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## Appendix A

United States Court of Appeals for the Ninth Circuit

December 20, 2021

JAMES JOSEPH KNOCHEL, Petitioner-Appellant,  
and EMILY NOELLE MIHAYLO, Petitioner,

v.

AMY FACKRELL; JOHN C. MORRIS; UNKOWN  
PARTY, named as Medical Director - West Yavapai  
Guidance Clinic; ATTORNEY GENERAL FOR THE  
STATE OF ARIZONA, Respondents-Appellees.

No. 20-17326

D.C. No. 3:19-cv-08086-GMS-JZB

### MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona

G. Murray Snow, District Judge, Presiding

Submitted December 14, 2021\*\*

Before: WALLACE, CLIFTON, and HURWITZ,  
Circuit Judges.

James Joseph Knochel appeals pro se from the

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\* This disposition is not appropriate for publication and is not  
precedent except as provided by Ninth Circuit Rule 36-3

\*\* The panel unanimously concludes this case is suitable for  
decision without oral argument. See Fed. R. App. P. 34(a)(2).

district court's order designating him a vexatious litigant and imposing pre-filing restrictions against him. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Knochel contends that the district court should have held an evidentiary hearing before imposing the order, and that recent developments in state court undermine the basis for the order. Reviewing for abuse of discretion, *see Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1056 (9th Cir. 2007), we conclude there was none. The district court followed the appropriate procedure in imposing the order: It gave Knochel notice and an opportunity to oppose the order, compiled an adequate record for appellate review, made substantive findings regarding the harassing nature of Knochel's litigation history, and narrowly tailored the prohibition to future filings in which Knochel may seek to act on behalf of, as next friend of, or that in any way relate to, Emily Mihaylo. *See Ringgold-Lockhart v. Cnty. of Los Angeles*, 761 F.3d 1057, 1062 (9th Cir. 2014). The alleged developments in state court do not undermine the basis for the order, and the authorities Knochel cites do not support his claim that the district court erred by failing to hold an evidentiary hearing regarding those developments.

**AFFIRMED.**

**Appendix B**

United States Court of Appeals for the Ninth Circuit

December 8, 2020

In re: JAMES JOSEPH KNOCHEL; et al.

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JAMES JOSEPH KNOCHEL; et al., Petitioners, v.  
UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ARIZONA, PHOENIX, Respondent,  
AMY FACKRELL; et al., Real Parties in Interest.

No. 20-73382

D.C. No. 3:19-cv-08086-GMS-JZB

District of Arizona, Prescott

**ORDER**

Before: THOMAS, Chief Judge, HURWITZ and  
BADE, Circuit Judges.

Petitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus or any other writ. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

All pending motions are denied as moot.

No further filings will be accepted in this closed case, and any continued attempts by James Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions or a vexatious litigant order. DENIED.

## **Appendix C**

In the United States District Court  
for the District of Arizona

November 13, 2020

Emily Noelle Mihaylo, et al.,  
Petitioners,  
v.  
Amy Fackrell, et al.,  
Respondents.

No. CV 19-8086-PCT-GMS (JZB)

### **ORDER**

#### **I. Background**

On January 11, 2018, James Joseph Knochel filed, as “next friend” of purported Petitioner Emily Noelle Mihaylo, a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, paid the filing fee, and sought a Temporary Restraining Order and “Ex-Parte Evidentiary Hearing,” as well as the appointment of counsel for Ms. Mihaylo. In order to facilitate consideration of the documents, the Clerk of Court assigned the matter as case no. CV 18-08004-PCT-GMS (JZB). In the Petition, Mr. Knochel alleged that Ms. Mihaylo had been ordered into treatment at a mental health facility, that she was being compulsorily medicated, and that the medications were making her condition worse, all in violation of the Constitution and laws of the State of

Arizona. On January 24, 2018, Ms. Mihaylo sent a letter to the Court — which the Clerk of Court docketed as a Motion to Dismiss — stating that

“[A]t no time did I file this claim and I would like it to be removed. I believe that my ex-boyfriend used my information to file this claim. The reason he filed this claim is unknown to me. Moving forward[,] I would like to have this case dismissed, thrown out, and terminated all together.”

On January 26, 2018, Mr. Knochel filed a “Response” to the Motion, suggesting that the Motion had not been written by Ms. Mihaylo, or at least not by her “of her own free will,” and that the Motion otherwise is “evidence of [Petitioner’s] status as a vulnerable person, and as further justification for the necessity of appointed counsel for [Ms.] Mihaylo.”

By Order dated February 7, 2018, the Court found that Mr. Knochel had failed to demonstrate that Ms. Mihaylo was unable to prosecute this action on her own and that he was acting in the best interests of Ms. Mihaylo, and that he thus did not have standing to sue as “next friend.” Accordingly, the Petition was dismissed without prejudice for lack of jurisdiction. Judgment was entered the same day, and case no. CV 18-08004-PCT-GMS (JZB) was closed. Mr. Knochel thereafter filed several additional documents that either failed to request any relief or were dismissed for lack of standing.

On March 25, 2019, Mr. Knochel filed, again as the purported “next friend” of Ms. Mihaylo, the instant action. Therein, Mr. Knochel again alleged that the

January 24, 2018 letter in case no. CV 18-08004-PCT-GMS (JZB) was not sent by Ms. Mihaylo, but was rather a fraudulent document sent by the administrators of Ms. Mihaylo's mental healthcare facility. Mr. Knochel also provided a letter, which he purported to have been handwritten by Ms. Mihaylo, stating that "the letter that I signed was not written by me. I was pressured into signing it by ViewPoint staff." Attached to the Petition were also numerous exhibits, including a November 29, 2018 Minute Entry in a Yavapai County Mental Health Court hearing noting that "Defendant [apparently referring to Ms. Mihaylo] has been contacted by James. The Court notes to block James from phone..."; a December 13, 2018 Minute Entry in the same Yavapai County Mental Health Court case ordering that "Defendant shall have no contact with James Knochel"; a December 13, 2018 "Comprehensive Mental Health Court Contract" in the same case that is signed by Ms. Mihaylo and stipulates that Ms. Mihaylo will have "no contact with James Knochel"; and a December 27, 2018 "Comprehensive Mental Health Court Contract" that was again signed by Ms. Mihaylo and again stipulates that she will have "no contact with James Knochel."

Accordingly, by Order dated May 7, 2019, the Court found that, given the multiple no-contact orders entered against Mr. Knochel, Mr. Knochel had again failed to demonstrate that he had standing to sue as "next friend." Accordingly, the Petition was dismissed without prejudice for lack of jurisdiction (Doc. 4). Judgment was entered the same day, and case no. CV 19-08086-PCT-GMS (JZB) was closed.



(Doc. 6). On June 3, 2019, Mr. Knochel appealed the dismissal to the Ninth Circuit Court of Appeals (Doc. 7).

Further, on May 5, 2019, Mr. Knochel attempted to “remove” an Order of Protection that Ms. Mihaylo had sought, and obtained, against him in Prescott Justice Court, case no. J1303-PO2019000067.<sup>1</sup> In order to facilitate consideration of the “removal,” the Clerk of Court opened case no. CV-19-08137-PCT-GMS (JZB). Therein, Mr. Knochel asserted that the Order of Protection was the result of a “conspiracy ... to deprive [Ms. Mihaylo] and [Mr. Knochel] of rights secured by the Constitution,” namely, as Mr. Knochel put it, the “freedom of association guaranteed by the [First] Amendment and the equal protection of the law and privilege of habeas corpus guaranteed by the [Fourteenth] Amendment.” Mr.

