



# ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

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April 26, 2010

Lawyer Regulation Division  
State Bar of Arizona  
4201 North 24th Street, Suite 200  
Phoenix, AZ 85016-6288

**Re: Bar Complaint against Andrew P. Thomas**

## I. INTRODUCTION

### A. Complainant

Arizona Attorneys for Criminal Justice (AACJ) is a Statewide professional association of nearly 400 criminal defense lawyers in private and public practice who are members of the State Bar of Arizona, as well as law students and allied professionals. It has the following mission:

To protect and insure that the rule of law applies to all people, rich and poor alike, as both the Arizona and Federal Constitutions guarantee, and to resist all efforts to curtail such rights;

To improve the professional status of all lawyers and to encourage cooperation between lawyers to further our objectives through publications, education, and mutual assistance; and

To engage in all activities on a local, state, and national level to advance this organization's purposes of promoting justice and the common good of the citizens of the United States.

AACJ has appeared numerous times as *amicus curiae* before the courts of this State in matters of Statewide importance. Since its establishment in 1986 it has been the principal institutional voice of the Criminal Defense Bar in its duty to protect and preserve the rights of the criminally accused and to ensure the fair administration of justice.

Please address all communication to AACJ, 2340 West Ray Road, Ste 1, Chandler, AZ 85224-3516.

### B. Respondent

Andrew P. Thomas (Mr. Thomas) is a member of the State Bar. He was elected to the office of Maricopa County Attorney and assumed that office in

January, 2005. He has held the office since that time.

### **C. Reasons for Bringing the Complaint**

AACJ brings this complaint at the direction of its Board of Governors on behalf of its members, the members of the Board and its officers, in discharge of a lawyer's obligation under Ethical Rule 8.3, Rule 43 of the Supreme Court of Arizona, to report to the Bar conduct of a lawyer which raises substantial question as to his honesty, trustworthiness, or fitness as a lawyer.

In pursuit of his political goals Mr. Thomas has engaged in numerous, repeated and egregious violations of the Ethical Rules including, among others, those requiring candor to the tribunal, avoidance of conflict of interest, the bringing of non meritorious claims, truthfulness, proper supervision of subordinates, fairness to opposing parties and their counsel and avoidance of conduct prejudicial to the administration of justice, all as discussed below.

In engaging in the conduct described above, Mr. Thomas has allied and conspired with, and directed, supervised and utilized the services of, the Sheriff of Maricopa County, Joe Arpaio (the Sheriff), Arpaio's Chief Deputy, David Hendershott, and the deputies under Arpaio's and Hendershott's control. In addition, Mr. Thomas has acquiesced in the Sheriff's misconduct in the pursuit of their common political goals.

## **II. FACTUAL BACKGROUND**

*"This isn't a personal thing with Thomas, like some others allege. This is like in The Godfather—this is business, not personal."*

Barnett Lotstein, spokesman for  
Andrew Thomas to the ABA JOURNAL.  
**See Attachment – ABA JOURNAL *The  
Maricopa Courthouse War* posted  
April 1, 2010.**

### **A. General Overview**

A complete account of the sordid facts would be voluminous and chronicled in the media. What follows is a very brief overview.

Almost immediately upon taking office in January 2005, Mr. Thomas began a corrosive, adversarial relationship with the bench, county officials, and others who disagreed with him.

He excoriated judges in the press for their rulings. He filed judicial complaints rather than appeal adverse decisions.

When he was stymied in his efforts to extract more money from the Board of Supervisors in the midst of a devastating recession and the Court refused to

grant him relief, he surmised, based on no evidence, that there was a conspiracy between the Board and the Bench and filed civil racketeering charges against them all.

And he struck back against the Chief Presiding Criminal Judge who dared to rule against both him and the Sheriff by filing three felony charges against him — hindering prosecution, bribery and obstruction of justice. This was just before the judge was going to rule on an important issue that Mr. Thomas did not want to lose.

## **B. The Budget Motivation**

Mr. Thomas' attacks on the judiciary became more vigorous when the Arizona economy went into deep recession starting in 2007. County officials restricted Mr. Thomas and the Sheriff's budgets along with the budgets of every other county office.

In response, David Hendershott, the Sheriff's chief deputy also acting on Mr. Thomas' behest, combed through the county budget casting a covetous eye on the money set aside for the Court Tower Project—a fund the County saved for years to finance sorely needed new courtrooms. Since the 1990's, the Board, the Court, and the Sheriff had been working together to capitalize this key project--- a court building that could solve prisoner security issues and would handle the growth needs of Maricopa County for decades. The County Attorney's Office worked directly with the Board in approving the project, developing the plans, establishing the time line and creating the bid protocols.

The Board of Supervisors refused to give either Mr. Thomas or the Sheriff this money.

Despite this history of working for the Court Tower Project, in early 2007, Mr. Thomas and the Sheriff announced Operation M.A.C.E., a joint venture ostensibly designed to root out public corruption but in reality directed at challenging the Court Tower Project.

In December 2008, Mr. Thomas indicted County Supervisor Don Stapley. This is despite the fact that Mr. Thomas acted as the Board of Supervisors lawyer, had participated in and advised for years on the Court Tower Project, and may have even advised Supervisor Stapley regarding the very subject for which Mr. Thomas had him indicted.

Finally, in April 2009 Mr. Thomas claiming to recognize his own conflict of interest asked Yavapai County Attorney Sheila Polk to handle the ongoing investigations into the Board of Supervisors *and the Courts*, including the already indicted Stapley case. From the beginning, however, the sheriff, Mr. Hendershott, and Ms. Polk disagreed over grand jury subpoenas with Hendershott demanding that Ms. Polk issue subpoenas designed to detect whether predetermined targets had committed criminal acts. Ms. Polk refused maintaining it was inappropriate to use the grand jury power as a "fishing expedition" to uncover *possible* wrongdoing.

Mr. Hendershott and the sheriff were unhappy.

Eventually, at the Sheriff's behest Mr. Thomas took the cases back from Ms. Polk despite his conflicts of interest.

### **C. Mr. Thomas' Attacks on the Judiciary Get More Specific**

Mr. Thomas began to claim that the county government was corrupt describing an evil triad of the Board of Supervisors, the Court, and private lawyers. But, despite numerous public pronouncements, press conferences, and press releases, Mr. Thomas has yet to substantiate any claim of graft or corruption. He has, however, effectively intimidated the judiciary.

Sheriff's deputies began to appear at the homes of a number of judicial assistants and judges' secretaries after hours and in plain clothes. Some deputies carried folders marked with the Judicial Assistants name, with a photo of the assistant inside. The deputies read from a list of approximately 10-12 questions. They interrogated regarding the Court tower asking at least one judicial assistant if she agreed with the money being spent on the project. If the judicial assistants did not answer the door or were not at home, the deputies went to his neighbor's house to find them. Some judicial assistants immediately called their judges, which was the whole point.

*"Pure intimidation,"* said one anonymous judge to the press. *"The first thing they would do is pick up the phone and call their boss."*

Presiding Judge Mundell asked the Attorney General how best to advise court employees about the situation.

### **D. Someone Takes a Stand -- and Pays for It**

Sheila Polk took a stand:

*"I came to the realization that by remaining silent about my concerns, I was paving the way for greater abuses to occur. And I came to the realization that my continued silence made me complicit in those abuses and that's why I made the decision to speak out,"* she said.

Her concerns about Mr. Thomas' and Mr. Arpaio's abuse of power were legion.

When the Sheriff's chief deputy Hendershott, heard about Ms. Polk's planned statement, he called left a message on the cell phone of her chief deputy. He said if she made a public statement criticizing their investigation he threatened to reveal how incompetent she was, how the investigation was ignored and dumped because she wanted to be a judge. He then continued,

*"So if she wants to try and make this a political thing, and criticize a case she knows nothing about...she is risking a great more than she realizes."*

Subsequently, Hendershott claimed that he “turned her in” to the F.B.I. and he told reporters the same. He told the press they should investigate Ms. Polk for hindering a corruption investigation:

“Things are going to get a lot uglier before they get better.”

Mr. Hendershott then filed a bar complaint against Ms. Polk.

Mr. Thomas stood mute as the sheriff attacked Ms. Polk.

### **E. The Arizona Supreme Court Reacts**

The Supreme Court issued an Administrative Order Appointing former Chief Justice Ruth McGregor as Special Master to oversee Mr. Thomas and the Sheriff’s mess. This included issues related to Mr. Thomas’ investigations into the Board of Supervisors and any Judge on the Superior Court.

