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Attachment A

Clerk of the Superior Court
*** Electronically Filed ***
04/07/2021 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB 2019-002031

04/05/2021

HONORABLE BRIAN J. PALMER

CLERK OF THE COURT
R. Smith
Deputy

IN THE MATTER OF THE GUARDIANSHIP
OF AND CONSERVATORSHIP FOR:

EMILY N MIHAYLO

RICK KILFOY

AN ADULT.

JAMES KNOCHEL
P.O. BOX 3499
PRESCOTT VALLEY AZ 86302
SARAH N MIHAYLO
1615 S 52ND ST
TEMPE AZ 85281
STEVEN G MIHAYLO
1615 S 52ND ST
TEMPE AZ 85281
PAUL J THEUT
CHARLES M DYER

COMM. PALMER

MINUTE ENTRY

The Court has considered Compass Fiduciary Group, LLC (“Compass,” or “Guardian and Conservator”)’s *Response to Petition for Termination of Guardianship/Conservatorship and/or Discharge of Guardian/Conservator of an Adult and Counter-Petition for Protective Orders Against James J. Knochel* (“Petition for Protective Orders”) filed on January 27, 2021, Mr. Knochel’s *Reply on Petition to Discharge Guardian and Response to Counter-Petition for Protective Order* (“Reply to Petition for Protective Orders”) filed on February 16, 2021, *Guardian and Conservator’s Reply to Response to Counter-Petition for Protective Orders Against James J. Knochel* (“Reply in Support of Petition for Protective Orders”) filed on March

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25, 2021, the arguments and evidence presented at an evidentiary hearing held on April 1, 2021 on the Petition for Protective Orders, and, where necessary, the filings in this case.¹

After considering the above:

IT IS ORDERED granting the Petition for Protective Orders in part, and ordering that, effective as of the date of this minute entry, (1) James J. Knochel obtain this Court's permission to file future pleadings and other filings in the Maricopa Superior Court case number PB2019-002031, (2) no party is required to respond to James J. Knochel's future filings until ordered to do so, (3) no response to James J. Knochel's future requests for information is required by any party in this matter, unless later ordered by the Court and (4) James J. Knochel shall be prohibited from having any contact with Emily N. Mihaylo ("Protected Person") in person, by phone, or through any means of written communication (including without limitation emails, letters and texts) and that the Order shall be enforceable by law enforcement as an Order of Protection. Counsel for the Guardian and Conservator shall lodge a form of Protective Order for the Court's signature consistent with this minute entry ruling on or before **April 12, 2021**.

IT IS FURTHER ORDERED denying the Petition for Protective Orders in part, and declining to award the Protected Person's conservatorship Estate attorney fees and costs at this time. However, the Court will strongly reconsider awarding the Protected Person's conservatorship Estate attorney fees and costs if it is later determined that Mr. Knochel violates the terms of the Protective Order.

¹ The Court takes judicial notice of the filings in this case pursuant to Ariz. R. Evid. 201. The Court additionally takes judicial notice of the filings, rulings, orders and judgments in other proceedings pertinent to this case. *See, e.g., Scott v. Kemp*, 248 Ariz. 380, 386, ¶ 8, 460 P.3d 1264, 1269 (Ariz. App. 2020) (holding that it was proper to take judicial notice of filings in related cases); *Steinaker v. Southwest Airlines, Co.*, 472 F. Supp. 3d 540, 548 (D. Ariz. 2020) ("Public records, including judgments and other court documents, are proper subjects of judicial notice"); *United States v. Estrada*, 349 F. Supp. 3d 830, 834 ("A court may take judicial notice of documents on file in federal or state courts"); *Haroutunian v. Valueoptions, Inc.*, 218 Ariz. 541, ¶ 18, n. 8, 189 P.3d 1114, 1121 n. 8 (Ariz. App. 2008) ("It is appropriate to look to federal courts' interpretations of federal rules that mirror Arizona rules.").

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BACKGROUND

I. The Protected Person.

The Protected Person has a long history of documented mental health issues, drug dependency and alcohol addiction. She was placed under Court-ordered treatment on numerous occasions, and has been found to be both “persistently or acutely disabled” and “gravely disabled” by the Courts. The Protected Person has also been arrested on multiple occasions for drug and alcohol-related offenses.

On November 18, 2019, Compass was appointed Temporary Guardian and Conservator for the Protected Person. On February 18, 2020, Compass was appointed permanent Guardian and Conservator for the Protected Person. In so appointing, the Court found by clear and convincing evidence that the Protected Person was incapacitated pursuant to A.R.S. § 14-5101(1). The Protected Person did not object to the appointment at that time. *See* February 18, 2020 Minute Entry (Doc. 53).

II. Mr. Knochel’s relationship with the Protected Person.

Mr. Knochel is not a member of the Protected Person’s family, nor has he ever been appointed a power of attorney for the Protected Person. Mr. Knochel testified that he has no degrees, certifications, licenses, expertise or training in the medical, psychological, or addiction treatment fields. He is not a licensed attorney and does not hold a law degree.

Mr. Knochel met the Protected Person on March 10, 2015. Mr. Knochel was at one point engaged in a romantic relationship with the Protected Person, and the Protected Person has resided with Mr. Knochel and/or been under his care at various times. Mr. Knochel testified that the Protected Person does not appreciate how incapacitated she is and that she needs help advocating for herself. Mr. Knochel additionally testified that the Protected Person has very little insight into her problems, and that she is very vulnerable.

Despite the Protected Person’s documented history of mental illness and substance abuse, and her adjudicated incapacity, Mr. Knochel believes the treatment and care the Protected Person has received and is receiving is inappropriate and not in the Protected Person’s best interest. Mr. Knochel testified that he discussed his opinions about the Protected Person’s care treatment with her and makes it known to her that he disagrees with such care and treatment.

Although Mr. Knochel testified that he objects to the Protected Person’s consumption of drugs and alcohol, he admits that the Protected Person as consumed drugs and alcohol in his presence. He testified that on February 13, 2016, he witnessed her overdose on heroin. He additionally testified that he has offered to provide hard apple cider to the Protected Person while

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she was under his care as an alternative to the consumption of hard liquor. Mr. Knochel additionally offered into evidence a video depicting him using hard liquor in the presence of the Protected Person to cook a sauce for donuts he and the Protected Person were making. Petitioner's Ex. 17.

Mr. Knochel has been the subject of numerous no contact orders with respect to the Protected Person in the Yavapai County Superior Court. *See, e.g.*, Respondent's Ex. 6, p. 2:20-28. Additionally, on April 4, 2019, the Protected Person obtained an Order of Protection against Mr. Knochel prohibiting Mr. Knochel from contacting the Protected Person. Petitioner's Ex. 16. The Petition for the Order of Protection, signed by the Protected Person, states as follows:

March 5, 19 [Mr. Knochel] showed up at Mental Health hearing after being asked by the Probation department in months prior not to come back to mental health court. There is currently a no contact order from Mental Health Court placed on me, Emily Mihaylo, toward James Knochel.

April 2, 19 James Knochel shows up at Mental Health Court for the 3rd time; is escorted out of the court room, doesn't leave. Then harassed myself, my house manager from View Point, and one officer of the courts by taking pictures on his phone.

I am currently a client at View Point treatment center. He has been writing letters to the Supreme Court, & 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 court pertaining to me.

He has showed up at View Point after he has been asked to not come back.

He has written [sic] letter to the Adult Probation Department also trying to get me off of probation. I asked him to stop doing this.

Respondent's Ex. 1, pp. 2-3.

Mr. Knochel is aware that Compass had been appointed Guardian and Conservator for the Protected Person. There is evidence that was presented at the April 1, 2021 evidentiary hearing that from December 2019 through November 2020, the Protected Person was sober, except for the possibility of one relapse. In November 2020, the Protected Person left the facility where she was staying and where she had been for the most part maintaining her sobriety. She contacted Mr. Knochel and he picked her up at a restaurant. Mr. Knochel made no immediate

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efforts to contact the Guardian and Conservator after he picked her up, testifying that would have been a “bad move.” The Protected Person was under Mr. Knochel’s care for approximately ten days before eventually returning the Protected Person. The Protected Person has subsequently tested positive for various drugs.

The Protected Person has expressed a desire to continue to maintain contact with Mr. Knochel. The Guardian and Conservator, however, asserts that it would not be in Protected Person’s best interest to continue such contact, because Mr. Knochel does not believe that the Protected Person has the underlying mental health issues with which she has previously been diagnosed, and Mr. Knochel would thus be unsupportive in getting the Protected Person the help that she needs. The Guardian and Conservator testified that it is additionally concerned that the Protected Person has on numerous occasions abused drugs and alcohol in Mr. Knochel’s presence.

III. Mr. Knochel’s various filings in numerous courts on behalf of the Protected Person.

In addition to the proceeding Mr. Knochel has initiated in this case, over the course of several years, Mr. Knochel has made numerous filings on behalf of the Protected Person—which he alleges is with the Protected Person’s permission and sometime cooperation—challenging her care and treatment in Superior Court², the Arizona Court of Appeals,³ the Arizona Supreme Court⁴, the Arizona Federal District Court⁵, and the Federal Court of Appeals for the Ninth Circuit.⁶ *See, e.g.*, Respondent’s Ex. 4-6, 9-12. Mr. Knochel admits that almost all of his

² In the Yavapai Superior Court, Mr. Knochel filed three “next-friend” Petitions for Writ of Habeas Corpus on the Protected Person’s behalf in CV2016-00447, all of which were dismissed without prejudice.

³ Mr. Knochel appealed the denial of his third Petition for Writ of Habeas Corpus to the Arizona Court of Appeals, which was dismissed for lack of jurisdiction. *See* No 1 CA-HC 17-0001 (Ariz. App. Jul. 11, 2017).

