

COMMISSION ON JUDICIAL SELECTION APPLICATION

ELEVENTH JUDICIAL DISTRICT COURT  
DEPARTMENT 1



Personal Information
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1.	Full Name	William Elmer Schaeffer
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.	Only shortened versions such as "William E.", "Wm. E.", or the nickname "Bill"; but always the same last name.
3.	How long have you been a continuous resident of Nevada?	36 years (but was stuck out of state during Covid for most of 2020)
4.	City and county of residence	Battle Mountain, Lander County
5.	Age	70

Employment History
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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	Lander County/ District Attorney's Office
Phone	(775)635-5195
Physical Address & Website	50 State Route 305, P.O. Box 187, Battle Mountain, NV 89820 <a href="https://www.landercountynv.org/government/district_attorney/index.php">https://www.landercountynv.org/government/district_attorney/index.php</a>
Date(s) of Employment	January 2, 2023 to present
Supervisor's Name and Title	Voters of Lander County (otherwise, myself) Citizens
Your Title	District Attorney
Describe Your Key Duties	Per NRS Chapter 252 the more important ones are prosecuting all felonies, gross misdemeanors, and misdemeanors. Defending all lawsuits. Advising and attending Commissioner meetings as well as other boards such as PLUAC (public lands use advisory commission), Convention and Tourism, and Planning (zoning). Advising other county elected and appointed officials on legal matters affecting their offices. Drafting ordinances and resolutions. Supervising the employees of the D.A.'s office. Handling the budget of the office. Working with and over-seeing outside counsel on various projects as needed. Basically, everything a county government needs a lawyer for, I am in charge of. Currently, I do mostly civil and my Chief Deputy D.A. does mostly criminal, but there's overlap.

Reason for Leaving	Only if I get this appointment or lose an election

Previous Employer	William E. Schaeffer, Attorney at Law
Phone	(775)635-3227
Address & Website	160 W. 4th St., Battle Mountain, NV 89820 (no website)
Date(s) of Employment	March 1, 1999 to January 2, 2023 (date overlap: see key duties below)
Supervisor's Name and Title	William E. Schaeffer Proprietor
Your Title	Proprietor/Attorney at Law
Describe Your Key Duties	Ran a solo private practice full and part time depending on other duties (Esmeralda D.A., Lander Deputy D.A., and Austin Justice of the Peace rules all allowed for private practice on the side; so did my various public defender positions. I did divorces, child custody matters, criminal defense when allowed, water law cases, slip and fall torts, wills, estates, small business contracts and breach of contracts, evictions, bankruptcy, and basically whatever walked in the door that I thought I could handle. I cranked down my private practice when I tried being an assistant public defender in Michigan but didn't end it because of the circumstances wherein my initial boss was being promoted to judge and wasn't sure if I would replace her or get let go by my rival if I didn't. Never left Nevada for more than 90 days though, until Covid. I had a contract as the alternate public defender for Lander County from Spring of 2010 to January of 2013. Earlier, I had such a contract as one of several alternate public defenders for Nye County from summer of 2001 I think to January 2003 when I became the Esmeralda County D.A.
Reason for Leaving	NRS prohibits the Lander County D.A. from practicing law for profit, outside of his office and I was elected D.A. in 2022; but I still do occasional pro bono representations (civil only).

Previous Employer	Isabella County Public Defender
Phone	(989) 317-9393
Address & Website	2885 Health Parkway Mount Pleasant, MI 48858 <a href="https://www.isabellacounty.org/law-justice/public-defenders-office/">https://www.isabellacounty.org/law-justice/public-defenders-office/</a>
Date(s) of Employment	August 27, 2019 to February 24, 2020

Supervisor's Name and Title	Sara Spencer-Noggle Public Defender (then; now, Circuit Court Judge)
Your Title	Senior Assistant Public Defender
Describe Your Key Duties	Represented clients during all phases of the criminal process from first appearance/bail hearings through sentencing; prepared motions, negotiated plea bargains, represented clients at preliminary examinations, arraignments, etc.
Reason for Leaving	Basically, I applied for my old boss's job when she got appointed to a vacancy on the Circuit Court. When another Assistant Public Defender in the office got her position instead, he went along for a short time, but then let me go. So, I guess I was too ambitious? Covid hit then too; so, maybe that had something to do with it.

Previous Employer	Voters of Austin Township, Lander County
Phone	(775)964-2380
Address & Website	
Date(s) of Employment	January 7, 2013 to March 5, 2018
Supervisor's Name and Title	William E. Schaeffer Justice of the Peace
Your Title	Justice of the Peace
Describe Your Key Duties	Presided over every aspect of criminal and civil trials and motions from first appearances and bail hearings through final verdicts. Wrote opinions and non-standard orders myself, reviewed standard orders before signing. Performed weddings.
Reason for Leaving	Resigned to run for District Attorney

Previous Employer	Lander County District Attorney
Phone	(775)635-5195
Address & Website	50 State Route 305, Battle Mountain, NV 89820 <a href="https://www.landercountynv.org/government/district_attorney/index.php">https://www.landercountynv.org/government/district_attorney/index.php</a>
Date(s) of Employment	May 1, 2007
Supervisor's Name and Title	Hy Forgeron District Attorney
Your Title	Deputy District Attorney
Describe Your Key Duties	As the civil deputy D.A., I reviewed contracts, advised the County Commissioners' and attended their meetings, handled

	zoning issues, administrative hearings with various state agencies, advised the County Executive and various advisory boards; basically, if it was civil, it was my duty to handle it. I also handled all aspects of most juvenile cases.
Reason for Leaving	I campaigned hard for my boss, but he was defeated; so his successor fired me on her first day.

