Note: These cases are taken from the Arizona Appellate Court decisions from April 19, 2022, till the present and generally concern criminal cases that have an application in Limited *Jurisdiction Courts. Attached are my interpretations of the cases and as with all cases should be read by the judge prior to any citing of the cases.*

1) ***State v. Mandell,*** 253 Ariz. 97, 509 P.3d 405, (App. Div 1, filed on 04/19/22). This is a case where the state special actioned a court order which ordered the state to submit victim medical record, which the state did not possess, for an in-camera inspection. "In this criminal matter. The state seeks special action relief from an order that it produce a victim's mental health records for in-camera review…. We hold that the order should first have been directed to the victim instead of the state, and we grant relief because the defendant's generalized and speculative production request was insufficient to overcome the victim's constitutional and statutory rights."

2) ***State v. Teran,*** 253 Ariz. 165, 510 P.3d 502, (App. Div. 1, filed on 04/19/22). This case involved manslaughter with a person hit by a car and killed in the street. It is a contested issue, was the person in a cross walk. The court holds an off the record discussion about jury instructions and then in an on the record ruling refuses to give an instruction about who has the right of way when crossing the street. The manslaughter convictions are overturned but the other convictions are upheld. Be very careful about off the record discussions especially those that concern important matters.

3) ***State v. Wilson,*** 253 Ariz. 191, 510 P.3d 258, (App. Div. 2, filed on 05/18/22). This is a murder case where the defendant is given a self-defense instruction but not a crime prevention nor a defense of residual structure. After conviction defendant appeals and gets a new trial. "Generally, a defendant is entitled to an instruction on any theory of the case reasonably supported by the evidence. The slightest evidence of justification is sufficient to entitle the defendant to an instruction, but if the instruction does not fit the facts of a particular case, the trial court does not err by refusing to give it. Slightest evidence is a low standard, but speculation or mere inference cannot substitute for evidence. In determining slightest evidence, we view the facts in the light most favorable to the party requesting the instruction and do not weigh the evidence nor resolve evidentiary conflicts." Citations omitted.

4) ***City of Scottsdale v. Mikitish In and For CTY. Maricopa,*** 253 Ariz.238, 512 P.3d 92, (App. Div. 1, filed on 05/31/22). "In this special action, the City of Scottsdale (the city) petitions to reverse the superior court's denial of summary judgement on Jeffery Mason's (Mason) defamation claim. For the reasons set forth below, we conclude that absolute immunity protects statements in a police report made by a police officer who is a victim of the reported crime."

5) ***Morgan/Neff v. Dickerson In and For CTY Cochise***, 253 Ariz.207, 511 P.3d 202, (Supreme Court, filed on 06/14/22. The court uses numbers not names for jury selection. Neither side objects but a reporter does object. "The issue here is whether the Frist Amendment to the United States Constitution prohibits the court's routine use of innominate juries. Specifically, we are asked to decide whether the Frist Amendment provides the public a qualified right of access to jurors' names during voir dire, thereby creating presumptive access to those names that can be overcome only on a case-by-case basis by showing both a compelling state interest and that denying access is a remedy narrowly tailored to serve that interest. We hold the Frist Amendment does not prohibit the court's practice."

6) ***State v. Young, jr.,*** 253 Ariz. 367, 513 P.3d 343, (App. Div. 1, filed on 07/05/22). In this case defendant who is in prison has been granted several continuances to file a pro se PCR and now has been given a deadline date to file the PRC. Defendant gives the PRC to prison authorities on the deadline date, but it does not arrive at clerk's office until three days after the deadline. Court determines it to be untimely and the PCR is denied and will not allow the mailbox rule. The trial court is overruled. "Under the prisoner mailbox rule pro se prisoners are deemed to have filed legal documents if the filing is properly addressed and has been delivered to the proper prison authorities to be forwarded to the clerk of the court. We have applied the mailbox rule to the filing of notices of appeal and petitions for review. We see no reason to treat PCR petitions differently." Citations omitted.

7) ***State v. Muhammad,*** 253 Ariz. 371, 513 P.3d 1095, (Supreme Court, filed on 07/15/22). This case overturns an earlier case. "This case asks us to determine whether, in a case where a criminal defendant's competency has been put at issue, a trial court must make a specific finding of heightened competency before determining the defendant's waiver of the right to a jury trial is knowing, voluntary, and intelligent. We conclude that Arizona law does not require such a specific finding of heightened competency with respect to a jury-trial waiver."

