ACC Tells Lies in Public Records Lawsuit
Information & Perspective by Warren Woodward
Sedona, Arizona ~ June 24, 2016

As I mentioned in the last update about my Public Records lawsuit against the Arizona Corporation Commission (ACC), the judge had released to me all the unredacted documents that he got from the ACC. That put the ACC lawyers into a tizzy.

A word about the ACC lawyers: One of them is the ACC's new "ethics officer." Seems to me if he had any he never would have taken this case on and tried to defend the indefensible. The other two lawyers are from an outside firm the ACC hired because I guess the "ethics officer" just wasn't enough protection against a college drop-out (me) armed only with the truth. God only knows what these three are costing taxpayers. Whatever it is, it's a total waste.

"Ethics officer." Very funny. Total Orwellian Doublespeak. The ACC doesn't need an ethics officer; they need a warden.

So anyway, the lawyers were in such a tizzy over my getting their uncensored public records that they filed a "Motion for Reconsideration and for Clarification," and in it they actually lie to the Court. Why am I not surprised?

You can read about the ACC's lies in my Response to their Motion that I filed at Court today. It starts on page 2, below.

By the way, in case anyone wonders why I thanked the Court for the opportunity to respond to the ACC, in this particular instance Court rules dictate that I do not have a right to respond, but that I *could* respond if the judge offers me that option. He did, and I was grateful for the opportunity to expose the ACC.

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Plaintiff, Pro Se

SUPERIOR COURT OF ARIZONA
IN YAVAPAI COUNTY

Warren Woodward
PLAINTIFF,

v.

Arizona Corporation Commission
DEFENDANT.

Case # V-1300-CV-201680047

RESPONSE TO DEFENDANT'S MOTION FOR RECONSIDERATION AND FOR CLARIFICATION

Plaintiff, Warren Woodward, thanks the Court for the opportunity to respond to Defendant's Motion for Reconsideration and for Clarification ("Motion"), and Plaintiff requests that the Court deny Defendant's Motion.

Defendant seeks clarification as to whether the Court "... intended the May 18 order to be a ruling …." (Motion, p. 4, line 22). Simply put, if the Court had intended its May 18th Order to be a ruling, then it's clear (*to Plaintiff anyway*) that

the Court would have said as much.

Additionally, in what appears to be an act of desperation born of deep confusion and angst, Defendant's Motion concluded with:

> If the Court intended to make a ruling on the merits, the Commission respectfully requests the Court to reconsider its ruling and to revise it to recognize the validity of the Commission's *Griffis* and privilege claims.
> (Motion, p. 4, lines 24 – 26)

Again, it's obvious the Court's May 18th Order is not a ruling, so there is nothing to "reconsider." Besides, Plaintiff has thoroughly evaluated the unredacted documents supplied by the Court, and Plaintiff has compared them with the redacted documents supplied by Defendant. In short, many of Defendant's so-called "*Griffis* and privilege claims" are ***not*** valid despite Defendant's unsubstantiated claims that they are.

The Court's May 18th Order forbids Plaintiff from distributing any of the unredacted documents to third parties at this time. So Plaintiff is reluctant to discuss specific documents since Plaintiff does not know who exactly will have access to this Response. Plaintiff will, however, speak in general terms about some of what Plaintiff has found regarding the documents.

Not a single document was ever marked "Not a Public Record – as defined by *Griffis*." Like "Legislative Privilege," the classification is another after-the-

fact invention on the part of Defendant. Indeed, in one instance, Plaintiff found a redaction for “Personal Information” that was a wisecrack about a location a Corporation Commission employee was to visit as part of his job's duties. It was definitely *not* personal information, but it was reclassified in Defendant's Index of Records as “Not a Public Record – as defined by *Griffis*.”

Not one of Defendant's redactions for so-called “Company Sensitive Information” is legitimate. Utility employees' names, work phone numbers and work email addresses are ***not*** proprietary information or trade secrets, and so they are not company sensitive information. The Public has a right to know with whom Defendant is communicating. Such information is not privileged, and there is no statute that says it is.

Plaintiff noticed similar illegitimate redactions with many of the documents redacted for “Personal Information.” Names of individuals were redacted. In such cases, personal information of named individuals such as their personal phone numbers and personal email addresses should be redacted according to law, but not the particular individual's name itself. Again, the Public has a right to know with whom Defendant is communicating, and there is no statute that authorizes the redaction of names.

None of Defendant's redactions for “Security Reasons” are legitimate.

According to *Board of Regents v. Phoenix Newspapers, Inc.*, 167 Ariz. at 257-58, 806 P.2d at 351-52:

> When the release of information would have an important and harmful effect on the duties of the officials or agency in question, there is discretion not to release the requested documents. *Church of Scientology v. City of Phoenix*, 122 Ariz. 338, 594 P.2d 1034 (Ct.App. 1979).

In Plaintiff's case and at the time Plaintiff's Public Records Request was made, the security issue about which Defendant made redactions was over (as in, no longer an issue). So there was no way the redacted information could have had "an important and harmful effect on the duties of the officials or agency in question." Plaintiff believes the real reason those documents were redacted was the same reason some other documents (such as the wisecrack one) were redacted – for embarrassment avoidance on the part of the Defendant. Unfortunately for the Defendant, according to the Arizona Attorney General Agency Handbook at 6.4.3:

> The cloak of confidentiality may not be used, however, to save an officer or public body from inconvenience or embarrassment. *Dunwell v. Univ. of Ariz.*, 134 Ariz. 504, 508, 657 P.2d 917, 921 (App. 1982); Ariz. Att'y Gen. Op. 76-43.

