

**APPLICATION FOR NOMINATION TO
JUDICIAL OFFICE**

**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 65)**

PERSONAL INFORMATION

1. Full Name: **James Patrick Beene**
2. Have you ever used or been known by any other name? **No.**
3. Office Address: **Arizona Court of Appeals, Division One
Arizona State Courts Building
1501 West Jefferson Street, Suite 305
Phoenix, Arizona 85007**
4. How long have you lived in Arizona? **30 years.**
What is your home zip code? **85234.**
5. Identify the county you reside in and the years of your residency. **I have resided
in Maricopa County since December 1991 – over 27 years.**
6. If nominated, will you be 30 years old before taking office? yes no

If nominated, will you be younger than age 65 at the time the nomination is sent
to the Governor? yes no
7. List your present and any former political party registrations and approximate
dates of each: **I have been a registered Republican since 1984.**

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

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8. Gender: **Male.**
Race/Ethnicity: **Hispanic/Latino [Mother].**
Caucasian [Father].

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

Santa Barbara City College, 1983-1984.

University of California at Los Angeles, 1984-1985.

Santa Barbara City College, 1985-1986.

University of California at Santa Barbara, 1986-1988.
Bachelor of Arts, Political Science.

University of Arizona College of Law, 1988-1991.
Juris Doctor.

10. List major and minor fields of study and extracurricular activities.

Undergraduate major: Political Science. Minor fields of study: History.

Undergraduate Extracurricular Activities: From 1984-1985, I attended UCLA on a track and field scholarship and participated in intercollegiate competition.

Law School Extracurricular Activities: While at the University of Arizona, I was active in the Minority Law Students Association. Additionally, in 1990, during my second-year in law school, I served as the campaign manager for a Republican candidate for the Arizona State Senate in Tucson, Arizona.

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

College: I attended UCLA on an athletic scholarship.

Law School: In 1988, I was selected as a Valdemar A. Cordova Law Scholar, a scholarship given to deserving Hispanic law students. Additionally, from 1989 through 1991, I was awarded the Lewis Rosenstiel Law Scholarship. I was also on the Dean's List for three semesters while in law school. From June through September 1989, I interned at the United States Attorney's Office in Tucson in the criminal and civil divisions, and from September 1989 through

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December 1991, I worked as a law clerk at the Pima County Attorney's Office.

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

Arizona Supreme Court, May 1992.
United States District Court for the District of Arizona, May 2000.
United States Court of Appeals for the Ninth Circuit, December 2000.

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No.**
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **Yes.**

I took the Arizona State Bar Examination in July 1991, and missing a passing score by one point, I took and passed the examination in February 1992.

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER/LOCATION	DATES
Arizona Court of Appeals/Phoenix, AZ	1/2017-Present
Arizona Superior Court/Maricopa County, AZ	5/2009-1/2017
Maricopa County Attorney's Office/Phoenix, AZ	11/2005-5/2009
Arizona Attorney General's Office/Phoenix, AZ	9/1999-11/2005
Peoria City Attorney's Office/Peoria, AZ	6/1997-9/1999
Residential Utility Consumer's Office/Phoenix, AZ	6/1995-6/1997
Arizona State Senate/Phoenix, AZ	1/1995-6/1995
Maricopa County Attorney's Office/Phoenix, AZ	8/1992-1/1995

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15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

See Attachment A.

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

For approximately the last ten years, I have been a judicial officer. In April 2009, Governor Janice Brewer appointed me to the Arizona Superior Court for Maricopa County. I successfully stood for retention elections in November 2012 and November 2016. During my seven and a half years as a superior court judge, I presided over Family, Juvenile and Criminal calendars.

In December 2016, Governor Doug Ducey appointed me to the Arizona Court of Appeals, Division One. On the court of appeals, we sit on three-judge panels deciding appeals in a wide variety of substantive areas, including civil, criminal, juvenile, family, mental health, probate and tax law. We also decide cases from the Arizona Industrial Commission, the Arizona Department of Economic Security appeals board and the Arizona Corporation Commission.

Before my appointment to the superior court bench in 2009, I worked at the Maricopa County Attorney's Office and served as the Appeals and Extraditions Bureau Chief. In this position, my practice encompassed criminal law and procedure, federal and state constitutional law, appellate law and procedure, and some international treaty and extradition law. As bureau chief, I handled substantive cases consisting primarily of litigating petitions for post-conviction relief, direct appeals, and special actions in ongoing criminal prosecutions. In this capacity I supervised ten attorneys with similar caseloads. Additionally, I responded to daily requests from trial attorneys for research and advice on legal issues in ongoing criminal matters.

17. List other areas of law in which you have practiced.

At the Arizona Attorney General's Office, I served as an appellate prosecutor. I litigated state direct appeals, state post-conviction relief proceedings, and federal habeas corpus proceedings for the State of Arizona in Arizona's state appellate courts, the United States District Court for the District of Arizona, and the Ninth Circuit Court of Appeals.

During my tenure at the Residential Utility Consumer Office (RUCO), I practiced in the areas of civil litigation and utility law. While at RUCO, I litigated numerous utility rate increase cases before the Arizona Corporation Commission on behalf of Arizona's residential utility consumers.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

Not Applicable.

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

LEGAL DOCUMENTS:

I have extensive legal writing experience. I have written in excess of 100 merits briefs presented to Arizona appellate courts, including Divisions One and Two of the Arizona Court of Appeals and the Arizona Supreme Court. The briefs include Opening, Answering and Reply Briefs, as well as Special Action Petitions and Responses to Special Action Petitions, Petitions for Review and Responses to Petitions for Review in Post-Conviction Relief proceedings. In addition, I have also drafted many appellate merits documents in federal courts, including the United States District Court for the District of Arizona, the United States Ninth Circuit Court of Appeals, and the United States Supreme Court. These include Answers to Petitions for Writ of Habeas Corpus, Answering Briefs, and other relevant motions.

In Arizona state trial courts (superior court, city courts and justice courts), I have written and filed hundreds of motions, memoranda and responses, including, Responses to Petitions for Post-Conviction Relief; pretrial evidentiary motions; pretrial jury instruction proposals and motions; disclosure documents pursuant to Arizona Rule of Criminal Procedure 15.1; motions before a Grand Jury; and various pre and post-trial motions relative to all aspects of a criminal prosecution.

As Appeals and Extraditions Bureau Chief at the Maricopa County Attorney's Office, I also read, edited and contributed to countless legal documents drafted by other attorneys, both trial and appellate. I was also responsible for reviewing proposed legislation and proposed changes to current statutes.

When working for RUCO, I drafted various civil motions and memoranda relative to the rate cases which were litigated before the Arizona Corporation Commission. In this capacity I engaged in drafting and development of Interrogatories, Answers to Interrogatories; pretrial and post-trial motions; responses to trial motions.

During my seven and a half years on the Arizona Superior Court, I wrote minute entry orders on various pre-trial and post-trial motions. As a juvenile court judge, I wrote lengthy and specific orders regarding the termination of parental rights. I also drafted detailed orders relating to juvenile delinquency matters. As a family court judge, I authored dissolution and custody decrees and orders detailing the conditions for division of property, financial assets and debts, and, where applicable, parenting time and decision-making authority for minor children, among other issues. As a criminal court judge, I wrote numerous rulings on motions filed by defense attorneys and prosecutors.

STATUTES, RULES, JURY INSTRUCTIONS, ETC.:

While Chief of the Appeals Bureau, I frequently drafted responses to proposed changes to the Arizona Rules of Criminal Procedure on behalf of the Maricopa County Attorney's Office, and also authored proposed changes to new criminal rules and statutes. Additionally, as a member of the Arizona Supreme Court Capital Case Task Force, I proposed and negotiated changes in the rules and procedures to address delay in the litigation of capital cases in Maricopa County. Currently, I am a member of the Arizona Supreme Court's Rule 32 Task Force, which is overseeing a review and rewrite of the rule pertaining to post-conviction relief proceedings.

Additionally, I served on the Arizona State Bar Criminal Jury Instruction Committee from 2003 until 2012, and was involved in rewriting and updating all criminal jury instruction. I also served on a subcommittee tasked with rewriting and updating jury instructions in light of Arizona's capital sentencing procedures passed by the Arizona Legislature in response to the 2002 United States Supreme Court opinion in *Ring v. Arizona*. In 2015, I was reappointed to serve on this committee by the President of the Arizona State Bar.

From 1999 through 2003, I was a member of the Arizona State Bar Committee on Criminal Practice and Procedure and often assisted in drafting the Committee's proposals on various rule changes. In addition, I assisted in drafting the Committee's comments to various rules, including Rule 32 (post-conviction relief proceedings); Rule 8 (speedy trial rights and procedures); and Rule 15 (discovery and disclosure requirements and procedures) of the Arizona Rules of Criminal Procedure.

Finally, as a legislative analyst for the Government Reform Committee in the Arizona State Senate in 1995, I was both a principle and contributing draftsman to various Senate bills.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **Yes.**

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- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

The Arizona Corporation Commission: five (5) hearings.

- b. The approximate number of these matters in which you appeared as:

Sole Counsel: 2

Chief Counsel: 2 (I became Chief Counsel at RUCO in 1996)

Associate Counsel: 1

21. Have you handled any matters that have been arbitrated or mediated? **Yes.**

As a prosecutor at the county and city levels, I negotiated numerous plea agreements.

As a judge on the Arizona Superior Court, I conducted dozens of plea agreement settlement conferences pursuant to Arizona Rule of Criminal Procedure 17.4(a).

As a judge on the Arizona Court of Appeals, I have participated in the court's settlement program. This no cost program allows parties to try to resolve their appeals at a minimum of expense through negotiated settlement conferences. In July 2018, I participated as a settlement conference judge in a family law matter.

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

In the matter of the rate increase application of Tucson Electric Power Company

1. 1995-96.
2. **My Client: As an attorney with the Residential Utility Consumer Office (RUCO), my clients were the residential utility ratepayers serviced by the Tucson Electric Power Company.**

Opposing Counsel: Bradley S. Carroll, Tucson Electric Power Company, 88

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East Broadway Blvd., P.O. Box 711 MS HQE910, Tucson, Arizona 85702-0711;
bcarroll@tep.com; (520) 884-3679.

Other Counsel: Christopher C. Kempley, 1648 West Swan Place, Chandler, Arizona 85286; CKempley@gmail.com; (703) 861-3431. (Formerly with the Arizona Corporation Commission Legal Department).

Kenneth C. Sundlof, Jr., Jennings, Strouss & Salmon, PLC, One East Washington Street, Suite 1900, Phoenix, Arizona 85004-2554;
sundlof@jsslaw.com; (602) 262-5946.

3. In late-1995, Tucson Electric Power Company (TEP) filed an application for a rate increase with the Arizona Corporation Commission (ACC). TEP requested that the ACC increase its overall revenue by 4.8%, or an annual amount of \$28.4 million. As lead counsel on this case, I directed RUCO's investigation of TEP's proposed rate increase. After examining TEP's application, RUCO took the position that TEP's requested increase was not warranted. On January 17, 18, and 19, 1996, TEP's rate case was litigated before the ACC. RUCO was the only party/intervenor opposed to TEP's requested rate increase participating in the application process. At the conclusion of the hearing, the ACC voted *against* TEP's rate increase application. Subsequently, in February and March 1996, I led the negotiations on behalf of RUCO with TEP to settle their rate increase application. On March 27, 1996, the ACC approved the negotiated settlement agreed to by the parties/intervenors. The settlement increased TEP's overall revenue by 1.1%, or an annual amount of \$6.4 million.
4. Although this case was not legally significant on broad scale, it was very significant to my development as a lawyer. Being relatively new to the practice of civil law, I had not conducted any significant settlement negotiations. In this case, I was lead counsel at the hearing that led to the denial of TEP's rate increase application. After the hearing, I led RUCO's negotiations with a multi-million dollar electric utility corporation. Through this case, I learned a great deal about how to negotiate and how to use the evidence gathered to support our litigation efforts in the settlement proceedings. Being the lead negotiator in this case was a tremendous learning experience.
23. Have you represented clients in litigation in Federal or state trial courts? **Yes.**
The approximate number of cases in which you appeared before:

Federal Courts: **10**

State Courts of Record: **200+**

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Municipal/Justice Courts: **250+**

The approximate percentage of those cases which have been:

Civil: **1**

Criminal: **99**

The approximate number of those cases in which you were:

Sole Counsel: **425**

Chief Counsel: **0**

Associate Counsel: **5**

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: **5**

You argued a motion described above **5**

You made a contested court appearance (other than as set forth in the above response) **40**

You negotiated a settlement: **90**

The court rendered judgment after trial: **2**

A jury rendered a verdict: **30**

The number of cases you have taken to trial:

Limited jurisdiction court **250+**

Superior court **25**

Federal district court **0**

Jury **30**

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Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

The number of cases I have tried to the court is difficult to specifically ascertain. While I was a prosecutor for the City of Peoria, I routinely tried 10 bench trials a week while working there over a period of 2.5 years. I believe the number of bench trials is an accurate estimate.

24. Have you practiced in the Federal or state appellate courts? **Yes.**

The approximate number of your appeals which have been:

Civil: **0**
Criminal: **100**

The approximate number of matters in which you appeared:

As counsel of record on the brief: **100**

Personally in oral argument: **23**

**16—Arizona Court of Appeals; 4—Arizona Supreme Court
3—United States Court of Appeals, Ninth Circuit.**

25. Have you served as a judicial law clerk or staff attorney to a court? **No.**
26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

State ex rel. Thomas v. Duncan (Prince)

1. **In March 2008, I filed a Petition for Special Action on behalf of the State of Arizona, and later argued the case before the Arizona Court of Appeals, Division One. In April 2008, the court of appeals issued a decision order. Upon my motion, the court subsequently converted the decision order into a published opinion. On petition for review, the Arizona Supreme Court left the court of appeals' decision intact, while simultaneously depublishing the lower court's opinion.**

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2. Arizona Court of Appeals, Division One. Presiding Judge Lawrence F. Winthrop, Judge Jon W. Thompson, and Judge Sheldon H. Weisberg (retired).

3. Opposing Counsel: Dennis C. Jones, deceased.

Amicus Curiae Counsel: Judge Kent E. Cattani, kcattani@appeals.az.gov; (602) 452-6726; (Former Chief Counsel, Criminal Appeals/Capital Litigation Sections at the Arizona Attorney General's Office).

4. In 1998, Wayne Prince fatally shot 13-year-old Cassandra Parker in the head in front of his wife and the child's mother, Christine Parker, whom he also shot, hitting her in the lower jaw. Christine survived. A jury subsequently convicted Prince of first-degree premeditated murder and attempted first-degree murder, and, in 2000, after conducting a sentencing hearing, a judge found the existence of capital aggravating circumstances and sentenced Prince to death. However, following the 2002 United States Supreme Court opinion in *Ring v. Arizona*, 536 U.S. 584 (2002), the Arizona Supreme Court vacated Prince's death sentence and remanded for resentencing by a jury.

On remand, the newly impaneled jury found beyond a reasonable doubt the existence of the following two capital aggravating circumstances: 1) that Prince committed the murder in an especially cruel manner, and 2) that Prince was an adult and the victim was under 15 years of age at the time of the crime. The jury, however, was unable to reach a unanimous verdict with regard to whether to impose the death penalty, causing the trial court to declare a mistrial and dismiss the jury. Pursuant to the relevant Arizona statutes, the trial court then scheduled a third penalty phase with a new jury.

In preparation for the new penalty phase, a question arose regarding what information from the findings and verdicts of the previous two juries in the guilt and aggravation phases should be presented to the new penalty phase jury. Both counsel for the State and Prince agreed that the new jury needed factual information concerning the commission of the crime and the aggravating circumstances found by the previous jury in order to assess the severity of the crime and the aggravators. Counsel agreed that this assessment would be necessary to properly and constitutionally deliberate on the appropriate application of the death penalty. The trial court disagreed and ruled that no evidence supporting the previous juries' verdicts of guilt and the existence of capital aggravators would be presented to the new jury. Instead, the trial court ruled that the new penalty phase jury would be informed only of the crimes with which Prince had been charged and convicted, coupled with the descriptive titles and definitions of the two aggravators previously found beyond a reasonable doubt by a prior jury—with no further explanation. In other words, the new jury would not be given any information about the underlying facts and circumstances supporting the previous juries' verdicts—

only that those verdicts existed.

The Arizona Court of Appeals accepted jurisdiction of the State's ensuing Petition for Special Action, and granted relief. The court held that the constitutionally required individualized sentencing determination, which is based on the character of the defendant and the circumstances of the crime, permitted the State to present evidence or otherwise inform the jury of the facts established during previous guilt and aggravation phases that are relevant to the determination of the question of whether Prince should be shown leniency. Specifically, the court of appeals directed the trial court to "allow each of the parties to present evidence relevant to the jury's assessment and determination whether sufficiently substantial mitigating circumstances exist to call for leniency."

5. This case is legally significant because the interpretation of Arizona's death penalty statute is ongoing and crucial to the consistent, timely and constitutionally sound prosecution of capital cases across Arizona, which is why I took the time to petition the court of appeals to publish its decision. At issue specifically in this case was the meaning and application of A.R.S. § 13-703.01(K). Prior to the enactment of the new statute in 2002, judges, rather than juries, made the decision whether the death penalty was appropriate. The transition to implementing juries as the sentencers in capital cases created a number of questions that must be litigated in order for Arizona's capital sentencing system to remain constitutional and serve the needs of the public, defendants and victims. The magnitude of this decision motivated the subsequent request to the court of appeals for publication. Even though the Arizona Supreme Court removed this case from the body of citable precedent, the example set by this case influenced trial courts and attorneys in other capital penalty phase remands to constitutionally present the sentencing body with all of the information necessary to make the crucial decision regarding the appropriate sentence.

Chronis v. Steinle

1. In conjunction with an ongoing capital prosecution, the defendant (Chronis) filed a special action from the trial court's denial of his motion to dismiss the State's allegation of the death penalty. Oral argument was held in March 2009, before the Arizona Supreme Court sitting at the Arizona State University College of Law, and that court issued a published opinion in June 2009. See *Chronis v. Steinle*, 220 Ariz. 559 (2009).
2. Arizona Supreme Court. Chief Justice Ruth M. McGregor (retired), Vice Chief Justice Rebecca White Berch (retired), Justice Michael D. Ryan, Justice Andrew D. Hurwitz (now on the Ninth Circuit Court of Appeals), and Justice W. Scott Bales.

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3. **Opposing Counsel:** Stephen J. Whelihan; whelihan@mail.maricopa.gov; (602) 506-5137.
4. Pursuant to Arizona Rule of Criminal Procedure 15.1(i)(1), following a defendant's arraignment for first degree murder, the State has 60 days within which to provide the defendant with notice of whether the prosecutor intends to seek the death penalty. Subsection (i)(2) of Rule 15.1 further requires the prosecutor filing a notice of intent to seek the death penalty to simultaneously file a list of the aggravating circumstances (as described in A.R.S. § 13-751(F)) that the prosecutor intends to prove at the potential capital aggravation hearing. At issue in *Chronis* was whether Arizona Rule of Criminal Procedure 13.5(c) includes a right for a capital defendant to challenge the factual underpinnings of an alleged capital aggravator. Of particular concern was the meaning of the term "legal sufficiency" as used in Rule 13.5(c), and whether that phrase is limited to adequate notice to defend or, alternatively, whether that phrase encompasses the right for a defendant to challenge the State's factual basis (or probable cause) to allege the statutory aggravator or aggravators that have been noticed.
5. Although, ultimately, the Arizona Supreme Court did not agree with the State's position that Rule 13.5(c) did not contain the substantive right to challenge the underlying factual basis supporting an alleged capital aggravator, the case was significant in the development of Arizona's body of capital law following the change in Arizona's capital statutes in reaction to the United States Supreme Court's determination in *Ring v. Arizona*, 536 U.S. 584 (2002), that aggravating factors must constitutionally be found by a jury, rather than a judge. The Arizona Supreme Court had previously determined in *McKaney v. Foreman*, 209 Ariz. 268 (2004), that the State was not constitutionally required to allege aggravating factors in the grand jury indictment or information. After *Chronis*, however, capital defendants are now permitted to request a determination of probable cause regarding an alleged aggravator, and this frequently results in pre-trial hearings at which information and evidence are disclosed and challenged before a defendant ever goes to trial on the charged offenses. *Chronis* was thus a significant development in the practice and procedure of capital litigation in Arizona.

State v. Stummer

1. The Arizona Supreme Court held oral argument in this matter in May 2008, and subsequently issued its decision in a published opinion in October 2008. Co-counsel, Scott Boehm, argued the case before the Arizona Supreme Court. See *State v. Stummer*, 219 Ariz. 137 (2008).
2. Arizona Supreme Court. Chief Justice Ruth V. McGregor (retired), Vice Chief Justice Rebecca White Berch (retired), Justice Michael D. Ryan, Justice

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Andrew D. Hurwitz (now on the Ninth Circuit Court of Appeals), and Justice W. Scott Bales.

3. Co-Counsel: Scott E. Boehm; scott@scottboehmlaw.com; (602) 528-4719.

Opposing Counsel: Richard J. Hertzberg; (602) 840-6057.

4. Stummer and his co-defendant operated adult-oriented bookstores selling sexually explicit books and magazines. They were charged with violating A.R.S. § 13-1422, which forbids adult bookstores from remaining open during certain early morning hours. Stummer moved to dismiss the charges, citing *Empress Adult Video & Bookstore v. City of Tucson*, 204 Ariz. 50 (App. 2002), which held that the hours of operation provision in A.R.S. § 13-1422(A) was unconstitutional. The trial court granted the motion to dismiss. The State filed an appeal, arguing that *Empress* was decided incorrectly. The Arizona Court of Appeals, Division One, agreed and reversed. *State v. Stummer*, 217 Ariz. 188 (App. 2007). Stummer filed a petition for review, and the Arizona Supreme Court granted review in order to resolve the conflict between *Empress* and the lower court's opinion in *Stummer*.

The issue presented in *Stummer* was whether A.R.S. § 13-1422(A) violates Article 2, Section 6 of the Arizona Constitution—the Arizona Constitution's free speech provision. The State argued that the regulation in A.R.S. § 13-1422(A) was intended to accomplish a goal unrelated to the suppression of protected speech and that any effect on Stummer's free speech rights was incidental and permissible. Stummer argued that the hours of operation prohibition contained in A.R.S. § 13-1422(A) violated the Arizona Constitution because it was not the least restrictive means of addressing the negative secondary effects of adult businesses.

