State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-176

Judge: C. Steven McMurry

Complainant: Lynn Magnandonovan

AMENDED ORDER

The Complainant alleges a justice of the peace (now retired) violated Rules 1.1, 1.2, 2.2, 2.3, 2.5, 2.6, and 2.8 of the Code of Judicial Conduct in a civil proceeding.

Judge McMurry presided over a civil case, in which Lynn Magnandonovan was the plaintiff. Judge McMurry granted the defendants' motion to dismiss, but the ruling was overturned on appeal. On remand to the trial court, Judge McMurry reassigned the matter to a pro tem judge, but presided over a status conference on February 15, 2018, because the pro tem judge was unavailable. At the status conference, Judge McMurry spoke to Ms. Magnandonovan in a condescending and mocking tone, and he took on the role of an advocate, adamantly attempting to dissuade Ms. Magnandonovan from exercising her right to a jury trial. The Commission noted several examples of improper comments made by Judge McMurry, including, but not limited to:

- I'm going to do whatever I can to convince you that that's [a jury trial] is a bad choice. But I don't think I'm going to be successful. I think you're going to insist upon it, and you are. And you have the right. You certainly have the right. But I'll tell you the only time I've seen someone in your position take a case to a jury trial, it was an unmitigated disaster. And I warned the plaintiff. But yeah, you have the right to do it, but you have the same right to perform brain surgery on yourself. And I think they're both equally imprudent.
- Stop calling my staff and talking to them extensively. You're using too much of their time. I've actually told – gotten – bought for [S.H.] a three minute egg timer. And I've told her, if you call, flip over the egg timer. After three minutes, hang up the phone. If you can't ask your question in three minutes, you're wasting our time.
- [Judge McMurry laughing] You're telling me how long a trial is going to take? You've not done any civil litigation in this court . . . Alright, stop talking! I don't want to hear it anymore. . . . I don't care what

you think. I've told you you're making a mistake on this and you didn't hear me.

- And don't complain to us that it's inconvenient for you to come from California. You are burning through the time of forty Arizona citizens, at least. Plus, huge amounts of money, Arizona taxpayer money to produce this trial. Stop telling me it's inconvenient and expensive for you to come from California. Nobody cares. Nobody cares at all.
- You are a high maintenance litigant! And I'm simply telling you that's over. And this is the way it works.

In his response to the complaint, Judge McMurry admitted that he convened the status conference intending to attempt to dissuade Ms. Magnandonovan from pursuing a jury trial. He stated he never intended to mock Ms. Magnandonovan, but he believed his "bookish and awkward" mannerisms could cause someone to reasonably conclude he was mocking her and appear arrogant.

The Commission found that Judge McMurry's conduct, as described above, violated the following Code provisions:

Rule 1.2, which states, "a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

Rule 2.2, which states, "a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."

Rule 2.3(A), which states, "a judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."

Rule 2.8(B), which states, "a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . ."

The Commission found no clear and convincing evidence to support the remaining allegations of the complaint.

The Commission was troubled by the fact that Judge McMurry had a prior reprimand for a demeanor-related matter in 2010, but it considered the remoteness of that prior discipline, and Judge McMurry's retirement from being a full-time justice of the peace in 2018, in considering an appropriate sanction in this case.

Accordingly, retired Justice of the Peace C. Steven McMurry is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule

17(a). The record in this case, consisting of the complaint, the judge's response, and this order shall be made public as required by Commission Rule 9(a).

The Complainant had requested a copy of the judge's response. In light of the fact that the judge's response will be made public as a result of the reprimand, the Commission deems that request moot.

Commission members Roger D. Barton and Colleen E. Concannon did not participate in the consideration of this matter on September 23, 2019. Commission members Barbara Brown and George H. Foster, Jr., did not participate in the consideration of this matter related to the amended order on this date.

Dated: November 8, 2019

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were distributed to all
appropriate persons on November 8, 2019.

CONFIDENTIAL
Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2019-176

COMPLAINT AGAINST A JUDGE

Name: LYNN MAGNANDONOVAN **Judge's Name:** C. STEVEN MCMURRY

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

SEE ATTACHED COMPLAINT WITH EXHIBITS.

2019-176

INTRODUCTION

This complaint is filed against C. Steven McMurry ("McMurry"), Justice of the Peace, Encanto Justice Court, Maricopa County, Arizona, specifically for violations of Arizona Judicial Code of Conduct Rules 1.1, 1.2, 2.2, 2.3, 2.5, 2.6, and 2.8, and generally and fundamentally for the obstruction of justice that resulted from those Rule violations. When alleging obstruction of justice – interference of a government function – by McMurry I specifically use the following elements: 1) obstructive act; 2) nexus to an on-going government proceeding; and 3) evidence of corrupt intent on the part of the person carrying out the obstructive act. In case there is any question about the gravamen of obstruction of justice, a person does not have to complete the obstruction in order to be culpable. The specific statement of the facts are supported by the record in Case No, 2016-136702RC – most specifically the electronic recording of the proceeding on February 15, 2018 – and LC2018-000243-001DT. The attached Exhibits 1-5 are from that public record and incorporated into this complaint by reference.

I was the in pro per plaintiff in a non-criminal case that was filed in the Encanto Justice Court August 2016, and served on the defendants January 2017. The case was finally resolved by settlement; a court order ending the case was dated January 7, 2019, which I received January 14. Although the case was transferred from Encanto to Arcadia Biltmore in March 2018, because the Arcadia courtroom is next to the Encanto courtroom in the same courthouse and based on McMurry's conduct and his position as supervising justice of the peace for the previous four (4) years, I did not want to file this complaint until the case was completely resolved due to concerns of greater interference by McMurry.

I was advised there is no deadline for complaints. I was also advised the Arizona Commission on Judicial Conduct ("Commission") generally will not obtain the court file and if I want the Commission to consider matters in the record, I must provide them with the complaint. I submit this complaint and additional parts of the record since I think these court filings further illuminate and specifically analyze the particular issues in the electronic record that are set forth in this complaint, and flush out the seriousness of McMurry's conduct and the consequences of his actions. I presume the investigating person will obtain the electronic record of the February 15, 2018 hearing from Encanto Justice Court. Given my schedule regarding deadlines for other matters after receiving the court's order on January 14, and the seriousness and care I took in this submission, I am filing this complaint within a reasonable time.

FACTORS THAT COMPEL THIS COMPLAINT.

1. McMurry's extensive background, training, and experience.

Separate from his own statements on the record, McMurry's legal background, training, and experience is corroborative evidence his illegal conduct was no mistake and instead willful, intentional, and purposeful. Documentary evidence supports that McMurry:

- attended and graduated law school;
- was admitted to the Arizona State Bar in 1978;
- worked as an attorney in the Arizona Court of Appeals;
- practiced law in Arizona for 20 years thereafter;
- was elected as a Justice of the Peace in 1998, serving uninterrupted terms thereafter;
- was elected to the position of Supervising Justice of the Peace twice – first in 2012 – serving in that position for four (4) consecutive years from 2013-2017; and,
- has conducted presentations on constitutional principles and law.

McMurry graduated from law school, passed the bar exam, and practiced law – including a tenure with the court of appeals. McMurry has been a bench officer for approximately 20 years. Unlike many other justice court bench officers, McMurry is not ignorant of the rule of law, ethical responsibilities, and rules of judicial conduct. Therefore, McMurry's deliberate, intentional, and willful conduct is even more egregious, intolerable, and without justification. Further, McMurry's malice toward a litigant – particularly one appearing in pro per – in a court of law is reprehensible. As the previous supervising justice of the peace for four (4) years, McMurry responsibilities included supervision and discipline of the 26 justice court bench officers; within that context, McMurry's conduct is even more chilling – to the core: McMurry believes he is above the law – notwithstanding his imposition of the law on others – because the only rational explanation of his shocking behavior is that he thinks he can/will get away with his unlawful conduct. The public cannot endure this kind of abuse of power. To do so would subjugate the rule of law to tyranny. As former U.S. Senator Jeff Flake told the graduating class of Harvard Law School on May 23, 2018, "Without the rule of law, America is not America."

2. McMurry's prior discipline is an aggravating factor.

In 2010 McMurry was publically reprimanded (Disposition of **Complaint 10-221**) by the Commission for a violation of Rule 2.8(b) with the factual finding that McMurry made improper and unacceptable statements based on the record of the case (electronic recording of the hearing) that was reviewed by the Commission regarding the in pro per litigant's allegations of "verbally abusive comments and threatened physical violence." In part, the underlying allegations in **this** case are substantially the same as the 2010 case as well as eerily similar in nature, including McMurry's syntaxical construction, and tone.

Clearly, the Commission's discipline in 2010 was unable to extinguish McMurry's predilections and predispositions to abuse the power the citizens of Arizona have generously bestowed upon him when electing him to the position of public servant to the People. The People are the basis of government, and the government – **in every capacity** – is to serve the People. (See Arizona State Constitution Article 2, section 2.) There is no other objective. The rule of law is the instrumentality of that public service. Furthering the administration of justice is the underlying social policy of executing the rule of law as a bench officer. A bench officer's oath of office codifies this. (See: Arizona Constitution, Article 6, Section 26 Oath of office: "Each justice, judge and justice of the peace shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Arizona, and that he will faithfully and impartially discharge the duties of his office to the best of his ability.")

This prior 2010 incident is an aggravating factor because this case, in part, includes the same or similar conduct as that previous case, yet, this instant case involves far more egregious conduct, making the case that McMurry's tendencies were not curtailed at all but have become aggravated, possibly emboldened by McMurry's slight sanction by the Commission in 2010.

3. McMurry's complaints of same/similar conduct by others is an aggravating factor.

In 2015 McMurry – as the Presiding Justice of the Peace – filed a formal compliant as the Complainant (Complaint 15-125) with the Commission against judge pro tempore David Fletcher ("Fletcher") based on a proceeding with an in pro per litigant that involved, in part,

substantively the same or similar conduct as in **this** case. McMurry thought Fletcher's conduct was worthy of a compliant to the Commission for violations of the Rules of Judicial Conduct, and filed it as such. This 2015 complaint McMurry filed against another bench officer is an aggravating factor in this case because McMurry already found this conduct violated the Rules of Judicial Conduct; as a supervising judicial officer, when McMurry submitted the complaint against a bench officer to the Commission, McMurry had previously discerned the serious nature of the conduct. The fact that McMurry's conduct in this case is much more egregious and expansive than the judicial conduct he complained of in 2015 supports a separate and additional aggravating factor.

In 2012 McMurry – as the Presiding Justice of the Peace – lodged a formal complaint as the Complainant with the Commission against Melanie DeForest ("DeForest") as a justice of the peace [Complaint 12-275 (see also Complaint 12-266)], and asked that she be reassigned; McMurry cited allegations apparently published in the local newspaper that DeForest made false statements and misrepresentations. As the basis of his request to the Commission, McMurry specifically cited a finding of the California Commission on Judicial Performance for previous **removal** of a judge in 2008 because "a judge who does not honor the oath to tell the truth cannot be entrusted in judging the credibility of others." (See McMurry's letter to the Commission dated October 12, 2012, with "2012-275" stamped at the top of the page, and presumably in that complaint file.) (The irony is not lost on me that McMurry cited authority **from California** as the basis of his request to the Commission in Arizona.) On February 15, 2018, when McMurry made false allegations against me when he had the true facts in his possession at that time – not once, but *twice* – McMurry made the argument back in 2012 that he should be removed *today*.

On February 15 McMurry claimed Lynn "filed" a document that was an *ex parte* communication with the court because even though the document was executed by Lynn's signature, the attestation signature for copies to the Defendants was left blank (ER 3:11:57). Thinking this signature line was inadvertently left blank by the attorney service when it was filed (ER 3:11:57), Lynn *herself* then asked the Defendants if they had received a copy and if the attestation line had a signature (ER 3:01:50); the Defendants stated "yes" to both (ER 3:01:57). The mere inadvertent mistake of not signing the attestation line does not an *ex parte* communication make. The Defendants received the document, and theirs was signed; there was no *ex parte* communication. Notably, on February 15 when he had the unequivocal opportunity to do so in

court prior to making his claim, McMurry never asked the Defendants if they did or did not receive the document he was referencing.

On February 15 McMurry already had the true facts in his possession; McMurry misrepresented those true facts. Instead, when I attempted to clarify and explain the true facts, McMurry interrupted me and told me "No, there's no need"; "No, I don't need to. . ."; "No, were moving on . . .; "Ok we're going to move on now . . . " When alleging misconduct the bench officer needs to get it right before making those claims – because they are **serious** claims. But, McMurry's position was "Nobody cares. Nobody cares *at all*." Later, McMurry insisted he had previously ordered me to bring "(my) disclosure statement to the February 1 conference." This was not true. (See Exhibit F of Exhibit 1attached.) I attempted to engage in colloquy with McMurry, but instead of listening to me and my explanation, McMurry agitatedly pronounced "We're moving on. Oh, we're moving on." In both instances McMurry did not care about the true facts in his possession. McMurry was only interested in making false statements that vilified me. (See Exhibit 2, Page 13, lines 17-16; Page 14; Page 15, lines 1-2.)

4. McMurry's corrupt state of mind.

McMurry's conduct on February 15 – and before February 15 – is powerful and damaging evidence of intent to obstruct justice by his corrupt mental state. Discretion cannot be used to stymie or thwart constitutional rights or other law. Courts viewing McMurry's abuse of power should be unnerved about his contempt for the rule of law. In the instance of this case, McMurry's misconduct goes to the core of the integrity of the judicial system.

It is not reasonable to believe on February 15, 2018, McMurry just "snapped": McMurry's admissions in court and on the record are that McMurry had been thinking about what he was doing/going to do for a long time. Further, McMurry's admissions that he intentionally ordered/coerced me to personally appear in Arizona as a out-of-state litigant so he could "see me" and then treat me in the most despicable way and violate my right to a fair and impartial jury trial establishes a course of intentional and volitional conduct, not the idea that he simply "snapped." McMurry's willful conduct generated by malice and aforethought and using his judicial power to order/coerce me to personally appear at great personal expense from another state when established Arizona law (as well as federal law) and public policy dictate a telephonic

appearance on a "status conference" (See Exhibit D of attached Exhibit 1), while lying in wait for my personal appearance to further commit unlawful conduct, is unfathomable.

On February 15 McMurry wanted to "see me" in order to – among other things – adamantly advise me that me he would "do whatever (he) could to convince me that (a jury trial) was a bad choice," and advised me because I exercised my constitutional right to a jury trial "things are going to change." At one point after I told McMurry the jury trial will probably take more than one day, McMurry repeatedly insisted – with no request for clarification from me – the trial will take only one day. When I reiterated my time estimate, McMurry mockingly laughs at me. A reasonable person would conclude McMurry was not interested in me having a fair trial; rather McMurry was interested in showing me I would not get a fair trail. McMurry underscored his state of mind by unequivocally stating: "OK. Stop talking. I don't want to hear it anymore. I've set it (the jury trial) for May 14th. I don't care what you think. I've told you you're making a mistake on this anyway. And you didn't hear **me**" (emphasis in original). (See Exhibit 2, Page 3, lines 12-27; Page 4, lines 1-10.) My constitutional right to a fair and impartial jury trial was of no import or consequence to McMurry.

In the totality, these facts in the record made by McMurry himself are the kind of facts that support elements of crime. The facts of McMurry's mental state – provided by McMurry himself, *sua sponte*, with no solicitation or cross-examination – are the kind of facts used by prosecutors to support a "first degree" distinction in murder cases. This is an abuse of power in the most fundamental and shocking way. Moreover, McMurry had no way of knowing I would try to stop his obstruction. Simply because the case was transferred is of no consequence. In the first instance, if the case had not been transferred, McMurry's corrupt intent would have resulted in a sham process; in the second, the evidence in the transfer – "reassignment" – of the case to a courtroom right next to Encanto establishes McMurry's continued involvement.

It would be unreasonable to believe that the incident for which he was disciplined in 2010 and this one in 2018 are the bookends to completely impeccable ethical and legal conduct sandwiched between these two (2) incidents. Based on the facts of the record in this case that are so utterly inflammatory in degree, it is unreasonable to believe that McMurry has not engaged in the same and similar conduct in the intervening years. This means that it is reasonable to believe many other citizens have been denied fairness and impartiality during his tenure, and he has

disregarded the law when he wants. Maybe those citizens did not know his conduct was unethical or illegal, or they did not know there was a complaint process; many people are subjugated by the perception of another's power and do not complain about the subjugation. Maybe those citizens feel powerless, or have attempted to keep a powerful person accountable and they have suffered retaliation or it has ended in further injustice. (Or, they are attorneys who – knowing they will appear in Encanto in the future – do not want to "rock the boat.") Nonetheless, it is **this Commission's** responsibility to stop the abuse of power.

This Commission cannot allow McMurry's abuse of power to bronco-ride and break the rule of law. It is clear McMurry used all his power – "I am going to do whatever I can" – to stop this litigation *after* he failed to stop this case that **he** believed should not go forward when the superior court reversed his ruling on the Defendants' Motion to Dismiss; McMurry's obstruction of justice – on February 15, 2018, in particular – was the effort to in effect "overrule" the superior court's appellate decision because he did not want the case to go forward. This Commission cannot let McMurry "win" by his flaunting the law in a court of law when his job is to uphold the law. If here is no accountability, the Commission will show McMurry and The People that the law is simply nice language that people with fancy degrees put around will to power.

5. McMurry acted with malice.

McMurry's malice toward me has been memorialized by McMurry himself; McMurry made his own record. Here is a partial list of highlighted conduct establishing McMurry's malice: McMurry violated the law numerous times; made misstatement of the true facts when he had the true facts in his possession; repeatedly interrupted me while I was attempting to factually respond to McMurry's erroneous allegations, some of which McMurry mischaracterized as misconduct (eg., *ex parte* communication, improper filing of documents); spoke to me in a disrespectful and condescending manner and tone; denigrated me; laughed at me; mocked me, and mocked my right to have a fair jury trial.

In contravention of long-standing law McMurry compelled me – at my considerable time and expense – to travel from my resident state to Arizona. Instead of a short telephonic "status conference" that comports with the law, McMurry dragged me from California based on no legal

justification, but instead on his own desire as specifically stated by him: "I needed to see you." Based on McMurry's beginning seven-minute soliloquy at the "status conference," McMurry "needed to see" me to tell me that asking for a jury trial was "a bad choice," that he was going to "do whatever (he) could to convince me that it was a bad choice," that the jury trial was going to be "an unmitigated disaster," that I have the same right to perform brain surgery on myself as I have to have a jury trial, and because I had exercised my constitutional right to a jury trial "things are going to change." (See Exhibit 1, Page 3, lines 12-26; Page 4, lines 1-14.)

McMurry mocked me, derided me, denigrated me, and accused me of improper conduct. McMurry also advised me that in any future discussion with me, the Encanto clerk – who was given a 3-minute egg timer by McMurry for this purpose – would terminate the conversation when the time was up because if I could not ask her a question and get an answer in three (3) minutes, I was "wasting our time." Disregarding legal time requirements on motion briefing schedules, McMurry stated that when the Defendants filed any motion briefs, if there was not enough time between the setting of a date and the response time – 10 days and 5 days for mailing – that was "(my) problem."

McMurry's lack of restraint and disrespect for me included interrupting my serious, respectful, and fact-based explanation to McMurry's "issues." Notwithstanding my approximate 100 trials as a prosecutor, McMurry laughed mockingly for (a very long) three (3) seconds at my assessment that the jury trial would take more than one day; McMurry knew the case was a 7-count complaint, five (5) of which were fraud counts where sufficient evidence to prove the fraud claim requires proof on nine (9) elements, and McMurry never asked me about the evidence in the case. McMurry told me if I wanted a jury trial I had "to be a grown up." All the aforementioned are open and hostile acts of his abuse of power that is abhorrent. (See Exhibit 1, Page 6, lines 12-27; Page 4, lines 1-14.)

Judicial abuse of power that is abhorrent and shocks the conscious of any reasonable person cannot be tolerated. In all the years I represented the People of the State of California, which has included handling thousands of cases from arraignment to post-conviction matters while appearing before approximately 100 different bench officers in the Superior Court of Los Angeles County on thousands of days, I have never witnessed such disrespect of any person – including defendants who just intentionally lied to the bench officer's face in real time on the

record in court – nor during that career have I witnessed a judge so summarily violate inviolate constitutional rights and other law without hesitation. The Commission minimizing McMurry's course of conduct is perilous: "Injustice anywhere is a threat to justice everywhere." (Rev. Martin Luther King, Jr.) Justice courts may be courts of limited jurisdiction, but they **are** courts of law. The importance and value of courts of law in our constitutional democracy cannot be understated since it is one-third of our government and is the branch that ***enforces*** our constitutional and other legal rights.

6. McMurry violated his oath of office, and in turn, violated the public trust.

No one – including a person convicted of a violent felony – should be treated with the utter disrespect, debasement, and obstruction of justice established by the record in a scant 20 minutes on February 15, 2018. There was no provocation for McMurry's outrageous conduct; yet, although there was no provocation in this case, even if a litigant engages in conduct that could be argued to be provocative, McMurry is the person legally required to act within the rule of law and with restraint. Even when litigants become impassioned due to the often emotional nature of litigation, it is the bench officer who keeps a "cool head" and an "even hand" to ensure that the balance is true. [Judges are required to "hold the balance nice, clear and true." *Caperton, et al. v. Massey*, 129 S.Ct. 2252,2264, 556 U.S. 868 (2009), citing the language originally found in the 1927 *stare decisis* case *Tumey v. State of Ohio*, 273 U.S. at 572: "the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof . . . or which might lead him not to hold the balance nice, clear, and true . . . denies . . . due process of law."] McMurry violated his oath in the most troubling way: He broke the promise our constitution laid down several centuries ago. In doing so he brings shame upon the judicial branch and destroys the public trust in the branch of government that was established to ensure justice in our country where no person is above the law, and that the law is equally applied to every person. (See Exhibit C of attached Exhibit 1, *National Association of Court Management*.)

7. The Justice Courts' history of incompetency and misconduct.

Up to present day, the Arizona Justice Courts have a long history of legitimate criticism of

incompetency and misconduct. [*Fifty-Eight Years and Counting: The Elusive Quest to Reform Arizona's Justice of the Peace Courts*, Law & Policy Note, Anne E. Nelson, 52 ARIZ. L. REV. 533 (2010)] McMurry has actual knowledge of this criticism since the Arizona Supreme Court's Order for the Maricopa County Superior Court's supervision of the Maricopa Justice Courts occurred during McMurry's tenure on the bench. Rather than sensitivity to incompetency and misconduct, McMurry's conduct demonstrates he has been emboldened; when the Maricopa County Justice Courts chaffed against the Superior Court's supervision in 2002, those justice court bench officers stated that the supervision did not allow them "the power of their office," in other words, the supervision did not allow them to execute their power. (See Exhibit 2, Pages 1-3; Exhibit 4, Pages 9-10.) If McMurry's belief that the execution of power in reality – as here – includes the abuse of power, McMurry has justified the Supreme Court's concern and the Superior Court's supervision of justice courts.

8. McMurry's political power and influence.

McMurry's treatment of me and his authority and influence in Maricopa County Justice Courts undermined any trust I had with the judicial branch in Arizona. McMurry personally knows the current supervising justice of the peace, and the Encanto courtroom is next to the Arcadia Biltmore courtroom where the case was "reassigned." There was no way any reasonable person could trust the "justice courts," no matter who presided. After the case's transfer to Arcadia Biltmore, the bench officer had no prior legal experience and had been elected to her position about a year earlier. (See Exhibit 5, Page 7, lines 6-9.)

At the beginning of this matter, I had to decide where to file the case – superior court or justice court. After a due diligence investigation, I understood the main difference between superior court and justice court in Arizona was that the latter had a more streamlined approach regarding pre-trial matters. Since I had a right to a jury trial in both venues – with discovery – the streamlined approach seemed a better fit given I am a non-resident litigant. Moreover, I saw that McMurry had a law degree and had practiced law prior to his bench assignment, so I believed that would be advantageous (compared to other JPs), and McMurry's legal experience would lend itself to a fair and impartial process. This was the factor that pushed me over the line to file the case in justice court rather than superior court, and in that decision, I financially compromised any substantial punitive damage request on the fraud claims due to the

jurisdictional limits of justice court. This was a significant decision – the facts of this case justifiably would have supported a request of punitive damages in a six or seven figure amount because the Defendant attorneys engaged in on-going fraud and lied for over 1½ years solely for their financial gain. Never in my wildest imagination could I know how disastrous, wrong, and short-sighted this decision to file this case in justice court would be. (In sum and substance I stated all this in a Declaration signed under penalty of perjury and filed as an exhibit with the court; I will provide this to the Commission upon request.)

Having practiced in the criminal courts in Los Angeles representing The People, I did not expect perfection. However, I did expect competency and fairness. As most trial lawyers, I have endured adverse rulings and judicial intemperance. **This** was something utterly and completely different. On February 15, 2018, McMurry's shocking conduct and initial statement was so destabilizing, I actually had difficulty proceeding. In my opinion, most people would have been stunned and dismayed into silence – including many attorneys – and either would not – or could not – have made a record to protect themselves.

Further, as most trial attorneys, I also understand the power of judicial politics. After McMurry's involvement I understood I would never get out from under McMurry's power and influence. McMurry sitting on the court for so many years – 20 – and being elected twice by the other bench officers in the justice court as the supervising JP put McMurry in a position of power and influence not only in the justice courts, but also the superior courts. Anyone to knows and understands the politics of the judicial branch – and human nature and the psychology of value interests as the levers of power – knows it is unreasonable to believe that McMurry's power and influence would not follow me and the case wherever it went. (Exhibit 4, Pages 17-25; Exhibit 5, Page 3, lines 19-26, Page 4, lines 1-11.) Due to McMurry's unbridled obstruction of justice – he "would do whatever (he) could" – I could not trust having a fair and impartial trial, and, thus, **settled this case in a way I would not have done if I had <u>any</u> confidence in the Arizona justice court**. When people lose confidence in their constitutional democracy – their government – they know power – and not the rule of law – carries the day. That is a very sad day, indeed.

ALLEGATIONS OF JUDICIAL MISCONDUCT BY McMURRY.

The record reflects the following misconduct:

1. McMurry acted with malice, aforethought, and a corrupt intent toward me and my case in an on-going course of conduct. (See Exhibits 1-5.)

2. McMurry illegally and unethically prejudged the case and violated my right to a fair trial; after the superior court reversed his ruling to dismiss the case – remanding the case back to justice court – McMurry refused to honor the Notice of Change of Judge pursuant to Rule 42.1(e), *Arizona Rules of Civil Procedure*, and instead tried to keep the case in his effort to reverse/"overrule" the superior court's appellate review of his decision. (See Exhibit 4, Pages 4-5, Pages 10-11; Exhibit 5, Pages 7-8.)

3. McMurry acted purposefully, intentionally, volitionally, and with malice and aforethought in violating the law numerous times regarding me and my case. This is the standard for the mental state of first degree murder. The proof is McMurry's unsolicited statements in court. (See Exhibit 1, Pages 2-5; Exhibit 2, Pages 3-4; Exhibit 4, Pages 5-7, Pages 11-12 .)

4. In contravention of Arizona and federal law, McMurry punitively compelled me to Arizona for a "status conference" always waiting to the last possible time for me to leave California to travel to Arizona. McMurry did this repeatedly, and on his own because his ruling occurred prior to the filing of the Defendants' specious objections. (See Exhibit 1, Pages 5-7, and supporting Exhibits cited in this section, particularly my Declaration as Exhibit A, Pages 2-9.)

5. After his removal McMurry illegally refused to send the case to the supervising justice of the peace for reassignment. (See Exhibit 1, Pages 7-9; Exhibit 4, Pages 12-13.)

6. After his removal McMurry illegally reassigned the case to a judge pro tem who he personally knew and with whom he had a previous conversation about the case. (See Exhibit 1, Pages 9-10.)

7. After his removal McMurry illegally kept the case in Encanto, the precinct over which he

presided., with a judge pro tem who he personally knew and to whom he had previously spoken to about the case. (See Exhibit 1, Pages 10-11.)

8. After his removal McMurry illegally set trail and discovery dates violating the Justice Court Rules of Civil Procedure, ensuring I would not have a fair trial. (See Exhibit 1, Page 13, lines 1-16; Exhibit 3; Exhibit 4, Page 13.)

9. McMurry made false allegations about my filings that were factually contradicted by documentary evidence in McMurry's possession at the time McMurry made those false allegations against me. (See Exhibit 1, Pages 13-14; Exhibit 4, Pages 13-14.)

10. McMurry made a false allegation that I had been ordered to bring a "disclosure statement" to the hearing when the documentary evidence in McMurry's possession at the time proved that allegation was false at the time McMurry made that false allegation against me. (See Exhibit 1, Pages 14-15.)

11. McMurry improperly and unethically prejudiced the Encanto clerks against me. (See Exhibit 1, Page 11; Exhibit 4, Pages 14-15.)

