

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Charnelle Marie Bjelkengren
Charnelle Marie Lockhart

2. **Position**: State the position for which you have been nominated.

United States District Judge for the Eastern District of Washington

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: Spokane County Superior Court
1116 West Broadway Avenue
Spokane, Washington 99260

Residence: Spokane Valley, Washington

4. **Birthplace**: State year and place of birth.

1975; Great Lakes, Illinois

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1997 – 2000, Gonzaga University School of Law; J.D., 2000

1993 – 1997, Mankato State University; B.A., B.S. (*cum laude*), 1997

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2019 – present
Spokane County Superior Court

1116 West Broadway Avenue
Spokane, Washington 99260
Superior Court Judge

2013 – 2019
State of Washington, Office of Administrative Hearings
16201 East Indiana Avenue
Spokane Valley, Washington 99216
Senior Administrative Law Judge (2017 – 2019)
Administrative Law Judge (2013 – 2017)

2001 – 2003, 2004 – 2013
Washington State Office of the Attorney General
1116 West Riverside Avenue
Spokane, Washington 99201
Assistant Attorney General

2000
Express Employment Professionals
331 West Main Avenue
Spokane, Washington 99201
Legal Assistant

1998 – 2000
United States Attorney's Office
Eastern District of Washington
920 West Riverside Avenue, Suite 340
Spokane, Washington 99201
Legal Intern

Other Affiliations (uncompensated)

2021 – 2022
Washington State Superior Court Judges' Association
P.O. Box 41170
Olympia, Washington 98504
Member, Board of Trustees

2022 – present
Spokane Valley Kiwanis Club
P.O. Box 1275
Spokane Valley, Washington 99037
Member, Board of Directors

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social

security number) and type of discharge received, and whether you have registered for selective service.

I did not serve in the military. I was not required to register for the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Gonzaga University School of Law Diversity Scholarship (1997 – 2000)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

National Association of Unemployment Insurance Appeals Professionals Conference Committee (June 2018)

Spokane County Bar Association (2019 – present)

Diversity Section (2019 – present)

Carl Maxey Scholarship Committee (2021)

Systemic Racism Taskforce (2022)

Volunteer Lawyers Program Advisory Committee (2021 – present)

Spokane County Juvenile Court Triplett Award Selection Committee (2021)

Washington State Bar Association (2001 – present)

Washington State Office of Civil Legal Aid Right to Counsel Technical Advisory Workgroup (2021)

Washington State Superior Court Judges' Association (2019 – present)

District Six Trustee (2021 – 2022)

Equality and Fairness Committee (2019 – present)

Spokane County Superior Court Color of Justice Planning Committee
(March 2020)

Judicial Ethics Committee (2019 – 2021)

Legislative Committee (2020 – 2021)

Washington State Racial Justice Consortium (2020 – 2022)

Racial Justice Workgroup (2020 – 2021)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Washington, 2001

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

I have not been admitted to practice in any other courts.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

NAACP, Spokane Chapter (2020 – present)

Spokane Valley Kiwanis Club (2020 – present)
Elected to the Board (2022)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, the organizations listed above do not currently discriminate on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies. Prior to 1987 and prior to my membership, Kiwanis did not permit women to be members.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Micdrop What I know, Spokane Coeur d'Alene Living Magazine, May 2019.
Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Action Plan, Washington State Racial Justice Consortium (2022). Copy supplied.

Right to Counsel for Indigent Tenants: Implementation Plan, Washington State Office of Civil Legal Aid (2021). While my name is listed as helping to guide the process, I did not prepare or contribute to the drafting of the Implementation Plan. I participated in meetings that formed the basis for this plan. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Personal and Professional Commitment to Equality, Spokane Superior Court (June 26, 2020). I participated in drafting this statement with my bench mates. Copy supplied.

While I served as a trustee on the board for the Washington State Superior Court Judges' Association, the president of the association issued the following letters on letterhead which included my name. Although my name is on the letterhead, I had no role in drafting or approving these letters.

Washington State Superior Court Judges' Association Letter regarding ESHB 1169 Concerning Sentencing Enhancements (Mar. 2, 2022). Copy supplied.

Washington State Superior Court Judges' Association Letter regarding Funding for Re-entry Support and Teleservice Staffing (Feb. 28, 2022). Copy supplied.

Washington State Superior Court Judges' Association Letter regarding Right to Counsel Program (Feb. 7, 2022). Copy supplied.

Washington State Superior Court Judges' Association Letter regarding One Time Budget Request Benefiting Washington Superior Courts (Feb. 5, 2022). Copy supplied.

Washington State Superior Court Judges' Association Letter regarding One Time

Budget Request Benefiting Washington Superior Courts (Feb. 5, 2022). Copy supplied.

Washington State Superior Court Judges' Association Letter regarding One Time Budget Request Benefiting Washington Superior Courts (Feb. 4, 2022). Copy supplied.

Washington State Superior Court Judges' Association Letter regarding HB 1916 – Supporting crime victims and witnesses (Jan. 24, 2022). Copy supplied.

Washington State Superior Court Judges' Association Letter regarding SB 5663 Blake Stream-lined Procedures (Jan. 24, 2022). Copy supplied.

Washington State Superior Court Judges' Association Letter regarding Enforcement of Residential Landlord-Tenant Act (Jan. 7, 2022). Copy supplied.

The following Washington State Superior Court Judges' Association Board of Trustee Meetings Minutes identify me as offering comments at the meeting.

Washington State Superior Court Judges' Association Board of Trustees Meeting Minutes (Apr. 2, 2022). Copy supplied.

Washington State Superior Court Judges' Association Board of Trustees Meeting Minutes (Feb. 5, 2022). Copy supplied.

Washington State Superior Court Judges' Association Board of Trustees Meeting Minutes (Jan. 8, 2022). Copy supplied.

Washington State Superior Court Judges' Association Letter to Washington State Supreme Court Justice Gonzalez (Nov. 10, 2021). Copy supplied.

