

APPLICATION FOR APPOINTMENT TO JUDICIAL OFFICE
YAVAPAI COUNTY - DIVISION 8

APPLICATION INSTRUCTIONS

Note: Canon 4 of the Code of Judicial Conduct applies to candidates for judicial office. See [Ariz. Sup. Ct. R. 81](#), Application.

1. **This application is a public record. As such, all information except that specifically denoted herein as confidential (Section II) is available for public inspection and may be posted on the Governor's website. The Governor's Office will protect the confidentiality of Section II to the greatest extent permitted by law.**
2. Completely answer all questions. If a question does not apply, write "Not applicable" in the space provided. If information is not available, write "Not available" and state the reason(s) the information is not available. Sign the Waiver of Confidentiality and Release of Information Sheet.
3. Questions in the application ask about legal matters you have handled as a lawyer. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential section of this application.
4. You may reveal contact information for any individual in the confidential section of this application.
5. Submit applications by emailing a signed PDF copy to azgovlegal@az.gov.
6. The deadline for applications is **5:00 p.m. on Friday, May 19, 2023**. Applications should be submitted by the stated deadline.

INSTRUCTIONS FOR LETTERS OF REFERENCE AND TELEPHONE CALLS

The Governor's Office welcomes and needs written assessments of the applicants' skills, expertise, ethics, and any other characteristic relevant to an individual's qualifications to be a judge. Many applicants solicit letters of reference. "More" is not necessarily "better." Applicants are encouraged to solicit ten to twelve substantive letters of reference from those with significant experience with and insight into a candidate's professional experience and qualifications. This number provides sufficient insight into the applicant's potential for serving as an outstanding judge.

Letters regarding applicants should be emailed to azgovlega@az.gov by **5:00 p.m. on June 8, 2023**. All letters timely submitted to that address will be considered.

SUMMARY OF THE APPOINTMENT PROCESS

1. **Application Period**: The Governor's Office announces the vacancy. The press release announcing the vacancy provides specific information about the process for the particular vacancy and advises where application forms can be obtained and the deadline for submitting applications.
2. **Application Review**: The Governor's Office reviews all applications received and the results of any investigation conducted by staff and selects applicants to be interviewed.
3. **Notification to Applicants**: Applicants selected for interview are notified by email of the date, time, and location of the interviews. Applicants not selected for interview are notified by email.
4. **Public Notice**: The Governor's Office announces the names of the applicants to be interviewed and invites oral or written public comment regarding their qualifications.
5. **Investigation**: Further investigation of the applicants to be interviewed is conducted. The credit, criminal, and professional discipline histories of the applicants are requested, and the results are reviewed by the Governor's Office. The Governor's Office seeks comments from judges, attorneys, and the community.
6. **Initial Interviews**: Selected applicants will be interviewed by Governor's Office staff in a public session. In fairness to other applicants, an applicant should not attend earlier scheduled interviews of other applicants or otherwise seek out or accept information about the content of such interviews.

7. **Interviews with the Governor and Appointment:** The names of at least two applicants are selected for interviews with the Governor. The Governor will make her appointment following the interview. The appointee will be notified by telephone and letter. Applicants not selected will be notified by email.

**APPLICATION FOR APPOINTMENT TO
JUDICIAL OFFICE**

**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 68)**

**PERSONAL INFORMATION AND
CONSTITUTIONAL
QUALIFICATIONS**

1. Full Name: **Lori Ann Marschke**
2. Have you ever used or been known by any other name? **No**
If yes, provide prior name(s):
3. Office Address: **3031 Dollar Mark Way, Suite B, Prescott, AZ 86305**
4. How long have you lived in Arizona? **18 years**
What is your home zip code? **86314**
5. Identify the county you reside in and the years of your residency. **Yavapai County for 18 years.**
6. Have you been an Arizona resident for the last five years? (Ariz. Const. art. VI, § 22) **Yes**
7. Have you been a resident of Yavapai County for the last year? (Ariz. Const. art. VI, § 37(D)) **Yes**
8. Have you been admitted to the practice of law in Arizona for the last five years? (Ariz. Const. art. VI, § 22) **Yes**
9. If appointed, will you be 30 years old before taking office? (Ariz. Const. art. VI, § 22) **Yes**

10. List your present and any former political party registrations and approximate dates of each: **Democratic Party since 1993**

