IN THE SUPREME COURT OF IOWA
Supreme Court No. 15-1375

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STATE OF IOWA,
Plaintiff-Appellee,

vs.

DONNA JEAN HOLMAN,
Defendant-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT
FOR JOHNSON COUNTY
THE HONORABLE STEPHEN C. GERARD II, JUDGE

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# APPELLEE'S BRIEF

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THOMAS J. MILLER
Attorney General of Iowa

**BENJAMIN PARROTT**
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-4902 (fax)
Benjamin.Parrott@iowa.gov

JANET LYNESS
Johnson County Attorney

RACHEL ZIMMERMAN
Assistant County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE

FINAL

## CERTIFICATE OF SERVICE

On the 18th day of May, 2016, the State served the within Appellee's Brief and Argument on all other parties to this appeal by mailing one copy to the *pro se* defendant:

Donna Holman
776 Eicher St.
Keokuk, IA 52632

**BENJAMIN PARROTT**
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Benjamin.Parrott@iowa.gov

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## ROUTING STATEMENT

Transfer to the court of appeals is appropriate because this case involves the application of established legal principles to the facts of this case. Iowa R. App. P. 6.1101(3)(a).

## STATEMENT OF THE CASE

### Nature of the Case

Donna Holman appeals the district court's denial of her motion to vacate the extension of a no-contact order issued under Iowa Code

chapter 664A. Iowa law does not provide a right to appeal such an order, and Holman's claims do not entitle her to relief from the order. The appeal should be dismissed.

**Course of Proceedings**

This case has a lengthy procedural history, and understanding that history is necessary to understanding and resolving the issues appealed.

**The Underlying Convictions.**

On January 21, 2007, a magistrate judge found Donna Holman guilty of simple misdemeanor harassment and disorderly conduct. The court sentenced Holman to thirty days' incarceration on each count, to be suspended in favor of one year of probation. Order Re: Judgment and Sentence (1/26/2007); App. 89-90. "In addition to any other No Contact Orders entered in [the] matter," the court ordered Holman to have no contact with Planned Parenthood in Iowa City as a condition of her probation. Order Re: Judgment and Sentence (1/26/2007); App. 89. In a separate handwritten notation on the first page of the judgment, the magistrate ordered: "Previous no contact in place remains in effect for a period of 5 yrs. from the date of this order." Order Re: Judgment and Sentence (1/26/2007);

App. 89. The district court affirmed the judgment and sentence on appeal. Decision on Misdemeanor Appeal (2/20/2007); App.__.

On March 13, 2007, Holman filed a notice of appeal in the Iowa Supreme Court. On April 13, 2007, the Iowa Supreme Court informed Holman that she enjoyed no right to appeal the simple misdemeanor conviction and invited her to file a statement explaining why discretionary review should be granted. Sup. Ct. No. 07-0490, Order (4/13/2007). Holman filed such a statement on April 30, 2007, which the State resisted. On July 2, 2007, the Supreme Court denied discretionary review. Sup. Ct. No. 07-0490, Order (7/2/2007).

On January 15, 2008, the district court revoked Holman's probation and ordered her to serve thirty days in jail, with credit for time served. Order Re: Revocation of Probation.

**The NCO Extension.**

On November 16, 2011, the State moved the district court to extend the no-contact order. App. 92. The motion was supported by affidavits showing Holman continued to protest Planned Parenthood facilities, including by trespassing. App. 93-97. The district court approved the motion that same day, ordering the no-contact order

extended for five additional years. Order (11/16/2011); App. 98-99. Holman received notice of the order via service by the Lee County Sheriff on November 18, 2011. Lee County Return of Service; App.--.

**Motion to Correct or Vacate.**

Almost three years passed before Holman next took any action regarding the no-contact order. On August 8, 2014, Holman moved the court, through her counsel, to vacate the no-contact order on the grounds that she did not receive notice of the motion to extend the order and she was fully rehabilitated. Motion to Correct (Vacate) Illegal Order; App. 17. On August 22, 2014, the district court denied the motion, noting Holman failed to take action for three years after having been personally served with a copy of the extended no-contact order in November 2011. Ruling on Motion to Vacate No Contact Order (8/22/2014); App. 20.