The State urged the supreme court to review A.R.S. § 13-1422(A) under a federal intermediate scrutiny standard articulated in two previous United States Supreme Court cases. Stummer argued that the supreme court should adopt the "least restrictive means" test enunciated in *Empress*. The Arizona Supreme Court rejected both proposals and instead fashioned a new test based upon the broader protection of speech afforded by the Arizona Constitution, rather than the United States Constitution. The supreme court held that the "appropriate test for measuring the constitutionality of content-based secondary regulations must vindicate the constitutional right to free speech, yet accommodate the government's interest in protecting the public health, safety, and welfare," and then went on to articulate two separate phases involved in the application of the newly developed test.

5. *Stummer* is significant to the body of Arizona case law because it articulates an entirely new test for reviewing constitutional challenges under the Arizona

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Constitution when analyzing Arizona statutes or regulations that may have a secondary effect on free speech. The case is significant in my experience because it demonstrates the wide array of issues and bodies of law encompassed in the practice of criminal law.

Correll v. Stewart

1. In March 1998, the United States Ninth Circuit Court of Appeals remanded this case to the Arizona Federal District Court with instructions for that court to conduct an evidentiary hearing with regard to the question of whether Correll's defense counsel provided constitutionally effective assistance at Correll's sentencing proceeding in the Arizona Superior Court for Pima County. The hearing spanned several days. The Arizona Federal District Court denied Correll's claim of ineffective assistance of counsel in March 2003.
2. United States District Court, District of Arizona. Hon. Stephen M. McNamee, Judge.
3. Co-Counsel: Judge Paul J. McMurdie; pmcmurdie@appeals.az.gov; (602) 452-6736; (Formerly with the Arizona Attorney General's Office).

Opposing Counsel: Thomas J. Phalen; tphalen56@cox.net; (602) 340-0865; (Counsel at the evidentiary hearing).

Dale Baich; dale_baich@fd.org; (602) 382-2816 (Counsel on appeal).

4. In 1984, Michael Correll was convicted and sentenced to death for his involvement in a triple murder. Correll and an accomplice shot and killed three people while robbing them of a small amount of drugs. A fourth victim was shot but survived and testified at trial. In 1986, the Arizona Supreme Court affirmed Correll's convictions and death sentences. See *State v. Correll*, 148 Ariz. 468 (1986).

In 1995, the Arizona Federal District Court denied Correll's petition for writ of habeas corpus. Correll appealed this finding, and in 1998, the Ninth Circuit Court of Appeals remanded the case for a hearing to determine if his counsel's performance at the sentencing hearing was ineffective. Correll alleged that his trial counsel failed to properly investigate and present mitigation evidence regarding his drug abuse at the time of the crime and his poor mental health.

At the evidentiary hearing, Correll called several mental health experts including a psychiatrist, neuropsychologist, and a pharmacologist. At the hearing, I was responsible for cross-examining several of Correll's mental

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health experts. Judge McNamee ultimately denied Correll's requested relief on this claim. Specifically, Judge McNamee held that although Correll's counsel's performance was "slightly" deficient, Correll was not prejudiced by his attorney's performance as required by the United States Supreme Court standard for ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984).

Correll appealed the district court's findings to the Ninth Circuit Court of Appeals. I authored the answering brief on behalf of the State of Arizona. In September 2005, the Ninth Circuit Court of Appeals held oral argument in this case in San Francisco, California. The Ninth Circuit Court of Appeals, in a 2-1 decision, reversed the district court's finding and granted Correll's petition for writ of habeas corpus. See *Correll v. Ryan*, 465 F.3d 1006 (9th Cir. 2006) amended and superceded by *Correll v. Ryan*, 539 F.3d 938 (9th Cir. 2008).

5. The decision in *Correll* is significant because it provides further guidance to the State and defense counsel on what constitutes the effective assistance of counsel in death penalty cases. This case was also significant to me as a lawyer because not only was I involved at the hearing level, but I also handled the case on behalf of the State on appeal. Cognizant of the reality that, regardless of the district court's conclusions, the outcome of this lengthy and complicated hearing would be appealed to the Ninth Circuit Court of Appeals, I developed into an even more conscientious and careful attorney when litigating this hearing. As such, my vertical responsibility for this case translated into an ability to write a more thorough and compelling brief during the appeal.

Hernandez v. Lynch

1. In November 2006, the Arizona voters passed Proposition 100, adding another exception to Article 2, Section 22(A) of the Arizona Constitution to the general presumption that persons charged with a crime or crimes are entitled to bail. (That section also denies bail to persons charged with capital offenses, sexual assault or sexual conduct with a minor; persons charged with offenses committed while that person is already on bail from another charged offense; and charged persons who otherwise pose a "substantial danger" to another person or the community.) The defendant (Hernandez) was arrested for a statutorily qualifying serious offense on March 17, 2007, and, pursuant to Administrative Order No. 2007-30 issued by the Arizona Supreme Court on April 3, 2007, the trial court subsequently determined at the defendant's preliminary hearing that he was not entitled to bail under the new law and its coordinating statute, A.R.S. § 13-3961(A)(5). Hernandez filed a special action in the Arizona Court of Appeals, and that court granted jurisdiction on two issues. The court held oral argument in May 2007, and subsequently issued a published opinion in October 2007. See *Hernandez v. Lynch*, 216 Ariz. 469

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(App. 2007).

2. Arizona Court of Appeals, Division One. Presiding Judge Sheldon H. Weisberg (retired), Judge Ann A. Scott Timmer (now on the Arizona Supreme Court), and Judge Donn Kessler (retired).
 3. Opposing Counsel: Amy M. Kalman; kalmana@superiorcourt.maricopa.gov; (480) 344-2006; (Formerly with the Maricopa County Public Defender's Office).
 4. The voter-approved exception to the presumption of the availability of bail provided that no bail is permitted for persons charged with "serious felony offenses as prescribed by the legislature if the person charged has entered or remained in the United States illegally and if the proof is evident and the presumption great as to the present charge." Ariz. Const. Art. 2, § 22(A). In A.R.S. § 13-3961(A), the legislature subsequently defined a "serious offense" as any Class 1, 2, 3 or 4 felony or any violation of A.R.S. § 28-1383 (aggravated driving under the influence of drugs or alcohol). The court of appeals addressed and resolved two issues: 1) whether Proposition 100 applied to persons who had entered or remained in the United States illegally but are now lawful residents; and 2) whether Proposition 100 was facially unconstitutional under either the Equal Protection or Due Process Clauses of the United States Constitution. The court rejected Hernandez's argument that the language "entered or remained in the United States illegally" includes those who had once entered or remained in the United States illegally but are lawful residents at the time they are charged with a serious offense. The court likewise rejected the defendant's challenge to the constitutionality of the statute, concluding that Proposition 100 did not violate the constitutional principles of either equal protection or substantive due process—determining that the governmental interest in potential flight risks posed by undocumented aliens charged with serious offenses was sufficient to justify a denial of bail.
 5. *Hernandez* was a significant case for many reasons. The case involved the application of constitutional principles to the will of the Arizona electorate through the initiative process, as well as addressing the governmental interests in public safety and the ability to try and punish those who commit serious offenses in Arizona. The case also addressed an emotionally charged issue, and was thus a publicly high profile case, requiring particular attention and sensitivity. The facts and relevant law supported the State's position at the state court level, and handling the briefing and argument in this case was a great learning experience. Ultimately, Proposition 100 was held to be unconstitutional in *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014).
27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge,

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hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

In April 2009, Governor Janice Brewer appointed me to the Arizona Superior Court for Maricopa County. From May 2009 through June 2012, I presided over family court cases. I handled a heavy docket of marriage dissolution, legal-decision making and parenting time cases, as well as other relevant family law issues. As a family court judge, I presided over trials and evidentiary hearings, settlements conferences and other related matters under Arizona's family law statutes and rules of procedure.

From July 2012 until June 2016, I presided over juvenile court cases. In this role, I handled a very busy docket of juvenile dependency matters, cases in which the Department of Child Safety ("DCS") removed a child from its family because of abuse or neglect, as well as juvenile delinquency cases, matters in which a juvenile has been charged with a criminal offense. From March 2015 until June 2016, I served as one of two juvenile court judges in Maricopa County that presided over a specialty juvenile calendar that involved cases in which the juvenile was in both the child welfare system and the juvenile justice system. Presiding over "dually-adjudicated" youth cases requires a judge to work with the juvenile, the child's parents, DCS personnel and a number of lawyers that represented all interested parties. In this capacity, I was able to decide issues where acting in the "best interests" of the child was paramount. It was extremely challenging and rewarding to work on cases involving families in distress and as part of a team of professionals – helping to provide the structure for a juvenile that was often lacking.

From June 2016 until January 2017, I presided over criminal cases. In this role, I conducted pre-trial hearings, jury trials, sentencing hearings, other post-trial hearings and settlement conferences involving all types of criminal matters. As a criminal court judge I became very familiar with the Arizona's Rules of Evidence and Criminal Procedure.

In January 2017, I began my duties as a judge on the Arizona Court of Appeals, Division One. Judges on the court of appeals sit on three-judge panels that decides appeals in a wide variety of substantive areas, including civil, criminal, juvenile, family, mental health, probate and tax law. Over the past two years I have also decided cases involving the Arizona Industrial Commission, the Arizona Department of Economic Security appeals board and the Arizona Corporation Commission. Since

joining the court of appeals in January 2017, I have authored at total of 168 memorandum decisions and six published opinions.

In September 2003, before I became a judge, the Gilbert Planning Commission appointed me to serve as the Town of Gilbert's Zoning Variance Hearing Officer. As the Hearing Officer, I handled all the zoning variance cases that were filed with the Town of Gilbert. I served as the Town of Gilbert's Variance Hearing Officer until September 2005.

Under the Town of Gilbert's Unified Land Development Code, § 7.32, and Arizona Revised Statutes, § 9-462.06, a zoning variance request cannot be granted unless the applicant presents evidence that satisfies four specific conditions. If the applicant is successful in satisfying the statutory requirements, then the variance request is granted.

In each case that came before me, evidence was presented by the applicant and the Town of Gilbert staff. At the conclusion of each case, I prepared a written finding that set forth my legal and factual findings and submitted that document to the Town of Gilbert Planning Department. Either party had 30 days within which to appeal my decision to the Town of Gilbert's Board of Adjustment.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

State v. Raymond Scott, 243 Ariz. 183 (App. 2017)

1. The opinion in the case was filed in the Arizona Court of Appeals on September 12, 2017.
2. Arizona Court of Appeals, Division One.
3. **Appellee's Counsel: David A. Simpson, das@elgarizona.com; (480) 630-6480 (Former Assistant Arizona Attorney General).**
Appellant's Counsel: Nicole T. Countryman, nicolecountryman@outlook.com; (602) 488-2002.
4. In 1999, Scott sexually assaulted a former girlfriend, C.T., with whom he was living in Pennsylvania. Shortly after C.T. ended their relationship, Scott forced her into a bathroom in their apartment, restrained her with duct tape, and

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sexually assaulted her. Scott then immediately released C.T., gave her his gun, and threatened to stab her with a scalpel if she did not kill him. After C.T. refused to shoot him, Scott allowed her to leave, but threatened to kill himself if she spoke to the police. C.T. left and called police, who arrested Scott. Scott was found guilty of aggravated indecent assault and sentenced to prison.

In December 2013, Scott's ex-wife, M.N., and their children went to Scott's house to celebrate Christmas. While the children were busy with the gifts, Scott lured M.N. away and forced her into his bedroom. There, Scott lifted his shirt to reveal a handgun in his pants and told M.N. he wanted to have sex. M.N. refused, and Scott wrestled her to the bed, placed the gun to her head, and demanded that she perform sexual acts. Eventually, help arrived and M.N. was able to escape from Scott.

Before trial, Scott raised as a defense to the charges that any contact between him and M.N. had been consensual. After a ten-day trial, the jury convicted Scott of eight charges—three counts of aggravated assault, two counts of kidnapping, two counts of attempted sexual assault, and one count of threatening or intimidating. Scott was sentenced to an aggregate term of 25 years in prison.

On appeal, Scott argued, among other things, that the superior court erred in allowing the State to present evidence of his prior conviction for aggravated indecent assault under Arizona Rule of Evidence 404(b). Writing for the court, I found that Scott's 1999 prior act was properly admitted by the superior court.

By raising the defense of consent, Scott brought his subjective intent into question. Scott's prior sexual assault, strikingly similar in character to the current crime, was relevant to prove his intent and lack of mistake as to M.N.'s purported consent. In each crime, Scott assaulted a previous partner, restrained her in a bedroom, menaced her with a weapon, and threatened to kill himself if she called the police. Evidence of the previous similar crime was not a mere inflammatory accusation against Scott; it was evidence that tended to prove he was not acting under a mistaken understanding that M.N. consented to his acts. Additionally, comparing the facts of the prior sexual assault and the charged offenses in this case, the identical nature of the victims' relationships with Scott and the similar nature of the crimes support the relevance of Scott's prior acts.

For these reasons, we concluded that the superior court did not abuse its discretion in concluding that the probative value of Scott's 1999 sexual assault was not substantially outweighed by a danger of unfair prejudice and in allowing the past crime to be presented to the jury.

5. Arizona Rule of Evidence 404(b) is a regularly litigated area of the law. Lawyers and trial judges are in need of guidance regarding the proper use of this rule. I believe that the court's ruling in *State v. Scott* will assist trial courts and attorneys in further defining the proper parameters for "other act" evidence in criminal proceedings. In fact, since this ruling was issued in September 2017, *State v. Scott* has been cited by Arizona Court of Appeals in four subsequent cases.

***Empire Southwest LLC v. Arizona Dept. of Revenue*, 244 Ariz. 542
(App. 2018)**

1. The opinion in the case was filed in the Arizona Court of Appeals on May 24, 2018.
2. Arizona Court of Appeals, Division One.
3. **Appellee's Counsel:** James M. Susa, jsusa@dmyl.com; (520) 322-5000; and Sesaly O. Stamps, sstamps@dmyl.com; (520) 322-5000.

Appellant's Counsel: Benjamin H. Updike, Benjamin.Updike@azag.gov; (602) 542-8399; and Scot Teasdale, Scot.Teasdale@azag.gov; (602)542-8399.

4. The sole issue on appeal was whether a fuel truck sold by Empire Southwest was exempt from the transaction privilege tax under A.R.S. § 42-5061(B)(2). In the opinion, the court determined that under the "integrated rule" test, enunciated by the Arizona Supreme Court in *State ex rel. Ariz. Dep't of Revenue v. Capitol Castings, Inc.*, 207 Ariz. 445 (2004), Empire's truck was exempted from the transaction privilege tax under Arizona law.
5. Although I agreed with the court's opinion because it is in accordance with Arizona Supreme Court precedent, I authored a special concurrence to express my concern that the result in this case seems to confound the established principles of proper statutory construction.

Under Arizona case law, a statute's language "is the best and most reliable index of its meaning, and where language is clear and unequivocal it is determinative of its construction." *Ariz. Sec. Ctr., Inc. v. State*, 142 Ariz. 242, 244 (App. 1984). Moreover, an appellate court may not "inflate, expand, stretch or extend a statute to matters not falling within its expressed provisions," *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133 (1965), and an appellate court "cannot read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself." *State ex. rel. Morrison v. Anway*, 87 Ariz. 206, 209 (1960).

Instead of determining whether Empire's truck was entitled to a tax exemption

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according to the clear and unambiguous language found in A.R.S. § 42-5061(B)(2), the court was obligated to apply the “integrated rule” test promulgated by the Arizona Supreme Court in *Capitol Castings*. As stated in my special concurrence, the “integrated rule” test sets forth a number of judicially-created factors to be analyzed in order to determine whether machinery or equipment is “directly used” in metallurgical operations that are exempt from the transaction privilege tax. None of the “integrated rule” factors enunciated in *Capitol Castings* are found within the plain text of § 42-5061(B)(2), and the supreme court’s ruling in *Capitol Castings* seems to run afoul of its own precedent regarding the prohibition of expanding and stretching a statute to areas not within its expressed provisions.

It is my opinion that if the “primary rule” of statutory construction was applied and the words of § 42-5061(B)(2) were given their ordinary meaning, the result in the case would have been different.

This case is significant because it allowed me to apply my judicial philosophy about what I believe to be the proper principles of statutory construction.

Z.W. v. Foster, 244 Ariz. 478 (2018)

1. The opinion in the case was filed with the Arizona Court of Appeals on May 24, 2018.
2. Arizona Court of Appeals, Division One.
3. Petitioner’s Counsel: Jamie Balson, jamie@acesdv.org; (602) 279-2900, ex. 421.

Respondent’s Counsel: Brent Graham; brentgraham@msn.com; (602) 399-2349; and Joey Hamby; j.hamby@dmcantor.com; (602) 307-0808.

4. In this special action proceeding, the victim, Z.W., challenged the superior court’s ruling denying her request to preclude reference to her as the “alleged victim.” Z.W. argued that allowing defense counsel to refer to her in that manner, rather than simply as the “victim,” necessarily violated her statutory and constitutional rights under Arizona’s Victims’ Bill of Rights.

For a number of reasons, the majority concluded that the constitutional protections afforded crime victims do not mandate that a specific term be used in referring to victims during court proceedings. I disagreed and issued a dissent.

In my dissent, I pointed out that the legislature set forth the rights and duties afforded a victim, and that such rights “arise on the arrest or formal charging

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of the person or persons who are alleged to be responsible for a criminal offense against a victim ... [and] continue to be enforceable ... until the final disposition of the charges[.]” A.R.S. § 13-4402(A). Because a person against whom a crime has allegedly been committed is afforded several, substantive pre-trial rights pursuant to Arizona law, logic dictates this individual is a “victim” and should be referred to as such at all stages of the proceeding. The legislature referred to these individuals as “victims” and as a matter of proper statutory construction, the court must assign each word of a statute its “usual and commonly understood meaning unless the legislature clearly intended” otherwise. *Bilke v. State*, 206 Ariz. 462, 464, ¶ 11 (2003). Based on the plain language of the statute, it is my belief that the legislature intended courts to refer to individuals such as Z.W. as a “victim,” even during the pre-trial phase of a criminal proceeding, and the superior court erred in finding to the contrary.

5. My dissent in *Z.W.* was significant because it allowed me the opportunity to outline my judicial philosophy regarding proper constitutional and statutory interpretation. Specifically, that the text of the statute or constitutional provision is the law, and it is the usual and commonly understood meaning of the text that must be observed and applied by a judge.

City of Phoenix v. Orbitz Worldwide Inc.

1. The opinion in the case was filed with the Arizona Court of Appeals on September 6, 2018.
2. Arizona Court of Appeals, Division One.
3. Appellant’s Counsel: Barbara J. Dawson; bdawson@swlaw.com; (602) 382-6000; Andrew M. Jacobs; ajacobs@swlaw.com; (602) 382-6000; and Rebekah Elliott; relliott@swlaw.com; (602) 382-6000.

Appellee’s Counsel: Scott G. Andersen; sandersen@holmwright.com; (480) 961-0040; John W. Crongeyer; jw552020@gmail.com; (404) 542-6205; Alexandria E. Seay; aes@birdlawgroup.com (404) 873-4696.

4. Orbitz Worldwide Inc. and other travel companies (collectively “OTCs”) appealed the superior court’s partial grant of summary judgment to the City of Phoenix and other cities (“Cities”), holding the OTCs are brokers under the Phoenix City Code (“Code”) and, thus subject to the transaction privilege tax on their sales of hotel rooms.

The facts in this case were not in dispute. The OTCs operate websites that advertise travel services and allow customers to reserve and pay for hotel rooms. The OTCs do not own any hotels. Instead, they employ a merchant

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model, under which the OTCs contract with hotels to list rooms available for rent on their websites.

The OTC appears as the merchant of record on the customer's credit card statement. The OTC handles the customer's financial and customer service concerns until the customer arrives at the hotel. The customer directly pays the hotel only for incidentals during the stay. If the customer does not keep a reservation and fails to cancel, the OTC sometimes keeps all of the money from the transaction, including the tax.

In 2014, the Cities issued business activity privilege tax assessments to the OTCs for a period between June 2001 to April 2009. The Cities argued that the OTCs were engaged in taxable activities under the Code for the privilege of engaging in the business of operating hotels, or alternatively, for acting as brokers for hotels. The OTCs sought a redetermination of the Cities' assessments, arguing that the OTCs are not subject to the tax because they: 1) do not operate hotels and are not hotels; and 2) are not brokers.

In the superior court, the Cities filed a motion for summary judgment, which was granted in part and denied in part. The superior court concluded, in part, that: 1) the OTCs did not own or operate hotels; 2) the OTCs "clearly and unambiguously fall within the definition of 'broker'" under the Code because "the hotel uses the OTC as its agent to obtain business – in short, as a broker."

The Code imposes a tax on "the gross income from the business activity of every person engaging or continuing in the business of operating a hotel charging for lodging." Code § 14-444. We concluded that this section applied to the OTCs because: a) they are brokers; b) they provide services generally performed in operating a hotel; and c) their service fee is part of the entire amount a customer must pay for the lodging—the taxable gross income.

The Cities argued that the OTCs are "persons" under this ordinance because they are hotel room brokers. The OTCs countered that the definition does not apply because they do not own or operate hotels. The Code generally defines "person[s]" as any "individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, *broker*, the Federal Government, this State, or any political subdivision or agency of this State." Code § 14-100 (emphasis added). The Code, then, specifically defines "broker" as "any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity." Code § 14-100. The superior court concluded, and we agreed, that the OTCs "clearly and unambiguously fall within the definition of 'broker.'"

We determined that under the Code, the OTCs are brokers for the following four reasons: 1) they act for hotels by providing advertising, booking, and other hotel services; 2) they accept payment for their services from travelers; 3) they accept consideration for their services from hotels; and 4) they assist hotels with taxable hotel operations. The gross income for the lodging transaction consists of the entire sales price the OTC charges and is taxable under § 14-444.

For this reason, we found that the superior court correctly applied the law and summary judgment on this issue was appropriate.

