

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

3
4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) May 14, 2014
Joseph M. Arpaio, et al.,) 9:05 a.m.
8)
Defendants.)
9 _____)

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE G. MURRAY SNOW

17 (9 o'clock a.m. Status Conference, Pages 1-34)
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22 Court Reporter: Gary Moll
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Phoenix, Arizona 85003
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25 Proceedings taken by stenographic court reporter
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P R O C E E D I N G S

THE COURT: Please be seated.

THE CLERK: This is civil case 07-2513, Melendres v. Arpaio, on for status conference.

09:12:06

Counsel, please announce your appearances.

THE COURT: Please announce your appearances, counsel.

MR. MALGIERI: Patrick Malgieri from Harris Beach, Rochester, New York, on behalf of the monitor, Robert Warshaw and Warshaw & Associates.

09:12:21

THE COURT: Good morning.

MR. MALGIERI: Good morning, Your Honor.

MR. IRISH: Good morning, Your Honor. I'm Doug Irish representing the County, Maricopa County. I have at counsel table with me Sandi Wilson, the deputy county manager.

09:12:30

I've also invited Tom Manos, the county manager, and the chief of -- or the Chairman of the Board of Supervisors, to sit in the back of the courtroom, not to make a presentation, but to underscore that we want to cooperate with you and with Chief Warshaw in getting this resolved.

09:12:45

THE COURT: Well, I appreciate that, and let me -- I've read your letter, Mr. Irish. Let me give you the background of what led to the letter, so you're clear. Then I'm going to hear from the monitor's counsel and then I'll hear from you. I'm also going to set forth some concerns I have.

09:13:02

1 I assume that you represent the County, and in that
2 capacity are capable of speaking on behalf of the Sheriff's
3 Office, to the extent the sheriff has any concerns.

4 MR. IRISH: I do not speak for the sheriff, Your
5 Honor.

09:13:15

6 THE COURT: All right. Well, the sheriff was notified
7 of this hearing. You're here, Mr. Casey, and to the extent you
8 have concerns, you can speak to them.

9 Mr. Pochoda, you're here on behalf of plaintiffs. To
10 the extent -- and Ms. Wang, I see you as well. You can speak
11 to them, and then we may address other matters --

09:13:26

12 MR. CASEY: Yes, Your Honor.

13 THE COURT: -- after we're resolved -- finished with
14 this.

15 First off, I do have fairly regular communications
16 with the monitor. It's anticipated by the order. The monitor
17 has indicated to me that his -- or he initially indicated to me
18 that his -- because I wanted to make sure that he got paid. He
19 said that he would take that as part of his obligation. He
20 indicated to me he had an attorney. He told me that the
21 negotiations with the County in terms of arriving at a contract
22 went very well, they were very courteous and professional, and
23 the matters were resolved expeditiously.

09:13:39

09:14:00

24 Then, when I began inquiring as to whether he got
25 paid, he indicated to me that the County and he had arrived at

09:14:19

1 an impasse. He again indicated that he was having
2 communications with you; that he had received letters from
3 Ms. Wilson; that he -- to resolve those as well. And he did
4 keep me posted somewhat on the status, and to the effect that
5 he thought he could resolve those.

09:14:42

6 He shared with me one of the initial pieces of
7 correspondence that he received from Ms. Wilson laying out her
8 position and the County's position. I just decided to let him
9 resolve those until the matter got to where a number of accrued
10 fees have been unpaid.

09:15:02

11 I don't know that I view any party as operating in bad
12 faith here, and I don't think the monitor has attempted to
13 outmaneuver the County or misrepresent your position in any
14 way. But I was the one who instructed him to send me a letter
15 requesting this hearing. I did it, and I told him to attach
16 the correspondence so that you could see what correspondence he
17 sent me. I gathered there was some initial hitch with that but
18 you have it now.

09:15:23

19 I received your correspondence. I think it will be
20 profitable for us this morning to lay out the positions and
21 everybody's concerns and then I can rule, so that we can go
22 forward with a minimum -- or with a maximum of clarity possible
23 at this point and a minimum of future opportunities to be
24 cross-wise with one another.

09:15:38

25 With that said, Mr. Malgieri.

09:15:54

1 MR. MALGIERI: Thank you, Your Honor.

2 Thank you, Your Honor. As indicated, the matter that
3 brings us here this morning is, in its simplest form, a dispute
4 with respect to the form and content of the monitor's invoices
5 which has resulted in nonpayment of one, and, excuse me,
6 possibly two invoices at this point.

09:16:16

7 The invoices arise out of the contract that was
8 entered into between the County and the monitor pursuant to in
9 furtherance of the Court's orders of October 2, 2013, and
10 January 17th of this year that provided for the appointment of
11 a monitor, and then the subsequent appointment of our client as
12 the -- as the monitor in this matter.