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<sup>1</sup> The Petition for the Order of Protection, which is signed by Ms. Mihaylo, details multiple instances in which Mr. Knochel has harassed Ms. Mihaylo, including by “show[ing] up at ViewPoint after he has been asked not to come back”; “writ[ing] letters to the Adult Probation Department [] trying to get [Ms. Mihaylo] off probation [and that she] asked [Mr. Knochel] to stop doing this”; “showing up at [a] mental health hearing after being asked by the probation department in months prior not to come back to mental health court,”; and showing up at the mental health court “for the third time, [being] escorted out of the court room” but not leaving the building, and then “harass[ing]” Ms. Mihaylo, an employee from her mental health facility, and a court employee “by taking pictures on his phone.” (Doc. 1 at 14-15 in CV 19-08137-PCT-GMS (JZB)). Ms. Mihaylo further states that she has “asked [Mr. Knochel] to stop writing letters to the courts pertaining to [her].” (Id.). The Order of Protection itself mandates that Mr. Knochel have no contact with Ms. Mihaylo. (Id. at 10). It is dated April 4, 2019, and was effective for one year from that date. (Id.).

Knochel further requested that this Court “intervene in the conspiracy against Plaintiff’s and Defendant’s civil rights.” By Order dated May 20, 2019, the Court remanded the matter to the Prescott Justice Court for lack of jurisdiction. The Court further warned Mr. Knochel that “if [he] persists in using this Court as what appears to be a vehicle to further his harassment of Ms. Mihaylo,” the Court may impose a vexatious litigant order against him. On June 18, 2019, Mr. Knochel appealed the dismissal to the Ninth Circuit.

On July 7, 2019, the Ninth Circuit dismissed Mr. Knochel’s appeal of case no. CV 19-08137-PCT-GMS (JZB) as frivolous, and, on July 22, 2019, it declined to issue a certificate of appealability for the Court’s May 7, 2019 dismissal of the instant case. The Ninth Circuit further stated that “any continued attempts by James Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions or a vexatious litigant order.” (Doc. 9 at 1-2).

Despite the warnings from both this Court and the Ninth Circuit, Mr. Knochel continued to make filings in this case, including a Motion to Set Aside the Order of Dismissal and to Reinstate the Petition for a Writ of Habeas Corpus pursuant to Rule 60 of the Federal Rules of Civil Procedure, and a Declaration in support thereof (the “Rule 60 Motion”). Additionally, Mr. Knochel filed an Affidavit in which he sought to “remove” the undersigned from this case pursuant to 28 U.S.C. § 144. By Order dated September 9, 2020, the Court declined to recuse itself, denied the Rule 60 Motion, and ordered Mr. Knochel to show cause for why a vexatious litigant order should not be entered against him. On October

8, 2020, Mr. Knochel filed his Response to the Order to Show Cause (Doc. 16).

## II. Discussion

Federal courts have the responsibility to ensure that their limited resources “are allocated in a way that promotes the interests of justice.” *In re McDonald*, 489 U.S. 180, 184 (1989). “Flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.” *DeLong v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990); see also *O’Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990). District courts have the inherent power to act to ensure that the business of the Court is conducted in an orderly and reasonable fashion. See e.g. *Visser v. Supreme Court of the State of California*, 919 F.2d 113, 114 (9th Cir. 1990). This inherent authority includes the power to “regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances.” *DeLong v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990) (quoting *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989)).

Although the Court has the authority to enjoin abusive litigants from future access to the courts, that authority should be exercised only rarely. *Molski v. Evergeen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007); *DeLong*, 912 F.2d at 1147. Before imposing such an injunction, the Court must provide the abusive litigant with notice of the impending injunction and an opportunity to oppose it. *DeLong*, 912 F.2d at 1147. The Court must also

furnish an adequate record for review—one that includes “a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed.” *Id.* The Court must make a substantive finding of “the frivolous or harassing nature of the litigant’s actions.” *Id.* at 1148 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988)). Litigiousness is not enough; the court must consider “both the number and content of the filings.” *Id.* (quoting *In re Powell*, 851 F.2d at 431).

### **1. Filing History**

Mr. Knochel has filed three separate actions in this Court,<sup>2</sup> as well as two separate appeals to the Ninth Circuit.<sup>3</sup> This Court dismissed CV 18-08004-PCT-GMS (JZB) and CV 19-08086-PCT-GMS (JZB) for lack of standing, and dismissed CV 19-08137-PCTGMS (JZB) for lack of jurisdiction. The Ninth Circuit declined to issue a certificate of appealability in case no. 19-16135, and dismissed case no. 19-16261 as frivolous. In his Response, Mr. Knochel argues that this low volume of filings does not support issuance of a vexatious litigant order because he did not file “large numbers of pointless cases,” and the only cost is “this Court’s time in figuring out how to avoid its duty to justice.” (Doc. 16 at 4). Mr. Knochel further argues that the cases he brought in this Court were dismissed without prejudice. (*Id.* at 3).

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<sup>2</sup> CV 18-08004-PCT-GMS (JZB), CV 19-08086-PCT-GMS (JZB), and CV 19-08137-PCT-GMS (JZB).

<sup>3</sup> Ninth Circuit case no. 19-16135 (appealing CV 19-08086-PCT-GMS (JZB)), and Ninth Circuit case no. 19-16261 (appealing CV 19-08137-PCT-GMS (JZB)).

Although the volume of Mr. Knochel's filings is relatively low, and thus weighs against entry of a vexatious litigant order, this Court has repeatedly found that Mr. Knochel lacks standing to bring the filings at all, or that it lacks jurisdiction to consider them, and the Ninth Circuit has found that one of Mr. Knochel's appeals was frivolous. That the Court dismissed the actions without prejudice was to preserve *Ms. Mihaylo's* rights to bring any claims she wished, not an adjudication of the "good faith" of Mr. Knochel. Accordingly, the Court thus finds that, on balance, Mr. Knochel's filing history weighs in favor of entry of a vexatious litigant order.

## **2. Harassing Nature of Mr. Knochel's Filings**

Although the volume of Mr. Knochel's filing history is relatively low, both this Court and the Ninth Circuit have previously warned Mr. Knochel that a vexatious litigant order may be entered against him "if [he] persists in using this Court as what appears to be a vehicle to further his harassment of Ms. Mihaylo." (Doc. 11 at 6 in CV 19-08137-PCTGMS (JZB)); *see also* (Doc. 9 at 1-2) (stating that "any continued attempts by James Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions or a vexatious litigant order.") Despite those warnings, Mr. Knochel remains undeterred in making such filings, supporting the conclusion that they are intended "to be a vehicle to further his harassment of Ms. Mihaylo." This is evidenced by the following:

After initiating CV 18-08004-PCT-GMS (JZB), his first action in this court, Ms. Mihaylo filed a letter

with the Court stating that

“[A]t no time did I file this claim and I would like it to be removed. I believe that my ex-boyfriend used my information to file this claim. The reason he filed this claim is unknown to me. Moving forward[,] I would like to have this case dismissed, thrown out, and terminated all together.”

(Doc. 8 in CV 18-08004-PCT-GMS (JZB)).

Similarly, in the instant case, Mr. Knochel has provided handwritten notes from Ms. Mihaylo in which she states that Mr. Knochel

has been writing letters to the Supreme Court [and] Federal Court to get me out of the treatment center I am paying to be at. He has [filed] a filing called Next Friend saying I am not capable of making my own decisions. I have asked him to stop writing letters to the courts pertaining to me. He has showed up at ViewPoint after he has been asked to not come back. He has written letter to the Adult Probation Department also trying to get me off probation. I asked him to stop doing this.

