

COMMISSION ON JUDICIAL SELECTION APPLICATION

SEVENTH JUDICIAL DISTRICT  
DEPARTMENT 2

**By**

(David D. Loreman)



Personal Information
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1.	Full Name	David Dale Loreman
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?	34 Years
4.	City and county of residence	Spring Creek, Elko County
5.	Age	65

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	Self Employed
Phone	775-738-6606
Physical Address & Website	445 Fifth Street, Suite 210, Elko, Nevada 89801, Loremanlaw.com
Date(s) of Employment	July 1986 to present
Supervisor's Name and Title	N/A
Your Title	Owner/sole proprietor
Describe Your Key Duties	Duties are all business aspects of the office as well as all practical legal aspects of the office.
Reason for Leaving	To advance to this position

Previous Employer	Vaughn and Hull
Phone	No longer exists
Address & Website	N/A
Date(s) of Employment	February 1, 1991 to October 1994
Supervisor's Name and Title	N/A
Your Title	Attorney
Describe Your Key Duties	All legal duties as directed by partners and supervised my staff personnel.
Reason for Leaving	Went back to my own firm.

Previous Employer	
Phone	
Address & Website	
Date(s) of Employment	
Supervisor's Name and Title	
Your Title	
Describe Your Key Duties	
Reason for Leaving	

Previous Employer	
Phone	
Address & Website	
Date(s) of Employment	
Supervisor's Name and Title	
Your Title	
Describe Your Key Duties	
Reason for Leaving	

Educational Background
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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.

**Eisenhower High School**  
**702 South 40<sup>th</sup> Avenue**  
**Yakima, Washington 98908**  
**1974 - 1975 (Sophomore Year)**  
**Family relocated to State of Oregon.**

**Stayton Union High School**  
**757 West Locust Street**  
**Stayton, Oregon 97383**

**1975 - 1977**  
**Graduated**

**United States Air Force Academy**  
**2304 Cadet Drive, Suite 2300**  
**USAF Academy, CO 80840**  
**1977 - 1978**

**(Sick leave during school year due to injury)**

**After returning from the one year sick leave I was informed that my leg had not recovered from the injury and would require surgery or further sick leave. As I did not wish to prolong my college for another year I was given a 10% medical disability rating due to the injury and an honorable discharge from the United States Air Force.**

**Pepperdine University**  
**24255 Pacific Coast Hwy**  
**Malibu, California 90263**  
**1977 - 1978 (Freshman Year during Sick leave status)**

**I attended Pepperdine University during the time away from USAFA with the anticipation that I would be returning to the Academy in 1978.**

**Westminster College**  
**1840 South 1300 East**  
**Salt Lake City, Utah 84105**  
**1978 - 1981**  
**Graduated May 23, 1981**  
**Cum Laude**  
**Bachelor of Science**

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

**High School:**

- a. Letterman in Football, Basketball, Baseball and Track**
- b. High School was focused on obtaining an appointment from my Congressman or Senators to the United States Air Force Academy.**

**College:**

- a. Served in student government at Westminster College.**
- b. As student assistant in Continuing Education at Westminster College I worked with the Director of the Division to create the Paralegal Certificate Program and develop the curriculum to gain certification with the ABA.**

- c. Served as student representative to the Tickton Task Force which was established to modify the school structure as well as the curriculum to make Westminster College a viable private college that could survive in the competitive market as well as rectify the massive deficit that existed at the time for the school.
- d. Intermural sports as Westminster College had dropped its sports program after the 1978 -1979 school year.
- e. Worked with Salt Lake City Rape Crisis Center as a presenter for an abuse awareness program that went to schools in the County to educate students on abuse and what avenues those being abused have to seek help.
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.

**Willamette University**

**College of Law**

**Salem, Oregon**

**1981 - 1984**

**Rank: I was not ranked by the school.**

**Graduated May 13, 1984**

**Doctor of Jurisprudence**

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.

**Approximate: Summer 1982 - October 1982**

**Hannible's Ice Cream Parlor**

**Salem, Oregon**

**Shift Manager - Counter Worker**

**Filed for Bankruptcy and went out of business at or about the time of my leaving.**

**Full time summer then part time during school.**

**October 1982 - April 1983**

**Skipper's Fish and Chowder House**

**Salem, Oregon**

**General Laborer**

**Part time**

**April 1983 - June 1984**

**Long, Delapoer, Koos and Healy**

**201 1<sup>st</sup> Avenue West**

**Albany, Oregon 97321**

**(541) 926-5504**

**Worked in excess of 30 hours per week during school and full time in summer months.**

**Law Clerk/Deputy City Attorney (Did all criminal trials for City of Albany Oregon under the Oregon third year appearance rule)**

**Handled all prosecutions for the City of Albany, Oregon.**

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

**Member Phi Delta Phi Legal Fraternity**

**Magister - 1983 to 1984**

**1983 Representative to Biannual Convention in Washington, D.C.**

**Organized fund-raising activities as well as over sight on Fraternities Book Store that supplied all secondary materials for classes at the Law School.**

**Played slow pitch softball for the Police Officers and Lawyers team in Albany, Oregon.**

**Trial practice class – Moot Court Competition.**

Law Practice

12. State the year you were admitted to the Nevada Bar. 1989
13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission. Utah 1984 Bar No. 4366
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	20%
Juvenile matters	15%
Trial court civil	60%
Appellate civil	
Trial court criminal	5%
Appellate criminal	
Administrative litigation	
Other: Please describe	

16. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials? 100% 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. No Jury trials in last five years. Approx. 40 non-jury trials and over 300 Welfare hearings.
  
18. List courts and counties in any state where you have practiced in the past five years. District Courts, Justice Courts, Supreme Court, Lyon County, Carson City, Washoe, Humboldt, Lander, Elko, White Pine, Eureka, Nye County. Salt Lake County, Utah, Utah County, Utah. District Courts.
  
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: <b>Estate Landscape &amp; Snow Removal Specialists, Inc. v. Mountain States Tel. &amp; Tel. Co., 793 P.2d 415 (Utah Ct. App. 1990)</b> <b>Estate Landscape &amp; Snow Removal Specialists, Inc. v. Mountain States Tel. &amp; Tel. Co., 844 P.2d 322 (Utah 1993)</b>
Court and presiding judge and all counsel: <b>Third Judicial District Court, Salt Lake County, Salt Lake City, Utah The Honorable Michael R. Murphy and Timothy R. Hanson - Trial Judges David D. Loreman &amp; Lowell V. Summerhays, Attorneys for Plaintiff Floyd A. Jensen – Attorney for Defendant</b>
Importance of the case to you and the case’s impact on you: <b>This was my first major trial after graduation from law school in 1984. It was also my first time before the Utah Appellate Court and was a great learning experience. Mr. Summerhays had numerous years of experience and as the former partner with Senator Orin Hatch, I felt it would</b>

