

**APPLICATION FOR NOMINATION TO  
JUDICIAL OFFICE**

**SECTION I: PUBLIC INFORMATION  
(QUESTIONS 1 THROUGH 65)**

**PERSONAL INFORMATION**

1. Full Name: **Jared Edward Holland**
2. Have you ever used or been known by any other name? No If so, state name:
3. Office Address: **Holland Law Group, PLLC  
15 East Cherry Avenue, Suite 203  
Flagstaff, Arizona 86001**
4. How long have you lived in Arizona? **Approximately 36 years.** What is your home zip code? **86001**
5. Identify the county you reside in and the years of your residency. **Coconino County (2007-Present)**
6. If nominated, will you be 30 years old before taking office?  yes  no  
  
If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor?  yes  no
7. List your present and any former political party registrations and approximate dates of each:  
**Republican (1999 – 2008)**  
**Independent (2009 – 2011)**  
**Republican (2012 – Present)**

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: **Male**

Race/Ethnicity: **Caucasian/White**

<b>EDUCATIONAL BACKGROUND</b>
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9. List names and locations of all post-secondary schools attended and any degrees received.

**JURIS DOCTORATE OF LAW**  
*Arizona State University, Sandra Day O'Connor College of Law  
Tempe, Arizona*

**JURIS DOCTORATE OF LAW - CANDIDATE**  
*University of Idaho, College of Law  
Moscow, Idaho*

**BACHELOR OF ARTS IN POLITICAL SCIENCE**  
*Arizona State University, College of Liberal Arts and Sciences  
Tempe, Arizona*

**GENERAL STUDIES**  
*Cochise Community College  
Willcox, Arizona*

10. List major and minor fields of study and extracurricular activities.

*Arizona State University, Sandra Day O'Connor College of Law*  
**Major: Law**

**Extracurricular Activities:**

- **Boy Scouts of America**
  - **Eagle Scout Committee Chair**
  - **Varsity Coach**
  - **Scout Committee Member**
  - **Scouting Specialist**
- **J. Reuben Clark Law Society, Member (2004-Present)**

*University of Idaho, College of Law*

**Major: Law**

**Extracurricular Activities:**

- **Nez Perce County, Idaho Small Claims Court, Mediator (2004-2005)**
- **Law Students for Alternative Dispute Resolution (LSADR), Executive Member (2004-2005)**
- **J. Reuben Clark Law Society, Member (2004-Present)**

***Arizona State University, College of Liberal Arts and Sciences***

**Major:** Political Science

**Extracurricular Activities:**

- Boy Scouts of America
  - Assistant Varsity Coach
  - Scout Committee Member

***Cochise Community College***

**Major:** General Studies

**Extracurricular Activities:**

- Attended concurrently while attending high school and participating in high school athletics, National Honor Society and the school academic team.

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

***Arizona State University, Sandra Day O'Connor College of Law***

- Willard H. Pedrick Scholar
- C.A.L.I. Award Recipient (x 3)

***University of Idaho, College of Law***

- Northwest Institute for Dispute Resolution: Mediation Training (40 hrs.)
- LSADR Sponsored Negotiation and Mediation Skills Training Seminars
- C.A.L.I. Award Recipient (x 2)

***Arizona State University, College of Liberal Arts and Sciences***

- Recipient, Arizona State University Presidential Scholarship

**ADDITIONAL FACTORS:**

- Due to the number of college credits I earned concurrently while in high school, I began my undergraduate studies at Arizona State University as a second semester sophomore.
- Between my second and third years of undergraduate studies, I moved to Taiwan (R.O.C.) for a couple of years to serve the Chinese people and became conversationally fluent in Mandarin Chinese.
- As the second to the youngest of eight children, my parents could not financially afford to assist with my college education. I worked three-quarter to full-time throughout my undergraduate studies, while often taking 18-21 college credit hours each semester. I typically worked "graveyard" shifts as a commercial plumber (remodeling

large grocery stores and working on other government and commercial projects) throughout the night while going to school during the day; catching what sleep I could whenever I could get it. I worked both independently and overseeing/training crews on these projects.

- My wife and I had three (3) of our eight (8) children by the time I graduated from law school. I was consistently working 35-40 hours each week throughout my third year of law school to provide for my family and pay for school.

**PROFESSIONAL BACKGROUND AND EXPERIENCE**

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

**Arizona Supreme Court (October 19, 2007)**  
**United States District Court for the District of Arizona (October 22, 2007)**

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? No If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? No If so, explain any circumstances that may have hindered your performance.

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Holland Law Group, PLLC -Founding Member & Supervising Attorney	Apr. 2012- Present	Flagstaff, AZ
Coconino County Superior Court & Flagstaff Justice Court -Judge Pro Tempore	Mar. 2017- Present	Flagstaff, AZ
Northern Arizona University W. A. Franke College of Business -Adjunct Professor of Business Law	Aug. 2011- May 2016 (Several Non- Consecutive Semesters)	Flagstaff, AZ

<b>Davis Miles McGuire Gardner, PLLC -Senior Associate Attorney</b>	<b>Sep. 2008- Mar. 2012</b>	<b>Flagstaff, AZ</b>
<b>Aspey, Watkins &amp; Diesel, P.L.L.C. -Associate Attorney</b>	<b>Nov. 2007- Sep. 2008</b>	<b>Flagstaff, AZ</b>
<b>Independent Law Clerk/Legal Asst.</b>	<b>Dec. 2004- Nov. 2007</b>	<b>Moscow, ID/ Tempe, AZ</b>
<b>First Semester of Law School</b>	<b>Aug. 2004- Dec. 2004</b>	<b>Moscow, ID</b>
<b>Uchytel Plumbing and Service, Inc. -Commercial Plumber</b>	<b>Jan. 2002- Aug. 2004</b>	<b>Mesa, AZ</b>

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

- **Honorable Ted S. Reed, Coconino County Superior Court, Div. 1**
- **Honorable Dan R. Slayton, Coconino County Superior Court, Div. 2**
- **Honorable Mark R. Moran, Coconino County Superior Court, Div. 3**
- **Honorable Elaine Fridlund-Horne, Coconino County Superior Court, Div. 4**
- **Honorable Cathleen Brown Nichols, Coconino County Superior Court, Div. 5**
- **Honorable Fanny Steinlage, Coconino County Superior Court, Div. 6**
- **Honorable Angela R. Kircher, Coconino County Superior Court, Juv. Div.**
- **Honorable Howard Grodman, Flagstaff Justice Court**
- **Honorable Joshua Steinlage, Flagstaff Justice Court**
- **Joseph E. Holland, Esq.**
- **Christopher L. Christiansen, Esq.**
- **Hunter T. Lewis, Esq.**

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

**Throughout my legal career I have had the opportunity to practice in several uniquely different areas of the law. For the past five (5) years I have been attempting to pare down my practice areas to focus on:**

- **Probate/Wills/Trusts/Estates Administration and Litigation (40%),**
- **Guardianships/Conservatorships/Elder Law (10%),**

- Estate Planning (10%),
- Business Formation/Dissolution/Litigation (20%),
- Contract Drafting and Litigation (20%), and
- I am also a Judge Pro Tempore for the Coconino County Superior Court and Flagstaff Justice Court.

17. List other areas of law in which you have practiced.

- Family Law/Divorce/Paternity/Adoption
- Personal Injury/Insurance Defense/Insurance Subrogation
- Real Estate Litigation
- Creditor's Rights/Collection/Foreclosure
- Bankruptcy/Debtor's Rights
- Landlord/Tenant/Eviction

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

**Not Applicable**

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

**In my litigation practice, I have drafted numerous legal memoranda, pleadings, motions, discovery/disclosure related documents, dispositive motions, settlement agreements, evidentiary motions, trial memoranda, orders, forms of judgment, and appellate briefs.**

**I have also drafted complex contracts, agreements, buy/sell agreements, trusts, wills, powers of attorney, deeds, deeds of trust, assignments, business governance documents, corporate minutes, owner agreements, leases, waivers, releases, and other settlement agreements.**

20. Have you practiced in adversary proceedings before administrative boards or commissions? No If so, state:

a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

b. The approximate number of these matters in which you appeared as:

Sole Counsel: \_\_\_\_\_

Chief Counsel: \_\_\_\_\_

Associate Counsel: \_\_\_\_\_

21. Have you handled any matters that have been arbitrated or mediated? Yes .  
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: 15+ .

Chief Counsel: 10 .

Associate Counsel: 5 .

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

**Case #1: *In re The Turman Living Trust dated Nov. 9. 1992, Case No. P1300PB201800255; Yavapai County Superior Court***

**Period:** Aug. 2018 – June 2019

**Counsel:** Nora L. Jones, Esq.  
(602) 255-6000  
[nlj@tblaw.com](mailto:nlj@tblaw.com)  
Counsel for Petitioner/Beneficiary

Tevis Reich, Esq.  
(928) 213-1800  
[tevis@treichlaw.com](mailto:tevis@treichlaw.com)  
Co-Counsel for Respondent/Trustee

**Summary:** The Turman Living Trust was one of multiple family trusts created by the same trustors. As part of a greater estate plan, the Turman Living Trust held a small trove of cash and precious metals, as well as ownership interests in multiple companies which, in turn, owned percentages of certain parcels of real property. A beneficiary of the trust claimed that the successor trustee had failed to provide annual accountings and was otherwise mismanaging the trust administration. Said beneficiary filed a petition in the probate court seeking to compel an accounting and the removal and surcharge of the successor trustee. Shortly after the filing of the Petition, I was retained as co-counsel to act as lead counsel in the contested proceeding. Within a relatively short period of time, I worked with opposing counsel to secure sufficient time to create and provide an inventory and accounting. Based on the information provided in the inventory and accounting, the parties were able to negotiate an acceptable split and disposition of the trust assets. This led to a global resolution of all of the claims included in the beneficiary's petition.

**Significance:** Litigation resulting from the division of assets belonging to a recently

deceased loved one can quickly snowball into protracted litigation where, regardless of the ultimate outcome, the only true winners are the attorneys who walk away with a lion's share of the estate. Such cases not only involve a fight to secure a fair share of the estate, but often include a feeling of entitlement and/or an inability to properly/adequately grieve. These factors tend to cause these cases to be emotion-driven and engender an unwillingness to show any signs of perceived weakness by compromising to reach a settlement. Thus, getting a client to agree to participate in settlement discussions is difficult, but getting them to ultimately agree to a global settlement can be close to impossible. As an attorney handling these cases, I am not only a legal counselor who guides them through the litigation process but I often act as a sounding-board against which my clients vent their frustrations. Negotiating an early settlement in cases, such as this one, is relatively rare and requires the attorneys involved to be experienced enough to truly know what will happen if the case proceeds through litigation and to have the client's best interests at heart.

