

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Joel McElroy Carson III

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

Circuit Judge, United States Court of Appeals for the Tenth Circuit

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.

Carson Ryan LLC
400 East College Boulevard, Suite C
Roswell, New Mexico 88201

Magistrate Judge Joel M. Carson
500 North Richardson Avenue, Suite 320
Roswell, New Mexico 88201

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

1971; Artesia, New Mexico

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.

1994 – 1997, University of New Mexico School of Law; J.D., 1997

1990 – 1994, Texas Tech University; B.B.A., Finance, 1994

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.

2015 – present
United States District Court for the District of New Mexico

500 North Richardson, Suite 320
Roswell, New Mexico 88201
United States Magistrate Judge – Part Time

2014 – present
Carson Ryan LLC
400 East College Boulevard, Suite C
Roswell, New Mexico 88201
Partner

2008 – 2013
Mack Energy Corporation
Post Office Box 960
Artesia, New Mexico 88211
General Counsel
Corporate Secretary

2000 – 2002
Eastern New Mexico University – Roswell
52 University Boulevard
Roswell, New Mexico 88203
Part-Time Adjunct Instructor

1999 – 2008
Hinkle Hensley Shanor & Martin, LLP
400 Pennsylvania, Suite 640
Roswell, New Mexico 88201
Partner (2002 – 2008)
Associate (1999 – 2002)

1997 – 1999
United States Court of Appeals for the Tenth Circuit
Hon. Bobby R. Baldock, Circuit Judge
500 North Richardson, Suite 167
Roswell, New Mexico 88201
Law Clerk

1996 – 1997
University of New Mexico School of Law
117 Stanford NW
Albuquerque, New Mexico 87131
Research Assistant

Summer 1996
Hinkle Hensley Shanor & Martin, LLP
400 Pennsylvania, Suite 640
Roswell, New Mexico 88201

Summer Associate

1995

University of New Mexico School of Law
117 Stanford NW
Albuquerque, New Mexico 87131
Legal Writing Tutor

Summer 1995

United States Court of Appeals for the Tenth Circuit
Hon. Bobby R. Baldock, Circuit Judge
500 North Richardson, Suite 167
Roswell, New Mexico 88201
Judicial Extern

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 have not served in the military. I registered for 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.

Martindale Hubbell – Distinguished Attorney, 2009

University of New Mexico School of Law
Administrative Editor, Natural Resources Journal
Dean's List, Spring 1997
Honor Roll, Fall 1994, 1995, Fall 1996
Honors in Clinical Law
Corpus Juris Secundum Award in Property Law

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.

Chaves County Bar Association
President (2017 – present)
Vice President (2016)
Treasurer (2015)
Secretary (2014)

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.

New Mexico, 1997

There has been no lapse 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.

United States Court of Appeals, Tenth Circuit	1998
United States Court of Appeals, Federal Circuit	2001
United States District Court, Eastern District of Texas	2002
United States District Court, New Mexico	1999
United States Court of Federal Claims	1999
New Mexico Supreme Court	1997

To my knowledge, based upon inquires to these courts, there have been no lapses in membership.

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.

American Association of Petroleum Landmen, 2014 – present

American Bar Association, 2008 – 2014

Belles et Beaux Danse Club, 2010 – 2016

Family Resource & Referral, 2000 – 2008

George L. Reese, Jr. Inns of Court, 1997 – 1999

Goal Advocacy, 2013 – 2015

Independent Petroleum Association of New Mexico
Legal Committee, 2008 – present

Leadership Roswell, 2000

Mountain States Legal Foundation, 2014 – 2016

New Mexico Amigos, 2015 – present

New Mexico Cutting Horse Association, 2010 – 2013

New Mexico Economic Development Partnership, 2009 – 2011

New Mexico Judicial Performance Evaluation Commission, 2011 – present

New Mexico Judicial Selection Commission, approximately 2011, 2013, 2014

New Mexico Landman's Association, 2014 – present

New Mexico Oil and Gas Association
Legal Committee, 2008 – present

Phi Alpha Delta, 1997

Rocky Mountain Mineral Law Foundation, 1997 – present

Roswell Country Club, 2004 – 2016

Roswell Symphony Orchestra, approximately 2008 – 2014

State Bar of New Mexico
Board of Editors, 2007 – 2010

Teen Court of Chaves County, 1999 – 2006

Tenth Circuit Criminal Justice Act Panel, approximately 2001 – 2015

Tenth Circuit Historical Society, 2017 – present

University of New Mexico School of Law
Alumni Board, 1999 – 2006

University of New Mexico School of Law
Community Law Clinic, 1997

- 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, none of the organizations listed above currently discriminates 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.

