

**APPLICATION FOR NOMINATION TO
JUDICIAL OFFICE**

**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 65)**

PERSONAL INFORMATION

1. Full Name: **Cynthia Jo Bailey**

2. Have you ever used or been known by any other name? **Yes** If so, state name:
Cynthia Jo Langford

3. Office Address: **Arizona Court of Appeals, Division One
Arizona State Courts Building
1501 W. Washington, Suite 307
Phoenix, AZ 85007**

4. How long have you lived in Arizona? **1972-1980, 1982-1995, 1997-Present**

What is your home zip code? **85255**

5. Identify the county you reside in and the years of your residency. **Maricopa,
same as above question #4**

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: **Republican 1984 - Present**

(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.

Arizona State University - Tempe, AZ
Bachelor of Science, Business Administration

Sandra Day O'Connor College of Law - Tempe, AZ
Juris Doctorate

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

Law School

I completed an externship with the United States Attorney's Office in Phoenix. I wrote an appellate brief in a criminal case under the supervision of Assistant United States Attorney Patrick Cunningham. I also completed legal research and writing projects for other civil and criminal attorneys.

During my second and third years, I supported myself with continuous, part-time research and writing work for several civil and criminal attorneys.

College

My major field of study was Business Administration.

I was the president of Chi Omega sorority and also held other leadership positions within the sorority.

I was the Greek Week Committee co-chairman. In this year-long role, I led a committee that coordinated a week-long event that raised \$15,000 for Make-a-Wish Foundation. The Committee organized hundreds of students in philanthropic activities, hosted Greek-wide athletic events, and produced a musical performance at Gammage Auditorium.

During my junior and senior years, in addition to my leadership responsibilities in the Greek system, I maintained a 3.6 grade point average and was continuously employed in three part-time, off-campus jobs.

During my senior year, I completed an internship with a sports law professor. I conducted legal research for a law review article he authored.

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

Magna Cum Laude graduate

Regents Academic Scholarship (full tuition for four years)

Panhellenic Greek Woman of the Year, finalist

Arizona State University Academic Greek Woman of the Year

Between college and law school I completed a session-long internship with the Arizona Senate Government Committee. I was hired as a full-time assistant analyst after the internship concluded.

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 - November 1992

Indiana Supreme Court - June 1995

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No** If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **No** If so, explain any circumstances that may have hindered your performance.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Arizona Court of Appeals	5/20-present	Phoenix, AZ
Maricopa County Superior Court - Judge	9/11- 5/20	Phoenix, AZ
Maricopa County Superior Court - Commissioner	1/10-9/11	Phoenix, AZ
Maricopa County Attorney - Civil Division	9/07-1/10	Phoenix, AZ
Bailey Law Offices, PLC	10/05-9/07	Scottsdale, AZ
Arizona State Senate - Judiciary Committee Analyst	3/04-11/04	Phoenix, AZ
Fromm, Smith & Gadow, PC	10/03-10/05	Phoenix, AZ
Kimerer & Derrick, PC	11/01-8/03	Phoenix, AZ
Arizona State Senate - Rules Attorney	9/97-11/01	Phoenix, AZ
Grant County Prosecutor	3/95-9/97	Marion, IN
Maricopa County Attorney - Criminal Division	3/93-3/95	Phoenix, AZ
Howell Communications	8/92-1/93	Phoenix, AZ
Office of the General Counsel, March of Dimes, Law Clerk	5/90-8/90	Mamaroneck, NY
Arizona State Senate - Intern/ Assistant Research Analyst	1/89-8/89	Phoenix, AZ
Prudential Insurance Company	8/88-12/88	Phoenix, AZ

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.

I have attached, as Exhibit A, lists of current judges and commissioners

from the Maricopa County Superior Court and the Arizona Court of Appeals, Division One.

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.

I have served as a judicial officer since 2010. During this time, I presided over cases in the criminal, family, and civil divisions of the Maricopa County Superior Court. As a judge on the Arizona Court of Appeals, I sit on a three-judge panel and decide appeals in a variety of substantive legal areas, including criminal, civil, juvenile, family, mental health, tax, and probate. The court also decides cases on appeal from the Arizona Department of Economic Security, the Arizona Industrial Commission and the Arizona Corporation Commission.

Before joining the superior court bench, I was a Deputy Maricopa County Attorney and represented the State in civil actions to compel individuals who were in crisis to undergo mental health treatment. I presented testimony from social workers, psychiatrists, and lay witnesses in support of the assertion that involuntary treatment was appropriate.

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

I practiced criminal prosecution both in Maricopa County, Arizona, and Grant County, Indiana. I carried a full felony caseload in the trial division in Maricopa County. In Grant County, I tried major felony cases, including matters where the defendants were charged with murder, rape, vehicular homicide, arson, and child molestation. In addition, I handled matters in misdemeanor and juvenile court.

As the Rules Attorney for the Arizona Senate, my practice included constitutional law, statutory drafting, and ethics advice. In this nonpartisan position I reviewed bills for constitutionality and germaneness. I testified weekly before the Senate Rules Committee on these issues. I performed legal research for the members, and advised the body on parliamentary procedure and Senate Rules. I also analyzed existing statutory law.

I practiced criminal defense in cases at both Kimerer & Derrick, PC, and Bailey Law Offices, PLC.

At Fromm, Smith & Gadow, PC, a firm specializing in domestic relations, I developed a practice in Qualified Domestic Relations Orders (QDRO). At the time, few attorneys in Maricopa County practiced in this field. I took upon myself learning this complex area of federal pension law, and was able to develop business for the firm.

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.

While employed at the Arizona Senate, I drafted and/or edited hundreds of bills and statutory amendments. As Rules Attorney, I analyzed every bill and proposed amendment heard by the Senate. I also communicated with senators, staff, and lobbyists regarding the statutory, substantive, and constitutional deficiencies of each bill, and the propriety of proposed remedial measures.

As set forth above, I drafted QDROs in compliance with federal pension law. I also developed a working knowledge of commercial lease drafting, though I did not practice in the area.

During my ten years on the superior court, I authored countless minute entry orders, ruled on substantive motions in criminal and civil cases, and made factual findings and legal conclusions in contested evidentiary hearings. As a family court judge, I authored hundreds of dissolution decrees and custody orders.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **No** If so, state:
- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.
 - b. The approximate number of these matters in which you appeared as:

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

21. Have you handled any matters that have been arbitrated or mediated? **No**
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

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.

A.

- 1) **September 2007- January 2010
Maricopa County, AZ Mental Health Court**
- 2) **Maricopa County Office of the Public Advocate - for the patients**

Josephine Jones jonesj01@mcao.maricopa.gov 602-506-5795
Hon. Elisa Donnadieu elisa.donnadieu@jbazmc.maricopa.gov
602-655-1232
Ann Whitaker whitaker@mail.maricopa.gov 480-344-2013
- 3) **In the mental health court, I negotiated approximately 25% of my caseload to settlement. Settlement in these cases required that the respondents waive their right to an evidentiary hearing, stipulate to facts evidencing mental illness, and agree to be subject to court-supervised mental health treatment. These settlements were typically possible only after some period of in-patient treatment and stabilization.**
- 4) **Settlement is significant in these cases because it spares a patient**

from hearing testimony from family members and case workers about their mental decompensation in the community. It also relieves family members and patient case workers from testifying about these matters. Settlement can be vital to sustaining a patient's trust in their doctors and their family, and that trust benefits all parties in the long run.

B.

- 1) **October 1996, State of Indiana v. Terry Toy
Grant County, IN Superior Court 2**
- 2) **Bruce Elliot - Attorney for Defendant
765-651-2451
belliott@grantcounty.net**
- 3) **Defendant Toy was a convicted sex offender accused of molesting a seven (7) year-old girl who was playing outside her home. Because of his prior criminal history, I did not offer him a plea agreement. The victim and her family were extremely reluctant to appear in court. The defendant made admissions to police, but insisted on pursuing a trial. After jury selection and my opening statement, the defendant pled guilty to the court on all charges.**
- 4) **This case was my first sex-crimes trial, and it affirmed for me the importance of developing a rapport with the victim and her family. Through many hours of interaction with the victim and her family, the victim advocate and I were able to make the court process, which can be terrifying for any crime victim, as bearable as possible.**

C.

- 1) **November 1996, State of Indiana v. Denny Piercy/Jimmy Dale Clark Jr./Daniel Wayne Cook
Grant County, IN Superior Court 1**
- 2) **James Luttrull Jr.- Grant County Chief Deputy Prosecutor/co-counsel
765-618-4457
luttrullj@gmail.com**

**C. Robert Rittman - Attorney for Defendant Piercy
Deceased**

**Hon. Jeffrey Todd - Attorney for Defendant Clark
(765) 664-9532
jtodd@grantcounty.net**

Bruce Elliott - Attorney for Defendant Cook

765-651-2451
belliott@grantcounty.net

- 3) **Co-defendants drove to the rural home of an 80-year-old female victim. Under the guise of having car trouble and needing to use the victim's phone, all three co-defendants entered her home. Once inside, the defendants robbed and brutally beat the victim. She sustained permanent physical injuries to her face and suffered devastating emotional trauma from the senseless attack.**
- 4) **This case was a lesson in the breadth of interests that a prosecutor must weigh in determining how best to resolve a case. Here, the brutality of the crime demanded a punishment that might only be achieved through taking the case to trial. On the other hand, the victim was extremely frail after the attack, and testifying at trial could have been further damaging to her. Resolving the case required balancing those competing considerations.**

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:	1
State Courts of Record:	900
Municipal/Justice Courts:	150

Because I did not keep records, these figures are conservative estimates.

The approximate percentage of those cases which have been:

Civil:	30%
Criminal:	70%

The approximate number of those cases in which you were:

Sole Counsel:	95%
Chief Counsel:	0%
Associate Counsel:	5%

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: **0%**

You argued a motion described above **0%**

You made a contested court appearance (other than as set forth in the above response) **0%**

You negotiated a settlement: **65%**

The court rendered judgment after trial: **25%**

A jury rendered a verdict: **10%**

The number of cases you have taken to trial:

Limited jurisdiction court **0**

Superior court **Approximately 500 including mental health court**

Federal district court **0**

Jury **Approximately 30 in Maricopa and Grant counties**

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

Superior Court – I do not have a list of trials I conducted. The bulk of this large number relates to mental health court, and this is a conservative estimate based on my average weekly caseload.

Jury Trials – I do not have a list of jury trials I conducted. This is a conservative estimate based on my recollection.

24. Have you practiced in the Federal or state appellate courts? **No** If so, state:

The approximate number of your appeals which have been:

Civil: _____

Criminal: _____

Other: _____

The approximate number of matters in which you appeared:

As counsel of record on the brief:

Personally in oral argument:

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

A.

- 1) **March - June 1997, State of Indiana v. Charles Sanders**
- 2) **Judge Thomas Hunt (retired) Grant County, IN Circuit Court**
- 3) **James Luttrull, Jr.- Grant County Chief Deputy Prosecutor/co-counsel**
luttrullj@gmail.com
765-618-4457

Pat Ryan (retired, no contact information available)
Matthew Ryan - Attorneys for Defendant
ryan@csp.edu
507-301-2642
- 4) **Defendant was charged with second degree murder in the shooting death of a 45 year-old man. The murder occurred during the Quinceanera of the victim's niece. The defendant caused a disturbance during the celebration and was ousted from the party. He returned with a gun and shot the victim. The defendant claimed self-defense, alleging that the victim had a knife at the time of the shooting. The claim was specious when considering the proximity of the defendant and victim to one another. After a hung jury, we retried the case, and Sanders was convicted and**

sentenced to 65 years in prison.

5) This was my first murder trial, and was also my first retrial after a hung jury. In addition, the defendant and victim were both well-known in the small community where the crime occurred, which caused an intense local media focus on the case. The notoriety of those involved, together with the media coverage, made it more challenging to seat an impartial jury.

B.

1) August 1997, State of Indiana v. Ilan Kibbey

2) Judge Thomas Wright (Retired) Grant County, IN Superior Court 2

3) Joe Lewis - Attorney for Defendant
765-662-2576
Jklewis48@yahoo.com

4) Defendant was charged with child molestation for assaulting a pre-teen girl over several years. The victim's father was a professor at a local university where the defendant was a student. The victim's family befriended the defendant and spent significant time with him. The defendant was also the victim's youth group leader. The victim didn't disclose the molestation until after the defendant graduated from college and moved out of state. There was no corroborating physical evidence, but the defendant had written several letters in the intervening years giving vaguely worded "apologies" to the victim.

5) This case was significant because it was my first bench trial on a major felony case. Trying a case to the court requires a different strategy than presenting a case to a jury. This crime was devastating to the victim and her family as well as the university and church communities involved. In a small community like Grant County, the nature of this crime, and the violation of trust and decency that it represented, had long-lasting effects on all involved.

C.

1) March 2002, Robert Charles Comer v. Dora B. Schiro, Director of the Department of Corrections

2) Judge Roslyn O. Silver - United States District Court

3) Michael D. Kimerer - co-counsel for Plaintiff Comer
602-279-5900
MDK@kimerer.com

Holly Gieszl - co-counsel for Plaintiff Comer
602-277-0772
holly@gieszlfirm.com

Hon. Peter Eckerstrom - Respondent attorney and Comer's habeas
counsel
520-628-6950
Eckerstrom@appeals2.az.gov

Julie Hall - Respondent attorney and Comer's habeas counsel
520-896-2890
juliehall@hotmail.com

- 4) Plaintiff Comer, who was on death row at the Arizona Department of Corrections, sought to withdraw his appeals and be put to death. His habeas counsel refused to comply with his request, and instead challenged Comer's competency to make the decision to end the legal fight to overturn his death sentence. The 9th Circuit Court of Appeals remanded the case to the District Court to make findings regarding Comer's competency. We represented Comer in opposition to habeas counsel's position. Habeas counsel's argument focused on the conditions in the supermax unit of death row, the number of years Comer endured those conditions, and the psychological toll those conditions exacted. Comer testified on his own behalf and answered Judge Silver's questions. After a three-day evidentiary hearing, the District Court concluded that Comer was competent. He was eventually permitted to withdraw his appeals, and was executed in 2007.
- 5) This high-profile case was significant due to the unusual nature of Comer's request and the adversarial posture of his habeas counsel. Comer's original trial in Maricopa County Superior Court was itself a high-profile case, based on the nature of his crimes and his disruptive conduct during the trial.

D.

- 1) June - October 2005, In the Matter of Michael C. JG500190
- 2) Judge Jean Hoag (Retired) Maricopa County Juvenile Court
- 3) Michael Bailey - co-counsel for juvenile's paternal aunt/cousin
See Confidential Section for contact information Question #83

Carol Coghlan - Attorney for juvenile's maternal aunt

480-772-5187

CarolcoghlanCarter55@gmail.com

- 4) A few months after moving from New Jersey to Arizona, 8 year-old Michael C. was badly injured in a car accident. The accident took the lives of his parents and brother. His parents did not leave a will. A maternal aunt who was estranged from the family for many years, but lived in Phoenix, cared for Michael C. during his extended hospitalization and rehabilitation in Arizona. Although Michael C. established a relationship with the maternal aunt after the accident, she allowed him to be exposed to her adult son – who had both a criminal history and a drug problem. Michael C.'s paternal relatives from New Jersey sought guardianship, which was contested by the maternal aunt.
- 5) This case was my first juvenile matter. I was challenged to learn the law and rules of procedure in a completely new area of practice. This case was also an example of the tragic circumstances that frequent child guardianship matters.

E.

