

November 11, 2019

Maricopa County Board of Supervisors  
c/o Allister Adele, Maricopa County Attorney  
301 West Jefferson Street  
Phoenix, Arizona 85003  
[adela@mcao.maricopa.gov](mailto:adela@mcao.maricopa.gov)

**Re: Suspension of Maricopa County Assessor Paul Petersen – Request for Documents and Testimony**

Ms. Adel:

We write by way of follow-up to our letter of November 7, 2019 in which we requested on behalf of Maricopa County Assessor Paul Petersen the evidentiary hearing afforded by Ariz. Rev. Stat. § 11-664(C) in connection with the Board of Supervisors' putative suspension of Mr. Petersen from his constitutionally elected office. As you know, Section 11-664(C) entitles Mr. Petersen to present evidence and witnesses on his behalf. The effective vindication of this right, however, must necessarily entail means to compel the disclosure of documents and the production of witnesses, particularly when such sources of evidence are under the control of the Board and/or the County Attorney's Office.

To this end, we have set forth below documents and witnesses that must be made available to Mr. Petersen pursuant to the following provisions:

1. Ariz. Rev. Stat. § 11-664(C), which guarantees Mr. Petersen's right to present evidence in his defense at the upcoming hearing;
2. the Arizona Public Records Act, Ariz. Rev. Stat. § 39-121, *et seq.*, which guarantees the public's right to review records concerning the (mis)conduct of public officers; and
3. Arizona Rule of Professional Conduct 1.4 which, as discussed below, entitles Mr. Petersen to access the records of the Maricopa County Attorney's Office.

To the extent necessary to compel the production of records or the attendance of witnesses, Arizona Rev. Stat. § 11-664(C) obligates the Maricopa County Board of Supervisors to issue subpoenas pursuant to Ariz. Rev. Stat. § 11-218 for the records and/or witnesses necessary for the presentation of evidence in Mr. Petersen's defense.

In the alternative, these requests for records and witnesses can be rendered moot by stipulating to the material facts.

**I. Demands for Documents and Witnesses**

**A. Witnesses**

Mr. Petersen requests that the Board and/or County Attorney's Office secure the attendance of the following Maricopa County personnel to testify at the hearing:

1. Chief Deputy Assessor Timothy Boncoskey
2. Assistant Chief Deputy Assessor Lesley Kratz
3. Maricopa County spokesperson Fields Moseley
4. Maricopa County Attorney Allister Adel
5. Assistant Maricopa County Attorney Thomas Liddy
6. Supervisor Bill Gates
7. Supervisor Clint Hickman
8. Supervisor Jack Sellers
9. Supervisor Steve Chucri
10. Supervisor Steve Gallardo
11. Treasurer Royce T. Flora
12. Recorder Adrian Fontes
13. Sheriff Paul Penzone

**B. Documents and Materials**

Mr. Petersen requests that the Board and/or County Attorney's Office produce the following documents and materials within their possession, custody or control:

1. All documents created, modified or distributed between October 9, 2019 and the date of this letter that refer or relate to County Assessor Paul Petersen, including but not limited to documents that refer or relate to the removal or suspension of Mr. Petersen from office.
2. All communications (including but not limited to emails, text messages, and meeting minutes) between or among any member(s) of the Board of Supervisors and the County Attorney (to include communications between or among any employee, agent or representative of the Board of Supervisors or the County Attorney's Office) between October 9, 2019 and the date of this letter that refer or relate to Paul Petersen, including but not limited to communications concerning the report prepared by the County Attorney's Office pursuant to Ariz. Rev. Stat. § 11-664(B).
3. All documents and records, including but not limited to parking records, that reflect or evidence the dates and times that any of the following individuals entered or exited from Maricopa County office buildings or facilities between January 1, 2019 and the date of this letter: (a) any member of the Board of Supervisors, (b) the Sheriff of Maricopa County, (c) the Recorder of Maricopa County, (d) the Treasurer of Maricopa County, and (e) the Maricopa County Attorney.

4. Copies or images of the hard drives of all computers, cell phones, or other computing devices owned by Maricopa County and issued to any of the following individuals: (a) any member of the Board of Supervisors, (b) the Sheriff of Maricopa County, (c) the Recorder of Maricopa County, (d) the Treasurer of Maricopa County, and (e) the Maricopa County Attorney; or
  - a. in the alternative, logs or summaries reflecting the quantity or volume found on such computers, cell phones, or computing devices of (a) outgoing and incoming emails, calls, and text messages with any of the foregoing officers between January 1, 2019 and the date of this letter that are unrelated to official business of Maricopa County, and (b) visits to Internet websites that are unrelated to official business of Maricopa County.<sup>1</sup>
5. Copies of all rules, regulations or policies adopted, approved or ratified by the Board of Supervisors in effect between January 1, 2019 and the present that refer or relate to the Maricopa County Attorney and/or to the Maricopa County Assessor, or the personnel of their respective offices.

