



**CITY OF SURPRISE**  
**Judicial Selection Advisory Commission Meeting**  
**16000 N. Civic Center Plaza**  
**Surprise, AZ 85374**  
 Thursday, April 22, 2021 @ 6:00 PM  
 COMMUNITY ROOM

- A. Call To Order
- B. Roll Call
- C. Pledge of Allegiance
- D. Current Events and Reports
- E. Staff Reports
- F. Judicial Selection Advisory Commission Agenda

**CALL TO THE PUBLIC:**

**INSTRUCTIONS:** In order to address the Board\Commission, you will need to fill out a Call to the Public Form available at the front counter, and then turn it in to the Secretary before the meeting begins.

**Note:** A.R.S. 38-431.01(H) - During this time members of the public may address the Board\Commission only on issues within the jurisdiction of the Board\Commission which are not an item on the agenda. At the conclusion of the open call, the Board\Commission may respond to criticism, may ask staff to review the matter or may ask that the matter be put on a future agenda. No discussion or action shall take place on any item raised.

**CONSENT AGENDA:**

- 1. Citywide Consideration and action pertaining to the approval of the January 14, 2021 Judicial Selection Advisory Commission meeting minutes. Human Resources

**REGULAR AGENDA ITEM - PUBLIC HEARING:**

- 2. Citywide Consideration and action pertaining to the recommendation to Surprise City Council for the reappointment of Presiding Judge Louis Frank Dominguez whose current term expires June 30, 2021. Human Resources
- 3. Citywide Consideration and action pertaining to the recommendation to Surprise City Council for the reappointment of Associate Judge Catherine Ann Gaudreau whose current term expires June 30, 2021. Human Resources

**REGULAR AGENDA ITEM - NON-PUBLIC HEARING:**

- 4. Citywide Discussion and review of the Judicial Selection Advisory Commission Procedural Rules. Human Resources

- G. Other Business and Future Agenda Items
- H. Executive Session

Consideration and action to enter into executive session pursuant to A.R.S. 38-431.03(A)(1) for the purpose of evaluating, in accordance with Surprise City Code Sec. 30-44(c), Presiding Judge Louis Frank Dominguez.

Consideration and action to enter into executive session pursuant to A.R.S. 38-431-03(A)(1) for the purpose of evaluating, in accordance with Surprise City Code Sec. 30-44(c), Associate Judge Catherine Ann Gaudreau.

For information purposes: Upon a public majority vote of a quorum ("Commission"), the Commission may hold an executive session, which will not be open to the public, but for only the following purposes: discussion or consideration of records exempt by law from public inspection (A.R.S. §38-431.03(A)(2));

or discussion or consultation for legal advice with the attorney or attorneys of the public body (A.R.S. §38-431.03(A)(3)).

Confidentiality Requirements: Pursuant to A.R.S. §38-431.03(C)(D), any person receiving executive session information pursuant to A.R.S. §38-431.02 shall not disclose that information except to the Attorney General or County Attorney or by agreement of the Commission, or as otherwise ordered by a court of competent jurisdiction.

The Commission may vote to hold an executive session for the purpose of obtaining legal advice from the Commission's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).

I. Adjournment

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SHERRY ANN AGUILAR, CITY CLERK, MMC

POSTED: April 20, 2021 at 9:55 AM  
Amended agenda - 4/20/21 at 12:30 PM corrected meeting time to 6:00 PM

**SPECIAL NOTE: PERSONS WITH SPECIAL ACCESSIBILITY NEEDS, INCLUDING LARGE PRINT MATERIALS OR INTERPRETER, SHOULD CONTACT THE CITY CLERK'S OFFICE @ 623.222.1200 OR TTY 623.222.1002, BY NO LATER THAN 24 HOURS IN ADVANCE OF THE REGULAR SCHEDULED MEETING TIME.**



**CITY OF SURPRISE**  
**Judicial Selection Advisory Commission Meeting**

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Council Meeting Date: April 22, 2021  
Submitting Department: Human Resources  
Staff Recommendations:

Contact Person:  
District: Citywide

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Consent: Yes      Regular: No      Public Hearing: No      Report/Discussion: No

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**Agenda Wording:**

Consideration and action pertaining to the approval of the January 14, 2021 Judicial Selection Advisory Commission meeting minutes.

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**Motion:**

I move to approve the January 14, 2021 meeting minutes.

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**Background:**

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**Objective Analysis:**

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**Policy Compliant:**

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**Financial Impact:**

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**Budget Impact:**

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**FTE Impact:**

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**ATTACHMENTS:**

1. JSAC Meeting Minutes 2020.01.14
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**CITY OF SURPRISE**  
**JUDICIAL SELECTION ADVISORY COMMISSION (JSAC) MINUTES**

16000 N. Civic Center Plaza

Surprise, AZ 85374

Thursday, January 14, 2021 at 6:00 p.m.

- A. Call to Order at 6:04 p.m.
- B. Roll Call - Members present: Chair Swann, Vice-Chair Lang, Commissioners Carey, Gaunt, Hanzel, Jessen, and Stutzman.
- C. Pledge of Allegiance
- D. Current Events and Reports – None
- E. Staff Reports – None
- F. Judicial Selection Advisory Commission Agenda

Call to the Public: No comments from public.

Consent Agenda:

- 1. Consideration and action pertaining to the approval of the September 2, 2020 of the Judicial Selection Advisory Commission meeting minutes – APPROVED  
M: Jessen 2<sup>nd</sup>: Stutzman Votes: 7 Yes Votes

Regular Agenda:

- 2. Discussion and review of the reappointment process and timeline for Presiding Judge Louis Frank Dominguez

The commission discussed the reappointment process and timeline, and the fact that it would be the same for Judge Dominguez and Associate Judge Gaudreau.

- 3. Discussion and review of the reappointment process and timeline for Associate Judge Catherine Ann Gaudreau

The commission discussed the reappointment process and timeline, and the fact that it would be the same for Judge Dominguez and Associate Judge Gaudreau.

4. Discussion and possible action scheduling a future public input meeting and directing city staff to conduct a judicial performance survey of the current Presiding Judge, including inquiring on pending and past disciplinary actions and soliciting information on administrative performance from the Surprise City Court - APPROVED

The commission discussed the reappointment process and timeline, and the fact that it would be the same for Judge Dominguez and Associate Judge Gaudreau. At the end of the meeting chairman Swann summarized the survey timeline, content, and process and the commission voted on items in one action. The commission will meet on April 22, 2021 to hold the public hearing and discuss the survey results and make a recommendation to Council.

M: Jessen 2<sup>nd</sup>: Hanzel                      Votes: 7 Yes Votes

5. Discussion and possible action scheduling a future public input meeting and directing city staff to conduct a judicial performance survey of the current Associate Judge, including inquiring on pending and past disciplinary actions and soliciting information on administrative performance from the Surprise City Court - APPROVED

The commission discussed the reappointment process and timeline, and the fact that it would be the same for Judge Dominguez and Associate Judge Gaudreau. At the end of the meeting chairman Swann summarized the survey timeline, content, and process and the commission voted on items in one action. The commission will meet on April 22, 2021 to hold the public hearing and discuss the survey results and make a recommendation to Council.

M: Jessen 2<sup>nd</sup>: Hanzel                      Votes: 7 Yes Votes

G. Other Business and Future Agenda Items - NONE

H. Executive Session - NONE

I. Adjournment M: Jessen 2<sup>nd</sup>: Hanzel    Vote: Chair adjourned meeting at 6:40 p.m.

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Peter Swann, JSAC Chair

ATTEST:

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Maria Aranda, JSAC Secretary

CERTIFICATION:

I, Maria Aranda, Secretary for the Judicial Selection Advisory Commission of the City of Surprise, Maricopa County, Arizona, do hereby verify that these are the true and correct minutes of the Judicial Selection Advisory Commission Meeting of September 2, 2020.

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Maria Aranda, JSAC Secretary



**CITY OF SURPRISE**  
**Judicial Selection Advisory Commission Meeting**

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Council Meeting Date: April 22, 2021  
Submitting Department: City Clerk  
Staff Recommendations:

Contact Person:  
District: Citywide

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Consent: No      Regular: No      Public Hearing: No      Report/Discussion: No

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**Agenda Wording:**

REGULAR AGENDA ITEM - PUBLIC HEARING:

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**Motion:**

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**Background:**

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**Objective Analysis:**

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**Policy Compliant:**

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**Financial Impact:**

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**Budget Impact:**

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**FTE Impact:**

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**ATTACHMENTS:**

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**CITY OF SURPRISE**  
**Judicial Selection Advisory Commission Meeting**

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Council Meeting Date: April 22, 2021                      Contact Person:  
Submitting Department: Human Resources              District: Citywide  
Staff Recommendations:

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Consent: No              Regular: No              Public Hearing: Yes              Report/Discussion: No

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**Agenda Wording:**

Consideration and action pertaining to the recommendation to Surprise City Council for the reappointment of Presiding Judge Louis Frank Dominguez whose current term expires June 30, 2021.

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**Motion:**

I move that the Judicial Selection Advisory Commission recommend Louis Frank Dominguez reappointed as the Presiding Judge of the Surprise City Court based on .

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**Background:**

The purpose of the Judicial Selection Advisory Commission is to evaluate and make recommendations to the City Council with regard to the selection and reappointment of incumbent presiding and associate city judges. Surprise City Code requires that the JSAC meet to hold at least one public hearing for the reappointment of a presiding judge that has applied for reappointment. Louis Frank Dominguez is the current Presiding City Judge, whose current term ends June 30, 2021. He has applied for reappointment.

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**Objective Analysis:**

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**Policy Compliant:**

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**Financial Impact:**

The compensation of the presiding judge is fixed by the City Council and is included in the city's annual budget.

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**Budget Impact:**

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**FTE Impact:**

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**ATTACHMENTS:**

1. Reappointment Package 2021-Presiding Judge Louis Frank Domingez\_Final
2. Dominguez - Judicial Conduct Review

3. Dominguez Judicial Availability Letter
  4. Judicial Evaluation Survey (Dominguez)
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## Surprise City Court Presiding Judge Louis Frank Dominguez

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### 2021 Reappointment Package

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### Mission Statement

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The Surprise City Court's primary function is to fairly and impartially adjudicate all cases filed in the court and to effectively obtain compliance with the court's orders. We also provide the best possible service to the public by courteously and promptly answering questions and assisting all persons having business at the court, and by ensuring proper and timely accounting for both the judicial and financial activities of the Court. We pledge to faithfully execute the judicial and administrative duties of the Surprise City Court as prescribed by law.

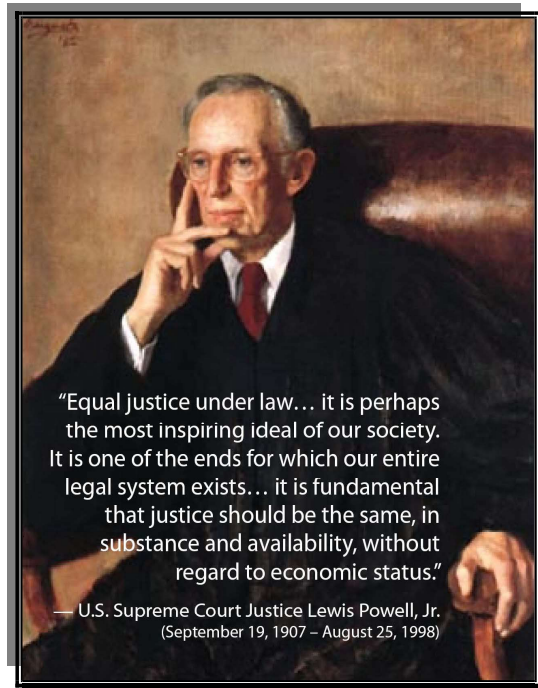
We are committed to upholding and enforcing the law, and to safeguarding the individual rights and liberties of all persons who come before the court. We promise to obey the letter and spirit of the law, the Code of Judicial Conduct, and all other standards as set by the Arizona Supreme Court.

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## Table of Contents

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Presiding Judge Louis Frank Dominguez - Request for Reappointment.....	2
Resume.....	4
Introduction & Court Overview.....	10
Organizational Chart.....	11
Administrative Staffing.....	12
Accomplishments, Enhancements, and Efficiencies.....	12
Fiscal 2020-2021.....	12
Fiscal 2019-2020.....	14
Fiscal 2018-2019.....	15
Three Years Statistics Reporting.....	16



***"Equal Justice Under Law"***



**Surprise City Court**  
16081 N. Civic Center Plaza, Ste. 105  
Surprise, AZ 85374  
Phone: 623.222.4800  
Fax: 623.222.4801

April 12, 2021

Honorable Peter Swann, Chair  
Judicial Selection Advisory Commission  
Arizona Court of Appeals, Div. 1  
1501 West Washington Street  
Phoenix, AZ 85007

Dear Judge Swann and Members of the Commission:

Please accept this letter as my formal request for reappointment as Presiding Judge of the Surprise City Court. I have served as Presiding Judge since March 25, 2013. Prior to this appointment, I served for approximately 19 years as a judge in the Phoenix Municipal Court.

The Surprise City Court is comprised of professional and outstanding staff, many of whom have worked in the Court system for a decade or more. We are committed to providing due process and the right to be heard. The Surprise City Court strives to provide a fair and impartial forum for all.

My aptitudes align well with the needs of the City of Surprise. I feel privileged to serve along with court staff to ensure the integrity and stature of our Court remain elevated. As Presiding Judge, I am dedicated to planning for excellence and “Justice for the Future.”

During my time presiding over the Surprise City Court, I have developed excellent working relationships with the City Manager, his team, City Directors, and other City departments. Our effective working relationships and coordination were especially important to successfully implementing Court safety protocols during the COVID-19 pandemic.

My resume and information on the Surprise City Court are included in this 2021 Reappointment Package. Some of those items are highlighted below.

**COVID-19 Access to Justice Advancements**

The COVID-19 pandemic began in late January 2020 to early February 2020. Like all organizations, the Court immediately developed a plan to maintain access to justice while safely continuing court operations. The Arizona Supreme Court, Superior Court of Maricopa County, municipal court presiding judges and court administrators, Maricopa County Justice Courts, coordinated our efforts. Our Court quickly formulated and executed a sound and safe plan to continue court operations in a hybrid environment of in-person and telephonic appearances. These methods ensured social distancing and sanitation measures established by the United States Department of Labor and the Center for Disease Control and Prevention (CDC).

### **Leader in the Judicial Community**

#### *Arizona Commission on Judicial Conduct*

I have served as Chair of the Commission from 2011 to present, initially appointed by the Arizona Chief Justice as the Judicial Member (Municipal Court) on January 24, 2007. I was reappointed for a second term on December 12, 2012, and subsequent for a third term on December 5, 2018. The Commission is an independent state agency responsible for investigating ethical conduct complaints against state court justices and judges. The Commission acts on complaints alleging one or more judges engaged in judicial ethical misconduct in a particular case or circumstance.

#### *Arizona Judicial Council*

Appointed by the Chief Justice of the Arizona Supreme Court as a Municipal Court Judge member. My initial term began on July 1, 2015. I was reappointed to a second term on March 28, 2018. The Council is a policy-making body that oversees the judicial system in Arizona. The Council assists the Supreme Court and the chief justice in the development and implementation of policies and procedures for the administration of all courts, uniformity in court operations and coordination of court services that will improve the administration of justice in the state of Arizona.

### **State and National Presentations as Faculty**

Served as faculty for the Arizona Supreme Court, the State Bar of Arizona, the National Judicial College, the American Bar Association (ABA), the National College on Judicial Conduct and Ethics, the National Highway Traffic Safety Administration (NHTSA), and the Governor's Office of Highway Safety (GOHS) for judicial and legal education seminars.

### **Community Outreach**

#### *Surprise City Court Academy*

The Surprise City Court Explorers inaugural program year commenced in November 2015. In October 2018, the Surprise City Court Explorers Program was renamed the "Surprise City Court Academy." This ongoing program promotes interest in law-related careers among high school students by providing them an opportunity to participate in a unique interactive worksite-based career education exploring program focusing on law and government. The students increase their awareness of the judicial system through education, observation, and participation.

### **Recognition**

I was presented with the 2020 State Bar of Arizona Public Lawyers Section Justice Michael D. Ryan Award for Judicial Excellence in September 2020. This award honors a judicial officer who demonstrates a dedication and commitment to improving the justice system.

In conclusion, I genuinely enjoy serving our community and believe that I help "make a difference" as Presiding Judge. I will continue to serve with the highest integrity and strive to ensure that the Surprise City Court provides a fair and impartial forum and "Justice for All." Thank you for your consideration. If you need additional information, please contact me.

Sincerely,

/s/ Louis Frank Dominguez

Louis Frank Dominguez  
Presiding Judge, Surprise City Court

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**JUDGE LOUIS FRANK DOMINGUEZ**

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**Presiding Judge, Surprise City Court**  
**16081 N. Civic Center Plaza, Surprise, AZ 85374, 623-222-4800**  
*Initial Appointment March 25, 2013.*

Primary responsibilities include planning, budgeting, organizing, implementing and evaluating all organizational operations; coordinating policy development for the mayor and city council through the city manager and other executive departments; as well as coordinating with the Arizona Supreme Court and the Superior Court of Maricopa County. Additional responsibilities include deciding motions, conducting pretrial hearings, non-jury trials, and jury trials involving misdemeanor offenses, such as DUI, driver's license violations, domestic violence offenses, assault, disorderly conduct, trespassing, shoplifting, theft, illegal possession of alcohol, drug paraphernalia and weapons, conducting ex parte hearings on protective order petitions, and conducting contested protective order hearings.

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**EMPLOYMENT HISTORY**

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- *Phoenix Municipal Court Judge, 1994 to 2013*
  - ❖ Training Judge from 2003 to 2013
  - ❖ Served on the following Phoenix Municipal Court Committees:
    - Training Committee, Chair
    - Judicial Practices and Procedures Committee, Member
    - Pro Tem Committee, Member
  
- *City of Phoenix Prosecutor's Office, 1984 to 1994*
  - ❖ Trial Bureau Attorney and Appeals Bureau Attorney
  - ❖ Assistant Trial Bureau Chief
  - ❖ Assistant Appeals Bureau Chief
  - ❖ Training Attorney

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**AWARDS**

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- *2020 State Bar of Arizona Public Lawyers Section Justice Michael D. Ryan Award for Judicial Excellence*
  - ❖ Presented in September 2020. This award honors a judicial officer who demonstrates a dedication and commitment to improving the justice system.
  
- *2019 Trainer Excellence Award*
  - ❖ Received the Trainer Excellence Award from the Arizona Supreme Court in recognition of my contributions to the goal of excellence in judicial education, and my commitment to serving the Arizona Judiciary as faculty.

- *2003 Distinguished Service Award*
  - ❖ Presented by the Arizona Supreme Court in the “Improving Public Trust and Confidence” category for outstanding achievement in the Judicial Department and my contributions to improving public trust and confidence in the courts.
- *1998 Distinguished Leadership Award*
  - ❖ Presented by the National Association for Community Leadership. This award recognizes graduates of leadership programs who exemplify the spirit and goals for civic involvement and trusteeship.
- *Recipient of two Phoenix City Manager Awards for “Excellence in Public Service.”*
  - ❖ First award recognized for my involvement as a member of a group of adults who read to third graders at Garfield Elementary School in Phoenix.
  - ❖ Second award recognized my Training Unit’s publication of an international newsletter on the Drug Recognition Evaluation and the alcohol-impaired driver.

**BAR MEMBERSHIPS**

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- *United States Court of Appeals for the Ninth Circuit (Admitted 1986)*
- *United States District Court for the District of Arizona (Admitted 1985)*
- *State Bar of Arizona (Admitted 1983)*

**PRESENTATIONS**

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- *October 1994 – Present*  
Served as faculty for the Arizona Supreme Court, the State Bar of Arizona, the National Judicial College, the American Bar Association (ABA), the National College on Judicial Conduct and Ethics, the National Highway Traffic Safety Administration (NHTSA), and the Governor’s Office of Highway Safety (GOHS) for education seminars including:

Judicial Ethics	Criminal Law Practice and Procedure
Arizona Commission on Judicial Conduct	DUI Cases
Ethics for Court Employees	Sentencing
Judicial Demeanor	Appeals
Jury Trials	Victims' Rights
Diversity and Human Relations	Courtroom Demeanor
Case Management	Procedural Fairness

- *Recent Presentations as Faculty*
  - ❖ *National Judicial College - Handling Traffic Cases An Eight-Part Webinar for Judges New to the Bench*  
January 27, 2021 – Controlling the Courtroom (Self-Represented Litigants/Sovereign Citizens) & Docket/Case Management  
March 3, 2021 – Sentencing to Reduce Recidivism: Goals of Sentencing and How to Achieve Those Goals

- ❖ *American Bar Association (ABA) Traffic Court Seminars*  
 March 10, 2020 – A View from the Bench on Traffic Cases  
 March 19, 2019 – Ethics: Judicial Courtroom Demeanor and Procedural Fairness
  
- ❖ *National College on Judicial Conduct and Ethics*  
 October 24, 2019 – Plenary Session, An Art, Not a Science: Sanctions for Judicial Misconduct  
 October 5 & 6, 2017 – Pro Se Litigants and Judicial Ethics (two sessions)
  
- ❖ *Arizona Annual Judicial Conferences*  
 June 19, 2019 – Hot Topics in Judicial Ethics (two sessions)  
 June 20, 2018 – Hot Topics in Judicial Ethics (two sessions)
  
- ❖ *Arizona Limited Jurisdiction New Judge Orientation*  
 January 11, 2021 – Judicial Ethics  
 January 11, 2021 – Judicial Demeanor and Direct Contempt  
 January 14, 2021 – Human Relations and Diversity  
  
 January 27, 2020 – Judicial Ethics  
 January 27, 2020 – Judicial Demeanor and Direct Contempt  
 January 30, 2020 – Human Relations and Diversity

## **PROFESSIONAL ORGANIZATIONS**

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- *Arizona Judicial Council*  
 Appointed by the Chief Justice of the Arizona Supreme Court as a Municipal Court Judge member. Initial term began on July 1, 2015. I was reappointed to a second term on March 28, 2018. The Council is a policy-making body that oversees the judicial system in Arizona. The Council assists the Supreme Court and the chief justice in the development and implementation of policies and procedures for the administration of all courts, uniformity in court operations and coordination of court services that will improve the administration of justice in the state of Arizona.
  
- *Arizona Judicial Branch - Strategic Agenda Awards Selection Committee*  
 Appointed by the Chief Justice of the Arizona Supreme Court  
 Chair, 2018  
 Member, 2016, 2018, 2019, and 2020
  
- *Arizona Commission on Judicial Conduct*  
 Chair, 2011 to Present  
 Vice-Chair, 2009 and 2010  
 Judicial Member (Municipal Court), January 2007 to Present

Initially appointed by the Arizona Chief Justice as the Judicial Member (Municipal Court) on January 24, 2007. Reappointed for a second term on December 12, 2012 and reappointed for a third term on December 5, 2018. The Commission is an independent state agency responsible for investigating ethical conduct complaints against state court justices and judges. The Commission acts on complaints alleging one or more judges engaged in judicial ethical misconduct in a particular case or circumstance.

- *Arizona Supreme Court Work Group on the Code of Judicial Conduct*  
Member, appointed by the Chief Justice of the Arizona Supreme Court
- *Arizona Task Force on the Code of Judicial Conduct in 2008 & 2009*  
Member, appointed by the Chief Justice of the Arizona Supreme Court
- *Arizona Annual Judicial Conference Planning Committee*  
Chair, 2000 Annual Judicial Conference  
Member, 1998 to Present
- *Governor's Office of Highway Safety (G.O.H.S.) Arizona DUI and Traffic Conference for Judges Planning Committee*  
Co-Chair, 2017, 2018, 2019, and 2020  
Chair, 2015 and 2016
- *Arizona Supreme Court Data Standards Committee*  
Member, from 2013 to 2021. Initial appointment in June 2013 by the Chief Justice of the Arizona Supreme Court
- *American Judges Association*  
Member
- *Arizona Magistrates Association*  
Member and Faculty at Annual Training Conferences.
- *Los Abogados Maricopa County Bar Association*  
Member
- *Maricopa County Bar Association*  
Member
- *Arizona Minority Judges Caucus*  
Founding Member
- *Judicial College of Arizona*  
Chair of 2000 Arizona Judicial Conference Limited Jurisdiction Committee

New Judge Orientation Committee (Limited Jurisdiction)

- ❖ Chair in 2003 and 2004
- ❖ Member from 1999 to 2006
- ❖ Mentor Judge
- ❖ Faculty from 1996 to present

- *Phoenix Hispanic Network*  
 Founding Member  
 A volunteer employee organization that promotes cultural diversity with commitment to excellence through leadership, education and service throughout Phoenix.

**COMMUNITY ACTIVITIES**

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- *Surprise City Court Academy*  
 The Surprise City Court Explorers inaugural program year commenced in November 2015. In October 2018, the Surprise City Court Explorers Program was renamed the “Surprise City Court Academy.” This ongoing program promotes interest in law-related careers among high school students by providing them an opportunity to participate in a unique interactive worksite-based career education exploring program focusing on law and government. The students increase their awareness of the judicial system through education, observation, and participation.
- *Teen Court at Surprise City Court*  
 In collaboration with the Maricopa County Juvenile Probation Department and Dysart Unified School District, the Court hosts and participates in Teen Court.  
 An ongoing program.
- *Mock Trials Held at Surprise City Court*  
 Since 2016, the Court has hosted mock trials by local charter schools, and I served as Presiding Judge volunteer.
- *Xavier Mock Trial Invitational*  
 Presiding Judge volunteer since 2007  
 Annual high school mock trial invitational held at Xavier Preparatory Academy.
- *Valley Leadership*  
 A non-profit organization that was founded in 1979. The mission of Valley Leadership is to "enhance the abilities of individuals to serve and strengthen our communities."  
  - ❖ Board Chair (July 2009 to June 2010)
  - ❖ Community Steward
  - ❖ Member of Valley Leadership Class XIII (June 1991-June 1992)
  - ❖ Director on Valley Leadership Board (July 2006-June 2012) (September 1992-2002)
  - ❖ Chair of the First Valley Leadership Board of Directors Retreat (1992-1993)
  - ❖ Chair of the Directory/Yearbook and Members of Undergraduate Selection Committee (1993/1994)
  - ❖ Executive Committee and Assistant Chair of Undergraduate Programs, Class XVI (1994/1995)
  - ❖ Chair of Undergraduate Programs, Class XVII (1995/1996)
  - ❖ Chair Selection Committee for Class XIX (1996-1997)
  - ❖ Chair of Man & Woman of the Year Selection Committee, Secretary of Board and Executive Committee Member (1997-1998)
  - ❖ Keynote Speaker at Valley Teen Leadership Graduations 2003, 2004, 2005 and 2006.
- *Phoenix Midtown Optimist Club*  
 A non-profit civic organization. The club’s primary focus as “Friend of Youth,” is working directly with young people through educational programs. Most of our activities took place in

Phoenix at Garfield Elementary School, Herrera Elementary School, and St. Mary's High School. (Midtown Chapter has disbanded)

- ❖ Member from 1986 to 2006
- ❖ Served as President in 1991 and 1992
- ❖ Served as *Chairman of Various Programs*:
  - Respect for Law
  - Essay Contest
  - Oratorical Contest
  - Bicycle Safety

## **EDUCATION**

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- *Law School*  
Arizona State University Sandra Day O'Connor College of Law, Tempe, Arizona, Juris Doctor (May 1983)
- *College*  
Arizona State University, Tempe, Arizona  
B.A. Psychology (May 1979)



## **SURPRISE CITY COURT**

Louis Frank Dominguez, Presiding Judge  
Catherine A. Gaudreau, Associate Judge  
Elaina Cano, Court Administrator

### **Introduction & Court Overview**

The Court is fortunate to have an outstanding professional staff, many of whom have worked in the Court system for a decade or more. The Court Administrator, among other significant responsibilities, manages and directs all operational and non-judicial functions of the Court, including the following:

#### **Court Services Unit**

The Court Services Unit assists the public with access to and navigation through the court system and provides essential administrative support for court operations. Employees in this Unit staff the front counter windows and are the first to assist those who come to the Court. They are also the first contact (whether by telephone or in person) for those seeking orders of protection. This Unit receives payments, accepts motions, addresses other in-person inquiries and, subject to exceptions, adjudicates certain civil traffic violations.

#### **Court Operations Unit**

The Court Operations Unit provides direct and essential administrative assistance to the judges in all court proceedings. A judicial assistant is present in each courtroom to ensure matters are promptly made ready for the judge to hear and to assist the judge and others present (attorneys, parties, victims, witnesses, court interpreters) with each matter heard. The judicial assistants coordinate telephonic appearances, including for those seeking orders of protection, prepare all necessary documents as directed by the judge, and process all matters post-hearing. This Unit also establishes and prepares the Court's monthly bench calendars and daily dockets, coordinates the weekly in-custody docket, prepares all motions and other matters submitted for judicial review, and processes the judges' orders on all such matters.

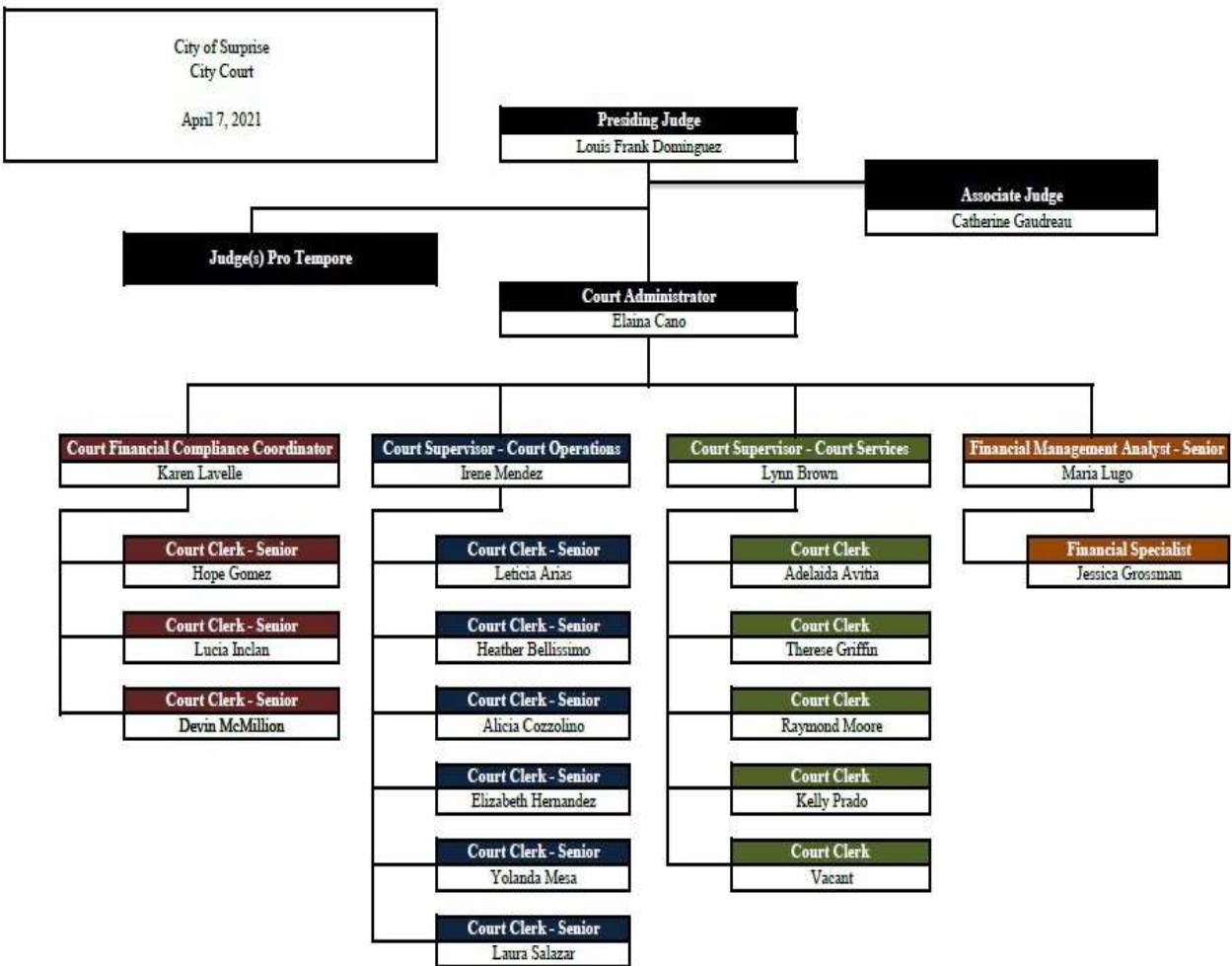
#### **Compliance Unit**

The Compliance Unit helps defendants reduce their outstanding financial obligations and works to increase compliance with the Court's orders. The Compliance Assistance Program (CAP) provides those with past-due financial obligations the opportunity to establish or reestablish payment contracts based on their ability to pay. Those in CAP are then eligible to reinstate their driver license. Staff provides recommendations to the judges and implements orders related to payment plans or financial obligations. Staff also monitors defendants' compliance with other Court directives, including orders to complete treatment programs, counseling, or community restitution work, pay restitution, serve jail sentences, or complete home detention.

