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*Attorneys for Plaintiffs/Appellees Arizona Alliance for
Retired Americans, Inc. and Stephani Stephenson*

*Admitted below *Pro Hac Vice*

ARIZONA COURT OF APPEALS

DIVISION TWO

ARIZONA ALLIANCE OF RETIRED
AMERICANS, INC. and STEPHANI
STEPHENSON,

Plaintiffs/Appellees,

No. 2CA-CV2022-0136

Cochise County Superior Court Case
No. S0200CV202200518

v.

TOM CROSBY, ANN ENGLISH, and PEGGY JUDD, in their official capacities as the Cochise County Board of Supervisors; DAVID STEVENS, in his official capacity as the Cochise County Recorder; and LISA MARRA, in her official capacity as the Cochise County Elections Director,

Defendants/Appellants.

**APPELLEES' MOTION TO
DISMISS APPEAL PURSUANT
TO ARIZONA RULE OF CIVIL
APPELLATE PROCEDURE 15(A)**

Plaintiff-Appellees Arizona Alliance of Retired Americans, Inc., and Stephani Stephenson (“Appellees”) hereby move to dismiss this appeal pursuant to Arizona Rule of Civil Appellate Procedure 15(a)(1) for failure to timely file an opening brief.

In its November 10, 2022, Order, this Court ordered that Appellants’ Opening Brief “*shall be due no later than* 60 days after receipt of the record from superior court,” and stated that the matter “shall proceed as a non-expedited appeal according to the Rules of Civil Appellate Procedure, none of which is suspended[.]” [Nov. 10, 2022 Order](#) (emphasis added). The record on appeal was transmitted to this Court on December 8, 2022. See [ROA 01-46](#). All parties received notice of the transmittal of the record. [Ex. B at 2](#). Therefore, Appellants’ Opening Brief was due 60 days later, on February 6, 2023. But Defendant-Appellants David Stevens, Tom Crosby, Ann English, Peggy Judd, and Lisa Marra (“Appellants”) waited to file their opening appellant brief until a full week after that clear deadline, on Monday, February

13. Appellants' Opening Brief is untimely and should be dismissed under ARCAP 15(a)(1).

After Appellants filed a Notice of Substitution of Counsel and Motion to Include Additional Transcripts on February 8, which seemed to indicate that Appellants intended to pursue this appeal, Appellees' counsel emailed Appellants' counsel to point out that the deadline to file a brief had passed per this Court's November 10, 2022 Order. Appellees responded that "Division 2 has the due date listed as February 13[.]" [Ex. A](#). While the Court's website does list a February 13 filing deadline, that does not supersede the relevant Court Order, under which the deadline for filing an opening brief was February 6. Further, even if the record were transmitted on December 12—the last day for transmission, as noted on the Court's website, *see* [Ex. B at 2](#)—60 days later would be February 10, not February 13. It is each party's responsibility to ensure they meet this Court's deadlines; they cannot blindly rely on dates listed on the Court's website. *See also* [Ex. B at 4](#) (noting as "**Disclaimer**" that "Court personnel have made every effort to ensure that the information provided at this web site is accurate and timely," but "[t]he court is not liable for any inaccuracy. . . .").

Appellants should not be permitted to ignore this Court's filing deadline, especially after a generous period of 60 days in which to file an opening brief. Appellants initially brought this appeal seeking an expedited briefing schedule and expedited review, with a "decision rendered as immediately as possible[.]" [Appellants'](#)

[Nov. 10, 2022 Mot. for a Procedural Order](#). When the Court declined to expedite the appeal, however, Appellants sat on their hands and failed to meet this Court's deadline. If Appellants needed additional time to file their opening brief, they should have sought an extension. They should not now be permitted to revive this untimely appeal.

For the foregoing reasons, Appellees respectfully request that the Court dismiss this appeal pursuant to Arizona Rule of Civil Procedure 15(a). Appellees also respectfully request that the Court stay the deadline for Appellees' answering brief pending the resolution of this Motion.

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DATED this 15th day of February, 2023.