As an assistant attorney general for the state of Washington, I represented Big Bend Community College from approximately 2005 to 2013, advising the college on all legal issues. I attended the majority of meetings (both open and closed) of the College's Board of Trustees. These meetings were open to the public and meeting minutes are publicly available upon request. The following Big Bend Community College Board of Trustees Regular Meeting Minutes identify me as speaking at the meeting.

Big Bend Community College Board of Trustees Regular Meeting Minutes (Apr. 5, 2012). Copy supplied.

Big Bend Community College Board of Trustees Regular Meeting Minutes (Mar. 5, 2012). Copy supplied.

Big Bend Community College Board of Trustees Regular Meeting Minutes (Feb.

17, 2012). Copy supplied.

Big Bend Community College Board of Trustees Regular Meeting Minutes (June 26, 2007). Copy supplied.

Big Bend Community College Board of Trustees Regular Meeting Minutes (May 29, 2007). Copy supplied.

Big Bend Community College Board of Trustees Regular Meeting Minutes (Apr. 10, 2007). Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

April 27, 2022: Speaker, Superior Court Judges' Association Annual Business Meeting, (virtual). I made brief remarks encouraging the Association to attend listening sessions to learn about the Racial Justice Consortium Action Plan and provide feedback. I have no notes, transcript, or recording. The address for the Superior Court Judges' Association is P.O. Box 41170, Olympia, Washington 98504.

April 12, 2022: Speaker, Mock Trial Team Banquet, The Oaks Classical Christian Academy, Spokane Valley, Washington. I encouraged the team to give back to their community. I have no notes, transcript, or recording. The address for the Oaks Classical Christian Academy is 1171 East 24th Avenue, Spokane Valley, Washington 99206.

March 13, 2022: Panelist, "A Day in the Life of a Judge," Fellows Clinic, Washington State Judicial Institute (virtual). I answered questions about a judge's daily schedule, duties, community involvement, and work/life balance. I have no notes, transcript, or recording. The address for the Washington State Judicial Institute is 1001 4th Avenue, Suite 4200, Seattle, Washington 98154.

May 14, 2021: Panelist, Volunteers Lawyer's Program, Justice Breakfast, Spokane County Bar Association, Spokane, Washington. I talked about the struggles of unrepresented litigants, and the benefits of volunteer lawyers in family law cases. I have no notes, transcript, or recording. The address for the Spokane County Bar Association Volunteers Lawyer's Program is 1116 West Broadway Avenue, Fourth Floor, Spokane, Washington 99260.

April 19, 2021: Competition Judge, Gonzaga Law School Trial Advocacy Mock Trial, Spokane, Washington. I judged the Trial Advocacy class mock trial. I have no notes, transcript, or recording. The address for Gonzaga Law School is P.O. Box 3528, 721 North Cincinnati Street, Spokane, Washington 99220.

March 19, 2021: Competition Judge, YMCA Mock Trial Competition (virtual). I judged a round of the competition. I have no notes, transcript, or recording. The address for the YMCA Mock Trial, Washington Administrative Office of the Courts is 1112 Quince Street Southeast, Olympia, Washington 98501.

January 26, 2021: Panelist, High School for Recording Arts (virtual). I discussed being the first in my family to graduate with a bachelor's degree and my path to the bench. I have no notes, transcript, or recording. The address for the High School for Recording Arts is 1166 University Avenue West, St. Paul, Minnesota 55104.

October 15, 2020: Panelist, Bridging the Gavel Gap, Washington State Judicial Institute (virtual). I discussed my professional experience, why I became a judge, my path to the bench, challenges of being a judge and advice for the attendees. I have no notes, transcript, or recording. The address for the Washington State Judicial Institute is 1001 4th Avenue, Suite 4200, Seattle, Washington 98154.

October 14, 2020: Panelist, Pathways to the Bench, Washington State Judicial Institute (virtual). Notes supplied.

February 21, 2020: Panelist, Beyond Justice: From Incarceration to Liberation, The Steering Committee of the Peer Navigator Training Program, and Community Engagement Initiative in partnership with the Spokane Regional Law & Justice Council Racial Equity Committee and Wilburn and Associates. Notes supplied.

2020 (specific date unknown): Speaker, spoke to home school student group about my job and Superior Court, Spokane, Washington. Notes supplied.

August 30, 2019: Guest, Roundtable, Legal Education and Networking Group, Spokane, Washington. I introduced myself as a recently appointed judge and spoke about superior court practice. I have no notes, transcript, or recording. The Legal Education and Networking Group does not have a mailing address.

July 15, 2019: Panelist, Law Enforcement and Criminal Justice Update, NAACP, Spokane Chapter, Spokane, Washington. I introduced myself as a recently appointed judge and answered questions about diversity in the legal system. I have no notes, transcript, or recording. The address for the NAACP, Spokane Chapter is 25 Main Avenue #239, Spokane, Washington 99201.

May 2019 (specific date unknown): Speaker, Campaign for Equal Justice, Legal Foundation of Washington, Spokane, Washington. I spoke about access to justice in the court system and my experience with unrepresented litigants. I have no notes, transcript, or recording. The address for the Legal Foundation of Washington is 1325 4th Avenue, Suite 1335, Seattle, Washington 98101.

April 1, 2019: Speaker, Chase Middle School Scholars event, Spokane, Washington. Notes supplied.

June 17, 2018: Speaker, The Elements of a Sound Decision, National Association of Unemployment Insurance Appeals Professionals Conference Committee, Annapolis, Maryland. PowerPoint supplied.

Fall 2017 (specific date unknown): Speaker, University of Idaho School of Law, Moscow, Idaho. I discussed administrative law and hearings. I have no notes, transcript, or recording. The address for the University of Idaho School of Law is 711 South Rayburn Street, Moscow, Idaho 83844.

2014 (specific date unknown): Panelist, State of Washington Attorney General's Office, Spokane, Washington. I discussed and answered questions about best practices for appearing at the Office of Administrative Hearings. I have no notes, transcript, or recording. The address for the State of Washington Attorney General's Office is 1116 West Riverside Avenue, Spokane, Washington 99201.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Emma Epperly, *'It's Watching Life Unfold in Front of You' Judge Maryann Moreno to Retire After Nearly 20 Years on Bench*, The Spokesman-Review, June 29, 2022. Copy supplied.

