APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name: Adele G. Ponce

2. Have you ever used or been known by any other name? Yes

   If so, state name: Adele Francoise Grignon

3. Office Address: 222 East Javelina Ave (2C)
   Mesa, AZ 85210

4. How long have you lived in Arizona? 17 years

   What is your home zip code? 85013

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

   Maricopa County, 2004-2021

6. If nominated, will you be 30 years old before taking office? x yes ☐no

   If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? x yes ☐no

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

I have been registered as a Republican since 1994 (Iowa, Massachusetts, Arizona). In the fall of 2015, when preparing to vote in the presidential primary, I saw that I had no party affiliation. I learned this had been the case since the fall of 2013, which was when we moved and updated our address, including for our drivers' licenses and voter registrations. I believe the loss of party affiliation occurred during this process. I corrected this and re-registered as a Republican when I discovered the error.

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

8. Gender: Female
Race/Ethnicity: Caucasian

EDUCATIONAL BACKGROUND

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

University of Chicago Law School, Chicago, IL; J.D.

University of Chicago, Chicago, IL; M.A. in Social Science

Harvard University, Cambridge, MA; A.B. in Government

N.Y.U., Paris, France (study abroad program)

Tufts University, Medford, MA (attended for one year)

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

Harvard University

- Concentration: Government—emphasis on political theory
- Semester studying art history in Paris, France
- Seminar on Plato's Republic at the Ecole des Hautes Etudes en Science Sociales in Paris (Professor Pierre Manent)
- Co-chair of the Women in Economics and Government Association
- Harvard-Radcliffe Chorus member
- Harvard Red Cross volunteer coordinator
- Kirkland House Liaison for Government Department
- Taught English to local immigrants through Phillips-Brooks House

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

Harvard University

- Graduated *Magna cum Laude*
- Honors Thesis on the role of music in political education in the works of Plato, Rousseau, and Nietzsche (advisor Peter Berkowitz)
- Harvard College Scholarship
- Agassiz Scholarship
- Center for European Studies grant for thesis research in France
- Research Assistant to Professor Harvey Mansfield
- Research Assistant to Professor Matthew Dickinson (currently at Middlebury College)

University of Chicago Law School

- Research Assistant to the Honorable Richard Posner
- Summer Associate at Brown and Bain, PA
- Summer Associate at Lewis and Roca, LLP
- Commerce Committee Intern for U.S. Senator John McCain

PROFESSIONAL BACKGROUND AND EXPERIENCE

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

Arizona Supreme Court	12/14/2004
United States District Court for the District of Arizona	08/15/2005
United States Court of Appeals for the Ninth Circuit	09/04/2009

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

Not applicable.

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

Not applicable.

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

EMPLOYER	DATES	LOCATION
Maricopa County Superior Court *Superior Court Judge, Family Division*	10/18-current	Mesa, AZ
Arizona Office of the Attorney General Criminal Appeals Section *Assistant Attorney General*	03/13-10/18	Phoenix, AZ
Ninth Circuit Court of Appeals *Law Clerk to the Hon. Mary Murguia*	03/11-09/12	Phoenix, AZ
U.S. District Court *Law Clerk to the Hon. Mary Murguia*	08/10-03/11	Phoenix, AZ
Lewis and Roca, LLP *Associate*	01/05-08/10	Phoenix, AZ
U.N. International Criminal Tribunal for Rwanda *Chambers Intern*	08/04-11/04	Arusha, Tanzania
Lewis and Roca, LLP *Summer Associate*	07/03-08/03	Phoenix, AZ
Brown and Bain, PA *Summer Associate*	06/03-07/03 07/02-08/02	Phoenix, AZ Phoenix, AZ
U.S. Senator John McCain *Commerce Committee Intern*	06/02-07/02	Washington, DC
U.S. Senator John McCain *Intern*	06/01-08/01	Phoenix, AZ
Ken Auletta *Fact Checker for book: World War 3.0*	03/00-11/00	New York, NY
The New Yorker *Fact Checker*	07/99-11/00	New York, NY
Parsons School of Design *Summer Program Counselor*	07/98-08/98	Paris, France

There was a period of approximately six months following my clerkship in 2012 when I interviewed for jobs, traveled, and took care of my family. I attended law school at the University of Chicago from 09/01-06/04. I attended graduate school at the University of Chicago from 09/98-09/99, and returned to Chicago to work on my Master's thesis from 01/01-06/01. While I was a graduate student and while I worked in Senator McCain's Phoenix office, I also worked part-time as a clerk in various clothing stores and taught French.

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

See Attachment A.

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

Before my appointment to the Superior Court, I worked for five years as an appellate prosecutor in the Criminal Appeals Section of the Arizona Attorney General's Office. Approximately fifty percent of my practice during this time consisted of representing the State in criminal cases in the Arizona Court of Appeals. My work primarily involved reviewing the trial court record, researching issues, writing answering briefs responding to appellants' claims, and generally arguing why their convictions and sentences should be upheld. I also participated in oral argument when ordered by the Court. I filed both petitions for review and responses to petitions for review in the Arizona Supreme Court.

The other fifty percent of my practice consisted of responding to petitions for the Writ of Habeas Corpus in the United States District Court for the District of Arizona. Although technically civil, these cases were largely criminal in substance, because the Writ of Habeas Corpus is a form of relief for those in custody whose federal constitutional rights have been violated. I reviewed the state court trial, appellate and post-conviction record, researched the issues raised, and drafted answers to petitions. The answers typically addressed the timeliness, exhaustion/procedural default, and merits of various claims. Some of these cases also involved a fair amount of motion practice. I also represented the State when district court rulings were appealed to the Ninth Circuit, including at oral argument. In addition, I regularly participated in moot-court panels to assist other attorneys preparing for oral argument in the Arizona appellate courts or Ninth Circuit Court of Appeals.

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

I spent close to six years at Lewis and Roca, LLP, working in the commercial litigation section. I represented clients in general business litigation, which typically consisted of contract disputes. The cases ranged from large claims involving big companies, to smaller claims involving breaches of lease terms or purchase agreements. In addition to general commercial disputes, I also represented clients in antitrust matters, and in cases before the Financial Industry Regulatory Authority (FINRA). I was also part of a team that represented a defendant *pro bono* in his retrial for murder, after his petition for the Writ of Habeas Corpus was granted. At the firm, I engaged in all aspects of civil litigation, including drafting letters, complaints and answers, and writing and arguing dispositive motions. I also participated in discovery, including drafting interrogatories, requests for production, and responses to the same. I conducted and defended depositions, and worked regularly with experts. In addition, I drafted settlement memoranda, and participated in mediations.

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

Not Applicable.

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

As a Superior Court Judge, I routinely draft and edit orders, including dissolution decrees, and other orders resolving various motions. As a law clerk in the United States District Court and the Ninth Circuit Court of Appeals, I participated in the drafting of orders, memorandum decisions, opinions, and dissents, under the direction of the judge. In private practice, I drafted a non-disclosure agreement and privilege logs in connection with discovery. I have also drafted multiple declarations for fact and expert witnesses. In addition, I have drafted a sales contract for an online seller, and multiple settlement agreements for the same client.

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

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

I worked on four matters before the Financial Industry Regulatory Authority (FINRA), a non-governmental organization which regulates and licenses stock brokers.

I also worked on one matter involving an attorney whose conduct was questioned by the State Bar of Arizona.

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

Sole Counsel: 1

Chief Counsel: 0

Associate Counsel: 4

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

Sole Counsel: 1

Chief Counsel: 0

Associate Counsel: 13

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

1. *International Air Response (IAR) v. Pacific Aviation Group (PAG)*, CV2008-008157, in Maricopa County Superior Court (see also 2:08-CV-04277 in the United States District Court for the Central District of California).

(1) 2008-2009

(2) I represented the plaintiff, IAR, along with:

Robert Schaffer
Holden Willits PLC
602-502-6229
rschaffer@holdenwillits.com

The defendant, PAG, was represented by:

Michael A. Cordier
Murphy Karber Cordier PLC
602-274-9000
mark.cord@mcordlaw.com

(3) The plaintiff, IAR, had entered into a business arrangement with PAG, whereby IAR agreed to contribute two airplanes to a limited liability company owned by PAG. In exchange, PAG would store, maintain, and lease out the planes, with interest and profit returning to IAR. PAG had represented that it had sufficient funds to store and maintain both planes, and that it had clients prepared to lease them. Shortly after entering into the agreement, however, PAG claimed one of the planes was too expensive to maintain, and it in fact had no client to lease the second plane. IAR sued for breach of contract and breach of the covenant of good faith and fair dealing.

(4) The case involved litigation in multiple states and courts. IAR filed a complaint in Maricopa County Superior Court, and PAG filed a motion to dismiss, claiming that the forum clause in their agreement required the case to be litigated in California. The trial court granted the motion to dismiss, and IAR filed a special action in the Arizona Court of Appeals, which reversed the dismissal. In addition, after IAR filed its complaint in Arizona, PAG filed its own complaint in the United States District Court for the District of California. IAR filed a motion to dismiss the California case, arguing that the abstention doctrine required dismissal in light of the pending action in Arizona. The California District Court dismissed the case. After these two victories in Superior Court and District Court, the case settled in a mediation conducted by Sherm Fogel.

2. *FOC Financial, LP v. National City Commercial Capital Corp.(National City)*, 2:08-CV-00851, in the United States District Court for the District of Arizona.

(1) 2009-2010

(2) I represented the defendant, National City, along with:

Randy Papetti
Lewis Roca Rothgerber Christie LLP
602-262-5337
RPapetti@lrrc.com

The plaintiff, FOC Financial Limited Partnership, was represented by:

Robert Du Comb
Alzate Ducomb Law Firm PLLC
602-685-1015
bobd@alzate-ducomb.com

(3) This was a breach of contract case related to a complicated loan transaction. The plaintiff, FOC, was in the business of leasing a GPS system to various golf courses. The defendant—a lender—agreed with the plaintiff to provide $600,000 in financing for a Texas golf course to lease the GPS system. However, the lender retained $200,000 of the financing by purchasing a CD, because the golf course was seen as a default risk. The CD would be released to the plaintiff if the golf course made timely payments and met certain milestones or if it improved its financial situation. When the golf course missed payments and failed to meet milestones, the lender cashed the CD. The plaintiff sued, claiming that the defendant had breached its financing agreement by cashing the CD and keeping the funds.

