

**Preliminary Report on the Independent Investigation  
Pertaining to Maricopa County Assessor Paul Petersen**

**Report of Findings and Statement of Charges  
Pursuant to A.R.S. § 11-664(B)**

**December 5, 2019**



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## Introduction

On October 9, 2019, law enforcement officials announced criminal charges against Maricopa County Assessor Paul Petersen.<sup>1</sup> Mr. Petersen was indicted on federal charges in Arkansas and on state charges in Arizona and Utah, all based on allegations connected with his adoption-related law practice.<sup>2</sup> Mr. Petersen was also arrested and taken into custody on October 8.<sup>3</sup>

On October 23, 2019, the Maricopa County Board of Supervisors unanimously voted in an open meeting to schedule a meeting on October 28 for the purpose of considering whether to suspend Mr. Petersen pursuant to A.R.S. § 11-664 for neglect of duty.<sup>4</sup> The Board met on October 28 and unanimously voted to suspend Mr. Petersen without pay for 120 days for neglect of duty based on his “failure to meaningfully oversee the operations of his office for an extended period and repeated misuse of County

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<sup>1</sup> See Arizona Attorney General, Press Briefing: Maricopa County Assessor Paul D. Petersen Indicted in Adoption Fraud Scheme (Oct. 9, 2019), *available at* <https://www.azag.gov/press-release/press-briefing-maricopa-county-assessor-paul-d-petersen-indicted-adoption-fraud> (**Exh. 52**).

<sup>2</sup> *United States of America v. Paul Petersen*, Superseding Indictment, No. S:19CR50079001, United States District Court for the Western District of Arkansas, Fayetteville Division (Oct. 4, 2019) (**Exh. 8**); *State of Utah v. Paul D. Petersen*, Information, No. 191910049, Third District Court Salt Lake Department, Salt Lake County, State of Utah (Oct. 2, 2019) (**Exh. 9**); *State of Arizona v. Paul D. Petersen and Lynwood Jennet*, Indictment, No. 85 SGJ 77, Superior Court of the State of Arizona in and for Maricopa County (Oct. 7, 2019) (**Exh. 10**).

<sup>3</sup> Robert Anglen and Jessica Boehm, *Paul Petersen Released from Federal Custody; Headed to Court in Arizona*, Utah, Arizona Republic (Oct. 29, 2019), *available at* <https://www.azcentral.com/story/news/local/phoenix/2019/10/29/paul-petersen-appear-arkansas-court-adoption-scam-charges/2496708001/> (**Exh. 45**).

<sup>4</sup> Maricopa County Board of Supervisors Special Meeting Agenda and Minutes, Oct. 23, 2019 (**Exh. 12**), at 4.

resources to conduct his private law practice.”<sup>5</sup> Under A.R.S. § 11-664(A), because the Board’s vote was unanimous, Mr. Petersen’s suspension was effective immediately.<sup>6</sup>

Mr. Petersen was released from law enforcement custody on October 29.<sup>7</sup> Through counsel, Mr. Petersen requested a hearing pursuant to A.R.S. § 11-664(C),<sup>8</sup> which the Board of Supervisors scheduled for December 11, 2019.<sup>9</sup>

On November 13, 2019, pursuant to A.R.S. § 11-664(B), the Board of Supervisors requested that the County Attorney conduct an investigation regarding its bases for suspending Mr. Petersen.<sup>10</sup> On November 15, 2019, County Attorney Allister Adel retained Mitchell Stein Carey Chapman, PC, to conduct the investigation.<sup>11</sup> County Attorney Adel requested that Mitchell Stein Carey Chapman provide the “report of findings, including a statement of charges,” required by A.R.S. § 11-664(B) by December 5, 2019.<sup>12</sup>

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<sup>5</sup> Maricopa County Board of Supervisors Special Meeting Agenda and Summary, Oct. 28, 2019 (**Exh. 13**), at 2.

<sup>6</sup> A.R.S. § 11-664(A) (“If the action of the board is a unanimous vote of the entire board, the suspension shall be immediate.”). For convenience, a copy of A.R.S. § 11-664 is included with the exhibits as **Exhibit 1**.

<sup>7</sup> Robert Anglen and Jessica Boehm, *Paul Petersen Released from Federal Custody; Headed to Court in Arizona*, Utah, Arizona Republic (Oct. 29, 2019), available at <https://www.azcentral.com/story/news/local/phoenix/2019/10/29/paul-petersen-appear-arkansas-court-adoption-scam-charges/2496708001/> (**Exh. 45**).

<sup>8</sup> Letter, Langhofer to Maricopa County Board of Supervisors re: Suspension of Maricopa County Assessor Paul Petersen, Nov. 7, 2019 (**Exh. 22**).

<sup>9</sup> Maricopa County Board of Supervisors Special Meeting Agenda and Summary, Nov. 13, 2019 (**Exh. 15**), at 4.

<sup>10</sup> *Id.*

<sup>11</sup> Letter, Adel to Stein re: Retention to conduct investigation pertaining to Assessor Paul Petersen pursuant to A.R.S. § 11-664(B), Nov. 15, 2019 (**Exh. 3**).

<sup>12</sup> *Id.*

Given the short time available to conduct the investigation and prepare this report of findings, this report is necessarily preliminary.

## **Investigation**

### **1. Investigators**

County Attorney Adel retained Mitchell Stein Carey Chapman to “conduct an investigation as it relates to Maricopa County Assessor Paul Petersen pursuant to A.R.S. § 11-664(B)” and to submit our “findings to the County Attorney’s Office, along with a written notice and report of findings, including a statement of charges.”<sup>13</sup> The County Attorney also retained the law firm of Cosmich Simmons & Brown, PLLC, to assist with document review and forensic analysis.<sup>14</sup> Cosmich Simmons & Brown worked under the direction of Mitchell Stein Carey Chapman. In addition, the County Attorney retained attorney Grant Woods to provide oversight to the overall investigation and provide regular updates to County Attorney Adel.<sup>15</sup> Mr. Woods maintained regular contact with Mitchell Stein Carey Chapman throughout the course of the investigation and participated in select interviews.

Lee Stein and Anne Chapman had primary responsibility for the investigation.

Lee Stein received his B.A. from the University of Arizona in 1983 and a J.D., magna cum laude, from Arizona State University’s Sandra Day O’Connor College of Law in 1988, where he was editor-in-chief of the Arizona State Law Journal and Order of the Coif. Following graduation, Mr. Stein served as a law clerk to Arizona Supreme Court Justice James Moeller. Mr. Stein was an Assistant United States Attorney in the

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<sup>13</sup>

*Id.*

<sup>14</sup>

Press Release: County Attorney Outlines Investigation Process, Nov. 19, 2019 (**Exh. 4**).

<sup>15</sup>

*Id.*

District of Arizona from 1995 to 1998 and a Special Assistant Attorney General in the Arizona Attorney General's office from 1999 to 2000. Before founding the law firm of Mitchell Stein Carey Chapman, PC, Mr. Stein was a partner at Perkins Coie, LLP, where he co-chaired the firm's national Investigations and White Collar Defense practice group. Mr. Stein has extensive experience in internal and governmental investigations.

Anne Chapman received her B.A., magna cum laude, from the University of Oregon in 1995, where she was elected to Phi Beta Kappa. She received her J.D., cum laude, from Duke University School of Law in 1999. Ms. Chapman served as a law clerk to the Honorable Robert H. Whaley, United States District Court for the Eastern District of Washington. From 2002 until 2007, Ms. Chapman was an Assistant Federal Public Defender in the Eastern District of Virginia. Ms. Chapman practiced at the law firm of Osborn Maledon, PA, in Phoenix, Arizona from 2007 to 2016, where she was a partner in the Investigations and Criminal Defense Group. Ms. Chapman joined Mitchell Stein Carey Chapman in 2016. Ms. Chapman has been recognized by Chambers USA, Phoenix Best Lawyers, The Best Lawyers in America, and Southwest Super Lawyers.

County Attorney Adel retained Cosmich Simmons & Brown, PLLC, to assist Mitchell Stein Carey Chapman with document review and forensic analysis of data.<sup>16</sup> Matt Clarke had primary responsibility for this engagement at Cosmich Simmons & Brown.

Over the past twenty-three years, Matt Clarke has managed a wide variety of litigations as well as multiple internal and external investigations, including matters related to RICO, employer discrimination, employee misconduct, criminal misconduct, kickbacks, and financial crimes. He has tried more than twenty-five criminal and civil

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<sup>16</sup> *Id.*

jury trials to verdict, as well as numerous bench trials and arbitrations in state and federal courts. Prior to entering private practice, Mr. Clarke was a Deputy County Attorney with the Maricopa County Attorney's Office where, in addition to his responsibilities in the general trial group, Mr. Clarke was a member of the joint MCAO/FBI fraud task force and was responsible for conducting investigations into a variety of activities involving financial crimes. For the past twelve years, Mr. Clarke's practice has been dedicated to leading a managed review practice group where his team of more than 100 attorneys provides managed review and related litigation and LPO support for all types of investigations and litigations worldwide.

County Attorney Adel retained Grant Woods to provide oversight to the overall investigation and provide regular updates to the County Attorney.<sup>17</sup> Mr. Woods graduated from Occidental College in 1976, where he was a member of Phi Beta Kappa. He graduated from Arizona State University College of Law in 1979. Mr. Woods served as Arizona's Attorney General from 1991 to 1999. Mr. Woods has argued before the United States Supreme Court. He also was one of the principal architects of the states' lawsuits against the tobacco companies and a key negotiator in the resulting largest civil settlement in history. Since returning to private practice in 1999, Mr. Woods has tried many multi-million-dollar and high-profile cases, served as a special prosecutor several times, including in cases involving public corruption, and maintained a government relations practice.

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<sup>17</sup>

*Id.*



## 2. Course of Investigation

Our investigation was conducted independently of the County Attorney's Office.<sup>18</sup>

We collected and reviewed relevant documents as part of the investigation. Staff at the County Attorney's Office and other County staff assisted us with obtaining these records. During the investigation, data was collected from Mr. Petersen's County hard drive and network systems.<sup>19</sup> The .pst files and email data extracted from Mr. Petersen's workstation, data from the network user shares, and various user-created files found on the workstation were searched and reviewed for the time period January 1, 2015, to date of collection.<sup>20</sup> Mr. Petersen's internet history was also evaluated as part of the investigation. His internet history was available from November 19, 2018, through October 2, 2019.<sup>21</sup>

Mr. Petersen's phone records were also reviewed, but only limited data was available.<sup>22</sup> Records from his office phone were available from January 22, 2013, to October 2019.<sup>23</sup> Records were also available for Mr. Petersen's County-issued cell phone from September 2013 to January 2014 and from May 20, 2015, to October 27, 2015.<sup>24</sup>

Mr. Petersen's access to the County garage and badging records from internal office areas in 2019 were also reviewed.<sup>25</sup>

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<sup>18</sup> *Id.*; Letter, Adel to Stein re: Retention to conduct investigation pertaining to Assessor Paul Petersen pursuant to A.R.S. § 11-664(B), Nov. 15, 2019 (**Exh. 3**).

<sup>19</sup> *See* Petersen Data Analysis Report to Mitchell Stein Carey Chapman by Cosmich Simmons, & Brown, PLLC (**Exh. 5**), at 1-2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

We interviewed every current member of the Assessor’s Office senior management team, the executive assistant to the Assessor and his top deputies, as well as Robert Pizorno, a senior manager who recently left the Assessor’s Office. We also interviewed Maricopa County Auditor Michael McGee and Maricopa County Human Resources Director Jan Plank. We also spoke with Frank Boucek, Assistant Director, Property Tax, of the Arizona Department of Revenue. Maricopa County staff assisted us with scheduling interviews of current County employees.

