

William M. Windsor  
PO Box 16181  
Missoula, Montana 59808  
Telephone: 770-578-1094  
windsorinmontana@yahoo.com  
Defendant, Pro Se

FILED MAY 14 2015

MISSOULA DISTRICT COURT  
CLERK

**MONTANA FOURTH JUDICIAL DISTRICT COURT  
MISSOULA COUNTY**

State of Montana,	§	Dept. No. 3
Plaintiff,	§	Cause No. DC-14-509
v.	§	
William Michael Windsor,	§	MOTION TO DECLARE ALL
Defendant.	§	CHARGES ARE MISDEMEANORS

COMES NOW William M. Windsor, Defendant, who files this “Motion to Declare All Charges are Misdemeanors,” and shows the Court as follows:

**INTRODUCTION**

1. William M. Windsor has been simultaneously charged with five protective order violations that took place on five distinctively different dates over a nine month period in 2013 and 2014. (See DC-14-509 Docket # 1, 2, 3, 4, and 5.)
2. The charges were all filed at one time yet called “subsequent.” To be “subsequent charges, William M. Windsor would have had to have been charged previously. He was not. So, all five alleged violations constitute a first offense, and the charges must, therefore, be declared misdemeanors

**FACTUAL BACKGROUND**

3. The factual background is provided in the Affidavit of William M. Windsor dated May 12, 2015 filed as Exhibit A to William M. Windsor’s Second Motion to Disqualify Judge James A. Haynes.

4. The State claims there is some form of protective order that William M. Windsor has violated. The alleged protective order was not filed as part of the Information filed at the commencement of this case, and it has not been identified since.

### ARGUMENT

#### A. THE CHARGES AGAINST WILLIAM M. WINDSOR FOR “VIOLATION OF AN ORDER OF PROTECTION” CONSTITUTE ONE CHARGE AND MUST BE CLASSIFIED AS A MISDEMEANOR.

5. Sean Boushie was obligated to “report all violations of this order of protection to law enforcement by calling 911.” (See Exhibit 1 - Temporary Order of Protection, Page numbered 3 in bottom right corner.) The evidence provided by the State of Montana shows that there were no 911 calls on December 30, 2013, February 6, 2014, May 4, 2014, July 4, 2014, October 2, 2014, or on any other date.

6. Failure to report separate alleged violations constitutes a waiver by Sean Boushie. He lost his right to claim five separate violations.

7. Failure to charge William M. Windsor or contact him about the alleged violations constitutes a waiver of the State’s rights to seek penalties for successive violations on one charge, the first ever.

8. Had Sean Boushie reported each individual alleged violation when they occurred, William M. Windsor would have had an opportunity to correct any wrongful conduct, and he would have had an opportunity to defend himself. If he was convicted of two violations, he would have been on notice that a third violation would be charged as a felony.

9. William M. Windsor was NEVER contacted by the police regarding any of these alleged violations.

10. The Montana law that permits repetition of misdemeanors to be charged as felonies is intended to use the higher charge as a deterrent, with increase after a defendant has proven that he is undeterred by the misdemeanor conviction. A person charged with DUI in Montana is charged with one offense even if he made five stops on the way home from a bar and had blood alcohol content that was five times over the legal limit. A Montana driver who the police attempted to stop for speeding who then attempted to evade arrest by committing five other infractions gets charged with seven crimes, but they all took place at one time and were for different criminal statutes. The driver could not be charged with seven counts of evading arrest.

11. Montana law is not intended as a way to sandbag a person who doesn't even know he has allegedly committed a misdemeanor and may next be charged with a felony. There has to be notice before escalated penalties may be imposed in the case of alleged violation of a protective order as the protective order is designed to stop recurring behavior.

**B. THE STATE OF MONTANA HAS VIOLATED WILLIAM M. WINDSOR'S RIGHT TO DUE PROCESS BY STACKING FIVE ALLEGED VIOLATIONS THAT OCCURRED OVER NINE MONTHS INTO ONE CHARGING DOCUMENT THAT SIMULTANEOUSLY PURPORTS TO BE FIVE SERPARATE CRIMES.**

12. William M. Windsor's rights to due process have been violated.

13. The Fifth and Fourteenth Amendments to the United States Constitution each contain a Due Process Clause. Due process deals with the administration of justice and thus the Due Process Clause acts as a safeguard from arbitrary denial of life, liberty, or property by the Government outside the sanction of law. The Supreme Court of the United States interprets the Clauses as providing

four protections: procedural due process, substantive due process, a prohibition against vague laws, and as the vehicle for the incorporation of the Bill of Rights.

