

APPLICATION FOR JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name:
Rodney Christopher Short
2. Have you ever used or been known by any other name? No If so, state name:
3. Office Address:
Yuma City Attorney's Office
One City Plaza
Yuma, Arizona 85364
4. How long have you lived in Arizona? What is your home zip code?
I have lived in Arizona since 1983
Home ZIP code is 85364
5. Identify the county you reside in and the years of your residency.
Yuma County
1983-1992
2011-present
6. If appointed, will you be 30 years old before taking office? ☐ yes ☐ no
Yes, if appointed, I will be older than 30 years old before taking office.
If appointed, will you be younger than age 65 at the time of appointment? ☐

Filing Date: March 11, 2019

Applicant Name: Rodney Christopher Short, Yuma County Superior Court

yes ☐no

Yes, if appointed, I will be younger than 65 years old at the time of appointment.

7. List your present and any former political party registrations and approximate dates of each:

I registered as a Republican when I became old enough to vote for the 1990 elections.

8. Gender: Male

Race/Ethnicity: Caucasian

EDUCATIONAL BACKGROUND

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

Attended: Arizona Western College, Yuma, AZ
Northern Arizona University, Flagstaff, AZ

Alumni: University of Arizona, Tucson, AZ, BS
Oklahoma City University, Okla. City, OK, JD

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

Bachelor of Science in Geosciences
Sigma Alpha Epsilon fraternity
Society of Earth Science Students
Guadalajara, Mexico, Summer School 1997

Juris Doctor
Delta Theta Phi legal fraternity
Buenos Aires, Argentina, Legal Summer 2006

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

Law Review, Staff Editor
Moot Court Society
Summer Law Clerk, Buckelew & Buckelew, OKC, Oklahoma
Early graduate from law school (completed studies in 2 ½ years)

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.

State of Arizona, 2008

U.S. District Court for District of Arizona, 2009

U.S. Court of Appeals for the Ninth Circuit, 2016

State of California, pro hac vice, 2009

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

In 2011, while in private practice, I attempted the California Bar exam and was not successful. I simply did not take enough time away from work to study sufficiently for the exam.

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
Viscount Suite Hotel	1997-2005	Tucson, Arizona
Buckelew & Buckelew, PC	2007	OKC, Oklahoma
Bauman Loewe Witt & Maxwell	2008-2011	Scottsdale, Arizona
Yuma City Attorney's Office	2012-present	Yuma, Arizona

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.

Steven W. Moore, (ret.) City Attorney

Richard W. Files, City Attorney

Jay R. Cairns, City Prosecutor

Connie S. Scoggins, (ret.) Assistant City Attorney
Daniel R. White, (fmr.) Assistant City Attorney
Emily K. Hart, Assistant City Attorney/Assistant City Prosecutor
Joseph D. Estes, Assistant City Attorney
K. Scott McCoy, Assistant City Attorney

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.

From 2012-2016, I served as an Assistant City Attorney. In 2016, I was promoted to the Deputy City Attorney. I currently serve in that position.

Litigation (police/fire civil rights, personal injury, etc.)	20%
Land Use	20%
City Council Legislation	15%
State Legislation	15%
Contract/Procurement	10%
Insurance Coverage (liquor/risk assessment)	10%
Employment	05%
Elections	05%

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

While in private practice, my law practice involved insurance subrogation, product defect, construction defect, insurance coverage/bad faith, premises liability, and fire/flood cause and origin. As a law clerk, the firm's practice involved family law and personal injury.

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.

I have drafted numerous contractual documents for the City of Yuma relating to purchases, sales, development agreements, and construction contracts. My current position also requires me to draft and review code additions or amendments for legislative adoption by the City Council or by the quasi-legislative and quasi-judicial commissions of the City of Yuma. I have also been responsible for much of the litigation pleadings and documents for the City of Yuma during my tenure. Finally, I have assisted drafting City Council and City Administration rules for employees.

20. 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.

Equal Employment Opportunity Commission (EEOC)	4
State of Arizona Department of Economic Security	3
City of Yuma Merit System Board	6

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

Sole Counsel: 12

Chief Counsel: 1

Associate Counsel: 0

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: 4

Chief Counsel: 2

Associate Counsel: 10

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.

I. City of Yuma v. Far West Water and Sewer. Yuma County Superior Court Case No.: S1400CV2013-00409. (1) November 2012-July 2013; (2) Defendant's counsel: Andrew J. Capestro, Esq., Corporate Counsel, acapestro@aol.com, (928) 342-1238; (3) breach of contract action where City of Yuma Utilities Department processed wastewater for private local water/sewer utility; (4) local utility was unable to process wastewater under order of Arizona Dept. of Environmental Quality. City of Yuma Utilities processed wastewater for the local utility and local utility failed to pay as agreed. Negotiated full payment and parties entered into

stipulated judgment.

