

APPLICATION FOR JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name:
Roger Heath Contreras
2. Have you ever used or been known by any other name? No. If so, state name:
3. Office Address:
100 South Seventh Street, Sierra Vista, Arizona 85635
4. How long have you lived in Arizona? What is your home zip code?
I have lived in Arizona for a total of 49 years, 23 since I returned from living in Los Angeles for 4 years. My home zip code is 85635.
5. Identify the county you reside in and the years of your residency.
Cochise. 16 years.
6. If appointed, will you be 30 years old before taking office? ☒ yes ☐ no
If appointed, will you be younger than age 65 at the time of appointment?
☒ yes ☐ no
7. List your present and any former political party registrations and approximate dates of each:
Republican, since 1983.

8. Gender:
Male

Race/Ethnicity: **Caucasian / Hispanic**

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

Northern Arizona University, Flagstaff, Arizona
August 1983 to May 1987
Bachelor of Science

University of Arizona, College of Law, Tucson, Arizona
August 1988 to December 1990
Juris Doctor

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

Telecommunication, Audio Production / Directing (Extended Major)
Kappa Sigma Fraternity
Scholarship-Leadership Award, 1986
Grand Treasurer, 1986-1987
Grand Scribe, 1986
Intramural Chairman, 1985

Law (independent research in Intellectual Property law)
Phi Alpha Delta National Law Fraternity
Law Men's Association

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

Dean's List: Spring 1984 ◦ Spring 1986 ◦ Spring 1987, Northern Arizona University
Outstanding Young Man of American, 1987
National Dean's List, 1987
Dean's List, Fall 1988, University of Arizona College of Law
Reserve Desk Student Assistant, University of Arizona College of Law Library, August 1989 to December 1990

Independent Research:

Copyright Law - Authored "Copyright Law Comparative Analysis: An Introduction to the 1886 Berne Convention, the 1909 Copyright Act, the 1976 Copyright Revision Act and the 1988 Berne Convention Implementation Act" (1990).

Federal Communications Commission regulations - Authored "Selling Transponder Use Rights on International Communication Satellites: The Basic Transaction" (1990); and "F.C.C. Syndex Rules: Are They Here to Stay, or Just Passing Through, Again?" (Boalt Hall High Technology Law Journal Second Annual Comment Competition, Honorable Mention and Publication Offer, 1990).

Clerk, Pima County Superior Court Judge Howard T. Hantman, August 1990 to December 1990

PROFESSIONAL BACKGROUND AND EXPERIENCE

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

United States District Court, District of Arizona, April 1995.

Arizona, May 1994.

United States District Court, Central District of California, June 1993.

California, November 1992.

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? Yes. If so, explain.

I moved to California in the middle of bar review courses and did not pass on my first attempt. During my second attempt, I was employed full-time and unable to devote sufficient time to preparation. I passed the California bar exam on my third attempt.

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

EMPLOYER	DATES	LOCATION
Bays Law, P.C. Of Counsel Tombstone City Prosecutor	10/18 to Present	Sierra Vista, AZ
Self / I3T, LLC Attorney / Corporate Counsel	06/18 to 10/18	Sierra Vista, AZ
Cochise County Attorney's Office Drug Unit Felony Prosecutor, Early Resolution Court / Charging Attorney; Former Manager - Misdemeanor Division; Former Manager, Juvenile Division Deputy County Attorney III	05/05 to 06/18	Bisbee, AZ
Cochise County Legal Defender Deputy Legal Defender II	08/02 to 05/05	Bisbee, AZ
Law Office of Norris L. Ganson	02/95 to 08/02	Tucson, AZ
Akre, Bryan & Chang Formerly Law Office of M. Jan Akre	04/92 to 02/95	Los Angeles, CA
Stanwood Smith	02/92 to 05/92	Los Angeles, CA
Temporary Positions Legal Assistant	05/91 to 02/92	Los Angeles, CA
Mendelson, Oseran, Mance & Eisner (Law Clerk)	02/91 to 05/91	Tucson, AZ

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

Paul Randall Bays

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

My current practice is a mixture of private criminal defense and criminal prosecutions for the City of Tombstone. Previously, I provided corporate assistance to a federal government contractor. Prior to June of this year, I was a Deputy County Attorney, responsible for charging and prosecution of all Early Resolution Court matters and trial of assigned matters in the Drug Unit of the Cochise County Attorney's Office, including serious drug felonies and related violent felony offenses and forfeitures.

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

**Private Felony Defense
Juvenile Prosecutions
Misdemeanor Prosecutions
Indigent Felony Defense
General Civil / Commercial Litigation including Appeals
Wills and Probate
Mediation / Arbitration / Dispute Resolution**

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

Not applicable.

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

As an attorney for 28 years practicing in a wide variety of legal environments, I have prepared numerous Settlement Agreement, Plea Agreements, Contracts, Wills, Trust Agreements, Articles of Incorporation and Bylaws, Briefs, Motions and Responses, Complaints and Responses, Appellate Briefs, Petitions for Special Action and Responses thereto, Petitions for Post-Conviction Relief, Sentencing Memoranda, and other documents in both criminal matters and civil matters. In addition, having previously been significantly involved in bar governance on the local, state, and national level, and having participated in the Rules Committee of the Pima County Bar Association from 1995 to 2002, the Arizona Bar Criminal Practice and Procedure Committee from 2010 to present, the Arizona Bar Board of Governors from 2004 to 2010, and too many other bar activities to list here, I have drafted or assisted in the drafting, revision, or modification of numerous bar governance rules, rules of procedure in Arizona criminal and civil courts, rules of professional responsibility, and other important legal documents, statutes, and/or rules.

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

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

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

Sole Counsel: _____

Chief Counsel: _____

Associate Counsel: _____

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

Sole Counsel: 5

Chief Counsel: _____

Associate Counsel: _____

Mediator: 60

Arbitrator: 9

Settlement Judge: 13

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

Having been a prosecutor and/or defense counsel for the past 16 years, I have negotiated numerous contested criminal matters to settlement. Of course, each involved a variety of legal, ethical, moral, and personal issues that made their resolution important to the State of Arizona, the Defendant, victims, and the community in general. My practice prior to employment with Cochise County involved civil matters, including among others the following cases negotiated to settlement:

Colvin v. Farwest Pump Co., Pima County Superior Court Case No. C0308295: (1) 12/95 to 09/99; (2) Randall M. Sammons, Esquire, 4501 East Grant Road, Tucson, Arizona 85712, (520) 326-4550 (e-mail address unknown), represented Farwest Pump Co. (after the death of Fred Belman,

Esquire); (3) Breach of contract action commenced by Farwest for recovery of agricultural well repair costs; (4) No real significance except to the parties involved. Litigated through arbitration, appealed through jury trial, then resolved through appellate settlement conference.

Devincenzi v. Bank One, Pima County Superior Court Case No. C311188: (1) 02/96 to 07/97; (2) Joy E. Herr-Cardillo, Esquire, Streich Lang, One South Church Avenue, Suite 1700, Tucson, Arizona 85701-1621 jcardill@quarles.com, (520) 770-8702, represented Bank One; (3) Action against bank for recovery of funds lost as a result of check forgeries; (4) No real significance except to the parties involved. Resolved through Settlement Agreement and Mutual Release.

Gross v. Christie, Pima County Superior Court Case No. 307157: (1) 05/96 to 08/02; (2) Dan W. Montgomery, Esquire, 432 East Speedway Boulevard, Tucson, Arizona 85705-7492 (e-mail address unknown), (520) 792-0580, represented Edwin C. Christie; (3) Breach of contract dispute between Gross (purchaser) and Christie (homebuilder); (4) No real significance except to the parties involved. Resolved after trial during appellate settlement conference.

