



Direct Line: 602-340-2741

December 22, 2021

**PERSONAL AND CONFIDENTIAL**

Jeffrey S. Silvyn  
Pima Community College  
4905 E. Broadway Blvd  
Tucson, AZ 85709-1005  
**Via Email Only:** [jsilvyn@pima.edu](mailto:jsilvyn@pima.edu)

**Re: File No:** 21-2327  
**Complainant:** Luis L. Gonzales

Dear Mr. Silvyn:

The State Bar recently received a bar charge against you from Mr. Gonzales. After our review of the charge, we have determined that no further investigation is warranted at this time. We therefore consider this file closed.

The closing letter to Mr. Gonzales contained the following:

First, the submission complains generally about the quality of Mr. Silvyn's communication with the Board; alleges that he has acted contrary to the integrity of his profession; and accuses him of bullying a Board member because of her Mexican American heritage. Bare allegations of ethical misconduct do not provide a basis for inquiry or investigation and Mr. Silvyn denies them.

Next, the submission alleges that Mr. Silvyn has a conflict of interest because he was hired by, and reports directly to, the College Chancellor and complains that he refuses to recuse himself when a conflict arises between the Board and the Chancellor. Mr. Silvyn denies the allegation and states that his client is the College and the Board, which is its highest decision-making body. While the Board has delegated certain day to day responsibilities to the Chancellor, including the hiring of general counsel, Mr. Silvyn states that he had made clear to the Board that it is his client and that he has comported himself accordingly.

The submission also alleges that Mr. Silvyn threatened you and another member of the Board when you questioned the Chancellor's relationship with certain vendors who were awarded contracts by the College. Mr. Silvyn denies the allegation and states the he advised you both of the potential legal pitfalls of

speaking in a public meeting about matters discussed by the Board during executive session and that he offered you alternative ways by which you might express your concerns without running afoul of the rules relating to the confidentiality of executive sessions.

The submission alleges that Mr. Silvyn engaged outside counsel without first obtaining the consent of the Board. Mr. Silvyn states that he is authorized to oversee outside counsel and observes that most of the Board members have been pleased with outside counsel. Mr. Silvyn further states that he has historically engaged outside counsel to, among other things, assist the Board in its review of the Bylaws or in response questions raised by you and/or another member of the Board regarding the soundness of his legal advice.

With respect to the use of outside counsel to investigate the Chancellor's alleged conflict of interest relating to certain contracts awarded by the College, Mr. Silvyn states that he was authorized to do so and regardless, he consulted with the Board Chairperson before moving forward. Mr. Silvyn further states that allegations of a conflict of interest and/or violations of State procurement laws was also raised with the Attorney General's Office, which declined to investigate, and the State Auditor General, which noted in its February 11, 2021 email that the concerns were "internal and the college district should conduct an internal review to determine if the district's policies were violated."

The submission also complains that Mr. Silvyn retained outside counsel to investigate similar allegations against the Chancellor contained in a June 25, 2021 report of C-FAIRR (the Report) and that he approved a threatening letter that was sent to C-FAIRR. However, the July 20, 2021 letter simply advised C-FAIRR that outside counsel was investigating the Report and asked for the evidence relied upon to reach certain conclusions; the names of individuals with knowledge about them; and any documentation in C-FAIRR's possession relating to them. The letter also made C-FAIRR aware of potential claims against it relating to the Report and asked that it preserve the information and documents in its possession relating to or arising out of the Report. Mr. Silvyn states that he spoke with both the Board Chairperson and the Chancellor before retaining outside counsel, which he maintains is a power that has been delegated to him.

Finally, the submission complains that Mr. Silvyn has provided the Board with questionable legal advice and there has been a breakdown of the College's disciplinary system, which the submission opines is the fault of Mr. Silvyn. These also appear to be internal issues to be raised with and resolved by the Board and/or the Chancellor.

Pursuant to Rule 70(a)(3), Ariz. R. Sup. Ct., the record of this charge will be public for six months from the date of this letter. This charge has no adverse impact on your standing with the State Bar. The record shows a consumer charge that was dismissed. Pursuant to Rule 71, Ariz. R. Sup. Ct., the State Bar file may be expunged in three years.

Sincerely,

/s/ Stacy L. Shuman

Stacy L. Shuman  
Bar Counsel – Intake

SLS/sb

October 12, 2021

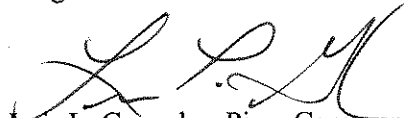
State Bar of Arizona  
4201 N. 24th Street Suite 100  
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270 N Church Ave,  
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Re: Complaint against Jeffrey S. Silvyn

My name is Luis L. Gonzales I am a member of the Pima County Community College District Board of Governors, representing District 5 (see attached brief bio). I was duly elected to the Board of Governors in November of 2018 and sworn into office in January 2019. This formal complaint is being submitted in my capacity as an Arizona elected public official. I am not an attorney and have a layman's understanding of the law. The complaint is against Jeffrey Silvyn, the college's general counsel. I assert that he has committed multiple violations of State Bar of Arizona Rule 42 (Ariz.R.S.CT). Ms. Maria Garcia, board member for District 3, witnessed some of Mr. Silvyn's action described in this complaint.

His actions as the college's general counsel are similar to those cited by the Office of the Inspector General, United States Department of the Interior in 2012 when he served as general counsel for the Morris K. Udall and Steward L. Udall Foundation. Mr. Silvyn's practice of law indicates that the infractions detailed in this complaint are not reflective of a lawyer with his length of service. I expect that the State Bar of Arizona will thoroughly investigate the allegations contained herein and take appropriate action.



Luis L. Gonzales, Pima Community College, Board of Governors, District 5

## BRIEF BIO OF LUIS L. GONZALES

I was born in Guadalupe, Arizona, a Mexican/Yaqui community and one of this state's oldest settlements. My parents did not complete elementary school. Yaqui was the native tongue of my mother, and Yaqui is my first language. I am member of the Pascua Yaqui Tribe of Arizona. My people have lived on this land from time immemorial; our roots are deep in this land. I was elected to Pascua Yaqui Tribal Council in 2000, and served for twelve years. I earned a Bachelors' degree in education from the University of Arizona. Before I was elected to the Tribal Council, I developed and expanded the Pascua Yaqui Scholarship Program including co-administration of federal financial aid programs. I worked in partnership with the Bureau of Indian Affairs to manage funds that it provided for post-secondary education for tribal members. I worked closely with Pima Community College to conduct classes on the reservation. I have five daughters, three are educators; two graduated from Arizona State University, and one from the University of Arizona. One daughter worked for Arizona State University and two daughters work for the tribe. One of my daughters works for the tribe as a teacher in preschool, and is pursuing a masters' in education. My youngest daughter was elected to the tribal council in 2020 and currently serves as co-chair for the tribal council's education oversight committee. There are five educators in our immediate family. One of my children attended PCC, and is an LPN who is seeking her RN. Another of my daughters attended PCC and now works for the Tribe. I am the grandparent of 27 grandchildren, which compels me to advocate for their educational opportunities as well for all the citizens of Pima County. There is an old saying: "la educacion es la llave para superarce", or "education is the key to self-improvement." I joined the Board with my colleague Ms. Garcia and like her, I spent my first two years on the Board learning and actively engaged in my role in addressing campus governance challenges.

