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Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,  
Plaintiff,

vs.

MARY ROSE WILCOX,  
Defendant.

) No. CR2009-007892-001 DT  
)  
) **MOTION TO ENJOIN COUNTY**  
) **ATTORNEY AND SHERIFF**  
) **FROM HARASSING**  
) **DEFENDANT'S COUNSEL AND**  
) **INTERFERING WITH**  
) **DEFENDANT'S RIGHT TO**  
) **COUNSEL OF CHOICE**  
)  
) **Expedited Consideration Requested**  
) **Arraignment Pending 12/21/09**  
)  
) (Judicial Assignment Pending)  
)  
) (Oral Argument Requested)

Defendant Mary Rose Wilcox respectfully moves the Court to enjoin the County Attorney, the County Sheriff, and the members of their offices from obstructing justice by harassing defense counsel and interfering with Defendant's right to counsel of her choice, which is protected by the Sixth Amendment to the United States Constitution and Article 2, Section 24 of the Arizona Constitution. In the alternative, Defendant requests that the Court issue an order allowing expedited discovery on this issue, including depositions of County Attorney Andrew Thomas, Sheriff Joe Arpaio, Detective G. Alamanza of the Sheriff's Office, and Deputy

1 County Attorney Lisa M. Aubuchon. Counsel for the Defendant are available to  
2 conduct these depositions any time in the next 72 hours. This motion is supported by  
3 the following Memorandum of Points and Authorities.

4 **Memorandum of Points and Authorities**

5 **I. Factual Background**

6 County Supervisor Mary Rose Wilcox was indicted on December 7, 2009, on  
7 thirty-six unfounded felony counts. The next day, County Attorney Andrew Thomas  
8 and County Sheriff Joe Arpaio held a press conference to announce the indictment.  
9 At the press conference, they made statements in violation of their ethical duties under  
10 the Arizona Rules of Professional Conduct (“ER”) 3.8(f) and 5.3, which prohibit  
11 prosecutors from making prejudicial public statements and bind non-lawyers  
12 associated with prosecutors to the same rule. In particular, the County Attorney  
13 mentioned the name of undersigned counsel, Colin Campbell, the attorney retained by  
14 Supervisor Wilcox to represent her in this matter. Apparently, Mr. Campbell’s name  
15 was referred to in connection with a civil racketeering lawsuit recently filed in federal  
16 court by the County Attorney and the Sheriff against the Maricopa County Board of  
17 Supervisors, Supervisor Wilcox, and others (but not Mr. Campbell).

18 Supervisor Wilcox’s first public response to the indictment occurred at a press  
19 conference held at 10:00 a.m. on December 15, 2009. There, Mr. Campbell  
20 responded to the charges in the indictment and explained that Supervisor Wilcox  
21 would present a vigorous defense until she is vindicated. This public statement was  
22 “required to protect [Supervisor Wilcox] from the substantial undue prejudicial effect  
23 of [the] recent publicity” initiated by the County Attorney and Sheriff. ER 3.6(c) &  
24 cmt. 7. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1043 (1991) (“[A]n  
25 attorney may take reasonable steps to defend a client’s reputation and reduce the  
26

1 adverse consequences of indictment, especially in the face of a prosecution deemed  
2 unjust or commenced with improper motives.”).

3         Shortly before 3 p.m., less than five hours after Supervisor Wilcox’s press  
4 conference had begun, the attached letter was delivered to the offices of Osborn  
5 Maledon, P.A., requesting that Mr. Campbell “contact the Maricopa County Sheriff’s  
6 Office by Wednesday December 16, 2009 no later than 5 pm for an interview to  
7 clarify information related to a current criminal investigation related to” four specified  
8 matters (the “Letter”). The four matters identified in the Letter are matters in which  
9 Mr. Campbell has had no involvement, and both the Sheriff and the County Attorney  
10 are well aware of that fact. The deadline stated in the Letter – little over 24 hours  
11 from the time it was delivered – is both unprecedented in its audacity and revealing of  
12 the Sheriff’s and County Attorney’s unveiled goal of interfering with Supervisor  
13 Wilcox’s right to representation by the counsel of her choice.

