The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

January 6, 2014

Dear Mr. Chairman:

I have reviewed the questionnaire I submitted to the Senate Judiciary Committee on October 22, 2013, in connection with my nomination to the United States District Court for the District of Arizona. Incorporating the additional information listed below, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate.

Q. 12(c)

As a member of the Arizona Commission on Judicial Performance review, I participated in a public meeting on November 22, 2013. I have no notes, transcripts or recording.

Q. 12(d)

Since my previously-submitted questionnaire, I have given the following presentations:

December 10, 2013: Panelist in a discussion for a group of approximately 30 people who were interested in the judicial selection process. A moderator led the panel of five active and retired judges and three attorneys in a general discussion of the merit selection and application procedures for the Arizona Superior Court, Arizona Supreme Court and the Federal District Court. I have no notes, transcripts or recording. The address of the sponsoring organization is Spirit of the Senses, Post Office Box 44273 Phoenix, Arizona 85064.

December 6, 2013: Guest speaker for the introduction of Judge Craig Blakey, the 2013 American Board of Trial Advocates' (ABOTA) Judge of the Year, at ABOTA's dinner to honor the Judge of the Year. I have no notes, transcripts or recording. The address of the Phoenix Chapter of the American Board of Trial Advocates is c/o Thomas K. Slack, Beale, Michaels & Slack PC, 7012 North 18th Street, Phoenix, Arizona 85020.

November 19, 2013: Moderator at a joint meeting of the Sandra Day O'Connor, Horace Rumpole and Thurgood Marshall Inns of Court using movie scene re-enactments from A Few Good Men to identify and discuss ethical issues. Outline supplied.

Q. 13(a)

I have presided over one civil bench trial that went to judgment and one civil jury trial that went to trial.

Q. 13(f)

Brimet II, L.L.C. v. Destiny Homes Marketing, L.L.C., No. CV2009-015587 Maricopa County Superior Court, Oct. 4, 2013), *rev'd sub nom. Brimet II, L.L.C. v. Rayes*, (mandate has not issued). Decision and Court of Appeals opinion supplied.

In this case, a developer, with a loan from First Horizon Loan Corporation (First Horizon) purchased land for a construction project using an acquisition loan. After the acquisition loan was recorded, an Option contract involving Destiny Holdings II ("Destiny") was recorded. First Horizon later made a second loan on the project. From the second loan, the acquisition loan was paid off. Later, a new lender, Northern Trust (Northern) made a third loan from which the First Horizon was paid off entirely. Ultimately, Northern foreclosed and purchased the property at a trustee's sale. Northern filed a quiet title suit , seeking a ruling that Destiny's Option was extinguished when the property was foreclosed and purchased by Northern. While the quiet title action was pending, Northern sold the property to Brimet II, LLC (Brimet). The original trial court judge granted Brimet's motion for summary judgment, finding that the Option had been extinguished. The Court of Appeals reversed and remanded the case to the trial court with instructions "that summary judgment be entered in favor of Destiny." After the original trial court judge retired, the case was assigned to me. Destiny's counsel submitted a form of judgment, and, after objection and briefing by the parties, I found that the proposed form of judgment complied with the Court of Appeals' order and entered summary judgment in favor of Destiny. Brimet then brought a special action. The Court of Appeals granted relief, stating that in reversing the original trial court judge, it had not addressed the enforceability of the Option and that although Destiny's Option is an encumbrance, Destiny cannot maintain an action for quiet title. As a result, the Court of Appeals deleted paragraphs 2(a) and 2(f) from the judgment that I had entered.

T.P. Racing v. Simms, No. CV2010-022308 (Maricopa County Superior Court 04/04/2013) special action relief was granted by the Arizona Court of Appeals, No. 1 CA-SA 13-0123, *sub nom.*

Simms v. Rayes. Court of Appeals opinion supplied.

Since I filed my questionnaire, the Court of Appeals has issued its opinion explaining the basis for its ruling, finding that no conflict of interests exists with defendants' counsel by bringing a derivative action on behalf of the minority shareholder.

I am also forwarding an updated net worth statement and financial disclosure report as requested in the questionnaire. I thank the Committee for its consideration of my nomination.

Yours very truly,

Douglas L. Rayes
Judge, Maricopa County Superior Court

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

A Few Good Men

1. Being former JAG, movie is dear to my heart.
2. Got some things right and some things wrong.
3. Got wrong:
    a. Defense attorney with no trial experience. In military, must prosecute first before defend.
    b. No such crime as conduct unbecoming Marine.
    c. “Just following orders” is no defense to an assault or murder charge.
    d. No Military trial attorney would treat a colonel the way this attorney did.
4. Got right:
    a. Military court procedures, military panel and judge.
    b. Tension between commanders and defense attorneys.
5. My experience in JAG with a hostile commander.
6. Ethical issues:
    a. One attorney team representing codefendants. Inherent conflict.
    b. Misleading court, military panel and witness about what other witnesses will testify to.
    c. After critical witness who gave defense attorney important information commits suicide, attorney decided to prove the missing facts by cross-examination of a hostile witness. Consider whether he should have discussed with his client and a more experienced attorney whether to withdraw from case and be a potential witness.