(4) Lewis and Roca took over the case from other counsel after the plaintiff filed a motion for partial summary judgment. We quickly prepared and filed a response to the motion, arguing that the failure to meet any of the conditions for release of the CD meant the defendant was not obligated to pay the plaintiff the $200,000. After we filed our response, the District Court ordered the parties to participate in a settlement conference conducted by Magistrate David Duncan, and the case was settled.

3. *Tee Time Arrangers v. Vistoso Gold Partners, LCC et al.*, CV2004-013105 in Maricopa Superior Court (*see also* 1 CA-CV 07-0268, Arizona Court of Appeals).

(1) 2005-2008

(2) I represented Ventana Canyon, and Tucson National Golf Resort & Spa along with:

Robert Schaffer
Holden Willits PLC
602-502-6229
rschaffer@holdenwillits.com

There were multiple co-defendants

Representing Starr Pass Holdings LLC, and Joan Fails:

Deena Peck
602-955-6953
deana.peck@cox.net

Edward Salanga
Quarles & Brady, LLP
602-229-5422
edward.salanga@quarles.com

Representing Vistoso Gold Partners and Mark Oswald:

The Honorable Charles A. Davis
Social Security Administration
888-363-8694
charles.davis@ssa.gov

Representing Rick Price:

Robert Bruno
Sanders & Parks, PC
602-532-5600
robert.bruno@sandersparks.com

Debra Verdier
Manning & Kass Ellrod Ramirez Trester LLP
480-609-4461
dlv@manningllp.com

Representing Canoa Hills Golf Club and Tom Tatum:

Joseph Mott
Hartman Titus PLC
602-714-7441
jmott@hartmantitus.com

The plaintiff, Tee Time Arrangers, was represented by:

Suzanne Dallimore
Suzanne M. Dallimore PC
480-584-4010
smd@smdpclaw.com

(3) The plaintiff in this antitrust case, Tee Time Arrangers, marketed and sold a pass that would permit the buyer to obtain discounted tee times at several golf resorts in Tucson. The plaintiff claimed that the defendant golf resorts violated antitrust laws by creating a separate and exclusive competing discount pass. The plaintiff alleged the defendants had engaged in: (1) a group boycott, which was a *per se* violation of antitrust law; (2) price fixing; and (3) output restriction. I drafted a settlement memorandum for a mediation I attended early in the case. One of the defendants we were representing settled after the mediation, and the case continued with the remaining defendants.

(4) The case was significant because of the antitrust claims alleged, which are uncommon, and the number of parties involved. The defendants filed a motion to dismiss, which was denied. After discovery was completed, however, the remaining defendants filed a motion for summary judgment on all three claims and won. The ruling was affirmed on appeal in a memorandum decision authored by Judge Lawrence Winthrop.

4. *Mott v. Caravello*, 2:08-CV-00829, in the United States District Court for the District of Arizona.

(1) 2008

(2) I represented the defendants, Avis and Steven Caravello, along with:

Randy Papetti
Lewis Roca Rothgerber Christie LLP
602-262-5337
RPapetti@lrrc.com

The plaintiff, Edward Mott, was represented by:

Ed Fleming
Burch & Cracchiolo, PA
602-234-9921
efleming@bcattorneys.com

(3) The case involved a dispute concerning a verbal agreement between friends who entered into a real estate deal. The defendant, Steven Caravello, entered an agreement to purchase the Hotel San Carlos from its owner. Mr. Caravello had used money invested by his friend the plaintiff, Ed Mott, to contribute to a non-refundable down payment to purchase the hotel. The purchase agreement for the hotel required the buyer to complete the purchase by a certain date. The date passed, the defendant was not able to secure the funding to complete the purchase, and the deposit was lost. The complaint alleged that the defendant had assured the plaintiff he would not lose his money if the deal did not go through. The case was settled by Magistrate Judge Lawrence Anderson after discovery, including a video-taped deposition of the plaintiff. I participated in the drafting of the settlement memoranda and attended the settlement conference.

(4) The case took place at the height of the recession and the downturn in the lending and real estate markets in 2008, and involved an acrimonious dispute between lifelong family friends.

5. *State v. DeBarge*, S-0300-CR-20070240, in Coconino County Superior Court (guilty plea for time served after re-trial ended in hung jury).

(1) I worked on the case from 2005-2008. The jury trial took place in the spring of 2007, and the case was settled in 2008.

(2) The prosecutors were:

The Honorable Theodore Campagnolo
602-372-0537
smiths013@superior court.maricopa.gov

I was part of the defense team representing John DeBarge, which also included:

Randy Papetti
Lewis Roca Rothgerber Christie LLP
602-262-5337
RPapetti@lrrc.com

Jon Weiss
Lewis Roca Rothgerber Christie LLP
602-262-5382
jweiss@lrrc.com

Dana Hlavac
928-279-2414
dphlavac@gmail.com

(3) This case involved a re-trial for first-degree murder after Mr. Debarge's conviction was vacated when the federal courts granted his petition for the Writ of Habeas Corpus. He had been convicted of killing his girlfriend's 11-month old daughter, after the child suffered a closed-head injury under his care. The defendant maintained the child fell out of her high chair while he was out of the room. The jury trial lasted five weeks and involved testimony from multiple prosecution and defense experts about whether the child's injuries could have resulted from a fall. After the re-trial ended in a hung jury, the parties reached a plea agreement whereby, in exchange for a sentence of time-served (10 years), the defendant pled guilty to reckless child abuse for leaving the child unattended in her high chair. The settlement conference was held by Judge Ronald Reinstein.

(4) The case was significant because of the seriousness of the charge, and because the re-trial took place many years after the events had occurred. In addition, the case involved complicated issues in the field of head trauma, where the medical consensus had changed regarding the severity of injury that could be caused by a short-distance fall. I participated in all aspects of trial preparation, pre-trial motions (including motion for change of venue and a motion to preclude evidence under Rule 404(b)), and the trial itself. I also obtained declarations from additional experts prior to the settlement conference, and drafted a settlement memorandum.

All of these settlements occurred early in my career, and I did not personally negotiate the agreements. Rather, I participated in the proceedings as an associate under the supervision of a partner, taking part in the litigation preceding the settlement, drafting settlement memoranda, and attending the mediation or settlement conference.

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

The approximate number of cases in which you appeared before:

Federal Courts:	51
State Courts of Record:	19
Municipal/Justice Courts:	0

The approximate percentage of those cases which have been:

Civil:	98%
Criminal:	2%

Only one case was criminal, but a majority of the federal cases were habeas corpus cases, which, while technically civil, involve a great deal of criminal issues.

The approximate number of those cases in which you were:

Sole Counsel:	40
Chief Counsel:	0
Associate Counsel:	29

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion:	80%
You argued a motion described above	1%
You made a contested court appearance (other than as set forth in the above response)	1%
You negotiated a settlement:	8%
The court rendered judgment after trial:	0
A jury rendered a verdict:	0

The number of cases you have taken to trial:

Limited jurisdiction court	0
Superior court	1
Federal district court	0
Jury	1

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

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

The approximate number of your appeals which have been:

Civil:	9
Criminal:	67
Other:	Not applicable.

The approximate number of matters in which you appeared:

As counsel of record on the brief:	73
Personally in oral argument:	6

25. Have you served as a judicial law clerk or staff attorney to a court? Yes If so, identify the court, judge, and the dates of service and describe your role.

I served as a law clerk to the Honorable Mary Murguia, on the United States Court of Appeals for the Ninth Circuit, from March, 2011 to September, 2012. I began clerking for Judge Murguia while she was a District Court Judge on the United States District Court for the District of Arizona, and did so from August 2010 to March 2011.

As a law clerk for the District Court, I reviewed parties' briefs, conducted research, and drafted orders under Judge Murguia's direction on a variety of motions. These included motions to dismiss, motions for summary judgment, and various evidentiary motions. I also assisted the Judge in preparing for trial, oral argument, and plea and sentencing hearings, and I attended these proceedings. I worked on a variety of federal cases, including federal criminal and habeas corpus cases, and contract, tax, administrative, and bankruptcy cases. My experience in the District Court provided an invaluable perspective when I later clerked in the Ninth Circuit, as I understood better the context in which the trial court decisions that are reviewed by the Court of Appeals are made.

While clerking for the Ninth Circuit Court of Appeals, I conducted research on issues in a variety of criminal, civil, administrative and other appellate cases. I prepared bench memoranda that analyzed each of the issues raised in a given case, and made recommendations to the Court. I also participated in pre-argument conferences in which the law clerks would staff the cases with Judge Murguia. I attended arguments in San Francisco and Seattle, as well as *en banc* arguments in Pasadena. In addition, following argument and conference, I participated in the drafting of memorandum dispositions, opinions, and dissents, under the Judge's direction. I also prepared memoranda for the Judge before members of the Court would vote on whether a case would be heard *en banc*.

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

1. *Stanford v. Ryan*, 15-16652, in the United States Court of Appeals for the Ninth Circuit.

(1) 2015-2017

(2) The case was before the Ninth Circuit Court of Appeals. The panel included:

The Honorable Consuelo Callahan
The Honorable Kim Wardlaw
The Honorable Ronald Gould

(3) I represented the State of Arizona.

The Appellant, Robert Stanford, was represented by:

Cedric Hopkins
520-294-2482
objectionyourhonor@hotmail.com

(4) Mr. Stanford, who is serving an 18-year sentence for second-degree murder, appealed the District Court's denial of his petition for the Writ of Habeas Corpus. Mr. Stanford had claimed at trial that the victim had reached into his car and grabbed his gun and that, in the ensuing struggle, Mr. Stanford had shot the victim three times in self-defense. In his habeas petition, Mr. Stanford claimed he had been deprived of his Sixth Amendment right to effective assistance of counsel because his lawyer did not formally interview the only witness to the murder, or call him to testify at trial. The witness provided a post-trial affidavit stating that had he would have corroborated Mr. Stanford's account of the shooting. The Ninth Circuit Court of Appeals affirmed the denial of the petition.

(5) I argued the case for the State of Arizona in the Ninth Circuit Court of Appeals in San Francisco. The case raised questions concerning the reasonableness of an attorney's decision not to pursue a witness or call him to testify. I successfully argued that under the deferential standard in *Strickland v. Washington*, the attorney was not objectively unreasonable in declining to further pursue the witness after speaking with him twice, and determining his account did not match Mr. Stanford's story, which was constantly changing. The Court also agreed that Mr. Stanford could not establish he was prejudiced by any decision not to call the witness, given the overwhelming evidence contradicting Mr. Stanford's account of having shot the victim in his car at close range, including the absence of bullets, blood or damage to the inside of the car.