**Case #2: *Rawlinson v. Rose*; Case No. DO2011-00451; Coconino County Superior Court**

**Period:** July 6, 2018 – Present (the Stipulated Parenting Plan has been fully signed and is being filed with the court in the next few days)

**Counsel:** Chad J. Winger, Esq.  
(928) 774-0011  
[chad@azharrislaw.com](mailto:chad@azharrislaw.com)  
Counsel for Respondent/Father

**Summary:** This case involved a hotly contested parenting time and legal decision-making dispute. On December 1, 2015 the Parties signed a Time Sharing and Support Agreement regarding their minor child. Thereafter, Mother was charged with a DUI and Father sought to revise the parenting plan. In May of 2017 the parties entered into a Stipulated and Restated Parenting Plan which provided that Father would have sole legal decision-making authority until Mother completed all DUI-related "sentencing, deferred prosecution, or diversion requirements, and successfully completes her current substance abuse treatment." Unfortunately, shortly thereafter, Mother was charged with a second DUI and the parties' interactions and communications began to deteriorate. The parties' relationship soured to the point that Father obtained a court order suspending Mother's ability to obtain joint legal decision-making authority and a second order requiring Mother to submit to a psychological evaluation. About that time, Mother terminated her prior counsel and retained my services. After being retained, I immediately contacted opposing counsel and began discussing possible resolutions. I arranged for Mother to voluntarily enroll in co-parenting classes and worked with her to improve her communication with Father. After significant work, Mother has completed all available co-parenting classes and substance abuse classes. The parties have also established a track record of being able to cooperatively co-parent together. Happily, the parties have recently signed a new parenting plan and joint legal decision-making agreement which will be filed with the court in the next few days.

**Significance:** When I substituted into this case as counsel for Mother, I anticipated a

difficult, uphill battle where I would try my best to further Mother's desires for obtaining joint legal decision-making authority, but feared I would find myself doing more damage-control to minimize the fallout from what had already happened in the case. Getting a second DUI after an existing parenting plan is crafted around a prior DUI, typically causes the court to further restrict parental rights. The breakdown in communication between the parties and the fact that the court already ordered Mother to participate in a psychological evaluation, was destined to result in an unpleasant ending for Mother. This was obviously not the ideal procedural posture to be walking into when taking over as counsel for Mother, but I believed Mother truly had her child's best interests in mind and was willing to follow my advice in making any necessary changes to remedy the situation.

Having previously had interactions with and mutual respect for opposing counsel, I was able to immediately pick up the phone and open a dialogue leading to settlement. I was also able to convince Mother to avoid all negative communication in the future and demonstrate that Mother was voluntarily taking steps to address and rectify both her DUI and any co-parenting issues. I worked with Father's counsel to slow the litigation process to enable the parties to establish a track record of successfully co-parenting and re-open channels for positive communication. After a few years of work, the parties are effectively co-parenting and a global settlement has been reached.

**Case #3: *Desert Lake Management, Inc. v. Straightline Builders, Inc.*, Case No. CV2016-00430; Coconino County Superior Court**

**Period:** April 29, 2019 - July 16, 2019

**Counsel:** M. Steven Mattia, Esq.  
(928) 774-4141  
[smattia.azlaw@gmail.com](mailto:smattia.azlaw@gmail.com)  
Counsel for Plaintiff/Hotel Owner

E. Duane Weston, Esq.  
(928) 779-4252  
[duane@mccarthyweston.com](mailto:duane@mccarthyweston.com)  
Co-Counsel for Defendant/Builder

**Summary:** During contract negotiations for the construction of a hotel in Page, AZ, the general contractor and the property owner re-negotiated the terms of the general contractor's initial bid. As part of said negotiations, the parties agreed to use cheaper electrical wiring than what was called for in the plan specifications. However, after reaching an agreement, the wiring change was not incorporated into the final contract signed by the parties. During construction, the electrical subcontractor installed the lesser quality wire in the first two floors of the hotel. Shortly thereafter, the property owner demanded that the non-conforming wiring be torn out and replaced with the expensive wiring identified in the original plan specifications. The electrical subcontractor was already experiencing financial hardship and was unable to make the changes as it could not pay its employees' wages or the amounts owed to its supplier for the materials already installed. Thereafter, a substitute subcontractor was hired to install the more expensive wiring, but title to the hotel remained clouded by a materialman's lien from the first electrical subcontractor's supplier. During

construction, the owner also requested several change orders, which were completed, but the owner refused to sign the change order paperwork when it was provided to him. I was hired to act as lead co-counsel for the general contractor after the lawsuit had been filed and on-going for some time. Although the hotel owner did not want to engage in settlement negotiations, the general contractor was interested in pursuing alternative dispute resolution. After digging through the parties' agreements, I invoked a portion of the contract compelling alternative dispute resolution. The hotel owner reluctantly agreed to mediate. Fortunately, the parties reached a global settlement of all of the claims and counterclaims at the subsequent mediation.

**Significance:** This multi-faceted case had gone through three years of litigation before I was retained. One of the major parties had declared bankruptcy, mountains of disclosure/discovery had already occurred on select issues; with substantial amounts of discovery/disclosure yet to be done. The case file filled an entire book shelf in co-counsel's office. During my first meeting with co-counsel I began reviewing the file with the intent to complete discovery/disclosure and proceed to trial. Yet, after a cursory review of the file, it became apparent that there would likely be no true winner if the case proceeded to trial. My client's arguments had merit, were supported by the facts, and were winnable, but the road to trial was going to be long and very expensive. That said, the opposing party was not interested in participating in settlement negotiations. It took a "carrot and stick" approach to finally convince the opposing party to participate in settlement. While effective, such an approach can often result in settlement negotiations where one party goes through the motions of participating in a settlement conference without any intention of reaching a settlement. My client had to make sufficient concessions at the beginning of the settlement conference to entice the opposing party to seriously participate in settlement without going so far as to put the client in a position where settlement would only be reached by completely caving to all of the opposing party's demands. Happily, a reasonable settlement was reached and unnecessary, costly litigation was avoided.

**Case #4: *Wyse v. Montgomery* (this dispute was able to be settled prior to the filing of any court case)**

**Period:** June 2015 – June 2016

**Counsel:** Tony S. Cullum, Esq.  
(928) 774-2565  
[tony@tonycullumlaw.com](mailto:tony@tonycullumlaw.com)  
Counsel for Montgomery

**Summary:** Two neighbors purchased adjoining parcels of real property from a lender who acquired the parcels through a recent non-judicial foreclosure. The original owner of the parcels used them collectively, as if they were a single parcel. All of the structures on the two parcels used the same septic located entirely on Wyse's property. The unpermitted power lines servicing Montgomery's parcel ran through Wyse's parcel. Montgomery also frequently used the driveways for ingress and egress to access the Montgomery parcel. Additionally, Montgomery's guest house encroached on Wyse's parcel by a few feet. Wyse desired to protect Wyse's property rights and was even willing to resort to self-help remedies, including cutting the power lines, capping the septic lines, fencing the parcel's perimeter and tearing down the encroaching portion of the guest house. Rather than

initiate litigation, the parties, through counsel, were able to entirely avoid a lawsuit by cooperatively negotiating a global settlement.

**Significance:** This case is a great example of how to avoid litigation while preserving and asserting your client's rights. When my clients first met with me, they were prepared to cap their neighbor's sewer lines, cut the neighbor's power, fence off the roads across their property and raze the encroaching portion of the neighbor's guest house. Any one of said actions could have sent the parties into lengthy and expensive litigation. Since both parties were relatively new owners of their respective parcels, any litigation would have involved extensive discovery, including third-party subpoenas and depositions. There was also strong indication that the opposing party would not have sufficient assets to satisfy any judgment obtained through trial. Rather than immediately initiating litigation, I worked with opposing counsel to explore alternative solutions, including crafting revocable licenses and temporary easements. This enabled the opposing party to have sufficient time to construct their own septic and reroute the power lines and access roads. We also negotiated the purchase of a small portion of my client's land to address the encroachment. While it would certainly be interesting to litigate such a case, my clients were best served by reaching a settlement.

**Case #5: *In re the Estate of Mailand*, Case No. PB2014-00020; Cochise County Superior Court**

**Period:** April 2014 - January 2019

**Counsel:** Robert D. Stachel, Jr., Esq.  
[rstachel@stachellaw.com](mailto:rstachel@stachellaw.com)  
Alberta Chu, Esq.  
[achu@stachellaw.com](mailto:achu@stachellaw.com)  
(520) 452-1006  
Counsel for Petitioners/Devises

James E, Holland, Sr., Esq.  
(Deceased)  
Co-Counsel for Personal Representative

**Summary:** Prior to the decedent's death, she signed a will essentially disinheriting two children and splitting her residuary estate between her other three daughters. Unfortunately, the residuary devisees were viciously fighting with each other. After opening probate of the decedent's will and paying for the funeral out-of-pocket, the personal representative learned that the decedent had signed transfer-on-death beneficiary designations for all of her bank accounts. Thus, the only assets left in the probate estate included a house located in the small town of Willcox, Arizona and the home's furnishings. All of the funds in the decedent's financial accounts went to the beneficiaries of said accounts, outside of the probate. The sale of the house in Willcox was estimated to take in excess of a year to close. Consequently, there was no liquidity in the estate to compensate or reimburse the personal representative for any out-of-pocket expenses. Once the residuary beneficiaries learned that the personal representative was entitled to reasonable compensation and reimbursement, two of the devisees petitioned the court to have the

personal representative removed, not compensated, and not reimbursed. I was retained as litigation counsel to represent the personal representative and obtain final approval of the estate administration. Immediately prior to the beginning of the final trial, the parties were able to negotiate an acceptable global settlement.

