

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Kevin Ray Sweazea

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

United States District Judge, District of New Mexico

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.

United States District Court
100 North Church Street, Suite 520
Las Cruces, New Mexico 88001

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

1963; McIntosh, South Dakota

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.

1986 – 1988: Baylor University School of Law; J.D., 1988

1985 – 1986: University of the Pacific, McGeorge School of Law; no degree

1985: New Mexico State University College of Business; no degree

1981 – 1985: New Mexico State University; Bachelor of Accountancy

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.

2017 – present

United States District Court
100 North Church Street
Las Cruces, New Mexico 88001
United States Magistrate Judge

2001 – 2017

State of New Mexico
Seventh Judicial District Court
200 Church Street
Socorro, New Mexico 87801
District Judge, Division III (2001 – 2017)
Chief District Judge of the Seventh Judicial District Court (2005 – 2015)

2000 – 2001

Sweazea and Mojtabei, LLC
[Firm no longer exists]
303 Rio Communities Boulevard
Belen, New Mexico 87002
Partner

1994 – 2000

Kevin Sweazea, Attorney at Law
[Firm no longer exists]
643 Highway 314
Los Lunas, New Mexico 87031
Sole practitioner

1991 – 1993

Anthony J. Williams, Attorney at Law
P.O. Box 2309
Los Lunas, New Mexico 87031
Associate attorney

1989 – 1990

Pongetti, Myers & Wilson
[Firm no longer exists]
6400 Uptown Boulevard, N.E.
Floor 3
Albuquerque, New Mexico 87110
Associate attorney

Fall 1988

Poole, Tinnin & Martin
[Firm no longer exists]
217 Central Avenue
Albuquerque, New Mexico 87103

Associate attorney

Summer 1987
Johnson & Lanphere
[Firm no longer exists]
6400 Uptown Boulevard, N.E.
Floor 3
Albuquerque, New Mexico 87110
Summer law clerk

Summer 1985
New Mexico State University
1780 East University Avenue
Las Cruces, New Mexico 88003
Welder/laborer

Other Affiliations (uncompensated unless otherwise indicated)

1988 – present
Sweazea Ranch
HC 75 Box 64
Mountainair, New Mexico 87036
Compensated owner and operator of family cattle ranching enterprise with my wife and two adult children

2010 – 2015
New Mexico High School Rodeo Association
1668 S RR 3
Portales, New Mexico 88130
Board Member

2005 – 2010
New Mexico Junior High School Rodeo Association
1668 S RR 3
Portales, New Mexico 88130
Board Member & National Director

2006 – 2007
New Mexico District Judge's Association
400 Lomas Boulevard, N.W.
Albuquerque, New Mexico 87102
Treasurer

1997 – 2001
New Mexico Environmental Improvement Board
1190 St. Francis Drive

P.O. Box 26110
Santa Fe, New Mexico 87502
Board Member

1996 – 2000
Socorro County Land Use Commission
198 Neel Street
Socorro, New Mexico 87801
Board Member

1993 – 1998
Valencia County Farm and Livestock Bureau
2220 North Telshor Boulevard
Las Cruces, New Mexico 88011
President (1995 – 1996)
Board of Directors member (1993 – 1998)

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 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.

Baylor University School of Law, Partial academic scholarship (1986 – 1988)

New Mexico State University, Scholarship for rodeo team that competed in National Intercollegiate Rodeo Association (1981 – 1985)

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.

Albuquerque Bar Association (1989 – 1990)

American Bar Association (1989 – 1990)

Federal Magistrate Judges Association (2017 – 2019)

New Mexico Bar (1988 – present)

New Mexico District Judge's Association

Treasurer (2006 – 2007)

New Mexico Judicial Merit Selection Committees

Private Attorney Member (1991 for the selection of a District Judge for the Thirteenth Judicial District; 1995 and 1997 for the selection of two District Judges for the Seventh Judicial District)

District Judge Member (2005 and 2014 for the selection of Seventh Judicial District Judges)

New Mexico Supreme Court Committees

Uniform Criminal Jury Instruction Committee (2003 – 2005)

Judicial Information Systems Council (2015 – 2017)

New Mexico Judicial Conclave Committee (2015 – 2017)

State of New Mexico, Judicial Standards Commission (2015)

New Mexico Supreme Court Chief Judge's Council: Chief District Judge,

Seventh Judicial District Court (2005 – 2015)

Valencia County Bar Association (1991 – 2000)

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.

State Bar of New Mexico (1988)

State Bar of Colorado (1988; lapsed in 1989). My score on the Multi-State portion of the New Mexico bar examination permitted me to gain admission to the Colorado bar without sitting for the Colorado bar. After practicing law for a short period of time, I realized I would not be taking cases in Colorado, so I did not renew my bar membership in Colorado.

- 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 for the Tenth Circuit (1988).

United States District Court for the District of New Mexico (1988). I was admitted while employed as an associate attorney at Poole, Tinnin & Martin. I did not renew my admission to practice after I left employment at the Poole firm because my law practice did not involve the litigation of cases in United States District Court or appeals to the Tenth Circuit Court of Appeals. Because I am exempt from admission as a judge, the Clerk's Office is unable to determine when my prior admission lapsed.

State of New Mexico (1988)

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.

New Mexico Businessman's Team Roping Association (2015 – present)

New Mexico Cattle Growers Association (1989 – 2001)

New Mexico Environmental Improvement Board
Board Member (1997 – 2001)

New Mexico Farm and Livestock Bureau (1988 – present)
Chairman, Young Farmer's and Rancher's Committee (1995 – 1996)

New Mexico High School Rodeo Association
Board Member (2010 – 2015)

New Mexico Junior High School Rodeo Association
Board Member and National Director (2005 – 2010)

Socorro County Land Use Commission
Board Member (1996 – 2000)

United States Team Roping Championships (1995 – present)

Valencia County Farm and Livestock Bureau (1993 – 1998)
President (1995 – 1996)
Board of Directors member (1993 – 1998)

World Series of Team Roping (2010 – present)

- 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.

None of the 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.

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.

Very early in my private practice of law, I may have written an article for publication in the NEW MEXICO STOCKMAN magazine, but I have been unable to determine whether an article was ever actually published, nor did I retain a copy of any drafts.

- 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.

December 28, 2005: Speaker, Torrance County Commission, Estancia, New Mexico. I spoke at a public meeting in support of the commission constructing recreational improvements that would encourage youth activities in Torrance County, New Mexico. I have no notes, transcript, or recording. Press reports supplied.

May 8, 2002: Speaker, Torrance County Commission, Estancia, New Mexico. I own a ranch in Torrance County, New Mexico. A land developer purchased a 12,640 acre ranch adjacent to mine, and applied to the County Commission to subdivide the ranch into residential lots. I attended a hearing concerning zoning on the proposed development, and expressed concern about water use for the proposed development. I have no notes, transcript, or recording. Press report supplied.

Minutes of State of New Mexico Environmental Improvement Board (Feb. 9, 2001). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Jan. 12, 2001). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Nov. 9, 2000). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Oct. 13, 2000). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Sept. 8, 2000). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Aug. 11, 2000). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (July 12, 2000). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (May 12, 2000). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Apr. 14, 2000). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Mar. 10, 2000). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Feb. 11, 2000). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Nov. 11-12, 1999). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Oct. 22, 1999). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Sept. 10, 1999). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (July 28, 1999). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (May 14, 1999). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Apr. 23, 1999). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Feb. 12, 1999). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Nov. 13, 1998). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Oct. 9, 1998). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Aug. 14, 1998). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (July 10, 1998). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Apr. 24, 1998). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Apr. 10, 1998). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Mar. 20, 1998). Copy supplied.

Minutes of State of New Mexico Environmental Improvement Board (Jan. 9, 1998). Copy supplied.

While Chief Judge of the Seventh Judicial District Court, each year from 2005 to 2015 I was required to present the Seventh District's budget request for the next year, first to the Budget Committee of the New Mexico Supreme Court Chief Judge's Council, and then to the New Mexico Legislature as part of the unified budget of the New Mexico judiciary. In furtherance of my duties as Chief Judge, I presented each Seventh Judicial District budget request to Chief Judge's

Council, usually in August or September, and then to the New Mexico Legislature the following January or February, along with the other Chief Judges from the other judicial districts throughout New Mexico. I do not have details regarding the exact dates of these presentations. During these presentations, I did not speak from a prepared text, and I have no notes, transcript, or recording. Illustrative press report supplied.