**Finance Unit**

The Finance Unit is responsible for ensuring the Court's accounting practices and procedures comply with Arizona Revised Statutes, Arizona Code of Judicial Administration, Minimum Accounting Standards (MAS), Generally Accepted Accounting Principles (GAAP), and all other applicable financial policies and procedures approved by the City of Surprise Finance Department, City Manager, and the City Council.

**Organizational Chart**



**Administrative Staffing**

Staff	FY2021
Judicial Officers	2
Administrators	1
Supervisors	3
Senior Clerks	6
CAP Senior Clerks	3
Court Clerks	5
Senior Financial Management Analyst	1
Financial Specialist	1
<b>TOTAL</b>	<b>22</b>

**Accomplishments, Enhancements, and Efficiencies**

**Fiscal 2020-2021**

The Court's accomplishments, enhancements, and efficiencies took place during the COVID-19 pandemic that began in late January 2020 to early February 2020.

**Continual Success of the Compliance Assistance Program (CAP):** On February 1, 2019, Surprise City Court implemented a Compliance Assistance Program (CAP) designed to help individuals address their court financial obligations, which may ultimately restore their driving privileges with the Arizona Motor Vehicle Division. Since date of implementation, CAP is ongoing. CAP provides a forum to enable those who cannot pay court-imposed fines and fees to seek alternatives such as affordable monthly installments or deferral of their payment obligations.

The table below illustrates CAP collections since program inception.

Method	FY19	FY20	FY21	Totals
FARE CAP	\$25,163.01	\$70,119.35	\$89,337.75	<b>\$184,620.11</b>
Tax Intercept Program	\$128,874.78	\$134,387.79	\$46,485.59	<b>\$309,748.16</b>
Totals	\$154,037.79	\$204,507.14	\$135,823.34	<b>\$494,368.27</b>

**Sustained Outreach Efforts:** Continued the partnership with the Maricopa County Juvenile Probation Department and City of Surprise Youth Services to facilitate a restorative justice program utilizing Teen Court events throughout the school year and during the summer. The Court continued to host Teen Court. Due to the COVID-19 pandemic, on-site Teen Court was suspended in March 2020.

The Court hosted the Surprise City Court Academy program for high school students from our community. This program provides information about our criminal justice system and structured real-world experiences with criminal justice professionals to help young people mature and become

responsible and productive members of their community. Our largest number of students yet was participating in the City Court Academy. Due to the COVID-19 pandemic, the Court suspended the program in March 2020. The program will be reinstated once it is safe and appropriate to do so.

**Court Operations:** During the COVID-19 pandemic, the Court executed a sound and safe plan to continue court operations in a hybrid environment of in-person and telephonic appearances. These methods ensure social distancing and sanitation measures established by the United States Department of Labor and the Center for Disease Control and Prevention (CDC). Everyone who enters the courthouse is required to wear a face mask and stay six feet apart from one another. All visitors and jurors are screened for high temperatures of 100.4 or above and asked a series of questions regarding COVID symptoms or potential direct contact with someone infected. Limiting the number of in-person hearings allows Judicial Officers and court employees to work remotely or to work alternate schedules. Rotation schedules have been implemented for court staff, including Judicial Officers to appropriately limit onsite staffing.

**Access to Justice Advancements During COVID-19 Pandemic:** During unprecedented challenges as a result of the COVID-19 pandemic, the Court implemented the following court access initiatives:

- Telephonic Protective Order Hearings (Ex Parte/Contested) – Pursuant to Surprise City Court Administrative Order No. 20-03, the Surprise City Court utilized AZPOINT telephonic appearances to conduct contact-less Protective Order hearings, both ex parte and contested. Court orders, other documents, and exhibits were distributed electronically to the parties. Pre-COVID, this process required in-person appearances by the applicant/plaintiff, and if contested, the plaintiff and defendant.
- Civil Traffic Hearings – The Court provides an opportunity for parties to appear telephonically for Civil Traffic Hearings, assisting with the coordination of submission and review of exhibits before the hearing commences. All documents, exhibits, and orders are received and distributed electronically to avoid in-person appearances and mailing delays.
- Long-Form Complaints – The Surprise City Court implemented addressing Long Form Complaints telephonically with electronic filing and issuance of signed complaints. Pre-COVID, prosecutors were required to appear in-person to swear in long-form complaints.
- Increased Arraignment Docket to Manage Backlog of Cases - To expeditiously process criminal cases once in-person arraignments resumed, the Court opened a second courtroom, scheduled additional judicial coverage, and advisory counsel to manage the increased arraignment docket. Pre-COVID, the Court had only one courtroom open for criminal arraignments with a limited amount of cases that could be scheduled per day. This change allowed the Court to manage the backlog and avoid further case processing delays.
- Special Accommodations for Cash Payments During Court Closure- The Court made accommodations for defendants who needed to make a cash payment during court closure and could not access a PayNearMe site. The Court allowed submission of cash payments through the drop box with case-specific information. Pre-COVID, the Court prohibited cash payments from being placed in the payment dropbox.
- Self-Service Kiosk – During court closure, the public could access the court lobby to utilize the self-service kiosk to access the Court’s website, AZPOINT, make online payments, and file motions.

- **Extended Grace Periods for FTA/FTP** – The Court extended the grace period for Failure to Appear/Failure to Pay which provides additional time for defendants to address their case without penalty. Pre-COVID, the grace period for defaults/suspensions was 14 days, which was increased to 45 days.

**Successfully Commenced Jury Trials:** The Court has conducted four jury trials successfully in FY20-FY21. Jurors are given reasonable assurance of their safety before participating in the jury process. The Court follows CDC guidelines and limits capacity based on the size of the various spaces within the courthouse. The Court designated large rooms or areas in the courthouse for jury assembly. Plexiglass is strategically placed around in the courtrooms, including the jury box.

**Expansion on Emergency Evacuation Plan:** Court staff completed a comprehensive training of the Court's emergency evacuation plan. Additional procedures were added to the Court's emergency evacuation plan to include jurors' evacuation. This robust addition ensures the safe egress of jurors while protecting the integrity of the jury trial proceeding. Jurors are instructed to remain together as a group while outside. An evacuation coordinator is posted with jurors to avoid any contact from the general public. The plan instructs jurors that discussion of the interrupted trial proceeding is prohibited. Evacuation coordinators monitor the jurors while outside until the emergency is over.

## Accomplishments, Enhancements, and Efficiencies

### Fiscal 2019-2020

**Court Security Enhancements:** In support of our ongoing security initiatives to provide a safe environment for court users, the following security enhancements were implemented: installation of four security cameras; eight cement bollards at the front entrance area of the court building to offer substantial protection from vehicles; window tinting to the exterior windows throughout the courthouse to prevent views from the outside into the court building.

**Developing Partnerships:** Partnered with the Arizona Department of Public Safety (DPS) to review and update outstanding arrest record information and integrated the Arizona Disposition Reporting System (ADRS) on 11 state computers. Over 4,000 arrest records were reviewed and updated to ensure the DPS database's criminal history is accurate and complete.

**Surprise City Court Academy – Early Career Development:** In October 2018, our Surprise City Court Explorers Program was renamed the “Surprise City Court Academy.” This ongoing program promotes interest in law-related careers among students by providing them an opportunity to participate in a unique interactive worksite-based career education exploring program, focusing on the field of Law and Government. The students increase their awareness of the judicial system through education, observation, and participation.

## Accomplishments, Enhancements, and Efficiencies

### Fiscal 2018-2019

**Operational Review:** The Arizona Supreme Court's Administrative Office of Courts conducted a Court Operational Review of the Surprise City Court. The completed evaluation reflects the results of our efforts to ensure that the Surprise City Court provides a fair, impartial, and just forum. The Court utilized the findings of the report as a tool in its continuous pursuit to fulfill its responsibilities to the residents of Surprise, Maricopa County, and the State of Arizona.

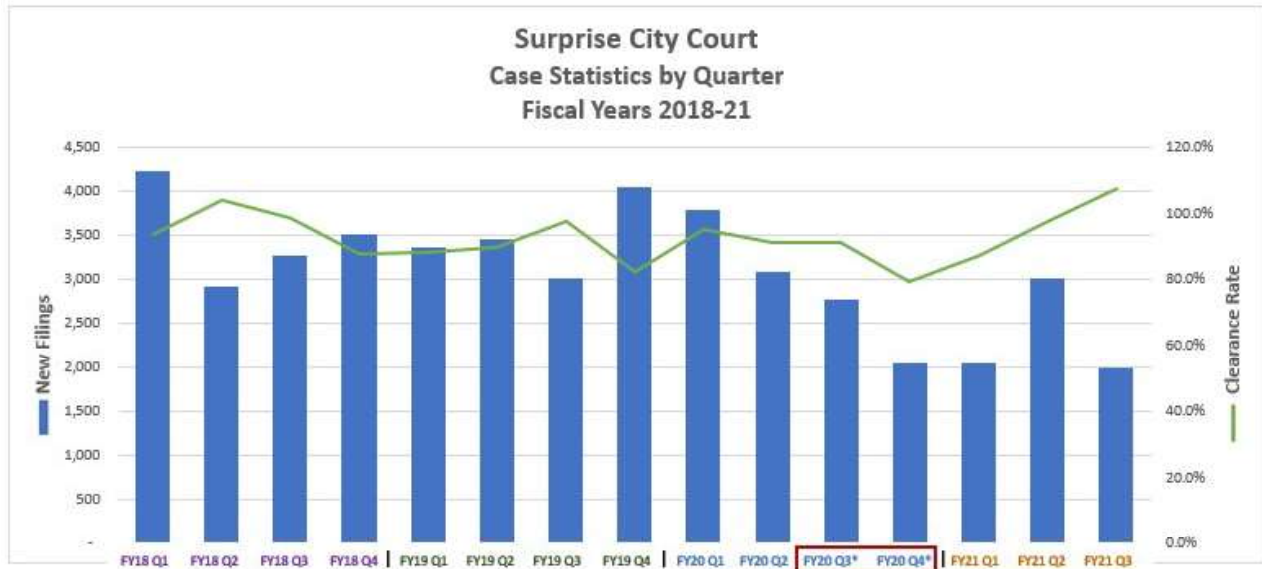
**Case Management System:** The Court implemented a new statewide case management system on August 14, 2017. The new case management system replaced one that was used for 17 years. The newer Arizona Judicial Automated Case System (AJACS) has more features and is better suited for today's technology. AJACS is the electronic record for the Court of the court proceedings. It stores electronic documents of the case. All Court staff attended training provided by the Administrative Office of the Courts (AOC) in July and August. During this comprehensive transition, the staff ensured little to no impact on our court users' services.

**Pilot Court:** The Surprise City Court was selected to be the SQL Server Reporting Services (SSRS) pilot court on ad hoc reporting for AJACS, the statewide case management system. The overall objective was to develop standard reports specific to the Surprise City Court's operational needs and enhance business processes. The Arizona Supreme Court's Administrative Office of the Courts (AOC) reviewed our reports and determined which reports were published and made available for statewide AJACS users.

**Surprise City Court Explorers Program:** On January 17, 2018, the Surprise City Court, commenced our 3rd year of participation in the Surprise City Court Explorers Program. This program provides youth with an opportunity to participate in a unique interactive worksite-based career education exploring program, focusing on the field of Law and Government. Court Explorers increase their awareness of the judicial system through education, observation, and participation.

**Veterans Community:** Maricopa County and the City of Glendale each hold annual events for veterans and invite other courts to participate. The Surprise City Court participates and supports these initiatives to assist veterans with their court obligations. The veteran's circumstances and specific needs are considered. At these events, veterans have an opportunity to address the Arizona Department of Transportation (ADOT), Motor Vehicle Division (MVD) services, social services, address legal issues with attorneys, and apply for health care and other benefits. Educational opportunities are also provided.

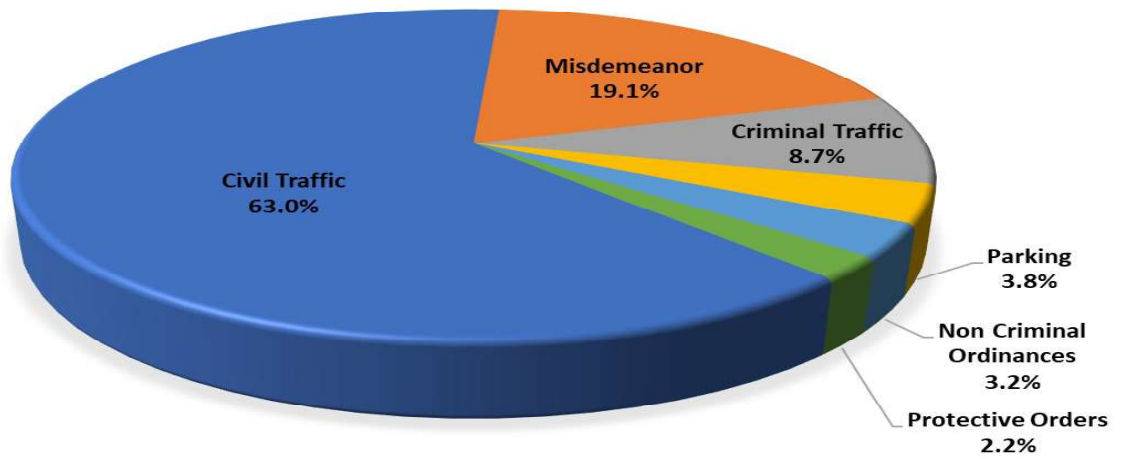
## Three Years Statistics Reporting



### **\*Pandemic Timeline - Surprise City Court:**

- The decrease in the clearance rate from FY20 third quarter to the fourth quarter was due to Court Operations suspending all in-person proceedings because of the public health emergency of the Coronavirus. Authority – Surprise City Court Administrative Order Nos.20-03 & 20-05
- The increase in the clearance rate from FY20 fourth quarter to FY21 first quarter was due to the Court Operations limitations being lifted, and in-person proceedings resumed. Authority – Surprise City Court Administrative Order No. 20-07
- Time-lapse - 71 days between March 23 – June 2, 2020.
- Impact on Caseload Management: Case Filings, Clearance Rates, Pending Caseload, & Case Processing Time standards

Surprise City Court  
Case Types Fiscal 2018-21



**Louis Frank Dominguez**  
Judicial Member  
Chair

**Christopher P. Staring**  
Judicial Member  
Vice-chair

**Colleen E. Concannon**  
Public Member  
Secretary

**Denise K. Aguilar**  
Attorney Member

**Christopher W. Ames**  
Public Member

**Roger Barton**  
Public Member



**COMMISSION ON JUDICIAL  
CONDUCT**

1501 W. Washington Street, Suite 229  
Phoenix, Arizona 85007

Telephone: (602) 452-3200  
[www.azcourts.gov/azcjc](http://www.azcourts.gov/azcjc)

March 22, 2021

**Barbara Brown**  
Judicial Member

**Michael J. Brown**  
Judicial Member

**Joseph C. Kreamer**  
Judicial Member

**Delia R. Neal**  
Judicial Member

**J. Tyrrell Taber**  
Attorney Member

**Margaret H. Downie**  
Executive Director

City of Surprise  
Human Resources Department  
JSAC Staff Liaison  
16000 N. Civic Center Plaza  
Surprise, AZ 85374

Re: Disciplinary Check

To Whom it May Concern:

In response to a request from Maria L. Aranda dated March 19, 2021, Judge Louis Frank Dominguez has never been publicly disciplined for judicial misconduct in Arizona. Pursuant to Rule 9 of the Commission's rules, we are unable to disclose information about dismissed or pending complaints.

I believe this information is responsive to your inquiry. If not, please feel free to contact me by email at [mdownie@courts.az.gov](mailto:mdownie@courts.az.gov).

Sincerely,

/s/ Margaret H. Downie

Margaret H. Downie  
Executive Director

MHD / kw



**SURPRISE CITY COURT**

16081 N. Civic Center Plaza, Suite 105

Surprise, AZ 85374-7478

Office: (623) 222-4800

Fax: (623) 222-4801

April 2, 2021

Honorable Peter Swann  
Arizona Court of Appeals  
Division One  
1501 W. Washington Street, Suite 321  
Phoenix, AZ 85007

***Re: Judicial Availability – Presiding Judge Louis Frank Dominguez***

Dear Judge Swann:

This is to advise the Judicial Selection Advisory Committee that there were no instances where Presiding Judge Louis Frank Dominguez was unavailable without good cause for his judicial duties since his reappointment on July 1, 2017.

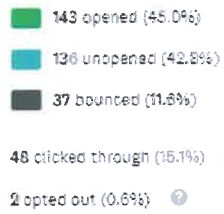
Should you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

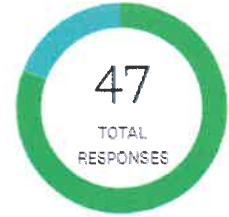
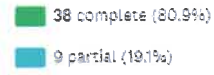
Elaina Cano  
Court Administrator  
[ecanou@courts.az.gov](mailto:ecanou@courts.az.gov)  
Office: 623-222-4832

## Judicial Evaluation Survey (Dominguez)

### Invitations



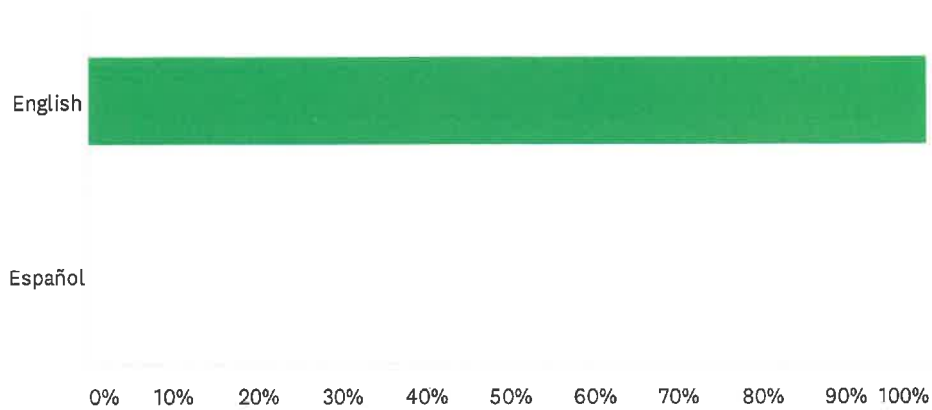
### Responses



Judicial Evaluation Survey

Q1 Please choose which language you would like to take the survey. (Por favor, elija qué idioma le gustaría realizar la encuesta.)

Answered: 47 Skipped: 0



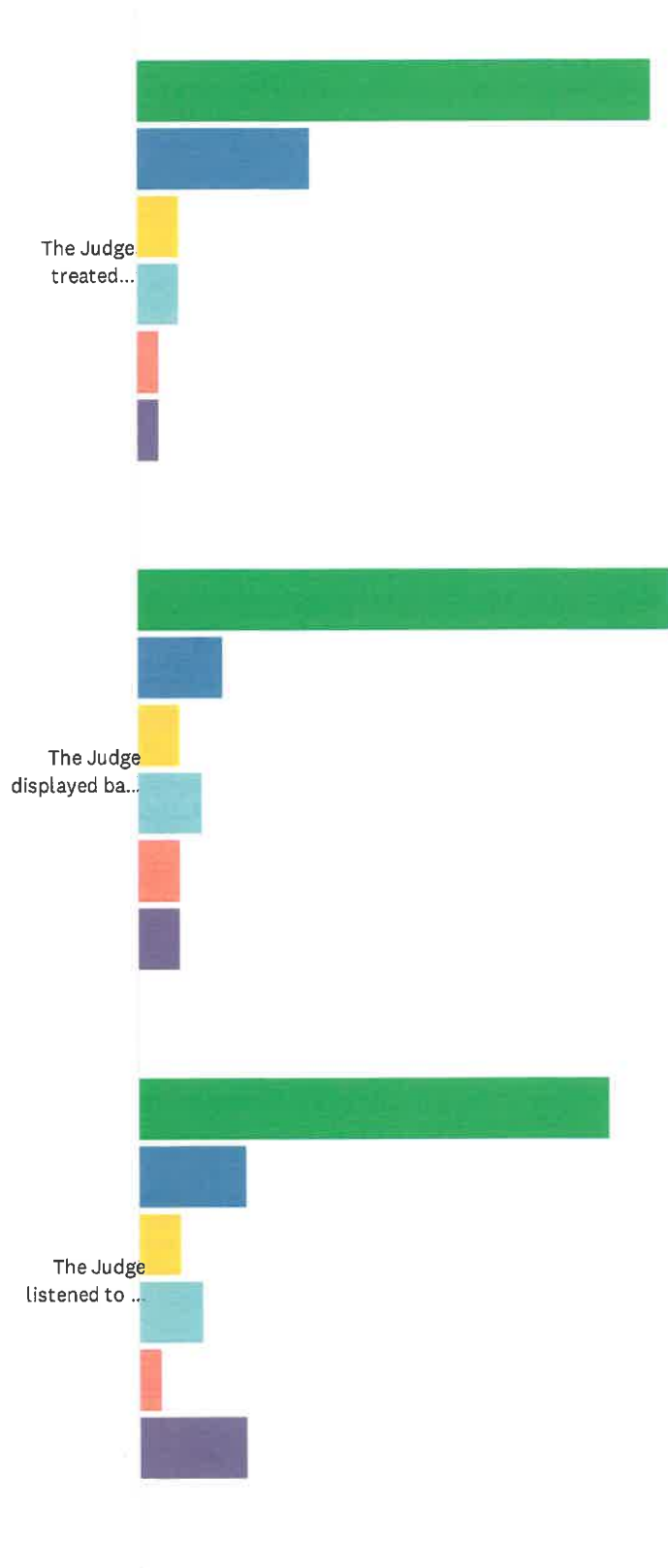
**ANSWER CHOICES**

**RESPONSES**

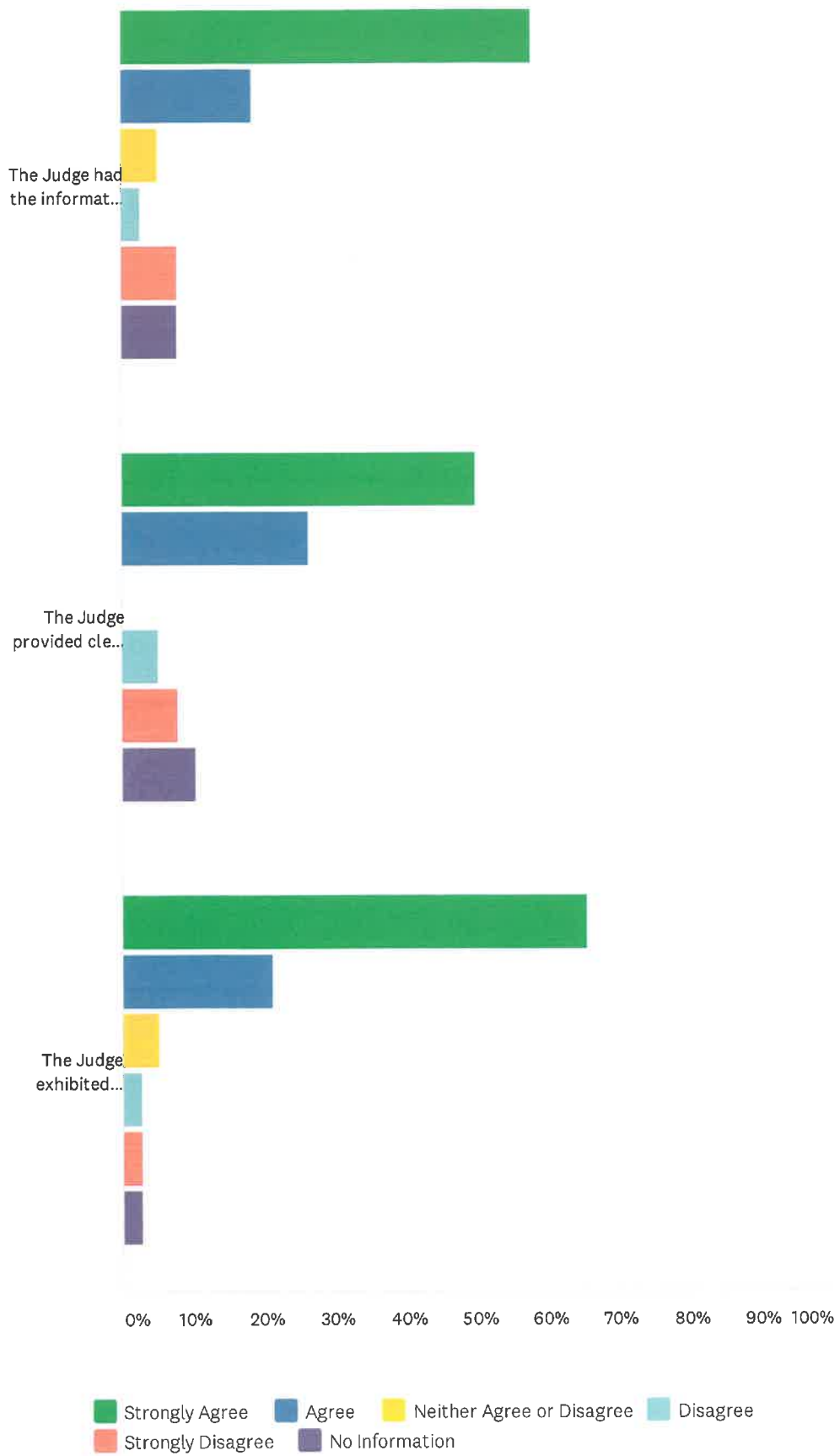
English	100.00%	47
Español	0.00%	0
TOTAL		47

## Q2 Section I: Integrity & Fairness

Answered: 38 Skipped: 9



### Judicial Evaluation Survey



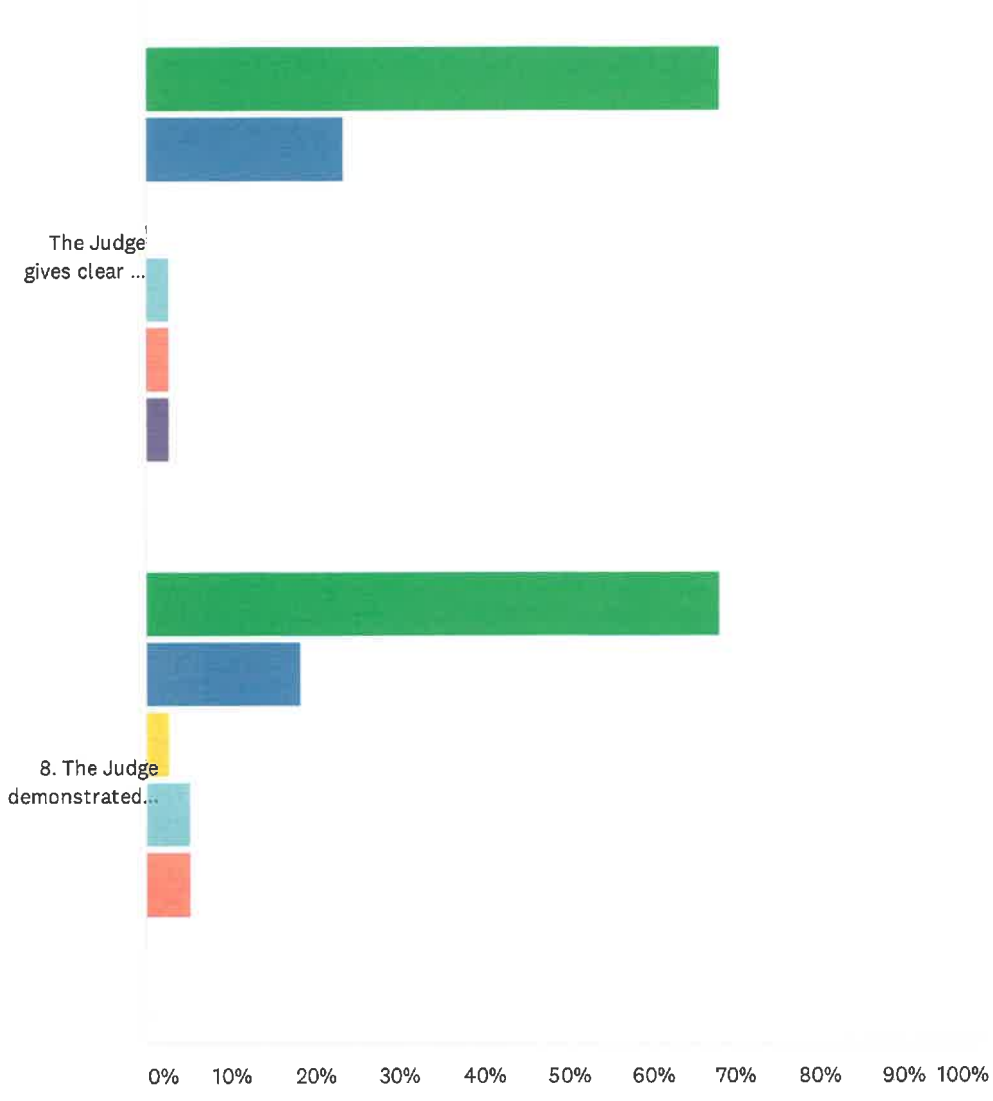
Judicial Evaluation Survey

	STRONGLY AGREE	AGREE	NEITHER AGREE OR DISAGREE	DISAGREE	STRONGLY DISAGREE	NO INFORMATION	TOTAL
The Judge treated everyone the same without regard to age/race/gender/economic status.	63.16% 24	21.05% 8	5.26% 2	5.26% 2	2.63% 1	2.63% 1	38
The Judge displayed basic fairness and impartiality.	65.79% 25	10.53% 4	5.26% 2	7.89% 3	5.26% 2	5.26% 2	38
The Judge listened to all sides of the story before rendering a decision.	57.89% 22	13.16% 5	5.26% 2	7.89% 3	2.63% 1	13.16% 5	38
The Judge had the information necessary to make good decisions about the case.	57.89% 22	18.42% 7	5.26% 2	2.63% 1	7.89% 3	7.89% 3	38
The Judge provided clear instructions and answered all questions pertaining to the case.	50.00% 19	26.32% 10	0.00% 0	5.26% 2	7.89% 3	10.53% 4	38
The Judge exhibited personal integrity.	65.79% 25	21.05% 8	5.26% 2	2.63% 1	2.63% 1	2.63% 1	38