5. This case presented a number of complex and challenging legal issues that required extensive research into areas of the law that were new to me as a judge. Working on this case also expanded my experience in the areas of civil and tax law, subject matters that are often before the Arizona Supreme Court.

29. Describe any additional professional experience you would like to bring to the Commission's attention.

One of the benefits of being a public lawyer was accumulating courtroom experience quickly and frequently. I learned this lesson while still in law school. I was fortunate to participate in a program coordinated between the University of Arizona College of Law and the Pima County Attorney's Office pursuant to Arizona Supreme Court Rule 38(e). Through this program, I participated in many bench and jury trials before ever taking the bar exam. And, while I had always wanted to be a public lawyer, this experience began what has been for me a career-long love of the courtroom and courtroom procedure.

It has been my privilege to appear in county, city and justice courtrooms in several counties in Arizona, along with both Divisions of the Arizona Court of Appeals, the Arizona Supreme Court, the United States District Court for the District of Arizona (in both Phoenix and Tucson), and the United States Ninth Circuit Court of Appeals in San Francisco. Whether for a trial, a status conference, or an oral argument, each day in a courtroom was an exciting day for me, not just because of the practical legal experience, but because of the opportunity to be a part of the important and historic role legal proceedings play in our free society. Being chosen to preside over courtroom proceedings, in both the superior court and the court of appeals is nothing short of a daily honor.

Being a public lawyer also provided me opportunities to engage in some unexpected professional experiences. For example, in 2003, I served as the representative from the Attorney General's Office to the Governor's State Emergency Council where I developed a working knowledge of different areas

of law—such as public health, civil rights and liability management—in an effort to help construct a comprehensive plan for public safety should a catastrophic event take place in Arizona. Working with various state and national agencies to coordinate communication and prioritize functions among the different branches of government was both rewarding and educational.

Additionally, in January 2014, I was named Associate Presiding Judge for the Southeast Juvenile Court. This opportunity provided me exposure to various administrative duties as well as allowed me to serve on a number of juvenile court committees dedicated to improving the effective administration of justice in juvenile court matters.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **No.**
31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No.** Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? **Not Applicable.**
32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes.**
33. Have you paid all state, federal and local taxes when due? **Yes.**
34. Are there currently any judgments or tax liens outstanding against you? **No.**
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? **No.**
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **Yes.** If so, identify the nature of the case, your role, the court, and the ultimate disposition.

In 2009, a couple of months after I began my judicial duties on family court, I was named as a defendant in a law suit in the United States District Court for the District of Arizona. A family court litigant was dissatisfied with my ruling and sued me in federal court district court. The Arizona Attorney General's Office, as counsel for the Arizona Superior Court, appeared in the matter, and the case was ultimately dismissed.

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37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No.**
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No.**

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? **No.**
40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No.**
41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

Not Applicable.

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

Not Applicable.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

Not Applicable.

44. List and describe any sanctions imposed upon you by any court.

Not Applicable.

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **Yes.** if so, in each case, state in detail the circumstances and the outcome.

In December 2010, a self-represented litigant ("Litigant") in a family court matter filed a complaint with the Commission on Judicial Conduct ("Commission"). The Litigant asserted that I refused to give her an

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opportunity to be heard. During a hearing, the Litigant accused me of being “paid off” by the opposing party. Because of the Litigant’s seriously disruptive behavior in previous hearings, I thought it best to end the hearing at that time and reset it for another date.

In March 2011, after filing a responsive letter explaining the rationale for my actions, the Commission dismissed the case with a private admonition to continue to comply with Rule 2.6(c) of the Code of Judicial Conduct, which requires judges to accord every person who has a legal interest in a proceeding the right to be heard according to the law.

On September 29, 2011, a self-represented litigant (“Litigant”) in a family court matter filed a complaint with the Commission on Judicial Conduct (“Commission”). The Litigant claimed that I was biased and that I issued improper rulings in the case.

In my response to the Commission’s inquiry, I admitted to issuing an erroneous ruling regarding attorneys’ fees, but once this error was brought to my attention, I issued a *nunc pro tunc* order correcting the error.

In December 2011, the Commission dismissed the matter with a private admonition to continue to comply with Rule 2.5 of the Code of Judicial Conduct which requires judges to perform their duties in a diligent fashion. As a result of this case, I instituted remedial measures to ensure that no similar errors occurred in the future.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No.**
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No.**
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No.**
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No.**

PROFESSIONAL AND PUBLIC SERVICE
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50. Have you published or posted any legal or non-legal books or articles? **Yes.** If so, list with the citations and dates.

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“Valdemar A. Cordova, Gentleman Judge,” *Arizona Attorney*, December 2010. See Attachment B.

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.**
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes.**

For over ten years, I have instructed judges, lawyers and support staff. I have lectured on Arizona case law, best practices for lawyers before trial and appellate courts, and ethics. Below is a list of course/seminars I have taught.

October 12, 2018, Arizona Prosecuting Attorneys’ Advisory Council, “Attorney Professionalism Course.” (with Judge Ron Reinstein, Timothy Agan, Caron Close, Elizabeth Ortiz, R.J. Parker).

October 8, 2018, Arizona State University College of Law, Christian Legal Society, “Issues in Criminal Law.” (with Teresa Rassas and Elizabeth Garcia).

September 14, 2018, Maricopa County Bar Association, “2018 Bench Bar Conference—A View from the Bench.” (with Judge Sam Thumma, Judge Paul McMurdie, Judge Diane Johnsen and Judge Kent Cattani).

May 16, 2018, Jewish Federation of Greater Phoenix—Cardozo Society, “Ethics Training from Arizona’s Top Judges.” (with Chief Justice Scott Bales, Judge Pamela Gates, Judge Brad Astrowsky, Judge William O’Neill and Judge Ron Reinstein).

April 20, 2018, La Paz County Bar Association, “Appellate Law Update.” (with Justice Andrew Gould and Judge Kent Cattani).

March 19, 2018, Arizona State University College of Law, Christian Legal Society, “The Application of the Law from a Christian Perspective.” (with Justice John Lopez, Judge James Teilborg and Judge Michael Herrod).

March 16, 2018, Arizona Attorney General’s Office, “Appellate Law Update.” (with Justice Andrew Gould, Judge Randall Howe and Judge Paul McMurdie).

December 15, 2017, Yuma County Bar Association, “Appellate Law Update.” (with Judge Maria Elena Cruz and Judge Sam Thumma).

October 20, 2017, American Academy of Matrimonial Lawyers, Southwest Divorce Conference, “Working with the Arizona Court of Appeals.” (with Judge Paul McMurdie and Judge Kenton Jones).

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August 2, 2017, Los Abogados, The Hispanic National Bar Association & The Latina Mentoring Project, “The Bench Needs You: Why Now is the Time for Diverse Applicants.” (with Justice Robert Brutinel, Jason Barraza, Kathryn Hackett King, Amanda Reeve and Stephen Silverman).

July 13, 2017, Los Abogados, Arizona Black Bar, Arizona Asian Bar Association, Native American Bar Association, Arizona Women Lawyers Association, Commission on Minorities Arizona Judicial Branch, Arizona American Jewish Lawyers Association and South Asian Bar Association, “AZCB Summer Mentoring Continuing Legal Education.” (with Judge Randall Howe, Michelle Askew, Sunita Cairo, George Chen, January Contreras, Kami Hoskins, Sherri McGuire, Sal Rivera, Jessica Sanchez, Michael Sillyman and Gary Verburg).

June 14, 2017, State Bar of Arizona Annual Convention, “RAJIs on Fire: What You Don’t Know About RAJIs Can Hurt You.” (with Carlos Carrion, Steve McCarthy, Mikel Steinfeld and Ken Vick).

June 29, 2016, Los Abogados, “Pathways to the Bench.” (with Judge Steven Logon, Judge Kerstin LeMaire and Kate Hackett King).

On June 23, 2016, Arizona Judicial Conference, “Issues in Rule 32, Post-Conviction Relief Petitions.” (with Judge Sam Thumma).

February 2016, Arizona Superior Court for Maricopa County, “Stop Court and Train—Best Practices in Dependency Proceedings.” (with Judge Timothy Ryan, Judge Janice Crawford and Judge David Palmer).

December 2015, Arizona Superior Court for Maricopa County, “Juvenile Case Law Update.” (with Judge Brad Astrowsky, Judge Susan Pineda, Judge Timothy Ryan and Judge Christopher Coury).

October 2010, Arizona State Bar, Family Law Continuing Legal Education, “A View from the Bench.” (with Judge Bruce Cohen, Judge Mina Mendez, Judge David Gass and Judge Lisa Flores).

April 2010, National Business Institute, Family Court Judicial Panel: “What Attorneys Need to Know.” (with Judge David Gass and Judge Bruce Cohen).

While at the Maricopa County Attorney’s Office as the Appeals Bureau Chief, Maricopa County Superior Court Judges Sally Duncan and Paul McMurdie asked me to participate as a presenter at the National Judicial College seminar entitled “Managing the Capital Case in Arizona.” As a presenter, I wrote and argued three pre-trial motions on behalf of the State of Arizona exploring emerging issues specific to the litigation of capital cases in an effort

to educate trial judges about this dynamic area of the law.

In addition, in both 2007 and 2008, I lectured on various evidentiary issues at the annual "Criminal Year in Review" seminar co-sponsored by the Arizona State Bar and the Arizona Prosecuting Attorneys' Advisory Council. In March (in Tucson) and in April (in Phoenix) of 2009, I once again lectured at the "Criminal Year in Review" seminar; presenting a review of Arizona constitutional law cases issued in 2008 that impacted the practice of criminal law.

53. List memberships and activities in professional organizations, including offices held and dates.

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **Yes.**

Member, Task Force on Rule 32 of the Arizona Rules of Criminal Procedure, February 2018 to Present. Appointed to this position by Chief Justice Scott Bales.

Member, Arizona Juvenile Justice Commission, January 2016 to Present. Appointed by Governor Doug Ducey.

Member, Judicial Branch Strategic Planning Committee – Maricopa County Superior Court, May 2016 to January 2017.

Member, Judicial Education and Relations to the Community Committee – Maricopa County Superior Court, April 2014 to January 2017. Co-chair of Electronic/Publications Subcommittee.

Member, Arizona State Bar Criminal Jury Instructions Committee, July 2015 to Present and July 2003 to August 2012.

Member, Arizona Supreme Court – Death Penalty Task Force, February 2007 to December 2007. Appointed to this position by Chief Justice Ruth McGregor.

Member, Arizona State Bar Criminal Practice and Procedure Committee, June 1999 to June 2002.

Member, 2001 Arizona State Bar Annual Convention Planning Committee.

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or

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the like.

Not Applicable.

54. Describe the nature and dates of any relevant community or public service you have performed.

Court of Appeals—Connecting with the Community

Since 2002, the Court of Appeals, Division One has scheduled oral arguments at high schools in at least one of the eight counties within the court's jurisdiction. The court provides students with briefs ahead of time, then works with volunteer lawyers to organize discussion sessions in the weeks leading up to the argument. After oral argument, typically held in the school auditorium, judges, attorneys, law clerks, school administrators, and teachers meet with the students to answer questions about the judicial process and careers in the legal profession. In June 2018, I became the chair of the Court of Appeals' Connecting with the Community committee, tasked with coordinating these activities. In October 2018, the court conducted a Connecting with the Community event at Desert Vista High School in Phoenix, and in February 2019, the court will be traveling to Kingman to conduct a similar event at Lee Williams High School.

Foster/Adopt Speaking Engagements

As a juvenile court judge I became familiar with a number of foster families that routinely appeared in my courtroom. Through these interactions, it became apparent that the juvenile court system would not be able to function without these selfless individuals willing to stand in the gap and take care of the most vulnerable citizens in our midst, the children who have been removed from their families and placed in the child welfare system. Currently, there are over 14,000 kids in foster care and unfortunately there are not enough foster families in Arizona to meet the demand of children in need their help. In an attempt to raise the awareness of this crisis, I began to reach out to foster/adopt groups and inquired as to how, as a superior court judge, I might be able to help increase the number of foster families in our state. Beginning in 2013, I have been able to coordinate with agencies such as Foster Arizona, West Valley Child Crisis Center, Arizona 127 and a number of other faith-based groups to speak about the importance of increasing the number of foster families in Arizona. Even though I no longer serve on the juvenile court bench, I have continued my work in this field assisting others in the critically important work of finding more foster families to care for Arizona's kids in need.

Gilbert Planning Commission

From July 1999 to July 2005, by appointment of the Gilbert Town Council, I served on the Gilbert Planning Commission, which is tasked with reviewing and advising the Council on a variety of planning issues, including the long-range community planning goals and policies, immediate planning problems, and specific development proposals. In addition to serving as a regular member of the Commission, I served for a period of my time on the Commission as the Town of Gilbert's Variance Hearing Officer.

Gilbert Economic Development Advisory Board

From 2000 through 2002, again by appointment of the Gilbert Town Council, I served on the town's Economic Development Advisory Board. The purpose of this board is to improve and promote the economy of Gilbert; to diversify and stabilize the town's economic bases; to develop new employment opportunities for citizens; and to encourage all forms of economic development beneficial to the Town of Gilbert. As a member of the Board, I made recommendations to the Council and the Economic Development Department about development issues which would serve the long-term economic goals of the residents of Gilbert, Arizona.

East Valley Habitat for Humanity

From 2002 through 2004, I volunteered for the East Valley Chapter of Habitat for Humanity, an organization that builds homes for low income working people who do not earn sufficient income to qualify for conventional forms of financing. Twice monthly, I worked at a Habitat new home construction site, and also helped the owners move into their new home.

Food for the Hungry Missions Trip to the Dominican Republic

In November 2003, I went on a 10-day trip to the small village of Puello located on the border between the Dominican Republic and Haiti as part of my church's men's ministry group. In conjunction with Food for the Hungry, we assisted the residents with several new construction projects for their village. As part of a 20-person team, I helped begin construction of a new 3000-square-foot community center by laying the foundation for the new building.

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

In February 2016, the Court Appointed Special Advocate (CASA) office for Maricopa County presented me with the "Champions for Children" award. This award is presented to individuals for their lasting contribution and

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commitment for children in the foster care system.

In September 2014, I was presented with the “Angel in Adoption” award by the Congressional Coalition on Adoption Institute. This award is given to individuals from around the country who have made exceptional contributions in the areas of adoption, foster care and child welfare.

In April 2004, I was nominated for the annual Association of Government Attorneys in Capital Litigation Outstanding Litigation Award. I received this nomination for my work in an extended and complicated federal habeas evidentiary hearing conducted in federal district court in *Lambright v. Schriro*.

In May 2002, I was awarded the Law Angel Award by the Arizona Attorney General’s Office for Victim Services for my work in *State v. Roger Murray*, a death penalty case.

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

In November 2012 and 2016, I was on general election ballot as a judge for the Arizona Superior Court for Maricopa County. I was retained by the voters at each election.

In January 2014, I was appointed by the Juvenile Presiding Judge for Maricopa County to be the Associate Juvenile Court Presiding Judge for the Southeast Judicial Facility in Mesa.

Have you ever been removed or resigned from office before your term expired?
No.

Have you voted in all general elections held during the last 10 years? **Yes.**

57. Describe any interests outside the practice of law that you would like to bring to the Commission’s attention.

I am an avid reader, particularly nonfiction, and especially historical and presidential biographies. My love of American history has led me to visit many sites of American historical significance and several American Presidential Libraries and Homes, including those of Presidents Washington, Jefferson, Jackson, Roosevelt, Johnson, Nixon, Reagan and Clinton.

In addition to reading and traveling, I enjoy sports of all kinds, but especially surfing. Having spent much of my youth near the beach, I love the ocean and am apt to join the “dawn patrol” looking for good surf any chance I get.

Thanks primarily to my mother, I also have a love of music – particularly classical, opera, classic rock, country, bluegrass and jazz.

My latest hobby arose from my love of good food and wine. In 2018, I began studying to take the Court of Master Sommeliers' introductory sommelier examination. I hope to take and pass the examination in the Fall 2019.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? **Yes.**

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

As a young prosecutor, I appeared in a courtroom for a routine criminal matter, only to have the judge say to me that he was glad the County Attorney's Office had sent me rather than my co-worker who ordinarily covered his courtroom. The reason the judge gave for preferring me was that the other lawyer was "Mexican." What the judge did not realize was that I am also Mexican. My mother is Hispanic, and my father is Caucasian. My biracial heritage is not evident in my appearance, so this judge assumed he was safe in expressing a racial prejudice that he concealed from my more obviously Latino co-worker. I found the comment no less offensive or hurtful than it would have been to my Latino colleague.

Fifteen years later, as a judge myself, I encountered similar latent and offensive attitudes expressed to me by a litigant who unthinkingly assumed that skin tone reveals heritage, and with it, assumed she knew my beliefs and perspective. This litigant made a racially prejudicial argument attempting to gain an increase in her parenting time. The litigant explained that a parenting time change was necessary because, among other things, her children returned from the father's home "smelling like Mexican," again not realizing that I am also Mexican. The assumption that appearance forecasts racial heritage, along with attitudes and beliefs, is one of the lasting diversity issues our society faces, and one I am uniquely suited to address.

I am proud to be both Hispanic and Caucasian. Together in Arizona, they represent the two largest and most influential racial groups in the state. Together in me, they provide a perspective that is vital to understanding and

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addressing the issues that face Arizona now and for the coming decades. I believe my perspective is one that includes both groups, but cannot be brought by a member of just one of those groups. Moreover, my biracial heritage is representative of a growing percentage of the public—people with parents of diverse racial heritage.

Tremendous strides have been made toward ending racism and ensuring equality in our community's tribunals. However, my experience practicing law in Arizona's courts, and now presiding in one, has exposed me to the fact that problems based on race persist. My biracial heritage has put me in a unique position to appreciate the insidious barriers still facing minorities in Arizona. Moreover, Arizona is a state with a rich Hispanic history and continuing Hispanic influence, and yet, surprisingly, there has only been one Hispanic justice appointed to the Arizona Supreme Court since statehood in 1912.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

Probably one of the most rewarding, and least obvious, experiences of my time as a public lawyer was the chance to interact with crime victims and their families. Many times in my career as an attorney, I found that the individuals with much at stake in a given litigation often do not have an actual voice in that litigation—such as victims in criminal cases or ratepayers in corporation commission cases. Through my professional interactions with victims of crime, I learned a degree of sensitivity, patience and humanity that extended beyond the job as an attorney. Working with victims was part of being a prosecutor that involved a higher duty to seek justice, rather than just securing a conviction at all costs, and I became a better, and more well-rounded, professional as a result.

My training and experience as a prosecutor instilled in me the duty to seek and promote fair, just and lasting outcomes. That experience has proven invaluable in my work as a judge, both on the superior court and the court of appeals. Much like crime victims, children often do not have an actual voice in the litigation that profoundly affects them. Courts in Arizona are charged with considering children's best interests, and judges must employ a great deal of sensitivity, patience and humanity when making decisions that will impact children and families in fundamental and intimate ways. In doing so, the rights and responsibilities of parents must be balanced to reach results that are fair and just. This reverence for all people was my goal as a practicing attorney, and has translated seamlessly into my goal as a jurist.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? **Yes.**

62. Attach a brief statement explaining why you are seeking this position.
See Attachment C.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

See Attachment D.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

See Attachment E.

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

See Attachment F.

ATTACHMENT A - LIST OF JUDGES

Arizona Court of Appeals, Division One Judges

Chief Judge Samuel A. Thumma

Vice Chief Judge Peter B. Swann

Judge Michael J. Brown

Judge Jennifer B. Campbell

Judge Kent E. Cattani

Judge Maria Elena Cruz

Judge Randall M. Howe

Judge Diane M. Johnsen

Judge Kenton D. Jones

Judge Paul J. McMurdie

Judge James B. Morse Jr.

Judge Jennifer M. Perkins

Judge Jon W. Thompson

Judge David D. Weinzweig

Judge Lawrence F. Winthrop

ATTACHMENT B - "Valdemar A. Cordova, Gentleman Judge"
Arizona Attorney, December 2010

VALDEMAR A. CORDOVA

Gentleman Judge



As I prepared to attend law school at the University of Arizona in the summer of 1988, I received the unexpected news that I was a recipient of the Judge Valdemar A. Cordova Scholarship. I was honored by the selection, but at the time I was mostly very grateful for the financial help. I had wanted to be a lawyer since an early age, and the Cordova Scholarship contributed greatly to fulfilling that childhood dream.

As a first-year law student, I attended several Cordova Scholar events, where I learned generally about Judge Cordova's contributions to Arizona's Latino and legal communities. Because of my heritage and my interest in historical figures in general, I remained curious over the years about Judge Cordova's life and legacy. I searched for more information about him, but found little published material, so I began a series of interviews with people who knew him.¹ I discovered that Valdemar Cordova was a quiet, intelligent, highly respected man who led a life marked by patriotism and public service.

Early Years

Born on Dec. 6, 1922, to Luis and Carmen Cordova, Valdemar was one in a family of eight children who grew up in the Grant Park neighborhood of South Phoenix. He was known to his family and childhood friends by the nickname "Baldy," given to him by a younger sister. He loved that neighborhood, and as an adult, Cordova reflected that, even though he came from humble circumstances, in childhood he had considered himself rich because of his family's values and heritage.

That heritage included his father Luis's involvement in local politics and civic affairs. Luis Cordova, a boilermaker for the Southern Pacific Railroad, helped form the Latin American Club to fight prejudice against the Latino community in Phoenix. Luis also campaigned for, and consulted with, many Arizona politicians—including Governor Ernest McFarland. He also was instrumental in the creation of Grant Park as a place for the neighborhood children to play. This included his young son Valdemar, who would grow up to continue his father's tradition of public service.

VALDEMAR A. CORDOVA

⇒ Cordova at 17, in 1939.



Cordova attended Lowell Elementary School in Phoenix and, later, Phoenix Union High School. What followed was something I never learned at the scholarship events—this legal hero was first a military hero. At the age of 17, he left high school to join the United States Army in August 1940, later serving in the Army Air Corps as a First Lieutenant during World War II.

the hands of their German captors. Cordova also endured execution threats for consistently refusing to divulge information they sought. Lieutenant Cordova was honorably discharged in November 1945, remaining close friends over the years with the tail-gunner shot down with him.

