

COMMISSION ON JUDICIAL SELECTION APPLICATION

SEVENTH JUDICIAL DISTRICT
DEPARTMENT 2

By

Dylan V. Frehner



Personal Information

1.	Full Name	Dylan Vern Frehner
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	No
3.	How long have you been a continuous resident of Nevada?	Grew up in Lincoln County and left for schooling and a church mission. Continuous resident from 2004-present.
4.	City and county of residence	Town of Pioche, County of Lincoln
5.	Age	48

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Lincoln County
Phone	775-962-8073
Physical Address & Website	181 N. Main Street, Suite 205, Pioche, NV 89043 Lincolncountynv.org
Date(s) of Employment	September 17, 2018 to present
Supervisor's Name and Title	Elected position
Your Title	District Attorney
Describe Your Key Duties	<p>As the elected district attorney, my primary duty is acting as the public prosecutor for Lincoln County. I handle all criminal matters from traffic tickets (now civil citations) up to murder cases. I am in court 3-4 days a week for criminal proceedings, including weekends to cover 48-hour bail hearings.</p> <p>I am legal counsel for all Lincoln County officials, departments and public bodies. I attend most board meetings in the County to maintain compliance with open meeting laws and to advise boards as necessary. I prepare and review legal documents including ordinances, resolutions, contracts and policies for all County entities. I also act as lead negotiator for the County with collective bargaining units.</p> <p>I direct the day to day functions of the district attorney's office. Due to budget cuts, the office has not had a full-time deputy district attorney for over 4 years. I am actively involved in the budgeting process for the county to ensure I understand the impacts of the budget on all my duties.</p>

	Finally, as part of my duties as elected district attorney, I serve as <i>ex officio</i> Lincoln County Public Administrator and Lincoln County Public Guardian. I administer most estates of indigent persons in the county. I am currently guardian of the person and estates of 3 persons. This number has fluctuated from year to year, but I have been guardian of at least 2 persons since being elected.
Reason for Leaving	Current position

Previous Employer	Dylan V. Frehner, Attorney at Law PC
Phone	775-962-5533
Address & Website	209 Field Street, Pioche NV 89043 No website
Date(s) of Employment	April 2008 to September 17, 2018
Supervisor's Name and Title	N/A
Your Title	Owner
Describe Your Key Duties	<p>Provide general legal services in solo practice with a focus on criminal defense. I also assisted clients with general civil practice, estate planning, family law and local public boards.</p> <p>As part of my practice, I was appointed the Lincoln County Public Defender from July 2011 through August 2018. I was also appointed as 1 of 3 Public Defenders in White Pine County from July 2015 through July 2016. As a public defender, I represented criminal clients in all aspects of their case, from first appearance through sentencing and appeal if necessary. I conducted over 10 felony jury trials to completion during this time, including a murder trial.</p> <p>I was appointed the City Attorney for the City of Caliente from January 2014 through August 2018. I advised all city boards and departments on legal matters, and drafted all ordinances, resolutions, contracts and policies for the City, along with representing the City in any civil litigation.</p> <p>I also served as General Counsel of the Lincoln County Water District from 2008 through August 2018. My duties included managing the water resources of the district and representing the district at administrative hearings before the Nevada Division of Water Resources.</p>
Reason for Leaving	Elected as Lincoln County District Attorney

Previous Employer	Brown & Frehner, LLP
Phone	Unavailable
Address & Website	1 North Ford Rd, Alamo, NV 89001 No website
Date(s) of Employment	August 2007 to April 2008
Supervisor's Name and Title	John Brown
Your Title	Managing Partner
Describe Your Key Duties	Provided general legal services in small law firm, including criminal defense, civil practice, estate planning and representation of local boards.
Reason for Leaving	Opened my own solo practice.

Previous Employer	Lincoln County Water District
Phone	775-962-8068
Address & Website	1005 Main Street, Panaca NV 89042 Lincolncountynv.org
Date(s) of Employment	January 2007 to August 2008
Supervisor's Name and Title	Lincoln County Water District Board of Trustees
Your Title	General Manager / General Counsel
Describe Your Key Duties	Organized the newly formed water district; prepared ordinances, resolutions and policies; advised board on open meeting law; managed water resources owned by district; and created a plan to grow the district.
Reason for Leaving	Resigned to create a local law firm.

Previous Employer	Lincoln County
Phone	775-962-8076
Address & Website	181 N. Main Street, Suite 205, Pioche, NV 89043 Lincolncountynv.org
Date(s) of Employment	June 2005 to December 2006
Supervisor's Name and Title	Phil Dunleavy, Lincoln County District Attorney
Your Title	Deputy District Attorney
Describe Your Key Duties	Managed all civil actions for county; provided legal representation to county officials, departments and public bodies; assisted elected DA with criminal prosecutions, mainly misdemeanor cases; drafted and reviewed ordinances, resolutions and policies.
Reason for Leaving	Newly elected district attorney

Previous Employer	Seventh Judicial District Court
Phone	775-293-6550
Address & Website	1786 Great Basin Blvd., Ely NV 89301 Whitepinecounty.net/223/District-Court
Date(s) of Employment	August 2004 to May 2005
Supervisor's Name and Title	Judge Dan Papez Judge Steve Dobrescu
Your Title	Law Clerk
Describe Your Key Duties	Performed legal research; drafted memos and court opinions; attended and assisted judges in civil and criminal proceedings.
Reason for Leaving	Hired as deputy district attorney in Lincoln County

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

- **Lincoln County High School:** 1111 Edwards Street, Panaca, NV 89042
 - August 1990 to May 1994
 - High School Diploma, Valedictorian
 - Graduated
- **University of Redlands:** 1200 East Colton Ave., Redlands, CA 92373
 - August 1994 to May 1995
 - Called to serve as a full-time missionary for the Church of Jesus Christ of Latter-Day Saints in Australia Brisbane Mission for 2 years.
- **Southern Utah University:** 352 W. University Blvd., Cedar City, UT 84720
 - August 1997 to December 1997
 - Transferred to University of Nevada, Reno because it had a better course of study for my major.
- **University of Nevada, Reno:** 1664 N. Virginia St., Reno, NV 89557
 - January 1998 to December 2000
 - Bachelor of Arts in Political Science with High Distinction
 - Business Minor
 - Graduated

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

High School

One of the joys of going to a small high school, was the ability to participate in so many different activities.

Athletics were a big part of my time in high school. I participated in football, basketball and baseball all 4 years. I lettered in all 3 sports my sophomore, junior and senior seasons, and was a team captain of all 3 sports my senior season. In football, I played quarterback and

safety and had to ensure that I knew all the plays and formations so that I could lead my teammates in proper execution. In basketball, I was the point guard, and likewise had to lead the team in our prepared game plans. In a 3-year period, our teams won 7 state championships.

In addition to athletics, I participated in band, performance choir and theater. I also participated in student government and served as a Club President for the Vocational Industrial Clubs of America (VICA) from 1992-93 and as Student Body Vice-President from 1993-94. As a member of VICA, I ran for and was elected as a state officer in 1993. In 1994, I participated in and won a gold medal for prepared speech at a Nevada VICA competition, which qualified me to compete at Nationals, where I placed in the top 10.

In high school I was able to perform on many diverse stages. I loved the variety and gained confidence from doing so many different activities.

University of Redlands

At the University of Redlands, I participated in intercollegiate athletics, including football and baseball. Being a student athlete at the college level was one of the hardest things, both physically and mentally, that I have ever done. Coming from a small high school, I had a lot to learn and re-learn both in the classroom and on the field. With hard work and dedication, I was able to make the Dean's Roll and was named the most improved player on the baseball team as a freshman.

