

APPLICATION FOR APPOINTMENT TO JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 68)

PERSONAL INFORMATION AND CONSTITUTIONAL QUALIFICATIONS

1. Full Name: **Danalyn Esther Savage**
2. Have you ever used or been known by any other name? **yes** no
If yes, provide prior name(s): **Danalyn Esther Mackmer**
3. Office Address: **255 East Gurley Street, Prescott, Arizona, 86301**
4. How long have you lived in Arizona? What is your home zip code?
I have lived in Arizona for 17 ½ years. I moved to Phoenix in May of 2005. I moved with my family to Yavapai County in July of 2016. My home zip code is 86323.
5. Identify the county you reside in and the years of your residency.
I have lived in Yavapai County for 6 ½ years.

6. Have you been an Arizona resident for the last five years? (Ariz. Const. art. VI, § 22) **yes** no
7. Have you been a resident of Yavapai County for the last year? (Ariz. Const. art. VI, § 37(D)) **yes** no
8. Have you been admitted to the practice of law in Arizona for the last five years? (Ariz. Const. art. VI, § 22) **yes** no
9. If appointed, will you be 30 years old before taking office? (Ariz. Const. art. VI, § 22) **yes** no
10. List your present and any former political party registrations and approximate dates of each:

Republican 1998-2016
Independent/Party Not Designated 2016-2023

11. Gender: **Female**

Race/Ethnicity: **White**

EDUCATIONAL BACKGROUND

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

Roberts Wesleyan College (now Roberts Wesleyan University) – Bachelor of Arts Degree in Psychology

Regent University – Juris Doctor

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

College:

Psychology with a concentration in Counseling

Roberts Wesleyan College Women’s Basketball Team – 3 Seasons

Women’s Basketball Team Manager - 1 Season, before I was a walk on my

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sophomore year
Roberts Wesleyan College Gospel Choir
Line Judge for Women's Volleyball Home Games

Law School:

Law with a focus on Business Associations and Contracts
Regent University Law School Council of Graduate Students – Law School
Chaplain
Regent University Intramural Basketball

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

McDonald's Excellence in Instrumental Music Award, 1998

The "Semper Fidelis" Award for Musical Excellence, 1998

Basketball scholarship after being a walk-on for tryouts sophomore year

Scorebook Keeper for the Women's Basketball Team after ACL surgery

Roberts Wesleyan College Outstanding Senior Psychology Student 2002

Uncle "Buck" and Anna C. Debar Women's Basketball Character and Integrity Basketball Award/Scholarship, May 2002

Regent University Law School Spiritual/Servant Leadership Award 2005

PROFESSIONAL BACKGROUND AND EXPERIENCE

15. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

State of Arizona – November of 2005

United States Federal Court, District of Arizona - May of 2006

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

Not Applicable.

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

Not Applicable.

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

Please see Attachment A for my resumé.

EMPLOYER	DATES	LOCATION
Yavapai County Attorney's Office	August 2016 to present	Prescott
Maricopa County Attorney's Office	February 2007 to July 15, 2016	Phoenix
Rupp Aerial Photography	December 2006 to February 2007	Phoenix
Westover Law Offices	August 2005 to November 2006	Phoenix
Regent University Law Library	2004 to 2005, 3L year	Virginia Beach, Virginia
Landscaper for a Small Family Landscaping Business	May 2002 to July 2002	Near Buffalo New York

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

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Please see Attachment B.

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

Over the last five years I have been the full-time juvenile delinquency prosecutor for Yavapai County. I have spent the last four years as the juvenile charging attorney as well as appearing for cases in the Prescott Juvenile Court and occasionally covering hearings in the Verde Juvenile Court. I was also assigned to the Seligman Justice Court while being assigned to the Juvenile caseload for a time.

For several months during that period, I was also the only Juvenile attorney. This meant that I was managing the entire county's Juvenile delinquency caseload with assistance doing court coverage in the Verde Valley for the Verde Juvenile Delinquency days.

I have also been responsible for charging all juveniles in adult court and any cases that come to me prior to a juvenile turning 18, but require charging after a juvenile turns 18. I review those cases and prepare them for filing a complaint or send them to the grand jury. When a complaint is filed, it is my responsibility to make a plea offer on the case.

I am responsible for responding to all of the motions for destruction of records in Prescott Juvenile Cases. I am also responsible for my appeals cases.

Part of my daily duties include responding to phone calls from officers and SROs who have questions related to juveniles. I review and charge all of the detained juvenile cases during the week and determine what cases need to be direct filed. I am then responsible for preparing those cases for the grand jury.

I meet quarterly with the probation officers assigned to the schools in Yavapai County, the SROs assigned to the schools, and sometimes school administrators. I also assist other counties when they have questions about how to file conflict cases in my county. I had two juvenile county attorneys from other counties contact me within a week's time to ask about the process for filing in Yavapai County Juvenile Court.

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

I started my career at a small personal injury and insurance defense firm. I was employed there for about a year until the firm closed when the sole managing attorney died in a plane crash. I assisted the father of Mr. William Westover, John Westover, with organizing files in the firm for the insurance companies to come and pick them up. I then maintained my presence in the office until John no longer needed me there. This was around Thanksgiving in 2006.

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

Not Applicable.

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

From January to May of 2021, I was in a group collaboration with the Juvenile Judge, Juvenile Court Clerk, Yavapai County Court Clerk, Public Defender and Juvenile Probation. Together, we were tasked with developing a process for handling and tracking the juvenile civil and petty marijuana/THC cases. We worked on how to manage the cases, how to track them, what documents to use for each type of violation, how cases would be sent to me for review, how to educate officers on the process, and what type of case number the cases would receive in the Clerk's office.

I then worked with Juvenile Probation to create a training to present to law enforcement to help them understand the process and how Prop 207 affected juvenile marijuana/THC cases. We presented this training to officers, supervisors, and attorneys from the Yavapai County Attorney's Office, in May of 2021, via WebEx.

23. Have you practiced in adversary proceedings before administrative boards or commissions? **No.** If so, state:

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

Not Applicable.