#	COMMENTS (OPTIONAL):	DATE
1	Judge Dominguez is always fair and impartial, both on and off the bench.	4/5/2021 9:14 AM
2	He was understanding, had attention to detail, As much as possible - he abided with "Nothing is real until you experience yourself", and was a citizen and a judge at the same time.	3/29/2021 10:01 AM
3	I felt I was treated fairly by both the judge and the DA.	3/15/2021 4:11 PM
4	Judge Dominguez is the most professional, impartial judge that I have appeared before. I always prefer seeing Judge Dominguez	3/15/2021 10:58 AM
5	Very unprofessional	2/16/2021 9:42 AM
6	Consummately professional and completely unbiased.	2/13/2021 1:50 PM

### Q3 Section II: Communication Skills & Understanding of the Law

Answered: 38 Skipped: 9



■ Strongly Agree  
 ■ Agree  
 ■ Neither Agree or Disagree  
 ■ Disagree  
■ Strongly Disagree  
 ■ No Information

	<b>STRONGLY AGREE</b>	<b>AGREE</b>	<b>NEITHER AGREE OR DISAGREE</b>	<b>DISAGREE</b>	<b>STRONGLY DISAGREE</b>	<b>NO INFORMATION</b>	<b>TOTAL</b>
The Judge gives clear and logical oral communications/instructions.	68.42% 26	23.68% 9	0.00% 0	2.63% 1	2.63% 1	2.63% 1	38
8. The Judge demonstrated a satisfactory knowledge of the law and procedures.	68.42% 26	18.42% 7	2.63% 1	5.26% 2	5.26% 2	0.00% 0	38

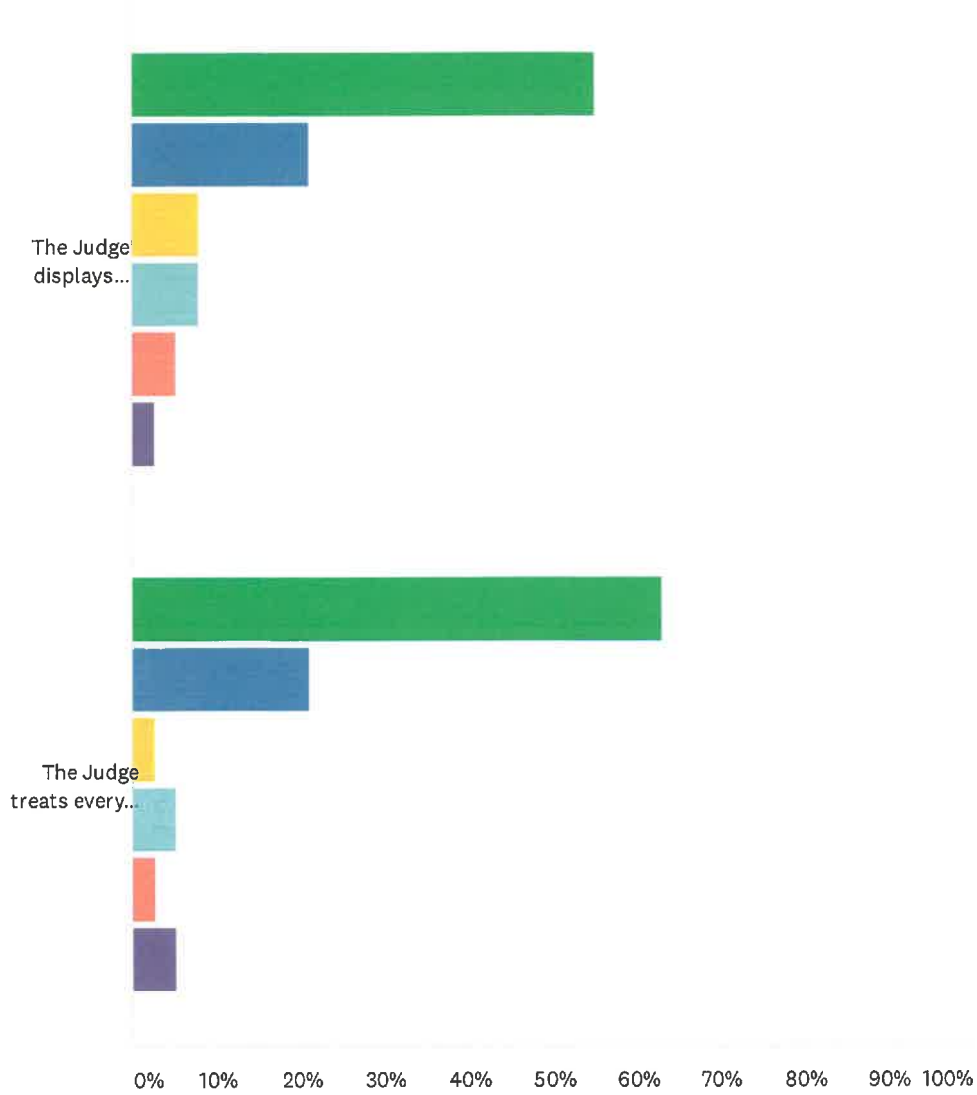
## Judicial Evaluation Survey

#	COMMENTS (OPTIONAL):	DATE
1	Judge Dominguez provides clear instructions and it is important to him that the parties understand the instructions before they leave.	4/5/2021 9:14 AM
2	There was no proof I had threatened anyone and he still found me guilty without proper evidence	3/29/2021 9:08 AM
3	The errors on the ticket were completely ignored. My exhibits clearly showed I was not guilty	2/17/2021 12:28 PM

Judicial Evaluation Survey

Q4 Section III: Judicial Temperament

Answered: 38 Skipped: 9



■ Strongly Agree   
 ■ Agree   
 ■ Neither Agree or Disagree   
 ■ Disagree  
■ Strongly Disagree   
 ■ No Information

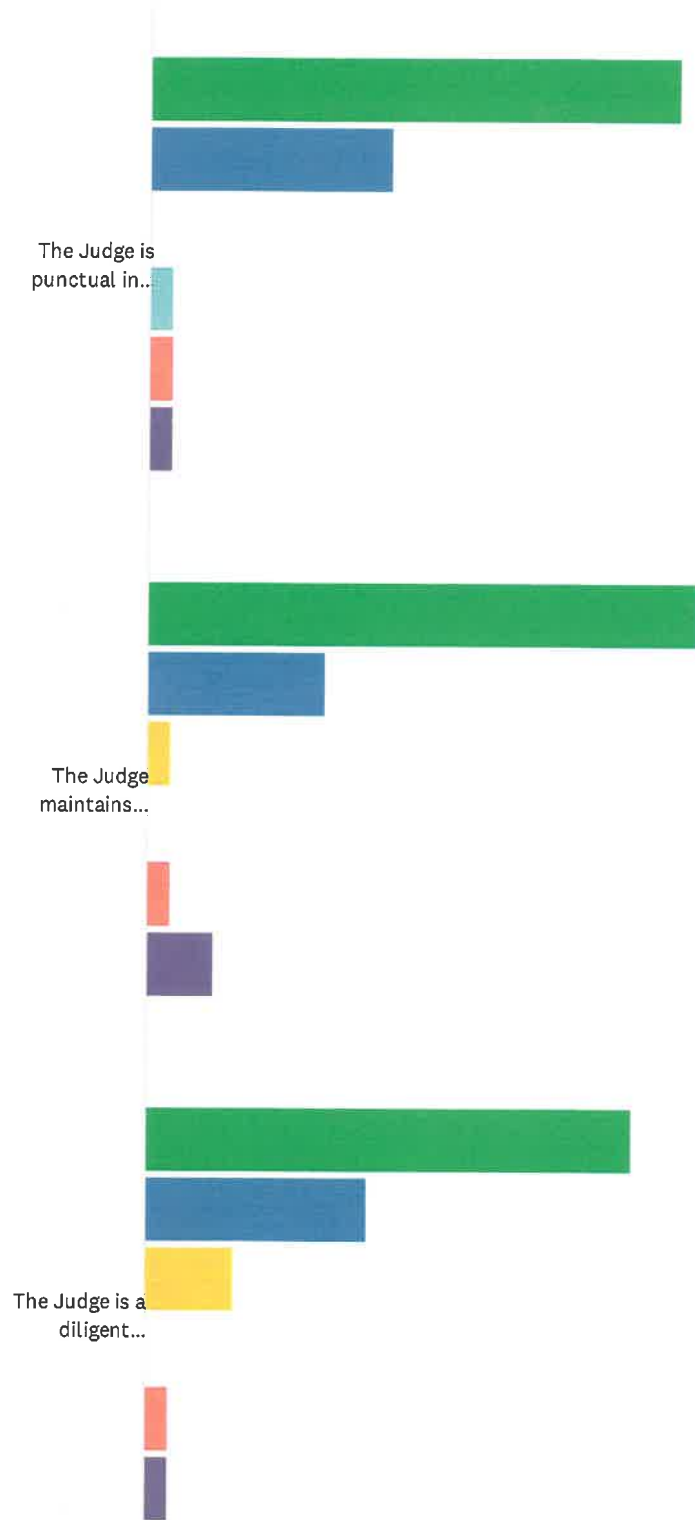
	<b>STRONGLY AGREE</b>	<b>AGREE</b>	<b>NEITHER AGREE OR DISAGREE</b>	<b>DISAGREE</b>	<b>STRONGLY DISAGREE</b>	<b>NO INFORMATION</b>	<b>TOTAL</b>
The Judge displays understanding and compassion.	55.26% 21	21.05% 8	7.89% 3	7.89% 3	5.26% 2	2.63% 1	38
The Judge treats everyone in the courtroom with courtesy and respect	63.16% 24	21.05% 8	2.63% 1	5.26% 2	2.63% 1	5.26% 2	38

## Judicial Evaluation Survey

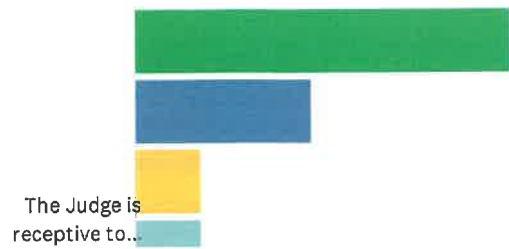
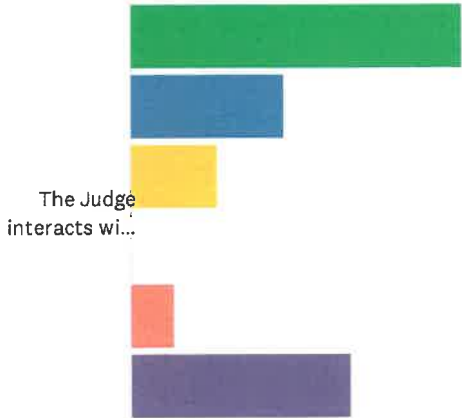
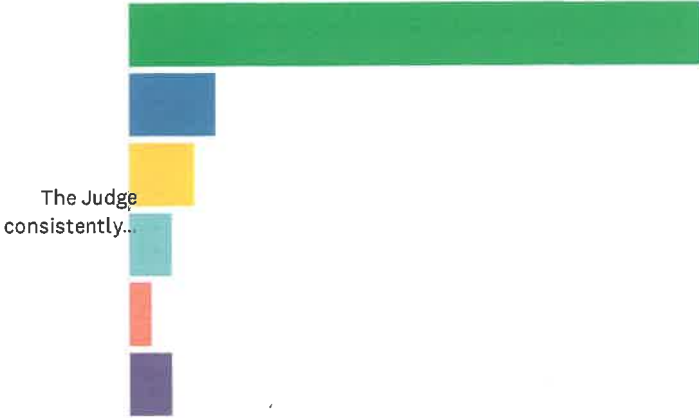
#	COMMENTS (OPTIONAL):	DATE
1	Judge Dominguez is respectful of everyone in the courtroom, including court staff.	4/5/2021 9:14 AM
2	I am with child and was treated cruel and unfairly	3/29/2021 9:08 AM
3	Very unprofessional	2/16/2021 9:42 AM

### Q5 Section IV: Administrative Performance & Leadership

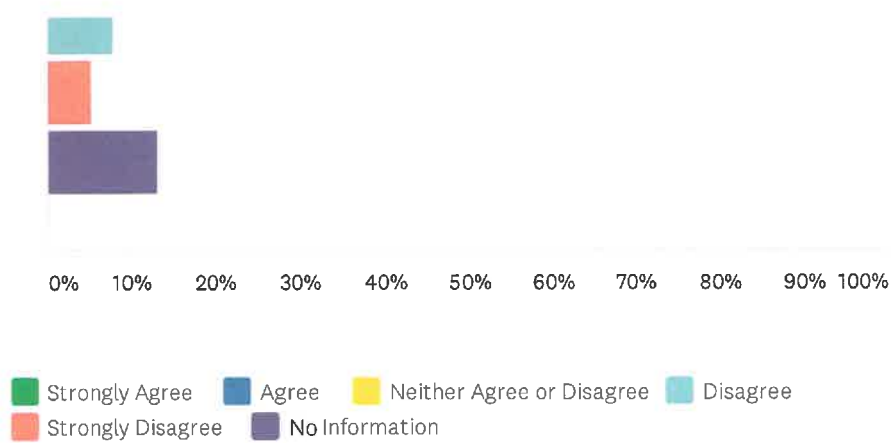
Answered: 38 Skipped: 9



Judicial Evaluation Survey



## Judicial Evaluation Survey



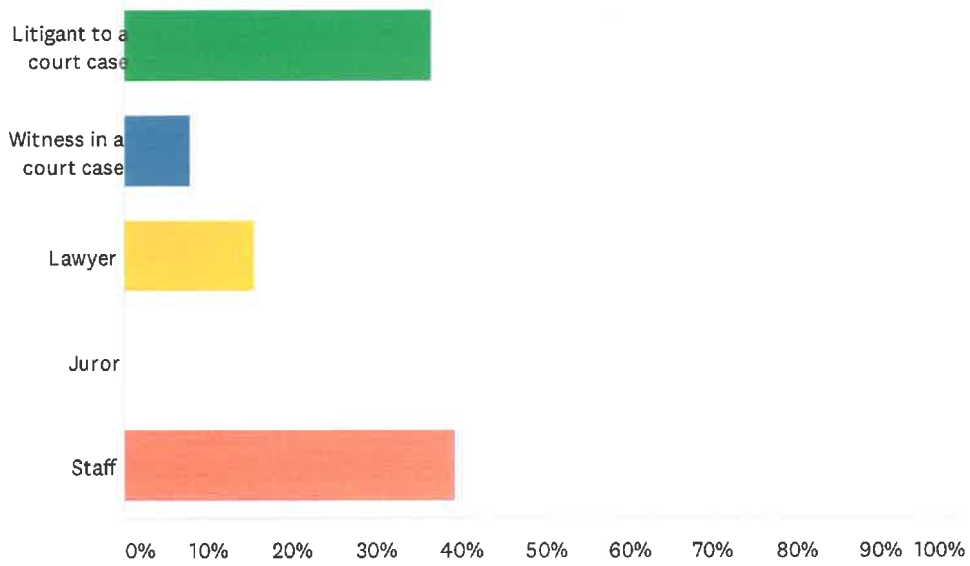
	STRONGLY AGREE	AGREE	NEITHER AGREE OR DISAGREE	DISAGREE	STRONGLY DISAGREE	NO INFORMATION	TOTAL
The Judge is punctual in conducting proceedings.	63.16% 24	28.95% 11	0.00% 0	2.63% 1	2.63% 1	2.63% 1	38
The Judge maintains proper control over courtroom.	65.79% 25	21.05% 8	2.63% 1	0.00% 0	2.63% 1	7.89% 3	38
The Judge is a diligent worker.	57.89% 22	26.32% 10	10.53% 4	0.00% 0	2.63% 1	2.63% 1	38
The Judge consistently treats court staff with respect.	68.42% 26	10.53% 4	7.89% 3	5.26% 2	2.63% 1	5.26% 2	38
The Judge interacts with other Judges in a constructive manner.	39.47% 15	18.42% 7	10.53% 4	0.00% 0	5.26% 2	26.32% 10	38
The Judge promotes the exchange of ideas.	44.74% 17	18.42% 7	7.89% 3	15.79% 6	2.63% 1	10.53% 4	38
The Judge is receptive to feedback.	44.74% 17	21.05% 8	7.89% 3	7.89% 3	5.26% 2	13.16% 5	38

#	COMMENTS (OPTIONAL):	DATE
1	Judge Dominguez has not acceptably addressed staff concerns and complaints as they relate to Judge Gaudreau. Judge Dominguez allows Judge Gaudreau to terrorize court staff with her belligerent behavior. He is not an affective leader for Surprise City Court.	4/5/2021 12:29 PM
2	I was wrongfully charged without proper evidence dates	3/29/2021 9:08 AM

Judicial Evaluation Survey

Q6 Your role in the court business?

Answered: 38 Skipped: 9



**ANSWER CHOICES**

- Litigant to a court case
- Witness in a court case
- Lawyer
- Juror
- Staff
- TOTAL

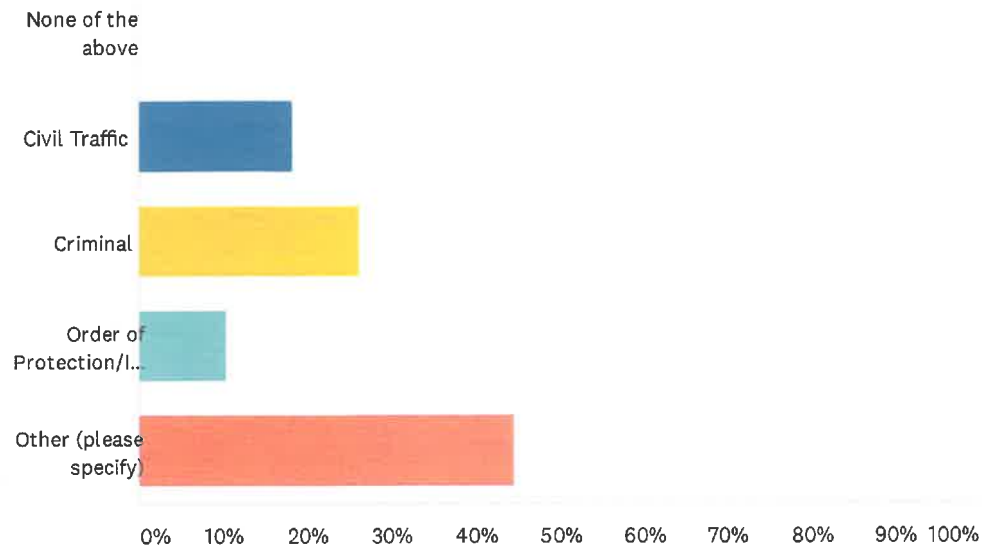
**RESPONSES**

Role	Percentage	Count
Litigant to a court case	36.84%	14
Witness in a court case	7.89%	3
Lawyer	15.79%	6
Juror	0.00%	0
Staff	39.47%	15
TOTAL		38

Judicial Evaluation Survey

### Q7 Type of business that brought you before the court?

Answered: 38 Skipped: 9



**ANSWER CHOICES**

**RESPONSES**

ANSWER CHOICES	RESPONSES	
None of the above	0.00%	0
Civil Traffic	18.42%	7
Criminal	26.32%	10
Order of Protection/Injunction against Harassment	10.53%	4
Other (please specify)	44.74%	17
<b>TOTAL</b>		<b>38</b>

#	OTHER (PLEASE SPECIFY)	DATE
1	staff	4/5/2021 12:29 PM
2	Employee of the Court	4/5/2021 9:14 AM
3	Staff	4/1/2021 9:25 AM
4	I was wrongfully accused in s case that shoud have never made it in front of a judge and was found guilty.	3/24/2021 9:23 PM
5	Invasion of property	3/23/2021 8:27 AM
6	n/a	3/11/2021 11:39 AM
7	I work for the court	2/27/2021 9:35 PM
8	I work there	2/25/2021 6:47 PM
9	I work here	2/23/2021 8:06 AM
10	EMPLOYEE	2/16/2021 4:14 PM
11	Staff	2/16/2021 9:11 AM

## Judicial Evaluation Survey

12	N/a Court staff	2/10/2021 6:35 PM
13	Staff	2/10/2021 3:45 PM
14	Staff	2/10/2021 1:51 PM
15	n/a	2/10/2021 1:40 PM
16	Interpreter	2/10/2021 1:35 PM
17	Administration	2/10/2021 1:22 PM



**CITY OF SURPRISE**  
**Judicial Selection Advisory Commission Meeting**

---

Council Meeting Date: April 22, 2021  
Submitting Department: Human Resources  
Staff Recommendations:

Contact Person:  
District: Citywide

---

Consent: No      Regular: No      Public Hearing: Yes      Report/Discussion: No

---

**Agenda Wording:**

Consideration and action pertaining to the recommendation to Surprise City Council for the reappointment of Associate Judge Catherine Ann Gaudreau whose current term expires June 30, 2021.

---

**Motion:**

I move that the Judicial Selection Advisory Commission recommend Catherine Ann Gaudreau reappointed as the associate judge of the Surprise City Court based on

---

**Background:**

The purpose of the judicial selection advisory commission is to evaluate and make recommendations to the City Council with regard to the selection and reappointment of incumbent presiding and associate city judges. Surprise City Code requires that the JSAC meet and hold at least one public hearing for the reappointment of an associate judge that has applied for reappointment. Catherine Ann Gaudreau is the current associate city judge, whose current term ends June 30, 2021. She has applied for reappointment.

---

**Objective Analysis:**

---

**Policy Compliant:**

---

**Financial Impact:**

The compensation of the associate judge is fixed by the City Council and is included in the city's annual budget.

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**Budget Impact:**

---

**FTE Impact:**

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**ATTACHMENTS:**

1. Catherine A. Gaudreau - 2021 Reappointment Submittal 04 21 2021 (1)
  2. Gaudreau - Judicial Conduct Review
  3. Gaudreau Judicial Availability Letter
  4. Judicial Evaluation Survey (Gaudreau)\_With Translation
-



**Surprise City Court  
Catherine A. Gaudreau, Associate Judge**

**2021 REAPPOINTMENT PACKAGE**

*With gratitude for the past four-plus years and enthusiasm for the next four, I am honored to submit these materials in support of my request to be reappointed as the Associate Judge for Surprise City Court.*

*Judge Catherine A. Gaudreau  
April 12, 2021*





**Table of Contents**

<u>DOCUMENT</u>	<u>PAGE</u>
<b>Judge Gaudreau’s Letter Seeking Reappointment</b> .....	<b>1</b>
<b>Resume of Catherine A. Gaudreau</b> .....	<b>6</b>
<b>Surprise City Court – Overview</b> .....	<b>9</b>
<b>Role of the Associate Judge for Surprise City Court</b> .....	<b>10</b>
<b>Examples of Legal Opinions Issued by Judge Gaudreau at Surprise City Court</b> .....	<b>11</b>
<b>State v. Baum</b> – order entered following an evidentiary hearing in a DUI case, denying the defendant’s four motions to suppress evidence and to dismiss the case, which were based on alleged violations of her Miranda rights, her right to counsel, and the State’s alleged failure to preserve evidence .....	<b>13</b>
<b>State v. Harko</b> – order entered following an evidentiary hearing in a DUI case, denying the defendant’s motion to suppress the results of her blood draw, where defendant alleged her consent to have her blood drawn was coerced in violation of her Fourth Amendment right to be free from an unreasonable search and seizure .....	<b>25</b>
<b>State v. Daghawi</b> – in a shoplifting case, an order granting the defendant’s motion to preclude the State from calling a late-disclosed witness; and an order denying the State’s motion to depose a witness in lieu of presenting her live testimony at the jury trial. The preclusion of witness decision was the subject of a special action filed by the State; jurisdiction was accepted but relief was denied, and the case was remanded for further proceedings consistent with my order .....	<b>30</b>
<b>State v. Bloomfield</b> – findings and judgment of acquittal in a case alleging disorderly conduct and misconduct involving weapons .....	<b>40</b>
<b>Thank You</b> .....	<b>44</b>



## Judge Gaudreau's Letter Seeking Reappointment

April 12, 2021

Honorable Peter Swann, Chair  
Judicial Selection Advisory Commission  
City of Surprise  
16000 N. Civic Center Plaza  
Surprise, AZ 85374

Dear Judge Swann and Members of the Commission:

Please accept this letter as my formal request for reappointment as the Associate Judge for the Surprise City Court. It has been my honor to serve in this role since my initial appointment on December 19, 2016.

I am proud of and gratified by the work I have done in my first term, and believe I have much more to offer the City and the Court, as well as the Arizona judiciary. In partnership with our Presiding Judge Louis Frank Dominguez, I am excited about what the next four years may bring.

### Types of Matters Heard:

During my initial tenure, I have had the privilege of presiding over every type of misdemeanor criminal and civil case filed with the Surprise City Court. This includes DUI, Reckless Driving, Domestic-Violence-designated offenses, Assault, Disorderly Conduct, Shoplifting, Criminal Damage, Misconduct Involving Weapons, Possession of Drug Paraphernalia, Indecent Exposure, Contributing to the Delinquency of a Minor, Criminal Speed, and any other criminal and civil violations alleged under the Arizona Revised Statutes or the Surprise Municipal Code.

For the majority of that time, my regular caseload has included the Court's weekly in-custody docket, the twice-weekly arraignment dockets, the contested civil traffic and code enforcement hearings, and, for self-represented litigants and those with privately-retained counsel, all pretrial and trial readiness dockets, non-jury trials, sentence reviews, probation revocations, restitution hearings, orders to show cause, and motion hearings. As a result, over the past four-plus years I have presided over many thousands of arraignments, changes of plea, and countless other types of hearings and trials.

Along with my scheduled cases, on a near-daily basis I hear *ex parte* petitions for orders of protection and injunctions against harassment. I have also presided over contested hearings on previously-issued protective orders. Before attendance at the Court was limited due to COVID-19, I routinely heard walk-in motions, including motions to quash warrants and for other relief.

### Jury Trials I Have Presided Over:

In addition to my above-described courtroom responsibilities, to date I have presided over 12 jury trials, including for charges of DUI and Reckless Driving. In doing so, I presided over the first jury trial to be held in the State of Arizona following the COVID-19 pandemic (once such trials were permitted to resume last Summer/Fall), and conducted two more thereafter.

### Contributions to the Arizona and National Judiciary:

I have also been fortunate to have the opportunity to contribute to the greater Arizona and national judiciary, in the following respects.

COVID-19 Jury Trials -- As a result of my work regarding post-COVID-19 jury trials (described more fully in my submittal), I was asked to and did present my experiences and recommendations (along with the materials I had prepared for such trials) to the Arizona Supreme Court's COVID-19 Committee on the Continuity of Court Operations During a Public Health Emergency (known as the "Plan B Workgroup"). I understand that other municipal courts in the Valley are following our Court's lead at this time.

CIDVC -- In July 2019, I was appointed by the Chief Justice of the Arizona Supreme Court to serve a three-year term as a Limited Jurisdiction Judge member of CIDVC, the Committee on the Impact of Domestic Violence and the Courts. CIDVC assists the Arizona Judicial Council with the development and implementation of policies on domestic violence and the courts. I currently serve on several subcommittees of CIDVC, including Judicial Education, ARPOP Rules and Forms, and PO2020. My most recent projects include drafting new judicial bench cards, including a procedural card for holding contested hearings on protective orders, and another entitled, "13 Things Every Arizona Judge Should Know About Non-Fatal Strangulation Cases."

Judicial Engagement Network -- In February 2021, I was honored to be selected as a Fellow in the Judicial Engagement Network's 2021 Fellowship Program. The Judicial Engagement Network (JEN) is a national community of engaged judges and judicial officers who are leading efforts to improve community responses and judicial and court practices regarding domestic and dating violence, sexual assault, and stalking. JEN's 2021 Fellowship Program focuses on projects seeking to create systems change in communities and courts to address the intersections of domestic violence and the impact of the COVID-19 pandemic, racial injustice, and bias within systems or institutional barriers to access to justice.

My JEN fellowship proposal was multi-faceted. On a broad scale, it involves working toward establishing a future domestic violence specialty court in Surprise, with meaningful oversight in such cases that will be designed to hold defendants accountable, obtain timely compliance with court directives, better ensure victim safety, and ultimately (hopefully) reduce recidivism. A more immediate aspect of my proposal is to establish a firearms surrender practice in Surprise to ensure compliance by those who are prohibited possessors under orders of protection that have been issued by our Court. As a result of and after completing my fellowship, I will become a JEN mentor judge to others in this national community.

Arizona Magistrate's Association -- At the 2019 annual conference of the Arizona Magistrate's Association, in an educational session regarding Arizona's new (but not yet in effect) state law regulating cell phone use while driving, I was asked as a very last-minute substitute to present a session

regarding the City of Surprise's Hands-Free Ordinance (S.C.C. § 54-8(B), which would eventually be superseded by State law, A.R.S. § 28-914). I was happy to do so, but with no time to prepare simply called up the ordinance on my phone to facilitate my presentation.

AZPOINT Informational Session -- In late 2019, prior to the statewide implementation of the new protective order process known as AZPOINT (effective 1-1-2020), A CIDVC colleague and I organized a training and information session which was held at Surprise City Court. Presentations were made by leaders from Arizona's Administrative Office of the Courts (AOC) and the Arizona Criminal Justice Commission (AJCJ). The training was open to all interested individuals and stakeholders. Those in attendance included representatives from the City's prosecution division, police department, defense attorneys, victim advocates, other City employees, and most if not all of our court staff.

#### Surprise City Court Academy:

The Surprise City Court Academy is a rare gem in the Arizona court system. Designed and instituted by Presiding Judge Dominguez in 2016, he and I, working with the City's Youth Services Coordinator, court staff, and volunteer attorneys, conduct an in-house, interactive program for students from Surprise's high schools.

Over a period of four months, we meet with the students twice a month to teach them about court-related legal careers, the work of the court, and conducting a trial. We also invite other city representatives, including the chief of police, victim advocates, prosecutors, and court-appointed defense attorneys, to speak with them about their chosen careers. We then supervise their presentation of a mock trial at the court, an event their family and friends are invited to attend. The program culminates with a trip to the Arizona Supreme Court, where the students hear oral arguments and have the opportunity for Q&A with appellate court judges, followed by a final send-off at a city council meeting, where students are recognized by the Mayor and Council.

It has been my great pleasure to work with and mentor the students who join our City Court Academy. With each succeeding year the enthusiasm for our program has grown (from two students in the initial class, to 18 in the most recent), and the accomplishments of our students has surpassed our expectations. While the program was temporarily suspended in 2020 due to COVID-19, we look forward to reinstating the program when circumstances permit.