- 1) 2007-2009 Maricopa County Mental Health court
- 2) Commissioner Benjamin Vatz (Retired)
Commissioner Patricia Arnold (Retired)
Commissioner Michael Hintze (Retired)
(currently a City of Phoenix Municipal Court Judge)
- 3) Maricopa County Office of the Public Advocate - for the patients
Josephine Jones jonesj01@mcao.maricopa.gov 602-506-5795
Hon. Elisa Donnadieu elisa.donnadieu@jbazmc.maricopa.gov
602-655-1232
Ann Whitaker whitaker@mail.maricopa.gov 480-344-2013
- 4) As the State's attorney in mental health court, I typically conducted 3-5 bench trials per day, presenting evidence of a patient's decompensation in the community due to mental health issues, and the patient's need for court-ordered treatment. Each case required the testimony of two psychiatrists, along with two witnesses who observed the patient's behavior. The latter testimony came from the case workers, family members, jail employees, or police officers who witnessed the behaviors that led to the patient's hospitalization.

- 5) **These cases, in general, are significant because, even though the public is becoming more aware of the impact serious mental illness has on society, the topic is not a matter of open community discourse. As a result, individuals and families confronting mental illness don't generally know how to access available community resources. Courts are still the first and last place for many patients and their families to find support and the necessary medical intervention for mental illness. Without court-ordered treatment, many patients may further decompensate in the community, creating a risk of harm for themselves or others.**
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 January 2010, I became a Commissioner of the Maricopa County Superior Court, and was assigned to the criminal division. In that assignment, I presided over a high-volume calendar that included change of plea proceedings, sentencings, preliminary hearings, and restitution hearings.

From my appointment to the bench as Judge in September 2011, through June 2014, I presided over a criminal calendar. I conducted approximately 40 jury trials, participated in hundreds of settlement conferences, ruled on countless substantive motions, and sentenced approximately 10-15 defendants per week. I was also a member of the Settlement Conference Committee.

From June 2014 to June 2018, I presided over a family calendar, the most challenging work for any trial court judge. I heard 6-10 evidentiary hearings per week, conducted numerous informal settlement conferences, and ruled on substantive motions. I was a member of the Behavioral Health Committee and the Initiatives Committee.

From June 2018 to May 2020, I presided over a civil calendar. I conducted jury trials, bench trials, and ruled on dispositive and other substantive motions. I served as the Northeast Regional Court Presiding Judge. I also served as a member of the Judicial Executive Committee and the Superior Court Judge Pro Tem selection committee.

Since May 2020, I have been a member of the Arizona Court of Appeals. I have authored 40 memorandum decisions, considered special actions, and reviewed cases on appeal from the Arizona Department of Economic Security. I am presently assigned to the panel reviewing tax court appeals.

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.

A

- 1) **State of Arizona v Claude Ranger, III CR2012-005729-001**
April 2-April 23, 2014
- 2) **Maricopa County Superior Court, Criminal Division**
- 3) **Jared McBride - Maricopa County Attorney's Office for the State**
484-238-8995
jarredjmcbride@gmail.com

Rachel Phipps-Yonas - Maricopa County Attorney's Office for the State
602-372-4041
Phipps-r@mcao.maricopa.gov

Tyrone Mitchell - Attorney for Defendant
602-695-0922
tmitchell@tyronemitchellpc.com
- 4) **Ranger was charged for a sexual assault that occurred in September 1991. The case remained unsolved until 2011, when police matched DNA from the sexual assault of a 93 year-old woman in Tucson in 1993 to the defendant. The victim was a young adult at the time of the assault.**
- 5) **The case was significant because as a "cold-case" it involved years-old memories at trial. The case presented interesting evidentiary issues related to the relevance of the defendant's prior criminal history and the victim's inability to identify the defendant during her testimony. While she recalled some very specific details of the crime, she was unable to remember other important facts. The defendant was convicted on all counts and that conviction was affirmed on appeal (CA-CR14-0613).**

B

- 1) **State of Arizona v. Benny Trejo CR2012-150337-001
October 16-November 5, 2013**
- 2) **Maricopa County Superior Court, Criminal Division**
- 3) **Robbie Mayer - Maricopa County Attorney's Office for the State
602-506-7205
mayerr@mcao.maricopa.gov**

**Hon. Lindsay Abramson (formerly Maricopa County Office of the
Public Defender) - Attorney for Defendant
602-506-4477
Lindsay.abramson@jbazmc.maricopa.gov**
- 4) **Defendant Trejo was charged with firing a sawed-off shotgun into an occupied residence. Trejo had five (5) prior felony convictions and a record of disruptive behavior. His attorney sought a competency review before trial and presented evidence at sentencing that he had low-average intelligence, symptoms of an undiagnosed depressive disorder, and a years-long addiction to drugs and alcohol.**
- 5) **The case was an exemplar of the difficulties that arise when the criminal courts confront mental health issues. After the defendant was charged, his mental state was evaluated and he was found competent to proceed to trial. However, his behavior was volatile and disruptive enough to potentially justify his removal from the courtroom, with the proceedings continuing in his absence. Because I believed it was important for the defendant to remain in the courtroom for all of the proceedings, I worked to help him improve his courtroom behavior by explaining the process and allowing him to voice his concerns outside of the jury's presence. These efforts took additional time, but ultimately allowed the defendant to participate in the entirety of the trial and aid in his defense.**

C

- 1) **State of Arizona v. Destiney D. Vahle CR2011-007449-001
March 1-March 14, 2012**
- 2) **Maricopa County Superior Court, Criminal Division**
- 3) **Jeannette Gallagher - Maricopa County Attorney's Office for the State (See Confidential Section for contact information Question**

#84)

**Shawn Fuller - Maricopa County Attorney's Office for the State
(See Confidential Section for contact information Question #84)**

**Daniella De La Torre - Attorney for Defendant
(See Confidential Section for contact information Question #84)**

- 4) Defendant was charged with hindering prosecution and interfering with a judicial proceeding for harboring and concealing the identities of three suspects in a murder investigation. The suspects included her boyfriend, her step-father, and the step-father's girlfriend. After the murder, the defendant sheltered the three suspects in her apartment for several days to help them evade capture. She also helped her step-father alter his appearance after seeing him pictured in media coverage of the case. She failed to appear after being subpoenaed to testify at her boyfriend's trial, which forced prosecutors to temporarily dismiss the charges against him. All three suspects were eventually caught, prosecuted, and convicted of murder.**
- 5) This case was significant because defendant's crime, while clearly less significant than the murder, deeply impacted the victim's family. The defendant's actions significantly slowed the police investigation and postponed justice for the family. The trial presented complex evidentiary issues in a variety of areas.**

D

- 1) July 13, 2015 See Confidential Section #85 for case identification**
- 2) Maricopa County Superior Court, Family Division**
- 3) Rebecca Marques - Attorney for Mother
480-305-2062
rmarques@marqueslaw.com**
**Jeffrey Zurbriggen - Attorney for Father
602-631-4444
jeff@jzfamilylaw.com**
- 4) This case involved extremely antagonistic parents who each sought court intervention and orders relating to their five-year old daughter's care and custody. The parties' claims, some unsubstantiated, included domestic violence, substance abuse, other criminal conduct, and mental illness.**

5) This case was significant because it involved some of the most difficult issues faced by a judge in family court. The parties had adequate resources to retain outside professionals to evaluate the respective allegations regarding the other party's parental fitness. These evaluations led to substantiation of some of the more serious claims made by the mother. After trial, the parenting time schedule was significantly altered and the father was ordered to complete intensive treatment.

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

I have been fortunate to work in all three branches of government during my legal career. At different stages, I've specialized in how laws are made, how they are enforced, and how they are interpreted by judicial officers. My experiences in the legislative and executive branches of government enhanced and informed my judicial career in different ways.

My nonpartisan position as Rules Attorney in the Arizona State Senate, where advocacy was prohibited, was particularly valuable. On controversial issues, I was lobbied by senators, staff, and lobbyists from both political parties, but was required to perform a neutral legal analysis of the proposed bills and amendments, as well as existing statutes. The experience provided an early opportunity for me to learn and exercise the skills that now inform my judicial philosophy, that a judge's role is to find what the law is, without regard to personal or partisan preference.

My work in the legislative and executive branches remains a constant reminder to me of the role of the judiciary and the separation of powers and responsibilities among the branches of government. In the absence of some legal or constitutional infirmity, I am constantly mindful that a judge must defer to the legislature's policy choices, and the executive's enforcement of the law.

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**

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No**
32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes**
33. Have you paid all state, federal and local taxes when due? **Yes**
34. Are there currently any judgments or tax liens outstanding against you? **No**
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**
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **Yes**

If so, explain.

If so, identify the nature of the case, your role, the court, and the ultimate disposition.

A criminal defendant filed a complaint against the State of Arizona, the Attorney General's Office, and myself in Maricopa County Superior Court (CV2017-00647). The defendant claimed that an "error on surcharges" in the plea agreement he entered in his criminal case (CR2011-007610) entitled him to a judgment of \$156,000.00.

On November 6, 2017 Judge Kerstin LeMaire summarily dismissed the case on multiple grounds.

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

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

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**

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.
51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes**
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.

October 2019, I participated as a panelist for the Maricopa County Bar Association Bench/Bar seminar “Judges Tell All – An Interactive Discussion on What Helps or Hurts Your Case”.

September 2019, I participated as a panelist for the State Bar of Arizona seminar “Up Your Motions Game”.

September 2019 and October 2020, I was a guest lecturer/judge in the Trial Advocacy course at the Sandra Day O’Connor College of Law.

June 2014, I participated as a panelist for a settlement conference best practices conference for the Maricopa County Attorney’s Office.

April 2013, I participated in the Sandra Day O’Connor College of Law Sentencing Workshop.

Summer 2009, I presented a Continuing Legal Education seminar on mental health law to legislative attorneys.

August-December 1996, I taught a semester-long legal studies class at IVY Tech community college in Marion, IN.

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

IPAC – Indiana Prosecuting Attorneys Council (1995-1997)
APAAC – Arizona Prosecuting Attorneys Advisory Council (1993-95)

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.

Not Applicable

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

March 2020 Soroptimist International, “Dream it, Be it: career support for girls” panelist

2016 - 2019 Baylor University Parents Network – Scottsdale Chapter

2018 Scottsdale Christian Academy Retreat Staff

2010 - 2017 Church small groups leadership

2009 - 2010 National Youth Sports, volleyball coach

2009 - 2010 Children’s Cancer Network Fashion Show

May 2009 and 2010 Paradise Valley Walk for the Cure

May 2009 - May 2011 Facilitator for 8-week long “Peacemakers” seminars at Camelback Bible Church. This curriculum consists of encouraging participants to use mediation, arbitration and learned interpersonal skills to privately resolve disputes of all sizes.

2007 - 2008 PTA Treasurer, Benchmark Elementary School

Since 2003 I have supported a Mayo Clinic medical mission to Mexico by presenting and packaging aid supplies and gathering donations of clothing and toiletries in advance of the annual summer trip.

January 2002 - 2003 Hospice of the Valley, in-patient volunteer, 10 hours per week. I was assigned to a 10-bed in-patient care facility in central Phoenix. I assisted nursing staff, patients and patient family members with a variety of medical and palliative needs.

1994 Coach for Xavier High School moot court team

I also spent countless hours in our children's classrooms and at our church volunteering.

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

Not Applicable

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

In November 2014 and 2018, I was on the general election ballot as a Maricopa County Superior Court judge. I was retained by the voters at each election.

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

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

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

My husband and I enjoy spending time with our family, cooking, and traveling. During the pandemic I developed a love of baking and bread making.

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

Filing Date: April 9, 2021
Applicant Name: Cynthia Bailey
Page 24

yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

During my legal practice, I had the privilege of working with people from a variety of backgrounds, religions, races, ethnicities, and socio-economic circumstances. In my prosecutorial work, it was important to understand the background and experiences of the victims and witnesses in my cases. In more serious cases, such as sex crimes, a victim or their family's background or past experience often impacted the way they approached the rigors of a criminal trial. I was more effective in my presentation to the jury and in my service to the victims when I took the time to understand the people I was working with.

My approach has evolved since those early years of my career. Never was it more important to acknowledge people's differences than when I was assisting the families of those suffering from mental illness. Many times, a person's background or experience influenced their perspective on mental health issues. I worked hard to listen, understand and educate families to assist them in overcoming any preconceived notions about the legitimacy of mental health diagnoses and treatment. In many cases, family members were understandably reluctant to testify about the manifestations of the patient's mental illness. It was therefore important to establish a rapport with the witness, explain the importance of testimony, and emphasize the great value the treatment would bring to their loved one. This understanding also had an effect on whether a family supported the patient's pursuit of mental health treatment after the court order expired.

Through my 11 years as a judicial officer, as I have countless times considered the appropriate sentence for a crime, the best interest of a child in a custody arrangement, the challenges of a pro per litigant in the civil arena, and the adequacy of an appellate argument, the rich diversity of the litigants, witnesses and victims I had the pleasure of working with over the years informs how I treat the people who appear before me.

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

My practice and my judicial tenure have been interesting and varied. As a practicing attorney, I expected certain things from the judges who I appeared before. The public insists on those attributes as well – integrity, knowledge of rules and statutes, fairness, and the willingness to give each party an opportunity to be heard. I understand the complexity of serving the public as a judicial officer. I consistently strive to conduct myself in a manner that preserves the dignity befitting this position of public trust. I present an even and measured temperament, especially when facing complex matters and emotional litigants. My judgment has been refined by

the breadth of my career opportunities, and by the resiliency I have gained through difficult, personal life experiences.

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 “Exhibit B” attached

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.

I did not retain any professional writing samples, except for QDROs drafted during my employment at Fromm, Smith & Gadow. See “Exhibit C” attached.

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 “Exhibit D” attached.

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 “Exhibit E” attached.

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

Judicial Officers - Exhibit A

COURT OF APPEALS DIVISION ONE JUDGES

Peter B. Swann

Kent E. Cattani

Michael J. Brown

Jennifer B. Campbell

Maria Elena Cruz

David B. Gass

Randall M. Howe

Paul J. McMurdie

James B. Morse Jr.

Jennifer M. Perkins

D. Steven Williams

Samuel A. Thumma

David D. Weinzweig

Lawrence F. Winthrop

MARICOPA COUNTY SUPERIOR COURT JUDGES

Jay Adelman	Janice Crawford	Joseph Creamer
Sara Agne	Kristin Culbertson	Margaret LaBianca
Arthur Anderson	David Cunanan	Todd Lang
Brad Astrowsky	Marvin Davis	Kerstin LeMaire
Alison Bachus	Adam Driggs	Margaret Mahoney
Justin Beresky	Sally Duncan	Michael Mandell
Michael Blair	Monica Edelstein	Daniel Martin
John Blanchard	Dean Fink	Suzanne Marwil
Scott Blaney	Geoffrey Fish	Julie Mata
Mark Brain	Ronda Fisk	Scott McCoy
Roger Brodman	Dewain Fox	David McDowell
Robert Brooks	Pamela Gates	Kathleen Mead
Lori Bustamante	Jo Lynn Gentry	Joseph Mikitish
Theodore Campagnolo	Michael Gordon	Scott Minder
Rodrick Coffey	Jennifer Green	Frank Moskowitz
Suzanne Cohen	John Hannah	Rosa Mroz
Bruce Cohen	Michael Herrod	Karen Mullins
Gregory Como	Stephen Hopkins	Sam Myers
Connie Contes	Melissa Julian	Suzanne Nicholls
Katherine Cooper	Michael Kemp	David Palmer
Christopher Coury	Joseph Kiefer	Susanna Pineda
Max Covil	Daniel Kiley	Jay Polk
Rusty Crandell	Ronee Korbin-Steiner	Adele Ponce

Michael Rassas

Chuck Whitehead

John Rea

Christopher Whitten

Laura Reckart

Cassie Woo

Joshua Rogers

Jeffrey Rueter

Timothy Ryan

Jennifer Ryan-Touhill

Teresa Sanders

Aryeh Schwartz

Joan Sinclair

James Smith

Patricia Starr

Sherry Stephens

Howard Sukenic

Pamela Svoboda

Timothy Thomason

Peter Thompson

David Udall

Lisa Vandenberg

Danielle Viola

Randall Warner

Kevin Wein

Joseph Welty

Tracey Westerhausen

MARICOPA COUNTY SUPERIOR COURT COMMISSIONERS

Lindsay Abramson	Melody Harmon	Bernard Owens
Richard Albrecht	Susan Harris	Brian Palmer
Glenn Allen	Roger Hartsell	Gary Popham
Lori Ash	Richard Hinz	Sigmund Popko
Michael Barth	Nicolas Hoskins	Virginia Richter
Christian Bell	Jacki Ireland	Ashley Rahaman
Harriet Bernick	Thomas Kapio	James Rummage
Keelan Bodow	Brian Kaiser	Andrew Russell
Veronica Brame	Amy Kalman	Nicholas Saccone
Nicole Brickner	Julie LaFave	Sarah Selzer
Michelle Carson	Utiki Spurling Laing	David Seyer
Terri Clarke	Thomas Marquoit	Shellie Smith
Lindsey Coats	Steve McCarthy	Barbara Spencer
Harla Davison	Justin McGuire	Nicole Stoutner
Elisa Donnadiou	Jane Mclaughlin	Annielaurie Van Wie
John Doody	Phemonia Miller	Dawn Walton
David Gabarino	Rodney Mitchell	Eartha Washington
Monica Garfinkel	Wendy Morton	Susan White
Cynthia Gialketsis	Christine Mulleneaux	Paula Williams
Laura Giaquinto	Tracy Nadzieja	William Wingard
Marischa Gilla	Casey Newcomb	Joshua Yost
Gregory Gnepper	Richard Nothwehr	Melissa Zabor

Laura Guyton

Interest Statement – Exhibit B

When I walked into the make-shift law school courtroom for my third-year trial practice class, my future in the law became clear. Looking back, I see that my legal “north star” has always been a courtroom. When I got my first legal job as a deputy county attorney, I imagined myself spending my entire career arguing cases, negotiating plea agreements, and seeking justice for victims.