⁴ Mr. Knochel appealed the dismissal of his third Petition for Writ of Habeas Corpus to the Arizona Supreme Court. The Arizona Supreme Court declined to review the appeal.

⁵ In the Arizona Federal District Court, Mr. Knochel filed three separate actions in connection with the Protected Person: CV 18-08004-PCT-GMS (JZB) (dismissed for lack of standing), CV 19-08086-PCT-GMS (JZB) (dismissed for lack of standing) and CV-19-08137-PCT-GMS (JZB) (dismissed for lack of jurisdiction).

⁶ In the United States Court of Appeals, Ninth Circuit, Mr. Knochel has filed at least two appeals: 19-16135 (declining to issue a certificate of appealability) and 19-16261 (dismissed as frivolous). Additionally, on November 17, 2020, Mr. Knochel filed a Petition for Extraordinary Writ, case no. 20-73382, purportedly co-signed by the Protected Person.

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requests for relief have been dismissed. Mr. Knochel has also stated that he has made numerous complaints to various government organizations, including the U.S. Attorney for Arizona, the FBI, and the U.S. Department of Justice. Respondent's Ex. 10, p. 6.

Of note, on July 22, 2019, the United States Court of Appeals for the Ninth Circuit denied one of his appeals and stated that "[n]o 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." Respondent's Ex. 11.

Also of note, on October 24, 2019, the United States Court of Appeals for the Ninth Circuit again denied one of Mr. Knochel's appeals, deeming it "frivolous." Respondent's Ex. 12.

Finally, on November 13, 2020, the United States District Court entered a vexatious litigant order prohibiting Mr. Knochel from further filings in certain cases, and prohibiting him from filing any new actions in Federal Court on behalf of or in any way related to the Protected Person. Respondent's Ex. 6.

The is evidence in the record reflects that contrary to Mr. Knochel's assertions, the Protected Person has not always assented to his filings on her behalf. In addition to the April 4, 2019, Petition for Protective Order, discussed above, in his Response to Petition for Protective Orders, Mr. Knochel admits that the Protected Person contacted him on February 13, 2021, upset that Mr. Knochel's Petition for Termination of Guardian/Conservatorship and/or Discharge of Guardian/Conservator of an Adult ("Petition for Termination"), filed in this case, was going to cost her a substantial amount in attorney's fees, and that the Protected Person "ask[ed] JAMES to drop this petition, but doing so would allow the spurious statements [of the Guardian and Conservator] to go unchallenged..." See Response to Petition for Protective Orders, (Doc. 106), ¶¶ 3-4.

And, in Federal District Court case no. CV 19-08086-(GMS (JZB), the Protected Person filed a letter on January 24, 2018 in which she stated 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.

Respondent's Ex. 7. Mr. Knochel submitted another, hand-written letter into evidence submitted in the same federal case purportedly written by the Protected Person stating that she was "pressured into signing" the letter filed on January 24, 2018, and that the letter "was not written

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by me.” Respondent’s Ex. 8. Notably, however, the hand-written letter did not retract the Protected Person’s objection to Mr. Knochel’s filing.

IV. Proceedings in this case.

On July 10, 2020, the Protected Person, on her own behalf, submitted a Motion for Status Hearing, in which she voiced various concerns related to the Guardian and Conservator.

On December 4, 2020, Mr. Knochel filed a Petition for Termination of Guardian/Conservatorship and/or Discharge of Guardian/Conservator of an Adult (“Petition for Termination”). The Guardian and Conservator and the Protected Person’s Statutory Representative objected to the Petition for Termination.

On December 14, 2020, the Protected Person, on her on behalf, submitted a Letter of Ward Requesting New Guardian Pursuant to A.R.S. 14-5307(B), in which she voiced additional complaints directed to the Guardian and Conservator and requested that Sam Ricketts be appointed as a successor guardian and conservator.

On January 27, 2021, the Guardian and Conservator filed the Petition for Protective Orders, in which the Guardian and Conservator alleges that (1) Mr. Knochel has a history of vexatious litigation that has negatively affected the Protected Person, (2) Mr. Knochel has a history of interfering with the Protected Person’s mental health treatment and sobriety and (3) there have been multiple prior protective orders entered against Mr. Knochel in connection with the Protected Person. Based on these allegations, the Guardian and Conservator requests that the Court order that (1) Mr. Knochel obtain this Court’s permission to file future pleadings and other filings in the Maricopa Superior Court in this case, (2) no party be required to respond to Mr. Knochel’s future filings until ordered to do so, (3) no response to Mr. Knochel’s future requests for information is required by any party in this matter, unless later ordered by the Court, (4) Mr. Knochel shall be prohibited from having any contact with the Protected Person in person, by phone, or through any means of written communication (including without limitation emails, letters and texts) and that the Order shall be enforceable by law enforcement as an Order of Protection and (5) Mr. Knochel to pay the Guardian and Conservator’s reasonable attorney fees and costs incurred in responding to the Petition for Termination and the Petition for Protective Orders.

In this case, Mr. Knochel has also filed a Motion to Produce Evidence on Petition to Discharge Guardian, Motion for Summary Judgment on Petition to Discharge Guardian (both filed on February 16, 2021), and an Ex-Parte Motion to Continue and Consolidate on Counter-Petition for Protective Orders Against James J. Knochel (filed on March 26, 2021). He has

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admitted that he will appeal this Court's order it grants the Guardian and Conservator's Petition for Protective Orders.

On February 16, 2021, Mr. Knochel filed his Reply to Petition for Protective Orders, objecting to the relief requested.

At the March 15, 2021 hearing, the Protected Person, through her Court-Appointed Counsel, objected to the Petition for Protective Orders. Court-appointed Counsel additionally stated that the Protected Person has changed positions at various times with respect to whether she would want Compass to continue as her Guardian and Conservator. Court-appointed Counsel furthermore stated that he, along with the Protected Person's Statutory Representative, are on the process of exploring options to address the Protected Person's concerns with respect to her current Guardian and Conservator.

DISCUSSION

I. The Court concludes that a Protective Order precluding contact between the Protected Person and Mr. Knochel is warranted.

The Court has jurisdiction over all subject matter relating to the "protection of minors and incapacitated persons" and has the power to "make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters that come before it..." A.R.S. § 14-1302(A)(2), (B). A guardian is furthermore authorized to "limit, restrict, or prohibit contact between the ward and any person if the guardian reasonably believes that the contact will be detrimental to the ward's health, safety or welfare." A.R.S. § 14-5613.

As noted above, the Protected Person was adjudicated as incapacitated pursuant to A.R.S. § 14-5101(1). She is thus a vulnerable adult pursuant to A.R.S. § 46-451(10) (defining vulnerable adult to mean "an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment. Vulnerable adult includes an incapacitated person as defined in § 14-5101."). An "incapacitated person cannot make informed decisions." See *Davis v. Zlatos*, 211 Ariz. 519, 525, ¶ 23, 123 P.3d 1156, 1162 (Ariz. App. 2005). "A vulnerable person... is unable to protect herself against being abused, neglected or exploited." *Davis*, 211 Ariz. at 525, ¶ 23, 123 P.3d at 1162.

Indeed, Mr. Knochel himself admits that the Protected Person does not appreciate how incapacitated she is, that she needs help advocating for herself, that the Protected Person has very little insight into her problems and that she is very vulnerable. It is also undisputed that the

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Protected Person has been diagnosed by health professionals with various mental disorders and that she has a long history of substance abuse.

Given the Protected Person's history of mental illness and substance abuse, her adjudicated incapacity, and her status as a vulnerable adult, the Court finds that the Protected Person is particularly susceptible to Mr. Knochel's influence over her pertaining to her care and treatment, her ability to deal with her mental illness and substance abuse and her opinion with respect to her court cases. The record establishes that Mr. Knochel has strongly disagreed for years with the course of the Protected Person's care and treatment, and he has discussed his disagreement with the Protected Person. The Court concludes that Mr. Knochel's actions in this regard threaten to impede the Protected Person's ability to improve her condition, especially given her vulnerable state.

Additionally, the record establishes numerous instances in which the Protected Person consumed alcohol and other drugs in Mr. Knochel's presence and under his care. In one such instance, the Protected Person overdosed on heroin. Furthermore, Mr. Knochel admitted that he offered to purchase alcohol for the Protected Person despite his admitted knowledge of the Protected Person's history of substance abuse. Furthermore, Mr. Knochel brandished a bottle of hard liquor in her presence while he and the Protected Person were cooking. Permitting the Protected Person to consume alcohol and drugs, and permitting them in her presence, constituted actions detrimental to the Protected Person's well-being, her ability to combat her substance abuse problem and her will to confront her underlying mental illness.

It is clear that the Protected Person has ongoing issues with respect to her current Guardian and Conservator. But it is apparent to the Court that at least to some extent, these issues are exacerbated by her continuing contact with Mr. Knochel.

The Court also acknowledges that the Protected Person's position through her Court-appointed Counsel is that she should continue to be able to contact Mr. Knochel. The Court is loathe to deny the Protected Person's wishes in this regard.

Nonetheless, based on the entire record before it, the Court concludes that Mr. Knochel's continuing contact with the Protected Person at this time is detrimental to the Protected Person's health, safety and welfare, will interfere with her ability to comply with her treatment and recovery, and that it is in the best interests of the Protected Person to grant the requested Order of Protection prohibiting Mr. Knochel from contacting the Protected Person, as more fully set forth above.

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II. The Court concludes that a Protective Order regarding Mr. Knochel's filings in this case pursuant to Ariz. R. Prob. P. 35 is warranted.