Previous Employer	Voters of Esmeralda County
Phone	(775)485-6352
Address & Website	231 Crook Ave., P.O. Box 339, Goldfield, NV 89013 <a href="https://cms2.revize.com/revize/esmeraldanew/county_offices/district_attorney.php">https://cms2.revize.com/revize/esmeraldanew/county_offices/district_attorney.php</a> (note: no website when I was there)
Date(s) of Employment	January 6, 2003 to January 2, 2007
Supervisor's Name and Title	William E. Schaeffer District Attorney
Your Title	District Attorney
Describe Your Key Duties	Responsible for everything a County needs a lawyer for: all criminal prosecutions from charging and arraignment through trial and appeal; both bench and jury trials. Advising other County elected and appointed officials on legal matters, reviewing contracts, attending Commissioner meetings, etc.
Reason for Leaving	Lost my bid for re-election but outlasted the previous 3 D.A.s plus the next 3: I was the last D.A. to finish a full term yet face a re-election candidate; current D.A. (Glennen) has been unopposed since a statutory change requiring the D.A. to be in the office every day (I had a private practice to run and D.A. paid as a part-time job).

### 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.

North Farmington High School, 32900 W 13 Mile Rd, Farmington Hills, 48334; September 1971 to June 1974; diploma; graduated and went to the University of Michigan.

University of Michigan, 500 S. State St, Ann Arbor, 48109, MI; September 1974 to April 1979, Bachelor of Arts degree in history; graduated and went to work. While at the U. of M., I took a semester to attend Michigan State University (MSU) for one of their quarters while I had an internship with the Governor's Office in Michigan which is less than ten miles from the MSU campus.

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

I ran track and cross country all three years of high school; tried out for track at U of M, but they were way too fast for me.

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 Toledo, College of Law; Juris Doctor, December 1984; Ranked 14th out of 30 (December is not a usual time for graduating, that's probably why the class size was so small).

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.

I had summer jobs but they were with my cousins who owned and operated a road construction company at the time. I had no legal type positions until after I graduated.

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

I served one term on our student council; a fellow student was caught cheating and the administration gave him a slap on the wrist though myself and others thought he deserved more severe punishment. Other than that, no, I was not involved in organized extra curricular activities at law school - no law review nor anything like that.

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

1986

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

Michigan 1985, Colorado 1986, Wyoming

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, never disciplined anywhere; never resigned, but I am inactive now in Wyoming and also in Colorado, I think. Still active in Michigan though.

Choose an item.

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	
Juvenile matters	10
Trial court civil	
Appellate civil	
Trial court criminal	15
Appellate criminal	15
Administrative litigation	
Other: Please describe	60 Advisory and review/drafting of resolutions, contracts, ordinances, etc. (non-litigation stuff)

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

15 percent of each (I mainly do the civil stuff for the office while my Chief Deputy handles most criminal matters; but I handled everything alone for most of my first year in office this term - so, lots of criminal trial stuff then: including three jury trials and at least a dozen bench 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.

Jury trials in THAT period: two to conclusion and one plea. I don't keep track of the statistics for bench trials, but I am confident it was at least a dozen.

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

Eleventh District Court, Lander County, Nevada  
 Argenta Justice Court, Lander County, Nevada  
 Austin Justice Court, Lander County, Nevada  
 Isabella Trial Court, Isabella County, Michigan

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: State v. Zuniga-Garcia; Entry of Order denying the writ of cert, alternatively writ of mandamus, was done on January 10, 2024.
Court and presiding judge and all counsel: Argenta Justice Court, Hon. Denise Fortune, William E. Schaeffer for the State, Jeff R. Miller for the Defense initially and for briefing; Michael Macdonald for the State and Kyle Swanson for the Defense after said Order.
Importance of the case to you and the case’s impact on you:  Every attorney I talked to about this case indicated that they thought stalking was a charge that mandates a jury trial. I had read the cases carefully and felt sure that it does not. I carefully drafted my briefs in opposition to Defense Counsel’s demand for jury trial and his subsequent petition for writ of mandamus or writ of cert. Both Judge Shirley and Judge Fortune agreed with me and denied the Defendant a jury trial on his stalking charge because the potential denial of his right to bear arms was neither direct nor automatic as it would be for a domestic battery charge. My knowledge of how long and strong the caselaw from the Nevada Supreme Court has been against forcing jury trials on rural justice courts (e.g. the <u>Blanton</u> decision from 1987; unanimously upheld by the U.S. Supreme Court in 1989) caused me to be confident that I had a winning argument that would save much time and trouble for my office, and the Justice Courts here, going forward. I have shared that brief in hopes that others may use it to streamline their own caseloads. Without the threat of a jury trial in a minor case, the pleas come easier and are more prosecutorially favorable in general; and the trials are shorter and simpler if we have to have them. As far as I am aware, we have not had a demand for jury trial in a stalking case since then. This demonstrated that research and writing skills can streamline the overall caseload for everyone - not just myself.
Your role in the case: I had started the case as the prosecutor for it and held onto it for purposes of handling the jury trial issue before the courts - that is, for briefing purposes. Once I won the point, I handed it off to my Chief Deputy and he got an acceptable plea agreement out of it - no jury trial and no one lost their Second Amendment rights thanks to my briefs.

