

## APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

This original application, 5 double-sided copies and one (1) single-sided copy must be filed with the Human Resources Department, Administrative Office of the Courts, 1501 W. Washington, Suite 221, Phoenix, AZ, 85007, not later than 3:00 p.m. on Monday, November 21, 2016. Read the application instructions thoroughly before completing this application form. The fact that you have applied is not confidential, responses to Section I of this application are made available to the public, and the information provided may be verified by Commission members. The names of applicants, interviewees and nominees are made public, and Commission files pertaining to nominees are provided to the Governor for review. This entire application, including the confidential portion (Section II), is forwarded to the Governor upon nomination by the Commission.

### SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 71)

#### PERSONAL INFORMATION

1. Full Name: **Kimberly Anne Demarchi**
2. Have you ever used or been known by any other legal name? **No**  
If so, state name: **Not applicable.**
3. Office Address:

**Lewis Roca Rothgerber Christie LLP  
201 East Washington Street  
Suite 1200  
Phoenix, Arizona 85004**



## EDUCATIONAL BACKGROUND

9. List names and locations of schools attended (college, advanced degrees and law), dates attended and degrees.

**University of Arizona, Tucson, Arizona, Summer Session 1992 (one course)**  
**Arizona State University, Tempe, Arizona, 1993-1997, double B.S.**  
**Pima Community College, Tucson, Arizona, Winter Session 1996-1997 (one course)**  
**Yale Law School, New Haven, Connecticut, 1997-2000, J.D.**

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

**At ASU, I earned dual degrees in history and political science, graduating from the University Honors College. My honors thesis in political science examined the use of language in shaping legal concepts. I also studied foreign languages and linguistics, including spending the summer after my freshman year studying language and culture in Japan.**

**Outside of my studies, I was active in student government, serving on the Honors College council and as one of the college's elected representatives to the Student Senate, as well as holding administrative positions in the student government. In each of the positions I occupied, my responsibilities usually involved designing and implementing programs, such as providing services to students living off campus, developing student informational forums, rewriting the student government election code, and managing the student government's finances as chair of the Finance Committee. I was also selected to serve as a student representative on the University Hearing Board, which adjudicated student disciplinary issues.**

**Later in my undergraduate career, I was able to explore my interest in the legal profession by doing research for practicing lawyers, first as a summer volunteer at the Arizona Center for Law in the Public Interest and later as a part-time clerk at a small firm, Robbins, Shumway, and Foreman.**

**ASU also provided me an opportunity to explore a career in academia, through the Political Science Department's Junior Fellows program. Faculty members selected Junior Fellows to serve as teaching assistants for undergraduate courses and to participate in a course introducing them to the possibility of graduate education in the field. During the summer between college graduation and law school, I was an intern at the Supreme Court of the United States, in the office of the Administrative Assistant to the Chief Justice. In addition to assisting with the administrative duties of that office, I worked with a research fellow who was investigating the history of political cartoons**

commenting on the Supreme Court and its cases.

I chose to attend Yale primarily because I was interested in becoming a law professor, and Yale provided numerous opportunities for students to be involved in legal scholarship. From the summer after my first year through graduation, I worked as a research assistant to Professor Judith Resnik, a prolific scholar working on topics ranging from federal courts and civil procedure to access to justice to the use of task forces to address gender and racial bias in the court system. While working with Professor Resnik, I provided research support to her numerous projects, helped to plan and implement conferences on access to justice and women in the legal profession, and co-edited conference papers for publication. In my third year, I served as a teaching assistant for her civil procedure course. I was also fortunate to work with Professor Harlon Dalton, who was researching a book on the relationship between law and community, and who invited me to join him in designing and teaching a seminar on that topic to other law students.

In addition to the research work I did with professors, I served as an editor of the *Yale Journal of Law and Humanities* for one year and the *Yale Journal of Law and Feminism* for three. During my third year, I organized and moderated a forum for students, faculty, and administration to discuss their own experiences of inclusiveness at the law school, building on a study of law student experiences published by the *Journal of Law and Feminism*. In that same year, I served as co-chair of the Yale Law Women, organizing mentoring and other support programs for law students.

But while I went to Yale to become a teacher, my experiences there actually led me to a career representing clients instead. I was able to begin doing clinical work in the second semester of my first year, representing individuals in the local community who needed legal help and could not afford to hire a lawyer. The particular clinic I joined worked with persons with disabilities, and I learned first-hand the powerful difference that having an advocate can make, whether in helping a parent place her child in a school that can meet the child's specialized needs or in obtaining vital heating oil subsidies for elderly retirees. I found the work so meaningful that I continued as a member of the clinic for the rest of my time at the law school, advancing into a role supervising less experienced students and serving on the student board for the clinic. I also volunteered at an office in the local courthouse that assisted domestic violence victims in applying for restraining orders.

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

**My undergraduate education at ASU was financed through the generosity of the Flinn Foundation, through the Flinn Scholarship, which is awarded annually to 20 Arizona high school graduates.**

**I graduated from the University Honors College *summa cum laude*, and was inducted into the Phi Beta Kappa honor society. In addition to being recognized by the Political Science Department as a Junior Fellow, I was given the ASU History Associates' Award for Excellence in Undergraduate Studies.**

**I began working part-time during my junior year of college. I first worked at the Information Desk at the ASU Memorial Union, and then began teaching test preparation classes at The Princeton Review, helping students to prepare for the SAT, LSAT, and GRE. I later became the office manager for the Phoenix office of that company.**

**During law school, I continued to teach test preparation classes for The Princeton Review intermittently, and later worked as a research and teaching assistant as described above. I spent the summer after my first year splitting my time between clinic and research assistant work, and the summer after my second year working at Lewis and Roca, the firm I would later join as an associate.**

**On graduation from law school, I was the co-recipient of the Stephen J. Massey Prize, which is awarded to a graduating student who exemplifies the values of the law school clinical program through their work on behalf of clients and in community service.**

## **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 administrative bodies, which require special admission to practice.

**State of Arizona – October 23, 2000**

**U.S. District Court for the District of Arizona – September 23, 2002**

**U.S. Court of Appeals for the Fifth Circuit – December 4, 2007**

**U.S. Court of Appeals for the Ninth Circuit – September 27, 2002**

**U.S. Court of Appeals for the Eleventh Circuit – May 31, 2016**

**U.S. Court of Appeals for the Federal Circuit – May 22, 2014**

**Supreme Court of the United States – December 1, 2003**

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 take a bar examination more than once in order to be admitted to the bar of any state? **No**. If so, explain.
14. Indicate your employment history since completing your formal education. List your current position first. If you have not been employed continuously since completing your formal education, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

**Lewis Roca Rothgerber Christie LLP, Phoenix, Arizona**  
**Partner, June 2008-present**  
**Associate, September 2002-May 2008**

**The Hon. Mary M. Schroeder, Chief Judge**  
**U.S. Court of Appeals for the Ninth Circuit, Phoenix, Arizona**  
**Law Clerk, July 2001-August 2002**

**The Hon. Ruth V. McGregor, Justice**  
**Arizona Supreme Court, Phoenix, Arizona**  
**Law Clerk, August 2000-July 2001**

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

**See attached list.**

16. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

**I practice in the areas of complex civil litigation and government law.**

**Litigation makes up approximately 75% of my practice. I represent public, private, and non-profit clients in trial and appellate courts in a broad range of subject areas. I handle cases involving contract and tort claims, violations of statutory and regulatory requirements, and intellectual property. Many of my cases involve laws governing public entities, such as open meetings, public records, procurement requirements, education law, and constitutional law.**

**At least half of my litigation practice involves appeals, both briefing or**

arguing cases to the appellate courts and working in the trial court to preserve or position issues for future appeal. I also regularly handle expedited litigation, such as motions for temporary restraining orders or preliminary injunctions and appellate court special actions.

The remaining approximately 25% of my practice involves advising clients on government law outside of the litigation context. I advise government entities and private clients on legal requirements applicable to the government, such as open meetings, public records, procurement requirements, and constitutional requirements. I also advise both government entities and private clients on election law, campaign finance law, and lobbyist regulations. I assist clients in drafting legislation for consideration by legislative bodies and by citizens through the initiative process.

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

**Not applicable.**

18. Identify all areas of specialization for which you have applied or been granted certification by the State Bar of Arizona.

**Not applicable.**

19. Describe your typical clients.

In my litigation practice, particularly when handling appeals, I represent a wide range of private entities. My clients have included construction companies, hotels, technology companies, manufacturers, real estate investors, banks, securities brokers, newspapers, retailers, law firms, insurance companies, trade associations, and health care providers. I am more likely to represent companies or organizations than individuals, but many of my clients have been small, family-owned businesses.

In both my litigation practice and my government law practice, I represent government agencies at every level of government: federal, state, county, and municipal. I also regularly represent tribal governments and agencies. Many of my clients are schools, colleges, or universities. Sometimes I represent individuals or private or non-profit entities that have a dispute with the government, such as a contested request for public records or a bid protest following the award of a government contract.

In the area of election and campaign finance law, I have represented municipal and tribal election officials, candidates, political committees, initiative and referendum campaigns, trade associations, corporations, non-profit organizations, and individual donors.

