Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-002634 09/23/2025

HONORABLE JENNIFER RYAN-TOUHILL

CLERK OF THE COURT
C. Lockhart
Deputy

THOMAS J GUSICH

JONATHAN A DESSAULES

v.

SUN CITY GRAND COMMUNITY ASSOCIATION INC

LAUREN ELLIOTT STINE

CURTIS S EKMARK
DANIEL G ROBERTS
JUDGE RYAN-TOUHILL
DOCKET CV TX

RULING

Before the Court is Defendant's August 1, 2025, *Application for Attorneys' Fees and Costs*, Plaintiff's August 20, 2025, *Response in Opposition to Defendant's Application for Attorneys' Fees*, and Defendant's September 4, 2025, *Reply in Support of Defendant's Application for Attorney' Fees*. Good cause appearing,

IT IS ORDERED awarding Defendant $355.85 in taxable costs.

Analysis

On January 22, 2025, Plaintiff filed suit against Defendant Sun City Grand Community (Defendant or HOA) and an amended complaint on February 20, 2025. In a prior Ruling, the Court summarized Plaintiff's claims. Defendant did not file an answer but instead moved to dismiss, which this Court granted. The Court now decides attorneys' fees after considering the parties' pleadings, attachments, legal authority, and the facts of the case.

Defendant moves for attorneys' fees under Section 15.9 of the CC&Rs, A.R.S. § 33-1813(A)(4)(f), and A.R.S. §§ 12-341 and -341.01.

> Section 15.9 is under Article XV, "General Provisions," and states:
>
> Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in the Governing Documents, the prevailing party is such action shall be entitled to recover from the other party thereto as part of the judgment, attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefited Assessment[1] with respect to the Lot(s) involved in the action.

Response to Plaintiff's Application for a Preliminary Injunction, Ex. 1, p. 42. A.R.S. § 33-1813(A)(4)(f) states, "if a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs." Finally, A.R.S. § 12-341.01 allows the court to award reasonable attorney fees to the successful party. *Associated Inem. Corp. v. Warner*, 143 Ariz. 567, 569 (1985).

The Court finds Defendant is entitled to fees. The Court will determine what is reasonable.

Defendant requests fees totaling $353,388.00.[2] The amount requested is supported by the declaration of their attorneys, Lauren Elliot Stine and Curtis S. Ekmark. Plaintiff opposes, arguing the fees are unreasonable, excessive, and unwarranted.

The Court turns to our *China Doll* case, which provides useful language. *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183 (App. 1983). First, the appellate court noted "that the award of fees is one way to discourage the filing of frivolous or meritless claims." *Id*. at 186. The court then addressed, as a "beginning point," the actual fee charged by the attorney. *Id*. at 187. However, the court "is not bound by the agreement between the parties." *Id.* at 188. Noting the trial court's discretion, the appellate court reiterated that not only might the hourly rate be unreasonable, "the amount of hours claimed may also be unreasonable." *Id*. Beyond the referenced language, this Court considers the following factors: (1) the qualities of the attorney; (2) the work itself, including difficulty and importance; (3) the work performed; and (4) the result. *Id*. at 187. In reaching the decision in this Ruling, the Court notes it has the inherent right to award Defendant some, but not all, of the requested fees. *Lee v. ING Investment Mgmt., LLC*, 240 Ariz. 158, 161, ¶ 13 (App. 2016).

[1] Separately defined in Section 9.8; not applicable here.
[2] Quarles & Brady billed $295,140.00, CHDB billed $24,205.50, and Ekmark billed $34,042.50.

Attorney Qualifications

The Court finds that Defendants' attorneys are qualified; Plaintiff does not argue that the attorneys lack qualifications but, instead, that the hourly rates are excessive. Defendant's lead counsel, Ms. Stine, has practiced law for 18 years and is a partner at Quarles & Brady, a national law firm. Co-counsel, Mr. Roberts, has practiced law for 9 years and also charged the same rate charged by Ms. Stine.