Southern Utah University (SUU)

I was only at SUU for a semester, but still participated in extra-curricular activities whenever I could. I tried out for the SUU baseball team in the fall, but did not make the team. Not making the team was a blessing in disguise, because I soon realized that SUU did not offer the classes I needed to pursue my educational goals. I also participated in performance choir at the local institute of religion for the Church of Jesus Christ of Latter-Day Saints. The choir performed concerts for local schools and events in the community.

University of Nevada, Reno (UNR)

While at UNR, I met my wife and we were married in the summer of 1998. I did not participate in extra-curricular activities on campus as I was focused on my family and preparing for a career. I did serve as a legislative intern to the Minority Leader, Lynn Hettrick, during the 2001 Nevada Legislative Session. This was an amazing opportunity to learn and participate in the law-making process in the State of Nevada.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

University of Pacific, McGeorge School of Law: 3200 Fifth Ave., Sacramento, CA 95817
Juris Doctor with Distinction awarded May 2004. Class Rank 16/198 (top 10%).

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

- Stockton and Lodi Unified School Districts
 - Substitute teacher from January 2001 to August 2002.
 - Taught classes for grades K-12 as available and followed prepared lesson plans for those classes.
- San Joaquin County District Attorney's Office
 - Part-time volunteer from June 2002 to August 2002.
 - Briefed cases and summarized officer-involved critical incidents. I did not have a full-time job lined up for the summer after my first year of law school, but I wanted to be in some legal environment. I volunteered at the District Attorney's Office to get a better understanding of criminal procedure.
- Capital Center for Government, Law & Policy
 - Part-time work study from August 2002 to May 2004.
 - Performed legal research and prepared written analysis for Center director on legal issues facing public bodies.
- Lionel, Sawyer & Collins
 - Full-time summer associate from June 2003 to August 2003
 - Conducted legal research and writing for Litigation, Business and Administrative departments in the firm.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

First Year Ben Frantz Mock Trial Competition Winner and Scholarship Recipient (2002). I had never had any court room experience before coming to law school. I had never even watched legal shows on television! But, with a scholarship on the line, my friend and I were determined that we needed to try. Because this was my first courtroom experience, I prepared and memorized everything. But during our presentation, I forgot part of my questioning. I paused, asked the judges (mock trial team members) to excuse me while I reviewed my notes, and then continued. I thought that I had ruined my chance when I forgot my questions. I was surprised and overjoyed when I made it to the next round. I later discovered that the judges had scored me the highest for the way I handled myself when I calmly reviewed my notes before continuing with my questioning. I went on to win one of the scholarships. More importantly, I began to understand the importance of courtroom demeanor and presentation.

Mock Trial Competition Team, August 2002 to December 2003. After my success of winning the Ben Frantz Scholarship, I auditioned and became a member of the McGeorge Mock Trial Competition Team. I participated for 3 semesters and with each competition I was able to sharpen my courtroom skills, especially my oral advocacy. I discovered a love for being in the courtroom and conducting trials. The experience I gained doing mock trials gave me confidence and was essential to me becoming a criminal trial attorney.

The Transnational Lawyer, Staff Writer August 2002 to May 2003. As a staff writer, I was able to work on my own writing projects, but also had assignments to review and check citations of other writers for accuracy. This experience increased my research and writing skills.

Administrative Law Adjudication Clinic, Spring 2003. As part of my Administrative Law class, we participated as administrative judges to review and rule on parking ticket cases in Sacramento, CA. While upholding or denying a parking ticket did not change the world, I used the knowledge of administrative procedures many times in my private practice in representing people/entities for water rights, employment, and other administrative proceedings.

Student Groups: Government Affairs, and Agricultural, Environmental & Mineral Law.

Law Practice

12. State the year you were admitted to the Nevada Bar.

2004

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

None

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 15-19 for the five years directly preceding your appointment or election to the bench.

Legal Discipline	Percentage of Practice
Domestic/family	2
Juvenile matters	5
Trial court civil	2
Appellate civil	2
Trial court criminal	50
Appellate criminal	2
Administrative litigation	2
Other: Please describe	35*

* Other duties as District Attorney include administrative functions in county management, representation of county departments and boards, and preparation of legal documents. I also serve ex-officio as the Lincoln County Public Administrator and the Lincoln County Public Guardian.

16. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

In the past 5 years, 40% of my litigation matters have involved cases set for jury trial and 60% have involved cases set for non-jury trials.

17. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

I have tried 1 felony jury trial to conclusion in the past 5 years as lead counsel. I have tried over 20 misdemeanor non-jury cases to a decision as lead counsel in the past 5 years.

As a rural district attorney for the past 6 years, I have found that negotiation of cases is essential. I am the only full-time attorney in my office due to budget constraints. Further, as the elected district attorney I also have duties as the civil attorney for all county departments and offices, as well as being the *ex officio* Public Administrator and Public Guardian for the County. Time management is critical. I review all criminal cases in detail and aggressively negotiate with defense counsel to reach quick and effective resolutions to most criminal cases.

18. List courts and counties in any state where you have practiced in the past five years.

- Nevada Supreme Court, State of Nevada
- Nevada Court of Appeals, State of Nevada
- Seventh Judicial District Court, Lincoln County
- Meadow Valley Justice Court, Lincoln County
- Pahrangat Valley Justice Court, Lincoln County

19. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1
Case name and date: <i>State v. Michael Alan Kincade</i> , CR-1036011 and CR-0304012 Tried: October 22 through November 2, 2012.
Court and presiding judge and all counsel: <ul style="list-style-type: none"> • Seventh Judicial District Court in and for the County of Lincoln, Dept. 1, Honorable Steve Dobrescu • State of Nevada: Daniel M. Hooge, Lincoln County District Attorney • Defense: Dylan V. Frehner, Lincoln County Public Defender
Importance of the case to you and the case's impact on you: The case was important to me because it exemplified how zealous advocacy of a client, especially an indigent defendant, is necessary to ensure a fair trial and to gain client confidence. As a young attorney in the Seventh Judicial District, I had often heard other attorneys say they could not represent or defend someone they knew was guilty or who had committed heinous crimes. I had tried several cases before this one, but those cases were either as a

prosecutor or as a privately retained attorney, which allowed me to pick and choose if I wanted to take the case. In 2011, I presented a proposal to Lincoln County for me to be appointed as the Lincoln County Public Defender. I had watched for years as the County's indigent defense services were provided by the State of Nevada Public Defender from its office in Ely, Nevada. Because of its remote distance and high turnover, the State PD's office struggled to provide adequate representation for indigent clients in Lincoln County.

I was appointed as Lincoln County Public Defender in July 2011. One month later, Mr. Kincade was arrested and charged with multiple counts of child sexual assault and related crimes. Subsequent searches were made of his work and his home, which led to another case being filed and alleging 25 counts for possession of child pornography. Combined, these cases instantly became the largest case I had ever handled. On top of that, Mr. Kincade was skeptical of whether I, or any public defender for that matter, would have the experience and tenacity to adequately represent his interests.

I threw myself into the case and met with Mr. Kincade multiple times each week to begin the monumental task of defending him from these charges. Through diligent preparation with Mr. Kincade, I was able to begin a solid defense at the preliminary hearing, where multiple charges were dismissed for lack of evidence. This was followed up with extensive pre-trial motion work, including filing a motion to suppress all evidence obtained from the illegal search of Mr. Kincade's home. The district court judge recognized the deficiencies of the search warrant and granted the motion to suppress which effectively led to the dismissal of case CR-0304012 and its 25 counts.