2. *State v. Wolfe*, CA-CR 15-0357, in Division One of the Arizona Court of Appeals.

(1) 2016-2017

(2) The case was before the Arizona Court of Appeals. The panel included:

The Honorable Jon W. Thompson (author)
The Honorable Maurice Portley
The Honorable Patricia Norris (dissent)

(3) I represented the State of Arizona.

The Appellant, Jobe Wolfe, was represented by:

Jared Keenan
Arizona Justice Project
602-773-6012

(4) Mr. Wolfe appealed his conviction for sexually assaulting his older brother's girlfriend, who lived next door to Mr. Wolfe. Mr. Wolfe claimed at trial that he had a consensual sexual encounter with the victim. Mr. Wolfe raised multiple hearsay issues, and alleged that the victim's testimony had opened the door to admission of her prior sexual history under Arizona's rape shield law. The Court of Appeals affirmed the conviction.

(5) I represented the State during oral argument in the Arizona Court of Appeals. The fact-intensive case involved a serious conviction of rape. Mr. Wolfe alleged seven different hearsay violations by the trial court, and claimed he had been deprived of his right to a defense. Mr. Wolfe also alleged that the victim's testimony describing her embarrassment in discussing the details of the assault with police had opened the door to admission of her sexual history, requiring a nuanced analysis of the rape shield law. Mr. Wolfe also petitioned for review in the Arizona Supreme Court, and I filed a response. The Arizona Supreme Court denied review.

3. *State v. Devault*, CA-CR 14-0427, in Division One of the Arizona Court of Appeals.

(1) 2015-2016

(2) The case was before the Arizona Court of Appeals. The panel included:

The Honorable Kent Cattani (author)
The Honorable Samuel Thumma
The Honorable Randall Howe

(3) I represented the State of Arizona.

The Appellant, Marissa Devault, was represented by:

Cedric Hopkins
520-294-2482
objectionyourhonor@hotmail.com

(4) The Appellant appealed her conviction for first-degree murder after a jury found her guilty of killing her husband with a hammer. At the time of the attack, Ms. Devault had a boyfriend, whom she owed almost $300,000. She had obtained two life insurance policies on her husband months before the murder. She eventually confessed to police, claiming she had hit her husband with the hammer in self-defense after he had sexually assaulted her. She later blamed her roommate for the killing. The Court of Appeals affirmed the conviction.

(5) This was a high-profile murder case that received significant media attention at the time of the crime and during the trial, which lasted 40 days. Ms. Devault was charged with capital murder. The jury convicted her of first-degree murder, and found sufficient aggravators to justify imposing the death penalty, but ultimately concluded that mitigating circumstances warranted a sentence of natural life in prison rather than death. The appeal raised multiple issues, including claims that improper hearsay and prejudicial prior bad acts by Ms. Devault had been admitted at her trial. Ms. Devault also alleged several instances of prosecutorial misconduct, and claimed that her confession had been admitted at trial in violation of her *Miranda* rights. Finally, Ms. Devault claimed the trial judge was biased. Ms. Devault petitioned for review of the Court of Appeals decision in the Arizona Supreme Court, which denied review.

4. *State v. Hunter,* 1 CA-CR 15-0499, in Division One of the Arizona Court of Appeals.

(1) 2017

(2) The case was before the Arizona Court of Appeals. The panel included:

The Honorable Randy Howe (author)
The Honorable Lawrence Winthrop
The Honorable Jennifer Campbell

(3) I represented the State of Arizona.

The Appellant, Jerice Hunter, was represented by:

Ronald De Brigida
602-558-8596
rdblaw@cox.net

(4) The Appellant, Ms. Hunter, was convicted of child abuse and first-degree murder for killing her 5-year-old daughter. Ms. Hunter had kept her daughter in a closet for weeks, where the child deteriorated until she died. Ms. Hunter then disposed of the child's body in a Tempe dumpster, and reported her missing. On appeal, Ms. Hunter alleged there was insufficient evidence to convict her of the charges, and that the court had prevented her from presenting a third party defense. Ms. Hunter also claimed the trial court had erred in admitting expert evidence that cadaver dogs alerted to her closet, the car used to take the body to Tempe, and the dumpster where Ms. Hunter disposed of her child. The Court of Appeals affirmed the convictions.

(5) The case received significant media coverage at the time the victim was reported missing, and when authorities spent months searching for the body in the landfill. Ms. Hunter was convicted following a 24-day trial, despite the fact the child's body was never found.

5. *State v. Carson,* CR-17-0116*, Arizona Supreme Court.*

(1) 2018

(2) The case was before the Arizona Supreme Court

Chief Justice Scott Bales
Vice Chief Justice John Pelander
Justice Robert Brutinel
Justice Ann Timmer (author)
Justice Clint Bolick
Justice Andrew Gould
Justice John Lopez

(3) I represented the State of Arizona.

The Appellant, Antajuan Stuart Carson, was represented by:

Erin Sutherland
Pima County Public Defender
520-243-6800
erin.sutherland@pima.gov

(4) This was an appeal from a double homicide in which the evidence indicated the defendant shot the murder victims as they were running away from him. Despite evidence the shooter had been seen brawling with his victims at some point before they ran away from him, and a bloody knife was found near one of the victim, the Court had declined to give the jury the "self-defense" instruction because the defendant denied having been the shooter, asserting a misidentification defense.

(5) I argued this case before the Arizona Supreme Court. The Court reversed the conviction, announcing a new rule overturning precedent, and providing that a misidentification defense did not preclude a defendant from instructing the jury on self-defense. The Court emphasized that the statute required that the self-defense instruction be given if there was any evidence to support the defense, regardless of any other defense asserted. The Court also found sufficient evidence to support giving the instruction.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

In 2018, I was appointed to the Maricopa County Superior Court, and I have served as family court judge in Mesa since October of that year. As a family court judge, I manage a docket of over 400 cases, ranging from marriage dissolutions, petitions to establish or to modify parenting orders, grandparent visitation, and support order modifications. Every day, I conduct resolution management conferences and hold evidentiary hearings on temporary and final orders. Portions of these hearings at times function as settlement conferences, in which I work with the parties or counsel to try to reach agreements. I also regularly hold hearings to address discovery disputes and other motions. Many of the litigants are self represented.

28. List at least three but no more than five cases you presided over or heard as a

judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

1. *McQuillen v. Hufford*, FC2017-096669

(1) 2019

(2) Maricopa County Superior Court

(3) The petitioner was represented by:

Michael Clancy
Hildebrand Law, P.C.
480-305-8300
Michael@hildebrandlaw.com

The respondent was represented by:

Robert Singer
Singer Pistiner, P.C.
(602)264-0110
rs@singerpistiner.com

(4) In this case, a child's mother filed a paternity action against the respondent, the child's biological father. The respondent filed a motion to dismiss because the mother and another man had signed an affidavit of paternity, which has the effect of a final judgment under Arizona law. The time had passed for challenging the affidavit under the Arizona Rules of Family Law Procedure. This made the fact that respondent was the biological father irrelevant, absent fraud. I dismissed the case after concluding that the mother was precluded from claiming the affidavit of paternity was fraudulent since she had signed it, knowing that respondent was the biological father.

(5) The ruling was affirmed in an opinion by the Arizona Court of Appeals. *See McQuillen v. Hufford*, 249 Ariz. 69 (App. 2020). The opinion clarified the interplay of the various presumptions of paternity associated with DNA tests and affidavits of paternity, and affirmed the mother's inability to challenge the affidavit, given her unclean hands.

2. *Cox v. Esplin*, FC2019-097629

(1) 2020

(2) Maricopa County Superior Court

(3) The petitioner was represented by:

Sandra Slaton
Horne Slaton, PLLC
480-483-2178
slaton@horneslaton.com

The respondent was represented by:

Glen Halterman
Ellsworth Family Law, P.C.
480-635-8700
sme@ellsworthfamilylaw.com

The adoptive couple was represented by:

Brent Ellsworth
480-654-3668
brent@brentellsworthlaw.com

(4) The case involved a dispute between a biological father and the child's mother, who placed the child for adoption. The biological father had been given notice of the adoption, but had not filed his petition to establish paternity within the timeframe provided under the law due to attorney error. I joined the adoptive couple as an interested party, and granted the mother's motion to dismiss the paternity suit as untimely.

(5) The case is significant because it concerns whether any circumstances can excuse a father's failure to comply the strict deadlines for filing and serving a paternity action when he has received proper notice an adoption is pending. The petitioner also asked the court to adopt the standard from a U.S. Supreme Court bankruptcy case to assess whether an error constitutes excusable neglect. The case is currently being reviewed in a special action in the Arizona Supreme Court.

3. *Nguyen v. Trinh*, FN2018–094469

(1) 2019-2020

(2) Maricopa County Superior Court

(3) The petitioner was self-represented at trial, and represented on appeal by:

Robert Gehrke (deceased)

The respondent was represented by

Barbara L. Fuqua
480-656-8356
barbara@fuqualawfirm.com

(4) This was a dissolution proceeding in which the parties had reached an agreement prior to the hearing to dispose of their real estate holdings. At the final hearing, the petitioner wanted to set aside the agreement, and also claimed the parties' marriage was not valid. The respondent wanted the court to uphold the agreement, and was also asserting a claim for waste and attorneys' fees. I denied the husband's request to set aside the agreement, found the parties had a valid marriage, and granted the wife's waste and attorneys' fees claims. The husband was self represented, and the hearing was conducted with an interpreter, who stopped interpreting at one point in the proceeding.

(5) The ruling in this case was recently affirmed in a memorandum decision by the Arizona Court of Appeals (No. 1 CA-CV 20–0325FC, February 9, 2021) (Bailey, J., author). The case demonstrates the variety of issues faced by family court judges, including self-represented litigants and problems that can arise concerning interpretation during hearings.

4. *Blazon v. Bruntz*, FC2020-093760

(1) 2020

(2) Maricopa County Superior Court

(3) The petitioner was represented by

Karla Urrea
Law Office of Ronald L. Kossack
480-345-2652
karla@kossacklaw.com

Respondent was represented by

Zachary Giammarco
Giammarco law Office, PLLC
480-722-0103
zach@glawaz.com

(4) The petitioner in this case filed a petition for dissolution, claiming the parties had been married under Colorado common law. The respondent filed a motion to dismiss, arguing the parties were not married under Colorado common law. Following an evidentiary hearing, I determined the parties were not married under common law, and dismissed the case.

