

COMMISSION ON JUDICIAL SELECTION APPLICATION

ELEVENTH JUDICIAL DISTRICT COURT
DEPARTMENT 1

By

David K. Neidert



Personal Information

1.	Full Name	David Kalo Neidert
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	Lockwood, Storey County
5.	Age	64

Employment History

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

Current or Last Employer	Neidert Law (solo practitioner)
Phone	775-623-4455
Physical Address & Website	P.O. Box 1022, Viegina City, NV 89440 (address confidential) none
Date(s) of Employment	2023 to present
Supervisor's Name and Title	Self
Your Title	Owner
Describe Your Key Duties	<p>I retired from state service in April, 2023. My practice is devoted to indigent criminal defense in Washoe County through the Indigent Conflict Group and throughout rural Nevada through the Nevada Department of Indigent Defense Services,</p> <p>As such, I have accepted and handled cases in Carson City, Washoe County, Lyon County, Elko County, Nye County, Humboldt County, White Pine County, Churchill County, and Lander County.</p> <p>I am currently the contract alternate public defender for Lander County, Nevada.</p> <p>During this period, I have been lead counsel in multiple jury trials, including clients charged with Attempted Murder and Sexual Assault on a Minor Under 14.</p>

	I am Rule 250 qualified to act as lead counsel in capital cases
Reason for Leaving	Not applicable

Previous Employer	Employment Security Division, Department of Employment, Training and Rehabilitation (DETR)
Phone	775-684-3450
Address & Website	500 E. 3 rd Street, Carson City, NV 89701; detr.nv.gov
Date(s) of Employment	July, 2020 to April, 2023
Supervisor's Name and Title	Troy Jordan, Senior Attorney
Your Title	Staff Attorney
Describe Your Key Duties	First as a contract attorney (from July, 2020 to October, 2021), and later as a state employee (from November, 2021 to April, 2023), advised the Director of the Employment Security Division on legal issues. Additionally, I defended the Employment Security Division in District Courts throughout Nevada in appeals from the decision of administrative law judges.
Reason for Leaving	My wife died in November, 2022. In the aftermath of her death, and because I had 21 years of PERS credit, retirement with a part-time law practice was preferable.

Previous Employer	Neidert Law
Phone	775-423-4455
Address & Website	643 S. Maine Street, Fallon, Nevada 89406 (no website)
Date(s) of Employment	July, 2012 to November, 2021
Supervisor's Name and Title	self
Your Title	Owner
Describe Your Key Duties	From November, 2012 to November, 2017, I was a contract public defender for Churchill County, Nevada. As such, I defended clients charged with criminal violations at all stages of the proceedings, including pretrial motions, trial, and appeal. I successfully defended clients in multiple jury trials and handled the appeals for those who were convicted.

	<p>I represented clients charged with a host of crimes, including Murder, Sexual Assault, Lewdness with a Minor, Robbery, and Kidnaping.</p> <p>My contract also required me to represent people who were alleged by the Division of Child and Family Services to have abused or neglected their children. This portion of my practice required me to consult with social workers, psychologists, and other experts in determining whether children could safely be returned to their parents and what was in the children's overall best interest,</p> <p>At the same time, since the Public Defender position was not a full-time position, I also grew a law practice in Fallon, Nevada.</p> <p>As such, I also represented criminal clients in the Nevada Supreme Court, the Fallon Municipal Court, the Fifth Judicial District Court (Mineral County), the Hawthorne Justice Court, the Second Judicial District Court, the Reno Justice Court, the Sparks Justice Court, and the Eleventh Judicial District Court (Pershing and Mineral Counties).</p> <p>I also accepted appointments to represent clients in the United States District Court, including a federal habeas corpus death penalty case and a death-row post-conviction case in Clark County, Nevada, and a death penalty direct appeal (following a re-sentencing) in Washe County.</p> <p>To my knowledge, I am the only attorney in the State of Nevada who has argued the merits of a death penalty case as both a prosecutor and as a defense attorney.</p> <p>Outside of my criminal practice, I had an extensive family law practice in Churchill County, where I represented numerous clients in both contested and uncontested divorces, which included child custody, pension and property distribution issues.</p> <p>I also had a probate practice, where I drafted wills, trusts, and various Powers of Attorney, as well as probating wills in both the Second and Tenth Judicial District Courts.</p> <p>Finally, I had a general litigation practice, where I represented civil litigants in all aspects of their cases, including preparing and responding to Requests for Admissions, Interrogatories, Depositions, Motions for Summary Judgment, and bench trials.</p>
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Reason for Leaving	Accepted full-time State employment
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Previous Employer	Nevada Attorney General
Phone	775-684-1100
Address & Website	5420 Kietzke Lane, Reno, NV 89509; ag.nv.gov
Date(s) of Employment	May, 1997 to June, 2012
Supervisor's Name and Title	Russell Smith, Director, Workers Compensation Fraud Unit
Your Title	Senior Deputy Attorney General
Describe Your Key Duties	<p>From 2008 to 2012, I handled Workman's Compensation Fraud cases in Northern Nevada, representing the State in district and justice courts as far east as West Wendover, Nevada and Ely, Nevada, and as far south as Hawthorne, Nevada. These cases involved allegations of Workman's Compensation Fraud and other cases specifically dealing with Nevada's workman's compensation criminal laws.</p> <p>During this same period, I continued to represent the State of Nevada in the United States District Court and the Ninth Circuit Court of Appeals on four death penalty cases and other federal habeas corpus cases where I had specialized expertise and knowledge.</p> <p>Though they were secondary assignments, I represented the state in an <i>en banc</i> argument in a federal habeas corpus case at the Ninth Circuit Court of Appeals and co-authored a merits brief in the United States Supreme Court.</p> <p>From 2005 to 2008, my official job assignment was "Capital Case Coordinator." In this capacity, I was personally responsible for all aspects of ten capital cases, including all motions practice and other litigation. I continued to regularly appear as an advocate in the Ninth Circuit Court of Appeals. I also acted as a mentor and trained new deputies attorney general assigned both capital and non-capital habeas corpus litigation throughout Nevada.</p> <p>Interestingly, to my knowledge, during this period I was the only Senior Deputy Attorney General in the State of Nevada with keycard access to the Attorney General's offices in Reno, Las Vegas, and Carson City, as well as having a physical key to the Attorney General's office in Ely, Nevada.</p>

