APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name: **Daniel Joseph Kiley**

2. Have you ever used or been known by any other name? **No.** If so, state name:

3. Office Address:

   Maricopa County Superior Court
   101 West Jefferson Street, Suite 613
   Phoenix, AZ 85003

4. How long have you lived in Arizona? **37 years** What is your home zip code? **85044**

5. Identify the county you reside in and the years of your residency.

   Maricopa County, 1985 to present

6. If nominated, will you be 30 years old before taking office? **Yes.**

   If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? **Yes.**

7. List your present and any former political party registrations and approximate dates of each:

   I have been registered as a Republican since I first registered to vote in Arizona in 1986.

   In 1981 or 1982, when I was 18 years old and living in Massachusetts, I registered to vote as a Democrat.
   (The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to

the Governor be of the same political affiliation.)

8. Gender: **Male**

Race/Ethnicity: **White**

EDUCATIONAL BACKGROUND

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

Arizona State University College of Law, J.D., *cum laude*, 1988
(now Sandra Day O'Connor College of Law)

Harvard University, B.A. in Government, *cum laude*, 1985

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

While in law school, I served as a staff writer for and, later, Note and Comment Editor of the Arizona State Law Journal.

In college, I majored in Government. In my free time, I was active in student government, serving as Vice President of the student council of my dormitory, Mather House, for two semesters. I also served as a member of and, eventually, co-chair of the Prisons Committee. Fellow committee members and I visited inmates at a nearby prison one evening each week.

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

I obtained my undergraduate degree *cum laude* from Harvard University in 1985. In addition to receiving significant scholarship assistance, I relied on the income I earned from part-time jobs, including jobs as a dormitory janitor and a library desk assistant, to pay my college expenses. Toward the end of my senior year, my classmates in Mather House voted to give me the "Unsung Hero Award" in recognition of my participation in various activities at Mather House, including the planning of fundraisers and social events.

I graduated *cum laude* from the Arizona State University College of Law (now the Sandra Day O'Connor College of Law) in 1988. Upon admission to

law school, I was awarded the "Outstanding Applicant" scholarship, which consisted of a tuition waiver and an annual stipend of $5,000. During my first year of law school, my assigned partner and I won a Closing Argument competition sponsored by the Phoenix Association of Defense Counsel.

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, 1988

United States District Court for the District of Arizona, 1989

United States Court of Appeals for the Ninth Circuit, 1999

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.** If so, explain.

b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **No.** If so, explain any circumstances that may have hindered your performance.

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	DATES	LOCATION
Superior Court	**June 2010 – present**	**Phoenix, AZ**
Sherman & Howard LLC	**Jan. 2009 - May, 2010**	**Phoenix, AZ**
Mohr, Hackett, Pederson, Blakley & Randolph, P.C.	**Oct. 1997 – Dec. 2008**	**Phoenix, AZ**
Arizona Attorney General's Office	**Aug. 1988 – Oct. 1997**	**Phoenix, AZ**

Additionally, I was a law clerk at the Arizona Attorney General's Office during the summer of 1987 and a law clerk at Mohr, Hackett, Pederson, Blakley & Randolph, P.C., during the summer of 1986.

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.

Before I was appointed to the bench in 2010, roughly two-thirds of my practice consisted of representing corporations and individuals in commercial litigation and contract disputes. Approximately 10% of my time was spent representing clients in civil litigation involving non-contract claims, such as, for example, a nuisance claim my clients brought against a neighboring landowner. Another 5% of my time was spent providing legal advice to corporate clients on employment issues and in contract review and negotiation.

Approximately 10% of my practice was in the area of criminal law. In addition to representing defendants and victims in criminal cases, I represented individuals and corporate entities in investigations being conducted by various law enforcement agencies.

Another 10% of my practice was in municipal law. In connection with my firm's service as Town Attorney for the Town of Carefree, I represented the Town in litigation and provided legal advice on issues such as the Town's obligations under Arizona's Public Records and Open Meeting laws.

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

Since becoming a Superior Court judge in 2010, I have been assigned to Family (2010-2013), Criminal (2013-2016), Civil (2016-2020), and Lower Court and Administrative Appeals calendars (2020-present). Additionally, I have conducted several trials in Juvenile cases involving the termination of parental rights due to parents' abuse and/or neglect of their children. While serving as an Assistant Attorney General from 1988 to 1997, I practiced primarily criminal law. In addition to handling criminal cases at the trial level, I handled approximately 100 appeals and special actions in

criminal cases pending before the Arizona Supreme Court and the Arizona Court of Appeals. Additionally, I handled trials, appeals, and special actions in asset forfeiture cases, which, with certain exceptions, follow civil procedural rules.

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.

As a judge over the past twelve years, I have drafted countless rulings and orders.

As a practicing attorney, I regularly drafted pleadings, motions/responses, settlement agreements, appellate briefs, and proposed jury instructions. Additionally, I negotiated and/or drafted a variety of contracts for clients, including sales agreements, employment agreements, and restrictive covenants. On one occasion, I revised and edited a client's employee handbook.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **Yes.** If so, state:

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

I represented an insurance agent before the Arizona Corporation Commission in 2005 in a matter arising out of the sale of unregistered securities and an applicant for a nursing license before the Arizona State Board of Nursing in 1998.

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

Sole Counsel: 2

Chief Counsel: 0

Associate Counsel: 0

21. Have you handled any matters that have been arbitrated or mediated? **Yes.** If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: 1

Chief Counsel: 5

Associate Counsel: 4

These figures include only mediations, arbitrations, and settlement conferences in which I participated as a lawyer representing clients. They do not include settlement conferences that I have conducted as a judge or a judge *pro tempore*, nor do they include arbitrations that I conducted as a court-appointed arbitrator.

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.

***Robert Stoffer, et al., v. Desert Mountain, et al.*,**
Maricopa County Superior Court Case No. CV2000-012349

1. **This case was filed in Maricopa County Superior Court in June 2000 and concluded by settlement in May 2006.**

2. **Counsel for most Plaintiffs:** **I was one of three attorneys at my former firm, Mohr, Hackett, Pederson, Blakley & Randolph P.C. ("Mohr Hackett"), who represented the majority of the plaintiffs in this case. The other two attorneys were Michael W. Wright and Thomas K. Chenal.**

Michael W. Wright
(then with Mohr Hackett)
Sherman & Howard, LLC
(480) 624-2722
mwright@shermanhoward.com

Thomas K. Chenal
(then with Mohr Hackett; now listed on the State Bar's website as "retired," with no contact information provided)

Counsel for some Plaintiffs:	**Bryan F. Murphy** **Burch & Cracchiolo, P.A.** **(602) 274-7611** **bmurphy@bcattorneys.com**
Counsel for the Defendants:	**Brian A. Cabianca** **(then with Squire, Sanders & Dempsey)** **Squire Patton Boggs LLP** **(602) 528-4160** **brian.cabianca@squirepb.com**
	Mark A. Nadeau **(then with Squire, Sanders & Dempsey; now listed on the State Bar's website as "active," but with no contact information provided)**

3. **The plaintiffs in this case asserted breach of contract and related claims against the developer and operator of a residential golf community in Scottsdale. The case was originally filed on behalf of six plaintiffs who sought class certification to represent all golf community members who purchased their memberships during the relevant time period. After class certification was denied, a total of 114 former and current members joined the litigation as plaintiffs to assert their individual claims. Toward the end of the litigation, due to disagreements on certain issues among some of the plaintiffs, some plaintiffs terminated our firm's representation and retained another firm to represent them in settlement negotiations. The matter resolved by settlement.**

4. **This case raised interesting issues relating to class certification and the application of statutes of limitations to claims asserted by multiple plaintiffs whose claims arguably accrued at different times.**

Herbert Dreiseszun, et al., v. Vulcan Materials Co. and Flood Control District of Maricopa County
Maricopa County Superior Court Case No. CV2002-014968

1. **This case was filed in Maricopa County Superior Court in August 2002 and concluded by settlement in June 2009.**

2. **Counsel for the Plaintiffs:** **Along with my partner Robert C. Hackett, I represented the Plaintiffs while I was at my former firm, Mohr Hackett.**

   Robert C. Hackett
   (then with Mohr Hackett)
   Sherman & Howard L.L.C.
   (602) 240-3044
   rhackett@shermanhoward.com

   Counsel for Defendant Vulcan Materials Co.: **Paul J. Giancola**
   Brett W. Johnson
   Snell & Wilmer L.L.P.
   (602) 382-6000
   pgiancola@swlaw.com
   bwjohnson@swlaw.com

   Counsel for Defendant Flood Control District of Maricopa County: **Roberta S. Livesay**
   Helm, Livesay and Worthington, Ltd.
   (480) 345-9500
   office@hlwaz.com

3. **My clients, who owned land in a floodplain, asserted common law nuisance and related statutory claims against an adjoining landowner, Vulcan Materials Co. ("Vulcan"), based on Vulcan's excavation of sand and gravel in a floodplain without a floodplain use permit. My clients alleged that Vulcan's excavation created erosion hazards to their property, thereby reducing its value. My clients also asserted negligence and other claims against the Flood Control District of Maricopa County (the "FCD") for failing to take action to stop Vulcan from excavating without a permit.**

   Judge Anna Baca granted my clients' motion for summary judgment against Vulcan, enjoining Vulcan from further excavation in the floodplain without a

permit. My clients then reached a settlement with Vulcan. Due to judicial rotations, the case was reassigned to Judge Eddward Ballinger, who subsequently granted a case-dispositive motion for summary judgment in the FCD's favor. While an appeal was pending, my clients and the FCD reached an agreement to settle the matter.

4. **This case involved substantial motion practice and a number of lengthy and often technical depositions of floodplain regulators, engineers, and real property appraisers. Additionally, the case raised a number of interesting legal issues including the scope of various governmental immunities and the applicability of the "economic loss rule," which bars the recovery of purely economic losses for negligence and other tort claims in the absence of personal injury or property damage.**

Trimedica International, Inc., et al. v. Paul Alan Finder, et al.,
Maricopa County Superior Court Case No. CV2004-024190

1. **This case was filed in Maricopa County Superior Court in December 2004 and concluded by settlement in February 2007.**

2. Counsel for the Plaintiffs/Counter-Defendants:	**Michael J. Fuller** **Attorney at Law** **(602) 603-7848** **michael@mjfullerlaw.com**
Counsel for the Defendants/ Counterclaimants:	**Along with associate Matthew J. Kelly, I represented the Defendants/Counterclaimants while I was with my former firm, Mohr Hackett.** **Matthew J. Kelly** **(then with Mohr Hackett)** **Arizona Attorney General's Office** **(480) 221-0083** **Matthew.Kelly@azag.gov**

3. **The opposing parties in this matter were two related corporations that alleged that an employee had used their equipment and other property without their permission so that he could conduct business on behalf of a limited liability company that he and his wife operated. I represented the now-terminated employee, his wife, and their company. My clients alleged that the use of the plaintiffs' equipment and property was done with the plaintiffs' knowledge and consent and that they paid the plaintiffs for the use of the equipment. My clients also asserted counterclaims for breach of contract and defamation. The case was eventually resolved by settlement.**

   Testimony elicited at a deposition established that, before the opposing parties retained counsel and sued my clients, one of their employees altered a critical document in this case in an effort to bolster the plaintiffs' claim for damages. As a result, after an evidentiary hearing, Judge Robert Miles imposed sanctions on the opposing parties.

4. **This case gave me the chance to argue a number of interesting legal issues, including issues relating to the factors to be considered in determining the appropriate sanction for a party's spoliation of evidence and my (successful) argument that the restrictive covenant in the former employee's employment agreement was overbroad and, therefore, unenforceable.**

23. Have you represented clients in litigation in Federal or state trial courts? **Yes.**
    If so, state:

    The approximate number of cases in which you appeared before:

    Federal Courts: __7__

    State Courts of Record: _more than 100*_

    Municipal/Justice Courts: _approximately 30_

    ***This figure is a conservative estimate. I do not have records of all of the cases I handled as an Assistant Attorney General**.

    The approximate percentage of those cases which have been:

    Civil: _35%_

    Criminal: _65%_

The approximate number of those cases in which you were:

Sole Counsel: 75

Chief Counsel: 20

Associate Counsel: 40

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: 25%

You argued a motion described above 25%

You made a contested court appearance (other than as set forth in the above response) 33%

You negotiated a settlement: 75+%

The court rendered judgment after trial: < 5%

A jury rendered a verdict: < 5%

The number of cases you have taken to trial:

Limited jurisdiction court 6

Superior court 7

Federal district court 0

Jury 9

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

24. Have you practiced in the Federal or state appellate courts? **Yes.** If so, state:

The approximate number of your appeals which have been:

Civil: 6

Criminal: 100+

Other: 0

The approximate number of matters in which you appeared:

As counsel of record on the brief: 100+

Personally in oral argument: 5

25. Have you served as a judicial law clerk or staff attorney to a court? **No.** If so, identify the court, judge, and the dates of service and describe your role.

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 of Arizona v. Eric John King*, 180 Ariz. 268, 883 P.2d 1024 (1994)**

1. **This appeal was filed in March 1991 and concluded when the Arizona Supreme Court issued its opinion in November 1994.**

2. **This case was a direct appeal to the Arizona Supreme Court of the convictions and capital sentences of Eric John King. The Court's opinion was authored by Justice Robert Corcoran and was joined by Chief Justice Stanley Feldman and Justice Thomas Zlaket. Vice Chief Justice James Moeller authored a concurring opinion in which Justice Frederick Martone joined.**

3. **Counsel for the State:** **I researched, drafted, and filed the answering brief on behalf of the State while I was with the Criminal Appeals Section of the Arizona Attorney General's Office. After I transferred to a different section within the Attorney General's Office, this case was argued before the Arizona Supreme Court by Assistant Attorney General John P. Todd.**

John P. Todd
(Then with the Arizona Attorney General's Office)
(480) 238-1658
johnpressleytodd@gmail.com

Counsel for the Defendant: **Edward F. McGee**
(then with the Maricopa County Public Defender's Office; now listed on the State Bar's website as "retired," with no contact information provided)

4. **The charges in this matter arose out of the defendant's killing of a convenience store clerk and security guard. On appeal, the defendant raised a variety of challenges to his convictions and sentences, all of which were rejected.**

5. **This case is significant because the Arizona Supreme Court's opinion clarified the scope of Rule 801(d)(1)(A) of the Arizona Rules of Evidence, which permits impeachment of a witness with his or her prior inconsistent statements. In this case, a witness who had given a statement to the police after the killings testified at trial that he did not remember the events that were the subject of his prior statement. Over the defendant's objection, the trial judge permitted the prosecutor to use the witness's pretrial statement to the police for impeachment purposes. The defendant challenged the trial judge's ruling on appeal, asserting that the witness's pretrial statement to the police was not a "prior inconsistent statement" within the meaning of Rule 801(d)(1)(A) because his pretrial statement was not "inconsistent" with his claim, at trial, that he no longer remembered the events. The Supreme Court accepted my argument that a witness's claim of lack of memory, if disbelieved by the trial judge, may be deemed inconsistent with the witness's pretrial statement, and therefore that the pretrial statement is admissible under Rule 801(d)(1)(A).**

***State of Arizona v. David Martinez Ramirez*, 178 Ariz. 116, 871 P.2d 237 (1994)**

1. **This appeal was filed in December 1990 and concluded when the Arizona Supreme Court issued its opinion in March 1994.**

2. This case was a direct appeal to the Arizona Supreme Court of the defendant's convictions and capital sentences. The Court's opinion was authored by Justice Robert Corcoran and joined by Chief Justice Stanley Feldman, Vice Chief Justice James Moeller, and Justices Thomas Zlaket and Frederick Martone.

3. Counsel for the State: **I researched, drafted, and filed the answering brief on behalf of the State while I was with the Criminal Appeals Section of the Arizona Attorney General's Office. After I transferred to a different section within the Attorney General's Office, this case was argued before the Arizona Supreme Court by Assistant Attorney General John P. Todd.**

John P. Todd
(then with the Arizona Attorney General's Office)
(480) 238-1658
johnpressleytodd@gmail.com

Counsel for the Defendant: **Neal W. Bassett**
(listed on the State Bar's website as "resigned," with no email address provided)
(602) 254-6112

4. The charges against the defendant arose out of his killing of his former girlfriend and her teenaged daughter. The defendant raised various challenges to his convictions and sentences, all of which were rejected.

5. This case is significant because the Arizona Supreme Court's opinion clarified the scope of *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* generally requires the suppression of a defendant's answers to questions asked during custodial interrogation unless the defendant is first advised of his or her rights to the assistance of counsel and to remain silent. In this case, officers who arrived at the scene in response to a 911 call arrested the defendant immediately upon his exiting of the victims' apartment. The Court accepted my argument that the defendant's answers to the officers' post-arrest questions, including "Who else is inside?" and "Is anyone else

hurt?", though given without benefit of *Miranda* warnings, were nonetheless admissible at trial pursuant to *Miranda*'s "public safety" exception.

***Daniel J. Sommer, et al., v. Edgar Stoffels, et al*.,**
2009 WL 1138045 (Ariz.App. Div. 1, Apr. 28, 2009)

1. **This case was filed in Maricopa County Superior Court in January 2008. *See Daniel J. Sommer, et al. v. Edgar Stoffels, et al*., Maricopa County Superior Court Case No. CV2008-050088. After Superior Court Judge Paul Katz issued a preliminary injunction in favor of my firm's clients, the opposing parties appealed to Division One of the Court of Appeals, which issued a memorandum decision affirming the preliminary injunction in April 2009. The case was remanded to the Superior Court and a permanent injunction was entered in March 2010 that concluded the case.**

2. **The opposing parties' appeal from the preliminary injunction was heard by a panel of the Court of Appeals comprised of then-Judge (now Justice) Ann Scott Timmer, Judge Jon Thompson, and Judge Margaret Downie (who authored the memorandum decision).**

3. **Counsel for the Plaintiffs:** **Along with my then-partner Michael W. Wright, I represented the Plaintiffs while I was with Mohr Hackett.**

   Michael W. Wright
   (then with Mohr Hackett)
   Sherman & Howard L.L.C.
   (480) 624-2722
   mwright@shermanhoward.com

   Counsel for the Defendants: **Brian M. Bergin**
   (then with Rose Law Group, PC)
   Bergin, Frakes, Smalley & Oberholtzer
   (602) 888-7857
   bbergin@bfsolaw.com

Cassie Adams
(then with Rose Law Group, PC)
Arizona Attorney General's Office
(602) 542-8334
Cassie.Adams@azag.gov

4. **Our clients sued their neighbors to enjoin them from constructing a second garage on their property in violation of applicable deed restrictions. The trial court's ruling granting our client's motion for injunctive relief was affirmed on appeal. I researched and drafted the appellate brief on behalf of our clients and argued the case before the Court of Appeals.**

5. **This case presented interesting issues regarding the enforceability of restrictive covenants. On a more personal note, this case is significant to me because it was the last appeal in which I participated as a practicing attorney prior to my appointment as a judge.**

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, 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.).