**allow me to gain a great deal of insight into the legal system in Utah. I argued the case before the Court of Appeals, but by the time it was in the Utah Supreme Court I had already relocated to Elko, Nevada. We prevailed in the Court of Appeals, however, the Supreme Court reversed on the issue of accord and satisfaction. After this case the Utah Legislature revised the Utah Law on accord and satisfaction to effectively overturn the Supreme Court's decision for future cases with similar facts. This case had a great impact on my view of my position in the system as my first trial was the basis for changing the law in the State of Utah.**

Your role in the case: **Joint lead counsel, and primary counsel in the Court of Appeals.**

**Case 2**

Case name and date: **Christensen v. Correctional Services Corporation**

Court and presiding judge and all counsel: **The Honorable H. Dale Cook  
United States District Court – Central Division Utah  
Case No. 90-CV-712 – Filed 08/29/1990  
United States Court of Appeals for the Tenth Circuit Court  
Case No. 93-4078 – Filed 04/28/1993  
David D. Loreman, Attorney for Plaintiff/Appellee  
Erik Strindberg & Martha S. Stonebrook, Attorneys for  
Defendants/Appellants**

Importance of the case to you and the case's impact on you: **This case had very special meaning as it was my first Federal Court Jury trial. It was a very involved discrimination case which ended up in a Jury Verdict in favor of my client, the Plaintiff. This is also significant as I later found out that this case was the first Plaintiff verdict by jury in a discrimination case in Federal Court in Utah in the previous seven years.**

Your role in the case: **I was sole counsel for Plaintiff.**

**Case 3**

Case name and date: **Gibellini, et. al. vs. Klindt et. al., 110 Nev. 1201; 885 P.2d 540 (1994)**

Court and presiding judge and all counsel: **The Honorable William P. Beko  
Vaughan & Hull and David D. Loreman, Attorneys for  
Respondents Stanley J. Steiber, Attorney for Appellants**

Importance of the case to you and the case's impact on you: **This was my first extensive trial in the State of Nevada. The appeal in this case highlighted an issue that was**

**changed in our statutes shortly after the decision. Although the appeal dealt with several aspects of costs on a judgement, one of the Supreme Court's rulings would cause the Nevada Legislature to change the law. The appeal held that electronic research costs were to be absorbed within attorney's fees and were not recoverable under NRS 18.005 as costs. NRS 18.005(17) was amended by the 1995 Legislature to include electronic research costs within the items allowable to tax as costs. It was good to know that I was part of change in our laws to make way for the future of our profession.**

Your role in the case: **I was trial and appellate counsel for Plaintiffs.**

Case 4

Case name and date: **Lewis v. District Court, 113 Nev. 106, 930 P.2d 770 (1997)**

Court and presiding judge and all counsel: **The Honorable Charles M. McGee  
David D. Loreman, Attorney for Real Party in Interest  
Martin Crowley, Attorney for Petitioner**

**Importance of the case to you and the case's impact on you: This was a case that has maintained as a primary cite for those dealing with domestic cases that involve the UCCJA. I was happy in some respects, but disappointed in the result ultimately of the case. Prior to the Supreme Court granting the stay to hear the request for Writ my client was on the road to seeing his three children for the first time in over 5 years. Because the stay was granted my client was again thwarted by his x-wife from seeing his children. This continued even after the decision was received in 1997. My client was finally able to see his children about 1999. However, the damage had been done and based on information attributable to the x-wife the children hated their father even though they did not know him. I have had continued contact with my client and understand that he has no relationship with his children of any kind and that the children have not faired well with their own contact with the legal system. The impact on me was one that I wanted our system to work for my client and it seemed to fail miserably for not only him, but also the children. This is one of the things I desire to follow up with if given the opportunity to obtain the position in Department 2.**

Your role in the case: **I was sole counsel for Real Party in Interest.**

Case 5
Case name and date: <b>Castle vs. Simmons, 120 Nev. 98; 86 P.3d 1042 (2004)</b>
Court and presiding judge and all counsel: <b>The Honorable J. Michael Memeo David D. Loreman, Attorney for Appellant Easterly Armstrong &amp; Lambert and John E. Lambert, Attorneys for Respondent</b>
Importance of the case to you and the case's impact on you: <b>This case changed prior law regarding what evidence could be presented in a domestic modification. The prior method of presentation of evidence was to have only that which existed after the prior order and before the present proceeding. This case determined that if the Court or other party was unaware of the evidence of domestic violence at the prior proceeding it could then be presented to the Court in a subsequent proceeding for modification of that prior order. Although I fervently disagree with the Courts conclusion that the Respondent was unaware of any facts in this case I feel vindicated by the fact that after several years with their father, based on the Court's decision to modify, the children were ultimately returned to their mother as the father had again abandoned them. In addition the older children of the parties later recanted their testimony regarding any abuse by my client and the children are rebuilding their relationship with their mother. This case was one where, in my opinion, the facts of the case were not carefully reviewed and the Court made a mistake. The impact of this case is one that anyone who is a judge of domestic cases must make sure they take care in the review of the facts so that children are not damaged by the decision that is made. Knowing the children involved in this case I have seen how this one ill advised modification effected all the children and not just the three children that went to live with their father.</b>
Your role in the case: <b>I was sole trial and appellate counsel for Plaintiff.</b>

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.

Yes

I have been appointed by the Fourth Judicial District Court, All Departments as mediator in family Court matters dealing with Custody as well as property distribution. It was very rewarding to an extent but somewhat frustrating when you have people determine that they do not want to agree with the other party when it is best for the kids to have agreement with the parents.

Older information:

- a. **Between 1986 and 1991 I was a Judge Pro Tem for the Circuit Court, Murray Division, Salt Lake City, Utah handling various small claim matters.**
- b. **I do private mediations in family law matters.**
- c. **Was a member of Rural Attorneys Arbitration Panel for Fee Disputes with the State Bar of Nevada.**

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

Presently I am the legal representative on the Board of Directors for the Head Start of Northern Nevada. I work at a reduced rate for criminal appointments through DIDs and Welfare 432B cases.

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.

**American Bar Association – Member  
Family Law Section**

**Washoe County Bar Association - Member**

**Elko County Bar Association – Member  
Past President**

**Nevada Bar Association – Member  
Fee Dispute Arbitrator  
Family Law Section  
Committee on Bar Member Insurance**

**Utah Bar Association – Member  
MCLE committee creating rules and requirements prior to implementation.**

**National Association of Criminal Defense Lawyers – Member**

**National Association of Counsel for Children – Member (in process of certification for child attorney)**

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? Yes See attached Exhibit “A”

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

### 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:
- a. the nature of the business Law Firm
  - b. the nature of your duties All business and legal duties as required
  - c. the extent of your involvement in the administration or management of the business, Total control
  - d. the terms of your service owner
  - e. the percentage of your ownership 100%
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. N/A

### 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. Appointed for a period of time as City attorney for City of Carlin, City of Elko, City of Wells, and City of West Wendover.

Election candidate for Justice of the Peace Elko Township.