20. Have you served regularly in a fiduciary capacity other than as a lawyer representing clients? If so, give details.

**No.**

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

**I have both professional and volunteer experience negotiating and drafting statutes and rules.**

**In my government law practice, I am regularly asked to draft, revise, or evaluate the language of statutes or regulations being proposed by my clients or by others. When I represent ballot initiative campaigns, I am usually involved in the drafting of the proposed language, working with the supporters of the proposal to translate their goals into statutory language. I have also assisted clients who are proposing legislation for consideration by the state legislature, working with the clients and lobbyists to draft language that can be offered for consideration. My work in drafting legislation spans a range of subject matters, including education, health care, public pensions, and gaming regulation.**

**My volunteer experience involves the drafting of rules of procedure and ethics. I worked with a group of other election lawyers to write and propose an amendment to the Rules of Civil Appellate Procedure (ARCAP 8.1, now renumbered as ARCAP 10) setting forth a process for the handling of expedited election law appeals. The rule codified existing practices, but by putting those procedures into the text of the rules, we hoped to help practitioners who did not regularly handle expedited election cases to avoid common pitfalls. As a member of the State Bar's Access to Justice Task Force, I worked on proposals to change the ethics rules to facilitate limited scope representation and expand access to legal representation for clients who could not otherwise afford to hire a lawyer or find *pro bono* counsel.**

**I have also served on the Ninth Circuit's Advisory Committee on Rules of Practice since 2013. That committee provides the court's leadership with input on possible changes to rules and internal procedures. In November 2015, I was appointed by the Arizona Supreme Court to the Steering Committee on Arizona Appellate Case Processing Standards, which has been charged with recommending standards for the timely processing of appellate cases in Arizona.**

**As a member of the American Law Institute, I work with other lawyers, law professors, and judges from around the country to develop model codes, summaries (restatements), and principles of the law to encourage improvements in the development of the law. I have had the opportunity to participate as a member providing input on projects involving government ethics, election law, the law of American Indians, and the procedures for addressing allegations of sexual misconduct on college campuses.**

I have also done significant volunteer work regarding the ethics rules. For the past ten years, I have been a member of the State Bar of Arizona's Rules of Professional Conduct Committee, which is responsible for providing formal and informal ethics guidance to Arizona attorneys, as well as advising the State Bar Board of Governors on possible revisions to the Rules of Professional Conduct. I am just finishing a two-year term as Chair of the committee. During my time on the committee, I have written proposed rule change petitions, drafted comments for the Bar to file regarding rule petitions proposed by others, and worked on a subcommittee that proposed changes to Arizona rules based on the recommendations of the American Bar Association's Ethics 20/20 project.

Building on my experience with the Rules of Professional Conduct Committee, in 2014 I served on the Committee on the Review of the Supreme Court Rules Governing Professional Conduct and the Rules of Law. That committee, chaired by Justice Timmer, was appointed by the Arizona Supreme Court to consider the rules of practice and professional conduct in light of the changing nature of the legal profession and to recommend changes accordingly. I chaired the workgroup responsible for an in-depth analysis of the ethics rules, which made multiple change proposals to the Arizona Supreme Court. Many of those changes were adopted in the fall of 2015.

My experience drafting important legal documents is similarly split between my professional and volunteer work.

In my practice, I regularly provide written guidance for my clients so that they can follow the law without needing to keep consulting a lawyer. For example, I provide election law clients with written instructions about particular election law compliance issues, such as the requirements for circulating a petition supporting a candidate or ballot measure, that they can distribute to train non-lawyer volunteers. I also draft contracts, such as settlement agreements and confidentiality agreements, usually in the context of my litigation practice.

In my work as a judge *pro tempore*, I regularly conduct settlement conferences in which I write agreements reflecting the agreement of the parties. Although dictating a settlement into the record is an option, I use written agreements as much as possible, in the hope of eliminating future confusion and conflict. In my service on the Rules of Professional Conduct Committee, I have written formal ethics opinions issued by the Committee to provide guidance for the guidance of Arizona attorneys, and substantively edited opinions written by others.

22. Have you practiced in adversary proceedings before administrative boards or commissions? **Yes**. If so, state:
- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

**Arizona Department of Health Services: 3**  
**City of Tempe: 1**  
**Hearing Officer Appointed by a School or University Governing Board: 4**  
**National Association of Securities Dealers: 1**  
**National Collegiate Athletic Association: 1**  
**Office of Administrative Hearings/Department of Gaming: 1**  
**U.S. Department of Agriculture Board of Contract Appeals: 1**

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

Sole Counsel: **3**  
Chief Counsel: **4**  
Associate Counsel: **5**

23. 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: **0**  
Chief Counsel: **1**  
Associate Counsel: **Approximately 5**

24. List not more than three contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, addresses (street and e-mail) 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. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

**I am rarely involved in settlement negotiations in cases in which I appear in litigation, particularly where I have become involved as appellate counsel in a case that has been tried by someone else. In those cases, trial counsel is more likely to handle settlement discussions.**

**My experience as a mediator of others' cases is described below, in response to Question 29.**

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

The approximate number of cases in which you appeared before:

Federal Courts: **20**

State Courts of Record: **45**

Municipal/Justice Courts: **3**

The approximate percentage of those cases which have been:

Civil: **100%**

Criminal: **0%**

The approximate number of those cases in which you were:

Sole Counsel: **8**

Chief Counsel: **27**

Associate Counsel: **33**

The approximate percentage of those cases in which:

You conducted extensive discovery<sup>1</sup>: **20%**

You wrote and filed a motion for summary judgment: **30%**

You wrote and filed a motion to dismiss: **35%**

You argued a wholly or partially dispositive pre-trial, trial or post-trial motion (e.g., motion for summary judgment, motion for a directed verdict, motion for judgment notwithstanding the verdict): **40%**

You made a contested court appearance (other than as set forth in above response) **25%**

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<sup>1</sup> Extensive discovery is defined as discovery beyond standard interrogatories and depositions of the opposing party.

You negotiated a settlement:	12%
The court rendered judgment after trial:	18%
A jury rendered verdict:	2%
Disposition occurred prior to any verdict:	80%

The approximate number of cases you have taken to trial:

Court	8
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Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

Jury	2*
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**(One of my cases was bifurcated, with each part of the case tried to a separate jury, in two multi-week trials held years apart. I have counted this as two jury trials though they arose from the same case.)**

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

The approximate number of your appeals which have been:

Civil:	126
Criminal:	1

The approximate number of matters in which you appeared:

As counsel of record on the brief:	AZ	87
	U.S.	39
Personally in oral argument:	AZ	27
	U.S.	14

27. Have you served as a judicial law clerk or staff attorney to a court? **Yes.** If so, state the name of the court and dates of service, and describe your experience.

**After graduating from law school in 2000, I clerked for Justice Ruth V. McGregor on the Arizona Supreme Court for one year. I then clerked for another year for Chief Judge Mary M. Schroeder on the U.S. Court of Appeals for the Ninth Circuit.**

**During both clerkships, my primary responsibility was to assist in analyzing cases before the court. Rather than just relying on the briefs of the**

parties, my job was to go through the records of the trial court proceedings and do independent legal research so that I could prepare a neutral analysis of the issues presented by the case for the judges' consideration prior to oral argument and decision. Once the judges had decided how to resolve a case, I would then help to turn that decision into a written opinion, preparing draft opinions for the judges' review and providing input into draft opinions written by others.

Both courts provided an opportunity to see and learn from the work of many different lawyers and judges, both through their work in the appellate court and in examining the record of the trial court proceedings. Both courts also gave me the opportunity to work on cases in a broad variety of subject areas, including tort and contract liability, constitutional law, mental health, tax, employee benefits, criminal procedure, and capital punishment.

28. List not more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts. 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 presiding judge or officer before whom the case was heard; (3) the names, addresses (street and e-mail) 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. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

**Case One: MTSI v. Nelcela et al.**

***Merchant Transaction Systems Inc. v. Nelcela Inc., et al.*, No. 2:02-cv-01954 (U.S. District Court for the District of Arizona)**

- Complaint filed October 2002; my involvement began in late 2003
- Judgment entered September 2009; post-judgment proceedings remain ongoing
- The Hon. Mary H. Murguia presided over the pre-trial, trial, and post-judgment proceedings; the case is currently assigned to the Hon. Neil V. Wake

***Merchant Transaction Systems Inc. v. Nelcela Inc., et al.*, No. 10-16008 (U.S. Court of Appeals for the Ninth Circuit)**

- Appeal docketed May 2010, oral argument heard May 2011, decision issued June 2011
- The appellate panel consisted of the Hon. Ronald M. Gould, the Hon. Milan D. Smith, Jr., and the Hon. Nancy Gertner

***POST Integrations, Inc. v. Dollarhide et al.*, No. 2:11-bk-24898-GBN (U.S. Bankruptcy Court for the District of Arizona)**

- Adversary proceeding filed December 2011, judgment entered January 2014
- The Hon. George B. Nielsen presided

***POST Integrations, Inc. v. Morse*, No. 1 CA-CV 14-0147 (Arizona Court of Appeals Division One)**

- The appeal was filed in February 2014 and dismissed in February 2015
- The appeal was briefed but not argued; a motion to dismiss the appeal as moot was granted in an order issued by the Hon. Andrew Gould

***POST Integrations, Inc. v. Morse*, No. 1 CA-CV 13-0197 (Arizona Court of Appeals Division One)**

- The appeal was filed in February 2013 and dismissed in July 2013
- The appeal was dismissed as untimely in an order issued by the Hon. Diane M. Johnsen

**Counsel were:**

- For the MTSI Parties:
  - Nicholas J. DiCarlo, DiCarlo Caserta McKeighan & Phelps PLC, 6900 East Camelback Road, Suite 250, Scottsdale, Arizona 85251-8042, 480-222-0914, ndicarlo@dcmplaw.com
  - William McKinnon, William McKinnon Attorney at Law, 2999 East Ocean Boulevard, Suite 830, Long Beach, California 90803, 562-628-0266, mail@williammckinnon.com
- For the Lexcel Parties:
  - George Chun Chen, Bryan Cave LLP, 2 North Central Avenue, Suite 2200, Phoenix, Arizona 85004-4406, 602-364-7000, george.chen@bryancave.com
- For the Nelcela Parties:
  - Merrick Brian Firestone and Veronica Lynn Manolio, Kelhoffer Manolio & Firestone PLC, 9300 East Raintree Drive, Suite 120, Scottsdale, Arizona 85260, 480-222-9100, mfirestone@kmflawfirm.com and vmanolio@kmflawfirm.com
  - Ray Kendall Harris, Fennemore Craig PC, 2394 East Camelback Road, Suite 600, Phoenix, Arizona 85016, 602-916-5000,

rharris@fclaw.com

Additional information regarding the substance and significance of this litigation is provided in the confidential portion of this application.

