

**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 _____. 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:** Peter Burgess Swann

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

3. **Office Address:** 1501 W. Washington, Phoenix, Arizona 85007

4. **When have you been a resident of Arizona?** 1992-2016

5. **What is your county of residence and how long have you resided there?**

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I have resided in Maricopa County for 24 years. I have also maintained a residence in Cochise County for 10 years. I have been registered to vote in Maricopa County for 24 years.

6. Age: 51

(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:

Democrat: 1983-2015
Independent: 2015-Present

During my years of service as a judge, I came to the decision that identification with a political party was inconsistent with my personal and judicial philosophies. For a few days in 2016, I briefly reregistered as a Democrat to participate in the presidential preference election. I promptly dropped my party affiliation thereafter and remain unaffiliated today.

(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.)

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EDUCATIONAL BACKGROUND

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

(a) Bachelor of Arts, University of California at Berkeley (1983-1987)

(b) Juris Doctor, University of Maryland School of Law, Baltimore (1988-1991)

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

(a) U.C. Berkeley: Double Major in Economics and Rhetoric

Extern, San Francisco District Attorney's Office, Consumer Fraud Mediation Program

(b) University of Maryland School of Law, Juris Doctor

Manuscripts Editor, *Maryland Law Review*

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

I graduated first in my law school class and achieved the top score on the Arizona bar examination in July 1992.

I received the following academic honors:

- Order of the Coif, law school class rank: 1/182
- Arizona Bar Foundation award: highest score, Arizona bar examination, July 1992
- William S. Thomas Prize: highest scholastic average in the University of Maryland School of Law class of 1991
- Judge W. Calvin Chesnut Prize: First-Year Scholastic Achievement
- Margaret E. Coonan Memorial Prize: Best Work in Legal Method, Fall 1988
- John S. Strahorn, Jr., Memorial Prize: Best Work in Evidence, Spring 1990

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- Judge Roszel C. Thomsen Prize: Best Work in Federal Jurisdiction, 1990-91
- Manuscripts Editor, *Maryland Law Review*
- American Jurisprudence Prizes (highest grade in class):
 - Legal Method - Property (1988)
 - Torts I (1988)
 - Torts II (1988)
 - Criminal Procedure (1989)
 - Constitutional Law (1989)
 - Legal Theory and Practice/Legal Profession (1989)
 - Business Associations (1990)
 - Evidence (1990)
 - Federal Jurisdiction (1990)

I was also awarded the University of Maryland's Italian-American scholarship in my third year of law school.

PROFESSIONAL BACKGROUND AND EXPERIENCE
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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.

- General admissions:
 - Court of Appeals of Maryland (1991)
 - Supreme Court of Arizona (1992)

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- United States Court of Appeals for the Fourth Circuit (1992)
- United States District Court for the District of Arizona (1992)
- United States District Court for the District of Maryland (1992)
- United States Court of Appeals for the Ninth Circuit (1993)

- Pro Hac Vice admissions:

- Idaho Supreme Court (2001)
- Circuit Court for Pulaski County, Arkansas (2001)
- 15th Judicial District, Lafayette Parish, Louisiana (2001)
- California Superior Court in and for the County of Orange (2001 and 2000)
- Washington Court of Appeals (2000)
- United States District Court for the Western District of Louisiana (2000)
- United States Bankruptcy Court, Northern District of Texas (2000)
- Circuit Court, Avoyelles Parish, Louisiana (1999)
- United States District Court for the Central District of Utah (1998)
- United States District Court for the Central District of California (1994)
- Colorado Court of Appeals (1994)

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? *NO*. If so, explain.

b. Have you ever had to take a bar examination more than once in order to be admitted to the bar of any state? *NO*. If so, explain.

14. Indicate your employment history since completing your formal education. List your current position first. If you have not been employed

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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 I	2008-present	Phoenix, Arizona
Judge, Arizona Superior Court, Maricopa County	2003-2008	Phoenix, Arizona
Equity Partner, Steptoe & Johnson LLP	2001-2003	Phoenix, Arizona
Associate, Steptoe & Johnson LLP	1992-2001	Phoenix, Arizona
Law clerk, Honorable Norman P. Ramsey, United States District Court for the District of Maryland	1991-1992	Baltimore, MD

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.**

Chief Judge Michael J. Brown
Vice Chief Judge Samuel A. Thumma
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 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.**

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I have served as a judge for the past thirteen years, and I no longer practice law.

During my eight years as an appellate judge, I have served on cases involving all facets of Arizona law. These cases have spanned the gamut of constitutional, civil, commercial, criminal, family, juvenile, tax, administrative, worker's compensation and unemployment law. On the Court of Appeals, judges hear different case types each week, with civil, criminal and family matters making up most of our workload.

To date, I have personally authored 97 published opinions and 476 memorandum decisions. I have authored 609 final dispositions and I have participated as a panel member in well over 1,500 cases on the Court of Appeals. I have also served by designation on the Arizona Supreme Court in two cases.

My primary job responsibility on the Court of Appeals consists of deciding cases and writing opinions. But I devote a great deal of my professional time to other tasks. I frequently mediate appellate cases through the court's settlement program, and volunteer to mediate cases pending in the superior courts upon request. I devote 100-700 hours per year to mediation. In addition, I am active in the reform of court rules and policies. I have taken a leading role in the redrafting of all the Arizona Rules of Civil Appellate Procedure, the Arizona Rules of Civil Procedure and several Arizona Rules of Family Court Practice. I currently serve on the Arizona Committee on Civil Justice Reform.

During my five years on the Superior Court bench, I served in the Family Court Department for two years, the Civil Department for three years, as well as on the complex civil calendar. I served administratively as the Associate Presiding Civil Judge. While serving as a civil judge, I also tried a number of felony cases.

As a trial judge, I have presided over hundreds of bench trials and dozens of civil and criminal jury trials.

As Associate Presiding Judge of the Civil Department, I also had the sole responsibility for regulation of process servers in Maricopa County.

For three years (2005-2008) I oversaw the civil arbitration program in Maricopa County.

My private law practice involved highly diverse clients and subject matters. Though I was mainly a civil litigator, I also intervened in criminal matters on behalf of various media clients who were covering the proceedings. I served for three years in a pro bono capacity as a judge pro tempore for the Gilbert Municipal Court, where my experience was almost exclusively in criminal matters. In addition, I represented clients in connection with business transactions that required negotiation and drafting of contracts, leases and other transactional documents.

A principal focus of my practice was media and First Amendment law. In addition, I represented institutional clients in commercial disputes, insurance bad-faith matters, intellectual-property disputes and negotiations, employment disputes and internal investigations.

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Steptoe & Johnson LLP served as general counsel to the Yavapai-Prescott Indian Tribe, and during my entire tenure at that firm I served that client in all areas of government practice, including criminal prosecutions.

Though I spent my career as a lawyer at the Phoenix office of Steptoe & Johnson, my practice was not limited to the Arizona courts. In numerous matters, clients with national interests asked me to appear in court outside Arizona and negotiate interests outside the state. On many occasions, those matters involved extensive and repeated court appearances by special admission in other jurisdictions, which included significant appellate work.

As a lawyer, my principal areas of practice were:

- Media and Constitutional Law - approximately 20%. Represented local and national media clients in connection with defense of libel and privacy litigation, access to government proceedings, FOIA and public records and subpoena matters. In addition, I represented businesses and individuals in challenges to the constitutionality of state legislation.

- Commercial Litigation - approximately 40%. Represented large and small businesses in a wide variety of commercial matters, including breach of contract, sales and diversion of goods, regulatory compliance and litigation, corporate governance, insurance bad faith and employment-related disputes.

- Tribal Law - approximately 20%. General counsel for the Yavapai-Prescott Indian Tribe in Prescott, Arizona. This representation included drafting ordinances, defending and prosecuting civil claims in federal and tribal courts, tax litigation and counseling, criminal prosecutions, social services, water law and environmental law.

- Intellectual Property - approximately 20%. Represented large and small businesses in a wide variety of trademark and copyright matters, including claims of infringement, counterfeiting and licensing.

- Ethics and Professional Responsibility. In addition to representing clients, I devoted significant time to service as the Ethics Officer for the Phoenix office of Steptoe & Johnson LLP. This involved counseling other lawyers within the firm on ethics issues. As a member of the State Bar of Arizona Committee on the Rules of Professional Conduct from 1998-2004, I also provided ethics advice to inquiring lawyers referred by the Bar.

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

- Water Law
- Tax Law
- Antitrust Law

- Securities Law
- Banking Law
- Environmental Law
- Bankruptcy Law
- State Regulatory Law.

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.

Although I represented a wide range of clients, they generally fell into five groups:

- Large, national corporations (e.g., Albertsons, Allstate Insurance)
- Arizona businesses and nonprofits (e.g., The Phoenix Zoo, Campanella Enterprises)
- Local and national media companies (e.g., Gannett Co., Inc., The Arizona Republic, CBS, Western Newspapers, Inc.)
- The Yavapai-Prescott Indian Tribe
- Municipalities (e.g., The City of Mesa, The Town of Litchfield Park)

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

No.

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

- I have authored approximately 600 final appellate decisions.
- I serve on the Supreme Court's Committee on Civil Justice Reform, which is in the

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process of drafting substantive proposals for the improvement of Arizona's civil justice system in the form of proposed rule amendments and pilot program designs.

- I serve on the Supreme Court's Civil Rules Restyling Task Force, which conducted a top-to-bottom revision of all the Arizona Rules of Civil Procedure, now pending in a petition before the Court.
- I served on a task force charged with restyling the Arizona Rules of Civil Appellate Procedure, the product of which is now embodied as the current Rules.
- I drafted proposed changes to ARCAP 9(b) to eliminate jurisdictional traps that had resulted in the dismissal of many meritorious appeals. The Supreme Court adopted my proposal effective January 1, 2014.
- As a Superior Court judge, I authored thousands of decisions of varying length and complexity in the areas of Civil, Family and Criminal law.
- I worked to draft SB1100, which was signed by the Governor in the 2008 Legislative Session and now appears as Chapter 78, Laws 2008. The bill assures that judges in Family Court proceedings may order that litigants be provided the same services as would be available in Juvenile proceedings.
- I served on the Supreme Court's Committee regarding amendments to Sup. Ct. R. 123 concerning public access to court records.
- On behalf of the Maricopa County Superior Court's Judicial Executive Committee, I negotiated changes to the pending proposed revisions to Sup. Ct. R. 122, concerning electronic coverage of court proceedings.
- I helped rewrite the Civil curriculum for general jurisdiction New Judge Orientation.
- I have served on the Family Law Executive Council of the Arizona State Bar for more than twelve years, and participated extensively in the comprehensive redrafting of the Rules of Family Law Procedure and the review and amendment of many statutes bearing on Family law.
- I serve on the State Bar of Arizona Civil Practice and Procedure Committee. I have participated in many dozens of Rule Change Petitions in this capacity, often as primary drafter.

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- I serve on the State Bar of Arizona Committee on Professionalism, which comments on amendments to certain Supreme Court Rules of Professional Conduct.
- For six years, I served on the State Bar of Arizona Committee on the Rules of Professional Conduct, for which I drafted and commented upon formal and informal ethics opinions.
- I regularly counseled clients in numerous matters concerning the drafting and negotiation of contracts, intellectual-property licenses and settlement agreements.
- I played a significant role in drafting the Yavapai-Prescott Indian Tribe Water Settlement. This involved the creation of numerous settlement documents and intergovernmental agreements.
- I drafted ordinances for the Yavapai-Prescott Indian Tribe and consulted with municipal clients in the drafting of their own local laws.
- I wrote numerous opinions and orders as a judge pro tempore of the Gilbert Municipal Court, and drafted dozens of opinions as a federal law clerk, five of which were published.

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.

- Arizona Office of Administrative Hearings (4 appearances)
- Arizona Board of Pharmacy (1 appearance)
- Arizona Department of Health Services (2 appearances)
- Carefree Town Council (1 appearance)
- Arizona Department of Water Resources (1 appearance)
- Paradise Valley School Board (1 appearance)
- Arkansas Alcohol Beverage Control Board (1 appearance)

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

Sole Counsel: 8

Chief Counsel: 1

Associate Counsel: 2

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: 4

Chief Counsel: 2

Associate Counsel: 1

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.

(Because I have not practiced law since my appointment as a Superior Court judge in 2003, the following responses are quite dated but are included for the sake of responsiveness and completeness).

1. *Poole v. Farmers Ins. Co.* (2001-2002)

This matter was a bad-faith insurance claim that was commenced in 2001. I represented three Farmers entities, along with my then-associate, Peter Kozinets. The plaintiffs were represented by Elliot Glicksman (Stompoly Stroud Glicksman & Erickson PC, One S. Church, Ste. 1640, P.O. Box 190, Tucson, Arizona 85702; (520) 628-8300; elliotglicksman@qwest.net). Gabriel Fernandez (Biaggi, Kimmel & Fernandez, 40 E. Helen Street, Tucson, Arizona 85705; (520) 881-0045; gfernandez@bkflawyers.com) did not participate actively in the litigation of the matter, but was also identified as counsel for

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plaintiffs. Before the case settled, Mr. Glicksman sought special action review by Division II of the Court of Appeals and the Arizona Supreme Court of the Superior Court's rulings concerning the dissemination of discovery materials. The case was significant because of the important discovery issues raised. The case settled in 2002 with the assistance of a mediator, Larry Fleischman.

2. *Trapp v. Leading Edge Cryogenics, Inc.* (1999-2000)

This was an action for breach of contract and fraud. It was commenced in 1999, and I negotiated a complex settlement involving land rights and stock transfers in 2000. I took over representation of the defendants from George Brandon (Squire Patton Boggs (US) LLP, 1 E Washington St Ste 2700, Phoenix, AZ 85004-2556, 602.528.4176), and plaintiffs were represented by Robert Lauanders (Law Office of Robert J. Lauanders, 8168 E. Florentine Road, Ste. B, Prescott Valley, Arizona 86314; (928) 775-5409; lauanders@prodigy.net).

3. *In re Fulline Vending, Inc.* (1996-1997)

This was an action by a tobacco distributor over the allocation of funds under Arizona's Proposition 200, which created a new tobacco tax subject to offset by taxes imposed on Indian reservations. This was a significant matter because it raised unique issues concerning the administrative relationships of tribes to the state under a statute designed to harmonize the state's interest in revenue with tribal sovereignty. I represented the taxpayer, together with David Bodney (now at Ballard Spahr, 1 East Washington Street, Ste. 2300, Phoenix, Arizona 85004-2555, (602) 798-5400) and Lisa Glow (now of Lisa Glow Consulting, LLC, 510 W Lynwood St., Phoenix, Arizona 85003-1209). The Arizona Department of Revenue was represented by Patrick Irvine, now of Fennemore Craig, 2934 E. Camelback Road, Phoenix, Arizona 85016; (602) 916-5406; pirvine@fclaw.com). The matter was settled after a hearing before, and a ruling by, Administrative Law Judge Kay Abramsohn of the Office of Administrative Hearings.

**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:	80
Municipal/Justice Courts:	5

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The approximate percentage of those cases which have been:

Civil: 98

Criminal: 2

The approximate number of those cases in which you were:

Sole Counsel: 23

Chief Counsel: 25

Associate Counsel: 55

The approximate percentage of those cases in which:

You conducted extensive discovery¹: 35%

You wrote and filed a motion for summary judgment: 30%

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): 25%

You made a contested court appearance (other than as set forth in above response) 15%

You negotiated a settlement: 40%

The court rendered judgment after trial: 3%

A jury rendered verdict: 1%

Disposition occurred prior to any verdict: 96%

The approximate number of cases you have taken to trial:

Court 3

Note: If you approximate the number of cases taken to trial,

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

explain why an exact count is not possible.

Jury 1

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: 18

Criminal: 0

The approximate number of matters in which you appeared:

As counsel of record on the brief: AZ 15 U.S. 3

Personally in oral argument: AZ 4 U.S. 1

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.

1991-1992 - Law Clerk to the late Hon. Norman P. Ramsey, United States District Judge, United States District Court for the District of Maryland.

Drafted published and unpublished opinions of the court; prepared sentencing paperwork in guideline sentencing cases; assisted the judge in the conduct of bench and jury trials; prepared jury instructions; assisted in preparation of the court for motions hearings.

1990 - Asper Externship, Hon. Frederic N. Smalkin, United States District Judge, United States District Court for the District of Maryland.

Assisted the judge in the conduct of bench and jury trials; prepared jury instructions; prepared draft of published antitrust opinion, *Sun Dun, Inc. of Wash. v. Coca-Cola Co.*, 740 F.Supp. 381, 397 (D. Md. 1990).

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,

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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.

1. *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344 (Ct. App. 2001).

Representing Phoenix Newspapers, I and commenced this special action in the Maricopa County Superior Court with David Bodney (now at Ballard Spahr, 1 East Washington Street, Ste. 2300, Phoenix, Arizona 85004-2555, (602) 798-5400) and Peter Kozinets (now an Assistant United States Attorney, 40 N Central Ave, Ste 1200, Phoenix, AZ 85004-4408, 602.514.7259) in 1999. The central question presented was whether Form A of the April 1999 AIMS test was subject to disclosure under the Arizona Public Records Law. In view of the significance to Arizona students and taxpayers of a high-stakes test that failed more than 90% of the students who took it, the public importance of access to the test was great. Judge John Foreman presided over the Superior Court proceedings, and ultimately determined that a substantial portion of the test was subject to disclosure. All defendants appealed, and Judge Foreman's decision was affirmed by the Court of Appeals, Division I, in 2001. The State defendants were represented by Lynne C. Adams, Osborn Maledon, P.A., 2929 N. Central Ave., Phoenix, Arizona 85012, (602) 640-9348, LAdams@omLaw.com; Elliot Talenfeld, 1117 W. Palm Lane, Phoenix, Arizona 85007, (602) 368-6701, (e-mail address unavailable); David M. Lujan, Childrens' Action Alliance, 4001 N. 3rd St., Ste. 160, Phoenix, Arizona 85012, (602) 266-0707, dlujan@azchildren.org. The preparer of the test, CTB/McGraw-Hill, was represented by Thomas Galbraith (retired), P.O. Box 44802, Phoenix, Arizona 85064, (602) 708-1460, bofumbo@aol.com.

2. *Phoenix Newspapers, Inc. v. United States District Court*, 156 F.3d 940 (1998).

Representing Phoenix Newspapers, Inc., publisher of The Arizona Republic, I and challenged the decision of U.S. District Judge Roger Strand to seal certain proceedings in the criminal trial of then-Governor J. Fife Symington III. Though relief was initially denied in large measure by Judge Strand, the Ninth Circuit accepted review of a petition for writ of mandamus and held 3-0 that the proceedings in question had been improperly shielded from public view.

In view of the fact that the prosecution of Governor Symington and his resulting conviction (later reversed) ended the administration of Arizona's highest elected official, information concerning the potential flaws in the operation of the judicial process was of critical

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importance to Arizona voters.

I brought the case with David Bodney (now at Ballard Spahr, 1 East Washington Street, Ste. 2300, Phoenix, Arizona 85004-2555, (602) 798-5400). The federal defendants were represented by David J. Schindler, Assistant United States Attorney (currently with Latham & Watkins, 633 West Fifth Street, Suite 4000, Los Angeles, California 90071; (213) 485-1234; (david.schindler@lw.com)).

3. *Yavapai-Prescott Indian Tribe v. Scott*, 117 F.2d 1107 (9th Cir. 1997), cert. denied, 118 S.Ct. 853 (1998).

Representing the Yavapai-Prescott Indian Tribe, I commenced this action against State defendants in 1995. The substance of the action was a challenge to the applicability of certain Arizona Transaction Privilege Taxes to transactions conducted at a hotel located on the Tribe's Reservation. The case was significant because it squarely addressed the nature of the geographical limits on tribal sovereignty over taxation of non-Indian enterprises.

I brought the case with David Bodney (now at Ballard Spahr, 1 East Washington Street, Ste. 2300, Phoenix, Arizona 85004-2555, (602) 798-5400). The State defendants were represented by Patrick Irvine, now of Fennemore Craig, 2934 E. Camelback Road, Phoenix, Arizona 85016; (602) 916-5406; pirvine@fclaw.com). The hotel, the Prescott Convention Center, was represented by Cameron C. Artigue (Gammage & Burnham PLC, Two North Central, 18th Floor, Phoenix, Arizona 85004; (602) 256-0566; cartigue@gblaw.com). In 1996, the United States District Court for the District of Arizona, Hon. Carl Muecke presiding, entered judgment in favor of the Tribe. On appeal, the Ninth Circuit reversed in a 2-1 decision in 1997. The United States Supreme Court denied certiorari in 1998.

4. *International Society of Krishna Consciousness, et al. v. Arizona Zoological Society*, United States District Court for the District of Arizona, CIV 98-1801 PHX RCB.

In this action, several religious and community activist groups challenged on First Amendment grounds a policy promulgated by the Phoenix Zoo that prohibits sales of goods and solicitations of donations on its leased premises. The case raised significant questions concerning the state action doctrine as applied to nongovernmental lessees on government land. From 1998-2003, I represented the Zoo in this case in the United States District Court for the District of Arizona, Hon. Robert Broomfield presiding. The case was settled in 2004. The plaintiffs were represented by David Liberman, (Law Office of David Liberman, 9709 Venice Blvd., Apt. 4, Los Angeles, California 90034, (424) 298-8646, mightyarm@msn.com); and Stephanie Nichols-Young, (624 N. Third Ave., Phoenix,

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Arizona 85003, (602) 257-9739, Stephanie.nichols-young@Arizonabar.org). The co-defendant, City of Phoenix, was represented by Kent. T. Reinhold (retired) (7111 E. Summit Trail, Mesa, Arizona 85207, (480) 838-0157, (e-mail address unavailable)).

