

APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

This original application, 16 double-sided copies and one (1) single-sided copy must be filed with the Human Resources Department, Administrative Office of the Courts, 1501 W. Washington, Suite 221, Phoenix, AZ, 85007, not later than 3:00 p.m. on Monday, August 8, 2016. Read the application instructions thoroughly before completing this application form. The fact that you have applied is not confidential, responses to Section I of this application are made available to the public, and the information provided may be verified by Commission members. The names of applicants, interviewees and nominees are made public, and Commission files pertaining to nominees are provided to the Governor for review. This entire application, including the confidential portion (Section II), is forwarded to the Governor upon nomination by the Commission.

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 71)

PERSONAL INFORMATION

1. Full Name: **Samuel Anderson Thumma**
2. Have you ever used or been known by any other legal name? **No.** If so, state name: **Not applicable.**
3. Office Address: **Vice Chief Judge
Arizona Court of Appeals, Division One
State Courts Building
1501 West Washington
Phoenix, Arizona 85007**
4. When have you been a resident of Arizona? **Continuously since 1992.**
5. What is your county of residence and how long have you resided there?
Maricopa County, where I have resided continuously since 1992.
6. Age: **54**

(The Arizona Constitution, Article VI, §§22 and 37, require that judicial nominees be 30 years of age or older before taking office and younger than age 65 at the time the nomination is sent to the Governor.)

7. List your present and former political party registrations and approximate dates of each: **Republican continuously since I first registered to vote in approximately 1980.**

(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
 Hispanic or Latino (of any race)
 Black or African American
 American Indian or Alaska Native
 Asian
 Native Hawaiian/Pacific Islander
 Other: _____

(The Arizona Constitution, Article VI, §§ 36 and 41, requires the Commission to consider the diversity of the state's or county's population in making its nominations. However, the primary consideration shall be merit.)

EDUCATIONAL BACKGROUND

9. List names and locations of schools attended (college, advanced degrees and law), dates attended and degrees.

Iowa State University
Ames, Iowa
August 1980-May 1984
Bachelor of Science Degree in Agricultural Journalism

Iowa Lakes Community College
Emmetsburg, Iowa
Summer 1981
No degree

University of Iowa College of Law
Iowa City, Iowa
August 1985-May 1988
Juris Doctorate Degree

Catholic University of America College of Law
Washington, D.C.
Summer 1986
No degree

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

Undergraduate:

- **Primary focus:** radio broadcasting and agricultural economics.
- **Activities:** All-University Council on Student Affairs chair, FarmHouse Fraternity (pledge class president and social chair), Inter-Fraternity Council Executive Committee member and blood drive co-chair (collecting more than 1,000 units of blood), and intramural basketball and flag football.

Law School:

- **Primary elective focus:** civil litigation, trial and appellate advocacy, administrative, constitutional and labor law, and estate and business planning.
- **Activities:** *Iowa Law Review* Note & Comment Editor, Stephenson Trial Advocacy and Van Oosterhout Appellate Advocacy Competitions, Iowa Student Bar Association elected class representative, and intramural volleyball.

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

Undergraduate:

- Dean's List, Cardinal Key Senior Honorary, Gamma Sigma Delta College of Agriculture Honorary, and Order of Omega Greek System Honorary.
- Harry S. Truman Memorial Scholar from Iowa. Established by an Act of Congress in 1975, Truman Scholarships are awarded annually to approximately 60 university students "who demonstrate outstanding potential for and who plan to pursue a career in public service." The Truman Scholarship paid for tuition, room, board, and books for my last two years of college and first two years of law school. Although I also worked to earn money to pay for college, I do not believe that I could have afforded law school if I had not been awarded the Truman Scholarship.
- Paid co-anchor for a statewide daily noon-hour farm report on WOI-AM Ames/Des Moines and provided recorded reports used by other radio stations in the Midwest.
- Unpaid on-air positions at KASI-AM/KCCQ-FM Ames and KPGY-FM Ames.
- Paid intern, United States Senator Charles E. Grassley, Washington, D.C.
- Volunteer, Iowa's then-Lieutenant Governor (and now Governor) Terry E.

Branstad in his successful campaign for Governor.

- **Agricultural economics extern, University of Ghent, Ghent, Belgium.**

From August 1984 to April 1985 (after graduating from college but before starting law school), I was an International 4-H Youth Exchange (“IFYE”) delegate to Australia. Administered by United States Department of Agriculture through the Cooperative Extension Service, IFYE is a cultural exchange program placing participants from the United States with farm families in other countries and vice versa. During my exchange, I stayed with families in South Australia and Queensland for six months, including living on sheep and cattle stations in the Outback, a sugar cane plantation, a peanut farm and many sheep, cattle, poultry, dairy and other farms. At the end of the exchange, I traveled for six weeks on my own in Australia and New Zealand.

Law School:

- **Graduated with High Distinction, Order of the Coif, and ranked 15th in a class of 259.**
- ***American Jurisprudence* awards for the highest grades in Professional Responsibility and Administrative Law classes.**
- **Paid research assistant, Professor William G. Buss, working 10 hours a week my second year.**
- ***Iowa Law Review*, second year member, working 10 to 15 hours a week, and Note & Comment Editor, working at least 20 hours a week, during the last portion of my second year and nearly all of my third year.**
- **Paid summer associate, Dorsey & Whitney, Minneapolis, Minnesota.**
- **Paid summer associate, Spencer, Fane, Britt & Browne, Kansas City, Missouri.**
- **Paid summer clerk, Commissioner Seeley G. Lodwick, United States International Trade Commission, Washington, D.C.**

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 administrative bodies, which require special admission to practice.

- **United States Court of Appeals for the Ninth Circuit (1995)**
- **United States District Court for the District of Arizona (1993)**
- **Supreme Court of Arizona/State Bar of Arizona (1992)**

- **United States Supreme Court, United States Court of Appeals for the District of Columbia Circuit and United States District Court for the District of Columbia (1992)**
- **District of Columbia Court of Appeals/District of Columbia Bar (inactive) and Supreme Court of Illinois/State Bar of Illinois (1990) (inactive)**
- **Supreme Court of Iowa/State Bar of Iowa (1988) (inactive)**

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. **Not applicable.**
- b. Have you ever had to take a bar examination more than once in order to be admitted to the bar of any state? **No.** If so, explain. **Not applicable.**
14. Indicate your employment history since completing your formal education. List your current position first. If you have not been employed continuously since completing your formal education, 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
Judge, Arizona Court of Appeals, Division One	2012-present	Phoenix, Arizona
Judge, Arizona Superior Court, Maricopa County	2007-2012	Phoenix, Arizona
Partner, Perkins Coie Brown & Bain P.A. (including Brown & Bain, P.A.)	1996-2007	Phoenix, Arizona
Associate, Brown & Bain, P.A.	1993-1996	Phoenix, Arizona
Law Clerk, Chief Justice Stanley G. Feldman Arizona Supreme Court	1992-1993	Phoenix, Arizona
Associate, Arnold & Porter	1990-1992	Washington, D.C.
Law Clerk, Judge David R. Hansen United States District Court Northern District of Iowa	1988-1990	Cedar Rapids, Iowa

After completing my clerkship for Judge Hansen in July 1990, I worked on our family farm in Iowa and traveled some before starting at Arnold & Porter in October 1990. During the summer of 1992—after leaving Arnold & Porter but before starting my clerkship on the Arizona Supreme Court—my wife and I were married and I studied for, took and passed the Arizona Bar examination.

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

Other judges on the Arizona Court of Appeals, Division One, State Courts Building, 1501 West Washington Street, Phoenix, Arizona 85007 (general number 602.542.4821) as of the date of this application (with one current opening) are:

**Chief Judge Michael J. Brown
Judge Kent E. Cattani
Judge Margaret H. Downie
Judge Andrew W. Gould
Judge Randall M. Howe
Judge Diane M. Johnsen
Judge Kenton D. Jones
Judge Donn Kessler
Judge Patricia K. Norris
Judge Patricia A. Orozco
Judge Maurice Portley
Judge Peter B. Swann
Judge Jon W. Thompson
Judge Lawrence F. Winthrop**

16. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

The Arizona Court of Appeals resolves appeals and special actions (seeking review of decisions before an appealable judgment is entered) in cases originating in Apache, Coconino, La Paz, Navajo, Maricopa, Mohave, Yavapai and Yuma Counties. These cases involve civil, criminal, juvenile (delinquency and dependency/abuse and neglect), family, mental health, tax, and probate issues. The Court also resolve appeals from administrative decisions, including worker's compensation and unemployment benefits decisions and decisions by the Arizona Corporation Commission. The Court decides cases in three-judge panels, with panel membership rotating from time to time. Each panel holds weekly conferences, where we discuss cases and have oral argument. I have served as presiding judge for various panels (chairing conferences and oral arguments and assigning writing responsibility for each case), as acting presiding judge (serving as presiding judge when the presiding

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judge is unable to participate) and by resolving motions made in appeals before they are assigned to a merits panel. Between conferences, we read the record for the cases we are asked to consider, perform independent research, write and edit draft decisions and attend to administrative and other matters.

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

Along with the areas of law noted in response to Question 16, before joining the Arizona Court of Appeals, I served as a judge on the Arizona Superior Court, Maricopa County, from May 2007 to May 2012. From June 2010 to May 2012, I presided over criminal cases, including approximately 35 felony jury trials and hundreds of other hearings, including sentencings, evidentiary hearings, pretrial conferences, settlement conferences and plea hearings. From May 2007 to June 2010, I presided over juvenile matters, including approximately 200 bench trials, involving delinquencies (where individuals less than 18 years of age are charged with violating the law), dependencies (sometimes called abuse and neglect cases) and other matters, including adoptions. I also presided over more than 25 appeals to the Superior Court from decisions by Municipal and Justice Courts and administrative agencies.

Before my appointment as a judge, I was in private practice for more than 15 years. During that time, my practice focused on civil litigation, with an emphasis on professional liability and business disputes, and related litigation and counseling, representing defendants, plaintiffs and third-parties.

Substantively, my practice addressed various issues involving contract, tort, equitable, common law, and statutory claims. At the time of my appointment to the Superior Court, I represented clients in various industries including financial institutions, real estate, home builders, land developers, technology companies, mining, franchisors, fence construction and maintenance, and telecommunications. At that time, all of my matters were litigation-related, consisting of 90 percent litigation and related counseling and the remaining 10 percent consisting of administrative, regulatory, government contracting and other matters.

While in private practice, I advised and represented clients in a wide variety of areas of law including: corporate and shareholder control and ownership, unwinding of business relationships, will contests, surcharge claims, trustee/personal representative disputes, products liability and design defects, blood services, investment services, legal malpractice, accounting malpractice, construction defects, condemnation, real estate transaction litigation, fiduciary duty/constructive fraud claims, racketeering/unlawful acts and pattern of unlawful activity claims, abuse of process, employee benefits, antitrust, fraudulent conveyance, franchising, landlord/tenant, mining, partnership, lien claims, debt collections, anatomic gifts, architectural services, supply contracts, wage claims, trade secret misappropriation, copyrights, patents, broker liability, homeowner association disputes, debtor-

creditor claims, clemency, government licensure, government contracting, government relations, satellite communications, software malpractice, cable television regulation, and the law of artifacts.

18. Identify all areas of specialization for which you have applied or been granted certification by the State Bar of Arizona. **None.**
19. Describe your typical clients.

As a judge, I do not have clients. As noted in response to Question 16, my current case mix involves appeals and special actions addressing a wide-variety of legal issues. When I was in private practice, I had the pleasure of representing a wonderful, eclectic mix of individuals and entities. My clients tended to be businesses based in Arizona or elsewhere in need of litigation, or litigation-related, representation and counseling. As examples, at the time of my appointment to the Superior Court, my clients included land developers and home builders, a publicly-traded Canadian merchant bank, a non-profit foundation, a Canadian gold mining venture, a financial institution based in Puerto Rico, telecommunications and other high-tech companies, a laser manufacturer, a private school, a franchisor and an electronic payment processing company along with bro bono clients, including an educational foundation.

20. Have you served regularly in a fiduciary capacity other than as a lawyer representing clients? **Yes.** If so, give details.

I hold funds for the benefit of our daughter and owe her fiduciary obligations. When my Father died in November 2009, he left my sister, my brother, and me an interest in our family farm land in Iowa. I hold that interest (including land that my brother continues to farm) through Tierra del Sol, an Iowa limited liability company that my wife and I formed. I serve as president and treasurer for, and am a member of, that entity and, accordingly, owe it and my wife (the other member) fiduciary obligations. From 2005 until my appointment to the Superior Court, I served as a member of the management committee of Perkins Coie Brown & Bain P.A. in Phoenix. I also have served as a member/director of various boards and foundations, including those noted in response to Question 59. In those positions, I served in a fiduciary capacity and owed fiduciary obligations.

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

While serving on the Arizona Court of Appeals, I have been primary author of more than 300 decisions addressing a variety of issues and areas of the law and have written many other orders resolving appeals or procedural issues on appeal. While on the Superior Court, I wrote many original orders addressing a variety of issues in criminal and juvenile cases as well as in appeals to the

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Superior Court. In 2012-2013, I sat by designation on the Arizona Supreme Court in one case, and in 2010, I sat by designation on the Arizona Court of Appeals and was the primary author of two decisions. Apart from my service as a judge, I am and have been involved in drafting statutes, rules and legal documents in various contexts.

Beginning in 2012, I have served as a Commissioner from Arizona on the Uniform Law Commission. Established in 1892, with Commissioners now from all 50 states, the ULC drafts and publishes uniform laws for adoption by state legislatures. The Uniform Commercial Code, adopted in all states, is perhaps the most widely known example of a ULC product. Since 2014, I have served as chair of the ULC's Drafting Committee on Employee and Student Online Privacy Protection (formerly Social Media Privacy). That Committee's charge was to research and draft "legislation concerning employers' access to employees' or prospective employees' social media accounts and educational institutions' access to students' or prospective students' social media accounts." Our Uniform Employee and Student Online Privacy Protection Act was approved by a vote of the state delegates to the ULC in July 2016 and our target is to have a uniform act ready for consideration by state legislatures later in 2016. I also serve as a member of the ULC's Drafting Committee on Criminal Records Accuracy, which is researching and drafting legislation to improve the accuracy of records used in criminal sentencing, law enforcement and background checks.

Beginning in 2005, I have served as one of approximately 30 appointed Advisors to the American Law Institute's RESTATEMENT OF THE LAW (THIRD) OF TORTS: LIABILITY FOR ECONOMIC LOSS, the end product of which will be a new RESTATEMENT. Established in 1923, the ALI drafts and publishes RESTATEMENTS of the law and other references designed to promote the clarification and simplification of the common law in the United States. The LIABILITY FOR ECONOMIC LOSS RESTATEMENT will provide guidance on when losses for injuries other than personal injuries can be recovered in tort. I also serve or have served on ALI Members Consultative Groups for PRINCIPLES OF THE LAW DATA PRIVACY (since 2015), PRINCIPLES OF THE LAW OF GOVERNMENT ETHICS (since 2011), RESTATEMENT OF THE LAW OF CHARITABLE NONPROFIT ORGANIZATIONS (originally PRINCIPLES OF THE LAW OF NONPROFIT ORGANIZATIONS) (since 2007), and RESTATEMENT OF THE LAW (THIRD) RESTITUTION AND UNJUST ENRICHMENT (from 2003 until completion in 2011).

Beginning in 2012, I have served as co-chair of the Arizona Supreme Court's Advisory Committee on the Rules of Evidence. This Committee considers and suggests changes to Arizona's Rules of Evidence and other rules addressing the admissibility of evidence used in Arizona's courts. On behalf of that Committee, I have served as co-petitioner on petitions filed with the Arizona Supreme Court suggesting changes to the Arizona Rules of Evidence, the Arizona Rules of Family Law Procedure, and the Arizona Rules of Probate

Procedure and in commenting on suggested changes to the Arizona Rules of Protective Order Procedure. Before the creation of the Advisory Committee, I served on the Arizona Supreme Court's Ad Hoc Committee on the Arizona Rules of Evidence from 2010-2012. The Ad Hoc Committee was charged with comparing the Arizona and Federal Rules of Evidence and providing input to the Arizona Supreme Court regarding possible conforming changes. After public hearings, the Ad Hoc Committee filed a petition to amend the Arizona Rules of Evidence, which the Arizona Supreme Court adopted (as modified), changing the Arizona Rules of Evidence effective January 1, 2012.

In 2014 and early 2015, I served as a member of the Arizona Supreme Court's Committee on the Review of Supreme Court Rules Governing Professional Conduct and the Practice of Law, focusing on how changes in technology have necessitated changes to the rules governing how lawyers practice. The Committee's work resulted in a petition to amend various rules governing the practice of law in Arizona, which the Arizona Supreme Court adopted (as modified) in August 2015.

For nine years ending in June 2015, I served as a member of the State Bar of Arizona's Rules of Professional Conduct Committee (often called the Ethics Committee), where we drafted and issued formal and informal Ethics Opinions governing the practice of law. In June 2015, I was appointed by the Arizona Supreme Court to the Judicial Ethics Advisory Committee, where I am involved in similar activities in applying the Arizona Code of Judicial Conduct. While on the Superior Court, in 2009-2010, I helped revise forms for petitions for dependency and severance/termination of parental rights petitions available at the Court's Self-Service Center for use by attorneys and self-represented litigants.

For nearly a decade, I served on the State Bar of Arizona's Civil Practice & Procedure Committee, including serving as chair from 2002-2006. Through the Board of Governors, that Committee proposes and comments on amendments to the Arizona Rules of Civil Procedure, the Arizona Rules of Civil Appellate Procedure, the Arizona Rules of Evidence and other procedural rules used in Arizona's courts. As chair, I was responsible for changes and comments presented to the Board of Governors and had shared responsibility for rule change petitions and comments filed with the Arizona Supreme Court.

From 1994-2007, I served as a member of the State Bar of Arizona's Fee Arbitration Committee, including serving as chair from 1997-2002. I helped draft and propose to the Board of Governors changes to the rules governing fee arbitrations, where many parties are self-represented.

From 2003-2007, I served on the Local Rules Committee for the Rules of Practice of the United States District Court for the District of Arizona, which considers and proposes changes to the Local Rules used in that Court. I

served as chair of the Committee's Civil Practice Subcommittee for two years. While in private practice, I had extensive experience in drafting, revising and finalizing documents in litigation, including complaints, answers, motions, responses, replies, forms of judgment, appellate briefs, and settlement agreements. My experience was both as an original drafter and editor in providing guidance for substance, style, and tone. I also had substantial negotiation experience with opposing counsel and others in reaching consensus for various legal documents, including settlement documentation, stipulations, proposed orders and judgments, and other litigation and non-litigation documents.

22. 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.

United States Securities and Exchange Commission	1
Arizona Registrar of Contractors/ Office of Administrative Hearings	10
Arizona Department of Economic Security/ Arizona Department of Administration	1
Arizona Department of Health Services/ Arizona Department of Administration	2
Arizona Department of Public Safety	1
Arizona Accountancy Board	1
Lake Havasu City Council	1

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

Sole Counsel:	11
Chief Counsel:	1
Associate Counsel:	5

23. 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:	12
Chief Counsel:	8
Associate Counsel:	8

24. List not more than three contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, addresses (street and e-mail) 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. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

Medcere, LLC v. Ken Taylor and Ceredev, LLC,
Case Nos. CV2004-016781 & CV2004-016782,
Arizona Superior Court, Maricopa County
(Judge Janet E. Barton)
(Mediator Gary L. Birnbaum)

(1) August 30, 2004 through November 29, 2004.

(2) Counsel of Record:

Counsel for Plaintiff:

Samuel A. Thumma and Paul F. Eckstein, Esq.
Brown & Bain, P.A. (now Perkins Coie LLP)
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Michael T. Liburdi, Jr., Esq. (then at Brown & Bain, P.A.)
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Counsel for Defendants:

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David W. Cowles, Esq. (then at Meyer, Hendricks & Bivens, P.A.)
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The additional information requested regarding these cases is contained in the confidential section of this application.

United Equities Group, L.L.C. v. Thomas Pride, Inc., et al., and related Counterclaims, Cross-Claims and Third-Party Claims and Parties, No. CV1999-13354, Arizona Superior Court, Maricopa County, No. 1 CA CV 03 0279, Arizona Court of Appeals, Division One (Judge Cari A. Harrison) (Court of Appeals Judges Philip Hall, Jon W. Thompson and then-Judge Ann Scott Timmer) (Mediator Lawrence H. Fleischman)

(1) Plaintiff filed the complaint in July 1999; cross-claims and third-party claims were filed against our clients in March and April 2001. The Arizona Court of Appeals granted our motion to dismiss the appeals from rulings in favor of our clients in June 2003. The parties settled the matter in June 2003.

(2) Counsel of Record:

Counsel for Plaintiff/Counterclaim Defendant United Equities Group, L.L.C.:

Ronald Jay Cohen, Esq.
Laura H. Kennedy, Esq. (now retired)*
Cohen Kennedy Dowd & Quigley
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* Contact information is provided for individuals with whom I had primary contact on a listed matter.

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Counsel for Defendant/Cross-Claimant/Counterclaim Defendant Thomas Pride, Inc.:

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Counsel for Defendants/Cross-Defendants and Counterclaimants PR Hotel, L.L.C. and PR Resort Club, L.L.C. and Third Party Defendant Four Seasons Hotels:

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The additional information requested regarding this case is contained in the confidential section of this application.

***EnerGCorp Inc., et al., v. Peter J. Workum, et al., and related
Counterclaims, Cross-Claims and Third-Party Claims and Parties,
Nos. CV2002-022196, CV2003-005632, CV2003-007031,
Arizona Superior Court, Maricopa County***

No. 1 CA CV 05 0716, Arizona Court of Appeals, Division One

In re Peter J. Workum Debtor, No. 2:06-bk-01146-GBN

United States Bankruptcy Court, District of Arizona

(Superior Court Judge Kenneth W. Fields)

(Special Master Thomas C. Kleinschmidt)

(Court of Appeals Judges Lawrence F. Winthrop,

G. Murray Snow and then-Judge Ann Scott Timmer)

(Bankruptcy Judge George B. Nielson, Jr.)

Related Proceedings:

Proprietary Industries, Inc. v. Peter Workum, et al., Action No. 0201-14914

Court of Queens Bench of Alberta, Judicial District of Calgary, Canada

(Madam Justice C.A. Kent)

In re Workum and Hennig, 2008 ABASC 363

Alberta Securities Commission

(1) Plaintiff EnerGCorp Inc. filed the complaint in November 2002; our firm first appeared for plaintiff in February 2005; Peter J. Workum filed a bankruptcy petition in April 2006 and the matter was settled in March 2007.

(2) Counsel of Record:

Many, many attorneys appeared in these cases at various times. The following is a list of attorneys who had material involvement in the cases as counsel of record after we first appeared as counsel of record.

Counsel for Plaintiffs EnerGCorp. Inc., et al.:

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M. Bridget McMullen (now Minder), Esq. (then at Perkins Coie Brown & Bain, P.A.)

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Special Master:
Honorable Thomas C. Kleinschmidt (Arizona Court of Appeals, Retired)
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The additional information requested regarding these matters is contained in the confidential section of this application.

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

The approximate number of cases in which you appeared before:

Federal Courts: **30**

State Courts of Record: **50**

Municipal/Justice Courts: **0**

The approximate percentage of those cases which have been:

Civil: **100%**

Criminal: **0%**

The approximate number of those cases in which you were:

Sole Counsel: **20**

Chief Counsel: **25**

Associate Counsel: **35**

The approximate percentage of those cases in which:

You conducted extensive discovery¹: **70%**

You wrote and filed a motion for summary judgment: **25%**

You wrote and filed a motion to dismiss: **20%**

You argued a wholly or partially dispositive pre-trial, trial or post-trial motion (e.g., motion for summary judgment, motion for a directed verdict, motion for judgment notwithstanding the verdict): **40%**

You made a contested court appearance (other than as set forth in above response) **70%**

You negotiated a settlement: **80%**

The court rendered judgment after trial: **8%**

A jury rendered verdict: **2%**

¹Extensive discovery is defined as discovery beyond standard interrogatories and depositions of the opposing party.

Disposition occurred prior to any verdict: **15% (on motion)**
90% (overall)

The approximate number of cases you have taken to trial:* **Court 5**
Jury 1

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

*** Including trials before Administrative Law Judges but excluding arbitrations.**

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

The approximate number of your appeals which have been:

Civil: **12**

Criminal: **0**

The approximate number of matters in which you appeared:

As counsel of record on the brief: **AZ 6 U.S. 6**

Personally in oral argument:* **AZ 1 U.S. 2**

*** Six of the appeals were dismissed/resolved without oral argument.**

27. Have you served as a judicial law clerk or staff attorney to a court? **Yes.** If so, state the name of the court and dates of service, and describe your experience.

I clerked for the Honorable David R. Hansen, United States District Judge for the Northern District of Iowa (later Judge, Chief Judge and now Senior Judge of the United States Court of Appeals for the Eighth Circuit), from March 1988 (part-time)/July 1988 (full time) to July 1990. Along with analyzing briefs, researching, and drafting, I researched and helped address evidentiary, procedural and other trial issues, and jury instructions. I also worked closely with Magistrate Judge John A. Jarvey (now United States District Judge for the Southern District of Iowa), who addressed pretrial discovery issues.

After moving to Arizona and taking the Arizona Bar Examination, I clerked for the Honorable Stanley G. Feldman, Chief Justice of the Arizona Supreme Court, from September 1992 to August 1993. That work included reading briefs, researching, and drafting as well as learning about the Arizona Supreme Court and the Arizona judicial system more broadly.

28. List not more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts. 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 presiding judge or officer before whom the case was heard; (3) the names, addresses (street and e-mail) 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. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

In the Matter of the Estate of Leon D. Spiegel,
Case No. P2000-0581, Arizona Superior Court, Pima County
No. 2 CA CV 03 0135, Arizona Court of Appeals, Division Two

(1) This case began as an informal probate of a will and appointment of personal representative in June 2000. I became involved in the case in late 2002, when I was asked to handle the matter for a law partner who was taking a sabbatical in the first part of 2003. Almost immediately, another party sought to disavow a settlement agreement, resulting in substantial discovery and motion practice. The Arizona Court of Appeals dismissed an appeal in September 2003 and, ultimately, the parties reached a revised settlement approved by the Superior Court in September 2004.

(2) Judge Clark W. Munger, Arizona Superior Court, Pima County, and Arizona Court of Appeals, Division Two (Judges Peter J. Eckerstrom, Philip G. Espinosa and then-Judge A. John Pelander).

(3) Counsel of Record:

Counsel for Personal Representative Joseph M. Burke:

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Counsel for Marilyn Helen Spiegel:

George Brandon, Esq.

Mitchell B. Axler, Esq. (now retired)

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Counsel for Leslie Rackliffe, Cheryl Spiegel and Justin Spiegel:

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The additional information requested regarding this case is contained in the confidential section of this application.

Slep-Tone Entertainment Corporation, et al., v. Joseph Carreiro and Marie Carreiro, doing business as A Major Productions,
No. CIV01-468-PHX-SRB
United States District Court, District of Arizona

- (1) We filed the complaint on March 13, 2001. On March 20, 2001, we seized counterfeit compact disks with graphics used by individuals who provide karaoke services and settled the case by late June 2001.
- (2) Judge Susan R. Bolton, United States District Court, District of Arizona.
- (3) Counsel of Record:

Counsel for Plaintiffs Slep-Tone Entertainment Corporation; Sound Choice, Inc. and K.A.P.A (Karaoke Anti-Piracy Agency):

Samuel A. Thumma

Brown & Bain, P.A. (now Perkins Coie LLP)

2901 North Central Avenue
Post Office Box 400
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602.351.8000

Counsel for Defendants Joseph Carreiro and Marie Carreiro, doing business as A Major Productions:

David E. Wattel, Esq. (then at Cluff & Associates)
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Chandler, Arizona 85224-0001
480-222-2020
dew@waytogolaw.com

The additional information requested regarding this case is contained in the confidential section of this application.