**Case Two: McKee v. Peoria Unified School District**

***McKee v. Peoria Unified School District***, No. CV2010-096000 and No. 1 CA-CV 13-0374 (Superior Court of Arizona in Maricopa County and Arizona Court of Appeals Division One)

- My involvement began with the briefing and argument of a post-judgment motion in February 2013 and continued through the Arizona Supreme Court's denial of review in May 2015
- The Superior Court judge was the Hon. Karen A. Mullins
- The appellate panel consisted of the Hon. Kent E. Cattani, the Hon. Jon W. Thompson, and the Hon. Donn Kessler
- The panel issued a published opinion, available at 236 Ariz. 254

***McKee v. Peoria Unified School District***, No. LC2011-000006 and ***Peoria Unified School District v. McClennan***, No. 1 CA-SA 13-0263 (Superior Court of Arizona in Maricopa County and Arizona Court of Appeals Division One)

- My involvement began with the briefing and argument of this administrative appeal to the Superior Court in March 2013, continued through a special action in the Court of Appeals challenging the Superior Court's decision, and ended with the Arizona Supreme Court's denial of review in February 2015
- The Superior Court judge was the Hon. Crane McClennan
- The appellate panel consisted of the Hon. Kent Cattani, the Hon. Maurice Portley, and the Hon. John C. Gemmill

Counsel for Mr. McKee were:

- William R. Hobson, Law Offices of William R. Hobson PC, 7303 West Boston Street, Chandler, Arizona 85226, 480-705-7550, bill@billhobsonlaw.com
- Kevin Koelbel, Law Offices of Kevin Koelbel PC, 7303 West Boston Street, Chandler, Arizona 85226, 480-705-7550, kevin@koelbellaw.com

Additional information regarding the substance and significance of this litigation is provided in the confidential portion of this application.

### Case Three: Open Primary Initiative Litigation

***Save Our Vote, Opposing C-03-2012 v. Bennett***, No. CV2012-010717 and No. CV-12-0272-AP/EL (Superior Court of Arizona in Maricopa County and Supreme Court of Arizona)

- These proceedings lasted from the filing of a complaint in Superior Court in July 2012 through the Arizona Supreme Court's decision in August 2012
- The Superior Court judge was the Hon. Mark Brain
- The Arizona Supreme Court issued a unanimous published opinion, 231 Ariz. 145, authored by the Hon. W. Scott Bales

***Open Government Committee v. Purcell***, No. CV2012-013089 (Superior Court of Arizona in Maricopa County)

- These proceedings were conducted in late August and early September 2012
- The Superior Court judge was the Hon. John Rea

***Save Our Vote, Opposing C-03-2012 v. Bennett***, No. CV2012-013094 and No. CV-12-0301-AP/EL (Superior Court of Arizona in Maricopa County and Supreme Court of Arizona)

- These proceedings were conducted in late August and early September 2012
- The Superior Court judge was the Hon. John Rea
- The Arizona Supreme Court resolved the appeal in a decision order

**Counsel were:**

- For Save Our Vote:
  - Michael T. Liburdi and Adam Lang, Snell & Wilmer LLP, 400 East Van Buren Street, Suite 1900, Phoenix, Arizona 85004, 602-382-6522, [alang@swlaw.com](mailto:alang@swlaw.com) (Mr. Liburdi has moved from Snell & Wilmer to the Governor's Office, his current contact information has not been provided)
  - Joshua Kredit, Center for Arizona Policy, Inc., P.O. Box 97250, Phoenix, Arizona 85060 (counsel in the first listed case only)
- For the Secretary of State:
  - Michele L. Forney, Pinal County Elections, 188 South Main Street, Coolidge, Arizona 85128, 520-866-7556 (formerly of the Office of the Arizona Attorney General)

- Thomas Collins, Arizona Citizens Clean Elections Commission, 1616 West Adams Street, Suite 110, Phoenix, Arizona 85007, 602-364-3477, Thomas.Collins@azcleelections.gov (formerly of the Office of the Arizona Attorney General) (not involved in the first listed case)
- For Maricopa County Recorder Helen Purcell
  - M. Colleen Connor, Office of the Maricopa County Attorney, 222 North Central Avenue, Suite 1100, Phoenix, Arizona 85004, 602-506-7726, connorc@mcao.maricopa.gov (not involved in the first listed case)

Additional information regarding the substance and significance of this litigation is provided in the confidential portion of this application.

#### Case Four: Wolfson Litigation

*Wolfson v. Brammer, et al.*, No. 3:08-cv-08064-FJM (U.S. District Court for the District of Arizona); No. 11-17634 (U.S. Court of Appeals for the Ninth Circuit); No. 11-17634 (Supreme Court of the United States)

- The lawsuit was filed in May of 2008; the Supreme Court denied the plaintiff's petition for certiorari from the Ninth Circuit's *en banc* decision on October 11, 2016
- The trial proceedings were conducted by the Hon. Frederick J. Martone
- The appellate panel consisted of the Hon. Richard A. Paez, the Hon. Marsha S. Berzon, and the Hon. Richard C. Tallman
- The *en banc* panel consisted of the Hon. Sidney R. Thomas, the Hon. Diarmuid F. O'Scannlain, the Hon. Susan P. Graber, the Hon. Ronald M. Gould, the Hon. Marsha S. Berzon, the Hon. Richard C. Tallman, the Hon. Johnnie B. Rawlinson, the Hon. Consuelo M. Callahan, the Hon. Morgan Christen, and the Hon. Andrew D. Hurwitz

*Wolfson v. Brammer, et al.*, No. 3:06-cv-0237-SMM and No. 09-15298 (U.S. District Court for the District of Arizona and U.S. Court of Appeals for the Ninth Circuit)

- The lawsuit was filed in August 2007, and the Ninth Circuit's decision was issued in August 2010
- The trial proceedings were conducted by the Hon. Stephen M. McNamee
- The appellate panel consisted of the Hon. J. Clifford Wallace, the Hon. Susan P. Graber, and the Hon. M. Margaret McKeown

Counsel were:

- For Mr. Wolfson:

- James Bopp, Jr., Jeffrey P. Gallant, Anita Yvonne Milanovich, Bopp Coleson & Bostrom, 1 South 6<sup>th</sup> Street, Terre Haute, Indiana 47807, 812-232-2434, jboppjr@aol.com, jgallant@bopplaw.com, amilanovich@bopplaw.com
- Byron Jeffords Babione, Benjamin W. Bull, Alliance Defending Freedom, 15100 North 90<sup>th</sup> Street, Scottsdale, Arizona 85260, 480-444-0020, bbabione@alliancedefendingfreedom.org and bbull@telladf.org
- For the members of the Arizona Commission on Judicial Conduct:
  - Paula Bickett and Charles Arnold Grube, Office of the Attorney General, 1275 West Washington, Phoenix, Arizona 85007, 602-542-8304, Paula.Bickett@azag.gov and 602-542-8341, Charles.Grube@azag.gov

**Additional information regarding the substance and significance of this litigation is provided in the confidential portion of this application.**

29. 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.).

**I have served as a judge *pro tempore* for the Superior Court in Maricopa County since July of 2012 on an unpaid, volunteer basis. In my first year as a judge *pro tempore*, I was appointed only to cover calendars for civil judges and to conduct settlement conferences in civil cases. In my second year, my appointment was expanded to include family court coverage and settlement conferences in family cases. (In 2013-14, I was also appointed to handle criminal and juvenile cases, but I was still in the process of training in those additional areas when the court announced a policy of not appointing lawyers in areas they do not practice, so I did not handle any criminal or juvenile matters.) My appointment has continued to be in both civil and family, and has been renewed for the 2016-17 court year.**

**In my three-plus years of service as a judge *pro tempore*, I have conducted 16 civil settlement conferences and 35 family court settlement conferences. I have covered family court calendars involving both hearings on orders of protection and initial, *ex parte* hearings seeking orders of protection. I have also presided over one civil short trial, a truncated one-day proceeding in which parties present limited issues to a jury for decision.**

30. List not 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, addresses (street and e-mail) 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. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

### **Cohen Short Trial**

#### ***Cohen v. Courts at Gainey Ranch Homeowners Association, CV 2011-050768* (Maricopa County Superior Court)**

- The short trial in this case was held on June 3, 2013
- Counsel for the plaintiff was John Evans, Law Offices of John Evans, PC, 6619 North Scottsdale Road, Scottsdale, Arizona 85250, 480-922-3676, jxevans@msn.com
- Counsel for the defendants was Shelley Pysell, Corporate Law Department, State Farm Mutual Automobile Insurance Company, One State Farm Plaza, B-3, Bloomington, Illinois 61710, 309-735-0102, shelley.pysell.jbb0@statefarm.com

**Additional information regarding the substance and significance of this litigation is provided in the confidential portion of this application.**

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

**The numerical information provided above regarding the number of trial and appellate cases in which I have appeared reflects only some of my overall work. I regularly assist in the litigation of cases in which I do not appear, assisting in the writing of motions, consulting on strategy, or providing feedback to other lawyers as they prepare for oral argument. I also regularly handle disputes that never reach the courthouse, including investigating claims and defenses, sending and responding to demand letters, and advising clients on their rights.**

<b>BUSINESS AND FINANCIAL INFORMATION</b>
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32. 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? **No**. If so, give details, including dates.