Julie Griffith, *Beyond the Bench: An Interview with Judge Charnelle Bjelkengren*, Spokane County Bar Association Calendar Call, Sept. 8, 2020. Copy supplied.

Chantell Cosner, *All Rise Podcast*, Gonzaga School of Law, Apr. 22, 2020. Video available at <https://www.youtube.com/watch?v=RJuExC6w3S0>.

Will Campbell, *Gov. Inslee appoints first female African American judge in Eastern Washington to Spokane County Superior Court*, The Spokesman-Review, Apr. 10, 2019. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by Governor Jay Inslee to the Spokane County Superior Court, State of Washington, effective May 1, 2019. On November 5, 2019, I was elected (unopposed) to complete the term of my predecessor on the Spokane County Superior Court. On November 3, 2020, I was elected (unopposed) to a four-year term on the Spokane County Superior Court. Washington superior courts are courts of general jurisdiction, handling criminal, civil, domestic, and juvenile matters. Since July 1, 2021, I have been assigned to the individual (trial) calendar docket.

In 2013, I was hired as an administrative law judge for the Washington State Office of Administrative Hearings, effective December 2013. This agency presides over hearings involving multiple state agencies, including the Department of Social and Health Services, the Department of Children, Youth and Families, the Employment Security Department, the Liquor Control Board, Department of Licensing, Department of Labor and Industries and more. The majority of the orders I issued were Initial Orders that were appealable to a commissioner or board who then issued a Final Order.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

Since May 1, 2019, according to court records, I have presided over 130 jury or bench trials that have gone to verdict or judgment.

- i. Of these cases, approximately what percent were:

jury trials:	17%
bench trials:	83%

- ii. Of these cases, approximately what percent were:

civil proceedings:	82%
criminal proceedings:	18%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

All orders, opinions, and decisions I have entered are available in the individual Spokane County Superior Court case files maintained by the Spokane County Superior Court Clerk's Office. Opinions and Orders from superior court judges are not published in the State of Washington.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Deviney v. Deviney*, No. 20-3-00727-32 (Wash. Sup. Ct Spokane Cnty. May 3, 2021); No. 38237-1-III (Wash. Ct. App. Aug. 30, 2022). Copies supplied.

In Washington state, all property acquired during marriage is presumed to be community property, except when property is acquired by inheritance it is considered separate property. Respondent purchased real property and an investment account with an inheritance he received during the marriage. The property was placed in both parties' names. In this contested divorce proceeding, Petitioner asserted that placing her name on the property indicated an intent to transfer the separate property to the community. I rejected this argument because the law is well settled that a name on a title or deed is not determinative of intent to transfer separate property to the community. Respondent credibly testified that he did not intend to transfer his separate property to the community. Therefore, I concluded the property Respondent purchased with his inheritance remained his separate property. Petitioner appealed and the court of appeals upheld my decision.

Counsel for Petitioner:

Olaf Hansen
Pacific Northwest Family Law
220 West Main Avenue
Spokane, WA 99201
(509) 319-2900

Counsel For Respondent:

Matthew Dudley
Attorney at Law
104 South Freya Street, Suite 120A
White Flag Building
Spokane, WA 99202
(509) 534-9180

2. *State of Washington v. Cardon*, No. 20-1-10785-32, 22-1-00933-32 (Wash. Sup. Ct. Spokane Cnty. Aug. 23, 2022). Copies supplied.

Defendant was the restrained party in a no-contact order. Mr. Temple observed Defendant contacting the protected party and attempted to intervene. As Mr. Temple did so, Defendant hit him in the arm with a bat, breaking Mr. Temple's arm. Defendant was charged with second-degree assault and violation of a no-contact order. While incarcerated, Defendant made phone calls to the protected party and was subsequently charged with six counts of violating a no-contact order and two counts of tampering with a witness. After a jury trial, Defendant was found guilty of all counts. At sentencing, Defendant requested a mental

health sentencing alternative which would have resulted in approximately 12 months of incarceration. I ruled that the evidence did not establish that Defendant and the community would benefit from the mental health sentencing alternative or that Defendant was willing to participate in mental health treatment, which is required by the statute. I sentenced Defendant to 75 months incarceration and 18 months community custody, which was within the standard sentencing range.

Counsel for the State:

Joseph Edwards
Spokane County Prosecutor's Office
1100 West Mallon Avenue
Spokane, WA 99260
(509) 477-3662

Counsel for Defendant:

Ellen Dexter
Kirsten Svendsen
Spokane County Public Defender's Office
1033 West Gardner Avenue
Spokane, WA 99201
(509) 477-4843

3. *State of Washington v. Carillo*, No. 22-1-00465-32 (Wash. Sup. Ct. Spokane Cnty. Aug. 10, 2022).

An officer observed Defendant walking with a female in a grocery store parking lot toward a vehicle that was registered to a male with an outstanding warrant. Defendant did not match the booking photo of the vehicle owner so the officer asked Defendant about the owner. Defendant explained he had not seen the owner in a while and did not have contact information for him. He identified himself with his brother's name and returned to the store. The officer learned that Defendant provided false information and went to the store to locate Defendant who then ran out of the store. Multiple officers and a K-9 unit joined in the pursuit before Defendant was apprehended hiding behind a residence and arrested. Defendant was charged with violating a no contact order because the female with whom he had been walking in the parking lot was the protected party in the order. He was also charged with resisting arrest and making a false or misleading statement to a public servant. After a jury trial, Defendant was found guilty of all charges. At sentencing, Defendant requested a mental health sentencing alternative. I denied the request because Defendant did not establish, as required by statute, that he had a serious mental illness.

Counsel for the State:

Emily Leddige
Spokane County Prosecutor's Office
1100 West Mallon Avenue
Spokane, WA 99260
(509) 477-3662

Counsel for Defendant:

Ellen Dexter
Spokane County Public Defender's Office
1033 West Gardner Avenue
Spokane, WA 99201
(509) 477-4843

4. *State of Washington v. Gilmore*, No. 22-1-00322-32 (Wash. Sup. Ct Spokane Cnty. May 27, 2022). Copy supplied.