Case 2
Case name and date: State v. Gonzales, appeal was decided April 30, 2025; tried September 2023.
Court and presiding judge and all counsel: 11th Dist. and NV Supreme Ct.: myself and Kyle Swanson
Importance of the case to you and the case’s impact on you:

First appeal and first jury trial in 20 years for me; and first jury trial to conclusion in the local District Court in at least 15 years. Established that I was unafraid of jury trials and could not be pushed into unwise plea bargains.

Your role in the case: Tried it as prosecutor and was appellate attorney.

#### Case 3

Case name and date: State v. Wippel, October 2023

Court and presiding judge and all counsel: Judge Shirley, 11th District Court, Debra Amens and myself

Importance of the case to you and the case's impact on you: Second jury trial tried to conclusion; proved the first one wasn't a fluke and established that I am still as effective as ever in a courtroom: guilty as charged.

Your role in the case: prosecutor

#### Case 4

Case name and date: State v. Hammond was ultimately plea bargained. September 2024.

Court and presiding judge and all counsel: 11th Dist. Ct., Judge Shirley, Kyle Swanson, myself

Importance of the case to you and the case's impact on you: This was probably the second largest drug bust in County history and got a hometown dealer off the street. It was handed back to us by the U.S. Attorney who decided he couldn't get a conviction in Federal Court after all. We got it done showing again that we know what we're doing; even when Federal prosecutors get timid.

Your role in the case: As prosecutor, I briefed the search issues and successfully argued that our Sheriff's deputies did nothing wrong. Once his motion to dismiss was denied, the Defendant pled guilty and was sentenced to prison.

#### Case 5

Case name and date: U.S. v. Walker River Irrigation District

Court and presiding judge and all counsel: U. S. District Court, District of Nevada. Miranda M. Du is the judge and there are literally almost 100 attorneys and hundreds of litigants - if not a thousand. John Howard and I worked together on this for several years.

Importance of the case to you and the case's impact on you: First, slight violation of your request: it's an on-going case, but I have been out of it for years and it has been going on for decades and NO, I am not exaggerating. Taught me a lot about water law and the Federal Courts as well as Federal and State relations in the Constitutional context.

Your role in the case: represented two of the water rights holders/farmers who are being sued. My last client passed away and his daughter hired a different attorney closer to home.

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.

Choose an item.

As noted above, I was the Judge of the Austin Justice Court in Southern Lander County. I enjoyed the experience overall or I wouldn't be applying to be a judge again. I handled almost everything a district judge would be asked to do but at a lower level with less at stake for the litigants. I held bail hearings, arraignments, preliminary exams, bench trials, and domestic disputes involving violence or the threat of it for temporary protection orders (which are a form of injunction). Consequently, I feel I can immediately get to work again as a judge the day I am appointed, if there's an immediate need.

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

More than once I have had people come into my private practice office seeking help for pending evictions and occasionally for other services for which they are too poor to afford an attorney. It's on a case by case basis, but I have helped people keep their homes or at least postpone eviction long enough to allow them to find another place to live and store their possessions without having everything piled up in the street. They are generally very grateful for the help.

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.

I am admitted to practice law in four states: Nevada, Michigan, Colorado, and Wyoming; so, I am a member of those state bar associations. As for local bar associations, I briefly joined the Isabella County bar association in Michigan shortly before the Covid pandemic hit, but I haven't kept up with it. Esmeralda, Lander, and Eureka Counties are too small to have a formal bar association. Such associations can be helpful in more urban areas, but in rural Nevada, my experience has been that we just gather informally for lunch or coffee or beer after work, but without any formal organization. We just talk with each other.

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 Name and Provider	General	Ethics	AAMH
10/03/2025	2025 Nevada Government Civil Attorneys Conference State Bar of Nevada	6.50	2.00	2.00
09/12/2025	2025 Prosecutors Conference Nevada Attorney General	5.00	1.00	1.50
10/09/2024	2024 Nevada Government Civil Attorneys Conference State Bar of Nevada	6.00	3.00	2.00
09/27/2024	Nevada Prosecutor's Conference Attorney General	10.50	1.50	1.00
12/15/2023	Jury Trial A-Z Training (2023) Washoe County DA	6.00	0.00	0.00
09/06/2023	2023 Nevada Government Civil Attorneys Conference State Bar of Nevada	9.00	2.00	1.00
01/03/2023	Advancements in Technology and Ethical Implications TRTCLE	0.00	2.00	0.00
12/13/2022	How to Overcome Substance Abuse Disorder and Avoid Legal Ethics Issues TRTCLE	0.00	0.00	1.00
01/01/2022	Arbitration 101: Resolving a Dispute TRTCLE	2.00	0.00	0.00
01/01/2022	Asset Acquisition Strategies TRTCLE	2.00	0.00	0.00
12/31/2021	Earth Law: Emerging Trends in Ecocentric Law & Policy TRTCLE	2.00	0.00	0.00
12/31/2021	Mastering Jury Selection TRTCLE	2.00	0.00	0.00
12/31/2021	Crucial Soft Skills for the Successful Attorney TRTCLE	1.50	0.00	0.00
12/31/2021	Confronting Bias in the Legal Profession TRTCLE	0.00	2.00	0.00
12/31/2021	Current Trends in Legal Technology TRTCLE	2.00	0.00	0.00
12/30/2021	Navigating Police & Citizen Encounters TRTCLE	2.00	0.00	0.00
12/30/2021	Rules & Procedures of Canine Law TRTCLE	2.00	0.00	0.00
12/30/2021	The Enforceable Non-Compete TRTCLE	1.50	0.00	0.00
2/29/2021	The High Cost of Exercising Poor Professional Judgment TRTCLE	0.00	1.50	0.00
12/29/2021	The History of Legal Ethics & Trials TRTCLE	0.00	2.00	0.00
12/29/2021	The Legal Profession & Professionalism TRTCLE	0.00	2.00	0.00
12/29/2021	When Attorneys Wrongdoings Rise to Ethics Violations TRTCLE	0.00	2.00	0.00
12/28/2021	Preventing Substance Abuse & Suicide in the Legal Profession TRTCLE	0.00	0.00	1.50
12/28/2020	Attorneys & Addiction: Breaking Down the Cycle TRTCLE	0.00	0.00	1.00
12/28/2020	Legal Ethics Evolution, Devolution, or Revolution TRTCLE	0.00	2.00	0.00
12/30/2019	Functionality of the Addicted Brain State Bar of Nevada	0.00	0.00	1.00

