

IN THE MATTER OF COMPLAINT  
AGAINST THE DOUGLAS COUNTY  
DISTRICT ATTORNEY, THE DOUGLAS  
COUNTY CLERK OF COURTS, AND  
THE BAYFIELD COUNTY CLERK  
OF COURTS,

Case No. 23-009

Respondents.

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### **PROBABLE CAUSE DETERMINATION**

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1. The Crime Victims Rights Board reviewed a complaint filed by JP<sup>1</sup> against the Douglas County District Attorney, the Douglas County Clerk of Courts, and the Bayfield County Clerk of Courts. The Board evaluated the complaint and other relevant information to determine whether there is probable cause that the respondents violated JP's rights as a crime victim. *See Wis. Stat. § 950.04(1v)*. The Board finds no probable cause.

### **BOARD PROCEDURE**

2. JP filed a complaint with the Board on April 16, 2023.
3. Upon receipt of the complaint, the Board contacted the Department of Justice, Office of Crime Victim Services, Victim Resource Center (VRC) to verify that JP had fulfilled his obligation to present the

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<sup>1</sup> This probable cause determination uses the initials of the alleged victim to protect the victim's privacy.

substance of the complaint to the VRC and that the VRC had completed its action. *See* Wis. Stat. § 950.08(3); Wis. Admin. Code CVRB § 1.05(1). At that time, the VRC had not yet completed its action as to one of the respondents.

4. In June 2023, the Board verified that the VRC completed its action as to all respondents. *See* Wis. Stat. § 950.08(3); Wis. Admin. Code CVRB § 1.05(1), (4).

5. The Board gave a copy of the complaint to the respondents and invited them to answer the complaint. *See* Wis. Admin. Code CVRB § 1.05(5). The respondents each filed a response to the complaint.

6. The Board made this probable cause determination at a meeting on November 29, 2023. *See* Wis. Admin. Code CVRB § 1.05(6).

7. In making this probable cause determination, the Board considered all relevant information, the complaint, responses, and the letter documenting the VRC's action. *See* Wis. Admin. Code CVRB § 1.05(7)(a)–(c).

8. The Board notifies the parties and the VRC of its conclusions through the issuance of this probable cause determination. *See* Wis. Admin. Code CVRB § 1.05(8).

## **STATEMENT OF THE CASE**

### **JP's complaint.**

9. In March 2013, JP's former wife and her boyfriend threw Molotov cocktails into the basement of his home, resulting in a fire that caused major

damage and displaced JP and his children while they rebuilt the home. As a result of this incident, JP's former wife was found guilty of arson and domestic abuse in Douglas County Case No. 13-CF-0097.

10. JP alleges that his former wife and her boyfriend previously burglarized his home and threatened his life, causing great distress to JP and his children.

11. Years later, JP was a party in two Bayfield County small claims cases filed in 2018 and a Douglas County traffic case filed in 2019. JP's name and address appear on electronic court records for those cases.

12. More recently, in 2023, the Douglas County District Attorney's Office sent JP's former wife a juvenile delinquency petition relating to their son and did not redact JP's address and telephone number from the petition form.

13. JP reports that immediately after the District Attorney's Office sent his address and telephone number to his former wife, she repeatedly tried to contact him, in violation of a protective order and the conditions of her supervision. As a result of this attempted contact, JP's former wife was housed in jail for a week and placed on GPS monitoring.

**The Bayfield County Clerk of Court's response.**

14. Bayfield County Clerk of Courts Deidre Zifko, through counsel, provided a response to the complaint.

15. Zifko confirmed that two small claims complaints were filed against JP in Bayfield County in 2018.

16. Zifko explains that when a clerk accepts a new case for filing, there is no mechanism for the clerk to know that a party to the case is a victim of a crime, nor is there authority for the clerk to unilaterally redact information published on the electronic court record.

17. According to Zifko, JP contacted her office about this matter on June 6, 2023. The deputy clerk emailed JP a form that he could file to ask the court to seal or redact information in the case record.

18. As of the date of Zifko's response, JP had not filed the form or made any other request for the court to remove the information from the record.

**The Douglas County Clerk of Court's response.**

19. Douglas County Clerk of Courts Michele Wick provided a response to the complaint.

20. Wick confirmed that a traffic complaint was filed against JP in Douglas County in 2019.

21. Wick explained that clerks have no way of knowing when a party to a case is a crime victim in an unrelated case, and nothing prevents the victim's address from being automatically included in the court record. The clerk is responsible for filing court documents as they are submitted. If a party

wishes to remove information from a court file, he must make a request in each individual case.

