

**APPLICATION FOR NOMINATION TO
JUDICIAL OFFICE**

**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 71)**

PERSONAL INFORMATION

1. Full Name: Karl Christopher Eppich

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

3. Office Address: Pinal County Superior Court
971 N. Jason Lopez Cir., Bldg. A
P.O. Box 946
Florence, AZ 85132

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

25 years. 85140

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

Pinal County since May 2007

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

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

7. List your present and any former political party registrations and approximate

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dates of each:

Republican 1997-present
Democrat 1996
Republican 1980-1995

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

8. Gender: Male

Race/Ethnicity: White

EDUCATIONAL BACKGROUND

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

Stanford Law School, Stanford, CA 8/89 - 5/92 Doctor of Jurisprudence

Univ. of California at Irvine 3/87 – 8/88 Bachelor of Arts

Humboldt State Univ., Arcata, CA 9/82 – 1/83

California State Univ. at Northridge 1/81 – 5/81

Univ. of Southern Calif., Los Angeles 9/78 -1/80

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

Undergraduate: Major in Social Ecology with emphasis in Criminology, Criminal Justice and Legal Studies

Law School: Co-founder/co-chairman Stanford Criminal Law Association
Member, Federalist Society for Law and Public Policy Studies

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

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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.

State of Arizona 10/92
U.S. District Court, Arizona 12/92
Hopi Tribal Court 9/98 (inactive)

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.

| | | |
|------------------------------|-----------------|--------------|
| Pinal County Superior Court | | Florence, AZ |
| Presiding Family Court Judge | 1/15 – present | |
| Judge | 6/14 – present | |
| Mesa Municipal Court | 10/2000 – 6/14 | Mesa, AZ |
| Judge | | |
| Arizona Court of Appeals | 4/99 – 9/2000 & | Phoenix, AZ |
| Staff Attorney | 8/97 – 8/98 | |
| Phoenix Municipal Court | 5/99 – 9/2000 | Phoenix, AZ |
| Judge Pro Tem | | |
| Tempe Municipal Court | 7/99 – 9/2000 | Tempe, AZ |
| Judge Pro Tem | | |

| | | |
|---|-------------|------------------------|
| Mangum, Wall, Stoops & Warden Associate | 8/98 – 4/99 | Flagstaff, AZ |
| Apache County Attorney Deputy County Attorney | 9/94 – 8/97 | St. Johns, AZ |
| Lewis and Roca Associate | 9/92 – 9/94 | Phoenix, AZ |
| Lewis and Roca Law Clerk | Summer 1991 | Phoenix & Tucson, AZ |
| Santa Clara County District Attorney Law Clerk/Bar-Certified Law Student | 1990 | San Jose, CA |
| Pacific Legal Foundation Law Clerk | Summer 1990 | Sacramento, CA |
| Los Angeles County Sheriff Deputy Sheriff | 9/88 – 8/89 | Valencia & Castaic, CA |

During gaps in employment 8/89-9/92 I was a law student or studying for the bar.

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.

Judge Stephen McCarville
 Judge Joseph Georgini
 Judge Steven Fuller
 Judge Jason Holmberg
 Judge Delia Neal
 Commissioner Lawrence Wharton
 Commissioner Richard Platt
 Commissioner Patrick Gard

Judge Kevin White
 Judge Brenda Oldham
 Judge Daniel Washburn
 Judge Henry Gooday
 Commissioner Dwight Callahan
 Commissioner DeLana Fuller
 Commissioner R. Carter Olsen
 Commissioner Megan Weagant

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.

Practice prior to appointment to the bench:

As a staff attorney at the Arizona Court of Appeals, I drafted opinions and memorandum decisions in felony criminal cases, presented drafts at panel conferences and attended oral arguments.

At Mangum, Wall in Flagstaff I practiced primarily in the areas of insurance and municipal defense, with a smaller part of my caseload involving education, employment and administrative law. I also served as a contract municipal prosecutor a few hours per month.

As a deputy county attorney in Apache County, I was responsible for the vertical prosecution of all types of felony and misdemeanor criminal cases. Additional responsibilities involved occasionally providing legal advice to the county assessor and the local fire district board.

At Lewis and Roca my practice was equally divided among the areas of commercial litigation, insurance defense and product liability litigation.

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

Not applicable.

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

Not applicable.

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

As a judge, I draft written rulings on motions and other matters presented to me. In my current assignment this includes preparing marital dissolution decrees and other family law orders. As a staff attorney with the Court of Appeals, I drafted memorandum decisions and opinions. As a prosecutor and in private civil practice I drafted various types of motions (*e.g.*, summary judgment, discovery, responses to motions to suppress or dismiss, *in limine* evidentiary motions) and appellate briefs. I have also negotiated settlements (criminal and civil) and negotiated terms for purchase of a business.

I currently serve on the Arizona Supreme Court's Task Force on the Rules of Family Law Procedure, which is charged with reviewing and restyling the rules. I also serve on the Arizona State Bar Family Law Practice and Procedure Committee, which drafts proposed rule changes and comments on rule change petitions submitted by others. As a member of the State Bar Criminal Practice

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and Procedure Committee I participated in drafting proposed rule changes and comments on proposed amendments to the Rules of Criminal Procedure.

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

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

I represented the Flagstaff Unified School District against a former employee in a "whistle-blower" hearing before an independent administrative hearing officer.

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

Sole Counsel: 1

Chief Counsel: _____

Associate Counsel: _____

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

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

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

As a deputy county attorney, I represented the State in each of the following matters:

State V. Warren Drye, Apache County Superior Court, 1996-97

Counsel for defendant: Michael Vaughn, Phoenix (deceased)

Child molestation/sexual assault case. Case was complicated by passage of

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time between commission of offenses and filing of charges, pressure on victim to recant by family members and arguably inadmissible nature of defendant's confession. Defendant pled guilty to two counts with stipulated prison term followed by lifetime probation.

State v. Kenneth Allen, Apache County Superior Court, 1997

Counsel for defendant: D. Bryce Patterson, P.O. Box 236, St. Johns, AZ 85936
(928) 551-0390 st.johnslaw@yahoo.com

Child molestation case in which defendant had molested a family member. Case was complicated by reluctance of parents to have victim testify. Defendant pled to two counts with prison term to be followed by lifetime probation.

State v. Stephen Slade, Apache County Superior Court, 1995

Counsel for defendant: Donna Grimsley, P.O. Box 667, St. Johns, AZ 85936
(928) 337-7555

Defendant was charged with indecent exposure and sexual abuse. Case involved uncooperative victim and hearsay/confrontation clause problems of proof. Defendant pled guilty to contributing to delinquency of minor and was placed on probation.

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: 2

State Courts of Record: 200

Municipal/Justice Courts: 800

The approximate percentage of those cases which have been:

Civil: 10%

Criminal: 90%

The approximate number of those cases in which you were:

Sole Counsel: 90%

Chief Counsel: _____

Associate Counsel: 10%

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: 5%

You argued a motion described above 3%

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

You negotiated a settlement: 90%

The court rendered judgment after trial: 5%

A jury rendered a verdict: 2%

The number of cases you have taken to trial:

Limited jurisdiction court 20

Superior court 5

Federal district court

Jury 5

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

All numbers are estimates due to length of time that has passed and limited nature of record keeping at the time.

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: 2

Criminal:

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Other: _____

The approximate number of matters in which you appeared:

As counsel of record on the brief: 2

Personally in oral argument: 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.

Staff Attorney, Division One, Arizona Court of Appeals, Phoenix, AZ
August 1997-August 1998 & April 1999-September 2000

Drafted opinions and memorandum decisions in felony criminal cases.
Presented drafts at panel conferences and attended oral arguments.

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.

As a deputy county attorney, I represented the state in each of the following matters:

State v. Akhtar Zaman, Arizona Supreme Court, 1997

Counsel for defendant: John Trebon, 308 N. Aggasiz, Flagstaff, AZ 86001
(928) 779-1713 jtrebonlaw@gmail.com

Civil paternity and child support action brought by state on behalf of Native American child against non-Indian father. I briefed and argued the case before the Arizona Supreme Court. Issue on appeal was whether state court had subject matter jurisdiction or whether tribal court had exclusive jurisdiction given identity of parties and fact that all relevant events occurred on reservation. Supreme Court ruled in favor of the state. Case is reported at 190 Ariz. 208.

State v, Akhtar Zaman, Apache County Superior Court, Hon. Michael Nelson, 1996-97

Counsel for defendant: John Chapela, member of New Mexico Bar admitted *pro hac vice*. P.O. Box 672, Gallup, NM 87305 (505) 722-2833
chapelaja@gmail.com

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Criminal case in which I prosecuted the defendant for failure to pay child support. Defendant was convicted after jury trial, placed on probation and ordered to pay \$30,000 in back support. Conviction was initially reversed on appeal, but was reinstated based upon Supreme Court ruling in case discussed above.

State v. William Brown, Apache County Superior Court, Hon. Michael Nelson, 1996-97

Counsel for defendant: Ron Wood, 201 S. White Mtn Rd., Show Low, AZ 85901
(928) 537-5799 ron@azcrimedog.net

I prosecuted the defendant for murder. The case received attention in the local press and divided a substantial portion of small community in which the killing occurred. Defendant argued self-defense and was acquitted by jury.

State v. Wayne Yellowhorse, Apache County Superior Court, Hon. Michael Nelson, 1996

Counsel for defendant: Benjamin Cole, 141 N. Date, Ste 50, Mesa, AZ 85201
(480) 649-4004 b.s.cole.jr@gmail.com

Prosecution of driver of car involved in drive-by shooting of home of deputy sheriff. Defendant argued lack of intent and duress. Jury found defendant guilty of drive-by shooting and several counts of aggravated assault and endangerment.

State v. Billy Hiscock, Apache County Superior Court, Hon. Michael Nelson, 1996

Counsel for defendant: G.L. "Pat" Patterson, P.O. Box 1036, Springerville, AZ 85938
(928) 333-5161 glpatlaw@gmail.com

Prosecuted defendant for aggravated assault on peace officer with a firearm. Jury found defendant guilty except insane. First Apache County case involving insanity defense under new "guilty except insane" statute. Defendant was committed to State Hospital under custody of Psychiatric Security Review Board.

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.).

Judge, Pinal County Superior Court 6/14 – present

Appointed, full-time position with retention election. Since my appointment I have been assigned to the family law bench. I handle all aspects of family law matters, including dissolution, child legal decision-making and parenting time, child support and third-party rights. At any given time I have approximately 300 open family law cases pending. I also preside over protective orders. I cover criminal, juvenile and civil matters for other judges as needed. In addition, I carry a small criminal caseload, averaging about a half-dozen cases at any given time. According to our case management system, I have had a total of almost 2000 assigned matters since my appointment. I regularly conduct settlement conferences in family and criminal cases.

Since January of 2015, I have served as the presiding judge of the family law department, with responsibility for administrative oversight of three other judicial officers. My duties include serving as Conciliation Court judge and on the Community Advisory Committee for La Paloma Center, which provides supervised parenting time and safe exchange services for parents in Pinal County.

Judge, Mesa Municipal Court 10/2000 – 6/14

Appointed, full-time position. I handled a high-volume misdemeanor criminal docket, as well as civil protective orders. I presided over more than 150 jury trials and several thousand bench trials and other contested hearings. I also handled thousands of arraignments, pretrial conferences, sentencing, probation violation proceedings, and civil traffic hearings. I was one of two judges with primary responsibility for training of pro tem judges.

Judge Pro Tem, Maricopa County Superior Court 2004 -10

Volunteer appointed position. Occasionally heard appeals from administrative agency decisions on an as-needed basis.

Judge Pro Tem, Tempe and Phoenix Municipal Courts 1999-2000

Presided over misdemeanor criminal cases and civil traffic matters on a part-time, as-needed basis. Appointed positions.

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.

I presided over the following cases as a Pinal County Superior Court judge:

State v. Milton Barnett, III 2014-16

Counsel for State: Jill Sosin, P.O. Box 887, Florence, AZ 85132

(520) 866-6271 Jill.Sosin@pinalcountyaz.gov

Counsel for Defendant: Chester Lockwood, P.O. Box 4560, Apache Junction, AZ 85178

(928) 533-3126 chetjet@myself.com

Criminal case in which defendant was charged with various offenses arising out of a planned drug transaction. It was alleged that the defendant and his accomplices had intended to rob the prospective seller. Legal issues in dispute that I was required to resolve included allegation of vindictive prosecution relating to the defendant's re-indictment and whether stipulation to admit videotaped testimony of intended victim was still binding after additional charges were filed. I presided over a nine day jury trial in which the defendant was convicted.

Nesbihal v. Nesbihal 2015-17

Counsel for Petitioner: Melinda Sloma, 3030 N. 3rd St., Suite 600, Phoenix, AZ 85012

(602) 494-0556 msloma@slomalawgroup.com

Counsel for Respondent: Deborah Varney, 1845 S. Dobson Rd., #209 Mesa, AZ 85202

(480) 838-2400 deborah.varney@rocketmail.com

Highly contentious marital dissolution case with allegations of significant domestic violence and fraud. Legal issues that I was required to resolve included whether husband's treating neurologist was qualified to offer expert opinion on his future employment prospects for purposes of spousal maintenance and whether husband's former bankruptcy counsel could be compelled to discuss husband's financial circumstances. Also at issue was whether husband's post-filing earnings were relevant to division of debts and/or attorney fee request. Trial was bifurcated due to pending bankruptcy filing. I issued rulings with respect to issues tried in the first phase of trial and on discovery issues related to the second. Matter settled prior to second phase of trial.

Olsen v. Olsen 2016

Counsel for Petitioner: Maureen Gregan, 320 W. Superstition Blvd. Suite 110, Apache Junction, AZ 85120

(480) 982-2754 info@greganlawoffice.com

Counsel for Respondent: Jan Buescher, 3514 N. Power Rd. # 103, Mesa, AZ 85215

(480) 344-1802

info@BuescherLaw.com

Dissolution case. Primary issues included use of marital residence, parenting time, attorney fees and interpretation of partial settlement agreement.

Varner v. Kennedy 2014-16

Counsel for Petitioner: Gary Schneider, 2929 N. Power Rd., Suite 101, Mesa, AZ 85215
(480) 285-1905 gary@schneiderlawaz.com

Counsel for Respondent: Lynsey Robinson, 766 N. Park Ave., Casa Grande, AZ 85122
(520) 316-8076 Lrobinson@sazlegalaid.org

Counsel for Respondent: Ari Cohn, 100 E. Florence Blvd., Casa Grande, AZ 85122
(520) 836-1776 suttonlaw@azsuttonlaw.com

Best Interest Counsel: Kent Volkmer, P.O. Box 887, Florence, AZ 85132
(520) 866-6320 kent.volkmer@pinalcountyaz.gov

Contentious marital dissolution matter with competing allegations regarding parental fitness. I presided over the initial dissolution and post-decree proceedings in which father sought modification of legal decision-making and parenting time, as well as third party visitation with mother's other minor child.

I heard the following case as a Mesa Municipal Court judge:.

State v. Raymond Garcia 9/15/11

Counsel for State: W. Craig Jones, 222 E. Javelina, Mesa, AZ 85210
(602) 506-2600

Counsel for Defendant: Daniel Marco, 123 N. Centennial Way, Suite 110,
Mesa, AZ 85201 (480) 275-4894 dmarco@marcowimmerlaw.com

Prosecution under city ordinance for failure to remit sales taxes. At issue was whether an individual member of a limited liability company can be held criminally liable for the LLC's failure to remit. My grant of defendant's motion to dismiss was affirmed on appeal.