8) ***State v. Castaneda, Jr.,*** Court of Appeals, No. 1, CA-CR 21-0525, filed on 09/13/22. The case involved a 4-year-old witness who at five would testify that his father slipped him fentanyl pills to hid in his pants pocket. The child at five years old is allowed to testify even though there are some issues as to can the child tell the difference between a truth and a lie. "On appeal, this court defers to the superior court's determination regarding a witness's competency to testify. This court will reverse the superior court's competency decision only if the decision constitutes a clear abuse of discretion… In any criminal trial every person is competent to be a witness." Citations omitted, at page 4…. "Neither age, mental capacity nor feeble-mindedness renders a witness incompetent or disqualified. Instead, competency depends on a witness's ability to observe, recollect, and communicate about the event in question. In instances of extreme youth, to find a lack of competency, the superior court must be convinced that no trier of fact could reasonably believe that the prospective witness could have observed, communicated, remembered, or told the truth with respect to the event in question." Citation omitted, at page 4 and 5.

9) ***State v. Stowe,*** Court of Appeals, No. 1, CA-CR 21-0422, filed on 11/01/22. "Arizona law requires a person convicted for extreme driving under the influence of intoxicating liquor to serve at least 45 days in jail. The legislature has authorized the superior court to suspend all but 14 days of that sentence when the person equips a vehicle, she operates with an ignition interlock device for a year. We address here whether a person who does not own or operate any vehicle for a year must, nonetheless, equip a vehicle with the device before the court may reduce her jail time. We conclude the law allows the court to reduce otherwise mandatory jail time for a person who does not own or operate any vehicle for a year." At page 2. The court twice characterize the alternative argument using the word absurd as in absurd interpretation or absurd result.

10) ***Arizona Attorneys for Criminal Justice v. Doug Ducey, et al, United States district court Arizona,*** No. CV-17-01322-PHX-SPL, filed on 11/02/22. This case declared A.R.S. 13-4433(B) (defense attorney or their agents must go through the prosecutors to contact victims) to be in violation of the United States Constitution free speech Amendment and enjoined its enforcement.

11) ***State v. Hon. LaBianca/Pedro,*** Court of Appeals, No. 1, CA-SA 22-0157, filed on 11/03/22. "The state petitions for special action review of the superior court's order denying its request to have the State's expert examine the defendant before an Arizona Rule of Evidence ("Rule") 404(c) hearing. We accept jurisdiction and grant relief in part, holding that if the court allows a defendant's expert to testify at an evidentiary hearing about the defendant's mental health based on that expert's examination of the defendant, the court must also allow the State's expert to examine the defendant upon request." At page 2.

12) ***State v. MacHardy,*** Court of Appeals, No. 2 CA-CR 2021-0021, filed on 11/10/22. This was a case about a person who had images on his home computer involving children. There were several issues but the one for our interest is waiver of a jury trial for a bench trial. The defendant signed a written waiver and was addressed several times in court as to the waiver. After conviction, the defendant complained that the court did not find specifically that the waiver was voluntary like would be required for a plea. The appellate found the procedure was sufficient but there was a strong dissent. I suggest you always make finding of voluntariness if appropriate. "Under our criminal rules, a defendant's waiver of that right must be in writing or on the record in open court. Ariz. R. Crim. P. 18.1(b)(3); accord Ariz. R. Crim. P. 41, Form 20 (Waiver of Trial by jury (non-Capital). And the trial court must address the defendant personally, inform the defendant of the defendant's right to a jury trial, and determine that the defendant's waiver is knowing, voluntary, and intelligent. Citations omitted. In this case, the trial court complied with the requirement of Rule 18.1(b) in determining that MacHardy had knowingly, intelligently, and voluntarily agreed to a bench trial. MacHardy both signed a written waiver and twice confirmed his decision on the record in open court to waive his right to a jury trial, as required by Rule 18.1(b)(1), and the court twice personally addressed MacHardy and informed him of his right to a jury trial, as required by Rule 18.1(b)(2). Indeed, the record reflects that, over a five-month period MacHardy repeatedly agreed to proceed with a bench trial in writing and when asked in person by the court." At page 8.

