

## PROTECTIVE ORDERS GENERALLY DO NOT BIND A NON-PARTY ABSENT THE NON-PARTY'S CONSENT

July 21, 2009 | Law Alerts

*State v. Grant*

Ct. Appeals, Div. One, July 21, 2009

Authored by the [JSH Appeals Team](#)

Lennar Communities Development and Sonoran Utility Services were adversaries in a lawsuit. Pursuant to a protective order, Sonoran designated as confidential portions of the deposition transcript of one of its representatives. The Maricopa County Attorney's Office was simultaneously conducting a criminal investigation of the deponent/representative. Accordingly, the State filed a "Request for Copy of Deposition" in the Lennar action. Sonoran objected as the State had not agreed to be bound by the protective order.

Before the court could rule on the State's request, the State acquired a copy of the deposition after executing a search warrant at the deponent/representative's office. At a subsequent hearing, counsel for the State advised the court that it had obtained a copy of the transcript, but had yet to review it. The court set a date for oral argument on the Request for Copy of Deposition. Shortly thereafter, the State filed a withdrawal of its Request.

A local newspaper following the criminal investigation of the deponent/representative learned that the State had obtained a copy of the deposition transcript through a search warrant. The newspaper filed a public records request seeking a copy of the transcript, which was provided. Thereafter, the newspaper published an article recounting portions of the deposition. Angry at what it contended was a violation of the protective order, Sonoran filed a motion for sanctions against the State, arguing that a protective order binds all who are aware of it. The court granted Sonoran's motion.

The State filed a petition for special action to obtain relief from the court's ruling. The court of appeals reversed, noting, "The general rule is that a court order does not bind a non-party to the litigation in which the order was entered." It rejected Sonoran's argument that the State effectively agreed to be bound by the protective order by "intervening" in the litigation to seek disclosure of the deposition transcript. The court noted the State did not file a motion to intervene pursuant to Rule 24, and it withdrew the Request for the deposition. Moreover, the State did not expressly or impliedly consent to be bound by the protective order.