11. Gender: **Female**

Race/Ethnicity: **Caucasian**

EDUCATIONAL BACKGROUND

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

**Valparaiso University School of Law, Valparaiso, Indiana
Juris Doctor (2005)**

**University of Minnesota, Minneapolis, Minnesota
Bachelor of Arts (~2001)**

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

**Valparaiso University School of Law: Note Writer, Law Review
Publication: Lori A. Marschke, *Proving Deliberate Indifference: Next to Impossible for Mentally Ill Inmates*, 39 Val. U. L. Rev. 487 (2004).**

University of Minnesota: Major in Law and Social Issues

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

Valparaiso University School of Law:

- **Graduated *Magna Cum Laude* (2005)**
- **Teaching Assistant, Legal Writing (2004-2005)**
- **Legal Research Assistant (2003):**
 - **For Jay Conison, Dean of Valparaiso University School of Law: Updated cases for employee benefits nutshell book and edited manuscript of new edition for publication**
 - **For Professor Susan Stuart: Researched issues related to student privacy rights**
 - **For Professor David Vandercoy: Researched issues related to federal death penalty case**

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.

Arizona Supreme Court: 2005

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.
- 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.
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.

EMPLOYER	DATES	LOCATION
Holdsworth Law Firm, P.C.	2015-present	Prescott, AZ
Gregory W. Huber, P.C.	2005-2015	Prescott, AZ
Kuehling & Kuehling, Zitowsky Law Office, and Kris J. Thomas Law Office (joint employment)	1999-2002	Madison, WI

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.

- **Michael L. Holdsworth**
- **Anne C. Holdsworth**

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.

As an attorney at the law firm of Gregory W. Huber, P.C., my practice was focused on real estate and commercial transactions, real estate development, business organizations, zoning and entitlements, financing transactions, and general contract, employment and other issues attendant to serving as counsel to business clients.

After joining Holdsworth Law Firm, P.C., my practice expanded to include estate planning, probate, and trust administrations, as well as probate and civil litigation matters.

- Real estate and commercial transactions — 50%
- Estate planning, probate, and trust administrations — 30%
- Civil litigation — 20%

20. List other areas of law in which you have practiced. **None**

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. **None**

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

Since 2005, I have drafted and negotiated hundreds, if not thousands, of real estate and business transactional documents for my clients, in the areas of:

- **Commercial real estate transactional documents, including purchase and sale agreements, subdivision trusts, option agreements, ground leases, office and retail leases, easements, financing documents, condominiums, planned community documentation (CC&Rs and forming owners' associations).**
- **Business structuring and formations for limited liability companies and corporations, including operating agreements, shareholders agreements, bylaws, buy-sell agreements, and meeting minutes.**
- **General commercial transactions and business-related agreements, including employment agreements, independent contractor agreements, dissolutions, waivers and releases, settlements, and purchases and sales of existing businesses and business assets.**

In addition, since joining Holdsworth Law Firm, P.C., I have drafted estate-

related documents, including trusts, wills, powers of attorney, probate petitions, proposals for distributions, and family settlement agreements. In litigations matters, I have drafted complaints, motions, and appellate briefs.

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.

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

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

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

Sole Counsel: **0**

Chief Counsel: **3**

Associate Counsel: **1**

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.

Kennedy, et. al. v. Sweeten, et. al.

- **Yavapai County Case No. P1300CV202100480 (2021)**
- **Attorneys for Plaintiffs: Holdsworth Law Firm, P.C. (Michael L. Holdsworth and Lori Marschke), [REDACTED]**
[REDACTED]
- **Attorneys for Defendant: Andrew Becke, Becke Law Firm PLLC, [REDACTED]**
[REDACTED] a
[REDACTED]

- In this case, Plaintiff brought claims for, *inter alia*, financial exploitation under the Adult Protective Services Act in connection with a handyman's acquisition of a home using an elderly woman's funds.
- In settlement, the entire interest in the home was conveyed to the Plaintiff.