**Significance:** This case is another example of a case wherein I was hired to assume the role of lead litigation counsel after relations between the parties had soured. I was actually retained on two separate occasions to act as lead litigation counsel in this case. The first time was when the devisees tried to remove the personal representative because she sought to be compensated and reimbursed. I filed and successfully prosecuted a petition seeking approval of the personal representative's interim fees and costs. The case was supposed to be closed shortly thereafter and it made little sense for the estate to employ two attorneys to file some simple closing documents. Unfortunately, after I withdrew, the devisees began fighting with each other and the personal representative regarding the division and distribution of the estate. Consequently, I was re-hired to resume the role of lead litigation counsel. I conducted all necessary discovery and disclosure, retained a standard of care expert and prepared for trial. On the morning of trial, opposing counsel sought to disqualify my expert witness as being an "unnecessary estate expense". After his request was denied by the court, I reiterated that the personal representative was not interested in incurring unnecessary fees and costs, but only sought to be compensated/reimbursed. The personal representative would thereafter promptly make final distribution and close out the estate. This statement led to multi-hour-negotiations which yielded a global settlement. The settlement reached included the payment of the vast majority of the personal representatives' requested compensation and reimbursement, including attorney's fees and expert witness fees.

23. Have you represented clients in litigation in Federal or state trial courts? Yes .  
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 5+ . (I was lead counsel in over 1,500  
bankruptcy cases which are  
not included in this number)

State Courts of Record: 100+ .

Municipal/Justice Courts: 10 .

The approximate percentage of those cases which have been:

Civil: 99% .

Criminal: 1% .

The approximate number of those cases in which you were:

Sole Counsel: 65+ .  
Chief Counsel: 10 .  
Associate Counsel: 30+ .

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: 30%

You argued a motion described above 30%

You made a contested court appearance (other than as set forth in the above response) 95%

You negotiated a settlement: 70%

The court rendered judgment after trial: 30%

A jury rendered a verdict: <1%

The number of cases you have taken to trial:

Limited jurisdiction court 5 .

Superior court 30+

Federal district court 2 .

Jury 1 .

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

**I have handled cases at three different law firms (one of which merged with another law firm) and I do not currently have access to records for all of the cases I have handled/taken to trial.**

24. Have you practiced in the Federal or state appellate courts? Yes . If so, state:

The approximate number of your appeals which have been:

Civil: 5 .

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Criminal: 1.

Other: 0.

The approximate number of matters in which you appeared:

As counsel of record on the brief: 3.

Personally in oral argument: 1.

25. Have you served as a judicial law clerk or staff attorney to a court? No. If so, identify the court, judge, and the dates of service and describe your role.
26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

<b>Case #1: <i>In re the Estate of Kay</i>; Case No. PB2014-00131</b>	
<b>Date/Period:</b> December 2015 – August 2018	
<b>Court:</b> Navajo County Superior Court	
<b>Counsel:</b>	Brendon R. Rogers, Esq. (928) 536-6780 <a href="mailto:brendon@brendonrogerslaw.com">brendon@brendonrogerslaw.com</a> Counsel for Marilyn K. Winn  Roger D. Curley, Esq. (928) 286-6300 <a href="mailto:roger.curley@curley-allison.com">roger.curley@curley-allison.com</a> Counsel for Joseph Walker Kay, Jr.
<b>Summary:</b> A man claimed that his recently deceased grandmother had gifted him certain items of personal property, including a buffalo head mount, prior to her death. The man's father, who had been appointed as the personal representative of the decedent's estate, refused to surrender the gifted items to his son. The personal representative claimed that the gifts to the grandson were incomplete as the items had not been physically "delivered" to the grandson by the decedent. The personal representative further claimed that he had been gifted some of the same items by the decedent prior to any gift(s) being made to the	

grandson.

Although the buffalo head mount remained on the decedent's wall at the time of her death, the trial court found that the gift to the grandson had been completed when the decedent orally stated that she was giving the mount to the grandson and the decedent delivered the corresponding buffalo hide to the grandson so it could be used to repair the head mount after the grandson retrieved it at his convenience. The large and heavy mount was hung on the wall above a staircase and the evidence demonstrated that it would not have been possible or practical for the decedent to remove the mount from the wall to physically hand it to the grandson at the time that she gave it to him. Thus, the decedent delivered the mount to the grandson as well as she could under the circumstances.

**Significance:** This case demonstrates my ability to interpret and argue statutes and applicable case law. The facts of many cases will not fall squarely within one's preconceived ideas of how a statute should be interpreted and applied. This case required me to convince the court to put aside any preconceived notions it might have had and read the statutory language in light of its application to the unique facts of this case. While "delivery" of possession of an item is an essential element of a completed gift, delivery in this case was not accomplished in the same manner as one might have thought.

**Case #2:** *Baca v. Squire Motor Inns, Incorporated*

**Date/Period:** October 2010 – December 2011

**Court:** Coconino County Superior Court, Case No. CV2009-0276

**Counsel:** Kenneth H. Brendel, Esq.  
(928) 779-6951  
[kbrendel@mwsowlaw.com](mailto:kbrendel@mwsowlaw.com)  
Counsel for Squire Motor Inns, Incorporated  
d/b/a Grand Canyon Squire Inn

**Summary:** Baca had secured a five year contract with the Grand Canyon Squire Inn to provide and service laundry, vending and coin machines for the hotel. The contract required the hotel to provide 90 days-notice of any termination of the contract. The hotel felt that Baca was not fulfilling its contractual obligations and gave only 14 days-notice before terminating the contract. Three weeks later, the hotel contacted the lender who financed the purchase of Baca's machines to have them surrendered back to the lender as abandoned property. Baca sued the hotel and the hotel claimed that it was discharged from its performance of the parties' contract as a result of Baca's repeated material breaches. The hotel also counterclaimed for breach of contract. I was assigned to handle the case a few days before the mandatory arbitration hearing. Baca was the prevailing party in arbitration and the hotel appealed. After being granted summary judgement on essentially all of the hotel's counterclaims and defenses, a four-day jury trial followed. The jury entered a verdict in favor of Baca in excess of the arbitration award.

**Significance:** This case involved contract interpretation, performance, breach and enforcement. It highlights my knowledge of and experience with the complexities of contract litigation. This case was also closely tied to a companion case involving my

client's father and the lender who financed the machines which he sold to Baca. This companion case involved two different trial court proceedings, a successful appeal to the Arizona Court of Appeals and a bankruptcy filing, with a corresponding adversary proceeding. Only after I was able to secure a judgment favorable to Baca's father was I able to fully litigate this case. This case is also representative of my experience with a jury trial. The four-day jury trial in this matter included all phases of trial, from *voir dire* through jury instructions and the return of a verdict.

**Case #3: *Sterling v. Northern Arizona University, Grad College***

**Date/Period:** July 2017 - October 2017

**Court:** Flagstaff Justice Court, Case No. CV17-1104SC

**Counsel:** None.

**Summary:** A graduate student from Northern Arizona University sued the school alleging that the school had breached a contract relating to the student's expectations stemming from an independent study experience. I was retained by the Arizona Board of Regents (ABOR) to defend against the lawsuit. The ABOR was able to summarily dispose of the entire case by filing a motion to dismiss the lawsuit due to: 1) the plaintiff's failure to comply with applicable notice of claim statutes, 2) the fact that NAU is a non-jural entity that can neither sue nor be sued, 3) lack of proper service, and 4) failure to state a claim upon which relief can be granted. The court's dismissal order indicated that it granted ABOR's motion to dismiss based "on each of the grounds raised," in the motion.

**Significance:** While I would not typically include in this application a case from a limited jurisdiction court against a self-represented litigant, this case highlights three items of significance: 1) the caliber of clients I represent; 2) the breadth and diversity of my knowledge and experience in complex legal areas; and 3) the ability to efficiently dispose of frivolous lawsuits without great expense and protracted litigation. I did not solicit the Arizona Board of Regents or NAU to represent either in this case, but was sought out by the office of general counsel for Northern Arizona University to handle this and other matters. The issues in this case are unique to public entities and typically handled by a small number of attorneys specializing in handling lawsuits against or in defense of public entities. To dispense with an entire lawsuit with a single motion is a task requiring the attorney to be highly knowledgeable about both the relevant facts and law. The attorney must also be able to clearly and concisely present the undisputed facts and applicable law in a way that demonstrates the client's position is righteous and dismissal is just.

**Case #4: *In re the Matter of Casey***

**Date/Period:** November 2019 - March 2020

**Court:** Coconino County Superior Court, Case No. GC2019-00083

**Counsel:** Mark Byrnes, Esq.

mbyrnes@coconino.az.gov  
(928) 679-8280  
Counsel for the Coconino County Public Fiduciary

**Summary:** The Coconino County Public Fiduciary filed a petition seeking to establish a permanent guardianship over Casey due to alleged mental incapacity. I was appointed by the court to represent Casey in contesting the appointment of a guardian for her. At the final evidentiary hearing, the Public Fiduciary called the court investigator and medical examiner to testify as to why they each believed that a guardianship was necessary and appropriate. Following the close of the petitioner's case in chief, I, on behalf of Casey, orally moved for judgement as a matter of law based on the information obtained during cross-examination indicating that there was no clear and convincing evidence to establish that Casey was incapacitated and in need of a guardian. The motion was granted and the Public Fiduciary's petition was denied.

**Significance:** This case is an example of the attention I pay to each client I represent. I am one of a few attorneys in Coconino County who accepts reduced-fee appointments to represent alleged incapacitated persons in guardianship and conservatorship proceedings. My services are compensated at approximately one-fifth of my customary hourly rate. Yet, I take these appointments very seriously. These cases involve the instigation of litigation by the government against an indigent person where I stand as their last line of defense should they desire to contest the appointment of a guardian/conservator. By paying close attention to detail, being familiar with applicable law, and eliciting favorable facts from adverse witnesses, I was able to successfully move for dismissal of this case without requiring my client to present any evidence of her own.

**Case #5: *In re the Estate of Livingston***

**Date/Period:** February 2008 – January 2017

**Court:** Navajo County Superior Court, Case No. PB2007-0071

**Counsel:** Mark E. House, Esq.  
(480) 240-4020  
[mark@beckerandhouse.com](mailto:mark@beckerandhouse.com)  
Counsel for the Childers & Coventry, LLC

Joseph E. Holland, Esq.  
(928) 536-3001  
[Joseph@hollandsaline.com](mailto:Joseph@hollandsaline.com)  
Counsel for Alvin Livingston

Victoria L. Earle, Esq.  
\*Ms. Earle has relocated to Ohio and the following is the best contact information I can find.  
(419) 624-3001  
[victoriaearlelaw@gmail.com](mailto:victoriaearlelaw@gmail.com)  
Counsel for Norma Livingston

Phillip Visnansky, Esq.  
(602) 264-7101  
[pvisnansky@warnerangle.com](mailto:pvisnansky@warnerangle.com)  
Counsel for Dorothy Dinsmore

**Summary:** Shortly before the decedent died, he was married to his third wife, Norma. The circumstances of the decedent's sudden and unexpected death caused his adult children to suspect foul play. Norma had alienated the decedent from his adult children and submitted two separate wills to probate: 1) an unsigned will leaving everything to Norma, and 2) a fill-in-the-blank form will leaving a large portion of the estate to Norma and the rest to the decedent's children. I was hired by one of the adult children to petition the court to have both wills invalidated and seek the probate of a third will. Shortly before the final trial a settlement was reached wherein Norma was to receive 40% of the estate and the decedent's adult children would share the remaining 60%. The settlement further provided that Norma and my client were to act as co-personal representatives. However, Norma was unable to secure a bond and was, therefore, ineligible to act as a personal representative. The adult children petitioned the court to appoint Childers and Coventry as a special administrator to assume the administration of the estate.

