

# SCHMITT SCHNECK SMYTH CASEY & EVEN, P.C.

ATTORNEYS AT LAW

Timothy J. Casey  
e-mail: [timcasey@azbarristers.com](mailto:timcasey@azbarristers.com)

Client No. 5354.030

November 5, 2015

## VIA HAND-DELIVERY

Hon. Steve Chucri  
Chairman  
District 2 Supervisor  
MARICOPA COUNTY BOARD OF SUPERVISORS  
301 West Jefferson Avenue, 10<sup>th</sup> Floor  
Phoenix, Arizona 85003

**Re: *Melendres v. Arpaio, CV2007-2513 U.S.D.C. Arizona***  
**REQUEST FOR REIMBURSEMENT OF FEES AND EXPENSES**  
**NECESSARILY INCURRED BY T. CASEY TO RETAIN ETHICS COUNSEL**  
**TO PROTECT FORMER CLIENTS' PRIVILEGE AND CONFIDENTIAL**  
**INFORMATION- APPEAL OF MCAO DENIAL**

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Dear Mr. Chucri:

On October 28, 2015, I wrote County Attorney William Montgomery requesting that he authorize Maricopa County to reimburse my law firm \$116,633.81 for the fees and expenses my firm incurred from February 1, 2015 through September 30, 2015 to protect the attorney-client privilege and client confidentiality of our former clients (Sheriff Joseph M. Arpaio and the Maricopa County Sheriff's Office) by retaining the legal services of ethics counsel Adams & Clark, P.C. in regards to the contempt proceeding in the above-referenced case. Attached as Exhibit 1 to this letter is a copy of my October 28, 2015 letter with attachment. On November 3, 2015, I was advised by Doug Irish that the Office of Maricopa County Attorney ("MCAO") is denying my request for reimbursement.

The contract between Maricopa County and my firm, Serial 13102-ROQ, does not contain a dispute resolution provision. As such, I am directly appealing to the Board of Supervisors to reconsider the MCAO's decision and independently approve Maricopa County's reimbursement of the foregoing sum for the reasons set forth herein and in the attached Exhibit 1.

In summary to the attached exhibit: I was ordered by the Court in November 2014 at the time of my withdrawal as counsel for Sheriff Arpaio and the MCSO to assist in the transition of the case to new counsel; the Court stated its expectation that the County would reimburse me for the assistance; the later decisions and actions of Sheriff Arpaio and the other contemnors concerning their defense to, and/or mitigation of, the various contempt issues placed me in an extraordinarily rare and unique situation of becoming a fact witness in the contempt hearing; and I retained ethics counsel Adams & Clark as a necessary part of advising me how to fulfill my role and ethical duties of protecting the privileges and confidentiality held by my former clients Sheriff Arpaio and the MCSO.

Any position that the retention of ethics counsel was for my, and/or my firm's, own benefit is mistaken. It is also factually counter to the tremendous financial hardship incurred to protect my former clients' privilege and confidentiality. I would never have incurred such charges had I not determined it was necessary to protect my former clients' interests. Any benefit inuring to me or my firm, therefore, is merely incidental or secondary to ethics counsel Adams & Clark advising me on how to fulfill my duties to protect my former clients' interests. In other words, what benefitted and protected my former clients would benefit me and my firm by following the ethical rules. Moreover, such a position disregards the historic anomaly of the circumstances created by my former clients during their contempt proceedings.

The position that I did not obtain pre-approval for retaining ethics counsel Adams & Clark, while accurate, should not be dispositive on a reimbursement decision. Assuming that Serial 13102-ROQ applies to my retention of ethics counsel, the County retains the exclusive and broad authority and discretion to retroactively approve any type of service that it deems appropriate and/or necessary. In this situation, I and my firm were placed in an exceptionally rare position. We were under Court orders to lawfully produce documents and testify while at the same time remaining hyper-vigilant to take every proper action we could in the contempt proceedings to protect our former clients' interests and fully comply with our ethical duties to our former clients. Most lawyers face a lifetime of law practice without facing circumstances created by their former clients as here. As such, I respectfully submit that, as a matter of fairness and equity, the County should authorize the requested reimbursement given the extraordinary circumstances presented here.

If you would like to discuss the foregoing in executive session, public meeting, or any other format, I and my ethics counsel Adams & Clark are available at the convenience of the Board. If you require any additional information, please advise me as soon possible and I will provide the same to you.

Thank you in advance for your consideration of this request. I respectfully request the favor of a reply by November 25, 2015.

Sincerely,  
SCHMITT SCHNECK SMYTH CASEY & EVEN,  
P.C.

By   
Timothy J. Casey

TJC:eh

Encl.

cc: Denny Barney, Supervisor, District 1, w/encl.  
Andrew Kunasek, Supervisor, District 3, w/encl.  
Clint Hickman, Supervisor, District 4, w/encl.  
Steve Gallardo, Supervisor, District 5, w/encl.

Fran McCarroll, Clerk of the Board, w/encl.  
Tom Manos, County Administrative Officer, w/encl.  
William Montgomery, County Attorney, w/encl.