13) ***King v. Hon. Starr,*** Court of Appeals, No.1 CA-SA 21-0219, filed on 11/22/22. This case involves the defense mental health expert wanting to testify in a Rule 11 proceeding where statements of a ruled incompetent defendant have been redacted. If the statements are redacted the expert cannot be used at the Rule 11. "Therefore, to the extent it has not been stated with clarity, we hold that Fifth Amendment protection apply to statements incompetent defendants make during mental health examinations conducted by examiners retained by the defendant pursuant to A.R.S. 13-4505(E) during Rule 11 competency restoration proceedings. By extension, we agree with King that because he cannot waive his Fifth Amendment rights, any of his statements that implicate those Fifth Amendment rights found in Dr. Weller reports cannot be disclosed. Assuming Dr. Weller's report contains inculpatory statements, King is not presently capable of knowingly, voluntarily, and intelligently waived his constitutional rights to authorize their disclosure. To be voluntary, a defendant's waiver of his constitutional rights must be knowing and intelligent. We therefore grant partial relief and hold that Dr. Weller's unredacted report cannot be disclosed." Citations omitted. At page 8.

14) ***State V Santillanes,*** Court of Appeals, No. 1 CA-CR 21-0389, filed on 12-15-22. This case involved the state's appeal of a granting of an expungement order. The first ruling is that the state cannot appeal that decision but must go by way of a special action. The court decides to treat this as a special action. The issue is the amount of pot in this case is too large for the expungement statute, but defense says the plea did not list an amount of pot. "We hold that: 1) courts may consider any admissible evidence the parties present regarding a petitioner's eligibility for expungement; (2) the superior court may abuse its discretion if it fails to hold an evidentiary hearing on a contested expungement petition; and (3) orders granting or denying expungement petition must include the facts the court relied on in reaching its decision." At page 2.

15) ***Shinn v. Arizona Board of Executive Clemency,*** Arizona Supreme Court, No. Cv-21-0275-PR, filed on 12/21/22. The Supreme Court overturns the court of appeals. This is a murder case where after decades the court wants to add that defendant is eligible for parole after 25 years in prison and does so by a nunc pro tunc order under Rule 24.4 of the Arizona Rules Criminal Procedure. The Supreme Court disagrees because this was a judicial error not a clerical error. "Thus, we established that a nunc pro tunc order may only be used to modify clerical errors and that a court reviewing the propriety of the order may examine the entire record, as we did here, to determine whether the order merely remedied a true clerical error established in the record. Under Back, Judge Bernini's nunc pro tunc order did not accurately record what actually happened at Freeman's sentencing; it changed what occurred." At page 13.

16) ***State v. Moore,*** Court of Appeals, No.1 CA-CR 21-0459, filed on 12/20/22. This case involves the extension of probation for defendant to finish paying restitution. With the defendant agreement, the probation extension is granted and three years later defendant objects because of a petition to revoke. The court vacates its earlier ruling, so probation would not have been extended and the state appeals. "Our holding today, therefore, clarifies that the court lacked jurisdiction to vacate a three-year-old probation extension order, but does not in any way affect the court's ability to modify Moore's probation going forward. For example, upon hearing Moore's motion to vacate in 2021, the court had jurisdiction and discretion to modify or terminate Moore's probation as of that date." At page 5.

17) ***State v. Ibarra,*** Court of Appeals, No. 2 CA-CR 2021-0087, filed on 12/21/22. This case involves the court refusing to grant the defendant a pot expungement where the state did not contest the expungement. The burden is on the state to object to the expungement and to prove by clear and convincing evidence that the defendant is not entitled to expungement. The defendant does not have to show that he/she is entitled to expungement.

18) ***State v. Shortman,*** Court of Appeals, No. 1 CA-CR 21-0354, filed on 12/29/22. This case allows the covid seating of jurors in criminal cases. Because of Covid restrictions the jury sat in the jurors' box and behind the prosecutor table. The defendant felt this gave the prosecutor an unfair advantage. The appellate court disagreed.

19) ***State v. Ewer,*** Arizona Supreme Court, No. CR-21-0059-PR, filed on 01/18/23. This case involves the justification/self-defense statute. Does A.R.S. 13-404(A) apply to only defendants or can it apply to defendants and allege victims? Even though the statute uses the word person and not defendant the courts rule that "we hold that the justification defense provided by 13-404(A) only applies to a defendant's conduct". At page 2.