Preparation for trial was overwhelming. Throughout the entire trial, I continued to meet with Mr. Kincade multiple times per week. I hired an expert to interview the 2 child victims. I had never examined a child witness in trial, but I knew that this would require great delicacy. Countless hours of research were spent analyzing how to best challenge the testimony of the child victims, the testimony of officers, and the other digital evidence the State would seek to admit. I had to hire a private investigator to interview witnesses and do research into internet companies. Beyond these trial issues, Mr. Kincade and I were extremely worried about the selection of a jury in our rural and conservative community. We did extensive research of the jury pool, including sending out jury questionnaires.

When we got to trial, I petitioned the judge and was allowed to interview potential jurors one by one to ascertain their comfort and willingness at not only listening to but also discussing topics of a sexual nature that would be presented during trial. This process was time consuming, but it helped us to better identify potential jurors who were biased or who would not be able to handle the nature of the charges in this case. The trial went on for 2 weeks. I presented a zealous defense for Mr. Kincade at trial, and included him in every decision I made. I cross-examined the child victims delicately as we planned, but was able to challenge other adult witnesses and officers more aggressively.

Ultimately, the results of the trial did not turn out as Mr. Kincade desired and he was found guilty of the charges. But that did not stop my efforts to represent him. I continued to file post-trial motions to set aside the verdict and to request a new trial based upon juror

misconduct. Those motions were denied, and the case was appealed to the Nevada Supreme Court. Just like the preparation for the trial in this case, the preparation for the appeal was daunting. Two weeks of trial transcripts and multiple motion hearings made for an extensive record. It took me approximately a year to finalize the appeal briefs. The case was argued before the Nevada Supreme Court in 2014. While it was daunting to prepare the appeal brief, that was nothing compared to the preparation it took to organize all that material into a 15-minute oral argument. The Supreme Court upheld the verdict of the jury, but in a separate appeal also upheld the judge's prior decision to suppress the evidence.

After all appeals were done, I met with Mr. Kincade again to discuss the outcome of his cases. I knew my representation of Mr. Kincade was zealous, but not perfect. I outlined for Mr. Kincade the mistakes I believed I may have made throughout the process and which I also believed could be used to challenge his conviction on a post-conviction writ for ineffective assistance of counsel. Mr. Kincade refused. While he did not agree with the results of the trial or the appeal, he would not submit any claim alleging I was ineffective.

This was the hardest case of my career, no doubt. I discovered that I could give my all to zealously represent my client without prejudice or bias.

Your role in the case: Public Defender appointed to represent Mr. Kincade.

Case 2

Case name and date: *State v. Caleb Joseph Budreau*, CR-0725011

Tried: September 7-8, 2011 (hung jury, 11-1 not guilty)

Tried: November 1-2, 2011 (found guilty)

New trial granted on March 7, 2012

Court and presiding judge and all counsel:

- Seventh Judicial District Court in and for the County of Lincoln, Dept. 2, Honorable Dan L. Papez
- State of Nevada: Daniel M. Hooge, Lincoln County District Attorney
- Defense: Dylan V. Frehner, Lincoln County Public Defender

Importance of the case to you and the case's impact on you:

This case is important to me because it emphasizes the importance of having a timely resolution to a case. I learned that it was much more important to seek my client's best interest versus winning a case.

Caleb Budreau was another case that I was appointed to almost immediately after becoming the Lincoln County Public Defender. Mr. Budreau was charged with aiding and abetting his co-defendant in committing a battery with a deadly weapon causing substantial bodily harm. Mr. Budreau invoked his right to a speedy trial.

At the time of his first trial, Mr. Budreau was 24 years old. I subpoenaed his co-defendant to testify on Mr. Budreau's behalf, but he invoked his 5th Amendment right to remain silent

while his case was also pending trial. There was not clear evidence to support the allegations presented at trial and the case resulted in a hung jury, 11-1 not guilty. The one hold-out juror later described that the State did not meet its burden of proof, but he felt that Mr. Budreau was guilty and would not change his opinion.

At the second trial a few months later, the State amended the charges to include additional criminal theories. Considering the results of the first trial, I believed I could convince the jury again of the faults in the case. The trial went much the same as the first trial. I again wanted the co-defendant to testify, but his case was still pending and he refused. This time, Mr. Budreau was convicted.

After Mr. Budreau's conviction, his co-defendant entered a plea and was now willing to testify on Mr. Budreau's behalf. I filed a motion for a new trial based upon new evidence from the co-defendant, which the State heavily contested. The district court judge granted the motion for a new trial in a very detailed order. Finding that it was a very close case, the judge believed that a new trial was necessary after seeing the prior two cases and the possible impact the co-defendant's testimony could provide to Mr. Budreau. The State appealed the grant of a new trial.

I worked very closely with Mr. Budreau and I knew that he had substance abuse issues. Mr. Budreau was excited for the chance to have a new trial, but it also caused him great anxiety and depression. While the case was on appeal, Mr. Budreau committed suicide.

In the end, whether I was right or whether the prosecutor was right about the case did not matter. It didn't matter who won. It also didn't matter if the judge was right to grant a new trial. As we all fought over what was right, the case carried on too long. As a result, my client did not receive the help he needed when he needed it.

This case was important in helping me to realize that speedy justice is important. I further discovered that I was more than just an advocate for my clients in court, but at times I also had to counsel them on what was in their best interest in resolving a case.

Your role in the case: Public Defender appointed to represent Mr. Budreau

Case 3

Case name and date: *State v. Blaine Eric Mastin*, CR-1202819
Sentencing May 22, 2020

Court and presiding judge and all counsel:

- Seventh Judicial District Court in and for the County of Lincoln, Dept. 1, Honorable Steve Dobrescu
- State of Nevada: Dylan V. Frehner, Lincoln County District Attorney
- Defense: Bret O. Whipple

Importance of the case to you and the case's impact on you:

I have been a strong advocate of treatment court since its introduction into the Seventh Judicial District in 2007. Over 75% of all criminal cases of which I have been involved were the result of substance abuse, and so many of those are repeat offenders. This case was important to me because regardless of whether I am a prosecutor or a defense attorney, treatment is essential to recovery and reducing criminal activity.

During my time as a defense attorney, I had requested many times for my clients convicted of selling small amounts of controlled substances to be admitted to treatment court. My reasoning was that they were addicts selling drugs to feed their own disorder and that they needed treatment more than prison. More times than not, the court would reject my client's request for treatment.

Mr. Mastin was charged with selling a controlled substance, a category B felony, and he had retained his own counsel. Pursuant to a Guilty Plea Agreement, Mr. Mastin pled guilty to the sale of a controlled substance and I agreed to recommend probation but not diversion or treatment. This was Mr. Mastin's first felony conviction and he was a good candidate for a diversion program.

At the time of sentencing, Mr. Mastin's counsel did not file any notices nor did he ask for a diversion or treatment program for his client. Mr. Mastin spoke and indicated he did have a problem with substance abuse, and there were strong indications of substance abuse in his presentence investigation report. As I rose to make my recommendation, I knew I was only bound to follow what was in the guilty plea agreement. However, I knew that Mr. Mastin had issues with substance abuse addiction. I had seen his family in other instances and I knew he needed treatment. In that moment, I decided to alter my recommendation. I outlined to the court the facts of this case, and emphasized the small amounts of substances that Mr. Mastin sold to support his conviction. I then proceeded to review the PSI with the court in detail, outlining why I believed that Mr. Mastin should be placed in a treatment program for not only his long-term benefit, but also for the long-term benefit of his family. After I finished, the court had further conversations with Mr. Mastin and agreed that he qualified for a deferred judgment and treatment. The Court admitted Mr. Mastin into the treatment court program.

