

**APPLICATION FOR NOMINATION TO  
JUDICIAL OFFICE**

**SECTION I: PUBLIC INFORMATION  
(QUESTIONS 1 THROUGH 65)**

**PERSONAL INFORMATION**

1. Full Name: **Michael Fortune Kelly**
2. Have you ever used or been known by any other name? **No.** If so, state name:
3. Office Address:  
**Hollingsworth Kelly, PLLC  
3501 N. Campbell Ave., Suite 104  
Tucson, Arizona 85719**
4. How long have you lived in Arizona? **I have lived in Arizona for 43 years.** What is your home zip code? **85718.**
5. Identify the county you reside in and the years of your residency.  
**I reside in Pima County and have continuously done so for 43 years.**
6. If nominated, will you be 30 years old before taking office? **Yes.**  
  
If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? **Yes.**
7. List your present and any former political party registrations and approximate dates of each:  
  
**Republican since 2007; prior to that I was registered to vote without a party preference from 2000 to 2006.**  
  
(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)
8. Gender: **Male.**

Race/Ethnicity: **Caucasian.**

**EDUCATIONAL BACKGROUND**

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

**University of Arizona, James E. Rogers College of Law  
Tucson, Arizona  
Juris Doctor**

**University of Arizona  
Tucson, Arizona  
Bachelor of Science in Business Administration, Finance, *magna cum laude***

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

I began my undergraduate studies in the fine arts program at the University of Arizona, pursuing an interest in theater. I soon realized that business and finance were more suited to my strengths, so I obtained a finance degree from the Eller College of Management and engaged in theater as a hobby.

During all four years of undergraduate study, I worked as the student manager for the University of Arizona women's soccer team. My responsibilities included attending all practices and games, managing equipment and facilities, and office work. When I traveled to road games with the team, I arranged transportation, accommodations, meals, and access to equipment and facilities.

While attending the James E. Rogers College of Law, I was drawn to the courtroom as the place where the rules of evidence, the rules of procedure, and the Constitution all converge. I focused my studies on constitutional law, evidence, trial advocacy, and criminal and civil procedure, and I competed in a number of legal skills competitions, including the Richard Grand Damages Argument Competition. I worked as a student attorney pursuant to Arizona Supreme Court Rule 38(d) at Pima County Juvenile Court under the supervision of the Honorable Peter Hochuli, who was then a Deputy County Attorney. He encouraged me to apply for a job at the Pima County Attorney's Office upon graduation.

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

**My job as the student manager of the women's soccer team carried a tuition scholarship that paid for my entire bachelor's degree. In addition to graduating *magna cum laude*, I was on the Dean's List four times, twice with distinction.**

**During the summer, I worked at a Barnes & Noble bookstore. I have always loved reading, and I enjoyed the atmosphere of a bookstore and the opportunity to discuss books with customers and coworkers.**

**I received a Dean's Achievement Award scholarship to attend the University of Arizona, James E. Rogers College of Law in 2001, based on my undergraduate performance, writing sample, and LSAT score. I was on the Dean's List in 2002, and I was a finalist in the Richard Grand Damages Argument Competition in 2003. During law school I also worked as a law clerk for the Waterfall Economidis Caldwell law firm and for attorney Tanis A. Duncan.**

**I attended summer school and took on extra credits to graduate early from law school in December of 2003. While studying for the Arizona Bar Exam, I worked as a law clerk at the United States Attorney's Office for the Honorable Richard Gordon, who was then an Assistant United States Attorney.**

**While working full-time as a prosecutor, I studied for the California Bar Exam on the side. I have maintained an active license in the State of California since 2009 (which has, on occasion, proven quite useful to my practice in southern Arizona).**

### **PROFESSIONAL BACKGROUND AND EXPERIENCE**

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

**Supreme Court of Arizona: June 9, 2004.**

**Supreme Court of California: July 16, 2009.**

**United States District Court for the District of Arizona: February 2, 2011.**

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No**. If so, explain.

- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **No**. If so, explain any circumstances that may have hindered your performance.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
<u>Hollingsworth Kelly, PLLC</u>	<u>April 2009 – present</u>	<u>Tucson, Arizona</u>

I am a partner and litigation attorney in a firm with four attorneys and nine support staff, specializing in civil litigation in both state and federal courts on claims of personal injury, insurance bad faith, wrongful death, professional negligence, product liability, dignitary torts, premises liability, and contract disputes. Throughout my 13 plus years of civil practice, I have regularly handled all aspects of litigation including legal research and writing, depositions, motion hearings, arbitrations, trials, and appeals. I also practice regularly in probate court, handling conservatorship cases for clients who are minors.

<u>Pima County Attorney's Office</u>	<u>June 2004 – March 2009</u>	<u>Tucson, Arizona</u>
--------------------------------------	-------------------------------	------------------------

I handled hundreds of criminal cases as a Deputy Pima County Attorney. I spent the majority of my prosecutorial career in the Gang Unit, prosecuting violent felony offenses, but I also tried a significant number of vehicular offenses, property crimes, and misdemeanors. I wrote and argued legal motions on a weekly basis throughout my career as a prosecutor.

<u>United States Attorney's Office</u>	<u>January - June 2004</u>	<u>Tucson, Arizona</u>
--	----------------------------	------------------------

I worked as a law clerk in the civil division of the United States Attorney's Office performing legal research and drafting legal memoranda and pleadings related to the Federal Tort Claims Act, including motions for summary judgment and motions to dismiss.

<u>Waterfall Economidis Caldwell</u>	<u>2002-2003</u>	<u>Tucson, Arizona</u>
--------------------------------------	------------------	------------------------

I worked as a project clerk for a large firm in the field of real estate and commercial transactions, performing legal research and drafting legal memoranda.

**Law Office of Tanis A. Duncan**

**2002-2003**

**Tucson, Arizona**

I worked as a project clerk performing legal research and drafting legal memoranda for an attorney who represented homeowners and community associations.

**Barnes & Noble Booksellers**

**2001**

**Tucson, Arizona**

I worked in a bookstore, providing customer service and sales. I helped customers locate reading material and recommended interesting books.

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

**Louis Hollingsworth**

**David D. Buechel**

**Honorable John F. Kelly, Retired (of counsel)**

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

I am a partner in a firm with one senior partner, an associate attorney, and a retired superior court judge serving "of counsel." We employ a support staff of six full-time employees and several part-time employees. Ninety percent of my practice consists of representing plaintiffs for a wide variety of claims in state courts throughout Arizona, as well as in federal courts. Our firm handles each case from the investigation phase through litigation and trial, and we handle our own appeals. The 21 civil cases I have tried to juries have involved premises liability, contract disputes, wrongful death, professional negligence, and catastrophic brain injury, in addition to simple negligence. We also handle cases involving product liability, insurance bad faith, intentional torts, and dignitary torts. My firm frequently provides pro bono representation to clients with small claims to ensure they are not denied access to justice simply because the recovery they seek is modest.

In addition to trials and appeals, I have resolved hundreds of civil cases through mediation, arbitration, and pre-litigation settlement. My practice is very expert-witness intensive, and I have retained, deposed, and cross-examined expert witnesses hundreds of times. I have argued before the Arizona Court of Appeals on multiple occasions as well as the Arizona Supreme Court. In United States District Court, I litigate declaratory

Filing Date: September 2, 2022  
Applicant Name: Michael F. Kelly

Page 5

**judgment actions that determine the rights of the parties when disputes arise regarding the provisions of an insurance contract.**

**I handle third-party reimbursement claims, both simple and complex, for my clients. These arise out of healthcare services provided pursuant to Medicare, AHCCCS (Arizona Health Care Cost Containment System), FEHBA (Federal Employee Health Benefits Act) and ERISA (Employee Retirement Income Security Act) health plans, each with its own body of governing statutes and case law. Five percent of my practice is devoted to resolving third-party reimbursement claims.**

**I also regularly handle probate conservatorship hearings for minor clients arising out of settlements reached on the minor's behalf. This represents approximately five percent of my practice.**