20) ***State v. Griffin real party in interest Ahlersmeyer,*** Court of Appeals, No. 2, CA-SA 2023-0006, filed on 03/10/23. In this case the judge sentenced defendant to prison on one case and lifetime probation on the other case. While in prison the defendant wanted the Judge to revoke the probation and sentence him. The Judge denied the request because the judge believed that the court lacked the authority. After release from prison, the defendant renewed his requests. The Judge now decided that the court had the authority and granted the request. The state special action that decision. The court of appeals reversed the court. "The state argues the respondent judge lacked discretion to revoke Ahlersmeyer's probation in the absence of a petition to revoke. We agree that no rule or statue gives a trial judge the authority to do so and that the respondent erred by concluding otherwise." At page 3.

21) ***State v. Hons. Brearcliffe/Vasquez et al.,*** Arizona Supreme Court, No. VC-21-0174-SA, filed on 03/24/23. This case involves a defendant who was told and signed that if convicted and he did not appear for sentencing within 90 after conviction he may give up the right of appeal. The defendant fled to California after the trial started and before the conviction. He was arrested after the 90 days had passed. After sentencing the defendant appeals and the state objects. This case vacates an appellate court case from 2021. "Under A.R.S. 13-4033(C), 1 if a defendant's absence prevents sentencing from occurring within ninety days after conviction, the defendant cannot appeal unless it is proven by clear and convincing evidence at the time of sentencing that the absence was involuntary. In this case, we consider the safeguards that must be afforded a defendant before the right to appeal can be divested under 13-4033(C). We conclude that before the right to appeal is abrogated: (1) the defendant must receive notice that the right may be waived if his or her absence prevents sentencing from occurring within ninety days after conviction; (2) the waiver must be knowing, intelligent, and voluntary; and (3) the defendant must be provided an opportunity at sentencing to prove by clear and convincing evidence that the absence was involuntary." At page 2. In this case defendant was not given that opportunity. Also, the court stated: "...we disavow ***Raffaele*** to the extent it may be construed to require trial courts to find that a defendant expressly waived the right to appeal." At page 8.

22) ***State v. Underwood,*** Court of Appeals, No. 1 CA-CR 21-0439, filed on 03/28/23. This case involves a person who wants to represent himself on very serious offenses. The trial court after an inquiry grant that request. The defendant will not sign a pretrial statement because he says he does not understand it and it is a contract. The court revokes the defendant right to represent himself after a half hour and reassigns the public defender. The defendant does not ask again and after conviction at trial appeals. The conviction is reversed. "A criminal defendant holds a constitutional right to self-representation, which is not absolute and may be revoked if the defendant deliberately engages in serious and obstructionist misconduct. On appeal here, Defendant Archie Underwood challenges the superior court's revocation of his right to self-representation, which occurred just 27 minutes after the court granted that right, when Defendant refused to sign a comprehensive pretrial conference statement he did not prepare or understand. We vacate and remand Defendant's convictions and sentence because his conduct did not rise to the level of serious and obstructionist misconduct, and the court neither warned Defendant nor tried less severe methods to gain his compliance." At page 2. "But the right to represent oneself

is not absolute and may be terminated when a defendant deliberately engages in serious and obstructionist misconduct. The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law. The Arizona Supreme Court has interpreted serious and obstructionist misconduct to include serious violations of court orders and rules when the conduct signifies that continued self-representation would undermine the court's authority and ability to conduct the proceeding in an efficient and orderly manner. At page 5, citations omitted.

23) ***State v. Rios,*** Court of Appeals, No. 2 CA-CR 2022-0084, filed on 04/10/23. In this case the defendant is told he has the right to counsel prior to questioning but not expressly told that he also has the right to counsel during questioning. "He (defendant) further argues that the Miranda advisory was inadequate because it stated only that he has the right to the presence of an attorney to assist you prior to questioning. It did not expressly state that his right to counsel continued during questioning. We conclude that the advisory reasonably conveyed Rios's rights, such that the trial court did not abuse its discretion. The prior to language conveyed to Rios when his right to the presence of counsel was triggered. It did not convey any subsequent limitation on that right." At page 2. The defendant was told the following: "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 the presence of an attorney to assist you prior to questioning. Um. If you can't afford one we'll provide one for you. Ok. Do you understand those rights" At page 4. "The advisory must convey the following essential information: (1) that he has the right to remain silent, (2) that anything he says can be used against him in a court of law, (3) that he has the right to the presence of an attorney, and (4) that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." At page 4. "Although every element of the advisory must be conveyed, courts do not dictate the precise language. As long as the sum total of statements in a Miranda advisory reasonably conveys the essential information, the warning is sufficient. Nevertheless, the advisory must inform the defendant that the right to counsel exists before and during interrogation and must not convey the message that appointed counsel cannot be made available until some future time." At page 4. "However, we emphasize while the Miranda advisory reasonably conveyed Rios's rights, the better practice is to explicitly state that defendants have the right to counsel's presence both before and during the interrogation." At page 6.