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

Sole Counsel: **0**

Chief Counsel: **0**

Associate Counsel: 0

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

Sole Counsel: 0

Chief Counsel: 0

Associate Counsel: 0

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

***State v. Z.J.**

- 1) **A delinquency petition was filed on January 8, 2018, for an incident that occurred on January 1, 2017. An admission was entered by the juvenile, Z.J., on May 10, 2018. His disposition was on June 28, 2018. He has participated in Healthy Boundaries Court while on probation and has had several violations of probation.**
- 2) **Attorney for the Juvenile: April Goswick
Email: [REDACTED]
Phone: [REDACTED]**
- 3) **This case was a sex offense against Z.J.'s younger sibling. This was a co-juvenile case which involved an older brother, who was also placed on probation in Juvenile Court. Z.J. was charged with Molestation of a Child, a class 2 felony.**
- 4) **This case has been hard from the start. Z.J. has been on probation now since he was around 13. When I first had him in court, he would not come into the courtroom. Some days he had to be carried in. Over time he progressed and was able enter the courtroom, but he would not speak. He did eventually speak, but it took time and several hearings. The other important thing about this case was that the victim was very young and I did not believe that she would be able to testify**

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without experiencing a major emotional and mental spiral after the fact. I needed to take into consideration what happened and how to keep the victim from spiraling post trial. I was able to come to a resolution on the case that took into account the right result while also keeping in mind the victim's mental and physical health. She is now safe and with a loving family.

***State v. D.B-B.**

- 1) This case was charged on March 2, 2022, for incidents reported as happening between September of 2017 and May of 2020. Juvenile D.B-B. entered an admission on May 12, 2022. His disposition was on June 9, 2022. He continues to have hearings in Health Boundaries Court while on probation.
- 2) Attorney for the Juvenile: Lourdes Todd.
Email: [REDACTED]
Phone: [REDACTED]
- 3) This case involved sexual abuse of the victim, who is a sibling of D.B-B. The victim reported that he forced her to touch him. There were two sibling witnesses who saw what happened in some of the instances. He was charged with five counts of Molestation of a Child, class 2 felonies, and one count of Sexual Conduct with a Minor, a class 2 felony. He admitted to the Sexual Conduct with a Minor charge and the rest of the counts were dismissed.
- 4) This case was hard to work out because the witnesses were young and the victim was very quiet. In our first meeting, a "meet and greet," she was quiet and reserved. She warmed up after a while, but it was clear that she wasn't keen on talking about what happened. I talked to her and her parents to let them know what might happen if we had to go to trial. I wanted to make sure they were able to make an informed decision about whether it was good for her mental and emotional health to have to testify. For our next meeting, we went to the juvenile courtroom to show the victim and witnesses what it looked like and to talk more about giving testimony. It was at that point that I could clearly see the victim's fear and anxiety. I was able to have a more honest conversation with her away from everyone else. After that conversation I decided that a resolution short-of-trial would be better for her. We were able to come up with a solution that allowed an admission by D.B-B. without the stress of a trial for the victim. We found a plea solution that was the best for everyone involved. I have since seen the victim in the community and have talked to her.

***State v. L.C.**

- 1) This case was charged on January 18, 2022. The incident happened on January 16, 2022. The case was dismissed, and further information was requested. The case was then recharged on March 29, 2022, once the requested information was received. A notice of intent to retain jurisdiction at that time. L.C. admitted to the charge on May 12, 2022. His disposition was on June 9, 2022.
- 2) Attorney for the Juvenile: Jeff Gautreaux
Email: [REDACTED]
Phone: [REDACTED]
- 3) This case involved the assault of L.C.'s grandmother. He was charged with Aggravated Assault and a notice of intent to retain jurisdiction was filed because he was so close to turning 18 years old.
- 4) This case was challenging because L.C. changed his story from what he told the police and tried to claim that the victim's injuries were from her falling when she exited the truck on her own. He originally reported to the police that he pushed her out, left her in a ditch, came back to get her, and then proceeded to hit her all the way to the hospital. Because he had the benefit of extended jurisdiction his offer was admit to the charge. My goals were to make sure the victim was safe and to allow L.C. the time on juvenile probation for rehabilitation. Adult Protective Services was also involved in this case because of the age of the victim.

* Please note, these cases are highly sensitive, with young or vulnerable victims and witnesses. I have only included the initials of the juveniles to protect these people. Due to the fact that Yavapai is more of a small town, I have concerns about including the names of the juveniles. Should you have any questions about the cases, or the juveniles and witnesses involved, I am happy to answer those questions. The case name and case number is provided in the confidential information section under "Case Names."

26. Have you represented clients in litigation in Federal or state trial courts? **Yes.** If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: **0**

State Courts of Record: **Approximately 1,500-2,000**

Municipal/Justice Courts: **Approximately 200-300**

The approximate percentage of those cases which have been:

Civil: **0 %**

Criminal: **100%**

The approximate number of those cases in which you were:

Sole Counsel: **1,700-2,290**

Chief Counsel: **1,700-2,290**

Associate Counsel: **10**

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: **20%**

You argued a motion described above: **10%**

You made a contested court appearance (other than as set forth in the above response) **Not Applicable.**

You negotiated a settlement: **90-95%**

The court rendered judgment after trial: **5%**

A jury rendered a verdict: **5%**

The number of cases you have taken to trial:

Limited jurisdiction court: **Approximately 15-20**

Superior court: **Approximately 10-15 in Adult Court, Approximately 15-20 in Juvenile Court**

Federal district court: **0**

Jury: **Approximately 10-15**

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

My career spans almost 18 years in two counties, serving as a deputy county attorney. In Maricopa County, the office used two different case management systems during my tenure, with the second one covering my final two years when I was assigned to the charging and the grand jury units. I charged hundreds of cases in the charging unit and presented on average ten cases per day to the grand jury, 4-5 days a week. When I wasn't before the grand jury or charging cases, I was responsible for "statute day." This is a day set for a brand-new grand jury to listen to all of the statutes they will need to use regularly during their deliberations. I also picked two grand juries. I am unable to access those systems. I have a guess based on cases I remember trying, the judges I appeared before, and the attorneys I tried the cases against, but I am certain that my guess is a low estimate.