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

I work for a government agency.

Business Experience	&	Occupational
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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, all my non-law employment was summer jobs while in college and law school; nothing since I became a lawyer.

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

I have been the 100% owner and sole proprietor of my own law firm as indicated in my career experience listed above. That was from March 1999 to January 2023.

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.

I have only represented fiduciaries such as executors and trustees. I have never been one.

Civic Professional & Community Involvement
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28. Have you ever held an elective or appointive public office in this or any other state?

Yes, as already indicated, I am and have been an elected District Attorney and Justice of the Peace.

Choose an item.

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

Yes.

Choose an item.

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

Eureka County D.A. from August 1989 to January 1999 (9½ years); initially appointed to fill a vacancy, then elected and re-elected 3 times.

Esmeralda County D.A. from January 2003 to January 2007 (4 years); elected.

Austin Township Justice of the Peace (in Southern Lander County) from January 2013 to March 2018 (5 years); elected.

Lander County D.A. from January 2023 to present (almost 3 years and counting); elected.

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

I have held several positions in Lions Clubs International but I'll note only the highest: District Governor of District 4N which is now District 46 and comprises all of Nevada plus a couple of clubs in California. I did that from July 2002 to June of 2003.

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

None.

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

I have already mentioned Lions Clubs International where I was the District Governor for Nevada. I am currently President of the Battle Mountain Lions Club and I am on the worship team at the First Baptist Church in Battle Mountain.

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

Nothing I would care to mention beyond what I've already detailed.

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.

When I first transferred to the Battle Mountain Lions Club, that club would not allow women members (although the District had its first woman Governor just a couple of years earlier). However, within a year, we got a woman to join our club and finally entered the 20th Century just as the century was ending in 1999. Currently, a woman is our Treasurer, the previous President was a woman, and there's no such discrimination going on any longer.

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

Only legal opinions as part of my jobs; but none have ever been submitted for publication that I know of.

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

Yes, I have been registered to vote continuously since I moved to Nevada in 1989 and was registered in Michigan before that from May of 1973 when I turned 18 and voted for my mother to be on the City Council of the newly formed City of Farmington Hills, Michigan (she had been a Trustee for Farmington Township before it became that city).

Choose an item.

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

Choose an item.

Yes, I think so; but I know that due to travel problems, I have missed a couple of votes. However, I don't think I've ever missed a Presidential election.

38. List avocational interests and hobbies.

I am still active: I run 2 miles or more an average of 3 or 4 times a week and I like to bicycle when I get a chance. I have skied a lot too; but haven't had time lately.

### Conduct

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

Yes and yes.

Choose an item.

40. 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.

Only traffic tickets and only speeding plus one failure to yield the right of way when I got into an accident in high school while taking a friend home after school. I think that was spring of 1972, but I doubt I can find a record of it anymore. I think my last speeding ticket was in 1999 or the early 2000s in Northern Eureka County; but I'm not sure. I cannot now find those records.

Choose an item.

41. 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, not as far as I can recall; but, I missed the first mandatory class for Justices of the Peace in 2013, in part due to the then recent death of my mother. That resulted in a show-cause order by the Nevada Supreme Court; but I DID show cause and ultimately the matter was dismissed without any discipline.

Choose an item.

42. 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.

Choose an item.

No.

43. 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.

Choose an item.

No, never served in the military.

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

Choose an item.

I don't think so, but I do get behind on my water bill occasionally and they automatically send a notice of lien. When it happens, I generally pay it quickly. However, it's possible that I have gone over 30 days on that. I just don't know for sure.

45. 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?

Choose an item.

No. The only experience I have had with bankruptcy court has been as an attorney for debtors filing bankruptcy.

46. 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.

Just the obvious: I can't be a judge on a case that I was the lawyer for one of the parties. Since I am the local D.A., that means I can't judge any of the cases wherein I appeared for the State

Other

47. 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.