During my years as a private attorney, I was designated by the New Mexico Supreme Court to sit on a Judicial Merit Selection Committee in 1991 for the selection of a District Judge for the Thirteenth Judicial District, and in 1995 and 1997 for the selection of District Judges for the Seventh Judicial District. Similarly, in 2005 and 2014, while a State of New Mexico District Judge, I sat on Judicial Merit Selection Committees for the Selection of Seventh Judicial District Judges pursuant to designation by the New Mexico Constitution, as the Chief Judge of the Seventh Judicial District Court. I do not have details regarding the exact dates of these meetings. During the meetings for these groups, I did not speak from prepared text, and I have no notes, transcript, or recording. Illustrative press report supplied.

I was on the Board of the Socorro County Land Use Commission, as noted above, but copies of the Board's meeting minutes from my tenure no longer exist.

- 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.

January 18, 2019: Speaker, Naturalization Ceremony, Las Cruces, New Mexico. I spoke about the importance of immigrants and citizenship. My remarks followed the notes supplied for the September 15, 2017, speech.

May 18, 2018: Speaker, Naturalization Ceremony, Las Cruces, New Mexico. My remarks followed the notes supplied for the September 15, 2017, speech.

September 15, 2017: Speaker, Naturalization Ceremony, Las Cruces, New Mexico. Notes supplied.

January 7, 2010: Speaker, Career celebration for District Judge Edmund Kase III, Socorro, New Mexico. I spoke about Judge Kase's career. I have no notes, transcript, or recording. Press report supplied.

March 10, 2008: Speaker, Election tie-breaker, Estancia, New Mexico. One of my duties as District Judge was to certify election results, and to resolve ties in elective seats. New Mexico law provides for the resolution by game of chance of a tie in an election. In order to resolve a tie for a municipal election seat, I traveled to the municipal office and resolved the tie between the two candidates by a hand of poker. I have no notes, transcript, or recording. Press report supplied.

On multiple dates, as part of a community outreach program with Estancia Municipal Schools, occasionally classes of students would come to the Torrance County District court house for a tour and discussion about court processes. I no longer have records on the precise dates. I have no notes, transcripts, or recordings. Illustrative press reports supplied.

One of my duties as District Judge was to swear in newly elected public officials, law enforcement officers, and other individuals who must take an oath before assuming an elective or appointive office. Accordingly, virtually every year in December, I would attend swearing-in ceremonies in Torrance County and Catron County, which are two of the four counties comprising the Seventh Judicial District. Sometimes, but not every year, I would also attend the swearing-in ceremonies in Socorro County and Sierra County, which are the remaining two counties comprising the Seventh Judicial District. Occasionally as the need arose during the year, I would also swear in other individuals, such as CASA volunteers or police officers. I no longer have records on the precise dates. I have no notes, transcripts, or recordings. Illustrative press reports supplied.

- 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.

Harold Smith, *Hard-Working Kids off to Rodeo Finals; Six Youths from Area Find Persistence Pays off for Nationals*, ALBUQUERQUE J., June 24, 2010. Copy supplied.

Ashley Bergen, *Young Mountainair Roper Wins Truck*, ALBUQUERQUE J., Feb. 11, 2010. Copy supplied.

Harold Smith, *Teen Wins Second Cowgirl State Title*, ALBUQUERQUE J., May 28, 2009. Copy supplied.

Laura Nesbitt, *County Fixes Court Mold; Judicial Complex Windows Leaked*, ALBUQUERQUE J., June 19, 2008. Copy supplied.

Editorial Opinion, *Drug Courts Fight Crime*, ALBUQUERQUE J., Sept. 20, 2007. Copy supplied.

Beth Hahn, *Cabin Slayings Conviction Overturned; Sentence May Be Reduced to 39 Years*, ALBUQUERQUE J., May 24, 2007. Copy supplied.

Jeff Proctor, *Plea Deal in Cabin Murders: Prosecutors Didn't Disclose Evidence*, ALBUQUERQUE J., May 22, 2007. Copy supplied.

Ruben Gonzales, *Judges Show Support for Vehicle-Seizure Plan*, ALBUQUERQUE J., June 3, 2004. Copy supplied.

Rory McClannahan, *Volunteers Sought to Help Legal Staff*, ALBUQUERQUE J., July 12, 2001. Copy supplied.

Tim Menicutch, *Mountainair Cowboy/Judge Is Handy with a Gavel and a Rope*, ALBUQUERQUE J., June 22, 2001. Copy supplied.

Tim Menicutch, *Handy with a Gavel and a Rope*, ALBUQUERQUE J., June 14, 2001. Copy supplied.

Rory McClannahan, *Mountainair Lawyer to Be District Judge*, ALBUQUERQUE J., Mar. 1, 2001. Copy supplied.

Carolyn Appelman, *Downwind Monitor Installation Sought*, ALBUQUERQUE J., July 15, 2000. Copy supplied.

In approximately 2017, in connection with the announcement of my appointment as United States Magistrate Judge, I gave an interview to a newspaper reporter for a Truth or Consequences, New Mexico, newspaper. There are two newspapers published in Truth or Consequences: THE HERALD and THE SENTINEL. I cannot determine for which newspaper the reporter worked. I also gave an interview to a reporter who worked for the MOUNTAIN VIEW TELEGRAPH, which is affiliated with the ALBUQUERQUE JOURNAL, and is distributed in Torrance County, New Mexico. I do not remember the dates of the interviews, which both concerned the fact of my appointment as United States Magistrate Judge and my retirement from the State District Court. The interviews did not address or discuss substantive legal topics. I have been unable to locate any articles resulting from these interviews.

In approximately February 2005, the individual who was then Chief Judge of the Seventh Judicial District Court was in an automobile accident while conducting court business. As a result of the accident, the individual took an immediate leave of absence from the court and was ultimately removed from the Judiciary. Immediately upon the individual taking a leave of absence, I was appointed Chief Judge of the Seventh Judicial District. In connection with my duties as Chief Judge, I was interviewed by various newspapers, including the ALBUQUERQUE JOURNAL and one or more Albuquerque, New Mexico, based television stations,

concerning the course of action that the Seventh Judicial District would take following the incident with the previous Chief Judge. The interviews did not address or discuss substantive legal topics. I do not remember the dates of the interviews. Four articles resulting from those interviews are listed below.

Jeremy Pawloski and Russell Contreras, *District Judge Drove Drunk*, ALBUQUERQUE J., February 17, 2005. Copy supplied.

Jason Auslander, *Panel: Suspend Judge Charged With DWI*, SANTA FE NEW MEXICAN, Feb. 15, 2005. Copy supplied.

Sweazea Named Acting Chief Judge After Fitch Accused of DWI, ASSOCIATED PRESS, Feb. 14, 2005. Copy supplied.

Jason Auslander, *Judge Charged with DWI After Crash*, SANTA FE NEW MEXICAN, Feb. 12, 2005. Copy supplied.

It is possible that I was interviewed by newspaper or television reporters on other occasions at various points in my career that I do not remember and for which I have been unable to locate any records.

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.

State of New Mexico, Seventh Judicial District Court, District Judge, Division III.

I was appointed to the position of State of New Mexico, Seventh Judicial District Court, District Judge, Division III, by Governor Gary Johnson, and was sworn in on March 9, 2001. In 2002, I ran in the constitutionally mandated partisan primary and general elections, and was elected to the position of State District Court Judge without opposition. I stood for retention elections in 2008 and 2014, and was retained by the voters for a six year term each time. My most recent term as District Judge would have expired December 31, 2020, had I not retired from that position when appointed United States Magistrate Judge.

The Seventh Judicial District Court is the general jurisdiction trial court for the State of New Mexico. The Seventh Judicial District comprises Catron, Sierra, Socorro and Torrance Counties, New Mexico. The Seventh Judicial District Court is not divided into divisions concerning the type of cases assigned to each of the three District Judges in the District. Each of the District Judges in the Seventh Judicial District presides over cases in each of the four counties comprising the District. Accordingly, during my sixteen years as District Judge, I presided over thousands of civil, criminal, children's court, domestic, and probate cases in the four counties comprising the District. I also presided over many complex civil cases in New Mexico District Courts outside of the Seventh Judicial District by stipulation of the parties and attorneys involved in those cases, or by designation by the New Mexico Supreme Court. In addition, I presided over a number of

complicated criminal cases outside of the Seventh Judicial District by designation of the New Mexico Supreme Court.