### **3. Mr. Petersen’s Lack of Cooperation with the Investigation**

Mr. Petersen did not meaningfully cooperate with our investigation.<sup>26</sup> On November 19, 2019, we requested an interview with Mr. Petersen through his counsel.<sup>27</sup> On November 25, having not yet received a response from Mr. Petersen to our November 19 request, we invited Mr. Petersen through his counsel to provide us with written materials that might be helpful to our investigation.<sup>28</sup> In the same November 25 letter, we also requested that Mr. Petersen return to Maricopa County the County-owned laptop issued to him for work on County matters so that we could review it as part of our investigation.<sup>29</sup>

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<sup>26</sup> Recognizing that Mr. Petersen is an elected official and not a County employee, we note that it is an expectation that County employees will cooperate with all County investigations, and failure to do so could result in discipline, including termination. *See* Maricopa County Policy, Code of Conduct, No. HR2416, adopted Apr. 11, 2018 (**Exh. 35**), at 2 § V.A.3 (“Employees may not withhold relevant information or willfully mislead an administrative investigation.”).

<sup>27</sup> Letter, Stein to Langhofer re: Maricopa County Attorney’s Office Investigation, Nov. 19, 2019 (**Exh. 27**).

<sup>28</sup> Letter, Stein to Langhofer re: Maricopa County Attorney’s Office Investigation, Nov. 25, 2019 (**Exh. 28**).

<sup>29</sup> *Id.*

Mr. Petersen’s counsel responded to our November 25 letter by email on November 26 (at 4:38 pm on the Tuesday before Thanksgiving), notifying us that he “expect[s] to have the laptop ready for you shortly.”<sup>30</sup> In the same email, Mr. Petersen’s counsel stated that Mr. Petersen would agree to an interview only after the County agreed to make available documents for inspection and numerous witnesses (many of whom are elected officials) for interviews described in his November 11 letter to the County.<sup>31</sup> By placing these wide-ranging conditions on Mr. Petersen’s interview, he effectively refused our request. He also never submitted any information to us in writing. As a result, Mr. Petersen has provided no explanation as to why he maintained hundreds of documents relating to his private law practice and adoption business on the County network.

The County-issued laptop reportedly was obtained by the Arizona Attorney General’s Office pursuant to a search warrant on December 3, 2019. On December 4, we sent a letter to the Attorney General’s Office requesting a digital image of the laptop so that we can review it as part of our investigation, and the Attorney General’s Office agreed to make a copy available to us promptly. We have not yet reviewed its contents.

## **Background**

### **1. Mr. Petersen’s Appointment and Election to the Office of County Assessor and Previous Employment at the Assessor’s Office**

Paul Petersen began working for the County Assessor’s Office in 2006, serving as the Assessor’s representative at the Arizona Legislature and as the Public Information Officer and advising the Assessor regarding legal, administrative, and political issues

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<sup>30</sup> Email, Langhofer to Stein re: Paul Petersen, Nov. 26, 2019 (**Exh. 29**).

<sup>31</sup> *Id.*

regarding the property tax system in Arizona.<sup>32</sup> Keith Russell was the County Assessor from 2004 to 2013.<sup>33</sup>

On June 5, 2013, the Maricopa County Board of Supervisors appointed Mr. Russell to be a Justice of the Peace in East Mesa Justice Court, filling the vacancy left when Justice of the Peace Mark Chiles resigned.<sup>34</sup> Chief Deputy Assessor Tim Boncoskey<sup>35</sup> served as the acting Maricopa County Assessor until the Board appointed Mr. Petersen to the position in August 2013.<sup>36</sup>

Mr. Petersen ran for the office in a special election in 2014 to complete the remainder of Mr. Russell's term, which ran through 2016.<sup>37</sup> Mr. Petersen won the special

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<sup>32</sup> Maricopa County Assessor's Office's website, Your County Assessor, <https://mcassessor.maricopa.gov/about-us/bio.php> (**Exh. 48**).

<sup>33</sup> *Id.*

<sup>34</sup> Michelle Ye Hee Lee and Maria Polletta, *Maricopa County Assessor Named New Justice of Peace*, Arizona Republic (June 7, 2013), available at <http://archive.azcentral.com/news/politics/articles/20130605assessor-chosen-maricopa-county-justice-peace.html> (**Exh. 41**).

<sup>35</sup> Mr. Boncoskey has continued to serve as the Chief Deputy Assessor under Mr. Petersen through the present time.

<sup>36</sup> Michelle Ye Hee Lee and Maria Polletta, *Maricopa County Assessor Named New Justice of Peace*, Arizona Republic (June 7, 2013), available at <http://archive.azcentral.com/news/politics/articles/20130605assessor-chosen-maricopa-county-justice-peace.html> (**Exh. 41**); John Hunnicutt, *Petersen Named Maricopa County Assessor*, Arizona Daily Independent (Aug. 20, 2013), available at <https://arizonadailyindependent.com/2013/08/20/petersen-named-maricopa-county-assessor/> (**Exh. 42**).

<sup>37</sup> Michelle Ye Hee Lee and Maria Polletta, *Maricopa County Assessor Named New Justice of Peace*, Arizona Republic (June 7, 2013), available at <http://archive.azcentral.com/news/politics/articles/20130605assessor-chosen-maricopa-county-justice-peace.html> (**Exh. 41**).

election on November 4, 2014,<sup>38</sup> and was re-elected in the general election on November 8, 2016.<sup>39</sup>

## 2. Duties of the County Assessor

“County assessors are elected officials responsible for identifying, mapping, and assessing all property in their counties for property tax and other purposes. They are also responsible for determining the ownership of property for tax and other purposes. These duties . . . derive from the Constitution and statutes.”<sup>40</sup> Specifically, the Arizona Constitution designates an assessor as among the county officers to be elected every four years and requires that “[t]he duties, powers, and qualifications of such officers shall be as prescribed by law.”<sup>41</sup>

A county assessor and the deputies of his office are required to take a special oath that defines the principal mission of the office: to “truly and fairly determine the valuation, without favor or partiality, of all the taxable property in said county at its full cash value.”<sup>42</sup> The primary duties of a county assessor are to (1) identify real property in the county subject to taxation, (2) determine the owners of properties, (3) determine the full cash value of properties, (4) list properties with their valuations for use on the tax

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<sup>38</sup> Summary Report of Final Official Results of Nov. 4, 2014 Election for Maricopa County, available at <https://recorder.maricopa.gov/electionarchives/2014/11-04-2014%20Final%20Summary%20Report.pdf> (Exh. 53) at 6.

<sup>39</sup> Summary Report of Final Official Results of Nov. 8, 2016 Election for Maricopa County, available at <https://recorder.maricopa.gov/electionarchives/2016/11-08-2016%20Final%20Summary%20Report.pdf> (Exh. 54), at 6.

<sup>40</sup> Ariz. Att’y Gen. Op. No. I15-013 (R15-017) (Dec. 21, 2015), available at <https://www.azag.gov/opinions/i15-013-r15-017>.

<sup>41</sup> Ariz. Const. art. XII, §§ 3, 4; *see also* A.R.S. § 11-401(A)(6) (assessor is officer of the county); A.R.S. § 11-541 (“The county assessor shall have the powers and perform the duties prescribed by law.”).

<sup>42</sup> A.R.S. § 11-542.

roll, and (5) report to the Arizona Department of Education the valuations of properties subject to the government property lease excise tax.<sup>43</sup>

Arizona's tax code, A.R.S. Title 42, contains numerous provisions that govern how assessors' offices should meet their obligations, particularly Chapter 15 of Title 42, Assessment Process. Additional statutory duties of county assessors are specified outside Title 42.<sup>44</sup> County assessors are also required to meet several annual deadlines set by statute.<sup>45</sup>

The Arizona Department of Revenue ("ADOR") exercises general supervision over county assessors.<sup>46</sup> ADOR is responsible for establishing guidelines for conducting appraisals that county assessors are required to use.<sup>47</sup> ADOR publishes an Assessment Procedures Manual, as well as other more specific manuals and guidelines applicable to property assessment.<sup>48</sup>

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<sup>43</sup> A.R.S. § 42-13051.

<sup>44</sup> *See, e.g.*, A.R.S. § 11-802(I) (assessor serves as advisor to county zoning commission and boards of adjustment); A.R.S. § 15-442(C) (assessor, along with county superintendent of schools, determines whether school district boundaries are in conflict with each other); A.R.S. § 48-262(A)(1) (assessor provides detailed list of taxable properties within proposed boundaries of special taxing district).

<sup>45</sup> *See, e.g.*, A.R.S. § 42-13003(A) (November 15 deadline to report on property not appraised in previous three years); A.R.S. § 42-13051(A) (December 15 deadline to identify all real property subject to taxation); A.R.S. § 42-15053(A) (February 1 deadline to mail notice to owners of taxable personal property); A.R.S. § 42-15101(A) (March 1 deadline to mail notice of full cash value to property owners); A.R.S. § 42-15153(A) (December 20 deadline to complete assessment roll).

<sup>46</sup> A.R.S. § 42-13002(A)(1).

<sup>47</sup> A.R.S. § 42-11054(A)(1).

<sup>48</sup> *See* Arizona Department of Revenue, Property Tax, <https://azdor.gov/businesses-arizona/property-tax>.

### 3. Organization and Functioning of the County Assessor's Office

Professional staff run the day-to-day operations of the Assessor's Office. Tim Boncoskey is the Chief Deputy Assessor, a role he has held since 2006, and is functionally the chief of operations in the Office. Mr. Boncoskey is the only employee who reported directly to Mr. Petersen. Seven people report to Mr. Boncoskey, including Assistant Chief Deputy Assessor, Lesley Kratz, who has worked under five Assessors, including Mr. Petersen. Each person on the Assessor's Office core leadership team reports directly to either Mr. Boncoskey or Ms. Kratz.<sup>49</sup> Dawn Humphrey is the Executive Assistant to the Assessor, Mr. Boncoskey, and Ms. Kratz.

The mission of the Assessor's Office is "[t]o efficiently and effectively administer all laws and regulations for Maricopa County property owners so that all ad valorem property is fairly and equitably valued."<sup>50</sup> The Office operates in five divisions: the Administrative Division, the Valuation Relief Program Division, the Information Technology Division, the Property Ownership & Mapping Division, and the Appraisal Division.<sup>51</sup> In addition, the Assessor's Office is in the midst of a large information technology project, known as the MARS project, or Maricopa Assessment Replacement System.

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<sup>49</sup> See Maricopa County Assessor's Office website, Assessor's Leadership Staff, <https://mcassessor.maricopa.gov/about-us/leadership-staff.php> (Exh. 49).

<sup>50</sup> Maricopa County Assessor's Office website, Our Office, <https://mcassessor.maricopa.gov/about-us/about-us.php> (Exh. 50).

<sup>51</sup> *Id.*

#### 4. Mr. Petersen's Law Practice and Adoption Business

Mr. Petersen has been licensed to practice law in Arizona since 2002.<sup>52</sup> He is also licensed to practice law in Utah and Arkansas.<sup>53</sup> As a lawyer, Mr. Petersen focuses his practice on adoptions.<sup>54</sup> Having lived in the Marshall Islands for two years while serving on a church mission, Mr. Petersen's practice has consisted largely of "assisting Marshallese birth families with their adoption plans."<sup>55</sup> Mr. Petersen has maintained a law office in Mesa, Arizona.<sup>56</sup>

Several news articles predating this investigation have reported on issues relating to Mr. Petersen's adoption business.<sup>57</sup> One long-form article published by the Honolulu Civil Beat in 2018 referred to the adoptions involving Marshallese women arranged by Mr. Petersen as "black market adoptions" and called Mr. Petersen "one of the most active adoption lawyers handling babies from the Marshall Islands."<sup>58</sup> The article insinuates that

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<sup>52</sup> State Bar of Arizona, Find a Lawyer, Paul D. Petersen, <https://azbar.legalserviceslink.com/attorneys-view/PaulDPetersen> (Exh. 51).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> See, e.g., Steven Hsieh, *Report: County Assessor Paul Petersen Runs "Black Market" Adoption Agency*, Phoenix New Times (Nov. 30, 2018), available at <https://www.phoenixnewtimes.com/news/report-assessor-in-arizona-runs-a-black-market-adoption-agency-11054069> (Exh. 44); John Hill & Emily Dugdale, *Marshallese Adoptions Fuel A Lucrative Practice For Some Lawyers*, Honolulu Civil Beat (Nov. 2018), available at <https://www.civilbeat.org/2018/11/marshallese-adoptions-fuel-a-lucrative-practice-for-some-lawyers/> (Exh. 43); see also *Jared S. v. Rees*, Case. No. 1 CA-JV 06-0158 (Ariz. Ct. App. Feb. 22, 2007) (addressing adoption by couple represented by Mr. Petersen), available at <http://poundpuplegacy.org/files/1%20CA-JV%2006-0158.pdf> (Exh. 55).