33. Are you now an officer, director or majority stockholder, or otherwise engaged in the management, of any business enterprise? **No**. 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.

Is it your intention to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? **Not applicable**. If not, give reasons.

34. Have you filed your state or federal income tax returns for all years you were legally required to file them? **Yes**. If not, explain.
35. Have you paid all state, federal and local taxes when due? **Yes**. If not, explain.
36. Are there currently any judgments or tax liens outstanding against you? **No**. If so, explain.
37. Have you ever violated a court order, including but not limited to an order for payment of child or spousal support? **No**. If so, explain.
38. Have you ever been a party to a lawsuit, including bankruptcy but excluding divorce? **Yes**. If so, identify the nature of the case, your role, the court, and the ultimate disposition.

I was a defendant in *Lundberg v. Davalos*, No. CIV 02-124-PHX-RCB, a civil lawsuit filed in the U.S. District Court for the District of Arizona on January 22, 2002. The lawsuit was brought by a litigant who was dissatisfied with the outcome of his criminal appeal in the Ninth Circuit. He sued all three of Judge Schroeder's law clerks and one of her judicial assistants, for fraud and for violation of his constitutional rights, alleging that the decision was faulty and must have been made by us rather than the judge. The case was dismissed with prejudice on September 3, 2002, and judgment entered in favor of all defendants.

39. Do you have any financial interests, investments or retainers that might conflict with the performance of your judicial duties? **No**. If so, explain.

## CONDUCT AND ETHICS

40. Have you ever been terminated, expelled, or suspended from employment or any school or course of learning on account of dishonesty, plagiarism, cheating or any other “cause” that might reflect in any way on your integrity? **No.** If so, give details.
41. a. Have you ever been charged with, arrested for, or convicted of any felony, misdemeanor, or violation of the Uniform Code of Military Justice? **No.** If so, identify the nature of the offense, the court, and the ultimate disposition.
- b. Have you, within the last 5 years, been charged with or cited for any traffic-related violations, criminal or civil, that are not identified in response to question 41(a)? **No.** If so, identify the nature of the violation, the court, and the ultimate disposition.
42. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

**Not applicable.**

43. List and describe any litigation (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) concerning your practice of law.

**Not applicable.**

44. List and describe any litigation involving an allegation of fraud in which you were or are a defendant.

**I was a defendant in *Lundberg v. Davalos*, No. CIV 02-124-PHX-RCB, a civil lawsuit filed in the U.S. District Court for the District of Arizona on January 22, 2002. The lawsuit was brought by a litigant who was dissatisfied with the outcome of his criminal appeal in the Ninth Circuit. He sued all three of Judge Schroeder’s law clerks and one of her judicial assistants, for fraud and for violation of his constitutional rights, alleging that the decision was faulty and must have been made by us rather than the judge. The case was dismissed with prejudice on September 3, 2002, and judgment entered in favor of all defendants.**

45. List and describe any sanctions imposed upon you by any court for violation of any rule or procedure, or for any other professional impropriety.

**Not applicable.**

46. To your knowledge, has any formal charge of professional misconduct ever been filed against you by the State Bar or any other official attorney disciplinary body in any jurisdiction? **No.** If so, when? How was it resolved?

47. Have you received a notice of formal charges, cautionary letter, private admonition or other conditional sanction from the Commission on Judicial Conduct or any other official judicial disciplinary body in any jurisdiction? **No.** If so, in each case, state in detail the circumstances and the outcome.

48. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal and State laws? **No.** If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)

49. In the past year, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as a result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? **No.** If so, state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

50. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended or terminated by an employer? **No.** If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

51. Have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a complaint or accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? **Yes.** If so, state the date(s) of such accusation(s), the specific accusation(s) made, and the background and resolution of such action(s).

**In July 2013, I was the subject of a complaint made to the State Bar of**

Arizona that was closed without investigation. The complaint related to my representation of a non-profit organization. Particular individuals had been designated as the people who were authorized to seek legal advice for the organization, with reports to be given to the organization's board at scheduled meetings. When another member of the organization requested information directly, and I directed her to the individuals designated to authorize such requests, she called the State Bar.

An attorney in the Attorney/Consumer Assistance Program contacted me in response to the call. I explained to him the direction I had been provided regarding which individuals were permitted to request legal advice and obtain information directly from counsel. The State Bar attorney closed the matter without an investigation. Neither screening nor disciplinary proceedings were initiated.

52. 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 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.
53. Within the last five years, have you failed to meet any deadline imposed by a court order or received notice that you have not complied with the substantive requirements of any business or contractual arrangement? **No.** If so, explain in full.
54. 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 in full.

**PROFESSIONAL AND PUBLIC SERVICE**

55. Have you published any legal or non-legal books or articles? **Yes.**  
If so, list with the citations and dates.

**Peer Reviewer, AMERICA VOTES! CHALLENGES FACING MODERN ELECTION LAW AND VOTING RIGHTS (American Bar Association, 3<sup>rd</sup> ed. forthcoming 2016).**

***Civil Appeals*, ARIZONA APPELLATE HANDBOOK (State Bar of Arizona, 6<sup>th</sup> ed. 2015) (with Susan Freeman and Paul Ulrich)**

**Contributing author, ARIZONA LEGAL ETHICS HANDBOOK (State Bar of Arizona, 3<sup>rd</sup> ed. 2015)**

***Election Process and Procedure, ARIZONA'S GOVERNMENT: THE NEXT 100 YEARS (2010) (briefing book for the 97<sup>th</sup> Arizona Town Hall)***

***Election Campaign Funding After Citizens United, ARIZONA ATTORNEY (June 2010)***

***Strategies for Litigating Computer Software Copyright Claims, LITIGATION (Fall 2007) (with Richard A. Halloran)***

***Direct Democracy and Indirect Regulation: The Brewing Conflict Between Federal Campaign Finance Law and State Ballot Measure Campaigns, 34 WILLIAM MITCHELL L. REV. 591 (Winter 2007) (with Margaret Perl)***

***Arizona State Law Resources, Alliance for Justice (Fall 2007, Fall 2010) (internet-based guide for non-profit organizations)***

56. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.** If not, explain.

57. 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 frequently speak at continuing legal education seminars on topics including lawyer ethics, appellate advocacy, access to justice, and election law. I also regularly speak to audiences of non-lawyers regarding election law. I have taught undergraduate political science and justice studies classes and law school classes on ethics and election law, and I have guest lectured on election law in classes taught by others. A complete listing of my courses and presentations is attached.**

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

**Task Force on Lawyer Ethics, Professionalism, and the Unauthorized Practice of Law (October 2016-present)**

**Member, American Academy of Appellate Lawyers (September 2016-present)**

**Steering Committee on Arizona Appellate Case Processing Standards: Member (November 2015-March 2016)**

**Committee on the Review of the Supreme Court Rules Governing Professional Conduct and the Rules of Law: Member, Chair of Ethics Workgroup (June-December 2014)**

**U.S. Court of Appeals for the Ninth Circuit, Advisory Committee on Rules of Practice: Member (January 2013-present)**

**American Law Institute: Elected Member (December 2010-present)**

**Litigation Counsel of America, Fellow (2014-present)**

**Horace Rumpole Inn of Court: Associate (Fall 2002-Spring 2004), Program Chair (Fall 2003-Spring 2004)**

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.

**American Bar Association, Standing Committee on Election Law: Member (August 2013-August 2016); Chair of Advisory Committee (August 2016-present)**

**State Bar of Arizona, Rules of Professional Conduct Committee: Chair (June 2013-June 2015), Member (June 2005-present)**

**Arizona Women Lawyers Association: President (2012); Member of State Board of Directors (2006-2013), Member of State Advisory Board (2013-present), Member of Maricopa Chapter Steering Committee (2003-2008); past chair of Mentoring, Community Service, and Gender Equity committees**

**State Bar of Arizona, Appellate Practice Section: Chair (June 2010-June 2011); member of Executive Council (June 2006-June 2012)**

**American Bar Association Council of Appellate Lawyers: Website Coordinator (August 2009-August 2013)**

**Media Liaison, American Bar Association Section of Litigation, Ethics and Professionalism (2003-2008)**

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.

**Throughout my career, I have provided *pro bono* legal services to**

individual clients. In law school, I represented individuals with disabilities through a law school clinic. Since law school, I have represented individuals in contract disputes, tort cases, and immigration matters. I also supervise more junior lawyers handling *pro bono* cases so that they can learn both litigation skills and the value of serving others.

I have also been involved with increasing access to justice at an institutional level. When I was chair of the State Bar Appellate Practice Section, I worked with Division One of the Arizona Court of Appeals, the Bar Foundation's Modest Means Program, and the Volunteer Lawyers Program to develop a pilot program matching *pro bono* lawyers with indigent clients in civil appeals. Once the program was in place, I recruited volunteer lawyers and helped to train them in appellate advocacy.