HERRERA ARELLANO LLP

By: /s/ Jillian L. Andrews

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Jillian L. Andrews (034611)
Austin T. Marshall (036582)
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*Admitted below *pro hac vice*

Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the foregoing Motion to Dismiss Appeal Pursuant to ARCAP 15(a) was e-filed with the Clerk of the Arizona Court of Appeals, Division Two on February 15, 2023, and that a copy was served via email on this same date to the following:

Bryan Blehm
bryan@blehmlegal.com
BLEHM LAW, PLLC
*Counsel for Defendants Tom Crosby,
Ann English, and Peggy Judd*

Alexander Kolodin
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Veronica Lucero
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DAVILLIER LAW GROUP, LLC
Counsel for Defendant David Stevens

Christina Estes-Werther
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Aaron Arnson
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Trish Stuhan
trish@piercecoleman.com
PIERCE COLEMAN PLLC
Counsel for Defendant Lisa Marra

/s/ Jillian L. Andrews

EXHIBIT A

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From: [Veronica Lucero](#)
To: jillian@ha-firm.com; [Yuka Bacchus](#); [Alexander Kolodin](#)
Cc: bryan@blehmlegal.com; christina@piercecoleman.com; trish@piercecoleman.com; "Aaron Arnson"; [Aria Branch](#); [Lali Madduri](#); [Christina Ford](#); [Daniel Cohen](#); [Mollie DiBrell](#); [roy](#); daniel@ha-firm.com; [Austin Marshall](#)
Subject: Re: 2CA-CV2022-0136 AARA v. CROSBY
Date: Friday, February 10, 2023 1:09:21 PM

Dear all,

Division 2 has the due date listed as February 13, and I've already confirmed that date with the clerk. You can call the clerk and confirm as well. We plan to file on Monday.

Kind regards,
Veronica

Veronica Lucero

Attorney

Davillier Law Group LLC

4105 N. 20th St., Ste. 110

Phoenix, AZ 85016

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From: Jillian Andrews <jillian@ha-firm.com>

Sent: Friday, February 10, 2023 10:55 AM

To: [Yuka Bacchus](mailto:ybacchus@davillierlawgroup.com) <ybacchus@davillierlawgroup.com>; [Alexander Kolodin](mailto:akolodin@davillierlawgroup.com) <akolodin@davillierlawgroup.com>; [Veronica Lucero](mailto:vlucero@davillierlawgroup.com) <vlucero@davillierlawgroup.com>

Cc: bryan@blehmlegal.com <bryan@blehmlegal.com>; christina@piercecoleman.com <christina@piercecoleman.com>; trish@piercecoleman.com <trish@piercecoleman.com>; 'Aaron Arnson' <aaron@piercecoleman.com>; [Aria Branch](mailto:abranche@elias.law) <abranche@elias.law>; [Lali Madduri](mailto:lmadduri@elias.law) <lmadduri@elias.law>; [Christina Ford](mailto:cford@elias.law) <cford@elias.law>; [Daniel Cohen](mailto:dcohen@elias.law) <dcohen@elias.law>; [Mollie DiBrell](mailto:mdibrell@elias.law) <mdibrell@elias.law>; [Roy Herrera](mailto:roy@ha-firm.com) <roy@ha-firm.com>; [Daniel Arellano](mailto:daniel@ha-firm.com) <daniel@ha-firm.com>; [Austin Marshall](mailto:austin@ha-firm.com) <austin@ha-firm.com>

Subject: RE: 2CA-CV2022-0136 AARA v. CROSBY

Counsel,

Thank you. Given that you've recently filed a Notice of Substitution of Counsel and Motion to Include Additional Transcripts in this case, it appears you are planning to file a brief in this appeal. Is that correct?

We are inquiring because the deadline for Appellants to file their opening brief has passed, and thus any brief filed would be untimely. Per the Court's 11/10/22 Order, Appellants' Opening Brief was due

“no later than 60 days after receipt of the record from superior court.” The record was filed on December 8, so the 60-day deadline to file the Opening Brief was February 6. See Ariz. R. of Civ. App. P. 5(a); Ariz. R. Civ. P. 6(a).

Please let us know if you'd like to discuss.