FILED
Oct. 4, 2013 2:20 pm
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By T. Springston
T. Springston, Deputy

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IN THE SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

BRIMET II, LLC; ME 12, LLC, Plaintiff, v. DESTINY HOMES MARKETING, LLC, Defendants.	No. CV2009-015587 **AMENDED FORM OF JUDGMENT** (Assigned to the Honorable Douglas Rayes)

This matter comes before the Court on remand from the Arizona Court of Appeals, the Court of Appeals having issued its mandate on June 17, 2013. Pursuant to that mandate, and having considered Brimet II, LLC and ME 12, LLC's objection to Amended Form of Judgment,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That the Judgment dated September 9, 2011 and entered on September 12, 2011 is vacated;

2. That judgment shall enter in this action, as follows:

(a) That title in the real property further described on **Exhibit A** attached hereto, also known as Lot Nos. 1, 4-10 and 13-16 of Mountainside Estates, located at the Northwest corner of 19th Street and East Dobbins Road, Phoenix, Arizona ("Property"), is hereby quieted in favor of Destiny Homes Marketing, LLC ("Destiny");

(b) That the Option Agreement entered into between Destiny and Destiny Holdings II, LLC, with an effective date of November 10, 2004 and evidenced by a Memorandum of Option Agreement duly recorded with the Maricopa County Recorder on November 12, 2004 as instrument number 2004-1322080 ("Option"), is a valid interest in, and encumbrance upon, the Property and each lot therein;

(c) That foreclosure of the mortgage and deed of trust held by Northern Trust, N.A. ("Northern") and the resulting trustee's sale of the Property to Northern on February 17, 2009, did not extinguish or otherwise invalidate the Option;

(d) That Northern purchased the Property at the trustee's sale subject to the Option, which has been and remains superior to all other interests in the Property since November 12, 2004;

(e) That all subsequent purchasers of the Property, or any lot therein, purchased such Property and/or lot(s) subject to the Option, including, but not limited to, Brimet II, LLC and ME12, LLC.

(f) That the Option is valid and enforceable according to its terms against all current owners of the Property or lot(s) therein, and their successors and assigns;

3. The parties shall record this Judgment with the Maricopa County Recorder pursuant to A.R.S. § 33-414, which, upon such recording, shall relate back to and be effective *nunc pro tunc* to November 12, 2004.

DONE IN OPEN COURT this 2 day of Oct, 2013.

The Honorable Douglas Rayes
Superior Court of Maricopa County, Arizona

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

BRIMET II, L.L.C.; ME 12, L.L.C., *Petitioners*,

v.

THE HONORABLE DOUGLAS RAYES, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA,
Respondent Judge,

DESTINY HOMES MARKETING, L.L.C., *Real Party in Interest.*

No. 1 CA-SA 13-0297
FILED 12-23-2013

Petition for Special Action from the Superior Court in Maricopa County
No. CV2009-015587
The Honorable Douglas L. Rayes, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Gust Rosenfeld, P.L.C., Phoenix
By Charles W. Wirken, Scott A. Malm

Counsel for Petitioners

Stinson Morrison Hecker, LLP, Phoenix
By Michael C. Manning, James E. Holland, Jr., Sharon W. Ng

Foster, Graham, Milstein & Calisher, LLP, Denver, CO
By Daniel K. Calisher, Chip G. Schoneberger

Counsel for Real Party in Interest

DECISION ORDER

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Kenton D. Jones joined.

N O R R I S, Judge:

¶1 This special action challenges provisions of a judgment entered by the superior court on remand that Petitioners, Brimet II, L.L.C. and ME 12, L.L.C. (collectively, "Brimet"), argue exceeded the instructions and mandate issued by this court in *Brimet II, L.L.C. v. Destiny Homes Marketing, L.L.C.*, 231 Ariz. 457, 296 P.3d 993 (App. 2013) ("*Brimet II*"). Because the appropriate method of seeking review of a superior court judgment on remand entered pursuant to specific instructions by an appellant court is through special action, *Scates v. Ariz. Corp. Comm'n*, 124 Ariz. 73, 76, 601 P.2d 1357, 1360 (App. 1979) (citation omitted), the court accepts special action jurisdiction and grants relief.

¶2 As explained in *Brimet II*, Northern Bank, N.A., as Brimet's predecessor in interest, filed a quiet title action against the real party in interest, Destiny Homes Marketing, L.L.C. ("Destiny") to obtain "judicial confirmation" that a trustee's sale of certain real property ("Property") had extinguished an option contact ("Option") granted to Destiny by Destiny Holdings II, L.L.C. ("Borrower"). 231 Ariz. at 458-59, ¶¶ 2-6, 296 P.3d at 994-95. Brimet moved for summary judgment and, pursuant to the doctrines of replacement and equitable subrogation, argued Destiny's Option had been "wiped out" through the foreclosure. *Id.* at 459, ¶ 6, 296 P.3d at 995. In response, Destiny cross-moved for partial summary judgment. In its cross-motion, Destiny asserted the Option was senior to the interest acquired by Brimet and had not been extinguished by the trustee's sale. Notably, Destiny did not seek summary judgment on its counterclaims in which it had requested a declaration that the Option remained a "valid, senior interest in the Property enforceable as against Brimet and all subsequent transferees of the Property . . . pursuant to . . . the Option's express terms," and an order "[e]stablishing [its] interests in the Property under the Option."

¶3 The superior court denied Destiny's motion and granted Brimet's motion for summary judgment, ruling "the doctrines of replacement and equitable subrogation apply here and collectively have the legal effect of wiping out Destiny's option upon Northern Trust's foreclosure of its priority lien position."