The Court is empowered to regulate filings in probate matters. Specifically, "if the court finds that a person has engaged in repetitive filings or vexatious conduct, the court may... (1) require the person to obtain the court's permission to file future pleadings and other papers in the probate case or in other cases, and, if the court enters such an order, no party is required to respond to the person's future filings until ordered to do so [and] (2) order that no response to the person's future requests for information is required, unless a later order requires it." Ariz. R. Prob. P. 35(c)(1), (2). The Court may additionally "order any other remedy provided by law." *Id.* (c)(3). For the purposes of this rule, "vexatious conduct means habitual, repetitive conduct undertaken solely or primarily to harass or injure another party or that party's representative, cause unreasonable delay in proceedings, cause undue harm to the ward or protected person, or cause unnecessary expense. It does not include conduct undertaken in good faith." *Id.* (a)(2).

Additionally, Arizona courts possess inherent authority to curtail a vexatious litigant's ability to initiate additional lawsuits. See *Acker v. CSO Chevira*, 188 Ariz. 252, 254, 934 P.2d 816, 818 (Ariz. App. 1997) (defining a court's inherent authority as "such powers as are necessary to the ordinary and efficient exercise of jurisdiction"); *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990) (recognizing strong precedent establishing inherent authority of courts "to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances") (citation omitted). Because access to courts is a fundamental right, however, such orders must be entered sparingly and appropriately. See *DeVries v. State*, 219 Ariz. 314, 321-22, ¶¶ 22-23, 198 P.3d 580, 587-88 (Ariz. App. 2008); *De Long*, 912 F.2d at 1147 (noting courts should rarely enter vexatious litigant orders, which serve as exceptions to the general rule of free access to courts).

Before ordering pre-filing restrictions, a court should observe the following principles: (1) to satisfy due process, the litigant must be afforded notice and an opportunity to oppose the order, (2) the court must create an adequate record for appellate review that includes a listing of the cases and motions leading the court to enter the order, (3) the court must make substantive findings as to the frivolous or harassing nature of the litigant's actions, and (4) the order must be narrowly tailored to closely fit the specific vice encountered. *Madison v. Groseth*, 230 Ariz. 8, 14, ¶ 18, 279 P.3d 633, 639 (Ariz. App. 2012) (citation omitted).

Among the additional facts a court can consider are the litigant's history of litigation and the nature of prior lawsuits, whether the litigant has caused needless expense to others or unduly burdened the court, and whether different sanctions would adequately protect other parties and the court. *Madison*, 230 Ariz. at 14, ¶ 18, 279 P.3d at 639.

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Mr. Knochel has been provided notice and an opportunity to oppose the order. He has made filings opposing the requested order, and participated in a half-day evidentiary hearing on the Guardian and Conservator's Petition for Protective Orders.

As discussed and listed above, Mr. Knochel has made numerous filings in various courts on behalf of the Protected Person challenging her treatment and care, almost all of which have been dismissed as meritless. He has been declared a vexatious litigant by the Arizona Federal District Court, and the United States Court of Appeals for the Ninth Circuit has threatened to do the same in dismissing one of his appeals. In this proceeding alone, since December 4, 2020, and not including his Petition for Termination and related responses and replies, Mr. Knochel has filed a Motion to Produce Evidence on Petition to Discharge Guardian, Motion for Summary Judgment on Petition to Discharge Guardian, and an Ex-Parte Motion to Continue and Consolidate on Counter-Petition for Protective Orders Against James J. Knochel.

The Court finds that Mr. Knochel's filings are habitual and repetitive. Their sole general purpose is to object to and oppose the Protected Person's current care and treatment.

The Court additionally finds that the filings harass and injure the Protected Person. As noted above, the Protected Person is an incapacitated, vulnerable adult who is particularly susceptible to the influence of Mr. Knochel, who is a long-time friend and one-time boyfriend. At various times, the Protected Person has voiced her objection to Mr. Knochel continuing to make filings on her behalf, an objection that Mr. Knochel has ignored.

The Court furthermore finds that Mr. Knochel's filings have caused unreasonable delay in this guardianship and conservatorship case, the purposes of which are to provide for the Protected Person's well-being and shepherd her assets, and will undoubtedly continue to do so if the Court declines to enter the requested Protective Order. The Protected Person, the Guardian and Conservator, Court-appointed counsel, and the Statutory Representative have all had to divert time and resources from these purposes to deal with Mr. Knochel's filings here.

Relatedly, the Court finds that Mr. Knochel's filings in this case have caused unnecessary expense, and will undoubtedly continue to do so if the Court declines to enter the requested Protective Order, given his filing history. Mr. Knochel seems to have no appreciation for the fact that every time he files something, it causes attorney fees and costs to be expended from Protected Person's estate. While Mr. Knochel believes the Protected Person has "a large estate," this is no excuse for continuing to challenge the Protected Person's treatment and care, especially where courts have repeatedly dismissed such attempts and the Protected Person herself has at times objected to these challenges.

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The Court concludes that the requested relief, which pertains only to this case, is narrowly tailored, and that no other sanctions would adequately protect the Protected Person and the parties at this time.

Finally, the Court concludes that Mr. Knochel's conduct in repeatedly challenging the treatment and care of the Protected Person are not made in good faith. While Mr. Knochel admits he has no expertise regarding the Protected Person's care and treatment, is not a licensed attorney and has no law degree, he persists in the belief that his opinion is superior to the medical professionals, attorneys and professional fiduciaries responsible for the Protected Person's well-being, estate, diagnoses, care and treatment. And again, Mr. Knochel persists in continuing to make his filings when they have repeatedly been denied, with the knowledge that his actions are contributing to the depletion of the Protected Person's assets and despite the Protected Person's past objections.

At this time, the Court determines that it is in the best interest of the Protected Person to enter the requested Protective Order.

Based on the entire record before it, the Court concludes that Mr. Knochel has engaged in vexatious conduct pursuant to Ariz. R. Prob. P. 35, and that an order prohibiting him from making any further filings in this case is appropriate, as more fully set forth above.

Attachment B

4/15/2021 10:57am
FILED
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9
10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11 IN AND FOR THE COUNTY OF MARICOPA

12
13 In the Matter of the Guardianship and
Conservatorship for:

Case No.: PB 2019-002031

**ORDER ENTERING PROTECTIVE
ORDERS AGAINST JAMES J.
KNOCHEL**

14
15
16 **EMILY N. MIHAYLO,**

**(Enforceable by law enforcement as an
Order of Protection)**

17
18 An Adult.

(Assigned to the Hon. Brian Palmer)

19
20 The Court having considered the *Response to Petition for Termination of*
21 *Guardianship/Conservatorship and/or Discharge of Guardian/Conservator of an Adult*
22 *and Counter-Petition for Protective Orders Against James J. Knochel* ("Petition for
23 Protective Orders") filed by COMPASS FIDUCIARY GROUP, LLC ("COMPASS") on
24 January 27, 2021, JAMES J. KNOCHEL's *Reply on Petition to Discharge Guardian and*
25 *Response to Counter-Petition for Protective Orders* filed on February 16, 2021,
26 COMPASS' *Reply to Response to Counter-Petition for Protective Orders Against James*
27 *J. Knochel* filed on March 25, 2021, the arguments and evidence presented at an evidentiary
28 hearing held on April 1, 2021 on the Petition for Protective Orders, and, where necessary,

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1 the filings in this case, and consistent with this Court's Minute Entry Ruling dated April 5,
2 2021, with good cause appearing;

3 **THE COURT HEREBY FINDS AS FOLLOWS:**

4 1. The Court has jurisdiction over the parties and subject matter pursuant to
5 A.R.S. § 14-1302(A)(2) and (B).

6 2. JAMES J. KNOCHEL filed a *Response to Counter-Petition for Protective*
7 *Orders* opposing the Petition for Protective Order, received actual notice of the Hearing
8 held on April 1, 2021, and did participate in that Hearing.

9 3. The Protected Person, EMILY N. MIHAYLO ("Protected Person") was
10 previously adjudicated as incapacitated pursuant to A.R.S. § 14-5101(3), and COMPASS
11 is her Guardian and Conservator.

12 4. The Protected Person is also a vulnerable adult pursuant to A.R.S. § 46-
13 451(A)(10).

14 5. As Guardian for the Protected Person, COMPASS is authorized pursuant to
15 A.R.S. § 14-5316 to "limit, restrict, or prohibit contact between the ward and any person if
16 the guardian reasonably believes that the contact will be detrimental to the ward's health,
17 safety or welfare."

18 6. JAMES J. KNOCHEL was at one point engaged in a romantic relationship
19 with the Protected Person, and the Protected Person has resided with JAMES J. KNOCHEL
20 and/or been under his care at various times.

21 7. The Protected Person is particularly susceptible to JAMES J. KNOCHEL's
22 influence over her pertaining to her care and treatment, her ability to deal with her mental
23 illness and substance abuse, and her opinion with respect to her court cases.

24 8. JAMES J. KNOCHEL has strongly disagreed for years with the course of the
25 Protected Person's care and treatment, and he has discussed his disagreement with the
26 Protected Person. JAMES J. KNOCHEL's actions in this regard threaten to impede the
27 Protected Person's ability to improve her condition, especially given her vulnerable state.

28 ///

1 9. There have been numerous instances in which the Protected Person
2 consumed alcohol and other drugs in JAMES J. KNOCHEL's presence and under his care.

3 10. JAMES J. KNOCHEL permitting the Protected Person to consume alcohol
4 and drugs, and permitting them in her presence, constituted actions detrimental to the
5 Protected Person's well-being, her ability to combat her substance abuse problem, and her
6 will to confront her underlying mental illness.