- II. Fannin v. City of Yuma. (1) May 2013-November 2013; (2) Plaintiff's counsel: Thomas Griffin, Esq., ttg@robainalaw.com, Samuel Randall, Esq., srr@robainalaw.com, Robaina & Kresin, PLLC, (602) 682-6450; (3) terminated police sergeant sought reinstatement; (4) negotiated settlement with police union counsel to allow former police sergeant to resign in way set forth in A.R.S. § 38-1101 et seq. Parties entered into settlement agreement.
- III. Killian v. City of Yuma. (1) December 2014-May 2015; (2) Plaintiff's counsel: Neil Landeen, Esq., Landeen@ypplaw.com, Yen Pilch & Landeen, P.C., (602) 241-0474; (3) terminated police officer sought reinstatement; (4) negotiated settlement with police union counsel to allow former police officer to resign as set forth in A.R.S. § 38-1101 et seq. Parties entered into settlement agreement.
- IV. Fabela v. Davis. Yuma County Superior Court Case No.: S1400CV2018-00051. (1) June 2017-December 2018; (2) Plaintiff's counsel: Thomas G. Kelly, III, tgkellyiii@aol.com, (928) 246-9629; (3) automobile accident between on-duty police officer and plaintiff; (4) accident where employee was mostly liable but damages were inflated. Parties attempted judicial mediation, which closed the delta and continued to negotiate to full settlement.

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

The approximate number of cases in which you appeared before:

Federal Courts: 10

State Courts of Record: 25

Municipal/Justice Courts: 5

The approximate percentage of those cases which have been:

Civil: 100%

Criminal: _____

The approximate number of those cases in which you were:

Sole Counsel: 20

Chief Counsel: 10

Associate Counsel: 10

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: 50%

You argued a motion described above 20%
(about 1/5 of the time in which a motion was filed. Often courts only grant oral argument requests on dispositive motions when it is helpful to the court.)

You made a contested court appearance (other than as set forth in the above response) 10%

You negotiated a settlement: 90%

The court rendered judgment after trial: 1

A jury rendered a verdict: 3

The number of cases you have taken to trial:

Limited jurisdiction court 0

Superior court 5

Federal district court 0

Jury 3

Note: If you approximate the number of cases taken to trial, explain why an exact count is not 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: 2
Criminal: 1
Other: _____

The approximate number of matters in which you appeared:

As counsel of record on the brief: 2

Personally in oral argument: 0

25. Have you served as a judicial law clerk or staff attorney to a court? No If so, identify the court, judge, and the dates of service and describe your role.
26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.
- I. Yuma County, Arizona v. Swenson, et al. (1) July 2007-April 2013; (2) Yuma County Superior Court Case No.: S1400CV2007-00805, Judge Lawrence Kenworthy (Court of Appeals Div. 1; (3) Defendants' counsel: Carl Sammartino, Esq., CSammartino@StubbsSchubart.com, Thomas S. Parsons, Esq., TParsons@StubbsSchubart.com, Stubbs & Schubart, P.C. (520) 623-5466; Plaintiff co-counsel: Christopher W. Kramer, Esq. Dickson Wright (now with Jennings Strouss & Salmon), ckramer@jsslaw.com, (602) 262-5927; (4) This was a condemnation matter where County/City condemned property to build new intersection before the great recession. The issue at trial was value of property. The matter was tried to a jury.; (5) road construction monies dried up during recession and City completed interim build-out which re-opened necessity as an appealable issue.
- II. Yuma Mesa Land, L.L.C. v. (City Clerk) Bushong, et al. (1) May 2016-August 2016; (2) Yuma County Superior Court Case No.: S1400CV2016-00239, Judge John P. Plante, (Court of Appeals Div. 1, CV 16-0368); (3) Plaintiff's counsel: John A. Weil, Esq. (retired), john@hallsconstruction.com, (928) 782-3072; Defendant co-counsel: Adam E. Lang, Esq., alang@swlaw.com, Snell & Wilmer L.L.P., (602)

382-6522; Defendant County co-counsel: William J. Kerekes, Chief Deputy County Attorney, bill.kerekes@yumacounty.gov, (928) 817-4300; (4) This was an election matter where citizens filed a referendum on a legislative zoning matter. The citizens gathered a sufficient amount of signatures and the City Clerk and County Recorder and Elections Director certified the matter as eligible to be placed on the ballot. The landowner filed suit to prevent the matter from being referred to the voters. (5) The matter was interesting because plaintiff presented an argument that zoning was administrative and therefore not eligible for referendum by the citizens and I had to present the precedent to the Court.

III. City of Yuma v. Clark, et al. (Diamond Brooks). (1) July 2014-November 2016; (2) Yuma County Superior Court Case No.: S1400CV2014-01271, Judge Lawrence Kenworthy; (3) Defendant Diamond Brooks' counsel: Wm. Michael Smith, Esq., Carol Bowman, Esq. wms@bsklawoffice.com, Bowman & Smith, P.C. (928) 783-8879; Defendant Corona's counsel: Ryan C. Hengl, Esq., rhengl@hengllaw.com, Hengl Law Offices, P.L.C., (928) 366-1223; (4) This was a theft of utility services matter. The U.S. Attorney for the District of Arizona originally indicted the defendant company and owner with federal crimes, including this theft of services, but then dropped the theft in a plea agreement, leaving the City with only a civil remedy. The matter was tried to a jury.; (5) This was interesting because the federal government held most of the evidence in the matter and per the plea agreement, the City did not get much cooperation in the civil matter. City prevailed despite the non-cooperation.