	<p>From 1997 to 2005, I was a prosecutor in the Attorney General’s Office, where I prosecuted a host of criminal violations, including Murder, Battery on an Officer, Possession of a Dangerous Weapon by a Prisoner, and Escape, mostly perpetrated by inmates in the custody of the Nevada Department of Corrections but also cases the Attorney General was asked to handle due to the local disqualifications of prosecutors.</p> <p>During this period, I acted as lead prosecutor on cases in the First Judicial District Court, the Second Judicial District Court, the Third Judicial District Court, the Fourth Judicial District Court, the Sixth Judicial District Court, the Seventh Judicial District Court, and the Ninth Judicial District Court, as well as in Justice Courts in those respective judicial districts districts.</p> <p>During this same period, I also handled federal habeas corpus and state post-conviction litigation, including eleven death penalty cases and scores of non-death cases, which required extensive legal research and writing, and appellate briefing and arguing, mostly in the Ninth Circuit Court of Appeals but also in the Nevada Supreme Court and the United States and state district courts, on over 20 occasions.</p>
Reason for Leaving	Dispute over a death penalty appeal I was handling

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

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.

Reno High School, 1975-1979 (Graduated)

University of Nevada, Reno, 1979-1981 (transferred to Westminster College of Salt Lake City)

Westminster College of Salt Lake City, 1981 to 1985, Bachelor of Science, *Summa Cum Laude*, (1984), Bachelor of Arts, *Magna Cum Laude* (1985) (Graduated)

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

In High School, I was in the senior leadership of the Junior Reserve Officers Training Corps (JROTC). As a junior and a senior, I was a member of the high school debate team. I was active as a sophomore, junior, and senior in theater.

Outside of the school setting, I was active in the Boy Scouts of America and became an Eagle Scout.

In the summers of 1979 and 1980, I was on the staff of the Philmont Scout Ranch in Cimarron, New Mexico, as a Program Counselor and Ranger.

At the University of Nevada, I was employed part-time as a projectionist and cashier at the Fleischman Planetarium.

At Westminster College, I was a member of the student legislature, and active in campus theater. Additionally, I did internships on a United States Senate campaign in Maine, a gubernatorial campaign in Utah, and a state legislative race in Pennsylvania.

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 Utah College of Law, 1988 to 1991, Juris Doctor. The University of Utah did not have formal class rankings, but based on the information it did supply, I graduated in the top 15% of my class.

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 worked full time for Fidelity Investments during my first year of law school as a customer service representative – this likely caused me to not receive Order of the Coif. I had worked at Fidelity Investments prior to starting law school.

During my second and third year of law school, I worked part time for the Utah Attorney General's Office in its Criminal Appeals section.

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

In addition to working part-time for the Utah Attorney General, I was on the staff of the *Journal of Contemporary Law* and the *Journal of Environmental Law and Policy*. During my third year, I was Executive Editor of both publications. I published both a Note and a Comment in the *Journal of Contemporary Law*.

In my third year of law school, I did a Criminal Law Clinic with the Salt Lake County Attorney. Using Utah's "Third Year Practice Rule," I made numerous appearances and litigated numerous misdemeanor trials in Salt Lake County, including two jury trials, both convictions.

Between my first and second year of law school, I did an internship with the Legal Aid Society of Salt Lake City, which represented victims of domestic violence seeking protective orders.

Law Practice

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

1991

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

None. However, in 1997, I was admitted to the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Court for the District of Nevada.