After court, Mr. Mastin met with me and shared how grateful he was for my recommendation and admission into the treatment court program. He did not even know this was an option. Mr. Mastin entered and successfully graduated from the treatment court. While in the treatment court program, Mr. Mastin became more involved with his family, acting as a volunteer coach for his kids' football teams. He became gainfully employed and was able to make a difference in the lives of his family.

I could share many success stories of the people I have seen turn their lives around after going through a treatment program. Treatment courts are one of the greatest tools at our disposal, and after 15 years we still under-utilize them. As judge, I would like to continue to expand our treatment courts and programs throughout the district. Fighting for limited

<p>funding and constantly updating our services is essential to combat the epidemic of drug abuse in our communities.</p>
<p>Your role in the case: Prosecutor for the State of Nevada</p>

<p>Case 4</p>
<p>Case name and date: <i>State of Nevada v. Mikey Willy Murphy</i>, CR-1203521 Sentencing September 22, 2023</p>
<p>Court and presiding judge and all counsel:</p> <ul style="list-style-type: none"> • Seventh Judicial District Court in and for the County of Lincoln, Dept. 2, Honorable Gary Fairman • State of Nevada, Dylan V. Frehner, Lincoln County District Attorney • Defense, Franklin Katschke, Lincoln County Public Defender
<p>Importance of the case to you and the case's impact on you:</p> <p>This case was important to me because it was one of the first deaths in Lincoln County related to fentanyl. The defendant, Mikey Murphy, provided drugs to the victim knowing the victim was intoxicated and that the drugs were likely laced with fentanyl. When the victim had a reaction, Mr. Murphy did not immediately provide or seek medical assistance. When medical personnel did finally arrive, the victim was already deceased.</p> <p>This was a very emotionally charged case, as the defendant and the victim knew each other very well, as did their families. I also knew the victim, as I had represented her in the past with her own substance abuse issues. In fact, I had seen the victim in court a few weeks before her death, and she looked better than she had in a long time. She was happy and excited to share with me all that was going right in her life.</p> <p>After the victim's death, I wanted to send a message to the community that I would prosecute this type of offense to the highest. Knowingly bringing fentanyl into our community was unpardonable. The victim's family was also understandably angry and wanted justice, which to them meant seeing Mr. Murphy go to prison for as long as possible.</p> <p>On the other hand, I knew I could not prosecute in anger. I had knowledge that Mr. Murphy was an addict and not the smartest person based upon his upbringing and lack of education and drug use. I met many times with the victim's family and we discussed openly what an appropriate sentence should be. We discussed the pain that a trial would cause to everyone. We also discussed what the victim would want if she were still alive. After months of discussions and negotiations, all parties agreed that it was best to send Mr. Murphy to prison and recommend 4-10 years. This would send a message to the community, provide justice for the family, but would also provide some leniency to Mr. Murphy based upon the facts of the case.</p> <p>While I could have taken this case to trial and likely obtained a conviction and sentence beginning at 20 years, it was not in the best interest of all parties involved. This case helped</p>

me to understand the importance of working with victims and their families. But even if we disagree about what should be done, the hard decision was ultimately mine to determine how best to resolve the case.
Your role in the case: Prosecutor for the State of Nevada

Case 5
Case name and date: <i>In the Matter of the Guardianship of the Person and Estate of John Gabriel Carney, A Proposed Protected Person, PR-0100224</i> Hearing appointing guardian January 29, 2024.
Court and presiding judge and all counsel: <ul style="list-style-type: none"> • Seventh Judicial District Court in and for the County of Lincoln, Dept. 2, Honorable Gary Fairman. • Petitioner: Dylan V. Frehner, Lincoln County Public Guardian • Counsel for Protected Person, Franklin Katschke
Importance of the case to you and the case's impact on you: <p>This case is important to me because it shows the very hard and personal decisions that the Court must make with regards to the daily lives of individuals.</p> <p>Mr. Carney was a local resident of Pioche who had lived alone for the past 20 years. His eye sight had continually deteriorated to the point of near blindness, and in the past few years he had relied upon others to get him around town for necessities. Many local residents had complained to my office that someone needed to take guardianship of him due to his wandering down the middle of the streets, yelling at people, and constantly being so dirty that no one wanted to be near him.</p> <p>Before taking guardianship, I had tried to talk to Mr. Carney to encourage him to seek some medical attention, but he refused. He also refused any type of intervention to assist with his house and care due to concerns that people would take his belongings. Through my conversations, I could see that Mr. Carney was extremely paranoid and making allegations of events and people that were not true.</p> <p>In January 2024, after a few weeks of extreme cold, no one had seen Mr. Carney and a welfare request was made to check on him. Mr. Carney was found just inside the front door of his house, living in a pile of filth and half frozen. Mr. Carney's home had no running water or electricity that he could utilize to keep warm. I immediately filed for a temporary guardianship and Mr. Carney was admitted to the hospital for care. I then proceeded to file to become Mr. Carney's permanent guardian.</p> <p>I met with Mr. Carney frequently to discuss the guardianship, but he continually argued that he did not want or need the guardianship. In his own assessment, Mr. Carney was just fine and all he needed was to go home to his cats. I am a firm believer that people can choose to live how they want, and I wondered if taking guardianship against Mr. Carney's wishes was appropriate. I had seen cases before where guardianship was denied because a person was</p>

of sound mind and lived in unsanitary conditions by choice. However, the more I talked with Mr. Carney, the more I realized that it was absolutely necessary that I take guardianship for his safety as well as the safety of the community.

At a hearing before the court, the district judge also had to make the difficult decision on whether to place a guardian over Mr. Carney and in effect remove his ability to make decisions for himself. Mr. Carney with the assistance of his counsel argued that he was competent to make his own decisions and that he did not need anyone to be his guardian. Instead, all he needed was for someone to give him a ride occasionally to the store. After seeing Mr. Carney's condition and the condition of his home, the court believed that a guardianship was necessary.

Following the statutory process in these proceedings is essential to ensure that the proposed protected person's rights are not violated, that his interests are protected, that his family (if any) are notified, and that all parties, including the community, are kept safe.

I have had to file for guardianship in cases more times than I have wanted, and each time it was a difficult decision. To see people in a condition where they cannot care for themselves and where no one else, family or friend, is able to assist them is heartbreaking. To this day, Mr. Carney is still extremely angry at me for taking away his rights and for removing him from his home. But, no matter how angry he is, I know that taking guardianship and placing him in proper care was the right thing to do.

Your role in the case: Lincoln County Public Guardian and Petitioner

20. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

No

21. Describe any pro bono or public interest work as an attorney.

As the elected District Attorney for the past 6 years, I have had limited pro bono or public interest legal work. However, I do act as the Lincoln County Public Guardian which requires extensive time to assist those in the community who have no family, friends or means to help with their legal needs. As a private attorney, I regularly accepted cases for reduced fees. Working in a rural community, there has never been a shortage of cases from people who could not afford an attorney or could not find an attorney that would come here to help them.

In the past few years, Lincoln County has not had a juvenile probation officer in the county, but has had to rely upon White Pine County's juvenile probation officer for assistance. Likewise, the Division of Child and Family Services (DCFS) re-assigned Lincoln County from its Ely office (1.5 hours away) to its Pahrump office (4 hours away). This has led to a reduction

in services on both fronts. In September 2023, the district court judges shared with me how they had created a multi-disciplinary team (MDT) in White Pine to try to get ahead of juvenile and 432B cases. Intrigued by the concept and knowing that I needed to take a more pro-active approach in Lincoln County, I formed the Lincoln County MDT to hold monthly virtual meetings with the district court judges, juvenile probation, DCFS, local mental health providers, law enforcement, school principals and counselors and myself. These meetings have been essential to make sure that all of the participants are aware of concerns with juveniles and families in Lincoln County that need services and to hopefully keep them from appearing before the court.

22. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

- State Bar of Nevada
- Nevada District Attorney's Association
 - Member of the Best Practices Subcommittee from 2022 to Present. This subcommittee consists of representatives from both district attorney and city attorney offices throughout the State of Nevada with the goal to review current issues of evidence, legislation and hiring practices for prosecuting offices.
- Seventh Judicial District Bar Association
- Nevada Water Resource Association

23. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

DATE	COURSE	PROVIDER
10/16/2024	Nevada Specialty Court 2024 Conference	Supreme Court of NV, Administrative Office of the Courts (AOC)
09/27/2024	Nevada Prosecutor's Conference	Attorney General
09/20/2024	Nevada's Community Improvement Council 2024 Summit	Supreme Court of NV, AOC
05/22/2024	RISE24, Treatment Court Conference	All Rise
12/15/2023	Jury Trials A-Z Training	Washoe County DA
10/30/2023	2023 Legislative Update Webinar with Rural Prosecutors	Clark County DA
09/28/2023	Nevada Community Improvement Council 2023 Summit	Supreme Court of NV, AOC

09/06/2023	2023 Nevada Government Civil Attorney's Conference	State Bar of Nevada
02/02/2023	2023 NWRA Annual Conference Week	Nevada Water Resource Association (NWRA)
09/23/2022	Nevada Community Improvement Council 2022 Summit	Supreme Court of NV, AOC
09/14/2022	2022 Nevada Government Civil Attorney's Conference	State Bar of Nevada
05/11/2022	Nevada Prosecutors Conference	NV Advisory Council for Prosecuting Attorneys
12/06/2021	Forensic Evidence Course	National District Attorney's Association
10/13/2021	2021 Nevada Government Civil Attorney's Conference	State Bar of Nevada
09/23/2021	Nevada Community Improvement Council 2021 Summit	Supreme Court of NV, AOC
09/15/2021	Nevada Prosecutors Conference	NV Advisory Council for Prosecuting Attorneys
10/05/2020	Nevada Government Civil Attorney's Conference	State Bar of Nevada
02/11/2020	2020 NWRA Annual Conference	NWRA
01/15/2020	Blunt Force Trauma, Stab Wounds & Gunshot Wounds	Clark County DA

I am in compliance with the continuing legal education requirements applicable to me as a lawyer.

24. Do you have Professional Liability Insurance or do you work for a governmental agency?

I work for a government entity.

Business & Occupational Experience

25. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

No.

26. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:
- the nature of the business
 - the nature of your duties
 - the extent of your involvement in the administration or management of the business
 - the terms of your service
 - the percentage of your ownership

Yes. I am currently an owner and managing member with my wife of the Pioche Old School House, LLC, a Nevada limited liability. This business was formed in 2024 for the purpose of owning and restoring the Pioche Old School House into an event venue and rental property. My wife and I share all responsibilities for ownership and management of the property and its restoration. The business is currently still in a financing and construction phase. As the business gets established, it is anticipated that my wife will operate and manage the business on a full-time basis, while I will act as a consultant or advisor. My wife and I own 100% of the business.

I am also currently an owner and managing member with my wife of Frehner Properties, LLC, a Nevada limited liability company. This business focuses on purchasing investment properties. My duties are to identify properties that can be purchased as an investment. I assist in the management and operation of the business as needed. My wife and I own 100% of the business.

I was previously the sole owner and manager of Dylan V. Frehner, Attorney at Law PC, a Nevada domestic professional corporation from January 17, 2012 through January 1, 2019. This business was associated with my solo practice as an attorney, and I was the sole owner and manager of all aspects of the business. Prior to becoming a corporation, I also operated as a sole proprietor from April 2008 through January 2012, where I was the sole owner and manager of my solo practice as an attorney.

From August 2007 to April 2008, I was a managing partner of Brown & Frehner, LLP, a Nevada limited liability partnership. I was a 50% owner and manager of the business to provide legal services.

27. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

As Lincoln County Public Guardian, I have acted as guardian in a fiduciary capacity for approximately 10 persons and their estates. The nature of my duties as guardian are to make decisions for the benefit of the person and estate for which I have been appointed. My terms of service last so long as I continue in my capacity as Public Guardian or until the person is no longer in need of a guardian.

Civic Professional & Community Involvement

28. Have you ever held an elective or appointive public office in this or any other state?

Yes

29. Have you been a candidate for such an office?

Yes

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

In 2014, I was elected to the Board of Trustees for the Lincoln County Power District No. 1. I served on the Board from January 2015 through September 2018. I resigned my seat in September 2018 when I was appointed as the Lincoln County District Attorney.

I won a contested election to be the Lincoln County District Attorney in June 2018, but before I took office the sitting district attorney resigned and I was appointed to fill the remainder of his term on September 17, 2018. I have served as the Lincoln County District Attorney from September 17, 2018 until the present. I was re-elected in 2022 without opposition.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

The most significant activity in my life has been my family. My wife and I had 2 children during my undergraduate studies, and our third child was born during my second year of law school. Being in school and raising kids was no easy task for either of us, but it certainly gave us perspective on what was most important in our lives. After law school, we were blessed with 2 more children. Our youngest child has Down Syndrome, and he always helps us to slow down our busy lives to see what is most important.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

None. I have provided training to local law enforcement on search and seizure, legislative updates and courtroom decorum. I have also presented a class to high school seniors each year on "Now Your 18" for the past 10 years.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I have not served in the military.

Church of Jesus Christ of Latter-Day Saints (Church)

Throughout my life, I have been an active member of the Church and have served in many different capacities. I served as a missionary for two years in the Australia Brisbane Mission from July 1995 through July 1997. As a missionary, I worked with a wide variety of people on a day to day basis listening to their problems, teaching them gospel principles from the scriptures, and helping them to apply these principles in their lives. Further, for 15 months during my mission I held leadership assignments to help organize and supervise the efforts of 8-20 other missionaries. This included conducting training sessions with groups and individual missionaries to be more effective in our teaching efforts.

From 1998-2004, I served as a youth Sunday school teacher, choir director, and as a counselor in a quorum presidency.

From 2005-2015, I served mainly with the youth as a young men's advisor and scout master. I helped to organize and plan treks for church youth in Lincoln County on multiple occasions. I also helped to create and implement a new curriculum for summer youth camps to help prepare and train young men and women to become missionaries.

From 2016-Present, I served twice as a quorum president supervising the temporal and spiritual welfare of families in my local congregation. This included organizing efforts to perform service projects in the community, to help elderly or disabled persons, and organizing and carrying out activities to strengthen the members.

Educational Activities

Having grown up in Lincoln County, I have taken a great interest in working with the local schools to educate students about legal issues. I have frequently spoken to high school classes about the judicial process. For several years, I helped the J4AG (Jobs 4 America's Graduates) class conduct a simple mock trial in their class. This would usually take over a month of meeting with them once or twice a week to help them in preparation. They would then come to the courthouse in Pioche to conduct their trial before me or another local attorney acting as the judge.

For over 10 years, the local high schools have also invited me to participate in "Now Your 18" presentation for high school seniors. In this program, I have helped the seniors understand what legal issues they may be facing from substance abuse, domestic violence, sexual assault (especially for persons over 18 having relationships with students still in school and under the age of 14), and a myriad of other crimes. Each year I would discuss current cases with the students and the local sheriff's office would also bring in an inmate to discuss his/her life choices that led them to be incarcerated.

Community Activities

Since 2006, I have been a member of the Stage-Struck Players and have participated in putting on theatrical productions for the community. We would generally put on a show every other year called "A Little Off Broadway" in which we would perform 20 different musical numbers from musicals and movies.