23. 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: 1 (Class Action)
State Courts of Record: 50 (Civil)
1,000 (Criminal and Juvenile)
Municipal/Justice Courts: 200

The approximate percentage of those cases which have been:

Civil: 15
Criminal: 85

The approximate number of those cases in which you were:

Sole Counsel: 1,250
Chief Counsel: _____

Associate Counsel: _____

The approximate percentage of those cases in which:

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

You argued a motion described above 25

You made a contested court appearance (other than as set forth in the above response) 85

You negotiated a settlement: 80

The court rendered judgment after trial: 5

A jury rendered a verdict: 15

The number of cases you have taken to trial:

Limited jurisdiction court 35

Superior court 120

Federal district court 0

Jury 105

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

I have been trying cases for approximately 27 years, in Los Angeles, California, Tucson, Arizona, and Cochise County, Arizona. While I have records of most cases I have tried, having worked in criminal defense and juvenile, misdemeanor, and felony prosecution, it would be nearly impossible to recall exactly how many cases I have tried without spending days reviewing archived calendars. I am confident, however, that my approximations are as accurate as possible.

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

The approximate number of your appeals which have been:

Civil: 8

Criminal: 27

Other:

The approximate number of matters in which you appeared:

As counsel of record on the brief: 35

Personally in oral argument: 3

25. 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.

**Pima County Superior Court
Clerk for Judge Howard T. Hantman
August 1990 to December 1990
Researched issues as required by Judge Hantman;
Part-time (for law school credit)**

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

Hume v. Sportsparks of America, Inc., et al., Pima County Superior Court Case No. 293700, Arizona Court of Appeals, Division II, Case No. 2-CA-CV-95-0082: (1) 02/95 to 07/95; (2) Arizona Court of Appeals, Division II, Department A, Petitioned for Review to the Arizona Supreme Court; (3) David C. Bury, formerly of BURY, MOELLER, HUMPHRY & O'MEARA, now a United States District Court Judge (520-205-4560), represented Sportspark; (4) Appeal of Summary Judgment granted on a waiver of liability in favor of Sportspark in an action for personal injury; (5) This matter was an attempt to clarify the effect of Washington Elementary School Dist. No. 6 v. Baglino Corp., 169 Ariz. 58, 817 P.2d 3 (1991) on waivers of liability as opposed to indemnity agreements. Petition for Review denied.

Marie Alvarado v. Cochise County Superior Court, Honorable Wallace R. Hoggatt, Cochise County Superior Court Case No. CV97-000027: (1) 01/97

to 09/97; (2) Cochise County Superior Court, Judge Wallace R. Hoggatt, Arizona Court of Appeals, Division II; (3) Joel Borowiec, Esquire, Borowiec & Borowiec, (520-417-0221), represented Real Party Plaintiffs in Issue, Ronald and Yvonne Herreras; (4) Petition for Special Action relief after denial of a Motion for Summary Judgment based on the doctrines of res judicata, laches, and the statute of limitations. Petition granted. (5) Significant only to Ms. Alvarado to the extent that she was not required to defend a civil complaint twice.

State of Arizona v. Elizabeth Salazar-Teran, Cochise County Superior Court Case No. CR200300947: (1) 01/04 to 09/04; (2) Cochise County Superior Court, Division V, James L. Conlogue, Judge Pro Tempore; (3) Bernadette Burick, Esquire, former Deputy Cochise County Attorney, Post Office Box CA, Bisbee, Arizona 85603 (520) 432-8700; (4) Criminal case tried *in absentia* to a jury regarding two counts of Sale of Heroin. Defendant was alleged to have sold heroin to undercover officers on two occasions. The jury was unable to reach a unanimous verdict after trial. The matter was ultimately dismissed with prejudice prior to re-trial. (5) No particular significance except to the parties involved.

In re: Andres M., Cochise County Superior Court No. JV05000132, Arizona Court of Appeals, Division II, Department A, Case No. 2-CA-SA-2006-0004: (1) 07/05 to 03/06; (2) Cochise County Superior Court, Division IV, Judge Ann R. Littrell; (3) Sanford J. Edelman, Esquire (sedelman@co.cochise.az.us) and Kelly K. Smith, Esquire (ksmith@co.cochise.az.us), both former Deputy Public Defenders, 100 Colonia de Salud, Suite 103, Sierra Vista, Arizona 85635 (520) 803-3272; (4) Juvenile delinquency prosecution alleging four counts of burglary and theft. The Juvenile filed for Special Action relief arguing that Petition B was filed in violation of the 17B A.R.S. Juv. Ct. Rules of Proc., Rule 25. Special Action relief was denied. (5) This case provided clarification, at least informally, of the County Attorney's broad discretion to prosecute juvenile delinquency petitions.

State of Arizona v. Tywan Demetrius Woods, Cochise County Superior Court Case No. CR201000870, Arizona Court of Appeals, Division II, 2 CA-CR 2014-0020 (1) 10/2010 to 05/2015; (2) Cochise County Superior Court, Division IV, Judge Ann R. Littrell and Division II, Judge John F. Kelliher, Jr.; (3) S. Ruben Teran, Esquire (520-364-3401; rteranlaw@gmail.com) and Anne Elsberry, Esquire (counsel for co-defendant, James Elliott Romeo; CR201000832 and CR201000869) (520-790-7337; Anne@wczlaw.com); (4) Prosecution of several members of a "Rip Crew" involved in stealing marijuana from a home where five adults and four children (including 2 under the age of 15 years) were present and victims of Armed Robbery, Aggravated Robbery, Kidnapping, Aggravated Assault (deadly weapon / dangerous instrument), Aggravated Assault (while bound), and Aggravated Assault (of victims under the age of 15 years). Due to a hung jury, then the

conduct of one victim, Defendant was tried three (3) times before being convicted of all eighteen (18) counts. The trial court sentenced Defendant to a total of 171.5 years. Due to some sentences being run concurrently, Mr. Woods' effective sentence was for 78.5 years. However, the appellate court determined that Judge Littrell had abused her discretion in granting a mistrial (that I requested to protect the right of Defendant to a fair trial) opposed by Defendant without sufficient inquiry regarding feasible alternatives. (5) This case was an important test of my prosecutorial integrity. While I would repeat the same request to protect a defendant's rights, in this instance it resulted in dismissal of a case in which I fought hard for over three (3) years to ensure justice and protection of the community; a case where a defendant was clearly deserving of, essentially, a life-sentence (Mr. Romeo remains imprisoned for 274 years (104 effective), until at least March of 2092, having been convicted in August of 2011). More important, however, was the state-wide importance of the Decision, which provided clear guidance to prosecutors and judges of their roles in ensuring the proper declaration of a mistrial.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

Pima County Superior Court, Judge Pro Tempore, July 2001 to Present (reappointed annually). Settlement Conference Judge / Judge Pro Tempore. In that capacity, I have conducted thirteen (13) settlement conferences resulting in the resolution of eleven (11) cases pending before the court, including civil contracts, injury, dissolution, paternity, medical malpractice, conservatorship, guardianship, probate, and community association cases. In addition, for a number of years, I conducted Juvenile Detention Hearings and Trial Reviews. Finally, I have presided over the criminal calendar during the annual Judicial Conference during the past several years, conducting Arraignments and Initial Appearances, and Probation Reviews, including probation pleas. Assignments have been limited as a result of my location and prior county employment.

Cochise County Superior Court, Arbitrator (appointed), August 2002 to Present. I have conducted three (3) compulsory arbitration of civil cases to date. Two matters were resolved by the parties prior to arbitrator's

decision. However, one case was fully arbitrated and a decision was rendered.