IV. Pearce v. Mayor and City Council, City of Yuma. (1) August 2015-January 2018; (2) Yuma County Superior Court Case No.: S1400CV2016-00419, Judge Lawrence Kenworthy (Court of Appeals Div. 1 CV 16-0574); (3) Plaintiff pro per as "power of attorney" for his mother's estate; co-defendant's counsel: Larry W. Suciu, Esq. lsuciu@lwslaw.net, (928) 783-6887; Defendant City's co-appellate counsel: Lori L. Voepel, Esq., lvoepel@jshfirm.com, (602) 263-7312; (4) In 2016, Plaintiff, a non-lawyer, filed suit as "power of attorney" on behalf of his mother against the City of Yuma elected officials and a local developer alleging the City Council action in 2000 or 2001 caused damage to his mother's property by eliminating access.; (5) This was interesting because the pro per litigant would not understand the issues and instead filed numerous pleadings. Then, after the matter was dismissed at the trial court level, the pro per litigant appealed the matter. The City prevailed and was awarded attorney fees.

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.). No

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. Not Applicable
29. Describe any additional professional experience you would like to bring to the Governor's attention.

After undergraduate studies, but before law school, I was the director of sales for a hotel in Tucson, Arizona. In that position, I was part of the senior management staff for the hotel operations and had at least one sales manager working under me. Working in a fast-paced sales climate, where competition was fierce, especially in a declining market, was invaluable. It showed me how to talk to customers and understand their needs. The position also taught me humility, when a decision not to use my business was a final decision, and I could not talk my way out of the decision. The position also showed me how to be a leader to the young professionals working under my supervision. My mentors always provided reasons for success and used the instances of less success as a teaching tool.

Many lawyers follow a career path directly from undergraduate studies to law school and have not had opportunities to work in a business environment. I think those lawyers have missed a great opportunity to grow as a professional. The legal profession is a business, but it is not life. I believe lawyers are also counselors at law, and many in my profession tend to forget that aspect of the practice. Often, a lawyer's best advice is the counseling of how to avoid the legal issue, rather than moving a legal position forward when the legal position may have consequences beyond the current dispute.

I believe my experience prior to law school and entering the legal practice is nearly as important in solving my client's issues. I would bring that same approach to the bench and give litigants before me every opportunity to settle differences.

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.

During high school and beginning college, I worked at Soft Cloth Car Wash in Yuma, Arizona. During undergraduate at UofA, I worked at the Radisson Suite Hotel in Tucson, Arizona and at the Embassy Suites Tucson Airport as a restaurant waiter/banquet server.

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? No If so, explain.

35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? No If so, explain.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? No If so, identify the nature of the case, your role, the court, and the ultimate disposition.

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

CONDUCT AND ETHICS

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

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

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

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? No If so, describe.

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? No

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.

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

I have been a member of the Caballeros de Yuma, an organization that raises money and promotes special events in Yuma, since 2013. I currently serve as the treasurer of the organization and have chaired the Caballeros Holiday Pageant and Friendship Tower Lighting and the Midnight at the Oasis Festival. www.caballeros.org.

I am also active in the Yuma Rotary Club and the Yuma Elks Club. For Yuma Rotary, I have volunteered for their school supply drive in Mexicali, BC, MX for the last several years (although I missed 2018 due to a work scheduling conflict). I also volunteer for cooking duties at the Yuma Rotary Walt Kammann Sausage Fry and the Yuma Rotary Yuma County Fair booth. I participate in the Yuma Elks major projects and volunteer at the Elks holiday food drive where the Yuma Elks assemble holiday food boxes for families in need around Yuma and distribute the boxes to their homes.

Since 2012, I have served on the Amberly's Place board of directors. Amberly's Place is a victim advocacy center assisting victims of domestic violence and sexual assault. www.amberlysplace.com

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received. Not applicable

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates. Not Applicable

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.

My wife and I are very active in our service organizations and love to participate in community events. While I am from Yuma, my wife is a Coloradan, and we met in Tucson. Convincing my wife to move to Yuma was a monumental step, as most citizens of Phoenix or Tucson only know Yuma as the pit-stop on the way to San Diego. However, Yuma is an unknown gem, and has much to offer. Our participation in these community events has allowed us to develop life-long friendships. It is rewarding beyond belief. Additionally, we love to experience all of the outdoors Yuma has to offer: the desert and sand dunes during the winter and Colorado River activities during the summer. And yes, Yuma is warm during the summer and we are lucky that my younger sister lives in north county San Diego for some reprieve from the heat.

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 am from Yuma and a graduate of Yuma High School (Go Criminals!). My family moved to Yuma due to my father's transfer as a sergeant with the California Highway Patrol. My father instilled a sense of right and wrong with me, along

with a frank discussion of the gray areas in between. Those lessons remain with me now and I have applied them throughout my life and my career as a lawyer, and if selected, I will remember those lessons while on the bench.