My time in Yavapai County has been split between adult trial cases, Seligman Justice Court, and the Prescott Juvenile Court assignment. I have not kept track of the number of cases I took to trial. I do not recall the names of most of those defendants. Given the fact that I have had over 3,300 cases come across my desk in some way or another since taking on the juvenile assignment in late 2017, I have no way to go back and see which cases went to trial or how many.

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

The approximate number of your appeals which have been:

Civil: **0**

Criminal: **4**

Other: **0**

The approximate number of matters in which you appeared:

As counsel of record on the brief: **4**

Personally in oral argument: **0**

28. Have you served as a judicial law clerk or staff attorney to a court? **No**. If so, identify the court, judge, and the dates of service and describe your role.

Not Applicable.

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

***State v. H.B.**

- 1) A petition was filed in this case on April 10, 2021. The bench trial was held on May 27, 2021. His disposition was held on June 17, 2021. He was ultimately sent to ADJC in September of 2021.
- 2) The Honorable Anna Young, Yavapai County Juvenile Court Div. 6
- 3) Attorney for the Juvenile: Steven Dagilis
Email: [REDACTED]
Phone number: [REDACTED]
- 4) H.B. was charged with one count of Burglary in the 3rd Degree, a class 4 felony. He was adjudicated as delinquent after a bench trial. He was confronted by a neighbor of the victim when he was seen with the driver's door to the victim's Chevy Colorado opened. When confronted, he ran. When located by police as a suspect, he denied he was there. He was already on probation at the time and wearing a GPS unit monitored by juvenile probation. The investigating officer checked with juvenile probation and discovered that his GPS coordinates put him at the victim's home when the neighbor confronted the suspect.
- 5) This case was interesting because the juvenile was wearing a GPS unit and denied that he did anything. We had the probation officer who monitors the GPS units testify at trial about the unit, how it works, how he pulls up information on each unit, how he knows what unit each juvenile has and what he saw in the information he pulled up. He then testified about what was showing in the screen recording of the GPS plots that was in evidence. It showed how fast the juvenile moved and when he was at the victim's house. This information corroborated what the witness said happened.

***State v. A.L.**

- 1) A petition was filed in this case on March 12, 2018. A bench trial was held on September 10, 2018. He was placed on probation on November 1, 2018, until his 18th birthday. A notice of appeal was filed prior to the disposition and then dismissed. Another notice of appeal was filed on November 2, 2018. A.L. was discharged from probation effective April 10, 2019.
- 2) The Honorable Anna Young, Yavapai County Juvenile Court Div. 6
- 3) Attorney for the Juvenile: Julio Laboy
Email: [REDACTED]
Phone [REDACTED]
- 4) In 2017 the victim reported that she had been touched under her clothes by A.L. while he was visiting in 2016. He is her stepbrother. He was charged with one count of Molestation of a Child, a class 2 felony. A bench trial was held, and he was adjudicated delinquent.
- 5) This juvenile was very close to the age of 18 when this trial happened. He spent very little time on probation. I met with the victim prior to the trial to talk through what to expect and make sure she would be able to testify. She was able to articulate what happened to her even though it had been a while since it happened.

***State v. S.P. Jr.**

- 1) A petition was filed in this case on June 15, 2021. A bench trial was held on August 30, 2021. He was placed on probation on September 23, 2021. He had several violations of probation and was ultimately sent to ADJC in April of 2022.
- 2) The Honorable Anna Young, Yavapai County Juvenile Court Div. 6
- 3) Attorney for the Juvenile: Adam Feldman
Email: [REDACTED]
Phone [REDACTED]
- 4) The charges filed in this case were two counts of Sexual Conduct with a Minor, Sexual Assault, and Kidnapping. The victim reported that in June of 2021, the juvenile told her he was coming over. When he got there, they went into the bathroom, and he forced her to have vaginal sex, anal sex, and oral sex. She was also forced to kiss him. She

reported that it hurt, and she was crying and told him she did not want to do any of it. She reported that she was afraid of him and that he had threatened her in the past. She also reported that he strangled/choked her while he was penetrating her.

- 5) The mother of the victim was very active in communication on this case. The victim had a victim advocate at the Yavapai County Family Advocacy Center (“YFAC”) she was already comfortable with. So we met at YFAC for our first meeting. I was able to talk to the mom and answer her questions and then meet with the victim. We met a second time to go over what to expect at trial and have the victim watch her forensic interview. I appreciated how the victim’s mother advocated for her daughter and it was nice to get to know them a little bit. The trial was tough, but the victim was able to push through and talk about what happened to her. The juvenile testified and admitted to everything, but kept saying it was consensual, while the victim said it never was. He was ultimately adjudicated delinquent on the case.

* Please note, these cases are highly sensitive, with young or vulnerable victims and witnesses. I have only included the initials of the juveniles to protect these people. Due to the fact that Yavapai is more of a small town, I have concerns about including the names of the juveniles. Should you have any questions about the cases, or the juveniles and witnesses involved, I am happy to answer those questions. The case name and case number is provided in the confidential information section under “Case Names.”

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

Not Applicable.

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

Not Applicable.

32. Describe any additional professional experience you would like to bring to the Governor's attention.

During the last two years that I worked at the Maricopa County Attorney's Office, I was assigned to what was at the time the Charging and Grand Jury Bureau. I gained significant experience learning to review and charge cases of all kinds. While in this Bureau, I also gained a significant understanding of how to prosecute all types of cases. I had previously only had experience charging serious cases related to Child Abuse and Domestic Violence. I spent most of my days in the grand jury presenting cases and making sure that any guest presenters followed the rules of the grand jury. I also assisted on numerous occasions with statue day for new grand juries. I had two occasions where someone was needed last minute to select members of the grand jury. I was assigned the task despite having no previous knowledge of how to do this. In one of those instances, the judge informed me they personally knew one of the grand jury panelists, and I had to report this information back to my supervisor. Finally, I also appeared for Not Guilty Arraignments a couple of times when the assigned attorney was unable to be there.

As a part of my assignment in Yavapai County I am in close contact with schools and their administrators. These administrators are sometimes victims, but they also care very much about their students and schools. They attend some of the meetings we have with the School Resource Officers to let us know what trends they are seeing and to talk about how to be proactive to help their students. One of the ways they try to be proactive is to have me come and speak to the students about decision making, consequences of making poor decisions, and how those decisions affect the people around them. I have done this a few times, partnering with several schools, MATFORCE, and Juvenile Probation.

