

**APPLICATION FOR NOMINATION TO
JUDICIAL OFFICE**

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

PERSONAL INFORMATION

1. Full Name: **Daniel Joseph Kiley**
2. Have you ever used or been known by any other name? **No**. If so, state name:
3. Office Address:

**Maricopa County Superior Court
101 West Jefferson Street, Suite 613
Phoenix, AZ 85003**

4. How long have you lived in Arizona? **36 years** What is your home zip code? **85044**
5. Identify the county you reside in and the years of your residency.

Maricopa County, 1985 to present

6. If nominated, will you be 30 years old before taking office? **Yes**.
If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? **Yes**.
7. List your present and any former political party registrations and approximate dates of each:

I have been registered as a Republican since I first registered to vote in Arizona in 1986.

In 1981 or 1982, when I was 18 years old and living in Massachusetts, I registered to vote as a Democrat.

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

8. Gender: **Male**

Race/Ethnicity: **White**

EDUCATIONAL BACKGROUND

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

**Arizona State University College of Law, J.D., *cum laude*, 1988
(now Sandra Day O'Connor College of Law)**

Harvard University, B.A. in Government, *cum laude*, 1985

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

While in law school, I served as a staff writer for and, later, Note and Comment Editor of the Arizona State Law Journal.

In college, I majored in Government. In my free time, I was active in student government, serving as Vice President of the student council of my dormitory, Mather House, for two semesters. I also served as a member of and, eventually, co-chair of the Prisons Committee. Fellow committee members and I visited inmates at a nearby prison one evening each week.

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

I obtained my undergraduate degree *cum laude* from Harvard University in 1985. In addition to receiving significant scholarship assistance, I relied on the income I earned from part-time jobs, including jobs as a dormitory janitor and a library desk assistant, to pay my college expenses. Toward the end of my senior year, my classmates in Mather House voted to give me the "Unsung Hero Award" in recognition of my participation in various activities at Mather House, including the planning of fundraisers and social events.

I graduated *cum laude* from the Arizona State University College of Law (now the Sandra Day O'Connor College of Law) in 1988. Upon admission to law school, I was awarded the "Outstanding Applicant" scholarship, which consisted of a tuition waiver and an annual stipend of \$5,000. During my first year of law school, my assigned partner and I won a Closing Argument competition sponsored by the Phoenix Association of Defense Counsel.

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, 1988

United States District Court for the District of Arizona, 1989

United States Court of Appeals for the Ninth Circuit, 1999

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
Superior Court	June 2010 – present	Phoenix, AZ
Sherman & Howard LLC	Jan. 2009 - May, 2010	Phoenix, AZ
Mohr, Hackett, Pederson, Blakley & Randolph, P.C.	Oct. 1997 – Dec. 2008	Phoenix, AZ
Arizona Attorney General's Office	Aug. 1988 – Oct. 1997	Phoenix, AZ

Additionally, I was a law clerk at the Arizona Attorney General's Office during the summer of 1987 and a law clerk at Mohr, Hackett, Pederson, Blakley & Randolph, P.C., during the summer of 1986.

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

See Attachment A.

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

Before I was appointed to the bench in 2010, roughly two-thirds of my practice consisted of representing corporations and individuals in commercial litigation and contract disputes. Approximately 10% of my time was spent representing clients in civil litigation involving non-contract claims, such as, for example, a nuisance claim my clients brought against a neighboring landowner. Another 5% of my time was spent providing legal advice to corporate clients on employment issues and in contract review and negotiation.

Approximately 10% of my practice was in the area of criminal law. In addition to representing defendants and victims in criminal cases, I represented individuals and corporate entities in investigations being conducted by various law enforcement agencies.

Another 10% of my practice was in municipal law. In connection with my firm's service as Town Attorney for the Town of Carefree, I represented the Town in litigation and provided legal advice on issues such as the Town's obligations under Arizona's Public Records and Open Meeting laws.

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

Since becoming a Superior Court judge in 2010, I have been assigned to Family (2010-2013), Criminal (2013-2016), Civil (2016-2020), and Lower Court and Administrative Appeals calendars (2020-present). Additionally, I have conducted several trials in Juvenile cases involving the termination of parental rights due to parents' abuse and/or neglect of their children.

While serving as an Assistant Attorney General from 1988 to 1997, I practiced primarily criminal law. In addition to handling criminal cases at the trial level, I handled approximately 100 appeals and special actions in criminal cases pending before the Arizona Supreme Court and the Arizona Court of Appeals. Additionally, I handled trials, appeals, and special actions in asset forfeiture cases, which, with certain exceptions, follow civil procedural rules.

- 18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state. **Not applicable.**
- 19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

As a judge over the past eleven years, I have drafted countless rulings and orders.

As a practicing attorney, I regularly drafted pleadings, motions/responses, settlement agreements, appellate briefs, and proposed jury instructions. Additionally, I negotiated and/or drafted a variety of contracts for clients, including sales agreements, employment agreements, and restrictive covenants. On one occasion, I revised and edited a client's employee handbook.

- 20. Have you practiced in adversary proceedings before administrative boards or commissions? **Yes.** If so, state:
 - a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

I represented an insurance agent before the Arizona Corporation Commission in 2005 in a matter arising out of the sale of unregistered securities and an applicant for a nursing license before the Arizona State Board of Nursing in 1998.

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

Sole Counsel: 2

Chief Counsel: 0

Associate Counsel: 0

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

Sole Counsel: 1

Chief Counsel: 5

Associate Counsel: 4

These figures include only mediations, arbitrations, and settlement conferences in which I participated as a lawyer representing clients. They do not include settlement conferences that I have conducted as a judge or a judge *pro tempore*, nor do they include arbitrations that I conducted as a court-appointed arbitrator.

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.

Robert Stoffer, et al., v. Desert Mountain, et al.,
Maricopa County Superior Court Case No. CV2000-012349

1. **This case was filed in Maricopa County Superior Court in June 2000 and concluded by settlement in May 2006.**

2. **Counsel for most Plaintiffs:** **I was one of three attorneys at my former firm, Mohr, Hackett, Pederson, Blakley & Randolph P.C. (“Mohr Hackett”), who represented the majority of the plaintiffs in this case. The other two attorneys were Michael W. Wright and Thomas K. Chenal.**

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- 3. The plaintiffs in this case asserted breach of contract and related claims against the developer and operator of a residential golf community in Scottsdale. The case was originally filed on behalf of six plaintiffs who sought class certification to represent all golf community members who purchased their memberships during the relevant time period. After class certification was denied, a total of 114 former and current members joined the litigation as plaintiffs to assert their individual claims. Toward the end of the litigation, due to disagreements on certain issues among some of the plaintiffs, some plaintiffs terminated our firm's representation and retained another firm to represent them in settlement negotiations. The matter resolved by settlement.**
- 4. This case raised interesting issues relating to class certification and the application of statutes of limitations to claims asserted by multiple plaintiffs whose claims arguably accrued at different times.**

Herbert Dreiseszun, et al., v. Vulcan Materials Co. and Flood Control District of Maricopa County

Maricopa County Superior Court Case No. CV2002-014968

1. This case was filed in Maricopa County Superior Court in August 2002 and concluded by settlement in June 2009.

2. Counsel for the Plaintiffs: Along with my partner Robert C. Hackett, I represented the Plaintiffs while I was at my former firm, Mohr Hackett.

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**Counsel for Defendant
Vulcan Materials Co.:**

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**Counsel for Defendant
Flood Control District of
Maricopa County:**

**Roberta S. Livesay
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3. My clients, who owned land in a floodplain, asserted common law nuisance and related statutory claims against an adjoining landowner, Vulcan Materials Co. (“Vulcan”), based on Vulcan’s excavation of sand and gravel in a floodplain without a floodplain use permit. My clients alleged that Vulcan’s excavation created erosion hazards to their property, thereby reducing its value. My clients also asserted negligence and other claims against the Flood Control District of Maricopa County (the “FCD”) for failing to take action to stop Vulcan from excavating without a permit.

Judge Anna Baca granted my clients' motion for summary judgment against Vulcan, enjoining Vulcan from further excavation in the floodplain without a permit. My clients then reached a settlement with Vulcan. Due to judicial rotations, the case was reassigned to Judge Eddward Ballinger, who subsequently granted a case-dispositive motion for summary judgment in the FCD's favor. While an appeal was pending, my clients and the FCD reached an agreement to settle the matter.

- 4. This case involved substantial motion practice and a number of lengthy and often technical depositions of floodplain regulators, engineers, and real property appraisers. Additionally, the case raised a number of interesting legal issues including the scope of various governmental immunities and the applicability of the "economic loss rule," which bars the recovery of purely economic losses for negligence and other tort claims in the absence of personal injury or property damage.**

***Trimedica International, Inc., et al. v. Paul Alan Finder, et al.,*
Maricopa County Superior Court Case No. CV2004-024190**

- 1. This case was filed in Maricopa County Superior Court in December 2004 and concluded by settlement in February 2007.**

- 2. Counsel for the Plaintiffs/Counter-Defendants: Michael J. Fuller
Attorney at Law
(602) 241-8599
michael@mjfullerlaw.com**

**Counsel for the Defendants/
Counterclaimants: Along with associate Matthew J. Kelly, I represented the Defendants/Counterclaimants while I was with my former firm, Mohr Hackett.**

**Matthew J. Kelly
(then with Mohr Hackett)
Kelly McCoy PLC
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3. **The plaintiffs in this matter were two related corporations that alleged that an employee had used their equipment and other property without their permission so that he could conduct business on behalf of a limited liability company that he and his wife operated. My clients, who were the now-terminated employee, his wife, and their company, alleged that their use of the plaintiffs' equipment and property was done with the plaintiffs' knowledge and consent and that they paid the plaintiffs for the use of the equipment. My clients also asserted counterclaims for breach of contract and defamation. The case was eventually resolved by settlement.**

Testimony elicited at a deposition established that, before the opposing parties retained counsel and sued my clients, one of their employees altered a critical document in this case in an effort to bolster the plaintiffs' claim for damages. As a result, after an evidentiary hearing, Judge Robert Miles imposed monetary sanctions on the opposing parties.

4. **This case gave me the chance to argue a number of interesting legal issues, including issues relating to the factors to be considered in determining the appropriate sanction for a party's spoliation of evidence and my (successful) argument that the restrictive covenant in the former employee's employment agreement was overbroad and, therefore, unenforceable.**
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: 7
State Courts of Record: more than 100*
Municipal/Justice Courts: approximately 30

***This figure is a conservative estimate. I do not have records of all of the cases I handled as an Assistant Attorney General.**

The approximate percentage of those cases which have been:

Civil: 35%
Criminal: 65%

The approximate number of those cases in which you were:

Sole Counsel: 75

Chief Counsel: 20

Associate Counsel: 40

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: 25%

You argued a motion described above 25%

You made a contested court appearance (other than as set forth in the above response) 33%

You negotiated a settlement: 75+%

The court rendered judgment after trial: < 5%

A jury rendered a verdict: < 5%

The number of cases you have taken to trial:

Limited jurisdiction court 6

Superior court 7

Federal district court 0

Jury 9

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

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

The approximate number of your appeals which have been:

Civil: 6

Criminal: 100+

Other: 0

The approximate number of matters in which you appeared:

As counsel of record on the brief: 100+

Personally in oral argument: 5

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.

State of Arizona v. Eric John King, 180 Ariz. 268, 883 P.2d 1024 (1994)

- 1. This appeal was filed in March 1991 and concluded when the Arizona Supreme Court issued its opinion in November 1994.**
- 2. This case was a direct appeal to the Arizona Supreme Court of the convictions and capital sentences of Eric John King. The Court's opinion was authored by Justice Robert Corcoran and was joined by Chief Justice Stanley Feldman and Justice Thomas Zlaket. Vice Chief Justice James Moeller authored a concurring opinion in which Justice Frederick Martone joined.**
- 3. Counsel for the State: I researched, drafted, and filed the answering brief on behalf of the State while I was with the Criminal Appeals Section of the Arizona Attorney General's Office. After I transferred to a different section within the Attorney General's Office, this case was argued before the Arizona Supreme Court by Assistant Attorney General John P. Todd.**

John P. Todd
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Counsel for the Defendant: **Edward F. McGee**
(then with the Maricopa County Public
Defender's Office; now listed as "retired,"
with no contact information, on the State
Bar's website)

4. The charges in this matter arose out of the defendant's killing of a convenience store clerk and security guard. On appeal, the defendant raised a variety of challenges to his convictions and sentences, all of which were rejected.
5. This case is significant because the Arizona Supreme Court's opinion clarified the scope of Rule 801(d)(1)(A) of the Arizona Rules of Evidence, which permits impeachment of a witness with his or her prior inconsistent statements. In this case, a witness who had given a statement to the police after the killings testified at trial that he did not remember the events that were the subject of his prior statement. Over the defendant's objection, the trial judge permitted the prosecutor to use the witness's pretrial statement to the police for impeachment purposes. The defendant challenged the trial judge's ruling on appeal, asserting that the witness's pretrial statement to the police was not a "prior inconsistent statement" within the meaning of Rule 801(d)(1)(A) because his pretrial statement was not "inconsistent" with his claim, at trial, that he no longer remembered the events. The Supreme Court accepted my argument that a witness's claim of lack of memory, if disbelieved by the trial judge, may be deemed inconsistent with the witness's pretrial statement, and therefore that the pretrial statement is admissible under Rule 801(d)(1)(A).

State of Arizona v. David Martinez Ramirez, 178 Ariz. 116, 871 P.2d 237 (1994)

1. This appeal was filed in December 1990 and concluded when the Arizona Supreme Court issued its opinion in March 1994.

2. This case was a direct appeal to the Arizona Supreme Court of the defendant's convictions and capital sentences. The Court's opinion was authored by Justice Robert Corcoran and joined by Chief Justice Stanley Feldman, Vice Chief Justice James Moeller, and Justices Thomas Zlaket and Frederick Martone.

3. Counsel for the State: I researched, drafted, and filed the answering brief on behalf of the State while I was with the Criminal Appeals Section of the Arizona Attorney General's Office. After I transferred to a different section within the Attorney General's Office, this case was argued before the Arizona Supreme Court by Assistant Attorney General John P. Todd.

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Counsel for the Defendant: Neal W. Bassett
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4. The charges against the defendant arose out of his killing of his former girlfriend and her teenaged daughter. The defendant raised various challenges to his convictions and sentences, all of which were rejected.

5. This case is significant because the Arizona Supreme Court's opinion clarified the scope of *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* generally requires the suppression of a defendant's answers to questions asked during custodial interrogation unless the defendant is first advised of his or her rights to the assistance of counsel and to remain silent. In this case, officers who arrived at the scene in response to a 911 call arrested the defendant immediately upon his exiting of the victims' apartment. The Court accepted my argument that the defendant's answers to the officers' post-arrest questions, including "Who else is inside?" and "Is anyone else

hurt?”, though given without benefit of *Miranda* warnings, were nonetheless admissible at trial pursuant to *Miranda*’s “public safety” exception.

Daniel J. Sommer, et al., v. Edgar Stoffels, et al.,
2009 WL 1138045 (Ariz.App. Div. 1, Apr. 28, 2009)

1. This case was filed in Maricopa County Superior Court in January 2008. *See Daniel J. Sommer, et al. v. Edgar Stoffels, et al.,* Maricopa County Superior Court Case No. CV2008-050088. After Superior Court Judge Paul Katz issued a preliminary injunction in favor of my firm’s clients, the opposing parties appealed to Division One of the Court of Appeals, which issued a memorandum decision affirming the preliminary injunction in April 2009. The case was remanded to the Superior Court and a permanent injunction was entered in March 2010 that concluded the case.
2. The opposing parties’ appeal from the preliminary injunction was heard by a panel composed of then-Judge (now Justice) Ann Scott Timmer, Judge Jon Thompson, and Judge Margaret Downie (who authored the memorandum decision).

3. Counsel for the Plaintiffs:

Along with my then-partner Michael W. Wright, I represented the Plaintiffs while I was with Mohr Hackett.

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**Catherine Sims Adams
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- 4. Our clients sued their neighbors to enjoin them from constructing a second garage on their property in violation of applicable deed restrictions. The trial court's ruling granting our client's motion for injunctive relief was affirmed on appeal. I researched and drafted the appellate brief on behalf of our clients and argued the case before the Court of Appeals.**
 - 5. This case presented interesting issues regarding the enforceability of restrictive covenants. On a more personal note, this case is significant to me because it was the last appeal in which I participated as a practicing attorney prior to my appointment as a judge.**
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.).

I was appointed a Superior Court judge for Maricopa County in 2010 and retained in office in the 2012, 2016, and 2020 general elections.

I served in the Family Department from June 2010 until June 2013. I presided over bench trials and hearings in divorce and custody cases, resolving disputes over issues ranging from legal decision-making authority, parenting time, spousal maintenance, child support, the division of marital property and allocation of responsibility for marital debt, and visitation for grandparents and other third parties.

I served in the Criminal Department from June 2013 until June 2016. I conducted over 50 jury trials and countless hearings (including, for example, change of plea hearings, sentencings, and evidentiary hearings on motions to suppress evidence) in a variety of felony cases, including cases involving

charges of murder, sexual assault, crimes involving children, and other offenses.

I served in the Civil Department from June 2016 until November 2020, including serving as Associate Civil Presiding Judge from June 2018 until November 2020. I presided over jury trials, evidentiary hearings, oral arguments, and other hearings in cases involving claims as varied as professional malpractice, eminent domain, breach of contract, personal injury, and challenges to the placement of candidates and initiative measures on the ballot. Additionally, I conducted several severance trials in Juvenile cases that had previously been assigned to Juvenile Department judges but which were re-assigned to me as part of an effort to reduce the backlog of cases in the Juvenile Department.

I am now the Presiding Judge of the Lower Court and Administrative Appeals department, a position I have held since November 2020. Defendants in misdemeanor criminal cases, civil litigants in justice court cases involving claims of \$10,000 or less, and parties to proceedings before administrative agencies (such as, for example, the Arizona Corporation Commission and the Arizona Registrar of Contractors) must appeal their cases to the Superior Court, rather than to the Court of Appeals. As the Lower Court and Administrative Appeals judge, I review the parties' appellate memoranda, the record of the proceedings below, and the relevant legal authorities; conduct oral arguments; and issue written rulings either affirming or reversing the decisions being challenged. In each of my written rulings, I discuss the relevant facts of the case and the pertinent legal authorities and explain the basis for my decision. It is my goal to make sure, at the end of every case and regardless of the outcome, that both sides feel that I listened to them, carefully considered their arguments, and made my decision based solely on the merits.

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.