14. Sean Boushie's one police report of five alleged violations violates the terms of the alleged Temporary Order of Protection where he was obligated to call 911 with each violation. The charging in this case perverts the order of protection process that is designed to prevent repetitive conduct.

15. "Subsequent" is defined as "occurring or coming later or after." "Simultaneous" is defined as "happening, existing, or done at the same time." William M. Windsor's charges were simultaneous, not subsequent.

16. The charging documents erroneously claim Counts II, III, IV, and V were subsequent, but they were all charged simultaneously.

17. The State did not even file the charges in chronological or "concurrent" order. Count I allegedly took place on May 4, 2014; Count II allegedly took place on July 4, 2014. Then the first felony, the third alleged offense, took place on December 30, 2013. Then Count IV was February 6, 2014, and Count V was October 2, 2014. (The date for Count V is a date manufactured for the State's improper purpose. IF that is a violation of the Temporary Order of Protection, it took place first, so it is subsequent to nothing.)

18. In actuality, Count V was first; Count III was second; Count IV was third; Count I was fourth; and Count II was fifth. As charged, NONE of the charges may be considered subsequent as none of the alleged violations occurred or came later than the first one that allegedly occurred.

19. The charge is that William M. Windsor violated MCA 45-5-626:  
MCA 45-5-626 (3) An offender convicted of violation of an order of protection shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a first offense. **Upon conviction** for a second offense, an offender shall be fined not less than \$200 and not more than \$500 and be imprisoned in the county jail not less

than 24 hours and not more than 6 months. **Upon conviction** for a third or **subsequent offense**, an offender shall be fined not less than \$500 and not more than \$2,000 and be imprisoned in the county jail or state prison for a term not less than 10 days and not more than 2 years. [**emphasis added.**]

20. In Montana, the first two **convictions** for violation of a protective order are misdemeanors. After that, they are felonies. William M. Windsor has not been convicted of anything, so all five charges must be treated as misdemeanors.

21. The protective order statute, MCA Title 40 Chapter 15, was created to stop a pattern of conduct. Increased penalties for “subsequent offenses” were developed to provide a deterrent to continued illegal conduct. Once again, “subsequent” is defined as “occurring or coming later or after.” Charging five violations at one time is not what the legislature intended. These charges are not subsequent; they were simultaneous. The charging of all five alleged violations at one time without notice violates William M. Windsor’s rights against double jeopardy.

22. Upon information and belief, the State has never charged anyone else in such a manner for this alleged criminal violation.

23. None of the five charges are valid, but it is clear that Montana law and due process do not allow three of the five simultaneous alleged violations to be charged as felonies by citing them as subsequent offenses.

24. It is a further violation of William M. Windsor’s rights to due process for the State to change the dates and order of alleged violations to put its weakest charges first and call them misdemeanors.

25. What the State has done is a significant violation of William M. Windsor’s rights to due process because calling three of these charges felonies, William M. Windsor’s legal rights were dramatically changed. Extradition became

possible with alleged felonies, where it would not be possible under various state laws if the charges were misdemeanors. Bond became much higher and harder to obtain. Extradition laws are much tougher on felonies. The stress on William M. Windsor became much greater as he faces all the losses of rights that come with the possibility of being a convicted felon. William M. Windsor now faces charged in Texas for alleged “felony bond jumping” related to these charges, but the charges are actually misdemeanor charges.

26. It should also be noted that NONE of the alleged violations violate MCA Title 40 Chapter 15, and NONE of the alleged violations would constitute stalking under Texas or Montana law. The alleged violations were all committed when William M. Windsor was 2,500 miles away from Missoula Montana in Dallas Texas.

27. The purpose of the Montana protective order statutes is set out at MCA 40-15-101: “The purpose of this chapter is to promote safety and protection of all victims of partner and family member assault, victims of sexual assault, and victims of stalking.” William M. Windsor submits that his due process rights are violated if he is charged for doing simple, Constitutionally-protected things that do not violate the protective order statutes or the purpose of the statutes.