*Leonard and Catherine Glass and Avocado Partnership Acres II
v. Kronish Lieb Weiner & Hellman, et al.,
No. CV1996-11690, Arizona Superior Court, Maricopa County,
declining special action jurisdiction (Ariz. Ct. App. 1997) (2-1 decision),
petition for review denied (Ariz. 1998).*

(1) Plaintiffs filed the complaint in July 1996. Our clients' motions to dismiss were denied in August 1997, jurisdiction on our clients' special action petition was declined by the Arizona Court of Appeals in October 1997 and the Arizona Supreme Court denied our clients' petition for review in June 1998. Following discovery, expert disclosures and mediation, the case settled in March 2001.

(2) Judges Norman D. Hall, Jr., David M. Talamante and Gary E. Donohoe, Arizona Superior Court, Maricopa County; Arizona Court of Appeals, Division One (Judges Jefferson L. Lankford, William F. Garbarino and then-Judge Ruth V. McGregor) and the Arizona Supreme Court. Former Superior Court Judge Daniel E. Nastro served as mediator.

(3) Counsel of Record:

Counsel for Plaintiffs Leonard Glass, Catherine Glass and Avocado Acres, II:

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T. Dawn Farrison, Esq.
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Connie T. Gould, Esq.
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Counsel for Defendants Kronish Lieb Weiner & Hellman, LLP, Kent W. Klineman and Topspin Data Corporation:
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Phoenix, Arizona 85001-0400

Judge John A. Buttrick (then at Brown & Bain, P.A.)
United States Magistrate Judge
United States District Court, District of Arizona
John M. Roll United States Courthouse
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Judge Douglas Gerlach (then at Brown & Bain, P.A.)
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The additional information requested regarding this case is contained in the confidential section of this application.

Kana, Inc., et al., v. Burger King Corporation,
No. CV1988-33674, Arizona Superior Court, Maricopa County,
reversed 1997 WL 667171 (Ariz. Ct. App. 1997)
(reversing tort verdict for plaintiffs on economic loss rule grounds),
petition for review denied (Ariz. 1998).

(1) Although this case was filed in 1988, my involvement did not begin until 1995, when summary judgment previously granted in favor of our client was reversed in part by the Arizona Court of Appeals and the case was remanded. In February 1996, the jury returned verdicts both favorable to and adverse to our client after a four week jury trial. In October 1997, the Arizona Court of Appeals issued an opinion and a memorandum decision reversing the verdicts against our client and entering judgment in favor of our client. In September 1998, the Arizona Supreme Court denied plaintiffs' petition for review and depublished the Court of Appeals' opinion. In May 1999, the individual plaintiff filed bankruptcy.

(2) Judge Michael D. Jones, Arizona Superior Court, Maricopa County; Arizona Court of Appeals, Division One (Judges Edward C. Voss, James B. Sult and Cecil B. Patterson, Jr.) and the Arizona Supreme Court.

(3) Counsel of Record:

Counsel for Plaintiffs Kana, Inc., Nicholas A. Cherevka and Angela S. Cherevka:

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Counsel for Defendant Burger King Corporation:

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Appellate Co-Counsel for Defendant Burger King Corporation:

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Vice President & General Counsel

Capital BlueCross

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The additional information requested regarding this case is contained in the confidential section of this application.

*Joseph Velarde, et al., v. PACE Membership Warehouse, Inc.,
No. CIV94-198-TUC-JFB (WDB)
United States District Court, District of Arizona,
affirmed 105 F.3d 1313 (9th Cir. 1997).*

(1) In February 1994, we filed the complaint on behalf of 25 individual clients. After discovery, our motion for summary judgment on liability, treble damages and attorneys' fees was granted in January 1995 and attorneys' fees were awarded in May 1995. The Ninth Circuit Court of Appeals affirmed in February 1997 and the judgment was paid in March 1997.

(2) Judge James F. Battin, United States District Court, District of Montana (sitting by designation in the United States District Court, District of Arizona) and the Ninth Circuit Court of Appeals (Judges William A. Fletcher, Charles E. Wiggins and T.G. Nelson).

(3) Counsel of Record:

Counsel for Defendant PACE Membership Warehouse, Inc.:
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The additional information requested regarding this case is contained in the confidential section of this application.

29. 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 to the Arizona Court of Appeals, Division One, in April 2012, and began hearing cases in May 2012. In November 2014, I was on the election ballot and was retained by the voters.

As noted in response to Question 16, as a judge on the Arizona Court of Appeals, I decide appeals and special actions in cases originating in eight of Arizona's 15 Counties addressing a wide-variety of legal issues. The Court decides cases in three-judge panels, which rotate in composition from time to time. I serve with two other judges and address cases at weekly conferences where we consider cases assigned for that week and hear oral argument. I have served as presiding judge and acting presiding judge for various panels

and also on motions panels, resolving motions made in appeals before they are assigned to a merits panel.

To date, I have participated in nearly 900 cases that have been resolved by opinion or memorandum decision, and I have been the primary author for more than 300 of those opinions or memorandum decisions. I also have participated in resolving a significant number of issues by order, including various motions and related issues, and have presided over several settlement conferences for cases on appeal. I served as a judge *pro tempore* on the Arizona Supreme Court, participating in a criminal case where the appellant was sentenced to death for two murders and the convictions and sentences were affirmed. See *State v. Parker*, 231 Ariz. 391, 296 P.3d 53 (2013).

In 2015, I was elected by my peers as Vice Chief Judge for the Court of Appeals, and was re-elected to that position earlier this year. As Vice Chief Judge, I have various management and administrative responsibilities for the Court and serve as the presiding judge for show cause hearings when court reporters have not provided transcripts, or attorneys have not filed briefs, in a timely fashion.

Before being appointed to the Court of Appeals, I served as a judge on the Arizona Superior Court, Maricopa County, for nearly five years. I was appointed to the Superior Court in March 2007, and began hearing cases in May 2007. In November 2010, I was on the election ballot and was retained by the voters.

While serving on the Superior Court, I presided over thousands of cases. As noted in response to Question 17, from June 2010 until being appointed to the Court of Appeals in April 2012, I served on a criminal rotation, where I presided over criminal trials, sentencings, pretrial hearings, settlement conferences and various other hearings arising out of felony criminal prosecutions. I presided over approximately 35 criminal jury trials involving various charges, including first and second degree murder, sexual assault and abuse, sexual conduct with a minor, kidnapping, burglary, armed robbery, aggravated assault, possession of various types of drugs for sale, possession of various types of drugs, fraudulent schemes and artifices to defraud, forgery, trafficking in stolen property, and misconduct involving weapons. I also presided over hundreds of sentencings, pretrial conferences and settlement conferences—including three capital case settlement conferences—and numerous other hearings. From time to time, I also presided over Juvenile Transferred Offender Program (JTOP) hearings, when the judge primarily responsible for that calendar was unavailable.

In October 2010, I served as a judge *pro tempore* on the Arizona Court of

Appeals, Division One, participating in three cases and writing one opinion (later depublished) and one memorandum decision. See *Gelb v. Department of Fire, Building and Life Safety*, 225 Ariz. 515, 241 P.3d 512 (Ariz. Ct. App. Oct. 28, 2010), review denied and opinion depublished, 2011 WL 2028520 (Ariz. May 24, 2011), and *Levine v. Parker Unified School District*, 1 CA-CV 10-0029 (Ariz. Ct. App. Oct. 19, 2010) (memorandum decision).

For the three years ending June 2010, I served on a juvenile rotation on the Superior Court, where I presided over more than 150 delinquency trials, 10 dependency trials and 30 severance/termination of parental rights trials. I also presided over hundreds of disposition hearings (the juvenile delinquency equivalent of sentencing in criminal cases), pretrial/status conferences and various other types of delinquency and dependency hearings, including adoptions. While on the Superior Court, I also presided over more than 25 appeals to the Superior Court from decisions by Municipal and Justice Courts and administrative agencies, typically involving civil issues.

From 2004 to 2007, I served as a judge *pro tempore* for the Superior Court, presiding over five “short trials” (two through jury verdict and three resolved before verdict) as part of the Alternative Dispute Resolution program. I also conducted approximately 15 settlement conferences, helping to facilitate resolution in about half of those cases, and served as a privately-retained mediator in an additional matter that was resolved by settlement. I served as a court-appointed arbitrator in nine additional cases. From 1994 to 2007, I served as an arbitrator for the State Bar of Arizona’s Fee Arbitration program in five arbitrations, including as panel chair in three of those matters.

30. List not 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, addresses (street and e-mail) 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. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

State of Arizona v. Andres de la Torre,
CR2011-006294-001; CR2011-006300-012; CR2009-007812
Arizona Superior Court, Maricopa County

(1) Hearings in CR2009-007812 included trial on the misconduct involving weapons charge from June 14-July 21, 2011 (with some breaks); trial on the first degree murder charge from August 8-31, 2011; oral argument on the motion to vacate verdict and to dismiss on October 11, 2011 and sentencing

in all matters on November 21, 2011 as well as miscellaneous hearings on other dates.

(2) Arizona Superior Court, Maricopa County.

(3) Counsel for the State of Arizona:
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The additional information requested regarding these cases is contained in the confidential section of this application.

State of Arizona v. Bradley Hugh Tocker,
CR2010-005795-001
Arizona Superior Court, Maricopa County
affirmed, Arizona Court of Appeals, 1 CA-CR 11-0681, 2012 WL 4564276
(Ariz. Ct. App. 10/2/2012) (memorandum decision)

(1) Trial from March 21-April 7, 2011 and sentencing on September 30, 2011 as well as miscellaneous hearings on other dates.

(2) Arizona Superior Court, Maricopa County.

(3) Counsel for the State of Arizona:
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The additional information requested regarding this case is contained in the confidential section of this application.

***State of Arizona v. Dywayne Earl Madison,
CR2010-006355-001
Arizona Superior Court, Maricopa County,
affirmed other than vacating one kidnapping conviction deemed
duplicative, Arizona Court of Appeals, 1 CA-CR 11-0157, 2012 WL 3582693
(Ariz. Ct. App. 8/21/2012) (memorandum decision)***

- (1) Trial from January 11-31, 2011; sentencing on March 2, 2011 as well as miscellaneous hearings on other dates.
- (2) Arizona Superior Court, Maricopa County.
- (3) **Counsel for the State of Arizona:**
Commissioner Erin A. Otis (then a Deputy Maricopa County Attorney)
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The additional information requested regarding this case is contained in the confidential section of this application.

**A.F. v. A.M., et al.,
JS111115
Arizona Superior Court, Maricopa County
affirmed, Arizona Court of Appeals, 1 CA-JV 09-0136, 2009 WL 4646961
(Ariz. Ct. App. 12/8/2009) (memorandum decision)**

- (1) Trial on February 5, 12, 23; March 5; April 21, 22 and 28; May 29 and June 9, 2009 as well as miscellaneous hearings on other dates.
- (2) Arizona Superior Court, Maricopa County.
- (3) **Counsel for Biological Mother:**
The Honorable Kathleen M. Mucerino (then in private practice)
Administrative Law Judge, Social Security Administration
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Counsel for Biological Father 2:

Virginia S. Matte, Esq. (now retired)
Paul J. Matte, III, Esq. (now retired)
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Guardian Ad Litem for the Children:

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The additional information requested regarding this case is contained in the confidential section of this application.

*In re Termination of Parental Rights of T.O., C.O. and M.O.,
JS11395/JD18429
Arizona Superior Court, Maricopa County
affirmed, Arizona Court of Appeals, 1 CA-JV 10-0142, 2011 WL 4337030
(Ariz. Ct. App. 9/15/2011) (memorandum decision)*

(1) Trial on March 1, 11, 26, 31 and April 8, 12 and 14, 2010 as well as miscellaneous hearings on other dates.

(2) Arizona Superior Court, Maricopa County.

(3) **Counsel for Arizona Department of Economic Security, Child Protective Services:**

Colleen E. O'Donnell-Smith, Esq.
Assistant Attorney General
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Counsel for Biological Father 2 (not contesting severance):

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Guardians Ad Litem for the Children (at various times):

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The additional information requested regarding these cases is contained in the confidential section of this application.

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

In 2005, I served as an expert witness addressing Arizona disclosure, discovery and other obligations in *Proprietary Industries, Inc. v. Peter Workum, et al.*, Action No. 0201-14914 (Court of Queens Bench of Alberta, Judicial District of Calgary Canada). I provided a declaration and then was asked questions in what is called a discovery examination in Calgary under Alberta law (akin to a deposition in Arizona) for approximately three hours.

Also in 2005, I testified in a family court matter in Arizona Superior Court, Maricopa County. This testimony arose out of a settlement conference I conducted as a judge *pro tempore*. One party, over the objection of the other, called me as a witness and I was asked questions about my recollection of statements made by a non-party at the settlement conference over which I presided.

Having taken and defended depositions, prepared witnesses, and examined and cross-examined witnesses for years, in the same month, I was both first deposed as an expert and then first called to testify as a trial witness. Both experiences aided my own practice in conducting and preparing for such events, as well as presiding over trials and other evidentiary proceedings.

BUSINESS AND FINANCIAL INFORMATION

32. 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? **Yes.** If so, give details, including dates.

While growing up, I worked for my parents on our family corn, soybean and beef cattle farm near Laurens, Iowa, and I owned a portion of our cattle herd. During my last two years in high school, I farmed my grandmother's 110 acre corn and soybean farm to earn money for college. I also had occasional jobs, including shelling corn, baling hay and helping work livestock.

In 1981, I served as a counselor for the Iowa Agricultural Youth Institute in Ames, Iowa, in conjunction with the Iowa Department of Agriculture. In 1981, I also attended and graduated from the Reisch Worldwide College of Auctioneering in Mason City, Iowa, and occasionally served as an auctioneer for fundraising events before becoming a judge.

In 1984, after graduating from college but before travelling to Australia on the exchange program noted in response to Question 11, I worked as a paid member of the Sheep Division of the Iowa Department of Agriculture in Des Moines, Iowa. I wrote articles about the sheep industry, worked to promote the industry in Iowa and helped at the Iowa State Fair.

33. Are you now an officer, director or majority stockholder, or otherwise engaged in the management, of any business enterprise? **No (but see below)**. 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.

As noted in response to Question 20, I hold an interest in our family's Iowa farm land (including land that my brother continues to farm) in the form of an Iowa limited liability company called Tierra del Sol. My wife and I are the sole members and officers of that limited liability company.

Is it your intention 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, give reasons.

34. Have you filed your state or federal income tax returns for all years you were legally required to file them? **Yes**. If not, explain. **Not applicable**.
35. Have you paid all state, federal and local taxes when due? **No**. If not, explain.

We paid off our mortgage on a prior home several years early. After doing so, a property tax previously paid through escrow was not timely paid. On another occasion, an Iowa income tax return was timely filed but the payment check was not enclosed. Immediately upon learning of these embarrassing errors, I paid all outstanding taxes, interest and fees.

36. Are there currently any judgments or tax liens outstanding against you? **No**. If so, explain. **Not applicable**.
37. Have you ever violated a court order, including but not limited to an order for payment of child or spousal support? **No**. If so, explain. **Not applicable**.
38. Have you ever been a party to a lawsuit, including bankruptcy but excluding divorce? **Yes**. If so, identify the nature of the case, your role, the court, and the

ultimate disposition.

After I denied motions filed by a self-represented defendant in a criminal case over which I was presiding while serving as a judge on the Superior Court, the defendant filed an amended complaint in a 42 U.S.C. § 1983 case in the United States District Court, District of Arizona, naming me a defendant (along with the prosecutor and another judicial officer). I was never served with that amended complaint. Soon after that filing, the District Court dismissed the claims for failure to state a claim and, in doing so, certified that any appeal from that dismissal would not be taken in good faith. See *Ross v. Arpaio, et al.*, No CV 11-60-PHX-JAT (ECV) (D. Ariz. Mar. 16, 2011 Order).

From time to time, while serving as a judge on both the Court of Appeals and the Superior Court, I have been named as a respondent judge in special actions, where my rulings are being challenged by one of the parties. Other individuals and entities are the real parties in interest and I have had no involvement in those matters, other than having issued the order being challenged. To my knowledge, special action jurisdiction has been declined or the relief requested in those special actions has been denied.

39. Do you have any financial interests, investments or retainers that might conflict with the performance of your judicial duties? **No (but see below).** If so, explain.

My wife and I own stocks, bonds and other interests in publicly traded companies, and my wife has a financial interest in her law firm. As a judge, I am mindful of those holdings in determining when I need to make disclosures and/or recuse myself from consideration of any matter.

CONDUCT AND ETHICS

40. Have you ever been terminated, expelled, or suspended from employment or any school or course of learning on account of dishonesty, plagiarism, cheating or any other "cause" that might reflect in any way on your integrity? **No.** If so, give details. **Not applicable.**
41. a. Have you ever been charged with, arrested for, or convicted of any felony, misdemeanor, or violation of the Uniform Code of Military Justice? **No.** If so, identify the nature of the offense, the court, and the ultimate disposition. **Not applicable.**
- b. Have you, within the last 5 years, been charged with or cited for any traffic-related violations, criminal or civil, that are not identified in response to question 41(a)? **No.** If so, identify the nature of the violation, the court, and the ultimate disposition. **Not applicable.**

42. If you performed military service, please indicate the date and type of discharge. **Not applicable.** If other than honorable discharge, explain. **Not applicable.**
43. List and describe any litigation (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) concerning your practice of law. **None.**
44. List and describe any litigation involving an allegation of fraud in which you were or are a defendant. **None.**
45. List and describe any sanctions imposed upon you by any court for violation of any rule or procedure, or for any other professional impropriety. **None.**
46. To your knowledge, has any formal charge of professional misconduct ever been filed against you by the State Bar or any other official attorney disciplinary body in any jurisdiction? **No.** If so, when? **Not applicable.** How was it resolved? **Not applicable.**
47. Have you received a notice of formal charges, cautionary letter, private admonition or other conditional sanction from the Commission on Judicial Conduct or any other official judicial disciplinary body in any jurisdiction? **No.** If so, in each case, state in detail the circumstances and the outcome. **Not applicable.**
48. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal and State laws? **No.** If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.) **Not applicable.**
49. In the past year, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as a result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? **No.** If so, state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action. **Not applicable.**
50. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended or terminated by an employer? **No.** If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the back ground and resolution of such action. **Not applicable.**
51. Have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a complaint or accusation of misconduct against

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you with any regulatory or investigatory agency, or with your employer? **No.** If so, state the date(s) of such accusation(s), the specific accusation(s) made, and the background and resolution of such action(s). **Not applicable.**

52. 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 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. **Not applicable.**
53. Within the last five years, have you failed to meet any deadline imposed by a court order or received notice that you have not complied with the substantive requirements of any business or contractual arrangement? **No.** If so, explain in full. **Not applicable.**
54. 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 in full. **Not applicable.**

PROFESSIONAL AND PUBLIC SERVICE

55. Have you published any legal or non-legal books or articles? **Yes.** If so, list with the citations and dates. **I have published nine law review articles, and nearly 40 other law-related articles, including:**
- **Magnuson & Thumma, “Prospects and Problems Associated With Technological Change In Appellate Courts: Envisioning The Appeal Of The Future,” 15 *Journal of Appellate Practice & Process* 111 (2014).**
Cited in articles appearing in 129 *Harvard Law Review* 2049 (2016); 107 *Law Library Journal* 347 (2015) and 22.4 *The Professional Lawyer* 16 (2014).
 - **Kirchmeier & Thumma, “Scaling the Lexicon Fortress: The United States Supreme Court’s Use of Dictionaries in the Twenty-First Century,” 94 *Marquette Law Review* 77 (2010).**
Cited in more than 20 law review articles, including in 113 *Columbia Law Review* 531 (2013); 128 *Harvard Law Review* 1 (2014); 88 *New York University Law Review* 729 (2013); 66 *Stanford Law Review* 725 (2014); 125 *Yale Law Journal Forum* 267 (2016); 124 *Yale Law Journal* 2746 (2015); 83 *University of Chicago Law Review* 295 (2016); and in *The New York Times* (June 13, 2011); In re Milan, 546 BR 187, 195 n.19 (Bankr. D. Minn. 2016); *Gerber Life Ins. Co. v. Bissa*, 2013 WL 2196023, *4 (E.D. Mich. May 20, 2013); and *Clark v. Clark*, 2011 WL 2848178, *4 (Ind. Ct. App. July 19, 2011) (Robb, C.J., dissenting).

- **Ballinger & Thumma, “The Continuing Evolution of Arizona’s Economic Loss Rule,” 39 *Arizona State Law Journal* 353 (2007).**

Cited in 44 *Arizona State Law Journal* 961 (2012); 50 *Hapraklit Law Review* 95 (2008); 4 *Phoenix Law Review* 85 (2010-2011); 18 *Texas Wesleyan Law Review* 893 (2012); and in *Flagstaff Affordable Housing, Ltd. Partnership v. Design Alliance, Inc.*, 223 Ariz. 320, 323, 223 P.3d 664, 667 (2010); *Makoto USA, Inc. v. Russell*, 2009 WL 4069579, *4 (Colo. Ct. App. Nov. 25, 2009); *Firetrace USA, LLC v. Jesclard*, 800 F.Supp.2d 1042, 1051 (D. Ariz. 2010); and *Evans v. Singer*, 518 F.Supp.2d 1134, 1140 n.1, 1143 (D. Ariz. 2007).

- **Ballinger & Thumma, “The History, Evolution and Implications of Arizona’s Economic Loss Rule,” 34 *Arizona State Law Journal* 491 (2002).**

Cited in 44 *Arizona State Law Journal* 961 (2012); 38 *Arizona State Law Journal* 337 (2006); 48 *Creighton Law Review* 245 (2015); 16 *George Mason Law Review* 747 (2009); 92 *Marquette Law Review* 423 (2009); and in *Shaw v. CTVT Motors, Inc.*, 232 Ariz. 30, 33 ¶ 17, 300 P.3d 907, 910 (Ariz. App 2013); *Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407, 415 (Tex. 2011); *Arce-Mendez v. Eagle Produce Partnership, Inc.*, 2008 WL 659812, *4 (D. Ariz. Mar. 6, 2008); *Evans v. Singer*, 518 F.Supp.2d 1134, 1140, 1141 n.2, 1143 (D. Ariz. 2007); and *QC Const. Products, LLC v. Cohill’s Bldg. Specialties, Inc.*, 423 F. Supp. 2d 1008, 1015 & n.7 (D. Ariz. 2006).

- **Thumma & Kirchmeier, “The Lexicon Remains a Fortress: An Update,” 5 *Green Bag 2d* 51 (2001).**

Cited in more than 10 law review articles, including in 2002 *BYU Education & Law Journal* 333; 29 *Columbia Journal of Environmental Law* 1 (2004); 11 *Georgetown Journal on Poverty Law & Policy* 53 (2004); 64 *Ohio State Law Journal* 149 (2003); and 44 *William & Mary Law Review* 737 (2002).

- **Thumma & Jackson, “The History of Electronic Mail in Litigation,” 16 *Santa Clara Computer & High Technology Law Journal* 1 (1999).**

Cited in more than 20 law review articles, including in 24 *Comparative Labor Law & Policy Journal* 487 (2002-2003); 25 *Delaware Journal of Corporate Law* 741 (2000); *Employment Law Update* (Aspen Pub. 2004); 2000 *Federal Courts Law Review* 2; 17 *Harvard Journal of Law & Technology* 211 & 283 (2003); 17 *Labor Lawyer* 311 (2001); *Vanderbilt Journal of Entertainment Law & Practice* 79 (2000); and 19 *Wisconsin Women’s Law Journal* 47 (2004).

- **Thumma & Kirchmeier, “The Lexicon Has Become a Fortress: The United States Supreme Court’s Use of Dictionaries,” 47 *Buffalo Law Review* 227 (1999).**

Cited in more than 80 law review articles, including in 29 *Adelaide Law Review* 113 (2008); 49 *Arizona Law Review* 521 (2007); 36 *Canadian Law Library Review* 106 (2011); 113 *Columbia Law Review* 531 (2013); 60 *Duke Law Journal* 167 (2010); 96 *Georgetown Law Journal* 1863 (2008); 119 *Harvard Law Review* 2041 (2006); 41 *Hong Kong Law Journal* 27 (2011); 1 *International Journal of Baltic Law* 26 (2002); 31 *Melbourne University Law Review* 733 (2007); 104 *Michigan Law*

Review 101 (2005); 83 *New York University Law Review* 769 (2008); 67 *Stanford Law Review* 999 (2015); 26 *University of Tasmania Law Review* 34 (2007); 124 *Yale Law Journal* 484 (2014); and in *In re Adoption of Baby E.Z.*, 266 P.3d 702, 726 n.30, 727 n.32 (Utah 2011) (Lee, J., concurring in part and concurring in judgment); *Stokes v. Commonwealth*, 275 S.W.3d 185, 189 (Ky. 2008); *Waldschmidt v. Reassure American Life Ins. Co.*, 271 S.W.3d 173, 176 n.2 (Tenn. 2008); *ACTV, Inc. v. Walt Disney, Co.*, 346 F.3d 1082, 1089 (Fed. Cir. 2003); and *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 552 S.E.2d 42, 47 (S.C. Ct. App. 2001).

- **Thumma & Dawson, “The Iowa Equal Access to Justice Act: Is Recovery Available?” 39 *Drake Law Review* 431 (1988-89).**

Cited in 71 *Chicago-Kent Law Review* 547 (1995); and in *Branstad v. State ex rel. Natural Resources Comm’n*, 871 N.W. 2d 291, 297 (Iowa 2015); *In re Mirazai*, 2011 WL 6672598, *5 (Iowa Ct. App. Dec. 21, 2011); and *In re Matter of Property Seized from McIntyre*, 550 N.W.2d 457, 459-60 (Iowa 1996).

- **Thumma, Comment, “The Domestic Industry Definition in Value-Added Agricultural Investigations: Why all the Attention?” 12 *North Carolina Journal of International Law & Commercial Regulation* 249 (1987).**

Cited in 19 *William Mitchell Law Review* 481 (1993) and 14 *Syracuse Journal of International Law and Commerce* 363 (1987-88).

- **Thumma, “Arizona Supreme Court: Forensics Workgroup Needs Assessment,” __ *Judicial Division Record* __ (forthcoming).**
- **Thumma, “Memories,” 42 *Litigation* No. 4 at 6 (Summer 2016).**
- **Thumma & Marshburn, “Applying Successful Nonprofit Management Principles In The Courts,” 55 *The Judges’ Journal* No. 2 at 32 (Spring 2016).**
- **Thumma, “The Arizona Appellate Courts,” Chapter 1, 1A ARIZONA APPELLATE HANDBOOK (6th ed. 2015).**
- **Thumma & Beene, “The Judge as Servant-Leader,” 54 *The Judges’ Journal* No. 1 at 9 (Winter 2015).**
- **Thumma, “Writing Appellate Decisions Observations of a Rookie Appellate Judge,” 53 *The Judges’ Journal* No. 1 at 32 (Winter 2014).**
- **Thumma, “Writing Appellate Briefs Thoughts of a Rookie Appellate Judge,” *Arizona Attorney*, Dec. 2013, at 34.**
- **Thumma & Thumma, “Different Perspectives on Oral Advocacy,” 20 *ABA Committee On Pretrial Practice & Discovery Newsletter* No. 1, Fall 2011, at 20.**
- **Thumma, “The Trials and Tribulations – And Benefits – Of Technology One Judge’s Advice for Attorneys,” 49 *The Judges’ Journal* No. 3 at 15 (Summer 2010).**
- **Thumma, “Using Technology at Pretrial Hearings,” 17 *ABA Pretrial Practice & Discovery Committee Newsletter* No. 2, Winter 2009, at 8.**

- Thumma, “Fundamentals of Discovery Motion Practice,” 17 *ABA Pretrial Practice & Discovery Committee Newsletter* No. 1, Fall 2008, at 1.
- Thumma, “Seven ‘International’ Observations from a Former ‘Local’ Lawyer,” 16 *ABA Pretrial Practice & Discovery Committee Newsletter* No. 2, Spring 2008, at 11.
- Thumma, “In Support of the ‘To Do’ List,” 16 *ABA Pretrial Practice & Discovery Committee Newsletter* No. 1, Fall 2007, at 1, *reprinted in* THE YOUNG LITIGATOR: TIPS ON RAINMAKING, WRITING AND TRIAL PRACTICE (First Chair Press 2011).
- Thumma, “New Standards of Legal Sufficiency to Survive a Motion to Dismiss?” 15 *ABA Pretrial Practice & Discovery Committee Newsletter* No. 4, Summer 2007, at 1, *reprinted in* XXVII *ABA Appellate Practice Journal* No. 1, Winter 2008, at 10.
- Thumma, “The Economic Loss Rule: A Brief History and Some Current Questions,” 14 *ABA Pretrial Practice & Discovery Committee Newsletter* No. 3, Spring 2006, at 1.
- Thumma, “The Common-Interest (aka Joint-Defense) Doctrine, RESTATEMENT Style,” 14 *ABA Pretrial Practice & Discovery Committee Newsletter* No. 2, Winter 2006, at 13.
- Thumma, “Expert Reports and Disclosure in Federal Court: Nuts and Bolts,” 13 *ABA Pretrial Practice & Discovery Committee Newsletter* No. 3, Summer 2005, at 1.
- Thumma, “Punitive Damages Post-‘Campbell’ Cases,” *National Law Journal*, June 7, 2004, at 13.
Cited in 39 *Akron Law Review* 1019 (2006).
- Thumma & Mais, “Applying the Economic Loss Rule to Misrepresentation Torts,” 11 *ABA Business Torts Journal* No. 3, Spring 2004, at 12.
- Thumma & Shely, “Fee Agreements: A to Z,” *Arizona Attorney*, Jan. 2002, at 22.
Cited in 45 *Connecticut Law Review* 1165 (2013) and 22 *Georgetown Journal of Legal Ethics* 97 (2009).
- Thumma, “Electronic Data in Employment Litigation: Preparing for the Inevitable,” 64 *ABA Committee on Corporate Counsel Newsletter* 5 (June 2001).
- Thumma, “Discovery of Electronic Data in Employment Litigation in Federal Court,” *Discovery in Employment Litigation: Insights on Recurring Issues* (LRP Pub. 2000).
- Thumma & Jackson, “E-vidence E-Mail in the Workplace,” *Verdicts & Settlements*, Supplement to March 12, 1999 *Los Angeles Daily Journal* and *San Francisco Daily Journal*.