Vince Leach, et al., v. Michele Reagan, et al.,
Maricopa County Superior Court Case No. CV2018-009919

1. **This case was filed on July 19, 2018. A little over a month later, I conducted a 5-day trial and issued my ruling on August 27, 2018. The Arizona Supreme Court affirmed my ruling by order issued two days later, and subsequently issued a written opinion on December 6, 2018. *See Leach v. Reagan*, 245 Ariz. 430, 430 P.3d 1241 (2018).**
2. **This case was filed and tried in Superior Court, and then affirmed by the Arizona Supreme Court in an opinion written by Justice Ann Scott Timmer.**

3. **Counsel for Plaintiffs Vince Leach, Glenn Hamer, Justine Robles, John Kavanagh, Jenn Daniels, Jackie Meck, Ashley Ragan, and John Giles:**

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and Graham County
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and La Paz County Supervisors:**

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- 4. The plaintiffs in this case challenged the placement on the November 2018 ballot of Proposition 127, an initiative measure that would have amended the Arizona Constitution to require certain electricity**

providers to generate at least 50% of their electricity from renewable sources. The plaintiffs asserted a variety of arguments, including challenges to (1) the organizational formation of the political action committee that sponsored the measure, (2) the accuracy of the measure's title and text, and (3) the validity of petition signatures submitted in support of the measure. In support of the placement of the measure on the ballot, the committee that sponsored the measure challenged the constitutionality of two statutes: A.R.S. § 19-102.01, which requires "persons using the initiative process" to "strictly comply" with applicable constitutional and statutory requirements (thereby abrogating the "substantial compliance" standard that formerly applied) and A.R.S. § 19-118(C), which invalidates all signatures submitted by a registered petition circulator who fails to comply with a subpoena requiring him or her to testify in a case in which the validity of those signatures is challenged.

I rejected the plaintiffs' challenges to the committee's formation and the sufficiency of the measure's title and text, finding those challenges to lack support in statute or case law. I rejected the committee's challenge to the constitutionality of A.R.S. § 19-102.01 and A.R.S. § 19-118(C), both because of the strong presumption in favor of the constitutionality of statutory enactments and because I found that those statutes promote the important public interest in fair and transparent elections. Finally, after considering the evidence presented at trial, I found that, although many of the signatures submitted in support of the measure were invalid for a variety of reasons (including that some of the signatures had obviously been forged), the number of valid signatures that had been submitted was more than sufficient to qualify the measure for placement on the ballot.

My ruling in this case was issued on August 27, 2018, and is available on the Clerk of the Superior Court for Maricopa County's website at www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/082018/m8425143.pdf.

5. This case presented unique logistical challenges due to the unusually large number of parties and attorneys involved and the fact that, collectively, the parties offered over 6,000 exhibits at trial and subpoenaed over 900 witnesses, of whom more than 40 testified. The logistical challenges presented by this case were exacerbated by the necessity of resolving the case on an accelerated basis in order to meet statutory ballot printing deadlines.

Apart from its logistical challenges, this case is significant because of the novelty of the issues presented. Among other things, the issues raised by the parties required me to interpret, and resolve constitutional challenges to, statutes that were of recent enactment and whose constitutionality had not, to my knowledge, been previously tested.

The novelty of the issues presented in this case is illustrated by the fact that, on the same day that I issued my ruling upholding the constitutionality of A.R.S. § 19-102.01's requirement that initiative sponsors strictly comply with applicable constitutional and statutory requirements, another Superior Court judge issued a ruling in an unrelated case that reached the opposite conclusion. The ruling in that case was reversed by the Arizona Supreme Court in *Molera v. Reagan*, 245 Ariz. 291, 428 P.3d 490 (2018), with two justices dissenting.

***Commissioner Robert Burns v. Arizona Public Service Co., et al.,*
Maricopa County Superior Court Case No. CV2017-001831**

- 1. This case was filed in March 2017; I entered judgment in January 2019. The Court of Appeals issued an opinion affirming my rulings on March 4, 2021. See *Burns v. Arizona Public Service Co.*, 250 Ariz. 607, 483 P.3d 229 (App. 2021).**
- 2. This case was filed in Superior Court and resolved by my rulings on dispositive motions. The Court of Appeals affirmed my rulings in an opinion written by Judge Kent Cattani.**

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- 4. In this case, the plaintiff, a member of the Arizona Corporation Commission (“ACC”), issued subpoenas to a regulated utility and its parent corporation to require them to produce certain financial records, including records of campaign contributions they had made to ACC candidates. The utility and its parent corporation asserted objections to the subpoenas, and a majority of the ACC members voted to deny the**

plaintiff's motion to compel their compliance. The plaintiff then sought a judicial declaration of his constitutional and statutory authority as an ACC member to compel the utility and its parent corporation to comply with the subpoenas. The plaintiff later amended his complaint to seek a judicial declaration of his constitutional and statutory authority to initiate an investigation into potential grounds to disqualify his fellow ACC members from adjudicating a rate case on the grounds that the utility seeking the rate increase and/or its parent company may have made financial contributions to the campaigns of those ACC members.

After considering the parties' arguments and the legal authorities they cited, I ruled that, although the text of the Arizona Constitution confers authority on individual ACC members to serve subpoenas and otherwise gather information from regulated companies, nothing in the Arizona Constitution or in Arizona statute authorizes a single member of the ACC, acting unilaterally, to compel compliance with a subpoena to which the recipient of the subpoena has objected. Instead, the text of the relevant constitutional and statutory provisions make clear that only the ACC as a whole, and not an individual ACC member acting alone, is authorized to rule on the validity of an objection and to compel compliance with a subpoena. Because a majority of the ACC members had voted against compelling the companies to comply with the subpoenas served by the plaintiff, I held that the plaintiff, as a single ACC member, had no constitutional or statutory authority to unilaterally compel compliance with those subpoenas.

I also rejected the plaintiff's challenge to his fellow ACC members' allegedly "arbitrary and capricious" refusal to compel the companies to comply with his subpoenas. Citing well-established case law recognizing that the ACC is, essentially, a "fourth branch of government" that enjoys constitutional authority to act in executive, legislative, and quasi-judicial capacities, I held that separation of powers principles precluded me, as a judicial officer, from second-guessing the decision of a majority of the ACC about the proper scope of an ACC investigation.

Finally, I rejected, as lacking any constitutional or statutory basis, the plaintiff's request for a judicial declaration of his authority to unilaterally initiate an investigation into potential grounds for disqualification of his fellow ACC members.

My substantive rulings in this case were issued on August 3, 2017, February 15, 2018, and December 18, 2018, and are available on the Clerk of the Superior Court for Maricopa County’s website at www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/082017/m7944279.pdf; www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/022018/m8189065.pdf; and www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/122018/m8559117.pdf.

5. This case is significant because it presented issues of first impression regarding the authority conferred by the Arizona Constitution and Arizona statute on members of the Arizona Corporation Commission. In resolving the disputed issues, I was guided by the text of the applicable constitutional and statutory provisions and by separation of powers principles that bar the judicial branch from encroaching on powers constitutionally entrusted to other branches of government.

City of Phoenix v. State of Arizona

Maricopa County Superior Court Case No. CV2016-014855

1. This case was filed in September 2016; I entered judgment in January 2018. The judgment was affirmed on appeal by memorandum decision issued in February 2019. *See City of Phoenix v. State of Arizona*, 2019 WL 845334 (Ariz.App. Div. 1, Feb. 21, 2019).
2. This case was filed in Superior Court and resolved by my ruling on the parties’ respective dispositive motions, which was subsequently affirmed by Division One of the Court of Appeals in a memorandum decision written by Judge Kenton D. Jones.

3. Counsel for Plaintiff City of Phoenix (the “City”):

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**Counsel for Defendant State
of Arizona (the “State”):**

**Rusty D. Crandell
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Maricopa County Superior Court
(602) 372-3140**

- 4. This case involved a dispute over amendments that were enacted in 2016 (the “2016 amendments”) to certain statutes that govern the creation of “improvement districts.” Arizona statutes authorize municipalities to establish “improvement districts” within municipal boundaries. Improvement districts provide certain public services at a higher level or greater degree than those provided in the surrounding community; such services are funded by taxes assessed against real property located within the improvement district’s boundaries. The 2016 amendments changed the process for establishing an improvement district by adding a requirement that the proponents of the establishment of an improvement district demonstrate that the creation of the proposed district is supported by the owners of a majority of the taxable property within the proposed district.**

The City sued for declaratory relief, seeking a judicial declaration that the 2016 amendments did not apply to a downtown arts district known as the Roosevelt Business Improvement District or “Roosevelt Row.” The City argued that it had already satisfied all then-existing statutory requirements for establishing a business improvement district prior to the enactment of the 2016 amendments, and that the 2016 amendments did not apply retroactively. In the alternative, the City argued that, if the 2016 amendments apply to Roosevelt Row, the 2016 amendments constitute a “special law” that violates Article IV, pt. 2, § 19 of the Arizona Constitution, which prohibits “local or special laws...when a general law can be made applicable.”

After briefing and argument, I issued a written ruling rejecting the City’s arguments. I found that the undisputed facts established that the the City had not yet completed all statutory steps required for the establishment of an improvement district before the 2016 amendments took effect, and therefore that the 2016 amendments did, in fact, apply to Roosevelt Row. Finally, I rejected the City’s argument that the 2016 amendments constitute a “special law” in violation of the Arizona

Constitution, holding that, pursuant to criteria established in case law, the 2016 amendments do not constitute a “special law.”

My ruling on the parties’ dispositive motions was issued on July 24, 2017, and can be found on the Clerk of the Superior Court for Maricopa County’s website at

www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/072017/m7932591.pdf

- 5. This case was unusual in that it involved a dispute between two governmental entities over the constitutionality of a state statute.**

***Jane Ann Riddle, et al., v. State of Arizona, et al.,*
Maricopa County Superior Court Case No. CV2016-018092**

- 1. This case was filed on December 15, 2016. I held a hearing within a matter of days, after which I denied the plaintiffs’ motion for a preliminary injunction. My ruling was appealed to, and affirmed by, the Arizona Supreme Court. *See Arizona Chamber of Commerce & Industry v. Kiley*, 242 Ariz. 533, 399 P.3d 80 (2017). The plaintiffs voluntarily dismissed their complaint in August 2017.**

- 2. This case was filed in Superior Court and resolved by rulings on dispositive motions that were subsequently affirmed by the Arizona Supreme Court in an opinion written by Justice Ann Scott Timmer.**

- 3. Co-Counsel for Plaintiffs Jane Ann Riddle, William L. Riddle III, Charlotte Chester, Ian McCarthy, Arizona Chamber of Commerce & Industry, Greater Phoenix Chamber of Commerce, Tucson Hispanic Chamber of Commerce, Greater Flagstaff Chamber of Commerce, Arizona Licensed Beverage Association, Arizona Restaurant Association, Yuma County Chamber of Commerce, MARC Community Resources, Inc., Arizona Free Enterprise Club, and ABRIO:**

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- 4. This case involved a challenge to Proposition 206, an initiative measure passed by the voters in November 2016 which provided for an increase in the minimum wage and which required, with certain exceptions, that employers offer paid sick leave to their employees. The plaintiffs alleged that Proposition 206 violated three provisions of the Arizona Constitution: Article 21 § 1, known as the "Separate Amendment Rule"; Article 4, part 2**

§ 13, known as the “Single Subject Rule”; and Article 9 § 23, known as the “Revenue Source Rule.”

I rejected the plaintiffs’ Separate Amendment Rule and Single Subject Rule challenges on multiple grounds. Among other reasons, I held that the Separate Amendment Rule did not apply to Proposition 206 because, by its terms, the Separate Amendment Rule applies only to constitutional amendments, and Proposition 206 did not purport to amend any provision of the Arizona Constitution. Instead, Proposition 206 effected only statutory changes. Similarly, I held that the Single Subject Rule did not apply to the Proposition 206 because binding appellate precedent holds that the Single Subject Rule applies only to legislative enactments, not to ballot initiatives.

The plaintiffs’ Revenue Source Rule challenge was based on their contention that Proposition 206, if implemented, would require an increased expenditure of state funds. The plaintiffs argued that, because Proposition 206 did not identify a funding source for the increased expenditures, Proposition 206 violated Article 9 § 23 of the Arizona Constitution and was, therefore, invalid. I rejected the plaintiffs’ argument because, by its terms, Article 9 § 23 of the Arizona Constitution applies only to ballot measures that propose a “mandatory expenditure” of state funds. Because Proposition 206 expressly exempted the State from its minimum wage and sick leave provisions, it did not “mandate” an “expenditure” of state funds, and so was not required to comply with Article 9 § 23 by identifying a separate funding source.

My ruling denying the plaintiffs’ motion for a preliminary injunction was issued on December 21, 2016, and is available on the Clerk of the Superior Court for Maricopa County’s website at www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/122016/m7652337.pdf.

- 5. This case is significant because it presented issues of first impression regarding the interpretation of Article 9 § 23 of the Arizona Constitution.**

State of Arizona v. Brandon Ray Davis
Maricopa County Superior Court Case No. CR2013-104527

- 1. This case began with the filing of criminal charges in January 2013 and concluded in the Superior Court when I imposed sentence on the defendant in December 2013. The defendant’s convictions and sentences were**

subsequently affirmed on appeal. *See State of Arizona v. Brandon Ray Davis*, 2015 WL 849595 (Ariz.App. Div. 1, Feb. 26, 2015).

2. This case was filed and tried in Superior Court, and then affirmed by Division One of the Court of Appeals in a unanimous memorandum decision written by Judge Peter Swann.
3. Counsel for the State: Edward Schoeler IV
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Counsel for the Defendant: K. Bryan Goodman
(then with the Maricopa County Public Defender's Office)
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(no email address listed on State Bar's website or his current firm's website)
4. The defendant was charged with stealing a car and related offenses. Due to his prior criminal history, he was facing a significant prison sentence if convicted. He nonetheless rejected the State's plea offer and chose to go to trial. While attempting to serve witnesses with subpoenas to appear for trial, the State's investigators were unable to locate C. L., an eyewitness to the theft of the car. Further investigation, including a review of recorded jail calls between the defendant and his friends, revealed that, at the defendant's behest, one of his friends had paid C.L. to leave the state until the trial was over so that she could not be called as a witness. The State then moved for the admission of C.L.'s pretrial statements to the police about the theft under the doctrine of "forfeiture by wrongdoing." The forfeiture by wrongdoing doctrine provides that out-of-court statements by an unavailable witness that would otherwise be inadmissible at trial are admissible if the prosecution establishes that the unavailability of the witness is due to the wrongful actions of the defendant.

After an evidentiary hearing, I issued an 8-page ruling holding that the State had met its burden of establishing that C.L.'s unavailability as a witness was due to the wrongful acts of the defendant and others acting at his behest and, therefore, that C.L.'s pretrial statements to the police were admissible at the defendant's trial under the forfeiture by wrongdoing doctrine. My ruling was issued on October 3, 2013, and is available on the Clerk of the Superior Court for Maricopa County's website at www.courtminutes.maricopa.gov/viewerME.asp?fn=Criminal/102013/m5979540.pdf.

The defendant was subsequently convicted at trial and sentenced to prison. His convictions and sentences were affirmed on appeal.

- 5. This case is significant because it required me to analyze and apply an infrequently-invoked legal doctrine in determining the admissibility of evidence.**
29. Describe any additional professional experience you would like to bring to the Commission's attention.

Prior to my appointment as a judge, I handled over one hundred appeals and special actions before Arizona's appellate courts as a practicing attorney.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **No.** If so, give details, including dates.
31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No.** If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? **Not applicable.** If not, explain your decision.
32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes.** If not, explain.
33. Have you paid all state, federal and local taxes when due? **Yes.** If not, explain.

34. Are there currently any judgments or tax liens outstanding against you? **No.** If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? **No.** If so, explain.
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **I have never been a party to a lawsuit except on a handful of occasions when I have been named as a nominal respondent in a special action filed in an appellate court challenging a ruling that I made as a trial judge. As discussed above, for example, I was the nominal respondent in *Arizona Chamber of Commerce & Industry v. Kiley*, 242 Ariz. 533, 399 P.3d 80 (2017).** If so, identify the nature of the case, your role, the court, and the ultimate disposition.
37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No.** If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No.** If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other “cause” that might reflect in any way on your integrity? **No.** If so, provide details.
40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No.**
- If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition. **Not applicable.**
41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. **Not applicable.**
42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

When I was in private practice, two individuals complained to the State Bar

of Arizona about me. The State Bar dismissed both complaints.

The first complaint was made by an adverse party, S.F. As an associate at my former firm, I assisted a shareholder in defending certain clients in a lawsuit filed against them by S.F. and her husband. After approximately six months of litigation, S.F. filed a complaint with the State Bar against the shareholder and me, alleging a conflict of interest in that another Mohr Hackett attorney had represented S.F. and her husband in an unrelated matter several years earlier. The complaint was dismissed by the State Bar, and S.F. did not appeal the dismissal.

The second complaint was made by a former client, C.S., whom I represented in litigation filed against her by her former business partner. Included within a stack of documents that opposing counsel disclosed to us along with his client's Initial Rule 26.1 Disclosure Statement was a copy of an email between the opposing party and her attorney that appeared to be protected by the attorney-client privilege. After confirming with opposing counsel that the email was, in fact, a privileged document that had been inadvertently disclosed, I returned the privileged document to opposing counsel as required by ER 4.4(b) of the Arizona Rules of Professional Conduct. Although I had discussed the matter with C.S., explaining that I had an ethical obligation to return the privileged document, C.S. was upset that I returned the document rather than trying to use it to her advantage in the litigation. Shortly after I returned the privileged document to opposing counsel, C.S. terminated my services, and then filed a complaint against me with the State Bar. The State Bar dismissed her complaint, and C.S. did not appeal the dismissal.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. **Not applicable.**
44. List and describe any sanctions imposed upon you by any court. **Not applicable.**
45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **No.** If so, in each case, state in detail the circumstances and the outcome.
46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No.** If your answer is "Yes," explain in detail.

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No.** If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No.** If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No.** If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? **Yes.** If so, list with the citations and dates.

