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STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

2010 MAY 17 AM 9:18

FOURTH JUDICIAL DISTRICT

Peter Rickmyer,

BY HENN CO. DISTRICT
DEPUTY COURT ADMINISTRATOR

Plaintiff,

v.

Robert Hodson, John Hoff, The Adventures of
Johnny Northside, David Arnold Schooler,
Jordan Area Community Council, Joel Pucely,
Brandon Bartholomew, Jeffrey B. Newman,
John Haddy, Briggs & Morgan, Michael (Kip)
Browne, Ann McCandless, John George
Hubbard II, Police Officer Olson, Mike Martin,
John Does 1-15, Jane Does 1-10,

Defendant.

**ORDER AND
MEMORANDUM**

Court File No. 27CV10-3378
Judge Robert A. Blaeser

The above-entitled matter came before the Honorable Robert A. Blaeser, Judge of Hennepin County District Court, on April 20, 2010. Plaintiff brought a Motion for Temporary Restraining Order and a Motion for Consolidation of Temporary Restraining Order Hearing with Court Trial. Defendants Jordan Area Community Council ("JACC"), Michael (Kip) Browne, John Haddy, Robert Hodson, John George Hubbard II, and Ann McCandless (collectively, the "JACC Defendants") brought a Motion to Dismiss and a Motion for Rule 9 Sanctions. Defendants Officer Brandon Bartholomew, Officer Jeffrey B. Newman, Officer Joel Pucely, Sergeant Scott Olson, and Inspector Michael Martin (collectively, the "City Defendants") brought a Motion to Dismiss, or Alternately, Motion for Summary Judgment.

Peter Rickmyer appeared pro se.

David A. James, Esq. appeared for and on behalf of the JACC Defendants.

Amanda M. Trelstad, Esq. and James A. Moore, Esq. appeared for and on behalf of the City Defendants.

John Hoff and The Adventures Johnny Northside did not appear.¹

Based upon all files, records, and proceedings herein, along with the arguments of counsel and the parties,

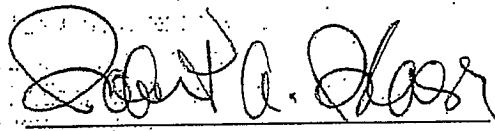
¹ Defendants David Arnold Schooler and Briggs and Morgan also did not appear, as they previously settled out of the case.

IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Temporary Restraining Order is **DENIED**.
2. Plaintiff's Motion for Consolidation of Temporary Restraining Order Hearing with Court Trial is **DENIED**.
3. The JACC Defendants' Motion to Dismiss is **GRANTED**.
4. The City Defendants' Motion to Dismiss, or Alternately, Motion for Summary Judgment is **GRANTED**.
5. The JACC Defendants' Motion for Rule 9 Sanctions is **GRANTED**. Until further order of this Court, Plaintiff may not file any new cases unless an attorney licensed to practice law in Minnesota has signed the complaint and the Chief Judge or the Presiding Judge of Civil has approved. The Clerk of Court is instructed to not accept any filings from Plaintiff unless these conditions are met.
6. The Court does not have jurisdiction over Defendant John Hoff or Defendant The Adventures of Johnny Northside. Those defendants have not been served.
7. The attached memorandum is incorporated herein by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: 5/17/2010



Robert A. Blaeser
Judge of District Court
C-659 Government Center
Minneapolis, MN 55487
(612) 348-4964

MEMORANDUM

Facts

Plaintiff Peter Rickmyer ("Rickmyer") is a resident of north Minneapolis. Defendant John Hoff ("Hoff") is a blogger residing in north Minneapolis. Hoff runs the Defendant blog known as The Adventures of Johnny Northside ("Johnny Northside"), which comments on events in north Minneapolis. Defendant Jordan Area Community Council ("JACC") is a community group in north Minneapolis. Defendants Michael (Kip) Browne, John Haddy ("Haddy"), Robert Hodson ("Hodson"), John George Hubbard II ("Hubbard"), and Ann McCandless ("McCandless") are all members or serve on the board of JACC. Defendants Officer Brandon Bartholomew ("Officer Bartholomew"), Officer Jeffrey B. Newman ("Officer Newman"), Officer Joel Pucely ("Officer Pucely"), Sergeant Scott Olson ("Sergeant Olson"), and Inspector Michael Martin ("Inspector Martin") are all Minneapolis Police officers.

In this case, Plaintiff asserts Hoff made defamatory statements on his Johnny Northside blog that lowered Plaintiff's reputation in the community. Plaintiff also claims the other Defendants manipulated the City Defendants into discriminating against him. Plaintiff further alleges all Defendants created a hostile environment that resulted in vandalism against his home, loss of free speech, and loss of liberty. Police, according to Plaintiff, are also not giving him the same level of service as other neighborhood residents due to a conspiracy against him by Defendants.

Specifically, Plaintiff alleges that Sergeant Olson made false statements about him. Plaintiff contacted Sergeant Olson on or about April 7, 2009 with information about removing several stop signs on 26th Avenue North at Humboldt Avenue and Knox Avenue. Based on Sergeant Olson's interaction with Plaintiff, Sergeant Olson believed Plaintiff was working with the Public Safety Committee of JACC. At a Folwell Neighborhood meeting, Sergeant Olson mentioned Plaintiff's efforts and his understanding that Plaintiff was associated with JACC. Sergeant Olson later learned that Plaintiff was not, in fact, associated with JACC. According to his affidavit, Sergeant Olson has not since stated that Plaintiff represented himself as part of JACC, nor will he in the future.

Plaintiff also asserts that on May 4, 2009, Haddy and Hubbard committed trespass and harassed him when they came onto his property and knocked on his door, which woke him up. Plaintiff has reportedly posted no trespassing signs at his residence.

In addition, Plaintiff alleges that on June 2, 2009, Officer Bartholomew refused to give him information about a vehicle that hit Plaintiff. Officer Bartholomew provided affidavit testimony regarding the incident. On June 2, 2009, Plaintiff waved Officer Bartholomew down near the intersection of 25th Avenue North and Penn Avenue North in Minneapolis. Plaintiff informed the Officer that he had been hit on the shoulder by a passing car's side mirror when Plaintiff was crossing the street on foot. Officer Bartholomew asked Plaintiff if he was injured and requested an ambulance come to the scene. Plaintiff did not have any visible injuries. Officer Bartholomew checked with the driver of the car and saw that there was no damage to the side mirror. An ambulance arrived on the scene but did not transport Plaintiff. Plaintiff turned away

from Officer Bartholomew and left the scene before the Officer could gather sufficient information to make an accident report.

Plaintiff further claims that on June 10, 2009, Officers Newman and Pucely refused to file a police report of harassment on Defendant Hubbard and others. As stated in their affidavits, on June 10, 2009 at approximately 11:19 p.m., the Officers responded to a 911 call by Plaintiff for a neighbor dispute at Plaintiff's residence. At approximately 11:23 p.m., the scene was clear. However, Officers Newman and Pucely returned to the scene after Plaintiff called their supervisor. According to Pucely, Plaintiff is known to have a long history of disputes with his neighbors. Plaintiff told the Officers that his neighbors were harassing him and that he had an upcoming harassment hearing against them. Plaintiff did not have a current harassment order. Plaintiff also could not tell the Officers about any specific threats. Because there was no unlawful conduct at the scene, the Officers did not write a police report about the incident. The Officers left the scene at approximately 11:42 p.m.

Plaintiff also alleges that Inspector Martin did not order Officers Bartholomew, Newman, and Pucely to do as Plaintiff requested, namely filing police reports to Plaintiff's satisfaction. According to Inspector Martin's affidavit, on or about June 16, 2009, Martin received a complaint from Plaintiff relating to Officers Bartholomew, Pucely and Newman. Martin forwarded that complaint to the Traffic Unit as required under Minneapolis Police Department Policy.

And finally, Plaintiff asserts the JACC Defendants conspired with Hoff to use Johnny Northside to interfere with a contractual agreement between JACC and the Community Planning and Economic Development Department ("CPED"). The alleged contractual interference affected Plaintiff by reportedly creating a hostile environment against him at JACC meetings, and causing the City Defendants to allegedly offer Plaintiff a lower level of police services.

On March 30, 2010, counsel for the JACC Defendants sent a letter to the Court requesting discovery be suspended until resolution of the April 20, 2010 motions. The letter indicated Plaintiff was copied via UPS Overnight Delivery. However, the secretary for JACC Defendants' counsel did not notice delivery was to be made by UPS Overnight. The secretary instead sent Plaintiff's copy of the letter by U.S. Mail. Plaintiff did not receive his copy of the letter until after the Court had issued its April 1, 2010 Order staying discovery. Plaintiff alleges the March 30, 2010 letter constitutes an improper *ex parte* communication with the Court by the JACC Defendants.

During the April 20, 2010 motion hearing, Plaintiff acknowledged Defendants Hoff and Johnny Northside have not been served. Plaintiff also acknowledged he is not seeking money damages against the City Defendants. Rather, he views the Officers as "victims" of the JACC Defendants' alleged manipulative and conspiratorial actions.

Previous Litigation Involving Plaintiff

Plaintiff has a long history of litigation in the Fourth Judicial District. Several of his previous cases involve the same parties and/or claims as this matter.

On May 5, 2009, the Honorable Charles A. Porter heard a motion in *Ethylon B. Brown, et al. v. John Hubbard, et al.*, Case No. 27-CV-09-2277, which is a different lawsuit against many of the JACC Defendants found in this case. The JACC Defendants in the *Brown* case were represented by former Defendant in this case David Schooler of former Defendant Briggs and Morgan at the hearing. Although he was not a party, Plaintiff appeared at the hearing. In his Complaint in the present case, Plaintiff alleges that he was subsequently “publicly humiliate[d]” by being “removed from Court on May 13, 2009.” This incident became the basis for his allegations against Schooler and Briggs and Morgan in this case.

Plaintiff has also been involved in prior litigation against Defendant Hubbard. On May 6, 2009, Plaintiff filed an Affidavit and Petition for Harassment Restraining Order against Defendant Hubbard in the case *Peter Rickmyer v. John George Hubbard II*, Case No. 27CV09-10939. Among other things, Plaintiff alleged harassment and a trespass by Hubbard on May 4, 2009 and a conspiracy by Hubbard “and other community members” to have him “removed” from the community. The supporting affidavit itself contends that “Community members have in the past conspired against me.” These allegations are very similar to those made against Hubbard in the present case. Plaintiff also included allegations regarding the May 5, 2009 hearing with Judge Porter, as well as a conspiracy involving Hoff.

A hearing was held in the case on May 16, 2009 before the Honorable Mark Labine. Referee Labine concluded the facts did not support any of Plaintiff’s claims and dismissed Plaintiff’s case with prejudice. Unsatisfied with the Court’s decision, Plaintiff filed an Affidavit and Petitioner’s Submission of New and Material Evidence. This submission attached a complaint by Jerry L. Moore against Defendant Hoff and his blog from a completely different case. Notably, Moore’s complaint in the other case alleged defamation, intentional interference with contract, and aiding and abetting—claims Plaintiff has latched on to and now alleges in the present case. Additionally, Plaintiff requested review of Referee Labine’s decision, sought reconsideration of Judge Zimmerman’s Order adopting and affirming Referee Labine’s decision, and brought a “Motion to Remove Judge [Zimmerman] for Bias.”

Plaintiff has also had previous litigation against Defendant Hoff. On December 16, 2009, Plaintiff filed a Petitioner’s Affidavit and Petition for Harassment Restraining Order against Hoff in the case of *Peter Rickmyer v. John Hoff*, Case No. 27CV09-30329. Similar to the claims in this case, Plaintiff’s affidavit complained of Hoff’s blog, alleged a relationship between the blog and vandalism at his home, and contended that Hoff was “trying to limit [his] freedom of speech.” After a review of Plaintiff’s filings, the Honorable Patricia Belois issued an Order for Dismissal that same day.

Plaintiff brought two harassment suits against Cecile Johnson, a Jordan New Life Church employee, in August 2008. Jordan New Life Church is located in north Minneapolis, and Plaintiff alleged mistreatment by Ms. Johnson. Both cases were dismissed. Plaintiff has also brought various litigation against individuals and corporations outside of the Jordan neighborhood since 1990.

Outside of the courts, Plaintiff has filed a number of "grievances" with the City of Minneapolis regarding perceived mistreatment by JACC. Also, in this case, Plaintiff has heavily used the resources of the Sheriff's Department for personal service of every type of document on Defendants. This is well beyond the summons and complaint paperwork normally served by the Deputies.

Analysis

I. DEFENDANTS JOHN HOFF AND THE ADVENTURES OF JOHNNY NORTHSIDE

As an initial matter, Plaintiff has not obtained service on Defendants Hoff and Johnny Northside. "A civil action is commenced against each defendant . . . when the summons is served upon that defendant . . ." Minn. R. Civ. P. 3.01. Accordingly, the Court does not have jurisdiction over those parties at this time.

II. PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

A. Temporary Restraining Order Standard

Minnesota Rules of Civil Procedure 65.01 and 65.02 govern the issuance of Temporary Restraining Orders and Temporary Injunctions. "A temporary injunction is an extraordinary equitable remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits." *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982) (citation omitted). A temporary injunction should only be granted "when it is clear that the rights of the party will be irreparably injured before a trial on the merits is held." *Id.* (citation omitted). "The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy . . . are not enough." *Id.* at 713 (citation omitted). "[T]he injury must be of a nature that money damages alone would not provide adequate relief." *Haley v. Forcelle*, 669 N.W.2d 48, 56 (Minn. Ct. App. 2003).

The five factors to be considered in determining whether to grant a temporary injunction are outlined in the *Dahlberg* case. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965). The *Dahlberg* factors are:

- (1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.
- (2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.
- (3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.
- (4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.
- (5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Id. at 321-22 (footnotes omitted).