In short order, the County Attorney filed a pleading before the Special Master, requesting that she investigate who might be instigating county attorneys outside Maricopa County to defame Mr. Thomas or publicly criticize his decisions—Sheila Polk was not the only sitting county attorney to condemn Mr. Thomas.

## **III. FACTS RELATED TO MR. THOMAS’ SPECIFIC VIOLATIONS**

Mr. Thomas has engaged in a pattern of unwarranted attacks on the judiciary, ex parte communications, and lack of candor to tribunals.

The following reiterates and expands those facts in the context of specific violations. This presentation, however, is not comprehensive of all potential ethical violations on the part of Mr. Thomas and his subordinates.

### **A. Attacking the Honorable Warren Granville**

Mr. Thomas’s attacks on the judiciary began soon after he took office in 2005 with the Honorable Warren Granville.

Judge Granville, a prosecutor for many years before his appointment to the court, sentenced a defendant under Arizona law, affording judges limited latitude. But, Judge Granville believed that the defendant’s sentence was “clearly excessive” and that barely concealed racism tainted the prosecution. Accordingly, he invoked ARS § 13-603 (L) to allow the defendant to seek clemency from the Arizona Board of Executive Clemency:

[A trial judge who is] “*of the opinion that a sentence that the law requires the court to impose is clearly excessive, [can] enter a special order allowing the person sentenced to petition the board of executive clemency for a commutation of sentence.*”

A.R.S. §13-603(L) (Supp. 2006). For this, Mr. Thomas filed a judicial complaint against Judge Granville on August 30, 2005.

Judge Granville responded to the Commission that filing a judicial conduct complaint against the court instead of working within the rules was “chilling.” If Mr. Thomas contested his order he could have appeared before the Clemency Board. Using the Commission on Judicial Conduct to appeal the order, Judge Granville correctly reasoned, was improper. The complaint was, therefore, frivolous. The Commission on Judicial Conduct dismissed Mr. Thomas’ complaint in March 2006.

But, Mr. Thomas was not yet through with Judge Granville. On October 2, 2007, the County Attorney filed another judicial conduct complaint against Judge Granville after the judge imposed a required sentence of death against a defendant, but dared to criticize the County Attorney’s decision to seek the death penalty. Mr. Thomas’ office had unsuccessfully sought to disqualify Judge Granville in this case, but instead of seeking appellate review, they filed yet another frivolous judicial complaint.

In response, Judge Granville pointed out the frivolity of this second judicial conduct complaint:

*The short answer is that the County Attorney’s complaint is a frivolous attempt to seek collateral review of adverse legal rulings, and, as so, should be dismissed summarily... Before filing this Complaint with the Commission, the County Attorney raised a similar complaint before the Criminal Presiding Judge as a Rule 10.1 motion in Mr. Gaines’ pending case. The Criminal Presiding Judge rejected the County Attorney’s claim. Rather than seek appellate review of the Criminal Presiding Judge’s ruling, the County Attorney brings his grievance to this forum.*

This Commission on Judicial Conduct dismissed the second judicial complaint.

Mr. Thomas’ complaints against Judge Granville are particularly unethical considering that Arizona law obligated Judge Granville’s conduct. *See, e.g., State v. Smith*, 146 Ariz. 325, 705 P.2d 1376 (App.1985)(“The judge’s obligation is to see that justice is done.”); *Cano v. Neill*, 12 Ariz. App. 562, 473 P.2d 487 (App.1970)(“The judge’s duty is essentially to see that there is no miscarriage of justice.”); *see also* A.R.S. §13-603(L) (permitting a trial judge who is “of the opinion that a sentence that the law requires the court to impose is clearly excessive, to enter a special order allowing the person sentenced to petition the board of executive clemency for a commutation of sentence). The following describes the scope of a trial judge’s duty:

*The fundamental duty ‘to do justice’ requires the trial judge ‘to be most vigilant (sic.) and vigorous in protecting individuals, as well as minority and majority groups, against encroachment upon their fundamental liberties,’ though no objection be made by counsel or the right to be unknown to the litigants or their counsel. Whether the proceeding be civil or criminal, the protection of such fundamental rights as life, liberty and property is dependent upon procedural due process. The trial judge’s duty to ensure this protection is not delegable to either counsel or appellate tribunals.*

Gitelson and Gitelson, *A Trial Judge's Credo Must Include His Affirmative Duty To Be An Instrumentality of Justice*, 7 SANTA CLARA LAWYER 16 (1966).

## **B. Attacking the Honorable Timothy Ryan**

In 2006 Arizona voters passed Proposition 100, amending the Arizona Constitution to deny bail to illegal aliens. During 2007, the Honorable Timothy Ryan labored to resolve the backlog of cases that Mr. Thomas caused by his manner of applying the new measure. After the Mr. Thomas' office failed to provide the evidence necessary to justify detention, Judge Ryan ordered release on condition to many defendants. **Exhibit 1: Declaration of Hon. Timothy J. Ryan.**

In October, 2007 the Honorable Timothy Ryan, Associate Presiding Criminal Judge, scheduled a hearing on a substantive defense motion involving an undocumented alien. Mr. Thomas named Dennis Wilenchik, Esq., a private attorney,<sup>1</sup> as co-counsel in the case. Mr. Thomas directed Wilenchik to demand that Ryan "voluntarily" remove himself from all County Attorney cases because of Ryan's alleged bias against the County Attorney and Proposition 100. Wilenchik filed the motion on the eve of the scheduled substantive hearing.

Mr. Thomas widely publicized this motion. At the hearing, Wilenchik repeatedly declared that Judge Ryan,

*"a threat to public safety"*

for his rulings in the Proposition 100 cases. See **Hearing at <http://www.youtube.com/watch?v=EgZrMxsHM58&feature=related> (last visited march 30, 2010)**. Wilenchik later testified that he made this claim at Thomas's behest. When Judge Ryan denied the motion, Thomas issued a press release repeating that Judge Ryan was,

*"a threat to the public safety."*

After the press printed Mr. Thomas' statement, Judge Ryan received graphic death threats:

*The judge, like all judges, is an arrogant pig. I say string the guy up from a streetlight in downtown Phoenix until his flesh rots off.*

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*Does anyone remember [assassinated REPUBLIC reporter] Don Boles [sic]? The reported [sic] who was blown up in his car. Not sure why,*

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<sup>1</sup> Wilenchik employed Thomas during the year between Thomas's departure from the Attorney General's Office to run for County Attorney and his assuming that office. Since that time Wilenchik's firm has received millions of dollars from the County for work Mr. Thomas steered to him.

*but you gotta admit it was darn effective. He's not writing anymore... Do you catch where I'm going with this? What's good for the reported [sic] is certainly good enough for [the judge].?*

**Exhibit 1: Declaration of Hon. Timothy J. Ryan.**

Judge Ryan contacted the sheriff, who is responsible for court security, but the sheriff referred him to Mr. Thomas' Office. After Mr. Thomas never returned Judge Ryan's calls, the judge had to arrange for his own protection. Judge Ryan later learned that although Mr. Thomas received a referral about the threats to Judge Ryan, his office took no effort to investigate them.

Moreover, Mr. Thomas failed to recognize his own conflict of interest in the matter given that his own repeated statement that Judge Ryan was "a threat to public safety" caused the problem. As the other parts of this complaint will show, Mr. Thomas repeatedly fails to the ethical rules regarding conflict of interest.

But, as with Judge Granville discussed above, Mr. Thomas was not yet through with Judge Ryan.

Months later, the County Attorney moved for change of judge for cause pursuant to Ariz. R. Crim .P. 10.1 against Judge Ryan, demanding that he be removed from all cases involving the County Attorney's Office. The motion again claimed that Judge Ryan was biased and prejudiced against the County Attorney's Office. One allegation complained that the judge issued an Order to Show Cause why a prosecutor should not be held in contempt after she failed to appear (for the second time) for a scheduled settlement conference. The motion claimed Judge Ryan's minute entry "lacked common courtesy." Though the motion was denied, Judge Ryan was not able to participate in any case involving the County Attorney's Office during its pendency.

Rule 10.1, Arizona Rules of Criminal Procedure, provides a mechanism for removal of a judge from a case for cause – Mr. Thomas did not follow it. Instead, he employed a procedure which was to become all too familiar: file a meritless motion or pleading, make outlandish and un-provable allegations, notify the press and attract as much adverse attention to the victim of his ire.