5. *Beihl, et al. v. Phoenix Newspapers, et al.*, Maricopa County Superior Court, CV 1998-012117;

In this action, 18 former employees of Phoenix Newspapers, Inc., sued their former employer for defamation over a statement that appeared in the Columbia Journalism Review that had been attributed to the former managing editor of The Arizona Republic. The case raised significant questions concerning the group libel doctrine, constitutional privilege and the "of and concerning" element of the tort of defamation. Judge John Foreman entered summary judgment in favor of all defendants in 1998 and the judgment was affirmed by the Arizona Court of Appeals in 2000. I represented Phoenix Newspapers with David Bodney (now at Ballard Spahr, 1 East Washington Street, Ste. 2300, Phoenix, Arizona 85004-2555, (602) 798-5400), and plaintiffs were represented by Sally Shanley (Retired)(2660 Ridge Rd., Applegate, MI 48401-9706, 602.206.2252, sally.shanley@azbar.org).

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.).**

- 2008-2016: Judge, Arizona Court of Appeals, Division I. I was appointed to this position in 2008. I was retained by the voters in 2012.

As an appellate judge, my main duty is deciding appeals and special actions in all types of cases that arise in the state courts. The case types include civil, criminal, family, juvenile, tax, worker's compensation, unemployment benefits and mental health. To date, I have authored 97 published opinions and nearly 500 memorandum decisions, all of which are available on the Court of Appeals website. I have participated in roughly three times that many cases as a panel member.

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In addition to the core function of deciding cases, I frequently serve as a mediator in cases pending before the Court of Appeals and the Superior Courts. My judicial philosophy favors voluntary resolution of disputes over involuntary resolution, and I take every opportunity to help parties settle disputes.

In 2015, I conceived and led the effort to mediate the school-finance dispute in *Cave Creek v. DeWit* that had threatened to bankrupt the Arizona state government. Though the case did not settle under the auspices of the court's mediation, our efforts set the stage for the ultimate settlement of the case soon thereafter by the Governor's office and passage of Proposition 123. My work with the schools and the legislative leadership gave me unique insights into the workings of state government, the culture of the legislature and the potential for smoother, more cooperative relations between the three branches of government.

Since my first service on family court as a Superior Court judge, I have mediated cases pending before me and other judges. As a Court of Appeals judge, I participate in the court's settlement program and mediate approximately as many cases as the rest of the judges on the court combined. In more than 85% of those cases, I have achieved a settlement.

- 2003-2008: Judge, Arizona Superior Court, Maricopa County. I was appointed to this position in 2003. I was retained by the voters in 2006.

For two years during 2003-2005, I served on the Family Court rotation. On this rotation, I handled cases involving dissolution, paternity, relocation, child support enforcement, *in loco parentis*, grandparents' rights and domestic violence. These cases frequently involved substance abuse and coordination with therapeutic courts including the drug court. At any given time during my rotation, approximately 850 pre-decree cases were assigned to me. (In addition, my calendar was assigned approximately 25,000 post-decree cases that accounted for roughly half my work).

As a Family Court judge, I conducted hundreds of trials and evidentiary hearings, all to the bench. I conducted approximately 20 formal settlement conferences, both in my own cases (with the consent of counsel) and in cases assigned to other judges. I also conducted hundreds of resolution management conferences and return hearings at which I pursued settlement.

From 2005-2008, I served on a Civil calendar. From 2007-2008, I served as the Associate Presiding Judge of the Civil Department. In 2008, I rotated to a complex

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civil calendar, retaining my civil cases and adding a number of cases designated complex pursuant to Ariz. R. Civ. P. 8(i).

On the Civil calendar, I was responsible for managing a caseload of approximately 650 cases. I presided over dozens of civil jury trials and conducted a roughly equivalent number of bench trials and evidentiary hearings.

While on the civil assignment, I served on the election rotation in 2006 and 2008. In addition, from 2005-2008 I oversaw the county's civil arbitration program. I was the designee of the presiding judge for purposes of process server certification and discipline.

As a civil judge, I also conducted criminal jury trials and a criminal bench trial.

While on the civil assignment, I conducted numerous settlement conferences in cases assigned to me (with the consent of counsel) as well as cases assigned to other judges.

Several of my other judicial duties are described in response to questions 21 and 31.

- 2005-2006: Judge pro tempore, Arizona Court of Appeals, Division I

I was appointed to serve in this capacity in 2005 by Chief Justice McGregor. I served on a special action panel with Judges Timmer and Snow. I participated in the decision of three cases, including one published opinion, *Williams v. Miles*, 212 Ariz. 155 (Ct. App. 2006). I also authored a memorandum decision.

- 2001-2003: Supreme Court Disciplinary Hearing Officer

I was appointed to this volunteer position in 2001. Disciplinary hearing officers were responsible for conducting evidentiary proceedings, preparing findings of fact and conclusions of law and recommending discipline in matters prosecuted by the State Bar against attorneys alleged to have violated the Rules of Professional Conduct. In this capacity, I conducted one evidentiary hearing and one settlement conference.

- 2000-2003: Judge pro tempore, Gilbert Municipal Court

I was appointed to this volunteer position in 2000. In this capacity, I handled all phases of misdemeanor criminal matters. My responsibilities included conducting initial appearances, guilty-plea proceedings, jury trials and bench trials. During the time I served, I conducted approximately six jury trials and six bench trials. I also

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handled numerous orders of protection and injunctions against harassment.

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.**

- *Planned Parenthood Arizona, Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 257 P.3d 181 (App. 2011).

I authored this opinion for the Court of Appeals in 2011. The case challenged four abortion regulations on federal and state constitutional grounds, and the opinion held that the regulations were constitutional. The opinion also recognized the right of the Speaker of the House to intervene in cases involving constitutional challenges to state statutes.

Many counsel participated in this appeal. For convenience, a complete list, with detailed contact information, is included at Attachment D-1.

Principal counsel were:

Planned Parenthood: Jennifer Sandman

State defendants: David R. Cole

Office of the Speaker of the House of Representatives: Peter A. Gentala

- *Sedona Grand, LLC v. City of Sedona*, 229 Ariz. 37, 270 P.3d 864 (App. 2012).

I authored this opinion for the Court of Appeals in 2012. The case was the first published appellate decision to apply the Private Property Rights Protection Act, A.R.S. §§ 12-1131 through 12-1138, also known as Proposition 207. With certain exceptions, Proposition 207 requires a state governmental entity to pay a landowner just compensation when a law or ordinance reduces "the existing rights to use, divide, sell or possess private real property."

The opinion enforced Proposition 207 and prevented governmental entities from easily avoiding its strictures, holding that "a mere declaration of purpose is insufficient to invoke the exemption, and that a government entity seeking to avoid paying compensation must present evidence that its principal purpose in passing a land use law is one that qualifies for exemption under the Act." The opinion also

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held that “when a land use law enacted after the effective date of the Act expands the reach of a preexisting restriction, the new law is subject to the Act.”

Counsel on appeal were:

Sedona Grand, LLC: Steven H. Schwartz

City of Sedona: Jeffrey T. Murray and Kristin M. Mackin

Detailed contact information is included at Attachment D-2.

- *Biggs v. Cooper*, 234 Ariz. 515, 323 P.3d 1166 (App.), *aff'd in part, vacated in part sub nom. Biggs v. Cooper ex rel. County of Maricopa*, 236 Ariz. 415, 341 P.3d 457 (2014).

I was a member of the Court of Appeals panel that decided this case, which now-retired Judge John C. Gemmill authored in 2014. The case was brought by 36 legislators, who challenged the passage of Arizona’s Expanded Medicaid Program by a simple majority. The Legislators maintained that a 2/3 supermajority was required to pass such an act under Article 9, Section 22 of the Arizona Constitution because it created a new tax on hospitals. The superior court dismissed the case, ruling that the Legislators lacked standing. The Court of Appeals granted relief, and held that the Legislators had a right to a judicial determination whether their votes were given constitutionally-required weight.

Counsel on appeal were:

Petitioners: Clint Bolick and Christina Sandefur

Real Party in Interest Janice K. Brewer: Patrick Irvine, Timothy J. Berg, Carrie Pixler Ryerson, Douglas C. Northup and Joseph Sciarrotta, Jr.

Detailed contact information is included at Attachment D-3.

- *Volk v. Brame*, 235 Ariz. 462, 333 P.3d 789 (App. 2014).

I authored this opinion for the Court of Appeals in 2014. This case arose from a brief child support modification hearing in which a superior court commissioner imposed such strict time limits on the presentation of evidence that no testimony was heard and the case was decided on avowals of counsel.

The opinion held that “when the resolution of an issue requires an assessment of credibility, the court must afford the parties an opportunity to present sworn oral testimony, and may not rely solely on avowals of counsel.” The opinion also held that “a court abuses its discretion when it adheres to rigid time limits that do not

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permit adequate opportunity for efficient direct testimony and cross-examination.” Despite its humble beginnings, I view this case as highly important because it upholds fundamental notions of due process and ensures that Arizona courts remain places in which citizens can be confident that they will receive a full and fair hearing.

Counsel on appeal were:

Petitioner: Keith Berkshire, Maxwell Mahoney
Real Party in Interest: Carol A. Salvati

Detailed contact information is included at Attachment D-4.

- ***Nardelli v. Metro. Group Prop. & Cas. Ins. Co.*, 230 Ariz. 592, 277 P.3d 789 (App. 2012) (Swann, J. Dissenting).**

In 2012, I authored the dissent in this case concerning punitive damages. In a case over an insurance company’s mishandling of the repair of a stolen Ford Explorer, the jury awarded \$55 million in punitive damages. Though the superior court ultimately reduced the punitive damage award to \$620,000 (and a majority of the Court of Appeals reduced it further), I argued in my dissent that the rigorous standard for punitive damages under Arizona law had not been met, and that there should be no punitive damage award – compensatory damages were all that the law allowed.

Though I was not in the majority, I cite this case for its importance in underscoring the duty of the court to prevent civil litigation from imposing irrational, excessive cost that exceeds the limits of the law. The Arizona Supreme Court has held that punitive damages “should be appropriately restricted to only the most egregious of wrongs. ‘A standard that allows exemplary awards based upon gross negligence or mere reckless disregard of the circumstances overextends the availability of punitive damages, and dulls the potentially keen edge of the doctrine as an effective deterrent of truly reprehensible conduct.’” *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 331, 723 P.2d 675, 680 (1986). Because the delayed repair of a car is not, in my view, the “most egregious of wrongs,” I wrote this dissent to protest the erosion of the law on this point.

Counsel on appeal were:

Plaintiffs: Steve C. Dawson, Anita Rosenthal and
Richard A. Dillenburg

Defendants: Floyd P. Bienstock, Bennett Evan Cooper,
Douglas Janicik and Tim Strong

Detailed contact information is included at Attachment D-5.

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

- As noted above, I have been very active as a mediator during my entire service on the bench, and now handle approximately 12 cases per year in that capacity.
- I helped write the curriculum for, and taught, the Family Law section of the Supreme Court's live and video courses on Arizona law required for those seeking admission to the Bar.
- I have served as a member of the Supreme Court's Board of Certified Reporters since 2010.
- I serve as Chair of the Judicial Selection Advisory Committee for the City of Surprise (2012-present)
- I serve as faculty at numerous educational programs for judges and lawyers, speaking at programs conducted by the Supreme Court, the State Bar of Arizona, various County Bar associations, and industry groups.
- I serve as chair of the Maricopa County Bar Association's Continuing Legal Education Committee.
- For 16 years, I have served on the State Bar of Arizona's Civil Practice and Procedure Committee.
- For 12 years, I have served on the State Bar of Arizona's Family Law Executive Council.
- For 12 years, I have served on the State Bar of Arizona's Professionalism Committee.
- I am a founding board member of the National Courts and Sciences Institute, an organization that provides top-level training for judges nationwide in advanced scientific topics.
- While on the Superior Court bench, I was active in a wide variety of efforts to improve and modernize the court system. With a dramatically escalating caseload, and no new judicial resources, it was (and still is) critical that the courts discover methods by which they can continue to deliver top-quality timely justice in a more

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efficient manner. To that end, upon assignment to a civil calendar, my division became the first to implement the court's new e-filing system. Since its inception, I have brought thousands of cases into that system and helped develop enhancements to increase judicial efficiency.

- On the Superior Court, I was active in court management, serving on the judicial executive committee and as associate civil presiding judge. I helped to introduce fundamental changes to civil case management, with a focus on Rule 16 scheduling orders as opposed to multiple trial settings, which frequently create illusory deadlines and impose insurmountable cost burdens on litigants. In 2013, I led a successful effort to have such civil case management techniques incorporated into the Arizona Rules of Civil Procedure.
- I served on the Maricopa County Superior Court's judicial advisory committee, and in that capacity proposed and implemented a number of reforms to increase the efficient use of jury resources, while enhancing the jurors' experience and saving costs.
- For four years, I have played an active role in the Superior Court's judicial education committee, and have taught courses at new judge orientation for the past ten years. I also helped rewrite the civil curriculum for that program.
- While assigned to Family Court, I served as chair of the court's mental health committee, coordinating the continuous improvement of services provided by private mental health professionals.

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.

- In 2015, I formed Useful Arts, LLC. I now design and build professional audio equipment for musicians and recording engineers.

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- I am the managing partner of 58 Opera General Partnership, an entity that owns a building in Cochise County. I personally restored the 1922 convent to modern codes, performing all electrical, plumbing, framing and drywall work to make the investment profitable.
- From 1996 through the present, I have performed as an amateur musician with various musical groups consisting of lawyers, judges and others. In addition, I have owned and operated a recording studio to serve local musicians during that period. With the studio, I have donated my recording services to local artists, artistic organizations and educational institutions as a form of service to promote the arts in the community.
- In 2001, I became Manager of Earl Tastee Holdings, LLC, a holding company that owned a commercial restaurant building in downtown Phoenix. That entity wound up its business in 2006.
- In 2006, I formed Luddite Audio LLC. Through that entity, I designed and built custom tube audio equipment
- From 1987-1988, I worked for a private investigator, Chris McGoey, in Oakland, California.

33. Are you now an officer, director or majority stockholder, or otherwise engaged in the management, of any business enterprise? YES. 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.

- *58 Opera General Partnership.* Real estate holding partnership, managing partner.
- *Useful Arts, LLC.* Audio equipment manufacturing, managing member.

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? NO. If not, give reasons.

I created both ventures during my tenure as a judge, and perceive no possibility that either would interfere with my duties as a justice.

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.**
35. **Have you paid all state, federal and local taxes when due? YES. If not, explain.**
36. **Are there currently any judgments or tax liens outstanding against you? NO. If so, explain.**
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.**
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.**

- *Nicholson v. Bodney, et al.*, Maricopa County Superior Court No. CV1999-014561. This action arose from my successful defense of a libel action in the mid-1990s brought by Carl Nicholson, a pro per plaintiff, against a local television station. Mr. Nicholson's action against the station was dismissed by Hon. William Schafer for failure to participate in disclosure. Rather than appeal, Mr. Nicholson sued my firm and several of its lawyers (including one who had never appeared in the matter). He also sued my former secretary, the Clerk of the Superior Court and others, alleging conspiracy theories arising in part from the fact that I was awarded the "Order of the Coif" honor in law school - an award that he believed represented an unsavory secret society. Mr. Nicholson pursued his action in various federal and state forums, and all were summarily dismissed.
- *Stone v. Bodney, et al.* This was a frivolous action brought by a different pro per litigant who had been engaged in disputes with a firm client, Albertsons, Inc., for a period of years. Mr. Stone attempted unsuccessfully to advance identical claims against Albertsons multiple times in multiple courts. After these serial actions were dismissed, Mr. Stone added my firm and several of its lawyers as defendants. In the same complaint (which was filed in 2002 in the United States District Court for the District of Arizona as 02-CV-00784-PGR), Mr. Stone named as defendants United States Bankruptcy Judge Sarah Sharer Curley, the United States Bankruptcy Trustee,

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the Rev. Jesse Jackson and others. After service of a Motion for Sanctions pursuant to Fed. R. Civ. P. 11, Mr. Stone voluntarily dismissed his action.

- On January 23, 2003, Judge Gary Donahoe of the Maricopa County Superior Court affirmed an injunction against harassment in favor of myself and Messrs. Bodney and Kozinets, after concluding that Mr. Stone's conduct against us met the legal definition of "harassment" and expressly found that Mr. Stone's testimony regarding his past disputes with us was "entirely incredible."
- *Swann v. Stone*. CV2002-024046, CV2004-022724, CV2006-000256 CV2007-002113. On four separate occasions since my appointment to the bench, I have had to seek injunctions against harassment against Mr. Stone. Each was granted. In one instance, Mr. Stone violated the injunction as against my coplaintiff, David Bodney. He was criminally charged, convicted by a jury and spent eight months in jail.
- *Stone v. Albertsons, et al.*, United States District Court for the District of Arizona, CV-05-2626-PHX RCB. Mr. Stone again sued me, David Bodney, Albertsons and 41 other defendants; the claims against me arose from my representation of Albertsons in connection with claims that Stone had made against the company in 1998. The Court dismissed the complaint as frivolous, and awarded Albertsons all of its attorneys' fees.
- *Magna Legal Services, LLC v. State of Arizona ex rel. Board of Certified Reporters, et al.*, United States District Court for the District of Arizona, CV-13-00802 PHX NVW. This action was brought by a court-reporting firm against numerous defendants, challenging the constitutionality of a licensing regulation concerning court reporters. I was a defendant in my official capacity as a member of the Board of Certified Reporters. After the State filed a motion to dismiss on behalf of all defendants, plaintiff abandoned its complaint, citing later changes to the Arizona Code of Judicial Administration.
- *Kroncke v. City of Phoenix, et al.*, Maricopa County Superior Court, CV2008-020850. In 2008, Kroncke, an inmate of the Department of Corrections, sued the City of Phoenix and a host of judges and other officials, including me, alleging frivolous civil-rights claims and allegations of bribery and other misdeeds. The case was summarily dismissed in 2010.

- *Plummer vs. State Bar, et al.*, United States District Court for the District of Arizona, CV-08-1630-PHX ROS. This case was brought by a lawyer who had been disciplined, in part, because I sanctioned him for billing fraud. He claimed that I had violated the Americans With Disabilities Act. The case was dismissed in 2009.

39. **Do you have any financial interests, investments or retainers that might conflict with the performance of your judicial duties?** *NO*. If so, explain.

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.

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.

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.

42. **If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.**

N/A

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.

The actions noted in response to Question 38, brought by pro per opposing litigants, were sprinkled with frivolous allegations of fraud.

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? How was it resolved?
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.
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.)
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.

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.
51. Have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a complaint or accusation of misconduct against 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).
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.
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.
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.

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.
- *Genomic Test Results and the Courtroom: The Roles of Experts and Expert Testimony*, J Law Med Ethics. 2016 Mar; 44(1):205-15, 2016 American Society of Law, Medicine & Ethics. This is a peer-reviewed article I co-authored with Edward Ramos, Ph.D., Shawneequa L. Callier, J.D., M.A. and Hosea H. Harvey, J.D., Ph.D.

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- In 2003, I co-authored a book and associated lesson plans entitled *What's America?*, the purpose of which was to provide constitutional law education to elementary school students. The book has been used extensively in programs offered by public schools throughout Arizona.
 - Advocating Justice, Arizona Attorney, November 1999
 - Co-author, Libel Defense Resource Center 50-State Survey, Media Privacy and Related Law (Arizona) (annual publication, 1995-2002)
 - Co-author, Libel Defense Resource Center 50-State Survey, Employment Privacy Law (Arizona), 1998-2002 (annual publication, 1998-2002)
 - Maryland Uniform Trade Secrets Act, 49 Md. Law Rev. 1056 (1990)
 - Survey, Developments in Maryland Law, Property, 1988-89, 49 Md. Law Rev.
- 56. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? YES. If not, explain.**

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.

- Panelist, ASU-Arkfeld ediscovery and Digital Evidence Conference 2015, 2016
- Panelist, Electronic Discovery Institute/IAALS 2016 Summer Conference
- Panelist, MC Consultants Tri-Region Litigation Seminar 2006, 2009, 2013, 2014
- Instructor, "Nuts & Bolts of Civil Practice & Procedure: Views from the Bench and Bar," State Bar of Arizona, 2006-2009, 2011, 2012
- Instructor, "Know Your Appeal (and Avoid Losing It Before It Starts)," State Bar of Arizona CLE by the Sea, Seminar Co-chair and Panelist, July 2013
- Guest lecturer and mock trial judge, Arizona criminal justice, Centennial High School, 2014
- Instructor, "Rules Maintenance: Civil Rules Update, the Restyled Arizona Rules of

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Evidence, and the Adoption of Daubert in Arizona," State Bar of Arizona CLE by the Sea, Seminar Co-chair and Panelist, July 2013

- Instructor, "Current Trends in Discovery, Disclosure, ADR and Expert Witness Preparation and Testimony," State Bar of Arizona CLE by the Sea, Seminar Co-chair and Panelist, July 2013
- Instructor, "Challenges of Technology in 21st Century Law Practice," State Bar of Arizona CLE by the Sea, Panelist, July 2013
- Guest Lecturer, Arizona State University School of Law/Cronkite School of Journalism, Media Law, 1996-present
- Instructor, Arizona Judicial College, New Judge Orientation. I have taught sessions including civil law, civil case management, family law and contempt at this biannual event, 2006-present.
- Instructor, Arizona Law Course, Admission on Motion. Since its inception in 2010, I taught the family law portion of this course multiple times per year. When the court phased out the live presentation and began offering video courses, I recorded the family law portion required of new admittees.
- Panelist, Arizona State Bar Convention. I have presented at numerous seminars on Civil, Appellate, Ethics and Family Law from 2005-present.
- Instructor, 2014 Arizona Judicial Conference, "Writing for the Trial Court"
- Keynote Speaker, Cochise County Law Day, 2009
- I have presented numerous appellate rule and caselaw updates for Arizona State Bar, Maricopa County Bar, Cochise County Bar and Yavapai County Bars from 2008-present.
- Lecturer, "New Professionalism Rules," Arizona Bar Convention, Family Law Section, June 2008
- Lecturer, "Staying Ethical Despite Technology's Temptations," State Bar of Arizona CLE, 2008

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- Presenter, Maricopa County Superior Court Civil Bench Rotation Training, 2008
- Panelist, "Arizona Election Law," State Bar of Arizona CLE, 2008;
- Lecturer, "Nuts and Bolts of Civil Practice: Pre-filing Considerations in Litigation," State Bar of Arizona CLE, 2007, 2008
- Lecturer, Judicial Training Academy, Civil Procedure and Law For Limited Jurisdiction Courts, Arizona Supreme Court, 2007
- Presenter, Civil Bench Rotation Training, Maricopa County Superior Court, 2007
- Lecturer, "Courtroom Experience" program for Maricopa County Superior Court employees, 2007
- Presenter, "Courtroom Experience" program for summer interns with the Arizona Attorney General's Office
- Lecturer, "Better Decision-making For Children," Family Law Conference, 2005
- Lecturer, Constitutional Law, "We The People" Teacher Training, 2004, 2005
- I frequently gave presentations concerning developments in media law to Arizona journalists each year from 1993-2003.
- Lecturer, National Business Institute Ethics Seminar, May 1997

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

Current:

- Board Member, National Courts and Sciences Institute, 2013-present; Fellow, Advanced Science and Technology Adjudication Resource Center, 2008-present; State Bar of Arizona, Member, 1992-present.