United States District Court, District of New Mexico, Magistrate Judge.

I was appointed to the position of United States Magistrate Judge located in Las Cruces, New Mexico by the District Judges of the United States District Court for the District of New Mexico. I was sworn in to the position of Magistrate Judge on May 3, 2017. The jurisdiction of a United States Magistrate Judge is found in 28 U.S.C. § 636.

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

In my sixteen years as a State District Court Judge, I presided over and disposed of approximately 11,260 cases through final judgment. Chart supplied.

I have been a United States Magistrate Judge since May 2017. Magistrate Judges preside over trials or other dispositive proceedings only in civil cases where the parties consent. While many civil litigants have consented to me presiding over dispositive proceedings in their cases, only two of those cases, other than social security appeals, have reached judgment by other than settlement at this juncture. I have not conducted any jury trials as a United States Magistrate Judge. United States Magistrate Judges do not have jurisdiction to preside over criminal trials involving felony offenses. I have presided over three criminal trials involving a misdemeanor offenses. I have decided twenty-seven social security appeal cases through final judgment by consent of the parties. Pursuant to the practice of the New Mexico District Court, social security appeal cases are decided on the briefs, rather than at the conclusion of a hearing.

- i. Of these, approximately what percent were:

| | |
|-----------------------|-----|
| jury trials: | 1% |
| bench trials: | 99% |
| civil proceedings: | 60% |
| criminal proceedings: | 40% |

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

As a State District Court Judge, I did not write published or cited opinions, nor concurrences or dissents to opinions of other judges. I presided over and disposed of approximately 11,260 cases through final judgment. Chart supplied in response to Question 13(a).

As a United States Magistrate Judge, citations for all opinions I have written as of March 1, 2019, that are available on Westlaw or Lexis are provided in the supplied table.

- 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. *New Mexico v. Ray*, Nos. D-721-CR-1999-21; D-721-CR-2000-25; D-721-CR-2000-26 (N.M. 7th Jud. Dist.).

Mr. Ray was charged in State Court with a multitude of charges related to the kidnap and sexual assault of three women. The first trial of the first case, presided over by Judge Neil Mertz, was held in Tierra Amarilla, New Mexico, on a change in venue and ended in a mistrial. Judge Mertz changed the venue for the second trial of the first case to Torrance County, New Mexico, based upon the stipulation of the parties. Upon retrial, just before Thanksgiving 2000, Judge Mertz passed away the morning of the second day of jury selection. I was appointed to Judge Mertz's former office and was sworn in on March 9, 2001. The retrial of the first case against Mr. Ray recommenced in April 2001, with me as the presiding judge. The trial of the case, including deliberation, took approximately two weeks. The jury convicted Mr. Ray on all counts.

The trial of the second case against Mr. Ray began in June 2001. Before the State rested its case, the State and Mr. Ray reached a plea agreement. Pursuant to the plea, Mr. Ray plead guilty to the charges against him, agreed not to appeal or otherwise challenge his convictions and sentence, and the State agreed to leniency in the sentence of Jesse Ray, Mr. Ray's daughter and co-defendant. The third case against Mr. Ray was dismissed by the State. Mr. Ray was sentenced to 223 years in the New Mexico Department of Corrections.

Counsel for the Prosecution

Clint Wellborn
District Attorney's Office
P.O. Box 1099
Socorro, New Mexico 87801
(575) 835-0052

James Yonce
Contact information unavailable

Counsel for the Defendant

Lee McMillan
Contact information unavailable

2. *New Mexico v. Guzman*, No. D-725-CR-2000-113 (N.M. 7th Jud. Dist.), *aff'd*, 136 N.M. 253 (N.M. Ct. App. 2004).

Defendant was charged with vehicular homicide, accidents involving death or personal injury, tampering with evidence, and aggravated driving under the influence of intoxicating liquors. The charges stemmed from an incident where Defendant, who had been at a bar drinking alcohol from early evening until the bar closed around 2:00 a.m., drove her car home and, in route, struck and killed a pedestrian. Trial was originally scheduled before Judge Neil P. Mertz, who died in November 2000 before the trial was held, and the case was reassigned to Pro Tem Judge Richard Parsons. On February 27, 2001, eighteen days past the deadline to commence trial under Rule 5-604, Judge Parsons entered a nunc pro tunc order which granted an extension through May 7, 2001, of the deadline to commence trial. Defendant opposed this order and filed a motion to dismiss for failure to timely commence trial.

I was sworn in on March 9, 2001, and was assigned the case. I conducted a hearing on the motion to dismiss and denied the motion. The charges against Defendant were tried before a jury during a multi-day trial beginning April 30, 2001. Defendant was convicted on all of the charges against her and was sentenced to six years in the New Mexico Department of Corrections. The Court of Appeals (Judges Wechsler, Castillo, and Robinson) affirmed Defendant's convictions.

Counsel for the Prosecution

Bruce Burwell
District Attorney's Office
P.O. Box 1099
Socorro, New Mexico 87801
(575) 835-0052

Counsel for the Defendant

Edward Chavez
Law Office of Edward Chavez Jr.
P.O. Box 25442
Albuquerque, New Mexico 87125
(505) 243-5900

3. *New Mexico v. Jensen*, No. D-722-CR-2002-99 (N.M. 7th Jud. Dist.), *rev'd*, 138 N.M. 647 (N.M. Ct. App. 2005), *rev'd*, 140 N.M. 416 (N.M. 2006).

Mr. Jensen was arrested and charged with child abuse and two counts of contributing to the delinquency of a minor. The investigation of Mr. Jensen began after the disappearance of a fifteen year old male who lived in the same

neighborhood as Mr. Jensen. The young man's dismembered remains were later discovered in a rural field close to Mr. Jensen's residence. Mr. Jensen was not charged in connection with the death of the young man. The case received extensive media coverage. Based upon the defendant's motion for a change of venue due to unfavorable media coverage, venue for the case was changed from Tarrant County, New Mexico to Catron County, New Mexico. After a multi-day trial, Mr. Jensen was convicted of two counts of contributing to the delinquency of a minor and one count of child abuse. Mr. Jensen was sentenced to six years. He appealed his conviction to the Court of Appeals, challenging only his child abuse conviction. The Court of Appeals (Judges Sutin, Bustamante, and Fry) reversed Defendant's conviction, concluding that the evidence "does not portray a defenseless child too young to protect himself." The New Mexico Supreme Court (Justices Chavez, Bosson, Minzner, Serna, and Maes) granted the State's petition for writ of certiorari and reversed the Court of Appeals.

Counsel for the Prosecution

Mark Pickering
P.O. Box 52
Cedar Crest, New Mexico 87008
(505) 681-8138
Formerly with the District Attorney's Office

Counsel for the Defendant

Jeff Rein
New Mexico Public Defender Department
505 Marquette Avenue, N.W., Suite 120
Albuquerque, New Mexico 87102
(505) 369-3570

4. *New Mexico v. Cates*, No. D-1031-CR-2005-04 (N.M. 10th Jud. Dist.), *aff'd*, No. 30,022 2010 N.M. Unpub. LEXIS 8 (N.M. May 11, 2010).

Mr. Cates was charged with murder and other related charges in connection with allegations that he had broken into the home of an elderly woman, assaulted her, and stabbed her to death. The New Mexico Supreme Court designated me to preside over the case. Mr. Cates was convicted of first degree murder and sentenced to life in prison. Mr. Cates appealed his conviction to the New Mexico Supreme Court (Justices Serna, Daniels, Maes, Bosson, and Chavez), which affirmed the conviction in an unreported opinion.

Counsel for the Prosecution

Hon. Matt Chandler
Ninth Judicial District Court

700 North Main Street, Suite 2
Clovis, New Mexico 88101
(575) 742-7502
Formerly with the District Attorney's Office

Andrea Reeb
District Attorney's Office
417 Gidding Street #200
Clovis, New Mexico 88101
(575) 769-2246

Counsel for the Defendant

Hon. Abigail Aragon
Fourth Judicial District Court
496 West National Street
Las Vegas, New Mexico 87701
(505) 425-3900
Formerly with Office of the Public Defender

5. *Parkhill v. Alderman-Cave Milling & Grain Co.*, No. D-608-CV-2005-57 (N.M. 6th Jud. Dist.), *aff'd*, 149 N.M. 140 (N.M. Ct. App. 2010), *cert. granted*, No. 32,690 (N.M. Dec. 3, 2010), *writ quashed*, (N.M. May 10, 2013).