Defendant was stopped by law enforcement for a vehicle license trip permit violation. During the course of the traffic stop, law enforcement learned that the defendant had an outstanding misdemeanor warrant. After Defendant was arrested and before he was given a Miranda warning, he asked the officers to retrieve his phone from his car so he could contact his employer. He indicated it would be on the passenger-side seat. He did not give consent to search his vehicle. The officer went through the driver's-side door and lifted a baseball cap which was covering a firearm. Defendant subsequently consented to search of his vehicle indicating that there was nothing of value besides the firearm. Defendant was charged with unlawful possession of a firearm and moved to suppress the firearm. I granted the motion to suppress, reasoning that the officers conducted an unlawful search of the vehicle. Defendant had not been advised of his Miranda rights and did not give consent to search his vehicle, beyond the passenger seat, prior to the seizure of the firearm. The state subsequently moved to dismiss the case. I granted the motion to dismiss.

Counsel for the State:

Brytney Stanley
Spokane County Prosecutor's Office
1100 West Mallon Avenue
Spokane, WA 99260
(509) 477-3662

Counsel for the Defendant:

Kyle Madsen
Spokane County Public Defender's Office
1033 West Gardner Avenue

Spokane, WA 99201
(509) 477-4246

5. *Thurman v. Cowles Company*, No. 21-2-01609-32 (Wash. Sup. Ct Spokane Cnty. June 1, 2022). Copy supplied.

The Sheriff's Department issued a press release regarding Mr. Thurman's termination from employment following allegations that that he made violent, racist, and threatening comments. The Cowles Company/Spokesman Review (Cowles), a news organization, published articles regarding the termination. Mr. Thurman filed a defamation lawsuit and a Consumer Protection Act (CPA) cause of action against Cowles. Cowles filed a special motion for expedited relief under Revised Code of Washington 4.105, the Uniform Public Expression Act (Act). At the time of the special motion, there was no Washington case law addressing this law, which had been enacted in 2021. Mr. Thurman argued the Act is indistinguishable from a prior Washington anti-SLAPP law that had been struck down as unconstitutional. I rejected that argument because the Act employs a standard similar to the summary judgment standard, which is constitutional. I also held, however, that because the instant defamation claim was brought before the effective date of the Act, it was therefore not subject to a special motion. I dismissed the CPA claim as it was based on acts which did not occur within trade or commerce. Both parties appealed this decision to the court of appeals, which is where the matter is currently pending.

Counsel for Plaintiff:

Mary Schultz Law, PS
2111 East Red Barn Lane
Spangle, WA 99031
(509) 245-3522

Counsel for Defendant:

Casey Brunner
Sawyer Margett
Witherspoon Kelley
422 West Riverside Avenue, Suite 1100
Spokane, WA 99201
(509) 624-5265

6. *In the Matter of the Marriage of Mulholland & Leuser*, No. 18-3-00842-32 (Wash. Sup. Ct. Spokane Cnty. Oct. 27, 2020); No. 37864-1-III (Wash. Ct. App. Jan. 25, 2022).

Petitioner was awarded spousal support in a stipulated order. The agreement was unconventional – allowing for spousal support until Petitioner obtained

employment or began receiving social security disability (SSD) benefits. The judge made a notation in the order explaining that the arrangement was discussed with the Petitioner, that it was vague, and may not be enforceable. Nearly two years later, after Petitioner had not obtained employment or SSD benefits, Respondent brought a motion for post-judgment relief seeking declaratory judgment that the precondition of Petitioner seeking employment or SSD benefits had been met, allowing an end to spousal support. The court commissioner denied post-judgment relief and I was assigned to hear Respondent's revision motion, which is an appeal of a commissioner's decision. On revision, Respondent characterized his motion as a motion for clarification. I ruled that he had not made this motion to the court commissioner. Further, I did not have sufficient evidence to determine whether Petitioner had been given a "reasonable time" to obtain employment or SSD benefits. I denied the motion for revision because Respondent should have brought a motion to terminate spousal support or a motion to clarify the order awarding spousal support. Respondent appealed to the court of appeals. The court of appeals ruled that both the commissioner and superior court should have addressed the merits of Respondent's motion. The court of appeals agreed that Respondent did not present sufficient evidence for the superior court to render a decision as to whether Petitioner had been given a reasonable amount of time to obtain employment or SSD benefits. The court remanded to the superior court to determine the reasonable time in which Petitioner should have obtained employment or benefits. Ultimately, on remand, the parties settled the matter.

Petitioner did not participate.

Respondent:

Evan Dobbs
Crouse Erickson, PLLC
422 West Riverside Avenue, Suite 920
Spokane, WA 99201
(509) 590-0207

7. *West Terrace Golf LLC v. City of Spokane*, No. 17-2-02120-7 (Wash. Sup. Ct. Spokane Cnty. Dec. 2, 2021). Copy supplied.

The City of Spokane owns and operates a municipal water system providing water service to customers inside and outside city limits. Plaintiff argued the city charges customers located outside city limits nearly 200 percent what it charges customers who are within the city limits, in violation of Revised Code of Washington (RCW) 80.28, which sets utility rate standards. According to those standards, rates must be just, fair, reasonable, and sufficient. Defendant argued that the city water rates are instead governed by RCW 39.92.010 and the Washington State Constitution. RCW 39.92.010 requires that rates must be uniform and sufficient to operate the water system but does not include a just and

reasonable requirement. Both parties moved for declaratory relief. I ruled RCW 39.92.010 and the Constitution control water rates, not RCW 80.28. Moreover, a separate statutory provision, RCW 80.04.500, exempts municipal water systems from the utility rate standards. The matter is currently pending in the court of appeals.