B. Plaintiff has Not Met the Requirements for Issuance of a Temporary Restraining Order

Plaintiff's oral presentation on this issue involved a somewhat repetitive recounting of his long and rambling Complaint. Although Plaintiff's Complaint does contain some specifics, it mainly appears to tie all Defendants together in an unknown conspiracy. Plaintiff is apparently asking the Court for an order prohibiting the JACC Defendants from being mean to him, as well as directing the City Defendants to follow the law to his satisfaction.

A review of the *Dahlberg* factors shows a temporary restraining order is not warranted in this case.

(i.) Relationship between the parties

Plaintiff is a resident of north Minneapolis. JACC is a community group in north Minneapolis, and the JACC Defendants are members or serve on the board of JACC. The City Defendants are Minneapolis Police Officers. Plaintiff alleges all Defendants are conspiring against him in some way. This factor is neutral in the *Dahlberg* analysis.

(ii.) Likelihood of success on the merits

As discussed *infra*, Plaintiff has no chance of success on the merits. This factor weighs heavily against Plaintiff.

(iii.) Public policy

This factor also weighs against Plaintiff. Plaintiff has failed to identify a public policy at issue. On the other hand, injunctive relief against the JACC Defendants as a whole, or at least the individual defendants, would be inconsistent with the public policy behind Minnesota Statute section 317A.257, which provides immunity for unpaid volunteers of non-profit organizations. See Minn. Stat. § 317A.257, subd. 1 (unpaid directors, officers, or members of nonprofit corporations are not liable for an act or omission made in good faith within the scope of that person's duties in the organization).

Public policy also weighs against Plaintiff in regard to the City Defendants. Police officers have discretion in the performance of their duties. See *Elwood v. Rice County*, 423 N.W.2d 671, 678 (Minn. 1988) (many of police officers' duties are of an executive character and involve the exercise of discretion); *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 665 (Minn. 1999) (how officers respond to a police dispatch is discretionary in nature). The Officers properly exercised their discretion in this case.

(iv.) Administrative burden

This factor favors Defendants. Denial of Plaintiff's motion for a temporary restraining order would place no administrative burden on the Court. However, granting Plaintiff's motion would likely saddle the Court with a heavy administrative burden. Plaintiff appears completely and

solely focused on this case. Given Plaintiff's litigation history, it seems likely that granting Plaintiff's motion would require frequent if not constant involvement of the Court.

(v.) Balance of harms/irreparable harm

The balance of harms weighs in favor of Defendants. Denial of Plaintiff's motion will preserve the status quo. Granting Plaintiff's motion will harm Defendants, as Plaintiff will undoubtedly strive to find violations of any conditions the Court might impose.

More significantly, Plaintiff has not shown the denial of his motion for temporary restraining order will result in irreparable harm. Instead, Plaintiff has made a series of vague conspiracy allegations against perceived enemies in his neighborhood. Plaintiff has failed to describe what irreparable harm he believes will occur.

Because Plaintiff has not met the requirements for injunctive relief, his motion for temporary restraining order will be denied.

III. PLAINTIFF'S MOTION FOR CONSOLIDATION OF TEMPORARY RESTRAINING ORDER HEARING WITH COURT TRIAL

Plaintiff did not cite any law or authority supporting his motion for consolidation of the temporary restraining order hearing with a court trial. Accordingly, this motion will be denied.²

IV. JACC DEFENDANTS' MOTION TO DISMISS

A. Motion to Dismiss Standard

Minnesota Rule of Civil Procedure 12.02 states in part as follows: "the following defenses may at the option of the pleader be made by motion . . . (e) failure to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). A motion to dismiss under Rule 12.02(e) "raises the single question of whether the complaint states a claim upon which relief can be granted." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000). "A Rule 12.02 motion to dismiss for failure to state a claim upon which relief can be granted will be denied 'if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded.'" *Northern States Power Co. v. Minn. Metropolitan Council*, 684 N.W.2d 485, 490 (Minn. 2004) (citing *Northern States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963)). A pleader is not required to allege facts and every element of a cause of action. *Northern States Power*, 122 N.W.2d at 29. "[A] pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Id.*³

² This issue is also moot, as the hearing has already been held.

³ The Minnesota Supreme Court has not explicitly adopted the revised motion-to-dismiss standard adopted by the United States Supreme Court for review of motions to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Supreme Court has mentioned *Twombly* in passing in two opinions, the first recognized the inapplicability of *Twombly* to a price-fixing dispute and the second acknowledged that *Twombly* recognized that a Court is not bound by legal conclusions masquerading as factual allegations when reviewing a motion to dismiss. See *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 631 n.3 (Minn.

B. Plaintiff's Claims are Unfounded and Will Be Dismissed

Plaintiff has not really opposed the JACC Defendants' motion to dismiss. Instead, Plaintiff has alleged conspiracies and innuendo involving the JACC Defendants. Plaintiff's entire case is an attempt to tie together his suspicions regarding the JACC Defendants.

(i.) Defamation (Count I)

A defamation claim includes three elements: (1) publication to someone other than the plaintiff; (2) a false statement; and (3) harm to the plaintiff's reputation and lowering his/her reputation in the community. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919-20 (Minn. 2009).

Here, this claim appears focused on Defendant Hoff and his Johnny Northside blog. Plaintiff references some sort of collusion between the JACC Defendants and Hoff. However, as previously noted, the Court does not have jurisdiction against Hoff or Johnny Northside. Plaintiff has pointed to no defamatory statements made by the JACC Defendants themselves, nor will Plaintiff be able to show the JACC Defendants personally published false statements that harmed his reputation. Because Plaintiff will not be able to introduce facts that support his claim, dismissal of this count is appropriate.

(ii.) Intentional Interference with Contract (Count II)

"A cause of action for wrongful interference with a contractual relationship requires: (1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages." *Kjesbo v. Ricks*, 517 N.W.2d 585, 588 (Minn. 1994).

Plaintiff does not claim interference with any contract in which he is a party. Instead, Plaintiff refers to actions by the JACC Defendants that interfered with JACC's contract with CPED. Presuming a contract does exist between JACC and CPED, interference by the JACC Defendants would not harm Plaintiff's rights. A party cannot interfere with its own contract—interference must occur by a third party. See *Nordling v. Northern States Power Co.*, 478 N.W.2d 498, 505 (Minn. 1991). In other words, the JACC Defendants are not liable for allegedly interfering in JACC's contract with CPED. It is clear no facts could be introduced that would support

2007); *Herbert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008). Neither case convinces this Court that the Supreme Court has forsaken the *Northern States Power* standard applied by Minnesota courts for nearly fifty years. However, the Court notes that a panel of the Minnesota Court of Appeals recently opined that the *Twombly* does indeed apply to cases in Minnesota. See *Bahr v. Capella University*, 765 N.W.2d 428, 436-37 (Minn. Ct. App. 2009) ("The court demands that the complaint state 'enough factual matter' or 'factual enhancement' to suggest, short of 'probability,' 'plausible grounds' for a claim — a pleading with 'enough heft' to show entitlement.") (quoting *Twombly*, 550 U.S. at 556-57). Nonetheless, the Court does not find *Bahr's* adoption of *Twombly* persuasive because the Supreme Court has granted review of *Bahr*. (See Order of August 11, 2009 granting Petition for Review). Absent express adoption of the *Twombly* standard by the Minnesota Supreme Court, this Court continues to apply the *Northern States Power* test when reviewing motions to dismiss. See *Lake Superior Center Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 483 (Minn. Ct. App. 2006) (recognizing that the Court of Appeals "has no authority to overrule decisions of the Supreme Court").

Plaintiff's claim, as no one is interfering with a contractual right held by Plaintiff, and JACC cannot interfere with its own contract. Accordingly, this count will be dismissed.

(iii.) Discrimination (Count III)

Plaintiff's discrimination claim is especially vague because it does not allege discrimination by the JACC Defendants. Instead, it asserts that the JACC Defendants manipulated the City Defendants into discriminating against Plaintiff. This theory is indeterminate to the point that Plaintiff will not be able to introduce any facts that would support this perceived conspiracy. As a result, this count will be dismissed.

(iv.) Harassment (Count IV) and Trespassing (Count VII)

These claims arise from an incident on May 4, 2009. Plaintiff alleges Defendants Haddy and Hubbard knocked on his front door and woke him up. Plaintiff filed a case based on this incident, and a hearing was held before Referee Labine on June 16, 2009. Referee Labine dismissed the case with prejudice during the hearing. Plaintiff is now attempting to re-litigate his claims related to this incident. "Once there is an adjudication of a dispute between the parties, res judicata prevents either party from relitigating claims arising from the original circumstances, even under new legal theories." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). These claims are therefore barred under the doctrine of res judicata and will be dismissed.

(v.) Loss of Liberty (Count V) and Loss of Free Speech (Count VI)

Loss of liberty and loss of free speech, as claims premised on state action, may be directed only at governmental agencies. *See generally State v. Ornelas*, 675 N.W.2d 74, 80 (Minn. 2004) (discussing loss of liberty in the context of criminal conviction); *Smith v. Condux Int'l, Inc.*, 466 N.W.2d 22, 26 (Minn. Ct. App. 1991) ("The first amendment applies only to state action and protected speech"). There is no indication any of the JACC Defendants are state actors, and Plaintiff will not be able to supply any facts to show that the JACC Defendants are state actors. As such, these claims will be dismissed.

(vi.) Aiding and Abetting (Count VIII)

The essential elements of an aiding and abetting claim are: (1) a primary tortfeasor; (2) the defendant's knowledge that the primary tortfeasor's conduct constitutes a breach of duty; and (3) substantial assistance or encouragement. *Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 185 (Minn. 1999). Because all of Plaintiff's claims are without merit, Plaintiff will be unable to produce facts showing a primary tortfeasor. Plaintiff's claim therefore will be dismissed.

V. CITY DEFENDANTS' MOTION TO DISMISS, OR ALTERNATELY, MOTION FOR SUMMARY JUDGMENT

A. Motion to Dismiss and Summary Judgment Standards

Rule 12.02(e) of the Minnesota Rules of Civil Procedure states that "failure to state a claim upon which relief can be granted" is a defense which may be made by motion at the option of the pleader. Minn. R. Civ. P. 12.02(e). Rule 12 also provides that if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Minn. R. Civ. P. 12.02; see *Antone v. Mirviss*, 720 N.W.2d 331, 334 n. 4 (Minn. 2006).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03. In a summary judgment motion, evidence is viewed in a light most favorable to the non-moving party. *Offerdahl v. Univ. of Minn. Hosps. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). However, "an adverse party may not rest upon the mere averments or denial of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05. A court may grant a motion for summary judgment when reasonable persons may not draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (citation omitted).

B. Summary Judgment for the City Defendants is Appropriate Because No Genuine Issue of Material Fact Exists

As an initial matter, the Claims portion of Plaintiff's Complaint fails to address any of the City Defendants. In addition, Plaintiff's Complaint is not a factual basis for his legal claims, nor does it state any facts supporting his claims against the City Defendants. Plaintiff further stated during the April 20, 2010 motion hearing that he is not seeking monetary damages against the City Defendants, as they are "victims" of manipulation by the JACC Defendants. Still, in the interest of thoroughness, the Court will briefly address each of Plaintiff's claims regarding the City Defendants.

(i.) Defamation (Count I)

A defamation claim requires proof of (1) publication, (2) of a false statement, (3) that harmed plaintiff by lowering his or her standing in the community. *Bahr*, 766 N.W.2d at 919-20.

Sergeant Olson's statement that he believed Plaintiff was working with the JACC Public Safety Committee would not tend to harm Plaintiff's standing in the community. In fact, Plaintiff's reputation would likely be enhanced if he were associated with the JACC Public Safety Committee. Because no reputational harm occurred, Plaintiff's defamation claim fails.

(ii.) Intentional Interference with Contract (Count II)

Intentional interference with contracts requires the existence of a contract. *Kjesbo*, 517 N.W.2d at 588. Plaintiff has not alleged or set forth any facts showing that he has a contractual relationship with which any of the City Defendants interfered or about which any City Defendant even knew. As such, this claim fails.

(iii.) Discrimination (Count III)

As previously noted, “[t]o establish a prima facie case of [public services discrimination] the claimant must introduce evidence showing that (1) the claimant is a member of a protected class; (2) the claimant was subjected to adverse and unreasonable treatment; and (3) the treatment was caused by a discriminatory consideration.” *Minneapolis Police Dept. v. Kelly*, 776 N.W.2d 760, 766 (Minn. Ct. App. 2010).

Plaintiff alleges he is in a protected class; and the City Defendants discriminated against him based on his status. It is not clear whether Plaintiff is a member of a protected class or not. Plaintiff’s discrimination claim does not specify whether he brings his claim under the Minnesota Human Rights Act, the Minneapolis Civil Rights Ordinance, or some other statute. In any event, even if Plaintiff were a member of a protected class, he has failed to show the actions of the City Defendants met the required standard to prove discrimination. Specifically, Plaintiff has not shown he was subjected to adverse and unreasonable treatment by the Officers, and the treatment was caused by a discriminatory consideration of the Officers. *Kelly*, 776 N.W.2d at 766. Absent these factors, Plaintiff’s discrimination claim fails as a matter of law.

(iv.) Harassment (Count IV) and Trespassing (Count VII)

Plaintiff’s harassment and trespassing claims are not directed against the City Defendants. Plaintiff sets forth no facts that suggest the City Defendants’ involvement in those claims.

(v.) Loss of Liberty (Count V) and Loss of Free Speech (Count VI)

Similar to the harassment and trespassing claims, Plaintiff’s loss of liberty and loss of free speech claims do not have any basis in the record with regard to the City Defendants. Plaintiff sets forth no facts showing how the City Defendants have interfered with his liberty or speech.