On September 5, 2015, Holman filed a Rule 1.904 motion to reconsider the court's previous order refusing to vacate the no-contact order. Holman again asked the court to hold that she should have been given an opportunity to be heard on the motion to vacate, and she requested a hearing on the merits of whether she continued to pose a threat to the protected party. 1.904 Motion; App. 21. On

September 23, 2014, the court denied the Rule 1.904 motion, "declin[ing] to amend any part of the Ruling filed on August 22, 2014." Ruling on 1.904 Motion, Re: No-Contact Order; App. 24. The court did, however, construe the "1.904 Motion" as a request for a hearing on the merits of whether Holman continued to be a threat to the safety of the protected party. Ruling on 1.904 Motion, Re: No-Contact Order; App. 25. The court scheduled that hearing for October 31, 2014. Ruling on 1.904 Motion, Re: No-Contact Order; App. 25.

On October 9, 2014, Holman filed a motion to continue the hearing because her counsel had a scheduling conflict. 1.908 Notice to the Court and Request for Continuance. The court rescheduled the hearing for November 7, 2014. Order Setting/Resetting Hearing/Plea/Trial.

Before that hearing could be held, the parties filed additional documents. On October 9, 2014, Holman's counsel filed a document supplementing the pending motion with argument and legal authority and requesting the court to "set forth some of the limits and boundaries of the No-Contact Order." Supplement to Pending Motion. On October 21, 2014, Holman filed a pro se motion and accompanying appendix, containing argument and citation to various

legal sources. Motion to Challenge Standing of Protected Party to Participate in Hearing or to Receive Legal Protection; App. 26. The motion asked the court (1) to prevent the protected party from participating in the hearing and (2) to vacate the no-contact order. App. 26. On the other hand, the State filed affidavits to show Holman still posed a safety threat to the protected parties. Affidavit (Penelope Dickey); App. 101.

The parties appeared as scheduled for the November 7, 2014, hearing but the parties and the court agreed to continue the hearing for sixty days (until January 16, 2015) to allow for evidentiary affidavits to be filed by either party. Order Setting/Resetting Hearing (11/7/2014). Holman filed a personal affidavit on December 30, 2014. Affidavit (Holman); App. 103. She disclaimed any intent to annoy or alarm and noted: "My main interest in life at this point is trying to save unborn babies from being aborted." Affidavit (Holman); App. 103. She amended the affidavit the next day.

The day before the scheduled hearing, Holman's counsel filed a second motion to continue the hearing. 1.908 Notice to the Court and Request for Continuance (1/15/2015); App. 106. The motion stated: "Defendant also respectfully suggests that perhaps a personal

presence hearing is not necessary and that the parties could instead simply submit written arguments to the court by a date certain. This would perhaps be the most effective use of scant court resources." App. 106-07. Counsel repeated that request in the prayer paragraph of the motion. App. 107.

The court granted Holman's motion. On February 10, 2015, the court ordered that the motion "shall be deemed submitted on Affidavits filed by the parties on or before February 27, 2015." Order (2/10/2015). On February 24, 2015, Holman filed an affidavit submitted by friends. *See* Affidavit of Dave & Dorothy Leach. Holman never objected to the court's order indicating the motion would be submitted in writing.

On July 14, 2015, the court refused to vacate the no-contact order. Ruling on Motion to Vacate No Contact Order; App. 85. Finding Holman continued to pose a threat to the safety of the protected parties, the court denied the motion to vacate the no-contact order. App. 87.

On August 13, 2015, Holman filed a notice of appeal in the Iowa Supreme Court, precipitating the current appeal. Notice of Appeal; App. 109.

### Facts

The district court succinctly stated the historical facts of this case:

> The Defendant is an anti-abortion protester. On November 1, 2006, she was at the Iowa City Planned Parenthood facility located at 850 Orchard Street. As persons attempted to enter the facility, the Defendant yelled at them and attempted to force anti-abortion materials upon them.
>
> The Defendant continued yelling loudly outside the clinic disrupting the business of the clinic. Her conduct alarmed and annoyed persons entering, leaving and working at the clinic.