It worked.

The Rule 10.1 motion that Thomas eventually filed was similarly frivolous and contained allegations that were at once petty and silly. While it was eventually dismissed, it served to prevent Judge Ryan from sitting on any criminal cases involving the County Attorney during its pendency.

**C. Mr. Thomas' Repeated *Ex Parte* Communications in Pending Cases and Lack of Candor to Tribunals**

In the Fall 2008, Maricopa County Presiding Judge Barbara Mundell assigned the case of an indicted county supervisor to retired Maricopa County Superior Court Judge Kenneth Fields. In a rambling motion under Arizona Rule of Criminal Procedure 10.1, Mr. Thomas on December 12,

2008 claimed that Judge Fields was biased against him.

Part of the claim of Judge Fields' bias was the allegation that he had filed a bar complaint against Mr. Thomas. In fact, Judge Fields had never done so having only filed a bar complaint against Dennis Wilenchik, the lawyer who declared that Judge Ryan was "a threat to Public Safety".

Mr. Thomas, through his deputy Lisa Aubuchon, then sent letters to Presiding Judge Mundell, Criminal Presiding Judge Anna Baca, and Judge Fields requesting the judges to submit to an "interview" concerning their "decision making process" in appointing Judge Fields. **See Exhibit 2 – Undated Letters of Lisa Aubuchon.**

Judge Mundell responded on December 15, 2008 with a letter noting not only the unprecedented nature of the request but also the illegality of it under the Constitution's separation of powers doctrine and that no nexus existed between the decision to appoint Judge Fields and whether Judge Fields was biased. Judge Mundell's letter also decried the impropriety of Mr. Thomas' *ex parte* request. **See Exhibit 3 – Letter of Judge Mundell, December 15, 2008:**

*Lawyers file motions in pending cases; they do not write letters that are not part of the public file of the case ....*

Judge Mundell also had to remind the CA to,

*"[P]lease follow the Rules of Criminal Procedure and file proper motions with the Clerk of the Superior Court."*

**Exhibit 3.** Judge Baca similarly responded with a minute entry/order regarding the impropriety of Mr. Thomas' *ex parte* communication stating that for that reason she declined to read the letter. **Exhibit 4 – Judge Baca Minute Entry of 12/15/2008.**

Likewise, Judge Fields by minute entry noted that he,

*"declines to accept or read the letter from the County Attorney ... since such a off-the-record communication may relate to this case."*

**Exhibit 5 – Judge Fields Minute Entry of 12/15/2008.** Judge Fields subsequently denied Mr. Thomas' motion as to the request that he (Judge Fields) voluntarily recues himself. **Exhibit 6 - Judge Fields Minute Entry of 12/10/2008.** As Judge Fields' order underscored, however, Mr. Thomas was free to pursue his claim that Judge Fields' was biased by appellate review. Mr. Thomas did not do this

Instead, just over a year later, on January 14, 2010, Mr. Thomas through his subordinate Rachel Alexander, filed a 32 page "First Amended Complaint" in Federal Court alleging Violations of the Racketeer and Influence and Corrupt Organizations Act (RICO) naming as defendants the Maricopa County Supervisors, their lawyers, and four Maricopa Superior Court judges – Mundell, Baca, Fields, and Donahoe. **Exhibit 7 – RICO Complaint of**

**1/14/2010.** At paragraphs 41 and 42, page 9, Mr. Thomas alleges that,

*“41. Despite knowledge of defendant Field’s bias, defendants Mundell, Baca and Fields conspired to retrain Fields as the judge in the Stapley case ...*

*42. Defendants Mundell and Baca refused to grant MCAO [Mr. Thomas] a hearing on the State’s motion to remove Fields for bias. This action violated Arizona’s rules of court, which require a prompt hearing upon the filing of such a motion.”*

Despite the above allegation, Mr. Thomas never sought appellate review of filed a motion to remove Judge Fields, much less requested a hearing. In addition, Mr. Thomas’ initial and continuing public statements that Judge Fields was “biased”, without following the procedure of Rule 10.1 or substantiating his claim in improper. Mr. Thomas never exercised his right under Rule 10.2 to notice Judge Fields and automatically remove him from the case. More importantly, Mr. Thomas himself mooted his own motion to recues Judge Fields when he sent the case against Supervisor Stapley to Sheila Polk.

A month after filing the RICO complaint on February 16, 2010, Mr. Thomas under oath perpetuated untire statements regarding his efforts to disqualify Judge Fields while testifying in relation to Supervisor Mary Rose Wilcox’s *Motion of Disqualify* him from prosecuting her.

*A. At some point. It may -- it may have been -- I can't say it was never discussed or considered prior to that. It may well have been. I don't recall that. But it became -- it became clear at some point that -- and I'm -- I'll say this from the witness stand because I have to, I've been compelled, it became clear to me that we could not receive justice in these matters in the Maricopa County Superior Court, in my judgment, because the Presiding Judge and her direct subordinates were taking actions to prevent us from receiving neutral magistrates, and as a result of that and related matters, it became clear that the federal RICO suit needed to be filed. And I do stand behind it and I would ask that it be read in its totality.*

**Exhibit 8 – Transcript of Polk/Thomas testimony of 2/14/2010; page 101-02.** Although Mr. Thomas never appealed his original motion under Arizona R. Crim. P. 10.1 to allege bias, nor did he move under 10.2 to automatically remove Judge Fields. But, he perpetuates a fraud on the court by testifying that the RICO complaint is accurate. *See, e.g. Exhibit 1.6; page 108:*

*Q: And you stand behind every word of the document; correct?*

*A: As far as I know, it’s accurate.*

On March 12, 2010, Mr. Thomas and the Sheriff dismissed their RICO complaint, just before the Federal District Court was to rule on the defendant’s Motions to Dismiss. In a joint televised press conference the Sheriff and Mr. Thomas claimed that he did so because the United States Department of Justice promised to review his corruption investigations against the RICO defendants, which includes Judges Mundell, Fields, Baca,

and Donahoe. Mr. Thomas claimed that he had,

*“been asking for federal involvement in these matters for a year.”*

**Exhibit 9 – Arizona Republic article of March 12, 2010.** Mr. Thomas’ statement left the false impression with the public that (a) the Federal Government had been dilatory, (b) that because the Federal Government was dilatory, he had to file the RICO suit, and (c) the Federal Government was now going to take over a RICO investigation like it should have in the first place.

In the same press conference, the Sheriff’s lawyer implied that, because of his “connections”, he could get the Department to review Mr. Thomas’s claims. Mr. Thomas knew or should have known that the statement was false. Because this was a joint conference between himself and the Sheriff, he had an obligation to correct the lawyer’s statement, or distance himself from it. However, he stood silent, leaving the impression that the statement was true and that he, as the elected County Attorney for Maricopa County, adopted it.

**Exhibit 10 – Arizona Republic article of March 13, 2010.**

In a strongly worded letter, however, the Department of Justice Public Integrity Section Acting Chief Raymond Hulser rebuked Mr. Thomas and the Sheriff’s claim stating that he was,

*“dismayed to learn that your mere referral of information to the Public Integrity Section was cited and relied upon in a pleading in federal court, and then used as a platform for a press conference.”*

**Exhibit 11 – Hulser letter to Arpaio Attorney Robert Driscoll.** Mr. Thomas attempts to perpetuate a lack of candor to the tribunal and the public are a matter of public record.

Mr. Thomas’ actions reflect a pattern and practice, of giving untruthful statements, both under oath and in public press conferences, designed to mislead judges and the public. At least some of the substance of previous Bar charges regards similar conduct. As the Bar is aware, a dismissal prior to a hearing on the merits for insufficient probable cause does not bar further action for the same facts. Rule 48(k)(1), Ariz.R.Sup.Ct.

Thus, in conjunction with this current bar complaint, we request that the State bar re-open any previous files against Mr. Thomas with similar charges.

**D. Mr. Thomas Has Unethically Filed Law Suits And Judicial Misconduct Complaints Culminating In A Federal RICO To Attack Judges For Rulings In-Court.**

The above facts demonstrate just part of Mr. Thomas’ pattern of practice. Mr. Thomas has filed a dizzying array of claims and counter claims in Superior court and/or a number of judicial complaints against judges for their rulings against him in the normal course of their role as neutral arbiters.