Past:

- Sandra Day O'Connor Inn of Court, 2002-2005; Board member, Arizona Center for

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Law and Public Interest, (1994-2003)

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.

- Chair, Maricopa County Bar Association CLE Committee, 2016-present
- Arizona State Bar Committee on Professionalism, 2005-present
- Arizona State Bar Committee on the Rules of Civil Procedure, 2002-present
- Arizona State Bar Committee on the Rules of Professional Responsibility, 1998-2004
- Supreme Court Disciplinary Hearing Officer, 2001-2003
- Lawyer Volunteer for Community Legal Services, 2000
- Executive Council of the Arizona State Bar Young Lawyers' Division, 1998-2000
- Treasurer, Indian Law Section, State Bar of Arizona, 1996
- While in private practice, I participated in a number of pro bono representations, including *Kern v. FBI* (C.D. Cal. 1993).

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

- I served as a safety volunteer and organizer for the Bisbee Coaster Race, 2010-2014.
- I have served as a judge for the Arizona High School Mock Trial Competition in both Maricopa and Cochise Counties;
- I have served as a judge of the "We the People" high school competition sponsored by the Arizona Foundation for Legal Services and Center for Law Related Education

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(2003).

- I have served three times as a recorder for the Arizona Town Hall (1994, 1998, 2002).
- As a musician, I performed numerous benefit concerts for youth and civic organizations, including Arizona Youth at Risk, the Mesa Partnership for Tobacco-Free Youth and Community Mesa Alliance Against Drugs and the Pima County Bar Association.
- Through my recording studio, I provided free production services to community arts organizations, including ballet schools and music students.
- I served as a block captain for the Encanto-Palmcroft Neighborhood Association (2001-2002).

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

- Judge of the Year Award, Arizona Supreme Court, 2016
- Judge of the Year Award, Arizona Board of Trial Advocates, 2008
- Recognition for Service on the committees and activities listed above
- Law Related Education Award, State Bar of Arizona (2004)

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

- Judge, Arizona Court of Appeals, Division I, appointed in 2008 and retained in the 2012 General Election.
- Judge, Arizona Superior Court, Maricopa County, appointed in 2003 and retained in the 2006 General Election.
- Appointed judge pro tempore, Gilbert Municipal Court, Gilbert, Arizona, 2000-2003.
- Elected as District 6 Representative, Arizona State Bar Young Lawyers Division, 1999-2000.

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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.*

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

- I am deeply interested in law-related education. As the foregoing responses illustrate, I frequently teach law to lawyers and judges. In addition, I have been active in legal and civics education to law students, elementary and high school students, both through my participation in the organized educational events and my co-authorship of the children's constitutional law book, "What's America?"
- I am a private pilot, with endorsements for high performance and complex aircraft.
- I am also both mechanically and technically inclined. I have enjoyed remodeling many homes.
- I have integrated old and new technology in the construction of my recording studio, and take great joy in resurrecting older electronic technologies in the design and construction of tube audio equipment.
- As much as I enjoy the technology of the 1940s, I have been active in adapting the newest technologies to use both in the courtroom and in the enhancement of case management.
- I build mid-century modern furniture.
- I am a photographer and enjoy creating large-format prints with both old and new technology. I have participated in photography shows at several local galleries.
- I am a musician and have been active in promoting the arts in Phoenix and Bisbee. In addition, my high school band, "Capital Punishment" in which Ben Stiller was the drummer, is due to have its 1982 recordings and new music formally released this year.

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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.**

In terms of both heritage and economics, my life experience is very much reflective of the diversity of Arizona. My twin daughters are of mixed race, and their maternal grandmother is a first-generation immigrant to this country from India. My partner, Michelle Hibbert Swann, a third-generation Arizonan, is Mormon. My mother's family was Italian, and my Father's was Irish. During my own childhood in Southern California, I attended a school at which my teachers were predominantly Asian-American and my friends and classmates were African-American and Hispanic. I never knew during that time that there were those who viewed racial and ethnic diversity as anything other than the norm. And while I have learned sobering lessons to the contrary as an adult, those early experiences have shaped my views about the value of diversity. The intolerance and suspicion exhibited since September 11, 2001, has brought with it a heightened awareness of the sometimes subtle and sometimes overt hostility faced by people of color -- including members of my own family. I have raised my children within multiple cultural traditions, and now face the solemn responsibility of ensuring that the a child's color-blind, gender-neutral perspective is realized.

Throughout my childhood, my mother researched and wrote two critically acclaimed books about Native Americans during America's colonial period. It was my desire to be of service to Native Americans (and the opportunity to that end that Steptoe & Johnson afforded) that prompted my move to Arizona. From the very beginning of my career at Steptoe & Johnson through the present, I have taken pride

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in my representation of the Yavapai-Prescott Indian Tribe, and have become intimately acquainted with the unique issues faced by native peoples in Arizona.

Diversity in its broadest sense includes not only racial and gender differences, but also the vastly different economic realities faced by citizens of Arizona. This was brought home to me poignantly when my twin daughters were born extremely prematurely (at 26 weeks). Initially, it was predicted that they would not live. But during months spent in the neonatal intensive care unit, I had the inspirational experience of sharing with people of all backgrounds the struggle to preserve the lives and futures of their children. The newborn intensive care unit is a true melting pot, where people of all cultures, genders, and socioeconomic environments together face the challenge of preserving life in a way that makes clear how few real differences there are among people in crisis. The combined efforts of so many people to save children from all backgrounds, including one who had been left in a dumpster, will always stay with me.

For my part, I was not born into privilege. My family was one of modest means. When my parents divorced during my childhood and moved to opposite ends of the country, the difficulties faced by both single parents were placed in sharp relief. I was fortunate to attend a good high school in New York City through the assistance of merit and need-based scholarships. I supported myself during my entire higher education -- college and law school. This history has given me a personal understanding of the harsh realities faced by those at many economic strata, and I bring that perspective to the bench as well. I have worked closely with court staff to develop and implement measurement instruments and training to ensure that our judges exhibit cultural competency and sensitivity to biases. As a judge, I believe that my own family experience offers a perspective that represents the ideal to which the community should aspire -- a society in which diversity is not merely tolerated, but celebrated.

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

I believe I have provided the relevant information in response to the specific questions.

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.**
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.**

I am seeking this position because a larger supreme court will change the dynamic of one of the most important institutions of the state. I hope to bring the experience and energy to make that change a positive one for Arizona's citizens and the workings of Arizona government as a whole.

Arizona's courts are the final guardians of liberty for its citizens. For me, this is not an academic principle, but a day-to-day reality that I have lived during my thirteen years of service as a trial and appellate judge. I have decided cases valued at hundreds of dollars and cases valued at billions of dollars. I have decided high-profile cases that received national attention and cases that no one other than the participants will remember. And I learned early on that there is no such thing as a small case -- almost every case is one of the most important events in the life of an individual or the fate of a business. Indeed, contact between the people and the courts is usually the most profound interaction that the people have with their government. It is critical that the courts -- from the supreme court to traffic court -- speak with a clear voice and respect the rights of the people under the law. It is also critical that the courts respect the law as it exists, without attempting to bend it toward any policy or result.

A properly functioning court is not an advocate for a viewpoint -- it is a forum in which citizens and the government can be confident that, win or lose, their case has been heard and their legal rights protected to the full extent of the law. We hear the phrase "fair and impartial justice" so often that it can sound hollow. To me, fair and impartial justice means that the court protects every liberty and property interest to which citizens are entitled under the federal and state constitutions and legislative enactments, without regard to who wins or loses. This perspective guides my approach to judging and enhances my interest in serving on an expanded supreme

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court. As a judge on both the trial and appellate courts for thirteen years, I have accumulated a substantial record of decisions that I am proud to stand behind.

The Arizona Supreme Court represents more than the sum of the decisions it issues. It is the conscience of the third branch of government, and it defines the legal climate throughout the state. Most Arizonans probably do not appreciate how fortunate they are to have access to a system of justice that is truly impartial, free of corruption and open to all. Citizens of many sister states are not able to take such pride in their courts. As the court expands and changes, there is an opportunity to develop an already-excellent judicial system into a more modern, efficient institution that guarantees people and businesses their rights with a minimum of cost, delay and burden. I have devoted my career not only to the fair decision of cases, but also to the improvement of the system as a whole, and I am proud of what I have achieved so far. The two new positions on the Supreme Court offer the opportunity to improve the Arizona system even more quickly and definitively.

There are those who say that our democracy requires that the three branches of government operate in a continual state of conflict. I reject this notion. I maintain that it is both possible and desirable for the branches of government to work cooperatively without abandoning the separation of powers that is implied in the federal constitution and written expressly into Arizona's constitution. Achievement of such a goal requires a new approach, and I took one step toward that goal by participating in the process that ultimately led to the settlement of one of the largest cases in Arizona history, *Cave Creek v. DeWit*. I do not believe it necessary for any branch to control another by force, and it was the desire to see the three branches move in the same direction within the strictures of the law that led me to make that effort. I am committed to the idea that there are many ways in which our divided powers can act as a coordinated unit to make Arizona's legal system, and by extension its state government, the most effective in the nation.

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.

Please see attachments A-1 – A-3

- 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.**

Please see attachments B-1 – B-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.**

I have included reports from 2015, 2012 and 2006 at Attachment C. I included three reports because while 2015 and 2012 are the most recent, there are only public vote reports for my last two retention elections, which were 2012 and 2006.

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

ATTACHMENT A-1

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 02-16305

CE DISTRIBUTION, LLC,

Plaintiff-Appellant,

vs.

NEW SENSOR CORPORATION,

Defendant-Appellee.

FILED

DEC 24 2002

CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

On Appeal from the United States District Court
for the District of Arizona
Honorable Frederick J. Martone, Presiding

REPLY BRIEF OF APPELLANT

STEPTOE & JOHNSON LLP
PETER B. SWANN
BENNETT EVAN COOPER
MICHELLE HIBBERT
Collier Center
201 East Washington Street, Suite 1600
Phoenix, Arizona 85004-2382
(602) 257-5200

Attorneys for Appellant

SUMMARY OF ARGUMENT

New Sensor's Answering Brief is notable principally for its failure to dispute that it intentionally set out to injure CE, and that CE suffered the harm from its conduct in Arizona. As this Court held in *Bancroft & Masters, Inc. v. Augusta National, Inc.*, 223 F.3d 1082 (9th Cir. 2000), specific personal jurisdiction is appropriate "when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state." *Id.* at 1087. Nowhere in its 35-page Answering Brief does New Sensor dispute CE's allegations that (1) New Sensor embarked on a course of conduct by which it intended to harm CE, (2) New Sensor was motivated to harm CE by a personal animus created by the departure of one of its key employees to CE's employ in Arizona, (3) New Sensor attempted unsuccessfully to induce CE's overseas supplier to breach its contract with CE, and (4) that New Sensor ultimately engaged in other overseas transactions with the intent to harm CE. (ER.1 ¶¶ 14-19, 44-47.) Put simply, New Sensor does not (and cannot) argue that CE has failed to allege wrongful conduct targeted at a known forum resident. This is not simply a matter of the locus of foreseeable injuries: when New Sensor *set out* to injure CE, it knew that CE is a resident of Arizona, and CE suffered harm in Arizona. (*Id.* ¶ 3; ER.7 ¶¶ 3, 6.) Those facts are sufficient to satisfy the test for personal jurisdiction under *Calder v. Jones*, 465 U.S. 783 (1984).

Reduced to its essence, New Sensor's position on appeal depends entirely on the facts that it is physically located in New York, and that its tortious conduct occurred outside Arizona. (Answering Br. at 11, 13.) Those facts are not antidotes

to Arizona's long-arm jurisdiction in this case. *See Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002) ("*Calder* stands for the proposition that *purposeful availment is satisfied even by a defendant whose only contact with the forum state is the purposeful direction of a foreign act having effect in the forum state.*") (internal citations and quotations omitted; emphasis added). The law since *Calder* has been that an intentional tortfeasor is subject to jurisdiction in the plaintiff's state of residence, so long as its conduct was targeted at the plaintiff and the injury was felt in the forum state *even where the tortious conduct occurs outside the forum*. *See, e.g., Calder*, 465 U.S. at 788-89 (jurisdiction upheld in California over nonresident defendants whose conduct occurred in Florida); *Bancroft*, 223 F.3d at 1087 (jurisdiction upheld in California over nonresident defendants whose conduct occurred in Georgia); *Brainerd v. Governors of Univ. of Ala.*, 873 F.2d 1257 (9th Cir. 1989) (jurisdiction upheld in California over nonresident defendants whose conduct occurred in Canada).

New Sensor does *not* deny that it targeted CE. Faced with a record containing facts that satisfy *Calder*, *Bancroft*, and *Brainerd*, New Sensor alternately argues its view of the merits of the dispute, invokes jurisdictional doctrines that have no role in intentional tort cases, and attempts to redefine existing law.

New Sensor's characterization of the current state of the *Calder* doctrine is flatly inaccurate in several respects. A core element of its position on appeal is its assertion that "intentionally inflicting economic harm on the plaintiff which it feels in the forum is not enough to satisfy the *Calder* effects test." (Answering Br. at

16.) This argument could not be more inconsistent with the law of this Circuit.

Indeed, in a recent decision upon which New Sensor itself relies, this Court noted:

Despite the apparent conflict between the *Core-Vent* line of cases and *Keeton*, we need not decide whether the effects test requires that the brunt of the harm have occurred within the forum state, or merely that some significant amount of harm have occurred there.... We hold that under either standard, *Dole suffered sufficient economic harm in California to give rise to jurisdiction in California.*

Dole, 303 F.3d at 1113 (emphasis added; citation omitted). New Sensor's position that *economic* harm flowing from an intentional tort is insufficient to create jurisdiction is simply not the law. Likewise, New Sensor misplaces reliance on *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414 (9th Cir. 1997), which dealt with only with *passive* conduct that was *not* targeted at a specific victim. There is nothing passive about the tortious conduct alleged in this case. And CE has not merely advanced conclusory allegations of targeting; rather, it has alleged a motive for New Sensor's animus against it. For its part, New Sensor has never attempted to refute those allegations.

In an effort to divert attention from the fact that CE has alleged both intentional interference with contract and breach of contract, New Sensor devotes much effort to a theory that the parties had not entered into a contract. (Answering Br. at 7, 9, 10, 21, 22, 26.) By this argument, New Sensor does not refute CE's allegation that it engaged in a targeted effort to harm CE, but rather suggests defenses that it will someday advance. Apparently, New Sensor contends that it committed no actionable wrong by attempting to induce CE's supplier to breach its

agreement and ultimately inducing a European distributor of Jensen[®] speakers to violate its territorial boundaries. (Answering Br. at 11.) CE disagrees. *See, e.g., Sebastian Int'l, Inc. v. Russolillo*, 162 F. Supp. 2d 1198, 1203-07 (C.D. Cal. 2001) (recognizing tort liability for intentional interference with exclusive distribution agreements). But the question presented by this appeal has nothing to do with New Sensor's defenses to CE's claims on the merits; it has everything to do with the fact that CE has presented allegations of New Sensor's misconduct that provide a basis for personal jurisdiction in Arizona where those defenses can be adjudicated. New Sensor's arguments concerning the finer contours of the parties' contractual relationship bear only on the ultimate outcome of the case, not on the propriety of personal jurisdiction over a company that endeavors to harm (and does harm) an Arizona resident.

In the face of uncontroverted allegations of an intentional tort directed at a known Arizona resident, New Sensor next suggests that the mere act of sending a cease and desist letter to CE in Arizona is not enough to create specific jurisdiction. (Answering Br. at 23.) While true in a vacuum, New Sensor's assertion ignores the realities of this record. New Sensor did *not* merely send a letter to Arizona—it took every available measure to use unfair competition in a coordinated attack on CE. Viewed in context, New Sensor's letter was not an isolated act. Its letter and its negotiations with CE for the right to distribute Jensen[®] speakers evidence its understanding that it was not harming an unknown business adversary, but was knowingly aiming its conduct at an *Arizona* resident. (ER.1 ¶¶ 3, 6, 7, 12-13, 15; ER.5 ¶ 9; ER.7 ¶¶ 3, 5, 6.) New Sensor's further

business dealings in Arizona (including its acknowledged relationship with Fender Musical Instruments) only underscore the reasonableness of the exercise of personal jurisdiction over it in Arizona. (ER.5 ¶ 8, ER.7 ¶ 9.)

ARGUMENT

I. The Factual Record Must Be Viewed in the Light Most Favorable to CE.

In its Answering Brief, New Sensor foreshadows unspecified defects in CE's Statement of Facts that never materialize. The Answering Brief suggests that "sworn testimony and/or documentary evidence" detracts from the legal significance of the allegations in the Complaint, but it never actually points to any material facts in dispute. (Answering Br. at 6.) As a matter of law, the standard is clear:

Where, as here, the motion is based on written materials rather than an evidentiary hearing, "the plaintiff need only make a prima facie showing of jurisdictional facts." In such cases, "we only inquire into whether [the plaintiff]'s pleadings and affidavits make a prima facie showing of personal jurisdiction." Although the plaintiff cannot "simply rest on the bare allegations of its complaint," *uncontroverted allegations in the complaint must be taken as true. Conflicts between parties over statements contained in affidavits must be resolved in the plaintiff's favor.*

Dole, 303 F.3d at 1108 (citations omitted; emphasis added).

New Sensor places heavy reliance on the affidavit of its President, Mike Matthews, for the proposition that there was never a contract between CE and New Sensor governing New Sensor's distribution of Jensen[®] speakers. (Answering Br. at 7.) This assertion has dubious materiality to the issues on appeal, and also raises

ATTACHMENT A-2

I. THE DISTRICT COURT PROPERLY HELD THE TAXES UNLAWFUL PURSUANT TO THE SPECIAL FEDERAL PREEMPTION DOCTRINE GOVERNING STATE ACTION WITHIN INDIAN RESERVATIONS.

A. The Value that the State Seeks to Tax Is Inherently a Product of the Reservation, and the Hotel's Customers Consume that Value on the Reservation.

"To determine whether the State tax on reservation transactions is preempted, the court must make 'a particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.'" *Salt River*, 50 F.3d at 736 (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)). "Ambiguities in federal law are to be construed generously in favor of the tribe; no specific congressional intention to preempt state activity is required." *Hoopa Valley Tribe v. Nivens*, 881 F.2d 657, 659, *cert. denied*, 494 U.S. 1055 (emphasis added).

Two independent doctrines -- federal preemption and tribal self-government -- support federal invalidation of state taxation of the wealth generated on Indian reservations. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). Those barriers are "independent because either, standing alone, can be a sufficient basis for holding State law inapplicable to activity undertaken on the Reservation or by tribal members." *Id.* at 143. Both doctrines apply here.

[I]n Indian cases weight must be given to the tradition of "Indian sovereignty over the reservation and tribal members" and the "firm federal policy of promoting tribal self-sufficiency and economic development" . . . Thus, unlike in normal preemption cases, ambiguities in federal law are resolved in favor of preemption, and an "express congressional statement" of preemption is unnecessary.

White Mountain Apache Tribe v. Arizona, 649 F.2d 1274, 1278 (9th Cir. 1981) (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)) (emphasis added); see also, *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 765 (1985) ("In keeping with its plenary authority over Indian affairs, Congress can authorize the imposition of state taxes on Indian tribes and individual Indians. It has not done so often, and the Court consistently has held that it will find the Indians' exemption from state taxes lifted only when Congress has made its intention to do so unmistakably clear.") (emphasis added).

In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the Supreme Court held that State intrusion into a tribal gaming enterprise was preempted where the tribe contributed to the creation of value unique to the reservations.

The . . . Reservations contain no natural resources which can be exploited. The tribal games at present provide the sole source of revenues for the operation of the tribal governments and the provision of tribal services. They are also major sources of employment on the reservations. Self-determination and economic development are not within reach if the tribes cannot raise revenues and provide employment for their members. The tribes' interests obviously parallel the federal interests.

Cabazon, 480 U.S. at 218-19 (emphasis added). The same circumstances that supported the Court's preemption of state regulation in *Cabazon* are present here. As in *Cabazon*, the Tribe's Reservation contains no developable natural resources and is not suitable for agriculture. The Tribe's primary asset is the commercial potential of its land, and State interference with the development of that potential is inconsistent with the federal policies that control the preemption analysis. See *Hoopa Valley Tribe*, 881 F.2d at 659 ("Federal policy encourages the economic development of tribal lands."). By actively regulating the quality of the accommodations and services on the Reservation, the Tribe is effectuating federal policy and succeeding in achieving self-sufficiency. There is, therefore, no room for State taxation.

