

DISTRICT COURT, Montrose County, State of Colorado Court Address: 1200 North Grand Avenue Montrose, CO 81401 Phone Number: (970) 252-4330	DATE FILED: June 20, 2017 12:58 PM FILING ID: 7AFB45475D9AE CASE NUMBER: 2017CV30071 <div style="text-align: center;">▲ COURT USE ONLY ▲</div>
Plaintiff(s)/Petitioner(s) and Address: DAN W. HOTSENPILLER, District Attorney, Seventh Judicial District 1140 North Grand Avenue, Suite 200 Montrose, CO 81401	
Defendant(s)/Respondent(s) and Address: HONORABLE DONALD CORY JACKSON, Judge of the County Court for the County of Montrose 1200 North Grand Avenue, Box A Montrose, CO 81401	Case Number: 2017CV__ Div.: Ctrm:

COMPLAINT PURSUANT TO C.R.C.P. 106(A)(4)

COMES NOW the Petitioner, DAN HOTSENPILLER, District Attorney for the Seventh Judicial District, State of Colorado, and his duly appointed Deputy, Matthew Magliaro, and seeks relief pursuant to Colorado Rule of Civil Procedure 106(a)(4). Petitioner challenges the decision of the Honorable Donald Cory Jackson, sitting as Montrose County Court Judge, to allow the Defendant's late filed endorsement of consent as an affirmative defense in the case *People of Colorado v Christopher Shane Rowan*, 2016M0480. Petitioner alleges this ruling exceeded the Respondent's jurisdiction and constituted an abuse of discretion. Petitioner has no plain, speedy and adequate remedy otherwise provided by law.

Petitioner hereby states and alleges as follows:

PARTIES AND JURISDICTION

1. Dan Hotsenpiller (hereinafter 'Petitioner') is the elected District Attorney in and for the Seventh Judicial District representing the People of the State of Colorado. District attorneys have a professional duty flowing from the Colorado Constitution and Colorado Revised Statutes to prosecute criminal cases within their judicial district in the name and by the authority of the People of the State of Colorado. Colo. Const. art. IV, § 1(1); Colo. Const. art. VI, § 13; C.R.S. § 20-1-102(1)(a) & (3).
2. The Honorable Judge Donald Cory Jackson (hereinafter 'Respondent') is a County Court Judge in the State of Colorado. At all times relevant to this Complaint, Respondent was sitting by designation as the assigned judicial officer to Montrose County Court criminal case *People of Colorado v Christopher Shane Rowan*, 2016M0480.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this case pursuant to Colorado Rule of Civil Procedure 106(a), (b).
4. Venue is proper in the District Court of Montrose County, Colorado, pursuant to Colorado Rule of Civil Procedure 98(b).

GENERAL ALLEGATIONS

5. On or about September 29th, 2013, Christopher Shane Rowan was charged in the Englewood Municipal Court with both Menacing and Assault, municipal misdemeanors in violation of the Municipal Code of Englewood, §§ 7-6A-1, 7-6A-2, in *City of Englewood v. Christopher Shane Rowan*, 16926M.
6. On or about September 30th, 2013, the Englewood Municipal Court issued a 'NO CONTACT ORDER – Domestic Violence' prohibiting Christopher Shane Rowan from contacting, threatening, molesting or injuring the alleged victim, Shawnee Rendon, in person or by phone, wherever she may be found including but not limited to home, work or school. The Englewood Municipal Court's order contained prohibitions on contact by the restrained person with the protected person without exception. The Defendant failed to appear during these proceedings, and the issued protection order remains in effect.
7. On September 2nd, 2016, Christopher Shane Rowan was found allegedly in direct contact with the protected party, Shawnee Rendon, in a motel room by members of the Montrose County Sheriff's Office serving a warrant.
8. On or about September 6th, 2016, Christopher Shane Rowan was criminally charged by summons and complaint filed in Montrose County Court with a single count of Violation of a Criminal Protection Order, C.R.S. § 18-6-803.5(1)(a), a Class 1 misdemeanor under C.R.S. § 18-6-803.5(2)(a). The Montrose County Court assigned the case designation and number *People of Colorado v Christopher Shane Rowan*, 2016M0480.
9. On May 22nd, 2017, five days prior to the scheduled jury trial in *People of Colorado v Christopher Shane Rowan*, 2016M0480, Mr. Rowan moved to amend his filed endorsements to add the affirmative defense of consent pursuant to C.R.S. § 18-1-505(1).
10. On May 24th, 2017, the People filed a "Motion to Strike Dilatory Amendment of Endorsement Adding Affirmative Defense of Consent." The People moved to strike the amendment on grounds it was late filed in violation of the trial court's pre-trial order and Colorado Rule of Criminal Procedure 16(II)(c). The People objected to the relevance and applicability of the statutory affirmative defense of consent in C.R.S. § 18-1-505 to a charge of Violation of a Criminal Protection Order under C.R.S. § 18-6-803.5(1)(a).

11. On May 26th, 2017, Respondent heard oral argument on the People's motion. Respondent issued both an oral and written ruling allowing the defense of consent of the protected party to the charge of Violation of a Criminal Protection Order. A true and accurate copy of the Respondent's 'Order on Motion to Strike' is attached as Exhibit 1.

FIRST CLAIM FOR RELIEF

12. Petitioner incorporates by reference the allegations in paragraphs 1 through 11 of this Complaint
13. Respondent's order allowing the defense of consent in C.R.S. § 18-1-505(1) to a charge of Violation of a Criminal Protection Order under C.R.S. § 18-6-803.5(1)(a) exceeded its jurisdiction and was an abuse of discretion. There is no plain, speedy and adequate remedy available to Petitioner for this abuse of discretion.
14. The case *People of Colorado v Christopher Shane Rowan*, 2016M0480, is still pending before the Montrose County Court without final judgment.
15. If the case proceeds to trial and the People are required to disprove the affirmative defense of consent, the burden of proof of the People is erroneously made substantially higher than proof beyond a reasonable doubt required for conviction to charge.
16. The People have no adequate remedy to address this abuse of discretion from the Respondent's ruling absent the relief sought herein.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the following relief:

1. A judicial finding Respondent exceeded its jurisdiction and/or abused its discretion in its May 26th, 2017, oral ruling and written Order on Motion to Strike allowing the defense of consent in C.R.S. § 18-1-505 to a charge of Violation of a Criminal Protection Order under C.R.S. § 18-6-803.5(1)(a).
 2. Issuance of a remedial writ and directive on remand to the Montrose County Court Judge currently assigned to the case *People of Colorado v Christopher Shane Rowan*, 2016M0480, to vacate the rulings made on May 26th, 2017.
 3. Such other relief as this Court deems just and equitable.
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4. No docket fee is required of the Petitioner, as representative of the People of the State of Colorado.

DATED at Montrose, Colorado, this 20th day of June, 2017.

Respectfully Submitted,

By Matthew Magliaro, # 39909
Lawyer for Petitioner Dan Hotsenpiller

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