Counsel for Petitioner:

Robert Dunn
Alexandria Drake
Dunn & Black, P.S.
111 North Post Street, Suite 300
Spokane, WA 99201
(509) 455-8711

Counsel for Respondents:

Michael F. Connelly
Megan C. Clark
Etter McMahon Lamberson Van Were & Oresk
618 West Riverside Avenue, Suite 210
Spokane, WA 99201
(509) 850-9124

8. *State of Washington v. Andersen*, No. 19-1-10610-32 (Wash. Sup. Ct. Spokane Cnty, Nov. 12, 2021). Copy supplied.

Defendant was charged with five counts of drive-by shooting from an incident that occurred on July 5, 2019. Defendant was also charged with one count of murder in the first degree and two counts of attempted murder in the first degree from an incident that occurred on July 7, 2019. Defendant moved to sever the charges in the July 5, 2019, incident from the July 7, 2019, incident. I applied the following factors identified in *State v. Bythrow*, 114 Wn.2d 713, 718, (1990): the strength of the evidence on each count; (2) the clarity of the defenses on each count; and (3) the admissibility of evidence of other crimes if they are tried separately. I ruled that the evidence in the July 7, 2019, incident was much stronger than July 5, 2019. Also, there was limited cross admissibility of evidence. Specifically, there would be admissible evidence relating to the murder charge that would not relate to the drive-by shooting. Therefore, I granted the motion to sever the charges.

Counsel for the State:

Dale Nagy
Spokane County Prosecutor's Office
1100 West Mallon Avenue

Spokane, WA 99260
(509) 477-3662

Counsel for Defendant:

Karen Lindholdt
1310 West Dean Avenue
Spokane, WA 99201
(509) 994-7423

9. *State of Washington v. Herkimer*, No. 19-1-00323-6 (Wash. Sup. Ct. Spokane Cnty. Oct. 31, 2019), No. 37222-7-III (Wash. Ct. App. Mar. 11, 2021). Copy supplied.

Defendant was accused of breaking and entering into the home of an elderly woman and charged with residential burglary, second degree burglary and third-degree malicious mischief. A responding officer observed shoeprints in the snow and a vehicle traveling from the house, coming from the direction in which the shoeprints led. The officer apprehended Defendant's vehicle parked in a nearby driveway. Initially, Defendant did not respond to the officer's commands to exit the vehicle but eventually complied. After Defendant was arrested, he explained he thought the reason he was stopped was because he was driving around late at night and pulled into a stranger's driveway. The officer looked at the soles of Defendant's shoes and matched them to the shoeprints in the snow that led to the house that was burglarized. I ruled on pretrial motions, including a motion to admit Defendant's statements about pulling into a stranger's driveway. Defendant did not seek to suppress the footprints. A jury found Defendant guilty of all charges. Defendant appealed the convictions on the basis of ineffective assistance of counsel, arguing that his counsel should have made a motion to suppress based on an unconstitutional stop and arrest. Because Defendant did not raise these issues at the trial court level, and probable cause had not been at issue, the state had not developed a record with regard to the stop and arrest. The court of appeals declined review because the record was insufficient to establish actual prejudice. All convictions were upheld by the court of appeals.

Counsel for the State:

Mark Lindsey
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1100 West Mallon Avenue
Spokane, WA 99260
(509) 477-3662

Counsel for Defendant:

Peter Van Akin

Spokane County Public Defender's Office
1033 West Gardner Avenue
Spokane, WA 99201
(509) 477-4246

10. *State of Washington v. Bost*, No. 18-1-004510 (Wash. Sup. Ct. Spokane Cnty. Dec. 19, 2019). Copy supplied.

Defendant was arrested on charges of second-degree murder and unlawful possession of a firearm. He moved to dismiss the charges based upon an alleged violation of Washington State Criminal Rule 3.3, which provides that a defendant detained in jail shall be brought to trial within 60 days of arraignment. The time period for any competency proceeding is excluded from the 60 days. After Defendant was placed in custody, multiple continuances were granted by different judges on our court due to his ongoing competency proceedings. Defendant argued that he was not brought to trial within the required time frame because any proceedings that occurred between June 2018 and May 2019, were not related to his competency. I ruled that all proceedings, including his attorney seeking a second and independent evaluation, were related to Defendant's competency to stand trial. The excludable period for competency proceedings does not end until the court enters an order finding Defendant competent. I therefore found no Rule 3.3 violation and denied the motion to dismiss. The record indicates that Defendant was acquitted by reason of insanity, and his case remains pending before a different judge.

Counsel for the State:
Sharon Hedlund
Spokane County Prosecutor's Office
1100 West Mallon Avenue
Spokane, WA 99260
(509) 477-3662

Defendant proceeded pro se

Stand by Counsel for Defendant:

Anthony Beattie
Steven Reich
Spokane County Public Defender's Office
1033 West Gardner Avenue
Spokane, WA 99201
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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys

who played a significant role in the case.

As is standard practice in superior court, after I issue an oral ruling, the parties draft order(s), and I sign the order that best reflects my oral ruling. Accordingly, the decisions provided in response to Question 13c are drafted by the parties. The below list reflects letter rulings I have drafted.

1. *Adrian v. Adrian*, No. 20-3-00472-32 (Wash. Sup. Ct. Spokane Cnty., Sept. 14, 2021). Copy supplied.

Morgan Maxey
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(509) 828-4936

Andrea Poplawski
Poplawski Law
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Spokane, WA 99201
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2. *McCormick v. Prosecuting Attorney of Spokane County*, No. 20-2-00308-32 (Wash. Sup. Ct. Spokane Cnty., May 6, 2020). Copy supplied.

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Emily Sullivan
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- e. Provide a list of all cases in which certiorari was requested or granted.