Ruling on Motion to Vacate No Contact Order (7/14/2015); App. 85. Holman was tried and convicted as described above and now appeals the district court's denial of her motion to vacate an extension of the no-contact order entered after her convictions.

## ARGUMENT

### I. Holman Has No Right to Appeal the Order Denying Her Motion to Vacate the No-Contact Order, and the Court Should Not Grant Discretionary Review.

#### Preservation of Error

This is the State's first opportunity to raise this argument. Further, the appellate court may always examine a jurisdictional issue, even in absence of briefing from the parties. *Stockburger v. Robinson*, 270 N.W.2d 453, 454 (Iowa 1978).

**Standard of Review**

As the right to appeal was not litigated below (for obvious reasons), this section is not applicable. In any event, jurisdiction is a legal issue and would be reviewed for errors at law. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002).

**Merits**

Holman attempts to appeal the denial of her motion to vacate the no-contact order. There is no right to such an appeal, and this case is not worthy of the judicial resources necessitated by discretionary review.

"[T]he right of appeal is not inherent or constitutional; it is purely statutory and may be granted or denied by the legislature as it determines." *James v. State*, 479 N.W.2d 287, 290 (Iowa 1991); *see also Wissenberg v. Bradley*, 229 N.W. 205, 209 (Iowa 1929) ("At common law, the right of appeal was unknown. It is purely a creature of statute."). "Unless the statute makes provision therefor, expressly or by plain implication, there is no right of appeal." *Boomhower v. Cerro Gordo County Bd. of Adjustment*, 163 N.W.2d 75, 76 (Iowa 1968). Nothing in Iowa Code chapter 664A expressly or impliedly grants a right to appeal from the denial of a motion to vacate a no-

contact order. Even the motion to vacate is, at best, merely impliedly granted in the statute. *See State v. Olney*, 2014 WL 2884869, at *4 (Iowa Ct. App. June 25, 2014) (analogizing no-contact order to temporary injunction and holding no-contact order similarly subject to a motion to dissolve, vacate, or modify).

While a criminal defendant has the right to appeal from "[a] final judgment of sentence," Holman is not appealing from a final judgment of sentence. *See* Iowa Code § 814.6(1)(a). Indeed, Holman never enjoyed a right to appeal in this case because she was convicted of only simple misdemeanors. *See* Iowa Code § 814.6(1)(a) (no right to appeal simple misdemeanors). For this reason, the Iowa Supreme Court denied her notice of appeal in 2007. Sup. Ct. No. 07-0490, Order (4/13/2007).

Moreover, final judgment in a criminal case is the entry of the sentence. *State v. Farmer*, 234 N.W.2d 89, 90 (Iowa 1975). Holman's final judgment of sentence occurred in 2007 but Holman does not appeal from that judgment. Indeed, the district court extended the no-contact order in 2011, Order (11/16/2011), App. 16—and served Holman with the order, App.---—but Holman does not appeal from that order. Still further, the district court denied

Holman's first motion to vacate the no-contact order (as well as a related 1.904 motion to reconsider), and Holman did not appeal from those orders. Instead, Holman appeals from the district court's 2015 denial of her 2014 motion to vacate the no-contact order. *See* Ruling on Motion to Vacate No Contact Order (7/14/2015); App. 85. Thus, Holman appeals the denial of a collateral order, not a final judgment or sentence. *Cf. State v. Sinclair*, 2013 WL 3458146, at *2 (Iowa Ct. App. July 10, 2013) (holding magistrate has statutory authority to issue NCO as part of simple misdemeanor sentence but lacks statutory authority to extend NCO under Iowa Code § 664A.8).

The order is not only collateral to the criminal sentence, it is not final. If *State v. Olney*, 2014 WL 2884869, at *4, correctly interprets chapter 664A to include the right to move to vacate the order any time the subject of the order believes he or she is no longer a safety threat, then any appeal would be interlocutory. Thus, Iowa Code § 814.6 does not grant Holman a right to appeal.