Arizona Attorney General's Office, Civil Rights Division, Conflict Resolution Section, Mediator (appointed), March 1999 to August 2002. Between March of 1999 and May 2002, I mediated approximately 50 matters, including civil rights disputes, matters referred by the Registrar of Contracts, victim-offender cases, child welfare matters, or adult guardianship cases.

Better Business Bureau of Southern Arizona, Mediator (March 1999 to August 2002), Certified Autoline Program Arbitrator (March 2001 to August 2002). I have mediated ten (10) cases involving consumer disputes, contract disputes, or real estate disputes. I have also sat as an arbitrator in six (6) matters; two (2) involving Autoline cases, and the remainder involving consumer disputes.

Private Mediator, July 1998 to Present. In that capacity, I was hired only once to resolve a marriage dissolution, including child custody issues.

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

Armando & Marcella Fontes v. Child Protective Services: (1) Mediation conducted on September 28 and October 17, 2001; (2) Arizona Attorney General's Office, Civil Rights Division, Conflict Resolution Section; (3) Tammi Janca, contact information unknown (represented Marcella Fontes, mother), Val Schaffer, contact information unknown (represented Armando Fontes, father), Scott W. Schlievert, (520-628-8286, sws2912@aol.com), (represented the child, but was not present). Also present were Mary Ann Rawson, CASA, Marcia Stephens, DES Caseworker, and Shiloh Jordan, DCYF Case Aide; (4) Child welfare mediation; (5) I don't have a record of the result, other than that the matter was resolved. No particular significance except to the parties involved.

In re: Domingo A. Arenas and Lupe Arenas v. Petitioners: (1) Mediation conducted on January 3, 2002; (2) Arizona Attorney General's Office, Civil Rights Division, Conflict Resolution Section; (3) Linda R. Herzog, (520-733-5676, lherzog@aol.com) (represented Domingo A. Arenas), Doris M. Reed, (520-884-1367, dreedslaw@aol.com) (represented Lupe Arenas), Paul C. Moors, (520-321-0100, tohono@aol.com) (represented Domingo R. Arenas, son, Arnold S. Arenas, son, and Nancy Arenas, daughter, Petitioners); (4)

Adult Guardianship matter; (5) I don't have a record of the result, other than that the matter was resolved. No particular significance except to the parties involved.

In re: Conservatorship of Ina Wilson (PCSC Case No. GC20150326) (1) I don't have a record of the date of the Settlement Conference I conducted at the (2) Pima County Superior Court; (3) Ronald Zack, Esq., then of Udall Law Firm, LLP (520-664-3420; ronzack@ronaldzackplc.com) (represented Richard Evans, temporary conservator); David West (520-790-7337, ddw@welzaz.com) (represented Ina Wilson); (4) Conservatorship matter in which the son of an 86-year-old woman was trying to protect her estate from impulsive, frivolous spending that was impeding its ability to provide for her care; (5) I was able to resolve the matter, permit the court to avoid trial, and more importantly, restore the relationship between an 86-year-old mother and her son in 3 hours.

In re: Thomas Price (PCSC Case No. GC20180045 (1) 06/01/2018 (2) Pima County Superior Court; (3) Teresa D. Lancaster (520-321-9700, teresa@bogutzandgordon.com) and Craig H. Wisnom (520-321-9700, cwisnom@bogutzandgordon.com) both of Bogutz & Gordon, P.C. (represented Kristin Knapp, Anne Mark, and Kaylee Price, the Objectors); Timothy M. Struse (520-575-5555, tstruse@tucsontrusts.com) of Fletcher Struse Fickbohm & Wagner, P.C. (represented Karen Price, Petitioner); and Bryan M. Canavan (520-468-2052, bryan@candolegal.com) of Canavan Law, P.C. (represented Thomas Price); (4) Guardianship/Conservatorship case in which the Petitioner sought to protect her approximately 50-year-old brain-injured husband against his grown children, who didn't fully understand the effects of his injury; (5) Resolved the matter in 3.5 hours and restored the family relationship.

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

As mentioned briefly above, during the entirety of my career, I have volunteered as a member and leader of various local, state, and national bar associations, including the Los Angeles County Bar Association, the Pima County Bar Association, the Cochise County Bar Association, the State Bar of California, the State Bar of Arizona, and the American Bar Association. I served most of those organizations in various roles, beyond mere membership, too numerous to mention here but including serving the State Bar of Arizona as President of the Young Lawyers Division from 2000 to 2001 (after which I was awarded as the Outstanding Young Lawyer for 2001 to 2002), District 4 (Cochise County) Representative to the Board of Governors from 2004 to 2010 (during which, among other positions, I served on the Finance and Audit Committee, chaired the Long-Range

Planning Committee), the American Bar Association Young Lawyers Division Awards Program Chief Judge (2000-2001), and Treasurer of both the Pima County Bar Association Young Lawyers Division (1997 to 1999) and the Cochise County Bar Association (2011 to present). (See answer to question 53, below.)

BUSINESS AND FINANCIAL INFORMATION

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

KTKT-AM / KLPX-FM Radio (KTKT: Transtar Affiliate) Tucson, Arizona
KTKT Producer, Board Operator, Announcer
KLPX Production Staff
June 1987 to August 1988

31. Are you now an officer, director, majority stockholder, managing member, 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.

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

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

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? Yes. If so, identify the nature of the case, your role, the court, and the ultimate disposition.

In approximately 1992, I was named as a defendant in a suit commenced by the landlord of the office space in which I worked. If my recollection serves correctly, the suit was filed in the Los Angeles County Superior Court. I don't have any record of the plaintiff's identity, but the plaintiff was represented by Baker & McKenzie, LLP. The named defendants included myself, Reginald A. Holmes, the lessee, and M. Jan Akre, sublessee. Although I was an attorney working with M. Jan Akre, I was not a party to the lease or sublease and had no responsibility thereunder. Thus, I was almost immediately dismissed from the suit.

In 2017, my ex-wife filed a civil "Complaint re: False Documents" in Cochise County Superior Court case no. CV201700053 alleging that three (3) judgment liens I recorded for attorneys' fees awarded in our dissolution and custody proceedings were improper. The matter was transferred to the Pima County Superior Court where Judge Brenden J. Griffin granted my Motion for Summary Judgment which argued plaintiff had failed to state a claim, failed to provide disclosure, failed to prosecute, and that her complaint was frivolous. The case was dismissed and my costs were awarded on August 27, 2018.

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? No. If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? No. If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? No. If so, provide details.

In the interest of utmost honesty, I must clarify. In June of 2018, I was asked to resign from the Cochise County Attorney's Office. After making a few copies using the office copy machine, I walked directly to the office manager's office with cash in hand to pay for those copies. I believe I am

the only person to have ever previously paid for personal copies, pursuant to a previous unwritten office policy that allowed such. However, because the copies were of a political nature, I was asked to resign. I do not believe the event reflects poorly on my integrity, given that I always intended to comply with office policy and given that I called my own action to light by immediately attempting to pay for the resources used, as I intended before they were used.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? Yes.

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

December 1, 1984; Flagstaff, Arizona; Driving Under the Influence of alcohol, in violation of A.R.S. § 28-692(A); No lo contendre plea; \$372.50 fine, plus 90-day suspension of driver's license.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

**United States Marine Corps Platoon Leaders Class
Entered, September 1984. Graduated from the Junior Course of Officer
Candidate School, July 1985. Honorable Discharge, December 1985.**

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

Not applicable, in my recollection or knowledge.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

Not applicable.