Counsel's affidavit states that Mr. Roberts worked with Ms. Stine "on the Association's strategy," drafting and revising briefs, legal research, trial preparation, etc., along with "other tasks related to assisting me in defending the Association." *Declaration of Lauren Elliot Stine* [ ], p. 3, ¶ 5. Setting aside the hourly rate for a moment, the Court questions why Mr. Roberts, a partner at the firm, was necessary to "assist" the lead attorney, including performing legal research, which could have been done by an associate or paralegal. Moreover, Mr. Roberts' work on the case exceeded that of Ms. Stine by roughly $46k.

Ms. Stine's affidavit states that an associate at the firm—Mr. Contrera—also worked on the case. Mr. Contrera graduated from law school in 2024, and charges $455.00 per hour. Mr. Contrera only billed approximately $9k less than the lead attorney, Ms. Stine. Finally, the firm's paralegal, Carla Walters, bills at $385.00 per hour, and charged $16,670.50 in fees.

Prior to Quarles & Brady working on the case, Defendant hired (or retained) Curtis Ekmark for representation. Mr. Ekmark worked at CHDB and then opened his own firm. Mr. Ekmark worked on the case for four months, including collaborating with litigation counsel. Mr. Ekmark has practiced law for 33 years and charges $495.00 per hour. Also with Mr. Ekmark's firm, Courtney Pecor worked on the case. Mr. Ekmark's affidavit contains no information on Ms. Pecor's education or years of practice; Ms. Pecor charges $470.00 per hour. Mr. Ekmark's affidavit does not address the monthly retainer the HOA allegedly pays to him.[3]

The Court finds no dispute over the quality of the attorneys or paralegal; the dispute is over the hourly rate, which the Court will address, later, along with the work performed.

The Case Itself

The case involved a dispute between Plaintiff, who was removed from the HOA Board of Directors, and the HOA. Plaintiff requested relief from the Court, including, essentially, reinstating him on the Board, voiding conduct standards applicable to board members only, cease

[3] In *Reply*, Mr. Ekmark asserted he does not receive a monthly retainer.

excluding Plaintiff from meetings, and attorneys' fees and costs. The Court does not find that the dispute was either overly difficult or, for that matter, of importance to anyone besides the parties. Plaintiff, to an extent, assists Defendant in his response by arguing, "The truth and record reflect that Tom lodged novel legal issues without precedent, two of which the Association did not successfully defeat on the merits." *Response,* p. 2, ¶ 2. Despite Plaintiff's concession on this issue, the Court remains unpersuaded.

The purported novel issue dealt with whether email signatures or responses to email solicitations counted as signatures for purpose of a recall election. *See, e.g.,* A.R.S. § 33-1813. The parties' dispute over the recall effort encompasses a large part of fees incurred before Plaintiff filed suit and the beginning of the case, before Defendant then relied upon the CC&Rs and Title 10 to justify its actions. The Court agrees with Plaintiff that the Court did not decide the merits of either party's argument regarding the initial process for a recall election, because this Court found:

> Plaintiff also neglects to consider the first sentence of A.R.S. § 33-1813(A) in its entirety: this statute governs removal by petition, not removal by other means. What the statute clarifies is that an HOA cannot, for example, refuse to call a special meeting upon receipt of a petition, cannot hold a meeting on the petition without a quorum, or allow ineligible people to vote on the petition simply because the HOA's declarations or bylaws allow it. It does not eliminate other processes for removal of a director. Plaintiff provides this Court with no authority to the contrary.
>
> Here, Title 10 does not conflict with Title 33 and relevant case law recognizes the interplay of the statutes. For example, in *McNally*, the court stated, "As a member of the Board, Arizona law requires McNally to participate in managing the affairs of the Association. A.R.S. § 10-3801(B)[.]" *McNally v. Sun Lakes Homeowners Ass'n #1, Inc.*, 241 Ariz. 1, 3, ¶ 13 (App.. 2016) The court also stated, "For example, the Association could have sought to remove McNally from the Board by filing a judicial removal actions. *See* A.R.S. § 10-3810(A)[.]" *McNally v. Sun Lakes Homeowners Ass'n #1, Inc.*, 241 Ariz. 1, 4, ¶ 20 (App.. 2016)(quotation omitted). In a footnote, the court noted that the board could have removed McNally under A.R.S. § 10-3808(A) if there was no conflict with the association's bylaws. In other words, *McNally* is replete with references to Title 10 while, at the same time, referencing Title 33.
>
> Defendant's bylaws do not contain language that only allows for removal of a board member through a recall election. The applicable bylaws are more generous and do not conflict with Arizona law: as long as a majority of members vote at a meeting for which proper notice was issued, a director may be removed.

