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4 *In Pro Per*

5 **SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **COUNTY OF MARICOPA**

7 Stacy Scheff,

8 Plaintiff,

9 v.

10 The State of Arizona,

11 Defendant,

12 David Shinn, Director,

13 Real Party in Interest.

Case No.: CV2021-091250

COMPLAINT

The Hon.

14
15 **NATURE OF THE ACTION**

16 The Arizona Department of Corrections (“ADC”) has an unwritten rule
17 that attorneys may not conference in third parties on legal calls with clients
18 who are incarcerated in ADC prisons. In order to enforce this unwritten
19 policy, ADC staff routinely listen to the calls in order to determine whether
20 there is a third party present, and if so, to terminate the call. This lawsuit
21 seeks to clarify the rights of both attorney and incarcerated client when
22 conducting legal calls arranged through the ADC.
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1 **VENUE**

2 Venue is proper in Maricopa County pursuant to A.R.S. §41-1034.

3 **JURISDICTION**

4 This Court has jurisdiction to hear this case pursuant to A.R.S. §12-
5 1831 *et. seq.* (“The Uniform Declaratory Judgements Act”).

6 **DEFENDANTS**

- 7 • The State of Arizona, Pursuant to A.R.S. §31-201.01(F) (“Any and all
8 causes of action which may arise out of tort caused by the director,
9 prison officers or employees of the department, within the scope of their
10 legal duty, shall run only against the state.”)
- 11 • David Shinn, Director ADC. Real party in interest. Pursuant to A.R.S.
12 §31-201.01(A), “The director shall hold in custody all persons who are
13 sentenced to the department under the law and shall hold such persons
14 for the term directed by the court, **subject to law.**” (emphasis added)

15 **FACTS**

- 16 1. Plaintiff is an attorney who represents almost exclusively clients who
17 are incarcerated in ADC prisons.
- 18 2. Plaintiff has been subject to a pattern of having legal calls interfered
19 with in various ways by ADC staff: a) staff listening to calls, b) staff
20 refusing to leave the room for various reasons, c) staff insisting that
21 Plaintiff show proof of attorney/client relationship before arranging the
22 call, and d) being told that Plaintiff specifically was not allowed to have
23 any legal calls at all.
- 24 3. An attorney who permits a communication to be overheard by
25 individuals who are not part of the confidential, attorney/client
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1 relationship usually destroys the confidentiality necessary for a
2 privileged communication.

3 **4.** For this reason, Plaintiff has been consistently vigilant about
4 protecting attorney/client confidentiality from ADC staff who seek to
5 eavesdrop on the calls.

6 **5.** Plaintiff was also careful to only include those third parties whose
7 presence was necessary for the representation, i.e. experts and third-
8 party payors, so that the privilege would not be waived.

9 **6.** Department Order (“DO”) 915 (“Inmate Phone Calls”) states that third
10 parties may not be conference in on calls.

11 **7.** DO 915 refers to DO 902 (“Access to the Courts”) for information about
12 “legal calls”. DO 902 does not contain any restriction against third-
13 parties on legal calls.

14 **8.** On Saturday, August 4, 2018, Plaintiff received a letter from Courtney
15 Glynn, Deputy General Counsel for ADC.

16 **9.** The letter states that Plaintiff is being punished for abusing the legal
17 call system by conferencing in third parties, and must use the Polycom
18 system instead.

19 **10.** On August 7, 2018, Plaintiff sued ADC in Pima County Superior
20 Court, (C20183923), alleging that the Polycom restriction violated the
21 Administrative Procedures Act (“APA”) by creating a new rule without
22 following the process outlined under the APA.

23 **11.** On September 21, 2018, Defendant ADC filed a Motion to
24 Dismiss, arguing that there was no “rule” identified.

25 **12.** The court in that case ordered supplemental briefing on the issue
26 of whether the statutory exemptions to the APA, (A.R.S. §§41-1005(A)

1 (4), (7), and (27) applied.

2 **13.** After briefing, the court found that Plaintiff had adequately
3 identified a rule: that attorneys who conferenced in third parties on
4 legal calls were required to use the Polycom system.

5 **14.** The court also found that the exceptions to the APA applied, and
6 prevented Plaintiff from succeeding because the ADC was entirely
7 exempted from the requirements of the APA.

8 **15.** In October of 2020, Plaintiff requested permission to have an
9 expert witness on a legal call for the reason that the expert was in
10 another State, and needed to interview the client.

11 **16.** The expert was approved for one-time only. On the Polycom call
12 with the expert, Plaintiff's visual on the screen was interrupted. The
13 CO entered the room with the client and switched off the Polycom,
14 ending the call for the reason that Plaintiff's face could not be seen on
15 the screen.

16 **17.** Plaintiff emailed ADC legal office and requested clarification
17 regarding a visual being necessary for the call.

18 **18.** On December 21, 2020, January 8, 2021, and February 3, 2021,
19 Plaintiff emailed, requesting clarification regarding visual rule
20 requirements.