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## COMPLAINT

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### I. STATEMENT OF FACTS

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. Rule 42, Ariz.R.S.Ct. ER 8.4. Comment [Amended Effective DEC. 1, 2002].

#### 1. COMPLAINANT

Luis L. Gonzales (hereafter Complainant) is a member of the Pima County Community College District (the college) Board of Governors representing District 5. He was duly elected to the Board of Governors in November of 2018 and was sworn into office in January 2019.

#### 2. FACTS

Complainant submits that attorney Jeffrey S. Silvyn has engaged in multiple violations of the Rules of the Supreme Court of Arizona, V. Regulation of the Practice of Law, D. Lawyer Obligations, Rule 42 Arizona Rules of Professional Conduct.

1. The Pima County Community College District identifies Jeffrey Silvyn as its General Counsel.<sup>1</sup> Mr. Silvyn was admitted to practice law by the State Bar of Arizona on May 15, 1993. The State Bar of Arizona website page for Mr. Silvyn lists 92 areas of practice.<sup>2</sup> Those areas of practice pertinent to this complaint include: Public Officials Liability, State Government Law, Government Immunity, Governmental Liability, Local Government Civil Rights, Government Ethics, and Government Investigations.
2. Pima County Community College District is an Arizona public community college. Pima Community College is a public educational institution with six locations in the Tucson, Arizona metropolitan area that offers post-secondary school certificates and associate's

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<sup>1</sup> His contact information on the State Bar of Arizona website lists Pima Community College.

<sup>2</sup> <https://azbar.legalserviceslink.com/attorneys-view/JeffreySSilvyn>.

degrees in a variety of educational fields. Lee Lambert has served as the college's Chancellor since July 1, 2013.

3. *A.R.S. § 15-1444 (A-G)* sets forth the general powers and duties of district governing boards of Arizona community colleges. The formal name of the college's governing board is the *Board of Governors*. The Bylaws of the college's Board of Governors acknowledge that it is the highest authority for the college, "...that can act on behalf of the organization as determined by applicable law." *Rule 42, Ariz. R.S.Ct.*, ER 1.13. (b).

The Governing Board (the "Board") of the Pima County Community College District (the "College") is the *legally constituted and final authority for the operation of the College* (emphasis added). (*PCC Governing Board Bylaws, Authority, Article Number: I*).

4. As the policy making body for the college, the board adopts policies pursuant to *A.R.S. §15-1444 (A)(2)*. Board of Governors' policy clearly states that it is the final authority of the college.

The Pima County Community College District Governing Board is the governing entity of the Pima County Community College District. In this role, the Governing Board retains authority to enact, rescind or modify all policies governing the District (BP.1.01).<sup>3</sup>

5. Silvyn served as general counsel for the Morris K. Udall and Steward L. Udall Foundation. The inspector general's report found fault with his legal advice. This is documented in a report titled, *Audit of the Stewardship of the Morris K. Udall and Steward L. Udall Foundation (Project Number: ZZ-IN-OSS-0011-2012) as of November 7, 2012*.

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<sup>3</sup> In an action brought by employees against PCC, the college argued to the court, "Defendants [the college] claim that *the governing board is the only decision maker* that can be held liable (emphasis added)." *Cuyugan, v. Pima Community College District*, No. CV-15-00260-TUC-RCC), 7. In *Katz* the court found, "It appears to the Court, and Defendants do not deny, that the *Board of Governors is the policy-making authority* for appointment of teachers and that rescission of approval to offer a new contract was an action of the policy-making authority."



## II. BACKGROUND

Beginning on or about February 2019 through its publication on October 15, 2019, college employees developed the *Request for Proposal Comprehensive, Integrated Energy Management Program* (Proposal No. P20/10015, 10/11/2019). On October 15, 2019 the Energy Management RFP was issued. Six firms responded and a selection committee headed by Greg Wilson, Dean, Applied Technology, reviewed the proposals and Trane was selected. Ameresco, the second highest scoring firm, filed a bid protest that was denied by the College.

During the summer of 2020, a District 5 constituent informed Complainant that Lee Lambert, Chancellor of Pima Community College (Chancellor Lambert) was serving on the Board of Directors of the National Coalition of Certification Centers (NC3), with Mr. Patrick Archambault, who is employed by Trane as an Education Program Manager. Complainant had not been provided this information in his official capacity. He verified the information concerning Chancellor Lambert at NC3's website. Constituent expressed concerns that there was the appearance of a conflict of interest. Complainant later became aware that Trane had responded to the Energy Management RFP cited above and had been awarded a contract.

Constituent stated that Chancellor Lambert was identified as the "founding" chair of the Unmudl Steering Council. Unmudl is a wholly owned product of Social Tech, Inc., and Social Tech.ai, 2121 Lohman's Crossing Road, Suite 504336, Austin, TX 78734, a "for profit" business registered in Texas. Constituent provided two news articles, one published in Inside Higher Education (October 16, 2019) entitled, *Clarifying a Muddled Career Training Landscape*. The second, in Business Insider (Oct. 14, 2019) entitled, *Forward Thinking Community Colleges Become Founding Members of First Global Work+Learn Marketplace*. These articles state that Pima Community College has a relationship with Unmudl.

Chancellor Lambert had not disclosed that he was serving as the chair of the Unmudl Steering Council to the board. Complainant and Ms. Garcia discussed this matter and were concerned that there was the appearance of a conflict of interest. Ms. Garcia asked Chancellor Lambert in a public meeting if he was serving as the chair of the Unmudl Steering Council, and he answered in the affirmative. She requested information concerning the college's relationship and participation with Unmudl. Information obtained confirmed that Chancellor Lambert was the chair of the Unmudl Steering Council and that an MOU had been executed with Social Tech Inc. Complainant subsequently learned that a payment had been made to Social Tech.ai in the amount of \$25,000.

On or about the fall of 2020, a constituent submitted a public records request (FOIA) to the college and obtained approximately 500 emails. He provided this information to Ms. Garcia. He also provided complainant with a small number of the emails he had obtained from college. Complainant asked that constituent's concerns be submitted in writing. Complainant had no prior knowledge of these emails. He had not been provided any information in his capacity as a member of the board. Chancellor Lambert's involvement with firms that had been awarded contracts had not been properly disclosed to the board.

These facts emerged from the emails: (a) a Trane employee and a number of the institution's employees had exchanged approximately 190 emails, (b) approximately 90 of these emails had been exchanged with the college employee who was selected to lead the team that would review the proposals submitted in response to the solicitation.

The extensive communications between employees of Trane and the college during the development and selection process of the Energy Management RFP was not disclosed to the board. The failure to timely disclose material information denied the board the ability to make

an informed decision. When complainant voted to approve the \$200,000 energy audit, Chancellor Lambert's connection to Trane through the NC3 board had not been disclosed.