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.

Biography of Robert W. McCoy, Tenth Circuit Historical Society, Publication Pending. Copy supplied.

Issue Update, Carson Ryan Website, Local Government/Pre-Emption, January 22, 2015. Copy supplied.

Issue Update, Carson Ryan Website, Public Lands/Wildlife, January 13, 2014. Copy supplied.

Robert O. Anderson's Influence Lives On, NMPolitics.net, December 10, 2007. Copy supplied.

Reintroducing the Mexican Wolf: Will the Public Share the Costs, or Will the Burden Be Borne by a Few, 38 Natural Resources Journal 298 (1998). Copy supplied.

T. Calder Ezzell, Jr., Quiet Title Suits in New Mexico, New Mexico Bar Journal 15-21 (September/October 1997) (contribution recognized in footnote). 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.

None.

- 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.

I testified before New Mexico Legislative Finance Committee on June 13, 2012 regarding activities and employment in the New Mexico Permian Basin. I prepared no written statement and submitted no written remarks to the body. I am unaware of any transcript, but attach the minutes from the meeting.

- 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.

December 28, 2017: Speaker, "Thoughts on Quiet Title Litigation in New Mexico," State Bar of New Mexico Center for Legal Education. Slides supplied. I also participated in the ethics panel with other attorneys who presented at the seminar. I have no notes, transcript, or recording. The address is State Bar of New Mexico, c/o Chris Morganti, Chief Operating Officer, 5121 Masthead NE, Albuquerque, New Mexico 87109.

November 20, 2017: Speaker, Chaves County Bar Association Monthly Luncheon. I advised the membership of the bank account balance and introduced our speaker, Judge Kenneth J. Gonzales. I have no notes, transcript, or recording. The address is Chaves County Bar Association, c/o Joel M. Carson III, President, Post Office Box 1612, Roswell, New Mexico 88202-1612.

October 16, 2017: Speaker, Chaves County Bar Association Monthly Luncheon. I advised the membership of the bank account balance and introduced our speaker, William Jepsen from U.S. Immigration and Customs Enforcement. I have no notes, transcript, or recording. The address is Chaves County Bar Association, c/o Joel M. Carson III, President, Post Office Box 1612, Roswell, New Mexico 88202-1612.

September 18, 2017: Speaker, Chaves County Bar Association Monthly Luncheon. I advised the membership of the bank account balance and introduced our speaker, Judge Dustin K. Hunter. I have no notes, transcript, or recording. The address is Chaves County Bar Association, c/o Joel M. Carson III, Post Office 1612, Roswell, New Mexico 88202-1612.

April 28, 2017: Speaker, Chaves County Bar Association Law Day Banquet. My

remarks concerned the Past-President to whom I presented an award and my acceptance of the office of President for 2017 to 2018. I have no notes, transcript, or recording. The address is Chaves County Bar Association, c/o Joel M. Carson III, Post Office Box 1612, Roswell, New Mexico 88202-1612.

Approximately September 15, 2015: Speaker, Chaves County Bar Association Monthly Luncheon in place of the then-President Dustin K. Hunter, who could not attend. My remarks were limited to introducing the speaker and making some announcements. I have no notes, transcript, or recording. The address is Chaves County Bar Association, c/o Joel M. Carson III, Post Office Box 1612, Roswell, New Mexico 88202-0550.

Approximately July 2010: Speaker, Corporate Counsel's luncheon at the Rocky Mountain Mineral Law Foundation Institute in Banff, Alberta, Canada. The nature of my remarks was to welcome everyone to the luncheon and to encourage fellowship among the various persons in attendance. I have no notes, transcript, or recording. The address is Rocky Mountain Mineral Law Foundation, 9191 Sheridan Boulevard, Suite 203, Westminster, Colorado 80031.