In 2005, I was admitted to the bar of the Supreme Court of the United States.

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	
Juvenile matters	
Trial court civil	1%
Appellate civil	

Trial court criminal	71%
Appellate criminal	3%
Administrative litigation	25%
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?

While all felony and gross misdemeanor cases involve the possibility of jury trials, I would estimate 10-15% of all of my criminal cases contemplated a criminal trial at some point as opposed to being resolved with a plea agreement prior to preliminary hearing. None of the administrative law cases involved jury trials

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

I have acted as lead counsel in six jury trials in 2025; three in 2024; and one in 2023. I had at least ten other cases settle on the eve of trial in this same three-year period. I would estimate that I have acted as lead counsel in between 50 and 100 felony jury trials during my legal career.

If you count district court appeals from the denial of administrative relief, I have appeared in dozens of non-jury trials from 2020 to 2023.

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

The Nevada Supreme Court; the First Judicial District Court, Carson City Justice Court, Virginia City Justice Court; the Second Judicial District Court, Reno Justice Court, Sparks Justice Court; the Third Judicial District Court, Canal Justice Court (Fernley), Dayton Justice Court, Walker River Justice Court (Yerington); the Fourth Judicial District Court, Elko Justice Court; the Fifth Judicial District Court, Pahrump Justice Court, Beatty Justice Court; the Sixth Judicial District Court, Union Justice Court (Winnemucca); the Seventh Judicial District Court, Ely Justice Court; the Eighth Judicial District Court; the Ninth Judicial District Court; the Tenth Judicial District Court, New River Justice Court (Fallon); the Eleventh Judicial District Court, Lake Justice Court (Lovelock); Argenta Justice Court (Battle Mountain); Hawthorne Justice Court.

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

Case 1
Case name and date: <i>State v. Michael Sonner</i> , Sixth Judicial District Court, Pershing County, 1993 to 1997. <i>Sonner v. State</i> , 112 Nev. 1328, 930 P.2d (1997); 114 Nev. 321, 955 P.2d (1998)

<p>Court and presiding judge and all counsel: The Nevada Supreme Court. The Sixth Judicial District Court</p> <p>The Honorable Richard Wagner, Belinda Quilici, Pershing County District Attorney, Brett Kolvet, Special Deputy District Attorney, James J. Jackson, Nevada State Public Defender, Steve McGuire, Deputy State Public Defender, and myself.</p>
<p>Importance of the case to you and the case's impact on you: Nevada Highway Patrol Trooper Carlos Borland was shot and killed in the line of duty by Michael Sonner, a prison escapee from North Carolina. just outside of Lovelock, Nevada. This was a fairly high profile capital case. I was the Assistant District Attorney of Pershing County at the time. This was a high-profile, extremely important prosecution close to the beginning of my professional career.</p> <p>It was the first murder prosecution of my career, involving a victim whom I knew and worked with on a professional basis.</p> <p>In many ways, this case was the lodestar of my subsequent career, since it directly led to my employment with the Nevada Attorney General as a prosecutor in its criminal division and as a litigator in federal habeas corpus cases, both death penalty and non-death penalty. Without this case, I doubt my career would have progressed the way that it did.</p> <p>I continued to work on the post-conviction aspects of the case as a Deputy Attorney General.</p>
<p>Your role in the case: I handled the legal aspects of the case, including preparing the original charging document, handling all motions practice, preparing the State's brief on direct appeal, and arguing the case in front of the Nevada Supreme Court, which was, at that time, the highlight of my legal career. For an attorney licensed to practice law for only two years at the time of Trooper Borland's murder, this was all a huge responsibility. This case required a huge investment in time while litigating complex legal issues for a case that I knew would be scrutinized by both state and federal courts for many years in the future.</p>

<p>Case 2</p>
<p>Case name and date: <i>Michael Sonner v. E.K. McDaniel</i> (state post-conviction and federal habeas corpus) (1998 to 2000, state post-conviction; 2000 to 2007, federal habeas corpus, 2007-2012, state post-conviction, 2012, federal habeas corpus)</p>
<p>Court and presiding judge and all counsel: The Nevada Supreme Court, the Sixth Judicial District Court (post-conviction), the Honorable Richard Wagner; David Lockie and Sherburn MacFarlain, defense counsel; the United States District Court; the Honorable Philip Pro; James Thompson, Saor Settler (federal habeas corpus, second state post-conviction), and myself.</p>
<p>Importance of the case to you and the case's impact on you: This was a continuation of the death penalty litigation involving the murder of Trooper Carlos Borland after I became a Deputy Attorney General. At all levels, this case had a deep personal impact because I knew Trooper Borland on a professional level and I got to know his family, particularly his mother, in its aftermath. The legal issues in capital litigation are always challenging.</p>

Knowing the victim prior to his death and his family because of it, I saw the impact of crime on a personal level. It has made me very conscious of the impact crime has on the victims and their families and why they should not be forgotten in the criminal justice system.