#### Additional Contributions to Surprise and the Surprise City Court:

During my first term in Surprise, I have also had the opportunity to recommend and help implement a number of improvements to our general processes within the Court. Such improvements include assisting Judge Dominguez and our Court Administrator with formulating policies on a variety of matters, particularly those that relate to my assigned dockets or other areas of special expertise.

For example, I have reconfigured certain dockets to better and more efficiently serve the litigants, and instituted a group arraignment to help streamline some of our busiest dockets. I have revised numerous court forms to better inform defendants, reflect changes in the law, and improve judicial and staff efficiencies.

In connection with our post-COVID jury trials, I drafted materials for a PowerPoint presentation to inform those summoned for jury duty of the COVID-related protocols and practices Surprise City Court has put in place for their protection. This PowerPoint is shown to all panelists, along with the AOC's

jury trial informational video and the Chief Justice's video on jury trials during COVID. When the Court's Emergency Evacuation Plan was recently revised, I drafted additional procedures to include those who may be present for jury duty, to ensure the safe and sequestered egress of all panelists while also protecting the integrity of the jury selection process or any jury trial that may be in progress.

Review by the Appellate Court:

With respect to review of my work by higher courts, I have had one criminal case appealed to the Superior Court following the defendant's conviction for DUI, and one special action filed by the State in a shoplifting case. My rulings in both matters were upheld by the appellate court, which affirmed my rulings in the appeal and granted jurisdiction but denied relief in the special action.

As part of my reappointment package, I have included several examples of my legal orders and opinions. That includes two orders entered following evidentiary hearings I held, one following a non-jury trial, and the order which formed the basis of the special action filed by the State.

Closing Comments:

I care deeply about the work I am privileged to do for Surprise City Court and the citizens of this wonderful City. My personal commitment is to continue to follow the law in a fair and impartial manner; to ensure that each individual has an equal access to justice in our Court, regardless of their station in life or economic status and whether they are represented by counsel or not; to continue to apply my strong work ethic, judicial knowledge and experience, enthusiasm, and dedication, to be well-prepared for each type of proceeding I am asked to handle; and to exercise my discretion in a fair, respectful, and compassionate manner, showing grace to one and all.

Judge Dominguez and I, along with our Court Administrator Ms. Cano, have a shared passion for the work of Surprise City Court. Working together with our staff, we will continue to pursue our common goal of improving what is already an outstanding city court. In doing so, I expect we will further establish our Court as a leader in Arizona's municipal court system of justice.

I am indebted to Presiding Judge Dominguez for his initial recommendation of me in 2016, and for his continued support of me throughout my tenure. I also wish to express my appreciation to you and the members of the Commission for your review of my reappointment materials.

I look forward to meeting with the Commission on April 22, 2021.

Yours truly,

/s/ Catherine A. Gaudreau

Associate Judge, Surprise City Court



**Resume of  
Catherine A. Gaudreau**

Please see Pages 6 - 8

## CATHERINE A. GAUDREAU

16081 N. Civic Center Plaza, Suite 105, Surprise AZ 85374

Phone: 623-222-4800 | FAX 623-222-4801

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Associate Judge  
Surprise City Court • Surprise, AZ

2016 - Present

As the Court's only Associate Judge, I preside over all aspects of misdemeanor cases including DUI, Domestic Violence, Reckless Driving, General Criminal, and Criminal Traffic offenses, as well as civil cases including violations of the Municipal Code, Property Code, and Civil Traffic laws. I also preside over jury and bench trials, and have conducted 12 jury trials to date.

My regular weekly dockets include the court's in-custody hearings, one full-day and one half-day arraignment calendar, contested code enforcement and civil traffic hearings, and all pretrial and trial readiness conferences for self-represented litigants and those with privately-retained (non-public defender) counsel. I also hear *ex parte* petitions for protective orders on a daily basis.

In addition to my regularly-scheduled matters, I conduct bench trials, evidentiary hearings on motions to suppress or to dismiss, restitution hearings, sentence reviews, probation revocations, OSCs, contested protective order hearings, and a variety of telephonic settings, including Changes of Plea. I handle walk-in motions as circumstances permit, including motions to quash warrants and for other relief; swear-in long-form complaints; and, in between handling cases in the courtroom or after hours, rule on matters in judicial review. I serve as Acting Presiding Judge as needed.

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## EMPLOYMENT HISTORY

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Assistant City Prosecutor II  
City of Scottsdale • Scottsdale, AZ

2006 - 2016

With Scottsdale I prosecuted DUIs, domestic violence, general misdemeanors, juvenile traffic and status offenses, and city code violations. I successfully tried 70 cases to Scottsdale juries and hundreds more to the court. I worked in the Domestic Violence, Juvenile Court, Rule 11, and Motions and Appeals units; held a leadership role on courtroom teams, negotiated case resolutions, trained and advised police officers, and helped train less-experienced prosecutors and interns, both in trial practice and in developing their ability to make independent judgments within office guidelines. In 2015, I authored an office training manual entitled, "Victims' Rights and the State's Responsibilities in Scottsdale City Court."

Assistant District Attorney  
Milwaukee County District Attorneys Office • Milwaukee and Wauwatosa, WI

1991 - 2002

As a State prosecutor, I conducted numerous jury trials in criminal and civil cases in the Superior Court; litigated suppression motions, detention hearings, competency proceedings, juvenile waiver contests, and civil forfeitures. My assignments included OWI Project Coordinator, Misdemeanor Team, Children's Court, Domestic Violence Unit, Child Sexual Assault, and Intake Court. In child abuse or neglect cases, initial jurisdiction over the child is a jury issue; while such trials were rare, I tried and won three, in cases involving Munchausen's Syndrome by Proxy; chronic paranoid schizophrenia; and a parent's sexual addiction resulting in the severe neglect of her children. Based on my *pro bono* experience in California, I assisted the District Attorney in establishing an Attorney Loaner Program with area law firms, resulting in *pro bono* services to our office.

Litigation Associate

1987 - 1991

Cooley Godward Castro Huddleson & Tatum (now, Cooley LLP) ·  
San Francisco, CA

With this international law firm, I handled business litigation and appeals in state and federal courts. My practice areas included bank fraud, securities litigation, employment discrimination, professional liability, construction litigation, FSLIC/FDIC representation, RICO, product liability, and bankruptcy. By request of the Litigation Dept. Chair, I supervised our firm's *pro bono* representation of a death row inmate's mandatory appeal to the California Supreme Court, including regularly meeting with the client at San Quentin Prison to develop mitigation evidence for a requested new penalty phase trial. I also participated in recruiting efforts and served on the firm's Summer Associate Committee.

*Pro Bono* Deputy District Attorney

Winter, 1991

Alameda County District Attorney's Office · Hayward, CA

While an Associate at Cooley, through an Attorney Loaner Program between Bay Area law firms and area District Attorney's Offices, I served a 3-month term as a *pro bono* Deputy District Attorney in Alameda County, California, where I successfully tried several criminal cases to juries. A memorable occasion was when local resident Fred Korematsu, of *U.S. v. Korematsu*, was present for jury duty.

Litigation Associate

1984 - 1987

McDermott, Will & Emery · Miami, FL

In the Miami office of this international, Chicago-based firm, I handled jury and bench trials, civil motion practice, and briefed and argued several cases in state appellate courts. My practice areas included RICO, insurance defense, health care litigation, professional liability, UCC, admiralty, construction litigation, aviation law, and general commercial litigation. In one notable jury trial, I worked with a senior partner from our Chicago office to defend an insurer which had denied coverage after an arson fire destroyed a local discotheque, on the grounds that the plaintiff business owner himself was responsible for the fire; we lost at trial after our arson defense was stricken by the judge, but following our successful appeal of that ruling the case was remanded for a new trial.

Law Clerk

1982 - 1984

Blackwell, Walker, Gray, Powers, Flick & Hoehl · Miami, FL

During my 2<sup>nd</sup> and 3<sup>rd</sup> years of law school, I worked in the firm's litigation and appellate divisions. I wrote several appellate briefs, drafted a wide variety of discovery and case-dispositive motions and responses, and assisted attorneys with all aspects of civil trial practice, including at trial.

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## EDUCATION

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J.D., *cum laude*, 1984  
University of Miami School of Law  
Coral Gables, FL

B.A., Political Science, honors, 1981  
Florida International University  
Miami, FL

Moot Court; Dean's List; Tuition Scholarship;  
Invitee, Lawyers of the Americas the Journal  
and Law Review Competition

Concentration in Business and Accounting;  
Dean's List; Honorary Accounting Society;  
Tuition Scholarships

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## JUDICIAL CONFERENCES & TRAINING

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- Arizona's Annual Judicial Conference (2017, 2018, 2019)
- Governor's Office of Highway Safety Judicial DUI Conference (2017, 2018, 2019)
- American Bar Association's Judicial Traffic Seminar (2019, 2020)
- Arizona Magistrates Conference (2018, 2019)
- Judicial Engagement Network's Leadership Summit (2019)
- Tucson City Court's DV Mentor Court Training (2018)
- Limited Jurisdiction New Judge Orientation (2017)
- Arizona Civil Traffic Hearing Officer Training (2017)
- NJIDV's Enhancing Judicial Skills in Domestic Violence Cases Workshop (2017)
- Webinars, as available on Wendell, on topics pertinent to my judicial practice

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## MEMBERSHIPS, COMMITTEES, AND COMMUNITY

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- ❖ Admitted to the State Bars of Arizona (2005), Wisconsin (1991), California (1988) and Florida (1984); Active status in Arizona; Inactive in WI, CA and FL
- ❖ Ninth Circuit Court of Appeals
- ❖ U.S. District Court for the Northern and Central Districts of California and the Southern District of Florida
- ❖ Arizona Supreme Court's Committee on the Impact of Domestic Violence in the Courts, Member (appointed 2019)
- ❖ National Judicial Engagement Network - Member (2019 to date) and Fellow (Fellowship awarded 2021)
- ❖ American Bar Association, Member - Judicial Division, Litigation Section, and National Conference of Specialized Court Judges
- ❖ American Judges Association
- ❖ Arizona Magistrates Association
- ❖ Arizona Women Lawyers Association
- ❖ Arizona Chapter of Women Leading Government
- ❖ City of Surprise's City Court Academy (formerly, City Court Explorers) (2017 to date)
- ❖ Scottsdale Domestic Violence Action Team, awarded Arizona Attorney General's Distinguished Service Award (2015)
- ❖ Finalist for Scottsdale's City-wide "Respect the Individual" Award; nominated by Scottsdale City Attorney for my work in the Domestic Violence Unit (2014)
- ❖ Volunteer panelist and speaker at ASU's Pre-Law Society and Barrett Honors College
- ❖ Volunteer judge at Sandra Day O'Connor College of Law's client counseling competition
- ❖ "Law Day" panelist at high schools in Scottsdale and Surprise
- ❖ Lecturer regarding juvenile law at Scottsdale middle schools

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## **SURPRISE CITY COURT**

**Louis Frank Dominguez, Presiding Judge**  
**Catherine A. Gaudreau, Associate Judge**  
**Elaina Cano, Court Administrator**

### **Surprise City Court ~ Overview**

The Court is fortunate to have an outstanding professional staff, many of whom have worked in the Court system for a decade or more. The Court Administrator, among other significant responsibilities, manages and directs all operational and non-judicial functions of the Court, including the following:

#### **Court Services Unit**

The Court Services Unit assists the public with access to and navigation through the court system and provides essential administrative support for court operations. Employees in this Unit staff the front counter windows and are the first to assist those who come to the Court. They are also the first contact (whether by telephone or in person) for those seeking orders of protection. This Unit receives payments, accepts motions, addresses other in-person inquiries and, subject to exceptions, adjudicates certain civil traffic violations.

#### **Court Operations Unit**

The Court Operations Unit provides direct and essential administrative assistance to the judges in all court proceedings. A judicial assistant is present in each courtroom to ensure matters are promptly made ready for the judge to hear and to assist the judge and others present (attorneys, parties, victims, witnesses, court interpreters) with each matter heard. The judicial assistants coordinate telephonic appearances, including for those seeking orders of protection, prepare all necessary documents as directed by the judge, and process all matters post-hearing. This Unit also establishes and prepares the Court's monthly bench calendars and daily dockets, coordinates the weekly in-custody docket, prepares all motions and other matters submitted for judicial review, and processes the judges' orders on all such matters.

#### **Compliance Unit**

The Compliance Unit helps defendants reduce their outstanding financial obligations and works to increase compliance with the Court's orders. The Compliance Assistance Program (CAP) provides those with past-due financial obligations the opportunity to establish or reestablish payment contracts based on their ability to pay. Those in CAP are then eligible to reinstate their driver license. Staff provides recommendations to the judges and implements orders related to payment plans or financial obligations. Staff also monitors defendants' compliance with other Court directives, including orders to complete treatment programs, counseling, or community restitution work, pay restitution, serve jail sentences, or complete home detention.

#### **Finance Unit**

The Finance Unit is responsible for ensuring the Court's accounting practices and procedures comply with Arizona Revised Statutes, Arizona Code of Judicial Administration, Minimum Accounting Standards (MAS), Generally Accepted Accounting Principles (GAAP), and all other applicable financial policies and procedures approved by the City of Surprise Finance Department, City Manager, and the City Council.



## Role of the Associate Judge for Surprise City Court

The role of the Associate Judge for the City of Surprise is to adjudicate in accordance with State law, City ordinances, the Arizona Supreme Court's Rules, and the Arizona and United States Constitutions, any and all cases filed with the Surprise City Court. Such cases include misdemeanor criminal, civil traffic, and code enforcement matters, as well as orders of protection.

The Associate Judge presides over initial appearances and arraignments, pretrial conferences, jury trials, non-jury trials, evidentiary and other motion hearings, civil traffic and code enforcement hearings, the in-custody docket, pretrial and trial readiness conferences, probation revocations, sentencing and restitution hearings, and orders to show cause. The Associate Judge reviews and rules on all motions and other matters which may be submitted for Judicial Review, whether pre- or post-adjudication; conducts *ex parte* hearings on petitions for orders of protection; presides over contested hearings on protective orders previously issued; hears probable cause statements and reviews and signs long-form criminal complaints; and as circumstances permit, hears walk-in motions to quash warrants or for other relief.

In all matters, the Associate Judge informs defendants of their rights, conveying the information in a clear and understandable manner. In certain criminal cases, the Associate Judge will appoint an attorney to represent the defendant, under financial guidelines established by the Court or as otherwise determined to be in the interests of justice.

In fulfilling this role, the Associate Judge exercises considerable independent judgment in managing her dockets, ruling on motions, and adjudicating cases. For any proceeding, the Associate Judge must determine the law applicable to each type of matter heard; evaluate in the light of that law any evidence presented to the Court; and render a decision in accordance with the law. The Judge must then convey her decision to defendants, attorneys, and court staff, as applicable, and enter legal decisions into the record and the Court file.

The Associate Judge also assists the Presiding Judge and the Court Administrator in administering court policies, practices and procedures, and in training pro tem judges as needed. When the Presiding Judge is absent due to out-of-state travel, the Associate Judge is appointed to serve as the Acting Presiding Judge.



## Examples of Orders and Legal Opinions Issued by Judge Gaudreau at Surprise City Court



Attached are examples of orders and legal opinions I have issued:

1. **State v. Baum** – order entered following an evidentiary hearing in a DUI case, denying the defendant’s four motions to suppress evidence and to dismiss the case, based on alleged violations of her Miranda rights, her right to counsel, and the State’s alleged failure to preserve evidence. Pages 12-23.
2. **State v. Harko** – order entered following an evidentiary hearing in a DUI case, denying the defendant’s motion to suppress the results of her blood draw, where defendant alleged that her consent to have her blood drawn was coerced in violation of her Fourth Amendment right to be free from an unreasonable search and seizure. Pages 24-28.
3. **State v. Daghlawi** –in a shoplifting case, an order granting the defendant’s motion to preclude the State from calling a late-disclosed witness; and an order denying the State’s motion to depose a witness in lieu of presenting her live testimony at the jury trial. The preclusion of witness decision was the subject of a special action filed by the State; jurisdiction was accepted but relief was denied, and the case was remanded for further proceedings consistent with my order. Pages 29-35.
4. **State v. Bloomfield** – findings and judgment of acquittal following a non-jury trial in a case alleging misconduct involving weapons. Pages 36-40

**State v. Baum**

Order Denying Defendant's Motion to Suppress Statements – Miranda “Waiver of Rights;” Motion to Dismiss – Miranda “At No Cost;” Motion to Dismiss for Right to Counsel Violation, and Motion to Dismiss for Failure to Preserve Evidence

See Pages 13-23

NOV 27 2017

CLERK: LVC

IN THE SURPRISE CITY COURT  
COUNTY OF MARICOPA, STATE OF ARIZONA

STATE OF ARIZONA	)	CASE NO. TR16-00879
	)	
Plaintiff,	)	ORDER DENYING DEFENDANT'S
	)	MOTION TO SUPPRESS STATEMENTS -
vs.	)	MIRANDA "Waiver of Rights;" MOTION
	)	TO DISMISS - MIRANDA "At No Cost;"
LAURA ANN BAUM,	)	MOTION TO DISMISS FOR RIGHT TO
	)	COUNSEL VIOLATION, AND MOTION
Defendant.	)	TO DISMISS FOR FAILURE TO
	)	PRESERVE EVIDENCE.

Defendant Laura Ann Baum, charged with DUI offenses under A.R.S. §§ 28-1381(A)(1) and 28-1381(A)(2), filed the following motions:

1. Motion to Suppress Statements Due to Ineffective and Insufficient Miranda Warnings – "Waiver of Rights;"
2. Motion to Dismiss Due to Ineffective and Insufficient Miranda Warnings – "At No Cost;"
3. Motion to Dismiss for Right to Counsel Violation; and
4. Motion to Dismiss for Failure to Preserve Evidence.

The State filed responses to the motions and an evidentiary hearing ("the Hearing") was held October 9, 2017. Attorney Brian Sloan appeared for Defendant and Assistant City Prosecutor Thomas Weber appeared for the State. The Court heard testimony of Defendant Laura Ann Baum; Surprise Police Officer Ryan Scott #2239; Surprise Police Sergeant Steve Shernicoff #2111, and Surprise Police Department Records Unit employee, Susan Lynn Presti.

The Court admitted into evidence the following Exhibits: DVD recording of Officer Scott's Axon Body Camera Video ("the Video") (Def.'s Exh. D); Records Request to Surprise Police Dept. (Def.'s Exh. E); Excerpts of the Surprise Police Dept.'s Video Policy (State's Exh. 4); and the Surprise Police Dept.'s Evidence Audit Trail (State's Exh. 5). At the close of the Evidentiary Hearing, the Court heard the arguments of counsel.

**RULING**

The Court has considered the evidence presented at the Hearing, assessed the demeanor and credibility of the witnesses who testified, and reviewed the parties' legal memoranda and cited authorities in support of and in opposition to Defendant's four motions. For the reasons set forth below, Defendant's motions to dismiss and to suppress are DENIED.

I.  
**DEFENDANT’S MOTION TO SUPPRESS**  
**STATEMENTS DUE TO INEFFECTIVE AND INSUFFICIENT**  
**MIRANDA WARNINGS – “WAIVER OF RIGHTS”**

In her Motion to Suppress Statements Due to Ineffective and Insufficient Miranda Warnings – “Waiver of Rights,” Defendant argues that even though Officer Scott read the requisite Miranda warnings to her, her post-Miranda statements (including those documented on the Alcohol Influence Report, “the A.I.R.”) must be suppressed because there was no explicit waiver of her rights.

More precisely, Defendant asserts that because Officer Scott did not (1) expressly ask Defendant whether she wanted to waive her Constitutional rights, and then (2) expressly ask her if she wanted to talk to him (after she said she understood the Miranda warnings but before he began questioning her), he did not obtain her “knowing, voluntary and intelligent waiver” of her Miranda rights.

According to Officer Scott’s testimony at the Hearing and as recorded on the Video, Officer Scott advised Defendant as follows:

*I have to read you your rights. Everyone is read their rights, so you know what your rights are. If you have any questions, let me know, okay? You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and to have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be, one will be appointed to represent you before any questioning if you wish.*

Officer Scott then asked Defendant, “Do you understand?” and Defendant said, “Yes, I do.”

At the Hearing, Defendant testified that she is a 45-year-old, college-educated professional with a Bachelor’s Degree in Nursing, who has worked for more than ten years as a Neonatal Intensive Care Unit Nurse. In the Video, she appears intelligent and engaged throughout the nearly three hours she spent with Officer Scott and in custody. While the Video shows that she asked him a number of questions over the course of that time (about procedures and other forms and advisements, among other things), and spoke freely throughout the time captured on the Video about DUI-related and other topics, she did not ask any questions about her Miranda rights, despite being invited to do so. Nor did she offer any testimony to suggest that her waiver of those rights was “unknowing” or “involuntary.” Indeed, at the Hearing she testified on cross-examination that she *did* understand her Miranda rights, including the right to have an attorney appointed for her before being asked any questions. And, understanding those rights, then answered Officer Scott’s questions on the A.I.R. and otherwise.

The Miranda warnings read to Defendant were precisely those required by *Miranda v. Arizona*, 384 U.S. 436 (1966), and its progeny. There is no Constitutional requirement that an

officer obtain a suspect's explicit waiver of her Miranda rights. *North Carolina v. Butler*, 441 U.S. 369, 375-76 (1979); *State v. Prince*, 160 Ariz. 268, 772 P.2d 1121 (1989). Where a suspect has been properly advised of her Miranda rights and proceeds to answer questions, as Defendant did here, such behavior constitutes a waiver by conduct. See *State v. Tapia*, 159 Ariz. 284, 287, 767 P.2d 5, 8 (1988); *State v. Knapp*, 114 Ariz. 531, 538; 562 P.2d 704, 711 (1977), *cert. denied*, 435 U.S. 908 (1978).

The State has met its burden of proving by a preponderance of the evidence that Defendant knowingly, voluntarily and intelligently waived her Miranda rights. Her Motion to Suppress Statements – Miranda “Waiver of Rights” is denied.

**II.**  
**DEFENDANT’S MOTION TO DISMISS**  
**DUE TO INEFFECTIVE AND INSUFFICIENT**  
**MIRANDA WARNINGS – “AT NO COST”**

In her Motion to Dismiss Due to Ineffective and Insufficient Miranda Warnings – “At No Cost,” Defendant contends that under *Miranda v. Arizona*, 384 U.S.436 (1966), a suspect must be specifically informed that if she cannot afford to hire an attorney, she is entitled to the assistance of an appointed attorney “at no cost.” (emphasis added).

The exact words Officer Scott used to advise Defendant of her Miranda rights are not in dispute. Regarding her right to an appointed attorney, he told her: *If you cannot afford to hire an attorney, one will be appointed, one will be appointed [sic] to represent you prior to any questioning, if you wish.* Defendant argues that this statement is constitutionally deficient because it did not include the words, “for free” or “at no cost.” For that reason, Defendant seeks dismissal of this case with prejudice or, in the alternative, suppression of any statements she made.

It bears noting that Defendant does not claim she is or was indigent or otherwise unable to afford to hire an attorney herself. Indeed, she testified at the Hearing that she started looking for an attorney and sent an email “that same day” (of her arrest, which was a Sunday), and then met with attorney Brian Sloan (who entered his Notice of Appearance at the Arraignment) the very next day. So even if Officer Scott *had* told Defendant that if she could not afford to hire an attorney, one would be appointed for her “for free,” it would have added nothing of significance to her assessment of her Miranda rights.

But regardless of whether Defendant could afford to hire an attorney or not, there was no Constitutional deficiency in the Miranda warnings she received. By the advisement given her – which essentially mirrors that in *Miranda v. Arizona* – Defendant was properly advised of the full substance of each of her Miranda rights, including the right to have an attorney appointed for her prior to questioning if she could not afford to hire one herself. See *United States v. Loucious*, 847 F.3d 1146 (9<sup>th</sup> Cir. 2017).

Defendant’s Motion to Dismiss Due to Ineffective and Insufficient Miranda Warnings – “At No Cost” is denied.

**III.**  
**DEFENDANT'S MOTION TO DISMISS**  
**FOR RIGHT TO COUNSEL VIOLATION**

In her Motion to Dismiss for Right to Counsel Violation, Defendant contends that during this investigation she “requested but was deliberately denied access to an attorney,” in violation of the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution, Article II, Sections 4 and 24 of the Arizona Constitution, and Rule 6.1(a) of the Arizona Rules of Criminal Procedure. She bases this argument on a conversation she says happened toward the end of her time in custody but before her blood was drawn, in which she asked Officer Scott if he thought she needed an attorney.

**Contextual Facts**  
**Elicited at the Evidentiary Hearing**

On August 7, 2016, after pulling her over at 3:40 a.m. and arresting her for DUI at 4:30 a.m., Officer Scott took Defendant to the Surprise Police Department to process her. She was read her Miranda warnings at 4:58 a.m., and agreed to submit to a breath test. After Defendant’s three unsuccessful attempts to complete the Intoxilyzer sequence, Officer Scott contacted a supervisor and decided to obtain Defendant’s blood sample instead. Defendant agreed to a blood draw and signed the Consent to Draw Blood form. Officer Scott called for a phlebotomist.

While they waited for Officer Shernicoff to arrive to draw Defendant’s blood, Officer Scott continued processing Defendant: among other tasks, he asked her the questions on the A.I.R., and completed that form and others; Defendant was permitted to use the restroom down the hall for a second time that evening; she was given her cell phone to make a call (when she said she wanted to call her boyfriend to let him know where she was, Officer Scott gave her her cell phone and told her, “You can call whoever you need to”); and she was asked to sign the Duplicate Breath Test Advisory. Each of these tasks was recorded on the Video. Once those tasks were completed, at 6:12 a.m. Officer Scott turned his Video camera off to do some paperwork on the computer and await the phlebotomist’s arrival, while Defendant sat nearby in the open holding area.

It was during what Officer Scott characterized as that lull in the investigation – after he had turned his Video camera off at 6:12 a.m. and turned to work on the computer, but before Officer Shernicoff arrived in the holding area to prepare for and draw Defendant’s blood – that Defendant said she asked Officer Scott about whether he thought she needed an attorney.<sup>1</sup>

**Defendant’s Testimony**

In her written motion, Defendant indicates that after she consented to the Blood Draw and while waiting for the Phlebotomist to arrive, she asked Officer Scott “something along the lines of, ‘Do you think I need an attorney?’” and that Officer Scott said “something along the

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<sup>1</sup> Based on Officer Shernicoff’s testimony, he likely arrived in the holding area (where Defendant and Officer Smith were waiting) a few minutes after 6:12 a.m., where he may have taken about ten minutes to prepare for the blood draw. He drew Defendant’s blood at 6:30 a.m.

lines of, ‘I can’t advise you, but I don’t think so because you are a nice person, and you have no priors.’” *Defendant’s Motion to Dismiss for Right to Counsel Violation*, p. 3.

At the Hearing, when her attorney asked her if she “ever mentioned an attorney” to Officer Scott, Defendant testified, “I asked him if I needed one, an attorney; if I needed an attorney.” When asked how Officer Scott responded, she said, “He said he didn’t think so; this is my first offense, he told me that they – I’d probably get a plea offer, I would not have to do any jail time, I’d get time served for the time I spent with him, I’d have to pay a fine, and he would deliver me a citation.”<sup>2</sup>

When her attorney asked her *when* the conversation happened, Defendant said:

*When we were talking, after we went through all that paperwork. I didn’t know, I’d never been in that situation before, so I didn’t know what’s next; I was still unclear because the whole thing was kind of weird to me; the whole thing was kind of unclear, [compared to] when you see it on TV. It seemed like I was in trouble, but was I in trouble? Was I charged, was I not charged, do I need an attorney? He said some people do get attorneys and spend a lot of money but the end result is they go by your test results. We had a conversation about another woman he placed under arrest, how she went through alcohol counseling before he even gave the citation to her – we talked about it, and I said I’d probably do that, too. ... He said he’d deliver the citation to me [once the blood results were in], which he did try to do. ... He said I was a nice person, I was cooperative, and I should be okay. ... So I trusted him, he’s law enforcement, I took what he said to heart. ... Do I need an attorney, he said he didn’t think so, I don’t have any priors, this is my first offense, and that I could spend a lot of money on lawyers. I asked him, ‘Do people spend money on lawyers?’ He said, ‘Yeah, they do – but the end result is – it’s based on your test results.’ ... I figured I’d get a fine, I’ll lose my driver’s license for 30 days, no jail; that’s all I expected. ... He told my boyfriend the same exact thing he’d told me, when my boyfriend asked him [about what happens next].*

Thus, as Defendant’s testimony continued, it was apparent that her question about whether she “needed an attorney” was in the larger context of her seeking information about “What happens next?” – that is, what she could expect to happen thereafter due to the DUI arrest.

On cross-examination, the Prosecutor asked Defendant to state precisely what question she asked Officer Scott about an attorney. Defendant responded:

Defendant: *I’m trying to remember my words. ‘Do I need an attorney? What am I looking at here?’*

Prosecutor: *You didn’t want an attorney right then?*

Defendant: *I didn’t know – I’d never been in that situation before.*

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<sup>2</sup> Although in quotes, the testimony excerpts are presented as a close approximation, not a verbatim transcript.

Prosecutor: *Did you ask any more questions about an attorney other than that?*  
Defendant: *No, just that.*  
Prosecutor: *And that was part of quite a long conversation?*  
Defendant: *Yes.*  
Prosecutor: *And you did not want to speak to an attorney, you wanted [Officer Scott's] opinion, right?*  
Defendant: *Yeah, I guess.*

### **Officer Scott's Testimony**

In contrast, Officer Scott testified that Defendant never asked for, or even asked about, an attorney ("Absolutely not," he testified), either before the blood draw while they were waiting for Officer Shernicoff to arrive, or at any other time during the investigation. He said that if she had, it would have been a simple matter to deal with: that he would have reactivated his Video camera to record their discussion about it, and then simply put her in the phone room where there is a land line, made sure that phone books, with the attorneys' pages and advertisements intact, were in the room, and given Defendant her cell phone as well so that she could call whoever she wished. He said he had documented in his report that Defendant never requested an attorney, and he testified at the Hearing that that documentation was correct.<sup>3</sup>

However, Officer Scott testified that at the very end of Defendant's time in custody, once the investigation was complete and he and Defendant were waiting for her ride to arrive,<sup>4</sup> Defendant asked him questions about "What happens next" ("as defendants often will," he said). He said he told her that once the blood results were received, he would deliver the citation to her; and told her what she might expect as consequences of a DUI, according to his understanding of it, and included the fact that each City handles its cases differently.

### **Findings Regarding the Conversation; Defendant Was Not "Tricked, Cajoled or Coerced"**

While Defendant and Officer Scott appeared to speak freely and in a relatively friendly manner to each other throughout, it is the Court's overall impression that Officer Scott answered Defendant's questions carefully and conscientiously, while remaining mindful of his role as a police officer. The Court also finds Officer Scott's testimony about what he *would have* done, if Defendant had asked for (or, as he said, even mentioned the issue of) an attorney before the blood draw, to be credible.

Based on Defendant's and Officer Scott's testimony, and assessing the credibility and demeanor of both individuals, the Court finds that Defendant did ask Officer Scott if he thought

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<sup>3</sup> He admitted his report contained errors: in one instance, he referred to Defendant as "Tammy" instead of "Laura," and the times he initially included for Defendant's Intoxilyzer attempts were wrong – left in this report from one he had prepared for a different defendant – and that he later corrected them.