Approximately September 2010: Speaker, Republican Party of Chaves County. I introduced Governor Susana Martinez at a dinner hosted by the Republican Party of Chaves County. I have no notes, transcript, or recording. The address is Republican Party of Chaves County, c/o Caleb Grant, President, Post Office Box 774, Roswell, New Mexico 88201.

February 22, 2006: Speaker, Republican Party of Chaves County. I introduced Senator Pete Domenici and Representative Steve Pearce at a dinner hosted by the Republican Party of Chaves County. I have no notes, transcript, or recording. The address is Republican Party of Chaves County, c/o Caleb Grant, President, Post Office Box 774, Roswell, New Mexico 88201.

September 9, 2005: Panelist, "Opinion Writing at the Court of Appeals and the District Court – What Works and What Doesn't," United States District Court for the District of New Mexico and United States Court of Appeals for the Tenth Circuit Eleventh Annual Law Clerk Orientation for New Mexico Clerks. I have no notes, transcript, or recording. The address is United States District Court for the District of New Mexico, 333 Lomas Boulevard Northwest, Albuquerque, New Mexico 87102.

May 13, 2004: Presenter, Legal Assistants Division of the State Bar of New Mexico. I presented an update on the Federal and New Mexico Rules of Civil Procedure to a group of paralegals and attorneys in Roswell, New Mexico in a continuing legal education course offered by the Legal Assistants Division of the State Bar of New Mexico. I have no notes, transcript, or recording. The address is the State Bar of New Mexico, 5121 Masthead Street NE, Albuquerque, New Mexico 87109.

On various occasions, I have introduced elected officials at the Republican Party of Chaves County annual conventions. My remarks have been introductory in nature and I spoke from no prepared remarks or outlines. I have no notes, transcripts, or recordings. The address is Republican Party of Chaves County, c/o Caleb Grant, President, Post Office Box 774, Roswell, New Mexico 88201.

Outside of wholly personal speeches or talks I may have given – for example, toasts, eulogies, and religious instruction or commentary – the above represents my best recollection of all speeches or talks I have delivered since high school.

- 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.

To the best of my recollection:

In 2006, I gave an interview to a Roswell, New Mexico radio station. The substance of the interview related to local elections and my comments were informational regarding the competitive nature of the elections. I am not aware of the call sign for the radio station and received no taping or transcript of the interview.

- 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.

2015 – present
United States District Court for the District of New Mexico
500 North Richardson, Suite 320
Roswell, New Mexico 88201
United States Magistrate Judge – Part Time (Appointed)

In my role as a United State Magistrate Judge – Part Time, I perform all the duties of a full-time United States Magistrate Judge in criminal proceedings and habeas corpus civil actions. I do not maintain a general civil docket.

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

Three

- i. Of these, approximately what percent were:

jury trials:	33%
bench trials:	67%

civil proceedings: 0%
criminal proceedings: 100%

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

The opinions or orders I have written are unpublished.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature 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 (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *United States v. Bordayo*, Case No. 1:16-CR-3340-JMC (2016)

In this Class A misdemeanor action, the parties consented to try a third-offense driving under the influence case arising on Cannon Air Force Base near Clovis, New Mexico. The factual background generally involved a civilian charged with driving under the influence based upon apparently faulty breathalyzer results. I conducted all normal pretrial proceedings and issued a written order on pretrial motions filed by the defense. The parties tried the case to a jury in Albuquerque, New Mexico. I presided over jury selection and all other aspects of the two-day trial. The jury returned a verdict of not guilty. My written order on pretrial motions is attached.

Counsel for the United States

Captain Josh Headrick
Special Assistant United States Attorney
Chief of General Law
27th Special Operations Wing Legal Office
101 Air Commando Way
Cannon AFB, New Mexico 88103
(575) 904-5056

Paul Mysliwicz
Assistant United States Attorney
P.O. Box 607
Albuquerque, New Mexico 87103
(505) 346-7274

Defense counsel

Jared A. Morris
Harmon, Barnett & Morris, P.C.
119 South Main Street
Clovis, New Mexico 88101

(575) 763-0077

2. *United States v. Malouf*, Case No. CVB HAFB 3905866 (2016)

I presided as the trial judge in this criminal action, which alleged the defendant committed assault under New Mexico state law by swinging a box-cutter toward the alleged victim. I ruled on pretrial motions and ultimately presided over the examination of witnesses and arguments in this action. At the close of evidence and following closing arguments, I issued a written order finding the defendant not guilty of the crime with which the government charged him. My written decision is attached.