12. McMurry acted illegally and unethically by filing a "recusal" after he knew I was challenging his assignment **and the venue** of justice court. McMurry's illegal and unethical conduct did not allow a full and fair hearing of the issues prior to the unilateral and preemptive "recusal" and a summary "reassignment" to the precinct court next to McMurry in the same courthouse. This intentional misconduct by McMurry is consistent with his course of conduct with me and my case: McMurry has no regard for the law and his ethical judicial responsibilities. This made the "reassignment" all the more reasonably suspicious, further corroborated by the form sent by McMurry at Encanto substantiating the continued involvement of McMurry. (Further, the form sent by McMurry regarding the reassignment looks completely different from the superior court reassignment document, adding additional legal confusion and reasonable suspicion.) (See Exhibit 2, Pages 4-10; Exhibit 4, Pages 7-8, Pages 15-19; Exhibit 5, Pages 1-9.)

PROCEDURAL ISSUES.

Since it is impossible to adequately cull out portions of the electronic recording to demonstrate and establish McMurry's each and every act of malice toward me on February 15, 2018, I incorporate the entire proceeding. (There is an approximate 12-minute break when McMurry was off the bench in an "unrelated matter" and off the record.) I urge the Commission to listen to the entire proceeding. Fairness to both me and McMurry requires this attention.

Since I have been advised that other than the electronic recording of the February 15, 2018 proceeding, the Commission will only review those materials provided by the complainant, I have attached as Exhibits pleadings from the case that are a matter of public record. (If you are so inclined, my suggestion is that the Commission would greatly benefit from the case file.) However, at the minimum, the material and relevant analysis is contained in Exhibits 1-5. Exhibits 1 and 2 are the briefs I filed with the court containing analysis with citations from the electronic record. Exhibits 4-5 are what I consider relevant pages of the briefs I filed with the court regarding McMurry (excluding exhibits attached to those filings). Exhibit 3 is an exhibit supporting the brief I included here as Exhibit 4. The record is extensive in this case, and if the Commission wants any exhibits referenced in Exhibits 4 and 5, the Commission only needs to make the request for that documentation and I will provide it to the Commission for its review.

Under the circumstances, I think it is only fair to ask the Commission an opportunity to reply to McMurry's response to this Complaint, since I presume he will respond to it. You are not going to cross-examine McMurry. Neither am I. You will rely only on written submissions. Moreover, notwithstanding the fact that you require the complainant to file a submission under penalty of perjury, apparently you do not require the same standard when the bench officer responds. (See McMurry's October 12, 2010 letter in response to **Complaint 10-221**.) I can only reasonably presume McMurry will have some excuse or explanation for his conduct – just like he did in response to the complaint filed against him in 2010 – since I also reasonably presume he expects to get away with his illegal conduct. Otherwise he would not have done it in the first place. Therefore, I think it reasonable and fair that whatever his response, I should have the opportunity to reply to whatever he submits to the Commission in order to factually rebut whatever McMurry asserts. Since I do not have the benefit of cross-examination, the Commission should allow this reasonable request.

Commission Complaint Form Question 6(b): The Complaint Form requires me to state if there was an attorney in the courtroom. I answered that question correctly, but the Arizona attorney in the courtroom was Stephanie Wilson ("Wilson"), the Defendant appearing in pro per for herself as an individual, and for Defendant Stoops, Denious, Wilson & Murray. In court filings I stated that in violation of her legal and ethical obligations as an attorney in Arizona, Wilson did not stop McMurry's obstruction even though she was legally and ethically required to act and stop this conduct. Further, I also stated in the record that Wilson participated in McMurry's obstruction by her conduct. (See Exhibit 4, Page 6, line 26; Page 7, lines1-5; Page 9, lines 4-11) It is without doubt that Wilson benefitted from McMurry's obstruction – violations of the law – because it gave her an unfair advantage. (Exhibit 5, Page 7, lines 1-17.) It cannot be reasonably asserted that Wilson has anything to add to this matter: The record will speak for itself. However, if the Commission receives any input from Wilson, I think it reasonable and fair that whatever her response, I should have the opportunity to reply.

To further support this request, Wilson lacks credibility and veracity. Wilson stated numerous things in her court filings and on the record in court – some she called "facts" – that are absolutely not true, and misrepresented/mischaracterized the law. (Exhibit 5, Page 4, lines 12-24; Page 5; Page 6, lines1-3; Page 9, lines 19-27; Page 10; Page 15, lines 1-6.) This is separate from the fraud/willful and intentional lying for 1½ years that constitute the gravamen of the claims made in this case against Wilson and her law firm.

CONCLUSION

I appeared in justice court in pro per, as a lay person. I was unfamiliar with civil matters and the morass of the Arizona Rules of Civil Procedure, and the Justice Rules of Civil Procedure. In sum and substance I was similarly situated to any other self-represented citizen not admitted to practice law in Arizona, and I had to figure it out just as they would. All Defendants are attorneys and were admitted to practice law many years ago; the Defendants had the clear advantage. McMurry knew the Defendants were attorneys; McMurry could have even personally known them.

The *Judicial Conduct Reporter*, by National Center for State Courts (NCSC) Center for Judicial Ethics, published an article stating the fundamental principle that "many decisions authorize

judges to handle cases involving self-represented litigants differently by, for example, affording self-represented litigants latitude and making allowances, being lenient and solicitous, or giving them every consideration." (See *Pro se litigants in the code of judicial conduct* by Cynthia Gray, Volume 36, No. 3, Fall 2014.) Arizona's judicial code approves this kind of consideration since it expressly states "It is not a violation of this rule for a judge to make reasonable accommodation to ensure self-represented litigants the opportunity to have their matters fairly heard." (Rule 2.2, Comment 4.) Further, Commission Disciplinary Counsel April P. Elliot specifically pointed this out in the Response to Motion for Reconsideration filed August 27, 2015, in the Fletcher complaint (*supra*, at pages 3-4) filed by McMurry: "(T)here is . . . case law and a growing trend to be more accommodating to self-represented litigants, including the Unites States Supreme Court's holding in Turner v. Rogers, 131 S.Ct. 2507 (2011)" (citing Rule 2.2 , Comment 4 in a footnote).

Instead of making any accommodation to me as a self-represented litigant, McMurry maliciously and with corrupt intent obstructed justice by violating the constitution, state laws (including the Justice Court Rules of Civil Procedure), and ethical boundaries of judicial conduct. This has been the source of great pain and suffering as a litigant and as – albeit in a sister jurisdiction – an officer of the court.

From the very start McMurry was intent on derailing accountability of Arizona attorneys by allowing the Defendants to illegally use a motion to dismiss as a motion for summary judgment, and, in doing so allowed the Defendants to state things that were not legally permissible as a matter of law, and assert things as "facts" that were simply not true, not stated under oath, and not subject to cross-examination. When the superior court's appellate review reversed McMurry's decision allowing the case to go forward, upon remand and denying my Notice of Change of Judge pursuant to Rule 42.1(e), *Arizona Rules of Civil Procedure*, McMurry made this promise: "**I'm going to do everything I can do** . . ." McMurry did not hesitate to invoke his power to stop me and my case. NOTE: McMurry did not state he would do everything within his legal authority. McMurry stated he was "going to do" "everything" he "can." This is a statement that goes beyond the rule of law. This is a statement of intent about raw power. In all my years as a prosecutor, I have never heard a bench officer utter those words. Nor anything approaching that sentiment. It was chilling on February 15, 2018, and I find it chilling to this day.

McMurry kept that promise, and he now luxuriates in the reality that he eventually derailed my case, since I was forced to settle the case in a way I otherwise would not have done if I had any confidence in the justice courts being outside the ambit of McMurry's power and influence. McMurry does not deserve to sit on any court. McMurry has had prior discipline by the Commission, and McMurry complained to the Commission about other bench officers engaged in the same and/or similar conduct. Yet, none of those prior instances are as startling egregious or **sweeping** as the course of conduct here. McMurry should be removed from the bench because his malicious, corrupt intent as the foundation to his course of conduct disqualifies him to wear the robe and preside over judicial matters. [See McMurry's own citation of a finding for judicial removal by the California Commission on Judicial Performance because "a judge who does not honor the oath to tell the truth cannot be entrusted in judging the credibility of others." (*Supra.* Page 4.) McMurry's conduct shames and debauches him. But, most important, McMurry's conduct shames and dishonors the rule of law and The People for which he is paid to serve.

EXHIBIT 1

Lynn Magnandonovan

Arcadia Biltmore

IN THE JUSTICE COURT

COUNTY OF MARICOPA, STATE OF ARIZONA

LYNN MAGNANDONOVAN, an individual
Plaintiff

vs

STEPHANIE MONROE WILSON, an Arizona attorney; STOOPS, DENIOUS, WILSON & MURRAY, P.L.C. an Arizona Professional Legal Corporation; JOHN and JANE DOES 1-10; ABC CORPORATIONS 1-10; XYZ PARTNERSHIPS 1-10; WHITE LIMITED LIABILITY COMPANIES 1-10; and BLACK SOLE PROPRIETORSHIPS 1-10,

Defendants

Case No. CC 2016-136702RC

PLAINTIFF'S MOTION FOR PROPER ASSIGNMENT/ RECUSAL/ CHANGE OF VENUE

Plaintiff Lynn Magnandonovan ("Lynn") files this Motion For Proper Assignment /Recusal/Change of Venue. On February 15, 2018, and on dates prior to February 15, the record shows uncontroverted evidence that C. Steven McMurry, justice of the peace (JOP) violated Lynn's constitutional protections of due process, equal protection, the right to a fair trial with a fair and impartial arbitrar, numerous Arizona statutes/rules, and other Arizona law. In the Encanto courthouse on February 15, there was the perfect storm of the Arizona Supreme Court's prescient declaration "it is always possible that the trial judge may subconsciously resent the lawyer or defendant who got the judgment reversed [*King v. Superior Court*, 108 Ariz. 492, 502 P.2d 529 (1972); the Court of Appeals admonition that where "the judge has

made a decision on the merits of the case, he has shown unequivocally what he believes the proper outcome of the case to be.... The judgment now having been reversed, the policy reasons for permitting a change of judge as a matter of right on remand are all the more apparent." *Valenzuela v. Brown*, 186 Ariz. 105, 107, 919 P.2d 1376, 1378 (App.1996); the violation of the requirement that after removal the bench officer will immediately transfer the case to the supervising bench officer, in this situation, the supervising JOP Keith Russell [*Hornbeck v. Lusk*, 217 Ariz. 581, 177 P.3d 323 (2008), *Arizona Rules of Civil Procedure*, Rule 42.1(f)(1), and Maricopa County Justice Court protocol (see Lynn's Declaration, Exh. A, ¶31)]; and, the very sad but real outcome of a bench officer fighting against their own intractable bias.

Lynn forewarned of this situation. Lynn forewarned of this situation precisely to prevent it. (See Exhibit B, Lynn's Request to Appear Telephonically at the Noticed February 15, 2018, Status Conference, Page 4, lines 1-18.) Yet, Lynn does not regret giving McMurry the opportunity to be "a fair-minded person." [Electronic recording ("ER") 3:36:30. [1]] The judicial office dictates that Lynn would give the person in that office the reasonable opportunity to demonstrate fairness and impartiality. However, Lynn will not stand by and be the victim of McMurry violating her most fundamental constitutional rights and the law. Lynn has an inviolate right to a fair and impartial trial by a fair and impartial arbitrar and is guaranteed her other constitutional rights, a guarantee secured by people throughout the years who gave their greatest gift – laying down their human life – for those constitutional rights created by our founding fathers based on The Declaration of Independence. Concomitantly, McMurry has taken an oath to uphold Lynn's constitutional and other legal rights.

McMurry acted with purposeful, intentional, and volitional aforethought.

On February 15, 2018, after formally calling the case on the record, McMurry stated *sua sponte* towards the beginning of his approximate seven-minute soliloquy (ER 2:53:22 -

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[1] All electronic recording times are cited to the best of Lynn's ability; since those cited times are approximate, they may fluctuate on either side by a second or so.

3:00:13) "I have thought about this **a lot**" (ER 2:56:05) (emphasis in original). McMurry's seven (7) words are a clear, direct, and a definite declaratory statement. McMurry's voluntary admission/confession establishes his premeditation. It so definitive and imperative it cannot be open to interpretation. When making this statement, McMurry's tone was heavy with emphasis. McMurry made it perfectly clear there can be no question about the fact he had thought about "this" **a lot**. "This" is this case and everything McMurry said and did following the calling of the case. There is only one reasonable credible claim: McMurry knew what he was doing, understood what he was doing, planned what he was doing, purposefully did it, intentionally did it, volitionally did it, and believed he had a right to do it. McMurry's many violations of the law and lies/misstatements about the true facts done by his free will and with premeditated aforethought is, well . . . staggering. It shocks the conscious.

McMurry acted with malice toward Lynn and the case.

It is impossible to adequately cull out portions of the electronic recording to demonstrate and establish McMurry's each and every act of malice toward Lynn on September 15. Therefore, Lynn cites the entire proceeding. (ER 2:54:28 to 3:19:45 and 3:31:53 to 3:45; there is an approximate 12-minute break when McMurry was off the bench in an "unrelated matter" and off the record.) Lynn urges the reader to listen to the entire proceeding. Fairness to both Lynn and McMurry requires this attention. With that said, this is a partial list of highlighted conduct establishing McMurry's malice: McMurry violated the law numerous times; made misstatement of the true facts when he had the true facts in his possession; repeatedly interrupted Lynn while she was attempting to factually respond to McMurry's erroneous allegations, some of which McMurry mischaracterized as misconduct (eg., *ex parte* communication, improper filing of documents); spoke to Lynn in a disrespectful and condescending manner and tone; denigrated Lynn; laughed at Lynn; mocked Lynn, and mocked Lynn's right to have a fair jury trial.

This open and hostile act of his abuse of power has been memorialized. McMurry

made his own record. Abuse of power that is abhorrent and shocks the conscious of any reasonable person, and in particular, any reasonable officer of the court, cannot be tolerated. In all the years Lynn represented the People of the State of California, which has included handling thousands upon thousands of cases from arraignment to post-conviction matter appearing before approximately 100 different bench officers in the Superior Court of Los Angeles County on thousands of days, Lynn has never witnessed such disrespect of any person – including defendants who just intentionally lied to the bench officer's face in real time on the record in court – nor has Lynn during that career witnessed a judge so summarily violate inviolate constitutional rights and other law without hesitation. (See Exh. A, ¶ 34.)

Trying to minimize McMurry's course of conduct is perilous: "Injustice anywhere is a threat to justice everywhere. (Rev. Martin Luther King, Jr.) Justice courts may be courts of limited jurisdiction, but they **are** courts of law. The importance and value of courts of law in our constitutional democracy cannot be understated since it is one-third of our government and is the branch that ***enforces*** our constitutional and other legal rights. (See Exhibit C.)

McMurry purposefully, intentionally, volitionally violated the law numerous times.

When McMurry engaged in a series of violations of the law, he did so with volition, intention, purpose, and malice. No reasonable person could make a finding to the contrary with the uncontroverted evidence that McMurry went to and graduated from Arizona State University; was admitted to practice law in the State of Arizona on October 7, 1978; worked for the Arizona Court of Appeals; worked as an attorney in private practice before becoming a justice of the peace; has been serving as a JOP for 20 years; was the supervising JOP from 2013-2017; and, teaches several different classes for other Justices of the Peace, including one entitled "The Bill of Rights: American Common Sense in Our Courtrooms." (This information is from McMurry's Justice Court on-line profile http://justicecourts.maricopa.gov/Judges/jp McMurryCSteven.aspx.)

All of McMcMurry's background and experience – particularly as the supervising JOP – does not allow him to credibly claim his conduct on February 15 was anything other than volitional, purposeful, and intentional. There can be no credible claim of mistake or ignorance of the law and the Maricopa County Justice Court protocol regarding bench officer reassignment after removal, requiring the immediate transfer to the supervising JOP for reassignment, violating Justice Court Rules of Civil Procedure ("JCRCP"), violating constitutional and other law, and misrepresenting the true facts of the case.

McMurray punitively compelled Lynn to court in Arizona from her resident state when the law recognizes this kind of travel/circumstance as an undue burden.

The law – Arizona state, Superior Court of Maricopa County, and federal law – allows for telephonic appearance for various judicial proceedings, including taking witness testimony, in order to promote access to the court and to save litigation costs (see Exhibit D). Although not a legal requirement in all instances, the request can be supported by a stated reason; "undue burden" can support the request, and traveling to Arizona from another state is presumptively an undue burden. Because McMurry denied Lynn's first request to appear telephonically for February 1, Lynn submitted this legal authority in her second request to appear telephonically for February 15. (The "status conference" initially scheduled for February 1 was continued to February 15.) Further, Lynn advised McMurry about the substantial travel time and cost (see Exhibit E, Lynn's Declaration, ¶ 4).

McMurry denied both of Lynn's requests *after* Lynn filed her Notice of Change of Judge on January 3. McMurry denied the first request to appear telephonically (for February 1) two days after the request was filed; McMurry denied Lynn's Request solely on his own since the Defendants had not filed an objection at that time. (See Exhibit A, ¶ 18.) McMurry denied the second request to appear telephonically for February 15 on February13, the day before Lynn needed to travel to Arizona on February 14. (See Exhibit A, ¶ 27.) Moreover, when McMurry ruled on Lynn's Stay for Special Action Petition that ultimately continued the "status

conference" from February 1 to February 15, McMurry waited until the late morning of January 30, the very morning Lynn needed to leave for Arizona if the February 1 proceeding would go forward. (See Exhibit A, ¶ 19-23.) McMurry waited to this last moment **after** he had the motion and knew about Lynn's travel issues.

Based on "status conference" substantive matters of the case on February 15, the proceeding would have lasted five (5) minutes to have McMurry call the case, have the parties announce their appearance, state he was removing himself from the case, and advise the parties they would be notified about the reassignment. In truth, this procedural matter could have been handled by judicial order through the mail with the February 15 date vacated and advisement that the parties would be notified about case reassignment. Even if McMurry had not removed himself from the case, what otherwise could have been done procedurally to set dates – even when done properly by law and the JCRCP – would have taken ten (10) minutes. If this was the real and true purpose of the February 15 proceeding, this could have been done telephonically – actually for both Lynn and the Defendants.

Instead, McMurry compelled Lynn at considerable time and expense to travel from her resident state to Arizona. Why? McMurry's explanation was: "I needed to see you" (ER 2:54:55). Based on McMurry's beginning seven-minute soliloquy, McMurry "needed to see" Lynn to tell her that asking for a jury trial was "a bad choice" (ER 2:54:31), he was going to "do whatever (he) could to convince Lynn that it was a bad choice" (ER 2:54:28), that the jury trial was going to be "an unmitigated disaster" (ER 2:54:40), that Lynn has the same right to perform brain surgery on herself as she has to have a jury trial[2] (ER 2:54:44), and because Lynn has exercised her constitutional right to a jury trial "things are going to change" (ER 2:56:00).

McMurry mocked Lynn, derided Lynn, denigrated Lynn, and accused Lynn of improper conduct. McMurry also advised Lynn that in any future discussion with Lynn, the Encanto

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[2] Of course this is completely absurd since the configuration of our human body would prohibit performing brain surgery on oneself, nor is it an inviolate constitutional right to perform surgical procedures on ourselves.

clerk – who was given a 3-minute egg timer by McMurry – would end the conversation when the time was up because if Lynn could not ask her question in three (3) minutes, Lynn is "wasting our time" (ER 3:02:59). If Lynn wants a jury trial she has "to be a grown up"[3] (ER 2:58:28). Due to time requirements when the Defendants to respond to motions, if there was not enough time between the setting of a date and the response time – 10 days and 5 days for mailing – that was Lynn's "problem" (ER 2:57:49). McMurry's lack of restraint and disrespect for Lynn by interrupting Lynn's serious, respectful, and fact-based explanation to McMurry's "issues" included McMurry laughing mockingly for three (3) seconds at Lynn's assessment that the jury trial would take more than one day (ER 3:02:59) without ever asking Lynn about the evidence in the case. All the aforementioned is an abuse of power that is abhorrent.

Yet, there is absolute truth: McMurry **could** have delivered his discursive diatribe over the telephone. There is absolutely no question about this. But, it is clear from the entire proceeding on February 15 McMurry wanted to tell Lynn to her face *all that he had been thinking about* "a lot." There can be no other reasonable interpretation based on the totality of the facts in the record of this case that McMurry's bias and prejudice were the motivating factors for McMurry compelling Lynn to court in Arizona despite the legal presumption of undue burden by traveling from another state for a status conference that would have only legally involved McMurry's involvement for a scant few minutes. Such abuse of power is appalling and disgusting.

McMurry was legally required to send this case to the supervising justice of the peace for reassignment after his removal.

The Arizona Supreme Court determined the force and effect of the removal statute (the statutory precursor to *Arizona Rules of Civil Procedure*, Rule 42.1) in *America Buyers Life Ins. Co. V. Superior Court* 84 Ariz. 377, 329 P.2d 1100 (1958):

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[3] There is nothing in the record of this case – no credible evidence based on true facts – that could reasonably give a reasonable person the impression Lynn was not engaging in "adult" behavior.

> The overall purpose of the statute is to preserve for litigants their right to have their matters judged by one who is fair and impartial and prevent unnecessary expense and delays incident to multiple changes. To this end the absolute right is given to remove one judge. Whether that right is exercised by filing the affidavit or by a request to the alleged disqualified judge is immaterial. He gets what he is entitled to, a change of judge, without the necessity or possible embarrassment of filing the affidavit. *Id.* at 380.

Upon his removal, McMurry was required to send this case to the Maricopa County Justice Court supervising JOP for reassignment. He did not. Case law – *Hornbeck v. Lusk*, 217 Ariz. 581, 177 P.3d 323 (2008) – Arizona statute – Arizona Rules of Civil Procedure, Rule 42.1(f)(1) – and Maricopa County Justice Court protocol (see Exh. A, ¶ 31) all expressly state this is the procedure for bench officer reassignment after removal. In particular the removed bench officer "should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss, or damage from occurring before the action can be transferred to another judge" [Rule 42.1(f)(1)] to "prevent the originally assigned judge, whom the litigant presumably has removed from the case for some perceived bias, from taking any further actions affecting that litigant's case." *Hornbeck* at 327. It is clear Maricopa County Justice Court protocol reflects this law by requiring that "the case immediately goes to the supervising justice of the peace as a disinterested third party . . . for reassignment" (Exhibit A, ¶ 31).

McMurry's removal was in response to Lynn's claim of bias; first through the Notice of Change of Judge, and then in her Request to Appear Telephonically at the Noticed February 15, 2018 Judicial Proceeding (Exhibit B, Page 4, lines 1-17). The record is clear McMurry cannot be fair and impartial regarding Lynn as a litigant and the case itself; McMurry knew and understood this and was the basis of his removal.[4] Once McMurry removed himself, for all legal intents and purposes he is deemed no longer fair and impartial. The very fact that McMurry continued to make rulings that violate the law rather than immediately send this case

[4] If McMurry had not removed himself the record establishes that an affidavit to remove McMurry for cause would have sufficient factual evidence to meed the proof standard of the preponderance of the evidence.

for reassignment to Keith Russell is evidence that McMurry has no regard for the law and was blinded by his own desire to punitively subjugate Lynn and this case to his will. Everything McMurry did after his removal (ER 2:58:32) is null and void as a matter of law.

McMurry illegally and erroneously personally and specifically selected a "judge pro tempore" of his own particular choice.

Arizona law and Maricopa County Justice Court protocol require the removed judge to immediately transfer the case to the supervising bench officer for reassignment. Allowing the preempted JOP in a particular precinct to choose his or her successor for the case would thwart the legal requirement of independent reassignment in Arizona's justice courts. *Hornbeck, supra,* at 327. If this was permitted, a bench officer removed for reasons of bias could simply "assign" the case to a friend, a lunch buddy, a cohort, a proxy, a shill. This would be a violation of the inviolate constitutional right to a fair jury trial by a fair and impartial arbitrar since the taint of bias would be subsequently assigned to the appointed bench officer, otherwise falling under the "fruit of the poisonous tree" principle.

In this case McMurry "asked" (ER 2:58:38) Bernard Barnes ("Barnes") to preside over this case because, according to *McMurry*, Barnes is "the perfect person to hear this matter." (ER 2:59:21) "And, he **will** hear the matter" (ER 2:59:22). Further, the record reflects a window into McMurry's apparent affection for Barnes; McMurry describes Barnes' personal attributes and vocational activities: "Barnes is everybody's favorite gentleman. Very distinguished. Probably 70 years old, 6-foot tall, all gray hair, patrician, and in his spare time teaches piano. He's a class act" (ER 3:32:50-3:32:59). McMurry makes it clear that Barnes is "assigned" to this case when he tells the Defendant Wilson "put on it, Assigned to Judge Barnes" when asked to whom the filings should be directed (ER 3:33:29 - 3:33:49).

McMurry violated the law when he himself personally assigned this case to Barnes. This case required assignment by the supervising JOP in Maricopa County, who is Keith Russell. Each justice-of-the-peace precinct is not a separate court for purposes of reassignment

by "a presiding judge"; the "presiding judge" in any county with two or more justice courts is the presiding justice of the peace of that county. *Hornbeck, supra,* at 327.

Moreover, any assignment to Barnes would violate the law since he was personally selected for personal reasons by McMurry. McMurry has already spoken to Barnes about the case (ER 2:58:38), and, further, apparently has had a sufficient conversation with Barnes to know that Barnes "would explain to (Lynn) in front of a jury how you've messed this up" (ER 3:04:38). As it would to any reasonable person, it sounded to Lynn, that Barnes – through McMurry – has already prejudged this case as well. This case must be properly reassigned. **McMurry purposefully kept the case in the Encanto court, the precinct over which he presides**.

McMurry removed himself but purposefully kept this case in the Encanto precinct. After removal of the bench officer, the case must be removed from the bench officer's ambit of influence. Instead, assigning this case to Barnes, McMurry stated: "But he will hear it as pro temp judge in this court" (ER 2:59:30). McMurry made a specific and definite point to make sure the case would stay within his purview and control. This was purposeful. The appearance of impropriety is as important as impropriety: "Almost every State . . . has adopted the American Bar Association's objective standard: "A judge shall avoid impropriety and the appearance of impropriety" (citation ommitted)." *Caperton, et al. v. Massey,* 129 S.Ct. 2252, 556 U.S. 868 (2009). (See Arizona Code of Judicial Conduct, *Arizona Supreme Court Rule 81, Rules of the Supreme Court,* Amended November 24, 2009, RULE 1.2., Comment 1.)

There is no guarantee McMurry will not have further conversations or discussions with Barnes about the case. The very fact that McMurry showed the lack of adherence to the law and lack of restraint on February 15 that the record establishes, portends that it is more likely than not he will continue this course of conduct. The law prevents McMurry from making the reassignment once he is removed. The fact that McMurry made it clear that his personal assignment of choice, Barnes, "will hear it as pro temp judge in this court" further demonstrates

McMurry wants custody and control and influence over this case. Further, if Barnes is paid for his service as a pro temp, then Barnes' assignment by McMurry establishes Barnes' pecuniary interest flowing back to McMurry. [See *Caperton, et al. v. Massey*, 129 S.Ct. 2252, 556 U.S. 868 (2009).] Again, everything McMurry did after his removal (ER 2:58:32) is null and void as a matter of law. This includes the assignment of Barnes and continued assignment in the Encanto precinct.

McMurry has prejudiced the Encanto clerks against Lynn.

Another reason this case cannot stay in the Encanto precinct is that McMurry has prejudiced the clerks against her, and the clerk staff is always integral in litigation proceeding in a fair and unbiased manner. Lynn has had conversations with the clerks that have been within the parameters of normal court business (Exh. A, ¶ 29). Moreover, a number of calls to the court were at the clerk's direction or invitation due to McMurry not deciding matters until the last minute before Lynn needed to travel to Arizona (Exh. A, ¶¶ 21-23 and ¶¶ 25-27). But, McMurry has directed the clerks to use a 3-minute egg timer when speaking with Lynn; after three minutes they are to terminate the call with Lynn, because if it is more than 3 minutes, Lynn is "wasting our time" (ER 3:02:57 - 3:03:26). This is irrational. There is no reasonable factual basis for McMurry's position and is only further evidence of his bias, prejudice, and animus towards Lynn of which he has surely communicated to the clerks.

McMurry has prejudged the case and violated Lynn's right to a fair jury trial

McMurry already formed the opinion that the trial will be an "unmitigated disaster," insisting it will only take one day, including voir dire, and told Lynn Barnes will admonish her in front of the jury during the trial. This litigation is a 7-count complaint with 4 counts of different fraudulent conduct, each involving proof on 9 different elements. Lynn has the burden of proof in establishing this case. Lynn presumes the Defendants will raise some specific affirmative defenses in challenging Lynn's case. Lynn has the burden of rebutting those affirmative defenses. On February 15 McMurry already knew this. On September 15 McMurry

knew Lynn intended to conduct 5 depositions prior to trial because Lynn told him this before February 15 (Exhibit E, ¶ 4). It is clear that when McMurry gave this case "a lot" of thought, he prejudged it. And, he had no concern to find out anything about the case. On February 15 McMurry never asked Lynn one single question about evidence to be presented at trial. In Lynn's career McMurry is the **only** bench officer Lynn has encountered in almost 2 decades of trial practice that has not asked any questions about these matters (Exhibit A, ¶ 36). McMurry's conduct is mind-boggling.