Returning to Phoenix at the conclusion of the war, Cordova married his Grant Park neighbor and sweetheart, Gloria Orduno, on July 21, 1945. The couple went on to have three children: Kenneth, Valerie and Lexia.

War and the Law

After several years of active service, Lieutenant Cordova's plane was shot down during a bombing mission over Germany. He was captured by the enemy and remained a prisoner of war in Stalag Luft I in Barth, Germany, for the duration of the war, which was about 18 months. He and his fellow prisoners suffered constant hunger and other hardships at

Valdemar Cordova recalled, "I expected to get a degree just as I expected to get up the next day to have breakfast."

Valdemar and Gloria on their honeymoon in California, 1945.



Cordova's father had always been a strong believer in education. As Valdemar Cordova recalled, "I expected to get a degree just as I expected to get up the next day to have breakfast." So he completed his high school education, and, capitalizing on the federal G.I. Bill, pursued a college education.

He attended both Arizona State University and the University of Arizona, eventually receiving his undergraduate degree from the University of Arizona. Cordova enrolled in law school there as well, where he was elected president of the law school student body in 1949. He maintained an "A" average in law school, and often took extra courses in order to graduate early. He graduated from the College of Law in 1950, and placed second in the Arizona State Bar Examination that same year.

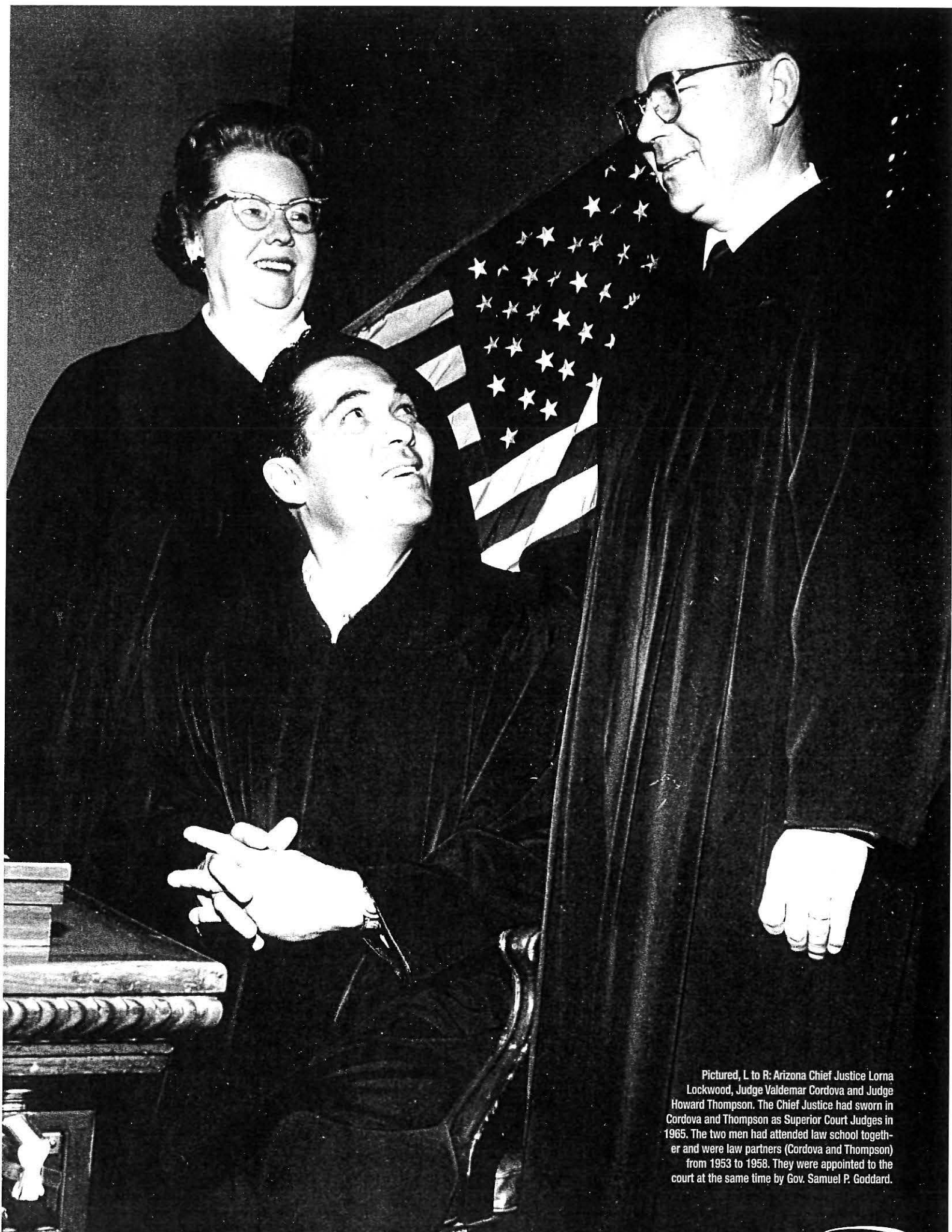
Law Practice and Taking the Bench

Cordova returned to Phoenix and began practicing with a local law firm, quickly gaining a reputation as an outstanding litigator, and, equally important, a kind and respectful attorney.

He also continued his father's tradition of political involvement and public service, serving on the Phoenix Board of Adjustment from 1954 to 1955; the Phoenix City Council from 1955 to 1959 as a part of Charter Government; and the Phoenix Civil Service Board from 1961 to 1965. Cordova served on various other boards and societies, including the Advisory Board for the Boy Scouts of America, Roosevelt Council, in 1966.

Cordova and other prominent Hispanic leaders often met over a meal at the El Portal Restaurant in the old Grant Park neighborhood to discuss local issues—a tradition that continues today among local leaders and downtown Phoenix attorneys.

On June 1, 1965, an appointment by Governor Samuel P. Goddard made Valdemar Cordova the first Mexican-American Superior Court Judge for Maricopa County, a position to which he was reelected a year later. In 1967, Gordon Cook, knowing



Pictured, L to R: Arizona Chief Justice Lorna Lockwood, Judge Valdemar Cordova and Judge Howard Thompson. The Chief Justice had sworn in Cordova and Thompson as Superior Court Judges in 1965. The two men had attended law school together and were law partners (Cordova and Thompson) from 1953 to 1958. They were appointed to the court at the same time by Gov. Samuel P. Goddard.

VALDEMAR A. CORDOVA



Cordova's reputation as a great trial attorney, persuaded the judge to leave the bench and join his expanding law firm as a partner. The firm of McKesson, Renaud, Cook, Miller & Cordova³ subsequently

moved to the top floors of the Luhrs Building in downtown Phoenix, where Cordova occupied an office in the northeast corner.

From that office, Cordova built a thriving law practice consisting primarily of plaintiffs' and insurance defense cases. Gordon Cook recalled that Cordova "really knew how to try a lawsuit." Cordova possessed the rare combination of

The Cordova family on the day of Val Cordova's swearing-in as Superior Court Judge in 1965. L to R: Gloria, Lexia (Lugo), Judge Val Cordova, Valerie (Susie) and Ken. Behind Judge Cordova is Nana (Carmen Cordova).



Valdemar Cordova became the first Hispanic federal judge in Arizona, and among the first in the nation. He referred to his journey from the Grant Park neighborhood to the federal court bench as "a long mile."

extraordinary verbal and written skills, and he was very effective in front of a jury. In fact, Cook remembered one case settling immediately after Cordova's delivery of an especially powerful opening statement. Stemming from a love of helping others instilled by his father, Valdemar drew satisfaction from securing compensation for the deserving and assisting members of the Latino community.

Mentor and Colleague

More than just an exemplary litigator, Valdemar Cordova was personable and friendly. He freely shared his knowledge and experiences, helping to shape good attorneys, as well as future Hispanic leaders, such as U.S. Rep. Ed Pastor and Judge Richard Trujillo. Cordova was widely regarded as a "gentleman," known to be both generous and un-opinionated. Recalling their days of practice together, law partner Gordon Cook described Val Cordova as "everything I would want in a lawyer and [law] partner."

Popular with colleagues and clients for his work ethic and knowledge of the law, Cordova also routinely mentored young lawyers. Patient and kind, he led by example, showing through

his own respectful actions how to interact with judges and court staff. As a young associate at the firm, Len Mark worked primarily with Cordova. Using words often uttered to describe Cordova, such as "incredible" and "exemplary," Mark recalled that Cordova took time to explain not just how to do something, but why to do it that way. As a young lawyer, I appreciated any experienced attorney taking the time to do this for me, and hearing this about Cordova deepened my respect for him.

Outside the practice of law, Cordova stayed physically strong and took his childhood love of basketball into adulthood. He often played a pickup game at the downtown YMCA over his lunch hour. Unfortunately, the Cordova men carried a history of congenital heart disease. One day while playing ball at the Y, he suffered a severe heart attack, requiring major heart surgery.

Judge Cordova Returns

After recovering from these health problems, Cordova ultimately decided that the best way for him to serve the public and make a positive difference was as a judge. In 1976, Gov. Raúl H. Castro appointed him to a second term on the Maricopa County Superior Court.

Cordova served on the superior court bench from 1976 until 1979, when he was appointed by President Jimmy Carter on July 3, 1979, to serve as a federal district court judge on the United States District Court, District of Arizona. With that appointment, Valdemar Cordova became the first Hispanic federal judge in Arizona, and among the first in the nation. Although his courtroom was only a few blocks from his humble childhood home, he referred to his journey from the Grant Park neighborhood to the federal court bench as "a long mile."

As a federal judge, Cordova discovered the culture of the federal bench to be more formal than that of the superior court, yet he maintained a judicial style more forgiving than tyrannical. Valdemar earned the respect of the entire bar for his demeanor



and his reputation of following the law.

One fellow judge described Cordova as “what a judge should look like,” inspiring awe in the courtroom when he took the bench and exuding the

importance of the proceedings with just his presence. But any visitor to the court requesting to speak to “Baldy” was warmly ushered back to his chambers. As did many others, I admire that even with the formality and power of a judicial position, he maintained a humble and approachable attitude.

Judge Cordova also continued his habit of looking out for young lawyers. As a new attorney, future State Bar of Arizona President Ernie Calderón completed a clerkship with one of Cordova’s colleagues on the federal bench and had an interview for an associate position with a large, prestigious law firm. Calderón learned during the interview that Judge Cordova had made an unsolicited telephone call on his behalf to recommend him for the position.

Cordova also had a high respect for the law and his role as a judge. One case that came before him on the District Court involved a plan that he knew might lead to the demolition of his high school, Phoenix Union. In ruling in favor of the plan, Judge Cordova commented that, despite his personal attachment to the site, “The board—indeed the voters—have decided

‘Hard work’ raised Hispanic from barrio to U.S. judgeship

Val Cordova, who rose from a barrio near Grant Park to become a lawyer and a Maricopa County Superior Court judge, Tuesday became the first Mexican-American to take the bench as a federal district court judge.

The 56-year-old Cordova, whose father was a Mexican laborer, made a point of telling a packed gathering of friends and relatives of his humble beginning because he said he wanted youngsters who now live in the barrios to know they can rise above it.

“It is only about a mile from Grant Park to here (the federal building) — a short walk. But it took me 50 years of hard work to make it,” said Cordova, of Phoenix.

“There were hard times and there were good times. I came from a family of eight and until I was 27 years old, two of my brothers and I slept three to a bed.

“When I went into the army (in 1940), and was given a cot, it was a real luxury,” Cordova said.

The new judge introduced each member of his immediate family — his wife Gloria, their children, Kenneth, Valerie and Lexia, and his 75-year-old mother, Carmen Cordova. In introducing his wife, he said, “This is the woman I’ve loved for 34 years.”

Cordova thanked Sen. Dennis DeConcini, D-Ariz., for promising to recommend a Mexican-American to the federal bench and finally selecting him.

“He (DeConcini) kept his promise to find a qualified Mexican-American,” the judge said.

DeConcini said, “Today is a day all of us can be proud of.”



Republic photo by Michael Spector

New U.S. District Judge Val Cordova kisses his wife, Gloria. Cordova is the first Mexican-American to be appointed as a judge on a federal court.

Judge Valdemar Cordova and his wife Gloria enter a testimonial dinner in his honor, at the VA Thunderbird Post 41, Sept. 18, 1965. They are escorted by Joe Fiore, Post Commander.



it should be sold. My personal preference is beside the point—the law is the law.” The case involved whether plans by the school board to close central Phoenix schools had a discriminatory effect on minorities. Cordova further commented, “It’s not for me to say I like or do not like what the school board has proposed. It is for me to say if it meets the constitutional and legal requirements of this country. A federal judge has to do his job notwithstanding the consequences. That’s not to say we don’t have feelings.”⁷⁴

Sadly, the Arizona federal court was not to enjoy the influence and service of Judge Cordova for long. In 1984, he suffered a serious stroke, after which he was unable to resume his judicial duties. His fellow judges and the entire federal court staff missed his presence greatly, and on June 18, 1988, Judge Valdemar Cordova died from complications of the 1984 stroke.

A Rich Legacy

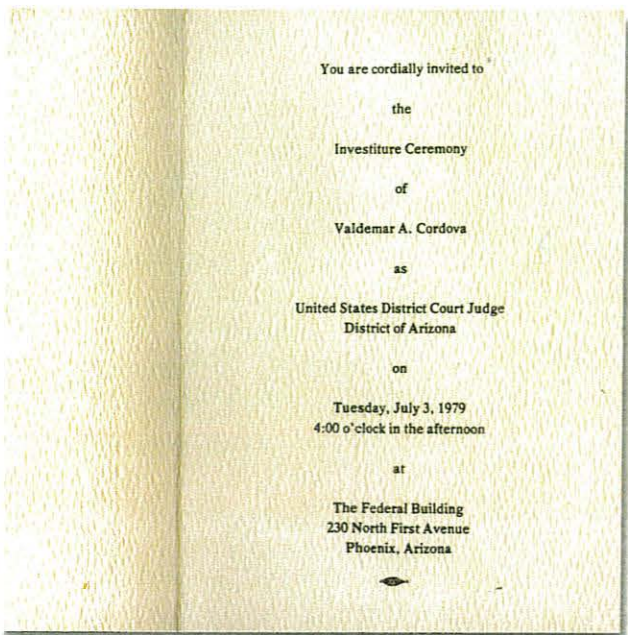
Valdemar Cordova was extremely proud of his Mexican-American heritage, and he believed that he and his family had prospered by hard work. In part due to his father's admonition, Valdemar always strove to be his best in every venue—as a student, in the military, as a practitioner, as a

SENATOR ROBERT F. KENNEDY DEMOCRAT FOR PRESIDENT ARIZONA COMMITTEE

WILLIAM P. MAHONEY, JR., Chairman
JOE HUERTA, Vice Chairman
NORMAN G. SHARBER, Secretary
CHARLES M. DUECY, Treasurer
ROBERT E. B. ALLEN, Executive Director



November 20, 1968



You are cordially invited to
the
Investiture Ceremony
of
Valdemar A. Cordova
as
United States District Court Judge
District of Arizona
on
Tuesday, July 3, 1979
4:00 o'clock in the afternoon
at
The Federal Building
230 North First Avenue
Phoenix, Arizona

Dear Val:

Today would have been Bob Kennedy's 43rd birthday, and it is an appropriate occasion belatedly to thank you for the great work you did on his behalf during those hectic weeks last spring.

This stationery, the mass card, and our memories should spur all of us on to the job Bob left unfinished. His course has been run, but he marked the way for the rest of us.

Again, my thanks and best wishes.

Sincerely,
Bill
Chairman

The Honorable V. A. Cordova
Attorney at Law
31 Luhrs Arcade
Phoenix, Arizona 85003



Gazette Staff Photo by Bob Leiby

Honored guests Bennie M. Gonzales, left, and The Honorable Valdemar A. Cordova, center, chat with Vilma Martinez of San Francisco, president and general counsel of Mexican American Legal Defense

and Educational Fund; Graciela Olivarez (second from right), chairperson of MALDEF board of directors; and The Honorable Leonel J. Castillo, right, commissioner-designate.

judge—and it showed. Those close to him said that he felt a great sense of responsibility because of the gifts God had given him to be a leader in his field and in his community, and he wanted to contribute and inspire others to do likewise.

Representative Pastor and attorney Len Mark each recalled that this was Cordova's preferred method of activism—to consciously set an example by going to school, studying hard, and then working hard. In doing so, he paved the way for others who shared his racial heritage to enter and thrive in the legal community—myself included.

In 1986, Maricopa County Superior Court Judge Armando de Leon approached Phoenix attorneys Ernie Calderón and José Cárdenas

CARTER NOMINEE SPEAKS HERE

Rocky Immigration Road Seen

Saturday, April 23, 1977

VALDEMAR A. CORDOVA



with the idea to begin a scholarship at Arizona's law schools in Valdemar Cordova's name. Cárdenas was then president of Los Abogados, Arizona's Hispanic Bar Association, and the organization was instrumental in the establishment of the scholarship. The original fundraising effort included a banquet

with former Governor Raúl Castro and other Arizona elected officials, and it netted \$70,000.

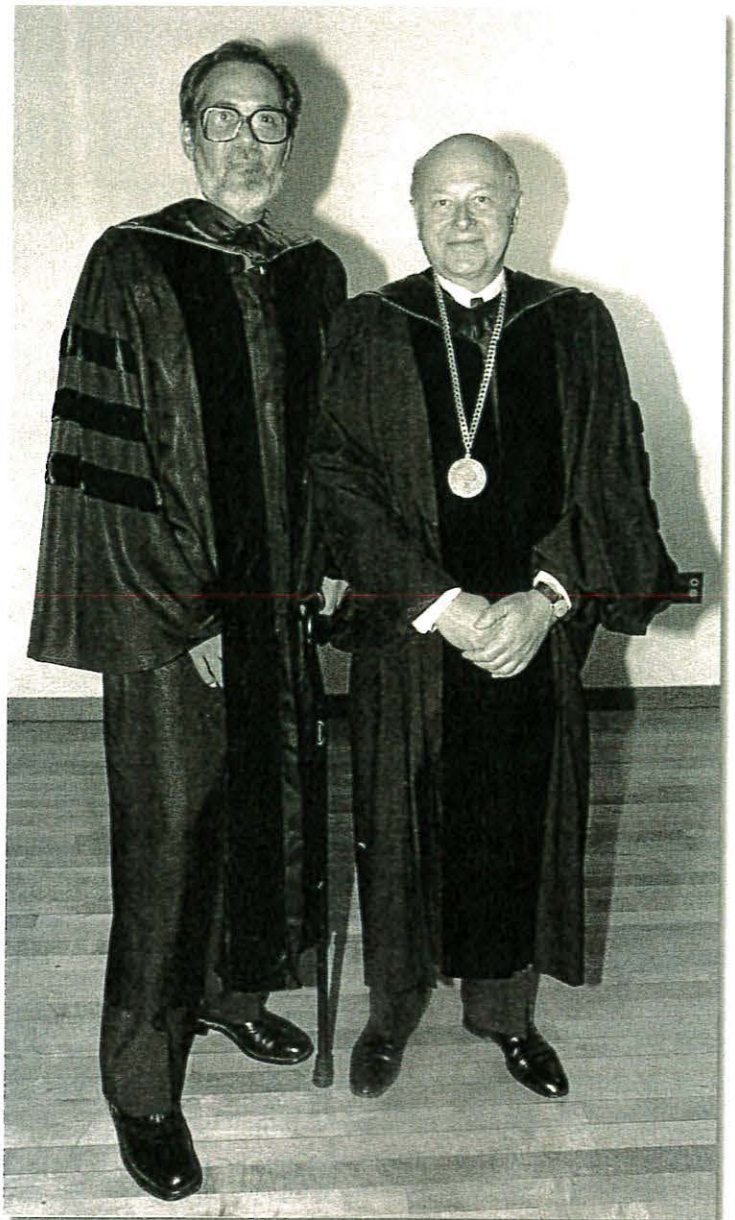
The scholarship, originally offered at both the Arizona State and University of Arizona law schools, continues today at the Arizona State University College of Law, and Los Abogados remains a key sponsor. And in 2002, Congressman Ed Pastor submitted a successful nomination to rename the City of Phoenix Municipal Court Building after Valdemar Cordova, in part because he "served the community with honor and distinction



Valdemar Cordova and U.S. Sen. Dennis DeConcini

and was a role model to many individuals in the fields of politics, law, judicial, education, public service, advocacy and civil rights."

I discovered that Judge Cordova was indeed a role model—not just in accomplishments, but also in character. He was kind and respectful to all, regardless of station. Even as a successful attorney, or when cloaked with the power and prestige of a judicial robe, Cordova was more than a competent and consummate



Judge Val Cordova, left, received an honorary doctor of laws degree from the University of Arizona, 1986. He is pictured with UA President Henry Koffler.

professional; he was a humble, genuine person. This is the example I most appreciate. It is also what I most wish to emulate as I follow him into the judiciary.

Judge Cordova left a legacy of values strongly held and actively lived. The financial help I received in his name years ago meant a great deal to me at the time. However, I now consider his example even more valuable. His is an example of the kind of public servants, attorneys, judges and leaders that our community deserves. And that legacy is priceless.²⁷

endnotes

1. Information for this article came primarily from personal interviews with, and input from, several people, including Judge Cordova's sister, Lala Bustoz, and his son, Ken Cordova; Representative Ed Pastor; Judge Stephen M. McNamee; Judge Earl H. Carroll; Judge Richard J. Trujillo; Los Abogados President Salvador Ongaro; and attorneys Ernie Calderón, Len Mark and Gordon Cook. My sincere appreciation goes to all who spent time and effort sharing their memories of Judge Cordova with me.
2. Deborah Shanahan, *Old School Ties: Judge Cordova Ok'd Sale of His Alma Mater*, ARIZ. REP., Nov. 29, 1982.
3. Later known as Renaud, Cook, Miller & Cordova, and today named Renaud Cook Drury Mesaros PA.
4. Shanahan, *supra* note 2.

