SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, -vs- STEVEN DEMOCKER, Defendant.	**Case No.** P1300CR201001325 **RULING**	**FILED** DATE: 3/16/2011 9:16 O'Clock A .M. JEANNE HICKS, CLERK BY: Karen Wilkes Deputy

HONORABLE DAVID L. MACKEY	**BY:** Cheryl Wagster Judicial Assistant
DIVISION 1	**DATE:** March 16, 2011

In mid-December 2010 the Clerk of the Superior Court was in the process of reorganizing the file in State v. Steven Carroll DeMocker, P1300CR20081339 in response to requests from the media for release of the information. During the comparison of the computerized OnBase records to the paper file, it was discovered that some documents that were "sealed" had been viewed and, in some cases, printed by persons employed by the Yavapai County Attorney's Office and Yavapai County Victim Services at remote electronic access sites. With the approval of the Presiding Judge a further administrative investigation was initiated by the Clerk of the Superior Court to determine what "ex parte" and "sealed" documents had been viewed through OnBase by persons employed by those offices. During that administrative investigation, it was determined that persons employed by the Yavapai County Public Defender's Office had also viewed "ex parte" and "sealed" documents at remote electronic access sites. The investigation was expanded to include a review of what "ex parte" and "sealed" documents had been viewed through all OnBase remote electronic access sites.

The Clerk of Court has completed a review of the records in State v. Steven Carroll DeMocker, P1300CR20081339 and has prepared two reports. The first report addresses documents that were filed "ex parte" pursuant to Rule 15.9, *Ariz.R.Crim.P.* The second report addresses documents that were "sealed" pursuant to Arizona law or the Order of the Court. Until this Court can verify that the release of the full information in those reports will not impact Mr. DeMocker's right to a fair trial, the Court finds that whether in electronic or paper form the reports are judicial work product pursuant to Rule 123(d)(3), *Arizona Supreme Court Rules* and shall be closed pursuant to Rule 123(b)(2), *Arizona Supreme Court Rules*. Those reports have been further edited by this Court to minimize the possibility that matters that are still confidential remain confidential until otherwise ordered. The reports are attached to this Ruling in a sealed envelope. **That sealed envelope is not to be scanned until further order of the Court.**

The Court's review of the reports as well as the file in P1300CR20081339 reveal that there are three general categories of "sealed" documents that have been viewed at remote electronic access sites by persons in the offices referenced above. First, and most concerning, there are instances in which it appears that Defense Counsel filed documents with the expectation that the documents and any subsequent order would be viewed only by the defense team and the Court pursuant to Rule 15.9, *Ariz.R.Crim.P.* Second, there are a number of instances in which documents were "sealed" pursuant to Arizona law or pursuant to a Court Order in which both the State and Defense Counsel were either involved in the proceedings or were otherwise made aware of the contents of "sealed" documents. Third, there are documents that were sealed pursuant to Arizona law or by Order of the Court.

Those general categories can be further broken down into the following more specific categories of documents that were viewed and, in some cases, printed by persons employed by the Yavapai County Attorney's Office, Yavapai County Victim Services and the Yavapai County Public Defender:

1. Motions filed by Defense Counsel pursuant to Rule 15.9 *Ariz.R.Crim.P.*
2. Orders issued in response to Motions filed by Defense Counsel pursuant to Rule 15.9 *Ariz.R.Crim.P.*
3. Minute Entries ordered sealed by the Court.
4. Motions filed by Defense Counsel "under seal".
5. Transcripts filed by Defense Counsel "under seal".
6. Grand Jury Minutes and Transcripts.
7. Transcripts ordered sealed by the Court.
8. Motions ordered sealed by the Court.
9. Juror Messages ordered sealed by the Court.
10. Other Orders sealed by the Court.
11. Rulings ordered sealed by the Court.

The investigation also has revealed that the Clerk of the Court's distribution stamp on the face of a number of the "sealed" Rule 15.9 Orders reflects distribution to the County Attorney's Office and Victim Services. Such distribution may have been contrary to the expectations of Judge Lindberg and the prior defense team. Therefore, the Court is concerned that not only have "sealed" documents been viewed through remote electronic access sites but that "sealed" documents have been distributed to the Yavapai County Attorney's Office and Victim Services when Judge Lindberg anticipated that such distribution would not occur.

The Clerk of Court believes that the OnBase remote electronic access that had been authorized to persons employed by the County Attorney's Office, Victim Services and the Public Defender's Office did not grant the viewing of "ex parte" and "sealed" documents in this criminal case. An administrative investigation is ongoing into how remote electronic access to the "ex parte" and "sealed" documents was obtained in this case and into what steps can be taken to prevent such remote electronic access in the future. However, given the ongoing nature of this criminal case, the Court has determined that the release of this information to the attorneys involved in this criminal proceeding at this time is fundamentally necessary to allow for further investigation by the attorneys as well as further proceedings regarding the impact upon the Defendant's fundamental right to receive a fair trial.