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

**Elko Desert Sunrise Rotary – Member since 1993  
President 1996-1997**

**Northeastern Nevada Development Authority – Member  
Chairman 1996-1997**

**United Way of the Great Basin – Board Member  
Chairman 1996-1998**

**Boy Scouts of America  
Overland District Chairman (two 2 year terms) 1998 – 1999 and 2001 – 2002  
Wood Badge Adult Leadership Course Director – 2011**

**Elko Library Board – Past Chairman  
Member Emeritus**

**Northeastern Nevada Headstart Board of Directors – Legal representative member,  
2022 to present.**

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.

**United States Air Force – June 1977 to approximately July 1978  
Rank: Cadet**

**Life Member of Phi Delta Phi**

**Stake Young Men's Secretary 2009-2011**

**Ward Mission Leader 2011- 2012  
Young Men's President 2012 – 2015  
Primary Teacher 2015 – 2017  
Elders Quorum 1<sup>st</sup> Counselor 2017 - 2018  
Elders Quorum President 2018 – 2021  
Assistant Ward Clerk – Membership 2021 to present**

**Adjunct Professor, Westminster College Salt Lake City, Utah 1987-  
1990**

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

**Rotary Award: Paul Harris Fellow - 2011**

**Boy Scouts of America – District Award of Merit 2006  
Silver Beaver 2007**

**Member Emeritus – Elko County Library and Law Library Board 2006**

**Elko Lions Club – Certificate of Appreciation for Service as Judge in the Family Traditions Elko County Fair and Livestock Show Parade**

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.

Nevada Lawyer: Volume 32; March 2024 “The Health of Children and Families Centered Around “Healthy Family Program” “ Page 5

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

Yes

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

Yes

38. List avocational interests and hobbies.

**Camping**

**Hiking**

**Refereeing High School Football and Basketball**

**Boating**

**Scuba Diving**

**Wood Working**

**Scouting**

**Flying**

**Skiing**

**Snorkeling**  
**Water Sports**  
**Genealogy**

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

Yes

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.

No

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

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.

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.

No

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

No

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?

No

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.

No

Other
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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. 2011 was candidate for Department 1 Fourth District Court. Was Second for appointment.

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).

See Exhibit B

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.

**As anyone can see from my application, I have had many experiences – some positive and some negative. I certainly believe that my life has been much more positive than negative in my dealings with the individuals and the matters in which I have been involved. I will continue to strive to do the best I can for the people I serve. As a District Judge I would expect nothing less of myself than hard work for those within my District in order to do the absolute best job possible.**

**The community needs a firm, but compassionate individual in this position as this person will be actively involved with the youth that are experiencing trouble at home as well as trouble with the legal system. Not only have I handled all legal issues involving youth, I have been active with youth activities outside the legal realm. My hope is always that we can reach the youth before they become part of our legal system. If we can do this, we will have the best chance that they will not become part of our legal system as adults.**

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.

See Exhibit C

# Exhibit A

# STATE BAR OF NEVADA

## Certification Summary

<b>Name</b>		<b>Bar #</b>
David Loreman		3867
<b>Certification</b>		<b>Status</b>
Mandatory Continuing Legal Education		Credit Compliant
<b>Start Date</b>	<b>End Date</b>	<b>Exempt Reason</b>
Wednesday January 01, 2020	Thursday December 31, 2020	
<b>General Credits Required</b>	<b>Ethics Credits Required</b>	<b>AAMH Credits Required</b>
10.00	2.00	1.00
<b>General Credits Earned</b>	<b>Ethics Credits Earned</b>	<b>AAMH Credits Earned</b>
10.00	2.00	1.00

## Certification Details

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
	<b>Credits carried forward to 2020 from 2018</b>		<b>10.00</b>	<b>1.00</b>	<b>0.00</b>
	<b>Credits carried forward to 2020 from 2019</b>		<b>0.00</b>	<b>1.00</b>	<b>1.00</b>

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
Eighth Judicial District Court Family Division	Supporting Meaningful Connections Family Time Visits During a Pandem	6/23/2020	0.50	0.00	0.00
Elko County Bar Association	Navigating the Practice of Law & a Pandemic While Maintaining Well-B	11/19/2020	0.00	0.00	1.00
	<b>2020 Total</b>		<b>10.50</b>	<b>2.00</b>	<b>2.00</b>
	<b>Credits Earned Towards 2020 Compliance</b>		<b>10.00</b>	<b>2.00</b>	<b>1.00</b>
	<b>Credits carried forward from 2020 to 2022*</b>		<b>0.50</b>	<b>0.00</b>	<b>1.00</b>

*\*Subject to the carry forward provisions of SCR 210(2)(b) and SCR 210(2)(c)*

# STATE BAR OF NEVADA

## Certification Summary

<b>Name</b>		<b>Bar #</b>
David Loreman		3867
<b>Certification</b>		<b>Status</b>
Mandatory Continuing Legal Education		Credit Compliant
<b>Start Date</b>	<b>End Date</b>	<b>Exempt Reason</b>
Friday January 01, 2021	Friday December 31, 2021	
<b>General Credits Required</b>	<b>Ethics Credits Required</b>	<b>AAMH Credits Required</b>
10.00	2.00	1.00
<b>General Credits Earned</b>	<b>Ethics Credits Earned</b>	<b>AAMH Credits Earned</b>
10.00	2.00	1.00

## Certification Details

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
	<b>Credits carried forward to 2021 from 2019</b>		<b>10.00</b>	<b>0.00</b>	<b>1.00</b>
State Bar of Nevada	Above The Law: Elevating Your Mental Health	5/5/2021	0.00	0.00	0.50

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
State Bar of Nevada	Preventing Business Burnout: A Panel Discussion	5/7/2021	0.00	0.00	1.00
Natl Academy of Continuing Legal Education	The Wonderful World of Oz: Effective Strategies for Virtual Litigati	5/7/2021	1.00	0.00	0.00
Natl Academy of Continuing Legal Education	Criminal Defense Strategies: How Former Prosecutors Use Mitigation I	5/8/2021	1.00	0.00	0.00
Natl Academy of Continuing Legal Education	Ethics & The Electronic Ages: Understanding Heightened Legal & Ethic	5/9/2021	0.00	1.00	0.00
Natl Academy of Continuing Legal Education	Basics in Transitioning The Family Owned Business	5/9/2021	1.00	0.00	0.00
Natl Academy of Continuing Legal Education	Common Mistakes Lawyers Make With Clients & How to Avoid Them	5/22/2021	0.00	1.50	0.00
Natl Academy of Continuing Legal Education	Compassionate Release: Covid-19 Effects On The Criminal Justice Syst	5/22/2021	1.50	0.00	0.00
Natl Academy of Continuing Legal Education	A Trial Attorneys Strategy on How to Convince a Jury	5/22/2021	1.50	0.00	0.00
Natl Academy of Continuing Legal Education	Cybersecurity During a Pandemic	5/23/2021	1.00	0.00	0.00
Natl Academy of Continuing Legal Education	Estate Administration, Estate Planning & Lien Resolution Basics for	5/23/2021	1.50	0.00	0.00