Minimum E-Contacts: Personal Jurisdiction in the Internet Age, 47 Arizona Attorney Magazine 58 (Nov. 2010)

Arizona's Stop Notice Remedy, The Arizonan (quarterly publication of the Arizona Contractors Association), Winter 2008

Application of the Exclusionary Rule to Deportation Cases Involving Egregious Fourth Amendment Violations: Arguelles-Vasquez v. Immigration and Naturalization Service, 19 Arizona State Law Journal 543 (1987)

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

Panelist, “2020 Arizona Election Law: The Most Comprehensive Review of Arizona Election Law,” State Bar of Arizona, February 2020

Panelist, “Up Your Motion Game,” State Bar of Arizona, September 2019

Speaker, “Playing Within the Rules: How the New Civil Rules Are Being Used in the Courtroom,” Arizona Association for Justice/Arizona Trial Lawyers Association, October 2018

Panelist, “Expert Witnesses in Civil Cases,” Arizona Judicial Conference, June 2018

Panelist, “As Judges See It: Best and Worst Practices in Civil Litigation,” National Business Institute, June 2017

Panelist, “Braving the Storm: Dealing With Opposing Counsel and the Court,” State Bar of Arizona, August 2016

Panelist, “The View from the Bench,” Maricopa County Bar Association Bench-Bar Conference, September 2014

Panelist, “Meet the Judges,” annual interactive program sponsored by the MCBA, October 2013

Panelist, “Family Court Judicial Forum,” State Bar of Arizona, October 2012

Panelist, “Meet the Judges,” annual interactive program sponsored by the MCBA, October 2012

Speaker, “The Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”),” Maricopa County Judicial Education Day (annual continuing education program for superior court judges), October 2012

Panelist, “What Family Court Judges Want You to Know,” National Business Institute, May 2012

Panelist, “Meet the Judges,” annual interactive program sponsored by the MCBA, October 2011

Over the past thirty years, I have chaired approximately fifteen seminars on a variety of subjects on behalf of the Maricopa County Bar Association (“MCBA”). The seminars have been on such diverse subjects as Evidence,

Jury Selection, and Litigating Civil Forfeiture Cases. As seminar chair, I identified the issues to be addressed, recruited faculty, and generally organized the program. I do not have records of the dates of most of these seminars. The subject of the most recent seminar, which was held on November 13, 2015, was the inmate placement and time computation policies of the Arizona Department of Corrections.

As a member of the MCBA’s Bench-Bar Committee, I have helped prepare training materials for the courtroom advocacy seminar that is held in conjunction with the annual Bench-Bar Conference.

I have served as a judge at moot court and other student competitions at the Sandra Day O’Connor College of Law on numerous occasions over the years. I do not have records of the dates of these competitions.

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

State Bar of Arizona, 1988-present

Maricopa County Bar Association (“MCBA”), 1988-present

MCBA Bench-Bar Committee, 2014-present

Co-Chair, 2020-present

MCBA Public Lawyers Division, 1988-1997 and 2010-present

President, 1993-1994

Board of Directors, 1989-1995, 2013-present

MCBA Continuing Legal Education Committee, 1992-2001

Vice Chair, 1998-2000

Criminal Law Subcommittee Co-Chair, 1994-1997

Arizona Judges Association, 2010-present

Supreme Court Historical Society, 2006-present

Harvard Club of Phoenix, 2009-2014

Harvard Club Board of Directors, 2009-2012

Arizona Republican Lawyers Association, 2009-2010

St. Thomas More Society (I don't have a record of dates of membership)

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **Yes.**

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

Prior to my appointment as a judge, I participated regularly in the Volunteer Lawyers Program ("VLP") sponsored by Community Legal Services, Inc. As a frequent volunteer with VLP's Attorney of the Day program, I met with indigent clients to discuss their legal issues, provide advice, and prepare a written summary of their cases to assist VLP in placing cases with volunteer attorneys where appropriate.

I have been active in the Maricopa County Bar Association ("MCBA") throughout my legal career. I have been a member of the MCBA's Bench-Bar Committee since 2014, and currently serve as co-chair of that committee. As a member of the Bench-Bar Committee's Trial Advocacy Program Subcommittee, I helped plan and organize the courtroom advocacy program for young lawyers that was presented at the MCBA's annual Bench-Bar Conference in 2018 and 2019.

I have been a member of the MCBA's Public Lawyers Division Board of Directors since 2013. I previously served on the same board from 1989 through 1995 while I was an Assistant Attorney General, and served as President of the MCBA's Public Lawyers Division from 1993 to 1994.

I was a member of the MCBA's Continuing Legal Education Committee from 1992 through 2001, serving as the committee's Vice Chair from 1998 to 2000 and as Co-Chair of the Criminal Law Subcommittee from 1994 to 1997.

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

Since 2017, my wife and I have been involved with Maggie's Place, a nonprofit organization that maintains homes for, and provides services to, homeless pregnant women and new mothers. Once a month, we prepare and deliver meals to the residents of Elizabeth House, one of the homes operated by Maggie's Place.

I have served since 2018 on the Mesa Judicial Advisory Board, which evaluates candidates for appointment or reappointment to the Mesa Municipal Court and makes recommendations to the Mesa City Council.

In 2016 and again in 2018, I served as a member of a Judicial Performance Review (“JPR”) team. The team met with certain judges individually to review their JPR scores, identify potential areas for improvement, and set measurable goals for implementing steps for improvement.

My wife and I have long supported NPH-USA (formerly known as “Friends of the Orphans”), a non-profit organization that provides financial and other support to Nuestros Pequeños Hermanos (“NPH”), a network of homes for orphaned and abandoned children in nine countries in Latin America and the Caribbean. In addition to sponsoring three children over the past twelve years, my wife and I have visited two NPH homes in Mexico and served as a host family for children from the NPH home in Nicaragua who visited Arizona in October 2008. I served as a member of the board of directors of NPH-USA’s Southwest Region from 2007 until 2010.

From 2001 to 2010, my wife and I volunteered at My Sister’s Place, a domestic violence shelter in Chandler. We provided child care one evening each month while the women at the shelter met in “group” to discuss their experiences and provide mutual support.

I served as a den leader for my son’s Cub Scout Pack, Pack 679 in Chandler, from 2006 until 2009.

I served as a recorder of the Arizona Town Hall in October 2002. The topic was “Arizona Hispanics: The Evolution of Influence,” and the final report reflected the participants’ discussion of such topics as immigration policy and the impact of Arizona’s changing demographics on the state’s economy and education system.

From 1991 to 1995, my wife and I volunteered at the Arizona State Hospital on alternate Sunday mornings. We escorted patients who wanted to attend religious services from their rooms to the on-campus chapel and then visited with them over coffee after services were concluded before escorting them back to their rooms.

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

While I was a practicing attorney, my Martindale-Hubbell Peer Review Rating was AV Preeminent.

In May 2009, the Arizona Foundation for Legal Services and Education named me one of the Top 50 Pro Bono Attorneys in Arizona.

In November 2009, my wife and I were awarded the Jim Bastian Volunteer Service Award by the Friends of My Sister's Place Committee for our service as volunteers at My Sister's Place, a domestic violence shelter.

In 2001, the Maricopa County Bar Association awarded me the Kenneth D. Freedman Award for Excellence in Continuing Legal Education in recognition of my activities on behalf of the MCBA's Continuing Legal Education Committee.

In 1994, along with several other volunteers, I received the Exceptional Volunteer Service Award from the Arizona State Hospital.

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

I was appointed a Superior Court judge in 2010 and retained in office in the 2012, 2016, and 2020 general elections.

Since November 2020, I have served as the Presiding Judge of the Lower Court and Administrative Appeals department. Before that, from June 2018 until November 2020, I was the Associate Civil Presiding Judge.

I was elected a Republican Party precinct committeeman in 2002, 2004, and 2006.

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 life outside of work centers around my family. For over 27 years, I have had the good fortune to be married to the best person I know, and together we have two wonderful children who have grown into smart, kind, and independent young adults. The four of us enjoy spending time together. Prior to the pandemic, we enjoyed dining out together as well as competing as a team in trivia contests at a nearby sports bar. Over the past year or so, our time together has been spent primarily in the backyard of our home.

My other interests include traveling and reading (particularly history and biographies; Noah Feldman's *The Three Lives of James Madison: Genius, Partisan, President* is a recent favorite).

HEALTH

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

ADDITIONAL INFORMATION

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

As a practicing lawyer for over twenty years before I joined the Superior Court, I represented clients from all walks of life in a wide range of cases. My years in private practice gave me the chance to represent individuals who were quite wealthy, some who were of modest means, and others who were indigent, as well as businesses ranging from sole proprietorships to multi-million dollar corporations. I represented plaintiffs and defendants in civil litigation involving a variety of claims, including negligence, breach of contract, fraud, defamation, and nuisance. I also handled criminal cases from a variety of perspectives, having represented the State, defendants, and crime victims at different times over the years.

As a Superior Court judge since 2010, I have handled Civil, Criminal,

Juvenile and Family Court cases. I now hear appeals in civil and criminal cases that originate in municipal courts, justice courts, and administrative agencies. My diverse professional experience will provide me with a solid foundation on which to draw when deciding the wide variety of cases and issues that come before an appellate court judge.

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

I have always had both a strong work ethic and a desire to do what I can to make a positive difference in my community. These qualities were instilled in me at an early age. I was raised in a suburb of Boston, Massachusetts, in a large family of relatively modest means. My father worked for the telephone company (back in the days when there was only one); my mother was a high school science teacher. My four siblings and I attended public schools from kindergarten through high school, and I depended on scholarship assistance, student loans, and the income I earned from part-time jobs to pay my undergraduate and law school tuitions.

Through their words and actions, my parents taught my siblings and me the values of hard work and individual initiative as well as the importance of making time to help those in need. As a high school student, I taught religious education classes to young children from an extended family of refugees from Laos and volunteered with mentally challenged teenagers through a program at my high school. I greatly enjoyed these experiences, and, since then, I have regularly participated in volunteer work and community service of one kind or another.

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.

I am seeking this position because I believe I have the skills and experience to serve the public well as an appellate court judge.

Throughout my life, I have devoted time and whatever skills I may have to serving the community. When I graduated from law school, I turned down an offer of a higher-paying job in the private sector to accept a position with the

Arizona Attorney General’s Office in order to serve the public as a prosecutor, a position I held for nine years. When I later entered private practice, I had a varied legal practice handling both civil and criminal cases and representing clients from all walks of life. During my years in private practice, I always made time for *pro bono* work to help ensure that our justice system is accessible to all. The wide-ranging experience I obtained as a result of my varied legal practice has served me well as I have handled the diverse caseload of a Superior Court judge; this experience will, I am sure, serve me equally well as a judge of the Court of Appeals.

Since my appointment to the Superior Court in 2010, I have handled, at the trial level, most of the same types of Civil, Criminal, Juvenile and Family Court cases that are heard by the Court of Appeals. Currently, I handle appeals in civil and criminal cases that originate in municipal and justice courts, as well as appeals in administrative proceedings. In all of the cases I’ve handled, I have given a respectful hearing to the parties and lawyers who have appeared before me and have thoroughly reviewed and considered the evidence and the arguments presented by the parties before making any rulings. I believe that my decisions have been fair, grounded in the facts, and decided in accordance with the text of applicable constitutional and statutory provisions as well as controlling case law.

Additionally, because I strongly believe that the appearance, as well as the reality, of fairness is critical to public confidence in the judiciary, I make every effort to ensure that litigants in my cases recognize that my decisions are not made arbitrarily. For that reason, except when ruling on oral motions made in open court, I generally resolve disputed legal issues in written rulings in which I discuss the relevant facts and legal authorities in sufficient detail that the parties are able to understand why I reached the conclusions that I did. I draft my rulings so that they can be easily read and digested by litigants who have no legal training, and I believe that my rulings, while comprehensive, are straightforward and free of unnecessary “legalese.” My experience researching and drafting rulings over the past eleven years has prepared me well to serve as an appellate court judge.

Justice Antonin Scalia is quoted as having said, “If you’re going to be a good and faithful judge, you have to resign yourself to the fact that you’re not always going to like the conclusions you reach. If you like them all the time, you’re probably doing something wrong.” My experience as a Superior Court

judge illustrates the accuracy of this observation. I have not always liked the results I have reached in every case; on the contrary, my rulings in certain cases have been contrary to my personal preferences. I can confidently say, however, that throughout my tenure as a Superior Court judge I have done my best to decide every case solely on the evidence presented and in accordance with the law as written, irrespective of my personal views about what the law ought to be. If I am fortunate enough to be appointed to the Court of Appeals, my decisions will reflect the same regard for the unique facts of each case and the same fidelity to the requirements of law.

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

See Attachment B

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

See Attachment C

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

See Attachment D

Attachment A

Maricopa County Superior Court Judges (as of June 30, 2021)

Adleman, Jay	Kemp, Michael	Thompson, Peter
Agne, Sara	Kiefer, Joseph	Udall, David
Astrowsky, Brad	Kiley, Daniel	Vandenberg, Lisa
Bachus, Alison	Korbin Steiner, Ronee	Viola, Danielle
Beresky, Justin	Kreamer, Joseph	Warner, Randall
Blair, Michael	LaBianca, Margaret	Wein, Kevin
Blanchard, John	Lang, Todd	Welty, Joseph
Blaney, Scott	LeMaire, Kerstin	Westerhausen, Tracey
Brain, Mark	Mahoney, Margaret	Wein, Kevin
Brodman, Roger	Mandell, Michael	Whitehead, R. Charles
Brooks, Robert	Martin, Daniel	Whitten, Christopher
Bustamonte, Lori Horn	Marwil, Suzanne	Woo, Cassie Bray
Campagnolo, Theodore	Mata, Julie	
Click, Stasy	McCoy, M. Scott	
Coffey, Rodrick	McDowell, David	
Cohen, Bruce	Mead, Kathleen	
Cohen, Suzanne	Mikitish, Joseph	
Como, Gregory	Minder, Scott	
Cooper, Katherine	Moskowitz, Frank	
Coury, Christopher	Mroz, Rosa	
Covil, Max	Myers, Sam	
Crandell, Rusty	Nicholls, Suzanne	
Crawford, Janice	Palmer, David	
Culbertson, Kristin	Pineda, Susanna	
Cunanan, David	Polk, Jay	
Davis, Marvin	Ponce, Adele	
Driggs, Adam	Rassas, Michael	
Duncan, Sally Schneider	Reckart, Laura	
Edelstein, Monica	Rogers, Joshua	
Fink, Dean	Rueter, Jeffrey	
Fish, Geoffrey	Ryan, Timothy	
Fisk, Ronda	Ryan-Touhill, Jennifer	
Fox, Dewain	Sanders, Teresa	
Gates, Pamela	Schwartz, Aryeh	
Gentry, Jo Lynn	Sinclair, Joan	
Gordon, Michael	Smith, James	
Green, Jennifer	Starr, Patricia	
Hannah, John	Stephens, Sherry	
Herrod, Michael	Sukenic, Howard	
Hopkins, Stephen	Svoboda, Pamela	
Julian, Melissa Iyer	Thomason, Timothy	

Attachment B

The following is a double-spaced excerpt from an appellate brief I wrote and filed in *Daniel J. Sommer, et al., v. Edgar Stoffels, et al.*, Arizona Court of Appeals Case No. 1 CA-CV 08-0525. The brief was filed on October 23, 2008. The complete brief is available on Westlaw, and can be found at 2008 WL 4971783.

* * *

B. A Weighing of the Relevant Equitable Criteria Establishes That The Trial Court Did Not Abuse Its Discretion in Granting Preliminary Injunctive Relief

“The enforcement of restrictive covenants through an injunction... is governed by equitable principles.” *Ahwatukee Custom Estates Mgmt. Ass’n v. Turner*, 196 Ariz. 631, 635 ¶ 9, 2 P.3d 1276, 1280 (App. 2000). When determining whether to issue a preliminary injunction, a trial court “focuses primarily on balancing...four equitable criteria.” *Powell-Cerkony v. TCR-Montana Ranch Joint Venture II*, 176 Ariz. 275, 280, 860 P.2d 1328, 1333 (App. 1993). Those four criteria are:

- 1) The likelihood of success on the merits;
- 2) The possibility of irreparable injury to the moving party if the relief requested is not granted;
- 3) The balance of hardships; and
- 4) Whether public policy favors the injunction.

Shoen, 167 Ariz. at 63, 804 P.2d at 792. The moving party need not establish the presence of all four equitable criteria. On the contrary, the trial court may issue a preliminary injunction after finding “either (1) probable success on the merits and the possibility of irreparable injury, or (2) the presence of serious questions and the balance

of hardships tips sharply in [the moving party's] favor." *Id.* (citation and internal quotations omitted)

1. Balance of Hardships Favors Appellees

"The critical element" in assessing whether preliminary injunctive relief is appropriate "is the relative hardship to the parties." *Shoen*, 167 Ariz. at 63, 804 P.2d at 792. In their Opening Brief, Appellants acknowledge that the "balance of hardships" is a factor that courts consider in determining whether to issue preliminary injunctions. O.B. at p. 7. Appellants do not, however, argue that the balance of hardships tips in their favor. Indeed, Appellants offer no argument at all as to the "balance of hardships." By failing to raise this issue in their Opening Brief, Appellants have waived the argument that the balance of hardships tips in their favor. *Long v. City of Glendale*, 208 Ariz. 319, 329 n. 4, 93 P.3d 519, 529 n. 4 (App. 2004).

In the court below, Appellants presented no evidence of any hardship they would sustain as a result of the issuance of a preliminary injunction. When asked what hardships he had sustained as a result of the trial court's issuance of the temporary restraining order prior to the preliminary injunction hearing, Stoffels testified that he refrained from buying two vehicles at auto auctions he attended in February, 2008, because he was unsure if he would be able to construct storage space for those vehicles. *See* R.T. of February 25, 2008 at p. 75. Stoffels was not able to identify any resulting hardship other than saying, "[i]t hurt my feelings." R.T. of March 11, 2008 at p. 46. Any hardship, in the form of hurt feelings or otherwise, that Appellants sustained as a result of being barred

from constructing the new storage facility is one that they voluntarily accepted when they purchased their lot with the knowledge that their lot, like all others at Desert Hills North, is subject to the restrictions contained in the Declaration. The Arizona Supreme Court has recognized that “[a] person who purchases land with knowledge, actual or constructive, of zoning ordinances which are in effect at the time of purchase is said to have created for himself whatever hardship such restrictions entail.” *Rotter v. Coconino County*, 169 Ariz. 269, 279, 818 P.2d 704, 714 (1991) (citation and internal quotations omitted, emphasis added). This principle applies with equal force to land use restrictions set forth in deed restrictions.

Sommer testified at the preliminary injunction hearing about the hardships that Appellees would sustain if the preliminary injunction were denied. Sommer testified that allowing the storage facility to be built would alter the character of the neighborhood, and that a judicial determination that the Declaration was no longer enforceable may encourage...other Desert Hills North lot owners to build additional structures that do not conform to the Declaration. R.T. of February 25, 2008 at pp. 44-45. By contrast, Stoffels identified no hardship that Appellees would sustain as a result of the granting of the preliminary injunction. See R.T. of March 11, 2008 at p. 46...Because the “relative hardship to the parties” is “the critical element” in determining whether to issue a preliminary injunction, *Shoen*, 167 Ariz. at 63, 804 P.2d at 792, Appellants’ failure to offer any evidence of any hardship is fatal to their challenge to the preliminary injunction.