<sup>58</sup> John Hill & Emily Dugdale, *Marshallese Adoptions Fuel A Lucrative Practice For Some Lawyers*, Honolulu Civil Beat (Nov. 2018), available at <https://www.civilbeat.org/2018/11/marshallese-adoptions-fuel-a-lucrative-practice-for-some-lawyers/> (Exh. 43).



Mr. Petersen's practices were illegal, but his lawyer is quoted in the article asserting that Mr. Petersen has complied with applicable laws.<sup>59</sup>

Mr. Petersen continued his law practice while he was an employee in the County Assessor's Office and also after his appointment and later election to the office of Assessor.<sup>60</sup> No law expressly allows the County Assessor or employees within that Office to engage in the private practice of law, but no law prohibits it either.<sup>61</sup> Maricopa County has a policy allowing employees to engage in outside employment if it does not interfere with their County employment, pose a conflict of interest with their County duties, or create an appearance of impropriety.<sup>62</sup>

## 5. The Criminal Charges Against Mr. Petersen

On October 2, 2019, the Utah Attorney General's Office charged Mr. Petersen with eleven felony criminal charges under Utah state law.<sup>63</sup> The information charging Mr. Petersen states that law enforcement received a tip that there may be an illegal adoption scheme involving Marshallese women in Salt Lake City. Hospital staff observed several Marshallese women giving birth and giving their babies up for adoption who all reported the same address and were all accompanied by a woman who reported living at the same

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<sup>59</sup> *Id.*

<sup>60</sup> We requested copies of any secondary employment forms completed by Mr. Petersen, but none were located or provided to us as of the date of this report.

<sup>61</sup> *Cf.* A.R.S. § 11-403 (prohibiting sheriff, constable, some county attorneys, and deputies from the private practice of law).

<sup>62</sup> Maricopa County Policy, Secondary Employment, No. HR2422, revised Sept. 19, 2018 (**Exh. 36**). People we interviewed expressed a common belief that many County employees have secondary employment, whether permanent or temporary, year-round or seasonal.

<sup>63</sup> *State of Utah v. Paul D. Petersen*, Information, No. 191910049, Third District Court Salt Lake Department, Salt Lake County, State of Utah (Oct. 4, 2019) (**Exh. 9**).

address. In addition, in all of the women's paperwork, Mr. Petersen was identified as the facilitator of the adoptions.

A superseding indictment against Mr. Petersen and a co-defendant was filed on October 4, 2019, in the Western District of Arkansas charging nineteen federal criminal charges.<sup>64</sup> The indictment alleges that Mr. Petersen brought women from the Marshall Islands to the United States in violation of a federal compact with the Republic of the Marshall Islands that prohibits Marshallese citizens from entering the United States if their travel is for the purpose of adoption. The indictment alleges that between April 21, 2014, and March 2, 2015, Mr. Petersen paid pregnant Marshallese women to travel to the United States and place their babies up for adoption, in violation of the compact. The indictment also alleges that Mr. Petersen and his associate purchased airline tickets for the women, concealed the reason for their travel from U.S. officials, and falsified information in official adoption documents.

On October 7, 2019, the Arizona Attorney General's Office secured an indictment against Mr. Petersen and a co-defendant, charging them with thirty-two state crimes.<sup>65</sup> The Arizona indictment focuses on the Marshallese women's use of Arizona's Medicaid system, the Arizona Health Care Cost Containment System, and alleges that between November 30, 2015, and May 30, 2019, Mr. Petersen engaged in a scheme to defraud the public healthcare system by submitting false information to illegally obtain benefits for the Marshallese women.

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<sup>64</sup> *United States of America v. Paul Petersen*, Superseding Indictment, No. S:19CR50079001, United States District Court for the Western District of Arkansas, Fayetteville Division (Oct. 4, 2019) (**Exh. 8**).

<sup>65</sup> *State of Arizona v. Paul D. Petersen and Lynwood Jennet*, Indictment, No. 85 SGJ 77, Superior Court of the State of Arizona in and for Maricopa County (Oct. 7, 2019) (**Exh. 10**).

## 6. Mr. Petersen's Arrest and Period of Incarceration

Mr. Petersen was arrested on October 8 and taken to a Maricopa County jail.<sup>66</sup> After his initial appearance on the Arizona charges, he was transferred to federal custody after posting bond in Arizona.<sup>67</sup> On October 29, Mr. Petersen appeared in federal court in Arkansas and was released from federal custody after posting a bond in that case.<sup>68</sup> Following his release in Arkansas, Mr. Petersen appeared in court in Utah, where he had also posted bond.<sup>69</sup> As of the date of this report, Mr. Petersen remains out of custody. Thus, Mr. Petersen was detained for approximately twenty days, from October 8 until October 29.

On November 4, 2019, the Arizona Attorney General's Office executed a search warrant at Mr. Petersen's County office and seized documents.<sup>70</sup> On November 19, 2019, the Arizona Attorney General's Office seized for forfeiture several properties owned by Mr. Petersen in Arizona, Utah, and Arkansas, and froze eleven of his personal and business bank accounts.<sup>71</sup>

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<sup>66</sup> Robert Anglen and Jessica Boehm, *Paul Petersen Released from Federal Custody; Headed to Court in Arizona, Utah*, Arizona Republic (Oct. 29, 2019), available at <https://www.azcentral.com/story/news/local/phoenix/2019/10/29/paul-petersen-appear-arkansas-court-adoption-scam-charges/2496708001/> (Exh. 46).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *See id.*; Jessica Miller, *Paul Petersen, Accused of Human Smuggling, Makes First Court Appearance in Utah*, Salt Lake Tribune (Nov. 15, 2019), available at <https://www.sltrib.com/news/2019/11/15/official-accused-human/> (Exh. 45).

<sup>70</sup> Search Warrant, County of Maricopa, State of Arizona, No. SW 2019-013729 (Nov. 4, 2019) (Exh. 11).

<sup>71</sup> *See* Robert Anglen, *Paul Petersen's Property, Bank Accounts Frozen in \$1.5 Million Seizure Warrant*, Arizona Republic (Nov. 27, 2019), available at <https://www.azcentral.com/story/news/local/arizona-investigations/2019/11/27/paul-petersen-receives-1-5-million-asset-seizure-property-bank-accounts-vehicles/4310519002/> (Exh. 47).

## 7. Maricopa County Internal Audit High-Level Assessment

After the criminal charges against Mr. Petersen were made public, the Board of Supervisors requested that the Maricopa County Internal Audit Department review the County Assessor's Office. Internal Audit "completed a high-level assessment of the Assessor's Office and its use of county resources" and reported its findings on October 28, 2019.<sup>72</sup>

The assessment concluded that the hard drive on Mr. Petersen's County desktop computer and Mr. Petersen's personal user folder on the County's network contained a substantial number of documents unrelated to County business and specifically related to his private law practice and adoption business.<sup>73</sup> Specifically, out of 550 documents dated between August 19, 2013, and October 17, 2019, ninety-five percent were related to Mr. Petersen's law practice.<sup>74</sup> This calculation does not include documents associated with emails, and the assessment did not include shared network drives available to Mr. Petersen.<sup>75</sup>

The assessment also noted that the County laptop issued to Mr. Petersen in November 2007 was not in the County's possession.<sup>76</sup> Adoption-related documents were also observed in Mr. Petersen's office files.<sup>77</sup>

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<sup>72</sup> Letter and High-Level Assessment of Assessor's Office, McGee to Maricopa County Board of Supervisors, Oct. 28, 2019 (**Exh. 7**), at 1. Michael McGee, Maricopa County Auditor, was interviewed regarding the assessment during our investigation.

<sup>73</sup> *Id.* at 2.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* Mr. Petersen was issued a County Surface Laptop in Fall 2017. The high-level assessment conducted by the County Internal Audit Department notes a 2007 laptop. Our investigation has focused on obtaining the laptop issued to Mr. Petersen in 2017. It is possible that the County issued him another laptop previously in 2007.

<sup>77</sup> *Id.*

The assessment’s review of Mr. Petersen’s internet browsing history showed that he was accessing adoption-related websites from the County computer, as well as other websites possibly unrelated to County business.<sup>78</sup> Seventeen of 383 unique daily visits to websites from February 20, 2019, through October 2019 related to adoption.<sup>79</sup>

The assessment identified a small percentage of emails in Mr. Petersen’s County email account related to adoption and other legal services.<sup>80</sup> Specifically, of 34,000 preserved emails reviewed, 181 emails were not related to County business, with thirty related to adoptions and 120 related to other legal services.<sup>81</sup>

There were also a small number of international and out-of-state phone calls made from Mr. Petersen’s desk phone.<sup>82</sup>

The assessment did not note any issues concerning Mr. Petersen’s travel and travel-related reimbursements.<sup>83</sup> Nor did the assessment discover any issues with property valuations that indicated preferential treatment for Mr. Petersen or his associates.<sup>84</sup>

Finally, as for its review of the operations and control environment of the Assessor’s Office, the assessment observed: “The organization’s structure, policies, and practices are well established which helps promote the integrity and continuity of operations. However, management reports that the past few weeks have been challenging

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*Id.*

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*Id.*

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*Id.* at 3.

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*Id.*

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*Id.*

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*Id.*

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*Id.*

for the employees of the Assessor’s Office, and they are receiving criticism from customers in their daily interactions with the public.”<sup>85</sup>

### **8. Board of Supervisors Proceedings and Correspondence Related to Suspension**<sup>86</sup>

On October 23, 2019, the Maricopa County Board of Supervisors voted to convene in executive session to receive legal advice and consider whether to take action related to Mr. Petersen in his capacity as Maricopa County Assessor.<sup>87</sup> The Board reconvened in open session and unanimously voted to schedule a public meeting to consider placing Mr. Petersen on unpaid suspension for neglect of duty pursuant to A.R.S. § 11-664.<sup>88</sup> The Board reasoned that because Mr. Petersen was in custody, he could not be physically present in the Assessor’s Office.<sup>89</sup> Moreover, the Board determined that “the multitude of documents not related to his public duties, but to his private law practice on [his] Maricopa County computer demonstrates additional neglect of duty.”<sup>90</sup>

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<sup>85</sup> *Id.* at 4.

<sup>86</sup> In addition to the proceedings discussed below, the Board of Supervisors met several additional times in executive session to discuss matters related to Mr. Petersen but did not take any action following those sessions. *See* Maricopa County Board of Supervisors Special Executive Meeting Documents (Oct. 14, Oct. 18, Oct. 21, Oct. 28, Nov. 4, Nov. 18, and Nov. 22, 2019) (**Exh. 16**).

<sup>87</sup> Maricopa County Board of Supervisors Special Meeting Agenda and Minutes, Oct. 23, 2019 (**Exh. 12**), at 3.