<sup>4</sup> This was a period of about 30 minutes, between 6:30 a.m., after Defendant's blood was drawn, and 7:00 a.m., when Defendant was released to her boyfriend in the parking lot.

she “should get an attorney,” and that she asked him that question in the context of wanting to know, “What happens next?” and “Am I in trouble?” rather than in the context of possibly wanting to call a lawyer at the time.

The Court further finds that the subject conversation occurred after the investigation was complete (during the half-hour or so while they were waiting for Defendant’s ride to arrive). Defendant said Officer Scott gave the same information to her boyfriend (who did not testify at the Hearing), when he arrived. Considering all the circumstances, it seems most credible that such discussion began in the booking room once the investigation was complete and then continued in the parking lot when Officer Scott released Defendant to her boyfriend at 7:00 a.m.

On these facts, there is no indication that Officer Scott “tricked, cajoled or coerced Defendant” with respect to her right to seek advice of an attorney. While Defendant’s written motion indicates that “after she was asked to consent to a blood test ... she requested to speak with an attorney” (*Motion to Dismiss for Right to Counsel Violation, p. 3, line 18*), there was nothing in her testimony to bear that out: Defendant never testified that she asked to speak with an attorney, or that she had even thought about calling an attorney for advice during the investigation, or that she had any questions regarding the impending blood draw or her rights with respect thereto.<sup>5</sup> In short, she never alluded to the possibility that she had considered calling an attorney from the police station at any time.

To the contrary, she testified that when she asked that particular question of Officer Scott (“Do you think I need an attorney?”), she asked not because she was thinking about talking to a lawyer at that time, but because she “wanted his opinion” on whether she should get one [prospectively].<sup>6</sup>

**In Any Event, Defendant’s Question to the Officer  
Was Not an Invocation of Her Right to Counsel**

To invoke the right to counsel, a suspect must make a clear and unambiguous request for an attorney. Not every reference to an attorney need be construed by police as an invocation of the suspect’s right to counsel. *State v. Ellison*, 213 Ariz. 116, 127, 140 P.3d 899, 910 (2006). Rather, an officer must only stop questioning a suspect if the person’s request for counsel is unambiguous. *Davis v. United States*, 512 U.S. 452, 459 (1994).

On the other hand, if a suspect makes a reference to an attorney that is equivocal or ambiguous, “in that a reasonable officer in light of the circumstances would have only understood that the suspect *might* be invoking the right to counsel,” the officer is not required to

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<sup>5</sup> Defendant never expressed any uncertainty, either at the police station or in her testimony at the Hearing, about whether she would submit to the blood draw. In fact, she testified at the Hearing that she had told Officer Scott while they were waiting for the phlebotomist to arrive that she thought it odd Officer Scott couldn’t do the draw himself, since that would save a lot of time.

<sup>6</sup> And despite what she said the officer’s opinion was on the matter, she decided to retain an attorney anyway, making that inquiry the same day she was released from custody.

stop questioning. *State v. Newell*, 212 Ariz. 389, 132 P.3d 833, 841 (2006), quoting *Davis v. United States*, 512 U.S. at 459 (1994). Unless the suspect's statement meets that "threshold standard of clarity" which invokes the right to counsel, police may continue their questioning. *Davis*, 512 U.S. at 454-56; *State v. Eastlack*, 180 Ariz. 243, 250-51, 883 P.2d 999, 1006-07 (1994). See also, *U.S. v. Rodriguez*, 518 F.3d 1072, 1079 (9<sup>th</sup> Cir. 2008) (per *Davis*, after a knowing and voluntary waiver of the Miranda rights, law enforcement officers may continue questioning a suspect unless and until the suspect clearly requests an attorney).

Here, Defendant asking Officer Scott the question, "Do you think I need an attorney?" was *not* an invocation of Defendant's right to counsel, regardless of when it occurred. Her question was not even an equivocal or ambiguous request for an attorney but was, in the context in which it was asked, a request for Officer Scott's own opinion.

In sum, there was no invocation of her right to counsel, and no violation of that right. For the foregoing reasons, Defendant's Motion to Dismiss for Right to Counsel Violation is denied.

#### IV. DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE

In her Motion to Dismiss for Failure to Preserve Evidence, Defendant claims that this case should be dismissed with prejudice because the State failed to produce video footage of Defendant "being asked to consent to a blood [draw], requesting an attorney, [and/]or the actual blood [draw] being performed." *Defendant's Motion at p. 2, para. 5*. Defendant alleges that either that footage was never created or, that it was created and then either lost or destroyed. Regardless of whether it existed or not, Defendant contends that her due process rights were violated because the "missing" evidence was material to her guilt or innocence, or relevant to her punishment.

The evidence presented at the Hearing substantially narrowed the facts on which this argument is based. First, it was established that the Video the State produced to Defendant does contain footage of Defendant being asked to consent to the blood draw. It also includes footage of Defendant signing, at Officer Scott's request, the Consent to Draw Blood form. And, as noted above in Section III, according to Defendant's testimony at the Hearing she did not actually request an attorney at any time while with Officer Scott; instead, as she testified, she asked him *whether he thought she needed an attorney*. Finally, Defendant has not alleged that any irregularities or improprieties occurred during the actual blood draw itself.<sup>7</sup>

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<sup>7</sup> The blood draw was not recorded by Officer Scott (the arresting officer) or by Officer Shernicoff (the officer phlebotomist). Officer Scott testified that it is Surprise Police Department policy to record the blood draw (*see* State's Exh. 4), and that he usually does record it for his DUIs. When he watched the final moments of the Video at the Hearing, he confirmed that he saw himself turn his recorder off after completing the A.I.R. (turning aside to do other work on the computer until the phlebotomist arrived), but had no explanation for why the blood draw, which occurred about 18 minutes later, was not recorded. Officer Shernicoff testified that since he was off-duty and was called to the station from home, he did not have his video camera with him and did not record the blood draw he conducted.

In essence, then, it is Defendant's claim that because there is no Video recording of Defendant asking Officer Scott whether he thought she needed an attorney, the case should be dismissed. Defendant contends that this is the required result whether the State failed to record the conversation in the first place, or recorded it but subsequently failed to preserve the video recording. *Defendant's Motion at p. 4, para.3.*

In making this argument, Defendant puts great weight on the fact that while she was initially told there were 11 video clips for this incident, only eight such clips were disclosed. That turn of events was explained at the Hearing by Susan Presti, an eleven-year employee of the Surprise Police Department's Records Unit.

**Testimony of Susan Lynn Presti,**  
**Surprise Police Department Records Unit**

Ms. Presti testified that she is the Records Unit employee who reviewed, redacted and ultimately disclosed the videos for this case. Initially, she found that there were 11 videos clips tagged to this incident in Evidence.Com, and she reported that number of clips as available. Once the Police Department received the required payment, she reviewed those clips to redact and then provide them to the attorney. Upon viewing the 11 clips, she found that three of them were videos of separate traffic stops conducted by Sgt. Hall. (Sgt. Hall, she believed, had brief involvement in this DUI, either as the on-call sergeant or at the scene of the arrest.) Because those three clips did not belong to this incident, Ms. Presti retagged them to the correct incident (see the Evidence Audit Trail, State's Exh. 5), and ultimately disclosed the remaining eight clips to Defendant's attorney.

To Ms. Presti's knowledge, officers are unable to redact, retag or delete videos from Evidence.Com. To upload an officer's body camera clips to Evidence.Com, the officer simply puts his or her camera unit on the docking station at the police department and the system automatically uploads the videos and automatically tags the clips to the appropriate incident or call number. (Officer Scott also testified that he does not manually input any data to upload his video clips or to have them tagged to his incidents; he simply puts his camera on the dock.) Ms. Presti testified that while she can redact and retag video clips, she cannot delete video clips. She said that Evidence.Com's video management system retains the videos pursuant to a Retention Schedule, and if a video is scheduled to be deleted (*see* the Retention Schedule, which is part of State's Exh. 4), the video management system, and not an individual officer or employee of the Police Department, deletes it.

When the defense objected to only receiving 8 clips instead of the initially-reported 11, Ms. Presti was asked to conduct a search in Evidence.Com for any "missing" videos that were or should have been tagged to this incident. She testified that she ran all of Officer Scott's "active" videos for the date of this violation,<sup>8</sup> as well as any clips for that date that the system would have noted as "deleted." She found no additional video clips for this incident, and found no

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<sup>8</sup> Officer Scott testified that he also conducted a search on Evidence.Com for any "missing" videos, but found no additional video clips for this incident.

information indicating that the system had deleted any of Officer Scott's video clips for that date. She also found that Officer Scott's video clips were correctly tagged to this incident number.

### Findings

Based on the testimony at the Hearing, the Court finds that the video clips Defendant believes are "missing" never in fact existed: while failing to record the blood draw appears to be contrary to Surprise Police Department Policy and to Officer Smith's own practice regarding his DUI arrestees, it is clear that neither Officer Scott nor Officer Shernicoff recorded the draw of Defendant's blood.

Nor did Officer Scott record the conversation in which Defendant asked him if he thought she needed an attorney. The testimony established that any such conversation occurred after the DUI investigation was complete, when Officer Scott would not have had reason to reactivate his Video camera.<sup>9</sup>

Thus, there was no such video evidence for the State to either preserve or to destroy. It is pure speculation, and contrary to the evidence presented at the Hearing, to argue otherwise. *See Arizona v. Youngblood*, 173 Ariz. 502, 506, 844 P.2d 1152, 1156 (1993). Based on the evidence, the officers do not have the ability to selectively upload video clips, or to delete any such video clips, once uploaded. The Court concludes that what was uploaded from Officer Scott's camera, and later disclosed to Defendant, is all there was.

The only remaining question, then, is whether the State was constitutionally required to video record either the blood draw itself, or – in order to include the conversation about an attorney – to video record the entirety of the interaction between Officer Scott and Defendant. But the law on this is clear: there is no constitutional requirement that the State make an audio or video recording of a DUI Defendant's encounter with police. *State v. Havatone*, 159 Ariz. 598, 599, 769 P.2d 1043, 1045 (Ct. App. 1989); *State v. Gerhardt*, 161 Ariz. 410, 411, 778 P.2d 1306, 1307 (Ct. App. 1989). Under the circumstances presented here, the officer's failure to record these two events presents no due process violation.<sup>10</sup>

For the foregoing reasons, Defendant's Motion to Dismiss for Failure to Preserve Evidence is denied.


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<sup>9</sup> Similarly, he would not have had reason to activate his Video camera during various lulls in the DUI investigation, including when he called his sergeant about getting a blood draw instead of making additional efforts to obtain Intoxilyzer results, or when they were waiting for Officer Shernicoff to arrive for the blood draw.

<sup>10</sup> Even if the events had been recorded, such videos would add little (in the case of the conversation) to nothing (in the case of the blood draw) of value to Defendant's position. That is because Defendant's testimony established that she did not ask for an attorney or otherwise invoke her right to counsel when speaking with Officer Scott, and she has not raised any issue or concerns regarding the blood draw itself.

This case remains set for Trial Readiness Conference on Friday, December 1, 2017, at 10:00 a.m. For that hearing, Defendant's appearance is waived, and Defense Counsel Brian Sloan may appear by telephone.

DONE this 27<sup>th</sup> day of November, 2017.

  
Catherine A. Gaudreau  
Associate Judge, Surprise City Court

A copy of this Order was mailed/delivered on November 21<sup>st</sup>, 2017, to:

- Assistant City Prosecutor Thomas Weber, City of Surprise Prosecutor's Office
- Attorney Brian Sloan, for Defendant Laura Ann Baum

**State v. Hartko**

Order Denying Defendant's Motion to Suppress Blood Draw Results

See Pages 25 - 28

IN THE SURPRISE CITY COURT  
MARICOPA COUNTY, STATE OF ARIZONA

STATE OF ARIZONA,	)	
	)	CASE NO. TR16-00834
Plaintiff,	)	
	)	
vs.	)	
	)	ORDER DENYING
CHRISTINA HARKO,	)	DEFENDANT’S MOTION TO
DOB 12-16-1967	)	SUPPRESS BLOOD DRAW
	)	AND RESULTS
Defendant.	)	
	)	

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In this DUI case, Defendant Christina Harko asks the Court to suppress the results of her blood draw and resulting analysis, which presumably showed the presence of one or more drugs or drug metabolites in her body. The Court has reviewed Defendant’s Motion to Suppress Blood Draw and Results, the State’s Response thereto, the testimony and exhibits presented at the August 17, 2017, evidentiary hearing,<sup>1</sup> and the arguments of counsel.

Relying primarily on the Supreme Court of Arizona’s April 26, 2016, decision in *State v. Valenzuela*, 239 Ariz. 299, 371 P.3d 627 (Ariz. 2016), Defendant contends that her consent to have her blood drawn was coerced, in violation of her Fourth Amendment right to be free from an unreasonable search and seizure. Considering the totality of the circumstances presented here, the Court agrees. However, the Court finds that the good faith exception to the exclusionary rule applies in this case. Therefore, Defendant’s motion to suppress is denied.

I.

In *State v. Valenzuela*, 239 Ariz. 299, 371 P.3d 627 (Ariz. 2016), the Supreme Court of Arizona held that a DUI suspect’s “consent” to the requested chemical test, when given solely in acquiescence to the admonitions of the Admin Per Se / Implied Consent Affidavit (which told the DUI suspect that “Arizona law required” him to submit), was not free and voluntary under the Fourth Amendment. The Court found that the admonitions were coercive, because in

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<sup>1</sup> At the August 17, 2017, hearing, the State presented the testimony of Surprise Police Department (“SPD”) Officers Glenn Cannon and Robert Mulligan; the Defendant did not call any witnesses. The Court admitted into evidence: Admin Per Se / Implied Consent Affidavit (State’s Exh. 1); Affidavit for Consent to Search for Blood/Breath/Urine/Alcohol Evidence (State’s Exh. 2); a CD containing eight Video Clips (State’s Exh. 3; clips #1, 3, 6, 7 and 8 were admitted by stipulation; clips 2, 4 and 5 were not viewed by the Court); and Phlebotomy Blood Draw Report (State’s Exh. 4).

advising the suspect that Arizona law required him to submit to the testing, the officer invoked lawful authority to *compel* the individual's consent.

In opposing the Defendant's motion, the State argues that the warrantless taking of Defendant's blood was constitutional because Defendant freely and voluntarily consented to the blood draw. However, the State's burden cannot be met by showing mere acquiescence to a claim of lawful authority, and in this case, the facts do not provide more.

The Admin Per Se / Implied Consent Affidavit Officer Cannon read to Defendant on December 12, 2015, appears to contain the same admonitions as those read to the defendant in *Valenzuela*. Here, as in *Valenzuela*, Defendant was told multiple times that "Arizona law requires" her to submit to the chemical test. In so stating, the officer effectively told her she had no legal right to refuse, and those statements were never retracted. Nor, for what it may be worth as to this issue, did Defendant speak to an attorney prior to "agreeing" to the test. And, while Officer Cannon also read Defendant the Consent to Search for Blood/Breath/Urine/Alcohol Evidence, thereby advising Defendant that she had a constitutional right to refuse the search, that was before he read the Admin Per Se / Implied Consent Affidavit to her and, thus, before he told her that Arizona law requires her to submit to the test. At best, telling Defendant she has a constitutional right to refuse the test, and in the next breath telling her that Arizona law requires her to submit to the test, is inconsistent and confusing. It does not constitute a retraction of the Implied Consent admonitions regarding what Arizona law "required," and cannot serve to render her consent to the blood draw "freely and voluntarily given."

In short, the evidence presented at the August 17, 2017, hearing did not establish by a preponderance of the evidence that Defendant's consent was sufficiently independent of the officer's assertion of lawful authority. To the contrary, in agreeing to the blood draw Defendant did just what Officer Cannon told her she was required by Arizona law to do.

In *Valenzuela*, the Supreme Court of Arizona held that the Implied Consent Affidavit administered there compels the suspect's consent and renders the test involuntary. Considering the totality of the circumstances presented here, and with the very same admonitions having been given Defendant in this case, this Court reaches the same result: Defendant's consent to the blood draw was compelled by the admonitions of the Implied Consent Affidavit which was read to her. Accordingly, the Court finds that Defendant's blood was taken in violation of her Fourth Amendment right to be free from an unreasonable search and seizure.<sup>2</sup>

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<sup>2</sup> It should also be noted that, contrary to Defendant's assertion that police should have used a language line or had an interpreter present, based on the audio / video clips of the conversations between the officers and Defendant (at the scene and at the hospital) and the testimony of Officer Cannon at the evidentiary hearing, the Court finds that Defendant did understand what the officer said to her in her non-native language of English. Indeed, if Defendant did not understand what the officer said to her, how can she claim that her consent was *coerced because it was based on* what the officer said to her? See Defendant's Motion to Suppress, p. 2, para. 2.

## II.

Defendant next argues that because her blood was drawn in violation of her Fourth Amendment rights, the blood draw and results must be suppressed under the exclusionary rule. *Davis v. United States*, 564 U.S. 229 (2011). The State contends that because the good faith exception to the exclusionary rule applies, the blood draw and results should not be suppressed.

The purpose of the judicially-created exclusionary rule is to deter future police misconduct. It is not a personal right of a defendant, and is not intended to remedy the invasion of a defendant's constitutional rights. Under this rule, the court will exclude from a criminal trial any evidence obtained in violation of the Fourth Amendment, unless the "good faith exception" to that rule applies. *Id.* at 236-37. The good faith exception permits law enforcement to reasonably rely on binding precedent and legislative enactments. *Id.*; *Illinois v. Krull*, 480 U.S. 340, 349-50 (1987); *Valenzuela, supra*, at 309. When law enforcement officers "act with an objectively reasonable good-faith belief that their conduct is lawful, deterrence is unnecessary and the exclusionary rule does not apply." *Id.* (quoting *Davis v. United States*, 564 U.S. 229 (2011)).

In December 2015, when Defendant's blood was drawn for this case, it was widely and generally understood that under Arizona law a DUI suspect had "the power, but not the right" to refuse a chemical test. *Id.* In effectuating Arizona's Implied Consent law, A.R.S. §28-1321, police were nevertheless required to obtain a DUI suspect's express consent prior to taking their blood, breath or urine, and they did so by reading the admonitions of the Implied Consent Affidavit which are at issue here. The Arizona Supreme Court's decision in *Valenzuela*, issued four months after the search conducted in this case, constituted a significant change in Arizona law regarding the voluntariness of a DUI suspect's "consent" to a chemical test. In fact, the Court in *Valenzuela* lays out, in plain order, just what procedures law enforcement should follow – prospectively – in order to constitutionally obtain a DUI suspect's blood, breath or urine. *Valenzuela*, at 308. Indeed, immediately following *Valenzuela*, in May 2016 the Implied Consent Affidavit and its admonitions were revised; DUI suspects are no longer informed that "Arizona law requires" them to submit to the chemical test or tests.<sup>3</sup>

In this case, the evidence shows that Officer Cannon relied in good faith on binding precedent that was in effect at the time of Defendant's blood draw. The officer administered the Implied Consent Affidavit to Defendant using the form that the State of Arizona Motor Vehicle Division had distributed to the Surprise Police Department (and presumably, to other law enforcement agencies throughout Arizona) for that purpose. In doing so, as a member of law enforcement he relied in good faith on previous binding precedent that had sanctioned the use of that very form. *Id.* At the evidentiary hearing, Officer Cannon testified that he did not deviate from the document in reading the Implied Consent Affidavit to Defendant, because "that would have been against the law and against [his] training."

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<sup>3</sup> See [https://www.azdot.gov/docs/default-source/motor-vehicle-services/ap\\_ic-affidavit-training-material.pdf?sfvrsn=2](https://www.azdot.gov/docs/default-source/motor-vehicle-services/ap_ic-affidavit-training-material.pdf?sfvrsn=2)

Here, as in *Valenzuela*, the officer did not “deliberately, recklessly, or with gross negligence” obtain Defendant’s blood in violation of her Fourth Amendment rights, but instead acted with an objectively reasonable good-faith belief that the admonitions of the Implied Consent Affidavit were lawful. In short, Officer Cannon did what he was trained to do, and what the law at the time required him to do. Under the circumstances presented here, excluding the blood results would not serve the purpose of deterring future police misconduct. Thus, the good faith exception to the exclusionary rule applies.

III.

For the foregoing reasons, Defendant’s Motion to Suppress Blood Draw and Results is denied. This case remains set for Trial Setting Conference on September 12, 2017, at 8:30 a.m.

DATED this \_\_\_\_ day of September, 2017.

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Catherine A. Gaudreau  
Associate Judge, Surprise City Court

Copies mailed / delivered this \_\_\_\_ day of September, 2017, to:  
Tony Flores, Assistant City Prosecutor  
Courtney Collins, Attorney for Defendant

**State v. Daghlawi**

Order Granting Defendant's Motion to Preclude Late-Disclosed Witness  
and  
Order Denying State's Motion to Depose [Its Trial Witness]

See Pages 30 - 38

STATE OF ARIZONA, )  
Plaintiff )  
vs. )  
FAYEZ DAGHLAWI, )  
Defendant. )  
\_\_\_\_\_ )

ORDER GRANTING DEFENDANT'S  
MOTION TO PRECLUDE LATE-  
DISCLOSED WITNESS

CASE NO. CM2019-00542

Defendant Fayez Daghlawi is charged in this case with two counts of Shoplifting arising from a May 13, 2019 incident at a Walmart Store in Surprise, Arizona.

In his Motion filed August 19, 2020, Defendant seeks an order precluding the State from calling as a witness at trial a Walmart employee named I [REDACTED] D [REDACTED]. The State's Response to Defendant's Motion was filed August 19, 2020 and, with leave of Court, the State's Amended Response was filed August 26, 2020.

In deciding this Motion, the Court has considered the parties' briefs, the relevant rules and case law, and the proceedings held to date, including the information provided to the Court at each of the Jury Trial Management Conferences (JTMCs), along with the arguments of counsel presented at the August 19, 2020 emergency hearing on this motion.

Statement of the Case Through August 19, 2020

The Jury Trial in this case was scheduled to commence August 20, 2020, a date for which both parties had consistently indicated they were "ready to proceed." That trial date was vacated at the end of the emergency hearing held the afternoon before.

The case was initiated May 19, 2019, with the filing of an ATTC alleging one count of Shoplifting under A.R.S. § 13-1805(A)(3), for a May 13, 2019, incident. Defense Attorney Caroline Aeed's Notice of Appearance was filed June 11, 2019, prior to the scheduled Arraignment.

In connection with the December 27, 2019, Trial Readiness Conference (TRC), the case was set for Jury Trial on February 20, 2020, with a prior JTMC on February 7, 2020.

Thereafter, by long-form Complaint filed January 22, 2020, the State alleged another Shoplifting count, under A.R.S. § 13-1805(A)(5), arising from the same incident.

At the February 7, 2020 JTMC, the Court inquired as to the parties' readiness for the February 20, 2020 Jury Trial. Both sides affirmed "ready." The Court asked counsel for each side to provide the names of its potential witnesses for the trial. The State indicated that it intended to call one civilian – "Victim Representative and [Walmart] Loss Prevention Witness, N [REDACTED] C [REDACTED]" – along with Officer Orner of the Surprise Police Department.

On February 12, 2020, Defendant filed a Motion to Continue the February 20, 2020, Jury Trial, to which the State took no position. The February 20, 2020, Jury Trial was vacated. With information from both sides as to their and their witnesses' availability, the case was reset for Jury Trial on May 7, 2020, with a prior JTMC on April 24, 2020.

In early April 2020, due to the COVID-19 pandemic and in accordance with the Arizona Supreme Court's Administrative Order 2020-60, the May 7, 2020, Jury Trial and the related JTMC was vacated on the Court's motion. A Status Conference was set for June 5, 2020, so that a new Jury Trial date could be set.

At the June 5, 2020 Status Conference, the State indicated that its civilian witness, N [REDACTED] C [REDACTED], was no longer available and that the State would instead call a different Walmart employee, I [REDACTED] O [REDACTED]. The Court was informed that the Defense was still awaiting a police supplement regarding Ms. O [REDACTED]'s involvement. With input from both sides regarding their and their named witnesses' availability, the case was set for Jury Trial on August 20, 2020, with a prior JTMC on August 7, 2020.

On July 20, 2020, following entry of the July 8, 2020 Jury Trial Order, by email the State again affirmed that it was "ready to proceed" with the August 20, 2020, Jury Trial.

At the August 7, 2020, JTMC, both sides again affirmed "ready" for the August 20, 2020 Jury Trial, and the State confirmed that its potential witnesses included only I [REDACTED] O [REDACTED] and Police Officer Orner.

On August 19, 2020 – the day before the scheduled Jury Trial – Defendant filed his Motion to Preclude Late-Disclosed Witness, Statements & Evidence, based on the State's indication, the afternoon prior, that it now planned to subpoena a new civilian witness, L [REDACTED] D [REDACTED] to testify at the August 20, 2020, trial.

The Court set Defendant's Motion to Preclude for an emergency telephonic hearing that same afternoon, while allowing the State time to file a written response to the

motion if it wished to do so. The State's Response was filed, and the emergency hearing was held at 2:00 p.m. the day before the scheduled Jury Trial.

After hearing argument by both counsel, given the State's late-hour disclosure of a new civilian witness whose testimony would be significant to the issues presented (and with no police supplement or other summary of any interview of that witness, if in fact any interview had occurred), the Court determined that under the circumstances it would be unfair to require the Defendant to proceed to trial the next morning.

Accordingly, at the end of the emergency hearing the parties were informed that the Jury Trial set for the next morning was vacated. The State requested and was given an opportunity to file an amended response to Defendant's Motion to Preclude, and its Amended Response was filed August 26, 2020. The parties were informed that upon issuing its ruling on Defendant's Motion (which was taken under advisement), the Court would reset the case for a status hearing.

#### State's Disclosure of L [REDACTED] D [REDACTED] as a Trial Witness

The Defense contends that it was first notified by the State, in a telephone call from the assigned prosecutor late Tuesday afternoon, August 18, 2020, that the State now planned to subpoena civilian witness, Walmart employee L [REDACTED] D [REDACTED], as a witness for the trial scheduled to commence Thursday morning, August 20, 2020. It appears that this disclosure was made based on comments made by the named witness, I [REDACTED] O [REDACTED] during her defense interview five days earlier on August 13, 2020.

In response, the State asserts that Ms. D [REDACTED] was "disclosed" as a potential trial witness on June 13, 2019 (rather than August 18, 2020), because the State's form "Initial 15.1 Disclosure Statement" indicated the State may call as a witness "any person referenced in the police report." The State's position is that because Ms. D [REDACTED]'s name (and only her name, as an individual who had been "contacted" by police) was included in the initial police report, she was properly "disclosed" as a witness for trial.

The Court finds that the State's Initial Disclosure Statement did not adequately inform the Defendant of the witnesses the State may call at trial. It is the State's duty to proactively and timely disclose its intended trial witnesses to the Defense; it is not the Defendant's obligation to try to guess which of possible myriad individuals whose names appear in a police report may in fact be called, or possibly intended to be called, by the State at trial. Indeed, in *State v. Tucker*, 157 Ariz. 433, 441 (1988), the Arizona Supreme Court repeated its "strenuous disapproval" of "... what appears to be a common practice for the prosecution to list all persons named in the police reports as its Rule 15

disclosure.” As the Court also noted, “... it is the trial court’s responsibility to enforce [the] disclosure rules,” including by the imposition of sanctions when appropriate. *Id.*<sup>1</sup>

The Disclosure of Ms. [REDACTED] as a Trial Witness,  
Less Than 48 Hours Prior to the Jury Trial, is a Disclosure Violation

The Court finds that on the afternoon of August 18, 2020, the State first informed the Defense that it would call a new and previously-undisclosed witness at the August 20, 2020, jury trial: Walmart employee L [REDACTED] D [REDACTED]. The Court further finds that the late disclosure of Ms. D [REDACTED] as a trial witness constitutes a violation of the disclosure requirements of Rule 15, including Rule 15.6, which provides a final disclosure deadline of “at least seven days prior to trial.”

While the State may have sought leave of court by motion, supported by affidavit, to extend the time for disclosure as provided in Rule 15.6(d), it did not do so here. Instead, at the August 19, 2020, emergency hearing, the State held fast to its position that Ms. D [REDACTED] had been “timely disclosed” through its Initial 15.1 Disclosure provided more than a year earlier, because her name was listed in the police report.

A Sanction Is Appropriate

Under the Rules and applicable case law, the Court has discretion to impose an appropriate sanction for a party’s failure to make the disclosure required by Rule 15. As Rule 15.7(a) provides, “[t]he Court shall impose any sanction it finds appropriate, unless the court finds that the failure to comply was harmless or that the information could not have been disclosed earlier even with due diligence ...”

Considering the record here, the Court finds that the State’s failure to timely disclose Ms. D [REDACTED] as a trial witness was not “harmless.” The State’s late disclosure of its intent to call Ms. D [REDACTED] as a trial witness is significant, to both the State and the Defense. Her testimony could significantly impact the issues to be decided at trial, as it now appears she was one of the Walmart employees who was involved in the incident with which Defendant is charged.

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<sup>1</sup> Aside from the disclosure obligations of Rule 15, timely disclosure of a party’s potential trial witnesses is also required by this Court, where the parties are asked at each JTMC to identify their potential witnesses for the upcoming trial.

The Court further finds that with the exercise of due diligence, the State could have and most likely would have obtained the information about Ms. D [REDACTED]'s possible involvement in this incident long before August 2020, and certainly before the eve of trial. Ms. D [REDACTED]'s name (and her address, although that had been redacted from the disclosure provided to Defendant) had been in the police report since the very beginning.<sup>2</sup>

#### State of the Proceedings at Which the Disclosure Was Made

In addition to the effect late disclosure (especially of a trial witness) may have on the opposing party, a party's timely compliance with its disclosure obligations is also significant with respect to judicial and court efficiency, particularly for cases that are scheduled for jury trial. The parties are also aware that it is Surprise City Court's practice to set just one case for jury trial at a time (that is, no back-up case is scheduled for jury on any given jury trial date). As such, each jury trial date is intended to be firm, and particularly so following the JTMC where the parties must affirm whether they are ready to proceed to trial, whether their witnesses have been confirmed, and the like. That question is asked of counsel for both sides, with both intent and purpose, at every JTMC.

Moreover, given the current COVID-19 pandemic and the resulting strain on the jury system, including the ability to have a sufficient number of jurors subpoenaed, qualified and present for any given trial, at the August 7, 2020 JTMC, the Court spoke at some length to provide the attorneys with information regarding protocols and protections the Court had instituted for the protection of all who would be present for the trial. Having received all that information, and presumably appreciating the importance of their avowal as "ready," the Aug. 20<sup>th</sup> trial date was affirmed.

Yet, due solely to the State's last-hour disclosure of its new intended witness for trial, the August 20, 2020 Jury Trial date was vacated the afternoon before.

#### The State is Precluded from Calling L [REDACTED] D [REDACTED] As a Witness at Trial

In light of the Court's findings under Rule 15.7(b), and after due consideration of the factors listed in Rule 15.7(c), the Court finds that the most appropriate sanction is to

<sup>2</sup> In addition, in its Amended Response (p. 5), the State wrote that "in late Spring 2020," it had requested police interviews of Ms. D [REDACTED] and two other Walmart employees, but that no supplement regarding Ms. D [REDACTED] was ever provided. Whether the State followed up on that request is unknown. Still, the State consistently indicated it was "ready" for the scheduled Jury Trial, with no mention that the investigation may not yet be complete, or that the State may need additional time before being ready for the trial.

grant Defendant's motion to preclude L [redacted] Denton as a witness. Accordingly, the State is precluded from calling Ms. Denton as a witness in this case.