I have also participated in our local community choir, "Bella Voce," consistently for over 15 years. The choir has historically performed 1-2 concerts per year, usually at Christmas and Easter.

Volunteer assistant coach for Lincoln County High School softball 2019-21. Little league baseball/softball assistant coach 2007, 2014-15.

33. List honors, prizes, awards, or other forms of recognition.

HIGH SCHOOL

- Honor Roll (1990-94)
- State Champions (Single A League)
 - Baseball - 1991, 1992, 1993
 - Football -1992, 1993
 - Basketball -1992, 1993
- 1992 Football Player of the Year (Single A League)
- 1993 Eagle Scout Recipient, Boy Scouts of America
- 1994 VICA Prepared Speech State gold medalist and Top 10 Finalist at Nationals

UNDERGRADUATE

- 2000 Outstanding Political Science Graduating Senior (1 of 4)
- Dean's List 1994-95, 1997-2000

LAW SCHOOL

- First Year Ben Frantz Mock Trial competition winner and scholarship recipient
- Dean's List 2001-2004

LAWYER

- Recognition from Nevada Department of Wildlife for first felony conviction of a wildlife crime in the State of Nevada.

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

None

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List avocational interests and hobbies.

Family. My number one interest has always been my family. My interests have often been whatever my kids were interested in at the moment. When my 4 oldest children were in high school, we attended sporting events, band and choir performances and a multitude of other activities. Now that they are adults and in college, we travel to see them as much as possible.

My youngest son is 16 and has Down Syndrome. He can be stubborn and loving, sometimes at the same time. We plan activities with him as often as we can, and those activities usually involve pizza and swimming.

Restoration of houses/buildings. Every house that we have owned has been a major remodel and restoration. My wife and I love to take old buildings (and old things) and restore them to their former glory or remodel them to fit a new purpose.

Other interests. I love participating in our local community theater and choir. When I can, I also enjoy hiking and seeing natural beauty, reading all forms of books from fiction to biographies and travelling to new locations.

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

Yes. I have been cited for speeding, with the last citation being over 10 years ago.

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

If I am appointed:

I would recuse myself from all cases involving matters which I personally participated as the Lincoln County District Attorney, including cases where I was appointed as the public administrator or public guardian, pursuant to Rule 2.11(A)(6)(b).

I would recuse myself from all cases involving matters which I personally participated in as lawyer for the Lincoln County Water District or in which I publicly expressed an opinion concerning ongoing litigation with the Nevada State Engineer's office regarding Order 1309 pursuant to Rule 2.11(A)(6)(b)

I may recuse myself from cases involving matters that I provided legal advice on while acting as the Lincoln County District Attorney.

I may recuse myself from any case in which a victim of a crime is a person with down syndrome. I have a son with down syndrome and pursuant to Rule 2.2, I may not be able to be fair and impartial in such a case.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

Not Applicable

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

See attached

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

We currently live in Pioche, Nevada. I recognize that the majority of the work associated with being a district court judge in the Seventh Judicial District will occur in White Pine County. If appointed, my family will be moving to Ely so that I can best perform my duties as a judge. We lived in Ely in 2004 when I was a law clerk for the Seventh Judicial District, and we look forward to returning to Ely to be part of the community.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

See attached

PERSONAL STATEMENT

“How do you survive as an attorney in rural Nevada?” I have been asked this question many times during my 20+ years in the Seventh Judicial District. I’ll admit, I even asked myself this question when I first drove to Ely in 2004 to interview with Judge Dan Papez and Judge Steve Dobrescu for the position of law clerk. In the interview, the judges were excited at the prospect of a local returning home to practice law in the District. I was also excited, but very nervous about how I would make a living and support my family. With the help of the judges, I came to understand how I could survive. It would require a lot of hard work, being well-rounded in many areas of the law, and servicing people to the best of my ability. Following these principles, I did more than just survive. I found a great joy in using legal knowledge to help and serve the people of my community. So, when asked “How do you survive?” My answer is always the same: “It is not easy. But it is worth it!”

HARD WORK

Serving as a law clerk provided me direct insight to the amount of work required to be a judge on a daily basis. I have never been afraid of hard work. I grew up on a farm in Lincoln County where hard work was a part of everyday life. From athletics, to school and even into my career, I have found success to be the result of 1) never assuming I am smarter or more talented than anyone else, and 2) working harder than those around me.

In my legal practice, hard work has mostly included taking time to do things correctly, especially with my research. I remember as a clerk frequently asking the judges questions about a variety of legal issues. I expected them to provide quick answers to direct my research. Instead, they would always ask “Have you looked it up in the blue books (NRS) yet?” I learned quickly that there are no shortcuts to learning the law. To this day, every one of my cases begins with a review of the blue books to make sure I understand the intricacies of the law first.

Whenever I dedicate extra time to properly complete a task, great rewards follow. Whether it is taking time to read reports in detail, taking classes to understand expert issues, or just taking extra time with clients/victims to ensure I know them and make sure they know what is happening with their case. I have never regretted taking more time or doing more work to make sure that every case received my very best. That will not change when I am a judge.

WELL-ROUNDED

The judges of the Seventh Judicial District hear and rule on an astonishing variety of cases. This variety was a major reason I returned to rural Nevada as an attorney. After my second year of law school, I worked as a summer associate in a large law firm and I was miserable working 16-hour days with a sole focus on corporate issues. In the subsequent 20 years of rural practice, the great diversity I have experienced in my work and clientele has been both refreshing and rewarding.

Like the Seventh Judicial District docket, the majority of my rural practice has been focused on criminal law. I have represented both sides of criminal cases, serving 10 years each as defense attorney and as prosecutor. In these roles I have seen the full spectrum of cases, from traffic trials to murder cases. All this experience has instilled in me an appreciation for criminal procedure and a love for being in the courtroom where I have tried over 13 felony jury cases to completion.

The civil portion of my practice has also been extremely diverse and includes: work on family law cases (from divorces, child custody, and guardianships to 432B cases), property disputes, transactional work, estate planning, and representing multiple government entities. However, one of my favorite areas of practice has been water law. I have represented the Lincoln County Water District (LCWD) since 2005 in managing and developing water rights for use within the County. This work includes representing the LCWD in administrative hearings before the Nevada State Engineer and keeping updated on water issues (legal and scientific) through yearly trainings. I am especially excited

about the pilot program announced in 2024 to certify water judges in the State. I personally advocated for water judges in the past, and I will seek the certification as part of my appointment.

Being well-rounded in so many areas of the law is part of being a rural attorney and judge. The diversity in my practice has prepared me from day one to tackle the variety of cases I will see as a judge.

SERVING PEOPLE

My greatest goal as an attorney has been to serve and help people. As a missionary in Australia for the Church of Jesus Christ of Latter-Day Saints from 1995-97, every day was filled with contacting and serving people. There was no greater joy than helping individuals change and overcome obstacles in their lives. It was during my mission experience that I first knew I wanted to be an attorney.

I could share countless stories and experiences of people I have helped in and out of court. Some were rich, others were poor. Regardless of whether I was paid in cash or...chickens, I always did my best to help my clients as people. The importance of a judge's decisions on the lives of people should never be underestimated and requires that each case be considered with great care and fairness.

Further, some of my greatest moments as an attorney have been helping people through specialty court programs. Almost all criminal cases in the Seventh Judicial District result from substance abuse or mental health disorders. Treatment courts are not for every person or every case. They are, however, an essential tool (especially in rural Nevada) to help people overcome their addictions and reduce criminal activity. I have written grants, revised treatment court handbooks, and attended training to ensure that our specialty courts provide the best services possible. I will continue to support and expand specialty courts as a judge because they help restore people to productive members of their communities.