(5) This case was unusual in that it required me to apply Colorado law. In addition, both parties called an expert witness—each one a former family court judge—to discuss Colorado common law marriage. I ultimately precluded portions of one of the expert reports, however, because it opined on the ultimate issue in the case.

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

In 2001, after taking the bar exam, I spent three months as an intern in chambers at the United Nations International Criminal Tribunal for Rwanda. The tribunal, located in Tanzania, was established to prosecute the leaders and organizers of the Rwandan genocide that took place in 1994. While interning for the tribunal, I wrote summaries of witness testimony, drafted evidentiary rulings, and participated in the drafting of the judgment in one case, under the direction of court staff. During my stay, I travelled to Rwanda and visited massacre sites to see firsthand the places I was reading about. My internship gave me direct exposure to the levels of depravity to which society can deteriorate without a reliable system of government and laws. The experience deepened my appreciation of the American constitutional structure within which courts operate, and from which they derive their authority to interpret and apply the law.

The summer following my first year of law school, in June and July of 2002, I served as a legal intern for Senator John McCain on the Commerce Committee in Washington, D.C. As a legal intern, I wrote talking points regarding the Sarbanes Oxley Act, which the Senator read on the Senate floor. I also drafted an op-ed on the Senator's behalf for *The Hill* about the use of performance enhancing drugs in professional sports.

The summer before I started law school, I worked as an intern for Senator John McCain in his Phoenix Office. During that time, I worked primarily on constituent services. In that capacity, I took calls from individuals regarding their concerns, and wrote letters on Senator McCain's behalf to convey the Senator's support of some constituents' requests to various federal agencies.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? No. If so, give details, including dates.

Not applicable.

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

Not applicable.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? If not, explain your decision.

Not applicable.

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

Not applicable.

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

* For the tax year 2013, we timely filed our returns with the assistance of an accountant. The returns contained an error, however, overstating the amount of federal taxes we had pre-paid. We received a notice about the error from the IRS, and immediately paid the amount due on May 20, 2014.

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

Not applicable.

35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? No. If so, explain.

Not applicable.

36. Have you ever been a party to a lawsuit, including an administrative agency

matter but excluding divorce? No. If so, identify the nature of the case, your role, the court, and the ultimate disposition.

Not applicable.

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? No. If so, explain.

Not applicable.

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

Not applicable.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? No. If so, provide details. Not applicable.

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

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

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? No. If so, in each case, state in detail the circumstances and the outcome.

Not applicable.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? No. If your answer is "Yes," explain in detail.

Not applicable.

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? No. If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

Not applicable.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? No. If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

Not applicable.

49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? No. If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

Not applicable.

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? No. If so, list with the citations and dates.

In 1999, after completing a year of graduate school, I worked as a fact-checker for *The New Yorker* magazine. At *The New Yorker*, every cartoon caption, movie review, and article is thoroughly, and meticulously fact-checked. In that capacity, I conducted research, reviewed interview notebooks, and called sources to verify information in draft articles. I worked closely with writers and editors to ensure the accuracy of every sentence published, and to meet the weekly magazine's tight deadlines. While working at *The New Yorker*, I also fact-checked a book on the Microsoft antitrust trial called *World War 3.0* by Ken Auletta, the magazine's media correspondent.

Working for Judge Posner during law school, I researched a wide range of topics for the prolific author, for articles on antitrust law, pragmatism, constitutional interpretation, as well as his book on catastrophe. I also checked the citations in many of his articles and books. During undergraduate school, I also provided research for a number of articles and books authored by Professors Harvey Mansfield and Matt Dickinson. For Harvey Mansfield, I conducted research on Alexis deTocqueville for his translation of Democracy in America. Matt Dickinson's work was on bureaucracy, and I assisted him in cataloguing the growth of the president's cabinet and staff over the years.

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

Not applicable.

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

- CLE presentation on the International Criminal Tribunal for Rwanda, for Inn of Court in 2006.

- CLE presentation on preparing a case involving complex medical issues for Arizona Public Defenders' Association in 2008.

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

- Member of the public section of the Arizona State Bar (2015 to 2017).
- Member of the appellate section of the Arizona State Bar (2017).

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? No.

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.

- Part of a legal team that represented defendant in first-degree murder re-trial following release on habeas corpus. (2005-2008).

- Represented an indigent immigrant in an appeal of the Bureau of Immigration Appeals' denial of cancellation of removal as part of the Ninth Circuit Court of Appeals *pro bono* program. This involved writing the appellate brief and arguing the case before the Ninth Circuit. (2009).

- Represented a Tucson non-profit providing substance abuse counseling for Native American communities in its efforts to retain a federal government grant. (2010).

- Organized a talk by Chief Justice Scott Bales about the Arizona Constitution put on by the Harvard Club. (2011).

- Volunteered for Court Works, Kids to Court program at the United States District Court, allowing kids from local public schools to come to court and participate in a mock trial. (2011).

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

All Saints' Episcopal Day School, Board of Trustees 2016-Present

- Member of committee on leadership, innovation, and excellence
- Member of finance committee
- Chair-elect of governance committee

Harvard College Interview Committee 2016-Present

ARCS Foundation (Achievement Rewards for College Scientists) 2014-Present
Member Phoenix Chapter

- Organization provides scholarships to American graduate students in the sciences at Arizona public universities
- Through the organization, my husband and I fund a scholarship every year.

For the past year, I have also volunteered every month with my eldest son at St. Mary's Food Bank or Feed My Starving Children, packing food to donate to individuals in Arizona and abroad.

Harvard Club, Board Member 2008-2015

- Volunteered for early college awareness forum
- Organized send off for Arizona students admitted to Harvard
- Organized various events

Phoenix Chorale, Board Member 2008-2010

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

- 2017 Arizona Attorney General Attorney of the Year for the Solicitor Division.

- 2008 Robert J. Hooker prize from the Arizona Public Defenders' Association for high quality representation of an indigent defendant.

- John Frank *pro bono* award at Lewis and Roca given to attorneys who perform over 50 hours of *pro bono* hours.

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

In 2018, I was appointed by Governor Doug Ducey to the Arizona Commission for the Arts.

Have you ever been removed or resigned from office before your term expired? Yes. If so, explain.

I resigned shortly after I was appointed to the Maricopa County Superior Court, in accordance with the ethical rules prohibiting judges from holding such an office.

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

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

the Commission's attention.

I have been married for over 18 years to my husband, Francisco, whom I met in college, and who is a neurosurgeon at the Barrow Neurological Institute. We have three sons, ages 14, 12, and 9. I am involved in their school, and spend a lot of time helping them with homework, listening to their music practice, and taking them to tennis lessons. This past year in particular, we have also spent a lot of time together as a family in Phoenix and Flagstaff engaged in activities like biking, playing golf and skiing, as well as playing board games and making puzzles. My husband and I are also enthusiastic supporters of education and the arts. In addition, I am an avid reader of fiction.

HEALTH

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

ADDITIONAL INFORMATION

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

When I was nine years old, my family immigrated to Des Moines, Iowa from Montreal, Canada. At the time, I spoke only French, and quickly learned English through immersion in school. The change from Canada to the United States was not as stark as that faced by many who come to this country. Nevertheless, I experienced both the awareness of being somehow different, and the open arms with which my family was met in the Midwest. Being from another country, I do not take living in the United States for granted. When I became a naturalized citizen in 1991, I felt, and still feel, profound gratitude for the opportunity America provides everyone fortunate enough to live here.

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

My father suffered from mental illness, and died when I was in high school, leaving my mother to raise four children alone. The experience of moving to a new country and losing my father at a young age nurtured in me a fundamental sense of adaptability and resilience that has served me throughout my personal and professional life.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? Yes. If not, explain.

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

See Attachment B.

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

See Attachment C, excerpt from answering brief filed in the Ninth Circuit Court of Appeals (2015) (the name of the witness discussed in the brief has been changed to Jones).

See Attachment D, excerpt from answering brief in the Arizona Court of Appeals (2015).

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

See Attachment E, excerpt from 2018 order granting motion for summary judgment (edited to remove identifying information and change non-party's name to John Smith).

See Attachment F, excerpt from 2019 order granting partial motion to dismiss (edited to remove identifying information).

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

See Attachment G

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

Attachment A

25 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
IN AND FOR THE COUNTY OF MARICOPA

IN THE MATTER OF DESIGNATION OF DIVISION NUMBERS	ADMINISTRATIVE ORDER NO. 2021-037

IT IS ORDERED, April 1, 2021**,** establishing division numbers for the respective Judges of the Superior Court as follows:

DIVISION	JUDGE	DIVISION	JUDGE
1.	Arthur T. Anderson	36.	Jay M. Polk
2.	Sherry K. Stephens	37.	Janice K. Crawford
3.	Teresa A. Sanders	38.	Pamela Hearn Svoboda
4.	David K. Udall	39.	Bradley Astrowsky
5.	Connie Contes	40.	David Cunanan
6.	Margaret R. Mahoney	41.	Joan M. Sinclair
7.	Sally S. Duncan	42.	Suzanne E. Cohen
8.	John Rea	43.	Jay R. Adleman
9.	Rosa Mroz	44.	Joseph P. Mikitish
10.	Michael W. Kemp	45.	Kathleen Mead
11.	Bruce R. Cohen	46.	Rodrick J. Coffey
12.	Jo Lynn Gentry	47.	Patricia A. Starr
13.	Timothy J. Ryan	48.	Lori Horn Bustamante
14.	Michael D. Gordon	49.	Timothy J. Thomason
15.	John R. Hannah, Jr.	50.	Geoffrey Fish
16.	Karen A. Mullins	51.	Frank Moskowitz
17.	Christopher T. Whitten	52.	Jennifer Ryan-Touhill
18.	Joseph C. Welty	53.	Jennifer Green
19.	Dean M. Fink	54.	Dewain D. Fox
20.	Joseph C. Kreamer	55.	James D. Smith
21.	Roger E. Brodman	56.	Theodore Campagnolo
22.	Susanna Pineda	57.	Jeffrey A. Rueter
23.	Daniel G. Martin	58.	Stephen M. Hopkins
24.	Samuel J. Myers	59.	Joshua D. Rogers
25.	Randall H. Warner	60.	Ronee Korbin Steiner
26.	M. Scott McCoy	61.	Kerstin G. LeMaire
27.	David J. Palmer	62.	Alison S. Bachus
28.	Pamela S. Frasher Gates	63.	Howard D. Sukenic
29.	Christopher A. Coury	64.	Roy C. Whitehead
30.	Daniel J. Kiley	65.	Gregory S. Como
31.	Peter A. Thompson	66.	Laura M. Reckart
32.	Mark H. Brain	67.	Kristin R. Culbertson
33.	Danielle J. Viola	68.	Michael C. Blair
34.	Michael J. Herrod	69.	Todd F. Lang
35.	Katherine M. Cooper	70.	Scott Minder

DIVISION	JUDGE	DIVISION	JUDGE
71.	Ronda R. Fisk	85.	Cassie Bray Woo
72.	Adam D. Driggs	86.	John L. Blanchard
73.	Michael S. Mandell	87.	Robert I. Brooks
74.	Justin Beresky	88.	Marvin L. Davis
75.	Lisa Ann VandenBerg	89.	Suzanne M. Nicholls
76.	Kevin Wein	90.	Michael Z. Rassas
77.	Suzanne S. Marwil	91.	Aryeh D. Schwartz
78.	Sara J. Agne	92.	Julie Mata
79.	Margaret B. LaBianca	93.	Max-Henri Covil
80.	Scott A. Blaney	94.	Monica N. Edelstein
81.	Adele G. Ponce	95.	Rusty D. Crandell
82.	Melissa Iyer Julian	96.	David E. McDowell
83.	Joseph S. Kiefer	97.	VACANT
84.	Tracey Westerhausen	98.	VACANT

IT IS FURTHER ORDERED terminating Administrative Order No. 2021-001

Dated this 25th day of March, 2021.