On December 1, 2009, Mr. Thomas’ contentions culminated in a federal

RICO lawsuit that he and the sheriff filed. Mr. Thomas asserted that the Court (including its presiding judge and presiding criminal judge), all members of the Maricopa County Board of Supervisors ('the Board'), and others, including the Board's attorneys and the Court's attorneys, conspired in an illegal racketeering enterprise. **See Exhibit 12 – Arizona Republic article Dec. 2, 2009.** Mr. Thomas bases most of his claims on judicial rulings adverse to him from the four defendant judges acting in their capacity as judges. He claimed in the RICO lawsuit that he was a personal victim of the conspiracy, in order to satisfy the requirement that a RICO plaintiff must suffer personal damage from the alleged racketeering misconduct. **See Exhibit 13 – Arizona Republic Columnist Robert Robb.** Mr. Thomas had appealed and lost most of these rulings or did not bother to appeal at all. Instead, he filed this improper RICO lawsuit for apparent tactical and political advantage.

On December 4, 2009, the Sheriff's Chief Deputy David Hendershott, acting in concert with Mr. Thomas, released to the media four judicial conduct complaints dated November 30, 2009. These complaints related to the rulings judges had made in court on matters in which Mr. Thomas was the litigant.

This compelled Presiding Judge Mundell on December 4, to issue a news release denouncing attempts to intimidate the judiciary:

*"The allegations made are false, frivolous and slanderous. This is the latest attempt to intimidate the judiciary and interfere with the impartial and timely administration of justice. This attempt will fail."*

**Exhibit 14 - Mundell News Release dated December 4, 2009.**

On December 8, Mr. Thomas issued a press release advising that all the defendant's in the RICO civil action were also under active criminal investigation, including the four Superior Court Judges. The release concluded with an ominous warning:

*"Thomas stated that any person, and particularly government employee or taxpayer-funded individual who takes any public or private action to obstruct or intimidate investigation or prosecution of county officials or employees will be dealt with appropriately."*

Making an unfounded judicial conduct complaint and following this with charging the judge criminally for adverse ruling made in his judicial capacity, creates an atmosphere of fear and intimidation in the judiciary as a whole. When a prosecutor does this, it jeopardizes the defendant's right to a fair trial and violates the prosecutor's obligation to seek justice:

*Any conduct by such a quasi-judicial officer which would denigrate a member of the Court or disseminate information so as to infuse the judicial process with prejudice, or use a case for self promotion is the very antithesis of the prosecutor's invested responsibility to the administration of justice. The prosecutor is jurisprudentially and statutorily bound to publicly display respect for the Courts and their*

*verdicts, since, absent such respect, law enforcement becomes a travesty.*

*Commonwealth v. Stumpo*, 1979 WL 139210(Pa.Comm.Pl.) 2 Phila.Co.Rptr.202.

And, attempts to intimidate the judiciary are of particular concern.

*“It is of particular importance to the integrity of the adjudicatory process and to the independence of the judiciary that a trial judge not be timid in the face of prosecutorial demands.”*

*Stumpo* at 209.

Mr. Thomas has brought the same frivolous claims over and over again despite dismissals. *See, e.g., Matter of Levine*, 847 P.2d 1093, 174 Ariz. 146 (1993). Mr. Thomas’ filing RICO complaint on matters that he has already lost in the state court is unethical.

#### **E. Mr. Thomas Sham Withdraw From Cases To Avoid Sanction From Courts And The Bar Is Unethical**

After Supervisor Don Stapley was indicted in December, 2008 his lawyer filed a motion to disqualify the Maricopa County Attorney’s Office from prosecuting him due to conflict of interest. Apparently realizing that disqualification was inevitable, Thomas began searching for an outside prosecutor to take over the Stapley case and the other investigations he and Arpaio were pursuing against the Board of Supervisors, including the one against Supervisor Mary Rose Wilcox.

Sheila Polk, Yavapai County Attorney, a career prosecutor, agreed to take over the cases. Ms Polk brought in Melvin R. Bowers, Jr., Esq., a former Navajo County Attorney, as Special Prosecutor to assist.

The hearing on the defendant’s motion to disqualify was set for April 9, 2009. Mr. Thomas moved to vacate the hearing because he was no longer handling the case. On this basis Judge Fields mooted the defense motion and vacated the hearing. <sup>2</sup> Thomas announced to the press that he withdrew from the case to avoid the appearance of impropriety. His withdrawal, however, was a sham.

Mr. Thomas’ deputy, Lisa Aubuchon, continued to advise and direct the Sheriff without Ms. Polk’s knowledge. This exacerbated Ms. Polk’s difficulties in restraining the renegade Sheriff.

Mr. Thomas also used his claimed withdrawal from the case to escape a Bar prior complaint for conflict of interest. He informed appointed Special Bar Counsel Rebecca A. Albrecht, a retired Superior Court Judge, that he had withdrawn from the Stapley case and all other cases involving allegations of

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<sup>2</sup> Thomas would later falsely state that Judge Fields had determined that there was no conflict of interest in Thomas’ participation in the case.

conflict of interest.

On May 4, 2009 Albrecht wrote Mr. Thomas that because he recognized the conflict, he had avoided the ethical violation:

*It is clear to me that under the facts as they were presented in the pleadings there was a clear issue of conflict of interest, which if borne out would have led to a conclusion that you had violated Ethical Rules 1.7, 1.10 and 8.4(d). However, you have obviously recognized those conflicts and have withdrawn from the case in accordance with ER 1.16. Please confirm that neither you, nor your office, is any longer involved. If that is the case, I see no purpose in pursuing a disciplinary case against you.*

\*\*\*

*Please be advised, however, that these issues are highly concerning and should it come to the Bar's attention that similar conflict of interest concerns come up in the future, this file may be reviewed anew.*

#### **Exhibit 45.**

After Judge Fields dismissed 53 counts of the Stapley indictment and Ms. Polk dismissed the rest to appeal the Court's dismissal to keep the case together, Thomas, at the Sheriff's behest, took the cases (Stapley and Wilcox) back from Ms. Polk, despite his conflict. Thus, Mr. Thomas proved his conduct a sham, however, when to ended up taking the cases back from Ms. Polk. 3

In December, 2009 Mr. Thomas had his attorneys caused Stapley and Wilcox to be indicted.

#### **F. Mr. Thomas Unethically Charged Superior Court Judge Donahoe with Crimes Including Bribery**

On December 9, 2009, Mr. Thomas, through his deputy Lisa Aubuchon, filed a criminal complaint against Presiding Criminal Judge Gary Donahoe alleging that Judge Donahoe's legal rulings *in court* constituted obstruction of justice, hindering prosecution, and bribery. *See Exhibit 15 – Donahoe Criminal Complaint.*

Using the power of prosecutorial discretion to charge felonious conduct, shielded by prosecutorial immunity, for purposes of tactical or strategic power in a political battle with the judicial branch of government is unlawful,

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3 This was not the first time Mr. Thomas effected such a sham withdrawal. Earlier Mr. Thomas attempted to prosecute the editor and the owner of THE NEW TIMES for allegedly violating state law by publicizing Arpaio's home address. THE NEW TIMES is a weekly tabloid that had published articles adverse to Mr. Thomas and Arpaio. Mr. Thomas again appointed Dennis Wilenchik and two lawyers from his office as Special Prosecutors, but remained involved by having personnel from the County Attorney's Office conduct training sessions and give advice to the appointees on conducting the grand jury investigation, among other things.

intimidating and directly affects the core function of administration of justice. Not only was Judge Donohoe publicly charged with corruption, he and his family were endangered through Mr. Thomas' chief deputy's dissemination of Judge Donahoe's home address, telephone number, and social security number through the Internet. After the treats to Judge Ryan, *see Exhibit 1: Declaration of Hon. Timothy J. Ryan*, Judge Donahoe had good reason for fear. Mr. Thomas not only violated his ethical duties but by releasing a judge's personal information may have committed a crime under ARS § 13-2401. 4

Although the Clerk of Court eventually redacted this information, it was originally widely available over the Internet. *See Exhibit 16 – Redacted Court Information Sheet and Release Questionnaire*. Thus, any prior litigant or other person with a grudge to settle for Judge Donahoe's rulings had access to his personal information. Every Maricopa Superior Court judge now also knows that not only can Mr. Thomas charge him with a crime but can in conjunction with it release his personal information to the public. Thomas and his deputy's publication of Judge Donohoe's personal information constitutes a class 5 felony .

