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to do justly, to love mercy, and to walk humbly with God. Micah 6 8

IN THE SUPERIOR COURT, STATE OF ARIZONA
APACHE COUNTY, JUVENILE DIVISION

In the Matter of:)
) Case No. JV 2008-065
Christian Ryan Romero)
) **Supplement to Objection to Motion to Dismiss**
) **Without Prejudice**
)
A person under 18 years) **[Hearing Requested]**
)

The Juvenile, through counsel and pursuant to the following authority,
supplements its objection to the motion to dismiss Count 1 of the Petition and requests
that the matter be set for a hearing.

In addition to the reasons for the objection to the dismissal of Count 1 without
prejudice stated in the motion filed 11/25/08 counsel argues the Juvenile will be
prejudiced by the dismissal of a single count in the Petition without prejudice in the event
the Juvenile is deemed to be incompetent to stand trial and not restorable within the 240
day window, at which time the Court is required to dismiss the matter with prejudice.

A.R.S. § 8-291.01 states, in pertinent part.

A. A juvenile shall not participate in a delinquency, incorrigibility or criminal
proceeding if the court determines that the juvenile is incompetent to proceed.

A.R.S. § 8-291.08 states, in pertinent part:

A. Within thirty days after a report is filed pursuant to § 8-291.07, the court shall hold a hearing to determine if a juvenile is competent to stand trial. The parties may introduce other evidence regarding the juvenile's mental condition or may submit the matter by written stipulation on the mental health expert's report or reports.

B. If the court finds that the juvenile is competent to stand trial, the proceedings shall continue without delay.

C. If the court initially finds that the juvenile is incompetent but may be restored to competency, the court shall order that the juvenile undergo an attempt at restoration to competency.

D. If the court initially finds that the juvenile is incompetent and there is not a substantial probability that the juvenile will be restored to competency within two hundred forty days, the court shall dismiss the matter **with prejudice** and shall initiate civil commitment proceedings, if appropriate. The court may appoint a guardian ad litem to proceed with a dependency investigation [Emphasis added] ..

A.R.S. § 8-291 10 states, in pertinent part...:

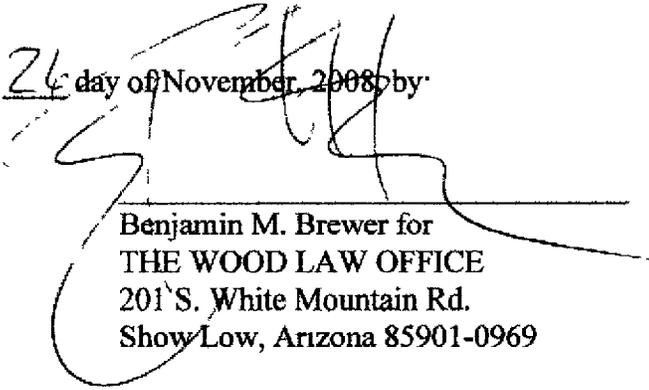
H. If at a hearing that is held pursuant to subsection C or subsection D, paragraph 1 or 2 of this section the court finds that the juvenile is incompetent to proceed and that there is not a substantial probability that the juvenile will regain competency within two hundred forty days after the date of the original finding of incompetency, **the court shall dismiss the charges with prejudice** and shall initiate civil commitment proceedings, if appropriate. The court shall order the guardian ad litem to proceed with a dependency investigation. [Emphasis added]

Clearly, then, if Count 1 is dismissed without prejudice, prior to a finding of incompetency by this Court, and Christian is found incompetent and unable to be restored within the time limits, Count 2 would be dismissed with prejudice. But, because Count 1 would have been dismissed without prejudice prior to a finding of incompetency, that Count would not be before the Court to dismiss with prejudice and as such the

government would be free to re-file that Count at a different date, presumably once the Juvenile was deemed competent, and begin proceedings then. The prejudice of this tactical maneuvering by the government is evident and for that reason, as well as those previously argued, defense strenuously objects to a dismissal of Count 1 without prejudice.

Counsel would urge the Court to consider this supplement, set this matter for a hearing, and thereafter deny the government's motion to dismiss Count 1 ~~without~~ prejudice.

Respectfully Submitted this 26 day of November, 2008, by



Benjamin M. Brewer for
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Copies mailed this 24 day of
November, 2008, to:
Judge Roca
Mr. Carlyon, Apache County Attorney
Client