(Doc. 14 at 22) (emphasis in original).

Ms. Mihaylo has also been directed by a Yavapai Mental Health Court to “block James [Knochel] from phone [contact],” and repeatedly ordered to “have no contact with James Knochel.” (Doc. 2-1 at 8-11).

Ms. Mihaylo has also sought, and obtained, an Order of Protection against Mr. Knochel. (Doc. 1 at 9 in CV 19-08137-PCT-GMS (JZB)). The Petition for the Order of Protection, which is signed by Ms. Mihaylo,

details multiple instances in which Mr. Knochel harassed Ms. Mihaylo, including by “show[ing] up at ViewPoint after he has been asked not to come back”; “writ[ing] letters to the Adult Probation Department [] trying to get [Ms. Mihaylo] off probation [and that she] asked [Mr. Knochel] to stop doing this”; “showing up at [a] mental health hearing after being asked by the probation department in months prior not to come back to mental health court,”; and showing up at the mental health court “for the third time, [being] escorted out of the court room” but not leaving the building, and then “harass[ing]” Ms. Mihaylo, an employee from her mental health facility, and a court employee “by taking pictures on his phone.” (*Id.* at 14-15). Ms. Mihaylo further states she “asked [Mr. Knochel] to stop writing letters to the courts pertaining to [her].” (*Id.*). The Order of Protection itself mandates that Mr. Knochel have no contact with Ms. Mihaylo. (*Id.* at 10).

Finally, Ms. Mihaylo has recently had a Guardian appointed to act on her behalf by Maricopa County Superior Court (Doc. 14 at 19-20), and Mr. Knochel himself states that this Guardian has “formally prohibit[ed] Mihaylo and Knochel’s contact.” (*Id.* at 6).

Although Mr. Knochel argues that these filings were made “in good faith,” that the litigation history recited by this Court is “incomplete and misleading,” and that he “only filed in District Court after he and Mihaylo were denied due process of law by ... the Arizona Superior Court, the Arizona Court of

Appeals, and the Arizona Supreme Court..."<sup>4</sup> he cherry-picks the record to support his actions. (Doc. 16 at 2-3). Mr. Knochel omits any mention of Ms. Mihaylo's written pleas that he desist in both contacting her and seeking judicial relief on her behalf, the Yavapai State Mental Health Court's numerous orders prohibiting Mr. Knochel from contacting Ms. Mihaylo, the entry of an Order of Protection against him obtained by Ms. Mihaylo, and the appointment of a Guardian for Ms. Mihaylo who has "formally prohibit[ed] Mihaylo and Knochel's contact." As such, Mr. Knochel's continued filings do not support that he is acting "in good faith," nor does it support that his litigation history militates against entry of a vexatious litigant order. To the contrary, the Court finds that the harassing nature of Mr. Knochel's filings strongly supports the entry of a vexatious litigant order against him.

### **III. Type of Injunctive Order**

An order enjoining an abusive litigant from future access to the courts must be "narrowly tailored to closely fit the specific vice encountered." *DeLong*, 912 F.2d at 1148. Here, that vice is Mr. Knochel's continued harassment of Ms. Mihaylo. As such, the Court sees no basis to enjoin Mr. Knochel from filing any actions that do not relate to Ms. Mihaylo, thus preserving his access to the Court should he seek to file an action that does not relate to Ms. Mihaylo.

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<sup>4</sup> The fact that Mr. Knochel is apparently seeking in the state courts the same relief he seeks in this Court and the Ninth Circuit only further supports the harassing nature of Mr. Knochel's filings.



Further, given Mr. Knochel's relative paucity of filings, the Court does not, at this time, find that a pre-filing monetary sanction is either warranted or sufficient to prevent Mr. Knochel's continued filings related to Ms. Mihaylo.<sup>5</sup> Accordingly, the Court's vexatious litigant order will be limited to preventing Mr. Knochel's continued filings in the three cases he has already brought in this Court, and preventing him from filing any new cases in this Court related to Ms. Mihaylo.

#### **IV. Vexatious Litigant Order**

The Court's September 9, 2020 Order served as notice of the Court's intent to impose a vexatious litigant order against Mr. Knochel. Mr. Knochel was permitted an opportunity to show cause for why such an order should not be entered, and has failed to persuade the Court that a vexatious litigant order is not warranted. Accordingly, the Court will enter the injunction proposed in its September 9, 2020 Order, with the following terms:

1. James Joseph Knochel is prohibited from making any further filings in cases CV 18-

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<sup>5</sup> The Court notes that two of the three actions Mr. Knochel has filed in this Court — CV 18-08004-PCT-GMS (JZB) and CV 19-08086-PCT-GMS (JZB) — were filed as habeas corpus actions, for which the filing fee is only \$5.00 and which Mr. Knochel paid in full at the time he initiated both cases. In the third case — CV 19-08137-PCT-GMS (JZB) — Mr. Knochel sought to proceed in forma pauperis, attesting that he had insufficient monies to pay the \$400 filing and administrative fees. Although in forma pauperis status is a privilege, not a right, it seems possible that, given Mr. Knochel's professed indigency, a pre-filing monetary sanction would effectively bar him from all access to the courts.

08004-PCT-GMS (JZB), CV 19- 08086-PCT-GMS (JZB), and CV 19-08137-PCT-GMS (JZB). If Mr. Knochel makes any further filings in these cases, the Court will not consider them, and the Clerk of Court will summarily strike them from the record.

2. If James Joseph Knochel attempts to file any new actions in this Court, he must include therewith a Declaration, signed under penalty of perjury, that the filing is not brought on behalf of, as "next friend" to, or in any way related to Emily Noelle Mihaylo. If Mr. Knochel fails to include the required Declaration, or if the Declaration indicates that the action is being brought on behalf of, as "next friend" to, or is otherwise related to Ms. Mihaylo, the Court will not consider the new action and will summarily dismiss the action for failure to comply with this Order.

**IT IS ORDERED:**

(1) Mr. Knochel having failed to show cause for why the injunction proposed in the Court's September 9, 2020 Order should not be imposed, the Injunction described in that Order is entered as set forth below.

(2) James Joseph Knochel is prohibited from making any further filings in cases CV 18-08004-PCT-GMS (JZB), CV 19-08086-PCT-GMS (JZB), and CV 19-08137-PCTGMS (JZB). If Mr. Knochel makes any further filings in those three cases, the Court will not consider them, and the Clerk of Court is directed to summarily strike them from the record.

(3) If James Joseph Knochel attempts to file any new



## **Appendix D**

In the United States District Court  
for the District of Arizona

September 9, 2020

Emily Noelle Mihaylo, et al.,  
Petitioners,  
v.  
Amy Fackrell, et al.,  
Respondents.

No. CV 18-08086-PCT-GMS (JZB)

### **ORDER and ORDER TO SHOW CAUSE**

#### **I. Background**

On January 11, 2018, James Joseph Knochel filed, as “next friend” of purported Petitioner Emily Noelle Mihaylo, a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, paid the filing fee, and sought a Temporary Restraining Order and “Ex-Parte Evidentiary Hearing,” as well as the appointment of counsel for Ms. Mihaylo. In order to facilitate consideration of the documents, the Clerk of Court assigned the matter as case no. CV 18-08004-PCT-GMS (JZB). In the Petition, Mr. Knochel alleged that Ms. Mihaylo had been ordered into treatment at a mental health facility, that she was being compulsorily medicated, and that the medications were making her condition worse, all in

violation of the Constitution and laws of the State of Arizona. On January 24, 2018, Ms. Mihaylo sent a letter to the Court — which the Clerk of Court docketed as a Motion to Dismiss — stating that

“[A]t no time did I file this claim and I would like it to be removed. I believe that my ex-boyfriend used my information to file this claim. The reason he filed this claim is unknown to me. Moving forward[,] I would like to have this case dismissed, thrown out, and terminated all together.”