At Mr. Thomas' own public statements and press conferences he was unable to offer specific evidence supporting that Judge Donahoe committed a crime. *See Exhibit 17 - New Times article – Andrew Thomas Offers No Evidence of Bribery in Judge Gary Donahoe Case – But Charges Him Anyway – December 9, 2009*. Mr. Thomas admitted that Judge Donahoe did not personally receive any financial benefit. Mr. Thomas even admitted that the charge against Judge Donahoe “is a hard thing to believe.” When a reporter asked Mr. Thomas to describe the basis for the bribery charge, he stammered and paused and then turned to the press corps and said, “Help me out here, guys.” Mr. Thomas went on to assert, however, the Judge Donahoe had been “obstructing justice” up “until about two hours ago” referring to a hearing that Judge Donahoe had on his calendar that afternoon: “The hearing this afternoon,” Mr. Thomas insisted, “was part of an ongoing criminal act.” *Id.*

As Mr. Thomas' brazenly confirmed in a concurrent press release, he had charged Judge Donahoe with these crimes so that the Judge would not hold a hearing:

*Judge Donahoe had scheduled a hearing today on the board of supervisors' unprecedented request that the county attorney be barred from prosecuting them or other county employees for any crime. Such a hearing, which the MCAO regards as illegal, has*

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4 “§ 13-2401. Personal Information on the world wide web; exception; classification; definitions - It is unlawful for a person to knowingly make available on the world wide web the personal information of a peace officer, justice, judge, commissioner, public defender or prosecutor if the dissemination of the personal information poses an imminent and serious threat to the peace officer's, justice's, judge's, commissioner's, public defender's or prosecutor's safety or the safety of that person's immediate family and the threat is reasonably apparent to the person making the information available on the world wide web to be serious and imminent.”

*apparently never before been held in Arizona history. It would have allowed, and all but ensured, that ongoing grand-jury matters, which are confidential by state statute, be aired in front of criminal defendants and suspects.*

**Exhibit 18 – Thomas Press Release – December 9, 2009.** Even if Mr. Thomas’ dubious legal reasoning has currency, it is unethical to criminally charge a judge to force him to cancel a hearing. Mr. Thomas only charged Judge Donahoe with these “crimes” after the judge ruled against him regarding his “investigation” of the new court building. **See Exhibit 19 – Arizona Republic Article - March 31, 2009 – Judge Bars Thomas from Case.**

Mr. Thomas’ office has continually failed to substantiate the charges against Judge Donahoe. On January 14, 2010, Mr. Thomas’ spokesperson, Barnett Lotstein, Special Assistant County Attorney, appeared on the public television show *Horizonte*. In response to the question regarding the substance of the “bribery” charge against Judge Donahoe, Mr. Lotstein repeatedly stated that Judge Donahoe had “certain motivations” that presumably induced his in court rulings. **See [http://www.azpbs.org/horizonte/09\\_detail.php?id=308#Maricopa County Politics](http://www.azpbs.org/horizonte/09_detail.php?id=308#MaricopaCountyPolitics).** Mr. Lotstein’s interview revealed, however, that though his boss Mr. Thomas charged Judge Donahoe with “bribery”, Judge Donahoe never received a bribe. Beyond bald allegations neither Mr. Lotstein nor his boss Mr. Thomas offered any substance.

Both ethical rules and Arizona law requires Mr. Thomas to substantiate a criminal charge. Arizona Rule of Criminal Procedure Rule 2.3, Content of Complaint, states the following:

*A complaint is a written statement of the essential facts constituting a public offense, that is either signed by a prosecutor, or made upon oath before a magistrate, or made in accordance with A.R.S. sec. 13-3903.*

Here, the Complaint, which Ms. Aubuchon signed on Mr. Thomas’ behalf, against Judge Donahoe gives no notice of any crime or “essential facts” as to what he did to commit a crime.

What makes this conduct particularly egregious is that Mr. Thomas filed a direct complaint allowing him to circumvent a grand jury or a judicial determination of probable cause. *See* Arizona Rules of Crim. Pro. 2.3 and 2.4. Thus, Judge Donahoe will always have on his record three criminal charges despite the fact there was no prior probable cause determination.

The Complaint’s Probable Cause Statement, moreover, fails to allege a crime. **See Exhibit 20 – Probable Cause Statement.** Instead, it outlines Mr. Thomas’ legal battles and losses before various judges and courts including Judge Donahoe as a basis for his allegation of “bias”, which even if true is not a crime.

This Probable Cause Statement’s language, with very minor amendments and

typographical corrections, mirrors Sheriff's Chief Deputy David Hendershott's judicial conduct complaint against Judge Donahoe of November 30, 2009. The same person authored each. This evidences the concerted campaign of Mr. Thomas acting through and in concert with the Sheriff to attack and intimidate the judiciary. **Exhibit 21 – Hendershott Judicial Complaint.** But, in addition, it ties a baseless judicial complaint to a concurrent baseless criminal complaint that Mr. Thomas orchestrated to file the baseless RICO complaint.

Both the Donohoe judicial conduct complaint and the supporting Donohoe Probable Cause Statement claim that Judge Donahoe made an “astonishing decision” in a case that was appealed to the Arizona Supreme Court, “and that matter is currently pending (CV-09-0165-PR).” By the time of the Probable Cause Statement against Judge Donahoe, however, the matter was no longer pending. Thus, Mr. Thomas and his deputy Ms. Aubuchon either knew or should have known that this was an affirmative and material false statement.

This matter was on the Supreme Court's calendar for decision December 1, 2009 even before Sheriff's Deputy Hendershott's November 30, 2009 judicial conduct complaint. On December 1, 2009, the Arizona Supreme Court issued its minutes and denied the petition for review of the special action filed in the Court of Appeals. **Exhibit 22 – Minutes of the Arizona Supreme Court – December 1, 2009.** Thus, the Arizona Supreme Court saw nothing “astonishing” about Judge Donahoe's ruling.

The Ruling was only “astonishing” to Mr. Thomas because he lost. **Exhibit 23 – Judge Donahoe's ruling – dated February 6, 2009.** Judge Donahoe ruled that Mr. Thomas had a conflict of interest in investigating criminal charges related to the Court Tower project, because Mr. Thomas' office had acted as the lawyer for the potential targets of the investigation. Also, Judge Donahoe concluded that he did not have a conflict of interest because he had no personal interest in the planned Court Tower Building. Moreover, Judge Donahoe ruled that the attorneys for the Board of Supervisors should not be disqualified. Judge Donahoe ruled that Mr. Thomas' actions in investigating his own clients created the “appearance of evil.” *Id.*

As both Hendershott's judicial conduct complaint and Mr. Thomas Statement of Probable Cause show, it was this very court ruling that slated Judge Donahoe for criminal charges of Hindering Prosecution, Obstruction of Criminal Investigation, and Bribery of a Public Servant. Indeed, Mr. Thomas, through his deputy Lisa Aubuchon, either lied or showed a reckless disregard for the truth when stating “that matter is currently pending (CV-09-0165-PR)” when the Supreme Court had already decided not to review Judge Donahoe's ruling. (Ms. Aubuchon was directly in charge of Mr. Thomas' proceedings against Stapley in the Superior Court, Court of Appeals and Supreme Court and was responsible for drafting the Donohoe Probable Cause Statement. Mr. Thomas is jointly responsible for the conduct of his closest assistant in each of the matters involving the alleged Court Tower Conspiracy.)

The Judicial Complaint and the *Probable Cause Statement* also refer to an implausible theory of attorney/client relationship between Judge Donahoe and lawyer Tom Irvine, an attorney who had been appointed to a special advisory board for deciding utilization for the Court Tower structure. Ms. Aubuchon sat on the same board as Mr. Thomas' special appointee for the County Attorney's office.

In Mr. Thomas' *Amended Petition for Review of a Special Action Decision of the Court of Appeals*, Deputy CA Lisa Aubuchon claimed she did not know that Tom Irvine and the firm of Shughart Thomson represented the Superior Court. **Exhibit 24 – Amended Petition.** Ms. Aubuchon, however, had represented Mr. Thomas on numerous occasions for years in the Court Tower planning process as reflected in various Stakeholder Project Control Meeting Minutes. *See Exhibit 25 – Sample Stakeholder Minutes of February 26, 2008 showing Ms. Aubuchon and Tom Irvine's presence* and **Exhibit 26 - Sample Stakeholder Minutes of April 8, 2008 showing Ms. Aubuchon and Tom Irvine's presence with a signature sheet** . The sign-in sheet of the April 8, 2008 meeting shows that Tom Irvine and Rebekah Francis signed in representing "court" and Lisa Aubuchon also signed in- next to Rebekah Francis. These minutes were sent out on April 15, 2008 to Lisa Aubuchon and Daniel Hanson of MCAO.