14 **II. Legal Argument**

15         The County Attorney’s public comments baselessly linking Mr. Campbell to  
16 the allegations he and the Sheriff are investigating, the Letter, and the interview the  
17 Letter seeks are transparent attempts to intimidate undersigned counsel and, more  
18 importantly, to compromise Defendant’s relationship with her chosen defense  
19 counsel.<sup>1</sup> The Sixth Amendment to the United States Constitution, and Article 2,  
20 Section 24 of the Arizona Constitution guarantee Supervisor Wilcox her counsel of  
21 choice. *E.g.*, *United States v. Gonzales-Lopez*, 548 U.S. 140, 144 (2006) (right to  
22 counsel includes “the right of a defendant who does not require appointed counsel to

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23 <sup>1</sup>         It is beyond question that the actions of the Sheriff are the responsibility of the  
24 County Attorney. “Both offices are government entities and the judicial standards  
25 governing investigative misconduct are equally applicable to prosecutors and police.”  
26 *State v. Warner*, 150 Ariz. 123, 127, 722 P.2d 291, 295 (1986) (citing *State v. Tucker*,  
133 Ariz. 304, 308, 651 P.2d 359, 363 (1982), and B.L. Gershman, *Prosecutorial  
Misconduct* § 1.2 (1985)).



1 Thomas, Sheriff Joe Arpaio, Detective G. Alamanza of the Sheriff's Office, and  
2 Deputy County Attorney Lisa M. Aubuchon.

3 DATED this 16<sup>th</sup> day of December, 2009.

4 OSBORN MALEDON, P.A.

5

6

By Colin Campbell by KBO  
7 Colin Campbell  
8 Kathleen Brody O'Meara  
9 2929 North Central Avenue, Suite 2100  
10 Phoenix, Arizona 85012-2793

9

Attorneys for Defendant

10

11 ORIGINAL of the foregoing filed this  
12 16<sup>th</sup> day of December, 2009 with:

12

13 Clerk of the Court  
14 Maricopa County Superior Court  
15 201 West Jefferson  
16 Phoenix, AZ 85003

15

16

17 COPY of the foregoing sent via  
18 U.S. Mail this 16<sup>th</sup> day of  
19 December, 2009 to:

17

18

19 Lisa M. Aubuchon  
20 Deputy County Attorney  
21 100 W. Washington, 21st Fl.  
22 Phoenix, AZ 85003  
23 Attorney for Plaintiff

19

20

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P. Palmer

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2877206

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# Attachment 1



# MARICOPA COUNTY SHERIFF'S OFFICE

JOSEPH M. ARPAIO  
SHERIFF

REC'D. OSBORN MALEDON PA  
DEC 15 2009



Colin F. Campbell  
Osborn Maledon, P.A.  
The Phoenix Plaza  
2929 North Central Avenue  
Twenty-First Floor  
Phoenix Arizona 85012-2793

You are hereby requested to contact the Maricopa County Sheriff's Office by Wednesday December 16, 2009 no later than 5pm for an interview to clarify information related to a current criminal investigation related to the following:

- Any effort with the Arizona State Bar Association to file complaints against Maricopa County Attorney Andrew Thomas.
- Any involvement / discussion with Presiding Maricopa County Superior Court Judge Barbara Mundell reference appointment of judges to the Maricopa County Supervisor Donald Stapley case or any other cases involving the Maricopa County Attorney's Office or the Maricopa County Sheriff's Office.
- Any involvement / discussion with Maricopa County Superior Court Judge Anna Baca reference appointment of judges to the Maricopa County Supervisor Donald Stapley case or any other cases involving the Maricopa County Attorney's Office or the Maricopa County Sheriff's Office.
- Any involvement / discussion with the Maricopa County Criminal Court Tower.

*Detective G. Almanza #1329*

Detective G. Almanza #1329  
Maricopa County Sheriff's Office  
100 West Washington Street  
Phoenix Arizona 85003  
602-876-6223



Joseph M. Arpaio, Sheriff  
Maricopa County  
Wells Fargo Plaza  
100 W. Washington, Suite 1900  
Phoenix, Arizona 85003

REC'D, OSBORN MAIL ROOM, P/F

**DEC 15 2009**

Colin F. Campbell  
Osborn Maledon, P.A.  
The Phoenix Plaza  
2929 North Central Avenue  
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