On January 26, 2018, Mr. Knochel filed a “Response” to the Motion, suggesting that the Motion had not been written by Ms. Mihaylo, or at least not by her “of her own free will,” and that the Motion otherwise is “evidence of [Petitioner’s] status as a vulnerable person, and as further justification for the necessity of appointed counsel for [Ms.] Mihaylo.”

By Order dated February 7, 2018, the Court found that Mr. Knochel had failed to demonstrate that Ms. Mihaylo was unable to prosecute this action on her own and that he was acting in the best interests of Ms. Mihaylo, and that he thus did not have standing to sue as “next friend.” Accordingly, the Petition was dismissed without prejudice for lack of jurisdiction. Judgment was entered the same day, and case no. CV 18-08004-PCT-GMS (JZB) was closed. Mr. Knochel thereafter filed several additional documents that either failed to request any relief or were dismissed for lack of standing.

On March 25, 2019, Mr. Knochel filed, again as the purported “next friend” of Ms. Mihaylo, the instant action. Therein, Mr. Knochel again alleged that the

letter filed on January 24, 2018 in case no. CV 18-08004-PCT-GMS (JZB) was not sent by Ms. Mihaylo, but was rather a fraudulent document sent by the administrators of Ms. Mihaylo's mental healthcare facility. Mr. Knochel also provided a letter, which he purported to have been handwritten by Ms. Mihaylo, stating that "the letter that I signed was not written by me. I was pressured into signing it by ViewPoint staff." Attached to the Petition in case no. CV 19-08086-PCT-GMS (JZB) were also numerous exhibits, including a November 29, 2018 Minute Entry in a Yavapai County Mental Health Court hearing noting that "Defendant [apparently referring to Ms. Mihaylo] has been contacted by James. The Court notes to block James from phone..."; a December 13, 2018 Minute Entry in the same Yavapai County Mental Health Court case ordering that "Defendant shall have no contact with James Knochel"; a December 13, 2018 "Comprehensive Mental Health Court Contract" in the same case that is signed by Ms. Mihaylo and stipulates that Ms. Mihaylo will have "no contact with James Knochel"; and a December 27, 2018 "Comprehensive Mental Health Court Contract" that was again signed by Ms. Mihaylo and again stipulates that she will have "no contact with James Knochel."

Accordingly, by Order dated May 7, 2019, the Court found that, given the multiple no-contact orders entered against Mr. Knochel, Mr. Knochel had again failed to demonstrate that he had standing to sue as "next friend." Accordingly, the Petition was dismissed without prejudice for lack of jurisdiction (Doc. 4). Judgment was entered the same day, and case no. CV 19-08086-PCT-GMS (JZB) was closed

(Doc. 6). On June 3, 2019, Mr. Knochel appealed the dismissal to the Ninth Circuit Court of Appeals (Doc. 7).

Further, on May 5, 2019, Mr. Knochel attempted to “remove” an Order of Protection that Ms. Mihaylo had sought, and obtained, against him in Prescott Justice Court, case number J1303-PO2019000067.

<sup>1</sup>In order to facilitate consideration of the “removal,” the Clerk of Court opened case no. CV-19-08137-PCT-GMS (JZB). Therein, Mr. Knochel asserted that the Order of Protection was the result of a “conspiracy ... to deprive [Ms. Mihaylo] and [Mr. Knochel] of rights secured by the Constitution,” namely, as Mr. Knochel put it, the “freedom of association guaranteed by the [First] Amendment and the equal protection of the law and privilege of habeas corpus guaranteed by the [Fourteenth]

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<sup>1</sup> The Petition for the Order of Protection, which is signed by Ms. Mihaylo, details multiple instances in which Mr. Knochel has harassed Ms. Mihaylo, including by “show[ing] up at ViewPoint after he has been asked not to come back”; “writ[ing] letters to the Adult Probation Department [] trying to get [Ms. Mihaylo] off probation [and that she] asked [Mr. Knochel] to stop doing this”; “showing up at [a] mental health hearing after being asked by the probation department in months prior not to come back to mental health court,”; and showing up at the mental health court “for the third time, [being] escorted out of the court room” but not leaving the building, and then “harass[ing]” Ms. Mihaylo, an employee from her mental health facility, and a court employee “by taking pictures on his phone.” (Doc. 1 at 14-15 in CV 19-08137-PCT-GMS (JZB)). Ms. Mihaylo further states that she has “asked [Mr. Knochel] to stop writing letters to the courts pertaining to [her].” (Id.). The Order of Protection itself mandates that Mr. Knochel have no contact with Ms. Mihaylo. (Id. at 10). It is dated April 4, 2019, and was effective for one year from that date. (Id.).

Amendment.” Mr. Knochel further requested that this Court “intervene in the conspiracy against Plaintiff’s and Defendant’s civil rights.” By Order dated May 20, 2019, the Court remanded the matter to the Prescott Justice Court for lack of jurisdiction. The Court further warned Mr. Knochel that “if [he] persists in using this Court as what appears to be a vehicle to further his harassment of Ms. Mihaylo,” the Court may impose a vexatious litigant order against him. On June 18, 2019, Mr. Knochel appealed the dismissal to the Ninth Circuit.

On October 24, 2019, the Ninth Circuit dismissed Mr. Knochel’s appeal of case number CV 19-08137-PCT-GMS (JZB) as frivolous, and, on July 22, 2019, it declined to issue a certificate of appealability for the Court’s May 7, 2019 dismissal of CV 19-08086-PCT-GMS (JZB). The Ninth Circuit further stated that “any continued attempts by James Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions or a vexatious litigant order.” (Doc. 9 at 1-2). Despite the warnings from both this Court and the Ninth Circuit, Mr. Knochel continued to make filings in case no. CV 19-08086- PCT-GMS (JZB) (see Docs. 10, 11, and 12).

Mr. Knochel has now filed a Motion to Set Aside the Order of Dismissal and to Reinstate the Petition for a Writ of Habeas Corpus pursuant to Rule 60 of the Federal Rules of Civil Procedure, and a Declaration in support thereof (the “Rule 60 Motion”) (Docs. 13, 14). Additionally, Mr. Knochel has filed an Affidavit (Doc. 12), in which he purports to “remove” the undersigned from this case pursuant to 28 U.S.C. § 144.



## II. Discussion

### A. Recusal or Removal

In his Affidavit, Mr. Knochel asserts that the undersigned is “prejudiced” against people with mental illness. He asserts that this prejudice “is related to [the undersigned’s] being on the Court when this Court’s former Chief Judge, John Roll, was assassinated at the January 8, 2011 shooting at Congresswomen Giffords’ event in Tucson”; that this event “traumatized” the undersigned into “believ[ing] that any mental health treatment is better than no treatment”; that “the specifics of these two Petitions [i.e. CV 18-08004-PCT-GMS (JZB) and CV 19-08086-PCT-GMS (JZB)] ‘triggered’ [the undersigned] which motivated him to overlook the actual requirements of the case law”; and left the undersigned unable to “impartially rule on the present Petition for Writ of Habeas Corpus.” (Doc. 12 at 2).