Indeed, the Hotel houses a casino that the Tribe owns and operates. [ER, at 33] A significant portion of the customer volume that generates room rentals and food sales is directly related to the availability of casino gaming at the Hotel -- an activity generally unavailable on non-Indian land in Arizona. Tribal gaming is governed by a comprehensive federal statute, the Indian Gaming Regulation Act ("IGRA"), 25 U.S.C. § 2701, et seq., which does not contain the "express consent" to State taxation that the Supreme Court required in *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 765 (1985). To the contrary, IGRA contains express statements of Congressional policy that the value generated by gaming is within the exclusive province of the tribal and federal governments and is to be regulated with an eye toward tribal economic development. See 25 U.S.C. § 2702(1) (Purpose of IGRA is "to provide a statutory basis for the operation of gaming by Indian Tribes as a means of promoting tribal economic development, self-sufficiency and strong tribal governments").³ State taxation of enterprises providing gaming-related services that are intrinsically linked to the Reservation -- to the direct economic detriment of the Tribe -- is therefore inconsistent with the federal policies in favor of Tribal self-determination.

Here . . . the Tribes are not merely importing a product onto the reservations for immediate resale to non-Indians. They have built modern facilities which provide recreational opportunities and ancillary services to their patrons, who do not simply drive onto the reservations, make purchases and depart, but spend extended periods of time there enjoying the services the Tribes provide. The Tribes have a strong incentive to provide comfortable, clean, and attractive facilities and well-run games in order to increase attendance at the games. . . . The Cabazon and Morongo Bands are generating value on the reservations through activities in which they have a substantial interest.

Cabazon, 480 U.S. at 219 (emphasis added). The record in this action presents an even stronger

³ The State does not tax the earnings of the casino. The Tribe's concern with gaming in this appeal is directed at its close involvement in generating business -- and value -- at the Hotel through its own activities.

case for preemption than that in *Cabazon*. Here, the Tribe not only has an incentive to provide (and does provide) top-flight facilities and well-run games, it provides and regulates quality lodging and meals to encourage visitors to remain on the Reservation for days at a time. The activities that the State seeks to tax are precisely the activities that demonstrate the intrinsic Tribal involvement in the generation of economic value on the Reservation.

This Court has held unequivocally that where a Tribe is able to demonstrate the "close involvement in the provision of quality entertainment services to the public on its lands" that was present in the *Cabazon* and *Gila River I* cases, it "assert[s] an interest in maintaining those services free from State taxation which could support a judgment in its favor." *Gila River I*, at 1411.4 See *Cabazon Band of Mission Indians v. Wilson*, 37 F.3d 430, 434-35 (9th Cir. 1994) (holding State taxation of tribal betting preempted by federal law) ("That a tribe plays an active role in generating activities of value on its reservation gives it a strong interest in maintaining those activities free from State interference.") (quoting *Gila River I*, 967 F.2d at 1410).

As owner of the physical structure and land, and as equity-holder in the enterprise that operates the Hotel, the Tribe markets on-Reservation value in the form of superior lodging on Reservation lands and food prepared on the Reservation subject to Tribal control. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 341 (1983) (holding that a "tribal enterprise" consisting of resort built with federal assistance "clearly involves 'value generated on the reservation by activities involving the Tribe'" (emphasis added). For its part, the State seeks to tax the commercial value created on the Reservation merely to add to its general revenue -- while requiring the Tribe to pay separate fees for services it furnishes to other taxpayers free of charge.

Recently, Judge Fletcher, author of the 1992 *Gila River I* decision, issued an

⁴On remand, the community in *Gila River II* was unable to demonstrate that close connection. That is not the case here.

opinion upholding State taxation of retail enterprises in *Salt River Pima-Maricopa v. Arizona*, 50 F.3d 734 (9th Cir. 1995). The *Salt River* decision reaffirmed the vitality of the broad preemption doctrine articulated in *Gila River I*, and clearly identified the circumstances that permit or prohibit State taxation within Indian lands. None of the circumstances that permitted State taxation in *Salt River* is present in this case. In *Salt River*, the Court permitted imposition of the Arizona transaction privilege tax upon a group of non-Indian retailers who were economically independent from the tribe. There, the transactions at issue were conducted in a non-Indian owned facility, located on land that the tribe did not own. Most importantly, the tribe had no share in the mall's profits. In *Salt River*, unlike this case, the tribe was not a co-owner of the selling enterprises -- the taxed sales consisted merely of non-Indian goods that were brought onto the reservation for resale and promptly removed from the Reservation after they were purchased by non-Indians. *Id.*, at 738. This case is markedly different.

The *Salt River* Court effectively defined the continuum along which Indian tax cases must be decided in this Circuit: "In [*Gila River I*], we found that a state tax was invalid because the Tribe's activities contributed value to the service sold. . . [*Gila River I*] is clearly distinguishable from [*Salt River*]." *Id.* Here, the Yavapai-Prescott Indian Tribe's claim to the generation of value is different in nearly every respect from the claim in *Salt River* and even stronger than that in *Gila River I*. Here, unlike *Salt River*, the Hotel is located on Tribal land and the building is wholly owned by the Tribe. [ER, at 16, 65] Here, unlike *Salt River*, the Tribe not only shares in the rents from the Hotel, it also shares in the net profits and owns a 30% equity stake in any transfer of the right to operate the Hotel. And here, the Tribe markets value created on the Reservation -- including the right to spend extended overnight periods on the Reservation and enjoy the Tribe's own self-managed gaming facilities -- rather than simply importing goods onto the Reservation for immediate resale. The United States Supreme Court has already held that a tribal resort built with federal assistance "clearly involves 'value generated on the

reservation by activities involving the Tribe." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 341 (1983) (emphasis added). In brief, the success of the Hotel venture is the product of Tribal planning, Tribal regulation and a cooperative relationship between the federal government, the Tribe and its business partner, PCC. Where, as here, the value sought to be taxed is a product of the Reservation as a matter of law, federal policies underlying Indian economic self-determination and the creation of the Hotel itself preempt state taxation.

ATTACHMENT A-3

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I. EMERGENCY REVIEW OF THE DISTRICT COURT'S ORDER ON MANDAMUS IS WARRANTED UNDER THE UNITED STATES CONSTITUTION.

A. The Press Has Standing to Seek Mandamus Review of an Order Closing Criminal Proceedings.

Ninth Circuit law leaves no doubt that "[t]he press has standing to seek review by petition for writ of mandamus of orders denying access to judicial proceedings of documents." Oregonian Pub. Co. v. United States District Court, 920 F.2d 1462, 1464, (9th Cir. 1990) (citing Seattle Times Co. v. United States District Court, 845 F.2d 1513 (9th Cir. 1982)).

1. The *Bauman* Factors Weigh Heavily in Favor of Mandamus Review.

Under the settled law of this Circuit, the following guidelines govern the determination of whether mandamus relief is appropriate:

1. whether the petitioner has no other adequate means, such as direct appeal, to obtain the requested relief;
2. whether the petitioner will be damaged or prejudiced in a way not correctable on appeal;
3. whether the district court's order is clearly erroneous as a matter of law;
4. whether the district court's order is an oft-repeated error or manifests a persistent disregard of the federal rules; and
5. whether the district court's order raises new and important problems or issues of first impression.

Oregonian, 920 F.2d at 1464 (citing Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977)). That test supported mandamus review in Oregonian, and it applies with even greater force here.

As in Oregonian, the presence of the first and second factors is beyond dispute. With regard to the first factor, this Court has repeatedly held that "the press lacks standing to bring a direct appeal and, therefore, must seek review of orders denying it access to judicial proceedings or documents by petition for writ of mandamus." Oregonian, 920 F.2d at 1464 (citing Seattle Times v. United States District Court., 845 U.S. 1513 (9th Cir. 1988)). "Moreover, without immediate review, the press will face a serious injury to an important first amendment right." Id. (emphasis added) As in Oregonian, the district court's failure to make specific factual findings on the record *before* closing public access to a criminal case for security reasons is clearly erroneous as a matter of law and the third factor therefore is satisfied.

In Oregonian, the fourth factor -- the presence of an oft-repeated error -- was not at issue. But on three occasions in this case alone, the district court has closed its hearings to the public without making the necessary findings.⁵ Though the district court has suggested that it might someday release the transcripts *sua sponte*, the period of closure that has already occurred amounts to a significant interference with PNI's First Amendment rights. [Exhibit A, at 2-3] The practice of closing proceedings first, and releasing transcripts later, cries out for correction by this court, and the fourth Bauman factor therefore weighs in favor of mandamus review.⁶

⁵In addition to the two hearings directly at issue in this petition, the district court withheld the transcript of a hearing on juror qualifications that it had similarly sealed without any predicate findings until the day after the hearing. [Exhibit C, Transcript of August 15, 1997 Hearing, at p.2, ll. 12-13 and 18-22; p.3, ll. 14-15; p.4, ll. 17-24; p.5, ll. 17-21; Reporter's Excerpt of Proceedings of August 20, 1997 Hearing, at p.14, ll. 5-11; p.15, ll. 3-4]

⁶The erroneous practice of releasing information to the public only after a significant delay has been employed in another recent criminal trial in the District of Arizona. In United States v. Leckie, No. CR96-096, the trial of one of Governor Symington's former aides, PNI sought access to a deposition transcript that had been part of the record in a closed hearing on a motion in limine. Over objection by PNI, Judge Earl Carroll kept the deposition transcript under seal until *after* the jury returned its verdict -- more than a full year *after* PNI objected to closure. [Exhibit G] Because the improper delay of access to criminal proceedings recently has occurred several times in the District of Arizona, the fourth factor weighs in favor of mandamus review.

Finally, because press access to hearings concerning the integrity of the trial of a state governor involves a fundamental constitutional interest, the fifth factor is satisfied. Where, as here, the district Court blocks that access without complying with First Amendment procedures, a mandamus petition presents a grave problem that warrants speedy review.

ATTACHMENT B-1

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DIVISION ONE
 FILED: 08/11/2011
 RUTH A. WILLINGHAM,
 CLERK
 BY: DLL

IN THE COURT OF APPEALS
 STATE OF ARIZONA
 DIVISION ONE

PLANNED PARENTHOOD ARIZONA, INC.,) No. 1 CA-CV 09-0748
 an Arizona non-profit) 1 CA-CV 10-0274
 corporation,) (Consolidated)

Plaintiff/Appellee,) DEPARTMENT B

v.) O P I N I O N

AMERICAN ASSOCIATION OF PRO-LIFE)
 OBSTETRICIANS & GYNECOLOGISTS;)
 CATHOLIC MEDICAL ASSOCIATION;)
 CHRISTIAN MEDICAL AND DENTAL)
 ASSOCIATIONS; CHRISTIAN)
 PHARMACISTS FELLOWSHIP)
 INTERNATIONAL; AVE MARIA)
 PHARMACY, PLLC; ARIZONA CATHOLIC)
 CONFERENCE; CRISIS PREGNANCY)
 CENTERS OF GREATER PHOENIX;)
 SENATOR LINDA GRAY;)
 REPRESENTATIVE NANCY BARTO,)

Applicant Intervenors-Defendants/)
 Appellants.)

PLANNED PARENTHOOD ARIZONA, INC.,)
 an Arizona non-profit)
 corporation,)

Plaintiff/Appellee,)

v.)

THOMAS C. HORNE, in his)
 official capacity as)
 Attorney General; ARIZONA)
 MEDICAL BOARD; LISA WYNN, in her)
 official capacity as Executive)
 Director of the Arizona Medical)
 Board; ARIZONA BOARD OF)
 OSTEOPATHIC EXAMINERS IN)
 MEDICINE AND SURGERY; ELAINE)
 LETARTE, in her official)

capacity as Executive)
 Director of the Arizona Board of)
 Osteopathic Examiners in)
 Medicine and Surgery; and KEN)
 BENNETT, Arizona Secretary of)
 State, in his official capacity,)
)
 Defendants/Appellants,)
)
 and)
)
 KIRK D. ADAMS, as Speaker,)
 Arizona House of Representatives,)
)
 Intervenor-Defendant/)
 Appellant,)
)
 and)
)
 AMERICAN ASSOCIATION OF PRO-LIFE)
 OBSTETRICIANS & GYNECOLOGISTS;)
 CATHOLIC MEDICAL ASSOCIATION;)
 CHRISTIAN MEDICAL AND DENTAL)
 ASSOCIATIONS; CHRISTIAN)
 PHARMACISTS FELLOWSHIP)
 INTERNATIONAL; AVE MARIA)
 PHARMACY, PLLC; ARIZONA CATHOLIC)
 CONFERENCE; CRISIS PREGNANCY)
 CENTERS OF GREATER PHOENIX;)
 SENATOR LINDA GRAY;)
 REPRESENTATIVE NANCY BARTO,)
)
 Intervenor-Defendants/)
 Appellants.)
)
 _____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2009-029110

The Honorable Donald Daughton, Judge (Retired)

VACATED IN PART, REVERSED IN PART, AND AFFIRMED IN PART

Planned Parenthood Federation of America	New York, N.Y.
By Jennifer Sandman <i>pro hac vice</i>	
Eve C. Gartner <i>pro hac vice</i>	
Greenberg Traurig, LLP	Phoenix
By Lawrence J. Rosenfeld	
Daniel B. Pasternak	
Co-counsel for Plaintiff/Appellee	
Thomas C. Horne, Arizona Attorney General	Phoenix
By David R. Cole, Solicitor General	
Paula S. Bickett, Chief Counsel, Civil Appeals	
Carrie J. Brennan, Assistant Attorney General	
Timothy A. Nelson, Chief Deputy Attorney General	
Attorneys for State Defendants/Appellants	
Office of the Speaker, Arizona House of Representatives	Phoenix
By Peter A. Gentala	
Cantelme & Brown, P.L.C.	Phoenix
By David J. Cantelme	
Co-counsel for Intervenor-Defendant/Appellant Kirk D. Adams	
Alliance Defense Fund	Washington, D.C.
By Steven H. Aden <i>pro hac vice</i>	
Matthew S. Bowman <i>pro hac vice</i>	
Center for Arizona Policy	Phoenix
By Deborah M. Sheasby	
Cathi W. Herrod	
Bioethics Defense Fund	Scottsdale
By Nikolas T. Nikas	
Co-counsel for Intervenor-Defendants/Appellants	
American Association of Pro-Life Obstetricians and Gynecologists; Catholic Medical Association; Christian Medical and Dental Associations; Christian Pharmacists Fellowship International; Ave Maria Pharmacy, PLLC; Arizona Catholic Conference; Crisis Pregnancy Centers of Greater Phoenix; Senator Linda Gray; Representative Nancy Barto	

S W A N N, Judge

¶1 This case requires us to decide whether four statutory provisions that regulate the performance of abortions violate the equal protection or privacy clauses of the Arizona Constitution. The trial court granted Planned Parenthood of

Arizona ("PPAZ") a preliminary injunction barring the enforcement of portions of A.R.S. §§ 36-2152 through -2155. We hold that the statutes at issue would withstand federal constitutional scrutiny, and that the Arizona Constitution -- to the extent it protects abortion rights at all -- offers no greater protection than the federal constitution with respect to the regulations at issue in this case. Because we hold that the statutes in question are constitutional, we reverse the decision of the trial court, vacate the injunction and remand.

¶2 In addition, the speaker of the Arizona House of Representatives ("Speaker") and a group of other persons and entities ("Proposed Intervenors")¹ appeal the denial of their Motions to Intervene. We reverse in part and affirm in part the trial court's denial of leave to intervene.

*FACTS AND PROCEDURAL HISTORY*²

¶3 On July 13, 2009, the Governor signed House Bill 2564 and Senate Bill 1175, which amended A.R.S. §§ 36-2151 through -2155. 2009 Ariz. Sess. Laws ch. 172, §§ 2-5; ch. 178, § 1 (1st

¹ The other intervenors are: Ave Maria Pharmacy, Christian Medical and Dental Associations, Christian Pharmacists Fellowship International, American Association of Pro-Life Obstetricians and Gynecologists, Catholic Medical Association, Arizona Catholic Conference, Crisis Pregnancy Centers of Greater Phoenix, and legislators Linda Gray and Nancy Barto.

² The facts presented in this summary are uncontroverted.

unconstitutional. *Id.* at 595 n.7, ¶¶ 20-21, 208 P.3d at 684 n.7.

I. THE PRIVACY CLAUSE AND ABORTION RIGHTS

¶10 Because the preliminary injunction before us addressed only PPAZ's claims under the equal protection and privacy clauses of the Arizona Constitution, we confine our analysis to the legal merits of the injunction on those theories.

¶11 The trial court concluded that "the fundamental right that gives rise to strict scrutiny in *Simat* is the right to choose abortion in general." From this proposition, PPAZ reasons that any law affecting the exercise of abortion rights is subject to strict scrutiny under the privacy clause. We disagree.

¶12 First, PPAZ's argument is contrary to the plain text of *Simat*, which reads:

[This case] is not about the right to an abortion . . . [or] about whether the Arizona Constitution provides a more expansive abortion choice than the federal constitution *The narrow and only question decided* is this: Once the state has chosen to fund abortions for one group of indigent, pregnant women for whom abortions are medically necessary to save their lives, may the state deny the same option to another group of women for whom the procedure is also medically necessary to save their health?

203 Ariz. at 455, ¶ 3, 56 P.3d at 29. Rather than establishing strict scrutiny under the state constitution for laws affecting

the right to abortion itself, *Simat* "arose because the legislature chose to provide medically necessary treatment to one class of pregnant citizens and to withhold medically necessary treatment from another class of pregnant citizens." *Id.* at 458, ¶ 14, 56 P.3d at 32. Under the statute at issue in that case, the agency that provided Medicaid services was to fund abortion services that were necessary to save the life of a woman or in cases of rape or incest, but was forbidden from funding abortion services needed to preserve the woman's health. *Id.* at 455-56, 458, ¶¶ 1, 4, 14, 56 P.3d at 29-30, 32. It was therefore the discriminatory *classification*, not any direct burden on the right to abortion, that gave rise to the *Simat* court's application of strict scrutiny to invalidate the statute before it: when the "right to equal treatment" is implicated by restrictions on the exercise of a fundamental right, "our constitution requires that [a] strict scrutiny analysis be applied." *Id.* at 458-59, ¶ 16, 56 P.3d at 32-33.

¶13 *Simat* held that strict scrutiny applied under the state constitution because the legislative classification affected the fundamental right to abortion as it exists under the *federal* constitution. *Id.* But *Simat* stopped short of holding that the privacy clause of the Arizona Constitution guarantees any specific right to abortion. Indeed, the court "[did] not hold that Arizona's right of privacy entitles

citizens to subsidized abortions." 203 Ariz. at 458, ¶ 13, 56 P.3d at 32. *Simat* recognized that the privacy clause has been held to guarantee Arizonans the right "to care for their health and to choose or refuse the treatment they deem best for themselves." *Id.* at n.2, 56 P.3d at 32, n.2 (citing *Rasmussen v. Fleming*, 154 Ariz. 207, 741 P.2d 674 (1987) (allowing person in chronic vegetative state to choose termination of treatment over life)).⁵ But while the court thereby acknowledged that the clause has force in the arena of individual medical decision-making, it did not hold that the privacy clause or any other part of the Arizona Constitution specifically confers abortion rights, and if it does, to a greater extent than the federal constitution. The court noted: "We reach no conclusion about whether the Arizona Constitution provides a right of choice, let

⁵ PPAZ reads *Rasmussen* as establishing a "fundamental" privacy right to "chart one's medical course." We find that reading overbroad. In *Rasmussen*, our supreme court recognized that even "the right to refuse medical treatment is not absolute." 154 Ariz. at 216, 741 P.2d at 683. The state has a "justifiably strong interest" in "preserving life" that limits that right, *id.*, but when the "treatment at issue serves only to prolong a life inflicted with an incurable condition" like *Rasmussen's* chronic vegetative state, that interest "must yield" to the patient's right. *Id.* at 216-17, 741 P.2d at 683-84 (internal quotation marks omitted). And *Rasmussen* did not involve abortion, which is "inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life." *Harris v. McRae*, 448 U.S. 297, 324-26 (1980) (upholding federal statute prohibiting use of Medicaid funding for some medically necessary abortions.)

alone one broader than that found in the federal constitution.” *Simat*, 203 Ariz. at 463, ¶ 35, 56 P.3d at 37. Here, of necessity we must determine whether any right under the Arizona Constitution to abortion is greater than that under the federal constitution. But we, like *Simat*, need not, and do not, reach the question of whether there is any right at all to abortion protected by the Arizona Constitution.⁶

¶14 Abortion rights find no mention in the text of Article 2, Section 8, and “the records of the Arizona constitutional convention contain no material addressing [that section’s] intent.” *Hart v. Seven Resorts Inc.*, 190 Ariz. 272, 277, 947 P.2d 846, 851 (App. 1997). Furthermore, PPAZ does not contend that the history and traditions of Arizona support abortion rights beyond those guaranteed by the federal constitution. If greater protections are to be found in the Arizona Constitution than are found in the federal one, we agree with the Idaho Supreme Court that they must be “based on the uniqueness of our

⁶ For example, the Speaker urges us to resolve this matter by holding there is no right at all to an abortion under the Arizona Constitution and therefore no greater right than the federal right. However, the statutes before us do not purport to take away the right to an abortion in all circumstances. We therefore need not address the larger constitutional question. See *In re United States Currency of \$315,900.00*, 183 Ariz. 208, 211, 902 P.2d 351, 354 (App. 1995) (“avoiding resolution of constitutional issues, when other principles of law are controlling and the case can be decided without ruling on the constitutional questions.”)

state, our Constitution, and our long-standing jurisprudence.” *State v. Donato*, 20 P.3d 5, 8 (Idaho 2001). Therefore, to establish that a fundamental right to abortion exists in Arizona that is superior to the federal right, PPAZ must show that right is explicitly or implicitly protected by the Arizona Constitution, or that it is “deeply rooted” in Arizona’s “history and tradition . . . and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if [the right was] sacrificed.” See *Standhardt v. Super. Ct.*, 206 Ariz. 276, 280, ¶ 11, 77 P.3d 451, 455 (App. 2003).