Additionally, the case served as a good reminder that judges aren't always right. District Judge Richard Wagner made rulings that were wrong as a matter of law with respect to Nevada's procedural default rules. While I have always deeply admired Judge Wagner (and still do), it served that sometimes I have to appeal decisions made by judges I otherwise highly respect. The Nevada Supreme Court reversed Judge Wagner's ruling in an unpublished opinion.

Michael Sonner died of natural causes on April 23, 2025.

Your role in the case: I handled all aspects of the litigation of the case, including hearings in the state district court as well as briefing in the Nevada Supreme Court and the United States District Court.

Case 3

Case name and date:

Ricky Sechrest v. John Ignacio, 549 F.3d 789 (9th Cir. 2008); *Ricky Sechrest v. Renee Baker*, 816 F.Supp. 1017 (D. Nev. 2011)

Court and presiding judge and all counsel:

The Ninth Circuit Court of Appeals, Judges Harry Pregerson, William Fletcher, and Marsha Berzon, the United States District Court, the Honorable Edward C. Reed, Tiffany Murphy and Michael Pescetta, Deputy Federal Public Defenders, and myself.

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

This was a death penalty case I argued on the merits in the Ninth Circuit Court of Appeals. I had inherited this case from another attorney. Sechrest had been on death row in Nevada since 1983 for kidnaping and murdering two young girls, aged nine and ten. Sechrest admitted that he masturbated over the body of one of his victims after killing her.

Perhaps even more so than Michael Sonner, Sechrest richly deserved his death sentence. Judge Reed denied Sechrest's federal habeas corpus petition, finding that Sechrest had been fairly tried and sentenced to death.

However, the Ninth Circuit panel, in an opinion authored by one of that court's most liberal judges, overturned Sechrest's conviction on the grounds that comments made by the trial prosecutor in his opening statement deprived Sechrest of a fair sentencing.

The Ninth Circuit rather blithely ignored my argument that given the heinous nature of Sechrest's conduct, Sechrest could not show he was prejudiced because any rational jury would have sentenced him to death regardless of the trial prosecutor's comments.

Following the denial of *certiorari* and remand to the district court to determine certain trial issues, the parties briefed and Judge Reed again ruled on issues relating to Sechrest's conviction, finding that he was not prejudiced. The Ninth Circuit did uphold Judge Reed's ruling regarding Sechrest's conviction.

This case is deeply personal to me, because it epitomized ideology sometimes thwarting justice.

It reminded me that while the ideal is that judges should apply the law fairly and evenly, this does not always occur.

This case stood in stark contrast to a case I had earlier in my career, while working in Pershing County, where Judge Wagner had to rule on a close Fourth Amendment question in a drug case.

Judge Wagner suppressed the drugs, finding that while he personally loathed and despised the sale and use of controlled substances, he had also taken an oath to uphold the Constitution, and that he believed the drugs in question had been seized illegally.

Ricky Sechrest died of natural causes on November 30, 2017.

Your role in the case: I inherited this case from another Deputy Attorney General. I was involved in all aspects of the litigation once I inherited it, including authoring the appellate brief and arguing it in front of the Ninth Circuit.

Case 4

Case name and date:

The State of Nevada vs. John Hunt (2017)

Court and presiding judge and all counsel:

Eleventh Judicial District Court, the Honorable Jim Shirley. Sean Rowe, Mineral County District Attorney, Kyle George (prosecutor), myself.

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

I was John Hunt's defense counsel. He was charged with Sexual Assault, which is a heinous crime. But even those charged with this crime are entitled to a zealous defense.

I inherited this case from a prior attorney, who had conducted his own investigation. He withdrew when he realized that a potential witness had given him a statement contrary to his police report, putting him in the position of being a witness in his own case.

This case reinforced the importance of having a defense investigator in almost every case heading toward trial, and certainly in any case where potential witnesses might be interviewed. A prior inconsistent statement is not hearsay, but if such a statement is made by a potential witness during the investigation, someone besides defense counsel must hear it for the statement to be used at trial.

This case also reinforced the importance of trial preparation, including investigations. My investigator and I traveled to Hawthorne several times preparing for trial.

This is representative of several cases in my career that reinforced these lessons, including an earlier Level 3 Drug Trafficking case in Washoe County where a thorough investigation resulted in the case against my client being completely dismissed prior to trial.

Ultimately, Hunt was found “not guilty” at his trial.

Your role in the case:

I was John Hunt’s defense counsel.

Case 5

Case name and date:

The State of Nevada vs. Randell Randall (2025)

Court and presiding judge and all counsel:

The Honorable Kristin Hill, Tyler Ingram, Elko County District Attorney, Jeffrey Slade, Deputy District Attorney, myself.

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

This case is fairly recent but it reinforces the truth of the old cliché that you should not judge a book by its cover.