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
Natl Academy of Continuing Legal Education	Family Based Immigration	5/24/2021	1.00	0.00	0.00
Natl Academy of Continuing Legal Education	How to Conduct a Comprehensive Client Consultation & Intake for Your	5/28/2021	1.00	0.00	0.00
Natl Academy of Continuing Legal Education	Green Cards, Visas, & Naturalization During Covid-19 - Oh, My!	5/28/2021	1.00	0.00	0.00
Natl Academy of Continuing Legal Education	Maintaining an Ethical Law Practice & Understanding Ethical Issues	5/29/2021	0.00	1.50	0.00
Natl Academy of Continuing Legal Education	Killer Deposition: Tactics, Tips, & Techniques That Can Make or Brea	5/30/2021	2.00	0.00	0.00
Natl Academy of Continuing Legal Education	Making Both Sides of the Story Be Heard: Breaking Down a Domestic Vi	6/3/2021	1.00	0.00	0.00
Natl Academy of Continuing Legal Education	The Complex Homicide Prosecution: A Case Study of the Trial of Ted B	6/5/2021	1.50	0.00	0.00
Supreme Court of Nevada, Administrative Office of the Courts	2021 Consultations for Child Welfare - Parents, Medication, & Therap	7/30/2021	0.00	0.00	1.50
Supreme Court of Nevada, Administrative Office of the Courts	Nevada Community Improvement Council 2021 Summit	9/23/2021	8.50	0.00	0.00
Elko County Bar Association	Substance Abuse	10/7/2021	0.00	0.00	1.00

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
	<b>2021 Total</b>		<b>34.50</b>	<b>4.00</b>	<b>5.00</b>
	<b>Credits Earned Towards 2021 Compliance</b>		<b>10.00</b>	<b>2.00</b>	<b>1.00</b>
	<b>Credits carried forward from 2021 to 2022*</b>		<b>19.50</b>	<b>2.00</b>	<b>1.00</b>
	<b>Excess credits for 2021</b>		<b>5.00</b>	<b>0.00</b>	<b>3.00</b>

*\*Subject to the carry forward provisions of SCR 210(2)(b) and SCR 210(2)(c)*

# STATE BAR OF NEVADA

## Certification Summary

<b>Name</b>		<b>Bar #</b>
David Loreman		3867
<b>Certification</b>		<b>Status</b>
Mandatory Continuing Legal Education		Credit Compliant
<b>Start Date</b>	<b>End Date</b>	<b>Exempt Reason</b>
Saturday January 01, 2022	Saturday December 31, 2022	
<b>General Credits Required</b>	<b>Ethics Credits Required</b>	<b>AAMH Credits Required</b>
10.00	2.00	1.00
<b>General Credits Earned</b>	<b>Ethics Credits Earned</b>	<b>AAMH Credits Earned</b>
10.00	2.00	1.00

## Certification Details

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
	<b>Credits carried forward to 2022 from 2020</b>		<b>0.50</b>	<b>0.00</b>	<b>1.00</b>
	<b>Credits carried forward to 2022 from 2021</b>		<b>19.50</b>	<b>2.00</b>	<b>1.00</b>

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
Nevada Department of Indigent Defense Services	DIDS Second Annual Conference, Day 1: Experts	5/26/2022	3.00	1.50	1.00
Nevada Department of Indigent Defense Services	DIDS Second Annual Conference, Day 2: Investigators	5/27/2022	5.50	0.00	0.00
National Association of Drug Court Professionals	NADCP RISE22	7/28/2022	17.50	3.00	0.00
Fourth Judicial District Court, Elko Nevada	Introduction to: The Fourth Judicial District Court Child Welfare Rules of Procedure	8/18/2022	1.00	0.00	0.00
Supreme Court of Nevada, Administrative Office of the Courts	Nevada Community Improvement Council 2022 Summit	9/23/2022	10.50	0.00	0.00
Nevada Legal Services-Reno	Adult Guardianship, 7/1/22	10/6/2022	2.00	0.00	0.00
Supreme Court of Nevada, Administrative Office of the Courts	Nevada Specialty Court 2022 Conference	10/14/2022	7.50	3.50	1.50
Elko County DA	Dependency Court Roles and Responsibilities Training	10/20/2022	1.00	0.00	0.00
<b>2022 Total</b>			<b>68.00</b>	<b>10.00</b>	<b>4.50</b>
<b>Credits Earned Towards 2022 Compliance</b>			<b>10.00</b>	<b>2.00</b>	<b>1.00</b>

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
	<b>Credits carried forward from 2022 to 2023*</b>		<b>20.00</b>	<b>4.00</b>	<b>2.00</b>
	<b>Excess credits for 2022</b>		<b>38.00</b>	<b>4.00</b>	<b>1.50</b>

*\*Subject to the carry forward provisions of SCR 210(2)(b) and SCR 210(2)(c)*

# STATE BAR OF NEVADA

## Certification Summary

<b>Name</b>		<b>Bar #</b>
David Loreman		3867
<b>Certification</b>		<b>Status</b>
Mandatory Continuing Legal Education		Credit Compliant
<b>Start Date</b>	<b>End Date</b>	<b>Exempt Reason</b>
Sunday January 01, 2023	Sunday December 31, 2023	
<b>General Credits Required</b>	<b>Ethics Credits Required</b>	<b>AAMH Credits Required</b>
10.00	2.00	1.00
<b>General Credits Earned</b>	<b>Ethics Credits Earned</b>	<b>AAMH Credits Earned</b>
10.00	2.00	1.00

## Certification Details

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
	<b>Credits carried forward to 2023 from 2022</b>		<b>20.00</b>	<b>4.00</b>	<b>2.00</b>
Fourth Judicial District Court, Elko Nevada	Emerging Drug Trends	3/16/2023	1.00	0.00	0.00

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
Nevada Department of Indigent Defense Services	DIDS Third Annual Conference	5/4/2023	11.00	1.00	0.00
National Association of Drug Court Professionals (NADCP)	RISE23	6/29/2023	16.50	0.00	0.00
Elko County Bar Association	Practices and Procedures in NRS 432B Actions	9/25/2023	1.50	0.00	0.00
Supreme Court of Nevada, Administrative Office of the Courts	Nevada Community Improvement Council 2023 Summit	9/28/2023	10.50	0.00	0.00
Supreme Court of Nevada, Administrative Office of the Courts	Legal Staff Workshop: Meeting the Needs of Child Welfare Involved Families When Domestic Violence i	10/16/2023	1.00	0.00	0.00
	<b>2023 Total</b>		<b>61.50</b>	<b>5.00</b>	<b>2.00</b>
	<b>Credits Earned Towards 2023 Compliance</b>		<b>10.00</b>	<b>2.00</b>	<b>1.00</b>
	<b>Credits carried forward from 2023 to 2024*</b>		<b>20.00</b>	<b>3.00</b>	<b>1.00</b>
	<b>Excess credits for 2023</b>		<b>31.50</b>	<b>0.00</b>	<b>0.00</b>