During the initial inventory process, the special administrator discovered that substantial estate assets had gone missing while in Norma's custody and control. My client petitioned the court to have Norma cited and appear for an in-court A.R.S. § 14-3709(b) examination.

Following said examination, the court found that that Norma had sold, gifted, and otherwise conveyed away the missing assets. Based on the information obtained during the examination, the estate was awarded double damages against Norma. Norma was also ordered to pay all of my attorney's fees and the special administrator's attorney's fees. The judgments obtained against Norma exceeded the amount she would have received from the estate.

**Significance:** This case is one of the longest cases that I have handled in my career. It included a) extensive discovery and disclosure, b) two weeks of depositions, c) a settlement on the eve of trial, d) enforcement of the settlement agreement, e) identification and pursuit of missing assets through a contested evidentiary hearing, f) a civil conversion proceeding, and g) final distribution of the estate. This case included issues spanning to the furthest reaches of the probate code and probate procedural rules. It evidences my ability to not only see a case through to the end, but also to see the end from the beginning.

The result obtained in this case was only made possible by securing evidence and testimony in anticipation of the potential future bad acts by the opposing party. While I encourage my clients to seek a global settlement, I strive to protect them against potential issues should the settlement not resolve the dispute as planned.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods

of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

<b>Judge Pro Tempore, Coconino County Superior Court &amp; Flagstaff Justice Court</b>
Period of Service: March 2017 – Present
Appointed or Elected: Appointed
Description: I serve on an as-needed basis to cover for judges who are taking time off, attending trainings, or otherwise unable to work. The type and approximate number of cases I have handled while serving as a judge are as follows: <ul style="list-style-type: none"> <li>• Criminal initial appearances and arraignments (150+);</li> <li>• Criminal change of plea hearings (25+);</li> <li>• Criminal and civil pretrial conferences (50+);</li> <li>• Civil bench trials (5+);</li> <li>• Misdemeanor criminal bench trials (3);</li> <li>• Sentencing hearings (2);</li> <li>• Civil traffic hearings (15+);</li> <li>• Eviction hearings (30+); and</li> <li>• Protective order <i>ex parte</i> and contested evidentiary hearings (25+).</li> </ul>

<b>Court-Appointed Arbitrator, Coconino County Superior Court</b>
Period of Service: December 2019 – March 2020
Appointed or Elected: Appointed
Description: I was appointed to act as an arbitrator in a high-conflict divorce case to assist the court with the identification and division of community and/or jointly owned property.

**I have also acted as a court-appointed arbitrator for several civil cases which are required to participate in mandatory arbitration pursuant to Ariz.R.Civ.P. 72-77.**

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

<b>Case #1: <i>State of Arizona v. Osornio</i></b>
<b>Date/Period:</b> March 16, 2020

<b>Court:</b> Flagstaff Justice Court
<b>Counsel:</b> Blaine Donovan, Esq. (928) 679-8280 <a href="mailto:bdonovan@coconino.az.gov">bdonovan@coconino.az.gov</a> Counsel for the State of Arizona
<b>Summary:</b> The defendant was charged with misdemeanor assault against her boyfriend. The defendant declined to accept any plea offers and the case proceeded to trial. As part of its case in chief, the State offered the testimony of two separate officers and the victim. Body camera footage from the arresting officer included an admission by the defendant that she had assaulted her boyfriend. As the body camera footage was being played in open court, the defendant sporadically, verbally confirmed her prior admission. The defendant was found guilty and sentenced following trial.
<b>Significance:</b> This case is an example of my judicial experience and the types of cases/issues I have had the opportunity to decide. It evidences my ability to handle and address evidentiary objections and quickly make decisions. I presided over every phase of this trial from opening statements through sentencing.

<b>Case #2: <i>In re the Marriage of Salceda</i></b>
<b>Date/Period:</b> December 2019 – March 2020
<b>Court:</b> Coconino County Superior Court, Case No. DO2018-00142
<b>Counsel:</b> Jason M. Brown, Esq. (928) 774-1433 <a href="mailto:Jason@azattorney.com">Jason@azattorney.com</a> Counsel for Petitioner/Husband  Donald P. Frame, Esq. (928) 214-7460 <a href="mailto:don@donframelaw.com">don@donframelaw.com</a> Counsel for Respondent/Wife
<b>Summary:</b> I was appointed to act as an arbitrator in a high-conflict divorce case to assist the court with the identification and division of community and/or jointly owned property.
<b>Significance:</b> I have not solicited or otherwise advertised to act as an arbitrator or mediator. The parties and court sought me out to act as an arbitrator in this case. In this case I handled every aspect of the arbitration from evidentiary submission/objections, to conducting the arbitration hearing and rendering an arbitration award.

**\*While I have presided over other contested evidentiary hearings, due to COVID-19 concerns and efforts to maintain social distancing, I did not have access to the court files to obtain the information necessary to complete this section regarding said other contested evidentiary hearings prior to submitting this application.**

29. Describe any additional professional experience you would like to bring to the Commission's attention.

**For most of the recent recession (2008 – 2011), I was employed by a law firm which focused on bankruptcy and debtor rights. Prior to my joining the firm, it was filing approximately 3 to 5 bankruptcies each month. I had very limited bankruptcy experience, but the firm did not have many other types of cases for me to handle. With a driven assistant to help me and an ever increasing number of clients needing debt relief, I assumed charge of the firm's consumer bankruptcy practice (Chapter 7 and 13 Bankruptcies). Over the four years that I was with that firm, the firm grew to become the third largest bankruptcy filing firm in Arizona. We were consistently filing 30-35 new cases each month. When I finally left that firm, I had to withdraw from several hundred open bankruptcy cases.**

**Handling such a high-volume consumer practice is impossible without the aid of technology. Unfortunately, there was no case management software available to accommodate my needs, so I had to create one. I taught myself how to create and use a simple SQL database. I then used Microsoft Access to create a case tracking system which enabled me to know where all of my files were at any given time. I developed and implemented firm-wide processes and procedures to ensure timely filings and avoid foreclosures. I also created reporting systems which were used during weekly meetings to determine where each case was in both the pre-filing and post-filing process. I streamlined staff assignments/responsibilities to foster efficiency and expertise while ensuring that I oversaw and was available for my clients throughout the entire process.**

**Recognizing that similar use of technology has application outside of the bankruptcy realm, in 2012, I, along with a few other visionary attorneys, established Firm Innovations Technologies, Inc. to develop a case management software (called "Matters of Law"). This software will not only enable attorneys to more efficiently handle their caseloads, but reduce the cost of running a law practice. This allows attorneys to provide higher quality legal services at reduced prices. The software can also be utilized by self-represented parties to aid in knowing what to file and when to file it. It has features to auto-generate discovery and disclosure. It enables the user to track cases, be aware of upcoming deadlines and provides forms to be used throughout the case. The trial preparation features enable the user to link and coordinate witnesses, exhibits, and contested issues to allow the efficient and coordinated presentation of evidence at trial.**

**I have not included this discussion of Matters of Law in my application as a sales pitch, but as proof that I am committed to finding ways to reduce the cost of legal services and increasing the ability of self-represented individuals to truly gain access to justice. I do not just speak of finding ways to help individuals gain access to the courts. Together, with the other shareholders of Firm Innovations, we have dedicated in excess of half a million dollars, a wealth of knowledge and experience, and nearly eight years of our lives developing this technology to ensure**

that all people can obtain legal representation at reasonable prices and truly have access to justice.

**BUSINESS AND FINANCIAL INFORMATION**

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **Yes** If so, give details, including dates.

**My parents believed in the principles of hard work and self-reliance. My siblings and I were taught that, beginning at age eight, my parents would provide for our reasonable needs, but we were expected to work for money to purchase our preferred clothing and anything else we desired. Consequently, at age eight I began working for minimum wage. At first, my parents would provide me with work opportunities. My father even secured a contract to have my siblings and me clean city hall, the police department and magistrate court two times each week. At age eleven I also gained employment doing yard work and landscaping for various elderly individuals in the community. I continued doing yard work for my several employers until I turned fifteen and became a lifeguard/water safety instructor at the swimming pool owned by the City of Willcox, Arizona. Around this same time, I also began cleaning my father's law office.**

**After graduating from high school, I moved to the Phoenix area to study at Arizona State University. While my academic scholarship covered the entirety of my tuition and books, it only covered a relatively small portion of my other living expenses. To supplement my finances, I began working as a telephonic customer service representative for a home security company called SecurityLink from AmeriTech. I continued to work for SecurityLink until I resigned to move to Taiwan. My business pursuits upon my return from Taiwan are identified in my response to question 14 (above).**

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **Yes** If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

**Business Name: • Firm Innovations Technologies, Inc.**

Nature of Business: Computer Software Development/Sales - This is a legal case management software company which is preparing to launch its first software in the near future. The software will not only be beneficial to practicing attorneys, but it will enable attorneys to reduce their overhead and the costs associated with running a law practice.