Additionally, I majored in geology during undergraduate and worked in a geology laboratory during my final year. My scientific training is applicable to the field of law. In legal terms, it is often said "what is past is prologue" (apologies to William Shakespeare). The same concept is applied to the science of geology because observation of current geologic processes give a key to the past and possibly a prediction of future events. Candidly, training in science, especially geology, has provided a leg up on legal colleagues, as it gives more insight to strong or weak legal theories and the misuse of statistics and other mathematical computations.

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

The City Attorney's Office and my position as Deputy City Attorney is very rewarding. Although almost 100% of the practice is devoted to civil litigation, I routinely have the opportunity to analyze the Constitutional protections afforded to criminal defendants as well as application of criminal statutes and local criminal codes. Much of what this office analyzes and accomplishes is not routine, and as such, the position, and indeed the practice of the office is academically and intellectually challenging. If selected, I believe these challenges make me well-suited for the bench.

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.

Brief statement attached.

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.

Writing Sample 1: an excerpt of Defendant City of Yuma's Motion to Dismiss Plaintiffs' Complaint for Declaratory Judgment Pursuant to Rules 12(b)(1) and 12(b)(6), A.R.C.P. filed in Yuma County Superior Court Case No.: S1400CV2013-00058. It is a public record.

Writing Sample 2: an excerpt of Defendant City of Yuma's Reply to Plaintiff's Response to City's Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim Upon Which Relief may be Granted filed in Yuma County Superior Court Case No.: S1400CV2012-00905. It is a public record.

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. Not Applicable
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

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(CONFIDENTIAL INFORMATION) ON NEW PAGE --**

Question 62:

**BRIEF PERSONAL
STATEMENT**

My reasoning for seeking this position is summed up in one word: service. I am seeking this position to serve the profession as well as the public. Yuma is a special place and its future is bright and deserves a judiciary that believes in the brightness of the future.

The timing is right. The decision to seek this position is not something I take lightly. I am an eleven-year lawyer now, with over half of my career dedicated to broad-based public service. As with most governmental lawyers, there are many lucrative opportunities in Phoenix and Tucson. While I have been tempted, Yuma always wins out. This is my community and I want to continue to give back. I do realize that obtaining this position is career move in which there should be no looking back. I am ready. My private practice and public practice career has been very fulfilling. If selected, there will be no regrets and I will continue to work on the bench until retirement.

I am well prepared for the workload. The Yuma County Superior Court docket is busy, possibly busier than its counterparts in larger communities. I seek this position understanding that I will walk into a full docket and full calendar and I will need to work extra hours to prepare in a way the litigants deserve and expect. I am up to the challenge. As depicted in other parts of this application and as will be shown when contacting my references, I am a lawyer who completes tasks. This is even true in my current position, where I, and my colleagues in the City Attorney's Office, continue to treat the position much like private practice and work until the project is completed. I will bring the same work ethic to the bench.

I have respect for the practice. My practice started in Maricopa County and continued into California courts on pro hac vice motions. To be candid, even as a young lawyer, I could see the difference in practice between Arizona courts, even Maricopa County courts, and the courts in California. The difference is civility, especially the lack thereof I witnessed in the Los Angeles courts, even when compared to the courts in San Diego. I can only assume the lack of civility is due to the large legal community in Los Angeles. Yuma's legal community is a micro chasm of the legal communities in larger regions. It contains the same issues, but also possesses the same remedies. I believe the judicial bench can lead by example, setting the stage and expecting the legal community to adhere to the Rules of Professional Conduct. Simply put, I believe the court system works better this way, especially in a small legal community like Yuma, where lawyers are not always anonymous in the community or at the courthouse.

Finally, I have empathy for litigants. At the end of the day, lawyers and judges are here to serve the community. The legal system only works if the litigants can be sure that the system is as fair as possible. It pains me when a criminal defendant or civil litigant sees the system as fixed or predetermined before stepping into the courtroom. Judges are not there to pick winners and losers, judges may only apply the rules and precedent. If selected, my courtroom will be fair. I will apply precedent even handedly, without being

tempted to invade the powers of the administration or the powers of the legislature. Judges are not legislators. I believe in separation of powers and if selected for the position, I will do my utmost to not give into temptation to legislate from the bench.

Thank you for the opportunity to apply for this position.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodney C. Short". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Rodney C. Short

Question 63:

WRITING SAMPLE 1

1 by the City Code Enforcement officers because mobile homes should not be considered
2 "residential structures" as defined by law and Yuma City Code. Oduyale's arguments
3 are fallacies and the motion to dismiss will not prevail.

4 Oduyale has now filed this instant action looking yet again for an "end-around"
5 the legal obligation to make the rented premises safe and inhabitable. The instant action
6 is Oduyale's fourth bite at this apple.