In the Matter of the Estate of: Kay R. Morrow

- Yavapai County Case No. P1300PB201900027 (2020)
- Attorneys for Respondents American Red Cross; Humane Society of United States; Greenpeace; PETA FOUNDATION; International Fund for Animal Welfare; and The National Anti-Vivisection Society: Janet Linton, Udall Law Firm, LLP, [REDACTED]
- Attorneys for Jo McCarver, Janet Riddle, Veryl Riddle, Jr., and Joanna McCarver and co-personal representatives, Jo McCaver and Michael McCarver: Holdsworth Law Firm, P.C. (Michael L. Holdsworth and Lori Marschke), [REDACTED]
- Attorneys for Larry D. Morrow: Clint A. Brown, Mull & Brown, PLLC, [REDACTED]
- Attorneys for Northern Arizona Fiduciaries, Inc.: Hans Clugston, [REDACTED]
- This case involved a contested probate matter involving a missing original will

Mattern v. Rose

- Yavapai County Case No. P1300CV202100933 (2022)
- Attorneys for Plaintiffs: Taylor Nelson, Prescott Law Group, [REDACTED]
- Attorneys for Defendant: Holdsworth Law Firm, P.C. (Michael L. Holdsworth and Lori Marschke), [REDACTED]
- This case was a partition action involving a Prescott Valley home.

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: **20**

Municipal/Justice Courts: **2**

The approximate percentage of those cases which have been:

Civil: **100%**

Criminal: **0%**

The approximate number of those cases in which you were:

Sole Counsel: **0**

Chief Counsel: **0**

Associate Counsel: **100% but in most of these cases I have been the sole attorney assigned to the case.**

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: **5%**

You argued a motion described above: **0**

You made a contested court appearance (other than as set forth in the above response): **75%**

You negotiated a settlement: **95%**

The court rendered judgment after trial: **1**

A jury rendered a verdict: **0**

The number of cases you have taken to trial:

Limited jurisdiction court: **0**

Superior court: **1**

Federal district court: **0**

Jury: **0**

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

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: **2**

Criminal: **0**

Other: **0**

The approximate number of matters in which you appeared:

As counsel of record on the brief: **2**

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.

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.

Wells v. ZumMallen

- **Yavapai County Case No. P1300CV201900989 (2019-2023) – Hon. Michael P. McGill**
- **Arizona Court of Appeals, Division One Case No. 1 CA-CV 22-0326 – Judge Randal M. Howe, Judge David D. Weinzweig, and Judge D. Steven Williams**
- **Counsel for the ZumMallens: Jeffrey Coughlin, J Jeffrey Coughlin PLLC, [REDACTED]**
- **Counsel for the Wells: Lori A. Marschke and Michael L. Holdsworth, Holdsworth Law Firm, P.C., [REDACTED] and Matthew J. Mansfield, Matthew J. Mansfield, PLLC, [REDACTED]**
- **This case involved the ZumMallens’ claim of an easement over the Wells’ property. The Wells prevailed on a Motion for Summary Judgment and again on appeal.**
- **This case was significant because one of the asserted bases in the claim was private condemnation, which implicated constitutional property rights.**

Talking Rock Land, LLC v. Inscription Canyon Ranch, LP, et. al.

- **Maricopa County Case No. CV2019-056128 (2019-2022) – Hon. Danielle J. Viola and Hon. Sara J. Agne**
- **Arizona Court of Appeals, Division One Case No. 1 CA-CV 22-0712 (2022-present)**
- **Counsel for Talking Rock Land: David E. Shein, Shein Phanse Adkins, P.C., [REDACTED]**
- **Counsel of record for Inscription Canyon Ranch for Superior Court case: Lonnie J. Williams, Jr. and Timothy S. Lauxman, Stinson LLP, [REDACTED]**
- **Additional counsel of record for Inscription Canyon Ranch for Appeal: Lori A. Marschke, Holdsworth Law Firm, P.C., [REDACTED]**
- **This case involved a breach of contract dispute regarding a real estate development project. Inscription Canyon Ranch prevailed on a Motion for Summary Judgment and this matter is currently on appeal.**
- **This case was significant because it involved extensive contract interpretation analysis with respect to complex real estate agreements.**

Rand Smith, et. al. v. Timothy B. Smith

- Yavapai County Case No. P1300CV202100197 (2021) – Hon. Michael John Napper
- Counsel for Rand Smith, et. al.: Lori A. Marschke and Michael L. Holdsworth, Holdsworth Law Firm, P.C., [REDACTED] and Matthew J. Mansfield, Matthew J. Mansfield, PLLC, [REDACTED] [REDACTED]
- Counsel for Timothy Smith: Paul M. Omerza, Andersen, PLLC, [REDACTED] [REDACTED]
- This case involved a dispute over administration of a decedent's trust. The trustee, Rand Smith, prevailed at trial on his Petition to Compel Trust Property Turnover.