44. List and describe any sanctions imposed upon you by any court.

Not applicable.

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? Yes. If so, in each case, state in detail the circumstances and the outcome.

David R. Paxton: State Bar File No. 97-2120; Screening investigation implicating violations of 17A A.R.S. Sup.Ct.Rules, Rules of Professional Conduct, Rule 42, E.R.s 3.1, 3.4(c), and 8.4(d) opened as a result of the filing with the State Bar of Judge Margaret M. Houghton's Minute Entry issued on June 2, 1997 in Pima County Superior Court Case No. TE-389, Paxton v. Sheffer, et al. Referred to diversion after a probable cause panelist found reason to believe E.R.s 3.1 and 8.4(d) had been violated. Diversion successfully completed – I was asked to attend 15 hours of additional continuing education programs, but was deemed in compliance due to the fact that I had attended 104.5 hours of continuing education programs during the previous year. (In its Memorandum Decision issued on April 27, 1999, in case number 2-CA-CV-97-0232, Division II of the Arizona Court of Appeals agreed with my objection to the fact that Judge Houghton had failed to make the proper findings of fact to support the imposition of sanctions against me (paragraph 18).)

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? No. If your answer is "Yes," explain in detail.
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? Yes. If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

See explanation below question 39, above.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? No. If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? No. If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties,

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? No. If so, list with the citations and dates.

ABA/YLD 2000-2001 AOP PUBLIC SERVICE SUBGRANT PROGRAM, American Bar Association Young Lawyers Division newsletter, "The Affiliate", September 2000 issue.

In addition, answer to question 11, above.

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes. If not, explain.
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? Yes. If so, describe.

Solo Practice, Presentation at Arizona Bar Young Lawyers Division Brown Bag Lunch Seminar, February 10, 1999 and February 6, 2001.

Getting Out of It What You Put Into It, Presentation at American Bar Association Young Lawyers Division Leadership Orientation, June 7, 2002.

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

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

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

United States District Court, District of Arizona, April 1995 to Present

State Bar of Arizona, Member: May 1994 to Present

**Board of Governors, District 4 (Cochise County) Representative,
2004 to 2010**

Finance/Audit Committee Member, 2005 to 2010

Long-Range Planning Committee Member, 2004 to 2010

Chair, 2009 to 2010

Young Lawyers Division Executive Council Liaison, 2008 to 2010
 Criminal Justice Committee Executive Council Liaison, 2004 to 2010
 Environmental and Natural Resource Law Committee Executive Council Liaison, 2005 to 2008
 Member: Criminal Justice Practice and Procedure Committee, 2010 to Present
 Member: Alternative Dispute Resolution Section, 2001 to 2003
 Member: Consumer Protection Committee, 2001 to 2002
 Young Lawyers Division, Member: 1994 to 2002
 Wills for Heroes Volunteer, 2005 to Present
 Executive Council, Member: 1997 to 2002
 Recipient: Outstanding Young Lawyer of the Year Award, 2002
 Immediate Past President, 2001 to 2002
 President, 2000 to 2001 (Member: Board of Governors)
 President Elect, 1999 to 2000
 Secretary, 1998 to 1999
 Arizona Legal Skills Committee Chair, 1997 to 1999
 High School Mock Trial: Judge, 2000 to 2001; Bailiff, 1997 to 1999
 Moderator: Teens Speak Out! Program, 1998 to 2002
 Presenter: Youth, Drugs & Alcohol Program, 1998 to 2002
 Presenter: Solo Practice, Brown Bag Seminar, 02/10/1999 and 02/06/2001
 Cochise County Bar Association, Member: 2002 to Present; Treasurer, 2011 to Present
 Sierra Vista Bar Association, Member: 2005 to 2008
 Pima County Bar Association, Member: 1995 to Present
 Member: Rules Committee, 1995 to 2002
 Young Lawyers Division Board of Directors Member: 1997 to 2002
 Treasurer, 1997 to 1999
 Co-Chair: Lawyers for Literacy Program, 1997 to 1999
 Volunteer: Law Week Meet-A-Lawyer, 1997 to 2002
 United States District Court, Central District of California, June 1993 to Present
 State Bar of California, Member: November 1992 to Present
 Member: Litigation Section, 1992 to 1999
 Los Angeles County Bar Association, Member: 1992 to 1995
 Barristers, Member: 1993 to 1995
 American Bar Association, Member: 1992 to Present
 Member: Litigation Section, 1994 to 2002
 Member: Intellectual Property Section, 1994 to 1997

Young Lawyers Division, Member: 1992 to 2001
 Liaison: Government and Public Lawyers Section, 2002 to 2003
 Presenter: Getting Out Of It What You Put Into It, ABA/YLD Leadership Orientation, 06/07/2002
 Liaison: Section Officers Council Membership Committee, 2002 to 2003
 Recipient: Outstanding Affiliate Leader Award, 2002
 Member: Affiliate Program Team, 2001 to 2002
 Recipient: Star of the Year Award, 2001
 Chief Judge: Awards Program, 2000 to 2001
 Chair: Subgrants Program, 1999 to 2001
 Member: Membership Committee, 2000 to 2001
 Member: Dispute Resolution Committee, 1998 to 2002
 Executive Subcommittee: 2001 to 2002
 Recipient: ABA-JAMS/Endispute Mediation Training Scholarship, 1998
 Judge: Awards of Achievement, 2000 to 2002
 Judge: Member Service Subgrants, 1998 to 2002
 Judge: Public Service Subgrants, 1998 to 2001

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

As a leader of the Young Lawyers Division of the State Bar of Arizona from 1997 through 2002, I conducted and participated in numerous community service projects. During my term as President-Elect of the Division from 1999 to 2000, I was responsible for the day-to-day operation of the Division. During that year, I scheduled a community service project immediately following every monthly meeting of the Executive Council. Such projects included, among other things, clean-up of property donated to Artworks (a non-profit organization providing art therapy to disabled individuals), assisting the Young Lawyers Division of the Maricopa County Bar Association with their Domestic Violence Necessities Drive, assisting the Young Lawyers Division of the Pima County Bar Association during their annual Adopt-A-Roadway cleanup, serving food at the St. Vincent DePaul Soup Kitchen, painting at the Phoenix Day Child and Family Learning Center, painting and clean-up at Rancho Viejo School in Yuma, assisting with and participating in the Big Brothers/Big Sisters of Tucson Bowlathon, and projects at Sojourner Center. Other projects that I assisted with and participated in included the Big Brothers/Big Sisters of Tucson holiday party, painting of an indigent senior center in Atlanta, Georgia during an American Bar Association Young Lawyers Division conference. There are too many to remember accurately, but additional public service is listed in my response to question #53, above. Also, I just made a donation for

which I am eligible to receive a 13-Gallon pin from the American Red Cross, saving over 300 lives (I think that is community service).

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

As listed in response to #53, above:

Outstanding Young Lawyer of the Year, State Bar of Arizona, 2002

Outstanding Affiliate Leader Award, American Bar Association Young Lawyers Division, 2002

Star of the Year Award, American Bar Association Young Lawyers Division, 2002

American Bar Association Young Lawyers Division and JAMS/Endispute Mediation Training Scholarship recipient, 1998

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

Pima County Superior Court, Judge Pro Tempore, July 2001 to Present (reappointed annually).