Counsel for the United States

Gerard Laver
Special Assistant United States Attorney
Attorney Advisor (General), 49 WG/JA
490 First Street, Suite 4800
Holloman AFB, New Mexico 88330
(575) 572-0861

Defense counsel

Todd Holmes
Holmes Law Firm
1123 Indiana Avenue
Alamogordo, New Mexico 88310
(575) 437-2801

3. *United States v. Paige*, Case No. CVB CAFB 6038129 (2017)

I presided as the trial judge in this criminal action, which arose from a traffic enforcement operation on Cannon Air Force Base. The defendant received a citation after an officer witnessed her violating traffic laws. The defendant appeared *pro se*. I presided over a trial on the merits, including the examination of witnesses and legal arguments. At the close of evidence and following closing arguments, I ruled from the bench in favor of the United States and against the defendant. I did not issue a written decision.

Counsel for the United States

Captain Christopher Pirog
Special Assistant United States Attorney
Deputy Chief, Military Justice
United States Air Force, 52 FW/JA
Spangdahlem AB, Germany
+49(0)656561-6284/2715

Defense counsel

Tynasha Paige, Pro Se

4. *Thomas v. Hatch*, Case No. 1:17-CV-885 WJ/JMC (2018)

I acted as the referral judge in this action brought under 28 U.S.C. § 2254 by a person in state custody. The case involved a claim by a person in custody that his trial counsel acted ineffectively in the proceedings before the state district court. I concluded the petitioner did not meet the standards necessary for relief as required by federal statutory law, the Tenth Circuit and the United States Supreme Court. I issued a written report and recommendation to the district judge assigned to the case recommending that the petition be denied and the case be dismissed. My written decision is attached.

Counsel for New Mexico

Jane A. Bernstein
Assistant Attorney General
Office of New Mexico Attorney General
201 Third Street, NW, Suite 300
Albuquerque, New Mexico 87102
(505) 717-3509

Defense counsel

Edgar Ray Thomas, Pro Se

- 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.

In response to Question 13c, I supplied copies of my unpublished decisions.

1. *United States v. Bordayo*, Case No. 1:16-CR-3340-JMC (2016)

Counsel for the United States

Captain Josh Headrick
Special Assistant United States Attorney
Chief of General Law
27th Special Operations Wing Legal Office
101 Air Commando Way
Cannon AFB, New Mexico 88103
(575) 904-5056

Paul Mysliwicz
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87103

(505) 346-7274

Defense counsel

Jared A. Morris
Harmon, Barnett & Morris, P.C.
119 South Main Street
Clovis, New Mexico 88101
(575) 763-0077

2. *United States v. Malouf*, Case No. CVB HAFB 3905866 (2016)

Counsel for the United States

Gerard Laver
Special Assistant United States Attorney
Attorney Advisor (General), 49 WG/JA
490 First Street, Suite 4800
Holloman AFB, New Mexico 88330
(575) 572-0861

Defense counsel

Todd Holmes
Holmes Law Firm
1123 Indiana Avenue
Alamogordo, New Mexico 88310
(575) 437-2801

3. *Thomas v. Hatch*, Case No. 1:17-CV-885 WJ/JMC (2018)

Counsel for New Mexico

Jane A. Bernstein
Assistant Attorney General
Office of New Mexico Attorney General
201 Third Street, NW, Suite 300
Albuquerque, New Mexico 87102
(505) 717-3509

Defense counsel

Edgar Ray Thomas, Pro Se

- e. Provide a list of all cases in which certiorari was requested or granted.
None.
- 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.

None of my decisions have been reversed or affirmed with criticism.

- 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.

All of my written decisions are unpublished.

- 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.

None.

- 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 a 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:

I recused from presiding over a misdemeanor drug offense on federal lands where the defendant was an acquaintance from high school. Other than that, I have not recused from any matter to date.

- 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;

Sua sponte.