Instead of following that early vision of a prosecutorial career, my broader interests led to practice opportunities across the legal spectrum. Throughout my career, I’ve relished opportunities to practice in new substantive areas. Whether my work was focused in criminal law and procedure, legislative analysis, federal pension regulation, or mental health law, I enjoyed exploring complex legal landscapes, and took pride in my ability to master these areas. Ultimately, I worked as both a prosecutor and a defense attorney on high-profile criminal cases, represented clients who were trying to conclude difficult divorce cases, participated as an attorney in the legislative process, and helped some of the most vulnerable families in our community access mental health treatment for their loved ones.

I first considered judicial service when I represented the State in mental health court. In that role, I saw the positive impact that a judicial officer can have on the parties and the process. I saw the difference it made to the participants when the judge took the time to share words of encouragement and treated everyone involved with dignity and respect.

My diverse professional experiences and passion for the courtroom have enhanced my work on the bench. My trial practice experience was invaluable for navigating the courtroom process, applying the rules of evidence, and presiding over complex jury trials. My past work with victims and witnesses gave me insight into the complexities of legal matters that arise outside the four walls of the courtroom. My time at the Arizona Senate, as an impartial, non-partisan attorney, gave me a firm foundation to execute my judicial duties.

The court of appeals has provided an even greater opportunity to apply these skills and interests to legal disputes. Though each panel focuses on the narrow questions presented in any given case, the issues regularly present a fulfilling challenge in the deep analysis of the law.

As I seek this new opportunity, I am mindful that every decision a judge makes is a reflection on the judicial system and its reputation in our community. It is imperative that legal rulings are fair and impartial, and the result of diligent study with sound legal reasoning and judgment. As a judge, I’ve had the privilege to use my skills and knowledge of the law to serve others. I would be honored to have the opportunity to continue this service on the Arizona Supreme Court.

Professional Writing Samples – Exhibit C

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602.955.1515 PHONE
602.955.0509 FAX

Cindy J. Bailey
S.B.N. 014323
ATTORNEYS FOR Parties

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

In re the Marriage of:)
)
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and Petitioner)
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 Respondent)
_____)

No. FC2004-

**QUALIFIED DOMESTIC RELATIONS
ORDER RE: MOTOROLA INC. 401(k) PLAN**

(Assigned to the Honorable
Robert A. Budoff)

WHEREAS, this Court has jurisdiction over Petitioner and Respondent and the subject matter of this Order; and
WHEREAS, Petitioner, Respondent and the Court intend that this Order shall be a Qualified Domestic Relations Order (hereinafter referred to as a "QDRO") as defined in Section 206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and section 414(p) of the Internal Revenue Code of 1986, as amended; and,
WHEREAS, pursuant to the referenced statutes, the Plan Administrator shall make a determination of the qualified status of this Order; and

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1 WHEREAS, following approval by the Plan Administrator, this Order shall constitute a
2 Qualified Domestic Relations Order; and

3 WHEREAS, Petitioner and Respondent have stipulated that the Court enter this Order;
4 NOW, THEREFORE, pursuant to Arizona's Domestic Relations Laws, IT IS HEREBY
5 ORDERED BY THE COURT as follows:
6

7 §1. **Qualified Domestic Relations Order.** This order creates or recognizes
8 the existence of the Alternate Payee's right to, or assigns to the Alternate Payee the
9 right to, receive all or a portion of the benefits payable with respect to the Participant
10 under the following plan or plans maintained by Motorola:

11 Motorola, Inc. 401(k) Profit Sharing Plan (the 401(k) Plan" or the "Plan"

12
13
14 §2. **Definitions.** For the purposes of the following assignment of tax-qualified
15 retirement plan benefits under this domestic relations order, the following terms,
16 when used with initial capital letters, have the following meanings.

17 §2.1. **Alternate Payee** – The following former spouse of the Participant:

18 Name:

19 Address:

Scottsdale, AZ 85258

20 SSN

21 Date of Birth:

22 §2.2. **Plan Administrator** - The following:

23 Benefits Administration Plan Administrator

24 Motorola, Inc.

25 c/o Hewitt Associates

3003 Summit Boulevard, Suite 100

Atlanta, Georgia 30319

26 §2.3. **Participant** – The following person:

27 Name:

28 Address:

Scottsdale, AZ 85258

SSN

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Date of Birth: _____

1
2 §3. **Miscellaneous Procedural Provisions.** The Alternate Payee may roll
3 over to an IRA or to another qualified pension plan any amounts eligible for
4 rollover. The Alternate Payee will be responsible for the payment of all state and
5 federal income taxes on any amounts paid to the Alternate Payee that are not
6 rolled over. The Alternate Payee will file all elections, applications, or other
7 forms required by the Plan Administrator in connection with the distribution
8 contemplated by this order. This order will be administered in accordance with
9 the Plan's QDRO Procedures.
10

11 §4. **Precedence.** This domestic relations order supersedes and completely
12 voids and vacates any and every prior order of this court to the extent that such
13 order purports to create or recognize the existence of the Alternate Payee's right
14 to, or assign to the Alternate Payee the right to, receive all or a portion of the
15 benefits payable with respect to the Participant under the plans specified in this
16 order. But this order does not supersede, and is subject to, any earlier qualified
17 domestic relations order in favor of another alternate payee.
18

19 §5. **Award to Alternate Payee under the 401(k) Plan.**
20

21 §5.1. **Definitions.** For the purposes of this Section 5, the following
22 terms, when used with initial capital letters, have the following meanings.

23 §5.1.1. **Alternate Payee's Account** – The portion of the
24 Participant's Account assigned to the Alternate Payee by this order as of the
25 Determination Date. Such portion may not exceed 100% of the value of the vested
26 portion of the Participant's Account on the Determination Date. To the extent that the
27 Participant's Account consists of monies coming from different sources or monies that
28 have been divided for investment purposes into different classes or categories of

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investments, the Alternate's Payee's Account will be drawn in reasonable proportion from such sources and investments as they exist on the Determination Date. If the Alternate Payee's Account is segregated retroactively for a Determination Date in the past, a pro rata share of any of the Participant's Account's gains and a pro rata share of any of the Participant's Account's losses in the Account from the Determination Date to the date the Alternate Payee's Account is actually segregated will be credited to or subtracted from the Alternate Payee's Account as from the Determination Date to the actual segregation date. Thereafter, the Alternate Payee's Account will be subject to the investment direction of the Alternate Payee from as soon as practicable after it is actually segregated until it is distributed to the Alternate Payee.

§5.1.2. **Determination Date** – The date as of which the Alternate Payee's Account is segregated from the Participant's Account, which is 03/05/04.

§5.1.3. **Participant's Account** – The Participant's entire interest in the 401(k) Plan (whether of not vested or non-forfeitable), valued as of a given date.

§5.1.4. **Valuation Date** – The date on which the Alternate Payee's Account is finally valued in preparation for distribution to the Alternate Payee. This date is the due date the Plan Administrator has formally and finally determined that this domestic relations order constitutes a qualified domestic relations order and after the time for appeals under the Motorola Qualified Domestic Relations Order Procedures has expired.

§5.2. **Valuation of Account** – The value of the Participant's Account on a given date will be determined as of the close of the New York Stock Exchange ("NYSE") on that date. When that date is not a date on which the NYSE is open, the benefit will be valued as of the close of the NYSE on the first date next preceding such

1 date on which the NYSE was open. The close of the NYSE will be deemed to be 4 p.m.
2 Eastern time, or such earlier time at which it actually closes on a given date.

3 §5.3. **Value of Alternate Payee's Account.** The value of the Alternate
4 Payee's Account as of the Valuation Date is 50% of the vested portion of the Account
5 determined as of the Determination Date, plus a pro rata share of any gains or minus a
6 pro rata share of any losses in the Account from the Determination Date to the
7 Valuation Date.

8 §5.4. **Time of Payment.** The Alternate Payee's Account will be paid to
9 the Alternate Payee as soon as administratively practicable after the Valuation Date.

10 §5.5. **Form of Payment.** The Alternate Payee's Account will be paid to
11 the Alternate Payee in a single lump sum payment in cash except to the extent the
12 Alternate Payee elects a rollover under § 3.

13 §5.6. **Limitation Rules.** The value of the Participant's Account as of any
14 date will be determined excluding: (i) any amount that has been, before such date,
15 distributed from the 401(k) Plan to (of with respect to) the Participant, (ii) any amount
16 that has been awarded to any other alternate payee under any other domestic relations
17 order that was determined to be a qualified domestic relations order before the date this
18 domestic relations order is determined to be a qualified domestic relations order, and
19 (iii) any amount that on such dates is in the form of unpaid principal or interest on a loan
20 to the Participant.

21 §5.7. **Survivorship.** If the Alternate Payee predeceases the Participant,
22 any portion of the Alternate Payee's Account not yet paid to the Alternate Payee at the
23 date of such death will be paid to the beneficiary filed by the Alternate Payee with the
24 Plan Administrator, or, if the Alternate Payee did not file such a beneficiary, then to the
25 personal representative of the Alternate's Payee's estate.
26
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1 If the Participant predeceases the Alternate Payee, any portion of the Alternate Payee's
2 Account not yet paid to the Alternate Payee at the date of such death will be paid to the
3 Alternate Payee as soon as practicable thereafter. The Participant's Account will be
4 paid to the beneficiary named by the Participant and on file in the 401(k) Plan
5 Administrator's records at the time of the Participant's death.
6

7 §5.8. **Cost of QDRO Review.** Any costs charged by the Plan in
8 connection with the Plan's review of this order pursuant to the Plan's QDRO Procedures
9 shall be divided equally between the Participant's and the Alternate Payee's Accounts.
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DONE IN OPEN COURT this _____ day of _____, 2005.

Robert A. Budoff
Maricopa County Superior Court Judge

APPROVED AS TO FORM AND CONTENT

10-14-05
Date

9-30-2005
Date

ORIGINAL of the foregoing submitted
This 17th day of October, 2005 to:

The Honorable Robert A. Budoff
222 E. Javalina
Mesa, Arizona 85210

COPY of the foregoing mailed
This 17th day of October, 2005 to:

Scottsdale, AZ 85258
Petitioner

and

Scottsdale, AZ 85258
Respondent


S:\Client Files\10DRO\10DRO-MOTOROLA401k.doc

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Cindy J. Bailey
S.B.N. 014323
ATTORNEYS FOR Respondent

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:)
)
)
Petitioner,)
)
and)
)
Respondent.)

No. D-67673
**QUALIFIED DOMESTIC RELATIONS
ORDER RE: ARIZONA STATE
RETIREMENT SYSTEM**

(Assigned to the Honorable
Nanette Warner)

This order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the Arizona State Retirement System, hereafter referred to as the "Plan" or ASRS. The Order is an integral part of the judgment entered on May 10, 1988 granting a divorce to the above-entitled parties and is drawn pursuant to the laws of the State of Arizona relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of marriage.

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BACKGROUND INFORMATION:

The Participating Member is:

The Alternate Payee is:

The Participating Member and the Alternate Payee were married on April 12, 1958.

IT IS HEREBY ORDERED THAT:

I. RETIREMENT BENEFITS

A. Benefits under the plan are distributed as follows:

The Alternate Payee is awarded a percentage of the Member's monthly

benefit as determined by the following formula:

Length of Member's marriage
while employed and covered by
the Plan

January 21, 1977 to January 1, 1988

X ½

Length of Member's total
employment covered by the Plan

January 21, 1977 to December 31, 2002

II. TIME OF BENEFIT RECEIPT

The benefits are payable to the Alternate Payee in the month following receipt of this Order by the Plan.

III. DURATION OF RETIREMENT BENEFITS TO ALTERNATE PAYEE

During the Life of the Participating Member under Life Annuity Refund provision retirement option. The payments shall be made to the alternate payee on a monthly basis over the life of the Participating Member.

.....

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IV. DEATH OF ALTERNATE PAYEE

In the event the Alternate Payee predeceases the member, the personal representative of the Alternate Payee shall receive the share of the Member's benefit payments awarded to the Alternate Payee in this Order upon the same terms and conditions that the Alternate Payee would have received such payments if the Alternate Payee were living. The ASRS shall not be responsible for making payments to the personal representative of the Alternate Payee until the personal representative has filed with the ASRS proof of the personal representative's authority to receive payment.

V. LIMITATIONS OF THE ORDER

A. The Order recognizes the existence of the right of the Alternate Payee to receive a portion of the benefits payable to the Participating Member as indicated in this Order.

B. This Order does not require ASRS to:

1. Provide to the Alternate Payee any type or form of benefit or any option not otherwise available to the Participating Member under the Plan.
2. Provide the Alternate Payee benefits, as determined on the basis of actuarial value, not available to the Participating Member.
3. Pay any benefits to the Alternate Payee which are required to be paid to any other Alternate Payee under any other Order previously accepted as a "Qualified" domestic relations order by the Administrator of the Plan.

C. If the Member or Alternate Payee receive any distribution that should not have been paid per this Order, the Member or Alternate Payee is designated a constructive trustee for the amount received and shall immediately notify ASRS and comply with the written instructions as to the distribution of the amount received.

FROM SMITH & GADOW, PC
2198 E. CAMELBACK ROAD
SUITE 365
PHOENIX, ARIZONA 85016-4742

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D. Alternate Payee is ordered to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by ASRS. The Plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to the Alternate Payee. Plan Member and Alternate Payee must comply with Internal Revenue Code and any applicable regulations.

E. Alternate Payee is ordered to provide the Plan prompt written notice of any changes in Alternate Payee's mailing address. ASRS shall not be liable for failing to make payments to Alternate Payee if ASRS does not have a current mailing address for Alternate Payee at the time of payment.

F. Alternate Payee shall furnish a certified copy of this Order to ASRS.

G. The Court retains jurisdiction to amend this Order so that it will constitute a "Qualified" domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If ASRS determines at any time that changes in the law, the administration of the Plan, or any other circumstances make it impossible to implement this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of this Order.

DONE IN OPEN COURT this ____ day of _____, 2004.