Plaintiffs operated several horse ranches located in southern New Mexico. Defendant produced and marketed horse and cattle feed in New Mexico. Plaintiffs purchased horse feed from Defendant, and soon after they began using the feed, several of Plaintiffs' horses became sick and died. Subsequent tests of samples of the horse feed disclosed the existence of monensin in the feed. Monensin is an antibiotic that is a common additive to livestock feed but is known to be toxic to horses and is, therefore, prohibited by State and Federal law from being in horse feed. Plaintiffs alleged that they personally suffered physical symptoms and illnesses during and after the time they were feeding their horses the horse feed. Plaintiffs brought suit, alleging that Defendant was liable for the loss of their horses and for their own alleged physical illnesses, based upon products liability theories.

I presided over the case at the request and stipulation of the attorneys and the parties in the case. The parties settled the property damage claims relating to the loss of their horses. Defendant moved to exclude the testimony of expert witnesses identified by Plaintiffs, and, after a two day evidentiary hearing and extensive briefing, the Court granted the motion. The Court also dismissed the individual claims of one Plaintiff as a sanction for discovery abuses. Plaintiffs appealed to the New Mexico Court of Appeals (Judges Vanzi, Wechsler, and Vigil), which affirmed.

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John S. Thal
Elizabeth Losee
Retired

6. *New Mexico v. Woods*, No. D-721-CR-2006-56 (N.M. 7th Jud. Dist.), *aff'd*, 148 N.M. 89 (N.M. Ct. App. 2009), *cert. denied*, No. 32,031 (N.M. Jan. 7, 2010).

The State charged Mr. Woods, a park ranger, with first degree murder after he shot and killed an individual who was camping in the park and had remained there much longer than permitted by park rules. Mr. Woods and other law enforcement in the area had dealt with the individual on multiple occasions and considered the individual to be dangerous. Mr. Woods went to the individual's camp to request that he leave the park, and a physical altercation developed during which Mr. Woods thought the individual was reaching for a gun. Mr. Woods shot the individual, killing him. The individual was not armed. Mr. Woods reached a plea deal with the government whereby he plead no contest to manslaughter with a firearm enhancement. The Court sentenced the Defendant to six years on the underlying manslaughter charge and one year on the firearm enhancement. The Court then suspended all of the time except for the one year firearm enhancement, which was ordered to be served on house arrest, followed by five years of supervised probation. The State appealed the sentence on the firearm enhancement. The New Mexico Court of Appeals (Judges Vigil, Fry, and Vanzi) affirmed the sentence.

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7. *Varga v. Ferrell*, No. D-721-CV-2007-51 (N.M. 7th Jud. Dist. May 25, 2011) (copy supplied), *aff'd in part & rev'd in part*, No. 31,268, 2013 N.M. App. Unpub. LEXIS 300 (N.M. Ct. App. Oct. 23, 2013).

This case arose from Plaintiff's purchase of a home from Defendant Mark Ferrell. After closing on the purchase, Plaintiff discovered construction defects in the home. Plaintiff sued the seller, the seller's broker, and her own brokers, asserting breach of contract, fraud, misrepresentation, and other related claims. The Court granted summary judgment in favor of the brokers. The Court denied an application for award of attorney fees. On the remaining claims, the Court held a multi-day trial. At the conclusion of the trial, the Court found that the seller had misrepresented the condition of the home to Plaintiff, and awarded damages to Plaintiff. All parties cross-appealed. The New Mexico Court of Appeals (Judges Fry, Bustamante, and Hanisee) affirmed the grant of summary judgment to the brokers and the award of compensatory damages to Plaintiff. The Court of Appeals reversed and remanded for further consideration of the calculation of the award of punitive damages. The Court of Appeals reversed the denial of the application for attorney fees.

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8. *New Mexico v. Mills*, No. D-1010-CR-2008-64 (N.M. 10th Jud. Dist.), *aff'd*, No. 29,901, 2011 N.M. App. Unpub. LEXIS 254 (N.M. Ct. App. June 17, 2011).

Mr. Mills was charged with three counts of criminal sexual penetration of a minor, kidnapping, criminal sexual contact of a minor, aggravated burglary, and intimidation of a witness. Mr. Mills was alleged to have gone into the house of a female acquaintance during the night and taken the acquaintance's young daughter from the home against her will and sexually assaulted the child in an alley near the child's home. I presided over this case pursuant to a designation from the New Mexico Supreme Court. Mr. Mills was tried before a jury in a multi-day trial. He was convicted of all charges and sentenced to the maximum sentence. Mr. Mills appealed his conviction to the New Mexico Court of Appeals (Judges Bustamante, Fry, and Garcia), which affirmed Mr. Mills' convictions.

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9. *Allred v. N.M. Dep't of Transp.*, No. D-728-CV-2011-21 (N.M. 7th Jud. Dist. Oct. 6, 2014) (copy supplied), *aff'd in part*, 388 P.3d 998 (N.M. Ct. App. 2016), *cert. denied*, No. S-1-SC-36235 (N.M. Jan. 12, 2017).

This case involved claims by the Allred family against the New Mexico Department of Transportation (“DOT”) relating to the construction and subsequent maintenance by the DOT of a bridge in Glenwood, New Mexico. After hearings on an application by Plaintiffs for a temporary restraining order, which was granted, the parties ultimately entered into a stipulated judgment that required DOT to undertake specific maintenance actions to alleviate flooding concerns. After extensive flooding of Plaintiffs’ lands, Plaintiffs sought to have DOT held in contempt of court for violating the judgment, and sought damages from DOT resulting from flooding. The Court found DOT in contempt of court for its willful failure to abide by the judgment. After a multi-day evidentiary hearing, the Court awarded Plaintiffs damages totaling \$408,764 and attorney fees of \$54,301.41. Defendants appealed to the New Mexico Court of Appeals (Judges Wechsler, Vigil, and Sutin), which reduced the damage award by \$15,000, but otherwise affirmed the judgment.

Counsel for the Plaintiff

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10. *Paez v. Burlington N. Santa Fe Railway, et al.*, No. D-725-CV-2009-83 (N.M. 7th Jud. Dist.), *aff'd*, 362 P.3d 116 (N.M. Ct. App. 2015).

While driving her vehicle along a county road, Rosemary Paez collided with a train owned and operated by Burlington Northern Santa Fe Railway ("BNSF"). Mrs. Paez and her husband filed a civil lawsuit against BNSF and the County, among others, seeking damages based upon common law negligence, inadequate railroad crossing design, construction and maintenance, and other claims relating to the collision. Defendants filed numerous motions for partial summary judgment. After multiple hearings, the district court granted summary judgment as to each motion, ultimately disposing entirely of Plaintiffs' claims against Defendants. Plaintiffs appealed, arguing that disputed issues of material fact precluded summary judgment. The New Mexico Court of Appeals (Judges Hanisee, Sutin, and Zamora) affirmed the trial court rulings.

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Counsel for Defendant County of Socorro

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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 a State District Judge, I typically issued decisions in open court, on the record, setting forth the basis for the decision on the record. No decision I issued was published. On occasion, I would issue a decision in the form of Findings of Fact, Conclusions of Law, and Decision. Two significant decisions of this nature are:

1. *Allred v. N.M. Dep't of Transp.*, No. D-728-CV-2011-21 (N.M. 7th Jud. Dist. Oct. 6, 2014) (copy supplied), *aff'd in part*, 388 P.3d 998 (N.M. Ct. App. 2016), *cert.*

denied, No. S-1-SC-36235 (N.M. Jan. 12, 2017).

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2. *Varga v. Ferrell*, No. D-721-CV-2007-51 (N.M. 7th Jud. Dist. May 25, 2011) (copy supplied), *aff'd in part & rev'd in part*, No. 31,268, 2013 N.M. App. Unpub. LEXIS 300 (N.M. Ct. App. Oct. 23, 2013).

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As a United States Magistrate, I have issued the following significant opinions:

1. *United States v. Rivero*, No. 2:17-CR-1915-KG, 2017 WL 4402424 (D.N.M. Oct. 2, 2017), *report & recommendation adopted*, 2017 WL 5450250 (D.N.M. Nov. 14, 2017).