Candidate for appointment to Cochise County Superior Court, Division V, 2006

Candidate for election to Cochise County Superior Court, Division IV, 2008

Candidate for election to Cochise County Superior Court, Division II, 2010

Candidate for election to Cochise County Superior Court, Division IV, 2012

Candidate for election to Cochise County Superior Court, Division III, 2018

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

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

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

I am the father of a brilliant 8-year-old son, who is the reason I breathe. I have been elected twice as the President of the Homeowner's Association of the 70-home, gated community where I live with him. I also enjoy hobbies including stunt kites, motorcycle riding, lake kayaking, fishing, travel, four-wheeling, Texas Hold-'Em, golf, and many other diversions.

HEALTH

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

ADDITIONAL INFORMATION

59. Provide any information about yourself (your heritage, background, life experiences, etc.) that you would like the Governor to consider.

I was born in Tucson, graduated from Marana High School, went to Northern Arizona University for my Bachelor's degree, and the University of Arizona for my law degree. Although I lived and practiced law in Los Angeles, California for four (4) years after law school, that was the only time I have lived outside Arizona. I am the son of a Tucson native, a small business owner for over 50 years. My father is a first-generation United States citizen of Mexican descent; one of 11 children, he left home at 13 years of age to complete his education. My mother was a Phoenix native to whom my father was married for over 55 years before she passed two years ago, having survived a heart transplant for over 20 years.

My father has always been my role-model. He demonstrates integrity every moment, and he taught me responsibility at a very young age by demonstrating it. Dad showed me the value of hard work and the pride that can be felt from doing what needs to be done and doing the right thing every time. Because of his lessons, I always kept track of the time I spent working for Cochise County, not because I was required to keep those records, but because I always wanted to be able to prove to myself that the community members I served were getting their money's worth. During just under 16 years (825 weeks) I spent working for Cochise County, I recorded 37,345.75 hours - the equivalent of more than 18 years' worth of work; an average of 45.24 hours per week, every week. I worked that hard not because I was getting rich working for Cochise County, but because I made a commitment to better my community, because my neighbors were counting on me, and because my work affected many lives.

I never prosecuted cases with expectations of any kind of recognition. However, I did develop a reputation. I was once called the toughest

prosecutor in Arizona by a Phoenix defense attorney who came to Bisbee to represent a felony defendant. I was also recently described by a 38-year law enforcement veteran as "the best drug prosecutor Cochise County has ever had." I am honored by those descriptions. They are the product of hard work and many late nights. However, the most important rewards I have ever received for my work were from the numerous people who have stopped me in the community and thanked me for saving their lives. Those expressions have come from a wide range of people – some who I represented as indigent defendants; some that I prosecuted, convicted, and sent to prison; some who continue to share the duration of their sobriety every time I see them. All have commented that I treated them with respect; treated them as a human.

The experience of loving a heart transplant recipient gave me a unique perspective on life - one that I employ every moment. That perspective has only been focused by my experiences with people expressing gratitude for any effect I've had on their life. Each breath is a gift, and we have a responsibility to make the most of that gift and to share it with those we love, and with our community. If you're not providing benefit to the world around you, you're wasting opportunity.

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

I have continued to pursue a judicial position, despite numerous setbacks, because many colleagues have encouraged me in that endeavor. People who have experienced my service as a Judge Pro Tempore, or as a mediator, arbitrator, or settlement judge, many who have witnessed my commitment to my positions as a prosecutor, defense attorney, or as a member of the bar have expressed gratitude for my service. Law enforcement officers with whom I have tried cases have lamented about my judicial campaigns because they didn't want to lose my assistance as a prosecutor, even though they know I will serve the bench with unwavering commitment, honor, and integrity. I am humbled by the number of members of my community who believe I have the experience, the ability, and the temperament to be a good judge.

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

I don't believe one should ever wish to serve the bench for personal reasons. Judicial integrity, judicial independence is essential to the

entirety of our community, our country, and our way of life. Serving for many years as a prosecutor, and having taken seriously the special duties that go along with that position, considering 17A A.R.S. Sup.Ct.Rules, Rules of Professional Conduct, Rule 42, E.R. 3.8 to be minimum guidelines, after serving as an indigent defense attorney and working in private practice for more than a decade, having resolved many controversies as a mediator or arbitrator, and having served for almost 18 years as a Judge Pro Tempore has given me a broad experience with which I feel uniquely qualified for this position.

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

Exhibits 1 and 2 (unredacted portions of documents filed in criminal cases)

64. 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. **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing 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.

Exhibits 3 and 4

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

Not Applicable.

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

Writing Sample 1 – Exhibit 1 – Excerpt from a Response to Motion to Suppress

A. Length of Stop

Neither United States v. Rodriguez, 135 S.Ct. 1609 (April 21, 2015) nor United States v. Evans, 786 F.3d 779 (C.A.9 (Nev.)) May 20, 2015 provide additional support for Defendant's motion. Indeed, Deputy Light's conduct complies with Rodriguez, and suppression is not warranted. See also, State v. Driscoll, 238 Ariz. 432, 361 P.3d 961, decided on November 6, 2015.

Rodriguez, which held that "Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution's shield against unreasonable seizures," is not a significant departure from the state of the law in Arizona even before that opinion issued. In fact, it doesn't appear to be any different than previous Arizona law, especially the opinion in State v. Teagle, 217 Ariz. at 22-23, 170 P.3d at 271 - 272, which, among other things, held that in the context of a traffic stop, once a police officer returns a driver's documents and hands him a citation, the driver must be allowed to leave unless (1) the encounter becomes consensual or (2) during the encounter, the officer develops a reasonable suspicion that criminal activity is afoot. Id., 217 Ariz. at 23, 170 P.3d at 272.

The length of the traffic stop here was not longer than was necessary to effectuate the purpose of the stop. Even Rodriguez acknowledges that "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'", but the "mission" is not limited to *only* the violation warranting the stop. Rodriguez defines the "mission" of the seizure in a traffic-stop context to include "address[ing] the traffic violation that warranted the stop *and* attend[ing] to related safety concerns." Rodriguez, 135 S.Ct. at 1614 (Citations omitted. Emphasis added). In addition to the fact that Deputy Light developed reasonable suspicion based on Defendant's statements and conduct to extend the duration of the stop, even if it had been completed, Defendant provided consent for the canine free-air sniff of the exterior of his vehicle. That consent converted the traffic stop, once its mission had been completed, to a

consensual encounter even if reasonable suspicion did not exist to permit an extension of the duration of the stop. Teagel.

It is well settled that a canine investigation of the exterior of a vehicle is not a “search” under the Fourth Amendment. Illinois v. Caballes, 543 U.S. 405, 408-09, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005); *see also* State v. Weinstein, 190 Ariz. 306, 310, 947 P.2d 880, 884 (App. Div. 2, 1997); State v. Paredes, 167 Ariz. 609, 613, 810 P.2d 607, 611 (App. Div. 2, 1991). Upon a canine alert to the outside of a vehicle, police officers have probable cause to search the entire car. Weinstein, 190 Ariz. at 310-11, 947 P.2d at 884-85; cited by State v. Teagle, 217 Ariz. 17, 27, 170 P.3d at 276 (App. Div. 1, 2008); *see also* Florida v. Harris, --- U.S. ---, 133 S.Ct. 1050, 1057, 185 L.Ed.2d 61 (Feb. 19, 2013). Given the canine alert to the presence of an odor of illegal drugs the canine is trained to detect, officers also have reason to be concerned for their personal safety. Such concerns permit a Terry frisk of the subjects which occupied the vehicle. State. V. Garcia Garcia, 169 Ariz. 530, 801 P.2d 191 (App. Div. 2, 1991); Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

After developing probable cause to search the vehicle from a canine alert during an exterior free-air sniff, search of the vehicle led to the discovery of a significant quantity of methamphetamine packaged for transport and sale. That discovery provided probable cause for the subsequent arrest of Defendant and his co-defendant. Any evidence of illegal activity discovered on their persons or within their immediate control during a search incident to that arrest (Chimel v. California, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 2040, 23 L. Ed. 2d 685, 694 (1969)) was legally obtained and may not be suppressed. Deputy Light’s search of Defendant’s pockets upon arrest was required to protect his personal safety (Defendant indicated he had a knife when he exited the vehicle) and to prevent the destruction of any additional evidence in Defendant’s possession, and also to prevent the introduction of illegal drugs into Deputy Light’s vehicle or the detention facility.