* * *

2. Appellees Clearly Established that They Faced the Possibility, and Even Probability, of Irreparable Injury If Preliminary Injunctive Relief Were Not Granted

In their Opening Brief, as in the court below, Appellants do not address the “possibility of irreparable injury,” which is another of the equitable criteria courts consider in determining whether to grant preliminary injunctive relief. Injuries are irreparable if they are not compensable by a subsequent award of money damages, or if damages are difficult to measure. *See, e.g., Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 423 (9th Cir. 1991)... “[A] party seeking to enforce a valid deed restriction may demonstrate adequate harm merely by proving that to tolerate a violation would diminish the protection provided to all homeowners by the deed restrictions.” *Turner*, 196 Ariz. at 636 ¶ 18, 2 P.3d at 1281 (citation omitted).

In the case at bar, if Appellants were allowed to build the automobile storage facility, and the trial court were later to make a final determination that the storage facility does, indeed, violate the Declaration, Appellees will have sustained irreparable harm. It would be extremely difficult, if not impossible, for a court to determine the amount of monetary damages necessary to compensate Appellees for the loss of the protection of the Declaration. Further, additional harm to Appellees would flow if the construction of the storage facility emboldened other Desert Hills North lot owners... to seek to construct other structures in violation of the Declaration. The loss of the benefits

of the Declaration would be an injury to Appellees that is both impossible to measure and irreparable...

The purpose of a preliminary injunction is to prevent “further injury or irreparable harm by preserving the status quo of the subject in controversy pending an adjudication on the merits.” *Yockey v. Kearns Props., L.L.C.*, 326 Mont. 28, 31-32 ¶ 18, 106 P.3d 1185, 1188-89 (2005). *See also Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (“The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.”) The preliminary injunction in the case at bar enjoins Appellants from altering the status quo by preventing them from constructing the disputed structure until the trial court can make a final determination of whether the Declaration precludes the construction of the structure. The trial court properly issued a preliminary injunction to preserve the *status quo* pending final judgment. *See Cracchiolo v. State*, 135 Ariz. 243, 247, 660 P.2d 494, 498 (App. 1983) (vacating temporary injunction in part because it did “not preserve the status quo”).

(end of excerpt)

The following is a double-spaced excerpt from a motion for summary judgment that I wrote and filed in *Protect Lake Pleasant, L.L.C., et al., v. Robert W. Johnson, et al.*, United States District Court for the District of Arizona Case No. 207-CV-00454. The motion was filed on June 22, 2009. The complete motion is available on Westlaw, and can be found at 2009 WL 2842389.

I. BRIEF SUMMARY OF THE MOTION

Defendant United States Bureau of Reclamation (“BOR”) and the other defendants (collectively, the “Federal Defendants”) violated their obligations under applicable environmental laws by (a) failing to prepare an environmental impact statement (“EIS”); (b) basing environmental decisions, including a Finding Of No Significant Impact (“FONSI”), on incomplete and inaccurate data; and (c) denying the public an opportunity for informed participation in environmental decision-making.

II. BACKGROUND

A. Overview of Applicable Legal Principles

The National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, requires federal agencies to prepare an EIS for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Case law recognizes that, “if the plaintiff raises substantial questions whether a project may have a significant effect” on the environment, “an EIS must be prepared.” *LaFlamme v. Federal Energy Reg. Comm.*, 852 F.2d 389, 397 (9th Cir. 1988) (emphasis in original). Significantly, in order to prevail on a claim that an agency was required to prepare an EIS, “the plaintiff need not show that significant effects will in fact occur.” *Id.*

An agency may prepare an environmental assessment (“EA”) to determine whether the environmental impact of a proposed action is significant enough to warrant an EIS. 40 C.F.R. §§ 1501.4(b), (c), 1508.9(a)(1). If the agency determines that no significant impact will occur, it issues a FONSI in which the agency explains “the reasons why an action...will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.” *Id.* §§ 1508.9(a)(1), 1508.13.

The purpose of an EA is to provide a basis for the agency to determine whether to prepare an EIS, and to serve as the agency’s environmental analysis when no EIS is necessary. 40 C.F.R. §§ 1501.4(c), 1508.9(a). The EA must include an analysis of the need for the proposal, of alternatives, and of the environmental impact of the proposal and the alternatives. *Id.* § 1508.9(b). Importantly, the EA “must supply a convincing statement of reasons to explain why a project’s impacts are insignificant.” *Defenders of Wildlife v. Ballard*, 73 F.Supp.2d 1094, 1102 (D.Ariz. 1999) (citation and internal quotations omitted). “[T]he statement of reasons is crucial to determining whether the agency” complied with its obligation under NEPA to take “a ‘hard look’ at the potential environmental impact of a project.” *Save the Yaak Comm. v. Block*, 840 F.2d 714, 717 (9th Cir. 1988) (citation and internal quotations omitted).

2. BOR Should Have Completed a New or Supplemental EIS

“[A]n agency that has prepared an EIS cannot simply rest on the original document,” but instead “must be alert to new information that may alter the results of its

original environmental analysis.” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000). NEPA regulations impose a duty on all federal agencies to prepare supplements to either draft or final EIS’s “[i]f there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. §§ 1502.9(c).

The fact that the Final EA is “tiered” to the 1984 EIS does not excuse the preparation of a new or supplemental EIS, particularly since conditions at the Lake have changed dramatically in the twenty-five years since the 1984 EIS was issued. *See Blue Mtns. Biodiversity Proj. v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998) (“Nothing in the tiering regulations suggests that the existence of a programmatic EIS...obviates the need for any future project-specific EIS...”). An agency cannot rely on an EIS that has become outdated due to significant changes in the relevant ecosystem. *See, e.g., Friends of the Clearwater*, 222 F.3d at 558 (Forest Service violated NEPA by failing to prepare a supplemental EIS for the Nez Perce National Forest in light of changes that had occurred in the forest in the decade since prior EIS was prepared, including the reintroduction of grey wolves into the area and the listing of several other species as endangered); *Blue Mountains*, 161 F.3d at 1214 (Forest Service violated NEPA by failing to prepare EIS to evaluate effects of logging in the Umatilla National Forest; Forest Service could not properly rely on prior EIS because prior EIS had been prepared before several devastating wildfires “dramatically altered the forest ecosystem”).

Since the 1984 EIS was prepared, the Lake has dramatically increased in size and volume. SOF ¶ 14. The maximum volume has more than quadrupled, while the surface area has almost tripled. *Id.* As the 1997 EA notes, the proposed marina is larger than the facilities contemplated in the 1984 EIS. *Id.* ¶ 18. Moreover, the 1984 EIS was premised on the incorrect assumption that the County alone controlled recreation on the Lake. An Arizona court decision later established that MWD may also authorize recreation on the Lake, leading to the establishment of Pleasant Harbor Marina, with current space for 1,430 watercraft and authorization for 560 more spaces. *See id.* ¶ 3, 12-13. The Lake's ecosystem has changed over the past twenty-five years. While the Lake and its environs had little wildlife habitat in 1984, that same area has since become one of the most productive breeding grounds for eagles in the state. *Id.* ¶¶ 97, 101. The dramatic changes in the Lake's environment since an EIS was last prepared mandated the preparation of a new or supplemental EIS.

* * *

a. BOR Has Conducted No Study of the Lake's Capacity

The 1984 EIS identifies the Lake's capacity as 546 boats, stating that "[t]he average boating capacity for the [Lake] was calculated by determining the mix of boaters, by activity, that the [L]ake could support at any one time." SOF ¶ 8. The 1984 EIS further provides that "[m]anagement of the [L]ake and operation of the boating facilities must insure that the number of boats on the [L]ake does not exceed its capacity." *Id.* ¶ 11. The

1984 EIS thus requires that the number of boats on the Lake not exceed the Lake's carrying capacity of 546 boats at any one time.

As Plaintiffs previously noted in their Preliminary Injunction Motion, the Final EA reflects that the watercraft usage at the Lake already exceeds the 546-boat figure set forth in the 1984 EIS, and that BOR improperly ignored the 1984 EIS by authorizing a proposed marina that would only further add watercraft to an already over-capacity Lake. *See* Preliminary Injunction Motion at p. 2. The "peak weekend" daily watercraft count at the Lake is 1,660. SOF ¶ 67. Applying a turnover rate of 2 to this figure yields a boats-at-one-time figure of 830, well in excess of the 1984 EIS's 546-boat figure.

BOR has downplayed the significance of the 1984 EIS's 546 "total boats at any one time" estimate. Although the 1984 EIS used the term "capacity," BOR has asserted that "[t]he true purpose of the 546 estimate was to assist in the planning for recreational facilities, not the creation of an enforceable boating limit." Federal Defendants' Response to Plaintiffs' Motion for Preliminary Injunction filed April 18, 2007, at p. 5.

If, then, the 1984 EIS's 546-boat figure is not the capacity limit of the Lake, then what is the limit? The 1984 EIS mandates that the number of boats on the Lake not exceed its capacity. What is the Lake's capacity? This information has never been determined. BOR cannot comply with the 1984 EIS's mandate to "insure that the number of boats on the [L]ake does not exceed its capacity," SOF ¶ 11, unless BOR first determines what the Lake's capacity is.

(end of excerpt)

Attachment C

The following is a double-spaced excerpt of a 13-page ruling I issued on March 12, 2021 in *State of Arizona v. Joshua David Berg*, Maricopa County Superior Court Case No. LC2021-000023. The complete minute entry is available on the Clerk of the Superior Court for Maricopa County’s website at www.courtminutes.maricopa.gov/viewerME.asp?fn=Lower%20Court/032021/m9484785.pdf

Defendant/Appellant Joshua David Berg (“Appellant”) appeals from the judgment of conviction and sentences entered against him in the Scottsdale Municipal Court for Assault in violation of A.R.S. § 13-1203(A)(1), a class one misdemeanor and domestic violence offense, and Disorderly Conduct in violation of A.R.S. § 13-2904(A)(1), a class one misdemeanor and domestic violence offense. This Court has jurisdiction pursuant to Ariz. Const. art. VI § 16 and A.R.S. §§ 12-124(A), 13-4033, and 22-425(B). For the reasons stated below, this Court affirms the judgment and sentences of the Scottsdale Municipal Court.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

Scottsdale police officers responded to Appellant’s apartment on January 25, 2020 after Appellant’s then-girlfriend, J.L., called 911 “due to her injuries and need for medical attention.” Appellant’s Memorandum at p. 1. Appellant was subsequently arrested and charged with Assault in violation of A.R.S. § 13-1203(A)(1), Disorderly Conduct in violation of A.R.S. § 13-2904(A)(1), and Criminal Damage in violation of A.R.S. § 13-1602(A)(1).

A bench trial was held on August 5, 2020, at which Appellant was represented by counsel.

At trial, J.L. testified that she and Appellant, with whom she shared an apartment, had gone out drinking on the evening of January 25, 2020, but that she remembers little from that evening. Transcript of August 5, 2020 Trial (“R.T. of Aug. 5, 2020”) at p. 8. At one point in her testimony, she stated, “I don’t remember anything from that night”; at a different point, she admitted, “I don’t even remember coming home.” *Id.* at pp. 8, 24. She was able to recall, however, that she called the police that evening, adding, “I vaguely remember the police coming, and I remember the hospital.” *Id.* at pp. 7-8. She attributed her poor memory to her heavy drinking that evening. *Id.* When asked if she recalled speaking to Detective Thomas at the hospital, she replied, “I do remember Officer Thomas, yes.” *Id.* at p. 24. When asked if she had recounted the events of that evening for Detective Thomas, J.L. responded simply, “I just remember him kind of keeping me updated on what was going on.” *Id.*

The State then offered in evidence a recording of the 911 call that J.L. made on January 25th. Before the 911 call was admitted in evidence, the prosecutor played a portion of the recording and, after listening to the caller’s voice, J.L. identified herself as the caller. R.T. of Aug. 5, 2020 Transcript at p. 10. Appellant’s counsel initially objected to the admission of the 911 call, but then withdrew his objection. *Id.* at p. 19.

The recording of the 911 call reflects that J.L. told the 911 operator, *inter alia*, that Appellant had hit her in the head. R.T. of Aug. 5, 2020 at p. 9. J.L. further stated that Appellant “hit [her] with an ice pack” and she was “bleeding a lot.” *Id.* at pp. 12, 13. When asked if Appellant was still at the scene, J.L. replied, “Yes,” later adding, “He’s

just walking around. Will you please hurry?” *Id.* at p. 9. She told the 911 operator that Appellant had never hit her before, but that “he’s always just mad at [her].” *Id.* at pp. 12, 15-16. “[H]e just always get so upset,” she told the 911 operator, later adding, “I’m just - just so sick of him being mad at me.” *Id.* at pp. 15-16.

* * *

In addition to the recording of the 911 call and the recordings of Detective Thomas’s conversations with Appellant, the exhibits admitted at trial include photographs taken by the officers of the injuries to the victim’s face, hands and leg, as well as injuries that Appellant had sustained during the altercation.

After considering the testimony and other evidence, the trial court found Appellant guilty of Assault and Disorderly Conduct, and not guilty of Criminal Damage.

* * *

STANDARD OF REVIEW

In all criminal prosecutions, the State has the burden of proving the defendant’s guilt beyond a reasonable doubt. *State v. Rhome*, 235 Ariz. 459, 460 ¶ 4 (App. 2014). On appeal, a reviewing court “does not reweigh the evidence to decide if it would reach the same conclusions as the trier of fact.” *State v. Barger*, 167 Ariz. 563, 568 (App. 1990). Instead, the reviewing court determines only whether the judgment below is supported by substantial evidence; if so, the judgment must be affirmed. *State v. Salman*, 182 Ariz. 359, 361 (App. 1994).

“Substantial evidence” is “evidence that reasonable persons could accept as

sufficient to support a guilty verdict beyond a reasonable doubt.” *State v. Stroud*, 209 Ariz. 410, 412 ¶ 6 (2005) (citation and internal quotations omitted). “The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Cox*, 217 Ariz. 353, 357 ¶ 22 (2007) (citation and internal punctuation omitted).

An appellate court must defer to a trial court’s assessment of the credibility of witnesses because the trial court is “in the best position to observe the demeanor of the witnesses” while testifying. *State v. Estrada*, 209 Ariz. 287, 292 ¶ 22 (App. 2004). *See also Cox*, 217 Ariz. at 357 ¶ 27 (“No rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the [finder of fact].”) (citation and internal quotations omitted). *See also Matter of Pima County Juvenile Action No. 63212-2*, 129 Ariz. 371, 375 (1981) (“One of the most important principles in our judicial system is the deference given to the finder of fact who hears the live testimony of witnesses because of his opportunity to judge the credibility of those witnesses.”) (citation and internal quotations omitted).

A court reviewing a trial court judgment must presume that the trial court was “aware of the relevant law and applic[ed] it correctly in arriving at its rulings.” *State v. Moody*, 208 Ariz. 424, 444 ¶ 53 (2004).

The Sixth Amendment to the United States Constitution guarantees, *inter alia*, the right of criminal defendants to “confront witnesses against them.” U.S. Const., Amend.

VI. “Confrontation” includes the right to cross-examine witnesses. *Davis v. Alaska*, 415 U.S. 308, 315 (1974)

Failure to object to the admission of evidence on hearsay or Sixth Amendment grounds normally effects a waiver of the claim on appeal. *See Moody*, 208 Ariz. at 441 ¶ 39 (“Challenges to the admissibility of evidence can be preserved only by a motion to preclude that evidence or by a specific, contemporaneous objection to its admission. The motion or objection must state specific grounds in order to preserve the issue for appeal.”) (citations omitted). If the defendant fails to object at trial to the admission of evidence on hearsay and/or Confrontation Clause grounds, an appellate court will review a challenge to the admission of the evidence only for fundamental error. *See, e.g., State v. Butler*, 230 Ariz. 465, 471 ¶ 21 (App. 2012) (on appeal, defendant challenged admission of evidence as “inadmissible hearsay” whose admission “violated his right to confront adverse witnesses”; “Because [defendant] did not object on either hearsay or Confrontation Clause grounds in the trial court, we review only for fundamental error.”); *State v. Alvarez*, 213 Ariz. 467, 469 ¶ 7 (App. 2006) (“By failing to object below on Sixth Amendment grounds, [defendant] forfeited the right to obtain appellate relief unless he proves that fundamental error occurred.”) (citation and internal punctuation omitted).

To establish fundamental error, a defendant must show that trial error occurred that “went to the foundation of the case,” “took from the defendant a right essential to his defense,” or “was so egregious that he could not possibly have received a fair trial.” *State v. Escalante*, 245 Ariz. 135, 142 ¶ 21 (2018). “To qualify as ‘fundamental error’,...the

error must be clear, egregious, and curable only via a new trial.” *State v. Gendron*, 168 Ariz. 153, 155 (1991). “To prevail under this standard of review, a defendant must establish *both* that fundamental error exists *and* that the error in his case *caused him prejudice*.” *State v. Lopez*, 217 Ariz. 433, 435 ¶ 7 (App. 2008) (emphasis added, citation and internal quotations omitted). The defendant asserting a claim of fundamental error “must affirmatively prove prejudice and may not rely upon speculation to carry his burden.” *State v. Dickinson*, 233 Ariz. 527, 531 ¶ 13 (App. 2013) (citation and internal quotations omitted).

ISSUES ON APPEAL

The following issues are raised in this appeal:

- (1) Did the Scottsdale Municipal Court Commit Fundamental Error in Admitting, as Evidence at Trial, the Recording of J.L.’s 911 Call?

* * *

DISCUSSION

* * *

Appellant asserts that the trial court erred in admitting, at trial, the recording of the 911 call made by J.L. on the evening of January 25th. Because Appellant did not object to the admission of this evidence at trial, the Court will review this claim solely for fundamental error. *See, e.g., Lopez*, 217 Ariz. at 435 ¶ 4 (“When a party fails to object properly, we review solely for fundamental error.”).

In support of his argument, he contends that the statements that J.L. made during

the 911 call were “testimonial in nature” because he “had left the premises” by the time of the call, and the 911 operator’s questions - - such as “What started all of this?” - - were not asked for the purpose of “aiding in an on-going emergency.” Appellant’s Memorandum at p. 2. In response, Appellee argues that, on the contrary, J.L.’s 9-1-1 call “was primarily a cry for help,” and therefore “was, in the main, non-testimonial.” Appellee’s Memorandum at pp. 5, 6.

Courts have explained the difference between testimonial and non-testimonial statements as follows:

[S]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. On the other hand, statements are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

State v. Hill, 236 Ariz. 162, 165 ¶ 12 (App. 2014), citing *Davis v. Washington*, 547 U.S. 813, 822 (2006). Courts generally consider 911 calls to be non-testimonial because they are “ordinarily not designed primarily to establish or prove some past fact, but to describe current circumstances requiring police assistance.” *Hill*, 236 Ariz. at 166 ¶ 12 (citation and internal punctuation omitted).

* * *

[T]he Court need not resolve the issue of whether J.L.’s statements during the 911 call were testimonial in nature because J.L. did, in fact, testify at trial.

