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14 **SUPERIOR COURT OF ARIZONA**

15 **MARICOPA COUNTY**

16 STATE OF ARIZONA, EX REL.,
17 ANDREW P. THOMAS, MARICOPA
18 COUNTY ATTORNEY,

19 Plaintiff,

20 v.

21 THOMAS IRVINE, SHUGHART
22 THOMSON & KILROY, P.C. AND
23 RICHARD ROMLEY,

24 Defendants.

No. _____

**PETITION FOR WRIT OF QUO
WARRANTO AND
APPLICATION FOR ORDER TO
SHOW CAUSE**

25 Plaintiff State of Arizona, ex rel., Andrew P. Thomas, Maricopa County Attorney,
26 in support of its petition for a Writ of Quo Warranto pursuant to A.R.S. § 12-2042,
27 alleges as follows:

28 **JURISDICTION**

1. This Court has subject matter jurisdiction over this action pursuant to
Arizona Constitution, Article 6, Section 18 and A.R.S. § 12-2042.

2. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17)
because the Maricopa County Attorney brings this action on behalf of the State.

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PARTIES

3. Plaintiff is the State of Arizona. Andrew P. Thomas (hereinafter the “County Attorney”) is the duly elected County Attorney of Maricopa County.

4. The County Attorney is authorized by A.R.S. § 12-2042 to petition for a writ of quo warranto on behalf of the State of Arizona “against any person who usurps, intrudes into or who unlawfully holds or exercises any public office or any franchise within his county.”

5. Defendant Thomas Irvine is an attorney and shareholder of Defendant Shughart Thomson & Kilroy PC (the “Shughart Firm”). Mr. Irvine performs legal services and is an active member of the Arizona State Bar.

6. Defendant Richard Romley performs legal services and is an active member of the Arizona State Bar.

7. Defendant Romley formerly served as the Maricopa County Attorney from 1989 to 2004.

GENERAL ALLEGATIONS

8. Neither members of Defendant Shughart Firm, nor Defendants Irvine or Romley are currently elected as the Maricopa County Attorney.

9. The Maricopa County Board of Supervisors (hereinafter the “Board”) is a board established pursuant to A.R.S. § 11-201, *et seq.*, with powers established by A.R.S. § 11-251.

10. At all times relevant to the Complaint, the Board was comprised of the following elected supervisors: Fulton Brock, Andrew Kunasek, Don Stapley, Mary Rose Wilcox and Max Wilson.

11. Pursuant to the Arizona Constitution, the duties, powers and responsibilities of the County Attorney “shall be as prescribed by law.” Ariz. CONST. art. XII, § 4.

12. Pursuant to A.R.S. § 11-532(A)(1), the County Attorney has the power and duty to conduct “all prosecutions for public offenses.”

1 13. Pursuant to A.R.S. § 11-532(A)(4), the County Attorney has the power and
2 duty to “defend actions brought against the county”

3 14. Pursuant to A.R.S. § 11-532(A)(7), the County Attorney “shall ... [w]hen
4 required, give a written opinion to county officers on matters relating to the duties of
5 their offices.”

6 15. Pursuant to A.R.S. § 11-532(A)(9), the County Attorney has the power and
7 duty to “act as the legal advisor to the Board of Supervisors, attend its meetings and
8 oppose claims against the county which the county attorney deems unjust or illegal.”

9 16. Whenever the County Attorney is unable to represent the Board due to a
10 lack of resources or specialized expertise on his staff or a conflict of interest, pursuant to
11 his obligation under A.R.S. § 11-532(A), the County Attorney appoints counsel from a
12 list of Board-approved outside counsel to represent the Board.

13 17. Arizona law does not permit the Board to substitute the County Attorney
14 with outside legal counsel. *The Board of Supervisors of Maricopa County v. Woodall*,
15 120 Ariz. 379, 382, 586 P.2d 628, 631 (1978).

16 18. Arizona law does not permit an individual other than the County Attorney
17 to provide legal advice to the Board without the County Attorney’s consent. *See* A.R.S.
18 § 11-532(A)(9); *Woodall*, 120 Ariz. at 382, 586 P.2d at 631.

19 19. At all times relevant to the Complaint, the County Attorney has been able
20 and willing to fulfill his statutory duties as the Board’s legal advisor.

21 20. Upon information and belief, before December 5, 2008, Defendants Irvine
22 and the Shughart Firm contacted county officials and Board members offering legal
23 services to the Board.

24 21. On or about December 4, 2008, the Board provided a public notice for a
25 “Special Meeting” to be held on December 5, 2008.

26 22. The Open and Executive Session Agenda for the December 5, 2008
27 meeting (hereinafter the “Agenda”) indicated that the Board intended to vote on the
28 appointment of and employment of the “Shughart Firm as Special Counsel to provide

1 legal advice to the Board regarding whether the County Attorney has a conflict of
2 interest with the Board, and for the filing of any actions necessary as a result of whether
3 any conflict exists with the County Attorney.”

4 23. The Agenda listed Defendant Irvine as outside counsel to provide “[l]egal
5 advice regarding potential conflict with County Attorney.”

6 24. The County Attorney did not authorize the appointment of Defendant
7 Shughart Firm as Special Counsel to the Board, and the Board did not seek the County
8 Attorney’s authorization to appoint Defendant Shughart Firm as Special Counsel.

9 25. Prior to the December 5, 2008 Special Meeting, the County Attorney
10 cautioned Defendants Irvine and the Shughart Firm that the Board’s proposed
11 appointment of Defendant Shughart Firm as Special Counsel violated A.R.S. § 11-
12 532(A)(9) and was, therefore, unlawful.