BUSINESS AND FINANCIAL INFORMATION

33. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 17? **No.**

If so, give details, including dates.

Not Applicable.

34. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No.**

If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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

Not Applicable.

39. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **No.**
If so, identify the nature of the case, your role, the court, and the ultimate disposition.

Not Applicable.

40. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No.**
If so, explain.

Not Applicable.

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

Not Applicable.

CONDUCT AND ETHICS

42. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other “cause” that might reflect in any way on your integrity? **No.**
If so, provide details.

Not Applicable.

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

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

Not Applicable.

44. If you performed military service, please indicate the date and type of discharge.

Not Applicable.

If other than honorable discharge, explain.

Not Applicable.

45. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

State v. Kharovsky: In this case the defendant filed a bar complaint. The complaint was dismissed and the case file closed. The date on the letter from the State Bar is July 28, 2014. I have no memory of the case or the defendant. In 2014 I was transitioning from the Family Violence Bureau at the Maricopa County Attorney's Office to the Charging and Grand Jury Unit, while also birthing twins.

State v. Smith: In this case the defendant file a bar complaint. The complaint was reviewed by the State Bar Attorney. The date of the letter from the State Bar is December 2, 2016. The defendant was directed to address any issues with the case, with the assigned presiding Judge. The matter was dismissed, and the case file closed.

State v. Fuller: I recall some of what I looked up in this case back when I received a call from the State Bar Attorney handling the complaint. In this case I was the grand jury attorney responsible for the formalities and the case was presented by another attorney. The date of the letter from the State Bar is August 9, 2017. I have no memory of the actual case. I received the call and letter after I had been with the Yavapai County Attorney's Office for a very short time. The complaint was dismissed, and the case file closed.

46. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 45.

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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

Not Applicable.

50. Within the last five years, have you ever been formally reprimanded, demoted,

disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No.**
If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

Not Applicable.

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

Not Applicable.

52. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No.**
If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties,

Not Applicable.

PROFESSIONAL AND PUBLIC SERVICE
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53. Have you published or authored any legal or non-legal books or articles (including online and including under a pen name or pseudonym)? **Yes.**
If so, list with the citations and dates of publication.

In college I was part of a research team in my Research Psychology class. We created and administered questionnaires under the direction of my professor, Dr. Bassett. The findings were written up by Doctor Bassett and published in the *Journal of Psychology and Theology* with my name as well as the other psychology students in the class. Dr. Bassett penned the document, but we are credited as having helped with the entire project. The name of the Article is "Reconsidering Intrinsic Religion as a Source of Universal Compassion." The article was presented by my professor to the 109th Annual Convention of the American Psychological Association in San Francisco, California.

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

Not Applicable.

55. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes.**
If so, describe.

- 1) **On July 15, 2022, I provided CLE training for the attorneys in my office to cover how to charge Juvenile Weekend Cases. This training consisted of what documents the attorneys should expect to get, what to do with those documents, how to prepare a juvenile petition and what to do with that petition once it was complete. This training was necessary in order to try to mitigate the mistakes I was seeing on Monday morning when I looked at what was filed over the weekend. I am the only full-time juvenile attorney in my office, so I am the only one who regularly does the work.**
- 2) **On March 4, 2022, I provided training to the Yavapai County Juvenile Probation Department to cover frequent mistakes and issues I was seeing on probable cause statements for violations of probation referrals. At the time there had been a large number of new probation officers, so my presentation also covered how to present effective trial testimony. I wanted to give them an idea of what a trial looked like, and what to expect from each party present in the courtroom (judge, defense attorney, and prosecutor). I was able to have one of the probation officers do a reenactment of his testimony from a trial in order to show them what it would look like and feel like to be questioned on the stand.**
- 3) **After Prop 207 was passed in 2020, it created a whole new situation as it related to juveniles that we all had to figure out. In order to create a cohesive and comprehensive plan, a group was put together to come up with a plan for Yavapai County. Once that plan was made, Juvenile Probation Officer Joe Bell and I were tasked with putting together a seminar for officers and attorneys on how these cases would make their way through the court and be tracked. Joe and I put together a Power Point and presented the training online in a WebEx and then answered questions about the process the Juvenile Court in Yavapai County would use. This training was on May 11, 2021.**

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

State Bar of Arizona – 2005 to present

Arizona Women Lawyers Association – March of 2019 to present

Yavapai County Bar Association – 2023

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **No.**

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

Not Applicable.

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

For Prescott Week – October 2022 and October 2019

This is a week of community service events each October, where our church finds community organizations we can do projects for or help in some way. In October of 2022, I made a giant pot of homemade tomato sauce for a meal being served at the Coalition for Compassion and Justice. The men at this home were excited it was homemade sauce and polished it off. In October of 2019, I helped serve breakfast for 100 staff and teachers at Prescott High School and handed out handwritten thank you notes.

Cross Country Coach for BASIS Prescott, Fall 2022 season

The cross-country coaches at BASIS Prescott needed to withdraw approximately a week before the first team meeting. One of the teachers who took over at the last minute asked me if I would help. While I am not a fast runner, or a great runner, she needed a second person to help, and she knew I had my fingerprint card, and I like to run. I committed to help for the rest of the season. I loved it so much that I am taking courses on how to coach, specifically how to coach cross country. I have committed to coach the team again in the fall of 2023. I am working on my coaching philosophy and a questionnaire for the kids to fill out, so I can create training plans for them for the season.

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

1) Yavapai County Juvenile Prosecutor of the Year 2019 and 2021

2) Nomination/Finalist for APAAC Juvenile Prosecutor of the Year 2019

3) APAAC Juvenile Prosecutor of the Year 2021

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

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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

Music:

I grew up in a musical family. I started taking piano lessons when I was five years old. In the fourth grade, I began learning to play the flute. Learning new instruments has always come easy to me. I was a quick study on the flute because I already knew how to read music. Once I advanced past where my school music teacher could teach me, I decided to learn to play the tenor saxophone, which was convenient for me because my father had a nice one. I was a quick study on the saxophone because many of the fingerings are the same between the sax and the flute. I had the joy of playing in the pit orchestra for my high school and then in one musical with a community theater (Lake Plains Players) where I grew up. I played off and on throughout college, law school, and during my early professional life.