> Defendant followed their own bylaws by allowing member vote on Plaintiff's removal from the HOA after providing notice to the membership.

Ruling, filed 07/11/2025, p. 6, ¶¶ 3-5. The Court further found:

> What Plaintiff appears to dispute is whether the petition (in whatever undefined format) met the requirements of A.R.S. § 33-1813(A)(4)(b). That is a dispute not resolved through the MTD. But the Court need not consider the sufficiency of the signatures (e.g., ten percent of eligible voters), because the membership could vote to remove Plaintiff consistent with the bylaws and Title 10.

Id. at pp. 7-8, ¶¶ 5, 1. Regarding both the recall election (i.e., petitions) and the Sun City Grand Standards, the Court declined to enter an advisory opinion. While the Court does not find these disputed issues were "novel," the Court agrees that it declined to substantively address the merits of Plaintiff's claims referenced above. Likewise, the Court does not agree that the issues presented were "highly complex," as claimed by Defendant's counsel. *Reply*, p. 2, ¶ 4. The Court has no opinion on whether Plaintiff's suit caused an "existential threat" to the HOA.

The Result

The result achieved is obvious: Defendant prevailed because the Court dismissed the case. But Defendant's achievement was not clean or straightforward—the Court agrees with Plaintiff that Defendant originally proceeded under A.R.S. § 33-1813 and later presented argument under Title 10 and reliance upon the CC&Rs (bylaws). Title 10, along with the bylaws, provided Defendant with the necessary authority to remove Plaintiff from the board. "We know of no public policy that allows attorneys to churn cases to generate fees beyond those reasonably necessary to successfully terminate the case." *ABC Supply, Inc., v. Edwards*, 191 Ariz. 48, 53 (App. 1996). Defendant is not entitled to all of the fees requested; the Court now analyzes the hourly rate and then will consider the work performed.

Hourly Rates

The Court will not hold anyone in suspense: the rates are too high. The Court is unpersuaded by Defendant's argument that the rates are reasonable because that is what the client agreed to pay. "Either a fixed or contingent fee, proper when contracted for, may later turn out to be excessive." *Matter of Swartz*, 141 Ariz. 266, 273 (1984).

Every three years the Arizona State Bar publishes their Economics of Law Practice in Arizona. The most recent edition is from 2022; after research, the Court cannot locate a more recent version. The publication contains all sorts of useful information, including the "typical" rates charged per hour, based upon experience. Relevant is the following:

- Only 3% of attorneys practicing 5 years or less charge $400/hour or more. The vast majority of attorneys with 5 years or less experience charge between $250-274/hour.
    - Mr. Contrera has practiced law less than one year yet charged $455/hour.
- 12.2% of attorneys practicing between 5-9 years charge $400/hour or more. The vast majority of attorneys within this level charge between $275-299/hour.
    - Mr. Roberts has practiced law for 9 years yet charged $620/hour.
- 16.8% of attorneys practicing between 10-19 years charge $400/hour or more. This is the highest percentage. 12.1% of the attorneys charge between $300-324/hour.
    - Ms. Stine has practiced law for 18 years and charged a "reduced" rate of $620/hour.
- 37.0% of attorneys practicing 30 years or longer charge $400/hour or more. This is the highest percentage. 10.2% of attorneys charge between $375-399/hour.
    - Mr. Ekmark has practiced law for 32 years and charged $495/hour.
- The Court has no information supporting Courtney Pecor's hourly rate. She charged the client $470/hour. [4]
- Quarles & Brady has 13 offices throughout the United States and roughly 520 attorneys.[5]
    - The average hourly billing rate at firms with 100 or more attorneys is $422.00.
    - The median hourly billing rate at firms with 100 or more attorneys is $388.00.
- Ekmark Pecor Law has two attorneys.[6]
    - The average hourly billing rate at firms with 2-3 attorneys is $337.00.
    - The median hourly billing rate at firms with 2-3 attorneys is $329.00.