Randell Randall looks like a hardcore prison inmate straight from Central Casting: heavily tattooed arms, chest, back, top of the head, along with a teardrop tattoo next to his eye.

This is because Randall has been a hardcore prison inmate.

I became his attorney in 2023, when he was charged with Attempted Murder, Battery with a Deadly Weapon Causing Substantial Bodily Harm, Challenging to a Fight, and being a Habitual Criminal (he has eight prior felony convictions).

It would have been easy to go through the motions with a client like this: Prison was his home. Prison is where he belonged.

However, the facts of the case were anything but straightforward. On the night of the charged incident, he was at his home minding his own business when the victim arrived to smoke methamphetamine with Randall’s girlfriend.

Discovering Randall was home, the victim called Randall out to fight, using derogatory terms in the process.

Randall ultimately left his residence to confront the victim, who Randall believed had a tire iron. Not wanting to be unarmed himself, Randall went to his wood pile and retrieved an axe.

None of the above-described facts are in dispute. The dispute concerned what happened afterward.

Randall claimed that the victim advanced toward him, causing Randall to swing the axe once, hitting the victim in the neck.

Both Randall and the victim fled the scene. Rather than go to the hospital, the victim instead checked into a motel in Carlin, Nevada. Seeing his neck wound, his girlfriend convinced him to go to the hospital, where medical personnel called the Elko County Sheriff.

At trial, I argued that Randall acted in self-defense. The jury found him “not guilty” of Attempted Murder but “guilty” of the two other substantive offenses.

The prosecutor still sought habitual criminal status. I had to prepare for sentencing, knowing that Randall could still be sentenced to life imprisonment. I presented an extensive mitigation case and argued against the judge adjudicating him a habitual criminal

Ultimately, Judge Hill sentenced Randall to 24 to 60 months on each of the substantive offenses, with the sentences ordered to run concurrently. This was the minimum prison sentence Judge Hill could give.

Like me, Judge Hill looked beyond Randall’s hardened criminal persona and recognized that defendants must be sentenced individually for the offenses they commit, with the sentence based not only the criminal record but instead the totality of the person and the facts behind the crimes known to the judge.

Randall told me that I was the best attorney that he had ever had. We decided not to appeal the trial verdict and his conviction is final.

While this case was very recent, Randall will be a client I never forget, both in terms of my own role in his case but also in Judge Hill providing thoughtful, individualized sentencing to a defendant in a way that many judges would not.

Your role in the case:

I was Randell Randall’s defense counsel

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

No

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

I served on the Board of Bristlecone Family Resources, have been a “Lawyer at the Library,” and have handled several family law matters on a *pro bono* basis during my career.

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 currently on the Rule 250 Revision Committee chaired by Justice Linda Bell; have served on the Continuing Legal Education Committee of the State Bar of Nevada earlier in my career; and have been a member of the Washoe County and First Judicial District Bar Associations.

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?

I must complete the Ethics and Substance Abuse hours of continuing legal education before the end of the calendar year. Otherwise, I am compliant.

The following is a list of the continuing legal education seminars, including the number of hours, that I have attended from 2020 to 2025. General credits are listed in the first numbered column. Ethics continuing legal education credits are listed in the second column, and Substance Abuse continuing legal education are listed in the third column.

04/30/2025	Ethics In The Courtroom	0.00	1.00
04/29/2025	Ethics Lessons from HBO’s Succession	0.00	1.00
04/19/2025	Wellness 101	0.00	0.00
06/07/2024	DIDS 4th Annual Conference	11.00	0.00
04/20/2024	Making Sense of Science XVII: Forensic Science & the Law	14.50	0.00
10/19/2023	Northern Nevada DNA Bootcamp	7.50	0.50
05/04/2023	How Wellness Impacts Attorneys’ Ethical Obligations	0.00	0.00
05/04/2023	DIDS Third Annual Conference	11.00	1.00
03/31/2023	Write Prose Like the Pros	1.00	0.00
03/03/2023	Office of bar Counsel An Insiders View	0.00	1.00

09/14/2022	2022 Nevada Government Civil Attorneys Conference	10.00	2.00
10/13/2021	2021 Nevada Government Civil Attorneys Conference	10.00	2.00
07/30/2021	Building a Winning Criminal Appeal From the Ground Up	1.50	0.00
12/31/2020	Pretty Little Liars: Dealing with the Dishonest Client	0.00	1.00
12/31/2020	Document Fraud in Probate Cases	1.00	0.00
12/31/2020	Bias in the Courtroom	0.00	1.00
04/24/2020	Sealing Criminal Records (Prod 4/24/20)	2.00	0.00
01/29/2020	9th Circuit Update - Habeas	1.00	0.00
01/29/2020	9th Cir. Update - Trial	1.00	0.00

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

I have had professional liability insurance in private practice but it was not required during my government service.

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.

From 1987 to 1989 I was a customer service representative for Fidelity Investment. As such, I was licensed by the National Association of Security Dealers.