The following facts were not disclosed to the board: (a) Mr. Patrick Archambault of Trane and Chancellor Lambert were serving on the NC3 Board; (b) Trane is the sole energy industry partner of NC3; (c) detail and extent of emails between Trane and college employees prior to the development of the Energy Management RFP; (d) detail and extent of emails between Trane employees and college employees leading to the removal of Mr. Ward from the development of Energy Management RFP; (e) Chancellor Lambert's exchange of emails with Trane employees prior to the development of the Energy Management RFP.

Mr. Silvyn, the college's general counsel informed the board that no financial benefit had been found and Chancellor Lambert's behavior was appropriate. Mr. Silvyn did not find the appearance of an ethical conflict of interest arising from Chancellor Lambert's involvement with two firms that had been awarded contracts by the college.

Complainant states that the evidence he reviewed eroded his trust in Chancellor Lambert and Mr. Silvyn. Mr. Silvyn's behavior at this time strengthened Complainant's doubts in his impartiality and in the accuracy of the legal advice he provided to the board. Ms. Garcia and Complainant raised legitimate questions as to what had transpired in the development of the Energy Management RFP. Mr. Silvyn began to threaten Ms. Garcia and Complainant when they asked questions or raised concerns regarding the appearance of a conflict interest. Mr. Silvyn became defensive when we did not accept his interpretation of ethical behavior. Mr. Silvyn is unwilling to provide sufficient information to allow board members to fully understand his advice and becomes defensive when questions are asked.

Complainant has observed Mr. Silvyn's continuous bullying and intimidation of Ms. Garcia. Complainant submits that Mr. Silvyn discriminates against Ms. Garcia because she is a woman of Mexican American heritage. See: *Title VII of the Civil Rights Act of 1964* (Title VII). Apparently he thought that a Mexican American woman was an easier target. Complainant does not make this claim lightly or without knowledge that a perpetrator always has a million justifications for their behavior. As a member of the Pascua Yaqui Tribe of Arizona, Complainant has experienced and witnessed enough of this behavior to immediately recognize it. Throughout Complainant's tenure on the Board of Governors, Mr. Silvyn has consistently engaged in behavior that does not maintain the integrity of the profession. *Rule 42, Ariz.R.S.Ct. ER. (8)*.

### III. CONFLICT OF INTEREST

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. *Rule 42, Ariz. R.S. Ct., ER 8.4. Comment [Amended Effective DEC. 1, 2002]*.

Mr. Silvyn is an *at-will employee* who reports to Chancellor Lambert under an administrative contract. He is listed on the College's website as General Counsel. *Rule 42, Ariz. R.S. Ct., ER 1.13 (a)*. Chancellor Lambert is Mr. Silvyn's immediate supervisor. The college's website identifies Mr. Silvyn as working in the Office of the Chancellor.<sup>4</sup> When Mr. Silvyn provides legal advice to the board, it is at the direction of Chancellor Lambert. *This is a prima facie conflict of interest. Rule 42, Ariz. R.S. Ct., ER 1.7 (a)(1)*.

According to Mr. Silvyn, in the college's legal model, he has no conflict of interest and has steadfastly refused to recuse himself from *any issue*. Complainant submits that the board of an Arizona public body has no independent legal counsel unless authorized by an employee,

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<sup>4</sup> <https://www.pima.edu/about-pima/leadership-policies/college-organization/college-administrators.html>.

Chancellor Lambert. Ms. Garcia and Complainant are on record pointing out Mr. Silvyn's conflict of interest and have requested independent counsel to no avail.

In recent months Mr. Silvyn has defended Chancellor Lambert against allegation of misconduct. *Id.* at (a)(1). Chancellor Lambert is the sole employee of the board. Mr. Silvyn's loyalty and independent judgment are to his immediate supervisor, and not to the board, which is the highest authority that can act on behalf of the organization as determined by applicable law. *Rule 42, Ariz. R.S. Ct.*, ER 1.13. (b). Mr. Silvyn's behavior prevents members of the board from fulfilling their oversight duties. *Rule 42, Ariz. R.S. Ct.*, ER 1.7. (a)(2).

In effect, Mr. Silvyn represents Chancellor Lambert's interests instead of representing the institution's best interest through the board, the *legally constituted and final authority for the operation of the College*.<sup>5</sup> Mr. Silvyn's behavior has undermined the trust that is an essential element in the lawyer's relationship to a client. Mr. Silvyn's concurrent conflicts of interest arise from his contractual responsibilities to Chancellor Lambert, his affirmative obligation to inform the board of his professional conflict of interest, and from the property interest in his position. Mr. Silvyn's actions confirm that he views Chancellor Lambert as his client. He has consistently asserted that he has no conflict of interest regarding his representation of Chancellor Lambert and the board. His actions demonstrate that his sole motivation is to protect Chancellor Lambert and not the organization. *Rule 42, Ariz. R.S. Ct.*, ER 1.13. (b). His professional obligation is to recuse himself when a conflict between the board and Chancellor Lambert arises. *Rule 42, Ariz. R.S. Ct.*, ER 1.7. (a).

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<sup>5</sup> "...the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the *highest authority that can act on behalf of the organization as determined by applicable law* (emphasis added)." *Rule 42, A.R.S. Sup.Ct.*, ER 1.13. (b).

Mr. Silvyn has failed to disclose to the board his obvious conflict of interest; hence, the board had no opportunity to formally consent to his continuing conflict. *Rule 42, Ariz. R.S. Ct., ER 1.7. (a)(2)*. Mr. Silvyn recognizes Chancellor Lambert as his client, therefore, he is obligated to not reveal information relating to his representation of Chancellor Lambert to the board. This requires that he recuse himself from giving legal advice to the board, as he cannot preserve the attorney-client privilege obligation he has to the board. *Id.* at (a)(2). Mr. Silvyn represents the institution; therefore, as the board is “the governing entity” and “[the] legally constituted and final authority for the operation of the College,” he is ultimately responsible to the board. *Rule 42, Ariz. R.S. Ct., ER 1.13. (b)*.

Mr. Silvyn has repeatedly taken actions without informing the board or obtaining its consent. Current members of the college’s board are not attorneys and do not hold Juris Doctorates. Mr. Silvyn has consistently failed to explain matters to the extent reasonably necessary to permit *all members of the board*, who are non-attorney clients, to make informed decisions regarding the representation. *Rule 42, Ariz. R.S. Ct., ER 1.4. (b)*.

Mr. Silvyn’s representation of Chancellor Lambert may be directly adverse to the interests of the board. Complainant has not observed a single case in which Mr. Silvyn has recused himself from providing legal advice to the board. Mr. Silvyn’s representation of Chancellor Lambert is directly adverse to the interests of the board. *Rule 42, Ariz. R.S. Ct., E.R. 1.7. (a)(1)*.

Mr. Silvyn acts as if he has authority independent of the board, and consistently fails to consult this client (the board) or obtain approval of a majority before taking action. *Rule 42, Ariz. R.S. Ct., ER 1.4. (a)(1)*.