- Thumma & Shely, “The State Bar of Arizona Fee Arbitration Program,” *Arizona Attorney*, March 1999, at 28.
- Thumma, “Punitives Kept Ebbing in Second Post-‘BMW’ Year,” *National Law Journal*, July 20, 1998, at B8.
Cited in 24 *Vermont Law Review* 299 (2000).
- Thumma, “E-Mail Zaps the Workplace,” *HRfocus*, July 1998, at 9.
Cited in 1998 *Annual Survey of American Law* 517.
- Thumma & Eckstein, “Novel Scientific Expert Evidence in Arizona State Courts,” *Arizona Attorney*, June 1998, at 16.
Cited in 46 *Villanova Law Review* 385 (2001) and in *Mason ex rel. Johnson v. Eastside Place Apartments, Inc.*, 2010 WL 2928432, *4 (Ariz. Ct. App. July 27, 2010).
- Thumma & Eckstein, “Getting Scientific Evidence Admitted: The *Daubert* Hearing,” 24 *Litigation* No. 2 at 21 (Winter 1998).
Cited in 76 *Fordham Law Review* 2227 (2008); 88 *Kentucky Law Journal* 809 (1999-2000); and 65 *Defense Counsel Journal* 526 (1998).
- Thumma, “Damages,” *National Law Journal*, June 30, 1997, at B5.
Cited in 60 *Montana Law Review* 367 (1999); 34 *Tulsa Law Journal* 207 (1999); 47 *Drake Law Review* 661 (1999); 46 *University of Kansas Law Review* 395 (1998); and 6 *University of Pennsylvania Journal of Constitutional Law* 423 (2004).
- Thumma & Hubbard, “E-mail Can Deliver Legal Problems,” Supp. to Oct. 17, 1996 *Arizona Business Gazette* reprinted in 7 *Matter of Fact* No. 1, Aug. 1997, at 10 (Arizona Software Association Newsletter).
Cited in 20 *University of Hawaii Law Review* 527 (1998) and *Society of American Archivists* (1998 Annual Meeting proceedings).
- Author or co-author of articles on the use of e-mail in litigation: 3 *Internet Newsletter*, No. 12, Mar. 1999, at 9; No. 9, Dec. 1998, at 10; No. 7, Oct. 1998, at 12; No. 3, June 1998, at 12; No. 1, Apr. 1998, at 11; and 2 *Internet Newsletter*, No. 9, Dec. 1997, at 10; No. 8, Nov. 1997, at 7; and No. 3, June 1997, at 10.
- Thumma & Dawson, “Management of Legal Assistants,” *Arizona Attorney*, Jan. 1989, at 27.
- Co-Editor of the ARIZONA APPELLATE HANDBOOK Volume 1A (6th ed. 2015); Volume 1B (6th ed. 2015); and Volume 3 (4th ed. 2014).
- Annual reviewer for the Arizona Supreme Court’s LIMITED JURISDICTION REFERENCE MANUAL (2013-present) and Juvenile and Juvenile Hearing Officer BENCH BOOKS (2010-2012).

While working for the Sheep Division of the Iowa Department of Agriculture in 1984, I wrote numerous articles used in industry publications and a Department newsletter. While in Australia in 1984-1985, I had two articles published in *Sheep Magazine*, a monthly United States sheep industry publication. While working at WOI-AM in 1982-1984, I also submitted stories used by the Associated Press and United Press International wire services.

56. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.** If not, explain. **Not applicable.**
57. 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.

During the 2000 Spring Semester, I taught Civil Remedies as an Adjunct Professor at Arizona State University's College of Law. More recently, I have served as a judge for moot court arguments at the Phoenix School of Law (now Arizona Summit Law School) from time to time.

I also have taught (including serving as chair) at approximately 240 national, state and local programs addressing various law-related topics, including:

National Programs:

- **What Lawyers Should Know About Judicial Ethics Part II: Communications With Judges Outside of Court, American Bar Association Webinar, May 25, 2016**
- **A Judicial Perspective: Judges Panel, Fifth Annual ASU-Arkfeld, eDiscovery and Digital Evidence Conference, March 10, 2016, Tempe, Arizona**
- **Judicial Ethics: Participation in Law Firm Programs, video posted on the American Bar Association Judicial Division website, http://www.americanbar.org/groups/judicial/membership/membership_recruitment.html (availability limited to ABA members), Spring 2016**
- **Appellate Justices and Judges Roundtable, Southern Methodist University Dedman School of Law, Appellate Judges Education Institute, January 26, 2016, Dallas, Texas**
- **Ethical Issues: Judge's Social Interaction With Lawyers and Their Clients, video posted on the American Bar Association Judicial Division website, http://www.americanbar.org/groups/judicial/membership/membership_recruitment.html (availability limited to ABA members), Spring 2015**
- **Life is a Highway (Discovery of Social Media), Fourth Annual ASU-Arkfeld, eDiscovery and Digital Evidence Conference, March 12, 2015, Tempe, Arizona**
- **Plenary Session – Judges' Panel, Fourth Annual ASU-Arkfeld eDiscovery and Digital Evidence Conference, March 11, 2015, Tempe, Arizona**

- **Appellate Justices and Judges Roundtable, Southern Methodist University Dedman School of Law, Appellate Judges Education Institute, January 29, 2015, Dallas, Texas**
- **Rebuttal Reports, American Institute of Certified Public Accountants, Forensic & Valuation Services Conference, November 11, 2014, New Orleans, Louisiana**
- **Commercial Damages, American Institute of Certified Public Accountants, Forensic & Valuation Services Conference, November 10, 2014, New Orleans, Louisiana**
- **Scientific Evidence in a Driving While Intoxicated Case, American Bar Association National Conference of Specialized Court Judges Traffic Court Seminar, April 9, 2014, Chicago, Illinois**
- **A View from the Bench: How Lawyers and Courts Can Make Jury Trials Better, Plenary Session, American Bar Association Section of Litigation Annual Conference, April 11, 2014, Scottsdale, Arizona**
- **Social Media Discovery Considerations, eDiscovery and Digital Evidence Conference, Sandra Day O'Connor College of Law at Arizona State University, Center for Law, Science and Innovation, March 14, 2013, Tempe, Arizona**
- **Conducting a Meet and Confer, eDiscovery and Digital Evidence Conference, Focusing the Convergence of Law and Technology, ASU College of Law, Center for Law, Science and Innovation/Law CLE Center, May 24, 2012, Tempe, Arizona**
- **From the Court's Perspective/Mock "Meet and Confer," Annual Electronic Discovery and Evidence Training Institute, ASU College of Law, Center for Law, Science and Technology, Arizona State Bar Association, Trial Section/Arkfeld Professional Education, December 2, 2011, Phoenix, Arizona**
- **Keynote Address, The Changing Digital Face of Litigation, Annual Electronic Discovery and Evidence Training Institute, ASU College of Law, Center for Law, Science and Technology, Arizona State Bar Association, Trial Section/Arkfeld Professional Education, December 1, 2011, Phoenix, Arizona**
- **Rules of Evidence: *Daubert* and *Frye* Standards, Admission of Blood Alcohol Tests, National Judicial College, Traffic Issues in the 21st Century, September 3, 2010, Tempe, Arizona**
- **Magistrates Panel on Discovery Issues, American Bar Association Section of Litigation Annual Conference, April 23, 2010, New York, New York**
- **Hey, You Can't Use That! What Happens When the Parties Don't Agree on Whether the Producing Party is Entitled to Get an Inadvertently Produced Privileged Document Back, American Bar Association Section of Litigation Annual Conference, May 1, 2009, Atlanta, Georgia**
- **E-Ethics: Practical Considerations and Ethical Issues in Electronic Discovery, The First National Institute on E-Discovery, American Bar Association Section of Litigation, March 9, 2007, Chicago, Illinois**

- **What You Should Know Before Handling Your First Electronic Discovery Case, American Bar Association Section of Litigation Annual Conference, April 21, 2006, Los Angeles, California**
- **The *Daubert* Dozen: Twelve Expert Witness Issues That Can Make (or Break) Your Day, American Bar Association Section of Litigation Annual Conference, April 21, 2005, New York, New York**
- **Punitive Damages Following *State Farm v. Campbell*, 538 U.S. 408 (2003), American Enterprise Institute/Brookings Institution Judicial Seminar, December 14, 2004, Washington, D.C.**
- **Houston, We have a Problem: Punitive Damage Control, American Bar Association Section of Litigation Annual Conference, May 6, 2004, Scottsdale, Arizona**
- **Interview/Placement Luncheon, American Bar Association Council on Legal Education Opportunity Pre-Law Summer Institute, Arizona State University College of Law, June 14, 2004, Tempe, Arizona**
- **National Institute for Trial Advocacy Deposition Program, Arizona State University College of Law, November 13-15, 2003, Tempe, Arizona**
- **Interview/Placement Luncheon, American Bar Association Council on Legal Education Opportunity Pre-Law Summer Institute, Arizona State University College of Law, June 30, 2003, Tempe, Arizona**
- **Interview/Placement Luncheon, American Bar Association Council on Legal Education Opportunity Pre-Law Summer Institute, Arizona State University College of Law, July 8, 2002, Tempe, Arizona**
- **Frequently Asked Questions About Fee Arbitration, American Bar Association 15th National Forum on Client Protection, June 5, 1999, La Jolla, California**
- **Multisource Assessment As a Tool in Improving the Legal Defensibility of Decisions Regarding Individuals, 360° Assessment Global USA Conference, March 26, 1997, San Francisco, California**

Arizona and Local Programs:

- **Rule 32 Post Conviction Relief – The Court As The Gatekeeper, Arizona Judicial Conference, June 23, 2016, Tucson, Arizona**
- **Evidence, Arizona Judicial Conference, June 22, 2016 and June 23, 2016, Tucson, Arizona**
- **Evidence, State Bar of Arizona 83rd Annual Convention, June 17, 2016, Chandler, Arizona**
- **So You Think You Want To Be A Judge?, State Bar of Arizona 83rd Annual Convention, June 16, 2016, Chandler, Arizona**

- **Ethics Game Show, State Bar of Arizona 83rd Annual Convention, June 16, 2016, Chandler, Arizona**
- **Upon Further Review: Effective Advocacy, Judicial Clerkships and Other Wisdom From Our Appellate Courts, Maricopa County Superior Court Externship Program, June 14, 2016, Phoenix, Arizona**
- **Appellate Update, La Paz County Bar Association, June 3, 2016, Parker, Arizona**
- **Selected Cases From The 2015-2016 United States Supreme Court Term, Thurgood Marshall Inn of Court, May 25, 2016, Phoenix, Arizona**
- **Appellate Update for Public Lawyers, Hosted by the Arizona Attorney General, May 19, 2016, Phoenix, Arizona**
- **Evidence, Arizona Magistrates Association, May 2, 2016, Tempe, Arizona**
- **Evidence, New Judge Orientation for Limited Jurisdiction Judges, Arizona Supreme Court, April 13, 2016, Phoenix, Arizona**
- **The Law, Honors Student Luncheon, Arizona Summit Law School, April 12, 2016, Phoenix, Arizona**
- **The Arizona Court of Appeals, Association of Corporate Counsel – Arizona Chapter, March 31, 2016, Phoenix, Arizona**
- **The Arizona Courts, University of Arizona Undergraduate Honors Program, March 22, 2016, Phoenix, Arizona**
- **Evidence, New Judge Orientation for Superior Court Judges, Arizona Supreme Court, March 8, 2016, Phoenix, Arizona**
- **Appellate Update, Mohave County Bar Association, February 25, 2016, Kingman, Arizona**
- **Writing for Judicial Clerks, Sandra Day O’Connor College of Law, Arizona State University, February 23, 2016, Tempe, Arizona**
- **Evidence, Maricopa County Bar Association, February 10, 2016, Phoenix, Arizona**
- **Words of Caution & Wisdom: Appellate Judges’ Panel, State Bar of Arizona Family Law Institute, January 22, 2016, Phoenix, Arizona**
- **Practicing Law in the Public and Private Sector, State Bar of Arizona Leadership Institute, January 22, 2016, Phoenix, Arizona**
- **Evidence, New Judge Orientation for Limited Jurisdiction Judges, Arizona Supreme Court, January 14, 2016, Phoenix, Arizona**
- **An Overview of the Arizona Appellate Courts, Marcos De Nixa High School “We the People” Participants, Arizona Courts Building, December 11, 2015, Phoenix, Arizona**

- **The Appellate Roundtables: Revisited, State Bar of Arizona Appellate Section, December 10, 2015, Phoenix, Arizona**
- **Scientific Evidence in a Driving Under the Influence Case, Governor's Office of Highway Safety 2015 Judicial Driving Under the Influence and Traffic Conference, December 4, 2015, Phoenix, Arizona**
- **The Life of a Civil Case: From Initial Arizona Superior Court Filing Through Arizona Court of Appeals Mandate, Committee on Judicial Education and Training, Arizona Supreme Court, November 18, 2015, Phoenix, Arizona**
- **Appellate Update, Yuma County Bar Association, November 6, 2015, Yuma, Arizona**
- **Business Ethics?, Phoenix West Rotary Club, October 22, 2015, Phoenix, Arizona**
- **On Being a Judge, Senior High Youth Group, First United Methodist Church, October 18, 2015, Phoenix, Arizona**
- **Justice Sandra Day O'Connor's "Middle Years," Presenter of the Career-Community Award of Merit, Phoenix Rotary 100 Club, October 16, 2015, Phoenix, Arizona**
- **The Paralegal's Role in the Appellate Process, Keynote Speaker Panel, 2015 Arizona Paralegal Conference, October 16, 2015, Phoenix, Arizona**
- **Civics Day, Ms. Bond's Fifth Grade Class, Longview Elementary School, September 4, 2015, Phoenix, Arizona**
- **Advanced Evidence and Evidence Essentials, Arizona Justices of the Peace Association Annual Conference, September 2, 2015, Prescott, Arizona**
- **Arizona Tax Court Brown Bag, Changes in Tax Appeals, Arizona Tax Court, July 27, 2015, Phoenix, Arizona**
- **Writing for Judicial Clerks, Sandra Day O'Connor College of Law, Arizona State University, July 23, 2015, Phoenix, Arizona**
- **Evidence Law Update, State Bar of Arizona 82nd Annual Convention, June 26, 2015, Phoenix, Arizona**
- **Ready, Set, Practice . . . But Not Without Ethics, Practical Pointers To Understand Revisions To Arizona's Ethical Rules, State Bar of Arizona 82nd Annual Convention, June 24, 2015, Phoenix, Arizona**
- **Evidence, Arizona Judicial Conference, June 18, 2015 afternoon and morning sessions, Phoenix, Arizona**
- **Upon Further Review: Effective Advocacy, Judicial Clerkships and Other Wisdom From Our Appellate Courts, Maricopa County Superior Court Externship Program, June 9, 2015, Phoenix, Arizona**

- **Selected Cases From The 2014-2015 United States Supreme Court Term, Thurgood Marshall Inn of Court, May 27, 2015, Phoenix, Arizona**
- **Ethics & Professionalism, Arizona Department of Transportation Administrative Law Judges, State Bar of Arizona, May 20, 2015, Phoenix, Arizona**
- **Civil Traffic Appeals, Civil Traffic Hearing Officers Training, Administrative Office of the Courts, May 14, 2015, Phoenix, Arizona**
- **What Appellate Court Judges Want You To Know, National Business Institute, May 8, 2015, Phoenix, Arizona**
- **Evidence, New Judge Orientation for Limited Jurisdiction Judges, Arizona Supreme Court, April 15, 2015, Phoenix, Arizona**
- **Appellate Update, La Paz County Bar Association, April 10, 2015, Parker, Arizona**
- **Appellate Update, Mohave County Bar Association, March 26, 2015, Kingman, Arizona**
- **Arizona's New Appellate Pro Bono Program, State Bar of Arizona Appellate Section, March 19, 2015, Phoenix, Arizona**
- **Being A Judge, Career Day, Phoenix Country Day School, March 13, 2015, Paradise Valley, Arizona**
- **Evidence, New Judge Orientation for Superior Court Judges, Arizona Supreme Court, March 3, 2015, Phoenix, Arizona**
- **A Conversation With Arizona Supreme Court Chief Justice Scott Bales, Phoenix Rotary 100, February 11, 2015, Phoenix, Arizona**
- **What Every Lawyer Should Know About Appellate Law, Scottsdale County Bar Association, February 10, 2015, Scottsdale, Arizona**
- **Evidence, New Judge Orientation for Limited Jurisdiction Judges, Arizona Supreme Court, January 15, 2015, Phoenix, Arizona**
- **Appellate Update, Maricopa County Bar Association, December 5, 2014, Phoenix, Arizona**
- **Scientific Evidence in a Driving Under the Influence Case, Governor's Office of Highway Safety 2014 Judicial Driving Under the Influence and Traffic Conference, December 4, 2014, Tempe, Arizona**
- **Appellate Update, Yuma County Bar Association, November 7, 2014, Yuma, Arizona**
- **Court of Appeals Overview, Maricopa County Superior Court Judicial Education Day, Judicial Assistants and Bailiffs, October 24, 2014, Phoenix, Arizona**
- **Appellate Update, Coconino County Bar Association, October 17, 2014, Flagstaff, Arizona**

- **American Bar Association Judicial Intern Opportunity Program, Arizona Summit Law School, October 8, 2014, Phoenix, Arizona**
- **Appellate Update, Yavapai County Bar Association, September 19, 2014, Prescott, Arizona**
- **Evidence, State Bar of Arizona, September 5, 2014, Phoenix, Arizona**
- **A Conversation With Department of Child Safety Director Charles Flanagan, Phoenix Rotary 100, August 8, 2014, Phoenix, Arizona**
- **A Judge's Perspective on E-Discovery, National Business Institute, June 27, 2014, Phoenix, Arizona**
- **Evidence, Arizona Judicial Conference, June 26, 2014 afternoon and morning sessions, Tucson, Arizona**
- **Upon Further Review: Effective Advocacy, Judicial Clerkships and Other Wisdom From Our Appellate Courts, Maricopa County Superior Court Externship Program, June 19, 2014, Phoenix, Arizona**
- **Technology and the Future of the Appellate Process, State Bar of Arizona 81st Annual Convention, June 14, 2014, Tucson, Arizona**
- **Evidence Law Update, State Bar of Arizona 81st Annual Convention, June 14, 2014, Tucson, Arizona**
- **Ethical Considerations for Lawyers in Transition, State Bar of Arizona 81st Annual Convention, June 14, 2014, Tucson, Arizona**
- **Appeals of Administrative Decisions, State Bar of Arizona 81st Annual Convention, June 13, 2014, Tucson, Arizona**
- **Ethics & Professionalism, Arizona Department of Transportation Administrative Law Judges, State Bar of Arizona, June 6, 2014, Phoenix, Arizona**
- **Appellate Update, Maricopa County Bar Association, June 5, 2014, Phoenix, Arizona**
- **Trial Court Advocacy, Thurgood Marshall Inn of Court, May 29, 2014, Phoenix, Arizona**
- **A View From The Bench, Snell & Wilmer, May 16, 2014, Phoenix, Arizona**
- **Civil Traffic Appeals, Civil Traffic Hearing Officers Training, Administrative Office of the Courts, May 16, 2014, Phoenix, Arizona**
- **Appellate Update, Navajo County Bar Association, May 9, 2014, Show Low, Arizona**
- **Journey: History of the American Inns of Court, Leadership Summit, American Inns of Court, April 26, 2014, Phoenix, Arizona**
- **Capital Cases and the Arizona Court of Appeals, The Death Penalty (JUST 465) guest lecturer, Arizona State University, April 24, 2014, Tempe, Arizona**

- **Meet the New Judges, State Bar of Arizona Appellate Section, April 17, 2014, Phoenix, Arizona**
- **Appellate Practice, Practicing Family Law; Avoiding Malpractice, FAMLaw LLC, April 17, 2014, Phoenix, Arizona**
- **How to Become a Judge: The Selection Process, From The Applicant's View, State Bar of Arizona Leadership Institute, April 11, 2014, Phoenix, Arizona**
- **Evidence, New Judge Orientation for Limited Jurisdiction Judges, Arizona Supreme Court, April 2, 2014, Phoenix, Arizona**
- **Batter's Up! The Ins and Outs of Oral Advocacy, Spring Training for Lawyers, March 28, 2014, Phoenix, Arizona**
- **A Conversation With Arizona Public Service Board Chair Donald E. Brandt, Phoenix Rotary 100, March 28, 2014, Phoenix, Arizona**
- **A Conversation With Presiding Disciplinary Judge William J. O'Neil, Thurgood Marshall Inn of Court Brown Bag, March 19, 2014, Phoenix, Arizona**
- **Being A Judge, Career Day, Phoenix Country Day School, March 14, 2014, Paradise Valley, Arizona**
- **Evidence, New Judge Orientation for Superior Court Judges, Arizona Supreme Court, March 6, 2014, Phoenix, Arizona**
- **Arizona's Economic Loss Doctrine, State Bar of Arizona, January 24, 2014, Phoenix, Arizona**
- **New Rules for Perfecting Appeals, State Bar of Arizona Appellate Practice Section, January 16, 2014, Phoenix, Arizona**
- **Evidence, New Judge Orientation for Limited Jurisdiction Judges, Arizona Supreme Court, January 16, 2014, Phoenix, Arizona**
- **A Conversation With Chief Judge Diane Johnsen, Thurgood Marshall Inn of Court Brown Bag, December 9, 2013, Phoenix, Arizona**
- **Professionalism and Collegiality, Family Law Association/Federalist Society Phoenix Student Chapter, Arizona Summit Law School (formerly Phoenix School of Law), November 14, 2013, Phoenix, Arizona**
- **Case Update, Rules Changes and Ethics Update, Yuma County Bar Association, October 25, 2013, Yuma, Arizona**
- **Civil Traffic Appeals, Civil Traffic Hearing Officers Training, Administrative Office of the Courts, October 11, 2013, Phoenix, Arizona**
- **Juvenile Court Update and Appeals/Post-Conviction Relief Proceedings In Capital Cases, Thurgood Marshall Inn of Court, September 25, 2013, Phoenix, Arizona**

- **A Conversation With United States Supreme Court Justice Sandra Day O'Connor, Phoenix Rotary 100, August 30, 2013, Phoenix, Arizona**
- **Violence In America, Phoenix Rotary 100, August 16, 2013, Phoenix, Arizona**
- **Evidence, Arizona Judicial Conference, June 27 and 26, 2013, Phoenix, Arizona**
- **A View from the Bench, Perkins Coie, June 25, 2013, Phoenix, Arizona**
- **Let's Talk Fees: An Ethics Update, State Bar of Arizona 80th Annual Convention, June 21, 2013, Phoenix, Arizona**
- **Traps on Appeal for the Wary and Unwary, Arizona Women Lawyers Association, May 29, 2013, Phoenix, Arizona**
- **Professionalism Course, State Bar of Arizona, May 7, 2013, Phoenix, Arizona**
- **Arizona's Judiciary, State Representative Kate Brophy-McGee "Coffee with Kate" Event, April 22, 2013, Phoenix, Arizona**
- **How to Become a Judge: The Selection Process, From The Applicant's View, State Bar of Arizona Leadership Institute, April 19, 2013, Phoenix, Arizona**
- **Evidence, New Judge Orientation for Limited Jurisdiction Judges, Arizona Supreme Court, April 17, 2013, Phoenix, Arizona**
- **Being A Judge, Career Day, Phoenix Country Day School, March 15, 2013, Paradise Valley, Arizona**
- **Evidence, Superior Court New Orientation, Arizona Supreme Court, March 6, 2013, Phoenix, Arizona**
- **Introduction to Judicial Clerkships, Phoenix School of Law, February 21, 2013, Phoenix, Arizona**
- **Evidence, New Judge Orientation for Limited Jurisdiction Judges, Arizona Supreme Court, January 10, 2013, Phoenix, Arizona**
- ***Daubert* Arrives in Arizona: New Standards for Expert Evidence in Arizona State Courts, Arizona Society of Certified Public Accountants, December 6, 2012, Phoenix, Arizona**
- **American Bar Association Judicial Intern Opportunity Program, Phoenix School of Law, November 26, 2012, Phoenix, Arizona**
- **Tips and Insights into the Appellate Process from Appellate Court Judges, Working with the Arizona Court of Appeals, State Bar of Arizona, November 9, 2012, Scottsdale, Arizona**
- **Faith Journey, Faith in the Law Forum, Arizona State University LDS Institute of Religion, October 26, 2012, Tempe, Arizona**
- **Coulda, Woulda, Shoulda: A Judicial Perspective, Judicial Education Day, Arizona Superior Court, Maricopa County, October 26, 2012, Mesa, Arizona**

- **Civil Traffic Appeals, Civil Traffic Hearing Officers Training, Administrative Office of the Courts, October 11, 2012, Phoenix, Arizona**
- **Arizona Rules of Evidence Governing Experts, 2012 Advanced Business Valuation Conference, American Society of Appraisers, The International Society of Professional Valuers, October 8, 2012, Scottsdale, Arizona**
- **Practical Applications, New Judge Orientation for Superior Court Judges, Arizona Supreme Court, September 14, 2012, Phoenix, Arizona**
- **The Juvenile Justice System, Friendly House Academia Del Pueblo Charter School, July 19, 2012, Phoenix, Arizona**
- **State Criminal Court Practice for Civil Litigators, Snell & Wilmer, June 27, 2012, Phoenix, Arizona**
- **The Sword: How to Protect Yourself in a Fee Dispute, State Bar of Arizona 79th Annual Convention, June 22, 2012, Scottsdale, Arizona**
- **Evidence, Arizona Judicial Conference, June 21, 2012, Tucson, Arizona**
- **Civil Traffic Appeals, Civil Traffic Hearing Officers Training, Administrative Office of the Courts, May 24, 2012, Phoenix, Arizona**
- **Developing the Case – Disclosures/Discovery, Nuts and Bolts of Civil Practice and Procedure: Views from the Bench and Bar, State Bar of Arizona, May 4, 2012, Phoenix, Arizona**
- **The Experience of Seeking to Be a Judge; How to Prepare to Become a Judge and The Judicial Selection Process, State Bar of Arizona Leadership Institute, April 20, 2012, Phoenix, Arizona**
- **Court Greeting, Phoenix Rotary 100 Meeting, Maricopa County Superior Court, April 20, 2012, Phoenix, Arizona**
- **New Arizona Rule of Evidence 702: Expert Evidence in Arizona State Courts After December 31, 2011, Arizona Forensic Science Academy, March 30, 2012, Phoenix, Arizona**
- **Evidence, New Judge Orientation for Superior Court Judges, Arizona Supreme Court, March 12, 2012, Phoenix, Arizona**
- **Application of The Arizona Rules of Evidence, Maricopa County Justices of the Peace, December 20, 2011, Phoenix, Arizona**
- **Changes To The Arizona Rules of Evidence, Maricopa County Superior Court, December 9, 2011, Phoenix, Arizona**
- **A Dialogue with the Judiciary, What is Working and What Can be Improved at the Courts, Arizona Women Lawyers Association, December 7, 2011, Phoenix, Arizona**
- **What Judges Need To Know About The New Attorney Discipline System, Maricopa County Superior Court, December 2, 2011, Phoenix, Arizona**