09:16:33

13 The contract provides that the monitor is to be
14 paid -- is to bill the County on a monthly basis within five
15 business days of the commencement of the month, and that the
16 monitor's invoices must set forth, quote, a description of the
17 services completed and the costs and expenses incurred.

09:16:48

18 Importantly, the contract does not contain any
19 reference to the County's required -- requirements applicable
20 to vendors of the County, only that the master provides a
21 description of its services, which we contend we've done with
22 respect to all the invoices submitted.

09:17:06

23 The contract requires that the monitor be paid within
24 30 days of the submission of the invoice unless the County, in
25 good faith, is contesting that invoice, in whole or in part.

09:17:22

1 If, as in this instance, the County is contesting an invoice,
2 the County's required under the contract to notify both the
3 monitor and this Court within five business days of its receipt
4 of that invoice of the fact that it is contesting it, the
5 nature of the contest, and the amount in dispute.

09:17:39

6 To our knowledge, the County has not notified this
7 Court with respect to the dispute -- its dispute with the March
8 invoice; namely, the invoice that covers services provided by
9 the monitor and the monitoring team during the month of March.
10 And to our knowledge, we've received no such notice with
11 respect to the April invoice, which I believe still remains
12 unpaid as of this date.

09:17:55

13 THE COURT: So let me ask you, Mr. Malgieri, how much
14 is the monitor owed that -- has he billed for that he has not
15 been paid?

09:18:13

16 MR. MALGIERI: I would have to ask the client
17 specifically, Your Honor, but I believe it's in the area of
18 about 200, 220,000. I would say approximately \$200,000 in
19 question, Your Honor. It may be a little bit more, a little
20 bit less; I don't have the exact number.

09:18:24

21 THE COURT: All right.

22 MR. MALGIERI: That's with respect to both the April
23 invoice and the March invoice.

24 THE COURT: All right.

25 MR. MALGIERI: The contract also provides that if the

09:18:32

1 County is disputing the invoice in whole or in part, that the
2 parties have 15 days in which to try to resolve that, and
3 failing that, then the parties would submit the dispute to the
4 Court for resolution.

5 As I've stated, the basic dispute here is over both 09:18:47
6 the form and the substance of the monitor's invoices. But
7 while we contend that the invoices as submitted in fact comply
8 with the requirements of the contract, we believe more
9 importantly that the nature and level of detail that the County
10 requires would undermine critical elements of the monitor's 09:19:04
11 work pursuant to this Court's orders. It would threaten to
12 compromise the confidentiality that is central to the monitor's
13 work, as well as the confidence of those working in cooperation
14 with, and in furtherance of, the monitor's work, oftentimes in
15 a confidential setting as well. 09:19:23

16 In short, it's been our position, Your Honor, from the
17 outset, that any resolution of this dispute must preserve the
18 integrity of the monitoring process and do nothing to
19 jeopardize the purposes of the monitorship or the effective
20 implementation of this Court's judgment and orders in this 09:19:39
21 matter. That is our overriding -- it's not our only but our
22 overriding concern in this respect.

23 Now, from the beginning, we have worked with the
24 County, tried to work with the County to resolve this matter,
25 again in a voluntary -- in a fashion without invoking the 09:19:54

1 resources of this Court. When we were advised initially as to
2 the objections relating to the February invoice, an invoice
3 that in fact was paid by the County, we attempted to address
4 those concerns and objections by providing a fuller narrative
5 description of the services that were rendered. That was the
6 narrative description that was contained in the March invoice
7 that is subject to despite right now.

09:20:15

8 Now, that response on our part was met with a
9 continued objection by the County to the March invoice, its
10 refusal to pay the March invoice with the exception of the
11 costs and expenses that were incurred by the monitor and the
12 monitoring team. Those were paid in the March invoice, but the
13 portion of the invoice dealing with fees and services were not
14 paid.

09:20:28

15 Instead, the County offered a proposal to us as to
16 what a typical invoice should look like, and it was essentially
17 what was characterized by the County in a letter dated April
18 9th --

09:20:40

19 THE COURT: Yeah, I've read that. That's the letter
20 from Ms. Wilson?

09:20:56

21 MR. MALGIERI: That's correct.

22 THE COURT: All right. And then you've read the
23 letter from Mr. Irish to me in which he made the three
24 counterproposals to the monitor?

25 MR. MALGIERI: I believe it's two, Your Honor, but

09:21:05

1 there were the -- the letter that Mr. Irish submitted to the
2 Court in which he memorialized a conversation that in fact did
3 take place is the last conversation that I had with Mr. Irish
4 in which after Mr. Benton left the County Attorney's Office,
5 Mr. Irish apparently assumed responsibility for this matter and
6 tried to resolve this dispute. And he did accurately recite in
7 his letter that we had the conversation that he set out, I
8 believe, two proposals. One was either to have the invoices
9 submitted to a third party, such as a master, or submitted to
10 this Court for review and approval.