- b. a brief description of the asserted conflict of interest or other ground for recusal;

I attended school with the person from sixth grade through high school graduation. Based upon our longstanding acquaintance, I am aware that the person has a history of illegal drug abuse. As a result of this knowledge, I believed I should recuse under 28 U.S.C. § 455(b)(1).

- c. the procedure you followed in determining whether or not to recuse yourself;

I analyzed the situation under 28 U.S.C. § 455.

- 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.

Please see my response to Question 14b.

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 public 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.

To the best of my knowledge:

Member – New Mexico Romney Finance Committee	2012
Secretary – Republican Party of New Mexico	2011
Member – New Mexico McCain Finance Committee	2008
Regional Co-Chairman – People For Pete (Domenici)	2007
Chairman – Republican Party of Chaves County	2006
County Chairman – Phelps Anderson for Congress	2002
Executive Committee – Republican Party of New Mexico	Various
Member – Chaves County Fed. of Republican Women	2006-2014
Member – Chaves County Young Republicans	2006-2007

Each of these positions was on a volunteer basis and I received no compensation for them.

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;

From 1997 to 1999, I served as a law clerk to the Honorable Bobby R. Baldock, Circuit Judge of the United States Court of Appeals for the Tenth Circuit.

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

I have not practiced alone except for my time as General Counsel of Mack Energy Corporation from 2008 to 2013. During that time, my office was located at 11352 Lovington Highway, Artesia, New Mexico 88210.

- 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.

1999 – 2008

Hinkle Hensley Shanor & Martin, LLP
400 Pennsylvania, Suite 640
Roswell, New Mexico 88201
Partner (2002 – 2008)
Associate (1999 – 2002)

2008 – 2013

Mack Energy Corporation
P.O. Box 960
Artesia, New Mexico 88211
General Counsel
Corporate Secretary

2014 – present

Carson Ryan LLC
400 East College Boulevard, Suite C
Roswell, New Mexico 88201
Partner

- 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 served as a mediator in one case regarding title to a valuable oil and gas interest for which two parties claimed ownership. The legal issues concerned compliance with the Uniform Probate Code, the construction of certain mineral conveyances and the application of various equitable

defenses. The case was resolved during the mediation.

b. Describe:

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

From 1999 to 2008, during my first ten years of practice, I worked primarily on appeals and general civil litigation matters. My practice varied from complex commercial and energy litigation to Criminal Justice Act appointments before the United States Court of Appeals for the Tenth Circuit.

From 2008 to 2013, I served as in-house general counsel. In addition to litigation, I expanded my practice to include real estate, corporate governance, complex energy transactions, and water rights. During this time, I continued to represent clients in civil litigation and Criminal Justice Act appeals.

From 2014 to present, I have been a partner in a small firm. My current practice focuses on energy litigation, complex real property litigation, employment litigation, and appellate litigation. I additionally advise clients regarding energy development projects including wind energy and biomass generation.

I am not board certified by the New Mexico Board of Legal Specialization, but my practice is focused on complex land title litigation, energy litigation, and commercial litigation.

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

From 1999 to 2008, I represented a diverse range of clients, including local businesses, publicly traded corporations, and individuals.

From 2008 to 2013, I served as in-house general counsel. My primary client was Mack Energy Corporation and its affiliates, although I continued to take court-appointed appeals on behalf of indigent criminal clients in the Tenth Circuit.

From 2014 to present, I have continued to represent a diverse group of clients. I currently represent local builders, individuals, publicly traded companies, privately held energy producers, local non-profits, estates, trusts and individuals who cannot afford representation.

- 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.

From 1999 to 2008, as an associate and then partner at Hinkle Hensley Shanor & Martin, LLP, I devoted nearly all of my time to litigation. I appeared in state and federal courts occasionally on behalf of clients.

From 2008 to 2013, as in-house general counsel, I devoted approximately 20% of my time to litigation. I supervised outside counsel in several cases and only occasionally appeared in court on behalf of Mack Energy Corporation and its affiliates. I appeared occasionally in the Tenth Circuit on behalf of court-appointed criminal clients under the Criminal Justice Act.

From 2014 to present, as a partner at my firm, I estimate that about 75% or more of my time is dedicated to litigation. Because my practice has focused on complex civil litigation, I have appeared in court occasionally.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 25% |
| 2. state courts of record: | 65% |
| 3. other courts: | 5% |
| 4. administrative agencies: | 5% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 85% |
| 2. criminal proceedings: | 15% |

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.