Mr. Silvyn was scheduled to assist the board in reviewing its Bylaws. His behavior is so egregious that Ms. Garcia and Complainant informed him that *we no longer had confidence in his legal advice*. In fact, because of our concerns about Mr. Silvyn, the board took appropriate action to engage an outside attorney to review and modify the Board of Governors' Bylaws.

#### IV. THREATS AGAINST MEMBERS OF THE BOARD

Rule 42, Ariz. R.S. Ct., ER 4.4. (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person, or use methods of obtaining evidence that violate the legal rights of such a person.

Mr. Silvyn threatened Ms. Garcia and Complainant at a meeting of the Board of Governors on or about April of 2021. At this meeting Mr. Silvyn stated that Ms. Garcia and Complainant could face legal action for any statements we made at a public meeting of the board about the controversial Energy Management RFP and/or the award of a contract to Trane. *Rule 42, Ariz. R.S. Ct., ER 1.1*. After this meeting I observed that Ms. Garcia was emotionally distraught and she told me that she was fearful of Mr. Silvyn's threat that she could be sued if she questioned the issues he had warned us about. He was in fact, threatening his clients (Ms. Garcia and Complainant) with a lawsuit, which is clear and convincing evidence that he fundamentally does not understand his obligation to *the highest authority that can act on behalf of the organization as determined by applicable law. Rule 42, Ariz. R.S. Ct., ER 1.13. (b)*.

Mr. Silvyn's behavior towards Ms. Garcia is not within the boundaries of professional ethical conduct and almost certainly constitute a violation of applicable civil rights statutes. His actions were so demeaning and malicious that this incident alone *warrants sanction*. Rule 42, Ariz. R.S. Ct., ER 8.4. (c) ("deceit").

In his capacity as general counsel, Mr. Silvyn is required to be cognizant of *A.R.S. Title 15, Chapter 12 Community Colleges*. He must be aware of the stipulation in A.R.S. § 15-1443

(C) “Members of the district board are immune from personal liability with respect to all acts done and actions taken in good faith within the scope of their authority during duly constituted regular and special meetings.” Though qualified immunity for public officials is a well-established legal principle, Mr. Silvyn never mentioned *qualified immunity* in his threat to Ms. Garcia and Complainant; for this reason his statement *can only be viewed as a threat. Rule 42, Ariz. R.S. Ct., ER 1.1.*

Further, in his capacity as general counsel, Mr. Silvyn is well acquainted with claims of qualified immunity. The college has asserted qualified immunity in cases brought by two employees. See: *Katz, v. Pima County Community College District, Et al.*; and *Cuyugan, v. Pima Community College District*, No. CV-15-00260-TUC-RCC).

Attorneys are expected to vigorously represent the interests of clients. The State Bar of Arizona recognizes that there must be limits to the defense of these interests. In *King* the court held that, “An attorney should not exploit their well-known privilege and access to the judicial process...” This must include unfounded threats or intimidation of elected public officials. (*King, v. Whitmer, Et al.* Civil Case No. 20-13134, 2). “[A]ttorneys have an obligation to the judiciary, their profession, and the public (i) to conduct some degree of due diligence before presenting allegations as truth...” *Id.* at 2.

Mr. Silvyn’s intention was to purposefully obstruct the participation of an elected public official in the discussion and debate on the matter under consideration. In *King*, the court also found, “Indeed, attorneys take an oath to uphold and honor our legal system.” *Id.* at 2, 4. Mr. Silvyn’s threat cannot be squared with his oath to uphold and honor the legal system.

Mr. Silvyn’s statement ignored *A.R.S. § 15-1443 (C)* and therefore, was demonstrably false and misleading. Further, his threat constitutes a violation of *Rule 42, Ariz.R.S. Sup.Ct., ER*



1.1. Mr. Silvyn has not hesitated to use the threat of legal action against Ms. Garcia and Complainant for disagreeing with Chancellor Lambert's position.

Mr. Silvyn's threat was an attempt to interfere with the processes of democracy. The threat was made with the intention of preventing elected officials from performing their statutory oversight responsibilities. It is difficult to conceive of a more serious violation of State Bar of Arizona Rule 42, than for a member of the bar to subvert the democratic process. No sophisticated legal argument can obscure the fact that Mr. Silvyn's statement was a threat, as he failed to mention *A.R.S. § 15-1443 (C)* and explain the protection it affords members of community college boards. This is a matter of the most serious import.

*Preventing an elected public official from the discharge of their responsibilities is a fundamental violation of the rule of law.*

Mr. Silvyn's primary obligation is to provide competent legal counsel to a publicly elected body that is the highest authority that can act on behalf of the organization as determined by applicable law. *Rule 42, Ariz. R.S. Ct., ER 1.13. (b)*. His threat was a purposeful violation of *Rule 42, Ariz. R.S. Ct., ER 1.1*. His sole purpose was to coerce Ms. Garcia and Complainant into not debating an issue before the board. Mr. Silvyn's actions are equivalent to riding roughshod over the process with the objective of quashing the inquiry and debate that are at the heart of the democratic process. His intention was to deny our rights and obligations as public officials to carry out our statutory duties.

Complainant considers that as a member of the Board of Governors, he is one of five of Mr. Silvyn's clients. Taken in this light the need for this complaint and for action on the part of the State bar of Arizona is clear.

## V. LEGAL ACTION WITHOUT BOARD KNOWLEDGE OR CONSENT

### I. ENGAGING EXTERNAL ATTORNEY TO CONDUCT INVESTIGATIONS WITHOUT BOARD CONSENT

Mr. Silvyn engaged Susan Segal (on retainer with the college) to conduct two investigations into Chancellor Lambert's actions. The selection of the attorney to conduct these investigations and the scope of work, were not formally disclosed to the board for consent. Mr. Silvyn did not disclose to board that he had selected an attorney to conduct these investigations *until they were completed* and reported to the board in executive session. *Rule 42, Ariz. R.S. Ct., ER 1.4.(a)(1)*. In his capacity as General Counsel, Mr. Silvyn was obligated to seek formal approval from the board for each of Ms. Segal's investigations. Mr. Silvyn has the ethical obligation to provide the board with informed consent. This requires that he communicate adequate information and explanation about each individual investigation and to seek authorization that must include: (a) authorization to conduct the investigation, (b) selection of the attorney, and, (c) the scope of work. *Rule 42, Ariz. R.S. Ct., ER 1.0. (e), and 1.4. (a) (1-5)*.

Complainant recalls that it was during the course of the second investigation that he became aware of the fact that a material witness had come forward with first-hand information pertinent to the investigation.<sup>6</sup> Subsequently, Complainant learned that a college employee had confirmed the statement of the material witness.<sup>7</sup> College documents from 2019 describe serious reservations on the part of the college's Energy Resource Manager.<sup>8</sup> Mr. Silvyn should have

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<sup>6</sup> See: *A Failure of Governance at Pima Community College*.