7 11. JAMES J. KNOCHEL's continuing contact with the Protected Person at this
8 time is detrimental to the Protected Person's health, safety and welfare, will interfere with
9 her ability to comply with her treatment and recovery, and it is in the best interests of the
10 Protected Person to grant the requested Order of Protection prohibiting JAMES J.
11 KNOCHEL from contacting the Protected Person.

12 12. In addition to the proceeding JAMES J. KNOCHEL initiated in this case,
13 over the course of several years, JAMES J. KNOCHEL has made numerous filings on
14 behalf of the Protected Person—which he alleges are with the Protected Person's
15 permission and sometimes cooperation—challenging her care and treatment in the Superior
16 Court, the Arizona Court of Appeals, the Arizona Supreme Court, the Arizona Federal
17 District Court, and the Federal Court of Appeals for the Ninth Circuit, almost all of which
18 have been dismissed as meritless.

19 13. JAMES J. KNOCHEL has been declared a vexatious litigant by the Arizona
20 Federal District Court, and the United States Court of Appeals for the Ninth Circuit has
21 threatened to do the same in dismissing one of his appeals.

22 14. In this proceeding alone, since December 4, 2020, and not including his
23 *Petition for Termination* and related responses and replies, JAMES J. KNOCHEL has filed
24 a *Motion to Produce Evidence on Petition to Discharge Guardian*, *Motion for Summary*
25 *Judgment on Petition to Discharge Guardian*, and an *Ex-Parte Motion to Continue and*
26 *Consolidate on Counter-Petition for Protective Orders Against James J. Knochel*.

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28 ///

1 15. JAMES J. KNOCHEL's court filings are habitual and repetitive and their
2 sole general purpose is to object to and oppose the Protected Person's current care and
3 treatment.

4 16. JAMES J. KNOCHEL's filings harass and injure the Protected Person. The
5 Protected Person is an incapacitated, vulnerable adult who is particularly susceptible to the
6 influence of JAMES J. KNOCHEL, who is a long-time friend and one-time boyfriend. At
7 various times, the Protected Person has voiced her objection to JAMES J. KNOCHEL
8 continuing to make filings on her behalf, an objection that JAMES J. KNOCHEL has
9 ignored.

10 17. JAMES J. KNOCHEL's court filings have caused unreasonable delay in this
11 guardianship and conservatorship case, the purposes of which are to provide for the
12 Protected Person's well-being and shepherd her assets, and he will undoubtedly continue
13 to do so if the Court declines to enter the requested Protective Order. The Protected Person,
14 the Guardian and Conservator, Court-Appointed Counsel, and the Statutory Representative
15 have all had to divert time and resources from these purposes to deal with JAMES J.
16 KNOCHEL's filings.

17 18. JAMES J. KNOCHEL's filings in this case have caused unnecessary expense
18 and will undoubtedly continue to do so if the Court declines to enter the requested
19 Protective Order, given his filing history.

20 19. The requested relief is narrowly tailored and no other sanctions than those
21 set forth below would adequately protect the Protected Person and the parties at this time.

22 20. JAMES J. KNOCHEL's conduct in repeatedly challenging the treatment and
23 care of the Protected Person is not made in good faith. While JAMES J. KNOCHEL admits
24 he has no expertise regarding the Protected Person's care and treatment, is not a licensed
25 attorney and has no law degree, he persists in the belief that his opinion is superior to the
26 medical professionals, attorneys, and professional fiduciaries responsible for the Protected
27 Person's wellbeing, estate, diagnoses, care, and treatment. And again, JAMES J.
28 KNOCHEL persists in continuing to make his filings when they have repeatedly been

1 denied, with the knowledge that his actions are contributing to the depletion of the
2 Protected Person's assets and despite the Protected Person's past objections.

3 21. It is in the best interest of the Protected Person to enter the requested
4 Protective Order.

5 22. JAMES J. KNOCHEL has engaged in vexatious conduct pursuant to Ariz.
6 R. Prob. P. 35 and an Order prohibiting him from making any further filings in this case is
7 appropriate.

8 23. Compass Fiduciary has met its burden of proving by a preponderance of the
9 evidence that a Protective Order precluding contact between the Protected Person and
10 JAMES J. KNOCHEL is warranted.

11 24. Compass Fiduciary has met its burden of proving by a preponderance of the
12 evidence that a Protective Order regarding James J. Knochel's filings in this case pursuant
13 to Ariz. R. Prob. P. 35 is warranted.

14 **IT IS HEREBY ORDERED** granting the *Petition for Protective Orders*, effective
15 as of April 5, 2021, as follows:

16 A. JAMES J. KNOCHEL (DOB: May 20, 1981) shall have no contact with
17 EMILY N. MIHAYLO in person, by phone, or through any means of written
18 communication (including without limitation emails, letters, and texts).

19 **B. This No Contact Order shall be enforceable by law enforcement as an**
20 **Order of Protection and shall remain in effect until further Order of this Court.**

21 C. JAMES J. KNOCHEL shall obtain this Court's permission to file future
22 pleadings and other filings in Maricopa County Superior Court case number PB2019-
23 002031.

24 D. No party in this matter is required to respond to JAMES J. KNOCHEL's
25 future filings until ordered to do so by this Court.

26 E. No response to JAMES J. KNOCHEL's future requests for information is
27 required by any party in this matter, unless later ordered by this Court.

28 ///

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1 F. Denying the request for an award of attorneys' fees and costs to EMILY N.
2 MIHAYLO's conservatorship Estate and against JAMES J. KNOCHERL at this time.
3 However, the Court will strongly reconsider awarding EMILY N. MIHAYLO's
4 conservatorship Estate attorney fees and costs if it is later determined that JAMES J.
5 KNOCHERL violates the terms of this Order.

6 G. Any further Orders: _____
7 _____
8 _____
9 _____
10 _____

11 Dated: April 13, 2021

12 
13 _____
14 Commissioner BRIAN PALMER
15 Maricopa County Superior Court

16 **WARNING: This is an official Court Order. If you disobey this Order, you will be**
17 **subject to arrest and prosecution for the crime of interfering with judicial**
18 **proceedings and any other crime you may have committed in disobeying this Order.**

19
20 **ADDITIONAL WARNING: Nothing the Protected Person does can stop, change, or**
21 **undo this Order without the Court's written approval. Even if the Protected Person**
22 **initiates contact, you could be arrested and prosecuted for violating this Order.**

Attachment C

ASH

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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

No. CV 19-08086-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.”

1
2 On January 26, 2018, Mr. Knochel filed a “Response” to the Motion, suggesting
3 that the Motion had not been written by Ms. Mihaylo, or at least not by her “of her own
4 free will,” and that the Motion otherwise is “evidence of [Petitioner’s] status as a vulnerable
5 person, and as further justification for the necessity of appointed counsel for [Ms.]
6 Mihaylo.”

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

14 On March 25, 2019, Mr. Knochel filed, again as the purported “next friend” of Ms.
15 Mihaylo, the instant action. Therein, Mr. Knochel again alleged that the January 24, 2018
16 letter in case no. CV 18-08004-PCT-GMS (JZB) was not sent by Ms. Mihaylo, but was
17 rather a fraudulent document sent by the administrators of Ms. Mihaylo’s mental healthcare
18 facility. Mr. Knochel also provided a letter, which he purported to have been handwritten
19 by Ms. Mihaylo, stating that “the letter that I signed was not written by me. I was pressured
20 into signing it by ViewPoint staff.” Attached to the Petition were also numerous exhibits,
21 including a November 29, 2018 Minute Entry in a Yavapai County Mental Health Court
22 hearing noting that “Defendant [apparently referring to Ms. Mihaylo] has been contacted
23 by James. The Court notes to block James from phone...”; a December 13, 2018 Minute
24 Entry in the same Yavapai County Mental Health Court case ordering that “Defendant shall
25 have no contact with James Knochel”; a December 13, 2018 “Comprehensive Mental
26 Health Court Contract” in the same case that is signed by Ms. Mihaylo and stipulates that
27 Ms. Mihaylo will have “no contact with James Knochel”; and a December 27, 2018
28 “Comprehensive Mental Health Court Contract” that was again signed by Ms. Mihaylo and
again stipulates that she will have “no contact with James Knochel.”

1 Accordingly, by Order dated May 7, 2019, the Court found that, given the multiple
2 no-contact orders entered against Mr. Knochel, Mr. Knochel had again failed to
3 demonstrate that he had standing to sue as “next friend.” Accordingly, the Petition was
4 dismissed without prejudice for lack of jurisdiction (Doc. 4). Judgment was entered the
5 same day, and case no. CV 19-08086-PCT-GMS (JZB) was closed (Doc. 6). On June 3,
6 2019, Mr. Knochel appealed the dismissal to the Ninth Circuit Court of Appeals (Doc. 7).

7 Further, on May 5, 2019, Mr. Knochel attempted to “remove” an Order of Protection
8 that Ms. Mihaylo had sought, and obtained, against him in Prescott Justice Court, case no.
9 J1303-PO2019000067.¹ In order to facilitate consideration of the “removal,” the Clerk of
10 Court opened case no. CV-19-08137-PCT-GMS (JZB). Therein, Mr. Knochel asserted
11 that the Order of Protection was the result of a “conspiracy ... to deprive [Ms. Mihaylo]
12 and [Mr. Knochel] of rights secured by the Constitution,” namely, as Mr. Knochel put it,
13 the “freedom of association guaranteed by the [First] Amendment and the equal protection
14 of the law and privilege of habeas corpus guaranteed by the [Fourteenth] Amendment.”
15 Mr. Knochel further requested that this Court “intervene in the conspiracy against
16 Plaintiff’s and Defendant’s civil rights.” By Order dated May 20, 2019, the Court
17 remanded the matter to the Prescott Justice Court for lack of jurisdiction. The Court further
18 warned Mr. Knochel that “if [he] persists in using this Court as what appears to be a vehicle
19 to further his harassment of Ms. Mihaylo,” the Court may impose a vexatious litigant order
20 against him. On June 18, 2019, Mr. Knochel appealed the dismissal to the Ninth Circuit.