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

From 2009 to 2014, I served as a member of the Arizona Judicial Ethics Advisory Committee. The committee is responsible for issuing formal and informal opinions interpreting the Code of Judicial Conduct and the Code of Conduct for Judicial Employees.

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.

U.S. Army, Military Police Sergeant 1983-86

Various jobs during high school and college (dishwasher, busboy, driver, security guard, disc jockey) 1977-83

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

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

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

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

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

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

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? Yes If so, identify the nature of the case, your role, the court, and the ultimate disposition.

Plaintiff in wrongful death action arising out of my father's death in a motor vehicle collision. Fresno County Superior Court, California, 1993. Matter settled prior to trial.

Nominal defendant in personal injury suit against my spouse arising out of motor vehicle collision. Maricopa County Superior Court, 1998. Matter resolved by arbitration with award paid by insurer.

Defendant in a quiet title action involving a parcel of real property that once belonged to my mother. My sisters and I were named defendants as beneficiaries of her trust. I never claimed any interest in the property, so I signed a quit-claim deed and the matter was dismissed. San Bernardino County Superior Court, California, 2016.

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.

U.S. Army, Honorably Discharged (separated from active service 10/86; discharged from inactive reserve 10/89).

42. List and describe any matter (including mediation, arbitration, negotiated

settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

Not applicable.

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

Not applicable.

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

Not applicable.

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

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

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

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

49. Have you ever been a party to litigation alleging that you failed to comply with the

substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? No If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? No If so, list with the citations and dates.
51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes 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.

Each year, beginning in 2003, I have served as a faculty member for new judge orientation for limited jurisdiction judges. For many of those years I also served as a mentor judge for the program. Topics I have taught include effective case management, judicial ethics, contempt, search and seizure, criminal traffic and DUI law, criminal procedure, and appeals.

I have made several presentations at the annual Arizona Judicial Conference on the topics of new legislation, rules and case law, ethics and contempt.

I have presented on several topics at meetings of the Arizona Magistrates Association (at which I'm scheduled to teach again in May) and at the annual Governor's Office of Highway Safety conference for judges.

While on the Mesa Municipal Court bench, I developed and presented an in-house ethics course for staff members.

Last year, I put together a presentation on civil protective orders for the Pinal County judiciary, both general and limited jurisdiction.

For the past two years I have served on the planning committee for the annual Legal Competency and Restoration Conference for mental health professionals and judges that is sponsored by the Arizona Supreme Court. I taught at the

conference last year.

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

Arizona Judges Association
Executive Committee 2016 – present
Member 2014 – present

Association of Family and Conciliation Courts
2015 – present

National Council of Juvenile and Family Court Judges
2015 – present

Arizona Magistrates Association
President 2010 -13
Vice-president 2008 -10
Member 2002 - 14

Lorna Lockwood Inn of Court 1993-94

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.

State Bar of Arizona Family Law Section Executive Council
2017 – present

State Bar of Arizona Family Practice and Procedure Committee
2015 – present

State Bar of Arizona Professionalism Committee
2011-14

State Bar of Arizona Appointments Committee
2004-10

State Bar of Arizona Criminal Practice and Procedure Committee
1997-2002

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

For the last several years I have volunteered with my sons' Boy Scout troop and Cub Scout pack. In addition to providing transportation and chaperoning outings, I regularly serve on boards of review for boys seeking rank advancement and am a merit badge counselor for seven merit badges. I also have made presentations on the role of the judiciary, separation of powers and the rights and responsibilities of citizenship.

Each of the last three years I have volunteered to preside over adoption proceedings on National Adoption Day.

Earlier this month I judged the Pinal County middle school mock trial competition.

Last November I participated in a panel presentation to students from two of the Florence District high schools with judges from Division Two of the Court of Appeals. As part of the Supreme Court's strategic agenda to improve court-community involvement, the judges discussed their career paths and engaged the students in an interactive discussion of the judicial process.

Over the past several years I have occasionally volunteered with Feed My Starving Children, a non-profit organization, packing food boxes for distribution to impoverished children in foreign countries.

In 2014 I spoke to third grade classes at San Tan Learning Center in Gilbert regarding my role as a judge, the judicial process and the branches of government. Over the years I have made similar presentations to scout groups visiting court.

In 2013, I spoke to a group of students from an advanced seminar on domestic violence from ASU and conferred with their professor, Dr. Alesha Durfee, regarding research she was planning.

Approximately 2002-05, I volunteered as a judge for the state finals for the high school "We the People" mock congressional hearing competition as well as for the state finals for the high school mock trial competition.

In 1999, I volunteered at fundraising events for the Flagstaff Lions Club to benefit the blind and vision impaired.

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

Named to *Arizona's Finest Lawyers* in 2011

U.S. Army – Army Commendation Medal, Army Achievement Medal with Oak Leaf Cluster, Good Conduct Medal, Army of Occupation Medal

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

None other than the judicial positions noted above.

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

I resigned from my position as a Mesa Municipal Court judge upon my appointment to superior court.

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

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

In addition to spending time with my children and my involvement with their sports and scouting activities, I enjoy reading (mostly history and historical fiction), camping, target shooting, hunting and playing with my dog. I have recently developed a keen interest in saltwater fishkeeping, but have yet to dive into the hobby as an aquarist.

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.

I come from a blue-collar, working class family that stressed the value of education. While serving in the army, I lived and worked closely with people from a wide variety of backgrounds. The nature of my assignments required the ability to effectively communicate with others and work as a team. My later employment also involved interaction with diverse people, particularly working as a prosecutor in an area with a majority Native American population.

In my role as a judge I interact with people from every racial, ethnic, religious and socio-economic background, the majority of whom are self-represented.

My own family is ethnically mixed, my wife and I having adopted three Latino children, two of whom are from Central America. I also experience the challenges and rewards of parenting a developmentally disabled child with cerebral palsy.

My legal experience is diverse as well. In addition to serving on the superior and municipal court benches, I've practiced as a rural prosecutor, an appellate court staff attorney, and a civil litigator in large and small firms.

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

I am committed to the fair, impartial and efficient administration of justice. During my sixteen years of employment as a full-time judge, I have strived to ensure that all whom appear in my court feel that they have been treated with dignity and respect and have had a fair opportunity to be heard, regardless of the outcome of the case.

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

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

I have served as a full-time trial court judge for over sixteen years. I have found the work to be extremely satisfying, both personally and professionally. I feel honored to be entrusted with the responsibility to ensure the fair and efficient administration of justice in the matters before me. During my time on the bench I believe that I have established a reputation for treating people with respect,

listening carefully, communicating clearly and making sound, impartial judgments based upon the law and the evidence. I have sought not only to improve my own performance, but to contribute to the improvement of the judiciary statewide through my involvement in judicial education and ethics.

While I love my current role, I frankly miss appellate work. I found my employment as a staff attorney at Division One to be extremely rewarding. I greatly enjoyed the intellectual stimulation of research, writing and debate. I was fortunate to have served with a brilliant group of judges and fellow attorneys. Being present when the judges conferenced cases, I gained valuable insight into the process of appellate judging. Presenting my drafts at case conferences permitted me to hone my writing and persuasive skills. With the additional perspective I have gained on the trial bench, I believe that I can make a meaningful contribution as an appellate judge.

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.

Attached are excerpts of a response I wrote to a motion to suppress as a deputy county attorney and a memorandum decision I drafted as a staff attorney with Division One of the Court of Appeals.

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.

Attached are rulings I drafted as a Maricopa County Superior Court Judge Pro Tem, as a Mesa Municipal Court Judge and as a Pinal County Superior Court Judge

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.

Attached are reports and commission votes from my last Pinal County performance review (my first) and data reports and comments from my last two City of Mesa performance surveys and minutes of the Mesa Judicial Advisory Board reappointment meetings (redacted portions involve reappointment of other judges).

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

Attachments for Question 63:

- 1) Excerpt of Response to Motion to Suppress I filed as a deputy county attorney.
- 2) Excerpt of draft Memorandum Decision I prepared as a staff attorney with Division One. Decision was re-designated as an Opinion and is published at 193 Ariz. 357.

1 II. THERE WAS NO MIRANDA VIOLATION

2 Miranda and its progeny require that the defendant be informed of
3 his right to remain silent and right to counsel prior to any custodial
4 interrogation by law enforcement officers. Because there was no
5 interrogation in this case prior to the defendant invoking his right
6 to remain silent, Miranda was not violated.

7 A.) DEFENDANT'S SPONTANEOUS UTTERANCES TO OFFICER DID NOT
8 RESULT FROM INTERROGATION

9 In order for the Miranda requirements to attach, a Defendant
10 must be in "custody." For the purposes of Miranda, custody exists when
11 a reasonable person in the defendant's position would conclude that he
12 is not free to leave. Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct.
13 1682, 64 L.Ed.2d 297 (1980). In this case custody, for purposes of
14 Miranda, attached when Officer told the defendant that he was
15 under arrest, grabbed the defendant's arm, and attempted to handcuff
16 him. While the defendant's pleadings argue that custody did not attach
17 until the defendant was actually handcuffed after the pursuit
18 (apparently in an attempt to maintain that "custody" for purposes of
19 the escape offense with which the defendant is charged had not
20 occurred), a reasonable person, being told that he is under arrest and
21 physically taken hold of by a peace officer (who has handcuffs in his
22 other hand), would conclude that he was not free to leave. That the
23 defendant understood that this was the case is clear from his statement
24 "no jail" as he pulled away from the officer.⁵

25 ⁵ Because the defendant concludes in his motion that custody did not attach until he
26 was actually handcuffed, he would seem not to challenge the admissibility of statements to
27 Officer prior to that time on the grounds of Miranda. However, elsewhere in his
28 pleadings he indicates that he seeks to suppress *all* statements. Accordingly, the State
presents the above discussion as to why the statements made by the defendant prior to
successful handcuffing are admissible.

1 At no time after telling the defendant that he was under arrest and
2 attempting to physically restrain him did Officer _____ interrogate
3 the defendant. Interrogation for the purposes of Miranda is not limited
4 to express questioning about criminal activity, but includes questions
5 or statements made by peace officers that a reasonable officer would
6 conclude are likely to elicit an incriminating response. Innis. Each
7 of the statements shouted by the defendant during the course of the
8 struggle over the officer's weapon were spontaneous utterances made by
9 the defendant. Officer _____ had not asked the Defendant any
10 questions or made any statements under the circumstances that a
11 reasonable officer would conclude were likely to elicit incriminating
12 responses. ⁶ Rather, the defendant's statements were spontaneous,
13 deliberate, and voluntary and, coupled with a deliberate physical
14 attack, were intended to place Officer _____ in fear and to further
15 the defendant's goal of escape. Therefore, the statements were not
16 obtained in violation of Miranda. Miranda, 384 U.S. at 478, 86 S.Ct.
17 1602, 16 L.Ed.2d 694 (1966) (Miranda requirements inapplicable to
18 volunteered statements.)

19 B.) DEFENDANT'S STATEMENT TO _____ NOT OBTAINED IN VIOLATION OF
20 MIRANDA.

21 While the question asked by volunteer firefighter _____ certainly
22 is one that a reasonable person would conclude is likely to elicit an
23 incriminating response, it did not constitute an interrogation for
24 Miranda purposes, insofar as it was not made by, nor at the request of,
25 any law enforcement officer or agency. Mr. _____ apparently asked the

26 _____
27 ⁶ Officer _____ did inform the defendant that he was under arrest. However
28 statements made that are normally attendant to any arrest do not constitute "interrogation" for
the purposes of Miranda. Innis, 466 U.S. at 300-01, 100 S.Ct. at 1689, 64 L.Ed.2d at 307-08.

1 question on his own, to satisfy his own curiosity. The requirements of
2 Miranda do not extend to interrogation by bystanders not acting at the
3 behest of the police. In Arizona v. Mauro, 481 U.S. 520, 107 S.Ct.
4 1931, 95 L.Ed.2d 458 (1987), for example, the defendant was given
5 Miranda warnings and indicated that he did not wish to be questioned
6 without a lawyer present. His wife insisted on speaking to the
7 defendant. A detective brought her into the room where the defendant
8 was being held, taping the conversation between the defendant and his
9 wife. The Supreme Court held that what the officers had done was not
10 the "functional equivalent" of police interrogation. The detective had
11 asked the defendant no questions about the crime or his conduct, nor did
12 officers send Mrs. Mauro to see her husband for purpose of eliciting
13 incriminating statements. Even though the officers were aware that
14 there was a possibility that the defendant would incriminate himself
15 under the circumstances, the Court held that "officers do not
16 interrogate a suspect simply by hoping that he will incriminate
17 himself."

18 Similarly, in Illinois v. Perkins, 496 U.S. 292, 110 S.Ct. 2394,
19 110 L.Ed.2d 243 (1990), the police placed an undercover agent in jail
20 with the defendant. Eventually, the agent, without giving Miranda
21 warnings, obtained incriminating statements from the defendant. The
22 Court held that conversations between suspects and undercover agents do
23 not implicate the concerns underlying Miranda, because the essential
24 ingredients of a "police-dominated atmosphere" and compulsion are not
25 present when an incarcerated person speaks freely to someone who he
26 believes to be a fellow inmate.

27 In this case, there likewise was no compulsion nor any evidence
28 that a reasonable person in defendant's position would fear some type of

1 reprisal for not answering Mr. ; question. The defendant's
2 response is admissible.

3 C.) DEFENDANT'S STATEMENTS IN AMBULANCE WERE NOT OBTAINED IN
4 VIOLATION OF MIRANDA

5 None of the statements made by the defendant while being
6 transported to the hospital were obtained in violation of Miranda,
7 because none of those statements were in response to any question or
8 statement that a reasonable person would conclude were likely to elicit
9 an incriminating response. Again, that the defendant chose to make
10 spontaneous unsolicited statements in no way implicates Miranda.

11 Moreover, Miranda is inapplicable because the only questions or
12 statements to the defendant were made by non-law enforcement personnel
13 acting on their own. Accordingly, the statements are admissible.

14 D.) STATEMENTS MADE AT THE HOSPITAL WERE NOT OBTAINED IN VIOLATION OF
15 MIRANDA

16 None of the questions or statements made to the defendant prior to
17 being "Mirandized" while at the hospital were communications which a
18 reasonable person would conclude were designed to elicit incriminating
19 responses. Again, the statements are admissible.

20 III. THE DEFENDANT'S STATEMENTS WERE VOLUNTARY ⁷

21 Each of the defendant's statements were voluntary in nature. At no
22 time was any force, coercion or duress used to get the defendant to
23 speak. While none of the defendant's statements were obtained in
24 violation of Miranda, even if they had been, and were therefore

25 _____
26 ⁷ The burden is on the State to demonstrate voluntariness of the defendant's
27 statements by a preponderance of the evidence prior to their admission into evidence. State v.
28 Scott, 177 Ariz. 131, 865 P.2d 792 (1993), cert. denied, 115 S.Ct. 129, 130 L.Ed.2d 73.
Accordingly, the State hereby requests an evidentiary hearing be scheduled prior to trial for
this purpose.