Holding that the legislature did not provide a right to appeal would not be contrary to *State v. Sanchez*, 2015 WL 4935530, at *5 (Iowa Ct. App. Aug. 19, 2015). In that case, the court found a right to appeal because the no-contact order was entered as part of the

sentencing order. *Id.* Holman does not appeal from a no-contact order entered as part of her original sentencing order, but from a separate and subsequent order of the court.

Also, the no-contact order is actually a civil order, and no civil statute or rule grants Holman the right to appeal. No-contact orders are not intended to be punishment. Instead, "the safety of others was the paramount concern of the legislature in providing for a no-contact order." *State v. Wiederien*, 709 N.W.2d 538, 546 (Iowa 2006) (Cady, J., dissenting). Thus, "no-contact orders under the statute are collateral matters to the underlying proceeding" and are "civil in nature." *Id.* For this reason, the Iowa Court of Appeals has rejected *ex post facto* challenges to no-contact orders. *See State v. Christoffer*, 2005 WL 2085564, at *2 (Iowa Ct. App. Aug. 31, 2005) (holding NCOs under Iowa Code § 901.5(7A), now codified in chapter 664A[1], to be civil in nature); *State v. Roby*, 2006 WL 2706124, at *3 (Iowa Ct. App. Sept. 21, 2006) (holding "no contact order was clearly imposed to promote the health, safety, and emotional well-being of [the victim] and her family" and concluding no-contact orders "are civil in nature"); *see also State v. Grover*, 2014 WL 7343514, at *1 n.2

[1] *See* 2006 Iowa Acts ch. 1101 (removing NCO provisions from § 901.5 and creating new Iowa Code chapter 664A).

(Iowa Ct. App. Dec. 24, 2014) ("An argument can be made that a sentencing no-contact order is civil in nature and not subject to challenge as an illegal sentence."); c*f. State v. Seering*, 701 N.W.2d 655, 668 (Iowa 2005) (holding 2000 foot restriction for convicted sex offenders not punitive). No law governing civil cases grants Holman a right to appeal.

In the absence of a statutory right to appeal, Holman has neither sought nor been granted discretionary review of the denial of her motion to vacate the no-contact order. The only mechanism for discretionary review possibly applicable to this case would be review of "[a]n order raising a question of law important to the judiciary and the profession." Iowa Code § 814.6(2)(e). Holman has neither complied with the procedure for requesting discretionary review nor provided a substantive issue appropriate for discretionary review.

First, the rules contain express requirements an applicant must follow in applying for discretionary review. *See generally* Iowa R. App. P. 6.106. Most relevant to this case, the defendant must state "with particularity the grounds upon which discretionary review should be granted." Iowa R. App. P. 6.106(1)(d). Holman has not

stated with any particularity why her claims raise questions of law important to the bench and bar.

Although this case is unquestionably important to Holman, the issues raised in Holman's brief are not, in fact, important to the bench and bar. *See* Appellee's br. p. 4 (Statement of the Issues Presented for Review). *But see State v. Dowell*, 2015 WL 4158758 (Iowa Ct. App. July 9, 2015) (granting discretionary review of a no-contact order). First, whether the district court erred by, at Holman's counsel's request, deciding her motion without an in person hearing is unique to her case and not an issue likely to recur. Second, the substantive issue of whether Holman remains a threat to the protected parties is a fact-intensive inquiry unlikely to provide useful legal precedent for future judges and lawyers. Third, whether the district court overlooked some of her arguments, and whether the alleged oversight violates the Code of Judicial Conduct, are similarly unlikely to produce useful precedent. Finally, the question of whether a victim must have "clean hands" to be protected by a no-contact order from further harassment (i.e., have "standing to sue" in Holman's parlance) is so lacking in legal justification that it is seldom likely to be presented to Iowa's courts. Discretionary review of this case is not

allowed by Iowa Code § 814.6 and would be a waste of judicial resources.

Iowa Rule of Appellate Procedure 6.108 does not require a different result. That rule states that if a defendant seeks the improper form of review "and the appellate court determines another form of review was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been requested." Iowa R. App. P. 6.108 (emphasis added). Impliedly then, if the appellate court finds no other form of review was proper, the case should be dismissed. That is the case here.