Consequently, the cost of hiring an attorney should be reduced. This software will also enable self-represented litigants to have greater access to justice with more resources, forms and tools at their fingertips to enable them to more competently represent themselves.
Title/Position: President and Chairman of the Board of Directors
Duties: I am one of the original founders and chief designers of the software. I handle all of the company's finances, tax filings, and corporate filings. I am also part of the programming team who meets weekly to review the programming progress and give direction to programmers.
Term of Service: 2012 - Present

<b>Business Name: JEKA Ventures, LLC</b>
Nature of Business: Stock Holding - The only asset owned by this company is stock in Firm Innovations Technologies, Inc.
Title/Position: Manager – This business is currently owned by a revocable trust (JEKA Trust) of which my wife and I are the co-trustees.
Duties: As manager, I handle all of the voting of said stock and any financial/tax responsibilities.
Term of Service: 2017 - Present

<b>Business Name: Jared E. Holland, P.L.L.C./Holland Law Group, PLLC</b>
Nature of Business: Law Firm
Title/Position: Founding Member – These businesses are currently owned by a revocable trust (JEH Trust) of which I am the sole trustee.
Duties: I am a founding member and supervising attorney, I oversee all of the firm's finances, including the firm's IOLTA Trust Account. I handle all advertising, hiring/firing, training and client retention.
Term of Service: 2012 - Present

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? **Yes**  
If not, explain your decision.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes** If not, explain.
33. Have you paid all state, federal and local taxes when due? **Yes** If not, explain.
34. Are there currently any judgments or tax liens outstanding against you? **No** If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as

orders of protection, or for payment of child or spousal support? **No** If so, explain.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **No** If so, identify the nature of the case, your role, the court, and the ultimate disposition.
37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No** If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No** If so, explain.

### CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other “cause” that might reflect in any way on your integrity? **No** If so, provide details.
40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No**
- If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.
41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. **Not Applicable**
42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

**Over the years that I have practiced law, I have received a small handful of screening phone calls from the State Bar of Arizona indicating that they had been contacted by someone wishing to have the State Bar investigate and/or**

address a perceived wrong. Each of these screening calls have been informational or required only brief explanations which resulted in agreement by bar counsel that there was no evidence of any wrongdoing. In fact, no written response or further investigation was required.

In January of 2012 the husband of a former Chapter 13 bankruptcy client from a prior law firm filed a bar charge against me and my prior firm (AZ State Bar File # 12-0228). The client intentionally did not list certain debts, income and assets in her bankruptcy petition and schedules that our firm had filed for her. She hoped that, by not listing the debts in her husband's name, she could keep paying the debts outside of the bankruptcy and salvage her husband's credit. Unfortunately, the client stopped paying her monthly Chapter 13 reorganization plan payment because she could not afford to pay both the plan payment and the debt in her husband's name. Upon learning of the omissions, I worked with the client to amend and correct her court filings to include all of her assets, debts, income and expenses. I was even able to obtain a moratorium on seven months-worth of plan payments and get the client's plan of reorganization confirmed by the court. However, after confirmation the client failed to make several more monthly plan payments and her case was dismissed. Following dismissal of the bankruptcy, the client's husband filed a bar charge accusing me and the firm I worked for of several ethical violations. After being notified of the bar charge, I cooperated fully with bar counsel and timely responded to the charge. As a result of my written response and its numerous supporting exhibits (i.e., emails, letters, court filings, phone log, timelines, etc.), the bar charge was summarily dismissed.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. **Not Applicable**
44. List and describe any sanctions imposed upon you by any court. **Not Applicable**
45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **Yes** If so, in each case, state in detail the circumstances and the outcome.

**In 2012 I received notice of a "bar charge" which was summarily dismissed following my response. See my response to Question #42 (above).**

**On March 16, 2020, I presided, as a Justice of the Peace, *pro tempore*, at a criminal bench trial. At the end of the Trial, I found the Defendant guilty of**

assault. Less than one month later, the Defendant filed a Complaint against me with the Commission on Judicial Ethics (Complaint No. 20-119) wherein she disputed her conviction. While I received a brief phone call from the Commission, I was never asked to provide any written response. In fact, the first time that I saw the written Complaint was when it was mailed to me with a copy of the Order summarily dismissing the Complaint.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No** If your answer is "Yes," explain in detail.
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No** If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No** If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No** If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

### PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? **No** If so, list with the citations and dates.
51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes** If not, explain.

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes** If so, describe.

**I taught business law courses as an adjunct professor for Northern Arizona University's W. A. Franke College of Business from Aug. 2011-May 2016 (Several Non-Consecutive Semesters); I have also been offered the opportunity to teach for Northern Arizona University's School of Hotel and Restaurant Management for upcoming courses.**

**I have taught/lectured in the follow continuing legal education courses:**

- **Best Interest Attorney Training, *Coconino County Superior Court***
- **Estate Administration From Start to Finish, *National Business Institute***
- **The Probate Process From Start to Finish, *National Business Institute***
- **What Every Family Law Practitioner Should Know About Bankruptcy, *Coconino County Bar Association***
- **What Every Family Law Practitioner Should Know About Bankruptcy, *Yavapai County Bar Association***

53. List memberships and activities in professional organizations, including offices held and dates.

- **State Bar of Arizona, Member (2007-Present)**
- **Coconino County Bar Association, Member (2007-Present)**
- **Coconino County Superior Court Probate Task Force, Member (2012-Present)**
- **Coconino County Superior Court Family Law Task Force, Member (2007-Present)**
- **Central Arizona Estate Planning Counsel, Member (2019-Present)**
- **J. Reuben Clark Law Society, Member (2004-Present)**
- **City of Flagstaff Downtown Advisory Committee, Appointed Member (2008)**
- **Nez Perce County, Idaho Small Claims Court, Mediator (2004-2005)**

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **Yes**

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or

the like.

- **Coconino County Superior Court (Integrated Family Court), Pro Bono Best Interests Attorney in complex cases involving minor children (2009-Present)**
  - Pro bono representation of minor children in high-conflict family law cases involving parenting time, legal decision making and/or child support
- **Coconino County Superior Court, Court-Appointed Attorney for incapacitated individuals in Guardianship & Conservatorship cases (2018-Present)**
  - Provide dramatically reduced-rate legal representation to alleged incapacitated persons/wards in guardianship cases
- **Verde Valley Law Day, Volunteer (2015)**

54. Describe the nature and dates of any relevant community or public service you have performed.

**Boy Scouts of America** - I am an Eagle Scout and have been actively involved in the Boy Scouts of America. For the last twenty years, I have served in a variety of leadership positions. Yet, my favorite scouting experiences involve working directly with youth. By participating in service projects, helping youth gain knowledge and skills through earning merit badges, or just having a discussion while sitting around a camp fire (with no electronics to distract the youth) I have enjoyed being able to reach youth and hopefully make an indelible impression that will help guide them throughout their lives.

**Volunteer Church Service Group** – For the past twenty years, I have actively participated in a service group consisting of several volunteers from my church. As part of said group, I strive to meet the needs of widows, single parents, struggling individuals and other members of the community. I assist those who may be moving, cut and stack firewood, complete yard work, shovel snow, assist with minor home repairs, visit individuals who find themselves in the hospital, and otherwise serve in any capacity I can, as my time permits. I have held multiple leadership positions in the group and twice served as the group’s president. As president I oversaw the service provided by the group members, coordinated and scheduled service opportunities, acted as a liaison between the group and ecclesiastical leaders, oversaw recruitment efforts and enlisted youth participation.

**Spontaneous Acts of Service** – I believe that service tailored to the immediate needs of an individual is the most rewarding service I can give. Some of my most memorable service opportunities involved helping someone push an

**inoperable vehicle out of the roadway while dressed in a suit and tie, helping someone change a flat tire while on a date with my wife, fixing a neighbor's burst waterline on a cold winter's night, introducing myself to a new neighbor without words, but by grabbing a box off the moving truck and asking where to take the box. Whether I was assisting at the Flagstaff Family Food Center by preparing meals and washing dishes for hours or helping to organize/run a school fundraiser, I believe that it is extremely important that members of the judiciary seek out opportunities to provide individualized service to the community. I have not only provided all of the aforementioned service, but I strive to continue to look for such service opportunities.**

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

- **“Best of the Best” 2019-2020 (Lawyers of Distinction)**
- **Premier Lawyers of America Nominee 2019-2020**
- **Acquisition International Legal Awards 2020**
- **“Top Lawyers in Arizona” 2018 (The Legal Network)**
- **“Top Attorneys of North America” 2015-2017 (Who's Who Directory)**
- **Eagle Scout (Boy Scouts of America)**

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

- **Coconino County Superior Court, Judge Pro Tempore – Appointed 2017**
- **Flagstaff Justice Court, Judge Pro Tempore – Appointed 2017**
- **Flagstaff Unified School District, School Board – Candidate 2012**

Have you ever been removed or resigned from office before your term expired? **No** If so, explain.

Have you voted in all general elections held during the last 10 years? **Yes** If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

**My wife (of 18 years) and I are the parents of eight (8) beautiful children. We are often called experts at managing chaos. I love spending time with my family. In fact, I find nothing so relaxing as playing family games and filling**

my home with the laughter of my children. My favorite stress reliever is to wrestle with my three young boys, while trying to avoid breaking anything.

I enjoy working with my hands. My father thought that an idle boy was an awful waste. So, my youth was filled with projects. In fact, it was my father who first enrolled me in cub scouts. He enthusiastically embraced the idea of helping me learn life skills through hands-on experience. However, the minimum requirements to obtain a given merit badge were not always satisfactory for my father and he would find opportunities for extended experience. I remember well earning the gardening merit badge only after fertilizing, cultivating, planting and harvesting a half-acre garden. The painting merit badge was not complete until after we painted the entire exterior of our home. The plumbing merit badge involved the remodeling of a bathroom. Through these and other experiences, I learned to love working with my hands and can often be found tinkering in the garage or building something when I have a spare moment.

I recently discovered the wonder of scuba diving. At the urging of my two brothers, who are also attorneys, I have become scuba certified. At least once each year, I go on a scuba diving trip with one or both of my brothers. These trips not only provide me with an opportunity to see the wonders of the ocean, but also enable me to visit exotic locations and experience new cultures. These experiences have heightened my appreciation for this awesome world and its amazing inhabitants.

## HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? Yes

## ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

**I was born and raised in the small southeastern Arizona town of Willcox. I am the second to the youngest of my parents' eight (8) children. My father's**

ancestry consists mostly of Michigan farmers; many of whom fought for the Union Army in the Civil War. After his parents divorced, my father moved with his mother to Ramona, California, where he spend his teen years working on his step-father's egg ranch and fruit stand. My mother was born in Miami, Arizona, but lived most of her teen years in Puerto Rico. My parents met in El Paso, TX where my father was stationed as a newly commissioned officer in the United States Army. After their marriage, my parents moved to Arizona to start and raise their family.

Growing up so close to the Mexican border, Willcox was highly influenced by Mexican culture. At the same time, Willcox is the home of cowboy legend, Rex Allen, and still has several vast ranches and farms. Thus, cowboy toughness and country work ethic was also ingrained in Willcox's populous. In fact, Willcox High School's mascot is the Cowboy.

