APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 71)

PERSONAL INFORMATION

1. Full Name: **Joseph Patrick Mikitish.**

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

3. Office Address: **Superior Court, Maricopa County, 201 W. Jefferson, Phoenix, AZ 85003.**

4. How long have you lived in Arizona? **53 years.** What is your home zip code? **85041.**

5. Identify the county you reside in and the years of your residency. **Maricopa, 30 years.**

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: **Republican, 1984 to present.**

   (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: **Caucasian.**

EDUCATIONAL BACKGROUND

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

Bachelor of Science	**University of Arizona**	**1984-1988**
Juris Doctor	**University of Arizona**	**1988-1991**

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

I received a Bachelor of Science in Business Administration with a major in economics.

Throughout my undergraduate years, I participated in adaptive recreation programs for students with disabilities. During my freshman year, I served on a committee that considered the development, design, and approval of a Student Recreation Center. I assisted in every phase of the committee and brought a perspective of ensuring accessibility. I was able to join in the ribbon cutting for the Rec Center during my first year of law school.

Throughout my sophomore and junior years, I worked with the Arizona Students' Association, an organization made up of representatives from Arizona's three state universities. The organization was established to advocate on behalf of students to the Arizona Board of Regents and the Legislature on issues including tuition, undergraduate education programs, student aid, and campus life. I assisted in researching higher education trends, preparing policy papers, and making presentations to Board and Legislature.

In my junior year, I joined the University Honors Program, which allowed me to take honors level classes and complete a substantive thesis. My thesis focused on the marginal costs of higher education and incorporated much of the work that I had done with the Arizona Students' Association and Board of Regents concerning tuition policy.

During my senior year, I was appointed by Governor Mecham and confirmed by the Arizona State Senate as the student member of the Board of Regents. As a Regent, I participated in monthly Board meetings, committee meetings, and events. I also testified before the Legislature regarding academic and scholarship programs. This experience provided a one-of-a-kind introduction to higher education policies, as well as education law and the legislative process.

During my first year of law school, I was selected as a member on the

Arizona Law Review, our school's foremost academic journal. During my second year, I was selected as a Law Review articles editor. As an editor, I led the editorial board efforts to develop a symposium on financial institutions after the savings and loan crisis. Throughout law school, I was also active in the International Legal Honor Society of Phi Delta Phi which was founded to foster scholarship, civility, and ethical conduct in the legal profession.

I received a summer clerkship at the firm of Malloy Jones Donahue in Tucson at the end of my first year. At the end of my second year, I received a summer clerkship at the firm of Fennemore Craig in Phoenix.

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

Entering college, I received a Regents Merit Scholarship by graduating in the top 1% of my high school class and, throughout my undergraduate years, retained that scholarship by maintaining a 3.5 GPA.

During college, I was a member of the Golden Key National Honorary, a business college fraternity, and a pre-law society. I received the Freeman Medal outstanding senior award based on factors including moral force of character and service. I graduated *magna cum laude* with honors.

As a first-year law student, I was awarded an academic scholarship, and in my second year, I received a fellowship with the research and writing program to help first year students become better writers.

During my third year of law school, I received the Outstanding Student Note Award for my Law Review article. The article addressed the calculation of damages in cases in which the government has taken private property. I graduated law school *magna cum laude*.

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.
Supreme Court of Arizona (1991)
United States District Court for the District of Arizona (1994)
United States Court of Appeals for the Ninth Circuit (1994)
United States Court of Appeals for the District of Columbia Circuit (2003)
United States Bankruptcy Court for the District of Delaware (2012)

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

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

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

EMPLOYER	DATES/LOCATION
Arizona Superior Court, Maricopa County	**2013-present Maricopa County**
Arizona Office of the Attorney General	
Unit Chief	**2007-2013 Phoenix, AZ**
Assistant Attorney General	**2001-2007 Phoenix, AZ**
Assistant Attorney General	**1996-2000 Phoenix, AZ**
Beshears Muchmore Wallwork, PC	**2000-2001 Phoenix, AZ**
Fennemore Craig, PC	**1992-1996 Phoenix, AZ**
Arizona Supreme Court (law clerk)	**1991-1992 Phoenix, AZ**

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

Attached is a current list of judges on the Maricopa County Superior Court.

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.

In the 12 years prior to my appointment to the bench, I worked for the Arizona Attorney General's Office representing the Arizona Department of Environmental Quality (ADEQ). My practice related primarily to civil and administrative law concerning the environment. An estimated breakdown of my practice was as follows:

- **30% litigation and appeals;**
- **25% client advice;**
- **20% administrative law, including administrative appeals;**
- **15% governmental law including public records, open meetings, legislation, and procurement law; and**
- **10% supervision and training.**

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

My practice included the following:

- **environmental and natural resources;**
- **administrative law;**
- **public lands;**
- **water law;**
- **governmental law (public records, open meetings, procurement law, etc.);**
- **public utilities;**
- **civil rights;**
- **employment;**
- **mining;**
- **contracts;**
- **antitrust;**
- **product liability**
- **bankruptcy.**

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.
None. During my time as the Chair of the State Bar's Environmental and Natural Resources Section, we discussed developing a specialization certificate for environmental law but, due to the breadth of the practice area and varied types of specialties of our attorneys, were unable to do so.

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

Since my appointment to the bench in 2013, I have gained considerable experience drafting judgments, orders, and rulings on motions.

Before my appointment to the bench, a major portion of my practice involved negotiating and drafting substantial legal documents. Many of the documents were consent judgments or settlement agreements by which the parties voluntarily agree to resolve a case. The vast majority (75%) of these matters involved the application of complex environmental laws, restitution, or injunctive relief to protect human health and the environment.

My practice also involved negotiating and drafting complex environmental permits. When I began working on air quality issues at the Attorney General's Office, ADEQ had a backlog of pending air-quality permit applications. Completing those permits was daunting, but with persistence and teamwork, the Department and my unit finalized all but one of the permit applications within one year.

I also represented both private and public parties in drafting statutes. The vast majority of the statutes addressed air quality, underground gas tanks, and public lands. One statute was an amendment to state housing laws.

I also represented public and private parties in negotiating and drafting major administrative rule packages. These packages not only included the language of the rules, but all supporting materials, including technical reports, impact statements, and responses to public comments. The process for approval of each package took approximately one year.

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.

The Office of Administrative Hearings – 50 proceedings.
The Maricopa County Air Pollution Hearing Board – 1 proceeding.

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

Sole Counsel:	**45**
Chief Counsel:	**50**
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:	**0**
Chief Counsel:	**3**
Associate Counsel:	**0**

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

1. State of Arizona v. Exxon Mobil, 2010-2011

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Outside Counsel for State of Arizona

My client, ADEQ, asserted claims for repayment of substantial monies paid from a state fund that was established for environmental cleanup of contamination from underground petroleum storage tanks. The Department

asserted that numerous oil companies had obtained monies from *both* the state fund and their own insurance companies, in contravention of state law.

This matter was complicated because a week before the mediation, the agreed-upon mediator was unavailable. Both sides finally agreed to negotiate without a mediator. Throughout two lengthy negotiations, the parties remained significantly apart. At my suggestion, the party representatives agreed to seek additional settlement authority and to speak directly without their attorneys. After further discussions, the parties were able to arrive at an agreeable solution on the major terms of an agreement. Ultimately, the parties were able to reach an agreement under which ExxonMobil repaid a substantial eight figure sum to the state fund.

The case is significant to me because I learned that, while vigorously advocating a client's position is important, sometimes a lawyer's most valuable service is stepping back and proposing alternatives. In this instance, I was able to suggest an alternative approach that helped the parties to arrive at an agreeable resolution.

2. In the Matter of Zinke Investments, LLP, 2009-2010

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Counsel for Zinke

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Counsel for Zinke

This matter involved a farm located near an elementary school in eastern Maricopa County. Several community members complained that their children were having respiratory issues because the farm was clearing its fields during the school day. Community members initially lodged complaints to the County Air Quality Department for violations of County dust regulations. The County Department then issued an order of violation and abatement. The farm asserted that the County did not have jurisdiction.

My client, the ADEQ, agreed that the County dust rules applied. The farm challenged the County's order with the applicable County Hearing Board, and I filed a pleading on behalf of the State in support of the County's position. The County Hearing Board rejected our position and found that the County did not have jurisdiction. On behalf of the State, I then negotiated with the farm to apply the State's requirements.

This case is significant to me because even though I did not prevail at the administrative hearing, I was able to continue working with my client and the farm in a productive way. Ultimately, using the State's rules, the farm was prohibited from conducting activities that caused dust during the school day, but was allowed to conduct its necessary farming activities in a different manner.

3. Oak Canyon Inc. v. ADEQ, 2007-2008

Maricopa County Superior Court
Case No. CV 2006-018439
Judge Ed Burke (retired)
Arizona Court of Appeals

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Counsel for Oak Canyon, Inc.

ADEQ adopted an environmental rule governing hazardous air pollutants. I assisted and advised the Department in the drafting and development of the rule. Two companies challenged the rule in court as being beyond the Department's authority. We argued the case in the trial court with the Department prevailing on two issues, and the challengers prevailing on two issues.

I briefed and argued one of the issues to the Arizona Court of Appeals, but before receiving a decision, the parties settled. The settlement terms provided that the rule remain dormant, but reinstituted an earlier hazardous air pollutant program based on the updated standards and findings in the rule-making process.

This matter is significant because it was a matter of statewide importance that I prepared and argued to the Superior Court and Court of Appeals. The settlement provided a creative win-win result for the parties in a complex regulatory matter. The resolution allowed us to provide significant human health benefits using state-of-the-art analysis while still allowing businesses to have flexibility in their operations. The matter is also significant because it is rare to participate in a case from the very inception of a rule, to its argument in court, to its final resolution by settlement.

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:	**10**
State Courts of Record:	**20**
Municipal/Justice Courts:	**0**

The approximate percentage of those cases which have been:

Civil:	**100%**
Criminal:	**0**

The approximate number of those cases in which you were:

Sole Counsel:	**15**
Chief Counsel:	**3**
Associate Counsel:	**12**

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:	**35%**
You argued a motion described above:	**30%**
You made a contested court appearance (other than as set forth in the above response):	**35%**
You negotiated a settlement:	**70%**
The court rendered judgment after trial:	**3%**
A jury rendered a verdict:	**3%**

The number of cases you have taken to trial: 2

Limited jurisdiction court	**0**
Superior court	**2**
Federal district court	**0**
Jury	**1**

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

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

The approximate number of your appeals which have been:

Civil:	**15**
Criminal:	**0**
Other:	**0**

The approximate number of matters in which you appeared:

As counsel of record on the brief:	**AZ—5**	**U.S.—10**
Personally in oral argument:	**AZ—2**	**U.S.—2**

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

I clerked for the Chief Justice of the Arizona Supreme Court Stanley Feldman. As a young lawyer, I honed my legal research and writing skills in drafting opinions. I also learned a great deal about advocacy by reading briefs and listening to oral arguments by some of the finest attorneys in the State. I witnessed exceptionally skilled Justices, each with very different approaches, show an incredible ability to get to the heart of the case. Finally, I personally grew from informal discussions with the Justices, clerks, and other staff. We exchanged perspectives, opinions, and passions on cases, politics, sports, and world events – the entire backdrop of the human experience that makes our profession relevant to society.

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

1. State of Arizona v. Fiesta Canning Company, 2008-2012
Maricopa County Superior Court, CV 2006-003022
Honorable Peter Swan
Honorable Colleen French

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Attorney for State of Arizona

I served as lead trial counsel in this case in which the ADEQ brought an action to enforce state water and air quality laws. We prevailed on summary judgment, establishing the company's liability on 11 of 12 counts of violations. We proceeded to trial to establish the penalties for the 11 violations.

On behalf of the State, I requested a substantial penalty at trial, but noted that the State would reduce it if the company remedied the asserted violation on the remaining count. The court held that the company would be required either to perform the work necessary to remedy the asserted violation on the remaining count at considerable cost, or to pay a substantial penalty. The court also awarded the State its litigation costs, including attorney and expert fees, as the prevailing party.

Because of the number, seriousness, and length of the violations at issue, the State had hoped to compel compliance *and* obtain a significant penalty. While we fell short of that goal, I learned that a court must use all available options to craft a just resolution.

2. Friends of Pinto Creek v. Arizona Dept. of Environmental Quality 2002-2005

Office of Administrative Hearings
Administrative Law Judge Gary Strickland

Maricopa County Superior Court
Judge Michael D. Jones (deceased)

Arizona Court of Appeals

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Attorney for Carlota Copper Mine

In this case, ADEQ issued an air quality permit to a copper mining company near Globe-Miami. The permit contained stringent requirements for protecting the environment. Nevertheless, an environmental advocacy group appealed the Department's decision to issue the permit. I successfully defended the Department's decision before three separate appellate bodies: the Office of Administrative Hearings, the Maricopa County Superior Court, and the Arizona Court of Appeals.

This case is important to me, first, because it involved very complex and detailed scientific material. Therefore, I had to condense intricate information into understandable language. In addition, I saw first-hand the value of judges rolling-up their sleeves to address complicated matters. At each stage of this case, the judges clearly reviewed the written briefs in-depth, asked important clarifying questions, and wrote well-reasoned decisions.

3. Center for Energy and Economic Development (CEED) v. EPA, 2003-2005

United States Court of Appeals for the District of Columbia Circuit Case No. 03-1222

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Attorney for Intervener Phelps Dodge (Now Freeport McMoRan)

Arizona intervened in this matter in the federal Court of Appeals for the District of Columbia Circuit. The case involved a challenge to federal regulations that gave states flexibility in developing rules to address haze

at national parks such as the Grand Canyon. The group challenging the regulations argued that the rule restricted the states' options in reducing haze. Arizona, along with six other mostly Western states and industry representatives such as Phelps Dodge Copper Company, argued that the regulations in fact permitted *more* state flexibility. I wrote the brief and argued the case on behalf of the States. The court, however, ultimately agreed with the Petitioners and struck down the rule.

The case was significant because I had an opportunity to argue at a federal appellate court in our nation's capital. In addition, at the oral argument, I was faced with an unexpected tactical decision. One of the judges asked my co-counsel a technical question, but he gave the wrong answer. As I rose for my argument time, I was not sure how to address the mistake. I chose to proceed with my argument as I had prepared it, anticipating that the mistake would be cleared up in the process. In fact, it never was. From this, I learned that attorneys must ensure accurate information and courts must seek clarification when necessary to decide a case.

4. In re Bennett's Oil Co.
2002-2004

Office of Administrative Hearings
Administrative Law Judge Gary Strickland

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In this administrative appeal, the ADEQ denied applications for reimbursement of expenses from a state fund. The legislature established the fund to reimburse business owners for cleaning up contamination from underground petroleum storage tanks. The Department denied the applications because the company failed to show that it had exhausted available private insurance before accessing the fund. The company argued that exhausting private insurance was not required to obtain reimbursement from the state fund. We prevailed both before the administrative law judge and the Superior Court.

This case is significant because it set a precedent for establishing the legal

requirements to obtain public monies from the fund. Nevertheless, the Legislature changed the statutory requirements to allow the fund to be a primary source of insurance before an owner is required to use his private insurance. While I was disappointed that the Legislature altered my legal victory, I came to appreciate more concretely the importance of the separation of powers. The courts state what the law is, and the Legislature has the opportunity to change that law.

5. Hernandez-Gomez v. Leonardo
1993-1996

Arizona Supreme Court
U.S. Supreme Court

Published opinions: 180 Ariz. 297, 884 P.2d 183 (1994), *vacated* by *Volkswagen of America, Inc. v. Hernandez-Gomez*, 115 S.Ct. 1819, 131 L.Ed.2d 742 (1995), on *remand* 185 Ariz. 509, 917 P.2d (1996), Arizona Supreme Court

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Attorney for Defendant Volkswagen

In this product liability case, a driver injured in an auto accident sued the car manufacturer for poorly designed seatbelts. The driver claimed that the car was defective because the car was made only with an automatic shoulder harness, and without a lap belt. My firm represented the manufacturer and argued that federal regulations at the time allowed a shoulder harness alone and preempted the state product liability claim. The trial court agreed with us and held that federal regulations preempted the product liability claim.