Superior Court Judge Nanette Warner

APPROVED AS TO FORM AND CONTENT

Judicial Writing Samples – Exhibit D

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ROBERT J. BARON, *Plaintiff/Appellant*,

v.

HONORHEALTH, et al., *Defendants/Appellees*.

No. 1 CA-CV 19-0391
FILED 9-22-2020

Appeal from the Superior Court in Maricopa County
No. CV2016-010115
The Honorable Pamela S. Gates, Judge

AFFIRMED

COUNSEL

Robert J. Baron, Phoenix
Plaintiff/Appellant

Gabriel & Ashworth PLLC, Scottsdale
By Andrew S. Ashworth
Counsel for Defendant/Appellee HonorHealth

Gabriel & Ashworth PLLC, Scottsdale
By Stacy M. Gabriel
Counsel for Defendant/Appellee Scottsdale Healthcare Hospitals

MEMORANDUM DECISION

Judge Cynthia J. Bailey delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Kent E. Cattani joined.

B A I L E Y, Judge:

¶1 Robert Baron appeals the trial court’s grant of summary judgment in favor of HonorHealth and denial of his motion for a new trial. Because Baron has shown no error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Baron was hired by HonorHealth in July 2015 as an Electronic Medical Records (“EMR”) trainer. After working for HonorHealth for less than one month, Baron emailed his supervisor complaining that another trainer was not accurately grading the physician and medical assistant training assessments. Approximately one week after Baron reported the other trainer to management, two students, who attended one of Baron’s trainings, separately complained that Baron “was dictatorial, imposed strict rules on the group and did not teach in a way that was inspiring—it was very much an atmosphere of fear, which was almost palpable.”

¶3 Following the students’ complaints, HonorHealth placed Baron on an investigatory suspension. On September 8, 2015, HonorHealth gave Baron a “final warning” indicating that if he failed to improve his teaching performance, he would be terminated. Baron appealed the final warning. HonorHealth employee Chuck Scully evaluated Baron’s appeal and recommended Baron be fired. Despite this recommendation, HonorHealth did not fire Baron.

¶4 In late September, Baron asked to speak with an Equal Employment Opportunity Commission (“EEOC”) official at HonorHealth. During this time, Baron applied to transfer to several other open positions within HonorHealth but was unsuccessful each time. Baron contested the denial of his transfer applications, continued to appeal the issuance of the final warning, and on November 9, 2015, he asserted that he had filed a federal EEOC complaint regarding these issues.

¶5 One month after disclosing the EEOC complaint filing, Baron reported that he witnessed HonorHealth Help Desk employees asking

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physicians and medical students for their personal EMR passwords to help resolve the employees' computer-related issues. Baron was unable to say whether any employee improperly accessed patient health information, and in fact, was not reporting that any patient information was accessed, only the sharing of passwords. At the same time Baron reported the password sharing, HonorHealth learned that Baron never filed a complaint with the EEOC. As a result, Baron was terminated from HonorHealth for having "fabricated or knowingly distorted, exaggerated or minimized a report of wrongdoing or a violation of the Compliance Program, Compliance Standards or laws and regulations."

¶6 Baron sued HonorHealth and thirteen HonorHealth supervisors and directors. Baron brought claims under the Arizona Employment Protection Act ("AEPA"), *see* A.R.S. §§ 23-1501 to -1502, and A.R.S. § 36-450.02. Baron filed a First Amended Complaint ("FAC") that included claims for fraud, negligence and the negligent infliction of emotion distress ("NIED"). The trial court partially dismissed Baron's FAC, including all claims against individual HonorHealth employees. Baron's allegations against HonorHealth under the AEPA was the only surviving claim. Baron filed a Second Amended Complaint ("SAC"), again asserting the same claims as those previously dismissed in the FAC. The trial court again dismissed the additional claims, leaving only the allegations under the AEPA.

¶7 Over two years after litigation commenced, the trial court granted HonorHealth's motion for summary judgment on the AEPA claim. The court found Baron had not shown reasonable evidence of the required elements of an AEPA claim because he could not establish that he either disclosed a reasonable belief that a violation of Arizona law had occurred or that he was terminated as a result of that disclosure. The court concluded that no reasonable juror could find that Baron's employment was terminated in retaliation for his complaints or that retaliation was a substantial factor in Baron's termination.

¶8 Following the entry of summary judgment, Baron filed a motion for a new trial pursuant to Arizona Rule of Civil Procedure ("Rule") 59(a). In the motion, Baron challenged many individual rulings, including the partial dismissals of his complaints, discovery rulings, rulings on various motions for sanctions, and the grant of summary judgment. The court denied Baron's motion.

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¶9 We have jurisdiction over Baron’s timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), -2101(A)(1), and -2101(A)(5)(a).

DISCUSSION

¶10 Baron challenges the grant of summary judgment and denial of his motion for a new trial. We address each of Baron’s arguments in turn.

I. Grant of HonorHealth’s Motion for Summary Judgment.

¶11 We review the court’s grant of summary judgment de novo. *Jackson v. Eagle KMC L.L.C.*, 245 Ariz. 544, 545, ¶ 7 (2019). “The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to a judgment as a matter of law.” Ariz. R. Civ. P. 56(a). In opposing a motion for summary judgment, the non-moving party must “set forth specific facts showing a genuine issue for trial.” *Id.* at (e). An “opposing party may not rely merely on allegations or denials of its own pleading.” *Id.*

¶12 To prove a claim under § 23-1501(A)(3)(c)(ii), Baron must demonstrate HonorHealth terminated his employment in retaliation for “[t]he disclosure by [Baron] in a reasonable manner that [Baron had] information or a reasonable belief that the employer, or an employee of the employer, has violated, is violating or will violate . . . the statutes of this state.” This requires proof of three elements: (1) Baron had information or a reasonable belief that HonorHealth was violating Arizona law; (2) Baron disclosed the alleged violations to HonorHealth or one of its employees who were in a position to investigate and/or stop the violations, or Baron disclosed the information to an agency with the authority to investigate; and (3) Baron was terminated due to the first and second elements. Rev. Ariz. Jury Instr. (“RAJI”) (Civil) Employment Law 7 (5th ed. 2017).

¶13 Once Baron established his prima facie case, the burden shifted to HonorHealth to demonstrate a legitimate reason for his termination. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973); see also *Czarny v. Hyatt Residential Mktg. Corp.*, 1 CA-CV 16-0577, 2018 WL 1190051, at *2, ¶¶ 12-13 (Ariz. App. Mar. 8, 2018) (mem. decision) (extending *McDonnell Douglas* burden-shifting framework to claims under § 23-1501). After HonorHealth provided a legitimate reason for the termination, the burden shifted back to Baron to establish the reason HonorHealth provided was pretextual. *Czarny*, 1 CA-CV 16-0577, at *2, ¶ 12. We first examine whether Baron established a prima facie case that he was terminated for reporting a violation of Arizona law.

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¶14 First, Baron must demonstrate he had information or a reasonable belief that HonorHealth was violating *Arizona* law. See § 23-1501(A)(3)(c)(ii). Baron reported two types of conduct which he considered to be violations of a law. First was his allegation that HonorHealth failed to properly grade EMR training assessments administered to physicians and medical assistants. Second was his assertion that HonorHealth physicians shared their personal passwords with Help Desk employees. When Baron reported his observations that another trainer was failing to grade the EMR assessments and providing the correct answers to the test takers, he alleged this conduct was “fraudulent.” Yet, Baron conceded in his deposition that he was unaware of any violations of Arizona law that occurred when HonorHealth failed to properly grade the assessments. In fact, no Arizona statute requires EMR training or testing for health care employees. Thus, Baron could not show that HonorHealth or its employees engaged in a fraudulent scheme or artifice pursuant to A.R.S. § 13-2310, as he alleged.

¶15 With respect to Baron’s allegation that physicians shared their personal passwords with HonorHealth Help Desk employees, at the time of reporting, Baron could not say that any patient health information was accessed but alleged the conduct violated the Health Insurance Portability and Accountability Act, a federal law that prohibits disclosure of certain healthcare information. Baron conceded at his deposition that at the time he reported the password sharing, “[he] was not reporting patient data access.” And he failed to establish that the alleged conduct otherwise violated Arizona law. See *Galati v. Am. W. Airlines, Inc.*, 205 Ariz. 290, 293, ¶ 9 (App. 2003) (noting that § 23-1501(A)(3)(c)(ii) “contemplate[s] only transgressions of Arizona law as violative of Arizona public policy”). Accordingly, Baron’s claim under the AEPA fails.

¶16 Baron not only failed to establish a prima facie case for retaliatory termination, HonorHealth provided a legitimate basis for his termination. In December 2015, Baron was terminated for having “fabricated or knowingly distorted, exaggerated, or minimized a report of wrongdoing or a violation of the Compliance Program, Compliance Standards or laws and regulations” by lying about filing a complaint with the EEOC. Baron was fired only after HonorHealth confirmed with the EEOC that no charge had been filed. Baron cannot overcome HonorHealth’s basis for his dismissal because a request made under the Freedom of Information Act never produced a copy of the alleged EEOC complaint and Baron never provided one.

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¶17 The record demonstrates Baron had neither information nor a reasonable belief that HonorHealth or one of its employees violated any Arizona law. See § 23-1501(A)(3)(c)(ii); RAJI (Civil) Employment Law 7. The trial court correctly found that Baron provided no evidence establishing a genuine issue of material fact on the first element of § 23-1501. See *Orme Sch. v. Reeves*, 166 Ariz. 301, 310 (1990). Furthermore, Baron did not provide *any* evidence to refute HonorHealth’s legitimate basis for termination. To defeat summary judgment, Baron had to oppose HonorHealth’s motion with affidavits “or other materials that would be admissible in evidence” but failed to do so here. Ariz. R. Civ. P. 56(c)(5)-(6). Baron’s self-serving claims were insufficient to create a genuine issue of material fact or oppose HonorHealth’s motion. Because no genuine issue of material fact exists, the court properly granted summary judgment in favor of HonorHealth. See *Orme Sch.*, 166 Ariz. at 305; Ariz. R. Civ. P. 56(e).

II. Denial of Baron’s Motion for New Trial Pursuant to Rule 59.

¶18 Baron also appeals the denial of his motion for a new trial that challenged the verdict under Rule 59(a)(1)(A), (B), (F), (G), and (H). “The grant or denial of a motion for new trial is within the sound discretion of a trial court, and we will not upset its ruling absent a clear showing of an abuse of discretion.” *Matos v. City of Phoenix*, 176 Ariz. 125, 130 (App. 1993). “An ‘abuse of discretion’ is discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Quigley v. City Court of City of Tucson*, 132 Ariz. 35, 37 (App. 1982).

A. Baron has not shown a clear abuse of discretion in denying his motion under Rule 59(a)(1)(A).

¶19 Baron’s motion for new trial challenged a number of the trial court’s rulings. First, Baron challenged the court’s findings that the FAC and SAC did not satisfy the *Higgins* test and that Baron is not a health professional as defined by § 36-450.02. See *Higgins v. Assmann Elecs. Inc.*, 217 Ariz. 289, 294, ¶ 13 (App. 2007) (setting forth the test for determining a supervisor’s individual tort liability). He does not challenge the dismissal of his NIED, negligence or fraud claims. We review the dismissal of a complaint under Rule 12(b)(6) de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012). In considering whether a complaint states a claim upon which relief may be granted, we “assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts, but mere conclusory statements are insufficient.” *Id.* at 356, ¶ 9.

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¶20 In both his FAC and SAC, Baron named numerous HonorHealth supervisors and directors as defendants. Under *Higgins*, a supervisor may be individually liable only “where the company has invested its supervisor with day-to-day control over the company, including the right to fire, and the supervisor has in fact exercised such control to harm another.” *Higgins*, 217 Ariz. at 294, ¶ 13. Neither of Baron’s complaints set forth facts to establish that HonorHealth gave the named supervisors and directors “day-to-day control over the company” or that the named defendants in fact exercised such control to harm Baron. *See id.* Although each complaint detailed some of the supervisors’ actions as related to Baron’s termination from HonorHealth, the facts pled do not meet *Higgins*’s requirements. For example, in his SAC Baron named Rhonda Forsyth, the current President of HonorHealth, as a defendant. His only allegations against Forsyth were that Baron attempted to contact her and those attempts went unanswered. Yet, his complaint does not show what control Forsyth exercised or what harm, if any, she caused to Baron. Baron’s complaints both fail to demonstrate that the supervisors involved in his termination actually exercised their control to cause harm to him. *See id.* Thus, the court did not err in dismissing Baron’s claims against the individual HonorHealth supervisors and directors.

¶21 Baron also argues his claims under § 36-450.02 were improperly dismissed as he is a “health professional” under the statute. Section 36-450.02 protects health professionals who report specific acts in good faith pursuant to A.R.S. § 36-450.01. Article 11, in which §§ 36-450.01 and -450.02 are found, provides that the definition of “health professional” is the same as the one found in A.R.S. § 32-3201. *See* A.R.S. § 36-450(1). “‘Health professional’ means a person who is certified or licensed pursuant to chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41 or 42 of this title [32], title 36, chapter 4, article 6, title 36, chapter 6, article 7 or title 36, chapter 17.” § 32-3201(2). Despite Baron’s complaints alleging his experience and education in the health care industry, his lack of certification or licensure in any listed field precludes his designation as a “health professional.” Moreover, he provides no basis from which to conclude that a “health professional” cannot be fired for fabricating or knowingly distorting health care violations. Accordingly, the court did not err in dismissing Baron’s claim under § 36-450.02.

¶22 Baron also challenges the court’s ruling limiting him to only three nonparty depositions, for two hours each. Baron argues the court abused its discretion as he was entitled to conduct each deposition for four hours. Not so. As relevant here, Rule 30 provides that a party may only take the depositions of an expert witness, or a document custodian.

BARON v. HONORHEALTH, et al.
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Without court approval, “a party *may not depose any other person.*” Ariz. R. Civ. P. 30(a)(1) (emphasis added). Thus, the court was permitted to limit Baron to only three nonparty depositions and did not abuse its discretion in doing so. As to the duration of the deposition, Baron’s argument on appeal ignores the language of the Rule: “[u]nless the parties agree *or the court orders otherwise*, a deposition is limited to 4 hours.” *Id.* at (d)(1) (emphasis added). Because the court set a different time limit for the nonparty depositions in this case, Baron was not entitled to the four-hour duration set by the Rule.

¶23 As to the numerous other rulings Baron challenged in his motion for new trial and here on appeal, he has failed to meet his burden. Baron does not demonstrate that the court clearly abused its discretion by denying his motion for a new trial. *See Matos*, 176 Ariz. at 130 (“[W]e will not upset [the trial court’s] ruling absent a clear showing of an abuse of discretion.”). As no showing has been made here, we cannot and will not find the court abused its discretion in denying Baron’s motion for new trial.

B. Baron has abandoned and waived any arguments that the motion for new trial should have been granted pursuant to Rule 59(a)(1)(B) or (G).

¶24 A new trial based on attorney misconduct should only be granted in the most serious of cases to prevent a miscarriage of justice. *Ritchie v. Krasner*, 221 Ariz. 288, 303, ¶ 52 (App. 2009). “The trial judge is in the best position to ‘decide whether the misconduct materially affected the rights of the aggrieved party.’” *Id.* (quoting *Leavy v. Parsell*, 188 Ariz. 69, 72 (1997)). However, Baron has failed to set forth any facts establishing that the judgment resulted from the misconduct of the prevailing party. Neither his motion for new trial nor his appellate briefs demonstrate what misconduct, if any, occurred in this case. “Merely mentioning an argument in an appellate opening brief is insufficient.” *MacMillan v. Schwartz*, 226 Ariz. 584, 591, ¶ 33 (App. 2011). Baron’s failure to meaningfully argue this point abandons and waives it. *Id.*; *see also Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143 (App. 1987) (“It is not incumbent upon the court to develop an argument for a party.”).¹

¹ “We hold unrepresented litigants in Arizona to the same standards as attorneys. Therefore, . . . courts may not afford special leniency to pro se litigants.” *Flynn v. Campbell*, 243 Ariz. 76, 83–84, ¶ 24 (2017).