<sup>7</sup> On May 3, 2021 Mr. David Davis emailed Mr. Alm, "Do you know anything more about the RFP generation than what I learned independently of you; that Trane wrote it. I was told this by Brice May [Trane employee], and I believe you had heard this from another employee at Trane. It sounds like someone here at PCC is saying they pulled it from some off the shelf resource. This doesn't make sense as the RFP was so specific and so well aligned with what Trane had been trying to sell before the RFP went out. Do you have anything to add to this [emphasis added]."

<sup>8</sup> Mr. David Davis (Energy Resource Manager) was disturbed by the RFP development process and scored all of the proposals with zeros, commenting in an email to Ms. Jan Posz, PCC Sr. Procurement Analyst, "I apologize for not providing advance notice that I would be rating proposals with zeroes. I am afraid that as PCC's Energy Resource Manager this was necessary in order to not imply acceptance or approval of this RFP as written."

provided all communications between the firm and college employees to Ms. Segal prior to the initiation of her investigation.<sup>9</sup> Ms. Segal's investigation largely ignored the crucial emails from David Davis, the college's Energy Resource Manager, who complained in an email on October 14, 2020, "Having participated in numerous performance contracts, I am concerned that this RFP as written *may open up PCC for some significant financial and operational difficulties* (emphasis added)."

Mr. Silvyn was responsible for this investigation's failure to examine readily available evidence of Trane's role in the development of the Energy Management RFP.<sup>10</sup> Complainant cannot factually state what evidence Mr. Silvyn provided to Ms. Segal as he did not disclose this information to the board. Mr. Silvyn also did not fully disclose to the board information concerning her scope of work or limitations on her access to evidence. Complainant also cannot authoritatively state if Mr. Silvyn limited her scope of work to prevent her from accessing evidence material to her work. Therefore, Complainant can offer no judgment as to Ms. Segal's responsibility for the findings of the investigation. Ultimately, Mr. Silvyn, as the college's general counsel, bears responsibilities for any shortcomings or failures related to these investigations. Competent investigatory practice requires that new evidence be carefully examined and entered into the record. The failure to do so undermines the credibility of these investigations.

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<sup>9</sup> During this period Mr. Davis provided feedback that questioned the RFP process and Trane's response to the RFP. In a lengthy email sent on October 1, 2019, (11:01 AM) Mr. Davis stated that he had requested that Trane submit proposals for two pilot projects. He reported that Trane's equipment was 25 percent and 37 percent more expensive than comparable equipment. He concluded, "In short, the District HVAC shop is concerned that a switch to Trane automation will bring about an increase in outage time and will be an impairment to the support and proper operation of PCC building automation systems. This will in turn result in increased cost and site support needed by Trane technicians [emphasis added]."

<sup>10</sup> On Monday, Jan 6, 2020 (12:02 PM) Mr. David Davis (PCC Energy Resource Manager) emailed Mr. Ward, "I noticed that all 6 evaluation criteria areas came from page 5 of the Trane RFP response. Would it be possible to add categories for ECM evaluation...[emphasis added]." The Trane proposal provided to constituent by the College in its response to the PRR is missing page 5. Mr. Davis is credible as he was simply asking a question concerning the evaluation form. This question goes to the heart of the problem as it demonstrates the influence that Trane exerted on the process.

## 2. THREATING LEGAL ACTION AGAINST MEMBERS OF THE PUBLIC WITHOUT BOARD CONSENT

*Without board knowledge or consent*, Mr. Silvyn directed external counsel representing the college to communicate threats to taxpaying residents of District 5. *Rule 42, Ariz. R.S. Ct., ER 4.4. (a)*. This letter was based on the attorney's limited interpretation of the report on the Energy Management RFP entitled, *A Failure of Governance at Pima Community College*.<sup>11</sup> This document was submitted to Ms. Garcia and Complainant in our *capacity as board members at our official college email addresses*, with a cover letter addressed to us. The report was prepared at the request of Complainant to provide him with a written explanation of this constituent's concerns. The demand to preserve documents contained in external counsel's letter was without merit. The letter necessitated these Pima County taxpayers to consult counsel who responded to the demand and threat contained in the letter. *Rule 42, Ariz. R.S. Ct., ER 4.4. (a)*.

Mr. Silvyn, on behalf of the college, *without board knowledge or consent, approved a letter containing a threat of legal action* against the First Amendment Rights of taxpaying citizens of Pima County. The First Amendment to the Constitution of United States guarantees its citizens the right of "freedom of speech...and to petition the government for a redress of grievances." *Constitution of United States*. The report submitted is clearly not defamatory and is squarely a matter of these citizens' rights of free speech and their right to petition the government for redress of grievances. *Rule 42, Ariz. R.S. Ct., ER 4.4. (a)*.

It is inconceivable that Mr. Silvyn did not understand that a letter sent to non-attorney citizens threatening legal action would be construed as a threat. Further, the letter contained a demand to preserve documents, which borders on the absurd, *as all the documents referenced in the report* are documents in the possession and control of the college. This was clearly stated in

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<sup>11</sup> The claims in this letter indicate that this attorney *did not read or comprehend the 500-page report* that was entirely based on documents received from the college via a request for public records pursuant A.R.S. § 39-121.

the report. Complainant submits that Mr. Silvyn must not be allowed to escape his responsibility for committing *the most serious transgression* against the fundamental constitutional rights that citizens of the United States are guaranteed. *Id.* at 4.4. (a).

Complainant notes that all of the individuals taxpayers addressed in the letter are of Mexican American heritage. As in the case of the discriminatory behavior against Ms. Garcia and Complainant, there are issues of targeted racial discrimination that must not go unsanctioned. Given Complainant's knowledge of Mr. Silvyn's continued threats against Ms. Garcia and himself, no other interpretation is plausible.

Complainant submits that the State Bar of Arizona should request that Mr. Silvyn provide a complete list of all individuals complaining about any aspect of the college's operations, and all communications answering the complaints to determine if there are other similar threats to taxpayers. A review of the discrimination claims brought against the college in federal and state courts reveal an underlying pattern of inappropriate behavior.

The letter in question threatened legal action from third parties *that the attorney author does not represent*.<sup>12</sup> Legal sophistry cannot obscure the fact that this letter constitutes a clear threat against the First Amendment Rights of Complainant's constituents. It was drafted and delivered with the pernicious intent of silencing citizens' right to question their government. Arguments that Mr. Silvyn was not aware that this would be the perceived objective of this threatening letter defy logic. *Id.* at 4.4. (a).

## VI. DENIAL OF DUE PROCESS TO EMPLOYEES

### 1. THE COLLEGE FOUND TO HAVE DENIED PROCEDURAL DUE PROCESS

(a) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the

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<sup>12</sup> Complainant submits that the attorney who authored this letter may be in violation of Rule 42, however, this is not within the scope of this complaint.

organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization (emphasis added). *Rule 42, Ariz. R.S. Ct.*, ER 1.13 (a).