09:21:22

09:21:40

11 THE COURT: The third one was a magistrate judge of
12 this court.

13 MR. MALGIERI: Or a magistrate judge, that's correct,
14 Your Honor. Thank you.

15 THE COURT: Um-hum.

09:21:49

16 MR. MALGIERI: And Mr. Irish correctly indicated that
17 when he conveyed that to me in the phone conversation, I did
18 say that the proposals were interesting and that I would
19 discuss it with our client, which in fact I did. But it was
20 following that that Chief Warshaw felt --

09:22:00

21 THE COURT: Well, it was following that, just to
22 complete the chronology, that I instructed Chief Warshaw to
23 send me the letter so that we could resolve this matter,
24 or at --

25 MR. MALGIERI: Correct.

09:22:13

1 THE COURT: -- least take significant steps towards
2 resolving it.

3 MR. MALGIERI: Correct.

4 THE COURT: And so just so Mr. Irish understands, it
5 was me that compelled that; it wasn't any lack of courtesy on
6 your part, as far as I can understand.

09:22:19

7 MR. MALGIERI: Thank you, Your Honor. Yes, that's
8 correct. I did contact Mr. Irish after I was advised by the
9 Court that the Court was going to request this hearing take
10 place and the parties appear, and Mr. -- I left Mr. Irish a
11 voicemail message and he did e-mail me back in response and
12 shared his concerns at the time, and, again, I understand that
13 Your Honor.

09:22:36

14 THE COURT: All right.

15 MR. MALGIERI: Just with respect to the mock invoice,
16 as it was called, characterized in that April 9th letter, we
17 think that the -- that the mock invoice, which was prepared by
18 the County, utilizing our client's billing letterhead, and what
19 I was advised at the time was prepared in consultation with
20 Mr. Casey, and I believe, although I'm not entirely certain,
21 but I believe it was also indicated to me that Mr. Liddy, in
22 his capacity as counsel to the Sheriff's Office and the County
23 Attorney's Office, participated in the development of the mock
24 invoice.

09:22:45

09:23:04

25 But that mock invoice, I think Your Honor could take a

09:23:19

1 look at the nature of the detail that's being -- that was being
2 requested really points to the very heart of our concern. For
3 example, one of the proposed -- one of the proposed --

4 THE COURT: You know what? I don't mean to cut you
5 off.

09:23:35

6 MR. MALGIERI: That's okay, Your Honor.

7 THE COURT: I do appreciate you've traveled a long way
8 to get here.

9 MR. MALGIERI: That's all right.

10 THE COURT: I get your concerns.

09:23:39

11 MR. MALGIERI: Okay.

12 THE COURT: And I understand them.

13 MR. MALGIERI: Fair enough, Your Honor.

14 The only other thing I would add is that I think in
15 that April 9th letter there was a statement made that I think
16 also suggests the County having a role with respect to the
17 review of the invoices that is certainly not contemplated in
18 the contract, and I would submit, respectfully, would represent
19 a possibly intrusion into the domain of the Court, which was a
20 statement by the deputy county manager that the County had an
21 obligation to review your bills, meaning the monitor's bills,
22 for reasonableness. And I don't think the -- whether or not
23 the invoices are reasonable or not is certainly not
24 contemplated in the contract, and I don't think there is
25 anything either in the contract or in the orders of this Court

09:23:44

09:24:03

09:24:17

1 that would vest the County with the authority or the ability to
2 make those determinations.

3 You know, in the end, Your Honor, as we said, even
4 subsequent to that letter, there were efforts still on the part
5 of both us and the County to try to resolve this matter on a -- 09:24:29
6 on a reasonable basis, including a conference call on the
7 Friday preceding Easter, and then a subsequent call that I just
8 mentioned to you between Mr. Irish and myself, and it was not
9 successful.

10 Your Honor, I'm not without sympathy for the County's 09:24:47
11 position, or without a complete understanding. In fact, I
12 served as the county attorney for Monroe County, New York,
13 which is not as large as Maricopa County, but I oversaw a
14 department of about 30 attorneys and a municipality of about
15 750,000, and the issues about vendor responsibility and billing 09:25:00
16 and accounting responsibility and fiduciary responsibilities
17 are items that I dealt with on a regular basis and fully
18 appreciate, as does our client. But the problem here is, in
19 the first instance, is that the monitor is not a vendor of the
20 County, nor subject to the requirements of a vendor of the 09:25:17
21 County.

22 But more importantly, our belief is that requiring the
23 level of detail that the County is asking for in the invoices
24 to be -- to be subjected to their review and consideration
25 would run to the very heart of the monitoring process, the 09:25:32

1 monitor's work, and threaten the integrity of that work. And
2 that is something that is of paramount importance, as I
3 indicated previously, and is something that we want to
4 preserve.