BARON v. HONORHEALTH, et al.
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C. Because the court properly granted summary judgment in favor of HonorHealth, the court did not abuse its discretion in denying Baron's motion for a new trial under Rule 59(a)(1)(F) or (H).

¶25 Baron argues the trial court improperly denied his motion for new trial because the court improperly granted summary judgment in HonorHealth's favor. Baron alleges that "several, material factual disputes" existed and that HonorHealth's motion was "baseless and frivolous." However, as discussed in Section I of this decision, there are no genuine issues of material fact that Baron had information or a reasonable belief that HonorHealth or one of its employees violated Arizona law. Because Baron never provided any admissible evidence to create a genuine issue of material fact, the court did not improperly disregard Baron's evidence or enter a judgment unsupported by evidence. *See Orme Sch.*, 166 Ariz. at 305; Ariz. R. Civ. P. 56(e). The court, therefore, did not abuse its discretion in denying Baron's motion on these grounds. *See Ariz. R. Civ. P.* 59(a)(1)(F), (H).

CONCLUSION

¶26 We affirm the judgment and denial of a motion for a new trial.



AMY M. WOOD • Clerk of the Court
FILED: AA

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ANTHONY JAMES MERRICK, III, *Plaintiff/Appellant*,

v.

ARIZONA BOARD OF EXECUTIVE CLEMENCY, et al.,
Defendants/Appellees.

No. 1 CA-CV 19-0836
FILED 10-13-2020

Appeal from the Superior Court in Maricopa County
No. LC2019-000173-001
The Honorable Douglas Gerlach, Judge

AFFIRMED

COUNSEL

Anthony James Merrick, III, Florence
Plaintiff/Appellant

Arizona Attorney General's Office, Phoenix
By Kelly Gillilan-Gibson
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Judge Cynthia J. Bailey delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Chief Judge Peter B. Swann joined.

B A I L E Y, Judge:

¶1 Plaintiff/Appellant Anthony James Merrick, III, seeks review of the superior court's November 1, 2019 denial of special action relief. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In 2011, Merrick was convicted of several offenses related to a fraudulent gift-card scheme and sentenced to thirty-five years' imprisonment. *See In re Merrick*, No. 1 CA-CV 18-0719, 2019 WL 6133671, at *1, ¶ 1 (Ariz. App. Nov. 19, 2019) (mem. decision). This court affirmed his convictions in 2012. *Id.*; *see State v. Merrick*, 1 CA-CR 11-0549, 2012 WL 4955425, at *1, ¶ 1 (Ariz. App. Oct. 18, 2012) (mem. decision), *review granted, decision vacated*.¹ Merrick twice sought post-conviction relief, and in both cases this court granted review but denied relief. *State v. Merrick*, No. 1 CA-CR 18-0656 PRPC, 2019 WL 386072, at *1, ¶ 4 (Ariz. App. Jan. 31, 2019) (mem. decision); *State v. Merrick*, No. 1 CA-CR 15-0596 PRPC, 2017 WL 6567944 at *1, ¶ 4 (Ariz. App. Dec. 26, 2017) (mem. decision).

¶3 In June 2018, Merrick applied to the Arizona Board of Executive Clemency ("Board") for commutation of his sentence. *See* A.R.S. §§ 31-441 to -446. Merrick received a month's notice that an in-absentia Phase I Commutation of Sentence Hearing was set for April 2019.² After the hearing, the Board voted not to pass Merrick's application to Phase II.

¹ *See* Arizona Supreme Court Minutes Regarding Petitions for Review (Aug. 26, 2014), http://www.azcourts.gov/Portals/21/MinutesCurrent/PR_Min_082614.pdf (remanding for recommendation in light of *Coleman v. Johnsen*, 235 Ariz. 195 (2014)).

² Pursuant to the Board's policy, commutation hearings proceed in two phases. Ariz. Bd. of Exec. Clemency, Bd. Policy # 115.6 4-5 (May 7,

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¶4 A month later, Merrick attempted to appeal the Board's denial in the superior court pursuant to A.R.S. §§ 12-901 to -914. The State moved to treat the challenge as a special action, arguing §§ 12-901 to -914 were inapplicable to Board decisions. The court granted the motion and ordered Merrick to file a compliant petition for special action, and about two months later, Merrick filed a petition in the superior court. He argued the Board: (1) was not legally authorized to hear and determine his application; (2) was required to pass his application to a Phase II hearing or to make a recommendation to the governor; and (3) had a duty to provide him the Board members' names, access to hearing records, and appeal rights.

¶5 The superior court accepted jurisdiction but denied relief. It concluded Merrick had failed to support his first and second claims with evidence and authority and was not denied due process. Merrick timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.01(A)(1) and -2101(A)(1).

DISCUSSION

¶6 Merrick renews the arguments he brought before the superior court. We construe these as challenges to the court's conclusions that Merrick: (1) failed to support his first argument with evidence; (2) failed to support his second argument with authority; and (3) was not denied due process.

I. Standard of Review

¶7 We review the superior court's denial of special action relief for an abuse of discretion. *Am. Furniture Warehouse Co. v. Town of Gilbert*, 245 Ariz. 156, 164, ¶ 30 (App. 2018). In doing so, "we view the facts in the light most favorable to sustaining the court's ruling." *Abeyta v. Soos ex rel. Cty. of Pinal*, 234 Ariz. 190, 192, ¶ 2 (App. 2014) (quoting *Hornbeck v. Lusk*, 217 Ariz. 581, 582, ¶ 2 (App. 2008)).

2018), <https://boec.az.gov/sites/default/files/documents/files/114-Commutation%20of%20Sentence%20Rev%2005-2018.pdf>. In Phase I, the Board reviews the defendant's application and the defendant is not present. *Id.* § 6.2. After the Phase I hearing, the Board determines by vote whether to pass the application to Phase II. *Id.* §§ 6.2, 6.4(a). The Phase II hearing includes the defendant. *Id.* § 6.3. After the Phase II hearing, the Board votes whether to recommend commutation to the governor. *Id.* § 6.4(b).

MERRICK v. ABOEC, et al.
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¶8 The Board has the sole power to make recommendations to the governor for commutation of sentence. A.R.S. § 31-402(A), (C)(2). Because of this, courts of this state are precluded from reviewing the Board's decisions. See *Stinson v. Ariz. Bd. of Pardons & Paroles*, 151 Ariz. 60, 61 (1986); see also *In re Hamm*, 211 Ariz. 458, 461, ¶ 8 n.2 (2005) (clarifying that "[t]he Board of Pardons and Paroles is now the Arizona Board of Executive Clemency"). "Judicial review is available, however, 'to insure that the requirements of due process have been met and that the . . . [B]oard has acted within the scope of its powers.'" *Stinson*, 151 Ariz. at 61 (quoting *Cooper v. Ariz. Bd. of Pardons & Paroles*, 149 Ariz. 182, 184 (1986)).

II. The superior court did not err by rejecting Merrick's claim that the Board was improperly constituted.

¶9 Merrick first argues the superior court erred by rejecting his argument that the Board was improperly constituted. He claimed below and in this court that all five members of the Board were in the same profession in violation of A.R.S. § 31-401(B) ("No more than two members from the same professional discipline shall be members of the board at the same time.") and the Due Process Clauses of the Arizona and United States Constitutions.

¶10 The superior court did not err by rejecting this claim. As the court noted, Merrick did not support his petition with any evidence indicating the Board was improperly constituted. The State, in contrast, provided evidence that the Board was properly constituted. "Generally, the party asserting a claim for relief has the burden of proving the facts essential to his claim." *Woerth v. City of Flagstaff*, 167 Ariz. 412, 419 (App. 1990). Further, the superior court "is in the best position to . . . resolve conflicting evidence," *Shah v. Vakharwala*, 244 Ariz. 201, 204, ¶ 12 (App. 2018) (quotation omitted), and we will not reweigh conflicting evidence on appeal, *Femiano v. Maust*, 248 Ariz. 613, 616, ¶ 14 (App. 2020). Because Merrick failed to support his claim with evidence, and because the State rebutted his claim, the superior court did not abuse its discretion by rejecting Merrick's argument that the Board was improperly constituted.

¶11 Because Merrick failed to show the Board was improperly constituted, Merrick has also failed to show a violation of due process. See *Wigglesworth v. Mauldin*, 195 Ariz. 432, 435, ¶ 6 (App. 1999) ("An inmate's interest in commutation . . . does not by itself trigger due process protections because there is no entitlement to reduction of a valid sentence. . . . However, if state statutes mandate commutation or parole via specified criteria, an interest protected by the Due Process Clause may arise.")

MERRICK v. ABOEC, et al.
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(citations omitted). The court did not err by rejecting Merrick's due process claim.

III. The superior court did not err by rejecting Merrick's claim that the Board was required to pass Merrick's application to a Phase II hearing or to recommend commutation to the governor.

¶12 Merrick next argues the superior court erred by rejecting his argument that the Board was required to pass his application to a Phase II hearing or to recommend commutation to the governor. He argued below and in this Court that substantive due process required the Board to pass his application to Phase II or to recommend commutation.

¶13 The superior court did not err by rejecting this claim because the Board: (1) has authority to "adopt rules, not inconsistent with law, as it deems proper for the conduct of its business," A.R.S. § 31-401(G); and (2) has discretion to make commutation recommendations to the governor, A.R.S. § 31-402(C).

¶14 To the extent Merrick challenges the Board's Phase I/Phase II framework, Merrick does not cite any legal authority indicating these rules were inconsistent with law. *See Woerth*, 167 Ariz. at 419 ("Generally, the party asserting a claim for relief has the burden of proving the facts essential to his claim."). We have found no authority indicating the Phase I/Phase II framework is inconsistent with the law applicable to the Board or the commutation process. *See* A.R.S. §§ 31-401 to -404 (statutes applicable to the Board); A.R.S. §§ 31-441 to -446 (statutes applicable to reprieves, commutations, and pardons).

¶15 To the extent Merrick argues the Board was required to make a commutation recommendation, his argument fails. As Merrick recognized in his petition for special action, § 31-402(C)(2) provides that the Board, in relevant part,

may make recommendations to the governor for commutation of sentence after finding by clear and convincing evidence that the sentence imposed is clearly excessive given the nature of the offense and the record of the offender and that there is a substantial probability that when released the offender will conform the offender's conduct to the requirements of the law.

(Emphasis added).

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¶16 The statute gives the Board discretion to make recommendations to the governor. *See Clark v. Clark*, 239 Ariz. 281, 282, ¶ 8 (App. 2016) (recognizing that a statute’s use of “may” when describing exercise of authority generally connotes discretion). The discretion is not without limits; before exercising discretion, the Board must first find by “clear and convincing evidence that the sentence imposed is clearly excessive given the nature of the offense and the record of the offender *and* that there is a substantial probability that when released the offender will conform the offender’s conduct to the requirements of the law.” A.R.S. § 31-402(C)(2) (emphasis added); *see Zadvydas v. Davis*, 533 U.S. 678, 697 (2001) (recognizing that although “may” indicates discretion, it does not necessarily suggest unlimited discretion). However, because no other language in the statute limits the Board’s discretion, the Board may refrain from making a recommendation even if it makes these findings. *Compare* A.R.S. § 31-402(C) (“the [Board] *may* . . . , after finding”) (emphasis added), *with* A.R.S. § 8-873.01(C) (“If the court finds . . . , the court *shall*”) (emphasis added); *see Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016) (characterizing “shall” as mandatory); *see also Banks v. Ariz. State Bd. of Pardons & Paroles*, 129 Ariz. 199, 201 (App. 1981) (“[C]ommutation is a matter of grace, not of right.”).

¶17 Here, Merrick was not restricted from presenting information to the Board, and he was provided the requisite notice of the proceedings.³ There is no evidence of improper deliberations by the Board, and Merrick has not otherwise established a violation of due process. Accordingly, the trial court did not err by rejecting Merrick’s claim that § 31-402(C) or the Arizona or United States Due Process Clauses required the Board to pass

³ As stated *supra* ¶ 3, Merrick received a month’s notice of the hearing. The notice identified the Board’s chairman, provided Merrick with the Board’s address and phone number, and informed Merrick that “[a]ny written statements for the Board[’s] consideration should be submitted to the Board office by the last day of the month prior to the scheduled month of the hearing.” *See* Ariz. Bd. of Exec. Clemency, Bd. Policy # 115.6 §§ 6.1-6.2 4, <https://boec.az.gov/sites/default/files/documents/files/114-Commutation%20of%20Sentence%20Rev%2005-2018.pdf> (requiring Board to consider all materials provided to it). The Board also published the date of Merrick’s Phase I hearing on its Hearing Post Sheet. *See* Ariz. Bd. of Exec. Clemency, Bd. Policy # 117.02 § 2.2.1 3 (July 6, 2017), https://boec.az.gov/sites/default/files/documents/files/117-Board%20Hearing%20Calendar_0.pdf (requiring Board to publish a Notice of Board Hearings on the Board’s website and to post a hard-copy in the public area at the Board’s location).

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his application to a Phase II hearing or make a recommendation to the governor.

IV. The superior court did not err by rejecting Merrick's claim that the Board failed to provide him with reasons for denying his application, the Board members' names, and transcripts of the Phase I hearing.

¶18 Merrick next argues the superior court erred by rejecting his claim that the Board failed to provide him with the reasons for the Board's denial, the Board members' names, and transcripts of the Phase I hearing. He asserts the Board's failure to provide this information denied him due process.

¶19 "An inmate's interest in commutation of his sentence does not by itself trigger due process protections because there is no entitlement to reduction of a valid sentence." *Wigglesworth*, 195 Ariz. at 435, ¶ 6. "However, if state statutes mandate commutation or parole via specified criteria, an interest protected by the Due Process Clause may arise." *Id.* In the context of commutation, this Court has held "[d]ue process of law requires notice and an opportunity to be heard," *McGee v. Ariz. Bd. of Pardons & Paroles*, 92 Ariz. 317, 320 (1962), but it "does not require that applicants for commutation be provided with reasons for [a] denial," *Banks*, 129 Ariz. at 202.

¶20 The superior court did not err by concluding Merrick's due process rights were not violated. In the superior court, Merrick did not identify any applicable statutes requiring the Board to provide him with the Board members' names and a transcript of the Phase I hearing, and our review reveals no such requirement. See A.R.S. §§ 31-401 to -404 (statutes applicable to the Board); A.R.S. § 31-441 to -446 (statutes regarding reprieves, commutations, and pardons); Ariz. Bd. of Exec. Clemency, Bd. Policy # 114.1 to 114.7, <https://boec.az.gov/sites/default/files/documents/files/114-Commutation%20of%20Sentence%20Rev%2005-2018.pdf> (outlining "the general procedures and guidelines associated with the eligibility and processing of Commutation of Sentence applications and subsequent Board determinations"). Instead, Merrick cited §§ 12-904 and -910, which are inapplicable to the Board's decision. See *State ex rel. Ariz. State Bd. of Pardons & Paroles v. Superior Court*, 12 Ariz. App. 77, 81 (1970) (holding these statutes are "not available to review the recommendations or absence of recommendations of the Board" because "in the field of commutation, at least, the Board does not 'adjudicate,' it can only recommend or decline to recommend").