With hard work, diverse experience and a desire to serve, I can and will have a positive impact on the people and communities of the Seventh Judicial District. Much like being a rural attorney, I know that being a judge will not be easy. But it will be worth it!

WRITING SAMPLE

1 Case No.: CR1002621

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IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF LINCOLN, STATE OF NEVADA

* * * * *

THE STATE OF NEVADA,)
)
 Plaintiff,)
)
 vs.)
)
 KIM A. JUDD,)
)
 Defendant.)

OPPOSITION
TO DEFENDANT'S MOTION TO SET
ASIDE JUDGMENT AND REQUEST TO
DETERMINE COMPETENCY OF
DEFENDANT

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

On October 4, 2021, the State filed a Criminal Information against the Defendant with the following criminal allegations:

Count I: Injuring or Tampering with a Motor Vehicle, a violation of NRS 205.274(1) and NRS 193.155(1), a Category C Felony; and

Count II: Coercion, a violation of NRS 207.190, a Category B Felony.

On February 25, 2022, the Defendant was present in court and entered a plea of not guilty and a trial was set. A 2-day trial was held on August 17-18, 2022.

On the first day of trial, the Defendant requested new legal counsel be appointed and the Court held a hearing with the Defendant. The Defendant's request was denied. The Defendant

1 was present and attentive throughout the trial, taking notes and talking with his counsel. The
2 Defendant testified in his own defense at trial and was on the witness stand for an extended period
3 of time. The Defendant’s testimony included specific facts about his expertise in vehicle repair
4 and the extensive work he had performed on the victim’s vehicle in this case. At the conclusion
5 of the trial, the jury found the Defendant guilty of both counts.

6 On November 18, 2022, the Defendant was sentenced to 19-48 months in the Nevada
7 Department of Corrections (“NDOC”) for each count, with the sentences running concurrently.
8 During the mitigation portion of sentencing hearing, the Defendant addressed the Court directly
9 and provided information to the Court as to why he should be granted probation. The Court
10 denied the request for probation and imposed the sentence.

11 On November 22, 2022, the Defendant filed a Motion to Set Aside Judgment and Request
12 to Determine Competency of Defendant (“Motion”).

13 II. LAW

14 Pursuant to NRS 178.400(1), a person may not be tried or adjudged of a crime while
15 incompetent. A person is deemed “incompetent” if he/she does not have the present ability to:

- 16 (a) Understand the nature of the of the criminal charge against the person;
- 17 (b) Understand the nature and purpose of the court proceedings; or
- 18 (c) Aid and assist the person’s counsel in the defense at any time during the proceedings
with a reasonably degree of rational understanding.¹

19 NRS 178.405 provides that if any doubt arises as to the competence of the defendant, “the court
20 shall suspend the proceedings, the trial or the pronouncing of judgment...until the question of
21 competence is determined.”² A district judge is not required to order a competency examination

22 ¹ NRS 178.400(2).

23 ² See also 18 U.S.C. 4241(a); *United States v. Duncan*, 643 F.3d 1242 (9th Cir.
24 2011); *Rodriguez v. State*, 329 S.W.3d 74, 81 (“the competency statute might
not authorize a trial court to appoint an expert after sentencing because the

1 in absence of evidence that raises a reasonable, bona fide doubt as to a defendant's competence.³
2 "The doubt mentioned in NRS 178.405 means doubt of the trial court, rather than counsel or
3 others."⁴ The only evidence relevant to the competency analysis is evidence that is before the trial
4 court **prior** to sentencing.⁵ Finally, bare allegations of incompetence are not sufficient to raise a
5 reasonable doubt as to competence.⁶

6 Retrospective competency hearings are generally disfavored.⁷ Nevada Courts have found
7 a retrospective, or *nunc pro tunc*, competency hearing is only a proper remedy to correct a district
8 court's violation of a defendant's due process rights by failing to conduct a competency hearing
9 prior to or during trial.⁸ To determine whether a retrospective competency hearing is feasible, a
10 trial court must consider:

11 (1) [t]he passage of time, (2) the availability of contemporaneous medical evidence,
12 including medical records and prior competency determinations, (3) any statements
13 by the defendant in the trial record, and (4) the availability of individuals and trial
14 witnesses, both experts and non-experts, who were in a position to interact with
[the] defendant before and during the trial as well as any other facts the court deems
relevant.⁹

15 statute is prospective in nature and it does not specifically provide for
16 an examination to determine if a convicted person had been incompetent to
stand trial").

17 ³ See Jones v. State, 107 Nev. 632, 817 P.2d 1179, 107 Nev. Adv. Rep. 107
(1991) (citing NRS 178.405); see also Melchor-Gloria v. State, 99 Nev. 174,
660 P.2d 109 (1983).

18 ⁴ See Baccari v. State, 97 Nev. 109, 624 P.2d 1008 (1981) (citing Williams v.
State, 85 Nev.169, 174, 451 P.2d 848 (1969)).

19 ⁵ See Blazak v. Ricketts, 1 F.3d 891, 898 (9th Cir. 1993) (holding that the only
20 evidence relevant to the analysis of competency outlined in Drope v. Missouri,
420 U.S. 162, 95 S.Ct. 896, 43 L.Ed 2d 103 (1975) is evidence before the trial
21 court prior to sentencing); see also Thompson v. Pliler, 339 Fed. Appx. 782,
783, 2009 U.S. App. LEXIS 17044, *3 (unpublished opinion) (finding that "since
the report was not brought to the trial judge's attention before judgment, the
appellate court concluded it could not have obligated the trial judge to order
a competency hearing").

22 ⁶ Martin v. State, 96 Nev. 324, 608 P.2d 502 (1980).

23 ⁷ Odle v. Woodford, 238 F.3d 1084, 1089-90 (9th Cir. 2001).

24 ⁸ See Goad v. State, 488 P.3d 646, 661-62 (2021).

⁹ See *id.* at 661 (citing People v. Lightsey, 54 Cal. 4th 668, 143 Cal. Rptr.3d
589, 279 P.3d 1072, 1105 (Cal.2012) (alterations in original) (citation and
internal quotations omitted)).

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III. ANALYSIS

The Defendant claims that his sentence in this case was illegal because he is incompetent now and may have been incompetent prior to sentencing. However, the time to request a competency hearing has expired under NRS 178.405, and retrospective competency hearings are disfavored. Even if Defendant’s Motion was timely, his allegations of incompetency are bare allegations without any factual basis or support in his Motion or in the record. For the following reasons, Defendant’s Motion should be DENIED.

A. The Defendant’s Request for Competency Hearing After Sentencing is Untimely.

A post-sentence request for a competency hearing is untimely. The Defendant filed his Motion requesting a competency hearing 4 days after he was sentenced to prison. The Defendant, nor anyone else in this proceeding, ever raised any questions regarding the Defendant’s competency prior to trial, during trial or prior to sentencing.

NRS 178.405 only requires a hearing when doubt arises as to the competency of the defendant at the times outlined in the statute, namely:

- after the arrest of the defendant,
- before trial,
- during trial,
- when upon conviction the defendant is brought up for judgment, or
- when a defendant who has been placed on probation or whose sentence has been suspended is brought before the court.”

1 The Federal equivalent to NRS 178.405 provides the same pre-sentence limitation.¹⁰ Thus, the
2 Defendant's request for a hearing 4 days after his sentence has been imposed is untimely.

3 Further, in *Thompson v. Plier*, the Court found it was not obligated to order a competency
4 hearing when the doctor's report suggesting incompetency was only brought to the court's
5 attention after judgment.¹¹ Likewise, the Defendant in this case has only brought allegations of
6 incompetency after judgment was entered, but even then, the Defendant has not provided any
7 reports to support his allegations. Thus, the Court is not obligated to grant Defendant's request
8 for a competency hearing, and the Court should DENY the Defendant's request as untimely.