7 **1. This Court Should Dismiss Oduyale's Requested Relief because it Asks this**
8 **Court to Issue an Advisory Opinion which is Contrary to the Intent of A.R.S.**
9 **§ 12-1831 et seq.**

10 There must be a justiciable issue between parties before a declaratory judgment
11 will be granted. *Thomas v. City of Phoenix*, 171 Ariz. 69, 74, 828 P.2d 1210, 1215
12 (App.Div.1, 1991). Courts will not hear declaratory judgment actions that seek advisory
13 opinions or that request an answer to moot or abstract opinions. *Id.* The declaratory
14 judgment must be based on a real controversy, not a theoretical controversy, and a
15 plaintiff must have sufficient, concrete interests at stake that a court may answer the
16 questions presented in relation to those interests. *Dail v. City of Phoenix*, 128 Ariz. 199,
17 203, 624 P.2d 877, 881 (App.Div.1, 1980).

18 There is no justiciable issue between the parties. Oduyale has been cited for
19 failing to maintain the rented premises and allowing the premises to become unsafe and
20 uninhabitable for human occupancy. The violations are serious in nature and any
21 remedy undertaken to fix the violations requires the expertise and skills of a licensed
22 contractor. Oduyale refuses to recognize this fact and asks this Court for three
23 enumerated declarations of relief.

24 First, Oduyale asks this Court to declare that as a landlord, Oduyale has a
25 statutory obligation to keep his premises safe and in a fit and habitable condition for his
26 renters. See Pl's Complaint for Declaratory Relief, pg. 3, ln 19-22. Second, Oduyale
27 asks this Court to declare that in light of a landlord's statutory legal obligation to keep
28 his rented premises safe and in a fit and habitable condition for his renters, the rent
29 Oduyale collects from his renters does not meet the definition of "compensation" under
30 the Registrar of Contractors' statutes so as to trigger the requirement of a contractor's
license because the work is being done in exchange for monies. See Pl's Complaint for

1 Declaratory Relief, pg. 3, ln 23-28. Third, and finally, Oduyale asks this Court that in
2 light of its earlier declarations, it should also declare that Oduyale (personally) is
3 therefore not within the statutory definition of "contractor" and thus, Oduyale should not
4 be required to obtain a contractor's license in order to remedy the violations at the rented
5 premises himself, without the need to retain a professional licensed contractor, so as to
6 elevate the rented premises to a safe, fit and habitable condition. See Pl's Complaint for
7 Declaratory Relief, pg. 4, ln 1-6.

8 Oduyale's first and second requests for relief from this Court are not at issue and
9 are, at best, theoretical controversies. As to the first request, it is without question that
10 Oduyale, as a landlord, has the obligation to make all repairs and do whatever is
11 necessary to put and keep the rented premises in a safe, fit and habitable condition. In
12 fact, Oduyale's failure to meet these clear obligations is the underlying reason for the
13 citations in the first place. This issue is not in controversy. The City agrees that a
14 landlord, such as Oduyale, is legally required, through statutes, to make all repairs and
15 do whatever is necessary to put and keep the [rented] premises in a fit and habitable
16 condition. A.R.S. § 33-1434.

17 Oduyale's second request presents a theoretical controversy, it is also strange.
18 Oduyale asks this Court to recognize that the Arizona Court of Appeals has held that the
19 collecting of rent is not considered compensation and therefore cannot be used as a basis
20 for requiring a landlord to be a licensed contractor when providing general maintenance
21 on his properties. See *Levitan v. State Registrar of Contractors*, 201 Ariz. 225, 33 P.3d
22 796 (App.Div.1, 2001). Oduyale's request is curious because Oduyale is not required to
23 obtain a license because he is collecting "compensation" as defined by statute. Not at
24 all. Oduyale is required to retain the services of a licensed contractor because he has
25 allowed his rental premises to fall into such poor condition that the repairs can only be
26 done by a professional licensed contractor possessing the knowledge and skills to protect
27 the public and make the premises safe and inhabitable. Thus, Oduyale's second request
28 is inapplicable and is not in controversy at all.

29 Oduyale's real leap of faith comes in the third request for relief. It is there that
30 Oduyale attempts to bootstrap two theoretical controversies, again which are not even

1 really applicable to the facts of the underlying debate, to use as a basis to request that
2 this Court interpret a landlord's clear statutory obligation to infer a statutory "right" that
3 is not granted by the legislature. Not only is the request an incorrect interpretation of the
4 plain meaning of the statutes, but it asks this Court to issue an unnecessary advisory
5 opinion. See *Manning v. Reilly*, 2 Ariz.App. 310, 314, 408 P.2d 414, 418 (App.Div.2,
6 1965) ("In order to serve as a basis for declaratory relief, a controversy involving a
7 statute or ordinance must be justiciable, i.e., there must be specific adverse claims, based
8 upon present rather than future or speculative facts, which are ripe for judicial
9 interpretation."). Here, Oduyale's requests are based on the speculation that the City
10 and/or the ROC are going to require Oduyale to hire or alternatively, to be, a licensed
11 contractor to do any type of maintenance work on his rented premises simply because he
12 is collecting rent. As stated above, this is not a justiciable controversy and therefore
13 violates the intent of the Declaratory Judgment Act.

14 Based on the foregoing, Oduyale's Complaint for Declaratory Relief should
15 properly be dismissed pursuant to Rule 12(b)(1) of the Arizona Rules of Civil Procedure
16 as there is no true justiciable issue between the parties and Oduyale is seeking an
17 advisory opinion from this Court.