I worked on the written briefs to the Arizona Court of Appeals and the Arizona Supreme Court and assisted the lead attorneys to prepare for oral arguments. The Arizona Court of Appeals agreed with the trial court, but the Arizona Supreme Court reversed and held that the plaintiff's claim was not preempted by the federal regulation. The United States Supreme Court reviewed the case and remanded it back to the Arizona Supreme Court to consider the preemption issue under a newly issued precedent. The Arizona Supreme Court again held that the claim was not preempted pursuant to the new precedent. The case then went to trial, and the jury

returned a $3.2 million verdict for the plaintiff. After that time, the United States Supreme Court issued a new decision based specifically on the automobile regulations. The manufacturer then prevailed on appeal that the claim was in fact preempted.

This case is significant because it established precedent on federal preemption from the U.S. Supreme Court. It is especially significant to me because it was my first appellate case as a lawyer, and I was able to participate with exceptional appellate advocates. In addition, the case was very challenging as we had to grapple with the complex interrelation between state and federal law. Finally, participating in the briefing and arguments between the state and federal courts was fascinating.

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

In 2013, I was appointed to the Maricopa County Superior Court, by the Honorable Governor Janice Brewer, and in 2016 and 2020, I was retained by election.

From 2013 through 2016, I served on the Family Court bench, hearing matters involving dissolutions (divorces), legal decision-making and parenting time (child custody), child support, spousal maintenance (alimony), and division of property. I presided over trials, conducted settlement discussions, held emergency hearings, ruled on motions, and prepared written decisions. I heard these cases without a jury.

In 2016, I was transferred to the criminal bench managing and conducting trials in felony cases including murder, rape, child molestation, child prostitution, aggravated assault, possession of dangerous drugs for sale, and armed robbery. I conducted a significant number of settlement conferences to assist parties in reaching a plea agreement, as the vast majority of cases are settled before trial. I held evidentiary hearings on substantive and procedural issues. Each week, I sentenced approximately 10 individuals.

In 2020, I was transferred to a civil law assignment handling a broad range of cases involving contracts, negligence claims, premises liability, and

insurance claims. I have also handled constitutional challenges, statutory interpretations, and governmental law issues. I address lower court appeals from our justice courts and administrative agencies. Like in the criminal assignment, I conduct settlement conferences to assist parties in reaching resolutions without the need for a trial.

The pandemic changed the operations of the court in significant ways. I now conduct the vast majority of my hearings virtually through a video conferencing platform. I even conducted one trial completely online. While the changes have been difficult to implement, they have increased the efficiency of the court system for judges and participants alike. With new operations, however, come new challenges. Judges at every level must ensure that participants receive due process through their virtual presentations. Appellate judges must closely review the record to ensure that everyone received a fair hearing. No one should be at a disadvantage because of an inability to access online hearings or properly present their case in a virtual format.

In total, my service on the trial court has allowed me to handle significant issues and areas of the law that I had not as an attorney. I now have a much greater breadth of experience to apply at the Court of Appeals.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

1. ESPN Inc. v. Arizona Board of Regents
CV 2021-001709
2021
Maricopa County Superior Court

Keith Beauchamp	**Gregg Clifton**
Coppersmith Brockelman	**Jackson Lewis**
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Attorneys for ESPN Inc.	**Attorneys for Board of Regents**

In this case, an international media outlet sued the governing body for our state universities to obtain copies of a notice of allegation from the

National Collegiate Athletic Association (NCAA). The notice set forth allegations that the University of Arizona men's basketball program committed numerous violations of NCAA rules. ESPN sought to obtain the documents under Arizona's public records law. The Board of Regents denied the request arguing that the release of the documents was "detrimental to the best interests of the state," an exception to the public records disclosure requirements.

The case included detailed briefing, an evidentiary hearing, and oral arguments. The analysis required a thorough review of NCAA rules, potential NCAA infractions from improper release of the documents, and an examination of the public interest in the documents. The law compelled me to order disclosure unless the Board made an express showing with specific evidence that release of the documents would be detrimental to the state. After a thorough analysis of the evidence and public records cases, I held that the documents must be disclosed.

The case was significant to me because it was high-profile in nature and involved the basketball program I revered since I was a boy. The NCAA began investigating the program after an assistant coach was indicted in late 2017 on charges of bribery and related offenses. Coaches in other prominent basketball programs also were involved. The media had been tracking the investigation for several years, and at the time of the ruling, the University was considering whether to extend the contract of the head coach.

The case was satisfying to me because I was able to rely on my experience that I gained at the Attorney General's Office in public records law and other laws affecting governmental entities. In addition, I was pleased to write a detailed order explaining my rationale which I believe allowed both parties to accept the result. Neither party appealed my decision, and the University released the documents a few days after I issued the ruling.

2. LaWall v. Hobbs; Arizonans for Second Chances Initiative v. Hobbs
CV2020-008289 (consolidated)
2020
Maricopa County Superior Court

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These consolidated cases addressed the validity of the Arizonans for Second Chances, Rehabilitation, and Public Safety Initiative which was proposed for the November 2020 election. The stated purpose of the Initiative was to change Arizona's sentencing laws to enhance public safety, implement best practices in reducing recidivism, reduce the number of people "warehoused" in prison for non-dangerous crimes, and enhance rehabilitation opportunities for people in prison.

Advocates for victims' rights challenged the initiative on the grounds that the 100-word summary included on the petition was fraudulent, created a significant danger of confusion to the voters who signed it, and failed to disclose principal provisions of the initiative. They argued that the initiative must be removed from the ballot because of the flaws in the summary.

The Initiative Committee challenged the Secretary of State's decision to

remove certain petition signatures for failure to comply with the applicable initiative laws. They argue that the removed petition signatures should be restored for purposes of counting the number of signatures to place the initiative on the ballot.

After extensive briefing on both issues, an evidentiary hearing, and arguments from the parties, I ruled that the summary was valid under state law. I also ruled that the Initiative Committee was not entitled to have the petition signatures restored. My rulings meant that the Initiative was valid based on its wording, but that it did not receive enough valid signatures to remain on the November ballot. The parties appealed my decisions to the Arizona Supreme Court but ultimately withdrew their appeals.

This case is important to me because it was my first elections case and impacted an initiative that would have been on the statewide ballot. The Initiative garnered significant state and national interest and involved passionate arguments on both sides of the issue. The case was difficult and stressful. It had to be reviewed, heard, and decided in a matter of days so that it could be reviewed by the Arizona Supreme Court prior to the printing of the ballots. I also needed to ensure that the written decisions were thorough, clear, and concise to allow the Supreme Court to render any decision it might make based on a clear record.

3. CR 2016-153769
May 2017-July 2017
Maricopa County Superior Court
Appellate Decision, CA-CR 17-0607, September 20, 2018, Court of Appeals Judges Perkins, Howe, Swan

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Counsel for the Defendant

The defendant in this criminal case was charged with one count of child prostitution, a class 2 felony and dangerous crime against children. The designation as a dangerous crime against children subjected the defendant to a much higher range of sentences if found guilty.

The state alleged that the defendant made contact with an undercover officer conducting a human trafficking sting operation online. The officer

posed as a mother offering sex with her 13-year-old daughter in exchange for a "donation." The defendant spoke on the phone with a detective posing as the mom and indicated that he would pay the "donation" for sex with the child. That same day, the defendant went to the police sting house, identified himself, and was arrested.

At trial, the defendant admitted that he had solicited prostitution, but claimed he believed he was hiring an adult prostitute who was simply role-playing as a child to act out a fantasy. The jury found him guilty of child prostitution, expressly finding that the persona of the minor was under the age of 15. I found the offense was a dangerous crime against children and sentenced the defendant in accordance with the higher range of penalties. In deciding the sentence, I relied on a Court of Appeals decision that ruled that an offense may be a dangerous crime against children even if the proffered victim was an undercover officer and not actually a child.

A few months after I issued the sentence, the Arizona Supreme Court issued a decision reversing the Court of Appeals and finding that a conviction for child prostitution aimed at an undercover officer rather than a child was not a dangerous crime against children under the statute.

On the appeal in my case, the Court of Appeals followed the Arizona Supreme Court decision and removed the dangerous crime against children designation for the offense. The Court of Appeals, however, applied the same higher range of penalties that was mandated under the child sex trafficking statutes. Therefore, the decision modified my ruling but affirmed the sentence.

This case is important to me because it demonstrates the need for our appellate courts to interpret and apply our statutes with great attention to detail. Our appellate courts must ensure that our laws are applied consistently with legislative intent and court precedent.

6. **CR2015-118182**
   July 2016 to March 2017
   Maricopa County Superior Court

Kellie Sanford	**Brett George**
Law Office of Kellie M. Sanford	**Maricopa County Attorney's Office**
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ksanfordlaw@gmail.com	**Counsel for the State**
Attorney for Defendant	

In this criminal case, the state alleged that the defendant sold small quantities of methamphetamine and prescription medications to undercover officers. The defendant argued that he was at the location that the officers alleged, but did not sell them any drugs. He argued that the state could not prove the sale because they did not provide any audio or video recording of the transaction, did not provide any fingerprints or DNA evidence from the packaging containing the drugs, and did not provide any corroborating evidence from any other individuals present. The case was tried three times.

In the first trial, before the final jury was selected, one member of the jury panel told other panel members that he distrusted law enforcement and prosecutors. He further encouraged other jury members to vote not guilty regardless of the evidence. At the request of both parties, I declared a mistrial because I could not be certain that those comments did not affect other panel members' ability to be fair and impartial.

In the second trial, the jury could not decide unanimously on a verdict. Some felt the officers' testimony was sufficient to prove that the defendant sold them the drugs. Others concluded that the officers' testimony was not sufficiently corroborated.

In the third trial, the jury found the defendant guilty beyond a reasonable doubt. This was the only trial in which the defendant himself testified. The jury did not believe his testimony and found that the officers' testimony, the presence of the drugs, and the presence of the defendant's vehicle at the scene provided sufficient evidence. This jury did not believe that additional corroborating evidence was necessary.

This case is significant to me because it was my first criminal jury trial, and therefore, I learned many lessons. In the first trial of the case, I learned the importance of jury instructions. Jurors typically do not understand how their actions may affect the case, and the instructions give them the necessary rules of conduct for their service.

In the second trial, I discovered that jurors increasingly expect to receive recordings or scientific evidence to corroborate testimony concerning the offense. The jury in the second trial was not willing to believe the police officers without that type of evidence. They needed some recordings, fingerprints, DNA, or other corroborating evidence of the offenses. This highlighted the need for parties to meet this expectation.

In the third trial, I understood more fully the risks of a defendant testifying at trial. I was able to appreciate the difficult decisions each side faces in determining a strategy for success.

5. FC 2015-001550, FC 2016-051574
Maricopa County Superior Court
September 2015 to August 2016

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Attorney for Father

The parties in this case were married in 1996 and had three minor children. The parties lived in Arizona during most of the marriage, until June or July 2015. At that point, they moved to California; she moved first, and he followed after packing the house, having the children complete their school year, and addressing some business issues.

Mother filed for a legal separation in California in September 2015. Father filed for divorce in Arizona three days later in September 2015.

Mother asked me to dismiss Father's case in Arizona arguing that Arizona did not have jurisdiction over the case. She argued that neither party lived in Arizona for at least the previous 90 days that Arizona law requires to file for divorce. She also argued that she no longer had enough contacts with Arizona for our courts to hear the case.

Father asked me not to dismiss his case arguing that he retained his Arizona driver's license, business interests, and voter registration, and that he continued to return to Arizona to address business issues from July through September. Father argued that he never really intended to leave Arizona permanently and remained domiciled in Arizona all along. He argued that Mother continued to have significant connections to Arizona because she kept her Arizona driver's license, the couple had business interests in Arizona, and the couple's children continued to live in Arizona.

I determined that Arizona did not have jurisdiction over Father's case filed in 2015, because at that time, neither party had lived in the state for at least the last 90 days. Therefore, I dismissed Father's 2015 action in Arizona.

Father later filed another action in Arizona in 2016. I determined that our courts did have jurisdiction over Father's 2016 case because at that time, he had lived in Arizona for the previous 90 days, and because the parties

had sufficient ties to Arizona to allow the case to proceed. I resolved the child custody-related issues in the Arizona case because the children resided with Father in Arizona. Nevertheless, I stayed action on the financial issues because the California case had been filed first, and it did not make sense to decide the same issues in two separate courts.

This case is important because it required a detailed legal assessment of jurisdiction. Each state had different laws about alimony and division of property. Each party had reasons to have the case addressed in the state in which he or she filed. My job was not to address the policy determinations of each state regarding these issues nor to get caught up in the parties' individual concerns. My job was to rule on the law.

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

I was recently appointed to the State Bar of Arizona Leadership Institute Panel. The Bar Leadership Institute is a selective program designed to train the next generation of Bar members and community leaders. Participants are provided with networking opportunities, training and education, community awareness and other skills necessary to benefit the diverse communities in which they work, live and serve.

For the past several years, I have served as a guest lecturer in the Trial Advocacy Program in the Arizona State University Sandra Day O'Connor Law School. The program trains law school students to present cases in court. As a guest lecturer, I serve as a mock trial judge, present trial tips, and offer practical guidance on the practice of law.

I served on the Arizona Supreme Court Committee on Mental Health Issues from 2017 through 2018. The Committee reviewed court rules and laws addressing criminal prosecutions and civil commitment concerning persons with mental illness. The Committee made several recommendations to improve how these cases are handled.

I have served on several local boards and commissions in Phoenix. These include the City of Phoenix Aviation Advisory Board (2000-2005), the City of Phoenix Bond Committees (2000, 2005), and the City of Phoenix Mayor's Commission on Disability Issues (1994-2000). In addition to helping the community, my service on these boards and commissions has allowed me to observe firsthand the interrelation between different government agencies. It also enabled me to see open meeting, public records, procurement, and other governmental law requirements in action.

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? **Yes.** If so, give details, including dates.
From 2008 until 2010, my wife and I owned a rental home. From 2010 until 2018, we owned two residential rental homes. In 2018, we sold one of the homes and now own one residential rental.

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?
Because I don't hold these positions, this question is 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? **No.** If not, explain.

The City of Chandler imposes a tax for residential homes for rent in the city, payable quarterly. On a few occasions, my wife and I have been late in paying the quarterly assessments due to oversight. On those occasions, we have paid the applicable interest and penalties of approximately $15.

In approximately 2013, we learned that we had not received an income statement from one of the investment funds we held several years earlier. Once we learned of the error, we paid additional income tax of approximately $300 for that earlier tax year.

In 2017, we received documentation from a trust distribution after it was required to be submitted for our 2016 taxes. We submitted the documentation when we received it and paid the tax thereafter.

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? **No.** 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.

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

I have not served in the military.

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.

I have not been accused of wrongdoing concerning my law practice.

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

I have had no litigation initiated against me based on allegations of misconduct.

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

I have not had sanctions imposed upon me by any court.

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? **Yes.** If so, in each case, state in detail the circumstances and the outcome.

I received a private admonition from the Commission on Judicial Conduct regarding a family law matter in 2015. The matter was referenced by the Commission as Case Number 15-182.

In the matter, I had issued temporary orders granting Father equal parenting time and, because of his mental health concerns, I conditioned his time upon his compliance with specific mental health terms, including maintenance of prescribed medications and mental health counseling. A few months after I issued the temporary orders, Mother petitioned for a modification arguing that Father was not in compliance with the mental health terms and that his behavior showed that he was a danger to the children. She asked to suspend his parenting time for an upcoming long weekend vacation at the end of the following week.

After receiving the petition, I had my judicial assistant immediately contact the parties to set up a hearing the following week, just before Father's scheduled long weekend. I issued a minute entry with the date and time of the hearing. Father did not appear for the hearing and later claimed that he did not speak with my assistant nor receive notice of the hearing. When Father did not appear, I treated the petition as an *ex parte* emergency motion, temporarily suspended his parenting time for the upcoming long weekend, and reset another hearing the following week.

The Commission correctly pointed out that, under the Family Law Rules of Procedure, I should have issued an order to appear and required Mother to serve Father with notice of the hearing. In my haste to address the substantive concerns regarding Father's behavior, I neglected to follow the procedural rules to ensure without question that Father had notice of the original hearing.

I learned from this matter that no matter how exigent the circumstances appear, we must pay close attention to applicable procedural rules to ensure each party has due process of law.

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? **Other than as described in response to Question 45, 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.

- **State Bar, *Arizona Appellate Handbook*, (chapter author, 2013, 2009)**
- **Maricopa County Bar Association, *The Most Frequently Asked Questions in Environmental Law*, (chapter author, 2012, 2007)**
- **Arizona State University Law Journal Article, *Achieving Sustainability Through Existing Environmental Regulations: A Look at Applied Sustainability Principles* (2011)**
- **Southern Arizona Environmental Management Society, Newsletter (contributing author 1994-1998)**
- **Arizona Law Review, *Measuring Damages in Regulatory Takings: Against Undue Formalism* (1990)**

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.