In 2019, I found a music teacher and started taking saxophone lessons again. I had to stop during the COVID shutdown and did not get back into it until January of this year when I discovered an online school for saxophone players. Professional saxophone players Leo P., Grace Kelly, and Michael Wilbur formed "Saxy School" an online, international school for saxophone players that provides lessons, monthly challenges and music scales and etudes to practice. This school has been the most fun I have had playing the saxophone since high school.

Sports:

I am an athlete. I played summer soccer as a child and picked up basketball in 7th grade. I was lucky enough to be able to be a part of the women's basketball team when I was in college. I played for two years and had to sit out one year due to ACL surgery. Playing in college gave me the opportunity to travel to Guatemala and El Salvador in the summer of 2000 to play for a team with OC International. We played games and put on basketball camps while we were there. Then in 2001, I had the opportunity to go to Puerto Rico with my college team to play games there and put on some basketball camps.

During law school, I continued playing with the men who played pickup games on Fridays after classes were out. That rolled into playing intramural basketball with a team. At the end of my 2L year I decided to take another trip with O.C. International, this time to India. We played games in and around Chennai and helped with basketball camps in the area as well. The cultures I have experienced and the places I have seen because of playing basketball have been amazing and life changing.

I have also taken up running. I am not fast, but I still do it. When I moved to Phoenix I signed up to run a marathon with Team in Training. I ran that marathon in San Diego. Then I ran the Phoenix Rock n' Roll Marathon a year or two later. Since then I have run about four half marathons and at least a handful of 5k and 10K races. I do this for my mind and my body. I want to stay strong and healthy. My time spent running allows me to process thoughts and just enjoy being outside.

Growing and Preserving Food:

An amazing part of life is being creative and giving gifts. Creating looks different for each of us. I have learned that I love to create a space in my environment that allows plants, animals, and all kinds of creatures to thrive. My yard is an example of this. Every spring my husband bemoans the five cubic yards of mulch we buy and put in the garden and around the plants. My roses, peonies, tulips, hyacinth, daffodils and wildflowers are a never-ending source of joy for the teachers at the school where my kids learn. I find joy in picking the flowers and giving them to a different teacher or staff member each Friday. I call it "Flower Friday."

I also grow many of the vegetables we use during the fall and summer. Each year has its own challenges, and it is a lesson in patience. I do this to help save money at the store and to encourage pollinators to visit my yard. The produce we do not eat gets processed and put in the freezer or canned.

I also buy fruit and make jams and jellies for my kids to use for lunches, and to use as gifts for special occasions. I find time on my weekends to do this because I enjoy seeing the smiles of the faces of the kids and the people who get the jams as gifts. This is also a way for me to create. I get to create mixtures of fruits in jams and create sauces with the tomatoes, herbs, and peppers that grow in the garden.

All these things help me remain well rounded outside of my profession while keeping me mentally and physically healthy.

HEALTH

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

ADDITIONAL INFORMATION

62. The Governor seeks to consider the diversity of the county's population in making her appointment. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

There's a stigma attached to small towns - many say they foster small thinking. While I was raised in a small town and now live in a smaller community, my family and my international travels empowered me to learn from anyone and serve everyone.

My oldest son is named after his great-grandfather, Wesley Mackmer. During his lifetime, Wesley was a dairy farmer, a postman, an insurance salesman, and an encourager for his grandchildren. He did all of this from Collins Center, New York. He grew up in a farming family, where he learned the value of hard work and education.

Wesley also valued travel, though he did not do much of that himself. At over six feet tall, he could have been intimidating, but his grandchildren always felt like a priority, and we knew how much he loved us. He always asked what we were up to and where we were traveling, tracking our moves on a wall map in his home.

His wife, Harriet, made her own money. Strong and independent, Harriet spent her days caring for two older women named Charlotte and Anna, whose families had abandoned them. “Gram” looked out for me and my sisters, ensuring we had treats and nice clothes when we came to their house. She did her best to look out for us and make sure we knew we were loved.

My grandparents taught me and showed me what hard work, compassion, and unconditional love looked like. I kept the last letter Gram wrote to me just before I went to law school, and I still re-read it to this day as a reminder that what I do and how I treat others matters.

The village I grew up in, Middleport, New York, was not much bigger than the one my grandparents lived in. I joke that there are more cows than people. In fact, most people do not leave the area, or they do not move more than a couple hours away. I knew from a young age that I was different. I needed to see the world outside of my small town in Western New York.

I had a taste of this when I was a teenager and went to a couple of basketball camps in Pennsylvania. When I went to college, while not far away from home, I took every opportunity to stay out on my own. I spent my first summer cleaning dorms. That is a test in character if there ever was one. After that summer, those dorms were the shiniest and cleanest they had been since the 1980’s.

I spent two summers as a nanny. The first summer was not the greatest experience. I learned what it feels like to be treated like less than a person. From that experience, I learned to see others with compassion and to treat everyone as a human.

The second summer, the family I worked for made me feel like part of the family. They included me on trips and family functions. When Grandpa Mackmer was declining that summer, they sent me back to see him and then when he died that summer, they sent me back to the funeral. I never had to ask. I had never experienced that kind of compassion and humanity before that summer. I realize now that my time with them helped prepare me to be a better human.

Though I traveled to Guatemala, El Salvador, Puerto Rico, and India to play basketball during college and law school, my trip to Zambia with my husband in 2011 left the most lasting impact on me. We partnered with friends at Northrise University whose goal is to equip and empower their students to transform their country and lift their families out of poverty. I taught a class in the community on domestic violence and child abuse. This was my specialized focus at work as a prosecutor at the time.

I went to Zambia thinking I was going to be able to teach the people so much. I discovered I had a lot of knowledge but lacked understanding. What I did not understand well was their culture, what domestic abuse looks like for them, or how it affects their community. I learned that I know nothing about the challenges they face. I can give them information, but they are the best suited to know how it can be applied to their culture and their communities. It was beautiful and humbling to see this in action. I left a different person, better educated and more sensitive when it comes to the different family and cultural dynamics at play in the world.