(vi.) Aiding and Abetting (Count VIII)

An aiding and abetting claim requires (1) a primary tortfeasor, (2) the defendant’s knowledge that the primary tortfeasor’s conduct constitutes a breach of duty, and (3) substantial assistance or encouragement. *Witzman*, 601 N.W.2d at 185. Plaintiff has not set forth any facts showing that a City Defendant substantially assisted or encouraged any person in committing tortious conduct against Plaintiff. The aiding and abetting claim against the City Defendants is therefore without merit and will be dismissed.

Because no genuine issue of material fact exists regarding Plaintiff's claims, summary judgment is warranted in favor of the City Defendants.

VI. JACC DEFENDANTS' MOTION FOR RULE 9 SANCTIONS

A. Rule 9 Standard

Under Rule 9.01 of the Minnesota General Rules of Practice, the Court is authorized to enter an Order "(a) requiring the furnishing of security by a frivolous litigant who has requested relief in the form of a claim, or (b) imposing preconditions on a frivolous litigant's service or filing of any new claims, motions or requests." Minn. Gen. R. Prac. 9.01. A "frivolous litigant" means:

(1) A person who, after a claim has been finally determined against the person, repeatedly relitigates or attempts to relitigate either (i) the validity of the determination against the same party or parties as to whom the claim was finally determined, or (ii) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same party or parties as to whom the claim was finally determined; or

(2) A person who in any action or proceeding repeatedly serves or files frivolous motions, pleadings, letters, or other papers, conducts unnecessary discovery, or engages in oral or written tactics that are frivolous or intended to cause delay; or

(3) A person who institutes and maintains a claim that is not well grounded in fact and not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law or that is interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigating the claim.

Minn. Gen. R. Prac. 9.06.

Rule 9.02 provides various factors the Court should consider, such as "the frequency and number of claims pursued" by the alleged frivolous litigant, whether there is a reasonable probability of success, the "injury incurred by other litigants prevailing against" the alleged frivolous litigant, and the injury "to the efficient administration of justice." Minn. Gen. R. Prac. 9.02(b).

B. Plaintiff is a Frivolous Litigant, and Rule 9 Sanctions are Appropriate

Plaintiff brings the present case against the JACC Defendants, Defendant Hoff and his Johnny Northside blog, Briggs and Morgan law firm and one of its attorneys, and the City Defendants. Tracking his history of litigation (and grievances), Plaintiff raises: (1) Defendant Hoff's blog (Complaint ¶ 19; Hubbard litigation; Hoff litigation; grievances); (2) the incident in Judge Porter's Courtroom (Complaint ¶ 20; Hubbard litigation); (3) a trespass on May 4, 2009 (Complaint ¶ 21; Hubbard litigation; grievances); (4) the Hubbard litigation itself (Complaint ¶ 22; grievances); (5) vandalism at his home (Complaint ¶ 24; Hoff litigation); (6) freedom of speech (Complaint ¶ 24; Hoff litigation); (7) various grievances submitted to the Jordan Area Community Council (Complaint ¶¶ 26, 28; grievances); and (8) Council concerns about Plaintiff misrepresenting his relationship with it (Complaint ¶ 29; Hubbard litigation). Plaintiff's causes

of action in the present case—defamation, intentional interference with contract(s), discrimination, harassment, loss of liberty, loss of free speech, trespassing, and aiding and abetting—echo the complaints made in his prior litigation against Hubbard and Hoff, as well as the Moore complaint Plaintiff filed during the Hubbard litigation.

Viewed cumulatively, Plaintiff's pattern of litigation renders him a frivolous litigant. First, the same issues, such as the incident in Judge Porter's Courtroom, the alleged trespass, harassment by various individuals, and Hoff's Johnny Northside blog, arise in multiple suits. None of Plaintiff's previous cases involving similar claims or parties to this matter have moved forward. Instead, Plaintiff's lawsuits attempt to re-litigate previously unsuccessful claims and roll new causes of action into additional cases. As aptly noted by counsel for the JACC Defendants, "the courts serve as an alchemist's laboratory in which Mr. Rickmyer mixes new allegations and unfamiliar causes of action in the blind hope of stumbling into success."

Second, the repeated dismissals of Plaintiff's petitions and the attempted re-litigation of those claims show a pattern of frivolous litigation tactics.

And third, none of Plaintiff's claims are well grounded in fact or in law. In this case, for example, Plaintiff sued Briggs and Morgan and attorney Schooler for their representation of JACC in a lawsuit in which Plaintiff was not even a party. Plaintiff is also suing various individuals and other non-governmental agencies for free speech violations in this case. While not expected to possess the legal knowledge of a licensed attorney, Plaintiff must still demonstrate a basis in law and fact to assert any and all claims.

Furthermore, Plaintiff's involvement in numerous other cases over the years shows he has a very active history as a pro se litigant. "He may not be in a class by himself, but it doesn't take long to call the roll." *Green v. Arnold*, 512 F. Supp. 650, 651 (D.C. Tex. 1981) (quoting A.O. "Bum" Phillips, former head coach, Houston Oilers, describing Hall of Fame running back Earl Campbell). A quick look at the record shows seventeen closed civil files involving Plaintiff: fifteen in Hennepin County and two in Ramsey County. Plaintiff lost in nearly every case. Many of Plaintiff's cases were dismissed outright, but those dismissals have not deterred Plaintiff from filing additional cases. This total does not include Plaintiff's three criminal cases in Hennepin County, or his probate/mental health matter in Ramsey County.

In the present case, Plaintiff has used a great deal of Court time and resources with his numerous filings. Plaintiff, seemingly consumed by this litigation, has regularly made daily filings of documents, phone calls, and chambers visits. This greatly exceeds the level of contact in an average civil case. Plaintiff's repeated use of the Sheriff's Department for service of routine filings also needlessly uses manpower and strains an already limited budget. Furthermore, Plaintiff's IFP status allows him to use the courts as a weapon against his alleged antagonists without cost to himself. If this case is any indication, Plaintiff will continue to bring actions against his perceived enemies, further diminishing the Court's resources. Accordingly, imposing preconditions on further filings by Plaintiff under Rule 9 is appropriate.

VII. PLAINTIFF'S OTHER CONCERNS

A. JACC Defendants' Alleged *Ex Parte* Communication with the Court

The Court does not believe the March 30, 2010 letter sent by the JACC Defendants' counsel was an improper *ex parte* communication with the Court. Counsel for the JACC Defendants explained the secretarial mix up to the Court's satisfaction at the April 20, 2010 motion hearing.

The Court also notes that Plaintiff has had a significant amount of one-on-one contact with the Court's staff during the course of this case. Plaintiff has made a large number of phone calls to the Court's chambers, including numerous instances of more than one call in a single day. Plaintiff has also frequently stopped by the Court's chambers in person. During these calls and chambers visits, Plaintiff often attempted to discuss substantive case issues with the Court's staff. Plaintiff appears focused on this litigation to the point of not following proper procedure for litigants.

B. Plaintiff's Post-Hearing Submissions

At the conclusion of the April 20, 2010 hearing, the Court indicated Plaintiff could provide a written submission of a "fact" regarding Defendant Hoff. Plaintiff did submit materials pertaining to Hoff. However, the Court did not review Plaintiff's numerous unsolicited post-hearing submissions.

Conclusion

Plaintiff is not entitled to a temporary restraining order or consolidation of the motion hearing with a court trial. The JACC Defendants' motion to dismiss is granted as discussed above. The City Defendants are entitled to summary judgment on all of Plaintiff's claims. Plaintiff is a frivolous litigant, and Rule 9 sanctions are appropriate. The Court finds the parties' other arguments unpersuasive.

R.A.B.



Minnesota Department of Corrections
HEARINGS AND RELEASE UNIT **EXHIBIT 45**

1450 Energy Park Drive, Suite 200; St. Paul, MN 55108-5219
(612) 642-0270

Revocation Hearing

OID: 215933	Releasee Name: Stephenson, Peter	Action Date: 3/24/2011
Offenses: CSC, 4th Deg.	Supervised Rel. Date: 9/25/2006	Rel. Exp: 09/22/16
Agent: Will McDonald	Hearing Loc: Hennepin County Jail	Attorney: Jill Clark (Private)
County: Hennepin	Warrant Issued: 3/9/2011	
Release Status: Intensive Supervised Release	Arrest Date: 3/1/2011	

Certification of Procedural Rights: Offender was informed of procedural rights.

NOTE: All Projected Release Date's (PRD) are approximate dates

Disposition: Revoke release and assign 90 days.

Decision Commentary: Revoke release and assign 90 days from date of arrest. The violations are Severity Level II Violations that call for 90 days if there are aggravating factors. The aggravating factors are subject has had three prior restructures and he is a Level 3 Predatory Offender. The mitigating factor is subject has been in the community since 2006. While incarcerated, the offender must avoid conviction of discipline violations, or HRU may extend the PRD by one day for every three days spent in segregation for minor rule violations or one day for every day spent in segregation for major rule violations. Re-release is contingent upon an agent-approved ISR plan. Offender must complete Civil Commit review, if applicable, for consideration of release of PRD. He is already an ECRC Level 3; therefore, an additional ECRC review is unnecessary. Megan Goodmundson testified for the county; Defense was provided an opportunity for cross-examination. Hennepin Co. Community Corrections Supervisor Hanna O'Neil and Hennepin Co. ISR Agent Mark Waltz observed the proceeding.

Defense Counsel Jill Clark submitted several motions on Due Process matters pertaining to Mr. Stephenson's Revocation Hearing prior to today's hearing date. Ms. Clark requested a response prior to the actual hearing. The Department of Corrections acknowledged receipt of Defense's motions. The Department's formal response is that the motions are rudimentary issues that are well settled in law and will not respond to them. Neither will this Hearing Officer address the motions at today's proceedings, as a revocation hearing is not the appropriate forum to address them. Moreover, both the Executive Hearing Officer of the Hearings and Release Unit (Jeffrey Peterson) and the Director of Legal Services (Brent Warner) of the Minnesota Department of Corrections addressed Ms. Clark's primary concern on the phone: lack of subpoena power to call witnesses for this administrative revocation hearing. Ms. Clark asserted that this is a standing objection at today's hearing, and wished the record to reflect that several key witnesses (Ray Neset, Judge Robert Blaeser, Attorney Paul Godfred and Agent Bobbi Chevalier-Jones) are critical to her defense. Ms. Clark said Mr. Neset's employer will only let him off to attend today's proceedings if a subpoena is issued; all others refused to voluntarily testify.

Defense also objects to the appropriateness/legality of Directives #1 and #2. Responses are addressed in the fact-finding rationale section.*

Extended Incarceration Time Will Adjust PRD As The Result Of Major Discipline.

- | | | |
|---------------|----------------------|------------------------|
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| | 1. Supervising Agent | 3. Atty/Legal advocate |

Alleged Violations: 1) Failure to follow Agent's directives; 2) Failure to follow Agent's directives; 3) Engaging in assaultive, abusive or violent behavior including harassment, stalking or threats of violence.

EXHIBIT

Plea: 1) deny, 2) deny, 3) deny

Findings: Violation found for #1 Failure to Follow Agent's directive based on the preponderance of the evidence. The Agent's directive is clear that subject must inform his Agent of any legal research or preparations or legal filings and name of his Attorney before any such activities were initiated. The directive was given very clearly on July 2010 and reinforced in November 2010 and February 2011. Witness Goodmundson credibly testified that she observed subject serving legal documents on 03/01/11 to John Hoff's Attorney, stating "John's been served." Subject is not denying he served legal documents, only that he is in compliance with his Court Order to not serve "new" documents after April 2010. He claimed he was serving "old" documents that pertained to litigation prior to April 2010. *The Agent's directive was precipitated by a formal judicial designation that subject is a "Frivolous Litigant" and directive's purpose was meant to ensure compliance of this Order. The directive is seen as having a nexus to the offender's history and, therefore, reasonable. This fact-finding is based specifically on the Agent's directive which requires subject to inform Agent of all legal research/preparations/filings before it is initiated and is broadly compatible with the Judge's Order. Subject's actions constitute a deliberate failure to comply with this directive. Burden of proof has been met.

Violation found for #2 for Failure to Follow Agent's directive based on the preponderance of the evidence. The Agent's directive to stay away from any court appearances in which John Hoff or Megan Goodmundson are involved was clearly violated on 03/01/11. Witness Goodmundson credibly testified that subject was at the court house where she, John Hoff and his attorney were present. Subject is not denying he was at the court house on this date. *This directive is seen as reasonable, as it is limited in scope (pertains to only when Hoff is present at the court house) and relates to his supervision: Agent feels subject has an excessive preoccupation with John Hoff due to believing Hoff requested his house be searched. Hoff has previously complained to Agent that subject was at the court house when he (Hoff) was there. Subject was aware that Hoff was involved in litigation that day and wanted to serve him or his attorney legal papers, and he was not there for any personal business. The Agent's directive was first issued on 02/16/11 and further explained on 03/01/11. Therefore, there should have been no confusion on the directive. The burden of proof has been met.

Violation #3 for Harassing Behavior dismissed. The witness, Ms. Goodmundson, did not testify to a pattern of harassment, or any tangible or specific examples of harassment. Rather, her testimony indicates her feelings of vulnerability at subject's presence in the neighborhood, or to a feeling of disgust at subject's sex offenses(s), or to his level 3 sex offender status. The burden of proof has not been met.