*\*Subject to the carry forward provisions of SCR 210(2)(b) and SCR 210(2)(c)*

# STATE BAR OF NEVADA

## Certification Summary

<b>Name</b>		<b>Bar #</b>
David Loreman		3867
<b>Certification</b>		<b>Status</b>
Mandatory Continuing Legal Education		Credit Compliant
<b>Start Date</b>	<b>End Date</b>	<b>Exempt Reason</b>
Monday January 01, 2024	Tuesday December 31, 2024	
<b>General Credits Required</b>	<b>Ethics Credits Required</b>	<b>AAMH Credits Required</b>
10.00	2.00	1.00
<b>General Credits Earned</b>	<b>Ethics Credits Earned</b>	<b>AAMH Credits Earned</b>
10.00	2.00	1.00

## Certification Details

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
	<b>Credits carried forward to 2024 from 2023</b>		<b>20.00</b>	<b>3.00</b>	<b>1.00</b>
National Council of Juvenile and Family Court Judges (NCJFCJ)	Psychiatric Medication in Foster Youth	2/21/2024	1.00	0.00	0.00

<b>Provider</b>	<b>Course/Description</b>	<b>Course Taken Date</b>	<b>General</b>	<b>Ethics</b>	<b>AAMH</b>
American Bar Association	ABA Center on Children and the Law Conferences 2024 37057	4/9/2024	28.00	0.00	0.00
All Rise (formerly NADCP)	All Rise	5/22/2024	20.50	1.00	0.00
National Association of Counsel for Children (NACC)	47th National Child Welfare Law Conference - In Person	8/14/2024	20.50	0.00	0.00
Supreme Court of Nevada, Administrative Office of the Courts	Nevada's Community Improvement Council 2024 Summit	9/20/2024	9.00	1.00	0.00
Ben Gaumond Law Firm, PLLC	Constitutional Land Law	10/3/2024	1.00	0.00	0.00
	<b>2024 Total</b>		<b>100.00</b>	<b>5.00</b>	<b>1.00</b>
	<b>Credits Earned Towards 2024 Compliance</b>		<b>10.00</b>	<b>2.00</b>	<b>1.00</b>
	<b>Credits carrying forward to 2025*</b>		<b>20.00</b>	<b>3.00</b>	<b>0.00</b>
	<b>Excess credits for 2024</b>		<b>70.00</b>	<b>0.00</b>	<b>0.00</b>

*\*Subject to the carry forward provisions of SCR 210(2)(b) and SCR 210(2)(c)*

# Exhibit B

## **STATEMENT IN RESPONSE TO QUESTION 48**

It is my belief that my background and experience with issues of abuse, education, my activities with the youth in our community, and my legal experiences will give me a unique perspective in performing the duties of District Court Judge for Department 2.

I was raised for the most part by a single mother who sought out education for herself to provide for my two sisters, brother and me. During the ten years when my mother was married to my stepfather the family suffered through a very abusive time. This was a period in our society, however, when not much was done to protect the spouses or children in abusive homes. During this time of my life, I strived not only to understand the effects of abuse, but to ask myself what I could do to change the cycle. This life experience has brought me great compassion for those who have suffered at the hands of an abuser.

My mother always taught me the benefit of education. To that end, I wanted to combine my passion for flying with my desire to obtain the best education possible. In my sophomore year in high school I focused on my desire and goal to be appointed to the United States Air Force Academy. Although I had more detractors than supporters, I credit my high school math teacher in my sophomore year for giving me the vision to be able to complete the task. After three years of hard work and being diligent in obtaining the appointment, I was honored to receive a call from the office of Congressman Al Ullman, (Chair of the House Ways and Means Committee in Washington, D. C.) offering me his appointment to the Air Force Academy.

The development of my character continued to be molded by roadblocks and trials in my life. Shortly after starting the Academy training, I was injured and my career aspirations suddenly took a tremendous turn in direction. Because of the extent of the injury, I now had to focus on my education and career in a different direction than what I had planned in the prior three years. My choice of law was one that was made shortly after starting my sophomore year at Westminster College in Salt Lake City, Utah. I always had great respect for the legal profession

and I desired to be a part of that profession.

My nature is to be involved in my community and to that end I took a very active role in my college. This included being a member of the student government and also being one of two student representatives on the Tickton Task Force Committee which was charged with implementation of a plan to restructure the school for accreditation. I was also a volunteer as a presenter for the Salt Lake Rape Crisis Center in the schools in the Salt Lake area. After I graduated with honors from college, I determined that I wanted to attend Willamette University College of Law in Salem, Oregon. This choice was made because of my desire to be closer to home as well as the reputation of the school.

As a young attorney, I involved myself with different bar assignments and was a member of the Young Lawyers Section in Utah. I was also on the committee to implement MCLE in Utah. I donated my time as a Judge Pro Tem to the Circuit Court in Murray, Utah. During this time, I also volunteered my services to Utah Legal Aid Service to assist the disadvantaged.

When I arrived in Elko over 20 years ago, I set out to become involved in my new community. I have had the opportunity and honor to be the head of many of the organizations listed in this application at one time or another. This certainly gives me a great and invaluable insight into our community and its needs.

Learning has never ended for me and my legal activities have and are still shaping my legal knowledge. My legal services to those through the Committee Against Domestic Violence program, who are not often trusting of a male based on their experiences, helped me to understand the suffering that can still go on even in today's society regarding treatment of abuse. The appointment by Judge Ames to represent a young boy who needed a guardianship, so that he could receive needed surgery on his hands from the Shriner's Hospital was very fulfilling. In retrospect I feel strongly that my choice of the legal profession was a positive one because of the

truly good things that could be done by an attorney with my background and life experience.

My practice has evolved into one where I now am appointed as the attorney for the Children that are taken from their homes by DCFS due to parents who have lost their perspective on what is important. Through the process it is hopeful that the parents become enlightened again as to what is important the addictions or the children that love and want them to succeed. I have gone through extensive training for my practice and find it very rewarding and the insight I have gained will be invaluable for a person that is appointed to the District Court Judgeship. In addition, I rely also on my activities with the youth in the community outside of my practice of law that allows a unique perspective for this position. I have been a referee in our community since 1995. I coached both of my sons throughout their youth in Baseball and AAU Basketball. I have been involved with the Boy Scouts of America as District Chairman for Overland District, Cub Master for Pack 85 and 850, Charter Representative for Pack 850, Youth Protection Trainer for Overland District, Rural Representative to the Nevada Area Counsel, Merit Badge Coordinator, Course Director for Wood Badge Training Course. Since I came to Elko in 1991 I have been in the front lines with the youth in our community and this I believe no other candidate for this position can state.

I've been married for over 30 years. I love my wife and two boys more than words can express. My life is a success because of them and I have always had their complete support. I desire the position of District Court Judge knowing that I will serve with the correct attitude as well as knowing that the temperament of judicial office takes a special person. The law is one of continuing learning throughout life and it will not cease, even when on the bench. I expect and will demand that attorneys who appear before me be well versed in their cases as well as their ability to teach the court the facts of the situation and the law that governs.

# Exhibit C

1 the overriding purpose of the intrusion is look for weapons and contraband.” *App.*  
2 184-85.