When the Arizona Court of Appeals decided to create its own *pro bono* program in 2014, I was asked to serve as the Attorney Coordinator for Division One. In that capacity, I provided input on the program design and recruited volunteer lawyers. Now that the program is underway, I match volunteer lawyers to cases identified by the court as in need of *pro bono* counsel.

In the fall of 2011, I served on the State Bar of Arizona's Access to Justice Task Force, which was charged with developing recommendations to improve access to justice in Arizona. I chaired the report drafting committee for the task force, translating the ideas generated by the task force into written recommendations.

I have also had the opportunity to support non-profit organizations whose mission is increasing access to justice. I have served on the Board of Directors for the Arizona Foundation for Legal Services and Education since 2013; I am currently the President-Elect of that Board. The Foundation supports access to justice in Arizona through raising funds for legal services, matching clients with volunteer lawyers, supporting law-related education in schools, and providing the public with information about the justice system through programs like the Law for Kids website. I was a member of the Board of Directors of Community Legal Services from September 2004 through August 2007. Community Legal Services is the legal aid agency for Central Arizona, representing clients who are unable to afford a lawyer in civil cases. On both boards, I have been involved in program development and evaluation and in fundraising to support the organizations' efforts.

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

**My non-legal community service work has been primarily in the areas of civic engagement and education.**

Since 2010, I have been active in the Arizona Town Hall, a non-profit organization that brings together Arizonans from around the state and from all backgrounds to discuss issues of public importance and make recommendations for Arizona's future. I first became involved in the preparations for the 97<sup>th</sup> Arizona Town Hall, on the topic of Arizona government. I was invited to join the Research Committee, which is responsible for preparing the briefing book given to all Town Hall attendees so that they have a shared background of information and can fully participate. I ended up writing a chapter on the election process for that briefing book and attending the Town Hall as a participant, and I was amazed by the degree to which the Town Hall method allowed all participants to be heard while also finding common ground among participants of very different perspectives and backgrounds. I was hooked, and I have remained on the Research Committee as a way to support these important community conversations. In June 2016, at the request of the Town Hall organizers, I will be one of several invited speakers at the annual meeting discussing possible town hall topics in which the Town Hall membership has expressed an interest; the membership will vote to choose its 2018 topic after our presentations.

My experience with the Flinn-Brown Civic Leadership Academy has been similar. The Academy was created to foster civic leadership in Arizona, and it offers aspiring public servants the opportunity to increase their knowledge and build their skills. The Academy emphasizes the role of learning in effective public service by bringing in subject-matter experts in multiple policy areas to educate program participants, and it intentionally draws its participants from a wide range of backgrounds and teaches them how to listen and learn from each other so that they can reach consensus on issues affecting our state. I was fortunate to be selected in the Academy's inaugural 2011 class, and I have worked to apply the collaborative listening and decision-making skills learned in the Academy to my practice and my community work.

My community work in education reflects my lifelong interest in teaching and mentoring. I enjoy working with young people, particularly when I can help them to see and pursue their full potential. The law school and undergraduate courses I have taught and guest-lectured in have given me that opportunity, as have the mentoring programs organized by the Arizona Women Lawyers Association and the Yale Law Women. I have been involved with the high school Mock Trial program, as an attorney-coach at Central High School for three years and now as a member of the Bar Foundation's Law-Related Education committee. As a member of the Barrett Honors College Alumni Network Board, I helped to design pre-law programs for honors students. And I have been able to give back to the Flinn Foundation by serving as a member of the Selection and Review Committees for future generations of Flinn Scholars.

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

I have been repeatedly recognized for my abilities as a litigator. I was listed as a “Rising Star” in appellate practice by *Southwest Super Lawyers* in 2012 and 2013, and I have been listed in that publication for Appellate Practice in 2014, 2015, and 2016. In 2015 and 2016, I was named by that publication as one of the 25 most highly rated Arizona women lawyers in any practice area. I have also been listed in *The Best Lawyers in America* by Woodward/White, Aiken, S.C. in the category of appellate law in 2013, 2014, 2015, 2016, and 2017 and was named a “Local Litigation Star” by *Benchmark Litigation* in 2014 and 2016. In 2014, I was invited to join the Litigation Counsel of America as a Fellow. In 2016, I was selected by *Az Business Magazine* as one of the Top 100 Lawyers in Arizona and was elected to membership in the American Academy of Appellate Lawyers. I have also been A-V Rated by Martindale Hubbell.

More meaningful to me are the recognitions I have received from my peers for my service to the profession and the community. In 2007, I was recognized as the “Outstanding Alumna” by the Barrett Honors College Alumni Network for my work on the network’s board and in designing pre-law programs for Honors College Students. In 2008, I was given the President’s Award by the Arizona Women Lawyers Association for my service to that organization. In 2008, I was given the Judge Learned Hand Award for Emerging Leadership by the Arizona Chapter of the American Jewish Committee. That award is given to an attorney practicing 10 years or less who has demonstrated a commitment to the values of public or community service. In 2012, I was recognized as one of the Top 50 Arizona Pro Bono Attorneys by the Bar Foundation.

61. List any elected or appointed offices you have held and/or for which you have been a candidate, and the dates. **Not applicable.**

Have you been registered to vote for the last 10 years? **Yes.**

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

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

For the past several years, I have been an active member of the choral music program at Phoenix College. I sing in the Phoenix Community Chorus, a mixed choir that includes both members of the community and full-time college students. The choral program also includes a women’s choir (the McConnell Singers) established more than fifty years ago and a choir and ensemble comprised predominantly of full-time students, all of whom perform in joint

concerts. Singing at Phoenix College gives me the opportunity to work with others who share a love of music, to learn from my fellow singers, and to mentor students in the choral program.

**HEALTH**

63. Are you physically and mentally able to perform the essential duties of a judge in the court for which you are applying? **Yes.**

**ADDITIONAL INFORMATION**

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

**Like every applicant, I bring my own unique background and history to my work. I am a native Arizonan, a woman, and a graduate of both large public and small private schools. I have chosen a broad-ranging law practice, handling a wide range of civil legal issues and working with many different kinds of clients.**

**More importantly, I have demonstrated the kind of commitment to inclusiveness that underlies the Constitution's requirement that this commission consider diversity in making its nominations. That commitment is what is necessary, not just to diversify the bench, but to ensure that the courts function in a way that is respectful to people from all backgrounds and recognizes the value that their perspectives and experiences can provide.**

**Throughout my professional life, I have sought out opportunities to make my profession and my community more inclusive. As a student, I organized forums to help students of all backgrounds succeed and open dialogues between students and administration about students' needs. As the chair of my law firm's diversity committee for the past seven years, I have designed training programs to support entry-level lawyers regardless of their backgrounds, conducted surveys and focus groups to get input on the firm's culture and practices, and written policies and procedures to increase retention of diverse lawyers. As an officer and later President of the Arizona Women Lawyers' Association, I have designed mentoring programs and organized educational programs on increasing inclusiveness in the legal workplace.**

**In my leadership of various bar and community organizations, I have**

always sought to increase participation and consensus, rather than permitting some participants to dominate and silence others. The Arizona Town Hall model is inherently participatory, and I have worked with the American Bar Association Standing Committee on Election Law to bring that kind of participatory process to the public meetings they have held around the country. My experiences as a Flinn-Brown Fellow also taught me the importance of making decisions that consider multiple perspectives and all available information, and I have applied the skills I learned as a Fellow in my professional and community work.

65. Provide any additional information relative to your application or qualifications you would like to bring to the Commission's attention at this time.

**My experience as an appellate clerk and appellate lawyer gives me an uncommon perspective on the work of the trial court. Because I do both trial and appellate litigation, I see the court process from both ends – not just in the initial development and decision of a case, but in how the trial proceedings stand up to appellate review. I understand the importance of preserving the record for review, of stating clearly the basis for the trial court's actions, and of following the law as set forth in statute and in prior case decisions. My appellate work has also required me to regularly learn new areas of law, a skill that is necessary to function in a trial court setting where judges rotate between divisions and are asked to judge in areas in which they may not have previously practiced.**

66. If you were selected by this Commission and appointed by the Governor to serve, are you aware of any reason why you would be unable or unwilling to serve a full term? **No.** If so, explain.

67. If selected for this position, do you intend to serve fully, including acceptance of rotation to areas outside your areas of practice or interest? **Yes.** If not, explain.

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

**See attached.**

69. Attach a professional writing sample, which you personally drafted (e.g., brief or motion). The sample should be no more than a few pages in length. You may excerpt a portion of a larger document to provide the writing sample. 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.

**See attached.**

70. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. The writing sample(s) should be no more than a few pages in length. 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.

**See attached.**

71. 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 two performance reviews.