¶15 To be sure, the drafters of the Arizona Constitution deliberately created an individual right of privacy that is not expressly set forth in the federal Bill of Rights. But the specific and limited regulations here, substantial equivalents of which have already been held not to offend the penumbral right of privacy that gave rise to federal abortion rights, do not implicate fundamental rights that are in any way unique to Arizona, its history or the intent of the framers of its Constitution. The fundamental rule of judicial restraint is to avoid constitutional questions unless “absolutely necessary” to decide the case. *Webster v. Reprod. Health Serv.*, 492 U.S. 490, 526 (1989) (O’Connor, J., concurring). Therefore, because Arizona’s citizens may “assert the right to choose as defined and articulated by the United States Supreme Court,” *Simat*, 203

Ariz. at 463, ¶ 35, 56 P.3d at 37, we too "reach no conclusion about whether the Arizona Constitution provides a right of choice," *id.*

II. THE UNDUE BURDEN TEST, NOT STRICT SCUTINY, APPLIES IN THIS CASE.

¶16 Although we hold that the trial court based its decision on an incorrect application of the law, "we are obliged to affirm the trial court's ruling if the result was legally correct for any reason." *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 191, 193, 836 P.2d 404, 406 (App. 1992). We therefore examine whether PPAZ has a likelihood of success on the merits of its claims under the correct legal standard.

¶17 Because *Simat* applied strict scrutiny under the state constitution to protect a federal right, we turn our attention to the standard of review under which these regulations must be evaluated. The trial court concluded that "[s]trict scrutiny is appropriate when 'the right that is to be affected is considered fundamental,'" citing *Simat; Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806 (1994); *Kenyon v. Hammer*, 142 Ariz. 69, 688 P.2d 961 (1984); and *Eastin v. Broomfield*, 116 Ariz. 576, 570 P.2d 744 (1977).

¶18 *Simat* did not hold that all regulations affecting fundamental rights are subject to strict scrutiny -- it held that strict scrutiny applies to *discriminatory* regulations of

fundamental rights. The regulations at issue here, however, do not discriminate against classes of people who seek to exercise a fundamental right. And while *Roosevelt* noted that there is conflicting precedent regarding the level of scrutiny to be applied when fundamental rights are at stake, that court determined that it "need not . . . resolve this conundrum" because more specific provisions of the Arizona Constitution were controlling. 179 Ariz. at 238, 877 P.2d at 811. Likewise, *Kenyon* cannot be read to hold that a statute that merely affects a fundamental right is automatically subject to strict scrutiny. Indeed, *Kenyon* acknowledged that "*Eastin* correctly applied the rational basis test" to those portions of a statute that "merely regulate" how a fundamental right may be exercised. 142 Ariz. at 83, 688 P.2d 975; accord *Tahtinen v. Super. Ct.*, 130 Ariz. 513, 515, 637 P.2d 723, 725 (1981) (discussing *Eastin's* use of rational basis review of statutes that regulate a fundamental right, and holding "that unless a fundamental right is violated or an invidious classification is created, a statute impinging on the equal privileges and immunities of a class of Arizona residents will be upheld if it has a rational basis.").⁷

⁷ Our supreme court has held that the test for distinguishing between impingement upon and violation of a right is whether exercising the right is still a "reasonable election." *Barrio v. San Manuel Div. Hosp. for Magma Copper Co.*, 143 Ariz. 101, 106, 692 P.2d 280, 285 (1984).

Finally, our supreme court did not apply strict scrutiny to a statute that prohibited non-therapeutic abortions in some state-run hospitals, and upheld the statute because it did not "significantly interfere with the right of choice to have an abortion." *Roe v. Ariz. Board of Regents* ("Regents"), 113 Ariz. 178, 180, 549 P.2d 150, 152 (1976). The trial court therefore erred in concluding that strict scrutiny must be applied to any statute that affects the exercise of a fundamental right.⁸

¶19 Because we are reviewing statutes that affect an oft-litigated federal constitutional right and there is no Arizona law prescribing a standard of review for enforcement under the Arizona Constitution, we follow the federal standard. In *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992), the Supreme Court overruled previous decisions applying strict scrutiny to laws regulating abortion rights, acknowledging that those decisions "undervalue[d] the State's interest in the potential life within the woman," *id.* at 875, and were inconsistent with the Court's "jurisprudence relating to all

⁸ It is well settled that not every law "affecting" the exercise of a fundamental right is subject to strict scrutiny. For example, time, place and manner restrictions on speech are not subject to strict scrutiny, though content-based restrictions are. See, e.g., *Hill v. Colorado*, 530 U.S. 703 (2000) (upholding statute that restricted protected speech within 100 feet of the entrance to a health-care facility under intermediate level of scrutiny).

liberties" which "recognized [that] not every law that makes a right more difficult to exercise is, *ipso facto*, an infringement of that right," *id.* at 873. Instead, the court held that a statute that affects abortion rights is not unconstitutional if "it serves a valid purpose, one not designed to strike at the right itself," and does not "impose[] an undue burden on a woman's ability" to exercise her rights. *Id.* at 874.⁹ In other words, "Casey thus requires courts to determine whether a large fraction of the women 'for whom the law is a restriction' will be 'deterred from procuring an abortion as surely as if the [government] has outlawed abortion in all cases.'" *Cincinnati Women's Servs., Inc. v. Taft*, 468 F.3d 361, 370 (6th Cir. 2006).

¶20 One state supreme court has found an implied right to abortion in its state constitution and rejected the federal

⁹ In *Casey*, Justices O'Connor, Kennedy and Souter applied the "undue burden" test, 505 U.S. at 874; Chief Justice Rehnquist and Justices White, Scalia and Thomas would have applied rational basis review, 505 U.S. at 966 (concurring in part and dissenting in part); and Justices Stevens, 505 U.S. at 917 (concurring in part and dissenting in part), and Blackmun, 505 U.S. at 923 (concurring in part and dissenting in part), would have applied strict scrutiny. *Casey* therefore holds that the "undue burden" standard applies, because "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977) (internal citation omitted) (internal quotation marks omitted). The joint holding of *Casey* was reaffirmed by a majority of the Supreme Court in *Stenberg v. Carhart*, 530 U.S. 914, 946 (2000).

standard of review, applying instead strict scrutiny to regulatory statutes. *Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W.3d 1, 15-17 (Tenn. 2000). There, the Tennessee Supreme Court rejected Casey's "undue burden" test as "essentially no standard at all," which therefore would "allow[] judges to impose their own subjective views." *Id.* at 16.

¶21 We reject *Sundquist's* characterization of the Casey standard. We also reject the notion that judges can be expected simply to default to their "subjective views" when faced with difficult questions. We join instead with other state courts that have applied the Casey standard. See, e.g., *Clinic for Women, Inc. v. Brizzi*, 837 N.E.2d 973, 987 (Ind. 2005); *Pro-Choice Miss. v. Fordice*, 716 So.2d 645, 654-55, ¶ 34 (Miss. 1998). Unlike the Tennessee court, we believe our courts are capable of properly applying the "undue burden" standard of Casey, just as they are capable of applying the "reasonableness" standard for intrusions on other protected privacy interests. See, e.g., *In re One 1965 Econoline*, 109 Ariz. 433, 434-36, 511 P.2d 168, 169-71 (1973) (Fourth Amendment prohibits "unreasonable" searches). Moreover, we find support for the Casey standard in *Barrío*, 143 Ariz. at 106, 692 P.2d at 285 (Feldman, J.), which held that a fundamental state constitutional right was not violated when the exercise of the right was still a "reasonable election" -- an undue burden

ATTACHMENT B-2

Filing Date: August 5, 2016

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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

KENNETH A. VOLK, *Petitioner,*

v.

THE HONORABLE VERONICA W. BRAME, Commissioner of the SUPERIOR
COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA,
Respondent Commissioner,

ANNALISA ALVRUS, STATE OF ARIZONA *ex rel.* ARIZONA DEPARTMENT
OF ECONOMIC SECURITY (ANNALISA B. ALVRUS), *Real Parties in Interest.*

No. 1 CA-SA 14-0079

FILED 08-28-2014

Petition for Special Action from the Superior Court in Maricopa County
No. FC2001-000831
The Honorable Veronica W. Brame, Judge *Pro Tempore*

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Berkshire Law Office, PLLC, Phoenix
By Keith Berkshire, Maxwell Mahoney
Counsel for Petitioner

Arizona Attorney General's Office, Phoenix
By Carol A. Salvati
Counsel for Real Party in Interest State of Arizona

VOLK v. HON. BRAME/ALVRUS
Opinion of the Court

OPINION

Judge Peter B. Swann delivered the opinion of the Court, in which Presiding Judge John C. Gemmill and Judge Patricia A. Orozco joined.

SWANN, Judge:

¶1 This case requires us to reaffirm the importance of due process in family court. Kenneth A. Volk (“Father”) petitions for special action relief from the family court’s order modifying his child support obligation. He contends that the court denied him a meaningful opportunity to be heard and to confront adverse evidence during the hearing from which the order was issued. We agree. We hold that when the resolution of an issue before the court requires an assessment of credibility, the court must afford the parties an opportunity to present sworn oral testimony, and may not rely solely on avowals of counsel. We further hold that a court abuses its discretion when it adheres to rigid time limits that do not permit adequate opportunity for efficient direct testimony and cross-examination. Accordingly, we accept jurisdiction, vacate the order modifying Father’s child support obligation, and remand for a new hearing consistent with this opinion.

JURISDICTION

¶2 It is fundamental to due process that a court provide a forum for witness testimony, and that it refrain from resolving matters of credibility on documents alone. We accept special action jurisdiction in this case because of the need to correct an error revealing a breakdown of that basic function. See *King v. Superior Court (Bauer)*, 138 Ariz. 147, 149-50, 673 P.2d 787, 789-90 (1983) (“[Special action] jurisdiction is frequently accepted when under no rule of law can a trial court’s actions be justified.”); *State v. Bernini*, 230 Ariz. 223, 225, ¶ 6, 282 P.3d 424, 426 (App. 2012) (“Special action relief is appropriate if the respondent judge has abused her discretion by committing an error of law or proceeding in excess of her legal authority.”); *Amos v. Bowen*, 143 Ariz. 324, 327, 693 P.2d 979, 982 (App. 1984) (“Special action jurisdiction may be assumed to correct a plain and obvious error committed by the trial court.”). Failures of due process are inherently of statewide importance. When due process succumbs to the demands of expedience created in high-volume settings such as family court, the risk that the error will recur is real and special action jurisdiction is appropriately exercised.

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Opinion of the Court

FACTS AND PROCEDURAL HISTORY

¶3 Father filed a Request to Modify Child Support “Simplified Procedure,” seeking a reduction of his monthly child support obligation from \$548.89 to \$222.09.¹ Annalisa Alvrus (“Mother”) opposed Father’s request, arguing that the court should instead increase Father’s monthly obligation to \$1,796 and requesting a hearing at which she could “present evidence to establish he[r] contentions.”

¶4 The court granted Mother’s request for a hearing and allotted 15 minutes for the proceeding. The court ordered the parties to exchange financial information before the hearing, including financial affidavits, tax returns, pay stubs, evidence of other income such as trust disbursements, and proof of child-care expenses.² At the time first set for the hearing, Father asked the court to allot more time to present witnesses and exhibits concerning his income from self-employment. The court denied Father’s request, but continued the hearing to allow the parties to resolve parenting time issues pending before a different judge.

¶5 Mother then filed a Motion to Expand Time for Evidentiary Hearing, contending that the time allotted would not allow for adequate testimony and review of the evidence. Father objected to Mother’s motion, arguing that he had been preparing for a hearing within the scheduled timeframe because the court had already denied his request for additional time. Father further argued that his “exhibits [would] be fully sufficient for the court to render an adequate determination of the issues at hand” and that he would “be prepared to testify regarding his exhibits within the time allocated by [the] Court.” Mother’s reply then joined in Father’s original request for additional time, but the court denied her motion.

¹ The Arizona Child Support Guidelines provide a “Simplified Procedure” for a parent who can show that application of the Guidelines would result in a child support order that varies 15% or more from the existing order. A.R.S. § 25-320 app. § 24(B) (“Guidelines”); *see also* ARFLP 91(B)(2)(b). If the parent receiving service timely requests a hearing, the court must conduct one before it can modify the existing order. Guidelines § 24(B).

² Consistent with the state’s role in child support proceedings under Title IV-D of the Social Security Act, 42 U.S.C. §§ 651-669b, the attorney general’s office also participated in the hearing.

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Opinion of the Court

¶6 At the outset of the continued hearing, Mother's counsel again objected that 15 minutes would be insufficient to review the evidence that Father intended to present, specifically raising procedural due process as a ground. The court overruled the objection, explaining that on matters set on Tuesdays and Wednesdays: "we don't have the opportunity to have a longer hearing. We tell you what documents you have to present to the Court in your order to appear before the Court. Those are the documents that we usually look at." The remainder of the hearing focused on the court's effort to identify and organize exhibits relevant to the parties' dispute over Father's income and parenting time.

¶7 Father's counsel argued that Father's income for child support purposes was \$1,432 a month, based on his tax returns "[a]nd all of his paperwork and everything that [he] provided to [the court], . . . [including] every single copy of every single bill, of every single debt, of every single charge associated with his self-employment."

¶8 Mother's counsel in turn asserted that Father's income ranged from \$8,762 a month "on the low side" to \$9,521 "on the high side," based on his review of recent business account statements and his own determination of allowable deductions for various expenses reflected in receipts, profit-and-loss statements and payroll records obtained through disclosure. Mother's counsel also alleged that Father received income from a trust. The difference between Mother's "high side" and "low side" calculations was never explained.

¶9 As the hearing proceeded the court asked the parties to submit the documents that they had relied on for their respective income calculations. Seated at counsel table, Father attempted to dispute the accuracy of the bank account statements on which Mother's counsel based his calculations by suggesting that they did not accurately reflect the course of his business. The court responded: "Okay. I need the bank statements from [Mother], and then anything you want to present on your side about those . . . you can present them." But the court never allowed Father to explain what his business was -- much less how it operates or the details of its finances. In fact, he was never allowed to testify at all. Instead, the court repeatedly interrupted Father's attempts to explain his view of the submitted exhibits, and insisted that all the parties could do was to provide the specific documents that the court had requested.

¶10 When Father's counsel voiced concern over the accuracy of a demonstrative chart that Mother's counsel offered as evidence of Father's income, the court interrupted: "This is how this is going to work. [Mother's

VOLK v. HON. BRAME/ALVRUS
Opinion of the Court

counsel is] going to present . . . his information, whether it's accurate or not. You're going to present me your information that says it's not true. I'm going to look at both of them, and then I'm going to make a decision." The court added: "I just need for you two to give me the documents. . . . You don't have to tell me what you presented. Just give it to the Clerk, [and] have her . . . mark it because I'm going to look at it."

¶11 At the conclusion of the hearing, the court again denied Father an opportunity to clarify the evidence, and indicated that it would assess the parties' credibility based solely on the disputed documents already submitted without taking any sworn testimony or additional evidence:

[FATHER'S COUNSEL]: . . . And then one last thing. My client did want to -- because if the Court's just going to review, he would like to just inform the Court briefly what documents he's provided to the Court.

THE COURT: No, ma'am. No, ma'am. I have the documents that I've asked for, and I'm not taking any additional documents.

[FATHER]: Your Honor?

THE COURT: No.

[FATHER]: One last statement?

THE COURT: No, sir, no last statement. I'm going to look at the files.

[FATHER'S COUNSEL]: Okay.

THE COURT: I'm going to look at all the paperwork you gave me, and I'm going to make a decision. I'm going to look at what orders are in place, when the orders were dated . . . and go forth from that. Okay? *I'm going to look at the total picture of this case . . . from my paper view and what you have given me. Okay. Because the argument is that, you know, [Mother] said things, and [Father] says no, it's not true. I'm going to look at the paper and make a ruling. This will be done by minute entry under advisement.*

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(Emphasis added.) The hearing lasted 31 minutes, during which the court admitted 23 of Father's exhibits and 11 of Mother's exhibits, including the demonstrative chart containing the calculation that Mother's counsel prepared and explained at length without supporting testimony.

¶12 The court issued a written decision, in which it stated that it had "heard testimony from Father and Mother, the argument of the attorneys, reviewed the legal file, the voluminous exhibits, the documentation submitted regarding Father's Trust account, and A.R.S. § 25-320 and the Child Support Guidelines." The court issued the following finding:

Despite the voluminous receipts and documents, *they do not add up to \$1,431.99 for Father's income*. The deposits for the business are over \$174,000.00; and the Court finds some business expenses are problematic. The business (which is out of the home) and personal expenses are combined.

....

THE COURT FINDS Father receives money from both his business and the trust account.

THE COURT FURTHER FINDS income for Father is \$9,521.00 per month.

¶13 Based on those findings, the court concluded that Mother's "high side" income calculation was correct to the penny and ordered Father to pay \$1,034 per month in child support, and later added \$400 per month to cover child support arrears. This special action followed.

DISCUSSION

I. CONTESTED ISSUES OF CREDIBILITY MUST BE DECIDED WITH THE AID OF SWORN WITNESS TESTIMONY.

¶14 We begin with the fundamental proposition that due process requires the court to allow parties a reasonable opportunity to present testimony whenever resolution of a material contested issue hinges on credibility. Here, the court recognized that credibility was central to the issue before it but expressly rejected the parties' efforts to testify, choosing instead to rely on a "paper view" to decide the petition. Such an approach categorically violates due process.

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¶15 In *Goldberg v. Kelly*, the United States Supreme Court held:

[W]ritten submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decision maker appears to regard as important. *Particularly where credibility and veracity are at issue . . . written submissions are a wholly unsatisfactory basis for decision. . . . Therefore a recipient must be allowed to state his position orally.*

397 U.S. 254, 269 (1970) (emphasis added); *see also Deuel v. Ariz. State Sch. for Deaf & Blind*, 165 Ariz. 524, 527, 799 P.2d 865, 868 (App. 1990) (due process requires the court to provide an “opportunity to be heard *in person*” to employees wishing to contest termination from public employment (emphasis added) (citation omitted)).

¶16 Though *Goldberg* arose in the benefits-eligibility context, its holding goes to the essence of the courts’ function and it applies with equal force in all judicial proceedings. In *Pridgeon v. Superior Court (LaMarca)*, a custody-modification case, our supreme court held: “If the affidavits are directly in opposition upon any substantial and crucial fact relevant to the grounds for modification, the court may not conduct a ‘trial by affidavit’, attempting to weigh the credibility of the opposing statements. In such a case, the court must hold a hearing.” 134 Ariz. 177, 181, 655 P.2d 1, 5 (1982); *cf. Orme Sch. v. Reeves*, 166 Ariz. 301, 311, 802 P.2d 1000, 1010 (1990) (court may not grant summary judgment if doing so would require it to assess “the credibility of witnesses with differing versions of material facts, . . . weigh the quality of documentary or other evidence, . . . [or] choose among competing or conflicting inferences”); *Ong Hing v. Thurston*, 101 Ariz. 92, 100, 416 P.2d 416, 424 (1966) (court errs by relying solely on “the testimony of others and documentary evidence in the case file to ascertain if an act of contempt ha[s] occurred,” because “whenever there is doubt as to the character of the alleged contempt, . . . justice is better served by giving an alleged contemnor his day in court rather than summarily holding him in contempt”).

¶17 Our analysis is informed by the reasoning of other courts that have concluded that trial courts cannot properly assess credibility without allowing the parties an opportunity to present oral testimony. In *Carvalho v. Carvalho*, the Alaska Supreme Court vacated a judgment for child support arrears issued after a hearing that consisted entirely of the attorneys’ oral argument and references to previously filed affidavits and memoranda. 838 P.2d 259, 259-60, 263 (Alaska 1992). Although the attorney for the father

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attempted to present evidence on disputed issues and informed the trial court that the father was available to testify, the trial court refused to take additional evidence or testimony. *Id.* at 260-61, 263. On appeal, the court “recognize[d] that in a proceeding to collect past due child support some procedural safeguards are reasonably eased to ensure that the child’s welfare is protected,” but nevertheless held that “the trial court’s refusal to admit [the father]’s testimony or take other evidence at the hearing deprived [the father] of a meaningful opportunity to be heard.” *Id.* at 263. The court reasoned that the case “clearly involved *contested facts* . . . [and the father]’s only opportunity to present *live* testimony or to cross-examine [the mother] came at the hearing.” *Id.* (emphases added).

¶18 Likewise, the court in *Garzon v. D.C. Comm’n on Human Rights* reversed an administrative tribunal’s decision because the tribunal had relied solely on documentary evidence to make credibility findings. 578 A.2d 1134, 1135, 1140-41 (D.C. 1990). The court concluded that “[i]mplicit in these [credibility] findings is a direct conflict among the factual accounts related by [the parties]” and “[t]he [tribunal] was not in a position to make such credibility findings because the affidavits . . . and the unsworn correspondence . . . provided insufficient data for resolving their conflicting stories.” *Id.* at 1140. Considering the documentary evidence provided by the parties “without accompanying testimony at an evidentiary hearing, the [tribunal] had no reliable basis for assessing [the parties’] credibility; the documents, sworn and unsworn, telling different stories, lacked demeanor evidence or other indicia of truthfulness essential to perceiving what really happened in this case.” *Id.* at 1141.³

³ Other cases from around the country echo the same reasoning. *See, e.g., Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013) (“In any contested administrative hearing, admission of a party’s testimony is particularly essential to a full and fair hearing where credibility is a determinative factor, as it was here.”); *Nowacki v. Nowacki*, 455 N.Y.S.2d 406, 407 (App. Div. 1982) (“[T]he Family Court abused its discretion in making a determination as to the amount of support required based merely upon the unsworn statements of the wife’s attorney and unverified financial data sheets, rather than the wife’s personal testimony supported by appropriate documentary evidence of her expenses and outstanding accounts.”).