From 2004 to 2010, I was an adjunct professor at the University of Phoenix, teaching classes in criminal justice and business law.

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 – my solo practice
- b. the nature of your duties – managing the day-to-day activities of the firm and supervising staff from 2012 to 2021. I run my current practice without support staff.
- c. the extent of your involvement in the administration or management of the business – my wife acted as the manager for the office. I supervised her and the support staff
- d. the terms of your service – Whatever was necessary for the law practice
- 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.

Not applicable

Civic Professional & Community Involvement

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

No

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.

I have run for district attorney in Storey County, Nevada in 2018 and 2022. I was a candidate for District Judge in the Second Judicial District Court in 2008.

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

I am currently the Vice Chair of a major political party in Storey County, Nevada.

I am currently a member of the Board of Directors and past Vice President of the Rainbow Bend Homeowners Association in Storey County, Nevada.

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

I have lectured on criminal law and procedure at continuing legal education programs through the Nevada Attorney General's office and the Nevada District Attorney's Association.

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

I have served on the Vestry (governing board) of Trinity Episcopal Cathedral in Reno, Nevada.

I have served on the Board of Directors of Bristlecone Family Resources

I was a Methodist lay minister at Winnemucca United Methodist Church and the First United Methodist Church of Reno, Nevada.

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

In law school, I received an American Jurisprudence Award in Remedies. I was also a Leary Scholar (awarded to the top 10% of the class) for three semesters.

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.

Not applicable

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.

College basketball, Poker, Bridge, History, Current Events

Conduct

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

If minor traffic offenses are included, I have pleaded No Contest and paid the fine for the minor traffic offense of "Rural Speed" and its predecessor, commonly referred to as "Waste of Energy."

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.

I have a Lander County client with open cases. Obviously, I would have to recuse myself from her current cases.

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 applied for vacancies in the district court on two or three occasions in the period between 2005 and 2010. I was not appointed.

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 district court judge. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

See attached

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.

The Eleventh Judicial District Court requires its district judge to travel extensively between courthouses. Lovelock is 126 miles from Battle Mountain and 128 miles to Hawthorne. Statistics from the Administrative Office of Courts indicate all three counties require the physical presence of a district judge at least every other week, if not more regularly.

I regularly accept appointments to cases in both Elko and Nye Counties. In the month of October 2025, I traveled by car to Elko and Beatty on successive weekends as part of my representation of clients charged with High Level Trafficking in a Controlled Substance and Murder, respectively.

During my career, I have voluntarily commuted from Winnemucca to Lovelock (148 miles roundtrip); Reno to Carson City (65 miles roundtrip); and Reno to Fallon (135 miles roundtrip) on a daily basis.

A proven willingness to travel in rural Nevada should be a factor in choosing a judge for the Eleventh Judicial District Court.

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 Attached

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 district court judge. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

Question 48 Personal Statement

During my 34-years as an attorney, I have had a diverse and fulfilling legal career. While it is indisputable that I have focused on criminal law, I have handled a variety of cases, criminal and civil, making me uniquely qualified for this position.

I should probably start with a discussion of my career in criminal law.

As a freshly minted lawyer in 1991, I knew that I wanted to be a criminal prosecutor. Then Judge Mills Lane gave me excellent career advice: Get a job in rural Nevada. As he told me, as a rural prosecutor I would handle a wide variety of cases and be in court on major cases more quickly than I would be in a major county.

Following his advice, I applied for jobs in rural Nevada, ultimately being hired by the Humboldt County District Attorney, where I successfully prosecuted my first felony jury trial less than a year after passing the bar.

Eighteen months later, I became the Assistant District Attorney in Pershing County. Less than six months after I started, Nevada Highway Patrol Trooper Carlos Borland was murdered in the line of duty just outside of Lovelock.

Trooper Borland's homicide was obviously a capital case, and as the Assistant District Attorney, I was part of the prosecution team. Specifically, I was charged with handling the legal issues involved in this type of prosecution. After we achieved a conviction, I authored the appellate brief and argued a death penalty case in front of the Nevada Supreme Court . *Sonner v. State*, 112 Nev. 1328, 930

P.2d 707 (1996). While in Lovelock, I also prosecuted multiple other jury trials, including an Attempted Murder case.

The Attorney General hired me in 1997, giving me the opportunity to prosecute cases throughout Nevada as well as litigate federal habeas corpus and state post-conviction cases in federal and state court. As a prosecutor in the Attorney General's office, I prosecuted multiple jury trials, including defendants charged with First Degree Murder.