Approximately 16. I have acted in the roles of sole, chief, and associate counsel in these cases. Additionally, I was lead counsel or had primary briefing responsibility in more than 20 appeals.

i. What percentage of these trials were:

- | | |
|--------------|-------|
| 1. jury: | 6.5% |
| 2. non-jury: | 93.5% |

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.

None.

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:

1. *Jepsen v. Vigil-Giron*, First Judicial District Court, Santa Fe County Cause No. D-101-CV-2001102177 (2001).

This lawsuit involved the 2001 New Mexico redistricting. Along with co-counsel, I represented the bi-partisan New Mexico Legislature and defended its redistricting plans for the New Mexico House of Representatives and the United States Congress. The controversy regarding the redistricting of the New Mexico State Senate settled prior to trial. I was responsible for one-fourth of the witnesses in these matters which culminated in approximately fourteen trial days. In preparation for trial, each member of our legal team deposed at least one witness per day for a two-week period in preparation for trial. The court adopted redistricting plans substantially similar to those advocated by our team at trial.

Trial Judge: Hon. Frank H. Allen, Jr.

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2. *United States v. Dally*, No. 14-2059 (10th Cir. 2016) (sealed & unpublished).

On appeal, I represented Mr. Dally, who was sentenced to life plus ten years after he was convicted of conspiracy to commit murder. Mr. Dally claimed he advised his attorney of his desire to accept a plea, but that the attorney wrongfully advised him that he could not. Mr. Dally contended that his counsel rendered ineffective assistance in giving this advice and requested an evidentiary hearing. The district court denied habeas relief without a hearing. On appeal, Mr. Dally argued that his counsel provided ineffective assistance of counsel by incorrectly advising him of his ability to accept a plea and that the district court should have held an evidentiary hearing to explore the merits of his claim. I prepared all briefing in

this matter and argued the case before the Tenth Circuit on a pro bono basis. The Tenth Circuit affirmed in a sealed opinion.

Panel: Hon. Carlos F. Lucero, Hon. Stephanie K. Seymour, and Hon. (now Justice) Neil Gorsuch

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3. *Premier Oil & Gas, Inc. v. Alderman*, Fifth Judicial District Court, Eddy County Cause No. D-503-PB-2012-36.

This case, in which the district court recently granted a final summary judgment in favor of my client, involves title to valuable oil, gas, and other mineral interests located in Eddy County, New Mexico. The litigation involves complex oil and gas issues relating to the effect of two competing wills and the collateral attack of a subsequent heirship proceeding. The case involves novel and complex issues regarding will interpretation, the probate code, collateral attacks of judgments, bona fide purchasers, and the application of doctrines of laches and estoppel in the context of valuable mineral rights. Along with co-counsel, I participated in all briefing and covered one-half of the full day summary judgment hearing before the district court.

Trial Judge: Hon. William Shoobridge

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4. *United States v. Madrid*, 633 F.3d 1222 (10th Cir. 2011).

I represented Mr. Madrid in this appeal where his trial counsel filed his notice of appeal beyond the jurisdictional limitations period. The dispositive issue concerned whether the Court could excuse the late filing. The district court granted Mr. Madrid's motion for a retroactive extension of time. The Tenth Circuit held that the appeal should be dismissed for being filed late. The case also involved an interesting Fourth Amendment issue that arose when officers, who did not witness alleged misdemeanor violations, stopped and detained Mr. Madrid to investigate whether he violated the law. In addition to the procedural issue, I argued that officer's violated Mr. Madrid's Fourth Amendment rights by stopping and detaining him to investigate a completed misdemeanor without first receiving a warrant. The Tenth Circuit did not reach that issue. I fully briefed and argued the case before the Tenth Circuit on a pro bono basis.

Panel: Hon. Paul J. Kelly, Hon. Bobby R. Baldock, and Hon. Harris L. Hartz

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5. *Moeller v. Nogal Mut. Domestic Water Consumers & Mut. Sewage Works*, 12th Judicial District Court, Lincoln County, New Mexico Cause No. D-1226-CV-200000211 (2006).