Certiorari has not been requested or granted in any of my cases.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

In the Matter of the Marriage of Mulholland & Leuser, No. 18-3-00842-32 (Wash. Sup. Ct Spokane Cnty. Oct. 27, 2020), *remanded*, No. 37864-1-III (Wash. Ct. App. Jan. 25, 2022). Copies supplied. Petitioner was awarded spousal support in a stipulated order. The agreement was unconventional – allowing for spousal support until Petitioner obtained employment or began receiving social security disability (SSD) benefits. The judge made a notation in the order explaining that the arrangement was discussed with Petitioner, that it was vague, and may not be enforceable. Nearly two years later, after Petitioner had not obtained employment or SSD benefits, Respondent brought a motion for post-judgment relief seeking declaratory judgment that the precondition of Petitioner seeking employment or SSD benefits had been met, allowing an end to spousal support. The court commissioner denied post-judgment relief and I was assigned to hear Respondent’s motion for revision, which is an appeal from the court commissioner’s decision. On revision, Respondent characterized his motion as a motion for clarification. I ruled that he had not made this motion to the court commissioner. Further, I did not have sufficient evidence to determine whether Petitioner had been given a “reasonable time” to obtain employment or SSD benefits. I denied the revision motion reasoning Respondent should have brought a motion to terminate spousal support or a motion to clarify the order awarding spousal support. Respondent appealed to the court of appeals. The court of appeals ruled that both the commissioner and superior court should have addressed the merits of Respondent’s motion. The court of appeals agreed that Respondent did not present sufficient evidence for the superior court to render a decision as to whether Petitioner had been given a reasonable amount of time to obtain employment or SSD benefits. The court remanded to the superior court to determine the reasonable time in which Petitioner should have obtained employment or benefits. Ultimately, on remand, the parties settled the matter.

State of Washington v. Populus, No. 16-1-02652-5 (Wash. Sup. Ct. Spokane Cnty March 11, 2020), *vacated in part and remanded*, 18 Wash. App. 2d 1022 (Wash. Ct. App. July 15, 2021). Copy supplied. Defendant was accused of responding to law enforcement’s Craigslist ads through a “Net Nanny” sting. He corresponded with an undercover police officer and planned to have sexual intercourse with her child. When Defendant arrived at the agreed upon location, he was arrested. A jury found Defendant guilty of Attempted Rape of a Child in the First Degree. Defendant appealed the assessment of legal financial obligations. The Court of Appeals ruled that the judgment and sentence miscalculated the legal financial obligations and held that Defendant should not be assessed court costs for the criminal filing fee because he was found indigent. The matter was remanded to superior court to strike the \$200 in court costs.

State of Washington v. Hiatt, No. 18-1-05601-32 (Wash. Sup. Ct. Spokane Cnty. Sept. 10, 2019), *rev’d*, 17 Wash. App. 2d 1050 (Wash. Ct. App. May 13, 2021). Copy supplied.

Defendant was charged with possession of a stolen motor vehicle and making or possessing a motor vehicle theft tool. Defendant was sleeping in his Ford Expedition which was inoperable. A stolen Honda Accord was chained and padlocked to the Expedition. Defendant told officers that the Accord belonged to a friend of a friend, the names of whom he did not wish to disclose, and claimed that he permitted his friend to chain the Accord to his vehicle so it would not get stolen. No key to the padlock was found in Defendant's possession. The officer found three key rings with shaved keys in Defendant's pockets. When the owner of the Accord came to retrieve his vehicle, he observed multiple items missing from the Accord. Also, there was a punch out key in the ignition which started the Accord. At trial, the owner of the Accord testified that he had previously given Defendant permission to drive the Accord but not on the date in question. In the bench trial, after the state rested, Defendant made a motion to dismiss the possession of a stolen motor vehicle charge for lack of evidence of actual or constructive possession. I denied the motion. After a one-day trial, I concluded Defendant had constructive possession of the Accord because he had dominion and control over the Accord. Further, he had the ability to saw off the padlock or make the Expedition operable, at which point the Accord would have been in his actual possession. In my oral ruling, I relied upon *State v. Lakotiy*, 151 Wn. App. 699 (2009), in support of a finding of constructive possession. The court of appeals reversed and dismissed the charge of a stolen motor vehicle, finding that there was not substantial evidence that the defendant had constructive or actual possession of the Accord.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a state trial judge, I do not author any published opinions. All decisions I issue are entered as orders or judgments. They are placed in individual case files maintained by the Spokane County Superior Court Clerk. Copies of all orders and judgments can be requested through Spokane County Clerk's office.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

State of Washington v. Gilmore, No. 22-1-00322-32 (Wash Sup. Ct Spokane Cnty. June 9, 2022). Copy supplied in response to Question 13c.

Thurman v. Cowles Company, No. 21-2-01609-32 (Wash. Sup. Ct Spokane Cnty. June 1, 2022). Copy supplied in response to Question 13c.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I am subject to the state of Washington's Code of Judicial Conduct. Rule 2.11 addresses when a judge must disqualify (recuse) from a matter. When deciding whether or not to recuse myself from a case, I consider Rule 2.11, confer with colleagues, and consider the situation from the position of an objective person to determine whether there could be an appearance of partiality. If I currently have or had a close relationship with a party, attorney, or potential witness, I recuse myself *sua sponte* from the matter. If there could be the appearance of partiality, but I am certain I can be impartial and am not obligated to recuse, I disclose the potential conflict of interest. I tell the parties that if requested, I will recuse. I do not recall ever declining a request to recuse myself from a matter.

Brickner v. Brooks, No. 21-2-02936-32 (Wash. Sup. Ct. Spokane Cnty.). I know the defendant and personal information about her as I am acquainted with her family members. Therefore, I recused *sua sponte*.

Tedescoe v. Eastern Washington University, No. 18-2-043721 (Wash. Sup. Ct. Spokane Cnty.). I am close personal friends with potential witnesses. Therefore, I recused *sua sponte*.

In re the Welfare of Kinchler, No. 20-7-01019-32 (Wash. Sup. Ct. Spokane Cnty.). The Assistant Attorney General representing the state was my team leader for a period of time when I worked as an Assistant Attorney General approximately 20 years ago. I disclosed this to the parties, explained that this would not affect my ability to be fair and impartial but if requested, I would recuse. When Respondent asked me to recuse, I granted the

request.