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2. *United States v. Ferman*, No. 2:18-cr-2739-KG, 2019 U.S. Dist. LEXIS 3170 (D.N.M. Jan. 7, 2019), *report & recommendation adopted with modifications*, No. 2:18-cr-2739-KG (D.N.M. Mar. 7, 2019).

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3. *Shultzaberger v. State Farm Mut. Auto. Ins. Co.*, No. 2:17-cv-01028-KRS-CG, 2018 U.S. Dist. LEXIS 7915 (D.N.M. Jan. 17, 2018) (granting motion to bifurcate); 2018 U.S. Dist. LEXIS 96123 (D.N.M. June 6, 2018) (granting motion to supplement discovery); 2018 U.S. Dist. LEXIS 180045 (D.N.M. Oct. 18, 2018) (order denying motion for summary judgment).

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4. *Hartman v. City of Roswell*, No. 2:17-cv-1105-KRS-SMV, 2018 U.S. Dist. LEXIS 13358 (D.N.M. Jan. 26, 2018) (denying motion to dismiss).

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5. *Nicholas v. Windstream Communs., LLC*, No. 2:17-cv-00361-KRS-GJF, 2018 U.S. Dist. LEXIS 36532 (D.N.M. Mar. 6, 2018) (granting motion to extend expert disclosure deadline); 2018 U.S. Dist. LEXIS 64571 (D.N.M. Apr. 17, 2018) (denying motion for summary judgment).

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6. *Torres v. Murillo*, No. 2:17-cv-00765-KRS-GBW, 2018 U.S. Dist. LEXIS 70416 (D.N.M. Apr. 25, 2018) (granting motion for summary judgment); 2018 U.S. Dist. LEXIS 74602 (D.N.M. May 2, 2018) (denying motion to dismiss); 2018 U.S. Dist. LEXIS 104978 (D.N.M. June 21, 2018) (granting in part motion for summary judgment); 2018 U.S. Dist. LEXIS 195586 (D.N.M. Nov. 16, 2018) (granting motion for summary judgment).

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7. *May v. Tex. Lobo Trucking Co.*, No. 2:17-cv-00889-KRS-SMV, 2018 U.S. Dist. LEXIS (D.N.M. May 16, 2018) (granting motion to amend complaint).

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8. *Hernandez v. Parker*, No. 2:17-cv-01218-KRS-GJF, 2018 U.S. Dist. LEXIS 207330 (D.N.M. Dec. 7, 2018).

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

I am not aware of any case over which I presided as a State District Court Judge where a party has requested certiorari to the United States Supreme Court.

I have been able to locate the following cases over which I presided as a State District Court Judge where a party requested certiorari to the New Mexico Supreme Court:

Allred v. N.M. Dep't of Transp., No. D-728-CV-2011-21 (N.M. 7th Jud. Dist. Oct. 6, 2014), *aff'd in part*, 388 P.3d 998 (N.M. Ct. App. 2016), *cert. denied*, No. S-1-SC-36235 (N.M. Jan. 12, 2017).

New Mexico v. Scott C., 365 P.3d 27 (N.M. Ct. App. 2015), *cert. denied*, No. S-1-SC-35561 (N.M. Jan. 5, 2016).

Parkhill v. Alderman-Cave Milling & Grain Co., No. D-608-CV-2005-57 (N.M. 6th Jud. Dist.), *aff'd*, 149 N.M. 140 (N.M. Ct. App. 2010), *cert. granted*, No. 32,690 (N.M. Dec. 3, 2010), *writ quashed*, (N.M. May 10, 2013).

New Mexico v. Morales, 145 N.M. 259 (N.M. Ct. App. 2008), *rev'd*, 148 N.M.305 (N.M. 2010).

New Mexico v. Woods, No. D-721-CR-2006-56 (N.M. 7th Jud. Dist.), *aff'd*, 148 N.M. 89 (N.M. Ct. App. 2009), *cert. denied*, No. 32,031 (N.M. Jan. 7, 2010).

New Mexico v. Cates, No. D-1031-CR-2005-04 (N.M. 10th Jud. Dist.), *aff'd*, No. 30,022 2010 N.M. Unpub. LEXIS 8 (N.M. May 11, 2010).

New Mexico v. Jensen, No. D-722-CR-2002-99 (N.M. 7th Jud. Dist.), *rev'd*, 138 N.M. 647 (N.M. Ct. App. 2005), *rev'd*, 140 N.M. 416 (N.M. 2006).

New Mexico v. Brown, 135 N.M. 291 (N.M. Ct. App. 2004), *aff'd*, 139 N.M. 466 (N.M. 2006).

Blea v. Fields, 138 N.M. 384 (N.M. 2005) (question certified to New Mexico Supreme Court).

New Mexico v. Montoya Guzman, 136 N.M. 253 (N.M. Ct. App. 2004), *cert. denied*, No. 28,766 (N.M. Aug. 3, 2004).

There are no cases over which I have presided as United States Magistrate Judge where a party has requested certiorari.

- 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.

As a United States Magistrate Judge:

United States v. Hammons, No. 16-cv-499, 2017 WL 3098261 (D.N.M. June 23, 2017), *adopted in part & rejected in part*, 286 F. Supp. 3d 1270 (D.N.M. 2017): This case involved several novel issues of interpretation regarding the Armed Career Criminal Act. I recommended that the district court conclude that New Mexico's crime of aggravated assault against a household member qualified as a crime of violence, but that Oregon's crime of third-degree robbery did not. The district court agreed on the New Mexico crime but concluded that the Oregon crime also qualified as a crime of violence.

As a State District Court Judge:

Allred v. N.M. Dep't of Transp., No. D-728-CV-2011-21 (N.M. 7th Jud. Dist. Oct. 6, 2014) (copy supplied), *aff'd in part*, 388 P.3d 998 (N.M. Ct. App. 2016), *cert. denied*, No. S-1-SC-36235 (N.M. Jan. 12, 2017): The Court found the Department of Transportation in contempt of court for its willful failure to abide by a prior judgment. After a multi-day evidentiary hearing, the Court awarded Plaintiffs damages totaling \$408,764 and attorney fees of \$54,301.41. Defendants appealed to the New Mexico Court of Appeals, which reduced the damage award by \$15,000, but otherwise affirmed the judgment.

Dethlefsen v. Weddle, Nos. 33,540, 33660, 2016 WL 1019190 (N.M. Ct. App. Feb. 15, 2016): This case involved a dispute concerning an easement, a portion of which traversed Plaintiff's real estate. The New Mexico Court of Appeals affirmed the determination that an express, fifty-foot-wide easement and road of some undetermined dimension burdens both the Dethlefsen and Warren

properties. The Court of Appeals reversed the declaration that “[t]here are no restrictions or limitations on the use of the . . . easement,” including its application to both the scope of the easement and the use of a lockable gate at the easement’s point of origin. The Court of Appeals remanded for admission and consideration of all relevant extrinsic evidence to determine the proper scope and use of the easement as intended by the common grantor, including a determination of the history and use of a locked gate.

New Mexico v. Scott C., 365 P.3d 27 (N.M. Ct. App. 2015), *cert. denied*, No. S-1-SC-35561 (N.M. Jan. 5, 2016): The New Mexico Children, Youth and Families Department dismissed several cases involving the defendant by notice of dismissal, without prejudice. Defendant claimed that the dismissal without prejudice violated an agreement between Plaintiff and Defendant that the cases were to be dismissed with prejudice. I granted Defendant’s motion to reopen the cases so that an order could be entered dismissing the cases with prejudice. Plaintiff appealed. The New Mexico Court of Appeals reversed my order reopening the case.

Thompson v. Torrance County Bd. of Comm’rs, No. 30,537, 2011 N.M. App. Unpub. LEXIS 352 (N.M. Ct. App. Sept. 21, 2011): This lawsuit arose from the death of Richard Brown, a fifteen month old child whose mother abandoned him along a highway. A Torrance County 911 operator erroneously described to a state highway patrolman where the mother and child were last seen, and Brown died before he could be found. Brown’s personal representative sued Torrance County dispatch operators and others alleging negligence and other related claims. The Torrance County dispatch operators moved to dismiss the claims against them, contending that the New Mexico Tort Claims Act did not waive immunity for suit against them. I granted the motion to dismiss. The New Mexico Court of Appeals reversed my dismissal and sent the case back to district court for further proceedings.