“‘[L]aw enforcement officers are afforded discretion in the length of time to perform an arrest,’ and the additional time the dog sniff added to the traffic stop was *de minimis*. (The court

noted that when the officer ‘returned appellant’s documents to him and handed him the written warning, appellant was free to leave . . . but the officer was equally free to ask appellant additional questions unrelated to the traffic stop.’ State v. Box, [205 Ariz. 492, 498,] 73 P.3d 623,] 629 (citing Ohio v. Robinette, 519 U.S. 33, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996)). “‘The permitted duration of a Terry-stop cannot be measured by the clock alone.’ Carter v. State, 143 Md.App. 670, 795 A.2d 790, 803 (2002).” Teagle, 217 Ariz. at 25, 170 P.3d at 274.

“We undertake a two-step inquiry to determine the constitutionality of an investigative detention. Terry, 392 U.S. at 19-20, 88 S.Ct. 1868. First, we must decide whether the police officer’s action was justified at its inception. Id. at 20, 88 S.Ct. 1868. Second, we consider whether the action was reasonably related in scope to the circumstances that justified the interference in the first place. Id.” Teagle, 217 Ariz. at 24, 170 P.3d at 273.

Reasonableness must be considered relative to law enforcement purpose. “Because the societal interest in interdicting the transportation (and presumed distribution) of illegal drugs is substantial, see United States v. Place, 462 U.S. 696, 704–05, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) (‘prevent[ing] the flow of narcotics into distribution channels’ by allowing investigative stops of suspected drug couriers is a ‘strong governmental interest’), a person who is reasonably suspected of transporting drugs may be justifiably detained for a longer time than a person detained for a less serious offense.” Teagle, 217 Ariz. at 26, 170 P.3d at 275.

“Although the total delay of one hour and forty minutes is an unusually long period of time to detain a person while awaiting the arrival of a drug-detection dog, we cannot say that a delay of such length is necessarily unreasonable. ‘When police need the assistance of a drug dog in roadside Terry stops, it will in general take time to obtain one; local government police forces and the state highway patrol cannot be expected to have drug dogs immediately available to all officers in the field at all times.’” United States v. Bloomfield, 40 F.3d 910, 917 (8th Cir.1994). Teagle, 217 Ariz. at 26–27, 170 P.3d at 275–276. “In balancing the justification for and circumstances of defendant’s detention against the degree to which his liberty was intruded upon, we conclude that Officer Greene did not act unreasonably by detaining defendant for one hour

and forty minutes pending the arrival of a drug-detection dog. See United States v. Maltais, 403 F.3d 550, 557–58 (8th Cir., 2005), *cert denied*, 546 U.S. 1177, 126 S.Ct. 1345, 164 L.Ed.2d 59 (finding detention of defendant for two hours and fifty-five minutes while awaiting arrival of drug dog in remote area not unreasonable); United States v. White, 42 F.3d 457, 460 (8th Cir.1994) (determining that it was reasonable for an officer to detain a truck for eighty minutes while awaiting the arrival of a drug dog when the officer ‘acted diligently to obtain the dog, and the delay was caused only by the remote location of the closest available dog’).” Teagle, 217 Ariz. at 27, 170 P.3d at 276.

Writing Sample 2 – Exhibit 2 – Excerpt from a Response to Petition for Review

A. U.S. v. Ruiz

¶ 1 It is clear, and Defendant acknowledges “that the Constitution does not require the [State] to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant.” *Ruiz, Id.*

¶ 2 The United States Supreme Court in *U.S. v. Ruiz* reversed the Ninth Circuit’s ruling on issues identical to those raised in the present case. In *Ruiz*, the defendant refused a “fast track” plea in which the government would recommend a downward departure under the sentencing guidelines, and the plea contained a waiver of *Brady*¹ rights to disclosure. Defendant ultimately did enter into a plea, despite the absence of a plea agreement. At sentencing, the defendant asked the judge to grant her the same reduced sentence that the government would have recommended had she accepted the original plea bargain. The government opposed, and the court denied her request. The Ninth Circuit vacated the sentence and noted that the Constitution requires prosecutors to make certain impeachment information available to a defendant before trial; decided that this obligation entitles a defendant to the information before they enter into a plea agreement; ruled that the Constitution prohibits defendants from waiving their rights to the information; and held that the “fast track” agreement was unlawful because it insisted upon a waiver. The United States Supreme Court disagreed and reversed the Ninth Circuit. The *Ruiz* Court stated:

“The constitutional question concerns a federal criminal defendant’s waiver of the right to receive from prosecutors exculpatory impeachment material—a right that the Constitution provides as part of its basic “fair trial” guarantee.” (Citations omitted).

“When a defendant pleads guilty he or she, of course, forgoes not only a fair trial, but also other accompanying constitutional guarantees. *629 *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)(pleading guilty implicates the Fifth Amendment privilege against self-incrimination,

1. *Brady v. Maryland*, 373 US 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

the Sixth Amendment right to confront one's accusers, and the Sixth Amendment right to trial by jury). Given the seriousness of the matter, the Constitution insists, among other things, that the defendant enter a guilty plea that is 'voluntary' and that the defendant must make related waivers 'knowing[ly], intelligent[ly] [and] with sufficient awareness of the relevant circumstances and likely consequences.' *Brady, v. United States*, 397 U.S. 742 748, 90 S. Ct. 1463, 25 L.Ed.2d 747 (1970); see also *Boykin*, *supra*, at 242, 89 S.Ct. 1709." *Id.* at 628-629, 122 S.Ct. at 2455.

¶ 3 The *Ruiz* Court addressed whether the Constitution required impeachment information be disclosed prior to a plea, stating:

"First, impeachment information is special in relation to *the fairness of a trial*, not in respect to whether a plea is voluntary ('knowing,' 'intelligent' and 'sufficient[ly] aware'). Of course, the more information the defendant has, the more aware he is of the likely consequences of a plea, waiver, or decision, and the wiser the decision will likely be. But the Constitution does not require the prosecutor to share all useful information with the defendant." (Citations omitted) *Id.* at 629, 122 S.Ct. at 2455.

"Second, we have found no legal authority embodied either in this Court's past cases or in cases from other circuits that provides significant support for the Ninth Circuit's decision." *Id.* at 630, 122 S.Ct. at 2456.

"Third, due process considerations, the very considerations that led this Court to find trial-related rights to exculpatory and impeachment information in *Brady* and *Giglio*, argue against the existence of the "right" that the Ninth Circuit found here." *Id.* at 631, 122 S.Ct. at 2456.

"In addition, we note that the 'fast track' plea agreement requires a defendant to waive her right to receive information the Government has regarding any 'affirmative defenses' she raises at trial. App. to Pet. for Cert. 46a. We do not believe the Constitution here requires provision of this information to the defendant prior to plea bargaining—for most (though not all) of the reasons previously stated. That is to say, in the context of this agreement the need for this information is more closely related to the *fairness* of a trial than to the *voluntariness* of the plea; the value in terms of the defendant's awareness of relevant circumstances is ordinary limited; yet the added burden imposed upon the government by requiring its provisions well in advance of trial (often before trial preparation begins) can be serious, thereby significantly interfering with the administration of the plea-bargaining process.

