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**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO**

L [REDACTED] F [REDACTED]-E [REDACTED],

Petitioner,

vs.

SUPERIOR COURT OF THE STATE  
OF ARIZONA, in and for the County of  
PINAL, THE HONORABLE DELIA R.  
NEAL, a judge thereof,

Respondent Judge,

SHAWN MAIN,

Real Party in Interest.

Court of Appeals  
No. 2 CA-SA 2019-0045

Pinal County Superior Court  
No. CR201503594

**MOTION TO STRIKE**

Crime Victims' Representative, L [REDACTED] F [REDACTED], respectfully files this motion to strike the *Defendant's Motion to Stay Proceeding Pursuant to Rule 5, Rules of Spec. Act. Proc.*

"A party requesting a stay from an appellate court under this Rule must first

request the stay in the superior court.” Ariz. R. Civ. App. P. 7(c). “The filing of a complaint in a special action and the setting of the matter for hearing shall not stay any proceedings in the court or tribunal as to which special relief is sought unless a stay is specifically ordered.” Ariz. R. Spec. Act. P. 5. Furthermore, “[i]t is the policy of the Court of Appeals to allow the trial judge who is familiar with the case to first weigh the necessity for issuing a stay.” Ariz. Ct. App. Div. 2 Frequently Asked Questions, *available at* <https://www.appeals2.az.gov/FAQs.cfm> (last visited Sep. 11, 2019) (in response to the question “[i]f I want to ask the appellate court to stay a trial proceeding, why do I need to first ask for a stay in the lower court?”); *see also* Ariz. Ct. App. Div. 1 Policies, *available at* <https://www.azcourts.gov/coa1/Policies> (last visited Sep. 11, 2019) (stating “[t]he Court of Appeals generally will not consider granting a stay of a matter in the superior court unless the superior court already has denied a stay request. For that reason, a party should not request a stay in the Court of Appeals before first asking for a stay in the superior court.”). Defendant has filed a motion in the superior court asking for a stay. However, there has been no such denial of her request.

Even if this court were to address the issue of granting a stay, Defendant’s motion fails to meet the burden set forth under Arizona law. In Arizona, a request for a stay made in conjunction with a special action should be evaluated similar to a preliminary injunction based on the following elements:

1. a strong likelihood of success on the merits;
2. irreparable harm if the stay is not granted;
3. that the harm to the requesting party outweighs the harm to the party opposing the stay; and
4. that public policy favors the granting of the stay.

*Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410-11, ¶ 10 (2006) (citing *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App.1991)). In seeking a stay, the moving party may establish either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and the balance of hardships is heavily in favor of the moving party. *Id.*

Defense Counsel has failed to meet either burden. Defense Counsel states the “pending special action issues will require a stay of the Superior Court matters so that defense counsel may adequately prepare for and address the issue.” Def. Mot. to Stay, page 3, lines 6-8. However, merely stating the need to reply to a motion and prepare for any further potential oral argument fails to show irreparable injury. More generally, Defendant’s motion merely states the evidence sought is material to her defense at trial and will defend against the pending child abuse charges. *Id.* at page 4, lines 6-7. Again, this statement fails to make any showing of how continuing other trial preparations would cause irreparable harm. In fact, Defendant’s own motion mentions that co-counsel is working on a second capital case; there is no discussion that working on presumably an equally important case is hampering the full attention of counsel in the current case.

Additionally, Defense Counsel states co-counsel will be traveling on “two back-to-back out-of-state mitigation related trips.” Def. Mot. to Stay, page 3, lines 11-14. Likewise, Defendant states that co-counsel has “collaborated, contributed, reviewed, and made revisions on most motions filed in this matter.” *Id.* at page 3, lines 16-17. These statements provide no timetable or length of the trips or how these factors would cause irreparable harm. Given there are multiple attorneys representing Defendant, presumably the attorney tasked with handling motion practice could prepare the motion while co-counsel is working on other issues. Lastly, the reasons listed would be more applicable to a request for extension of time in reply to the special action—not a request to stay the current proceedings.

### **CONCLUSION**

For the reasons set forth above, Ms. P■■-E■■■■ respectfully requests this court strike Defendant’s Motion for Stay.

Respectfully submitted this 11th day of September, 2019.

By: \_\_\_\_\_/Colleen Clase/\_\_\_\_\_  
Attorney for Petitioner L■■■P■■-E■■■■