5 It's important that this matter be resolved as 09:25:47
6 expeditiously as possible not only in order to deal with the
7 substantial sums that remain unpaid, but obviously to avoid any
8 further interference or disruption of the work of the monitor
9 that this kind of dispute inevitably leads to.

10 And I think it becomes all the more important because 09:26:00
11 my understanding is that this Court has, in effect, expanded
12 the role of the monitor by its order requiring that the monitor
13 undertake a more active role with respect to community
14 engagement that goes above and beyond the scope of the original
15 order of this Court, and -- 09:26:17

16 THE COURT: Yeah, I did note that Mr. Irish in his
17 letter discussed a cap that was negotiated on an annual basis.

18 MR. MALGIERI: That's true, Your Honor.

19 THE COURT: The cap was negotiated before I increased
20 the monitor's responsibilities, pursuant to my enforcement 09:26:28
21 power?

22 MR. MALGIERI: That's correct, Your Honor.

23 THE COURT: All right.

24 MR. MALGIERI: And it would be our expectation and
25 anticipation that we would be undertaking discussions with the 09:26:35

1 County in very short order about appropriate amendment to the
2 contract to both reflect that additional responsibility --

3 THE COURT: Well, I'm just going to say on the record
4 that would be my expectation as well.

5 MR. MALGIERI: Okay.

09:26:49

6 THE COURT: All right.

7 MR. MALGIERI: And in this environment, until this
8 dispute gets resolved, I don't think those negotiations can
9 either happen, or certainly happen productively.

10 THE COURT: All right.

09:26:56

11 MR. MALGIERI: Thank you, Your Honor.

12 THE COURT: Thank you.

13 Mr. Irish.

14 MR. IRISH: Good morning, Your Honor, and thank you
15 for the invitation.

09:27:06

16 THE COURT: Thank you for coming.

17 Ms. Wilson, thank you.

18 And also, I appreciate the county manager and the
19 Chairman of the County Board of Supervisors being here.

20 Did I miss somebody? I do appreciate that.

09:27:17

21 MR. IRISH: Thank you.

22 Mr. Malgieri is correct that we -- our communications
23 have been professional and courteous. We just have a
24 disagreement, and I don't -- I'm not going to repeat all of the
25 back and forth because you've already read it.

09:27:34

1 We received three invoices from Chief Warshaw. The
2 total is just slightly under \$300,000. That's a third of
3 a million dollars.

4 THE COURT: Can I share with you my disposition?

5 MR. IRISH: Please do. 09:27:49

6 THE COURT: And then maybe we can discuss the reality
7 of how we control this.

8 MR. IRISH: Yes.

9 THE COURT: It seems to me that in your letter you're
10 perfectly willing to let me decide this thing altogether if I 09:27:59
11 want to review the bills.

12 MR. IRISH: That's correct.

13 THE COURT: And I appreciate that; I appreciate that
14 trust. But I also appreciate the need for accountability. And
15 while I believe that your acknowledgement that I can review the 09:28:15
16 bills and you'll pay if I say it's okay acknowledges the
17 County's view that I'm in charge, and that I decide what is
18 necessary and what is not necessary.

19 I also appreciate the County's viewpoint that this is
20 taxpayer money; that you do have some fiduciary obligation to 09:28:32
21 make sure that that money is well spent.

22 That being said, I also share the monitor's concern
23 about a couple of things, and let me just sort of spin those
24 out for you. And then I have -- I've had a few thoughts and
25 I'll listen to you first, but then I'd like to share with you 09:28:52

1 my thoughts and see if you think they'll be workable, because
2 this is a rather unusual situation.

3 I think it is very important, and I will tell you on
4 the record that I myself have received a number of
5 communications from persons from the public, both prior to and 09:29:09
6 after the appointment of the monitor, which I would consider
7 along the nature of confidential -- efforts to confidentially
8 disclose operations that go on in the Sheriff's Department.
9 What I've done, without reading them, except for the first one,
10 just realized what it was, was refer them to the monitor once 09:29:30
11 he was appointed.

12 I realize that, from reading them, it is very
13 important to the monitor's work that the identity of such
14 persons be kept confidential and their confidence that it will
15 be confidential be fostered, so that the monitor can fulfill 09:29:50
16 his function.

17 A couple of other things have occurred to me since I
18 started this work, and one is that it would be possible, and
19 I'm not saying that the sheriff would do it, but it certainly
20 would be possible for the sheriff, by tracing detailed bills, 09:30:03
21 to detect patterns of monitor supervision, monitor activity,
22 and anticipate monitor interest in various operations, and to
23 cure those operations and not others. So I'm not interested in
24 allowing the sheriff to do that, either.

25 And third, it seems to me that even when the sheriff 09:30:27

1 is operating in good faith and the monitor is operating in good
2 faith, and I expect that they both are, they both might have an
3 interest in investigating something that comes up that they
4 want to keep confidential for purposes of the investigation,
5 even though they may disagree initially about whether or not 09:30:45
6 that falls within the scope of the monitor's responsibility.
7 That requires confidentiality.