To the extent the records are considered "remote electronic access user records" pursuant to Rule 123(e)(8), *Arizona Supreme Court Rules*, the Court finds that the Defendant's right to a fair trial outweighs the privacy interest of the remote electronic access user.

The Court is proceeding carefully to avoid the further release of information contained in the "sealed" documents. Initially, this Ruling is being distributed as set forth below; however, the reports are being distributed only to the Honorable Warren R. Darrow and the current Defense Team of Defense Counsel Craig A. Williams and Defense Counsel Greg Parzych. Defense Counsel will be given twenty (20) days from the date of this Ruling, exclusive of Saturdays, Sundays and legal holidays, to review the reports and advise the Court whether there are any other redactions necessary. Once that period of time passes, sealed envelopes with the reports will be distributed to Deputy County Attorney Joseph C. Butner III, Deputy County Attorney Jeffrey Paupore, Yavapai County Attorney Sheila Polk, Victim Services and Yavapai County Public Defender Dean Trebesch as well as the media parties in this case. To facilitate current Defense Counsel's review of the documents, the Court is ordering that current Defense Counsel be given complete access to the Clerk of the Superior Court's paper file in P1300CR20081339 including access to closed documents, confidential documents, sealed documents and/or unscanned documents.

Further proceedings regarding the impact of the distribution of the "sealed" documents on the prosecution of Steven Carroll DeMocker will be addressed by the judge assigned to this case. Further administrative investigation and discussions with representatives from the County Attorney's Office as well as the Public Defender's Office will be addressed by the Presiding Judge.

IT IS ORDERED whether in electronic or paper form the two reports prepared by the Clerk of the Superior Court regarding remote electronic access to documents that were filed "ex parte" pursuant to Rule 15.9, *Ariz.R.Crim.P* and to documents that were "sealed" pursuant to Arizona law or the Order of the Court are closed pursuant to Rule 123(b)2) and (d)(3), *Arizona Supreme Court Rules*.

IT IS ORDERED the reports attached to this Ruling in the sealed envelope are to be sealed in the Court file and not scanned until further order of this Court.

IT IS FURTHER ORDERED this Ruling without the sealed reports shall be distributed to the following:

Honorable Warren R. Darrow
Defense Counsel Craig A. Williams
Defense Counsel Greg Parzych
Deputy County Attorney Joseph C. Butner III
Deputy County Attorney Jeffrey Paupore
Yavapai County Attorney Sheila Polk
Yavapai County Public Defender Dean Trebesch
Chris Moeser
Bill Williams
Victim Services

IT IS FURTHER ORDERED a sealed envelope with copies of the reports shall be distributed by the Presiding Judge directly to the Honorable Warren R. Darrow as well as Defense Counsel Craig A. Williams and Defense Counsel Greg Parzych.

IT IS FURTHER ORDERED Defense Counsel Craig A. Williams and Defense Counsel Greg Parzych shall have twenty (20) days from the date of this Ruling, exclusive of Saturdays, Sundays and legal holidays, to provide the Presiding Judge with a request for further redaction in a sealed envelope that will be provided directly to the Presiding Judge's Judicial Assistant for examination *in camera.*

IT IS FURTHER ORDERED current Defense Counsel Craig A. Williams and Greg Parzych are authorized to have complete access to the Clerk of the Superior Court's paper file in P1300CR20081339 including access to closed documents, confidential documents, sealed documents and/or unscanned documents.

IT IS FURTHER ORDERED the Presiding Judge will then determine whether further redactions of the report are appropriate and distribute the reports to the following:

Deputy County Attorney Joseph C. Butner III
Deputy County Attorney Jeffrey Paupore
Yavapai County Attorney Sheila Polk
Yavapai County Public Defender Dean Trebesch
Chris Moeser
Bill Williams
Victim Services

cc: Honorable Warren R. Darrow – Division Pro Tem B
Joseph C. Butner – Deputy Yavapai County Attorney
Craig Williams – DeRienzo and Williams, 3681 N. Robert Road, Prescott Valley, AZ 86314
Greg Parzych – 222 N. Central Avenue, Phoenix, AZ 85004
Chris Moeser – Steptoe & Johnson, 201 E. Washington Street, Suite 1600, Phoenix, AZ 85004
Victim Services
Bill Williams – 824 W. Gurley, #129, Prescott, AZ 86305
Yavapai County Attorney Sheila Polk
Yavapai County Public Defender Dean Trebesch