**Not applicable.**

**Question # 15: Lawyers at Lewis Roca Rothgerber Christie LLP**

Anne Aikman-Scalese, Of Counsel, Tucson  
Jeffrey H. Albright, Partner, Albuquerque  
Michael G. Alonso, Partner, Reno  
Amy E. Altschuler, Partner, Phoenix  
Ann-Martha Andrews, Partner, Phoenix  
Daniel Arellano, Associate, Phoenix  
Aaron D. Arnson, Associate, Phoenix  
Robert S. Arthur Jr., Partner, Denver  
Lyndsay K. Arundel, Associate, Denver  
Jason Bacigalupi, Associate, Las Vegas  
Oliver S. Bajracharya, Partner, Los Angeles  
Bryant D. Barber, Partner, Phoenix  
Edwin A. Barkel, Partner, Phoenix  
Nathaniel Scott Barker, Associate, Denver  
Trevor G. Bartel, Associate, Denver  
Nicholas S. Bauman, Associate, Phoenix  
Fredrick J. Baumann, Partner, Denver  
Emily A. Bayton, Partner, Phoenix  
Brian Blakley, Associate, Las Vegas  
G. Warren Bleeker, Partner, Los Angeles  
Roman Borisov, Associate, Reno  
John E. Bragonje, Partner, Las Vegas  
Stephen M. Bressler, Partner, Phoenix  
Michael Charles Brown, Associate, Phoenix  
Scott K. Brown, Partner, Phoenix  
Scott M. Browning, Partner, Denver  
Anthony N. Cabot, Partner, Las Vegas  
Chad S. Caby, Partner, Denver  
Flavia Campbell, Partner, Phoenix  
Thomas H. Campbell, Partner, Phoenix  
Anderson L. Carper, Partner, Phoenix  
John Carson, Of Counsel, Los Angeles  
Josephine E. Chang, Partner, Los Angeles  
Samuel Sunghin Chang, Partner, Phoenix  
Rob Charles, Partner, Tucson  
Emily Charlesworth, Associate, Denver  
Natalie Cheung, Associate, Las Vegas  
Joshua T. Chu, Partner, Los Angeles  
Richard K. Clark, Partner, Denver  
Brent R. Cohen, Partner, Denver  
Howard E. Cole, Partner, Las Vegas  
Bobbie J. Collins, Associate, Albuquerque  
Carla A. Consoli, Partner, Phoenix  
Ross L. Crown, Partner, Albuquerque

Justin D. Cumming, Partner, Denver  
Michael J. Curry, Associate, Los Angeles  
Cameron Cushman, Associate, Los Angeles  
Thomas J. Daly, Partner, Los Angeles  
Dale A. Danneman, Partner, Phoenix  
Mark A. Davidson, Partner, Denver  
Kimberly A. Demarchi, Partner, Phoenix  
Adam DeVoe, Of Counsel, Denver  
Scott D. DeWald, Partner, Phoenix  
David A. Dillard, Partner, Los Angeles  
Thomas J. Dougherty II, Partner, Denver  
Kenneth D. Downey, Associate, Tucson  
Nicholas N. Dyer, Associate, Colorado  
Springs  
Nathaniel W. Edwards, Counsel, Phoenix  
Justin O. Ehresmann, Senior Associate, Los  
Angeles  
E. Martin Enriquez, Partner, Denver  
Todd D. Erb, Partner, Phoenix  
Philip A. Feigin, Partner, Denver  
Ian M. Fischer, Associate, Phoenix  
Conor Flanigan, Associate, Denver  
Erik J. Foley, Associate, Las Vegas  
Glenn D. Forcucci, Partner, Phoenix  
Jonathan W. Fountain, Of Counsel, Las  
Vegas  
Susan M. Freeman, Partner, Phoenix  
Joel C. Fry, Partner, Denver  
Jessica L. Fuller, Partner, Denver  
Jason C. Furedy, Partner, Phoenix  
David D. Garner, Partner, Phoenix  
Mark Garscia, Partner, Los Angeles  
Edward A. Gleason, Partner, Colorado  
Springs  
Joel A. Glover, Partner, Denver  
Charles Goldberg, Partner, Denver  
Dan Goldfine, Partner, Phoenix  
Richard N. Goldsmith, Partner, Phoenix  
Tamara F. Goodlette, Partner, Denver  
Garrett D. Gordon, Partner, Reno  
Zachary T. Gordon, Associate, Las Vegas  
Nicole K. Gorham, Associate, Denver  
Josh Gabel, Partner, Phoenix  
Justin Graham, Associate, Phoenix

Tennyson W. Grebenar, Partner, Denver  
Robert A. Green, Partner, Los Angeles  
John Michael Guevara, Associate, Denver  
Stacy Kourlis Guillon, Associate, Denver  
Jamie L. Halavais, Of Counsel, Phoenix  
Eric V. Hall, Partner, Colorado Springs  
Michael T. Hallam, Partner, Phoenix  
Georgia L. Hamann, Associate, Phoenix  
Abby Harder, Associate, Denver  
Gregory Y. Harris, Partner, Phoenix  
Stephen M. Hart, Partner, Phoenix  
Art Hasan, Partner, Los Angeles  
Takashi Hashimoto, Of Counsel, Silicon Valley  
Frances J. Haynes, Partner, Phoenix  
Diane R. Hazel, Associate, Denver  
Von S. Heinz, Partner, Las Vegas  
Andrew Helm, Associate, Denver  
Justin Henderson, Associate, Phoenix  
Joel D. Henriod, Partner, Las Vegas  
Lindsey Herzik, Associate, Phoenix  
Lindsey Herzog, Associate, Phoenix  
John C. Hinderaker, Partner, Tucson  
Dietrich Hoefner, Associate, Denver  
Kristina N. Holmstrom, Partner, Phoenix  
Peter C. Hsueh, Partner, Los Angeles  
Christy Hubbard, Of Counsel, Phoenix  
Marla J. Hudgens, Associate, Phoenix  
Steven J. Hulsman, Partner, Phoenix  
John N. Iurino, Partner, Tucson  
David A. Jackson, Associate, Phoenix  
Charles E. Jensen, Associate, Los Angeles  
Jun-Young E. Jeon, Partner, Los Angeles  
Aaron D. Johnson, Associate, Silicon Valley  
Stephen T. Johnson, Partner, Denver  
William P. Johnson, Partner, Denver  
Dennis E. Jontz, Partner, Albuquerque  
J. Christopher Jorgenson, Partner, Las Vegas  
Kathleen Kahn, Counsel, Phoenix  
Hermine Kallman, Associate, Denver  
Gregory B. Kanan, Partner, Denver  
Lawrence A. Kasten, Partner, Phoenix  
Kyle Kellar, Associate, Los Angeles  
Kevin M. Kelly, Partner, Denver  
Ryan B. Kennedy, Of Counsel, Albuquerque

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Holly C. Ludwig, Associate, Denver  
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Scott Y. MacTaggart, Partner, Las Vegas  
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Constantine Marantidis, Partner, Los Angeles  
Donald G. Martin, Partner, Las Vegas  
Kristen L. Martini, Associate, Reno  
Jason C. Martone, Partner, Los Angeles  
Adam L. Massaro, Associate, Denver  
Paul A. Matteoni, Partner, Reno  
Michael J. McCue, Partner, Las Vegas  
David C. McElhinney, Partner, Reno  
Sean M. McGuinness, Partner, Reno  
Caitlin McHugh, Associate, Denver  
Lindsay L. McKae, Partner, Denver  
Robert H. McKirgan, Partner, Phoenix  
Linda C. McNulty, Partner, Tucson  
Matthew Mellema, Associate, Colorado Springs  
Mark A. Meyer, Partner, Denver  
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Roger M. Morris, Partner, Denver  
David L. Mousel, Partner, Reno  
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Gary J. Nelson, Partner, Los Angeles  
William D. Nelson, Partner, Colorado Springs  
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Randy Papetti, Partner, Phoenix  
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Linda R. Parkis, Partner, Phoenix  
Laura Pasqualone, Associate, Phoenix  
Melaine V. Pate, Partner, Phoenix  
Kerry K. Patterson, Partner, Phoenix  
Mark D. Patton, Partner, Tucson  
Michael J. Phelan, Partner, Phoenix  
Craig W. Phillips, Partner, Phoenix  
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Foster Robberson, Partner, Phoenix  
Trey Rogers, Partner, Denver  
Robert F. Roos, Partner, Phoenix  
Kenneth F. Rossman IV, Partner, Denver  
Andrew P. Rubin, Associate, Phoenix  
Karl F. Rutledge, Partner, Las Vegas  
Daniel Salgado, Associate, Denver  
Bruce E. Samuels, Partner, Phoenix  
Andres Sanchez, Associate, Phoenix  
Robert G. Schaffer, Partner, Phoenix  
Sami I. Schilly, Associate, Los Angeles  
Cindy K. Schmidt, Associate, Tucson

Lauren E. Schneider, Partner, Los Angeles  
Andrew D. Schorr, Partner, Tucson  
Lewis D. Schorr, Partner, Tucson  
S.L. Schorr, Partner, Tucson  
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Heidi K. Short, Partner, Phoenix  
Kyle N. Siegal, Associate, Phoenix  
Mary Ellen Simonson, Partner, Phoenix  
Jesse B. Simpson, Partner, Phoenix  
Frances R. Sjoberg, Associate, Phoenix  
Jeffrey L. Sklar, Partner, Tucson  
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Brian J. Spano, Partner, Denver  
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Delany Steele, Associate, Denver  
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Amanda L. Thatcher, Associate, Phoenix  
Pilar Thomas, Of Counsel, Tucson  
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Mary Tran, Associate, Las Vegas  
Nicole M. True, Associate, Phoenix  
Douglas B. Tumminello, Partner, Denver  
Jennifer A. Van Kirk, Partner, Phoenix  
Kenneth Van Winkle, Jr., Partner, Phoenix  
Andrew Vanell, Associate, Phoenix  
Cindy A. Villanueva, Associate, Phoenix  
Dan R. Waite, Partner, Las Vegas  
James R. Walker, Partner, Denver  
Ryan M. Walters, Associate, Albuquerque  
Peter R. Wand, Partner, Phoenix  
Anne Wang, Partner, Los Angeles  
Eric G. Wanner, Associate, Phoenix  
Jon Weiss, Partner, Phoenix  
Hilary D. Wells, Partner, Denver