Agent Recommendations: Subject has been given numerous directives in regards to his legal filings. The first directive was on 04/09/10. He was told to cease any filings whatsoever until a motion filed against him was heard on 04/20/10. He was declared a "Frivolous Litigant" on 04/20/10 and ordered by the court to have all legal filings signed by a licensed lawyer and approved by a Presiding Civil Court Judge. He was given a clear directive on 07/29/10 to inform Agent before any work on legal research or preparation or filing is initiated and to inform Agent of the name of the attorney that would be signing off for him. He was also directed to follow the Court's order. On 03/02/11, John Hoff informed Agent that a process server delivered him a summons dated 02/24/11 along with a copy of a lawsuit filed by subject over a year ago. Subject does not believe this to be covered under the Court's Order because it is not "new". Subject appeared in court on 02/10/11 in which

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1. Supervising Agent 3. Atty/Legal advocate

John Hoff was a respondent. He was given a directive to stay away from any court appearances for John Hoff or Megan Goodmundson on 02/16/11. He called for clarification on this directive on 03/01/11. On 03/02/11, subject was waiting outside a courtroom in which John Hoff was appearing and ran up to Hoff, his significant other and his Attorney in order to serve paper. He failed to stay away from a hearing in which Hoff was appearing. He has been engaged in behavior for over a year that can be construed as harassing to John Hoff and Megan Goodmundson. He began by filing lawsuits against a large group of people, including the above, and despite a dismissal of his lawsuits and the Court Order for review of his purported filings, he continues to engage in filing. To avoid the Court Order, he filed a civil rights complaint with the City of Mpls. He also mailed letters addressed to Hoff and others.

Ms. Goodmundson testified to the following: she is one of the directors of the neighborhood organization, Jordon Area Community Counsel (JACC); she is aware of subject through the neighborhood and through the public notification process; she has had interaction with subject through his complaints and called Agent to report this; on Feb. 10, 2011, she was in court as a spectator and subject showed up there and attended the hearing; John Hoff was present and subject is not suppose to have contact with Hoff; she called Agent to complain; she was at the Government Center with Hoff and his attorney on 03/02/11 and observed subject ran up and served legal papers to the attorney; she saw subject on the hallway while she was going for coffee and felt he wanted to spy on her; she feels vulnerable anytime she sees him; he is a convicted level 3 sex offender and creepy and he seems to have a vendetta against her; subject knows where she lives and she feels very threatened by him; and she has written about subject in the blog, "Adventures of Johnny Northside" and has referred to him as "Spanky Pete" due to his prior offense of spanking a kid.

Subject's overall adjustment to supervision has been marginal. He persists on being defiant and questions all directives and methods of supervision. He has a lengthy history of filing multiple grievances, lawsuits or making complaints to get some sort of redress. His actions are quite frivolous and without merit. He has been out since September 2006. He has had three restructures. He is a Level 3 sex offender. He is obsessed with John Hoff. He indicated to Agent that he was upset with him because "Hoff had my house searched." Subject displays behavior that is not only escalating but is getting bizarre. He is difficult to supervise, unamenable to supervision due to the fact that he questions authority, displays little motivation for change and tends to externalize blame for his problems onto others. Revoke for 180 days.

Releasee Attorney Recommendations: Defense submitted multiple exhibits for consideration, including blogs of "Adventures of Johnny Northside," redacted chronos of Agent, Hoff's letter to Agent Fletcher, etc. Ms. Goodmunson volunteered to testify today. She wants subject to go to prison. She is the significant other of John Hoff and is a contributor to his website, "The Adventures of Johnny Northside." This blog is engaged in "cyberstalking" on subject. She is part of a community of about 20-50 members, who have a bias on subject. Instead of subject harassing her (as she claims), she has been the actual one harassing him. She called him "Spanky Pete" in the blog. She has no harassing or restraining order against subject and there is nothing in writing that says subject has to stay away from her. She was at a public court proceedings; she objected to subject being there. He has a right to be at public proceedings. Subject never harassed her, or followed her around. This is purely speculation on her part. Defense has ordered a video from the Government Center to show that subject never harassed her. She is the one that is harassing subject. She takes photographs of him to put on the blogs. She is testifying on behalf of John Hoff. This is self-serving testimony, as defense cannot cross examine Hoff. Subject was at court on 02/10/11 to observe the court case of Moore vs. Hoff. Moore was a victim of Hoff's blog

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2. Releasee
3. Atty/Legal advocate

and has a judgment against him (Hoff). He did not seek out Ms. Goodmunson; nor did he talk to her.

Subject asked the Agent several times to put the directive in writing that he cannot be at court when Hoff is present. Subject has a cognitive problem and the written directive would help him understand the directive. The Agent told him that he has no obligation to put it in writing. It is subject's understanding that he was prohibited from preparing or filing any new documents. Even DOC's central office has advised Agent that subject could not be violated for filing legal documents. This directive was given to him before the Judge's Order that designated him a "Frivolous Litigant" was put into effect. This directive prevented him from defending himself against the motion that he was a "Frivolous Litigant." It is unconstitutional.

The Court Order declaring him a "Frivolous Litigant" prevented him from filing new cases. He followed the spirit of the Court Order, as the documents served pertained to "old" materials and not "new" materials. The service of legal documents to Hoff on March 7, 2011, therefore, did not violate the Order. Hoff has bragged about evading subject's attempts to be served legal documents. Therefore, it was difficult to serve Hoff. Subject knew that he would be at the court house for the Moore vs. Hoff lawsuit and subject felt he would be able to serve him an amended complaint on the old lawsuit. Agent wanted subject to reveal his private conversation with his attorney. This is against attorney-client privileges.

The agent's directive is unconstitutional. Court trials are public places and subject has a right to be there. The paper work said he cannot be at JACC meetings. The directive did not say he could not be at a public place where Hoff and Goodmunson are present. He was told that he could not be in a court room with them. He served them, but he was never in a court room with them.

People in the community, including Hoff, Goodmunson and Kip Browne, were trying to get parole to prevent subject from filing complaints against them. The goal of parole is not do their work for them. Community corrections ended up doing their bidding. Confidential information was placed on Hoff's blog. Subject went to court to stop this mob mentality of the community. The District Court Judge that issued the order had ex parte communication over the matter and compromised his neutrality. Yet the Judge declared him a "Frivolous Litigant." His ISR Agent was changed because she told the community they could not do what they are doing to him. The community wanted a more tougher Agent who would do their bidding. His behavior is not getting bizarre, as his current Agent claimed. Perhaps a change in Agent is necessary to help his supervision. Subject has been stable. He would like to work more. None of the current issues are violence related, or related to sex offences. Subject has received calls from the community in support of him and against Hoff and others. He would like to go back on ISR and be supervised by his previous Agent.

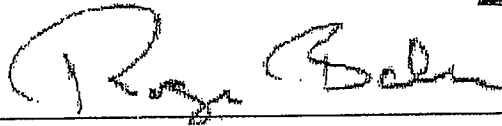
Crim/Release Information: SR /// PRIOR CRIMINAL HISTORY: Felony: 2nd Deg. CSC (1991) and Indecent Exposure (1989). Misd/GM: Assault (X 2) /// BCRC 3 /// DISCIP: 5 reports between 205-2006, including RCV Threatening Others and several Disorderly Conducts /// MI: Sexual sadism and Learning Disability /// TX: Negative Disorder /// RELEASE HISTORY: SRD on 09/25/06; Restructured on 04/01/10 for failure to involve in constructive activity; Restructured on 08/06/09 at a Revocation Hearing for failure to inform Agent of police contact and own/operate a computer with Internet capabilities.

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1. Supervising Agent

2. Releasee
3. Atty/Legal advocate

EXHIBIT _____

Hearing Officer: _____



Dated: 3/24/2011

Roger Baburam, Hearings and Release Officer

Distribution: Original - Base file
1. Supervising Agent

2. Releasee
3. Atty/Legal advocate



EXHIBIT 46

Central Office
Contributing to a Safer Minnesota

April 19, 2011

Jill Clark, P.A. Attorney at Law
2005 Aquila Ave. No.
Golden Valley, Minnesota 55427

RE: Peter Richard Stephenson #215933

Ms Clark;

I've receive your Appeal of the revocation hearing on the above offender conducted by Hearing Officer Roger Baburam at the Hennepin County Adult Detention Center on March 24, 2011. I find you Appeal to be very difficult to ascertain what exactly you are appealing. Your Appeal is exceedingly lengthy being seventeen pages with numerous attachments, and, in my opinion, quite disorganized. Several of your points do not even pertain to the Department of Corrections; such as, ex parte communication of a District Court Judge; improper role of local government; i.e. PO and Community Corrections collaborating with a neighborhood group; improper search of subject's residence, etc. The following two issues are what I believe to be the substance of your Appeal;

- A. Evidence not reviewed at Hearing;
 - Hearing Officer did not review all pieces of evidence prior to finding violation
 - Offender was unable to compel witnesses to testify

- B. No Rulings made on legal issues presented by Defense Council either prior to or during the Hearing
 - No rulings on subpoena power and some others
 - No Continuance granted
 - No rulings on the constitutionality of the Agent's two directives

From the review of the Hearing Summary Notes [document included], I believe the Hearing Officer addressed all of your points in a concise and clear manner. Subsequent to the Hearing and following receipt of your Appeal, I discussed the Hearing at length with the Hearing Officer. As recorded in the notes and as relayed to me, the Hearing Officer informs, he reviewed all your exhibits as they were submitted by you, some of which he considered irrelevant to the Hearing, and the subpoena issue was addressed prior to the Hearing by no fewer than two other parties; myself and Brent Wartner, Director of DOC Policy and Legal Services. Thus, there was no further need to address this issue at the Hearing. Additionally, the Hearing Officer fully addressed the legitimacy of the Agent Directives at the Hearing as is recorded in the Hearing Summary Notes.



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EQUAL OPPORTUNITY EMPLOYER

EXHIBIT _____

The Hearing Officer reports that although he made it very clear at the start of the Hearing that he was committed to a resolution and completion of the Hearing on the same day, you never made a formal request for a Hearing Continuance. Instead, you requested a stay of the 90 day revoke and return to prison so that you could facilitate the filing of a motion vacating the "Fivolous Litigation" court order in regard to the offender; perhaps that is what you are referring to in your Appeal? Ultimately this request was denied by the Hearing Officer at the Hearing.

Again, I refer to the Hearing Summary Note document, which is included with this reply to your Appeal, as containing all argument in rebuttal of your Appeal, which in all circumstances is denied.

Sincerely,



Jeffrey L. Peterson
Executive Officer Hearings and Release

Cc; Roger Baburam, Hearing Officer
Douglas Flantz, Case Manager MCF-Lino Lakes
Hana O'Neill, Corrections Agent Hennepin County
Base File

FILED

STATE OF MINNESOTA	2011 MAY 20 PM 2:30	DISTRICT COURT
COUNTY OF HENNEPIN	BY _____ DEPUTY	FOURTH JUDICIAL DISTRICT
State ex re. Peter Stephenson a/k/a Peter Rickmyer, Peter Rickmyer,		Case Type: Habeas Corpus Judge Susan N. Burke
Petitioner,		
v.		
Joan Fabian, in her official capacity as Minnesota Commissioner of Corrections, and her successor, Tom Roy, in his official capacity, Jeff Peterson, in his individual capacity, Will McDonald, in his individual capacity, John Hoff, an individual, Megan Goodmundson, an individual, Michael "Kip" Browne, an individual, and John Does 1-3,		<u>ORDER DENYING PETITIONER'S PETITION FOR A WRIT OF HABEAS CORPUS WITHOUT PREJUDICE</u>
Relators.		File No.: 27-CV-11-11012

INTRODUCTION

On May 17, 2011, this case came before the Court on Petitioner Peter Stephenson's (also known as Peter Rickmyer's) Petition for a Writ of *Habeas Corpus* (Petition) pursuant to Minnesota Statutes Section 589 (2010). On May 18, 2011, Petitioner submitted additional materials in support of his Petition. Jill Clark, Esq. filed the Petition on behalf of Petitioner. Petitioner has not provided any certification of representation or proof of service of his Petition on any other parties in this case.

In his Petition, Petitioner claims that he was denied his right to due process of law during an arbitrarily-conducted supervised release revocation proceeding on March 24, 2011. Petitioner requests that this Court grant his Petition and order that he be brought to the Hennepin County Adult Detention Center for further consideration of his claims.

ANALYSIS

I. Standard For Bringing A Writ Of Habeas Corpus

Minnesota Statutes Section 589.01 provides in relevant part that:

A person imprisoned or otherwise restrained of liberty, except persons committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon the judgment, may apply for a writ of *habeas corpus* to obtain relief from imprisonment or restraint.

Minn. Stat. § 589.01 (2010). Section 589.02 further provides:

Subdivision 1. Scope. In this chapter, the words listed in this section have the meanings or inclusions given them here.

Subd. 2. Detaining authority. "Detaining authority" includes a state or local correctional agency or officer or employee of that agency or any other public or private agency or person that is alleged in the writ of *habeas corpus* to have restrained or imprisoned the petitioner.

Subd. 3. Petitioner. "Petitioner" means a person who is imprisoned or otherwise restrained of liberty and who applies for a writ of *habeas corpus* to obtain release.

Minn. Stat. § 589.011 (2010). Finally, Section 589.02 provides that:

A person may apply for a writ of *habeas corpus* by petition addressed to the Supreme Court, Court of Appeals, or to the district court of the county where the petitioner is detained. The petition must be signed and verified by the petitioner or some person applying on the petitioner's behalf. If there is within the county a judge of the court to which the petition is addressed, that judge may grant the writ. If there is no judge within the county capable of acting and willing to grant the writ, it may be granted by a judge in an adjoining county.

Minn. Stat. § 589.02 (2010) (emphasis added).

In interpreting the *habeas corpus* statute in Minnesota, the Minnesota Supreme Court held that:

[A]ny one desiring the writ must apply to the court or judge thereof in the county where he is restrained, if there be one present capable and willing to act, and, if there be none, then to the nearest or most accessible court or judge capable and willing to act, and that he cannot pass over such near and accessible court or officer, and go to any court or judge in the state that he may select.

In re Doll, 50 N.W. 607, 608 (Minn. 1891); see also State ex rel. Alexander v. Rigg, 76 N.W.2d 478, 480 (Minn. 1956) (“The proper procedure to follow . . . is to petition the district court of the county in which the person is detained.”).