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.).

As a member of the bar, I have served as arbitrator as appointed by the Yavapai County Superior Court from time to time. All matters appointed to me have been resolved prior to hearing except one.

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.

All matters appointed to me as arbitrator have been resolved prior to hearing except the following:

Allstate Indemnity Company vs. Pacwest Investments, Inc., et. al.

- Yavapai County Case No. V1300CV201800964 (2019)

- **Attorneys for Plaintiff: Douglas M. Schumacher, Schumacher Law Firm, 12625 North Saguaro Boulevard, Ste. [REDACTED]**
- **Attorneys for Defendant: Brendan A. Melander, Jones, Skelton & Hochuli, P.L.C., [REDACTED]**
- **This case involved property damage resulting from a house fire.**

32. Describe any additional professional experience you would like to bring to the Governor's attention. **Not applicable.**

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.

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.

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.

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.

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

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

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.

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

I am currently the court-appointed personal representative in a probate action. This probate action is in process.

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

CONDUCT AND ETHICS

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.

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.

44. If you performed military service, please indicate the date and type of discharge. **Not applicable.** If other than honorable discharge, explain.

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.

In 2019, counsel for a party sent a letter to my firm accusing me of directly contacting his client without permission to procure signatures on a document. My firm responded with the name of the attorney, from an

entirely different firm unassociated with Holdsworth Law Firm, who actually procured those signatures. Thereafter, no further response was received from the accuser.

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.
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.
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.
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.
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,

PROFESSIONAL AND PUBLIC SERVICE

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.

Proving Deliberate Indifference: Next to Impossible for Mentally Ill Inmates, 39 Val. U. L. Rev. 487 (2004).

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

Legal Writing Teaching Assistant, Valparaiso University School of Law, (2004-2005)

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

State Bar of Arizona, 2005 to present

Arizona Women Lawyer's Association, ~2009 to ~ 2012

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. **Not applicable.**

58. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received. **Not applicable.**

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? ___ If so, explain. **Not applicable.**

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

60. Describe any interests outside the practice of law that you would like to bring to the Governor's attention. **Not applicable.**

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.

In my undergraduate studies, I was particularly interested in how the legal system may have a disparate impact on different groups of people. For this reason, my approved individualized major was "Law and Social Issues," which focused on race, class, and gender issues within the legal and political systems.

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

At the beginning of my career, I spent a decade focused almost exclusively on drafting and negotiating extensive and complex real estate and

business-related documents. In this area, the ability to meticulously review documents and precisely write complicated contract terms, were of utmost importance.

After joining Holdsworth Law Firm, many of my new clients were family members who had just lost a loved one. In this area, I was able to expand my skill set and deal with emotionally charged matters involving family disputes.

I believe having this experience in quite divergent types of matters, representing clients ranging from sophisticated real estate developers to grieving family members, would give me a well-rounded and open-minded perspective as a judge.

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

See Exhibit A attached hereto.

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.

See Exhibits B and C attached hereto.

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.

All matters appointed to me as arbitrator have been resolved prior to hearing except one. I did not personally draft any orders, findings, or opinions insofar as a proposed form of order was provided by counsel to one of the parties.

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 --**

**-- INSERT PAGE BREAK AFTER ALL CONFIDENTIAL
CONTENTS, TO START REMAINDER OF APPLICATION
(INCLUDING ATTACHMENTS) ON NEW PAGE --**

EXHIBIT A

In college, I discovered that I have a passion for the legal system and its potentially disparate impact on different types of people. At the University of Minnesota, I had the opportunity to create an individualized major that was tailored to my interests and incorporated classes from both Political Science and Sociology. In that major, I was able to study race, class, and gender issues within the legal and political systems. My passion continued in law school where I authored *Proving Deliberate Indifference: Next to Impossible for Mentally Ill Inmates*, 39 Val. U. L. Rev. 487 (2004).