3 Judge Kacin final sentence of his order stated:

4 *Ortiz indeed engaged in deliberate conduct in violation*  
5 *of Greenwald and Rice* that is worthy of deterrence. See  
6 *Herring v. United States*, 555 U.S. 135, 144 (2009)  
7 (exclusionary rule applies to "deliberate, reckless, or  
8 grossly negligent conduct, or in some circumstances  
recurring or systemic negligence," not every error that  
occurs). The pipe and the two quantities of  
methamphetamine must be suppressed. [emphasis added]

9 *App.* 188. He ruled the evidence should be suppressed based on Ortiz’s conduct in  
10 violation of *Rice* and *Greenwald*. He stressed that Ortiz did not make a proper  
11 search incident to arrest and that there was no actual *legal* inventory of the  
12 backpack. *App.* 185-86. The prosecution then appealed this case.

### 13 SUMMARY OF THE ARGUMENT

14 Respondent in this matter agrees with the Supreme Court of Nevada in the  
15 cases of *Rice* and *Greenwald*. Respondent believes that the Honorable Judge  
16 Alvin R. Kacin reviewed the facts presented to him and made the necessary  
17 findings based on the observations made of the witnesses testimony both oral and  
18 documentary. That the demeanor as witnesses were being questioned by Counsel  
19 for the State and Ms. Nye gave him the insight as to the honest review of the  
20 actions of law enforcement in the present case. A critical component is the finding  
21 that Officer Ortiz “engaged in deliberate conduct” (*App.* 188) in violation of  
22 Nevada Case Law. In viewing this matter it would be hard to understand how 4  
23 officers of the Elko Police Department could not search a bag at the scene. Nor  
24 could anyone of them truly even remember the “bag”. It certainly did not make an  
25 impression on anyone of them during their contact with Ms. Nye. In looking at the  
26 testimony of the officers none of them could even remember really where it was at  
27 any particular time nor could any of them remember how Officer Ortiz got the  
28 “bag” to place it in the vehicle trunk. The problems are compounded by Officer

1 Ortiz in his testimony at the preliminary hearing when he claimed his search to be  
2 an inventory. Then at the motion hearing he now claims and stresses that he was  
3 not doing and inventory search that it was a search incident to arrest. The State in  
4 its Response did not even make an argument that it was an inventory search. Ms.  
5 Nye submits to this Court that the State is attempting to cover up an error of law  
6 enforcement in its argument. This position, aside from trying to justify Ortiz's  
7 actions, also claims that Nevada Supreme Court was wrong in its rulings in *Rice*  
8 and *Greenwald*. Consequently claiming that Judge Kacin was wrong for following  
9 those rulings. Eighteen of the cases cited by the State all preceded *Rice* in time. It  
10 is submitted by Ms. Nye that the State claims that the Nevada Supreme Court in  
11 *Rice* must have missed these cases or did not understand them in coming to there  
12 decision in *Rice* based on the State's appeal in this case and argument in its  
13 opening brief. Ms. Nye in this Answering Brief submits that the Nevada Supreme  
14 Court in *Rice* was a Court that certainly knew what it was doing and was aware of  
15 all the cases at the time.

16 Ultimately the Elko County Sheriff's Office did not follow its policy in its  
17 inventory or the existing case law in Nevada to provide for a legal inventory. It is  
18 also submitted that Ortiz did not do a search incident to arrest and the attempt of  
19 the State to claim it is such does not make common sense and is in-opposite to the  
20 usage of the English language and definitions, specifically "substantially  
21 contemporaneous".

22 Based on the law of *Rice* and the reasoning found in the Order of Judge  
23 Kacin it is respectfully submitted that the Appeal of the State should be denied.

#### 24 ARGUMENT

25 **A. Issue One: The District Court properly concluded that the search of**  
26 **Nye's backpack at the jail was not proper as search incident to arrest.**

27 The case is essentially on all fours with this issue is *Rice v. State*, 113 Nev.  
28 425, 936 P.2d 319 (1997). In Judge Kacin's thoughtful and careful opinion he

1 described the facts of Rice as follows:

2 “In *Rice*, a University of Nevada patrol sergeant stopped a suspect ‘for not  
3 having a headlight or reflector on his bicycle.’ The suspect ‘immediately  
4 “escalated” his voice and became hostile’. *Id.* Further, the suspect ‘was highly  
5 agitated, highly aggressive and demonstrated jerky movements[.]’ [B]ased on past  
6 experience’ the patrol sergeant felt the suspect ‘was either looking for an escape  
7 route or a physical altercation.’ Thinking the suspect might escape, the patrol  
8 sergeant ‘asked him to step off his bicycle and remove his backpack because it  
9 appeared to have a heavy object in it.

10 “Just as the patrol sergeant started to pat the bag, he saw the suspect “move  
11 his right hand down. The patrol sergeant ‘then saw “a bulk and distinctive  
12 outline” of a Derringer in one of the suspect’s pockets. The peace officer  
13 responded in part by handcuffing the suspect and taking the firearm.

14 “Another officer arrived after the suspect was arrested for operating a  
15 bicycle without a headlight and carrying a concealed weapon. After the patrol  
16 sergeant put the suspect in a patrol car, the other officer ‘walked over, got the  
17 backpack, [and] opened it to check it to make sure there was no further  
18 contraband.’ In the backpack, the peace officers ‘found money, two bullets, and  
19 what they thought to be drugs and drug paraphernalia. Apparently, the patrol  
20 sergeant maintained the pair ‘were attempting the conduct an inventory on the  
21 scene.’ ” *App.* 185-86 (citing *Rice*, 113 Nev. at 427)(individual citations omitted).

22 Then relying on *Rice* to find that to hold that Ortiz’ search was not a valid  
23 search incident to arrest the District Court declared:

24 “The district court in *Rice* denied a motion to suppress the firearm and the  
25 evidence found in the backpack. *Id.* at 426. The Nevada Supreme Court  
26 effectively affirmed the denial of the motion to suppress the firearm, but reversed  
27 the decision on not suppressing the contraband in the backpack. Relying primarily  
28 on [*State v.*] *Greenwald* [109 Nev. 808 (1993)], the *Rice* court concluded that the

1 search of the backpack was neither a search incident to arrest nor an inventory. *Id.*  
2 at 430-31. In *Greenwald*, the court held that the search of the suspect’s motorcycle  
3 after he ‘was safely locked away in a police car was not a valid search incident to  
4 arrest because there was no conceivable need to disarm him or prevent him from  
5 concealing or destroying evidence. *Id.* at 430 (citing *Greenwald*, 109 Nev. at 810).  
6 As in *Rice*, ‘[t]he same is true in this case.’ Nye was placed in a police car and  
7 then given to a booking deputy before Ortiz searched the backpack. In other  
8 words, like the suspect in *Rice*, Nye was safely under law enforcement control  
9 before her backpack was searched. ‘Thus, under *Greenwald*, the backpack was not  
10 validly searched incident to arrest.’” *App.* 186. Note too that the level of  
11 commotion caused by Nye seems less than threatening than that discussed in *Rice*  
12 and apparently occurred in a closed space with more law enforcement personnel  
13 present. Judge Kacin did understand that in both *Rice* and the present case the  
14 officers were confronted with a person that was not being cooperative. This issue  
15 was not a factor in the ultimate determination of the Court as it was consistent in  
16 both the present case and *Rice*. *App.* 183 and *App.* 185

17 Contrariwise, the Appellant, inter alia, appears to argue that the *United*  
18 *States v. Chadwick*, 433 U.S. 1, 15 (1977) language “that warrantless searches of  
19 luggage or other property seized at the time of arrest cannot be justified as incident  
20 to that arrest . . . if the search is remote in time or place from the arrest” should  
21 mean that since the Elko jail was only .7 miles from the spot of the arrest it was  
22 not remote in place. *See Appellant Brief* at 16-17. This is foolish; being  
23 transported from a place where one is at liberty to one where trespassers are strip  
24 searched is remote in the sense of having very little connection or relationship with  
25 the prior place. It is thoroughly dissimilar although coincidentally nearby.

