

**Court of Appeals, Division One**  
**Civil Appeal**

**1 CA-CV 13-0697**

**MARICOPA v. WHITE MTN**

<b>Appellate Case Information</b> Case Filed: 4-Dec-2013 Case Closed:	<b>Dept/Composition</b> <b>Dept D</b> Hon. Donn Kessler Hon. Michael J Brown Hon. Peter B Swann
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Consolidated with: 1 CA-CV 12-0831 1 CA-CV 14-0372

**Side 1. MARICOPA COUNTY; WILLIAM G. MONTGOMERY, Maricopa County Attorney, Defendant/Appellant**

(Litigant Group) MARICOPA COUNTY

- Maricopa County
- William G Montgomery  
AZ Bar No. 21246  
[Current Member]  
Admitted 10/29/01

**Attorneys for: Defendant/Appellant**

Thomas P Liddy, Esq. (AZ Bar No. 19384)  
Bruce P White, Esq. (AZ Bar No. 4802)  
Joseph I Vigil, Esq. (AZ Bar No. 18677)

**Side 2. WHITE MOUNTAIN HEALTH CENTER, INC., an Arizona non-profit corporation, Plaintiff/Appellee**

(Litigant Group) WHITE MOUNTAIN HEALTH CENTER INC

- White Mountain Health Center Inc

**Co-Counsel for: Plaintiff/Appellee**

Jeffrey S Kaufman, Esq. (AZ Bar No. 3269)  
Steven M White, Esq. (AZ Bar No. 20061)  
Ezekiel R Edwards, Esq. (NY Bar No. 4189304)  
Emma A Andersson, Esq. (CA Bar No. 260637)  
Daniel Joseph Pochoda, Esq. (AZ Bar No. 21979)  
Kelly J Flood, Esq. (AZ Bar No. 19772)

**Side 3. STATE OF ARIZONA, Intervenor/Appellee**

(Litigant Group) STATE OF ARIZONA

- State of Arizona
- Thomas C Horne  
AZ Bar No. 2951  
[Current Member]  
Admitted 4/22/72

**Attorney for: Intervenor/Appellee**

Charles A Grube, Esq. (AZ Bar No. 11511)

**CASE STATUS**

Dec 20, 2016....Decision Rendered

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CV2012-053585	Summary Judgment		Michael D Gordon, Authoring Judge of Order		

**2 OPEN DUE DATES**

**Motion for Reconsideration due** **Due By:** Wednesday, January 4, 2017

Re: OPINION (Affirmed in Part, Reversed in Part) Hon Donn Kessler - Author; Hon Peter B Swann - Concur; Hon Michael J Brown - Concur

**Petition for Review to ASC due** **Due By:** Thursday, January 19, 2017

Re: OPINION (Affirmed in Part, Reversed in Part) Hon Donn Kessler - Author; Hon Peter B Swann - Concur; Hon Michael J Brown - Concur

**Court of Appeals, Division One**  
**Civil Appeal**

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**CASE DECISION**

20-Dec-2016 **OPINION**

**Donn Kessler**.....Author  
**Peter Swann**.....Concur  
**Michael Brown**.....Concur

Filed: **20-Dec-2016** Mandate:

Decision Disposition
<b>Affirmed in Part</b> <b>Reversed in Part</b>

**DECISION APPLIES TO THE FOLLOWING OTHER CASE(S)**

<b>1 CA-CV 12-0831</b>	WHITE MTN v. MAR COUNTY
<b>1 CA-CV 14-0372</b>	WHITE MTN v. MAR COUNTY et al.