The Iowa Supreme Court exercises its discretionary authority "sparingly," *see Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 735 (Iowa 2008) (addressing interlocutory appeals), and Holman's case does not justify that rare remedy. This appeal should be dismissed.

## II. Holman's Appeal From a 2011 Order Is Untimely, and Holman Was Not Prejudiced By an "Ex Parte Trial."

### Preservation of Error

It appears Holman attempts to appeal the district court's November 16, 2011, order extending the no-contact order for an additional five years. Yet, Holman did not timely appeal from, or seek

discretionary review of, that order. Instead, she waited three years before filing a motion to vacate the no-contact order. As such, any challenge to the procedure underlying the 2011 order is untimely. *See* Iowa R. App. P. 6.101(1)(b) ("A notice of appeal must be filed within 30 days after the filing of the final order or judgment. . . ."); *see also Root v. Toney*, 841 N.W.2d 83, 87 (Iowa 2013) ("It is axiomatic that compliance with our rules relating to time for appeal are mandatory and jurisdictional. Where an appellant is late in filing, by as little as one day, we are without jurisdiction to consider the appeal." (quotations omitted)).

Indeed, even an appeal from her 2014 motion to vacate would be untimely. The district court denied that motion on August 22, 2014. Holman did not appeal within thirty days of that order.

Consequently, Holman's only avenue to extend the thirty-day appeal deadline was to file a timely motion to enlarge or amend. *See* Iowa R. App. P. 6.101(1)(b) ("However, if a motion is timely filed under Iowa R. Civ. P. 1.904(2) or Iowa R. Civ. P. 1.1007, the notice of appeal must be filed within 30 days after the filing of the ruling on such motion."). But only a *proper* Rule 1.904(2) motion operates to extend the appeal deadline. *See Bellach v. IMT Ins. Co.*, 573 N.W.2d

903, 904-05 (Iowa 1998) ("A motion relying on rule [1.904(2)], but filed for an improper purpose, will not toll the thirty-day period for appeal under Iowa Rule of Appellate Procedure [6.101(1)(b)].").

On September 5, 2015, Holman filed a Rule 1.904 motion to reconsider the court's previous order refusing to vacate the no-contact order. Holman again asked the court to hold that she should have been given an opportunity to be heard on the motion, and she requested a hearing on the merits of whether she continued to pose a threat to the protected party. 1.904 Motion; App.21.

"A rule 1.904(2) motion is not available . . . to a party to challenge a ruling that was confined to a question of law with no underlying issue of fact." *In re Marriage of Okland*, 699 N.W.2d 260, 266 (Iowa 2005); *see also Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 641 (Iowa 2013) ("[A] rule 1.904(2) motion is improper where the motion only seeks additional review of 'a question of law with no underlying issue of fact.' "); *Meier v. Senecaut*, 641 N.W.2d 532, 538 (Iowa 2002) ("[A] rule [1.904(2)] motion is not available to challenge a ruling that did not involve a factual issue but instead was confined to the determination of a legal

question."); *Hedlund v. State*, 875 N.W.2d 720, 726 (Iowa 2016) (explaining Rule 1.904 motion also proper to preserve error).

Holman's Rule 1.904 motion raised only legal questions, not fact questions that fall within Rule 1.904(2)'s purview. The procedure underlying the court's order on the motion to vacate the no-contact order implicated only legal issues and therefore did not raise a legitimate Rule 1.904(2) issue and cannot operate to extend the thirty-day appeal deadline.

Thus, only the July 14, 2015, order refusing to vacate the no-contact order is properly at issue on appeal. *See* Ruling on Motion to Vacate No Contact Order; App. 85. Whether the district court conducted an "ex parte" "trial" in 2011 is not preserved for appeal.

**Standard of Review**

To the extent Holman raises a constitutional issue, review is de novo. *State v. Young*, 863 N.W.2d 249, 252 (Iowa 2015).

**Merits**

Holman argues the district court improperly conducted an ex parte trial. It appears Holman refers to the district court's consideration of the State's motion to extend the no-contact order for a second five-year term, in 2011. Holman calls this her "trial." It was

not. Holman's trial occurred in 2007, Order Re: Judgment and Sentence (1/26/2007), App. 89, and the Iowa Supreme Court denied discretionary review. Sup. Ct. No. 07-0490, Order (7/2/2007).