McMurry was required by law to order mediation but did not.

Cases in justice courts require mediation. JCRCP Rule 130(b) uses mandatory, not discretionary, language: "the court or the mediator **will** give the parties written notice . . ." (emphasis added). The Rule requires that "(e)very **party must participate in the mediation** conference in good faith (emphasis added)." [Rule 130 (c).] This requirement is punitively enforced by Rule 130 (e) with "an appropriate penalty provided under Rule 127(d)."

Settlement of a case prior to trial is encouraged by mandatory mediation. McMurry not only violated the law, McMurry also denied Lynn and the Defendants their legal right to settle the case prior to trial. This was no inadvertent mistake. On February 15 Defendant Wilson specifically asked McMurry if he was going to set mediation (ER 3:33:50); McMurry answered "There's not going to be a mediation" (ER 3:33:56). A reasonable inference is Defendant Wilson asked about mediation because the Defendants had some interest in it. Further, McMurry already knew Lynn's "desire (was) **to go forward to a meaningful resolution**, including presenting the case to a jury in trial ***if necessary***" (emphasis added) (Exhibit E, ¶ 3). Lynn's statement reasonably infers Lynn was interested in settling the case and not going to trial. McMurry violated the law, or rule, and did so summarily. Because he was specifically asked – in bad faith McMurry prevented the parties the opportunity from settling the case prior to trial even though *they are legally required* to do this through mediation and in good faith.

McMurry set dates when he was not entitled by law to set those dates, and in setting those dates, further violated Lynn's right to a fair trial by violating discovery rules.

After McMurry's removal on February 15, McMurry was required to immediately send this case to the supervising JOP for reassignment. He did not. Instead, McMurry further violated numerous laws by setting dates, including a trial date, that violated Rule 133(a). McMurry set dates with no regard to Lynn's right as a matter of law to conduct discovery. Rules 124, 125, and 126 provide for discovery; a party has 40 days to respond to the discovery request; this discovery usually happens before depositions (Rule 123) are conducted, which require notice to the deponent. On February 15 McMurry knew Lynn intended to take 5 depositions. Rule 122(c) requires discovery to be completed 30 days before trial. It would be virtually impossible to conduct necessary discovery Lynn is allowed to conduct as a matter of law by April 14, 30 days prior to May 14. For McMurry this was "too bad, so sad." McMurry has no regard for Lynn and her rights as a matter of law. Because, as McMurry so clearly and directly stated to Lynn on February 15: "Nobody cares. Nobody cares *at all*" (ER 3:11:57). But. That is not true. Lynn cares about the rule of law. And, the reader, who is bound by law, is required to care about violations of the law.

McMurry's claim of Lynn's "improper" filing is not supported by the true facts or the law.

Lynn properly filed original documents with the court through either personal attorney service or through USPS mail sent by Lynn in California; copies were sent to the Defendants by USPS mail. Whatever **notice** Lynn provided to the court was accepted pursuant to JCRCP Rule 120(5) allowing the delivery of documents by electronic methods. The two documents noticed to the court electronically were expressly accepted by the clerk, and the documents themselves expressly state that the original document was being filed separate from the electronically delivered notice, and that notice was sent electronically due to time and mailing issues because Lynn lives in another state (Exhibit A, ¶¶ 17 and 28). Further, there are justice courts in other

precincts that either accept filing by FAX or accept notice by FAX (Exhibit A, ¶ 15). Since Lynn properly filed original documents with the court, Rule 120(5) allows electronic delivery, the Encanto clerks expressly accepted them, and there is no written prohibition found or advised, there is no "improper" filing by Lynn as McMurry falsely claimed.

On February 15 McMurry claimed Lynn "filed" a document that was an *ex parte* communication with the court because even though the document was executed by Lynn's signature, the attestation signature for copies to the Defendants was left blank (ER 3:11:57). Thinking this signature line was inadvertently left blank by the attorney service when it was filed (ER 3:11:57), Lynn *herself* then asked the Defendants if they had received a copy and if the attestation line had a signature (ER 3:01:50); the Defendants stated "yes" to both (ER 3:01:57). The mere inadvertent mistake of not signing the attestation line does not an *ex parte* communication make. The Defendants received the document, and theirs was signed; there was no *ex parte* communication. Notably, on February 15 prior to making his claim, McMurry never asked the Defendants if they did or did not receive the document he was referencing.

On February 15 McMurry already had the true facts in his possession; McMurry misrepresented those true facts. Whatever clarification he needed he could have ascertained on February 15. Instead, when Lynn attempted to clarify and explain the true facts (ER 3:00:13), McMurry interrupted Lynn and told her "No, there's no need" (ER 3:00:17); "No, I don't need to. . ." (ER 3:11:57); "No, were moving on . . . (ER 3: 05:00 - 3:05:13); "Ok we're going to move on now . . . (ER 3: 05:33 - 3:06:09). When alleging misconduct the bench officer needs to get it right before making those claims – because they are **serious** claims. But, McMurry's position was "Nobody cares. Nobody cares *at all*" (ER 3:11:57).

McMurry never set disclosure information prior to February 15

McMurry insisted he had previously ordered bringing "your disclosure statement to the February 1 conference" (ER 3:13:52 - 3:15:21). This is not true. (See Exhibit F.) Lynn

attempted colloquy with McMurry, but instead of listening to Lynn and her explanation, McMurry agitatedly pronounced "We're moving on. Oh, we're moving on" (ER 3:15:19).

McMurry violated the Arizona Code of Judicial Conduct on February 15.

On February 15, 2018, McMurry violated Arizona Code of Judicial Conduct, *Arizona Supreme Court Rule 81, Rules of the Supreme Court,* Amended November 24, 2009, Rules 1.1; 1.2; 2.2; 2.3; 2.5; 2.6; and 2.8.

McMurry's conduct and his role in Maricopa County Justice Courts require recusal of the entire Maricopa County Justice Courts.

McMurry's misconduct is sweeping and deeply troubling to any reasonable and fair-minded person. After acting as the supervising JOP for four years, it is unfathomable that he would not know the requirement to send this case immediately to the supervising JOP, Keith Russell. McMurry engaged in this conduct because he thought he could: McMurry had no power to make the assignment but he did because he thinks the rules do not apply to him. It is also quite peculiar that Barnes would accept a direct assignment from McMurry upon McMurry's contact with him since McMurry was no longer the supervising JOP. Surely Barnes had to have known this.

McMurry was elected by the other JOPs as supervising JOP four years in a row. All the other JOPs obviously know him, are familiar with him, and have been "supervised" by him. One could only reasonably presume the politics of power exert control over this situation. Based on the fact that McMurry could not legally reassign this case to Barnes, but he did anyway, leads a reasonable person to presume McMurry believes he has enough influence with other JOPs that he thinks he can do what he did and circumvent the required legal process without their objection. This leads to a conflict of interest of all JOPs. A conflict of interest exists if the circumstances are reasonably believed (on the basis of past experience and objective evidence) to create a risk that a decision may be unduly influenced by other, secondary interests, and not on whether a particular individual is actually influenced by a

secondary interest. Based on McMurry's conduct, the factual background and context of McMurry's JOP tenure, all Maricopa County JOPs must be recused. For careful consideration of this issue, Lynn incorporates by reference the entire court of this case, including the appeal.

Superior Court of Maricopa County may not be the proper venue.

In a Maricopa County Justice Court recusal, it would be reasonable think this case would be reassigned to a bench officer in the Superior Court. However, it is no secret the Defendants practice law in Maricopa County. They have appeared in the Superior Court of Maricopa County as attorneys. It is also no secret all bench officers presiding over matters practiced law themselves prior to their position on the bench. It is no secret that attorneys – like physicians – do not want to find themselves adverse to a "colleague."

McMurry had never met Lynn before April 13, 2017, when she appeared for the Defendants' motion. There is no reasonable doubt about the unmitigated animus McMurry has towards Lynn. This begs the question: Where did this come from? The only reasonable explanation is that McMurry did not think Lynn's case should go forward against the Defendants who are attorneys in Maricopa County. There is no doubt Lynn's case alleges serious charges against the Defendants, ones of fraud. People who have been in the profession understand and appreciate the force and effect of a judgement against the Defendants in this case. Lynn does as well, and would not have brought this case unless in good faith she believed she had sufficient proof of the claims. But unless this case settles, Lynn deserves a fair jury trial by a fail and impartial arbitrar. Since McMurry's reassignment has been improper, the entire Maricopa County Justice Court should be recused, and it is reasonable to believe the Superior Court of Maricopa County cannot be fair and impartial either, therefore Lynn believes she is entitled to a change of venue to another county in Arizona.

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Conclusion

Based on the aforementioned, Lynn submits this request to recuse Maricopa County Justice Court and Superior Court of Maricopa County, and send this case to another county in Arizona.

Dated this 20th day of March, 2018.

LYNN MAGNANDONOVAN

Original filed this 21st day of March, 2018 with:

Encanto Justice Court
620 West Jackson Suite 1045
Phoenix, AZ 85003

Copy mailed this 21st day of March, 2018, to:

Justice of the Peace Keith Russell, Supervising Justice of the Peace
East Mesa Precinct
4811 East Julep Street, Suite 128
Mesa, AZ 85205

Colleen Connor
Maricopa County Attorney Office
222 North Central Avenue, Suite 1100
Phoeniz, AZ 85004

Stephanie Monroe Wilson and
Stoops, Denious, Wilson & Murray, P.L.C.
350 E. Virginia Avenue, Suite 100
Phoenix, AZ 85004

By

EXHIBIT A

DECLARATION OF LYNN MAGNANDONOVAN

I, Lynn Magnandonovan, declare the following:

1. I am a resident of California and over 18 years of age.

2. Even though I have been sick, I worked as hard as I could on the Motion for Proper Judicial Appointment for nine straight days, averaging over five uninterrupted hours a day. I conducted additional research, and I listened to and transcribed for my personal purposes the electronic recording after I received it. Due to the motion page limitation, I could not include every legal issue, every case citation, quote the Rules, and recite all the supporting facts in the record, so I had to choose what to leave out of this filing. Due to the gravity of the issues that are driven by law and facts, I found the editing challenging. However, their exclusion should not be interpreted as a waiver or that those issues are not legally important. That was one reason I included the entire record of this case by incorporating it by reference. I think the incorporation by reference of the entire record of this case is legitimately justified given the nature of the constitutional issues and what is at stake in this case: the right to have a fair jury trial by a fair and impartial arbitrar. Given the status of this case, in good faith I did not make the formal request for a longer page count as required by law since it would have delayed the Motion. I take these issues and this Motion extremely seriously and submit it based on the best of my ability with my physical incapacity and the totality of the circumstances. (See ¶5 below.)

3. I chose to draft this Motion before completing the disclosure information due to the gravity of the issues in the Motion, this Motion substantively effects the procedural posture of this case, and for over two years the Defendants have had all the documents in their possession that I will send them.

4. While working on this Motion, it was not lost on me that if McMurry had just properly granted my Notice to Change Judge or sent this case to the supervising justice of the peace (JOP) as required by law after his removal, none of this would be necessary.

5. The day this Declaration is executed, January 20, I am still sick.

6. On Saturday, March 25, 2017, I received the Notice of Court Date setting an oral argument on April 6 for what the Defendants called a motion to dismiss my First Amended Complaint. I was surprised the court had set this case for oral argument on a "motion to dismiss" since it is a legal determination on the sufficiency of the pleading alone with all reasonable inferences from the allegations made under penalty of perjury resolved in favor of the pleading party, and also by the fact that granting such a motion is disfavored as a matter of law.

7. The morning of Monday, March 27, I drafted a Motion to Continue and Order regarding the April 6 hearing date. Later that morning (March 27) at approximately 11:30 A.M. PST I spoke with the supervising clerk at Encanto Justice Court, Mary Blanco (Blanco"), regarding the court setting. I explained I received the notice two (2) days earlier and based on my schedule and out-of-state residency, the twelve (12) days the court had provided was not enough time to make appropriate rescheduling of other matters and travel arrangements. It was at this time Blanco suggested I just appear telephonically for the hearing on the Defendants' motion.

8. When Blanco talked about appearing telephonically – based on what she said during the conversation – telephonic appearance seemed so summarily routine that I had the state of mind a party could simply tell the court that is how they would appear, by telephone. Blanco never told me, nor did she indicate in any way, I would have to make a written request to appear telephonically. Since Blanco had been in her position for a number of years, I reasonably relied upon her representations and attitude about the issue of telephonic appearance.

9. During our conversation that day, March 27, Blanco *sua sponte* told me she would change the hearing date to April 13 now by telephone, but since I had already drafted the Motion and Order, and with the time remaining before April 6, Blanco said the court would receive these documents by email. I sent the Motion and Order via email at 11:53 AM PST, and she returned the signed Order the next day, March 28.

10. On Thursday, December 28, 2017, I called the Encanto Justice Court and spoke with the supervising clerk at Encanto Justice Court, Susie Hipolito (" Hipolito"), about the remand of

the case from the Superior Court of Maricopa County. (Blanco retired from that position in June and Hipolito was subsequently appointed.) I asked Hipolito if the court had received the case yet, and she stated it had not. I also told her the Superior Court of Maricopa County issued a Notice of Remand to the Justice Court and a Remand Docket Sheet On December 22, 2017, and that I was going to file a Notice of Change of Judge.

11. I executed and sent for filing that Notice of Change of Judge on December 29, 2017, in California where I reside, and that Notice was timely filed with the court personally by attorney service the following business day on Tuesday, January 3, 2018, after the New Year weekend/holiday. On January 4 the same JOP who granted the Defendant's so-called motion to dismiss C.Steven McMurry ("McMurry"), a decision reversed on appeal as error, summarily denied my Notice as "untimely" with no other explanation. I received that ruling January 8. The Defendants' filed their Objection to the change January 9 after McMurry denied the Notice of Change of Judge on January 4.

12. On December 29, 2017, McMurry set February 1, 2018, for a court proceeding. (See Exhibit F.) I did not receive that Notice until February 4, after I executed and mailed the Notice of Change of Judge on December 29, 2017, to the attorney service that filed it.

13. On Wednesday, January 10, I spoke to a clerk at Encanto. Since it was not stated in the Notice, I asked the clerk the purpose of the proceeding on February 1; she told me it was set for a "status conference." Upon hearing that, I told the clerk I wanted to appear telephonically for the "status conference" scheduled for February 1. The clerk told me I needed to put that request in writing. I provided the clerk a synopsis of my March 27, 2017 conversation with Blanco and in doing so explained the basis of my state of mind created by Blanco that I could simply advise the court of that choice. The clerk restated I must put the request in writing and that McMurry would decide. When I asked her where to find the "rule" that established that procedure, the clerk's response was "McMurry told (her) that."

14. All justice courts are listed on a web site, each with the respective telephone and Fax

number, and email address. Any reasonable person would understand that information is used for business purposes, as I reasonably presumed.

15. I contacted justice courts in other precincts and was told by clerks the court either accepted filing by FAX or accepted notice by FAX. Accepting the delivery of documents by electronic methods did not surprise me since Rule 120(5) allows electronic delivery of documents. Further, I was told by the Maricopa County Justice Courts administrative office that "e-filing" has been contemplated and is on the horizon for the justice courts; that information dovetailed with Rule 120(5).

16. On Saturday, January 13, I drafted and executed the Request to Telephonically Appear for the February 1, 2018 "status conference" and mailed it that day via regular USPS mail to the court. Because February 1 was quickly approaching I wanted to provide notice to the court and decided to send notice via FAX. I attempted to send the Request via FAX – twice on Saturday, and once again on Monday, January 15 – but could not successfully complete the transmission due to the Encanto FAX machine's faulty service.

17. On Tuesday, January 16, I spoke to Hipolito and explained the facts surrounding the unsuccessful transmission via FAX that otherwise would provide notice to the court regarding my Request. Hipolito said they "were having problems with the FAX machine." I told Hipolito that notwithstanding the original document had already sent to the court by USPS mail on January 13 for filing, I would also like to send it via email because I wanted the court to be aware – have notice – of my Request as soon as possible. Hipolito agreed, and I sent the Request with the unsuccessful FAX transmission reports as attachments via email. (See Exhibit G.)

18. On Thursday, January 18, McMurry denied my Request to Telephonically Appear for the February 1 proceeding. **After** McMurry's denial, on January 22, the Defendants mailed by regular USPS mail their Objection to my Request to Telephonically Appear February 1; their Objection was not personally filed that day. On January 22 the Defendants mailed by regular

USPS mail their Objection to me as well, which I received January 24.

19. I decided to draft and file a Special Action Petition on McMurry's denial of my Notice to Change Judge as a matter of right. After working on that petition for a short time, I realized the most prudent thing would be to draft and file a Motion for Stay in order to preserve the status quo. On January 25, 2018, I executed a Motion to Stay stating in part:

> Plaintiff Lynn Magnandonovan ("Lynn") is currently preparing a Special Action on the court's Order dated January 4, 2018, denying Lynn's Notice of Change of Judge. Therefore, in the interest of justice, and seeing no prejudice to the court or Defendants, Lynn requests the stay of all further judicial proceedings, including the scheduled appearance for a status conference on February 1, 2018, pending the resolution of the Special Action. (See Exhibit H, Page 1.)

20. Due to the immediacy and time sensitive nature of the Motion to Stay, that same day, January 25 (although after court hours), I sent notice of the Motion via email to the court with an explanation regarding the filing. (See Exhibit H.) The next day, January 26, I called the court, spoke to Hipolito, asked if the email had been received, and asked if she would make sure McMurry would receive it that day as notice; Hipolito acknowledged receipt of the email, and stated she would give it to McMurry that day, Friday, January 26. I also explained to Hipolito the original document was going to be personally served by an attorney service, and this was stated in the email. Using expedited mailing and expedited attorney service, the Motion to Stay was filed in person by an attorney service Monday, January 29, 2018, at approximately 11:18 AM. (See Exhibit H.)

21. Knowing I would have to travel on Wednesday, January 31, to appear in person for the status conference on February 1 – at an approximate expense of $1,400.00 and a 3-day drive – (see Exhibit E, Dec. ¶ 4) I called the court the day before, Tuesday, January 30, at approximately 3:30 PM AZ (2:30 PM PST) to inquire about a court ruling on the Motion to Stay; I was advised by the clerk the court had not yet ruled. I explained the travel situation (as stated above) to the clerk, and asked the clerk if there was an idea when the court would rule on the Motion to Stay, given my requirement to leave the next morning, January 31, to travel to Arizona for the February 1 status conference. The clerk said the McMurry had the Motion,

knew about the Motion, but there was no indication when the court would make a ruling. Further, McMurry was on the bench with scheduled matters for the rest of the afternoon.

22. At the invitation of the clerk, I was then telephonically transferred to Hipolito; I explained the urgency of the situation as I had to the previous clerk, further stating I did not want to be in transit from California to Arizona only to have McMurry grant the Motion to Stay, thereby negating the reason and expense of the trip. Hipolito invited me to call back before 5:00 PM (AZ time) for an update. At 4:57 PM AZ (3:57 PM PST) I spoke to Hipolito; the status of the Motion had not changed, and after a brief discussion, Hipolito suggested I call in the morning before I had to leave California, and I agreed I would.

23. The next morning, January 31, at approximately 10:30 AM AZ (9:30 AM PST) before I was ready to walk out the door to leave for Arizona, I called Hipolito as she had asked and I had promised; Hipolito told me McMurry still had not decided the Motion. When I told Hipolito McMurry had the motion and knew about my traveling circumstances but had not made a decision knowing I needed to begin travel to Arizona from California that morning – and I needed to leave presently – Hipolito asked me to please call back in one hour, and I agreed. At 11:28 AM AZ (10:28 AM PST) Hipolito personally called me and advised me McMurry "was continuing the status conference to February 15." I think this is a perfect example of "waiting to the last possible minute."

24. While waiting for the court document that memorialized McMurry's continuance as an exhibit for the Special Action Petition, I contemplated the Petition and case. In a desire to go forward, I decided to not file the Petition and instead proceed with the case. (See Exhibit E, Dec ¶ 3.) It was at that time I drafted the Request to Appear Telephonically for February 15; I signed it February 4 and it was personally filed by attorney service on February 6.

25. Not hearing from the court regarding my request to appear telephonically for February 15, on Monday, February 12, I called the Encanto court to see if McMurry had made a decision. When I asked the clerk, I was told he had not made a decision. Again the clerk suggested I

speak to Hipolito and I was then telephonically transferred to her. Hipolito confirmed McMurry had not made a decision and I explained I was in the same situation I was two weeks ago, since I had to leave Wednesday morning – less than two days – to travel to Arizona. She told me to "call back tomorrow" (Tuesday).

26. The next day, Tuesday, February 13, at approximately 11:30 AM PST (12:30 PM in AZ) I spoke to the clerk about the request; I was told McMurry had not made a decision. I told the clerk I had to leave to travel to Arizona in less than 24 hours; the clerk said McMurry was "waiting for the Defendants' response." When I told the clerk I had already received the Defendant's response and I live in California, the clerk said there are delays from "the mail room." When I reiterated I needed to leave California in less than 24 hours and that McMurry had previously denied my request without benefit of the Defendants' response, the clerk told me to call back "later in the afternoon."

27. Later on Tuesday, February 13, at approximately 3:00 PM PST AM (4:00 PM in AZ) I spoke to the clerk about the request; I was told McMurry denied my request to appear telephonically February 15. McMurry's denial of my request was less than 20 hours before I needed to leave on February 14 for Arizona to personally appear February 15.

28. After the February 15 proceeding I spoke to the Encanto clerk February 21 to obtain the copy McMurry was referencing in court on February 15 regarding the "*ex parte*" issue so I could have documentary proof of no signature on the attestation line when speaking to the attorney service. The clerk told me McMurry was actually referencing the "FAX" copy of the Motion to Stay for Special Action Petition. (Actually this Motion was emailed because of previous FAX problems.) However, when I told the clerk that the email copy was only notice based on time constraints, the **original** document that was filed with the court on January 29 by personal attorney service had the signature, *and* it was expressly stated in the January 25 email the original document was being filed by expedited service, the clerk said nothing. (See Exhibit H.)

29. All of the conversations memorialized in this Declaration with clerks at Encanto Justice Court fall within the parameters of thousands of conversations I have had with clerks of any court – including the California and Arizona Supreme Courts – in the years of practicing law. There was nothing unusual or different with the conversations I have had with the Encanto clerks consistent with court business.

30. Based on McMurry's inaction/actions alone, I had to call the court repeatedly due to the circumstances of travel and his decision as the controlling event of that travel. It is my state of mind that the clerks understood the urgency of my calls based on the need to leave California to travel to Arizona to personally appear in court and the reason why **they** told *me* to call back for a status update regarding rulings by McMurry.

31. I was advised by the administrative office of the Maricopa County Justice Court that the protocol for reassignment is that the case immediately goes to the supervising JOP as a disinterested third party, within one (1) to two (2) days the case is reassigned to a court in close proximity that can handle the case, and it will take a maximum of two days after that reassignment by the presiding JOP for the new court to receive the assignment.

32. Upon information and belief, Keith Russell is the supervising justice of the peace for Maricopa County Justice Court.

33. I have had a number of privileged conversations with Arizona attorneys who appear on matters in the justice courts in Maricopa County, including matters when McMurry presides. After speaking to these attorneys in conversations that are protected by the attorney-client privilege, my state of mind is that all of McMurry's rulings and behavior, including February 15, are aberrant and very surprising.

34. I have handled thousands upon thousands of cases for filing, arraignment, master calendar, pre-trial motions, staffing a trial court, and post-conviction matters representing the People of the State of California in Los Angeles, California. I have appeared before approximately 100 different bench officers in the Superior Court of Los Angeles County on thousands of days for

those matters. In all the years of this work, I have never witnessed such sweeping and continued disrespect of any person – including defendants who just intentionally lied to the bench officer's face in real time on the record in court – as I witnessed by McMurry on February 15, 2018. Nor have I witnessed during that career a judge so summarily violate inviolate constitutional rights and other law without hesitation.

35. I was truly flabbergasted when I sat in court February 15 witnessing McMurry's conduct and actions, knowing I was the victim of McMurry's conduct. As a prosecutor, I would have been required to confront these constitutional violations because it was my legal responsibility to secure those constitutional rights for defendants and the People of the State of California. However, because the attack was on me personally as a litigant in Arizona, I did my best to make the record about these matters without further inflaming McMurry. But, it is difficult at best to make the record with a bench officer so charged with animus, and the obvious desire to unethically and unprofessionally put an adult "in her place." This experience has brought me, as it would any reasonable person, great sadness.

36. During my work as a prosecutor conducting approximately 100 jury trials, and, additionally, all the thousands of different and separate motions and hearings apart from those trials, I have always had the experience of a judge asking for an estimate of time for the proceeding. Additionally, practically all of those judges have wanted to know how many witnesses a party will call for the proceeding.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed the 20th day of March, 2018, in California.

Lynn Magnandonovan

EXHIBIT B

It is a difficult thing for a person acting in good faith litigating claims – based on the conduct of others that has damaged and victimized that person – to be concerned about a bench officer's bias. Without a fair and impartial legal process, there is no real – no *meaningful* – "day in court." And, no justice. This can only reasonably be said to add insult to injury.

However, Lynn's decision to not file her Special Action Petition gives the court its opportunity: Now the court will show the community – the people who cast votes – that justice really does mean something very important. Instead of standing in the shadow of the expressly stated concerns of the Arizona Supreme Court and the Arizona Court of Appeals about having a case return to the same bench officer after remand on appeal, the court has the opportunity to step away from that shadow. This could include a voluntary reassignment for the case. But, no matter what, the court will demonstrate its position by creating its own facts. The court will either create a record of being fair and impartial, or it will not. The record will establish what is in the "back of (the) trial judge's mind."

Lynn has decided to not file the Special Action Petition, and instead proceed with the case as it sits. Now it can never be said that Lynn did not extend in good faith the opportunity to this court to show exactly the kind of arbitrar it is. By this act alone, Lynn gives the rule of law and furthering justice to this court.

Arizona has legally established court appearance by telephone.

Superior Court of Maricopa County has rendered living in another state factually meets the standard of undue burden for a request to appear telephonically for court proceedings (see Exhibit B). The Arizona Court of Appeals has the statutory provision sanctioned telephonic appearances establishing briefing schedules, where discussions are specific and detailed [see ARCAP Rule 10(g) Exhibit B]. Further, Arizona allows for witness testimony by telephone in a court proceeding (see Arizona Rules of Probate Procedure Rule 11, Exhibit B). Considering the importance of live witness testimony as it relates to a determination of credibility, allowing examination of a witness by telephone shows Arizona relies on the benefits and reliability of telephonic technology. Additionally, federal courts allow appearance by telephone, including

EXHIBIT C

Purposes and Responsibilities of Courts

Curriculum Guidelines Summary

What Court Leaders Need to Know and Be Able to Do

The Purposes and Responsibilities of Courts Core Competency includes five areas, each of which assumes a link between theory and practice; concept and behavior; and idea and application:

Curriculum Guidelines

Why Courts Exist

Only the judiciary can definitively determine who is to prevail in the inevitable conflicts that arise between individuals; between government and the governed, including those accused by the state of violating the law; between individuals and corporations; and between organizations, both public and private. The atmosphere surrounding courts and court events is formal and peculiar, because the courts are unique. They resolve disputes by applying the law to the facts of particular cases independently and impartially. When the law is applied to the facts in courts, every party has the absolute right to an arbiter who is independent of the parties to that case and their advocates.

Court processes must reflect established court purposes such as individual justice in individual cases, the appearance of individual justice in individual cases, provision of a forum for the resolution of disputes, the protection of individuals against the arbitrary use of governmental power, and the making of a record of legal status. Individual cases must receive individual attention. The law must be correctly applied to the facts. Regardless of economic or other status, there must be equal access. Everyone who comes to and before the court must be treated respectfully, fairly, and equally. Case processing and the application of the law to the facts in individual cases must be consistent and predictable.

Courts as Institutions

When they are impartial and independent, courts earn public trust and confidence as they balance needs for social order and individual freedom in the "ordinary administration of criminal and civil justice." (*Federalist 17*) Justice requires courts whose ordinary everyday administration reflects the legacy of the Declaration of Independence, the U.S. Constitution, America's compound republic, and the public's respect for and voluntary adherence to the law and judicial decisions in individual cases.

Courts are separate from the executive and the legislative branches of government. But, at bottom, the constitutional and statutory basis of their authority dictates interdependency and independence, not autonomy. Competent court managers understand the historical basis for judicial independence, judicial authority, concepts of jurisdiction and venue, and the inherent power of the courts. Whether exercised through management and restrained activism or via adversarial relations with the other branches, the courts self-consciously protect their decisional processes and maintain their distinctive political and administrative boundaries.

Because the **Trial Court Performance Standards** persuasively and thoroughly articulate what courts should accomplish with the resources available to them, competent court leaders know what they say and take them seriously.