**Douglas County District Attorney's response.**

22. District Attorney (DA) Mark Fruehauf provided a response to the complaint.

23. DA Fruehauf confirmed that JP was the victim of arson committed by his former wife in 2013. JP's former wife was convicted, sentenced to prison, released, and is currently on extended supervision.

24. DA Fruehauf further confirmed that his office filed a juvenile delinquency petition relating to JP's son in 2023. The petition included the names and addresses of the juvenile's parents—JP and his former wife—as required by Wis. Stat. § 938.255(1)(b), and the petition was provided to both parents as required by Wis. Stat. § 938.255(4).

25. The petition also included both parents' telephone numbers. The standard court form for the petition (JD-1721) includes a place for the parents' telephone numbers and according to DA Fruehauf, the Douglas County Court Commissioner who handles juvenile plea hearings has made clear that the petition must include the parents' telephone numbers so the commissioner can contact parents who fail to appear for plea hearings.

26. When the petition was filed and served on the parents, DA Fruehauf did not know that there was a history between the parents or a

need to consider redacting contact information. He has since learned that JP's former wife contacted JP using the telephone number on the form. DA Fruehauf understands that the call caused JP to feel frightened and traumatized, and DA Fruehauf apologizes for what JP went through.

27. As a result of this incident, DA Fruehauf has changed his office's practice. Now, when his office receives a referral for the filing of a juvenile delinquency petition, staff checks available records to see if there is a history of victimization of one parent at the hands of another.

28. For example, when drafting a recent juvenile delinquency petition, DA Fruehauf cross-referenced the parents and learned that the father had a warrant for crime perpetrated against the mother. Based on this information, DA Fruehauf redacted the mother's contact information from the petition served on the father.

### **ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS**

29. **Right to privacy.** Under the Wisconsin Constitution, a crime victim has a right "[t]o privacy." Wis. Const. art. I, § 9m(2)(b). The parallel statutory provision provides that a crime victim has a right to "be treated with . . . respect for his or her privacy by public officials, employees, or agencies." Wis. Stat. § 950.04(1v)(ag). This right "does not impair the right or duty of a public official or employee to conduct his or her official duties reasonably and in good faith." Wis. Stat. § 950.04(1v)(ag).

## DETERMINATIONS OF FACT

30. The Board finds no dispute of material fact between the parties.

## INTERPRETATIONS OF LAW

31. The Board employs a multi-step methodology to analyze the complaint: (1) whether the complainant was a crime victim; (2) whether the respondents are subject to the authority of the Board; (3) whether the allegations are time-barred; (4) whether the allegations implicate any constitutional or statutory victim rights; and (5) whether the respondents failed to comply with any duty imposed by a constitutional or statutory provision.

32. Whether a person is a crime victim is determined by statute. “A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both.” Wis. Stat. § 939.12. A crime victim is “[a] person against whom a crime has been committed.” Wis. Stat. § 950.02(4)(a)1.; *see also* Wis. Const. art. I, § 9m(1)(a)1. A crime victim “does not include the person charged with or alleged to have committed the crime.” Wis. Stat. § 950.02(4)(b); *see also* Wis. Const. art. I, § 9m(1)(b) (victim “does not include the accused”).

33. Whether respondents are subject to the Board’s authority is also determined by statute. The Board has authority to review complaints about

“public officials, employees or agencies that violate the rights of crime victims.” Wis. Stat. § 950.09(2)(a); *but see Gabler v. Crime Victims Rights Bd.*, 2017 WI 67, 376 Wis. 2d 147, 897 N.W.2d 384 (statute unconstitutional as applied to judges).

34. Whether the allegations are time-barred is determined by the filing requirements in the administrative code. The Board may not consider allegations relating to “conduct that occurred prior to December 1, 1998 or more than 3 years before a complaint was filed with the board or the board was otherwise notified of the conduct,” except that the Board may consider issuing a report and recommendation concerning such conduct. Wis. Admin. Code CVRB § 1.04(5).

35. Probable cause is “a reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint.” Wis. Admin. Code CVRB § 1.02(9). Probable cause is satisfied by a believable or plausible account that the respondent probably has violated or is violating the victim’s rights. *See State v. Sorenson*, 143 Wis. 2d 226, 251, 421 N.W.2d 77 (1988).

36. At the probable cause stage, the Board evaluates the limited information available to it in the light most favorable to the complainant. The probable cause determination is not the proper time to debate and resolve

credibility issues if essential facts, circumstances, and reasonable inferences are strong enough to warrant a prudent person to believe a violation probably has occurred or is occurring. *See State ex rel. Huser v. Rasmussen*, 84 Wis. 2d 600, 614, 267 N.W.2d 285 (1978).