8 Now, I'll tell you another thing that has occurred to
9 me, too, that I want to talk to you about, and that is given
10 that all those things require a certain level of 09:31:03
11 confidentiality in the billing, and which is why the monitor
12 has been billing in that narrative fashion that isn't
13 specifically descriptive, it is also the nature of things, I've
14 learned from the first letter that I did read, that some
15 things, clearly, that you get from complainants fall outside 09:31:24
16 the scope of my order. They may be true, they may be not true,
17 it doesn't matter: I don't have the authority to mess with
18 them as a result of this lawsuit.

19 Some things are clearly within the scope of the order
20 and the monitor has the authority, in my view, to investigate 09:31:40
21 them. And some things it's not clear whether they're in or out
22 of the scope of the order because it depends upon the nature of
23 what has been said and underlying facts, which require the
24 monitor to investigate if the monitor chooses to investigate,
25 but they're not necessarily outside the scope of the order. 09:31:56

1 They require further investigation.

2 Do you understand what I'm saying?

3 MR. IRISH: Exactly.

4 THE COURT: So a fair amount of discretion, in my
5 view, has to be given and will be given to the monitor to
6 investigate the scope of his own authority, given the
7 complaints that he might receive. Given those matters --

09:32:05

8 And Ms. Wilson, I read your letter, and your concern
9 about being a good public fiduciary. I also am not unaware,
10 and I'll state it on the record so that if I have any
11 misperceptions, or the scope of my perceptions, period, are
12 laid out so people understand what I know and if I
13 misunderstand something, but I do seem to remember that several
14 years ago Ms. Wilson herself was involved in a complaint that
15 involved the Sheriff's Office.

09:32:24

09:32:43

16 MR. IRISH: Correct.

17 THE COURT: And so I don't have any presumption that
18 Ms. Wilson is unfairly going to be an agent for monitoring the
19 monitor on behalf of the Sheriff's Office, or anything like
20 that. But it does seem to me that there is a general
21 presumption that things be done in public, and for a good
22 reason, which cannot be exercised here to the degree and level
23 of specificity that Ms. Wilson would want in a public way.

09:32:57

24 What I am prepared to propose to you, unless you want
25 to be heard on this now, because I saw that you were willing,

09:33:18

1 the County, in demonstrating its good faith, is willing to pay
2 a third-party special master to resolve these things, and --

3 MR. IRISH: Correct.

4 THE COURT: -- and I'll tell you, the only reason I'm
5 uncomfortable with that is I really -- you know, I don't want 09:33:30
6 to be doing huge billing review, either, but it seems to me
7 that to hire a special master would require somebody to become
8 as intimately familiar with my orders as I am, and I hesitate
9 to impose that on somebody else, but what I will do is this.

10 I do think that there is a substantial reason why 09:33:51
11 Ms. Wilson should be able to review the orders in their
12 complete and unredacted entirety. However, if you're going to
13 do that, Ms. Wilson, you will do it in my chambers. I will
14 do -- I will do it in the following way, and I will be
15 interested in your proposals. 09:34:10

16 The monitor will continue to submit public bills, to
17 the same detail he has submitted them, publicly to Ms. Wilson.
18 He will submit to me very detailed, task-oriented time logs of
19 everything that his staff does, with specificity. They will be
20 submitted to me, they will be submitted in camera, and they 09:34:31
21 will be submitted under seal.

22 Ms. Wilson will be able to, if she wishes, hire
23 separate counsel and even a separate consultant. She can come
24 into my chambers; she can review the bills in their entirety.
25 But what Ms. Wilson cannot do is discuss this matter with 09:34:56

1 anyone else, including Mr. Manos, including the County Board of
2 Supervisors, or including anyone else except for the monitor
3 and for me. If Ms. Wilson comes across something that she
4 believes is --

5 And by the way, she can't hire you as her attorney,
6 because you represent --

09:35:13

7 MR. IRISH: Thank you. I don't want to do this.

8 THE COURT: You represent the County. She can't hire
9 anybody in the County Attorney's Office.

10 MR. IRISH: Okay.

09:35:23

11 THE COURT: It has to be separate counsel. And if
12 you're going to hire a consultant, Ms. Wilson, that has to be a
13 separate consultant, and neither the consultant or the attorney
14 can confer with anybody about this, anybody even in the County
15 except Ms. Wilson.

09:35:37

16 Ms. Wilson, if you then want -- if you then, in your
17 combing of the bills, find something that you want to dispute,
18 you can call up Mr. Warshaw. You can discuss it with him. If
19 the two of you can't resolve the matter, you will submit it to
20 me in camera and under seal, and you will pay all the other
21 matters that you can resolve.