- **The New Arizona Rules of Evidence, Arizona Attorney General’s Office, October 18, 2011, Phoenix, Arizona**
- **Evidence, New Judge Orientation for Superior Court Judges, Arizona Supreme Court, September 13, 2011, Phoenix, Arizona**
- **Rules of Evidence, Arizona Judicial Conference, June 23, 2011, Scottsdale, Arizona**
- **The Role of the Judge in a Criminal Case: Roundtable, Criminal Bench Rotation Training, Maricopa County Superior Court, May 25, 2011, Phoenix, Arizona**
- **Electronically Stored Evidence, Maricopa County Superior Court, May 5, 2011, Phoenix, Arizona**
- **Legal Game Show (Judicial Ethics), Thurgood Marshall Inn of Court, April 27, 2011, Phoenix, Arizona**
- **The Experience of Seeking to Be a Judge; How to Prepare to Become a Judge and The Judicial Selection Process, State Bar of Arizona Leadership Institute, April 8, 2011, Phoenix, Arizona**
- **Developing the Case – Disclosures/Discovery, Nuts and Bolts of Civil Practice and Procedure: Views from the Bench, State Bar of Arizona, March 25, 2011, Phoenix, Arizona**
- **Evidence, New Judge Orientation for Superior Court Judges, Arizona Supreme Court, March 23, 2011, Phoenix, Arizona**
- **Arizona’s Economic Loss Rule, State Bar of Arizona, February 25, 2011, Phoenix, Arizona**
- **“What Happens If I Go To Court?” An Overview of Delinquency Proceedings in Arizona Superior Court: One Judge’s Perspective, posted December 2010 at http://az.lawforkids.org/index.php?option=com_content&view=category&id=141:maricopa-county-juvenile-court-tour&Itemid=293&layout=default.**
- **Bill and Collect Fees Ethically, State Bar of Arizona, October 27, 2010, Phoenix, Arizona**
- **Ethics Game Show Style, Judicial Education Day, Arizona Superior Court, Maricopa County, October 22, 2010, Mesa, Arizona**
- **Ethics Game Show, State Bar of Arizona 77th Annual Convention, June 10, 2010, Glendale, Arizona**
- **The Experience of Seeking to Be a Judge; How to Prepare to Become a Judge and The Judicial Selection Process, State Bar of Arizona Leadership Institute, April 9, 2010, Phoenix, Arizona**
- **Arizona’s Economic Loss Rule, State Bar of Arizona, December 3, 2009, Phoenix, Arizona**

- **Ethics Café, State Bar of Arizona, December 9, 2009, Phoenix, Arizona**
- **Ethical Panel Discussion and Professional Responsibility, Juvenile Legal Assistance Program Orientation and Training, Arizona State University, September 25, 2009, Tempe, Arizona**
- **A View from the Bench, Perkins Coie Brown & Bain, P.A., June 24, 2009, Phoenix, Arizona**
- **The Experience of Seeking to Be a Judge; How to Prepare to Become a Judge and The Judicial Selection Process, State Bar of Arizona Leadership Institute, February 20, 2009, Phoenix, Arizona**
- **First Year Orientation, Arizona State University College of Law, August 19, 2008, Tempe, Arizona**
- **A View from the Bench, Perkins Coie Brown & Bain, P.A., August 4, 2008, Phoenix, Arizona**
- **Ethics in the Internet Age, State Bar of Arizona 75th Annual Convention, June 18, 2008, Tucson, Arizona**
- **Ethics Game Show, State Bar of Arizona 74th Annual Convention, June 28, 2007, Scottsdale, Arizona**
- **Law Journal Membership Impact on Legal Careers, Arizona State University College of Law, March 6, 2007, Tempe, Arizona**
- **E-Discovery and Evidence Best Practices, State Bar of Arizona, September 20, 2006, Phoenix, Arizona**
- **Civil Litigation Rules, State Bar of Arizona 73rd Annual Convention, June 14, 2006, Phoenix, Arizona**
- **A View from the Bench, American Bar Association Judicial Intern Outreach Program Orientation, June 14, 2006, Phoenix, Arizona**
- **Developing and Managing Volunteers, American Red Cross Western Service Area, April 29 & 30, 2006, Phoenix, Arizona**
- **Law Journal Membership Impact on Legal Careers, Arizona State University College of Law, April 17, 2006, Tempe, Arizona**
- **Ethics The Reality Show: New Issues And Recurring Concerns, State Bar of Arizona 72nd Annual Convention, June 16, 2005, Tucson, Arizona**
- **Civil Litigation Rules, State Bar of Arizona 72nd Annual Convention, June 15, 2005, Tucson, Arizona**
- **Law Journal Membership Impact on Legal Careers, Arizona State University College of Law, March 28, 2005, Tempe, Arizona**
- **Servicing Clients and Getting Paid in a Timely Manner, Better Practices Today: Cutting-Edge and Practical Suggestions for Successful Lawyering, State Bar of**

Arizona, February 17, 2005, Phoenix, Arizona

- **Overview of Duties and Rights of Non-Profit Corporate Directors, Nonprofit Leadership and Ethics (PAF 591) guest lecturer, Arizona State University School of Public Affairs, October 26, 2004, Phoenix, Arizona**
- **Earn—and Collect—Your Fees Ethically, State Bar of Arizona, August 20, 2004, Phoenix, Arizona**
- **Keeping Client Secrets In Arizona: Confidentiality, Attorney-Client Privilege, Work Product Doctrine and Multiple Representation, August 18, 2004, Phoenix, Arizona**
- **Non-Profit Board Development, Organization for Nonprofit Executives (ONE) Luncheon, June 16, 2004, Phoenix, Arizona**
- **2004 Update: Arizona Rules of Civil Procedure, Association of Corporate Counsel Luncheon, June 15, 2004, Phoenix, Arizona**
- **The Changing Face of Litigation: Electronic Discovery and Evidence, State Bar of Arizona 71st Annual Convention, June 10, 2004, Scottsdale, Arizona**
- **Civil Litigation Rules and Case Law Update, State Bar of Arizona 71st Annual Convention, June 9, 2004, Scottsdale, Arizona**
- **Dispositive Motions, Arizona State University College of Law Writing Program, March 12, 2004, Phoenix, Arizona**
- **Discovery of Electronic Data, State Bar of Arizona, January 21, 2004, Phoenix, Arizona**
- **The Accountable Nonprofit Board—Workshop Session, 11th Annual Nonprofit Day, Center for Nonprofit Leadership and Management, Arizona State University College of Public Programs, December 5, 2003, Phoenix, Arizona**
- **Perspectives on Nonprofit Accountability and Public Trust—Plenary Session, 11th Annual Nonprofit Day, Center for Nonprofit Leadership and Management, Arizona State University College of Public Programs, December 5, 2003, Phoenix, Arizona**
- **Earn—and Collect—Your Fees Ethically, State Bar of Arizona, August 21, 2003, Phoenix, Arizona**
- **Professionalism Course, State Bar of Arizona 70th Annual Convention, June 14, 2003, Scottsdale, Arizona**
- **Civil Litigation Rules and Case Law Update, State Bar of Arizona 70th Annual Convention, June 11, 2003, Scottsdale, Arizona**
- **Law Journal Membership Impact on Legal Careers, Arizona State University College of Law, April 24, 2003, Tempe, Arizona**
- **Dispositive Motions, Arizona State University College of Law Writing Program, March 7, 2003, Phoenix, Arizona**

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- **The Legal Pitfalls of Electronic Communications, Labor & Employment Law Update, February 27, 2003, Phoenix, Arizona**
- **Overview of Duties and Rights of Non-Profit Corporate Directors, Nonprofit Leadership and Ethics (PAF 591) guest lecturer, Arizona State University School of Public Affairs, October 23, 2002, Phoenix, Arizona**
- **Earn—and Collect—Your Fees Ethically, State Bar of Arizona 69th Annual Convention, June 6, 2002, Tucson, Arizona**
- **Civil Litigation Rules and Case Law Update, State Bar of Arizona 69th Annual Convention, June 5, 2002, Tucson, Arizona**
- **E-Discovery: Electronic Evidence, State Bar of Arizona, January 25, 2002, Phoenix, Arizona**
- **Expert Witnesses 2001: Expert Witness Practice in Arizona After the Arizona Supreme Court's Decision in *Logerquist v. McVey*, Arizona Attorney General's Office, June 19, 2001, Phoenix, Arizona**
- **Second Annual Ethics Game Show, State Bar of Arizona 68th Annual Convention, June 15, 2001, Phoenix, Arizona**
- **Defamation in Arizona, Maricopa County Bar Association, May 24, 2001, Phoenix, Arizona**
- **Ethics for Every Lawyer: Money and Conflicts, State Bar of Arizona, April 11, 2001, Scottsdale, Arizona**
- **Ethics: Game-Show Style, State Bar of Arizona 67th Annual Convention, June 16, 2000, Tucson, Arizona**
- **Written, Oral and Other Discovery, Maricopa County Bar Association, May 6, 1999, Phoenix, Arizona**
- **Complaints, Answers, Counterclaims and Rule 12 Motions, Maricopa County Bar Association, November 19, 1998, Phoenix, Arizona**
- **The Ethics of Fees, State Bar of Arizona, November 6, 1998, Phoenix, Arizona**
- **Rule 12(b)(6) Motions to Dismiss, Third Year Writing Seminar guest lecturer, Arizona State University College of Law, October 13, 1998, Phoenix, Arizona**
- **Punitive Damages, Maricopa County Bar Association, June 17, 1998, Phoenix, Arizona**
- **Locating Assets During Litigation and After Judgment, Maricopa County Bar Association, June 4, 1998, Phoenix, Arizona**
- ***Frye/Daubert* Hearings on Scientific Evidence, Maricopa County Bar Association, December 17, 1997, Phoenix, Arizona**
- **Evidence, Maricopa County Bar Association, May 21, 1997, Phoenix, Arizona**

- **Discovery, Security and Confidentiality in the Digital Age, State Bar of Arizona Better Practices Seminar, May 1, 1997, Phoenix, Arizona**
- **Electronic Mail Policies, Labor and Employment Law Briefing, March 18, 1997, Scottsdale, Arizona**
- **Electronic Mail in the Workplace, Maricopa County Bar Association, December 5, 1996, Phoenix, Arizona**
- **Motions for Summary Judgment, Maricopa County Bar Association, May 21, 1996, Phoenix, Arizona**
- **Dealing Effectively With Fact and Expert Witnesses, Maricopa County Bar Association, December 14, 1995, Phoenix, Arizona**

58. List memberships and activities in professional organizations, including offices held and dates. **See below.**

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.

Nationally:

I have been a member of the American Bar Association since 1988. From 2007 to 2010, I was appointed by three consecutive ABA Presidents to serve on the Judges' Advisory Committee to the ABA Standing Committee on Ethics and Professional Responsibility.

In the ABA Judicial Division (JD), I have been nominated to serve as Secretary on the Appellate Judges Conference, and to serve on the board of the Appellate Judges Education Institute, nominations that will be voted on at the ABA Annual Meeting in San Francisco, CA, on August 7, 2016. Since 2014, I have served on the JD Cabinet and chair of the JD Court Technology Committee, and I have been a member of the JD Court Technology Committee since 2012. For the past two years, I have served as an appointee of the JD Chair to the JD Forensic Science Committee. I have been a member of the JD Ethics and Professionalism Committee since 2009 and, before that, a member of the Ethics, Professionalism, and the Community Committee from 2008-2009.

I am a member of the Summit Planning Committee for the Appellate Judges Education Institute (AJEI), a joint effort of the JD and the Southern Methodist University Dedman School of Law. I am helping plan and implement the 2016 AJEI, a four-day education program for federal and state appellate justices and

judges, appellate lawyers and staff attorneys, which will be held in Philadelphia, PA, in November 2016. I served in a similar role for 2015 AJEI, held in Washington, D.C., in November 2015.

Before my appointment to the Court of Appeals, from 2008-2012, I served as an Arizona Delegate to the ABA's National Conference of State Trial Judges (NCSTJ). I also served as an NCSTJ representative on the editorial board of the *Judicial Division Record* publication from 2011-2012.

In the ABA Section of Litigation, from 2006-2010, I served as an editor of the *Pretrial Practice & Discovery Newsletter*. Before that, I served as co-chair of the Membership (2004-2006) and Damages (2003-2005) Subcommittees of the Pretrial Practice & Discovery Committee. I also served on the Host Committee for the Section of Litigation Annual Conferences held in 2013 and in 2004.

As noted in response to Question 21, since 2012, I have served as a Commissioner from Arizona on the Uniform Law Commission and, since 2003, I have been a member of the American Law Institute, and have been active in both organizations. In 2005, I was elected to The Fellows of the American Bar Foundation, an honorary organization of lawyers, judges and professors whose careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. Since 2013, I have served on the Judicial Advisory Board of the Sedona Conference, a research and educational institute dedicated to the advanced study of law and policy in the areas of antitrust law, complex litigation, and intellectual property rights. Starting earlier this year, I have served on the American Inns of Court Judicial Task Force focusing on the involvement of judicial officers in the Inns of Court throughout the country.

Arizona:

I have been a member of the State Bar of Arizona since 1992, and am a member of the Appellate Practice Section. Since 2015, I have served on the State Bar's Civil Jury Instructions Committee, helping draft and propose Recommended Arizona Jury Instructions for civil cases. Since 2012, I have served as co-editor of the ARIZONA APPELLATE HANDBOOK and co-chair of the Appellate Handbook Committee. The HANDBOOK is a multi-volume treatise providing guidance for attorneys and litigants involved in appeals and special actions. In 2015, based on the work of a great group of volunteer authors, we issued a new edition of Volumes 1A and 1B of the HANDBOOK. In 2014, again based on the work of a great group volunteer authors, we issued a new edition of Volume 3 of the HANDBOOK. These new editions provide thousands of pages of guidance, authority, and forms addressing appeals, special actions and other aspects of Arizona's appellate courts. As co-editor, I edited each page of these new editions.

As noted in response to Question 21, I served as a member of the State Bar of Arizona's Committee on the Rules of Professional Conduct (also known as the Ethics Committee) for nine years, ending in 2015. From 1997-2006, I was appointed by nine consecutive State Bar Presidents to chair the Civil Practice and Procedure and Fee Arbitration Committees.

Although not part of a bar association, as noted in response to Question 21, I have served on various Arizona Supreme Court Committees and groups designed to provide a significant service to the bar, including serving as co-chair of the Advisory Committee on the Rules of Evidence, serving as a member of the Judicial Ethics Advisory Committee and serving as a member of the Ad Hoc Committee on the Rules of Evidence. In 2014 and 2015, I served as a member of the Committee on the Review of Supreme Court Rules Governing Professional Conduct and the Practice of Law, which filed a petition recommending amendments to the rules governing the practice of law in Arizona, and on an Our Courts Arizona working group, developing civics programs regarding the judicial branch for presentations to adults. In 2013, I served on the Electronic Records Retention and Destruction Advisory Committee and in 2012 and 2013, I served on both the Evaluation Committee for Request for Proposal 12-08 Judicial Decision Support System (eBench) and the Arizona Judicial Conference Planning Committee, and recently agreed to serve on the Arizona Judicial Conference Planning Committee for the 2017 Conference. I served for nearly two years on the Committee on Judicial Education and Training, ending in 2012 when I was appointed to the Court of Appeals. I served as co-chair of the Superior Court New Judge Orientation for approximately one year, resigning when I was appointed to the Court of Appeals.

From 2003-2007, I served as a member of the Local Rules Committee for the Rules of Practice of the United States District Court, District of Arizona. In 2005 and 2006, I served as chair of that Committee's Civil Practice Subcommittee. I also am a long-time member of the Arizona Woman Lawyers Association.

Locally:

Since 2010, I have been a member of the Thurgood Marshall Inn of Court, where I served as president in 2013-2014 and vice-president in 2012-2013. From 2014-2016, I served on the Maricopa County Bar Association's (MCBA) Continuing Legal Education Committee, on which I also served from 1995-1999. From 1999-2005, when I was hiring partner at Brown & Bain, P.A., I served on an MCBA task force on hiring and retaining lawyers. In 1999 and 2000, I served on an MCBA Planning Committee to honor pioneer lawyers in Arizona. From 1996-1999, I served on the MCBA's Barrister's Ball Committee, where I also served as Corporate Sponsor co-chair.

Although not part of a bar association, I served on various Maricopa County Superior Court Committees and groups intended to provide a significant service to the bar. I served as an elected member of the Judicial Executive Committee from 2007-2012; as chair of the Committee on Judicial Education and Training from 2007-2012; as part of the Integrated Court Information System “Next Generation” working group from 2011-2012 and, from 2004-2007, while in private practice, I served as a member of the Superior Court’s Civil Study Committee.

Pro Bono:

When in private practice, my pro bono activities included providing legal services to the Arizona Agricultural Education/FFA Foundation as well as working on post-conviction relief matters in Arizona and Washington, D.C. I also provided support and legal advice for participants in the Community Legal Services Program.

From 2013-present, I worked with other members of the Court of Appeals and lawyers to develop and implement the Arizona Court of Appeals Pro Bono Representation Program more fully discussed in response to Question 65.

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

Along with the activities noted in the responses to Questions 55, 57, and 58, my non-law related community and public service has centered on Rotary International, the American Red Cross, the Future Farmers of America/FFA and my church.

Since 2010, I have been a member of Phoenix Rotary 100, a local Rotary International Club. Along with weekly meetings, my involvement in Rotary 100 includes distributing dictionaries to grade school students and meeting with students to discuss civics and government. I also volunteer for the Free Food Mobile Pantry, where we distribute food (typically before dawn) from St. Mary’s Food Bank to as many as 200 families one Saturday a month in south Phoenix. Earlier this year, I was appointed chair of the Corporate Membership Committee and I continue to serve as a member of the Club’s Programming Committee. In the past few years, I have served as chair of the day for various speakers at Rotary 100 meetings, including hosting United States Supreme Court Justice Sandra Day O’Connor, Arizona Supreme Court Chief Justice Scott Bales as well as the Director of the Department of Child Safety and the President of Arizona Public Service/Pinnacle West.

I became a Rotary 100 member as my volunteer service with the American Red Cross was winding down.

Nationally, for the American Red Cross, I served as a member of the National Leadership Council from its inception in 2009 to late 2010. During that time, I chaired a working group addressing recruiting and retaining board members and keeping board alumni involved. I served as a member of the National Resolutions Committee from 2005-2007, and was elected vice chair in 2006. I also served as a member of both the National Chapter Executive and the Board Leadership Task Forces. From 2000-2002, I served on the National Convention Cabinet as vice chair for Biomedical Services.

Regionally, I served as a member of the West Service Area Council of the American Red Cross (covering Arizona, Alaska, Washington, Oregon, Idaho, Wyoming, Montana, Utah, and Colorado) from 2004-2008. From 2004-2006, I served as chair of the Council's Volunteer Employee and Leadership Committee.

Locally, I served as chair of the Grand Canyon Chapter of the American Red Cross (covering 10 Arizona Counties) from 2002-2004, was on the Executive Committee from 2001-2004 and was a Board member from 1999-2004. I served as a National Convention Voting Delegate (2001-2004), Chief Executive Officer Search Committee member (2006) and chair (2001-2002), and Human Resources Committee chair (2001-2002). I also served on the Long Range Planning (1999-2001) and Government Relations (1999-2000) Committees. Before becoming a full Board member, I served as Special Transportation Services Committee chair (1998-1999), Ex Officio Board member (1998-1999) and on the Special Transportation Services Task Force (1996-1998).

While growing up in Iowa, I was an active member of 4-H and the Future Farmers of America (now FFA). After moving to Arizona, I continued my involvement in the FFA by serving as a National Chapter and Proficiency Award judge (1996-1999, 2001-2003), Building Our American Communities Grant Committee member (1996) and a Parliamentary Procedure Award sponsor (1996-2007). My activities judging award applications ended when I started providing pro bono legal services for the Arizona Agricultural Education/FFA Foundation in approximately 2003.

I have been a member of the First United Methodist Church in Phoenix for nearly 20 years. From 2009 to the present, I have served as a liturgist and greeter; from 2008-2010, I served as a member of the Staff-Parish Relations Committee; and, in 2009, I served on the Search Committee for Head of The Weekday School at the Church. From 2004-2008, I served as a member of the First United Methodist Foundation of Phoenix Board of Directors. From 2006-2008, I served as vice chair of that Board and chair of the Expenditures and

Board Development and Governance Committees. We also provide support (often in the form of food) for the senior high youth group, where our daughter is involved.

In 2001 and 2002, I participated in Valley Leadership as a member of Class 23.

From 1994-1996, I was appointed and reappointed by two Phoenix Mayors to the Paradise Valley Village (of Phoenix) Planning Committee, the first public-input stage of land use planning for the City of Phoenix. I served as elected secretary of the Committee in 1995-1996. I served from 1993-1996 as a member of Iowa State University's Student Affairs Development Advisory Council. From 1991-1993, I served as the Purchasing Coordinator and a Director for Gifts For the Homeless, Inc., a non-profit corporation in Washington, D.C. that distributes warm clothing to the homeless.

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

2016 - Named Paul Harris Fellow - The Rotary Foundation of Rotary International

2014 - Named Honorary Chair for the American Bar Association Litigation Section Annual Conference held in Scottsdale, Arizona.

2011 - Named Founding Member of the Maricopa County Justice Museum and Learning Center

2011 - Named Lifetime Fellow of the Arizona Foundation for Legal Services & Education.

2010 - Named an Outstanding Subcommittee Chair by the American Bar Association Litigation Section.

2008 - Received National Leadership Award from the American Red Cross and Regional Leadership Award from the American Red Cross.

2006 - Honored at the American Red Cross National 125th Anniversary Gala in Washington, D.C., as one of approximately 40 individuals nationwide for contributions to the organization in an event hosted by actor Jimmy Smits.

2005 - Honored as one of two former law clerk speakers at the presentation of the portrait of Judge David R. Hansen, Senior United States Circuit Judge, Eighth Circuit Court of Appeals, in Cedar Rapids, Iowa (comments reported at 433 F.3d XXXV-XXXVII).

2002 - Named "Forty Under 40" Honoree by *The Business Journal*.

1996 - Received *Friend of Phoenix Commendation* for outstanding contributions to the City of Phoenix, based on my service on the Paradise Valley Village (of Phoenix) Planning Committee.

I have received various other awards and recognition from a variety of different organizations for my service, including from the American Bar Association, the National Judicial College, the Arizona Supreme Court, the State Bar of Arizona, the American Red Cross and the Arizona FFA.

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

In June 2016, I was re-elected by my peers as Vice Chief Judge of the Court of Appeals, Division One, effective July 2016. In May 2015, I was elected by my peers as Vice Chief Judge of the Court of Appeals, Division One, effective July 2015. In November 2014, I was on the election ballot as a judge on the Arizona Court of Appeals and was retained by the voters. In November 2010, I was on the election ballot as a judge on the Arizona Superior Court and was retained by the voters. While on the Superior Court, I was elected by my peers to the Judicial Executive Committee.

Have you been registered to vote for the last 10 years? **Yes.**

Have you voted in all general elections held during those years? **Yes.** If not, explain. **Not Applicable.**

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

I am naturally inquisitive and have a variety of interests outside of the law, centering on family, travel, farming, cooking, and learning.

On August 15, 2016, my wife Barb Dawson and I will celebrate our 24th wedding anniversary. Barb is an attorney and a partner at Snell & Wilmer, meaning we appreciate the stresses and strains of daily life, can laugh at each other's jokes and are a good team.

We are the proud parents of our daughter Nicole, who is a recent high school graduate and will be attending Massachusetts Institute of Technology this fall. Nicole allows us to see the world through the eyes of a smart, thoughtful, inquisitive teenager. Along with daily support of her school and numerous extracurricular activities, we have had the privilege of traveling with her around the world and throughout the United States. It has been a joy to expose Nicole to cultures, customs and parts of the world where all three of us can learn together.

Given my roots in farming, our travels also have allowed us to see the similarities, and differences, in production agriculture around the world. Although I am no longer involved in day-to-day farming, it is good to be reminded of how much is outside of our control. It also has been fascinating to see how similar conversations are on farms around the world, particularly when it comes to discussing the weather.

I enjoy cooking and eating good food. Cooking is something that our family and friends enjoy together and allows us to appreciate the fruits of our labor. We like to cook with plants we have grown at our home. For a wonderful period of time, when Nicole's flock of chickens (five laying hens at its peak) was in its prime, we learned to cook with really, really fresh eggs. Nicole and I were featured cooking together in a Father's Day issue of the *Arizona Republic* on June 12, 2002, and that article is one of a small number of frames hanging in my office.

More selfishly, I enjoy reading (biographies, some law-related materials and selected fiction); photography (having grown up in a home with a black-and-white darkroom) and sports (having the general curse of being an Iowa State University Cyclone fan).

HEALTH

63. Are you physically and mentally able to perform the essential duties of a judge in the court for which you are applying? **Yes.**

ADDITIONAL INFORMATION

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

It is important that Arizona's judicial system represent a diverse population in all respects. I am not a member of any diverse group based on heritage. While many close to me are (including my wife and our daughter), I fully recognize that my observation of the experiences of loved ones is not the same as if I was a member of such a group.

I grew up on a family farm outside of Laurens, Iowa, a town of about 1,500 people in northwest Iowa. Laurens was the subject of the 1999 Disney movie "The Straight Story" that, in most respects, properly captured the feel of my hometown. I went to school with the same students from kindergarten through 12th grade and was in a graduating class of 64 students.

In a small town, reputations are valued and memories last for a long, long time. I had the good fortune of being born into a family where few needs – as opposed to wants – went unmet. I was even more fortunate to have parents who taught me a strong work ethic, a sense of community and a hunger to do the right thing. Through words and deeds, my parents demonstrated that people should be treated well and fairly without regard to the clothes they wear, the car they drive, or where they live.

Now geographically distant from my childhood home, and living in a city larger than I could imagine growing up, the lessons that I learned from my parents on our farm still serve me well in treating people right. That same upbringing has given me an appreciation for the hardships that others, with very different life experiences than I have had, may face. As both a formal and informal mentor, I have worked hard, and continue to work hard, to apply these lessons, to provide practical, ethical, and appropriate guidance and to be a sounding board for my co-workers and others.

I hope and believe that I bring all of these values to how I behave in my day-to-day life.

65. Provide any additional information relative to your application or qualifications you would like to bring to the Commission's attention at this time.

As noted in response to Question 16, the Court of Appeals, Division One, hears cases originating in more than half of Arizona's Counties. The Court serves a large, diverse population, including extremely large cities and extremely remote rural areas, and has enormous geographic coverage. When I joined the Court, I wanted to focus on reaching out to the communities that we serve and to see what additional efforts we could undertake to do so.

An example of one such effort was developing and implementing an ongoing continuing legal education program that we take to the Counties that we serve. Judges on the Court prepare and update a PowerPoint presentation addressing recent rule changes, cases, ethics updates and tips for special actions, brief writing, and oral argument. We also identify written materials to distribute. Working with local bar associations, we then travel to the Counties that we serve to meet with judges, lawyers, and paralegals who practice there and discuss these topics. Beginning in October 2013, and with a budget of zero, judges on the Court (ranging from three to six at a time) have made largely annual day trips to meet with groups from all the Counties that we serve: Yuma; Maricopa; Apache/Navajo (in Show Low); Coconino; Yavapai; Mohave and La Paz. These programs typically provide three hours of continuing legal education credit to those who attend and have been a delightful exchange of information. They also appear to be well-received and

we are now scheduling programs for 2016-2017. More selfishly, these programs are enormously fun and informative.