<sup>88</sup> *Id.* at 4.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

That same day, the Board notified Mr. Petersen that it had set a public meeting for October 28, 2019, to consider his suspension as County Assessor due to neglect of duty.<sup>91</sup>

The notice alleged:

Due to your detention, you are not physically present in the Office, with severely restricted telephonic communication and access to email. Furthermore, the multitude of documents not related to your public duties, but to your private law practice on your Maricopa County computer, demonstrates additional neglect of duty.<sup>92</sup>

In addition, on October 24, Board Chair Bill Gates sent a separate letter to Mr. Petersen posing two questions that Chair Gates intended to address at the October 28 meeting:

- (1) Since you were arrested and detained on October 8, 2019, how are you fulfilling your duties as the elected Assessor?
- (2) Please explain how and why over a thousand documents relating to your private legal practice are stored on your county desktop, and/or the county's servers, or physically stored in your county office?<sup>93</sup>

Chair Gates "request[ed] that [Mr. Petersen] personally respond to this inquiry."<sup>94</sup>

At the October 28, 2019 meeting, the Board unanimously voted to place Mr. Petersen on unpaid suspension for 120 days pursuant to A.R.S. § 11-664.<sup>95</sup> The Board found that "Mr. Petersen's failure to meaningfully oversee the operations of his office for an extended period and repeated misuse of County resources to conduct his private law

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<sup>91</sup> Letter, McCaroll to Petersen with statutory notice of Oct. 28, 2019 meeting, Oct. 23, 2019 (**Exh. 17**)

<sup>92</sup> *Id.*

<sup>93</sup> Letter, Gates to Petersen posing two questions, Oct. 24, 2019 (**Exh. 19**).

<sup>94</sup> *Id.*

<sup>95</sup> Maricopa County Board of Supervisors Special Meeting Agenda and Summary, Oct. 28, 2019 (**Exh. 13**), at 2.

practice constitutes neglect of duty.”<sup>96</sup> On October 30, the Board appointed Bill Wiley as the Acting Administrator of the County Assessor’s Office.<sup>97</sup>

On November 7, 2019, counsel for Mr. Petersen requested a hearing pursuant to A.R.S. § 11-664(C) on the Board’s suspension of Mr. Petersen.<sup>98</sup> Mr. Petersen’s counsel argued that Mr. Petersen had not neglected his duties in office and that A.R.S. § 11-664 might be unconstitutional, among other things.<sup>99</sup> On November 11, Mr. Petersen’s counsel wrote again to the Board, this time via County Attorney Adel, to request that the Board secure the attendance of thirteen witnesses for the hearing on Mr. Petersen’s suspension, including all the elected officers of Maricopa County.<sup>100</sup> Mr. Petersen’s counsel also requested that the Board and County Attorney produce documents in advance of the hearing, including documents and communications concerning Mr. Petersen’s suspension, documents evidencing the dates and times other elected officers of the County entered and exited County buildings, images of technology resources issued to other County elected officers, and policies related to the County Assessor and personnel in his office.<sup>101</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> Maricopa County Board of Supervisors Special Meeting Agenda and Summary, Oct. 30, 2019 (**Exh. 14**), at 4.

<sup>98</sup> Letter, Langhofer to Maricopa County Board of Supervisors re: Suspension of Maricopa County Assessor Paul Petersen, Nov. 7, 2019 (**Exh. 22**).

<sup>99</sup> *Id.*

<sup>100</sup> Letter, Langhofer to Adel re: Suspension of Maricopa County Assessor Paul Petersen – Request for Documents and Testimony, Nov. 11, 2019 (**Exh. 24**).

<sup>101</sup> *Id.* Counsel for Mr. Petersen and the County Attorney’s Office exchanged other correspondence, as well. *See* Letter, Langhofer to Liddy re: Legal Ethics, Nov. 6, 2019 (**Exh. 21**); Letter, Liddy to Langhofer re: Response to your letter of November 6, 2019, Nov. 8, 2019 (**Exh. 23**); Letter, Langhofer to Adel re: Conflicts of Interest, Nov. 11, 2019 (**Exh. 25**).



On November 13, 2019, after meeting in executive session, the Board unanimously voted to schedule a hearing on the issue of Mr. Petersen's suspension for December 11, 2019.<sup>102</sup> The Board also unanimously voted to request that the Maricopa County Attorney conduct an investigation pursuant to A.R.S. § 11-664(B) regarding Mr. Petersen's neglect of duty.<sup>103</sup> County Attorney Adel retained Mitchell Stein Carey Chapman to conduct this investigation.<sup>104</sup>

### **Statement of Charges**

The Maricopa County Board of Supervisors, at special meetings on October 23 and 28, 2019, determined pursuant to A.R.S. § 11-664 as follows:<sup>105</sup>

1. Neglect of Duty: Mr. Petersen failed to meaningfully oversee the operations of his Office for an extended period. Due to Mr. Petersen's detention, he is not physically present in the Office, with severely restricted telephonic communication and access to email.
2. Neglect of Duty: Mr. Petersen repeatedly misused County resources to conduct his private law practice. The multitude of documents not related to his public duties, but to his private law practice on Mr. Petersen's Maricopa County computer, demonstrates neglect of duty.

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<sup>102</sup> Maricopa County Board of Supervisors Special Meeting Agenda and Summary, Nov. 13, 2019 (**Exh. 15**), at 4.

<sup>103</sup> *Id.*

<sup>104</sup> Letter, Adel to Stein re: Retention to conduct investigation pertaining to Assessor Paul Petersen pursuant to A.R.S. § 11-664(B), Nov. 15, 2019 (**Exh. 3**).

<sup>105</sup> See Maricopa County Board of Supervisors Special Meeting Agenda and Minutes, Oct. 23, 2019 (**Exh. 12**), at 4; Maricopa County Board of Supervisors Special Meeting Agenda and Summary, Oct. 28, 2019 (**Exh. 13**), at 2.

## Factual Findings

### 1. Operation of the Assessor's Office under Mr. Petersen and His Work in the Office

The County Assessor's Office, under Mr. Petersen's leadership, has reportedly not missed any statutory deadlines or otherwise failed to meet its obligations. In January 2018, the Maricopa County Internal Audit Department produced an audit report of the Assessor's Office for Tax Year 2016 with near-perfect audit results.<sup>106</sup> The report concluded that: (1) "Real property assessment valuations were computed in accordance with statute." (2) "Legal classifications and associated assessment ratios were accurate." (3) "New construction was accurately reflected in property assessment valuations."<sup>107</sup> Our investigation did not uncover any evidence that the Office has not complied with its statutory duties.

During our investigation, we spoke with every member of the Assessor's Office core leadership team, as well as the executive assistant to Mr. Petersen, Chief Deputy Boncoskey, and Assistant Chief Deputy Kratz. Our impression was that this senior staff is competent, dedicated to the mission of the Maricopa County Assessor's Office, and confident in each other and their staff's ability to effectively and efficiently administer their duties. Many of them are long-time public servants, and several have worked in the Assessor's Office for more than a decade. Several expressed pride in the work of the Assessor's Office. Mr. Petersen relied on his senior staff to manage the day-to-day operations of the Office.

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<sup>106</sup> Assessor's Office, Internal Audit Report Authorized by the Maricopa County Board of Supervisors, Jan. 2018 (**Exh. 6**).

<sup>107</sup> *Id.* at 1.

As the Assessor, Mr. Petersen was active and engaged in some aspects of the Office's work, particularly on strategic planning and initiatives, budgeting, meeting statutory obligations, legislative issues, litigation, and public-facing events and communications. For instance, Mr. Petersen monitored the progress of the MARS project and participated in high-level decisions for that project. Mr. Petersen also gave attention to issues involving solar leases, medical marijuana dispensaries, legislative proposals that might shift the tax burden, and urban agriculture and grazing. People we interviewed generally had positive impressions of Mr. Petersen's leadership of the Office: although relatively hands-off in style, he understands the work of the Office, sets a clear vision and direction for the Office, and delegates day-to-day operations to staff, particularly Mr. Boncoskey.

Mr. Petersen personally attended most of the Office's monthly management meetings, which Mr. Boncoskey runs, as well as periodic employee-appreciation events and meetings to greet new hires to the Office. Mr. Petersen was concerned with maintaining office morale and would advocate to the Board of Supervisors for staff raises.

Mr. Petersen generally was present in the Assessor's Office one to two days per week, and more during the legislative session or during the periods approaching statutory deadlines. Those we interviewed who had worked with other elected officials believed that Mr. Petersen's time in the office was consistent with that of other elected officials. He reportedly had an open-door policy, was friendly to employees, and was reachable when needed, even when he was out of the office. No person we interviewed expressed concern that Mr. Petersen was unavailable when his input or assistance was needed. All

believed that Mr. Petersen was fulfilling his duties as County Assessor, and several expressed loyalty to Mr. Petersen.

## **2. Period of Mr. Petersen's Incarceration**

Mr. Petersen was incarcerated for about twenty days and was unreachable during that time. Other than an initial shock to the staff after his arrest, and an accompanying hit to office morale, notwithstanding Mr. Petersen's unavailability, the operations of the Assessor's Office were not materially affected by Mr. Petersen's twenty-day absence.<sup>108</sup> Mr. Boncoskey was out of the country when he learned about Mr. Petersen's arrest; he made plans to return immediately. The Office's leadership team assured staff that the day-to-day operations of the Office should not be affected by Mr. Petersen's absence and that they should continue doing their good work for the Maricopa County taxpayers.

Because of his arrest, Mr. Petersen did miss an important meeting about the MARS project, the largest current project in the Office. The meeting was scheduled specifically to obtain Mr. Petersen's approval to delay the project's implementation date for six months. While Mr. Petersen was in custody, he reportedly spoke with Mr. Boncoskey for about thirty minutes on October 22, with about half the time being devoted to Office business, including the delayed implementation of the MARS project, which Mr. Petersen approved, and other projects and activities of the Assessor's Office.<sup>109</sup> Mr. Boncoskey and Mr. Petersen spoke again on October 24 when Mr. Petersen

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<sup>108</sup> See A.R.S. § 38-462 (allowing the deputies of an elected officer to perform the duties assigned to the office by law).

<sup>109</sup> See Letter, Langhofer to Maricopa County Board of Supervisors re: Suspension of Maricopa County Assessor Paul Petersen, Nov. 7, 2019 (**Exh. 22**).

notified Mr. Boncoskey that he was being transferred to Arkansas and that he expected to be released on October 29.<sup>110</sup>

Mr. Petersen's arrest and the public reports about it affected the staff at the Assessor's Office. People in the Office were surprised by the news, and the stress level in the Office went up, while morale went down, because of the uncertainty injected by Mr. Petersen's arrest. There was also some distraction from core duties while staff was compiling information to assist with the Audit Department's high-level assessment. Some staff were also on the receiving end of angry and critical communications from members of the public. By the time of our interviews, people reported that day-to-day operations of the Office had not suffered any material impact.<sup>111</sup> Some remained concerned, however, that Mr. Petersen's legal troubles could affect the public's confidence in the Assessor's Office. Others expressed uncertainty about how the Office would operate going forward, raising questions, for instance, about Mr. Wiley's role, the duration of his appointment, whether Mr. Petersen would return, and how these things would affect the work of the Office and the work environment.

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<sup>110</sup> We were not able to obtain or review a recording of the jail calls between Mr. Petersen and Mr. Boncoskey to verify the occurrence and content of these calls.

<sup>111</sup> See Letter and High-Level Assessment of Assessor's Office, McGee to Maricopa County Board of Supervisors, Oct. 28, 2019 (**Exh. 7**), at 4 ("The organization's structure, policies, and practices are well established which helps promote the integrity and continuity of operations. However, management reports that the past few weeks have been challenging for the employees of the Assessor's Office, and they are receiving criticism from customers in their daily interactions with the public.").