Ms. Aubuchon was a vocal participant in these meetings. Mr. Irvine , a veteran of the County's most important building projects over the past twenty years, was active as well.

Without question, Ms. Aubuchon knew that Mr. Irvine spoke as the court's representative during the planning meetings. She knew Mr. Irvine's partner, Ed Novak represented the County Administration before Judge Donahoe when the County sought to quash grand jury subpoenas issued through Ms. Aubuchon for all records involving the Court Tower Project. She raised the claim that Judge Donahoe was disqualified because of some "Benefit " he would receive as an occupant of Tower. But it was only months later that she "developed" her new theory that Irvine really represented both the Court and the Board, even though she was personally aware of each of the facts that led her to the "startling" conclusion .

Mr. Thomas had filed the Criminal Complaint against Judge Donahoe, two weeks after he filed a Federal RICO action against Judge Donahoe, every member of the Board of Supervisors, three other judges, and the two lawyers. By seeking civil damages in the Federal RICO complaint, while at the same time criminally prosecuting a defendant (Judge Donahoe), constitutes a conflict of interest. Thus, even if there were any substance to the criminal charges against Judge Donahoe, Mr. Thomas is ethically prohibited from prosecuting him.

Mr. Thomas' RICO Complaint of January 14, 2010 also demonstrates that he charged Judge Donahoe with crimes for rulings Donahoe made in court:

*50. ... Defendant Donahoe ignored state law and disqualified MCAO from investigation in order to hinder and effectively terminate it....*

**Exhibit 7 – RICO Complaint of 1/14/2010 at paragraph 50, page 11. See**

**also Exhibit 8 – Transcript of Polk/Thomas testimony of 2/14/2010; page 124-25** (Mr. Thomas testifying regarding his RICO complaint against Judge Donahoe). When a party thinks a judge “ignored state law” the proper course of professional conduct is to file an appeal or other legal review. Rather than seek his legal avenues, Mr. Thomas elected to charge Judge Donahoe in Federal court with a RICO violation and then with criminal charges for “ignor[ing] state law.”

Our system provided Mr. Thomas with procedural recourse, the most basic being an appeal. Mr. Thomas could also have moved for a change of judge, a stay, or an interlocutory appeal. Rather than follow the appropriate legal avenues, Mr. Thomas libeled Judge Donahoe by labeling him a racketeer, without probable cause, based on a flawed and probably perjured complaint, and then filed a criminal complaint against him, knowing that he was ethically prohibited from doing so even if he had probable cause, but doing it anyway, without probable cause.

Every judge of Maricopa County now knows he or she could face Judge Donahoe’s fate if they rule against Mr. Thomas or the Sheriff.

#### **G. Mr. Thomas’ Unethical Conduct Before Judge Donahoe Regarding Sheriff’s Deputy Stottard**

Presiding Criminal Judge Donahoe held a hearing regarding a Maricopa County Sheriff detention officer who improperly on October 19, 2009 removed a letter from a criminal defense attorney’s file while she was speaking at the podium on behalf of a defendant named Lozano in Judge Flores’ court. **See Exhibit 27 – New Times Article regarding Detention Officer Adam Stoddard.** Judge Donahoe found the officer in contempt and ordered him to publicly apologize to the lawyer. Deputy County Attorney Thomas Liddy represented the officer. Mr. Liddy publically advised the officer not to comply and in fact to violate Judge Donahoe’s order.

As a result, Judge Donahoe ordered the officer to report to jail. The next day, other officers and deputies of the Maricopa County Sheriff’s Office staged a sickout, and 19 officers refused to report to work. Also, someone made a bomb threat to the court, forcing the cancellation of all court hearings. Criminal cases were postponed prejudicing both the defendants and victims of crime, thereby prejudicing the administration of justice. Maricopa County Deputy Sean Pearce, speaking for the Deputies Law Enforcement Association, described the sick out as follows: “I think it sends out a message that this officer has integrity. Why should he apologize for doing his job?”

As part of the Sheriff’s and Mr. Thomas’ media campaign against Judge Donahoe on this issue, the Sheriff issued a news release on December 4, 2009 alleging that,

*“Donahoe’s record over the past 18 months shows that defendants who have committed crimes such as child abuse, drug possession, and aggravated assault, often walk away without serving any jail time. Yet, this week, when a young Maricopa County Sheriff’s Office*

*detention officer who acted in good faith attempting to maintain the safety and security of courtroom staff and the public, was ordered to serve jail time by Judge Donahoe as a way to fire a political shot and to send a message to the Maricopa County Sheriff's Office."*

**Exhibit 28 – Sheriff's News Release of December 4, 2009.** The news release went on to list criminal cases where Judge Donahoe sentences of defendants were overly-lenient. Subsequently, the *New Times* and other media outlets exposed the news release as a total distortion of the record in those cases. **Exhibit 29 – New Times web post – December 8, 2009.**

To date, there have been no repercussions for the Sheriff's behavior. Rather, Mr. Thomas engaged in misconduct through the acts of another by supporting the Sheriff, and responding to Judge Donahoe's order of contempt against the detention officer by filing the December 9, 2009 criminal charges against Judge Donahoe, and alleging in the Statement of Probable Cause that Judge Donahoe was "biased" because of his rulings against the officer.

On December 8, 2009, rather than confront Sheriff's deputies about their inability or unwillingness to bring in-custody defendants to her courtroom, Judge Flores recused herself from Lozano's case and requested that it be assigned to another judge.

#### **H. Search Warrant of Presiding Judge Barbara Mundell**

On December 10, 2009, a reporter called Presiding Judge Barbara Mundell to ask for permission to film inside her chambers as the Sheriff executed a search warrant. **Exhibit 30 – E-mail from KPNX/12News – December 10, 2009.**

Judge Mundell sought legal help to enjoin such a search of not only her chambers but also her home. **Exhibit 31 – New Times posting – December 13, 2009.** She was forced to file an emergency motion with the Arizona Court of Appeals to prohibit the Sheriff from executing the warrant.

At oral argument before the Court of Appeals, Mr. Thomas, acting through Deputy County Attorney Clarisse McCormick, argued that no search warrant existed specifically arguing,

*"Unfortunately, we are here today, your honor, simply because of media rumors"*

However, she went on to state, *"I can't speculate as to which search warrants would be issued in the future."*

The Court of Appeals granted Judge Mundell's requested stay and quashed any potential search warrant. **Exhibit 32 – Order.**

If Mr. Thomas did not create the "media rumors", he certainly benefitted from them. In the context of Mr. Thomas' repeated attempts to intimidate the judiciary, the rumors served him well. Every Maricopa County Superior Court Judge now knows that a search of his or her chambers and home is

possible if they rule adverse to Mr. Thomas. What person accused of a crime or other litigant can have confidence in judicial independence or confidentiality of the court's deliberative process.

### **I. Mr. Thomas Supports the Sheriff's Harassment of Court Employees**

Starting on December 15, 2009 armed sheriff's detectives began showing up late at night and on weekends at the homes of nine judicial assistants—secretaries of different Commissioners or Superior Court Judges—demanding information. *See Exhibit 33 – Reporter's Transcript of Proceeding – December 16, 2009.* The interrogations also extended to Maricopa Superior Court administrative staff. *See Exhibit 34 – Photographs of Sheriff's Detectives visiting the home of Karen Arra and copy of Det. J. Kelly #1777 business card.*

According to those who were contacted, the detectives were asking court staff about their knowledge of the Court Tower project. The interrogations also effectively sent a message of intimidation to judges and staff.

Meanwhile, in May of 2009, Chief Presiding Judge Barbara Mundell revealed to Channel 12 that she and contractors at her home has seen marked Sheriff's cars drive by and park near her house though she lives in a neighborhood patrolled by the Phoenix Police Department. She told the other judges about what she had seen at a judicial meeting. "I certainly wanted to let our judges know what lengths intimidation will be used against our judges," she said.

### **J. Mr. Thomas' Media Statements On A Pending Criminal Matter And Violating Attorney Client Relationship – Colin Campbell Letter**

On December 7, 2009, Mr. Thomas had two members of the County Board of Supervisors, including Supervisor Mary Rose Wilcox, indicted on 36 felony charges. Supervisor Wilcox had retained Retired Judge and former Presiding Judge Colin Campbell to represent her.

