

IN THE COUNTY COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 2018-MM-000867

vs.

ERIC COOLEY,

Defendant.

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**MOTION FOR GAG ORDER**

Pursuant to the Sixth Amendment of the United States Constitution and Article 1, Section 16 of the Constitution of the State of Florida (1968 revision), the Defendant, ERIC COOLEY, by and through his undersigned counsel, respectfully requests this Honorable Court to prohibit the extrajudicial comments by Flagler County Sheriff Staly, and members of his department established herein, from discussing in a public setting, i.e. radio programs, news outlets, or other such occasions where the public is the intended recipient of such discourse, "State of Florida v. Eric Cooley, the criminal proceedings herein. As grounds therefore, the Defendant, would allege:

1. The Sixth Amendment of the United States Constitution, in pertinent part, states:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed..." (emphasis added)

2. Article 1, Section 16 of the Florida State Constitution (1968 revision), in pertinent part, states:

"In all criminal prosecutions the accused shall, ... have a speedy and public trial by impartial jury in the county in where the crime was committed..." (emphasis added)

3. In State ex rel. Miami Herald Publishing Co. v. McIntosh, 340 So.2d 904, 909 (Fla. 1976), the Florida Supreme Court has recognized that "a trial court has the inherent power to control the conduct of the proceedings before it, and it is the trial court's responsibility to protect a defendant in a criminal prosecution from inherently prejudicial influences which threaten fairness of his trial in the abrogation of his constitutional rights."

4. Though the public has a right to know all that transpires in a criminal case, what is spoken about upcoming criminal proceedings must be carefully weighed against an accused's right to a fair trial, and a defendant's right to a fair trial should be given paramount consideration over and above a public's right to know.

5. The Florida Supreme Court in McIntosh (supra at p190) has stated that the limitations placed upon lawyers, litigants, and officials directly affected by court proceedings may be made at the court's discretion for a good cause to assure fair trials.

6. To safeguard a defendant's right to receive a fair trial, courts have a constitutional duty to minimize the effects of prejudicial pretrial publicity. Because of the constitution's pervasive concern for these rights, courts often take protective measures even when they are not strictly and inescapably necessary.

7. The Defendant is not seeking this Court's exercise of its judicial discretion to impede or interfere with a media's effort to inform the public, but rather to curtail extrajudicial comments by certain law enforcement officers during the pendency of this pretrial proceeding up to jury selection or until such time as the case is resolved.

8. Muzzling lawyers who may wish to make public statements has long been recognized as within the court's inherent power to control professional conduct. As such, courts also are authorized to limit what police may say when it becomes clear those communications are interfering with an accused's right to a fair trial in front of an impartial jury.

9. Though ours is a society that prides itself on the freedom of speech and expression, that right must coexist with other constitutional rights, and in some instances even be second chair to other rights.

10. The charges herein are misdemeanors and are alleged to have occurred within Flagler Beach, Flagler County, Florida.

11. As misdemeanor offenses, the rules of procedure envision trials within 90 days of arrest. Though that is not always true, comments by the Flagler County Sheriff keep them fresh in the mind of his audience who are potential jurors.

12. This county is served by two websites, The Palm Coast Observer and Flagler Live.

13. At a press conference immediately called by Flagler County Sheriff Staly the night of the arrest herein, Staly referring to the Defendant, Eric Cooley stated, "This is an unfortunate situation but it goes to show you that domestic violence has no boundaries." Continuing, Staly is constantly calling those accused of crimes "dirtbags" and "scumbags".

14. There has been widespread publicity which has been prejudicial to the Defendant, Eric Cooley, hosted by Sheriff Staly, which interferes with Eric Cooley's right to receive a fair trial, free from the outside influences from Sheriff Staly, and Eric Cooley has a right to be tried before an impartial jury in Flagler County, Florida.

15. The extensive print and broadcast media coverage, including the internet, has been generated predominantly because of the efforts of Sheriff Staly and because of the political position held by the Defendant, Eric Cooley in the City of Flagler Beach.

16. It is understood that even in the absence of a Court order both prosecutors and defense lawyers, as officers of the court, are severely restricted from making extrajudicial statements that might prejudice a fair trial. Prosecutors and defense attorneys have a duty of reasonable care to prevent other individuals assisting them, or associated with the case, from making extrajudicial statements that would be prejudicial to a fair trial. This requirement is cemented in rules regulating members of the Florida Bar, specifically Rule 4-3.6.

17. The United States Supreme Court has characterized the right to a fair trial as the most fundamental of all freedoms and that which must be preserved at all costs. (See Estes v. Texas, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed. 2<sup>nd</sup> 543 (1965)).

18. It is clear from the comments he has made, that Flagler County Sheriff Staly has no appreciation or respect for the criminal justice system, but rather a disdain of a constitutional system that has weathered over 200 years of testing, and though not perfect, admittedly the best in the world.

19. In a position of Sheriff of Flagler County Sheriff's Office, whether soliciting or agreeing to appear to discuss the accusations in this case, and particularly those against the Defendant, Eric Cooley, Staly's abuse of the freedom of speech protected and guaranteed by our constitution, is as abridged as someone yelling "fire" in a crowded building.

20. Whatever his intended purpose, or his limits, Sheriff Staly's comments about this criminal prosecution undermine the foundation of the criminal justice system, and therefore must be muzzled by a trial court's affirmative constitutional duty to minimize the effects of his prejudicial, sought after pretrial publicity.

21. Though the temptation great and the material voluminous, critiquing Sheriff Staly's comments beyond illustrating his base abrogation effort to abridge the Defendant, Eric Cooley's, right to a fair trial within Flagler Beach, Flagler County, Florida would serve

no useful purpose. Succinctly, they are what they are, and certainly not dressed up, sugar coated, professional or constitutionally permitted any further with regard to the prosecution of this case.

I HEREBY CERTIFY that a true and correct copy of the foregoing notice has been furnished by electronic delivery, to the Office of the State Attorney, [eserviceflagler@sao7.org](mailto:eserviceflagler@sao7.org), this 17<sup>th</sup> day of September, A.D., 2018.

**s/JOSHUA DAVIS, ESQ.**

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