After law school, I accepted a position that focused exclusively on drafting and negotiating complex commercial real estate, financing, and business-related documents. In my second position, I expanded my focus to include estate planning, probates, and trust administrations, as well as certain civil litigation matters. In these positions, I have been able to represent clients in a wide range of different matters that require different types of legal skills, including extensive research and technical writing skills, as well as patience and empathy for those suffering loss and trauma.

A position as a judge would allow me to take the divergent skill set I have developed from the private sector and apply it to work in the public sector where I can also rediscover my interest in ensuring that every person in the judicial process is afforded equal justice.

EXHIBIT B
(attached)

1 HOLDSWORTH LAW FIRM, P.C.
2 Michael L. Holdsworth #015802
3 Lori Marschke #024059
4 3031 Dollar Mark Way, Suite B
5 Prescott, Arizona 86305
6 (928) 776-0300
7 inbox@holdsworthlawfirm.com (Court Responses Only)

8 Matthew J. Mansfield, PLLC
9 Matthew J. Mansfield (AZ #024046)
10 111 E. Aspen Avenue, Suite 15
11 Flagstaff, Arizona 86001
12 Ph: (928) 478-7070
13 Fax: (928) 358-5108
14 E-mail: matt@mjm.legal

15 *Attorneys for* [REDACTED]

16 SUPERIOR COURT OF ARIZONA, YAVAPAI COUNTY

17 [REDACTED]
18 [REDACTED],
19 Plaintiffs/Counterdefendants,
20 v.
21 [REDACTED]
22 [REDACTED], AND
23 DOES 1 THROUGH 20, INCLUSIVE,
24 Defendants/Counterclaimants.

NO. [REDACTED]

**PLAINTIFFS' REPLY IN SUPPORT
OF THEIR MOTION FOR SUMMARY
JUDGMENT**

(Assigned to Hon. Michael P. McGill)

(Oral Argument Requested)

25 The [REDACTED]' Motion for Summary Judgment ("MSJ") and the [REDACTED]'s'
26 response to the MSJ ("**Response**") are like two ships passing in the night. The MSJ
27 demonstrated how each of the three easement claims fail *as a matter of law*. The Response
28 ignored every issue raised in the MSJ. The [REDACTED]'s' refusal to address the law
29 supporting the [REDACTED]'s' MSJ speaks volumes and supports entry of summary judgment.

1 There are three separate types of easements at issue in this case—an express
2 easement, an implied easement, and a private condemnation/private way of necessity. The
3 Response does not address their claims of an express easement or an implied easement.
4 The ██████████ concede these issues and the Court should grant summary judgment in
5 favor of the ██████████ on all express and implied easement claims. *See, e.g., State ex rel. J.C.*
6 *v. Mazzone*, 235 W.Va. 151, 772 S.E.2d 336 (W. Va. 2015) (“In the absence of any
7 responsive argument or explanation to the point raised, we are left with an implicit
8 concession.”).

9
10 The Response makes two arguments for a private condemnation/private way of
11 necessity over the ██████████’s property, which both lack merit.

12
13 1. *Defendants Failed to Make a Prima Facie Claim for Private Condemnation.*

14 The ██████████ failed to make a *prima facie* claim for a private condemnation
15 because they failed to meet their burden, or more precisely, failed to make any claim at
16 all, that the 1933 Mountain Club Roads Easement is either unavailable or inadequate. In
17 their Response, the ██████████ employ the simplest technique to deal with this
18 argument—ignore it completely. For this reason alone, the ██████████ are entitled to summary
19 judgment, because the ██████████ concede they already have legal access to their
20 property.

21 Nevertheless, it is worth noting that while ignoring the missing necessary element,
22 the ██████████ simply make the blanket statement that their property “is land-locked and
23 a reasonable necessity exists in order for Defendants to have proper use and enjoyment of
24 their land such that they need a private way of necessity over, across, and through and on
25 the premises of Plaintiffs’ property.” [Response p. 3:6]. Defendants claim this
26 unsupported statement as *fact*, apparently in an attempt to create the illusion that there is
27 a genuine issue of material fact. However, this argument is not only flawed, but improper.
28
29

1 First, this statement is a legal conclusion and cannot be accepted by this Court as a
2 fact. *See Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4, 121 P.3d 1256, 1259 (App.
3 2005). (“[W]e do not accept as true allegations consisting of conclusions of law, inferences
4 or deductions that are not necessarily implied by well-pleaded facts, unreasonable
5 inferences or unsupported conclusions from such facts, or **legal conclusions alleged as**
6 **facts**; only well-pleaded facts are accepted as true, not inferences not necessarily implied
7 by such facts or legal conclusions in the form of factual allegations” (citations omitted)
8 (emphasis added)).