09:35:56

22 I don't want to be reviewing a whole lot of these
23 things. I want you to understand, Ms. Wilson, that I'm going
24 to give the monitor fairly broad leeway, and I think I've just
25 explained why. If in fact I start resolving too many, I'm

09:36:13

1 going to start awarding attorneys' fees under the Arizona rule,
2 and I'm not -- you've said you're concerned about resolving
3 this dispute. We'll address that in a minute, and whether or
4 not the monitor's entitled to attorneys' fees.

5 In addition, though, to the confidentiality that 09:36:33
6 Ms. Wilson owes the monitor and she owes me and the process,
7 she will also owe confidentiality to the Sheriff's Department,
8 because the Sheriff's Department may well be involved in
9 investigations that it wants kept confidential.

10 So if she wants to dispute fees, the presumptive rule 09:36:50
11 will be she files it under seal and in camera. However, if she
12 checks with the monitor and the monitor has no problem with her
13 filing the dispute publicly, she still has to check with the
14 sheriff's representatives to make sure they have no problem,
15 and the plaintiffs' representatives to make sure they have no 09:37:08
16 problem, and then she can file the dispute publicly.

17 There may be public disputes that don't relate to
18 anything confidential and the monitor and the sheriffs and the
19 plaintiffs will agree. But first she needs to check with the
20 monitor to make sure the monitor doesn't have any concerns. 09:37:22
21 Then she checks with the parties, and then she can publicly
22 file it.

23 In that way, it seems to me that we are accommodating
24 as much public purview as we can of the monitor's operation.
25 That which must be kept in private and Ms. Wilson wants to have 09:37:37

1 detail, she can have detail. But she'll come review the
2 records in my office, and everybody who comes with her,
3 including her, will be bound by my order that she discusses it
4 with no one else.

5 Now, let me ask you, Ms. Wilson, do you have the kind 09:37:51
6 of authority from the County to do that?

7 MS. WILSON: Judge Snow, I think I probably would, but
8 my boss is right behind me so you can see whether he's nodding
9 his head. I think really what we were looking for is just
10 being able to ensure that what is being billed is in fact 09:38:11
11 related to the order, so in my mind that -- your solution works
12 perfectly.

13 THE COURT: All right.

14 MS. WILSON: Thank you.

15 THE COURT: All right. 09:38:21

16 Do you have any concerns about that, Mr. Irish?

17 MR. IRISH: I have a question but not a concern.

18 THE COURT: Sure.

19 MR. IRISH: I think your solution is perfect, but a
20 question with regard to Ms. Wilson engaging outside counsel, 09:38:36
21 other counsel.

22 There are a lot of lawyers in the county who are under
23 contract with the County that, if I may give you a little
24 history, when Bill Montgomery was elected and invited me to
25 join his executive staff, we inherited a mess. Lawsuits were 09:38:53

1 filed -- flying all over the place and subpoenas were flying
2 all over the place and we had to hire lawyers to represent
3 people with all sorts of conflicting interests.

4 THE COURT: Well, and it does seem to me that --

5 MR. IRISH: We engaged outside counsel to review those 09:39:06
6 bills so that we didn't get involved with it, and those lawyers
7 were contracted with the County but they didn't disclose
8 anything to us.

9 So if she elects to engage outside counsel, should we
10 use that list, or should we go under the County's ability to 09:39:20
11 get sole-source lawyers who are not contracted with the County
12 to perform that service?

13 What's your preference? We'll do it either way.

14 THE COURT: Well, does the monitor have a position on
15 that, Mr. Malgieri? 09:39:37

16 MR. MALGIERI: No, Your Honor.

17 THE COURT: All right. Then my view would be this.
18 Whoever she employs is going to have to sign an attestation
19 that they've read and understand my order. And if they --

20 MR. IRISH: Fair enough. 09:39:50

21 THE COURT: -- do that, and they're subject to my
22 sanction, then I don't care if you use the County-approved
23 list, and I presume that even if they have in the past provided
24 services to the County, that doesn't, in and of itself,
25 prevent -- or pose a conflict if they're willing to abide by 09:40:07

1 the conditions of my order.

2 MR. IRISH: With that answered, Your Honor, we're
3 pleased and satisfied. Thank you.

4 THE COURT: Does the monitor have any other concerns
5 with proceeding in that fashion? 09:40:18

6 MR. MALGIERI: No, Your Honor, we do not.

7 THE COURT: All right. Mr. Casey, do you want to
8 address any of that procedure?

9 MR. CASEY: Your Honor, Tim Casey on behalf of the
10 defendants Joseph M. Arpaio and the MCSO. Two things, briefly. 09:40:33

11 To the extent that the MCSO, during the course of
12 working with the monitor, so far my understanding/impression is
13 it's gone very well, and that my client has found the monitor
14 to be a source of wisdom and advice, especially with some of
15 the things that we've been dealing with recently, and we expect 09:40:57
16 that to continue.