During these programs, we receive extremely helpful formal and informal feedback about the Court, oftentimes from infrequent users. One suggestion was for training on how technology could be used to enhance the quality of appellate filings by rural attorneys. With the right technology, a solo practitioner in a small town can file a brief every bit as technically sophisticated as one filed by an international law firm. In response, then-Chief Judge Johnsen prepared some helpful instructions that appear on the Court's website. During an out-of-state program I attended, I saw some short video clips the Texas Supreme Court had prepared on how to best file documents electronically with that court. As a result, I am working to develop some short video clips, to be posted on the Court's website that will provide guidance to attorneys and their staff about how to best use technology when making electronic filings with our Court, with the hope that we can post these video clips before the end of the year. The hope is that this project, which is a direct result the feedback we received during one of our continuing legal education programs and has been more involved than I initially had anticipated, will be "win-win" for all involved.

Another, very different outreach effort is based on an unmet need we identified. Our Court resolves nearly 3,000 cases annually. Hundreds of these cases have at least one self-represented party and can involve difficult, novel legal issues addressing critically-important issues, including child custody, parental rights, and appellate jurisdiction. We saw a need for attorneys to represent parties in some of those cases and wondered what we could do to get the best legal briefing possible, recognizing better briefing typically results in better decisions. Because we had no money to pay attorneys, we needed to be creative to see what could be done.

Starting in the second half of 2013, I began researching the issue, including what our Court had in place and what courts elsewhere were doing that seemed to work. I then looked at what might work for our Court and spoke with many, many individuals to see what we could do. After compiling that information, we drafted, vetted, implemented, and publicized the Arizona Court of Appeals Pro Bono Representation Program. <http://www.azcourts.gov/coa1/Pro-Bono-Representation-Program>. Launched in late 2014, again with a budget of zero, the Program provides pro bono legal services to otherwise self-represented parties in selected civil, family and juvenile appeals and special actions identified by the Court to assist in resolving those cases more effectively.

The Program applies in both Divisions One and Two of the Court of Appeals, meaning it applies statewide and can include any appeal of these types from

any Arizona Superior Court. The Program also offers attorneys a valuable learning experience, with the Court usually hearing oral argument in cases selected to participate in the Program, while providing representation to parties in cases. The Program is built on attorneys volunteering their time to provide such services. To date, more than 100 attorneys have volunteered to participate and Division One is appointing pro bono counsel in approximately one case a month. In addition, the Arizona Supreme Court has appointed counsel using the Program. It is a small start, but it is a meaningful one, and given the overwhelming number of attorneys who have volunteered for the Program, they are being encouraged to volunteer in other pro bono programs. The Program was featured in the February 2015 *Arizona Attorney*. http://www.myazbar.org/AZAttorney/PDF_Articles/0215ChangeVenue.pdf. As I noted when interviewed for that article, the Program “rides on the backs of lawyers who are willing to volunteer their time, blood, sweat and tears to do the right thing. Without them, this program couldn’t exist. And it is an opportunity for the court to do some great things statewide, all based on the willingness of lawyers to step up.”

We have much to do. But these efforts, adopted based on feedback received and recognized needs, and provided without additional cost, are good examples of our attempts to try to constantly improve service to the public.

66. If you were selected by this Commission and appointed by the Governor to serve, are you aware of any reason why you would be unable or unwilling to serve a full term? **No.** If so, explain. **Not applicable.**
67. If selected for this position, do you intend to serve fully, including acceptance of rotation to areas outside your areas of practice or interest? **Yes.** If not, explain.
68. Attach a brief statement explaining why you are seeking this position.

See Attachment 1

69. Attach three professional writing samples, which you personally drafted (e.g., brief or motion). The samples should be no more than a few pages in length. 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 2

70. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. The writing sample(s) should be no more than a few pages in length. 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 3

71. 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 two performance reviews.

See Attachment 4

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(CONFIDENTIAL INFORMATION) ON NEW PAGE --**

Attachment 1

**Samuel Anderson Thumma
Application for Nomination to Judicial Office**

**Application of Samuel Anderson Thumma
For Nomination to Judicial Office**

Response to Question 68

I grew up on our family's farm in northwest Iowa wanting to be a veterinarian. Not until college did I seriously consider going to law school, after realizing I both liked the law and lacked skill in zoology and organic chemistry. In law school, I was determined to work hard to succeed. I ended up graduating from law school with high honors and a higher percentage class rank than in college, or in my high school class of 64 students. Something about the law just clicked for me.

My nearly 30-year journey in the law has involved challenges, wins, and losses. During this journey, I have dealt with complex legal issues along with the very human consequences of the law. This journey has taught me that I have a real passion for the law and the constant learning it requires. All of these experiences have helped prepare me to serve on the Arizona Supreme Court.

Serving as a law clerk for three years – two with a federal trial judge and one with the Arizona Supreme Court – exposed me to a variety of civil, criminal, administrative, and appellate issues. Working in private practice for more than 15 years – first in Washington, D.C., and then in Phoenix – allowed me to focus on complex, challenging, and novel civil litigation. I enjoyed private practice, including its stomach aches and sleepless nights, where I was privileged to help people work through often long-festered, painful disputes where the stakes were high.

When applying for the Superior Court, I thought service as a trial judge would be rewarding, and my experiences exceeded my highest expectations. For nearly five years as a trial judge, I focused intensely on juvenile and criminal law. Serving on the Superior Court allowed me to learn what it means to be a judge, not just by applying the law to the facts, but by being in court, on the bench, almost all day, nearly every day. Presiding over approximately 35 jury trials and 200 bench trials meant constant interaction with diverse participants in the legal system, including parties, attorneys, victims, family members, jurors, and court staff. This experience ingrained in me the critical importance of treating everyone with fairness, respect, and dignity. As a trial judge, the consequences of my decisions were vivid and immediate. I literally looked into the eyes of people whose lives often would change drastically based on my decisions. I vowed that I would never forget that immense responsibility when serving on the Court of Appeals, and I haven't.

When applying for the Court of Appeals, I thought service as an appellate judge would be rewarding and, again, my experiences have exceeded my highest expectations. I love my family and I love weekends, but I also love Monday

mornings. Serving on the Court of Appeals for more than four years has allowed me to focus on resolving challenging appeals, but also to look at the court system more broadly. As a trial judge, my primary focus was what I did, and could do better, in my own courtroom. As an appellate judge, I have the privilege of looking more toward the horizon, to learn from courts in the eight Counties we serve, to look at best practices and lessons learned and to see what we can do better as a system to serve the public. I have thoroughly enjoyed that strategic focus.

Service on the Arizona Supreme Court would allow an even broader strategic focus, looking at the Arizona legal system as a whole. Building on my experiences Arizona experiences, in my activities outside of Arizona, I have seen what courts in other states are doing well. I welcome the opportunity to look at best practices and lessons learned throughout Arizona as well as to identify what is working elsewhere that could be adopted here. This desire to focus on the Arizona legal system broadly is a primary reason why I am applying for the Arizona Supreme Court.

While practicing law and serving as a judge, I have thought a great deal about, and have taught, written, and acted on, a variety of issues that impact the law, the legal system, and the administration of justice. In the broader community, I have enjoyed volunteering in Rotary International, the American Red Cross, my church and elsewhere in helping people who are unable to help themselves. My commitment to public service is built on what I saw growing up in a small farming community, where volunteering was a way of life. Being steeped in that environment in my youth has given me a passion for public service as an adult. Receiving the Truman Scholarship allowed me to pursue that passion by attending law school. Serving as a judge allows me to live that passion with a constant focus on how to better serve the public.

Although wonderfully rewarding, being a judge is not easy. Serving as a judge for nearly a decade, I have wrestled with many thorny issues involving enormous consequences. I have seen first-hand the critical importance of being fair and impartial. The ability to look above the horizon and to further improve our legal system, while always remembering that we are public servants, is why I am applying for the Arizona Supreme Court.

Arizona has a strong Supreme Court and a strong legal system. As an enthusiastic optimist, I firmly believe we can make that system even stronger to even better serve the public. I would be honored to contribute to that effort by serving on the Arizona Supreme Court.

Attachment 2

Samuel Anderson Thumma Application for Nomination to Judicial Office

- Thumma, “Memories,” 42 *Litigation* No. 4 at 6 (Summer 2016).
- Thumma & Marshburn, “Applying Successful Nonprofit Management Principles In The Courts,” 55 *The Judges’ Journal* No. 2 at 32 (Spring 2016).
- Thumma & Beene, “The Judge as Servant-Leader,” 54 *The Judges’ Journal* No. 1 at 9 (Winter 2015).

From the Bench

MEMORIES

HON. SAMUEL A. THUMMA

The author is a judge on the Arizona Court of Appeals, Division One. He wishes to express his sincere appreciation to his law clerks Molly Schiffer and Byron Martz for assistance with an earlier version of this article.

What a nonparty witness recalls can be admitted in evidence at a civil trial in a variety of different ways. The most common and forceful way for memories to be admitted is a witness's testimony about what the witness recalls. But there are at least a half dozen other ways such memories are admissible under the Federal Rules of Evidence. Using a simple hypothetical, this article highlights some of these alternatives that should be in every trial lawyer's evidentiary toolbox.

Wanda Witness is walking down a sidewalk one afternoon and sees two cars collide. Being a good citizen, Witness waits with the drivers until the police arrive, writing in her journal what she saw. The police take Witness's statement, and she identifies drivers Peter Plaintiff and Danny Defendant and signs her name on a picture of each. The police then prepare a report. Plaintiff files a civil case against Defendant. Witness is deposed

and testifies at trial held years later. How can Witness's memories of the accident be admitted at trial?

A witness's unaided testimony about memories. Witness presumptively is competent to testify and, after giving an oath or affirmation, can testify based on her personal knowledge about what she recalls of the accident. FED. R. EVID. 601-603. If her memory is pristine, life is good. But what are the options if it isn't?

Leading questions (gasp!) during direct. Witness generally should not be asked leading questions during direct examination. FED. R. EVID. 611(c). But judges "should exercise reasonable control over the mode . . . of examining witnesses" to "avoid wasting time," and may allow leading questions even during direct "as necessary to develop the witness's testimony." FED. R. EVID. 611(a), (c).

So, if Witness can't recall the day of the week the accident occurred and the day of

the week is not disputed, asking Witness a leading question on direct to move things along—"The accident happened on a Friday, correct?"—should not be objectionable. If, however, the day of the week was a hotly disputed material fact, that same question may be objectionable. So, contrary to urban legend, leading questions can be used on direct examination for limited purposes, including times when a witness's memory is a little fuzzy.

Writing used to refresh a witness's memory. An attorney also can attempt to refresh the witness's memory. Trick question: What rule of evidence allows a witness's memory to be refreshed? Answer: There isn't one. (I said it was a trick question.) But the evidence rules do provide some guidance.

The rules of evidence don't describe how to refresh a witness's recollection but, instead, provide disclosure obligations and an adverse party's options "when a witness uses a writing to refresh memory." FED. R. EVID. 612(a). "[A]n adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony." FED. R. EVID. 612(b). And if the writing is not produced as ordered, the court "may issue any appropriate order" up to and including striking a witness's testimony or declaring a mistrial. FED. R. EVID. 612(c).

If Witness does not recall at trial what day the accident occurred, she could be shown a copy of the police report to see if it refreshes her memory. It doesn't matter whether Witness wrote the report or even had seen it before. She could then read the report to herself, set it aside, and be asked whether the report refreshes her recollection. If it does refresh her recollection, she answers the question; if not, she's still at a loss. What Witness can't do is to answer the question by reading aloud from the police report. And the document used to refresh her recollection can't be received in evidence unless it is admissible on some other basis.

Recorded recollection. What if no writing refreshes Witness's memory? Witness's journal entry might be admissible as a recorded recollection—an exception to the rule against hearsay regardless of whether a witness is available to testify. FED. R. EVID. 803(5). The journal entry is “a memorandum, report, or data compilation,” meaning it is a record. FED. R. EVID. 101(b)(4). The journal entry appears to be “on a matter the witness once knew about but cannot recall well enough to testify fully and accurately”; “was made or adopted by the witness when the matter was fresh in” Witness's memory; and accurately reflects her knowledge. FED. R. EVID. 803(5). So her journal entry should be admissible under the recorded recollection exception to the rule against hearsay. Would the police report be treated the same way? Probably not. Witness did not write the police report, and unless she “adopted” it when the matter was fresh in her memory, it would not qualify as Witness's recorded recollection.

Another trick question: If the journal entry is admissible as a recorded recollection, it is admitted in evidence as an exhibit the jury can consider during deliberations, right? Wrong. “If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.” *Id.* Because it is the functional equivalent of witness testimony, the document is read to the jury, but the jury can't consider the written journal during deliberations.

A witness's prior identification. What if the police report says Witness identified Defendant the night of the accident, but now she can't remember doing so, nothing refreshes her recollection, and her journal entry doesn't reflect the identification? Game over on the jury learning Witness identified Defendant, right? Not so fast!

Evidence of Witness's statement identifying Defendant the night of the accident, where Witness testifies and is subject to cross-examination, sure feels

like hearsay, but by rule, it isn't. FED. R. EVID. 801(d)(1)(C). So a police officer who saw Witness identify Defendant the night of the accident could testify to that fact without implicating the rule against hearsay.

Former testimony. During her pre-trial deposition, Witness recalled a great deal about the accident not otherwise captured in any document. But now, at trial, she can't remember much of anything. How can the deposition be used?

Contrary to urban legend, leading questions can be used on direct examination for limited purposes.

Her deposition testimony is admissible as an exception to the rule against hearsay if offered against a party who had an opportunity and similar motive to develop her testimony. FED. R. EVID. 804(b)(1). But wait! Witness is testifying at trial, and that exception is limited to “if the declarant is unavailable as a witness.” True, but a declarant is considered unavailable if she “testifies to not remembering the subject matter.” FED. R. EVID. 804(a)(3). So, if Witness remembers nothing, she may be deemed unavailable for purposes of this exception to the rule against hearsay.

A declarant-witness's prior statement. Although Witness's out-of-court statements sure feel like hearsay, they may be admissible as non-hearsay depending on (1) whether they are consistent or inconsistent with her trial testimony and (2) how they were made. FED. R. EVID. 801(d)(1)(A).

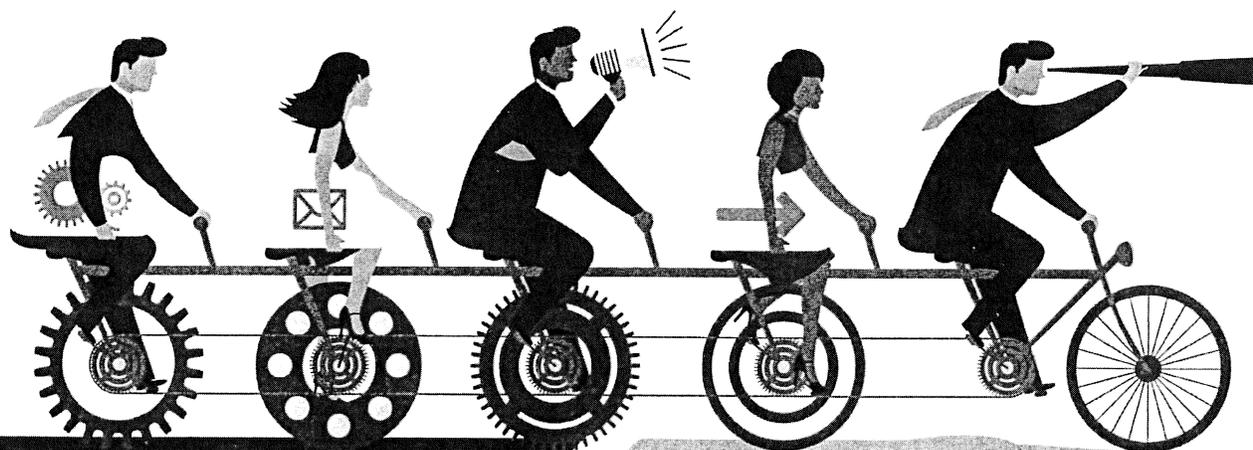
Witness is testifying at trial and is subject to cross-examination, meaning her prior statements under oath that are

inconsistent with her trial testimony are not hearsay. *Id.* Is this also true for her unsworn statements to police? No. For prior inconsistent statements to be “not hearsay,” they must be “given under penalty of perjury.” *Id.*

Witness's prior statements, even if not under oath, are not hearsay if they are consistent with her trial testimony and offered to rebut a claim of recent fabrication or improper influence or motive or offered to rehabilitate her credibility “when attacked on another ground.” FED. R. EVID. 801(d)(1)(B)(i) & (ii).

Although disclosure to the adverse party is required if requested, the examining party need not show or disclose the statements to Witness when questioning her about her prior statements. FED. R. EVID. 613(a). However, extrinsic evidence of a prior inconsistent statement is admissible only if Witness is given an opportunity to explain or deny the statement and the adverse party is given an opportunity to examine Witness about it, “or if justice so requires.” FED. R. EVID. 613(b).

The best way for Witness's testimony to have maximum force and impact at trial is for her to have a good, crisp memory. But failing that—and she's human after all—there are numerous other ways to admit evidence of her memories. This article discusses half a dozen ways to do so. Undoubtedly, there are many more; present sense impression and excited utterance exceptions to the rule against hearsay immediately come to mind. FED. R. EVID. 803(1) & (2). But given the potential importance of Witness's testimony, particularly her memories, the alternatives highlighted in this article should be in every trial lawyer's evidentiary toolbox. ■



Applying Successful Nonprofit Management Principles in the Courts

By Vice Chief Judge Samuel A. Thumma and Meredith Marshburn

Every organization uses management principles perceived to be effective that typically have a similar goal: to motivate individuals in furthering the purpose of the organization. The management principles used differ widely based on an almost infinite number of context-dependent variables. Is the organization large or small? Does it have one location or many? Does it provide a product, a service, or a combination of both? How are employees compensated? What are the culture and “feel” of the organization from the perspective of management, customers, and employees?

The effectiveness of the management principles used differs widely based on these same variables. For example, management principles that work well in an edgy, high-end restaurant, where wait staff are driven by the possibility of large tips from wealthy customers, may not work at all at a neighborhood diner where long-time employees are committed to serving comfort food at a

fair price to regulars they’ve known for years.

Accounting for these variables in identifying and implementing successful management principles also is resource-dependent. The resources available to manage the wants and needs of a Fortune 500 company’s employees are very different from those available to the local nonprofit’s volunteers. And the resources available for the nonprofit’s volunteers, in turn, differ from those available to a state court system’s employees.

Clearly, identifying management principles is not a “one size fits all” concept. Given these differences, there is a great deal to be said for attempting to adapt to court systems management principles identified as “best practices” in for-profit organizations. But can courts learn from management principles identified as “best practices” in nonprofit organizations?

This article begins with a brief overview of some differences and similarities in for-profit organizations, nonprofit

organizations, and government (more specifically, the courts). The article identifies how the courts have, in some significant respects, more similarities with nonprofit organizations than they do with for-profits. The article then discusses seven selected nonprofit management principles identified by the late management expert Peter F. Drucker in *Managing the Nonprofit Organization* (2006 paperback), and how these principles might apply to the courts. The article concludes that using nonprofit management principles in the courts merits serious consideration.

For-Profit, Nonprofit, and Court Organizations

This article divides the world of organizations into three categories: (1) for-profit, (2) nonprofit, and (3) the courts. Using these categories (which overlooks a great many details and draws bright lines where there are many shadows), significant similarities and differences exist

when comparing for-profits, nonprofits, and the courts.¹ As a proxy for a far larger number of factors, these similarities and differences are highlighted by focusing on ownership, funding sources, mission, the incentivizing of participants, and a determination of how success is defined.

For-profit organizations are owned by individuals or entities. Owners can be shareholders, limited partners, sole proprietors, or many other forms. Owners voluntarily fund the organization by purchasing its ownership interests. If owners become disillusioned with the organization, they can sell those interests. The organization generates income from the provision of goods or services through voluntary transactions with other individuals or organizations. The mission of a for-profit organization is to be the best provider of whatever it provides to make money for the owners. Participants in the organization are employees who are incentivized by compensation (typically money) in a variety of forms, ranging from hourly, to annually, to commission. A benchmark of success is whether the for-profit organization makes a profit (and, if so, how much) that can then be either distributed to the owners or reinvested.

By contrast, no individual or entity owns a nonprofit; the organization is a community asset, however that community is defined. Supporters voluntarily fund the organization by donations. If supporters become disillusioned with the organization, they can stop making donations. Along with donations, the nonprofit may generate revenue from the provision of goods or services through voluntary transactions with other individuals or organizations. The mission of a nonprofit is to create a community or public benefit and to secure enough funding to continue the work of the organization. Participants in the organization may be volunteers who are compensated by the reward of helping others. If the nonprofit has employees, their work typically is leveraged by a larger number of volunteers. The employees are compensated by a combination of monetary compensation and the reward of helping others. A definition of success is whether the nonprofit organization can

sustain itself and continue to serve the community it serves.

The courts have some characteristics of for-profit organizations, some characteristics of nonprofits, and some that reflect the unique nature of the courts. The courts are not owned by any individual or entity; instead, they are a governmental entity that broadly serves the public. Unlike for-profit and nonprofit organizations, funding for the courts is not voluntary; it comes from taxpayers under the threat of penalties if taxes are not paid and fees, fines, and costs imposed on parties by the courts. The mission of the courts is public service through the administration of justice in a timely manner, treating all with fairness, respect, and dignity. Courts typically have employees who are compensated by wages or salary and, hopefully, the reward of helping the public. Courts also rely on volunteers, who are compensated by the reward of helping others. A definition of success for the courts is whether the public is served and justice is administered in a timely fashion.

Clearly, there are similarities and differences in these three organizational structures. As particularly applicable here, however, nonprofit organizations have a significant number of similarities with the courts. These similarities include public ownership, a public service mission, compensation that is received both monetarily and by the reward of helping the public or community, and a definition of success that is a focus on serving the public or community. Given these similarities, it is worth looking at "best practices" identified in nonprofit management to see if they might add value in managing courts.

Nonprofit Management "Best Practices" and Their Application in Managing Courts

Drucker's *Managing the Nonprofit Organization* covers a lot of ground in identifying "best practices" for managing nonprofit organizations. It is a detailed, thoughtful book that merits careful study. What follows is a summary of seven "best practices" that Drucker identifies in the nonprofit world and a discussion of how each might apply in managing courts.

Identifying, Communicating, and Understanding the Mission²

Although discussed often in addressing mission statements, Drucker writes that a nonprofit organization must have a thoughtful, communicated operational mission, "otherwise it's just good intentions." The mission should focus on what the organization "really tries to do and then do it so that everybody in the organization can say, This is my contribution to the goal." The mission "has to be clear and simple. . . . It has to be something that makes each person feel that he or she can make a difference. . . . In every move, in every decision, in every policy, the nonprofit institution needs to start out by asking, Will this advance our capacity to carry out our mission?"

As applied to the courts, the basic mission is simple and direct: to serve the public and administer justice in a timely fashion. Court management should target this mission, or efforts will be muddled and confused. But what specific aspects of the mission are important? How about the fair, just, and timely resolution of disputes under the law? Enhancing confidence in the courts through accessibility, communication, and education? Administering justice with integrity, fairness, and equality? Resolving legal disputes in a prompt,



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timely, and fair manner while treating all involved with fairness, respect, and dignity? Each of these examples can be found in various court systems in the United States and each, hopefully, works well in that specific system.

A thoughtful mission that is expressly identified, communicated, understood, and used provides meaning and context to management decisions. Does a particular decision, project, or approach further the court's mission? If not, why should it proceed? And a focus on mission allows employees to have a better sense of purpose. It can transform simple work perceived to be without meaning into a sense of how the work fits into the broader goals, resulting in a sense of "contribution to the goal."

Embracing Change and Innovation

Drucker recommends embracing change and innovation *when things are going well*:

One strategy is practically infallible: Refocus and change the organization *when you are successful*. When everything is going beautifully. When everybody says, "Don't rock the boat. If it ain't broke, don't fix it." At that point, let's hope, you have some character in the organization who is willing to be unpopular by saying "Let's *improve* it." If you don't improve it, you go downhill pretty fast.³

At first blush, particularly as applied to the courts, this strategy seems counterintuitive. Many aspects of the courts have no substitutes. Although private mediation or arbitration may resolve civil and some family law disputes, that generally cannot be said for criminal and most juvenile matters. Moreover, most funding sources for the courts are not voluntary in the sense that contributions to nonprofits are voluntary. And some innovations fail because their costs lack corresponding benefits. So how could this "innovate when you are successful" concept apply to the courts?

In some respects, it may not. If an approach to a time-worn issue appears to be working just fine, it may be that no

improvement is appropriate. But it also may be that looking to see how a well-functioning process can be improved is just what courts should be doing. Take, for example, times for case processing. Case processing can always be improved. Looking to improve times for case processing when things are working just fine is at the core of the court's mission and allows a successful team to improve things in the cool of the day (and not in the heat of a crisis). Moreover, the fact that case processing is at the core of what the courts do and lacks any real substitute, by definition, provides a basis for looking to constantly improve. If a strategy is working, it suggests that the system and the people in charge of overseeing the system have been successful. And as a fail-safe, when a change is implemented when things are working well, if the new approach doesn't work, there is always the option of returning to the "unimproved" approach that was working.

A focus on change and innovation also allows individuals to grow in ways that maintaining does not. Although many individuals will say, in the abstract, that they don't like change, as applied, involving individuals in identifying, planning, and implementing changes can empower. As an example, consider how courts are using technology today compared to a decade ago. Or look at the proliferation of therapeutic courts that were virtually unheard of not so long ago. As Drucker writes for nonprofits, "[t]he first requirement for successful innovation is to look at a change as a potential opportunity instead of a threat."⁴ And because it's inevitable, isn't it better to embrace change rather than dread it?

Adopting the Team Concept

Drucker champions the essential nature of the team concept:

The more successful an organization becomes, the more it needs to build teams. In fact, non-profit organizations most often fumble and lose their way despite great ability at the top and a dedicated staff because they fail to build teams.

The purpose of a team is to make the strengths of each person effective, and his or her weaknesses irrelevant. One manages *individuals* on a team. The focus is to look at the performance and the strengths of individuals combined in a joint effort.⁵

This focus on team in the nonprofit context translates extremely well to the courts. Even though the judicial officer presides over the courtroom, teamwork is essential in the courtroom. To best serve the public, a judicial officer hearing cases on the bench works with any number of individuals, including a bailiff, a clerk of court, a court reporter, and perhaps many others. Each team member has his or her strengths, and the focus of the team is to build on strengths in a way that makes weaknesses of team members irrelevant.

Outside of the courtroom, the team concept may be even more essential in the courts. Take, for example, building and implementing a computer system for use in case management. That system will be used by, and for the benefit of, a wide variety of individuals, including judges, court staff, litigants, attorneys, law enforcement officers, probation officers, and so forth. Failing to obtain input and feedback from all of these users will ensure failure, at least at some point, and be a missed opportunity. By contrast, although obtaining input from all does not guarantee success, it does allow for communication of needs, accountability, and course-correction and helps enhance the probability of success. Working in such a team environment also can facilitate interdependence, trust, productivity, and creativity and encourage collaboration and communication. Also, done correctly, the team concept recognizes and welcomes new team members (who, by definition, will bring new ideas from a different perspective), but also values long-term team members who have the institutional memory that can offer lessons learned from previous efforts. Using a team approach in court management furthers productivity and empowers groups to do the best work possible.

Being Accountable

An essential corollary to the team concept is accountability.

Everyone in the non-profit institution, whether chief executive or volunteer foot soldier, needs first to think through his or her own assignment. What should this institution hold me accountable for? The next responsibility is to make sure that the people with whom you work and on whom you depend understand what you intend to concentrate on, and what you should be held accountable for.⁸

As in nonprofits, accountability translates extremely well to court management. Two examples prove the point.