24) ***State v. Hagerty,*** Court of Appeals, No. 2 CA-CR 2022-0155-PR., filed on 04 13/23. This case involves a group advisory of rights outside the presence of the judge. At a change of plea, the judge does not personally inform the defendant of his rights but asks did you view the video tape of your rights, do you have any questions on those rights and do you wish to waive those rights. Defendant files a PCR which complains that he was not personally informed of those rights by the judge under Arizona Rules of Criminal procedure 17.2. The court found this to be a violation, but defendant was granted no relief. They also did not comment on the practice of a group advisory in the foot notes.

25) ***State v. Perez-Gutierrez,*** Court of Appeals, No. 1, CA-CR 22-0268, filed on 05/09/23. Do you need to give reasons for consecutive sentences under A.R.S. 13-711(A), yes but there is a strong dissent. Also, in conflict with Rule 26.13.

26) ***State v. Scott,*** Court of Appeals, No.2 CA-CR 2021-0056, filed on 06/01/23. This case involves where a person is shot and killed. Police are looking at Mr. Scott and get a search warrant for his DNA. That DNA matches DNA taken for the recovered shell casings. Defendant is questioned and denied any involvement in the case until confronted with the DNA evidence then he claims self-defense. The warrant is thrown out with the DNA evidence after a ***Franks*** hearing due to reckless misstatements by the detective. The defendant also wants the statement thrown out as the result fruit of a poisonous tree. The court allows the confession and defendant is convicted. The appellate court reverse and says the confession should have also been suppressed. There is a strong dissent.

27) ***State v. Luviano,*** Arizona Supreme Court, No. CR-21-0329-PR, filed on 06/06/23. The supreme court held "that the felony resisting arrest is a single unified offense."

28) ***Ruff v. Schumacher,*** Maricopa County superior court, LC2023-000092-001 DT, filed on 05/22/2023. THIS CASE IS A LOWER COURT SPECIAL ACTION AND MAY **NOT BE CITED AS AUTHORITY.** This case can help you when deciding to no longer appoint a public defender for a defendant. The judge did not require 18 defenders to be appointed just four. Defendant said he was not going to change his ways and would treat any new defense attorney the same way he had treated the others. Court finds he has waived his right to an attorney and is upheld. The defendant was not granted a public defender for the appeal.

29) ***Shifflette v. Hon. Marner/State of Arizona***, Court of Appeals, No. 2, CA-SA 2023-0009, filed on 06/27/23. This is a special action where defendant pled to endangerment and DUI with a prior conviction. The judge placed defendant on probation with a 90-day jail sentence. The court suspended 60 days jail with 30 days consecutive in jail. The defendant special actioned claiming credit for 10 days in jail. The court of appeals ruled that the defendant could not be placed on probation until the jail sentence was served and the defendant was not entitled to 10 days credit since the 30 days had to be served consecutively. The credit would be applied to the 60 days if defendant had to served that or part of that in the future.

30) ***State v. Jimenez***, Court of Appeals, No.2 CA-CR 2022-0062, filed on 07-13-23. The case involves where the court refused to strike for cause a retired FBI agent who for a third of his career surveilled suspected pedophiles in a child sex case. The defense thought that training and experience clearly made the juror biased. "As the party asserting error, Jimenez bears the burden of establishing Juror 8 was incapable of rendering a fair and impartial verdict. … In assessing a potential juror's fairness and impartiality, the trial court has the best opportunity to observe prospective jurors and therefore judge the credibility of each. Trial courts thus retain broad discretion to determine whether there are reasonable grounds to doubt that a venireperson will be able to serve as a fair and impartial juror. We will not set aside a trial court's ruling absent a showing that the court abused that discretion." At page 3. Citations omitted. "A juror's assurance of impartiality need not be couched in absolute terms." At page 5.