¶4 Destiny appealed. We reversed and held Northern's foreclosure had not extinguished the Option:

> Destiny's Option was not extinguished when Northern foreclosed on its deed of trust and purchased the property at the trustee's sale. Therefore, Brimet did not acquire title to the property free and clear of the Option and the Option remains as a senior encumbrance on the property.

Brimet II, 231 Ariz. at 461, ¶ 21, 296 P.3d at 997. We remanded the matter to the superior court "with instructions that summary judgment be entered in favor of Destiny." *Id.* at ¶ 23.

¶5 On remand, over Brimet's objection, the superior court entered a judgment ("remand judgment") that, as relevant here, stated in paragraphs 2(a) and 2(f) the following:

> (a) That title in the real property further described on **<u>Exhibit A</u>** attached hereto**,** also known as Lot Nos. 1, 4-10 and 13-16 of Mountainside Estates, located at the Northwest corner of 19th Street and East Dobbins Road, Phoenix, Arizona ("Property"), is hereby quieted in favor of Destiny Homes Marketing LLC ("Destiny");
>
> (f) That the Option is valid and enforceable according to its terms against all current owners of the Property or lot(s) therein, and their successors and assigns.

¶6 Addressing paragraphs 2(a) and 2(f) in reverse order, we hold these provisions exceeded our instructions on remand. *See Raimey v. Ditsworth*, 227 Ariz. 552, 555, ¶ 6, 261 P.3d 436, 439 (App. 2011) (superior court does not have authority to transgress upon obvious intent of appellate court by contravening on remand decision and mandate previously issued; appellate mandate, along with decision it seeks to implement, is binding on superior court and enforceable according to its true intent and meaning).

¶7 First, the issue resolved by the superior court on summary judgment was whether the trustee's sale extinguished the Option or whether the Option remained as a senior encumbrance on the Property. Accordingly, that was the only issue we addressed and decided in *Brimet II*. When we instructed that summary judgment be entered in favor of Destiny, the true intent and meaning of our instruction was to direct the superior court to enter a judgment that confirmed the Option remained a senior encumbrance on the Property and that Brimet had not acquired title to the Property free and clear of the Option.[1] We did not address or decide the enforceability of the Option. Accordingly, paragraph 2(f) of the judgment that stated the Option was "valid and enforceable according to its terms against all current owners of the Property or lot(s) therein, and their successors and assigns" exceeded our instructions on remand.

¶8 Paragraph 2(a) of the remand judgment purported to quiet title in the Property in favor of Destiny. Although, as we explained in *Brimet II*, the Option remained a senior encumbrance on the Property, we did not direct the court to quiet title to the property in Destiny. A quiet title action provides a mechanism to determine and quiet title to real property and may be brought by anyone having or claiming an interest therein. *See generally* Ariz. Rev. Stat. ("A.R.S.") § 12-1101 (2003). The interest must be in the title, not merely in the land. *Saxman v. Christmann*, 52 Ariz. 149, 154, 79 P.2d 520, 522 (1938) (criticized on other grounds by *Rundle v. Republic Cement Corp.*, 86 Ariz. 96, 97, 101, 341 P.2d 226, 227, 229 (1959)). A quiet title action may not be brought by a person who does not claim title to or in the property. *Id.* An option, until and unless validly exercised, does not convey title. *Wilson v. Metheny*, 72 Ariz. 339, 344, 236 P.2d 34, 37-38 (1951). Thus, as we recognized in *Brimet II*, the Option is an encumbrance, and an optionee, as Destiny is here, may not bring an action

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[1]The remand judgment recited that the Option "is a valid interest in, and encumbrance upon, the Property and each lot therein;" the foreclosure sale "did not extinguish or otherwise invalidate the Option;" the Option "has been and remains superior to all other interests in the Property since November 12, 2004;" and "all subsequent purchasers of the Property, or any lot therein, purchased such Property and/or lot(s) subject to the Option." Brimet has not challenged these provisions of the remand judgment and has conceded they fall within our remand instructions.

to quiet title. *Saxman*, 52 Ariz. at 154, 79 P.2d at 522 ("encumbrancers cannot maintain an action to quiet title, for they have no title"). Although in *Brimet II* we held Destiny's Option remained a senior encumbrance on the property, as a matter of law, Destiny was not entitled to assert a claim to quiet title in the Property, and paragraph 2(a) which purported to quiet title to the property in Destiny was improper.

¶9 For the foregoing reasons, we delete paragraphs 2(a) and 2(f) from the remand judgment. We express no opinion on the enforceability of the Option against all current owners of the Property or lot(s) therein and their successors and assigns. We also deny Brimet's motion to consolidate this special action with its appeal from the remand judgment and the "Notice and Stipulation re: Motion to Consolidate Special Action and Appeal" as moot.

COURT OF APPEALS STATE OF ARIZONA

Ruth A. Willingham · Clerk of the Court
FILED: gsh

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

RONALD A. SIMMS and VICTORIA SIMMS, individually and on behalf of their marital community; RONALD A. SIMMS, a married man dealing with his sole and separate property; RONALD A. SIMMS AS TRUSTEE OF RONALD A. SIMMS PERPETUAL ASSET SHIELD TRUST; RONALD A. SIMMS AS TRUSTEE OF RAS TRUST; and RASCD, INC., a California corporation, *Petitioners*,

v.