- **State Bar of Arizona, Continuing Legal Education, "Our Path Forward: Comparison of Virtual and in Person Trials," Speaker (2021)**
- **State Bar of Arizona, Council on Persons with Disabilities, Bar Convention Program, Co-Chair (2021, 2019)**
- **Arizona State University Sandra Day O'Connor College of Law, Trial Advocacy Program, Guest Lecturer (2017-present)**
- **Maricopa County Superior Court, Judicial Education Day, Co-Chair (2019)**
- **St. Thomas More Society, Legal Professionalism from a Judge's View, panel discussion (2019)**
- **National Judicial College, Domestic Violence Course, Group Leader (2019)**
- **Maricopa County Superior Court, Judicial Education Day, Criminal Division Leader (2018)**
- **National Business Institute (NBI), Faculty, What Family Court Judges Want You to Know (2016)**
- **Maricopa County Bar Association, Family Law Section, Bench and Bar Conference (2014, 2015)**
- **Maricopa County Bar Association, Family Law Section, Judge, Mock Trial Program (2015)**
- **Arizona Attorney General's Office, Public Records Seminar (2013)**
- **State Bar and Arizona State University Symposium: Clean Air and Sustainability (2011)**
- **Maricopa County Bar Association, Legal Trends on Climate Change (2008, 2007)**
- **Rocky Mountain Mineral Institute Symposium: Current Trends in Air Quality Regulation (2007)**
- **Arizona Attorney General's Office, Care and Feeding of Agency Clients (2006)**

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

- **Arizona Supreme Court Fair Justice Task Force, Mental Health Subcommittee (2017)**
- **St. Thomas More Society (Member 1992 to present; Board of Directors 1993-2002; 2007-2015; President 1998-2000)**
- **Downtown Phoenix Young Republicans (President 2001)**
- **Valley Leadership Program (1998-1999)**
- **Arizona Town Hall (1990, 2001)**

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.

- **Arizona State Bar Association, Environmental and Natural Resources Section (Executive Council: 2002-2012, Chair: 2010-2011)**
- **Arizona State Bar Association, Committee on Persons with Disabilities in the Legal Profession (Member: 2001-2004, 2007-present, Vice Chair: 2012-2013)**
- **Maricopa County Bar Association, Environmental Section (Executive Board: 2000-2009, Chair: 2008)**
- **Pro bono work**

While in practice, I volunteered with the Volunteer Lawyers Program. In 2009, I developed a legal clinic for the guests and former guests at Maggie's Place, a local non-profit which provides homes for pregnant homeless women. The clinic still advises women who face many obstacles and struggles for themselves and their children. The clients often face an array of family law, criminal law, debtor, and related issues. In overseeing the clinic, I was struck by the intelligence and fortitude the guests demonstrate in addressing their legal and personal challenges.

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

I have served as a director and officer on the boards of three non-profits:

- **Maggie's Place, which provides homes for pregnant homeless women;**
- **Arizona Bridge to Independent Living (now Ability360), which promotes independence and provides numerous programs for persons with disabilities;**
- **St. Thomas More Society, which promotes the highest standards of ethics and the integration of faith and professional life.**

Each of these organizations has provided me with unique insight into the human experiences of poverty, disability, and ethics. They also helped me understand a broad section of our community who we serve in court.

I currently serve as a coordinator and leader of a Blue Knights Boys' Club for my two sons and other boys their age. The Club is a faith-based organization designed to teach and instill virtues.

I also currently serve as a member of the Diocese of Phoenix Ethics in Ministry Board. The board advises on ethical issues involving priests and deacons. We also assisted in developing a code of ethics for the Diocese.

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

- **Arizona's Finest Lawyers (2011-present)**
- **Arizona Attorney General's Office:**
  - **Public Advocacy Division Outstanding Lawyer Award (2012)**
  - **Rising Star Award (2005)**
- **Arizona Business Journal 40 Under 40 Award (2002)**
- **City of Phoenix Mayor's Commission on Disability Issues, Mayor's Award (2002)**

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 a candidate for the Arizona House of Representatives in 2000.

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? **I believe so.** If not, explain.

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

I enjoy spending time with my wife and my five young children. We spend significant time reading, swimming, playing, praying, and learning about our world. My family is my source of balance to my judicial work and offers a life-giving perspective to all of my professional and personal endeavors.

As foster and adoptive parents, my wife and I have also learned a great deal about the challenges children can face early in life. We have participated in programs through our church that promote fostering and adoption and frequently speak with other couples who are considering fostering or adopting children. Through our own study and our participation in these programs, we have learned a great deal about the foster care system, the adoption process, and juvenile law in general.

Our state has approximately 14,000 children in foster care. Juvenile law cases are now the most prevalent in our trial courts. My experience and training as a foster and adoptive parent will allow me to address juvenile cases from a unique vantage point.

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.

Living with a disability, I have learned a great deal about people who face challenges in life. Growing up, I was blessed to participate in adaptive sports, attend summer camps, and go to school with others who had various ranges of abilities and disabilities. I learned that kids are kids regardless of whether they run, walk, use a wheelchair, or can see and hear.

In my adult life, I have been honored to participate in organizations that assist persons with disabilities so that they might achieve their own ambitions and excel in their own God-given talents. I also have been fortunate enough to participate in recreational opportunities with other persons with disabilities. These activities have included bicycling, skiing, water-skiing, white water rafting, and hiking that people (including myself) might never have imagined were possible. Through these endeavors, I have been able to see people as they are on the inside despite their outward limitations.

As with all judges, appellate judges touch people at some of their most challenging moments. A court case can bring people to one of the lowest points in their life. My experience in the disability community helps me better understand the challenges that people face. That experience has helped me to maintain a positive judicial temperament and consistently treat all people with fairness, respect, and dignity, even if they are not at their best.

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

Appellate court judges must write well. Over my professional career, I have worked to be a good writer and am therefore confident of my writing abilities. In law school, I served on the Law Review, was given the Outstanding Student Note award, and edited other writers' endeavors as an Articles Editor and a student writing advisor. As a lawyer, in addition to my pleadings, motions, and briefs, I wrote seminar materials, newsletter submissions, and a Law Review article. As a judge, I take time to write decisions that are logical, concise, and clear. I believe my development of good writing skills will be of significant value on the Court of Appeals.

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

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

See Attachment, Question 62.

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

See Attachment, Question 63.

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, Question 64.

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, Question 65.

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Mikitish Application, Attachment, Question 15

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

IN THE MATTER OF DESIGNATION OF DIVISION NUMBERS	ADMINISTRATIVE ORDER NO. 2021-076

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

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

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

IT IS FURTHER ORDERED terminating Administrative Order No. 2021-061.

Dated this 28th day of May, 2021.

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

Original: Clerk of the Superior Court

Mikitish Application, Attachment, Question 62

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

First and foremost, I am seeking this position to serve our community. Public service is important to me and what I enjoy most about the law. My parents instilled in me the importance of serving others. My father served our country by enlisting in the military in 1945. After a military career that included duties in wartime and peace, he worked in the public sector for our state universities. My mother raised five children while she also provided significant support for our church and various charities. As children, we worked alongside our parents in community efforts, from Boy Scout projects to church fundraisers to Muscular Dystrophy Association events.

Growing up with a disability, I also received many benefits from charitable organizations. My family and I gratefully accepted medical services, durable equipment, and recreational opportunities. Most importantly, I was blessed with the encouragement, support, and friendship of many people who also recognized the significance of touching the lives of others in the community. Growing up with these many examples of service through my family and the community around me, I learned that we each have the opportunity and responsibility to make a difference. My wife and I now strive to pass on that transforming power of serving others to our five young children.

Being on the appellate court will allow me to serve the public by using the education, skills and talents that I have developed through my professional life along with the experiences that I have gained serving our community. From my 22 years as an attorney in both the private and public sectors and my seven years as a trial court judge in Maricopa County, I have developed the abilities and judgment to be an effective appellate judge. My 25 years of experience serving the community on public bodies such as the Board of Regents and nonprofit boards such as Maggie's Place, and more than 10 years serving as a foster and adoptive parent, have offered me a special vantage point on the work and challenges that people face. In sum, my professional and life experiences allow me to know the law and to know our community.

Specifically, I have handled a wide range of issues that are presented to the Court of Appeals. As a lawyer and judge, I have handled civil, criminal, and family law cases. Furthermore, I have experienced juvenile law firsthand as a foster and adoptive parent. My years of practice in public law has given me practical insights into open meeting laws, public records laws, and procurement laws. Those insights instilled in me the importance of government playing by the rules. Lastly, my work on the superior court has given me a keen understanding as to when appellate courts should defer to trial court judges and when they should not.

My work in specific areas of the law also will allow me to bring a unique perspective to the court. My extensive work in administrative law has allowed me to understand that due process is essential to our liberty. In an era of growing oversight of private affairs by government agencies, courts must be vigilant to ensure that individuals have a fair opportunity to be heard. My substantial experience in complex areas like environmental law has trained me to address difficult and technical issues that often arise in appellate cases.

Finally, I have personal traits critical to being a successful appellate judge. My judicial performance reviews demonstrate that I am a good listener, I am fair, and I endeavor to serve with integrity and the highest level of ethics. I have handled difficult matters in the law and in our community. I take time to make good decisions as a judge and have honed my writing abilities to explain the reasons for those decisions. I am ready for this new service and new challenge to make a difference in the lives of all Arizonans.

Mikitish Application, Attachment, Question 63

ARIZONA STATE LAW JOURNAL

SANDRA DAY O'CONNOR COLLEGE of LAW

ARIZONA STATE UNIVERSITY

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ACHIEVING SUSTAINABILITY THROUGH EXISTING ENVIRONMENTAL REGULATIONS

Joseph P. Mikitish

ACHIEVING SUSTAINABILITY THROUGH EXISTING ENVIRONMENTAL REGULATIONS

Joseph P. Mikitish*

A Look at Applied Sustainability Principles Under Current Hazardous Air Pollutant Regulation

TABLE OF CONTENTS

I. INTRODUCTION

In our era, many individuals and groups have struggled to define and put into practice principles of environmental sustainability. Defining sustainability alone has proven daunting; providing concrete objectives, and the means to achieve them, is even more difficult. Multinational organizations,[1] national governments,[2] state and local governments,[3]

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*. The author is an assistant attorney general with the Arizona Attorney General's Office. The opinions expressed in this article are entirely those of the author and not the Attorney General's Office. A special thanks to Phillip Daniels, 2012 J.D. Candidate, University of Arizona College of Law, for significant assistance on this article.

1. *See, e.g.*, United Nations Declarations, *infra* Section II.

2. *See, e.g.*, United States White House Reports and Executive Orders, *infra* Section II; *Government Sustainability*, AUSTRALIAN GOV'T: DEP'T OF SUSTAINABILITY, ENV'T, WATER, POPULATION, AND CMTYS., http://www.environment.gov.au/sustainability/government/ (last visited Sept. 20, 2011); *see generally Going Green: Why Germany Has the Inside Track to Lead a New Industrial Revolution*, KNOWLEDGE@WHARTON, http://knowledge.wharton.upenn.edu/article.cfm?articleid=2201&specialid=84 (last visited Sept. 20, 2011).

3. *See, e.g.*, Oregon Sustainability Act, OR. REV. STAT. § 184.423 (2009); Greenworks Philadelphia Sustainability Plan, CITY OF PHILADELPHIA, http://www.phila.gov/green/

academic institutions,[4] environmental groups,[5] industry associations,[6] individual corporations,[7] and untold others have offered their considerable energies defining the concept and setting out goals for achieving sustainability. Each understandably takes up the task from its own particular perspectives, and yet most share common core principles.

Those sustainability principles that cross interest groups focus largely on policies and practices that protect the interests of future generations.[8] They also emphasize reducing inputs and materials, rather than solely emissions and outputs.[9] Finally, sustainability goals promote efforts to protect ecosystems, in addition to protecting human health.[10] Commenters have suggested that these sustainability principles provide a new approach to environmental regulation that is more inclusive and forward-looking than traditional command-and-control regulation that currently prevails in most environmental regulatory programs.[11]

The regulation of the most hazardous air pollutants, sometimes referred to as air toxics or simply HAPs, serves as a thought-provoking case study for the application of sustainability principles. Hazardous air pollutant regulation is based on a traditional command-and-control approach to environmental law to prevent immediate harm to human health from emissions and avert accidental releases of extremely dangerous substances. It is not grounded predominantly on a sustainability perspective.[12] Nonetheless, hazardous air pollutant regulation incorporates some of the most important principles inherent in sustainability and can serve as a guide for addressing sustainability in many areas.

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greenworks/ (last visited Sept. 20, 2011); CITY OF PHOENIX, POLICY TO PROMOTE AND ENCOURAGE SUSTAINABLE DEVELOPMENT, *available at* http://phoenix.gov/webcms/groups/internet/@inter/@dept/@dsd/@trt/documents/web_content/dsd_trt_pdf_00499p.pdf (last visited Sept. 20, 2011).

4. *See, e.g.*, ARIZONA STATE UNIVERSITY SCHOOL OF SUSTAINABILITY, http://schoolofsustainability.asu.edu/ (last visited Sept. 20, 2011).

5. *See, e.g.*, *What Is GRI?*, GLOBAL REPORTING INITIATIVE http://www.globalreporting.org/AboutGRI/WhatIsGRI/ (last visited Sept. 20, 2011).

6. *See, e.g.*, OMNICOM GROUP, http://www.omnicomgroup.com/aboutomnicomgroup/CompanyOverview (last visited Sept. 20, 2011).

7. *See, e.g.*, *2010 Corporate Responsibility Report*, IBM, http://www.ibm.com/ibm/responsibility/ (last visited Sept. 20, 2011); *Corporate Responsibility*, TIME WARNER, http://www.timewarner.com/our-company/corporate-responsibility/ (last updated Jan. 31, 2011); *Environmental Footprint*, SEVENTH GENERATION, http://www.seventhgeneration.com/seventh-generation-mission/environmental-footprint (last visited Sept. 20, 2011).

8. *See infra* Section II.

9. *See infra* Section II.

10. *See infra* Section II.

11. *See infra* Section II.

12. *See infra* Section III.

This article reviews the varying perspectives on sustainability and common themes that weave through the analysis. It then reviews the history and legal framework of regulating hazardous air pollutants regulation, both nationally and locally. The article reviews one of the most calamitous industrial catastrophes in history, the explosion at the Union Carbide facility in Bhopal, India, that served as a strong impetus for reform of hazardous air pollutant regulation. It argues that the disaster also supports inclusion, and strengthening, of sustainability factors in existing regulation. Finally, it concludes with the recommendation to incorporate sustainable principles into existing laws which will maximize the benefit to the public now and in the future.

II. PRINCIPLES OF SUSTAINABILITY

National and international declarations on the fundamental principles of sustainability are abundant. The United Nations Stockholm Declaration on the Human Environment, unveiled in 1972, established twenty-six principles on international environmental protection, which serve as the foundation for sustainability principles.[13] The Stockholm declaration enunciated a human right to a quality environment and the "responsibility to protect and improve the environment."[14] In 1987, the UN World Commission on Environment and Development focused on the competing interests across generations by defining sustainable development as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs."[15] Likewise, the 1992 Rio Declaration on Environment and Development proclaimed that "human beings . . . are entitled to a healthy and productive life in harmony with nature" and echoed the goal "to equitably meet developmental and environmental needs of present and future generations."[16]

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13. United Nations Conference on the Human Environment, Stockholm, Swed., June 5–16, 1972, *Declaration of the United Nations Conference on the Human Environment,* (June 16, 1972), *available at* http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503.

14. *Id.* principle 1.

15. Our Common Future, From One Earth to One World, Rep. of the World Comm'n on Env't & Dev., 42d Sess., Aug. 4, 1987, para. 27, U.N. Doc. A/42/427, Annex; GAOR, 42d Sess., Supp. No. 25 (A/42/25), *available at* http://www.un-documents.net/ocf-ov.htm#I.3.27.

16. United Nations Conference on Environment and Development, Rio de Janiero, Braz., June 3–14, 1992, *Rio Declaration on Environment and Development*, Principle 5, A/CONF.151/26 (Vol. 1), Annex 1 (Aug. 12, 1992) *available at* http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm [hereinafter *Rio Declaration*].