The State's Pending Motion to Depose I [redacted] O [redacted]

Upon issuing its ruling on the remaining pending motion (State's Motion to Depose I [redacted] O [redacted], filed August 20, 2020 and submitted as of September 14, 2020), the Court will set this case for a Status Conference at which the parties and the Defendant will be directed to appear in person.

ORDERED, this \_\_\_\_\_ day of September, 2020.

\_\_\_\_\_  
Catherine A. Gaudreau  
Associate Judge, Surprise City Court

Copies provided this \_\_\_\_\_ day of September, 2020, to:

Surprise City Prosecutor's Office, at [Prosecutor@SurpriseAZ.gov](mailto:Prosecutor@SurpriseAZ.gov)  
Attorney Caroline Aeed, Attorney for Defendant, at [aeed\\_caroline@msn.com](mailto:aeed_caroline@msn.com)

STATE OF ARIZONA, )  
Plaintiff )  
vs. )  
FAYEZ DAGHLAWI, )  
Defendant. )  
\_\_\_\_\_ )

ORDER DENYING STATE'S  
MOTION TO DEPOSE

CASE NO. CM2019-00542

Defendant Fayez Daghlawi is charged in this case with two counts of Shoplifting, arising from a May 13, 2019 incident at a Walmart Store in Surprise, Arizona.

In its Motion to Depose [REDACTED] the State seeks an order pursuant to Rule 15.3 of the Arizona Rules of Criminal Procedure directing that [REDACTED] be deposed (remotely via WebEx or Zoom) so that such deposition may be used at trial in lieu of her live testimony. The Defendant objects to the Motion.

The Court has considered the State's Motion, the Defendant's Response entitled, "Objection to the State's Request to Ignore the 6<sup>th</sup> Amendment and Present Testimony by Deposition," and the State's Reply thereto, along with the record in this case, the applicable law and, to the extent relevant to this motion, the arguments of counsel made at the August 19, 2020 hearing held concerning Defendant's Motion to Preclude Late-Disclosed Witness, Statements & Evidence.

\* \* \*

According to the State, [REDACTED], the State's intended trial witness who is the subject of this motion, moved from Arizona to Washington State on August 28, 2020, shortly after the last scheduled jury trial date of August 20, 2020. On that basis alone, the State indicates that Ms. [REDACTED] "will be unavailable to testify" at any [yet-to-be-scheduled] jury trial in this case.<sup>1</sup>

The Court has discretion under Rule 15.3 to order, or decline to order, the deposition of a witness so that the deposition testimony may be presented at trial in lieu of the witness's live testimony. *State v. Talmadge*, 196 Ariz. 436, 439-40 (2000); *State v. Fuller*, 143 Ariz. 571, 574 (1985); *State v. Reid*, 114 Ariz. 16, 27-29 (1976). In reviewing this issue, the Arizona Supreme Court has

<sup>1</sup> As a result of the State's late disclosure that it will call a "new" witness at trial, the Court vacated the August 20, 2020 Jury Trial the afternoon before it was scheduled to proceed, and took under advisement the Defendant's Motion to Preclude Late-Disclosed Witness (a motion which has since been granted). A new jury trial date has not yet been scheduled, but will be addressed at the upcoming Status Conference.

expressed “a clear preference for live testimony” of a witness at trial. *State v. Talmadge*, 196 Ariz. at 439 (upholding the trial court’s denial of a party’s motion to allow a videotaped deposition in lieu of the witness’s live testimony at trial). In *State v. Reid*, while upholding the trial court’s decision, for cause shown, to *allow* the videotaped evidence of a pathologist’s testimony to be presented at trial in lieu of his live testimony, the Arizona Supreme Court stated:

We find no error in allowing Dr. Hirsch to testify by videotape under the appropriate safeguards contained herein. In deciding as we do, we wish to emphasize that our decision might be different were he an eyewitness to the events of the crime. Such a crucial witness should not be lightly excused from attendance at the trial itself.

*State v. Reid*, 114 Ariz. at 29. <sup>2</sup>

In this case, Ms. [REDACTED], a former employee of Walmart, is the State’s only remaining eye-witness to the events of the alleged crimes. (A different former Walmart employee and loss prevention witness was withdrawn by the State earlier this year after she moved out of Arizona, and another witness was precluded by the Court when the State failed to timely disclose its intent to call her as a witness at trial.) That fact makes Ms. O [REDACTED]’s trial testimony more significant than it might be for a different, or for a non-eye-witness, individual.

Aside from the potential importance of Ms. [REDACTED]’s testimony as the eye-witness, there is no indication of any additional facts that might warrant an order allowing a videotaped deposition in lieu of her live testimony at trial (such as, for example, the type of severe and permanent health issues present in *State v. Spratt*, 126 Ariz. 184 (1980), which prevented the witness from traveling to be present for the trial; nor, for another example, any indication that Ms. [REDACTED] will be “on extended out-of-country travel during the dates set for trial,” as was the situation in *State v. Reid*, 114 Ariz. at 27). Moreover, on the facts of this particular case, Defendant’s potential cross-examination of Ms. [REDACTED] (as alluded to in Defendant’s Response to this Motion) weighs against permitting videotaped as opposed to live testimony at the jury trial.

Finally, while the State has indicated that Ms. [REDACTED] will be unavailable to testify at the jury trial, there is no trial date currently set. The State may, if it chooses, seek to arrange for Ms.

<sup>2</sup> In *Reid*, *id.* at 27, the Arizona Supreme Court noted that the pathologist’s recorded testimony was preserved under several procedural safeguards that had been required by the trial court, including that the witness was present and his deposition videotaped in the courtroom; the defendant and his attorney were present for the examination; the doctor was cross-examined by the defendant’s attorney; and the trial judge was present and ruled on objections.

█'s return to Arizona (at the State's expense or otherwise, as may be appropriate) and seek to have the jury trial scheduled for a date on which Ms. █ could potentially be present.

In sum, the fact that the State's eye-witness to the alleged crimes now resides out-of-State is insufficient to warrant the relief sought under the circumstances presented by this case.

Accordingly, the State's Motion to Depose █ is DENIED.

\* \* \*

**This case is reset for Status Conference on Friday, October 23, 2020, at 1:30 p.m.** Counsel for both sides and the Defendant shall be present (unless otherwise permitted, in advance and for good cause shown, to appear by telephone) and shall indicate how they wish to proceed in this matter.

In the event a new Jury Trial date may be sought by either side, at the Status Conference the parties shall be prepared to represent to the Court whether they, each of their intended witnesses, and the Defendant, are available for a jury trial to commence on the following Thursdays (with the second day, if needed, being the next day), in the following order of preference:

- Thursday and Friday, Dec. 17 – 18, 2020
- Thursday and Friday, Jan. 7 – 8, 2021
- Thursday and Friday, Jan. 14 – 15, 2021
- Thursday and Friday, Jan. 21 – 22, 2021
- Thursday and Friday, Jan. 28 – 29, 2021
- Thursday and Friday, Feb. 4 – 5, 2021
- Thursday and Friday, Feb. 11 – 12, 2021

ORDERED, this \_\_\_\_\_ day of October, 2020.

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Catherine A. Gaudreau  
Associate Judge, Surprise City Court

Copies provided this \_\_\_\_\_ day of October, 2020, to:

Surprise City Prosecutor's Office, at [prosecutor@surpriseaz.gov](mailto:prosecutor@surpriseaz.gov)  
Attorney Caroline Aeed, Attorney for Defendant, at [aeed\\_caroline@msn.com](mailto:aeed_caroline@msn.com)

**State v. Bloomfield**

Findings and Judgment of Acquittal

See Pages 40 - 43

IN THE SURPRISE CITY COURT  
MARICOPA COUNTY, STATE OF ARIZONA

STATE OF ARIZONA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EDWARD C. BLOOMFIELD, JR. )  
 DOB 03/28/1985 )  
 Defendant. )  
 )

FINDINGS AND JUDGMENT  
OF ACQUITTAL

CASE NO. CM2019-00274

Defendant is charged in this case with three class one misdemeanors: Count 1 alleges Disorderly Conduct in violation of A.R.S. § 13-2904(A)(1), and Counts 2 and 3 allege Misconduct Involving Weapons (“MIW”) in violation of A.R.S. § 13-3102(A)(12).

A bench trial was held December 2, 2019 and the case was taken under advisement. Thereafter, the parties were asked to file legal memoranda to address issues regarding the MIW counts, and a briefing schedule and oral argument date were set. The parties’ legal memoranda were filed in January 2020, and the case ultimately set for Oral Argument on February 10, 2020. On the parties’ subsequent stipulated motion that the case be decided on the record, the oral argument was vacated.

The Evidence

At trial, the State presented testimony of civilians B [REDACTED] S [REDACTED] and K [REDACTED] O [REDACTED] and Surprise Police Officers Scott-Lopez #2272 and Phillip Hodgkins #2034. The Court admitted State’s Exhibits 2 through 13, and Defendant’s Exhibits A, B and C.

The evidence established that on March 11, 2019, at about 7 a.m., Defendant went to the home where B [REDACTED] S [REDACTED] and her 23-year-old son, C [REDACTED] S [REDACTED] reside. According to Ms. S [REDACTED], Defendant (who remained on the front patio, outside the home) was looking for his teenaged daughter, and complained to Ms. S [REDACTED] that he believed C [REDACTED] had been selling drugs to her.

C [REDACTED] then came outside to the front patio and, as seen on the video (Def. Exh. C, which has no audio but which shows part of the incident), Defendant and C [REDACTED] gestured to and verbally engaged with each other. After a few minutes, Defendant turned to leave and walked away from Ms. S [REDACTED] and C [REDACTED], towards the street, but C [REDACTED] followed Defendant down the walkway and continued to engage with him. Defendant stopped and turned to address C [REDACTED] once or twice, but then continued to the street where presumably his truck was parked. C [REDACTED] and Ms. S [REDACTED] then walked further down the same walkway, past the front of the home (and out of

view of the camera), and engaged again with Defendant while Defendant was in the street and no longer on their property.

Thereafter, C [REDACTED] is seen quickly pulling his mother into the home. Ms. S [REDACTED] testified that C [REDACTED] had told her to get inside because Defendant had a gun, and to call 911. After his mother was inside the home, C [REDACTED] went back down the walkway, beyond the front of the house, and again engaged with Defendant (who was then off-camera). Defendant ultimately left the scene.

Ms. S [REDACTED] called 911 (Def. Exh. B) and reported "there's a guy in my house and he has a gun!" "he threatened to shoot everyone!" and "he said he's coming back to kill us tonight!" At trial she testified that she did not see any gun, that Defendant had not been inside the home, and that Defendant had never made any threats against anyone.

Soon after, while police were looking for Defendant (based on the description of him and his truck, and the dispatch that a "subject with a gun threatened to kill everyone in the residence"), Officer Hodgkins saw Defendant pull up to the front drop-off area of [REDACTED] High School, where Defendant's daughter attends. Officer Hodgkins immediately approached Defendant, who was in his vehicle, and asked him if he had any weapons. Defendant said he had a concealed weapons permit and had no weapons on him but had a gun in the center console.

Officer Hodgkins found two loaded handguns in the center console of Defendant's truck and secured them for safety. Officer Hodgkins was then informed by another officer, who was not at the school, that there was probable cause to arrest Defendant for disorderly conduct based on the incident at the S [REDACTED] home. Defendant was arrested on that charge and taken into custody. After that charge was set for trial, the State filed a long-form complaint alleging, as Counts 2 and 3, MIW in violation of A.R.S. § 13-3102(A)(12).

#### Count 1, Disorderly Conduct

The Court has considered the testimony of Ms. S [REDACTED], Ms. C [REDACTED] (a neighbor who was able to see and hear just a portion of the incident through her upstairs window), and Officer Scott-Lopez (who responded to the scene after the incident); has reviewed the admitted exhibits; and has assessed the credibility of the witnesses and their ability to perceive the events about which they testified. Although the State indicated at the start of the trial that it would call C [REDACTED] S [REDACTED] as a witness, his testimony was not offered.

The Court finds that Defendant came to the S [REDACTED] residence at 7 a.m. on a school day to see if his daughter was there and to inform Ms. S [REDACTED] that he believed her son had been selling drugs to his daughter. The Court finds that such conduct is not, under the circumstances presented by this case, seriously disruptive behavior intended to disturb the peace of Ms. S [REDACTED]. Based on the evidence that was presented, the Court finds it was more likely C [REDACTED] who later escalated the situation, and C [REDACTED] who may have instigated any conduct that may have been disorderly.

Thus, Defendant is found **NOT GUILTY of Disorderly Conduct.**

### Counts 2 and 3, Misconduct Involving Weapons

In Counts 2 and 3, the State alleges Misconduct Involving Weapons in violation of A.R.S. § 13-3102(A)(12). Under that statute, it is a class 1 misdemeanor to knowingly possess a deadly weapon on school grounds. A deadly weapon includes a loaded or unloaded firearm, and school grounds includes being in or on the grounds of a public or nonpublic school. A.R.S. §§ 13-3101(A)(1) and (4); §§ 13-3102(N)(4) and (5).

The MIW statute contains eight exemptions under which subsection (A)(12) shall not apply.<sup>1</sup> One such exemption is that of A.R.S. § 13-3102(C)(4), under which the subsection (A)(12) prohibition against possessing a deadly weapon on school grounds “shall not apply to a person specifically licensed, authorized or permitted” pursuant to a State or federal law.

Here, it is undisputed that Defendant possessed two loaded firearms in the center console of his truck when he drove onto the grounds of **Shadow Ridge** High School, and that **Shadow Ridge** is a public high school in Surprise, Arizona. It is also undisputed that Defendant had been issued, and on the date of violation possessed, a concealed weapons permit issued by the State of Arizona (Defense Exh. A, to which the State stipulated).

The State, while acknowledging that the subsection (C)(4) exemption for one who holds a CCW permit fits the facts and circumstances of this case, contends that the later enactment of subsection (I)(3)<sup>2</sup> had the effect of repealing or otherwise replacing subsection (C)(4) of the very same statute. However, nothing in the record indicates that it was the legislature’s intent to silently repeal or to otherwise replace subsection (C)(4) when it added subsection (I)(3) as an additional circumstance under which the prohibition in subsection (A)(12) would not apply. Nor does anything in (I)(3) provide notice that some or all of the other specific exemptions to the prohibition in Subsection (A)(12), including that of (C)(4), would no longer apply. Indeed, while amending § 13-3102 to add subsection (I)(3), the legislature chose to leave, unchanged, subsection (C)(4) as well as the other exemptions set forth in that statute, each of which describe circumstances under which the prohibition of subsection (A)(12) is inapplicable.

By its plain language, the Court finds that the exemption set forth in subsection (C)(4) applies to the facts of this case.

That being said, it is important to note that it may well be – as indicated in the 2016 Arizona Attorney General Opinion No. 116-009 (9-2-2016)<sup>3</sup> – that separate considerations may apply to prohibit CCW permittees from carrying a concealed handgun on the grounds of a public school

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<sup>1</sup> See A.R.S. §§ 13-3102 (C)(1) through (4); (H); and (I)(1) through (3).

<sup>2</sup> Under subsection (I)(3), the prohibition against possessing a deadly weapon on school grounds shall not apply to a firearm possessed “by a person who possesses a certificate of firearms proficiency pursuant to Section 13-3112, subsection T and who is authorized to carry a concealed firearm pursuant to the law enforcement officers safety act of 2004.”

<sup>3</sup> Such opinion holds that CCW permittees are not legally prohibited from carrying a firearm on private school grounds in Arizona, but notes that “separate considerations may apply” to public schools.

as opposed to a private school. But the evidence developed at this trial as to that particular issue is insufficient to support convictions for the MIW violations alleged.

Accordingly, Defendant is found **NOT GUILTY of Misconduct Involving Weapons.**

DATED this \_\_\_\_ day of February, 2020.

\_\_\_\_\_  
Catherine A. Gaudreau  
Associate Judge, Surprise City Court

On this \_\_\_\_\_ day of February, 2020, copies of the Findings and Judgment of Acquittal, along with the Court's Judgment & Sentence Order dated 02-21-2020, were mailed / emailed / delivered to:

\_\_\_\_ Assistant City Prosecutor Stephanie Blahut, City of Surprise Prosecutor's Office  
\_\_\_\_ Attorney Michael S. Baker, Attorney for Defendant, Edward C. Bloomfield, Jr.

By: \_\_\_\_\_ (clerk)



**Thank You**



Thank you for your consideration of this submittal.

*Catherine A. Gaudreau*  
Associate Judge, Surprise City Court  
April 12, 2021

**Louis Frank Dominguez**  
Judicial Member  
Chair

**Christopher P. Staring**  
Judicial Member  
Vice-chair

**Colleen E. Concannon**  
Public Member  
Secretary

**Denise K. Aguilar**  
Attorney Member

**Christopher W. Ames**  
Public Member

**Roger Barton**  
Public Member



**COMMISSION ON JUDICIAL  
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Phoenix, Arizona 85007

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March 22, 2021

**Barbara Brown**  
Judicial Member

**Michael J. Brown**  
Judicial Member

**Joseph C. Kreamer**  
Judicial Member

**Delia R. Neal**  
Judicial Member

**J. Tyrrell Taber**  
Attorney Member

---

**Margaret H. Downie**  
Executive Director

City of Surprise  
Human Resources Department  
JSAC Staff Liaison  
16000 N. Civic Center Plaza  
Surprise, AZ 85374

Re: Disciplinary Check

To Whom it May Concern:

In response to a request from Maria L. Aranda dated March 19, 2021, Associate Judge Catherine Ann Gaudreau has never been publicly disciplined for judicial misconduct in Arizona. Pursuant to Rule 9 of the Commission's rules, we are unable to disclose information about dismissed or pending complaints.

I believe this information is responsive to your inquiry. If not, please feel free to contact me by email at [mdownie@courts.az.gov](mailto:mdownie@courts.az.gov).

Sincerely,

/s/ Margaret H. Downie

Margaret H. Downie  
Executive Director

MHD / kw



**SURPRISE CITY COURT**

16081 N. Civic Center Plaza, Suite 105  
Surprise, AZ 85374-7478  
Office: (623) 222-4800  
Fax: (623) 222-4801

April 2, 2021

Honorable Peter Swann  
Arizona Court of Appeals  
Division One  
1501 W. Washington Street, Suite 321  
Phoenix, AZ 85007

***Re: Judicial Availability – Associate Judge Catherine A. Gaudreau***

Dear Judge Swann:

This is to advise the Judicial Selection Advisory Committee that there were no instances where Associate Judge Catherine Gaudreau was unavailable without good cause for her judicial duties since her appointment on December 19, 2016.

Should you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

Elaina Cano  
Court Administrator  
[ecanou@courts.az.gov](mailto:ecanou@courts.az.gov)  
Office: 623-222-4832

## Judicial Evaluation Survey (Gaudreau)

### Invitations

- 172 opened (46.0%)
- 152 unopened (40.6%)
- 49 bounced (12.9%)
- 61 clicked through (16.3%)
- 2 opted out (0.5%)



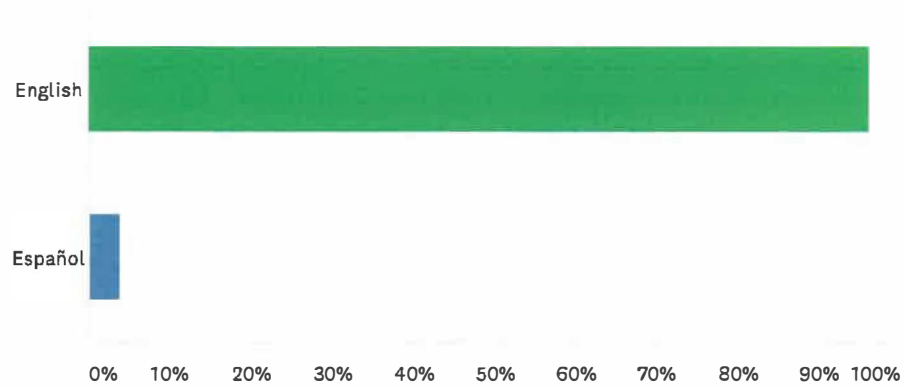
### Responses

- 47 complete (88.7%)
- 6 partial (11.3%)



Q1 Please choose which language you would like to take the survey. (Por favor, elija qué idioma le gustaría realizar la encuesta.)

Answered: 53 Skipped: 0



**ANSWER CHOICES**

English

Español

TOTAL

**RESPONSES**

96.23%

3.77%

51

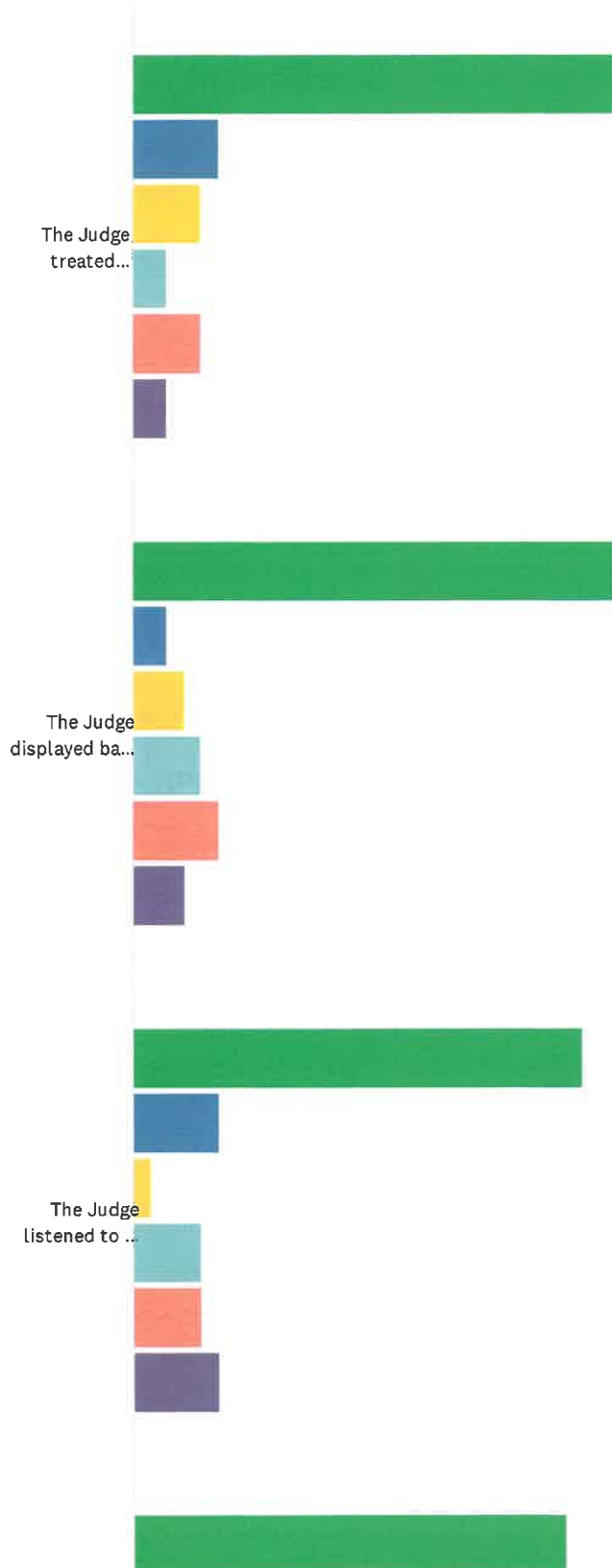
2

53

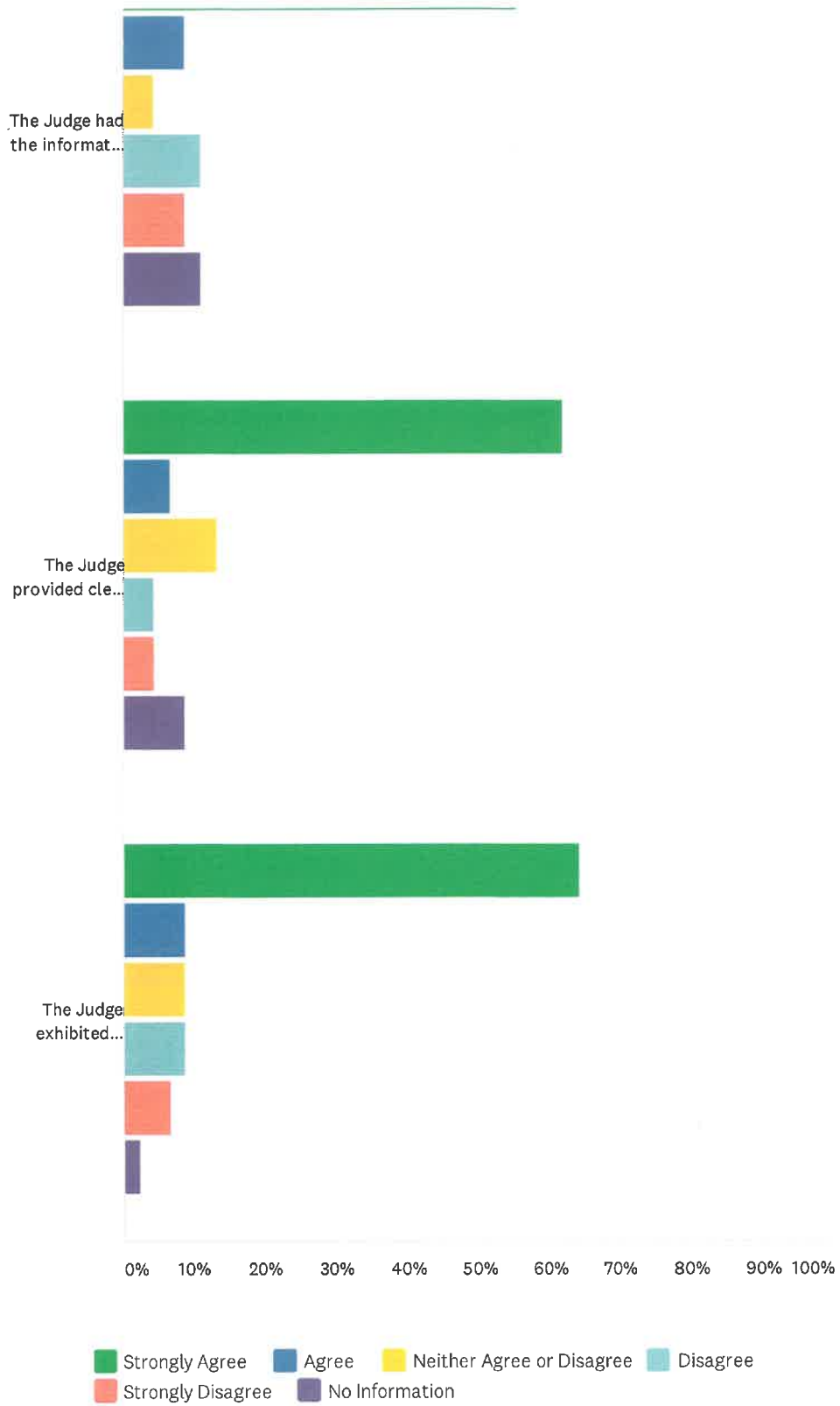
Judicial Evaluation Survey

Q2 Section I: Integrity & Fairness

Answered: 45 Skipped: 8



### Judicial Evaluation Survey



### Judicial Evaluation Survey

	<b>STRONGLY AGREE</b>	<b>AGREE</b>	<b>NEITHER AGREE OR DISAGREE</b>	<b>DISAGREE</b>	<b>STRONGLY DISAGREE</b>	<b>NO INFORMATION</b>	<b>TOTAL</b>
The Judge treated everyone the same without regard to age/race/gender/economic status.	62.22% 28	11.11% 5	8.89% 4	4.44% 2	8.89% 4	4.44% 2	45
The Judge displayed basic fairness and impartiality.	62.22% 28	4.44% 2	6.67% 3	8.89% 4	11.11% 5	6.67% 3	45
The Judge listened to all sides of the story before rendering a decision.	57.78% 26	11.11% 5	2.22% 1	8.89% 4	8.89% 4	11.11% 5	45
The Judge had the information necessary to make good decisions about the case.	55.56% 25	8.89% 4	4.44% 2	11.11% 5	8.89% 4	11.11% 5	45
The Judge provided clear instructions and answered all questions pertaining to the case.	62.22% 28	6.67% 3	13.33% 6	4.44% 2	4.44% 2	8.89% 4	45
The Judge exhibited personal integrity.	64.44% 29	8.89% 4	8.89% 4	8.89% 4	6.67% 3	2.22% 1	45

<b>#</b>	<b>COMMENTS (OPTIONAL):</b>	<b>DATE</b>
1	The Judge treats non-English speaking defendants different than English speaking defendants, making them wait until the end of docket, sometimes that being after 5pm, when they were set and arrived earlier in the day.	4/5/2021 12:18 PM
2	I appreciate her empathy, fairness and calm demeanor. Model Judge as I have worked with the juvenile courts for the last 20 years, she outstanding	4/2/2021 11:52 AM
3	Court personnel have expressed concerns that it is their perception that Spanish speaking defendants scheduled in Judge Gaudreau's courtroom receive unfair treatment by being placed at the end of the docket, causing them to wait much longer than non-Spanish speaking defendants who were scheduled and/or arrived much later than them. This concern was forwarded to the former court administrator after it was reported that a Spanish speaking defendant waited over five hours to be seen by Judge Gaudreau after his case was moved to the end of the docket. Staff reported that Judge Gaudreau said she wanted to hold the case until the end of the docket because she knew it would take the longest to complete. On Tuesday, April 16, 2019 at approximately 4:00pm, Judge Gaudreau asked parties seated in the gallery to raise their hand if they were unable to remain at the court past 5:00pm and then called on each person individually to explain why they may need to have their case rescheduled to a different date. Court personnel expressed frustration that a significant amount of time was spent polling the defendants instead of focusing on completing the docket so that everyone, including court staff, could go home at, or close to, 5pm, instead court did not conclude until 7pm. It was reported by staff that the prosecutor also expressed frustration upon being advised that Judge Gaudreau had excused several defendants to leave with a new court date without getting the State's position and/or notifying the State of her intent to reschedule the hearings, especially since one of the cases rescheduled was a victim cases.	4/1/2021 3:55 PM
4	"The Judge had the information necessary..." the Judicial Assistant should not be asked "what do you think" when the Judge is contemplating on how to proceed with a certain action on the case.	4/1/2021 9:21 AM
5	This judge was very fair caring and knowledgeable and explained everything thoroughly	3/18/2021 8:23 AM
6	Excellent, Judge,!!!!	3/15/2021 1:25 PM
7	She was more than fair considering the obstacles we are facing as a nation with health risks	3/15/2021 8:51 AM
8	On a recent occasion, I overheard the judge telling court staff that she didn't have time to waste on a "65 year old woman who wants to act like she is 13" and that the woman's behavior was ridiculous. This was in regards to a protective order case/petition. The comment was	3/1/2021 2:36 PM

## Judicial Evaluation Survey

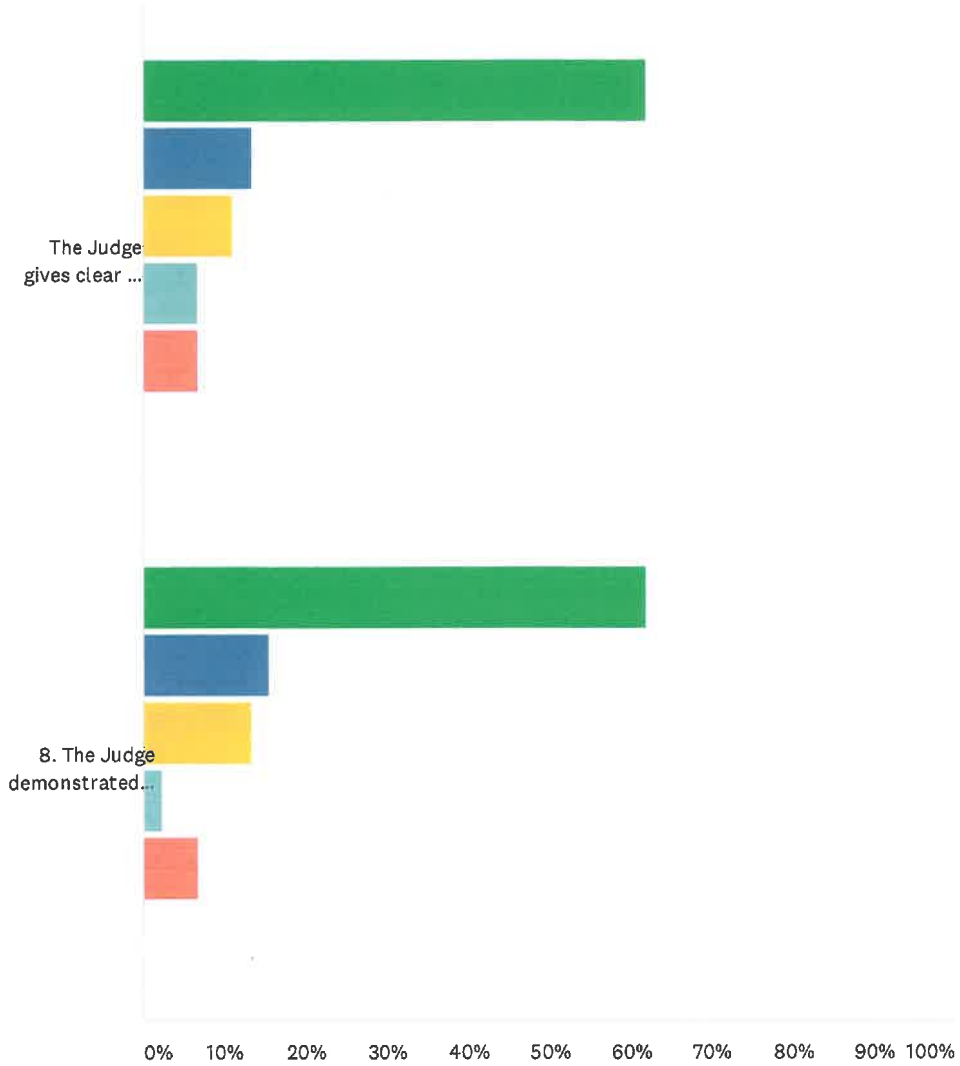
made to a member of the court staff and it was loud enough to be overheard by court staff sitting nearby.