In his capacity as general counsel of a public institution, Mr. Silvyn has a heightened obligation to respect the rights of others. Arizona statute requires a high degree of transparency in government and mandates that public business be conducted openly, and that “any person or entity charged with the interpretations of this article *shall construe this article in favor of open and public meetings* (emphasis added)” *A.R.S. § 38-431.09 (A)*. Arizona statute also requires that, “Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.” *A.R.S. § 39-121*. Actions taken by public officers that violate any statute undermine the public confidence in open and transparent government. Legal advice given by the general counsel is protected from public scrutiny, but the assertion of this privilege should not be used to shield the college’s actions from public view. In Complainant experience, Mr. Silvyn violates *A.R.S. § 38-431.03* by utilizing executive sessions to stifle public discussion.

The public trusts that public officers will competently discharge their responsibilities. Trust in the general counsel’s legal advice is undermined when federal courts find that the college has not provided employees with elementary procedural due process in the protection of their property rights.<sup>13</sup> As general counsel he is responsible to oversee the actions of external counsel engaged to litigate a case to protect the public from unnecessary litigation costs or financial loss. *Rule 42, Ariz. R.S. Ct.*, ER 1.1.

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<sup>13</sup> “The Fourteenth Amendment’s procedural protection of property is a safeguard of the security of interests that, a person has already acquired in specific benefits. These interests—property interests—may take many forms.” *Board of Regents v. Roth*, 408 U.S. 564 (1972).

Mr. Silvyn is also obligated to respect the rights of others and the right to procedural due process is among these rights. *Rule 42, Ariz. R.S. Ct.*, ER 4.4. He is responsible to review complaints by employees to ensure that the college provides procedural due process.<sup>14</sup> *Rule 42, Ariz. R.S. Ct.*, ER 1.13 As a member of the college's Board of Governors and a taxpaying citizen of Pima County, Complainant submits that the college has an expectation that Mr. Silvyn possesses the requisite knowledge to permit a competent analysis of precedent and an evaluation of evidence in a complaint or case brought by an employee.<sup>15</sup> The public is entitled to expect that Mr. Silvyn will *thoroughly investigate complaints or cases* brought by employees.

In litigation his primary responsibility is to avoid the loss of public funds. *Rule 42, Ariz. R.S. Ct.*, ER 1.1. The college has expended funds to litigate cases that resulted in avoidable payouts to former employees.<sup>16</sup> Due process is not a novel or arcane legal principle that Mr. Silvyn could not reasonably be expected to know; it is the basis of fairness in American jurisprudence. The general counsel is responsible to assure that the institution provides procedural due process rights to employees. In two federal cases courts found that the institution had denied the due process rights of employees. (see: *Katz v. Pima County Community College District, Et Al.*, No. CV-14-02515-TUC-CKJ ORDER and *Cuyugan, v. Pima Community College District*, No. CV-15-00260-TUC-RCC).<sup>17</sup>

In the *Katz* case the court granted summary judgment to the plaintiff, noting that he had established a due process violation. *Katz*, at 23. The court also, "decline[d] to dismiss the claim

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<sup>14</sup> In *Katz*, the college argued, "Defendants [the college] assert that the Chancellor was careful to get Plaintiff's "take," and even had Mr. Silvyn interview Plaintiff's witnesses before making a decision." *Katz, v. Pima County Community College District, et al.*, No. CV-14-02515-TUC-CKJ ORDER, 17.

<sup>15</sup> For an additional case brought against the college by the United States Department of Justice during Mr. Silvyn tenure, see: *Stoner v. Pima Community College*, CIVIL NO.: 4:14-cv-02456-RM.

<sup>16</sup> See: *Katz, v. Pima County Community College District, et al.*, No. CV-14-02515-TUC-CKJ ORDER; and *Cuyugan, v. Pima Community College District, et al.*, No. CV-15-00260-TUC-RCC.

<sup>17</sup> "Even a cursory examination of the September 16 Notice and other documents shows that Defendants did not provide Plaintiff an adequate explanation of the charges against him." *Katz, v. Pima County Community College District, et al.*, No. CV-14-02515-TUC-CKJ ORDER, 19.

for punitive damages at this time.” *Id.*, at 23. The court found that though individual defendants (college employees) “could have reasonably believed that they were following PCCCD policies, the issue is whether they could have reasonably believed they were complying with the requirements of due process.” *Id.* at 22-23. The individual defendants in the case are not lawyers. Mr. Silvyn was responsible to provide competent legal counsel to advise them of the college’s obligation to comply with procedural due process.<sup>18</sup> If Mr. Silvyn had discharged his duties in a competent manner, this situation would have been resolved without costly litigation and a settlement to Katz. Competent legal counsel would have advised individual defendants of the requirement to assure procedural due process—thus avoiding protracted litigation and settlement.<sup>19</sup>

The court noted another denial of due process, “Even a cursory examination of the September 16 Notice and other documents shows that Defendants *did not provide Plaintiff an adequate explanation* of the charges against him.” *Id.* at 19. The court found that the college had also failed to provide Katz a post-termination hearing.<sup>20</sup> The failures to provide fundamental procedural due process are so basic that any competent attorney would have identified them as they occurred.

The issue of whether Katz was a competent employee is not within the scope of this complaint. The focus here is the performance of Mr. Silvyn, and his failure to protect the financial interests of the taxpayers of Pima County. *Katz* reveals a complete breakdown of the college’s disciplinary system. Timely intervention by Mr. Silvyn would have quickly rectified

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<sup>18</sup> Pacer website list 76 filing/documents in this case, <https://www.courtlistener.com/docket/13213371/katz-v-pima-county-community-college-district/>

<sup>19</sup> Pacer website list 64 documents filed in this case. <https://www.courtlistener.com/docket/14420201/cuyugan-v-pima-community-college-district/>.

<sup>20</sup> “Due process requires an impartial decision maker... Here, there was no post-termination proceeding.” *Katz, v. Pima County Community College District, et al.*



the defective nature of the due process provided Katz. As a result of the court's finding in *Katz*, the college settled for a significant sum.<sup>21</sup>

In *Katz*, Chancellor Lambert and two employees were named in their individual capacities and requested qualified immunity. Government officials are generally shielded from individual liability, in *Harlow* the Supreme Court held.

We therefore hold that government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

In addition a public official is entitled to qualified immunity, "If the law at that time was not clearly established..." *Id.* at 818. In *Katz*, the court denied "Chancellor Lambert's request for qualified immunity...[and] to dismiss punitive damages claims as this time."<sup>22</sup> *Id.* at 41.

Complainant submits that the court's finding in *Malley* provides guidance to the denial of qualified immunity to Chancellor Lambert and the other individuals defendants in *Katz*, "As the qualified immunity defense has evolved, it provides ample protection to all but the *plainly incompetent or those who knowingly violate the law* (emphasis added)." *Malley v. Briggs*, 475 U.S. 335, 341.