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

**I practiced criminal law for nearly five years as a prosecutor. I tried 68 felony jury trials in that time, 17 of which were homicide trials. I was sole counsel in nine homicide trials, chief counsel in four, and second-chair in four. In addition to homicide prosecutions, I was assigned home invasion, armed robbery, kidnapping, burglary, attempted murder, and other violent offense cases while assigned to the Gang Unit. At the beginning of my career, I also worked in the Vehicular Offenses Unit trying vehicular manslaughter and aggravated driving-under-the influence cases. I handled a wide array of cases in the justice court, including 15 misdemeanor jury trials.**

**While in law school, I spent a semester at juvenile court handling delinquency cases as a student attorney pursuant to Rule 38(d) of the Arizona Rules of the Supreme Court. I appeared and argued at hearings and conducted bench trials at Pima County Juvenile Court under the supervision of a Deputy Pima County Attorney.**

**Over the past ten years, I have defended three misdemeanor criminal cases, all on a pro bono basis. Two resulted in dismissals and the third was resolved by a bench trial in Pima County Consolidated Justice Court where my client was acquitted.**

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

**In 2015, I applied to become a Certified Specialist in Personal Injury and Wrongful Death Litigation through the State Bar of Arizona, which requires significant legal experience in a specific area of law, a written examination, peer review, and a finding that ethical and professionalism standards have been met. I was approved by the Board of Legal**

**Specialization on my first application, and I have maintained that certification since.**

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

**I have written and responded to hundreds of legal motions in both criminal and civil cases, in state, federal, and appellate courts. These have included motions for summary judgment, motions for new trial, motions to suppress evidence, motions to dismiss, discovery motions, *Daubert* motions challenging the admissibility of expert testimony, motions in limine, appellate briefs, and petitions for review to the Arizona Supreme Court. I have also written and filed complaints for a wide variety of civil claims ranging from simple negligence to consumer fraud, insurance bad faith, and dignitary torts. I have written and filed many administrative claims pursuant to the Federal Tort Claims Act and 28 U.S.C. § 1346(b), as well as notices of claims pursuant to A.R.S. § 12-821.01. I have prepared hundreds of disclosure statements, discovery requests, trial memoranda, and motions supporting or opposing jury instructions. I have written and edited appellate briefs at the Arizona Court of Appeals, the Arizona Supreme Court, and the United States Court of Appeals for the Ninth Circuit.**

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

a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency. **Not applicable.**

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

Sole Counsel: **Not applicable.**

Chief Counsel: **Not applicable.**

Associate Counsel: **Not applicable.**

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

Sole Counsel: **75**

Chief Counsel: **20**

Associate Counsel: **50**

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

1. **Malaby v. Fry's Food Stores**

June 2016 – April 2017

**Honorable Cynthia Kuhn**

Pima County Superior Court  
(520) 724-9901

**Kevin Dykstra** (counsel for defendant)

(602) 277-7000

[kevin@azbarristers.com](mailto:kevin@azbarristers.com)

**My client has given informed consent pursuant to Ethical Rule 1.6(a) of the Arizona Rules of Professional Conduct to include the following information in this application.**

**This civil case centered around a Congressional act signed into law in 1996 by President Bill Clinton, but which had never been judicially construed or applied. Known as the Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. § 1791(d) is a provision of the federal code stating that a business that allows the collection of donations on its property to a non-profit representative is not liable for injury or death to the representative unless its act or omission constitutes gross negligence or intentional misconduct.**

**My client was a retired 78-year-old Tucson man who volunteered to collect bread from various grocery stores early in the morning and distribute them to the needy through the St. Vincent de Paul Society. One morning he was standing outside the rear receiving doors of the defendant grocery store waiting to pick up bread when a store employee swung open the doors without warning and knocked my client off his feet. He fell to the concrete and sustained a closed fracture at the base of his skull with subarachnoid, subdural, and extradural hemorrhage; subdural hematoma; and cerebral laceration and contusion. While in the ICU he developed stage IV pressure ulcers on both heels and his sacrum, which necessitated his residency in an adult care home. He never returned to his previous level of cognition or independence.**