9	These are courtroom questions. I have no direct knowledge of her courtroom attitude/demeanor.	2/25/2021 7:18 PM
10	Judge berates court employees in view of the public. Is unclear of her direct at times. Creates orders that go against the rules of court procedure, statute or orders that favor one defendant's situation over another.	2/25/2021 10:13 AM
11	she was the best judge I ever had	2/21/2021 8:10 PM
12	Regularly practice here. Excellent judge.	2/10/2021 1:07 PM

Judicial Evaluation Survey

Q3 Section II: Communication Skills & Understanding of the Law

Answered: 45 Skipped: 8



■ Strongly Agree   
 ■ Agree   
 ■ Neither Agree or Disagree   
 ■ Disagree  
■ Strongly Disagree   
 ■ No Information

	STRONGLY AGREE	AGREE	NEITHER AGREE OR DISAGREE	DISAGREE	STRONGLY DISAGREE	NO INFORMATION	TOTAL
The Judge gives clear and logical oral communications/instructions.	62.22% 28	13.33% 6	11.11% 5	6.67% 3	6.67% 3	0.00% 0	45
8. The Judge demonstrated a satisfactory knowledge of the law and procedures.	62.22% 28	15.56% 7	13.33% 6	2.22% 1	6.67% 3	0.00% 0	45

#                      COMMENTS (OPTIONAL):                      DATE

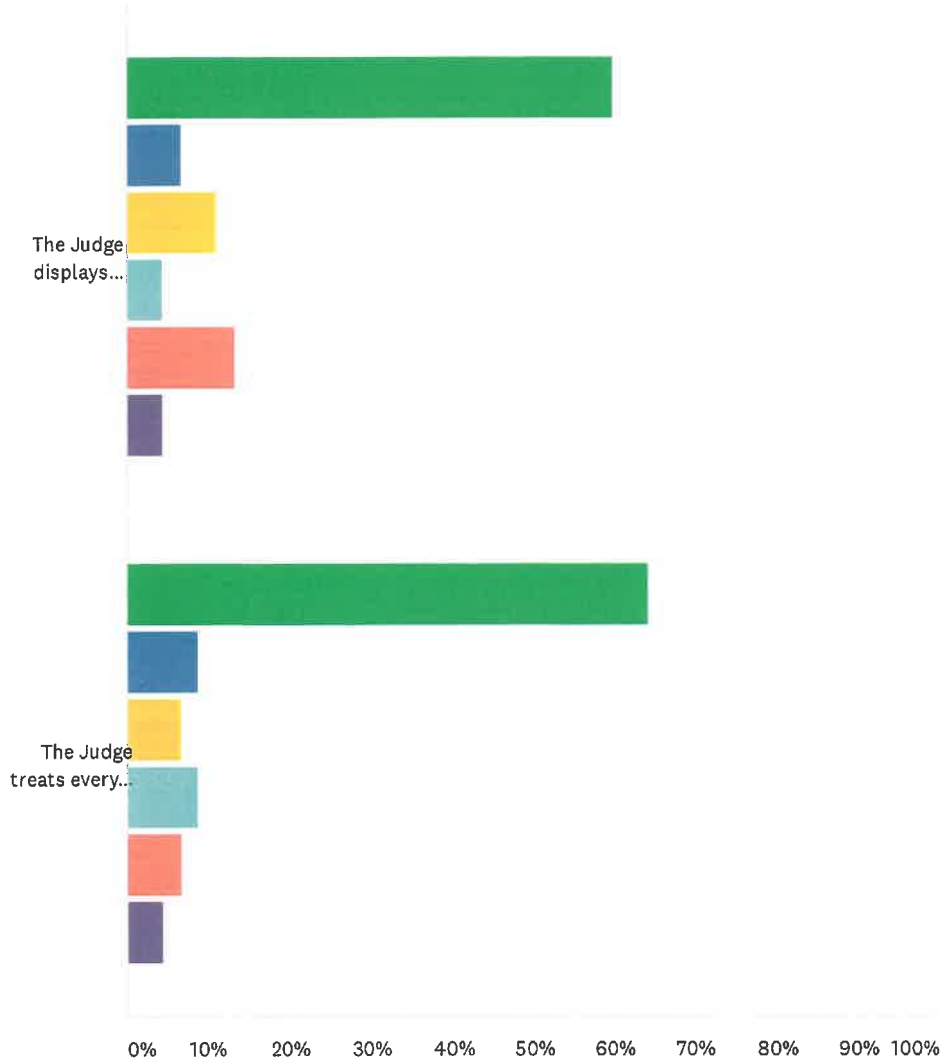
## Judicial Evaluation Survey

1	Judge Gaudreau routinely disregards the Arizona Rules of Protective Order Procedures by turning away people seeking to file a petition citing that she does not have time to hear the petition. The Court has received phone calls and emails from supervisors/court administrators from the Northwest Regional Court center expressing concern that the Surprise City Court is turning away individuals seeking to file a protective order. Although Judge Gaudreau has accepted significantly more protective order petitions since the commencement of the judicial surveys for her reappointment, this is not consistent with how she has handled protective order petitions over the last four years.	4/1/2021 3:55 PM
2	Her sermon can become elongated and what NEEDS to be communicated gets lost in translation. At times Defendant's leave the courtroom feeling more confused than when they entered.	4/1/2021 9:21 AM
3	This judge had clear and logical explanations on everything she explained.	3/18/2021 8:23 AM
4	Leaning on prosecutor knowledge	3/15/2021 1:13 PM
5	Despite serving on CIDVIC, this judge routinely violates ARPOP Rule 6(c) and 17 by referring petitioners to the justice courts because the judge is "too busy".	2/25/2021 7:18 PM
6	If a court employee does not understand the instruction and questions Judge for clarity, Judge becomes defensive and berates the employees.	2/25/2021 10:13 AM

Judicial Evaluation Survey

Q4 Section III: Judicial Temperament

Answered: 45 Skipped: 8



■ Strongly Agree  
 ■ Agree  
 ■ Neither Agree or Disagree  
 ■ Disagree  
■ Strongly Disagree  
 ■ No Information

	STRONGLY AGREE	AGREE	NEITHER AGREE OR DISAGREE	DISAGREE	STRONGLY DISAGREE	NO INFORMATION	TOTAL
The Judge displays understanding and compassion.	60.00% 27	6.67% 3	11.11% 5	4.44% 2	13.33% 6	4.44% 2	45
The Judge treats everyone in the courtroom with courtesy and respect	64.44% 29	8.89% 4	6.67% 3	8.89% 4	6.67% 3	4.44% 2	45

# COMMENTS (OPTIONAL): DATE

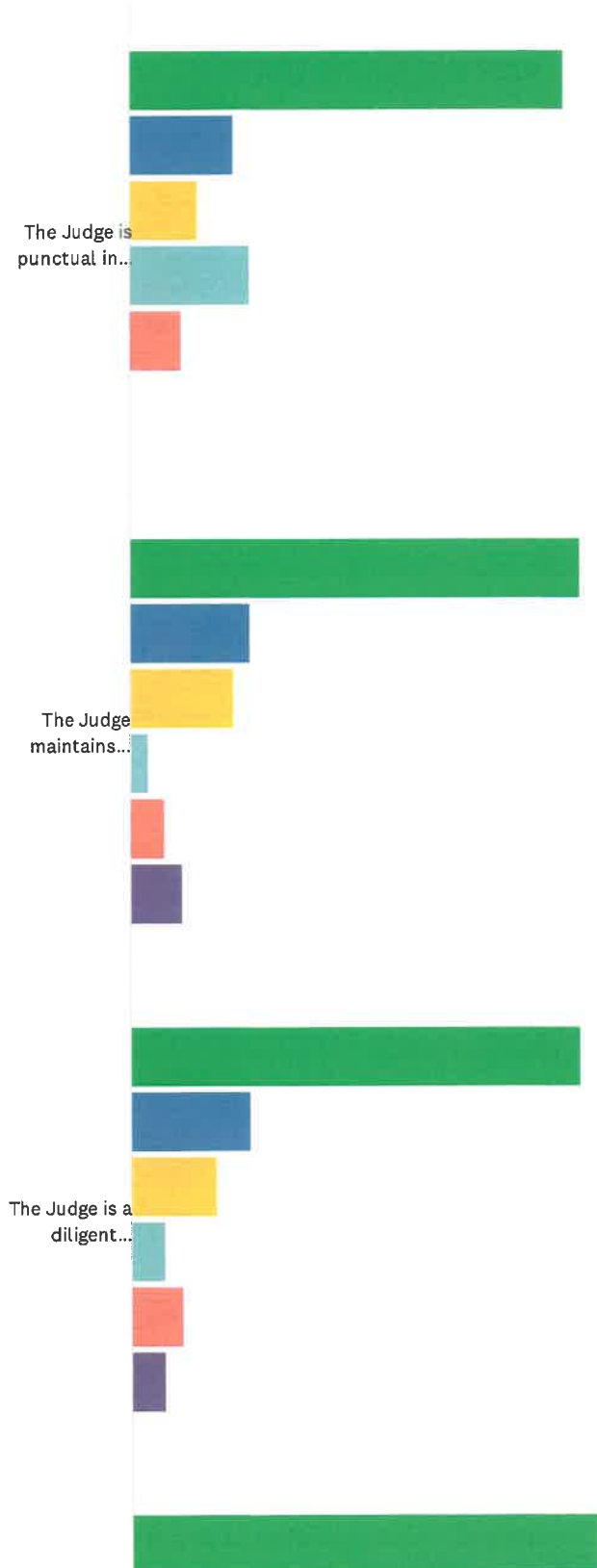
## Judicial Evaluation Survey

1	This judge was very fair in reviewing all facts prior to making a decision	3/18/2021 8:23 AM
2	Didn't let me speak judge let everyone else speak	3/15/2021 1:13 PM
3	The rating on this category is based mostly on a recent situation where the judge's comment to a member of the court staff, as described in the Section I comments above, did not display understanding/compassion. Although the comment was not made in the courtroom, I believe is still shows a lack of respect.	3/1/2021 2:36 PM
4	No direct knowledge - hearsay only	2/25/2021 7:18 PM
5	Judge does not treat all court employees the same inside the courtroom. Judge will reprimand the judicial assistance in the present of the public. Example of one incident with court employees in front of the public: "it's common sense, I didn't think I needed to ask for common sense"	2/25/2021 10:13 AM
6	treated everyone with the most respect big time	2/21/2021 8:10 PM
7	Today I had to eat out of the trash in this country because I had to choose pay a fine, rent or eat.	2/16/2021 9:55 AM
8	Judge Gaudreau is a very compassionate judge that listens to defendants and doesn't rush the court process.	2/16/2021 8:38 AM

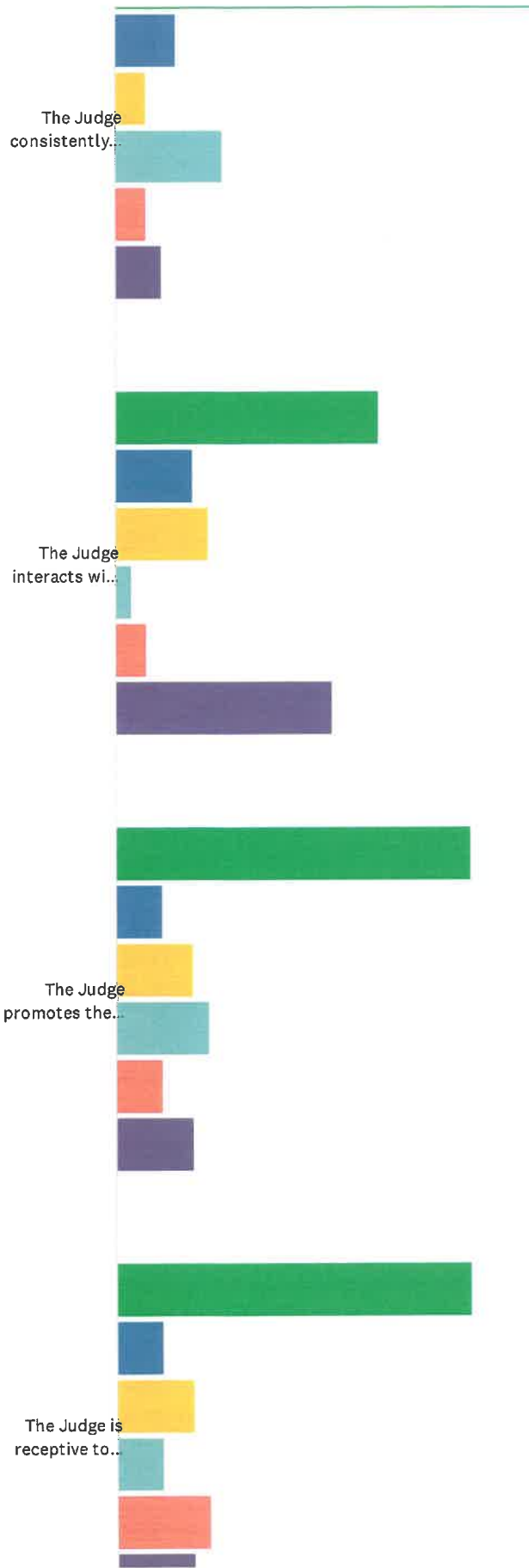
Judicial Evaluation Survey

Q5 Section IV: Administrative Performance & Leadership

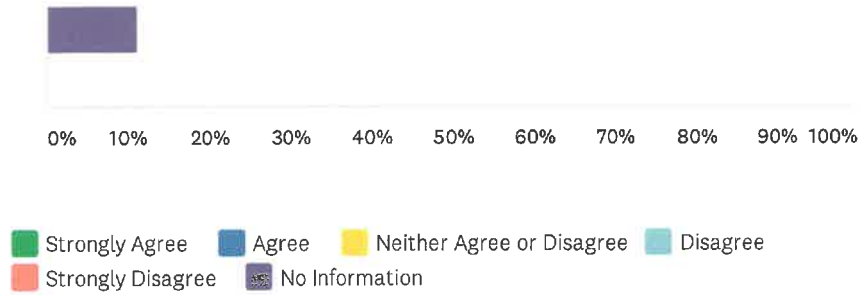
Answered: 45 Skipped: 8



# Judicial Evaluation Survey



## Judicial Evaluation Survey



	STRONGLY AGREE	AGREE	NEITHER AGREE OR DISAGREE	DISAGREE	STRONGLY DISAGREE	NO INFORMATION	TOTAL
The Judge is punctual in conducting proceedings.	55.56% 25	13.33% 6	8.89% 4	15.56% 7	6.67% 3	0.00% 0	45
The Judge maintains proper control over courtroom.	57.78% 26	15.56% 7	13.33% 6	2.22% 1	4.44% 2	6.67% 3	45
The Judge is a diligent worker.	57.78% 26	15.56% 7	11.11% 5	4.44% 2	6.67% 3	4.44% 2	45
The Judge consistently treats court staff with respect.	60.00% 27	8.89% 4	4.44% 2	15.56% 7	4.44% 2	6.67% 3	45
The Judge interacts with other Judges in a constructive manner.	37.78% 17	11.11% 5	13.33% 6	2.22% 1	4.44% 2	31.11% 14	45
The Judge promotes the exchange of ideas.	51.11% 23	6.67% 3	11.11% 5	13.33% 6	6.67% 3	11.11% 5	45
The Judge is receptive to feedback.	51.11% 23	6.67% 3	11.11% 5	6.67% 3	13.33% 6	11.11% 5	45

#	COMMENTS (OPTIONAL):	DATE
1	Judge is very rude, disrespectful and demeaning to court staff. Judge cannot effectively time manage the courtroom.	4/5/2021 12:18 PM
2	Judge Gaudreau does not treat court staff with dignity and respect and is often demeaning and discourteous when she becomes frustrated with a person or situation. Since her appointment in December 2016, court management has received numerous complaints about the manner in which she talks to staff and in December 2018, a formal complaint was filed against Judge Gaudreau with the City of Surprise Human Resources. Judge Gaudreau seems to get overwhelmed with the docket and then things in her courtroom begin to spiral out of control. Judge Gaudreau struggles to effectively manage the courtroom and the flow of scheduled cases, spending time trying to either reset or divert cases to another courtroom rather than being diligent to complete the cases that are scheduled on her docket. The Court has received complaints from court personnel, the Prosecutor's Office, and the Surprise Police Department Inmate Transport Unit regarding the excessive amount of time it takes for Judge Gaudreau to complete a typical docket. Judge Gaudreau is rarely punctual with taking the bench and commencing the docket, and often engages in impromptu meetings with administrative staff while the judicial assistants, attorneys and parties wait in the courtroom.	4/1/2021 3:55 PM
3	Judges should set an example for staff. It's noticed when absolutely no acknowledgement is made in the salutary aspect when crossing paths with staff. It's disheartening when common courtesy should be exercised and it's not. Judge is held at a higher standard, therefore, respect in the workplace should be exercised at all times.	4/1/2021 9:21 AM
4	This judge is clearly a professional! She did a great job and everything was explained and she was fair to all parties involved.	3/18/2021 8:23 AM
5	Prosecutor only	3/15/2021 1:13 PM
6	Judge has no respect for the line of authority. Routinely admonishes staff without supervisor	2/25/2021 7:18 PM

## Judicial Evaluation Survey

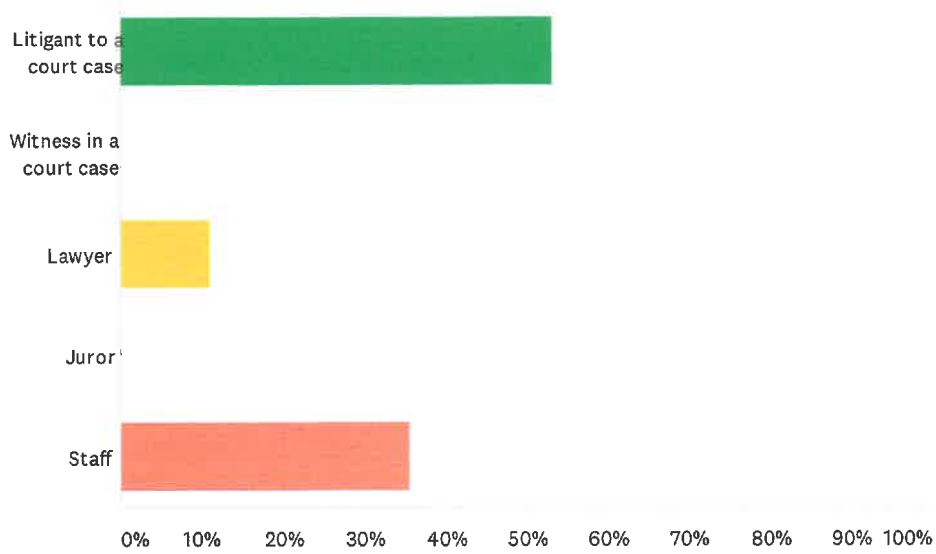
input or knowledge and in front of other staff members. Recently awarded on-site staff with thank you notes gift cards for working hard, while ignoring staff that works from home, putting on-site staff in an awkward situation.

- |   |  |                    |
|---|--|--------------------|
| 7 | Judge berates court employees causing them undue stress and anxiety. On a number of occasions, Judge has treated court employees disrespectfully in front of others causing them to become upset and cry. Judge holds up court by conducting extended conversations and ignoring the start times of the court docket. Judge becomes defensive when questioned by court employees for clarity of an order. Judge denies hearing Ex Parte Order of Protections or Injunctions of Harassment based on her schedule or based on whether she believes the order is not an emergency. She does not place this type of cases as a priority and will keep the parties waiting for hours, instruct them to return at a later time or direct them to another court. Judge believes she holds authority over court employees and will direct the court clerks procedurally without direction or input from the management team. | 2/25/2021 10:13 AM |
| 8 | Judge Gaudreau gives ideas to create processes to enhance customers experience at the court and to make it positive experience.  | 2/16/2021 8:38 AM  |

Judicial Evaluation Survey

Q6 Your role in the court business?

Answered: 45 Skipped: 8



**ANSWER CHOICES**

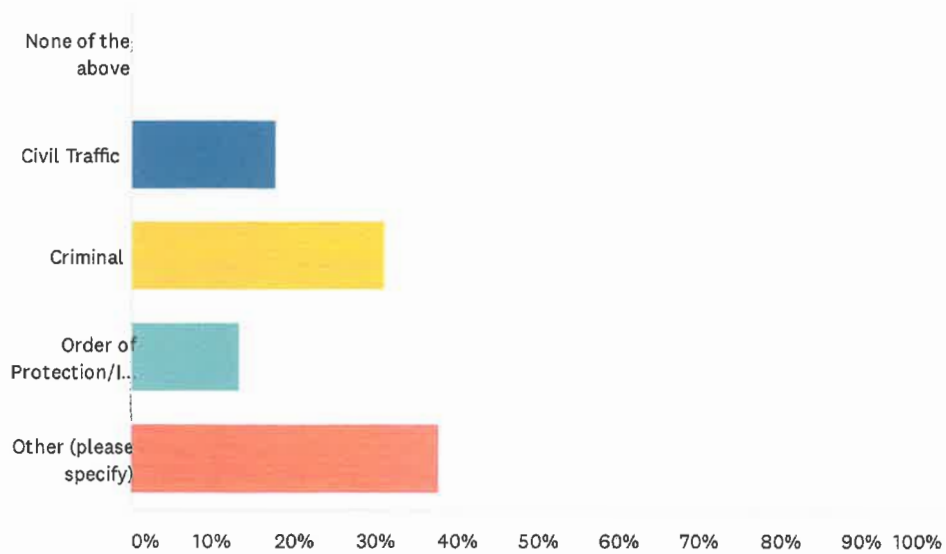
**RESPONSES**

ANSWER CHOICES	RESPONSES	
Litigant to a court case	53.33%	24
Witness in a court case	0.00%	0
Lawyer	11.11%	5
Juror	0.00%	0
Staff	35.56%	16
TOTAL		45

Judicial Evaluation Survey

Q7 Type of business that brought you before the court?

Answered: 45 Skipped: 8



ANSWER CHOICES	RESPONSES	
None of the above	0.00%	0
Civil Traffic	17.78%	8
Criminal	31.11%	14
Order of Protection/Injunction against Harassment	13.33%	6
Other (please specify)	37.78%	17
TOTAL		45

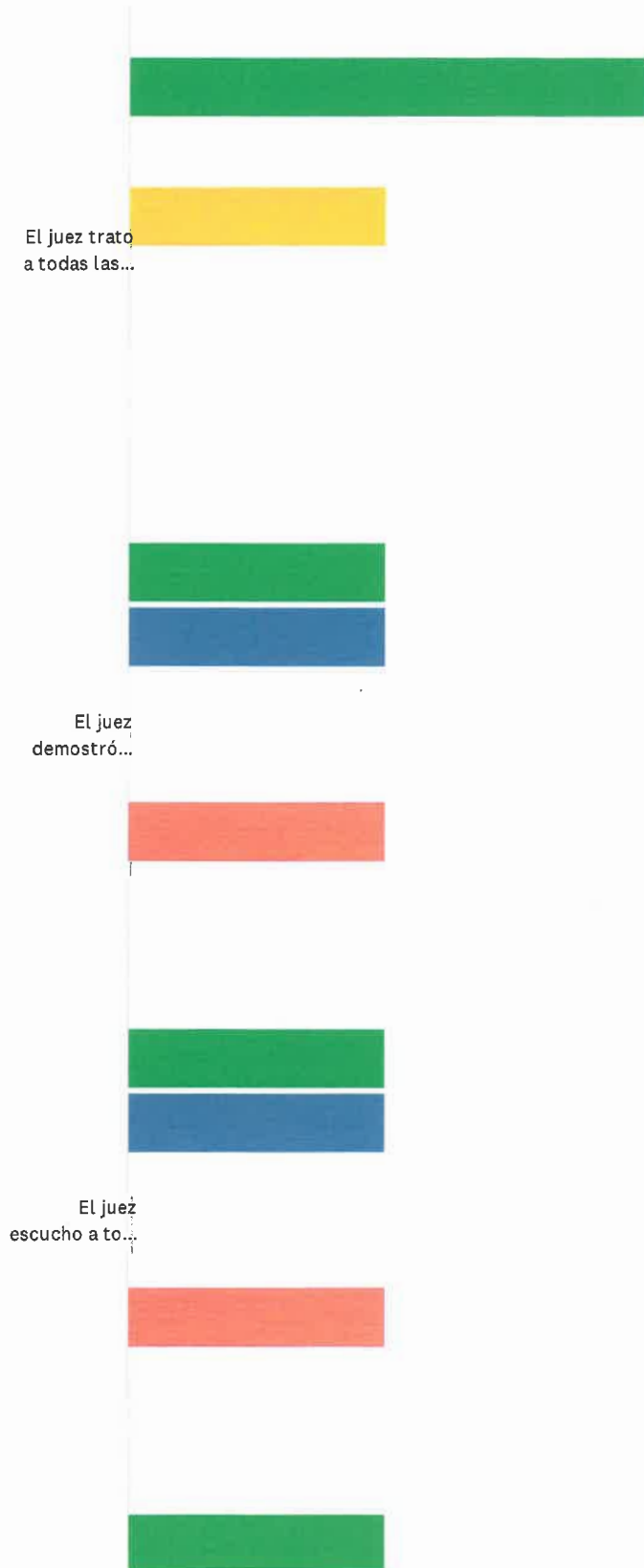
#	OTHER (PLEASE SPECIFY)	DATE
1	staff	4/5/2021 12:18 PM
2	Employee of the Surprise City Court	4/1/2021 3:56 PM
3	Staff	4/1/2021 9:22 AM
4	Class 2 Misdemeanor	3/11/2021 2:04 PM
5	n/a	3/11/2021 11:41 AM
6	not applicable	3/1/2021 2:36 PM
7	Work	2/25/2021 7:19 PM
8	N/A	2/25/2021 10:13 AM
9	I work here	2/23/2021 8:07 AM
10	N/A	2/18/2021 11:22 AM
11	EMPLOYEE	2/16/2021 4:18 PM
12	Found a phone and was charged for it	2/16/2021 1:46 PM
13	Staff	2/16/2021 8:39 AM

## Judicial Evaluation Survey

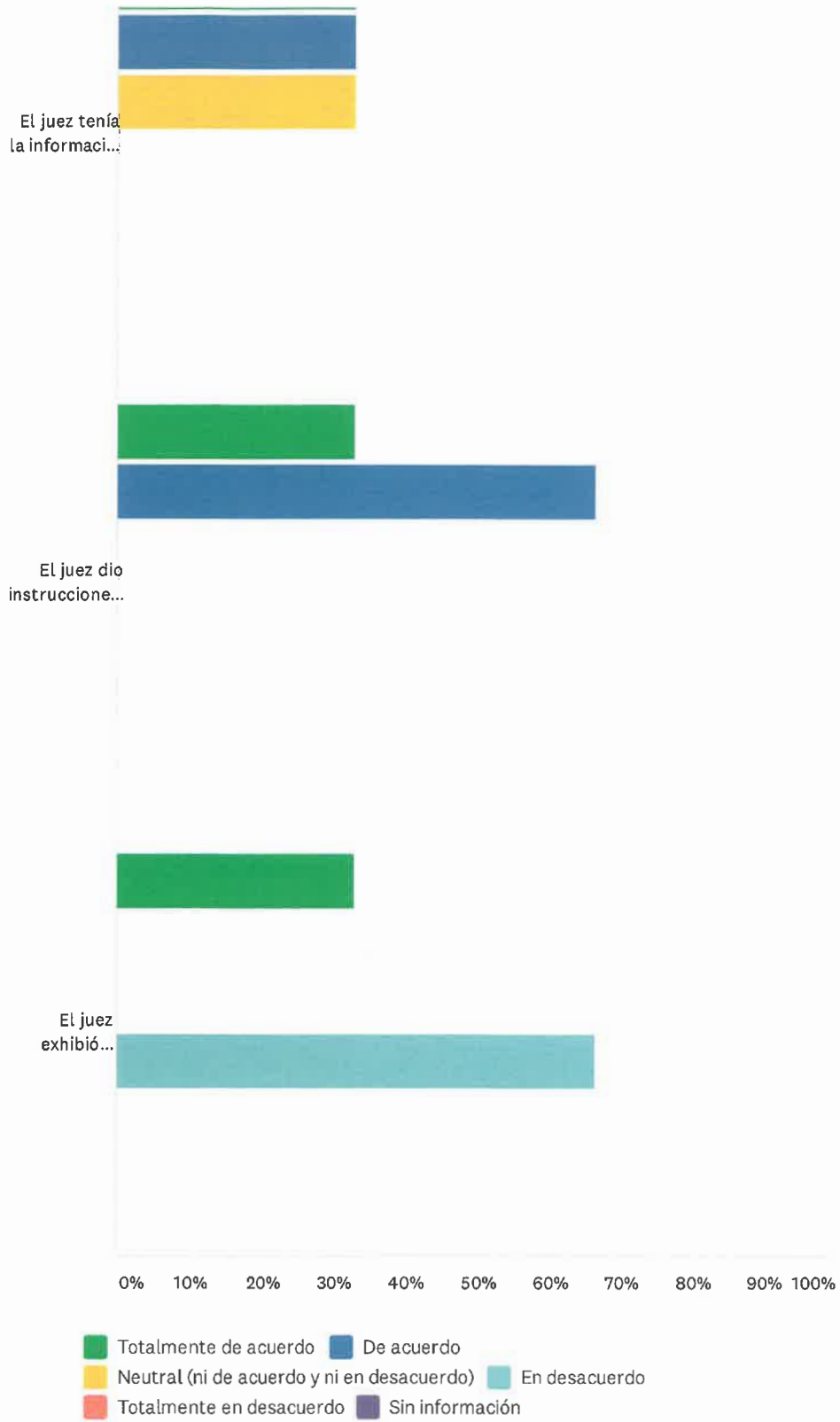
14	ProTem Judge	2/14/2021 10:07 AM
15	Court Interpreter	2/13/2021 4:03 PM
16	Staff	2/10/2021 2:12 PM
17	Administration	2/10/2021 1:23 PM