Appellant asserts that he was denied the right to cross-examine J.L. because she “testified that she had no recollection of the incident, her conversation with the 9-1-1 operator, or either conversation with” the responding officers. Appellant’s Memorandum at p. 2. “Since the victim testified that she did not remember making the 9-1-1 call or anything she said to the operator,” Appellant concludes, “cross-examination was not a possibility.” *Id.*

Case law does not support Appellant’s position. On the contrary, case law makes clear that “the *opportunity* for cross-examination is all the Confrontation Clause protects.” *State v. Real*, 214 Ariz. 232, 235 ¶ 10 (App. 2007) (emphasis added). The Confrontation Clause does not, in other words, guarantee “examination that is effective in whatever way, and to whatever extent, the defense might wish.” *State v. Adams*, 155 Ariz. 117, 121 (App. 1987), *quoting Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). As the United States Supreme Court has recognized,

The Confrontation Clause includes no guarantee that every witness called by the prosecution will refrain from giving testimony that is marred by forgetfulness, confusion, or evasion. To the contrary, the Confrontation Clause is generally satisfied when the defense is given a full and fair opportunity to probe and expose these infirmities through cross-examination, thereby calling to the attention of the factfinder the reasons

for giving scant weight to the witness' testimony.

Fensterer, 474 U.S. at 21-22.

Numerous courts have recognized that the Confrontation Clause is satisfied if the declarant takes the witness stand and testifies at trial, even if the declarant testifies to a lack of recall of the underlying events. *See, e.g., Real*, 214 Ariz. at 233 ¶ 3, 235 ¶ 10 (rejecting defendant's argument that his rights under the Confrontation Clause were denied when arresting officer testified at trial that he "had no memory of investigating or arresting [defendant]"; "[Defendant] had the opportunity to cross-examine [the officer], and he did so. Thus, the trial court afforded him the only right the Confrontation Clause provides.").

Here, J.L. took the witness stand and was questioned by Appellant's counsel. She admitted that, prior to the assault, she had "had quite of bit to drink." R.T. of Aug. 5, 2020 at p. 8. She further admitted, on cross-examination, that she does not even recall "if [Appellant] actually struck [her] or not." *Id.* at p. 24. While she also testified that she recalls very little of what transpired on the evening of January 25th, that fact does not support a finding that Appellant's confrontation rights were violated. *See United States v. Owens*, 484 U.S. 554, 559 (1988) (finding no Confrontation Clause violation where defendant was able to cross-examine trial witness who testified to lack of memory of assault; "It is sufficient that the defendant has the opportunity to bring out such matters as the witness's bias, his lack of care and attentiveness, his poor eyesight, and even...the very fact that he has a bad memory.") (citation omitted). The Court finds no error, much

less fundamental error, in the admission at trial of the recording of J.L.’s 911 call. *See Lopez*, 217 Ariz. at 435 ¶ 7 (“[T]o show fundamental error, [a defendant] must first show error.”).

* * *

CONCLUSION & ORDERS

Appellant has not established that the admission, at trial, of evidence to which his counsel never objected resulted in fundamental error. As such, this Court finds that the Appellant has failed to establish that the conviction and sentences below should be disturbed. Accordingly,

IT IS ORDERED affirming the judgment of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for such further proceedings, if any, as may be appropriate.

(end of excerpt)

The following is a double-spaced excerpt of a 16-page ruling I issued on August 16, 2018 in *Vince Leach et al. v. Michele Reagan et al.*, Maricopa County Superior Court Case No. CV2018-009919. The complete minute entry is available on the Clerk of the Superior Court for Maricopa County’s website at www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/082018/m8415591.pdf

E. The Committee’s Challenges to the Constitutionality of A.R.S. § 19-102.01

Last year, the Legislature enacted A.R.S. § 19-102.01, which provides in part that “[c]onstitutional and statutory requirements for statewide initiative measures must be strictly construed and persons using the initiative process must strictly comply with those constitutional and statutory requirements.” A.R.S. § 19-102.01(A). [Real Party in Interest Clean Energy Committee for a Healthy Arizona, referred to as the “Committee”] alleges that A.R.S. § 19-102.01 violates the Arizona Constitution. Committee’s Motion at p. 12. The Committee asserts that, “[i]n adopting its constitution, the Arizona Constitutional Conventional [*sic*] adopted a substantial compliance standard for initiatives and amendments,” and that A.R.S. § 19-102.01 reflects an “unlawful attempt to restrict” the “constitutional...substantial compliance standard.” *Id.* at pp. 13, 15. The Committee further argues that A.R.S. § 19-102.01 “violates the Arizona Constitution’s separation of powers requirement” by “usurp[ing] the authority of the judiciary to establish the standard of review for initiative challenges.” *Id.* at pp. 12, 13...The Committee concludes by arguing that, because “the right of initiative is a fundamental right,” A.R.S. § 19-102.01 is subject to strict scrutiny, an exacting standard that A.R.S. § 19-102.01 does not meet. Response to Intervenors’ Motion for Summary Judgment at pp. 11, 13.

* * *

[Intervenors Speaker of the House J.D. Mesnard and President of the Senate Steve Yarbrough, referred to as the “Intervenors”] argue that the Committee’s challenge to A.R.S. § 19-102.01 is based on a flawed premise, *i.e.*, that the “substantial compliance” standard for initiative matters is constitutionally based. Intervenors’ Motion at p. 5. Instead, they contend, “[t]he substantial compliance standard that formerly governed initiative petitions” was a matter of judicial interpretation, not “an immutable constitutional entitlement.” *Id.* Further, they contend that A.R.S. § 19-102.01 should not be subjected to strict scrutiny, but must be upheld if it is “reasonable.” *Id.* at pp. 5-6. In this case, they contend, the “important regulatory interests” served by initiative election laws “easily justify” A.R.S. § 19-102.01’s mandate that the laws be strictly complied with. *Id.* The Intervenors conclude by asking that summary judgment be entered in their favor on the Committee’s cross-claim challenging the constitutionality of A.R.S. § 19-102.01. *Id.*

When considering the Committee’s constitutional challenge to A.R.S. § 19-121.01, the Court must “begin with a strong presumption” that the statute is constitutional. *Martin v. Reinstein*, 195 Ariz. 293, 301, 987 P.2d 779, 787 (App. 1999). The Committee’s burden to establish the contrary is a “heavy” one. *Id.* Accepting as true, for purposes of the pending motions, the Committee’s disputed contention that the Secretary of State applied a “strict compliance” standard when conducting her A.R.S. § 19-121.01 review, the Court finds that the Committee has failed to sustain its heavy burden of establishing that A.R.S. § 19-121.01 is unconstitutional. Instead, for several reasons, the

Court agrees with the Intervenors that A.R.S. § 19-102.01 passes constitutional muster.

First, the Court agrees with the Intervenors that A.R.S. § 19-102.01 is not properly reviewed under a “strict scrutiny” standard. Certainly, that is not the standard typically applied in cases involving challenges to election statutes. *See Burdick v. Takushi*, 504 U.S. 428, 432, 112 S.Ct. 2059, 2062-63 (1992) (labelling as “an erroneous assumption” the contention that “a law that imposes any burden upon the right to vote must be subject to strict scrutiny”). As the United States Supreme Court has held, “to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest...would tie the hands of States seeking to assure that elections are operated equitably and efficiently.” *Id.* at 433, 112 S.Ct. at 2063.

While it is true that an election statute that imposes “a severe burden” on voters’ constitutional rights “is subject to strict scrutiny and will be upheld only if it is narrowly tailored to serve a compelling state interest,” *Nader v. Brewer*, 531 F.3d 1028, 1035 (9th Cir. 2008), the Court does not find that A.R.S. § 19-102.01 imposes a “severe burden” on the right of initiative. A.R.S. § 19-102.01 does not, for example, treat voters unequally, and the Committee does not contend otherwise. *Cf. Ariz. Minority Coalition for Fair Redistricting v. Ariz. Indep. Redistricting Comm’n*, 211 Ariz. 337, 347, 121 P.3d 843, 853 (App. 2005) (“The common thread in redistricting cases applying strict scrutiny review is the denial of the right to vote on an equal basis with others.”). Likewise, A.R.S. § 19-102.01 does not infringe on First Amendment rights, and the Committee does not contend otherwise. *Cf. KZPZ Broadcasting, Inc., v. Black Canyon City Concerned Citizens*, 199

Ariz. 30, 35, 37-38, 13 P.3d 772, 777, 779-80 (App. 2000) (in observing that it did “not see how” a statutory requirement that petition circulators be residents of “the political subdivision affected by the measure” would “survive strict scrutiny,” the Court noted that “the imposition of a county residency requirement” for petition circulators would “place a heavy burden on political expression regarding referendum issues in our smaller counties,” thereby “run[ning] afoul of the First and Fourteenth Amendments...”). Instead, A.R.S. § 19-102.01 merely requires that proponents of initiative measures do what proponents of referendum measures are required to do, *i.e.*, comply strictly with the requirements of applicable election laws. *See Western Devcor, Inc., v. City of Scottsdale*, 168 Ariz. 426, 429, 814 P.2d 767, 770 (1991) (“[W]e require referendum proponents to comply strictly with applicable constitutional and statutory provisions.”). The Committee has identified no provision of any statute relating to initiatives for which requiring strict compliance would impose a “severe burden.” On the contrary, the statutory circulator registration and affidavit requirements, and the requirement that signers provide their full and complete name and address as well as the date of signing, are requirements that can be completed with little difficulty.

The Committee’s sweeping assertion that the “strict scrutiny” standard must be used to review A.R.S. § 19-102.01 because “the right of initiative is a fundamental right” and “[f]undamental rights are reviewed under strict scrutiny,” Response to Intervenors’ Motion for Summary Judgment at pp. 11, is, in the Court’s view, an oversimplification that is not consistent with Arizona law. While it is true that “[i]nitiative and referendum

procedures are a fundamental part of Arizona’s scheme of government,” *Fairness and Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 584, 886 P.2d 1338, 1340 (1994), it is *not* true that the Arizona Constitution forbids the Legislature from enacting statutes regulating the electoral process. On the contrary, the Arizona Constitution expressly authorizes - - indeed, *mandates* - - the enactment of such statutes. Ariz.Const., Art. 7 § 12 (“There shall be enacted registration and other laws to secure the purity of elections and guard against abuses of the elective franchise.”). This constitutional directive makes no exception for statutes regulating the initiative and referendum. *See Arrett v. Bower*, 237 Ariz. 74, 78, 345 P.3d 129, 133 (App. 2015) (“[T]he fact that the constitutional provisions [*i.e.*, Ariz.Const. Art. IV, part 1] are self-executing does not preclude the legislature from enacting laws pertaining to referenda and initiatives.”); *Turley v. Bolin*, 27 Ariz.App. 345, 347-48, 554 P.2d 1288, 1290-91 (App. 1976) (noting that, while “the initiative and referendum provisions of the Arizona Constitution are self-executing, . . . this does not necessarily mean that the legislature is prohibited from enacting implementing legislation with respect to the constitutional rights given.”). The Court agrees with [Plaintiffs Vince Leach *et al.*] that “[i]t is well within the Legislature’s purview to” require “the statutes it passes” regulating the initiative and referendum “to actually be followed.” Plaintiffs’ Responses to Real Party in Interest’s Motion for Partial Summary Judgment and Trial Memorandum at p. 6.

Courts have long held that legislation regulating initiatives and referenda are permissible as long as they “implement[] or supplement[]” the provisions of Article IV,

part 1 § 1 of the Arizona Constitution without “unreasonably hinder[ing] or restrict[ing]” the rights conferred thereby. *Turley*, 27 Ariz.App. at 347-48, 554 P.2d at 1290-91. Arizona courts have accordingly upheld statutes regulating the initiative and referendum process without subjecting those statutes to strict scrutiny. *See Arrett*, 237 Ariz. at 76, 83, 345 P.3d at 131, 138 (affirming trial court’s denial of writ of mandamus to compel the placement of referendum on the ballot, where the referendum petition sheets failed to comply with statute requiring petition’s “serial number...to appear on both sides of each petition sheet”; in upholding constitutionality of serial number requirement, the Court held that it “serves the permissible and important purpose of facilitating and protecting, not burdening, the referendum process”). *See also Direct Sellers Ass’n v. McBrayer*, 109 Ariz. 3, 5, 503 P.2d 951, 953 (1972) (affirming injunction barring referendum measure from being placed on ballot, where referendum petitions lacked statutory affidavits affirming that each circulator was “a qualified elector”; in rejecting challenge to constitutionality of circulator affidavit statute and finding statutory requirement “that circulators of referendum petitions be qualified electors” to be “a valid exercise of legislative power,” the Court held that if legislation regarding a constitutional provision “does not unreasonably hinder or restrict the constitutional provision and if the legislation reasonably supplements the constitutional purpose, then the legislation may stand.”).

The Court agrees with the Intervenors that the statutes challenged by the Committee, such as those establishing circulator registration and affidavit requirements, do not unreasonably hinder or restrict the right of initiative, but instead reasonably

supplements the constitutional purpose. Intervenors’ Motion at p. 6. The statutes serve important interests in ensuring transparency in the initiative process, thereby fulfilling the constitutional mandate that the Legislature enact “laws to secure the purity of elections and guard against abuses of the elective franchise.” Ariz.Const., Art. 7, § 12. The requirement that circulators appear and testify if subpoenaed - - a requirement which, admittedly, may inconvenience circulators, and even impose a financial burden on them if they are required to miss work and/or travel a considerable distance to attend court proceedings - - is nonetheless an essential means of safeguarding against signature fraud. *See, e.g., Brousseau v. Fitzgerald*, 138 Ariz. 453, 456, 675 P.2d 713, 716 (1984) (“[S]tatutory circulation procedures are designed to reduce the number of erroneous signatures, guard against misrepresentations, and confirm that signatures were obtained according to law.”). *See also Zaiser v. Jaeger*, 822 N.W.2d 472, 483 (N.D. 2012) (holding that election officials correctly refused to consider petitions that included signatures that the petition circulators later admitted had been forged, and that the remaining petitions contained an insufficient number of signatures to place the initiative measure on the ballot); *Williams v. Dist. of Columbia Bd. of Elections and Ethics*, 804 A.2d 316, 318 (D.C. App. 2002) (“[T]he circulator’s role in gathering signatures for a nominating petition is critical to ensuring the integrity of the collection process.”). The Court therefore finds that the State’s important interests in ensuring fair and transparent elections free from fraud or other misconduct justifies requiring the same “strict compliance” with statutes governing initiative measures that is required in the context of

referendum measures.

The Court is likewise not persuaded by the Committee’s contention that “A.R.S. § 19-102.01 violates the Arizona Constitution’s separation of powers requirement” by usurping the “distinctly judicial function” of “[d]etermining the standard of review.” Committee’s Motion at p. 12. The “substantial compliance” standard appears nowhere in Article IV, part 1 § 1 of the Arizona Constitution. The “substantial compliance” standard was enunciated by the Arizona Supreme Court when it endeavored to determine the Legislature’s intent in enacting a statute authorizing courts to enjoin state election officials from certifying, and printing on the official ballot, an initiative measure upon “a showing” that the petition “is not legally sufficient.” *State ex rel. Bullard v. Osborn*, 16 Ariz. 247, 248-49, 143 P. 117, 117-18 (1914). The *Osborn* court held that, in using “the words ‘legally sufficient’ in [the statute at issue],” “*the Legislature meant to describe a valid petition, signed by legal voters, and complying substantially, not necessarily technically, with the requirements of the law.*” *Id.* at 250, 143 P. at 118 (emphasis added, citation and internal quotations omitted). The *Osborn* court’s interpretation of the initiative statute at issue based on its understanding of the legislative intent behind that statute in no way divests the Legislature of its authority to reject the judicial interpretation by amending the statute, or enacting a new one. *Galloway v. Vanderpool*, 205 Ariz. 252, 256, 69 P.3d 23, 27 (2003) (“[I]f the court interprets a statute other than as the legislature intended, the legislature retains the power to correct us.”).

The Committee’s contention that A.R.S. § 19-102.01 constitutes a legislative

attempt to “chok[e] the life from” the “fundamental right of initiative Arizonans have enjoyed for over 100 years,” Response to Intervenors’ Motion for Summary Judgment at pp. 2-3 (citation and internal quotations omitted), is, in the Court’s view, a gross mischaracterization of the scope and effect of A.R.S. § 19-102.01. As noted above, Arizona law has long applied a “strict compliance” standard to referendum petitions. *See, e.g., Western Devcor*, 168 Ariz. at 429, 814 P.2d at 770. If the “strict compliance” standard has not “choked the life out of” the right to referendum, what reason is there to believe that it would do so to the right to initiative? Further, a “strict compliance” standard has long been applied in initiative matters by courts in numerous other states whose constitutions, like Arizona’s, recognize the right to initiative. *See, e.g., Nevadans for Nevada v. Beers*, 142 P.3d 339, 350, 351 (Nev. 2006) (barring placement of initiative on ballot, where initiative sponsors improperly filed multiple versions of the proposed initiative with election officials; in applying a “strict adherence” rather than a “substantial compliance” standard, the Court noted in part that “the Nevada Constitution is the organic and fundamental law of this state, and to allow a sweeping amendment to it or to this state’s legislative acts, without strict adherence to the rules set forth therein, would work against government stability”); *State ex rel. Steele v. Morrissey*, 815 N.E.2d 1107, 1113 (Ohio 2004) (holding that election official did not abuse discretion in refusing to place initiative measure on ballot, where copy of initiative petition filed by sponsors did not include certified copy of proposed ordinance as required by statute; “[T]he settled rule is that election laws are mandatory and require strict compliance and that substantial

compliance is acceptable only when an election provision states that it is,” and, because statute at issue “does not expressly permit substantial compliance,...it requires strict compliance.”) (citations and internal quotations omitted); *Sears v. Treasurer and Receiver General*, 98 N.E.2d 621, 629 (Mass. 1951) (“Since the people have themselves adopted the Constitution with its amendments for their government, they are bound by the provisions and conditions which they themselves have placed in it, and when they seek to enact laws by direct popular vote they must do so in strict compliance with those provisions and conditions.”). The Court sees no basis for the Committee’s assertion that such a standard, applied by courts in other jurisdictions with similar constitutional provisions, would impose an intolerable burden on the right to initiative in Arizona.

In accordance with the foregoing,

* * *

IT IS FURTHER ORDERED granting the Motion for Summary Judgment on the Cross-Claim filed by Intervenors Speaker of the House J.D. Mesnard and President of the Senate Steve Yarbrough.