### **3. Conducting Personal Law Practice with County Resources**

#### *A. General Conclusions*

Staff at the Assessor's Office were aware that Mr. Petersen was a practicing lawyer who worked on adoptions. Some were aware that much of his work related to the Marshall Islands. Some people we interviewed noted that Mr. Petersen's biography on the County's website included information about his law practice, and some stated that Mr. Petersen's law practice was common knowledge at the Office. People also noted that Mr. Petersen spoke openly about his law practice at a general level. Some interviewees stated that Mr. Petersen would make clear that his law practice was entirely separate from his work for the County.

After the Honolulu Civil Beat published an article in November 2018 that was critical of Mr. Petersen and his adoption practice focusing on the Marshall Islands, Mr. Petersen addressed his management team about the article, reassuring staff that his conduct was legal and that the article should not affect the work of the Office. No one we interviewed expressed concern that Mr. Petersen's law practice was distracting Mr. Petersen from his County duties, no one reported that they witnessed Mr. Petersen working on law-related matters while he was at the office, and no one had been asked by Mr. Petersen, or had heard of others being asked, to assist him with his private practice while on County time.

The October 28, 2019 high-level assessment by the County Internal Audit Department observed that a significant number of documents on Mr. Petersen's County desktop and in his personal drive in the County network appeared to be related to his private adoption business.<sup>112</sup> Likewise, Mr. Petersen's internet browsing history and

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<sup>112</sup> *Id.* at 2.

phone records also suggested that he was working on his private law practice while he was in his County office.

The results of our independent forensic analysis confirmed the Audit Department's observations.

### *B. Select Maricopa County Policies*

County employees are subject to discipline up to and including termination for violations of County policies. Elected officials, however, may not be disciplined as County employees for violating policies.<sup>113</sup>

#### 1. Policies on the Use of Technology

As of July 24, 2019, Maricopa County had in place a Policy on Use of County Technology Resources.<sup>114</sup> This policy replaced nine other predecessor policies that collectively covered the same subject matter.<sup>115</sup> The predecessor policies are discussed below to the extent they are relevant or materially different in a relevant way.

The stated purpose of the current policy is to “[e]stablish privileges, responsibilities, and restrictions in the use of County Technology Resources (CTR) and devices that access CTR; maximize the value of these resources to securely enable business goals and improve efficiency in delivering the mission of Maricopa County.”<sup>116</sup> The policy applies to employees of County elected offices unless the elected official has

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<sup>113</sup> See *Hounshell v. White*, 220 Ariz. 1, 5 ¶ 18, 202 P.3d 466, 470 (App. 2008) (“*Hounshell P*”) (elected official “is the sole appointing authority with respect to his or her deputies and other classified employees” and only the appointing authority may “dismiss, suspend, or reduce in rank”).

<sup>114</sup> Maricopa County Policy, Use of County Technology Resources, No. A2611, adopted July 24, 2019 (**Exh. 33**).

<sup>115</sup> *Id.* at 16.

<sup>116</sup> *Id.* at 1, § I.

implemented a similar specific policy.<sup>117</sup> No separate County Assessor policies with respect to use of CTRs have been implemented.

Under the policy, an “Authorized User” is “[a]n individual approved by the Appointing Authority [elected official or department head] to use CTRs.”<sup>118</sup> A CTR is “[a]ny computing account; device (e.g., mobile device, smartphone, tablet, computer, communications equipment, video conference, facsimile, or telephone); peripheral; software; local, wireless and wide area networks (i.e., LAN, Wi-Fi and WAN); ESI; website; cloud-based or internally-hosted system; or related consumable (e.g., disk space, processor time, network bandwidth) owned by, contracted with, or controlled by the County.”<sup>119</sup>

The policy outlines acceptable uses of County CTRs: “All CTRs are to be used to carry out the responsibilities of County employment, County awarded contracts, or approved IGAs. Incidental, infrequent personal use is permissible so long as it does not interfere with the responsibilities and duties of employment.”<sup>120</sup> While such personal use

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<sup>117</sup> *Id.* § II.

<sup>118</sup> *Id.* § III.D.

<sup>119</sup> *Id.* at 2, § III.G. A predecessor policy applied to telephones and faxes. Maricopa County Policy, Telephony (desk phones, fax lines, cell phones, calling cards, and radios), No. A1202, revised Jan. 1, 2010 (**Exh. 30**).

<sup>120</sup> Maricopa County Policy, Use of County Technology Resources, No. A2611, adopted July 24, 2019 (**Exh. 33**), at 4, § IV.A.1. Under a predecessor policy governing email use, employees were likewise permitted to “make limited, incidental personal use of e-mail” under certain circumstances. Maricopa County Policy, Electronic Mail, No. A1608, revised Aug. 2001 (**Exh. 31**), at 2, § C.7. Unacceptable use of email under the old policy included “[r]unning, or participating in, a private or non-County related activity.” *Id.* at 3, § C.8. A predecessor policy governing use of technology resources allowed “[l]imited use of County Computing Resources for personal needs . . . as long as such use is consistent with established County and department policy, and does not inhibit either governmental or administrative use.” Maricopa County Policy, Acceptable Use of County Technology Resources, No. A1609, revised March 2003 (**Exh. 32**), at 2, § C. It also prohibited use of County resources for personal gain. *Id.*



may be permissible under the policy, it also warns that the County will “monitor, record, control and adjudicate all CTR usage at any time, without prior notice or warning to Authorized Users” and that “[a]nyone using CTRs has no expectation of privacy in the use of these resources or any content therein.”<sup>121</sup>

The policy provides examples of improper uses of CTRs. Specifically, “CTRs must not be used for illegal, insecure, inappropriate, obscene, political or personal gain purposes, or activities otherwise prohibited by County policy.”<sup>122</sup> Thus, CTRs may not be used in “violation of the intended use of the CTR”<sup>123</sup> or for “excessive personal use that interferes with employment duties.”<sup>124</sup> One specific example of an improper use is “Uses CTRs to conduct commercial or private business transactions other than County business (e.g. using facsimile machines or telephones to further an employee’s commercial/private business endeavors).”<sup>125</sup>

When users log into the County’s computers, they agree to an Acceptable Use Statement: “By logging into and/or using County Technology Resources, I acknowledge that I have read, understand, agree, and will comply with the current County policy,

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<sup>121</sup> Maricopa County Policy, Use of County Technology Resources, No. A2611, adopted July 24, 2019 (**Exh. 33**), at 4, § IV.A.8.

<sup>122</sup> *Id.* § IV.B.1.

<sup>123</sup> *Id.* at 5, § IV.B.1.c.

<sup>124</sup> *Id.* § IV.B.1.e.

<sup>125</sup> *Id.* § IV.B.4.f. A predecessor policy governing use of technology resources likewise prohibited “[u]s[ing] County Computing Resources to conduct commercial or private business transactions, or support[ing] a commercial/private business other than County business (e.g. using fax machines or telephones to further an employee’s commercial/private business endeavors).” Maricopa County Policy, Acceptable Use of County Technology Resources, No. A1609, revised March 2003 (**Exh. 32**), at 3, § C.

A2611 – Use of County Technology Resources. My usage may be monitored for compliance and I accept all consequences associated with any misuse on my part.”<sup>126</sup>

## 2. Policies on Secondary Employment

Maricopa County’s current policy on secondary employment was adopted on September 19, 2018.<sup>127</sup> That policy replaced a previous version initially adopted on November 14, 2012.<sup>128</sup>

The current policy’s stated purpose is “[t]o provide a mechanism for employees to request to participate in outside employment when doing so does not interfere with their County employment, create a conflict of interest, or create an appearance of impropriety.”<sup>129</sup> The policy “applies to all Maricopa County appointed departments as well as . . . employees of County elected offices unless the elected official has implemented a similar policy specific to his or her office.”<sup>130</sup> Under the policy,

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<sup>126</sup> Acceptable Use Statement (**Exh. 34**); *see also* Maricopa County Policy, Use of County Technology Resources, No. A2611, adopted July 24, 2019 (**Exh. 33**), at 16, § VI.1.

<sup>127</sup> Maricopa County Policy, Secondary Employment, No. HR2422, revised Sept. 19, 2018 (**Exh. 36**).

<sup>128</sup> Maricopa County Policy, Secondary Employment, No. HR2422, adopted Nov. 14, 2012 (**Exh. 37**).

<sup>129</sup> Maricopa County Policy, Secondary Employment, No. HR2422, revised Sept. 19, 2018 (**Exh. 36**), at 1, § I. The predecessor policy’s stated purpose was similar: “To provide direction to County Employees regarding activities outside their County employment that may create a conflict of interest or appearance of impropriety relating to their County employment.” Maricopa County Policy, Secondary Employment, No. HR2422, adopted Nov. 14, 2012 (**Exh. 37**), at 1, § I.

<sup>130</sup> Maricopa County Policy, Secondary Employment, No. HR2422, revised Sept. 19, 2018 (**Exh. 36**), at 1, § III.

“Employee” means “A person paid a wage, salary, or stipend in accordance with official County payroll entries.”<sup>131</sup> Outside employment includes self-employment.<sup>132</sup>

The policy prohibits outside employment that “[i]mpairs the performance of County duties including, but not limited to employment: . . . That uses County work time, facilities, personnel, equipment, technology, supplies, badges, or uniforms.”<sup>133</sup> The policy requires that employees notify their departments about and obtain approval for outside employment,<sup>134</sup> and the County has adopted a form to be used for these purposes.<sup>135</sup>

### *C. County Computer and Phone Use by Mr. Petersen*

As noted above, as part of our investigation, we collected and analyzed data from Mr. Petersen’s County hard drive, network systems, and other technology resources.<sup>136</sup>

Generally, our review concluded:

Petersen utilized County facilities, County telephone equipment and voice plans, County computers and related equipment, County IT infrastructure and internet access, and County scanning equipment to send and receive adoption-related contracts, perform research related to his law firm and adoption business, manage payment details for his adoption and law firm

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<sup>131</sup> *Id.* § IV.C.

<sup>132</sup> *Id.* § IV.D.

<sup>133</sup> *Id.* § V.A.4.a. The predecessor policy contained explicit prohibitions against using County resources for secondary employment and working on secondary employment during County work hours. Maricopa County Policy, Secondary Employment, No. HR2422, adopted Nov. 14, 2012 (**Exh. 37**), at 2, § IV.B (“Use of County property, equipment, supplies, paid personnel or services in support of Outside Employment is prohibited.”); *Id.* § IV.C (“Performing Outside Employment during the Employee’s County working hours is prohibited unless the Employee is in a previously approved time-off status in accordance with the County’s Leave Policy.”).

<sup>134</sup> Maricopa County Policy, Secondary Employment, No. HR2422, revised Sept. 19, 2018 (**Exh. 36**), at 2, § V.B.1.

<sup>135</sup> Secondary Employment Form (**Exh. 38**).

<sup>136</sup> See Petersen Data Analysis Report to Mitchell Stein Carey Chapman by Cosmich Simmons, & Brown, PLLC (**Exh. 5**), at 1-2.

businesses, solicit business, and send, receive, and store contracts, pleadings, medical records, photos, and related personal health information on County IT systems.<sup>137</sup>

More specifically, of the 61,532 documents reviewed, 856 related to Mr. Petersen's law firm or adoption business.<sup>138</sup> Documents created or downloaded from the internet or a USB drive to Mr. Petersen's County computer include, among other documents:

- adoption services agreements (82)
- ultrasound images (75)
- pleadings – affidavits (66)
- pleadings – petitions for adoption (52)
- law office – bank records (23)
- pleadings – bankruptcy (19)
- medical records (14)
- court orders/reports – adoption (14)
- partial sections of adoption brochures for adoptive families (50).<sup>139</sup>

In addition to these documents, there were 376 purely personal documents on Mr. Petersen's hard drive and network systems apparently unrelated to his law practice.<sup>140</sup>

Other documents were scanned using the County office scanner and saved to Mr. Petersen's County email and sent from Mr. Petersen's County email to Mr. Petersen's law-firm-related email accounts. Examples of those include:

- adoption file – multiple documents (34)
- law office – bank records (21)
- pleadings – bankruptcy (16)
- pleadings – petition for adoption (15)
- pleadings – affidavits (15)

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<sup>137</sup> *Id.* at 2.