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II. TIME LIMITS VIOLATE DUE PROCESS WHEN THEY PREVENT A MEANINGFUL OPPORTUNITY TO BE HEARD AND TO CONFRONT ADVERSE EVIDENCE.

¶19 The idea that witness testimony is essential to the resolution of disputed facts is not novel. But unless that principle is kept squarely in mind, the crush of busy caseloads can lead to a creeping perception that full evidentiary presentations are neither warranted nor possible in seemingly routine matters on high-volume calendars. Procedural due process, however, requires the court to afford litigants adequate time to present their evidence.

¶20 We recognize that the family court enjoys broad discretion to “impose reasonable time limits on all proceedings or portions thereof and [to] limit the time to scheduled time.” ARFLP 22(1); *see also* Ariz. R. Evid. 611, cmt. to 2012 amendment; *Findlay v. Lewis*, 172 Ariz. 343, 346, 837 P.2d 145, 148 (1992) (“A trial court has broad discretion over the management of its docket. Appellate courts do not substitute their judgment for that of the trial court in the day-to-day management of cases.”). But the court’s discretion is not limitless and cannot be exercised unreasonably. The court must afford the parties “an opportunity to be heard at a meaningful time and in a meaningful manner” before it modifies an order of child support. *See Curtis v. Richardson*, 212 Ariz. 308, 312, ¶ 16, 131 P.3d 480, 484 (App. 2006). “A trial court errs if it modifies child support without . . . allowing the parties to gather and present their evidence.” *Heidbreder v. Heidbreder*, 230 Ariz. 377, 381, ¶ 14, 284 P.3d 888, 892 (App. 2012); *see also Cook v. Losnegard*, 228 Ariz. 202, 206, ¶¶ 19-20, 265 P.3d 384, 388 (App. 2011) (vacating order modifying child support in part because trial court failed to receive or consider evidence, and directing court to consider such evidence on remand).

¶21 Though the court may impose time limits that appear reasonable in advance of a proceeding, those limits become unreasonable if they prove insufficient to allow a substantive hearing. If, during the progress of a scheduled hearing, it becomes apparent that the court lacks sufficient time to receive adequate testimony, then the court must allow reasonable additional time or continue the hearing to permit it to perform its essential tasks.⁴ *See Goldberg*, 397 U.S. at 268-69 (“The opportunity to be

⁴ In this case, it appears that the court felt constrained by the nature of its Tuesday and Wednesday calendars to limit the entire proceeding to a period of minutes despite the large quantity of evidence that required

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heard must be tailored to the capacities and circumstances of those who are to be heard.”); *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, 91, ¶ 29, 977 P.2d 807, 813 (App. 1998) (time limits predetermined by the court “must be reasonable under the circumstances . . . [and] should be sufficiently flexible to allow adjustment during [the hearing]”). When the court allows *no* time to hear testimony, or when the time available for each necessary witness does not allow for meaningful direct testimony and efficient but adequate cross-examination, the court violates the parties’ due process rights.

¶22 By holding that the court remain sufficiently flexible in its allotment of time to preserve due process, we do not suggest that the court must indulge inefficient use of time by parties or their counsel. The determination of when additional time is necessary is normally committed to the discretion of the trial court. Here, however, despite the trial court’s written statement that it had considered the testimony of both parties, it received no testimony at all. The transcript and video recording of the hearing reveal that no witnesses were sworn, no witnesses were called or examined, and the court summarily rejected the parties’ polite attempts to offer explanatory comments.⁵ The court’s insistence that Father submit documents only -- and not testify about those documents -- violated his right to present his evidence.⁶

review. Whatever procedures the court adopts to organize and manage busy calendars, however, it can never lose sight of its fundamental obligation to afford due process to all parties. In some cases, this requirement will trump uniform case-management schemes.

⁵ The discrepancy between the minute entry and the transcript on these points is a serious matter. We have therefore reviewed the video recording of the hearing to ensure that our analysis is not based on a flawed transcription.

⁶ We reject Mother’s contention that Father failed to raise his due process argument in the court below. Father in fact made several calm attempts during the hearing to clarify his exhibits and confront Mother’s evidence, even after the court refused to entertain his requests and told the parties to “settle down.” Though Father did not object with the “magic words” of due process, he implicitly raised the same arguments below that he now presents on special action and therefore adequately preserved the issue for our review. *See State v. Martinez*, 172 Ariz. 437, 440, 837 P.2d 1172, 1175 (App. 1992). Even so, we note that “[a] constitutional issue may be

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¶23 The fact that counsel were given some limited opportunity to outline their respective views of the facts did not remedy the problem. The practice of requiring presentation by avowal is no more effective a means of affording due process than deciding a case based on competing stacks of paper. While parties may stipulate to proceed in this manner, the court need not accept such a stipulation and should never expressly or impliedly force litigants to surrender their right to testify. And even when the parties stipulate to avowals, caution is appropriate because the court may be left without the means to resolve conflicts in those avowals.

¶24 “In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.” *Goldberg*, 397 U.S. at 269; *see also Obersteiner v. Indus. Comm’n*, 161 Ariz. 547, 549, 779 P.2d 1286, 1288 (App. 1989) (“The right to cross-examination is fundamental and attaches when . . . any testamentary or documentary evidence [is received].”). By limiting Father’s opportunity to confront Mother’s evidence to the submission of his own exhibits, the court denied Father his due process rights. And when counsel proceed by avowal, cross-examination cannot occur -- the finder of fact is left merely to consider argument, not evidence. Here, there was no adversarial check on the quality of the information that Mother provided to the court and upon which it relied to modify Father’s child support obligation. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1069 (9th Cir. 1995); *see also Castro v. Castro*, 627 A.2d 452, 457 (Conn. App. 1993) (“Where a party is not afforded an opportunity to subject the factual determinations underlying the trial court’s decision to the crucible of meaningful adversarial testing, an order cannot be sustained.” (citation omitted) (internal quotation marks omitted)).

¶25 The court adopted Mother’s counsel’s “high side” calculation in its entirety. Yet its summary findings -- that his receipts “do not add up to \$1,431.99 for Father’s income” and that “some business expenses are problematic” -- do not show that the court’s decision was based on an informed review of the evidence. It may well be the case that Father understated his income and overstated his deductions. But neither we nor the trial court have any means of quantifying any such error based on this

raised and addressed for the first time on appeal, particularly when, as here, the issue is of statewide importance, is raised in the context of a fully developed record, does not turn on resolution of disputed facts, and has been fully briefed by the parties.” *Larsen v. Nissan Motor Corp. in U.S.A.*, 194 Ariz. 142, 147, ¶ 12, 978 P.2d 119, 124 (App. 1998).

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record, because Father never had the chance to explain his view of the evidence. Calculation of the income of a self-employed individual can be a difficult and tedious task, but it is not an all-or-nothing choice between the positions taken by adverse parties. By rejecting Father's tax returns in their entirety and adopting counsel's estimate, the court leaves the clear impression that avowals, not evidence, formed the basis of its decision.

¶26 Without allowing Father an opportunity to explain his own evidence and dispute Mother's evidence, there is a grave risk that the court erroneously determined his income. Yet the court ordered Father to pay child support and arrears in an amount that would, in the year after the hearing, equal nearly the entire income reported on his tax return for the year preceding the hearing. This is not a minor matter -- if Father fails to comply with that order, he is subject to potential incarceration. *See* A.R.S. §§ 25-502(I) (court has power to issue child support arrest warrant and to find a party in contempt of court, requiring payment to secure release from custody or to purge the contempt), -508(A) (child support orders are enforceable by any "form of relief provided by law as an enforcement remedy for civil judgments"), -509(A) (attorney general may initiate or intervene in an action to enforce the duty of support by all means available, including all civil and criminal remedies provided by law). "The interest in securing . . . the freedom from bodily restraint lies at the core of the liberty protected by the Due Process Clause." *Turner v. Rogers*, 131 S. Ct. 2507, 2518 (2011) (citation omitted) (internal quotation marks omitted). "Given the importance of the interest at stake, it is obviously important to assure accurate decisionmaking in respect to the key 'ability to pay' question." *Id.* Due process errors require reversal only if a party is thereby prejudiced. *County of La Paz v. Yakima Compost Co.*, 224 Ariz. 590, 598, ¶ 12, 233 P.3d 1169, 1177 (App. 2010). Here, there can be no question that Father was prejudiced by the court's due process violation.

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CONCLUSION

¶27 For the reasons set forth above, we accept jurisdiction, vacate the order modifying Father's child support obligation, and remand for a new hearing consistent with this opinion.



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

ATTACHMENT C

Filing Date: August 5, 2016

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Appellate Courts

Name of Judge:	Total Surveys: 185										Assignment: Appellate										Cycle: 2015 Mid-term Review									
	ATTORNEY					PEER JUDGE/JUSTICE					SUP COURT JUDGE					STAFF														
	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU										
Hon. Peter Swann																														
Section I: Legal Ability	0%	5%	10%	20%	65%	0%	0%	0%	9%	91%	0%	0%	19%	19%	61%	0%	0%	0%	17%	83%										
Legal reasoning ability	0%	7%	6%	22%	65%	0%	0%	0%	9%	91%	0%	0%	19%	19%	62%	0%	0%	0%	17%	83%										
Knowledge of law	0%	2%	13%	15%	70%	0%	0%	0%	9%	91%	0%	0%	18%	20%	63%	0%	0%	0%	17%	83%										
Decisions based on law and facts	0%	9%	8%	17%	66%	0%	0%	0%	9%	91%	0%	2%	19%	17%	62%	0%	0%	0%	17%	83%										
Clearly written, legally supported decisions	0%	2%	12%	27%	59%	0%	0%	0%	9%	91%	0%	0%	19%	21%	60%	0%	0%	0%	17%	83%										
Section II: Integrity	0%	1%	7%	15%	77%	0%	0%	0%	9%	91%	0%	0%	12%	15%	72%	0%	0%	0%	17%	83%										
Basic fairness and impartiality	0%	2%	8%	20%	69%	0%	0%	0%	9%	91%	0%	2%	12%	12%	74%	0%	0%	0%	17%	83%										
Equal treatment regardless of race	0%	3%	6%	13%	78%	0%	0%	0%	9%	91%	0%	0%	13%	16%	72%	0%	0%	0%	17%	83%										
Equal treatment regardless of gender	0%	0%	6%	13%	81%	0%	0%	0%	9%	91%	0%	0%	12%	18%	70%	0%	0%	0%	17%	83%										
Equal treatment regardless of religion	0%	3%	7%	13%	77%	0%	0%	0%	9%	91%	0%	0%	13%	16%	72%	0%	0%	0%	17%	83%										
Equal treatment regardless of national origin	0%	3%	7%	13%	77%	0%	0%	0%	9%	91%	0%	0%	13%	16%	72%	0%	0%	0%	17%	83%										
Equal treatment regardless of disability	0%	0%	7%	14%	79%	0%	0%	0%	9%	91%	0%	0%	13%	16%	72%	0%	0%	0%	17%	83%										
Equal treatment regardless of age	0%	0%	7%	17%	77%	0%	0%	0%	9%	91%	0%	0%	13%	16%	72%	0%	0%	0%	17%	83%										
Equal treatment regardless of sexual orientation	0%	0%	7%	14%	79%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Equal treatment regardless of economic status	0%	0%	6%	15%	79%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Section III: Communication Skills	1%	2%	11%	19%	66%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Attentiveness	0%	2%	9%	25%	65%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Demeanor in communications with counsel	2%	5%	13%	18%	62%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Appropriate restrictions on counsel during argument	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Relevant questions	4%	0%	13%	14%	70%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Preparation for oral argument	0%	2%	11%	20%	67%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Clear and logical communications	3%	2%	13%	16%	66%	0%	0%	5%	18%	77%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Section IV: Judicial Temperament	2%	2%	18%	24%	54%	0%	0%	5%	33%	62%	0%	0%	18%	27%	55%	0%	0%	0%	19%	81%										
Understanding and compassion	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Dignified	2%	0%	13%	20%	66%	0%	0%	0%	18%	82%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Courteous	2%	4%	15%	16%	64%	0%	0%	9%	18%	73%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Patient	4%	4%	15%	15%	64%	0%	0%	9%	18%	73%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Conduct that promotes public confidence in the court	4%	0%	11%	15%	70%	0%	0%	0%	18%	82%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Section V: Administrative Performance	2%	2%	18%	24%	54%	0%	0%	5%	33%	62%	0%	0%	18%	27%	55%	0%	0%	0%	19%	81%										
Punctual in conducting proceedings	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Maintains proper control over courtroom	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Prepared for proceedings	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Respectful treatment of staff	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Cooperation with peers	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Cooperation with staff	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Efficient management of calendar	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Promptness in making rulings and rendering decisions	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Works effectively with other court personnel	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Works effectively with other court personnel	0%	0%	0%	0%	100%	0%	0%	0%	9%	91%	0%	0%	12%	15%	73%	0%	0%	0%	17%	83%										
Effective handling of ongoing workload	2%	2%	18%	24%	54%	0%	0%	5%	33%	62%	0%	0%	18%	27%	55%	0%	0%	0%	19%	81%										
	3.4	3.5	3.4	3.4	3.4	3.7	3.6	3.4	3.4	3.4	3.6	3.4	3.4	3.4	3.6	3.4	3.4	3.4	3.4	3.4										
Mean	3.4	3.5	3.4	3.4	3.4	3.7	3.6	3.4	3.4	3.4	3.6	3.4	3.4	3.4	3.6	3.4	3.4	3.4	3.4	3.4										
Mean	3.4	3.5	3.4	3.4	3.4	3.7	3.6	3.4	3.4	3.4	3.6	3.4	3.4	3.4	3.6	3.4	3.4	3.4	3.4	3.4										

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

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

Surveys were distributed to court users from 04/2012 - 03/2015

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Appellate Courts

Name of Judge:	Total Surveys: 185										Assignment: Appellate										Cycle: 2015 Mid-term Review										
	ATTORNEY					PEER JUDGE/JUSTICE					SUP COURT JUDGE					STAFF					7										
	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	Total Mean
Hon. Peter Swann	0	3	5	11	34	0	0	0	1	10	0	0	0	10	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.9
Section I: Legal Ability	0	4	3	12	35	0	0	0	1	10	0	0	0	10	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.4
Legal reasoning ability	0	0	1	7	38	0	0	0	1	10	0	0	0	10	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.4
Knowledge of law	0	0	5	4	9	0	0	0	1	10	0	0	0	10	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.5
Decisions based on law and facts	0	1	6	13	29	0	0	0	1	10	0	0	0	10	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.4
Clearly written, legally supported decisions	0	0	2	5	25	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Section II: Integrity	0	1	4	10	34	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Basic fairness and impartiality	0	1	2	4	25	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Equal treatment regardless of race	0	0	2	4	25	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Equal treatment regardless of gender	0	0	2	4	26	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Equal treatment regardless of religion	0	1	2	4	23	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Equal treatment regardless of national origin	0	1	2	4	23	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Equal treatment regardless of disability	0	0	2	4	23	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Equal treatment regardless of age	0	0	2	5	23	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Equal treatment regardless of sexual orientation	0	0	2	4	22	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Equal treatment regardless of economic status	0	0	2	5	26	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Section III: Communication Skills	1	1	5	9	30	0	0	0	1	10	0	0	0	4	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Attentiveness	0	1	5	14	37	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Demeanor in communications with counsel	1	3	7	10	34	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Appropriate restrictions on counsel during argument	0	0	0	0	1	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Relevant questions	2	0	7	8	39	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Preparation for oral argument	0	1	6	11	37	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Clear and logical communications	2	1	7	9	36	0	0	1	2	9	0	0	1	2	9	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Section IV: Judicial Temperament	1	0	7	11	37	0	0	0	2	9	0	0	0	2	9	0	0	0	2	9	0	0	0	2	9	0	0	0	2	9	3.6
Understanding and compassion	1	2	8	9	35	0	0	0	1	8	0	0	0	1	8	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.3
Dignified	2	2	8	8	35	0	0	1	2	8	0	0	1	2	8	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.7
Courteous	2	0	6	8	37	0	0	0	2	9	0	0	0	2	9	0	0	0	2	9	0	0	0	2	9	0	0	0	2	9	3.9
Patient	2	0	6	8	37	0	0	0	2	9	0	0	0	2	9	0	0	0	2	9	0	0	0	2	9	0	0	0	2	9	3.6
Conduct that promotes public confidence in the court	1	1	9	12	27	0	0	1	4	7	0	0	1	4	7	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.6
Section V: Administrative Performance	1	1	9	12	27	0	0	1	4	7	0	0	1	4	7	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Punctual in conducting proceedings	0	0	2	5	25	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Maintains proper control over courtroom	0	0	2	5	25	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Prepared for proceedings	0	0	2	5	25	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Respectful treatment of staff	0	0	2	5	25	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Cooperation with peers	0	0	2	5	25	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Cooperation with staff	0	0	2	5	25	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Efficient management of calendar	0	0	2	5	25	0	0	0	1	10	0	0	0	1	10	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Promptness in making rulings and rendering decisions	1	1	9	12	27	0	0	1	5	5	0	0	1	5	5	0	0	0	1	5	0	0	0	1	5	0	0	0	1	5	3.8
Works effectively with other judges	0	0	0	0	1	0	0	0	4	7	0	0	0	4	7	0	0	0	4	7	0	0	0	4	7	0	0	0	4	7	3.6
Works effectively with other court personnel	0	0	0	0	1	0	0	0	4	7	0	0	0	4	7	0	0	0	4	7	0	0	0	4	7	0	0	0	4	7	3.6
Effective handling of ongoing workload	0	0	1	4	6	0	0	1	4	6	0	0	1	4	6	0	0	1	4	6	0	0	1	4	6	0	0	1	4	6	3.5

Surveys were distributed to court users from 04/2012 - 03/2015

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

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

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Appellate Courts

Name of Judge: APP-11 Hon. Peter Swann	Total Surveys: 340										Assignment: Appellate										Cycle: Retention Election															
	ATTORNEY					PEER JUDGE/JUSTICE					SUP COURT JUDGE					STAFF					UN					SU										
	UN	PU	SA	VG	SU	UN	PU	SA	VG	SU	UN	PU	SA	VG	SU	UN	PU	SA	VG	SU	UN	PU	SA	VG	SU	UN	PU	SA	VG	SU	Total Mean	Total Mean	Total Mean	Total Mean		
Section I: Legal Ability	5	13	19	23	65	124	3.0	0	0	1	2	11	14	3.7	1	4	6	8	59	77	3.6															
Legal reasoning ability	4	14	19	24	65	126	3.0	0	0	1	2	11	14	3.7	0	6	4	8	59	77	3.6															
Knowledge of law	2	4	26	25	63	120	3.2	0	0	1	1	12	14	3.8	0	3	7	8	59	77	3.6															
Decisions based on law and facts	8	16	15	20	67	126	3.0	0	0	1	3	10	14	3.6	2	2	6	8	59	77	3.6															
Clearly written, legally supported decisions	6	16	16	22	64	124	3.0	0	0	1	3	10	14	3.6	0	4	6	8	59	77	3.6															
Section II: Integrity	0	1	4	11	42	59	3.6	0	0	0	1	13	14	3.9	0	0	2	2	42	46	3.9															
Basic fairness and impartiality	4	11	7	18	73	113	3.3	0	0	0	1	13	14	3.9	0	0	3	5	54	62	3.8															
Equal treatment regardless of race	0	0	4	10	39	53	3.7	0	0	0	1	13	14	3.9	0	0	2	1	40	43	3.9															
Equal treatment regardless of gender	0	0	4	11	40	55	3.7	0	0	0	1	13	14	3.9	0	0	2	3	39	44	3.8															
Equal treatment regardless of religion	0	0	4	9	37	50	3.7	0	0	0	1	13	14	3.9	0	0	2	1	40	43	3.9															
Equal treatment regardless of national origin	0	0	4	9	37	50	3.7	0	0	0	1	13	14	3.9	0	0	2	1	41	44	3.9															
Equal treatment regardless of disability	0	0	4	9	37	50	3.7	0	0	0	1	13	14	3.9	0	0	2	1	40	43	3.9															
Equal treatment regardless of age	0	0	4	9	41	54	3.7	0	0	0	1	13	14	3.9	0	0	2	1	40	43	3.9															
Equal treatment regardless of sexual orientation	0	0	4	9	37	50	3.7	0	0	0	1	13	14	3.9	0	0	2	1	40	43	3.9															
Equal treatment regardless of economic status	0	0	5	11	40	56	3.6	0	0	0	1	13	14	3.9	0	0	2	1	42	45	3.9															
Section III: Communication Skills	1	1	3	22	58	85	3.6	0	0	0	1	13	14	3.9	0	0	2	2	42	46	3.9															
Attentiveness	0	0	5	27	74	106	3.7	0	0	0	1	13	14	3.9																						
Demeanor in communications with counsel	2	3	4	26	71	106	3.5																													
Appropriate restrictions on counsel during argument	0	0	0	0	2	2	4.0	0	0	0	1	13	14	3.9																						
Relevant questions	2	3	3	29	71	108	3.5	0	0	0	1	13	14	3.9																						
Preparation for oral argument	0	0	5	26	70	101	3.6																													
Clear and logical communications																																				
Section IV: Judicial temperament	4	3	3	24	73	106	3.5	0	0	0	3	11	14	3.8																						
Understanding and compassion																																				
Dignified	2	3	4	23	75	107	3.6	0	0	0	2	12	14	3.9																						
Courteous	3	3	3	23	75	107	3.5	0	0	1	2	11	14	3.7																						
Patient	5	3	2	28	66	104	3.4	0	0	0	3	11	14	3.8																						
Conduct that promotes public confidence in the court	4	4	1	21	77	107	3.5	0	0	0	3	11	14	3.8																						
Section V: Administrative Performance	0	4	29	28	50	111	3.1	0	0	1	2	11	14	3.8	0	0	6	3	43	52	3.7															
Punctual in conducting proceedings																																				
Maintains proper control over courtroom																																				
Prepared for proceedings								0	0	0	2	11	13	3.8																						
Respectful treatment of staff																																				
Cooperation with peers																																				
Cooperation with staff																																				
Efficient management of calendar																																				
Promptness in making rulings and rendering decisions	0	4	29	28	50	111	3.1	0	0	1	2	10	13	3.7	0	0	6	3	43	52	3.7															
Works effectively with other judges								0	0	1	3	10	14	3.6																						
Works effectively with other court personnel								0	0	1	2	11	14	3.7																						
Effective handling of ongoing workload								0	0	0	2	12	14	3.9																						