/s/ Joseph C. Welty
Hon. Joseph C. Welty
Presiding Judge

Original: Clerk of the Superior Court

Attachment B

Attachment B

Personal Statement of Adele Ponce

When I told my college admissions interviewer I was interested in the law, he asked why. As a young girl from the Iowa suburbs, I strained to put into words the things I really sought to learn. I said I wanted to understand what was "behind the law," where our laws come from, and how we know whether they are good. He pointed me to some literature about various majors, and said I should look at the offerings of the school's Government Department.

The next fall I enrolled in my first political theory class, and read classic works by Plato, Aristotle, Aquinas, and others who had grappled with the big questions about man, the state, and the law. I immediately knew this was what I wanted study. The following semester, I continued with modern writers like Machiavelli, Hobbes, Locke, and Rousseau. Over the next three years, I took as many courses in political theory as I could, marveling at the great books, and the story they told of the evolution of human ideas about justice.

My studies gave me a profound appreciation for our American system of government as the product of hundreds of years of political thought. Our founders, standing on the shoulders of giants, separated government power into three branches, and enshrined the arrangement in our Constitution. In doing so, they aimed to protect us from tyranny and give citizens the best chance to flourish by establishing the rule of law. I came to understand that our laws are good, largely because they are a product of, and enforced through, this arrangement—written by representatives we elect, and applied to all through our courts.

This appreciation for the legal system led me to law school, where I took every available constitutional law class. Opinions on subjects such as the freedom of speech and presidential authority dazzled me, much like the political theory I had read in college. Studying the law, I refined my understanding of the role of the judiciary in our political system—both its functions and its limitations. I came to see judges as stewards of the law, and cases as opportunities to both apply and explain it to the public.

After graduating from law school, I came to Arizona, and joined the commercial litigation section of a large Phoenix firm. I worked with remarkable attorneys who taught me the nuts and bolts of civil practice, as well as the integrity and professionalism that are the hallmark of truly excellent lawyers. After five years at the firm, a chance meeting at a dinner banquet took me in a different direction. I was seated next to a Federal District Court Judge, and spent the evening discussing her prior career as a prosecutor and her experience on the bench. Months later, she reached out to ask if I would be interested in clerking for two years, and I eventually left the firm to pursue this opportunity.

Having worked as an advocate, it was eye-opening to experience the litigation process from the perspective of the court. Taking in opposing briefs and arguments from this vantage point gave me insight into what is—and is not—persuasive. I saw firsthand how lawyers can lose credibility by being careless or overzealous. I enjoyed the variety of cases I worked on as a

federal clerk, and was particularly drawn to criminal matters, whose facts and stakes were so different from the civil practice that was familiar to me. Participating in the work of our judicial branch gave me a personal and professional satisfaction that differed fundamentally from what I had experienced in my legal career up to that point.

The judge I worked for was elevated to the Ninth Circuit, and I spent the second half of my clerkship performing appellate work. I appreciated the tremendous responsibility borne by the appellate courts, as the final opportunity to ensure the law was correctly applied. I also found I was particularly well suited to this work, which required rigorous research on narrow issues and extensive writing. When my clerkship ended, I looked for opportunities to practice appellate law, and was fortunate to join the Criminal Appeals Section of the Arizona Attorney General's Office. I found being an appellate prosecutor both intellectually and emotionally rewarding, with each new case presenting an opportunity to learn about some new facet of criminal law, and ensure justice was maintained for crime victims.

Almost three years ago, I became a superior court judge, fulfilling what felt like a life-long dream to be a part of the judiciary. I greatly enjoy my work in family court, where I maintain a busy calendar, constantly conducting trials and resolution management conferences, and ruling on motions. Due to my years in appellate practice, I am always conscious that rulings made in the thick of litigation can at times lead to reversals. I apply the law faithfully, aware that the decisions I make profoundly impact the litigants before me. I love interacting with the public, and am proud to represent the justice system for the people in Arizona.

Much as I enjoy my work as a trial judge, I remain drawn to the rigor and in-depth nature of appellate work. I am thrilled when a case raises a thorny issue of legal interpretation, and I welcome the opportunity to perfect the legal reasoning behind a given decision. It would be an honor and privilege to serve the people of Arizona as one of the seven justices on our Supreme Court. I would bring to the high court my education and training and my diverse legal experience, as well as my innate curiosity about the law, my love of writing, and my strong work ethic. I believe my experience on the trial bench will also make me a better appellate judge. Having experienced the swift pace and varied nature of trial litigation, I understand inherently why certain discretionary decisions are assessed more generously than interpretations of the written law. I would assume the responsibilities of a Supreme Court justice ethically and professionally, aware that the Court is the very last stop in our justice system. Most importantly, I would approach the immense duties of the office with reverence and humility before the law, and a deep appreciation for the critical function of the Supreme Court as the ultimate steward of the rule of law in our great State.

Attachment C

1. *Liberty interest arising from statute.*

While an individual seeking release from restrictions imposed pursuant to a valid conviction can claim no liberty interest arising from the Due Process Clause itself, a statute mandating early release under certain circumstances can create an expectation of release protected by the Due Process Clause. *Board of Pardons v. Allen*, 482 U.S. 369, 377 (1987); *Greenholtz*, 442 U.S. at 11–12. The Supreme Court held that the Nebraska parole statute at issue in *Greenholtz* created such an expectation. *Greenholtz*, 442 U.S. at 11–12. The Court "found significant [the statute's] mandatory language—the use of the word 'shall'-and the presumption created that parole release must be granted unless one of four designated justifications for deferral is found."[1] *Allen*, 482 U.S. at 374 (discussing *Greenholtz*). In *Allen*, the Supreme Court similarly found that the Montana parole statute, like the statute at issue in *Greenholtz*, created a liberty

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[1] The statute at issue in *Greenholtz* provided: "Whenever the Board of Parole considers the release of a committed offender who is eligible for release on parole, it *shall* order his release unless it is of the opinion that his release should be deferred because: (a) There is a substantial risk that he will not conform to the conditions of parole; (b) His release would depreciate the seriousness of his crime or promote disrespect for law; (c) His release would have a substantially adverse effect on institutional discipline; or (d) His continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his capacity to lead a law abiding life when released at a later date." Neb. Rev. Stat. § 83–1, 114(1) (1981) (emphasis added, quoted in *Allen*, 482 U.S. at 374).

interest in parole release, due its use of "mandatory language ('shall') to 'creat[e] a presumption that parole release will be granted' when the designated findings are made."[2] 482 U.S. at 376 (citing *Greenholtz*, 442 U.S. at 12).

The holdings in *Greenholtz* and *Allen* have also been recognized by the Arizona courts. *See Stewart v. Arizona Board of Pardons*, 156 Ariz. 538, 542–43, 753 P.2d 1194, 1198–99 (App. 1988) (finding Arizona parole statute creates liberty interest because, like statute in *Allen*, it provides the board "shall" authorize release if criteria is found); *see also Wigglesworth*, 195 Ariz. at 435, 990 P.2d at 29 (citing *Greenholtz*, and noting that "if state statutes mandate commutation or parole via specified criteria, an interest protected by the Due Process Clause may arise").

A. APPELLANT HAS NO PROTECTED LIBERTY INTEREST IN EARLY TERMINATION OF PROBATION, AND THUS NO DUE PROCESS RIGHT TO A HEARING WHEN THE COURT DECLINES TO TERMINATE PROBATION EARLY.

Appellant does not specify whether the liberty interest he claims arises from the Due Process Clause itself, or from the statute. In any case, as

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[2] The parole statute at issue in *Allen* provided that "Subject to the following restrictions, the board *shall* release on parole . . . any person confined in the Montana state prison . . . when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or the community[.]" Mont. Code Ann. § 46-23-201 (1985) (cited in *Allen*, 482 U.S. at 376, with emphasis added).

discussed below, he cannot claim a protected interest under either. Thus, he cannot establish the court committed error, let alone fundamental error by denying his petition to terminate probation without conducting a hearing.

1. *A probationer has no liberty interest in early termination of probation arising from the Due Process Clause.*

Appellant can claim no liberty interest in the early termination of probation arising from the Due Process Clause. As "a convicted person," a probationer, like the petitioners in *Greenholtz*, possesses "no inherent right to be . . . released before the expiration of" his probation term. *Greenholtz*, 442 U.S. at 7. Appellant's "conviction, with all its procedural safeguards, has extinguished that liberty right." *Id*. Although Appellant has an interest in the conditional liberty he enjoys on probation, and is entitled to due process protections when faced with the possibility of revocation and incarceration, *Morrissey*, 408 U.S. at 482; *Gagnon*, 411 U.S. at 782, he has no comparable liberty interest in being released from the restrictions on his freedom. *Greenholtz,* 442 U.S. at 7; *Dumschat*, 452 U.S. at 464.