21 _____
22 ¹ The Petition for the Order of Protection, which is signed by Ms. Mihaylo, details
23 multiple instances in which Mr. Knochel has harassed Ms. Mihaylo, including by
24 “show[ing] up at ViewPoint after he has been asked not to come back”; “writ[ing] letters
25 to the Adult Probation Department [] trying to get [Ms. Mihaylo] off probation [and that
26 she] asked [Mr. Knochel] to stop doing this”; “showing up at [a] mental health hearing
27 after being asked by the probation department in months prior not to come back to mental
28 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.*).

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

7 Despite the warnings from both this Court and the Ninth Circuit, Mr. Knochel
8 continued to make filings in this case, including a Motion to Set Aside the Order of
9 Dismissal and to Reinstate the Petition for a Writ of Habeas Corpus pursuant to Rule 60 of
10 the Federal Rules of Civil Procedure, and a Declaration in support thereof (the "Rule 60
11 Motion"). Additionally, Mr. Knochel filed an Affidavit in which he sought to "remove"
12 the undersigned from this case pursuant to 28 U.S.C. § 144. By Order dated September 9,
13 2020, the Court declined to recuse itself, denied the Rule 60 Motion, and ordered Mr.
14 Knochel to show cause for why a vexatious litigant order should not be entered against
15 him. On October 8, 2020, Mr. Knochel filed his Response to the Order to Show Cause
16 (Doc. 16).

17 **II. Discussion**

18 Federal courts have the responsibility to ensure that their limited resources "are
19 allocated in a way that promotes the interests of justice." *In re McDonald*, 489 U.S. 180,
20 184 (1989). "Flagrant abuse of the judicial process cannot be tolerated because it enables
21 one person to preempt the use of judicial time that properly could be used to consider the
22 meritorious claims of other litigants." *DeLong v. Hennessey*, 912 F.2d 1144, 1148 (9th
23 Cir. 1990); *see also O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990). District courts
24 have the inherent power to act to ensure that the business of the Court is conducted in an
25 orderly and reasonable fashion. *See e.g. Visser v. Supreme Court of the State of California*,
26 919 F.2d 113, 114 (9th Cir. 1990). This inherent authority includes the power to "regulate
27 the activities of abusive litigants by imposing carefully tailored restrictions under the
28 appropriate circumstances." *DeLong v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990)

1 (quoting *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989)).

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

13 1. Filing History

14 Mr. Knochel has filed three separate actions in this Court,² as well as two separate
15 appeals to the Ninth Circuit.³ This Court dismissed CV 18-08004-PCT-GMS (JZB) and
16 CV 19-08086-PCT-GMS (JZB) for lack of standing, and dismissed CV 19-08137-PCT-
17 GMS (JZB) for lack of jurisdiction. The Ninth Circuit declined to issue a certificate of
18 appealability in case no. 19-16135, and dismissed case no. 19-16261 as frivolous.

19 In his Response, Mr. Knochel argues that this low volume of filings does not support
20 issuance of a vexatious litigant order because he did not file “large numbers of pointless
21 cases,” and the only cost is “this Court’s time in figuring out how to avoid its duty to
22 justice.” (Doc. 16 at 4). Mr. Knochel further argues that the cases he brought in this Court
23 were dismissed without prejudice. (*Id.* at 3).

24 Although the volume of Mr. Knochel’s filings is relatively low, and thus weighs
25 against entry of a vexatious litigant order, this Court has repeatedly found that Mr. Knochel

26
27 ² CV 18-08004-PCT-GMS (JZB), CV 19-08086-PCT-GMS (JZB), and CV 19-
08137-PCT-GMS (JZB).

28 ³ 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)).

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

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

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

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

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

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

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

25 has been writing letters to the Supreme Court [and] Federal Court to get me
26 out of the treatment center I am paying to be at. He has [filed] a filing called
27 Next Friend saying I am not capable of making my own decisions. I have
28 asked him to stop writing letters to the courts pertaining to me. He has
shown 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).

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

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

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

21 Although Mr. Knochel argues that these filings were made “in good faith,” that the
22 litigation history recited by this Court is “incomplete and misleading,” and that he “only
23 filed in District Court after he and Mihaylo were denied due process of law by ... the
24 Arizona Superior Court, the Arizona Court of Appeals, and the Arizona Supreme
25 Court...”⁴ he cherry-picks the record to support his actions. (Doc. 16 at 2-3). Mr. Knochel
26 omits any mention of Ms. Mihaylo’s written pleas that he desist in both contacting her and
27

28 ⁴ 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.

1 seeking judicial relief on her behalf, the Yavapai State Mental Health Court's numerous
2 orders prohibiting Mr. Knochel from contacting Ms. Mihaylo, the entry of an Order of
3 Protection against him obtained by Ms. Mihaylo, and the appointment of a Guardian for
4 Ms. Mihaylo who has "formally prohibit[ed] Mihaylo and Knochel's contact." As such,
5 Mr. Knochel's continued filings do not support that he is acting "in good faith," nor does
6 it support that his litigation history militates against entry of a vexations litigant order. To
7 the contrary, the Court finds that the harassing nature of Mr. Knochel's filings strongly
8 supports the entry of a vexatious litigant order against him.

9 **III. Type of Injunctive Order**

10 An order enjoining an abusive litigant from future access to the courts must be
11 "narrowly tailored to closely fit the specific vice encountered." *DeLong*, 912 F.2d at 1148.
12 Here, that vice is Mr. Knochel's continued harassment of Ms. Mihaylo. As such, the Court
13 sees no basis to enjoin Mr. Knochel from filing any actions that do not relate to Ms.
14 Mihaylo, thus preserving his access to the Court should he seek to file an action that does
15 not relate to Ms. Mihaylo. Further, given Mr. Knochel's relative paucity of filings, the
16 Court does not, at this time, find that a pre-filing monetary sanction is either warranted or
17 sufficient to prevent Mr. Knochel's continued filings related to Ms. Mihaylo.⁵
18 Accordingly, the Court's vexatious litigant order will be limited to preventing Mr.
19 Knochel's continued filings in the three cases he has already brought in this Court, and
20 preventing him from filing any new cases in this Court related to Ms. Mihaylo.

21 **IV. Vexatious Litigant Order**

22 The Court's September 9, 2020 Order served as notice of the Court's intent to
23 impose a vexatious litigant order against Mr. Knochel. Mr. Knochel was permitted an

24
25 ⁵ The Court notes that two of the three actions Mr. Knochel has filed in this Court
26 —CV 18-08004-PCT-GMS (JZB) and CV 19-08086-PCT-GMS (JZB)— were filed as
27 habeas corpus actions, for which the filing fee is only \$5.00 and which Mr. Knochel paid
28 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.

1 opportunity to show cause for why such an order should not be entered, and has failed to
2 persuade the Court that a vexatious litigant order is not warranted. Accordingly, the Court
3 will enter the injunction proposed in its September 9, 2020 Order, with the following terms:

4 1. James Joseph Knochel is prohibited from making any
5 further filings in cases CV 18-08004-PCT-GMS (JZB), CV 19-
6 08086-PCT-GMS (JZB), and CV 19-08137-PCT-GMS (JZB).
7 If Mr. Knochel makes any further filings in these cases, the
8 Court will not consider them, and the Clerk of Court will
9 summarily strike them from the record.

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

20 **IT IS ORDERED:**

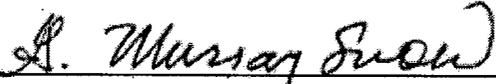
21 (1) Mr. Knochel having failed to show cause for why the injunction proposed in
22 the Court’s September 9, 2020 Order should not be imposed, the Injunction described in
23 that Order is entered as set forth below.

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

(3) 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.

1 Mihaylo, the Court will not consider the new action and will summarily dismiss the action
2 for failure to comply with this Order.

3 Dated this 13th day of November, 2020.

4 
5 _____
6 G. Murray Snow
7 Chief United States District Judge

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Attachment D

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
JAN 24 2018	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY 	DEPUTY

NEW VISION. NEW HOPE. NEW LIFE.

www.viewpointdualrecovery.com

January 19, 2018

United States District Court for the District of Arizona, case number CV-18-08004:

My name is Emily Noelle Mihaylo and I received a letter regarding a case that had been filed in federal court using my name. 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.

I was unaware that my information was being used to file this claim and I am willing to take the appropriate action required to get this case dismissed.

For further clarification, the paperwork I received has two case numbers that have different letters at the end. I will include those in this document so that there is no misunderstanding of which case I am referencing.

Case Number: CV-18-08004-PCT-GMS-JZB

Case Number: 3:18-cv-08004-GMS-JZB

Thank you,

A handwritten signature in cursive script that reads "Emily Mihaylo".

Emily Mihaylo

12/10/2018

REFERENCE CIVIL 54.7.1(a)(1)
(Rule Number/Section)

FILED 12/17/18	LODGED Page 1 of 2
RECEIVED	COPY
DEC 17 2018	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

Attachment E

To the United States District Court of Arizona

To whom it may concern,

CV-18-8004-PCT-GMS-JZB

The letter that I signed was not written by me. I was pressured into signing it by ViewPoint staff.

James gave me a ride on Saturday when I was stranded in Sedona Arizona. I would prefer not to go back to View Point, and have myself arranged to transfer to Alternative to Med. Center in Sedona.