Along with co-counsel I represented the Plaintiffs in this derivative action brought by members of a mutual domestic water cooperative on behalf of the cooperative. The case involved allegations of self-dealing and mismanagement among board members of the water cooperative. I had primary briefing responsibility on all pretrial briefing and all legal arguments at trial. In addition, I split the witness examinations with my co-counsel and acted as second chair at trial which lasted for four days. The district court's decision resulted in a partial victory for our client.

Trial Judge: Hon. Karen Parsons

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6. *United States v. Gonzalez-Jaquez*, 566 F.3d 1250 (10th Cir. 2009).

I represented Mr. Gonzalez on appeal from a sentence enhancement he received for being previously convicted for a crime of violence in California. The California statute under which Mr. Gonzalez was previously convicted codified crimes, some of which did not constitute crimes of violence for sentence enhancement purposes. The record before the district court did not specify whether Mr. Gonzalez' previous conviction was for a crime enumerated under the statute that involved violence as required to support a sentence enhancement. On

behalf of Mr. Gonzalez, I argued that the district court erroneously enhanced his sentence because it had no evidence before it showing that he was actually convicted of a crime of violence. The Tenth Circuit affirmed, holding that the district court properly enhanced Mr. Gonzalez' sentence.

Panel: Hon. Carlos F. Lucero, Hon. William J. Holloway, and Hon. Michael W. McConnell

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7. *Bass Enters. Prod. Co. v. United States*, 381 F.3d 1360 (Fed. Cir. 2004).

This lawsuit was the final appeal in a long standing case between our client and the United States regarding the condemnation of federal oil and gas lease. The court of claims previously held the government's actions resulted in a compensable taking under the Fifth Amendment of the United States Constitution. In this appeal, for which I had primary briefing responsibility, the Federal Circuit held, based upon recent Supreme Court precedent that the Government's conduct did not result in a compensable taking.

Panel: Hon. Pauline Newman, Hon. Arthur J. Gajarsa, and Hon. Timothy B. Dyk

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Susan V. Cooke
Current contact information unknown.

8. *Shell Western E&P v. Chavez*, 131 N.M. 445 (Ct. App. 2001).

This case involved a tax amnesty program offered by the State of New Mexico and an attempt by our client to participate in that program. The State of New Mexico Taxation and Revenue Department attempted to place limitations on the program that were not set forth in statute. The court of appeals determined that the department did not have the discretion to limit the application of the statute in a way that excluded the taxpayer. The court of appeals thus concluded that the taxpayer could participate in the amnesty program and reversed the district court's decision. I obtained the alternative writ of mandamus for the taxpayer in this case and had primary briefing responsibility on the appeal.

Panel: Hon. Celia Foy Castillo, Hon. Richard Bosson, and Hon. Jonathan Sutin

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9. T.H. McElvain Oil & Gas Ltd. P'ship v. Benson-Montin-Greer Drilling Corp., Inc., 2017-NMSC-004, 388 P.3d 240 (N.M. 2017).

I filed an amicus brief with the New Mexico Supreme Court on behalf of the New Mexico Landman's Association. The plaintiffs sought to declare a 1948 quiet title judgment void for failure to properly serve their predecessor-in-interest. The Supreme Court reached the result urged by my client and clarified that constructive service of process by publication satisfies due process if and only if the names and addresses of the defendants to be served are not "reasonably ascertainable." Quoting from my brief, the court additionally held that quiet title judgments provide the certainty needed to ensure that one is the record owner of property in New Mexico to the exclusion of others.

Panel: Hon. Charles Daniels, Hon. Petra Jimenez Maes, Hon Edward Chavez,
Hon. Barbara Vigil, and Hon. Judith Nakamura.

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10. *Davis v. David H. Arrington Oil & Gas, Inc.*, Fifth Judicial District Court, Lea
County, New Mexico Cause No. D-506-CV-2004-00323.

This case involved alleged damages to the surface estate of property located in
Lea County, New Mexico. The case also involved questions as to the measure of
damages to surface lands leased to the plaintiff by the New Mexico State Land
Office. I was responsible for all pretrial discovery in this case and successfully
obtained summary judgment for our client on some claims. Along with co-
counsel, I tried the case to a jury and received a directed verdict in our client's
favor at the close of the plaintiff's case. At trial, I made all legal arguments, was
responsible for examination of expert witnesses and split examination of the fact
witnesses with co-counsel.