*Cuyugan v. Pima Community College* centered on a number of claims, (1) denial of due process, (2) retaliation, and (3) gender discrimination. As in *Katz*, Mr. Silvyn allowed this case to proceed without analyzing facts that supported Cuyugan's claim of failure to provide due process. Mr. Silvyn failed to reasonably analyze the seriousness of the violations of procedural due process. Competent counsel would have realized there were numerous problems with the

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<sup>21</sup> Ex-Pima College instructor given \$150K settlement in civil rights case Updated Mar 17, 2017. [https://tucson.com/news/local/education/college/pcc-board-backs-lambert-but-discipline-could-follow-court-case/article\\_e87445d9-12f1-5645-a6ac-c6f121cd9db1.html#tracking-source=article-related-bottom](https://tucson.com/news/local/education/college/pcc-board-backs-lambert-but-discipline-could-follow-court-case/article_e87445d9-12f1-5645-a6ac-c6f121cd9db1.html#tracking-source=article-related-bottom).

<sup>22</sup> "On these facts, the Court cannot find as a matter of law that Chancellor Lambert acted reasonably when he provided no due process, including notice, to Plaintiff regarding the rescission of approval for a new contract offer." *Id.* 39

college's case and specifically the behavior of Chancellor Lambert, whose was named in his individual capacity. In *Cuyugan* the court found that Chancellor Lambert, "[had] deprived Plaintiff of a property interest without any due process and is liable in his personal capacity" *Id.* at 8. Again the college failed to provide a post-deprivation [termination] hearing and the court found that "Plaintiff has successfully made a due process claim." *Id.* at 6.

The court also found that Cuyugan, "has successfully made a prima facie gender discrimination claim." The retaliation claim centered on the actions of Chancellor Lambert, "[who] was adversarial upon meeting Plaintiff for the first time, accused Plaintiff of being a problem and not knowing how to perform her job and required Plaintiff to report to his assistant in the mornings. Plaintiff's allegations sufficiently demonstrate a pattern of antagonism." *Id.* at 12. The parties do not dispute that Plaintiff never had a post-deprivation hearing or any other opportunity to be heard. See: *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner'" (citation omitted)). "Thus, Plaintiff has successfully made a due process claim (emphasis added)." *Cuyugan*, at 13.

The court noted the inconsistencies in PCC's argument, "In contrast, Defendants failed to follow their own policies and *now claim that they are irrelevant.*" *Id.* at 13. Complainant submits that this argument reveals a deeper truth about the general counsel's legal practice. When it is necessary to bolster his position Complainant has listened to Mr. Silvyn expound on the necessity of following the college's policies to the letter. When it suits an argument in a case where a federal judge will decide the relevancy of the college's arguments, attorneys for the college, supervised by Mr. Silvyn, argue that policies are irrelevant.

The juxtaposition of polar opposite arguments best characterizes Mr. Silvyn's attitude toward the facts. No argument, regardless of its apparent inconsistency is beyond his use. Mr. Silvyn interprets statute, board bylaws, and policies to achieve the ends that he and his immediate supervisor have determined further their interests. These two cases are presented here for more than historical relevance, Mr. Silvyn has brought the college into another potential legal situation that has implications far beyond the courtroom, and presents an existential threat to the college.

## 2. MR. SILVYN PARTICIPATES IN ANOTHER POTENTIAL DENIAL OF DUE PROCESS

Sometime in May of this year Chancellor Lambert, supported by Mr. Silvyn's legal advice, initiated disciplinary proceedings against Mr. William Ward, the Vice Chancellor for Facilities. The actions of Chancellor Lambert and Mr. Silvyn resulted in Mr. Ward's termination on June 30, 2021. Complainant submits that based on information provided to the board, Mr. Ward was not afforded a hearing and thus denied his Fourteenth Amendment procedural due process rights, in violation of 42 U.S.C. § 1983.<sup>23</sup> "Due process demands that one be given an opportunity to be heard at a meaningful time and in a meaningful manner." *Jones*, 702 F.2d., at 206. In Mr. Ward's case, Mr. Silvyn's legal advice is not reflective of a commitment to *Rule 42, Ariz. R.S. Ct.*, ER 1.1. Mr. Silvyn's assertion that Chancellor Lambert has "unilateral" authority to do as he wishes in the area of personnel actions, *appears to include denying employees procedural due process.*

Complainant submits that the allegations against Mr. Ward by Chancellor Lambert and Mr. Silvyn were intended to obscure the fact that he is a whistleblower. Complainant believed that Mr. Ward was a whistleblower when he met with him. Complainant agreed that he would

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<sup>23</sup> In *Katz* the court found, "Put another way, on this record, whether the Board failed to act itself or failed to delegate authority to act, it appears that the [college's] de facto policy was to provide no notice and due process." *Katz*, 40.

not reveal Mr. Ward as the source of any information obtained. Whether Mr. Ward is entitled to whistleblower status is a legal question not within the knowledge of the complainant.

Mr. Silvyn provided the legal advice that allowed Mr. Ward to be terminated without his procedural due process rights. This is not an isolated incident, it is a reoccurring pattern of incompetent legal advice that has resulted in two federal courts finding that the college had not provided employees procedural due process.

Ms. Garcia and I informed Mr. Silvyn that if Mr. Ward initiated legal action against the college we would be compelled to testify truthfully that we met with him as a whistleblower. It cannot be expected that Complainant would stand silently by while he has been told that millions of taxpayer dollars could be wasted on this project. The facilities assessment suggests that over the life of the contract approximately \$7,000,000 could be wasted.

## VII. QUESTIONABLE LEGAL ADVICE

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. *Rule 42, Ariz. Sup.Ct.*, ER 8.4. Comment [Amended Effective DEC. 1, 2002].

### 1. FAULTY INTERPRETATION OF STATUTES

Mr. Silvyn is well aware that a community college board's policies must be consistent with statute; the board adopted at least three policies that conflict with statute during Mr. Silvyn tenure as general counsel. There is an obligation on the part of counsel to provide competent legal advice that is given in good faith and is accurate. *Rule 42, Ariz. Sup.Ct.*, ER 1.1. Complainant argues this obligation is heightened when counsel serves a public institution, as in effect his fees are paid by the public.

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem. ER 1.1. (5). Competent representation requires a

lawyer to give sensible construction to the law. Mr. Silvyn should be well aware that Arizona courts have long held that statutes must be interpreted as written. "Courts will not read into a statute something which is not within the manifest intent of the legislature as gathered from the statute itself." *State ex rel. Morrison v. Anway*, 87 Ariz. 206, 349 P.2d 774. "Statutes must be given a sensible construction which accomplishes the legislative intent behind them and which avoids absurd results." *State ex rel. v. Flournoy v. Mangum*, 113 Ariz. 151, 152, 548 P.2d 1148, 1149 (1976). "In interpreting a statute a sensible construction should be given which will accomplish the legislative intent and purpose and which will avoid an absurd conclusion or result." *Arnold Const. Co., Inc. v. Arizona Board of Regents*, supra; *Mendelsohn v. Superior Court*, 76 Ariz. 163, 261 P.2d 983 (1953).

Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. *Rule 42, Ariz. Sup.Ct., ER 1.1.*

Complainant observes that Mr. Silvyn has often provided legal advice without being asked. *Rule 42, Ariz. Sup.Ct.Rules., ER 2.1. (5)*. He has often threatened board members when in effect the board is his client.