**The defendant moved for partial summary judgment, citing the Emerson Act and arguing that it preempted Arizona law. In opposition, I contended the Act exceeded Congressional authority under the Commerce Clause. Additionally, the State of Arizona has its own analogous Good Samaritan statute, A.R.S. § 36-916, which limits liability only when**



“agricultural crops” are being collected. Accordingly, a dispute arose as to whether federal preemption applied under these facts, especially in light of the Emerson Act’s explicit language that it does not “supercede [sic] State . . . health regulations” and the fact that the Arizona statute is found within Title 36, which expressly concerns “Public Health and Safety.”

This motion was fully briefed by both sides and set for oral argument when the case settled at mediation. This case was significant not only because my client’s family would not otherwise have been able to afford the very high costs for his past and future medical care, but also because of its constitutional underpinnings related to the Supremacy Clause, the Commerce Clause, and the State of Arizona’s right to enact its own legislation that does not conflict with federal law.

2. **State v. Lamont Adams**  
January – October 2005

**Honorable Howard Hantman** (Retired)  
Pima County Superior Court

**Honorable Teresa Godoy** (co-counsel for Pima County Attorney’s Office)  
(520) 724-3242  
[tgodoy@sc.pima.gov](mailto:tgodoy@sc.pima.gov)

**Stephanie Meade** (counsel for defendant)  
(520) 419-0299  
[meadelaw23@aol.com](mailto:meadelaw23@aol.com)

In this criminal case, I prosecuted a man charged with three counts of attempted murder. The indictment alleged that he broke into an apartment in the middle of the night and shot three men inside. He rejected a plea agreement and the case went to trial. After several days in trial, a key witness testified to statements the defendant allegedly made to him following the shooting, but which were never documented or disclosed, and which neither the defense attorney nor I had ever heard before. This testimony raised questions in my mind about the authenticity of certain evidence in the case.

This was the first serious violent offense case I tried as a prosecutor, and I had spent a significant amount of time preparing it for trial. But because I understood my role as a prosecutor was to seek justice rather than to “win,” I privately expressed my concern about this new evidence to opposing counsel. She proposed a plea agreement that her client was willing to accept. After discussing the plea with the victims, the case was resolved, and I learned more about my role as a prosecutor in seeking justice than I would have had I tried the case to verdict.

3. **Gilmartin v. All Around Trail Horses**

June 2016 – December 2017

**Honorable Catherine Woods**

Pima County Superior Court  
(520) 724-9897

**Bill Sowders** (counsel for defendant All Around)

(602) 257-7478

[wsowders@gustlaw.com](mailto:wsowders@gustlaw.com)

**J.T. Shoaf**

(602) 257-7419 (co-counsel for defendant All Around)

[jtshoaf@gustlaw.com](mailto:jtshoaf@gustlaw.com)

**My client has given informed consent pursuant to Ethical Rule 1.6(a) of the Arizona Rules of Professional Conduct to include the following information in this application.**

**This civil case hinged on the rights guaranteed by the Arizona Constitution, even in the face of conflicting legislation and a signed waiver of liability. My client booked a sunset horseback ride in Tucson. She had virtually no riding experience and was advised by the wrangler that helmets were available, but not strictly necessary or even recommended, due to the anticipated slow pace of the ride. She noticed that her saddle was loose before the ride began and asked the wrangler to inspect it. He told her it was “normal” and declined. During the ride, her saddle slipped to the side, and when her horse began to gallop unexpectedly, she fell from the horse and struck the ground headfirst. She suffered a fractured skull and scattered subarachnoid hemorrhage with right frontal subdural hematoma and cerebral edema. After an extended hospital stay, she was left with permanent loss of all smell and taste.**

**There is an Arizona statute, A.R.S. § 12-553, that directly limits the liability of a stable or equine owner for injury or death. Additionally, prior to the ride, my client had signed a written release of liability, which stated that the stable could not be sued for injury or death, *even if caused by its own negligence* or the negligence of its employees. These two legal defenses presented a significant hurdle for my client.**