John C. West, Partner, Phoenix  
Amy D. Wills, Associate, Denver  
Drew Wilson, Associate, Los Angeles

Karen L. Witt, Partner, Denver  
Joy Allen Woller, Partner, Denver  
Meng Zhong, Associate, Las Vegas

## **Question #57 – Courses Taught and Presentations Given**

### **Undergraduate Courses and Presentations**

- Citizens United*, presentation in “Great Cases” undergraduate class, University of Arizona (March 2014)
- POS 471: Constitutional Law I, Arizona State University (Fall 2013)
- POS 453-001: Regulating Government, Honors undergraduate seminar, University of Arizona (Spring 2012)
- JUS 494: Legal Reasoning, undergraduate class, Arizona State University (Spring 2006)
- JUS 494: Elections, Democracy, and Justice, undergraduate class, Arizona State University (Spring 2006) (with Eddie Genna)
- JUS 305: Principles of Justice Studies, undergraduate class, Arizona State University (Fall 2005)

### **Law School Courses and Presentations**

- Guest Lecturer, First Amendment Seminar, University of Arizona (Fall 2012, Fall 2013, Fall 2014)
- LAW 691: Election Law, law school course, Arizona State University (Spring 2010) (with Todd Lang)
- PL 703 – Professional Responsibility, law school course, Phoenix School of Law (now Arizona Summit Law School) (Fall 2008)
- Law and Community, Yale Law School, seminar (Fall 1998) (with Professor Harlon K. Dalton)

### **Continuing Legal Education Programs**

- Civil Case Update*, State Bar of Arizona CLE Program on Working with the Court of Appeals (upcoming November 2016)
- Initiative/Referendum Law Overview*, State Bar of Arizona CLE on Arizona Election Law (April 2016) (with Roopali Desai and Lisa Hauser)
- The Paralegal’s Role on Appeal*, Maricopa County Bar Association, Paralegal Division Annual Convention (October 2015)
- Ethics Update: A Review of the 2015 Ethical Rule Updates*, State Bar of Arizona (September 2015)
- Live Oral Argument: Become Game-Ready with Major League Coaching*, State Bar of Arizona, Annual Convention (June 2015)
- Ready, Set, Practice . . . But Not Without Ethics: Practical Pointers to Understand Revisions to Arizona’s Ethical Rules*, State Bar of Arizona, Annual Convention (June 2015)
- Bad PowerPoint: Don’t Do It*, State Bar of Arizona, CLE Institute (Fall 2014)

*Lawyers in Transition*, State Bar of Arizona, Annual Convention (June 2014)

*Model Argument*, Appellate Practice Institute, State Bar of Arizona (May 2014)

*Initiative/Referendum Law Overview*, State Bar of Arizona CLE on Arizona Election Law (April 2014) (with Roopali Desai)

*Arizona Supreme Court Review* (November 2013)

*Constitutional Policy and Legislation in the Era of the Initiative*, State Bar of Arizona, Annual Convention (June 2013)

*Ethical Marketing*, State Bar of Arizona CLE Program (May 2013)

*Recent Developments in Lawyer Ethics: Technology, Outsourcing, and Globalization*, Legal Education Boot Camp, Lewis and Roca LLP (May 2013)

*Pros and Cons of Using Mediation to Resolve Public Records Disputes*, Public Records Law Litigation Conference, Law Seminars International (March 2013)

*Civil Case Update*, State Bar of Arizona CLE Program on Working with the Court of Appeals (November 2012)

*Ethics Game Show*, State Bar of Arizona, Annual Convention (June 2012)

*History of Legal Service Programs in Arizona*, State Bar of Arizona, Annual Convention (June 2012)

*Model Argument and Ethics of Appellate Advocacy*, Appellate Practice Institute, State Bar of Arizona (April 2012)

*Arizona Supreme Court Review* (April 2012)

*Appellate Litigation: Foundations*, Arizona Foundation for Legal Services and Education (April 2012)

*Trends in State and Local Election Law: Planning for the Future*, American Bar Association State and Local Government Section Fall Meeting (September 2011; re-broadcast with additional commentary, March 2012)

*What Every Trial Lawyer Should Know About Appeals*, Maricopa County Bar Association (March 2012)

*Mock Oral Argument*, Annual Construction Law Update 2012, State Bar of Arizona Construction Law Section (February 2012)

*Arizona Supreme Court Review* (May 2011)

*Advocacy Activities: Rules of the Road*, Flinn-Brown Civic Leadership Academy (May 2011)

*Redistricting: How Did We Get Here?*, State Bar of Arizona CLE Program on Legislative Redistricting (March 2011)

*Civil Case Update*, State Bar of Arizona CLE Program on Working with the Court of Appeals (November 2010)

*Developments in Election Law and Corporate Advocacy*, State Bar of Arizona Business Law Section (April 2010)

*Litigating Nomination Challenges*, State Bar of Arizona CLE on Arizona Election Law (March 2010)

*New Appellate Rules for Election Cases and Litigating Nomination Challenges*, State Bar of Arizona CLE on Arizona Election Law (April 2008)

*IDEA's Reauthorization and Its Interaction with the No Child Left Behind Act* (2004)

### **Presentations to Non-Lawyers on Legal Topics**

*Election Reform: Possible Arizona Town Hall Topics*, Arizona Town Hall Annual Meeting (June 2016)

*Tribal Political Involvement: Strategy and Practice* (July 2013)

*Corporate Political Involvement*, Arizona Corporate Counsel Forum (April 2012)

*Taking Your Cause Public: Direct and Grassroots Lobbying by Foundations*, CASE Conference for Institutionally Related Foundations (April 2011)

*Obligations of Public Employees*, Law for the University Administrator Workshop, Arizona State University (October 2010)

*Arizona Advocacy Overview*, Alliance for Justice Worry-Free Advocacy Training (May 2009, October 2007)

*Election Protection Volunteer Training*, Arizona Democratic Party (October/November 2006, October 2008, October 2010)

*Arizona Campaign Finance Law Basics*, EMILY's List (2005)

*Religion and the Schools: The Latest Issues and Cases*, Arizona School Boards Association Conference (2004) (with Lynne Adams and David Garner)

### **Question #68 – Statement of Interest**

I became a lawyer out of a desire to help people. When I made that decision, I had only vague notions of how lawyers could do that, based on the advice of inspiring teachers and my own limited experiences representing clients in law school clinics and interning with practicing lawyers. I thought that being a lawyer meant solving your clients' problems and making your clients whole again.

In the intervening years, my understanding of the role – and limitations – of the legal system has become more nuanced. I have seen that people seek legal help first and foremost because they need *help*, often desperately. They have been victims of or are accused of committing crimes, their marriages are failing, or they have been betrayed by those they trusted in their business or personal lives. But courts can provide only so much help. A court can order someone to stop doing something harmful, or to pay the damages caused by the person's actions, but cannot force a person to feel remorse or to apologize. A court can determine guilt and impose punishment, but not erase the betrayal from the memories of those involved or restore a trusting relationship.

Paradoxically, these limitations make the court system more important, not less. The courts are charged with addressing the kinds of problems that do not really have a "solution," but must be resolved somewhere. For these difficult problems, courts provide a neutral forum, accessible to all, in which all parties can have an opportunity to be heard. And in some situations, having the opportunity to be heard fairly is the most we can ask for, and is the thing that lets us move forward with our lives.

Administering that system is important, useful work. Fair and consistent judging, with laws and procedures neutrally enforced regardless of the identity of the parties or the judge's personal views, maintains trust in the legal system and encourages the parties to recognize as legitimate even judgments that are made against them. It also has positive effects on disputes that never reach the justice system, because people are more likely to comply with laws when they know what the penalties will be if they break the law. Court procedures and programs that are transparent, so that any person seeking redress can understand the process and the standards that will be applied, ensure accountability and increase access to justice for all parties, most notably those who cannot afford a lawyer and must represent themselves.

I want to help, and that is why I am seeking this position.

### **Question #69 – Professional Writing Sample**

The attached document is excerpted from a reply in support of a Motion for Summary Judgment I prepared and filed in bankruptcy court. The motion involved whether a judgment debt could be discharged in bankruptcy. The litigant names have been changed for confidentiality.

## **I. Introduction**

This Court has already determined that the fraud and misappropriation of trade secrets judgments against Mr. Doe entered by the District Court are nondischargeable in bankruptcy, finding that the District Court judgment has collateral estoppel effect and that the elements of those claims, as defined by the jury instructions, satisfied the requirements of 11 U.S.C. § 523(a)(2)(a) and § 523(a)(6), respectively. (Statement of Facts in Support of Reply (“Reply SOF2”), filed herewith, at ¶ 1.)

Only three questions remain to be resolved before this Court can enter final judgment holding that those parts of the federal court judgment are nondischargeable as to Mr. Doe and the Does’ community property:

(1) What is the amount of the fraud damages established by the District Court’s judgment?

(2) What is the amount of the misappropriation of trade secrets damages established by the District Court’s judgment?

(3) Did the District Court’s judgment hold the Does’ community property liable, or just Mr. Doe’s separate property?

The overwhelming majority of the Does’ response to the pending motion for summary judgment is irrelevant to resolving the issues actually pending before this Court. Mr. Doe cannot relitigate whether or not he committed common law fraud and willful and malicious misappropriation of trade secrets, having lost that issue before the federal court jury and on appeal to the Ninth Circuit. Nor should he be permitted to turn these summary judgment proceedings into an untimely motion for reconsideration of this Court’s prior rulings that (1) collateral estoppel applies to the prior federal court proceedings and (2) the fraud and misappropriation judgments satisfy the requirements of 11 U.S.C. § 523 regarding nondischargeability.