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¶21 Absent statutory requirements, due process only requires “notice and an opportunity to be heard,” *McGee*, 92 Ariz. at 320, which Merrick received. Further, Board members’ names are publicly available, *see* Ariz. Bd. of Exec. Clemency, Board Members, <https://boec.az.gov/node/726> (last visited Oct. 2, 2020), and the Board sent Merrick a CD audio recording of his commutation hearing upon request, *see Merrick v. Ariz. Bd. of Exec. Clemency*, No. 1 CA-CV 19-0771, 2020 WL 3583259, at *1, ¶ 2 (Ariz. App. July 2, 2020) (mem. decision). The Board also published the audio recording in accordance with Board policy. *See also* Ariz. Bd. of Exec. Clemency, Bd. Policy # 105.04 § 4.1 4 (July 6, 2017), <https://boec.az.gov/sites/default/files/documents/files/105-Open Meeting 0.pdf> (stating “[t]he Board’s official record of its mandated hearings relating to inmates . . . shall be audio copies of each hearing,” and requiring the Board’s executive director to “ensure that a copy of the recording or the minutes of any hearing . . . be made available for public review within three business days, excluding holidays, after a hearing”); Ariz. Bd. of Exec. Clemency, Board Weekly Agenda (April 11, 2019), <https://boec.az.gov/board-hearing-minutes/april-11-2019> (last visited Oct. 2, 2020) (providing audio recording of Merrick’s Phase I hearing). The superior court correctly concluded that Merrick’s due process rights were not violated.

CONCLUSION

¶22 Because the superior court did not abuse its discretion by denying relief, we affirm.



AMY M. WOOD • Clerk of the Court
FILED: AA

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

ANTON NGUYEN, *Petitioner/Appellant*,

v.

KIMQUY THI TRINH, *Respondent/Appellee*.

No. 1 CA-CV 20-0325 FC

FILED 2-9-2021

Appeal from the Superior Court in Maricopa County

No. FN2018-094469

The Honorable Adele Ponce, Judge

AFFIRMED

COUNSEL

Robert F. Gehrke Attorney at Law, Phoenix
By Robert F. Gehrke (deceased)
Counsel for Petitioner/Appellant

Anton Nguyen, Chandler
Petitioner/Appellant

Fuqua Law Firm PC, Chandler
By Barbara L. Fuqua
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge Cynthia J. Bailey delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Lawrence F. Winthrop joined.

B A I L E Y, Judge:

¶1 Anton Nguyen (“Husband”) appeals the superior court’s approval of an Arizona Rule of Family Law Procedure (“Rule”) 69 agreement and entry of a decree of dissolution. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Husband and Kimquy Thi Trinh (“Wife”) married in Vietnam in 1975. In October 2018, Husband filed for dissolution. Before Wife filed a response, the parties’ adult daughter worked with Husband to draft a Rule 69 agreement (“Agreement”) that divided some but not all of the parties’ property. Although counsel represented Husband at the time, Husband signed the Agreement in January 2019 without his counsel present. Wife signed shortly thereafter.

¶3 After the parties appeared for conciliation services in February 2019, Wife responded to Husband’s petition and moved the court to approve the Agreement. Without waiting for a response, the trial court granted Wife’s motion.

¶4 Five months later, Husband moved to set aside the Agreement. He argued he had been coerced into signing the Agreement and signed it without fully understanding its contents or legal effects. He also claimed the Agreement unfairly divided the parties’ assets.

¶5 The trial court combined an evidentiary hearing on Husband’s motion with the trial on the dissolution. It provided an interpreter for both parties. After the trial, the court denied Husband’s motion to set aside the Agreement, entered a decree of dissolution, and awarded Wife \$10,000 in attorneys’ fees and costs. Husband timely appealed.

¶6 We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. § 12-2101(A)(1).

DISCUSSION

¶7 Husband argues the trial court erred by approving the Agreement because evidence showed that Husband did not understand the Agreement and the Agreement was incomplete. He argues he was deprived of a fair trial; testimony by the parties' daughter was improper; the court erred in ordering reimbursement for community waste; and the court erred by awarding Wife her attorneys' fees.

I. Whether Husband was deprived of a fair trial.

¶8 Husband contends he was deprived of a fair trial because the court-appointed interpreter did not adequately interpret the proceedings. He further argues the trial court abused its discretion by limiting his testimony and claims that the record clearly shows he did not understand the proceedings. *See* Ariz. R. Evid. 611(a).

¶9 The Fourteenth Amendment "entitles a party to notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Curtis v. Richardson*, 212 Ariz. 308, 312, ¶ 16 (App. 2006). Consistent with that principle, the trial court provided a Vietnamese interpreter so that Husband and Wife could understand the proceedings.

¶10 Husband points out that the court had to interrupt the testimony of the parties' daughter when it noticed that the interpreter did not appear to be interpreting her testimony. But on that occasion, the court properly ordered questioning of the daughter to start again from the beginning, directed the interpreter to interpret her testimony, and stated it would disregard the daughter's previous testimony. Husband raised no objection at trial to the interpreter's performance, and on appeal, he does not cite any testimony that should have been interpreted but was not.

¶11 Husband also argues the court several times "cut off" his testimony. But the transcript shows that on those occasions, the court was exercising its discretion to prevent Husband from testifying about unrelated topics or continuing to speak when there was no question before him. Thus, the court acted well within its duty and discretion under Arizona Rule of Evidence 611. *See* Ariz. R. Evid. 611(a) ("The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for determining the truth; [and] (2) avoid wasting time . . .").

¶12 Husband, who represented himself at trial, further argues he did not properly understand the nature of the proceedings and the

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applicable rules. Unrepresented litigants are held to the same standards as attorneys. *Flynn v. Campbell*, 243 Ariz. 76, 83-84, ¶ 24 (2017). Further, although Husband complained during the trial that he was confused, in the court's written ruling, it expressly rejected his contention that he did not fully understand the proceedings. "We do not reweigh evidence or determine the credibility of witnesses." *Clark v. Kreamer*, 243 Ariz. 272, 276, ¶ 14 (App. 2017) (quoting *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, 92, ¶ 36 (App. 1998)).

¶13 For these reasons, we conclude Husband was not deprived of a fair trial on the decree and was not deprived of a fair hearing concerning his motion to set aside the Agreement.

II. Whether the trial court erred by approving the Agreement.

¶14 Husband next argues the trial court erred by approving the Agreement before Wife filed her response to the dissolution petition. The record is to the contrary. Wife's attorney filed a response to Husband's petition on March 29, 2019, and the court approved the Agreement nearly two months later, on May 20, 2019.

¶15 He also contends that because the parties signed the Agreement before Wife filed her response to his petition, the Rules of Family Law Procedure did not apply to the Agreement. Husband's argument fails because the Rules apply to all family law cases, and Husband initiated a family law case when he filed his petition for dissolution. *See* Ariz. R. Fam. Law P. ("ARFLP") 1, 23.

¶16 Husband further argues, citing A.R.S. § 25-317 and *Sharp v. Sharp*, 179 Ariz. 205 (App. 1994), that the court erroneously concluded the Agreement was fair and equitable and that the court failed to consider the property that was given to the parties' children.

¶17 A Rule 69 "agreement is presumed valid, and a party who challenges its validity has the burden to prove any defect." ARFLP 69(c). "[T]he terms of [a] separation agreement . . . are binding on the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unfair." A.R.S. § 25-317(B). Although several cases – including *Sharp* – have stated in dicta that a separation agreement is binding unless the court finds the agreement "unfair or inequitable," § 25-317 does not use the term equitable. *See Buckholtz v. Buckholtz*, 246 Ariz. 126, 131, ¶ 18 (App. 2019). "Accordingly, when a separation agreement is presented to the superior court under

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A.R.S. § 25-317, the court's obligation is to determine whether the agreement is 'unfair.'" *Id.* (quoting A.R.S. § 25-317(B)).

¶18 We conclude the court did not abuse its discretion by finding the Agreement fair and approving it. Although Husband argues the Agreement is not fair because it did not take into account property the parties gave to their children, the record does not support this assertion. The Agreement itself acknowledged that the parties had already transferred the property to their children, a fact Husband admitted at trial. Additionally, contrary to Husband's assertion, the court expressly found that the Agreement was fair.

¶19 Finally, Husband argues the court should have set aside the Agreement because of "confusion and uncertainty along the way the Agreement was executed" and because it did not address the parties' retirement and other financial accounts. But testimony at trial established that the parties' daughter drafted the Agreement in close cooperation with Husband, and that she had urged Husband to include the retirement accounts in the Agreement, but that he intentionally omitted the accounts because "[h]e said they were about the same, and they weren't important." Further, testimony also established that the Agreement had been explained to Husband in English and Vietnamese multiple times in front of witnesses and notaries. Based on the foregoing, the court did not err by approving the Agreement and denying Husband's motion to set it aside.

III. Whether admission of the parties' daughter's testimony was proper.

¶20 Husband next argues the parties' daughter practiced law without a license when she helped him prepare the Agreement. Rule 69, however, does not require that a lawyer prepare an agreement subject to the rule. *Cf. Fowler v. Fowler*, 1 CA-CV 14-0361, 2015 WL 410594, at *2, ¶ 13 (Ariz. App. Jan. 27, 2015) (mem. decision) (concluding email between the parties, without the input of counsel, was a binding enforceable Rule 69 agreement).

¶21 Husband further asserts the court erred by allowing the daughter to testify because she was "clearly biased" in favor of Wife. Judging the credibility of witnesses is the province of the trier of fact. *Pugh v. Cook*, 153 Ariz. 246, 247 (App. 1987). Similarly, although Husband argues the court improperly allowed the daughter to testify about her opinions, the transcript does not support this assertion.

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IV. Whether the court erred by ordering reimbursement for community waste.

¶22 Husband next argues the trial court erred by ordering him to reimburse Wife for community waste because the only evidence of waste was his daughter's testimony.

¶23 "When the court determines one spouse has wasted or dissipated marital assets, it may apportion the community property in a manner designed to compensate the other spouse for the waste." *Helland v. Helland*, 236 Ariz. 197, 201, ¶ 17 (App. 2014). "The spouse alleging waste must make a *prima facie* showing to support his or her claim; the other spouse then bears the burden to demonstrate the absence of waste." *Id.*

¶24 Again, the record does not support Husband's assertion. Although the parties' daughter testified about the amount Husband had spent on his mistress, the court also admitted financial records supporting the daughter's testimony. Husband did not object to the records, and in fact admitted he gave his mistress gifts, sent her money, and spent community funds to travel to see her. Accordingly, the trial court did not err by ordering reimbursement for community waste.

V. Whether the court erred by awarding attorneys' fees.

¶25 Husband finally argues the trial court erred by ordering him to pay Wife \$10,000 in attorneys' fees. He complains the award was substantively unfair and the amount of fees were excessive.

¶26 "The court . . . after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding" A.R.S. § 25-324(A).

¶27 The trial court based its fee award on finding that Husband acted unreasonably in the litigation, and the record supports this finding. As the court found, Husband was delinquent in responding to discovery requests, requiring Wife to issue several subpoenas to obtain information on Husband's financial accounts. Further, Husband took unreasonable trial positions, including that the parties' marriage certificate was fake and the parties were not married.

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¶28 Further, the amount of attorneys' fees and costs was supported by documentation and properly assessed by the court. *See* A.R.S. § 25-324; *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 188-89 (App. 1983). Wife requested \$19,560.77 in fees and costs, but, after receiving Husband's response to Wife's request, the court awarded Wife only \$10,000.

¶29 The court did not abuse its discretion by awarding Wife her attorneys' fees and costs.

VI. Attorneys' fees on appeal.

¶30 Husband requests an award of his attorneys' fees and costs pursuant to ARCAP 21 and A.R.S. §§ 12-341 and 25-324. Wife also requests an award of her fees and costs pursuant to ARCAP 21 and A.R.S. § 25-324. In an exercise of our discretion, we award Wife her reasonable fees and costs upon her compliance with ARCAP 21.

CONCLUSION

¶31 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
FILED: AA

Judicial Performance Review – Exhibit E

Judge Hugh Hegyi intends to retire at the end of his term and did not file for retention. He is not listed on the Maricopa County ballot .

Maricopa County Voters Only

Hon. Cynthia Bailey

Maricopa County Superior Court
 Bench: Family
 Appointed: 2011

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

Show Surveys from Prior Years

2018	Attorney Surveys Distributed: 150 Returned: 29 Score (See Footnote)	Juror Surveys Distributed: 0 Returned: 0 Score (See Footnote)	Litigant Witness Surveys Distributed: 154 Returned: 9 Score (See Footnote)
Legal Ability	99%	n/a	n/a
Integrity	97%	n/a	81%
Communication	98%	n/a	81%
Temperament	96%	n/a	75%
Admin Performance	100%	n/a	92%
Settlement Activities	95%	n/a	n/a

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

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Judge Hugh Hegyi intends to retire at the end of his term and did not file for retention. He is not listed on the Maricopa County ballot .

Maricopa County Voters Only

Hon. Cynthia Bailey

Maricopa County Superior Court
 Bench: Criminal
 Appointed: 2011

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

Show Surveys from Prior Years

2014	Attorney Surveys Distributed: 315 Returned: 57 Score (See Footnote)	Juror Surveys Distributed: 43 Returned: 25 Score (See Footnote)	Litigant Witness Surveys Distributed: 50 Returned: 5 Score (See Footnote)
Legal Ability	96%	n/a	n/a
Integrity	96%	100%	100%
Communication	96%	99%	100%
Temperament	93%	100%	100%
Admin Performance	98%	96%	100%
Settlement Activities	100%	n/a	n/a

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

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ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge:

