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9  
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 THE STATE OF ARIZONA,  
13  
14 Plaintiff,  
15  
16 vs.  
17  
18 JOHN CHESTER STUART,  
19  
20 Defendant.


No. CR2008-006332-001

**MOTION TO DISMISS**

Assigned to the Honorable:  
Rosa Mroz

21 Defendant, through counsel undersigned, moves this Court to dismiss the above-captioned  
22 matter because even taking all of the state's allegations as true, defendant did not violate A.R.S. §  
23 39-161. Simply put, attachments to pleadings can *not* be false filings. This motion is more fully set  
24 forth in the accompanying Memorandum of Points and Authorities.

25 DATED this 2<sup>nd</sup> day of June, 2008.

26 JACKSON WHITE  
  
Attorneys for Defendant  
Jeremy S. Geigle, No. 021786

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. FACTS**

3 Many of the facts are in dispute. However, for the purpose of this motion, we assume all  
4 allegations of the state are true. The state has alleged that on or about March 26, 2008, John  
5 Stuart filed a pro-per motion in Maricopa County Superior Court and attached false or forged  
6 IRS form 10-40 V and IRS form 1099-OID to the motion.

7 **2. LAW**

8 A person who acknowledges, certifies, notarizes, procures or offers to be filed,  
9 registered or recorded in a public office in this state an instrument he knows to be  
10 false or forged, which, if genuine, could be filed, registered or recorded under any law  
11 of this state or the United States, or in compliance with established procedure is guilty  
12 of a class 6 felony. As used in this section "instrument" includes a written instrument  
13 as defined in § 13-2001.<sup>1</sup>

14 A.R.S. § 39-161 was copied verbatim from California Penal Code § 115(a).<sup>2</sup>

15 The purpose of A.R.S. § 39-161 is to protect the integrity and reliability of public records.<sup>3</sup>

16 The whole object of all laws which require or permit instruments to be filed,  
17 registered, or recorded in any public office is that the general public, if interested in  
18 the subject-matter of the instrument, may proceed to the proper office, and if therein  
19 they find an instrument duly filed, registered, or recorded, they may and must act with  
20 the presumption that such an instrument is indeed in existence and is genuine, and  
21 govern their affairs accordingly.<sup>4</sup>

22 In its broadest sense, a paper with writing on it is an instrument.<sup>5</sup>

23 "Falsely alters a written instrument" means to change a complete or incomplete  
24 written instrument, without the permission of anyone entitled to grant it, by means of  
25 counterfeiting, washing, erasure, obliteration, deletion, insertion of new matter,  
26 connecting together different parts of the whole of more than one genuine instrument

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21 <sup>1</sup>A.R.S. § 39-161.

22 <sup>2</sup>*Lewis v. State*, 32 Ariz. 182,186, 256 P. 1048, 1049 (Ariz. Jun 13, 1927) (NO. 639).

23 <sup>3</sup>*People v. Gangemi*, 13 Cal.App.4th 1790, 17 Cal.Rptr.2d 462 (Cal.App. 1 Dist. Mar  
24 10, 1993) (NO. A054746).

25 <sup>4</sup>*Lewis v. State*, 32 Ariz. 182, 188, 256 P. 1048, 1050 (Ariz. Jun 13, 1927) (NO. 639).

26 <sup>5</sup>A.R.S. § 13-2001.

1 or transposition of matter or in any other manner, so that the altered instrument falsely  
2 appears or purports to be in all respects an authentic creation of its ostensible maker  
or authorized by him. *Id.*

3 “Falsely completes a written instrument” means to transform an incomplete written  
4 instrument into a complete one by adding, inserting or changing matter without the  
5 permission of anyone entitled to grant it, so that the complete written instrument  
falsely appears or purports to be in all respects an authentic creation of its  
ostensible maker or authorized by him. *Id.*

6 “Falsely makes a written instrument” means to make or draw a complete or  
7 incomplete written instrument that purports to be an authentic creation of its  
8 ostensible maker but that is not either because the ostensible maker is fictitious, or  
because, if real, the ostensible maker did not authorize the making or drawing of  
the written instrument. *Id.*

9 “Forged instrument” means a written instrument that has been falsely made,  
10 completed or altered. *Id.*

11 **3. ARGUMENT**

12 Original, Unaltered Motions, Memorandums And Attachments Can Not Be False Filings.

13 Original, unaltered motions, memorandums and attachments can not be false filings under  
14 A.R.S. § 39-161. In the *Parks*<sup>6</sup> case, the defendant obtained a signed *temporary* restraining order  
15 (TRO) from the judge, altered it, then presented it for filing. The *Parks* court held that a signed  
16 court order, which is obtained, falsified and returned for filing is properly actionable under  
17 California’s false filing statute.