9 **B. Defendant's Allegations of Incompetence are Inadequate and Unsupported**

10 Over a year has passed since the State filed criminal charges against the Defendant, and
11 never during this time has there been any concern from either counsel or the Court regarding the
12 Defendant's competency. The Defendant has been present at Arraignment, motion hearings and
13 trial, where he has maintained (1) a present ability to understand the nature of the criminal charges
14 against him; (2) an understanding of the nature and purpose of the court proceedings; and (3) an
15 ability to aid and assist his counsel in his defense.

16 The Defendant's claims of incompetency in his Motion, while curious, are insufficient to
17 warrant a competency hearing.¹² Defendant has provided no evidence of past psychological
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20 ¹⁰ 18 USCS § 4241(a) ("At any time after the commencement of a prosecution for
21 an offense and prior to the sentencing of the defendant, or at any time after
22 the commencement of probation or supervised release and prior to the
completion of the sentence, the defendant or the attorney for the Government
may file a motion for a hearing to determine the mental competency of the
defendant.").

23 ¹¹ See *Thompson*, 339 Fed. Appx. at 783.

24 ¹² See *Doggett*, 93 Nev. at 593-594 (finding that while evidence was presented
that Defendant suffered from paranoid schizophrenia, his condition did not
decrease the possibility that he could aid in the conduct of his defense).

1 conditions, mental illness, or use of psychiatric drugs—only bare allegations of incompetence
2 based on peculiar beliefs Defendant holds about various personal relationships.¹³

3 Conversely, Defendant was clearly competent enough to take the stand in his own defense
4 at trial. During his testimony, the Court had ample opportunity to evaluate the Defendant’s
5 demeanor and the substance of his testimony. Further, the Defendant provided a verbal statement
6 to the Court in support of his request for probation at sentencing. None of the Defendant’s
7 interactions with the Court raised any doubt as to his competency.

8 Defendant has failed to provide any relevant or substantial evidence to create a reasonable
9 doubt as to his competency at the time of trial or sentencing. An evaluation of the Defendant at
10 this time will be after the fact and will not provide any evidence of his prior competency. Thus,
11 the Defendant’s request to set aside judgment and to determine competency AFTER the sentence
12 has already been imposed must be DENIED.

13 **C. The Defendant was Properly Sentenced by the Court.**

14 The Defendant’s claim that the Court entered and must correct an illegal sentence pursuant
15 NRS 176.555 is not supported by the facts of this case. As set forth above, there was no indication
16 or request prior to trial and/or sentencing that the Defendant was incompetent. Even the
17 Defendant’s Motion does not allege that the Defendant was incompetent during trial and
18 sentencing, but only claims there may be a “chance” of incompetency.¹⁴ The Court properly
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21 ¹³ See Williams v. Warden, 91 Nev. 16, 530 P.2d 761 (1975) (history of mental
22 illness and recent evaluation by court-appointed psychologist); Krause v.
23 Fogliani, 82 Nev. 459, 421 P.2d 949 (1966) (judge had presided over
commitment 13 days before escapee committed crime with which charged).;
24 contra Hollander v. State, 82 Nev. 345, 418 P.2d 802 (1966) (no abuse of
discretion in the trial court's failure to order a competency hearing on the
basis of an army discharge for psychoneurosis).

¹⁴ See Motion, pg. 3, lines 16-23.

1 sentenced the Defendant in this case and there is no illegal sentence to correct. Thus, the
2 Defendant's motion to set aside an illegal judgment or sentence should be DENIED.

3 **D. A Retroactive Competency Hearing is not Justified Because the Court did not**
4 **Violate the Defendant's Due Process Rights Prior to Sentencing and the**
5 **Defendant has Presented NO Facts to Support a Look Back.**

6 Throughout the duration of this case, there have been no facts identified by the Court or
7 counsel that would raise a reasonable doubt as to the Defendant's competency to stand trial. The
8 Defendant does not refer to any such facts in his Motion other than vague concerns his counsel
9 may have had, but which were never brought to the Court. The Court can only rely upon its own
10 observations of the Defendant, and it cannot be assumed that the Court has knowledge of
11 Defendant's interactions with his counsel if no motion or hearing is requested. In this case, there
12 was no motion or request made prior to sentencing regarding competency, and there was nothing
13 from the Defendant's interactions with the Court that would suggest an issue of competency.
14 Thus, the Court could not have, nor did it, violate the Defendant's due process rights by not
15 conducting a competency hearing prior to sentencing.

16 Even if there was a violation of the Defendant's due process rights, the Defendant has not
17 provided the Court with any evidence that would allow the Court to order a retroactive
18 competency hearing pursuant to *Goad v. State*.¹⁵ The Defendant's Motion was filed shortly (4
19 days) after sentencing. However, the Defendant has not provided any medical records or evidence
20 of prior competency determinations, nor has listed any individuals or witnesses who interacted
21 with him before or during trial that can testify to his competency. Without this evidence, the
22 Defendant has not presented anything the Court can rely on to support conducting a retrospective
23 competency hearing. Any competency evaluation done now would only determine competency

24 ¹⁵ See 488 P.3d 661-62.

1 at this time and moving forward. It would not be retrospective and give the Court the ability to
2 look back in time to tell us if the Defendant was competent prior to sentencing.

3 Accordingly, the Defendant's motion must be DENIED because there was no violation of
4 his due process rights AND there are no facts or evidence presented to even suggest a retroactive
5 competency hearing is feasible.

6 **E. Consideration of a Defendant's Claim of Incompetency After Sentencing**
7 **Creates Bad Precedent and Policy.**

8 As outlined above, the laws of the State of Nevada go to great lengths to protect a
9 defendant who is incompetent from trial and sentence. However, allowing a defendant to make
10 a claim of incompetency for the first time after sentencing invites a defendant to take two bites at
11 the apple. If defense counsel believes or has any concern that a defendant is incompetent, but
12 knows that he can present such a claim of incompetency after sentencing without consequence,
13 then there is reason to withhold the concern to see if an acquittal can be had at trial. If the
14 defendant wins at trial, then any concern of competency is silenced. If the defendant loses at trial,
15 then the defendant's competency claim can be voiced after the fact with the whole proceeding
16 potentially becoming null and void.

17 While the State does not believe that defense counsel engaged in such a strategy in this
18 case, there are serious consequences to allowing a challenge to the proceedings on a post-
19 conviction claim of incompetency. There is no judicial economy in going to trial, setting aside a
20 trial after the fact, and then possibly requiring a new trial on the same case months or years later
21 once a defendant has been treated to competency. If there are any concerns of competency, no
22 matter how slight, then a defendant and his counsel must raise the issues in a timely fashion prior
23 to trial and sentencing in order to preserve the issue and the integrity of the judicial process.
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1 There were no requests to determine competency made in this case before sentence was
2 imposed. The Court had multiple interactions with the Defendant prior to sentencing and had no
3 concerns of competency. Setting aside verdict after sentence has been imposed goes against the
4 principles of judicial economy unless there is substantial evidence to suggest an injustice has
5 occurred. No such evidence exists in this case and the Defendant's request must be DENIED.

6 **IV. CONCLUSION**

7 Defendant's Motion to Set Aside Judgment and Request to Determine Competency should
8 be denied. Not only is his Motion made outside the statutorily permitted time, but his Motion fails
9 to create a reasonable, bona fide doubt as to his competence either now or during trial. Defendant
10 has failed to meet his burden to justify a retroactive hearing, and it is poor policy to set aside a
11 judgment in this case. Accordingly, the State requests the Court DENY Defendant's Motion.

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