If and to the extent that the Board intends to assert attorney-client privilege or any other exception from the general production obligations outlined above, with respect to any of the foregoing records, we request the prompt production of a log itemizing any such withheld materials and the basis for withholding them.

Please be advised, however, that Mr. Petersen anticipates that he will object to any invocation of the attorney-client privilege to interdict his access to relevant documents and information. The County Attorney's Office represents the county government as a whole; it has routinely dispensed legal advice to Mr. Petersen and employees of his office concerning matters within the scope of their duties, and indeed is currently counsel of record for Mr. Petersen in his official capacity in at least one pending civil proceeding. *See generally Salt Lake Cnty. Comm'n v. Salt Lake Cnty. Att'y*, 985 P.3d 899, 905 (Utah 1999) ("The County Attorney has an attorney-client relationship only with the County as an entity, not with the Commission or the individual Commissioners apart from the entity on behalf of which they act."); *see also* Ariz. Rev. Stat. § 11-532(A)(7) (authorizing County Attorney to "give a written opinion to county officers on matters relating to the duties of their offices"); *Romley v. Daughton*, 225 Ariz. 521, 524, ¶ 14 (App. 2010) (citing *Salt Lake* extensively in general discussion of relationship between a county attorney and a board of supervisors). As an elected, coequal officer of Maricopa County, Mr. Petersen is squarely within the ambit of the attorney-client relationship between the County Attorney and the county government; the privilege cannot be deployed to obstruct Mr. Petersen's access to material information in a proceeding brought against him in his official capacity concerning his official duties. *See generally* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 74 (2000) ("[U]nlike persons in private life, a public agency or employee has no autonomous right of confidentiality in communications relating to governmental business.").

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<sup>1</sup> As you may know, "[a]ny supervisor who neglects or refuses to perform any duty imposed on him without just cause" is liable for monetary penalties and potentially civil damages. Ariz. Rev. Stat. § 11-223. The requested documents and information are hence not only relevant to the question of whether the newfound "neglect of duty" rubric formulated by the Board and retroactively applied to Mr. Petersen derives from the actual practices of elected county officials and the demands of their office, but also whether any or all of the Supervisors themselves have engaged in similar ostensible derelictions actionable under Section 11-223.

## II. Proposed Stipulations

In lieu of producing the foregoing witnesses and documents, Mr. Petersen proposes that the Board stipulate and agree to the following facts, which we believe would be established by the witness testimony and documentary evidence:

1. The members of the Board of Supervisors, the Sheriff of Maricopa County, the Maricopa County Attorney, the Maricopa County Recorder, and/or the Maricopa County Treasurer typically are physically present in Maricopa County offices or facilities for less than forty hours per week.
2. The members of the Board of Supervisors, the Sheriff of Maricopa County, the Maricopa County Attorney, the Maricopa County Recorder, and/or the Maricopa County Treasurer routinely (a) send or receive during regular business hours emails that are unrelated to official business of Maricopa County and/or (b) visit during regular business hours Internet websites that are unrelated to the official business of Maricopa County.
3. The Board of Supervisors' primary reason for putatively suspending Mr. Petersen on October 29, 2019 is that Mr. Petersen is alleged to have engaged in certain unlawful conduct in connection with his private law practice.
4. At all times relevant, all functions and responsibilities assigned by law to the office of Maricopa County Assessor have been adequately and lawfully carried out.

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As indicated in its title, Ariz. Rev. Stat. § 11-664 mandates “due process” for any county assessor subjected to its suspension provisions. But due process “cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial.” *Commonwealth of N. Mariana Islands v. Bowie*, 243 F.3d 1109, 1115 (9th Cir. 2001) (quoting *Mooney v. Holohan*, 294 U.S. 103, 112 (1935)). We hope that the Board—either by stipulation or, more circuitously, by the elicitation of evidence through document productions and witness testimony—shares Mr. Petersen’s commitment to a full and fair exposition of the facts.

Respectfully,

/s/ Kory Langhofer

Kory Langhofer

/s/ Thomas Basile

Thomas Basile