1 inadmissible in the State's case in chief, they would be admissible in
2 the State's rebuttal case to impeach the defendant if he chose to
3 testify.⁸

4 In his pleadings and at various hearings, the defendant has argued
5 that statements obtained in violation of Miranda are *per se* involuntary
6 and are not admissible for any purpose. This is simply not the law.
7 McCormick, Evidence § 76.4. While at one time it could have been
8 argued that Miranda commanded such a conclusion, the U.S. Supreme Court
9 has since made clear that any suggestion in Miranda that otherwise
10 voluntary statements obtained in violation of Miranda are inadmissible
11 for any purpose was merely *dicta* and is disapproved. *Id.* The seminal
12 case is Harris v. New York, 401 U.S. 222, 91 S.Ct. 643, 20 L.Ed.2d 1
13 (1971) (shield of Miranda not a license to use perjury). See also,
14 Oregon v. Hass, 420 U.S. 714, 95 S.Ct. 1215, 43 L.Ed.2d 570 (1975)
15 (distinguishing Miranda violation from situation involving coercion or
16 duress).

17 Defense counsel has also argued that the Arizona legislature has
18 extinguished any distinction between an admission obtained involuntarily
19 and one obtained in violation of Miranda, citing A.R.S. § 13-3988.
20 However, by its terms that statute makes clear that the issue of whether
21 or not Miranda warnings were given is merely a factor to be taken into
22 consideration in determining voluntariness and need not be conclusive on
23 the issue. Thus the issue of voluntariness remains distinct under
24 Arizona law, as well as federal constitutional law.

25 In State v. Gonzalez, 181 Ariz. 502 (1995), the defendant, while
26

27 ⁸ The defendant's statements are potentially useful for rebuttal not only substantively,
28 but also to demonstrate that, contrary to defendant's expected assertion, he speaks and
understands more English than he is now willing to admit.

ANALYSIS

I. "Shunting Away" of Prospective Jurors

In anticipation of a lengthy trial in this case, the jury commissioner "prescreened" prospective jurors before voir dire. Those indicating to the commissioner that they would be unduly burdened by lengthy service were excused. On appeal, Wooten argues that the jury commissioner's prescreening of prospective jurors disproportionately excluded poor and minority panelists, thereby depriving Wooten of his right to a jury composed of a fair cross-section of the community and violating his Sixth Amendment right to a fair trial as well as his rights to equal protection and due process under the Fourteenth Amendment.³

The selection of a jury from a representative cross-section of the community is an essential component of a criminal defendant's Sixth Amendment right to an impartial jury. *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975). In order to establish a *prima facie* violation of the fair cross-section requirement, a defendant must show (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair

³ Wooten implies that the State purposefully misrepresented to the trial court the anticipated length of the trial to seat a jury more favorable to its case. The record does not support his claim. Indeed, Wooten's counsel told the court that the trial would likely take longer than the State estimated. Although the State ultimately called only a fraction of the witnesses it had listed, we know of no requirement that a party call all or even most of the witnesses it has disclosed. Such a rule would likely encourage litigants to either "underlist" witnesses, thereby risking preclusion of important evidence, or to offer unnecessarily cumulative evidence.

and reasonable in relation to the number of such persons in the community; and (3) that the underrepresentation is due to systematic exclusion of the group in the jury selection process. *Duren v. Missouri*, 439 U.S. 357, 364 (1979).

Wooten's claims are nearly identical to those raised in *State v. Atwood*, 171 Ariz. 576, 621-23, 832 P.2d 593, 438-39 (1992). In that case, the defendant claimed that persons not employed by larger corporations with policies of compensating their employees for jury duty were excluded from the jury pool. *Id.* On appeal, our supreme court held that the defendant had failed, either for purposes of a fair cross-section claim under *Duren* or for purposes of an equal protection claim, to identify a distinctive group. *Id.* at 623, 832 P.2d at 439.

Wooten has likewise failed to establish that a cognizable group was excluded. Under *Atwood*, those seeking exclusion from service due to economic hardship do not constitute a distinctive group within the community. Wooten's contention that those likely to claim hardship are disproportionately poor or racial minorities is purely speculative.

Wooten has failed to satisfy the other two prongs of *Duren* as well. Although he identifies thirteen minority members among the seventy-eight to ninety-four persons who were excused, he has offered no statistical evidence to demonstrate that any identifiable group was underrepresented in the venire from which the jury was selected. *Cf. State v. Sanderson*, 182 Ariz. 534, 538, 898 P.2d 483, 487 (App. 1995) (comparing percentage of Native

Americans in venire from which jury was selected with proportion in population of county). See also *Atwood*, 171 Ariz. at 623, 832 P.2d at 439 (noting defendant had failed, for purposes of equal protection claim, to establish underrepresentation by comparing proportion of group in total population to proportion called to serve as jurors over significant period of time). Nor has Wooten shown that systematic exclusion of any group resulted from the selection process employed.

Wooten also contends that the procedure violated state law and therefore constituted a *per se* due process violation requiring reversal of his conviction. He concedes that the jury commissioner is statutorily empowered to excuse prospective jurors from service:

Where a person's answers to a questionnaire indicate that he is unqualified for jury service or, in the opinion of the jury commissioner, state grounds sufficient to be excused from jury service, his name shall not be included on the qualified juror list and he shall be notified that he is excused from service.

Arizona Revised Statutes ("A.R.S") section 21-315 (Supp. 1997). Wooten contends, however, that the statute does not permit the jury commissioner to excuse jurors, once summoned, from service based upon an unsworn "show of hands" that they would be unable to serve on a lengthy trial without voir dire by the court and counsel.

Again, we find *Atwood* dispositive of Wooten's claim. On appeal, *Atwood* argued that the jury commissioner's staff had improperly excluded prospective jurors who had claimed undue hardship, including those responsible for caring for young children

or the elderly. The supreme court rejected the defendant's claim, noting the broad discretion afforded the jury commissioner's office and concluding that nothing in the record indicated that the jury selected from the remaining pool fell short of the requisite standards of fairness and impartiality. See also *State v. Murray*, 184 Ariz. 9, 23, 906 P.2d 542, 556 (1995), cert. denied, 116 S.Ct. 2535 (1996), and cert. denied, 117 S.Ct. 193 (1996) (noting that, absent separate showing of prejudice or discrimination, failure to follow statutory procedures for jury selection is considered harmless).

Wooten's reliance on our recent decision in *State v. Shone*, ___ Ariz. ___, 945 P.2d 834 (App. 1997) is misplaced. In that case, the trial court improperly denied defense counsel's request to voir dire the jury panel, in violation of Rule 18.5(d), Arizona Rules of Criminal Procedure. 945 P.2d at 836. As amended, that rule requires that the court allow a party requesting voir dire reasonable time to conduct an examination. We reversed Shone's conviction under a harmless error analysis because the trial court's action resulted in the seating of a potentially biased juror. 945 P.2d at 837-38.

In Wooten's case, the persons excused by the jury commissioner ceased to be prospective jurors. Thus, there was no need to allow defense counsel to conduct voir dire, the purpose of which is to identify those who should be excluded from the jury. See *State v. McDaniel*, 136 Ariz. 188, 192-93, 665 P.2d 70, 74-75 (1983) (purpose of voir dire to unveil juror's prejudice so parties

can exercise intelligently peremptory strikes and strikes for cause). Wooten has not demonstrated, nor even alleged, that the jury selected in this case was biased. Reversal is not warranted.

II. Preclusion of "Third-Party" Defense

The State filed a motion in limine to preclude introduction of certain evidence and argument that someone other than Wooten was the killer.⁴ [Instruments at 269.] The trial court granted the State's motion, citing *State v. Fulminante*, 161 Ariz. 237, 252 (1988), which provides that "before a defendant may introduce evidence that another person may have committed the crime, the defendant must show that the evidence has an inherent tendency to connect such other person with the actual commission of the crime." The court ruled, however, that Wooten could introduce evidence that Mustaf had brought friends in to provide himself with an alibi. [TR 1/8/96 at 3-4.]

⁴In response to the State's motion, Wooten identified the following evidence and argument as "third-party" evidence: (1) that Pete Reece could have killed Hayes because the police had failed to adequately verify that Reece had departed Phoenix before the killing; (2) that Hayes' neighbor had seen three black males entering and exiting Hayes' apartment on numerous occasions including the night before and morning after the killing; (3) that Max Etienne, a friend of Mustaf's from New York, called Mustaf on the night Hayes was killed; (4) that Frank Simone, who operated a limousine service, received a call from Mustaf on or about the night of the murder asking that Simone pick someone up at the airport; (5) that an old gray car was seen leaving Hayes' apartment complex with its lights off on the night of the killing; and (6) that an associate of Mustaf's had once threatened a man with a gun. [TR 1/3/96 at 71-83; TR 1/23/96 at 81; Instruments at 243.] Evidence of all but the final matter listed was admitted, primarily in support of Wooten's theory that the police had failed to adequately follow up various investigative leads.

Attachments for Question 64 (3 rulings)

STATE OF ARIZONA,)
Plaintiff,)
vs.)
JOSEPH)
Defendant.)

No#

MINUTE ENTRY
AND ORDER

The court has considered the defendant's motion to dismiss with prejudice filed February 12, 2001, the State's response thereto, and the arguments of counsel. Because the "informal" transcript appended to the defendant's motion contained several obvious, although immaterial, inaccuracies, the court has also reviewed the audiotape record of the prosecutor's December 5, 2000 opening statement and the arguments that immediately followed. Having given the matter extensive consideration, the court hereby grants the defendant's motion for the reasons that follow.

The defendant was charged with driving under the influence of alcohol and having an alcohol concentration of .10 or more within two hours of driving. In her opening statement, the prosecutor told jurors that the arresting officer contacted the defendant after he observed the defendant's vehicle drive over a concrete parking barrier in a restaurant parking lot. She informed the jury that, upon approaching the defendant, the officer noticed a strong odor of alcohol on the defendant's breath and that he had bloodshot and watery eyes. The prosecutor then said, "Officer asked [the defendant] if he had been drinking any alcohol and the defendant wouldn't answer him." Defense counsel objected that the prosecutor's statement was an improper comment on the

defendant's invocation of his right to remain silent. The court agreed and granted the defendant's motion for mistrial.

The defendant contends that dismissal with prejudice is warranted because the mistrial resulted from deliberate overreaching by the prosecutor. Ordinarily, by requesting a mistrial, a defendant waives any claim that retrial is barred on double jeopardy grounds. However, an exception to this general principle applies when the mistrial is prompted by certain prosecutorial misconduct. The question in this case is whether the prosecutor's improper comment in opening statement was of such character as to bar retrial.

The seminal Arizona case addressing the legal standard to be applied in deciding this issue is *Pool v. Superior Court*, 139 Ariz. 98, 677 P.2d 261 (1984). In that case our supreme court, interpreting the double jeopardy clause of the state constitution, declined to follow the U.S. Supreme Court's test for deciding whether prosecutorial misconduct bars retrial under the analogous federal clause. Instead, the court adopted the holding of the Oregon Supreme Court in *State v. Kennedy*, 666 P.2d 1316 (Or. 1983), concluding that double jeopardy prevents retrial when the prosecutor "knows that the conduct is improper and prejudicial and either intends or is indifferent to the [danger of] resulting mistrial or reversal." *Pool* at 107, 677 P.2d at 270 (quoting *Kennedy* 666 P.2d at 1326 (emphasis added)).

In its response to the defendant's motion, the State concedes that the comment was improper. In fact, the State contends that the prosecutor "had spent considerable time instructing the relatively new police officer who arrested this Defendant about what he could and could not testify about during the course of the trial." State's Response to

Motion to Dismiss at 3. According to the State, the prosecutor then inadvertently made the same type of improper comment that she had warned the officer not to make. *Id.*

The trial record contradicts the State's claim that the comment was accidental. When asked to explain why the statement was not a comment on the defendant's invocation of his right to remain silent, the prosecutor responded:

Your Honor, the State believes and the report indicates that when he approached the defendant, the defendant says that I don't want to answer, I don't want to incriminate myself and the state believes that in redacting the statement, just to say that he didn't answer the question was sufficient to remove the, the prejudice of the incrimination or the refusal to incriminate himself.

The prosecutor then informed the court that, other than the results of a blood test, there was little evidence to present to the jury at trial. She continued:

So, the State believed that we can indicate that he was resistant to the investigation and that he wouldn't answer the officer's question without it being a comment on his invocation to remain silent.

Thus, the comment, which the state now concedes was improper, was not the result of accident, but was deliberate. Indeed, that the prosecutor went to the trouble of "redacting" the defendant's statement reflects a deliberate tactical decision.¹ *See State v. Keeley*, 178 Ariz. 233, 234-35, 871 P.2d 1169, 1170-71 (App. 1994) (concluding that prosecutor's opening comment on defendant's decision to stop answering questions, as noted in police report, evidenced deliberate trial strategy). While that effort also serves to dispel any suggestion of improper motive, the fact that the prosecutor may not have intended to force a mistrial does not preclude dismissal. The defendant need not show bad faith on the part of the prosecutor. "Rather, [the burden of a second trial is not attributable to the defendant if] it results from the state's readiness, *though perhaps not*

¹ The court continues to reject as unsound the State's earlier contention that redacting the defendant's statement somehow rendered the prosecutor's comment proper or obviated the necessity of a mistrial.

calculated intent, to force the defendant to [request a mistrial].” *Pool*, 139 Ariz. At 107, 677 P.2d at 270 (quoting *Kennedy*, 666 P.2d at 1326 (emphasis added)). The Arizona Supreme Court recently reaffirmed this principle in *State v. Jorgenson*, 332 Ariz. Adv. Rep. 3 (September 29, 2000). Among the cases cited with approval in *Jorgenson* was ~~*State v. Rogan*, 984 P.2d 1231 (Hawaii 1991)~~, wherein the court concluded that the double jeopardy bar applies to cases in which the need for retrial is attributable to “the prosecutor’s misconduct or overreaching, *though perhaps not specific intent*, designed to force the defendant” to move for mistrial. *Id.* at 1249 (emphasis added).

As the defendant contends, the Fifth Amendment privilege against self-incrimination applies regardless of the strength of the State’s case against him. Moreover, even assuming that other evidence of a defendant’s “non-cooperation” with a criminal investigation is somehow relevant and otherwise admissible, *but see State v. Palenkas*, 188 Ariz. 201, 211, 933 P.2d 1269, 1279 (App. 1996) (finding use of defendant’s refusal to consent to warrantless search improper), the comment on the type of non-cooperation at issue here (*i.e.* a refusal to submit to police interrogation by invoking one’s right to remain silent) is so clearly forbidden that it cannot be excused. *See, e.g., State v. Sorrell*, 132 Ariz. 328, 329-30, 645 P.2d 1242, 1243-44 (1982) (noting earlier opinions in which the court had repeatedly warned of need to scrupulously avoid any reference to accused’s silence).

The court is mindful that, under *Pool* and its progeny, the remedy sought in this case is to be granted very sparingly. The published appellate opinions in this area typically involve far more egregious misconduct than the single comment at issue here. *See, e.g., Jorgenson* (involving repeated acts of misconduct). However, given the

manifest impropriety of the comment at issue, and because the stated reasons for which it was offered were so clearly inadequate, the court can only conclude that the comment, though not calculated to force a mistrial or evidencing bad faith on the part of the prosecutor, reflected indifference to the resulting danger of mistrial.