17 If in fact my clients ever sense the proverbial what
18 we're concerned about is mission creep, then we're going to
19 raise that with Sandi Wilson and we're going to say, We're
20 concerned about this, that seems to be broader than the order. 09:41:13

21 We understand that there may be some good faith
22 differences at some point, particularly on the areas that you
23 discussed. I think that is completely legitimate, and that
24 would be a hard thing that I would recommend ever coming to you
25 and saying it's mission creep, when there are confidential 09:41:29

1 informants either within the MCSO or outside the MCSO about
2 things.

3 I think this man has to have the breadth to be able to
4 investigate that. But on other things we are sensitive, based
5 on our investigation, about any monitor and potential mission
6 creep. And again, I don't use that pejoratively but it is a
7 concern. We would be communicating that with Sandi Wilson.

09:41:45

8 The second thing, let me say, is this on behalf of my
9 clients. I, as counsel, have no interest in seeing
10 Mr. Warshaw's bills in any extent. I'm not going to see them,
11 obviously, with what you've said. My clients, I will represent
12 to the Court, have no desire to take generalized bills or
13 specific bills to try to discern what he's doing or what he
14 might do. The methodology that you've set up guarantees that
15 now.

09:42:05

09:42:26

16 But I wanted the Court to be aware that we've had some
17 issues at the beginning of this, but my clients, I believe, got
18 the message, are implementing in good faith, and they're not
19 interested in gaming anything but in achieving good faith
20 results in full intention -- actually, good faith intention to
21 comply.

09:42:46

22 The reason I share that with you, Your Honor, is I
23 understand we have to earn that trust from you with time. But
24 I wanted you to know that from our perspective, my client is
25 not interested in trying to head him off at the pass by

09:43:02

1 learning the game plan from these folks. Your order now makes
2 that a certainty, but I wanted to tell you that your order, I
3 think, guarantees that, so -- but I wanted to let you know
4 that's always been my clients' position, so thank you.

5 THE COURT: All right. Thank you.

09:43:22

6 Mr. Pochoda, Ms. Wang, I don't know who wants to
7 address this.

8 MR. POCHODA: Just very briefly, Your Honor.

9 Plaintiffs would have some concern about the counsel
10 issue. We agree with Your Honor's position that Ms. Wilson
11 cannot be bringing to it or revealing to any counsel that are
12 involved from the County, or the MCAO and so forth. We don't
13 think that the -- I may have misheard, but the attestation that
14 the Court mentioned really gets at that issue of the importance
15 of a wall of some type, and not just that they're familiar with
16 the orders but that they will not speak, any attorney, of this
17 matter to anyone else or the county -- the county attorney and
18 so forth. So we would request that that be a stronger wall
19 between --

09:43:36

09:43:59

20 THE COURT: Well, you do raise one of the things I
21 wanted to address, and that is the County was a party to this
22 lawsuit and they were dismissed by stipulation. In that
23 stipulation, I indicated that if the County was needed, they
24 could be reintroduced as a party and the County stipulated to
25 that.

09:44:16

09:44:35

1 Ms. Wilson, I'm not saying this to threaten you at
2 all, but you've just heard that the MCSO may want to lobby you,
3 the County may want to lobby you, you may find yourself subject
4 to lots of competing influences and lots of pressures, and I
5 want to make it clear when I enter an order that the order is
6 enforceable. 09:44:53

7 I want to know from the County right now if you're
8 going to take any position that I can't enforce an order for
9 contempt against Ms. Wilson or against any attorney she may
10 hire or consultant she may hire if I find that she or they have 09:45:15
11 breached the terms of my order. And if that is the case, then
12 I want to know if we need to reintroduce the County as a party
13 for purposes of this action.

14 Do you understand what I'm asking, Ms. Wilson?

15 MS. WILSON: Your Honor, I believe I do understand,
16 but obviously I have no intention of releasing any information
17 to anyone -- 09:45:30

18 THE COURT: And please, I'm not assuming that you're
19 acting in bad faith, but I learned a long time ago when I enter
20 an order, I make sure that I can enforce that order, so I'm
21 raising that issue now. 09:45:46

22 Do you have any position with respect to that,
23 Mr. Irish?

24 MS. WILSON: No, I don't.

25 THE COURT: All right. So that if that -- 09:45:58

1 MR. IRISH: On behalf of the County, Your Honor, we
2 agree that such issues will not be raised.

3 THE COURT: All right. Now, let me just raise -- I
4 will craft the order. If you don't like it, Mr. Pochoda, I'll
5 let you comment in a day or two before I enter it, but I think
6 that I will have every intention of making it very, very solid.