Throughout middle school and high school, I participated in almost every available athletic opportunity. I was a four-year letterman in varsity football, two year letterman in basketball, three-year letterman in tennis and one-year letterman in track. In addition to athletics, I was a two-year member of the school academic team and took several college courses through the local branch of Cochise Community College while still in high school.

I attended Arizona State University for my undergraduate studies in political science. Between my second and third years of undergraduate studies, I moved to Taiwan (R.O.C.) for a couple years. I became conversationally fluent in Mandarin Chinese and grew to love the Taiwanese people and culture. That immersive experience enabled me to learn to embrace and love individuals because of who they are, rather than merely tolerating a people whose appearance, practices, culture, food, language and upbringing is different from my own. Upon returning from Taiwan and resuming my undergraduate studies, I married my sweetheart and we began our family.

After graduating from ASU, my wife and I thought it would be good to broaden our experience by leaving Arizona. I attended the first three semesters of law school at the University of Idaho and was on track to graduate one semester early. However, we desired to return to Arizona after law school and soon discovered that it would be far easier to meet Arizona employers if we lived in Arizona. So, I transferred to the Sandra Day O'Connor College of Law at Arizona State University for the remainder of law school.

After law school, my wife and I decided to focus on finding employment in Flagstaff so we could raise our family in a smaller community, rather than accept a higher-paying job opportunity in the valley. Shortly after becoming licensed to practice law, I found employment with the largest law firm in Flagstaff. I later joined another law firm and eventually co-founded my current

law firm.

Since founding my current law firm, I have had the privilege of working with three different, but amazing, legal assistants. All three are women, but each is a different ethnicity (one is Native American, one is African American, and one is Caucasian). While ethnically different, each of these remarkable women were honest, hard-working, fun-loving and a pleasure to work with. Due to my upbringing and over-seas experience, I strive to embrace diversity, as it only enriches and adds to our communities.

As demonstrated by my founding of Firm Innovations Technologies, Inc. and the goals that I have pursued, I have a great love for my fellowman and believe that our democracy only works if the entire citizenry has access to justice, regardless of race, ethnicity, gender, age, socio-economic status, or any other factor.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

Some may see that I have practiced in several areas of the law and believe that I am a "general practitioner" (i.e. a jack of all trades and master of none). However, this would not be an accurate assumption. My career is more accurately described as having the opportunity to focus my practice on various areas of the law at different times during my career. Rather than attempting to dabble in any legal area that presents itself, I have focused my practice on relatively few areas at any given time. Only after I gained the competence and desire to practice in a different area, did I close out an existing practice area and begin accepting cases in a new area. This has enabled me to become well versed in the law of each area in which I have practiced. At the same time, it has given me a well-rounded experience in multiple areas of the law, which is not available to most attorneys. Having practiced in so many areas of the law, I am uniquely qualified to handle each client matter with a multi-disciplinary approach. In fact, I am often invited to act as co-counsel with other attorneys and/or substitute as counsel in cases that have branched into an area with which the prior attorneys are not familiar.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? **Yes** If not, explain.

62. Attach a brief statement explaining why you are seeking this position.

63. Attach two professional writing samples, which you personally drafted (e.g., brief  
Filing Date: August 31, 2020  
Applicant Name: Jared E. Holland  
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or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.
65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews. **Not Applicable**

**-- INSERT PAGE BREAK HERE TO START SECTION II  
(CONFIDENTIAL INFORMATION) ON NEW PAGE --**

# **ATTACHMENT A**

## **PERSONAL STATEMENT**

## PERSONAL STATEMENT

I am seeking appointment to the Arizona Court of Appeals because I believe that I have acquired the necessary knowledge, experience, skills and temperament to whole-heartedly serve my community as a jurist. I have a great passion for the rule of law and the security it provides. My experience has been well-rounded and varied; making me uniquely qualified to take a multi-faceted approach to each case with an understanding that each matter will not fit squarely into any single area of the law. Such an approach enables me to understand the intertwined legal complexities of each case and apply the law so as to give effect to the intent of our law makers and comply with public policies.

My exposure to other cultures and customs gives me insight and understanding of the different individuals who may seek relief from the judiciary. Each person who seeks redress from the courts deserves to be heard and treated respectfully. As a pro tempore judge, I have strived to treat all who appear before me with understanding and respect, for it is in the reciprocated respect of our citizenry that the judiciary derives its ability to enforce its pronouncements. This same respect and even temperament will be the hallmark of my service as a judge on the Arizona Court of Appeals.

I have a great love for the law. A judge must love the law to the point where s/he has the courage to evenly apply the law when it seems unpopular, exposes the judge to ridicule, and/or does not align with the political whims of the day. At the same time, a judge must exercise great restraint and curb the urge to rewrite laws with which the judge may not personally agree. I am a firm believer in the balance maintained by the separation of powers between the three branches of our government and, as a judge, will apply the law as written, free from the influence of any personal bias, beliefs or moral codes I may have.

It is my sincere hope that you will find me to be the right candidate for appointment to the Arizona Court of Appeals. I humbly seek your vote of confidence with a promise and commitment that I will faithfully fulfill the duties of a judge of the Arizona Court of Appeals and do all within my power to maintain and defend the Constitution of the United States and the Constitution and laws of the State of Arizona.

# **ATTACHMENT B**

## **Writing Sample #1**

**I. ALL OF THE EVIDENCE PRODUCED BY THE PARTIES DURING DISCOVERY/DISCLOSURE SUPPORTS PLAINTIFFS' INTERPRETATION OF SECTION 14(c)(iii) OF THE LEASE, WHILE DEFENDANTS HAVE YET TO PRODUCE ANY EVIDENCE TO SUPPORT THEIR INTERPRETATION.**

On January 13, 2011, Defendants filed a Motion for Summary Judgment on all Counts in this case. On February 16, 2011, Plaintiffs filed a Response to Defendants' Motion as well as a Cross-Motion for Summary Judgment. After the parties fully briefed the Motion and Cross-Motion, the Court heard oral argument. On July 8, 2011 the Court entered Its Under Advisement Ruling wherein It held:

The parties in this matter entered into a Commercial Lease on September 1, 2006. Included in the Commercial Lease was a lease profit sharing clause. Plaintiff's interpretation and Defendant's interpretation of the clause vary greatly.

...

The language [of the Lease clause] is ambiguous and subject to different interpretations. This Court, therefore, finds that interpretation of the contract language is a factual question to be decided by the trier of fact.

*See* Court's Minute Entry dated July 8, 2011.

Following the Court's Under Advisement Ruling, the parties engaged in the discovery and disclosure process. As agreed to by the parties and ordered by the Court at the October 31, 2011 Case Management Conference, the disclosure/discovery deadline in this case ran on January 29, 2012.

During the disclosure/discovery process, the parties retained expert witnesses to testify regarding the appropriate interpretation of Section 14(c)(iii) of the Commercial Lease. Plaintiffs also obtained a copy of an e-mail from [Defendants' Agent #1] to Plaintiffs dated Saturday, August 26, 2006, responding to a request for clarification of Section 14(c)(iii) made by [one of the Plaintiffs], in a telephone conversation with [Defendants' Agent #1] on August 25, 2006. In the e-mail, [Defendants' Agent #1], acting in her capacity as an agent for the original Landlord,

explained to Plaintiffs the meaning of Section 14(c)(iii). Said statements evidence the parties' intent, which Plaintiffs now ask the Court to enforce.

The Arizona Supreme Court has explained that the purpose of interpreting a contract is to discover and give effect to the parties' intent:

Interpretation is the process by which we determine the meaning of words in a contract. [citation omitted]. Generally, and in Arizona, a court will attempt to enforce a contract according to the parties' intent. [citations omitted]. "The primary and ultimate purpose of interpretation" is to discover that intent and to make it effective. [citation omitted].

Taylor v. State Farm Mut. Auto. Ins. Co., 175 Ariz. 148, 152, 854 P.2d 1134, 1138 (1993). After reviewing the evidence obtained during discovery/disclosure, it is clear that the parties' experts, Defendants' agent and Plaintiffs all agree on the interpretation to be applied to Section 14(c)(iii) of the Commercial Lease.

Section 14(c) of the Commercial Lease states:

Assignment or Subletting Conditions: Subject to (i) the other provisions of this Section 14 and (ii) Landlord's consent, which shall not be unreasonably withheld, Tenant may assign or sublet such space to any third party on the following conditions:

...

(iii) An amount equal to 50% of all sums or other economic consideration received by Tenant as a result of such assignment or subletting, however denominated (whether as consideration for the assignment, rentals under a sublease, or otherwise) which exceed in aggregate the total sums which Tenant (or Tenant's assignee in case of an assignment) is obligated to pay Landlord under this Lease (after deducting Tenant's actual out-of-pocket costs of such assignment or subletting) prorated to reflect obligations allocable to that portion of the Premises subject to such assignment or sublease, shall be payable to Landlord as additional rental under this Lease without affecting or reducing any other obligations of Tenant hereunder, provided that in no event shall Tenant be obligated to pay Landlord less than the rental specified in this Lease. The parties hereto acknowledge and agree that it is not their intention that Tenant's leasehold interest in the Premises have any bonus value or marketable value to Tenant even

though the rentals provided for herein may from time to time be less than the fair market rental value of the premises.

(Emphasis added).

In the depositions of [Defendants' Agent #2] (trustee of the original Landlord), [Defendants' Agent #3] (trustee of the original Landlord and trustee of the current Landlord), and [Defendants' Agent #1] (agent for the original Landlord), each deponent admitted that [Defendants' Agent #1] acted as an authorized agent of the original Landlord in the negotiations and drafting of the Commercial Lease.

On Saturday, August 26, 2006, (the day before the Original Landlord signed the Commercial Lease) [Defendants' Agent #1] sent an e-mail to Plaintiffs clarifying the meaning of Section 14(c)(iii) of the Commercial Lease. [Defendants' Agent #1] explained to the Plaintiffs that: "Subsection (iii) states that, if an assignee or sublet tenant agrees to pay more for the use of the property than you pay for the use of the property, then the excess profit would be shared equally between us." (emphasis added). A copy of [Defendants' Agent #1]'s e-mail is attached to Plaintiffs' Separate Statement of Uncontroverted Facts and is incorporated herein by this reference.