Simultaneously, I handled complex federal habeas corpus litigation, resulting in numerous oral arguments in front of the United States Court of Appeals, including a capital case, *Sechrest v. Ignacio*, 549 F.3d 789 (9th Cir, 2008), and an *en banc* case regarding attorney-client relationships during criminal representation, *Plumlee v. Masto*, 512 F.3d 1204 (9th Cir. 2008 (*en banc*)). I became a member of the United States Supreme Court bar and authored an amicus brief joined by seventeen other states, *Rice v. Collins*, 546 U.S. 333 (2006) I also co-authored a merits brief on a Nevada case, *McDaniel v. Brown*, 558 U.S. 120 (2010) (*per curiam*). -

When I went into private practice in 2012, I was almost immediately appointed as counsel for two death row inmates, one in federal court and one in state court.

I also became a contract public defender in Churchill County, Nevada, where I represented defendants charged with a wide variety of offenses, including Murder. While a public defender, I also took appointments in Mineral County. Over the succeeding eight years, I successfully defended numerous clients in jury trials,

including those charged with Sexual Assault and Attempted Murder.

While I do not know the exact number of jury trials in which I have acted as lead counsel, the number is somewhere between 50 and 100. I have acted as lead counsel in five jury trials this calendar year.

I am also unaware of any other attorney in Nevada, other than myself, who has argued and briefed death penalty cases as both a prosecutor and a defense attorney. I may be the only Rule 250 death penalty qualified attorney whose qualification is based primarily on his or her career as a prosecutor.

Between 2012 and 2020, my law practice also handled general civil matters, probate, family law, and divorce cases, requiring me to learn the intricacies of these areas of law as well. Since divorce cases are a major part of the district court's caseload, familiarity with this area of law will be invaluable when I take the bench.

Finally, my almost three years at the Employment Security Division taught me the intricacies of administrative law and what is entailed during judicial review.

Since "retiring" in 2023, I have traveled extensively throughout Nevada representing indigent clients in Washoe County and numerous other rural counties.

There is an aphorism that in criminal law you see bad people at their best and in family and divorce law you see good people at their worst. Having practiced both of these areas of law, I can attest there is a lot of truth to this.

For these reasons, I believe I am a uniquely qualified candidate for this judicial position.

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.

ISSUE PRESENTED FOR REVIEW

Did the District Court properly deny the Appellant's Request to Represent Himself at Trial?

STATEMENT OF THE CASE

The Appellant, THOMAS JOSEPH BALBONI, JR. ("Mr. Balboni"), was charged with Violate Condition of Sex Offender Lifetime Supervision, a violation of NRS 213.1243(3), a Category B Felony, and Failure to Register as a Sex Offender, a violation of NRS 179D.550, NRS 179D.480, NRS 179D.460 and/or NRS 179D.470, a Category D Felony. R. 1-4.

A jury found Mr. Balboni guilty of both offenses. R. 205-206.

On June 3, 2024, the district court sentenced Mr. Balboni to 28 to 72 months in prison for Count 1 and 19 to 48 months in prison for Count 2, with the sentences to run consecutively. R. 206. The *Judgment of Conviction* was filed the next day. R. 215-216.

Mr. Balboni timely filed a *Notice of Appeal*. R. 217-218.

STATEMENT OF FACTS

The facts of the underlying conviction are not necessary for the resolution of the appeal, since the issue is whether Mr. Balboni should have been allowed to represent himself at trial. However, it is noteworthy that, during trial, Mr. Balboni indicated defense counsel refused to call witnesses that Mr. Balboni would have called had he represented himself. R. 147.

At his initial arraignment on November 1, 2023, Ian Silverberg, Mr. Balboni's counsel, advised the Court, "Mr. Balboni wishes to represent himself. At some point I think we need to do a *Faretta* canvass. I am not sure this is the time. He also doesn't want me to represent him. Either way, if the Court is not satisfied by the canvass, we probably will go into a *Young* hearing. You may want to set a special day." R. 7.

The district court then continued the hearing to November 6, 2023. R. 8.

On that date a very perfunctory *Faretta* canvass was held.¹ R. 13-26.

¹*Faretta v. California*, 422 U.S. 806 (1975)

The district court started by asking Mr. Balboni if he had a “general knowledge” of the legal system. R. 13-14. Mr. Balboni responded in the affirmative, albeit in a rambling answer. R. 14.

The district court and Mr. Balboni then engaged in a colloquy, where the district court appeared to be arguing with Mr. Balboni over his contention there was significance in the case number. R. 14-15. Indeed, the district interrupted its canvass to ask Mr. Balboni’s attorney about the merits of Mr. Balboni’s contention. R. 15-16. The district court then asked Mr. Balboni pedantic questions regarding Mr. Balboni’s name. R. 16. The district court finally asked the prosecutor about Mr. Balboni’s contention. R. 16.

At that point, district court asked Mr. Balboni if he could define “hearsay.” R. 17.

Mr. Balboni responded, “Hearsay. When you overhear something that you consider it is actually a fact.” R. 17.

The district court then asked Mr. Balboni if he understood that “perjury” and “hearsay” were different things, to which Mr. Balboni answered in the affirmative. R. 18.