Varga v. Ferrell, No. D-721-CV-2007-51 (N.M. 7th Jud. Dist. May 25, 2011) (copy supplied), *aff’d in part & rev’d in part*, No. 31,268, 2013 N.M. App. Unpub. LEXIS 300 (N.M. Ct. App. Oct. 23, 2013): Plaintiff discovered construction defects in a recently purchased home and sued the seller, the seller’s broker, and her own brokers. The Court granted summary judgment in favor of the brokers, and the New Mexico Court of Appeals affirmed that decision. I denied several of the brokers’ request for attorney fees, which the Court of Appeals reversed. I also found that the seller had misrepresented the condition of the home to Plaintiff, and I awarded damages to Plaintiff; the Court of Appeals affirmed the award of compensatory damages but remanded for further consideration of the award of punitive damages.

Derryberry v. Derryberry, No. 29,747, 2011 WL 2041854 (N.M. Ct. App. Mar. 10, 2011): I ordered summary judgment allowing the foreclosure of Appellant’s real property located in Socorro to satisfy a judgment lien in favor of Appellee for

back child support. Appellant's central contention was that his wife was a necessary party to the litigation. The New Mexico Court of Appeals reversed my decision and remanded the case for further hearing.

New Mexico v. Morales, 145 N.M. 259 (N.M. Ct. App. 2008), *rev'd*, 148 N.M.305 (N.M. 2010): Mr. Morales was charged with sexual penetration of a minor, but he argued that the statute of limitations had expired and that a statutory amendment abolishing the 15-year statute of limitations for all capital felonies and first-degree violent felonies did not apply to crimes that occurred before the amendment's effective date. I rejected his position because his crimes were not time-barred as of the effective date of the statutory amendment. The New Mexico Court of Appeal reversed, but the New Mexico Supreme Court reversed the Court of Appeals and adopted my view.

ERICA, Inc. v. N.M. Reg. & Licensing Dep't, 144 N.M. 132 (N.M. Ct. App. 2008): A liquor licensee sought judicial review of a hearing officer's decision that the licensee had violated the law by selling alcohol to underage individuals. I affirmed the officer's decision, but the New Mexico Court of Appeals reversed, finding that the licensee may qualify under a good-faith exception.

New Mexico v. Jensen, No. D-722-CR-2002-99 (N.M. 7th Jud. Dist.), *rev'd*, 138 N.M. 647 (N.M. Ct. App. 2005), *rev'd*, 140 N.M. 416 (N.M. 2006): Mr. Jensen was arrested and charged with child abuse and two counts of contributing to the delinquency of a minor. Mr. Jensen was convicted and appealed his conviction to the New Mexico Court of Appeals, which reversed, but then the New Mexico Supreme Court reversed the Court of Appeals and adopted my view.

New Mexico v. Brown, 135 N.M. 291 (N.M. Ct. App. 2004), *aff'd*, 139 N.M. 466 (N.M. 2006): The New Mexico Court of Appeals reversed my decision denying an application by the attorney for Mr. Brown, who was privately retained and was not a Public Defender, seeking funds from the Public Defender Department to pay for an investigator/expert. The New Mexico Supreme Court affirmed the Court of Appeals.

- 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 District Court Judge, my decisions are not published. All decisions or other pleadings prepared by me in connection with any case over which I presided are filed in the district court clerk's office for the New Mexico court where the case was pending. Most of the decisions or other pleadings I authored are filed in the Seventh Judicial District Court in Catron, Sierra, Socorro, or Torrance County, New Mexico. However, I was often designated by the New Mexico Supreme Court to preside over cases in New Mexico courts outside of the Seventh Judicial District. In addition, I often presided over cases outside the Seventh

Judicial District by agreement of the litigants and attorneys in those cases. In the event I authored a decision or other pleading in a case over which I presided outside of the Seventh Judicial District, those decisions or other pleadings would be filed with the corresponding district court.

As a United States Magistrate Judge, I have not issued a decision that has been published in the Federal Supplement reporter. I have issued approximately 1,000 orders, decisions, and pleadings, and approximately 145 of them are available on Westlaw or Lexis.

- 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.

As a State District Court Judge: I do not recollect being requested or required to rule on any significant federal or state constitutional issue or challenge during my tenure as State District Court Judge, other than motions to suppress evidence in criminal cases based upon alleged Federal or State constitutional violations of search, seizure, or interrogation rules. During my tenure as State District Judge, I heard and ruled on many, many motions to suppress. Typically, I ruled from the bench on motions to suppress immediately after hearing the evidence and argument concerning the motion. In making those determinations, I stated my ruling and underlying reasoning on the record, rather than requiring the parties to wait for a written decision. The only written pleading I would enter concerning a motion to suppress typically would be a short order, granting or denying the motion for the reasons stated on the record. Accordingly, I am not able to provide any written opinions or decisions on the motions to suppress made during my tenure as State District Judge.

As a United States Magistrate Judge:

United States v. Rivero, No. 2:17-CR-1915-KG, 2017 WL 4402424 (D.N.M. Oct. 2, 2017), *report & recommendation adopted*, 2017 WL 5450250 (D.N.M. Nov. 14, 2017).

- 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. However, during my career as State District Court Judge, I did sit by designation on an appeal before the New Mexico Supreme Court:

Bustos v. Zia Park LLC, 294 P.3d 1244 (May 31, 2013) (table). I sat by designation of the Chief Justice of the New Mexico Supreme Court on this appeal before the New Mexico Supreme Court, which involved claims by the personal representative of a decedent for personal injuries he had received while acting as a

race horse jockey at the horse racing track in Lea County, New Mexico. None of the parties, other than the personal representative, had residency in San Miguel County. Pursuant to statute, a civil action may be brought in the county where a party resides. The Defendants challenged the selection of venue in San Miguel County District Court by motion to dismiss, which was denied. The Defendants were granted the right to seek interlocutory appeal of the denial of dismissal, and were not successful on appeal to the New Mexico Court of Appeals. The New Mexico Supreme Court granted certiorari. Justice Barbara Vigil recused from the case, and I was designated to sit as a member of the New Mexico Supreme Court by designation. After oral argument, we deliberated and voted unanimously to quash the grant of certiorari as having been improvidently granted. I did not participate in the drafting of any opinion or order concerning the aforementioned case.

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.

Recusals during tenure as United States Magistrate Judge. Upon my appointment as United States Magistrate Judge, I reviewed all of the cases assigned to me in order to determine whether I could appropriately preside over those cases. Subsequent to the initial assignment of cases to me, I have reviewed each new case assigned to me to ensure that I may properly preside over that case.

In order to determine whether I may properly preside over a particular proceeding, I refer to 28 U.S.C. § 455 and the Code of Conduct for United States Judges. 28 U.S.C. § 455 and Canon 3 of the Code provide that a judge must perform the duties of the office fairly, impartially and diligently and address specifically those instances when a judge must recuse from presiding over a case. I apply the facts of each case to which I am assigned to the provisions the law and determine whether recusal from the case is necessary.

During my time as United States Magistrate Judge, I have recused from one case. 28 U.S.C. §454(b)(1) and Canon 3(C)(1)(a) (a) provides in part that the judge should recuse from a case if the judge “has a personal bias or prejudice concerning a party” The defendant in one of the cases initially assigned to me is a person whom I have known well for much of my life. Due to my knowledge of that individual, I determined that I had a personal bias or prejudice concerning that party, and I recused from the case, sua sponte.

The United States District Court has an automatic screening process in place to assure in cases where a recurring conflict is present, the case is assigned to another judge. One of my law clerks was formerly employed by a Las Cruces, New Mexico, law firm that regularly appears in United States District Court in civil cases. The Court placed an automatic screen so that cases in which that law firm entered an appearance were automatically assigned to a United States Magistrate Judge other than me for a period of one year.

I have not been requested by motion or otherwise to recuse from any case.

Recusals during tenure as State District Judge. The Code of Judicial Conduct for State District Judges is very similar to the Code of Conduct for United States Judges. During my term as State District Judge, I occasionally recused from cases assigned to me. I used a process very similar to the process I described above, wherein I evaluated each new case assigned to me in light of the provisions of the Code of Judicial Conduct, and recused from the case if the Code required recusal.

The Seventh Judicial District is primarily rural in character, with a few small cities throughout the District. The population of the District is relatively small compared to other judicial districts in the State. As such, it was not unusual to realize that I was acquainted with individuals who were litigants in the Seventh Judicial District Court. In those instances where I was acquainted with one or more litigants in a case, I would customarily recuse from the case. In addition, the Rules of Judicial Conduct mandate that all of the judges of a judicial district recuse from any case involving an employee of the District as a party. Many of the recusals I entered during my State judge career were entered based upon the foregoing mandate. I do not recollect having any personal conflict presiding over any case, other than acquaintance with a party to the case or a party being a court employee.