I was appointed a Superior Court judge for Maricopa County in 2010 and retained in office in the 2012, 2016, and 2020 general elections.

I served in the Family Department from June 2010 until June 2013. I presided over bench trials and hearings in divorce and custody cases, resolving disputes over issues ranging from legal decision-making authority, parenting time, spousal maintenance, child support, the division of marital property and allocation of responsibility for marital debt, and visitation for grandparents and other third parties.

I served in the Criminal Department from June 2013 until June 2016. I conducted over 50 jury trials and countless hearings (including, for example, change of plea hearings, sentencings, and evidentiary hearings on motions to suppress evidence) in a variety of felony cases, including cases involving

charges of murder, sexual assault, crimes involving children, and other offenses.

I served in the Civil Department from June 2016 until November 2020, including serving as Associate Civil Presiding Judge from June 2018 until November 2020. I presided over jury trials, evidentiary hearings, oral arguments, and other hearings in cases involving claims as varied as professional malpractice, eminent domain, breach of contract, personal injury, and challenges to the placement of candidates and initiative measures on the ballot. Additionally, I conducted several severance trials in Juvenile cases that had previously been assigned to Juvenile Department judges but which were re-assigned to me as part of an effort to reduce the backlog of cases in the Juvenile Department.

I am now the Presiding Judge of the Lower Court and Administrative Appeals Department, a position I have held since November 2020. Judgments and appealable decisions entered by justice courts, municipal courts, and most administrative agencies are appealed to the Superior Court, rather than to the Court of Appeals. As the Superior Court's Lower Court and Administrative Appeals judge, I review the parties' appellate briefs, the record of the proceedings below, and the relevant legal authorities; conduct oral arguments; and issue written rulings either affirming or reversing the judgments and decisions being appealed. In each of my written rulings, I discuss the relevant facts of the case and the pertinent legal authorities and explain the basis for my decision. It is my goal to make sure that, at the end of every case and regardless of the outcome, both sides feel that I listened to them, carefully considered their arguments, and made my decision based solely on the merits.

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.

City of Phoenix v. State of Arizona
Maricopa County Superior Court Case No. CV2016-014855

1. **This case was filed in September 2016; I entered judgment in January**

2018. The judgment was affirmed on appeal by memorandum decision issued in February 2019. *See City of Phoenix v. State of Arizona*, 2019 WL 845334 (Ariz.App. Div. 1, Feb. 21, 2019).

2. **This case was filed in Superior Court and resolved by my ruling on the parties' respective dispositive motions, which was subsequently affirmed by Division One of the Court of Appeals.**

3. **Counsel for Plaintiff City of Phoenix (the "City"):** **Colin Campbell, Joseph D. Roth, Eric M. Fraser, Osborn Maledon, P.A., (602) 640-9000, ccampbell@omlaw.com, jroth@omlaw.com, efraser@omlaw.com**

   Counsel for Defendant State of Arizona (the "State"): **Rusty D. Crandell (then with the Arizona Attorney General's Office), Maricopa County Superior Court, (602) 372-3140**

4. **This case involved a dispute over amendments that were enacted in 2016 (the "2016 amendments") to certain statutes that govern the creation of "improvement districts." Arizona statutes authorize municipalities to establish "improvement districts" within municipal boundaries. Improvement districts provide certain public services at a higher level or greater degree than those provided in the surrounding community; such services are funded by taxes assessed against real property located within the improvement district's boundaries. The 2016 amendments changed the process for establishing an improvement district by adding a requirement that the proponents of the establishment of an improvement district demonstrate that the creation of the proposed district is supported by the owners of a majority of the taxable property within the proposed district.**

   The City sued for declaratory relief, seeking a judicial declaration that the 2016 amendments did not apply to a downtown arts district known as the Roosevelt Business Improvement District or "Roosevelt Row." The City argued that it had already satisfied all then-existing statutory

requirements for establishing a business improvement district prior to the enactment of the 2016 amendments, and that the 2016 amendments did not apply retroactively. In the alternative, the City argued that, if the 2016 amendments apply to Roosevelt Row, the 2016 amendments constitute a "special law" that violates Article IV, pt. 2, § 19 of the Arizona Constitution, which prohibits "local or special laws…when a general law can be made applicable."

After briefing and argument, I issued a written ruling rejecting the City's arguments. I found that the undisputed facts established that the the City had not yet completed all statutory steps required for the establishment of an improvement district before the 2016 amendments took effect, and therefore that the 2016 amendments did, in fact, apply to Roosevelt Row. Finally, I rejected the City's argument that the 2016 amendments constitute a "special law" in violation of the Arizona Constitution, holding that, pursuant to criteria established in case law, the 2016 amendments do not constitute a "special law."

My ruling on the parties' dispositive motions was issued on July 24, 2017, and can be found on the Clerk of the Superior Court for Maricopa County's website at http://www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/072017/m7932591.pdf.

6. **This case was unusual in that it involved a dispute between two governmental entities over the constitutionality of a state statute.**

***Vince Leach, et al., v. Michele Reagan, et al.*,**
Maricopa County Superior Court Case No. CV2018-009919

1. **This case was filed with the Superior Court on July 19, 2018. A little over a month later, I conducted a 5-day trial and issued my ruling on August 27, 2018. The Arizona Supreme Court affirmed my ruling by order issued two days later, and subsequently issued a written opinion on December 6, 2018. *See Leach v. Reagan*, 245 Ariz. 430, 430 P.3d 1241 (2018).**

2. **This case was filed and tried in Superior Court, and then affirmed by the Arizona Supreme Court.**

3. Counsel for Plaintiffs Vince Leach, Glenn Hamer, Justine Robles, John Kavanagh, Jenn Daniels, Jackie Meck, Ashley Ragan, and John Giles:	**Brett W. Johnson** **Jennifer Hadley Catero** **Colin P. Ahler** **Snell & Wilmer L.L.P.** **(602) 382-6000** **bwjohnson@swlaw.com** **jcatero@swlaw.com** **cahler@swlaw.com**
Co-Counsel for Defendant Arizona Secretary of State Michele Reagan:	**Kara Karlson** **Arizona Attorney General's Office** **(602) 542-5025** **kara.karlson@azag.gov**
	Joseph E. La Rue **(then with the Arizona Attorney General's Office)** **Maricopa County Attorney's Office** **(480) 737-1321** **laruej@mcao.maricopa.gov**
	Timothy Berg **Janice Procter-Murphy** **Fennemore Craig, P.C.** **(602) 916-5000** **tberg@fennemorelaw.com** **jpmurphy@fennemorelaw.com**
Counsel for Real Party-in-Interest Clean Energy for a Healthy Arizona Committee:	**James E. Barton II** **(then with Torres Law Group, PLLC)** **Barton Mendez Soto PLLC** **401 W. Baseline Road, Suite 205** **Tempe, AZ 85283** **(480) 418-0668** **James@bartonmendezsoto.com**

	Saman John Golestan **(then with Torres Law Group, PLLC)** **Peoria City Attorney's Office** **(480) 628-2194** **Saman.Golestan@peoriaaz.gov**
Counsel for Intervenors Speaker of Arizona House of Representatives J.D. Mesnard and President of Arizona Senate Steve Yarbrough:	**Kory Langhofer** **Thomas Basile** **Statecraft PLLC** **(602) 362-0036** **kory@statecraftlaw.com** **tom@statecraftlaw.com**
Counsel for Defendants Apache County Recorder and Apache County Supervisors:	**Joseph Young** **(then with the Apache County Attorney's Office)** **(480) 766-6732** **josephdyoung7@gmail.com**
Counsel for Defendants Cochise County Recorder and Cochise County Supervisors:	**Britt W. Hanson** **(then with the Cochise County Attorney's Office; now listed on the State Bar's website as "retired," with no contact information provided)**
Counsel for Defendants Coconino County Recorder Patty Hansen and Coconino County Supervisors:	**William P. Ring** **Coconino County Attorney's Office** **(928) 679-8200** **wring@coconino.az.gov**
	Rose M. Winkeler **(then with the Coconino County Attorney's Office)** **Flagstaff Law Group, PLLC** **(928) 233-6800**
Counsel for Defendants Gila County Recorder and Gila County Supervisors:	**Jefferson R. Dalton** **Gila County Attorney's Office** **(928) 402-8638** **jdalton@gilacountyaz.gov**

Counsel for Defendants Graham County Recorder and Graham County Supervisors:	**Kenneth A. Angle** **(then with the Graham County Attorney's Office)** **Tohono O'odham Nation Prosecutor's Office** **(520) 383-4590** **(no email address provided on employer's website)**
Counsel for Defendants Greenlee County Recorder and Greenlee County Supervisors:	**Robert Gilliland** **Nogales Municipal Court** **(then with the Greenlee County Attorney's Office)** **(520) 287-6571** **rgilliland@courts.az.gov**
Counsel for Defendants La Paz County Recorder and La Paz County Supervisors:	**R. Glenn Buckelew** **(then with the La Paz County Attorney's Office; now listed on the State Bar's website as "retired," with no contact information provided)**
Counsel for Defendants Maricopa County Recorder and Maricopa County Supervisors:	**Talia J. Offord** **(then with the Maricopa County Attorney's Office)** **United Healthcare** **(602) 708-6679** **talia.offord@gmail.com** **M. Colleen Connor** **(then with the Maricopa County Attorney's Office)** **Yavapai County** **(928) 777-7101** **(no email address provided on employer's website)**

Counsel for Defendants Mohave County Recorder and Mohave County Supervisors:	**Matthew J. Smith** **Ryan Esplin** **Mohave County Attorney's Office** **(928) 753-0719** **CAOcourt@Mohave.gov**
Counsel for Defendants Navajo County Recorder and Navajo County Supervisors:	**Jason S. Moore** **Navajo County Attorney's Office** **(928) 524-4026** **jason.moore@navajocountyaz.gov**
Counsel for Defendants Pima County Recorder and Pima County Supervisors:	**Daniel Jurkowitz** **Pima County Attorney's Office** **(520) 724-5600** **Daniel.Jurkowitz@pcao.pima.gov**
Counsel for Defendants Pinal County Recorder and Pinal County Supervisors:	**Craig C. Cameron** **Pinal County Attorney's Office** **(520) 866-6271** **craig.cameron@pinal.gov**
Counsel for Defendants Santa Cruz County Recorder and Santa Cruz County Supervisors:	**Charlene Laplante** **(then with the Santa Cruz County Attorney's Office)** **San Carlos Apache Tribe Office of the Attorney General** **(no contact information provided on the State Bar's website or employer's website)**
Counsel for Defendants Yavapai County Recorder and Yavapai County Supervisors:	**Thomas M. Stoxen** **Yavapai County Attorney's Office** **(928) 771-3344** **Thomas.Stoxen@yavapai.us**

	Jessica Salem **(then with the Yavapai County Attorney's Office)** **District Attorney's Office for Montezuma and Dolores Counties** **(970) 564-2756** **jsalem@co.montezuma.co.us**
Counsel for Defendants Yuma County Recorder and Yuma County Supervisors:	**William J. Kerekes** **Yuma County Attorney's Office** **(928) 817-4300** **bill.kerekes@yumacountyaz.gov**

4. **The plaintiffs in this case challenged the placement, on the November 2018 ballot, of Proposition 127, an initiative measure that would have amended the Arizona Constitution to require certain electricity providers to generate at least 50% of their electricity from renewable sources. The plaintiffs asserted a variety of arguments, including challenges to (1) the organizational formation of the political action committee that sponsored the measure, (2) the accuracy of the measure's title and text, and (3) the validity of petition signatures submitted in support of the measure. In support of the placement of the measure on the ballot, the measure's sponsor challenged the constitutionality of two statutes: A.R.S. § 19-102.01, which requires "persons using the initiative process" to "strictly comply" with applicable constitutional and statutory requirements (thereby abrogating the "substantial compliance" standard that formerly applied) and A.R.S. § 19-118(C), which invalidates all signatures submitted by a registered petition circulator who fails to comply with a subpoena requiring him or her to testify in a case in which the validity of those signatures is challenged.**

   I rejected the plaintiffs' challenges to the committee's formation and the sufficiency of the measure's title and text, finding those challenges to lack support in statute or case law. I rejected the sponsor's challenge to the constitutionality of A.R.S. § 19-102.01 and A.R.S. § 19-118(C), both because of the strong presumption in favor of the constitutionality of statutory enactments and because I found that those statutes promote the important public interest in fair and transparent elections. Finally, after considering the evidence presented at trial, I found that, although many of

the signatures submitted in support of the measure were invalid for a variety of reasons (including that some of the signatures had obviously been forged), the number of valid signatures that had been submitted was sufficient to qualify the measure for placement on the ballot.

My ruling in this case was issued on August 27, 2018, and is available on the Clerk of the Superior Court for Maricopa County's website at http://www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/082018/m8425143.pdf As noted above, the Arizona Supreme Court affirmed my ruling in *Leach v. Reagan*, 245 Ariz. 430, 430 P.3d 1241 (2018).

5. **This case presented unique logistical challenges due to the unusually large number of parties and attorneys involved and the fact that, collectively, the parties offered over 6,000 exhibits at trial and subpoenaed over 900 witnesses, of whom more than 40 testified. The logistical challenges presented by this case were exacerbated by the necessity of resolving the case on an accelerated basis in order to meet statutory ballot printing deadlines.**

   Apart from its logistical challenges, this case is significant because of the novelty of the issues presented. Among other things, the issues raised by the parties required me to interpret, and resolve constitutional challenges to, statutes that were of recent enactment and whose constitutionality had not, to my knowledge, been previously tested.

   The novelty of the issues presented in this case is illustrated by the fact that, on the same day that I issued my ruling upholding the constitutionality of A.R.S. § 19-102.01's requirement that initiative sponsors strictly comply with applicable constitutional and statutory requirements, another Superior Court judge issued a ruling in an unrelated case that reached the opposite conclusion. The ruling in that case was reversed by the Arizona Supreme Court in *Molera v. Reagan*, 245 Ariz. 291, 428 P.3d 490 (2018), with two justices dissenting.

Laurin Hendrix v. Town of Gilbert, et al.
Maricopa County Superior Court Case No. CV2020-009892

1. **This case was filed with the Superior Court on August 18, 2020. I conducted a hearing on September 9, 2020 and issued my ruling the following day, September 10, 2020.**

2. **This case was filed in Superior Court and resolved by my ruling on the parties' dispositive motions.**

3. **Counsel for the Plaintiff** — **Timothy A. La Sota, Timothy A. La Sota, PLC, (602) 515-2649, tim@timlasota.com**

   Counsel for Defendants Town of Gilbert and Gilbert Town Clerk: — **Charles W. Wirken, Gust Rosenfeld PLC, (602) 257-7959, cwirken@gustlaw.com**

   Counsel for Defendant Town Council Member Bill Spence: — **Aaron D. Arnson, Pierce Coleman PLLC, (602) 777-5506, Aaron@PierceColeman.com**

4. **The plaintiff ran for a seat on the Gilbert Town Council and won the primary election held on August 4, 2020. Because he faced no opponent in the general election, the plaintiff sought to take office immediately upon winning the primary election. The Defendant Town of Gilbert (the "Town") and other defendants took the position that the governing Town ordinance did not entitle the plaintiff to take office until January of the following year, at the same time that the other candidates who prevailed in the November general election were to take office. The plaintiff filed this suit, seeking a judicial determination that state law prohibited Town officials from requiring him to wait until January 2021 to assume office.**

   Although a Town ordinance provides that successful candidates do not take office until January of the year following the general election, a state statute, A.R.S. § 9-821.01, provides in part that a candidate for mayor or municipal council who wins a majority of the vote in the primary election is deemed elected to the office "effective as of the date of the general election…" A.R.S. § 9-821.01(D) (emphasis added). Pursuant to the state statute, in other words, the plaintiff was entitled to take office as of the date of the November general election, rather than waiting until the following January.

   I held that, because a municipal enactment must yield to a state statute

in the event of a conflict, A.R.S. § 9-821.01(D) entitled the plaintiff to take office in November 2020, notwithstanding the provisions of the Town ordinance that would have required him to wait until January 2021.

My ruling in this case was issued on September 10, 2020, and can be found on the Clerk of the Superior Court for Maricopa County's website at http://www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/092020/m9280516.pdf.

5. This case is significant because it involved a conflict between state and local enactments. In my ruling, I reaffirmed the principle that, in the event of a conflict between a local ordinance and a state statute, the latter prevails.

Manuel Gonzales v. Arizona State Board of Nursing
Maricopa County Superior Court Case No. LC2021-000127

1. This case was filed in the Superior Court in May 2021 as an appeal from a decision by an administrative agency to revoke the appellant's nursing license. I issued my ruling reversing the agency's decision in March 2022.

2. This case was appealed from the Arizona State Board of Nursing (the "Board") to the Lower Court and Administrative Appeals Department of the Superior Court. After I issued my ruling reversing the Board's decision, the Board appealed my ruling to Division One of the Court of Appeals. The appeal is now pending.

3.

Counsel for the Appellant	**David Farren** **Mark D. Bogard** **Jaburg & Wilk, P.C.** **(602) 248-1000** **dnf@jaburgwilk.com** **mdb@jaburgwilk.com**
Counsel for the Board:	**Elizabeth Campbell** **Arizona Attorney General's Office** **(602) 542-7681** **Elizabeth.Campbell@azag.gov**

4. The appellant in this case is a registered nurse. The case began when the

Board summarily suspended his nursing license as a result of a workplace incident in which he allegedly assaulted a coworker.

Because the appellant's license was suspended without notice and with no pre-suspension opportunity to be heard, applicable agency rules and case law entitled the appellant to a prompt post-suspension hearing at which he would have the opportunity to contest the suspension. The Board did, in fact, promptly schedule the post-suspension hearing before an administrative law judge (the "ALJ"), as the Board was required to do. The Board unilaterally decided, however, to consolidate this post-suspension hearing with a hearing on the merits of whether the appellant's license should be revoked entirely. The consolidated hearing was held on December 1, 2020, only twelve business days after the suspension of the appellant's license on November 12, 2020.