Surveys were distributed to court users from 01/2007 - 03/2012

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

SA=Satisfactory, VG=Very Good, SU=Superior

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Name of Judge:
APP-11
Hon. Peter Swann

Total Surveys: 340

Cycle: Retention Election

	ATTORNEY					PEER JUDGE/JUSTICE					SUP COURT JUDGE					STAFF						
	UN	PU	SA	VG	SU	UN	PU	SA	VG	SU	UN	PU	SA	VG	SU	UN	PU	SA	VG	SU	Mean	
	Mean					Mean					Mean					Mean						
Section I: Legal Ability	4%	10%	15%	18%	52%	0%	0%	7%	16%	77%	1%	5%	7%	10%	77%	0%	0%	2%	30%	68%	3.7	
Legal reasoning ability	3%	11%	15%	19%	52%	0%	0%	7%	14%	79%	0%	8%	5%	10%	77%	0%	0%	17%	17%	67%	3.6	
Knowledge of law	2%	3%	22%	21%	53%	0%	0%	7%	7%	86%	0%	4%	9%	10%	77%	0%	0%	0%	33%	67%	3.6	
Decisions based on law and facts	6%	13%	12%	16%	53%	0%	0%	7%	21%	71%	0%	3%	8%	10%	77%	0%	0%	0%	33%	67%	3.6	
Clearly written, legally supported decisions	5%	13%	13%	18%	52%	0%	0%	7%	21%	71%	0%	5%	8%	10%	77%	0%	0%	0%	33%	67%	3.6	
Section II: Integrity	1%	2%	8%	18%	72%	0%	0%	0%	7%	93%	0%	0%	5%	4%	92%	0%	0%	0%	30%	68%	3.9	
Basic fairness and impartiality	4%	10%	6%	16%	65%	0%	0%	0%	7%	93%	0%	0%	5%	8%	87%	0%	0%	0%	17%	17%	67%	3.8
Equal treatment regardless of race	0%	0%	8%	19%	74%	0%	0%	0%	7%	93%	0%	0%	5%	2%	93%	0%	0%	0%	33%	67%	3.9	
Equal treatment regardless of gender	0%	0%	7%	20%	73%	0%	0%	0%	7%	93%	0%	0%	5%	7%	89%	0%	0%	0%	33%	67%	3.8	
Equal treatment regardless of religion	0%	0%	8%	18%	74%	0%	0%	0%	7%	93%	0%	0%	5%	2%	93%	0%	0%	0%	33%	67%	3.9	
Equal treatment regardless of national origin	0%	0%	8%	18%	74%	0%	0%	0%	7%	93%	0%	0%	5%	2%	93%	0%	0%	0%	33%	67%	3.9	
Equal treatment regardless of disability	0%	0%	8%	18%	74%	0%	0%	0%	7%	93%	0%	0%	5%	2%	93%	0%	0%	0%	33%	67%	3.9	
Equal treatment regardless of age	0%	0%	7%	17%	76%	0%	0%	0%	7%	93%	0%	0%	5%	2%	93%	0%	0%	0%	33%	67%	3.9	
Equal treatment regardless of sexual orientation	0%	0%	8%	18%	74%	0%	0%	0%	7%	93%	0%	0%	5%	2%	93%	0%	0%	0%	33%	67%	3.9	
Equal treatment regardless of economic status	0%	0%	9%	20%	71%	0%	0%	0%	7%	93%	0%	0%	4%	2%	93%	0%	0%	0%	33%	67%	3.9	
Section III: Communication Skills	1%	1%	4%	26%	68%	0%	0%	0%	7%	93%	0%	0%	4%	2%	93%	0%	0%	0%	29%	71%	3.9	
Attentiveness	0%	0%	5%	25%	70%	0%	0%	0%	7%	93%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	3.7
Demeanor in communications with counsel	2%	3%	4%	25%	67%	0%	0%	0%	7%	93%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	3.5
Appropriate restrictions on counsel during argument	0%	0%	0%	0%	100%	0%	0%	0%	7%	93%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	4.0
Relevant questions	2%	3%	3%	27%	66%	0%	0%	0%	7%	93%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	3.5
Preparation for oral argument	0%	0%	5%	26%	69%	0%	0%	0%	7%	93%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	3.6
Clear and logical communications	3%	3%	2%	22%	69%	0%	0%	2%	18%	80%	0%	0%	2%	18%	80%	0%	0%	0%	18%	80%	3.8	
Section IV: Judicial temperament																						3.8
Understanding and compassion	2%	3%	4%	21%	70%	0%	0%	0%	14%	86%	0%	0%	0%	0%	0%	0%	0%	0%	33%	67%	3.9	
Dignified	3%	3%	3%	21%	70%	0%	0%	0%	14%	79%	0%	0%	0%	0%	0%	0%	0%	0%	29%	71%	3.7	
Courteous	5%	3%	2%	27%	63%	0%	0%	0%	21%	79%	0%	0%	0%	0%	0%	0%	0%	0%	29%	71%	3.8	
Patient	4%	4%	1%	20%	72%	0%	0%	0%	21%	79%	0%	0%	0%	0%	0%	0%	0%	0%	29%	71%	3.8	
Conduct that promotes public confidence in the court	0%	4%	26%	25%	45%	0%	0%	4%	16%	79%	0%	0%	12%	6%	83%	0%	0%	0%	15%	85%	3.7	
Section V: Administrative Performance																						3.8
Punctual in conducting proceedings	0%	0%	0%	0%	100%	0%	0%	0%	15%	85%	0%	0%	0%	0%	0%	0%	0%	0%	17%	83%	3.8	
Maintains proper control over courtroom	0%	0%	0%	0%	100%	0%	0%	0%	15%	85%	0%	0%	0%	0%	0%	0%	0%	0%	17%	83%	3.8	
Prepared for proceedings	0%	0%	0%	0%	100%	0%	0%	0%	15%	85%	0%	0%	0%	0%	0%	0%	0%	0%	17%	83%	3.8	
Respectful treatment of staff	0%	0%	0%	0%	100%	0%	0%	0%	15%	85%	0%	0%	0%	0%	0%	0%	0%	0%	17%	83%	3.8	
Cooperation with peers	0%	0%	0%	0%	100%	0%	0%	0%	15%	85%	0%	0%	0%	0%	0%	0%	0%	0%	17%	83%	3.9	
Cooperation with staff	0%	0%	0%	0%	100%	0%	0%	0%	15%	85%	0%	0%	0%	0%	0%	0%	0%	0%	17%	83%	3.9	
Efficient management of calendar	0%	4%	26%	25%	45%	0%	0%	4%	16%	79%	0%	0%	12%	6%	83%	0%	0%	0%	15%	85%	3.9	
Promptness in making rulings and rendering decisions	0%	4%	26%	25%	45%	0%	0%	4%	16%	79%	0%	0%	12%	6%	83%	0%	0%	0%	15%	85%	3.9	
Works effectively with other judges	0%	4%	26%	25%	45%	0%	0%	4%	16%	79%	0%	0%	12%	6%	83%	0%	0%	0%	15%	85%	3.7	
Works effectively with other court personnel	0%	4%	26%	25%	45%	0%	0%	4%	16%	79%	0%	0%	12%	6%	83%	0%	0%	0%	15%	85%	3.6	
Works effectively with other court personnel	0%	4%	26%	25%	45%	0%	0%	4%	16%	79%	0%	0%	12%	6%	83%	0%	0%	0%	15%	85%	3.7	
Effective handling of ongoing workload	0%	4%	26%	25%	45%	0%	0%	4%	16%	79%	0%	0%	12%	6%	83%	0%	0%	0%	15%	85%	3.9	

Surveys were distributed to court users from 01/2007 - 03/2012

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

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

PORTLEY, MAURICE

Appointed to Court of Appeals Division I: 2003

	29 Commissioners Voted "Meets" 1 Commissioner Voted "Does Not Meet"	
<u>Judicial Performance Standards</u> <u>Evaluation Categories</u>	<u>Attorney Responses</u> <i>Surveys Distributed: 1,416</i> <i>Surveys Returned: 192</i>	<u>Superior Court Judge Responses</u> <i>Surveys Distributed: 340</i> <i>Surveys Returned: 74</i>
	<u>Score (See Footnote)</u>	<u>Score (See Footnote)</u>
Legal Ability	88%	94%
Integrity	100%	97%
Communication Skills	98%	N/A
Judicial Temperament	99%	N/A
Administrative Performance	100%	100%
Administrative Skills	N/A	N/A

SWANN, PETER B.

Appointed to Court of Appeals Division I: 2008

	30 Commissioners Voted "Meets" 0 Commissioners Voted "Does Not Meet"	
<u>Judicial Performance Standards</u> <u>Evaluation Categories</u>	<u>Attorney Responses</u> <i>Surveys Distributed: 913</i> <i>Surveys Returned: 238</i>	<u>Superior Court Judge Responses</u> <i>Surveys Distributed: 186</i> <i>Surveys Returned: 79</i>
	<u>Score (See Footnote)</u>	<u>Score (See Footnote)</u>
Legal Ability	85%	94%
Integrity	98%	100%
Communication Skills	98%	N/A
Judicial Temperament	93%	N/A
Administrative Performance	96%	100%
Administrative Skills	N/A	N/A

PIMA COUNTY VOTERS VOTE ON THE FOLLOWING COURT OF APPEALS DIVISION II JUDGES

ECKERSTROM, PETER J.

Appointed to Court of Appeals Division II: 2003

	29 Commissioners Voted "Meets" 1 Commissioner Voted "Does Not Meet"	
<u>Judicial Performance Standards</u> <u>Evaluation Categories</u>	<u>Attorney Responses</u> <i>Surveys Distributed: 967</i> <i>Surveys Returned: 218</i>	<u>Superior Court Judge Responses</u> <i>Surveys Distributed: 333</i> <i>Surveys Returned: 93</i>
	<u>Score (See Footnote)</u>	<u>Score (See Footnote)</u>
Legal Ability	76%	98%
Integrity	95%	100%
Communication Skills	94%	N/A
Judicial Temperament	97%	N/A
Administrative Performance	98%	100%
Administrative Skills	N/A	N/A

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

JUDICIAL PERFORMANCE REVIEW

Superior Court

Cycle: PR-2006

Total Surveys: 120

Name of Judge: MCCiv-10

Name of Judge: MCCiv-10 Peter B. Swain Legal Ability	Assignment: Civil										JUROR										STAFF										Total UN-PO							
	ATTORNEY					LITIGANT/PROPER					UN-PO					UN-PO					UN-PO					UN-PO												
	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU	UN	PO	SA	VG	SU		UN	PO	SA	VG	SU	Valid	Mean
Legal reasoning ability	0%	1%	16%	26%	57%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	9	3.9	5
Knowledge of substantive law	0%	1%	19%	29%	50%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	9	3.9	5
Knowledge of rules of evidence	0%	3%	14%	24%	59%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	9	3.9	5
Knowledge of laws pertaining to sentencing	0%	0%	21%	29%	50%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	9	3.9	5
Keeps up to date	0%	0%	17%	30%	52%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	9	3.9	5
Legal Ability Summary	0%	1%	17%	28%	54%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	327	3.4	177																				
II: Integrity	0%	0%	11%	18%	72%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	74	3.6	10																				
Conduct free from impropriety	0%	0%	10%	22%	67%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	49	3.6	35
Equal treatment regardless of race.	0%	0%	10%	20%	71%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	51	3.6	33
Equal treatment regardless of gender.	0%	0%	11%	22%	67%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	45	3.6	39
Equal treatment regardless of religion.	0%	0%	11%	23%	66%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	47	3.6	37
Equal treatment regardless of national origin	0%	0%	11%	22%	67%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	46	3.6	38
Equal treatment regardless of disability	0%	0%	10%	22%	67%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	49	3.6	35
Equal treatment regardless of age.	0%	0%	12%	19%	70%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	43	3.6	41
Equal treatment regardless of sexual orientation.	0%	0%	10%	20%	69%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	49	3.6	35
Equal treatment regardless of economic status	0%	0%	11%	20%	69%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	70	3.6	14
Avoided prejudging outcome of case.	0%	0%	8%	21%	71%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	72	3.6	12
Basic fairness and impartiality.	0%	0%	10%	21%	69%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	595	3.6	329
Integrity Summary	0%	0%	10%	21%	69%	0%	0%	10%	20%	70%	0%	0%	0%	0%	0%	90	3.6	0																				
III: Communication Skills	0%	0%	10%	25%	63%	0%	0%	10%	10%	80%	0%	0%	0%	0%	0%	68	3.5	16																				
Clear and logical oral communications/directions.	0%	2%	12%	40%	47%	0%	0%	10%	10%	80%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	60	3.3	24
Clear and logical written decisions	0%	0%	11%	33%	55%	0%	0%	10%	10%	80%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	128	3.4	40
Explained proceedings to the jury	0%	0%	10%	38%	52%	0%	0%	10%	30%	60%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	73	3.4	11
Explained reasons for delays.	0%	0%	8%	28%	64%	0%	0%	10%	10%	80%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	74	3.5	10
Clear explanations of the juror's responsibilities.	0%	0%	11%	27%	62%	0%	0%	10%	10%	80%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	74	3.5	10
Clear instructions to the jury.	0%	0%	11%	28%	61%	0%	0%	10%	10%	80%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	74	3.5	10
Communication Skills Summary	0%	0%	10%	31%	60%	0%	0%	10%	13%	78%	0%	295	3.5	41																								
IV: Judicial Temperament	0%	0%	10%	38%	52%	0%	0%	10%	30%	60%	0%	0%	0%	0%	0%	73	3.4	11																				
Understanding and compassion.	0%	0%	8%	28%	64%	0%	0%	10%	10%	80%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	74	3.5	10
Dignified.	0%	0%	11%	27%	62%	0%	0%	10%	10%	80%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	74	3.5	10
Courteous	0%	0%	11%	28%	61%	0%	0%	10%	10%	80%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	74	3.5	10
Conduct that promoted public confidence in the court and judge's ability.	0%	0%	11%	28%	61%	0%	0%	10%	10%	80%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	74	3.5	10
Judicial Temperament Summary	0%	0%	10%	31%	60%	0%	0%	10%	13%	78%	0%	295	3.5	41																								
V: Administrative Performance	0%	1%	12%	33%	54%	0%	0%	10%	30%	60%	0%	0%	0%	0%	0%	76	3.4	8																				
Functionality in conducting proceedings	0%	0%	10%	29%	61%	0%	0%	10%	30%	60%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	70	3.5	14
Maintenance of proper control over courtroom.	0%	0%	12%	33%	54%	0%	0%	10%	30%	60%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	75	3.4	9
Promptness in making rulings and rendering decisions.	0%	0%	6%	19%	74%	0%	0%	10%	25%	75%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	62	3.7	22
Hard worker	0%	0%	14%	23%	63%	0%	0%	10%	30%	60%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	65	3.5	19
Respectful treatment of staff	0%	1%	11%	28%	61%	0%	0%	10%	30%	60%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	348	3.5	72
Cooperation with peers	0%	0%	11%	23%	63%	0%	0%	10%	30%	60%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	65	3.5	19
Cooperation with staff.																																						

SWANN, PETER B.

Assignment During Survey Period: Civil
 Appointed to Maricopa County Superior Court: 2003

28 Commissioners Voted "Meets"
 0 Commissioners Voted "Does Not Meet"

<u>Judicial Performance Standards Evaluation Categories</u>	<u>Attorney Responses</u> <i>Surveys Distributed: 284 Surveys Returned: 84</i>	<u>Litigant, Witness, ProPer Responses</u> <i>Surveys Distributed: 46 Surveys Returned: 10</i>	<u>Juror Responses</u> <i>Surveys Distributed: 18 Surveys Returned: 12</i>
	<u>Score (See Footnote)</u>	<u>Score (See Footnote)</u>	<u>Score (See Footnote)</u>
Legal Ability	99%	N/A	N/A
Integrity	100%	100%	100%
Communication Skills	99%	100%	100%
Judicial Temperament	100%	98%	100%
Administrative Performance	99%	96%	100%
Settlement Activities	99%	N/A	N/A
Administrative Skills	N/A	N/A	N/A

TALAMANTE, DAVID M.

Assignment During Survey Period: Criminal
 Appointed to Maricopa County Superior Court: 1999

28 Commissioners Voted "Meets"
 0 Commissioners Voted "Does Not Meet"

<u>Judicial Performance Standards Evaluation Categories</u>	<u>Attorney Responses</u> <i>Surveys Distributed: 206 Surveys Returned: 34</i>	<u>Litigant, Witness, ProPer Responses</u> <i>Surveys Distributed: 101 Surveys Returned: 14</i>	<u>Juror Responses</u> <i>Surveys Distributed: 95 Surveys Returned: 33</i>
	<u>Score (See Footnote)</u>	<u>Score (See Footnote)</u>	<u>Score (See Footnote)</u>
Legal Ability	96%	N/A	N/A
Integrity	98%	100%	100%
Communication Skills	98%	93%	100%
Judicial Temperament	99%	98%	100%
Administrative Performance	93%	94%	97%
Settlement Activities	99%	N/A	N/A
Administrative Skills	N/A	N/A	N/A

VERDIN, MARIA DEL MAR

Assignment During Survey Period: Juvenile
 Appointed to Maricopa County Superior Court: 1999

27 Commissioners Voted "Meets"
 0 Commissioners Voted "Does Not Meet"

NOTE: Judge Verdin is a member of the JPR Commission who could not vote on her own performance finding.

<u>Judicial Performance Standards Evaluation Categories</u>	<u>Attorney Responses</u> <i>Surveys Distributed: 99 Surveys Returned: 19</i>	<u>Litigant, Witness, ProPer Responses</u> <i>Surveys Distributed: 303 Surveys Returned: 34</i>	<u>Juror Responses</u> <i>Surveys Distributed: 0 Surveys Returned: 0</i>
	<u>Score (See Footnote)</u>	<u>Score (See Footnote)</u>	<u>Score (See Footnote)</u>
Legal Ability	100%	N/A	N/A
Integrity	99%	98%	N/A
Communication Skills	100%	100%	N/A
Judicial Temperament	100%	100%	N/A
Administrative Performance	97%	94%	N/A
Settlement Activities	100%	N/A	N/A
Administrative Skills	N/A	N/A	N/A

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

ATTACHMENT D-1

Filing Date: August 5, 2016

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Civil Appeal

1 CA-CV 10-0274

PLANNED PARENTHOOD v. HORNE et al

Party/Attorney Information

PLANNED PARENTHOOD ARIZONA INC

Parties Involved

Planned Parenthood Arizona Inc
Plaintiff/Appellee

Attorney Information

Phone/Fax

Co-Counsel for: Plaintiff/Appellee
4426 Lawrence J Rosenfeld
Greenberg Traurig LLP

23751 Daniel B Pasternak
Greenberg Traurig LLP

NY Eve C Gartner
GartnerEv Planned Parenthood Federation of America Inc
434 West 33rd Street
New York, NY 10001

NY Jennifer Sandman
Sandman, Planned Parenthood Federation of America Inc
434 West 33rd Street
New York, NY 10001

19955 Tawn T Thornton
Perkins Coie LLP

23086 Rhonda L Barnes
(602) 351-8000
(602) 648-7000
Perkins Coie LLP
Suite 2000
2901 North Central Avenue
Phoenix, AZ 85012-2788
PHONE
FAX

27341 Kirstin T Eidenbach
(602) 351-8000
(602) 648-7000
Perkins Coie LLP
Suite 2000
2901 North Central Avenue
Phoenix, AZ 85012-2788
PHONE
FAX

Court of Appeals, Division One

Civil Appeal

1 CA-CV 10-0274

PLANNED PARENTHOOD v. HORNE et al

Party/Attorney Information

THOMAS C. HORNE

Parties Involved

Thomas C Horne
Defendant/Appellant

Arizona Medical Board
Defendant/Appellant

Lisa Wynn
Defendant/Appellant

AZ Board of Osteopathic Examiners In
Medicine and Surgery
Defendant/Appellant

Elaine Letarte
Defendant/Appellant

Ken Bennett
Defendant/Appellant

Attorney Information

Attorneys for: Defendants/Appellants Horne et al

6821 Paula S Bickett
(602) 542-8304 PHONE
(602) 542-8308 FAX
Arizona Attorney General's Office
1275 W Washington St
Phoenix, AZ 85007

18250 Carrie Jane Brennan
(602) 542-8444 PHONE
(602) 542-8072 FAX
Arizona Attorney General's Office
1275 W Washington St
Phoenix, AZ 85007

4643 David R Cole
Arizona Attorney General's Office

KIRK D. ADAMS, as Speaker, Arizona House of Representatives

Parties Involved

AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS; CATHOLIC MEDICAL ASSOCIATION;
CHRISTIAN MEDICAL AND DENTAL ASSOCIATIONS; CHRISTIAN PHARMACISTS FELLOWSHIP INTERNATIONAL; AVE
MARIA PHARMACY, PLLC; ARIZONA CATHOLIC CONFERENCE; CRISIS PREGNANCY

Parties Involved

Attorney Information

Phone/Fax

Attorney Information

Phone/Fax

Court of Appeals, Division One

Civil Appeal

1 CA-CV 10-0274

PLANNED PARENTHOOD v. HORNE et al

.rty/Attorney Information

KIRK D. ADAMS

Parties Involved

Kirk D Adams
Defendant/Appellant

Attorney Information

Phone/Fax

Attorney for: Intervenor-Defendant/Appellant Adams

21789 Peter A Gentala
(602) 926-5544 PHONE
(602) 417-3042 FAX
Arizona House of Representatives
1700 W Washington
Suite H
Phoenix, AZ 85007