21 **19.** On February 3, 2021, Loresa Purden from ADC legal responded
22 that, "A visual during Polycom calls is required for the duration of the
23 call. Any disruption of a visual will result in the termination of the
24 call."

25 **20.** Plaintiff requested the reasoning behind the requirement and
26 noted that there had been calls where Plaintiff's face was not visible

- 1 but the call continued uninterrupted.
- 2 **21.** On March 2, 2021, Plaintiff had a Polycom call set with a new
3 client. At the time of the call, Plaintiff dialed in and could see the
4 client and hear him, but the client could not see Plaintiff. The CO
5 indicated that the call would have to be rescheduled.
- 6 **22.** Plaintiff phoned Loresa Purden to request that the call be
7 allowed to go forward without visual. The request was denied. Ms.
8 Purden stated that Plaintiff must have a visual due to the fact that
9 Plaintiff tends to have third parties on calls in violation of policy.
- 10 **23.** Plaintiff asked what policy, because there is no written policy
11 stating this. Ms. Purden hung up the phone.
- 12 **24.** Courtney Glynn from ADC legal indicated that a technician
13 would be in touch to determine if the problem with the visual was on
14 Plaintiff's end. This was never arranged.
- 15 **25.** On March 3, 2021, Plaintiff was informed that she would be able
16 to request and conduct legal calls "per normal procedure".
- 17 **26.** Plaintiff requested the reasons for the change. Plaintiff was
18 directed to submit a public records request for that information.
- 19 **27.** On March 10, 2021, Plaintiff had her first non-Polycom legal call
20 with a new client since August of 2018. The call was arranged through
21 CO Lakeydra Smith.
- 22 **28.** When the client came on the phone, he asked if the call was
23 intended to be private.
- 24 **29.** Plaintiff said, "yes, you have the right to a confidential call. If
25 there is anyone within earshot, I can ask them to step out."
- 26 **30.** The client requested that CO Smith speak with Plaintiff.

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Plaintiff requested privacy.

31. CO Smith protested that the client was in a detention setting, therefore it could not be private.

32. Plaintiff asked if CO Smith knew that the call was a legal call.

33. CO Smith responded that she did know.

34. Plaintiff asked if CO Smith knew that legal calls must be confidential.

35. Before Plaintiff could finish the question, CO Smith interrupted and stated that she would move the client and hung up the phone.

36. CO Smith then moved the client to a new location and called Plaintiff back.

37. The legal call commenced with the assumption that it was being treated as privileged.

38. Approximately 20 minutes into the call, CO Smith entered the room and informed Plaintiff that the call was being terminated due to Smith's belief that there was a third party on the call.

39. Plaintiff emailed the complex and the ADC legal office for assistance.

40. On Monday, March 15, 2021, Plaintiff once again called the complex to attempt to get answers and reschedule the call.

41. Plaintiff was put through to CO Smith to reschedule the call.

42. Plaintiff repeatedly requested acknowledgement that CO Smith understood that she had violated attorney/client privilege by listening to the call on March 10th.

43. CO Smith repeatedly refused to acknowledge her error, or that the upcoming call would be confidential.

1 **44.** On Tuesday, March 16, 2021, Plaintiff was informed that all legal
2 calls must now be made via Google Meet in the visitation area.

3 **45.** Plaintiff requested clarification but it has not yet been provided.

4 **46.** On information and belief, ADC has an unwritten policy of
5 listening to legal calls to the greatest extent possible.

6 **47.** On information and belief, ADC required Plaintiff to use the
7 Polycom system because she consistently enforced the right to
8 confidentiality against the attempts by staff to circumvent
9 attorney/client privilege.

10 **48.** On information and belief, ADC staff use the unwritten rule that
11 attorneys may not conference in third parties on legal calls to justify
12 listening to the calls.

13 **PRAYER FOR RELIEF**

14 Because Plaintiff is a person who is affected by an existing agency
15 practice or substantive policy statement that she alleges to constitute a rule,
16 and because this is a dispute that is likely to recur,

17 Plaintiff asks the Court for a Declaration pursuant to A.R.S. §41-1034,

- 18 • That A.R.S. 41-1005(A)(7) and (A)(22) are unconstitutional if the
- 19 alleged rule violates federal civil rights.
- 20 • That the practice of stating that attorneys cannot have third parties on
- 21 legally privileged calls is a rule,
- 22 • That the rule is invalid when it is used to violate the client's right to
- 23 speak confidentially with their attorney, or impairs the attorney's
- 24 ability to effectively represent incarcerated clients in violation of the
- 25 First, Fifth, Sixth, and/or Fourteenth Amendments.
- 26 • That ADC staff have violated the rights of Plaintiff's clients by

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listening to conversations they knew to be privileged.

- For any other relief this Court deems just and appropriate.

DATED March 16, 2021

A handwritten signature in black ink, appearing to read "S. Scheff", written over a horizontal line.

Stacy Scheff, *in pro-per*