At the conclusion of the December 1st hearing, the ALJ recommended not only that the summary suspension of the appellant's license be upheld, but that the appellant's license be revoked entirely. The Board subsequently adopted the ALJ's recommendations and revoked the appellant's license.

The appellant appealed to the Superior Court, asserting that he had been denied due process because he had not been given adequate time to prepare for the revocation hearing.

After briefing and argument, I ruled that the Board violated the appellant's due process and statutory rights when it unilaterally consolidated the post-suspension hearing with the final hearing on the merits of the revocation of the appellant's license. In so ruling, I held that, although the appellant was entitled to a prompt post-suspension hearing following the suspension of his license, the Board had no right to unilaterally consolidate the post-suspension hearing with the revocation hearing. On the contrary, A.R.S. § 41-1092.05(D) entitles a licensee to notice of a revocation hearing "at least thirty days" in advance of the hearing, a requirement that serves to ensure that the licensee has adequate time to prepare. By unilaterally consolidating the suspension hearing with the revocation hearing and scheduling the consolidated hearing on an expedited basis, the Board deprived the appellant of adequate time to prepare for the revocation hearing in violation of his constitutional and statutory rights.
Because the evidence presented at the December 1st hearing was sufficient to justify the suspension of the appellant's license, I affirmed the

suspension of his license pending the outcome of the administrative proceedings. I reversed the revocation of his license, however, and remanded the case to the Board to schedule a revocation hearing after the appellant has had adequate time to prepare for it.

My ruling in this appeal was issued on March 4, 2022, and can be found on the Clerk of the Superior Court for Maricopa County's website at
http://www.courtminutes.maricopa.gov/viewerME.asp?fn=Lower%20Court/032022/m9893036.pdf

5. This case is significant because it gave me the opportunity to affirm that the fundamental principles of due process that apply in judicial proceedings - - *i.e.*, notice and an opportunity to be heard at a meaningful time and in a meaningful manner - - apply with equal force in administrative proceedings.

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

Prior to my appointment as a judge, I handled over one hundred appeals and special actions before Arizona's appellate courts as a practicing attorney.

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.** If so, give details, including dates.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No.** If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

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.** If not, explain your decision.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes.** If not, explain.

33. Have you paid all state, federal and local taxes when due? **Yes.** If not, explain.

34. Are there currently any judgments or tax liens outstanding against you? **No.** If so, explain.

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.** If so, explain.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **I have never been a party to a lawsuit except on a handful of occasions when I have been named as a nominal respondent in a special action filed in an appellate court challenging a ruling that I made as a trial judge. As discussed above, for example, I was the nominal respondent in *Arizona Chamber of Commerce & Industry v. Kiley*, 242 Ariz. 533, 399 P.3d 80 (2017).** If so, identify the nature of the case, your role, the court, and the ultimate disposition.

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.** If so, explain.

38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No.** If so, explain.

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.** If so, provide details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No.**

    If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition. **Not applicable.**

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.

    When I was in private practice, two individuals complained to the State Bar

of Arizona about me. The State Bar dismissed both complaints with no action taken.

The first complaint was made by an adverse party, S.F. As an associate at my former firm, I assisted a shareholder in defending certain clients in a lawsuit filed against them by S.F. and her husband. S.F. filed a complaint with the State Bar against the shareholder and me, alleging a conflict of interest in that another Mohr Hackett attorney had represented S.F. and her husband in an unrelated matter several years earlier. The State Bar dismissed her complaint, and S.F. did not appeal the dismissal.

The second complaint was made by a former client, C.S., whom I represented in litigation filed against her by her former business partner. Included within a stack of documents that opposing counsel disclosed to us with his client's initial disclosures was a copy of an email from the opposing party to her attorney that appeared to be a privileged communication that had been inadvertently disclosed. I returned the document to opposing counsel after explaining to C.S. that ER 4.4(b) of the Arizona Rules of Professional Conduct imposed an ethical obligation on me to return the inadvertently-disclosed privileged document. Although I had explained my ethical obligation to C.S. to return the inadvertently-disclosed privileged document, C.S. was upset that I returned the document rather than trying to use it to her advantage in the litigation. Shortly after I returned the privileged document to opposing counsel, C.S. terminated my services, and then filed a complaint against me with the State Bar. The State Bar dismissed her complaint, and C.S. did not appeal the dismissal.

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? **No.** If so, in each case, state in detail the circumstances and the outcome.

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.** If your answer is "Yes," explain in detail.

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.** If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

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.** If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

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.** If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

PROFESSIONAL AND PUBLIC SERVICE

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

***Minimum E-Contacts: Personal Jurisdiction in the Internet Age*, 47 Arizona Attorney Magazine 58 (Nov. 2010)**

***Arizona's Stop Notice Remedy*, The Arizonan (quarterly publication of the Arizona Contractors Association), Winter 2008**

***Application of the Exclusionary Rule to Deportation Cases Involving Egregious Fourth Amendment Violations: Arguelles-Vasquez v. Immigration and Naturalization Service*, 19 Arizona State Law Journal 543 (1987)**

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.** If not, explain.

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes.** If so, describe.

Presenter, "*New Issues in Lower Court Appeals*," Maricopa County Justice

Courts, May 2022

Presenter, "*Lower Court and Administrative Appeals*," State Bar of Arizona, Construction Law Section, April 2022

Presenter, "*View From the Bench – Lower Court and Administrative Appeals*," State Bar of Arizona, Administrative Law Section, November 2021

Panelist, "*Follow the Yellow Brick Road to the City Court Bench*," Maricopa County Bar Association ("MCBA"), November 2021

Panelist, "*2020 Arizona Election Law: The Most Comprehensive Review of Arizona Election Law*," State Bar of Arizona, February 2020

Panelist, "*Up Your Motion Game*," State Bar of Arizona, September 2019

Speaker, "*Playing Within the Rules: How the New Civil Rules Are Being Used in the Courtroom*," Arizona Association for Justice/Arizona Trial Lawyers Association, October 2018

Panelist, "*Expert Witnesses in Civil Cases*," Arizona Judicial Conference, June 2018

Panelist, "*As Judges See It: Best and Worst Practices in Civil Litigation*," National Business Institute ("NBI"), June 2017

Panelist, "*Braving the Storm: Dealing With Opposing Counsel and the Court*," State Bar of Arizona, August 2016

Panelist, "*The View from the Bench*," MCBA Bench-Bar Conference, September 2014

Panelist, "*Meet the Judges*," annual interactive program sponsored by the MCBA, October 2013

Panelist, "*Family Court Judicial Forum*," State Bar of Arizona, October 2012

Panelist, "*Meet the Judges*," annual interactive program sponsored by the MCBA, October 2012

Speaker, "*The Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA")*," Maricopa County Judicial Education Day, October 2012
Panelist, "*What Family Court Judges Want You to Know*," NBI, May 2012

Panelist, "*Meet the Judges*," annual interactive program sponsored by the MCBA, October 2011

Over the years, I have chaired approximately fifteen seminars on a variety of subjects on behalf of the Maricopa County Bar Association. The seminars have been on such diverse subjects as Evidence, Jury Selection, and Litigating Civil Forfeiture Cases. As seminar chair, I identified the issues to be addressed, recruited faculty, and generally organized the program. I do not have records of the dates of most of these seminars. The subject of the most recent seminar, which was held on November 13, 2015, was the inmate placement and time computation policies of the Arizona Department of Corrections.

As a longtime member and current co-chair of the Maricopa County Bar Association's Bench-Bar Committee, I have helped prepare training materials for the courtroom advocacy seminar that is held in conjunction with the annual Bench-Bar Conference.

I have served as a judge at moot court and other student competitions at the Sandra Day O'Connor College of Law on numerous occasions over the years. I do not have records of the dates of these competitions.

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

State Bar of Arizona, 1988-present

Maricopa County Bar Association ("MCBA"), 1988-present

MCBA Bench-Bar Committee, 2014-present

Co-Chair, 2020-present

MCBA Public Lawyers Division, 1988-1997 and 2010-present

President, 1993-1994

Board of Directors, 1989-1995, 2013-present

MCBA Continuing Legal Education Committee, 1992-2001

Vice Chair, 1998-2000

Criminal Law Subcommittee Co-Chair, 1994-1997

Arizona Judges Association, 2010-present
Supreme Court Historical Society, 2006-present

Harvard Club of Phoenix, 2009-2014

Harvard Club Board of Directors, 2009-2012

Arizona Republican Lawyers Association, 2009-2010

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.**

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 the like.

Prior to my appointment as a judge, I participated regularly in the Volunteer Lawyers Program ("VLP") sponsored by Community Legal Services, Inc. As a frequent volunteer with VLP's Attorney of the Day program, I met with indigent clients to discuss their legal issues, provide advice, and prepare a written summary of their cases to assist VLP in placing cases with volunteer attorneys where appropriate.

I have been active in the Maricopa County Bar Association ("MCBA") throughout my legal career. I have been a member of the MCBA's Bench-Bar Committee since 2014, and currently serve as co-chair of that committee. As a member of the Bench-Bar Committee's Trial Advocacy Program Subcommittee, I have helped plan and organize the courtroom advocacy program for young lawyers that is presented at the MCBA's annual Bench-Bar Conference.

I have been a member of the MCBA's Public Lawyers Division Board of Directors since 2013. I previously served on the same board from 1989 through 1995 while I was an Assistant Attorney General, and served as President of the MCBA's Public Lawyers Division from 1993 to 1994.

I was a member of the MCBA's Continuing Legal Education Committee from 1992 through 2001, serving as the committee's Vice Chair from 1998 to 2000 and as Co-Chair of the Criminal Law Subcommittee from 1994 to 1997.

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

Since 2017, my wife and I have been involved with Maggie's Place, a non-profit organization that maintains homes for, and provides services to,

homeless pregnant women and new mothers. We deliver meals on a monthly basis to the residents of Elizabeth House, one of the homes operated by Maggie's Place.

I have served since 2018 on the Mesa Judicial Advisory Board, which evaluates candidates for appointment or reappointment to the Mesa Municipal Court and makes recommendations to the Mesa City Council.

In 2016 and again in 2018, I served as a member of a Judicial Performance Review ("JPR") team. The team met with certain judges individually to review their JPR scores, identify potential areas for improvement, and set measurable goals for implementing steps for improvement.

My wife and I have long supported NPH-USA (formerly known as "Friends of the Orphans"), a non-profit organization that provides financial and other support to Nuestros Pequeños Hermanos ("NPH"), a network of homes for orphaned and abandoned children in nine countries in Latin America and the Caribbean. In addition to sponsoring three children over the past fifteen years, my wife and I have visited two NHP homes in Mexico and served as a host family for children from the NPH home in Nicaragua during their visit to Arizona in October 2008. I served as a member of the board of directors of NPH-USA's Southwest Region from 2007 until 2010.

From 2001 to 2010, my wife and I volunteered at My Sister's Place, a domestic violence shelter in Chandler. We provided child care one evening each month while the women at the shelter met in "group" to discuss their experiences and provide mutual support.

I served as a den leader for my son's Cub Scout Pack, Pack 679 in Chandler, from 2006 until 2009.

I served as a recorder of the Arizona Town Hall in October 2002.

From 1991 to 1995, my wife and I volunteered at the Arizona State Hospital on alternate Sunday mornings. We escorted patients who wanted to attend religious services from their rooms to the on-campus chapel and then visited with them over coffee after services were concluded.

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

While I was a practicing attorney, my Martindale-Hubbell Peer Review Rating was AV Preeminent.

In May 2009, the Arizona Foundation for Legal Services and Education named me one of the "Top 50 Pro Bono Attorneys" in Arizona.

In November 2009, my wife and I were awarded the Jim Bastian Volunteer Service Award by the Friends of My Sister's Place Committee for our service as volunteers at a domestic violence shelter known as "My Sister's Place."

In 2001, the Maricopa County Bar Association awarded me the Kenneth D. Freedman Award for Excellence in Continuing Legal Education in recognition of my activities on behalf of the association's Continuing Legal Education Committee.

In 1994, along with several other volunteers, I received the Exceptional Volunteer Service Award from the Arizona State Hospital.

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

I was appointed a Superior Court judge in 2010 and retained in office in the 2012, 2016, and 2020 general elections.

Since November 2020, I have served as the Presiding Judge of the Lower Court and Administrative Appeals Department. Before that, from June 2018 until November 2020, I served as the Associate Presiding Judge of the Superior Court's Civil Department.

I was elected a Republican Party precinct committeeman in 2002, 2004, and 2006.

Have you ever been removed or resigned from office before your term expired? **No.** If so, explain.

Have you voted in all general elections held during the last 10 years? **Yes.** If not, explain.

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

My life outside of work centers around my family. For over 28 years, I have had the good fortune to be married to the best person I know, and together we have two wonderful children who have grown into smart, kind, and independent young adults. The four of us enjoy spending time together. Among other things, we often meet for dinner at a local restaurant or compete as a team in trivia contests at a nearby sports bar.

Among my other interests are traveling (including, most recently, a trip to Bryce Canyon National Park last fall) and reading (particularly history and biographies; *My Grandfather's Son: A Memoir*, by Justice Clarence Thomas, is a recent favorite).

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 practicing lawyer for over twenty years before joining the Superior Court, I represented clients from all walks of life in a wide range of cases. My years in private practice gave me the chance to represent individuals who were quite wealthy, some who were of modest means, and others who were indigent, as well as businesses ranging from sole proprietorships to multi-million dollar corporations. I represented plaintiffs and defendants in civil litigation involving a variety of claims, including negligence, breach of contract, fraud, defamation, and nuisance. I also handled criminal cases from a variety of perspectives, having represented the State, defendants, and crime victims at different times over the years.

As a Superior Court judge since 2010, I have handled Civil, Criminal, Juvenile and Family Court cases. As the Presiding Judge of the Lower Court and Administrative Appeals Department, I now handle appeals in civil and criminal cases that originate in municipal courts, justice courts, and

administrative agencies. My diverse professional experience will provide me with a solid foundation on which to draw when deciding the wide variety of cases and issues that come before the Court of Appeals.

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

I have always had both a strong work ethic and a desire to do what I can to make a positive difference in my community. These qualities were instilled in me at an early age. I was raised in a suburb of Boston, Massachusetts, in a large family of relatively modest means. My father worked for the telephone company (back in the days when there was only one); my mother was a high school science teacher. My four siblings and I attended public schools from kindergarten through high school, and I depended on scholarship assistance, student loans, and the income I earned from part-time jobs to pay my undergraduate and law school tuitions.

Through their words and actions, my parents taught my siblings and me the values of hard work and individual initiative as well as the importance of making time to help those in need. When I was a junior high school student, I volunteered with a group from my church to help a family of refugees from Southeast Asia to adjust to life in the United States. In addition to providing them with food and household items, we spent time visiting with them, both to provide them with social interaction and to help them develop their English skills. Later, as a high school student, I participated in a program to help developmentally disabled teenagers learn basic life skills. I greatly enjoyed these experiences, and, since then, I have regularly participated in volunteer work and community service of one kind or another.

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.** If not, explain.

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

I am seeking this position because I believe I have the skills and experience necessary to serve the public well as an appellate court judge.

Throughout my life, I have devoted time and whatever skills I may have to serving the community. When I graduated from law school, I turned down an offer of a higher-paying job in the private sector to accept a position with the

Arizona Attorney General's Office in order to serve the public as a prosecutor, a position I held for nine years. When I later entered private practice, I had a varied legal practice handling both civil and criminal cases and representing clients from all walks of life. During my years in private practice, I always made time for *pro bono* work to help ensure that our justice system is accessible to all. The wide-ranging experience I obtained as a result of my varied legal practice has served me well as I have handled the diverse caseload of a Superior Court judge; this experience will, I am sure, serve me equally well as a judge of the Court of Appeals.

Since my appointment to the Superior Court in 2010, I have handled, at the trial level, most of the same types of civil, criminal, juvenile and family law cases that are heard by the Court of Appeals. Currently, I handle appeals in civil and criminal cases that originate in municipal and justice courts, as well as appeals of decisions by administrative agencies. In all of the cases I've handled, I have given a respectful hearing to the parties and lawyers who have appeared before me and have thoroughly reviewed and considered the evidence and the arguments presented by the parties before making my rulings. I believe that my decisions have been fair, grounded in the facts, and decided in accordance with the text of applicable constitutional and statutory provisions as well as controlling case law.

Additionally, because I strongly believe that the appearance, as well as the reality, of fairness is critical to public confidence in the judiciary, I make every effort to ensure that litigants in my cases recognize that my decisions are not made arbitrarily. For that reason, except when ruling on oral motions made in open court, I generally resolve disputed legal issues in written rulings in which I discuss the relevant facts and legal authorities in sufficient detail that the parties are able to understand why I reached the conclusions that I did. I draft my rulings so that they can be easily read and digested by litigants who have no legal training, and I believe that my rulings, while comprehensive, are straightforward and free of unnecessary "legalese." My experience researching and drafting rulings over the past twelve years has prepared me well to serve as an appellate court judge.

Justice Antonin Scalia is quoted as having said, "If you're going to be a good and faithful judge, you have to resign yourself to the fact that you're not always going to like the conclusions you reach. If you like them all the time, you're probably doing something wrong." My experience as a Superior Court

judge illustrates the accuracy of this observation. I have not always liked the results I have reached in every case; on the contrary, my rulings in certain cases have been contrary to my personal preferences. I can confidently say, however, that, throughout my years as a Superior Court judge, I have done my best to decide every case solely on the evidence presented and in accordance with the law as written, irrespective of my personal views about what the law ought to be. If I am fortunate enough to be appointed to the Court of Appeals, my decisions will reflect the same regard for the unique facts of each case and the same fidelity to the requirements of law.