II. The Court Denies Petitioner’s Petition For A Writ Of Habeas Corpus Without Prejudice, Because Petitioner Did Not Bring His Petition In The Proper County Pursuant To Section 589.02

In his Petition, Petitioner states that he is currently being held in the Lino Lakes Correctional Facility in Lino Lakes, Minnesota. The Court notes that the Lino Lakes Correctional Facility is located in Anoka County, Minnesota (Anoka County). Petitioner argues that he filed his Petition before this Court in Hennepin County, Minnesota (Hennepin County), and not Anoka County, because time is of the essence, and because Hennepin County Judge Robert Blaser (Judge Blaser) ordered Petitioner to do so. Finally, based on Judge Blaser’s Order, Petitioner argues that judges in Anoka County are not authorized or are incapable of granting his Petition.

In his Order of May 17, 2010, Judge Blaser ordered that:

Until further order of this Court, [Petitioner] may not file any new cases unless an attorney licensed to practice law in Minnesota has signed the complaint and the Chief Judge or the Presiding Judge of Civil has approved. The Clerk of Court is instructed to not accept any filings from [Petitioner] unless these conditions are met.

Rickmyer v. Hodson, 27-CV-10-3378 (Hennepin County Dist. Ct. - May 17, 2010).

It is clear to this Court that Judge Blaser's Order only applies to Petitioner's filings in Hennepin County. Judge Blaser's Order does not apply to Petitioner's filings in Anoka County. Therefore, Petitioner's argument that Judge Blaser's Order requires Petitioner to file his Petition in Hennepin County fails to persuade the Court. Additionally, Petitioner's argument that, based on Judge Blaser's Order, judges in Anoka County are not authorized or are incapable of granting his Petition also fails to persuade the Court.

Pursuant to Section 589.02 and the case law cited above, Petitioner's Petition should be "addressed to the Supreme Court, Court of Appeals, or to the district court of the county where the petitioner is detained." Minn. Stat. § 589.02 (emphasis added). As Petitioner is being detained in Anoka County, Petitioner should address his Petition to the Anoka County District Court.

ORDER

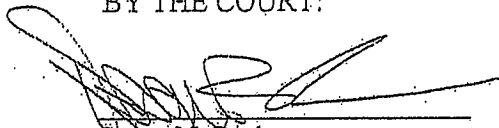
Based upon the files herein, and pursuant to Minnesota Statutes Section 589,

IT IS HEREBY ORDERED:

1. Petitioner Peter Stephenson's (also known as Peter Rickmyer's) Petition for a Writ of *Habeas Corpus* is denied without prejudice.
2. The remainder of Petitioner Peter Stephenson's claims for violation of 42 U.S.C. § 1983 and the state tort of abuse of process may proceed as a standard civil action before this Court.

Dated: 5/20/2011

BY THE COURT:



Susan N. Burke
Judge of District Court

STATE OF MINNESOTA
COUNTY OF ANOKA

MAY 26 2011

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Anoka County, MN
In the Matter of: Peter Stephenson, also
known as Peter Rickmyer,

Petitioner,

v.

Tom Roy, Commissioner of Corrections,
State of Minnesota, and Michael Freeman,
Hennepin County Attorney

Respondents.

ORDER DIRECTING RESPONDENT
TO SHOW CAUSE WHY WRIT OF
HABEAS CORPUS SHOULD NOT
BE ISSUED

Court File No: 02-CV-11-3668

Petitioner Peter Stephenson, also known as Peter Rickmyer, (hereinafter referred to as petitioner Stephenson) filed a petition for a writ of *habeas corpus* with this Court at 5:20 p.m. on May 23, 2011. The petition was reviewed by the undersigned Judge of this Court in chambers, without any appearances.

This Court notes that the petition and accompanying documents were voluminous, wordy, difficult to understand, rambling, and, at times, appeared to be irrelevant to the claim submitted to this Court. This Court is not clear of, nor did petitioner Stephenson clearly outline, the exact nature of the claim, the evidence proving the claim, or the asserted authority for the claim. Furthermore, petitioner Stephenson failed to provide all the necessary documents required when petitioning for a writ of *habeas corpus*, including a transcript of the proceedings taken at the time of arraignment and sentence in the court which imposed the sentence. Minn. Stat. § 589.04(e).

Though this Court is left with incomplete information, based on the petitioning papers it appears that the legal matter underlying petitioner Stephenson's *habeas corpus* petition is a criminal proceeding in the Hennepin County District Court, concerning a conviction and sentence of criminal sexual conduct. In his *habeas corpus* petition, petitioner Stephenson characterizes that proceeding as follows:

That Petitioner was arrested in Hennepin County on or about March 9, 2011, by the Minnesota Department of Corrections (DOC), and was detained in Hennepin County Adult Detention by the Hennepin County Sheriff while under "hold" from the DOC, and whose release revocation hearing was held in Hennepin County. Further, in his *habeas corpus* petition, petitioner Stephenson asserts that he is "imprisoned by virtue of an arbitrarily-conducted and motivated proceeding that denied due process, and which was

termed a supervised release revocation". Petitioner asserts that he is currently being held at the Minnesota Correctional Facility – Lino Lakes, located in Anoka County, Minnesota, with an anticipated release date of June 6, 2011. Presumably, petitioner Stephenson was charged and convicted of a criminal offense by the Hennepin County District Court. (Accordingly, in the caption of the present *Habeas Corpus* Order, the Court itself has designated as respondents both Hennepin County and the Commissioner of Corrections).

Having reviewed the *habeas corpus* petition and the paper attached to it, the Court now issues the following Order:

ORDER

1. The Anoka County Court Administrator shall immediately provide copies of petitioner Stephenson's *habeas corpus* petition and all papers accompanying it to the following attorneys, on behalf of the respondents:

Michael Freeman
Hennepin County Attorney
Hennepin County Attorney's Office
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

Matt Frank
Assistant Attorney General
Attorney General's Office
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

2. Within 15 days of the date of this present Order (i.e. no later than June 10, 2011) the respondents shall serve upon petitioner Stephenson's attorney and file with the Anoka County District Court a return in writing.

The return shall certify the true legal justification for petitioner Stephenson's current confinement, and shall show cause why the writ should not be issued. The return shall include:

- a. Such affidavits and exhibits as are needed to establish the lawfulness of petitioner Stephenson's confinement, in light of the issues raised in the *habeas corpus* petition.

- b. A memorandum of law and fact fully stating the respondents' legal position, including the respondents' position as to whether an evidentiary hearing is needed in this matter.
 - c. Certified copies of such documents the respondents deem material to the issues raised by the habeas corpus petition.
3. Petitioner Stephenson shall serve on respondents and file the remaining documents necessary to perfect his petition for *habeas corpus* within 15 days of this Order, no later than June 10, 2011.
 4. If the respondents do not timely serve and file the written return described in paragraph #2 above, the Court will then entertain a written motion by petitioner Stephenson to grant the relief requested in his *habeas corpus* petition.
 5. If the respondents do timely serve and file the written return described in paragraph #2 above, petitioner Stephenson shall then have 7 days (i.e. no later than June 17, 2011) to serve and file such written response as he deems necessary and appropriate. In the procedural scenario described in this paragraph, this Court will then resolve the *habeas corpus* petition on the basis of any and all papers that have been served and filed by that time, or, if necessary, set the matter on for a hearing.
 6. The Anoka County Court Administrator shall notify the parties of the present Order by immediately providing copies of the Order to the respondents' attorneys at the addresses listed above and to petitioner Stephenson's attorney at the address below:

Jill Clark
2005 Aquila Avenue North
Minneapolis, MN 55427

7. Petitioner Stephenson simultaneously brought a Motion for Injunctive Relief to restrain the Minnesota Department of Corrections from detaining petitioner Stephenson. This Court addresses that motion by separate order.

SO ORDERED.

Dated: May 26,
2011

BY THE COURT:

Bethany A. Fountain Lindberg
Honorable Bethany A. Fountain Lindberg
Judge of District Court

MAY 26 2011

STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
TENTH JUDICIAL DISTRICT

ANOKA COUNTY, MN
Deputy

In the Matter of: Peter Stephenson, also
known as Peter Rickmyer

Petitioner,

v.

Tom Roy, Commissioner of Corrections,
State of Minnesota, and Michel Freeman,
Hennepin County Attorney

Respondent.

**ORDER DENYING PETITIONER'S
MOTION FOR *EX PARTE*
TEMPORARY RESTRAINING
ORDER**

Court File No: 02-CV-11-3668

Petitioner Peter Stephenson, also known as Peter Rickmyer, (hereinafter referred to as petitioner Stephenson) filed a Motion for Temporary Injunction/Writ of *Habeas Corpus* and a petition for *habeas corpus* with this Court at 5:20 p.m. on May 23, 2011. The Motion was reviewed by the undersigned Judge of this Court in chambers, without any appearances.

ORDER

1. Petitioner Stephenson's motion for an *ex parte* temporary restraining order is **DENIED**.
2. Petitioner Stephenson's Motion for Temporary Injunction will be heard on June 2, 2011 at 1:30 p.m.
3. Court Administration shall serve a copy of this order on all parties via first class United States Mail, by and through their attorneys as listed below:

Jill Clark
2005 Aquila Avenue North
Minneapolis, MN 55427

Michael Freeman
Hennepin County Attorney
Hennepin County Attorney's Office
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487

Matt Frank
Assistant Attorney General
Attorney General's Office
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

4. This Court will address petitioner Stephenson's Petition for Habeas Corpus by separate order.

SO ORDERED.

Dated: May 26,
2011

BY THE COURT:

Bethany A. Fountain Lindberg
Honorable Bethany A. Fountain Lindberg
Judge of District Court

MEMORANDUM

Anoka County Court File: 02-CV-11-3668

Petitioner Peter Stephenson, also known as Peter Rickmyer (hereinafter "petitioner Stephenson") is an inmate incarcerated at the Minnesota Correctional Facility - Lino Lakes, which is located in Anoka County, Minnesota. Petitioner Stephenson is scheduled to be released from prison on June 6, 2011. Petitioner Stephenson asserts that he will suffer irreparable and significant harm if he is not released from custody during the pendency of this Court's review of his *habeas* petition and requests that this Court issue an *ex parte* order restraining the Department of Corrections from detaining him.

Minnesota Rule of Civil Procedure 65.01 authorizes a court to grant a temporary restraining order without notice to the adverse party only if "it clearly appears . . . that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition." Minn. R. Civ. P. 65.01. Injunctive relief should be awarded only in clear cases, reasonably free from doubt, and when necessary to prevent great and irreparable injury. *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 110 N.W.2d 348, 351 (Minn. 1961). The burden of proof rests upon the complainant to establish the material allegations entitling him to relief. *Id.* An injunction will not issue to prevent an imagined injury which there is no reasonable ground to fear and the threatened injury must be real and substantial. *Id.* When an injury alleged is primarily economic, grounds for a temporary injunction are not established. *Morse v. City of Waterville*, 458 N.W.2d 728, 729-30 (Minn. Ct. App. 1990). Additionally, injunctions ought not to be granted in any case except where it is clear that any legal remedy the party may have is inadequate. *Id.*

Petitioner Stephenson presents a list of "numerous consequences" that will befall him if he is not immediately released and makes a generalized statement that "the negative consequences . . . are significant." Petitioner Stephenson maintains that he will suffer the following consequences should the court deny the temporary restraining order:

- 1) Petitioner's Risk Level Reduction Application being delayed three years;

- 2) Community will be re-notified of his Level 3 Sex Offender status upon release;
- 3) Outpouring of hate speech directed at Petitioner;
- 4) Petitioner's possible involvement in civil commitment proceedings
- 5) Petitioner's family and friends abandoning him;
- 6) Petitioner's supervision being enhanced from routine to intensive;
- 7) Petitioner having to abandon his home during a time when some members of the community appear motivated to "violate" it as a violent outgrowth of hate speech;
- 8) Petitioner being unable to monitor his home and pay bills that may have been destroyed;
- 9) Petitioner's inability to prevent his residence from being looted or damaged by the elements resulting from a the May 22, 2011 tornado that damaged his home; and
- 10) Petitioner's inability to meet in a productive setting with his attorney.

It is highly unlikely that the harms suggested by petitioner Stephenson in items 1-6 above would be caused or enhanced by holding petitioner Stephenson until his anticipated release date of June 6, 2011. These articulated consequences are likely to occur no matter when petitioner Stephenson is released from incarceration. Also, petitioner Stephenson has failed to make a showing that this harm is immediate and irreparable.

Petitioner Stephenson next articulates his concern for his home in light of the heavy storm that struck and damaged many homes in North Minneapolis on May 22, 2011. Petitioner Stephenson is seeking an immediate release from incarceration to enable him to return to his home to prevent further damage caused by weather and/or looting. Petitioner Stephenson alleges that local law enforcement is not allowing non-residents into the area because of the storm damage, which limits his ability to send friends or family members to care for his home while he is incarcerated.

It is unfortunate that a destructive storm swept through the neighborhood where petitioner Stephenson owns a home. While the harms asserted by Petitioner in items 7, 8 and 9 above could be handled more expeditiously if petitioner Stephenson was

granted an early release date from prison, this is not the threshold to obtain a temporary restraining order.

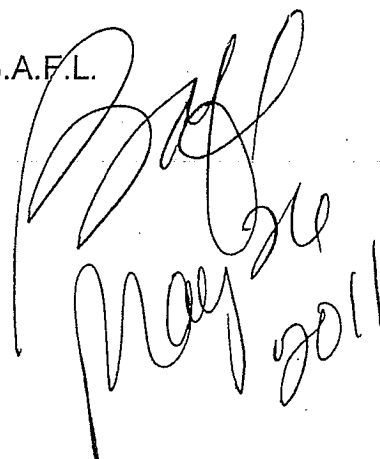
In the present case, Petitioner has not met his burden. The damage to petitioner Stephenson's home has already occurred. Petitioner Stephenson has failed to provide any substantial proof that his home will be subject to further harm or that the additional harm would be "great and irreparable" harm. The burden rests with the party requesting the relief. *AMF Pinstoppers, Inc.*, 110 N.W.2d at 351.