### **PROBABLE CAUSE DETERMINATION**

37. The Board finds no probable cause of a crime victims rights violation.

38. The Board finds that JP is a crime victim because his former wife deliberately set fire to his house and was found guilty of arson and domestic abuse, as prohibited by state law and punishable by a fine or imprisonment or both. *See Wis. Stat. §§ 943.02(1)(a) (arson), 968.075(1)(a) (domestic abuse)*.

39. The Board finds that the district attorney and clerks of court are public officials or employees subject to the authority of the Board. *See Wis. Stat. § 950.09(2)(a)*.

40. The Board finds that none of the allegations in the complaint occurred outside the three-year limitations period. *See Wis. Admin. Code CVRB § 1.04(5)*. The Douglas County juvenile delinquency petition was filed in January 2023, within the three-year limitations period. And although the Bayfield County small claims cases and the Douglas County traffic case were filed in 2018 and 2019, respectively, it is undisputed that the information in question remains on the electronic court record and, therefore, the Board

assumes, for the purposes of this decision, that the conduct JP attributes to those respondents is within the three-year limitations period.

41. The Board finds that the allegations in the complaint implicate JP's right to privacy but finds no probable cause that the respondents violated that right.

42. The small claims and traffic cases filed against JP in Bayfield and Douglas counties included JP's address, which was then published on the electronic court records for those cases. The clerks were obligated to file the cases as they were submitted. At that time, the clerks did not know JP was a crime victim and had no duty to ascertain that information.

43. JP does not allege that the clerks refused to assist him once they learned that he was a crime victim. In fact, at least one of the clerks explained to JP that the only way to remove his address from the case record was to file a request with the court. JP never filed such a request.

44. As for the Douglas County District Attorney, that office was also unaware that JP was victimized by his former wife at the time of filing the juvenile delinquency petition. The District Attorney, like the clerks of court, had no affirmative duty to ascertain whether a party to the petition was a crime victim and was further required by statute and court practice to include both parents' names and addresses on the petition and to serve the petition on both parents.

45. Once the District Attorney learned of JP's concern, he changed the practice of his office to provide the most privacy possible while still complying with the legal requirements.

46. Viewing these facts in the light most favorable to the complainant, the Board finds no probable cause that the respondents violated JP's right to privacy. *See* Wis. Const. art. I, § 9m(2)(b); Wis. Stat. § 950.04(1v)(ag).

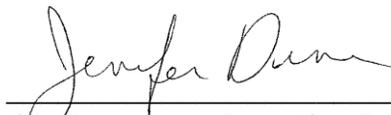
47. While the Board finds no probable cause, the Board acknowledges the fear and trauma that JP and his family experienced as a result of this situation. The Board appreciates that JP brought this issue to light as it may lead to changes similar to those instituted by the Douglas County District Attorney's Office.

## ORDER

Based on the foregoing, it is hereby ORDERED:

1. That there is no probable cause that a victim rights violation occurred, so the complaint is dismissed. A finding of no probable cause is a final decision of the Board under Wis. Admin. Code CVRB § 1.05(8).
2. That the Board hereby provides notice to the parties of the right to seek judicial review of this final decision pursuant to Wis. Stat. § 227.52. Attached to this decision is a summary of appeal rights.
3. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–.59. *See* Wis. Admin. Code CVRB § 1.10.
4. That a copy of this probable cause determination will be provided to the parties and the VRC, as identified in the service list below, in accordance with Wis. Admin. Code CVRB § 1.05(8).

Dated this 31st day of January, 2024.



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Chairperson Jennifer Dunn  
Crime Victims Rights Board

## SERVICE LIST

JP

[street address withheld]

Attorney John Carlson  
o/b/o Bayfield County Clerk of Courts  
Spears, Carlson & Coleman, S.C.  
122 W. Bayfield Street  
P.O. Box 547  
Washburn, WI 54891

Michele Wick  
Douglas County Clerk of Courts  
1313 Belknap Street #309  
Superior, WI 54880

District Attorney Mark Fruehauf  
Douglas County District Attorney's Office  
1313 Belknap Street #201  
Superior, WI 54880

Hannah Wrobel  
Victim Rights Specialist  
Office of Crime Victim Services  
Post Office Box 7951  
Madison, WI 53707-7951

Julie Braun  
CVRB Operations Director  
Wisconsin Department of Justice  
17 West Main Street, 8th Floor  
Madison, WI 53703