**47 PROCEEDING ENTRIES**

1. 4-Dec-2013 FILED: Motion for Stay of Judgment Pending Appeal of November 20, 2013 Final Judgment as Amended by the December 2, 2013 Minute Entry and Request for Expedited Ruling and Request for Oral Argument; Notice of Appeal; Certificate of Service; Exhibits (Appellants Maricopa County and William Montgomery) (filed in 1 CA-CV 13-0697 prior to consolidation with 1 CA-CV 12-0831)
2. 10-Dec-2013 ORDERED: consolidating the appeals in 1 CA-CV 12-0831 and 1 CA-CV 13-0697. The parties shall use the above caption on all future filings on appeal. FURTHER ORDERED: remanding these consolidated appeals until and through 12/20/13, to permit the superior court to resolve White Mountain's Motion to Amend 11/20/13 or 11/25/13 Judgment, filed on 12/4/13 ("Motion to Amend") and file a signed order or judgment (as appropriate reflecting that resolution. On or before 12/20/13, the parties shall file a copy of any such signed order or judgment with the Clerk of this court in these consolidated appeals or file a notice with the clerk of this court of the status of the Motion to Amend. If no such order or judgment or notice is filed by 12/20/13, jurisdiction will automatically revert in this court to determine appellate jurisdiction and for further proceedings. FURTHER ORDERED: during this remand, no response or reply shall be filed to the Motion for Stay. The court will set a briefing schedule on the Motion to Stay after 12/20/13. Hon Donn Kessler - Author
3. 12-Dec-2013 FILED: Notice Of Compliance With Order Of 12/10/2013; Certificate Of Service Of Notice Of Compliance With Order Of 12/10/2013 (Appellants Maricopa County et al.)
4. 31-Dec-2013 ORDERED: Appellee White Mountain Health Center to file response to County's Motion for Stay of Judgment on/before 1/15/2014. FURTHER ORDERED County may file reply on/before 1/23/2014. FURTHER ORDERED, if court desires to have oral argument, it will notify parties. FURTHER ORDERED, as part of briefing of Motion for Stay of Judgment, parties shall address whether any action of County is pending amending its zoning for medical marijuana dispensaries which might affect jurisdiction of appeals. FURTHER, staying any merits briefing on issues raised in 1 CA-CV 13-0697 until further order of this court. Hon Donn Kessler - Author
5. 14-Jan-2014 FILED: Response to County Defendants' Motion for Stay of Judgment Pending Appeal of November 20, 2013 Final Judgment Amended by The December 2, 2013 Minute Entry; Certificate of Service; Exhibits 1-3 (Appellee)
6. 29-Jan-2014 FILED: Notice of Change of Circumstances; Certificate of Service; Exhibit A (Appellee)
7. 26-Mar-2014 ORDERED: counsel shall not contact the panel members' chambers with inquires about the pending matters. Counsel shall direct future inquiries to the Clerk's Office at 602-542-4821. Hon Donn Kessler - Author
8. 31-Mar-2014 ORDERED: denying the Motion to Stay of Judgment. FURTHER ORDERED: denying as moot the request for oral argument and the request for expedited ruling on the motion for stay. FURTHER ORDERED: on or before 4/10/14 Appellants shall file a civil appeals docketing statement. FURTHER ORDERED: on or before 5/12/14, Appellant shall file their separate or consolidated opening briefs in 1 CA-CV 13-0697. FURTHER ORDERED: if any party require additional time to file briefs because of the need to order, prepare, and file with the Clerk of the Court transcripts of hearings held in the superior court, counsel shall file a motion for extension of time no later than ten days before their respective briefs are due to be filed. Hon Donn Kessler - Author
9. 10-Apr-2014 FILED: Civil Appeals Docketing Statement; Certificate of Service of Civil Appeals Docketing Statement; Exhibits (Appellant)
10. 1-May-2014 FILED: Appellants' Unopposed Motion for Extension of time to File Opening Brief; Certificate of Service; Exhibit (Appellant)
11. 2-May-2014 ORDERED: Appellants Maricopa County and William Montgomery and Intervenor/Appellant State of Arizona shall have until and through 6/11/14 to file their separate or consolidated opening brief(s) in 1 CA-CV 13-0697. FURTHER ORDERED: All other provisions of this Court's order filed 3/31/14 remain in effect. Hon Donn Kessler - Author
12. 11-Jun-2014 FILED: Appellants Maricopa County And William Montgomery's Opening Brief; Certificate of Compliance; Certificate of Service For County Defendants' Opening Brief (Appellant) (In Re 1 CA-CV 13-0697)