For these reasons the judgment of the Court of Appeals for the Ninth Circuit is Reversed." *Id.* at 633, 122 S.Ct. at 2457.

¶ 4 Arizona has also addressed the issue of waiver of defenses in plea agreements. In the present case, Defendant entered into an unconditional plea agreement and thus waived all non-jurisdictional defects and defenses including claims of ineffective assistance of counsel, except those that relate to the validity

of the plea. *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. Div. 2, 1993).

¶ 5 Also on point, in *State v. Banda*, 232 Ariz. 582, 307 P.3d 1009 (App. Div. 2, 2013), the defendant petitioned the Court of Appeals for review of his off-right petition for post-conviction relief filed pursuant to Rule 32. The *Banda* Court addressed defendant's two assertions:

"On review, Banda first asserts the trial court violated his due process rights by concluding he had waived a statute-of-limitations defenses without first giving him an opportunity to address that issue." *Id.*, at 584, 307 P.3d at 1011.

"But that does not mean Banda did not waive the protection of the limitations period under the statute by pleading guilty. Banda's plea agreement stated that he waived '**any and all motions, defenses, objections or requests which he had made or raised, or could assert thereafter, to the court's judgment against him and imposition of a sentence upon him consistent with this agreement.**'" *Id.* (Emphasis added).

"Finally, Banda asserts the trial court erred in summarily rejecting his claim trial counsel had been ineffective for failing to raise the statute of limitations before 'allowing him to enter a plea agreement.' 'To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below objectively reasonable standards and this deficiency prejudiced the defendant.' *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006)." *Id.*, at 585, 307 P.3d at 1012.

"By entering a guilty plea, a defendant waives all non-jurisdictional defects and defenses, including claim of ineffective assistance of counsel, except those that relate to the validity of a plea. *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. Div. 2, 1993)." *Id.*

¶ 6 In the present case, Defendant entered a Plea Agreement² which contained the following language,

16. **WAIVER OF DEFENSES, MOTIONS, ETC.:** Unless this plea is rejected by the Court or withdrawn by either party, Defendant hereby waives and gives up any and all motions, defense objections, or requests which he had made or raised, or could assert hereafter, to the Court's entry of judgment against him and imposition of a sentence upon him consistent with this Agreement." (See Defendant's Exhibit E, pg. 3, ¶ 16).

Therefore, defendant waived his rights to disclosure of impeachment information regarding Officer Mitchell or any other potential witness.

2. Remember that the defendant in *U.S. v. Ruiz* entered a plea without a plea agreement.

B. Application of Ruiz

¶ 7 Defendant attempts to elevate the Brady material regarding Corporal Mitchell to a quality greater than mere impeachment evidence, suggesting that Corporal Mitchell’s “fraudulent concealment” of his misconduct “deceived [Defendant] into making the plea, and deception prevent[ed Defendant’s] act from being a true act of volition.” (Citing U.S. v. Fisher, 711 F.3d 460 (4th Cir., 2013). However, again, Defendant acknowledges that Corporal Mitchell’s misconduct occurred after his entry into the Plea Agreement (See ¶ 5, above) and that the State was unaware of that misconduct until after Defendant had been sentenced. Fisher simply does not apply here.

C. Missouri v. Frye and Lafler v. Cooper

¶ 8 Similarly, Defendant’s arguments regarding Missouri v. Frye³ and Lafler v. Cooper⁴ are misplaced. Given that Corporal Mitchell’s misconduct occurred after Defendant’s offense and plea, Defendant’s counsel’s advice to enter into the Plea Agreement could not possibly be construed as ineffective assistance.

D. Ethical and Other Obligations of the Prosecutor

¶ 9 The sequence also voids Defendant’s argument regarding the effect of any applicable Ethical Rules under 17A A.R.S. Sup.Ct.Rules, Rules of Professional Conduct, Rule 42. Defendant’s suggestion that the undersigned prosecutor had any obligation which was violated ignores the sequence of events. As discussed above, Defendant committed his offenses in December of 2014. He entered a Plea Agreement in this case on May 20, 2015, and that he was sentenced on June 22, 2015. Corporal Mitchell’s misconduct occurred during the period between May 2015 and July 2015. Obviously, the State did not become aware of that misconduct until after it had occurred. If the State was aware of Corporal

3. 566 U.S. 133, 132 S.Ct. 1399, 182 L.Ed.2d 379 (2012).

4. 566 U.S. 156, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012).

Mitchell's misconduct before it ended in July of 2015, the misconduct would not have continued until then and the State would have disclosed the misconduct to Defendant's counsel (and every other IDC attorney) at an earlier date.

¶ 10 17A A.R.S. Sup.Ct.Rules, Rules of Professional Conduct, Rule 42, E.R. 3.8(d), as cited by Defendant in his Petition for Review, "requires a prosecutor in a criminal case to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense..." (Emphasis added.) Obviously, the State made disclosure of the information to Defendant as timely as possible. The information was not known to the prosecutor until after Corporal Mitchell's misconduct was discovered, which couldn't have happened until some time after the period during which it occurred (May 2015 through July 2015). Therefore, there was clearly no violation of E.R. 3.8(d).

¶ 11 Defendant also suggests that the State somehow violated its disclosure obligations under the Rule 15 of the Arizona Rules of Criminal Procedure, 16A A.R.S. Rules of Crim.Proc. Again, however, the sequence of events here completely upends Defendant's argument. As Defendant notes, Rule 15.1(b)(8) requires prosecutors to make available to the defendant "all then existing material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce the defendant's punishment therefor." (Emphasis added.) Clearly, since Corporal Mitchell's misconduct didn't even begin until approximately the same time, if not after Defendant's entry into the Plea Agreement, information about that misconduct did not exist to be disclosed at that time.

Exhibit 3 – Judicial Order, Findings or Opinion 1 – Arbitration Award

The above-captioned matter came on for arbitration hearing on the *h day of *, 201*, at the Cochise County Superior Court in Sierra Vista, Arizona, Roger H. Contreras hearing the matter as Arbitrator. *, ("Plaintiff"), was present in person with her counsel, *. *, (the "Defendant"), was also present in person with his counsel, *.

Plaintiff and Defendant were given equal opportunity to offer testimony, present evidence and witnesses, and question each other, and the Arbitrator received numerous documents and other items into evidence on behalf of Plaintiff.

FINDINGS OF FACT:

Having considered all testimony and evidence, the Arbitrator makes the following findings of fact:

1. Plaintiff is a (now) 73-year-old woman. Defendant is Plaintiff's husband of 48 years.
2. Plaintiff was diagnosed with Fibromyalgia in 1991. She retired from all employment in 1998 and began receiving SSI-Disability benefits in 2000. Plaintiff also presented testimony that she is multiple-chemical sensitive. She presented further testimony regarding her medical care requirements as they existed prior to August 22, 2013.
3. Plaintiff and Defendant were involved in an automobile accident on August 22, 2013. Defendant was the driver of their privately-owned vehicle in which Plaintiff was the front-seat and only passenger. Defendant rear-ended the vehicle in front of him in a line of vehicles, then the vehicle occupied by Plaintiff and Defendant was stricken from the rear by another vehicle driven by defendant MMC. Defendant MMC eventually settled in the action brought by Plaintiff

against her on unspecified terms. All other defendants to Plaintiff's action (the drivers of the other vehicles in the line in front of that vehicle driven by Defendant) have been dismissed out of Plaintiff's action.