The only authority cited by Appellant in support of his due process claim is *State v. Smith*, 166 Ariz. 118, 800 P.2d 984, and *State v. Benson*, 176 Ariz. 281, 860 P.2d 1334, both of which held that a defendant has a due process right to notice and a hearing before the court designates an open-ended offense as a felony pursuant to A.R.S. § 13–702(H). Those decisions are

distinguishable, however, as they based their due process holdings on the "significant consequences attendant upon the designation of an offense as a felony," which include the loss of civil rights, the extension of a probationary period, and the enhancement of a subsequent sentence. *Smith*, 166 Ariz. at 120, 800 P.2d at 986 (citing *Gagnon*, and holding: "Given the significant consequences attendant upon the designation of an offense as a felony, due process requires that a defendant be given notice and an opportunity to be heard prior to the trial court's determination"); *Benson*, 176 Ariz. at 284, 860 P.2d at 1337 ("We also agree with *Smith* that, given the significant consequences of a felony designation, denial of notice and a hearing in this context would violate a defendant's right to due process. . .").

Appellant argues there are also significant consequences attendant to his early termination request, emphasizing that if the court granted relief, he "would be free of the burden of meetings with his probation officer, counseling sessions, and fines," "would not have to report every time he accidentally comes into contact with minors," and would "psychologically be free from having to look over his shoulder." (O.B. at 10.) The Supreme Court in *Greenholtz*, however, rejected a similar attempt to characterize a "natural desire . . . to be released," as a protected liberty interest, emphasizing the Due Process Clause protects against the potential deprivation "of a liberty one has,"

and not the liberty "one desires." 442 U.S. at 9. An individual with an *undesignated* offense facing the possibility of becoming a convicted felon,[3] is in this respect "quite different" from an individual on probation seeking early termination and release. *Greenholtz*, 442 U.S. at 9. In requesting early termination of his probation, Appellant was not facing the possibility of increased punishment or "grievous loss," but rather the possibility of release from those restrictions already lawfully imposed. Appellant thus has no protected liberty interest in the early termination of his probation arising from the Due Process Clause.

2. *A.R.S. § 13–901(E) does not create a protected liberty interest because it does not set out circumstances mandating early termination of probation.*

Although a protected liberty interest can also arise where a statute creates an expectation of release, § 13–901(E) does not create such an expectation for probationers seeking early termination. As noted, a statute creates a protected interest in freedom from conditions imposed following a conviction if it mandates release in certain circumstances. *Allen*, 482 U.S. at

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[3] Although A.R.S. § 13–702(H) provided that the undesignated offense would be treated as a felony, this Court emphasized that "[h]ow the offense is treated until the designation is made is not relevant to the question of how the designation ultimately is made." *Benson*, 176 Ariz. at 284, 860 P.2d at 1337.

377; *Greenholtz*, 442 U.S. at 11–12; *Stewart*, 156 Ariz. at 542–43, 753 P.2d at 1198–99.

In *Stewart*, this Court concluded Arizona's parole release statute created a protected liberty interest. *Stewart*, 156 Ariz. at 542–43, 753 P.2d at 1198–99. The court cited a change in the statute to support its conclusion; the statute had previously stated that the parole board "may authorize release" under certain conditions, but now said the board "shall authorize" release if it appears the applicant will remain at liberty without violating the law. *Id*. The Court noted that *Allen* had found a similar change to be indicative of the legislature's intent to severely limit the board's discretion, and thus created a protected liberty interest. *Id*. (citing *Allen*, 482 U.S. at 380–81); *cf. Wigglesworth*, 195 Ariz. at 436, 990 P.2d at 30 ("Because the legislature's [mandatory] disproportionality review standards place no substantive limitations on an Arizona Governor's discretion to grant or deny commutation. . . [t]his procedure . . . fails to create a protected liberty interest regardless of the Board's recommendation of commutation").

Unlike the parole statutes at issue in *Allen*, *Greenholtz*, and *Stewart*, § 13–901(E), does not mandate early termination of probation under a particular set of circumstances; it does not provide that the court "shall" terminate probation once any conditions have been met. Rather, the statute

says the court "*may* terminate the period of probation . . . at a time earlier than that originally imposed if in the court's opinion the ends of justice will be served and if the conduct of the defendant on probation warrants it." § 13–901(E) (emphasis added). Thus, the statute places no limits on the court's ability to deny early termination; instead, it identifies circumstances permitting—but not requiring—the court to terminate probation. Those circumstances themselves constitute broad categories—the ends of justice will be served by the termination, and the conduct of the probationer warrants it—and are acknowledged to be a matter of "opinion" for the court. Indeed, Rule 27.4 of the Arizona Rules of Criminal Procedure refers to this as "discretionary probation termination." Because the statute does not mandate discharge from probation under particular circumstances, it creates no expectation of release, and thus no protected liberty interest in early termination. *Allen*, 482 U.S. at 377; *Greenholtz*, 442 U.S. at 11–12; *Stewart*, 156 Ariz. at 542–43, 753 P.2d at 1198–99.

Citing *Smith* and *Benson*, Appellant points to the court's discretion as the reason a hearing is required under the Due Process Clause. As discussed above, however, those cases are distinguishable because this Court in *Smith* and *Benson* recognized that the consequences of becoming a convicted felon meant due process protections were warranted when the designation was made;

a probationer seeking release does not face this same prospect. The conclusion that due process required a hearing before an offense could be designated a felony was based on that interest—and not on any expectation created by the statute. *Smith*, 166 Ariz. at 120, 800 P.2d at 986; *Benson*, 176 Ariz. at 284, 860 P.2d at 1337. In the absence of comparable consequences, the discretion of the court does not raise due process concerns; on the contrary, it ensures no protected liberty interest is created.

This Court did conclude in *Smith* and *Benson* that the discretion of the court in designating an offense implied that both parties had the opportunity to present conflicting facts. The Court, however, based this conclusion, not on any due process consideration, but on its interpretation of the statute, and its "belie[f] that the legislature [could not] have intended" for the court to reach any conclusion it wished without regard to the criteria set forth in the statute. *See Smith*, 166 Ariz. at 119, 800 P.2d 984 (discussion of court's discretion under separate subheading than due process discussion). The Court thus read into § 13–702(H), an implication that both parties had an opportunity to be heard before the designation was made.

No such requirement may be read in § 13–901(E), which makes clear the

legislature did not intend for the court to hold a hearing if a probationer applies to terminate his probation.[4] Instead, the statute specifically provides that a court may terminate probation "after notice and an opportunity to be heard for the prosecuting attorney and, on request, the victim." A.R.S. § 13–901(E). The right to be heard does not necessarily mean the right to a hearing. *See Mendez v. Robertson*, 202 Ariz. 128, 130, ¶ 10, 42 P.3d 14, 16 (App. 2002). Regardless, there is no mention of an opportunity to be heard for the probationer.[5] *See State v. Roscoe*, 185 Ariz. 68, 71, 912 P.2d 1297, 1300 (1996) ("'the expression of one or more items of a class indicates an intent to exclude all items of the same class which are not expressed.'") (quoting *Pima County v. Heinfeld*, 134 Ariz. 133, 134, 654 P.2d 281, 281 (1982)). Indeed, the Arizona Rules of Criminal Procedure indicate it is the probation officer who moves to terminate probation on the probationer's behalf, and in this case the probation department opposed Appellant's early release.[6] Ariz. R. Crim. P.

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[4] Appellant does not claim and has thus waived any claim that he was entitled to a hearing under the statute. See *Carver*, 160 Ariz. at 175, 771 P.2d at 1390.

[5] Other subsections of the probation statute indicate the legislature was explicit when it wanted to prescribe probation review hearings. *See*, *e.g.*, A.R.S. § 13–923.

[6]Section 13–901(E) states that the court may terminate probation upon application of the probationer, and the Rules of Criminal Procedure specify that the probation officer applies for early termination. To the extent possible, rules

(continued ...)

27.4(a). Thus, the authority cited by Appellant does not support any claim to a liberty interest created by statute.

3. *Even if Appellant had some protected interest in the court's discretionary early termination of his probation, his Due Process rights were not violated in this case.*

Even if Appellant could be said to have some protected interest in the court's discretionary early termination of probation, the Due Process Clause "is flexible and calls for such procedural protections as the particular situation demands." *Morrissey*, 408 U.S. at 481. As the Supreme Court noted in *Greenholtz*, "Merely because a statutory expectation exists cannot mean that in

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(... continued)
and statutes should be harmonized. *Readenour v. Marion Power Shove*, 149 Ariz. 442, 445, 719 P.2d 1058, 1061 (1986). Having the probation officer apply for termination on the probationer's behalf makes sense, given that the officer supervises a course of rehabilitation and represents the probationer's best interest as long as these do not constitute a threat to public safety. *Gagnon*, 411 U.S. at 783–84. Even if the rule and statute cannot be harmonized, "[w]hen a rule and statute conflict, the rule will govern if the matter concerns a procedural right, and the statute will govern if the matter concerns a substantive right." *Patterson v. Mahoney*, 219 Ariz. 453, 199 P.3d 708 (App. 2008). "Substantive law is that part of the law which creates, defines and regulates rights; whereas the [procedural] law is that which prescribes the method of enforcing the right or obtaining redress for its invasion." *State v. Birmingham*, 96 Ariz. 109, 110, 392 P.2d 775, 776 (1964). As noted, Appellant has no protected liberty interest or due process right in early release from his probation term. The question of who may contact the court to request early termination on a probationer's behalf is, therefore, a procedural issue, not a substantive one. Thus to the extent there is a conflict between the statute and the rule, it is the probation officer who should apply for early termination of probation.

Attachment D

Attachment D

D. ***The state court's determination that defense counsel's decision not to call Jones fell within the wide range of reasonable attorney assistance was not an objectively unreasonable application of*** **Strickland**.

Petitioner claims his lawyer was ineffective for failing to call Jones as a defense witness during his trial, and that the trial court unreasonably applied *Strickland* in concluding otherwise. The decision to call certain witnesses to testify, however, "rests upon the sound professional judgment of the trial lawyer." *Gustave v. United States*, 627 F.2d 901, 904 (9th Cir. 1980). The state court concluded that trial counsel's actions fell within the wide range of reasonable assistance, and found his decisions were not the product of ineptitude or lack of preparation. (ER 25.) As Petitioner acknowledges, his attorney was aware of Jones, spoke to him more than once, and "chose not to call Jones to testify at [his] trial." (Dkt. 9, at 14.) Petitioner further concedes his attorney "made this determination because he felt that Jones's testimony would be detrimental to [Petitioner's] case." (*Id*.)