In conjunction with the December 7<sup>th</sup> indictment, Mr. Thomas and the Sheriff held a joint press conference.

*"[Andrew] Thomas indicated that the very county officials, lawyers and judges named in the civil suit also may be targets of current criminal investigations. Thomas singled out Wilcox's attorney, Colin Campbell, a retired presiding judge of the Superior Court."*

**Exhibit 35 - Arizona Republic article of December 9, 2009.** Mr. Campbell, however, was not named in Mr. Thomas' civil racketeering suit. At the time of Mr. Thomas' Press Conference, Mr. Campbell had been off the bench for three years and had stepped down as presiding judge four and a half years earlier.

On December 15, 2009, Supervisor Wilcox, through Mr. Campbell, made her first public response at a press conference at 10 a.m. On the same day, before 3 p.m. an armed deputy sheriff detective hand-delivered a letter to Mr.

Campbell stating in imperative terms,

*“[y]ou are hereby requested to contact the Maricopa County Sheriff’s Office by Wednesday December 16, 2009 no later than 5pm for an interview ...”*

The letter referenced four matters for questioning, none of which had anything to do with Mr. Campbell. The Sheriff desired to question Mr. Campbell regarding Judge Mundell and Judge Baca’s appointment of judges in the Supervisor Stapley case and as to his involvement regarding the Maricopa County Court Tower. **Exhibit 36 – Sheriff’s Letter to Colin Campbell.**

On Mr. Thomas’ behalf, the Sheriff also sought to interrogate Mr. Campbell regarding,

*“[a]ny effort with the Arizona State Bar Association to file complaints against Maricopa County Attorney Andrew Thomas.*

**Exhibit 36 – Sheriff’s Letter to Colin Campbell.**

The letter constituted harassment and interference with the constitutional right to counsel.

Mr. Campbell filed a *Motion To Enjoin County Attorney And Sheriff From Harassing Defendant’s Counsel And Interfering With Defendant’s Right To Counsel Of Choice.* **See Exhibit 37 – Campbell Motion.**

On this point, the Sheriff is doing Mr. Thomas’ bidding. In Mr. Thomas’ RICO complaint he alleges several judges “conspired” to file State Bar complaints against him:

*31. In approximately October 2007, defendants Mundell, Fields and other current and retired Maricopa County Superior Court Judges conspired and acted outside the scope of their judicial offices to instigate frivolous investigations of plaintiff Thomas and other MCAO prosecutors and deputies by the State Bar of Arizona. This effort in the wake of differences between laws governing illegal immigration and related issues and public debate regarding same. A total of 13 such investigations were initiated after emissaries of this group of judges (“the Mundell-Fields faction”) approached leaders and officials of the State Bar and urged them to “do something” about Thomas. Eventually the State Bar dismissed all of these investigations.*

**Exhibit 7 – RICO Complaint of 1/14/2010 at paragraph 31, page 6-7.** *See also paragraph 64, page 15* (alleging that Judge Daughton made rulings in court “in furtherance of the efforts of the Mundell-Fields faction to encourage the State Bar to take adverse and unjust action against plaintiff Thomas and potentially other MCAO attorneys.”) **and paragraph 113, page 28** (alleging that “Defendants continue their attempts to keep PLAINTIFFS from continuing with the now-stalled investigation of the COURT TOWER

*project by attempting to initiate a number of proceedings by the State Bar of Arizona against THOMAS.”).*

During Mr. Thomas’ testimony on February 14, 2010 he alluded various times to “mysterious” bar complaints against him implying they are part of some grand conspiracy. *See, e.g., Exhibit 8 – Transcript of Polk/Thomas testimony of 2/14/2010; page 107 and 108.*

Mr. Thomas’ RICO complaint alleging that “*current and retired Maricopa County Superior Court Judges conspired*” to file bar complaints against him is an attempt to impede the duty of lawyers and judges to report possible ethical abuses to the State Bar. Coupled with the Sheriff’s letter to Colin Campbell of December 15, 2009, it constitutes an unethical attempt of disrupt an attorney client relationship.

### **K. Mr. Thomas’ Failure To Recognize His Own Ethical Conflicts And Uphold The Rule Of Law**

On December 22, 2009, the Yavapai County Attorney, Sheila Polk, wrote a letter to the *Arizona Republic* affirmatively stating that Mr. Thomas and the Sheriff have subverted justice and are a continued threat to “the entire criminal-justice system.” **Exhibit 38 – Sheila Polk.**

Ms. Polk also disclosed her knowledge of Mr. Thomas’ abuses of power stating,

*“Prosecutors are ethically bound to refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.”*

Ms. Polk, a career prosecutor, demonstrated her knowledge of Mr. Thomas’ ethical violations, including information about the counts described in this bar complaint. The *Arizona Republic* on December 22, 2009 applauded Ms. Polk’s courage on speaking out. **Exhibit 39 – Arizona Republic Editorial.** The response of the Sheriff, unchecked by Mr. Thomas, was to recommend to the FBI that it investigate her for “hindering the Maricopa County Sheriff’s Office corruption investigation.” **Exhibit 40 – Arizona Republic Article.**

On December 23, 2009, the Arizona Supreme Court issued an administrative order to deal with this unprecedented situation. **Exhibit 41 – Supreme Court Administrative Order No. 2009-124.** Chief Justice Berch, in summing up recent events, stated:

*“These investigations, cases, motions, and allegations, particularly the allegations of conflicts of interest and a conspiracy among the members of the Board of Supervisors and certain judges, including the Presiding Judge, have the potential to impair that court’s ability to carry out its responsibilities and threaten the perception of impartial justice. More significantly, if a true conflict is found to exist requiring the transfer of all criminal cases prosecuted by the Maricopa County Attorney’s Office to out-of-county judges, a public*

*safety emergency would arise.”*

For those reasons, Chief Justice Berch appointed retired Chief Justice Ruth McGregor to oversee the administration of the relevant cases.

On December 24, 2009, Mr. Thomas, once again through his deputy Lisa Aubuchon, filed a “*Motion for Inquiry by Special Master*” asking Justice McGregor to investigate whether county attorneys outside Maricopa County “and possibly other third parties” are engaging in a campaign to publicly pressure Mr. Thomas and the Sheriff not to press criminal charges against “certain influential defendants.” **Exhibit 42 – Motion.**

The motion’s purported basis is the Yavapai and Pinal County Attorneys’ public statements decrying Mr. Thomas’s unethical actions. According to Deputy CA Aubuchon, Ms. Polk’s public statements “violate the rules of professional responsibility and are affecting the jury pool in Maricopa County.” Also, Ms. Aubuchon continued with the bald assertion that “these actions appear to be part of an orchestrated campaign to pressure law enforcement in Maricopa County to drop charges against influential criminal defendants and suspects.”

Ironically, Mr. Thomas’ motion argues that he is the victim of a campaign of intimidation. In fact, the opposite is true. Mr. Thomas’ meritless motion is part of his campaign to retaliate and intimidate any public person who dares disagree with him. The Yavapai County Attorney fulfilled her duties as an officer of the court and member of the Arizona State Bar. Mr. Thomas cannot truthfully say the same.

On February 16, 2010, Judge John S. Leonardo of Pima County held a hearing on County Board of Supervisor Wilcox’s Motion to Disqualify Mr. Thomas for his conflict of interest. Ms. Polk and Mr. Thomas testified at a hearing.

Ms. Polk’s testimony demonstrated that Mr. Thomas through the Sheriff had tried to intimidate Ms. Polk into issuing subpoenas as “fishing expeditions” without probable cause to justify them. **See Exhibit 8 – Transcript of Polk/Thomas testimony of 2/14/2010**

Mr. Thomas response was to blame Ms. Polk:

*And she used terminology towards the Sheriff’s Office that, candidly, seemed lifted from an editorial in The Arizona Republic that had occurred -- that had run a day or two before and I thought if she’s taking her litigation and prosecution strategy from a newspaper, that’s more important to her than prosecuting the case, that troubled me. I didn’t say that at the meeting but it troubled me.*

**Exhibit 8 – Transcript of Polk/Thomas testimony of 2/14/2010; page 145-46; see also pages 146-47.**

On February 24, 2010, Judge Leonardo issued his order. **Exhibit 43 – Leonardo Order.** He found that “[b]ased on substantial evidence contained

in the record” Mr. Thomas had “failed to impartially exercise his prosecutorial discretion.” Specifically,

*“his [Mr. Thomas’] efforts to retaliate against members of the MCBS [Maricopa County Board of Supervisors], including defendant [Mary Rose Wilcox] for actions allegedly carried out in concert with each other against his office and against him personally as alleged in the civil RICO complaint”*

constituted grounds for Mr. Thomas’ disqualification.