I have applied to this commission or its predecessor four times before. I think the first was sometime in the 1990s or early 2000s for the Seventh District when Judge Dobrescu was appointed. The second was to fill the seat of the late Judge Davis in the Fifth District when Judge Wanker got appointed by Governor Sandoval in early 2011 when I was one of the three finalists. The third and fourth were when both Judicial seats were vacated in the 4th District in late 2011 when I was one of the three finalists for one seat but not for the other. Governor Sandoval didn't pick me that time either.

48. 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).
49. 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.
50. 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.



## ANSWER TO QUESTION 48

What sets me apart from my colleagues are my experiences here in rural Nevada. I believe I am the only person to have ever been elected to three different counties as a District Attorney: Eureka in 1990, 1992 (in an attempted recall against Patty Cafferata), and 1994; Esmeralda in 2002; and Lander in 2022. Eureka was habitually throwing out its law enforcement leaders before I became D.A. there: three recalls of Sheriffs and D.A.s in the fifteen years before I faced my recall election in 1992. All of those previous recalls were successful. I fought it fairly and rigorously: the people who circulated the petitions made some mistakes and we made use of our legal training to get the first attempt thrown out in court. When the petitioners returned with a second set of petitions, there were still problems with them; but my legal team and I decided to not fight them at the hearing and I stood in court alone with everyone wondering where my lawyer was. You could have heard a pin drop when I announced to the judge that I was not going to object to the petitions and that we were going to have ourselves a recall election. The County Clerk was on my side and we had figured out that the election could be held simultaneously with the primary election and that would both save money and increase turnout. I was confident that a high turnout would favor me. So, there were two elections and two ballots on the same day. It was close, but I won by more votes than in my first election – just as we had planned. My margin of victory increased in the next election as well.

By 1998, I felt I was stagnating and wanted a new challenge, so I stepped down to set up a private practice in Battle Mountain. I was confident that my lawyer in the recall, Hy Forgeron, would win election as D.A. there and that I could probably pick up many of his former clients when he went out of business and returned to being a D.A. So, that's what happened. This experience broadened my abilities into civil areas so that I am comfortable handling divorce and

child custody cases, water law matters, as well as criminal cases from the defense side (I got a contract with Nye County as one of their alternate public defenders). This made me more multi-dimensional than most other lawyers.

By 2002, I found that I missed being a D.A. and was asked to put my hat in the ring for Esmeralda County which I thought would be good because, at that time, I could maintain my private practice in Battle Mountain yet indulge my appetite for government service at the same time. This makes me not only multi-dimensional but also demonstrated that I can ride the circuit and go from court to court in widely separated counties with no trouble at all. Given that the three county seats are widely separated in the Eleventh District, this trait is a good one to have. Esmeralda too had had a problem with recalls and other removals from office, but I made it through a full term; something that had not been done in quite a while there. Even though all I did was to complete one full term, I lasted longer than the previous 3 D.A.s and the next 3.

Next, I went to work at the Lander County D.A.'s Office in 2007 and maintained my private practice in a house I bought right across the street from the courthouse. This worked fine until my boss was defeated for re-election and the new D.A. decided to clean house, so I applied for and got an alternate public defender contract again: this time with Lander County. That did not satisfy me for long though and I was asked to run for Justice of the Peace in the South end of the County; so I did. Shortly after that, the new D.A. in Battle Mountain decided not to run again. An experienced attorney took her place and was unopposed in the election of 2014. However, he could not keep from repeatedly bickering with some of the Commissioners and other elected County officials and a couple of them asked me to run against him. I did; but this first time out, I got beat 60% to 40%. I made some adjustments to my way of campaigning and he seemed to get

worse, so more than a third of essentially the same voters changed their minds 4 years later and voted for me. I won 55% to 45%.

So, how does this make me better as a potential District Judge? As noted, I can at least travel a lot with no concern about it. More importantly though, I understand what it's like to fail even after success and fully realize that people can come back from that – including me. So, I won't be writing off a lawyer or a litigant just because s/he has screwed up once or twice. However, I also won't be a push over: the law must be enforced. Intellectually understanding that someone who is down is not necessarily out and may merely need some understanding and encouragement is one thing; living it yourself and realizing that hope is not forlorn, is another. I believe my experiences will lead me to be more fair with everyone and keep me looking for ways to persuade them to be good citizens and move forward with their lives after they leave our courts.

Writing Sample for Question 50 on Judicial Application

Case No. 87849

IN THE SUPREME COURT

STATE OF NEVADA

CHRISTIAN ALEJANRO GONZALES )  
Plaintiff, )  
vs. )  
STATE OF NEVADA, )  
Respondent. )

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**RESPONDENT’S ANSWERING  
BRIEF**

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**SUMMARY OF THE ARGUMENT**

There is no evidence offered and, it is believed none exists, to show that the alternate juror communicated any of her prior knowledge about the case to the jurors who actually deliberated. She was not seated as an actual juror, and without urging from the Court or from the Prosecutor, Defense Counsel volunteered that there was no cause for excusing said juror; so no objection to having her serve was lodged until this appeal. Further, as is standard, the jury was instructed to not talk about the case until deliberations started and the alternate was no longer with the other jurors when this occurred. Absent some showing that the jury actually received information indicating prior bad acts, the Appellate Defender’s claims are mere unsubstantiated speculation at best and in no way can rise to the level of plain error so as to overcome the lack of an objection. Additionally, even when there is a clear violation of Constitutional commands, when such violations concern only an alternate juror, who is not seated, it is harmless error and not grounds for reversal.