(end of excerpt)

The following is a double-spaced excerpt of a 14-page ruling I issued on February 15, 2018 in *Robert Burns v. Arizona Public Service Co., et al.*, Maricopa County Superior Court Case No. CV2017-001831. The complete minute entry is available on the Clerk of the Superior Court for Maricopa County’s website at www.courtminutes.maricopa.gov/viewerME.asp?fn=Civil/022018/m8189065.pdf

Finally, [Defendants Arizona Corporation Commission and Commissioners Tom Forese, Doug Little, Andy Tobin, and Boyd Dunn, referred to as the “Commission Defendants”] and Defendants Arizona Public Service Company, Pinnacle West Capital, and Donald Brandt, referred to as the “Companies”] argue that the [First Amended Complaint, or “FAC”] should be dismissed because it seeks declaratory relief to which Commissioner Burns is not entitled. They assert, first, that Commissioner Burns had no authority to issue the Subpoenas unilaterally, or to otherwise initiate investigations on his own authority. *See* Commission Defendants’ Motion at p. 19 (“[A]n individual commissioner has no authority to act for or to bind the Commission, except to the extent the Commission has expressly delegated such authority to an individual commissioner. In [the] rate case, the Commission has delegated nothing to Commissioner Burns. Thus, his authority was limited to casting his vote on questions before the Commission.”); Companies’ Motion at pp. 19, 20 (“Members of the Commission enjoy the power to issue and enforce subpoenas under [Article XV, § 4] when they are acting as *representatives* of the Commission and exercising its delegated powers.”; “[I]f individual members had the powers asserted by Commissioner Burns, there would have been no need for [Article XV,

§ 4] to vest any power in the Commission as a body.”) (emphasis in original, internal punctuation omitted).

In the alternative, the Defendants contend that, even if individual commissioners possess the authority asserted by Commissioner Burns, such authority is nevertheless subject to review by the Commission as a whole. Commission Defendants’ Reply at pp. 14, 15 (“Whatever Commissioner Burns’s powers are, at some point...they must yield to the power of a majority of the Commission to manage that agency...Allowing an individual commissioner’s powers to trump those of the Commission invites chaos...”); Companies’ Motion at p. 19 (“Article 15, Section 4 does not give members of the Commission the power to disregard the Commission’s decision not to enforce a subpoena...Individual members do not have the right to *override* the Commission’s decision.”) (emphasis in original, internal punctuation omitted). In response, Commissioner Burns asserts that Article XV, § 4 and A.R.S. § 40-241(A) do, in fact, confer “full investigatory powers” on individual ACC members, and that those powers are “not subject to being vetoed by the other commissioners.” Response to Commission Defendants’ Motion at pp. 12, 13.

Article XV, § 4 authorizes “[t]he corporation commission, *and the several members thereof,*” to “inspect and investigate” the financial affairs of certain corporations, and to compel the attendance of witnesses and the production of evidence by subpoena. The Court agrees with Commissioner Burns that the reference to “the several members” of the Commission evinces an intent to empower individual

commissioners, not merely the Commission acting as a collective body, to conduct such inspections and investigations. If Article XV, § 4 were intended to authorize only collective action by the Commission, the reference to “the several members” would be superfluous, an interpretation that is to be avoided when construing a constitutional provision. *See Moore v. Valley Garden Ctr.*, 66 Ariz. 209, 211, 185 P.2d 998, 999 (1947) (“[I]t is a well settled law of construction of constitutions...that the courts must, if consonant with reason, interpret such instruments in a manner such as will give effect to each and every provision thereof.”).

A.R.S. § 40-241(A) similarly authorizes “each commissioner” to “inspect” the financial affairs “of any public service corporation.” Subsection B of that statute provides that “[a]ny person *other than a commissioner* or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission his authority to make the inspection,” A.R.S. § 40-241(B) (emphasis added), thus making clear that a commissioner needs no authority to conduct an inspection of a public service corporation’s financial affairs other than the authority conferred by virtue of the office he or she holds.

The Court finds it plain that Article XV, § 4 and A.R.S. § 40-241(A) each authorize Commissioner Burns to seek information from the Companies by subpoena on his own authority, without the prior approval of the Commission as a whole, and therefore rejects the Defendants’ arguments to the contrary.

A different issue is presented, however, by the question of whether Commissioner

Burns is entitled to enforce the Subpoenas unilaterally after the remaining ACC members have voted against doing so. A party on whom an investigatory subpoena has been served has, of course, the right to object to its validity and/or scope, and to have its objection heard and ruled upon before it must comply. *See, e.g., Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305, 18 P.3d 97, 99 (App. 2000) (“[A] party may resist the Commission’s subpoena on grounds” that include that “the subpoena seeks irrelevant information”). To hold that an objection to a subpoena is to be resolved solely by the individual commissioner who issued the subpoena in the first place would hardly comport with due process. *See Horne v. Polk*, 242 Ariz. 226, 231, 394 P.3d 651, 656 (2017) (“The right to a neutral adjudicator has long been recognized as a component of a fair process”; “[As] Blackstone observed,...it is unreasonable that any man should determine his own quarrel.”) (citation and internal quotations omitted). Indeed, Commissioner Burns does not contest this proposition. He asserts, instead, that when an objection is raised to a subpoena issued by an individual member of the Commission, that objection should be resolved neither by the commissioner who issued the subpoena nor by the Commission as a whole, but by a court. At Oral Argument on December 19, 2017, Commissioner Burns argued that a party who seeks to challenge the validity or scope of a subpoena issued by an individual Commission member “could go to the courts and say, ‘This exceeds the jurisdiction of this Commissioner. This is outside of his authority. And I want a declaration on that. I want an injunction’.”

For a number of reasons, the Court agrees with the Companies and the Commission Defendants that authority to determine whether to enforce a subpoena issued by an individual Commission member, or whether to sustain an objection to such a subpoena, rests with the Commission, and not with a court.

First, as the Companies note, the Arizona Constitution confers authority on “the [C]ommission” to enact “rules and regulations to govern proceedings” before it. Companies’ Motion at p. 8, *quoting* Ariz. Const., Art. XV, § 6. The Commission has enacted a rule providing that objections to subpoenas are to be resolved by the Commission. Ariz. Admin. Code R14-3-109(O). To hold that the Commission as a body has no authority to resolve objections to subpoenas issued by individual members would be to deny effect to a rule enacted by the Commission pursuant to authority expressly granted to it by the Constitution.

Second, Arizona statute confers on the Commission as a whole, and not on an individual member, authority to issue contempt citations. A.R.S. § 40-424(A) (“If any corporation or person fails to observe or comply with any order, rule, or requirement of the commission or any commissioner, the corporation or person shall be in contempt of the commission and shall, after notice and hearing before the commission, *be fined by the commission...*”) (emphasis added). This statute supports the position of the Companies and the Commission Defendants that the Commission as a whole has authority to determine whether to compel compliance with an investigatory subpoena to which an objection has been made.

Third, A.R.S. § 40-102 explicitly states that investigations undertaken by individual members of the Commission are subject to the supervision and approval of the Commission as a whole. *See* A.R.S. § 40-102(C) (“Any investigation, inquiry or hearing may be undertaken or held by or before any commissioner designated by the commission for the purpose, and every finding, order or decision made by a commissioner so designated, *when approved and confirmed by the commission...*, shall be the finding, order or decision of the commission.”) (emphasis added).

Fourth, to look to a court to resolve disputes among ACC members about the proper scope of an investigation risks - - indeed, virtually *guarantees* - - undue judicial involvement in the day-to-day affairs of a separate and co-equal branch of government.

No party questions the ACC’s status as a separate and independent branch of government whose powers are derived directly from the Arizona Constitution. *See, e.g., Ariz. Corp. Comm’n v. State ex rel. Woods*, 171 Ariz. 286, 290, 830 P.2d 807, 811 (1992) (“The framers established the Commission as a separate, popularly-elected branch of state government.”). As an independent branch of government, the ACC is entitled to deference from the other branches. *See Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm’n*, 220 Ariz. 587, 595, 208 P.3d 676, 684 (2009) (noting the “deference that we customarily must pay to the duly enacted and carefully considered decision of a coequal and representative branch of our Government”) (citation and internal quotations omitted). The same considerations that require courts to act with caution when “asked, in effect, to referee disputes *between*” other branches of

government, *Brewer v. Burns*, 222 Ariz. 234, 237, 213 P.3d 671, 674 (2009) (emphasis added), apply with even greater force when a court is asked to referee disputes *within* another branch.

As the Commission Defendants correctly argue, the Commission is constitutionally empowered to “exercise all powers which may be necessary or essential in connection with the performance of its duties,” *Garvey v. Trew*, 64 Ariz. 342, 346, 170 P.2d 845, 848 (1946), including “full and exclusive power in the field of prescribing rates which cannot be interfered with by the courts, the legislature or the executive branch of state government.” *Qwest Corp. v. Kelly*, 204 Ariz. 25, 30, 59 P.3d 789, 794 (App. 2002) (citation and internal quotations omitted). *See also* Commission Defendants’ Motion at p. 8, *quoting Miller v. Ariz. Corp. Comm’n*, 227 Ariz. 21, 25, 251 P.3d 400, 404 (App. 2011) (“Under Article 15, Section 3, of the Arizona Constitution, the Commission possesses plenary power to set just and reasonable rates and charges collected by public service corporations.”) (citation and internal quotations omitted). This “full and exclusive power” was conferred on the ACC precisely because the ACC is uniquely constituted to exercise this power effectively. *Woods*, 171 Ariz. at 291, 830 P.2d at 812 (“The framers...creat[ed] an elected commission with broad powers” because “[c]onstraints on legislators’ time, the lack of information, and inadequate means of investigation limited the ability of legislatures to oversee public service corporations”). The Court therefore agrees with the Defendants that the Commission “is best situated to know what evidence is, and is not, relevant to its own decision-making in an area over which it has special

expertise.” Companies’ Motion at p. 11.

Even if this Court had the expertise necessary to make informed decisions about what information should and should not be gathered and presented to Commission members for them to consider in the performance of their duties - - whether subpoenas for particular information should or should not issue, whether particular witnesses should or should not be summoned to testify - - the Court could not overrule the decision of a majority of the Commission about the proper scope of an ACC investigation without running afoul of the “separation of powers” principles that are at the heart of our system of government. *See Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485-86, 143 P.3d 1023, 1026-27 (2006) (“Limiting the actions of each branch of government to those conferred upon it by the constitution is essential to maintaining the proper separation of powers.”). As Commissioner Burns himself notes, courts must “give the Commission ‘wide berth’ in conducting investigations.” Response to Companies’ Motion at p. 15, *quoting Carrington*, 199 Ariz. at 305, 18 P.3d at 99. The “wide berth” that courts must give to the Commission when it pursues an investigation is no narrower when, as here, the Commission decides to put an end to an investigation.

* * *

In the FAC, Commissioner Burns implicitly accuses the Defendant Commissioners of acting in an arbitrary and capricious manner in refusing to enforce the Subpoenas, alleging that they identified “no factual basis for their assertions that compliance with the [Subpoenas] would not yield any relevant information” and that they

are “overly broad [and] unduly burdensome.” FAC at ¶¶ 184, 187, 195, 198. *See City of Tucson v. Mills*, 114 Ariz. 107, 111, 559 P.2d 663, 667 (App. 1976) (administrative decision may be “set...aside as being arbitrary and capricious” if it “is unsupported by competent evidence”). In his responses to the Defendants’ Motions, Commissioner Burns makes this accusation explicit, arguing that the Defendant Commissioners “acted arbitrarily, capriciously and in violation of [his] constitutional and statutory rights” in refusing to enforce the Subpoenas. Response to Commission Defendants’ Motion at p. 3. *See also* Response to Companies’ Motion at p. 4 (“[E]ven assuming the ACC Defendants do have the right to veto and block a single commissioner’s investigatory efforts...the ACC Defendants were not authorized to veto or block Commissioner Burns based on reasons that are...arbitrary [and] capricious...”).

While case law recognizes that an ACC decision may be set aside if arbitrary or capricious, *see, e.g., Ariz. Water Co. v. Ariz. Corp. Comm’n*, 217 Ariz. 652, 659, 177 P.3d 1224, 1231 (App. 2008), Commissioner Burns’s attempt to challenge the ACC’s decision not to enforce his Subpoenas as “arbitrary and capricious” does not persuade the Court that his challenge is one appropriate for judicial relief. The Court is aware of no Arizona case setting aside, as arbitrary and capricious, a decision by the ACC *not* to act in a particular case. In the absence of such controlling authority, in light of the power granted to the Commission by statute and rule to determine the proper scope of Commission investigations, and pursuant to the “separation of powers” principles discussed above, the Court finds that Commissioner Burns is not entitled to his requested

relief of a judicial declaration that the Defendant Commissioners had “no authority to stop [him] from” requiring the Companies to comply with the Subpoenas. FAC at ¶ 188.

* * *

Even if [Commissioner Burns were correct in asserting that the ACC] as a whole lacks authority by statute and rule to determine the proper scope of an ACC investigation, “separation of powers” principles would preclude judicial involvement in the Commission’s internal decision-making processes. The Court cannot assume oversight of an ACC investigation, nor can it second-guess a determination by a majority of the ACC as to the proper scope of any such investigation, without improperly usurping the authority constitutionally conferred on another branch of government. *See J.W. Hancock Enters., Inc. v. Ariz. State Registrar of Contractors*, 142 Ariz. 400, 406, 690 P.2d 119, 125 (App. 1984) (“Arizona courts have frequently stated that no branch may exercise the powers belonging to others.”). Even accepting the truth of the factual allegations in the FAC, therefore, the Court cannot issue the declaration Commissioner Burns seeks, *i.e.*, that he, as a single member of the Commission, “is fully authorized and entitled to” to investigate the financial affairs of the Companies over the opposition of his fellow Commission members. *See* FAC at ¶¶ 204-205.

(end of excerpt)

Attachment D

Arizona Supreme Court Superior Judges

Hon. Daniel Kiley	
Group	Comment
Attorney	Very smart and wise judge. Very fair judge. He is an excellent communicator. Great judicial temperament.
Attorney	Very good judge. Knows the law.
Attorney	Thorough, superior & excellent.
Attorney	The judge is brilliant. Even when he disagrees with me, his analysis always well-reasoned. He actually allows people to present TOO much. He needs better control. Judge Kiley is actually one of the BEST judges in terms of efficiency and calendaring.
Attorney	Judge Kiley is fair and impartial, takes the time to read the briefs of both sides to understand all relevant facts, issues and the applicable law, and fairly and impartially applies the law to the facts in well-reasoned, articulate and detailed legal opinions. Superior. Beyond reproach. Brilliantly reasoned legal opinions. Fair and impartial.
Attorney	Judge Kiley has sound judicial ability and exudes confidence in his rulings. Impeccable integrity. Explicit and easy to understand. Allows all parties to communicate their arguments with liberal time allotments. Straight forward and fair.
Attorney	Judge Kiley had extensive knowledge of the record, arguments, and exhibits and asked pointed questions to both sides.
Attorney	Judge Kiley always appears for hearings very well prepared, with a full understanding of the issues.
Attorney	It's a pleasure being before Judge Kiley because he is so knowledgeable about the law. He is incredibly fair. He is very patient - much more so than I would be. He is in the top tier of judges I have been before in this regard. He very clearly is diligent and always is very well prepared.
Attorney	I can't evaluate this judge yet, I've only had one scheduling conference with him.

Arizona Supreme Court Superior Judges

Attorney	Highest possible score; needs to be less rigid on procedural rules particularly scheduling. Highest; but like too many judges, allows insurance defense lawyers too much leeway in breaking rules re disclosure, discovery responses. Only area not clear about is what he allows to be discussed during 26(d) discovery dispute hearing, limiting to what's on agenda, when often there are other issues that come up that need discussed with court's input.
Attorney	He is a very fair, honest and professional judge.
Attorney	Disregarded Rule 15 which requires a motion to amend with proposed amended complaint and let the plaintiff do it anyway after the judge told plaintiff what to do. Was going to moot defendant's motion filed based on what Plaintiff said without asking defendant's counsel. Then was not going to give defendant the chance to rebut on oral argument of defendant's motion to dismiss. Ruled from the bench which is refreshing.
Attorney	Led oral argument in orderly and respectful fashion. Knew the briefs and arguments.
Attorney	An excellent judge. The highest. He is a keeper.
Attorney	My only appearance before the Hon. Daniel Kiley was at a default hearing.
Juror	Very good communication. Exceptional in this area.
Juror	Very professional. Even tone the whole time.
Litigant/Witness	I'm a pro se litigant Kiley is the fairest judge I've seen before: He writes long detailed rulings. He's a good judge detailed and well thought out rulings fair rulings. He ruled in favor and against me he's fair.
Litigant/Witness	Address us professionally and properly. Had our outcome on determination of order: Very to the point and matters at hand: Understand our situation and was very kind and had read compassion for situation de definitely read our file very helpful.

Arizona Supreme Court Superior Judges

Litigant/Witness	Prose litigant was treated less than human: He enjoyed speaking to attorneys but not pro litigant.
Staff	Very Professional. Excellent. Professional. Excellent.
Staff	Judge Kiley treats all people with the same regard. Judge Kiley is very clear when communicating with everyone in the courtroom. Judge Kiley maintains his composure in the courtroom. Judge Kiley's hearings almost always begin on time. When they do not, it is usually because the parties have not called in or have not yet arrived.
Staff	Judge Kiley is a very fair and excellent Judge. Judge Kiley communicates very well to the parties including allowing them to fully express their opinions on a matter. Judge Kiley is very patient with pro pers as well as attorneys. Judge Kiley is very respectful of all people in the courtroom.
Staff	Judge Kiley is a highly moral and ethical person who takes very seriously the duty to treat all fairly and with respect. Judge Kiley ensures that all understand and have had an opportunity to be heard. Asking questions and elaborating as necessary to ensure complete communication. Judge Kiley has tremendous patience and treats all parties with the utmost respect regardless of how disturbing their behavior might be keeping in mind that the court is a forum for civilized discussion and he insists that all respect one another in their demeanor and conduct in his courtroom. Judge Kiley has a daunting workload, however, he never lets that affect his treatment of others and is always prepared and punctual for all his proceedings.

