

**ARIZONA COURT OF APPEALS**  
**DIVISION ONE**

**Robert Parsons et al.,**  
Plaintiffs/Appellees.

v.

**Toby Harris,**  
Defendant/Appellant,

**Court of Appeals Case No.: 1 CA-CV 26-0642**

**Superior Court Case No.: CV2023-002276**

**APPELLANT'S REPLY TO APPELLEES' RESPONSE TO  
MOTION FOR SANCTIONS**

Appeal from the Superior Court of Arizona, Maricopa County

**Honorable Scott Minder, Judge Presiding**

Submitted by:

**Toby Harris, Pro Se**

Defendant/Appellant

13602 N. 44<sup>th</sup> St #149

Phoenix, AZ 85032

623-387-065

## I. Introduction

Appellant Toby Harris respectfully submits this Reply to Appellees' Response to Motion for Sanctions.

The docket confirms this motion remains a pending matter and that a reply is authorized:

“Reply to Motion Due — Due By: Monday, September 28, 2026 ...

Re: Plaintiffs/Appellees ... Response To Motion For Sanctions.”

“PENDING MATTER — Motion for Sanctions (Appellant Pro Per).”

Appellees' response does not cure—and in fact compounds—the misconduct identified in the Motion for Sanctions.

## II. Sanctions Motions Are Permitted in Appeals, and the Briefing Schedule Proves It

Appellees incorrectly suggest that sanctions cannot be sought at the appellate level or that Appellant's motion is procedurally improper. This is demonstrably false.

ARCAP 25 expressly authorizes sanctions in the Court of Appeals. The Court's own docket confirms this by issuing a briefing schedule for the sanctions motion:

“Reply to Motion Due — Due By: Monday, September 28, 2026 ... Response To Motion For Sanctions.”

If sanctions motions were not permitted in appeals, the Court would have:

- struck the motion,
- denied it summarily, or
- refused to set a briefing schedule.

Instead, the Court accepted the motion, docketed it as a pending matter, ordered Appellees to respond, and set a reply deadline. This is conclusive proof that the motion is procedurally proper.

Appellees' contrary assertion is a misstatement of appellate procedure and itself supports sanctions.

### III. Misstatements of Law

#### A. Frivolousness Standard

Appellees assert that Appellant's appeal is "frivolous." This misstates the governing standard. A frivolous appeal is one wholly without merit such that no reasonable litigant would pursue it. Appellant's opening brief raises:

- constitutional-malice issues,
- structural error in the superior court's handling of the motion to vacate,
- record-based challenges to the judgment.

These issues are facially non-frivolous and grounded in the record. Appellees' disagreement with the merits does not convert the appeal into a frivolous one.

#### B. Misuse of Eaton Fruit and Jurisdiction

Appellees attempt to re-litigate jurisdiction as a basis for sanctions. The Court has already resolved this:

“ORDERED: Pursuant to Eaton Fruit ... staying appeal ... revesting jurisdiction in superior court ... If no order has been signed by 08/31/2026 ... this court will dismiss this appeal.”

The superior court entered the signed order, the record was supplemented, and Division One allowed the appeal to proceed. Appellees' jurisdiction argument contradicts the Court's own order.

#### IV. Appellees' Response Does Not Address the Issues Pending Before This Court

Appellees' response fails to address the actual issues pending before this Court. Instead of responding to the structural defects raised in Appellant's Motion for Sanctions, Appellees offer generalized accusations, misstatements of law, and irrelevant characterizations. Their response does not engage with:

1. the void nature of the vexatious-litigant injunction,
2. the permanent breach and multi-year prior restraint created by that void injunction,

3. the lower-standard distortion resulting from Appellees' suppression of their public-figure status,
4. the superior court's refusal to rule on Appellant's pending punitive-damages motion,
5. the procedural impossibility of issuing a vexatious injunction mid-case,
6. the Court of Appeals' own docket entries confirming these issues are properly before the panel.

The docket shows the issues are live and pending:

“PENDING MATTER — Motion for Sanctions (Appellant Pro Per).”<sup>1</sup>

“FILED: Motion Requesting Appellate Determination of Constitutional Malice Standard and Correction of Structural Error.”

Appellees do not dispute the structural impossibility of the vexatious order. They do not dispute that the injunction lacked a signed order. They do not dispute that the injunction was used to block filings. They do not dispute that the punitive-damages motion remains unresolved. They do not dispute that Appellant attempted to raise the correct constitutional standard.