26 Similarly, the Appellant argues in part that the place is not “remote” since  
27 Ortiz was standing five or six feet from Nye when he began his search. Again the  
28 logic is nonsense. First, this was the position Ortiz apparently chose when Nye

1 was secured and being booked at the jail. Second, merely because an officer later  
2 places a container near the arrestee when he searches it does not convert a search  
3 into a search incident. Indeed at that point it is he who is creating any justification  
4 of the search as incident. This is clearly wrong. *See United States v. Perea*, 986  
5 F.2d 633, 636, 643 (2d Cir. 1993)(placing bag in police vehicle near arrested  
6 defendant did not make its search incident to arrest); *United States v. Rothman*,  
7 492 F.2d 1260, 1265 (9<sup>th</sup> Cir. 1974)(bringing baggage to arrested defendant did not  
8 make its search incident to arrest); *United States v. Rigales*, 630 F.2d 364, 366-67  
9 (5<sup>th</sup> Cir. 1980)(police could not open heavy zippered bag found in automobile  
10 incident to a warrant arrest of a person who had bullets in his jacket); *See Also*  
11 *United States v. Monclavo-Cruz*, 662 F.2d 1285, 1286-88 (9<sup>th</sup> Cir. 1981)(search of  
12 purse with arrested defendant being questioned an hour afterward at station house  
13 not search incident to arrest).

14 Appellant also argues that the careful and thoughtful tests of *United States v.*  
15 *Knapp*, 917 F.3d 1161, 1168-69 (10<sup>th</sup> Cir. 2019) including (1) whether the person  
16 is handcuffed; (2) numbers of officers and arrestees; (3) relative positions of  
17 officers, arrestees and the place itself; and (4) ease or difficulty with which arrestee  
18 could gain access to the searched area are too onerous in contrast to merely recalling  
19 whether the person was in possession of the item at the time of arrest. This is  
20 somewhat ironic inasmuch as testimony of all of the police officers at the hearings  
21 varied as to the location of the backpack or if it even existed but varied little as to  
22 the *Knapp* factors. *Knapp* wisely focused on *Arizona v. Gant*, 556 U.S. 332, 343-  
23 44 (2009) and determined that whether “at the time of the search” the arrestee had  
24 the capability to access weapons or destroy evidence was the primary inquiry.  
25 *Knapp, Supra* at 1168 (emphasis added in *Knapp*). The *Knapp* court then ruled  
26 that a zipped shut purse an officer had removed three or four chairs away from her,  
27 was not in her immediate control when the handcuffed Ms. Knapp when it was  
28 placed on the hood of a police car. *Knapp, Supra* at 1164. The prosecution

1 argued unsuccessfully that this was proper under search incident and inevitable  
2 discovery. This was the holding despite the handcuffed Knapp's admission under  
3 interrogation that the purse contained a gun. *Knapp, Supra* at 1164, 1166-70.

4 Indeed the Appellant's argument that *Knapp* curtails officer safety does not  
5 apply to this case since Ortiz' safety can scarcely be much of an issue when he has  
6 successfully brought his handcuffed arrestee to the jail and subsequently with  
7 cuffs, shoes and belts, etc., removed she was being booked. Note also that *Knapp*  
8 and another case cited by the Appellant, *Byrd v. State*, 310 P.3d 791 (Wash.  
9 2012), are actually in harmony with respect to the location of the container issue.  
10 The Byrd opinion basically hangs its hat on the fact since the purse was on the  
11 defendant's lap, thus being removed "from her person" at the time of her arrest, it  
12 could be searched incident. *Id.* at 798-99.

13 Appellant also attempts to argue that the "roughly contemporaneous"  
14 language of certain Ninth Circuit cases make this a valid search incident despite  
15 cases like *Rice* and *Knapp* or even a commonsense use of the definition of  
16 "contemporaneous". These cases are distinguishable from *Knapp* based on the  
17 notion that the item searched must have been in the arrestee's control at the time of  
18 arrest. *See Also United States v. Camou*, 773 F.3d 932, 942-43 (9th Cir. 2014)  
19 (cell phones are not containers for vehicular search after arrest). Much as the  
20 "remote" analysis above is not really dependent on distance, so too "roughly  
21 contemporaneous" analysis should not be contingent upon the distance between  
22 arrest site and place of incarceration, but this is the argument of the *Appellant's*  
23 *Brief* at 17-18--including the notion that a vast schism exists between the Ninth  
24 and Tenth Circuits on the Routing Statement issue of whether "time of arrest"  
25 versus "time of the search." *See also Appellant's Brief* at 2 (Routing Statement).  
26 This sleight of hand argument ignores the *Knapp* focus on accessibility and  
27 possible destruction; contrariwise these factors appear to be wisely considered in  
28 Judge Kacin's opinion. Instead, the Appellant's argument would make "roughly

1 contemporaneous” standard dependent on the luckiness or unluckiness of  
2 proximity to the incarcerating facility. The absurdity of this argument is perhaps  
3 most clear in a county like Elko which has an overall area over twice the size of  
4 New Jersey.

5 In truth, *Rice* and the instant case represents a logical line of search incident  
6 analysis in Nevada. As noted in the Appellee’s Routing Statement and the  
7 Appellant Brief Nevada law preceding *Rice* can be summarized from the  
8 following quotes: In *Thurlow v. State*, 81 Nev. 510, 513 (1965) the Nevada  
9 Supreme Court found that “A search can be incident to arrest ‘only if it is  
10 substantially contemporaneous with the arrest and is confined to the immediate  
11 vicinity of the arrest . . . This right to search and seize without a search warrant  
12 extends to the thing under the accused’s immediate control.’” *See Appellant Brief*  
13 at 15.

14 The second quote is from *Scott v. State*, 86 Nev. 145, 147 (1970): “‘Once  
15 an accused is under arrest and in custody, then a search made at another place,  
16 without a warrant, is simply not incident to the arrest.’ It is apparent that the  
17 search in the instant matter was not incident to Scott’s arrest, since it was remote in  
18 time and place from his arrest.” *See Appellant Brief* at 16.

19 Clearly, Judge Kacin’s Order comports with *Scott* and *Thurlow* besides  
20 *Rice*. In all, the remoteness and contemporaneous arguments only support *Rice*,  
21 *Scott*, and *Thurlow*. Moreover, not only did Ortiz not make a valid search incident  
22 to arrest at the jail but clearly he didn’t even think he was doing so at the time.