The Rio Declaration, in its twenty-six principles, focused on the importance of balancing and integrating competing interests. It declared that "human beings . . . are entitled to a healthy and productive life in harmony with nature"[17] and established an objective to eliminate unreasonable or unacceptable environmental risks "to the extent economically feasible."[18] The Rio Declaration boldly proclaimed its ultimate vision of sustainability: "[I]ntegration of environment and development concerns . . . will lead to the fulfillment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future."[19]

In the United States, there have been similar assessments on the need to emphasize sustainability in economic development and environmental protection. The 1981 White House Council on Environmental Quality Report noted that "[t]he key concept here is sustainable development. If economic development is to be successful over the long-term, it must proceed in a way that protects the natural resource base of developing countries."[20] A 2007 Federal Executive Order established as a national policy that federal agencies conduct environmental, transportation, and energy related activities "in an environmentally, economically, and fiscally sound, integrated, continually improving, efficient, and sustainable manner."[21] The Order defined "sustainable" as creating and maintaining "conditions, under which humans and nature can exist in productive harmony, and that permit fulfilling the social, economic, and other requirements to present and future generations of Americans."[22]

These principles of sustainability can be seen from various vantage points. The first has been referred to as the "competing objectives" view.[23] This perspective focuses on balancing the human goals of economics, equity, and ecology.[24] To achieve sustainability, society must balance a wide range of human needs and aspirations, including health, literacy,

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17. *Id.* principle 1.

18. United Nations Conference on Environment and Development, Rio de Janiero, Braz., June 3-14, 1992, *Agenda 21,* para. 19.48, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. II), *available at* http://www.un.org/esa/dsd/agenda21/res_agenda21_19.shtml.

19. *Id.* para. 1.1, *available at* http://www.un.org/esa/dsd/agenda21/res_agenda21_01.shtml.

20. 12TH ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 190 (1981), *available at* http://www.slideshare.net/whitehouse/august-1981-the-12th-annual-report-of-the-council-on-environmental-quality.

21. Federal Acquisition Regulation; Sustainable Acquisition, 76 Fed. Reg. 31,395, 31,395 (May 31, 2011).

22. 48 C.F.R. § 2.101 (2011).

23. Robert J. Klee, Note, *Enabling Environmental Sustainability in the United States: The Case for a Comprehensive Material Flow Inventory*, 23 STAN. ENVTL. L.J. 131, 139 (2004).

24. *Id.*

poverty alleviation, political freedom, material goods, employment, technology, economic growth, and ecological needs.[25]

Another perspective on sustainability looks to the planet's carrying capacity and seeks to manage the Earth's "critical limits."[26] This view emphasizes identifying and preserving the underlying physical and ecological necessities of human beings and other species to survive.[27] The critical limits perspective seeks to prevent the environmental degradation of the essential natural ingredients for survival and to limit the use of vital natural resources that are not renewable.[28]

Some commenters have argued that a sustainability approach provides sharper tools for more effective environmental regulations in the future than that currently exist today.[29] Some have gone so far as to assert that a regulatory scheme based on protection of the environment alone, without taking into account the sustainable use of resources, is obsolete.[30] Despite these bold proclamations, however, a broad-scale regulatory revolution based on sustainability principles has not happened. Under the competing interests theory, the challenge of creating sustainability-based regulations is the exceptional difficulty of how to balance competing interests and arrive at an action point for decision-making.[31] Different people will arrive at different balancing points. Likewise, the critical limits approach requires complex long-term assessments of human and environmental needs and a principled method to allocate an enormous quantity of limited resources over a broad spectrum of space and time.

While our existing environmental laws are often seen as focusing more on command-and-control efforts to protect the immediate needs of humans and the environment, many environmental programs serve both to protect immediate interests and incorporate longer-range environmental sustainability principles. One of the first American laws to incorporate the idea of environmental sustainability was the 1970 National Environmental Policy Act ("NEPA").[32] NEPA established a national goal to create and maintain conditions under which humans and nature "can exist in productive harmony, and [to] fulfill the social, economic and other

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25. *Id.* at 140.
26. *Id.* at 143.
27. *Id.*
28. *See id.*
29. Klee, *supra* note 23 at 133.
30. J.B. Ruhl, *Sustainable Development: A Five-Dimension Algorithm for Environmental Law*, 18 STAN. ENVTL. L.J. 31, 33 (1999).
31. *See* Klee, *supra* note 23, at 139–40.
32. David R. Hodas, *The Role of Law In Defining Sustainable Development: NEPA Reconsidered*, 3 WIDENER L. SYMP. J. 1, 35 (1998).

requirements of present and future generations of Americans."[33] That law provides the procedural underpinnings for sustainability by requiring decision makers to consider the environmental and ecological impacts of federal projects.[34]

As we examine the existing regulation of hazardous air pollutants, an environmental law program justifiably focused on immediate human health concerns, we see a concurrent incorporation of sustainability principles, including the need to protect our ecological resources and the interests of our future generations. In fact, we see that the hazardous air pollutant program promotes the connection, and not just the competition, between those varied interests. Therefore, the article recommends developing future amendments to existing environmental regulations based on sustainability.

III. HAZARDOUS AIR POLLUTANTS REGULATION

A. 1970 Clean Air Act Amendments

In the 1970 Clean Air Act Amendments, Congress recognized the need to regulate particularly harmful air pollutants in a special way. Congress promulgated a separate section of the Act that set up a different regulatory scheme for hazardous air pollutants than the one used for conventional air pollutants.[35] Section 112 of the Act established a framework for controlling hazardous air pollutants, which are defined as pollutants that are known or suspected to cause cancer, reproductive or birth defects, damage to the immune system, or other serious harm including neurological, developmental, or respiratory damage.[36] The Congressional program sought primarily to reduce emissions and protect human health from the dangers of air toxics.[37] The Act also protected damage to ecosystems from the deposition and bioaccumulation of these pollutants in both in soil and water bodies.[38]

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33. *See* 42 U.S.C. § 4321 (2006); *see generally* George J. Skelly, *Psychological Effects at NEPA's Threshold*, 83 COLUM. L. REV. 336, 337 (1983).

34. *What is Sustainability?*, EPA, http://epa.gov/sustainability/basicinfo.htm (last visited Sept. 7, 2011).

35. *See* 42 U.S.C. §§ 7401–7671.

36. *See id.* § 7412(b)(1) (listing specific pollutants). Specific human injuries from pollutants listed in the Clean Air Act have been codified into other statutes. Common examples are asbestosis—the cause of mesothelioma. *See generally*, Asbestosis and mesothelioma, ARIZ. REV. STAT. ANN. § 36-134 (2011); Mesothelioma Awareness Day, N.J. STAT. ANN. § 36:2-155 (West 2011).

37. *See* 42 U.S.C. § 7401(b)(1).

38. *See id.* § 7412(b)(3)(B).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-121058-001 DT 11/01/2019

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
N. Pallas
Deputy

STATE OF ARIZONA KATE LOUDENSLAGEL

v.

KENNETH GEORGE ECKERT (001) ULISES FERRAGUT JR.

JUDGE MIKITISH

UNDER ADVISEMENT RULING

The Court has received and reviewed the Defendant Kenneth Eckert's Motion to Suppress filed May 16, 2019, the State's response thereto filed July 14, 2019 and the Defendant's reply filed July 26, 2019. The Court received evidence and heard argument on August 30, 2019 and on September 6, 2019 and took the matter under advisement. This is the under advisement ruling. For the reasons set forth below, the Motion is denied.

FACTUAL AND PROCEDURAL HISTORY

On May 7, 2017, at approximately 11:00 a.m. the Defendant called 911 to report that his wife Jennifer Eckert had been shot. He said that the shooting was accidental. He requested an ambulance to respond to his home, which was the place of the shooting. He told the 911 operator that the front door was unlocked so that responders could enter while he remained with his wife.

Officer Parsons was the initial patrol officer to respond. He entered the unlocked front door and went to the master bedroom where he found the Defendant standing next to the bed where Mrs. Eckert was found. She had been shot in the back of the head. Officer Parsons asked where the gun was located and the Defendant responded that he did not have it and lifted his shirt to show his waistband. Officer Parsons observed that the Defendant's belt was undone and out of the belt loops on his right hip. The Defendant then was detained for officer safety.

Additional officers as well as the fire department personnel responded to the scene. Mrs. Eckert was pronounced deceased at 11:39 a.m. The Defendant informed police that only he and his wife were present in the home. He advised he was not injured, although he had blood on him. He identified himself as Kenneth Eckert and his wife as Jennifer Eckert. He told the officers that he had military and private security experience. After being read his rights, the Defendant invoked his right to remain silent and was arrested.

Sergeant Butler obtained the first search warrant for the residence, which included the following:

1. Scene processing to include but not limited to the photographing and measuring of the scene.
2. Biological evidence including but not limited to blood.
3. Items of victim-suspect clothing and/or other items containing blood evidence.
4. Blood draw from Kenneth Eckert.
5. Swabs from Kenneth Eckert skin for blood evidence.
6. Cell phones and data contained within such device.
7. Firearms.
8. Live and spent cartridges.
9. Projectiles.

In the affidavit for the search warrant, Sergeant Butler states that the collection of the items is necessary to "aid in the investigation of the death of Jennifer Eckert and to help determine Kenneth's involvement in the death."

The first search warrant was granted by the Hon. Jane McLaughlin and returned to Detective Butler via fax at 4:45 p.m. Thereafter, the Buckeye police officers entered the residence and conducted an initial walk-through before initial photographs were taken. Initial photographs were taken and then the execution of the search warrant began in the master bedroom. Officer Belanick placarded evidence in the master bedroom area and then measured and photographed everything in place. Afterward, Officer Belanick placarded additional evidence throughout the house and photographed everything in place. Once the officers completed their search pursuant to the first search warrant, the home was secured and a return of the search warrant was completed on May 8, 2017.

On May 30, 2017, Detective Crotteau authored a second search warrant for the residence and vehicles. The second search warrant included the following:

1. Financial records including but not limited to savings accounts, checking accounts, investment accounts and credit card accounts.

2. Additional letters/notes discussing Jennifer and Kenneth Eckert's relationship.
3. Prescription medications for Kenneth Eckert and Jennifer Eckert.
4. Amazon account information.
5. The Venus.com account information.
6. Ring.com account information.
7. Closed, locked and sealed containers including but not limited to file cabinets and safes.

The second search warrant was executed on May 30, 2017 and returned the following day.

ANALYSIS

The Defendant argues that the police illegally collected, open, and read numerous letters not listed in the first search warrant during the execution of that warrant. The Defendant further argues that the contents of those items led police to learn about financial accounts which were subsequently sought and approved in the second search warrant.

The Fourth Amendment of the United States Constitution and Article 2 Section 8 of the Arizona Constitution protects an individual in his or her person, house, papers and effects, against unreasonable searches and seizures. A person's ability to claim protection of the Fourth Amendment depends on the person's "legitimate expectation of privacy in the invaded place." *State v. Juarez,* 203 Ariz. 441, 444 (App. 2002). Mr. Eckert argues that "his home, papers, and effects" are "continually protected areas where he absolutely has the constitutional right to have papers protected against unreasonable searches and seizures." Motion at 2.

The State posits several theories on which the searches of the items of which the Defendant complains were appropriate under the law. The Court finds the following arguments and assessments to be the most applicable.

1. The Defendant had no reasonable expectation of privacy in the contents of the victim's purse.

A search protected by the Fourth Amendment occurs "when the government violates a subjective expectation of privacy that society recognizes as reasonable." *United States v. Kyle,* 533 U.S. 27, 33 (2001). "[A] Fourth Amendment search does *not* occur – even when the explicitly protected location of a *house* is concerned – unless the individual manifested a subjective expectation of privacy in the object of the challenged search, and society is willing to recognize that expectation as reasonable." *Id.* (Emphasis in original, internal quotes omitted).

In assisting with the execution of the first search warrant, Detective Skaggs located a brown purse that was of a size that could have contained a weapon. Consistent with the first search warrant's authorization to search for weapons, Detective Skaggs opened the purse and determined that it contained Mrs. Eckert's identification. Detective Skaggs testified that the purse was of a size and style that was consistent with women's apparel. No identification was located inside the purse for the Defendant and there was no reason to believe that the item was his. Inside the purse was correspondence marked by police as item 35. The correspondence appeared to be written by the Defendant to the victim and appeared to be angry in nature.

The Court finds that the Defendant had no reasonable expectation of privacy in the victim's purse or its contents. Therefore, he cannot object to the search of that purse and item 35.

2. Given the finding of the correspondence in the victim's purse and the review of the house's contents by the victim's next of kin, the remaining correspondence and financial account information inevitably would have been discovered.

Arizona recognizes the inevitable discovery doctrine. *State v. Paxton*, 186 Ariz. 580, 584 (App. 1996). Under the doctrine, the introduction of evidence is permitted when it inevitably would have been lawfully discovered. *See State v. Castaneda*, 150 Ariz. 382, 388 (1986).

In this case, even if the scope of the first search warrant did not permit the review of the contents of correspondence other than item 35, those items inevitably would have been legally discovered after the police's review of item 35. That letter, along with the circumstances of the shooting, the statements of the Defendant, and the scene of the crime, would have provided probable cause that a domestic violence offense had occurred. In addition, Detective Crotteau testified that police interviewed the Defendant's ex-wife and learned of circumstances in that former relationship that was consistent with controlling behavior and domestic violence by the Defendant. That evidence provided additional support for probable cause of a domestic violence offense in this case. The probable cause from all of this evidence would have provided authority for the second search warrant and allowed the lawful collection and review of all of the correspondence and financial account information gathered by police and objected to by the Defendant.

In addition, Detective Crotteau testified that the victim's next of kin reviewed the contents of the home after the police's investigation. In reviewing the victim's files, the next of kin undoubtedly would have come across the correspondence between the parties that provided clear evidence of domestic violence and provided that to police.

CONCLUSION

Because the Defendant has no grounds to object to the search of item 35, and the discovery of item 35 along with all of the other evidence legally gathered by the police in this case demonstrate that the other correspondence and accounts inevitably would have been discovered, IT IS ORDERED **denying** the Defendant's Motion to Suppress.

Mikitish Application, Attachment, Question 64

Clerk of the Superior Court
*** Electronically Filed ***
03/03/2021 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-001709 03/01/2021

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
E. Wolf
Deputy

E S P N INC

KEITH BEAUCHAMP

v.

ARIZONA BOARD OF REGENTS

GREGG E. CLIFTON

JUDGE MIKITISH

UNDER ADVISEMENT RULING
Application for Production of Public Records

The Court has received and reviewed the Plaintiff ESPN Inc.'s (ESPN) Complaint and Application for Order to Show Cause, filed on January 29, 2021; the Defendant Arizona Board of Regents' (the Board) Memorandum in Opposition to Application for Order to Show Cause, filed February 4, 2021; and ESPN's Reply in Support of its Application for Order to Show Cause, Notice of Filing of Authorities, and attachments, filed February 5, 2021.

The Court has also received and reviewed the Board's unopposed Motion for Entry of Protective Order, filed February 11, 2021; and ESPN's Notice of No Opposition to the Board's Motion, filed February 12, 2021.

Finally, the Court has received and considered the evidence and arguments made at the Evidentiary Hearing on February 17, 2021. During the hearing, the Court granted the Motion for Entry of Protective Order upon certain conditions noted in the Minute Entry. The Court took the Application for Order to Show Cause under advisement at the end of the hearing. For the reasons set forth below, the Application is granted.

Background

ESPN is an internationally recognized media outlet focused on every level of sports. The Board is a public body responsible "for the effective governance and administration" of Arizona's three state universities, including the University of Arizona (the University). The University's men's basketball program has an impressive history of success dating back decades. The parties agree that there is a strong public interest in the men's basketball program throughout the state as well as nationally and internationally.

In September 2017, the United States Attorney for the Southern District of New York announced indictments against several individuals involved with prominent collegiate basketball programs. The indictments stemmed from a federal investigation into bribery and related offenses involving coaches, athletic shoe company representatives, and "athlete advisors." One of those arrested was one of the University's assistant basketball coaches, Emmanuel Richardson. In early 2018, the University terminated Mr. Richardson's employment. In early 2019, Mr. Richardson pled guilty to one count of conspiracy to commit bribery for taking approximately $20,000 in bribes from purported "athlete advisors" in exchange for using his position with the University to influence players to retain the services of those same advisors. In June 2019, Mr. Richardson was sentenced to three months in prison with two years of probation. One source purportedly linked the program's head coach Sean Miller to bribery. The University and Mr. Miller steadfastly have denied that assertion.