**C. THE CHARGES BY THE STATE VIOLATE WILLIAM M. WINDSOR’S RIGHTS REGARDING DOUBLE JEOPARDY, EXCESSIVE FINES, AND CRUEL AND UNUSUAL PUNISHMENT CLAUSES IN THE BILL OF RIGHTS AND COMMON LAW.**

28. The Bill of Rights limits punishment to be proportionate to the wrong punished. The charging in this case violates this right.

29. The charging in this case violates the Eighth Amendment as it is excessive to charge William M. Windsor with felonies on a “first offense” when the applicable statute makes a first offense a misdemeanor.

30. The charging by the State creates a punishment that is excessive and defeats the intent of the statute that was designed to have remedial steps.

31. It is cruel and unusual punishment to charge William M. Windsor for five alleged violations over nine months that he knew nothing about.

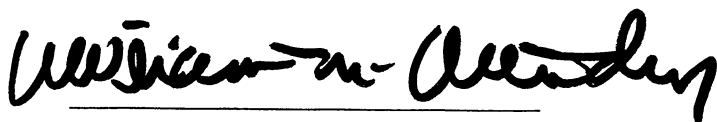
32. There is only one criminal statute involved in this case – MCA 45-5-626. But by charging William M. Windsor five times for the same offense, violation of a protective order, the State has violated William M. Windsor's rights to protection from Double Jeopardy. The five counts are penalties for the same offense as they were brought simultaneously.

33. William M. Windsor has been out on bond for five days. He plans to file a separate brief with case law as soon as he has time to conduct legal research.

WHEREFORE, William M. Windsor prays that this Court issue an order that:

- a. five alleged violations of a protective order charged simultaneously may not be charged so four are treated as subsequent charges;
- b. William M. Windsor's charges must be considered to be one misdemeanor, not five alleged crimes as there was only one police complaint and one charging document (or, I the alternative) that each of the five alleged violations shall be treated as misdemeanors; and
- c. grant such other relief as the Court finds appropriate

This 14th day of May 2015,



**William M. Windsor**

**VERIFICATION**

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, William M. Windsor, who after being duly sworn deposes and states that he is authorized to make this verification on behalf of himself and that the facts alleged in the foregoing are true and correct based upon his personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

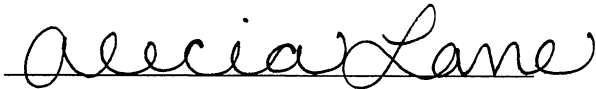
I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This 14th day of May 2015.

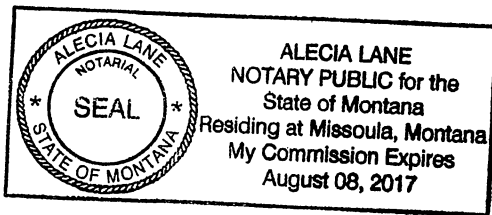


\_\_\_\_\_  
William M. Windsor

Sworn and subscribed before me this 14th day of May 2015.



Notary Public





**CERTIFICATE OF CONFERENCE**

I hereby certify that I was unable to reach Jennifer Clark or Christopher Daly.

This 14th day of May 2015,



**William M. Windsor**

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing Motion by United States Postal Service to Jennifer Clark, Deputy County Attorney, Missoula County Courthouse, 200 West Broadway Street, Missoula, Montana 59802, and I sent a copy to Christopher Daly.

This 14th day of May 2015,



**William M. Windsor**

# **Exhibit**

**1**

# Temporary Order of Protection

Case No. OP-2013-00198

- Temporary Ex Parte Order and Notice of Hearing
- Amended Temporary Order and Notice of Hearing

Municipal Court, Missoula County, Montana.  
Before the Honorable Judge Warren

## Petitioner/Protected Person

First Middle Initial Last

Sean M. Boushie

## Petitioner/Protected Person Identifiers

Year of Birth of Petitioner

1960 Male  Female

And/Or on behalf of family members:

First/Middle Initial/Last Name	Year of Birth	Sex
<u>Wynne L Boushie</u>	<u>72</u>	<u>M (E)</u>
		<u>M F</u>
		<u>M F</u>

Other Protected Person/s:

First/Middle Initial/Last Name	Year of Birth	Sex
		<u>M F</u>
		<u>M F</u>
		<u>M F</u>

## Respondent

First Middle Initial Last

William M Windsor

Respondent's Address:

## Respondent's Identifiers

Sex	Race	Year of Birth	Height	Weight
<u>M F</u>	<u>Cauc</u>		<u>700</u>	<u>5'8"</u>
Eye color		Hair color		Driver's License State
		<u>White</u>		<u>GA</u>
Distinguishing Features				
<u>Beard &amp; Mustache</u>				

Petitioner's/Protected Person's Relationship to Respondent: check all that apply

- Married
- Were married, but are now separated
- Divorced
- Currently dating or having an ongoing intimate relationship
- Live together
- Lived together in the past
- Have a child and/or children together
- Family member or former family member of Respondent
- Dated or had an ongoing intimate relationship in the past

- Victim of sexual assault
- Victim of stalking
- Victim of assault
- Victim of other: \_\_\_\_\_

### CAUTION:

- Weapon Involved
- Weapon on Property

The court has jurisdiction over the parties and subject matter. The terms of this Order shall be effective until 09/16/13 at 11:59 PM/unless terminated earlier by another Court Order. By Judge Sam Warren

**WARNINGS:** This Order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and U.S. Territory, and may be enforced on Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, and tribal boundaries to violate this Order may result in federal imprisonment (18 U.S.C. Section 2262). Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)(9)). Violation of this Order may be a criminal offense under applicable Federal or Tribal law and is a criminal offense under Mont. Code Ann. § 45-5-220 or § 45-5-626 and may carry penalties of up to \$10,000 in fines and up to a 5 year jail sentence. It is a misdemeanor under Montana Code Annotated 45-5-220 and/or 45-5-626 for the Respondent, even if invited and after notice of this Order, to violate the provisions of this Order. Further, under Montana Code Annotated §§ 45-2-301 and 302(3), it is a crime for any person to aid and abet a crime, or, not being present, to advise and encourage a crime. Under Montana Code Annotated § 45-2-303, any person who counsels, aids, solicits or incites another to commit a misdemeanor is guilty of a misdemeanor. Therefore, it may be a crime for any person to encourage or invite contact between the Respondent and the Petitioner, except such contact as expressly permitted by the above Order.

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Municipal COURT, MISSOULA, MONTANA

JUDGE Warren

Sean M. Boushik  
Petitioner,

vs.  
William Windsor  
Respondent.

CAUSE NO. OP-2013-00198

**TEMPORARY ORDER OF PROTECTION AND ORDER SETTING HEARING**

On 08/21, 2013 the Court considered the Petitioner's request for a Temporary Order of Protection.

**THE COURT FINDS** from the petition that the Petitioner is in danger of harm. The court issues the following order immediately, under Mont. Code Ann. § 40-15-201 (2009), and without notice to the Respondent:

**IT IS ORDERED** that the Respondent is restrained as follows:

1.  Respondent must not threaten to commit or commit acts of violence against Petitioner and the following Protected Persons: Wynne He L. Boushik (PCO 01)
2.  Respondent shall not harass, annoy, disturb the peace of, telephone, email, contact, or otherwise communicate directly or indirectly, with Petitioner and the following Protected Persons: Wynne He L. Boushik, Uaf M. Staff  
(If the same people are listed in #1, write "see #1"). (PCO 05)
3.  The location of my current residence is confidential. (Do not write your address below.)
4.  Respondent must stay 500 feet or other suitable distance \_\_\_\_\_ feet (not to exceed 1500 feet) away from Petitioner's residence at: 570 Grandview Drive
5.  Respondent must stay 500 feet or other suitable distance \_\_\_\_\_ feet from Petitioner and the following Protected Persons: Wynne He L. Boushik
6.  Respondent must stay 500 feet or other suitable distance \_\_\_\_\_ feet away from Petitioner's place of employment at: University of Montana