13 26. In the December 5, 2008 letter, the County Attorney also cautioned
14 Defendants Irvine and the Shughart Firm that Defendant Irvine could not be present
15 during the executive session of the Board or give legal advice to the Board. Pursuant to
16 A.R.S. § 38-431.03, only the Board and its attorney may be present for the purpose of
17 providing legal advice in an executive session of the Board.

18 27. The December 5, 2008 letter also informed Defendant Irvine that the
19 County Attorney determines when a conflict requires the appointment of outside counsel
20 to provide legal advice to the Board, and the Board may not seek outside counsel
21 independently.

22 28. In the December 5, 2008 letter, the County Attorney’s Office warned
23 Defendant Irvine that the County Attorney had declared no such conflict and did not
24 retain him to take the County Attorney’s place at the Executive Session scheduled for
25 December 5, 2008.

26 29. To date, the County Attorney has not found a conflict of interest requiring
27 the appointment of outside counsel for the Board.
28

1 30. A “draft” version of the “Special Meeting Minutes” for the December 5,
2 2008 meeting, indicate that the Board considered the appointment of Defendant Shughart
3 Firm, as “Special Counsel to the Board of Supervisors pursuant to the Contract for
4 Specialty Legal services Providers” at the meeting.

5 31. The draft also indicates that Defendant Irvine was present at the session
6 and provided legal advice to the Board.

7 32. Upon information and belief, Defendant Irvine and the Shughart Firm
8 accepted the appointment and employment as Special Counsel to the Board.

9 33. Based upon the warnings of the County Attorney, as well as the comments
10 of Special Assistant County Attorney Barnett Lotstein at the Board’s meeting on
11 December 5, 2008, Defendants Irvine and the Shughart Firm were aware that they could
12 not lawfully provide legal advice to the Board without the consent of the County
13 Attorney.

14 34. Upon information and belief, despite the County Attorney’s warnings,
15 Defendants Irvine and the Shughart Firm have provided legal counsel to unknown
16 representatives of the County, including several Board members, without the County
17 Attorney’s consent, thus usurping, intruding and otherwise interfering with the public
18 office of the County Attorney in violation of A.R.S. § 12-2042.

19 35. On December 22, 2008, the Board published a public notice for a Special
20 Meeting set for 1:00 p.m. on December 23, 2008.

21 36. The “Special Meeting Agenda” for the December 23, 2008 meeting states
22 that the Board “previously appointed” Defendant Shughart Firm “on December 5, 2008
23 as its Special Counsel for the filing of any actions necessary as a result of any conflict
24 with the County Attorney, and to provide all necessary legal advice related to the
25 conflict of interest.”

26 37. At the December 23, 2008 meeting, Defendant Irvine gave legal advice to
27 the Board on the Agenda Items.

28

1 38. Upon information and belief, prior to the December 23, 2008 meeting, the
2 Board hired Defendant Romley to serve as consultant to provide legal advice to the
3 Board.

4 39. The County Attorney did not authorize the Board to retain Defendant
5 Romley to provide legal advice to the Board, and the Board did not seek the County
6 Attorney's authorization to retain Defendant Romley.

7 40. The "consulting" arrangement between the Board and Defendant Romley
8 is an unlawful attempt to usurp, intrude upon or otherwise interfere with the County
9 Attorney's statutory duties as the legal advisor to the Board.

10 41. During his 15 year tenure as Maricopa County Attorney, Defendant
11 Romley filed a lawsuit against Maricopa County Sheriff Joseph Arpaio to prevent the
12 Sheriff's attempt to "fire" the County Attorney due to perceived conflicts. *See Romley v.*
13 *Arpaio*, 202 Ariz. 47 (2002). Based upon his participation in the *Arpaio* case, Defendant
14 Romley is aware that the Board cannot hire independent legal counsel for the purpose of
15 obtaining legal advice and counsel if the County Attorney is willing and able to provide
16 legal advice and counsel.

17 42. Upon information and belief, despite his knowledge that he cannot
18 lawfully provide legal advice to the Board, Defendant Romley has provided legal advice
19 to the Board without the County Attorney's consent, thus usurping, intruding and
20 otherwise interfering with the public office of the County Attorney in violation of A.R.S.
21 § 12-2042.

22 43. Upon information and belief, the Board has agreed to pay Defendant
23 Romley \$350 an hour for his services as a consultant in a time when the Board contends
24 Maricopa County is in a budgetary and fiscal crisis. Upon information and belief, this
25 rate is nearly seven times the hourly rate that the Attorney General's Office recently paid
26 Defendant Romley for similar legal services.

27 WHEREFORE, the Plaintiff prays for the following relief:
28

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1 A. That this Court issue a Writ of Quo Warranto to Defendants Irvine, the
2 Shughart Firm, and Romley requiring they show cause why their actions do not
3 constitute usurpation, intrusion and/or interference with the public office of the Maricopa
4 County Attorney, and why the Court should not find them unlawfully interfering with
5 this office;

6 B. That this Court grant judgment declaring that Defendants Irvine, the
7 Shughart Firm and Romley usurped, intruded upon and/or interfered with the County
8 Attorney's office and grant injunctive relief.

9 C. That this Court sanction Defendants Irvine, the Shughart Firm and Romley
10 for knowingly usurping, intruding and interfering with the statutory relationship between
11 the County Attorney and the Board for their own financial benefit and in violation of
12 Arizona law.

13 D. That this Court order Defendants Irvine, the Shughart Firm and Romley to
14 disgorge any funds obtained as a result of their unlawful conduct and return any records,
15 documents or other property pertaining to their appointments and employment with
16 Maricopa County.

17 E. Other such relief as justice requires.

18
19 DATED this 31st day of December 2008.

20 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

21
22 By Leah S. Freed

23 Joseph T. Cleeves

24 L. Eric Dowell

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