As a part of Mr. Richardson's sentencing, the University's General Counsel noted that the negative publicity associated with Mr. Richardson's arrest made the recruitment of future players substantially more challenging. He also noted that the University was facing the prospect of significant sanctions and penalties from the National Collegiate Athletic Association (NCAA), a member led organization that in part establishes and enforces the rules for intercollegiate competition.

After the announcement of the federal investigation and indictments, the NCAA began its own investigation into the basketball program. In October 2020, the University received a "notice of allegations" (NOA) from the NCAA. The NOA purportedly alleges nine separate rule violations, five of which are allegations of "Level I" violations classified as severe breaches of conduct that could lead to the imposition of serious sanctions. *See* NCAA Bylaw, 19.1.1. Several media outlets have requested to obtain copies of the NOA from the University pursuant to the Arizona Public Records Law, A.R.S. § 39-121, *et seq.*, but the University has denied the requests. ESPN requested the NOA in late October 2020, and on November 3, 2020, the University denied the request. In late January 2021, counsel for ESPN sent a demand letter for the NOA, and the

University denied the request the following day. The following week, ESPN filed this special action.

Legal standard

A person who has requested public records and been denied access may appeal the denial through a special action in the Superior Court. A.R.S. § 39-121.02.

Discussion

I. Public Records Requirements

In Arizona, "[p]ublic records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours." A.R.S. § 39-121. Arizona's public records statutes, adopted as early as 1939, are a part of its "government in the sunshine" laws designed to provide transparency in government. *See Matthews v. Pyle*, 75 Ariz. 76, 79 (1952) (referencing the Legislature's adoption of public records law in section 12-412, A.C.A. 1939). The purpose of Arizona's public records law is to "open agency action to the light of public scrutiny." *Scottsdale Unified School Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co.*, 191 Ariz. 297, 302 ¶ 21 (1998). Arizona evinces a general "open access" policy towards public records. *Phoenix Newspapers Inc. v. Purcell*, 187 Ariz. 74, 81 (App. 1996). Like its federal counterpart, Arizona's public records law allows the public "to be informed about what their government is up to." *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989). Arizona's law creates a presumption that records are open to the public for inspection and establishes a "clear policy favoring disclosure." *Carlson v. Pima County*, 141 Ariz. 487, 490-91 (1984).

The presumption of disclosure, however, is not absolute, and a public body or officer may withhold public records in certain circumstances. For example, Arizona courts have held that a public body or officer need not disclose public records under the following circumstances:

1) where public records are made confidential by statute, *see* Arizona Agency Handbook (Rev. 2018), appendix 6.1, Records Made Confidential/Non-Disclosable by Arizona Statute (documenting over 300 statutes);

2) where public records would inappropriately invade privacy, *see Scottsdale Unified School Dist.*, 191 Ariz. at 301 ("reasonable people do not expect that their privacy interest in information disappears merely because that information may be available through some public source"); and

3) where disclosure of public records would be "detrimental to the best interests of the State." *See Matthews*, 75 Ariz. at 81.

"If a document falls within the scope of the public record statute, then the presumption favoring disclosure applies and, when necessary, the Court can perform a balancing test to determine whether privacy, confidentiality, or the best interests of the State outweigh the policy in favor of disclosure." *Griffis v. Pinal County*, 215 Ariz. 1, 5 ¶ 13 (2007). The government bears the burden of overcoming the presumption of disclosure. *Scottsdale Unified School District*, 191 Ariz. 300 ¶ 9.

In order to withhold public records, a government entity must specifically demonstrate how release of particular information would violate privacy rights or confidentiality, or adversely affect the State's interests. *See Cox Arizona Publications v. Collins*, 175 Ariz. 11, 14 (1993); *Mitchell v. Superior Court*, 142 Ariz. 332, 335 (1984); *Judicial Watch Inc. v. City of Phoenix*, 228 Ariz. 393, 400 ¶ 30 (App. 2011); *Phoenix Newspapers Inc. v. Ellis*, 215 Ariz. 268, 273 (App. 2007). The government cannot rely on "global generalities" of possible harm that might result to forestall releasing public records. *Cox*, 175 Ariz. at 14; *Judicial Watch Inc.*, 282 Ariz. at 399.

II. The Board's Assertions of Specific Harm

In this case, the parties do not dispute that the NOA issued to the University is a public record. The Board has not argued that it can withhold it based on a statutory exemption or privacy interests. Rather, the Board argues that it can withhold the NOA in the best interests of the State. The Board points to several factors which, it argues, amount to specific harm that would result from the release of the NOA.

First, the Board asserts that disclosure would violate NCAA rules and subject the University to the possibility of additional allegations and harsher sanctions. The Board argues that NCAA Bylaws forbid the University for making public disclosures about a case until a "final decision" has been announced. Those Bylaws provide as follows:

> An institution and any individual subject to the NCAA Constitution and Bylaws involved in a case, including any representative or counsel, shall not make public disclosures about the case until a final decision has been announced in accordance with prescribed procedures.

NCAA Bylaw, 19.01.3 Public Disclosure.

In addition to the NCAA Bylaws, the Board notes that as a result of the FBI probe, the NCAA established the Independent Accountability Resolution Process (IARP) and Complex Case

Unit (CCU) in 2019 to address infractions issues. The Board argues that the IARP and CCU "radically transform" NCAA investigations by establishing a neutral and aggressive investigative body and new process for complex or serious violations. The IARP has Internal Operating Procedures that, like the NCAA Bylaws, address confidentiality. Those procedures provide:

> Confidential information shall not be publicly disclosed in contravention of applicable bylaws and procedures. Confidential information includes but is not limited to identifying information related to the case, investigative information, case management plan, hearing status reports, case record, institutional compliance reports, all other filings and other information submitted through the secure filing and case management system, and all other case-related information.

IARP Internal Operating Procedure 3-2-1.

In addition,

> The parties shall not disclose information about an investigation in violation of Bylaw 19.11.4.2 or contrary to instructions of the CCU. If a party improperly discloses information, the CCU may investigate the source of the leaked or disclosed information and bring appropriate allegations if the IRP [Independent Resolution Panel] could conclude from the information discovered that a party violated confidentiality expectations.

IARP Internal Operating Procedure 3-4-4.

Because the University's case was referred to the IARP, the Board argues that NCAA Bylaw 19.01.3 and IARP Internal Operating Procedure 3-2-1 bar it from publicly releasing the NOA until the Independent Resolution Panel publishes its "final public infractions decision."

The Board also argues that, "[w]hen a case is referred to the independent structure, the CCU will assess whether further investigation is needed. The CCU will conduct any additional investigation and submit the case for review by the independent resolution panel." https://iarpcc.org/. In this case, the University has confirmed the CCU's intention to conduct further investigation in the matter. The Board argues that additional investigation could result in either 1) additional violations being alleged, or 2) existing violations being withdrawn or modified.

A release of the NOA, according to the Board, would compromise the additional investigation and be detrimental to the University if it increases the chance of additional violations or reduces the chance of withdrawn or modified violations. The Board argues that disclosure of the details of the allegations contained in the NOA would tipoff individuals subject to the remaining aspects of the investigation, may result in individuals refusing to cooperate, or lead to

the destruction of or tampering with critical evidence. The Board argues that in other cases, the NCAA enforcement staff has issued new and amended NOA's containing additional allegations based on the results of additional investigation.

The Board further argues that the NCAA or CCU could charge that the University has failed to cooperate with the investigation if it releases the NOA. The Board notes that, in past cases, the NCAA has charged institutions who failed to cooperate with a Level I infraction. The Board argues that if it releases the NOA, the NCAA or CCU also could charge the University with obstructing an investigation or premeditated violations, and issue a higher penalty. *See* NCAA Bylaws 19.9.3 (d), (f), (m), (o). The Board argues that these additional violations would cause specific and material harm to the State due to the negative stigma associated with additional infractions, harm to the University's reputation, and diminishment of recruitment and retention efforts for prospective athletes. The Board asserts that additional violations would result in additional costs including attorneys' fees and a harmful delay in the processing of the case.

The Board notes that the risks of disclosure in this case are heightened because this is one of the first referred to the IARP. The Board argues that the consequence of violating NCAA Bylaws and IARP Internal Operating Procedures is unknown because it is an entirely new process with no precedent. The Board argues that a court order requiring immediate release of the NOA would preclude the Board from defending the allegations contained in the NOA and limit the harm caused by unproven allegations circulating in the media.

III. Analysis

1. Violations of NCAA Bylaws and IARP Internal Operating Procedures

On their face, the NCAA Bylaws and IARP Internal Operating Procedures appear to prohibit a release of the NOA. While the NOA is not a document expressly included in the confidentiality provisions, it seems clearly included the catchall provision, "all other case-related information." *See* IARP Internal Operating Procedure, 3-2-1.

Simply because release of the NOA may violate the NCAA Bylaws and IARP Internal Operating Procedures, however, does not end the public records inquiry. The State still must overcome the presumption of disclosure by specifically demonstrating how release of particular information would harm the State's best interests. In this case, the Board must show the likelihood of a serious potential harm from revelation. *See Phoenix Newspapers Inc. v. Ellis*, 215 Ariz. 268, 273 ¶ 22 (App. 2007); *Mitchell v. Superior Court*, 142 Ariz. 332, 335 ("The burden of showing the probability that specific, material harm will result from disclosure, thus justifying an exception to the usual rule of full disclosure, is on the party that seeks nondisclosure rather than on the party

that seeks access."). *See also Star Publishing Company v. Pima County Attorney's Office*, 184 Ariz. 432, 434 (App. 1994).

In this case, the Board has put forth no evidence that the NCAA, CCU, or other related body has ever brought an allegation or increased penalties for a public university's release of an NOA pursuant to a public records request. While the University's Vice President and Director of the Athletic Department and its Senior Assistant Athletic Director for compliance both testified of their awareness of the NCAA adding allegations or increasing penalties based on information obtained after initial allegations were made, neither testified that the NCAA's actions in those cases were caused by the release of public records. Both testified to their awareness that other universities have released NOA's and related documents stemming from the FBI probe, yet neither were aware that the NCAA or CCU have issued any allegations or sanctions because of that disclosure. Both testified that the NCAA or CCU has not asked them not to disclose the NOA or that the University would risk additional sanctions or allegations if it does. The Senior Assistant Athletic Director for Compliance, the University's official familiar with NCAA investigations, testified that he was unaware of whether the University had conferred with the CCU about the public record request and possible disclosure.

On this record, THE COURT FINDS that the Board has not met its burden to demonstrate that release of the NOA is likely to lead to additional NCAA allegations or sanctions that would result in specific, material harm to the State.

2. Potential for Harm to Ongoing Investigation

The NCAA Bylaws and IARP Internal Operating Procedures provide that the NCAA and CCU may further investigate allegations after the issuance of an NOA. The Board presented evidence that the CCU in fact has indicated that it is undertaking additional investigation in the University's case. The existence of an additional investigation, however, does not close the public records assessment.

Several Arizona cases have dealt with public records requests for documents related to ongoing investigations. In *Cox Arizona Publications Inc. v. Collins*, 175 Ariz. 11 (1993), our Arizona Supreme Court addressed a request for release of police reports arising out of the investigation of illegal drugs and gambling by members of the Phoenix Suns basketball team. The county attorney in that case argued that police reports in an active ongoing criminal prosecution could never be subject to disclosure because of the countervailing interests of due process, confidentiality, privacy and the best interests of the State. Our Supreme Court held that such a blanket rule "contravenes the strong public policy favoring open disclosure and access." *Id.* at 14. The Court held that it was incumbent on the county attorney "to specifically demonstrate how production of the documents would violate rights of privacy or confidentiality, or would be

'detrimental to the best interests of the State.'" *Id*. The Court found that he did not meet that burden. Instead, the Court found that the county attorney argued "in global generalities of the possible harm that might result from the release of police records" which the Court found insufficient to meet his burden. *Id*.

In *Carlson*, our Supreme Court addressed a public records request for a county sheriff's offense report implicating an inmate of the county jail in an alleged assault on another inmate. The Court held that there was a presumption in favor of releasing the report unless the State was able to show specifically that the best interests of the State would prevent inspection. *Carlson*, 141 Ariz. at 491. Likewise, in *Star Publishing Company v. Pima County Attorney's Office*, 181 Ariz. 432 (App. 1994), our Court of Appeals addressed a public records request for production of a county attorney's office's computer backup tapes. The county attorney argued that, among other concerns, some of the material might impede a pending criminal investigation. The Court held that "while these concerns might on occasion permit secrecy, no showing has been made on this record why they should preclude revelation. All that is offered is speculation." *Id* at 434.

In this case, the public body at issue is not the investigative body. Rather, it is the subject of the investigation. Nevertheless, the same rule regarding ongoing investigations must apply. The Board may not withhold documents relating to an investigation without an express showing by specific evidence that the release would be detrimental to the State.

The Board argues that disclosure of the NOA would specifically and materially harm the Board, the University and the State "by undermining the integrity of the investigation going forward." The Board argues that disclosure would improperly forewarn individuals regarding future aspects of the investigation and cause individuals to refuse to cooperate or destroy evidence. The Board, however, offered no evidence as to how the integrity of the investigation would be undermined by release of the NOA. It also offered no evidence that disclosure would improperly forewarn any individuals or cause them to refuse to cooperate. ESPN noted that there has been numerous court proceedings, plea agreements, and public trials in addition to numerous media reports related to the allegations in this case. If there is any potential of improperly impeding the investigation, it was incumbent upon the Board, specifically and materially, to show how. Because the Board has not made such a showing, THE COURT FINDS that the Board has not met its burden to demonstrate that release of the NOA would impede any ongoing investigation in such a way as to be detrimental to the State's best interests.

3. Harm to the IARP Process

The IARP was established in 2019 and therefore its precise modes of operation are uncertain. Naturally, participating institutions like the University are cautious. No rational individual or institution wishes to be the example of how to do things improperly. Nevertheless,

the recent establishment of the process cannot shield the Board from producing public records in compliance with our state laws. In this case, the University's officials testified that they have not spoken with either the NCAA or CCU about the public records request to release the NOA nor how the release would affect the resolution process.

If release of the NOA would compromise this new process, it was incumbent on the Board to show how. Because the Board has not done so, THE COURT FINDS that the Board has not met its burden to show that release of the NOA would harm the IARP or be detrimental to the best interest of the State. While the Board has expressed its desire to limit the harm caused by "unproven allegations circulating in the media," the best interests of the State exception does not exist to save an officer or public body from inconvenience or embarrassment. *Dunwell v. University of Arizona*, 134 Ariz. 504, 508 (App. 1982).

4. Timing of Production

Arizona law requires that a custodian of records must "promptly furnish" copies of public records when requested. A.R.S. §39-121.01 (D). The Board argues that it should be allowed to turn over the NOA at the completion of the investigative portion of the IARP in order to prevent the potential harm to any further investigation. The Board argues that it anticipates that this investigative phase will be completed within three to six months and that this timing would be reasonable under the public records law. The University's athletic department officials, however, testified that they did not know the exact timing of the investigation. Even assuming the Board's conclusions to be correct, THE COURT FINDS that furnishing the NOA in three to six months is not consistent with the statutory requirement to provide the records promptly.

5. Attorneys' Fees

"The Court may award attorneys' fees and other legal costs that are reasonably incurred in any action under this [public records] article if the person seeking public records has substantially prevailed." A.R.S. §39-121.02 (B). Both the determination that the petitioner substantially prevailed and the award of attorneys' fees are at the discretion of the trial court. *See Hodai v. City of Tucson*, 239 Ariz. 34, 46 ¶ 41 (App. 2016), *citing Democratic Party of Pima County v. Ford*, 228 Ariz. 545, 547-48 ¶ ¶ 8-10 (App. 2012).

In this case, THE COURT FINDS that the Board denied the public records request relying in part on NCAA Bylaws and IARP Internal Operating Procedures that on their face compel confidentiality with the threat of additional allegations or sanctions. THE COURT ALSO FINDS that the Board was grappling with the newness of the IARP procedures that caused it to place extra caution on release of information that might compromise, or be seen to compromise, an ongoing investigation. While these reasons are insufficient to protect the release of the public records, THE

COURT FINDS that they are sufficient to forestall an award of attorneys' fees. Therefore, THE COURT FINDS that although ESPN substantially prevailed in this action, no award of attorneys' fees is appropriate.

Conclusion

Based on the foregoing,

IT IS ORDERED **granting** the Application for Order to Show Cause and ordering the Board to disclose the NOA promptly in response to the public records request.