In its response to the defendant's motion, the State cites three cases in which retrial, rather than dismissal, was ordered for prosecutorial misconduct. In one of those cases, *Miller v. Superior Court*, 198 Ariz. 130, 938 P.2d 1128 (App. 1997) the improper comment was found to have been invited by defense counsel's improper argument, and is distinguishable for that reason. In the other two cases, there is no suggestion that the issue of double jeopardy was raised on appeal. In *State v. Keeley*, 178 Ariz. 233-34, 871 P.2d 1169-70 (App. 1994) the court noted that the "sole issue" on appeal was whether mistrial should have been granted. In *Sorrell*, a pre-*Pool* case, the court remanded the case to the trial court after finding that unobjected-to conduct resulted in fundamental error. Presumably, the trial court could have addressed any double jeopardy claim after remand. See *Jorgenson*, 332 Ariz. Adv. Rep. at 5 (Martone, J., dissenting) (unsuccessfully arguing that dismissal after remand was inappropriate because the defendant had not raised the double jeopardy issue on appeal).

For the foregoing reasons, this case is ordered dismissed with prejudice.

Dated this 27th day of March, 2001.



Karl C. Eppich
City Magistrate

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2007-0

'2007

HONORABLE KARL EPPICH

CLERK OF THE COURT
S. Bindenagel
Deputy

PAUL A CONANT

v.

ARIZONA SECRETARY OF STATE (001)

REX C NOWLAN

OFFICE OF ADMINISTRATIVE
HEARINGS

RULING

I. JURISDICTION AND STANDARD OF REVIEW

This case is an Administrative Review action pursuant to A.R.S. section 12-901, et. seq. Under A.R.S. section 12-910(E), this court is required to affirm the agency action unless the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion. The plaintiff bears the burden of establishing the impropriety of the agency's action.¹ The reviewing court may not substitute its own discretion for that exercised by the agency,² nor may it act as the trier of fact,³ but must only determine whether there is any competent evidence to sustain the decision. The court has reviewed the record and the memoranda submitted by the parties.

II. FACTUAL SUMMARY AND PROCEDURAL HISTORY

Petitioner _____ held a commission as a notary public issued by the Arizona Secretary of State ("the Secretary"). In March of 2006, one _____ filed a complaint

¹ *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431 (App 1977).

² *Ariz. Dept. of Economic Security v. Lidback*, 26 Ariz. App. 143, 145 (1976).

³ *Siler v. Ariz. Dept. of Real Estate*, 193 Ariz. 374 (App. 1998).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2007-1

/2007

against alleging that he had improperly notarized a number of documents. Among the documents at issue was a trust document (“the Trust”) in which was identified as the second successor trustee. The Secretary referred the complaint to the Attorney General’s office for investigation.

By letter dated August 2, 2006, the Secretary notified that his commission had been revoked based upon his failure to act as an independent witness in notarizing the Trust, thereby violating his duty to fully and faithfully discharge his duties or responsibilities as a notary public.⁴ subsequently requested an administrative hearing to contest the Secretary’s decision.

After the hearing the Administrative Law Judge, Daniel Martin (“the ALJ”), concluded that the statute upon which the Secretary had relied, A.R.S.41-328 (B), prohibits a notary from notarizing his own signature or that of a person related to the notary by marriage or adoption, but does not create a broader duty of impartiality. Because did not witness his own signature on the Trust, the ALJ concluded that the Secretary’s decision to revoke commission based solely upon his possible interest in the trust as a successor trustee had to be reversed.

By order dated February 9, 2007, the Secretary rejected the ALJ’s decision, concluding that A.R.S. section 41-328(B) requires a notary to act as an impartial witness in general, and that the statute’s prohibition against notarizing signatures of the categories of persons specifically noted was effectively independent of a general obligation of impartiality. Accordingly, the Secretary affirmed her earlier decision to revoke commission. now asks this court to reverse the Secretary’s decision.

III. DISCUSSION

The sole issue in this case is the proper interpretation of A.R.S. section 41-328(B) which provides: “A notary public is an impartial witness and shall not notarize the notary’s own signature or the signatures of any person who is related by marriage or adoption.” contends that the statute prohibits notarization of the signatures of those persons identified in the statute, but does not create any broader, general duty of impartiality. argues that the phrase prohibiting the notarization of certain signatures “defines” the term “impartial witness.” He also argues that reading the statute to impose a general, undefined duty of impartiality would render the statute unconstitutionally vague.

⁴ An earlier version of the revocation notice also concluded that had failed to provide a copy of his notary journal, but that allegation was deleted from the revised notice.

had failed to provide a copy of his notary

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The Secretary contends that the statute requires a notary to act impartially aside from, or in addition to the independent duty not to notarize signatures of the referenced persons. She argues that [redacted]s proposed interpretation would result in absurdity. She cites a number of hypothetical example involving equally apparent conflicts of interest that would be permissible under [redacted]s interpretation, including one in which a biological daughter could notarize her mother's signature transferring the mother's assets to the daughter's husband.

This court concludes that the interpretation of the statute proffered by [redacted] is correct for the reasons stated in the ALJ's January 11, 2007 decision. A basic tenet of statutory construction is to give each word, phrase or clause meaning so that no part of the statute is rendered superfluous, insignificant or redundant.⁵ If the Secretary was correct in concluding that the legislature intended that the statute create a general obligation to act as an impartial witness, then there would be no need to prohibit notarizing one's own signature, and the language prohibiting such self-notarization would be superfluous or redundant. Ironically, another statute cited by the Secretary in her Order rejecting the ALJ's decision supports [redacted]s interpretation for similar reasons. As noted by the Secretary, A.R.S. section 41-320(B) prohibits a notary from acknowledging an instrument executed by or to a corporation of which he is a stockholder, director, officer or employee if he is a party to the instrument. If the Secretary were correct in concluding that section 41-328(B) creates a *general* prohibition against notarizing a document in which the notary has an interest, then section 41-320(B) would be superfluous or redundant.

The secretary argues that her agency is entitled to great deference in interpreting the statutes which her office implements. Such deference is well-recognized in situations where statutory language is not dispositive of an issue, and where the agency's specialized knowledge and expertise are of considerable value.⁶ Here, however, the court finds the language of the statute sufficiently clear that the policy considerations supporting such deference are attenuated, and that the Secretary's expertise and experience are less pertinent in matters of simple interpretation of non-technical statutes.

The Secretary offers compelling public policy arguments in favor of a general requirement of notary impartiality. However, those concerns must be addressed to the legislature. That the legislature has chosen, either intentionally or by omission, to prohibit conduct involving certain conflicts of interest while ignoring others does not render the result "absurd." Neither the Secretary nor this court has the authority to close the "loopholes" identified in the Secretary's brief. Nor is the court persuaded by the Secretary's assertion that the secondary sources cited by [redacted] in the proceedings below actually support her interpretation. As noted by [redacted], the legislature has apparently declined to adopt the more restrictive model

⁵ *Patterson v. Maricopa County Sheriff's Office*, 177 Ariz. 153, 156, 865 P.2d 814, 817 (App. 1993).

⁶ *Phelps Dodge v. Az. Dept. of Water Resources*, 211 Ariz. 146, 153, 118 P.3d 1110, 1117 (App. 2005).

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legislation mentioned. That a representative from the Secretary's office may have participated in drafting such proposed rules does not allow the Secretary to substitute them for the statutes adopted by the legislature.

IV. CONCLUSION

Notwithstanding the deferential standard of review discussed above, the court finds that the Secretary's decision to revoke [redacted] notary commission was contrary to the law and constituted an abuse of discretion. Accordingly,

IT IS ORDERED reversing the decision of the Arizona Secretary of State.

IT IS FURTHER ORDERED granting the relief requested by the petitioner in his complaint.

IT IS FURTHER ORDERED approving the ALJ's recommended decision and order of January 11, 2007 as the final decision in this case.

IT IS FURTHER ORDERED granting petitioner's request for attorney's fees and costs pursuant to A.R.S. sections 12-348(A) (2) and 41-1007(E).

IT IS FURTHER ORDERED that counsel for petitioner shall prepare and lodge a judgment consistent with this minute entry, and his affidavit in support of his application for attorneys' fees and costs no later than fourteen days from the date of this ruling.

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: ____/2015

THE HON KARL C EPPICH,

By Judicial Administrative Assistant: JESSICA I. LEWIS

**IN RE THE MATTER
AND/OR MARRIAGE OF**

) S1100DO2011
) DISSOLUTION W/CHILDREN

PETITIONER

) RULING ON MATTER(S) UNDER
) ADVISEMENT

AND

RESPONDENT

Before the Court are Respondent's Petition to Enforce Final Judgment and Petitioner's Counter-Petition for Military Retirement Payment and for Attorneys Fees. In addition to the parties' written pleadings, the Court has considered the evidence and arguments presented at the evidentiary hearing conducted on September 1, 2015. The Court has also reviewed the Consent Decree and the stipulated FERS order.

Respondent argues that the Petitioner is not entitled to a share of the disability retirement benefits that he is receiving as a result of his federal civil service (the "FERS" benefits) until he attains the age of 62, at which time he expects the disability benefit to be converted to "normal" retirement. Petitioner disagrees. She also contends that she is entitled to a share of the military retirement benefits which Respondent receives.

As a preliminary matter, the Court rejects Petitioner's argument that Respondent agreed that Petitioner would receive a share of his FERS benefits without regard to whether they are considered retirement benefits earned as result of service or as a result of disability. The Court finds noting in the language of the decree itself to suggest that it was intended that Petitioner generally be entitled to receive any share of post-decree disability benefits, which, unlike retirement earnings, are not ordinarily considered community property. See *In re Marriage of Kosko*, 125 Ariz. 517 (App. 1980).

The Court likewise rejects Petitioner's claim that the stipulated Order of Award of Federal Employment Retirement System ["FERS"] Benefits, signed by the Court on September 27, 2012, reflects an agreement that Petitioner be entitled to a share of post-decree disability benefits. Although said order does provide that it "applies to all benefits available to Employee under FERS," it is important to consider the purpose of the Order. As with similar Qualified Domestic Relation Orders, or "QDROs," the Order is intended to implement the terms of the existing dissolution decree. Absent express language reflecting an intention to modify the decree, this Court will not interpret the Order to allow for recovery of benefits ordinarily exempt from division. Indeed, elsewhere in the Order it defines as community property the rights, claims and benefits "earned" during the marriage. Because disability benefits are generally not considered "earned," the purpose of the Order is clearly to divide retirement benefits, not disability compensation.

As to the military benefit being received by respondent, the Court finds that the reasoning of *Luna v. Luna*, 125 Ariz. 120 (App.1979) is applicable, notwithstanding the fact that *Luna* involved a disability retirement that was in place pre-decree. Accordingly, the Court finds that Petitioner is entitled to her share of the community interest in the portion of the benefit attributable to Respondent's service, but not the portion attributable to his disability.

Although not entirely clear, in reviewing the closing arguments from the evidentiary hearing, it appears that the parties may differ in their positions as to the precise calculation that would result from the application of *Luna*. Accordingly,

IT IS ORDERED that each party shall submit to the Court a detailed calculation consistent with *Luna* no later than November 27, 2015. The Court shall then fashion an order requiring Respondent to directly pay Petitioner her monthly entitlement.

The issue of the benefits that Respondent is receiving from FERS is more problematic. Respondent's federal civil employment can be characterized as "dual status." Said employment was contingent upon Respondent maintaining his status as a member of the National Guard. With certain exceptions, once the dual status employee loses his or her military reserve status as a result of disability, the employee may be eligible for disability retirement under FERS.

Petitioner contends that the payments Respondent receives from FERS are retirement payments and are therefore community property, a share of which she is entitled to under the terms of the Consent Decree. Petitioner likens the situation to cases such as *McNeel v. McNeel*, 169 Ariz. 213 (App. 1991), in which a party begins receiving retirement benefits and later converts the benefits to disability payments. Respondent argues that the benefits are disability payments that constitute sole and separate

property. He urges the Court to suspend the payment of any of those funds to Petitioner until Respondent attains the age of 62, at which time the benefit should be considered a normal retirement benefit subject to division.

The question, then, is whether the FERS benefits are properly considered to be disability payments or retirement benefits. Respondent notes that, but for his military disability, he would not be receiving benefits under FERS at all. Indeed, unlike *McNeel*, this is not a case in which Respondent elected early retirement and subsequently converted the payments to disability as the result of post-dissolution disability. On the other hand, the peculiar provisions of federal law applicable to civil service disability retirement applicable to dual status employees under the military reserve technician program tend to support a conclusion that the benefits Respondent are receiving are more properly characterized as akin to early retirement benefits, notwithstanding the disability label. As noted by Petitioner, in order to qualify for military reserve technician disability retirement under FERS, the employee must *not* be considered to be disabled in his or her [civilian] position under FERS disability rules.

Having considered the policy considerations underlying the different treatment afforded retirement income and disability payments in the context of marital dissolution, the Court's general obligation to interpret the decree so as to result in equitable distribution of community property and the absence of any controlling caselaw precisely on point,

IT IS ORDERED granting Petitioner's request to suspend or distribution for Petitioner's share of the FERS benefits until such time as Respondent reaches age 62. In the event that this order is deemed by OPM insufficient to effect such suspension, Respondent shall submit to the Court a proposed form of order. Petitioner shall then have ten days within which to lodge any objection.

IT IS FURTHER ORDERED that Petitioner shall be permitted to retain those FERS monies already distributed to her prior to the date of this order without any subsequent offset against her receipt of FERS funds in the future.

Respondent also requests that the Court relieve him of the obligation under the dissolution decree to elect Petitioner as the beneficiary of survivor benefits with respect to his retirement. Although the terms of the decree provide that the Court retains jurisdiction to effectuate the division of community interest in Respondent's retirement and permit the parties to seek clarification of the decree's terms, Respondent is essentially asking for modification of the decree. Because the request was not raised in his initial petition and, more importantly, appears untimely,

IT IS ORDERED denying Respondent's request to modify the decree and affirming the provision of the decree entitling Petitioner to former spouse survivor benefits with respect to Respondent's military and FERS retirements.

Finally, the Court having considered the parties' request for attorneys fees and costs,

IT IS ORDERED that each party shall bear their own fees and costs.

IT IS FURTHER ORDERED *vacating* any future hearing dates and ***closing*** this file administratively.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

DATED the ____ day of _____, 2015.



Honorable Karl C. Eppich
JUDGE OF THE SUPERIOR COURT

ALL PARTIES REPRESENTING THEMSELVES MUST KEEP THE CLERK OF THE SUPERIOR COURT UPDATED WITH ADDRESS CHANGES.