4. Defendant has accepted responsibility for his portion of the fault for the accident. He only disputes the issues of causation and damages attributable to the two (2) impacts which occurred during the accident – the first impact being when Defendant struck the vehicle in front of him; the second being when the vehicle occupied by Plaintiff and Defendant was stricken from behind by defendant MMC.
5. Plaintiff suffered injuries as a result of the accident. However, she required minimal emergency medical care. She was transported to the local hospital by ambulance, then discharged later that day with after-care instructions including direction to take Tylenol at home. Plaintiff incurred medical bills on the date of the accident totaling \$3,226.41, including \$1,181.41 for on-scene care and ambulance transport by Fry Fire District and \$2,045.00 for Emergency Room care at Canyon Vista Medical Center.
6. The following morning, Plaintiff began treatment with Bisbee Chiropractic. She continued that treatment two (2) or three (3) times per week over the course of the next two (2) months, until October 21, 2013. Plaintiff incurred expenses for care by Bisbee Chiropractic between August 23, 2013 and October 21, 2013 totaling \$2,035.00.
7. Plaintiff's medical expenses incurred between August 22, 2013 and October 21, 2013 totaled \$5,261.41.
8. Although it appears that Plaintiff maintained medical insurance which covered some portion of her expenses incurred through Fry Fire District (United Health Care) and through Canyon Vista Medical Center (HMO Medicare), there is no indication that any medical insurance covered the expenses incurred through

Bisbee Chiropractic. Neither party raised the issue of medical insurance coverage. Therefore, the Arbitrator will assume that subrogation is either not an issue or that it will be handled subsequently between Plaintiff and her provider(s).

9. Plaintiff presented no evidence of any medical care between October 21, 2013 and April 2, 2014, almost six (6) months later. Plaintiff offered no explanation why there was such a lapse in medical care if the conditions being treated after April 2, 2014 were connected in any way to the accident which occurred on August 22, 2013.
10. Plaintiff presented testimony that the various medical professionals who have provided care for her since the time of the accident have been unable to allocate which percentage of her injuries resulted from which of the two (2) impacts. Plaintiff presented no testimony or evidence that any of her medical care, beyond the immediate emergency medical care and perhaps her treatments at Bisbee Chiropractic before October 21, 2013, was required by injuries or conditions which either resulted from or were exacerbated by the accident on August 22, 2013.
11. Plaintiff concedes that she is an unusually susceptible person and requests consideration of a jury instruction regarding "Pre-existing Condition, Unusually Susceptible Plaintiff." However, the jury instruction Plaintiff submitted for consideration is California Civil Jury Instruction No. 3928, propounded by the Judicial Council of California. Plaintiff submitted no authority either requiring or permitting the Arbitrator to consider that jury instruction in the State of Arizona.
12. Plaintiff submitted medical bills totaling \$23,833.95 incurred between the date of the accident and the date of the Arbitration Hearing. Plaintiff indicated that there were additional bills that had not been submitted, including one from the Sierra Vista Regional Health Center incurred in March of 2015 for approximately \$10,000.00, bringing her total medical expenses to approximately \$34,000.00.

Plaintiff argued that all those medical expenses were incurred to care for either injuries which resulted from the accident or medical conditions exacerbated thereby.

13. Plaintiff requested damages equal to the arbitration limit of \$50,000.00, including her medical expenses, pain and suffering, and loss of enjoyment. Plaintiff argued that the accident caused new injuries and exacerbated pre-existing conditions. According to Plaintiff's prayer, pain and suffering and loss of enjoyment were approximately 32% of her total requested award (approximately 47% of her medical expenses).
14. Defendant argued that there is no proof which impact was greater and caused Plaintiff's injuries. Defendant requested that the Arbitrator find him 50% at fault and attribute 50% of the fault for Plaintiff's injuries to defendant MMC.
15. The Arbitrator finds that Plaintiff failed to meet her burden of proving any correlation between the medical bills incurred after October 21, 2013 and the accident.

DECISION:

Based upon the above findings of fact, the undersigned Arbitrator concludes as follows:

1. Plaintiff's demand for \$50,000.00 in damages cannot be sustained.
2. Defendant was generous, but not unreasonable, in requesting that the Arbitrator attribute 50% of the fault for Plaintiff's damages to him (and 50% to defendant MMC).
3. Plaintiff's medical expenses incurred between August 22, 2013 and October 21, 2013 totaling \$5,261.41 are the only ones which can be directly attributed to the accident on August 22, 2013.
4. Based on Plaintiff's prayer for relief at the Arbitration hearing, she is entitled to damages for pain and suffering and loss of enjoyment totaling 47% of her medical expenses, or \$2,472.86.

5. Plaintiff's damages resulting from the accident total \$7,734.27.
6. Defendant MMC is responsible for 50% of Plaintiff's damages.
7. Defendant is responsible for the remaining 50% of Plaintiff's damages.
8. Plaintiff is awarded damages against Defendant in the total amount of \$3,867.13.

Exhibit 4 – Judicial Order, Findings or Opinion 2 – Notice to the Court in Arbitration

[Caption]

The undersigned Arbitrator was appointed in this matter on **, 201*, and notice of that appointment was provided to the parties on that date. By the time Notice of the scheduled Arbitration Hearing was delivered by the Arbitrator on **, 201*, the time for any peremptory challenge pursuant to ARCP Rule 73(c)(4) had passed without any such challenge being filed. The deadline for commencement of an Arbitration Hearing is **, 201*. The Arbitrator's Notice scheduled the Arbitration Hearing on *day, **, 201* at 9:00 a.m. in the Mediation Room of the Cochise County Superior Court, 100 Colonia de Salud, Sierra Vista.

On **, 201*, the parties submitted their Stipulated Motion to Extend Time for Arbitration and proposed Order to the Court. They also submitted a Stipulated Motion to Continue Arbitration and proposed Order for Continuance to the Arbitrator.

The Arbitrator conferred with the Court's Judicial Administrative Assistant via telephone on *day, **, 201* at **:*** p.m. to confirm that he had the authority, pursuant to ARCP Rule 74(b), to consider and rule on both stipulated motions. Being assured that his interpretation of Rule 74(b) complied with the Court's, the Arbitrator granted both stipulated motions in the Order Extending Time for Arbitration, Continuing Arbitration Hearing issued on **, 201* and filed on that date at **:*** p.m.

On *day, **, 201*, at **:*** p.m., the Arbitrator received email from the Court's Judicial Administrative Assistant containing an unsigned Order Denying Stipulation to Extend Time for Arbitration. The Court's signed Order was received via email on *day, **, 201* at **:*** a.m. That Order had been issued and filed on *day, **, 201* at **:*** p.m. That Order was copied to

counsel for each party via email. That Order confirmed the Arbitration Hearing previously scheduled to commence on *day, * *, 201*, at *:*** a.m.

The Arbitrator appeared early on *day, * *, 201* to set up the room reserved for the Arbitration Hearing. *, counsel for defendants, * and *, arrived tardy, but did appear at *:*** a.m. The Arbitrator was not informed whether either defendant or any defense witness also appeared, but * seemed to be alone. Neither plaintiff's counsel nor any other representative of Plaintiff nor any witness for Plaintiff had appeared by the time the Arbitrator left the court at *:*** a.m., and to the time of the filing of this Notice, the Arbitrator has received no contact nor attempts to contact from Plaintiff's counsel. Because neither Plaintiff nor its counsel appeared, the Arbitrator was unable to commence the Arbitration Hearing as scheduled and confirmed by the Court. To date, neither party has complied with Rule 75.

The Arbitrator returns this matter to the Court for any further proceedings deemed necessary and appropriate.