THE HONORABLE DOUGLAS RAYES, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, *Respondent Judge,*

TP RACING, LLLP, an Arizona limited liability partnership; JEREMY ELLIS SIMMS, in his individual capacity; JEREMY and SERENA SIMMS, husband and wife; J&R RACING LLC, an Arizona corporation; and J. SIMMS ENTERPRISES LLC, an Arizona limited liability company, *Real Parties in Interest*.

No. 1 CA-SA 13-0123

FILED 1-2-2014

Petition for Special Action from the Superior Court in Maricopa County
No. CV2010-022308
The Honorable Douglas Rayes, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Greenberg Traurig, LLP, Phoenix
By E. Jeffrey Walsh, Nicole M. Goodwin

Counsel for Petitioners

Stinson Morrison Hecker, LLP Phoenix
By Michael C. Manning, James M. Torre

Counsel for Real Parties in Interest

OPINION

Judge Randall M. Howe delivered the opinion of the Court, in which Presiding Judge Peter B. Swann and Judge John C. Gemmill joined.

H O W E, Judge:

¶1 This special action arises from the trial court's disqualification of Petitioners' counsel, Greenberg Traurig, LLP ("GT"), from representing Petitioners in pursuing derivative claims against TP Racing, LLLP. We accept jurisdiction because Petitioners have no adequate remedy by appeal and raise a legal issue that may recur. *Sec. Gen. Life Ins. Co. v. Helm*, 149 Ariz. 332, 333, 718 P.2d 985, 986 (1986) (holding that disqualification order was not appealable and special action jurisdiction was therefore appropriate); *State ex rel. Romley v. Superior Court (Flores)*, 181 Ariz. 378, 380, 891 P.2d 246, 248 (App. 1995) (same). We grant relief because the trial court erred in disqualifying GT as Petitioners' counsel.

FACTS AND PROCEDURAL HISTORY

¶2 Brothers Ron and Jerry Simms are the principal owners of TP Racing, a limited partnership that owns Turf Paradise Racetrack. Ron individually owns an 18 percent interest in TP Racing and his trust owns a 14 percent interest. Jerry owns a 55 percent interest in TP Racing. J&R Racing, LLC, is the general partner and manager of TP Racing. Jerry and

RASCD, Inc.—a corporation of which Ron is the sole shareholder—each have a 50 percent interest in J&R Racing. Jerry serves as J&R Racing's manager and makes the day-to-day decisions, but other management decisions require RASCD's consent.

¶3 In July 2010, TP Racing separately sued Ron and one of Ron's corporations, and the trial court consolidated these actions. Ron answered the complaints and counterclaimed[1] against TP Racing,[2] alleging, among other things, breaches of contract and breaches of fiduciary duty. GT was Ron's counsel in this litigation.

¶4 In August 2011, TP Racing moved to disqualify GT because the firm was representing Ron in his defense against TP Racing's claims and in his counterclaims brought against TP Racing. Ron, in turn, moved to disqualify TP Racing's counsel, alleging that Jerry and TP Racing were adverse to each other on some claims and that Jerry and TP Racing had hired their counsel without Ron's consent. After oral argument on the motions, the trial court denied TP Racing's motion because GT had never asserted that it represented TP Racing and was not seeking relief on TP Racing's behalf, and denied Ron's motion because Jerry and TP Racing were not adverse to each other.

¶5 In March 2012, TP Racing moved to dismiss Ron's counterclaims. TP Racing argued that Ron lacked standing to bring certain claims because they were derivative: they sought redress for harms Jerry allegedly caused TP Racing, not for harms caused to Ron personally. TP Racing also argued that the remaining counterclaims failed to state a claim upon which relief could be granted. The trial court agreed and dismissed the counterclaims without prejudice.

¶6 Before refiling certain counterclaims as derivative claims, Ron filed a "Motion for a Determination of No Conflict," asking the trial court to determine that GT could represent Ron on the derivative claims

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1 Included as counterclaimants are Ron's wife and several trusts and corporations in which Ron has an interest. For clarity and ease of reference, the court will refer to the counterclaimants as "Ron."

2 Included as counterdefendants are Jerry, Jerry's wife, and two other entities in which Jerry has an interest. For clarity and ease of reference, the court will refer to the counterdefendants as "TP Racing."

brought in TP Racing's name without creating a conflict of interest between GT and TP Racing. Ron argued that no conflict existed because no attorney-client relationship existed between GT and TP Racing. TP Racing opposed the motion and moved to disqualify GT, arguing that GT had a conflict of interest because it was representing Ron simultaneously in defending against claims by TP Racing, in pursuing claims against TP Racing, and in pursuing derivative claims on behalf of TP Racing.

¶7 The trial court denied Ron's motion and granted TP Racing's motion to disqualify GT for the reasons set forth in TP Racing's motion. Ron now seeks relief from that order with the present petition for special action.