Mailed/distributed copy: /2015

JAMES OSBORN POPP, PLC.
160 SOUTH ASH AVE
TEMPE, AZ 85281

RAYMOND S. DIETRICH, ESQ.
2355 E CAMELBACK ROAD, SUITE 618
PHOENIX, AZ 85016

Office Distribution:
CHILD SUPPORT
JUDGE/EPPICH

Attachments for Question 65:

- 1) Pinal County 2016
- 2) City of Mesa 2013
- 3) City of Mesa 2009

Pinal County Voters Only

Hon. Karl C. Eppich

Pinal County Superior Court

Bench: Family

Appointed: 2014

**100% of the Commission Voted Judge Eppich
MEETS Judicial Performance Standards**

32 Commissioners Voted 'Meets'

0 Commissioners Voted 'Does Not Meet'

| 2016 | Attorney Surveys | Juror Surveys | Litigant Witness Surveys | Presiding Judge Surveys |
|-----------------------|-----------------------------|-----------------------------|---------------------------------|--------------------------------|
| | Distributed: 65 | Distributed: 10 | Distributed: 239 | Distributed: 3 |
| | Returned: 21 | Returned: 10 | Returned: 29 | Returned: 1 |
| | Score (See Footnote) | Score (See Footnote) | Score (See Footnote) | Score (See Footnote) |
| Legal Ability | 91% | n/a | n/a | n/a |
| Integrity | 94% | 100% | 98% | 100% |
| Communication | 88% | 100% | 92% | 100% |
| Temperament | 92% | 98% | 92% | 100% |
| Admin Performance | 96% | 100% | 90% | 100% |
| Admin Skills | n/a | n/a | n/a | 100% |
| Settlement Activities | 87% | n/a | n/a | n/a |

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

ARIZONA COMMISSION ON JUDICIAL PERFORMANCE REVIEW

| Name of Judge: PINAL-01 Hon. Kart Eppich | Total Surveys: 70 | | | | | | | | | | Assignment: Family | | | | | | | | | | Retention Election | | | | | | | | | | 10 Mean |
|--|-------------------|-----|-----|-----|-----|------------|-----------------|-----|-----|-----|--------------------|------------|-------|-----|-----|-----|-----|------------|-------|-----|--------------------|-----|-----|--|--|--|--|--|--|--|------------|
| | ATTORNEY | | | | | 21 Mean | LITIGANT/PROPER | | | | | 29 Mean | JUROR | | | | | 10 Mean | STAFF | | | | | | | | | | | | |
| | UN | PU | SA | VG | SU | | UN | PU | SA | VG | SU | | UN | PU | SA | VG | SU | | UN | PU | SA | VG | SU | | | | | | | | |
| Section I: Legal Ability | 1% | 7% | 13% | 32% | 46% | 3.1 | 0% | 1% | 14% | 29% | 55% | 3.4 | 0% | 0% | 7% | 13% | 80% | 0% | 0% | 12% | 47% | 41% | 3.3 | | | | | | | | |
| Legal reasoning ability | 0% | 11% | 6% | 39% | 44% | 3.2 | 4% | 4% | 15% | 30% | 48% | 3.1 | 0% | 0% | 11% | 11% | 78% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Knowledge of substantive law | 0% | 12% | 19% | 35% | 41% | 3.1 | 0% | 0% | 12% | 32% | 56% | 3.4 | 0% | 0% | 0% | 11% | 89% | 0% | 0% | 13% | 50% | 36% | 3.3 | | | | | | | | |
| Knowledge of rules of evidence | 0% | 6% | 19% | 25% | 50% | 3.2 | 0% | 4% | 8% | 31% | 58% | 3.4 | 0% | 0% | 0% | 11% | 89% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Knowledge of rules of procedure | 6% | 0% | 17% | 28% | 50% | 3.2 | 0% | 0% | 13% | 29% | 58% | 3.5 | 0% | 0% | 20% | 20% | 60% | 0% | 0% | 13% | 50% | 38% | 3.3 | | | | | | | | |
| Section II: Integrity | 4% | 1% | 18% | 20% | 57% | 3.2 | 0% | 0% | 13% | 29% | 58% | 3.5 | 0% | 0% | 0% | 13% | 88% | 0% | 0% | 13% | 50% | 38% | 3.3 | | | | | | | | |
| Basic fairness and impartiality | 10% | 0% | 15% | 15% | 60% | 3.2 | 0% | 0% | 12% | 32% | 56% | 3.4 | 0% | 0% | 0% | 10% | 80% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Equal treatment regardless of race | 0% | 0% | 19% | 19% | 63% | 3.4 | 0% | 0% | 13% | 29% | 58% | 3.5 | 0% | 0% | 0% | 13% | 88% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Equal treatment regardless of gender | 11% | 0% | 16% | 16% | 58% | 3.1 | 0% | 0% | 13% | 29% | 58% | 3.5 | 0% | 0% | 0% | 10% | 80% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Equal treatment regardless of religion | 8% | 0% | 15% | 23% | 54% | 3.2 | 0% | 0% | 12% | 32% | 56% | 3.4 | 0% | 0% | 0% | 14% | 71% | 0% | 0% | 13% | 50% | 38% | 3.3 | | | | | | | | |
| Equal treatment regardless of national origin | 0% | 0% | 17% | 25% | 50% | 3.2 | 0% | 0% | 18% | 27% | 55% | 3.4 | 0% | 0% | 0% | 13% | 88% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Equal treatment regardless of disability | 0% | 6% | 19% | 19% | 56% | 3.3 | 0% | 0% | 18% | 27% | 55% | 3.4 | 0% | 0% | 0% | 13% | 88% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Equal treatment regardless of age | 0% | 0% | 25% | 25% | 50% | 3.3 | 0% | 4% | 21% | 21% | 54% | 3.3 | 0% | 0% | 13% | 13% | 75% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Equal treatment regardless of sexual orientation | 6% | 0% | 19% | 19% | 56% | 3.2 | 2% | 6% | 8% | 29% | 54% | 3.3 | 0% | 0% | 13% | 13% | 75% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Equal treatment regardless of economic status | 4% | 8% | 17% | 19% | 52% | 3.1 | 2% | 6% | 8% | 29% | 54% | 3.3 | 0% | 0% | 13% | 13% | 75% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Section III: Communication Skills | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear and logical communications | 0% | 10% | 15% | 20% | 55% | 3.2 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear and logical oral communications and directions | 8% | 8% | 31% | 15% | 38% | 2.7 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear and logical written decisions | 5% | 5% | 11% | 21% | 58% | 3.2 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Gave all parties an adequate opportunity to be heard | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Explained proceedings (to the jury) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Explained reason for delays | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clearly explained the juror's responsibilities | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Section IV: Judicial Temperament | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Understanding and compassion | 4% | 4% | 12% | 21% | 59% | 3.3 | 3% | 5% | 10% | 29% | 53% | 3.2 | 0% | 2% | 8% | 14% | 76% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Dignified | 5% | 5% | 15% | 20% | 55% | 3.2 | 7% | 4% | 11% | 30% | 48% | 3.1 | 0% | 10% | 0% | 20% | 70% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Courteous | 0% | 0% | 15% | 25% | 55% | 3.3 | 0% | 7% | 7% | 32% | 54% | 3.3 | 0% | 0% | 10% | 20% | 70% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Conduct that promotes public confidence in the court | 0% | 5% | 10% | 20% | 65% | 3.5 | 0% | 0% | 14% | 36% | 50% | 3.4 | 0% | 0% | 10% | 10% | 80% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Patient | 10% | 0% | 10% | 20% | 60% | 3.2 | 7% | 7% | 4% | 25% | 57% | 3.2 | 0% | 0% | 10% | 10% | 80% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Section V: Administrative Performance | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Punctual in conducting proceedings | 0% | 4% | 15% | 23% | 58% | 3.3 | 0% | 10% | 7% | 25% | 58% | 3.3 | 0% | 0% | 13% | 27% | 60% | 0% | 0% | 17% | 38% | 45% | 3.3 | | | | | | | | |
| Maintained proper control of courtroom | 0% | 0% | 20% | 25% | 55% | 3.4 | 0% | 11% | 7% | 25% | 57% | 3.3 | 0% | 0% | 20% | 30% | 50% | 0% | 0% | 22% | 33% | 44% | 3.2 | | | | | | | | |
| Prompt in making rulings and rendering decisions | 0% | 5% | 15% | 20% | 60% | 3.4 | 0% | 4% | 7% | 29% | 61% | 3.5 | 0% | 0% | 10% | 30% | 60% | 0% | 0% | 22% | 33% | 44% | 3.2 | | | | | | | | |
| Was prepared for the proceedings | 0% | 6% | 17% | 22% | 56% | 3.3 | 0% | 14% | 7% | 21% | 57% | 3.2 | 0% | 0% | 10% | 20% | 70% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Respectful treatment of staff | 0% | 5% | 10% | 30% | 55% | 3.4 | 0% | 14% | 7% | 21% | 57% | 3.2 | 0% | 0% | 10% | 20% | 70% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Cooperation with peers | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Efficient management of calendar | 0% | 6% | 12% | 18% | 65% | 3.4 | 0% | 14% | 7% | 21% | 57% | 3.2 | 0% | 0% | 10% | 20% | 70% | 0% | 0% | 11% | 44% | 44% | 3.3 | | | | | | | | |
| Section VI: Settlement Activities | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Appropriately promoted or conducted settlement | 13% | 0% | 27% | 13% | 47% | 2.8 | 13% | 0% | 27% | 13% | 47% | 2.8 | | | | | | | | | | | | | | | | | | | |

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

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

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



JUDICIAL ADVISORY BOARD MINUTES

March 6, 2013

The Judicial Advisory Board of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on March 6, 2013 at 5:48 p.m.

BOARD PRESENT

Peter Lesar
Kate Ali'varius
Phillip Austin
David Brooks
Margaret Downie
Robin Harris
Teresa Sanders

BOARD ABSENT

None

STAFF PRESENT

Michael Claspell
Christy Trevino
Matt Tafoya
Paul Thomas

1. Approve minutes from the February 4, 2013 Board meeting.

It was moved by Boardmember Ali'varius, seconded by Boardmember Harris, that the minutes from the February 4, 2013 Board meeting be approved.

Chairman Lesar declared the motion carried unanimously.

2. Conduct a public hearing to receive comments on the reappointment of Magistrate [REDACTED]

Chairman Lesar declared the public hearing open at 5:48 p.m. for the purpose of receiving comments on the reappointment of Magistrate [REDACTED]

Chairman Lesar stated that Court Administrator Paul Thomas has requested that the remarks he makes during the public hearing of Magistrate [REDACTED] also apply to Magistrates Karl Eppich and [REDACTED]

Mr. Thomas commented that in recent years, the Mesa Municipal Court's achievements are directly related to the following: 1.) A highly skilled and motivated staff; 2.) Leadership willing to take a risk on cutting-edge processes; and 3.) A bench that is supportive, available and willing to contribute to change.

Mr. Thomas indicated that more often than not, the well-defined judicial role of judges makes it difficult for them to be a part of the Court's undefined administration when solutions must be sought without the clarity of written law or the Rules of Procedure. He remarked that such is not the case at the Mesa Municipal Court and said that the three magistrates under consideration tonight have all been available at any time and for any reason to assist him and the entire Court staff with the challenges of administering a very complex organization.

Mr. Thomas, in addition, noted that the Mesa Municipal Court has gained a national reputation for innovation and cutting-edge processes. He said that it also possesses the very rare characteristic of institutional courage and added that staff operates without any fear in considering a new process or an "out of the box" idea.

Mr. Thomas further commented that his support for Magistrates [REDACTED], Karl Eppich and [REDACTED] should be viewed as an affirmation of their direct contributions to the many stunning successes the Court has achieved in recent years. He urged that the Board maintain the extraordinary blend of individuals at the Court by recommending their reappointments tonight.

Chairman Lesar thanked Mr. Thomas for his input.

4. Conduct a public hearing to receive comments on the reappointment of Magistrate Karl Eppich.

Chairman Lesar declared the public hearing open at 6:24 p.m. for the purpose of receiving comments on the reappointment of Magistrate Karl Eppich.

Presiding Magistrate Matt Tafoya stated that he was honored to recommend the reappointment of Magistrate Karl Eppich. He commented that not only has Magistrate Eppich contributed to the success of the Mesa Municipal Court through his knowledge and helpfulness, but he is also very mature and responsible as a judge. He noted that Magistrate Eppich is considered a "go to person" for staff, the administrators and other judges and regarded as a fair and professional jurist by attorneys and defendants alike.

Presiding Magistrate Tafoya urged that the Board recommend Magistrate Eppich's reappointment to the Mesa Municipal Court.

Chairman Lesar thanked Presiding Magistrate Tafoya for his remarks.

Chairman Lesar stated that there being no further citizens wishing to address the Board, he declared the public hearing closed.

5. Interview Magistrate Karl Eppich for reappointment.

The members of the Judicial Advisory Board posed selected interview questions to Magistrate Eppich.

Chairman Lesar thanked Magistrate Eppich for his input.

8. Convene an Executive Session.

It was moved by Boardmember Ali'varius, seconded by Boardmember Brooks, that an Executive Session be convened at 8:04 p.m. to discuss the reappointments of Magistrates [REDACTED] Karl Eppich and [REDACTED]

Chairman Lesar declared the motion carried unanimously.

- a. Discussion or consideration of employment, assignment, appointment, promotion or resignation of a public officer, appointee or employee of the City. (A.R.S. § 38-431.03A (1))
 1. Reappointment items for Magistrate [REDACTED]
 2. Reappointment items for Magistrate Eppich
 3. Reappointment items for Magistrate [REDACTED]

(At 9:30 p.m., the Board adjourned the Executive Session and reconvened their regular meeting.)

9. Discuss and make recommendations to the City Council on the reappointment of Magistrate [REDACTED] for a four-year term, Magistrate Karl Eppich for a four-year term and Magistrate [REDACTED] for a four-year term.

Chairman Lesar expressed appreciation to Presiding Magistrate Tafoya, Mr. Thomas and Magistrates [REDACTED], Eppich and [REDACTED] for their participation and patience this evening. He asked that each of the magistrates come forward when the Board makes their recommendations to the City Council regarding their respective reappointments.

Chairman Lesar asked Magistrate Eppich to come forward.

It was moved by Boardmember Brooks, seconded by Boardmember Harris, that Magistrate Karl Eppich be reappointed for a four-year term.

Chairman Lesar opened up the item for discussion.

Boardmember Brooks commented that in his opinion, Magistrate Eppich's interview/discussion with the Board was outstanding. He explained that he would support Magistrate Eppich's reappointment due to his years of experience, positive reference checks and his involvement as a mentor to the limited jurisdiction court judges. He remarked, in addition, that Magistrate Eppich's work with those judges throughout Arizona has brought and will continue to bring valuable information to the City of Mesa. He said that Magistrate Eppich's survey results were at or above the norm and added that the comments were also positive.

Chairman Lesar commended Magistrate Eppich for his contributions outside the courtroom and noted that he was an asset to the legal system and the City of Mesa. He pointed out that during a recent visit to Magistrate Eppich's courtroom, he displayed patience, clarity in his explanations and "clear fairness" about the proceedings to the party who was appearing in front of him.

Boardmember Harris said that it was clear from the survey results that Magistrate Eppich performs his job exceptionally well. He noted that he was also impressed with Magistrate Eppich's willingness to reach out and help others "do better" which, in his opinion, is the mark of a great public servant and a credit to his profession.

Chairman Lesar called for the vote.

Chairman Lesar declared the motion carried unanimously and congratulated Magistrate Eppich on his reappointment.