ATTACHMENT C - ANSWER TO QUESTION 62

Why I am Seeking this Position

Question 62 - Why I am Seeking This Position

From an early age, my family and my faith taught me that whatever I chose to do in life as a profession, must involve giving back to my community. My parents instilled in me and my brother that to whom much is given, much is expected. For this reason, public service has always been the driving force in my professional life, and I see my service on the Arizona Supreme Court as a continuation of my lifelong desire to serve my community in the most helpful and impactful way possible. And I believe that my professional career as a lawyer and a judge on the Arizona Superior Court and Arizona Court of Appeals has uniquely prepared me to serve on the state supreme court.

The Arizona Supreme Court's jurisdiction is primarily discretionary, meaning that the court can grant review in cases encompassing all areas of the law. Over the last ten years, as both a trial and appellate court judge, I have handled several case types, including civil, criminal, juvenile, family, mental health, probate and tax law. I have also decided cases involving the Arizona Industrial Commission, the Arizona Department of Economic Security appeals board and the Arizona Corporation Commission.

The Arizona Supreme Court, however, must review all death penalty cases, and it is in this area of law that I also have a great deal of experience. As an appellate attorney at both the Arizona Attorney General's Office and the Maricopa County Attorney's Office, I handled capital cases at both the trial and supreme court levels, and am well versed in this complex and highly scrutinized area of the law. During my time as a lawyer and judge, I have worked hard to learn from each case, improving my knowledge of both substantive and procedural law.

Now equipped with 27 years of trial and appellate work, both as an attorney and judge, I wish to apply my experience and skills as a justice on the Arizona Supreme Court. I am confident that I could make an immediate and positive contribution to the supreme court.

In summary, I am seeking a position on the Arizona Supreme Court because it would provide me the opportunity to continue to contribute to the law and the legal profession while also advancing my career of public service.

ATTACHMENT D - WRITING SAMPLES

discretion by denying his motion to dismiss the allegation of the death penalty, claiming that he was “entitled to a determination of probable cause” pursuant to Rule 13.5(c) of the Arizona Rules of Criminal Procedure. (Petition for Special Action, at 18.)

Statement of the Issue

Does Rule 13.5(c) of the Arizona Rules of Criminal Procedure entitle a defendant to require a trial court to conduct a probable cause hearing, and make a probable cause finding, regarding the factual basis for an alleged statutory capital aggravating circumstance?

LEGAL ANALYSIS

Petitioner contends that Rule 13.5(c) provides a mechanism whereby a trial judge may dismiss alleged aggravating circumstances because the “factual underpinnings are legally insufficient.” (Petitioner’s Reply, at 17.) Petitioner’s contention misreads Rule 13.5(c), and, further, attempts to fundamentally redefine “legal sufficiency,” constitutionally and statutorily.

The United States and Arizona Constitutions do not require a probable cause finding for alleged aggravators in a state capital prosecution.

Initially, it must be noted that the question accepted for review by this Court does not include a challenge this Court’s holding in *McKaney v.*

Foreman, 209 Ariz. 268, 100 P.3d 18 (2004),² that the federal Constitution, as interpreted by the United States Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466, (2000) and *Ring v. Arizona*, 535 U.S. 584 (2002), along with the Arizona Constitution and law, do not require that aggravators alleged by the State in a capital case pursuant to A.R.S. § 13-703(F) be alleged in the charging document and supported by evidence of probable cause.³ *McKaney*, 209 Ariz. 268, at ¶ 1. As this Court stated in *McKaney*:

the only federal mandate applicable [to a capital defendant] is the Fourteenth Amendment due process requirement that a defendant receive adequate notice of the charges against him.

Id. at ¶ 13. This Court went on to state that the Arizona rules comply with the federal constitutional mandate for due process found in the Fourteenth Amendment by providing fair and adequate notice of alleged aggravating circumstances. *Id.* This conclusion was unanimous, as it was concurred with by the two dissenting justices as well. *Id.* at ¶¶ 29, 31, 36 (Justices Hurwitz and Ryan, concurring in part and dissenting in part).

Moreover, a majority of this Court also rejected the argument that the

² This Court has specifically refused to revisit *McKaney*. *State v. Hampton*, 213 Ariz. 167, ¶ 26, 140 P.3d 950 (2006) (*McKaney* forecloses defendant's contention that probable cause for aggravators must be found either by a grand jury or at a preliminary hearing).

³ This Court also explicitly recognized that the United States Supreme Court in both *Apprendi* and *Ring* specifically disavow addressing the sufficiency of indictments. *McKaney*, 209 Ariz. 268, at ¶ 12.

Arizona Constitution, specifically Article II, Section 30, independently requires a probable cause finding with regard to alleged capital aggravators. *McKaney*, at ¶¶ 15-16, 20. This Court held that the due process mandates of both the Arizona and United States Constitutions are met by adequate notice, which is provided specifically by the disclosure requirements Rule 15.1(i)(1) and (2) of the Arizona Rules of Criminal Procedure. *Id.* Further, the majority in *McKaney* called the dissent's argument—that the Arizona Constitution provided otherwise and required insertion of aggravating factors into a charging document for purposes of a probable cause finding—a “dramatic assertion” because Arizona had never historically had such a requirement. *Id.* at ¶ 22.

The only question raised by the instant petition, then, is whether Rule 13.5(c) was intended to grant capital defendants more than the fair and adequate notice guaranteed by the United States and Arizona Constitutions with regard to alleged capital aggravating circumstances⁴ by also establishing a “right” to a probable cause finding as to the factual

⁴ Because 13.5(d) of the Arizona Rules of Criminal Procedure likewise grants non-capital defendants the ability to “challenge the legal sufficiency of an alleged prior conviction or non-capital sentencing allegation that must be found by a jury by motion pursuant to Rule 16,” the implications of the Court's answer to the Petition's contention regarding the scope of Rule 13.5(c) has potentially wide-ranging implications for all criminal prosecutions in Arizona, both capital and non-capital.

underpinnings of an alleged aggravator. The answer to that question is “no” for three primary reasons: 1) the plain language of Rule 13.5(c) provides for a challenge to *legal* sufficiency, not *factual* sufficiency; 2) trial courts engaging in weighing evidence and striking aggravators before trial exceed their authority in violation of the doctrine of separation of powers, and, further, by assuming the role of the fact finder violate *Ring v. Arizona*; and 3) the institution of contested pre-trial factual hearings with regard to the factual sufficiency of alleged capital aggravators will potentially violate the Arizona Constitution, specifically the Victims’ Bill of Rights.

The plain language of Rules 13.5(c) and Arizona case law interpreting Rule 16.6(b) indicate that “legal sufficiency” means *solely* adequate notice, and does not implicate factual sufficiency.

As this Court has previously recognized, Arizona law simply requires notice:

The law requires notice of the charges. The rules of procedure thereafter provide for discovery. The prosecutor has no independent duty to tell the defendant how the state intends to proceed or to elect theories in advance.

State v. West, 176 Ariz. 432, 443, 862 P.2d 192, 203 (1993). If Arizona law requires only notice, “legal sufficiency” cannot mean anything more than notice because that is what both the plain meaning of the language and Arizona law dictate. Requiring the State to present at a hearing before the

an (F)(2) aggravating circumstance is proper.

VI.

THE TRIAL COURT'S FINDING OF AN (F)(2) AGGRAVATING FACTOR, BASED ON THE ARMED ROBBERY AND KIDNAPPING OF ██████████ DID NOT VIOLATE THE DOCTRINE OF COLLATERAL AND JUDICIAL ESTOPPEL.

Appellant argues that the doctrines of collateral estoppel and judicial estoppel prohibited the trial court from finding an aggravating factor of prior "serious offense" under A.R.S. § 13-703(F)(2). Appellee disagrees.

The doctrine of collateral estoppel is entirely inapplicable to this case. In *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S. Ct. 1189 (1970), the United States Supreme Court defined "collateral estoppel" as providing that "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in *any future lawsuit*." (Emphasis added.) In all the cases cited by Appellant in support of his claim that the trial court was collaterally estopped from finding an (F)(2) aggravating factor, the defendants were attempting to prohibit a *future lawsuit* on charges that had already been litigated. The applicability of the collateral estoppel doctrine and the holding of *Ashe* is distinguishable because the sentencing hearing that took place after Appellant was convicted of first-degree murder does not constitute a *future lawsuit*. See *State v. Counterman*, 8 Ariz. App. 526, 532, 448 P.2d 96, 102 (1968) (A "criminal proceeding" includes the sentencing hearing). Because collateral estoppel is applicable only in instances where a future lawsuit is initiated and Appellant's

sentencing hearing does not constitute a future lawsuit, Appellant's reliance on this doctrine is unavailing.

Even assuming that Appellant's sentencing hearing constituted a future lawsuit, the doctrine of collateral estoppel is not applicable and would not bar the trial court from finding an (F)(2) aggravating factor. In *Ashe*, the United States Supreme Court stated that collateral estoppel applies *only* when the defendant seeks to preclude the State from relitigating issues that a jury must have necessarily resolved *against the prosecution* in order to return a verdict of acquittal. *Ashe*, 397 U.S. at 443. Appellant was convicted of armed robbery and kidnapping in this case. The armed robbery and kidnapping charges were not resolved *against* the State. In order for collateral estoppel to bar the State and the trial court from using Appellant's prior "serious offenses" as a aggravating circumstance, Appellant would have to have been acquitted of these charges by a jury. That simply did not occur in this case. For this reason, Appellant's argument that the trial court's finding of the (F)(2) aggravating factor is barred by the collateral estoppel component of the Double Jeopardy Clause is incorrect and should be rejected.

Appellant also argues that the finding of the (F)(2) aggravating circumstance violates the doctrine of "judicial estoppel." Appellee disagrees.

"Judicial estoppel prevents a party from taking an inconsistent position in successive or separate actions." *State v. Towerly*, 186 Ariz. 168, 182, 920 P.2d 290, 304 (1996). The State did not take an inconsistent position in this case when it argued the existence of the (F)(2) aggravating factor. At the conclusion of the State's

case-in chief, Appellant's counsel made a motion for judgment of acquittal. (R.T. 9/9/99, at 80.) In explaining the evidence that had been presented at trial in reference to the armed robbery charge, the prosecutor stated that:

So we do have a gun being used in this case, and the obvious statements from the various witnesses is that the defendant expressed his intention to rob the victim, whether it be for his cigarettes or whether for this money or the credit card that he got, his obvious intention was to rob the victim, and during the course of that robbery the victim ended up dead and in the furtherance of that robbery the victim was killed.

(R.T. 9/9/99, at 84–85.)

Then, at the conclusion of the aggravation/mitigation hearing, the State argued that it had proven that the armed robbery and kidnapping convictions constituted an (F)(2) aggravating circumstance.

MR. BERRY: The second half of the State's argument dealing with serious offenses also deal with Count 2 being the aggravated (sic) robbery and Count 3 being the kidnapping, and the State asserts that those crimes should be considered in this case because this case is somewhat of a unique case. It's not an immediate situation dealing with the victim's death. As the Court's well aware, we're talking about a period of in excess of 24 hours, more like 48, possibly more hours, in which the victim's held captive.

THE COURT: The evidence shows, if I recall correctly, that the kidnapping and robbery occurred immediately.

MR. BERRY: That's correct, Judge.

THE COURT: And then the evidence shows that the victim was held for several days.

MR. BERRY: That's correct, Judge. It's not a situation where the victim was killed during the course of the immediate robbery that was accomplished inside the car, the car-jacking. It didn't take place then or immediately thereafter. It took place, in fact, over the course of days later. And it didn't even occur on the same day. The victim's been held captive now for numerous hours, and during that captivity later at another site he'd killed. So the State's position is both Counts 2 and 3 also qualify as serious offenses, and the State has proven those beyond a reasonable doubt.

(R.T. 7/11/00, at 27-28.)

Although the State's argument in response to Appellant's motion for judgment of acquittal is not identical to the argument it made during the sentencing proceedings, these two arguments contained a consistent theme: the victim was killed in furtherance of the armed robbery and kidnapping offenses. The State's positions regarding Appellant's commission of the armed robbery and kidnapping charges and the use of these convictions as an (F)(2) aggravating circumstance was not inconsistent. For this reason the doctrine of judicial estoppel is not applicable.

VII.

THE TRIAL COURT'S FINDING OF AN (F)(5) AGGRAVATING FACTOR DID NOT CONSTITUTE "DOUBLE COUNTING."

Appellant claims that the trial court's finding of pecuniary gain violates his constitutional rights because it repeats an element of the crime of armed robbery, resulting in an insufficient narrowing of the class of death eligible defendants. Appellant's claim is meritless and should be rejected.

In *West*, this Court held that, “all first degree murders committed for pecuniary gain are death eligible does not render Arizona’s capital sentencing scheme unconstitutional.” 176 Ariz. at 449, 862 P.2d at 207. See *Lowenfield*, 484 U.S. at 241–46, 108 S. Ct. at 553–55 (upholding Louisiana’s capital sentencing scheme where only first-degree murderers were death eligible, and four of the five types of first-degree murder led automatically to a death qualifying aggravating circumstance that was identical to an element of the crime). Appellant’s “double counting” argument regarding armed robbery and pecuniary gain has been rejected by the United States Supreme Court and this Court.

Additionally, Appellant’s argument was specifically rejected by this Court in *State v. Carriger*, 143 Ariz. 142, 692 P.2d 991 (1984). In *Carriger*, this Court stated that “[p]roving a taking in a robbery does not *necessarily* prove the motivation for a murder, and the state cannot be said to be using one fact to prove two different items.” 143 Ariz. at 161, 692 P.2d at 1010. (Emphasis added.) To prove armed robbery, the State must show a *taking* of property from the victim, see A.R.S. § 13–1904(A); to prove pecuniary gain, the State must show the actor’s *motivation* was the expectation of pecuniary gain. Proving a taking in an armed robbery does not necessarily prove the motivation for a murder, and the State did not use one fact (armed robbery) to prove two different items (pecuniary gain and armed robbery). See *Hoskins*, 199 Ariz. at 148, 14 P.2d at 1018 (Felony murder and pecuniary gain may co-exist, but one may also exist without the other; they are neither synonymous nor co-extensive). For these reasons, Appellant’s argument fails.

ATTACHMENT E - SAMPLE RULINGS

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

RAYMOND J. SCOTT, *Appellant*.

No. 1 CA-CR 16-0348
FILED 9-12-2017

Appeal from the Superior Court in Maricopa County
No. CR2013-461659
The Honorable Peter C. Reinstein, Judge
The Honorable Jose S. Padilla, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By David Andrew Simpson
Counsel for Appellee

Nicole T. Farnum, Attorney at Law, Phoenix
By Nicole T. Farnum
Counsel for Appellant

OPINION

Judge James P. Beene delivered the opinion of the Court, in which Presiding Judge Diane M. Johnsen and Chief Judge Samuel A. Thumma joined.

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Opinion

B E E N E, Judge:

¶1 After having been found guilty of eight felony offenses, Raymond J. Scott (“Scott”) argues on appeal (1) that he was convicted of two multiplicitous kidnapping charges and (2) that the superior court erred by allowing evidence of his prior conviction in Pennsylvania for aggravated indecent assault. Scott asks that we vacate one kidnapping conviction as multiplicitous and vacate and remand for a new trial on the remaining charges. Because there was a clear break in Scott’s restraint of his victim, and because Scott’s past act was properly admitted to show a lack of mistake under Arizona Rule of Evidence 404(b), we affirm Scott’s convictions and sentences.

FACTS AND PROCEDURAL HISTORY¹

¶2 In 1999, Scott sexually assaulted C.T., a former girlfriend with whom he was living in Pennsylvania. Shortly after C.T. had ended their romantic relationship, Scott forced C.T. into her bedroom in their shared apartment, restrained her with duct tape, and sexually assaulted her. Scott then immediately released C.T., gave her his gun, and threatened to stab her with a scalpel if she did not kill him. After C.T. refused to shoot him, Scott allowed her to get dressed and leave, but threatened to kill himself if

¹ On appeal, we view the evidence in the light most favorable to sustaining the convictions and resolve all reasonable inferences against the defendant. *State v. Karr*, 221 Ariz. 319, 320, ¶ 2 (App. 2008).

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Opinion

she spoke to the police. C.T. left and called the police, who arrested Scott. Scott was found guilty of aggravated indecent assault and sentenced to prison.

¶3 After his release, Scott moved to Arizona, where he met and later married M.N. M.N. had a child from a previous marriage, D.N., and she and Scott had two other children during their time together, D.N.S. and R.N.S. They divorced in 2011, but continued to share custody of their children.

¶4 On Christmas Day 2013, M.N. and the children gathered with Scott in his apartment to open presents. While the children were busy with the gifts, Scott lured M.N. away and forced her into his bedroom. There, Scott lifted his shirt to reveal a handgun in his pants and told M.N. he wanted to have sex. M.N. refused, and Scott wrestled her to the bed, placed the gun to her head, and demanded that she perform sexual acts. M.N. began crying, and D.N., her oldest child, heard her asking Scott to stop and crying out in “actual pain.” Eventually, D.N. forced open the bedroom door and saw Scott with his pants down, standing over M.N. on the floor.

¶5 M.N. managed to throw a cell phone to D.N. and yelled to her to take the other children and go for help. D.N. gathered R.N.S., but not D.N.S., left the apartment, and called her uncle. Meanwhile, as the struggle continued in the bedroom, Scott told M.N. he would “shoot everybody in

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here if you don't be quiet." When M.N. was able to throw the gun aside, Scott pulled out a knife and pressed it to her neck while he continued the assault.

¶6 M.N. finally escaped from Scott and ran out of the bedroom to the living room. M.N. intended to leave with her younger daughter, D.N.S., but before she could gather her up, Scott knocked M.N. down, grabbed her by the legs, and dragged her back into the bedroom. There he continued to assault M.N. until help arrived.

¶7 The State charged Scott with fourteen counts – two counts of kidnapping, three counts of aggravated assault, three counts of sexual assault, three counts of attempted sexual assault, two counts of public sexual indecency to a minor, and one count of threatening or intimidating. After a ten-day trial, the jury convicted Scott of eight charges – three counts of aggravated assault, two counts of kidnapping, two counts of attempted sexual assault, and one count of threatening or intimidating. Scott was sentenced to an aggregate of 25 years in prison.

¶8 Scott timely appealed. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") section 13-4031 (2017).²

² Absent material revision after the date of the alleged offense, we cite a statute's current version.

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DISCUSSION

I. Scott Was Properly Convicted of Two Counts of Kidnapping

¶9 Scott argues that his two kidnapping convictions are multiplicitous and violate his due process right against double jeopardy. A charge is multiplicitous if it charges a single offense in multiple counts and thereby raises the potential for multiple punishments for a single act. *State v. Brown*, 217 Ariz. 617, 620, ¶ 7 (App. 2008) (quoting *State v. Powers*, 200 Ariz. 123, 125, ¶ 5 (App. 2001), *aff'd* 200 Ariz. 363 (2001)). “Whether charges are multiplicitous is an issue of statutory interpretation, which we review *de novo*.” *Brown*, 217 Ariz. at 620, ¶ 7. “Offenses are not the same, and therefore not multiplicitous, if each requires proof of a fact that the other does not.” *Merlina v. Jejna*, 208 Ariz. 1, 4, ¶ 12 (App. 2004); see *Blockburger v. United States*, 284 U.S. 299, 304 (1932).

¶10 Kidnapping is defined as “knowingly restraining another person with the intent to . . . [i]nfllict death, physical injury or a sexual offense on the victim[.]” A.R.S. § 13-1304(A)(3). At trial, the State argued to the jury that Scott committed two kidnappings, the first of which began when he initially forced M.N. into the bedroom and ended when she dashed from the bedroom to the living room, and the second of which began when Scott pulled her back into the bedroom, ending with her final escape. Scott argues both kidnapping convictions arise out of the same act, restraining M.N. within his apartment. He argues that, although M.N. was

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able to leave the bedroom for a brief time during the assault, she was continuously restrained within the apartment during the entire incident.

¶11 A defendant may be convicted of two counts of kidnapping “only if, after the original kidnapping concluded with the victim’s release from restraint, the victim was restrained *anew*, with the requisite intent.” *State v. Braidick*, 231 Ariz. 357, 360, ¶ 9 (App. 2013) (noting that “multiple charges might be authorized when a victim is released, but then restrained again.”). It is uncontested that Scott restrained M.N. intending to inflict a sexual offense. Therefore, whether Scott was properly convicted of two counts of kidnapping turns entirely on whether he restrained M.N. continuously throughout the entire ordeal, or released her and restrained her anew.

¶12 A kidnapping remains an ongoing crime for only so long as the defendant maintains control of the victim, restraining the victim’s freedom. *See id.*, at 360, ¶ 11. Restraint need not be accomplished by physical control, and “so long as the [victim feels] compelled by fear to remain, the confinement continue[s].” *State v. Jones*, 185 Ariz. 403, 407 (App. 1995) (citing *People v. Martinez*, 150 Cal.App.3d 579 (1984)). Here, M.N. briefly escaped Scott midway through the ordeal, when she ran from the bedroom to the living room, and attempted to gather D.N.S. to leave. M.N. was momentarily free, but chose not to run directly out of the residence,

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instead pausing to grab her daughter. M.N.'s choice of action and freedom of movement during that period showed Scott did not continue to restrain her, albeit briefly, after he initially forced her into his bedroom. Scott then committed a second act of kidnapping, separate from the first, when he grabbed M.N. anew and pulled her back into the bedroom for the purpose of sexual assault. For these reasons, Scott's convictions for two counts of kidnapping were not multiplicitous.

II. The Superior Court Did Not Abuse Its Discretion in Admitting Scott's Prior Sexual Assault under Rule 404(b)

¶13 The superior court admitted evidence of Scott's 1999 sexual assault crime under Arizona Rule of Evidence ("Rule") 404(b), reasoning that it showed an "absence of mistake or accident." The court gave a limiting instruction to the jury, stating the jury could only consider the evidence to establish Scott's intent, plan, or "absence of mistake or accident. You must not consider these acts to determine the defendant's character or character trait, or to determine that the defendant acted in conformity with the defendant's character or character trait and therefore committed the charged offense." Scott argues the superior court abused its discretion by admitting his prior sexual assault because it was unduly prejudicial under Rule 403.