Let's start with an example of when accountability is not present: an ongoing study committee that meets monthly with an agenda item that is consistently deferred, and the deferral continues until the item is removed because nothing is ever done. What has been accomplished? Quite literally, nothing. But more broadly, an issue that at some point was important slipped away with no consideration of the merits or how resolving the issue would improve the system. It may be that the decision to do nothing to resolve the issue is the correct one, but that's only by chance as the merits of the issue were never considered in a meaningful way.

By contrast, let's turn to an example when accountability is present: At a meeting of the same ongoing study committee, an item is raised, and three named individuals are designated to look into the issue. This subcommittee is asked to consider the issue and report back to the committee as a whole with written recommendations within 60 days. That empowers those three individuals, makes them accountable, and sets expectations for all involved about what the subcommittee will do, what it will provide, and when it will be provided. The subcommittee has a work plan, a goal, and a deadline. "By focusing on accountability, people take a bigger view of themselves. That's not vanity, not pride, but it is self-respect and self-confidence. It's

something that, once gained, can't be taken away from a person."⁷

Welcoming Dissent but Targeting Consensus⁸

The team concept encourages different points of view. Although unanimity can lead to easy decision making, Drucker celebrates dissent. "If you can bring dissent and disagreement to a common understanding of what the discussion is all about, you create unity and commitment."

You use dissent and disagreement to resolve conflict. If you ask for disagreement openly, it gives people the feeling that they have been heard. But you also know where the objectors are and what their objections are. And in many cases you can accommodate them, so that they can accept the decision gracefully. That also enables them very often to understand the arguments of the [other] side. . . . You do not prevent disagreement, but you do resolve conflict.

Applied to the courts, this concept of welcoming and encouraging dissent offers a real possibility of improving results. Take, for example, consideration of a differentiated case assignment system for civil cases, where the issue is whether to adopt a complex case system or a business court, or some similar concept. It may be that those considering such a change are not unanimous in the wisdom of adopting such an approach. When such a change is not universally embraced, encouraging respectful dissent in the decision-making process allows for individuals to raise differing perspectives *before* a decision is made. That discussion will either fortify a consensus, result in a change in plans before a change is implemented, or mean a change being considered is never implemented. That process, in turn, facilitates communication, an exchange of ideas, and an appreciation of competing views. As a result, the quality of decisions should be improved.

Although dissent should be welcomed, it cannot become paralyzing. Encouraging dissent implies that changes are made by

consensus, but not unanimity. So although dissent is a wonderful way to test a proposed change, it should be used as a mechanism to build consensus, not empower one person to veto change.

Benefiting from Lessons Learned

Drucker encourages organizations to ask: "Is this the best application of our scarce resources? There is so much work to be done. Let's put our resources where the results are. We cannot afford to be righteous and continue this project where we seem to be unable to achieve the results we've set for ourselves."⁹

In the courts, there are numerous time-worn issues that continue to pop up and that are hard to fix. Attorney scheduling in high-volume courts is one example. Another example is the balance between having enough, but not too many, potential jurors summoned to account for jury trial needs. For a variety of reasons, courts do not have the luxury of expending time and money for numerous, repeated efforts to use the same strategy to fix or improve something. Because of this, having a long-term collective memory about what has been tried and failed (a.k.a. "lessons learned") may be just as important as knowing what has succeeded. Also, knowing when to change course is essential, as is retaining knowledge of why attempted changes did not work. For a change to fail is understandable and will happen. Not learning from a failed change, however, is to fail twice: first by the failed change and second by failing to learn from the failed change. It is essential to benefit from lessons learned to avoid that second failure.

Celebrating Accomplishments and Contributions

Drucker is blunt in describing employee development:

- "Any organization develops people; it has no choice. It either helps them grow or it stunts them. It either forms them or it deforms them."
- "[I]f you want people to perform in an organization, you have to use their strengths—not

emphasize their weaknesses.”

- “Although successful business executives have learned that workers are not entirely motivated by paychecks or promotions—they need more—the need is even greater in nonprofit institutions. Even paid staff in these organizations needs achievement, the satisfaction of service, or they become alienated and even hostile.”¹⁰

The courts, as with nonprofits, do not typically pay monetary bonuses for additional contributions, and in fact may be prohibited from doing so. Instead, paradoxically, individuals in the courts who are doing well typically are asked to do their regular job *and also* be involved in special projects without any change in pay. As a result, they are asked to do more work for the same monetary compensation.

Given this, it is important for courts to celebrate the contributions of individuals to the team and to the organization. This not only provides credit where credit is due, but it also allows individuals involved in the project to understand that their work is appreciated and important. Such efforts also recognize the team, encourage involvement in future efforts, and foster a positive work environment. The “cake and cookies” celebration after the completion of the project can have far more significance than simply providing people sweets. Thank you announcements and notes, certificates, and other nonmonetary recognition can be

vitaly important in the courts.

As with nonprofits, court employees who serve on productive teams and projects are rewarded by being asked to do so again in future endeavors without additional compensation. Celebration of achievement serves as a sort of psychic compensation, particularly where additional monetary compensation is not an option. Why would people work on difficult, time-consuming projects for no additional monetary compensation? Some don’t. But those who do often have been encouraged, have been instilled with the purpose of the organization, and feel a sense of ownership, satisfaction, and pride in the additional work.

Finally, people remember how they are treated, particularly when they begin a journey and when they end a journey. In the courts, recognizing the addition of an individual to a team is important. Even more important is to celebrate the contribution of an individual who is leaving the team. In this sense, successful courts (as with nonprofit organizations) understand that additional monetary compensation is not a necessary component of a productive organization. They wisely stress purpose, community-building, and employee satisfaction to constantly improve.

Conclusion

Effective court management comes in a variety of different forms, and there are certainly lessons to be learned from the for-profit sector. However, courts also can benefit from adapting “best practices” in

nonprofit organizations. As in nonprofit management, court systems will benefit from focusing on (1) identifying, communicating, and understanding the mission; (2) embracing change and innovation; (3) adopting the team concept; (4) being accountable; (5) welcoming dissent but targeting consensus; (6) benefiting from lessons learned; and (7) celebrating accomplishments and contributions. ■

The views expressed are solely those of the authors and do not represent those of the Arizona Court of Appeals.

Endnotes

1. Recognizing there are some extremely large nonprofit organizations and some extremely small for-profit organizations, this discussion uses more stereotypic examples where the for-profit organization is a large, publicly held corporation and the nonprofit is a local, largely volunteer, cause-based organization. The discussion adopts some concepts found in Authenticity Consulting, *How Nonprofits Differ from For-Profits—and How They Are the Same*, available at <http://managementhelp.org/misc/Nonprofits-ForProfits.pdf> (last visited May 21, 2016).

2. Quotes from PETER F. DRUCKER, *MANAGING THE NONPROFIT ORGANIZATION* 4, 114, 149 (2006).

3. *Id.* at 66.

4. *Id.* at 68.

5. *Id.* at 152–53.

6. *Id.* at 184.

7. *Id.* at 193.

8. Quotes from *id.* at 125, 126–27.

9. *Id.* at 112.

10. *Id.* at 147, 181.

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The Judge as Servant-Leader

By Judge Samuel A. Thumma and Sarah Beene

There are as many approaches to leadership as there are people. Leadership styles range widely, from dictatorial to collaborative, autocratic to autonomous, micro-managing to laissez-faire, hierarchical to co-equal. Leadership styles are also extremely context-dependent. An athletic coach, for example, will use a different approach when speaking to the team just before a big game, dealing with two players competing for the same position, motivating a talented but underperforming player, and meeting with a team member one-on-one about a career-ending injury.

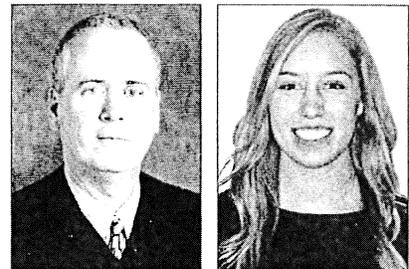
Deciding which leadership approach is most appropriate also depends on a wide variety of other factors. What personalities are involved? What are the organizational structure and culture? What are the time and other constraints? What is the history of those involved, both independently and with each other? What are the individual and common goals (and do those coincide or conflict)?

For judges, leadership approaches can be viewed in two very different contexts: (1) on the bench and (2) everything else (e.g.,

outside of the courtroom). On the bench, the judge clearly and properly controls the discussion and has the last word. But what about the judge's leadership approach outside of the courtroom? Determining what leadership approach is best for a judge outside of the courtroom depends heavily on context, taking into account things such as the personalities involved, the organizational structure and culture, time and other constraints, the history of the individuals and organizations involved, and an assessment of both individual and common goals. For example, will a leadership approach that works well for a bench meeting of peer judges work equally well in a meeting of non-judge court personnel in addressing a human resource issue? How about when a judge serves on an internal study group involving court personnel who are supervised by the judge or his or her peer judges? Or when tackling an issue where the brunt of any change will be felt most acutely by court employees who are not judges? Or when addressing an issue, such as technology, where the judge lacks firsthand knowledge or experience of what can and cannot work?

Along with these internally focused

contexts, the most effective leadership approach may be different when a judge is involved in any number of external activities. For example, is the same on-the-bench leadership approach appropriate when a judge deals with the legislature or governor on appropriation issues? Or when a judge



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chairs a committee of lawyers, other judges, and members of the public? Or when the judge volunteers with Rotary, Lions, Kiwanis, Red Cross, Salvation Army, or any one of thousands of other community-based organizations that judges serve?

The decision-making process for such outside-of-the-courtroom endeavors will benefit from full and active participation by all. An obstacle to such full and active participation can be deference—perhaps, gasp, undue deference—to the judge’s perspective. Such deference to a judge is necessary and appropriate while in court. Outside of the courtroom, however, such deference may inhibit a full and frank discussion of issues, concerns, suggestions, solutions, and resolutions. A judicial leadership approach that is appropriate and efficient in court may not be helpful to flesh out the brilliant idea by the new staff member, fellow club member, or volunteer, who may be uncomfortable, intimidated, and reluctant to speak up.

What, then, are the alternative leadership styles for judges to consider in these outside-of-the-courtroom endeavors? Although there are many, this article focuses on the concept of the judge as servant-leader. The article starts with a brief overview of the servant-leader concept. The article then discusses 10 nonexclusive characteristics of a servant-leader, suggesting how they might apply to judges outside of the courtroom. The article concludes by suggesting that these servant-leadership concepts merit consideration as tools for judges in their endeavors outside of the courtroom.

The Concept of Servant-Leadership

The term “servant-leader” was coined by Robert K. Greenleaf in the 1970 essay *The Servant as Leader*.¹ Greenleaf worked at AT&T for nearly 40 years, including serving as director of management research, and lectured at the Massachusetts Institute of Technology’s Sloan School of Management, the Harvard Business School, Dartmouth College, and the University of Virginia.² In 1964, when he retired from AT&T, Greenleaf started what became the Greenleaf Center for Servant Leadership.

So what, then, is servant-leadership? “Servant leadership is a philosophy and set of practices that,” among other things, “enriches the lives of individuals [and] builds better organizations.”³ In some respects, servant-leadership is counterintuitive to the general stereotype of a leader. A caricature of a stereotypic leader is someone who sits at the head of the table, spewing out orders that others implement. Servant-leadership, by contrast, is based on the concept that “*the great leader is seen as servant first*, and that simple fact is the key to his [or her] greatness.”⁴ So the stereotypic servant-leader is more likely to sit in the middle of the table with the group, ask others what they think, and ask how he or she can help and serve them. The difference between these “leader-first” versus “servant-first” extremes

manifests itself in the care taken by the servant-first to make sure that other people’s highest priority needs are being served. The best test, and difficult to administer, is: Do those served grow as persons? Do they, *while being served*, become healthier, wiser, freer, more autonomous, more likely themselves to become servants?⁵

Stated differently,

[a] servant-leader focuses primarily on the growth and well-being of people and the communities to which they belong. While traditional leadership generally involves the accumulation and exercise of power by one at the “top of the pyramid,” servant leadership is different. The servant-leader shares power, puts the needs of others first and helps people develop and perform as highly as possible.⁶

There are many ways to describe the aspects of servant-leadership. One of the most concrete descriptions was published in 2000 by Larry C. Spears, then chief executive officer of the Greenleaf Center for Servant Leadership. In “On Character and Servant-Leadership: Ten Characteristics

of Effective, Caring Leaders,” Spears identified 10 nonexhaustive characteristics of the servant-leader: (1) listening, (2) striving to understand, (3) healing, (4) awareness, (5) persuasion, (6) conceptualization, (7) foresight, (8) stewardship, (9) commitment to the growth of people, and (10) building community.⁷

Different articles discuss these servant-leader characteristics in various law-related contexts, including private practice, in-house counsel, law school and law firm management, legal education, bar association leadership, and pro bono services.⁸ To date, however, there has been little if anything written that applies these servant-leader characteristics to judges.⁹ This article does so, focusing on the judge as servant-leader outside of the courtroom. This article certainly is not comprehensive and asks more questions than it answers. The effort, however, is intended to provide some guidance about how these characteristics might be used by judges to facilitate more frank discussions, obtain more buy-in by participants, and help make better decisions in their outside-of-the-courtroom leadership endeavors.

The Judge as Servant-Leader

Listening

For a servant-leader, communication and decision-making skills are “reinforced by a deep commitment to listening intently to others . . . listen[ing] receptively to what is being said and unsaid.”¹⁰ This active, genuine interest in hearing and understanding what others are saying is a helpful and useful skill anywhere. But particularly for the judge outside of the courtroom, focusing on the comments, concerns, and excitement of others will facilitate better discussion, decisions, and buy-in. For example, in a committee meeting addressing a contentious or controversial issue, encouraging frank and honest discussion, including disagreement, and valuing contrary and supportive comments is one of the ways judges can reward those who participate in such groups. The judge as servant-leader is able to listen carefully and patiently, to ask questions to help facilitate the discussion, and to appropriately and carefully solicit and offer advice to others.

Striving to Understand

Striving to understand, sometimes called empathy, means that “[o]ne assumes the good intentions of co-workers and colleagues and does not reject them as people, even when one may be forced to refuse to accept certain behaviors or performances.”¹¹ Striving to understand is particularly important where, for example, experience, education, ability, and other talents of the participants may be wildly divergent. The concept separates people from ideas and recognizes that even a suggestion that could never work can add value. More significantly, the concept recognizes that a person suggesting a really bad idea—and there are some really bad ideas—does not make that person a really bad person. The judge as servant-leader works to control expressions and emotions that otherwise might intimidate or suppress communication. The judge as servant-leader also is strong enough to express kindness toward difficult people and situations while still being an objective observer and participant. This is not to say the judge as servant-leader cannot have emotion or passion for a position or outcome. Rather, it suggests that those emotions and passions cannot blind the approach to an issue. Striving to understand involves the judge as servant-leader soliciting input on how to make something better, fairly dealing with individuals who are not easy to deal with, and making decisions based on the best interests of all.

Healing

The characteristic of healing has a bit of a metaphysical feel and, fairly, the concept of healing is not always front of mind in a judge’s service outside of the courtroom. A focus on healing can, however, have some applicability in almost any leadership context. If, for example, an individual has had a bad experience on a committee, the judge as servant-leader can identify and try to account for that experience. If a person feels bitter because his or her contributions were not recognized, those contributions can be recognized. If individuals have long opposed each other, or have not worked well with each other, the judge as servant-leader can seek to identify that tension and frame the

conversation to avoid further conflict. One such way is to depersonalize the conversation and make sure the discussion is about ideas as opposed to personalities, consistent with the bad ideas versus bad person dichotomy discussed above. Another way is to look for small points of agreement and common interests—even if unrelated to the task at hand—and try to build on that common ground. The point is that the work of the group may offer an opportunity to resolve past conflict, something the judge as servant-leader can identify and attempt to achieve.

Awareness

Awareness can mean that tiny, apparently trivial things can have great meaning. For example, the judge as servant-leader welcoming and celebrating the addition of a new member to a longstanding group

judge as servant-leader is constantly looking for opportunities to improve the process, to improve the experience, and, in doing so, to improve the ultimate product or result.

Persuasion

A servant-leader relies “on persuasion, rather than authority, in making decisions within an organization. The servant-leader seeks to convince others, rather than coerce compliance. This particular element [or characteristic] offers one of the clearest distinctions between the traditional authoritarian model and that of servant-leadership. The servant-leader is effective at building consensus within groups.”¹²

A committee recommending a significant change in a longstanding process, for example, likely will benefit from consensus

Striving to understand is particularly important where, for example, experience, education, ability, and other talents of the participants may be wildly divergent.

undoubtedly will mean a great deal to that new member. By contrast, failing to do so and picking up right where the group left off from the last meeting, based on mystical acronyms after months or years of meetings, will effectively give the new member the cold shoulder. As another example, when done at an appropriate time and manner, asking a group member who has not spoken on a topic for his or her opinion may have real meaning to that member. It signals that his or her opinion is wanted and valued. And as a final example, identifying and addressing (preferably one-on-one, at least to start) a group member who dominates the conversation to the exclusion of others in a way that stifles good and helpful conversation is another form of awareness. Awareness means that the

by committee members. The judge as servant-leader does not use or abuse authority to force submission or answers but, instead, uses persuasion to seek consensus. This does not mean that issues are discussed without urgency or deadlines, that votes are never taken, or that projects are never completed. The effort, however, is to change the focus from personalities or technical authority to the merit of new ideas.

Change can be hard. By definition, change requires additional work because it mandates learning something new while, at the same time, continuing to do or use something that may be antiquated. Every new idea contemplates change, and every successful change requires buy-in and commitment. The focus on persuasion is intended to make the process more

participatory and satisfying for those involved. But a wonderful byproduct of focusing on persuasion is that those involved in change may become advocates for the change. This approach can result in a team of champions supporting the change, avoiding a situation where individuals are told what to do, without understanding the need for or merits of the change and, perhaps, without really caring whether the change succeeds.

Conceptualization

As applied to the servant-leader, conceptualization “means that one must think beyond day-to-day realities. . . . Servant-leaders seek to nurture their abilities to *dream great dreams*.”¹³ Stated differently, conceptualization is a focus on the long run, a strategic view, and a look to the horizon.

Day-to-day issues occupy a significant amount of time for any group and any member in that group. This is particularly true for, as an example, a task force charged with resolving an urgent, tactical issue. The focus that works effectively will be useless if it is exclusively, or perhaps even largely, conceptual. But the work can include conceptualization aspects. The judge as servant-leader can help facilitate such work so that the task force will (1) identify a tactical fix for the issue that works now but also (2) identify options in the future that, conceptually, may work better, faster, etc., than the tactical fix. In this respect, the task force performs its specific charge but also sets the table for further improvement in the future.

Enhancing conceptualization can be nothing more complicated than a positive reaction to an enthusiastic suggestion of a new, untested idea that someone starts by stating, “What if we . . . ?” Encouraging and welcoming those moments, even if the new untested idea will never see the light of day, is a key part of conceptualization by the judge as servant-leader.

Foresight

“Foresight is a characteristic that enables the servant-leader to understand the lessons from the past, the realities of the present, and the likely consequences of a decision for the future.”¹⁴ In many respects,

this is what judges do all the time in the courtroom. Using foresight outside of the courtroom, however, involves a somewhat different set of skills.

For example, a bar committee may be asked to address a time-worn issue that has been studied for years that the group has tried to fix, with limited success, and new members are now suggesting different, untested possible fixes. The focus of the work must look to the past, the present, and the future.

The lessons learned from the past (sometimes called mistakes) will come from a variety of different sources, ranging at the extremes from concerns by an individual with years of day-to-day experience to a novice. Both perspectives are essential; both should be considered; one cannot exclude the other and considering each without the other will yield a significantly weaker result. The judge as servant-leader helps facilitate discussion of lessons learned from these different perspectives.

Turning to the realities of the present, as with conceptualization, there may be fixes that, for one reason or another, are impossible to implement now or in the near future. Budgetary issues quickly come to mind. But there may be other impediments as well, including technology and personnel constraints, logistical limitations, practical priorities, and work volume. Facilitating discussion to allow for a candid and frank conversation of these realities is a key component of foresight and what the judge as servant-leader does and should do in assessing the realities of the present.

Looking to the future, it is essential to identify and account for consequences. The intended consequences in fixing a problem are comparatively easy to identify. The unintended consequences, however, may be extremely difficult to identify and require creative and critical thinking of all involved.

With the concept of foresight in mind, the judge as servant-leader easily can and should empower any group to focus on and apply these concepts to enhance the process and the outcome.

Stewardship

Judges are public servants. And they know how important it is to ensure that the court

as an institution is operated for the greater public good. The judge as servant-leader outside of the courtroom embraces this approach. “Servant-leadership, like stewardship, assumes first and foremost a commitment to serving the needs of others” and that all involved play “significant roles in holding their institutions in trust for the greater good of society.”¹⁵ The cornerstone of this concept is focusing on the good of the whole, not individual gain. Valuing the views of all is consistent with this concept. So is holding all involved accountable. Simply stated, stewardship is a foundation for all servant-leader characteristics.

Commitment to the Growth of People

The judge as servant-leader is committed to the growth of individuals and acts accordingly. This commitment can include “concrete actions such as . . . taking a personal interest in the ideas and suggestions from everyone, encouraging worker involvement in decision-making, and actively assisting laid-off employees to find other positions.”¹⁶ Much of this commitment is taking time to value the ideas, suggestions, thoughts, and impressions of all involved. And that, in turn, has the benefit of obtaining buy-in for projects and changes, including from participants who may have started as staunch opponents.

The importance of commitment to individual growth is perhaps best demonstrated in groups tasked with identifying and implementing change. In the court system, there often is no financial benefit for those who go the extra mile. Instead, those who go the extra mile are often rewarded by being asked to commit even more time to endeavors that will involve more work, uncertain outcomes, and no financial benefit to the individuals involved. Focusing on the growth of individuals undertaking such efforts brings its own reward, both to those who participate and to the judge as servant-leader. The participants likely will take real satisfaction in learning that their ideas and suggestions are valued and that their views make a difference. And, for both participants and judges as servant-leaders, the effort develops mutual respect and trust, significant side benefits of any endeavor.

Building Community

What, then, is a by-product of the nine characteristics of the judge as servant-leader described so far? It is building a community. It is serving on a task force where participants look forward to meetings, addressing hard issues with forceful but respectful debate resulting in well-reasoned outcomes. Or it may be scheduling a food distribution program that requires participants to get up before dawn, on cold winter mornings and hot summer days, to drive miles to help feed hungry people. Or it may be working hard to get competing factions in a bar association to meaningfully discuss resolution of issues that are time-worn.

Looking at such projects from a short-term perspective may not require a focus on community; they could be accomplished through an autocratic delegation of duties and responsibilities. But to sustain with enthusiasm by building community, the judge as servant-leader can help the group do more, better, for longer. By focusing on these characteristics, the judge as servant-leader can help build communities that are rewarding, successful, and self-sustaining.

Conclusion

To end as we started: there is no “one size fits all” leadership style. Focusing on outside-of-the-courtroom activities, servant-leadership offers one such style for judges to consider. To help best develop all of the talent around them, judges properly may focus on (1) listening, (2) striving to understand, (3) healing, (4) awareness, (5) persuasion, (6) conceptualization, (7) foresight, (8) stewardship, (9) commitment to the growth of people, and (10) building community. In that way, judges as servant-leaders may help obtain long-lasting and effective results that far exceed the sum of the parts. ■

The views expressed are solely those of the authors and do not represent those of the Arizona Court of Appeals.

Endnotes

1. ROBERT K. GREENLEAF, *THE SERVANT AS LEADER* 59 (rev. ed. 2008) (“About the Author”). Greenleaf attributed his servant-leadership idea to

reading Herman Hesse’s *JOURNEY TO THE EAST* (1932), a story about a mythical journey where a putative servant is shown to be the leader of the group. GREENLEAF, *supra*, at 9.

2. GREENLEAF, *supra* note 1, at 59 (“About the Author”).

3. See *What Is Servant Leadership?*, GREENLEAF CTR. FOR SERVANT LEADERSHIP, <https://greenleaf.org/what-is-servant-leadership> (last visited Aug. 4, 2014).

4. GREENLEAF, *supra* note 1, at 9.

5. *Id.* at 15.

6. See *What Is Servant Leadership?*, *supra* note 3.

7. See Larry C. Spears, *On Character and Servant-Leadership: Ten Characteristics of Effective, Caring Leaders*, 8 *CONCEPTS & CONNECTIONS: LEADERSHIP & CHARACTER*, no. 3, 2000, at 1, 3–5.

8. See, e.g., Chuck Barry & Kristin Kuntz, *In-House Counsel Should Implement Servant Leadership to Help Clients Make Values-Based Decisions*, 37 *HAMLIN L. REV.* 501 (2014); Thomas C. Grella, *Transitions: Partner to Leader: A Managing Partner’s Guide to the Best Leadership Books*, 33 *ABA LAW PRACT.*, no. 6, Sept. 2007, at 48; Ben G. Pender II, *Invigorating the Role of the In-House Legal Advisor as Steward in Ethical Culture and Governance at Client-Business Organizations: From 21st Century Failures to True Calling*, 12 *DUQ. BUS. L.J.* 91, 116–18 (Winter 2009); Robert H. Jerry, *Reflections on Leadership*, 38 *U. TOL. L. REV.* 539, 540 n.2 (2007) (citing

authority); Filippa Marullo Anzalone, *Servant Leadership: A New Model for Law Library Leaders*, 99 *LAW LIB. J.* 793 (2007); Victoria M. Almeida, *Servant Leader*, 58 *R.I. B.J.* 3 (July/Aug. 2009); Neil W. Hamilton, *Ethical Leadership in Professional Life*, 6 *U. ST. THOMAS L.J.* 358, 383–95 (2009); Kristin L. Fortin, *Reviving the Lawyer’s Role as Servant Leader: The Professional Paradigm and a Lawyer’s Ethical Obligation to Inform Clients About Alternative Dispute Resolution*, 22 *GEO. J. LEGAL ETHICS* 589 (2009); Jean M. Holcomb, *New Perspectives on Following the Leader*, 100 *LAW LIB. J.* 779 (2008); Irving R. Stubbs, *The Attorney as Servant Leader*, 15 *LEGAL ECON.*, no. 6, 1989, at 46, 46–47.

9. Although Alameda County California Superior Court Judge David Matthew Krashna presented a thoughtful program on Judicial Servant Leadership in September 2012 at a National Judicial College Theory & Practice of Judicial Leadership Program, including a PowerPoint presentation titled *Theory and Practice of Judicial Servant Leadership*, there was no corresponding article on the topic.

10. See Spears, *supra* note 7, at 3.

11. *See id.*

12. *See id.* at 3–4.

13. *See id.* at 4.

14. *See id.*

15. *See id.*

16. *See id.*

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Attachment 3

Samuel Anderson Thumma Application for Nomination to Judicial Office

- *State ex. rel. Montgomery v. Superior Court*, 238 Ariz. 560, 364 P.3d 479 (App. 2015)
- *Rader v. Greenberg Traurig, LLP*, 237 Ariz. 433, 352 P.3d 465 (App. 2015)

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA ex rel. WILLIAM G. MONTGOMERY,
Maricopa County Attorney, *Petitioner,*

v.

THE HONORABLE JOSE PADILLA, Judge of the SUPERIOR COURT OF
THE STATE OF ARIZONA, in and for the County of MARICOPA,
Respondent Judge,

CHRIS A. SIMCOX a.k.a. CHRISTOPHER ALLEN SIMCOX,
Real Party in Interest.

A.S., mother of minor crime victim, Z.S., *Petitioner,*

v.

THE HONORABLE JOSE S. PADILLA, Judge of the SUPERIOR COURT
OF THE STATE OF ARIZONA, in and for the County of MARICOPA,
Respondent Judge,

CHRIS ALLEN SIMCOX.
Real Party in Interest.

No. 1 CA-SA 15-0203, 1 CA- SA 15-0211
(Consolidated)
FILED 12-08-15

AMENDED PER ORDER FILED 12-08-15

Petition for Special Action from the Superior Court in Maricopa County
No. CR2013-428563-001 DT
The Honorable Jose S. Padilla, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED IN PART

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Amanda M. Parker
Counsel for Petitioner State of Arizona

Chris A. Simcox, Phoenix
Real Party in Interest

Office of the Legal Defender, Phoenix
By Sheena Chawla, Robert S. Shipman
Advisory Counsel for Real Party in Interest

Arizona Voice for Crime Victims, Tempe
By Colleen Clase
Counsel for A.S.