CITY OF MESA JUDICIAL ADVISORY BOARD

| Name of Judge: Karl Eppich | Total Surveys: 279 | | | | | | | | | | Assignment: Mesa City Court | | | | | | | | | | Cycle: 2013 Reappointment | | | | | | | | | | | | | | | |
|---|--------------------|----|-----|-----|-----|---------------|------|-----|----|-----|-----------------------------|-----|------|------|------|-------|-----|-----|-----|------|---------------------------|-----|------|-----|-----|------------|------|------|-----|-----|------|-----|-----|------|------|-----|
| | ATTORNEY | | | | | LITIGATOR PER | | | | | JUROR | | | | | STAFF | | | | | | | | | | | | | | | | | | | | |
| | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | Total Mean | | | | | | | | | | |
| i: Legal Ability | 0% | 2% | 6% | 18% | 75% | 100% | 3.6 | 0% | 2% | 6% | 18% | 75% | 100% | 3.6 | 0% | 2% | 6% | 17% | 74% | 100% | 3.6 | 0% | 2% | 6% | 18% | 75% | 100% | 3.6 | | | | | | | | |
| Legal reasoning ability. | 0% | 2% | 6% | 18% | 75% | 100% | 3.6 | 0% | 2% | 6% | 17% | 74% | 100% | 3.6 | 0% | 2% | 6% | 16% | 74% | 100% | 3.6 | 0% | 0% | 8% | 13% | 79% | 100% | 3.7 | | | | | | | | |
| Knowledge of substantive law. | 0% | 2% | 6% | 18% | 75% | 100% | 3.6 | 0% | 2% | 6% | 16% | 74% | 100% | 3.6 | 0% | 0% | 6% | 15% | 79% | 100% | 3.7 | 0% | 0% | 6% | 15% | 79% | 100% | 3.7 | | | | | | | | |
| Knowledge of rules of evidence. | 0% | 2% | 6% | 17% | 74% | 100% | 3.6 | 0% | 2% | 6% | 16% | 74% | 100% | 3.6 | 0% | 1% | 7% | 16% | 75% | 100% | 3.7 | 0% | 0% | 7% | 16% | 75% | 100% | 3.7 | | | | | | | | |
| Knowledge of rules of procedure. | 0% | 2% | 6% | 16% | 74% | 100% | 3.6 | 0% | 2% | 6% | 15% | 73% | 100% | 3.6 | 0% | 1% | 7% | 15% | 73% | 100% | 3.6 | 0% | 0% | 7% | 16% | 75% | 100% | 3.7 | | | | | | | | |
| Knowledge of laws pertaining to sentencing. | 0% | 0% | 0% | 8% | 13% | 79% | 100% | 3.7 | 0% | 0% | 0% | 8% | 13% | 79% | 100% | 3.7 | 0% | 0% | 0% | 8% | 13% | 79% | 100% | 3.7 | 0% | 0% | 0% | 8% | 13% | 79% | 100% | 3.7 | | | | |
| Keeps up to date. | 0% | 0% | 0% | 6% | 15% | 79% | 100% | 3.7 | 0% | 0% | 0% | 6% | 15% | 79% | 100% | 3.7 | 0% | 0% | 0% | 6% | 15% | 79% | 100% | 3.7 | 0% | 0% | 0% | 6% | 15% | 79% | 100% | 3.7 | | | | |
| Legal Ability Summary | 0% | 1% | 7% | 16% | 75% | 100% | 3.7 | 0% | 1% | 7% | 16% | 75% | 100% | 3.7 | 0% | 1% | 7% | 16% | 75% | 100% | 3.7 | 0% | 1% | 7% | 16% | 75% | 100% | 3.7 | 0% | 1% | 7% | 16% | 75% | 100% | 3.7 | |
| ii: Integrity | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | |
| Conduct free from impropriety. | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | |
| Equal treatment regardless of race. | 0% | 0% | 0% | 2% | 17% | 81% | 100% | 3.8 | 0% | 0% | 0% | 2% | 17% | 81% | 100% | 3.8 | 0% | 0% | 0% | 2% | 17% | 81% | 100% | 3.8 | 0% | 0% | 0% | 2% | 17% | 81% | 100% | 3.8 | | | | |
| Equal treatment regardless of gender. | 0% | 0% | 0% | 2% | 15% | 83% | 100% | 3.8 | 0% | 0% | 0% | 2% | 15% | 83% | 100% | 3.8 | 0% | 0% | 0% | 2% | 15% | 83% | 100% | 3.8 | 0% | 0% | 0% | 2% | 15% | 83% | 100% | 3.8 | | | | |
| Equal treatment regardless of economic status. | 0% | 0% | 0% | 2% | 15% | 83% | 100% | 3.8 | 0% | 0% | 0% | 2% | 15% | 83% | 100% | 3.8 | 0% | 0% | 0% | 2% | 15% | 83% | 100% | 3.8 | 0% | 0% | 0% | 2% | 15% | 83% | 100% | 3.8 | | | | |
| Avoided prejudging outcome of case. | 2% | 2% | 2% | 10% | 84% | 100% | 3.7 | 2% | 2% | 2% | 10% | 84% | 100% | 3.7 | 2% | 2% | 2% | 10% | 84% | 100% | 3.7 | 2% | 2% | 2% | 10% | 84% | 100% | 3.7 | 2% | 2% | 2% | 10% | 84% | 100% | 3.7 | |
| Basic fairness and impartiality. | 2% | 2% | 2% | 4% | 8% | 84% | 100% | 3.7 | 2% | 2% | 2% | 4% | 8% | 84% | 100% | 3.7 | 2% | 2% | 2% | 4% | 8% | 84% | 100% | 3.7 | 2% | 2% | 2% | 4% | 8% | 84% | 100% | 3.7 | | | | |
| Exhibits personal integrity. | 1% | 1% | 2% | 12% | 83% | 100% | 3.8 | 1% | 1% | 2% | 12% | 83% | 100% | 3.8 | 1% | 1% | 2% | 12% | 83% | 100% | 3.8 | 1% | 1% | 2% | 12% | 83% | 100% | 3.8 | 1% | 1% | 2% | 12% | 83% | 100% | 3.8 | |
| Integrity Summary | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | 0% | 2% | 2% | 10% | 85% | 100% | 3.8 | |
| iii: Communication Skills | 0% | 2% | 8% | 18% | 73% | 100% | 3.6 | 0% | 2% | 8% | 18% | 73% | 100% | 3.6 | 0% | 2% | 8% | 18% | 73% | 100% | 3.6 | 0% | 2% | 8% | 18% | 73% | 100% | 3.6 | 0% | 2% | 8% | 18% | 73% | 100% | 3.6 | |
| Clear and logical oral communications/directions. | 0% | 2% | 8% | 18% | 73% | 100% | 3.6 | 0% | 2% | 8% | 18% | 73% | 100% | 3.6 | 0% | 2% | 8% | 18% | 73% | 100% | 3.6 | 0% | 2% | 8% | 18% | 73% | 100% | 3.6 | 0% | 2% | 8% | 18% | 73% | 100% | 3.6 | |
| Clear and logical written decisions. | 0% | 0% | 11% | 11% | 79% | 100% | 3.7 | 0% | 0% | 11% | 11% | 79% | 100% | 3.7 | 0% | 0% | 11% | 11% | 79% | 100% | 3.7 | 0% | 0% | 11% | 11% | 79% | 100% | 3.7 | 0% | 0% | 11% | 11% | 79% | 100% | 3.7 | |
| Explained proceedings to the jury. | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | |
| Explained reasons for delays. | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | |
| Clear explanations of the juror's responsibilities. | 0% | 0% | 0% | 4% | 8% | 88% | 100% | 3.8 | 0% | 0% | 4% | 8% | 88% | 100% | 3.8 | 0% | 0% | 4% | 8% | 88% | 100% | 3.8 | 0% | 0% | 4% | 8% | 88% | 100% | 3.8 | 0% | 0% | 4% | 8% | 88% | 100% | 3.8 |
| Clear instructions to the jury. | 0% | 0% | 0% | 4% | 12% | 85% | 100% | 3.8 | 0% | 0% | 4% | 12% | 85% | 100% | 3.8 | 0% | 0% | 4% | 12% | 85% | 100% | 3.8 | 0% | 0% | 4% | 12% | 85% | 100% | 3.8 | 0% | 0% | 4% | 12% | 85% | 100% | 3.8 |
| Communication Skills Summary | 0% | 1% | 9% | 15% | 75% | 100% | 3.6 | 0% | 1% | 9% | 15% | 75% | 100% | 3.6 | 0% | 1% | 9% | 15% | 75% | 100% | 3.6 | 0% | 1% | 9% | 15% | 75% | 100% | 3.6 | 0% | 1% | 9% | 15% | 75% | 100% | 3.6 | |
| iv: Judicial Temperament | 0% | 2% | 12% | 18% | 67% | 100% | 3.5 | 0% | 2% | 12% | 18% | 67% | 100% | 3.5 | 0% | 2% | 12% | 18% | 67% | 100% | 3.5 | 0% | 2% | 12% | 18% | 67% | 100% | 3.5 | 0% | 2% | 12% | 18% | 67% | 100% | 3.5 | |
| Understanding and compassion. | 0% | 2% | 12% | 18% | 67% | 100% | 3.5 | 0% | 2% | 12% | 18% | 67% | 100% | 3.5 | 0% | 2% | 12% | 18% | 67% | 100% | 3.5 | 0% | 2% | 12% | 18% | 67% | 100% | 3.5 | 0% | 2% | 12% | 18% | 67% | 100% | 3.5 | |
| Dignified. | 0% | 0% | 8% | 22% | 71% | 100% | 3.6 | 0% | 0% | 8% | 22% | 71% | 100% | 3.6 | 0% | 0% | 8% | 22% | 71% | 100% | 3.6 | 0% | 0% | 8% | 22% | 71% | 100% | 3.6 | 0% | 0% | 8% | 22% | 71% | 100% | 3.6 | |
| Courteous. | 0% | 0% | 10% | 14% | 76% | 100% | 3.7 | 0% | 0% | 10% | 14% | 76% | 100% | 3.7 | 0% | 0% | 10% | 14% | 76% | 100% | 3.7 | 0% | 0% | 10% | 14% | 76% | 100% | 3.7 | 0% | 0% | 10% | 14% | 76% | 100% | 3.7 | |
| Courteous to litigants. | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | |
| Courteous to jurors. | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | 0% | 0% | 0% | 0% | 0% | 100% | 3.9 | |
| Is accessible. | 0% | 2% | 8% | 19% | 71% | 100% | 3.6 | 0% | 2% | 8% | 19% | 71% | 100% | 3.6 | 0% | 2% | 8% | 19% | 71% | 100% | 3.6 | 0% | 2% | 8% | 19% | 71% | 100% | 3.6 | 0% | 2% | 8% | 19% | 71% | 100% | 3.6 | |
| Conduct that promoted public confidence in the court and judge's ability. | 0% | 2% | 12% | 18% | 73% | 100% | 3.6 | 0% | 2% | 12% | 18% | 73% | 100% | 3.6 | 0% | 2% | 12% | 18% | 73% | 100% | 3.6 | 0% | 2% | 12% | 18% | 73% | 100% | 3.6 | 0% | 2% | 12% | 18% | 73% | 100% | 3.6 | |
| Judicial Temperament Summary | 0% | 1% | 10% | 16% | 72% | 100% | 3.6 | 0% | 1% | 10% | 16% | 72% | 100% | 3.6 | 0% | 1% | 10% | 16% | 72% | 100% | 3.6 | 0% | 1% | 10% | 16% | 72% | 100% | 3.6 | 0% | 1% | 10% | 16% | 72% | 100% | 3.6 | |
| v: Administrative Performance | 0% | 0% | 8% | 14% | 78% | 100% | 3.7 | 0% | 0% | 8% | 14% | 78% | 100% | 3.7 | 0% | 0% | 8% | 14% | 78% | 100% | 3.7 | 0% | 0% | 8% | 14% | 78% | 100% | 3.7 | 0% | 0% | 8% | 14% | 78% | 100% | 3.7 | |
| Punctuality in conducting proceedings. | 0% | 0% | 8% | 14% | 78% | 100% | 3.7 | 0% | 0% | 8% | 14% | 78% | 100% | 3.7 | 0% | 0% | 8% | 14% | 78% | 100% | 3.7 | 0% | 0% | 8% | 14% | 78% | 100% | 3.7 | 0% | 0% | 8% | 14% | 78% | 100% | 3.7 | |
| Maintenance of proper control over courtroom. | 0% | 0% | 6% | 20% | 74% | 100% | 3.7 | 0% | 0% | 6% | 20% | 74% | 100% | 3.7 | 0% | 0% | 6% | 20% | 74% | 100% | 3.7 | 0% | 0% | 6% | 20% | 74% | 100% | 3.7 | 0% | 0% | 6% | 20% | 74% | 100% | 3.7 | |
| Promptness in making rulings and rendering decisions. | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | |
| Hard worker. | 0% | 0% | 6% | 13% | 81% | 100% | 3.7 | 0% | 0% | 6% | 13% | 81% | 100% | 3.7 | 0% | 0% | 6% | 13% | 81% | 100% | 3.7 | 0% | 0% | 6% | 13% | 81% | 100% | 3.7 | 0% | 0% | 6% | 13% | 81% | 100% | 3.7 | |
| Respectful treatment of staff. | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | |
| Cooperation with peers. | 0% | 0% | 6% | 13% | 81% | 100% | 3.7 | 0% | 0% | 6% | 13% | 81% | 100% | 3.7 | 0% | 0% | 6% | 13% | 81% | 100% | 3.7 | 0% | 0% | 6% | 13% | 81% | 100% | 3.7 | 0% | 0% | 6% | 13% | 81% | 100% | 3.7 | |
| Cooperation with staff. | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | 0% | 0% | 8% | 20% | 71% | 100% | 3.6 | |
| Efficient management of calendar. | 0% | 0% | 7% | 18% | 75% | 100% | 3.7 | 0% | 0% | 7% | 18% | 75% | 100% | 3.7 | 0% | 0% | 7% | 18% | 75% | 100% | 3.7 | 0% | 0% | 7% | 18% | 75% | 100% | 3.7 | 0% | 0% | 7% | 18% | 75% | 100% | 3.7 | |
| Admin. Performance Summary | 0% | 0% | 7% | 18% | 75% | 100% | 3.7 | 0% | 0% | 7% | 18% | 75% | 100% | 3.7 | 0% | 0% | 7% | 18% | 75% | 100% | 3.7 | 0% | 0% | 7% | 18% | 75% | 100% | 3.7 | 0% | 0% | 7% | 18% | 75% | 100% | 3.7 | |

UN=Unacceptable, PO=Poor
 SA=Satisfactory, VG=Very Good, SU=Superior
 This summary is based on all reappointment reports published from: 2003 through 2012 and DOES NOT INCLUDE THE CURRENT REPORTS.