- 1 7.  Respondent must stay 1500 feet or other suitable distance \_\_\_\_\_ feet away from Petitioner's and/or
- 2 Petitioner's child(ren)'s school(s) at: \_\_\_\_\_
- 3 \_\_\_\_\_
- 4 8.  Respondent must stay 1500 feet or other suitable distance \_\_\_\_\_ feet away from any of the following
- 5 addresses frequented by Petitioner and/or other Protected Person: \_\_\_\_\_
- 6 \_\_\_\_\_ (PCO 04)
- 7 9.  Respondent shall not take the following child(ren) from Missoula County: \_\_\_\_\_
- 8 \_\_\_\_\_
- 9 10.  Respondent shall not possess these firearms: Taurus Judge (PCO 07)
- 10 11.  Respondent must not take, hide, sell, give away, borrow against, damage, or otherwise dispose of the
- 11 following property: \_\_\_\_\_
- 12 12.  Respondent must give Petitioner and/or Protected Person's possession or use of the following items
- 13 (items may include the residence, automobile and other *essential personal property, regardless of*
- 14 *ownership*): \_\_\_\_\_
- 15 13.  Law enforcement shall:
- 16  Remove the Respondent from the residence at: \_\_\_\_\_
- 17  Place the Protected Person in possession of the residence at: \_\_\_\_\_
- 18  Supervise the removal of:
- 19  Protected Person's property listed in 12 above.
- 20  Respondent's items needed for employment and necessary personal effects (at peace officer's
- 21 discretion) from the residence.
- 22 14.  The Court deems that the following additional relief is necessary to provide for the safety and welfare of
- 23 the Petitioner or other individuals designated in this Petition. Release of www.searchof5150.com
- 24 To petitioner, Respondent shall not post
- 25 petitioners name on live

1 **HEARING**

2 A hearing on the Petitioner's request that this Court Order the Order of Protection continue for a specific  
3 time or continue permanently will be held before this court on 09/09/13, the 9<sup>th</sup> day of September,  
4 2013, at the hour of 2:30 o'clock P.m., or as soon thereafter as the matter may be heard, in the following  
5 courtroom:

6 <i>Municipal Court - City Hall</i>	<i>Justice Court I</i>	<i>Justice Court II</i>	<i>District Court</i>
<i>435 Ryman</i>	<i>200 W. Broadway</i>	<i>200 W. Broadway</i>	<i>200 W. Broadway</i>
<i>Missoula, MT</i>	<i>Missoula, MT</i>	<i>Missoula, MT</i>	<i>Missoula, MT</i>

7 This Temporary Order of Protection shall continue in full force and effect until 09/16/13, the 16<sup>th</sup> day of  
8 September, 2013, at the hour of 11:59 o'clock P.m. unless continued at the hearing.

9 **Petitioner: Report all violations of this Order of Protection to law enforcement by calling 911. If you fail  
10 to appear for the Hearing, this Order may be dismissed.**

11 **Respondent: If you fail to appear for the Hearing, the Judge's decisions in this case will be made without  
12 your presence. This decision could affect your rights to own or possess firearms.**

13 **Petitioner and Respondent: You may not agree to violate the terms of this Order.**

14 **WARNING**

15 **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER MONT. CODE ANN. 45-5-  
16 220 OR 45-5-626 AND MAY CARRY PENALTIES OF UP TO \$10,000 IN FINES AND UP TO A 5 YEAR  
17 JAIL SENTENCE.**

18 **THIS ORDER IS ISSUED BY THE COURT AND THE RESPONDENT IS FORBIDDEN TO DO  
19 ANY ACT LISTED IN THE ORDER, EVEN IF INVITED BY THE PETITIONER OR ANOTHER  
20 PERSON. THIS ORDER MAY BE AMENDED ONLY BY FURTHER ORDER OF THIS COURT OR  
21 ANOTHER COURT THAT ASSUMES JURISDICTION OVER THIS MATTER.**

1 The Sheriff is hereby directed to serve, without cost to the Petitioner, a copy of this Temporary Order of  
2 Protection, together with a copy of the Petitioner's petition, upon the Respondent and to file a return of service  
3 with the Clerk of this Court. Upon receipt of proof of service of this Order, the Clerk is hereby directed to mail or  
4 otherwise promptly deliver a copy of this Order, together with a copy of the proof of service, to the following law  
5 enforcement agencies: MISSOULA COUNTY SHERIFF'S OFFICE (Warrants).

6 ISSUED this 23 day of August, 2013, at the hour of 10:45 a.m.

7 Sam Warren  
8 JUDGE

9 **SHERIFF'S RETURN**

10 I served this Temporary Order of Protection on the Respondent by delivering a copy to him/her at \_\_\_ :  
11 o'clock \_\_.m. on (date) \_\_\_\_\_, 201\_\_ at (location)

12 DATED this \_\_\_ day of \_\_\_\_\_, 201\_\_.

13 \_\_\_\_\_  
14 Signature of Server