Rule of Law, Equal Protection and Due Process

The promise of equal justice under law and the constitutional guarantees of equal protection and due process of law ground day-to-day judicial administration. Courts protect all persons equally without bias or discrimination of any type. This is equal protection. Proper judicial administration demands protection of private rights through regular administration according to prescribed rules, processes, and forms. This is due process. Elements of due process on the criminal and civil side include notice, discovery, right to bail, counsel, lawful and regular process, confrontation, cross examination, the right to call witnesses, the privilege against self incrimination, and public and timely resolution, among others.

Court management competency requires an informed understanding of equal protection and due process and their historical evolution from rights first granted by the English king to the Lords of the Realm, to rights now guaranteed to all Americans. Rule of law, equal protection, and due process have profound practical implications. The ends of judicial administration are not autonomy or even judicial independence, but rather liberty, social order, equal access, the equality of individuals and the state, and justice.

Accountability

Purposes and Responsibilities of Courts require balance between independence and external and internal accountability. Courts do not serve their enduring purposes or continuing responsibilities unless their structure, governance, operations, programs, processes, and performance lead to the reality and deserved public perception that the judiciary is accountable. The justification for court control of the pace of litigation, the tracking and reporting of case disposition times, and adherence to judicial decisions is not merely efficiency. Rather it is the courts' responsibility for

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Overview
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Core Competency
- Purposes and Responsibilities of Courts
- Caseflow Management
- Leadership
- Visioning and Strategic Planning
- Essential Components
- Court Community Communication
- Resources, Budget and Finance
- Human Resources Management
- Education, Training, and Development
- Information Technology Management

Self
- Self and Group Assessment

the proper use of public money to ensure rule of law, equal protection and due process, individual justice in individual cases, and the appearance of individual justice in individual cases.

Court managers establish, explain, and maintain the court's use of public resources. They report on court performance to the judiciary, the public, and the judiciary's political co-equals. Judges and court staff recognize the public's right to an accountable judiciary which demonstrates service excellence.

Interdependence and Leadership

Federalist 51 declares that a "contriving . . . interior structure of government . . . is . . . essential to the preservation of liberty." Contriving interdependency and overlapping power assume on-going relationships and, plainly, conflict. The judiciary's relationships have a distinctive flavor in needed balance between interdependency and responsiveness to others, independence and distinctive boundaries, and leadership of the judiciary, individual judges, and the justice system.

Courts depend on the executive and legislative branches for resources. The judiciary cannot process and resolve even simple disputes without the cooperation of others who have conflicting responsibilities. Courts oversee an adversarial process as the way to truth and justice. Court leaders remain above the fray even as they actively manage cases, work to improve the justice system and court performance, and build public trust and confidence. Judicial communications and interventions are subject to public and governmental accountability. But the judiciary should never be subservient. The judicial voice must be strong and steady, yet modest and measured. The judiciary must lead the justice system in resolving criminal, civil, and family matters.

Advanced courts have leaders who not only know what the enduring purposes and continuing responsibilities are, they live it. Enduring values are acted upon, risks are taken in the interest of justice, and leadership is exercised in the interest of justice and the courts as institutions. Effective leaders are comfortable with ambiguity and with their affirmative responsibility to lead. Absent leadership, courts cannot structure and maintain distinctive relationships. Likewise, leadership allows courts to build and to protect judicial authority. Authority requires understanding and effective communication of the proper purpose behind judicial prerogatives, emoluments of office, legal and administrative processes, programs, offices and activities.

In Hamilton's words, "the judiciary has neither FORCE nor WILL, but merely judgment. . ." (*Federalist 78*). Judicial administration is a high calling. With their passion for justice and courts as institutions, court leaders motivate others and bring pride to everyday routines and responsibilities. They demand integrity and ethical conduct. They know that the courts integrity must be pure.

Click on each of the five Curriculum Guidelines to see the associated Knowledge, Skills and Abilities:

- Why Courts Exist
- Courts as Institutions
- Rule of Law, Equal Protection and Due Process
- Accountability
- Interdependence and Leadership

Purposes and Responsibilities of Courts MSWord version for printing

(A password window will appear. Click Cancel).

Purposes and Responsibilities of Courts Adobe Acrobat 5.0 version for printing.

GET ACROBAT READER. The above files are Adobe Acrobat pdf files, and require the free Adobe Acrobat Reader to download, view, and print. You can download the free reader here

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EXHIBIT D

REQUEST TO APPEAR BY TELEPHONE FOR

*Early Resolution Conference
*Mediation Conference

FORMS
&
INSTRUCTIONS

INSTRUCTIONS:
HOW TO FILL OUT THE "REQUEST TO APPEAR TELEPHONICALLY FOR CONFERENCE" FORM

The court will not grant requests to appear by telephone without specific reasons, (example: residing out of state, traveling out of state for employment, etc...) Supporting documents MUST be submitted with request *unless*, your address on file with court is an out of state address, or both parties agree with and sign request form.

Make your request as soon as possible, no less than 2 weeks prior to the conference date.

Step 1: In the top left corner of the first page fill out the following: Your name; Address; City; State and Zip Code; Telephone Number; and mark the box that states how you are represented in this case.

Step 2: **Only** fill in YOUR name in the space that says Petitioner (if you filed the original action). If the other party filed the original action, they will be the Petitioner. In the space that says Respondent, fill in the name of the Respondent that has been used throughout your case. Whoever was the Respondent for the original action will be the Respondent for any other papers related to this case.

Step 3: Fill in your case number where it says Case No: Your case number stays the same any time you file any papers in your case.

Step 4: **# 1 on form:** If you are the Petitioner check the box marked Petitioner. If you are the Respondent check the box marked Respondent. Check the box of the conference for which you are requesting to appear telephonically. In the spaces provided write the "date" & "time" of your Conference.

Step 5: **# 2 on form:** Provide a brief statement on the following lines detailing why you are unable to appear in person. (You must supply documentation to support your request *unless* you have an out of state address on file with the court OR the other party agrees AND has signed in # 4 of the request form)

Step 6: **# 3 on form:** A copy of this request must be mailed or delivered to the other party at his/her last known address (even if that address is yours). The mailing certificate at the bottom of the request form MUST be completed or your request may be denied.

Step 7: **# 4 on form:** Check ALL boxes that apply. The party submitting the request to appear by telephone MUST sign and date. If the request is submitted less than 2 weeks from the conference date, then both parties must sign the request, or the request may be denied.

Step 8: **Mailing Certificate:** On the bottom of the request, indicate that you are mailing or delivering a copy to the other party involved in your case. Do this by (1) filling in the date the copy will be mailed or delivered, (2) selecting the box [mailed OR delivered by] (making sure to include the name of the person delivering), and (3) filling in the other party's address where the request was sent.

(B) No later than one business day after filing the notice of appeal in the superior court, the appellant must notify every other party of the portions of every transcript of court proceedings that the appellant intends to include in the record on appeal. If any other party considers a transcript of additional portions of the proceedings to be necessary, that party must notify the appellant and all other parties within one business day of the additional portions to be included in the record on appeal. If the appellant declines to order those additional portions, that other party may order them, or may instead request an appropriate order from the superior court judge who entered the judgment.

(C) The party that orders a transcript must make payment arrangements with the court reporter, and upon receipt of the transcript, must promptly file it with the appellate court and serve other parties with a copy.

(D) If necessary, a party may request the appellate court to order expedited preparation of the record.

(E) In lieu of transcripts, the parties may agree on a stipulated record and submit copies of the stipulated record to the appellate court.

(g) Scheduling Conference. Simultaneously with filing the copy of the notice of appeal in the appellate court as required by Rule 10(c), the appellant must file a written request that the appellate court set an initial telephonic scheduling conference to determine a schedule for expedited proceedings. The parties must be prepared to address the following topics at the initial scheduling conference:

(1) Any pending deadlines that might affect the schedule for briefing or disposition of the appeal, such as the deadline for printing ballots or a publicity pamphlet, or the date of the election;

(2) Any request for a court order to facilitate the timely preparation of the record on appeal;

(3) Any request to transfer the case to the Court of Appeals or to the Supreme Court;

(4) The nature and number of issues on appeal;

(5) Deadlines for submission of the parties' briefs;

(6) The format of pleadings and documents that the parties may file on appeal, including proposed word limits and whether briefs should be as prescribed by Rules 13 and 14; and

(7) Whether the court should schedule oral argument.

(h) Electronic Filing and Service Requirement. Parties to an expedited election appeal are required to file documents electronically, as provided by Rule 4.2, unless an exception applies under Rule 4.1. A party that serves documents on another party by mail in an expedited election appeal also must deliver the documents by electronic means, including email or facsimile, or as agreed to by the parties. If the party on whom electronic delivery is to be made does not have access to email or facsimile, then delivery must be done by hand delivery or as the appellate court otherwise directs.

(i) Motion for Reconsideration. A party that seeks reconsideration of an appellate court decision in any expedited election case under this Rule must file a motion for reconsideration within 5 calendar days after entry of the decision. This motion is otherwise subject to the requirements of Rule 22.

(j) Petition for Review.

(1) *Petition Deadline.* To file a petition for review in any expedited election case governed by this Rule, a party must file the petition with the Supreme Court clerk within 10 calendar days after either entry of a decision, or entry of the final disposition by the Court of Appeals of a motion for reconsideration, whichever is later. The petitioner must serve a copy of the petition and any appendices on all parties that have appeared in the Court of Appeals.

(2) *Cross-petition Deadline.* A party may file a cross-petition for review with the Supreme Court clerk within 10 calendar days after service of a petition for review. The cross-petitioner must serve a copy of the cross-petition and any appendices on all parties that have appeared in the Court of Appeals.

(3) *Response Deadline.* Any party's response to a petition or cross-petition for review must be filed within 10 calendar days after service of the petition or cross-petition.

(4) *Form.* The petition, cross-petition, and responses must comply with the form, length, and content requirements provided by Rule 23.

(5) *Supplemental Briefs; Oral Argument.* If the Supreme Court grants review but its order does not provide for filing supplemental briefs or for oral argument, a party may file a request to allow one or both of these within 5 calendar days after entry of the order.

Credits

Formerly Rule 8.1, added Sept. 5, 2007, effective Jan. 1, 2008. Renumbered Rule 10 and amended Sept. 2, 2014, effective Jan. 1, 2015.

Editors' Notes

COMMENT TO RULE 10

(1) This rule applies only to election-related cases designated by statute for expedited consideration on appeal, such as those arising under A.R.S. § 16-351(A) (candidate nomination petitions); A.R.S. § 19-208.04 (recall); A.R.S. § 19-122 (initiative and

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Arizona Revised Statutes Annotated
Arizona Rules of Probate Procedure
II. General Procedures

17B A.R.S. Rules Probate Proc., Rule 11

Rule 11. Telephonic or Electronic Appearances and Testimony

Currentness

A. Upon timely written motion or on the court's own motion, a judicial officer may allow telephonic appearance or appearance by any approved electronic means during any proceeding. In the event more than one participant has requested telephonic or electronic appearance, the first party requesting telephonic appearance shall arrange at his or her expense for the call or conference call unless the court orders otherwise.

B. Unless a shorter time is authorized by the judicial officer, a motion to allow telephonic testimony or argument via telephonic or other approved electronic means shall be filed at least 30 days before the hearing, unless the notice setting the hearing provides for fewer than 30 days' notice, in which case the request shall be filed within five days after receipt of the notice setting the hearing. The motion shall be served on all parties and on any person who has filed a demand for notice and shall be accompanied by a form of order.

C. A party opposing a motion for telephonic or electronic appearance or telephonic or electronic testimony shall file a written response within five days after service of the motion.

D. Telephonic or electronic appearances and testimony shall be of such quality that the voices of all parties and counsel are audible to each participant, the judicial officer, and, where applicable, the certified reporter or electronic recording device.

Credits

Added Sept. 16, 2008, effective Jan. 1, 2009. Amended Aug. 30, 2012, effective Jan. 1, 2013.

Editors' Notes

COMMENT

While telephonic appearance and testimony or argument are encouraged as time and cost-saving methods of addressing probate matters, a number of issues bear consideration. First, courts throughout the state have different telephone technology, some of which is better suited than others for telephonic appearances. For that reason, the judicial officer assigned to the case must approve the request in advance of the hearing.

Second, last-minute requests are discouraged. Judicial officers may not have an opportunity to consider a last-minute request because of the pressure of other court business.

Finally, a party should carefully consider a request to present telephonic testimony or arguments in a contested matter. A witness's demeanor while testifying is an important factor used by the court to assess a witness's credibility. A party who offers a witness by telephone may be at a disadvantage if the testimony is contradicted by a witness who personally appears. Judicial officers may reject an untimely request if it detracts from the court's ability to address other matters on the court's calendar or if it affects the court's ability to judge the demeanor of the witnesses in a contested matter.

17B A. R. S. Rules Probate Proc., Rule 11, AZ ST PROB Rule 11
Current with amendments received through 11/1/17

END OF DOCUMENT

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE UNITED STATES OF AMERICA,	No. 14-70486
UNITED STATES OF AMERICA, *Petitioner*, v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, RENO, *Respondent*, PAUL J. MALIKOWSKI; BANK OF AMERICA, NA, *Real Parties in Interest.*	D.C. No. 3:13-cv-00470-RCJ-VPC OPINION

On Petition for Writ of Mandamus
to the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Argued January 16, 2015
Submitted June 29, 2015
San Francisco, California

Filed June 29, 2015

Walker River Irrigation District (*Walker River*), No. 3:73-cv-00127-RCJ-VPC (D. Nev.), a case involving claims of the United States and the Walker River Paiute Tribe (the Tribe) to water rights in the Walker River basin. Andrew Guarino and David Negri, DOJ Environment and Natural Resources Division attorneys based in Denver, Colorado and Boise, Idaho, respectively, appeared by telephone at one of the first status conferences in *Walker River* held before Judge Jones. Both had previously filed notices of appearance in the case. After Guarino and Negri introduced themselves at the status conference, Judge Jones stated: "You folks will see in other cases . . . that I am entering orders disapproving Washington, D.C., counsel appearance, in particular in tax cases and in some environmental cases, and insisting upon appearance only by the local U.S. Attorney or adjacent districts of the U.S. Attorney." Judge Jones assured Guarino and Negri that "those orders will not apply to this case[,] at least to the appearances so far."

Approximately two months later, Guarino and Negri appeared in person before Judge Jones. Judge Jones asked whether Guarino and Negri had been granted pro hac vice status, and cited Local Rule IA 10-3. Judge Jones again stated that he was "developing a policy" of "disallowing" or "debarring" U.S. Attorneys from Washington, D.C. because of concerns about their adherence to "ethical standards," but once again assured Guarino and Negri that he would allow them to appear in this case.

Soon thereafter, the lead counsel for the United States, who had handled *Walker River* for over a decade, filed a notice of withdrawal stating that Guarino would replace her as lead counsel. The local U.S. Attorney's Office filed a motion to allow Guarino and Negri to practice before the

EXHIBIT E

DECLARATION OF LYNN MAGNANDONOVAN

I, Lynn Magnandonovan, declare the following:

1. I am a resident of California and over 18 years of age.

2. After working on the draft for a number of days, by early afternoon on Thursday, February 1, 2018, my Special Action Petition was for all intents and purposes finished and ready to file with the Superior Court of Maricopa County. At this time I was waiting for the court's order continuing the status conference from February 1 to February 15 to add as an exhibit for the Petition. Around 2:00 PM PST (3:00 PM AZ) I called and spoke to the clerk about whether the continuance Order had been mailed that day yet; the answer was it had not.

3. Awaiting the document, and not knowing exactly when the document would be in my possession, I had an opportunity to reflect upon the Special Action Petition and the case. I felt positive about my legal analysis regarding the facts and the law, and satisfied I had done a legally sufficient job. Yet, I thought about the various factors any litigant would consider in advancing their case. Of particular consideration was the delays the case had already sustained, and the desire to go forward to a meaningful resolution, including presenting the case to a jury in trial if necessary. I thought about this for several hours, and decided to wait until the next day to make a final decision. Upon this reflection, I decided to not file the Petition and instead go forward with the scheduled proceeding on February 15.

4. The cost for the February 1 appearance would have been about $1,4000.00; the cost for the February 15 appearance will be about $1,0000.00, and I intend to conduct five (5) depositions in Arizona which will bear similar costs. Travel time for each is three (3) days.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed the 3rd day of February, 2018, in California.

_____

Lynn Magnandonovan

EXHIBIT F

Maricopa County Justice Courts, Arizona

Encanto Justice Court 620 W. Jackson St., #1045, Phoenix, AZ 85003 602-372-6300

CASE NUMBER: CC2016136702 RC
LC CASE NUMBER: LC2017-000347-001

LYNN MAGNANDONOVAN

Plaintiff(s) Name / Address / Email / Phone
PRO PER

Attorney for Plaintiff(s) Name / Address / Email / Phone

STOOPS DENOUS WILSON & MURRAY
STEPHANIE MONTRE WILSON

Defendant(s) Name / Address / Email / Phone
PRO PER

Attorney for Defendant(s) Name / Address / Email / Phone

NOTICE OF FINAL DISPOSITION OF APPEAL BY TRIAL COURT (CIVIL)

☐ Abandonment ☒ Further Adjudication ☐ ORDER OF BOND DISPOSITION

To the Appellant: Pursuant to the applicable rules of procedure for civil appeals, as explained below:

☐ You do NOT need to return to court.
☐ The appeal has been deemed abandoned for non-perfection, AND IS HEREBY DISMISSED.
☐ Appellant has failed to:
- ☐ Timely file a Notice of Appeal
- ☐ Pay fees to the Trial Court
- ☐ Post cost bond or alternatively, file motion and affidavit to waive cost bond
- ☐ Timely file an Appeal Memorandum and if applicable a Transcript
- ☐ Pay Superior Court filing fee

☒ IT IS ORDERED that any applicable payments, bonds or deposits be applied as follows:
Return Cost Bond $250.00 to Appellant Lynn Magnandonovan

☐ The judgment or order of this court has been affirmed. IT IS ORDERED that any applicable payments, bonds or deposits be applied as follows:

☒ For the reasons stated below, you MUST return to this court on:

Date: February 1, 2018 Time: 3:00 PM

☐ The appeal has been deemed abandoned for non-perfection, AND IS HEREBY DISMISSED. You are required to personally appear before this court on the date stated above for further judicial action.
☒ The matter has been remanded with instructions. You are required to personally appear before this court on the date stated above for further judicial action.
☐ For bond disposition hearing.
☐ Other:

SEAL

Date: 12/29/2017

Justice of the Peace

I CERTIFY that I delivered / mailed a copy of this NOTICE to:

☒ Plaintiff at the above address ☐ Plaintiff's attorney ☒ Defendant at the above address ☐ Defendant's attorney

Date: 12/29/2017 By: FF
Clerk

DISBURSEMENT DETAIL (Internal use only)

☐ Partial bond exoneration ☐ Bond exoneration ☐ Bond transfer

Chase Transaction number: Amount: $ Payable to:

Mailing address:

iCIS Transaction Number:

Date completed: Done by (initials): Verified by (initials):

EXHIBIT G

Lynn Magnandonovan

IN THE ENCANTO JUSTICE COURT

COUNTY OF MARICOPA, STATE OF ARIZONA

LYNN MAGNANDONOVAN, an individual

Plaintiff

vs

STEPHANIE MONROE WILSON, an Arizona attorney; STOOPS, DENIOUS, WILSON & MURRAY, P.L.C. an Arizona Professional Legal Corporation; JOHN and JANE DOES 1-10; ABC CORPORATIONS 1-10; XYZ PARTNERSHIPS 1-10; WHITE LIMITED LIABILITY COMPANIES 1-10; and BLACK SOLE PROPRIETORSHIPS 1-10,

Defendants.

Case No. CC 2016-136702RC

REQUEST TO APPEAR TELEPHONICALLY AT THE NOTICED FEBRUARY 1, 2018, JUDICIAL PROCEEDING

As the Plaintiff in the above-captioned case, LYNN MAGNANDONOVAN, ("Lynn") requests to appear telephonically on February 1, 2018, at 3:00 PM for the "further judicial action" appearance noticed by the court after a remand from the appellate court was issued on this case. The Encanto Clerk of the Court advised Lynn that the judicial action noticed by the court is a "status conference." Lynn resides in another state – her address on file with the court is an out of state address – and appearing in person in court on February 1, 2018, at 3:00 PM is an undue burden at this time.

In fairness and in order to expedite this request, and because this Court does not provide "e-filing," Monday, January 15, 2018, is a federal holiday, and other filing protocol would create

an unnecessary delay, Lynn is sending this Motion via facsimile transmission (FAX) by using the FAX number listed on the Encanto Justice Court website on January 13, 2018 (http://justicecourts.maricopa.gov/locations/court.aspx?loc=DJC). Lynn is also sending this request with the original signature via regular USPS mail to the court.

DATED this 13th day of January, 2018.

LYNN MAGNANDONOVAN

_____

Lynn Magnandonovan

Original of the foregoing mailed by regular U.S. mail on this 13th day of January, 2018, with:

The Clerk of the Court
Encanto Justice Court
620 West Jackson Street, Suite 1045
Phoenix, AZ 85003

Copy mailed by regular U.S. mail on this 13th day of January, 2018, to:

Stephanie Monroe Wilson
Stoops, Denious, Wilson & Murray, P.L.C.
350 E. Virginia Avenue, Suite 100
Phoenix, AZ 85004

Stoops, Denious, Wilson & Murray, P.L.C.
350 E. Virginia Avenue, Suite 100
Phoenix, AZ 85004

By _____
Lynn Magnandonovan

From: Lynn Magnandonovan

To: encanto

Subject: CASE NO. 2016-136702RC REQUEST TO APPEAR TELEPHONICALLY FEBRUARY 1, 2018

Date: Tue, Jan 16, 2018 1:54 pm

Attachments: 001.jpg (419K), 002.jpg (332K), 003.jpg (151K), 004.jpg (152K), 005.jpg (151K)

Attached is the 2-page Request To Appear Telephonically at the Noticed February 1, 2018, Judicial Proceeding. Also attached are 3 different Transmission Verification Reports -- one (1) for today and two (2) for Saturday, January 13 -- that document attempts to FAX the document that were unsuccessful based on "Poor Line Condition."

I appreciate your assistance with this situation, given the inability of being able to successfully FAX this document using the Encanto Justice Court FAX number. I will call you later this afternoon to confirm this has been successfully transmitted using this electronic mail (email).

Thank you very much,

Lynn Magnandonovan

5 Attached Images

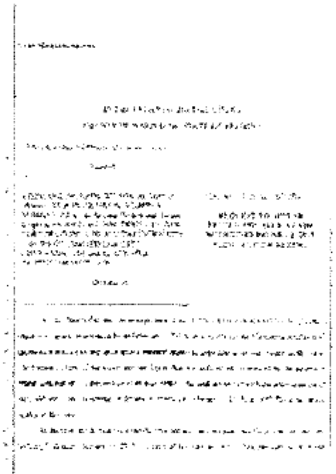

EXHIBIT H

Lynn Magnandonovan

11:18 AM

IN THE ENCANTO JUSTICE COURT

COUNTY OF MARICOPA, STATE OF ARIZONA

LYNN MAGNANDONOVAN, an individual
Plaintiff

vs

STEPHANIE MONROE WILSON, an Arizona attorney; STOOPS, DENIOUS, WILSON & MURRAY, P.L.C. an Arizona Professional Legal Corporation; JOHN and JANE DOES 1-10; ABC CORPORATIONS 1-10; XYZ PARTNERSHIPS 1-10; WHITE LIMITED LIABILITY COMPANIES 1-10; and BLACK SOLE PROPRIETORSHIPS 1-10,

Defendants

Case No. CC 2016-136702RC

MOTION TO STAY STATUS CONFERENCE ON FEBRUARY 1, 2018, AND OTHER COURT PROCEEDINGS FOR PLAINTIFF'S SPECIAL ACTION ON COURT'S DENIAL OF PLAINTIFF'S NOTICE TO CHANGE JUDGE

(Assigned to Justice of the Peace C. Steven McMurray)

Plaintiff Lynn Magnandonovan ("Lynn") is currently preparing a Special Action on the court's Order dated January 4, 2018, denying Lynn's Notice of Change of Judge. Therefore, in the interest of justice, and seeing no prejudice to the court or Defendants, Lynn requests the stay of all further judicial proceedings, including the scheduled appearance for a status conference on February 1, 2018, pending the resolution of the Special Action.

Lynn filed a Complaint in Justice Court against Defendants Stephanie Monroe Wilson ("Wilson") and Stoops, Denious, Wilson & Murray ("Stoops") on August 1, 2016; however, this Complaint was not served on the Defendants. Subsequently, Lynn amended the Complaint and filed that First Amended Complaint on January 6, 2017, and served the Defendants. The Defendants filed a Motion to Dismiss Lynn's First Amended Complaint.

From: Lynn Magnandonovan
To: encanto
Subject: PLEASE GIVE THIS TO SUSIE HIPOLITO
Date: Thu, Jan 25, 2018 6:46 pm
Attachments: 001.jpg (471K), 002.jpg (504K), 003.jpg (582K), 004.jpg (456K), 005.jpg (254K)

Susie,

Attached is a 5-page Motion I am sending based on the immediacy of the matter. I am sending this same document in overnight mail to an attorney service who will file it with the Justice Court pursuant to their expedited process.

Given that it is after your court hours, I thought this was the best way to handle the situation since previously I had problems FAXing a document to the court. I will call you tomorrow -- Friday, January 26 -- to discuss this matter.

Thank you for your understanding, and help.

Regards,

Lynn Magnandonovan

5 Attached Images

EXHIBIT 2

Lynn Magnandonovan

IN THE ARCADIA BILTMORE JUSTICE COURT

COUNTY OF MARICOPA, STATE OF ARIZONA

LYNN MAGNANDONOVAN, an individual
Plaintiff

vs

STEPHANIE MONROE WILSON, an Arizona attorney; STOOPS, DENIOUS, WILSON & MURRAY, P.L.C. an Arizona Professional Legal Corporation; JOHN and JANE DOES 1-10; ABC CORPORATIONS 1-10; XYZ PARTNERSHIPS 1-10; WHITE LIMITED LIABILITY COMPANIES 1-10; and BLACK SOLE PROPRIETORSHIPS 1-10,

Defendants

Case No. CC 2016-136702RC

ERRATUM: CORRECTION OF CAPTION PAGE FOR PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PROPER ASSIGNMENT/ RECUSAL/ CHANGE OF VENUE

Notice is hereby given by Plaintiff Lynn Magnandonovan that the correct caption page for PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PROPER ASSIGNMENT/ RECUSAL/ CHANGE OF VENUE is attached.

This corrects the inadvertent error on the caption page of the Plaintiff's Reply in Support of Motion For Proper Assignment/Recusal/Change of Venue filed April 3, 2018.

DATED: April 4, 2018

By_____
Lynn Magnandonovan

Lynn Magnandonovan

IN THE ARCADIA BILTMORE JUSTICE COURT

COUNTY OF MARICOPA, STATE OF ARIZONA

LYNN MAGNANDONOVAN, an individual
Plaintiff

vs

STEPHANIE MONROE WILSON, an Arizona attorney; STOOPS, DENIOUS, WILSON & MURRAY, P.L.C. an Arizona Professional Legal Corporation; JOHN and JANE DOES 1-10; ABC CORPORATIONS 1-10; XYZ PARTNERSHIPS 1-10; WHITE LIMITED LIABILITY COMPANIES 1-10; and BLACK SOLE PROPRIETORSHIPS 1-10,

Defendants

Case No. CC 2016-136702RC

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PROPER ASSIGNMENT/ RECUSAL/ CHANGE OF VENUE

The Justice Courts have a long history of legitimate criticism of incompetency, misconduct, and ineffective administration.

Even the venerated Justice Sandra Day O'Connor, who is known for her general linguistic moderation and eschewing hyperbole, has stepped onto the bandwagon asking for reform of Arizona's judicial system due to the present structure that includes the justice courts. [*Fifty-Eight Years and Counting: The Elusive Quest to Reform Arizona's Justice of the Peace Courts*, Law & Policy Note, Anne E. Nelson, 52 ARIZ. L. REV. 533 (2010), Pages 540 and 550. If the reader has not read this law review article, it is strongly suggested it be read in its entirety since the wealth of information is historical with extraordinarily sources. (These criticisms continue to present day.)] Over 60 years of scandal and misconduct (*Id.*, see in particular Page 534, footnotes 5 and 6) have resulted in Arizona's Supreme Court ordering

Lynn Magnandonovan

IN THE ARCADIA BILTMORE JUSTICE COURT

COUNTY OF MARICOPA, STATE OF ARIZONA

LYNN MAGNANDONOVAN, an individual
Plaintiff

vs

STEPHANIE MONROE WILSON, an Arizona attorney; STOOPS, DENIOUS, WILSON & MURRAY, P.L.C. an Arizona Professional Legal Corporation; JOHN and JANE DOES 1-10; ABC CORPORATIONS 1-10; XYZ PARTNERSHIPS 1-10; WHITE LIMITED LIABILITY COMPANIES 1-10; and BLACK SOLE PROPRIETORSHIPS 1-10,

Defendants

Case No. CC 2016-136702RC

PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO STAY ALL PROCEEDINGS FOR FILING AND DETERMINATION OF PLAINTIFF'S MOTION FOR PROPER ASSIGNMENT/ RECUSAL/ CHANGE OF VENUE

The Justice Courts have a long history of legitimate criticism of incompetency, misconduct, and ineffective administration.

