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News Release

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Supreme Court Asked to Intervene in Bar Matters *Legal Experts Cite Extensive Ethical Misconduct by Bar Officials*

The County Attorney's Office today filed a brief with the Arizona Supreme Court asking the court to terminate or, at minimum, refer to an independent special master all State Bar inquiries regarding the County Attorney and other prosecutors in related matters due to serious ethical misconduct by Bar officials and attorneys.

The petition for special action was filed after evidence has mounted that former members of the Maricopa County judiciary improperly enlisted the State Bar, which is an arm of the judiciary, to begin retaliatory investigations of Thomas and other prosecutors due to their criticism of several county judges last year. This sudden flood of investigations occurred right after Thomas criticized members of the county judiciary over their handling of Proposition 100, the ballot measure approved by 78 percent of Arizonans that ended the right to bail for illegal immigrants accused of serious felonies. Growing evidence has made clear the Bar investigations, which legal experts have unanimously concluded are frivolous, were intended to retaliate for the Proposition 100 controversy, as well as to intimidate prosecutors into not criticizing county judges.

Thomas stated, "Proposition 100 is the law of the land today because I took on the judges who refused to enforce it. Now, some judges have reportedly retaliated by encouraging the State Bar to launch improper investigations of my prosecutors and me. Our office will not be intimidated. And I will continue to speak out and defend the will of the people."

Accompanying the brief were affidavits from five esteemed experts in legal ethics stating Thomas had acted properly in all areas being scrutinized by the Bar and had committed no violations of the rules of professional responsibility. These experts are: Thomas Zlaket, former Chief Justice of the Arizona Supreme Court; Jack La Sota, former Attorney

General of Arizona; Ernest Calderon, former State Bar President; Geoffrey Hazard, former Yale Law School professor and perhaps the nation's leading expert on legal ethics; and Michael Alan Schwartz, former chief counsel at the State Bar of Michigan.

In addition, Hazard and Schwartz were asked to opine on the propriety of actions by State Bar officials. Both concluded that senior Bar officials and attorneys in Arizona have acted improperly in their conduct of these inquiries.

Also released was an affidavit from Chief Assistant County Attorney Sally Wells. She affirmed she had spoken to a senior official at the State Bar who had said "retired judges" visited the State Bar last year and urged the Bar to "do something" about Thomas. They made this complaint because of Thomas' public criticism of county judges and judicial rulings, statements which Thomas had a clear constitutional right to offer. They urged retaliatory action by the Bar in the absence of any evidence that Thomas or any other prosecutor in his office had violated any of the rules of professional responsibility.

Immediately after this visit by retired judges in the fall of 2007, the Bar launched multiple investigations of Thomas and other prosecutors and attorneys working for Maricopa County. The Bar commenced six separate investigations of Thomas. It launched an investigation of Barnett Lotstein, a long-time senior prosecutor in the office, simply for writing newspaper columns defending Thomas from inaccurate criticism related to Proposition 100 made by Presiding Judge Barbara Rodriguez Mundell. The Bar also began an investigation of an attorney with the Maricopa County Sheriff's Office after he publicly criticized rulings of Judge Anna Baca. Her rulings eventually were overturned by the Arizona Court of Appeals.

In recent days, as Bar officials learned of the County Attorney's plans to file a special action with the Supreme Court, they abruptly announced, without explanation, they would terminate three of the six investigations of Thomas. However, those matters that remain are the subject of serious and continuing misconduct by Bar officials.

Maricopa County taxpayers have had to pay more than \$300,000 in legal bills to defend against these inquiries. These bills continue to mount for Bar matters that, diverse legal experts unanimously agree, all lack merit.

The following misconduct by Bar officials and attorneys was identified in affidavits and exhibits submitted to the Supreme Court today:

- After Superior Court judges urged the Bar to "do something" against Thomas, State Bar President Daniel McAuliffe launched a public relations campaign against the County Attorney intended to prejudice all attorneys and judges against him and his office. This included sending an article to every attorney and judge in Arizona in which McAuliffe claimed falsely that Thomas had accused every Maricopa County Superior Court judge of bias. There is strong evidence McAuliffe and other outside

parties are involved in the investigations, as he and a public defender leaked news of these matters to the media weeks before Thomas received notice of them from the State Bar.

- Chief Bar Counsel Robert Van Wyck, a Maricopa County Superior Court Judge Pro Tem, has admitted prejudice against the County Attorney's Office because of the County Attorney's handling of "illegal alien" criminal cases. He said he recused himself from all criminal cases filed by the County Attorney's Office because he saw a "conflict" due to his disagreement with the office's handling of cases against "illegal aliens" and the office's "plea policies." Yet he has refused to recuse himself from the Bar investigations.
- In letters to former special prosecutor Dennis Wilenchik and a second, currently employed county prosecutor, Van Wyck misrepresented the ethical rules in an attempt to compel them to reveal privileged information. Van Wyck has taken the position that attorneys may not assert the attorney-client privilege or any other privilege in Bar investigations. This position is plainly contrary to law and the Supreme Court's own rules. As a result of his efforts, Van Wyck succeeded in violating the attorney-client privilege in the Wilenchik matter.
- When attorneys for Thomas complained to Van Wyck about these and other actions by the Bar, Van Wyck retaliated. He sent them another frivolous inquiry against Thomas that was three months old. This matter was dismissed recently, but only after taxpayers were forced to spend thousands of additional dollars to respond to it.
- Van Wyck has pledged to give the privileged information he is seeking to adverse parties in current or prior litigation against the County Attorney's Office or Maricopa County. Van Wyck is openly coordinating his investigations with attorneys for the *New Times* in its recent lawsuit against Maricopa County officials. As a result, the State Bar is seeking to compel the production of privileged information from Maricopa County attorneys to hand over to a plaintiff in active litigation against the county. He is doing this even though legal experts have unanimously agreed Thomas did not violate the rules of professional responsibility in his handling of the *New Times* matter.

Thomas added that unless the Supreme Court intervenes, the attorney-client privilege effectively will have been repealed in Arizona. The Bar has taken the position that any third party can lodge a complaint with the State Bar and misuse the Bar's disciplinary process to extract privileged information and material from investigated attorneys. This includes complaints filed by plaintiffs or defendants in active litigation. This arrangement will disadvantage all individuals and businesses in Arizona that seek to rely on confidential legal advice, as that advice no longer is confidential.

Serving as counsel for Thomas and the County Attorney's Office in this matter are Leo Beus and Dan Cracchiolo. They are two prominent Arizona attorneys who co-founded two of Arizona's leading law firms, Beus Gilbert and Burch & Cracchiolo.

Appearing at the press conference and speaking in support of the office's actions today were Sheriff Joe Arpaio; Jack La Sota, former Attorney General of Arizona; Beus; Michael Alan Schwartz, a former prosecutor from Brooklyn, New York, who served as chief bar counsel for the State Bar of Michigan; Wells and Lotstein.

Cracchiolo, who was out of the country and unable to attend the press conference, provided a statement to the media: "I am a registered Democrat, and I happen to disagree with a number of Mr. Thomas' policies on illegal immigration. However, I am very troubled by the actions of the State Bar towards him and his office. As a former prosecutor myself, I believe these actions should be of great concern to anyone who wants the Maricopa County Attorney's Office to be able to do its job effectively. I hope the Supreme Court will intervene and correct these injustices."

The State Bar reports to and is overseen by the Supreme Court, which is why this special action was filed directly with the court.

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