<sup>138</sup> *Id.* at 2-3.

<sup>139</sup> *Id.* at 3.

<sup>140</sup> *Id.*

- birth certificates (13)
- adoption services agreements (6).<sup>141</sup>

Mr. Petersen's County computer included documents related to his law practice and wire transfers associated with individuals identified in the Arizona indictment,<sup>142</sup> as well as wire transfers to individuals identified as involved in Mr. Petersen's allegedly unlawful activities in Utah.<sup>143</sup>

Mr. Petersen also used his County computer to send and receive emails to and from his law-firm-related email accounts pdplaw@yahoo.com or pdplaw@gmail.com for law-firm-related business purposes as well.<sup>144</sup>

Mr. Petersen used the County network in support of his private law practice, in addition to other personal, non-County use. Examples of internet browser history from Mr. Petersen's computer, likely in support of his private law practice, include visits to the following websites (among others):

- www.utahadoptionspecialists.com
- sharedbeginnings.org
- Medicaid.utah.gov
- lawpay.com
- www.privateadoptionlaw.com (his own website)
- Rolfefamilylaw.com
- arizonaschildren.org
- docuSign.net

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<sup>141</sup> *Id.* at 3-4.

<sup>142</sup> *Id.* at 4-5; see *State of Arizona v. Paul D. Petersen and Lynwood Jennet*, Indictment, No. 85 SGJ 77, Superior Court of the State of Arizona in and for Maricopa County, Oct. 7, 2019 (**Exh. 10**).

<sup>143</sup> Petersen Data Analysis Report to Mitchell Stein Carey Chapman by Cosmich Simmons, & Brown, PLLC (**Exh. 5**), at 4-5; see *State of Utah v. Paul D. Petersen*, Information, No. 191910049, Third District Court Salt Lake Department, Salt Lake County, State of Utah. Oct. 2, 2019 (**Exh. 9**).

<sup>144</sup> Petersen Data Analysis Report to Mitchell Stein Carey Chapman by Cosmich Simmons, & Brown, PLLC (**Exh. 5**), at 5.

- verisign.com
- www.ncsl.org/research/immigration/immigrant-eligibility-for-health-care-programs-in-the-united-states.aspx
- multiple banking activities for non-County related banking.<sup>145</sup>

Mr. Petersen also accessed files in dropbox.com on multiple occasions, but he does not have any cloud storage syncing applications installed on his County computer nor any County Assessor-related reason to access dropbox. He also does not have remote VPN access to the County networks.<sup>146</sup> Thus, Mr. Petersen was doing work related to his private law practice while in his County office using a County computer.

Mr. Petersen's use of the County phone system included calls in furtherance of his private law practice. These calls include (among others):

- Mother Goose Adoption Agency
- Premier Adoption Agency
- hotels in Arkansas
- adoption law firms in Oklahoma
- adoption law firms Tempe
- Appalachian Power
- services in Arkansas
- Ozarks Electrical Cooperative in Arkansas
- LawPay
- Springdale Water Utilities (Springdale, Arkansas)
- Arkansas Supreme Court
- OBGYN offices in Arkansas and Mesa.<sup>147</sup>

Whether Mr. Petersen used his County-issued laptop in furtherance of his private law practice is an open question because at the time this report was written we had not yet received a digital image of the laptop.

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<sup>145</sup> *Id.* at 5-6.

<sup>146</sup> *Id.* at 6.

<sup>147</sup> *Id.* at 6-7.

#### *D. Mr. Petersen's Presence in the Office*

Our review of Mr. Petersen's access to the County garage and badging records from internal office areas in 2019 indicates that Mr. Petersen was in the office approximately fifty-five days of the 192 working days between January 1 and October 2, 2019, typically remaining between four and five hours per visit. Mr. Petersen does, however, have County Assessor responsibilities outside the Assessor's Office, including public functions, legislative duties, and work at satellite County Assessor offices. Our investigation did not attempt to quantify Mr. Petersen's days or hours of County work while not in the office.

#### **4. Criminal Allegations**

Given our time constraints and the scope of our engagement, we have not undertaken to investigate the serious criminal allegations against Mr. Petersen or whether his alleged conduct was unlawful. We expect that the three criminal cases against him will proceed and that there will be some resolution to those allegations in due course. We do note, however, that Mr. Petersen has been aware for more than ten years of serious questions about the legality of the adoptions he facilitated involving Marshallese women and babies, and notwithstanding those questions, he continued to use County resources in connection with his practice.<sup>148</sup>

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<sup>148</sup> See *Jared S. v. Rees*, Case. No. 1 CA-JV 06-0158 (Ariz. Ct. App. Feb. 22, 2007) (**Exh. 55**), at 4 n.3 (commenting that there is "strong support" for the view that this practice was unlawful), available at <http://poundpuplegacy.org/files/1%20CA-JV%2006-0158.pdf>.

## Legal Standards and Application

The Arizona Constitution specifies that the County Assessor is an elected officer whose term lasts four years.<sup>149</sup> The County Assessor’s duties are “as prescribed by law,”<sup>150</sup> meaning that the Assessor’s duties are set in statutes by the Arizona Legislature.<sup>151</sup>

### 1. Standard for Suspension under A.R.S. § 11-664

#### A. *Grounds for Suspension of the Assessor under A.R.S. § 11-664: Defalcation and Neglect of Duty*

The board of supervisors may suspend the assessor for “defalcation or neglect of duty.”<sup>152</sup> Arizona statutes do not define “defalcation” or “neglect of duty,” but other authorities, including case law from Arizona courts, help to define those terms. The cases, however, are few in number and highly fact-specific, so the meaning of those terms have never been fully developed. Below we discuss the case law in Arizona that has addressed these and similar terms, and also some examples from other jurisdictions.

Defalcation has not been well-defined in legal authorities outside the context of bankruptcy, but it generally means “[t]he fraudulent misappropriation of money held in trust; financial wrongdoing involving a breach of trust; embezzlement.”<sup>153</sup> The *Griffin* case discussed below, which involved the predecessor to § 11-664, involved financial wrongdoing (the treasurer’s failure to deposit tax checks), but the Court did not specify

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<sup>149</sup> Ariz. Const. art. XII, § 3; *see also* A.R.S. § 11-401(A)(6) (assessor is officer of the county).

<sup>150</sup> Ariz. Const. art. XII, § 4; *see also* A.R.S. § 11-541.

<sup>151</sup> *Weidler v. Ariz. Power Co.*, 39 Ariz. 390, 394, 7 P.2d 241, 242 (1932).

<sup>152</sup> A.R.S. § 11-664(A).

<sup>153</sup> Black’s Law Dictionary (11th ed. 2019).



whether the conduct at issue was defalcation or neglect of duty.<sup>154</sup> In any event, the Board of Supervisors did not base Mr. Petersen’s suspension on grounds that he committed defalcation.<sup>155</sup>

“Neglect of duty is the substantial failure to perform a duty. . . . It ‘impl[ies] wrongdoing, some act of omission or commission in office the law required to be done which was not done or if done was done in an unlawful manner.’”<sup>156</sup> “Neglect of duty and nonfeasance mean the same thing.”<sup>157</sup>

No Arizona appellate decision has addressed the suspension of a county officer under A.R.S. § 11-664, but a 1944 decision of the Arizona Supreme Court reviewed a county officer’s suspension under a predecessor to § 11-664, which also allowed the board of supervisors to suspend the county treasurer or assessor for “defalcation or neglect of duty.”<sup>158</sup>

*Griffin* involved the Pinal County Board of Supervisors’ suspension of the county treasurer.<sup>159</sup> The conduct justifying the board’s suspension was that the treasurer held and failed to deposit for more than two months three tax checks, even though she credited the taxpayer’s account.<sup>160</sup> In addition, upon her re-election to office, the treasurer did not file her oath of office, post the required bond, or offer to do either until after the board had

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<sup>154</sup> *Griffin v. Denton*, 61 Ariz. 454, 150 P.2d 96 (1944).

<sup>155</sup> Our investigation did not uncover any evidence the Mr. Petersen misappropriated public money.

<sup>156</sup> *Ariz. Indep. Redistricting Comm’n v. Brewer*, 229 Ariz. 347, 356 ¶ 40, 275 P.3d 1267, 1276 (2012) (citing and quoting *Holmes v. Osborn*, 57 Ariz. 522, 539-40, 115 P.2d 775, 783 (1941)).

<sup>157</sup> *Holmes*, 57 Ariz. at 40, 115 P.2d at 783.

<sup>158</sup> *Griffin*, 61 Ariz. at 457, 150 P.2d at 97 (applying § 17-331, A.C.A. 1939).

<sup>159</sup> *Id.* at 454-55, 150 P.2d at 96-97.

<sup>160</sup> *Id.* at 454-55, 150 P.2d at 96.

already suspended her.<sup>161</sup> She failed to do all these things as required.<sup>162</sup> The Arizona Supreme Court, affirming the superior court and board of supervisors, concluded that the suspension was not improper.<sup>163</sup>

Aside from *Griffin*, very few court cases in Arizona and elsewhere clearly define what might constitute “neglect of duty” for public officials.<sup>164</sup> Moreover, the cases that do address this and similar standards largely do not involve factual circumstances similar to those at issue here.

One case bearing discussion is *Holmes v. Osborn*,<sup>165</sup> a 1941 case that involved the governor’s removal of two members of the industrial commission under a statute allowing removal for “inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.”<sup>166</sup> The governor alleged that the commissioners continued to engage in a business or occupation while serving on the commission, in their cases, farming and ranching.<sup>167</sup> The Court concluded that removal for neglect of duty or nonfeasance in office would be appropriate “if the commissioner occupies himself in a business or occupation other than his official duties *to the extent of neglecting such duties*, . . . but not otherwise.”<sup>168</sup> There, neither of the commissioners “neglected to attend his office regularly during office hours or to perform the duties thereof” because of his

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<sup>161</sup> *Id.* at 455, 150 P.2d at 97.

<sup>162</sup> *Griffin*, 61 Ariz. at 455, 150 P.2d at 97.

<sup>163</sup> *Id.* at 458, 150 P.2d at 98. The Court in *Griffin* did not articulate whether the conduct at issue was defalcation or neglect of duty. Arguably, it could be either.

<sup>164</sup> There are a number of cases that discuss neglect of duty in the context of public employees, but these are not helpful for purposes of this analysis.

<sup>165</sup> 57 Ariz. 522, 115 P.2d 775 (1941).

<sup>166</sup> *Id.* at 535, 115 P.2d at 781.

<sup>167</sup> *Id.* at 544-46, 115 P.2d at 785-86.

<sup>168</sup> *Id.* at 543, 115 P.2d at 785 (emphasis added).

outside business.<sup>169</sup> The other stated grounds for removal amounted essentially to disagreements with the commissioners' decisions and their running of the agency.<sup>170</sup> The Court concluded that there was no valid basis for removal under the statute.<sup>171</sup>

More recently, the Arizona Supreme Court reviewed the governor's removal of the chair of the independent redistricting commission under a statute that allowed removal for "substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office."<sup>172</sup> The governor alleged that the chair had committed substantial neglect of duty and gross misconduct in office because she failed to conduct the commission's business in open meetings and failed to adjust the grid map as required by the Arizona Constitution.<sup>173</sup> The Court concluded that the removal was improper because the alleged misconduct were not grounds for removal under the statute.<sup>174</sup> With respect to the allegation about open meetings, the governor had not alleged a violation of law governing open meetings.<sup>175</sup> With respect to the allegation about the maps, the maps were still in draft, so the governor's issue was premature; the proper recourse would be by judicial

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<sup>169</sup> *Id.* at 547, 115 P.2d at 786.