As to the admissibility of the blood test, the Trooper was counting down the seconds

hoping to get the blood draw done within two hours as the jury saw in the bodycam video. That makes it clear that he was not willful nor grossly negligent in his decision to not seek timed blood draws beyond the two hours because he clearly thought he was within two hours. Does two hours mean down to the very second or can it include up to 30 seconds past absolute? Apart from the blood test results, there was plenty of additional evidence of intoxication to overcome any errors regarding the two-hour limit.

Citations to the trial transcript from the District Court below are referenced in the following manner: page 33 of the transcript from October 2, 2023 shall be cited herein as “T2 33”; while page 121 of the transcript from October 3, 2023 shall be cited as “T3 121”.

### **ARGUMENT**

There was nothing wrong with including a court clerk as an alternate juror nor does the Appellant reference any specifics indicating otherwise or showing any prejudice therefrom. Appellant (the Defendant below) complains that it not only was error to allow a court clerk to be an alternate, but plain error that has to be noticed and corrected even though no objection was lodged at the time (T2 33; Appellant’s Opening Brief p. 5) and even though there was clearly no effect on the deliberations nor the trial itself which is even admitted and shown.

“Although (Appellant) chose not to challenge the veniremember for cause, (Appellant) now contends that the district court erred by not excluding the veniremember on its own motion.

“This issue was not preserved for appeal, so we must determine whether the error is plain and affected (Appellant’s) substantial rights. ‘To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record.’” Nelson v. State, 123 Nev. 534, 543, 170 P.3d 517, 524 (2007 footnoted citations omitted).

That juror “was selected as the alternate and stayed on the jury for the entire duration of the trial. AA 163. However, none of the other jurors left and so she was not a participant in the deliberations. AA 532-33.” Appellant’s Opening Brief, p. 5. At pages 4-5 of Appellant’s Brief he reproduces the questioning of that Alternate which also appears on pages 30-33 of the transcript from October 2, 2023. T2 30-33. Nothing there or elsewhere indicates or alludes to any prior convictions or other bad acts and Appellant fails to cite to any such reference showing

that information about the existence of prior convictions or other bad acts was disseminated to any juror who actually ended up in the deliberations. Thus, the fear of contaminating the deliberation process with external facts that might prejudice the jury did not happen and, again, are not referenced by Appellant. Further, Appellant does not explain how it is error – let alone plain error – to ignore the prospective juror’s multiple statements that “yes” she could put aside her feelings and what she had read, and decided the case based only on the testimony and evidence produced in court (although “it would be hard”). T2 30-31. The Alternate’s repeated assessment that “yes” she could be fair is in line with the juror’s self-assessment in Nelson v. State, 123 Nev. 534, 544, 170 P.3d 517, 524 (2007). “Given this record, we conclude that the district court did not err by failing to sua sponte excuse the veniremember for cause.” *Id.* Even if one could stretch plain error to include ignoring a prospective juror’s own statements, in which she stated at least twice that she could be fair, under the test that the Appellant’s Counsel himself points to, prejudice must be shown. Appellant’s Opening Brief, page 8; citing to Nelson v. State, *supra*, 123 Nev. 534, 543, 170 P.3d 517, 524 (2007).

Well, there was no prejudice: assuming *arguendo* that there was some kind of an error in seating a Court Clerk as an Alternate, “the error had no effect on the outcome of (appellant’s) trial and was therefore harmless because no alternate deliberated with the jury.” Dixon v. State, 137 Nev. 217, 223, 485 P.3d 1254 (2021). “There is no constitutional right to alternate jurors, nor is there a right to be an alternate juror. *See* [State v.] *Carter*, 889 S.W.2d at 109.” Dixon, *supra*, 137 Nev. at 222. The jury instructions required these jurors to “not discuss the case among yourselves or allow anyone to speak of it in your presence.” T2 68. Appellant’s Counsel cites us to no testimony or evidence that indicates that this instruction was violated and the part of the transcript he does reproduce in his brief, at pages 4-5, demonstrates that there was no mention of prior convictions for DUI nor for anything else. Further, as already noted, Appellant’s Counsel admits that the Alternate “...was not a participant in the deliberations.” Appellant’s Opening Brief, page 5. Allowing the court clerk to sit through the trial as an alternate juror was no more harmful to anyone’s interests than if she had done so as a part of her

job or as just a member of the public who found it interesting: she did not pass along any information nor otherwise compromise the jurors who deliberated to a verdict.

Thus, it was not a mistake; and even if it had been, there was no harm done - that is, no prejudice - in having a court clerk serve as an Alternate.