Sincerely

Emily Mihalylo

Emily Mihalylo

EM

CV-18-
08004-PCT
-GMS (JZB)

Mihalylo v. Russell-Derking
et al



Acknowledgment by Individual

State of Arizona County of Yavapai

On this 11th day of December, 20 18, before me, Amanda Zeldin
Name of Notary Public

the undersigned Notary Public, personally appeared

Emily Mihaylo

Name of Signer(s)

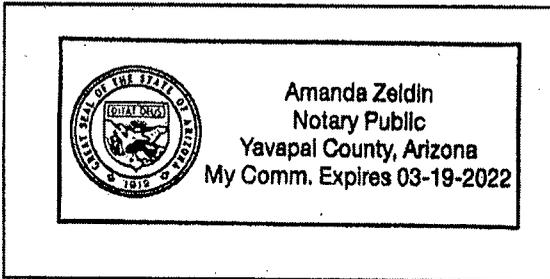
Proved to me on the oath of _____

Personally known to me

Proved to me on the basis of satisfactory evidence AZ State ID D02167938 NO EXP
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.

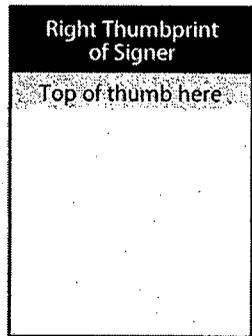


Notary Seal

Amanda Zeldin
(Signature of Notary Public)

My commission expires 03-19-2022

Optional: A thumbprint is only needed if state statutes require a thumbprint.



For Bank Purposes Only

Description of Attached Document

Type or Title of Document

Grievance Letter

Document Date

12/10/18

Number of Pages

1 page

Signer(s) Other Than Named Above

NA



FO01-00000DSG5350-01
Att-31

Emily Noelle Mihaylo, pro per
% James Knochel
P.O. Box 3499
Prescott, AZ 86302
602-481-1743
EmilyMihaylo@icloud.com

Attachment F

UNITED STATES COURT OF APPEALS
for the Ninth Circuit

James Joseph Knochel,)	
)	Case no. <u>20-73382</u>
)	
Emily Noelle Mihaylo,)	
)	In re James Joseph Knochel, et al.
)	
Petitioners;)	Declaration on
)	Petition for Extraordinary Writ
)	

Declaration of Emily Noelle Mihaylo

I, Emily Noelle Mihaylo, hereby declare the following:

I was formerly a client at Viewpoint Dual Recovery. In January 2018 I observed Viewpoint Dual Recovery staff open, in my presence, a letter sent to me by the United States District Court for the District of Arizona. The staff immediately removed the letter from the room, and I never saw it again. Days later I was presented a letter to sign by Jesse, a former employee of Viewpoint Dual Recovery. I protested that I did not write the letter I was asked to sign, but was told by Jesse to "just sign it". I was not informed as to the significance of what I signed.

I am now a ward of the state of Arizona, due to my father's petition for guardianship which was filed against me in October 2019. My guardian is Compass Fiduciary. I do not have faith in my guardian, because I feel like they abandoned me at a care home for disabled adults. While I have come to appreciate that I was not well in October 2019, I believe I have recovered to the point where I am fully capable of making decisions for myself.

Our petition for extraordinary writ was entirely written by my boyfriend, James Joseph Knochel. He has made efforts to inform me of its contents, and has respected my wishes when I protested what he had planned to say about me and my/our situation. I have not studied the entirety of our Petition, as it is stressful for me to remember some of the situations I have been through.

Similarly, this Declaration was written by James Joseph Knochel. It has been read to me in its entirety, and my feedback has been incorporated. I have signed the *Petition for Extraordinary Writ* freely without coercion.

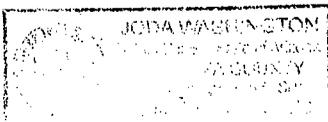
November 12, 2020

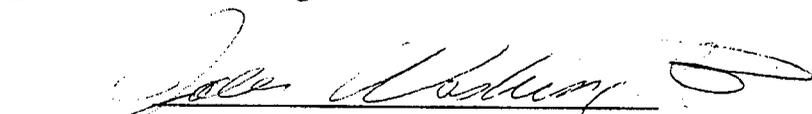

Emily Noelle Mihaylo, pro per

Arizona Notary Acknowledgement
State of Arizona, County of Yavapai

On this 12th day of November 2020, before me personally appeared Emily Noelle Mihaylo (Signer), whose identity was proven to me on the basis of satisfactory evidence: AZ ID, to be the person who he or she claims to be, and acknowledged that he or she signed the above *Declaration*.

(seal)




Notary Public



Attachment G

James Knochel <knochj@gmail.com>

My rights

1 message

Emily Mihaylo <emilymihaylo@icloud.com>
To: bwillard@compassfidgroup.com

Sun, Jun 13, 2021 at 9:55 AM

Dear Beth,

Pardon the last email seeming a bit unclear.

The situation in which I find my self in now is not appropriate Beth. For almost 2 years now your company has been betraying me. Remember when I said I had to eat a specific diet in order to stay recovered from my eating disorder. Well, your idea that food is included in the places, I say is negligent.

You have a license in Nutrition correct?

I know my body and my physical needs.

I physically needed to eat correctly in order to maintain my health. My body has taken a toll from your company's poor placement.

No exercise?

What purpose does that equate to?

What difference does it make if I had walked around the block a few times. Getting some fresh air and a moment alone was paramount for me to stay calm during the flash backs of sexual assault.

Your company must understand that there is nothing wrong with me. As of late I am off all antipsychotic. I don't have any conditions that need to be treated. Yet, I still suffer from Compass Fiduciary Groups maltreatment. My evaluation in the hospital proved I don't need meds.

There was a mixup at the house on 4106 N 22 st. yesterday.

I was taking pills for major depression. This could have been a mix up but no one explains such things to me. I have moderate depression. It is manageable in the right environment.

That house is far from the right environment, so was the place in Peoria! I have put up with your orders and forced conditioning for far to long.

Frankly, I would rather be in a short hostage situation for a few days. Then be under the care of your company!

Your manners/educate are poor.

I do receive emails.

Take the time when you can; send me specific details on the needs you are providing for me currently.

I want it on record, all that I have endured over the past 3 months.

I am not going through your impossible program of recovery anymore. It has nothing to do with recovery in the first place. You have committed some forms of malpractice.

I don't know all of them, but none the less, I was a much heather women once in 2018.

Sincerely,

Ms. Mihaylo

Att-34

Attachment H

Michael K. Jeanes, Clerk of Court

*** Filed ***

9/23/2015 8:00 am

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB 2015-003427

09/22/2015

COMMISSIONER KERSTIN LEMAIRE

CLERK OF THE COURT
P. Valenzuela
Deputy

IN THE MATTER OF

EMILY NOELLE MIHAYLO

AN ADULT.

JAMES KNOCHEL
2041 W BETHANY HOME RD
PHOENIX AZ 85015
BANNER THUNDERBIRD MEDICAL
CENTER
PURPLE ZONE
5555 W THUNDERBIRD ROAD
GLENDALE AZ 85306

COLLECTIONS - COC

HEARING

Courtroom OCH 209

3:54 p.m. This is the time set for hearing re: Writ of Habeas Corpus. Petitioner, James Knochel, boyfriend, is present on his own behalf.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

On this date, this division received a phone call from Banner Thunderbird Medical Center stating that Emily Mihaylo was not going to be delivered to this hearing as a Petition for Court Ordered Evaluation has been filed.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB 2015-003427

09/22/2015

The court, having received the documents e-mailed by Banner Thunderbird Medical Center, finds that Banner Thunderbird Medical Center filed an Application for Involuntary Evaluation and not a Petition for Court Ordered Evaluation.

Mr. Knochel provides the court an affidavit reflecting that John Cox, a private process server, attempted to serve Banner Thunderbird Medical Center on September 22, 2015, but the security supervisor refused to allow anyone to accept service.

The court finds that Banner Thunderbird Medical Center was aware of this hearing as Banner Thunderbird Medical Center phoned this division earlier to notify the court that Ms. Mihaylo was not going to be delivered to court.

IT IS ORDERED granting the Writ of Habeas Corpus.

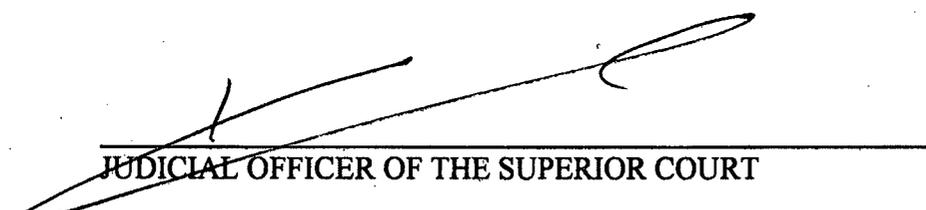
IT IS FURTHER ORDERED that Banner Thunderbird Medical Center shall release Emily Noelle Mihaylo unless a properly filed Petition for Court Ordered Evaluation is filed.

4:02 p.m. Hearing concludes.

LATER:

IT IS ORDERED waiving all fees and costs relating to this Writ of Habeas Corpus.

The court signs this minute entry as an enforceable Order.



JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

The foregoing instrument is a full, true and correct
the original document.

Attest SEP 22 2015 _____ 19.

MICHAEL K. JEANES, Clerk of the Superior Court
State of Arizona, in and for Maricopa County

By P. Valenzuela _____ Deputy

Docket Code 005

Form P000

Att-36

Attachment I

No. _____

In The
Supreme Court of the United States

*James J. Knochel and
Emily N. Mihaylo, Petitioners,*

v.