23 Additionally, many of the cases Appellant has cited for allowing search  
24 incident after the item is seized and the arrestee is handcuffed, *Appellant’s Brief* at  
25 13, are distinguishable from the instant case. For example *United States v.*  
26 *Nelson*, 102 F.3d 1344, 1346-47 (4<sup>th</sup> Cir. 1996) allows such a search incident when  
27 the search was at the scene and the delay was reasonable. Here the second but not  
28 the first applies. In *United States v. Morales*, 923 F.2d 621, 622 (8<sup>th</sup> Cir 1990), the

1 defendant was arrested but not handcuffed when his bags were searched about  
2 three feet away from him. In *United States v. Herrera*, 810 F.2d 989, 990 (10<sup>th</sup>  
3 Cir. 1987) authorities surveilling the defendant had seen him take a letter with a  
4 tracking device enclosed, placed it in a briefcase, then walk towards his car so they  
5 knew the evidence was in the briefcase.

6 This search made in another place without a warrant while the arrestee was  
7 being booked and was essentially without access to the container was not incident  
8 to the arrest.

9 **B. Issue Two: Inevitable discovery does not apply.**

10 Again Judge Kacin’s opinion is right on point. Although noting that despite  
11 Deputy Edgmond’s normal procedure left “little doubt that Edgmond inevitably  
12 would have discovered both quantities of methamphetamine and the pipe in Nye’s  
13 backpack had Ortiz not searched it first. However, the court cannot conclude that  
14 the contraband would have been found in a *lawful* inventory.” *App.* 187 (emphasis  
15 original).

16 Thus, the District Court was correct to conclude that the deputy failed to  
17 produce an actual inventory of the search of the backpack and hence concluded  
18 correctly that “‘Without an inventory, we can have no inventory search.’  
19 *Greenwald, Supra.* at 811. For that reason alone, the court must conclude that  
20 Edgmond would not have inevitably discovered the methamphetamine and pipe in  
21 a *lawful* inventory search.” *App.* 187 (emphasis original).

22 Also on point is *Bailey v. State*, 2016 Nev. Unpub. LEXIS 801. In *Bailey*,  
23 the Nevada Supreme Court has ruled that an item may not be part of an inventory  
24 search when it is not on the arrestee at the time of arrest—as was the case here--  
25 and the arrestee did not ask for the item. *Bailey* at 1.

26 For other cases analogous to why inevitability does not apply here: *See State*  
27 *v. Warren* 37 P.3d 270, 274-75 (Utah App. 2001) (cannot assume inevitability of  
28 finding contraband in vehicle simply because it was going to be impounded); *See*

1 *Also United States v. Warren*, 152 F.3d 1034, 1040 (8<sup>th</sup> Cir. 1998)(exploitation of  
2 illegal entry to premises did not support notion that warrant would be granted  
3 inevitably); cf. *United States v. Keszthelyi*, 308 F.3d 557, 571-72 (6th Cir.  
4 2002)(second search not inevitable when first search warrant had terminated);  
5 *Rodriguez v. State*, 187 So. 3d 841, 849-50 (Fla. 2015)(must at least be seeking a  
6 search warrant to argue inevitability of illegal search); *Lee v. State*, 774 A.2d 1183,  
7 1192-93 (Md. App. 2001)(improper no knock clause in search warrant precluded  
8 inevitability) .

9 **C. Issue Three: The District Court found correctly that suppression**  
10 **was the proper remedy for deliberate conduct in violation of *Rice* and**  
11 ***Greenwald*.**

12 Judge Kacin correctly and succinctly found that the exclusionary rule  
13 applied. He declared that: “Given the longstanding rule of *Greenwald* and *Rice*,  
14 the court is not persuaded by the prosecution’s argument that ‘[a]pplication of the  
15 exclusionary rule is unwarranted’ here. Ortiz indeed engaged in deliberate conduct  
16 in violation of *Greenwald* and *Rice* that is worthy of deterrence. *See Herring v.*  
17 *United States*, 555 U.S. 135, 144 (2009)(exclusionary rule applies to ‘deliberate,  
18 reckless, or grossly negligent conduct, or in some circumstances recurring or  
19 systemic negligence,’ not every error that occurs). The pipe and the two quantities  
20 of methamphetamine must be suppressed.” *App.* 188.

21 This seems particularly apt when Ortiz’ rationale for the search appears,  
22 which was initially in his report and preliminary hearing testimony, that this was an  
23 inventory search. He apparently only changed to justifying it as a search incident  
24 to arrest when that was how the prosecution below framed its response to the initial  
25 motion to suppress. *See App.* 107-12 (Opposition to Motion to Suppress not even  
26 arguing an inventory by Ortiz). Appellant seems now to argue that Ortiz was  
27 acting on something like “good faith” on federal precedent, but how much good  
28 faith can you have when you apparently change your “inventory” to “search

1 incident” only after the prosecutor subsequently frames his arguments that way,  
2 and where your controlling law is *Rice*? Clearly it is absurd to believe that Ortiz  
3 was relying on federal precedent. Similarly how much “good faith” can buttress a  
4 booking inventory consisting of a “bag” in a state that knows of its own precedent  
5 of *Greenwald* and *Weintraub v. State*, 110 Nev. 287, 288-89, 871 P.2d 339 (1994)  
6 (listing only 8 items and not listing over a hundred was improper inventory)?

7 **D. Issue Four: There are other alternative reasons that this was not a**  
8 **valid search incident to arrest.**

9 **a. The backpack was apparently out of Nye’s control both before and**  
10 **after Ortiz seized it.**

11 Either alternative suffices to negate a search incident to arrest analysis. *See*  
12 *State v. Carrawell*, 481 S.W.2d 833 (Mo. 2016). In *Carrawell*, an officer was  
13 arresting a man carrying a plastic bag for his gestures and swearing disturbing the  
14 peace of those around him. The man attempted to enter a door and the policeman  
15 grabbed hold of him, telling him to drop the bag as he attempted to handcuff him.  
16 Eventually when the policeman ripped the bag from Carrawell’s hands it fell to the  
17 ground with a breaking sound. The officer secured the arrestee in his car then went  
18 back and searched the bag, finding a broken plate and a smaller plastic bag  
19 containing heroin. The court ruled that since the bag was not within the area of the  
20 arrestee’s control this was not a valid search incident to arrest but that since there  
21 was precedent that supported allowing this search at the time it occurred the search  
22 occurred in good faith. *Id.* at 838-46. In finding the search not incident to arrest,  
23 the court noted that the *United States v. Edwards*, 415 U.S. 800, 803 (1974)  
24 “exception to the general rule allowing the item to be within the immediate control  
25 applies only to items that are so entwined with the arrestee’s person that they  
26 cannot be separated from the person at the time of arrest.” *Carrawell, Supra.* at  
27 840. Obviously, the backpack was separated from Ms. Nye at the time of arrest  
28 and quite likely before it and even if taken from her, Ortiz could not search it then