DISCUSSION

¶8 This Court reviews a trial court's ruling on a motion to disqualify counsel for an abuse of discretion. *Smart Indus. Corp., Mfg. v. Bradshaw*, 179 Ariz. 141, 145, 876 P.2d 1176, 1180 (App. 1994). When the trial court's decision is not based on the resolution of disputed factual issues but the application of legal principles, however, we review the decision de novo as an issue of law. *See Tritschlar v. Allstate Ins. Co.*, 213 Ariz. 505, 518 ¶ 41, 144 P.3d 519, 532 (App. 2006) ("A court abuses its discretion if it commits legal error in reaching a discretionary conclusion."); *Chih Teh Shen v. Miller*, 150 Cal. Rptr. 3d 783, 788 (Cal. Ct. App. 2012) ("[W]here there are no material disputed factual issues, the appellate court reviews the trial court's determination [on disqualification] as a question of law."). The nature of disqualification motions requires a "careful review" of the trial court's ruling. *Chih Teh Shen*, 150 Cal. Rptr. 3d at 788 (*quoting People ex rel. Dep't of Corps. v. SpeeDee Oil Change Sys., Inc.*, 980 P.2d 371, 377 (Cal. 1999)). Because disqualification interferes with a party's attorney-client relationship, disqualification motions are subject to "tactical abuse," *id.*, and are "view[ed] with suspicion," *Gomez v. Dawson*, 149 Ariz. 223, 226, 717 P.2d 902, 905 (1986). They should be granted "[o]nly in extreme circumstances," and the party seeking disqualification has the burden of proof. *Alexander v. D'Angelo*, 141 Ariz. 157, 161, 685 P.2d 1309, 1313 (1984).

¶9 The issue in this case is whether GT has a conflict of interest in representing Ron on his derivative claims on behalf of TP Racing because GT also represents Ron in his defense against claims by TP Racing. Ron argues that no conflict exists because GT's only attorney-client relationship is with him, and not with TP Racing. TP Racing argues that although GT has no attorney-client relationship with it, GT still owes a fiduciary duty to it because the derivative claims are pursued *on behalf of* TP Racing, which impermissibly places GT as counsel on both sides of the litigation.

¶10 Conflict of interest disputes are resolved under Arizona Rules of Professional Conduct Ethical Rule ("ER") 1.7(a). That rule prohibits a lawyer from representing a client if (1) that representation will be directly adverse to another client or (2) a significant risk exists that the lawyer's responsibilities to another client, a former client, a third person, or to the lawyer's personal interest will materially limit the client's representation. The "threshold question" is whether an attorney-client relationship exists between the lawyer and an adverse party. *Gonzalez ex rel. Colonial Bank v. Chillura*, 892 So.2d 1075, 1077 (Fla. Dist. Ct. App. 2004).

¶11 As TP Racing concedes, no attorney-client relationship exists between GT and TP Racing. An attorney-client relationship exists when a person has manifested to a lawyer his intent that the lawyer provide him with legal services and the lawyer has manifested consent to do so. *Paradigm Ins. Co. v. Langerman*, 200 Ariz. 146, 149 ¶ 10, 24 P.3d 593, 596 (2001) (*quoting* Restatement (Third) of the Law Governing Lawyers § 14). Nothing in the record shows that TP Racing manifested to GT its intent that GT provide legal services to it or that GT manifested any consent to do so. GT's only attorney-client relationship is with Ron.

¶12 The fact that GT's client Ron—in his capacity as a minority partner of TP Racing— has filed derivative claims on behalf of TP Racing changes nothing. Although no Arizona appellate court has considered the issue, courts that have considered the issue have held that lawyers are not disqualified from representing clients who are simultaneously pursuing direct claims against a corporation and derivative claims on behalf of that corporation. *See Chih Teh Shen*, 150 Cal. Rptr. 3d at 789–91; *Gonzalez,* 892 So.2d at 1077–78 (applying Florida Rule of Professional Conduct 4–1.7, identically worded to ER 1.7); *see also In re Dayco Derivative Sec. Litig.*, 102 F.R.D. 624, 630 (S.D. Ohio 1984) ("the case law is virtually unanimous in holding that one counsel can represent a stockholder bringing both an individual and a derivative action") (footnote omitted). This is so because of the nature of derivative actions.

¶13 Derivative actions allow a minority shareholder to pursue a claim on behalf of a corporation when the management of the corporation has refused to pursue the claim itself. *Kamen v. Kemper Fin. Serv., Inc.,* 500 U.S. 90, 95 (1991). The corporation is merely a nominal party in a dispute between a minority shareholder and the management that controls the corporation. *See Chih Teh Shen,* 150 Cal. Rptr. 3d at 790–91; *Gonzalez*, 892 So.2d at 1078; *see also Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 548 (1949) (noting that in a derivative action, the corporation is a nominal party). The corporation thus is not a "client" of the lawyer for the minority shareholder and the lawyer has no attorney-client relationship with it. If the filing of a derivative claim created an attorney-client relationship between the corporation and the lawyer for the minority shareholder, "there would be no way for the derivative plaintiff to ever have conflict-free counsel."*Gonzalez*, 892 So.2d at 1078. The corporation would then control who could represent the minority shareholder, "letting the fox guard the chicken coop." *Id*.

¶14 Because the lawyer in a derivative action has an attorney-client relationship only with the minority shareholder, nothing prevents the lawyer from also representing the minority shareholder on any direct claims against the corporation or its management that arise from the same set of facts. The shareholder may sue directly for harms the mismanagement of the corporation has caused him personally, and derivatively for harms the mismanagement has caused the corporation. *See Chih Teh Shen*, 150 Cal. Rptr. 3d at 795 ("Shen's individual and derivative claims revolve around the same nucleus of facts alleging misconduct by corporate mismanagement.") (internal quotation marks and citation omitted); *Dayco*, 102 F.R.D. at 631 ("The legal theory underlying the derivative suit and Lovorn's complaint in state court is parallel and entirely compatible."). The lawyer is not representing adverse interests in this situation.