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 B

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 C

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 D

-- INSERT PAGE BREAK HERE TO START SECTION II (CONFIDENTIAL INFORMATION) ON NEW PAGE –

Attachment A

Maricopa County Superior Court Judges (as of August 29, 2022)

Adleman, Jay
Agne, Sara
Allen, Glenn
Astrowsky, Brad
Avelar, Stasy
Bachus, Alison
Beresky, Justin
Blair, Michael
Blanchard, John
Blaney, Scott
Brain, Mark
Brooks, Robert
Bustamonte, Lori Horn
Campagnolo, Theodore
Coffey, Rodrick
Cohen, Bruce
Cohen, Suzanne
Como, Gregory
Cooper, Katherine
Coury, Christopher
Covil, Max-Henri
Crandell, Rusty
Crawford, Janice
Culbertson, Kristin
Cushner, Quintin
Davis, Marvin
Drake, James
Driggs, Adam
Edelstein, Monica
Fink, Dean
Fish, Geoffrey
Fisk, Ronda
Fox, Dewain
Garbarino, David
Gates, Pamela
Gentry, Jo Lynn
Gordon, Michael
Green, Jennifer
Halvorson, Ashley
Hannah, John
Herrod, Michael
Hopkins, Stephen
Julian, Melissa Iyer
Kemp, Michael
Kiefer, Joseph
Kiley, Daniel
Korbin Steiner, Ronee
Kreamer, Joseph
LaBianca, Margaret
Lang, Todd
LeMaire, Kerstin
Mandell, Michael
Martin, Daniel
Marwil, Suzanne
Mata, Julie
McCoy, M. Scott
McDowell, David
Mead, Kathleen
Mikitish, Joseph
Miller, Keith
Minder, Scott
Moskowitz, Frank
Myers, Samuel
Nicholls, Suzanne
Palmer, David
Parker, Amanda
Pineda, Susanna
Polk, Jay
Ponce, Adele
Rassas, Michael
Reckart, Laura
Rogers, Joshua
Rueter, Jeffrey
Russell, Andrew
Ryan, Timothy
Ryan-Touhill, Jennifer
Schwartz, Aryeh
Sinclair, Joan
Starr, Patricia
Sukenic, Howard
Svoboda, Pamela
Thomason, Timothy
Thompson, Peter
Valenzuela, Michael
VandenBerg, Lisa
Viola, Danielle
Wahlin, Lisa
Warner, Randall
Wein, Kevin
Welty, Joseph
Westerhausen, Tracey
Whitehead, R. Charles
Whitten, Christopher
Woo, Cassie Bray

Attachment B

The first of the following two writing samples is an excerpt from an appellate brief I wrote and filed in *Daniel J. Sommer, et al., v. Edgar Stoffels, et al.*, Arizona Court of Appeals Case No. 1 CA-CV 08-0525. The brief was filed on October 23, 2008. The complete brief is available on Westlaw, and can be found at 2008 WL 4971783. The second is an excerpt from a motion for summary judgment that I wrote and filed in *Protect Lake Pleasant, L.L.C., et al., v. Robert W. Johnson, et al*., United States District Court for the District of Arizona Case No. 207-CV-00454. The motion was filed on June 22, 2009. The complete motion is available on Westlaw, and can be found at 2009 WL 2842389.

2008 WL 4971783

Daniel J. SOMMER and Joanne Donnelly, a married couple, Plaintiffs/Appellees,

v.

EDGAR and Sharon Stoffels, a married couple, Defendants/Appellants.

No. 1 CA-CV 08-0525.

October 23, 2008.

Maricopa County Superior Court No. CV2008-050088

Appellees' Answering Brief

* * *

B. A Weighing of the Relevant Equitable Criteria Establishes That The Trial Court Did Not Abuse Its Discretion in Granting Preliminary Injunctive Relief

"The enforcement of restrictive covenants through an injunction... is governed by equitable principles." *Ahwatukee Custom Estates Mgmt. Ass'n v. Turner*, 196 Ariz. 631, 635 ¶ 9, 2 P.3d 1276, 1280 (App. 2000). When determining whether to issue a preliminary injunction, a trial court "focuses primarily on balancing...four equitable criteria." *Powell-Cerkony v. TCR-Montana Ranch Joint Venture II*, 176 Ariz. 275, 280, 860 P.2d 1328, 1333 (App. 1993). Those four criteria are:

1) The likelihood of success on the merits;

2) The possibility of irreparable injury to the moving party if the relief requested is not granted;

3) The balance of hardships; and

4) Whether public policy favors the injunction.

Shoen, 167 Ariz. at 63, 804 P.2d at 792. The moving party need not establish the presence of all four equitable criteria. On the contrary, the trial court may issue a preliminary injunction after finding "either (1) probable success on the merits and the

possibility of irreparable injury, or (2) the presence of serious questions and the balance of hardships tips sharply in [the moving party's] favor." *Id*. (citation and internal quotations omitted)

1. Balance of Hardships Favors Appellees

"The critical element" in assessing whether preliminary injunctive relief is appropriate "is the relative hardship to the parties." *Shoen*, 167 Ariz. at 63, 804 P.2d at 792. In their Opening Brief, Appellants acknowledge that the "balance of hardships" is a factor that courts consider in determining whether to issue preliminary injunctions. O.B. at p. 7. Appellants do not, however, argue that the balance of hardships tips in their favor. Indeed, Appellants offer no argument at all as to the "balance of hardships." By failing to raise this issue in their Opening Brief, Appellants have waived the argument that the balance of hardships tips in their favor. *Long v. City of Glendale*, 208 Ariz. 319, 329 n. 4, 93 P.3d 519, 529 n. 4 (App. 2004).

In the court below, Appellants presented no evidence of any hardship they would sustain as a result of the issuance of a preliminary injunction. When asked what hardships he had sustained as a result of the trial court's issuance of the temporary restraining order prior to the preliminary injunction hearing, Stoffels testified that he refrained from buying two vehicles at auto auctions he attended in February, 2008, because he was unsure if he would be able to construct storage space for those vehicles. *See* R.T. of February 25, 2008 at p. 75. Stoffels was not able to identify any resulting hardship other than saying, "[i]t hurt my feelings." R.T. of March 11, 2008 at p. 46. Any hardship, in the form of hurt feelings or otherwise, that Appellants sustained as a result of being barred

from constructing the new storage facility is one that they voluntarily accepted when they purchased their lot with the knowledge that their lot, like all others at Desert Hills North, is subject to the restrictions contained in the Declaration. The Arizona Supreme Court has recognized that "[a] person who purchases land with knowledge, actual or constructive, of zoning ordinances which are in effect at the time of purchase is said to have created for himself whatever hardship such restrictions entail." *Rotter v. Coconino County*, 169 Ariz. 269, 279, 818 P.2d 704, 714 (1991) (citation and internal quotations omitted, emphasis added). This principle applies with equal force to land use restrictions set forth in deed restrictions.

Sommer testified at the preliminary injunction hearing about the hardships that Appellees would sustain if the preliminary injunction were denied. Sommer testified that allowing the storage facility to be built would alter the character of the neighborhood, and that a judicial determination that the Declaration was no longer enforceable may encourage…other Desert Hills North lot owners to build additional structures that do not conform to the Declaration. R.T. of February 25, 2008 at pp. 44-45. By contrast, Stoffels identified no hardship that Appellees would sustain as a result of the granting of the preliminary injunction. See R.T. of March 11, 2008 at p. 46…Because the "relative hardship to the parties" is "the critical element" in determining whether to issue a preliminary injunction, *Shoen*, 167 Ariz. at 63, 804 P.2d at 792, Appellants' failure to offer any evidence of any hardship is fatal to their challenge to the preliminary injunction.

* * *

2. Appellees Clearly Established that They Faced the Possibility, and Even Probability, of Irreparable Injury If Preliminary Injunctive Relief Were Not Granted

In their Opening Brief, as in the court below, Appellants do not address the "possibility of irreparable injury," which is another of the equitable criteria courts consider in determining whether to grant preliminary injunctive relief. Injuries are irreparable if they are not compensable by a subsequent award of money damages, or if damages are difficult to measure. *See, e.g., Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 423 (9th Cir. 1991)…"[A] party seeking to enforce a valid deed restriction may demonstrate adequate harm merely by proving that to tolerate a violation would diminish the protection provided to all homeowners by the deed restrictions." *Turner*, 196 Ariz. at 636 ¶ 18, 2 P.3d at 1281 (citation omitted).

In the case at bar, if Appellants were allowed to build the automobile storage facility, and the trial court were later to make a final determination that the storage facility does, indeed, violate the Declaration, Appellees will have sustained irreparable harm. It would be extremely difficult, if not impossible, for a court to determine the amount of monetary damages necessary to compensate Appellees for the loss of the protection of the Declaration. Further, additional harm to Appellees would flow if the construction of the storage facility emboldened other Desert Hills North lot owners…to seek to construct other structures in violation of the Declaration. The loss of the benefits of the Declaration would be an injury to Appellees that is both impossible to measure and irreparable. In their Opening Brief, Appellants do not deny that Appellees were threatened with irreparable injury if the preliminary injunction did not issue. Appellants'

failure to dispute the threat of "irreparable injury" faced by Appellees constitutes a waiver of that issue. *Long*, 208 Ariz. at 329 n. 4, 93 P.3d at 529 n. 4.

The purpose of a preliminary injunction is to prevent "further injury or irreparable harm by preserving the status quo of the subject in controversy pending an adjudication on the merits." *Yockey v. Kearns Props., L.L.C.*, 326 Mont. 28, 31-32 ¶ 18, 106 P.3d 1185, 1188-89 (2005)…The preliminary injunction in the case at bar enjoins Appellants from altering the status quo by preventing them from constructing the disputed structure until the trial court can make a final determination of whether the Declaration precludes the construction of the structure. The trial court properly issued a preliminary injunction to preserve the *status quo* pending final judgment. *See Cracchiolo v. State*, 135 Ariz. 243, 247, 660 P.2d 494, 498 (App. 1983) (vacating temporary injunction in part because it did "not preserve the status quo").

(end of excerpt)

2009 WL 2842389

PROTECT LAKE PLEASANT, L.L.C., an Arizona limited liability company, et al., Plaintiffs,

v.

Robert W. JOHNSON, in his official capacity as Commissioner, United States Bureau of Reclamation, et al., Defendants, and Lake Pleasant Marina Partners, LLC, an Arizona limited liability company, Intervenor.

D.Ariz. No. 207CV00454.

June 22, 2009.

Pursuant to Rule 56, Fed. R. Civ. P., Plaintiffs move for summary judgment on Counts Two, Three and Four of the First Amended Complaint…

I. BRIEF SUMMARY OF THE MOTION

Defendant United States Bureau of Reclamation ("BOR") and the other defendants (collectively, the "Federal Defendants") violated their obligations under applicable environmental laws by (a) failing to prepare an environmental impact statement ("EIS"); (b) basing environmental decisions, including a Finding Of No Significant Impact ("FONSI"), on incomplete and inaccurate data; and (c) denying the public an opportunity for informed participation in environmental decision-making.

II. BACKGROUND

A. Overview of Applicable Legal Principles

The National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq*., requires federal agencies to prepare an EIS for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). Case law

recognizes that, "if the plaintiff raises substantial questions whether a project may have a significant effect" on the environment, "an EIS must be prepared." *LaFlamme v. Federal Energy Reg. Comm.*, 852 F.2d 389, 397 (9th Cir. 1988) (emphasis in original). Significantly, in order to prevail on a claim that an agency was required to prepare an EIS, "the plaintiff need not show that significant effects will in fact occur." *Id.*

An agency may prepare an environmental assessment ("EA") to determine whether the environmental impact of a proposed action is significant enough to warrant an EIS. 40 C.F.R. §§ 1501.4(b), (c), 1508.9(a)(1). If the agency determines that no significant impact will occur, it issues a FONSI in which the agency explains "the reasons why an action...will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared." *Id.* §§ 1508.9(a)(1), 1508.13.

The purpose of an EA is to provide a basis for the agency to determine whether to prepare an EIS, and to serve as the agency's environmental analysis when no EIS is necessary. 40 C.F.R. §§ 1501.4(c), 1508.9(a). The EA must include an analysis of the need for the proposal, of alternatives, and of the environmental impact of the proposal and the alternatives. *Id.* § 1508.9(b). Importantly, the EA "must supply a convincing statement of reasons to explain why a project's impacts are insignificant." *Defenders of Wildlife v. Ballard*, 73 F.Supp.2d 1094, 1102 (D.Ariz. 1999) (citation and internal quotations omitted). "[T]he statement of reasons is crucial to determining whether the agency" complied with its obligation under NEPA to take "a 'hard look' at the potential

environmental impact of a project." *Save the Yaak Comm. v. Block*, 840 F.2d 714, 717 (9th Cir. 1988) (citation and internal quotations omitted).

2. BOR Should Have Completed a New or Supplemental EIS

"[A]n agency that has prepared an EIS cannot simply rest on the original document," but instead "must be alert to new information that may alter the results of its original environmental analysis." *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000). NEPA regulations impose a duty on all federal agencies to prepare supplements to either draft or final EIS's "[i]f there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. §§ 1502.9(c).

The fact that the Final EA is "tiered" to the 1984 EIS does not excuse the preparation of a new or supplemental EIS, particularly since conditions at the Lake have changed dramatically in the twenty-five years since the 1984 EIS was issued. *See Blue Mtns. Biodiversity Proj. v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998) ("Nothing in the tiering regulations suggests that the existence of a programmatic EIS...obviates the need for any future project-specific EIS..."). An agency cannot rely on an EIS that has become outdated due to significant changes in the relevant ecosystem. *See, e.g., Friends of the Clearwater*, 222 F.3d at 558 (Forest Service violated NEPA by failing to prepare a supplemental EIS for the Nez Perce National Forest in light of changes that had occurred in the forest in the decade since prior EIS was prepared, including the reintroduction of grey wolves into the area and the listing of several other species as endangered)…

Since the 1984 EIS was prepared, the Lake has dramatically increased in size and volume. SOF ¶ 14. The maximum volume has more than quadrupled, while the surface area has almost tripled. *Id*. As the 1997 EA notes, the proposed marina is larger than he facilities contemplated in the 1984 EIS. *Id*. ¶ 18. Moreover, the 1984 EIS was premised on the incorrect assumption that the County alone controlled recreation on the Lake. An Arizona court decision later established that MWD may also authorize recreation on the Lake, leading to the establishment of Pleasant Harbor Marina, with current space for 1,430 watercraft and authorization for 560 more spaces. *See id*. ¶ 3, 12-13. The Lake's ecosystem has changed over the past twenty-five years. While the Lake and its environs had little wildlife habitat in 1984, that same area has since become one of the most productive breeding grounds for eagles in the state. *Id*. ¶¶ 97, 101. The dramatic changes in the Lake's environment since an EIS was last prepared mandated the preparation of a new or supplemental EIS.

*** * ***

a. BOR Has Conducted No Study of the Lake's Capacity

The 1984 EIS identifies the Lake's capacity as 546 boats, stating that "[t]he average boating capacity for the [Lake] was calculated by determining the mix of boaters, by activity, that the [L]ake could support at any one time." SOF ¶ 8. The 1984 EIS further provides that "[m]anagement of the [L]ake and operation of the boating facilities must insure that the number of boats on the [L]ake does not exceed its capacity." *Id.* ¶ 11. The 1984 EIS thus requires that the number of boats on the Lake not exceed the Lake's carrying capacity of 546 boats at any one time.

As Plaintiffs previously noted in their Preliminary Injunction Motion, the Final EA reflects that the watercraft usage at the Lake already exceeds the 546-boat figure set forth in the 1984 EIS, and that BOR improperly ignored the 1984 EIS by authorizing a proposed marina that would only further add watercraft to an already over-capacity Lake. See Preliminary Injunction Motion at p. 2. The "peak weekend" daily watercraft count at the Lake is 1,660. SOF ¶ 67. Applying a turnover rate of 2 to this figure yields a boats-at-one-time figure of 830, well in excess of the 1984 EIS's 546-boat figure.

BOR has downplayed the significance of the 1984 EIS's 546 "total boats at any one time" estimate. Although the 1984 EIS used the term "capacity," BOR has asserted that "[t]he true purpose of the 546 estimate was to assist in the planning for recreational facilities, not the creation of an enforceable boating limit." Federal Defendants' Response to Plaintiffs' Motion for Preliminary Injunction filed April 18, 2007, at p. 5.

If, then, the 1984 EIS's 546-boat figure is not the capacity limit of the Lake, then what is the limit? The 1984 EIS mandates that the number of boats on the Lake not exceed its capacity. What is the Lake's capacity? This information has never been determined. BOR cannot comply with the 1984 EIS's mandate to "insure that the number of boats on the [L]ake does not exceed its capacity," SOF ¶ 11, unless BOR first determines what the Lake's capacity is.

(end of excerpt)

Attachment C

The following is a double-spaced excerpt of a 12-page ruling I issued on August 11, 2022 in an appeal from a decision by the Scottsdale Municipal Court in *State v. Eric T. Gregorin*, Maricopa County Superior Court Case No. LC2022-000119. The complete minute entry is available on the Clerk of the Superior Court for Maricopa County's website at
http://www.courtminutes.maricopa.gov/viewerME.asp?fn=Lower%20Court/082022/m10083849.pdf

Defendant-Appellant Eric T. Gregorin ("Appellant") seeks reversal of the decision of the Scottsdale Municipal Court denying his motions to suppress the evidence obtained by Scottsdale police officers during their encounter with Appellant on December 2, 2020. For the reasons that follow, this Court affirms the trial court's ruling on both motions to suppress, and so affirms the judgment and sentence imposed.

* * *

Appellee State of Arizona ("Appellee" or "the State") charged Appellant with two counts of Driving Under the Influence ("DUI") in violation of A.R.S. §§ 28–1381(A)(1) and (2), both class 1 misdemeanors…

On May 18, 2021, Appellant filed two motions to suppress. *See* Motion to Suppress – Garage/Curtilage Issue ("Motion to Suppress I"), Motion to Suppress Re: Probable Cause Issue ("Motion to Suppress II"). In his motions, Appellant argued, *inter alia*, that the police engaged in an unlawful search and seizure by making a warrantless entry into the parking garage of the condominium complex where Appellant lives, *see* Motion to Suppress I at p. 7, and that the police lacked probable cause to arrest him. Motion to Suppress II at p. 4.

** ** **

In his Opening Memorandum, Appellant argues the trial court committed reversible error when it denied his two motions to suppress. O.M. at pp. 6–7.

With respect to Motion to Suppress I, Appellant contends that law enforcement officers violated his Fourth Amendment rights when, without a warrant, they entered the parking garage of his condominium complex to detain and question him. O.M. at p. 7.[1] Noting that "the curtilage to a residence enjoys the same Fourth Amendment protection as does the home itself," Appellant asserts that "this Court should…find" that "his private condominium garage," "located inside a gated and controlled community," "is curtilage." *Id.* at pp. 8, 10-11, 12. In support of his position, Appellant notes that signage outside the parking garage marked the garage as "Private" and for "Residents Only." *Id.* at p. 10. Thus, Appellant argues, the police violated his Fourth Amendment rights by entering the garage to detain him after "ignor[ing] and bypass[ing] the signage indicating the private nature of the garage." *Id*.