I did not keep personal statistics concerning recusals during the sixteen years I served in State District Court, and I do not have access to any recusal data compiled by the Court. The only specific case where I recollect being requested by motion to excuse myself was *New Mexico v. Dane Morris*, No. D-722-CR-2015-54 (N.M. 7th Jud. Dist.). Mr. Morris was charged with vehicular homicide and related charges. During the course of the case, there were numerous delays, many at the request of defense counsel. Upon Defendant making a request for an additional continuance, I questioned defense counsel’s justification and pointed out the many delays requested by Defendant and his counsel.

Defense counsel then filed a motion requesting that I excuse myself from the case, contending I was biased against defense counsel. I conducted a hearing on the motion, and denied the motion, determining I was not biased or otherwise required to excuse myself from the case. Defendant did not challenge my ruling by motion to reconsider or appeal, and later in the case pleaded guilty to the charge of vehicular homicide.

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 served as a Board Member for the Socorro County Land Use Commission for 1996 through 2000. I was appointed by the Socorro County Board of Commissioners.

I served as a Board Member for the New Mexico Environmental Improvement Board from December 1997 through March 2001. I was appointed to the Board by New Mexico Governor Gary Johnson and was confirmed to the position by the New Mexico Senate.

As described above, I served as a State District Court Judge, and I currently serve as a United States Magistrate Judge.

- 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.

I have not held an office or rendered service to any political party or election committee, other than my own. The only political campaign in which I have held a position or played a role was in connection with my election as District Judge in 2002, and in subsequent retention elections in 2008 and 2014. I was the candidate in each of those elections. I did not have an opponent in the 2002 primary or general partisan elections. Judges who stand for retention election in New Mexico do not have an opponent in the election. Instead, the voters indicate in their vote whether a judge should be retained or not. I did not have a campaign committee or solicit or attempt to raise any campaign funds in connection with any election for which I was a candidate.

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 did not serve as a law clerk to a judge.

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

I operated my law practice as a sole practitioner in Los Lunas, New Mexico from January 1994 through August 2000. I did not practice law alone, in that I shared office space with attorney Anthony Williams during the entire time that I operated my law practice as a sole practitioner. Mr. Williams and I frequently consulted concerning our respective legal work. In addition, during 1999 and 2000, attorney Cyndi Wimberly (Mojtabai) worked with me on a contract basis so I was not alone in that regard, either.

- 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.

Summer 1987
Johnson & Lanphere
[Firm no longer exists]
6400 Uptown Boulevard, N.E.
Floor 3
Albuquerque, New Mexico 87110
Summer law clerk

Fall 1988
Poole, Tinnin & Martin
[Firm no longer exists]
217 Central Avenue
Albuquerque, New Mexico 87103
Associate attorney

1989 – 1990
Pongetti, Myers & Wilson
[Firm no longer exists]
6400 Uptown Boulevard, N.E.
Floor 3
Albuquerque, New Mexico 87110
Associate attorney

1991 – 1993
Anthony J. Williams, Attorney at Law

P.O. Box 2309
Los Lunas, New Mexico 87031
Associate attorney

1994 – 2000
Kevin Sweazea, Attorney at Law
[Firm no longer exists]
643 Highway 314
Los Lunas, New Mexico 87031
Sole practitioner

2000 – 2001
Sweazea and Mojtabai, LLC
[Firm no longer exists]
303 Rio Communities Boulevard
Belen, New Mexico 87002
Partner

2001 – 2017
State of New Mexico
Seventh Judicial District Court
200 Church Street
Socorro, New Mexico 87801
District Judge, Division III (2001 – 2017)
Chief District Judge of the Seventh Judicial District Court (2005 – 2015)

2017 – present
United States District Court
100 North Church Street
Las Cruces, New Mexico 88001
United States Magistrate Judge

- 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.

During my career in the private practice of law, I occasionally served as mediator on cases that were pending in New Mexico State District Court. My law practice focused on business and real estate related litigation and transactions. The cases in which I served as mediator typically involved disputes concerning business or real estate matters. It has been more than eighteen years since I was in the private practice of law, and I am not able to identify with specificity a particular case that I acted as mediator.

One of my responsibilities with respect to civil cases assigned to me as pretrial United States Magistrate Judge is to conduct settlement

conferences for those cases. I have thus far conducted settlement conferences in seventeen civil cases. The 10 most significant matters for which I have acted as settlement facilitator are:

1. *Valenzuela v. Bd. Directors Sw. Solid Waste Auth.*, No. 2:17-cv-00264-GBW-KRS (D.N.M. Aug. 10, 2017).

Plaintiff asserted claims of wrongful termination, denial of due process, and negligent supervision and training. The parties settled.

2. *Sanchez et al. v. Surratt et al.*, No. 2:13-cv-00444 (D.N.M. Feb. 16, 2018).

Plaintiffs asserted claims of substantive due process, malicious prosecution and retaliation resulting from the wrongful arrest of two of them. The parties settled.

3. *Garcia v. Travelers Ins.*, No. 2:17-cv-00423-JCH-KRS (D.N.M. Aug. 15, 2018).

Plaintiff asserted claims relating to a property casualty insurance policy issued by Defendant to Plaintiff. Mediation was informal, between the parties and me by telephone, prior to the scheduled formal settlement conference. The parties settled.

4. *Mountain States Crain, LLC v. ARS Aleut Remediation, LLC*, No. 1:17-cv-01169-JCH-KRS (D.N.M. Aug. 20, 2018).

Claims of breach of contract and unjust enrichment resulting from a construction contract dispute. The parties settled.

5. *Casteneda v. Black*, No. 2:18-cv-00070-RB-KRS (D.N.M. Aug. 28, 2018).

Plaintiff asserted claims of excessive force and false arrest resulting from her wrongful arrest. The parties settled.

6. *Higginbotham v. Ornelas*, No. 2:18-cv-00449-GJF-KRS (D.N.M. Sept. 24, 2018).

Plaintiff asserted claims unlawful search and seizure arising from law enforcement's warrantless entry into a home in response to a domestic dispute. The parties settled.

7. *Peer v. Chico's FAS*, No. 2:18-cv-00150-MV-KRS (D.N.M. Oct. 10, 2018).

Plaintiff asserted claims of personal injury resulting from a trip and fall in

a retail store. The parties settled.

8. *Rodriguez v. Adams Radio Group, LLC*, No. 2:17-cv-00791-GJF-KRS (D.N.M. Oct. 30, 2018).

Plaintiff asserted claims of employment discrimination and wrongful termination. The parties settled.

9. *Dominguez v. Colfax County et al.*, No. 1:14-cv-00875-MV-KRS (D.N.M. Nov. 13, 2018).

Plaintiff asserted claims of denial of adequate medical care arising from the arrest and detention of a mentally ill individual. The parties settled.

10. *Harding v. Sw. Décor El Paso Corp et al.*, No. 2:18-cv-00702-JB-KRS (D.N.M. Dec. 17, 2018).

Plaintiff asserted personal injury claims as a result of an automobile collision. The parties settled.

I presently am scheduled to conduct eleven additional settlement conferences from March through June 2019.

b. Describe:

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

I began the private practice of law at Poole, Tinnin & Martin, a large Albuquerque, New Mexico law firm, working in their litigation department. Within months of beginning my work there, a partner of the firm informed me that the demise of the firm was likely, and encouraged me to obtain other employment sooner than later to protect my financial wellbeing.

In early 1989, I obtained employment with Pongetti, Myers & Wilson, in Albuquerque, New Mexico. The firm comprised several experienced attorneys who had been partners with the firm Johnson & Lanphere, for which I clerked during law school. I worked as an associate attorney for the Pongetti firm for approximately two years, litigating cases and representing individuals and businesses in transactional matters.

In early 1991, the opportunity arose to continue the practice of law much closer to my residence. From January 1991 until December 1993, I worked as an associate attorney for Anthony J. Williams in Los Lunas, New Mexico.

From January 1994 through August 2000, I practiced as a sole practitioner, sharing office space and consulting on cases with Anthony J. Williams. During 1999 and 2000, Cyndi Wimberly worked for me as an associate attorney on a contract basis.