¶14 Generally, "evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in

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conformity therewith.” Ariz. R. Evid. 404(b). The rule, however, states that evidence of other crimes, wrongs, or acts may be “admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* The rule’s “list of relevant purposes for which evidence of other crimes, wrongs or acts may be admitted is not exhaustive.” *State v. Via*, 146 Ariz. 108, 122 (1985). Evidence of an act otherwise admissible under Rule 404(b) may be excluded if “its probative value is substantially outweighed by a danger of,” among other things, “unfair prejudice[.]” Ariz. R. Evid. 403. We review the admission of prior act evidence under Rule 404(b) for abuse of discretion. *State v. Van Adams*, 194 Ariz. 408, 415, ¶ 20 (1999).

¶15 At trial, the State argued, and the superior court agreed, that Scott’s prior sexual assault was admissible under Rule 404(b) to refute his defenses of “consent” and “no specific intent.” Rule 404(b) does not expressly authorize the admission of other act evidence to rebut consent or lack of specific intent defenses. But the examples listed in the rule are not exclusive. A defendant who claims his victim consented as a defense to sexual assault implicitly argues the victim gave him permission to engage in the sexual act. In such a case, evidence of other acts may be admitted to show the defendant knew otherwise. *See State v. Lamoureux*, 623 A.2d 9, 13 (R.I. 1993) (“[T]he issue of consent in a sexual-assault case is closely related

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to the exception absence of mistake set forth in Rule 404(b).” (internal quotations omitted)). More generally, a defendant who claims he lacked the necessary mental state may open the door to evidence of similar past wrongdoing under such factors as “proof of motive, . . . intent, preparation, [or] plan.” Ariz. R. Evid. 404(b); see *State v. Lee*, 189 Ariz. 590, 599 (1997) (determination of intent is “proper purpose” for admission of other crimes under Rule 404(b)); *State v. Huey*, 145 Ariz. 59, 62 (1985) (prior sexual assault admissible to show defendant’s intent to assault victim against her will).

¶16 By raising the defenses of consent and no specific intent, Scott brought into contention his own intent. Scott’s prior sexual assault, strikingly similar in character to the current crime, was relevant to prove his intent and lack of mistake as to M.N.’s purported consent. In each crime, Scott assaulted a previous partner, restrained her in a bedroom, menaced her with a weapon, and threatened to kill himself if she called the police. Evidence of the previous similar crime was not a mere inflammatory accusation against Scott; it was evidence that tended to prove he was not acting under a mistaken understanding that M.N. consented to his acts. It is the State’s burden to prove each element of a crime beyond a reasonable doubt and here, where Scott’s intent was at issue, Scott’s past act was relevant to prove that M.N. did not consent.

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¶17 Scott argues, however, that evidence of the prior assault was unduly prejudicial under Rule 403. Evidence that a defendant committed a serious crime similar to the one being tried is unquestionably prejudicial and may, at times, be unfairly so. Even relevant evidence must be excluded if its probative value is substantially outweighed by a danger of unfair prejudice. Ariz. R. Evid. 403. That, however, was not the case here. Comparing the facts shown regarding the prior sexual assault and the charged offenses here, the identical nature of the victims' relationships with Scott and the similar nature of the crimes support the relevance of Scott's prior act. *State v. Schurz*, 176 Ariz. 46, 52 (1993) (evidence which is "prejudicial" merely because it is relevant and material, while adverse to the opponent, is not barred by Rule 403). The superior court did not abuse its discretion in concluding that the probative value of Scott's 1999 sexual assault was not substantially outweighed by a danger of unfair prejudice and in allowing the past crime to be presented to the jury.³

³ The superior court admitted evidence of the prior sexual assault under both Rule 404(b) and Rule 404(c) ("Character evidence in sexual misconduct cases") and gave corresponding final jury instructions for Rule 404(b) and Rule 404(c) evidence. The proper consideration and use by the jury of evidence of a prior crime differs significantly depending upon whether it is admitted for a limited purpose other than "to prove the character of [the defendant] in order to show action in conformity therewith" under Rule 404(b), or "to show that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the offense charged" under Rule 404(c). Scott, however, did not object to the

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

RES-AZ HP160 LLC, *Plaintiff/Appellant*,

v.

GAMMAGE & BURNHAM PLC, et al., *Defendants/Appellees*.

No. 1 CA-CV 16-0318
FILED 10-24-2017

Appeal from the Superior Court in Maricopa County
No. CV2014-052666
The Honorable Aimee L. Anderson, Judge

REVERSED AND REMANDED

COUNSEL

Sherman & Howard, L.L.C., Phoenix
By Bryan A. Albue, Thomas M. Quigley, Gabriel A. Peraza
Co-Counsel for Plaintiff/Appellant

Bonnett, Fairbourn, Friedman & Balint, P.C., Phoenix
By William G. Fairbourn, William F. King
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Presiding Judge James P. Beene delivered the decision of the Court, in which Judge Randall M. Howe and Judge Kent E. Cattani joined.

RES-AZ v. GAMMAGE & BURNHAM, et al.
Decision of the Court

B E E N E, Judge:

¶1 Plaintiff RES-AZ HP160, LLC (“HP160”) appeals the superior court’s judgment in favor of Defendants Gammage & Burnham, P.L.C. and James and Jane Doe Polese (collectively “Gammage”). Because the court erred in granting summary judgment, we reverse and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

¶2 This appeal arises from HP160’s claims against Gammage through Gammage’s legal representation of Stephen and Patricia Kohner (collectively the “Kohners”). At all relevant times, Gammage represented the Kohners in their transactions with HP160.

¶3 In 2011, HP160 sued the Kohners to recover on a real estate loan made to one of the Kohners’ business entities that they personally guaranteed. The parties entered into a settlement agreement, in which HP160 obtained a judgment against the Kohners for \$20,819,862.59 and could seek enforcement after a specified forbearance period.

¶4 In an effort to enforce the judgment, in February 2013, HP160, along with two other creditors, filed an involuntary bankruptcy petition, placing the Kohners into Chapter 7 bankruptcy proceedings (“Kohners’ BK

RES-AZ v. GAMMAGE & BURNHAM, et al.
Decision of the Court

Case”).¹ That same day, the Chapter 7 bankruptcy trustee (“Trustee”) filed an adversary action in the bankruptcy court against the Kohners, the Kohners’ many legal entities and trusts, and Gammage (“BK Adversary Action”).² As pertinent here, the Trustee sought to avoid, under both the bankruptcy code and Arizona state law, a series of allegedly fraudulent transfers the Kohners made to one of their trusts (“Treese Trust”) pursuant to an agreement between other entities they controlled (“2013 RLK Settlement Agreement”). The Trustee also argued that Gammage conspired to commit fraudulent transfer in its legal representation of the Kohners in making those transfers.

¶5 In March 2014, HP160 filed the instant action in Arizona state court (“State Action”). HP160 argued Gammage committed (1) fraud, (2) negligent misrepresentation, and (3) aiding and abetting fraud. HP160’s claims stemmed from Gammage’s preparation and transmission of the Kohners’ financial information from 2011 through 2013 during settlement negotiations and HP160’s subsequent effort to collect on the judgment (“Financial Representations”). Gammage removed the State Action to the

¹ The Kohners’ administrative bankruptcy proceedings remain pending in the United States Bankruptcy Court for the District of Arizona, case number 2:13-bk-002159-DPC (consolidated).

² The Chapter 7 Trustee’s BK Adversary Action remains pending in the United States Bankruptcy Court for the District of Arizona, case number 2:13-ap-00199-DPC.

RES-AZ v. GAMMAGE & BURNHAM, et al.
Decision of the Court

Kohners' BK Case, claiming it was an "otherwise related" case under the bankruptcy code.

¶6 In the BK Adversary Action, Gammage moved to dismiss the Trustee's conspiracy to commit fraudulent transfer claim. In September 2014, the bankruptcy court dismissed the conspiracy claim finding that (1) the complaint did not plead facts sufficient to establish the elements of the claim, dismissing it without prejudice and with leave to amend, and (2) the Trustee did not have standing to pursue a claim for conspiracy to commit fraudulent transfer against Gammage on behalf of a hypothetical lien creditor under the bankruptcy code, dismissing the claim with prejudice. Upon HP160's subsequent motion, the bankruptcy court remanded the State Action because Gammage's notice of removal was procedurally defective. The bankruptcy court also found that equitable considerations weighed in favor of remand; namely that because the bankruptcy court dismissed the only count in the Trustee's complaint naming Gammage, the State Action was remote from the BK Adversary Action, despite the two actions sharing many common facts. In November 2014, the Trustee amended its complaint in the BK Adversary Action a second time to add a count of legal malpractice against Gammage.

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¶7 In May 2015, HP160 amended its complaint in the State Action to add a count of conspiracy to commit fraudulent transfer.³ In November 2015, Gammage moved for summary judgment, arguing that HP160 lacked standing to pursue its claims because the Trustee in the BK Adversary Action was seeking to avoid the same allegedly fraudulent transfers at issue in the State Action. Gammage claimed that HP160, as an individual creditor, was barred from bringing any claim based on the “same transaction” or with a similar “object and purpose,” regardless of whether those claims were technically part of Kohners’ bankruptcy estate. The superior court agreed and granted summary judgment in favor of Gammage.

¶8 HP160 unsuccessfully moved for reconsideration, to vacate and set aside the judgment, and for a new trial. Final judgment was entered and HP160 timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes section 12-2101(A).

DISCUSSION

¶9 Entry of summary judgment is proper “if the moving party shows that there is no genuine dispute as to any material fact and the

³ HP160’s original complaint also named as defendants George Winney and his spouse. Winney was an attorney at Gammage and at various times provided legal counsel to the Kohners. On remand to state court from the bankruptcy court in September 2014, the parties stipulated to exclude the Winneys as defendants going forward.

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moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a). We determine *de novo* whether any genuine issue of material fact exists and whether the trial court erred in applying the law, and will uphold the court’s ruling if correct for any reason. *Logerquist v. Danforth*, 188 Ariz. 16, 18 (App. 1996). We construe the evidence and reasonable inferences in the light most favorable to the non-moving party. *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Tr. Fund*, 201 Ariz. 474, 482, ¶ 13 (2002).

¶10 HP160 argues the superior court erred in granting summary judgment by finding it lacked standing to pursue its State Action claims because they are based on the same transaction or with a similar object and purpose as the Trustee’s claims in the BK Adversary Action. HP160 contends it alone may pursue its claims against Gammage because they are particularized to it as an individual creditor of the Kohners.

¶11 A bankruptcy trustee may bring claims based on the debtor’s rights and on certain rights of the debtor’s creditors. *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1093 (2d Cir. 1995). “Whether the rights belong to the debtor or the individual creditors is a question of state law.” *Id.* (citation omitted). Arizona recognizes a state law cause of action against a judgment debtor’s attorney, here Gammage, who conspires to defraud the

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judgment creditor, here HP160. See *McElhanon v. Hing*, 151 Ariz. 386, 394 (App. 1985) (*vacated on other grounds*, 151 Ariz. 403, 408 (1986)).

¶12 To determine if a claim belongs to the debtor or the creditor, “the focus of the inquiry is on whether the Trustee is seeking to redress injuries to the debtor itself caused by the defendants’ alleged conduct.” *Smith v. Arthur Andersen LLP*, 421 F.3d 989, 1002 (9th Cir. 2005). When a third party injures not the debtor itself, but a creditor, the bankruptcy trustee is precluded from bringing suit against the third party. *Id.* at 1002-03 (citing *Steinberg v. Buczynski*, 40 F.3d 890, 893 (7th Cir. 1994)). In other words, when a creditor has an injury that is “particularized” to it, that personal claim is the creditor’s “property” and may only be asserted by it, to the exclusion of the trustee. See *Hirsch*, 72 F.3d at 1093-94; see also *In re Seven Seas Petroleum, Inc.*, 522 F.3d 575, 586 (5th Cir. 2008) (holding that creditor’s claims alleged “a direct injury . . . that was independent of any injury to [the debtor]”); cf. *In re Bernard L. Madoff Inv. Sec., LLC*, 740 F.3d 81, 92-93 (2d Cir. 2014) (holding that creditor’s claims were not particularized injury traced to third party’s conduct in conspiracy with debtor for fraudulent transfers because claims did not allege that third party made any misrepresentations directly to creditor).

¶13 Here, HP160, a creditor, did not sue the Kohners, the debtors. It sued Gammage, a third party. And the basis for HP160’s claims is

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Gammage's conduct that caused a direct injury to HP160, independent of any injury to the Kohners—that conduct being Gammage's preparation and transmission of the Kohners' Financial Representations to HP160 in 2011-2013 during settlement negotiations up to and including HP160's attempt to collect on the judgment.

¶14 HP160's amended complaint alleged several particularized claims that Gammage conspired with the Kohners to defraud HP160, and in furtherance of those efforts, made misrepresentations directly to HP160.

HP160 argued Gammage

made numerous and material misrepresentations in litigation settlements and otherwise regarding the financial condition, assets and income of Kohners and Kohners' ownership of various entities . . . result[ing] in financial damage to HP160 by, among other things, preventing and interfering in HP160's efforts to collect on a judgment it holds against Kohners. In addition, [Gammage] ha[s] conspired with Kohners to commit fraudulent transfers, which have damaged HP160.

HP160 further contended that Gammage "has a close personal and business relationship with Kohners and has provided legal representation to Kohners and Kohners' family members for over twenty years." Because of that relationship and Gammage's preparation, review, approval, and transmission of the Kohners' Financial Representations to HP160, Gammage "had independent personal knowledge of the contents . . . and of their truth and accuracy." HP160 further alleged that Gammage misrepresented the Kohners' financial condition through the Financial

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Representations, as well as through letters Gammage sent directly to HP160. HP160 claimed, among other things, that Gammage failed to identify the Kohners' (1) ownership in real property; (2) additional sources of income; (3) life insurance policies; and (4) involvement in and/or control of various trusts and legal entities, and the value of those entities.

¶15 Additionally, HP160 alleged that the Kohners and Gammage "were engaging in efforts to hide Kohners' assets . . . engaging in business transactions and activities . . . outside the context of an attorney-client relationship," and that certain transactions were an "attempt to hinder, delay and defraud [HP160]." In fact, HP160 alleged that Gammage was listed as either a statutory agent or was responsible for forming various legal entities the Kohners owned and controlled. Thus, Gammage knew or should have known about the Kohners' many business dealings, and knew or should have known that the information disclosed in the Financial Representations was "materially and intentionally deficient with respect to other legal entities owned, or controlled by Kohners." HP160 alleged that Gammage's intent and motivation was to hide the Kohners' assets and Gammage knew at the time it provided the Financial Representations to HP160 that they "were incomplete, and materially false and misleading." HP160 asserted that it had suffered damages of at least \$1,759,000.00, the

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value of the assets the Kohners transferred to the Treese Trust pursuant to the 2013 RLK Settlement Agreement.

¶16 In granting summary judgment, the superior court found:

That the Trustee's claims share the same object and purpose and arise from the same transaction alleged in [HP160's] First Amended Complaint.

That while the present action has different bodies of law and different theories of liability from the pending bankruptcy matter, they are similar in object and purpose to the bankruptcy trustee's fraudulent transfer claims.

That [HP160] lacks standing to pursue any claims that are similar in object and purpose to the bankruptcy trustee's fraudulent transfer claims.

That both the pending lawsuit before this Court and the pending bankruptcy court proceeding challenge the same pre-petition "transfer" of cash and promissory notes to the same trust.

That both lawsuits arise from the same "transfer of property in question".

That both lawsuits concern the same underlying focus-specifically, a transfer by the debtor to a third party. As such, the Trustee's ongoing prosecution of its fraudulent conveyance action in the bankruptcy court deprives [HP160] of standing to pursue its individual claims.

¶17 We disagree with the superior court. While HP160's claims refer to the same fraudulent transfers as in the BK Adversary Action, only HP160 can pursue its claims against Gammage for several reasons. First, the Trustee is attempting to avoid or challenge the Kohners' fraudulent transfers. HP160 is not. In its attempt to avoid those transfers, the Trustee brought claims against the recipient of those transfers, the Treese Trust.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JOSEPH ANTHONY DIPASQUALE, *Petitioner/Appellee*,

v.

HELEN VIRGINIA DIPASQUALE, *Respondent/Appellant*.

No. 1 CA-CV 16-0356 FC
FILED 9-7-17

Appeal from the Superior Court in Maricopa County
No. DR2000-012781
The Honorable Katherine M. Cooper, Judge

VACATED AND REMANDED

COUNSEL

Ayers & Brown, P.C., Phoenix
By Harvey S. Brown, Joshua M. Conway
Counsel for Petitioner/Appellee

The Cavanagh Law Firm, P.A., Phoenix
By Philip C. Gerard, Helen R. Davis, Karen C. Stafford
Counsel for Respondent/Appellant

DIPASQUALE v. DIPASQUALE
Opinion of the Court

OPINION

Judge James P. Beene delivered the opinion of the Court, in which Presiding Judge Samuel A. Thumma and Judge Lawrence F. Winthrop joined.

B E E N E, Judge:

¶1 Helen DiPasquale (“Helen”) appeals the superior court’s denial of her motion for leave to join Susan Levendowski (“Susan”) as a party in Helen’s motion to enforce a judgment against her former husband, Joseph DiPasquale (“Joseph”). Helen contends the superior court erred by failing to properly consider Arizona Revised Statutes (“A.R.S.”) section 25-215 (2017)¹ and this court’s holding in *Flexmaster Aluminum Awning Co. Inc. v. Hirschberg*, 173 Ariz. 83 (App. 1992). For the following reasons, we vacate and remand.

FACTS AND PROCEDURAL HISTORY

¶2 Helen and Joseph were married for 38 years before they obtained a decree dissolving their marriage in 2001. Contemporaneous with their consent decree, the parties entered into a property settlement agreement whereby Joseph agreed to pay Helen \$2,600 per month in

¹ Absent material revision after the relevant date, we cite a statute’s current version.

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spousal maintenance until her death or remarriage.² Soon after the dissolution, Joseph stopped making spousal maintenance payments. In February 2006, Joseph married Susan.

¶3 In September 2006, Helen petitioned to enforce spousal maintenance and arrearages. In March 2007, the parties agreed to another property settlement agreement that resulted in a judgment in favor of Helen and against Joseph for \$122,200 plus interest at 10% per year, and the cessation of ongoing spousal maintenance payments. Additionally, Joseph agreed to pay Helen \$200 per month against the spousal maintenance arrearage, provide her with copies of his annual tax returns, and maintain a life insurance policy with a face value of \$250,000 for Helen's irrevocable benefit.

¶4 Although Joseph largely made the arrearage payments, he allowed the life insurance policy to lapse and failed to provide Helen his annual tax returns. In October 2015, Helen filed a petition to enforce all previous property settlement agreements and sought entry of judgment, equitable relief, and an award of attorneys' fees. *See* Ariz. R. Fam. Law P. ("Rule") 91. Helen also moved for leave to file a third-party petition pursuant to Rule 33 and A.R.S. § 25-215(B), asking that Susan be joined in

² The property settlement was incorporated into the parties' consent decree and adopted by the superior court.

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order for the superior court to make a finding determining Joseph's contribution to the community property.

¶5 Following a hearing, the superior court granted Helen much of her requested relief, but denied her motion to file a third-party petition to join Susan as a party. The court found that determining Joseph's contribution to the community was not an issue for the family court, and that it was premature to join Susan until Helen sought to actually collect against Joseph and Susan's community property. Helen timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(2).

DISCUSSION

¶6 Helen argues the superior court erred in concluding it could not join Susan pursuant to Rule 33 in order to establish Joseph's contribution to the community property and liability of the community under A.R.S. § 25-215(B). We review questions involving the application and interpretation of court rules *de novo*. *Duckstein v. Wolf*, 230 Ariz. 227, 231, ¶ 8 (App. 2012).

¶7 Rule 33(A) states "[a] party to a family law case may file a statutory claim . . . against a third party arising out of or related to the subject matter of the action by the filing of . . . [a] third party petition[.]" Rule 33(C) states that "the court *may* join additional parties necessary for the exercise of its authority." (Emphasis added.) Read together, these rules grant the superior court discretion to permit joinder of third parties by third

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party petition. See *Crum v. Maricopa Cnty.*, 190 Ariz. 512, 515 (App. 1997) (noting “may” is permissive, not mandatory); see also *Nikolous v. Superior Court*, 157 Ariz. 256, 259 (1988) (trial court has discretion to allow third-party practice).

¶8 Helen’s Rule 33 petition sought to join Susan in order to litigate the issue of Joseph’s contribution to the community property of Joseph and Susan. Contrary to Joseph’s contention, allowing Helen to file her petition would not, and as a matter of law could not, convert his pre-marital spousal maintenance into community debt. Compare *Hines v. Hines*, 146 Ariz. 565, 567 (1985) (A.R.S. § 25-215 permits collection of pre-marital debts only from debtor’s contribution to community) with *Gardner v. Gardner*, 95 Ariz. 202 (1964) (public policy considerations before passage of § 25-215 allowed child support to be collected from entire community property of remarried debtor). A creditor owed pre-marital debt may collect from community property only the amount contributed to the community by the debtor. A.R.S. § 25-215(B).

¶9 In *Flexmaster*, albeit in a different procedural context, we held that “a nondebtor spouse is a necessary and proper party in a suit to establish the limited liability of the community under A.R.S. section 25-215(B) for separate, premarital debts.” 173 Ariz. at 87. Failing to join the spouse of a pre-marital debtor will “necessarily duplicate every aspect of

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the proceedings, waste judicial resources, and cause unneeded expense for the parties.” *Id.* at 89.

¶10 Here, the superior court declined to join Susan because “the issue of [Joseph’s] contribution to a community property asset is not an issue for Family Court[,]” and the issue was premature so long as Helen did not attempt to collect the pre-marital debt from a specific source. The legal basis for the superior court’s reasoning is incorrect.

¶11 In Arizona, the superior court is a “single unified trial court of general jurisdiction[,]” *Marvin Johnson, P.C. v. Myers*, 184 Ariz. 98, 102 (1995), and the separation of the superior court into divisions is “purely imaginary and for convenience only,” *Peterson v. Speakman*, 49 Ariz. 342, 348 (1937). “[T]he enforcement of dissolution decrees . . . is generally predicated upon the equitable power of the family court ‘to do full and complete justice between the parties.’” *Jensen v. Beirne*, 241 Ariz. 225, 229, ¶ 14 (App. 2016) (quoting *Genda v. Superior Court*, 103 Ariz. 240, 244 (1968), *overruled on other grounds by Helber v. Frazelle*, 118 Ariz. 217 (1978)). The superior court “retains jurisdiction to enforce a dissolution decree until justice is achieved.” *Id.* The statutory basis for Helen’s motion to file a third-party petition, A.R.S. § 25-215(B), relates solely to community property created by marriage. Helen’s motion, which was authorized by statute and rule, was properly before the superior court in this family law matter. Accordingly,

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any conclusion that it could only be pressed in a civil proceeding was contrary to law.