In addition, no information has been provided as to the length of time North Minneapolis will be closed to non-residents, thus, petitioner Stephenson has failed to show that it would be impossible to have a friend or family member care for the home while he is incarcerated. Even if weather or looting caused further injury to petitioner Stephenson's storm damaged home, the injury would be primarily economic and not irreparable. Harms that are primarily economic are not grounds for a temporary injunction. See *Morse*, 458 N.W.2d at 729-30.

A legal remedy exists for petitioner Stephenson to request relief from his detention. The proper method for contesting petitioner Stephenson's incarceration is through a writ of *habeas corpus*, which petitioner Stephenson has instigated. An order releasing Petitioner from custody before the *habeas* petition can be properly reviewed would be premature.

The Court concludes that petitioner Stephenson has not demonstrated that he would suffer immediate and irreparable injury, loss, or damage if he were not released before his Motion for Temporary Injunction can be heard.

B.A.F.L.

A handwritten signature in black ink, appearing to be "B.A.F.L.", with the date "May 26 2011" written below it.

In the Matter of: Peter Stephenson, also
known as Peter Rickmyer

FILED
Jane F. Morrow
Court Administrator

ORDER DENYING TEMPORARY
RESTRAINING ORDER

Petitioner,

v.

JUN 07 2011

Court File No: 02-CV-11-3668

Tom Roy, Commissioner of Corrections,
State of Minnesota, and Michael Freeman,
Hennepin County Attorney

WYNKIA STRECKER
Deputy

Respondent.

The above-entitled matter came before the Honorable Bethany A. Fountain Lindberg, Judge of District Court, City of Anoka, County of Anoka, State of Minnesota, on June 2, 2011, pursuant to Plaintiffs' Motion for a Temporary Injunction, dated May 23, 2011. Plaintiff appeared through counsel Jill Clark, Esq. Defendant Tom Roy, Commissioner of Corrections, appeared through Brent D. Wartner, Esq. Defendant Michael Freeman, Hennepin County Attorney, appeared through counsel J. Michael Richardson, Assistant Hennepin County attorney.

Petitioner Peter Stephenson, also known as Peter Rickmyer, (hereinafter referred to as petitioner Stephenson) filed a Motion for Temporary Injunction/Writ of Habeas Corpus and a petition for habeas corpus with this Court at 5:20 p.m. on May 23, 2011. The Court denied petitioner Stephenson's request for ex parte relief and set the matter for hearing on June 2, 2011.

ORDER

1. Plaintiff's motion for a temporary injunction is **DENIED**.
2. This Court will address Plaintiff's motion for Writ of Habeas Corpus by and through a separate order.

SO ORDERED.

Dated:

June 7, 2011

BY THE COURT:

Bethany Lindberg
Honorable Bethany A. Fountain Lindberg
Judge of District Court

MEMORANDUM
Anoka County Court File: 02-CV-11-3668

Petitioner Peter Stephenson, also known as Peter Rickmyer (hereinafter "petitioner Stephenson") is an inmate incarcerated at the Minnesota Correctional Facility - Lino Lakes, which is located in Anoka County, Minnesota. Petitioner alleges that on May 22, 2011, a tornado damaged his home in North Minneapolis. Petitioner is seeking an immediate release from incarceration that would enable him to return to his home to prevent further damage caused by weather and/or looting. Petitioner alleges that local law enforcement is not allowing non-residents into the area because of the storm damage, which limits his ability to send friends or family members to care for his home while he is incarcerated.

Petitioner Stephenson is scheduled to be released from prison on June 6, 2011. Petitioner asserts that he will suffer irreparable and significant harm if he is not released from custody during the pendency of this Court's review of his habeas petition. Petitioner also alleges that his release date of June 6, 2011, may not occur, as Corrections may hold him for lack of a home to return to upon his release, thus infringing on petitioner Stephenson's liberty rights. Furthermore, petitioner Stephenson argues that if his revocation isn't lifted, Corrections may subject him to a second civil commitment evaluation, further impinging on his rights.

Minnesota Rule of Civil Procedure 65.02 authorizes a court to grant a temporary injunction if "it appears that sufficient grounds exist therefor." Minn. R. Civ. P. 65.02(b). The purpose of a temporary injunction is to maintain the status quo during pending litigation so that final judgment will not be affected by the previous acts of the parties. *Pickerign v. Pasco Mktg., Inc.*, 303 Minn. 442, 446, 228 N.W.2d 562, 565 (1975). A temporary injunction is an extraordinary equitable remedy and should be granted "only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held." *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982), citing *Pickerign*, 303 Minn. at 444, 228 N.W.2d at 564. The party seeking the temporary injunction has the burden to show that sufficient grounds exist for its issuance. *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 260 Minn. 499, 504, 110 N.W.2d 348, 351 (1961).

The district court must apply a five factor test to determine the propriety of a temporary injunction. *Dahlberg Bros, Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 214, 321-22 (1965).

1. The nature and background of the relationship between the parties preexisting the dispute.
2. The harm to be suffered by the plaintiff if the temporary restraint is denied as compared to that of defendant if the injunction issues pending trial.
3. The likelihood of either party prevailing on the merits.
4. The aspects of the fact situation, if any, which permit or require consideration of public policy.
5. The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Dahlberg Bros, Inc. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 214, 321-22 (1965). These factors are analyzed with the circumstances presented by petitioner Stephenson below:

1. *The Nature and Relationship Between the Parties*

In the present case, the relationship between the parties is as detainee to warden. Petitioner Stephenson is currently suing the Department of Corrections civilly, arguing that the Department of Corrections (hereinafter "DOC") improperly revoked his intensive supervised release. That creates an additional relationship of adversarial litigants.

Petitioner asserts that the relationship between himself and the Commissioner of Corrections weights in favor of a temporary restraining order. However, Petitioner fails to articulate facts supporting this conclusory statement. The mere fact that Petitioner is currently involved in a civil suit against the DOC is irrelevant in determining whether a temporary restraining order is appropriate. Moreover, the Petitioner has not asserted that he will be burdened in his pending civil suit against the DOC if he is not immediately released from custody. Therefore, the Court finds that Petitioner has not met his burden on this factor.

2. *Balance of Harm*

While all five *Dahlberg* factors must be considered, even if the party seeking the injunction reaches its burden in regard to some factors, an injunction will only be awarded when it is clear that an injunction will prevent a great and irreparable injury. *Pacific Equip. & Irrigation, Inc. v. Toro Co.*, 519 N.W.2d 911, 918 (Minn. Ct. App. 1994), *review denied* (Minn. Sept 16, 1994). Failure to show irreparable harm is generally sufficient ground to deny a temporary injunction. *Medtronic, Inc. v. Advanced Bionics*, 630 N.W.2d 438, 451 (Minn. Ct. App. 2001).

As to this factor, petitioner Stephenson presents a list of "numerous consequences" that will befall him if he is not immediately released and makes a generalized statement that "the negative consequences . . . are significant." Petitioner Stephenson maintains that he will suffer the following consequences should the court deny the temporary restraining:

- 1) Petitioner's Risk Level Reduction Application being delayed three years;
- 2) Community will be re-notified of his Level 3 Sex Offender status upon release;
- 3) Outpouring of hate speech directed at Petitioner;
- 4) Petitioner's possible involvement in civil commitment proceedings
- 5) Petitioner's family and friends abandoning him;
- 6) Petitioner's supervision being enhanced from routine to intensive;
- 7) Petitioner having to abandon his home during a time when some members of the community appear motivated to "violate" it as a violent outgrowth of hate speech;
- 8) Petitioner being unable to monitor his home and pay bills that may have been destroyed;
- 9) Petitioner's inability to prevent his residence from being looted or damaged by the elements resulting from a the May 22, 2011 tornado that damaged his home; and
- 10) Petitioner's inability to meet in a productive setting with his attorney.

Again, this Court notes that the anticipated consequences argued by petitioner Stephenson are fragmented phrases and are extremely difficult for this court to understand, particularly given the dearth of supporting evidence or analysis. Taking petitioner Stephenson's argument at face value, it is highly unlikely that the harms suggested by Petitioner in items 1-6 above would be caused or enhanced by holding petitioner Stephenson until his anticipated release date of June 6, 2011. These articulated consequences are likely to occur no matter when petitioner Stephenson is released from incarceration.

The only instance that petitioner Stephenson articulates with any clarity is his concern for his home in light of the heavy storm that struck and damaged many homes in North Minneapolis. It is unfortunate that a destructive storm swept through the neighborhood where petitioner Stephenson owns a home. The harms asserted by Petitioner in items 7, 8 and 9 above could possibly be averted by an early release date from prison. However, petitioner Stephenson has failed to show that this harm is more than monetary damages. Petitioner Stephenson's Second Supplement Affidavit of Jill Clark, Esq. dated June 2, 2011, (with attachments) indicate that the damage to petitioner Stephenson's home in north Minneapolis was inspected by Director of Housing Inspections. His e-mail under date of June 2, 2011, indicates that structural concerns are now deemed (after inspection and review of photographs) to be pre-existing to the storm. As of June 2, 2011, the "unsafe" designation was lifted from petitioner Stephenson's home. This evidence directly contradicts petitioner Stephenson's argument that the tornado created an "emergency" situation requiring a temporary restraining order to release her client from incarceration.

In addition petitioner Stephenson did not demonstrate that his harm is greater than the harm to be suffered by the Commissioner of Corrections or the general public, if the order is granted. Documents submitted by petitioner Stephenson indicate that he is a Level 3 sex offender. As there is no evidence of record regarding his criminal arraignment and/or sentencing, this court is left to wonder as to petitioner Stephenson's criminal conviction(s).

As such, it is difficult if not impossible to balance the harm suffered by petitioner Stephenson vs. the harm to the Commissioner of Corrections and/or members of the

general public. Given these facts, the court cannot conclude that petitioner Stephenson has demonstrated that he will suffer irreparable harm.

Regardless, the proper method for contesting Petitioner's incarceration is through a writ of habeas corpus, which petitioner Stephenson has instigated. An order releasing Petitioner from custody before the habeas petition can be properly reviewed would be premature.

The Court concludes that Petitioner has not demonstrated he would suffer irreparable and significant harm if he were not released from custody before his scheduled release date of June 6, 2011.

3. Success on the Merits

If a petitioner can show no likelihood of prevailing on the merits, a court cannot grant a temporary injunction. *Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 226 (Minn. Ct. App. 2002), *review denied* (Minn. Feb. 4, 2002). However, if a petitioner makes even a doubtful showing as to the likelihood of prevailing on the merits, a court may issue a temporary injunction to preserve the status quo until trial. *Id.*

Petitioner Stephenson asserts he is entitled to bring a writ of habeas corpus because his imprisonment violates his constitutional or statutory rights. This Court concurs that a writ of habeas corpus is an appropriate vehicle to challenge potential violations of a detained prisoner's constitutional rights. However, petitioner Stephenson fails to demonstrate how these alleged violations translate into an immediate release of custody and how an immediate release of custody equates to maintaining the status quo.

In the present case, Petitioner is in custody at Minnesota Correctional Facility – Lino Lakes. Even if petitioner Stephenson made a showing as to the likelihood of prevailing on the habeas petition, that doesn't necessarily equate to an immediate release from incarceration. Petitioner Stephenson's success on the unlawful detention may correct any defects in his constitutional rights during the revocation hearing, but there is no evidence that success on the habeas corpus petition will automatically result in an immediate release from incarceration.

Moreover, temporary injunctions are to preserve the status quo and in this case, preserving the status quo would require holding petitioner Stephenson in custody until the habeas petition can be decided on the merits. Petitioner Stephenson has been detained since his revocation hearing in March 2011. His anticipated release date is June 6, 2011. Even if petitioner Stephenson could show that these harms are reasonable reasons to bring a habeas action, his incarceration until his expected release date would not affect his likelihood of success in said action, except to possibly render the issue moot by the running of his required incarceration time.

4. Public Policy

Petitioner asserts that he should be granted an early release from custody as a matter of public policy because "public interest weighs in favor of due process for all citizens, to protect First Amendment rights, and to not allow the misuse of government resources." Not only does petitioner Stephenson fail to support these generalized statements through logical analysis of the evidence, but Petitioner fails to consider the policy of assuring public safety by incarcerating criminal offenders until their scheduled release date. In general, it is not sound public policy to grant inmates immediate, early release in order to settle affairs that are more easily tended to while not in custody. In the instant case, it would be irresponsible of this Court to release petitioner Stephenson without the court's knowledge of the underlying criminal conviction, sentence, and hearing the evidence. The court cannot properly analyze the public policy concerns and the risk to the public without such relevant information. Therefore, this Court finds that Petitioner has not met his burden on this factor.

5. Administrative Burden

The fifth factor the court must examine is the administrative burden that enforcement of a temporary injunction would place upon the court system. *Dahlberg*, 137 N.W.2d at 322. Petitioner asserts that there are few burdens. Petitioner asserts that even if the Court grants him immediate releases through a temporary restraining order and subsequently denies his habeas petition, the Court could simply order Petitioner back into custody to serve the remaining balance of his sentence.

Petitioner fails to consider the delay between the issuance of a temporary restraining order and the ultimate determination of the merits of his habeas petition.

Petitioner's habeas motion may not be decided until after June 6, 2011, at which time Petitioner's period of incarceration will have run. It would be administratively difficult for this Court to determine whether Petitioner should be ordered back into custody after June 6, 2011 if his habeas motion is ultimately denied.

This court could find no authority for using a temporary restraining order to "restrain" the DOC from detaining petitioner Stephenson or an affirmative injunction, requiring the DOC to release him." Furthermore, the administrative burden on the court system as a whole if the court did in fact release prisoners, pending a hearing on the substantive merit of their unlawful detainer case, could be significant as it would likely drive up the number of filings for writs of habeas corpus and temporary injunctions. As temporary injunctions are considered expedited matters, this would magnify the work load on court administration and the court system as a whole.