Motions to disqualify or recuse a federal judge fall under two statutory provisions, 28 U.S.C. §§ 144 and 455. Section 144 provides for recusal where a party files a “timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party.” The affidavit must state the facts and reasons for the belief that the bias or prejudice exists. 28 U.S.C. § 144. If the judge finds the affidavit timely and legally sufficient, the judge must proceed no further and another judge must be assigned to hear the motion. *Id.*; *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980).

On the other hand, § 455 is self-enforcing on the

judge and requires a judge to recuse himself “in any proceeding in which his impartiality might reasonably be questioned,” where he “has a personal bias or prejudice concerning a party,” or when he is “a party to the proceeding.” 28 U.S.C. § 455(a), (b)(1), and (b)(5)(i). *See also Sibla*, 624 F.2d at 867- 68.

The undersigned must initially determine whether Mr. Knochel has filed an affidavit that is timely and legally sufficient. *See United States v. Azhocar*, 581 F.2d 735, 738 (9th Cir. 1978) (“the judge against whom an affidavit of bias is filed may pass on its legal sufficiency” (citing *Berger v. United States*, 255 U.S. 22 (1921))). He has not. To be timely, the affidavit “shall be filed not less than 10 days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time.” 28 U.S.C. § 144. There are two branches to the timeliness inquiry. “First, the timing of a submission must be measured on an absolute scale. That is, the remoteness of the disqualification request from the commencement of the proceeding necessarily bears on its timeliness.” *United States v. International Business Machine Corp.*, 475 F.Supp. 1372, 1377 (S.D.N.Y. 1979) (citing *Craven v. United States*, 22 F.2d 605, 608 (1st Cir. 1927)). Second, the submission must be filed at the earliest moment after knowledge of the facts alleged to require disqualification are obtained. *Id.*

Here, Mr. Knochel asserts that the basis giving rise to the undersigned’s purported prejudice was the shooting of former Chief Judge John Roll on January 8, 2011. This event occurred seven years before Mr. Knochel filed case no. CV 18-08004-PCT-GMS (JZB), eight years before he initiated the instant action,

and nine years before his filed his Affidavit. Indeed, Mr. Knochel's Affidavit was not filed until nearly a year after this action had already been closed. Mr. Knochel has not shown good cause for this delay. Accordingly, the Court concludes that Mr. Knochel's Affidavit was not timely filed, and is thus not required to assign the recusal request to another judge. See *Azhocar*, 581 F.2d at 738 ("Only after the legal sufficiency of the affidavit is determined does it become the duty of the judge to 'proceed no further' in the case.").<sup>2</sup>

Under §§ 144 and 455, recusal is appropriate where "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008) (quoting *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997)), *abrogated on other grounds in Simmons v. Himmelreich*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1843 (2016).

Based on the history of Mr. Knochel's past filings in this Court and his assertions in the Affidavit, the undersigned concludes that no reasonable person with knowledge of all the relevant facts would question the impartiality of the undersigned. Accordingly, the Court, in its discretion, will deny Petitioner's Affidavit to the extent he seeks the undersigned's recusal or removal pursuant to either 28 U.S.C. §§ 144 or 455.

## **B. Rule 60**

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<sup>2</sup> For the reasons set forth in Part II.B, *infra*, the Court further finds that Mr. Knochel has not properly brought the Affidavit because he has no standing to make any filings in this case.

Motions pursuant to Rule 60 should be granted only in rare circumstances. *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). “Rule 60(b) ‘provides for reconsideration only upon a showing of (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) ‘extraordinary circumstances’ which would justify relief.” *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (quoting *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991)); *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985). Mere disagreement with a previous order is an insufficient basis for reconsideration. See *Leong v. Hilton Hotels Corp.*, 689 F. Supp. 1572, 1573 (D. Haw. 1988). A motion for reconsideration “may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Nor may a Rule 60 motion simply repeat any argument previously made in support of or in opposition to a filing. *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 586 (D. Ariz. 2003).

In his Rule 60 Motion, Mr. Knochel continues to insist that the January 24, 2018 letter in case no. CV 18-08004-PCT-GMS (JZB) was not sent by Ms. Mihaylo, but was a fraudulent document sent by the administrators of Ms. Mihaylo’s mental healthcare facility that constituted a “fraud on the court”; states that the Order of Protection that Ms. Mihaylo obtained against him was “coerced”; and argues that

he should be granted “next friend” status because he “is working for [Ms. Mahaylo’s] best interests.” (Doc. 14 at 5, 11). Mr. Knochel also attaches several “exhibits” to his Motion, including a February 18, 2020 “Letter of Appointment as Guardian for an Adult” in Maricopa County Superior Court case no. PB2019-002031 indicating that Ms. Mihaylo has had a guardian appointed to represent her. (Id. at 19-20). Mr. Knochel states that the guardian “formally prohibits Mihaylo and Knochel’s contact.” (Id. at 6). Mr. Knochel also attaches a set of handwritten notes that he purports to have been written by Ms. Mihaylo, in which she states that Mr. Knochel has been writing letters to the Supreme Court [and] Federal Court to get me out of the treatment center I am paying to be at. He has called a filing called Next Friend saying I am not capable of making my own decisions. I have asked him to stop writing letters to the courts pertaining to me. He has showed up at ViewPoint after he has been asked to not come back. He has written letter to the Adult Probation Department also trying to get me off probation. I asked him to stop doing this.

(Id. at 22) (emphasis in original). Mr. Knochel has also attached a “Motion for Status Hearing” in the same Maricopa County case, and avows that Ms. Mihaylo sent the request to state court on her own. (Id. at 10, 23-25).

As an initial matter, Mr. Knochel’s Rule 60 Motion is untimely. Rule 60(c)(1) of the Federal Rules of Civil Procedure requires that “[a] motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the

proceeding.” Fed. R. Civ. P. 60(c)(1). Mr. Knochel appears to seek relief based upon Rules 60(b)(2) and (3). (Doc. 14 at 12). Therefore, Mr. Knochel had no more than one year from the judgment, order, or proceeding from which he seeks relief in order to file his Motion. Mr. Knochel seeks relief from this Court’s “order of dismissal, dated MAY 7, 2019” (Doc. 14 at 1) and thus had one year from that date in which to timely file his Motion pursuant to Rule 60(b).<sup>3</sup> Because he did not file the Motion until August 4, 2020, the Motion is untimely.

To the extent Mr. Knochel also argues that Rule 60(d)(3) allows this Court to “set aside a judgment for fraud on the Court,” he has failed to demonstrate that he has standing to seek such relief. Indeed, the fact that Ms. Mihaylo has had a guardian appointed for her who “formally prohibits Mihaylo and Knochel’s contact” supports that Mr. Knochel is legally unable to act in Ms. Mihaylo’s interests. Further, the fact that Ms. Mihaylo was able to file, on her own, a motion challenging her guardian’s actions in Maricopa County Superior Court (see Doc.

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<sup>3</sup> To the extent Mr. Knochel argues that the limitations period was “tolled while the appeal was pending, or that the rule tolls from July 22, 2019, the date which Mihaylo contacted Knochel following her escape from her captors” (Doc. 14 at 12), his argument has no merit. Mr. Knochel cites no authority providing that the limitations period is tolled during the pendency of an appeal, see Fed.R.Civ.P. 60(c)(2), or until “contact” is initiated. Further, even assuming *arguendo* that the limitations period was tolled until either the Ninth Circuit’s Order dismissed his appeal or until Ms. Mihaylo allegedly contacted him— both of which occurred on July 22, 2019—the Motion would still be untimely because it was filed more than one year after that date.