### Q8 Sección I: Integridad e imparcialidad

Answered: 3 Skipped: 50



### Judicial Evaluation Survey



### Judicial Evaluation Survey

	TOTALMENTE DE ACUERDO	DE ACUERDO	NEUTRAL (NI DE ACUERDO Y NI EN DESACUERDO)	EN DESACUERDO	TOTALMENTE EN DESACUERDO	SIN INFORMACIÓN	TOTAL
El juez trato a todas las personas de la misma manera sin importar la edad/ raza/género/estatus económico	66.67% 2	0.00% 0	33.33% 1	0.00% 0	0.00% 0	0.00% 0	3
El juez demostró imparcialidad y un concepto básico de la justicia	33.33% 1	33.33% 1	0.00% 0	0.00% 0	33.33% 1	0.00% 0	3
El juez escucho a todas las partes involucradas antes de imponer su decisión	33.33% 1	33.33% 1	0.00% 0	0.00% 0	33.33% 1	0.00% 0	3
El juez tenía la información necesaria para tomar buenas decisiones sobre el caso	33.33% 1	33.33% 1	33.33% 1	0.00% 0	0.00% 0	0.00% 0	3
El juez dio instrucciones claras y respondió a todas las preguntas pertenecientes al caso	33.33% 1	66.67% 2	0.00% 0	0.00% 0	0.00% 0	0.00% 0	3
El juez exhibió integridad personal	33.33% 1	0.00% 0	0.00% 0	66.67% 2	0.00% 0	0.00% 0	3

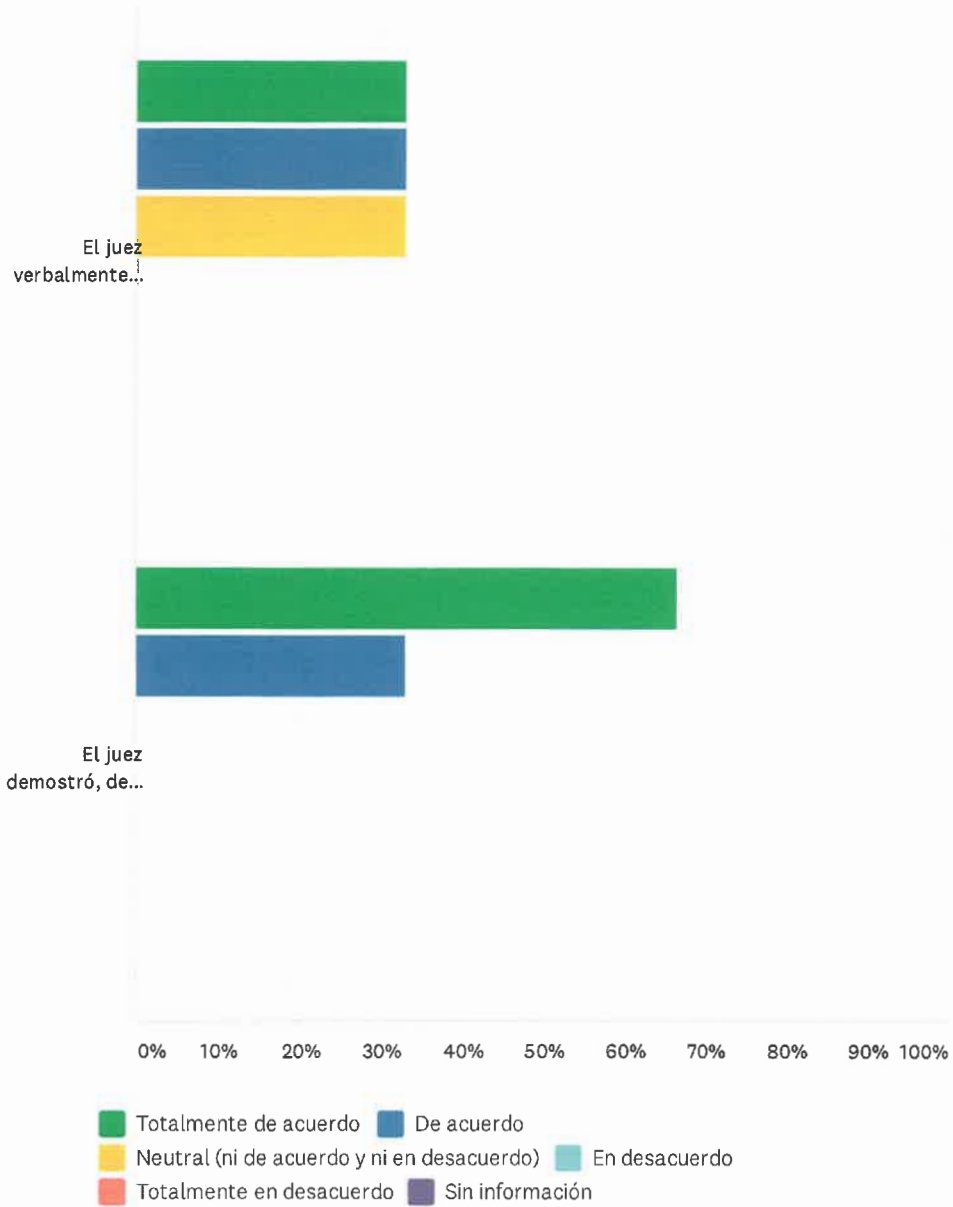
#	COMENTARIOS DE LA SECCIÓN I	DATE
1	Muy buen trabajo de la juez	4/4/2021 4:38 PM

*English translation: Very good job by the Judge*

Judicial Evaluation Survey

Q9 Sección II: Habilidad comunicativa y comprensión de la ley

Answered: 3 Skipped: 50



### Judicial Evaluation Survey

	TOTALMENTE DE ACUERDO	DE ACUERDO	NEUTRAL (NI DE ACUERDO Y NI EN DESACUERDO)	EN DESACUERDO	TOTALMENTE EN DESACUERDO	SIN INFORMACIÓN	TOTAL
El juez verbalmente comunico instrucciones claras y lógicas	33.33% 1	33.33% 1	33.33% 1	0.00% 0	0.00% 0	0.00% 0	3
El juez demostró, de una manera satisfactoria, su conocimiento de la ley y los procedimientos legales	66.67% 2	33.33% 1	0.00% 0	0.00% 0	0.00% 0	0.00% 0	3

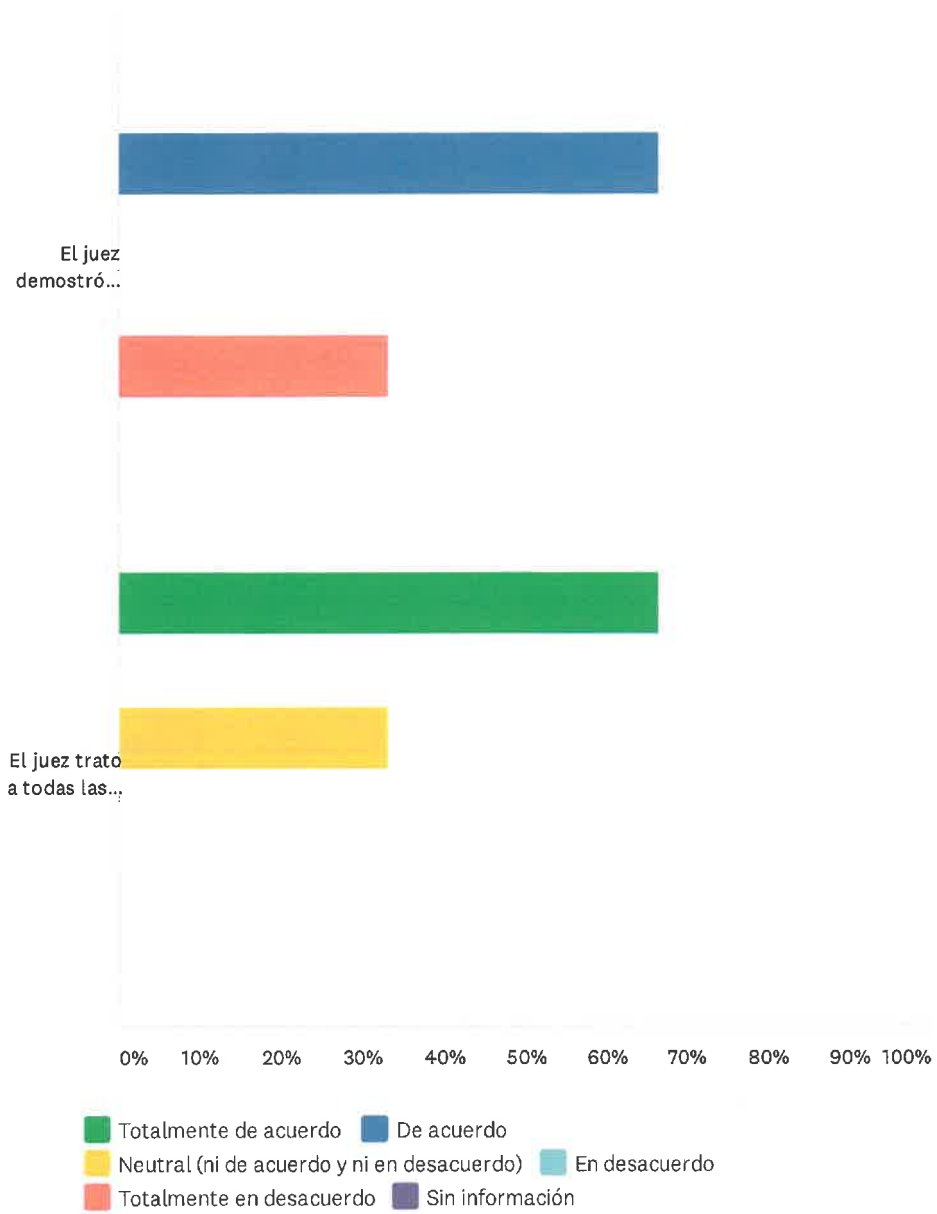
#	COMENTARIOS DE LA SECCIÓN II	DATE
1	Exelente juez	4/4/2021 4:38 PM

*English translation: Excellent Judge*

Judicial Evaluation Survey

Q10 Sección III: Temperamento judicial

Answered: 3 Skipped: 50



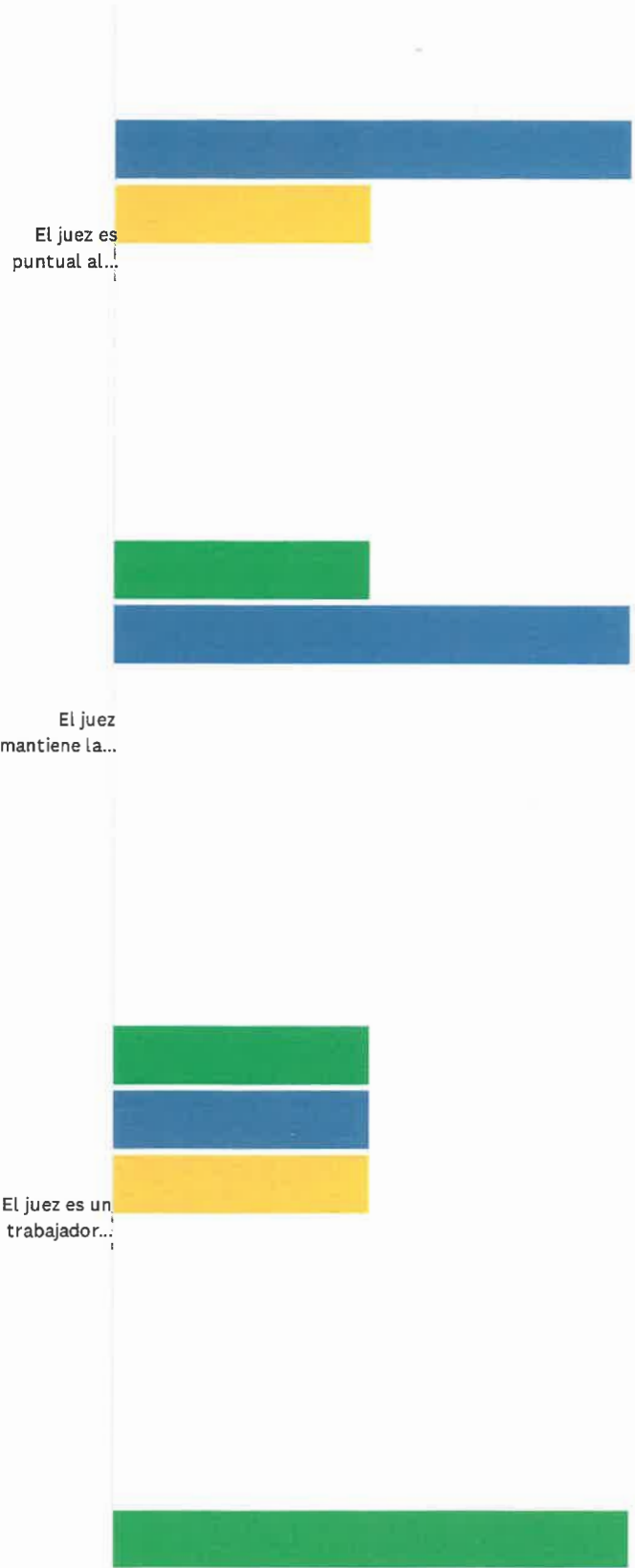
### Judicial Evaluation Survey

	TOTALMENTE DE ACUERDO	DE ACUERDO	NEUTRAL (NI DE ACUERDO Y NI EN DESACUERDO)	EN DESACUERDO	TOTALMENTE EN DESACUERDO	SIN INFORMACIÓN	TOTAL
El juez demostró comprensión y compasión	0.00% 0	66.67% 2	0.00% 0	0.00% 0	33.33% 1	0.00% 0	3
El juez trato a todas las personas en la sala de justicia con cortesía y respeto	66.67% 2	0.00% 0	33.33% 1	0.00% 0	0.00% 0	0.00% 0	3
<b>#</b>	<b>COMENTARIOS DE LA SECCIÓN III</b>					<b>DATE</b>	
1	Muy respetuosa					4/4/2021 4:38 PM	

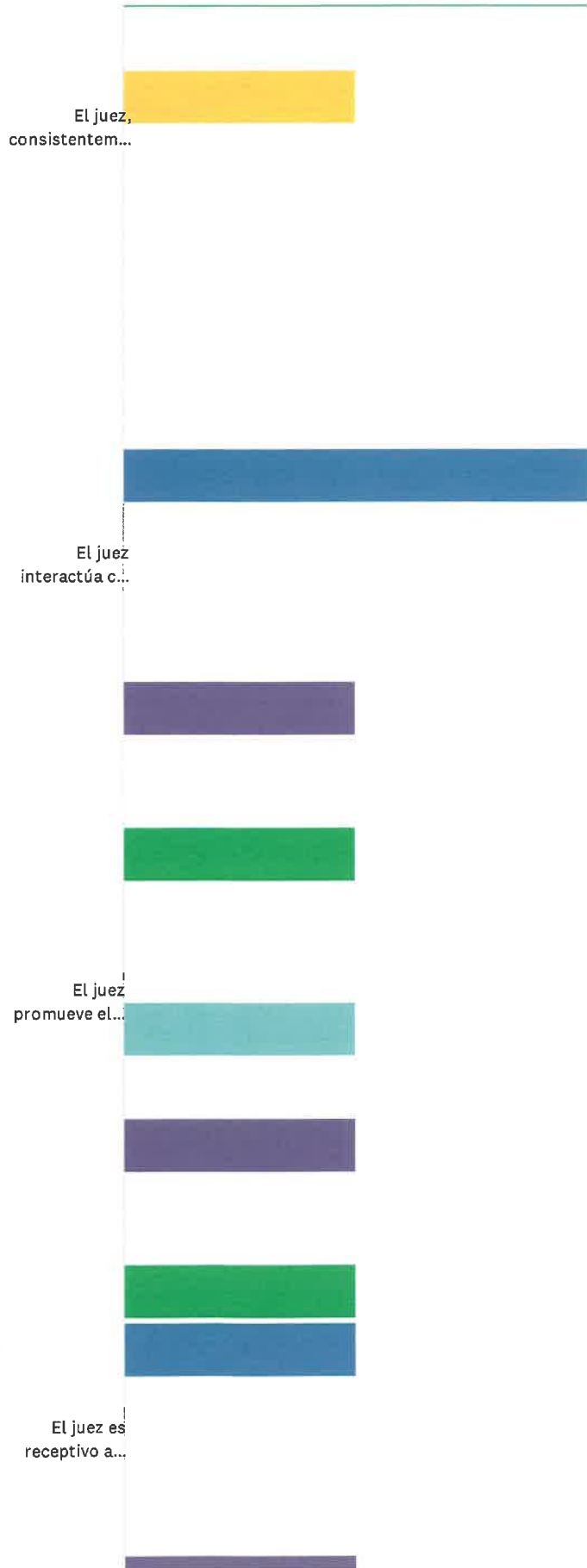
*English translation: Very respectful*

### Q11 Sección IV: Desempeño administrativo y liderazgo

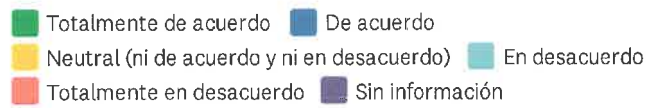
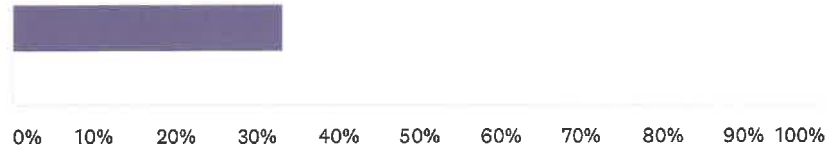
Answered: 3 Skipped: 50



# Judicial Evaluation Survey



## Judicial Evaluation Survey



	TOTALMENTE DE ACUERDO	DE ACUERDO	NEUTRAL (NI DE ACUERDO Y NI EN DESACUERDO)	EN DESACUERDO	TOTALMENTE EN DESACUERDO	SIN INFORMACIÓN	TOTAL
El juez es puntual al poner en funcionamiento el procedimiento jurídico	0.00% 0	66.67% 2	33.33% 1	0.00% 0	0.00% 0	0.00% 0	3
El juez mantiene la sala de justicia bajo su control de una manera propia	33.33% 1	66.67% 2	0.00% 0	0.00% 0	0.00% 0	0.00% 0	3
El juez es un trabajador diligente	33.33% 1	33.33% 1	33.33% 1	0.00% 0	0.00% 0	0.00% 0	3
El juez, consistentemente, trata a los empleados de la sala de justicia con respeto	66.67% 2	0.00% 0	33.33% 1	0.00% 0	0.00% 0	0.00% 0	3
El juez interactúa con otros jueces de una manera constructiva	0.00% 0	66.67% 2	0.00% 0	0.00% 0	0.00% 0	33.33% 1	3
El juez promueve el intercambio de ideas	33.33% 1	0.00% 0	0.00% 0	33.33% 1	0.00% 0	33.33% 1	3
El juez es receptivo a recibir retroinformación (información para evaluar/mejorar su desempeño)	33.33% 1	33.33% 1	0.00% 0	0.00% 0	0.00% 0	33.33% 1	3

**# COMENTARIOS DE LA SECCIÓN IV**

1 Exelente juez

**DATE**

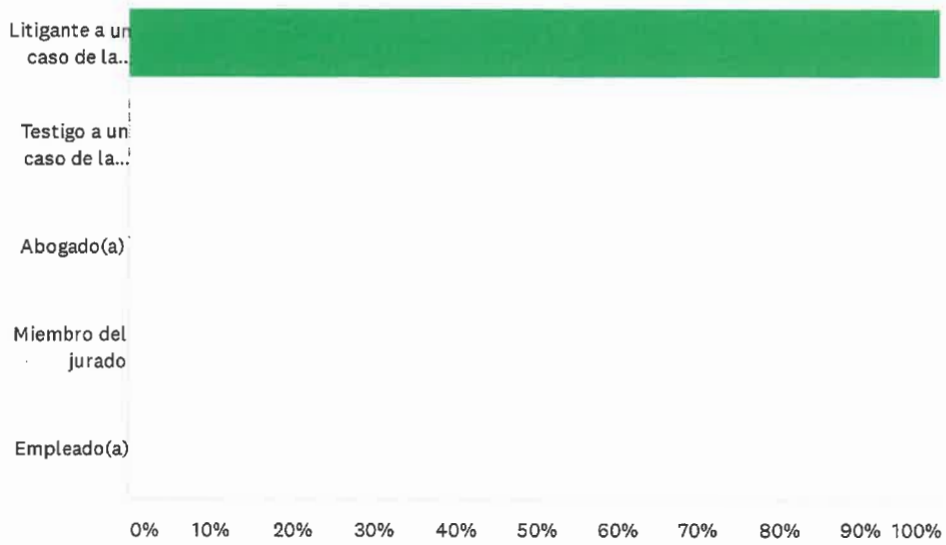
4/4/2021 4:38 PM

*English translation: Excellent Judge*

Judicial Evaluation Survey

Q12Cuál es su función en la sala de justicia:

Answered: 2 Skipped: 51

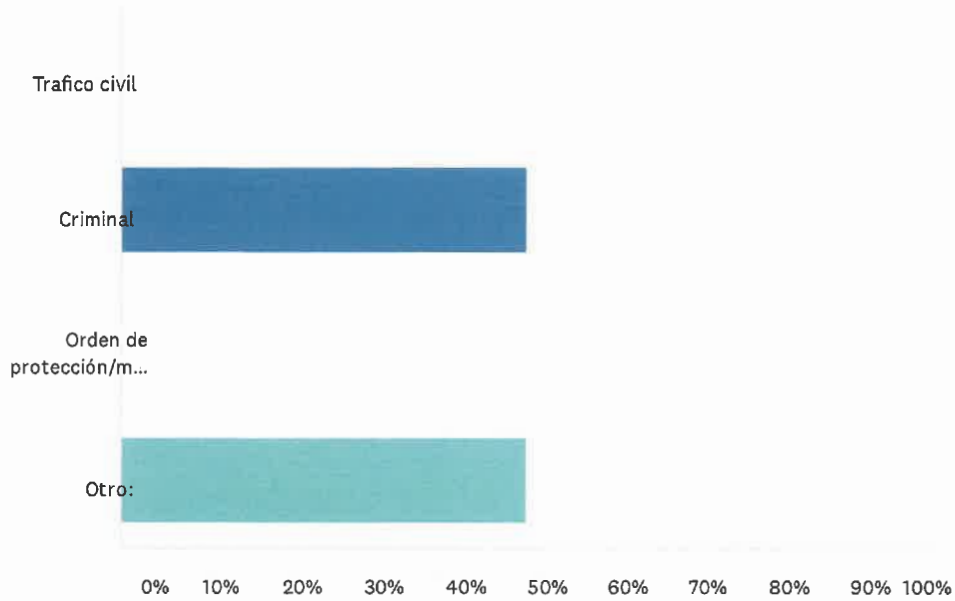


ANSWER CHOICES	RESPONSES	
Litigante a un caso de la corte	100.00%	2
Testigo a un caso de la corte	0.00%	0
Abogado(a)	0.00%	0
Miembro del jurado	0.00%	0
Empleado(a)	0.00%	0
TOTAL		2

Judicial Evaluation Survey

Q13 Qué negocio le ha traído a la corte:

Answered: 2 Skipped: 51



ANSWER CHOICES		RESPONSES	
Trafico civil		0.00%	0
Criminal		50.00%	1
Orden de protección/mandato contra el acoso		0.00%	0
Otro:		50.00%	1
TOTAL			2

#	OTRO:	DATE
1	Conducta desordenada	4/4/2021 4:39 PM

*English translation: Disorderly conduct*



**CITY OF SURPRISE**  
**Judicial Selection Advisory Commission Meeting**

---

Council Meeting Date: April 22, 2021  
Submitting Department: Human Resources  
Staff Recommendations:

Contact Person:  
District: Citywide

---

Consent: No      Regular: Yes      Public Hearing: No      Report/Discussion: No

---

**Agenda Wording:**

Discussion and review of the Judicial Selection Advisory Commission Procedural Rules.

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**Motion:**

This item is for discussion only.

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**Background:**

Pursuant to Article III. - Judicial Selection Advisory Commission, Section 30-43 - Meetings (a). The commission shall hold no less than one meeting each year for the purpose of reviewing the commission's operating procedures.

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**Objective Analysis:**

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**Policy Compliant:**

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**Financial Impact:**

None

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**Budget Impact:**

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**FTE Impact:**

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**ATTACHMENTS:**

1. JSAC Procedural Rules
-

**City of Surprise  
Judicial Selection Advisory Commission  
Procedural Rules**

Rule 1. Commission Officers

The Commission members shall elect officers as required by city ordinance or by-law. The chairman shall preside at all meetings of the Commission. In the chairman's absence, the vice chairman shall preside over the meetings.

Rule 2. Secretary

The Secretary to the Commission will be as designated by ordinance or rule. The duties of Secretary will include preparing and keeping minutes of all meetings, sending information packets to the members prior to a meeting, ensuring the meetings are duly posted as required and other duties as required to conduct the business of the Commission.

Rule 3. Duties of Commission Members

- (A). A Commission member shall consider each application for judicial office in a fair, impartial and objective manner.
- (B). Any Commission member who knows of any fact which may cause or appear to cause a conflict of interest with an applicant shall report such facts to the Commission for its determination of whether the member should deliberate concerning the applicant.
- (C). A Commission member shall discourage any person or organization attempting to influence him/her with facts or opinions other than those relevant to the judicial qualifications of the applicant.

Rule 4. Commission Meetings

- (A). All meetings of the Commission shall comply with the Arizona Open Meeting Law.
- (B). Once a year the Commission shall review the Commission's procedural rules.
- (C). The chairman shall issue a call for a meeting promptly upon being advised of the existence or anticipated existence of a judicial vacancy that has to or will have to be filled.
- (D). A quorum for the Commission shall be four (4) members. The Commission may act on any matter by a majority vote of the members present and voting on the matter.

Approved 6/7/10

(E). Any Commission member who is absent from three consecutive meetings without being excused by the chairman shall be considered to have abandoned their appointment and shall be removed from the Commission.

#### Rule 5. Recruitment of Applicants

Commission members shall actively seek and encourage qualified individuals to apply for judicial office. Commission members should be mindful that qualified persons often will not seek judicial appointment and, thus, it is incumbent on members to seek well-qualified persons and encourage them to apply.

#### Rule 6. Procedure for Recommendation for Reappointment

(A). The chairman shall notify the Commission in writing once apprised about the expiration of an existing term of a city judge.

(B). The Commission shall hold a meeting to determine whether to recommend the reappointment of a city judge whose term will be expiring.

(C). All interested members of the public are encouraged to comment on the reappointment of city judges.

(D). The process for reappointment is outlined in section 30-44 of Ordinance #09-41.

(E). The Commission's written recommendation concerning the reappointment of a city judge shall be delivered to the city council as required by the ordinance.

#### Rule 7. Preliminary Screening of Applicants for New Vacancies

(A). Upon receipt of the applications packets, the Commission shall meet in executive session for the purpose of reviewing the qualifications of the applicants.

(B). Those applicants who are selected to be interviewed shall become candidates. The names and applications of candidates will be made available pursuant to Arizona Supreme Court Rule 123 and the public records law.

#### Rule 8. Investigation of Applicants

Commission members shall conduct investigations into the background and qualifications of the applicants. Using the Application for Judicial Office as a guide, the Commission shall conduct a due diligence inquiry of those individuals, organizations and institutions mentioned in the application. The Commission, however, need not limit itself to the

Approved 6/7/10

application but may contact other individuals, institutions and organizations as it deems reasonable in its effort to obtain as much background information on an applicant as is reasonable.

Rule 9. Selection of Nominees.

(A). The Commission shall interview each candidate in accordance with the Arizona Open Meeting Law. The Commission shall vote on the candidates in the public meeting.

(B). Before proceeding to vote on the candidates, the Commission may elect to meet in executive session to discuss a candidate's qualifications for judicial office.

Rule 10. Transmittal to the Presiding Judge

Recommendations regarding the initial appointment of associate judges shall be made to the Presiding Judge as required by Section 30-45 of Ordinance #09-41.



**CITY OF SURPRISE**  
**Judicial Selection Advisory Commission Meeting**

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Council Meeting Date: April 22, 2021  
Submitting Department: Human Resources  
Staff Recommendations:

Contact Person:  
District: Citywide

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Consent: No      Regular: No      Public Hearing: No      Report/Discussion: No

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**Agenda Wording:**

Consideration and action to enter into executive session pursuant to A.R.S. 38-431.03(A)(1) for the purpose of evaluating, in accordance with Surprise City Code Sec. 30-44(c), Presiding Judge Louis Frank Dominguez.

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**Motion:**

I move to enter into Executive Session.

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**Background:**

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**Objective Analysis:**

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**Policy Compliant:**

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**Financial Impact:**

N/A

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**Budget Impact:**

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**FTE Impact:**

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**ATTACHMENTS:**

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**CITY OF SURPRISE**  
**Judicial Selection Advisory Commission Meeting**

Council Meeting Date: April 22, 2021  
Submitting Department: Human Resources  
Staff Recommendations:

Contact Person:  
District: Citywide

---

Consent: No      Regular: No      Public Hearing: No      Report/Discussion: No

---

**Agenda Wording:**

Consideration and action to enter into executive session pursuant to A.R.S. 38-431-03(A)(1) for the purpose of evaluating, in accordance with Surprise City Code Sec. 30-44(c), Associate Judge Catherine Ann Gaudreau.

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**Motion:**

I move to enter into Executive Session.

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**Background:**

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**Objective Analysis:**

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**Policy Compliant:**

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**Financial Impact:**

N/A

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**Budget Impact:**

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**FTE Impact:**

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**ATTACHMENTS:**

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