

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-014562

11/19/2020

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT

K. Ballard

Deputy

LAURIE AGUILERA, et al.

ALEXANDER M KOLODIN

v.

ADRIAN FONTES, et al.

THOMAS PURCELL LIDDY

DANIEL A ARELLANO  
SARAH R GONSKI  
COURT ADMIN-CIVIL-ARB DESK  
DOCKET-CIVIL-CCC  
JUDGE MAHONEY

CONFERENCE

Courtroom: ECB-411

11:27 a.m. This is the time set for a virtual Scheduling Conference, set informally via email to discuss the Parties' Joint Witness and Exhibit Lists, filed 11/18/2020.

Appearances are all virtual and/or telephonic through the GoToMeeting platform and are as follows:

- Plaintiffs Laurie Aguilera and Donovan Drobina are represented by Counsel Alexander Kolodin and Pro Hac Vice Counsel Sue Becker.
- Defendant Adrian Fontes (in his official capacity as Maricopa County Recorder); Defendants Clint Hickman, Jack Sellers, Steve Chucuri, Bill Gates, and Steve Gallardo (in their official capacities as members of the Board of Supervisors for Maricopa County); and Defendant Maricopa County (collectively, the "County Defendants") are

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represented by Deputy County Attorneys (“DCA”) Thomas P. Liddy (DCA Liddy appears telephonically only), Emily Craiger, Joseph LaRue, and Joseph Vigil.

- Intervenor Arizona Democratic Party (“ADP”) is represented by Counsel Sarah R. Gonski, Daniel A. Arellano and Roy Herrera (Mr. Herrera appears telephonically only).

A record of the proceedings is made digitally in lieu of a court reporter.

The Court has reviewed the Parties’ Joint Witness and Exhibit Lists, filed 11/18/2020. The Court set this conference to obtain clarification from the parties as to the anticipated witness times, as time information is missing for Defendants’ cross examination of Plaintiffs’ witnesses; Plaintiffs show no time for a witness they have listed, Scott Jarrett; and the total amount of time listed for witness examinations alone exceeds the total amount of time allotted for the 11/20/2020 hearing which will include oral argument on the two pending Motions to Dismiss. Court and counsel discuss same.

The hearing hours for the 11/20/2020 hearing are from 9:00 a.m. to noon, and 1:30 p.m. to 4:00 p.m., with a 15-minute break in the morning and another one in the afternoon. Accordingly, the total amount of time for the parties to present their cases, including oral argument on the pending Motions to Dismiss and closing arguments regarding the evidence presented, will be 5 hours, with total time allotted to each side of 2.5 hours (Plaintiffs on one side and Defendants and Intervenor ADP on the other side).

The Court reiterates that there is no additional time to use to expand the oral argument/evidentiary hearing.

DCA Craiger advises the Court that a revised schedule, which will include cross examination of Plaintiffs’ witnesses, will be filed after this hearing concludes.

**IT IS SO ORDERED.**

DCA Craiger advises that the County Defendants just filed a Motion in Limine as to several of Plaintiffs’ witnesses. Neither the Court nor Plaintiffs’ counsel has had an opportunity to review the Motion in Limine.

DCA Craiger advises that Witness Scott Jarrett will only be available to testify in the morning on 11/20/2020, and therefore she requests that his testimony be taken and concluded by noon.

Attorney Kolodin indicates Plaintiffs have decided not to call Michael Long as a witness.

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Attorney Kolodin acknowledges that the Court has set aside a specific amount of time for the hearing and indicates Plaintiffs will pare down witness examination times to complete Plaintiffs' case within the time allotted to Plaintiffs.

Brief discussion is held as to the scope of Intervenor ADP's involvement and participation in the witness examinations as Intervenor ADP expects its examination of witnesses to be minimal.

Intervenor ADP orally joins in the County Defendants' Motion in Limine to Exclude Witnesses, filed 11/19/2020.

Plaintiffs request that Defendants' Motion in Limine be addressed after witness testimony has been concluded, to which the County Defendants object.

DCA Craiger advises the Court that the County Defendants will be filing shortly Motions to Quash Subpoenas issued yesterday by Plaintiffs. Court and counsel discuss the same.