18 **2. This Court Should Dismiss Oduyale's Requested Relief because it Asks this**
19 **Court to Issue Judgment on Exact Issues which are Currently Pending**
20 **Before Another Court which is Contrary to the Intent of A.R.S. § 12-1831 et**
21 **seq.**

22 The legislature never intended that relief under the Declaratory Judgment Act
23 (A.R.S. §§ 12-1831 to 12-1846) should be exercised for the purpose of trying issues
24 involved in cases already pending. *Merritt-Chapman & Scott Corp. v. Frazier*, 92 Ariz.
25 136, 139, 375 P.2d 18, 20 (Ariz. 1962). Generally, declaratory relief will be denied
26 when the issue presented by the action is already pending in another forum. *Id.*

27 The issues Oduyale brings before this Court in his prayer for declaratory relief are
28 the exact issues currently pending before the City of Yuma Municipal Court. That
29 tribunal is the proper forum to decide if the issues are applicable as a defense or
30 mitigating circumstance. Bringing the issue before this Court in a separate action is
contrary to the intent of the legislature. As between Oduyale and the City, the

1 Complaint for Declaratory Judgment usurps the authority of the Municipal Court and
2 seeks instead to try the matter before this Court. This will allow Oduyale to pick and
3 choose the Orders from each of the courts depending on which one best suits his
4 argument. The request for declaratory relief should properly be denied.

5 Moreover, even if this Court decided to grant Oduyale's requested relief (and it
6 should not), the relief would do nothing to terminate the controversy between the parties
7 in the parallel action. Instead, a premature ruling by this Court would confuse that
8 pending action and lead to uncertainty which would assuredly necessitate yet another
9 action to resolve the issues. That was never the intent of the legislature. A court may
10 properly refuse to enter a declaratory judgment where it will be necessary to bring
11 another action to settle the controversy between the parties. *Merrit-Chapman*, 92 Ariz.
12 at 139, 375 P.2d at 20; *see also* A.R.S. § 12-1836 ("[t]he court may refuse to render or
13 enter a declaratory judgment or decree where such judgment or decree, if rendered or
14 entered, would not terminate the uncertainty or controversy giving rise to the
15 proceeding.").

16 Based on the foregoing, this Court should properly refuse to enter declaratory
17 judgment and dismiss Oduyale's Complaint for Declaratory Judgment pursuant to Rule
18 12(b)(6) of the Arizona Rules of Civil Procedure for failure to state a claim upon which
19 relief may be granted.

20 **3. This Court Should Dismiss Oduyale's Requested Relief because it Asks this**
21 **Court to insert Itself into the Legislative Process and Confer a New Right to**
22 **a Landlord when the Legislature Clearly Intended an Obligation**

23 "The powers of the government of the State of Arizona shall be divided into three
24 separate departments, the Legislative, the Executive, and the Judicial; and, except as
25 provided in this [Arizona] Constitution, such departments shall be separate and distinct,
26 and no one of such departments shall exercise the powers properly belonging to either of
27 the others." Ariz. Const. Art III. Arizona courts have not required absolute separation
28 of powers. *J. W. Hancock Enterprises, Inc. v. Arizona State Registrar of Contractors*,
29 142 Ariz. 400, 404, 690 P.2d 119, 123 (App.Div.1, 1984). Instead, the courts opine the
30 true intent of the separation of powers doctrine is to prevent one branch of government
from exercising the whole power of another branch. *Id.* at 405, 406, 690 P.2d at 124,

1 125. Thus, a separation of powers analysis must include the origination of the powers,
2 the degree in which the legislative body controls the field of power, the objective sought
3 to be obtained by the legislature, and the practical result of the blending of the power,
4 including what amount is left for another branch of government. See *Id.* (discussing
5 factors under the *Bennett* test adopted by the appeals court in a separation of powers
6 analysis).

7 The regulation of the standards of construction improvements to real property is
8 born out of the police, health and welfare powers constitutionally granted to the Arizona
9 Legislature. Ariz. Const. Art IV. In turn, the Legislature has delegated the
10 constitutional power to implement and regulate the standards of construction
11 improvements to real property to the Registrar of Contractors ("ROC"). A.R.S. § 32-
12 1101 *et seq.* In addition to the power to implement and regulate construction standards,
13 the Legislature has also vested the ROC with the power to investigate issues involving
14 real property construction. A.R.S. § 32-1106. Further, the Legislature has deemed the
15 ROC to be the sole administrative authority to regulate the licensing of contractors and
16 to set forth the minimum qualifications necessary to obtain a contractor's license.
17 A.R.S. § 32-1122. Finally, the Legislature provided a statutory administrative review
18 process for the ROC's decisions to provide a remedy for the members of the public that
19 feel aggrieved by the decisions of the ROC. A.R.S. § 41-1092 *et seq.*

20 Applying the *Bennett* standards, it is clear the Legislature intends the ROC to
21 regulate the entire field, including an administrative review of its decisions, providing
22 the courts only with the power to review the final decisions of the ROC on an appeal.
23 But the court may apply its power after the exhaustion of administrative remedies.