9
10 Second, this statement actually highlights the glaring deficiency in the
11 ██████’s case. The Courts in both *Siemsen* and *Bickel* set forth exactly what facts the
12 ██████s needed to prove to reach the legal conclusion they are, indeed, landlocked—
13 that *both* of their existing easements—the Copper Basin Road Easement and the 1933
14 Mountain Club Roads Easement—are unavailable or inadequate. *Siemsen v. Davis*, 196
15 Ariz. 411, 998 P.2d 1084 (Ariz. App. 2000) (“To assert that they were landlocked and
16 entitled to condemn a southerly outlet begged the question whether they had an adequate
17 outlet by the northerly route.”); *Bickel v. Hansen* 169 Ariz. 371, 375, 819 P.2d 957, 961
18 (1991) (where an adequate alternative exists, “the statutory way of necessity does not
19 exist because the purportedly landlocked land is not, in fact, hemmed in”). Here, the
20 ██████s have avoided even mentioning the 1933 Mountain Club Roads Easement.
21 Thus, their blanket statement that they are landlocked—and the entire premise of their
22 claim—fails, and the ██████ are entitled to summary judgment on this issue.

23 Finally, the argument is improper. Rule 56(e) provides that in responding to a
24 motion for summary judgment, the ██████s “may not rely merely on allegations or
25 denials of its own pleading” and requires the ██████s to set forth specific facts, “by
26 affidavits or otherwise,” to demonstrate a “genuine issue for trial.” Here, however, the
27 ██████s have not followed this explicit rule. Instead, the “source” given for this
28 claimed “fact” is none other than the ██████s themselves. Moreover, this supposed
29

1 “fact” was not even disclosed as a “fact” in their disclosure statement, but rather was
2 asserted as a “legal theory” of their claim. The [REDACTED] own unsupported
3 allegations, let alone their legal theories, cannot magically transform into “facts” just
4 because they want them to. Reliance on their own allegations in a summary judgment
5 response is improper. Rule 56(e) is clear as to the consequence of this improper response:
6 “If the opposing party does not so respond, summary judgment, if appropriate, shall be
7 entered against that party.”
8

9
10 2. *Defendants Seek a Public, Not Private, Easement.*

11 The [REDACTED]s’ second argument is to claim that they seek to condemn the
12 [REDACTED]s’ property “for a **private** use” [Response p.9:23 (emphasis added)], in an attempt to
13 avoid the requirements of A.R.S. §12-1116(A). However, this argument is both legally
14 and factually wrong.

15 A “private” condemnation action is that in name only—the legal effect is actually
16 to create a public right-of-way:

17
18 To appreciate the trial court's finding of detriment to Defendants, one must
19 understand that what is called a "private way of necessity" is not private at
20 all. See Solana, 69 Ariz. at 124, 210 P.2d at 598 ("the term `private way of
21 necessity' is really a misnomer"). When a way of necessity is condemned, its
22 use is not limited to the condemnor; instead the condemned roadway
23 "becomes an open public way which may be traveled by any person who
24 desires to use it." Id.

25 *Siemens v. Davis*, 196 Ariz. 411, 998 P.2d 1084 (Ariz. App. 2000)

26 This argument is also directly contradicted by the [REDACTED]s themselves.
27 Specifically, in their letter of March 18, 2016 (attached to Complaint at Exhibit E), the
28 [REDACTED]s confirmed their intent to develop their property into a subdivision,
29 acknowledging that their property “could potentially accommodate 20+ homes.” Thus, it
is clear that the easement the [REDACTED]s seek would not be used as their private

1 driveway, but rather as a heavily trafficked public roadway. Therefore, their “private use”
2 argument is blatantly inaccurate, misleading, and cannot be relied on by the Court to
3 excuse the [REDACTED]s from the requirements of A.R.S. §12-1116(A).