The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. See ERs 3.3(a) through (c), 3.4(a) through (c), and 3.5. *Rule 42, Ariz.R.S.CT., ER 3.9.(1) Advocate in Nonadjudicative Proceedings.*

## 2. FAULTY INTERPRETATION OF A.R.S §15-1444 (A-G)

*A.R.S §15-1444 (A-G)* enumerates the general powers and duties of Arizona community college boards. The policy of the Pima Community College Board of Governors stipulates that the board is the final authority of the college. Therefore, while Mr. Silvyn is general counsel for the institution, the duties and responsibilities enumerated in A.R.S §15-1444 (A-G) are solely reserved to the board. Mr. Silvyn argues that the Board has delegated a number of powers to

Chancellor Lambert. His legal opinion is not based on a sensible construction of A.R.S §15-1444 (A-G). The word “delegate” appears in *A.R.S §15-1444 (B) (2) and (4)*, and stipulates two areas in which an Arizona community college board may delegate authority.

A.R.S §15-1444 (B) (2) Lease real property, as lessor or as lessee. If a district is the lessee, the lease may contain an option to purchase the property. The district board may adopt policies as are deemed necessary and may delegate in writing to the chancellor or president of the district, or their designees, all or any part of its authority to lease property under this paragraph. Any delegation by the district board pursuant to this paragraph may be rescinded in whole or in part at any time by the district board.

A.R.S §15-1444 (B) (4) Contract. The district board may adopt such policies as are deemed necessary and may delegate in writing to the chancellor or president of the district, or their designees, all or any part of its authority to contract under this paragraph. Any delegation of authority under this paragraph may be rescinded by the district board at any time in whole or in part.

The paragraphs in *A.R.S §15-1444 (B)(2)(4)* allowing a board to delegate authority also empower a board to rescind the delegation at any time. Mr. Silvyn asserts that the board has delegated to Chancellor Lambert its power to “appoint and employ.” The authority that he asserts is not found in *A.R.S §15-1444 (A)(6)*. If the legislature had intended to grant community college boards the power to delegate the authority to appoint and employ, it would have done so with the language employed in *A.R.S §15-1444 (B)(2)(4)*.

6. Appoint and employ a chancellor or chancellors, vice-chancellors, a president or presidents, vice presidents, deans, professors, instructors, lecturers, fellows and such other officers and employees it deems necessary. The district board may enter into employment contracts with chancellors, vice-chancellors and presidents for a duration of more than one year but not more than five years. *A.R.S §15-1444 (A)(6)*

Complainant submits that Mr. Silvyn’s proclamations concerning his interpretation of *A.R.S §15-1444 (A)(6)* are not based on ignorance—they are sanctionable. His assertion that the board has delegated authority to Chancellor Lambert to “appoint and employ” is not consistent with a sensible construction of the statute. If Mr. Silvyn's interpretation were accepted, an absurd result contrary to legislative intent would hold, as the legislature narrowly defined the authority

of Arizona community college boards to delegate. Since “delegation” of authority is found in *A.R.S §15-1444*, it is clear that the legislature *understood delegation*, and specifically specified the authorities a community college board could delegate.

Complainant submits that there is no mention of delegation in paragraph *A.R.S §15-1444 (B)(6)* of power to “appoint and employ,” therefore, the legal analysis Mr. Silvyn provided the board was flawed. Mr. Silvyn’s interpretation of this statute reduces the board to the role of passive observer without the power to conduct oversight or to fulfill its duties pursuant to *A.R.S §15-1444 (A-G)*.

### 3. BYLAWS CONFLICT WITH A.R.S §15-1443 (B)

A.R.S §15-1443 (B) requires that community college boards meet in January of each year for the purpose of organizing. Implicit in the word organizing is that officers of the board should be elected on an annual basis. The statute places no limit on the time an individual board member may serve as an officer of the board, but a sensible construction of A.R.S §15-1443 (B) requires that they stand for election each year. The complainant understands that prior to the adoption of *Bylaw IV Officers* on January 18, 2018, elections were held annually to one-year terms.

Section 2. The Board shall nominate and elect officers for a term of two years at the annual meeting (Article VI, Section 3). Board members shall rotate through these offices based on their original swearing-in date. Exceptions can be made to this section by majority vote.

In addition, the board adopted Bylaw VI that conflicts with Bylaw IV, that requires annual election of officers.

Section 4. In January of each year, the Board shall hold an annual meeting, as specified by A.R.S. § 15-1443(B), for the purpose of electing officers and conducting such other business as may be necessary. The annual meeting will be the first Governing Board meeting in January, unless the Chancellor and Board Chair designate a different January meeting as the annual meeting. The Board may also select representatives to various organizations and discuss the parameters of that appointment.

As the attorney advising the board on the need to comply with statute, Mr. Silvyn has not performed this responsibility with the competence required.

#### 4. BYLAWS CONFLICT WITH *A.R.S* § 39-121.01 (D)(1).

The board revised Article X of its bylaws on October 19, 2016. The intent of this bylaw limits access to public records by individual board members, when no such limitation in statute to members of the public is allowed.

iii) Information requests that will involve more than four hours of College staff time, per request, shall require the agreement of a majority of the Board. *Board Bylaws Article X, Code of Ethics*.

This bylaw is obviously not consistent with Arizona's policy of open and transparent government. It conflicts with *A.R.S* § 39-121.01 (D)(1). Had Mr. Silvyn provided a sensible construction of this statute, the board would not have adopted a policy so clearly in conflict with the intent of its meaning.

### VIII. CONCLUSION

Based on the evidence above, Complainant submits that Mr. Silvyn has committed multiple violations of the Rules of the Supreme Court of Arizona, V. Regulation of the Practice of Law, D. Lawyer Obligations, Rule 42 Arizona Rules of Professional Conduct. There are multiple aggravating factors that should be considered when evaluating Mr. Silvyn's violations of Rule 42. He is an experienced lawyer having practiced law in Arizona for over 28 years. He served as general counsel for the Morris K. Udall and Stewart L. Udall Foundation (January 2008-January 2013), prior to becoming general counsel for Pima Community College.<sup>24</sup> He has served as general counsel for public bodies since 2008. Mr. Silvyn's actions as the college's general counsel are consistent with his behavior as the general counsel for the Udall Foundation. The behavior cited by the Inspector General in 2012 indicates a level of incompetency not

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<sup>24</sup> See: Jeff Silvyn's LinkedIn page. <https://www.linkedin.com/in/jeff-silvyn-75b80a7/>.



consistent with the duties of a general counsel for a federal office.<sup>25</sup> The length of Mr. Silvyn's practice of law indicates that the infractions detailed in this complaint are not reflective of a lawyer with his length of service. In addition, his inappropriate behavior toward members of a public elected body constitutes a betrayal of the public trust. Complainant expects that the State Bar of Arizona will thoroughly investigate the allegations contained herein and take appropriate action.

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<sup>25</sup> Of the 26 contracts that were sole source awarded, only 19 had approved sole source justifications as required by FAR. Of these, 18 were approved by the Udall Foundation General Counsel. *Audit of the Stewardship of the Morris K. Udall and Steward L. Udall Foundation*, 110.