18 The instant case is significantly distinguishable from *Parks*. Here, Stuart did not obtain any  
19 previously filed court orders or other court documents. Here, Stuart did not falsify any records.  
20 Here, Stuart is alleged to have filed a petition, memorandum of law and exhibits including copies  
21 of IRS forms. Here, the allegation is that Stuart filled out the original IRS forms and not that he  
22 altered the work of another. Here, the IRS forms were attached as exhibits for demonstrative  
23 purposes and have absolutely no actual nor apparent legal efficacy. Therefore, the attachments can  
24 not be false filings.

25 \_\_\_\_\_  
26 <sup>6</sup>*People v. Parks*, 7 Cal.App.4th 883, 9 Cal.Rptr.2d 450 (Cal.App. 4 Dist. Jun 24, 1992) (NO. D014160)

1           The IRS Forms Are Not False Nor Forged Instruments.

2           The IRS forms attached to legal pleadings are not false nor forged instruments under A.R.S.  
3 § 39-161. The state has never alleged that Mr. Stuart changed “a complete or incomplete written  
4 instrument, without the permission of anyone entitled to grant it. . . .”<sup>7</sup> Nor has it alleged that Mr.  
5 Stuart transformed “an incomplete written instrument into a complete one by adding, inserting or  
6 changing matter without the permission of anyone entitled to grant it. . . .” *Id.* Nor has it alleged that  
7 Mr. Stuart made or drew “a complete or incomplete written instrument that purports to be an  
8 authentic creation of its ostensible maker but that is not either because the ostensible maker is  
9 fictitious, or because, if real, the ostensible maker did not authorize the making or drawing of the  
10 written instrument.” *Id.* Here according to the state’s allegations, Mr. Stuart is either the maker or  
11 grantor or that he caused the IRS forms to be made. In either case, Mr. Stuart is the person entitled  
12 to grant, authorize, draw and make the IRS forms and therefore the instrument can not be deemed  
13 false nor forged under A.R.S. § 39-161. If nothing else, the IRS forms are what they purport to be:  
14 true copies attached for demonstrative purposes.

15           The State’s Contention Borders On Ridiculous.

16           The state’s contention borders on ridiculous seeking to make attachments to legal pleadings  
17 false filings under A.R.S. § 39-161. If the state had alleged that Mr. Stuart had removed a  
18 document from the record, altered it, and re-filed it as in *Parks supra*, then it may have legal ground  
19 to stand. However, that is not the case here. The state’s contention disallows the filing of *any*  
20 attachment even if the express purpose is to prove that the attached document is in fact false or  
21 forged. Following the state’s position, consider that on April 8, 2006, Susie Charbel offered to be  
22 filed in the Maricopa County Superior Court, a public office of this state, IRS form 10-40V and IRS  
23 form 1099-OID, an instrument she knew to be false or forged, which, if genuine, could be filed,  
24 registered, or recorded under any law of this state or the United States, or in compliance with  
25  
26

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<sup>7</sup>A.R.S. § 13-2001.

1 established procedure, in violation of A.R.S. § 39-161. Surely the state is not taking the position  
2 that Ms. Charbel should be prosecuted for filing documents she alleges are false with the grand jury.

3 **4. CONCLUSION**


4 This case should be dismissed because even taking all of the state's allegations as true,  
5 defendant did not violate A.R.S. § 39-161. Simply put, attachments to pleadings can *not* be false  
6 filings. For the foregoing reasons, it is respectfully requested that this case be dismissed.

7  
8  
9 ORIGINAL filed with the court on  
10 this 2<sup>nd</sup> day of June, 2008.

11 COPY of the foregoing  
12 faxed/mailed this same date to:

13 The Honorable Rosa Mroz  
14 Maricopa County Superior Court  
15 101/201 W. Jefferson  
16 Phoenix, Arizona 85003

17 Deputy County Attorney  
18 301 W. Jefferson, 6<sup>th</sup> Floor  
19 Phoenix, AZ 85007

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