4 The [REDACTED] have laid out a litany of reasons why summary judgment is proper. The
5 law simply does not allow any of the [REDACTED]s’ easement claims. There are no genuine
6 issues of fact to try in this case. The [REDACTED] are entitled to summary judgment based on the
7 express language of public records recorded ninety years ago.
8

9 WHEREFORE, the [REDACTED] respectfully request that the Court grant their Motion for
10 Summary Judgment and any other relief the Court deems just.
11

12 **RESPECTFULLY SUBMITTED** this 8th day of November, 2021.
13

14 **HOLDSWORTH LAW FIRM, P.C.**
15 **MATTHEW J. MANSFIELD, PLLC**

16
17 /s/ Lori Marschke
18 Lori Marschke
19 Matthew J. Mansfield
Attorneys for Plaintiffs

20 ORIGINAL e-filed this 8th day of
21 November 2021, with:
22 Yavapai County Superior Court
23 120 S. Cortez
Prescott, Arizona 86301

24 COPY of the foregoing e-mailed
25 this 8th day of November 2021, to:
26 J. Jeffrey Coughlin PLLC
1570 Plaza West Drive
27 Prescott, AZ 86303
Attorneys for Defendants
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29

EXHIBIT C
(attached)

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SUPERIOR COURT OF ARIZONA, YAVAPAI COUNTY

In the Matter the Estate of
[REDACTED],
Deceased.

NO. [REDACTED]

**MOTION FOR JUDGMENT ON THE
PLEADINGS**

(Hon. John Napper)

Mark [REDACTED] (“**Mark**”) moves for the Court to enter judgement on the pleadings in his favor pursuant to Ariz. R. Civ. P. 12(c).

This case involves competing cross petitions seeking the appointment of a personal representative for the Estate of [REDACTED]. [REDACTED] passed away leaving two sons—Mark and [REDACTED] (“**Ben**”), who are half-brothers, and each entitled to 50% of the estate. Ben’s mother (and [REDACTED] ex-wife) filed a Creditor’s Petition¹ (“**Dawn’s Petition**”), claiming to be a creditor and seeking to have herself appointed as Personal Representative. Dawn’s Petition was formally objected to by Mark. Mark also filed a Cross Petition (“**Mark’s Petition**”), seeking to have [REDACTED], LLC (license number [REDACTED]) appointed as Personal Representative.² Mark’s Petition was objected

¹ Entitled “*Creditor’s Petition for Adjudication of Intestacy, Determination of Heirs, Objection to Appointment of [REDACTED], LLC as Personal Representative, and Request for Appointment of Personal Representative.*”

² In his Cross Petition, Mark initially nominated [REDACTED], LLC to serve as Personal Representative. Mark subsequently filed a *Notice of Substitution of Nominee* substituting [REDACTED], LLC as his nominee for appointment as Personal Representative.

to by Dawn, but not by Ben. For this reason, Mark is entitled to the orders requested in his petition as a matter of law.

Argument:

Ariz. R. Civ. P. 12(c) allows the Court to enter judgment based on the allegations of the pleadings. A motion for judgment on the pleadings requires the Court consider the allegations of the pleadings and requires the court to assume the truth of the material allegations of such pleadings. *Neiderhiser v. Henry's Drive-In, Inc.*, 96 Ariz. 305, 308, 394 P.2d 420, 422 (Ariz. 1964). A trial court errors by failing to grant judgment on the pleadings when a party states a claim for relief and the other fails to establish a defense. *Walker v. Estavillo*, 73 Ariz. 211, 215, 240 P.2d 173, 176 (Ariz. 1952).

Here, Dawn's Petition was objected to by Mark; and Mark's Petition was objected to by Dawn. In cases of such objections, A.R.S. § 14-3203(B) governs. Dawn cites to A.R.S. § 14-3203(B)(1) as her basis to seek appointment of "any qualified person." However, Dawn's reliance on this statute is not only erroneous but is also contradicted by the allegations contained in her petition. Specifically, A.R.S. § 14-3203(B)(1) allows a creditor to petition for the appointment of any qualified person only if "the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims." In other words, the estate must be insolvent. Dawn's Petition does not allege that the estate is insolvent. To the contrary, Dawn's Petition alleges that the estate, after deducting liens and encumbrances, may be valued at \$175,000.³ Thus, A.R.S. § 14-3203(B)(1) is not applicable in this case.