Trial Judge: Hon. Gary Clingman

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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.)

Many of the most significant litigation matters in which I have been involved resulted in a settlement because of success in discovery or in pretrial motion practice. My strong approach to pretrial practice has resulted in a number of favorable settlements for my clients. For example, in one recent case, an out-of-state operator sought to oust our client from operating certain oil and gas wells. Through a motion for summary judgment, the court determined that the company opposing our client was not the operator. This partial victory on summary judgment ended the dispute. Similarly, in another case, I was able to settle a case based upon strong deposition practice for a very reasonable sum. The client later sold the interest it acquired in the settlement for twenty-five times the amount of the settlement.

Following the financial downturn of 2008, I assisted a client in taking over a failed investment and settling numerous outstanding debts. Our strategy of proactively settling the outstanding claims allowed my client to take possession of valuable fixed assets and real estate without costly litigation. The result was a win-win as the strategy kept the debtor of bankruptcy and allowed creditors to receive substantial repayment.

I am a member of the New Mexico Judicial Performance Evaluation Commission. The commission reviews statistical data on state court judges in order to evaluate them and help them improve their skills on the bench. In certain years, the Commission's evaluations are used to advise voters on whether or not judges should be retained in office. The Commission meets once per month at different locations across the state and evaluates every metropolitan court, district court, court of appeals, and supreme court judge (or justice).

I formerly served on the New Mexico Bar Board of Editors. This group selected articles for publication in the Bar Bulletin, the weekly publication for the State Bar of New Mexico, and certain other publications. The various members of the Board edited the articles prior to publication.

I participated as lobbyist for Caza Ranches, L.L.C. at the New Mexico legislature in 2014. In that role, I generally followed legislation and informed the client of pending legislation. I also reached out to legislators with comments on various pieces of proposed legislation. I did not correspond with any legislators in writing in this role.

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.

From 2000 until 2002, I taught paralegal courses at Eastern New Mexico University – Roswell. Each year, I taught Civil Litigation in the spring and Torts in the fall. The Civil Litigation class was largely practical and focused on application of the Federal Rules of Civil Procedure with some discussion of the New Mexico Rules of Civil Procedure. I taught the Torts class using a case-based approach modeled after a typical law school torts class. I did not keep any materials and have not located any materials relating to these classes.

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.

I am the beneficiary of a defined benefit program from my prior employment with Mack Energy Corporation.

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.

I have a small farm and cattle herd. I intend to continue farming and raising cattle if I am confirmed.

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).

Please 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).

Please see attached statement of net worth.

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.

If confirmed, I will recuse in any litigation where I have ever played a role. For a period of time, I anticipate recusing in all cases where my current firm, Carson Ryan LLC or its successor, represents a party. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

- 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 will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges and any and all other laws, rules and practices governing such circumstances.

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.

I routinely engage in pro bono legal work for individuals and non-profit organizations that cannot afford to pay for legal services. During the past fifteen years, I estimate I have represented without payment at least six indigent defendants in appeals before the United States Court of Appeals for the Tenth Circuit. I have additionally represented on a pro bono basis an individual in a trial regarding the sale of a vehicle without proper emissions equipment. I also routinely draft wills, real estate agreements and assist clients in limited court proceedings on a pro-bono basis. I estimate in the past three years, I have performed 150-200 hours per year of pro bono legal work. Prior to that time, I performed 50-100 hours per year of pro bono legal work.

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.

There is no selection commission in New Mexico, but I submitted information to

Senator Tom Udall and Congressman Steve Pearce regarding my interest in this position. On April 28, 2017, I informed the Chief of Staff to Congressman Steve Pearce that I wished to be considered for this position. Sometime in May, White House Counsel's Office called, asking if I could come to Washington, D.C., for an interview. On May 22, 2017, I participated in an interview in Washington, D.C. with attorneys from the White House and the Department of Justice.

Since the interview, I have continued to have sporadic communications with the Department of Justice, White House Counsel's Office, Senator Udall's office and Congressman Pearce's office. On December 20, 2017, the President submitted my nomination 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.