In response, the State acknowledges that a homeowner's "expectation of privacy generally extends to the curtilage of [the] home," but argues that the common parking

1 Although Appellant also references Article 2 § 8 of the Arizona Constitution in his Opening Memorandum, he does not contend that the scope of Article 2 § 8 of the Arizona Constitution differs in any respect from the scope of the Fourth Amendment to the United States Constitution. *See generally* O.M. The Court therefore does not separately address Article 2 § 8 of the Arizona Constitution. *State v. Jean*, 243 Ariz. 331, 342 ¶ 39 (2018) (declining to address Article 2 § 8 of the Arizona Constitution, where appellant's brief did not "address[] why or how our constitution should afford greater protection than the Fourth Amendment.").

structure of Appellant's condominium complex does not constitute part of the "curtilage" of his "individual condominium unit." A.M. at pp. 8, 9. This is so, the State argues, because the parking structure is "separate" from, and "non-adjacent" to, Appellant's individual condominium unit, and is "shared by hundreds, if not thousands, of other residents" of the complex. *Id*. at p. 8. "Curtilage," the State asserts, constitutes "the land immediately surrounding and associated with [a] home." *Id*. (citations and internal quotations omitted). Because "[t]here is nothing private or intimate about" a "residential parking garage shared by numerous other residents and guests," the State concludes, Appellant cannot claim to have had "a reasonable expectation of privacy" in the garage, and therefore "cannot assert a violation of the Fourth Amendment." *Id*. at p. 14.

Although there does not appear to be any published Arizona case law directly on point, case law from other jurisdictions supports the State's position that the shared parking area of a multi-unit residential complex does not constitute the "curtilage" of the individual units within the complex. *See Mack v. City of Abilene*, 461 F.3d 547, 554 (5th Cir. 2006) (holding that parking space in apartment complex parking lot was "not part of the curtilage of Appellant's apartment"); *U.S. v. Cruz Pagan*, 537 F.2d 554, 557-58 (1st Cir. 1976) ("[T]he highest courts of at least two states have held that one does not have a reasonable expectation of privacy with regard to objects left in a common garage or basement of a multi-unit apartment house. We agree with these courts that a person cannot have a reasonable expectation of privacy…in such a well travelled common area of an apartment house or condominium."); *State v. Williford*, 767 S.E.2d 139, 143

(N.C.App. 2015) (holding apartment building's "shared parking lot...was not located in the curtilage of defendant's building").

As the State points out in its Answering Memorandum, the Wisconsin Supreme Court addressed this issue at length in *State v. Dumstrey*, 873 N.W.2d 502 (Wis. 2016). *See* A.M. at pp. 9-12. In *Dumstrey*, the defendant, while "being followed by police for erratic driving," drove into the parking garage underneath his apartment building, where he was stopped by the police. 873 N.W.2d at 504-05 ¶ 2. Following his subsequent DUI conviction, Dumstrey argued on appeal "that the officers' conduct violated the Fourth Amendment's prohibition against unreasonable searches and seizures because it occurred during a warrantless entry into a constitutionally protected area," *i.e.*, the "curtilage of his home." *Id*. at 505 ¶ 2. The *Dumstrey* court held that four factors set forth in *U.S. v. Dunn*, 480 U.S. 294 (1987), are to be considered when "conducting an analysis of whether an area constitutes curtilage of a home," identifying the *Dunn* factors as

> (1) the proximity of the area claimed to be curtilage to the home; (2) whether the area is included within an enclosure surrounding the home; (3) the nature of the uses to which the area is put; and (4) the steps taken by the resident to protect the area from observation by people passing by.

Id. at 512 ¶ 32 (citations and internal punctuation omitted). Taking the *Dunn* factors in order, the *Dumstrey* court found that the parking garage was not "closely proximate" to Dumstrey's home "for Fourth Amendment purposes" because Dumstrey was required to

"take[] an elevator from the parking garage…to gain access to the floor on which his home is located." *Id*. at 513 ¶ 37. Next, the Court found that the garage was not "within an enclosure" of Dumstrey's home since his "29 fellow tenants' apartments are likewise included within the same enclosure." *Id*. ¶¶ 38-39. The *Dumstrey* court further found that Dumstrey "utilize[d] the parking garage solely for parking his vehicle," and not for "storing personal belongings" or for other uses "associated with intimate activity of the home or privacy of life." *Id*. at 514 ¶ 42. Finally, the Court found, Dumstrey had "taken no steps to protect the parking garage from observation by passersby within the garage." *Id*. ¶ 45. On the contrary, "[e]ach day, countless tenants…pass through the parking garage in order to get from their own vehicles to the elevator to access their homes." *Id.* The *Dumstrey* court therefore concluded that an analysis of the *Dunn* factors established that that "the parking garage is not so intimately tied to Dumstrey's home that it warrants Fourth Amendment protection as curtilage of his home." *Id*. at 514-15 ¶ 46.

The *Dumstrey* court then turned to the question of whether the defendant had "a reasonable expectation of privacy in the parking garage for some other reason" so as to "warrant Fourth Amendment protection against warrantless entry." 873 N.W.2d at 515 ¶ 46. The Court noted that Dumstrey did not exercise "dominion and control over the parking garage" because the other tenants of the complex, as well as their guests, had "the same right of access as he" to the garage. *Id*. ¶ 49. Citing case law for the proposition that "[c]ommon areas in apartment buildings are, by their very definition, not private," the *Dumstrey* court held that "historical notions of privacy are simply not

consistent with such a large number of people having the same right of access to the parking garage as [the defendant] himself." *Id*. (citation and internal quotations omitted). The Dumstrey court concluded by "doubt[ing] that Dumstrey harbor[ed] any actual expectation of privacy in the parking garage" and that, even if he did, "such an expectation is surely not reasonable." *Id*. ¶ 50. Holding that "the parking garage underneath" Dumstrey's "apartment building does not constitute curtilage of [his] home," the *Dumstrey* court affirmed Dumstrey's DUI conviction. *Id*. at 516 ¶ 51.

An analysis of the *Dunn* factors here leads to the same conclusion reached by the *Dumstrey* court. Officer Ivanoff's testimony established that Appellant's parking garage is located directly below a multi-story building that houses dozens of condominium units, and that, to access their individual units, tenants must use elevators located on the other side of a set of doors in the garage. R.T. 8/12/21 at pp. 26, 43–44, 45-46. Because Appellant occupies only one of dozens of units located in that multi-story building, the below-ground parking garage is not in close proximity to Appellant's unit for Fourth Amendment purposes. Likewise, the parking garage is no more "enclosed" within Appellant's home than the garage in *Dumstrey* was "enclosed" within the defendant's apartment in that case. Further, as was true of the defendant in *Dumstrey*, there is no evidence that Appellant uses the garage for storage of personal items, or for any purpose other than to park his car. As Officer Ivanoff testified, Appellant's parking space is not "wall[ed] off or block[ed] off" from the rest of the garage, and the officer saw no personal effects stored there. *Id*. at pp. 25, 27. The nature of Appellant's use of the

parking garage thus weighs in favor of the State's position. Finally, although "Residents Only" signage can be found at the garage entrance, no physical barrier restricts access to the garage, and the individual parking spaces themselves are open to view by passersby. *Id*. at pp. 27–28, 52, 15, 19. *See also* Defendant's Exhibit 9. Indeed, body camera video footage of Appellant's arrest shows passersby walking through the garage at the time of his arrest. *See* State's Exhibit 1. The Court finds that an analysis of the *Dunn* factors makes clear that the shared parking garage in the condominium complex where Appellant lives does not constitute curtilage of Appellant's condominium unit.

Moreover, the same factors that led the *Dumstrey* court to find that Dumstrey had no reasonable expectation of privacy in his apartment building's parking garage are present in this case as well. The parking structure in the condominium complex where Appellant lives is a common area open to other tenants. R.T. 8/12/21 at pp. 24-26. *See also* Defendant's Exhibits 9, 10. As Officer Ivanoff testified, no physical barrier prevents tenants or their guests who are within the complex from accessing and traversing the garage. R.T. 8/12/21 at pp. 24, 27–28, 52. Although Appellant has an assigned parking space inside the garage, Officer Ivanoff testified that the space itself is not enclosed or shielded from view. *Id*. at pp. 15, 19, 46, 24, 25. Finally, nothing in the record indicates Appellant has any right to exclude other tenants or their guests from accessing or traversing the garage. On the contrary, the "Residents Only" signage makes clear that Appellant shares the use of the garage with the other residents of the complex. Defendant's Exhibits 9, 10. Under the circumstances, the Court finds that Appellant

could have no reasonable expectation of privacy in the complex's parking garage or in his own parking space within the garage. *See Dumstrey*, 873 N.W.2d at 515 ¶ 50 ("[W]e doubt that [the defendant] harbors any actual expectation of privacy in the parking garage, and if he does, such an expectation is surely not reasonable."). *See also U.S. v. Brooks*, 911 F. Supp. 2d 836, 843 (D. Ariz. 2012) (defendant's expectation of privacy was unreasonable where "a person would not be required to be a complex resident to see the 'comings and goings' at the [gated complex.]"); *U.S. v. Powell*, 943 F. Supp. 2d 759, 786 (E.D. Mich. 2013), aff'd, 847 F.3d 760 (6th Cir. 2017) ("[I]t is true that gated communities are 'private property' in the general sense and are designed to restrict access to the community. But it is not true that residence in a gated community transforms the entire community into an individual's private property for Fourth Amendment purposes.").

Appellant suggests that the fact that a motorist cannot gain access to the complex unless admitted by a security guard at the guardhouse supports a finding that Appellant had a reasonable expectation of privacy in the parking garage. *See* O.M. at p. 11. The fact that members of the general public are not permitted to enter the condominium complex except as the guest of a resident is not, however, enough to establish that Appellant had a reasonable expectation of privacy in the garage of a multi-unit residential complex. *See, e.g., U.S. v. Nohara*, 3 F.3d 1239, 1242 (9th Cir. 1993) ("[A]n apartment dweller has no reasonable expectation of privacy in the common areas of the building[.]"); *U.S. v. McGrane*, 746 F.2d 632, 634 (8th Cir. 1984) (defendant "did not

have an expectation of privacy" in basement of apartment building that "constituted a common area of the building, accessible to all tenants and the landlord"); *U.S. v. Correa*, 635 F.Supp.2d 379, 382 (D.N.J. 2009) ("There is no reasonable expectation of privacy in the common areas of a multi-unit apartment building.") (collecting cases); *State v. Luhm*, 880 N.W.2d 606, 613 (Minn.App. 2016) (holding that defendant "did not have a legitimate or reasonable expectation of privacy in the common areas of the secured, multi-unit condominium building so as to challenge the officers' warrantless entry into the building."). A "reasonable expectation of privacy," after all, "necessarily implies an expectation that one will be free of *any* intrusion," not merely intrusions by the police or by the general public. *Nohara*, 3 F.3d at 1242 (emphasis in original, citation and internal quotations omitted). *See also Commonwealth v. Dora*, 781 N.E.2d 62, 66 (Mass.App. 2003) ("[H]allways of the defendant's apartment building" that were "accessible to approximately 120 tenants and their invitees" was "beyond any constitutionally protected privacy zone": "The exclusion of the general public for purposes of security cannot reasonably engender an expectation of privacy in an area accessible to 120 apartment occupants and their invitees.").

In support of his position, Appellant cites case law holding that a garage or carport adjacent to a private residence constitutes part of the residence's curtilage for Fourth Amendment purposes. *See, e.g.*, *Taylor v. U.S.*, 286 U.S. 1, 6 (1932); *U.S. v. Oaxaca*, 233 F.3d 1154, 1157 (9th Cir. 2000); *Baker v. Clover*, 177 Ariz. 37, 38 (App. 1993); *In re One 1970 Ford Van*, 111 Ariz. 522, 523 (1975). Those cases are inapposite, however,

because none of them considered the issue presented here, *i.e.*, whether a common parking structure shared by residents of a multi-unit residential building constitutes the part of the curtilage of the residents' homes. The cases Appellant cites therefore provide no support to his position that the parking structure of his condominium complex constitutes part of the curtilage of his condominium unit.

The Court concludes that the parking garage Appellant shares with the other residents of Scottsdale Shadows is not part of the curtilage of Appellant's unit and that he had no reasonable expectation of privacy in the garage or his parking space within the garage. Accordingly, this Court affirms the trial court's denial of Appellant's Motion to Suppress I.

The following is a double-spaced excerpt of a 13-page ruling I issued on March 4, 2022 in an appeal from a decision by the Arizona State Board of Nursing in *Manuel E. Gonzales v. Arizona State Board of Nursing*, Maricopa County Superior Court Case No. LC2021-000127. The complete minute entry is available on the Clerk of the Superior Court for Maricopa County's website at http://www.courtminutes.maricopa.gov/viewerME.asp?fn=Lower%20Court/032022/m9893036.pdf.

* * *

In his Opening Brief, [Appellant Manuel E. Gonzales, referred to herein as "Appellant"] raises several issues. *See* O.B. at p. 6. In the Court's view, however, resolution of this case turns on the answer to a single question: Did [Appellee Arizona State Board of Nursing, referred to herein as "Appellee" or the "Board"] violate Appellant's constitutional and statutory rights by conducting a license revocation hearing [the "Hearing"] without giving Appellant the advance notice of the Hearing to which he was statutorily entitled?

* * *

…Appellant asserts that the Hearing was conducted in violation of his rights under A.R.S. § 41-1092.05(D). O.B. at p. 7. He explains that A.R.S. § 41-1092.05(D) required the Board to allow him "at least thirty days" after service of the Notice of Hearing to prepare for the Hearing, and that the Board violated that statute by giving him only thirteen days' advance notice of the Hearing. *Id*. at pp. 5, 7.

In response, Appellee asserts that A.R.S. § 41-1092.05(D) "does not apply" at all here, asserting that this is "a summary suspension case" that is governed by A.R.S. § 41-

1092.11(B). A.B. at p. 5. Noting that, following the summary suspension of Appellant's license, A.R.S. § 41- 1092.11(B) "required" the Board "to promptly institute and determine the matter," Appellee asserts that the Board acted "in compliance with A.R.S. § 41-1092.11(B)" when it scheduled the Hearing on less than 30 days' notice. *Id*. at pp. 6, 7 (internal quotations omitted)

A.R.S. § 41-1092.11(B)'s requirement that suspension and/or revocation proceedings be "promptly instituted and determined" following the summary suspension of a license is, obviously, intended to protect the due process rights of the license holder. *Cf. Dahnad v. Buttrick*, 201 Ariz. 394, 399 ¶ 19 (App. 2001) (concluding that A.R.S. § 41-1092.11 "contemplate[s] and permit[s] a summary suspension without notice or a pre-suspension hearing when emergency circumstances imperatively require such action" while "requir[ing] a formal post-suspension hearing process to be promptly instituted and determined…A prompt or immediate post-suspension hearing…satisfies due process."). A license required to engage in one's chosen profession is, after all, a property interest protected by the due process provisions of the United States and Arizona constitutions. *Wassef v. Ariz. St. Bd. of Dental Exam'rs Through Hugunin*, 242 Ariz. 90, 93 ¶ 12 (App. 2017). For that reason, due process generally requires the State to afford a licensee notice and an opportunity to be heard before taking disciplinary action against his or her license. *See Comeau v. Ariz. St. Bd. of Dental Exam'rs*, 196 Ariz. 102, 108 ¶ 28 (App. 1999). Where prior notice is not feasible, due process requires the State to provide a prompt and meaningful post-deprivation hearing. *See, e.g., Fed. Deposit Ins. Corp. v. Mallen*, 486

U.S. 230, 240 (1988) ("An important government interest, accompanied by a substantial assurance that the deprivation is not baseless or unwarranted, may in limited cases demanding prompt action justify postponing the opportunity to be heard until after the initial deprivation."); *Dahnad*, 201 Ariz. at 399 ¶ 19 (after suspension of a license "without notice or a pre-suspension hearing when emergency circumstances imperatively require such action," "[a] prompt or immediate post-suspension hearing…satisfies due process…because it accommodates the State's need to move swiftly when protective action cannot wait, yet grants an opportunity to be heard at a significant time and in a significant manner") (citations and internal quotations omitted). Here, A.R.S. § 41-1092.11(B) serves to protect the licensee's due process rights by assuring him or her of a prompt post-deprivation hearing following the summary suspension of a license.

Nothing in A.R.S. § 41-1092.11(B), however, overrides A.R.S. § 41-1092.05(D)'s provision that a licensee is entitled to "at least" thirty days' notice before a hearing on the merits of an "appeal or contested case." This requirement serves to afford a license holder facing revocation or other disciplinary action sufficient time to prepare a meaningful defense. The opportunity to prepare a meaningful defense is, of course, a critical component of due process. *See Comeau*, 196 Ariz. at 108 ¶ 28 ("Due process requires prior notice of the charges so that the accused has a meaningful opportunity for explanation and defense."). Due process is therefore violated when a licensing agency schedules a revocation hearing on such short notice that the licensee has insufficient time in which to prepare. *Cf. Morrison v. Shanwick Int'l Corp*., 167 Ariz. 39, 43 (App. 1990)

(trial court violated defendant's due process rights by granting motion for summary judgment that was filed nine days before defendant was served, notwithstanding fact that defendant's counsel was given opportunity to argue at hearing on motion; "The requirements of timely notice and meaningful opportunity to be heard certainly envision more than" giving "contemporaneous notice and opportunity to be heard" to "an unsuspecting and unprepared party."). *See also Bank of Am., N.A. v. Fogel*, 192 So.3d 573, 576 (Fla.App. 2016) (trial court set hearing on defendants' motion to set aside judgment on October 20th but did not issue Notice of Hearing to plaintiff until October 15th; after trial court granted defendants' motion, appellate court reversed, holding that "[t]he inadequate notice period between" issuance of Notice of Hearing "and the hearing date violated [the plaintiff's] due process rights").

* * *

Appellee justifies the Board's action by insisting that A.R.S. § 41-1092.11(B) "required" the Board "to promptly institute and determine the matter." A.B. at p. 2. Appellee's position is, in effect, that, after determining that exigent circumstances justified the summary suspension of Appellant's license, the Board was then entitled to use A.R.S. § 41-1092.11(B)'s requirement of a prompt post-deprivation hearing to deny Appellant the time to prepare for the license revocation hearing to which A.R.S. § 41-1092.05(D) would otherwise have entitled him. Appellee's interpretation of A.R.S. § 41-1092.11(B) thus transforms that statute from a safeguard that protects a license holder from the deprivation of a property interest in violation of due process into a means for the

State to disadvantage a license holder by forcing him or her into hastily-scheduled revocation proceedings for which the license holder lacks an adequate opportunity to prepare. Appellee's interpretation of A.R.S. § 41-1092.11(B) is, in the Court's view, untenable.