CITY OF MESA JUDICIAL ADVISORY BOARD

| Name of Judge: Karl Eppich | Total Surveys: 279 | | | | | | | | | | Assignment: Mesa City Court | | | | | | | | | | Cycle: 2013 Reappointment | | | | | | | | |
|---|--------------------|----|----|----|-----|----------------|-----|----|----|-----|-----------------------------|-----|-----|-----|----|-------|----|----|-----|-----|---------------------------|-----|----|----|----|-------|------|-----|-----|
| | ATTORNEY | | | | | LITWIT/PRO PER | | | | | JUROR | | | | | STAFF | | | | | 15 | | | | | | | | |
| | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | Total | Mean | | |
| I: Legal Ability | 0 | 1 | 3 | 9 | 38 | 51 | 3.6 | | | | | | | | | | | | | | | | | | | | | | |
| Legal reasoning ability. | 0 | 1 | 3 | 9 | 38 | 51 | 3.6 | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of substantive law. | 0 | 1 | 3 | 8 | 35 | 47 | 3.6 | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of rules of evidence. | 0 | 1 | 4 | 8 | 37 | 50 | 3.6 | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of rules of procedure. | 0 | 0 | 4 | 6 | 38 | 48 | 3.7 | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of laws pertaining to sentencing. | 0 | 0 | 3 | 7 | 37 | 47 | 3.7 | | | | | | | | | | | | | | | | | | | | | | |
| Keeps up to date. | 0 | 4 | 20 | 47 | 223 | 294 | 3.7 | | | | | | | | | | | | | | | | | | | | | | |
| Legal Ability Summary | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| II: Integrity | 0 | 1 | 1 | 5 | 41 | 48 | 3.5 | 2 | 0 | 27 | 36 | 90 | 155 | 3.4 | 0 | 0 | 0 | 2 | 19 | 21 | 3.9 | 0 | 0 | 1 | 3 | 8 | 12 | 3.6 | |
| Conduct free from impropriety. | 0 | 0 | 1 | 8 | 39 | 48 | 3.8 | 3 | 1 | 23 | 40 | 93 | 160 | 3.4 | 0 | 0 | 0 | 3 | 20 | 23 | 3.9 | 0 | 0 | 1 | 3 | 8 | 12 | 3.6 | |
| Equal treatment regardless of race. | 0 | 0 | 1 | 7 | 39 | 47 | 3.8 | 3 | 1 | 23 | 42 | 91 | 160 | 3.4 | 0 | 0 | 0 | 3 | 20 | 23 | 3.9 | 0 | 0 | 1 | 3 | 8 | 12 | 3.6 | |
| Equal treatment regardless of gender. | 0 | 0 | 1 | 7 | 40 | 48 | 3.8 | 3 | 1 | 23 | 42 | 91 | 160 | 3.4 | 0 | 0 | 0 | 3 | 22 | 25 | 3.9 | 0 | 0 | 1 | 3 | 8 | 12 | 3.6 | |
| Equal treatment regardless of economic status. | 1 | 1 | 1 | 5 | 41 | 49 | 3.7 | 8 | 3 | 25 | 40 | 84 | 160 | 3.2 | 0 | 0 | 0 | 3 | 23 | 26 | 3.9 | 0 | 0 | 1 | 3 | 8 | 12 | 3.6 | |
| Avoided prejudging outcome of case. | 1 | 1 | 2 | 4 | 41 | 49 | 3.7 | 8 | 3 | 25 | 40 | 84 | 160 | 3.2 | 0 | 0 | 0 | 3 | 23 | 26 | 3.9 | 0 | 0 | 1 | 3 | 8 | 12 | 3.6 | |
| Basic fairness and impartiality. | 2 | 3 | 7 | 36 | 241 | 289 | 3.8 | 16 | 5 | 98 | 158 | 358 | 635 | 3.3 | 0 | 0 | 0 | 14 | 104 | 118 | 3.9 | 0 | 0 | 5 | 15 | 40 | 60 | 3.6 | |
| Exhibits personal integrity. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Integrity Summary | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| III: Communication Skills | 0 | 1 | 4 | 9 | 37 | 51 | 3.6 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 2 | 24 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Clear and logical oral communications/directions. | 0 | 0 | 4 | 4 | 30 | 38 | 3.7 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 2 | 24 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Clear and logical written decisions. | 0 | 0 | 4 | 4 | 30 | 38 | 3.7 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 2 | 24 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Explained proceedings to the jury. | 0 | 0 | 4 | 4 | 30 | 38 | 3.7 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 2 | 24 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Explained reasons for delays. | 0 | 0 | 4 | 4 | 30 | 38 | 3.7 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 2 | 24 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Clear explanations of the juror's responsibilities. | 0 | 0 | 4 | 4 | 30 | 38 | 3.7 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 2 | 24 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Clear instructions to the jury. | 0 | 1 | 8 | 13 | 67 | 89 | 3.6 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 2 | 13 | 113 | 128 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 |
| Communication Skills Summary | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| IV: Judicial Temperament | 0 | 1 | 6 | 9 | 33 | 49 | 3.5 | 3 | 7 | 23 | 38 | 90 | 161 | 3.3 | 0 | 0 | 0 | 6 | 18 | 24 | 3.8 | 0 | 0 | 2 | 4 | 7 | 13 | 3.4 | |
| Understanding and compassion. | 0 | 0 | 4 | 11 | 36 | 51 | 3.6 | 2 | 2 | 27 | 40 | 91 | 162 | 3.3 | 0 | 0 | 0 | 4 | 22 | 26 | 3.8 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Dignified. | 0 | 0 | 5 | 7 | 39 | 51 | 3.7 | 2 | 3 | 30 | 37 | 94 | 166 | 3.3 | 0 | 0 | 0 | 4 | 22 | 26 | 3.8 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Courteous. | 0 | 1 | 4 | 9 | 34 | 48 | 3.6 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 3 | 23 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Courteous to litigants. | 0 | 1 | 4 | 9 | 34 | 48 | 3.6 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 3 | 23 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Courteous to jurors. | 0 | 1 | 4 | 9 | 34 | 48 | 3.6 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 3 | 23 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Is accessible. | 0 | 1 | 4 | 9 | 34 | 48 | 3.6 | 3 | 2 | 20 | 41 | 96 | 162 | 3.4 | 0 | 0 | 0 | 3 | 23 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Conduct that promoted public confidence in the court and judge's ability. | 0 | 1 | 6 | 5 | 39 | 51 | 3.6 | 4 | 6 | 23 | 37 | 93 | 163 | 3.3 | 0 | 0 | 0 | 3 | 23 | 26 | 3.9 | 0 | 0 | 2 | 3 | 8 | 13 | 3.5 | |
| Judicial Temperament Summary | 0 | 3 | 25 | 41 | 181 | 250 | 3.6 | 11 | 18 | 103 | 152 | 368 | 652 | 3.3 | 0 | 0 | 0 | 20 | 108 | 128 | 3.8 | 0 | 0 | 8 | 13 | 31 | 52 | 3.4 | |
| V: Administrative Performance | 0 | 0 | 4 | 7 | 39 | 50 | 3.7 | 1 | 6 | 31 | 43 | 80 | 161 | 3.2 | 0 | 0 | 1 | 4 | 21 | 26 | 3.8 | 0 | 1 | 2 | 3 | 5 | 11 | 3.1 | |
| Punctuality in conducting proceedings. | 0 | 0 | 3 | 10 | 37 | 50 | 3.7 | 1 | 0 | 27 | 39 | 96 | 163 | 3.4 | 0 | 0 | 0 | 3 | 23 | 26 | 3.9 | 0 | 0 | 2 | 4 | 6 | 12 | 3.3 | |
| Maintenance of proper control over courtroom. | 0 | 0 | 4 | 10 | 35 | 49 | 3.6 | 2 | 2 | 22 | 27 | 73 | 126 | 3.3 | 0 | 0 | 0 | 3 | 16 | 19 | 3.8 | 0 | 0 | 3 | 2 | 8 | 13 | 3.4 | |
| Promptness in making rulings and rendering decisions. | 0 | 0 | 3 | 6 | 38 | 47 | 3.7 | 2 | 2 | 22 | 27 | 73 | 126 | 3.3 | 0 | 0 | 0 | 3 | 16 | 19 | 3.8 | 0 | 0 | 3 | 2 | 8 | 13 | 3.4 | |
| Hard worker. | 0 | 0 | 4 | 10 | 35 | 49 | 3.6 | 2 | 2 | 22 | 27 | 73 | 126 | 3.3 | 0 | 0 | 0 | 3 | 16 | 19 | 3.8 | 0 | 0 | 3 | 2 | 8 | 13 | 3.4 | |
| Respectful treatment of staff. | 0 | 0 | 4 | 10 | 35 | 49 | 3.6 | 2 | 2 | 22 | 27 | 73 | 126 | 3.3 | 0 | 0 | 0 | 3 | 16 | 19 | 3.8 | 0 | 0 | 3 | 2 | 8 | 13 | 3.4 | |
| Cooperation with peers. | 0 | 0 | 4 | 10 | 35 | 49 | 3.6 | 2 | 2 | 22 | 27 | 73 | 126 | 3.3 | 0 | 0 | 0 | 3 | 16 | 19 | 3.8 | 0 | 0 | 3 | 2 | 8 | 13 | 3.4 | |
| Cooperation with staff. | 0 | 0 | 4 | 10 | 35 | 49 | 3.6 | 2 | 2 | 22 | 27 | 73 | 126 | 3.3 | 0 | 0 | 0 | 3 | 16 | 19 | 3.8 | 0 | 0 | 3 | 2 | 8 | 13 | 3.4 | |
| Efficient management of calendar. | 0 | 0 | 4 | 10 | 35 | 49 | 3.6 | 2 | 2 | 22 | 27 | 73 | 126 | 3.3 | 0 | 0 | 0 | 3 | 16 | 19 | 3.8 | 0 | 0 | 3 | 2 | 8 | 13 | 3.4 | |
| Admin. Performance Summary | 0 | 0 | 18 | 43 | 184 | 245 | 3.7 | 4 | 8 | 80 | 109 | 249 | 450 | 3.3 | 0 | 0 | 1 | 10 | 60 | 71 | 3.8 | 0 | 0 | 2 | 19 | 18 | 47 | 86 | |

UN=Unacceptable, PO=Poor
 SA=Satisfactory, VG=Very Good, SU=Superior
 This summary is based on all reappointment reports published from 2003 through 2012 and DOES NOT INCLUDE THE CURRENT REPORTS.



JUDICIAL ADVISORY BOARD MINUTES

March 18, 2009

The Judicial Advisory Board of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on March 18, 2009 at 7:46 a.m.

COMMITTEE PRESENT

David M. Talamante
Kate Ali'varius
Daniel A. Barker
Marlon E. Branham
Stella Hunsaker
Scott Rhodes

COMMITTEE ABSENT

Michael B. Cowan

STAFF PRESENT

Susan Bozile
Kathleen Broman
Michael Claspell
Karl Eppich
Matt Tafoya

1. Items from citizens present.

Michelle Lue Sang, a Mesa Municipal Court Magistrate since May 1998, offered a series of comments regarding Magistrate Karl Eppich from her perspective as his colleague. She stated that Magistrate Eppich is an extremely dependable jurist and has assisted her on many occasions with her busy Court calendar. Magistrate Lue Sang also remarked that because of his judicial experience, ability to teach, enthusiasm and demeanor, Magistrate Eppich was invited to serve as a faculty member for the Administrative Office of the Court (AOC). She noted that in that capacity, Magistrate Eppich is responsible for the orientation of newly appointed judges in limited jurisdiction courts.

Magistrate Lue Sang further indicated that Magistrate Eppich respects the litigants that appear in his court and said that just because a litigant is dissatisfied with a judge's ruling does not mean the judge acted inappropriately or did not make decisions in accordance with the law. She also commented that Magistrate Eppich is an asset to the Mesa Municipal Court bench, possesses keen analytical skills and is committed to the bench and the community in which he serves. She added that Magistrate Eppich is one of the few judges at the Mesa Municipal Court who has embraced technology in an effort to create a more efficiently run facility.

Chairman Talamante stated that the Boardmembers were provided correspondence from David Rodriguez, a litigant who once appeared before Magistrate Eppich, and noted that he would prefer to discuss the matter in Executive Session. He advised that Magistrate Eppich would receive a copy of the above-referenced materials.

2. Convene an Executive Session.

- a. Discussion or consideration of employment, assignment, appointment, promotion or resignation of a public officer, appointee or employee of the City. (A.R.S. 38-431.03A (1))

1. Reappointment items for Magistrate Eppich

It was moved by Boardmember Rhodes, seconded by Boardmember Ali'varius, that an Executive Session be convened at 7:53 a.m. to discuss the reappointment of Magistrate Karl Eppich.

Chairman Talamante declared the motion carried unanimously by those present.

(At 8:46 a.m., the Executive Session adjourned and the Board reconvened their regular meeting.)

3. Discuss and make recommendations to the City Council on the reappointment of Magistrate Karl Eppich for a four-year term.

It was moved by Boardmember Rhodes, seconded by Boardmember Ali'varius, that staff provide the City Council the complete court file regarding David Rodriguez (Docket #2000024634) and also copies of a March 17, 2009 letter to the Judicial Advisory Board authored by Mr. Rodriguez. (Items are available for review in the City Clerk's Office.)

Chairman Talamante declared the motion carried unanimously by those present.

Although Mr. Rodriguez was not in attendance, Boardmember Rhodes expressed appreciation to him for bringing his concerns to the Board's attention and emphasized the fact that the Boardmembers take all concerns very seriously. He also commented on the fact that the March 4, 2009 meeting was continued in order to conduct additional investigation in this regard. Boardmember Rhodes clarified that it is not the responsibility of the Boardmembers to review a particular case that goes before the Mesa Municipal Court, but rather to review the record of each judge individually as a whole.

It was moved by Boardmember Rhodes, that based on Magistrate Eppich's career at the Mesa Municipal Court for many years, the communications that the Board received from members of the public, the judiciary and the State Bar, on Magistrate Eppich's job performance (as determined by the survey results), and based on Magistrate Eppich's demeanor, abilities as a judge, contributions to the Court system in general and to the Administrative Office of the Court, that Magistrate Karl Eppich be reappointed for a four-year term.

Boardmember Barker seconded the motion.

Chairman Talamante stated that in casting their votes on the pending motion, it might be appropriate for each Boardmember to explain the reason for his or her vote in this matter since the minutes will be reviewed by the City Council.

Chairman Talamante commented that he would abstain from voting on this item because he was not present at the March 4, 2009 Judicial Advisory Board meeting when Mr. Rodriguez addressed the Board. He stated that the Board first considered the issues that were raised by Mr. Rodriguez and ultimately continued the matter in order to perform further due diligence in this regard.

Boardmember Barker stated that he would vote in favor of the motion.

Boardmember Ali'varius advised that she would support the motion.

Boardmember Branham also indicated that he would vote in favor of the motion.

Boardmember Hunsaker expressed support for the motion.

Chairman Talamante declared the motion to recommend the reappointment of Karl Eppich as City Magistrate in the Mesa Municipal Court for an additional four-year term carried unanimously by those present and voting.

Chairman Talamante commented that the due diligence performed by the Board, the results of the Court survey, and the comments that the Board received in support of Magistrate Eppich demonstrate that he is performing in a competent and diligent manner as a City Magistrate and added that he deserves the opportunity to continue to serve in that capacity.

Deputy City Clerk Michael Claspell stated that it would be unnecessary to schedule further meetings until this fall, at which time the Board would begin to prepare for the 2010 reappointments of Magistrates Michelle Lue Sang and Elizabeth Arriola.

4. Adjournment.

It was moved by Boardmember Barker, seconded by Boardmember Ali'varius, that the meeting of the Judicial Advisory Board be adjourned at 8:53 a.m.

