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7 **SUPERIOR COURT FOR THE STATE OF ARIZONA**

8 **MARICOPA COUNTY**

9 STATE OF ARIZONA,

10 Plaintiff,

11 vs.

12 NATHAN GRAHAM ROUSE,

13 Defendant.

No. CR2007-15243-001-SE

**RESPONSE TO MOTION FOR
ORDER TO SHOW CAUSE
RE: CONTEMPT**

14
15 Maricopa County Adult Probation Officer Anne M. Skebba, through undersigned
16 counsel, responds as follows to Defendant's Motion for Order to Show Cause.

17 **A. Factual Background.**

18 Officer Anne M. Skebba has been employed as an Adult Probation Officer with
19 Maricopa County Adult Probation Department ("APD") for over four years. She is the
20 supervising officer for Defendant Rouse. The conditions of probation applicable to the
21 Defendant included Uniform Conditions of Supervised Probation numbers 1 – 16, 21, 24 and
22 26. Uniform Condition 24 directed the Defendant to participate and cooperate in counseling

1 or assistance for "Substance Abuse" and "Sex Offender" as directed by APD; Uniform
2 Condition 26 required completion of a psycho sexual evaluation.

3 Defendant completed a psycho sexual evaluation on April 30, 2008. On May 13,
4 2008, Officer Skebba recommended that the Court defer Defendant's jail term pending
5 results of the evaluation. The Court agreed with the deferment.

6 Written results of the evaluation were dated May 30, 2008. As a result thereof, and
7 pursuant to Uniform Conditions 10¹ and Uniform Condition 24², Officer Skebba made a
8 written directive on June 12, 2008 that Defendant schedule a sexual history polygraph.
9 Additionally, Officer Skebba contacted the Court on July 7, 2008 to request a hearing to
10 determine whether additional sex offender conditions needed to be added. Specifically,
11 Officer Skebba advised the Court of the evaluator's recommendation that Defendant (1) be
12 prohibited from unsupervised contact with children, (2) be prohibited from possessing
13 pornographic materials, and (3) be subjected to the use of clinical polygraph to monitor
14 compliance with terms of probation and to produce a confirmation history polygraph
15 examination free from indications of deception. The Court declined addition of sex offender
16 conditions in a hearing on September 25, 2008.

17 On October 1, 2008, Officer Skebba discovered that the Defendant had not complied
18 with her June 12, 2008 written directive to schedule a sexual history polygraph. Officer
19

20 ¹ "Defendant shall participate and cooperate in any program of counseling or assistance as
21 directed by the APD and/or Court."

22 ² "Defendant shall participate and cooperate in any counseling or assistance as directed by
the APD pertaining to Sex Offender"

1 Skebba cited the probation violation of Uniform Condition 10 in writing the following day.
2 Officer Skebba also completed a written directive reiterating that the Defendant must
3 schedule a sexual history polygraph (pursuant to Uniform Conditions 10 and 15) and
4 referring Defendant for sex offender treatment (pursuant to Uniform Conditions 10 and 24).
5 Officer Skebba specifically explained to Defendant that the Uniform Conditions 10 and 24
6 allowed for referral to treatment even without the addition of sex offender conditions by the
7 Court.

8 In November 2008, Officer Skebba informed the Court that the doctor that had
9 completed Defendant's April 2008 psycho sexual evaluation had determined that Defendant
10 could benefit from sex offender treatment. Officer Skebba further advised that the
11 Defendant was scheduled to complete a sexual history polygraph, and would be starting
12 treatment. Officer Skebba recommended that Defendant's jail term be deferred for four
13 months to gauge Defendant's attendance and compliance with sex offender treatment and the
14 sexual history polygraph. The Court, fully aware of the course of action being taken by
15 Officer Skebba, agreed with the deferment.

16 **B. Analysis.**

17 Defendant's Motion for Order to Show Cause misrepresents Officer Skebba's actions
18 and demonstrates a misunderstanding of one the APD's most basic duties: assessing
19 offenders' risks and need in order to help guide Court decisions and to apply the appropriate
20 level of services.

21 Defendant implies that Officer Skebba directed Defendant to submit to a sexual
22 history polygraph after – and in defiance of – the Court's decision not to impose sex offender

1 terms. Notably, Officer Skebba's directive was made in June 2008, wholly independent of,
2 and more than three months *prior* to, the Court's decision of whether to impose additional
3 sex offender terms. The directive to undergo a polygraph examination was not the
4 imposition of a new sex offender term, but was made pursuant to the existing Uniform
5 Conditions of Supervised Probation 10 and 24.

6 Defendant argues that it is important to note that Officer Skebba directed Defendant
7 to schedule the polygraph after she acknowledged to the Court that Defendant has completed
8 the evaluation as directed by Condition 26 of his probation. More important is to note that
9 Officer Skebba's cited acknowledgement was completed in conjunction with a request to
10 defer Defendant's jail term because Officer Skebba had not received the results of the
11 evaluation.

12 Although the Court ultimately declined imposition of additional sex offender terms of
13 probation, the Court did not "shoot down" Officer Skebba's June 2008 directive, nor did the
14 Court suggest that the Defendant could disregard existing directives of the APD. Officer
15 Skebba's refusal to rescind the directive does not violate any order of this Court. It was
16 explained to Defendant that his failure to comply with the June 2008 directive was a
17 violation of Uniform Conditions 10 and 15 of his probation.

18 This Court is aware of Officer Skebba's directives, and on November 4, 2008,
19 executed a modification deferring Defendant's jail term to allow time for compliance with
20 the directives. It is irrational for Defendant to move that Officer Skebba be held in contempt
21 for directives that this Court has already implicitly approved by deferring Defendant's jail
22 term specifically for the purpose of allowing compliance with the directives at issue.

1 **C. Conclusion.**

2 Probation Officer Skebba has not violated any of this Court's orders and Defendant's
3 motion is wholly without merit. The real problem here is that Defendant's counsel confuses,
4 "sex offender terms and conditions" (involving severe restrictions on a defendant's actions
5 and movements) with "sex offender counseling and assistance" pursuant to term 24 of
6 Uniform conditions of probation.

7 And that confusion appears intentional. This defendant's recent admissions and
8 polygraph result have given Probation Officer Skebba a strong indication that this defendant
9 presents a clear danger to the community. In order to forestall warranted adverse
10 consequences for the defendant, defense counsel has engaged in inappropriate legal
11 gamesmanship.

12 Specifically, defense counsel sought an order to show cause instead of following the
13 legal correct (and more time consuming) procedures under Rule 27.3, Rules of Criminal
14 Procedure for modifying terms and conditions of probation. And it appears counsel
15 deliberately mislead the court in the OSC pleading (and the concurrently filed motion for
16 Early Termination) so that defendant could avoid any adverse consequences from his
17 admissions. The motion must, in all respects, be denied.

18 Dated this 26th day of February, 2009.

19 BIHN & MCDANIEL, P.L.C.

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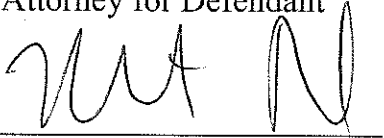
21 Martin A. Bihn

1 COPY of the foregoing faxed and/or
e-mailed this 7th day of February, 2009 to:

2
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