**However, Article 2, Section 23 of the Arizona Constitution provides that the right to trial by jury shall remain inviolate. Moreover, Article 18, Section 5 provides that the defenses of contributory negligence and assumption of the risk shall, in all cases whatsoever, be a question of fact and shall, at all times, be left to the jury. Therefore, the legal issue presented by this case was how to reconcile the rights guaranteed us by the Arizona Constitution with the waiver of liability and equine statute that sought to**

preclude my client's case from ever reaching the courtroom. After nearly 18 months of litigation, including the deposition of multiple expert witnesses for each side and a lengthy hearing on several legal motions, the case ultimately settled for a confidential sum.

4. **Gettings v. Yuma Regional, Dr. Wager, Dr. Lokareddy, Dr. Tucker et al.**  
February 2011 – December 2014

**Honorable Lawrence Kenworthy**  
Yuma County Superior Court  
(928) 817-4077

**Mark Kamitomo** (co-counsel for plaintiffs)  
(509) 710-7370  
[mark@markamgrp.com](mailto:mark@markamgrp.com)

**Jeff Campbell** (counsel for defendant Yuma Regional)  
(602) 322-1600  
[jcampbell@cycn-phx.com](mailto:jcampbell@cycn-phx.com)

**Dan Cavett** (counsel for defendant Dr. Wager)  
(520) 733-0100  
[dan@cavettandfulton.com](mailto:dan@cavettandfulton.com)

**Dan Jantsch** (counsel for defendant Dr. Lokareddy)  
(Deceased)

**Tom Slutes** (counsel for defendant Dr. Tucker)  
(520) 624-6691  
[tslutes@sluteslaw.com](mailto:tslutes@sluteslaw.com)

**My clients have given informed consent pursuant to Ethical Rule 1.6(a) of the Arizona Rules of Professional Conduct to include the following information in this application.**

**In this civil case, my clients were twin one-year-old boys in Yuma whose parents filed suit on their behalf against a hospital, an obstetrician, a perinatologist, and a radiologist regarding the prenatal care their mother received. At 16 weeks gestation, the boys' mother was diagnosed with a twin pregnancy. The standard of care for twin gestation requires the attending obstetrician to determine chorionicity: whether the twins have a single or a shared placenta. The danger with a single placenta is that one twin may begin receiving more blood, oxygen, and nutrients than the other. This condition, known as twin-to-twin transfusion syndrome (TTTS), can be readily diagnosed via ultrasound and examination of the fluid levels in the amniotic sacs. Once identified, the condition can be remediated, resulting in healthy twins 85 percent of the time. If it is not recognized, however, either**

because of an initial failure to determine chorionicity or because the amniotic fluid is not monitored, a substantial likelihood of birth defects or death exists. In this case, my clients alleged the obstetrician, perinatologist, and radiologist neglected to properly determine chorionicity and monitor the fluid levels in the amniotic sacs.

Carter Gettings was born with severe brain damage and cerebral palsy as a result of undiagnosed TTTS. He will never walk or talk and will always be tube fed. His brother Kyle was born with speech and physical developmental deficiencies. The case involved more than 20 expert witnesses across the country and spanned nearly four years of litigation. All four defendants ultimately settled for a confidential amount.

This case is significant to me for two reasons. First, the settlement we reached will provide for the extraordinary level of medical care these children will need for the rest of their lives. In addition, this was an extremely complex case, outside my normal practice area. It required years of discovery in very technical areas of medicine with which I was unfamiliar at the outset. I have always enjoyed the challenge of learning an entirely new area of law and achieving proficiency at it, and this case gave me an opportunity to do that for an Arizona family that really needed good legal representation.