When the actual District Court record is examined, it is clear that: (1) the entire amount of the judgment against the Does was specifically assessed as damages for

common law fraud, (2) the judgment specifically enumerated both consequential and exemplary damages against the Does for misappropriation of trade secrets, and (3) the judgment established liability of the Does' marital community for the judgment, in addition to any of Mr. Doe's separate property. Each of these determinations is entitled to collateral estoppel effect in these proceedings, and the Plaintiffs are entitled to summary judgment in their favor.

**[ARGUMENT SECTIONS OMITTED]**

**II. The liability of the Does' community property for the non-dischargeable judgment was conclusively established in the federal court action.**

As the Does acknowledge, the question of whether community property will be liable for a nondischargeable debt is resolved by applying the law of the relevant state regarding community liability.<sup>1</sup> (Response, docket no. 35, at 6:23-7:2 (citing *In re Rollinson*, 322 B.R. 879, 880, 884-85 (Bankr. D. Ariz. 2005).) The federal court entered an order holding that the Does' community would be liable for any judgment issued in that action against Mr. Doe. (Reply SOF2 at ¶ 14.) That order was not appealed by the Does in their unsuccessful challenge of the judgment against Mr. Doe. (Reply SOF2 at ¶ 15.)

The Does had an opportunity to litigate liability of the community for a judgment against Mr. Doe, and they chose instead to stipulate to entry of an order against them on

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<sup>1</sup> Whether or not Mrs. Doe was "innocent" of involvement in her husband's common-law fraud and misappropriation of trade secrets is not relevant, as the plaintiffs are not seeking an order binding her separate property (of which she has none) and her innocence is not relevant to a determination of community liability under applicable Arizona law. *In re Lansford*, 822 F.2d 902, 904 (9<sup>th</sup> Cir. 1987) ("innocent spouse" doctrine applies only to spouse's separate property); *Selby v. Savard*, 134 Ariz. 222, 229, 655 P.2d 342, 349 (1982) (marital community "is liable for the intentional torts of either spouse if the tortious act was committed with the intent to benefit the community, regardless of whether in fact the community receives any benefit.")

that issue.<sup>2</sup> (Reply SOF2 at ¶ 12.) Now that the District Court’s order holding the community liable has become final with expiration of the time to appeal, the District Court’s determination that the community is liable is binding on this Court under the doctrine of collateral estoppel. *See Pena v. Gardner*, 976 F.2d 469, 471 (9<sup>th</sup> Cir. 1992) (collateral estoppel applies to issues actually litigated and lost in prior actions between the same parties); *see also Parklane Hoisery Co. v. Shore*, 439 U.S. 322, 329 (1979). There is no issue of “waiver” of bankruptcy rights, but a simple application of basic collateral estoppel law: the Does were parties to the federal court action, that action determined that their marital community was liable for the judgment against Mr. Doe, and the prior order is binding on them in this case.

### **III. Conclusion**

For the foregoing reasons, plaintiffs ask that this Court enter summary judgment holding as follows: (1) that the amount of the Does’ liability on the fraud judgment is the amount established by the federal court jury verdict and amended judgment, \$3,145,797; (2) that the amount of the Does’ liability on the misappropriation of trade secrets judgment is the amount established by the federal court jury verdict, amended judgment, and post-trial court orders, a total of \$1,067,131.85; and (3) that both Mr. Doe’s separate property and the Does’ community property are liable for these judgment amounts, which are nondischargeable.

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<sup>2</sup> The stipulation reserved only the right to appeal from the judgment in the federal court action—a right that the Does exercised without success—and did not attempt to reserve any other rights or to attempt to contract around the collateral estoppel effects of orders or judgments entered by the Court based on that stipulation. (Reply SOF2 at ¶ 13.)

### **Question #70 – Samples of Orders, Findings or Opinions**

The attached document is a Notice of Decision I prepared as a court-appointed arbitrator. I have redacted the case number, party names, and lawyer names.

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Kimberly A. Demarchi, State Bar No. 020428  
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Arbitrator

SUPERIOR COURT OF ARIZONA  
COUNTY OF MARICOPA

PLAINTIFF NAME REDACTED, )  
 )  
 ) Plaintiff, ) No. CASE NUMBER REDACTED  
 )  
 ) vs. ) **NOTICE OF DECISION OF**  
 ) **ARBITRATOR**  
 )  
 ) DEFENDANT NAME REDACTED, )  
 ) (Arbitration)  
 ) Defendant. )

As Arbitrator for this cause, I find in favor of the Plaintiff, NAME REDACTED, in the total amount of \$4,468.35. The components of this award, and the reasons for its entry, are as follows.

The Defendant has acknowledged liability for the automobile accident at issue, and has tendered payment in the amount of \$1,870.01 for the total loss of Plaintiff's vehicle. Plaintiff has accepted this amount and acknowledges that it is full payment for the value of his vehicle. The only issue submitted for resolution by the arbitrator was whether Plaintiff is entitled to additional compensation for other damages sustained in the accident.

Plaintiff seeks additional damages for the following: loss of use of his vehicle, medical expenses, and pain and suffering. Having considered the exhibits proffered by the parties and the testimony of Plaintiff at the arbitration hearing, I make the following determinations.

As to the claim for loss of use, the Restatement of Torts indicates that loss of use damages are available as a form of compensation when the vehicle is not totally destroyed, in which instance the injured party is entitled to be compensated for loss of use during the

1 time needed to repair the vehicle. Restatement (Second) of Torts §§ 927, 928; *State v.*  
2 *Brockell*, 187 Ariz. 226, 228 (App. 1996). In this case, Plaintiff and Defendant agree that  
3 the automobile was destroyed, and the appropriate measure of damages is therefore the  
4 value of the vehicle, which both parties agree was \$1,870.01. While Plaintiff apparently  
5 chose to rent a car for two months rather than to replace his car or make other alternative  
6 arrangements, he offered no testimony regarding why these expenses were caused by or  
7 chargeable to the Defendant or why his need to rent a car stopped after only two months  
8 when he still had not received payment for the total loss of his vehicle at that time.

9 Plaintiff's entitlement to payment for the total loss of his vehicle began on August  
10 4, 2009, when the vehicle's condition was assessed and its value determined. As both  
11 parties agree, Plaintiff is entitled to interest at the prejudgment rate of 10% per year on that  
12 amount from the date owed until the date paid. Defendant contends that the entitlement to  
13 interest stopped on October 26, 2009, when Defendant first attempted to tender payment.  
14 However, the check tendered on October 26, 2009 was not in the amount of the total loss  
15 payment owed, or the total loss plus accrued interest, but rather included additional  
16 amount offered in an attempt to settle other components of the damages claim. As  
17 Plaintiff could not accept this check without waiving his other damage claims, it was not  
18 an effective proffer of payment for the total loss, and interest on the total loss amount due  
19 therefore continued to accrue until the Defendant proffered payment only on the total loss,  
20 on March 23, 2011. At 10% simple interest, the interest due is \$296.35.<sup>1</sup>

21 Plaintiff has also sought payment of medical bills totaling \$9,165.37. I find  
22 Plaintiff's testimony that he suffered physical pain as a result of the accident and that he  
23 believed he needed medical treatment to relieve that pain credible. However, I find that  
24 Plaintiff did not carry his burden of proving that all of the medical treatment actually  
25 received was reasonable and necessary for the treatment of his soft tissue injuries. *See,*  
26 *e.g., Larsen v. Decker*, 196 Ariz. 239, 243-44, 995 P.2d 281, 285-86 (App. 2000) (injured

27 <sup>1</sup> One year of interest at 10% on a principal amount of \$1,870.01 is \$180.70. The interval  
28 between the date on which payment was owed and the date on which it was made was 597  
days, or 1.64 years. 1.64 years of interest at an amount of \$180.70 per year is \$296.35.

1 party's entitlement is to reasonable and necessary medical expenses); *see also* Revised  
2 Arizona Jury Instructions, Personal Injury Damages at 1(3). Considering Plaintiff's  
3 testimony, the bills and treatment notes of his medical providers, and the report of  
4 Defendant's expert, I find that Plaintiff has failed to carry his burden of proving that the  
5 treatments by Dr. NAME REDACTED or the MRI of his spine were reasonable and  
6 necessary. I also find that Plaintiff has failed to carry his burden of proving that all of the  
7 chiropractic appointments were reasonable and necessary. I therefore award Plaintiff the  
8 amount of \$2,172.00 in reasonable and necessary medical expenses, representing the  
9 charges for his first 12 appointments with MEDICAL PRACTICE NAME REDACTED.

10 Plaintiff also requests damages for pain and suffering caused by the accident, but  
11 has not requested a specific amount. I find credible Plaintiff's testimony that he suffered  
12 physical pain as a result of the accident that interfered with his daily activities including  
13 his sleep, his recreational activities, his ability to perform his job without pain, and his  
14 interactions with his family members. I award Plaintiff the sum of \$2,000 for pain and  
15 suffering.

16 I find that Plaintiff is the prevailing party. The prevailing party shall submit to me  
17 a proposed form of award, an affidavit in support of attorneys' fees, if attorneys' fees are  
18 recoverable, and a verified statement of costs. Copies shall be served by mail or delivered  
19 to all parties within ten days from the date of this Notice.

20 DATED this 18th day of November, 2016.

21 LEWIS AND ROCA LLP

22 By /s/ Kimberly A. Demarchi  
23 Kimberly A. Demarchi  
24 Arbitrator

25 [SERVICE CERTIFICATE OMITTED]  
26  
27  
28