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCCIV-17 Hon. Daniel Kiley	Total Surveys: 109					Assignment: Civil					Cycle: Retention Election					STAFF					11								
	SU	VG	SA	PO	UN	Resp	Mean	SU	VG	SA	PO	UN	Resp	Mean	SU	VG	SA	PO	UN	Resp	Mean	SU	VG	SA	PO	UN	Resp	Mean	
Section I: Legal Ability	36	13	5	2	0	56	3.5																						
Legal reasoning ability	36	15	3	4	0	58	3.4																						
Knowledge of substantive law	36	15	5	2	1	59	3.4																						
Knowledge of rules of evidence	34	9	3	2	0	48	3.6																						
Knowledge of rules of procedure	37	12	7	1	0	57	3.5																						
Section II: Integrity	28	6	0	0	1	36	3.7	5	4	0	0	0	9	3.5	19	2	0	0	0	22	3.9	6	2	1	0	0	9	3.6	
Basic fairness and impartiality	38	14	4	1	1	58	3.5	6	3	1	0	1	11	3.2	21	3	0	0	0	24	3.9	7	2	1	0	0	10	3.6	
Equal treatment regardless of race	28	5	0	0	1	34	3.7	6	4	0	0	0	10	3.6	20	2	0	0	0	22	3.9	6	2	1	0	0	9	3.6	
Equal treatment regardless of gender	28	7	0	1	1	37	3.6	5	4	0	0	0	9	3.6	20	2	0	0	0	22	3.9	6	2	1	0	0	9	3.6	
Equal treatment regardless of religion	26	4	0	0	1	31	3.7	5	4	0	0	0	9	3.6	19	2	0	0	0	21	3.9	5	2	1	0	0	8	3.5	
Equal treatment regardless of national origin	26	5	0	0	1	32	3.7	5	4	0	0	0	9	3.6	19	2	0	0	0	21	3.9	6	2	1	0	0	9	3.6	
Equal treatment regardless of disability	23	5	0	0	0	28	3.8	5	4	0	0	0	9	3.6	19	2	0	0	0	21	3.9	6	2	1	0	0	9	3.6	
Equal treatment regardless of age	31	7	0	0	0	38	3.8	6	4	0	0	0	10	3.6	20	2	0	0	0	22	3.9	6	2	1	0	0	9	3.6	
Equal treatment regardless of sexual orientation	22	5	0	0	0	27	3.8	5	3	0	0	0	8	3.6	18	2	0	0	0	20	3.9	5	2	1	0	0	8	3.5	
Equal treatment regardless of economic status	32	4	0	0	1	37	3.8	5	3	0	1	1	10	3.0	18	3	0	0	0	21	3.9	6	2	1	0	0	9	3.6	
Section III: Communication Skills	39	10	6	2	0	56	3.5	6	2	2	1	0	10	3.3	21	2	1	0	0	24	3.8	7	1	2	0	0	10	3.5	
Clear and logical communications																						7	1	2	0	0			
Clear and logical oral communications and directions	38	12	9	1	0	60	3.5																						
Clear and logical written decisions	35	7	3	4	1	50	3.4																						
Gave all parties an adequate opportunity to be heard	43	11	5	0	0	59	3.6																						
Explained proceedings (to the jury)								6	2	3	1	0	12	3.1	22	2	0	0	0	24	3.9								
Explained reason for delays								5	2	0	0	0	7	3.7	18	3	2	0	0	23	3.7								
Clearly explained the juror's responsibilities															22	2	0	0	0	24	3.9								
Section IV: Judicial Temperament	36	12	9	2	0	59	3.4	9	2	1	0	0	12	3.5	21	3	0	0	0	24	3.9	7	2	1	0	0	10	3.6	
Understanding and compassion	33	13	9	2	0	57	3.4	7	2	1	1	0	11	3.4	21	3	0	0	0	24	3.9	8	1	1	0	0	10	3.7	
Dignified	35	14	10	0	0	59	3.4	9	2	1	0	0	12	3.7	21	3	0	0	0	24	3.9	8	1	1	0	0	10	3.7	
Courteous	38	10	10	1	0	59	3.4	9	2	1	0	0	12	3.7	21	3	0	0	0	24	3.9	8	1	1	0	0	10	3.7	
Conduct that promotes public confidence in the court	38	11	6	4	0	59	3.4	8	2	0	0	2	12	3.2	20	3	0	0	0	23	3.9	7	2	1	0	0	10	3.6	
Patient	35	13	10	1	0	59	3.4	11	0	1	0	0	12	3.8	20	3	0	0	0	23	3.9	6	3	1	0	0	10	3.5	
Section V: Administrative Performance	40	13	3	1	0	57	3.6	9	2	1	0	0	12	3.7	20	3	1	0	0	24	3.8	7	2	1	0	0	10	3.6	
Punctual in conducting proceedings	42	16	1	1	0	60	3.7	9	2	1	0	0	12	3.7	18	4	2	0	0	24	3.7	7	2	1	0	0	10	3.6	
Maintained proper control of courtroom	42	14	1	1	0	58	3.7	9	2	1	0	0	12	3.7	21	3	0	0	0	24	3.9	7	1	2	0	0	10	3.5	
Prompt in making rulings and rendering decisions	37	10	7	1	0	55	3.5																						
Was prepared for the proceedings	42	13	4	1	0	60	3.6	9	2	1	0	0	12	3.7	21	2	1	0	0	24	3.8	7	2	1	0	0	10	3.6	
Respectful treatment of staff																						7	2	1	0	0	10	3.6	
Cooperation with peers																						6	1	1	0	0	8	3.6	
Efficient management of calendar	37	13	2	1	0	53	3.6														6	2	2	0	0	10	3.4		
Section VI: Settlement Activities	7	2	3	0	1	13	3.1																						
Appropriately promoted or conducted settlement	7	2	3	0	1	13	3.1																						

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 02/2019 - 05/2019

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCCIV-17 Hon. Daniel Kiley	Total Surveys: 109					Assignment: Civil					Cycle: Retention Election					STAFF											
	ATTORNEY					62 Mean	LIT/WIT/PRO PER					12 Mean	JUROR					24 Mean						11 Mean			
SU	VG	SA	PO	UN	SU		VG	SA	PO	UN	SU		VG	SA	PO	UN	SU		VG	SA	PO	UN					
Section I: Legal Ability	64%	23%	8%	4%	0%	3.5																					
Legal reasoning ability	62%	26%	5%	7%	0%	3.4																					
Knowledge of substantive law	61%	25%	8%	3%	2%	3.4																					
Knowledge of rules of evidence	71%	19%	6%	4%	0%	3.6																					
Knowledge of rules of procedure	65%	21%	12%	2%	0%	3.5																					
Section II: Integrity	79%	17%	1%	1%	2%	3.7	56%	39%	1%	1%	2%	3.5	90%	10%	0%	0%	0%	0%	0%	0%	3.9	66%	23%	11%	0%	0%	3.6
Basic fairness and impartiality	66%	24%	7%	2%	2%	3.5	55%	27%	9%	0%	9%	3.2	88%	13%	0%	0%	0%	0%	0%	0%	3.9	70%	20%	10%	0%	0%	3.6
Equal treatment regardless of race	82%	15%	0%	0%	3%	3.7	60%	40%	0%	0%	0%	3.6	91%	9%	0%	0%	0%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Equal treatment regardless of gender	76%	19%	0%	3%	3%	3.6	56%	44%	0%	0%	0%	3.6	91%	9%	0%	0%	0%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Equal treatment regardless of religion	84%	13%	0%	0%	3%	3.7	56%	44%	0%	0%	0%	3.6	90%	10%	0%	0%	0%	0%	0%	0%	3.9	63%	25%	13%	0%	0%	3.5
Equal treatment regardless of national origin	81%	16%	0%	0%	3%	3.7	56%	44%	0%	0%	0%	3.6	90%	10%	0%	0%	0%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Equal treatment regardless of disability	82%	18%	0%	0%	0%	3.8	56%	44%	0%	0%	0%	3.6	90%	10%	0%	0%	0%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Equal treatment regardless of age	82%	18%	0%	0%	0%	3.8	60%	40%	0%	0%	0%	3.6	91%	9%	0%	0%	0%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Equal treatment regardless of sexual orientation	81%	19%	0%	0%	0%	3.8	63%	38%	0%	0%	0%	3.6	90%	10%	0%	0%	0%	0%	0%	0%	3.9	63%	25%	13%	0%	0%	3.5
Equal treatment regardless of economic status	86%	11%	0%	0%	3%	3.8	50%	30%	0%	10%	10%	3.0	86%	14%	0%	0%	0%	0%	0%	0%	3.9	67%	22%	11%	0%	0%	3.6
Section III: Communication Skills	69%	18%	10%	3%	1%	3.5	58%	21%	16%	5%	0%	3.3	87%	10%	3%	0%	0%	0%	0%	0%	3.8	70%	10%	20%	0%	0%	3.5
Clear and logical communications																						70%	10%	20%	0%	0%	3.5
Clear and logical oral communications and directions	63%	20%	15%	2%	0%	3.5																					
Clear and logical written decisions	70%	14%	6%	8%	2%	3.4																					
Gave all parties an adequate opportunity to be heard	73%	19%	8%	0%	0%	3.6																					
Explained proceedings (to the jury)							50%	17%	25%	8%	0%	3.1	92%	8%	0%	0%	0%	0%	0%	0%	3.9						
Explained reason for delays							71%	29%	0%	0%	0%	3.7	78%	13%	9%	0%	0%	0%	0%	0%	3.7						
Clearly explained the juror's responsibilities													92%	8%	0%	0%	0%	0%	0%	0%	3.9						
Section IV: Judicial temperament	61%	21%	15%	3%	0%	3.4	75%	14%	7%	2%	3%	3.5	87%	13%	0%	0%	0%	0%	0%	0%	3.9	74%	16%	10%	0%	0%	3.6
Understanding and compassion	58%	23%	16%	4%	0%	3.4	64%	18%	9%	9%	0%	3.4	88%	13%	0%	0%	0%	0%	0%	0%	3.9	80%	10%	10%	0%	0%	3.7
Dignified	59%	24%	17%	0%	0%	3.4	75%	17%	8%	0%	0%	3.7	88%	13%	0%	0%	0%	0%	0%	0%	3.9	80%	10%	10%	0%	0%	3.7
Courteous	64%	17%	17%	2%	0%	3.4	75%	17%	8%	0%	0%	3.7	88%	13%	0%	0%	0%	0%	0%	0%	3.9	80%	10%	10%	0%	0%	3.7
Conduct that promotes public confidence in the court	64%	19%	10%	7%	0%	3.4	67%	17%	0%	0%	17%	3.2	87%	13%	0%	0%	0%	0%	0%	0%	3.9	70%	20%	10%	0%	0%	3.6
Patient	59%	22%	17%	2%	0%	3.4	92%	0%	8%	0%	0%	3.8	87%	13%	0%	0%	0%	0%	0%	0%	3.9	60%	30%	10%	0%	0%	3.5
Section V: Administrative Performance	70%	23%	5%	2%	0%	3.6	75%	17%	8%	0%	0%	3.7	83%	13%	4%	0%	0%	0%	0%	0%	3.8	69%	17%	14%	0%	0%	3.6
Punctual in conducting proceedings	70%	27%	2%	2%	0%	3.7	75%	17%	8%	0%	0%	3.7	75%	17%	8%	0%	0%	0%	0%	0%	3.7	70%	20%	10%	0%	0%	3.6
Maintained proper control of courtroom	72%	24%	2%	2%	0%	3.7	75%	17%	8%	0%	0%	3.7	88%	13%	0%	0%	0%	0%	0%	0%	3.9	70%	10%	20%	0%	0%	3.5
Prompt in making rulings and rendering decisions	67%	18%	13%	2%	0%	3.5																					
Was prepared for the proceedings	70%	22%	7%	2%	0%	3.6	75%	17%	8%	0%	0%	3.7	88%	8%	4%	0%	0%	0%	0%	0%	3.8	70%	20%	10%	0%	0%	3.6
Respectful treatment of staff																						70%	20%	10%	0%	0%	3.6
Cooperation with peers																						75%	13%	13%	0%	0%	3.6
Efficient management of calendar	70%	25%	4%	2%	0%	3.6																60%	20%	20%	0%	0%	3.4
Section VI: Settlement Activities	54%	15%	23%	0%	8%	3.1																					
Appropriately promoted or conducted settlement	54%	15%	23%	0%	8%	3.1																					

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 02/2019 - 05/2019

Maricopa County Superior Court Judges

MCCIV-23	Hon. Daniel J. Kiley
Group	Comment
Attorney	Extremely thorough and well prepared.
Attorney	Hon. Kiley confused standard of care issue with causation issue, which made for a poor decision. He did very well at attempting to understand the parties' positions. Excellent. He remained calm throughout the hearing.
Attorney	Judge Kiley grasped the legal issues with ease and was well-prepared for the hearing. His questions of counsel regarding the issues were spot on. His demeanor and temperament were excellent.
Attorney	Judge Kiley is first rate. Smart, prepared, engaged, and balanced. Top level.
Attorney	Judge Kiley listened to and applied the law, including listening to and seeking attorney's input on the same.
Attorney	Judge Kiley was well prepared and thorough. He had exceptional legal ability. I felt Judge Kiley was professional, courteous and fair. No concerns. Excellent.
Attorney	Knew evidentiary rules, applied them even handed to all parties. Was well-prepared for oral argument.
Attorney	One of my favorite judges.
Attorney	Tentative application of Rule 12(b)(6).
Attorney	Very prepared for argument. Had done research outside of parties' briefs.
Attorney	He prepared an extremely detailed and well written minute entry explaining his ruling. He was very courteous at all times in the courtroom. His staff was also very helpful and friendly. One of my better trial experiences.
Attorney	I appreciated that he had obviously read all of the pleadings prior to an oral argument.
Attorney	THE SMARTEST JUDGE ON THE BENCH!!!!
Litigant/Witness	Other party didn't show.

Maricopa County Superior Court Judges

Litigant/Witness	He didn't speak except to call me as a witness & excuse me. While in a police uniform I'd like to keep my gun on me.
Staff	Don't know him well enough to know the answers of all of the above questions. Very good from what I have seen in covering for him the few times I have covered
Staff	Judge Kiley treats everyone that comes into our courtroom with dignity, respect and equality. I have never seen him favor one side over the other or one party over the other. Judge Kiley goes out of his way to make everything as clear and concise as possible, often going above and beyond, especially when pro per litigants are involved. I feel that Judge Kiley is always respectful, professional, dignified and courteous to everyone that comes into his courtroom.
Staff	Judge Kiley works hard to ensure equal treatment for everyone, regardless of a person's individual situation. Judge Kiley is always careful to make sure he's been understood in his communications. Judge Kiley remains patient and courteous even when faced with extremely rude individuals. Judge Kiley acts respectfully towards staff, is always punctual and prepared for proceedings, and is very efficient.
Staff	Very good judge.

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCCIV-23 Hon. Daniel J. Kiley	Total Surveys: 71					Assignment: Civil					Cycle: Mid-Term Review																	
	ATTORNEY					LIT/WIT/PRO PER					JUROR					STAFF												
	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	0	1	11	23	35	3.6																					
Legal reasoning ability	0	0	1	13	26	40	3.6																					
Knowledge of substantive law	0	1	0	11	24	36	3.6																					
Knowledge of rules of evidence	0	0	0	7	19	26	3.7																					
Knowledge of rules of procedure	0	0	4	11	21	36	3.5																					
Section II: Integrity	0	0	0	4	19	24	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Basic fairness and impartiality	0	0	0	9	31	40	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	5	10	15	3.7
Equal treatment regardless of race	0	0	0	4	19	23	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of gender	0	0	1	5	18	24	3.7	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of religion	0	0	0	3	16	19	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of national origin	0	0	0	3	17	20	3.9	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of disability	0	0	0	3	16	19	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of age	0	0	0	4	21	25	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of sexual orientation	0	0	0	3	15	18	3.8	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	2	10	12	3.8
Equal treatment regardless of economic status	0	0	0	3	21	24	3.9	0	0	1	1	2	4	3.3	0	0	0	0	8	8	4.0	0	0	0	3	10	13	3.8
Section III: Communication Skills	0	0	2	7	28	37	3.7	0	0	1	1	4	6	3.5	0	0	0	1	7	8	3.9	0	0	0	5	11	16	3.7
Clear and logical communications																						0	0	0	5	11	16	3.7
Clear and logical oral communications and directions	0	0	3	9	27	39	3.6																					
Clear and logical written decisions	0	0	2	5	25	32	3.7																					
Gave all parties an adequate opportunity to be heard	0	0	1	7	31	39	3.8																					
Explained proceedings (to the jury)								0	0	1	1	4	6	3.5	0	0	0	1	7	8	3.9							
Explained reason for delays								0	0	1	1	4	6	3.5	0	0	0	1	7	8	3.9							
Clearly explained the juror's responsibilities								0	0	0	1	7	8	3.9	0	0	0	1	7	8	3.9							
Section IV: Judicial temperament	0	0	1	8	29	38	3.7	0	0	1	2	3	6	3.3	0	0	0	0	8	8	4.0	0	0	0	5	10	15	3.6
Understanding and compassion	0	0	0	10	27	37	3.7	0	0	1	2	3	6	3.3	0	0	0	0	8	8	4.0	0	0	0	5	10	15	3.7
Dignified	0	0	1	9	30	40	3.7	0	0	1	3	2	6	3.2	0	0	0	0	8	8	4.0	0	0	0	5	10	15	3.7
Courteous	0	0	2	7	31	40	3.7	0	0	1	2	3	6	3.3	0	0	0	0	8	8	4.0	0	0	0	6	10	16	3.6
Conduct that promotes public confidence in the court	0	0	1	8	29	38	3.7	0	0	1	2	3	6	3.3	0	0	0	0	8	8	4.0	0	0	0	5	10	15	3.7
Patient	0	0	1	8	28	37	3.7	0	0	1	2	3	6	3.3	0	0	0	0	8	8	4.0	0	0	0	6	10	16	3.6
Section V: Administrative Performance	0	0	1	8	30	39	3.7	0	0	1	1	4	6	3.6	0	0	0	0	8	8	4.0	0	0	0	4	11	15	3.8
Punctual in conducting proceedings	0	0	1	9	31	41	3.7	0	0	1	1	4	6	3.5	0	0	0	0	8	8	4.0	0	0	0	4	12	16	3.8
Maintained proper control of courtroom	0	0	1	10	28	39	3.7	0	0	1	1	4	6	3.5	0	0	0	0	8	8	4.0	0	0	0	4	12	16	3.8
Prompt in making rulings and rendering decisions	0	0	2	6	31	39	3.7																					
Was prepared for the proceedings	0	0	0	10	30	40	3.8	0	0	1	0	5	6	3.7	0	0	0	0	8	8	4.0	0	0	0	4	12	16	3.8
Respectful treatment of staff																						0	0	0	4	10	14	3.7
Cooperation with peers																						0	0	0	3	10	13	3.8
Efficient management of calendar	0	0	3	6	28	37	3.7															0	0	0	2	10	12	3.8
Section VI: Settlement Activities	0	0	0	2	8	10	3.8																					
Appropriately promoted or conducted settlement	0	0	0	2	8	10	3.8																					