In August 2000, Ms. Wimberly and I formed a law partnership, and that partnership continued until I assumed the bench as State District Judge.

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

My law practice involved the representation of individuals and business entities in transactional matters, and in the litigation of civil disputes in New Mexico District and Magistrate Courts throughout the State of New Mexico, as well as in Bernalillo County Metropolitan Court. I also represented Boards of County Commission and a municipality as their general counsel. In addition, I litigated a number of contested cases involving applications for certificates of public convenience and necessity or applications for contract motor carrier permits, before the Transportation Department of the New Mexico Public Regulation Commission. I also occasionally represented claimants/creditors in United States Bankruptcy Court.

As a State District Judge and now as a United States Magistrate Judge, I do not have any clients.

- 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.

Approximately fifty percent of my law practice involved the representation of clients in litigation. I appeared in court frequently.

- i. Indicate the percentage of your practice in:

- 1. federal courts: >1%
- 2. state courts of record: 95%
- 3. other courts: 4%
- 4. administrative agencies: 1%

- 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 dozens of cases to verdict, judgment or final decision in courts of record or before administrative law judges. I do not have any records from my private law practice that I might refer to in order to gain precise numbers of cases. I was sole counsel in approximately 90% of the cases, lead counsel in 10% of the cases, and associate counsel once.

- i. What percentage of these trials were:
 1. jury: >1%
 2. non-jury: 99%

- 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.

It has been more than eighteen years since I ended my private practice of law, and I have not maintained records concerning the cases that I litigated. The following are the few significant cases I can describe from memory:

1. *In re Application for Certificate of Public Convenience & Necessity of Safe Ride Services.*, No. N/A (N.M. Pub. Reg. Comm'n Transportation Div.).

This case involved an application by Safe Ride Services to the New Mexico Public Regulation Commission for a Certificate of Public Convenience and Necessity giving it authority to transport medical patients to and from medical appointments throughout New Mexico. I represented Valley Cab, Inc., which already had a Certificate of Public

Convenience and Necessity that included geographic areas included in Saferide's application, giving Valley Cab, Inc. standing to object to the application. After a multiple day evidentiary hearing, the Public Regulation Commission granted Saferide's application in part and denied it in part. I was involved in approximately 1995.

Opposing Counsel

Fred Mowrer
P.O. Box 1966
Albuquerque, New Mexico 87103
(505) 247-4321

2. *Burleson v. Cordova*, No. N/A (N.M. 7th Jud. Dist. 2000).

This case involved claims by the Plaintiffs against a neighboring real property owner to judicially establish an easement for access to Plaintiffs' property. I represented Plaintiffs. After a multiple day trial, the Court (Judge Thomas Fitch presiding) ruled in Plaintiffs' favor.

Co-counsel

Cyndi Wimberly
United States Department of Energy
P.O. Box 5400
Albuquerque, New Mexico 87185
(505) 845-4083
Formerly with Kevin Sweazea, Attorney at Law

Opposing Counsel

Jerry Armijo
Jerry A. Armijo, P.A.
P.O. Box 773
Socorro, New Mexico 87801
(575) 835-1400

3. *Quemado Lake Estates v. El Caso Ranch, Inc.*, No. N/A (N.M. 7th Jud. Dist. 2004).

This case involved claims by a property owner's association and several individual property owners, against the developer of a subdivision, claiming breach of contract and fraud in connection with the construction and sale of the subdivision. I represented Defendants. Plaintiffs were seeking injunctive relief and damages in the range of seven figures. After a multiple day trial, the Court (Judge Thomas Fitch presiding) awarded the homeowner's association approximately \$20,000, and denied the request for injunctive relief.

Opposing Counsel

Charles Aspinwall
Deceased

4. *Desert Sun Construction v. Kevin Mullany*, No. N/A (N.M. 12th Jud. Dist. 1990).

The Desert Sun case involved claims by the general contractor of a high school gymnasium construction project against Kevin Mullany, who was the subcontractor that installed a wood floor in the gymnasium. Plaintiff was seeking damages in the mid-six figures, based upon allegations of breach of contract and breach of warranty. After a multiple day trial, the Court (Judge Robert Doughty presiding) awarded Plaintiff approximately \$15,000.

I am unable to locate the name of opposing counsel.

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.)

My law practice involved the representation of individuals and business entities in transactional matters, and in the litigation of civil disputes in New Mexico District and Magistrate Courts throughout the State of New Mexico, as well as in Bernalillo County Metropolitan Court. I also represented Boards of County Commission and a municipality as their general counsel. In addition, I litigated a number of contested cases involving applications for certificates of public convenience and necessity or applications for contract motor carrier permits, before the Transportation Department of the New Mexico Public Regulation Commission. I also occasionally represented claimants/creditors in United States Bankruptcy Court. I occasionally acted as mediator for civil actions.

I have not conducted lobbying activities on behalf of any client or organization.

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.

I have not taught any courses.

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 receive a monthly pension, in the net amount of \$5,181.96 as of February 2019, from the State of New Mexico, Judicial Retirement Association in connection with my retirement as an New Mexico District Judge.

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.

My family has been in the cattle ranching business in New Mexico since the early 1900's. I continue to own a ranch owned by my family since the early 1900's, as well as another that I purchased during my private practice of law. My wife and I operate our family cattle ranching operation, and will continue to do so if I am appointed to serve as District Judge. My adult children are very involved in our cattle ranching operation, and have primary responsibility for day-to-day operations at our ranches. I work at the ranches on weekends and holidays, and when I am on vacation. My primary role in our family ranching enterprise is as a manager or consultant, assisting my children in their operation of the ranches by providing direction and advice as to the necessary and appropriate actions to be undertaken.

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 am not aware of any family members or other persons, parties, categories of litigation, or financial arrangements that are likely to cause conflicts-of-interest. As in my present position, if appointed District Judge I will screen every case

assigned to me. If a conflict-of-interest is present when a case is filed, or later develops with respect to a case assigned to me, I will recuse from the case.

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

In order to determine whether I may properly preside over a particular case I will refer to 28 U.S.C. §455 and the Code of Conduct for United States Judges. If the statute and Code, when applied to the particular facts of a case, require my recusal, then I recuse from the case.

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.

While a practicing attorney before I became a judge in 2001, I satisfied the pro bono requirements of the New Mexico State Bar each year. Typically, to satisfy my pro bono obligations, I would represent poor individuals in litigation or in transactional matters and not charge them for my services. I do not remember the specific hours, cases, or matters I worked on to satisfy my pro bono obligations.

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 December 14, 2017, I submitted an application for the Las Cruces, New Mexico, District Judge position to the Office of Senator Tom Udall after reading a press release from his office inviting applications. I was contacted by Senator Udall's office to schedule an interview, which occurred March 10, 2018, at the Senator's office in Santa Fe, New Mexico. In attendance at the interview were Senator Udall and one of his assistants, as well as two representatives from the office of Senator Martin Heinrich. After the interview, Senator Udall submitted my name, along with other names, to the White House for consideration of appointment to the District Judge position.

I was then contacted on May 7, 2018, by the Office of White House Counsel and

scheduled for an interview on May 15, 2018, at the Eisenhower Executive Office Building in Washington, D.C. From May 7, 2018, through May 11, 2018, I exchanged several very short email messages with the Office of White House Counsel, providing an updated resume, confirming the interview date, confirming that the Office of White House Counsel had received my application, and providing me information concerning available hotels. I attended the interview on May 15, 2018.

My next communication with the Office of White House Counsel was on February 13, 2019, when I received an email inquiring whether I had interest in the judicial vacancy in Albuquerque, or only the position in Las Cruces. Three very brief messages were exchanged wherein I confirmed that I was only interested in the Las Cruces position. In the last message, I asked the Office of White House Counsel to contact me by telephone to confirm that I was actually being considered for the Las Cruces position, since so much time had passed since my initial application was submitted. During that call, it was confirmed that I was actually being considered for nomination.

On February 25, 2019, I received another call from the Office of White House Counsel informing me that I would be nominated upon clearing the FBI background check and other unspecified vetting. From February 25, 2019, through the submission by me of this questionnaire, various individuals from the Office of White House Counsel have sent me emails with the various documentation required to complete the background check and other vetting. I have corresponded with those individuals concerning the logistics of completing the various documents, and to transmit the completed documents to the Office of White House Counsel. I have also been in contact during that same approximate time frame with the Department of Justice's Office of Legal Policy regarding the nomination paperwork.

- 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.