What Holman really complains about is a lack of a hearing on the State's motion to extend the no-contact order. As explained above, a no-contact order is not a criminal matter; it is a civil order intended to protect the victims in this case.

To the extent Holman enjoyed a right to be heard regarding the extension of the no-contact order, she received it (and waived it) in 2014. On September 23, 2014, the district court construed previous motions by Holman to request a hearing on the merits of whether Holman continued to be a threat to the safety of the protected party and scheduled a hearing. Ruling on 1.904 Motion, Re: No-Contact Order; App. 24-25. By granting that hearing, the district court granted the relief Holman now seeks. Consequently, she was not prejudiced by the lack of a hearing. The fact that Holman subsequently waived her right to the hearing, as will be explained shortly, does not undermine the fact that the district court ultimately granted her the relief she now seeks.

Holman's third motion to continue that hearing stated: "Defendant also respectfully suggests that perhaps a personal presence hearing is not necessary and that the parties could instead simply submit written arguments to the court by a date certain. This would perhaps be the most effective use of scant court resources." 1.908 Notice to the Court and Request for Continuance (1/15/2015); App. 106. Counsel repeated that request in the prayer paragraph of the motion. App. 107. The court granted Holman's motion on February 10, 2015, stating that the motion "shall be deemed submitted on Affidavits filed by the parties on or before February 27, 2015." Order (2/10/2015). On July 14, 2015, the court refused to vacate the NCO. Ruling on Motion to Vacate No Contact Order; App. 85.

Thus, through counsel, Holman waived any right to be personally present at a hearing on the motion by affirmatively requesting the issue be submitted on the merits. *See generally State v. LeFlore*, 308 N.W.2d 39, 41 (Iowa 1981) ("[A]n attorney is an agent of limited authority, and generally a defendant is bound by defense counsel's action within the scope of that authority taken on behalf of

the defendant." (citation omitted)). The lack of an in-person hearing is no basis to set aside the no-contact order.

## III. The District Court Did Not Abuse Its Discretion By Holding that Holman Poses A Threat to the Safety of the Protected Parties.

### Preservation of Error

Holman argues she poses no safety threat to the protected parties sufficient to justify the no-contact order. She does this, in part, by attacking the evidence supporting her 2007 convictions. Here again, it is too late for Holman to challenge her 2007 convictions, and any argument directed at the original harassment and disorderly conduct convictions should be disregarded.

### Standard of Review

Where a no-contact order was challenged as unreasonable, the Iowa Court of Appeals reviewed for abuse of discretion. *State v. Hall*, 740 N.W.2d 200, 202 (Iowa Ct. App. 2007). There is an abuse of discretion when "there is no support for the decision in the . . . evidence." *State v. Valin*, 724 N.W.2d 440, 445 (Iowa 2006). To the extent the challenge is constitutional, review is de novo. *Id. See also, State v. Haviland*, 2012 WL 1453981, at *3 (Iowa Ct. App. April 25, 2012) ("The issue for the court is, however, whether the evidence establishes that Haviland no longer poses a threat to [the victim].");

*State v. Dowell*, 2015 WL 4158758, at *2 n.1 (Iowa Ct. App. July 9, 2016) (discussing burden of proof).

**Merits**

Holman argues she does not pose a real threat to the protected parties and, therefore, the no-contact order should not have issued. Holman argues her octogenarian status proves she is not a threat to the protected parties.

Iowa Code § 664A.8 governs the extension of no-contact orders. That section provides that, upon the State's application, "the court shall modify the no-contact order for an additional period of five years, unless the court finds that the defendant no longer poses a threat to the safety of the victim . . . ." Iowa Code § 664A.8. Thus, the default rule is for the court to extend the no-contact order. The no-contact order is discontinued only if the State's evidence utterly fails to show a threat or the subject of the order can show she is no longer a threat to the protected party. Of course, Holman does not appeal the no-contact order itself; she appeals the denial of her motion to vacate the no-contact order. Assuming a motion to vacate a no-contact order is a procedure implied by chapter 664A, surely the proponent of the motion would have the burden to establish cause to

grant it. Iowa R. App. P. 6.904(3)(e). Holman did not make an affirmative showing that she no longer poses a safety threat to the protected parties.