DeFusco & Udelman, PLC, Scottsdale
By Randall Udelman
Counsel for Amicus Curiae National Crime Victim Law Institute

OPINION

Judge Samuel A. Thumma delivered the opinion of the Court, in which Presiding Judge Jon W. Thompson and Chief Judge Michael J. Brown joined.

T H U M M A, Judge:

¶1 These consolidated special actions arise out of pretrial proceedings in a criminal case where Chris Simcox is charged with three counts of sexual conduct with a minor, two counts of child molestation and one count of furnishing harmful items to minors, alleged to have occurred at various times between April 2012 and May 2013. Accepting special action jurisdiction over both petitions, because the court did not properly apply

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Arizona Revised Statutes (A.R.S.) section 13-1421 (2015),¹ this court grants relief and remands for further proceedings consistent with this opinion. Because the court did not properly apply the Victims' Bill of Rights, Ariz. Const. art 2, § 2.1, (VBR) as implemented in the Victims' Rights Implementation Act (VRIA), A.R.S. § 13-4401, et seq., this court also grants relief on that basis and remands for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

¶2 Z.S. and J.D. were approximately 8-years old at the time of the alleged offenses. The State challenges the superior court's application of A.R.S. § 13-1421(A) to statements made by Z.S. A.S., the mother and legal representative of Z.S., challenges the superior court's application of the VBR and the VRIA. The record generated at an evidentiary hearing addressing A.R.S. § 13-1421(A) provides much of the basis for both challenges.

¶3 In a motion in limine, the State expressed concern that Simcox, who has elected to represent himself, would offer evidence at trial that Z.S. "has made prior allegations of sexual abuse against another individual." Citing A.R.S. § 13-1421(A),² the State sought to preclude any evidence or reference at trial "regarding alleged sexual activity between

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

² As relevant here, that statute states:

Evidence of specific instances of the victim's prior sexual conduct may be admitted only if a judge finds the evidence is relevant and is material to a fact in issue in the case and that the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence, and if the evidence is . . . [e]vidence of false allegations of sexual misconduct made by the victim against others.

A.R.S. § 13-1421(A)(5). "The standard for admissibility of evidence under subsection A is by clear and convincing evidence." A.R.S. § 13-1421(B).

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victim Z.S. and anyone other than” Simcox. Simcox countered that the statute was inapplicable because he intended to introduce evidence that Z.S. alleged an individual, referred to here as N., touched her inappropriately, arguing such evidence would constitute a third-party defense to the charges involving Z.S. The court set an evidentiary hearing on the matter, the relevant portion of which was held on July 23, 2015.

¶4 Counsel for A.S. attempted to assert various rights on behalf of A.S. and as legal representative of Z.S. At a July 7, 2015 hearing, counsel for A.S. stated: “I just want the record to note our continued objection to Mr. Simcox conducting any cross-examination of” A.S. The court responded that counsel for A.S. does not “have a right to participate in this part. . . . You’re not representing the State. You represent this witness. We’re not dealing with litigation involving this witness. So it will be noted, but that’s about it.” After counsel for A.S. cited A.R.S. § 13-4437,³ the court noted counsel had standing to represent A.S. “but not participate,” citing *Lindsay R. v. Cohen*, 236 Ariz. 565 (App. 2015).

³ As relevant here, that statute states:

A. The victim has standing to seek an order, to bring a special action or to file a notice of appearance in an appellate proceeding seeking to enforce any right or to challenge an order denying any right guaranteed to victims under the victims’ bill of rights, article II, section 2.1, Constitution of Arizona, any implementing legislation or court rules. In asserting any right, the victim has the right to be represented by personal counsel at the victim’s expense.

. . . .

C. At the request of the victim, the prosecutor may assert any right to which the victim is entitled.

D. On the filing of a notice of appearance and if present, counsel for the victim shall be included in all bench conferences and in chambers meetings and sessions with the trial court that directly involve a victim’s right enumerated in article II, section 2.1, Constitution of Arizona.

A.R.S. § 13-4437(A), (C)-(D).

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¶5 Counsel for A.S. unsuccessfully moved to reconsider. Counsel for A.S. also filed a motion for a protective order seeking to preclude testimony from Dr. C.P. on the grounds it would violate the privacy rights of Z.S. At the July 23, 2015 evidentiary hearing, when the prosecutor stated the motion for protective order was filed by A.S.'s counsel "on behalf of the victim," the court stated "[a]ny information that counsel for any of the victims" wanted to raise with the court must come through the prosecutor, citing *Lindsay R.* When A.S.'s counsel argued she had standing to assert her rights under A.R.S. § 13-4437(A), "rather than asking the State to do it on her behalf," the court stated that, because A.S. had testified at the July 7, 2015 hearing when called by the State, Simcox had a right to cross-examine her. A.S.'s counsel responded that she was "not saying that [A.S.] shouldn't be cross-examined. I wanted to make a record that I objected to Mr. Simcox cross-examining her." The court noted that the parties to a criminal case are the State and the defendant and that victims "can make your position known by way of objecting to what's going on, but that's it." When A.S.'s counsel asked if she could argue her motion for a protective order, the court responded "[t]hat would be [the prosecutor's] job." The court later acknowledged that A.S. has a right to be heard and to be present but did not alter its prior rulings.

¶6 At the July 23, 2015 evidentiary hearing, the court heard testimony from Dr. C.P., who met with Z.S. periodically from June 2011 to May 2013. Dr. C.P. testified that Z.S. reported in May 2013 that N. had touched her inappropriately. Dr. C.P. immediately reported that disclosure to the Department of Child Safety (DCS). A DCS case manager testified about the investigation of that report.

¶7 At the conclusion of the hearing, the court confirmed that A.R.S. § 13-1421(A)(5) sets forth the applicable analysis and addresses "false allegations against others." The court characterized certain testimony it had heard as "'[w]e simply couldn't find evidence of it, but we can't tell you that it did not happen.'" The court, however, declared it was "not making a determination that there is a basis" for the statement by Z.S. that N. had touched her inappropriately. This was consistent with an earlier court statement that the scope of the hearing was:

simply trying to establish is there some credible evidence that there was an allegation made as to another individual. This is not a trial of that other individual. So the statement is not to prove that [N.] did it, but that the allegation was made, there is credible evidence, and the

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witnesses should be examined in front of a jury about those things. That's the entire scope of this hearing.

¶8 The court then indicated it would allow Simcox to question witnesses about the statement by Z.S. that N. had touched her inappropriately. In response, the State argued that "[j]ust because . . . [Z.S.] may have been touched by somebody else doesn't prove or disprove anything about the defendant. She could have been touched by both. So that's why it's not relevant to this proceeding, and would only serve to confuse the jury." The court indicated it was impeachment and "[t]here is clear evidence that the statements were made to a mandated reporter whose job it was to figure out if these things were made," meaning Simcox was not "simply making them up." The court concluded that Simcox "has met his burden of showing that there were allegations made against another individual. . . . The fact that they turned out to be unsubstantiated is something [the State] can bring up."

¶9 The State argued A.R.S. § 13-1421(A)(5) "talks about evidence of the false allegations of sexual misconduct made by the victim against others. That's not what the defendant is arguing here. He's arguing that she wasn't touched by him, that she was touched by somebody else. That's not what this statute is for." The State argued allegations could be admissible "[o]nly if they were false" and met the statute's other requirements, adding:

But just because she may have been touched by somebody else, it's just like as if somebody would have been sexually assaulted by somebody else. Just because it may have happened doesn't make him less a defendant or not, less the perpetrator or not. That's what the purpose of [A.R.S. § 13-]1421 is, not to confuse the jury.

The court indicated it disagreed with the State, adding "[m]y ruling stands." After the State obtained a stay from the superior court, the State and A.S. filed these petitions for special action. Simcox filed the same response in both matters, which addresses in part the State's arguments under A.R.S. § 13-1421 but does not directly address the arguments made by A.S.

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DISCUSSION

I. Special Action Jurisdiction.

¶10 Special action jurisdiction is appropriate where petitioner has no “equally plain, speedy, and adequate remedy by appeal.” Ariz. R.P. Spec. Act. 1(a). Special action jurisdiction is appropriate to address an issue that is “a purely legal question, is of statewide importance, and is likely to arise again.” *Lear v. Fields*, 226 Ariz. 226, 229 ¶ 6 (App. 2011) (quoting *Vo v. Superior Court*, 172 Ariz. 195, 198 (App. 1992)). “Although ‘highly discretionary,’ accepting special action jurisdiction is particularly appropriate where the welfare of children is involved and the harm complained of can only be prevented by resolution before an appeal.” *Dep’t. of Child Safety v. Beene*, 235 Ariz. 300, 303 ¶ 6 (App. 2014) (citations omitted).

¶11 The petitions seek review of decisions that are not final and appealable at this time, implicate the interests of children and involve legal issues of statewide importance that are likely to arise again. Moreover, there is no equally plain, speedy and adequate remedy by appeal. Accordingly, in exercising its discretion, this court accepts special action jurisdiction over the petitions filed by the State and A.S. In doing so, the court notes A.S. has standing to participate in this special action under A.R.S. § 13-4437(A). See *Lindsay R.*, 236 Ariz. at 567 ¶ 5.

II. The Merits.

A. Standard Of Review.

¶12 Although this court reviews a decision to admit evidence for an abuse of discretion, an interpretation of a statutory provision is subject to de novo review. See *State v. Bernstein*, 237 Ariz. 226, 228 ¶ 9 (2015) (citing cases). The interpretation of the VBR, the VRIA and Ariz. R. Crim. P. 39 similarly is subject to de novo review. See *State ex rel. Thomas v. Klein*, 214 Ariz. 205, 207 ¶ 5 (App. 2007).

B. A.R.S. § 13-1421(A)(5).

¶13 As applicable here, “[e]vidence of specific instances of the victim’s prior sexual conduct may be admitted only if” the proponent of such evidence proves by clear and convincing evidence that (1) the “evidence is relevant and is material to a fact in issue in the case;” (2) the “evidence is . . . of false allegations of sexual misconduct made by the victim against others” and (3) “the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence.” A.R.S. §

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13-1421(A)(5); *see also State v. Gilfillan*, 196 Ariz. 396, 401 ¶ 16 (App. 2000); Ariz. R. Evid. 608(b).

¶14 It is not clear that the court determined whether evidence regarding the statement by Z.S. that N. had touched her inappropriately was relevant and material to a fact at issue, a necessary predicate to an admissibility ruling under A.R.S. § 13-1421(A)(5). *See State ex rel. Montgomery v. Duncan*, 228 Ariz. 514, 516 ¶ 7 (App. 2011) (“A finding of relevancy alone does not act to trump victim’s rights”). It is clear, however, that the court neither found the statement was false (as is required to be admissible under A.R.S. § 13-1421(A)(5)) or may be true (as would be required for a third-party defense theory). Instead, although finding “clear evidence that statements were made,” the court expressly stated it was “not making a determination that there is a basis for those claims.” Finally, there is nothing in the record indicating the court assessed whether the inflammatory or prejudicial nature of the evidence did not outweigh its probative value, an assessment required by the statute that differs from the standard in Ariz. R. Evid. 403 and that the court has considerable discretion in addressing. *See Gilfillan*, 196 Ariz. at 405 ¶ 29.

¶15 In opposing the State’s special action petition, Simcox argues the evidence is admissible under A.R.S. § 13-1421(A)(3), which addresses admissibility of prior sexual conduct evidence “that supports a claim that the victim has a motive in accusing the defendant of the crime.” Simcox, however, did not press that argument with the superior court. *Cf. Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) (“[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal.”). Moreover, to show admissibility under A.R.S. § 13-1421(A)(3), Simcox would be required to prove by clear and convincing evidence: (1) the “evidence is relevant and is material to a fact in issue in the case;” (2) the “. . . [e]vidence that supports a claim that the victim has a motive in accusing the defendant of the crime;” and (3) “the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence.” A.R.S. § 13-1421(A)(3). The record does not support a finding that Simcox met his burden regarding the first and third of these required showings. Nor, as to the second required showing, has Simcox shown how Z.S.’s allegation regarding N. shows Z.S. has a motive in accusing Simcox of the crimes alleged. On this record, and recognizing Simcox did not raise the

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argument with the superior court, the order is not supported by A.R.S. § 13-1421(A)(3).⁴

¶16 The court's findings do not support the conclusion that evidence regarding the statement by Z.S. that N. had touched her inappropriately is admissible under A.R.S. § 13-1421(A)(5). Accordingly, the court's ruling that such evidence is admissible is vacated.

C. VBR And VRIA.

¶17 The rulings regarding A.S.'s participation are less specific than the ruling under A.R.S. § 13-1421(A)(5), meaning A.S.'s arguments regarding the VBR and VRIA are somewhat more general. A.S. makes two primary arguments: (1) *Lindsay R.* does not preclude a victim's private counsel from asserting the victim's rights in pretrial proceedings and (2) Z.S.'s rights to standing and to have her own counsel were violated when A.S.'s counsel was prohibited from asserting arguments to protect victim's rights, including on Z.S.'s behalf, during pretrial proceedings.

¶18 *Lindsay R.* held that neither the VBR, the VRIA nor Ariz. R. Crim. P. 39 "provide for privatized restitution proceedings." 236 Ariz. at 567 ¶ 6. *Lindsay R.* declared that "[t]he VBR does not make victims 'parties' to the prosecution, and does not allow victims to usurp the prosecutor's unique role." *Id.* at 567 ¶ 8 (citation omitted). A.S. does not dispute these directives, admits she is not a party to the criminal case and is not seeking to displace or usurp the prosecutor. More broadly, the issue of guilt in the criminal case has not yet been resolved, meaning restitution is not yet implicated. Accordingly, *Lindsay R.*'s concern that allowing victim's counsel to substitute for the prosecution in a restitution proceeding would "essentially transform a criminal sentencing function into a civil damages trial," 236 Ariz. at 568 ¶ 10, is not presented here.

¶19 *Lindsay R.* does, however, offer some guidance in this case. *Lindsay R.* made clear that the "'prosecutor does not 'represent' the victim.'" 236 Ariz. at 567 ¶ 9 (citation omitted). "Unlike a prosecutor, a victim's personal counsel serves solely as an advocate for the victim." *Id.* at 567 ¶ 10. Moreover, as noted two decades ago in a different context, "the VBR and the VRIA give victims the right to participate and be notified of certain criminal proceedings." *State v. Lamberton*, 183 Ariz. 47, 49 (1995).

⁴ Similarly, although his response takes issue with the State's prosecution of the case and other court rulings, Simcox did not file a petition for special action review, meaning the issues he discusses will not be addressed here.

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Accordingly, it is not correct to say broadly that the victim provides information to the State and the State then decides whether it is going to use that information (with no recourse by the victim).

¶20 The VBR guarantees a crime victim various rights, including “[t]o be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.” Ariz. Const. art. 2, § 2.1(A)(3). Under the VRIA, in asserting any right the victim holds, “the victim has the right to be represented by personal counsel at the victim’s expense.” A.R.S. § 13-4437(A); *accord* Ariz. R. Crim. P. 39(c)(4). “On the filing of a notice of appearance and if present, counsel for the victim shall be included in all bench conferences and in chambers meetings and sessions with the trial court that directly involve a victim’s right enumerated in” the VBR. A.R.S. § 13-4437(D).

¶21 Under the VRIA, “the victim has standing to seek an order, to bring a special action or to file a notice of appearance in an appellate proceeding seeking to enforce any right or to challenge an order denying any right guaranteed to victims.” A.R.S. § 13-4437(A). To the extent that the court may have initially viewed this provision as applying only to appellate proceedings, such a reading would not be supported. The Legislature has directed that the VRIA “shall be liberally construed to preserve and protect the rights to which victims are entitled.” A.R.S. § 13-4418. Requests “seek[ing] an order” are made to, and granted by, both appellate and trial courts. Moreover, limiting the ability to enforce the rights enumerated in the VBR and VRIA to orders issued by appellate courts (but prohibiting trial courts from issuing such orders) would largely nullify those rights. Accordingly, A.S., as legal representative of Z.S., had standing to seek an order from the superior court pursuant to A.R.S. § 13-4437(A).

¶22 Standing to seek an order implies the right to properly request an order. With exceptions not applicable here, a request for an order in a criminal case must be timely, in writing, served and filed with the court. *See* Ariz. R. Crim. P. 35.3. For victims, the subject matter of such a request is limited and must be directed to “enforc[ing] any right or to challeng[ing] an order denying any right guaranteed to victims.” A.R.S. § 13-4437(A). As applied to this case, and without expressing any opinion on the merits of the requests, A.S., through her counsel, had a right to object to Simcox personally (as opposed to through other means) conducting cross-examination of A.S. And A.S., as the legal representative of Z.S., had a right through her counsel to object to Simcox eliciting testimony from Z.S. based on Z.S.’s rights as a victim, including privacy rights. Accordingly, the rulings to the contrary are vacated.

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Opinion of the Court

CONCLUSION

¶23 Accepting special action jurisdiction over both petitions, this court grants relief as set forth above and remands for further proceedings consistent with this opinion.



Ruth A. Willingham · Clerk of the Court
FILED : jt

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ROBERT and KATALIN RADER, as individuals and as trustees for The Rader Family Trust dated September 6, 2002; DELBERT and HEATHER LEWIS, as individuals and as trustees for The Delbert R. Lewis Jr. Family Trust U/T/A dated December 31, 1997; JANE BARTELME, as an individual; KAREN E. LAMB, as an individual and a trustee for The Karen E. Lamb Living Trust dated February 26, 2007; MARK LOBERG, as an individual; DAVID STANTON, as an individual and a trustee for The David Brian Stanton Revocable Trust dated August 25, 2004; LOUIS and THELMA VAZQUEZ, as individuals; WALTER J. CLARKE, as an individual; DONALD FRUCHTMAN, as an individual; TOM and NANCY LUTZ, as individuals; SUSAN THARP and MICHAEL NORMAN, as individuals and as trustees for The Norman Tharp Family Trust #3 dated July 19, 2002; JAN STERLING, as an individual and a trustee for The Jan M. Sterling Living Trust dated January 4, 1995; DAVID and HANNA FURST, as individuals and as trustees for the DHF Corporation Retirement Trust and the Furst Family Trust,
Plaintiffs/Appellants,

v.

GREENBERG TRAURIG, LLP, a New York limited liability partnership,
Defendant/Appellee.

No. 1 CA-CV 14-0299
FILED 6-23-2015

Appeal from the Superior Court in Maricopa County
No. CV2012-013308
The Honorable Arthur T. Anderson, Judge

AFFIRMED

COUNSEL

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OPINION

Presiding Judge Samuel A. Thumma delivered the opinion of the Court, in which Judge Patricia A. Orozco and Judge Michael J. Brown joined.

T H U M M A, Judge:

¶1 Appellants challenge the superior court's dismissal of their claims against Greenberg Traurig, LLP as time-barred, asking this court to adopt cross-jurisdictional tolling. Because Appellants have not shown the superior court erred in granting Appellees' motion to dismiss, the dismissal is affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 Mortgages Ltd., a now-bankrupt Arizona real estate investment company, solicited investors using private offering memoranda. In 2006, Mortgages Ltd. retained the law firm Greenberg

¹ In reviewing the grant of a motion to dismiss for failure to state a claim, this court assumes the truth of all well-pleaded facts alleged in the complaint. *Fidelity Sec. Life Ins. Co. v. State*, 191 Ariz. 222, 224 ¶ 4, 954 P.2d 580, 582 (1998).

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Traurig to review and draft offering memoranda. Appellants claim they relied on these offering memoranda to invest in securities offered by Mortgages Ltd. between March 2006 and June 2008.

¶3 Scott M. Coles managed Mortgages Ltd. from 1997 until his suicide on June 2, 2008. Appellants allege that, “[b]y 2005, Mortgages Ltd. stood at the brink of bankruptcy” and, after issuance of an audit report for 2007, “Mortgages Ltd. was forced into bankruptcy” on June 20, 2008. On April 30, 2009, Appellants filed an action against the estate of Scott Coles in Maricopa County Superior Court. In December 2009, most Appellants entered into a written agreement with Greenberg Traurig tolling the application of “any statutes of limitations and/or any statutes of repose” against Greenberg Traurig from December 15, 2009 to December 15, 2010. This tolling agreement was not extended.

¶4 On May 11, 2010, Mortgages Ltd. investors filed a putative class action against Greenberg Traurig and others in the United States District Court for the District of Arizona, captioned *Facciola v. Greenberg Traurig LLP*, No. 10-CV-1025 (the *Facciola* Action). In March 2012, the putative class in the *Facciola* Action was certified and Appellants were class members. After discovery and motion practice, the court in the *Facciola* Action preliminarily approved a settlement reached with Greenberg Traurig. Appellants later filed a notice of intent to opt out of that settlement. On August 31, 2012, the same day the court in the *Facciola* Action “confirmed that [Appellants] had properly excluded themselves from” the class and the settlement with Greenberg Traurig, Appellants filed this action.

¶5 Appellants’ complaint in this action asserted five claims against Greenberg Traurig: (1) primary statutory liability under Arizona Revised Statutes (A.R.S.) section 44-2003(A) (2015);² (2) aiding and abetting “common law securities fraud;” (3) aiding and abetting breach of fiduciary duty; (4) intentional misrepresentation and (5) negligent misrepresentation and nondisclosure. Greenberg Traurig moved to dismiss, arguing Appellants’ claims: (1) generally were subject to a two-year limitations period (with the intentional misrepresentation claim subject to a three-year limitations period); (2) accrued on Mortgage Ltd.’s June 20, 2008 bankruptcy; and (3) were time-barred, given this case was not filed until August 31, 2012. Appellants argued the limitations period was “tolled

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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during the entire time that they were members of the *Facciola* Action (from May 11, 2010 until August 31, 2012), making their claims timely. After briefing and oral argument, the superior court rejected Appellants' tolling arguments and granted Greenberg Traurig's motion to dismiss, finding Appellants' claims were time-barred.

¶6 This court has jurisdiction over Appellants' timely appeal from the resulting judgment pursuant to the Arizona Constitution, Article 6, Section 9, and A.R.S. §§ 12-2101(A)(1) and -120.21(A)(1).

DISCUSSION

¶7 The sole issue on appeal is whether Arizona should adopt cross-jurisdictional tolling, whereby the filing of a class action in one jurisdiction tolls the limitations period for claims by class members in a different jurisdiction during the pendency of the class action. If cross-jurisdictional tolling does not apply, Appellants do not dispute that their claims are time-barred. Because this involves a purely legal issue, this court's review is de novo. *US W. Commc'ns, Inc. v. Ariz. Corp. Comm'n*, 201 Ariz. 242, 244 ¶ 7, 34 P.3d 351, 353 (2001); see also *Andrews ex rel. Woodard v. Eddie's Place, Inc.*, 199 Ariz. 240, 241 ¶ 1, 16 P.3d 801, 802 (App. 2000) (applying de novo review to grant of motion to dismiss claims as time-barred). To claim the benefit of tolling of a limitations period, "the burden is on the plaintiff to show the statute should be tolled." *Ulibarri v. Gerstenberger*, 178 Ariz. 151, 155, 871 P.2d 698, 702 (App. 1993) (citation omitted).

I. Intra-Jurisdictional And Cross-Jurisdictional Tolling.

¶8 Intra-jurisdictional tolling, whereby the filing of a class action may toll the limitations period for claims by class members in the same jurisdiction during the pendency of the class action, was first recognized in *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974). See generally David Bober, Comment, *Cross-Jurisdictional Tolling: When and Whether a State Court Should Toll Its Statute of Limitations Based on the Filing of a Class Action in Another Jurisdiction*, 32 Seton Hall L. Rev. 617 (2002). In *American Pipe*, the State of Utah filed a timely putative class action alleging civil antitrust violations. 414 U.S. at 541-42. Several months later, the district court ruled the case could not proceed as a class action under Federal Rule of Civil Procedure 23 because the putative class was not "so numerous that joinder of all members was impracticable." *Id.* at 543 (citation omitted). Days later, purported members of the putative class moved to intervene as plaintiffs.

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Id. at 543–44. The district court, however, denied intervention, finding any claims by the putative interveners were time-barred. *Id.* at 544.

¶9 On those facts, the United States Supreme Court recognized what has become known as intra-jurisdictional tolling.

We hold that in this posture, at least where class action status has been denied solely because of failure to demonstrate that “the class is so numerous that joinder of all members is impracticable,” the commencement of the original class suit tolls the running of the statute for all purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status.

Id. at 552–53. *American Pipe* added that failing to recognize this type of tolling during the pendency of a putative class action where class certification was denied based on a lack of numerosity would create mischief and unnecessary litigation and “deprive Rule 23 class actions of the efficiency and economy of litigation which is a principal purpose of the procedure.” *Id.* at 553–54.

Potential class members would be induced to file protective motions to intervene or to join in the event that a class was later found unsuitable. In cases such as this one, where the determination to disallow the class action was made upon considerations that may vary with such subtle factors as experience with prior similar litigation or the current status of a court’s docket, a rule requiring successful anticipation of the determination of the viability of the class would breed needless duplication of motions.

Id. Thus, *American Pipe* found “the rule most consistent with federal class action procedure must be that the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action.” *Id.* at 554. *American Pipe* also noted that tolling was “in no way inconsistent with the functional operation of a statute of

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limitations” because the putative class action would put a defendant on notice even if class certification ultimately was denied. *Id.* at 554–55.

¶10 The United States Supreme Court later held that *American Pipe* tolling also applied to putative class members who, after the denial of class certification, timely filed a separate suit in the same court where the putative class action had been pending (sometimes called intra-jurisdictional tolling). See *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 353–54 (1983). “Once the statute of limitations has been tolled, it remains tolled for all members of the putative class until class certification is denied. At that point, class members may choose to file their own suits or to intervene as plaintiffs in the pending action.” *Id.* at 354.

¶11 Although binding precedent in federal court, state courts have taken different positions when addressing *American Pipe* tolling, with the following results:

If the applicable tolling rule is that the jurisdiction does not recognize *American Pipe* tolling, the individual will not be able to take advantage of tolling and will be bound by the statute of limitations clock itself. If the applicable rule permits only intra-jurisdictional *American Pipe* tolling, the individual will be able to take advantage of tolling law if her new case is lodged in the same jurisdiction as that in which the class suit was filed. If the applicable rule encompasses cross-jurisdictional *American Pipe* tolling, the individual will be able to take advantage of tolling law no matter where the initial class suit was filed.

William B. Rubenstein, *Newberg on Class Actions* § 9:67 (5th ed. 2014). Appellants ask this court to adopt cross-jurisdictional tolling, which they concede Arizona has never done.

II. Arizona Case Law Discussing *American Pipe* Tolling.

¶12 Three Arizona appellate court decisions have considered *American Pipe* tolling. *Hall v. Romero* did not adopt *American Pipe* tolling because the defendant in the putative class action was not the same defendant as was named in the individual class members’ suits. 141 Ariz. 120, 126, 685 P.2d 757, 763 (App. 1984).

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¶13 In *Hosogai v. Kadota*, the Arizona Supreme Court found equitable tolling was appropriate during the pendency of a wrongful death suit resulting in a jury verdict that was vacated on appeal for lack of proper service of process and then refiled in the same court. 145 Ariz. 227, 229, 700 P.2d 1327, 1329 (1985). In that context, and recognizing that the court was construing a statutory limitations period adopted by the Legislature, *Hosogai* noted that “Arizona does not have a general savings statute for civil actions.” *Id.* at 230, 700 P.2d at 1330. *Hosogai* then rejected a “presumption that mere silence on a particular subject necessarily indicates legislative disapproval in all cases,” adding that it found no bill had been presented to the Legislature “for a general civil savings statute” or any legislative “disapproval of savings statutes generally or the equitable tolling doctrine in particular.” *Id.* at 230–31, 700 P.2d at 1330–31. *Hosogai* added that “[a] court has a legitimate interest in the procedural rules that govern lawsuits, especially to prevent such rules from becoming a shield for serious inequity. Accordingly, a court may under certain circumstances make narrow equitable exceptions to statutes of limitations.” *Id.* at 231, 700 P.2d at 1331 (citations omitted).