Mark cites to A.R.S. § 14-3203(B)(3) as his basis to seek appointment of [REDACTED]

[REDACTED], LLC, which provides:

In case of objection to appointment of a person who is not a surviving spouse, other than one whose priority is determined by will, by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint *a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value*, or, in default of this accord any suitable person. (emphasis added)

³ See Dawn's Petition at paragraph 9, subsection (ii), wherein she alleges that the value of estate assets may be not more than \$75,000 in personal property and \$100,000 in real property. Nowhere in her petition does Dawn allege that the estate has insufficient assets to pay its debts.

Here, Dawn is not a surviving spouse, nor is her priority determined by a will. Dawn’s Petition was objected to by Mark, who is an heir with a substantial interest in the estate. Thus, the Court may appoint any person acceptable to the heirs with a majority interest. Mark petitioned for the appointment of [REDACTED], LLC—and Ben did not object to this appointment.⁴ This lack of objection by Ben may be deemed by this Court as his implied agreement. *See, e.g., Stanley v. Superior Court of L.A. Cnty.*, 206 Cal.App.4th 265, 141 Cal.Rptr.3d 675, (Cal. App. 2012) (“failure to state any disagreement constituted implied consent…”); *State ex rel. J.C. v. Mazzone*, 235 W.Va. 151, 772 S.E.2d 336 (W. Va. 2015) (“In the absence of any responsive argument or explanation to the point raised, we are left with an implicit concession.”).⁵ Moreover, Ben did not nominate Dawn, nor did Ben suggest anyone he would prefer over [REDACTED]. Thus, 100% of the heirs are agreeable to the appointment of [REDACTED]. Therefore, as a matter of law, [REDACTED] is the only proper appointment under A.R.S. § 14-3203(B)(3).

It should be noted that Mark’s Petition was objected to by Dawn. However, Dawn is not an “*heir or devisee* appearing to have a substantial interest in the estate.”⁶ As she is Decedent’s ex-spouse, Dawn is no longer an heir. Mark and Ben are the only heirs, and neither objected to Mark’s Petition. Thus, Dawn’s objection has no bearing on any A.R.S. § 14-3203(B)(3) analysis.

⁴ Dawn claimed in her petition that Ben objected to Mark’s Petition. However, Ben confirmed in his Amended Motion for Protective Order filed on July 7, 2022, that he made no such objection.

⁵ See also, e.g., *People v. Sorenson*, 22 Cal.Rptr.3d 854, 125 Cal.App.4th 612 (Cal. App. 2005) (failure to object “suggests an implicit agreement”); *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (we may treat as an implicit concession the respondent’s failure to dispute a proposition in the appellant’s brief); *United States v. Lara–Ramirez* (1st Cir.2008) 519 F.3d 76, 83 [“Consent may sometimes ‘be implied from a defendant’s acts or failures to act, such as where the defendant sits silently by and does not object to the declaration of a mistrial even though he has a fair opportunity to do so.’”].

⁶ A.R.S. § 14-3203(B)(3) (emphasis added).

Conclusion:

Mark is entitled to judgment on the pleadings pursuant to Ariz. R. Civ. P. 12(c). Dawn failed to plead that the estate was insolvent; thus negating any application of A.R.S. § 14-3203(B)(1). Therefore, her quest to use such statute to get herself appointed as “any suitable person” under the statute—is not viable as a matter of law.

The only subsection of A.R.S. § 14-3203(B) that applies in this situation is subsection (3). Dawn failed to make any argument at all that would negate the application of this statute. Under this statute, [REDACTED] is the only proper appointment *as a matter of law* because neither Mark nor Ben objects to this appointment.

For the foregoing reasons, Mark respectfully request the Court to: (1) enter judgment in favor of Mark with respect to Mark’s Petition; (2) make the findings required by A.R.S. § 14-3409, including a finding that Decedent died intestate; (3) determine that Mark and Ben are Decedent’s lawful heirs; (4) appoint [REDACTED], LLC as personal representative of Decedent’s estate without bond; (5) award Mark’s attorneys’ fees and costs to be determined by Ariz. R. Civ. P. 54 (f) and (g); and (6) vacate the upcoming trial set for November 22, 2022 because the relief requested in this motion disposes of all matters to be argued at such trial.

RESPECTFULLY SUBMITTED this 8th day of August, 2022.

HOLDSWORTH LAW FIRM, P.C.

/s/ _____
Lori Marschke
Attorneys for Mark [REDACTED]