A decision not to call a witness based on sound logic and tactics is not ineffectiveness. *See generally United States v. Opplinger*, 150 F.3d 1061, 1071-72 (9th Cir. 1998), *overruled on other grounds by United States v. Contreras*, 593 F.3d 1135 (9th Cir. 2010). A decision not to call a witness who would provide testimony that was contrary to and harmful to the defendant is, of

course, based on sound logic and tactics. *See Denham v. Deeds*, 954 F.2d 1501, 1505 (9th Cir. 1992) (decision not to call witness who would have done more harm than good, because of "glaring inconsistencies" in proposed testimony "reflects the skill and judgment one would expect of a reasonably competent attorney"). The fact that jurors expressed a desire to hear from the witness is irrelevant to this determination; jurors often wish to hear from witnesses (including the defendant) whom counsel does not want to call for tactical reasons. Thus, the state court was not objectively unreasonable in concluding that the decision not to call Jones was the product of sound trial strategy, and that counsel was not deficient under the first prong of *Strickland*.

Aware that counsel decided not to call Jones after determining his testimony would prove harmful to the defense, Petitioner faults his attorney for making the decision "based on informal momentary remarks" Jones made to him that led him to "determine[] that Jones's version of the shooting did not match [Petitioner's]." (Dkt. 9, at 14.) Petitioner cites no authority to support his claim that counsel was ineffective in declining to *further* question Jones, after reasonably determining his testimony would be harmful to his defense. *Cf. Campbell v. Coyle*, 260 F.3d 531, 552 (6th Cir. 2001) ("[I]f a habeas claim does not involve a failure to investigate but, rather petitioner's dissatisfaction with the degree of his attorney's investigation, the presumption of reasonableness

imposed by Strickland will be hard to overcome."). On the contrary, although a lawyer has a duty to investigate and prepare an adequate defense, this Court has held that "[t]he fact that trial counsel did not personally interview each witness does not constitute ineffective assistance," *LaGrand v. Stewart*, 133 F.3d 1253, 1274 (9th Cir. 1998), especially when a witness's account is "otherwise fairly known to defense counsel." *Eggleston v. United States*, 798 F.2d 374, 376 (9th Cir.1986) (internal quotation marks omitted). Furthermore, defense counsel has no obligation to interview a witness after determining his testimony would be detrimental the case. *See De Castro v. Branker*, 642 F.3d 442, 452 (9th Cir. 2011); *Williams*, 557 F.3d 534.

Petitioner argues that Jones's affidavit demonstrates his "testimony at trial would have matched [Petitioner's]," and "bolstered [Petitioner's] credibility, which played a significant role in the case." (Dkt. 9, at 14-15.) Petitioner assumes that, had Jones been interviewed formally, defense counsel would have "discovered that Jones's recollection of the shooting *actually* matched [Petitioner's] version of the shooting that he testified to at trial." (*Id*.) (emphasis added.) This assertion is problematic, for several reasons.

As an initial matter, the account in Jones's affidavit does differ from Petitioner's testimony in some respects. Contrary to the account Petitioner offered at trial, for example, Jones admitted seeing the victim as he exited the

Redfish. (ER 35.) Moreover, Jones states that he punched the victim in the head as the latter leaned into the car, important information left out of Petitioner's account. (ER 36.) Thus, while corroborating some aspects of Petitioner's account at trial, Jones's statement could also be used to cast doubt on some aspects of Petitioner's self-defense claim.

More importantly, this approach is contrary to *Strickland*'s command to make "every effort" "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." 466 U.S. at 689. At the time Petitioner's counsel spoke to Jones, their accounts of the crime did not match. The state court of appeals properly expressed "significant reservations" about using Jones's post-trial affidavit—written almost 5 years after the crime, with the benefit of having Petitioner's testimony—to cast doubt over trial counsel's decision not to further interview him. Indeed, courts view such post-trial affidavits with skepticism. *See generally*, *Herrera v. Collins*, 506 U.S. 390, 418-19, 423 (1983). That skepticism is particularly justified here, where Petitioner both testified he had not spoken to Jones since the shooting, and claimed that Jones would corroborate his account.

Petitioner argues his counsel should have "formally" interviewed Jones, and that, had he done so, he would have determined that his account "actually"

corroborated the story Petitioner told at trial, as outlined in Jones's post-trial affidavit. Petitioner's trial counsel indicated, however, that when he spoke with Jones, Petitioner's story was changing frequently, Jones's account did not match Petitioner's version, and so he reasonably believed Jones's testimony would harm the defense case. (ER 39.) That Petitioner offered multiple accounts of the shooting was confirmed at trial, and the prosecutor pointed out his story seemed to evolve to conform to whatever evidence was presented. Thus, even assuming that further communications with Jones would have yielded the story he produced in his affidavit, trial counsel would have had reason to be concerned that even this story would be inconsistent with Petitioner's eventual testimony at trial, as well as Petitioner's prior stories.

Trial counsel was not unreasonable in concluding that testimony from Jones could hurt the defense, depending on what version Petitioner or Jones ultimately offered on the stand. *Cf. Richter*, 562 U.S. at 89 (state court could reasonably conclude that a competent attorney could elect a strategy that did not require using blood evidence "when counsel had reason to question the truth of his client's account"); *see also Carpenter v. Vaughn*, 296 F.3d 138, 154–55 (3d Cir. 2002) (trial counsel was not ineffective for deciding not to call eye witness who provided multiple different accounts of stabbing, some of which contradicted defendant's account).

Petitioner thus cannot establish no reasonable jurist would have concluded his counsel was reasonable in declining to further pursue Jones as a witness after speaking with him, and determining his testimony would not assist Petitioner.[1]

E. ***Petitioner cannot establish counsel's decision not to further pursue Jones prejudiced him under the* Strickland *standard.***

Even if Petitioner could somehow show counsel was deficient in declining to further pursue Jones as a witness, Petitioner must satisfy both *Strickland* prongs, and show that he was prejudiced. 466 U.S. at 691. Here, however,

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[1] Petitioner also notes in passing the state court reached its conclusions "despite" the fact it did not hold an evidentiary hearing. (Dkt. 9, at 19.) Section 2254(e) does not require findings to be based on evidentiary hearings. This is a major difference between § 2254(e), part of AEDPA, and its predecessor 28 U.S.C. (1994 ed.) § 2254(d). *Mendiola v. Schomig*, 224 P.3d 589, 592 (7th Cir. 2000); *see also Lambert v. Blodgett*, 393 F.3d 943, 965-66 (9th Cir. 2004) ("We decline to hold that AEDPA's reference to 'adjudicated on the merits' authorizes us to review the form of sufficiency of the proceedings conducted by the state court. Thus, we will not read into 'adjudicated on the merits' a requirement that the state have conducted an evidentiary hearing, or indeed, any particular kind of hearing. Rather, we give the phrase its ordinary meaning: in general, 'an adjudication upon the merits' is the opposite off a 'dismissal without prejudice.'").

Regardless, the communications from Petitioner's trial counsel made clear he decided not to call Jones after determining his account of the events did not match Petitioner's evolving story and concluding his testimony would not be helpful, but rather hurtful. Declining to conduct a hearing does not render such a determination unreasonable, where a petitioner has the opportunity to present evidence, including affidavits and other documents. *Hibbler v. Benedetti*, 693 F.3d 1140, 1147 (9th Cir. 2012). Petitioner presented affidavits signed by him and Jones, as well as communications between his trial attorney and post-conviction counsel. Based on the materials received, the state court could establish that Petitioner failed to state a colorable ineffective assistance claim.

Attachment E

Attachment E

Excerpt from 2018 order.

Before the Court is Respondent's motion for summary judgment. Petitioner ("Mother") filed a Petition to establish paternity, legal decision making, parenting time and child support on October 19, 2017. According to Petitioner's allegations, the minor child at issue in this case was born on August 8, 2015. Mother alleges in her pleadings that she reached out to Respondent following the birth of the child, that Respondent denied paternity and made statements indicating to Mother he would not take care of the child. More than a year after the child's birth, on January 7, 2016, Mother and another man, John Smith, signed a voluntary acknowledgement of paternity and changed the child's last name to Smith. John Smith is now listed as the father on the child's birth certificate.

Mother's petition in this Court, however, alleges that Respondent is in fact the father of the child. On November 14, 2017, this Court entered an order for genetic testing of Respondent, the result of which indicated there was a 99.99% probability that Respondent was the minor child's biological father. Mr. Smith provided an affidavit stating that he signed the acknowledgement of paternity, knowing there was a chance he was not the child's biological father. He is not opposed to having Respondent established as the father, but Mr. Smith has not intervened in this case.

On October 12, 2018, Respondent filed a motion for summary judgment, arguing that pursuant to A.R.S. § 25–812 and Rule 85(C) of the Arizona Rules of Family Law Procedure, Mr. Smith was the legal father of the child, and Petitioner was time-barred from challenging the acknowledgement of fatherhood. Petitioner filed a response, arguing that she could challenge the paternity acknowledgement on the basis of fraud given the filing of a false acknowledgment of

paternity, and maintaining that the genetic test provided clear and convincing evidence to override the prior paternity determination. Respondent filed a reply.

Summary judgment is appropriate if there "is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). There is no dispute that Mother and Mr. Smith individually signed their names, witnessed by other people and under penalty of perjury to an acknowledgement of paternity. Mr. Smith's name was originally omitted from the birth certificate, but was added through the voluntary actions of Mother and Mr. Smith. The acknowledgement the parties signed "is a determination of paternity and has the same force and effect as a superior court judgment." A.R.S. § 25–812(D). Neither Mother nor Mr. Smith sought to rescind the Acknowledgment of Paternity within the 60 days required by A.R.S. § 25–812(H)(1). Thus, they could only challenge the acknowledgment of paternity "on the basis of fraud, duress or material mistake of fact," as provided in rule 85(C) of the Arizona Rules of Family Law Procedure. A.R.S. § 25–812(H)(1). Such a motion, however, must "be filed within a reasonable time, and . . . not more than six months after the judgment or order was entered . . ." Rule 85(C)(2). Mother did not file her motion within six months of the signing of the Acknowledgement.

Mother relies on portions of A.R.S. § 25–812(E) that provide for genetic testing when an acknowledgement of paternity is challenged, and requires the court to vacate the determination of paternity if the genetic testing provides clear and convincing evidence the established father is not in fact the biological father. Mother also cites § 25–816(B) which provides in part that "if the results of the genetic testing indicate that the likelihood of the alleged father's paternity is ninety-five percent or greater, the alleged father is presumed to be the parent of the child and the party opposing the establishment of the alleged father's paternity shall establish by clear and convincing

evidence that he is not the father of the child." Mother claims that these provisions require the Court to set aside the determination that John Smith is the father, in light of the results of the genetic testing. There are a number of problems with Mother's position.