**Court of Appeals, Division One**  
**Civil Appeal**

**1 CA-CV 13-0697**

**MARICOPA v. WHITE MTN**

**47 PROCEEDING ENTRIES**

13. 18-Jul-2014 ORDERED: consolidating the appeal in 1 CA-CV 14-0372 with the previously consolidated appeals in 1 CA-CV 12-0831 and 1 CA-CV 13-0697. FURTHER ORDERED: opening brief in 1 CA-CV 14-0372 shall be filed on or before 9/2/14. The answering and any reply brief in 1 CA-CV 14-0372 shall be filed pursuant to Arizona Rule of Civil Appellate Procedure 15. All briefs shall also be served on counsel for amici curiae. Hon Donn Kessler - Author
14. 18-Jul-2014 FILED: Appellee's Unopposed Motion for Extension of Time to File Answering Brief; Certificate of Service (Appellee)
15. 23-Jul-2014 ORDERED: Appellee's Unopposed Motion for Extension of Time to File Answering Brief = GRANTED. Due date EXTENDED from Monday, 07-28-2014 to Wednesday, 08-27-2014. Nothing in this order affects the briefing schedule for 1 CA-CV 14-0372 set in this Court's Order filed 7/18/14. Hon Donn Kessler - Author
16. 1-Aug-2014 FILED: Notice of Errata; Certificate of Service (Appellee)
17. 27-Aug-2014 FILED: Appellee's Answering Brief; Certificate of Compliance; Certificate of Service (Appellee White Mountain Health)
18. 2-Sep-2014 FILED: Appellants Maricopa County and William Montgomery's Opening Brief relating to Attorney's Fees; Certificate of Compliance; Certificate of Service (Appellant)
19. 10-Sep-2014 FILED: Appellants' Motion For Extension Of Time To File Reply Brief Re 1 CA-CV 13-0697; Certificate Of Service Of Appellants' Motion For Extension Of Time To File Reply Brief Re 1 CA-CV 13- (Appellant)
20. 11-Sep-2014 ORDERED: Appellants' Motion For Extension Of Time To File Reply Brief Re 1 CA-CV 13-0697 = GRANTED. Due date EXTENDED from Monday, 09-22-2014 to Wednesday, 10-22-2014 Hon Donn Kessler - Author
21. 30-Sep-2014 ORDERED: White Mountain shall have until and through 11/12/14 to file its answering brief in 1 CA-CV 14-0372 in response to Appellants Maricopa County and William Montgomery's opening brief filed 9/2/14. Hon Donn Kessler - Author
22. 15-Oct-2014 FILED: Appellants Maricopa County and William Montgomery's Reply Brief Re 1 CA-CV 13-0697; Certificate of Compliance for Appellants' Reply Brief re 1 CA-CV 13-0697; Certificate of Service of Appellants' Reply Brief re 1 CA-CV 13-0697 (Appellant)
23. 24-Oct-2014 FILED: Appellant's Request for Oral Argument; Certificate of Service for Request for Oral Argument (Appellant)
24. 31-Oct-2014 ORDERED: Appellant's Request for Oral Argument = GRANTED. Hon Donn Kessler - Author
25. 12-Nov-2014 FILED: Appellee's Answering Brief relating to Attorneys' Fees; Certificate of Compliance; Certificate of Service (Appellee White Mntn Health for CV 14-0372)
26. 12-Dec-2014 ORDERED: holding these consolidated cases in abeyance until the Arizona Supreme Court issues its decision in Reed-Kaliher v. Hoggatt. Nothing in this order precludes the Appellants from filing their reply brief on attorneys' fees. Hon Donn Kessler - Author
27. 8-Apr-2015 ORDERED: continuing to hold these consolidated cases in abeyance until ASC issues its mandate in Reed-Kaliher v. Hoggatt. Hon Donn Kessler - Author
28. 1-May-2015 FILED: Appellants Maricopa County and William Montgomery's Motion to Lift the Stay Re 1 CA-CV 13-0697 Only; Certificate of Service of Appellant's Motion to Lift the Stay Re 1 CA-CV 13-0697 Only (Appellant)
29. 27-May-2015 ORDERED: Appellants Maricopa County and William Montgomery's Motion to Lift the Stay Re 1 CA-CV 13-0697 Only (Appellant) = DENIED. Hon Donn Kessler - Author
30. 14-Sep-2015 ORDERED: (Court has determined that ASC has issued mandate in Reed-Kaliher v. Hoggatt and no petition for a writ of certiorari was filed) lifting orders of abeyance in this matter. FURTHER ORDERED: On/before 10/15/15, parties and amici may file briefs on application of Reed-Kaliher to issues in these consolidated appeals. Each supplemental brief shall not exceed ten pages, excluding tables and certificates and any appendices. FURTHER ORDERED: This case will be set for oral argument after filing of above supplemental briefs. Hon Donn Kessler - Author
31. 15-Sep-2015 FILED: Supplemental Amicus Curiae Brief of The Yavapai County Attorney in Support of Appellants County of Maricopa, State of Arizona; Certificate of Compliance; Certificate of Service
32. 6-Oct-2015 FILED: State's Supplemental Brief; Certificate of Compliance; Certificate of Service (Intervenor/Appellant)
33. 15-Oct-2015 FILED: Memorandum: Judge Swann for Judge Thumma (Chief Judge Brown)