First, the State filed two affidavits in support of the motion to extend the no-contact order. One affidavit averred that Holman protested a Planned Parenthood facility in Red Oak, Iowa, in October 2011. State's Motion to Modify and Extend No Contact Order; App. 93. A second affidavit detailed how Holman received successive trespassing citations after being asked to leave Planned Parenthood property in Ames and Ankeny on the same morning. App. 96. In 2014, the State filed an additional affidavit demonstrating that Holman continued to frequent events where Planned Parenthood staff was present and to demonstrate hostility towards Planned Parenthood. Affidavit (Penelope Dickey); App. 101. All three affiants feared for their safety and the safety of staff and patients.

By contrast, Holman filed a personal affidavit on December 30, 2014. Affidavit (Holman); App. 103. She disclaimed any intent to annoy or alarm and noted: "My main interest in life at this point is trying to save unborn babies from being aborted." Affidavit

(Holman); App. 103. Holman submitted two other affidavits from friends, each averring she is a peaceful person.

In arguing she is not a threat to the protected parties in this case, Holman employs a narrow interpretation of the word threat. Due to her age, she suggests, she could not physically harm a protected party even if she wanted to. Given the purpose of the no-contact order, the court should interpret the phrase "threat to the safety of the victim" more broadly.

The obvious purpose of a no-contact order is to protect the victim from further harassment, abuse, or victimization. *See Haviland*, 2012 WL 1453981, at *2 (purpose is to protect victims); *Wiederien*, 709 N.W.2d at 546 (Cady, J., dissenting) (noting the safety of others was the paramount concern of the legislature in providing for a no-contact order). The ability to cause bodily harm to a victim is not a prerequisite for a no-contact order, as Holman would have it.

Instead, "a threat to the safety of the victim" supporting a no-contact order contemplates any type of assault, harassment, or crime involving a victim. The crime of assault does not require physical contact. A person commits assault by "[a]ny act which is intended to

place another in fear of immediate physical contact which will be painful, injurious, *insulting*, or *offensive*." Iowa Code § 708.1(2)(b). Importantly, a person intends the natural a probable consequences of one's acts. *State v. Bedard*, 668 N.W.2d 598, 601 (Iowa 2003). Forcing pamphlets upon someone while calling them a murderer in a loud voice is reasonably likely to place that person in fear of insulting or offensive physical contact. Similarly, the natural and probable result of such conduct is "to intimidate, annoy, or alarm another person." Iowa Code § 708.7. Holman's argument that she does not intend such a result is belied by common sense and human experience. Her own experience should have taught her this, as the victims of her harassment were visibly upset.

Iowa Code § 664A.8 should be interpreted at least as broadly as the crimes necessitating the original no-contact order. Indeed, the Iowa Court of Appeals—affirming a conviction for violation of a no-contact order where the defendant merely called the victim's phone and hung up—has explained: "A victim of assault is likely to feel distressed or harassed when the alleged abuser is attempting to make unauthorized contact. Distress of this type is one of the wrongs addressed by a protective order." *Rockhold v. Iowa Dist. Ct.*, 2002

WL 570718, at *2 (Iowa Ct. App. Feb. 20, 2002). Only a broad interpretation of Iowa Code § 664A.8 can prevent this type of distress. Holman's interpretation would require crime victims to live in justified fear of their next victimization.

The evidence before the district court proved Holman has no intent to change her ways. Indeed, she proclaimed: "My main interest in life at this point is trying to save unborn babies from being aborted." Affidavit (Holman); App. 103. And in her appellate brief she continues to label the protected parties "murderers." Appellant's br. p. 30.