Defendant wrote:

> The documents withheld as failing to meet the *Griffis* substantial-nexus test all pertained to Commission-employee personal business or communications, such as, for example, vacation plans.

(Motion, p. 3, lines 8 – 10)

Defendant is not being truthful. Plaintiff has already put the lie to the "vacation plans" excuse at ¶ 13 of Plaintiff's Complaint for Statutory Special Action that launched this case. To wit:

> 13. In the redo demand, Plaintiff cited an example of faulty redaction for "personal information." Plaintiff caught Defendant redacting a joke about scamming taxpayers with a Hawaii trip by noticing that in one email thread the joke was redacted as "personal information" but in another email thread it was not. That called into question the validity of all other "personal information" redactions – were they done to legitimately protect truly personal information, or were they done to hide things Defendant did not want Plaintiff to see?

In what appears to be an attempt to be authoritative regarding Defendant's assertions of "attorney-client" privilege, Defendant cites *Cruz v. Miranda*, 2016 WL 1612748, *2, ¶ 7 (Ariz.App., Div 2, April 21, 2016), and in conjunction mentions that "City of Tucson properly withheld certain documents subject to the attorney-client privilege." Even more authoritatively, Defendant then footnotes to Supreme Court Rule 111(c)(1)C). The problem with all this faux authoritativeness is that Rule 111(c)(1)(C) allows a case such as *Cruz v. Miranda* to be cited only for "persuasive value," but *Cruz v. Miranda* did not decide an attorney-client privilege issue; it decided attorney's fees. So there's not much "persuasive

value" in it.

What's more persuasive is A.R.S. § 12-2234. Defendant cited only the B part, but section C is also instructive. Here is the entire statute:

> 12-2234. <u>Attorney and client</u>
> A. In a civil action an attorney shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment. An attorney's paralegal, assistant, secretary, stenographer or clerk shall not, without the consent of his employer, be examined concerning any fact the knowledge of which was acquired in such capacity.
> B. For purposes of subsection A, any communication is privileged between an attorney for a corporation, governmental entity, partnership, business, association or other similar entity or an employer and any employee, agent or member of the entity or employer regarding acts or omissions of or information obtained from the employee, agent or member if the communication is either:
> 1. For the purpose of providing legal advice to the entity or employer or to the employee, agent or member.
> 2. For the purpose of obtaining information in order to provide legal advice to the entity or employer or to the employee, agent or member.
> C. The privilege defined in this section shall not be construed to allow the employee to be relieved of a duty to disclose the facts solely because they have been communicated to an attorney.

Based on section C, it would appear that a Corporation Commission staffer or commissioner cannot redact a communication solely because it was communicated to a lawyer. The information communicated has to at least relate to the attorney-client advice process. No one should be able to just send something to a lawyer and claim privilege later, especially if it's to hide unethical

or embarrassing behavior. Yet that appears to be what happened with some of the documents Defendant redacted for attorney-client privilege. Additionally, in Defendant's response to Plaintiff's public records request, Plaintiff received many duplicate documents. Some of the documents that were redacted for attorney-client privilege in one place were left unredacted at another. So which is it? Are those documents attorney-client privileged or aren't they? Defendant appears to be either arbitrary or sloppy or both.

In an apparent attempt to rationalize Defendant's bogus "state of mind" redactions, Defendant, in Defendant's Motion, repeated the same convoluted rate-making argument that Plaintiff already debunked in his Reply to Defendant's Response to Plaintiff's Motion for *In Camera* Inspection of Records. Beating a dead horse, Defendant also repeated the *Arizona Independent Redistricting Commission v. Fields* case. In his Motion for *In Camera* Inspection of Records, Plaintiff already demonstrated that case was misapplied by Defendant, and that the case actually supports Plaintiff. Defendant *did* add something new to Defendant's "state of mind" rationalization this time, that being an outright lie. Defendant wrote:

> The Commission once referred to the legislative privilege as "state of mind." Doing so is unfortunate to the extent that it inserted any confusion into the analysis.
> (Motion, p. 4, lines 16 & 17)

Once? In actual fact, “state of mind” was handwritten by the Commission a total of eighteen times on various redacted documents received by Plaintiff. “Legislative privilege” was never written anywhere as a reason for redaction. So who exactly is “confused” in this “analysis?” Clearly it is not Plaintiff.

Lastly, Plaintiff was amused to see that, in Defendant's Motion, Defendant felt obligated to dictate to the Court. Defendant wrote:

> **The Court should uphold and enforce** the legislative privilege in these circumstances as well.
> (Motion, p. 4, lines 19 & 20, emphasis added)

Defendant also wrote:

> Apart from substantial-nexus, **the Court still must determine** whether a document should be withheld or redacted based on “privacy, confidentiality, or the best interest of the state ….”
> (Motion, p. 3, lines 13 – 15, emphasis added)

Perhaps such imperiousness has worked for Defendant in the past. In this case, Plaintiff is hopeful that it will not, and that Defendant's Motion will be denied.

RESPECTFULLY SUBMITTED this 24th day of June, 2016.

By

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Copies of this Response to Defendant's Motion for Reconsideration and for Clarification were mailed on this 24th day of June, 2016 to attorneys for Defendant:

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