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<sup>1</sup> The punitive-damages motion seeks \$4.1 billion based on allegations of intentional misuse of judicial process, suppression of constitutional rights, and obstruction of access to the courts. Under Arizona punitive-damages doctrine, deterrence must be proportionate to the defendant's financial condition, and a punitive award must be sufficiently substantial to achieve meaningful deterrence. See *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 330 (1986); *Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 497 (1987); *Volz v. Coleman Co.*, 155 Ariz. 567, 570 (1987). The amount requested reflects the level necessary to deter future misconduct given the defendant's demonstrated resources. Appellees' response does not address the punitive-damages claim or its procedural posture, underscoring their failure to engage with the issues properly before this Court.

Their failure to address the issues pending before this Court is itself sanctionable under ARCAP 25 because it:

- misleads the Court,
- obstructs appellate review,
- multiplies proceedings, and
- demonstrates bad faith.

This omission reinforces the need for sanctions.

#### V. The Vexatious-Litigant Order Was Void, and All Rulings Made Under It Are Void

A vexatious-litigant designation is an injunction under A.R.S. § 12-3201. See A.R.S. § 12-3201(A); Ariz. R. Civ. P. 65(a)(1).

Injunctions require:

- a signed order,
- Rule 65 compliance,
- notice,
- findings,
- and an appealable final order.

An injunction cannot be issued mid-case to block filings in the same matter. The superior court's mid-case vexatious ruling was therefore structurally impossible and jurisdictionally void.

The docket confirms the procedural posture at the time the vexatious order was imposed:

“Motion for Leave to File Motion to Vacate to Void Judgment.”

“Scott Sebastian Minder, Authoring Judge of Order.”

These entries show the case was active, with live motions pending, when the superior court attempted to impose a vexatious designation. Because the vexatious order lacked a signed injunction and was issued mid-litigation, it had no legal effect.

A void injunction cannot:

- restrict filings,
- strike motions,
- bar access to the court, or
- dispose of pending claims.

Accordingly, all rulings made under that void injunction are themselves void, including the refusal to consider Appellant's pending punitive-damages motion.

#### VI. The Void Vexatious Order Produced a Permanent Breach and an Unlawful Prior Restraint

Appellees' response overlooks the most severe consequence of the superior court's actions: by attempting to impose a vexatious-litigant injunction mid-case—without a signed order, without Rule 65 findings, and without an appealable judgment—the court created a procedurally impossible injunction. Because the injunction was void, every restriction imposed under it was also void.

The docket confirms the procedural posture at the time the vexatious order was imposed:

“Motion for Leave to File Motion to Vacate to Void Judgment.”

“Scott Sebastian Minder, Authoring Judge of Order.”

These entries show the case was active, with live motions pending, when the superior court attempted to block Appellant’s access to the court. A void injunction cannot restrict filings, cannot strike motions, and cannot bar access to judicial review. Yet Appellant was prevented from filing motions, prevented from obtaining rulings, and prevented from advancing constitutional defenses.

This resulted in a permanent breach of Appellant’s rights:

- denial of access to the courts,
- denial of due process,
- and a multi-year prior restraint on protected speech.

A prior restraint is “the most disfavored” form of speech restriction in American law. See *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976); *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). When such a restraint persists for years—based solely on a minute-entry ruling rather than a signed injunction—it becomes an extraordinary constitutional anomaly. Appellant is unaware of any reported case in which a prior restraint of this duration was upheld by a mere minute entry rather than a lawful injunction.

Appellees' counsel relied on this void order to block filings, suppress speech, and prevent adjudication of Appellant's pending punitive-damages motion. Their continued reliance on a procedurally impossible injunction—both below and in this Court—constitutes misuse of judicial process and supports sanctions under ARCAP 25.

## VII. Appellees Litigated Under a Lower Standard by Suppressing Their Public-Figure Status

Appellees' response also ignores a second structural defect: Appellees litigated this case under a lower standard by misrepresenting and suppressing their public-figure status. Under well-established First Amendment doctrine, a plaintiff who voluntarily injects themselves into public controversy, engages in public advocacy, or seeks public influence is a limited-purpose public figure and must prove constitutional malice. See *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974).

Appellees avoided this standard by:

1. pleading under the private-figure negligence standard,
2. omitting evidence of their public-figure activity,
3. mischaracterizing their public role,
4. and using the void vexatious injunction to block Appellant from raising the correct standard.