IT IS FURTHER ORDERED **denying** the request for attorneys' fees.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-008289 08/19/2020

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
C. Lacey
Deputy

BARBARA LAWALL, et al. BRETT W JOHNSON

v.

KATIE HOBBS, et al. KARA MARIE KARLSON

ARIZONANS FOR SECOND CHANCES REHABILITATION AND PUBLIC SAFETY, et al.

v.

KATIE HOBBS

THOMAS J. BASILE
ROOPALI HARDIN DESAI
DUSTIN ROMNEY
KORY A LANGHOFER
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE MIKITISH

VERDICT AND RULING

The Court has reviewed and considered all filings in the case, together with all legal authorities, evidence admitted at the evidentiary hearing on August 18, 2020, and arguments by counsel. After taking this matter under advisement at the conclusion of the hearing, the Court issued a preliminary ruling from the bench. The parties requested additional time to submit an additional stipulation before the Court entered its final verdict and ruling. Having now received that stipulation, the Court now issues its final verdict and ruling.

Background

On February 18, 2020, Arizonans for Second Chances, Rehabilitation, and Public Safety (the "Committee") filed an application for an initiative petition for the "Second Chances, Rehabilitation and Public Safety Act" (the "Initiative"). On July 2, 2020, the Committee filed with the Secretary of State petition number I-32-2020 (the "Initiative Petition") in support of the Initiative. The Initiative Petition consisted of approximately 28,964 petition sheets containing an aggregate approximately 397,291 signatures. The initiative petition must contain at least 237,435 signatures of qualified electors to qualify the initiative for the November 3, 2020 general election ballot. See Ariz. Const. art. IV, pt. 1, §1 (2), (7).

On July 22, 2020, the Secretary of State issued "preliminary results of Secretary of State review of initiative I-32-2020" (The "Secretary's Report"). The Secretary's Report provided the number of petition sheets and signatures that the Secretary disqualified pursuant to A.R.S. §19-121.01 (A). The Secretary's Report concluded that 338,202 signatures were eligible for random sampling and verification by the county recorders. See A.R.S. §19-121.02.

Petitioners filed this action seeking to restore certain petition sheets and signatures disqualified by the Secretary. On August 14, 2020, the Petitioners and Secretary stipulated to the introduction of certain evidence relating to the legal sufficiency of the petition sheets and signatures. On August 17, 2020, Barbara Lawall, Heather Grossman, Becky Miller, and John Gillis (the "Interveners") moved to intervene in the case, and on August 18, 2020, the Petitioners opposed the Motion.

The Court held the evidentiary hearing on August 18, 2020 and, after hearing argument on the Motion to Intervene, granted that Motion. The Court then took evidence in the matter. After the hearing, the parties reconvened on the same date and the Court announced its preliminary determination. The parties requested that the Court make its final ruling on August 19, 2020 include a stipulation of the parties as to a number of petition signatures that the parties agree can be added to the total previously qualified. The parties then submitted a stipulation that 976 petition signatures be added to the number previously determined by the Secretary.

Discussion

Initiative and referendum procedures are a fundamental part of Arizona's scheme of government. *Whitman v. Moore,* 59 Ariz. 211, 218–20 (1942). Although our constitution vests legislative authority "in a Legislature, ... the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; and they also reserve ... the power to approve or reject at the polls any Act, or item, section, or part of any Act of the Legislature." Ariz. Const. art. 4, pt. 1, § 1.

Fairness and Accountability in Ins. Reform v. Green, 180 Ariz. 582, 584-85 (1994). Our courts have always respected, and endeavored to uphold, the power of the people of our state to enact or reject laws by popular vote. *Molera v. Reagan*, 245 Ariz. 291, 293 ¶ 1 (2018) ("We greatly respect the initiative process, including the civic activism required to collect the signatures necessary to qualify a ballot measure, and we do not lightly disturb the fruits of such efforts.")

The Arizona Constitution directs the legislature to enact "registration and other laws to secure the purity of elections and guard against abuses of the elective franchise." Ariz. Const. art. VII, §12. State law provides that "constitutional 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). Strict compliance "requires nearly perfect compliance with constitutional and statutory" mandates. *Arrett v. Bower*, 237 Ariz. 74, 81 (App. 2015). Strict compliance applies to "all constitutional and statutory provisions, no matter how minor." *Homebuilders Association of Central Arizona v. City of Scottsdale*, 186 Ariz. 642, 648 (App. 1996), even if it's application results in what may seem to be "harsh consequences" resulting from as little as an "unfortunate mistake." *Arrett*, 237 Ariz. at 80, 83.

Once initiative petitions are circulated, signed, and filed, they are presumed valid. *Harris v. Purcell*, 193 Ariz. 409, 412 ¶ 15 (1998). Petitions and signatures disqualified by the Secretary of State are not entitled to that presumption, but the presumption may be reinstated on proof of the signature or petition's legal sufficiency. *Direct Sellers Association v. McBrayer*, 109 Ariz. 3, 5 (1972); *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 431 (1991); *Harris v. City of Bisbee*, 219 Ariz. 36, 42 ¶ 21 (App. 2008).

Here, the Petitioners seek the restoration of petition sheets and individual signatures disqualified by the Secretary of State. The Court addresses the Petitioners' I claims as follows:

Petition sheets not attached to a copy of the title and text of the initiative at the time of filing

Arizona law requires that the full title and text of an initiative the attached to petition sheets when circulated. See Ariz. Const. art. IV, pt. 1, §1 (9); A.R.S. §19-121 (A) (3). Signed petition sheets that do not have copies of the full title and text at the time they are filed with the Secretary of State will be rejected. A.R.S. §19-121.01 (A) (1) (A). Such sheets are not presumed to be valid. *Forszt v. Rodriguez*, 212 Ariz. 263 (App 2006). Those sheets, however, are not automatically void and the presumption of validity can be restored. *Id*. 265-266. In *Forszt*, the petitions were restored upon stipulations that the proponents had improperly removed all of the title and text sheets before filing the petitions.

Here, the Petitioners argue that the title and text of the measures were attached to the petitions at all times while in circulation. They argue that declarations by circulators support that conclusion as a matter of fact. They offer pictures of the petition sheets showing small remnants of page corners, staple holes, and larger pieces of paper suggesting that the title and text was previously attached but became detached at some point before filing.

The interveners argue that the pictures cannot show the time that any attached title and text was actually removed from the petition sheets. They argue that the declarations are self-serving and are not subject to cross-examination to determine the specifics regarding any particular petition sheets.

Unlike *Forszt*, here there are no stipulations between the parties. The question is whether the proof is sufficient to show that the petitions were attached to the title and text of the initiative at all times during circulation of the petition sheets. The photographs do not demonstrate when the text and title of the petitions became detached. While the declarations indicate that the circulator "always made sure that the full title and text of the initiative was attached to every petition sheets before I asked any voters to sign the petition," and "I only collected signatures on petition sheets that were attached to the full title and text of the initiative," it is not clear from the declarations whether the circulators can verify whether all of the petitions had all of the requisite attachments at all times while in circulation. While submitting declarations clearly makes any evidentiary hearing run more smoothly, it also removes the possibility of specific questions regarding patterns and practices of each individual circulator.

Because the issue of whether the title and text of the Initiative was attached to the petitions during circulation is not clear from this record, the Court cannot state with any certainty that the proponents have strictly complied with the statutory requirements. Therefore, the petitions without the title and text of the initiative attached at the Secretary of State's Office cannot be declared legally sufficient and must be rejected.

Petition sheets with circulator affidavit notarized before signatures on petition

A circulator must execute an affidavit in the presence of a notary public after the signatures on the petition have been affixed. Ariz. Const. art. IV, pt. 1, §1 (9); A.R.S. §19-112 (C)-(D). The Secretary of State rejected some petition sheets in their entirety and individual signature lines because the circulator affidavit and/or notary certificate were dated prior to the date on which one or more of the accompanying signatures was affixed.

The Petitioners present declarations from circulators and officers of the petition circulation firms affirming that after each circulator affidavit was notarized, the firm took possession of the petition sheets and stored it in a secure location where it could not be accessed.

No circulators were able to collect signatures after notarization. If an affidavit was notarized prior to the dates of the accompanying signatures, either the notary or a signer simply recorded the incorrect date.

Strict compliance requires notarization after completing signatures. In addition, the declarations are insufficient evidence to establish that the dates of the notary signatures all postdate the signatures of the petition signers. Given the requirements for service as a notary, and the specific process required by law to notarize a document, the Court has serious doubts that a notary included a wrong date on the notarized petition. While an elector may have signed the petition with the wrong date, it is up to the circulator to ensure the proper dates are used to strictly comply with the law. Therefore, the petitions with notary dates prior to the date of accompanying signatures must be rejected as invalid.

Out of county signatures

Arizona statute provides that the Secretary of State is to remove signatures of those not in the county of the majority of signers on each sheet. A.R.S. §§19-112 (C), 19-121.01 (2) (b). The Petitioners argue that the "same county" rule is merely an administrative accommodation held over from the olden days. They argue that the rule allowed the Secretary of State to transmit each petition sheet to the relevant county recorder in an era before scanning and email.

While the same county rule may appear outdated, it is still state law, and, under strict scrutiny, it must still be applied. The Court finds that the signatures of electors not in the county of the majority of signers on each sheet must be rejected as invalid.

Circulator registration numbers

Our statutes provide that all circulators of statewide ballot measures compensated for their services and not Arizona residents must, prior to collecting any signatures, register with the Secretary of State and receive an identification number. A.R.S. §19-118 (A), (C). The circulator must then include the correct identification number on both the front and back side of each petition that he or she circulates. See A.R.S. § 19-121.01. Some petition sheets were disqualified because the circulator wrote the wrong ID number or wrote the correct ID number on only one side of the petition sheets.

The Petitioners argue that such defects are merely "scrivener errors." They argue that disqualifying all accompanying signatures because of these errors unreasonably hinder the constitutional right of initiative while advancing no articulable interest in the integrity or security of the ballot measure process.

The Court finds that strict scrutiny applies to even seemingly administrative functions of the initiative process. *Compare Arrett*, 237 Ariz. at 80 ¶ 17 (serial number requirement for front and back of petition critical tool of process). The legislature has declared that monitoring the activities of out-of-state circulators is important to the ballot process. This Court is not at liberty to change that legislative determination. Therefore, petitions with invalid circulator ID numbers must be rejected as invalid.

Use of post office boxes by tribal community residents

Petition signers must supply a residential street address or a description of the place of residence. A.R.S. §§19-112 (A),-121.01 (A) (3) (b). The Petitioners argue that the Court should reinstate valid signatures by residents of tribal communities who provided a PO Box address on the petition. The Arizona Constitution requires a street and number only if any exists. Ariz. Const. art. IV, pt. 1, §1 (9). The Arizona Supreme Court has previously held that voters who lack a traditional numbered street address may rely on a post office box instead. *Whitman*, 59 Ariz. at 228-29.

Petitioners argue that residents of tribal communities often do not have traditional numbered street addresses. *Democratic National Committee v. Hobbs*, 948 F. 3d 998 ("On Navajo Reservation, most people live in remote communities… And there is no home incoming or outgoing mail, only post office boxes…") The Petitioners, however, provided a document that shows that many of the individuals who used PO Box numbers on the petition sheets in fact used street addresses or descriptions in their voter registration. Therefore, the Court cannot find that it is impossible or impracticable for the voters at issue in this case to have used either an address or physical description of the residence. Therefore, the petition signatures using PO boxes presented in this case have not met strict scrutiny of the statutory requirements or a reason to modify those requirements. Therefore, they must be rejected.

Circulator Affidavits Missing Circulator County

Arizona statutes provide that a circulator must provide information of the county in which he or she is qualified to vote. The Petitioners argue that this requirement dates back to a time where circulators were required to be residents. Those requirements were deemed unconstitutional. *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999); *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008). The Petitioners argue that the statute was amended to provide that circulators must be qualified to vote in Arizona and, in some circumstances, register with the Secretary of State, notwithstanding their state of residence. They argue that because a circulator need only be qualified to register to vote in the state, the county declaration is unnecessary and confusing.

The statute, however, still provides the form for circulators to identify themselves for electors. A.R.S. §19-112 (D). That form requires an identification of a county. In order to comply with strict scrutiny, the Court cannot modify that requirement. Therefore, the Court finds that petitions that do not identify a county where the circulator is "otherwise qualified to register to vote" must be rejected as invalid.

Conclusion

After reviewing the exhibits, authorities, pleadings, and arguments of the parties, the Court cannot find sufficient authority or proof to restore the presumption of validity of the petition sheets and signatures invalidated by the Secretary of State in any of the categories presented to the Court.

Therefore, good cause appearing,

IT IS ORDERED finding in favor of the Secretary of State and Interveners and against the Petitioners for inclusion of petitions and/or signatures previously rejected by the Secretary of State.

IT IS FURTHER ORDERED accepting the stipulation of the parties as follows:

> "The Petitioners and the Secretary of State stipulate and agree that, pursuant to the hearing held on the afternoon of August 18, 2020, a total of 976 signatures in the petition in support of initiative I-32-2020 should be reinstated to the total number of accepted signatures pursuant to A.R.S. § 19-121.01(A)(6), which is multiplied by the aggregate validity rate from the County Recorders' random sample verification in order to determine if the initiative has a sufficient number of signatures to qualify for the ballot pursuant to A.R.S. § 19-121.04."

Under A.R.S. § 19-118(F), a party must file a notice of appeal within five calendar days after entry of judgment. The Supreme Court may dismiss a belatedly prosecuted appeal, such as one filed on the last day of the statutory deadline. *See McClung v. Bennett*, 225 Ariz. 154, 235 P.3d 1037 (2010). Special procedural rules govern expedited appeals in election cases. Ariz. R. Civ. App. P. 10.

Pursuant to Rule 54(b), Ariz. R. Civ. P., and there being no just reason for delay, the court directs entry of this Judgment as a final, appealable Order. The Court signs this minute entry as an enforceable Order of the Court effective immediately.

/S/ JOSEPH P. MIKITISH
_____
HONORABLE JOSEPH P. MIKITISH
JUDGE OF THE MARICOPA COUNTY SUPERIOR COURT

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-119756-001 DT 01/09/2017

HONORABLE JOSEPH P. MIKITISH.

CLERK OF THE COURT
A. Gonzalez
Deputy

STATE OF ARIZONA

v.

JARRE EDWARD BJELIC (001)

REBECCA KATHLEEN JONES

DAVID PAUL LISH

PRETRIAL SERVICES AGENCY-CCC

UNDER ADVISEMENT DECISION/ RULING
MOTION TO SUPPRESS

BACKGROUND

On May 7, 2015, the Defendant Jarre Bjelic was indicted on 32 counts of felonies, many of them committed or facilitated by electronic usage, including luring a minor for sexual exploitation, theft by extortion, computer tampering and others. Prior to the indictment, on March 26, 2014, law enforcement executed a subpoena for electronic sources including Mr. Bjelic's cellular phone and computers. Law enforcement also questioned Mr. Bjelic about allegations they had received from one of the victims at the time they executed the warrant on Mr. Bjelic's person and automobile.

On August 30, 2016, Defendant filed his Motion to Suppress Statements, Cell Phone Data, and Witness Testimony stemming from Mr. Bjelic's statements during the questioning on March 26, 2014. Specifically, the Defendant asserts that Mr. Bjelic's provision of his cell phone pass code was based on improper questioning by the police. The State filed its response on September 26, and Mr. Bjelic filed his reply on October 7, 2016. The Court held an evidentiary hearing with arguments on the motion on November 18, 2016.

Mr. Bjelic argues that suppression is appropriate because 1) the police failed to administer Miranda warnings before a custodial interrogation of the Defendant; 2) Mr. Bjelic expressly invoked his Fifth Amendment rights; and 3) Mr. Bjelic's statements were involuntary. Mr. Bjelic argues that the law requires the Court to suppress the specific evidence because they result as fruits

of the poisonous tree from the constitutional violations. Because the Court finds there are no constitutional violations, the motion is denied.