Despite living in small towns their entire lives, my grandparents instilled the values of hard work, self-reliance, and compassion for others. They supported my career ambitions and desire to travel internationally to grow myself. My experiences working a variety of jobs alongside a variety of people have shaped how I treat everyone— from the judges I stand in front of to the people who clean my office.

The central thing I have learned through all these experiences is that seeing the humanity in each person is essential. Being interested in others, seeing what another person faces, and helping when I can, are all things I learned from my grandparents. I understand small town dynamics, but I have also seen how big and diverse the world is. I cannot save the world; that is an unattainable task. I can see a need and help fill that need while helping empower those I help. I can listen to the stories of others and adjust my worldview. I can treat every person as a human.

If I have failed at this, then I have failed my family, I have failed my community, and I have failed to leave the world better than when I entered it.

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

Some people I have met through my husband's profession have put me at the receiving end of bias and prejudice because they did not support my career, nor my efforts to pursue justice and advocacy for victims. I am all too familiar with the prejudices and cruelty of people that can come from being in a more public position. Navigating this has been challenging. In the years that have followed our move to Prescott, I took steps to work through the anger and hurt that grew from the cruelty of those people.

Through these difficult experiences, I developed the ability to work alongside people with prejudice and preconceived notions, while always maintaining boundaries and professional courtesy.

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

Not Applicable.

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

Please see Attachment C.

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

Please see Attachment D.

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

Not Applicable.

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

Not Applicable.

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

ATTACHMENT B

18. List of Associates in the Last Five Years

The following list contains the names of all attorneys which have been employed by the Yavapai County Attorney's office in the last five years. An attorney who has left the office in the last five years is referenced with an "*".

Sheila Polk*	Casi Harris	Dana Souser
Denis McGrane	Glen Asay	Alex Toth
Tom Stoxen	Larissa Parker	Vince Ware
Bill Hughes	John Lowe*	Jessica Salem*
Ethan Wolfinger	Chris Michalsky	Dexton Nye*
Steve Young*	Tyler Pitrat*	Matt Black*
Mike Morrison	Lewis Citrenbaum	Bill Nelson
Sue Eazer*	Jim Landis	Kevin Schiff*
Patti Wortman	Kristina Jezairian	Ross Edwards*
Martin Brennan	Chick Hastings*	Colby Morris
Steve Clark	Scott Blake	
Joy Biederman*	Nathan Best	
Dana Owens	Joe Butner	
Carol Kennedy	Karolina Czapinska	
Michael McGill*	Amy Drew	
Josh Fisher*	George Gialketsis	
Steven Sisneros	Cynthia Giltner	
Bob Johnson*	Michael Gordon	
George Rodriguez	Lindsey Hannan	
Michael Cordrey	Julia Ketchum	
Bill Kunisch*	Kellen Marlow	
Jonathan Hale	Jason Nunez	
Ben Kreutzberg	Matthew Polk	
Stephanie Sankey	Kristen Sharifi	
Henry Whitmer*	Kristen Shortley	

ATTACHMENT C

65. Statement on Why I am Seeking this Position

“Who am I to be applying for this?”

These words play in my head even as I type this essay. But after a lifetime of self-reflection and critique, I can state with conviction and humility that I am called, and qualified, to be a superior court judge.

I started law school over twenty years ago with the strong sense that I was made for the world of law. The last sixteen years of work as a prosecutor have confirmed that sense of calling. My ability to organize and plan ahead, my desire to see people and treat them with respect, and my commitment to the highest ethics come together when I show up at work every day.

When I started as a prosecutor, I had no idea that I would spend the next sixteen years in a courtroom. My time as a prosecutor has taught me an immense amount about being human and seeing the humanity in people. Despite the crime committed, I know that there is humanity in every person, even if it is hard to see.

I have also come to realize the life-altering power of my words. If I use my words in the wrong way, I can break and destroy people. However, I can also use my words to be firm, while not ignoring the fact that there is a human on the other side of the aisle. I want to be a judge to continue and expand that kind of impact through my words and actions. My words will be true and right, but they will not be demeaning or dehumanizing.

“Always tell the truth. Always do the right thing. No matter what.” That might seem like no-brainer advice. Nevertheless, those words from my supervisor for Charging and Grand Jury have stuck with me. The only way to practice his advice is to understand that there are humans behind every case and every case number. There are humans on both sides of the aisle and humans on both sides of the gallery. Failing to see the humanity in every person is detrimental to me as a person and to the people around me.

In 2011 my husband and I traveled to Northrise University in Ndola, Zambia. I taught a class in the Ndola community on domestic violence and child abuse, which was my specialization at work at the time. I went there with the attitude that I had something they needed. I left, however, understanding that my knowledge is useless to them if it is not helpful in improving their community through them. My ideas of what I “knew” they should do was radically changed as I listened to them talk about the information and apply it to their communities and cultures in a way I could not have done. [insert something about how you want to use these listening skills and working with diverse communities on the bench.

In 2017, I moved from handling adult cases to taking on juvenile cases full-time. This is where I saw that even while being firm, words of hope can have an incredible impact. In an environment where many of the juveniles have parents who have struggled to parent, I have been able to address a child and call them to more. Through what I’ve termed my “disappointed mother

lecture,” I call out the positive and potential I see in a child, while also showing them the destructiveness of their current path and the necessary consequences for their past actions.

At every turn in my career, I have had opportunities to learn and grow. Some of those opportunities I have chosen myself. More often than not, though, I have been thrust into an opportunity unexpectedly. For a long time, I just wanted to prove to everyone (including myself) that I could do whatever I set my mind to and I had what it takes. But as I grew and learned from new and challenging experiences, I realized I did not have to prove who I am to anyone. I can take on a new challenge (like being a judge) because I am competent and I love to learn new things.

My variety of life experiences in rural Western New York and around the world have prepared me to be a judge. A variety of life-lessons and hard-earned wisdom have prepared me to be a judge who practices discernment and courage. I know how to adapt, and I have a teachable spirit. In the twenty plus years since I started law school, I have evolved from wanting to prove myself to realizing I want to take steps to help make the world a better place.

I no longer see this appointment as another opportunity to prove myself. Becoming a judge is part of my bigger vision to practice compassion, show humanity, and make my corner of the world a better place by seeking justice and loving mercy.

