



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE v. HON. JAMES MARNER (real party in interest,  
DARREN IRVING GOLDIN), No. CR-19-0315-PR (Decision Order)**

**PARTIES:**

*Petitioner:* Darren Irving Goldin  
*Respondent:* State of Arizona  
*Amici curiae:* Arizona Attorneys for Criminal Justice

**FACTS:**

Darren Irving Goldin is accused of first-degree murder in a drug-related murder for hire that occurred in 2000. He was indicted in 2010, and the prosecution sought the death penalty.

In 2011, Goldin moved to disqualify the entire Tucson branch of the Attorney General's Office from his prosecution based on actual ethical violations committed by former Assistant Attorney General Richard Wintory. In fact, in 2014, pursuant to an Agreement for Discipline by Consent, Wintory was suspended from the practice of law in Arizona for 90 days for violating an ethical rule, ER 8.4(d). The conditional admissions he made in the agreement included an acknowledgment that he had several telephone communications with a confidential intermediary who had been appointed to assist Goldin's defense counsel in uncovering mitigation evidence through a search for Goldin's birth parents. *In the Matter of Richard Mendel Wintory*, PDJ-2013-9089 (February 14, 2014). The evidence of Goldin's heritage and circumstances surrounding his birth may have been relevant to whether the death penalty was warranted if Goldin was convicted.

Before the motion was decided, Wintory withdrew from the case, and Goldin accepted a plea agreement. However, his plea was revoked and the charge was reinstated after Goldin prevailed on a claim of ineffective assistance. *See State of Arizona v. Goldin*, 2016 WL 4756798 (Ariz. App. September 13, 2016) (Mem. Dec.), review denied (May 15, 2017). By then, Wintory had left the Attorney General's Office. The Attorney General also removed the death penalty as an option. Goldin resumed his disqualification challenge upon his return to superior court.

In September 2019, the trial judge granted Goldin's requested vicarious or imputed disqualification. Judge Marner emphasized that he had made no finding of improper conduct by anyone in the Tucson office **other than** Wintory (but a paralegal with the office had overheard part of one of his conversations with the confidential intermediary). The judge also cited the "unknown" content of the impermissible conversations between them. The judge based his disqualification ruling on "the importance we put on the Fifth and Sixth Amendment right to counsel" and the attorney-client privilege.

The State filed a petition for special action. The State argued in its special action petition that the appearance of impropriety, standing alone, is not a valid basis for disqualification. It primarily relied on *Gomez v. Superior Court*, 149 Ariz. 223, 225 (1986). It emphasized that the respondent judge agreed that his ruling was "only that there may be an appearance of impropriety."

The appeals court accepted special action jurisdiction. It found it did not need to address the State's argument because the trial court's ruling was not based on the mere *appearance* of impropriety but on Wintory's *actual* impropriety. The court said, "Whether Wintory's ethical violations warrant disqualification of a geographic section of the Attorney General's Office, or the entire office, is properly analyzed under the four-factor test articulated in *Gomez*, an analysis the respondent did not perform." Decision Order ¶4. Because the respondent judge did not undertake the analysis it deemed was required when evaluating Goldin's motion, the appeals court remanded for consideration of the *Gomez* factors. *State v. Hon. Marner (rpi, Goldin)*, 2 CA-SA 2019-0042 (App. Div. 2, August 30, 2019).

**ISSUE (as rephrased by the Court):**

"Did the court of appeals err by vacating the trial court's order disqualifying the Arizona Attorney General's Tucson Office from prosecuting petitioner and instructing that court to reevaluate whether disqualification is warranted based on factors identified in *Gomez v. Superior Court*, 149 Ariz. 223 (1986)?"

**Definitions:**

The *Gomez* factors to be considered for purposes of disqualification of counsel are:

- (1) whether the motion is being made for the purposes of harassing the [opposing party],
- (2) whether the party bringing the motion will be damaged in some way if the motion is not granted,
- (3) whether there are any alternative solutions, or is the proposed solution the least damaging possible under the circumstances, and
- (4) whether the possibility of public suspicion will outweigh any benefits that might accrue due to continued representation.

*Gomez*, 149 Ariz. at 226 (quoting *Alexander v. Superior Court*, 141 Ariz. 157, 165 (1984)).

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