At Oral Argument, Appellee seemed to take the position that, following the summary suspension of his license, A.R.S. § 41-1092.11(B) entitled Appellant to only a single hearing at which the validity of the November 12th summary suspension order and the possible revocation of his license would be addressed simultaneously.

The Court sees nothing in A.R.S. § 41-1092.11(B) to suggest that a post deprivation hearing following the summary suspension of a license must be consolidated with a hearing on the merits of the agency's request for revocation of the license. A.R.S. § 41-1092.11(B) provides in part that, under certain circumstances, an agency "may order summary suspension of a license pending proceedings for revocation or other action," adding that "[t]hese proceedings shall be promptly instituted and determined." Nothing in this statute provides, however, that both the licensee's challenge to the summary suspension and the agency's revocation request are to be addressed in a single hearing. To interpret A.R.S. § 41-1092.11(B) in this manner would be to simply disregard A.R.S. § 41-1092.05(D)'s "30-days-advance-notice" requirement. Because the Board unilaterally decided to consolidate the post-deprivation hearing required by A.R.S. § 41-1092.11(B) with the hearing on the merits of the proposed revocation of his license, the Board forced Appellant to choose between two rights, both of which are guaranteed by

due process and codified in statute, *i.e.*, Appellant's right under A.R.S. § 41- 1092.11(B) to a prompt post-deprivation hearing on the suspension of his license and Appellant's right under A.R.S. § 41-1092.05(D) to at least 30 days' time to prepare his defense to the proposed revocation of his license. By unilaterally consolidating the two hearings, the Board forced Appellant to choose between proceeding with the Hearing on December 1st to challenge the summary suspension of his license (thereby risking the loss of his license entirely if he was unable to adequately defend against the revocation) or waiving his right to a prompt post-deprivation hearing by requesting a continuance of the Hearing (in order to give himself time to prepare to defend against the proposed revocation of his license). Nothing in A.R.S. § 41- 1092.05(B), A.R.S. § 41-1092.11(B), or any other statute permits the Board to force such a choice on Appellant.

* * *

…[E]ven if Appellee's interpretation of the relevant statutes were correct - - even if, in other words, A.R.S. § 41-1092.11(B) could fairly be read to authorize a licensing board to unilaterally deprive a licensee of the time to prepare for a revocation hearing to which A.R.S. § 41-1092.05(B) would otherwise have entitled him - - due process would not allow such a result. Due process does not, in other words, allow the Board to transform A.R.S. § 41- 1092.11(B) - - a statute whose aim is to protect a license holder's due process rights - - into a means by which a license holder can be deprived of his right under A.R.S. § 41-1092.05(B) to adequate time to prepare for a license revocation hearing.

* * *

The evidence presented at the [administrative hearing] was certainly sufficient to support the [administrative law judge's] recommendation that "the Board's decision to suspend [Appellant's] registered nursing license be upheld." ALJ Decision at p. 11. The Court will therefore affirm the Final Decision to the extent it accepted the ALJ Decision's recommendation that the November 12th summary suspension order be affirmed. Appellant's license will, therefore, remain suspended pending further administrative proceedings. The Court will reverse the Final Decision to the extent that it revoked Appellant's license, and will remand this matter to the Board for revocation proceedings to be held in accordance with A.R.S. § 41-1092.05(D).

(end of excerpt)

The following is a double-spaced excerpt of a 16-page ruling I issued on August 16, 2018 in *Vince Leach et al. v. Michele Reagan et al*., Maricopa County Superior Court Case No. CV2018-009919. The complete minute entry can be retrieved through the Clerk of the Superior Court for Maricopa County's ECR Online system, which can be found at https://www.clerkofcourt.maricopa.gov/records/electronic-court-records-ecr

* * *

E. The Committee's Challenges to the Constitutionality of A.R.S. § 19-102.01

Last year, the Legislature enacted A.R.S. § 19-102.01, which provides in part that "[c]onstitutional and statutory requirements for statewide initiative measures must be strictly construed and persons using the initiative process must strictly comply with those constitutional and statutory requirements." A.R.S. § 19-102.01(A). [Real Party in Interest Clean Energy Committee for a Healthy Arizona, referred to as the "Committee"] alleges that A.R.S. § 19-102.01 violates the Arizona Constitution. Committee's Motion at p. 12. The Committee asserts that, "[i]n adopting its constitution, the Arizona Constitutional Conventional [*sic*] adopted a substantial compliance standard for initiatives and amendments," and that A.R.S. § 19-102.01 reflects an "unlawful attempt to restrict" the "constitutional…substantial compliance standard." *Id*. at pp. 13, 15. The Committee further argues that A.R.S. § 19-102.01 "violates the Arizona Constitution's separation of powers requirement" by "usurp[ing] the authority of the judiciary to establish the standard of review for initiative challenges." *Id*. at pp. 12, 13…The Committee concludes by arguing that, because "the right of initiative is a fundamental right," A.R.S. § 19-

102.01 is subject to strict scrutiny, an exacting standard that A.R.S. § 19-102.01 does not meet. Response to Intervenors' Motion for Summary Judgment at pp. 11, 13.

* * *

[Intervenors Speaker of the House J.D. Mesnard and President of the Senate Steve Yarbrough, referred to as the "Intervenors"] argue that the Committee's challenge to A.R.S. § 19-102.01 is based on a flawed premise, *i.e*., that the "substantial compliance" standard for initiative matters is constitutionally based. Intervenors' Motion at p. 5. Instead, they contend, "[t]he substantial compliance standard that formerly governed initiative petitions" was a matter of judicial interpretation, not "an immutable constitutional entitlement." *Id*. Further, they contend that A.R.S. § 19-102.01 should not be subjected to strict scrutiny, but must be upheld if it is "reasonable." *Id*. at pp. 5-6. In this case, they contend, the "important regulatory interests" served by initiative election laws "easily justify" A.R.S. § 19-102.01's mandate that the laws be strictly complied with. *Id*. The Intervenors conclude by asking that summary judgment be entered in their favor on the Committee's cross-claim challenging the constitutionality of A.R.S. § 19-102.01. *Id*.

When considering the Committee's constitutional challenge to A.R.S. § 19-121.01, the Court must "begin with a strong presumption" that the statute is constitutional. *Martin v. Reinstein*, 195 Ariz. 293, 301, 987 P.2d 779, 787 (App. 1999). The Committee's burden to establish the contrary is a "heavy" one. *Id*. Accepting as true, for purposes of the pending motions, the Committee's disputed contention that the Secretary of State applied a "strict compliance" standard when conducting her A.R.S. § 19-121.01

review, the Court finds that the Committee has failed to sustain its heavy burden of establishing that A.R.S. § 19-121.01 is unconstitutional. Instead, for several reasons, the Court agrees with the Intervenors that A.R.S. § 19-102.01 passes constitutional muster.

First, the Court agrees with the Intervenors that A.R.S. § 19-102.01 is not properly reviewed under a "strict scrutiny" standard. Certainly, that is not the standard typically applied in cases involving challenges to election statutes. *See Burdick v. Takushi*, 504 U.S. 428, 432, 112 S.Ct. 2059, 2062-63 (1992) (labelling as "an erroneous assumption" the contention that "a law that imposes any burden upon the right to vote must be subject to strict scrutiny"). As the United States Supreme Court has held, "to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest…would tie the hands of States seeking to assure that elections are operated equitably and efficiently." *Id.* at 433, 112 S.Ct. at 2063.

While it is true that an election statute that imposes "a severe burden" on voters' constitutional rights "is subject to strict scrutiny and will be upheld only if it is narrowly tailored to serve a compelling state interest," *Nader v. Brewer*, 531 F.3d 1028, 1035 (9th Cir. 2008), the Court does not find that A.R.S. § 19-102.01 imposes a "severe burden" on the right of initiative. A.R.S. § 19-102.01 does not, for example, treat voters unequally, and the Committee does not contend otherwise. *Cf. Ariz. Minority Coalition for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 211 Ariz. 337, 347, 121 P.3d 843, 853 (App. 2005) ("The common thread in redistricting cases applying strict scrutiny review is the denial of the right to vote on an equal basis with others."). Likewise, A.R.S. § 19-

102.01 does not infringe on First Amendment rights, and the Committee does not contend otherwise. *Cf. KZPZ Broadcasting, Inc., v. Black Canyon City Concerned Citizens*, 199 Ariz. 30, 35, 37-38, 13 P.3d 772, 777, 779-80 (App. 2000) (in observing that it did "not see how" a statutory requirement that petition circulators be residents of "the political subdivision affected by the measure" would "survive strict scrutiny," the Court noted that "the imposition of a county residency requirement" for petition circulators would "place a heavy burden on political expression regarding referendum issues in our smaller counties," thereby "run[ning] afoul of the First and Fourteenth Amendments…"). Instead, A.R.S. § 19-102.01 merely requires that proponents of initiative measures do what proponents of referendum measures are required to do, *i.e.*, comply strictly with the requirements of applicable election laws. *See Western Devcor, Inc., v. City of Scottsdale*, 168 Ariz. 426, 429, 814 P.2d 767, 770 (1991) ("[W]e require referendum proponents to comply strictly with applicable constitutional and statutory provisions."). The Committee has identified no provision of any statute relating to initiatives for which requiring strict compliance would impose a "severe burden." On the contrary, the statutory circulator registration and affidavit requirements, and the requirement that signers provide their full and complete name and address as well as the date of signing, are requirements that can be completed with little difficulty.

The Committee's sweeping assertion that the "strict scrutiny" standard must be used to review A.R.S. § 19-102.01 because "the right of initiative is a fundamental right" and "[f]undamental rights are reviewed under strict scrutiny," Response to Intervenors'

Motion for Summary Judgment at pp. 11, is, in the Court's view, an oversimplification that is not consistent with Arizona law. While it is true that "[i]nitiative and referendum procedures are a fundamental part of Arizona's scheme of government," *Fairness and Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 584, 886 P.2d 1338, 1340 (1994), it is *not* true that the Arizona Constitution forbids the Legislature from enacting statutes regulating the electoral process. On the contrary, the Arizona Constitution expressly authorizes - - indeed, *mandates* - - the enactment of such statutes. Ariz.Const., Art. 7 § 12 ("There shall be enacted registration and other laws to secure the purity of elections and guard against abuses of the elective franchise."). This constitutional directive makes no exception for statutes regulating the initiative and referendum. *See Arrett v. Bower*, 237 Ariz. 74, 78, 345 P.3d 129, 133 (App. 2015) ("[T]he fact that the constitutional provisions [*i.e.*, Ariz.Const. Art. IV, part 1] are self-executing does not preclude the legislature from enacting laws pertaining to referenda and initiatives."); *Turley v. Bolin*, 27 Ariz.App. 345, 347-48, 554 P.2d 1288, 1290-91 (App. 1976) (noting that, while "the initiative and referendum provisions of the Arizona Constitution are self-executing,…this does not necessarily mean that the legislature is prohibited from enacting implementing legislation with respect to the constitutional rights given."). The Court agrees with [Plaintiffs Vince Leach *et al*.] that "[i]t is well within the Legislature's purview to" require "the statutes it passes" regulating the initiative and referendum "to actually be followed." Plaintiffs' Responses to Real Party in Interest's Motion for Partial Summary Judgment and Trial Memorandum at p. 6.

Courts have long held that legislation regulating initiatives and referenda are permissible as long as they "implement[] or supplement[]" the provisions of Article IV, part 1 § 1 of the Arizona Constitution without "unreasonably hinder[ing] or restrict[ing]" the rights conferred thereby. *Turley*, 27 Ariz.App. at 347-48, 554 P.2d at 1290-91. Arizona courts have accordingly upheld statutes regulating the initiative and referendum process without subjecting those statutes to strict scrutiny. *See Arrett*, 237 Ariz. at 76, 83, 345 P.3d at 131, 138 (affirming trial court's denial of writ of mandamus to compel the placement of referendum on the ballot, where the referendum petition sheets failed to comply with statute requiring petition's "serial number…to appear on both sides of each petition sheet"; in upholding constitutionality of serial number requirement, the Court held that it "serves the permissible and important purpose of facilitating and protecting, not burdening, the referendum process"). *See also Direct Sellers Ass'n v. McBrayer*, 109 Ariz. 3, 5, 503 P.2d 951, 953 (1972) (affirming injunction barring referendum measure from being placed on ballot, where referendum petitions lacked statutory affidavits affirming that each circulator was "a qualified elector"; in rejecting challenge to constitutionality of circulator affidavit statute and finding statutory requirement "that circulators of referendum petitions be qualified electors" to be "a valid exercise of legislative power," the Court held that if legislation regarding a constitutional provision "does not unreasonably hinder or restrict the constitutional provision and if the legislation reasonably supplements the constitutional purpose, then the legislation may stand.").

The Court agrees with the Intervenors that the statutes challenged by the

Committee, such as those establishing circulator registration and affidavit requirements, do not unreasonably hinder or restrict the right of initiative, but instead reasonably supplements the constitutional purpose. Intervenors' Motion at p. 6. The statutes serve important interests in ensuring transparency in the initiative process, thereby fulfilling the constitutional mandate that the Legislature enact "laws to secure the purity of elections and guard against abuses of the elective franchise." Ariz.Const., Art. 7, § 12. The requirement that circulators appear and testify if subpoenaed - - a requirement which, admittedly, may inconvenience circulators, and even impose a financial burden on them if they are required to miss work and/or travel a considerable distance to attend court proceedings - - is nonetheless an essential means of safeguarding against signature fraud. *See, e.g., Brousseau v. Fitzgerald*, 138 Ariz. 453, 456, 675 P.2d 713, 716 (1984) ("[S]tatutory circulation procedures are designed to reduce the number of erroneous signatures, guard against misrepresentations, and confirm that signatures were obtained according to law."). *See also Zaiser v. Jaeger*, 822 N.W.2d 472, 483 (N.D. 2012) (holding that election officials correctly refused to consider petitions that included signatures that the petition circulators later admitted had been forged, and that the remaining petitions contained an insufficient number of signatures to place the initiative measure on the ballot); *Williams v. Dist. of Columbia Bd. of Elections and Ethics*, 804 A.2d 316, 318 (D.C. App. 2002) ("[T]he circulator's role in gathering signatures for a nominating petition is critical to ensuring the integrity of the collection process."). The Court therefore finds that the State's important interests in ensuring fair and transparent

elections free from fraud or other misconduct justifies requiring the same "strict compliance" with statutes governing initiative measures that is required in the context of referendum measures.

The Court is likewise not persuaded by the Committee's contention that "A.R.S. § 19-102.01 violates the Arizona Constitution's separation of powers requirement" by usurping the "distinctly judicial function" of "[d]etermining the standard of review." Committee's Motion at p. 12. The "substantial compliance" standard appears nowhere in Article IV, part 1 § 1 of the Arizona Constitution. The "substantial compliance" standard was enunciated by the Arizona Supreme Court when it endeavored to determine the Legislature's intent in enacting a statute authorizing courts to enjoin state election officials from certifying, and printing on the official ballot, an initiative measure upon "a showing" that the petition "is not legally sufficient." *State ex rel. Bullard v. Osborn*, 16 Ariz. 247, 248-49, 143 P. 117, 117-18 (1914). The *Osborn* court held that, in using "the words 'legally sufficient' in [the statute at issue]," "*the Legislature meant to describe a valid petition*, signed by legal voters, and *complying substantially, not necessarily technically, with the requirements of the law*." *Id*. at 250, 143 P. at 118 (emphasis added, citation and internal quotations omitted). The *Osborn* court's interpretation of the initiative statute at issue based on its understanding of the legislative intent behind that statute in no way divests the Legislature of its authority to reject the judicial interpretation by amending the statute, or enacting a new one. *Galloway v. Vanderpool*, 205 Ariz. 252, 256, 69 P.3d 23, 27 (2003) ("[I]f the court interprets a statute other than as

the legislature intended, the legislature retains the power to correct us.").

The Committee's contention that A.R.S. § 19-102.01 constitutes a legislative attempt to "chok[e] the life from" the "fundamental right of initiative Arizonans have enjoyed for over 100 years," Response to Intervenors' Motion for Summary Judgment at pp. 2-3 (citation and internal quotations omitted), is, in the Court's view, a gross mischaracterization of the scope and effect of A.R.S. § 19-102.01. As noted above, Arizona law has long applied a "strict compliance" standard to referendum petitions. *See, e.g., Western Devcor*, 168 Ariz. at 429, 814 P.2d at 770. If the "strict compliance" standard has not "choked the life out of" the right to referendum, what reason is there to believe that it would do so to the right to initiative? Further, a "strict compliance" standard has long been applied in initiative matters by courts in numerous other states whose constitutions, like Arizona's, recognize the right to initiative. *See, e.g., Nevadans for Nevada v. Beers*, 142 P.3d 339, 350, 351 (Nev. 2006) (barring placement of initiative on ballot, where initiative sponsors improperly filed multiple versions of the proposed initiative with election officials; in applying a "strict adherence" rather than a "substantial compliance" standard, the Court noted in part that "the Nevada Constitution is the organic and fundamental law of this state, and to allow a sweeping amendment to it or to this state's legislative acts, without strict adherence to the rules set forth therein, would work against government stability"); *State ex rel. Steele v. Morrissey*, 815 N.E.2d 1107, 1113 (Ohio 2004) (holding that election official did not abuse discretion in refusing to place initiative measure on ballot, where copy of initiative petition filed by sponsors did

not include certified copy of proposed ordinance as required by statute; "[T]he settled rule is that election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election provision states that it is," and, because statute at issue "does not expressly permit substantial compliance,…it requires strict compliance.") (citations and internal quotations omitted); *Sears v. Treasurer and Receiver General*, 98 N.E.2d 621, 629 (Mass. 1951) ("Since the people have themselves adopted the Constitution with its amendments for their government, they are bound by the provisions and conditions which they themselves have placed in it, and when they seek to enact laws by direct popular vote they must do so in strict compliance with those provisions and conditions."). The Court sees no basis for the Committee's assertion that such a standard, applied by courts in other jurisdictions with similar constitutional provisions, would impose an intolerable burden on the right to initiative in Arizona.

In accordance with the foregoing,

* * *

IT IS FURTHER ORDERED granting the Motion for Summary Judgment on the Cross-Claim filed by Intervenors Speaker of the House J.D. Mesnard and President of the Senate Steve Yarbrough.