<sup>170</sup> *Id.* at 551-53, 115 P.2d at 788-89.

<sup>171</sup> *Id.* at 558, 115 P.2d at 790.

<sup>172</sup> *Ariz. Indep. Redistricting Comm'n v. Brewer*, 229 Ariz. 347, 275 P.3d 1267 (2012). The statute at issue in *Arizona Independent Redistricting Commission* had a standard of *substantial* neglect of duty, whereas the statute at issue here only requires neglect of duty for a suspension. Although neither standard is well-defined, it appears as though a standard of "substantial" neglect of duty is more rigorous than merely neglect of duty.

<sup>173</sup> *Id.* at 349-50 ¶ 8, 275 P.3d at 1269-70.

<sup>174</sup> *Id.* at 358 ¶ 48, 275 P.3d at 1278.

<sup>175</sup> *Id.* at 357 ¶ 45, 275 P.3d at 1277.

review after the maps were drawn, not through removal of the chair before completion of the maps.<sup>176</sup>

Looking to other jurisdictions, the cases regarding public officials' neglect of duty are largely not helpful because of the factual dissimilarities to this matter,<sup>177</sup> with one possible exception related to public records.<sup>178</sup>

*B. Procedure for Suspending the Assessor under A.R.S. § 11-664*

“The board of supervisors may suspend the county assessor . . . for defalcation or neglect of duty.”<sup>179</sup> The board is required to give notice to the assessor “including reasons for the suspension at least five calendar days before the meeting at which the matter is to

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<sup>176</sup> *Id.* ¶ 46. Other than the *Griffin, Holmes, and Arizona Independent Redistricting Commission*, our research did not uncover any other Arizona cases that interpret the meaning of “neglect of duty” in the context of public officials.

<sup>177</sup> *See, e.g., State ex rel. Strange v. Clark*, 216 So. 3d 426, 428-29 (Ala. 2016) (sheriff committed willful neglect of duty by failing to properly supervise and giving special privileges to certain inmates that allowed them, for instance, to leave the jail without supervision, bring contraband into the jail, and have access to firearms); *Johnson v. Macon Cty. Bd.*, 433 N.E.2d 707, 708 (Ill. Ct. App. 1982) (highway superintendent’s single instance of intoxication while performing duties *not* neglect of duty or malfeasance in office); *State v. Price*, 280 P.3d 943, 952 ¶ 29 (Okla. 2012) (sheriff’s releasing a person on personal recognizance, which is a judicial function, constituted “wilfull neglect of duty”); *Bowles v. State*, 215 P. 934, 936 (Okla. 1923) (“habitual and willful neglect of duty” and “willful maladministration” for mayor to fail to file statutorily required monthly reports for several months).

<sup>178</sup> *State ex rel. Cater v. City of N. Olmsted*, 631 N.E.2d 1048 (Ohio 1994). In *Cater*, the Ohio Supreme Court concluded that the suspension of an official was proper because he committed nonfeasance – “the omission of an act which a person ought to do” – by not complying with his duty under the public records law to release records to other officials. *Id.* at 321.

<sup>179</sup> A.R.S. § 11-664(A).

be considered.”<sup>180</sup> If the board votes unanimously to suspend the assessor, the suspension is effective immediately.<sup>181</sup>

The assessor has the right to a hearing and can exercise that right by filing a written request with the board within ten days of the board’s suspension.<sup>182</sup> At the hearing, the assessor may be represented by counsel and may have counsel, witnesses, and members of the public testify on his or her behalf.<sup>183</sup> The board may sustain or reverse the suspension at the conclusion of the hearing.<sup>184</sup>

A suspension by the board cannot exceed 120 days unless removal of the assessor is sought within the time period of the suspension.<sup>185</sup> By implication, if removal is sought within that time period, the assessor remains suspended from office pending the outcome of the removal proceedings.<sup>186</sup> If removal is not sought during the suspension, the suspended assessor must be reinstated to office.<sup>187</sup> Removal of an elected official from office is governed by A.R.S. §§ 38-341 through -345 and is discussed further below.

### *C. Judicial Review of Suspension*

Suspension under § 11-664 is subject to judicial review by way of special action.<sup>188</sup> That review is discretionary, however, and also limited. Courts do not “review

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*Id.*

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*Id.*

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A.R.S. § 11-664(C).

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*Id.*

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*Id.*

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A.R.S. § 11-664(E).

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*See id.*

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*Id.*

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*See Ariz. Indep. Redistricting Comm’n*, 229 Ariz. at, 350 ¶ 11, 275 P.3d at 1270 (special action rules “combine the old common law writs into a single form of action”); *Griffin*, 61 Ariz. at 455, 150 P.2d at 97 (reviewing suspension of county treasurer under predecessor to § 11-664 on writ of certiorari); Ariz. R.P. Spec. Act. 1(a).

the judgment [of the board of supervisors] as to its intrinsic correctness, either on the law or on the facts of the case.”<sup>189</sup> Rather, courts are “limited to a determination of whether the board of supervisors has regularly pursued its authority” and thus cannot “weigh the evidence to determine whether the board of supervisors was authorized to enter the order of suspension.”<sup>190</sup>

#### *D. Constitutionality of A.R.S. § 11-664*

In his November 7, 2019 letter to the Board of Supervisors, counsel for Mr. Petersen questions the constitutionality of A.R.S. § 11-664, arguing that the Legislature may not provide for the Board to suspend the elected occupant of a coequal and constitutionally created office.<sup>191</sup> We do not address that argument here, other than to note that it does not appear to have been raised or addressed in the only Arizona case that interprets § 11-664 or a statutory predecessor.<sup>192</sup>

### **2. Potential Factual Bases for Finding Neglect of Duty**

Our research did not identify any case that has presented the issue of whether certain conduct amounted to neglect of duty under A.R.S. § 11-664. One recent case that considered similar language involved different facts and a different statute.<sup>193</sup> As noted above, in that case, the Arizona Supreme Court characterized neglect of duty as “the

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<sup>189</sup> *Griffin*, 61 Ariz. at 456, 150 P.2d at 97.

<sup>190</sup> *Id.* at 455-56, 150 P.2d at 97; *see also Ariz. Indep. Redistricting Comm’n*, 229 Ariz. at 356, ¶ 39 n.6, 275 P.3d at 1276 n.6 (Court would not assess or weigh the facts because “[a]s a general rule, the weight and sufficiency of evidence will not be reviewed on certiorari unless it is necessary to determine jurisdictional facts”) (citations omitted).

<sup>191</sup> Letter, Langhofer to Maricopa County Board of Supervisors re: Suspension of Maricopa County Assessor Paul Petersen, Nov. 7, 2019 (**Exh. 22**), at 2-3.

<sup>192</sup> *See Griffin*, 61 Ariz. at 457, 150 P.2d at 97.

<sup>193</sup> *See Ariz. Indep. Redistricting Comm’n*, 229 Ariz. at 349-50 ¶ 8, 275 P.3d at 1269-70.

substantial failure to perform a duty. . . . It ‘impl[ies] wrongdoing, some act of omission or commission in office the law required to be done which was not done or if done was done in an unlawful manner.’<sup>194</sup>

With this background, it falls to the Board, then, to determine whether the conduct identified in our investigation constitutes neglect of duty under § 11-664.<sup>195</sup>

*A. Mr. Petersen’s Violations of County Policies on Use of Technology Resources*

Elected officials cannot be disciplined for violating County policies in the same way that employees can be disciplined.<sup>196</sup> Discipline aside, however, no one we spoke with expressed the view that elected officials are free to disregard County policies, and we do not believe that to be the case. After all, County policies, including those implicated here, are adopted for sound reasons. The policies governing the use of technology resources have several important goals, including maintaining secure systems for conducting County business and ensuring the maintenance of public records as required by law.

The people we interviewed as part of our investigation, which consisted largely of the senior management team of the Assessor’s Office, were universally surprised to learn about the volume of documents on Mr. Petersen’s computer related to his private law practice. The leadership team is aware of the County’s policies on use of technology

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<sup>194</sup> *Id.* at 356 ¶ 40, 275 P.3d at 1276 (citing and quoting *Holmes*, 57 Ariz. at 539-40, 115 P.2d at 783).

<sup>195</sup> *See* A.R.S. § 38-443 (nonfeasance in office is a criminal misdemeanor requiring proof that a “public officer . . . knowingly omits to perform any duty the performance of which is required of him by law”). Only one Arizona case has interpreted this provision, and that case suggests that this crime requires omission to perform a duty required by statute. *Harper v. State*, 241 Ariz. 402, 405 ¶¶ 16-17, 388 P.3d 552, 555 (App. 2016).

<sup>196</sup> *See Hounshell I*, 220 Ariz. at 5 ¶ 18, 202 P.3d at 470.

resources and recognized that, while occasionally using a computer for personal reasons might be permissible, using County computers for a private business is not allowed. Thus, the people we interviewed generally expressed disapproval of Mr. Petersen’s using County resources for the purpose of his private law practice.

In addition, there are obvious reasons why using County technology for non-County purposes could not only hinder County business, but also put at risk potentially confidential matters unrelated to County business. For instance, if the County were responding to a public records request, it would be forced to review and cull personal documents from a set of public records before producing them as a response.<sup>197</sup> And the policy on technology use could not be more clear – users do not have an expectation of privacy in connection with their use of County resources, and the County can and does monitor technology use.<sup>198</sup> Here, because Mr. Petersen maintained his private law practice documents on the County network, potentially confidential and privileged communications could be subject to review by persons unrelated to the representation, placing the privileged and confidential nature of such communications at risk.<sup>199</sup>

Moreover, Mr. Petersen did acknowledge the County’s policies on the use of technology resources and agreed to comply with those policies at least twice, first upon

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<sup>197</sup> See *Griffis v. Pinal Cty.*, 215 Ariz. 1, 5 ¶ 14, 156 P.3d 418, 422 (2007) (rejecting “argument that all e-mails generated or maintained on a government-owned computer system are automatically public records. Some e-mails will relate solely to personal matters and will not, therefore, reflect the requisite substantial nexus with government activities.”).

<sup>198</sup> Maricopa County Policy, Use of County Technology Resources, No. A2611, adopted July 24, 2019 (**Exh. 33**), at 16, § VI.1.

<sup>199</sup> See Ariz. R. Prof’l Conduct 1.6(e) (“A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”).



becoming an employee in 2006, and then again upon becoming the Assessor in 2013.<sup>200</sup> He also agreed to the Acceptable Use Statement each time he logged onto the County's systems.

Mr. Petersen's extensive use of County technology resources during office hours, while physically present in the County Assessor's Office, for his private law practice is explicitly forbidden by the applicable policies.

*B. Mr. Petersen's Failure to Cooperate with This Investigation*

The Maricopa County Code of Conduct, adopted on April 11, 2018, states that "Employees may not withhold relevant information or willfully mislead an administrative investigation."<sup>201</sup> An "Employee" under this policy is "[a] person paid a wage, salary or stipend from public monies in accordance with official entries on County payroll,"<sup>202</sup> which unquestionably includes Mr. Petersen. As noted above, Mr. Petersen did not promptly respond to our request for an interview, did not provide any written materials to us, and did not return his County-issued laptop until after the Attorney General's Office obtained a search warrant, leaving us unable to review its contents as part of this investigation. Thus, Mr. Petersen did not cooperate with this investigation, which was commenced by the County Attorney's Office specifically in response to Mr. Petersen's request for a hearing on his suspension from office.