While this court is not aware of the specific administrative duties involved in releasing an offender into the community, it is logical that there are significant administrative functions borne by the DOC whenever a prisoner is released, and more so for level 3 sex offenders. Should petitioner Stephenson obtain an early release, then be ordered back into incarceration, a second release would seem to double to administrative burdens on the DOC. At any rate, based on these reasons and based upon the dearth of evidence or argument on this factor, this Court finds that Petitioner has failed to meet his burden on this factor.

Petitioner Stephenson also argues that his liberty may be further constrained and lost without the grant of a temporary restraining order. Again, there is a dearth of evidence with respect to this issue. The court would be engaging in sheer speculation to attempt this type of analysis without additional evidence. Therefore, the court declines to analyze, at least in this order, the constitutional issues surrounding the writ of habeas corpus. A habeas corpus petition is the appropriate remedy for an unlawful detention based on loss of liberty and other constitutional issues and a separate order has already been issued with respect to that issue.

On a whole, after consideration of the Dahlberg factors, the court denies petitioner Stephenson's request for a temporary injunction.

B.A.F.L.
[Handwritten signature]
6-7-11

Minnesota

County Anoka

District Court

Judicial District: Tenth

Court File Number: CV-11-

Case Type: General

State of Del
PETER STEPHENSON *aka*
Plaintiff/Petitioner
Richmyer

FILED
Jane F Morrow
Court Administration

JUN 06 2011

Order Allowing Inmate

In Forma Pauperis Action

vs.

Anoka County, MN
NYKKIA STRECH
Deputy

(Minn. Stat. § 563.02)

Tom Roy
Defendant/Respondent

Upon the affidavit of the applicant, and based on the authority of Minn. Stat. § 563.02

IT IS ORDERED:

- A. Applicant is authorized to proceed in forma pauperis without being required to pay filing fees, service and publication fees, and copying fees.

 B. Applicant is authorized to proceed in forma pauperis upon initial payment of \$_____ (50% of the balance of the inmate account). The Commissioner of Corrections is directed to withdraw this amount and shall continue making withdrawals from the inmate's account and forward the amounts withdrawn to the court administrator at intervals as the applicable funds equal at least \$10 until the entire filing fee of \$_____ has been paid.*
- All necessary pleadings in this proceeding shall be served by the sheriff of the appropriate county as requested without paying any fees or costs.
- If funds are recovered by either settlement or judgment in this action, the costs deferred and expenses directed by the Court to be paid in this order shall be included in such settlement or judgment and shall be paid directly to the court administrator by the opposing party.

Date: June 6, 2011

B. Fountain Lindberg
Judge of District Court

6/8/11
ngms

*NOTICE TO INMATE: If you opt not to proceed under this provision, you must notify the commissioner of corrections immediately to stop the withdrawal of funds. Your pleadings will not be returned to commence service of the action until payment has been received by the court.

Minnesota

County Anoka

District Court

Judicial District: Tenth

Court File Number: CV -11-

Case Type: General

State of Del
PETER STEPHENSON *aka peter*
Plaintiff/Petitioner
Richmyer

FILED
Jane F Morrow
Court Administration

JUN 06 2011

Order Allowing Inmate
In Forma Pauperis Action
(Minn. Stat. § 563.02)

Anoka County, MN
NYKKIA STRECK
Deputy

vs.

Tom Roy
Defendant/Respondent

Upon the affidavit of the applicant, and based on the authority of Minn. Stat. § 563.02

IT IS ORDERED:

- A. Applicant is authorized to proceed in forma pauperis without being required to pay filing fees, service and publication fees, and copying fees.

 B. Applicant is authorized to proceed in forma pauperis upon initial payment of \$ _____ (50% of the balance of the inmate account). The Commissioner of Corrections is directed to withdraw this amount and shall continue making withdrawals from the inmate's account and forward the amounts withdrawn to the court administrator at intervals as the applicable funds equal at least \$10 until the entire filing fee of \$ _____ has been paid.*
- All necessary pleadings in this proceeding shall be served by the sheriff of the appropriate county as requested without paying any fees or costs.
- If funds are recovered by either settlement or judgment in this action, the costs deferred and expenses directed by the Court to be paid in this order shall be included in such settlement or judgment and shall be paid directly to the court administrator by the opposing party.

Date: June 6, 2011

B. Fountain Lindberg
Judge of District Court

*NOTICE TO INMATE: If you opt not to proceed under this provision, you must notify the commissioner of corrections immediately to stop the withdrawal of funds. Your pleadings will not be returned to commence service of the action until payment has been received by the court.

FILED

AUG 08 2011

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

Court Administration
Anoka County, MN

TENTH JUDICIAL DISTRICT

In the Matter of: Peter Stephenson, also
known as Peter Rickmyer

Petitioner,

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

v.

Court File No: 02-CV-11-3668

Tom Roy, in his official capacity as
Commissioner of Corrections, State of
Minnesota.

Respondent.

The above-entitled matter came before the Honorable Bethany A. Fountain Lindberg, Judge of District Court, City of Anoka, County of Anoka, State of Minnesota via submissions from the parties. Petitioner Stephenson appeared through counsel Jill Clark, Esq. Respondent Tom Roy, Commissioner of Corrections, appeared through Krista Fink, Esq.

Petitioner Peter Stephenson, also known as Peter Rickmyer, (hereinafter referred to as Petitioner Stephenson) filed a Motion for Temporary Injunction/Writ of Habeas Corpus and a Petition for Habeas Corpus with this court at 5:20 p.m. on May 23, 2011. On May 26, 2011, this court denied Petitioner Stephenson's request for ex parte relief and set the matter for hearing on June 2, 2011. On May 26, 2011, by way of a separate Order, this court ordered Respondent Tom Roy to show cause as to why a writ of habeas corpus should not be issued. On June 7, 2011, this court denied Petitioner Stephenson's motion for a temporary restraining order. On June 7, 2011, Respondent

Tom Roy filed his response to Petitioner Stephenson's Petition for Writ of Habeas Corpus.

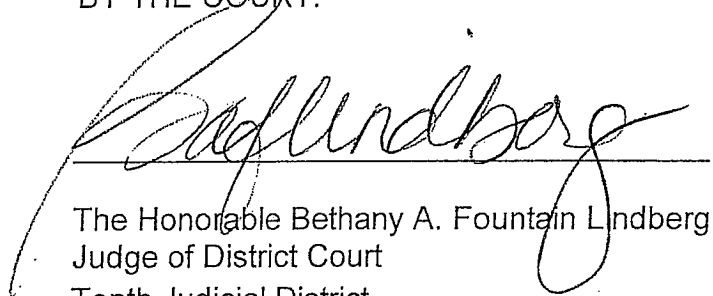
ORDER

1. Plaintiff's Petition for Writ of Habeas Corpus is **DENIED**.
2. The attached memorandum of law is incorporated herein by reference
3. A copy of this order shall be served upon the parties by U.S. Mail and shall constitute due and proper service in lieu of personal service.

SO ORDERED.

Dated: August 8, 2011

BY THE COURT:


The Honorable Bethany A. Fountain Lindberg
Judge of District Court
Tenth Judicial District

MEMORANDUM
Anoka County Court File: 02-CV-11-3668

Petitioner Peter Stephenson, a.k.a. Peter Rickmyer (hereinafter Petitioner Stephenson) was committed to the Commissioner of Corrections (hereinafter Commissioner) for 36 months for Fourth Degree Criminal Sexual Conduct in violation of Minn. Stat. § 609.345, subd. 1(b). Pursuant to Minn. Stat. § 609.109, subd. 7, Petitioner Stephenson's sentence also included a mandatory ten-year conditional release term.¹ After serving his term of imprisonment, Petitioner Stephenson was released on intensive supervised release ("ISR") on September 25, 2006. Petitioner Stephenson has been charged with alleged violations of his ISR on three occasions. The most recent charge, which is the subject of Petitioner Stephenson's petition, was brought by the Commissioner on March 17, 2011 and alleged that Stephenson violated his conditions of release by failing to adhere to agent directives on two occasions and failing to refrain from harassing behavior.

The two instances of failing to follow agent directives stem from Petitioner Stephenson's ongoing legal battles with an individual named John Hoff. Mr. Hoff maintains a blog under the nickname "Johnny Northside" where he comments on life in North Minneapolis. Petitioner Stephenson has been the subject of many posts on the website relating to his status as a sex offender. Petitioner Stephenson has initiated several lawsuits against Hoff and has on many occasions attempted to serve Hoff with legal process. According to the "Uniform Case Report" filed by ISR agent Will McDonald on March 17, 2011, Petitioner Stephenson was directed by ISR agent Fletcher to cease any legal filings on April 9, 2010. On April 20, 2010, Petitioner

¹ Minn. Stat. § 609.109, subd. 7 was replaced in 2005 with Minn. Stat. § 609.3455, subd. 6 but the effect of the statute remained the same.

Stephenson was declared a "frivolous litigant" and ordered by the court to have all legal filings signed by a licensed attorney and approved by the presiding Civil Court Judge. On July 29, 2010, Petitioner Stephenson was directed to inform agent McDonald of any legal research or filings Stephenson was working on and to inform the agent of the name of the attorney that would be signing off on any documents. Petitioner Stephenson was also directed to comply with the April 20, 2010 court order. Agent McDonald reinforced these directives on November 4, 2010 and during a home visit on February 16, 2011, Petitioner Stephenson informed the agent McDonald that no legal research was being conducted. Agent McDonald alleged in his March 17, 2011 report that Petitioner Stephenson served legal process on John Hoff on March 2, 2011 and March 7, 2011 in direct violation of the above directives and court order.

In addition to the directives involving legal research and filings, Petitioner Stephenson was given a directive to stay away from any court appearance involving John Hoff or Megan Goodmundson (Hoff's girlfriend and frequent contributor to Johnny Northside's blog) on February 16, 2011. Agent McDonald alleged that on March 2, 2011, Petitioner Stephenson waited outside a courtroom where Hoff was appearing and attempted to serve legal process on Hoff's attorney.

Petitioner Stephenson received notice of these allegations and a hearing was conducted on March 24, 2011. At the hearing, the violation of engaging harassing behavior was dismissed and the hearing officer found by a preponderance of the evidence that Petitioner Stephenson failed to follow his agent's directives on two instances. The hearing officer revoked Petitioner Stephenson's release and assigned

him 90 days of accountability time. Petitioner Stephenson was re-released on June 6, 2011 and, as of the date of this Order, remains out of custody.

On May 23, 2011 Petitioner Stephenson filed a Petition for Habeas Corpus with this court along with a Motion for Temporary Injunction. Petitioner Stephenson asked this court to issue an ex parte order that would allow him to be released from custody before his June 6, 2011 scheduled release date to allow him to care for and secure his home after a tornado tore through North Minneapolis on May 22, 2011. This court denied that request but set the matter on for a hearing on June 2, 2011. At this hearing Petitioner Stephenson's counsel argued that immediate release from custody was necessary to allow Petitioner to secure his home from the widely publicized looting which was rampant after the tornado. Additionally, Petitioner Stephenson asserted that he was unable to have family members care for his home in his absence due to the fact that Minneapolis Police were not allowing non-residents into the area. This court denied Petitioner Stephenson's motion and informed the parties that it would address the habeas petition by way of separate order.

While it is difficult to ascertain from the sometimes rambling and incoherent petition and supporting documents exactly what relief Petitioner is requesting, this court surmises that the main crux of Petitioner's requested relief is the house arrest condition imposed after his June 6, 2011 release.²

² Petitioner Stephenson also alleges that his most recent incarceration will or has resulted in many collateral consequences including: an inability to monitor his home, care for it and seek government funding for repairs after a recent tornado; supervision enhanced from routine to intensive; possible subjection to a civil commitment review; delay of his civil case pertaining to constitutional rights; "Risk Legal Reduction" application delayed three years; re-notification to the community of his Level 3 Offender status; stigmatization in the media. This court is unclear why Petitioner Stephenson believes a habeas petition is the proper channel to address these issues. Therefore, this court will focus on Petitioner Stephenson's house arrest as the injury subject to this habeas petition.

A person whose supervised release has been revoked may seek review of the revocation by petitioning the district court for a writ of habeas corpus. See *State ex rel. Fox v. Young*, 199 N.W.2d 156, 156 (Minn. 1972). A writ of habeas corpus is a statutory remedy available "to obtain relief from [unlawful] imprisonment or restraint." Minn.Stat. § 589.01. Habeas corpus is an appropriate remedy if the relief to which a petitioner may be entitled is immediate release. *Kelsey v. State ex rel. McManus*, 244 N.W.2d 53, 54 (1976). The petitioner has the burden of establishing the illegality of the detention. *Loyd v. Fabian*, 682 N.W.2d 688, 690 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). To obtain a writ of habeas corpus, a petitioner must set forth sufficient facts to establish a prima facie case for discharge. *State ex rel. Fife v. Tahash*, 261 Minn. 270, 271, 111 N.W.2d 619, 620 (1961). The allegations in the petition must be more than argumentative assertions without factual support. *Id.*

It is clear that a person may use the writ of habeas corpus to challenge their incarceration in a correctional institute or other form of jail. However, the writ may also be used to raise claims involving fundamental constitutional rights and significant restraints on a person's liberty. *Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

The Commissioner argues that Petitioner Stephenson's habeas petition is moot because Petitioner is no longer in custody and a ruling in favor of Petitioner would not provide any meaningful relief. See *Spencer v. Kemna*, 523 U.S. 1 (1998). Nevertheless, Petitioner Stephenson argues that the restraint on his liberty is an "injury-in-fact" and is therefore entitled to seek relief via a habeas petition. The Minnesota Supreme Court has held:

[H]abeas corpus goes beyond protection of a person in actual physical custody and reaches those who are subject to wrongful restraints upon their liberty while on parole, pointing out that the writ of habeas corpus is not a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose - the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty.