Chairman Talamante declared the motion carried unanimously by those present.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Judicial Advisory Board meeting of the City of Mesa, Arizona, held on the 18th day of March 2009. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

CITY OF MESA JUDICIAL ADVISORY BOARD

Name of Judge:
Karl Eppich

Total Surveys: 321

Assignment: Mesa City Court

Cycle: Reappointment 2009

| | ATTORNEY | | | | | 33 | | LIT/WIT/PRO PER | | | | | 223 | | JUROR | | | | | 46 | | STAFF | | | | | 19 | | |
|---|----------|-----|-----|-----|-----|-------|------|-----------------|----|-----|-----|-----|-------|------|-------|----|-----|-----|-----|-------|------|-------|----|-----|-----|-----|-------|------|--|
| | UN | PO | SA | VG | SU | Total | Mean | UN | PO | SA | VG | SU | Total | Mean | UN | PO | SA | VG | SU | Total | Mean | UN | PO | SA | VG | SU | Total | Mean | |
| I: Legal Ability | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Legal reasoning ability. | 0% | 3% | 6% | 34% | 56% | 100% | 3.4 | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of substantive law. | 0% | 9% | 3% | 34% | 53% | 100% | 3.3 | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of rules of evidence. | 0% | 3% | 13% | 38% | 47% | 100% | 3.3 | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of rules of procedure. | 0% | 0% | 13% | 38% | 50% | 100% | 3.4 | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of laws pertaining to sentencing. | 0% | 0% | 16% | 34% | 50% | 100% | 3.3 | | | | | | | | | | | | | | | | | | | | | | |
| Keeps up to date. | 0% | 0% | 10% | 42% | 48% | 100% | 3.4 | | | | | | | | | | | | | | | | | | | | | | |
| Legal Ability Summary | 0% | 3% | 10% | 37% | 51% | 100% | 3.4 | | | | | | | | | | | | | | | | | | | | | | |
| II: Integrity | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Conduct free from impropriety. | 0% | 3% | 13% | 29% | 55% | 100% | 3.4 | | | | | | | | | | | | | | | | | | | | | | |
| Equal treatment regardless of race. | 0% | 0% | 13% | 30% | 57% | 100% | 3.4 | 1% | 2% | 12% | 32% | 54% | 100% | 3.4 | 0% | 0% | 7% | 41% | 51% | 100% | 3.4 | 0% | 0% | 8% | 41% | 53% | 100% | 3.5 | |
| Equal treatment regardless of gender. | 0% | 0% | 14% | 28% | 58% | 100% | 3.4 | 1% | 1% | 13% | 32% | 53% | 100% | 3.4 | 0% | 0% | 7% | 33% | 60% | 100% | 3.5 | 0% | 0% | 6% | 35% | 59% | 100% | 3.5 | |
| Equal treatment regardless of economic status. | 0% | 0% | 11% | 32% | 57% | 100% | 3.5 | 2% | 1% | 12% | 28% | 56% | 100% | 3.4 | 0% | 0% | 12% | 34% | 54% | 100% | 3.4 | 0% | 0% | 6% | 35% | 59% | 100% | 3.5 | |
| Avoided prejudging outcome of case. | 0% | 6% | 10% | 26% | 58% | 100% | 3.4 | | | | | | | | | | | | | | | | | | | | | | |
| Basic fairness and impartiality. | 0% | 13% | 16% | 25% | 47% | 100% | 3.1 | 1% | 4% | 13% | 30% | 53% | 100% | 3.3 | 0% | 0% | 7% | 26% | 67% | 100% | 3.6 | 6% | 0% | 0% | 28% | 65% | 100% | 3.5 | |
| Exhibits personal integrity. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Integrity Summary | 0% | 4% | 13% | 28% | 55% | 100% | 3.3 | 1% | 2% | 13% | 31% | 54% | 100% | 3.4 | 0% | 0% | 7% | 32% | 61% | 100% | 3.5 | 2% | 0% | 4% | 32% | 62% | 100% | 3.5 | |
| III: Communication Skills | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear and logical oral communications/directions. | 0% | 3% | 16% | 31% | 50% | 100% | 3.3 | 1% | 1% | 12% | 31% | 54% | 100% | 3.4 | 0% | 0% | 4% | 43% | 52% | 100% | 3.5 | 0% | 0% | 11% | 33% | 56% | 100% | 3.4 | |
| Clear and logical written decisions. | 0% | 4% | 17% | 17% | 61% | 100% | 3.3 | | | | | | | | | | | | | | | | | | | | | | |
| Explained proceedings to the jury. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Explained reasons for delays. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear explanations of the juror's responsibilities. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear instructions to the jury. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Communication Skills Summary | 0% | 4% | 16% | 25% | 55% | 100% | 3.3 | 1% | 1% | 12% | 31% | 54% | 100% | 3.4 | 0% | 0% | 8% | 37% | 55% | 100% | 3.5 | 0% | 0% | 11% | 33% | 56% | 100% | 3.4 | |
| IV: Judicial Temperament | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Understanding and compassion. | 0% | 13% | 19% | 22% | 47% | 100% | 3.0 | 1% | 3% | 13% | 32% | 52% | 100% | 3.3 | 0% | 0% | 21% | 42% | 37% | 100% | 3.2 | 6% | 0% | 13% | 19% | 63% | 100% | 3.3 | |
| Dignified. | 0% | 3% | 19% | 25% | 53% | 100% | 3.3 | 1% | 1% | 14% | 27% | 58% | 100% | 3.4 | 0% | 0% | 11% | 33% | 57% | 100% | 3.5 | 6% | 0% | 6% | 13% | 75% | 100% | 3.5 | |
| Courteous. | 0% | 10% | 17% | 13% | 60% | 100% | 3.2 | 1% | 2% | 13% | 28% | 57% | 100% | 3.4 | | | | | | 100% | 3.4 | 6% | 0% | 6% | 25% | 63% | 100% | 3.4 | |
| Courteous to litigants. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Courteous to jurors. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Is accessible. | 0% | 10% | 17% | 21% | 52% | 100% | 3.1 | | | | | | | | | | | | | | | | | | | | | | |
| Conduct that promoted public confidence in the court and judge's ability. | 0% | 13% | 13% | 23% | 52% | 100% | 3.1 | 2% | 3% | 11% | 28% | 57% | 100% | 3.3 | 0% | 0% | 11% | 30% | 59% | 100% | 3.5 | 6% | 0% | 6% | 19% | 69% | 100% | 3.4 | |
| Judicial Temperament Summary | 0% | 10% | 17% | 21% | 53% | 100% | 3.2 | 1% | 2% | 13% | 29% | 56% | 100% | 3.4 | 0% | 0% | 12% | 34% | 55% | 100% | 3.4 | 6% | 0% | 8% | 19% | 67% | 100% | 3.4 | |
| V: Administrative Performance | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Punctuality in conducting proceedings. | 0% | 3% | 16% | 41% | 41% | 100% | 3.2 | 1% | 1% | 17% | 32% | 50% | 100% | 3.3 | 0% | 0% | 22% | 42% | 36% | 100% | 3.1 | 0% | 0% | 7% | 43% | 50% | 100% | 3.4 | |
| Maintenance of proper control over courtroom. | 0% | 0% | 19% | 41% | 41% | 100% | 3.2 | 1% | 0% | 15% | 29% | 55% | 100% | 3.4 | 0% | 0% | 13% | 38% | 49% | 100% | 3.4 | 0% | 8% | 15% | 38% | 38% | 100% | 3.1 | |
| Promptness in making rulings and rendering decisions. | 0% | 0% | 19% | 39% | 42% | 100% | 3.2 | | | | | | | | | | | | | | | | | | | | | | |
| Hard worker. | 0% | 7% | 10% | 30% | 53% | 100% | 3.3 | 1% | 1% | 15% | 33% | 50% | 100% | 3.3 | 0% | 0% | 15% | 41% | 44% | 100% | 3.3 | 0% | 6% | 6% | 38% | 50% | 100% | 3.3 | |
| Respectful treatment of staff. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cooperation with peers. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cooperation with staff. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Efficient management of calendar. | 0% | 7% | 13% | 33% | 47% | 100% | 3.2 | | | | | | | | | | | | | | | | | | | | | | |
| Admin. Performance Summary | 0% | 3% | 15% | 37% | 45% | 100% | 3.2 | 1% | 1% | 16% | 31% | 52% | 100% | 3.3 | 0% | 0% | 17% | 40% | 43% | 100% | 3.3 | 3% | 3% | 9% | 34% | 51% | 100% | 3.3 | |

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

This report is based on responses from surveys received between January 1, 2005 and December 31, 2008.

CITY OF MESA JUDICIAL ADVISORY BOARD

| Name of Judge: Karl Eppich | Total Surveys: 321 | | | | | | | | | | Assignment: Mesa City Court | | | | | | | | | | Cycle: Reappointment 2009 | | | | | | | | | |
|---|--------------------|----|----|----|-----|---------------------|-----|----|----|----|-----------------------------|-----|-----|-----|----|-------|----|----|-----|-----|---------------------------|---|---|---|----|----|-----|-----|--|--|
| | ATTORNEY | | | | | DEFENDANT/PLAINTIFF | | | | | JUROR | | | | | STAFF | | | | | | | | | | | | | | |
| | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | UN | PO | SA | VG | SU | | | | | | | | | | |
| I: Legal Ability | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Legal reasoning ability. | 0 | 1 | 2 | 11 | 18 | 32 | 3.4 | | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of substantive law. | 0 | 3 | 1 | 11 | 17 | 32 | 3.3 | | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of rules of evidence. | 0 | 1 | 4 | 12 | 15 | 32 | 3.3 | | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of rules of procedure. | 0 | 0 | 4 | 12 | 16 | 32 | 3.4 | | | | | | | | | | | | | | | | | | | | | | | |
| Knowledge of laws pertaining to sentencing. | 0 | 0 | 5 | 11 | 16 | 32 | 3.3 | | | | | | | | | | | | | | | | | | | | | | | |
| Keeps up to date. | 0 | 0 | 3 | 13 | 15 | 31 | 3.4 | | | | | | | | | | | | | | | | | | | | | | | |
| Legal Ability Summary | 0 | 5 | 19 | 70 | 97 | 191 | 3.4 | | | | | | | | | | | | | | | | | | | | | | | |
| II: Integrity | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Conduct free from impropriety. | 0 | 1 | 4 | 9 | 17 | 31 | 3.4 | | | | | | | | | | | | | | | | | | | | | | | |
| Equal treatment regardless of race. | 0 | 0 | 4 | 9 | 17 | 30 | 3.4 | 1 | 3 | 23 | 58 | 100 | 186 | 3.4 | 0 | 0 | 3 | 17 | 21 | 41 | 3.4 | 0 | 0 | 1 | 7 | 9 | 17 | 3.5 | | |
| Equal treatment regardless of gender. | 0 | 0 | 4 | 8 | 17 | 29 | 3.4 | 1 | 2 | 25 | 60 | 101 | 189 | 3.4 | 0 | 0 | 3 | 14 | 26 | 43 | 3.5 | 0 | 0 | 1 | 6 | 10 | 17 | 3.5 | | |
| Equal treatment regardless of economic status. | 0 | 0 | 3 | 9 | 16 | 28 | 3.5 | 3 | 2 | 22 | 53 | 100 | 180 | 3.4 | 0 | 0 | 5 | 14 | 22 | 41 | 3.4 | 0 | 0 | 1 | 6 | 10 | 17 | 3.5 | | |
| Avoided prejudging outcome of case. | 0 | 2 | 3 | 8 | 18 | 31 | 3.4 | | | | | | | | | | | | | | | | | | | | | | | |
| Basic fairness and impartiality. | 0 | 4 | 5 | 8 | 15 | 32 | 3.1 | 1 | 7 | 25 | 57 | 103 | 193 | 3.3 | 0 | 0 | 3 | 12 | 31 | 46 | 3.6 | 1 | 0 | 0 | 5 | 11 | 17 | 3.5 | | |
| Exhibits personal integrity. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Integrity Summary | 0 | 7 | 23 | 51 | 100 | 181 | 3.3 | 6 | 14 | 95 | 229 | 404 | 748 | 3.4 | 0 | 0 | 16 | 69 | 131 | 216 | 3.5 | 2 | 0 | 3 | 27 | 53 | 85 | 3.5 | | |
| III: Communication Skills | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear and logical oral communications/directions. | 0 | 1 | 5 | 10 | 16 | 32 | 3.3 | 2 | 3 | 25 | 82 | 109 | 201 | 3.4 | 0 | 0 | 2 | 20 | 24 | 46 | 3.5 | 0 | 0 | 2 | 6 | 10 | 18 | 3.4 | | |
| Clear and logical written decisions. | 0 | 1 | 4 | 4 | 14 | 23 | 3.3 | | | | | | | | | | | | | | | | | | | | | | | |
| Explained proceedings to the jury. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Explained reasons for delays. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear explanations of the juror's responsibilities. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear instructions to the jury. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Communication Skills Summary | 0 | 2 | 9 | 14 | 30 | 55 | 3.3 | 2 | 3 | 25 | 62 | 109 | 201 | 3.4 | 0 | 0 | 17 | 82 | 122 | 221 | 3.5 | 0 | 0 | 2 | 6 | 10 | 18 | 3.4 | | |
| IV: Judicial Temperament | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Understanding and compassion. | 0 | 4 | 6 | 7 | 15 | 32 | 3.0 | 2 | 5 | 25 | 62 | 100 | 194 | 3.3 | 0 | 0 | 9 | 18 | 16 | 43 | 3.2 | 1 | 0 | 2 | 3 | 10 | 16 | 3.3 | | |
| Dignified. | 0 | 1 | 6 | 8 | 17 | 32 | 3.3 | 1 | 1 | 27 | 53 | 115 | 197 | 3.4 | 0 | 0 | 5 | 15 | 26 | 46 | 3.5 | 1 | 0 | 1 | 2 | 12 | 16 | 3.5 | | |
| Courteous. | 0 | 3 | 5 | 4 | 18 | 30 | 3.2 | 1 | 3 | 26 | 56 | 112 | 198 | 3.4 | | | | | | | | | | | | | | | | |
| Courteous to litigants. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Courteous to jurors. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Is accessible. | 0 | 3 | 5 | 6 | 15 | 29 | 3.1 | | | | | | | | | | | | | | | | | | | | | | | |
| Conduct that promoted public confidence in the court and judge's ability. | 0 | 4 | 4 | 7 | 16 | 31 | 3.1 | 3 | 6 | 21 | 53 | 109 | 192 | 3.3 | 0 | 0 | 5 | 14 | 27 | 46 | 3.5 | 1 | 0 | 1 | 3 | 11 | 16 | 3.4 | | |
| Judicial Temperament Summary | 0 | 15 | 26 | 32 | 81 | 154 | 3.2 | 7 | 15 | 99 | 224 | 436 | 781 | 3.4 | 0 | 0 | 26 | 76 | 124 | 226 | 3.4 | 4 | 0 | 5 | 12 | 43 | 64 | 3.4 | | |
| V: Administrative Performance | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Punctuality in conducting proceedings. | 0 | 1 | 5 | 13 | 13 | 32 | 3.2 | 1 | 1 | 33 | 64 | 98 | 197 | 3.3 | 0 | 0 | 10 | 19 | 16 | 45 | 3.1 | 0 | 0 | 1 | 6 | 7 | 14 | 3.4 | | |
| Maintenance of proper control over courtroom. | 0 | 0 | 6 | 13 | 13 | 32 | 3.2 | 1 | 0 | 30 | 57 | 109 | 197 | 3.4 | 0 | 0 | 6 | 17 | 22 | 45 | 3.4 | 0 | 1 | 2 | 5 | 5 | 13 | 3.1 | | |
| Promptness in making rulings and rendering decisions. | 0 | 0 | 6 | 12 | 13 | 31 | 3.2 | | | | | | | | | | | | | | | | | | | | | | | |
| Hard worker. | 0 | 2 | 3 | 9 | 16 | 30 | 3.3 | 1 | 2 | 24 | 53 | 81 | 161 | 3.3 | 0 | 0 | 6 | 16 | 17 | 39 | 3.3 | 0 | 1 | 1 | 6 | 8 | 16 | 3.3 | | |
| Respectful treatment of staff. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cooperation with peers. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cooperation with staff. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Efficient management of calendar. | 0 | 2 | 4 | 10 | 14 | 30 | 3.2 | | | | | | | | | | | | | | | | | | | | | | | |
| Admin. Performance Summary | 0 | 5 | 24 | 57 | 69 | 155 | 3.2 | 3 | 3 | 87 | 174 | 288 | 555 | 3.3 | 0 | 0 | 22 | 52 | 55 | 129 | 3.3 | 3 | 3 | 9 | 36 | 54 | 105 | 3.3 | | |

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

This report is based on responses from surveys received between January 1, 2005 and December 31, 2008.