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<sup>200</sup> Human Resources Department Employee Acknowledgement Form, Paul D. Petersen, Jan. 24, 2006 (**Exh. 39**); Human Resources Department Employee Acknowledgement Form, Paul D. Petersen, Aug. 19, 2013 (**Exh. 40**).

<sup>201</sup> Maricopa County Policy, Code of Conduct, No. HR2416, adopted Apr. 11, 2018 (**Exh. 35**), at 2, § V.A.3. The previous and original version of this policy was adopted on July 27, 2017. We did not review the 2017 version or any other predecessor policies to the Code of Conduct as part of our investigation.

<sup>202</sup> *Id.* § IV.D.

### *C. Mr. Petersen's Twenty-Day Incarceration*

During his twenty-day period of incarceration, Mr. Petersen was absent from the office and largely unavailable and unreachable. His absence was unexpected and not planned for – Chief Deputy Assessor Boncoskey was out of the country when Mr. Petersen was arrested and had to return early from his travels. Because of his arrest and incarceration, Mr. Petersen missed a significant meeting about the MARS project, which had been scheduled to seek his approval to delay the project's implementation date. During his incarceration, Mr. Petersen reportedly devoted approximately fifteen minutes to County work when he spoke on the phone with Mr. Boncoskey on October 22. Although, aside from the MARS meeting, there was no issue that arose during Mr. Petersen's incarceration that required his attention, he nevertheless would have been unable to respond in the event that there was a need for him to do so. He was unable to perform his duties for the period in which he was incarcerated.<sup>203</sup>

### **3. Other Considerations**

#### *A. Criminal Statutes*

Some of Mr. Petersen's conduct with respect to his use of County resources may constitute crimes. For instance, Mr. Petersen's use of the County's computer and networks for purposes other than those authorized for County work may constitute theft under A.R.S. § 13-1802(A)(2).<sup>204</sup> Likewise, Mr. Petersen's failure to return his County-

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<sup>203</sup> *But see* A.R.S. § 11-405 (county officer is not permitted to be absent from the state for more than thirty days without the consent of the board of supervisors).

<sup>204</sup> A.R.S. § 13-1802(A)(2) (“A person commits theft if, without lawful authority, the person knowingly: . . . Converts for an unauthorized term or use services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use[.]”). *See* A.R.S. § 13-1801(A)(14) (“services” includes “computer or communication

issued laptop when requested to do so may constitute theft under A.R.S. § 13-1802(A)(1).<sup>205</sup> Mr. Petersen’s failure to return the laptop also may constitute withholding of public records under A.R.S. § 38-363<sup>206</sup> or stealing, destroying, altering or secreting public records under A.R.S. § 38-421.<sup>207</sup> Other possible charges might be criminal damage<sup>208</sup> or tampering with a public record.<sup>209</sup>

### *B. Other Statutes*

A.R.S. § 11-253 allows the county board of supervisors to require any county officer, including the assessor, “to make reports under oath on any matter connected with

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services”); A.R.S. § 13-1802(G) (taking property or services is a crime regardless of the property’s value).

<sup>205</sup> A.R.S. § 13-1802(A)(1) (“A person commits theft if, without lawful authority, the person knowingly: . . . Controls property of another with the intent to deprive the other person of such property[.]”).

<sup>206</sup> A.R.S. § 38-363 (“A public officer . . . who, after expiration of the time for which he has been appointed or elected, or after he has resigned or been legally removed from office, knowingly and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents or other writings pertaining or belonging to his office, or who knowingly mutilates, destroys or takes away any thereof, or who knowingly and unlawfully withholds or detains from his successor, or other person entitled thereto, any money or property in his custody as such officer, is guilty of a class 4 felony.”).

<sup>207</sup> A.R.S. § 38-421(A) (“An officer having custody of any record . . . filed or deposited in any public office, or placed in his hands for any purpose, who steals, or knowingly and without lawful authority destroys, mutilates, defaces, alters, falsifies, removes or secretes the whole or any part thereof, or who permits any other person so to do, is guilty of a class 4 felony.”).

<sup>208</sup> A.R.S. 13-1602(A)(1), (2) (“A person commits criminal damage by: 1. Recklessly defacing or damaging property of another person. [or] 2. Recklessly tampering with property of another person so as substantially to impair its function or value.”).

<sup>209</sup> A.R.S. § 13-2407(A)(4), (5) (“A person commits tampering with a public record if, with the intent to defraud or deceive, such person knowingly: . . . 4. Destroys, mutilates, conceals, removes or otherwise impairs the availability of any public record; or 5. Refuses to deliver a public record in such person's possession upon proper request of a public servant entitled to receive such record for examination or other purposes.”).

the duties of his office.”<sup>210</sup> “An officer who neglects or refuses to make the report . . . may be removed from office by the board and the office declared vacant. The board may then fill the vacancy.”<sup>211</sup> Failure to make such a report “authorizes the county board of supervisors, at its discretion, to remove the offending officer.”<sup>212</sup>

Board Chair Gates’s October 24 letter to Mr. Petersen may be viewed as a request for a report under § 11-253. Viewed in that way, Mr. Petersen’s failure to make a report on those issues could be a ground for removal.

#### 4. Removal from Office

Removal of a county assessor from office is governed by A.R.S. §§ 38-341 through -345.<sup>213</sup> The grounds for removal are “wilful or corrupt misconduct in office.”<sup>214</sup> Like for neglect of duty, there are few authorities in Arizona and elsewhere that provide

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<sup>210</sup> A.R.S. § 11-253(A)

<sup>211</sup> *Id. See Hounshell v. White*, 219 Ariz. 381, 386 ¶ 14, 199 P.3d 636, 641 (App. 2008) (“*Hounshell I*”) (A.R.S. § 11-253 “remains the law in Arizona, and the Board is entitled to take action pursuant to it.”).

<sup>212</sup> *Hounshell II*, 219 Ariz. at 387 ¶ 19, 199 P.3d at 642.

<sup>213</sup> For convenience, a copy of A.R.S. § 38-341 is included with the exhibits as **Exhibit 2**. While “[e]lected officials who violate criminal statutes . . . may be prosecuted and removed from office,” *Hounshell I*, 220 Ariz. at 6 ¶ 24, 202 P.3d at 471 (citing A.R.S. § 38–343(C)), unproven criminal charges are not themselves grounds for removal. *See LaRance v. Hopi Tribe*, No. 2007-CV-0103, 2010 WL 8973160, at \*13 (Hopi C.A. Oct. 11, 2010) (“Presuming guilt from the fact of arrest violates the most basic principles of due process of law . . .”). Likewise, a felony conviction, on its own, does not disqualify a person from holding public office in Arizona. *See* A.R.S. § 38-201 (qualifications for public office). Thus, the fact that Mr. Petersen has been charged with crimes related to his private law practice and adoption business, standing alone, does not automatically result in his removal from office. Conviction of any of these charges also would not necessarily result in his removal. If Mr. Petersen were sentenced to imprisonment, however, statutory provisions addressing vacancies in office would likely apply. *See* A.R.S. § 38-291(5) (ceasing to be resident), (6) (absence from state for more than three consecutive months), (7) (ceasing to discharge duties for three consecutive months).

<sup>214</sup> A.R.S. § 38-341.

guidance on the meaning of “wilful or corrupt misconduct in office,” and the cases that do are factually dissimilar. We provide below a brief discussion of the applicable authorities uncovered in our research.

The Arizona Supreme Court has said that “[m]isconduct in office consists of a public officer’s corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance.”<sup>215</sup> “‘Wilfully’ means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person’s conduct is of that nature or that the circumstance exists.”<sup>216</sup> “‘Corruptly’ means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.”<sup>217</sup> “In office” connotes conduct related to official duties.<sup>218</sup> Synthesizing these definitions, removal under A.R.S. § 38-341 would be appropriate if the officer commits malfeasance, misfeasance, or nonfeasance in connection with his official duties knowing or believing that the conduct is improper or for the wrongful benefit of himself or another person.<sup>219</sup>

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<sup>215</sup> *Ariz. Indep. Redistricting Comm’n*, 229 Ariz. at 356 ¶ 41, 275 P.3d at 1276 (citing Bryan A. Garner, *A Dictionary of Modern Legal Usage* 564 (2d ed. 1995); *Black’s Law Dictionary* 1089 (9th ed. 2009)).

<sup>216</sup> A.R.S. § 1-215(41).

<sup>217</sup> A.R.S. § 1-215(8).

<sup>218</sup> *See Johnson*, 433 N.E.2d at 711 (“to warrant the removal of an officer for malfeasance in office, the malfeasance must have direct relation to, and be connected with, the performance of official duties”); *In re Rubi*, 148 Ariz. 167, 172, 713 P.2d 1225, 1230 (1985) (Holohan, C.J., dissenting) (“willful misconduct in office” and “willful and persistent failure to perform his duties” “refer explicitly or implicitly to conduct in office”).

<sup>219</sup> *See Vinson v. O’Malley*, 25 Ariz. 552, 558, 220 P. 393, 395 (1923) (“Before misconduct in office is a ground of removal of the incumbent, it must be willful and corrupt. . . . Certainly, to say of an officer that he was derelict in some duty is not to charge him with corrupt or willful misconduct.”).

Removal proceedings are in the nature of criminal proceedings.<sup>220</sup> A written accusation of wilful or corrupt misconduct in office must be made in writing by a grand jury,<sup>221</sup> the proceedings occur in the superior court,<sup>222</sup> and the case is tried to a jury.<sup>223</sup> The officer may appeal the removal, but the officer remains suspended until the judgment is reversed.<sup>224</sup>

### **Conclusion**

The ultimate issue the Board must decide is whether Mr. Petersen's conduct amounts to "neglect of duty" within the meaning of A.R.S. § 11-664. As discussed above, we did not find evidence that Mr. Petersen failed to fulfill any particular statutory obligations of the County Assessor.

The Board may, however, determine that Mr. Petersen had a duty to follow County policies with respect to the use of County resources and to cooperate with County authorized investigations, even though he is not subject to employee discipline for violating those policies because he is not considered an employee of the County. In considering that question, the Board will need to decide whether sustained misuse of County resources while at the Office of the County Assessor and failing to cooperate with a County-authorized investigation means that Mr. Petersen neglected his duties as an elected official.

Our investigation established that Mr. Petersen devoted substantial time during working hours to his adoption law practice, even after serious questions about its legality

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<sup>220</sup> *State v. Burr*, 12 Ariz. App. 72, 74, 467 P.2d 784, 786 (1970).

<sup>221</sup> A.R.S. § 38-341(A).

<sup>222</sup> A.R.S. § 38-342.

<sup>223</sup> A.R.S. § 38-343(B).

<sup>224</sup> A.R.S. § 38-345.

had been raised over the years. Moreover, the investigation confirmed that he created and saved in excess of 800 documents relating to his private law practice on County computers, while in his County office, during work hours. And, significantly, he did so with full knowledge that County policies expressly forbid the use of County computers for private business purposes. Mr. Petersen also failed to cooperate with this investigation by not making his County-issued laptop available in a timely fashion after multiple requests from multiple people on multiple occasions and by failing to submit to an interview. And finally, as a consequence of his arrest and incarceration, Mr. Petersen was unavailable to fulfill his duties as Assessor for the twenty-day period he was in custody.

While Mr. Petersen's conduct with respect to his misuse of County resources may give rise to criminal charges or may form the basis for removal under A.R.S. § 38-341, the Board must decide whether that conduct, as well as his absence from office for twenty days and his failure to cooperate with this investigation, amounts to "neglect of duty," and thus warrants leaving his 120-day suspension in place. Regardless of whether Mr. Petersen's conduct meets the "neglect of duty" standard, his conduct in office, namely his misuse of County resources, may constitute "wilful misconduct in office," within the meaning of A.R.S. § 38-341, and could subject him to removal from office.