Total Surveys: 49

Assignment: Family

Cycle: Retention Election

MCFAM-01

Hon. Cynthia J. Bailey

	ATTORNEY					29 Resp Mean	LIT/WIT/PRO PER					9 Resp Mean	JUROR					0 Resp Mean	STAFF					11 Resp Mean			
	UN	PO	SA	VG	SU		UN	PO	SA	VG	UN		PO	SA	VG	SU	UN		PO	SA	VG	SU					
Section I: Legal Ability	0	0	5	7	15	27	3.4																				
Legal reasoning ability	0	1	3	9	14	27	3.3																				
Knowledge of substantive law	0	0	5	6	16	27	3.4																				
Knowledge of rules of evidence	0	0	5	6	15	26	3.4																				
Knowledge of rules of procedure	0	0	5	5	16	26	3.4																				
Section II: Integrity	0	0	2	1	15	19	3.6	1	1	1	1	5	8	3.0	0	0	0	0	0	0	0	0	0	1	8	9	3.9
Basic fairness and impartiality	0	2	3	4	18	27	3.4	2	0	1	2	3	8	2.5	0	0	0	0	0	0	0	0	0	1	9	10	3.9
Equal treatment regardless of race	0	2	1	2	16	21	3.5	0	1	1	1	5	8	3.3	0	0	0	0	0	0	0	0	0	1	8	9	3.9
Equal treatment regardless of gender	1	0	4	3	18	26	3.4	2	1	0	1	5	9	2.7	0	0	0	0	0	0	0	0	0	1	8	9	3.9
Equal treatment regardless of religion	0	0	2	1	14	17	3.7	0	1	1	1	5	8	3.3	0	0	0	0	0	0	0	0	0	1	7	8	3.9
Equal treatment regardless of national origin	0	0	2	1	14	17	3.7	0	1	1	1	5	8	3.3	0	0	0	0	0	0	0	0	0	1	8	9	3.9
Equal treatment regardless of disability	0	0	2	1	14	17	3.7	2	0	1	1	5	9	2.8	0	0	0	0	0	0	0	0	0	1	8	9	3.9
Equal treatment regardless of age	0	0	2	0	13	15	3.7	2	0	1	1	5	9	2.8	0	0	0	0	0	0	0	0	0	1	8	9	3.9
Equal treatment regardless of sexual orientation	0	0	2	0	13	15	3.7	0	0	1	1	5	7	3.6	0	0	0	0	0	0	0	0	0	1	7	8	3.9
Equal treatment regardless of economic status	0	0	4	1	14	19	3.5	1	1	1	1	5	9	2.9	0	0	0	0	0	0	0	0	0	1	8	9	3.9
Section III: Communication Skills	0	1	4	4	18	28	3.5	0	2	0	3	4	8	3.1	0	0	0	0	0	0	0	0	1	1	8	10	3.7
Clear and logical communications																					0	0	1	1	8	10	3.7
Clear and logical oral communications and directions	0	0	5	4	19	28	3.5																				
Clear and logical written decisions	0	1	4	6	16	27	3.4																				
Gave all parties an adequate opportunity to be heard	0	1	4	3	20	28	3.5																				
Explained proceedings (to the jury)								0	2	0	2	5	9	3.1	0	0	0	0	0	0	0	0	0	0	0		
Explained reason for delays								0	1	0	4	2	7	3.0	0	0	0	0	0	0	0	0	0	0	0		
Clearly explained the juror's responsibilities															0	0	0	0	0	0	0	0	0	0	0		
Section IV: Judicial temperament	0	1	4	3	20	28	3.5	2	0	1	1	5	9	2.8	0	0	0	0	0	0	0	0	0	1	9	10	3.9
Understanding and compassion	0	2	3	4	18	27	3.4	2	1	0	1	5	9	2.7	0	0	0	0	0	0	0	0	0	1	9	10	3.9
Dignified	0	0	6	3	19	28	3.5	2	0	1	1	5	9	2.8	0	0	0	0	0	0	0	0	0	1	9	10	3.9
Courteous	0	1	4	3	21	29	3.5	1	0	1	1	5	8	3.1	0	0	0	0	0	0	0	0	0	1	9	10	3.9
Conduct that promotes public confidence in the court	0	1	4	4	20	29	3.5	2	0	1	1	5	9	2.8	0	0	0	0	0	0	0	0	0	1	9	10	3.9
Patient	0	2	3	3	21	29	3.5	2	1	0	2	4	9	2.6	0	0	0	0	0	0	0	0	0	1	9	10	3.9
Section V: Administrative Performance	0	0	4	6	18	28	3.5	1	0	0	2	5	8	3.3	0	0	0	0	0	0	0	0	0	1	9	10	3.9
Punctual in conducting proceedings	0	0	4	6	18	28	3.5	0	0	1	2	5	8	3.5	0	0	0	0	0	0	0	0	0	1	8	9	3.9
Maintained proper control of courtroom	0	0	5	6	17	28	3.4	1	0	0	2	5	8	3.3	0	0	0	0	0	0	0	0	0	1	8	9	3.9
Prompt in making rulings and rendering decisions	0	0	5	6	16	27	3.4																				
Was prepared for the proceedings	0	0	5	4	20	29	3.5	1	0	0	2	5	8	3.3	0	0	0	0	0	0	0	0	0	1	8	9	3.9
Respectful treatment of staff																					0	0	0	1	10	11	3.9
Cooperation with peers																					0	0	0	1	9	10	3.9
Efficient management of calendar	0	0	3	6	19	28	3.6														0	0	0	1	9	10	3.9
Section VI: Settlement Activities	0	1	2	3	15	21	3.5																				
Appropriately promoted or conducted settlement	0	1	2	3	15	21	3.5																				

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

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

Surveys were distributed to court
users from 02/2017 - 05/2017

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCFAM-01 Hon. Cynthia J. Bailey	Total Surveys: 49						Assignment: Family					Cycle: Retention Election															
	ATTORNEY					29 Mean	LIT/WIT/PRO PER					9 Mean	JUROR					0 Mean	STAFF					11 Mean			
	UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU				
Section I: Legal Ability	0%	1%	17%	25%	58%	3.4																					
Legal reasoning ability	0%	4%	11%	33%	52%	3.3																					
Knowledge of substantive law	0%	0%	19%	22%	59%	3.4																					
Knowledge of rules of evidence	0%	0%	19%	23%	58%	3.4																					
Knowledge of rules of procedure	0%	0%	19%	19%	62%	3.4																					
Section II: Integrity	1%	2%	13%	7%	77%	3.6	12%	7%	11%	13%	57%	3.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	11%	89%	3.9			
Basic fairness and impartiality	0%	7%	11%	15%	67%	3.4	25%	0%	13%	25%	38%	2.5	0%	0%	0%	0%	0%	0.0	0%	0%	0%	10%	90%	3.9			
Equal treatment regardless of race	0%	10%	5%	10%	76%	3.5	0%	13%	13%	13%	63%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	11%	89%	3.9			
Equal treatment regardless of gender	4%	0%	15%	12%	69%	3.4	22%	11%	0%	11%	56%	2.7	0%	0%	0%	0%	0%	0.0	0%	0%	0%	11%	89%	3.9			
Equal treatment regardless of religion	0%	0%	12%	6%	82%	3.7	0%	13%	13%	13%	63%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	13%	88%	3.9			
Equal treatment regardless of national origin	0%	0%	12%	6%	82%	3.7	0%	13%	13%	13%	63%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	11%	89%	3.9			
Equal treatment regardless of disability	0%	0%	12%	6%	82%	3.7	22%	0%	11%	11%	56%	2.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	11%	89%	3.9			
Equal treatment regardless of age	0%	0%	13%	0%	87%	3.7	22%	0%	11%	11%	56%	2.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	11%	89%	3.9			
Equal treatment regardless of sexual orientation	0%	0%	13%	0%	87%	3.7	0%	0%	14%	14%	71%	3.6	0%	0%	0%	0%	0%	0.0	0%	0%	0%	13%	88%	3.9			
Equal treatment regardless of economic status	0%	0%	21%	5%	74%	3.5	11%	11%	11%	11%	56%	2.9	0%	0%	0%	0%	0%	0.0	0%	0%	0%	11%	89%	3.9			
Section III: Communication Skills	0%	2%	16%	16%	66%	3.5	0%	19%	0%	38%	44%	3.1	0%	0%	0%	0%	0%	0.0	0%	0%	10%	10%	80%	3.7			
Clear and logical communications																		0%	0%	10%	10%	80%	3.7				
Clear and logical oral communications and directions	0%	0%	18%	14%	68%	3.5																					
Clear and logical written decisions	0%	4%	15%	22%	59%	3.4																					
Gave all parties an adequate opportunity to be heard	0%	4%	14%	11%	71%	3.5																					
Explained proceedings (to the jury)							0%	22%	0%	22%	56%	3.1	0%	0%	0%	0%	0%	0.0									
Explained reason for delays							0%	14%	0%	57%	29%	3.0	0%	0%	0%	0%	0%	0.0									
Clearly explained the juror's responsibilities													0%	0%	0%	0%	0%	0.0									
Section IV: Judicial temperament	0%	4%	14%	12%	70%	3.5	20%	5%	7%	14%	55%	2.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	10%	90%	3.9			
Understanding and compassion	0%	7%	11%	15%	67%	3.4	22%	11%	0%	11%	56%	2.7	0%	0%	0%	0%	0%	0.0	0%	0%	0%	10%	90%	3.9			
Dignified	0%	0%	21%	11%	68%	3.5	22%	0%	11%	11%	56%	2.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	10%	90%	3.9			
Courteous	0%	3%	14%	10%	72%	3.5	13%	0%	13%	13%	63%	3.1	0%	0%	0%	0%	0%	0.0	0%	0%	0%	10%	90%	3.9			
Conduct that promotes public confidence in the court	0%	3%	14%	14%	69%	3.5	22%	0%	11%	11%	56%	2.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	10%	90%	3.9			
Patient	0%	7%	10%	10%	72%	3.5	22%	11%	0%	22%	44%	2.6	0%	0%	0%	0%	0%	0.0	0%	0%	0%	10%	90%	3.9			
Section V: Administrative Performance	0%	0%	16%	20%	64%	3.5	8%	0%	4%	25%	63%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	10%	90%	3.9			
Punctual in conducting proceedings	0%	0%	14%	21%	64%	3.5	0%	0%	13%	25%	63%	3.5	0%	0%	0%	0%	0%	0.0	0%	0%	0%	11%	89%	3.9			
Maintained proper control of courtroom	0%	0%	18%	21%	61%	3.4	13%	0%	0%	25%	63%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	11%	89%	3.9			
Prompt in making rulings and rendering decisions	0%	0%	19%	22%	59%	3.4																					
Was prepared for the proceedings	0%	0%	17%	14%	69%	3.5	13%	0%	0%	25%	63%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	11%	89%	3.9			
Respectful treatment of staff																		0%	0%	0%	9%	91%	3.9				
Cooperation with peers																		0%	0%	0%	10%	90%	3.9				
Efficient management of calendar	0%	0%	11%	21%	68%	3.6												0%	0%	0%	10%	90%	3.9				
Section VI: Settlement Activities	0%	5%	10%	14%	71%	3.5																					
Appropriately promoted or conducted settlement	0%	5%	10%	14%	71%	3.5																					

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

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Surveys were distributed to court users from 02/2017 - 05/2017

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCFAM-03 Hon. Cynthia Bailey	Total Surveys: 92						Assignment: Family						Cycle: Mid-Term Review																
	ATTORNEY					60		LIT/WIT/PRO PER					3		JUROR					0		STAFF					29		
	UN	PO	SA	VG	SU	Resp	Mean	UN	PO	SA	VG	SU	Resp	Mean	UN	PO	SA	VG	SU	Resp	Mean	UN	PO	SA	VG	SU	Resp	Mean	
Section I: Legal Ability	2	1	10	18	20	50	3.1																						
Legal reasoning ability	2	1	10	18	22	53	3.1																						
Knowledge of substantive law	1	1	11	18	20	51	3.1																						
Knowledge of rules of evidence	2	1	10	15	17	45	3.0																						
Knowledge of rules of procedure	2	1	9	19	20	51	3.1																						
Section II: Integrity	0	0	8	9	17	35	3.2	0	0	1	1	1	3	2.7	0	0	0	0	0	0	0	0	0	0	3	11	14	3.8	
Basic fairness and impartiality	1	1	15	13	28	58	3.1	1	0	1	0	1	3	2.0	0	0	0	0	0	0	0	0	0	0	3	11	14	3.8	
Equal treatment regardless of race	0	0	8	8	14	30	3.2	0	0	1	1	1	3	3.0	0	0	0	0	0	0	0	0	0	0	3	11	14	3.8	
Equal treatment regardless of gender	0	2	9	13	27	51	3.3	1	0	1	0	1	3	2.0	0	0	0	0	0	0	0	0	0	0	3	11	14	3.8	
Equal treatment regardless of religion	0	0	6	6	11	23	3.2	0	0	1	1	1	3	3.0	0	0	0	0	0	0	0	0	0	0	3	11	14	3.8	
Equal treatment regardless of national origin	0	0	6	7	15	28	3.3	0	0	1	1	1	3	3.0	0	0	0	0	0	0	0	0	0	0	3	11	14	3.8	
Equal treatment regardless of disability	0	0	7	7	11	25	3.2	0	0	1	1	1	3	3.0	0	0	0	0	0	0	0	0	0	0	3	11	14	3.8	
Equal treatment regardless of age	0	0	6	10	20	36	3.4	0	0	1	1	1	3	3.0	0	0	0	0	0	0	0	0	0	0	3	11	14	3.8	
Equal treatment regardless of sexual orientation	0	0	6	6	10	22	3.2	0	0	1	1	1	3	3.0	0	0	0	0	0	0	0	0	0	0	2	11	13	3.8	
Equal treatment regardless of economic status	0	1	10	9	20	40	3.2	1	0	1	0	1	3	2.0	0	0	0	0	0	0	0	0	0	0	2	11	13	3.8	
Section III: Communication Skills	1	1	11	13	28	55	3.2	0	1	1	0	1	3	2.6	0	0	0	0	0	0	0	0	0	0	4	10	14	3.7	
Clear and logical communications																													
Clear and logical oral communications and directions	1	1	12	14	30	58	3.2																						
Clear and logical written decisions	1	0	11	15	23	50	3.2																						
Gave all parties an adequate opportunity to be heard	1	2	11	10	32	56	3.3																						
Explained proceedings (to the jury)								0	1	1	0	1	3	2.3	0	0	0	0	0	0	0								
Explained reason for delays								0	0	1	0	1	2	3.0	0	0	0	0	0	0	0								
Clearly explained the juror's responsibilities															0	0	0	0	0	0	0								
Section IV: Judicial temperament	0	3	11	12	33	59	3.3	0	0	1	0	2	3	2.8	0	0	0	0	0	0	0	0	0	0	2	12	14	3.9	
Understanding and compassion	0	4	12	12	30	58	3.2	1	0	1	0	1	3	2.0	0	0	0	0	0	0	0	0	0	0	1	13	14	3.9	
Dignified	0	2	12	12	33	59	3.3	0	0	1	0	2	3	3.3	0	0	0	0	0	0	0	0	0	0	2	12	14	3.9	
Courteous	0	2	12	12	33	59	3.3	0	0	1	0	2	3	3.3	0	0	0	0	0	0	0	0	0	0	1	13	14	3.9	
Conduct that promotes public confidence in the court	2	3	8	12	34	59	3.2	0	1	0	0	2	3	3.0	0	0	0	0	0	0	0	0	0	0	3	11	14	3.8	
Patient	0	3	10	11	34	58	3.3	0	1	1	0	1	3	2.3	0	0	0	0	0	0	0	0	0	0	2	12	14	3.9	
Section V: Administrative Performance	0	0	9	16	31	57	3.3	0	0	0	1	2	3	3.3	0	0	0	0	0	0	0	0	0	0	2	12	14	3.8	
Punctual in conducting proceedings	0	0	10	19	30	59	3.3	0	0	0	1	2	3	3.7	0	0	0	0	0	0	0	0	0	0	2	12	14	3.9	
Maintained proper control of courtroom	0	0	11	16	31	58	3.3	0	0	0	1	2	3	3.7	0	0	0	0	0	0	0	0	0	0	3	11	14	3.8	
Prompt in making rulings and rendering decisions	1	2	8	14	29	54	3.3																						
Was prepared for the proceedings	1	0	8	18	31	58	3.3	0	1	0	1	1	3	2.7	0	0	0	0	0	0	0								
Respectful treatment of staff																													
Cooperation with peers																													
Efficient management of calendar	0	0	9	15	32	56	3.4																						
Section VI: Settlement Activities	1	2	3	9	17	32	3.2																						
Appropriately promoted or conducted settlement	1	2	3	9	17	32	3.2																						

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Surveys were distributed to court
users from 08/2015 - 01/2016