Even the venerated Justice Sandra Day O'Connor, who is known for her general linguistic moderation and eschewing hyperbole, has stepped onto the bandwagon asking for reform of Arizona's judicial system due to the present structure that includes the justice courts. [*Fifty-Eight Years and Counting: The Elusive Quest to Reform Arizona's Justice of the Peace Courts*, Law & Policy Note, Anne E. Nelson, 52 ARIZ. L. REV. 533 (2010), Pages 540 and 550. If the reader has not read this law review article, it is strongly suggested it be read in its entirety since the wealth of information is historical with extraordinarily sources. (These criticisms continue to present day.)] Over 60 years of scandal and misconduct (*Id.*, see in particular Page 534, footnotes 5 and 6) have resulted in Arizona's Supreme Court ordering

consolidation of justice courts with superior courts and superior courts to take over their administration:

> More significantly, the Arizona Supreme Court has ordered certain justice courts to be directly administered by county superior courts. The Supreme Court has ordered consolidation in several instances and for a variety of reasons. The most recent and most notable example of this was in 2002, when Chief Justice Charles Jones transferred administrative control of all Maricopa County Justice Courts to the Presiding Judge of the Maricopa County Superior Court. The 2002 Administrative Order came as the result of several years of corruption and management scandals in the Maricopa County Justice Courts. *Id.* at 548. (Footnotes omitted.) . . .
> This transfer of administrative control did not sit well with Maricopa County JPs. Many fought the reforms and argued that the changes **left them powerless** in their own offices. . . . .Maricopa County Justice Court centralization was short lived. In 2006, the Arizona Supreme Court began to transfer administrative authority back to the individual justice precincts. . . . The decentralized nature of the Arizona justice court system will likely require the state Supreme Court to continue playing an active role in supervising the justice courts. *Id.* at 549. (Footnotes omitted.) (Emphasis added.)

McMurry was a justice of the peace ("JP") when the Arizona Supreme Court transferred control of the Justice Courts (2002-2006) due to "corruption and management scandals." McMurry's conduct reflects that a JP thinks they should have power "in their own office." But, for any court – and this includes courts of limited jurisdiction like the justice courts – "power" ultimately comes from the constitution and rule of law. The bench officer is a conduit. Our democracy of constitutional principles and rule of law flows *through* them, and, as Justice Kennedy recently reminded us, judges are required to "hold the balance nice, clear and true." [*Caperton, et al. v. Massey,* 129 S.Ct. 2252,2264, 556 U.S. 868 (2009), citing the language originally found in the 1927 *stare decisis* case *Tumey v. State of Ohio,* 273 U.S. at 572: "the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a **possible temptation** to the average man as a judge to forget the burden of proof . . . or which might lead him not to hold the balance nice, clear, and true . . . denies . . . due process of law." (Emphasis added.)]

On February 15 McMurry stated "You asked for a jury trial. **I'm going to do whatever I can do** to convince you that's a bad choice." (ER 2:54:25-2:54:31.) McMurry then

proceeded to violate Lynn's constitutional rights, Arizona law, and numerous Judicial Canons – to make his point absolutely clear. McMurry did this over Lynn's protestations. It is clear McMurry was delivering on his promise made at the beginning of the proceeding: McMurry was going to do ***whatever he could*** to have Lynn abandon her right to a fair jury trial by a fair and impartial arbitrar by showing Lynn she would **never** get one. The fact that McMurry – with his background, training, and experience – would so flagrantly and pervasively engage in sweeping misconduct establishes that his desire knows no bounds "to do whatever (he) can to convince" Lynn to abandon her constitution right of a jury trial by showing her she will never get one. McMurry's position and history with the Maricopa County Justice Courts has generated influence in every single precinct. This *cannot* be discounted. This must be taken seriously.

Obstruction of justice and corrupt intent.

McMurry's conduct on February 15 – and before February 15 – is powerful and damaging evidence of intent to obstruct justice. Discretion cannot be used to stymie or thwart constitutional rights or other law. Courts viewing McMurry's abuse of power should be unnerved about his contempt for the rule of law. In the instance of this case, McMurry's misconduct goes to the core of the integrity of the judicial system.

Lynn's constitutional rights of due process and equal protection are federal issues. (See 18 U.S. Code § 1505, ¶ 2.) Obstruction of justice law requires a state of mind: What is going on in the person's head – is the intent corrupt? McMurry said he would "do whatever (he) could to convince Lynn that (a jury trial) was a bad choice" (ER 2:54:28), and advised Lynn because she exercised her constitutional right to a jury trial "things are going to change" (ER 2:56:00). At one point after Lynn tells McMurry the jury trial will probably take more than one day – with no request for clarification from Lynn – McMurry repeatedly insists the trial will take only one day (ER3:10:04 - 3:10:58). When Lynn reiterates her time estimate, McMurry mockingly laughs at her. (ER3:10:04 - 3:10:18). A reasonable person would conclude McMurry was not interested in Lynn having a fair trial; rather McMurry was interested in

showing Lynn she would not get a fair trail. McMurry underscored his state of mind by unequivocally stating: "OK. Stop talking. I don't want to hear it anymore. I've set it (the jury trial) for May 14th. I don't care what you think. I've told you you're making a mistake on this anyway. And you didn't hear **me**." (Emphasis in original.) (ER 3:10:58-3:11:20.)

As stated in the Motion, the state of the record shows McMurry acted with malice (see Page 3, lines 12-26 and Page 4, lines 1-9) and premeditated aforethought (see Page 2 lines22-24, and page 3, lines 1-11). The record is not ambiguous and McMurry's actions establish a pattern of conduct. The entirely of the record is evidence that reasonably establishes McMurry's corrupt intent to prevent Lynn from her inviolate right to fair and impartial jury trial which falls squarely under obstruction of justice.

McMurry's "Transfer Request" supplanted Lynn's right to have constitutional rights decided on their merits adding to a pattern of retaliatory conduct.

Lynn did not have benefit of notice regarding the "transfer request" when she drafted this Motion; she received it after the Motion was executed (see Declaration, Exhibit A, ¶ 4). The Defendants' Response raises this issue and Lynn addresses it now. On March 13, 2018, McMurry had the benefit of Lynn's Motion to Stay (filed on February 27), the Defendants' Response, and Lynn's Reply (mailed for filing on March 9); McMurry generated the "transfer request" and knew Lynn was preparing to fully brief and analyze the constitutional and other legal violations related to proper judicial reassignment that would include recusal and a change of venue. McMurry knew this because Lynn had specifically asked for the stay of all proceedings for those very reasons. (See Stay, in particular the Motion, Page 1, lines 17-26, and Page 5, lines 5-9; the Reply Page 7, lines 23-26, and Page 8, lines 1-5). McMurry did **not** issue a stay on the proceedings to preserve the *status quo* regarding fundamental and inviolate constitutional rights as Lynn requested. Instead, on March 13 McMurry initiated a"transfer request" circumventing the legal analysis regarding removal. Without that legal briefing, there was no context for the "reassignment."

If done properly after the full briefing on the issues and based on the totality of the circumstances, the "reassignment" could reasonably resulted in a different outcome. Knowing all of the true facts and having the benefit of the record – particularly listening to the electronic recording of the February 15 proceedings – one would reasonably expect a different outcome since there is a reasonable belief all justice court bench personnel are tainted by McMurry's relationship with them and his role with the justice court (see Motion Page 15, lines 7-26, and Page 16, lines 1-3). Instead of issuing the stay of all proceedings and preserving the status quo, McMurry generated the "transfer request" March 13 further prejudicing Lynn. Lynn's credible and reasonable assertion in her Motion to Stay that "(t)he court's refusal to grant this motion can only reasonably be considered further evidence of the court's bias and prejudice against Lynn and a further violation of her legal rights" gave McMurry no pause.

On February 15 after his removal McMurry engaged in action violating A.R.S. Rule 42.1(f)(1) because that action was not "temporary" and "absolutely necessary to prevent immediate and irreparable injury, loss, or damage from occurring. . . " However, after removal the one thing McMurry *could* have done that **is** consistent with that test was to grant Lynn's request for a stay of all proceedings preserving the status quo in order for the issues that effected any reassignment to be fully briefed. If McMurry wanted to *legitimately* initiate the "transfer request," he could have done this by granting the stay, wait for all pleadings without making a decision on the merits, and then initiated the "transfer request." This would have been the **only** action that was the least prejudicial to Lynn and this case: It would have preserved the status quo until the issues material and relevant to a reassignment of this case could be fully briefed by both parties. McMurry did not do this. McMurry purposefully did the most prejudicial thing by initiating a "transfer request" knowing it would not have the benefit of fully briefed and analyzed issues regarding reassignment that are *specifically* related to McMurry. In doing so McMurry continues to try to control this case and litigation. Furthermore, it adds to a pattern of retaliatory conduct against Lynn for filing a case McMurry

did not think should proceed and for requesting her constitutional right to a fair jury trial by a fair and impartial arbitrar.

The "Transfer Request" is legally null and void on its face.

The "transfer request" on its face establishes it has been generated and mailed by a clerk at the Encanto Justice Court ("Encanto"). Pursuant to the law, after bench officer removal the case must be transferred to the presiding bench officer; everything thereafter comes from that presiding bench officer with no more contact with the removed bench officer. The whole point of reassignment protocol is to avoid any accusations that the biased bench officer is involved or interfering in any way after removal, or there is *any* appearance of impropriety. The Encanto clerk working directly for the removed bench officer, McMurry, sent the "Transfer Request" to Lynn and this fact alone demonstrates continued involvement by McMurry; the clerk is an agent/attache of McMurry and the only reasonable explanation is that the clerk acted at the request, direction, and supervision of McMurry.

It cannot be credibly claimed that the presiding JP Keith Russell does not have a clerk, or access to mailing. Thus, the "transfer request" sent to Lynn by Encanto is legally null and void on its face since the removed bench officer, McMurry, was involved in conduct that cannot pass the legal test of being "temporary" and "absolutely necessary to prevent immediate and irreparable injury, loss, or damage from occurring. . . " [Rule 42.1(f)(1)]. And, it cannot be credibly claimed that the presiding JP Keith Russell could not have issued and sent a minute order/entry regarding the reassignment and then sent it to the parties. That kind of activity must occur practically every court day at the East Mesa Justice Court.

The Superior Court of Maricopa County civil presiding judge follows an established protocol regarding judicial reassignment. (See Exhibit A, ¶ 3.) The Superior Court of Maricopa County civil presiding judge issues and sends a minute entry to the parties so there is no involvement or taint from the removed judge, and as documentary evidence of no impropriety or appearance of impropriety. (See Exhibit B.) In this "transfer request" from

Encanto there is no evidence to support the indicia of reliability that Keith Russell actually did anything himself. In other words, on the face of the document there is no way to establish that the Encanto clerk did not complete the entire document or that Keith Russell was properly involved in any reassignment. Nor does this "transfer request" meet the legal and substantive test of no involvement, no taint, no impropriety, or no appearance of impropriety. For a court system that does not allow "efiling" it is rather curious to see "/s/ Keith Russell" on a document, particularly when that form was not generated or mailed by anyone related to Keith Russell or the East Mesa Justice Court. Anyone could have word-processed that (including McMurry). When a document is generated and mailed by Encanto – the removed court – with no authentication of who and how the "reassignment" was made, a legitimate and reasonable question arises regarding the legality and propriety of a lawful reassignment.

The Superior Court of Maricopa County protocol reflects the appropriate steps required by the law so when the civil presiding judge executes the protocol these legal questions of the removed bench officer's subsequent involvement do not reasonably arise. This is 2018 and removal and reassignment law has existed for many years. There is no credible reason for the "Transfer Request" generated by Encanto; McMurry's involvement after removal violates the law. The "Request Transfer" document on its face cannot establish with absolute certainty what really happened. McMurry was removed from this case on February 15. The March "Transfer Request" showing his improper involvement is null and void as a matter of law. **All justice court precincts located at 620 West Jackson, Phoenix, Arizona, must be removed from reassignment due to their conflict of interest.**

Arcadia Biltmore, Downtown, Encanto, South Mountain, and West McDowell precincts are in the same courthouse, each courtroom for each respective precinct next to each other all in a row. All bench officers come to work at the same building on the same floor and are in proximity of each other. It is reasonable to believe all other JPs interact with McMurry and all have a relationship with him. As supervising/presiding JP for four years, McMurry held a

bureaucratic apex position. It is reasonable to believe there was support among the JPs for McMurry as the supervising/presiding JP. It is reasonable to believe these JPs like, admire, and respect McMurry, have sought advice from McMurry and received it. It is reasonable to believe based on the aforementioned, these JPs would defend and/or excuse McMurry's misconduct and adopt his animus. (It serves no one to be in denial about the fact bench officers talk about their cases with each other **all the time**.) Given the close proximity, all the bench officers will most likely continue to have on-going contact and congeniality with McMurry. His embedded influence, including the impact on people's subconscious process, effecting bias and choices cannot be underestimated.

The clerks/support staff from the different precincts share the same open-floor work area in the courthouse; these people hear comments around them, and they talk to each other. It is reasonable to believe they are familiar enough with the JP they work with that they have casual conversations. It is reasonable to believe the clerks/support staff discuss the cases on calendar, with each other and the JPs. McMurry has prejudiced the Encanto clerks against Lynn with his animus and irrationality (see Motion, Page 11, line 7-18) and it is reasonable to believe the clerks/support staff would not question any of this, adopting his world view.

The entirety of McMurry's misconduct and remarks made on February 15 – and make no mistake about this, the clerk in the courtroom heard single every word – is far-reaching and unbridled and a bell that cannot be unrung. (See Exhibit C, Lynn's Appellate Memoranda, Pages 9, lines 8-15, Page10, lines 3-5; this excerpt is included since Lynn has incorporated the entire court record on this case in her Motion.) All the precincts located in the same courthouse have been contaminated by McMurry: He has "poisoned the well." Because McMurry's lack of restraint and violations of inviolate constitutional rights and the law has been so expansive, no reasonable person would believe he has not – or will not – further voice his unbridled animus towards the case and Lynn. "(T)he objective standards implementing the Due Process Clause do not require proof of actual bias, . . (r)ather, the question is whether, "under a realistic

appraisal of psychological tendencies and human weakness," the interest "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Caperton, supra* at 2263. The precincts in the same courthouse must be removed from reassignment.

Bench officers of the Justice Courts of Maricopa County must be recused.

It is fair to say McMurry has cut a large figure and cast a big shadow as a bench officer in Maricopa County Justice Courts. He has been seated for 20 years and been the presiding JP for the four years preceding 2018. Incorporating all of the substantive issues previously mentioned, it is reasonable to believe McMurry has the same kind of relationship with all the JPs and the judge pro temps, with the same or similar influence. The ego drives a lot of conduct, and people want to believe they can be fair and impartial. But perfection does not exist, and the subconscious is an unconscious driving force. Further, the bias of judges believing they are without bias is the most intractable bias of all. (*Mediating Dangerously - The Frontiers of Conflict Resolution*" by Kenneth Cloke.) No doubt, this is the underlying social policy for the Rule 1.2's mandate to avoid the appearance of impropriety, promulgated by *Tumey* in 1927: "the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a **possible temptation** to the average man as a judge to forget the burden of proof . . . or which might lead him not to hold the balance nice, clear, and true . . . denies . . . due process of law." *Tumey, supra* at 572 (Emphasis added.)

The role of the Superior Court of Maricopa County regarding reassignment.

Lynn understands and appreciates judicial resources and does not want to cause undue burden on those resources. But, Lynn rightly wants a fair trial. Lynn submits that on the totality of circumstances anchored to recusal law, Justice Court bench personnel must be removed: "While not limited to the following circumstances, a judge's impartiality can **reasonably** be

questioned under the rule for the following reasons: 1. The judge has a personal bias or prejudice concerning a party or a party's lawyer (Rule 2.11(A)(1), "A judge **shall** disqualify himself or herself in any proceeding in which the judge's impartiality ***might*** **reasonably be questioned** . . . " Based on McMurry's misconduct, his tenure and role with the justice court and all bench personnel for years, and reasonably looking into the heart and soul of human behavior – most particularly that promulgated by the subconscious which is unknown to the conscious mind – recusal of Justice Court bench officers is proper. Also, the totality of the circumstances of the case meets the change of venue test under A.R.S. § 12-406 (B)(1) and (3). However, rather than sending this case to another county, the case can be sent to Superior Court for reassignment to a impartial superior court bench officer as a temporary assignment in the justice court jurisdiction. These assignments traditionally occur at times when it is important to preserve justice and avoid the appearance of impropriety. This is one of those times.

Public trust in the judicial system requires proper reassignment.

The Preamble of the Arizona Code of Judicial Conduct is the lodestar here:

> An independent, fair, and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the rules contained in this code are the precepts that judges, individually **and collectively**, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system. (Emphasis added.)
>
> Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

Lynn is no different from every reasonable and fair-minded citizen: Lynn wants a fair jury trial. Surely the reader would want the very same thing. So would *the Defendants* if they found themselves in this situation. Public trust in our constitution and the judicial system requires rigorous vigilance to due process and equal protection for **all**.

Conclusion

Based on McMurry's misconduct and his history of relationship, influence, prejudice he created with staff, and proximity with the other JPs at the West Jackson courthouse, all precincts

located there must be removed for reassignment purposes. Further, based on those reasons and Rule 1.2, all bench personnel in Justice Court must also be removed. Based on those recusals/removals, the Superior Court should consider an appropriate reassignment for this case from superior court bench personnel who can sit in a justice court for the purposes of this case to ensure Lynn's right to a fair trial.

Dated this 31st day of March, 2018.

LYNN MAGNANDONOVAN

Lynn Magnandonovan

Original filed this _____ day of April, 2018 with:

Arcadia Biltmore Justice Court
620 West Jackson Street
Phoenix, AZ 85003

Copy mailed this _____ day of April, 2018, to:

Stephanie Monroe Wilson and
Stoops, Denious, Wilson & Murray, P.L.C.
350 E. Virginia Avenue, Suite 100
Phoenix, AZ 85004

By_____

EXHIBIT A

DECLARATION OF LYNN MAGNANDONOVAN

I, Lynn Magnandonovan, declare the following:

1. I am a resident of California and over 18 years of age.

2. On Page 16, lines 2-3, my Motion For Proper Assignment/Recusal/Change of Venue should state: ". . . Lynn incorporates by reference the entire court **record** of this case, including the appeal." This is supported by my Declaration as Exhibit A in the Motion (see Page 1, lines 11-15).

3. I spoke to a clerk in the Superior Court of Maricopa County Civil Division administration office about the protocol reassignment used by the civil presiding judge when a judge is removed for reasons other than cause. The presiding judge generally assigns the judge from a "matrix." Once that judge has been selected for reassignment, the presiding judge issues a minute entry and sends it to the parties. The entire reassignment process is handled by the civil presiding judge. It never goes back to the removed judge for any further involvement.

4. On March 20 I signed and mailed the Motion to the attorney service in Arizona. On March 21 at approximately 1:00 PM PST I spoke to the attorney service who advised me they would file the Motion that afternoon, but I was not given a specific time. Later that afternoon at approximately 3:35 PM PST I received and read the "Transfer Request" sent by Encanto Justice Court. At approximately 3:50 PM PST the attorney service called when the person filing the Motion was told the case had been transferred. After having several brief discussions with the attorney service (who was in communication with the filing person), it was agreed that the filing person would change the caption page to "Arcadia Biltmore" and file the motion at the filing window located next to the Encanto filing window.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed the 31st day of March, 2018, in California.

Lynn Magnandonovan

EXHIBIT B

Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
10/13/2014 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-000965

10/10/2014

HON. JOHN REA

CLERK OF THE COURT
L. Gilbert
Deputy

WESTGREEN TOWNHOUSE ASSOCIATION

MELISSA S LAVONIER

v.

RYAN M MAGNAN

STEPHANIE MONROE WILSON

NIKITA VERMA PATEL
COURT ADMIN-CIVIL-CCC
JUDGE BUSTAMANTE
JUDGE WHITTEN

CASE REASSIGNMENT - CIVIL PRESIDING JUDGE

This case was previously assigned to the Honorable Lori Bustamante. A Notice of Change of Judge has been filed by Defendant. The case was transferred to the Presiding Civil Judge for reassignment.

IT IS ORDERED that this case be assigned to Civil Calendar CVJ02, the Honorable Christopher Whitten, for all further proceedings. If any objections to the Notice of Change of Judge are filed, the noticed judge retains jurisdiction to hear and decide the objections. Any objections must be filed and a copy delivered to the noticed judge within twenty days of the date of this order.

Pending:

- *Plaintiff/Counter-Defendant's September 24, 2014 Partial Motion to Dismiss*

ATTENTION: If there are any matters pending and/or previously scheduled events (oral argument, hearings, conferences, trial, etc.), counsel are directed to immediately contact the newly assigned division to determine whether the new division is able to maintain the current schedule in this matter.

EXHIBIT C

one party over another. Because Justice has context, Lynn submits this foundational framework in support of the facts and the law of this case in the record.

B. Standard of Review: *De Novo*

The review of the trial court's dismissal is *de novo*: "We review the dismissal of a complaint de novo." *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7, 284 P.3d 863, 866 (2012).

C. Defendants intentionally and impermissibly used their motion to dismiss as a summary judgement motion.

You cannot unring a bell that has already been rung. This is disdained in a court of law. Inadmissable evidence so taints the legal proceeding that its entry has been deemed reversible error, and the basis of a mistrial. "Unringing the bell" is the analogy often used for the diffieulty of forgetting information once it is known. Courts in the United States have acknowledged this:

> Unring the bell" is a good analogy which can save a lot of words in making the point. That phrase originated, as far as we can find, in Sandez v. United States, 239 F.2d 239, 248 (9th Cir.1956), and was elaborated on in Dunn v. United States, 307 F.2d 883, 886 (5th Cir.1962), which added other pertinent analogies. "After the thrust of the saber it is difficult to forget the wound," was another. . . *United States v. Lowis* (1999) 174 F.3d 881, at 885.

Defendants' Motion to Dismiss improperly asserted numerous unverified "facts" – some which we not true – and made conclusory statements of law based on those assertions that were outside Lynn's First Amended Complaint, substantively, effectively, and illegally turning a motion to dismiss into a motion for summary judgment. The Supreme Court of Arizona in *Coleman v. City of Mesa*, 230 Ariz. 352, 356, 284 P. 3d 863, 867 (2012) stated: "[C]ourts look only to the pleading itself" when adjudicating a Rule 12(b)(6) motion. *Id.* If "matters outside the pleading" are considered, the motion must be treated as one for summary judgment. Ariz. R. Civ. P. 12(b)(6).

The court heard the Defendants' "position" first – a "position" where they engaged in illegal conduct to impermissibly influence the court – *before* the court either read Lynn's pleadings or heard Lynn's objections at the April 13 hearing. By the time the trial court read Lynn's First Amended Complaint **after** the hearing, the damage had already been done. In essence, the Defendants presented "new evidence" outside Lynn's First Amended Complaint – unverified

matters, not subjected to cross examination to establish they are not true – in order to obtain a false and unfair advantage in a court of law, just like the kind of conduct Lynn complains about in her First Amended Complaint. Under the theory that first impressions are the most lasting, being in a position to object the bell was rung *after* the bell had been rung was not going to silence all of the sounds made by the clapper. Even the most tempered and restrained have ears.[2] The Defendants obtained the impermissible advantage they sought in violation of the law.

D. Lynn's First Amended Complaint was legally sufficient, a motion to dismiss is not favored in Arizona, and Arizona law equally applies the standard of liberally allowing the correction of any perceived deficiencies of a pleading.

Lynn lacks experience with filing a civil complaint. But, inartful articulation as the result of inexperience is not tantamount to invalid claims, or claims unsupported by the law. Additionally, the First Amended Complaint was Lynn's very first attempt to state allegations to support claims she alone had against the Defendants. Social policy and the law recognizes no one is perfect.

Made at the initial pleading stage the Defendants' motion to dismiss is disfavored. *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 667 P.2d 1304 (1983); *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 922 P.2d 308 (1996); *Veach v. City of Phoenix*, 102 Ariz. 195, 427 P.2d 335 (1967). In viewing a motion to dismiss, the court must only look to the pleadings itself, and take the allegations in the complaint as true and all reasonable inferences from these allegations must be resolved in favor of Lynn. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7, 284 P.3d 863, 866 (2012); *McDonald v. City of Prescott*, 197 Ariz. 566, 5 P.3d 900 (App. 2000); *Wallace v. Casa Grande Union High School Dist. No. 82*, 184 Ariz. 419, 909 P.2d 486 (App. 1995). Lynn's First Amended Complaint was sufficient to survive a motion to dismiss at this stage of the litigation. In the alternative, the law supports Lynn's opportunity to remedy any perceived

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[2] "[T]here is no such thing as genuine neutrality when it comes to conflict. . . . **Judges have the most intractable bias of all: the bias of believing they are without bias**" (emphasis added). "*Mediating Dangerously - The Frontiers of Conflict Resolution*" by Kenneth Cloke. http://www.markbaeresq.com/ Pasadena-Family-Law-Blog/2012/January/Judicial- Bias-A-Variable-That-Is-Often-Overlooke.aspx. (Viewed July 11, 2017).

EXHIBIT 3

LITIGATION DATES ORDERED BY MCMURRY ON FEBRUARY 15, 2018, AFTER HIS REMOVAL IN VIOLATION OF A.R.S. RULE 42.1(f)(1), *America Buyers Life Ins. Co. V. Superior Court* 84 Ariz. 377, 329 P.2d 1100 (1958), and *Hornbeck v. Lusk*, 217 Ariz. 581, 177 P.3d 323(2008) IN VIOLATION OF LYNN'S RIGHT TO A FAIR TRAIL.

On February 15 McMurry was required to immediately send the case to the presiding JP for reassignment after his removal. Instead, after his removal on February 15 and knowing Lynn's case involved seven (7) counts – four (4) of which were 9-element fraud claims – and that Lynn intended to take five (5) depositions for discovery purposes, McMurry ordered litigation dates that would have never allowed Lynn to have a fair trial, nor undertake lawful discovery to secure that right. **(See: McMurry's Order, included as Page 5.)** McMurry's course of conduct of open and hostile acts and his abuse of power are memorialized on February 15 and emphasize that McMurry put his own interests ahead of the interests of justice:

1. Disclosure Information.

Even though on February 15 Lynn's Motion to Strike the Defendants' Answer (filed January 24) challenging the legal sufficiency of the Defendants' Answer was outstanding and unresolved, over Lynn's objection, McMurry ordered disclosure information submitted within seven (7) days, February 23; McMurry knew at the time Lynn needed to travel back to her resident state, and mailing required several more days. As for the information itself, the Defendants already had in their possession the information Lynn would provide because they created/generated or received all of it via electronic transmission.

2. Trial.

Notwithstanding the legal sufficiency of the Defendant's Answer was still unresolved on February 15, McMurry initially wanted to set the trial date "on a Monday in April . . ." (ER 3:06:50). This would violate the 120 day requirement imposed by JCRCP Rule 133 (a), and Lynn objected. McMurry then set the trial for May 14 – 88 days later. As for the duration of the jury trial, based on her experience of about 100 trials and the case was a 7-count complaint

with four (4) counts of 9-element fraud, Lynn repeatedly told McMurry the trial would take more than one day. McMurray laughingly mocked Lynn and without asking one clarifying question about evidence – for example, how many witnesses Lynn intended to call and if the Defendants intended to call any witnesses – McMurry repeatedly insisted the entire trial, including voir dire, would take only one day.

3. Dispositive Motions.

At the *sole request of the Defendants* to order dates for dispositive motions in "mid-March" (ER 3:34:45), and with no input from Lynn, McMurry ordered those motions filed no later than March 23; this was only 36 days later, and 52 days prior to the ordered trial date, May 14. However, pursuant to JCRCP Rule 129(b), a summary judgement motion must be filed **no later than 90 days prior to trial**; the opposing party must be given 30 days to respond, and a reply filed 15 days after the response; however, because five (5) days is added to each for notice by mailing, the filing times would otherwise effectively be 35 and 20 days respectively, putting the reply filing date on May 17, 3 days past the trial date, May 14. This time line does not include any oral argument or notice to the parties regarding the court's ruling on the motion. McMurry ordering the trial date for May 14 and dispositive motions set for no later than March 23 after his removal on February 15 violates numerous civil procedure laws, and, thus, Lynn's right to a fair trial. For Lynn a summary judgment motion would have to be submitted in violation of Rule 129(b) **and** without discovery. (See: *infra*, ¶ 4.) Pursuant to Rule JCRCP 122(c), discovery needs to be completed 30 days prior to trial – April 13 – and that date would be 21 days after McMurry ordered dispositive motions filed no later than March 23.