¶15 The same analysis applies to Ron's claims involving TP Racing. Just as a shareholder has the right to pursue a derivative action on behalf of a corporation, a minority partner in a limited partnership has the right to pursue a derivative action on behalf of a partnership. A.R.S. § 29–356. Ron's direct claims are aligned with the derivative claims filed on behalf of and for the benefit of TP Racing. The direct claims are against TP Racing and Jerry for harm Jerry has caused Ron in his alleged mismanagement of TP Racing. These claims include breach of the partnership agreement, breach of the covenant of good faith and fair dealing, and breach of the duty of loyalty. The derivative claims similarly allege mismanagement of TP Racing by its manager, Jerry. These claims include breach of the fiduciary duties of loyalty and due care. Because Ron's interests in his direct claims and the interests of TP Racing in the derivative claims are aligned, GT is not representing adverse interests and has no conflict of interest cognizable under ER 1.7(a).[3]

¶16 TP Racing argues, however, that the true issue is not whether GT can represent Ron on both his direct claims and his derivative claims, but whether GT can represent Ron on the derivative claims while defending Ron against claims filed by TP Racing. But the answer remains the same. GT has an attorney-client relationship with Ron, with all its attendant duties to Ron; GT has no relationship with or duty to TP Racing. The fact that the derivative claims are filed nominally in TP Racing's name and that the benefits of any successful prosecution will flow to TP Racing creates no duty on GT's part to TP Racing.

¶17 TP Racing nevertheless argues that even though no attorney-client relationship exists between GT and TP Racing, GT still has a conflict of interest under ER 1.7(a) because the derivative claims impose a fiduciary duty on GT to TP Racing that conflicts with GT's duty to Ron. Although a fiduciary duty does exist in a derivative action, it exists between the corporation or partnership and the minority shareholder or partner asserting the derivative claim. *See Chih Teh Shen*, 150 Cal. Rptr. 3d at 790; *South v. Baker*, 62 A.3d 1, 21 (Del. Ch. 2012). Thus, Ron, as the minority limited partner asserting the derivative claim, has a fiduciary duty to act in TP Racing's interest. GT is counsel for the person having the fiduciary duty to TP Racing; the firm itself has no separate fiduciary duty to TP Racing.

¶18 TP Racing relies on *In re Estate of Shano*, 177 Ariz. 550, 869 P.2d 1203 (App. 1993), to support its claim that GT has its own—or at least a derivative—fiduciary duty to TP Racing. The lawyer in *Shano* initially represented the beneficiary of a holographic will and moved the probate court to appoint the beneficiary as the special administrator for the decedent's estate. *Id*. at 552, 869 P.2d at 1205. The decedent's wife

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[3] TP Racing argues that Ron has his own conflict of interest in pursuing direct claims and derivative claims against TP Racing that should be imputed to GT, and cites several federal district court decisions that hold that a minority shareholder may not pursue derivative claims against a corporation while being a member of a class action against the corporation. Not only does TP Racing fail to present any authority for the proposition that a client's conflict of interest may be imputed to the client's lawyer, the question whether Ron has some conflict of interest that prevents him from presenting derivative claims is not before us.

subsequently submitted an earlier will for probate, which named her and her children as beneficiaries. *Id*. The probate court, upon the parties' stipulation, appointed a new third-party administrator of the estate because of the conflict between the original administrator—the beneficiary of the holographic will—and the decedent's wife. *Id*. The lawyer then ceased representing the beneficiary of the holographic will and associated as co-counsel with the lawyer representing the third-party administrator. *Id*. The decedent's wife then filed several claims against the estate, and the lawyer, acting as counsel for the third-party administrator, opposed the claims. *Id*. at 553-54, 869 P.2d at 1206-07. The decedent's wife moved to disqualify the lawyer because he had a conflict of interest, and the probate court granted the motion. *Id.* at 554, 869 P.2d at 1207.

¶19 On appeal, this Court affirmed the disqualification, ruling that the lawyer had represented conflicting interests. *Id*. We noted that the administrator had a fiduciary duty to the successor to the decedent's estate—the decedent's wife—and that the lawyer thus had a derivative fiduciary duty to the decedent's wife, which has been materially limited by his previous representation of the beneficiary of the holographic will. *Id*. at 554–55, 869 P.3d at 1207–08. We recognized that no authority had ever held that a *lawyer* for an administrator had a fiduciary duty to the successors to an estate, but held that the peculiar circumstances of estate administration justified the imposition of such a duty because the lawyer was compensated not by the administrator, but from the estate itself, and the lawyer, through his superior knowledge and position of trust, was able to influence the administrator in discharging its duties. *Id*. at 555, 869 P.3d at 1208.