Defendants' expert witness, [], after reviewing Section 14(c)(iii) has opined: "It is my experience that such clauses are commonly inserted into leases so that the tenant cannot make a profit at the landlord's expense by the assignment of the leasehold, which may provide for rent which is more favorable than the market rate by the time of the assignment." (emphasis added). A copy of [Defendants' Expert Witness]' Expert Opinion is attached to Plaintiffs' Separate Statement of Uncontroverted Facts.

[Defendants' Agent #1]'s and [Defendants' Expert Witness]' united explanation of Section 14(c)(iii) falls right in-line with the Plaintiffs' expert's opinion. Plaintiffs' expert, [], has stated:

“As a licensed attorney specializing in real estate matters, it is my expert opinion that the provisions of Section 14(c)(iii) of the Commercial Lease clearly apply only to the sharing of excess ‘rental amounts’ that the Tenant might receive under an assignment or sublease of the Lease.” (emphasis added). A copy of [Plaintiffs’ Expert Witness]’ Expert Opinion is attached to Plaintiffs’ Separate Statement of Uncontroverted Facts.

Thus, all of the evidence produced by the parties clearly indicates that Plaintiffs’ interpretation of Section 14(c)(iii) is the correct interpretation which was discussed and agreed to by the parties as of the date that the Commercial Lease was signed by the parties. Defendants are not entitled to fifty percent (50%) of all consideration received as a result of the sale of Plaintiffs’ business. In fact, Defendants are not entitled to receive fifty percent (50%) of all consideration received as a result of the assignment or subletting. Defendants are only entitled to receive fifty percent (50%) of any consideration that was not only a direct result of the assignment of the leasehold (not resulting from the sale of the other tangibles and/or intangibles of the business) but also in excess of the total aggregate sums which Plaintiffs were obligated to pay Defendants under the Lease.

Consequently, to receive any of the sale proceeds, Defendants must demonstrate that: 1) The consideration was received as a direct result of the assignment of the Lease (not as consideration for the sale of the business tangibles/intangibles); AND 2) The consideration received specifically for the assignment of the lease exceeded the aggregate total sums Defendants would be entitled to under the terms of the Lease.

**II. THE TERM “HOWEVER DENOMINATED” FOUND IN SECTION 14(c)(iii) OF THE COMMERCIAL LEASE DOES NOT CHANGE THE TYPE OF CONSIDERATION THE LANDLORD MAY RECEIVE FROM AN ASSIGNMENT.**

Defendants repeatedly cite to the term “however denominated” as being some sort of modifier of the consideration the Landlord may receive from any assignment of the Commercial Lease. Yet, this term only comes into play when the Landlord alleges that the Tenant and/or the Tenant’s assignee mis-designates/mis-allocates consideration which was really paid for the assignment of the lease as consideration for something else.

Even if the Tenant does “denominate” consideration which was really paid for the assignment of the lease as consideration for something else, the proper interpretation of Section 14(c)(iii) remains unchanged. Plaintiffs readily admit that any consideration received/to be received as a direct result of the assignment of the leasehold which exceeds the total aggregate sum due to Defendants under the Lease, must be split with Defendants, regardless of how that consideration is denominated or labeled.

Fortunately, the issue of whether Tenants have/have not wrongfully denominated sums received from Tenants’ assignee, has nothing to do with Count One of the First Amended Complaint and/or Count One of the Counterclaims. The issue of appropriate allocation of the consideration received/to be received by Plaintiffs will be addressed in the remaining counts in the First Amended Complaint and Counterclaim. The respective first counts of the First Amended Complaint and Counterclaim only seek declaratory judgment regarding the appropriate interpretation of Section 14(c)(iii).

# **ATTACHMENT C**

**Writing Sample #2**

## MEMORANDUM OF POINTS AND AUTHORITIES:

In this case, partial summary judgment is appropriate as there is no genuine issue of material fact regarding the issues discussed herein.

### I. THE TRANSACTIONS IDENTIFIED HEREIN CONSTITUTE "CONFLICTING INTEREST" TRANSACTIONS PURSUANT TO A.R.S. § 10-860(1).

A.R.S. § 10-860(1) defines a "Conflicting Interest" as follows:

"Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, by a subsidiary of the corporation or by any other entity in which the corporation has a controlling interest if either:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person either:

(i) Is a party to the transaction.

(ii) Has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called on to vote on the transaction.

(b) The transaction is brought or is of such character and significance to the corporation that it would in the normal course be brought before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called on to vote on the transaction:

(i) An entity, other than the corporation, of which the director is a director, general partner, agent or employee.

(ii) A person that controls one or more of the entities specified in item (i) of this subdivision or an entity that is controlled by or is under common control with one or more of the entities specified in item (i) of this subdivision.

(iii) An individual who is a general partner, principal or employer of the director.

(Emphasis added).

All of the parties admit and agree that [Defendant Directors] own equity membership interest(s) in [Company A]. SOF 1. All parties further admit and agree that the [Defendant Directors], as officers and/or directors of [Company B], engaged in significant business transactions with [Company A]. SOF 2 and 4. The undisputed evidence in this case further shows that the [Defendant Directors] acted as agents of [Company A] while engaging in said business transactions. SOF 3. *See also* Sale Agreement attached as Exhibit A, and Lease attached as Exhibit D.

Thus, after applying the facts in this matter to applicable Arizona law, there is no genuine issue of material fact as to whether the transactions identified above are “conflicting interest” transactions as defined under A.R.S. § 10-860(1). Whether the “conflicting interest” transactions should be set aside or give rise to an award of damages or other sanctions, remains at issue. That said, [Company B] is entitled to summary judgment on the issue of whether the transactions, identified above, constitute “conflicting interest” transactions.

II. A.R.S. §§ 10-861(B)(1) AND (2) ARE NOT APPLICABLE TO THE “CONFLICTING INTEREST” TRANSACTIONS.

A.R.S. § 10-861(B) provides:

A director’s conflicting interest transaction shall not be enjoined, be set aside or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation, because the director, or any person with whom or with which the director has a personal, economic or other association, has an interest in the transaction, if either:

1. Directors' action respecting the transaction was taken at any time in compliance with section 10-862.

2. Shareholders' action respecting the transaction was taken at any time in compliance with section 10-863.

3. The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

(Emphasis added).

[Company B] recognizes that one or more Defendants may desire to assert A.R.S. § 10-861(B)(3) as a defense against liability for their participation in the conflicting interest transactions identified above, and said statute requires a factual finding of unfairness. However, [Company B] is entitled to summary judgment regarding the inapplicability of A.R.S. §§ 10-861(B)(1) and (2).

**A. A.R.S. § 10-861(B)(1) is not applicable because there was no disinterested director approval of the conflicting interest transactions.**

The defense found in A.R.S. § 10-861(B)(1) requires that the corporate directors comply with the mandates of A.R.S. § 10-862 before said defense is available. A.R.S. § 10-862(A) provides:

Directors' action respecting a transaction is effective for purposes of section 10-861, subsection B, paragraph 1 if the transaction received the affirmative vote of a majority, but at least two, of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection B of this section.

A.R.S. § 10-862(D) defines a "qualified director" as:

...[A]ny director who does not have either:

1. A conflicting interest respecting the transaction.

2. A familial, financial, professional or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

Thus, to utilize the defense of A.R.S. § 10-861(B)(1), the [Defendant Directors] were required to comply with A.R.S. § 10-862 by obtaining the approval of at least two disinterested corporate directors.

In this case, there were no disinterested directors. [Defendant Directors] acted without advising and/or receiving approval from any other party who had an interest in [Company B]. Consequently, A.R.S. § 10-861(B)(1) is unavailable as a defense to liability for the [Defendant Directors]' participation in the conflicting interest transactions.

**B. A.R.S. § 10-861(B)(2) is not applicable because there was no disinterested shareholder approval of the conflicting interest transactions.**

The defense found in A.R.S. § 10-861(B)(2) requires that the corporate directors comply with the mandates of A.R.S. § 10-863 before said defense is available. A.R.S. § 10-863(A) provides:

Shareholders' action respecting a transaction is effective for purposes of section 10-861, subsection B, paragraph 2 if a majority of the votes entitled to be cast by the holders of all qualified shares was cast in favor of the transaction after all of the following:

1. Notice to shareholders describing the director's conflicting interest transaction.
2. Provision of the information referred to in subsection C of this section.
3. Required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

A.R.S. § 10-863(E) defines "qualified shares" as:

...[A]ny shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary, or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

Thus, to utilize the defense of A.R.S. § 10-861(B)(2), the [Defendant Directors] were required to comply with A.R.S. § 10-863 by obtaining disinterested corporate shareholder approval.

In this case, there were no disinterested shareholders. [Defendant Director 1], individually and as trustee of the [Shareholder Trust], owned/controlled all of the outstanding shares of [Company B] stock. [Defendant Directors] acted without advising and/or receiving approval from any other party who had an interest in [Company B]. Consequently, A.R.S. § 10-861(B)(2) is unavailable as a defense to liability for the [Defendant Directors]' participation in the conflicting interest transactions, identified herein.

### **CONCLUSION:**

For the reasons stated above, [Company B] is entitled to summary judgment on the following issues: 1) The transfer of the real property from [Company B] to [Company A] and the leasing-back of the real property by [Company B] were both "conflicting interest" transactions pursuant to A.R.S. § 10-860(1); 2) The defenses found in A.R.S. § 10-861(B)(1) and (2) from setting aside the transactions, an award of damages, and/or other sanctions are unavailable.

The [Defendant Directors] have financial interests which were in direct conflict with [Company B's] interests in both transactions. However, the [Defendant Directors] neither sought nor obtained disinterested director or shareholder approval of said transactions.

# **ATTACHMENT D**

## **Sample Judicial Decision #1**

**ARBITRATION AWARD RE:  
DIVISION OF PERSONAL PROPERTY**

This matter having come before the Arbitrator at the Arbitration Hearing held on February 13, 2020 and the Arbitrator having reviewed and considered all three volumes of the Court's paper file, the evidence presented by the parties and the arguments of counsel, **THE ARBITRATOR FINDS:**

A) The marriage and marital community of Husband and Wife was terminated via a Consent Decree of Dissolution of Marriage – No Children (“Consent Decree”) signed by the Parties and the Court on July 23, 2019.

B) Paragraph 41 on Page 10 of the Consent Decree states:

If any disputes arise involving dividing the personal property, a mutually agreed upon arbitrator will be retained by the parties to resolve the dispute. The arbitrator's decision is final and binding. Each party will split equally the arbitrator's cost, unless the arbitrator determines a party is acting in bad faith, then the arbitrator may assign this [sic] costs to the party acting unreasonably.