Hoffman v. Providence Health & Services, Washington, No. 20-2-01749-32 (Wash. Sup. Ct. Spokane Cnty.). In my former job as a Senior Administrative Law Judge, I supervised an attorney who represented Plaintiff in a case assigned to me. I disclosed this relationship, explained that it would not affect my ability to be fair and impartial, and then offered to recuse myself. I granted Defendant's request that I recuse.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office other than my current judicial office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Consistent with Washington's Code of Judicial Conduct, I have endorsed the following judges and court commissioners for election and re-election: Justice Helen Whitener, Justice Raquel Montoya-Lewis, Judge Tracy Staab, Court Commissioner Eric Dooyema, Court Commissioner Deanna Crull, and Matthew Antush.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature

of your affiliation with each;

2001 – 2003; 2004 – 2013
Washington State Attorney General
1116 West Riverside Avenue
Spokane, Washington 99201
Assistant Attorney General

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 2001 to 2002 I was an Assistant Attorney General. I was assigned to the Licensing and Employment Security Division representing Department of Licensing driver's license revocation hearings in superior and appellate courts throughout eastern Washington. I also represented the Employment Security Department in unemployment benefit cases.

In approximately 2003, I was assigned to the Department of Social and Health Services where I handled dependency, day care licensing, and civil commitment cases in administrative hearings and juvenile court.

In 2004 to 2013, I was assigned to the Administrative Law Division. I represented the Department of Licensing in driver's license revocation hearings in superior and appellate courts throughout eastern Washington. I also represented the Employment Security Department in unemployment benefits cases. I served as the judicial review coordinator, which included serving as the client contact for settlement, reviewing and editing briefs, advising, mentoring, and educating Assistant Attorneys General statewide.

In approximately 2005 to 2013, I took on an additional client in the Education Division. I represented Big Bend Community College, advising the college on all legal issues including contracts, public records, open public meetings act, real estate, and employment law.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My clients have always been state agencies and state institutions.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 0% |
| 2. state courts of record: | 98% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 2% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | 0% |

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried one or two cases before an Administrative Law Judge, one case before a Department of Licensing Hearing Examiner, and multiple shelter care and dependency cases, which are not final decisions. The majority of my practice involved litigating appeals from administrative agencies in superior court. These appeals were all record reviews. I estimate I had more than 150 cases in superior court and the court of appeals.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 0% |
| 2. non-jury: | 100% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I personally handled numerous litigated matters during my time at the Attorney General's Office. I no longer have records of the cases I litigated, which were primarily administrative appeals in the superior courts of eastern Washington. Because these matters are not published, they are not easily accessible. I was able to obtain only the limited case details provided below as they are accessible through a Westlaw search.

1. *In re Richie*, 127 Wash. App. 935 (2005) (Judge Brown, Judge Kato, and Judge Sweeney)

Petitioner Mr. Richie was in a car accident in Washington and transported to a medical center in Idaho. A Washington State Trooper investigated and, among other observations, smelled the odor of alcohol on Mr. Richie at the medical center. The trooper arrested Mr. Richie for driving under the influence of intoxicants at the Idaho medical center. A blood test then showed a blood alcohol content of .13. The Department of Licensing subsequently suspended Mr. Richie's driver's license. Mr. Richie appealed to the superior court where his license suspension was upheld. Mr. Richie appealed to the court of appeals arguing that his arrest by a Washington officer in Idaho was unlawful. The Court of Appeals clarified its holding in *City of Clarkston v. Stone*, 63 Wash. App. 500 (1991). "Considering the law and our unique facts, we clarify Clarkson and hold that pursuing Washington officers may effectuate a lawful arrest in Idaho for DUI if reasonable suspicion exists to believe the suspect may have been driving under the influence in Washington before the officer pursues the suspect into Idaho." Mr. Richie also argued that the phlebotomist was not qualified to draw his blood, pursuant to Revised Code of Washington 46.61.506, which permits a physician, registered nurse or qualified technician to draw blood. The court reasoned that a sworn report submitted by a law enforcement officer is prima facie evidence of compliance with the statute. Because Mr. Richie did not present evidence in rebuttal, the hearing officer did not err in finding the phlebotomist to be a qualified technician. Accordingly, the court of appeals upheld the Department's action. I briefed and argued this matter in the court of appeals on behalf of the Department.

Counsel for Appellant:

Scott Gallina
Currently incarcerated

Dates of representation: approximately 2004 – 2005

2. *Ingram v. Department of Licensing*, 162 Wash. 2d 514 (2007) (Justice Chambers, all

Justices concurred).

In this consolidated case challenging driver's license revocations, the respondent drivers contested the admissibility in administrative hearings of the state toxicologist's declarations, which established that approved thermometers had been used in the breath testing machines used to detect alcohol. The state of Washington's implied consent statute provides that anyone operating a motor vehicle in Washington has given implied consent to a breath or blood test of their alcohol content if the arresting officer has reasonable grounds to believe the person was driving under the influence of intoxicants. A breath test over the legal limit results in driver's license suspension. A person may challenge the test results in an administrative hearing. Under the statutory provision, the officer's sworn report and any accompanying evidence is admissible at the hearing without further evidentiary foundation. Pursuant to the Department of Licensing's (Department) rules, evidence is admissible if received prior to the end of the administrative hearing. At the administrative hearing, a hearing examiner considered the declarations and ultimately, suspended the drivers' licenses. The respondent drivers appealed their license suspensions to superior court, arguing that the toxicologist's declarations were not admissible under any of the relevant statutes or regulations. The superior court suppressed the breath test results and reversed the license revocations. The Department appealed. The supreme court granted review and agreed with the Department that relevant evidence, including hearsay, is admissible for purposes of driver's license revocation hearings. I represented the Department in the Washington State Supreme Court. I had the primary responsibility for drafting the briefing. My co-counsel presented the oral argument.

Co-counsel:

Jay Geck (retired)

Counsel for Appellant:

Kenneth Beckley (resigned)

Dates of representation: approximately 2006 – 2007

3. *Kabrick v. Employment Security Department, and Spo-Cab, Inc.*, 110 Wash. App. 1010 (2002) (Judge Brown, Judge Schultheis, and Judge Kato)

I represented the Employment Security Department (Department) in both Spokane County Superior Court and the Court of Appeals. The Department denied Ms. Kabrick unemployment benefits because it determined she was an independent contractor and failed to establish sufficient wage credits for an unemployment claim. Ms. Kabrick appealed the denial of benefits to an administrative law judge and commissioner of the Department and both affirmed the denial of benefits. Ms. Kabrick appealed to Superior Court where she argued she was an employee of Spokane Cabs. The Department argued that Ms. Kabrick did not perform personal services for Spokane Cabs or for its benefit.