¶14 In concluding such a narrow equitable exception was appropriate in that context, *Hosogai* cited *American Pipe* for the proposition that courts have “applied the doctrine of equitable tolling to successive identical actions arising within the same court system,” noting “[t]here is no general savings statute in federal civil actions.” *Id.* at 231, 233, 700 P.2d at 1331, 1333. *Hosogai*, however, had no need to consider or adopt *American Pipe* tolling. *Hosogai* did, however, evidence caution by the Arizona Supreme Court against broadly adopting tolling concepts in construing statutory limitations periods. *Hosogai* noted that the “narrow equitable exception to the statute of limitations” on the distinguishable facts of that case “is far from the equivalent of a savings statute.” *Id.* at 234, 700 P.2d at 1334. And recognizing that equitable tolling, in substance, involves construing statutory limitations periods, *Hosogai* concluded that “[a]s overseers of the judicial system in this state, we call upon the legislature to pass a general savings statute in civil actions.” *Id.*

¶15 In response to the call in *Hosogai*, the Legislature enacted a general civil savings statute in 1986, currently codified at A.R.S. § 12-504. See *Jepson v. New*, 164 Ariz. 265, 271, 792 P.2d 728, 734 (1990). The key provision of that statute currently provides:

If an action is commenced within the time limited for the action, and the action is terminated in any manner other than by

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abatement, voluntary dismissal, dismissal for lack of prosecution or a final judgment on the merits, the plaintiff, or a successor or personal representative, may commence a new action for the same cause after the expiration of the time so limited and within six months after such termination. If an action timely commenced is terminated by abatement, voluntary dismissal by order of the court or dismissal for lack of prosecution, the court in its discretion may provide a period for commencement of a new action for the same cause, although the time otherwise limited for commencement has expired. Such period shall not exceed six months from the date of termination.

A.R.S. § 12-504(A). Appellants voluntarily sought exclusion from the class in the *Facciola* Action and do not argue that A.R.S. § 12-504 would apply to their claims.³ The enactment of A.R.S. § 12-504 supersedes at least some of the force of *Hosogai*, although as discussed below, its reasoning is still instructive. *See Jepson*, 164 Ariz. at 270–71, 792 P.2d at 733–34.

¶16 The third Arizona appellate court decision considering *American Pipe* tolling is *Albano v. Shea Homes Ltd. P'ship*, 227 Ariz. 121, 254 P.3d 360 (2011). In *Albano*, the Arizona Supreme Court addressed certified questions from the Ninth Circuit Court of Appeals, holding “that *American Pipe* tolling does not apply to the statute of repose in [A.R.S.] § 12-552.” *Id.* at 128 ¶ 34, 254 P.3d at 367. In doing so, *Albano* noted that the Arizona Supreme Court “has never determined whether *American Pipe* and its progeny apply to class actions” and stated that *American Pipe* “aptly stated that its ‘judicial tolling of the statute of limitations’ was simply a matter of ‘recognizing *judicial power*’ to do so in federal courts.” *Id.* at 124 ¶ 11, 127 ¶ 25, 254 P.3d at 363, 366 (citation omitted). To resolve the certified questions, *Albano* “assume[d] without deciding that the filing of a class action in Arizona tolls the applicable statute of limitations for non-named class members until class certification is denied.” *Id.* at 124 ¶ 11, 125 ¶ 17, 254

³ At oral argument before this court, both Appellants and Greenberg Traurig argued A.R.S. § 12-504(A) would not apply to Appellants’ claims, an issue this court need not address. Similarly, there is no contention that other statutory tolling provisions would apply to Appellants’ claims. *See, e.g.*, A.R.S. § 12-501 (tolling for absence from state); A.R.S. § 12-502 (tolling for minority and insanity).

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P.3d at 363, 364. Accordingly, *Albano* did not address or resolve the issue presented here.

III. Appellants Have Not Shown That Arizona Should Adopt Cross-Jurisdictional Tolling.

¶17 Contrary to Appellants' argument, *Albano* did not adopt intra-jurisdictional tolling in Arizona. Indeed, *Albano* expressly stated that it "need not answer" whether to do so because the certified questions addressed a statute of repose, not a statute of limitations. *Id.* at 125 ¶ 17, 254 P.3d at 364. Moreover, even if *Albano* could be construed as adopting intra-jurisdictional tolling, it would not apply to Appellants' state court claims here, given the *Facciola* Action is a *federal* case, which the court *certified* as a class action. *See Albano*, 227 Ariz. at 123 ¶ 2, 254 P.3d at 362 (assuming, without deciding, that limitations period was tolled "until an order *denying* class certification is entered") (emphasis added); *id.* at 125 ¶ 17, 254 P.3d at 364 (same); *see also* William B. Rubenstein, *Newberg on Class Actions* § 9:67 (5th ed. 2014) (discussing distinction between intra-jurisdictional and cross-jurisdictional tolling).

¶18 As *Albano* noted, however, whether class certification is granted may be an important consideration in addressing subsequent tolling requests. Other courts have been reluctant to extend *American Pipe* tolling where class certification was granted. *See, e.g., Warren Consol. Sch. v. W.R. Grace & Co.*, 518 N.W.2d 508, 511 (Mich. Ct. App. 1994) ("Plaintiff has failed to persuade us that the *American Pipe* rule should be extended to the situation where, as here, the class is certified and the plaintiff elects to pursue its own case.") (citations omitted). Tellingly, none of the state court cases Appellants cite adopted cross-jurisdictional tolling when class certification was granted and class members elected to opt out to press their own individual claims. *See Dow Chem. Corp. v. Blanco*, 67 A.3d 392 (Del. 2013); *Stevens v. Novartis Pharm. Corp.*, 247 P.3d 244 (Mont. 2010); *Vaccariello v. Smith & Nephew Richards, Inc.*, 763 N.E.2d 160 (Ohio 2002); *Staub v. Eastman Kodak Co.*, 726 A.2d 955 (N.J. Super. Ct. App. Div. 1999); *Lee v. Grand Rapids Bd. of Educ.*, 384 N.W.2d 165 (Mich. Ct. App. 1986). Here, Appellants opted out of the *Facciola* Action after the case was certified as a class action and, in fact, after the court preliminarily approved the class settlement after a fairness hearing. The facts of this case are therefore distinguishable from the state cases relied upon by Appellants.

¶19 Federal cases have, at times, refused to apply *American Pipe* tolling where, as here, class certification was granted. *Compare Wachovia Bank & Trust Co., N.A. v. Nat'l Student Mktg. Corp.*, 650 F.2d 342, 346 n.7 (D.C.

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Cir. 1980) (holding appellants could not claim *American Pipe* tolling where “certification of the class was granted, not denied”) *with Tosti v. City of Los Angeles*, 754 F.2d 1485, 1488 (9th Cir. 1985) (applying *American Pipe* tolling where class was certified). Recognizing the interests of class members are protected by class certification, one commentator has noted such an approach “will encourage class members to seek vindication through the class action suit” and a contrary approach “would sanction duplicative suits.” Note, *Statutes of Limitations and Opting Out of Class Actions*, 81 Mich. L. Rev. 399, 429–30 (1982). Because the class in the *Facciola* Action was certified, this approach would not toll the limitations period for Appellants’ claims here.

¶20 Appellants cite federal cases applying *American Pipe* tolling after a class action was certified. *See, e.g., Realmonte v. Reeves*, 169 F.3d 1280, 1284 (10th Cir. 1999); *Adams Pub. Sch. Dist. v. Asbestos Corp.*, 7 F.3d 717, 718 n.1 (8th Cir. 1993); *Tosti*, 754 F.2d at 1488; *Edwards v. Boeing Vertol Co.*, 717 F.2d 761, 766 (3d Cir. 1983), *judgment vacated on other grounds and remanded*, 468 U.S. 1201 (1984). Those cases, however, are distinguishable; unlike Arizona after the enactment of A.R.S. § 12-504, “[t]here is no general savings statute in federal civil actions.” *Hosogai*, 145 Ariz. at 231, 700 P.2d at 1331. Even the diversity case Appellants cite that applied *American Pipe* tolling after certification of a class action did so noting that, although current state law did not provide for tolling, a new statute provided “clear evidence of the North Dakota legislature’s intent” that plaintiff’s claims were not barred by the statute of limitations. *Asbestos Corp.*, 7 F.3d at 719.

¶21 Regardless of whether *American Pipe* tolling is limited to cases filed following the denial of class certification, the lack of a general savings statute in the federal system is important in deciding whether to adopt cross-jurisdictional tolling by case law in Arizona. Because there is no general federal savings statute, the legislative void resulting in *American Pipe* remains in the federal system, while in Arizona, the Legislature filled that void by enacting A.R.S. § 12-504. Appellants do not argue that the Legislature failed to account for cross-jurisdictional tolling when enacting A.R.S. § 12-504. Indeed, Arizona’s saving statute applies to an action timely filed in another jurisdiction and later refiled in Arizona. *See Templer v. Zele*, 166 Ariz. 390, 391, 803 P.2d 111, 112 (App. 1990). Thus, by enacting this general Arizona savings statute, the Legislature adopted a form of cross-jurisdictional tolling, just not in the form Appellants claim should apply to their claims here. Given this history leading up to the enactment of A.R.S. § 12-504, and the scope of that statute, Appellants have not shown that Arizona nonetheless should adopt broader cross-jurisdictional tolling by case law.

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¶22 Appellants cite several legitimate reasons supporting intra-jurisdictional and cross-jurisdictional tolling, including resolution of disputes on the merits and a lack of prejudice to defendants. Had the Legislature not enacted the general Arizona savings statute in A.R.S. § 12-504 following the call by *Hosogai*, those arguments would have greater weight. But the Legislature did enact A.R.S. § 12-504. As a result, Appellants effectively are asking this court to adopt a doctrine broader than what the Legislature adopted in a statute enacted in response to a call by the Arizona Supreme Court. This court declines to do so. *Cf. State ex rel. Morrison v. Anway*, 87 Ariz. 206, 209, 349 P.2d 774, 776 (1960) (“[C]ourts cannot read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself.”).

¶23 Although addressing a different type of tolling, *Albano* noted that, pertinent to its analysis in “determining whether to apply class action tolling, ‘[t]he proper test is . . . whether tolling the limitation in a given context is consonant with the legislative scheme.’” 227 Ariz. at 127 ¶ 22, 254 P.3d at 366 (citation omitted). There is no suggestion here that recognizing cross-jurisdictional tolling for claims that may not fall within the protection of A.R.S. § 12-504 is consonant with Arizona’s legislative scheme. This is particularly true given that the Legislature’s limitations periods and savings statute involve “very delicate policy decisions that properly belong to the legislative branch of government.” *Florez v. Sargeant*, 185 Ariz. 521, 528–29, 917 P.2d 250, 257–58 (1996); *see also Albano*, 227 Ariz. at 127–28 ¶ 29, 254 P.3d at 366–67 (declining tolling when it conflicts with statute of repose; “[i]f the Legislature wishes to permit class action tolling under [A.R.S.] § 12-552, it may of course amend the statute to so provide”). Given these legislative balances, Appellants have not shown that Arizona should adopt cross-jurisdictional tolling by case law. Accordingly, the superior court properly dismissed Appellants’ claims as time-barred. *See* A.R.S. § 12-542; A.R.S. §§ 44-2004(B), -3241(B).

CONCLUSION

¶24 The superior court’s judgment is affirmed.



Ruth A. Willingham · Clerk of the Court
FILED : ama

Attachment 4

**Samuel Anderson Thumma
Application for Nomination to Judicial Office**

Maricopa County Voters Only

Hon. Samuel A. Thumma

Court of Appeals Division I

Appointed: 2012

100% of the Commission Voted Judge Thumma
MEETS Judicial Performance Standards
 29 Commissioners Voted 'Meets'
 0 Commissioners Voted 'Does Not Meet'

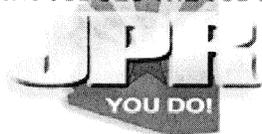
Show Surveys from Prior Years

2014	Attorney Surveys	Peer Judge Surveys	Superior Court Judge Surveys
	Distributed: 335 Returned: 62 Score (See Footnote)	Distributed: 15 Returned: 12 Score (See Footnote)	Distributed: 76 Returned: 29 Score (See Footnote)
Communication	98%	100%	n/a
Legal Ability	84%	100%	100%
Integrity	100%	100%	100%
Temperament	100%	100%	n/a
Admin Performance	96%	100%	100%

2010	Attorney Surveys	Litigant Witness Surveys
	Distributed: 138 Returned: 37 Score (See Footnote)	Distributed: 246 Returned: 50 Score (See Footnote)
Legal Ability	100%	n/a
Integrity	99%	100%
Communication Skills	99%	93%
Temperament	98%	100%
Admin Performance	99%	96%
Settlement Activities	100%	n/a

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

WHO JUDGES THE JUDGES?



Arizona Commission on Judicial Performance Review

WE CAN HELP.

Hon. Samuel A. Thumma

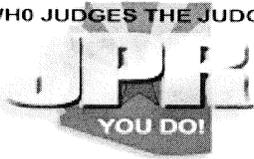
2010 Attorney Survey Responses

Key: UN = Unsatisfactory PO = Poor SA = Satisfactory VG = Very Good SU = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Legal Ability													
1. Legal reasoning ability	0	0%	0	0%	5	14%	4	11%	27	75%	3.61	36	1
2. Knowledge of substantive law	0	0%	0	0%	5	14%	4	11%	27	75%	3.61	36	1
3. Knowledge of rules of evidence	0	0%	0	0%	5	14%	5	14%	25	71%	3.57	35	2
4. Knowledge of rules of procedure	0	0%	0	0%	5	14%	4	11%	27	75%	3.61	36	1
Category Total	0	0%	0	0%	20	14%	17	12%	106	74%	3.60	143	
2. Integrity													
5. Basic fairness and impartiality	0	0%	1	3%	4	11%	5	14%	27	73%	3.57	37	0
6. Equal treatment regardless of race	1	3%	0	0%	3	9%	5	14%	26	74%	3.57	35	2
7. Equal treatment regardless of gender	0	0%	0	0%	3	9%	6	17%	26	74%	3.66	35	2
8. Equal treatment regardless of religion	0	0%	0	0%	3	9%	6	18%	25	74%	3.65	34	3
9. Equal treatment regardless of national origin	0	0%	0	0%	3	9%	6	18%	25	74%	3.65	34	3
10. Equal treatment regardless of disability	0	0%	0	0%	3	9%	6	17%	26	74%	3.66	35	2
11. Equal treatment regardless of age	0	0%	0	0%	3	8%	6	17%	27	75%	3.67	36	1
12. Equal treatment regardless of sexual orientation	0	0%	0	0%	3	9%	6	18%	25	74%	3.65	34	3
13. Equal treatment regardless of economic status	0	0%	1	3%	4	11%	4	11%	26	74%	3.57	35	2
Category Total	1	0%	2	1%	29	9%	50	16%	233	74%	3.63	315	
3. Communication Skills													
14. Clear and logical oral communications and directions	0	0%	0	0%	4	11%	6	16%	27	73%	3.62	37	0
15. Clear and logical written decisions	0	0%	0	0%	3	9%	5	16%	24	75%	3.66	32	5
16. Gave all parties an adequate opportunity to be heard	0	0%	1	3%	3	8%	4	11%	29	78%	3.65	37	0
Category Total	0	0%	1	1%	10	9%	15	14%	80	75%	3.64	106	
4. Temperament													
17. Understanding and compassion	0	0%	1	3%	3	8%	5	14%	28	76%	3.62	37	0
18. Dignified	0	0%	1	3%	3	8%	3	8%	30	81%	3.68	37	0
19. Courteous	0	0%	1	3%	3	8%	2	5%	31	84%	3.70	37	0
20. Conduct that promoted public confidence in the court and judge's ability	0	0%	0	0%	4	11%	3	8%	30	81%	3.70	37	0
21. Patient	0	0%	1	3%	3	8%	4	11%	29	78%	3.65	37	0

Category Total	0	0%	4	2%	16	9%	17	9%	148	80%	3.67	185	
5. Admin Performance													
22. Punctual in conducting proceedings	0	0%	1	3%	6	16%	8	22%	22	59%	3.38	37	0
23. Maintained proper control over courtroom	0	0%	0	0%	5	14%	7	19%	25	68%	3.54	37	0
24. Prompt in making rulings and rendering decisions	0	0%	0	0%	3	9%	9	26%	23	66%	3.57	35	2
25. Was prepared for the proceedings	0	0%	0	0%	4	11%	5	14%	28	76%	3.65	37	0
26. Efficient management of the calendar	0	0%	1	3%	5	14%	9	24%	22	59%	3.41	37	0
Category Total	0	0%	2	1%	23	13%	38	21%	120	66%	3.51	183	
6. Settlement Activities													
27. Appropriately promoted or conducted settlement	0	0%	0	0%	1	9%	2	18%	8	73%	3.64	11	26
Category Total	0	0%	0	0%	1	9%	2	18%	8	73%	3.64	11	

WHO JUDGES THE JUDGES?



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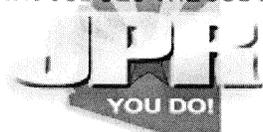
Hon. Samuel A. Thumma

2010 Litigant Witness Survey Responses

Key: UN = Unsatisfactory PO = Poor SA = Satisfactory VG = Very Good SU = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Integrity													
1. Basic fairness and impartiality	0	0%	0	0%	0	0%	15	31%	34	69%	3.69	49	1
2. Equal treatment regardless of race	0	0%	0	0%	0	0%	9	19%	38	81%	3.81	47	3
3. Equal treatment regardless of gender	0	0%	0	0%	0	0%	9	20%	37	80%	3.80	46	4
4. Equal treatment regardless of religion	0	0%	0	0%	0	0%	9	23%	31	78%	3.78	40	10
5. Equal treatment regardless of national origin	0	0%	0	0%	0	0%	9	21%	33	79%	3.79	42	8
6. Equal treatment regardless of disability	0	0%	0	0%	0	0%	9	23%	31	78%	3.78	40	10
7. Equal treatment regardless of age	0	0%	0	0%	1	2%	9	21%	33	77%	3.74	43	7
8. Equal treatment regardless of sexual orientation	0	0%	0	0%	1	3%	7	18%	31	79%	3.77	39	11
9. Equal treatment regardless of economic status	0	0%	0	0%	0	0%	9	19%	38	81%	3.81	47	3
Category Total	0	0%	0	0%	2	1%	85	22%	306	78%	3.77	393	
2. Communication Skills													
10. Explained proceedings	0	0%	1	2%	3	6%	15	31%	30	61%	3.51	49	1
11. Explained reasons for delays	2	5%	3	7%	5	12%	9	22%	22	54%	3.12	41	9
Category Total	2	2%	4	4%	8	9%	24	27%	52	58%	3.33	90	
3. Temperament													
12. Understanding and compassion	0	0%	0	0%	2	4%	12	24%	35	71%	3.67	49	1
13. Dignified	0	0%	0	0%	2	4%	10	20%	38	76%	3.72	50	0
14. Courteous	0	0%	0	0%	2	4%	9	18%	39	78%	3.74	50	0
15. Conduct that promotes public confidence in the court	0	0%	0	0%	1	2%	9	19%	38	79%	3.77	48	2
16. Patient	0	0%	0	0%	3	6%	11	22%	36	72%	3.66	50	0
Category Total	0	0%	0	0%	10	4%	51	21%	186	75%	3.71	247	
4. Admin Performance													
17. Punctual in conducting proceedings	3	6%	1	2%	8	16%	12	24%	25	51%	3.12	49	1
18. Maintained proper control of courtroom	0	0%	2	4%	0	0%	13	26%	35	70%	3.62	50	0
19. Was prepared for the proceedings	0	0%	0	0%	1	2%	11	23%	36	75%	3.73	48	1
Category Total	3	2%	3	2%	9	6%	36	24%	96	65%	3.49	147	

WHO JUDGES THE JUDGES?



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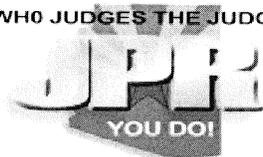
2014 Attorney Survey Responses

Key: UN = Unsatisfactory PO = Poor SA = Satisfactory VG = Very Good SU = Superior

	UN		PO		SA		VG		SU		Mean	Total
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.		
1. Legal Ability												
1. Legal reasoning ability	2	7%	2	7%	2	7%	11	39%	11	39%	2.96	28
2. Knowledge of law	2	7%	2	7%	2	7%	10	36%	12	43%	3.00	28
3. Decisions based on laws and facts	4	14%	2	7%	3	11%	6	21%	13	46%	2.79	28
4. Clearly written, legally supported decisions	3	11%	1	4%	5	18%	6	21%	13	46%	2.89	28
Category Total	11	10%	7	6%	12	11%	33	29%	49	44%	2.91	112
2. Integrity												
5. Basic fairness and impartiality	0	0%	0	0%	3	13%	8	35%	12	52%	3.39	23
6. Equal treatment regardless of race	0	0%	0	0%	2	13%	6	40%	7	47%	3.33	15
7. Equal treatment regardless of gender	0	0%	0	0%	2	14%	5	36%	7	50%	3.36	14
8. Equal treatment regardless of religion	0	0%	0	0%	2	17%	4	33%	6	50%	3.33	12
9. Equal treatment regardless of national origin	0	0%	0	0%	2	14%	5	36%	7	50%	3.36	14
10. Equal treatment regardless of disability	0	0%	0	0%	2	15%	5	38%	6	46%	3.31	13
11. Equal treatment regardless of age	0	0%	0	0%	2	15%	4	31%	7	54%	3.38	13
12. Equal treatment regardless of sexual orientation	0	0%	0	0%	2	17%	4	33%	6	50%	3.33	12
13. Equal treatment regardless of economic status	0	0%	0	0%	3	18%	5	29%	9	53%	3.35	17
Category Total	0	0%	0	0%	20	15%	46	35%	67	50%	3.35	133
3. Communication												
14. Attentiveness	0	0%	0	0%	2	6%	8	24%	24	71%	3.65	34
15. Demeanor in communications with counsel	0	0%	0	0%	3	9%	8	24%	22	67%	3.58	33
16. Relevant questions	0	0%	2	6%	2	6%	8	24%	22	65%	3.47	34
17. Preparation for oral argument	0	0%	0	0%	3	9%	8	25%	21	66%	3.56	32
Category Total	0	0%	2	2%	10	8%	32	24%	89	67%	3.56	133
4. Temperament												
18. Dignified	0	0%	0	0%	0	0%	3	9%	30	91%	3.91	33
19. Courteous	0	0%	0	0%	0	0%	4	12%	29	88%	3.88	33
20. Patient	0	0%	0	0%	1	3%	5	16%	26	81%	3.78	32
21. Conduct that promotes confidence in the court and judge's ability	0	0%	0	0%	2	6%	4	12%	27	82%	3.76	33
Category Total	0	0%	0	0%	3	2%	16	12%	112	85%	3.83	131
5. Admin Performance												

22. Promptness in making rulings and rendering decisions	0	0%	1	4%	6	22%	7	26%	13	48%	3.19	27
Category Total	0	0%	1	4%	6	22%	7	26%	13	48%	3.19	27

WHO JUDGES THE JUDGES?



Arizona Commission on Judicial Performance Review

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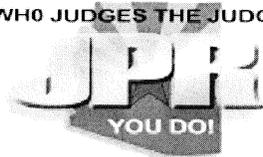
2014 Peer Judge Survey Responses

Key: UN = Unsatisfactory PO = Poor SA = Satisfactory VG = Very Good SU = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Legal Ability													
1. Legal reasoning ability	0	0%	0	0%	0	0%	2	17%	10	83%	3.83	12	0
2. Knowledge of law	0	0%	0	0%	0	0%	2	17%	10	83%	3.83	12	0
3. Decisions based on law and facts	0	0%	0	0%	0	0%	2	17%	10	83%	3.83	12	0
4. Clearly written, legally supported decisions	0	0%	0	0%	0	0%	2	17%	10	83%	3.83	12	0
Category Total	0	0%	0	0%	0	0%	8	17%	40	83%	3.83	48	
2. Integrity													
5. Basic fairness and impartiality	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	0
6. Equal treatment regardless of race	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	0
7. Equal treatment regardless of gender	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	0
8. Equal treatment regardless of religion	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	0
9. Equal treatment regardless of national origin	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	0
10. Equal treatment regardless of disability	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	0
11. Equal treatment regardless of age	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	0
12. Equal treatment regardless of sexual orientation	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	0
13. Equal treatment regardless of economic status	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	0
Category Total	0	0%	0	0%	0	0%	9	8%	99	92%	3.92	108	
3. Communication													
14. Attentiveness	0	0%	0	0%	0	0%	2	17%	10	83%	3.83	12	0
15. Appropriate restrictions on counsel during argument	0	0%	0	0%	0	0%	1	9%	10	91%	3.91	11	0
16. Relevant questions	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	0
Category Total	0	0%	0	0%	0	0%	4	11%	31	89%	3.89	35	
4. Temperament													
17. Dignified	0	0%	0	0%	0	0%	0	0%	12	100%	4.00	12	0
18. Courteous	0	0%	0	0%	0	0%	0	0%	12	100%	4.00	12	0
19. Patient	0	0%	0	0%	0	0%	0	0%	12	100%	4.00	12	0
20. Conduct that promotes public confidence in the court and judge's ability	0	0%	0	0%	0	0%	0	0%	12	100%	4.00	12	0
Category Total	0	0%	0	0%	0	0%	0	0%	48	100%	4.00	48	
5. Admin Performance													

21. Promptness in making rulings and rendering decisions	0	0%	0	0%	0	0%	2	18%	9	82%	3.82	11	0
22. Prepared for proceedings	0	0%	0	0%	0	0%	0	0%	12	100%	4.00	12	0
23. Works effectively with other judges	0	0%	0	0%	0	0%	2	17%	10	83%	3.83	12	0
24. Works effectively with other court personnel	0	0%	0	0%	0	0%	2	18%	9	82%	3.82	11	0
25. Effective handling of ongoing workload	0	0%	0	0%	0	0%	2	20%	8	80%	3.80	10	0
Category Total	0	0%	0	0%	0	0%	8	14%	48	86%	3.86	56	

WHO JUDGES THE JUDGES?



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Hon. Samuel A. Thumma

2014 Superior Court Judge Survey Responses

Key: UN = Unsatisfactory PO = Poor SA = Satisfactory VG = Very Good SU = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Legal Ability													
1. Legal reasoning ability	0	0%	0	0%	0	0%	2	7%	26	93%	3.93	28	0
2. Knowledge of the law	0	0%	0	0%	0	0%	2	7%	26	93%	3.93	28	0
3. Decisions based on law and facts	0	0%	0	0%	0	0%	2	7%	26	93%	3.93	28	0
4. Clearly written, legally supported decisions	0	0%	0	0%	0	0%	2	7%	26	93%	3.93	28	0
Category Total	0	0%	0	0%	0	0%	8	7%	104	93%	3.93	112	
2. Integrity													
5. Basic fairness and impartiality	0	0%	0	0%	0	0%	1	4%	24	96%	3.96	25	0
6. Equal treatment regardless of race	0	0%	0	0%	0	0%	1	4%	22	96%	3.96	23	0
7. Equal treatment regardless of gender	0	0%	0	0%	0	0%	1	5%	21	95%	3.95	22	0
8. Equal treatment regardless of religion	0	0%	0	0%	0	0%	1	5%	21	95%	3.95	22	0
9. Equal treatment regardless of national origin	0	0%	0	0%	0	0%	1	5%	21	95%	3.95	22	0
10. Equal treatment regardless of disability	0	0%	0	0%	0	0%	1	5%	21	95%	3.95	22	0
11. Equal treatment regardless of age	0	0%	0	0%	0	0%	1	5%	21	95%	3.95	22	0
12. Equal treatment regardless of sexual orientation	0	0%	0	0%	0	0%	1	5%	21	95%	3.95	22	0
13. Equal treatment regardless of economic status	0	0%	0	0%	0	0%	1	5%	21	95%	3.95	22	0
Category Total	0	0%	0	0%	0	0%	9	4%	193	96%	3.96	202	
3. Admin Performance													
14. Promptness in making rulings and rendering decisions	0	0%	0	0%	0	0%	2	10%	19	90%	3.90	21	0
Category Total	0	0%	0	0%	0	0%	2	10%	19	90%	3.90	21	