

1 **MICHAEL P. DENEА, PLC**
3200 N. CENTRAL AVENUE, SUITE 1500
2 PHOENIX, ARIZONA 85012
TELEPHONE: 602-794-4480
3 FACSIMILE: 602-794-4481
EMAIL: doCKET@mpdlawfirm.net

4 Michael P. Denea (014768)
Attorney for Defendant

6 **ARIZONA SUPREME COURT**

7 STATE OF ARIZONA,) Case No. CR-21-0397
))
8 Plaintiff/Petitioner,) Court of Appeals Case
 -vs-) No. 1 CA-SA 21--0241
9 TAMIRA MARIE DURAND,)
) Maricopa County Superior Court
10 Defendant/Respondent.) No. CR2019-005593-001
) CR2020-001680-002
11 _____)
) **DEFENDANT’S**
12) **SUPPLEMENTAL BRIEF**
) **(re: STATE’S PETITION FOR**
13) **REVIEW OF A SPECIAL**
) **ACTION DECISION OF THE**
14) **COURT OF APPEALS)**

15 **COMES NOW** Defendant Tamira Durand, through undersigned counsel,
16 pursuant to this Court’s 05/04/2022 Order regarding Supplemental Briefs in the
17 above referenced cause; and hereby submits the defendant’s Supplemental Brief,
18 supported by the following Memorandum of Points and Authorities.

19 **RESPECTFULLY SUBMITTED** this 24rd day of May, 2022.

20 **MICHAEL P. DENEА, PLC**

21 /s/ Michael P. Denea
22 Michael P. Denea
23 Attorney for Tamira Durand

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The defendant’s Supplemental Brief follows the State’s filing of a Petition
4 for Review of the Court of Appeals’ December 9, 2021 Order accepting jurisdiction
5 of the State’s December 8, 2021 appellate court special action but denying relief.
6 The State then filed its December 22, 2021 Petition for Review in this Court and the
7 defendant filed her January 14, 2022 Response thereto. This Court then issued its
8 May 4, 2022 Order granting review and allowing simultaneous supplemental
9 briefs by May 24, 2022.

10 **II. THE CORE ISSUE**

11 The matter before this Court is whether Maricopa County Superior Court
12 Judge David Palmer abused his discretion in his November 18, 2021 Minute Entry
13 Order (ruling) granting defendant’s Motion to Disqualify the Maricopa County
14 Attorney’s Office in the prosecution of the defendant in CR2019-005593-001 on
15 class 2 felonies involving fraudulent schemes and artifices and trafficking in the
16 identity of another (*inter alia*).

17 The Maricopa County Attorney’s Office asserts that there is no appearance
18 of impropriety in being allowed to proceed with the prosecution and essentially
19 argues that the fact that one of the victims is a member of the Maricopa County
20 Attorney’s Office should not disqualify the office and require the transfer of the
21 case to another office for prosecution. *See* State’s December 22, 2021 Petition for
22 Review, and seeks an order from this Court setting aside the Superior Court Order
23 disqualifying the Maricopa County Attorney’s Office and requiring transfer of the

1 case to another prosecutorial agency in Arizona.

2 **III. THE CRITICAL FLAW IN THE STATE’S CHALLENGE**

3 A summary review of the motions, responses, replies and decisions in the
4 Maricopa County Superior Court, the Arizona Court of Appeals, Division One, and
5 the prior filings in this Court certainly suffices to provide the Court with the various
6 contentions and arguments about whether the Maricopa County Attorney’s Office
7 should be disqualified from prosecution in the underlying criminal charges against
8 the defendant. Indeed, this Court’s May 4, 2022 Order cautions the parties that the
9 Order for supplemental briefing “*should not be construed as an invitation to repeat*
10 *the contents of the Petition for Review, the Response, or any Reply.*”

11 Accordingly, the defendant emphasizes the single most important reason why
12 this Court should allow Judge Palmer’s November 18, 2021 Minute Entry Order
13 Disqualifying the Maricopa County Attorney’s Office from being the prosecuting
14 agency in this case.

15 While the criminal charges against the defendant involve actions allegedly
16 amounting to \$500,000,¹ the State elected to include a \$56.00 charge for a victim
17 who just happened to be a member of the Maricopa County Attorney’s Office.
18 There are consequences for decisions by the State involving which crimes to
19 include in the prosecution, and it simply is beyond belief that the decision was
20 merely a coincidence or an accident or an unintentional oversight, for the State to

21 ¹ *“Durand headed an organization of at least four people that*
22 *stole identities and caused losses exceeding \$500,000.” See State’s*
23 *ASC Petition for Review, at page 2, paragraph 2, second sentence. The*
State’s appellate court special action states “the total amount stolen
exceed [sic] \$500,000.00,” at page 4, paragraph 3, second sentence.

1 include a charge against a victim involving \$56.00 in light of the \$500,000 scope
2 of the alleged criminal activity. The Maricopa County Attorney’s Office elected
3 to “send a message” that they take care of their own, and thus the trial is to include
4 prosecution for the targeting of a member of its own prosecutors.

5 This deliberate and intentional act of including a \$56.00 victim (prosecutor)
6 in a \$500,000 case necessarily and inherently raises the very matter of an
7 appearance of impropriety, in that what lead to this decision also implicates the
8 question of what other related actions might or might not be involved, regardless
9 of whether such actions were or have been taken or would be taken.

10 As argued in prior briefs, an appearance of impropriety arising from a
11 conflict of interest need not involve any demonstration of a demonstrated conflict
12 or any actual indiscretion or impropriety occurring. *See* Judge Palmer’s Order, at
13 page 2, paragraphs 5-7, citing *Turbin v. Superior Court*, 165 Ariz. 195, 198,
14 797 P.2d 734, 737 (App.1990). Rather, avoiding even the appearance of
15 impropriety is at the core of the issue, *see id.*, at page 2, paras 5 8.

16 The significance of the State’s decision to emphasize a \$56.00 victim in a
17 \$500,000 prosecution belies any argument that the actual amount of financial harm
18 is not significant. While that may be true in the abstract there is no countervailing
19 or related specific argument from the State that asserting why this particular
20 victim/prosecutor should not be seen as an example of an appearance of
21 impropriety.

22 Indeed, it appears, given the vast scope of alleged activity, that the State
23 went **out of its way** to include this victim/prosecutor and related facts —

1 and **that decision injected an appearance of impropriety** into the prosecution
2 where none would have existed but for that specific decision.

3 **CONCLUSION**

4 **WHEREFORE**, based upon the foregoing, Petitioner respectfully
5 requests the Court deny relief with regard to the State's request to set aside Judge
6 Palmer's order disqualifying the Maricopa County Attorney's Office from
7 proceeding with prosecution of this case.

8 **RESPECTFULLY SUBMITTED** this 24th day of May, 2022.

9 **MICHAEL P. DENEVA, PLC**

10
11 */s/ Michael P. Deneva*
12 Michael P. Deneva
13 Attorney for Defendant Tamira Durand
14
15
16
17
18
19
20
21
22
23