Thank you,

Jillian L. Andrews
Herrera Arellano LLP
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Phoenix, AZ 85004
480-688-4657

From: Yuka Bacchus <ybacchus@davillierlawgroup.com>

Sent: Thursday, February 9, 2023 3:15 PM

To: Roy Herrera <roy@ha-firm.com>; Daniel Arellano <daniel@ha-firm.com>; Jillian Andrews <jillian@ha-firm.com>; Austin Marshall <austin@ha-firm.com>; Aria Branch <abranch@elias.law>; Imadduri@elias.law; Christina Ford <cford@elias.law>; Mollie DiBrell <mdibrell@elias.law>; Daniel Cohen <dcohen@elias.law>; christina@piercecoleman.com; trish@piercecoleman.com; aaron@piercecoleman.com; Bryan Blehm <bryan@blehmlegal.com>

Cc: Alexander Kolodin <akolodin@davillierlawgroup.com>; Veronica Lucero <vlucero@davillierlawgroup.com>

Subject: Re: 2CA-CV2022-0136 AARA v. CROSBY

Hello all,

Please see attached that was filed. Thank you.

Yuka M. Bacchus
Paralegal/Legal Assistant

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Phoenix, AZ 85016

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From: Yuka Bacchus

Sent: Wednesday, February 8, 2023 1:19 PM

To: Roy Herrera <roy@ha-firm.com>; Daniel Arellano <daniel@ha-firm.com>; Jillian Andrews <jillian@ha-firm.com>; Austin Marshall <austin@ha-firm.com>; Aria Branch <abranche@elias.law>; lmadduri@elias.law <lmadduri@elias.law>; Christina Ford <cford@elias.law>; Mollie DiBrell <mdibrell@elias.law>; Daniel Cohen <dcohen@elias.law>

Cc: Alexander Kolodin <akolodin@davillierlawgroup.com>; Veronica Lucero <vlucero@davillierlawgroup.com>

Subject: 2CA-CV2022-0136 AARA v. CROSBY

Please see attached that was filed. Thank you.

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EXHIBIT B

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2 CA-CV 2022-0136 EXPEDITED ELECTION MATTER

Department: A
County: Cochise
Cause Numbers: CV202200518

Casey F. McGinley

At Issue Number: 2022-04661

Party/Attorney Information	
Party Information	Attorney Information
<p>ARIZONA ALLIANCE FOR RETIRED AMERICANS, INC. STEPHANI STEPHENSON Appellees</p>	<p>Daniel A. Arellano Herrera Arellano LLP Retained</p> <p>Jillian Andrews Herrera Arellano LLP Retained</p> <p>Austin Marshall Herrera Arellano LLP Retained</p> <p>Mollie DiBrell Co Counsel</p>
<p>ANN ENGLISH DAVID STEVENS PEGGY JUDD TOM CROSBY Appellants</p>	<p>Veronica Lucero Davillier Law Group, LLC Retained</p> <p>Alexander Kolodin Davillier Law Group, LLC Retained</p>
<p>LISA MARA Appellants</p>	<p>Christina Estes-Werther Pierce Coleman, PLLC Retained</p> <p>Trish Stuhan Curtis, Goodwin, Sullivan, Udall & Schwab, PLC Retained</p> <p>Aaron Arnson Pierce Coleman PLLC Retained</p>

Filings, Dues and Continuances					
Document Type	Due Date	Document Title	Filing Date	Attorney/Firm	Type
Motion		Motion for a Procedural Order Expedited Briefing Schedule and Consideration	11/10/2022	Kolodin, Alexander	Filing
Notice		Notice of Lodging of As-Filed Copy of Notice of Appeal	11/10/2022	Kolodin, Alexander	Filing
Motion		Motion for a Procedural Order To Dispense With Hyperlink Requirement	11/10/2022	Kolodin, Alexander	Filing
Notice		Notice of Opposition to Motion for Procedural Order re Expedited Briefing	11/10/2022	Andrews , Jillian	Filing
Certificate of Service		Certificate of Service	11/10/2022	Andrews , Jillian	Filing
Notice		Notice of Appellees Position on Motions for Procedural Orders	11/10/2022	Kolodin, Alexander	Filing
Notice of Appeal		COPY OF NOTICE OF APPEAL FILE STAMPED 11/9/2022	11/10/2022	Kolodin, Alexander	Filing
Response		Response in Opposition to Motion for Procedural Order re Expedited Consideration	11/10/2022	Andrews , Jillian	Filing
Notice		Notice of Denial of Motion to Transfer	11/10/2022	Kolodin, Alexander	Filing
Opening Brief		Appellants Opening Brief (STRICKEN PER 11/10/2022 ORDER)	11/10/2022		Filing
Record	12/12/2022	NOTIFICATION OF ELECTRONIC RECORD	12/08/2022		Filing
Notice of Change of Counsel		Notice of Substitution of Counsel	02/08/2023	Lucero, Veronica	Filing
Record	12/12/2022	Record	12/08/2022		Due
Opening Brief	02/13/2023	Opening Brief		Kolodin, Alexander	Due