Moving on to the next issue; the two-hour controversy: The Trooper's body camera video shows that it was 16:52 before the driver turned off his vehicle and threw down his keys. That same body camera video shows the Trooper counting down to 18:52 as the blood draw was made. The Trial Court found that the actual time down to the second was either 2 hours 20 seconds or 2 hours 30 seconds. This finding was made during trial and before submission to the jury, but was then separately memorialized in a written order after the verdict. The original, First Amended, and Second Amended Criminal Complaints in the Justice Court below and the Complaint as it existed before the Trial Court all include the standard statutory DUI language of "actual physical control". Until he shut the vehicle off, the Defendant was in actual physical control of it. That was at 16:52. The blood draw was two hours later at 18:52. Obviously two hours is within two hours. Only by adding in and counting every single second, do we even get to an argument; but we don't do that in other contexts, so why do it here? What do I mean? Simple: stop and think; when a lawyer or her secretary files a brief near the deadline, s/he gets it time stamped. If it's an old, mechanical time stamp and the time is 5:00 pm, it continues to be 5:00 pm up until it's 5:01 pm and the time stamp shows that. It will stamp 5:00 each time all the way up until it flips over to 5:01. Trooper Church was using this common sense ideation when he counted down the time for the blood draw on the video. He clearly, honestly believed he was still within the two-hour limit because he wasn't including the seconds in his calculation. You can see/hear that in his voice in the video. It's an excited utterance and it's a clear record of what actually was going on. In order to have any argument at all, the Defendant has to insist that this isn't right; but is he correct? Are you late for a 3 o'clock appointment when the second hand sweeps past by 20 or 30 seconds? Methinks not. The statute specifying 2 hours was passed at a time when the old mechanical time stamps were still in use. It is not a stretch

therefore to believe that to the legislators who passed the statute, 2 hours would include all of the seconds up until it reached 2 hours and one full minute. This is the basis for the Trooper's belief and the prosecution's argument.

The Trial Court rested its own finding that the blood test was admissible, not so much on this but rather upon the expert testimony that 30 seconds was not enough to affect the results significantly one way or the other. The Defense posits that this violates the holding of Armstrong: State v. Dist. Ct. (Armstrong), 127 Nev. 927, 267 P. 3d 777 (2011).

However, the State would apply Armstrong differently than the Defendant is trying to do. The dissent in Armstrong, *supra* is well reasoned and it's difficult to believe that their concerns had no effect upon the majority; but the case was not one where the appellate court was free to exercise its own judgment consistent with prior precedent. Rather, the appellate court could only overrule the trial court there if and when there was an abuse of discretion: "Because the State has not demonstrated a manifest abuse of discretion in this case, we deny the petition." *Id.* at 938. To be specific, the high court reasoned earlier: "Under the circumstances presented, we cannot say that the district court manifestly abused or arbitrarily or capriciously exercised its discretion, that is, applied a clearly erroneous interpretation of the law or one not based on reason or contrary to the evidence or established rules of law." Given the scientific reasons on both sides, it would seem that the majority was merely holding that, in the final analysis, it could not agree that the trial court had abused its discretion. Yet, the facts were such that it was a close enough question that there was a strong, well-reasoned dissent. Here, the facts are slightly different in that they are even more favorable to the use of the blood test because much, much closer in time, but the application of the relevant law should not be: the trial court should be upheld unless it abused its discretion; and clearly, that's not the case here. Thus, the State would distinguish the instant case from Armstrong and therefore side with the trial judge in allowing consideration of the lone blood test by the jury. The Armstrong Majority themselves foresaw this inasmuch as they explicitly stated: "There may be circumstances consistent with this opinion in which a calculation based on the results of a single blood sample is reliable and whose

relevance is not substantially outweighed by the danger of unfair prejudice; that is up to the district court to determine on a case-by-case basis.” *Id.* at 937. It hardly seems a stretch then to posit that twenty to thirty seconds past the precise two-hour mark, when the measurement is well over twice the legal limit, would seem to qualify as such a circumstance; just as the district court here found. If not, then we really are getting to the point where an appellate court ruling “precludes the state from ever convicting a drunk driver of having a .08 or more at [the] time of driving’ and ‘legalizes driving under the influence of alcohol so long as a chemical test is not done within two hours of driving.” *Id.* at 37 quoting the prosecution’s brief in Armstrong as going “a step too far.” *Id.* A “step too far”? At 21 minutes, maybe; but at 20 to 30 seconds and more than double the legal limit?! No. Heck No! (expletive reduced but decidedly inferred).

Further, “even when retrograde extrapolation evidence is not admissible, other evidence may establish that a defendant was driving under the influence as prohibited by NRS 484C.430(1)(a). See *Sheriff v. Burcham*, 124 Nev. 1247, 1258, 198 P.3d 326, 333 (2008).” Armstrong, *supra*, at 937. Here, there is plenty of “other evidence” of intoxication and part of that is the Defendant’s own actions which delayed the blood draw by delaying the officer in his gathering of evidence. The defendant was very slow in all he did after he pulled over. It took almost 5 minutes just to get him out of the car and handcuffed. Obviously, a Defendant should not be permitted to benefit from his own delaying tactics.

Third, evidence at trial or at a separate hearing on the instant Motion should show that the level of alcohol in the blood, regardless of supposed rapid metabolism of the alcohol, would still have certainly been above the legal limit of .08 so as to make the test accurate enough for present purposes. Under any scenario consistent with the available evidence in this case, where the Defendant was at more than twice the legal limit 2 hours after driving, there is no credible way he could have been under the limit when he turned off his vehicle. Such evidence was not necessary to simply demonstrate probable cause and therefore wasn’t sought nor produced up to now; but it may well be produced at trial and/or at a Motion hearing.

Fourth, in this instance, the part of the search that is objected to was permissive; not

mandatory. The warrant by its own terms gives the officer discretion to make “up to” 3 blood draws at half hour intervals. *See*, search warrant as well as the search warrant request. It does not mandate them. Because he apparently (and accurately) thought he was within the 2-hour limit, Trooper Church did not elect to make the 3 half hour blood draws but relied on the one with an unexplained back up of one more drawn immediately (which is not to say that there isn’t an explanation, merely that one hasn’t been volunteered to date – but then, on this record, he hasn’t been asked nor has the relevance of it been alluded to let alone demonstrated; merely noted).