¶12 Collecting community property from Joseph and Susan under A.R.S. § 25-215(B) requires a finding of Joseph's contribution to the community property, an issue that was ripe for determination. Susan's "interest in the marital community confers a due process right to litigate the extent to which the parties' community property will be liable for the debtor spouse's premarital debt." *CBM of Ariz., Inc. v. Sevier*, 184 Ariz. 503, 505 (App. 1996). Moreover, because "both spouses have a right to litigate the extent of the debtor spouse's contribution to the community[.]" due process requires a finding of the amount a debtor contributed to the marital property, and the opportunity for debtor's spouse to contest same. *Id.* While the superior court has discretion regarding the joinder of third parties under Rule 33, the superior court's statement that the issue of Joseph's contribution to a community asset is not an issue for family court is not a correct statement of law.

CONCLUSION

¶13 For the foregoing reasons, we vacate the superior court's order and remand for further proceedings consistent with this opinion.

ATTACHMENT F - JPR INFORMATION

Judge Hugh Hegyi intends to retire at the end of his term and did not file for retention. He is not listed on the Maricopa County ballot .

Maricopa County Voters Only

Hon. James P. Beene

Maricopa County Superior Court

Bench: Juvenile

Appointed: 2009

**100% of the Commission Voted Judge Beene
MEETS Judicial Performance Standards**
32 Commissioners Voted 'Meets'
0 Commissioners Voted 'Does Not Meet'

Show Surveys from Prior Years

2016	Attorney Surveys	Juror Surveys	Litigant Witness Surveys
	Distributed: 118 Returned: 34 Score (See Footnote)	Distributed: 0 Returned: 0 Score (See Footnote)	Distributed: 227 Returned: 14 Score (See Footnote)
Legal Ability	100%	n/a	n/a
Integrity	100%	n/a	100%
Communication	100%	n/a	88%
Temperament	100%	n/a	100%
Admin Performance	100%	n/a	98%
Settlement Activities	100%	n/a	n/a

FOOTNOTE: The score is the percentage of all evaluators who rated the judge "satisfactory", "very good", or "superior" in each of the Commission's evaluation categories. Depending on the assignment, a judge may not have responses in certain categories, indicated by N/A (for example, some judicial assignments do not require jury trials). The JPR Commission votes "Yes" or "No" on whether a judge "MEETS" Judicial Performance Standards, based on the statistical information, as well as any other information submitted by the public or the judge. Further information on the judges and justices can be found at each court's website.

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ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCJUV-01 Hon. James Beene	Total Surveys: 78						Assignment: Juvenile					Cycle: Retention Election					STAFF							
	ATTORNEY					34 Mean	LIT/WIT/PRO PER					14 Mean	JUROR					0 Mean	STAFF					30 Mean
	UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU	
Section I: Legal Ability	0%	0%	0%	28%	72%	3.7																		
Legal reasoning ability	0%	0%	0%	29%	71%	3.7																		
Knowledge of substantive law	0%	0%	0%	24%	76%	3.8																		
Knowledge of rules of evidence	0%	0%	0%	28%	72%	3.7																		
Knowledge of rules of procedure	0%	0%	0%	29%	71%	3.7																		
Section II: Integrity	0%	0%	0%	28%	72%	3.7	0%	0%	12%	17%	71%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Basic fairness and impartiality	0%	0%	0%	29%	71%	3.7	0%	0%	21%	7%	71%	3.5	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Equal treatment regardless of race	0%	0%	0%	27%	73%	3.7	0%	0%	8%	15%	77%	3.7	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Equal treatment regardless of gender	0%	0%	0%	30%	70%	3.7	0%	0%	15%	15%	69%	3.5	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Equal treatment regardless of religion	0%	0%	0%	29%	71%	3.7	0%	0%	8%	23%	69%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Equal treatment regardless of national origin	0%	0%	0%	26%	74%	3.7	0%	0%	8%	23%	69%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Equal treatment regardless of disability	0%	0%	0%	27%	73%	3.7	0%	0%	8%	23%	69%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Equal treatment regardless of age	0%	0%	0%	30%	70%	3.7	0%	0%	15%	15%	69%	3.5	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Equal treatment regardless of sexual orientation	0%	0%	0%	28%	72%	3.7	0%	0%	8%	15%	77%	3.7	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Equal treatment regardless of economic status	0%	0%	3%	24%	74%	3.7	0%	0%	15%	15%	69%	3.5	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Section III: Communication Skills	0%	0%	0%	26%	74%	3.7	0%	12%	8%	20%	60%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	8%	8%	83%	3.8
Clear and logical communications																			0%	0%	8%	8%	83%	3.8
Clear and logical oral communications and directions	0%	0%	0%	27%	73%	3.7																		
Clear and logical written decisions	0%	0%	0%	27%	73%	3.7																		
Gave all parties an adequate opportunity to be heard	0%	0%	0%	24%	76%	3.8																		
Explained proceedings (to the jury)							0%	7%	7%	21%	64%	3.4	0%	0%	0%	0%	0%	0.0						
Explained reason for delays							0%	18%	9%	18%	55%	3.1	0%	0%	0%	0%	0%	0.0						
Clearly explained the juror's responsibilities													0%	0%	0%	0%	0%	0.0						
Section IV: Judicial Temperament	0%	0%	5%	21%	73%	3.7	0%	0%	16%	4%	80%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	8%	10%	82%	3.7
Understanding and compassion	0%	0%	9%	15%	76%	3.7	0%	0%	14%	0%	86%	3.7	0%	0%	0%	0%	0%	0.0	0%	0%	8%	17%	75%	3.7
Dignified	0%	0%	3%	21%	76%	3.7	0%	0%	14%	14%	71%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	8%	8%	83%	3.8
Courteous	0%	0%	3%	26%	71%	3.7	0%	0%	21%	0%	79%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	8%	8%	83%	3.8
Conduct that promotes public confidence in the court	0%	0%	3%	21%	76%	3.7	0%	0%	14%	0%	86%	3.7	0%	0%	0%	0%	0%	0.0	0%	0%	8%	0%	92%	3.8
Patient	0%	0%	9%	24%	67%	3.6	0%	0%	14%	7%	79%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	8%	17%	75%	3.7
Section V: Administrative Performance	0%	0%	4%	24%	72%	3.7	0%	2%	12%	17%	69%	3.5	0%	0%	0%	0%	0%	0.0	0%	0%	20%	1%	79%	3.6
Punctual in conducting proceedings	0%	0%	3%	24%	74%	3.7	0%	0%	14%	36%	50%	3.4	0%	0%	0%	0%	0%	0.0	0%	0%	17%	8%	75%	3.6
Maintained proper control of courtroom	0%	0%	3%	24%	74%	3.7	0%	0%	14%	7%	79%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	17%	0%	83%	3.7
Prompt in making rulings and rendering decisions	0%	0%	3%	24%	73%	3.7																		
Was prepared for the proceedings	0%	0%	3%	24%	73%	3.7	0%	7%	7%	7%	79%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	25%	0%	75%	3.5
Respectful treatment of staff																			0%	0%	17%	0%	83%	3.7
Cooperation with peers																			0%	0%	18%	0%	82%	3.6
Efficient management of calendar	0%	0%	6%	24%	70%	3.6													0%	0%	25%	0%	75%	3.5
Section VI: Settlement Activities	0%	0%	6%	12%	82%	3.8																		
Appropriately promoted or conducted settlement	0%	0%	6%	12%	82%	3.8																		

UN=Unacceptable, PO=Poor,
SA=Satisfactory, VG=Very Good,
SU=Superior

Category summaries are averages and may not add up due to rounding.

Surveys were distributed to court
users from 08/2015 - 01/2016

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCJUV-01 Hon. James Beene	Total Surveys: 78					Assignment: Juvenile					Cycle: Retention Election																	
	ATTORNEY					LIT/WIT/PRO PER					JUROR					STAFF												
	UN	PO	SA	VG	SU	34 Resp	Mean	UN	PO	SA	VG	14 Resp	Mean	UN	PO	SA	VG	SU	0 Resp	Mean	UN	PO	SA	VG	SU	30 Resp	Mean	
Section I: Legal Ability	0	0	0	9	24	33	3.7																					
Legal reasoning ability	0	0	0	10	24	34	3.7																					
Knowledge of substantive law	0	0	0	8	25	33	3.8																					
Knowledge of rules of evidence	0	0	0	9	23	32	3.7																					
Knowledge of rules of procedure	0	0	0	10	24	34	3.7																					
Section II: Integrity	0	0	0	9	23	32	3.7	0	0	2	2	9	13	3.6	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Basic fairness and impartiality	0	0	0	10	24	34	3.7	0	0	3	1	10	14	3.5	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Equal treatment regardless of race	0	0	0	9	24	33	3.7	0	0	1	2	10	13	3.7	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Equal treatment regardless of gender	0	0	0	10	23	33	3.7	0	0	2	2	9	13	3.5	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Equal treatment regardless of religion	0	0	0	9	22	31	3.7	0	0	1	3	9	13	3.6	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Equal treatment regardless of national origin	0	0	0	9	25	34	3.7	0	0	1	3	9	13	3.6	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Equal treatment regardless of disability	0	0	0	8	22	30	3.7	0	0	1	3	9	13	3.6	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Equal treatment regardless of age	0	0	0	10	23	33	3.7	0	0	2	2	9	13	3.5	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Equal treatment regardless of sexual orientation	0	0	0	8	21	29	3.7	0	0	1	2	10	13	3.7	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Equal treatment regardless of economic status	0	0	1	8	25	34	3.7	0	0	2	2	9	13	3.5	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Section III: Communication Skills	0	0	0	8	24	32	3.7	0	2	1	3	8	13	3.3	0	0	0	0	0	0	0	0	0	1	1	10	12	3.8
Clear and logical communications																												
Clear and logical oral communications and directions	0	0	0	9	24	33	3.7															0	0	1	1	10	12	3.8
Clear and logical written decisions	0	0	0	8	22	30	3.7																					
Gave all parties an adequate opportunity to be heard	0	0	0	8	25	33	3.8																					
Explained proceedings (to the jury)								0	1	1	3	9	14	3.4	0	0	0	0	0	0	0							
Explained reason for delays								0	2	1	2	6	11	3.1	0	0	0	0	0	0	0							
Clearly explained the juror's responsibilities															0	0	0	0	0	0	0							
Section IV: Judicial temperament	0	0	2	7	25	34	3.7	0	0	2	1	11	14	3.6	0	0	0	0	0	0	0	0	0	1	1	10	12	3.7
Understanding and compassion	0	0	3	5	26	34	3.7	0	0	2	0	12	14	3.7	0	0	0	0	0	0	0	0	0	1	2	9	12	3.7
Dignified	0	0	1	7	26	34	3.7	0	0	2	2	10	14	3.6	0	0	0	0	0	0	0	0	0	1	1	10	12	3.8
Courteous	0	0	1	9	24	34	3.7	0	0	3	0	11	14	3.6	0	0	0	0	0	0	0	0	0	1	1	10	12	3.8
Conduct that promotes public confidence in the court	0	0	1	7	26	34	3.7	0	0	2	0	12	14	3.7	0	0	0	0	0	0	0	0	0	1	0	11	12	3.8
Patient	0	0	3	8	22	33	3.6	0	0	2	1	11	14	3.6	0	0	0	0	0	0	0	0	0	1	2	9	12	3.7
Section V: Administrative Performance	0	0	1	8	24	33	3.7	0	0	2	2	10	14	3.5	0	0	0	0	0	0	0	0	0	2	0	9	12	3.6
Punctual in conducting proceedings	0	0	1	8	25	34	3.7	0	0	2	5	7	14	3.4	0	0	0	0	0	0	0	0	0	2	1	9	12	3.6
Maintained proper control of courtroom	0	0	1	8	25	34	3.7	0	0	2	1	11	14	3.6	0	0	0	0	0	0	0	0	0	2	0	10	12	3.7
Prompt in making rulings and rendering decisions	0	0	1	8	24	33	3.7																					
Was prepared for the proceedings	0	0	1	8	24	33	3.7	0	1	1	1	11	14	3.6	0	0	0	0	0	0	0	0	0	3	0	9	12	3.5
Respectful treatment of staff																						0	0	2	0	10	12	3.7
Cooperation with peers																						0	0	2	0	9	11	3.6
Efficient management of calendar	0	0	2	8	23	33	3.6															0	0	3	0	9	12	3.5
Section VI: Settlement Activities	0	0	1	2	14	17	3.8																					
Appropriately promoted or conducted settlement	0	0	1	2	14	17	3.8																					

UN=Unacceptable, PO=Poor,
SA=Satisfactory, VG=Very Good,
SU=Superior

Category summaries are averages and may not add up due to rounding.

Surveys were distributed to court
users from 08/2015 - 01/2016

Maricopa County Superior Court Judges

MCJUV-01	Hon. James Beene
Group	Comment
Litigant/Witness	Judge Beene carefully explains and answers questions. Judge Beene provides participants time to fully explain and is always patient in court.
Litigant/Witness	Due to lack of communication regarding a time change, we were very late. Judge Beene was understanding and allowed us to participate at a later time. Thank you!
Litigant/Witness	The judge did not appear to have any prejudices based on the above qualities. Proceedings were well explained to make understanding all issue in a clear and descriptive way. No delay in a day. Appointed time 9:00 actual time approx. 9:45 Assume prior cases took longer.
Litigant/Witness	We were 30 min late from the time of our appointment. This to me ok. Any more than 30 minutes would be very inconvenient.
Litigant/Witness	He was very good dealing with my son who was a bit shy and frightened. He made us all a little more comfortable with his language and mannerisms. We never had to wait too long for our name to be called. It was a very efficient process.
Litigant/Witness	There are two people in my life that infuriate me, this is due to my ultimate respect. Judge Beene is very good, very fair and I could go on and on. I'm glad he was the judge. At one point he embarrassed me which I probably had it coming but as far as his judging skills he was absolutely fair and exceptional. We were always one of the last people to go in although we waited for many more periods. Besides Judge Beene *please note that Colleen Eugineer. Jakes appointed attorney and Bob Noble deserves recognition on a tremendous job they did. Also Lacy.
Litigant/Witness	Overall, Judge Beene is a very fair and respectable judge. He is attentive as well as considerate to everything and/or everyone within the case. However, if there are tough words that need to be said in regards to how the parents, children or the department are handling things, he says the words with respect.
Staff	Judge Beene is a wonderful asset to the Juvenile Bench. His manner in the courtroom is everything you'd expect of a Judge. Respectful of all persons, courteous and patient, without being a push over. He holds people accountable for their actions. Judge Beene's performance in the courtroom is superior. He manages his courtroom in a courteous and efficient manner. His time

Maricopa County Superior Court Judges

	management is outstanding. He has a very heavy calendar and still finds a way to address all issues in a fair manner.
Staff	Never seems to get upset - very patient. Judge has helped me several times regarding calendar needs.
Attorney	This is a judge well versed in the law. Superior. Superior. Great temperament. Very Efficient.
Attorney	The best judge in terms of legal ability. Simply the best The best communicator
Attorney	Judge Beene is thoughtful and especially in JV matters, I note that he cares about the kids and their futures. He speaks to the heart of the kids. He makes the best out of difficult situations that we have in juvie court. Considering how busy and hectic it can get at SEF/JUVY, he does a good - very good job
Attorney	Judge Beene is an exceptionally-qualified jurist. Judge Beene possesses the highest integrity, and promotes confidence to both legal professionals and the lay public in the fairness and impartiality of the Court. Judge Beene has excellent oral communication skills; he also provides detailed, clear, fully-substantiated and well-considered written opinions -- his written rulings are consistently supported by researched authority -- analogous to appellate court decisions. Every once in a while, Judge Beene displays a 'temper' -- usually provoked by the poor demeanor of a litigant or an attorney. He suffers fools poorly. Judge Beene primarily runs on time, despite the significant challenges of high caseloads and calendar congestion. Judge Beene is intelligent, articulate, and gives appropriate consideration to the positions of all litigants, which significantly contributes to the likelihood of successful resolution.
Attorney	He is well spoken and understands the applicable laws in the juvenile rotation. I have never had a reason to question his integrity. Very fair, calm, and even tempered.
Attorney	He is an excellent judge and his legal analysis is superior!
Attorney	He always has thorough, well-reasoned decisions.
Attorney	Generally very good Generally very good Generally very good

Maricopa County Superior Court Judges

Attorney	Exceptional understanding of the law
Attorney	Equally strict with all the kids. Always professional with the attorneys and probation officers.
Attorney	I appreciate the judge's willingness to allow all parties the opportunity to fully make their point
Attorney	VERY GOOD WITH THE KIDS.
Attorney	Very efficient time management.

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCJUV-13 Hon. James P. Beene	Total Surveys: 50					Assignment: Juvenile					Cycle: Mid-Term Review					STAFF							
	ATTORNEY					24 Mean	LIT/WIT/PRO PER					8 Mean	JUROR					0 Mean	STAFF				
	UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU
Section I: Legal Ability	0%	0%	1%	26%	73%	3.7																	
Legal reasoning ability	0%	0%	4%	25%	71%	3.7																	
Knowledge of substantive law	0%	0%	0%	29%	71%	3.7																	
Knowledge of rules of evidence	0%	0%	0%	25%	75%	3.8																	
Knowledge of rules of procedure	0%	0%	0%	25%	75%	3.8																	
Section II: Integrity	0%	0%	0%	20%	80%	3.8	0%	0%	0%	2%	98%	4.0	0%	0%	0%	0%	0.0	9%	1%	9%	24%	57%	3.2
Basic fairness and impartiality	0%	0%	0%	17%	83%	3.8	0%	0%	0%	13%	88%	3.9	0%	0%	0%	0%	0.0	8%	0%	17%	17%	58%	3.2
Equal treatment regardless of race	0%	0%	0%	22%	78%	3.8	0%	0%	0%	0%	100%	4.0	0%	0%	0%	0%	0.0	9%	0%	9%	27%	55%	3.2
Equal treatment regardless of gender	0%	0%	0%	21%	79%	3.8	0%	0%	0%	0%	100%	4.0	0%	0%	0%	0%	0.0	9%	0%	9%	36%	45%	3.1
Equal treatment regardless of religion	0%	0%	0%	18%	82%	3.8	0%	0%	0%	0%	100%	4.0	0%	0%	0%	0%	0.0	9%	0%	9%	27%	55%	3.2
Equal treatment regardless of national origin	0%	0%	0%	23%	77%	3.8	0%	0%	0%	0%	100%	4.0	0%	0%	0%	0%	0.0	8%	8%	8%	25%	50%	3.0
Equal treatment regardless of disability	0%	0%	0%	18%	82%	3.8	0%	0%	0%	0%	100%	4.0	0%	0%	0%	0%	0.0	9%	0%	9%	18%	64%	3.3
Equal treatment regardless of age	0%	0%	0%	23%	77%	3.8	0%	0%	0%	0%	100%	4.0	0%	0%	0%	0%	0.0	9%	0%	9%	27%	55%	3.2
Equal treatment regardless of sexual orientation	0%	0%	0%	18%	82%	3.8	0%	0%	0%	0%	100%	4.0	0%	0%	0%	0%	0.0	11%	0%	0%	22%	67%	3.3
Equal treatment regardless of economic status	0%	0%	0%	21%	79%	3.8	0%	0%	0%	0%	100%	4.0	0%	0%	0%	0%	0.0	9%	0%	9%	18%	64%	3.3
Section III: Communication Skills	0%	0%	0%	24%	76%	3.8	0%	0%	0%	7%	93%	3.9	0%	0%	0%	0%	0.0	8%	17%	0%	17%	58%	3.0
Clear and logical communications																	8%	17%	0%	17%	58%	3.0	
Clear and logical oral communications and directions	0%	0%	0%	25%	75%	3.8																	
Clear and logical written decisions	0%	0%	0%	26%	74%	3.7																	
Gave all parties an adequate opportunity to be heard	0%	0%	0%	21%	79%	3.8																	
Explained proceedings (to the jury)							0%	0%	0%	0%	100%	4.0	0%	0%	0%	0%	0.0						
Explained reason for delays							0%	0%	0%	14%	86%	3.9	0%	0%	0%	0%	0.0						
Clearly explained the juror's responsibilities													0%	0%	0%	0%	0.0						
Section IV: Judicial temperament	0%	0%	1%	20%	79%	3.8	0%	0%	0%	13%	88%	3.9	0%	0%	0%	0%	0.0	9%	18%	0%	15%	58%	2.9
Understanding and compassion	0%	0%	0%	25%	75%	3.8	0%	0%	0%	13%	88%	3.9	0%	0%	0%	0%	0.0	9%	18%	0%	18%	55%	2.9
Dignified	0%	0%	0%	17%	83%	3.8	0%	0%	0%	13%	88%	3.9	0%	0%	0%	0%	0.0	9%	18%	0%	9%	64%	3.0
Courteous	0%	0%	0%	21%	79%	3.8	0%	0%	0%	13%	88%	3.9	0%	0%	0%	0%	0.0	9%	18%	0%	9%	64%	3.0
Conduct that promotes public confidence in the court	0%	0%	0%	17%	83%	3.8	0%	0%	0%	13%	88%	3.9	0%	0%	0%	0%	0.0	9%	18%	0%	9%	64%	3.0
Patient	0%	0%	4%	21%	75%	3.7	0%	0%	0%	13%	88%	3.9	0%	0%	0%	0%	0.0	9%	18%	0%	27%	45%	2.8
Section V: Administrative Performance	0%	0%	3%	29%	68%	3.7	0%	0%	8%	13%	79%	3.7	0%	0%	0%	0%	0.0	9%	6%	11%	11%	63%	3.1
Punctual in conducting proceedings	0%	0%	4%	38%	58%	3.5	0%	0%	25%	13%	63%	3.4	0%	0%	0%	0%	0.0	9%	0%	18%	9%	64%	3.2
Maintained proper control of courtroom	0%	0%	0%	29%	71%	3.7	0%	0%	0%	13%	88%	3.9	0%	0%	0%	0%	0.0	9%	9%	9%	9%	64%	3.1
Prompt in making rulings and rendering decisions	0%	0%	4%	25%	71%	3.7																	
Was prepared for the proceedings	0%	0%	0%	29%	71%	3.7	0%	0%	0%	13%	88%	3.9	0%	0%	0%	0%	0.0	9%	9%	9%	9%	64%	3.1
Respectful treatment of staff																	9%	9%	9%	18%	55%	3.0	
Cooperation with peers																	10%	0%	10%	10%	70%	3.3	
Efficient management of calendar	0%	0%	4%	25%	71%	3.7												9%	9%	9%	9%	64%	3.1
Section VI: Settlement Activities	0%	0%	0%	21%	79%	3.8																	
Appropriately promoted or conducted settlement	0%	0%	0%	21%	79%	3.8																	

UN=Unacceptable, PO=Poor,
SA=Satisfactory, VG=Very Good,
SU=Superior

Category summaries are averages and may not add up due to rounding.