4. Discovery.

Discovery must be completed 30 days prior to trial [Rule 122(c)]; in this case with a May 14 trial date, discovery would have to be completed by April 13. Given it was February 15, completing discovery 30 days prior to trial dictated by Rule 122(c) would allow only 60 days to complete all discovery. Yet, discovery requires notice and time compliance: 40-day

compliance time after notice for production of documents (Rule 125), interrogatories (Rule 124), and admissions (Rule 126). This does not include any subsequent time needed to resolve discovery disputes regarding those discovery methods if they should arise. Further, these discovery methods time lines effect the taking of depositions, since the previously mentioned discovery is needed for questioning in depositions; Rule 125(c) requires at least 10 day notice for depositions, with depositions taken 30 days after that notice. After the depositions, time is required to order, secure, review, and correct transcripts. Lynn lives in another state, adding another layer of time for mailing. Moreover, this does not include any disputes that would otherwise arise between Lynn and the Defendants over any deposition issues. Given these notice and compliance requirements and the requirement imposed that all discovery must be complete 30 days prior to the trial, it would have been virtually impossible to achieve meaningful discovery.

5. **Jury Instructions and voir dire questions.**

McMurry ordered that jury instructions and voir dire questions must be submitted 30 days before trial by April 13 – 57 days later. Given the previously mentioned discovery time lines (see: *supra*, ¶ 4), jury instructions would have to be submitted without meaningful discovery completed.

6. **Pretrial Motions.**

Pretrial motions, for example, regarding the admissibility of evidence, are due 40 days before trial [Rule 132(c)]; with a trial date of May 14 in this case, that date would be April 4. However, if considered a "dispositive motion" McMurry order would require that motion filed March 23, also forcing an evidentiary motion without complete meaningful discovery.

7. **The force and effect of these illegal orders.**

Having practiced law for 20 years and a JP for 20 years after that, McMurry surely knew what he was doing and all the laws he was violating. All of the litigation dates were ordered after McMurry's removal on February 15, and over Lynn's protestations. (ER 3:16:38.) All of

the dates McMurry ordered prejudiced Lynn's ability to effectively prepare and present her case to a jury, which could only reasonably benefit the Defendants. However, given McMurry's promise to "do whatever (he) could" to not have Lynn proceed with a jury trial, these dates McMurry ordered would otherwise make a fair jury trial unobtainable, in effect McMurry would get what he wanted: Lynn would lose the case because McMurry's unequivocal opinion was that the case should not be litigated. Rather, it should be dismissed. Thus, the force and effect of McMurry's conduct would be to effectively overrule the Superior Court's reversal of his original May 2, 2017 Order.

8. The Defendants' participation with litigation dates.

All dates were ordered with the Defendants' participation and assent. Defendant Wilson, an attorney handling civil litigation for over 20 years, knew and understood the law requiring McMurry to immediately send the case to the presiding JP after his removal. Wilson said nothing. Wilson allowed McMurry to repeatedly violate the law, knowing he was violating the law. In fact, it was Wilson who specifically asked for a dispositive motions date *after* McMurry set the trial for May 14 (ER 3:34:34). With a filing deadline of March 23 – 57 days before May 14 trial date – Wilson knew and understood 45 days of response and reply time for a summary judgment motion – plus time added for mailing – would place the ruling of the motion after the trial date, violating the legal requirement that it must be filed no later than 90 days prior to trial (JCRCP Rule 129). Wilson would have also known there would not be adequate time for discovery. Yet, the only reasonable explanation for Wilson's conduct is that Wilson thought these dates benefitted the Defendants.

ENCANTO JUSTICE COURT
620 West Jackson Suite 1045
PHOENIX, AZ 85003
602 372-6300

Case Number: CC2016136702RC

PLAINTIFF:
LYNN MAGNANDONOVAN

DEFENDANT:
STEPHANIE MONROE WILSON
STOOPS DENIOUS WILSON & MURRAY PLC

Minute Entry

February 15, 2018

This matter came before this Court on February 15, 2018.

Plaintiff, Lynn Magnandonovan, and Defendant, Stephanie Monroe Wilson, were present.

Pro Tem Judge Bernard Barnes is assigned to this case.

Disclosure requirement extended to Friday, February 23, 2018.

Dispositive Motions no later than March 23, 2018.

Jury instructions and voir dire questions to be submitted by Friday, April 13, 2018.

Jury trial status conference is scheduled for Wednesday, May 9, 2018 at 1:30PM.

Jury trial is scheduled for Monday, May 14, 2018 at 8:00AM.

C. Steven McMurry
Justice of the Peace
Encanto Justice Court

I CERTIFY that I mailed a copy of this document to:
Plaintiff at the above address
Defendant at the above address

Date: 2/20/18 By Clerk:

give a 3-minute egg timer to the Encanto supervising clerk and tell her to terminate a call with a litigant after 3 minutes is barmy and disturbed; the effect of that conduct is another aspect of McMurry's obstruction of justice.

F. The illegal "reassignment" by Encanto is null and void on its face.

The "transfer request" by McMurry from Encanto to Arcadia violates the law. On its face the "transfer request" proves that the action either was done by or involved McMurry; this is legally impermissible. Ex. E, Page 6-7. Superior Court protocol follows the law by having the presiding judge separately reassign a case when a judge has been removed; there is no reassignment involvement by that removed judge. Ex. E: Page 6, lines 22-26; Lynn's Declaration (Ex. A ¶ 3); Superior Court of Arizona Maricopa County Case Reassignment (Ex. B). (Also see *Hornbeck*, *supra,* and Rule 42.1(f)(1).)

There is no plausible or reasonable way to authenticate the Encanto "transfer request" actually involved any other precinct other than Encanto. Defendants concede Encanto made the "reassignment" to Arcadia. Ex. D, Page 1, lines 23-24. There is no credible evidence to support the indicia of reliability that presiding JP Keith Russell did *anything*, let alone anything himself. Ex. E, Page 6-7. The Encanto "transfer request" cannot reasonably survive legal scrutiny; the Encanto document is so completely substantively and procedurally different from the Superior Court Reassignment document that the entire justice court "reassignment" procedure is called into question. Ex. E, Page 7, lines 12-19. Based on the record of the case, a reasonable person could reasonably conclude McMurry did, directed, and/or orchestrated the "reassignment" to the precinct next to him just as he did with "reassigning" the case to a judge pro tem and keeping it in Encanto. Complete control is what drives McMurry. [See: Sect. F, *supra*; Ex. C, Page 11 McMurry provided the supervising clerk with a 3-minute egg timer and ordered her – regardless of the issue – **to terminate any call** with Lynn **after 3 minutes** because Lynn "is wasting our time."]

The Encanto "transfer request" is null and void on its face. Evidence proving McMurry's

course of conduct regarding prejudice and hostility toward Lynn and this case, and McMurry's willingness to abandon the law, professionalism, restraint, rationality, logical thinking, and make false accusations about Lynn that McMurry knew were false at the time is memorialized in the record and made by McMurry himself. A reasonable person knowing the aforementioned and reviewing the Encanto document could credibly state the "transfer request" from Encanto to Arcadia is illegal and illegitimate.

G. McMurry's transfer was done without the Motion for Judicial Assignment and this alone prejudiced Lynn.

On March 13 McMurry knew and understood Lynn was preparing a Motion for Proper Assignment/Recusal/Change of Venue. Instead of waiting for the briefing on the issues, McMurry sent the case next door to Arcadia. Under rule 42.1(f)(1) McMurry should have issued Lynn's Motion for a Stay filed February 27 (an action causing no prejudice), waited for the filing of all briefs, and then sent the case to the presiding JP, Russell. Ex. E, Page 4, lines 11-26; Page 5; Page 6, lines 1-2. Since Lynn's Motion challenged all justice courts for cause, Russell – also being challenged for cause – would have been required to have a non-JP decide the motion on its merits. Ex. C, Page 15-16. Following this law-driven protocol guarantees the context of judicial reassignment consistent with Lynn's constitutional right to a fair and impartial trial.

"Reassignment" of this case by Encanto to Arcadia was legally improper, but it was also legally improper to have occurred without the benefit of analysis of the issues and the law that McMurry knew was on the way and would effect reassignment. Based on the totality of the circumstances of the facts and law – including the Judicial Canon requirement of removal for impropriety and appearance of impropriety – and all reasonable inferences from them, Lynn was prejudiced when McMurry sent the case to Arcadia after his removal and Arcadia decided the matter when the Motion itself specifically challenged that precinct for cause. Ex. C, Page 15-16; Ex. E, Page 7, lines 20-26, Page 8-9, lines 1-21. It does justice no good to conjure a *post hoc*

rationalization based on speculation and bureaucratic protection. This is a case where McMurry wanted no more scrutiny, and Arcadia (Wolcott) was happy to oblige.

H. April 18 ruling on Motion was illegal, null and void, and evidence for justice court recusal.

Lynn's Motion challenged all justice courts for cause, seeking their removal based on impropriety and appearance of impropriety. This purpose was very clear. Ex. C, Page 15-16; Ex. E. Pages 7-11. The Motion met the test of ARS § 12-409(5), and JCRCP 133(d) [Arizona Revised Statutes § 22-204(A) and § 22-204(B)(1).] The protocol for seeking recusal or removal for cause would be for Arcadia to send Lynn's Motion to the presiding JP for assignment determination on that challenge; then Russell would legally be required to transfer the Motion outside of the justice court for a fair and impartial determination of Lynn's challenge for cause since no challenged JP – including Russell – could make that determination. (See A.R.S. Rule 42.2.) This did not happen.

However, Russell had actual notice of the Motion because Lynn sent him a copy and knew he actually received it. Ex. C, Page 17. (Also see Ex. W.) After Russell had actual notice Lynn was challenging all justice courts, Russell did not act to ensure a fair and impartial adjudication of Lynn's Motion by recalling it from Arcadia. Instead, Russell allowed Lynn's Motion to stay in the Arcadia precinct. It is fair and reasonable to point out Russell was appointed JP in 2013 when McMurry was presiding JP; McMurry removed the seated JP due to criminal accusations, leading to Russell's assignment as JP there (See: https://azcapitoltimes.com/news/2013/07/15/ex-east-mesa-judge-is-found-guilty-of-shoplifting/); and, Russell became presiding JP when McMurry left that post.

Wolcott, an Arcadia judge pro tem, decided Lynn's Motion; Wolcott summarily denied the Motion, giving no reason. The Ruling on Motion showed the box marked "Denying said motion," nothing else. Given the serious nature of fundamental constitutional rights, this box-checking can reasonably be considered dismissive; then, the meritorious nature of the ruling becomes suspect. Lower courts providing reasons for decisions fosters accountability because it

enables reviewing courts to appraise their decisions. Giving a reasoned judgment enables any appellate court to review the decision and decide whether it is subject to reversible error.

Reason-giving is thus a doctrine of judicial restraint and accountability (including to the general public), encourages consistency, and promotes the rule of law. James Boyd White, What's an Opinion For?, 62 U.CHI. L. REV. 1363, 1366-1368 (particularly fn 3) (1995). In Federalist No. 78, Hamilton argued that in order "[t]o avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them." The Federalist No. 78, *supra* at 471. "Reason-giving is an efficient tool for supervision within the judicial hierarchy." (See Mathilde Cohen, Sincerity and Reason-Giving: When May Legal Decision Makers Lie?, 59 DePaul L. Rev. 1091, 1143 1097 (2010).) It is quite remarkable and telling within the explicit and specific context of this case, the importance of constitutional rights, the requirement of transparency in government to uphold its legitimacy, and in view of the justice courts corruption and other scandals, that Wolcott gave no reason *at all* for his decision in a motion challenging all justice courts for cause – or change of venue from all precincts – and asking for a reassignment appointment from Superior Court.

For 30 years Wolcott worked for the Maricopa County Attorney's Office ("MCAO"), including the civil division that legally *defends* the justice courts. Wolcott worked at MCAO during the corruption, mismanagement, and other scandals that led to the Supreme Court ordering Superior Court supervision; he continued there during the Superior Court takeover of justice courts, the resistance to that takeover, the political push to remove the oversight, and the lobbied removal of that oversight. Then, in 2015 Wolcott was appointed the JP for Arcadia by the Maricopa County Board of Supervisors. (See: http://northcentralnews.net/2015/community/wolcott-named-new-justice-of-the-peace/.) Wolcott knew McMurry; McMurry was presiding JP, and Arcadia is the courtroom next to Encanto. Having practiced law for many years, and particularly as it relates to justice courts, it would be unreasonable to believe Wolcott did not know and understand the force and effect of Lynn's challenge for cause; the challenge for

removal of all justice courts – change of venue for cause challenging **all** precincts pursuant to Rule 133(d) – would require Wolcott to send Lynn's Motion to Russell, the presiding JP. It is equally unreasonable to believe Wolcott did not know the law and justice court protocol of sending Lynn's Motion to Russell for assignment in the specific challenge to the "reassignment" of Arcadia by Encanto. Not sending Lynn's Motion to Russell for either reasonably calls into question Wocott's personal motivation and bias.

In reviewing the process of judges inquiring into **their *own* motives and bias**, the U.S. Supreme Court acknowledges the importance of reason-giving by a judge in discerning their bias: "To bring coherence to the process, and to seek respect for the resulting judgment, judges often explain the reasons for their conclusions and rulings." *Caperton, supra* at 2263. Wolcott explained nothing. Given the law, the justice court protocol, the foundational issue of a fair and impartial trial, the specific true facts and state of the record as context in this case, Wolcott's training and experience as an attorney, Wolcott's employment as defense attorney for the justice courts, his appointment as JP to Arcadia precinct in the same courthouse in the courtroom next to Encanto, and his tenure as JP under McMurry as presiding JP, a reasonable person would find Wolcott's conduct one of impropriety. Interestingly, Wolcott serves as a judge pro tem at Arcadia now. Yet, Wolcott – **not the JP** – ruled on Lynn's Motion.

I. Bias and subconscious control.

Given human nature being what it is, and the judicial branch composed of human beings subject to their human nature, the law is concerned with subconscious process and how it particularly effects judicial outcomes. Over 90 years ago the U.S. Supreme Court addressed how *every* procedure could offer a *possible temptation* resulting in a denial of due process due to the inability "to hold the balance nice, clear and true." *Tumey, supra, at* 532 (1927). Over 60 years ago Arizona Supreme Court Justice Dudley Windes stated:

> Whether equity and good conscience will impel the court to relieve against a wrong is a matter that **rests within the bosoms of the judges** passing upon the matter. . . .the degree to which it operates correctly is dependent almost entirely upon **that intangible thing we**

call sense of justice. *Honk v. Karlssonn* (dissenting) 80 Ariz. 30, 42, 292 P.2d 455 (1956). (Emphasis added.)

More recently Arizona courts have addressed this underlying issue of the subconscious aspect of judicial bias effecting due process which has led to removal of judge as a matter of right. The Arizona Supreme Court acknowledged thoughts alone that exist at the back of a judge's mind can be the basis of bias and removal: "In the case of an appeal, reversal and a remand for a new trial, **it is always possible that the trial judge *may* subconsciously resent the lawyer or defendant who got the judgment reversed. The mere possibility of such a thought in the back of a trial judge's mind means that a new judge should be found**." *King v. Superior Court*, 108 Ariz. 492, 493, 502 P.2d 529, 530 (1972) (Emphasis added). Then, *Smith v. Mitchell*, 148 P.3d 1151, 214 Ariz. 78 (2006) affirmed *Valenzuela v. Brown*, 186 Ariz. 105, 107, 919 P.2d 1376, 1378 (1996) where a party was entitled to a peremptory change of judge following the reversal of a grant of partial summary judgment, because "the reason for the rule [is] avoiding **the possibility of judicial bias** after reversal and remand." *Id.* at 108, 919 P.2d at 1379. (Emphasis added.)

Recently the U.S. Supreme Court in *Caperton v. Massey*, 129 S.Ct. 2252, 556 U.S. 868 (2009) rejected a determination of actual bias or the judge's subjective findings of impartiality and propriety for the constitutional rigor of due process: 'Rather, the question is whether, "under a realistic **appraisal of psychological tendencies and human weakness**," the interest "**poses such a risk** of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." (*Withrow*, 421 U.S., at 47, 95 S.Ct. 1456).' *Id.*, at 2263. (Emphasis added.) Further, *Caperton* underscored the appearance of impropriety is as important as impropriety itself: "Almost every State . . . has adopted the American Bar Association's objective standard: "A judge shall avoid impropriety and the appearance of impropriety" (citation omitted)." *Caperton, et al. v. Massey,* 129 S.Ct. 2252, 556 U.S. 868 (2009). (See: Arizona Code of Judicial Conduct, Rule1.2.)

The Arizona Supreme Court – possibly in part because those sitting there have wrestled with the exact same issue themselves – rightly acknowledged and recognized how subconscious impulses are strong, enduring, and difficult to override, restrain, and control. That Court took a very commanding position: The ***mere possibility*** that subconscious resentment would be *in the back of* a trial judge's mind requires a new judge. *King v. Superior Court*, 108 Ariz. 492, 493, 502 P.2d 529, 530 (1972). The Arizona Supreme Court anchored this subconscious resentment to "the lawyer or defendant who got the judgment reversed." But as anyone who understands and appreciates the unbridled power of the subconscious, the resentment animus is not contained to one target. (See: Ex. X.) In other words, concerning judicial officers, the subconscious resentment about being told that their "unequivocal" decision about the outcome of the case is **wrong**, the subconscious resentment is fluid enough to resent the source of the reversal and the reversal itself: In this regard, the **subconscious** resentment works not just against the litigant, but against the ruling itself because it told the judicial officer s/he was *wrong*.

It is that subconscious animus and resentment that drives the effective, or constructive, reversing of the reversal – in effect overruling the review court's decision by deciding matters and issues that favor the initial decision – deciding matters consistent with the original "unequivocal outcome" – and work against the appellate decision, In other words, once remanded back to the trial court, the original judicial officer can make decisions that in force and effect overrule the review court and sustain the original ruling of that judicial officer; in this case, constructively overruling the Superior Court's appellate ruling. When prevented from presiding over the remanded case in order to effectively overturn the appellate reversal of his original ruling, it is not unreasonable to believe McMurry – given his significant power in justice court – would/could use others as proxy for effectuating that outcome to make good on his promise to "**do whatever (he) could . . .**"

Bias is so powerful that it resists detection and acknowledgment. The subconscious process, which controls 95% of a person's actions or choices, is undetectable or indiscernible to

the conscious mind. (See Ex. X ¶2.) Judges in particular have difficulty embracing this neuroscience research because they have a tendency to believe they are not biased, or, alternatively, they are able to "control" their bias. But, "**(j)udges have the most intractable bias of all: the bias of believing they are without bias**". "*Mediating Dangerously - The Frontiers of Conflict Resolution*" by Kenneth Cloke. http://www.markbaeresq.com/Pasadena-Family-Law-Blog/2012/January/Judicial-Bias-A-Variable-That-Is-Often-Overlooke.aspx. (Emphasis added.) This resistance is exemplified when a person exhibits bias, is recorded when exhibiting that bias, but cannot admit the bias. (See: https://www.washingtonpost.com /news /business/wp/2018/05/22/i-am-not-a-racist-new-york-lawyer-apologizes-for-rant-about-spanish-speakers-in-viral-video/?utm_term=.fe7294c9d909.) It may have taken 20 years to argue the underlying legal theories that the lasting damage of segregation constitutionally mandates integration, but ultimately *Brown v. Board of Education* 347 U.S. 483 (1954) was leveraged on recognizing, acknowledging, and understanding the link between external power, the subconscious, and behavior: It matters what is in the heart and mind of a person. (See: *Id.*, at 494; footnote 10.)

J. The currency of relationships.

Often, pecuniary interest – concern with conflicts resulting from financial incentives – is the focus of judicial removal or recusal. (See *Caperton*, *supra* at 2260.) However, under the theory that it is not what you know but who you know – there is another type of currency: The currency of relationships. The politics of power include vicarious, derivative, and aspirational power, as well as tribal, identification, and collective power. All coalesce to create an environment where, like pecuniary interests, relationships involve *value* incentives. Based on the record, no one can say with any certainty that McMurry did not have influence on the "reassignment" and the ruling on Lynn's Motion – or, he will not exert that power and influence to "do whatever (he) can" in the future.

McMurry resisted removal, and once removed, he was unable to relinquish custody and control: When legally required to immediately send the case to the presiding JP, instead, McMurry kept the case at Encanto and personally assigned a judge pro tem he had personal affection for and *with whom he had discussed the case*. Then, knowing Lynn was filing a motion to fully brief and analyze proper judicial assignment/recusal/change of venue, McMurry purposefully "reassigned" the case to Arcadia – the next courtroom over from Encanto – prior to the filing of those briefs. However, the Arcadia JP did not decide Lynn's Motion. Instead, it was Wolcott, an Arcadia judge pro tem, who McMurry supervised as presiding JP when Wolcott was the Arcadia JP, and prior to that, had legally defended the justice court as an MCOA attorney for many years. Instead of sending Lynn's Motion to presiding JP Russell as legally required – it specifically challenged Arcadia and all justice courts for cause – Wolcott summarily denied it, giving no reason. Having been provided actual notice of Lynn's Motion and knowing the challenge for cause included him, Russell – who had also been supervised by McMurry when McMurry was presiding JP, who was appointed JP after McMurry removed the prior JP in that precinct, and who became presiding JP after McMurry – purposefully allowed the Motion to be decided in Arcadia, a precinct specifically challenged for cause.

McMurry has been a JP for 20 years. This provides him with seniority, and with this seniority comes influence and deference. McMurry was the presiding JP for four years, exponentially adds to that influence and deference. The other JPs voted for him – twice. Based on the totality of the record – McMurry's disturbing and outrageous conduct and subsequent obvious legal violations by other JPs, including the presiding JP – a reasonable person applying the mandate of Rule 1.2 of the Arizona Code of Judicial Conduct would want to **ensure** "public confidence in the independence, integrity, and impartiality of the judiciary." When no one can ensure McMurry will not "do whatever (he) can" to influence the outcome of Lynn's case, and subconscious process drives power and the currency of relationships, all justice courts must be removed to ensure impropriety and the appearance of impropriety. With years of scandal, justice

court has plenty of practice with corruption. Understandably, justice court wants no supervision because it wants to exercise its power the way it wants. Since the Superior Court no longer supervises justice court, review vis-a-vis this petition must be taken seriously.

K. Removal of all justices of the peace is justified.

Change of venue is warranted when factors exist that prevent a party from obtaining a fair trial. Generally these factors impinging on a fair trial are external. Here they are internal. Ex. C, Pages 15-16; Ex. E, Pages 7-10. The influences are manifest by Wolcott and Russell violating the law when faced with Lynn's Motion requesting removal of justice courts for cause; Lynn's Declaration attached as Exhibit A to the Motion (Ex. C) is legally sufficient to serve as an affidavit when removing for cause. There can be no reasonable explanation for their unlawful refusal to send Lynn's Motion to Superior Court for consideration other than they do not want its supervision. Superior Court has general jurisdiction and its review of Lynn's Motion is proper, as is Lynn's request to appoint a Superior Court judicial officer to preside over the case. (See: Arizona Constitution Article 6, Section 14; ARS §§ 12-123 and 22-201E.) This case is entitled to be filed in superior court.

The right to a jury trial is not a pro forma venture. It is an inviolate constitutional right considered sacred because it is the forum of executing due process and equal protection under the law. When something so fundamental as the right to a fair trial is at stake, rigorous heightened scrutiny is necessary. A court of limited jurisdiction is not a court of limited law. The same law promulgated in Arizona by the legislative and judicial branch utilized in superior court is the same law required in justice court. A $10,000.00 case limit does not limit dues process, equal protection, and other constitutional and legal rights. A $10,000.00 case does not receive one percent of the law that a million dollar case does. Particularly when bias and prejudice call into question substantive and foundational constitutional rights, adherence to the rule of law is the underlying scaffolding in the constitutional requirement to "hold the balance nice, clear and true."

The Defendants asserted Lynn "received what she wanted" when the case was transferred from Encanto. Ex. M, Page 1, lines26-28. But, this is not true. Lynn does not want Arcadia, or any court, to be a proxy for McMurry. Lynn wants a fair trial secured by the Constitution and the Superior Court appellate decision. Lynn knows what a fait trial is. She has secured it for many others for years. This is not what is happening in Justice Court. It would be fair to say "shake the denial off." But, other than the Superior Court reversing McMurry's ruling, the Defendants have gotten what *they* wanted, bolstered by violations of the law. It is fair to say the Defendants know **exactly** what is going on in justice court. The Superior Court must ensure the integrity of the judiciary and its own rulings. In order to do this, the Superior Court must remove the justice courts from this case, just as the Arizona Supreme Court ordered the Superior Court to supervise justice courts to the ensure the integrity of the judiciary and the rule of law due to years of the abuse of power.

IV. Motion to Strike

A. Lack of jurisdiction.

Arcadia Biltmore ("Arcadia") did not have jurisdiction to rule on Lynn's Motion to Strike. Encanto's direct "reassignment" to Arcadia violated the law, and this violation was further aggravated when Arcadia ruled on Lynn's Motion for Judicial Assignment/Recusal/ Change of Venue ("Motion") otherwise trying to cement "reassignment" jurisdiction. Instead, because Lynn's Motion was a removal for cause (Ex. E, Page 9, lines 5-21), and **specifically** states Arcadia must be removed due to their conflict of interest (Ex. E, Page 7, lines 20-26; Page 8; Page 9, lines 1-4), Arcadia was legally required to send the Motion to presiding JP Russell. A.R.S. Rule 42.1(f)(1) only allows temporary rulings that are absolutely necessary "to prevent immediate and irreparable injury, loss, or damage from occurring." Arcadia's ruling on Lynn's Motion is substantive and goes to the very heart of Lynn obtaining a fair and impartial jury trial by a fair and impartial bench officer; it is not a ruling that falls within the carve-out of Rule

prove or disprove a contested issue in the case, so they have no use or purpose. Thus, arguing them at trial would confuse jurors, and waste time and judicial resources.

CONCLUSION

The Superior Court issued its Order reversing the justice court's ruling to dismiss Lynn's Complaint, stating Lynn made the legal showing as a matter of law. Now Lynn is entitled to prove her case. The Justice Court has refused to allow Lynn to do this by effectively "overturning" the Superior Court's decision by denying both Lynn's Motions, and in doing so engaged in sustained obstruction of justice by refusing to follow the law.

REMEDY REQUESTED

For the foregoing reasons, this Court should reverse the rulings of the Justice Court on both Motions and either send this case to Superior Court for all purposes or for judicial officer reassignment. Alternatively, if there are any procedural issues that need to be clarified this Court should reverse and remand, with instructions for the Justice Court and the parties. Lynn made reasonable attempts in good faith to request relief from Justice Court. If this Court determines for any reason that Lynn was not entitled to seek relief in the manner she did, this Court should clarify that the rulings did not dispose of Lynn's claims on the merits, and do not preclude Lynn from seeking relief in a new procedure, or with such instructions as this Court deems appropriate.

RESPECTFULLY SUBMITTED and DATED this 20th day of June, 2018.

LYNN MAGNANDONOVAN

Lynn Magnandonovan

EXHIBIT 4

Lynn Magnandonovan

IN THE SUPERIOR COURT

IN AND FOR THE COUNTY OF MARICOPA, STATE OF ARIZONA

LYNN MAGNANDONOVAN, an individual
Plaintiff

vs

MARICOPA COUNTY JUSTICE COURTS OF THE STATE OF ARIZONA, IN AND FOR THE COUNTY OF MARICOPA, RESPONDENT, AND, STEPHANIE MONROE WILSON, an Arizona attorney; STOOPS, DENIOUS, WILSON & MURRAY, P.L.C. an Arizona Professional Legal Corporation; JOHN and JANE DOES 1-10; ABC CORPORATIONS 1-10; XYZ PARTNERSHIPS 1-10; WHITE LIMITED LIABILITY COMPANIES 1-10; and BLACK SOLE PROPRIETORSHIPS 1-10, REAL PARTY IN INTEREST

PETITION FOR SPECIAL ACTION AND REQUEST FOR STAY

Petitioner Lynn Magnandonovan ("Lynn") requests this court to accept jurisdiction of this Petition pursuant to Rules 1, 3, 4, and 7 of the Arizona Rules of Procedure Special Action. The petitioner further requests this court to issue orders staying all proceedings in the above-referenced justice court case pursuant to Rule 5 of the Arizona Rules of Procedure Special Action, and set the matter for oral argument if it sees fit, for the reasons set forth below.

JURISDICTIONAL STATEMENT

This Court should accept jurisdiction of this special action petition reviewing two (2) different but contemporaneous justice court rulings. Special actions are appropriate where there

is no "equally plain, speedy, and adequate remedy by appeal." Issues pertaining to a change of judge, recusal, and change of venue are not appealable orders (see A.R.S. § 12-2101), and the Petitioner does not have "an equally plain, speedy, and adequate remedy by appeal." Change of judge issues must seek timely review by way of special action relief. [See *Hornbeck v. Lusk*, 217 Ariz. 581, 177 P.3d 323 (2008) (Court of Appeals reversing Superior Court special action denial when after his removal justice of the peace reassigned case himself instead of immediately sending it to the presiding judge), and *Taliaferro v. Taliaferro*, 186 Ariz. 221, 223, 921 P.2d 21, 23 (1996).]