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCFAM-03 Hon. Cynthia Bailey	Total Surveys: 92					Assignment: Family					Cycle: Mid-Term Review													
	ATTORNEY					60 Mean	LIT/WIT/PRO PER					3 Mean	JUROR					0 Mean	STAFF					29 Mean
	UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU	
Section I: Legal Ability	4%	2%	20%	35%	40%	3.1																		
Legal reasoning ability	4%	2%	19%	34%	42%	3.1																		
Knowledge of substantive law	2%	2%	22%	35%	39%	3.1																		
Knowledge of rules of evidence	4%	2%	22%	33%	38%	3.0																		
Knowledge of rules of procedure	4%	2%	18%	37%	39%	3.1																		
Section II: Integrity	0%	1%	23%	25%	50%	3.2	11%	0%	33%	22%	33%	2.7	0%	0%	0%	0%	0%	0.0	0%	0%	0%	20%	80%	3.8
Basic fairness and impartiality	2%	2%	26%	22%	48%	3.1	33%	0%	33%	0%	33%	2.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	21%	79%	3.8
Equal treatment regardless of race	0%	0%	27%	27%	47%	3.2	0%	0%	33%	33%	33%	3.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	21%	79%	3.8
Equal treatment regardless of gender	0%	4%	18%	25%	53%	3.3	33%	0%	33%	0%	33%	2.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	21%	79%	3.8
Equal treatment regardless of religion	0%	0%	26%	26%	48%	3.2	0%	0%	33%	33%	33%	3.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	21%	79%	3.8
Equal treatment regardless of national origin	0%	0%	21%	25%	54%	3.3	0%	0%	33%	33%	33%	3.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	21%	79%	3.8
Equal treatment regardless of disability	0%	0%	28%	28%	44%	3.2	0%	0%	33%	33%	33%	3.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	21%	79%	3.8
Equal treatment regardless of age	0%	0%	17%	28%	56%	3.4	0%	0%	33%	33%	33%	3.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	21%	79%	3.8
Equal treatment regardless of sexual orientation	0%	0%	27%	27%	45%	3.2	0%	0%	33%	33%	33%	3.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	15%	85%	3.8
Equal treatment regardless of economic status	0%	3%	25%	23%	50%	3.2	33%	0%	33%	0%	33%	2.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	15%	85%	3.8
Section III: Communication Skills	2%	2%	21%	24%	52%	3.2	0%	20%	40%	0%	40%	2.6	0%	0%	0%	0%	0%	0.0	0%	0%	0%	29%	71%	3.7
Clear and logical communications																			0%	0%	0%	29%	71%	3.7
Clear and logical oral communications and directions	2%	2%	21%	24%	52%	3.2																		
Clear and logical written decisions	2%	0%	22%	30%	46%	3.2																		
Gave all parties an adequate opportunity to be heard	2%	4%	20%	18%	57%	3.3																		
Explained proceedings (to the jury)							0%	33%	33%	0%	33%	2.3	0%	0%	0%	0%	0%	0.0						
Explained reason for delays							0%	0%	50%	0%	50%	3.0	0%	0%	0%	0%	0%	0.0						
Clearly explained the juror's responsibilities													0%	0%	0%	0%	0%	0.0						
Section IV: Judicial temperament	1%	5%	18%	20%	56%	3.3	7%	13%	27%	0%	53%	2.8	0%	0%	0%	0%	0%	0.0	0%	0%	0%	13%	87%	3.9
Understanding and compassion	0%	7%	21%	21%	52%	3.2	33%	0%	33%	0%	33%	2.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	7%	93%	3.9
Dignified	0%	3%	20%	20%	56%	3.3	0%	0%	33%	0%	67%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	14%	86%	3.9
Courteous	0%	3%	20%	20%	56%	3.3	0%	0%	33%	0%	67%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	7%	93%	3.9
Conduct that promotes public confidence in the court	3%	5%	14%	20%	58%	3.2	0%	33%	0%	0%	67%	3.0	0%	0%	0%	0%	0%	0.0	0%	0%	0%	21%	79%	3.8
Patient	0%	5%	17%	19%	59%	3.3	0%	33%	33%	0%	33%	2.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	14%	86%	3.9
Section V: Administrative Performance	1%	1%	16%	29%	54%	3.3	0%	11%	0%	33%	56%	3.3	0%	0%	0%	0%	0%	0.0	0%	0%	0%	17%	83%	3.8
Punctual in conducting proceedings	0%	0%	17%	32%	51%	3.3	0%	0%	0%	33%	67%	3.7	0%	0%	0%	0%	0%	0.0	0%	0%	0%	14%	86%	3.9
Maintained proper control of courtroom	0%	0%	19%	28%	53%	3.3	0%	0%	0%	33%	67%	3.7	0%	0%	0%	0%	0%	0.0	0%	0%	0%	21%	79%	3.8
Prompt in making rulings and rendering decisions	2%	4%	15%	26%	54%	3.3																		
Was prepared for the proceedings	2%	0%	14%	31%	53%	3.3	0%	33%	0%	33%	33%	2.7	0%	0%	0%	0%	0%	0.0	0%	0%	0%	14%	86%	3.9
Respectful treatment of staff																			0%	0%	0%	14%	86%	3.9
Cooperation with peers																			0%	0%	0%	21%	79%	3.8
Efficient management of calendar	0%	0%	16%	27%	57%	3.4													0%	0%	0%	14%	86%	3.9
Section VI: Settlement Activities	3%	6%	9%	28%	53%	3.2																		
Appropriately promoted or conducted settlement	3%	6%	9%	28%	53%	3.2																		

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

Surveys were distributed to court
users from 08/2015 - 01/2016

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCCRI-02 Hon. Cynthia J. Bailey	Total Surveys: 112					Assignment: Criminal					Cycle: Retention Election																	
	ATTORNEY					57 Mean	LIT/WIT/PRO PER					5 Mean	JUROR					25 Mean	STAFF					25 Mean				
	UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU					
Section I: Legal Ability	0%	4%	10%	26%	60%	3.4																						
Legal reasoning ability	0%	4%	12%	20%	65%	3.5																						
Knowledge of substantive law	0%	4%	8%	29%	59%	3.4																						
Knowledge of rules of evidence	0%	4%	12%	26%	58%	3.4																						
Knowledge of rules of procedure	0%	4%	8%	31%	57%	3.4																						
Section II: Integrity	0%	4%	10%	13%	73%	3.5	0%	0%	0%	31%	69%	3.7	0%	0%	7%	17%	75%	3.7	0%	0%	6%	20%	75%	3.7				
Basic fairness and impartiality	0%	9%	11%	15%	64%	3.3	0%	0%	0%	25%	75%	3.8	0%	0%	8%	16%	76%	3.7	0%	0%	6%	18%	76%	3.7				
Equal treatment regardless of race	0%	2%	10%	14%	74%	3.6	0%	0%	0%	25%	75%	3.8	0%	0%	8%	16%	76%	3.7	0%	0%	6%	24%	71%	3.6				
Equal treatment regardless of gender	0%	6%	6%	14%	74%	3.6	0%	0%	0%	33%	67%	3.7	0%	0%	8%	16%	76%	3.7	0%	0%	6%	24%	71%	3.6				
Equal treatment regardless of religion	0%	2%	11%	15%	72%	3.6	0%	0%	0%	33%	67%	3.7	0%	0%	5%	19%	76%	3.7	0%	0%	6%	18%	76%	3.7				
Equal treatment regardless of national origin	0%	2%	10%	13%	75%	3.6	0%	0%	0%	33%	67%	3.7	0%	0%	8%	16%	76%	3.7	0%	0%	6%	18%	76%	3.7				
Equal treatment regardless of disability	0%	2%	11%	11%	76%	3.6	0%	0%	0%	33%	67%	3.7	0%	0%	4%	22%	74%	3.7	0%	0%	6%	18%	76%	3.7				
Equal treatment regardless of age	0%	2%	11%	13%	74%	3.6	0%	0%	0%	33%	67%	3.7	0%	0%	4%	20%	76%	3.7	0%	0%	6%	24%	71%	3.6				
Equal treatment regardless of sexual orientation	0%	2%	11%	11%	76%	3.6	0%	0%	0%	33%	67%	3.7	0%	0%	8%	17%	75%	3.7	0%	0%	6%	18%	76%	3.7				
Equal treatment regardless of economic status	0%	6%	10%	14%	70%	3.5	0%	0%	0%	33%	67%	3.7	0%	0%	12%	16%	72%	3.6	0%	0%	6%	18%	76%	3.7				
Section III: Communication Skills	0%	4%	13%	20%	63%	3.4	0%	0%	0%	33%	67%	3.7	0%	1%	4%	26%	69%	3.6	0%	0%	16%	26%	58%	3.4				
Clear and logical communications																		0%	0%	16%	26%	58%	3.4					
Clear and logical oral communications and directions	0%	2%	15%	19%	63%	3.4																						
Clear and logical written decisions	0%	11%	8%	18%	63%	3.3																						
Gave all parties an adequate opportunity to be heard	0%	2%	15%	22%	62%	3.4																						
Explained proceedings (to the jury)							0%	0%	0%	33%	67%	3.7	0%	0%	4%	24%	72%	3.7										
Explained reason for delays							0%	0%	0%	33%	67%	3.7	0%	4%	8%	25%	63%	3.5										
Clearly explained the juror's responsibilities													0%	0%	0%	28%	72%	3.7										
Section IV: Judicial temperament	2%	5%	11%	21%	61%	3.3	0%	0%	0%	20%	80%	3.8	0%	0%	5%	23%	72%	3.7	0%	0%	9%	30%	62%	3.5				
Understanding and compassion	2%	11%	7%	22%	58%	3.2	0%	0%	0%	20%	80%	3.8	0%	0%	8%	20%	72%	3.6	0%	0%	6%	33%	61%	3.6				
Dignified	2%	2%	13%	20%	64%	3.4	0%	0%	0%	20%	80%	3.8	0%	0%	4%	24%	72%	3.7	0%	0%	5%	32%	63%	3.6				
Courteous	2%	5%	9%	20%	64%	3.4	0%	0%	0%	20%	80%	3.8	0%	0%	4%	24%	72%	3.7	0%	0%	11%	26%	63%	3.5				
Conduct that promotes public confidence in the court	2%	2%	11%	19%	67%	3.5	0%	0%	0%	20%	80%	3.8	0%	0%	4%	24%	72%	3.7	0%	0%	11%	26%	63%	3.5				
Patient	2%	7%	15%	24%	53%	3.2	0%	0%	0%	20%	80%	3.8	0%	0%	4%	24%	72%	3.7	0%	0%	11%	32%	58%	3.5				
Section V: Administrative Performance	0%	2%	9%	21%	67%	3.5	0%	0%	0%	20%	80%	3.8	0%	4%	9%	19%	68%	3.5	0%	0%	1%	34%	65%	3.6				
Punctual in conducting proceedings	0%	2%	9%	24%	65%	3.5	0%	0%	0%	20%	80%	3.8	0%	12%	8%	20%	60%	3.3	0%	0%	0%	35%	65%	3.6				
Maintained proper control of courtroom	0%	2%	9%	22%	67%	3.5	0%	0%	0%	20%	80%	3.8	0%	0%	12%	16%	72%	3.6	0%	0%	0%	35%	65%	3.6				
Prompt in making rulings and rendering decisions	0%	2%	10%	18%	70%	3.6																						
Was prepared for the proceedings	0%	2%	9%	22%	67%	3.5	0%	0%	0%	20%	80%	3.8	0%	0%	8%	20%	72%	3.6	0%	0%	0%	35%	65%	3.6				
Respectful treatment of staff																		0%	0%	6%	33%	61%	3.6					
Cooperation with peers																		0%	0%	0%	29%	71%	3.7					
Efficient management of calendar	0%	2%	9%	22%	67%	3.5												0%	0%	0%	35%	65%	3.6					
Section VI: Settlement Activities	0%	0%	7%	24%	69%	3.6																						
Appropriately promoted or conducted settlement	0%	0%	7%	24%	69%	3.6																						

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

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

Surveys were distributed to court users from 08/2013 - 01/2014

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCCRI-02 Hon. Cynthia J. Bailey	Total Surveys: 112						Assignment: Criminal					Cycle: Retention Election																
	ATTORNEY					57 Resp Mean	LIT/WIT/PRO PER					5 Resp Mean	JUROR					25 Resp Mean	STAFF					25 Resp Mean				
	UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU		UN	PO	SA	VG	SU					
Section I: Legal Ability	0	2	5	13	30	50	3.4																					
Legal reasoning ability	0	2	6	10	33	51	3.5																					
Knowledge of substantive law	0	2	4	14	29	49	3.4																					
Knowledge of rules of evidence	0	2	6	13	29	50	3.4																					
Knowledge of rules of procedure	0	2	4	16	29	51	3.4																					
Section II: Integrity	0	2	5	6	35	48	3.5	0	0	0	1	2	3	3.7	0	0	2	4	18	24	3.7	0	0	1	3	13	17	3.7
Basic fairness and impartiality	0	5	6	8	34	53	3.3	0	0	0	1	3	4	3.8	0	0	2	4	19	25	3.7	0	0	1	3	13	17	3.7
Equal treatment regardless of race	0	1	5	7	37	50	3.6	0	0	0	1	3	4	3.8	0	0	2	4	19	25	3.7	0	0	1	4	12	17	3.6
Equal treatment regardless of gender	0	3	3	7	37	50	3.6	0	0	0	1	2	3	3.7	0	0	2	4	19	25	3.7	0	0	1	4	12	17	3.6
Equal treatment regardless of religion	0	1	5	7	34	47	3.6	0	0	0	1	2	3	3.7	0	0	1	4	16	21	3.7	0	0	1	3	13	17	3.7
Equal treatment regardless of national origin	0	1	5	6	36	48	3.6	0	0	0	1	2	3	3.7	0	0	2	4	19	25	3.7	0	0	1	3	13	17	3.7
Equal treatment regardless of disability	0	1	5	5	34	45	3.6	0	0	0	1	2	3	3.7	0	0	1	5	17	23	3.7	0	0	1	3	13	17	3.7
Equal treatment regardless of age	0	1	5	6	35	47	3.6	0	0	0	1	2	3	3.7	0	0	1	5	19	25	3.7	0	0	1	4	12	17	3.6
Equal treatment regardless of sexual orientation	0	1	5	5	34	45	3.6	0	0	0	1	2	3	3.7	0	0	2	4	18	24	3.7	0	0	1	3	13	17	3.7
Equal treatment regardless of economic status	0	3	5	7	35	50	3.5	0	0	0	1	2	3	3.7	0	0	3	4	18	25	3.6	0	0	1	3	13	17	3.7
Section III: Communication Skills	0	2	6	10	30	48	3.4	0	0	0	1	2	3	3.7	0	0	1	6	17	25	3.6	0	0	3	5	11	19	3.4
Clear and logical communications																						0	0	3	5	11	19	3.4
Clear and logical oral communications and directions	0	1	8	10	33	52	3.4																					
Clear and logical written decisions	0	4	3	7	24	38	3.3																					
Gave all parties an adequate opportunity to be heard	0	1	8	12	34	55	3.4																					
Explained proceedings (to the jury)								0	0	0	1	2	3	3.7	0	0	1	6	18	25	3.7							
Explained reason for delays								0	0	0	1	2	3	3.7	0	1	2	6	15	24	3.5							
Clearly explained the juror's responsibilities															0	0	0	7	18	25	3.7							
Section IV: Judicial temperament	1	3	6	11	33	55	3.3	0	0	0	1	4	5	3.8	0	0	1	6	18	25	3.7	0	0	2	6	12	19	3.5
Understanding and compassion	1	6	4	12	32	55	3.2	0	0	0	1	4	5	3.8	0	0	2	5	18	25	3.6	0	0	1	6	11	18	3.6
Dignified	1	1	7	11	35	55	3.4	0	0	0	1	4	5	3.8	0	0	1	6	18	25	3.7	0	0	1	6	12	19	3.6
Courteous	1	3	5	11	35	55	3.4	0	0	0	1	4	5	3.8	0	0	1	6	18	25	3.7	0	0	2	5	12	19	3.5
Conduct that promotes public confidence in the court	1	1	6	10	36	54	3.5	0	0	0	1	4	5	3.8	0	0	1	6	18	25	3.7	0	0	2	5	12	19	3.5
Patient	1	4	8	13	29	55	3.2	0	0	0	1	4	5	3.8	0	0	1	6	18	25	3.7	0	0	2	6	11	19	3.5
Section V: Administrative Performance	0	1	5	12	36	54	3.5	0	0	0	1	4	5	3.8	0	1	2	5	17	25	3.5	0	0	0	6	11	17	3.6
Punctual in conducting proceedings	0	1	5	13	36	55	3.5	0	0	0	1	4	5	3.8	0	3	2	5	15	25	3.3	0	0	0	6	11	17	3.6
Maintained proper control of courtroom	0	1	5	12	37	55	3.5	0	0	0	1	4	5	3.8	0	0	3	4	18	25	3.6	0	0	0	6	11	17	3.6
Prompt in making rulings and rendering decisions	0	1	5	9	35	50	3.6																					
Was prepared for the proceedings	0	1	5	12	37	55	3.5	0	0	0	1	4	5	3.8	0	0	2	5	18	25	3.6	0	0	0	6	11	17	3.6
Respectful treatment of staff																						0	0	1	6	11	18	3.6
Cooperation with peers																						0	0	0	5	12	17	3.7
Efficient management of calendar	0	1	5	12	37	55	3.5															0	0	0	6	11	17	3.6
Section VI: Settlement Activities	0	0	2	7	20	29	3.6																					
Appropriately promoted or conducted settlement	0	0	2	7	20	29	3.6																					

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