See State Bar of Arizona, *Economics of Law Practice in Arizona*, June 2022, pp. 45, 49.

When determining what is a reasonable hourly rate, this Court has discretion. Like our federal counterparts, this Court would look to the market rates in the same community "for similar work performed by attorneys of comparable skill, experience, and reputation." *Schwarz v. Sec'y of Health & Human Servs.,* 73 F.3d 895, 908 (9th Cir. 1995)(internal citation omitted). Defendant has the burden of proving the rates charged are reasonable: "To inform and assist the court in the exercise of discretion, the burden is on the fee applicant to procedure satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008)(internal citation omitted). *See also Talking Rock Land, LLC v. Inscription Canyon Ranch, LP*, 257 Ariz. 267, ¶ 10 (App. 2024)("Under Ethical Rule 1.5, one factor to consider when determining the reasonableness

[4] As stated, the Court has no information showing when Ms. Pecor graduated law school or how long she has practiced law, including in the specific area for this suit.
[5] www.quarles.com
[6] www.ekmarkpecorlaw.com

of a fee is the fee customarily charged in the locality for similar legal services. Ariz. R. Sup. Ct. 42, ER 1.5(a)(3).")

Defendant provided the Court with no evidence beyond the attorneys' own affidavits to support the high hourly rates charged here. That is insufficient. However, Plaintiff provided the Court with an affidavit from Kevin Harper, an Arizona attorney with Harper Hall PLC. *Response*, Ex. E. Mr. Harper has practiced law for 27 years, "with substantial experience in homeowners association disputes[,]" and charges $400/hour. *Id*. Mr. Harper attested that another attorney in his same firm with the same years of practice also charges $400/hour. Similarly, Mr. Wood, one of Plaintiff's attorneys, has practiced law for 24 years and charges $385/hour. Plaintiff's attorneys' law firm billed an associate (2024 graduate) at $225/hour. The rates sought by Defendant's counsel are not consistent with prevailing market rates in Arizona and Defendant has not presented this Court with competent evidence that supports the requested fees. *See, e.g., McDowell Mountain Ranch Cmty. Ass'n, Inc., v. Simons*, 216 Ariz. 266, 270 (App. 2007); *Elson Dev. Co. v. Ariz. Sav. & Loan Ass'n*, 99 Ariz. 217, 223 (1965).

IT IS ORDERED reducing the hourly rate for attorneys as follows:

- Mr. Contrera $250.00.
- Mr. Roberts $400.00.
- Ms. Stine $400.00.
- Ms. Pecor $250.00.

The Court will not reduce Mr. Ekmark's hourly rate. The Court finds the rates, above, along with the rates from Mr. Ekmark, reasonable.

The Work Performed

The Court first addresses billing by Mr. Ekmark. Mr. Ekmark provide the Court with an affidavit. *Application*, Ex. B. Mr. Ekmark stated he first worked on the case when employed with CHDB Law. CHDB billed for time between October 28, 2024, and February 28, 2025, four months. On March 1, 2025, Mr. Ekmark worked on the case under his own firm, billing for time from March 1, 2025, to July 31, 2025, five months. For the nine months' worth of work—while there were other attorneys on the case—Mr. Ekmark seeks $58,248.00.

Plaintiff properly challenges most of the charges. It matters little to the Court whether Defendant agreed to pay Mr. Ekmark to read emails Defendant sent to and from litigation counsel—that is between the client and the firm. That does not mean, however, this Court will pass those fees along to Plaintiff.

Mr. Ekmark's (and Ms. Pecor's) billings do not clearly differentiate those tasks related to enforcing the CC&Rs and those related to enforcing a contract between the parties. For example, on October 29, 2024, Mr. Ekmark billed the HOA for "work[ing] on board code of conduct issue." Was the Board trying to enforce the CC&Rs/Code of Conduct against Plaintiff? Did the Board file suit on this? No. So what does this billing entry mean? The billing statement is replete with similar charges, vague in nature or not tied to the litigation. Section 15.9 of the CC&Rs, consequently, does not assist Defendant's claim for attorneys' fees for most of what happened prior to the lawsuit.