¶20 *Shano* is distinguishable in two salient ways. First, the lawyer in *Shano* had a conflict of interest because he had represented one party in what developed into a will contest and then represented the administrator of the decedent's estate that had a neutral fiduciary duty to all of the will contestants. *See* ER 1.9 ("Duties to Former Clients"). Here, GT has represented only Ron in this litigation and had no prior relationship with or duty to TP Racing that would create a conflict. Second, none of the peculiar circumstances discussed in *Shano* are present here. Ron is responsible for paying GT's fees, not TP Racing, and this case has no neutral arbiter in the role of an administrator on which GT has special influence. *Shano* does not change the result here. GT has no fiduciary duty to TP Racing that constitutes a conflict of interest under ER 1.7(a).[4]

¶21 GT's representation of Ron on his derivative claims against Jerry on behalf of TP Racing does not create an attorney-client relationship with TP Racing or impose on GT a fiduciary duty to TP Racing. The trial court thus had no basis to find that GT had a conflict of interest because GT also represents Ron in defending against TP Racing's claims and in pursuing direct counterclaims against TP Racing. The trial court erred in granting TP Racing's motion to disqualify GT from representing Ron on the derivative claims.

CONCLUSION

¶22 We accept jurisdiction and grant relief. We reverse the trial court's order granting the motion to disqualify Greenberg Traurig from representing Petitioners on the derivative claims.

Ruth A. Willingham · Clerk of the Court
FILED: mjt

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4 We do not mean to say that a litigant could never prove that because of the specific circumstances of a case, a limited partner's lawyer has an actual conflict of interest in representing the limited partner in pursuing derivative claims. *See Dayco*, 102 F.R.D. at 631 (although rejecting argument that the lawyer's representation of minority shareholder on direct claims against corporation and on derivative claims on behalf of corporation by itself created an "irreconcilable conflict of interest" warranting disqualification, nevertheless examining whether the particular facts of the case established an "actual" conflict of interest). But no such circumstances are present on this record.

AO 10 Rev. 1/2013	**FINANCIAL DISCLOSURE REPORT** **NOMINATION FILING**	*Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Rayes, Douglas L.	**2. Court or Organization** U.S. District Court - DIstrict of Arizona	**3. Date of Report** 01/06/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) US District Judge	**5a. Report Type (check appropriate type)** ☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2013 to 12/20/2013
7. Chambers or Office Address 201 West Jefferson Phoenix, AZ 85003		

IMPORTANT NOTES: ***The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.***

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Vice President	Rayes Properties Inc.
2.	Trust	Trust #1
3.	Managing Partner	KJET Limited Partnership
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2000	Arizona Elected Officials Retirement Plan; No control.
2.	
3.	

Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2012	Maricopa County, Salary	$123,240.00
2. 2013	Maricopa County, Salary	$109,434.00
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1. 2013	State of Arizona, Salary
2.	
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Apple Inc.	A	Dividend	K	T					
2. AT & T Inc., Stock	A	Dividend							
3. American Express Company (AXP) Stock	A	Dividend	L	T					
4. BMO Lloyd George EMRG MKTS EQ fund	B	Dividend	M	T					
5. BMO Mid Cap Value Fund	A	Dividend	K	T					
6. Chevron Corporation Stock	A	Dividend	K	T					
7. Cohen & Steers INSTL RLTY SCH	A	Dividend	J	T					
8. Cia De Bebidas PFD ADR Fsponsored ADR (ABV) Stock	A	Dividend							
9. Cisco Systems Inc (CSCO) Stock	A	Dividend	K	T					
10. Disney Walt Co (DIS) Stock	A	Dividend	K	T					
11. Dodge & Cox Stock Fund #145	A	Dividend	N	T					
12. Golden Sacks Money Market	A	None	K	T					
13. Gateway Fund Y	A	Dividend	L	T					
14. General Electric Stock	A	Dividend	K	T					
15. Glaxosmithkline PLC (GSK) Stock	B	Dividend	K	T					
16. Intel Corporation (INTC) Stock	A	Dividend	K	T					
17. JP Morgan Chase & Co (JPM) Stock	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. McDonalds Corp (MCD)	A	Dividend	K	T					
19. Microsoft Corp (MSFT)	A	Dividend	K	T					
20. Novartis AG Spon ADR B Div (NVS) Stock	B	Dividend	K	T					
21. Nestle SA Reg B ADR (NSRGY) Stock	B	Dividend	K	T					
22. Novo-Nordisk A-S ADR F (NVO) Stock	B	Dividend	J	T					
23. PIMCO Commodaty RR	A	Dividend	J	T					
24. Oakmark International Fund		None	K	T					
25. Rio Tinto PLC Spon ADR Fsponsored ADR Stock	B	Dividend							
26. Royal BK CDA Montreal (RY) Stock	A	Dividend	K	T					
27. S A P AG ADR F (Sap) Stock	B	Dividend	K	T					
28. Schlumberger LD (SLB) Stock	A	Dividend	K	T					
29. Templeton INST Foreign SM Fund		None	K	T					
30. Toyota Stock	A	Distribution	K	T					
31. Tweedy Browne FD Global Value		None	K	T					
32. Visa (V) Stock	A	Dividend	L	T					
33. Wells Fargo & Co (WFC) Stock	A	Dividend	K	T					
34. SANOFI (SNY) Stock	B	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. EXXON (XOM)	A	Dividend	K	T					
36. HSBC Holding PLC ADR New F (HBC) Stock	B	Dividend							
37. Comcast Corp (CMCSA) Stock	A	Dividend	K	T					
38. SPDRS & P500 ETFTR Expiring 01/22/18 (SPY) Stock	B	Dividend							
39. Bank of America (BAC) Stock	A	Dividend							
40. Basf SE ADR (BASFY) Stock	A	Dividend							
41. Billiton Ltd. ADRF (BHP) Stock	B	Dividend							
42. China Mobile LTC ADR (CHL) Stock	A	Dividend							
43. Home Depot Inc. (HD) Stock	A	Dividend							
44. IBM Stock	A	Dividend							
45. Johnson & Johnson (JNJ) Stock	B	Dividend							
46. Coca Cola (KO) Stock	A	Dividend							
47. Loreal (LRLCY)	A	Dividend							
48. LVMH MOET New ADR F (LVMUY) Stock	B	Dividend							
49. Oracle Corp (ORCL)	A	Dividend							
50. Pepsico Inc. (PEP) Stock	B	Dividend							
51. Pfizer Inc. (PFE) Stock	B	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. Proctor & Gamble (PG) Stock	A	Dividend							
53. Qualcomm Inc. (QCOM) Stock	A	Dividend							
54. State Streety Equity 500 Index Fund		None	K	T					
55. United Technologies Corp (UTX) Stock	A	Dividend							
56. Vanguard INSTL Index Fund		None	N	T					
57. Vodafone Group New ADR (VOD) Stock	A	Dividend							
58. Nationwide Destination 2050 Fund		None	K	T					
59. Fidelity Contra Fund		None	J	T					
60. American FundsEuro Pacific Growth Fund		None	L	T					
61. T. Rowe Price Mid-Cap Growth Fund		None	L	T					
62. Dodge and Cox Internantional Fund		None	K	T					
63. Rayes Properties Inc Stock		None	J	W					
64. Bank of America Checking / Savings Accounts		None	J	T					
65. BMO Private Bank Money Market Funds MT		None	J	T					
66. US Savings Bonds Series EE		None	J	T					
67. American Funds - The Growth Fund of America		None	K	T					
68. Wasatch Core Growth Fund		None	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
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Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. AVIVA Annuity	E	Distribution							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