14 at 23-25) suggests that she is able to pursue relief without Mr. Knochel's assistance. *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990). In short, for all of the reasons previously set forth in this Court's prior orders in this case, case number CV 18-08004-PCT-GMS (JZB), and case number CV 19-08137-PCT-GMS (JZB), Mr. Knochel has yet again failed to demonstrate that he is acting as Ms. Mihaylo's "next friend," and he thus continues to lack standing to make any filings on Ms. Mihaylo's behalf. Accordingly, Mr. Knochel's Rule 60 Motion will be denied.

### **III. Vexatious Litigant Warning and Order to Show Cause**

Both this Court and the Ninth Circuit have previously warned Mr. Knochel that a vexatious litigant order may be entered against him "if [he] persists in using this Court as what appears to be a vehicle to further his harassment of Ms. Mihaylo." (Doc. 11 at 6 in CV 19-08137-PCT-GMS (JZB)); see also (Doc. 9 at 1-2 in CV 19-08086-PCT-GMS (JZB)) (stating that "any continued attempts by James Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions or a vexatious litigant order.") Despite those warnings, Mr. Knochel remains undeterred in making such filings, and the Court thus notices its intent to now enter a vexatious litigant order against him.

Federal courts have the responsibility to ensure that their limited resources "are allocated in a way that promotes the interests of justice." *In re McDonald*, 489 U.S. 180, 184 (1989). "Flagrant abuse of the judicial process cannot be tolerated because it

enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.” *DeLong v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990); see also *O’Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990). District courts have the inherent power to act to ensure that the business of the Court is conducted in an orderly and reasonable fashion. See e.g. *Visser v. Supreme Court of the State of California*, 919 F.2d 113, 114 (9th Cir. 1990). This inherent authority includes the power to “regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances.” *DeLong v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990) (quoting *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989)).

Although the Court has the authority to enjoin abusive litigants from future access to the courts, that authority should be exercised only rarely. *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007); *DeLong*, 912 F.2d at 1147. Before imposing such an injunction, the Court must provide the abusive litigant with notice of the impending injunction and an opportunity to oppose it. *DeLong*, 912 F.2d at 1147. The Court must also furnish an adequate record for review—one that includes “a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed.” *Id.* The Court must make a substantive finding of “the frivolous or harassing nature of the litigant’s actions.” *Id.* at 1148 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988)). Litigiousness is not enough; the court must consider “both the number and content of the filings.” *Id.*



(quoting *In re Powell*, 851 F.2d at 431).

## **A. Need for an Injunction**

### **1. Filing History**

Mr. Knochel has filed three separate actions in this Court,<sup>4</sup> as well as two separate appeals to the Ninth Circuit.<sup>5</sup> This Court dismissed CV 18-08004-PCT-GMS (JZB) and CV 19-08086-PCT-GMS (JZB) for lack of standing, and dismissed CV 19-08137-PCTGMS (JZB) for lack of jurisdiction. The Ninth Circuit declined to issue a certificate of appealability in case number 19-16135, and dismissed case number 19-16261 as frivolous.

Although the volume of Mr. Knochel's filings is relatively low, and thus weighs against entry of a vexatious litigant order, this Court has repeatedly found that Mr. Knochel lacks standing to bring the filings at all, or that it lacks jurisdiction to consider them, and the Ninth Circuit has found that one of Mr. Knochel's appeals was frivolous. Accordingly, the Court thus finds that, on balance, Mr. Knochel's filing history weighs in favor of entry of a vexatious litigant order.

### **2. Harassing Nature of Mr. Knochel's Filings**

Although the volume of Mr. Knochel's filing history is relatively low, the nature of the filings supports that they are intended "to be a vehicle to further his harassment of Ms. Mihaylo." (Doc. 11 at 6 in case no.

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<sup>4</sup> CV 18-08004-PCT-GMS (JZB), CV 19-08086-PCT-GMS (JZB), and CV 19-08137-PCT-GMS (JZB).

<sup>5</sup> Ninth Circuit case no. 19-16135 (appealing CV 19-08086-PCT-GMS (JZB)), and Ninth Circuit case no. 19-16261 (appealing CV 19-08137-PCT-GMS (JZB)).

CV 19-08137-PCT-GMS (JZB)). This is evidenced by the following:

After initiating CV 18-08004-PCT-GMS (JZB), his first action in this court, Ms. Mihaylo filed a letter with the Court stating that

“[A]t no time did I file this claim and I would like it to be removed. I believe that my ex-boyfriend used my information to file this claim. The reason he filed this claim is unknown to me. Moving forward[,] I would like to have this case dismissed, thrown out, and terminated all together.”

(Doc. 8 in CV 18-08004-PCT-GMS (JZB)).

Similarly, in the instant case, Mr. Knochel has provided handwritten notes from Ms. Mihaylo in which she states that Mr. Knochel

has been writing letters to the Supreme Court [and] Federal Court to get me out of the treatment center I am paying to be at. He has called a filing called Next Friend saying I am not capable of making my own decisions. I have asked him to stop writing letters to the courts pertaining to me. He has showed up at ViewPoint after he has been asked to not come back. He has written letter to the Adult Probation Department also trying to get me off probation. I asked him to stop doing this.

(Doc. 14 at 22) (emphasis in original).

Ms. Mihaylo has also been directed by a Yavapai Mental Health Court to “block James [Knochel] from phone [contact],” and repeatedly ordered to “have no

contact with James Knochel.” (Doc. 2-1 at 8-11).

Ms. Mihaylo has also sought, and obtained, an Order of Protection against Mr. Knochel. (Doc. 1 at 9 in CV 19-08137-PCT-GMS (JZB)). The Petition for the Order of Protection, which is signed by Ms. Mihaylo, details multiple instances in which Mr. Knochel harassed Ms. Mihaylo, including by “show[ing] up at ViewPoint after he has been asked not to come back”; “writ[ing] letters to the Adult Probation Department [] trying to get [Ms. Mihaylo] off probation [and that she] asked [Mr. Knochel] to stop doing this”; “showing up at [a] mental health hearing after being asked by the probation department in months prior not to come back to mental health court,”; and showing up at the mental health court “for the third time, [being] escorted out of the court room” but not leaving the building, and then “harass[ing]” Ms. Mihaylo, an employee from her mental health facility, and a court employee “by taking pictures on his phone.” (Id. at 14-15). Ms. Mihaylo further states she “asked [Mr. Knochel] to stop writing letters to the courts pertaining to [her].” (Id.). The Order of Protection itself mandates that Mr. Knochel have no contact with Ms. Mihaylo. (Id. at 10).

Finally, Ms. Mihaylo has recently had a Guardian appointed to act on her behalf by Maricopa County Superior Court (Doc. 14 at 19-20), and Mr. Knochel himself states that this Guardian has “formally prohibit[ed] Mihaylo and Knochel’s contact.” (Id. at 6).

As such, despite Ms. Mihaylo’s written pleas that Mr. Knochel desist in both contacting her and

seeking judicial relief on her behalf, the Yavapai State Mental Health Court's numerous orders prohibiting Mr. Knochel from contacting Ms. Mihaylo, the entry of an Order of Protection against him obtained by Ms. Mihaylo, and the appointment of a Guardian for Ms. Mihaylo who has "formally prohibit[ed] Mihaylo and Knochel's contact," Mr. Knochel continues to attempt to act as Ms. Mihaylo's "next friend" in this Court and to pursue various forms of "relief" on her behalf. As such, the Court finds that the harassing nature of Mr. Knochel's filings strongly supports the entry of a vexatious litigant order against him.