Surveys were distributed to court
users from 08/2013 - 01/2014

Arizona Supreme Court Maricopa County Superior Judges

MCJUV-13	James P. Beene
Group	Comment
Litigant/Witness	Allows attorneys to work throughout disagreements instead of stopping conversations. Very thorough, and respectful. CPS case managers appreciate that judge Beene is on time (901.) with hearings.
Litigant/Witness	Judge gives parents too many opportunities when parents have been offered multiple times.
Litigant/Witness	Wish other court rooms operated the way this one does!!!
Attorney	I have disagreed with Judge Beene on his interpretation of the law; however, I would litigate every case before him if I could. He is fair, patient, and direct. We need more like Judge Beene on the bench.
Attorney	It is refreshing to have a judge on the bench who actually knows the law. Judge Beene takes time to listen to all parties he always treats everyone with respect. Judge Beene always take the time to read ahead of time and has a clear understanding of what the parties are requesting.
Attorney	Excellent Judge; a welcome addition to juvenile court!
Staff	Judge Beene exhibits the highest standard of integration in his rulings, dealings on the bench, and unit count staff. He communicates his orders/directions clearly to the litigants/juveniles. His minute entry rulings are well written and detailed. Judge Beene's temperament on the bench is one of the very best I've seen. He is always dignified and ensures that all parties are given the opportunity to be amply heard. He is extremely patient. Excellent time management skills - court proceedings are efficiently run and judge Beene is always prepared for his hearings. He's usually one of the first to volunteer to assist his peers in calendar coverage for illnesses/vacations. He treats his staff with respect and kindness and I appreciate the opportunity I have to work with him every day.
Staff	Judge Beene's compassion is unlike any judge that I have witnessed before, he speaks from the heart and it's obvious that he cares about his cases deeply.



INSTRUCTIONS FOR COMPLETING THE CONFERENCE TEAM REPORT

To use the report format, place your cursor two spaces behind the colon after each section and begin typing your response. You will need to complete the areas highlighted in red as shown in the following sample report:

2014 CONFERENCE TEAM REPORT

I. INTRODUCTION

JUDGE BEING REVIEWED: Judge James Beene

TEAM MEMBERS: Judge – Hon. James Blomo
Attorney – Michael Blair
Public – Evan Bagner

DATE OF REVIEW: June 11, 2014

MEETING LOGISTICS:

- Time/Length of Meeting: 30 minutes
- Location: Judge Paul McMurdie's jury room

II. DISCUSSION OF TEAM'S APPROACH/GOALS FOR MEETING WITH JUDGE

The team members met on Monday, June 9, prior to meeting with our first Judge to discuss the JPR process. At that initial meeting, we assigned each team member to a particular Judge; that assigned team member then took the lead in the meeting with the Judge. On Wednesday, June 11, the team met in Judge Paul McMurdie's jury room at the Southeast Court facility and conducted three meetings with our three assigned judges at that facility. Judge Beene was one of those three.

III. DISCUSSION WITH JUDGE REGARDING JPR PROCESSES

- Judge's Attitude/Receptiveness Regarding JPR Process: Judge Beene was very open and receptive to the JPR process. He took the scores and comments seriously and wants to improve.
- Judge's Attitude/Receptiveness Regarding Conference Team Meeting: Judge Beene was extremely cordial, open, and honest with the team.

IV. DISCUSSION WITH JUDGE REGARDING DATA REPORT RESULTS

- Assessment of Current Scores and Written Comments: Judge Beene scored very high and received high praise in the comments. The only negative score was from an apparently disgruntled staff member. When asked about this, Judge Beene said that he was very surprised because he has a great staff. He said after much thought, the only thing he could come up with was that he found out that the "staff" section is more than just his judicial assistant, bailiff, and clerk. He thinks the one negative score could have come from someone at another department, such as CPS. In any event, this one negative staff comment appears to be an outlier that skewed the staff results because of the small sample size.
- Comparison of Judge Scores With Other Judges on Bench: Judge Beene's scores were higher in the attorney and the lit/wit/pro per categories than the other judges in Maricopa County. His staff scores were a little lower, but that is because of the one outlier described above and the small sample size.
- Comparison of Self-Evaluation Report to Data Report Results: The self-evaluation report was consistent with the data report results. Two of his answers to questions on the self-evaluation were brought to his attention for clarification. In question 3(a), Judge Beene clarified that he rarely has difficulty ruling on objections. He said that he marked the wrong box. In question 16(a), Judge Beene explained why he answered "usually" when asked how often he cannot begin hearings at the specified time. He explained that on the juvenile bench, all parties and lawyers must be present and sometimes that is difficult with case workers and lawyers who have multiple hearings scheduled at the same time in different courtrooms. He said he does the best he can to start on time, but sometimes circumstances simply do not allow the proceedings to start.
- Comparison to Previous Scores and Conference Team Reports: Judge Beene's scores during this cycle are comparable to the high marks he received in his previous review.

- V. DISCUSSION WITH JUDGE OF JUDGE'S STRENGTHS: Judge Beene is a conscientious judge who appears to be trying his best to manage his calendar, be fair and impartial, and render decisions in a timely, if not expeditious, manner. He appears to truly enjoy working on the juvenile bench where he feels he is making a difference.

keep doing what he is doing.

- Judge's Comments Regarding Improvement Areas: The one negative staff score did seem to bother Judge Beene. However, one disgruntled score should not detract from the other high marks he received.

VII. REVIEW OF GOALS FROM LAST REPORT PERIOD

- Goals Met/Steps Taken to Achieve: Improved calendar management and continue training. Judge Beene was on the family bench during his last review. He was able to complete both of these goals and has continued to manage his calendar well on the juvenile bench.
- Goals Remaining/Plans to Achieve: None

VIII. TRAINING/OTHER GOALS SET DURING CONFERENCE FOR NEXT TWO-YEAR PERIOD

Goal #1: Judge Beene is going to oversee the new cross-over youth court at the Southeast Court facility. This program is scheduled to start this summer. It is intended to help unify families and keep kids out of court.

Implementation Plan: He will work with Judge Blakey at the Durango Court facility. He is excited about this new court program. He attended training last year in Atlanta and is looking forward to implementing the youth court.

Time Frame: During the current JPR cycle

Goal #2: Keep up to date with the law and receive ongoing training.

Implementation Plan: Continual review of new case law decisions.

Time Frame: During the current JPR cycle.

IX. CONFERENCE TEAM'S OVERALL ASSESSMENT OF MEETING WITH JUDGE

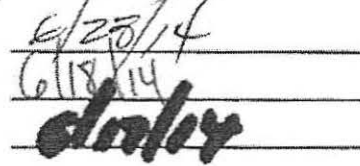
Judge Beene is an asset to the bench. He received high marks and glowing comments. He seems to love the juvenile bench where he feels he can make a difference in the lives of youth. We were very impressed.

X. CONFERENCE TEAM MEMBER SIGNATURES

SIGNATURE:



DATE:



XI. JUDGE'S COMMENTS AND SIGNATURE

COMMENTS: _____

SIGNATURE: _____

DATE: _____

XI. JUDGE'S COMMENTS AND SIGNATURE

COMMENTS: IT WAS A PLEASURE TO MEET WITH MY JPR TEAM.

SIGNATURE:

Jan P. Zeme

DATE:

7/2/14

CONFIDENTIALITY

Pursuant to Rule 6(f)(1), Rules of Procedure for Judicial Performance Review, the conference team members have met with the judge. Pursuant to Rule 7 of the Rules of Procedure for Judicial Performance Review, the Conference Team Members and Judge agree all information used in the course of developing this report shall be strictly confidential and shall not be disclosed except as provided in the Rules of Procedure for Judicial Performance Review and in accordance with court rules relating to public dissemination of such information.

The three team members should sign the report. The original of the report should be given to the judge for review, together with the envelope addressed to the Judicial Performance Review office.

The judge should be instructed to review the report, make any comments, and sign the original report below the team member signatures. The judge should then send the original report to the Judicial Performance Review office:

Attn: JPR Program Manager
Administrative Office of the Courts
1501 W. Washington, Suite 221
Phoenix, AZ 85007

Judge Hugh Hegyi intends to retire at the end of his term and did not file for retention. He is not listed on the Maricopa County ballot .

Maricopa County Voters Only

Hon. James P. Beene

Maricopa County Superior Court

Bench: Family

Appointed: 2009

**100% of the Commission Voted Judge Beene
MEETS Judicial Performance Standards**
30 Commissioners Voted 'Meets'
0 Commissioners Voted 'Does Not Meet'

Show Surveys from Prior Years

2012	Attorney Surveys	Litigant Witness Surveys
	Distributed: 157 Returned: 48 Score (See Footnote)	Distributed: 377 Returned: 12 Score (See Footnote)
Legal Ability	99%	n/a
Integrity	99%	98%
Communication Skills	98%	100%
Temperament	98%	100%
Admin Performance	99%	100%
Settlement Activities	100%	n/a

FOOTNOTE: The score is the percentage of all evaluators who rated the judge "satisfactory", "very good", or "superior" in each of the Commission's evaluation categories. Depending on the assignment, a judge may not have responses in certain categories, indicated by N/A (for example, some judicial assignments do not require jury trials). The JPR Commission votes "Yes" or "No" on whether a judge "MEETS" Judicial Performance Standards, based on the statistical information, as well as any other information submitted by the public or the judge. Further information on the judges and justices can be found at each court's website.

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ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCFAM-04 Hon. James P. Beene	Total Surveys: 74					48 Mean	Assignment: Family					12 Mean	Cycle: Retention Election					14 Mean					
	UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		Mean	UN	PO	SA	VG
Section I: Legal Ability	0%	1%	8%	36%	55%	3.4																	
Legal reasoning ability	0%	2%	5%	40%	53%	3.4																	
Knowledge of substantive law	0%	2%	9%	34%	55%	3.4																	
Knowledge of rules of evidence	0%	0%	9%	35%	56%	3.5																	
Knowledge of rules of procedure	0%	0%	9%	35%	56%	3.5																	
Section II: Integrity	0%	1%	4%	26%	69%	3.6	0%	2%	0%	20%	78%	3.7					16%	0%	0%	13%	71%	3.2	
Basic fairness and impartiality	0%	2%	7%	31%	60%	3.5	0%	8%	0%	17%	75%	3.6					10%	0%	0%	10%	80%	3.5	
Equal treatment regardless of race	0%	0%	3%	29%	68%	3.7	0%	0%	0%	20%	80%	3.8					10%	0%	0%	10%	80%	3.5	
Equal treatment regardless of gender	0%	0%	10%	27%	63%	3.5	0%	0%	0%	18%	82%	3.8					10%	0%	0%	10%	80%	3.5	
Equal treatment regardless of religion	0%	0%	3%	24%	73%	3.7	0%	0%	0%	20%	80%	3.8					10%	0%	0%	10%	80%	3.5	
Equal treatment regardless of national origin	0%	0%	3%	24%	73%	3.7	0%	0%	0%	18%	82%	3.8					20%	0%	0%	10%	70%	3.1	
Equal treatment regardless of disability	0%	0%	3%	24%	74%	3.7	0%	0%	0%	20%	80%	3.8					20%	0%	0%	10%	70%	3.1	
Equal treatment regardless of age	0%	0%	3%	27%	70%	3.7	0%	9%	0%	18%	73%	3.5					20%	0%	0%	20%	60%	3.0	
Equal treatment regardless of sexual orientation	0%	0%	3%	21%	76%	3.7	0%	0%	0%	22%	78%	3.8					20%	0%	0%	20%	60%	3.0	
Equal treatment regardless of economic status	0%	3%	3%	28%	67%	3.6	0%	0%	0%	30%	70%	3.7					20%	0%	0%	20%	60%	3.0	
Section III: Communication Skills	1%	1%	8%	32%	57%	3.4	0%	0%	0%	16%	84%	3.8					18%	0%	0%	18%	64%	3.1	
Clear and logical communications																	18%	0%	0%	18%	64%	3.1	
Clear and logical oral communications and directions	0%	2%	7%	31%	60%	3.5																	
Clear and logical written decisions	2%	0%	9%	34%	55%	3.4																	
Gave all parties an adequate opportunity to be heard	0%	2%	9%	31%	58%	3.4																	
Explained proceedings (to the jury)							0%	0%	0%	17%	83%	3.8											
Explained reason for delays							0%	0%	0%	14%	86%	3.9											
Clearly explained the juror's responsibilities																							
Section IV: Judicial Temperament	0%	2%	7%	27%	64%	3.5	0%	0%	5%	11%	84%	3.8					18%	4%	5%	9%	64%	3.0	
Understanding and compassion	0%	4%	7%	28%	61%	3.5	0%	0%	8%	17%	75%	3.7					18%	0%	9%	9%	64%	3.0	
Dignified	0%	0%	9%	26%	65%	3.6	0%	0%	8%	8%	83%	3.8					18%	0%	9%	9%	64%	3.0	
Courteous	0%	0%	9%	24%	67%	3.6	0%	0%	8%	8%	83%	3.8					18%	0%	9%	9%	64%	3.0	
Conduct that promotes public confidence in the court	0%	4%	4%	26%	65%	3.5	0%	0%	0%	9%	91%	3.9					18%	9%	0%	9%	64%	2.9	
Patient	0%	0%	9%	29%	62%	3.5	0%	0%	0%	11%	89%	3.9					18%	9%	0%	9%	64%	2.9	
Section V: Administrative Performance	0%	0%	9%	28%	63%	3.5	0%	0%	0%	11%	89%	3.9					22%	0%	0%	15%	63%	3.0	
Punctual in conducting proceedings	0%	0%	9%	26%	65%	3.6	0%	0%	0%	17%	83%	3.8					22%	0%	0%	11%	67%	3.0	
Maintained proper control of courtroom	0%	0%	7%	24%	70%	3.6	0%	0%	0%	8%	92%	3.9					22%	0%	0%	11%	67%	3.0	
Prompt in making rulings and rendering decisions	0%	2%	7%	33%	58%	3.5																	
Was prepared for the proceedings	0%	0%	9%	28%	63%	3.5	0%	0%	0%	8%	92%	3.9					22%	0%	0%	11%	67%	3.0	
Respectful treatment of staff																	22%	0%	0%	22%	56%	2.9	
Cooperation with peers																	22%	0%	0%	11%	67%	3.0	
Efficient management of calendar	2%	0%	13%	27%	58%	3.4											22%	0%	0%	22%	56%	2.9	
Section VI: Settlement Activities	0%	0%	21%	33%	46%	3.3																	
Appropriately promoted or conducted settlement	0%	0%	21%	33%	46%	3.3																	

UN=Unacceptable, PO=Poor,
SA=Satisfactory, VG=Very Good,
SU=Superior

Category summaries are averages and may not add up due to rounding.

Surveys were distributed to court
users from 08/2011 - 03/2012

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCFAM-04 Hon. James P. Beene	Total Surveys: 74					Assignment: Family					Cycle: Retention Election																	
	ATTORNEY					LIT/WIT/PRO PER					JUROR					STAFF												
	UN	PO	SA	VG	SU	Hesp	Mean	UN	PO	SA	VG	SU	Hesp	Mean	UN	PO	SA	VG	SU	Hesp	Mean	UN	PO	SA	VG	SU	Hesp	Mean
Section I: Legal Ability	0	1	4	16	24	43	3.4																					
Legal reasoning ability	0	1	2	17	23	43	3.4																					
Knowledge of substantive law	0	1	4	15	24	44	3.4																					
Knowledge of rules of evidence	0	0	4	15	24	43	3.5																					
Knowledge of rules of procedure	0	0	4	15	24	43	3.5																					
Section II: Integrity	0	0	2	10	25	37	3.6	0	0	0	2	8	10	3.7						2	0	0	1	7	10	3.2		
Basic fairness and impartiality	0	1	3	14	27	45	3.5	0	1	0	2	9	12	3.6						1	0	0	1	8	10	3.5		
Equal treatment regardless of race	0	0	1	11	26	38	3.7	0	0	0	2	8	10	3.8						1	0	0	1	8	10	3.5		
Equal treatment regardless of gender	0	0	4	11	26	41	3.5	0	0	0	2	9	11	3.8						1	0	0	1	8	10	3.5		
Equal treatment regardless of religion	0	0	1	8	24	33	3.7	0	0	0	2	8	10	3.8						1	0	0	1	8	10	3.5		
Equal treatment regardless of national origin	0	0	1	8	24	33	3.7	0	0	0	2	9	11	3.8						2	0	0	1	7	10	3.1		
Equal treatment regardless of disability	0	0	1	8	25	34	3.7	0	0	0	2	8	10	3.8						2	0	0	1	7	10	3.1		
Equal treatment regardless of age	0	0	1	10	26	37	3.7	0	1	0	2	8	11	3.5						2	0	0	2	6	10	3.0		
Equal treatment regardless of sexual orientation	0	0	1	6	22	29	3.7	0	0	0	2	7	9	3.8						2	0	0	2	6	10	3.0		
Equal treatment regardless of economic status	0	1	1	11	26	39	3.6	0	0	0	3	7	10	3.7						2	0	0	2	6	10	3.0		
Section III: Communication Skills	0	1	4	14	26	45	3.4	0	0	0	2	8	10	3.8						2	0	0	2	7	11	3.1		
Clear and logical communications																				2	0	0	2	7	11	3.1		
Clear and logical oral communications and directions	0	1	3	14	27	45	3.5																					
Clear and logical written decisions	1	0	4	15	24	44	3.4																					
Gave all parties an adequate opportunity to be heard	0	1	4	14	26	45	3.4																					
Explained proceedings (to the jury)								0	0	0	2	10	12	3.8														
Explained reason for delays								0	0	0	1	6	7	3.9														
Clearly explained the juror's responsibilities																												
Section IV: Judicial temperament	0	1	3	12	29	46	3.5	0	0	1	1	9	11	3.8						2	0	1	1	7	11	3.0		
Understanding and compassion	0	2	3	13	28	46	3.5	0	0	1	2	9	12	3.7						2	0	1	1	7	11	3.0		
Dignified	0	0	4	12	30	46	3.6	0	0	1	1	10	12	3.8						2	0	1	1	7	11	3.0		
Courteous	0	0	4	11	31	46	3.6	0	0	1	1	10	12	3.8						2	0	1	1	7	11	3.0		
Conduct that promotes public confidence in the court	0	2	2	12	30	46	3.5	0	0	0	1	10	11	3.9						2	1	0	1	7	11	2.9		
Patient	0	0	4	13	28	45	3.5	0	0	0	1	8	9	3.9						2	1	0	1	7	11	2.9		
Section V: Administrative Performance	0	0	4	13	29	46	3.5	0	0	0	1	11	12	3.9						2	0	0	1	6	9	3.0		
Punctual in conducting proceedings	0	0	4	12	30	46	3.6	0	0	0	2	10	12	3.8						2	0	0	1	6	9	3.0		
Maintained proper control of courtroom	0	0	3	11	32	46	3.6	0	0	0	1	11	12	3.9						2	0	0	1	6	9	3.0		
Prompt in making rulings and rendering decisions	0	1	3	15	26	45	3.5																					
Was prepared for the proceedings	0	0	4	13	29	46	3.5	0	0	0	1	11	12	3.9						2	0	0	1	6	9	3.0		
Respectful treatment of staff																				2	0	0	2	5	9	2.9		
Cooperation with peers																				2	0	0	1	6	9	3.0		
Efficient management of calendar	1	0	6	12	26	45	3.4													2	0	0	2	5	9	2.9		
Section VI: Settlement Activities	0	0	5	8	11	24	3.3																					
Appropriately promoted or conducted settlement	0	0	5	8	11	24	3.3																					

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ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Spring 2012

Hon. James P. Beene	
Group	Comment
Attorney	Best D.R. judge and staff in county.
Attorney	Rules fairly firm the facts at hand. He is extremely fair in his rulings.
Attorney	It is taking too long to get a hearing date. This is longer than for other judges in a similar case.
Attorney	Best judge on the bench!
Attorney	I have had Attorney cases assigned to Judge Beene, but none have required any trials or evidentiary hearings.
Staff	Extremely patient to all. Goes out of his way when possible impediments to judicial process are known to him to be fair and impartial.
Staff	Speaks to us (staff) with respect and seems to value our opinions.
Staff	Runs his division very well while managing a busy and challenging calendar.
Staff	Staff are rarely present, unable to reach by phone-division closes early quite frequently, do not cooperate with other divisions very often-staff allegedly use intimidation tactics with other court personnel and runners when confronted with complaints.
Litigant/Witness (English)	Regardless of outcome treatment was fair, compassionate and gentle.
Litigant/Witness (English)	Things never go my way, but can't complain about this judge.
Litigant/Witness (English)	Our adoption went smoothly and overall it was a great experience!
Litigant/Witness (English)	Even though Judge Beene doesn't always rule in my favor in family court, he is always objective and fair, and I appreciate that.
Litigant/Witness (English)	Judge Beene is extraordinarily patient on multiple occasions my ex-husband had yelled at him. Judge Beene never loses his composure or professionalism.
Litigant/Witness (English)	Have not stood before a nicer judge - and things have not always gone my way.
Litigant/Witness (English)	Very kind judge.