Further, special actions are appropriate to challenge venue rulings. [See *Yarbrough v. Montoya-Paez*, 214 Ariz. 1, 2, ¶ 1, 147 P.3d 755, 756 (2006) ("[b]ecause an appeal cannot adequately cure an erroneous venue ruling," special action review of such orders is appropriate); *Dunn* v.,Carruth 162 Ariz. 478, 479, 784 P.2d 684, 685-86 (1989).] Apparently, challenging justices of the peace for cause is otherwise considered a change of venue. [Justice Rules of Civil Procedure ("JCRCP") Rule 133(d).] Issues pertaining to a change of judge are remedied prior to appeal: "Once judgment has been entered in a civil action, it is too late in the day to be worrying about who tried the case." *Taliaferro, supra*, at 223. Change of judge issues are "cases where an appeal makes no sense, (and) we have said that a party must seek relief by special action." *Id.*, at 223.

Denying a Motion to Strike is not an appealable order. *Galaz v. Vinyard*, 128 Ariz. 606, 608, 627 P.2d 1104, 1106 (1981). Further, review of a decision that overrules the Superior Court's appellate mandate – in this case the denial of a Motion to Strike – is not an appealable order. [See *Scates v. Ariz. Corp. Comm'n*, 124 Ariz. 73, 75-76, 601 P.2d 1357, 1359-60 (App. 1979); *Arizona Rules of Civil Appellate Procedure* (ARCAP), Rule 24(a) "The mandate is the final order of the appellate court, which may command another appellate court, superior court or agency to take further proceedings or to enter a certain disposition of a case."]

The statewide importance of the constitutional right to a fair and impartial jury trial cannot be overstated because it is specifically secured by the Arizona Constitution. "It is axiomatic that "[a] fair trial in a fair tribunal is a basic requirement of due process." *Caperton v. Massey*, 129 S. Ct. 2252, 2259, 556 U.S. 868 (2006). Judicial economy is also important; there is no point waiting until the case is fully litigated to argue that what the lower court did was an abuse of discretion when that court should be challenged by the standard of bias, impropriety and the appearance of impropriety in the first instance. Further, the years of corruption, mismanagement, and other scandals of the justice courts make judicial review even more critical. The underlying social policy of special actions is to cure early and with forbearance, and preserve appellate rulings and the rule of law with finality.

QUESTIONS PRESENTED

1. Is the "reassignment" from the Encanto Justice Court to the Arcadia Biltmore precinct null and void because it was done in violation of the law.

2. Does the unlawful conduct of the removed justice of the peace, in conjunction with unlawful conduct in a challenge for cause by other justices of the peace and years of previous corruption scandals, justify the removal of all justice courts under the constitution and the Arizona Code of Judicial Conduct test of impropriety and the appearance of impropriety.

3. Did the Arcadia Biltmore precinct have lawful jurisdiction over the case and if it did have lawful jurisdiction did it abuse its discretion when it denied Lynn's Motion to Strike the Defendants' Answer thereby overruling and nullifying the appellate decision by allowing every legal theory challenging the Complaint the Superior Court stated was error, had already been decided on the merits, and had become "the law of the case."

STATEMENT OF THE CASE

I. Background.[1] With another plaintiff, Petitioner/Plaintiff Lynn Magnandonovan ("Lynn") filed a Complaint (Case Number CC 2016-136702RC) in Encanto Justice Court ("Encanto") against Defendants Stephanie Wilson ("Wilson") and Stoops, Denious, Wilson & Murray ("Stoops"); it was never served on the Defendants. After amending it on January 6, 2017, Lynn alone served the Defendants with that First Amended Complaint ("Complaint") alleging claims of fraud, fraudulent concealment, fraudulent misrepresentation, fraudulent inducement, breach of oral contract, breach of written contract, and unjust enrichment.

The Defendants filed a Motion to Dismiss Lynn's Complaint; there was a hearing on that motion April 13, 2017. On May 2, 2017, Justice of the Peace ("JP") C. Steven McMurry ("McMurry") issued the Order, dismissing Lynn's Complaint. Ex. Y. On May 15, 2017, Lynn filed a timely Notice of Appeal on the court's Order. On December 1, 2017, the Superior Court of Maricopa County ("Superior Court") Case Number LC2017-000347 issued its ruling that McMurry had erred in dismissing Lynn's Complaint, ordered Encanto's "judgment" reversed, and remanded the case back to Encanto for further action consistent with the ruling. Ex A, Page 13. On December 22, 2017, the Superior Court issued a Notice of Remand to the Justice Court.

Executed December 29, 2017, in California where Lynn resides, on January 3, 2018 (the New Year holiday in between) Lynn timely filed a Notice For New Judge pursuant to A.R.S. Rule 42.1(e). Encanto's McMurry summarily denied the Notice of Change of Judge on January 4, 2018, by stating it was "untimely" with no other explanation. The Defendants' Objection was mailed January 9, 2018.

Meanwhile in Arizona, on December 29, 2017, McMurry issued a notice for the first scheduled proceeding – "a status conference" – after the Superior Court remanded the case.

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[1] Lynn submits this **Background** as an important factual predicate to the questions presented and issues analyzed without every supporting document (in the record and which the Court can take judicial notice) in this section as exhibits for the purpose of conservation. Lynn will provide them to the Court at its request. Also for conservation, Exhibit = Ex.

Living in California, Lynn received this Order through the USPS mail January 6, 2018, days after the Order was dated on December 29, 2017. On January 13, 2018, Lynn executed a Request for Telephonic Appearance ("Request") for the February 1 status conference citing the undue burden of traveling from her residence in another state. Without explanation, McMurry denied Lynn's Request January 18. The Defendants' Objection was mailed January 22.

On January 25, Lynn executed a Motion to Stay requesting the stay of all further judicial proceedings, including the scheduled February 1 proceeding, pending the resolution of a Special Action Petition Lynn was drafting for review of McMurry's Order denying Lynn's Notice of Change of Judge. After repeated contacts with the court regarding McMurry's ruling on the stay – including having to push back the departure time the morning of January 31, the day Lynn needed to leave California to travel to Arizona for the February 1 proceeding – McMurry finally ruled January 31 and granted a 2-week continuance to February 15. Ex. C, Page 6, lines 1-4 and Lynn's Declaration attached (Ex. A) ¶ 19-23.

After February 1, while waiting for a document from Encanto, upon evaluation and reconsideration Lynn decided to give McMurry the opportunity to show he could be fair and impartial (Ex. B, Page 4, lines 1-17); instead of filing her special action petition, Lynn made a Request to Appear Telephonically at the February 15 "status conference" on February 6. Ex. B. Notwithstanding Lynn submitting the Request with local, state, and federal law supporting the request – establishing interstate travel an undue burden – McMurry again denied Lynn's Request. Although McMurry already understood the circumstances of Lynn's travel to Arizona from several weeks ago, McMurry waited until the afternoon of February 13 – approximately 18 hours before Lynn needed to leave for the trip – to deny her request and compel Lynn to court on February 15 in Arizona from her resident state. Ex. C, Page 5, lines 23-25 and Lynn's Declaration attached (Ex. A) ¶ 17.

II. February 15 Proceeding. On February 15 Lynn appeared in person at Encanto, as did Defendant Wilson for herself and for Defendant Stoops, Denious, Wilson &Murray.

Nothing can replace the complete record of the proceeding (see Ex. C, Page 3, lines 13-17) and the analysis provided in the Motion for Proper Judicial Assignment/ Recusal/Change of Venue ("Motion") (Ex. C), but a partial list of highlighted conduct supported by evidence in the record is the following: McMurry violated the law numerous times; made false allegations when he had the relevant true facts in his possession; repeatedly interrupted Lynn while she was attempting to factually respond to McMurry's erroneous allegations, some of which McMurry mischaracterized as misconduct (eg., *ex parte* communication, improper filing of documents); spoke to Lynn in a disrespectful and condescending manner and tone; denigrated Lynn; laughed at Lynn; mocked Lynn, and mocked Lynn's right to have a fair jury trial. Ex. C, Page 3, lines 18-25.

The record is not ambiguous; McMurry himself made his own record admitting his premeditation (Ex. C, Page 2, lines 23-24, Page 3, 1-11), his purpose, (*Id.*, Page 6, lines 5-17) his intention (*Id.*, Page 6, lines 17-22), his disrespect for Lynn (*Id.*, Page 6, lines 23-24, Page 7, lines 1-1-10), and his insistenee to set dates after he was removed from the case (*Id.*, Page 11, lines 19-26, Page 12, Page 13, lines 1-16). (Also see Ex. E, Page 3-4.) Further, after McMurry's removal from the case on February 15, instead of immediately sending the case to the presiding JP for reassignment, McMurry himself reassigned the case to an Encanto judge pro tem with whom he had personally discussed the case, and went on to recite his experience with and express his admiration and affection for that bench officer. Ex. C, Page 9, Page 10, lines 1-8.

After McMurry's removal and his subsequent reassignment to another bench officer at Encanto, over Lynn's objections McMurry went on to set litigation dates – including a trial date in 90 days on a 7-count case including four (4) counts related to fraud that require proof on nine (9) elements – that violated the law and would have had the force and effect of denying Lynn a fair jury trial by not allowing legally allowable discovery prior to a trial. Ex. C, Page 13, lines 1-16; Ex. E, Page 3, lines 23-27, Page 4, lines 1-4; Exhibit J. McMurry also specifically and purposefully refused to set the case for mandatory mediation. Ex. C, Page 12, lines 8-25.

McMurray's conduct on February 15 was done in the presence of the Defendants, with a

collective legal practice of approximately 134 years (see State Bar of Arizona attorney records), who have actual personal knowledge of the law as it relates to removal of a bench officer, including the protocol for reassignment. Ex. H: Page 5-7; Lynn's Declaration (Ex. A ¶ 5); Exhibit B. Further, with no input from Lynn, Defendants sought the dispositive motions date that violated Lynn's discovery rights; McMurry complied. Ex. J ¶ 3.

III. Motion For Judicial Assignment/Recusal/Change of Venue. On February 22, 2018, Lynn executed a Motion to Stay requesting a stay of all further judicial proceedings pending the resolution of her Motion that Lynn was preparing as a full briefing on the issues, and to vacate all dates McMurry set for the case because they were made in violation of the law. Exh. F. On March 1 Defendants mailed a Response to Lynn's Motion to Stay (Ex. G), and on March 9 Lynn mailed her Reply (Ex. H). Without ruling on the Motion to Stay, and with actual knowledge Lynn was drafting her Motion to submit to the court, on March 13 McMurry intentionally "reassigned" the case to another precinct, Arcadia Biltmore ("Arcadia") (Ex. I) which is next to the Encanto courtroom and in the same courthouse. Without having received McMurry's March 13 "reassignment" mailed from Arizona on March 15 [Ex. E, Page 4, lines 13-14; Lynn's Declaration (Ex. A) ¶ 4] on March 20 Lynn executed her Motion. Ex C. The Defendants filed their Response March 28 (Ex. D), and Lynn, now having received McMurry's "reassignment" notice, filed her Reply on April 3 (Ex. E).

Lynn's Motion states the uncontoverted evidence of McMurry's conduct at the February 15, 2018 proceeding establishes obstruction of justice. Ex. E, Page 3, lines 12-27; Page 4, lines 1-10. Lynn stated that during her entire career as a prosecutor she had not witnessed in a court of law "a judge so summarily violate constitutional rights without hesitation" nor witnessed "such sweeping and continued disrespect of any person." Ex. C Page 4, lines 1-9. Lynn further states that McMurry's course of conduct – including before and after the February 15 proceeding – establishes McMurry's absolute unyielding bias and prejudice towards Lynn, and due to McMurry's position as presiding JP for the preceding four (4) years – elected by popular vote for

2 back-to-back 2-year terms and his authority over all other judicial officer personnel, including the right to discipline them – requires the removal of all justice courts in Maricopa County. Ex. C, Page 5, lines 8-26; Page 6-15, Page 16, lines 1-3. Ex. E, Pages 2-10.

On March 27 Arcadia ordered a "pretrial conference" for May 10. Ex. K. On April 6 Lynn filed a Motion to Vacate "Pretrial Conference" Scheduled For May 10, 2018, on ripeness grounds based on the unresolved and pending Motion challenging all Jps, but Arcadia specifically. Ex. L. The Defendants mailed their Response on April 16 (Ex.M) and Lynn mailed her Reply (by next-day service) April 21. This Motion was denied May 7 by the JP after the pending Motion was decided by the Arcadia judge pro tem April 18. (Ex.N)

Knowing Lynn's Motion concerned the proper judicial assignment of the case, including removal and change of venue, Arcadia judge pro tem "DWolcott" ("Wolcott") denied Lynn's Motion for Proper Assignment on April 18, 2018. Ex. O. Wolcott gave no reason for the denial.

On May 3 Lynn executed a Motion to Stay All Proceedings and Vacate May 10, 2018 Pretrial Conference For Plaintiff's Special Action Petition with Arcadia regarding the April 18 denial of Lynn's Motion for Judicial Assignment. Ex. P. At the scheduled May 10, 2018 proceeding Arcadia granted Lynn's stay for 60 days to file this Petition.

IV. Motion to Strike. On January 2, 2018, the Defendants mailed their Answer (Ex. Q) to Lynn's Complaint (Ex.R), and January 24 Lynn filed a Motion to Strike the Defendants' Answer (Ex. S); Defendants mailed a Response on February 7 (Ex. T), and February 15 Lynn filed her Reply (Ex. U). Lynn's Motion to Strike challenged the Defendants' Answer on good faith grounds pursuant to *Arizona Rules of Civil Procedure* Rule 8(b); requested striking a number of Defendants' claimed affirmative defenses pursuant to *res judicata*, the Superior Court's December 1, 2017 ruling that had decided those issues on their merits making it "the law of the case"; and, requested striking other affirmative defenses that were irrelevant and immaterial to the allegations in Lynn's Complaint. Arcadia denied Lynn's Motion to Strike at the scheduled May 10, 2018 proceeding. Ex. V. Since Arcadia had just granted Lynn's Motion

to Stay for the special action, Lynn advised the court she would include the denial of Lynn's Motion to Strike in the Special Action Petition.

ANALYSIS

This is a case where the justice court is effectively trying to overrule the Superior Court's previous appellate ruling by preventing Lynn from obtaining a fair and impartial trial because the JP in the first instance did not think the matter should go forward: If you are unsuccessful in dismissing the case altogether, make sure the plaintiff can never win. The Defendants, who benefit from this, have participated in the endeavor. Lynn has tried to stop this, to no avail. The presiding JP is implicated in the effort, as are other JPs, and within the historical context of justice court corruption and resistance to oversight, this impropriety and the appearance of impropriety requires removal.

I. Justice Courts and due process of law.

For over 60 years Arizona Justice Courts have been involved in scandal, corruption, misconduct, and mismanagement that has required consolidation with or supervision by Arizona's Superior Courts. Ex. E, Pages 1-2. Recently Maricopa's Justice Courts were taken over by the Superior Court through order of the Supreme Court of Arizona. (*Id.*) This can only reasonably said to have occurred in response to years of continued abandonment of the rule of law and abuse of power by the JPs. Those very same JPs – the judicial officers engaged in the "corruption and mismanagement scandals" compelling the Supreme Court's Order – objected to this supervision by the Superior Court because they said it took away their power. (*Id.*) Clearly the power they were concerned about having is the same power they illegally and improperly exercised causing the corruption and mismanagement scandals requiring supervision. The politics of power being what it is, after four (4) years the Supreme Court relented, removing Superior Court supervision. (*Id.*) McMurry has been a JP since 1998, for 20 years; he was a JP at during this time. (*Id.*)

The justice courts are courts of limited jurisdiction, but they are still courts of law.

Courts of law are bound by the rule of law and judicial officers are public servants required to be conduits of the rule of law. The judicial branch maintains its authority through an agreement with The People that the judicial branch will maintain and enforce the rule of law **without** bias and prejudice. This agreement is found in the Arizona Constitution, which reflects the will of The People. (See Article II, Section 2: "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights"; and, Article VI.) Over 60 years of corruption and mismanagement requiring consolidation with and supervision by Superior Courts in Arizona establishes an on-going breach of the agreement and public trust with The People.

II. Constitutional due process requires judicial fairness and impartiality.

It is axiomatic that "[a] fair trial in a fair tribunal is a basic requirement of due process. (citations omitted)" *Caperton v. Massey*, 129 S. Ct. 2252, 2259, 556 U.S. 868 (2006). A fair trial is a fundamental liberty secured by the United States and Arizona Constitutions. See Ariz. Const. art. II, §§ 4, 24; *Estelle v. Williams*, 425 U.S. 501, 503, 96 S.Ct. 1691, 1692, 48 L.Ed.2d 126 (1976); *Cox v. Louisiana*, 379 U.S. 559, 562, 85 S.Ct. 476, 479-80, 13 L.Ed.2d 487 (1965); *State v. Neil*, 102 Ariz. 110, 112, 425 P.2d 842, 844 (1967). Included in this right is the guarantee that the jury determine guilt or innocence based solely on the evidence admitted at trial. *Irvin v. Dowd, 366* U.S. 717, 722, 81 S.Ct. 1639, 1642, 6 L.Ed.2d 751 (1961). The courts must never substitute "will" for "judgment," as all branches of government answer to the Constitution." The Federalist No. 78, at 379 (A. Hamilton) (Clinton Rossiter ed., 1961).

III. Obstruction of justice by Justice Court .

The Arizona Constitution guarantees a jury trial as an inviolate right. McMurry denied Lynn this right by violating Lynn's other legal rights that would otherwise secure that right, one that includes that the jury trial bench officer be fair and impartial and meet the constitutional test of "to hold the balance nice, clear and true." (Citations omitted.) *Caperton, supra* at 2261. McMurry was biased and prejudiced from the beginning; when the Defendants used a "motion to

dismiss" as a summary judgment motion, McMurry wrongly dismissed Lynn's Complaint. After reversal and remand by Superior Court, McMurry engaged in a series of actions intended to have Lynn either abandon her case because she could not effectively present it, or lose the trial by trying to present to a jury "a case" that McMurry prevented Lynn from effectively and properly submitting to them. (Sect. C, *infra*.) The entirely of the record is evidence that reasonably establishes McMurry's corrupt intent to prevent Lynn from her inviolate right to fair and impartial jury trial which falls squarely under obstruction of justice. McMurry's conduct of violating Lynn's constitutional and other legal rights was constructively overruling the Superior Court's appellate ruling.

A. McMurry's corrupt intent

McMurry's conduct was premeditated, intentional, volitional, purposeful, and malicious. McMurry's admissions establish his state of mind and leave no question about the serious nature of his premeditation: "I have thought about (this) **a lot**." McMurry confessed his illegal conduct was premeditated and made with aforethought, i.e., deliberately planned. Ex. C, Page 2, lines 22-24, Page 3-4, Page 5, lines 1-7; Ex. E, Page 3, lines 12-27, Page 4, 1-10. This includes McMurry contravening well-established federal, state, county, and local law to punitively compel Lynn to travel at substantial time and expense from another state for a "status conference" because "(he) needed to see (Lynn)." Ex. C Pages 5-7.

McMurry's intention was to "**do whatever (he) could** to convince (Lynn) that (a jury trial) was a bad choice." Ex. E, Page 2, lines 26-27. McMurry confessed he did not want Lynn to exercise her constitutional right to a jury trial. Since the right belonged to Lynn and not McMurry, McMurry was intent on "doing whatever he could" to make sure Lynn would not secure her right to a fair jury trial. McMurry's illegal conduct is evidence that McMurry's statement is not about use of discretion; McMurry's statement is about the abuse of power. McMurry did this because *he thought he could*. McMurry's obstruction of justice occurred because McMurry did not fear accountability. When the very people who enforce the law

violate the law and nothing happens, the rule of law has been abandoned. This is corruption. For any person who believes our "exceptionalism" rests on our living constitutional democracy anchored to the rule of law, McMurry's premeditated corrupt intent is deadly: "America without the rule of law is no longer America." (See: U.S. Senator Jeff Flake, May 23, 2018, Harvard Law School, Https://www.youtube.com/watch?v=yWQg-VG9Euw at 13:30.)

B. On February 15 McMurry was legally required to send this case to the presiding JP for reassignment after his removal.

The law is clear: Once a bench officer is removed the case is immediately sent to the presiding judicial officer for reassignment. [See ARS Rule 42.1(f); *Hornbeck v. Lusk*, 217 Ariz. 581, 177 P.3d 323 (2008); see also, *America Buyers Life Ins. Co. V. Superior Court* 84 Ariz. 377, 329 P.2d 1100 (1958) Supreme Court of Arizona; justice court protocol; Ex. C, Page 7, lines 20-24, Page 8, and Page 9, lines 1-3.] The first proceeding after the Superior Court's remand was on February 15 in Encanto. McMurry was removed that day. After McMurry's removal on February 15, McMurry did not immediately send the case to the presiding JP. Rather than following long-established law, and justice court protocol – which McMurry knew and understood after his position of presiding JP from 2014 to 2017 – McMurry purposefully kept the case in Encanto (Ex. C, Page 10, lines 9-26, Page 11, lines 1-6), and personally and specifically selected a judge pro tem of his own particular choice for "reassignment." Ex. C, Page 9, lines 4-26, Page 10, lines 1-8.

On the record that day McMurry stated he affectionately knew and specifically selected the "reassignment" judge pro tem; McMurry had already personally spoken to him about the case and this bench officer was prepared to admonish Lynn in front of the jury during the trial advising Lynn, as McMurry fancied, that she and her case was an "unmitigated disaster." Ex. C, Pages 9-10. Even after McMurry's removal based on his bias and prejudice against Lynn, McMurry continued to exert power and control to further prejudice Lynn, her case, and her legal

rights, including her right to a fair and impartial jury trial in his effort to effectively overturn the reversal of his original ruling by Superior Court to dismiss Lynn's case. *Id.*

C. After removal McMurry illegally and purposefully ordered litigation dates that violated the law and prevented Lynn from obtaining a fair trial.

The Supreme Court of Arizona acknowledged over 60 years ago that *procedural* rights are directly related to and effect the constitutional and substantive right of a fair trial:

> The right to a fair and impartial trial before a fair and impartial judge is a valuable substantive right. . . Neither this court nor the superior court can by rule of procedure deprive a party of the opportunity to exercise this right. Courts cannot enact substantive law. A court is limited to passing rules which prescribe procedure for exercising the right. Any rule of court that operates to lessen or eliminate the right is of no legal force. It has even been held by the Supreme Court of the United States that under some circumstances a procedure that had such effect offended the due process clause of the Federal constitution. (*Tumey v. State of Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749, 50 A.L.R. 1243.) *Marsin v. Udall* 78 Ariz. 309, 312, 279 P.2d 721 (1955)

On February 15 McMurry was required to immediately send the case to the presiding JP for reassignment after his removal. Instead, after his removal on February 15 and knowing Lynn's case involved seven (7) counts, four (4) of which were 9-element fraud claims and that Lynn intended to take five (5) depositions, McMurry ordered litigation dates that would have never allowed Lynn to have a fair trial, nor undertake lawful discovery to secure that right. Ex. C, Page 11, lines 19-26, Page 12, lines 1-7, Page 13, lines 1-16; Exhibit J. McMurry's course of conduct of open and hostile acts and his abuse of power are memorialized on February 15 and emphasize that McMurry put his own interests ahead of the interests of justice. Having worked for the Arizona Court of Appeals, practiced law for 20 years, and a JP for 20 years after that, McMurry surely knew what he was doing and all the laws he was violating, and he did this over Lynn's protestations. (See: ER 3:16:38.)

D. McMurry's false accusations of improper conduct.

McMurry made accusations of improper conduct by Lynn related to *ex parte* communications with the court, and improper communications with the clerks. None of those accusations were true and on February 15 McMurry had the facts in his possession when he made

those false accusations. Ex.C, Page 13, lines 17-26 and Page 14, lines 1-22; (clerks) Page 11, lines 10-13. A judicial officer making false allegations of misconduct concerning conduct of an officer of the court is a dire situation (even if from a different state). It is chilling to know McMurry did just that while he possessed the true facts that proved those accusations false. When Lynn attempted to explain the true facts that supported the conduct of interest, McMurry refused to be deterred and further demeaned Lynn: "No one care about you. No one cares ***at all***." Ex. C, Page 14, lines 15-22.

The importance of this evidence is that it further establishes McMurry's corrupt intent in his obstruction of justice: For McMurry truth is not a defense to false accusations. This puts McMurry outside the boundaries of rationality and is additional evidence that McMurry knows no restraint when it comes to Lynn and this case. There is no reasonable expectation that McMurry will not do "whatever he can" to stop Lynn from securing her constitutional rights, outside the Encanto precinct like he did at Encanto. If prior performance predicts future conduct, McMurry promise to "do whatever (he) could" dovetails into the judicial concern "[w]here . . .the judge has made a decision on the merits of the case, he has shown unequivocally what he believes the proper outcome of the case to be . . . *Valenzuela v. Brown*, 186 Ariz. 105, 109, 919 P.2d 1376, 1380 (App.1996)

E. McMurry's prejudice against Lynn with the Encanto clerks.

McMurry's irrational animus and hostility towards Lynn was directly expressed to the Encanto clerks due to his apparent sense of power that he can do and say what he wants to others in the judicial branch that prejudice a litigant. Ex. C Page 11, lines 8-18. McMurry's conduct with the Encanto clerks is evidence that McMurry's lack of restraint knows no professional boundaries. Lynn's conununication with the Encanto clerks was professional, proper, and related to court business concerning the case; the clerks rightly encouraged and told Lynn to make necessary calls because McMurry did not rule on Motions related to Lynn's travel from another state. Ex. C, Lynn's Declaration (Ex. A), ¶¶ 7-10, 13, 17, 20-23, 25-30, Page 11, lines 8-18.) To

EXHIBIT 5

Lynn Magnandonovan

IN THE SUPERIOR COURT

IN AND FOR THE COUNTY OF MARICOPA, STATE OF ARIZONA

LYNN MAGNANDONOVAN, an individual Plaintiff vs STEPHANIE MONROE WILSON, an Arizona attorney; STOOPS, DENIOUS, WILSON & MURRAY, P.L.C. an Arizona Professional Legal Corporation; JOHN and JANE DOES 1-10; ABC CORPORATIONS 1-10; XYZ PARTNERSHIPS 1-10; WHITE LIMITED LIABILITY COMPANIES 1-10; and BLACK SOLE PROPRIETORSHIPS 1-10, REAL PARTY IN INTEREST	**CASE NO. LC2018-000243-001DT** **PETITIONER/PLAINTIFF'S REPLY IN SUPPORT OF PETITION FOR SPECIAL ACTION AND REQUEST FOR STAY** **(Assigned to Hon. Cynthia Bailey)**

Petitioner Lynn Magnandonovan ("Lynn") submits this Reply in support of her Special Action Petition.

REMOVAL OF JUSTICE COURT

1. Defendants already conceded the "reassignment" was illegally done by Encanto,.

The Defendants concede the good cause for Lynn's Petition. On March 26, 2018, the Defendants correctly stated and conceded the illegal conduct at issue in Lynn's special action by stating that "**the Encanto Justice Court transferred the case** to the Arcadia Biltmore Justice Court." Petition Page14, lines 21-24, and Petition Exhibit D (emphasis added). The Defendants

rightly acknowledged Encanto itself transferred this case. The reason the Defendants clearly stated this unequivocal fact is because there is no credible alternative to state. Having collectively practiced the law for approximately 134 years, the Defendants know the law regarding the removal of a judicial officer and have sufficiently engaged in the protocol. Exhibit A attached; Petition Exhibit H, Lynn's Declaration, ¶ 5 as Exhibit A.

Now, in an apparent stunning reversal three (3) months later, the Defendants want this Court to believe the transfer from Encanto to Arcadia was done by the presiding JP, and is the same legally legitimate reassignment pursuant to Arizona law. If that were the case, the document the Defendants rely upon would not look so completely, unequivocally, and objectively different. The Defendants make claims about the Encanto document (Defendants' Response Page 2, lines 6-8; lines 19-24), but they have no credible evidence to support those claims. There is no doubt the document is an Encanto document. There is no doubt Encanto sent the document to the parties. The Defendants do not dispute this. This alone renders the "reassignment" legally invalid. The removed court not only must send the case to the presiding judicial officer immediately, but also must not have any other involvement with the case. [See A.R.S. Rule 42.1(f)(1).] Once the presiding judicial officer receives the case, s/he makes the reassignment with no further involvement with the removed court. The reason the law requires this protocol is to prevent the situation that occurred in this case: When the removed court's involvement cannot be credibly eliminated after its removal, the bias or prejudice remains. This is not legally allowed. Thus, the impropriety of McMurry/Encanto renders the "reassignment" to Arcadia null and void.

McMurry was removed on February 15. The Defendants concede McMurry was removed from the case on February 15 because the record does not allow them to credibly claim otherwise. Therefore, McMurry's removal on February 15 is an uncontroverted fact. In their Response, the Defendants state presiding JP Keith Russell ("Russell") "transferred" the case to Arcadia on March 15. Defendants' Response, Page 2, lines 5-8. This is not "immediately."