Regarding excessiveness, the Court finds that Mr. Ekmark's firm had multiple emails, daily, about "mediation." For example, on November 13, 2024, Mr. Ekmark billed roughly $500 to review multiple emails about mediation, excluding the $100 phone call he had with the Board President. Then, six days later, Mr. Ekmark billed almost $250 to read another email about mediation and draft a message to the Board President (excluding other emails regarding mediation sent that same day). During this time, Plaintiff alleged the HOA failed to comply with Arizona law (e.g., recall election) and improperly excluded Plaintiff from executive board meetings while Plaintiff sat as a board member. The Court did not decide the case based upon the HOA's actions prior to the February 2025, removal via a properly-noticed meeting and recall election or the board's exclusion of Plaintiff from meetings.

A large portion of the fees charged by Mr. Ekmark's firm from October 28, 2024, until January 23, 2025, appear to be related to what counsel has called "Tom issues." Clearly, the HOA sought an out-of-court resolution to the dispute, evidenced by multiple emails regarding mediation. But the HOA is not the one who filed suit—honorably, the HOA wanted to de-escalate the situation, act consistently with the CC&Rs and Arizona law, and avoid court. Plaintiff did not agree, to his detriment. That does not automatically mean, however, that Plaintiff has to pay for fees incurred by Defendant related to the HOA's efforts, including the efforts to recall Plaintiff and keep him out of executive board meetings or otherwise deal with "Tom issues." The Court will not make Plaintiff pay fees for his legitimate dispute with the HOA (e.g., a member is entitled to records) and because Defendant has failed to identify a legal basis tying together fees incurred prior to the lawsuit with Plaintiff's subsequent liability, Defendant's request for those fees fails. The burden is not upon the Court to identify the basis for the fees charged and the Court finds that Defendant has not presented clarity to this Court that justifies awarding all fees incurred prior to the lawsuit.

As stated, part of the "Tom issues" included Plaintiff's requests for documents allowed by statute. A.R.S. § 33-1805(A) requires an HOA to make association records "reasonably available for examination[.]" The HOA is explicitly precluded from charging a member for providing the material but the HOA "may charge a fee for making copies of not more than fifteen cents per page." *Id*. A portion of Plaintiff's requested documents included emails, signatures, petition(s),

or any other relevant document pertaining to Plaintiff's recall. During that timeframe, Defendant proceeded on a theory that the HOA could recall Plaintiff via petition/recall election under Arizona law. No one was discussing Title 10 or the bylaws.

The Court understands and does not dispute Mr. Ekmark's involvement at the beginning of the lawsuit, including emailing the client (the HOA) about the lawsuit. Some of the billing is clerical (e.g., reviewing email regarding service) and some is warranted. From January 23, 2025, through February 2, 2025, the Court finds reasonable fees for reimbursement totaling $2,080.00.

After February 2, 2025, the Court becomes troubled by the involvement of five attorneys—plus a paralegal—on this case. That is excessive. From February 2, 2025, through July 28, 2025, the Court finds that Mr. Ekmark performed unnecessary, duplicative tasks. The Court has no explanation for why Mr. Ekmark read so many emails between litigation counsel (Quarles & Brady) and others. If the client agreed to pay for this constant monitoring, that is a decision between the client and Mr. Ekmark. But other than a few tasks, the Court is unclear as to Mr. Ekmark's role in the litigation that required his firm to charge significant fees. For example, it makes sense that Mr. Ekmark's firm would continue to advise the community, including drafting emails to the membership or reviewing drafted emails from others, e.g., the Board President. It also makes sense that Mr. Ekmark might have to consult with litigation counsel about the client's method of communication, expectations for board members, etc. Of course, for Mr. Ekmark to assist with these tasks, Mr. Ekmark would need a status update from litigation counsel or would need to provide litigation counsel with advice. That could have occurred through a phone call, which Mr. Ekmark properly billed his client. For this timeframe, the Court finds reasonable fees for reimbursement totaling $5,294.00.