6313 David J Cantelme
(602) 200-0104 PHONE
(602) 200-0106 FAX
Cantelme & Brown PLC
Suite 600
3003 N Central Ave
Phoenix, AZ 85012

Court of Appeals, Division One

Civil Appeal

1 CA-CV 10-0274

PLANNED PARENTHOOD v. HORNE et al

Party/Attorney Information

AMERICAN ASSN PRO-LIFE

Parties Involved

American Assn of Pro-Life Obstetricians &
Gynecologists

Defendant/Appellant

Catholic Medical Association

Defendant/Appellant

Christian Medical and Dental Associations

Defendant/Appellant

Ave Maria Pharmacy PLLC

Defendant/Appellant

Arizona Catholic Conference

Defendant/Appellant

Crisis Pregnancy Centers of Greater
Phoenix

Defendant/Appellant

Senator Linda Gray

Defendant/Appellant

Nancy Barto

Defendant/Appellant

Attorney Information

Phone/Fax

Co-Counsel for: Intervenor-Defendants/Appellants

9115 Cathi W Herrod
(602) 424-2525 PHONE
Center for Arizona Policy
PO Box 97250
Phoenix, AZ 85060

25752 Deborah M Sheasby
(602) 424-2525 PHONE
Center for Arizona Policy
PO Box 97250
Phoenix, AZ 85060

11025 Nikolas T Nikas
(480) 483-3597 PHONE
Bioethics Defense Fund
6811 E Voltaire Ave
Scottsdale, AZ 85254

Court of Appeals, Division One

Civil Appeal

1 CA-CV 10-0274

PLANNED PARENTHOOD v. HORNE et al

Distribution List

Distribution List

Lawrence J Rosenfeld
Greenberg Traurig LLP
Phoenix Office
Suite 700
2375 E Camelback Rd
Phoenix AZ 85016

Tawn T Thornton
tpritchette@perkinscoie.com

Rhonda L Barnes
Perkins Coie LLP
Suite 2000
2901 North Central Avenue
Phoenix AZ 85012-2788

Lawrence J Rosenfeld
Greenberg Traurig LLP
rosenfeldl@gtlaw.com

Rhonda L Barnes
RBarnes@perkinscoie.com

Daniel B Pasternak
Greenberg Traurig LLP
Phoenix Office
Suite 700
2375 E Camelback Rd
Phoenix AZ 85016

Rhonda L Barnes
docketphx@perkinscoie.com

Daniel B Pasternak
Greenberg Traurig LLP
pasternakd@gtlaw.com

Kirstin T Eidenbach
Perkins Coie LLP
Suite 2000
2901 North Central Avenue
Phoenix AZ 85012-2788

Eve C Gartner
Planned Parenthood Federation of America Inc
434 West 33rd Street
New York NY 10001

Kirstin T Eidenbach
KEidenbach@perkinscoie.com

Eve C Gartner
Planned Parenthood Federation of America Inc
Eve.Gartner@ppfa.org

David R Cole
Arizona Attorney General's Office
1275 W Washington St
Phoenix AZ 85007

Jennifer Sandman
Planned Parenthood Federation of America Inc
434 West 33rd Street
New York NY 10001

David R Cole
Arizona Attorney General's Office
SolicitorGeneral@azag.gov

Jennifer Sandman
Planned Parenthood Federation of America Inc
Jennifer.Sandman@ppfa.org

Paula S Bickett, Assistant Attorney General
Arizona Attorney General's Office
1275 W Washington St
Phoenix AZ 85007

Tawn T Thornton
Perkins Coie LLP
Suite 2000
2901 North Central Avenue
Phoenix AZ 85012-2788

Paula S Bickett, Assistant Attorney General
Arizona Attorney General's Office
paula.bickett@azag.gov

Court of Appeals, Division One

Civil Appeal

1 CA-CV 10-0274

PLANNED PARENTHOOD v. HORNE et al

Distribution List

Distribution List

Paula S Bickett
solicitorgeneral@azag.gov

Deborah M Sheasby
Center for Arizona Policy
PO Box 97250
Phoenix AZ 85060

Carrie Jane Brennan, Assistant Attorney General
Arizona Attorney General's Office
1275 W Washington St
Phoenix AZ 85007

Deborah M Sheasby
Center for Arizona Policy
dsheasby@azpolicy.org

Carrie Jane Brennan
Carrie.Brennan@azag.gov

Mr Nikolas T Nikas
President
Bioethics Defense Fund
6811 E Voltaire Ave
Scottsdale AZ 85254

Carrie Jane Brennan
SolicitorGeneral@azag.gov

Peter A Gentala
Arizona House of Representatives
1700 W Washington
Suite H
Phoenix AZ 85007

Mr Nikolas T Nikas
President
Bioethics Defense Fund
ntnikas@aol.com

Peter A Gentala
Arizona House of Representatives
pgentala@azleg.gov

Hon Donald Daughton, Retired Judge
Maricopa County Superior Court
Old Court House
125 W Washington
Phoenix AZ 85003

David J Cantelme
Cantelme & Brown PLC
Suite 600
3003 N Central Ave
Phoenix AZ 85012

Marcus Reinkensmeyer
Maricopa County Superior Court
Central Court Building
201 W Jefferson St
Phoenix AZ 85003-2243

David J Cantelme
Cantelme & Brown PLC
djcb@cb-attorneys.com

Marcus Reinkensmeyer
Maricopa County Superior Court
mreinken@superiorcourt.maricopa.gov

Cathi W Herrod
Chief Counsel
Center for Arizona Policy
PO Box 97250
Phoenix AZ 85060

Hon Michael K Jeanes, Clerk
Maricopa County Superior Court
Central Court Building
201 W Jefferson St
Phoenix AZ 85003-2243

Cathi W Herrod
Chief Counsel
Center for Arizona Policy
cauth_herrod@azpolicy.org

Hon Michael K Jeanes, Clerk
Maricopa County Superior Court
Appeals@COSC.maricopa.gov

Court of Appeals, Division One

Civil Appeal

1 CA-CV 10-0274

PLANNED PARENTHOOD v. HORNE et al

tribution List

Andrew Tobin, Speaker of the House
Arizona House of Representatives
1700 W Washington
Suite H
Phoenix AZ 85007

Kirk D Adams
Arizona House of Representatives
1700 W Washington
Suite H
Phoenix AZ 85007

ATTACHMENT D-2

Filing Date: August 5, 2016

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Court of Appeals, Division One

Civil Appeal

1 CA-CV 10-0782

SEDONA GRAND v. CITY OF SEDONA

Party/Attorney Information

SEDONA GRAND LLC

Parties Involved

Sedona Grand LLC

Plaintiff/Appellant-Cross Appellee

Attorney Information

Phone/Fax

Attorney for: Plaintiff/Appellant-Cross Appellee

20669 Stephen H Schwartz

Law Offices of Stephen H Schwartz Esq PA

PO Box 1524

Sedona, AZ 86339

CITY OF SEDONA

Parties Involved

City of Sedona

Defendant/Appellee-Cross Appellant

Attorney Information

Phone/Fax

Attorney for: Defendant/Appellee-Cross Appellant

19223 Jeffrey T Murray

Peters Cannata & Moody PLC

23985 Kristin M Mackin

Peters Cannata & Moody PLC

Court of Appeals, Division One

Civil Appeal

1 CA-CV 10-0782

SEDONA GRAND v. CITY OF SEDONA

Distribution List

Stephen H Schwartz
Law Offices of Stephen H Schwartz Esq PA
PO Box 1524
Sedona AZ 86339

Stephen H Schwartz
Law Offices of Stephen H Schwartz Esq PA
stephenschwartz@earthlink.net

Jeffrey T Murray
Peters Cannata & Moody PLC
Suite 905
3030 N 3rd Street
Phoenix AZ 85012

Jeffrey T Murray
Peters Cannata & Moody PLC
jtmurray@lasotapeters.com

Jeffrey T Murray
jtmurray@lasotapeters.com

Kristin M Mackin
Peters Cannata & Moody PLC
Suite 905
3030 N 3rd Street
Phoenix AZ 85012

Kristin M Mackin
Peters Cannata & Moody PLC
kmackin@lasotapeters.com

Hon Tina R Ainley, Criminal Presiding Judge
Yavapai County Superior Court
Camp Verde
2840 N Commonwealth Drive
Camp Verde AZ 86322

Hon Tina R Ainley, Criminal Presiding Judge
Yavapai County Superior Court
tainley@courts.az.gov

Distribution List

Hon Michael R Bluff, Judge
Yavapai County Superior Court
Camp Verde
2840 N Commonwealth Drive
Camp Verde AZ 86322

Hon Michael R Bluff, Judge
Yavapai County Superior Court
mbluff@courts.az.gov

Sandra K Markham, Court Reporter
Yavapai County Superior Court
Prescott
Yavapai County Courthouse
120 S Cortez St No 207
Prescott AZ 86303

Sandra K Markham, Court Reporter
Yavapai County Superior Court
tfenton@courts.az.gov

Sandra K Markham, Court Reporter
Sandra Markham Court Reporter

Sandra K Markham
smarkham@courts.az.gov

ATTACHMENT D-3

Filing Date: August 5, 2016

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Court of Appeals, Division One

Special Action

1 CA-SA 14-0037

BIGGS et al v. HON COOPER/BREWER

Party/Attorney Information

BIGGS et al

Parties Involved

Attorney Information

Phone/Fax

Andy Biggs
Petitioner

Attorneys for: Petitioners
21684 Clint Bolick

(602) 462-5000
(602) 256-7045

PHONE
FAX

Andrew Tobin
Petitioner

Goldwater Institute
Scharf-Norton Center for Constitutional Litigation
500 E Coronado Rd
Phoenix, AZ 85004

15603

Kurt M Altman
(602) 462-5000
(602) 256-7045

PHONE
FAX

Nancy Barto
Petitioner

Goldwater Institute
Scharf-Norton Center for Constitutional Litigation
500 E Coronado Rd
Phoenix, AZ 85004

Judy Burges
Petitioner

27983

Christine Sandefur
(602) 462-5000
(602) 256-7045

PHONE
FAX

Chester Crandell
Petitioner

Goldwater Institute
Scharf-Norton Center for Constitutional Litigation
500 E Coronado Rd
Phoenix, AZ 85004

Gail Griffin
Petitioner

Al Melvin
Petitioner

Kelli Ward
Petitioner

Court of Appeals, Division One

Special Action

1 CA-SA 14-0037

BIGGS et al v. HON COOPER/BREWER

Party/Attorney Information

BREWER

Parties Involved

Janice K Brewer
Real Party in Interest

Thomas J Betlach
Real Party in Interest

Attorney Information

Attorneys for: Real Parties in Interest

6534 Patrick Irvine
(602) 916-5000
(602) 916-5999
Fennemore Craig PC
Central Office
Suite 600
2394 East Camelback Road
Phoenix, AZ 85016

4170 Timothy J Berg
(602) 916-5421
(602) 916-5621
Fennemore Craig PC
Central Office
Suite 600
2394 East Camelback Road
Phoenix, AZ 85016

28072 Carrie Pixler Ryerson
(602) 916-5000
(602) 916-5999
Fennemore Craig PC
Central Office
Suite 600
2394 East Camelback Road
Phoenix, AZ 85016

13987 Douglas C Northup
(602) 916-5362
(602) 916-5562
Fennemore Craig PC
Central Office
Suite 600
2394 East Camelback Road
Phoenix, AZ 85016

Phone/Fax

PHONE
FAX

PHONE
FAX

PHONE
FAX

PHONE
FAX

Janice K Brewer
Real Party in Interest

Co-Counsel for: Real Party Brewer

17481 Joseph Sciarrotta, Jr
Office of the Governor

Court of Appeals, Division One

Special Action

1 CA-SA 14-0037

BIGGS et al v. HON COOPER/BREWER

Distribution List

Kurt M Altman
Goldwater Institute
Scharf-Norton Center for Constitutional Litigation
500 E Coronado Rd
Phoenix AZ 85004

Kurt M Altman
Goldwater Institute
Litigation@goldwaterinstitute.org

Hon Clint Bolick
Goldwater Institute
Scharf-Norton Center for Constitutional Litigation
500 E Coronado Rd
Phoenix AZ 85004

Hon Clint Bolick
Goldwater Institute

Christina Sandefur
Goldwater Institute
Scharf-Norton Center for Constitutional Litigation
500 E Coronado Rd
Phoenix AZ 85004

Christina Sandefur
Goldwater Institute
litigation@goldwaterinstitute.org

Timothy J Berg
Fennemore Craig PC
Central Office
Suite 600
2394 East Camelback Road
Phoenix AZ 85016

Timothy J Berg
Fennemore Craig PC
tberg@fclaw.com

Distribution List

Patrick Irvine
Fennemore Craig PC
Central Office
Suite 600
2394 East Camelback Road
Phoenix AZ 85016

Patrick Irvine
Fennemore Craig PC
pirvine@fclaw.com

Douglas C Northup
Fennemore Craig PC
Central Office
Suite 600
2394 East Camelback Road
Phoenix AZ 85016

Douglas C Northup
Fennemore Craig PC
dnorthup@fclaw.com

Carrie Pixler Ryerson
Fennemore Craig PC
Central Office
Suite 600
2394 East Camelback Road
Phoenix AZ 85016

Carrie Pixler Ryerson
Fennemore Craig PC
cryerson@fclaw.com

Hon Joseph Sciarrotta Jr
Office of the Governor
1700 W Washington
Phoenix AZ 85007

Hon Joseph Sciarrotta Jr
Office of the Governor
JSciarrotta@az.gov

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Court of Appeals, Division One

Special Action

1 CA-SA 14-0079

VOLK v. HON. BRAME/ALVRUS

Party/Attorney Information

KENNETH A. VOLK

Parties Involved

Kenneth Allen Volk
Petitioner

Attorney Information

Attorneys for: Petitioner
24107 Keith Berkshire
(602) 396-7668
(602) 396-7697
Berkshire Law Office PLLC
Suite 340
5050 N 40th Street
Phoenix, AZ 85018

Phone/Fax

PHONE
FAX

28837 Maxwell Mahoney
(602) 396-7668
(602) 396-7697
Berkshire Law Office PLLC
Suite 340
5050 N 40th Street
Phoenix, AZ 85018

PHONE
FAX

HON. VERONICA W. BRAME

Parties Involved

Veronica W Brame
Respondent Judge

Attorney Information

Phone/Fax

ANNALISA ALVRUS

Parties Involved

Annalisa B Alvrus
Respondent

Attorney Information

Attorney for: Real Party in Interest Alvrus
20114 Joel L Brand
(602) 256-6080
Law Office of Joel L Brand
Suite 804
45 W Jefferson St
Phoenix, AZ 85003

Phone/Fax

PHONE

Court of Appeals, Division One

Special Action

1 CA-SA 14-0079

VOLK v. HON. BRAME/ALVRUS

ty/Attorney Information

STATE OF ARIZONA/ADES

Parties Involved

Arizona Department of Economic Security
Respondent

Attorney Information

Attorneys for: Real Party in Interest ADES

15539 Carol A Salvati

(602) 542-8444

(602) 542-8072

Arizona Attorney General's Office

1275 W Washington St

Phoenix, AZ 85007

Phone/Fax

PHONE

FAX

Court of Appeals, Division One

Special Action

1 CA-SA 14-0079

VOLK v. HON. BRAME/ALVRUS

tribution List

Keith Berkshire
Berkshire Law Office PLLC
Suite 340
5050 N 40th Street
Phoenix AZ 85018

Keith Berkshire
Berkshire Law Office PLLC
keith@berkshirlawoffice.com

Maxwell Mahoney
Berkshire Law Office PLLC
Suite 340
5050 N 40th Street
Phoenix AZ 85018

Maxwell Mahoney
Berkshire Law Office PLLC
Max@Berkshirlawoffice.com

Joel L Brand
Law Office of Joel L Brand
Suite 804
45 W Jefferson St
Phoenix AZ 85003

Joel L Brand
jlbrandlaw@aol.com

Carol A Salvati
Assistant Attorney General
Arizona Attorney General's Office
1275 W Washington St
Phoenix AZ 85007

Carol A Salvati, Assistant Attorney General
Arizona Attorney General's Office
carol.salvati@azag.gov

Carol A Salvati
PSSAppeals@azag.gov

Distribution List

Hon Janet E Barton, Presiding Judge
Maricopa County Superior Court
Old Court House
125 W Washington
Phoenix AZ 85003

Hon Janet E Barton, Presiding Judge
Maricopa County Superior Court
carrerasr@superiorcourt.maricopa.gov

Hon Janet E Barton, Presiding Judge
Maricopa County Superior Court
jabarton@superiorcourt.maricopa.gov

Hon Veronica W Brame, Commissioner
Maricopa County Superior Court
Old Court House
125 W Washington
Phoenix AZ 85003

Hon Veronica W Brame, Commissioner
Maricopa County Superior Court
bramev@superiorcourt.maricopa.gov

Raymond L Billotte, Court Administrator
Maricopa County Superior Court
Central Court Building
201 W Jefferson St
Phoenix AZ 85003-2243

Raymond L Billotte, Court Administrator
Maricopa County Superior Court
billotter@superiorcourt.maricopa.gov

Hon Michael K Jeanes, Clerk
Maricopa County Superior Court
Central Court Building
201 W Jefferson St
Phoenix AZ 85003-2243

Hon Michael K Jeanes, Clerk
Maricopa County Superior Court
Appeals@COSC.maricopa.gov

ATTACHMENT D-5

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Court of Appeals, Division One

Civil Appeal

1 CA-CV 13-0400

NARDELLI v. METROPOLITAN et al.

Party/Attorney Information

NARDELLI

Parties Involved

Kenneth John Nardelli
Plaintiff/Appellant

Tammy M Nardelli
Plaintiff/Appellant

Attorney Information

Co-Counsel for: Plaintiffs/Appellants

6674 Steven C Dawson
(928) 282-3111
(928) 282-3126
Dawson & Rosenthal PC
25 Schnebly Hill Road
Sedona, AZ 86336

6199 Anita Rosenthal
(928) 282-3111
(928) 282-3126
Dawson & Rosenthal PC
25 Schnebly Hill Road
Sedona, AZ 86336

13813 Richard A Dillenburg
(480) 668-1924
(480) 831-7438
Richard A Dillenburg PC
Suite 101
2173 E Warner Rd
Tempe, AZ 85284-3503

Phone/Fax

PHONE
FAX

PHONE
FAX

PHONE
FAX

METROPOLITAN et al.

Parties Involved

Metropolitan Group Property and Casualty
Insurance Company
Defendant/Appellee

Metropolitan Property and Casualty
Insurance Company
Defendant/Appellee

Attorney Information

Attorneys for: Defendants/Appellees

6299 Floyd P Bienstock
(602) 257-5200
(602) 257-5299
Steptoe & Johnson LLP
Collier Center
Suite 1600
201 E Washington St
Phoenix, AZ 85004-2382

10819 Bennett Evan Cooper
(602) 257-5299
(602) 257-5200
Steptoe & Johnson LLP
Collier Center
Suite 1600
201 E Washington St
Phoenix, AZ 85004-2382

Phone/Fax

PHONE
FAX

FAX
PHONE

Court of Appeals, Division One

Civil Appeal

1 CA-CV 13-0400

NARDELLI v. METROPOLITAN et al.

ty/Attorney Information

ARIZONA ASSOCIATION for JUSTICE/ARIZONA TRIAL LAWYERS ASSOCIATION

Parties Involved

Attorney Information

Phone/Fax

Attorneys for: Amicus Curiae

9001 David L Abney
(480) 991-7677

PHONE

Knapp & Roberts PC
Suite 165

8777 N Gainey Center Drive
Scottsdale, AZ 85258-2106

Court of Appeals, Division One

Civil Appeal

1 CA-CV 13-0400

NARDELLI v. METROPOLITAN et al.

istribution List

Steven C Dawson
Dawson & Rosenthal PC
dandr@dawsonandrosenthal.com

Steven C Dawson
Dawson & Rosenthal PC
sdawson@dawsonandrosenthal.com

Richard A Dillenburg
Richard A Dillenburg PC
Suite 101
2173 E Warner Rd
Tempe AZ 85284-3503

Richard A Dillenburg
Richard A Dillenburg PC
rich@dillenburglaw.com

Anita Rosenthal
Dawson & Rosenthal PC
arosenal@dawsonandrosenthal.com

Floyd P Bienstock
Steptoe & Johnson LLP
fbienstock@steptoe.com

Floyd P Bienstock
Steptoe & Johnson LLP
phcourtnotices@steptoe.com

Bennett Evan Cooper
Steptoe & Johnson LLP
Collier Center
Suite 1600
201 E Washington St
Phoenix AZ 85004-2382

Bennett Evan Cooper
Steptoe & Johnson LLP
phcourtnotices@steptoe.com

Bennett Evan Cooper
Steptoe & Johnson LLP
bcooper@steptoe.com

Distribution List

David L Abney
Knapp & Roberts PC
Suite 165
8777 N Gainey Center Drive
Scottsdale AZ 85258-2106

David L Abney
Knapp & Roberts PC

David L Abney
Knapp & Roberts PC
abney@krattorneys.com

Hon Lisa Daniel Flores
Judge
Maricopa County Superior Court
East Court Building
101 West Jefferson St
Phoenix AZ 85003-2243

Hon Lisa Daniel Flores
Judge
Maricopa County Superior Court
lstrombe@superiorcourt.maricopa.gov

Hon Lisa Daniel Flores
Judge
Maricopa County Superior Court
floresl003@superiorcourt.maricopa.gov

Hon Michael K Jeanes, Clerk
Maricopa County Superior Court
Central Court Building
201 W Jefferson St
Phoenix AZ 85003-2243

Hon Michael K Jeanes
Appeals@COSC.maricopa.gov