09:46:11

7 MR. POCHODA: Thank you, Your Honor.

8 THE COURT: All right.

9 Let me just state for the record, I think everybody
10 here is probably aware of this, the monitor's informed me that
11 Mr. Manos met with him yesterday morning for breakfast, that he
12 was very -- it was a very cordial and professional conversation
13 in which Mr. Manos expressed an interest and a willingness to
14 do anything that the monitor thought would be more efficient
15 for MCSO operations.

09:46:25

09:46:43

16 Let me express to you my concern about that,
17 Ms. Wilson, just so you'll understand, because Mr. Manos is
18 your boss. The monitor's already come to me with a few
19 concerns about MCSO operations, and he wanted to know what to
20 do with them, because while they might have been
21 recommendations he could have made, they really didn't fall
22 within the scope of our order.

09:46:59

23 There are plenty of things that do fall within the
24 scope of the order which we will be doing and we're working in
25 good faith with the Sheriff's Office to accomplish now. But

09:47:13

1 whatever else the monitor is, he isn't a consultant to the MCSO
2 on how they can operate more efficiently or implement better
3 police procedures.

4 And if you're going to look at the order for purposes
5 of implementing the order, you have to implement -- I mean, 09:47:28
6 things that actually might be to the County's benefit and might
7 be to the MCAO's benefit but not the MCSO's benefit are still
8 beyond the scope of the order. You understand that.

9 MS. WILSON: Yes. Yes, sir.

10 THE COURT: All right. The other thing that I will 09:47:46
11 say is -- frankly, I'm going to say this to the MCSO -- when I
12 entered the order appointing the monitor, I noted that there
13 was some dispute about the expense involved in things that the
14 parties had stipulated to, so I invited the County to consult
15 directly with the monitor if they had concerns about what I was 09:48:04
16 ordering, and that there was a more cost-efficient way to do
17 that than was contained in my order. I don't view that as
18 beyond the scope of my order. But it is the sort of thing I
19 recognize the MCSO might have some concerns about.

20 But I'm going to reaffirm today, Mr. Manos, for your 09:48:21
21 benefit, and Mr. Barney, for yours, that to the extent, you
22 know, any consultants you hire or anybody else has
23 recommendations that they want to submit for the monitor's
24 consideration about how we can revise this order in a way that
25 will make it more efficient and just as effective for 09:48:39

1 plaintiffs and less cost-effective for the County, I believe
2 that you are within the realm of appropriate authority to
3 submit those recommendations to the monitor for him to act on
4 them.

5 The only thing I would require that you do is when you
6 submit such recommendations to the monitor, you need to let the
7 MCSO know what they are, or such inquiries. So if you have any
8 objections on behalf of the MCSO, you can object.

09:48:53

9 Now, do I realize that that creates inner conflicts
10 among the parties here? It might, but you're going to have to
11 deal with that. And if it ever comes to the level where I have
12 to deal with it, you can raise it with me again. All right?

09:49:11

13 Now, as it relates to getting my monitor paid for
14 outstanding billings, you understand, Mr. Warshaw, that I'm
15 going to require you to engage in detailed, task-based billing,
16 so that Ms. Wilson can review that in my chambers.

09:49:34

17 MR. WARSHAW: Yes, sir.

18 THE COURT: Are you going to have -- would it be
19 possible at this point to reconstruct the first two bills that
20 you've already submitted in that fashion?

09:49:47

21 MR. WARSHAW: It would be difficult, based upon the
22 kind of detail that we'll be using from this point forward,
23 but --

24 THE COURT: Is the County going to insist on that?
25 Are you just willing to pay his bill if I will -- if I will

09:49:58

1 review it and confirm that the services as he has billed were
2 provided?

3 MS. WILSON: Your Honor, I think that would be
4 acceptable to us.

5 THE COURT: All right. I have reviewed those bills.
6 I can confirm that to my knowledge, the services he has billed
7 for were provided, so I'm going to direct the County to pay the
8 outstanding bills from March and April.

9 As it relates to whether or not you can seek fees for
10 this, is it your desire to seek fees, Mr. Warshaw?

11 MR. MALGIERI: It was never our intent, Your Honor.

12 THE COURT: Excuse me?

13 MR. MALGIERI: I'm sorry, Your Honor. It was never
14 our intent or expectation.

15 THE COURT: All right. Then it doesn't sound like
16 that's going to be an issue. Are there --

17 MR. MALGIERI: Thank you.

18 THE COURT: -- other matters that need to be raised at
19 this point?

20 MR. MALGIERI: No, Your Honor.

21 MR. IRISH: No, Your Honor.

22 THE COURT: All right. Now, I have scheduled another
23 status hearing in this matter. I believe I've scheduled it for
24 10 o'clock, is that not right?

25 MR. CASEY: That's my understanding, Your Honor.

1 THE COURT: All right. Then this hearing is dismissed
2 and we'll proceed at 10 o'clock at the additional status
3 hearing. Thank you.

4 (Proceedings concluded at 9:51 a.m.)
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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 15th day of May, 2014.

s/Gary Moll