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: MCCIV-23 Hon. Daniel J. Kiley	Total Surveys: 71					Assignment: Civil					Cycle: Mid-Term Review													
	ATTORNEY					41 Mean	LIT/WIT/PRO PER					6 Mean	JUROR					8 Mean	STAFF					16 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%	4%	30%	65%	3.6																		
Legal reasoning ability	0%	0%	3%	33%	65%	3.6																		
Knowledge of substantive law	0%	3%	0%	31%	67%	3.6																		
Knowledge of rules of evidence	0%	0%	0%	27%	73%	3.7																		
Knowledge of rules of procedure	0%	0%	11%	31%	58%	3.5																		
Section II: Integrity	0%	0%	0%	17%	82%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	20%	80%	3.8
Basic fairness and impartiality	0%	0%	0%	23%	78%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	33%	67%	3.7
Equal treatment regardless of race	0%	0%	0%	17%	83%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of gender	0%	0%	4%	21%	75%	3.7	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of religion	0%	0%	0%	16%	84%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of national origin	0%	0%	0%	15%	85%	3.9	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of disability	0%	0%	0%	16%	84%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of age	0%	0%	0%	16%	84%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of sexual orientation	0%	0%	0%	17%	83%	3.8	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	17%	83%	3.8
Equal treatment regardless of economic status	0%	0%	0%	13%	88%	3.9	0%	0%	25%	25%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	23%	77%	3.8
Section III: Communication Skills	0%	0%	5%	19%	75%	3.7	0%	0%	17%	17%	67%	3.5	0%	0%	0%	13%	88%	3.9	0%	0%	0%	31%	69%	3.7
Clear and logical communications																		0%	0%	0%	31%	69%	3.7	
Clear and logical oral communications and directions	0%	0%	8%	23%	69%	3.6																		
Clear and logical written decisions	0%	0%	6%	16%	78%	3.7																		
Gave all parties an adequate opportunity to be heard	0%	0%	3%	18%	79%	3.8																		
Explained proceedings (to the jury)							0%	0%	17%	17%	67%	3.5	0%	0%	0%	13%	88%	3.9						
Explained reason for delays							0%	0%	17%	17%	67%	3.5	0%	0%	0%	13%	88%	3.9						
Clearly explained the juror's responsibilities												0%	0%	0%	13%	88%	3.9							
Section IV: Judicial temperament	0%	0%	3%	22%	76%	3.7	0%	0%	17%	37%	47%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	35%	65%	3.6
Understanding and compassion	0%	0%	0%	27%	73%	3.7	0%	0%	17%	33%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	33%	67%	3.7
Dignified	0%	0%	3%	23%	75%	3.7	0%	0%	17%	50%	33%	3.2	0%	0%	0%	0%	100%	4.0	0%	0%	0%	33%	67%	3.7
Courteous	0%	0%	5%	18%	78%	3.7	0%	0%	17%	33%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	38%	63%	3.6
Conduct that promotes public confidence in the court	0%	0%	3%	21%	76%	3.7	0%	0%	17%	33%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	33%	67%	3.7
Patient	0%	0%	3%	22%	76%	3.7	0%	0%	17%	33%	50%	3.3	0%	0%	0%	0%	100%	4.0	0%	0%	0%	38%	63%	3.6
Section V: Administrative Performance	0%	0%	4%	21%	76%	3.7	0%	0%	17%	11%	72%	3.6	0%	0%	0%	0%	100%	4.0	0%	0%	0%	24%	76%	3.8
Punctual in conducting proceedings	0%	0%	2%	22%	76%	3.7	0%	0%	17%	17%	67%	3.5	0%	0%	0%	0%	100%	4.0	0%	0%	0%	25%	75%	3.8
Maintained proper control of courtroom	0%	0%	3%	26%	72%	3.7	0%	0%	17%	17%	67%	3.5	0%	0%	0%	0%	100%	4.0	0%	0%	0%	25%	75%	3.8
Prompt in making rulings and rendering decisions	0%	0%	5%	15%	79%	3.7																		
Was prepared for the proceedings	0%	0%	0%	25%	75%	3.8	0%	0%	17%	0%	83%	3.7	0%	0%	0%	0%	100%	4.0	0%	0%	0%	25%	75%	3.8
Respectful treatment of staff																		0%	0%	0%	29%	71%	3.7	
Cooperation with peers																		0%	0%	0%	23%	77%	3.8	
Efficient management of calendar	0%	0%	8%	16%	76%	3.7												0%	0%	0%	17%	83%	3.8	
Section VI: Settlement Activities	0%	0%	0%	20%	80%	3.8																		
Appropriately promoted or conducted settlement	0%	0%	0%	20%	80%	3.8																		

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

Maricopa County Superior Court Judges

MCCRI-14	Hon. Daniel Kiley
Group	Comment
Juror Form (Superior)	Excellent experience. Very Skilled. Superior Job.
Juror Form (Superior)	Thoughtful & very good with understanding several witnesses and various ages.
Juror Form (Superior)	He made a point of thanking us.
Juror Form (Superior)	Gave directions clearly and patiently. Communicated care for juror's understanding. Was careful all were treated fairly throughout the trial.
Juror Form (Superior)	Judge Kiley is an example for other Judges to follow. Thank you Judge Kiley.
Juror Form (Superior)	He read a lot of guidelines on some of the responsibilities. Awesome. Great Job.
Juror Form (Superior)	Judge was very thoughtful regarding hardship dismissing valid requests of service. During one on one interviews when multiple groups were evaluated for final service, there were no chairs or adequate waiting facilities for 60+ people.
Juror Form (Superior)	Judge Kiley provided clear and concise instruction. He has a calm presence and is very fair minded in his approach.
Juror Form (Superior)	Very grateful for the U.S. government court system and feel outstanding for my duty as an American to serve on the jury.
Litigant/Witness	Very polite and informative.
Litigant/Witness	Think he is a very good judge, and that he cares about people that go through his court. Just and fair men.
Staff	Judge Kiley maintains an incredibly high standard for himself, his staff, and the lawyers in his courtroom when it comes to the equal treatment of victims, defendants, lawyers, and the public in general. In explaining his decisions and the reasoning behind them, Judge Kiley does his best to assertion that everyone in proceeding with clear understanding of the situation. Working in the criminal division of the AZ superior court requires a great deal of patience, considering both what is at stake and the behavior of disgruntled individuals. Judge Kiley tries

Maricopa County Superior Court Judges

	to be as efficient as possible taking the time to thoroughly prepare for hearing and remaining focused on what needs to be accomplished during said hearings.
Staff	Judge Kiley is very fair and treats everyone with respect. Judge Kiley is brilliant and he is great communicator both vocally and in writing. One of the first things I noticed about Judge Kiley is his mild temperament. He always listens and is very respectful, he always recognizes others' feelings. Judge Kiley runs an efficient courtroom, he works very hard and handles a large volume of cases each day.
Attorney	Judge Kiley is very prosecution oriented in his decision and not based off the rule of law. Judge Kiley is very short tempered.
Attorney	Judge Kiley is a kind and fair judicial officer with an astute sense of justice. Unassailable.
Attorney	Judge Kiley has a first rate legal intellect. Judge Kiley has excellent judicial temperament. Good marks in this area. He is unflappable. Exceedingly organized.
Attorney	Very patient, understanding, listens to all sides. Respectful.

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCCRI-14 Hon. Daniel Kiley	Total Surveys: 136						Assignment: Criminal					Cycle: Retention Election																
	ATTORNEY					55 Resp Mean	LIT/WIT/PRO PER					6 Resp Mean	JUROR					43 Resp Mean	STAFF					32 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	1	1	9	21	17	49	3.0																					
Legal reasoning ability	1	0	11	21	18	51	3.1																					
Knowledge of substantive law	1	2	8	22	16	49	3.0																					
Knowledge of rules of evidence	1	2	9	19	15	46	3.0																					
Knowledge of rules of procedure	1	1	8	23	17	50	3.1																					
Section II: Integrity	0	1	5	15	25	47	3.4	0	0	0	2	4	6	3.7	0	0	2	4	35	41	3.8	0	0	1	4	9	14	3.6
Basic fairness and impartiality	0	2	11	19	22	54	3.1	0	0	0	2	4	6	3.7	0	0	2	5	36	43	3.8	0	0	1	4	9	14	3.6
Equal treatment regardless of race	0	1	5	15	28	49	3.4	0	0	0	2	4	6	3.7	0	0	2	5	36	43	3.8	0	0	1	4	9	14	3.6
Equal treatment regardless of gender	0	3	3	15	27	48	3.4	0	0	0	2	4	6	3.7	0	0	2	5	36	43	3.8	0	0	1	4	9	14	3.6
Equal treatment regardless of religion	0	0	6	14	23	43	3.4	0	0	0	2	4	6	3.7	0	0	1	3	33	37	3.9	0	0	1	4	9	14	3.6
Equal treatment regardless of national origin	0	1	4	15	26	46	3.4	0	0	0	2	4	6	3.7	0	0	2	5	33	40	3.8	0	0	1	4	9	14	3.6
Equal treatment regardless of disability	0	0	4	16	23	43	3.4	0	0	0	2	4	6	3.7	0	0	2	3	33	38	3.8	0	0	1	4	9	14	3.6
Equal treatment regardless of age	0	0	5	15	27	47	3.5	0	0	0	2	4	6	3.7	0	1	1	3	36	41	3.8	0	0	1	4	9	14	3.6
Equal treatment regardless of sexual orientation	0	0	5	14	23	42	3.4	0	0	0	2	4	6	3.7	0	0	1	3	36	40	3.9	0	0	1	4	9	14	3.6
Equal treatment regardless of economic status	0	1	5	15	26	47	3.4	0	0	0	1	4	5	3.8	0	0	1	4	37	42	3.9	0	0	1	4	9	14	3.6
Section III: Communication Skills	0	1	10	17	21	49	3.2	0	0	0	1	4	5	3.8	0	0	2	10	31	42	3.7	0	0	1	5	8	14	3.5
Clear and logical communications																						0	0	1	5	8	14	3.5
Clear and logical oral communications and directions	0	2	11	19	20	52	3.1																					
Clear and logical written decisions	0	1	9	16	16	42	3.1																					
Gave all parties an adequate opportunity to be heard	0	1	9	17	26	53	3.3	0	0	0	2	4	6	3.7	0	0	1	11	31	43	3.7							
Explained proceedings (to the jury)								0	0	0	0	3	3	4.0	0	0	2	9	31	42	3.7							
Explained reason for delays															0	0	2	9	31	42	3.7							
Clearly explained the juror's responsibilities																												
Section IV: Judicial temperament	0	4	10	18	21	54	3.0	0	0	0	1	4	6	3.7	0	0	1	6	36	43	3.8	0	0	2	3	9	14	3.5
Understanding and compassion	0	5	11	19	19	54	3.0	0	0	0	0	4	4	4.0	0	0	1	9	33	43	3.7	0	0	2	3	9	14	3.5
Dignified	0	1	11	17	24	53	3.2	0	0	1	1	4	6	3.5	0	0	1	6	36	43	3.8	0	0	2	3	9	14	3.5
Courteous	1	5	9	16	22	53	3.0	0	0	0	2	4	6	3.7	0	0	1	5	37	43	3.8	0	0	2	3	9	14	3.5
Conduct that promotes public confidence in the court	0	4	10	19	21	54	3.1	0	0	0	2	4	6	3.7	0	0	2	5	36	43	3.8	0	0	2	3	9	14	3.5
Patient	1	4	11	18	20	54	3.0	0	0	0	1	5	6	3.8	0	0	1	4	38	43	3.9	0	0	2	3	9	14	3.5
Section V: Administrative Performance	0	1	8	22	22	53	3.2	0	0	1	1	4	6	3.4	0	0	2	7	34	43	3.7	0	0	1	3	9	13	3.6
Punctual in conducting proceedings	0	1	10	19	24	54	3.2	0	0	2	0	4	6	3.3	0	0	4	11	28	43	3.6	0	0	1	3	9	13	3.6
Maintained proper control of courtroom	0	0	8	26	20	54	3.2	0	0	1	1	4	6	3.5	0	0	1	4	38	43	3.9	0	0	1	3	9	13	3.6
Prompt in making rulings and rendering decisions	1	1	8	21	20	51	3.1																					
Was prepared for the proceedings	0	0	8	22	23	53	3.3	0	0	1	1	4	6	3.5	0	0	1	6	36	43	3.8	0	0	1	3	9	13	3.6
Respectful treatment of staff																						0	0	1	3	9	13	3.6
Cooperation with peers																						0	0	1	3	10	14	3.6
Efficient management of calendar	0	1	8	21	23	53	3.2															0	0	1	3	9	13	3.6
Section VI: Settlement Activities	0	1	5	12	14	32	3.2																					
Appropriately promoted or conducted settlement	0	1	5	12	14	32	3.2																					

UN=Unacceptable, PO=Poor,
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ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: MCCRI-14 Hon. Daniel Kiley	Total Surveys: 136					Assignment: Criminal					Cycle: Retention Election														
	ATTORNEY					LITAWIT/PRO PER					JUROR					STAFF									
	UN	PO	SA	VG	SU	55 Mean	UN	PO	SA	VG	SU	6 Mean	UN	PO	SA	VG	SU	43 Mean	UN	PO	SA	VG	SU	32 Mean	
Section I: Legal Ability	2%	3%	18%	43%	34%	3.0																			
Legal reasoning ability	2%	0%	22%	41%	35%	3.1																			
Knowledge of substantive law	2%	4%	16%	45%	33%	3.0																			
Knowledge of rules of evidence	2%	4%	20%	41%	33%	3.0																			
Knowledge of rules of procedure	2%	2%	16%	46%	34%	3.1																			
Section II: Integrity	0%	2%	11%	33%	54%	3.4	0%	0%	0%	32%	68%	3.7	0%	0%	4%	10%	86%	3.8	0%	0%	7%	29%	64%	3.6	
Basic fairness and impartiality	0%	4%	20%	35%	41%	3.1	0%	0%	0%	33%	67%	3.7	0%	0%	5%	12%	84%	3.8	0%	0%	7%	29%	64%	3.6	
Equal treatment regardless of race	0%	2%	10%	31%	57%	3.4	0%	0%	0%	33%	67%	3.7	0%	0%	5%	12%	84%	3.8	0%	0%	7%	29%	64%	3.6	
Equal treatment regardless of gender	0%	6%	6%	31%	56%	3.4	0%	0%	0%	33%	67%	3.7	0%	0%	5%	12%	84%	3.8	0%	0%	7%	29%	64%	3.6	
Equal treatment regardless of religion	0%	0%	14%	33%	53%	3.4	0%	0%	0%	33%	67%	3.7	0%	0%	3%	8%	89%	3.9	0%	0%	7%	29%	64%	3.6	
Equal treatment regardless of national origin	0%	2%	9%	33%	57%	3.4	0%	0%	0%	33%	67%	3.7	0%	0%	5%	13%	83%	3.8	0%	0%	7%	29%	64%	3.6	
Equal treatment regardless of disability	0%	0%	9%	37%	53%	3.4	0%	0%	0%	33%	67%	3.7	0%	0%	5%	8%	87%	3.8	0%	0%	7%	29%	64%	3.6	
Equal treatment regardless of age	0%	0%	11%	32%	57%	3.5	0%	0%	0%	33%	67%	3.7	0%	2%	2%	7%	88%	3.8	0%	0%	7%	29%	64%	3.6	
Equal treatment regardless of sexual orientation	0%	0%	12%	33%	55%	3.4	0%	0%	0%	33%	67%	3.7	0%	0%	3%	8%	90%	3.9	0%	0%	7%	29%	64%	3.6	
Equal treatment regardless of economic status	0%	2%	11%	32%	55%	3.4	0%	0%	0%	20%	80%	3.8	0%	0%	2%	10%	88%	3.9	0%	0%	7%	29%	64%	3.6	
Section III: Communication Skills	0%	3%	20%	35%	42%	3.2	0%	0%	0%	22%	78%	3.8	0%	0%	4%	23%	73%	3.7	0%	0%	7%	36%	57%	3.5	
Clear and logical communications																									
Clear and logical oral communications and directions	0%	4%	21%	37%	38%	3.1																			
Clear and logical written decisions	0%	2%	21%	38%	38%	3.1																			
Gave all parties an adequate opportunity to be heard	0%	2%	17%	32%	49%	3.3																			
Explained proceedings (to the jury)							0%	0%	0%	33%	67%	3.7	0%	0%	2%	26%	72%	3.7							
Explained reason for delays							0%	0%	0%	0%	100%	4.0	0%	0%	5%	21%	74%	3.7							
Clearly explained the juror's responsibilities													0%	0%	5%	21%	74%	3.7							
Section IV: Judicial temperament	1%	7%	19%	33%	40%	3.0	0%	0%	4%	21%	75%	3.7	0%	0%	3%	13%	84%	3.8	0%	0%	14%	21%	64%	3.5	
Understanding and compassion	0%	9%	20%	35%	35%	3.0	0%	0%	0%	0%	100%	4.0	0%	0%	2%	21%	77%	3.7	0%	0%	14%	21%	64%	3.5	
Dignified	0%	2%	21%	32%	45%	3.2	0%	0%	17%	17%	67%	3.5	0%	0%	2%	14%	84%	3.8	0%	0%	14%	21%	64%	3.5	
Courteous	2%	9%	17%	30%	42%	3.0	0%	0%	0%	33%	67%	3.7	0%	0%	2%	12%	86%	3.8	0%	0%	14%	21%	64%	3.5	
Conduct that promotes public confidence in the court	0%	7%	19%	35%	39%	3.1	0%	0%	0%	33%	67%	3.7	0%	0%	5%	12%	84%	3.8	0%	0%	14%	21%	64%	3.5	
Patient	2%	7%	20%	33%	37%	3.0	0%	0%	0%	17%	83%	3.8	0%	0%	2%	9%	88%	3.9	0%	0%	14%	21%	64%	3.5	
Section V: Administrative Performance	0%	1%	16%	41%	42%	3.2	0%	0%	22%	11%	67%	3.4	0%	0%	5%	16%	79%	3.7	0%	0%	8%	23%	70%	3.6	
Punctual in conducting proceedings	0%	2%	19%	35%	44%	3.2	0%	0%	33%	0%	67%	3.3	0%	0%	9%	26%	65%	3.5	0%	0%	8%	23%	69%	3.6	
Maintained proper control of courtroom	0%	0%	15%	48%	37%	3.2	0%	0%	17%	17%	67%	3.5	0%	0%	2%	9%	88%	3.9	0%	0%	8%	23%	69%	3.6	
Prompt in making rulings and rendering decisions	2%	2%	16%	41%	39%	3.1																			
Was prepared for the proceedings	0%	0%	15%	42%	43%	3.3	0%	0%	17%	17%	67%	3.5	0%	0%	2%	14%	84%	3.8	0%	0%	8%	23%	69%	3.6	
Respectful treatment of staff																				0%	0%	8%	23%	69%	3.6
Cooperation with peers																				0%	0%	7%	21%	71%	3.6
Efficient management of calendar	0%	2%	15%	40%	43%	3.2														0%	0%	8%	23%	69%	3.6
Section VI: Settlement Activities	0%	3%	16%	38%	44%	3.2																			
Appropriately promoted or conducted settlement	0%	3%	16%	38%	44%	3.2																			

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