If appointed, I will bring a few core values with me to the bench every day. I will embody fairness, doing the right thing even when it is the hard thing. I will practice unyielding integrity through actions that are marked by consistency and humility. Each person who steps into my courtroom will have their humanity honored through kindness, respect, and dignity. When things get tense and emotions run high, I will remain calm and firm, remaining in control of myself first and foremost in an emotionally-charged environment. Finally, I will establish a healthy culture built upon trust, empowering my staff to do their jobs and upholding the faith of our community as public servants.

If my grandparents were still alive, my grandfather would look forward to adding to his map the location of a courtroom where I was presiding. My grandmother would write me a letter asking about what I was learning and how I was growing as I served others.

I look forward to the continued opportunity to serve the people who call my community “home” and to steward the experience, wisdom, and opportunities that have been so kindly offered to me thus far—all of which will make me a good judge.

ATTACHMENT D
66. Writing Samples

IN THE ARIZONA COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

In re the Matter of

K [REDACTED] V.,

A person under the age of 18.

Court of Appeals No.

1 CA-JV [REDACTED]

Yavapai County Superior Court No.

P1300JV2019 [REDACTED]

APPELLEE'S ANSWERING BRIEF

YAVAPAI COUNTY ATTORNEY'S OFFICE

Firm No. [REDACTED]

Danalyn E. Savage, SBN [REDACTED]

Deputy County Attorney

255 East Gurley Street

Prescott, AZ 86301

[REDACTED]

ycao@yavapai.us

Attorney for STATE OF ARIZONA

(3) directly result from the defendant's criminal conduct. *In re Stephanie B.*, 204 Ariz. at 469, ¶ 10.

B. Restitution for Replacing the Gym Floor

a. Witness credibility is determined by the Juvenile Court.

K.V.'s challenge to the Juvenile Court's order on appeal is that the Court should have found that the information provided by his expert was the standard for remediation on the gym floor. He is asking this Court to overturn the restitution order because the company who did the remediation should have used mineral spirits on the floor to dissipate/dilute the oil. It was suggested that because that expert claimed a simple Google search would have provided them with the answer they needed on how to take care of the oil, that is what should have been done.

The Judge in this hearing is the fact finder and determines the credibility of the witnesses. *State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (Ct. App. 1995). She heard the witnesses and pointed out in her ruling that she was able to review the testimony prior to closing arguments on February 3, 2020. *Reporter's Transcript Restitution Hearing (R.T.) FTR*, February 3, 2020 at 19:12-18. The Court, in its ruling, points out issues with Mr. S [REDACTED]'s credibility. R.T. FTR, February 3, 2020 at 21:13-14. Specifically, that he contradicted himself when he said he had worked on the floors in Flagstaff, but he instead said they called him and then he called them back only after the incident in this case. R.T. FTR, February 3, 2020 at 21:15-22. The

Court points out that the experiment done on the new wood was “of no value” because it did not replicate the situation at the School, and noted it was like “apples and oranges.” R.T. FTR, February 3, 2020 at 20:5-11. The Court also noted that the witness had a piece of wood from the School and did not use that for his experiment. R.T. FTR, February 3, 2020 at 20:4-9.

The Judge at the hearing was in the best position to determine what testimony was credible and make the decision based on the evidence. The Judge determined that the testimony from Mr. S [REDACTED] was not compelling and made the ruling on the restitution based on the testimony presented in the case. That included a detailed description from Mr. Sm [REDACTED] about the process and decision making once he took over the work on the floor. It also included the testimony from Mr. R [REDACTED] about what he and the School administration tried prior to calling the Trust and S [REDACTED] C [REDACTED] F [REDACTED]. In determining that Mr. S [REDACTED] contradicted his own testimony and that the Court had issues with his credibility, the Court likely gave less weight to his testimony about the mineral spirits and how he would have handled the situation. Which, as the finder of fact, is the Court’s role.

The oil on the floor was not the only issue faced, it was the oil that had seeped into the floor over the course of a night and continued to do so as they tried to remedy the situation. The oil was there for hours. The School tried to clean it up without having to make a claim. Mr. S [REDACTED] testified that the floor was in great

shape and if the oil had not been poured on the floor by the juveniles, it would have been good for many more years. R.T. Morning, January 31, 2020 at 60:11-15.

The Court determined witness credibility in this case and made the decision based on the witness testimony. The order did not create a windfall or abuse the Court's discretion just because the Court did not believe the testimony of Mr. S█████. To ask this Court to make a credibility determination based on just the written record and reverse the decision because the Juvenile Judge should have believed Mr. S█████ would be incorrect.

The evidence presented at the hearing clearly showed the steps taken by the School, the Trust and S█████ C█████ F█████ to remediate the problem before replacing the gym floor. In fact, at no time did the School request other compensation for employee hours or loss of the use of the gym. The Court acted well within its authority when making the ruling and based the ruling on the evidence presented in the hearing. Thus, the order should be affirmed.

b. The economic loss was the cost of replacing the floor.

Any restitution requested must be an economic loss, a cost that would not have been incurred but for the juvenile's criminal actions, and directly result from the juvenile's criminal conduct. *In re Stephanie B.*, 204 Ariz. at 469, ¶ 10. "A loss flows directly from a defendant's criminal activity if it results 'without the intervention of additional causative factors.'" *State v. Madrid*, 207 Ariz. 296, 298,

85 P.3d 1054, 1056 (App. 2004), *quoting Wilkinson*, 202 Ariz. at 29, 39 P.3d at 1133; *see Ariz. Cons. Art. 2, §2.1(A)(8), A.R.S. §13-804, and A.R.S. 13-105(16)*. The Arizona Supreme Court has held that restitution should be ordered for all actual damages that are a natural consequence of the defendant's criminal act. *Wilkinson*, 202 Ariz. at 29, 39 P.3d at 1133; *State v. Morris*, 173 Ariz. 14, 18, 839 P.2d 434, 438 (App. 1992).