Further, cab drivers were not paid wages; rather, Spokane Cabs merely facilitated the collection of fares. The fares belonged to the cab drivers. The Court of Appeals agreed with the Department's denial of unemployment benefits and reversed the Superior Court and remanded to the Department for further proceedings consistent with the decision.

Co-counsel:

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(509) 327-2500

Counsel for Appellant:

Thomas Doran
8817 East Mission Avenue, Suite 201
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(509) 777-0600

Dates of representation: approximately 2001 – 2002

4. *Lavarias v. Employment Security Department*, 111 Wash. App. 1030 (2002) (per curiam)

I represented the Employment Security Department (Department) in the Court of Appeals. Ms. Lavarias collected unemployment benefits while working as an aerobics instructor and personal trainer. The Department assessed an overpayment of benefits, finding that she was ineligible for unemployment because she was not able to, available for, and actively seeking work. An administrative law judge, commissioner of the Department, and superior court all affirmed the denial of benefits. Ms. Lavarias appealed to the court of appeals. The court of appeals agreed with the Department that Ms. Lavarias was not available for work because she limited her search to jobs that did not conflict with her personal trainer work, rather than, as required, actively seeking all work she was able to perform.

Appellant proceeded pro se

Dates of representation: approximately 2001 – 2002

5. *Markam Group, Inc. v Employment Security Department*, 148 Wash. App. 555 (2009) (Judge Sweeney, Judge Kulik, and Judge Korsmo)

I represented the Employment Security Department (Department) in both Spokane County Superior Court and the Court of Appeals in upholding the award of unemployment benefits to Ms. Monroe after she was discharged from employment with

the Markam Group. Ms. Monroe worked as a legal secretary. Ms. Monroe did not perform to the employer's expectations because of her inability to do so. After the Department granted benefits, an Administrative Law Judge affirmed the Department's award of benefits, and the Department's Commissioner affirmed the Administrative Law Judge. The employer appealed, arguing that it was error to require it to prove Ms. Monroe's conduct was intentional. The superior court agreed and reversed the award of benefits. On appeal, the court of appeals agreed with the Department that the employer must show Ms. Monroe's conduct was intentional to establish she committed misconduct. Here, the evidence did not support that she acted in willful or wanton disregard of the employer's interests or that she knowingly failed to perform her job duties.

Co-counsel:

Marcus Lampson
Unemployment Law Project
1904 3rd Avenue #604
Seattle, WA 98101
(206) 441-9178

Counsel for Markam Group:

Mark Kamitomo
421 West Riverside Avenue, #1060
Spokane, WA 99201
(509) 747-0902

Dates of representation: approximately 2008 – 2009

6. *Turnbow v Employment Security Department*, 162 Wash. App. 618 (2011) (Judge Sweeney, Judge Kulik, and Judge Brown).

I represented the Employment Security Department (Department) in both the Spokane County Superior Court and the Court of Appeals. A person must demonstrate availability for employment to be eligible for unemployment benefits while they are looking for work. The Department denied Ms. Turnbow unemployment benefits because she was self-employed, focused on establishing her business as an independent contractor and therefore unavailable for full time work. I argued this case before Judge Eitzen in Spokane County Superior Court who upheld the Department's denial of unemployment benefits to Ms. Turnbow. Ms. Turnbow appealed and prevailed in the Court of Appeals. The Court of Appeals reasoned that a self-employed person is eligible for unemployment benefits while pursuing self-employment so long as the new business is contingent, and the person is available for work.

Appellant proceeded pro se

Dates of representation: approximately 2010 – 2011

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I served as Trustee for the Superior Court Judges' Association September 2021 to April 2022. I am on the Equality and Fairness Committee and serve as the liaison for the Legislative Committee. The Legislative Committee reviews, monitors, and recommends proposed legislation that affects statewide superior court operations. I have also served on the Ethics Committee which provides support and education on ethical issues to superior court judges. I served on the Racial Justice Consortium which consists of a group of statewide stakeholders committed to addressing structural racism in the legal system.

I have not performed any lobbying activities nor registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

None.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not have any family members, other persons, parties, categories of litigation or financial agreements that are likely to present potential conflicts-of-interest. I will continually monitor my cases to evaluate any potential conflicts of interest on a case-by-case basis. If a conflict were to arise, I would address it in accordance with the Code of Conduct for United States Judges. When in doubt, I would err on the side of recusal.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would resolve any potential conflict of interest in accordance with 28 U.S.C. § 455, the Code of Conduct for United States Judges, any related laws, and advisory opinions.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a government employee and now judge, state ethics laws have limited my ability to engage in the practice of law outside my government service. I have served my community in other ways. I volunteered for the YMCA mock trial tournament and served as a judge for the Gonzaga Law School trial advocacy mock trial. I have mentored multiple law students while at the Attorney General's Office, Office of Administrative Hearings, and in Superior Court.

26. **Selection Process**:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and

the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On March 1, 2021, I submitted my application to the bipartisan Judicial Merit Selection Committee established by Senators Maria Cantwell and Patty Murray. On March 25, 2021, I interviewed with the Judicial Merit Selection Committee. I was notified that my name was forwarded by the committee to the senator's office. On April 19, 2021, I interviewed with Senator Cantwell's representatives. On April 20, 2021, I interviewed with Senator Murray's representatives. On May 13, 2021, I interviewed with Senator Murray. Senator Murray's office notified me that my name was forwarded to the White House. On May 26, 2021, I interviewed with attorneys from the White House Counsel's Office. On June 11, 2022, I was contacted by an attorney from the White House Counsel's Office regarding my interest in being considered for potential nomination to the Eastern District of Washington. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 19, 2022, my nomination was submitted to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.