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**47 PROCEEDING ENTRIES**

34. 15-Oct-2015 FILED: Courtesy Copy of Supplemental Brief of Appellants Maricopa County and William Montgomery (includes Table of Contents and Table of Authorities)
35. 15-Oct-2015 FILED: Appellee's Supplemental Brief; Certificate of Compliance; Certificate of Service (White Mountain Appellee)
36. 15-Oct-2015 FILED: Appellants Maricopa County and William Montgomery's Supplemental Brief; Certificate of Compliance for Appellants Maricopa County and William Montgomery's Supplemental Brief; Certificate of Service for Appellants Maricopa County and William Montgomery's Supplemental Brief
37. 28-Oct-2015 FILED: Appellee's Second Supplemental Citation to Legal Authority; Certificate of Service; Order Re Motion to Dissolve Permanent Injunction dated 10/19/15
38. 11-Dec-2015 FILED: Supplemental Citation of Legal Authorities of Appellants Maricopa County and William Montgomery; Certificate of Service of Supplemental Citation of Legal Authorities (Appellant)
39. 13-Jan-2016 ORDERED: Court will hear oral argument on these consolidated appeals on 3/3/16 @ 10 am. Hon Donn Kessler - Author
40. 28-Jan-2016 FILED: Return Receipt of Notice of Oral Argument signed by Steve White on 1/13/16 (Appellee)
41. 1-Feb-2016 FILED: Appellee's Third Supplemental Citation to Legal Authority; Certificate of Service
42. 23-Feb-2016 FILED: Receipt of Notice of Oral Argument signed by Charles A Grube on 1/13/16; Certificate of Service (Intervenor/Appellant/State of AZ)
43. 24-Feb-2016 FILED: Receipt of Notice of Oral Argument signed by Thomas P. Liddy on 1/13/16; Certificate of Service (Appellant)
44. 26-Feb-2016 FILED: Return Receipt Re Oral Argument, signed by Thomas P. Liddy, on 1/13/16 (Appellant Maricopa County)
45. 3-Mar-2016 FILED: Sign-in Sheet/Case is Under Advisement (Dept D)
46. 20-Dec-2016 OPINION (Affirmed in Part, Reversed in Part) Hon Donn Kessler - Author; Hon Peter B Swann - Concur; Hon Michael J Brown - Concur
47. 20-Dec-2016 FILED: Opinion Distribution List