When the district court asked Mr. Balboni “If you had an objection to one of the jurors, how would you handle that with the Court?” R. 18

Mr. Balboni responded, “I would just say ‘objection’ and whatever the problem was.” R. 18.

When Mr. Balboni used the word “interrogatories” (apparently thinking it meant something like “communication between attorneys”), the district court corrected him and then discussed the minutia of pleading paper. R. 18-19.

During this discussion, the district court asked Mr. Balboni what “discovery” is, to which Mr. Balboni responded, “Discovery is the evidence the State is basically using against me.” R. 19.

The district court went into a rather long statement on how someone becomes an attorney, sarcastically ending its discourse by commenting, “To say I read all the Grisham books so I can do my defense. That is fiction.” R. 22.

Mr. Balboni indicate that he would use “Black’s Law” and Westlaw for his legal research, to which the district court responded, “Reading Black’s Law and accessing Westlaw is not sufficient.” R. 22.

The district court then ruled that it was not going to grant Mr. Balboni's request. R. 14.

After prior counsel was allowed to withdraw, current counsel was appointed and filed a formal request for Mr. Balboni to be allowed to represent himself at trial. R. 27-31.

At the status hearing on December 13, 2023, Mr. Balboni's request to represent himself was addressed in the following manner:

THE COURT: Mr. Neidert, are you getting up to speed on this case?

MR. NEIDERT: I am up to speed. As the Court just noted, I visit [sic] Mr. Balboni at the Washoe County Jail. He wanted to represent himself. I filed a request to for the Court to conduct a Faretta canvass to represent himself. I advised him the Court likely will want to set a trial date if he does that. It his decision whether or not to request a speedy trial.

THE COURT: Mr. Balboni, as you recall last time I issued an order with regard to your self-representation. Do you remember that, sir?

THE DEFENDANT: Yes.

THE COURT: At this point, unless you have something new to present to me.

THE DEFENDANT: Besides violating the constitutional right to represent myself.

THE COURT: I understand your position. I am going to deny it again.

R. 34-35.

ARGUMENT

The district court improperly denied Mr. Balboni's request to represent himself. The United States Supreme Court has held that a criminal defendant has the absolute right to represent himself at trial. *Faretta v. California*, 422 U.S. 806, 835 (1975). The Supreme Court has reiterated the right to self-representation several times, including a death penalty case originating from Nevada. *Godinez v. Moran*, 509 U.S. 389, 399 (1993).

This Court has formalized the requirements for a *Faretta* canvass in Supreme Court Rule 253. SCR 253(5) states, "If the district court appoints counsel to represent a defendant who insists on exercising his or her right to self-representation, then the district court should state the basis for denying the defendant's request for self-representation."

However, there is no requirement for any kind of "mechanical performance" of a *Faretta* canvass. *Hymon v. State*, 121 Nev. 200, 212 111 P.3d 1092, 1101 (2005).

In this case, Mr. Balboni sought to represent himself at trial. The district court held a canvass that apparently ignored Supreme Court Rule 253 in its entirety.

In 2021, this Court issued a lengthy opinion discussing the right to self-representation. *Miles v. State*, 137 Nev. 747, 500 P.3d 1263 (2021) (*en banc*). In *Miles*, this Court held that the district court should not ignore a defendant's "lack of understanding" in granting a *Faretta* Motion. 137 Nev. at 747, 500 P.3d at 1266. However, *Miles* also noted that a district court "risks reversal if it *refuses* the defendant's request, because the defendant has the right to self-represent and that right is not extinguished by an insufficient canvass over which the defendant has little to no control." 137 Nev. at 751, 500 P.3d at 1269 (emphasis in original).

In this case, the canvass was woefully inadequate. While district courts are not required to mechanically follow SCR 253, they should, at a minimum, give defendants who seek self-representation, such as Mr. Balboni, an opportunity to prove or disprove their ability to represent themselves at trial by having a meaningful discussion with them.

Miles warned that “the [district] court must conduct its canvass in a courteous manner, consistent with respect due to the exercise of a constitutional right and the decorum and impartiality demanded by the judicial process.” 137 P.3d at 747-48, 500 P.3d at 1267.

Unfortunately, the cold record of the canvass demonstrates the district court failed in that endeavor.

CONCLUSION

Because the district court conducted an inadequate *Faretta* canvass, Mr. Balboni was improperly denied his right to represent himself at trial. Consequently, his conviction should be reversed.

CERTIFICATION OF COMPLIANCE

Pursuant to Rule 32(a)(9), I, David K. Neidert, an active member of the State Bar of Nevada, certify as follows

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

2. I further certify that this brief complies with the page- or type-volume limitations of [NRAP 40](#), [40A](#), or [40B](#) because it is:

Proportionately spaced, has a typeface of 14 points or more, and contains 1,305 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including [NRAP 28\(e\)\(1\)](#), if applicable, which requires every assertion in the brief regarding matters in the record to be

supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 21st day of June, 2025.

- /s/ David K. Neidert
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