Part I
Trust #1 Family Trust - No reportable assets
KJET Limited Partnership - Managing Partner - The assets held in KJET limited partnership are included in the list of assets in Part VII.
Asset listed in part VII, Line 2, was inadvertently ommited from the previous nomination report

Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ Douglas L. Rayes

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		12	742	Notes payable to banks-secured			
U.S. Government securities–Series EE bonds		3	000	Notes payable to banks-unsecured			
Listed securities – see schedule	2	228	945	Notes payable to relatives			
Unlisted securities – see schedule		2	750	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – see schedule		706	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		62	000				
Cash value-life insurance							
Other assets itemize:							
Arizona Elected Officials Retirement Plan		243	058				
				Total liabilities			0
				Net Worth	3	258	495
Total Assets	3	258	495	Total liabilities and net worth	3	258	495
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

<u>Listed Securities</u>	
American Funds The Growth Fund of America	$ 26,876
Wasatch Core Growth Fund	27,683
KJET Limited Partnership Holdings	
American Express stock	63,755
Apple stock	23,309
BMO Lloyd George Emerging Markets Equity Fund	59,992
BMO Mid-Cap Value Fund	14,602
Chevron stock	27,072
Cisco Systems stock	17,677
Cohen & Steers Realty Shares Fund	4,877
Comcast stock	37,278
Disney stock	37,803
Dodge & Cox Stock Fund #145	93,444
Exxon stock	27,573
Gateway Fund	18,496
GE stock	22,975
GlaxoSmithKline stock	38,695
Intel stock	26,504
McDonalds stock	33,976
Microsoft stock	41,788
Nestle stock	45,516
Novartis AG (ADR)	30,676
Novo Nordisk stock	12,256
Oakmark International Stock Fund	30,631
PIMCO CommodityRealReturn Strategy Fund	4,776
Royal Bank of Canada Montreal stock	39,534
Sanofi stock	40,136
SAP AG (ADR)	32,640
Schlumberger stock	22,240
Toyota stock	38,554
Templeton Institutional Foreign Smaller Companies Fund	10,098
Tweedy Browne Global Value Fund	25,607
Visa stock	51,180
Wells Fargo stock	30,077
Retirement Holdings	
American Funds EuroPacific Growth Fund	32,595
BMO Lloyd George Emerging Markets Equity Fund	144,375
BMO Mid-Cap Value Fund	34,670
Cohen & Steers Realty Shares Fund	11,445
Dodge & Cox International Stock Fund	29,614
Dodge & Cox Stock Fund #145	174,804
Fidelity Contrafund	3,859

Gateway Fund	64,326
Goldman Sachs Financial Square Money Market Fund	31,784
Nationwide Destination 2050 Fund	43,035
Oakmark International Fund	35,671
PIMCO CommodityRealReturn Strategy Fund	11,645
State Street Equity 500 Index Fund	41,108
T. Rowe Price Mid Cap Growth Fund	53,312
Templeton Institutional Foreign Smaller Companies Fund	47,323
Tweedy Browne Global Value Fund	35,698
Vanguard Institutional Index Fund	375,385
Total Listed Securities	$ 2,228,945

Unlisted Securities	
Alpha Holdings LLC/Tama Ethanol, LLC	$ 0
Rayes Properties Inc.	2,750
Total Unlisted Securities	$2,750

Real Estate Owned	
Personal residence	$ 636,000
Vacation land and unfinished cabin	70,000
Total Real Estate Owned	$ 706,000