The docket confirms that Appellant attempted to raise the constitutional-malice standard:

“FILED: Motion Requesting Appellate Determination of Constitutional Malice Standard and Correction of Structural Error.”

But Appellees relied on the void injunction to prevent the superior court from addressing the correct standard. Litigating under a lower standard while suppressing public-figure status is a distortion of constitutional doctrine and a denial of due process. It materially prejudiced Appellant and independently supports sanctions under ARCAP 25.

#### VIII. Procedural Distortions

Appellees mischaracterize Appellant’s motions—judicial notice, record clarification, and sanctions—as abusive. The docket shows otherwise:

“FILED: Supplemental Notice of Record Clarification Under ARCAP 17(b).”

These filings were targeted, record-based, and intended to ensure accurate appellate review. The Court denied the judicial-notice motion in part but expressly deferred remaining issues to the merits panel, confirming that the issues raised were not abusive.

Appellees’ attempt to portray legitimate filings as harassment is itself improper.

#### IX. Reinforcement of Sanctions Grounds

Appellees’ response:

1. Misstates the law governing vexatious-litigant injunctions;

2. Mischaracterizes the record and omits key docket entries;
3. Fails to address the issues pending before this Court;
4. Relies on a void injunction to justify procedural obstruction;
5. Attempts to use a non-existent injunction to block appellate review;
6. Repeats misrepresentations that multiply proceedings and prejudice Appellant.

This conduct reinforces the need for sanctions under ARCAP 25.

#### X. Sanctions Are Warranted Because PXG Was Treated as a Party for Purposes of Evidence Preservation and Destroyed Evidence While Under Subpoena

Appellees' response omits a critical fact: PXG was treated as a party for purposes of evidence preservation and yet destroyed subpoenaed evidence while under a court-ordered duty to preserve it. Although PXG claimed to be a non-party to avoid discovery, the superior court and the Court of Appeals treated PXG as a party by granting PXG excusable neglect—a remedy available only to litigants. Once PXG received party-level relief, it assumed party-level preservation duties.

The record shows:

1. PXG had custody of the subpoenaed evidence;
2. PXG missed the subpoena deadline by a full week without excuse;
3. PXG never produced the evidence;
4. PXG offered no explanation for the disappearance;
5. PXG provided no chain-of-custody documentation or preservation records;

Appellees' response also omits the spoliation issue arising from PXG's disappearance of subpoenaed evidence. PXG was treated as a de facto party when the superior court granted it excusable neglect—relief available only to litigants—thereby imposing party-level preservation duties. See *Soule v. Farmers Ins. Co.*, 222 Ariz. 309, 318 ¶ 32 (App. 2009); *McMurtry v. Weatherford Hotel, Inc.*, 231 Ariz. 244, 258 ¶ 50 (App. 2013).

The record shows that PXG had custody of the subpoenaed materials, missed the production deadline by a full week without excuse, never produced the evidence, and never provided any chain-of-custody or preservation documentation. The evidence went missing while PXG was under subpoena and while Appellees' former in house counsel, Jackie Pakula, was employed there, confirming that PXG had corporate custody at the time of disappearance. PXG has never explained what happened to the evidence. Appellees' failure to address PXG's spoliation—while simultaneously relying on PXG's procedural posture to block Appellant's filings—constitutes a material omission and independently supports sanctions under ARCAP 25. see ARCAP 25(a).

## XI. Conclusion and Request for Relief

Appellant respectfully requests that the Court:

1. Grant the Motion for Sanctions;
2. Find that Appellees' response contains material misstatements of law and fact;
3. Impose appropriate sanctions on Appellees and/or their counsel, including monetary sanctions or other relief necessary to deter misuse of judicial process;
4. Recognize that the punitive-damages motion remains live and must be adjudicated on remand.

Respectfully Submitted this 23<sup>rd</sup> day of Sept, 2026

\_\_\_\_\_/s/\_\_\_\_

Toby Harris, Pro Se

Defendant / Appellant

13602 N. 44<sup>th</sup> St. #149

Phoenix AZ, 85032

### **CERTIFICATE OF SERVICE**

I certify that on this 23<sup>rd</sup> day of Sept., 2026, a true and correct copy of the Reply to Appellee's Response to Motion for Sanctions , was emailed via AZTurbo court to:

Sally Odegard

Holloway Odegard & Kelly, P.C. (HOK Law)

Counsel for Plaintiffs/Appellees

Service via AZTurboCourt/e-Filing

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Served at drive time legal department email

\_\_\_\_\_/s/\_\_\_\_\_

Toby Harris