(end of excerpt)

Attachment D

Arizona Supreme Court Superior Judge

	Hon. Daniel Kiley
Group	**Comment**
Attorney	Judge Kiley is very prepared, knowledgeable about the facts and law, and issued his ruling quickly. Judge Kiley's minute entry was thorough and well done. It showed his reasoning for his decision so the parties understood exactly how he reached his conclusion.
Staff	Judge Kiley is incredibly integral and exemplifies the excellence we expect from judges in Maricopa County. Judge is prompt in answering questions, and providing clear and effective communication to all staff Judge Kiley very often reflects a high standard of excellence in how he treats others in the courtroom and in terms of rulings. Judge Kiley is an effective leader in terms of managing his staff, and providing an effective and efficient work environment for those around him.
Staff	Judge Kiley is known to be a man of high integrity by everyone that knows him. Judge Kiley communicates well with everyone. Judge Kiley always strives to have an even temperament with everyone. Judge Kiley is always well prepared for his hearings. He is extremely respectful to his staff.
Staff	Judge Kiley is very good with people. He comes into the courtroom prepared. He has read all documents, asks pertinent questions, and treats all people well. He is fair to all. Judge Kiley is direct with his comments. When he speaks no one has doubts as to what he is saying or why. He is polite and answers questions that counsel, self-represented litigants and his staff may ask of him in a very professional manner. Judge Kiley is really on top of things and has great control over the courtroom. He seems to get along well with all people he with whom he comes in contact.
Staff	Regarding integrity, Judge Kiley sets the bar high. Judge Kiley is very thorough, professional, and clear in his communications of all types with all people. No matter the situation, Judge Kiley maintains a professional and even temperament. Judge Kiley sets the standard regarding how everything should be done in all areas.

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: Total Surveys: 13 Assignment: Other-LCA Cycle: Mid-Term Review

MCOTH-13 Hon. Daniel Kiley	ATTORNEY SU	VG	SA	PO	UN	6 Mean	LIT/WIT/PRO PER SU	VG	SA	PO	UN	0 Mean	JUROR SU	VG	SA	PO	UN	0 Mean	STAFF SU	VG	SA	PO	UN	7 Mean
Section I: Legal Ability	87%	0%	13%	0%	0%	3.7																		
Legal reasoning ability	83%	0%	17%	0%	0%	3.7																		
Knowledge of substantive law	83%	0%	17%	0%	0%	3.7																		
Knowledge of rules of evidence	100%	0%	0%	0%	0%	4.0																		
Knowledge of rules of procedure	83%	0%	17%	0%	0%	3.7																		
Section II: Integrity	88%	8%	4%	0%	0%	3.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	85%	15%	0%	0%	0%	3.9
Basic fairness and impartiality	83%	0%	17%	0%	0%	3.7	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Equal treatment regardless of race	100%	0%	0%	0%	0%	4.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Equal treatment regardless of gender	80%	20%	0%	0%	0%	3.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Equal treatment regardless of religion	100%	0%	0%	0%	0%	4.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	83%	17%	0%	0%	0%	3.8
Equal treatment regardless of national origin	100%	0%	0%	0%	0%	4.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Equal treatment regardless of disability	100%	0%	0%	0%	0%	4.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Equal treatment regardless of age	67%	33%	0%	0%	0%	3.7	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Equal treatment regardless of sexual orientation	100%	0%	0%	0%	0%	4.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	80%	20%	0%	0%	0%	3.8
Equal treatment regardless of economic status	100%	0%	0%	0%	0%	4.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Section III: Communication Skills	88%	13%	0%	0%	0%	3.9	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Clear and logical communications																			86%	14%	0%	0%	0%	3.9
Clear and logical oral communications and directions	83%	17%	0%	0%	0%	3.8																		
Clear and logical written decisions	100%	0%	0%	0%	0%	4.0																		
Gave all parties an adequate opportunity to be heard	83%	17%	0%	0%	0%	3.8																		
Explained proceedings (to the jury)							0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0						
Explained reason for delays							0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0						
Clearly explained the juror's responsibilities													0%	0%	0%	0%	0%	0.0						
Section IV: Judicial temperament	67%	0%	33%	0%	0%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	80%	20%	0%	0%	0%	3.8
Understanding and compassion	67%	0%	33%	0%	0%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Dignified	67%	0%	33%	0%	0%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Courteous	67%	0%	33%	0%	0%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Conduct that promotes public confidence in the court	67%	0%	33%	0%	0%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Patient	67%	0%	33%	0%	0%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	57%	43%	0%	0%	0%	3.6
Section V: Administrative Performance	83%	17%	0%	0%	0%	3.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	83%	17%	0%	0%	0%	3.8
Punctual in conducting proceedings	83%	17%	0%	0%	0%	3.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	71%	29%	0%	0%	0%	3.7
Maintained proper control of courtroom	83%	17%	0%	0%	0%	3.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Prompt in making rulings and rendering decisions	83%	17%	0%	0%	0%	3.8																		
Was prepared for the proceedings	83%	17%	0%	0%	0%	3.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	0%	0%	0.0	86%	14%	0%	0%	0%	3.9
Respectful treatment of staff																			86%	14%	0%	0%	0%	3.9
Cooperation with peers																			83%	17%	0%	0%	0%	3.8
Efficient management of calendar	83%	17%	0%	0%	0%	3.8													86%	14%	0%	0%	0%	3.9
Section VI: Settlement Activities	100%	0%	0%	0%	0%	4.0																		
Appropriately promoted or conducted settlement	100%	0%	0%	0%	0%	4.0																		

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 02/2021 - 10/2021

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCOTH-13 Hon. Daniel Kiley | Total Surveys: 13 | Assignment: Other-LCA | Cycle: Mid-Term Review

	ATTORNEY					6		LIT/WIT/PRO PER					0		JUROR					0		STAFF					7	
	SU	VG	SA	PO	UN	Resp	Mean	SU	VG	SA	PO	UN	Resp	Mean	SU	VG	SA	PO	UN	Resp	Mean	SU	VG	SA	PO	UN	Resp	Mean
Section I: Legal Ability	5	0	1	0	0	6	3.7																					
Legal reasoning ability	5	0	1	0	0	6	3.7																					
Knowledge of substantive law	5	0	1	0	0	6	3.7																					
Knowledge of rules of evidence	5	0	0	0	0	5	4.0																					
Knowledge of rules of procedure	5	0	1	0	0	6	3.7																					
Section II: Integrity	3	0	0	0	0	3	3.8	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Basic fairness and impartiality	5	0	1	0	0	6	3.7	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Equal treatment regardless of race	2	0	0	0	0	2	4.0	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Equal treatment regardless of gender	4	1	0	0	0	5	3.8	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Equal treatment regardless of religion	2	0	0	0	0	2	4.0	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	5	1	0	0	0	6	3.8
Equal treatment regardless of national origin	2	0	0	0	0	2	4.0	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Equal treatment regardless of disability	2	0	0	0	0	2	4.0	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Equal treatment regardless of age	2	1	0	0	0	3	3.7	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Equal treatment regardless of sexual orientation	2	0	0	0	0	2	4.0	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	4	1	0	0	0	5	3.8
Equal treatment regardless of economic status	2	0	0	0	0	2	4.0	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Section III: Communication Skills	5	1	0	0	0	5	3.9	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Clear and logical communications																						6	1	0	0	0	7	3.9
Clear and logical oral communications and directions	5	1	0	0	0	6	3.8																					
Clear and logical written decisions	4	0	0	0	0	4	4.0																					
Gave all parties an adequate opportunity to be heard	5	1	0	0	0	6	3.8																					
Explained proceedings (to the jury)								0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0							
Explained reason for delays								0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0							
Clearly explained the juror's responsibilities															0	0	0	0	0	0	0.0							
Section IV: Judicial temperament	4	0	2	0	0	6	3.3	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.8
Understanding and compassion	4	0	2	0	0	6	3.3	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Dignified	4	0	2	0	0	6	3.3	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Courteous	4	0	2	0	0	6	3.3	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Conduct that promotes public confidence in the court	4	0	2	0	0	6	3.3	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Patient	4	0	2	0	0	6	3.3	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	4	3	0	0	0	7	3.6
Section V: Administrative Performance	5	1	0	0	0	6	3.8	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.8
Punctual in conducting proceedings	5	1	0	0	0	6	3.8	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	5	2	0	0	0	7	3.7
Maintained proper control of courtroom	5	1	0	0	0	6	3.8	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Prompt in making rulings and rendering decisions	5	1	0	0	0	6	3.8																					
Was prepared for the proceedings	5	1	0	0	0	6	3.8	0	0	0	0	0	0	0.0	0	0	0	0	0	0	0.0	6	1	0	0	0	7	3.9
Respectful treatment of staff																						6	1	0	0	0	7	3.9
Cooperation with peers																						5	1	0	0	0	6	3.8
Efficient management of calendar	5	1	0	0	0	6	3.8															6	1	0	0	0	7	3.9
Section VI: Settlement Activities	1	0	0	0	0	1	4.0																					
Appropriately promoted or conducted settlement	1	0	0	0	0	1	4.0																					

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 02/2021 - 10/2021

Arizona Supreme Court Superior Judges

	Hon. Daniel Kiley
Group	**Comment**
Attorney	Very smart and wise judge. Very fair judge. He is an excellent communicator. Great judicial temperament.
Attorney	Very good judge. Knows the law.
Attorney	Thorough, superior & excellent.
Attorney	The judge is brilliant. Even when he disagrees with me, his analysis always well-reasoned. He actually allows people to present TOO much. He needs better control. Judge Kiley is actually one of the BEST judges in terms of efficiency and calendaring.
Attorney	Judge Kiley is fair and impartial, takes the time to read the briefs of both sides to understand all relevant facts, issues and the applicable law, and fairly and impartially applies the law to the facts in well-reasoned, articulate and detailed legal opinions. Superior. Beyond reproach. Brilliantly reasoned legal opinions. Fair and impartial.
Attorney	Judge Kiley has sound judicial ability and exudes confidence in his rulings. Impeccable integrity. Explicit and easy to understand. Allows all parties to communicate their arguments with liberal time allotments. Straight forward and fair.
Attorney	Judge Kiley had extensive knowledge of the record, arguments, and exhibits and asked pointed questions to both sides.
Attorney	Judge Kiley always appears for hearings very well prepared, with a full understanding of the issues.
Attorney	It's a pleasure being before Judge Kiley because he is so knowledgeable about the law. He is incredibly fair. He is very patient - much more so than I would be. He is in the top tier of judges I have been before in this regard. He very clearly is diligent and always is very well prepared.
Attorney	I can't evaluate this judge yet, I've only had one scheduling conference with him.

Arizona Supreme Court Superior Judges

Attorney	Highest possible score; needs to be less rigid on procedural rules particularly scheduling. Highest; but like too many judges, allows insurance defense lawyers too much leeway in breaking rules re disclosure, discovery responses. Only area not clear about is what he allows to be discussed during 26(d) discovery dispute hearing, limiting to what's on agenda, when often there are other issues that come up that need discussed with court's input.
Attorney	He is a very fair, honest and professional judge.
Attorney	Disregarded Rule 15 which requires a motion to amend with proposed amended complaint and let the plaintiff do it anyway after the judge told plaintiff what to do. Was going to moot defendant's motion filed based on what Plaintiff said without asking defendant's counsel. Then was not going to give defendant the chance to rebut on oral argument of defendant's motion to dismiss. Ruled from the bench which is refreshing.
Attorney	Led oral argument in orderly and respectful fashion. Knew the briefs and arguments.
Attorney	An excellent judge. The highest. He is a keeper.
Attorney	My only appearance before the Hon. Daniel Kiley was at a default hearing.
Juror	Very good communication. Exceptional in this area.
Juror	Very professional. Even tone the whole time.
Litigant/Witness	I'm a pro se litigant Kiley is the fairest judge I've seen before: He writes long detailed rulings. He's a good judge detailed and well thought out rulings fair rulings. He ruled in favor and against me he's fair.
Litigant/Witness	Address us professionally and properly. Had our outcome on determination of order: Very to the point and matters at hand: Understand our situation and was very kind and had read compassion for situation de definitely read our file very helpful.

Arizona Supreme Court Superior Judges

Litigant/Witness	Prose litigant was treated less than human: He enjoyed speaking to attorneys but not pro litigant.
Staff	Very Professional. Excellent. Professional. Excellent.
Staff	Judge Kiley treats all people with the same regard. Judge Kiley is very clear when communicating with everyone in the courtroom. Judge Kiley maintains his composure in the courtroom. Judge Kiley's hearings almost always begin on time. When they do not, it is usually because the parties have not called in or have not yet arrived.
Staff	Judge Kiley is a very fair and excellent Judge. Judge Kiley communicates very well to the parties including allowing them to fully express their opinions on a matter. Judge Kiley is very patient with pro pers as well as attorneys. Judge Kiley is very respectful of all people in the courtroom.
Staff	Judge Kiley is a highly moral and ethical person who takes very seriously the duty to treat all fairly and with respect. Judge Kiley ensures that all understand and have had an opportunity to be heard. Asking questions and elaborating as necessary to ensure complete communication. Judge Kiley has tremendous patience and treats all parties with the utmost respect regardless of how disturbing their behavior might be keeping in mind that the court is a forum for civilized discussion and he insists that all respect one another in their demeanor and conduct in his courtroom. Judge Kiley has a daunting workload, however, he never lets that affect his treatment of others and is always prepared and punctual for all his proceedings.

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: Total Surveys: 109 Assignment: Civil Cycle: Retention Election

MCCIV-17	ATTORNEY					62	LIT/WIT/PRO PER					12	JUROR					24	STAFF					11
Hon. Daniel Kiley	SU	VG	SA	PO	UN	Mean	SU	VG	SA	PO	UN	Mean	SU	VG	SA	PO	UN	Mean	SU	VG	SA	PO	UN	Mean
Section I: Legal Ability	64%	23%	8%	4%	0%	3.5																		
Legal reasoning ability	62%	26%	5%	7%	0%	3.4																		
Knowledge of substantive law	61%	25%	8%	3%	2%	3.4																		
Knowledge of rules of evidence	71%	19%	6%	4%	0%	3.6																		
Knowledge of rules of procedure	65%	21%	12%	2%	0%	3.5																		
Section II: Integrity	79%	17%	1%	1%	2%	3.7	56%	39%	1%	1%	2%	3.5	90%	10%	0%	0%	0%	3.9	66%	23%	11%	0%	0%	3.6
Basic fairness and impartiality	66%	24%	7%	2%	2%	3.5	55%	27%	9%	0%	9%	3.2	88%	13%	0%	0%	0%	3.9	70%	20%	10%	0%	0%	3.6
Equal treatment regardless of race	82%	15%	0%	0%	3%	3.7	60%	40%	0%	0%	0%	3.6	91%	9%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Equal treatment regardless of gender	76%	19%	0%	3%	3%	3.6	56%	44%	0%	0%	0%	3.6	91%	9%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Equal treatment regardless of religion	84%	13%	0%	0%	3%	3.7	56%	44%	0%	0%	0%	3.6	90%	10%	0%	0%	0%	3.9	63%	25%	13%	0%	0%	3.5
Equal treatment regardless of national origin	81%	16%	0%	0%	3%	3.7	56%	44%	0%	0%	0%	3.6	90%	10%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Equal treatment regardless of disability	82%	18%	0%	0%	0%	3.8	56%	44%	0%	0%	0%	3.6	90%	10%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Equal treatment regardless of age	82%	18%	0%	0%	0%	3.8	60%	40%	0%	0%	0%	3.6	91%	9%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Equal treatment regardless of sexual orientation	81%	19%	0%	0%	0%	3.8	63%	38%	0%	0%	0%	3.6	90%	10%	0%	0%	0%	3.9	63%	25%	13%	0%	0%	3.5
Equal treatment regardless of economic status	86%	11%	0%	0%	3%	3.8	50%	30%	0%	10%	10%	3.0	86%	14%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Section III: Communication Skills	69%	18%	10%	3%	1%	3.5	58%	21%	16%	5%	0%	3.3	87%	10%	3%	0%	0%	3.8	70%	10%	20%	0%	0%	3.5
Clear and logical communications																			70%	10%	20%	0%	0%	3.5
Clear and logical oral communications and directions	63%	20%	15%	2%	0%	3.5																		
Clear and logical written decisions	70%	14%	6%	8%	2%	3.4																		
Gave all parties an adequate opportunity to be heard	73%	19%	8%	0%	0%	3.6																		
Explained proceedings (to the jury)							50%	17%	25%	8%	0%	3.1	92%	8%	0%	0%	0%	3.9						
Explained reason for delays							71%	29%	0%	0%	0%	3.7	78%	13%	9%	0%	0%	3.7						
Clearly explained the juror's responsibilities													92%	8%	0%	0%	0%	3.9						
Section IV: Judicial temperament	61%	21%	15%	3%	0%	3.4	75%	14%	7%	2%	3%	3.5	87%	13%	0%	0%	0%	3.9	74%	16%	10%	0%	0%	3.6
Understanding and compassion	58%	23%	16%	4%	0%	3.4	64%	18%	9%	9%	0%	3.4	88%	13%	0%	0%	0%	3.9	80%	10%	10%	0%	0%	3.7
Dignified	59%	24%	17%	0%	0%	3.4	75%	17%	8%	0%	0%	3.7	88%	13%	0%	0%	0%	3.9	80%	10%	10%	0%	0%	3.7
Courteous	64%	17%	17%	2%	0%	3.4	75%	17%	8%	0%	0%	3.7	88%	13%	0%	0%	0%	3.9	80%	10%	10%	0%	0%	3.7
Conduct that promotes public confidence in the court	64%	19%	10%	7%	0%	3.4	67%	17%	0%	0%	17%	3.2	87%	13%	0%	0%	0%	3.9	70%	20%	10%	0%	0%	3.6
Patient	59%	22%	17%	2%	0%	3.4	92%	0%	8%	0%	0%	3.8	87%	13%	0%	0%	0%	3.9	60%	30%	10%	0%	0%	3.5
Section V: Administrative Performance	70%	23%	5%	2%	0%	3.6	75%	17%	8%	0%	0%	3.7	83%	13%	4%	0%	0%	3.8	69%	17%	14%	0%	0%	3.6
Punctual in conducting proceedings	70%	27%	2%	2%	0%	3.7	75%	17%	8%	0%	0%	3.7	75%	17%	8%	0%	0%	3.7	70%	20%	10%	0%	0%	3.6
Maintained proper control of courtroom	72%	24%	2%	2%	0%	3.7	75%	17%	8%	0%	0%	3.7	88%	13%	0%	0%	0%	3.9	70%	10%	20%	0%	0%	3.5
Prompt in making rulings and rendering decisions	67%	18%	13%	2%	0%	3.5																		
Was prepared for the proceedings	70%	22%	7%	2%	0%	3.6	75%	17%	8%	0%	0%	3.7	88%	8%	4%	0%	0%	3.8	70%	20%	10%	0%	0%	3.6
Respectful treatment of staff																			70%	20%	10%	0%	0%	3.6
Cooperation with peers																			75%	13%	13%	0%	0%	3.6
Efficient management of calendar	70%	25%	4%	2%	0%	3.6													60%	20%	20%	0%	0%	3.4
Section VI: Settlement Activities	54%	15%	23%	0%	8%	3.1																		
Appropriately promoted or conducted settlement	54%	15%	23%	0%	8%	3.1																		