MIRANDA REQUIREMENTS

Mr. Bjelic argues that the police improperly failed to administer Miranda warnings before their custodial interrogation of him. Under Miranda, warnings must be given before a suspect is questioned while in custody. Custody under Miranda requires a curtailment of the suspect's freedom of action, *and* also an environment that presents inherently coercive pressures as the type found in stationhouse questioning used in Miranda. *State v. Maciel*, 240 Ariz. 46, 49, 375 P.3d 938, 941 (2016). A person's freedom of movement is significantly curtailed if a reasonable person would have felt he or she was not at liberty to terminate the questioning and leave. *Id.* An environment presenting inherently coercive pressures is one that threatens to subjugate the individual to the examiner's will. *Id.*

In this case, the Court finds that Mr. Bjelic's freedom of action was substantially curtailed during the March 26, 2014 police stop to execute on the search warrant and subsequent questioning. He was pulled over while driving, taken out of his car, and handcuffed. Pursuant to a search warrant, police took his cell phone, wallet, ID, car keys, and house key. He was kept in handcuffs for approximately one hour while the lead investigative detective made his way to the scene. Once on the scene, the lead detective questioned Mr. Bjelic for approximately another hour. Although the detective had the Defendant's handcuffs removed, he did not inform the Defendant that he was free to leave until close to the end of the questioning. Mr. Bjelic's wallet, ID, and car keys had not yet been returned, making it impossible for him to leave with his car. Given all of these facts, a reasonable person would not have felt that he was at liberty to terminate the questioning and leave until the end of the interview.

Nevertheless, the inquiry into the issue of "custody" for Miranda purposes does not end there. The Court must address whether the environment of the questioning presents and inherently coercive pressure as the type found in a stationhouse interrogation. The facts of this case present a very close call. On the one hand, the environment was certainly one that would cause a reasonable person a heightened level of anxiety. The police stopped Mr. Bjelic away from his home while he was driving to work. He was handcuffed for approximately one hour while the police executed a search based on the search warrant issued and while the lead detective drove to the scene. Several police officers and law enforcement vehicles were present and firearms may have been out for a time. When the lead detective arrived, Mr. Bjelic appears to have been questioned either outside or inside a renovated police minivan that contained police equipment. In the recorded interview with the lead detective, Mr. Bjelic notes that he is nervous.

On the other hand, the environment was also somewhat casual. Mr. Bjelic bantered with many of the officers present, discussing his own role in law enforcement as a member of the Sheriff's posse and other community law enforcement programs. In the recorded interview, Mr. Bjelic is heard exchanging nicknames with the officers in the midst of laughter. The police did not threaten force, or otherwise employ coercive tactics. The lead detective had the handcuffs removed from Mr. Bjelic prior to the interview. Police delayed the interview to allow the lead detective to arrive, but there is no evidence that it was intentionally or unnecessarily delayed. The interview was conducted on the side of a public street, apparently in view of the outside world. Other officers were not nearby the Defendant during the majority of the interview. The detective informed Mr. Bjelic early in the interview process and several times thereafter that he was not under arrest, would not be leaving the scene with the police, and would not be going to jail that day.

Importantly, the form of the interrogation allowed Mr. Bjelic to control much of the process. Mr. Bjelic asked to make a statement prior to questions from the detective, and was granted the opportunity to do so. Mr. Bjelic asked whether he could phone his mother because she was an important advisor to him, and the detective offered to call her.[1] Near the end of the interview, Mr. Bjelic asked whether he could stop the questioning and resume it later with his attorney present. The police officer stated that he could, and arranged a time to meet again. At that time, prior to Mr. Bjelic providing the pass code, the officer stated that the Defendant did not have to talk to him. The recorded interview took approximately one hour, but much of the conversation was led by Mr. Bjelic, which lengthened the discussion significantly as he talked at length on numerous topics not related to the investigation. Considering all of these facts, the environment did not present inherently coercive pressures that served to subjugate the Defendant's will to the Detective's questioning.

Given the totality of the circumstances, the Court finds that Mr. Bjelic was not in custody for purposes of Miranda.

FIFTH AMENDMENT REQUIREMENTS

The Defendant also asserts that the questioning was improper because it violated his right not to incriminate himself. He notes that he twice stated during the interview, "I don't want to incriminate myself." He also notes that he stated during the interview, "is this the point where I need to ask for a lawyer?" He argues that these statements were either explicit invocations of his Fifth Amendment rights, in which case questioning was required to cease immediately, or that they were ambiguous invocations of his Fifth Amendment rights, in which case the police were only allowed to continue questioning to clarify his intent. The Defendant argues that, in either event,

[1] Mr. Bjelic later changed his mind and decided not to call his mother.

the police improperly continued questioning on issues involved in the case, specifically the Defendant's passcode to his cell phone.

The Court disagrees. Even though a suspect invokes his right to decline further interrogation, or requests to speak to a lawyer, police may continue to question the Defendant so long as he is not in custody and his responses are voluntary. *State v. Stanley*, 167 Ariz. 519, 526, 809 P.2d 944, 951 (1991). Therefore, because the Court finds that Mr. Bjelic was not in custody, the police could continue questioning regardless of his request not to incriminate himself and for the presence of lawyer, so long as his responses were voluntary.

The provisions of Miranda warnings are a factor in determining whether a statement is voluntary. In addition, "promises of benefits or leniency, whether direct or implied, even if only slight in value, are impermissibly coercive." *State v. Lopez*, 174 Ariz. 131, 138, 847 P.2d 1078, 1085 (1992). In order for a Court to determine a statement is involuntary because of a promise, there must be evidence that a promise of a benefit or leniency was made, and that the Defendant relied on the promise in making the statement. *Id.*

The Defendant argues that the police did not give Mr. Bjelic Miranda warnings. The Defendant further argues that the police promised benefits and leniency when the lead detective told Mr. Bjelic that he would not be going to prison for his involvement in the crimes related to this case. It is also arguable whether the police promised benefits by promising to return Mr. Bjelic's cell phone more quickly if he cooperated and provided his passcode.

Although he was not provided with his Miranda rights by the police, Mr. Bjelic statements and conduct made clear that he was aware of his right to speak to an attorney and not to incriminate himself based on his participation in law enforcement activities, such as the Sheriff's posse, and his knowledge of the law through the media, including watching crime drama such as "Law and Order."

In addition, while the lead detective's statement that Mr. Bjelic would not be going to prison is certainly a positive outcome for the Defendant, the Court finds that it was not made as a *quid pro quo* for Mr. Bjelic to provide his passcode. In other words, the Detective did not state that Mr. Bjelic would not go to prison if he provided his passcode. The Detective simply stated that, presumably for the crimes that he was aware of, Mr. Bjelic would not go to prison. He also stated on several occasions that he could not promise any outcome in the case and how the County Attorney would or would not proceed.

Finally, while the detective promised to return Mr. Bjelic's cell phone more quickly if he provided the passcode, there is no evidence that Mr. Bjelic relied on that promise in order to give his passcode. Rather, right before he provided the passcode to the detective, Mr. Bjelic stated to

the detective that the police would probably get the passcode by issuing a warrant. He also wondered aloud whether he would have to buy a new cell phone. The detective responded that police probably could get a warrant. He also stated that the police would have to keep the phone several days, but that the police would get it back as quickly as possible so that Mr. Bjelic would not be inconvenienced too much. Whether Mr. Bjelic rightly or wrongly concluded the police could get the passcode in another manner, Mr. Bjelic did not appear to rely on a promised benefit for a speedy return in order to provide the passcode.

THE COURT FINDS that Mr. Bjelic's Statements and the password to his cell phone were made voluntarily and not as a result of promises the police made to the Defendant.

CONCLUSION

For the foregoing reasons,

IT IS ORDERED denying the Motion to Suppress.

IT IS FURTHER ORDERED affirming the Status Conference date of FEBRUARY 13, 2017 at 8:30 a.m. before the HON. JOSEPH P. MIKITISH.

LAST DAY REMAINS: 4/3/2017

Mikitish Application, Attachment, Question 65

Judicial Report

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

Back To List Print View

Maricopa County Voters Only

Hon. Joseph Mikitish
Maricopa County Superior Court
Bench: Family
Appointed: 2013

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

Full Bio

2016	**Attorney Surveys** Distributed: 165 Returned: 43 Detailed Report **Score (See Footnote)**	**Juror Surveys** Distributed: 0 Returned: 0 Detailed Report **Score (See Footnote)**	**Litigant Witness Surveys** Distributed: 168 Returned: 9 Detailed Report **Score (See Footnote)**
Legal Ability	97%	n/a	n/a
Integrity	98%	n/a	100%
Communication	95%	n/a	100%
Temperament	97%	n/a	100%
Admin Performance	86%	n/a	100%
Settlement Activities	100%	n/a	n/a

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

Top of Form**Hon. Joseph Mikitish** **2016 Attorney Survey Responses**

Key: **UN** = Unsatisfactory **PO** = Poor **SA** = Satisfactory **VG** = Very Good **SU** = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
1. Legal Ability	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Legal reasoning ability	0	0%	2	5%	6	16%	10	27%	19	51%	3.24	37	0
2. Knowledge of substantive law	0	0%	1	3%	7	18%	11	29%	19	50%	3.26	38	0
3. Knowledge of rules of evidence	1	3%	0	0%	6	18%	8	24%	19	56%	3.29	34	0
4. Knowledge of rules of procedure	0	0%	1	3%	6	15%	11	28%	22	55%	3.35	40	0
Category Total	**1**	**1%**	**4**	**3%**	**25**	**17%**	**40**	**27%**	**79**	**53%**	**3.29**	**149**	
2. Integrity													
5. Basic fairness and impartiality	0	0%	3	7%	4	10%	11	27%	23	56%	3.32	41	0
6. Equal treatment regardless of race	0	0%	0	0%	2	7%	7	24%	20	69%	3.62	29	0
7. Equal treatment regardless of gender	1	3%	1	3%	4	11%	8	22%	23	62%	3.38	37	0
8. Equal treatment regardless of religion	0	0%	0	0%	2	8%	5	20%	18	72%	3.64	25	0
9. Equal treatment regardless of national origin	0	0%	0	0%	2	8%	5	21%	17	71%	3.62	24	0
10. Equal treatment regardless of disability	1	4%	0	0%	1	4%	3	13%	18	78%	3.61	23	0
11. Equal treatment regardless of age	0	0%	0	0%	3	11%	5	19%	19	70%	3.59	27	0
12. Equal treatment regardless of sexual orientation	0	0%	0	0%	2	11%	2	11%	15	79%	3.68	19	0
13. Equal treatment regardless of economic status	0	0%	0	0%	3	10%	6	20%	21	70%	3.60	30	0
Category Total	**2**	**1%**	**4**	**2%**	**23**	**9%**	**52**	**20%**	**174**	**68%**	**3.54**	**255**	
3. Communication													
14. Clear and logical oral communications and directions	2	5%	0	0%	6	15%	11	27%	22	54%	3.24	41	0
15. Clear and logical written decisions	2	6%	1	3%	7	20%	6	17%	19	54%	3.11	35	0
16. Gave all parties an adequate opportunity to be heard	1	3%	0	0%	5	13%	8	20%	26	65%	3.45	40	0

Category Total	**5**	**4%**	**1**	**1%**	**18**	**16%**	**25**	**22%**	**67**	**58%**	**3.28**	**116**	
4. Temperament													
17. Understanding and compassion	0	0%	1	3%	5	13%	11	28%	23	57%	3.40	40	0
18. Dignified	1	2%	0	0%	5	12%	9	21%	27	64%	3.45	42	0
19. Courteous	0	0%	0	0%	4	10%	9	21%	29	69%	3.60	42	0
20. Conduct that promoted public confidence in the court and judge"s ability	2	5%	2	5%	4	10%	6	14%	28	67%	3.33	42	0
21. Patient	0	0%	1	2%	4	10%	9	21%	28	67%	3.52	42	0
Category Total	**3**	**1%**	**4**	**2%**	**22**	**11%**	**44**	**21%**	**135**	**65%**	**3.46**	**208**	
5. Admin Performance													
22. Punctual in conducting proceedings	3	7%	3	7%	2	5%	11	26%	23	55%	3.14	42	0
23. Maintained proper control over courtroom	1	2%	0	0%	6	15%	11	27%	23	56%	3.34	41	0
24. Prompt in making rulings and rendering decisions	5	13%	6	15%	4	10%	9	23%	16	40%	2.62	40	0
25. Was prepared for the proceedings	3	7%	1	2%	3	7%	10	24%	24	59%	3.24	41	0
26. Efficient management of the calendar	3	8%	3	8%	6	15%	5	13%	23	57%	3.05	40	0
Category Total	**15**	**7%**	**13**	**6%**	**21**	**10%**	**46**	**23%**	**109**	**53%**	**3.08**	**204**	
6. Settlement Activities													
27. Appropriately promoted or conducted settlement	0	0%	0	0%	5	25%	5	25%	10	50%	3.25	20	0
Category Total	**0**	**0%**	**0**	**0%**	**5**	**25%**	**5**	**25%**	**10**	**50%**	**3.25**	**20**	

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

Hon. Joseph Mikitish

2016 Litigant Witness Survey Responses

Key: **UN** = Unsatisfactory **PO** = Poor **SA** = Satisfactory **VG** = Very Good **SU** = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
1. Integrity	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Basic fairness and impartiality	0	0%	0	0%	0	0%	2	22%	7	78%	3.78	9	0
2. Equal treatment regardless of race	0	0%	0	0%	0	0%	1	13%	7	88%	3.88	8	0
3. Equal treatment regardless of gender	0	0%	0	0%	0	0%	1	13%	7	88%	3.88	8	0
4. Equal treatment regardless of religion	0	0%	0	0%	0	0%	2	25%	6	75%	3.75	8	0
5. Equal treatment regardless of national origin	0	0%	0	0%	0	0%	1	13%	7	88%	3.88	8	0
6. Equal treatment regardless of disability	0	0%	0	0%	0	0%	2	25%	6	75%	3.75	8	0
7. Equal treatment regardless of age	0	0%	0	0%	0	0%	2	25%	6	75%	3.75	8	0
8. Equal treatment regardless of sexual orientation	0	0%	0	0%	0	0%	2	25%	6	75%	3.75	8	0
9. Equal treatment regardless of economic status	0	0%	0	0%	0	0%	2	25%	6	75%	3.75	8	0
Category Total	**0**	**0%**	**0**	**0%**	**0**	**0%**	**15**	**21%**	**58**	**79%**	**3.79**	**73**	
2. Communication													
10. Explained proceedings	0	0%	0	0%	0	0%	2	22%	7	78%	3.78	9	0
11. Explained reasons for delays	0	0%	0	0%	0	0%	2	40%	3	60%	3.60	5	0
Category Total	**0**	**0%**	**0**	**0%**	**0**	**0%**	**4**	**29%**	**10**	**71%**	**3.71**	**14**	
3. Temperament													
12. Understanding and compassion	0	0%	0	0%	0	0%	2	22%	7	78%	3.78	9	0

13. Dignified	0	0%	0	0%	0	0%	2	22%	7	78%	3.78	9	0
14. Courteous	0	0%	0	0%	0	0%	2	22%	7	78%	3.78	9	0
15. Conduct that promotes public confidence in the court	0	0%	0	0%	0	0%	2	22%	7	78%	3.78	9	0
16. Patient	0	0%	0	0%	0	0%	2	22%	7	78%	3.78	9	0
Category Total	**0**	**0%**	**0**	**0%**	**0**	**0%**	**10**	**22%**	**35**	**78%**	**3.78**	**45**	
4. Admin Performance													
17. Punctual in conducting proceedings	0	0%	0	0%	0	0%	2	22%	7	78%	3.78	9	0
18. Maintained proper control of courtroom	0	0%	0	0%	0	0%	2	22%	7	78%	3.78	9	0
19. Was prepared for the proceedings	0	0%	0	0%	0	0%	2	22%	7	78%	3.78	9	0
Category Total	**0**	**0%**	**0**	**0%**	**0**	**0%**	**6**	**22%**	**21**	**78%**	**3.78**	**27**	

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

Superior Court

Name of Judge: **Total Surveys: 83** **Assignment: Criminal** **Cycle: Mid-Term Review**