Also, Judge Leonardo noted that the court had to disqualify Mr. Thomas for *“his attempts to gain political advantage by prosecuting those who oppose him politically, including Defendant...”*

Finally, Judge Leonardo disqualified Mr. Thomas because of his *“political alliance with the Maricopa County Sheriff who misused the power of his office to target members of the MCBS for criminal investigation....”*

After the ruling, Mr. Thomas implicated Judge Leonardo in the vast conspiracy against him stating,

*“I may have underestimated the sheer extent of the invisible network of people in power.”*

Hours after Judge Leonardo’s decision, Mr. Thomas dismissed the charges against Mr. Stapley and Judge Donohoe.

Judge Leonardo’s order demonstrates Mr. Thomas’ utter failure to follow the ethical responsibilities that his office demands.

#### **L. Mr. Thomas Has Abused the Process**

Mr. Thomas and his deputies used the powers of his office and the grand jury to threaten and intimidate members of the Board of Supervisors and the judiciary for political and budgetary gain. When the Board in during a fiscal crisis denied Mr. Thomas and the Sheriff access to the capital funds for the Court Tower over many years, they caused Maricopa County Grand Jury criminal subpoenas to be issued to the “Maricopa County Administration” for all contracts and records relating to the Court Tower project. They served theses subpoenas on the acting County Manager and others, even though no evidence existed that anything was improper in the Court Tower Project.

Mr. Thomas also knew that he had been the Board’s counsel of record throughout all of the Court Tower planning , had drafted many of the contracts involved, had overseen and approved ALL of the contracts the Board considered through 2007, gave legal advice to the Board with rerspect to the contracts throughout and had members of its own office of the Space Utilization Advisory Group, including Lisa Aubuchon, who obtained the grand jury subpoenas.

When the Superior Court refused to enforce the subpoenas, Ms. Aubuchon

and Mr. Thomas then began accusing the Board, members of the judiciary and others of a conspiracy to cover up the unexplained and unknown misconduct in building the Court Tower. [Interestingly, the Sheriff's Office was able to obtain all of the records sought by the grand jury subpoenas through a Freedom of Information Act request. And, of course, all of the contracts and documents were resident in the County Attorney's files as well since the County Attorney was the Board's lawyer in regard to Court Tower matters.]

Mr. Thomas engaged in abuse of process in using Grand Jury subpoenas—not to seek information which he already knew or could access—without probable cause, for the unlawful purpose of intimidating the Maricopa County Administration.

The response to these subpoenas was exactly what Mr. Thomas expected. Public servants who have acted throughout their careers in the reasoned belief that they were providing a service to the people of Maricopa County, have had their reputations damaged and their peace of mind disturbed. While the courts have quashed those subpoenas, the judges who did immediately fell under suspicion and have had changes brought against them.

Mr. Thomas abused process by suing each of the defendants in his "RICO" suit. Incredibly, Mr. Thomas had no standing to file the lawsuit in the first place, because he cannot establish that he has been "personally damaged" by the conduct of the alleged racketeers. He admitted as much in his testimony before Judge Leonardo. But in doing so, he also admitted that he was responsible for the language in the RICO suit. In the same testimony, he admitted that later, in filing a Response to Motion to Dismiss because he could not have "personal damage", he claimed that he did.

For the individuals he named in the RICO suit, the damage to their personal lives is far from over, even though that case has been dismissed. But, Mr. Thomas has tainted this dismissal by brazenly asserting that he and the Sheriff only did so because the federal government was "finally" looking into their allegations against the County.

Arizona recognizes the tort of abuse of process. In *Nienstedt v. Wetzel*, 133 Ariz.348, 651 P.2d 871 (1982), Division One of the Court of Appeals approved the Restatement definition:

“§ 682. General principle

“One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed, is subject to liability to the other for harm caused by the abuse of process.”

There must be a showing that a defendant has used a legal process against the plaintiff, primarily to accomplish a purpose for which the process was not designed; and harm was caused to the plaintiff as a result. The essential elements of the offense require a willful act in the use of judicial process for an ulterior purpose not proper in the regular conduct of the proceedings. See

Bird v. Rothman, 128 Ariz. 599, 627 P2.d1097 (App.) cert denied, 454 U.S.865, 102 S. Ct.327, 70 L.Ed.2d 166 (1981).

Mr. Thomas conduct is not only actionable, it violates of ER 8.4 (d). Mr. Thomas succeeded in bringing the system of justice in Maricopa County to a standstill. He never had a factual or legal basis for proceeding, but he did so anyway. He had a single motive—to gain political power and an increased portion of the public budget by attempting to frighten the administration of Maricopa County into submission in hope that senior officials would not be further castigated and perhaps prosecuted. This overt effort to, in effect, decapitate county government, requires severe and immediate consequence.

#### **IV.REQUEST FOR MR. THOMAS’ INTERIM SUSPENSION:**

The *Arizona Republic* in an editorial of December 16, 2009 asked,

***“Is there no one who will stand up to Thomas, Arpaio?”***

**Exhibit 44.** The answer is that it is time for the State Bar to stand up.

Sheila Polk on February 14, 2010 explained why she felt the need to speak out regarding Mr. Thomas’ unethical conduct:

*Q. What concerns were raised in your mind after Judge Donahoe was indicted -- or not indicted, but was served with a criminal complaint?*

*A. During the five months or so that my office and I were handling ongoing investigations and working with the Maricopa County Sheriff's Office, there had been a couple of issues that caused me concern. And then after we returned the cases to Mr. Thomas's office, the events that you just described occurred and caused me any greater concern. **I came to the realization that by remaining silent about my concerns, I was paving the way for greater and greater abuses to occur. And I came to the realization that my continued silence made me complicit in those abuses and that's why I made the decision to speak out....***

#### **Exhibit 8 – Transcript of Polk/Thomas testimony of 2/14/2010; page 20-21.**

As the recent round of press conferences and releases demonstrates, Mr. Thomas’ conduct continues. *See, e.g., Exhibit 9 – Arizona Republic article of March 12, 2010; Exhibit 10 – Arizona Republic article of March 13, 2010; Exhibit 11 – Hulser letter to Arpaio Attorney Robert Driscoll.* Mr. Thomas poses a continuing threat to the public.

Mr. Thomas’s response to every court loss is to accuse lawyers and judges of a conspiracy against him – he attacks the court rather than accept or appeal a loss on the merits. He uses his considerable power to intimidate public officials, judges, and citizens who disagree with them by making misrepresentations to the press and filing frivolous law suits and judicial complaints.

Mr. Thomas’ actions have done significant harm to both the legal system and

individual judges. Judge Donahoe, for example, will for the rest of his life be “a judge charged with bribery”, regardless of the political motivation of the charge and its facial lack of merit.

Of even greater and lasting import, the public’s perception, of the judiciary as a whole, the integrity of individual judges, and even the appropriate role of a county attorney as a officer of the court, have all suffered immeasurably.

Mr. Thomas’ actions and continuing conduct warrants interim suspension under Rule 61, Ariz.R.Sup.Ct. Undersigned request that the State Bar immediately file a petition with the Supreme Court seeking Mr. Thomas’ interim suspension. We respectfully ask that the State Bar respond to this request.

#### V. CONCLUSION:

The State Bar should re-open any relevant files that show Mr. Thomas’ pattern of conduct. *See* Rule 48(k)(1), Ariz.R.Sup.Ct. *See Exhibit 45 – Judge Albrecht’s Letter of May 4, 2009 admonishing Mr. Thomas for prior conduct.*

To be an attorney is a privilege, not a right. For that privilege we agree to a code of ethical conduct. This is especially true for a prosecutor. It is now up to the State Bar to hold Andrew Thomas accountable.

For Mr. Thomas, unethical conduct is not “*a personal thing*” but instead it’s “*like in The Godfather—this is business, not personal.*” Barnett Lotstein

Respectfully,

/s/ Steven P. Sherick

Stephen P. Sherick

President, Arizona Attorneys for Criminal Justice

Individually and on behalf of the AACJ Board of Governors

/s/ Robert J. McWhirter

Robert J. McWhirter

Immediate Past President, Arizona Attorneys for Criminal Justice

Chair of the ad hoc Ethics Committee

Individually and on behalf of the AACJ Board of Governors