Calendar and Agenda Information

OA Request Due	OA Filed	OA Request By	OA Request Result	OA Date	OA Time	OA Type

Decision Information

Decision Type	Decision Date	Result Type

Mandate

Mandate Date	Mandate Vacated Date

MR/PR Outcome			
MR Outcome	MR Outcome Date	PR Outcome	PR Outcome Date
Proceedings			
Type	Date	Proceeding	
Receipts	11/14/2022	Appellants / ANN ENGLISH, et al; \$280.00; Receipt Number: 9679; Check Rec'd from: DAVILLIER LAW GROUP (ALEXANDER KOLODIN) for ANN ENGLISH, et al	
Record	12/08/2022	Filed: NOTIFICATION OF ELECTRONIC RECORD. (Filed by Pima County Superior Court)	
Briefs	11/10/2022	Filed: Appellants Opening Brief. (Filed by Alexander Kolodin) (e-filer) (STRICKEN PER 11/10/2022 ORDER)	
All Other	11/10/2022	Filed: Motion for a Procedural Order Expedited Briefing Schedule and Consideration. (Filed by Alexander Kolodin) (e-filer)	
All Other	11/10/2022	Filed: Notice of Lodging of As-Filed Copy of Notice of Appeal. (Filed by Alexander Kolodin) (e-filer)	
All Other	11/10/2022	Filed: Motion for a Procedural Order To Dispense With Hyperlink Requirement. (Filed by Alexander Kolodin) (e-filer)	
All Other	11/10/2022	Filed: Notice of Opposition to Motion for Procedural Order re Expedited Briefing. (Filed by Jillian Andrews) (e-filer)	
All Other	11/10/2022	Filed: Certificate of Service (Filed by Jillian Andrews) (e-filer)	
All Other	11/10/2022	Filed: Notice of Appellees Position on Motions for Procedural Orders. (Filed by Alexander Kolodin) (e-filer)	
All Other	11/10/2022	Filed: COPY OF NOTICE OF APPEAL FILE STAMPED 11/9/2022. (Filed by Alexander Kolodin)	
All Other	11/10/2022	Filed: Response in Opposition to Motion for Procedural Order re Expedited Consideration. (Filed by Jillian Andrews) (e-filer)	
All Other	11/10/2022	<p>The court having conducted a telephonic conference involving all parties on the joint Motion for a Procedural Order (Expedited Briefing Schedule and Consideration) filed by appellants Recorder David Stevens and Cochise County Board of Supervisors, at which hearing appellant Stevens conceded that Rule 10, Ariz. R. Civ. App. P. (expedited election appeals) is not applicable to this case, ORDERED: This motion is denied and the opening brief shall not be considered and, together with the appendix attached thereto, is stricken; FURTHER ORDERED: The Motion for a Procedural Order to Dispense with Hyperlink Requirement is denied as moot; FURTHER ORDERED: This matter shall proceed as a non-expedited appeal according to the Rules of Civil Appellate Procedure, none of which is suspended, and the record on appeal shall be transmitted to this court no later than December 12, 2022. FURTHER ORDERED: The court declines appellant Steven's request to treat the motion and the related filings as a special action; FURTHER ORDERED: Appellant(s)' Opening Brief shall be due no later than 60 days after receipt of the record from superior court. Judges Eppich and Staring concurring. Judge Brearcliffe: Dissents and would grant the Motion, accept the opening brief, and order an expedited briefing schedule. DATED: November 10, 2022 _____ Karl C. Eppich Presiding Judge</p>	

All Other	11/10/2022	Filed: Notice of Denial of Motion to Transfer. (Filed by Alexander Kolodin) (e-filer)
All Other	02/08/2023	Filed: Notice of Substitution of Counsel. (Filed by Veronica Lucero) (e-filer)

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