MCCRI-19 Hon. Joseph P. Mikitish	ATTORNEY UN	PO	SA	VG	SU	45 Resp	Mean	LIT/WIT/PRO PER UN	PO	SA	VG	3 Resp	Mean	JUROR UN	PO	SA	VG	SU	20 Resp	Mean	STAFF UN	PO	SA	VG	SU	15 Resp	Mean
Section I: Legal Ability	**1**	**1**	**9**	**16**	**14**	**40**	**3.0**																				
Legal reasoning ability	1	0	7	19	14	41	3.1																				
Knowledge of substantive law	1	1	10	14	15	41	3.0																				
Knowledge of rules of evidence	1	1	9	14	13	38	3.0																				
Knowledge of rules of procedure	1	1	8	17	13	40	3.0																				
Section II: Integrity	**1**	**0**	**2**	**16**	**23**	**42**	**3.4**	**0**	**0**	**0**	**1**	**2**	**3.5**	**0**	**0**	**1**	**6**	**11**	**18**	**3.5**	**0**	**0**	**0**	**3**	**7**	**10**	**3.7**
Basic fairness and impartiality	1	2	3	16	23	45	3.3	0	0	0	1	2	3.5	0	1	1	6	12	20	3.5	0	0	0	3	7	10	3.7
Equal treatment regardless of race	1	0	3	17	23	44	3.4	0	0	0	1	2	3.5	0	1	1	6	11	19	3.4	0	0	0	3	7	10	3.7
Equal treatment regardless of gender	1	0	2	17	23	43	3.4	0	0	0	1	2	3.5	0	0	1	6	11	18	3.6	0	0	0	3	7	10	3.7
Equal treatment regardless of religion	1	0	1	16	23	41	3.5	0	0	0	1	2	3.5	0	0	1	6	11	18	3.6	0	0	0	3	7	10	3.7
Equal treatment regardless of national origin	1	0	1	17	23	42	3.5	0	0	0	1	2	3.5	0	0	1	6	11	18	3.6	0	0	0	3	7	10	3.7
Equal treatment regardless of disability	1	0	1	16	23	41	3.5	0	0	0	1	2	3.5	0	0	1	6	10	17	3.5	0	0	0	3	7	10	3.7
Equal treatment regardless of age	1	0	1	16	23	41	3.5	0	0	0	1	2	3.5	0	0	1	6	11	18	3.6	0	0	0	3	7	10	3.7
Equal treatment regardless of sexual orientation	1	0	1	15	21	38	3.4	0	0	0	1	2	3.5	0	0	1	5	11	17	3.6	0	0	0	3	7	10	3.7
Equal treatment regardless of economic status	1	1	2	14	23	41	3.4	0	0	0	1	2	3.5	0	0	1	4	11	16	3.6	0	0	0	3	7	10	3.7
Section III: Communication Skills	**1**	**0**	**3**	**17**	**18**	**40**	**3.3**	**0**	**0**	**0**	**1**	**2**	**3.7**	**0**	**2**	**2**	**4**	**12**	**20**	**3.2**	**0**	**0**	**0**	**3**	**7**	**10**	**3.7**
Clear and logical communications																					0	0	0	3	7	10	3.7
Clear and logical oral communications and directions	1	0	3	23	17	44	3.3																				
Clear and logical written decisions	2	0	3	13	13	31	3.1																				
Gave all parties an adequate opportunity to be heard	1	0	3	15	25	44	3.4																				
Explained proceedings (to the jury)								0	0	0	1	2	3.5	0	1	3	4	12	20	3.4							
Explained reason for delays								0	0	0	0	1	4.0	1	3	3	2	11	20	3.0							
Clearly explained the juror's responsibilities														0	2	1	5	12	20	3.4							
Section IV: Judicial temperament	**1**	**0**	**1**	**12**	**30**	**44**	**3.6**	**0**	**0**	**0**	**1**	**2**	**3.5**	**1**	**0**	**3**	**4**	**12**	**20**	**3.3**	**0**	**0**	**0**	**2**	**9**	**11**	**3.8**
Understanding and compassion	1	1	4	9	29	44	3.5	0	0	0	1	2	3.5	1	0	3	4	12	20	3.3	0	0	0	2	9	11	3.8
Dignified	1	0	0	14	29	44	3.6	0	0	0	1	2	3.5	1	0	4	3	12	20	3.3	0	0	0	2	9	11	3.8
Courteous	1	0	0	11	32	44	3.7	0	0	0	1	2	3.5	1	0	3	4	12	20	3.3	0	0	0	2	9	11	3.8
Conduct that promotes public confidence in the court	1	0	2	13	27	43	3.5	0	0	0	1	2	3.5	1	1	2	4	12	20	3.3	0	0	0	2	7	9	3.8
Patient	1	0	0	12	31	44	3.6	0	0	0	1	2	3.5	1	0	2	5	12	20	3.4	0	0	0	2	9	11	3.8
Section V: Administrative Performance	**1**	**0**	**3**	**14**	**25**	**43**	**3.4**	**0**	**0**	**0**	**1**	**2**	**3.5**	**0**	**2**	**3**	**5**	**10**	**20**	**3.1**	**0**	**0**	**0**	**1**	**7**	**9**	**3.8**
Punctual in conducting proceedings	1	0	2	15	26	44	3.5	0	0	0	1	2	3.5	1	4	4	5	6	20	2.6	0	0	0	3	5	8	3.6
Maintained proper control of courtroom	1	0	5	15	22	43	3.3	0	0	0	1	2	3.5	0	1	1	6	12	20	3.5	0	0	1	1	7	9	3.7
Prompt in making rulings and rendering decisions	1	1	4	10	23	39	3.4																				
Was prepared for the proceedings	1	0	2	14	28	45	3.5	0	0	0	1	2	3.5	0	2	3	3	12	20	3.3	0	0	0	1	8	9	3.9
Respectful treatment of staff																					0	0	0	1	9	10	3.9
Cooperation with peers																					0	0	0	1	7	8	3.9
Efficient management of calendar	1	0	3	16	25	45	3.4														0	0	0	1	8	9	3.9
Section VI: Settlement Activities	**1**	**0**	**1**	**9**	**11**	**22**	**3.3**																				
Appropriately promoted or conducted settlement	1	0	1	9	11	22	3.3																				

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

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW **Superior Court**

Name of Judge: Total Surveys: 69 Assignment: Criminal Cycle: Retention Election

MCCRI-18	ATTORNEY					45		LIT/WIT/PRO PER					8		JUROR					9		STAFF					7	
Hon. Joseph Mikitish	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	21	12	7	2	1	42	3.2																					
Legal reasoning ability	21	14	4	3	1	43	3.2																					
Knowledge of substantive law	21	12	7	2	1	43	3.2																					
Knowledge of rules of evidence	21	11	8	0	0	40	3.3																					
Knowledge of rules of procedure	21	12	8	1	1	43	3.2																					
Section II: Integrity	24	7	7	0	0	38	3.4	5	3	0	0	0	7	3.7	7	1	0	0	0	8	3.9	4	3	0	0	0	7	3.6
Basic fairness and impartiality	26	9	6	2	1	44	3.3	4	4	0	0	0	8	3.5	8	1	0	0	0	9	3.9	4	3	0	0	0	7	3.6
Equal treatment regardless of race	24	7	7	0	0	38	3.4	5	3	0	0	0	8	3.6	8	1	0	0	0	9	3.9	4	3	0	0	0	7	3.6
Equal treatment regardless of gender	24	7	7	0	0	38	3.4	5	3	0	0	0	8	3.6	7	1	0	0	0	8	3.9	4	3	0	0	0	7	3.6
Equal treatment regardless of religion	23	7	7	0	0	37	3.4	5	2	0	0	0	7	3.7	6	1	0	0	0	7	3.9	4	3	0	0	0	7	3.6
Equal treatment regardless of national origin	24	7	6	0	0	37	3.5	5	2	0	0	0	7	3.7	7	1	0	0	0	8	3.9	4	3	0	0	0	7	3.6
Equal treatment regardless of disability	25	7	6	0	0	38	3.5	5	2	0	0	0	7	3.7	7	1	0	0	0	8	3.9	4	3	0	0	0	7	3.6
Equal treatment regardless of age	24	7	7	0	0	38	3.4	5	3	0	0	0	8	3.6	7	1	0	0	0	8	3.9	4	3	0	0	0	7	3.6
Equal treatment regardless of sexual orientation	24	7	6	0	0	37	3.5	5	2	0	0	0	7	3.7	5	1	0	0	0	6	3.8	4	3	0	0	0	7	3.6
Equal treatment regardless of economic status	23	8	7	0	0	38	3.4	5	2	0	0	0	7	3.7	7	1	0	0	0	8	3.9	4	3	0	0	0	7	3.6
Section III: Communication Skills	22	11	6	2	1	42	3.2	4	4	0	0	0	8	3.5	7	1	0	0	0	8	3.8	4	3	0	0	0	7	3.6
Clear and logical communications																						4	3	0	0	0	7	3.6
Clear and logical oral communications and directions	23	12	6	2	1	44	3.2																					
Clear and logical written decisions	19	10	5	2	1	37	3.2																					
Gave all parties an adequate opportunity to be heard	24	12	6	2	0	44	3.3																					
Explained proceedings (to the jury)								4	4	0	0	0	8	3.5	8	1	0	0	0	9	3.9							
Explained reason for delays								3	4	0	0	0	7	3.4	6	1	1	0	0	8	3.6							
Clearly explained the juror's responsibilities															7	1	0	0	0	8	3.9							
Section IV: Judicial temperament	27	12	5	1	1	45	3.4	5	3	0	0	0	8	3.6	8	1	0	0	0	9	3.9	4	3	0	0	0	7	3.6
Understanding and compassion	25	12	5	2	1	45	3.3	5	2	0	0	0	7	3.7	8	1	0	0	0	9	3.9	4	3	0	0	0	7	3.6
Dignified	28	11	5	0	1	45	3.4	5	3	0	0	0	8	3.6	8	1	0	0	0	9	3.9	5	2	0	0	0	7	3.7
Courteous	29	11	5	0	0	45	3.5	5	3	0	0	0	8	3.6	8	1	0	0	0	9	3.9	4	3	0	0	0	7	3.6
Conduct that promotes public confidence in the court	26	11	4	3	1	45	3.3	5	3	0	0	0	8	3.6	8	1	0	0	0	9	3.9	4	3	0	0	0	7	3.6
Patient	26	14	5	0	0	45	3.5	5	3	0	0	0	8	3.6	8	1	0	0	0	9	3.9	5	2	0	0	0	7	3.7
Section V: Administrative Performance	25	13	5	1	0	43	3.4	5	3	0	0	0	8	3.6	8	1	0	0	0	9	3.9	4	3	0	0	0	7	3.6
Punctual in conducting proceedings	25	13	6	0	0	44	3.4	5	3	0	0	0	8	3.6	7	2	0	0	0	9	3.8	3	3	1	0	0	7	3.3
Maintained proper control of courtroom	27	12	5	0	0	44	3.5	5	3	0	0	0	8	3.6	8	1	0	0	0	9	3.9	4	3	0	0	0	7	3.6
Prompt in making rulings and rendering decisions	24	13	5	1	0	43	3.4																					
Was prepared for the proceedings	25	14	3	1	0	43	3.5	5	3	0	0	0	8	3.6	8	1	0	0	0	9	3.9	5	2	0	0	0	7	3.7
Respectful treatment of staff																						5	2	0	0	0	7	3.7
Cooperation with peers																						4	1	0	0	0	5	3.8
Efficient management of calendar	23	15	4	1	0	43	3.4															3	4	0	0	0	7	3.4
Section VI: Settlement Activities	18	8	4	3	0	33	3.2																					
Appropriately promoted or conducted settlement	18	8	4	3	0	33	3.2																					

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ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW **Superior Court**

Name of Judge: Total Surveys: 69 Assignment: Criminal Cycle: Retention Election

MCCRI-18	ATTORNEY					45	LIT/WIT/PRO PER					8	JUROR					9	STAFF					7
Hon. Joseph Mikitish	SU	VG	SA	PO	UN	Mean	SU	VG	SA	PO	UN	Mean	SU	VG	SA	PO	UN	Mean	SU	VG	SA	PO	UN	Mean
Section I: Legal Ability	50%	29%	16%	4%	2%	3.2																		
Legal reasoning ability	49%	33%	9%	7%	2%	3.2																		
Knowledge of substantive law	49%	28%	16%	5%	2%	3.2																		
Knowledge of rules of evidence	53%	28%	20%	0%	0%	3.3																		
Knowledge of rules of procedure	49%	28%	19%	2%	2%	3.2																		
Section II: Integrity	63%	19%	17%	1%	0%	3.4	66%	34%	0%	0%	0%	3.7	87%	13%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Basic fairness and impartiality	59%	20%	14%	5%	2%	3.3	50%	50%	0%	0%	0%	3.5	89%	11%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Equal treatment regardless of race	63%	18%	18%	0%	0%	3.4	63%	38%	0%	0%	0%	3.6	89%	11%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Equal treatment regardless of gender	63%	18%	18%	0%	0%	3.4	63%	38%	0%	0%	0%	3.6	88%	13%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Equal treatment regardless of religion	62%	19%	19%	0%	0%	3.4	71%	29%	0%	0%	0%	3.7	86%	14%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Equal treatment regardless of national origin	65%	19%	16%	0%	0%	3.5	71%	29%	0%	0%	0%	3.7	88%	13%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Equal treatment regardless of disability	66%	18%	16%	0%	0%	3.5	71%	29%	0%	0%	0%	3.7	88%	13%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Equal treatment regardless of age	63%	18%	18%	0%	0%	3.4	63%	38%	0%	0%	0%	3.6	88%	13%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Equal treatment regardless of sexual orientation	65%	19%	16%	0%	0%	3.5	71%	29%	0%	0%	0%	3.7	83%	17%	0%	0%	0%	3.8	57%	43%	0%	0%	0%	3.6
Equal treatment regardless of economic status	61%	21%	18%	0%	0%	3.4	71%	29%	0%	0%	0%	3.7	88%	13%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Section III: Communication Skills	53%	27%	14%	5%	2%	3.2	47%	53%	0%	0%	0%	3.5	84%	12%	4%	0%	0%	3.8	57%	43%	0%	0%	0%	3.6
Clear and logical communications																			57%	43%	0%	0%	0%	3.6
Clear and logical oral communications and directions	52%	27%	14%	5%	2%	3.2																		
Clear and logical written decisions	51%	27%	14%	5%	3%	3.2																		
Gave all parties an adequate opportunity to be heard	55%	27%	14%	5%	0%	3.3																		
Explained proceedings (to the jury)							50%	50%	0%	0%	0%	3.5	89%	11%	0%	0%	0%	3.9						
Explained reason for delays							43%	57%	0%	0%	0%	3.4	75%	13%	13%	0%	0%	3.6						
Clearly explained the juror's responsibilities													88%	13%	0%	0%	0%	3.9						
Section IV: Judicial temperament	60%	26%	11%	2%	1%	3.4	64%	36%	0%	0%	0%	3.6	89%	11%	0%	0%	0%	3.9	63%	37%	0%	0%	0%	3.6
Understanding and compassion	56%	27%	11%	4%	2%	3.3	71%	29%	0%	0%	0%	3.7	89%	11%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Dignified	62%	24%	11%	0%	2%	3.4	63%	38%	0%	0%	0%	3.6	89%	11%	0%	0%	0%	3.9	71%	29%	0%	0%	0%	3.7
Courteous	64%	24%	11%	0%	0%	3.5	63%	38%	0%	0%	0%	3.6	89%	11%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Conduct that promotes public confidence in the court	58%	24%	9%	7%	2%	3.3	63%	38%	0%	0%	0%	3.6	89%	11%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Patient	58%	31%	11%	0%	0%	3.5	63%	38%	0%	0%	0%	3.6	89%	11%	0%	0%	0%	3.9	71%	29%	0%	0%	0%	3.7
Section V: Administrative Performance	57%	31%	11%	1%	0%	3.4	63%	38%	0%	0%	0%	3.6	85%	15%	0%	0%	0%	3.9	60%	38%	3%	0%	0%	3.6
Punctual in conducting proceedings	57%	30%	14%	0%	0%	3.4	63%	38%	0%	0%	0%	3.6	78%	22%	0%	0%	0%	3.8	43%	43%	14%	0%	0%	3.3
Maintained proper control of courtroom	61%	27%	11%	0%	0%	3.5	63%	38%	0%	0%	0%	3.6	89%	11%	0%	0%	0%	3.9	57%	43%	0%	0%	0%	3.6
Prompt in making rulings and rendering decisions	56%	30%	12%	2%	0%	3.4																		
Was prepared for the proceedings	58%	33%	7%	2%	0%	3.5	63%	38%	0%	0%	0%	3.6	89%	11%	0%	0%	0%	3.9	71%	29%	0%	0%	0%	3.7
Respectful treatment of staff																			71%	29%	0%	0%	0%	3.7
Cooperation with peers																			80%	20%	0%	0%	0%	3.8
Efficient management of calendar	53%	35%	9%	2%	0%	3.4													43%	57%	0%	0%	0%	3.4
Section VI: Settlement Activities	55%	24%	12%	9%	0%	3.2																		
Appropriately promoted or conducted settlement	55%	24%	12%	9%	0%	3.2																		

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