#### **B. Type of Injunctive Order**

An order enjoining an abusive litigant from future access to the courts must be "narrowly tailored to closely fit the specific vice encountered." *DeLong*, 912 F.2d at 1148. Here, that vice is Mr. Knochel's continued harassment of Ms. Mihaylo. As such, the Court sees no basis to enjoin Mr. Knochel from filing any actions that do not relate to Ms. Mihaylo, thus preserving his access to the Court should he seek to file an action that does not relate to Ms. Mihaylo. Further, given Mr. Knochel's relative paucity of filings, the Court does not, at this time, find that a pre-filing monetary sanction is either warranted or sufficient to prevent Mr. Knochel's continued filings related to Ms. Mihaylo.<sup>6</sup> Accordingly, the Court's

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<sup>6</sup> The Court notes that two of the three actions Mr. Knochel has filed in this Court — CV 18-08004-PCT-GMS (JZB) and CV 19-08086-PCT-GMS (JZB) — were filed as habeas corpus actions, for which the filing fee is only \$5.00 and which Mr. Knochel paid in full at the time he initiated both cases. In the third case

intended vexatious litigant order will be limited to preventing Mr. Knochel's continued filings in the three cases he has already brought in this Court, and preventing him from filing any new cases in this Court related to Ms. Mihaylo.

### **C. Notice and Opportunity to Show Cause**

This Order serves as notice of the Court's intent to impose a vexatious litigant order against Mr. Knochel. The Court will permit Mr. Knochel an opportunity to show cause in writing why such an injunction should not be imposed. Mr. Knochel's response to this Order **MUST BE LIMITED TO THIS ISSUE** and must be filed within **30 DAYS** of the date this Order is filed.

If Mr. Knochel fails to timely respond to this Order or fails to persuade the Court that an injunction should not be imposed, the Court will enter a vexatious litigant injunction with the following terms:

1. James Joseph Knochel is prohibited from making any further filings in cases CV 18-08004-PCT-GMS (JZB), CV 19-08086-PCT-GMS (JZB), and CV 19-08137-PCT-GMS (JZB). If Mr. Knochel makes any further filings in these cases, the Court will not

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— CV 19-08137-PCT-GMS (JZB) — Mr. Knochel sought to proceed in forma pauperis, attesting that he had insufficient monies to pay the \$400 filing and administrative fees. Although in forma pauperis status is a privilege, not a right, it seems possible that, given Mr. Knochel's professed indigency, a pre-filing monetary sanction would effectively bar him from all access to the courts.

consider them, and the Clerk of Court will summarily strike them from the record.

2. If James Joseph Knochel attempts to file any new actions in this Court, he must include therewith a Declaration, signed under penalty of perjury, that the filing is not brought on behalf of, as "next friend" to, or in any way related to Emily Noelle Mihaylo. If Mr. Knochel fails to include the required Declaration, or if the Declaration indicates that the action is being brought on behalf of, as "next friend" to, or is otherwise related to Ms. Mihaylo, the Court will not consider the new action and will summarily dismiss the action for failure to comply with this Order.

**IT IS ORDERED:**

(1) Mr. Knochel's Affidavit (Doc. 12) is denied to the extent he seeks the recusal or removal of the undersigned pursuant to either 28 U.S.C. §§ 144 or 455.

(2) Mr. Knochel's Motion to Set Aside the Order of Dismissal and to Reinstate the Petition for a Writ of Habeas Corpus (Doc. 14) is **denied**.

(3) Mr. Knochel is **ORDERED TO SHOW CAUSE**, in writing, within 30 days of the date this Order is filed, why the injunction proposed in this Order should not be imposed. Plaintiff's response to this Order must be **limited to this issue**.

(4) If Mr. Knochel fails to timely respond to this Order or fails to persuade the Court that an injunction should not be imposed, the Court will



**Appendix E**  
United States Court of Appeals for the Ninth Circuit

July 22, 2019

JAMES JOSEPH KNOCHEL, Petitioner-Appellant,  
and  
EMILY NOELLE MIHAYLO, Petitioner,

v.

AMY FACKRELL; et al.,  
Respondents-Appellees.

No. 19-16135  
D.C. No. 3:19-cv-08086-GMS-JZB  
District of Arizona,  
Prescott

**ORDER**

Before: IKUTA and N.R. SMITH, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*,



529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Appellant's motions to file submissions under seal are denied, and the motions with attachments are instead stricken from the record (Docket Entry Nos. 2, 5). No further filings will be entertained in this case, and any continued attempts by James Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions or a vexatious litigant order. Any other pending motions are denied as moot.

DENIED.

## Appendix F

In the United States District Court  
for the District of Arizona

May 7, 2019

Emily Noelle Mihaylo, et al.,  
Petitioners,  
v.  
Shane Russell-Jenkins, et al.,  
Respondents.

No. CV 19-8086-PCT-GMS (JZB)

### ORDER

On January 11, 2018, James Joseph Knochel filed, as “next friend” of Petitioner Emily Noelle Mihaylo, a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, paid the filing fee, and sought a Temporary Restraining Order and “Ex-Parte Evidentiary Hearing,” as well as the appointment of counsel for Petitioner. In order to facilitate consideration of the documents, the Clerk of Court assigned the matter as case no. 18-08006-PCT-GMS (JZB). In the Petition, Mr. Knochel alleged that Petitioner had been ordered into treatment at a mental health facility, that she was being compulsorily medicated, and that the medications were making her condition worse, all in violation of the Constitution and laws of the State of Arizona. On January 24, 2018, Petitioner sent a letter to the Court — which the Clerk of Court docketed as a

Motion to Dismiss — stating that

“[A]t no time did I file this claim and I would like it to be removed. I believe that my ex-boyfriend used my information to file this claim. The reason he filed this claim is unknown to me. Moving forward[,] I would to have this case dismissed, thrown out, and terminated all together.”

On January 26, 2018, Mr. Knochel filed a “Response” to the Motion, suggesting that the Motion had not been written by Petitioner, or at least not by her “of her own free will,” and that the Motion otherwise is “evidence of [Petitioner’s] status as a vulnerable person, and as further justification for the necessity of appointed counsel for Mihaylo.”

By Order dated February 7, 2018, the Court found that Mr. Knochel had failed to demonstrate that Petitioner was unable to prosecute this action on her own, and that he thus did not have standing to sue as “next friend.” Accordingly, the Petition and this action were dismissed without prejudice for lack of jurisdiction. Judgment was entered the same day, and case no. 18-08006-PCT-GMS (JZB) was closed. Mr. Knochel thereafter filed several additional documents that either failed to request any relief, or were dismissed for lack of standing.