Further, the First Amendment does not avail Holman. The State is not regulating the content of her speech, merely her conduct. *Snyder v. Phelps*, 562 U.S. 443, 461 (2011) (Breyer, J., concurring) ("Moreover, suppose that A were physically to assault B, knowing that the assault (being newsworthy) would provide A with an opportunity to transmit to the public his views on a matter of public concern. The constitutionally protected nature of the end would not shield A's use of unlawful, unprotected means. And in some circumstances the use of certain words as means would be similarly unprotected."). Moreover, the no-contact order serves a compelling state interest of

protecting crime victims. *See State v. Doyle*, 787 N.W.2d 254, 259 (Neb. Ct. App. 2010) (stating the focus of a protective order is not the speech but the conduct, and the state has a compelling interest in protecting victims from continuing harassment and abuse); *State v. Hauge*, 547 N.W.2d 173, 176 (S.D. 1996) (recognizing that domestic abuse protection orders support compelling governmental interests).

The district court properly extended the no-contact order where the evidence did not allow the court to find Holman no longer poses a threat to the safety of the victim.

## IV. The District Court Adequately Addressed Holman's Arguments.

### Preservation of Error

Holman failed to preserve error. She argues the district court overlooked arguments in pro se documents filed October 21, 2014. In those filings, Holman argued Planned Parenthood cannot be protected by a no-contact order because that entity conducts abortions and therefore has "unclean hands." *See* Motion to Challenge Standing of Protected Party to Participate in Hearing or to Receive Legal Protection; App. 26. Holman did not file a Rule 1.904 motion subsequent to the district court's July 14, 2015 ruling denying her motion to vacate the no-contact order. To preserve error on this

issue she was required to file such a motion. *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012); *Hedlund v. State*, 875 N.W.2d 720, 726 (Iowa 2016) (explaining Rule 1.904 motion also proper to preserve error).

**Standard of Review**

Review is for errors at law. Iowa R. App. P. 6.907.

**Merits**

Holman argues the district court overlooked or ignored arguments in pro se documents filed October 21, 2014. The district court had no duty to address Holman's pro se arguments because she was represented by able counsel.

Even in a criminal case, there is no right to hybrid representation, and a district court does not err by refusing to consider pro se motions when a criminal defendant is represented by counsel. *See, e.g.*, *United States v. D'Amario*, 256 Fed. Appx. 569, 570-71 (3d Cir. 2007) (citing *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984)).

Holman's only legal authority for the district court's obligation to expressly address her pro se arguments are the Canons of Judicial Ethics. Yet, those canons exist to govern the conduct of judicial

officers, not to displace the rules of procedure or to provide remedies to civil litigants.

## V. The Doctrines of Necessity, Compulsion, And Defense of Others Do Not Justify Holman's Contact with Planned Parenthood and Its Patients.

### Preservation of Error

Holman did not preserve error on this issue for the two reasons discussed in the preceding section. First, her attorney did not brief the issue. And second, she did not file a Rule 1.904 motion requesting the district court to rule on the issue. *Lamasters*, 821 N.W.2d at 864; *Hedlund*, 875 N.W.2d at 726 (explaining Rule 1.904 motion also proper to preserve error).

### Standard of Review

Review is for errors at law. Iowa R. App. P. 6.907.

### Merits

Holman argues Planned Parenthood cannot be a protected party. More specifically, she argues Planned Parenthood "murders" babies and murderers are not protectable parties.

A similar argument was rejected in *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 640 (Iowa 1991), where the court rejected a necessity defense and issued an injunction against

trespass by an abortion protester. Holman's argument should be rejected for all the same reasons.

Further, abortion is legal under Iowa law; it is not murder. Iowa Code § 707.7 (2015); *Planned Parenthood of the Heartland, Inc., v. Iowa Bd. of Medicine*, 865 N.W.2d 252, 263 (Iowa 2015). Consequently, the doctrines of necessity, compulsion, or defense of others do not apply. *See* Iowa Code §§ 704.3, 704.10.

## CONCLUSION

Holman has no right to appeal the order denying her motion to vacate the NCO, and discretionary review is not warranted. Further, Holman's complaints are untimely, waived, or meritless. The appeal should be dismissed.

## REQUEST FOR NONORAL SUBMISSION

This case is appropriate for submission without oral argument.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

**BENJAMIN PARROTT**
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Benjamin.Parrott@iowa.gov

## CERTIFICATE OF COMPLIANCE

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**BENJAMIN PARROTT**
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Benjamin.Parrott@iowa.gov