As an initial matter, the various presumptions discussed in § 25–814 and § 25–816(B) do not apply when there is a voluntary acknowledgment of paternity, which has the force of a judgment under A.R.S. § 25–812. Section 25–812 outlines the requirements for overcoming such an acknowledgement. Although § 25–812(E) does require the Court to order genetic testing, which can serve as clear and convincing evidence to set aside an acknowledgement of paternity, the provision makes clear this only applies when a challenge has been made within 60 days prescribed by the statute. Beyond the 60 days, as noted above, it is only on the basis of fraud, duress or material mistake of fact that a challenge to such an acknowledgement may be made, and then only within six months of the acknowledgement as provided by Rule 85(C). These time limits recognize "that there exists a strong public intent to advance a child's best interest by providing that child with permanency," and that "[a]t some point in time, a child's need for permanency must outweigh the ability of a party who has acknowledged paternity to challenge that acknowledgement." *Andrew R. v. Ariz. Dept. of Economic Sec.*,223 Ariz. 453, 457, ¶24 (App. 2010). The results of the genetic testing have no impact on the acknowledgement of paternity if Mother lacks the authority to challenge it. Mother did not file her petition within 60 days or six months that the acknowledgement was signed. Her motion is thus untimely. *See generally Id.* 223 Ariz. at 458–59, ¶¶ 19–21.

Mother states throughout her response that the acknowledgment she and Mr. Smith signed constituted a fraud upon the court, presumably in order to avoid the time-bar through the exception in Ariz. R. Fam. Law P. 85(C)(3). That rule does separately provide that the six month

limitation on challenging judgments "does not limit the power of a court to entertain an independent action . . . to set aside a judgment for fraud upon the court." Rule 85(C)(3). Even if the signing of the acknowledgment might under some circumstances be seen as a fraud upon the court, the circumstances here in which Mr. Smith thought there was a chance he was not the father do not qualify. *Cf. Alvarado v. Thomson*, 240 Ariz. 12, 15, ¶¶ 12–23 (App. 2016) (finding the requirements of Rule 85(C)(3) met where biological father challenged acknowledgement signed by mother and individual whom she paid to sign acknowledgement in order to avoid adoption proceedings). Moreover, even assuming the acknowledgement of paternity in this case can be characterized as a fraud upon the court and that Mother's raising of this argument qualifies as an "independent action," the fraud in this case was perpetrated by Mother and she is foreclosed from challenging the acknowledgement of paternity on this basis. *See Matter of Worcester*, 192 Ariz. 24, 26 (1998) ("it is axiomatic that one who has knowingly and intentionally perpetrated a fraud on another party and the court can never be entitled to relief under the rule").

IT IS ORDERED Respondent's motion for summary judgment is granted.

Attachment F

Attachment F

Excerpt from 2019 order.

Before the Court is the motion filed by Respondent ("Husband") to dismiss the petition for legal separation filed by Petitioner ("Wife"). Husband's motion is made on jurisdictional grounds on the basis of A.R.S. § 25-313 and A.R.S. § 25–1224(B). The Court heard oral argument on the motion March 19, 2019, during the parties' resolution management conference.

Pursuant to the allegations in the petitions, the parties were married on September 28, 1991, and used to live in Arizona in a condo they own. In March, 2018, the parties rented out their Arizona condo, and moved to St. Peters, Missouri, where they had purchased a house. The parties moved to Missouri for Husband's work. In Missouri, Wife registered to vote and obtained a driver's license. Wife came back to Arizona around November 24, 2018, after deciding to separate from Husband, and stayed with family and friends and received medical care. Wife returned to Missouri on December 4, 2018, to retrieve her car and most of her belongings, which she then brought back to Arizona. Wife alleges she signed a 13-month lease for an apartment and has established a design business in Arizona. Husband remains in Missouri.

On December 8, 2018, Wife filed a petition for legal separation in this Court, requesting spousal maintenance. Just over a week later, on December 18, 2018, Husband filed his own petition for legal separation in Missouri, affirmatively alleging no spousal maintenance was owed.[1]

On February 28, 2019, Husband filed the current motion to dismiss, in which he objected to the petition for legal separation. Under Arizona law, upon the filing of such an objection, the

[1] Wife was served with Husband's petition on December 29, 2018, and Husband was served with Wife's petition on February 6, 2019.

Court must "direct that the pleadings be amended to seek a dissolution of the marriage." A.R.S. § 25-313(4).[2] To enter a decree for legal separation, the Court must find that one of the parties was domiciled in Arizona at the time the action was commenced. A.R.S. § 25-312(1). To enter a dissolution decree, by contrast, the Court has to find that one of the parties was domiciled in Arizona for 90 days before the filing of the petition for dissolution. A.R.S. § 25–312(1). Husband's motion to dismiss argues that Wife's petition should be dismissed because Wife did not meet the jurisdictional requirements for a petition for dissolution on the date she filed the petition for legal separation.

Husband's claim that this Court lacks jurisdiction because he objects to a legal separation lacks merit. As an initial matter, an objection to a legal separation does not deprive the court of jurisdiction, even where the jurisdictional requirement for dissolution has not been met. Section 25–313(4) does not provide that an objection immediately converts the petition for legal separation into a petition for dissolution, which could potentially be dismissed for lack of jurisdiction. Rather, the statute explicitly provides that "[i]f the other party objects to a decree of legal separation, *on one of the parties meeting the required domicile for dissolution of marriage*, the court shall direct that the pleadings be amended to seek a dissolution of the marriage." A.R.S. § 25-313(4) (emphasis added). As such, the statute explicitly acknowledges that there will be circumstances like this case, in which a party files for legal separation without meeting the jurisdictional standard for a petition for dissolution. And the statute permitting an objection explicitly provides that the pleadings are to be amended "on one of the parties meeting the required domicile." The action for dissolution does not begin upon objection, but rather once and after the pleading is amended, which only

[2] On March 8, 2018, Wife filed a motion in this Court to convert her action to a petition for dissolution.

occurs after the jurisdictional requirement has been met.[3] This is not a case in which Wife is amending her pleading to cure a jurisdictional defect. *Cf. Davis v. Russell*, 84 Ariz. 144 (1948). Husband has not (and based on the allegations, cannot) challenge the Court's jurisdiction to hear the petition for legal separation Wife filed, and the motion to dismiss on the basis of A.R.S. § 25–313, is denied.

Husband also separately argues that because he filed a "comparable pleading" in Missouri before an answer to Wife's petition for legal separation was due, and he has challenged this Court's jurisdiction, this Court "may not exercise jurisdiction establish a support order" pursuant to A.R.S. § 25–1224(B).[4] This statute, which is part of the uniform interstate family support act, governs proceedings to establish support orders impacting individuals outside this state. A support order includes an order for spousal maintenance. A.R.S. § 25–1202(29). Section 25–1224 addresses simultaneous proceedings, providing as follows:

> (A) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or foreign country only if all of the following are true:
>
> 1. The petition or comparable pleading in this state is field before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country.
> 2. The contesting party timely challenges the exercise of the jurisdiction in the other state or the foreign country.
> 3. If relevant, this state is the home state of the child.

[3] Even if it could be argued that the petition converts on the date of the objection, the petition alleges that Wife went back to Arizona on November 24, 2018—96 days before Husband filed his objection. Although there could be a fact issue regarding whether Wife established residency before she moved all of her belongings in December, this is not an issue the Court needs to determine at this time.

[4] Wife also moved for dismissal in Missouri on January 28, 2019, alleging that Missouri law provides that, where two courts have jurisdiction, the court where the first petition is filed has exclusive jurisdiction. Per the parties, the Missouri court has not ruled on Wife's motion to dismiss, and is awaiting a ruling from this Court on jurisdiction.

> (B) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if all of the following are true:
>
> > 1. The petition or comparable pleading in the other state or the foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state.
> >
> > 2. The contesting party timely challenges the exercise of jurisdiction in this state.
> >
> > 3. If relevant, the other state or the foreign country is the home state of the child.

Husband claims that A.R.S. § 25–1224(B) precludes the Court from hearing Wife's request for spousal maintenance because he filed a petition for legal separation in Missouri raising this issue within the time allowed for a responsive pleading in this state, and he timely challenged the exercise of this Court's jurisdiction. Wife did not address this claim in her response. Husband is correct that the strict application of § 25–1224(B) precludes this Court from exercising jurisdiction over Wife's request for spousal maintenance. The Court notes that in cases involving requests for child support, a later comparable pleading in another state does not preclude an Arizona court from exercising jurisdiction unless the other pleading is filed in the child's home state. This provides a reasonable basis for giving deference to a later action for filing support, without which no such deference is owed under § 25–1224(B). Such a reasonable basis is missing from § 25–1224(B) as it applies to cases establishing spousal support. As such, the statute rewards a party for delaying a filing addressing the issue of support, penalizes a party for filing first and promotes forum shopping.[5] It could also result in a situation in which no Court has jurisdiction to hear a valid

[5] The Court notes that Husband in this case filed a motion to dismiss objecting to a legal separation, requiring the amendment of this petition to convert it to a petition for dissolution, after having filed a legal separation in Missouri.

claim for spousal support, where, for example, the "comparable pleading" is filed in a state without jurisdiction over the claim. This issue, however, is for the Legislature to correct. Section 25–1224(B) precludes this Court from exercising jurisdiction over Wife's claim for spousal maintenance.

Attachment G

Maricopa County Voters Only

Hon. Adele Ponce

Maricopa County Superior Court
Bench: Family
Appointed: 2018

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

2020	**Attorney Surveys** Distributed: 153 Returned: 22 **Score (See Footnote)**	**Juror Surveys** Distributed: 0 Returned: 0 **Score (See Footnote)**	**Litigant Witness Surveys** Distributed: 286 Returned: 30 **Score (See Footnote)**
Legal Ability	81%	n/a	n/a
Integrity	97%	n/a	99%
Communication	83%	n/a	96%
Temperament	95%	n/a	98%
Admin Performance	93%	n/a	98%
Settlement Activities	91%	n/a	n/a

FOOTNOTE: The score is the percentage of all evaluators who rated the judge "superior", "very good", or "satisfactory" 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 or no survey responses were returned). The JPR Commission votes "Yes" or "No" on whether a judge "MEETS" Judicial Performance Standards, based on the statistical information, as well as any other information submitted by the public or the judge. Further information on the judges and justices can be found at each court's website.

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