31) ***State v. Melendez,*** Court of Appeals, No.1, CA-CR 20-0066, filed on 07/25/23. In this shooting case defendant answers some questions but not others. The state brings that up at trial and argues it in response to a self-defense claim. "After our initial review of the record, we ordered the parties to brief, inter alia, whether the State's references to Melendez's refusal to answer certain questions during custodial integration violated his constitutional rights and whether fundamental, prejudicial error occurred. Applying established principles from Arizona case law and Doyle v. Ohio, 426 U.S. 610 (1976), we hold that such error occurred when the State cross-examined Melendez about

his selective silence and then asked the jury to hold that silence against him during closing argument. Thus, we reverse and remand for a new trial." At page 2.

32) ***State v. Fournier,*** Court of Appeals, No.2, CA-CR 2022-0108, filed on 07/26/23. This case involves a refusal of the court to strike a juror for cause, voluntariness of a confession to another prisoner and jury instructions. "A party challenging a juror for cause must show that the juror cannot render a fair and impartial verdict by a preponderance of the evidence. Ariz. R. Crim. P. 18.5(h). Because a trial judge has the best opportunity to assess whether a juror can be fair and impartial, appellate courts review such decisions only for abuse of discretion. The court did not abuse its discretion by concluding that Fournier failed to meet his burden here." At page 4, citations omitted. Defendant also lost on the voluntariness since no state involvement and on the jury instructions.

33) ***Lane Draper v. Hon. Gentry/State/Nez,*** Arizona Supreme Court, No. CR-22-0175-PR, filed 07/31/23. This involves a murder with four drunk people. One ends up dead and the question is who did it. The defendant is charged and list the other two people as people who may have committed the murder. One of those two people is the brother of the dead person and for victim rights now becomes the victim. Defendant wants to examine the GPS on the "victim, alleged murder" truck to see if he can use that information as to the third-party defense. Court grants the search. "We granted review to determine whether the standard established in Vanders II is the proper standard for a discovery request compelling a crime victim to produce his personal vehicle to permit the defendant's third-party agent to search and seize his GPS data, which presents an issue of statewide importance. Nez argues that the Vanders II requirement that a reasonable possibility exists that the disclosure will lead to material evidence should apply here. Vanders II, 251 Ariz. at 119. Draper argues that Nez must show either probable cause under the Fourt Amendment, or that there is a substantial probability that the disclosure will produce evidence material to the defense." At page 6. "That probable cause requirement therefore does not apply to pretrial discovery if there is notice and an opportunity to be heard." At page 8. "a defendant is entitled to discovery of a victim's privileged information only upon showing that (1) the defendant seeks evidence whose materiality is of constitutional dimension, as distinguished by evidence merely relevant to the defense; and (2) there is a reasonable possibility that the requested information actually includes such evidence. As we explained, the defendant's request must be based on more than mere speculation and must include a sufficiently specific basis to deter fishing expeditions, prevent a wholesale production of the victim's medical records, and adequately protect the parties' competing interests." At pages 11-12. If by contrast, Nez's agent will be able to view any portion of the data or share it with Nez, then it becomes a direct disclosure and it is subject to the more demanding substantial probability standard." (this is instead of an in camera inspection by the court) " Thus, applying the substantial probability standard in the direct disclosure context, a defendant is entitled to discovery from a victim if the defendant seeks evidence of constitutional dimension (which is necessary to vindicate the defendant's constitutional rights) and the defendant establishes that the requested discovery is very likely to contain such evidence.: At page 13.

34) ***State v. Hon. Chambers/Henderson,*** Arizona Supreme Court, No. CR-21-0388-PR, filed on 08/07/23. This case involves the disqualification of the Gila County Attorney's office in a criminal matter where the county attorney had represented the defendant ten years ago in an annulment matter. The court first denied the motion then granted the motion. The appeals court did not take the matter, but the Arizona supreme court did rule on the matter. The court ruled under Gomez "we hold that there is no appearance of impropriety upon which to disqualify the

office." At page 2. The four factors in Gomez are: "(1) whether the motion is being made for the purpose of harassing the defendant; (2) whether the party bringing the motion will be damaged in some way if the motion is not granted; (3) whether there are any alternative solutions, or is the proposed solution the least damaging possible under the circumstances; and (4) whether the possibility of public suspicion will outweigh any benefits that might accrue due to continued representation." At pages 3-4.