C) Disputes have arisen involving the identification and division of the Parties' personal property.

D) On December 20, 2019, the Court appointed the undersigned Arbitrator to address the above-indicated disputes.

E) An Arbitration Hearing was held on February 13, 2020 wherein the Parties presented testimony and other evidence regarding the existence, value, and desired division of personal property.

F) A.R.S. § 25-318(A) provides that the community and commonly owned property be divided “equitably, though not necessarily in kind, without regard to marital misconduct.” The Arizona Supreme Court has clarified that “[t]he statute requires a substantially equal distribution of community assets in the absence of a compelling reason to the contrary.” *Kelly v. Kelly*, 198

Ariz. 307, 309, 9 P.3d 1046, 1048 (2000). That said, “So long as the trial court acts equitably, it is allowed great discretion in the apportionment of the community assets and obligations.” *Neal v. Neal*, 161 Ariz. 590, 594, 570 P.2d 758, 762 (1977). The trial court may not exercise its discretion in dividing community property in such manner as to reward one spouse and punish the other. *Calderon v. Calderon*, 9 Ariz.App. 538, 541, 454 P.2d 586, 589 (App. 1969).

G) Because the personal property is in a “used” condition (some was even gifted to the parties after it had been used by a prior owner) and not uncommon and/or irreplaceable, the appropriate valuation method in this case is the current fair market value of the assets; not the replacement value, purchase prices, or even the “garage sale” value of the assets. *See* A.R.S. § 25-318(B). *See also Kelsey v. Kelsey*, 186 Ariz. 49, 918 P.2d 1067 (App., 1996), (The valuation of assets is a factual determination that must be based on the facts and circumstances of each case.”); and *Sample v. Sample*, 152 Ariz. 239, 243-44, 731 P.2d 604, 608-09 (App., 1986), (“A.R.S. § 25–318(A) provides that the selection of a valuation date rests within the wide discretion of the trial court and will be tested on review by the fairness of the result.”).

H) Prior to the Arbitration Hearing, the Parties were ordered to “prepare and submit an ‘Inventory of Property and Debts’ ... *See* A.R.F.L.P., Form 12.” While A.R.F.L.P., Form 12 requires the Parties to list only assets having a value greater than \$100.00, [Husband] argues that an “equitable division” of the Parties’ assets requires consideration and division of the cumulative sum of those assets which are individually worth less than \$100.00. The Arbitrator agrees that an “equitable division” requires consideration of the value of said assets. However, very little evidence regarding the cumulative value of said assets was presented at the Arbitration Hearing. Nonetheless, the evidence that was presented has been taken into consideration in the division of assets made herein.

I) [Wife] testified that several of the assets [Husband] claims are community assets, were actually gifted from a departing neighbor directly to one or more of [Wife]’s adult children from a prior relationship ([Wife’s Child 1 and Wife’s Child 2]), [Wife’s Child 2]’s children, and/or to the Parties’ child-in-common ([Common Child]). Arizona law is clear that, “As a general rule, property acquired by either spouse during marriage is presumed to be community property. [citations omitted]. The spouse seeking to overcome that presumption has the burden of establishing the separate character of the property by clear and convincing evidence.” *In re Marriage of Cupp*, 152 Ariz. 161, 164, 730 P.2d 870, 873 (App., 1986). However, [Wife]’s testimony does not fall within said presumption because she testified that the property was never acquired by either spouse during their marriage, but it was gifted directly to others who happened to reside in the same home as the Parties. The Arbitrator finds [Wife]’s testimony regarding gifts made directly to the afore-mentioned persons credible as she indicated that the neighbor intentionally stated that the gifts were made to others and she was present when the gifts were made. [Husband] was not present for the actual gifting. That said, [Wife] further indicated that certain assets were received as gifts from the neighbors which were gifted to the Parties. As such, the Arbitrator finds that the following assets were gifted to the following individuals and will not be equitably divided between the Parties:

<b>ASSET:</b>	<b>GIFTED TO:</b>
Leather Couch from Dana Pt. Condo	[Wife’s Child 1]
2 Leather Seats from Dana Pt. Condo	[Wife’s Child 1]
Coffee Table from Dana Pt. Condo	[Wife’s Child 1]
Desk in [Common Child]’s Room	[Common Child]
Bed in [Common Child]’s Room	[Common Child]
TV in [Common Child]’s Room	[Common Child]
TV Stand in [Common Child]’s Room	[Common Child]
Chest of Drawers in [Common Child]’s Room	[Common Child]
2 Beds from Dana Pt. Condo	[Wife’s Child 1]
Dining Room Set from Dana Pt. Condo	[Wife’s Child 1]
TV in [Wife’s Child 2]’s Room	[Wife’s Child 2]

Chest of Drawers in [Wife's Child 2]'s Room	[Wife's Child 2]
Bed in [Wife's Child 2]'s Room	[Wife's Child 2]
2 Beds in [Wife's Child 2]'s Children's Room	[Wife's Child 2]

Any assets received as gifts which are not listed above are community assets of the Parties which are subject to equitable division.

J) The 2006 Seadoo RXP was purchased by [Husband] on June 15, 2018, which is after the date [Wife] was served with the Petition. [Husband] testified that said Seadoo was purchased with his sole and separate earnings. Consequently, the 2006 Seadoo RXP is [Husband]'s sole and separate property which must be confirmed to him.

K) [Wife] testified that [Husband] returned to the marital residence on multiple occasions, both before and after she was granted exclusive use of the residence. [Husband] denied [Wife]'s allegations and testified that because he had not returned to the residence, he has not been provided with a full and fair opportunity to inventory the entire residence. The Arbitrator notes that Paragraph 42 on Page 10 of the Consent Decree states: "**Temporary Orders.** All temporary orders, if any, have been satisfied in full, except as addressed in the mortgage arrears section of this Consent Decree." Inasmuch as the Parties' allegations relate to temporary orders, the Court has already addressed the Parties' claims and the Arbitrator will not/cannot disturb the Court's findings.

L) While Paragraph 41 on Page 10 of the Consent Decree gives the Arbitrator discretion to assign the arbitration-related costs unequally between the parties should "the arbitrator determine[] a party is acting in bad faith," this authority relates only to the arbitration proceedings. It would be inappropriate for the Arbitrator to consider anything which did or did not transpire prior to the December 20, 2019 Order appointing the Arbitrator. Any concerns arising from actions prior to the December 20, 2019 Order should be addressed by the Court. With this

in mind, the Arbitrator does not find that either party has acted in bad faith since December 20, 2019. While [Wife] did not tender the arbitration fees on the date ordered, any contempt finding would have been a civil contempt finding which could have been purged by payment of the ordered fees. Fortunately, [Wife] was able to tender the ordered fee a few days later and the Arbitration Hearing proceeded as initially scheduled.

**WHEREFORE, HAVING TAKEN THE FOREGOING FINDINGS INTO ACCOUNT, IT IS ORDERED:**

- 1) The 2006 Seadoo RXP is confirmed to [Husband] as his sole and separate property.
- 2) The assets identified in Paragraph I (above) are not the Parties' assets and are not subject to equitable distribution.
- 3) Equitably dividing the Parties' personal property as indicated in "Exhibit A", attached hereto, and awarding the property to the indicated Party.
- 4) Any or all after discovered assets and/or assets, having a value of more than \$100.00, which are not expressly addressed herein are awarded equally to the Parties to be held as tenants-in-common.
- 5) Any Party who believes that any property is missing or stolen, especially any firearms, is encouraged to report the property missing or stolen to law enforcement.
- 6) Pursuant to the last sentence in the first Paragraph 42 on Page 10 of the Consent Decree, [Husband] will notify [Wife] of two (2) days, eight hours each (during reasonable daylight hours), when [Wife] and/or his movers will retrieve the assets awarded to him that are located at [the marital residence awarded to Wife]. Said two (2) days may not occur sooner than five (5) days nor later than thirty (30) days from the date of this Arbitration Award. [Husband] shall not

disturb the tenants leasing said location. [Wife] shall timely give all required notices to the tenant(s) of [Husband]'s entry on the premises.

7) Denying the Parties' respective requests for unequal assignment of the arbitration fees.

**SO ORDERED** this 20<sup>th</sup> day of February, 2020.

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Jared E. Holland, Arbitrator

# **ATTACHMENT E**

## **Sample Decision #2**

**THE ARBITRATOR** has received and reviewed Petitioner's Amended *Expedited* Motion to Enforce Arbitration Award and Request for Findings of Contempt. Said Motion seeks a finding of contempt, with corresponding sanctions, against Respondent stemming from Petitioner's unsuccessful attempt to retrieve personal property awarded to him.

Before the Arbitrator can consider and/or grant the relief sought in Petitioner's Motion, the Arbitrator must first determine whether he has authority to rule on this type of a Motion. After reviewing the Court's January 9, 2020 Amended Order re: Second Motion to Appoint Arbitrator, the Arbitrator notes that the Court did not expressly grant the Arbitrator the authority to enforce the Arbitration Award and/or sanction a party. That said, Paragraph 41 on Page 10 of the Consent Decree gives the Arbitrator discretion to assign the arbitration-related costs unequally between the parties should "the arbitrator determine[] a party is acting in bad faith." However, said authority is limited in its scope and expressly granted by the Court.

Arizona Rules of Civil Procedure, Rule 74(d)(1)(F) states that a court-appointed arbitrator in a civil case may not make any legal rulings on any motions for sanctions. Although A.R.F.L.P., Rule 1(c) clarifies that the civil rules are applicable in domestic relations cases "only when [the Family Law] rules expressly incorporate them," there are no family law procedural rules regarding court-appointed arbitrators and the civil rules are instructive.

The Arbitrator further notes that Paragraph 6 on Page 6 of the Arbitration Award (the portion of the Arbitration Award at issue in Petitioner's Motion) is based on the first Paragraph 42 on Page 10 of the Consent Decree. Thus, any consideration/enforcement of the applicable portion(s) of the Arbitration Award may involve consideration/enforcement of the underlying Court Order.

For these reasons, the Arbitrator finds that, even if the Arbitrator does have the authority to do so, it is not appropriate for the Arbitrator to rule on Petitioner's Motion. Petitioner's Motion should be directed to the Court for consideration and adjudication.

**SO ORDERED** this 10<sup>th</sup> day of March, 2020.

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Jared E. Holland, Arbitrator