Primarily, Defendant relies upon a faulty timeline to bootstrap his attack upon the blood test results. While the report and the Trooper’s testimony begin the narrative at 16:51, that’s not the time when the Defendant stopped driving and stopped being in actual physical control. Rather, the report and the testimony both detail how the Defendant continued to drive for a surprising amount of time and distance after the Trooper began to respond. Trooper Church crossed a median to try to get behind and pursue the Defendant; then followed as the Defendant got off the freeway and went driving through traffic, nearly colliding with other vehicles more than once, continuing to speed, and blowing a stop sign before pulling over on a residential side street where Church caught up with him and turned on his bodycam video. That video shows that the suspect vehicle was not turned off by the Defendant until 16:52; and the keys were tossed out a few seconds later, at the command of the Trooper. Two hours later, at 18:52, that same bodycam shows the blood draw being performed on the Defendant. The Trooper makes a point of calling out the time on the video of the blood draw and both videos have the time displayed on them.

Defense Counsel cites Gordon v. State, 121 Nev. 504, 117 P.3d 214 (2005) which clearly states that the evidence must first be material and, if it is, that “the court must determine whether the failure to gather it resulted from negligence, gross negligence, or bad faith. In the case of mere negligence, no sanctions are imposed....” *Id.* at 510; Defendant’s motion and brief at 4. Here, a blood draw is supposed to be done within 2 hours; and only if it is not, is there supposed

to be further timed draws to determine the possibility of the subject not being legally intoxicated at the time s/he was driving. The Defendant stopped being in actual physical control of his vehicle at 16:52 according to the bodycam video. Using that same bodycam, another video shows the blood draw is at 18:52. That's two hours and should be the end of any further inquiry as to time.

However, even if the time were off slightly as the Defense claims, materiality kicks in – according to the Defense cited Gordon case. Id. Here, the blood test results are more than double the legal limit. Expert testimony should demonstrate at trial that there's no applicable nor reasonable scenario under which a person could metabolize that much alcohol that fast so as to have been under the legal limit at the time the Defendant was driving; but the Defense is welcome to try and test this with cross examination of the State's expert; or with their own expert, if they produce one. Absent some such evidence of materiality, there's no violation of law or procedure that the Gordon decision would countenance.

Apparently sensing this, the Defense points to the fact that Defense Counsel has not been given a declaration (sworn or unsworn) of the EMT who did the blood draw as to whether or not it was done in a medically acceptable manner. However, the video of the blood draw shows, at 1:29 into it (it's 2:01 minutes long), a clear view of the apparently prepackaged kit used to prepare the swab and you can watch the entire blood draw being performed. It is the State's understanding that these are standardized kits that do not contain alcohol or other unpermitted agents that might adversely impact the accuracy of the subsequent testing of the blood sample. The State intends to call the EMT and the Defense is welcome to cross examine him at trial.

In an apparent effort to continue this dubious quest for material bad faith or gross negligence, the Defense characterizes the Trooper's decision to not make three timed blood draws as some kind of sinister plot or incredible gross negligence. No, he merely seems to have noticed that 18:52 comes two hours after 16:52 and therefore elected to not do the timed draws that the search warrant permitted – note, it PERMITS such draws; it does NOT COMMAND them! We do not want to convert every blood draw into an arduous invasion when it is not

necessary. If courts insist that three blood draws be done in every case, needless pain and added time will be suffered in many more cases without reasonable justification therefor. “Judicial restraint is a worthwhile practice when the proposed new doctrine may have implications far beyond the perception of the court asked to declare it.’ Hamm v. Carson City Nugget, Inc., 85 Nev.99, 101, 450 P.2d 358, 359 (1969).” Blanton v. North Las Vegas Mun. Ct., 103 Nev. 636 (1987) upheld unanimously on appeal to the U.S. Supreme Court Blanton v. N. Las Vegas, 489 U.S. 538, 109 S. Ct. 1289, 103 L. Ed. 2d 550, 57 U.S.L.W. 4314 (1989).

It’s important to take a step back and look at the entirety of this situation as the Gordon supra, Court did in that case. Here, the blood testing shows a result more than 2 decimal points beyond DOUBLE the legal limit of .08 and this from a test that can be watched and which was performed just two hours after the Defendant was still in actual physical control of his vehicle. In Gordon, “a toxicology expert for the State acknowledged that factoring in variance could lower the actual BAC value to 0.099 and the chances of that were ‘fifty-fifty.’” Id. at 506 [Note, the legal limit has since decreased from 1.0 to .08]. The State expects to have such an expert at the trial in this case as well. How such an expert can concoct a means by which this Defendant could possibly be below the legal limit at 16:52 and yet be more than double it two hours or even two hours and five minutes later is beyond this writer’s capacity to imagine; but that possibility is what the Defense is necessarily insisting upon to bootstrap this argument into a dismissal or even a specially constructed jury instruction. This is simply a Bridge Too Far.

Accordingly, the State respectfully requests that the Motion to Dismiss be denied.

### **CONCLUSION**

WHEREFORE, the State respectfully requests this Honorable Court to Deny the Defendant’s Motion to Dismiss and allow the matter to move forward as it is.

DATED this 8th day of August, 2024

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William E. Schaeffer, District Attorney NV Bar No. 2789