On March 25, 2019, Mr. Knochel filed, again as the

purported “next friend” of Petitioner, the instant pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 2), as well as a Motion to Seal the Petition (Doc. 1). Therein, Mr. Knochel again alleges that the January 24, 2018 letter in case no. 18-08006-PCT-GMS (JZB) was not sent by Petitioner, but was rather a fraudulent document sent by the administrators of Petitioner’s mental healthcare facility. Mr. Knochel also provides a letter, which he purports to have been handwritten by Petitioner, stating that “the letter that I signed was not written by me. I was pressured into signing it by ViewPoint staff.” (Doc. 2-1 at 1). Attached to the Petition are also numerous exhibits, including a November 29, 2018 Minute Entry in a Yavapai County Mental Health Court hearing noting that “Defendant [apparently referring to Petitioner] has been contacted by James. The Court notes to block James from phone...” (*Id.* at 8); a December 13, 2018 Minute Entry in the same Yavapai County Mental Health Court case ordering that “Defendant shall have no contact with James Knochel” (*id.* at 9); a December 13, 2018 “Comprehensive Mental Health Court Contract” in the same case that is signed by Petitioner and stipulates that Petitioner will have “no contact with James Knochel” (*id.* at 10); and a December 27, 2018 “Comprehensive Mental Health Court Contract” that is again signed by Petitioner and again stipulates that she will have “no contact with James Knochel” (*id.* at 11).

As the Court previously noted in its January 26, 2018 order in case no. 18-08006- PCT-GMS (JZB), under Article III, a federal court cannot consider the

merits of a legal claim unless the person seeking to invoke the jurisdiction of the court establishes the requisite standing to sue. *Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990). A litigant demonstrates standing by showing that she has suffered an injury in fact that is fairly traceable to the challenged action and is redressable by a favorable judicial decision. *Steel Company v. Citizens for a Better Environment*, 523 U.S. 83, \_\_\_, 118 S.Ct. 1003, 1017 (1998).

The Supreme Court recognized in *Whitmore* that a habeas petitioner may demonstrate standing as a “next friend.” 495 U.S. at 163. A next friend does not himself become a party to the habeas petition, “but simply pursues the cause on behalf of the detained person, who remains the real party in interest.” *Id.* The Court set out “at least two firmly rooted prerequisites to ‘next friend’ standing”:

First, a next friend must provide an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action. Second, the next friend must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate and it has been further suggested that a next friend must have some significant relationship with the real party in interest. The burden is on the next friend clearly to establish the propriety of his status and thereby justify the jurisdiction of the

court.

*Id.* at 163–64 (citations omitted).

Here, however, given the conflicting accounts between Petitioner’s submissions to the court, and the numerous no contact orders entered against Mr. Knochel on Petitioner’s behalf in Yavapai state court, Mr. Knochel has again failed to establish that he should be allowed to bring this action as Petitioner’s “next friend.” Accordingly, the Court will dismiss the Petition and this action without prejudice. If Petitioner wishes to bring her own habeas action in the future, she remains free to do so.

**IT IS ORDERED:**

(1) Mr. Knochel’s Motion to Seal Case (Doc. 1) is **denied**.

(2) The Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, currently lodged at Doc. 2, must be **filed** by the Clerk of Court. The filing shall **not** be under seal.

(3) The Petition for Habeas Corpus (Doc. 2) and this case are **dismissed without prejudice**. The Clerk of Court must enter judgment accordingly and close this case.

(4) Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, in the event Petitioner files an appeal, the Court declines to issue a certificate of

appealability because reasonable jurists would not find the Court's procedural ruling debatable. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Dated this 7th day of May, 2019.

/s/

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Honorable G. Murray Snow  
Chief United States District Judge

## Appendix G

In the United States District Court  
for the District of Arizona

February 7, 2018

Emily Noelle Mihaylo, et al.,  
Petitioners,  
v.  
Shane Russell-Jenkins, et al.,  
Respondents.

No. CV 18-08004-PCT-GMS (JZB)

### ORDER

On January 11, 2018, James Joseph Knochel filed, as “next friend” of Petitioner Emily Noelle Mihaylo, a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1), paid the filing fee, and sought a Temporary Restraining Order and “Ex Parte Evidentiary Hearing” (Doc. 2), as well as the appointment of counsel (Doc. 3). Mr. Knochel alleged that Petitioner had been ordered into treatment at a mental health facility, that she was being compulsorily medicated, and that the medications were making her condition worse but that she was being “brainwash[ed]... into thinking she’s benefiting from her treatment.” (Doc. 1 at 24)<sup>1</sup>. On

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<sup>1</sup> The Petition also alleges that Petitioner’s mental illness should be a bar to her recent conviction for the “strict liability offense” of drug possession (Doc. 1 at 26), that her bail was



January 24, 2018, Petitioner sent a letter (Doc. 8) to the Court — which the Clerk of Court has docketed as a Motion to Dismiss (Doc. 8) — stating that

“at no time did I file this claim and I would like it to be removed. I believe that my ex-boyfriend used my information to file this claim. The reason he filed this claim is unknown to me. Moving forward[,] I would like to have this case dismissed, thrown out, and terminated all together.”

On January 26, 2018, Mr. Knochel filed a “Response” to the Motion, suggesting that the Motion had not been written by Petitioner, or at least not by her “of her own free will,” and that the Motion otherwise is “evidence of [Petitioner’s] status as a vulnerable person, and as further justification for the necessity of appointed counsel for Mihaylo.” (Doc. 9).

Under Article III, a federal court cannot consider the merits of a legal claim unless the person seeking to invoke the jurisdiction of the court establishes the requisite standing to sue. *Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990). A litigant demonstrates standing by showing that she has suffered an injury in fact that is fairly traceable to the challenged action and is redressable by a favorable judicial decision. *Steel Company v. Citizens for a Better Environment*, 523 U.S. 83, \_\_\_, 118 S.Ct. 1003, 1017

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excessive (*Id.* at 27), and that her attorney provided ineffective assistance (*Id.* at 30).

(1998).

The Supreme Court recognized in *Whitmore* that a habeas petitioner may demonstrate standing as a “next friend.” 495 U.S. at 163. A next friend does not himself become a party to the habeas petition, “but simply pursues the cause on behalf of the detained person, who remains the real party in interest.” *Id.* The Court set out “at least two firmly rooted prerequisites to ‘next friend’ standing”:

First, a next friend must provide an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action. Second, the next friend must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate and it has been further suggested that a next friend must have some significant relationship with the real party in interest. The burden is on the next friend clearly to establish the propriety of his status and thereby justify the jurisdiction of the court.

*Id.* at 163–64 (citations omitted).

Given the conflicting accounts between Mr. Knochel’s filings and Petitioner’s Motion to Dismiss, Mr. Knochel has failed to establish that he should be allowed to bring this action as Petitioner’s “next friend.” That is, Mr. Knochel has not presented

sufficient evidence to support that Petitioner is unable to appear on her own behalf to prosecute this action; indeed, it appears that Petitioner is capable of appearing on her own behalf, as evidence by the Motion to Dismiss. *Whitmore*, 495 U.S. at 164–166; *Demosthenes v. Baal*, 495 U.S. 731, 736-37 (1990). Further, given that Petitioner herself has indicated that she has no interest in this action or, it seems, with Mr. Knochel, he has failed to clearly establish the propriety of his status *vis a vis* Petitioner so as to justify this Court's jurisdiction. Accordingly, the Court will dismiss the Petition and this action without prejudice. If Petitioner wishes to bring her own habeas action in the future, she remains free to do so.

**IT IS ORDERED:**

(1) The Petition for Habeas Corpus (Doc. 1) and this case are **dismissed without prejudice**. The Clerk of Court must enter judgment accordingly and close this case.

(2) The “Motion for Ex-Parte Evidentiary Hearing in Support of ‘Next Friend,’ and for a Temporary Restraining Order” (Doc. 2), Motion for Appointment of Counsel (Doc. 3) and Motion to Dismiss Case (Doc. 8) are **denied as moot**.

(3) Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, in the event Petitioner files an appeal, the Court declines to issue a certificate of appealability because reasonable jurists would not find the Court's procedural ruling debatable. *See*