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 02/2019 - 05/2019

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: Total Surveys: 109 Assignment: Civil Cycle: Retention Election

MCCIV-17	ATTORNEY					62		LIT/WIT/PRO PER					12		JUROR					24		STAFF					11	
Hon. Daniel Kiley	SU	VG	SA	PO	UN	Resp	Mean	SU	VG	SA	PO	UN	Resp	Mean	SU	VG	SA	PO	UN	Resp	Mean	SU	VG	SA	PO	UN	Resp	Mean
Section I: Legal Ability	**36**	**13**	**5**	**2**	**0**	**56**	**3.5**																					
Legal reasoning ability	36	15	3	4	0	58	3.4																					
Knowledge of substantive law	36	15	5	2	1	59	3.4																					
Knowledge of rules of evidence	34	9	3	2	0	48	3.6																					
Knowledge of rules of procedure	37	12	7	1	0	57	3.5																					
Section II: Integrity	**28**	**6**	**0**	**0**	**1**	**36**	**3.7**	**5**	**4**	**0**	**0**	**0**	**9**	**3.5**	**19**	**2**	**0**	**0**	**0**	**22**	**3.9**	**6**	**2**	**1**	**0**	**0**	**9**	**3.6**
Basic fairness and impartiality	38	14	4	1	1	58	3.5	6	3	1	0	1	11	3.2	21	3	0	0	0	24	3.9	7	2	1	0	0	10	3.6
Equal treatment regardless of race	28	5	0	0	1	34	3.7	6	4	0	0	0	10	3.6	20	2	0	0	0	22	3.9	6	2	1	0	0	9	3.6
Equal treatment regardless of gender	28	7	0	1	1	37	3.6	5	4	0	0	0	9	3.6	20	2	0	0	0	22	3.9	6	2	1	0	0	9	3.6
Equal treatment regardless of religion	26	4	0	0	1	31	3.7	5	4	0	0	0	9	3.6	19	2	0	0	0	21	3.9	5	2	1	0	0	8	3.5
Equal treatment regardless of national origin	26	5	0	0	1	32	3.7	5	4	0	0	0	9	3.6	19	2	0	0	0	21	3.9	6	2	1	0	0	9	3.6
Equal treatment regardless of disability	23	5	0	0	0	28	3.8	5	4	0	0	0	9	3.6	19	2	0	0	0	21	3.9	6	2	1	0	0	9	3.6
Equal treatment regardless of age	31	7	0	0	0	38	3.8	6	4	0	0	0	10	3.6	20	2	0	0	0	22	3.9	6	2	1	0	0	9	3.6
Equal treatment regardless of sexual orientation	22	5	0	0	0	27	3.8	5	3	0	0	0	8	3.6	18	2	0	0	0	20	3.9	5	2	1	0	0	8	3.5
Equal treatment regardless of economic status	32	4	0	0	1	37	3.8	5	3	0	1	1	10	3.0	18	3	0	0	0	21	3.9	6	2	1	0	0	9	3.6
Section III: Communication Skills	**39**	**10**	**6**	**2**	**0**	**56**	**3.5**	**6**	**2**	**2**	**1**	**0**	**10**	**3.3**	**21**	**2**	**1**	**0**	**0**	**24**	**3.8**	**7**	**1**	**2**	**0**	**0**	**10**	**3.5**
Clear and logical communications																						7	1	2	0	0	10	3.5
Clear and logical oral communications and directions	38	12	9	1	0	60	3.5																					
Clear and logical written decisions	35	7	3	4	1	50	3.4																					
Gave all parties an adequate opportunity to be heard	43	11	5	0	0	59	3.6																					
Explained proceedings (to the jury)								6	2	3	1	0	12	3.1	22	2	0	0	0	24	3.9							
Explained reason for delays								5	2	0	0	0	7	3.7	18	3	2	0	0	23	3.7							
Clearly explained the juror's responsibilities															22	2	0	0	0	24	3.9							
Section IV: Judicial temperament	**36**	**12**	**9**	**2**	**0**	**59**	**3.4**	**9**	**2**	**1**	**0**	**0**	**12**	**3.5**	**21**	**3**	**0**	**0**	**0**	**24**	**3.9**	**7**	**2**	**1**	**0**	**0**	**10**	**3.6**
Understanding and compassion	33	13	9	2	0	57	3.4	7	2	1	1	0	11	3.4	21	3	0	0	0	24	3.9	8	1	1	0	0	10	3.7
Dignified	35	14	10	0	0	59	3.4	9	2	1	0	0	12	3.7	21	3	0	0	0	24	3.9	8	1	1	0	0	10	3.7
Courteous	38	10	10	1	0	59	3.4	9	2	1	0	0	12	3.7	21	3	0	0	0	24	3.9	8	1	1	0	0	10	3.7
Conduct that promotes public confidence in the court	38	11	6	4	0	59	3.4	8	2	0	0	2	12	3.2	20	3	0	0	0	23	3.9	7	2	1	0	0	10	3.6
Patient	35	13	10	1	0	59	3.4	11	0	1	0	0	12	3.8	20	3	0	0	0	23	3.9	6	3	1	0	0	10	3.5
Section V: Administrative Performance	**40**	**13**	**3**	**1**	**0**	**57**	**3.6**	**9**	**2**	**1**	**0**	**0**	**12**	**3.7**	**20**	**3**	**1**	**0**	**0**	**24**	**3.8**	**7**	**2**	**1**	**0**	**0**	**10**	**3.6**
Punctual in conducting proceedings	42	16	1	1	0	60	3.7	9	2	1	0	0	12	3.7	18	4	2	0	0	24	3.7	7	2	1	0	0	10	3.6
Maintained proper control of courtroom	42	14	1	1	0	58	3.7	9	2	1	0	0	12	3.7	21	3	0	0	0	24	3.9	7	1	2	0	0	10	3.5
Prompt in making rulings and rendering decisions	37	10	7	1	0	55	3.5																					
Was prepared for the proceedings	42	13	4	1	0	60	3.6	9	2	1	0	0	12	3.7	21	2	1	0	0	24	3.8	7	2	1	0	0	10	3.6
Respectful treatment of staff																						7	2	1	0	0	10	3.6
Cooperation with peers																						6	1	1	0	0	8	3.6
Efficient management of calendar	37	13	2	1	0	53	3.6															6	2	2	0	0	10	3.4
Section VI: Settlement Activities	**7**	**2**	**3**	**0**	**1**	**13**	**3.1**																					
Appropriately promoted or conducted settlement	7	2	3	0	1	13	3.1																					

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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 02/2019 - 05/2019

MCCIV-23	Hon. Daniel J. Kiley
Group	**Comment**
Attorney	Extremely thorough and well prepared.
Attorney	Hon. Kiley confused standard of care issue with causation issue, which made for a poor decision. He did very well at attempting to understand the parties' positions. Excellent. He remained calm throughout the hearing.
Attorney	Judge Kiley grasped the legal issues with ease and was well-prepared for the hearing. His questions of counsel regarding the issues were spot on. His demeanor and temperament were excellent.
Attorney	Judge Kiley is first rate. Smart, prepared, engaged, and balanced. Top level.
Attorney	Judge Kiley listened to and applied the law, including listening to and seeking attorney's input on the same.
Attorney	Judge Kiley was well prepared and thorough. He had exceptional legal ability. I felt Judge Kiley was professional, courteous and fair. No concerns. Excellent.
Attorney	Knew evidentiary rules, applied them even handed to all parties. Was well-prepared for oral argument.
Attorney	One of my favorite judges.
Attorney	Tentative application of Rule 12(b)(6).
Attorney	Very prepared for argument. Had done research outside of parties' briefs.
Attorney	He prepared an extremely detailed and well written minute entry explaining his ruling. He was very courteous at all times in the courtroom. His staff was also very helpful and friendly. One of my better trial experiences.
Attorney	I appreciated that he had obviously read all of the pleadings prior to an oral argument.
Attorney	THE SMARTEST JUDGE ON THE BENCH!!!!
Litigant/Witness	Other party didn't show.

Litigant/Witness	He didn't speak except to call me as a witness & excuse me. While in a police uniform I'd like to keep my gun on me.
Staff	Don't know him well enough to know the answers of all of the above questions. Very good from what I have seen in covering for him the few times I have covered .
Staff	Judge Kiley treats everyone that comes into our courtroom with dignity, respect and equality. I have never seen him favor one side over the other or one party over the other. Judge Kiley goes out of his way to make everything as clear and concise as possible, often going above and beyond, especially when pro per litigants are involved. I feel that Judge Kiley is always respectful, professional, dignified and courteous to everyone that comes into his courtroom.
Staff	Judge Kiley works hard to ensure equal treatment for everyone, regardless of a person's individual situation. Judge Kiley is always careful to make sure he's been understood in his communications. Judge Kiley remains patient and courteous even when faced with extremely rude individuals. Judge Kiley acts respectfully towards staff, is always punctual and prepared for proceedings, and is very efficient.
Staff	Very good judge.

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: Total Surveys: 71 Assignment: Civil Cycle: Mid-Term Review

MCCIV-23	ATTORNEY					41	LIT/WIT/PRO PER					6	JUROR					8	STAFF					16
Hon. Daniel J. Kiley	UN	PO	SA	VG	SU	Mean	UN	PO	SA	VG	SU	Mean	UN	PO	SA	VG	SU	Mean	UN	PO	SA	VG	SU	Mean
Section I: Legal Ability	0%	1%	4%	30%	65%	3.6																		
Legal reasoning ability	0%	0%	3%	33%	65%	3.6																		
Knowledge of substantive law	0%	3%	0%	31%	67%	3.6																		
Knowledge of rules of evidence	0%	0%	0%	27%	73%	3.7																		
Knowledge of rules of procedure	0%	0%	11%	31%	58%	3.5																		
Section II: Integrity	0%	0%	0%	17%	82%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	20%	80%	3.8
Basic fairness and impartiality	0%	0%	0%	23%	78%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	33%	67%	3.7
Equal treatment regardless of race	0%	0%	0%	17%	83%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of gender	0%	0%	4%	21%	75%	3.7	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of religion	0%	0%	0%	16%	84%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of national origin	0%	0%	0%	15%	85%	3.9	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of disability	0%	0%	0%	16%	84%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of age	0%	0%	0%	16%	84%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of sexual orientation	0%	0%	0%	17%	83%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of economic status	0%	0%	0%	13%	88%	3.9	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	23%	77%	3.8
Section III: Communication Skills	0%	0%	5%	19%	75%	3.7	0%	0%	17%	17%	67%	3.5	0%	0%	0%	13%	88%	3.9	0%	0%	0%	31%	69%	3.7
Clear and logical communications																			0%	0%	0%	31%	69%	3.7
Clear and logical oral communications and directions	0%	0%	8%	23%	69%	3.6																		
Clear and logical written decisions	0%	0%	6%	16%	78%	3.7																		
Gave all parties an adequate opportunity to be heard	0%	0%	3%	18%	79%	3.8																		
Explained proceedings (to the jury)							0%	0%	17%	17%	67%	3.5	0%	0%	0%	13%	88%	3.9						
Explained reason for delays							0%	0%	17%	17%	67%	3.5	0%	0%	0%	13%	88%	3.9						
Clearly explained the juror's responsibilities													0%	0%	0%	13%	88%	3.9						
Section IV: Judicial temperament	0%	0%	3%	22%	76%	3.7	0%	0%	17%	37%	47%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	35%	65%	3.6
Understanding and compassion	0%	0%	0%	27%	73%	3.7	0%	0%	17%	33%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	33%	67%	3.7
Dignified	0%	0%	3%	23%	75%	3.7	0%	0%	17%	50%	33%	3.2	0%	0%	0%	0%	100%	4.0	0%	0%	0%	33%	67%	3.7
Courteous	0%	0%	5%	18%	78%	3.7	0%	0%	17%	33%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	38%	63%	3.6
Conduct that promotes public confidence in the court	0%	0%	3%	21%	76%	3.7	0%	0%	17%	33%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	33%	67%	3.7
Patient	0%	0%	3%	22%	76%	3.7	0%	0%	17%	33%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	38%	63%	3.6
Section V: Administrative Performance	0%	0%	4%	21%	76%	3.7	0%	0%	17%	11%	72%	3.6	0%	0%	0%	0%	100%	4.0	0%	0%	0%	24%	76%	3.8
Punctual in conducting proceedings	0%	0%	2%	22%	76%	3.7	0%	0%	17%	17%	67%	3.5	0%	0%	0%	0%	100%	4.0	0%	0%	0%	25%	75%	3.8
Maintained proper control of courtroom	0%	0%	3%	26%	72%	3.7	0%	0%	17%	17%	67%	3.5	0%	0%	0%	0%	100%	4.0	0%	0%	0%	25%	75%	3.8
Prompt in making rulings and rendering decisions	0%	0%	5%	15%	79%	3.7																		
Was prepared for the proceedings	0%	0%	0%	25%	75%	3.8	0%	0%	17%	0%	83%	3.7	0%	0%	0%	0%	100%	4.0	0%	0%	0%	25%	75%	3.8
Respectful treatment of staff																			0%	0%	0%	29%	71%	3.7
Cooperation with peers																			0%	0%	0%	23%	77%	3.8
Efficient management of calendar	0%	0%	8%	16%	76%	3.7													0%	0%	0%	17%	83%	3.8
Section VI: Settlement Activities	0%	0%	0%	20%	80%	3.8																		
Appropriately promoted or conducted settlement	0%	0%	0%	20%	80%	3.8																		

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ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: Total Surveys: 71 Assignment: Civil Cycle: Mid-Term Review

MCCIV-23 Hon. Daniel J. Kiley	ATTORNEY UN	PO	SA	VG	SU	41 Resp	Mean	LIT/WIT/PRO PER UN	PO	SA	VG		6 Resp	Mean	JUROR UN	PO	SA	VG	SU	8 Resp	Mean	STAFF UN	PO	SA	VG	SU	16 Resp	Mean
Section I: Legal Ability	0	0	1	11	23	35	3.6																					
Legal reasoning ability	0	0	1	13	26	40	3.6																					
Knowledge of substantive law	0	1	0	11	24	36	3.6																					
Knowledge of rules of evidence	0	0	0	7	19	26	3.7																					
Knowledge of rules of procedure	0	0	4	11	21	36	3.5																					
Section II: Integrity	0	0	0	4	19	24	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Basic fairness and impartiality	0	0	0	9	31	40	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	5	10	15	3.7
Equal treatment regardless of race	0	0	0	4	19	23	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of gender	0	0	1	5	18	24	3.7	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of religion	0	0	0	3	16	19	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of national origin	0	0	0	3	17	20	3.9	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of disability	0	0	0	3	16	19	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of age	0	0	0	4	21	25	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of sexual orientation	0	0	0	3	15	18	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of economic status	0	0	0	3	21	24	3.9	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	3	10	13	3.8
Section III: Communication Skills	0	0	2	7	28	37	3.7	0	0	1	1	4	6	3.5	0	0	0	1	7	8	3.9	0	0	0	5	11	16	3.7
Clear and logical communications																						0	0	0	5	11	16	3.7
Clear and logical oral communications and directions	0	0	3	9	27	39	3.6																					
Clear and logical written decisions	0	0	2	5	25	32	3.7																					
Gave all parties an adequate opportunity to be heard	0	0	1	7	31	39	3.8																					
Explained proceedings (to the jury)								0	0	1	1	4	6	3.5	0	0	0	1	7	8	3.9							
Explained reason for delays								0	0	1	1	4	6	3.5	0	0	0	1	7	8	3.9							
Clearly explained the juror's responsibilities															0	0	0	1	7	8	3.9							
Section IV: Judicial temperament	0	0	1	8	29	38	3.7	0	0	1	2	3	6	3.3	0	0	0	0	8	8	4.0	0	0	0	5	10	15	3.6
Understanding and compassion	0	0	0	10	27	37	3.7	0	0	1	2	3	6	3.3	0	0	0	0	8	8	4.0	0	0	0	5	10	15	3.7
Dignified	0	0	1	9	30	40	3.7	0	0	1	3	2	6	3.2	0	0	0	0	8	8	4.0	0	0	0	5	10	15	3.7
Courteous	0	0	2	7	31	40	3.7	0	0	1	2	3	6	3.3	0	0	0	0	8	8	4.0	0	0	0	6	10	16	3.6
Conduct that promotes public confidence in the court	0	0	1	8	29	38	3.7	0	0	1	2	3	6	3.3	0	0	0	0	8	8	4.0	0	0	0	5	10	15	3.7
Patient	0	0	1	8	28	37	3.7	0	0	1	2	3	6	3.3	0	0	0	0	8	8	4.0	0	0	0	6	10	16	3.6
Section V: Administrative Performance	0	0	1	8	30	39	3.7	0	0	1	1	4	6	3.6	0	0	0	0	8	8	4.0	0	0	0	4	11	15	3.8
Punctual in conducting proceedings	0	0	1	9	31	41	3.7	0	0	1	1	4	6	3.5	0	0	0	0	8	8	4.0	0	0	0	4	12	16	3.8
Maintained proper control of courtroom	0	0	1	10	28	39	3.7	0	0	1	1	4	6	3.5	0	0	0	0	8	8	4.0	0	0	0	4	12	16	3.8
Prompt in making rulings and rendering decisions	0	0	2	6	31	39	3.7																					
Was prepared for the proceedings	0	0	0	10	30	40	3.8	0	0	1	0	5	6	3.7	0	0	0	0	8	8	4.0	0	0	0	4	12	16	3.8
Respectful treatment of staff																						0	0	0	4	10	14	3.7
Cooperation with peers																						0	0	0	3	10	13	3.8
Efficient management of calendar	0	0	3	6	28	37	3.7															0	0	0	2	10	12	3.8
Section VI: Settlement Activities	0	0	0	2	8	10	3.8																					
Appropriately promoted or conducted settlement	0	0	0	2	8	10	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 02/2017 - 05/2017