24 Here, Oduyale asks this Court to take jurisdiction of the matter prematurely and
25 before the exhaustion of any administrative remedy. Further, Oduyale asks this Court to
26 provide an interpretation of the ROC statute that is contrary to the Legislative direction
27 and can only be accomplished by the Court inserting itself into the legislative process.
28 The Legislature and the courts are clear, the purpose of A.R.S. § 32-1101 *et seq.*
29 providing for licensing and regulation of contractors is to regulate the conduct of those
30 engaged in the business of contracting and to discourage certain bad practices which

Question 63:

WRITING SAMPLE 2

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3 Arizona Bar No. 018346
4 Rodney C. Short, Assistant City Attorney
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6 One City Plaza
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10 Rodney.Short@YumaAZ.gov

11 Attorneys for Defendant

FILED

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LYNN FAZZ
CLERK OF SUPERIOR COURT
YUMA ARIZONA 85364

12 **SUPERIOR COURT**

13 **COUNTY OF YUMA, STATE OF ARIZONA**

14 PATRICIA MUNGER, an unmarried woman,

15 Plaintiff,

16 v.

17 ROBERT E. TRABUE, and JANE DOE
18 TRABUE, husband and wife, and CITY OF
19 YUMA, an Arizona municipal corporation;
20 DOES, 1-50,

21 Defendants.

Case No. SC1400CV2012-00905

**REPLY TO PLAINTIFF'S
RESPONSE TO DEFENDANT'S
RULE 12(b)(6) MOTION TO
DISMISS FOR FAILURE TO
STATE A CLAIM UPON
WHICH RELIEF MAY BE
GRANTED**

*Assigned to the Honorable
John N. Nelson*

22 Counsel undersigned hereby submits this Reply to Plaintiff's Response to
23 Defendant's Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim Upon Which
24 Relief May be Granted. ("Plaintiff's Response"). Plaintiff argues that Defendants'
25 Motion is moot. Plaintiff is wrong, the issue is not moot. It is undisputed that Plaintiff
26 did not serve a Notice of Claim to Detective Trabue in his official capacity as mandated
27 under A.R.S. § 12-821.01. Plaintiff is therefore unable to maintain a lawsuit against
28 Detective Trabue in his official capacity as a public employee. Detective Trabue must be
29 dismissed in his official capacity and with the undisputed facts, the issue is ripe for
30 decision. Further, Plaintiff does not have the ability to file an Amended Complaint to

1 cure the Notice of Claim defect because the cause of action is time barred. Accordingly,
2 counsel undersigned respectfully requests that Defendant's Rule 12(b)(6) Motion and this
3 Reply also be applied to Plaintiff's First Amended Complaint.

4 **MEMORANDUM OF POINTS AND AUTHORITY**

5 **I. Plaintiff Did Not Serve Detective Trabue with a Notice of Claim within the**
6 **Statutory Time Period and Therefore Cannot Maintain a Lawsuit against Detective**
7 **Trabue in his Official Capacity because it is Now Time-Barred**

8 **A. Plaintiff must provide Notice of Claim to Public Employee**

9 The Arizona Notice of Claim statute is clear: in order to maintain a claim against
10 a public employee acting in the scope of his employment, a plaintiff must file a proper
11 Notice of Claim with not only the public entity and with the public employee. A.R.S. §
12 12-821.01(A); see *Harris v. Cochise Health Systems*, 215 Ariz. 344, 351-52, 160 P.3d
13 223, 230-31 (Ariz. 2007) (requiring dismissal of public employee because plaintiff failed
14 to provide separate Notice of Claim); see also *Crum v. Superior Court*, 186 Ariz. 351,
15 352, 922 P.2d 316, 317 (App.Div.1, 1996) (holding that compliance with statute requires
16 Notice of Claim to both the individual public employee and the public entity when the
17 plaintiff alleges tortuous acts within the scope of their employment). Any Notice of
18 Claim which is not filed within one-hundred eighty days after the cause of action accrues
19 is barred and no action may be maintained thereon. A.R.S. § 12-821.01(A); *Falcon ex rel*
20 *Sandoval v. Maricopa County*, 213 Ariz. 525, 527, 144 P.3d 1254, 1256 (Ariz. 2006).
21 Here, Plaintiff does not and has not purported to have provided proper Notice of Claim to
22 Detective Trabue within the statutory limit. As a matter of law, Defendant Trabue must
23 be dismissed pursuant to the statute.