The Court advises counsel that it is inclined to recess this hearing to give the Court and Plaintiffs' counsel an opportunity to review the County Defendants' Motion in Limine, and the County Defendants' forthcoming Motions to Quash. Thereafter, the Court will determine whether to set a hearing later today to address the issues or to defer addressing them until the 11/20/2020 hearing.

Attorney Kolodin indicates if the Court is inclined to grant the Motion in Limine, Plaintiffs would request time to file a written response, and an opportunity to proffer evidence as to the anticipated witness testimony.

**IT IS FURTHER ORDERED** denying Plaintiffs' request that the Court issue a tentative ruling on the Motion in Limine and then permit Plaintiffs time to file a written Response.

**IT IS FURTHER ORDERED** denying Plaintiffs' request to defer ruling on the Motion in Limine until the conclusion of witness testimony.

Attorney Kolodin orally moves to strike the County Defendants' Motion in Limine as untimely and not preauthorized. Alternatively, Plaintiffs request that 11/20/2020 oral argument/evidentiary hearing be reset to Monday, 11/23/2020, to permit the parties adequate time to prepare given the County Defendants' recent motion practice.

For the reasons discussed on the record,

**IT IS ORDERED** denying the oral motion to move the 11/20/2020 hearing to 11/23/2020.

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**IT IS FURTHER ORDERED** denying the oral motion to strike the Motion in Limine as untimely.

Plaintiffs' reaffirm their oral request that the Motion in Limine be stricken (1) for not being filed 30 days before trial, and (2) for failure of Defendants to obtain preauthorization before filing said motion. Court and counsel discuss same. The Court does not find the Motion in Limine untimely as not filed 30 days ago since Plaintiffs only filed this lawsuit 7 days ago. The Court is unaware of any rule that requires preauthorization for filing a motion in limine, and Plaintiffs assert it is an (unidentified) Rule of Special Actions, which Plaintiffs will identify hereafter.

**IT IS FURTHER ORDERED** directing Plaintiffs to file no later than **3:30 p.m. today** (and contemporaneously email the Court and all counsel) a written Response to the County Defendants' Motion in Limine to Exclude Witnesses.

**IT IS FURTHER ORDERED** setting a **virtual** Oral Argument on County Defendants' Motion in Limine to Exclude Witnesses, filed 11/19/2020, for **4:30 p.m. today** (time allotted: 30 minutes) in this Division.

Ms. Becker, on behalf of Plaintiffs, addresses the Court as to Plaintiffs' request to move the 11/20/2020 hearing to 11/23/2020 based on the circumstances of case and mandated deadlines in place as they relate to Plaintiffs' requested relief.

**IT IS FURTHER ORDERED** directing counsel for the County Defendants and Intervenor ADP to consider Ms. Becker's request to move the hearing to Monday and thereafter email the Court and all counsel their position.

Counsel are hereby advised that the hearing will be **conducted via GoToMeeting**. Court staff will email an invitation to counsel that contains a link and phone number for purposes of participating in the hearing remotely. **PLEASE NOTE: Counsel are responsible for sharing the GoToMeeting invitation with any clients, client representatives and witnesses who will appear at the hearing.**

To ensure public access to the hearing, **members of the public may call** into the Court's public access number at **1-877-309-2074** and enter the following public access code: **574-299-109#**. Members of the public will only be able to listen to the proceedings and will not be permitted to participate.

12:11 p.m. Matter concludes.

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**PLEASE NOTE:** This Division requires that all motions, responses, replies and other Court filings in this case must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. **No filing will be accepted if filed in combination with another. Additionally, all filings shall be fully self-contained and shall not “incorporate by reference” other separate filings for review and consideration as part of the pending filing.**

**ALERT:** Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a Court facility to wear a mask or face covering at **all times** while they are in the Court facility. With limited exceptions, the Court will not provide masks or face coverings. Therefore, any individual attempting to enter the Court facility must have an appropriate mask or face covering to be allowed entry to the Court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the Court facility or asked to leave. In addition, all individuals entering a Court facility will be subject to a health screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the Court facility.