March 15 is 28 days – almost one (1) month – after February 15. As Lynn correctly stated in her Petition, McMurry intentionally, and with premeditated aforethought, reassigned this case to a judge pro tem in Encanto instead of sending it to Russell immediately. This is a violation of the law. They do not dispute this because they cannot.

Rule 42.1 (f)(1) requires the removed judicial officer to "proceed no further in the action." Instead of adhering to the rule of law, after his removal from the case McMurry lawlessly ordered litigation dates that violated the justice court Rules, and Lynn's constitutional right to a fair and impartial jury trial. Exhibit B attached, and Petition, Page 13. Because the true facts of McMurry's outlandishly egregious illegal conduct are uncontovertable, the Defendants concede each and every factual allegation and every reasonable inference made from those true facts in Lynn's Petition because they do not address the matter at all. The Defendants say nothing about this in their Response. Thus, the Defendants admit all the harm Lynn faced with McMurry's order of litigation dates, and by doing so, admit McMurry violated Lynn's constitutional right to a fair and impartial trial. The Defendants are also silent on the prejudice Lynn suffered when Arcadia improperly ruled on the challenge for cause to Arcadia specifically, and presiding JP Russell's involvement in this prejudice, with Lynn's Motion for Judicial Assignment/Recusal/Change of Venue ("Motion for Judicial Assignment"). In this respect as well, the Defendants concede the good cause of Lynn's Petition.

II. It is the court's responsibility to prove it has complied with the law.

There is no way to authenticate any other claim about the Encanto document other than it is a document generated by Encanto and sent by Encanto. There is no way to credibly claim or prove from the Encanto document – the only evidence provided by the justice court – that "***the Presiding Judge, Keith E. Russell***" granted any request. Defendants' Response. Page 2. line 6 (emphasis in original). There is no way to credibly claim or prove from the Encanto document that the request was actually sent to presiding JP Russell. There is no way to credibly claim or prove from the Encanto document that the presiding JP Russell "signed" the document. There is

no way to credibly claim or prove Russell did anything. A reassignment document was not generated by Russell. The Encanto document was not sent by Russell. Petition, Page 15; Petition, Exhibit E, Pages 6-7.

The law for judicial reassignment and the proper protocol created by that law is the same for justice court as it is superior court. In the Superior Court reassignment document (Exhibit A), there is no credible question about the fact it was generated and sent by the presiding judge of the Superior Court. Therein lies the difference. And, this is a difference that is a serious legal distinction, rendering the Encanto document null and void on its face pursuant to Arizona law, specifically Rule 42.1. This Encanto document was generated and mailed by justice court. Instead, of complying with the law, justice court proved by the documentary evidence it alone created it did not comply with the law.

III. Defendants mischaracterize the Encanto document.

Three (3) months ago when they first addressed the justice court reassignment – March 23 in their Response to Lynn's Motion for Judicial Assignment – the Defendants conceded Encanto transferred the case to Arcadia. They made absolutely no mention of presiding JP Russell. With their personal knowledge of the law, and having exercised their own rights with a change of judge, the Defendants know the Encanto document cannot be legally valid pursuant to Rule 42.1. Now, in their Response, the Defendants mischaracterize the Transfer Request document (Defendants' Response Exhibit A); on its face the document is otherwise so completely, unequivocally, and objectively different from the Superior Court reassignment document relying on the very same law (Exhibit A attached), that Defendants' assertion that the Encanto Transfer Request complies with the law they have relied on and utilized themselves is not credible. A square peg cannot go into a round hole, no matter how hard the Defendants try to jam it in.

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IV. Defendants mislead the Court about Lynn's challenge to justice court.

In their Response the Defendants completely disregard the fact that the Encanto transfer occurred on March 13 when since February 25 (advisement in Lynn's Motion to Stay executed February 22) McMurry had specific knowledge about the forthcoming Motion for Judicial Assignment, a motion that would fully brief the issues. Encanto's illegal transfer to Arcadia without waiting for Lynn's Motion prejudiced Lynn; had McMurry waited, as he had a legal duty to do, there would be no issue about Russell's involvement at all since Lynn's challenge for cause was to all justice courts, including Russell.

Further, the Defendants' Response completely disregards that neither the presiding JP Russell nor Arcadia could legally decide the reassignment – or anything else about the case; **both** were challenged for cause in Lynn's Motion for Judicial Assignment that was filed March 21. On March 21 Arcadia and Russell had actual notice that Lynn was challenging for cause the entire Maricopa County Justice Court, and specifically Arcadia as a precinct in that courthouse. Petition Exhibit E, Pages 7-9. Lynn's Declaration stating with sufficient specificity the factual basis of the impropriety, that promulgated the appearance of impropriety of all justice courts, supported Lynn's Motion for Judicial Assignment as an unequivocal challenge for cause. The Defendants concede Lynn's challenge for cause; they never address it, do not controvert it, and fail to provide any legal authority that contradicts Lynn's position, including the Motion as a challenge for cause pursuant to ARS § 12-409(5), and JCRCP 133(d).

Even after Encanto illegally transferred the case to Arcadia, on March 21 Arcadia had a legal duty to immediately send the Motion to Presiding JP Russell based on Lynn's challenge for cause to Arcadia. Then, upon receipt, Russell had a legal duty to immediately send the Motion outside justice court for determination. Arizona law makes it clear that a challenged judicial officer will not determine a challenge for cause made against them. Yet, almost one month later – April 18 – Arcadia did just that. Of course, no one will ever know the rationale since Arcadia said nothing about its ruling. Since it was such an egregious violation by Arcadia and Russell, it

is reasonable to believe impropriety goes way beyond Encanto. The fact that Russell as presiding JP so flagrantly violated the law is further indicia of corruption that Superior Court supervision for four (4) years was unable to eliminate.

V. Obstruction of justice requiring removal of justice courts.

The Defendants do not refute in any way that McMurry obstructed justice. The glaring and grievous true facts of obstruction of justice establish McMurry breathed life into his sweeping and unequivocal promise that he will "do whatever he could" to make Lynn change her mind about her inviolate right to a fair and impartial jury trial on February 15 when, after removed from the case, he, himself, illegally reassigned the case, and then ordered litigation dates that violated the law to enure Lynn would never be able to legally and properly submit her case to the jury. McMurry's obstruction was an effective overturning of the appellate decision, which would lead to the same result of his May 2, 2017, dismissal of Lynn's Complaint. The Defendants participated in this course of events.

The Defendants fail to provide **any** legal authority to contradict the historical *stare decisis* case law from the United States and Arizona Supreme Courts, Arizona Court of Appeals, and the Arizona Codes of Judicial Conduct that supports the removal of the justice courts pursuant to the constitutional principle of impropriety and the appearance of impropriety. The Defendants do not even provide any analysis of or argument against the legal and other authority submitted to the Court in Lynn's Petition (approximately one-quarter of the Petition). It is proper and reasonable for the Court to view with prejudice a summary reductionist and distorted dismissal of constitutional claims – as the Defendants do in their Response – when they are ones so critically fundamental to our constitutional democracy. Thus, those portions of Lynn's Petition stand uncontested and uncontroveted, and with that, the reasonable outcome that McMurry will further effectuate his promise influencing the entire justice court using his political power Often we discover these machinations after the fact: The current executive branch administration to "campaign" Justice Anthony Kennedy into retirement, and Chief

Justice Earl Warren's influence to achieve unanimity in *Brown v. Board of Education*, 347 U.S. 483 (1954). (See Lynn's Request to File a Reply, Page 4.) Sometimes we never know. When people lobby/campaign – or have others do it on their behalf – for their own advancement or some desired goal or outcome, it can be *invisible* to the outside observer. However, it does not mean the effort has not hit its mark. Here, though, we have evidence in real time.

Which leads to the nagging and vexing question as to why the Defendants adamantly want to stay in a court with a bench officer who has not attended law school or practiced law but will make legal and evidentiary rulings in a litigation with claims of fraud against them personally. Justice court is rife with a torturous history of corruption, criticized openly and notoriously about incompetency today, and a venue where attorneys never want to appear. But, the Defendants *want a justice court officer*. It is fair and reasonable this Court consider the Defendants' response to the obstruction of justice, and the precinct where they want to stay. Obstruction of justice they cannot – and do not – deny. Obstruction where evidence establishes it cannot be reasonably contained outside of Encanto. The Defendants know McMurry's power and influence follows them, and they benefit from it. The constitution guarantees a fair and impartial trial. The Superior Court cannot guarantee Lynn a fair and impartial trial by a justice court bench officer. This is a prejudice so great that it requires their removal.

VI. Integrity of Superior Court appellate ruling must be maintained.

There is no value to the rule of law if the justice court effectively overturns the Superior Court appellate ruling. This situation brings life to the difference between *de jure* and *de facto* law. McMurry was intently and ruthlessly motivated to derail a case he did not think should go forward. And, after the Superior Court decided Lynn's case should go forward, McMurry made his promise to do whatever he could to stop it. McMurry's premeditated corruption has been on full display. Every juncture after February 15 is equally corrupt because the violations of law have reinforced McMurry's February 15 corruption. Instead of corrective action reflecting the

law, every inflection point has violated the law – **outside** of Encanto, and by the presiding JP himself. McMurry's power and influence allow his promise to be executed by others.

For judicial removal, the U.S. Supreme Court used the test of "realistic appraisal of **psychological tendencies** and **human weakness**" that **"poses a risk"** of actual bias or prejudgment. *Caperton v. Massey*, 129 S.Ct. 2252, 2263, 556 U.S. 868 (2009) (emphasis added). In *King v. Superior Court*, 108 Ariz. at 493, 502 P.2d at 530 (1972), the Arizona Supreme Court determined that when an appeal has resulted in *reversal and a remand*, "it is **always possible** that the trial judge **may subconsciously** resent the lawyer or defendant who got the judgment reversed," and "(t)he **mere possibility** of such a thought in the back of a trial judge's mind" means that judge should be removed. *Id.*, at 493 (emphasis added). The Arizona Court of Appeals decided, based on *King*, when "a judge has made a decision on the merits of the case, he has shown unequivocally what he believes the proper outcome of the case to be," and "(t)he judgment now having been reversed, the policy reasons for (removing that judge) on remand are all the more apparent." *Valenzuela v. Brown*, 186 Ariz. 105, 109, 919 P.2d 1376, 1378 (1996). This is the law that **requires removal**, with no evidence of actual bias: The mere possibility – always present – of psychological tendencies and human weakness that pose a risk of actual bias or prejudgment. Here we have unquestionable evidence not just of bias, but obstruction of justice. Here there is uncontroverted evidenee of corruption. This ease requires removal of all justice courts.

The record in this case would make Lady Justice weep under her blindfold. The stakes are high for our constitutional democracy, the rule of law, and the integrity of the judicial branch itself. There is no point to appeal when upon remand the reversal of the lower court is overturned *by* the lower court. Impropriety and the appearance of impropriety that we can see, and the constitutional guarantee of a fair and impartial jury trial mandates justice court removal. There is no harm to the courts if a superior court judicial officer is reassigned this case. There is irreparable harm to Lynn if not.

VII. Delays in this case have been caused by justice court and the Defendants.

Any delays in this case have been generated by justice court and the Defendants. The Defendants were served with Lynn's Complaint January, 2017,[1] and instead of answering the Complaint, they moved to dismiss it. McMurry set a hearing on the Defendants' motion for April 13, and dismissed Lynn's Complaint May 2. Lynn had a legal right to appeal McMurry's order, which she did in a timely manner. The Superior Court reversed McMurry's order and remanded the case to Encanto December 2017. The appellate decision established Lynn's legally legitimate claim as a matter of law. The Defendants' motion to dismiss and McMurry's ruling were meritless. They delayed this case. Moreover, if it were not for the Defendants' illegal conduct in the first instance, there would be no case to litigate against them.

The first proceeding on the case after remand was February 15, 2018, which put the special action issues into motion. The Defendants did not engage in corrective action on February 15, thereby furthering the judicial officer's illegal conduct. On February 15, the Defendants, having personal knowledge of removal protocol and the law underlying it, allowed McMurry to proceed after his removal and violate the law numerous times, even though the Defendants as officers of the court had an affirmative duty to stop these legal violations.[2] The Defendants have no standing to complain about the progress of this case when they have provoked its duration.

VIII. Litigation expense caused by justice court and the Defendants.

It is rather stunning and remarkable that the Defendants make the untenable claim that Lynn is attempting to "run up the expense" for the Defendants (Response, Page 2, lines 22-23). Nothing could be further from the truth. Instead of filing an answer to Lynn's Complaint and proceeding with the litigation, the Defendants filed their motion to dismiss. Although it was

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[1] It is irrelevant this legal action was filed five (5) months prior to the Defendants being served: the Defendants were unaware of the Complaint and had no legal obligation until they were provided notice of it.

[2] See Arizona Rules of Professional Conduct ER 8.4 (d) and ER 8.4 (f).

their legal right to file a motion to dismiss and not an answer, not only was the motion to dismiss meritless, the Defendants used a "motion to dismiss" as a summary judgment motion by stating information as "facts" outside the complaint, some not even true. Petition Exhibit E (Exhibit C attached). Lynn rightly appealed the meritless ruling by McMurry – just as meritless as the Defendants' motion. Then, because the Defendants did not take corrective action on February 15 when McMurry repeatedly violated the law after his removal – when the Defendants had the affirmative duty to do so – Lynn filed this special action. Lynn's filings are a direct result of *their* conduct, and this has been an additional expense **for Lynn**.

The Defendants did not have to file a Response on Lynn's appeal, or this special action. The Defendants are entitled to file a Response as a matter of right, but there is no duty to do so. When the Defendants exercise their right to file a response through a discretionary act, but have no legal duty to file that response, the Defendants cannot complain about their choice, particularly when they provoked both remedial procedures.

Furthermore, notwithstanding the local, state, and federal law supporting Lynn's appearance telephonically from another state on a "status conference" or "pretrial conference," the Defendants objected three (3) different times in order to compel Lynn's personal presence in court knowing it would result in a substantial financial burden to Lynn (approximately $1,000.00 in cost for travel and accommodations). They, themselves, have made court appearances telephonically many times in litigation. More important, the Defendants have made the telephonic appearance from the same city, most likely within a 15-mile radius. Yet, the Defendants objected every single time to Lynn's request to telephonically appear in court from hundreds of miles away in a different state.

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troubling. If Defendant Wilson can mislead this Court in such an easily disproveable fact, it is fair for a reasonable person to think seriously about how that conduct is relevant to the entire litigation and everything they say. As officers of the court, the Defendants have obligations to the court. One is to not mislead it. They have done this in Paragraphs 1, 6, 7, 9, and 11 of their Answer; this Court should reverse the trial court ruling, strike those Paragraphs, and require Defendants to admit or deny in good faith pursuant to Rule 8(b).

CONCLUSION

Justice Court has attempted to reject the authority of the Superior Court and its appellate review, just as it did when the Arizona Supreme Court ordered Superior Court supervision after many years of corruption and scandals. Justice Court acts with a reckless and wanton disregard for the rule of law, and unhesitantly committed obstruction of justice with malice and aforethought in this case. The "reassignment" from Encanto is illegal, as is action by Arcadia and the presiding JP, since when Lynn challenged them for cause they had no authority to act. Arcadia had no authority to act on Lynn's Motion to Strike, but even if it did, it erred in denying it. The Superior Court can and should remove Justice Court and assign a superior court judicial officer as the most constructive alternative, whether in limited jurisdiction court or not.

REMEDY REQUESTED

Petitioner/Plaintiff makes the same request here as in her Petition. Further, this Court should provide the Justice Court and the parties with any other remedial instructions it deems appropriate and necessary.

RESPECTFULLY SUBMITTED and DATED this 14th day of July, 2018.

LYNN MAGNANDONOVAN

Lynn Magnandonovan

Resp

2019-176

AUG 23 2019

C. Steven McMurry

August 23, 2019

Commission on Judicial Conduct
1501 W Jackson Suite 229
Phoenix AZ 85007

Re: Complaint No. 19-176

Dear Commission Members:

I have listened to the recording in this case. I respectfully disagree with the assertion that I acted improperly.

The Hearing Had No Impact Upon The Case.

Ms. Magnandonovan complains about a twenty-minute hearing that I conducted in the Encanto Justice Court on February 15, 2018. That hearing had no impact whatsoever upon her case.

The case had just been remanded to Encanto for trial, and she was requesting a jury trial. I had decided before the hearing started that I wasn't going to preside at the trial. That was partly because I knew Ms. Magnandonovan didn't like me.[1] More importantly, I knew the case would require a lot of time, that it wouldn't fit well into the regular court calendar, that I would have to use a pro tem judge for the regular calendar if I took the trial, so therefore I might as well find a pro tem with the right temperament and patience to take the trial and I would take the regular court calendar. That pro tem was Bernard Barnes.[2]

Judge Barnes was not available for the February 15 status conference, so I went into the conference to inform the parties of the assignment to Judge Barnes, to set a jury trial date, to set a deadline for Disclosure Statements, and to set a deadline for proposed jury instructions and voir dire questions. I made it clear that the parties could persuade Judge Barnes to change those dates if it proved necessary.

That was the purpose and the result of the hearing. As it turned out, the hearing itself made no difference whatsoever to the case. Judge Barnes never

[1] Ms. Magnandonovan had already – frequently and vociferously – expressed her contempt for me in her lengthy phone calls to my staff, before I had seen her in person. Those calls are discussed hereinafter.
[2] This was a breach of contract case, and Judge Barnes was the bench's recognized expert on contracts. Ms. Magnandonovan expressed approval of the assignment to Judge Barnes at the February 15, 2018, hearing.

presided at the trial. Someone – I don't know who, or when, or how, and I don't care – got the case transferred to another Justice Court.[3]

Collateral Issue: *Ex Parte* Filings.

There were some collateral issues in this litigation that I wanted to resolve at the hearing before Judge Barnes took the case over, and one of them was the apparent *ex parte* filings by Ms. Magnandonovan.

I've attached the last page of a Motion Ms. Magnandonovan filed in the Encanto Justice Court on January 26, 2018. This may have been the same page I held up during the February 15, 2018, hearing as I was discussing the *ex parte* filings, although I think there were other, similar examples as well. Notice that, while the document is signed by Ms. Magnandonovan, the Proof of Service is blank. This is an apparent *ex parte* filing. I warned her that similar filings would be rejected in the future.

In response, Ms. Magnandonovan explained that she lived in California, that she was using a Phoenix attorney service to file and serve her pleadings, that the service was filing out the Proof of Service for the copy that went to the Defendant, but not the original filed with the Court, that she understood the Court's concern, and that she would undertake to assure that the attorney service did the filings properly in the future.

That resolved the issue for me. I was ready to move on (assuming it did not recur in the future). Ms. Magnandonovan was not ready to move on, however. She kept wanting to go back and address how I had impugned her integrity by suggesting she had engaged in *ex parte* filings. I acknowledge that I cut her off on that issue. I also acknowledge that I went into the hearing thinking that I probably would have to cut her off, for her own sake. This leads logically to the next issue.

Collateral Issue: The Long Phone Calls, and The Egg Timer.

I returned to Encanto Justice Court last week as a pro tem, and while I was visiting I asked the civil clerks if they remembered Lynn Magnandonovan. They groaned collectively. They then started volunteering that the calls from her came every day, sometimes more than once a day, that every call took more than an hour, and that mostly her purpose in the calls seemed to be to establish that the clerk did not know how to do his or her job and that she, Magnandonovan, was going to educate them. She also wanted to convince them, well before the February 15 hearing, that I was a bad judge. Before the issue of the phone calls had been brought to my attention, my Court Manager already had intervened and directed that all this litigant's calls should go to her. Before the hearing my Manager told me about the interminable phone calls, that they were continuing, and that she could handle them. She suggested, however, that Magnandonovan should correct this practice if there was to be any hope that Magnandonovan would be effective before a jury.

[3] It may have been Encanto itself that initiated the departure of the case to another Court. At some point in 2018 the entire Encanto Justice Court had the sad duty of attending Judge Barnes' funeral.

I agreed with my Manager. It is a huge mistake to give a civil jury the impression that one is wasting the jury's time. Ms. Magnandonovan lavishly wasted my clerks' time. There is simply no reason why a litigant's call to a clerk should take more than three minutes. I invented and introduced the notion of a three-minute egg timer in an effort to get Ms. Magnandonovan to make her communications crisp, clean, and efficient. I did it because I wanted to improve her chances before a jury. I don't think I succeeded.

Collateral Issue: My Advice Against A Jury.

My advice against a jury was based on experience.

Several years ago I had a self-represented plaintiff before me who was suing an acquaintance because the defendant had invited the plaintiff to turn her horse loose in the defendant's backyard to rest after a ride, and the defendant had failed to tell the plaintiff about a colony of Africanized bees in the backyard. The bees had swarmed, attacked the horse, and killed it. This was the first litigant to whom I said "you have the right to represent yourself in front of a jury, you also have the right to conduct brain surgery upon yourself, and I regard both courses of action to be equally imprudent". This plaintiff disregarded my advice. She did a credible job of establishing negligence before the jury. Then she rested. The defendant's attorney moved for a directed verdict on the theory that there was not a scintilla of evidence of damages, and I was compelled to grant that motion. My bailiff told me later that, after I had dismissed the jury and left the bench, the plaintiff showed the bailiff a file of documents related to her damages, and asked when she was going to be able to show them to the jury.

If that had been a bench trial, I might have asked the plaintiff if she had any evidence of damages. Or I might have asked her if she wanted to move to reopen her case after I had granted the Motion, but before excusing the jury. No one has established exactly how far a judge should go to help a self-represented litigant. This, however, is where I draw the line. I did not help this plaintiff out of a concern that by helping I would give the jury the impression that I favored the plaintiff.

This was the "unmitigated disaster" I had in mind when I told Ms. Magnandonovan that "when you ask for a jury, things change; the Court cannot help you".

In addition, frankly I also thought it was a mistake for a California lawyer to ask for an Arizona jury. In her somewhat excessive investigation of me, Ms. Magnandonovan failed to discover that I was a litigator in Los Angeles for years before I returned and became a litigator in Arizona, and that therefore I once was a California lawyer appearing in Arizona courts. That experience has convinced me that Arizona juries don't really like California lawyers. I certainly didn't mention that to Ms. Magnandonovan. She would have misinterpreted my intention. But it was another reason why I tried – unsuccessfully – to persuade her not to request a jury.

Collateral Issue: Telephonic Appearances.

I refused permission for Ms. Magnandonovan to attend the February 15, 2018, status conference telephonically. I wanted to try to dissuade her at the conference from insisting upon a jury. I also wanted to persuade her to stop being so verbose and repetitive in her communications, especially if she was going to continue to insist upon a jury. I thought I could be more effective if she was there in person in front of me. I told her that Judge Barnes would probably let her attend any future hearings telephonically.

It is not an abuse of discretion for a judge to require a party who chose to file in a particular court to attend in person an important hearing in that court.

Collateral Issue: The Length of the Trial.

When I conduct a civil pretrial conference for a bench trial, I ask the litigants for an estimate of the trial length. Two hours, I suggest. Perhaps three hours. "But don't tell me the trial will take eight hours," I say. "It certainly won't. This is by definition a claim of less than $10,000, and it certainly won't take an entire day to get to the bottom of it".

A jury trial can take longer, both because of the time required to pick a jury and for other reasons. Yet in my more than twenty years in Justice Court, I have never known a trial to go more than two days. I would assume that, if any Justice Court trial went for more than three days, then the judge conducting the trial was incompetent.

So when Ms. Magnandonovan insisted that her trial would require at least five days, I probably smiled involuntarily. I probably was reminded at that point of the staffs' remarks that Ms. Magnandonovan clearly knew more about their jobs than they did. Then I promised her that the trial would not take that long. I made the promise because I knew Bernard Barnes was very competent.

Mocking.

I never meant to mock Ms. Magnandonovan. I suspect, however, that she may have reasonably concluded that I was mocking her. Let me explain.

I was raised in Casa Grande, Arizona. Exposure to sunshine as a child made me sick. I spent most of my early life indoors, reading. I read Cervantes and Goethe in the original languages; I attempted the same with Moliere. I am bookish and awkward.

When I was about thirty, a friend pulled me aside and asked me if I knew that I showed up to people as arrogant. I was shocked. I had no idea. Nothing like arrogance was actually going on within me. However, the mannerisms I developed to compensate for my bookish awkwardness, it seems, are often interpreted as arrogance by people who don't know me very well. I cannot alter my ingrained mannerisms. I can only apologize for their impact. Since the friend brought this to my awareness, I have had to make that apology to strangers many times.

I am sorry that I appeared arrogant to Ms. Magnandonovan. I certainly did not intend to mock her.

Prejudice.

I don't know if Ms. Magnandonovan's suit had merit or not. I had decided she was a high maintenance litigant. Nevertheless, I still wanted her to have a fair trial. What I did, however misguided my actions might have been, was intended to maximize the chances that she would have a fair trial.

Very truly yours,

C. Steven McMurry

DATED this 25th day of January, 2018.

LYNN MAGNANDONOVAN

Lynn Magnandonovan

Original of the foregoing filed
on this _____ day of January, 2018, with:

The Clerk of the Court
Encanto Justice Court
620 West Jackson Street, Suite 1045
Phoenix, AZ 85003

Copy mailed by regular U.S. mail on
this _____ day of January, 2018, to:

Stephanie Monroe Wilson
Stoops, Denious, Wilson & Murray, P.L.C.
350 E. Virginia Avenue, Suite 100
Phoenix, AZ 85004

Stoops, Denious, Wilson & Murray, P.L.C.
350 E. Virginia Avenue, Suite 100
Phoenix, AZ 85004

By_____

State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-176

Judge: C. Steven McMurry

Complainant: Lynn Magnandonovan

ORDER

The Complainant alleges a justice of the peace (now retired) violated Rules 1.1, 1.2, 2.2, 2.3, 2.5, 2.6, and 2.8 of the Code of Judicial Conduct in a civil proceeding.

Judge McMurry presided over a civil case, in which Lynn Magnandonovan was the plaintiff. Judge McMurry granted the defendants' motion to dismiss, but the ruling was overturned on appeal. On remand to the trial court, Judge McMurry reassigned the matter to a pro tem judge, but presided over a status conference on February 15, 2018, because the pro tem judge was unavailable. At the status conference, Judge McMurry spoke to Ms. Magnandonovan in a condescending and mocking tone, and he took on the role of an advocate, adamantly attempting to dissuade Ms. Magnandonovan from exercising her right to a jury trial. The Commission noted several examples of improper comments made by Judge McMurry, including, but not limited to:

- I'm going to do whatever I can to convince you that that's [a jury trial] is a bad choice. But I don't think I'm going to be successful. I think you're going to insist upon it, and you are. And you have the right. You certainly have the right. But I'll tell you the only time I've seen someone in your position take a case to a jury trial, it was an unmitigated disaster. And I warned the plaintiff. But yeah, you have the right to do it, but you have the same right to perform brain surgery on yourself. And I think they're both equally imprudent.
- Stop calling my staff and talking to them extensively. You're using too much of their time. I've actually told – gotten – bought for [S.H.] a three minute egg timer. And I've told her, if you call, flip over the egg timer. After three minutes, hang up the phone. If you can't ask your question in three minutes, you're wasting our time.
- [Judge McMurry laughing] You're telling me how long a trial is going to take? You've not done any civil litigation in this court . . . Alright, stop talking! I don't want to hear it anymore. . . . I don't care what

you think. I've told you you're making a mistake on this and you didn't hear me.

- And don't complain to us that it's inconvenient for you to come from California. You are burning through the time of forty Arizona citizens, at least. Plus, huge amounts of money, Arizona taxpayer money to produce this trial. Stop telling me it's inconvenient and expensive for you to come from California. Nobody cares. Nobody cares at all.
- You are a high maintenance litigant! And I'm simply telling you that's over. And this is the way it works.

In his response to the complaint, Judge McMurry admitted that he convened the status conference intending to attempt to dissuade Ms. Magnandonovan from pursuing a jury trial. He stated he never intended to mock Ms. Magnandonovan, but he believed his "bookish and awkward" mannerisms could cause someone to reasonably conclude he was mocking her and appear arrogant.

The Commission found that Judge McMurry's conduct, as described above, violated the following Code provisions:

Rule 1.2, which states, "a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

Rule 2.2, which states, "a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."

Rule 2.3(A), which states, "a judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."

Rule 2.8(B), which states, "a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . ."

The Commission was troubled by the fact that Judge McMurry had a prior reprimand for a demeanor-related matter in 2010, but it considered the remoteness of that prior discipline, and Judge McMurry's retirement from being a full-time justice of the peace in 2018, in considering an appropriate sanction in this case.

Accordingly, retired Justice of the Peace C. Steven McMurry is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judge's response, and this order shall be made public as required by Commission Rule 9(a).

The Complainant had requested a copy of the judge's response. In light of the fact that the judge's response will be made public as a result of the reprimand, the Commission deems that request moot.

Commission members Roger D. Barton and Colleen E. Concannon did not participate in the consideration of this matter.

Dated: September 23, 2019

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were distributed to all
appropriate persons on September 23, 2019.