*Amy Fackrell; John C. Morris; Unknown Party,
named as Medical Director - West Yavapai Guidance
Clinic; Attorney General For The State Of Arizona,
Respondents.*

**On Petition for Writ of Certiorari to
the United States Court of Appeals for the 9th
Circuit**

Petition for Writ of Certiorari

James Knochel, pro se
PO Box 3499
Prescott, AZ 86302-3499
602-842-2688
knochj@gmail.com

May 19, 2022

Questions Presented

Petitioner filed a next friend petition for a writ of habeas corpus to the United States District Court, but was declared vexatious after asking for the evidentiary hearing required by the case law. The Arizona State Court's public record and videos posted to YouTube fully establish Petitioner's allegations of fraud on the United States Court.

The questions presented:

#1 – Does *Whitmore v. Arkansas*, 495 U.S. 149, require an evidentiary hearing before dismissing a next friend's petition for writ of habeas corpus, or is this just a suggestion?

#2 – May a petitioner be declared vexatious by the United States Court without an evidentiary hearing to consider alleged evidence of fraud on the court?

#3 – May a respondent to a petition in the United States Court 'assist' the party to the petition – their involuntary client – by asking for the proceeding's dismissal?

#4 – Does the appointment of a guardian for a party to a habeas petition foreclose the United States Court from considering a next friend's petition alleging violation of the Ward's rights?

Parties to the Proceedings Below

Petitioner is James J. Knochel.

Party to the petitions below is Emily Noelle Mihaylo ("Mihaylo"), who is now a ward of the State of Arizona.

Amy Fackrell ("Fackrell") was Executive Director of Viewpoint Dual Recovery, the business which formerly had custody of Mihaylo under color of law.

John C. Morris was head of Yavapai County, Arizona's adult probation department while Mihaylo was on probation.

Unknown Party, named as Medical Director - West Yavapai Guidance Clinic, was responsible for Mihaylo's involuntary mental health treatment program.

The State of Arizona is the respondent to this petition.

Related Cases

Pursuant to Supreme Court Rule 14.1(b)(iii),
Petitioner states that the following proceedings are
related:

In the United States District Court for the District of
Arizona:

In Re Emily Noelle Mihaylo, No. 18-cv-8004-
PCT--GMS-JZB, U.S. District Court for the
District of Arizona. Judgment entered
February 7, 2018 (habeas #1)

In Re Emily Noelle Mihaylo, No. 19-cv-8086-
PCT--GMS-JZB, U.S. District Court for the
District of Arizona. Judgments entered May 7,
2019, September 9, 2020 and November 13
2020 (habeas #2)

Mihaylo v. Knochel, No. 19-cv-08137-PCT--
GMS-JZB, U.S. District Court for the District
of Arizona. Judgment entered May 20, 2019.
(notice of removal)

In the United States Court of Appeals for the 9th
Circuit:

James Knochel, et al v. Amy Fackrell, et al,
No. 19-16135, U.S. Court of Appeals for the 9th
Circuit. Judgment entered July 22 2019.
(habeas #2 appeal)

Emily Mihaylo v. James Knochel, No. 19-
16261, U.S. Court of Appeals for the 9th
Circuit. Judgment entered October 24 2019.
(removal appeal)

James Knochel, et al v. USDC-AZP, No. 20-73382, U.S. Court of Appeals for the 9th Circuit. Judgment entered December 8 2020. (petition for extraordinary writ)

James Knochel, et al v. Amy Fackrell, et al, No. 20-17326, U.S. Court of Appeals for the 9th Circuit. Judgment entered December 20, 2021 (vexatious litigant appeal)

In the Supreme Court of the United States:

In re James J Knochel. No. 21-6444, Supreme Court of the United States. Judgment entered February 22, 2022 and April 18, 2022.

In the Arizona Superior Court:

In the Matter of the Guardianship of and Conservatorship for: Emily N Mihaylo. Maricopa County Superior Court, No. PB 2019-002031. Ongoing. Minute entry confirming fraud on the United States Court was entered April 05, 2021.

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Cases

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8th Amendment to the United States Constitution ... 2

Article I, Section 9, Clause 2 of the Constitution of
the United States 1

Statutes

28 USC § 1254 1

28 USC § 2242 2

28 USC § 2254 2

Rules

Sup. Ct. Rule 10(a) 10

Petition for Writ of Certiorari

Petitioner James J. Knochel respectfully requests Certiorari of the United States Court of Appeals for the 9th Circuit's memorandum decision issued on December 20, 2021, which affirms the U.S. District Court for the District of Arizona's order declaring Petitioner vexatious.

Statement of Jurisdiction

The U.S. Court of Appeals' judgment was entered on December 20, 2021.

Petitioner's application for extension of time, #21A512, was granted on March 16, 2022. This extended the time to file this petition until May 19, 2022.

Jurisdiction to review the U.S. Court of Appeals for the 9th Circuit's memorandum decision is conferred by 28 USC § 1254.

Constitutional and Statutory Provisions

Article I, Section 9, Clause 2 of the Constitution of the United States:

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

The 14th Amendment to the United States Constitution:

All persons born or naturalized in the United States, and subject to the

jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The 1st Amendment to the United States Constitution protects freedom of association.

The 8th Amendment to the United States Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

28 USC § 2242 allows for application for habeas corpus by someone acting on behalf of the party to the petition.

28 USC § 2254(b)(1)(B)(i) and (ii) allow the federal courts to consider petitions for writ of habeas corpus for persons in state custody, even when state court remedies cannot be exhausted by the next friend because the state court will not consider the merits of filed petitions.

Statement of the Case

The present issue before this court is that Petitioner is declared vexatious by the U.S. District Court for the district of Arizona on the basis of a fraudulent motion to dismiss. Petitioner has evidence of this

claim, but the courts below pretend that the case law does not actually require an evidentiary hearing.

On January 11 2018 Petitioner filed a petition for writ of habeas corpus in the U.S. District Court for the District of Arizona on behalf of Emily Mihaylo ("Mihaylo" or "Ms. Mihaylo"), docketed as 18-CV-08004-PCT-GMS(JZB). This filing precisely detailed how the state court had been properly petitioned but was derelict in its duty to justice.

The district court next docketed an informal typed letter on January 24 2018 as a "motion to dismiss". This informal motion was printed on the business stationary of the treatment center with Mihaylo's custody pursuant to the state court's order.

Petitioner promptly filed to point out that the motion to dismiss was obviously fraudulent, and was most likely written by the respondent to the habeas petition. The supposed motion to dismiss was granted, and the habeas petition was dismissed without prejudice (Appendix G), without the evidentiary hearing required by the cited case law.

Petitioner specifically requested an evidentiary hearing on the fraudulent "motion to dismiss", but the district court and court of appeals refuse to acknowledge this requirement of the case law.

The evidence of the fraudulence of the motion to dismiss takes the form of Mihaylo's own notarized filings to the U.S. District Court and the U.S. Court of Appeals, witnesses, evidence, Petitioner's video interview of Mihaylo and other videos posted to YouTube, the state court's public record, and records of Mihaylo's subsequent arrest at Petitioner's home.

Mihaylo was abandoned by her guardian at a care home for disabled adults in December 2020. Mihaylo wrote the Arizona Superior Court for a status hearing on July 10 2020, but this filing was ignored by the Superior Court.

Mihaylo filed a written request for a replacement guardian pursuant to the provisions of state law. This request was docketed on December 14 2020, but was never addressed by the Arizona State Court.

Petitioner filed to replace Mihaylo's guardian in the State Court in December 2020. Mihaylo's guardian filed a counter-petition for protective order.

In the filings of Maricopa County Superior Court, No. PB 2019-002031, Mihaylo's guardian claims the fraudulent motion to dismiss, USD-AZ #18-CV-8004 (doc 8), was filed by Mihaylo with "assistance" from the business with Mihaylo's custody, ViewPoint Dual Recovery (Respondent Fackrell's business).

Petitioner was ordered to have no contact with Mihaylo on April 5, 2021. The minute entry granting Mihaylo's guardian's counter petition for protective order establishes fraud on the U.S. Court.

Mihaylo was arrested by the Yavapai County Sheriff at Petitioner's home on July 11, 2021, on an outstanding warrant. These arrest records establish fraud on the court.

Mihaylo returned for her backpack about a week later. Transportation records evidence this trip.

Make-Believe Justice

The district court's orders repeatedly quote the fraudulent letter docketed as a 'motion to dismiss':

“[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.”

(Appendix C pg A-6 and A-13, Appendix D pg A-20 and A-33, Appendix F pg A-42, Appendix G pg A-48)

The specific phrasings of “claim” and “dismissed, thrown out, and terminated all together” are lawyer-speak. ViewPoint Dual Recovery's website says Respondent Fackrell is a J.D.; Mihaylo shared how Fackrell formerly practiced criminal defense law. Fackrell simply made 'one little mistake' in using business stationary to print this fraudulent letter.

The District Court repeatedly acknowledges Petitioner's allegations that this 'motion to dismiss' is fraudulent, but does not share how it decided this controversy. For example:

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.”

(Appendix C pg A-6 and Appendix D pg A-20)

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”; [...]

(Appendix D, pg A-27)

Petitioner shared with the district court how Ms. Mihaylo was coerced (presumably by Respondent Fackrell) into filing for an injunction against harassment (granted as an order of protection, even though the filed petition had no allegations of ‘domestic violence’). Petitioner knew this petition for injunction against harassment was coerced because Ms. Mihaylo enlisted Petitioner’s help to escape from Fackrell’s custody in July 2019.