For the reasons set forth in this Ruling,

IT IS ORDERED Plaintiff shall pay Defendant's attorneys' fees to CHDB and Mr. Ekmark's firm in the total amount of $7,374.00.

The Court now turns to litigation counsel, Quarles & Brady. The firm, on Defendant's behalf, seeks $295k in attorneys' fees. The Court will reduce the award.

As stated, the client is free to enter into any agreement it so chooses with legal counsel. If the client (Defendant HOA) chose not to use their insurance coverage for litigation counsel but instead hired a top national firm, nothing prevented the HOA from doing so. However, for purposes of an attorneys' fee award, this Court looks to the prevailing market rate for attorneys similarly situated. *Those* are the fees the Court will order Plaintiff to pay.

The Court spent time reviewing the billing statements provided; the Court will illustrate some fees charged to the client that are not passed on to Plaintiff. For example, the Court will not

order Plaintiff to pay fees related to the requested documents to which he was statutorily entitled. The Court will also not order Plaintiff to pay fees for time spent reviewing signatures for a recall petition prior to the lawsuit. The Court finds these examples are obvious omissions. Less obvious, but no less noteworthy, are charges by three attorneys in the same firm for similar (or the same) work on an HOA case plus multiple charges for strategizing that same, duplicative work. The Court does not refer to a draft of a motion by an associate attorney, then revised by a partner. The Court instead refers to the plethora of charges wherein both the associate and the partner wrote, revised, researched, rewrote, revised, and again researched the same issue(s). Additionally, the Court found duplicative entries not only from multiple attorneys within the same firm but also by the same attorney: on April 25, 2025, Mr. Roberts spent 0.30 to "[r]eview and analyze Plaintiffs' response to motion to dismiss." However, on April 30, 2025, Mr. Roberts spent 0.50 to "[r]eview and analyze Plaintiffs' response to motion to dismiss." Likewise, on April 30, 2025, Mr. Contrera spent 1.70 to "[r]eview and analyze Plaintiffs' response to motion to dismiss and being drafting reply brief." Mr. Roberts also billed 0.20 to draft a notice of extension to file a reply: this is an acceptable client charge but not one that will be passed on to Plaintiff. The Court will not require Plaintiff to pay for Ms. Walters to "familiarize self with CaseLines in preparation for hearing (.8)." In August 2021, our Supreme Court issued an Administrative Order for the digital submission of exhibits and Maricopa County Superior Court has used CaseLines for at least two years. Whether or not Ms. Walters knows how to use the program is irrelevant—the Court perceives the firm's need to familiarize itself with the program as a strictly clerical duty.

The above paragraph does not set out the Court's reasoning for declining to pass along to Plaintiff most of Defendant's fees; the Court only provides the explanation as a courtesy to assist the parties in understanding the Court's reasoning and exercise of its discretion. *Talking Rock Land, LLC v. Inscription Canyon Ranch, LP*, 257 Ariz. 267, ¶ 10 (App. 2024)(The Court has no duty to provide "an express finding requirement for each disallowed entry in a fee request. No such findings are required by contract or statute. . . . So long as the record reflects a reasonable basis for the court's decision in awarding fees, there is no abuse of discretion.") Defendant may have questions regarding why the Court has declined to award the vast majority of the fees incurred: that is the purpose of this Ruling. Similarly, Plaintiff has a right to understand how the Court arrived at a reasonable dollar figure in awarding Defendant attorneys' fees.

For the reasons set forth in this Ruling,

IT IS ORDERED Plaintiff shall pay Defendant's attorneys' fees to Quarles & Brady in the total amount of $37,245.00.

IT IS FURTHER ORDERED granting the Application, in part, and awarding to Defendant their reasonable attorneys' fees in the amount of $44,619.00 against Defendant.

Plaintiff shall pay to Defendant interest on all sums set forth in this Ruling and due and owing at the statutory rate of 8.5% per annum until paid in full.

Because no further matters remain pending and judgment is entered under Rule 54(c),

IT IS ORDERED final judgment is entered in Defendant's favor and the case is dismissed in its entirety.

/s/ *Jennifer Ryan-Touhill*
HONORABLE JENNIFER RYAN-TOUHILL
JUDGE OF THE SUPERIOR COURT