24 **B. Failure to comply with Notice of Claim Statute is not cured by** 25 **substantial compliance**

26 Plaintiff argues that service on the public entity (the City of Yuma) alone will
27 suffice under the statute. See Plaintiff's Response, page 3, lines 1-6. It will not. The
28 Arizona Notice of Claim statute requires strict compliance. *Nored v. City of Tempe*, 614
29 F.Supp.2d 991, 995 (D. Ariz. 2008), citing *Deer Valley Unified Sch. Dist. No. 97 v.*
30 *Houser*, 214 Ariz. 293, 298 n.6, 152 P.3d 490, 495 n.6 (Ariz. 2007). Substantial

1 compliance and constructive or even actual notice will not suffice. *Id.*; citing *Matineau*
2 *v. Maricopa County*, 207 Ariz. 332, 337, 86 P.3d 912, 917 (App.Div.1, 2004) (rejecting
3 substantial compliance and actual notice arguments); *Falcon*, at 527, 144 P.3d at 1256
4 (actual notice and substantial compliance do not excuse failure to comply with the
5 statutory requirements of A.R.S. § 12-821.01(A)); *Harris*, at 351-52, 160 P.3d at 230-31
6 (dismissal of public employee who did not receive separate Notice of Claim even though
7 employee had actual notice of the claim). Under strict compliance, and contrary to
8 Plaintiff's assertions, it is necessary "to simultaneously maintain the same claim against
9 the "public employee" in this circumstance where the "public entity" is already
10 responsible". See Plaintiff's Response, page 3, lines 4-6. *Haab v. County of Maricopa*,
11 219 Ariz. 9, 12, 191 P.3d 1025, 1028 (App.Div.1, 2008) (failure to comply with statute is
12 not cured by actual notice or substantial compliance).

13 **II. Strict Compliance with the Notice of Claim Statute Prevents Plaintiff**
14 **from Curing the Notice of Claim Deficiency by Filing an Amended Complaint**

15 Failure to file a Notice of Claim within the statutory time period is treated as a
16 statute of limitations. *Pritchard v. State of Arizona*, 163 Ariz. 427, 433, 788 P.2d 1178,
17 1183 (Ariz. 1990). Again, the Notice of Claim statute, on its face, requires strict
18 compliance and the legislature has abolished the reasonable standard previously applied
19 by the courts. *Deer Valley Unified Sch. Dist. No. 97*, at 298, 152 P.3d at 495.

20 While Rule 15 of the Arizona Rules of Civil Procedure allows parties to amend
21 their pleadings and the amended pleadings generally "relate back" to the date of the
22 original pleading, it simply does not work in this case. ARCP R. 15(c). Plaintiff has
23 filed an amended complaint seeking to rewind the clock and cure the defect under the
24 "relation back" doctrine. This is not permissible. Plaintiff's failure to provide Notice of
25 Claim to Detective Trabue individually within the statutorily prescribed time limits
26 barred the claim before the filing of Plaintiff's original complaint. The "relation back"
27 doctrine only resets the clock to the date of the original complaint. ARCP R. 15(c); see
28 also *O'Keefe v. Grenke*, 170 Ariz. 460, 466, 825 P.2d 985, 991 (App.Div.1, 1992) (not
29 allowing claims to "relate back" and defeat statute of limitations defense when attorney
30 made tactical choice not to assert claims in lawsuit). No Arizona Rule of Civil Procedure

1 authorizes a plaintiff to file an amended complaint in order to circumvent the strictly
2 applied Notice of Claim statute.

3 **III. Plaintiff's Filing of an Amended Complaint did not Render Defendant's**
4 **12(b)(6) Motion to Dismiss Moot**

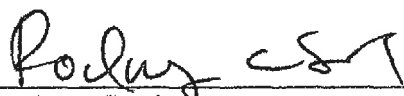
5 Plaintiff asks this Court to deny Defendant's Rule 12(b)(6) Motion to Dismiss
6 because Plaintiff believes the filing of the amended complaint cures the Notice of Claim
7 deficiency and through the cure, Defendant's Motion becomes moot. For the reasons
8 discussed in Part I and Part II above, the issue is not moot. Plaintiff admits, in the
9 original complaint, the amended complaint and in Plaintiff's Response, that Notice of
10 Claim was only provided to the City of Yuma. Plaintiff elected not to provide Notice of
11 Claim to the individual public employee, who Plaintiff alleges is the tortfeasor. While
12 Plaintiff's amended complaint may more precisely frame the causes of action alleged, it
13 did not provide "a change in condition" so as to render Defendant's Motion moot. The
14 "relation back" doctrine only relates back to the time of the original pleading; if the claim
15 was time barred then (and it was), it remains time-barred under the amended complaint as
16 well. There is no cure. Defendant's motion to dismiss Detective Trabue must be granted.

17 **IV. Conclusion**

18 Based on the foregoing, counsel undersigned respectfully requests this Court grant
19 Defendant's 12(b)(6) Motion to Dismiss for Failure to State a Claim Upon Which Relief
20 May be Granted. Plaintiff failed to provide Detective Trabue with the statutorily required
21 Notice of Claim in the time permitted which now bars the claim. Plaintiff's filing of an
22 amended complaint does not cure the failure and may not circumvent the strict statutory
23 requirements. Accordingly, Detective Trabue should be dismissed from this lawsuit.

24 RESPECTFULLY SUBMITTED this 21st day of September, 2012.

25 CITY OF YUMA CITY ATTORNEY'S OFFICE

26
27 
28 _____
29 Rodney C. Short
30 Assistant City Attorney

1 Copy of the foregoing delivered this 21st
2 day of September, 2012 to:

3 The Honorable John N. Nelson

4 Copy of the foregoing mailed this 21st day
5 of September, 2012, to:

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14 By 
15 Christina R. Ramirez