The District Court took Petitioner’s relations of the coerced order of protection out of the provided context. Petitioner has catalogued copious evidence and witnesses that Ms. Mihaylo was indeed coerced into filing for an injunction against harassment against him. For example, the Prescott City Attorney declined to prosecute Ms. Mihaylo (who had deteriorated on account of her untreated alcohol

problems & had struck Knochel while they were driving in September 2019). The City Attorney also declined to prosecute Knochel for being technically in violation of the supposed “order of protection”.

The District Court misrepresents the District Court’s own public record:

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.”

(Appendix F, pg A-43)

The notarized handwritten letter was originally mailed to the court and docketed by the clerk into 18-cv-8004 (doc 14) as a Notice. A *copy* of the docketed Notice was ‘provided’ in 19-cv-8086.

Mihaylo escaped from captivity in November 2020. Petitioner used this opportunity to obtain Mihaylo’s signature for a joint petition for extraordinary writ to the U.S. Court of Appeals for the 9th Circuit (No. 20-73382). The Court of Appeals indicates it did not believe Mihaylo’s notarized signatures on the joint petition for extraordinary writ were genuine:

“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 B, pg A-4)

That filing was NOT “on behalf”, it was a joint petition, was written cooperatively, and was freely signed by Mihaylo in front of a public notary.

The District Court dismissed without prejudice without conducting evidentiary hearings as to whether Ms Mihaylo was capable of filing without assistance, and explained itself with this statement:

“That the Court dismissed the actions without prejudice was to preserve *Ms. Mihaylo*’s rights to bring any claims she wished [...]”

(Appendix C, pg A-12)

The essence of this Petition is that Mihaylo is incapable of bringing any claims while she is forcibly psychiatrically deteriorated with medications that sedate her cognitive functions.

The district court furthermore says that people who have guardians cannot enlist the help of their friends to protest the violations of their rights:

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.

(Appendix D, pg A-29. Emphasis added)

The District Court misrepresents the proceedings in Mihaylo's guardianship case in the Arizona State Court:

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. 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).

(Appendix D, pg A-29/30)

In the real world, the Maricopa County Superior Court never acted on Ms Mihaylo's own "motion challenging her guardian's actions".

What more can forcibly sedated persons do for themselves than write simple letters to the probate court with control of the entirety of their rights? As the State Court has repeatedly ignored Mihaylo's complaints, and her attorneys only do the minimum to collect their fees, Mihaylo's only option for self-preservation is to escape from her color-of-law confinement.

As discussed below, the authority cited by the district court in the quote above, *Whitmore v. Arkansas*, 495 U.S. 149, clearly requires an evidentiary hearing before dismissing a next friend's petition for relief, but the District Court blatantly ignores this requirement.

Compelling Reasons for Granting Petition

Rule 10 provides "A petition for a writ of certiorari will be granted only for compelling reasons."

Petitioner cites Sup. Ct. Rule 10(a): "a United States court of appeals has entered a decision [that is] so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power".

Petitioner has videos from August 2015 which prove Mihaylo was misdiagnosed by the mental health industry, and that her alleged 'mental disorder' is created by the treatments forced on her by the Arizona State Court.

The District Court avoids considering Petitioner's videos, which falsify mainstream Medicine's approach to mental illness, by endorsing Respondents' fraud on the court and declaring Petitioner vexatious.

One shouldn't require videos of misdiagnosis to avoid involuntary treatment with the Soviets' preferred medication for torture of dissidents.

No one in power cares about the plight of those who are abused by the country's various involuntary treatment programs. Those slandered as 'mentally ill' live on an animal farm, where they have no right to refuse degenerative FDA-approved prescriptions.

The case law REQUIRES evidentiary hearing

That prerequisite for "next friend" standing is not satisfied **where an**

evidentiary hearing shows that the defendant has given a knowing, intelligent, and voluntary waiver of his right to proceed, and his access to court is otherwise unimpeded.

-Whitmore v. Arkansas, 495 U.S. 149 at 165 (emphasis added, citation omitted).

Whitmore was a case where death row inmate Simmons no longer wished to challenge his sentence. Whitmore was a fellow inmate on the Arkansas death row.

Although we are not here faced with the question **whether a hearing on mental competency is required** by the United States Constitution **whenever a capital defendant desires to terminate further proceedings**, such a hearing will obviously bear on **whether the defendant is able to proceed on his own behalf.**

-Whitmore v. Arkansas, 495 U.S. 149 at 165 (emphasis added, citation omitted).

The present petition raises significant questions on mental competency, and the rights afforded by the United States Constitution to those held captive by do-gooders who are engaged in de-facto capital punishment. Petitioner believes that forcing a person to take medications that make them suicidal or self-harm, as Mihaylo has endured, is negligence and should be prosecuted.

The Supreme Court of Arkansas requires a competency hearing as a matter of state law, and in this case it affirmed the trial court's finding that Simmons had "the capacity to understand the choice between life and death and to knowingly and intelligently waive any and all rights to appeal his sentence.

-Whitmore v. Arkansas, 495 U.S. 149 at 165 (citation omitted).

In the present case, the Arizona State Court has declared Mihaylo incompetent. Petitioner's evidence is that Mihaylo's incompetence is transitory, and is caused by malnourishment, substance abuse, and psychiatric medications.

Petitioner is meticulous

Petitioner is treated by the courts below as an obnoxious harasser. In the real world, at every step of their legal odyssey over the last 6+ years, Petitioner has been meticulous in his efforts to extract his friend, Emily Mihaylo, from her misdiagnosis and mistreatment by the mental health industry.

Petitioner's September 21, 2015 petition to the Arizona State Court was a textbook-perfect example of how the privilege of habeas corpus is supposed to work: the Arizona Superior Court considered Petitioner's next-friend habeas petition, found the hospital's legal authority to hold Mihaylo against her will had expired and ordered her released. Petitioner

made the mistake of expecting that hospital to respect the Arizona Superior Court's order.

Petitioner's subsequent efforts in the Arizona Superior Court were similarly acceptable, but were blocked by 'a rural judge who will never rule against the community's non-profit mental health service provider' (quote of an anonymous person who was familiar with Petitioner's petitions and appeal in the state court). The state appellate judges and justices similarly would not declare the state's involuntary treatment system unconstitutional.

While it may not be this court's place to tell doctors that they don't always know what they're doing, it is the requirement of Constitutional governance that doctors be required to respect bodily autonomy. If a citizen of the United States does not consent to being injected with the Soviets' preferred medication for dissident re-education, doctors should not be able to use the courts to force this, or any other drug, approved or experimental, on any person.

The principle of health freedom requires that people be allowed to make decisions for themselves, without coercion from others. If a person doesn't want to have their brain electrocuted by their doctor, they shouldn't be forced to endure this treatment. If a person is concerned they'll have an adverse reaction to a medication or condition that the experts think is good for everyone, there can be no coercion against people making decisions for themselves, no matter their perceived competency.

If this court cares about its legitimacy, it must grant this petition. There was nothing wrong with #21-6444. Petitioner can only assume the #21-6444

petition (and the petition for rehearing) were not actually read by your clerks.

Petitioner's friend, Emily Mihaylo, has endured another six months of *medical assault* since #21-6444 was filed.

Petitioner is aware that Mihaylo has yet again escaped from her latest care home. After some time on the run, she has apparently found a 'roof over her head' for the last few nights (May 15, 2022).

All petitioner asks for is an evidentiary hearing, so the U.S. Court can consider whether Petitioner's November 9 2020 interview of his friend actually proves that Respondents in fact perpetrated fraud on the United States District Court in January 2018.

This video is available for all to consider, no matter this court's decision:

<https://www.youtube.com/watch?v=CxWseFuHPWo>

Conclusion

Petitioner thinks back to his experience of being prosecuted by the State of Arizona for trying to exercise the privilege of habeas corpus on behalf of his friend, Emily Mihaylo. Petitioner's criminal defense attorney observed, "you enjoy this." This was more an observation that Petitioner is good at deciphering puzzles, case law, and putting together comprehensive arguments, than Petitioner's 'enjoying' getting animal farm'd by the United States' various courts.

The modern involuntary mental health industry is a fundamental miscarriage of justice for everyone who

endures forced obsolete treatments. This can be easily corrected in an instant with this court's ruling that medical professionals must respect their patients' rights to refuse medical treatment, and with this court's ruling that the mental health industry is not actually above the law.

While Petitioner has paid to have this cert petition professionally printed, Petitioner is capable of printing his own future paid petitions for extraordinary writs on the required weights of paper to minimize the cost of future petitions. Petitioner has an acquaintance with an antique paper-chopper that can cut printouts of future petitions to the required size.

Petitioner is also considering starting a crowd funding campaign for the purpose of raising funds to remove the Soviets' techniques of torture from American medicine: modern medical professionals need help updating their 'standard of care'.

Wherefore Petitioner prays for relief.

May 19, 2022.

Respectfully Submitted,

/s/

James Knochel
PO Box 3499
Prescott, AZ 86302-3499
602-842-2688
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Appendix

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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; UNKNOWN
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

* 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.

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.

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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.

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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

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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-PO2019000067.¹ 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.

¹ 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,² as well as two separate appeals to the Ninth Circuit.³ 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).

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

³ 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...”⁴ 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.

⁴ 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. ⁵ 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-

⁵ 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

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.

Dated this 13th day of November, 2020.

/s/

G. Murray Snow
Chief United States District Judge

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.

¹In 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]

¹ 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.").²

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

² 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).³ 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.

³ 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, ⁴ as well as two separate appeals to the Ninth Circuit. ⁵ 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.

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

⁵ 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. ⁶ Accordingly, the Court's

⁶ 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

— 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*,

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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

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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/

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) ¹. On

¹ 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

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 evidenced 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*