Atkinson v. Tahash, 142 N.W.2d 294, 298 (Minn. 1966) (adopting the United States Supreme Court's decision in *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)).

This court finds Petitioner Stephenson's argument on this point persuasive and determines that his petition is not moot because while he is out of custody, his house arrest constitutes a restraint upon his liberty. The question then turns to whether Petitioner Stephenson's "liberty restraint" is wrongful. An inquiry into the due process afforded to Petitioner Stephenson is necessary to answer this question.

The conditional release of sex offenders mandated by Minn. Stat. § 609.3455, subd. 6 is governed by provisions relating to supervised release. Minn. Stat. § 609.3455, subd. 8(a). The conditions of release may include any conditions that the Commissioner considers appropriate. *Id.* at subd. 8(b). If the offender fails to meet any condition of release, the Commissioner may revoke the offender's conditional release and order that the offender serve all or part of the remaining portion of the conditional release term in prison. *Id.* If appropriate, the Commissioner may also continue the inmate's supervised release term, with or without modifying or enlarging the conditions imposed on the offender or revoke the offender's supervised release and re-imprison for the appropriate period of time. Minn. Stat. § 244.05 subd. 3.

While the conditions imposed on a person who is on supervised release may resemble conditions of probation, the status of the offender is significantly different. *Kachina v. State of Minnesota*, 744 N.W.2d 407, 409 (Minn. App. 2008). Only the

district court can impose the conditions of probation. *Id.* However, the legislature has explicitly granted authority over supervised release to the Department of Corrections (DOC) and the DOC, not the court, revokes supervised release if the offender violates any of the conditions of supervised release. *Id. citing* Minn. Stat. § 244.05, subd. 3(2). While violations of conditions of supervised release involve administrative and not judicial supervision, it is clear that a person on supervised release is still entitled to due process if their supervised release status is being threatened. The legislature has provided that,

The commissioner of corrections shall adopt by rule standards and procedures for the revocation of supervised or conditional release, and shall specify the period of revocation for each violation or release. Procedures for the revocation of release shall provide due process of law for the inmate.

Minn. Stat. § 244.05, subd. 2. See also *Carrillo v. Fabian*, 701 N.W.2d 763, 733 (Minn. 2005) (holding that DOC hearing officer must find by preponderance of evidence that offender committed disciplinary offense before date of supervised release can be extended).

In general, due process requires notice and a meaningful opportunity to be heard before a fair and impartial decision maker. *Marlowe v. Fabian*, 755 N.W.2d 792, 794 (Minn. App. 2008) *citing* *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972). When an offender's liberty is in jeopardy, the following due process standards will be observed: 1) a formal neutral hearing should be held; 2) the offender should receive written notice of the date, time and subject of the hearing; 3) the offender should be present at the hearing and be allowed to participate; 4) a written record of the hearing should be maintained; and 5) the offender should receive written notice of the hearing decision. *State v. Schoen*, 273 N.W.2d 612, 617 (Minn. 1978). "Revocation of supervised release

is justified when there is enough evidence to satisfy the decision maker that the conduct of the offender does not meet the conditions of release." *Guth* 716 N.W.2d at 27 citing *United States v. Strada*, 503 F.2d 1081, 1085 (8th Cir. 1974).

Respondent has included in its submissions the procedures used to guide revocation proceedings as called for in Minn. Stat. § 244.05, subd. 2. The procedures state that their purpose is "[t]o implement a fair and consistent set of hearing procedures that affords offenders due process of law while maintaining the objective of public safety." Additionally, the procedures state that the burden of proof for finding any violation is by a preponderance of the evidence.

The record indicates that Petitioner Stephenson's revocation proceedings complied with the due process standards set forth in *Schoen*. Petitioner Stephenson received notice of the alleged violations and appeared at the revocation hearing with counsel. A written record of the hearing was maintained and Petitioner Stephenson received written notice of the hearing decision.

However, it appears from Petitioner Stephenson's submissions that he believes that he was not afforded the full right to participate in the hearing and that the hearing official was not neutral. Again, it is difficult to ascertain exactly what Petitioner Stephenson alleges the reasons for these beliefs are. Petitioner Stephenson's Petition for Writ of Habeas Corpus includes 274 paragraphs detailing many alleged injustices suffered by him. Included in these paragraphs are allegations that Blogger John Hoff and many others in North Minneapolis do not respect Petitioner Stephenson's First Amendment rights. Unless Petitioner Stephenson is alleging that John Hoff and others in the community are somehow acting as government agents, this court is unclear as to

why Petitioner Stephenson would bring such claims before the court. In addition to the allegations of First Amendment infringements precipitated by John Hoff (which, again, are odd given that Mr. Hoff is clearly not a government actor), Petitioner Stephenson submitted 174 pages of "Johnny Northside's" blog purportedly evidencing the harassment and constitutional infringements that Petitioner has had to suffer through.

While Petitioner Stephenson's allegations of First Amendment infringements precipitated by private individuals are confusing, this court can more easily understand his allegations involving government officials. Petitioner Stephenson argues that the supervised release condition of ordering him to stay away from court proceedings involving John Hoff and Megan Goodmundson violated his First Amendment right of access to the courts. Additionally, Petitioner Stephenson asserts that the barriers erected prohibiting him from filing and serving legal process without the supervision of licensed counsel and court approval infringed upon this right. Clearly, access to the courts and the freedoms guaranteed by the First Amendment are tenants upon which this country was built. However, this court cannot find any substantiated evidence that Petitioner Stephenson's rights under these tenants were unjustly infringed upon.

The directive that Petitioner Stephenson stay away from court proceedings involving John Hoff and Megan Goodmundson is tantamount to a no contact order. Clearly, no contact orders are valid conditions of supervised release. A restriction on the persons with whom a probationer may associate is a traditional term of probation. *State v. Schwartz*, 628 N.W.2d 134, 141 (Minn. 2001). Additionally, the legislature has given the DOC wide latitude in determining what conditions are appropriate to place on an offender. See generally Minn. Stat. 244.05, subd. 6(b). The directive to stay away

from court appearances involving John Hoff and Megan Goodmundson was well within the bounds of the DOC's authority to impose.

Petitioner Stephenson's restriction on filing and serving legal process was similarly valid. Courts have the power to declare a person a "frivolous litigant" and impose certain conditions on their legal filings. See Minn. Gen. R. Prac. 9.01. "[O]n its own initiative . . . the court may . . . (impose) preconditions on a frivolous litigant's service or filing of any new claims, motions or requests." *Id.* The DOC's directive that Petitioner Stephenson inform his Agent of any legal research, preparations or legal filings and the name of his attorney was precipitated by the formal designation of Petitioner Stephenson as a "frivolous litigant". As such, conditions that offenders on supervised release comply with court orders are clearly valid.

Petitioner Stephenson further alleges that he was not afforded due process at his March 24, 2011 revocation hearing because he was not allowed to subpoena witnesses. Petitioner Stephenson asserts in his petition that "DOC policy 106.140 claims to ensure the right to "calls witnesses", but if it does not provide for subpoenas, that right is a nullity." This statement is purely conclusory and not supported by law. Petitioner Stephenson seems to suggest that if a person is entitled due process at a particular hearing, then that person is entitled to each and every due process "right" that has been ever been created. Clearly, this is not the case. It is well settled that the analysis of procedural due process is a two step inquiry; once it is determined that due process applies, the question remains what process is due. *Morrissey*, 408 U.S. at 481. "[R]evocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations." *Id.*,

at 480. A supervised release revocation proceeding is neither a criminal trial, civil trial nor a probation revocation hearing. In all of these other types of hearings, the rights of the parties to subpoena witnesses are express. See Minn. R. Civ. P. 45; Minn. R. Crim. P. 22; Minn. R. Crim. P. 27.04, subd. 2(1)(c). This is not the case when it comes to supervised release revocations.

What this court does know is that Petitioner Stephenson's revocation hearing was a special proceeding – administrative in nature. Petitioner Stephenson fails to provide any authority granting him the right to subpoena witnesses. Petitioner Stephenson was present at the hearing and was clearly allowed to participate. Petitioner Stephenson introduced evidence, questioned adverse witnesses and was permitted to comment on the proceedings and explain his side of the story. Additionally, there is no evidence that Petitioner Stephenson was denied the opportunity to call witnesses. The mere fact that Petitioner Stephenson was not provided with subpoena power does not illustrate that he was denied due process.

Petitioner Stephenson also alleges that he was not provided with a neutral hearing officer at his revocation hearing. Petitioner Stephenson appears to base this allegation on the fact that "the hearing officer was merely an agent for the DOC, directed by the DOC as to how to rule and what to do (and not do)." Before the March 23, 2011 hearing, Petitioner Stephenson contacted Jeff Peterson, an employee at the DOC, to inquire about compulsory process at the revocation hearing. According to Petitioner Stephenson, Peterson instructed Petitioner to submit "something" with the Hearings and Release Unit of the DOC which is responsible for all administrative hearings including release revocations. Petitioner Stephenson alleges that Peterson

had no intention of providing any ruling on the submissions before the hearing and that the only reason Peterson requested the filings was to "[allow] management at the DOC to learn what relief Plaintiff (Petitioner) was requesting and to interfere with the hearing officer." Based on the submissions by both parties, this court cannot find any evidence supporting these assertions or conspiracy theories.

Peterson is the Executive Officer of Hearings and Release. Petitioner Stephenson's hearing was before Roger Baburam, a Hearing and Release Officer (hereinafter "HO"). Petitioner makes generalized allegations that his HO was not neutral. For example, Petitioner states that "HO made statements that caused Petitioner to believe that the HO had conferred with Peterson before the hearing, and that the HO was doing what Peterson told him to do." Petitioner Stephenson does not provide any greater detail, nor does he indicate the basis or foundation for these beliefs. The court file does not contain any affidavit of Petitioner Stephenson setting forth these claims, but rather the court must rely on a narrative, signed by his attorney, setting forth his beliefs as to what happened. In review, Petitioner Stephenson simply fails to substantiate his claim.

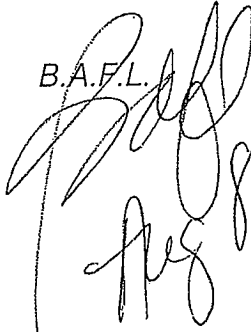
General beliefs or thoughts do not make a theory true. The fact that Petitioner Stephenson thinks that, 1) there were conversations between Peterson and the HO; 2) Peterson directed the HO to rule a certain way; and 3) the HO took the directive to find against Petitioner to heart and allowed it to cloud his decision making, does not in any way prove that this is what occurred.

The allegations that Petitioner Stephenson puts forth are serious. Such allegations should not be dismissed lightly. Conversely, such allegations have serious

ramifications against individuals and agencies if they are true. The court has a duty to carefully review the evidence submitted and conscientiously consider the evidence submitted to support such claims. In this case, there is a dearth of evidence to show that Hearing Officer Roger Baburam lacked any neutrality. As such, this court rejects Petitioner's Stephenson's claims regarding the bias of the HO.

Regardless of the conspiracy theories advocated by Petitioner Stephenson, the legislature has clearly vested the power to hear and conduct revocation hearings in the DOC. See generally Minn. Stat. 244.05 and Minn. Stat. 609.3455. Additionally, reviewing courts in the state have held that the administrative hearings associated with supervised release revocations are substantially different than criminal proceedings and even probation violation hearings. See generally *Kachina*, 744 N.W.2d 407. This is not to say that an offender is not entitled to a fair hearing at a supervised release revocation proceeding, however, it clearly demonstrates that the due process standards and the procedures used to ensure a fair hearing are different for each type of proceeding. It appears from the submissions from both parties that the revocation hearing was conducted in a proper, impartial manner. Petitioner Stephenson was permitted to cross examine witnesses as well as present his side of the story. The hearing officer concluded that the witnesses the DOC presented were credible and the evidence proved by a preponderance of the evidence that Petitioner Stephenson was in violation of his supervised release. Judicial bias cannot be based simply on a litigant's subjective belief. *State v. Laughlin*, 508 N.W.2d 545, 548 (Minn. App. 1993). Applying this rule, the Appellate Court has held that the mere fact that a hearing officer at a revocation hearing rules in favor of the DOC does not alone show bias. *Guth*, 716 N.W.2d at 28.

Evidentiary hearings in habeas proceedings are required only if the petitioner demonstrates that a factual dispute exists. *State ex rel. Roy v. Tahash*, 152 N.W.2d 301, 305 (Minn. 1965). The only factual dispute appears to be whether Petitioner Stephenson was on supervised release or intensive supervised release at the time of the violations. This factual dispute is irrelevant as Petitioner Stephenson has failed to allege facts sufficient to constitute a prima facie case for relief. Therefore, this court denies Petitioner Stephenson's request to hold an evidentiary hearing. Based on the above, this court finds that the conditions placed on Petitioner Stephenson during his supervised release were valid and that he received due process at the revocation hearing. Thus, this court denies Petitioner Stephenson's Petition for Writ of Habeas Corpus.

B.A.F.L.

Aug 8, 2011

State of Minnesota
Anoka County

District Court
Tenth Judicial District

Court File Number: **02-CV-11-3668**

Case Type: Habeas Corpus

Notice of Filing of Order

JILL ELEANOR CLARK
2005 AQUILA AVENUE NORTH
GOLDEN VALLEY MN 55427

**Peter Stephenson vs Tom Roy, in his official capacity as Minnesota Commissioner of
Corrections, State of Minnesota, Hennepin County Attorney**

You are notified that on August 08, 2011, the following was filed:

Order-Other

Dated: August 9, 2011

Jennifer A. Schlieper
Court Administrator
Anoka County District Court
325 East Main Street
Anoka MN 55303-2489
763-422-7350

cc: MATTHEW GLEN FRANK
Michael Freeman
KRISTA JEAN GUINN FINK

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.