Economic loss is defined in A.R.S. 13-105(16). It is defined as “any loss incurred by a person as a result of the commission of an offense...Economic loss includes...other losses that would not have been incurred but for the offense.” A.R.S. 13-105(16). It is clear the loss here is economic. The Trust is funded by Arizona schools. That money is then used to pay for damage when it is reported by a school. Here, the Trust paid out over \$180,000 to try and remediate the damage to the floor, and then ultimately had to replace it. If K.V. and the other juveniles had not broken into the School, poured and spread oil, the School would not have had to hire someone to come and remediate the situation. The Trust would not have had to pay to fix the floor.

The School and the Trust, as the payer for the cost to fix the floor, did not receive a windfall. When the damage was discovered, nobody knew exactly what was on the floor or who had damaged it. The oil was on the entire gym floor and seeped down to the subflooring. The testimony made it clear that there was no way to

IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

In re the Matter of

B [REDACTED] C.,

A PERSON UNDER THE AGE OF 18.

Court of Appeals No.

1 CA-JV-20-[REDACTED]

Yavapai County Superior Court No.

P1300JV2019-[REDACTED]

APPELLEE'S ANSWERING BRIEF

YAVAPAI COUNTY ATTORNEY'S OFFICE

Firm No. [REDACTED]

Danalyn E. Savage, SBN [REDACTED]

Deputy County Attorney

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Prescott, AZ 86301

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Attorneys for STATE OF ARIZONA

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Economic loss is defined in A.R.S. 13-105(16). It is defined as “any loss incurred by a person as a result of the commission of an offense...Economic loss includes...other losses that would not have been incurred but for the offense.” A.R.S. 13-105(16). It is clear the loss here is economic. The Trust is funded by multiple Arizona schools. That money is then used to pay for damage when it is reported by a school. Here, the Trust paid out over \$180,000 to try and remediate the damage to the floor, and then ultimately had to replace it. If B.C. and the other juveniles had not broken into the School, poured and spread oil, the School would not have had to hire someone to come and remediate the situation. The Trust would not have had to pay to fix the floor.

C. The Trust acted reasonably in determining loss and replacing the gym floor.

a. The process to handle the gym floor was methodical.

When the oil was poured on the floor it sat there overnight and was not discovered until the next day when staff arrived at school for the day. R.T. Morning,

January 31, 2020 at 13:4-12. It sat there for several hours prior to discovery and while staff attempted to figure out what exactly had been spread on the gym floor and backboards. R.T. Morning, January 31, 2020 at 12:5-13:3. They started cleaning up the oil as best as they could. R.T. Morning, January 31, 2020 at 54:19-58:11. At some point the School realized that they had more damage than they initially thought, when the oil continued to seep up and affect the finish on the floor. R.T. Afternoon, January 31, 2020 at 58:6-58:23. S ■ C ■ F ■ was called for advice. R.T. Morning, January 31, 2020 at 43:1-44:4.

Eventually S ■ C ■ F ■ came to sand and refinish the floor. R.T. Morning, January 31, 2020 at 53:12-23. When that did not work, Mr. Sm ■ started making marks and cutting holes in the floor to see how much damage there was. R.T. Morning, January 31, 2020 at 60:25-65:23. He also spoke with several experts in the industry to see what could be done to get the floor clean. R.T. Morning, January 31, 2020 at 54:21-56:2. It was discovered that the oil had seeped into the subflooring throughout the gym. R.T. Morning, January 31, 2020 at 65:20-23. Mr. S ■ would be unable to warranty the floor due to the amount of oil seepage and the concern that any oil left in the wood would likely damage any finish put on the floor, creating a danger to anyone using the floor. R.T. Morning, January 31, 2020 at 80:19-81:25.

Sun Country Flooring provided an estimate for the cost to replace the floor. R.T. Morning, January 31, 2020 at 76:21-77:17. The estimate was detailed and provided to the Trust for Mr. H [REDACTED] to review. R.T. Morning, January 31, 2020 at 77:15-25. Mr. H [REDACTED] agreed that the best course of action was to replace the floor and to have S [REDACTED] C [REDACTED] F [REDACTED] do the work. R.T. Afternoon, January 31, 2020 at 35:2-36:2.

The Court has previously stated that importing civil concepts into criminal law is not appropriate. *State v. Reynolds*, 171 Ariz. 678, 682, 832 P.2d 695, 699. While the *Reynolds* case facts are different, the principles are the same. Specifically, the Court said,

“As noted by the state, concepts such as “failure to mitigate” or “not commercially reasonable” simply do not fit into the framework of the criminal law. Restitution is *not* governed by the standard of what is commercially reasonable under the U.C.C., and is not governed by all the principles of tort law.”

Id. at 678, 832 P.2d at 699.

There the Court was dealing with a criminal case where an insurance company sold a vehicle in a closed auction instead of an open auction. *Id.* While the Court noted that it did not agree with the ultimate amount ordered by the trial court (the deductible was attributed to the wrong party), the Court pointed out that “USAA’s method of selling would have been the same whether or not there was a criminal defendant and the possibility of restitution.” *Id.* at 678, 832 P.2d at 699.

Here, the testimony provided by Mr. H [REDACTED] was that the process the Trust, and specifically himself as a Senior Adjustor with 12 years of insurance experience, followed in determining what to do with the damaged floor was consistent with any other claim the Trust processes. Similarly, Mr. Sm [REDACTED] went through a process to determine whether his company could fix the floor, and only arrived at replacement after consultation with other experts and attempts to take care of the issue without replacement. He stated that it was never his intention to just go in and replace the floor from the start. R.T. Morning, January 31, 2020 at 72:11-22. Mr. Sm [REDACTED] recommended flooring that was less expensive, despite it being a better floor than the school had previously installed. R.T. Afternoon, January 31, 2020 at 124:8-125:1.

While the State is not arguing that the Court should import “failure to mitigate” or “commercially reasonable” ideas into the criminal arena, it is clear the Trust did not just jump into a decision to replace the floor lightly. Mr. H [REDACTED] was clear about what process was used. He was also clear that he had a duty to the schools in the pool because the Trust was not a traditional insurance company. The Trust used a company it trusted to do good work at a reasonable price. Mr. Sm [REDACTED] was concerned with doing good work and keeping the people at the School safe and made decisions accordingly. Specifically, he knew that the floor would not be safe, if he just put a finish on top of the leftover oil after it was sanded. All actions were perfectly reasonable, methodical, and in line with the business and business practices.