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

The approximate number of cases in which you appeared before:

Federal Courts:	<b>20</b>
State Courts of Record:	<b>500</b>
Municipal/Justice Courts:	<b>300</b>

The approximate percentage of those cases which have been:

Civil:	<b>60%</b>
Criminal:	<b>40%</b>

The approximate number of those cases in which you were:

Sole Counsel:	<b>500</b>
Chief Counsel:	<b>250</b>
Associate Counsel:	<b>70</b>

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion:	<b>5%</b>
You argued a motion described above	<b>4%</b>
You made a contested court appearance (other than as set forth in the above response)	<b>50%</b>
You negotiated a settlement:	<b>75%</b>
The court rendered judgment after trial:	<b>7%</b>
A jury rendered a verdict:	<b>13%</b>

The number of cases you have taken to trial:

Limited jurisdiction court	<b>over 50</b>
Superior court	<b>89</b>
Federal district court	<b>0</b>
Jury	<b>104</b>

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

**I have tried 21 civil jury trials, 68 felony criminal jury trials, and 15 misdemeanor criminal jury trials. I do not have records documenting the precise number of bench trials I handled while in the misdemeanor unit of the Pima County Attorney's Office from June 2004 to December 2004, but I estimate there were at least 50.**

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

The approximate number of your appeals which have been:

Civil:	<b>9</b>
Criminal:	<b>0</b>
Other:	<b>0</b>

The approximate number of matters in which you appeared:

As counsel of record on the brief: **7**

Personally in oral argument: **5**

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

**1. Metzler v. BCI Coca-Cola Bottling Company**

May 2007 – July 2014

**Honorable Michael Miller** (Retired)  
Pima County Superior Court

**Robert Greer** (trial counsel for defendant)  
(480) 539-9400  
[rlgreer@riggsllaw.com](mailto:rlgreer@riggsllaw.com)

**Susan Freeman** (appellate counsel for defendant)  
(602) 262-5756  
[sfreeman@lewisroca.com](mailto:sfreeman@lewisroca.com)

**My client has given informed consent pursuant to Ethical Rule 1.6(a) of the Arizona Rules of Professional Conduct to include the following information in this application.**

**In this civil case, which involved three separate trips to the Court of Appeals and was finally resolved at the Supreme Court, my client was injured when she slipped in a puddle of water leaking from a refrigerator owned and operated by the defendant. She suffered a herniated disc in her lower back, which ultimately required surgical intervention. My senior partner and I tried the case to a jury and it was defended on liability and damages. The jury found in favor of the plaintiff and awarded her more than the amount for which she had offered to settle in her Rule 68 offer of judgment, which in turn entitled her to sanctions including prejudgment interest on the jury's award. The defendant filed a motion for new trial and the court granted the**

motion in part, ordering a new trial on liability only and denying the motion as to the damages award. Both parties appealed, and in 2011 the Court of Appeals reversed the grant of a new trial on liability and affirmed the trial court's denial of a new trial on damages in a memorandum decision.

Once the case was remanded for entry of judgment, a dispute arose as to the cutoff date for prejudgment interest. The trial court entered judgment and my client appealed, sending the case back to the Court of Appeals, which again reversed in a published opinion, concluding that the trial court erred in determining the date when prejudgment interest would terminate. *Metzler v. BCI Coca-Cola Bottling Co. of Los Angeles, Inc.*, 230 Ariz. 26, 279 P.3d 1188 (App. 2012).

Upon remand to the trial court, a new dispute arose as to what rate should apply to the prejudgment interest since the language of A.R.S. § 44-1201 had changed while the case was pending in the Court of Appeals (from 10% to "1% plus the prime rate"). The trial court entered judgment in my client's favor, the defendant appealed, and the Court of Appeals affirmed. The Supreme Court granted review, *amicus curiae* briefs were submitted for both sides, I appeared at oral argument, and the Supreme Court reversed. *Metzler v. BCI Coca-Cola Bottling Company of Los Angeles, Inc.*, 235 Ariz. 141, 329 P.3d 1043 (2014).

This case is legally significant because it resulted in a published Supreme Court opinion, creating precedent for all Arizona cases involving the statutory interest rate applicable to Rule 68 offers of judgment. It introduced me to the challenges of appellate practice and immersed me in appellate procedure, briefing, and oral argument for over five years. I personally appeared twice for oral argument at the Court of Appeals and once at the Arizona Supreme Court before the case was finally resolved.

2. **State v. Anthony Encinas**  
January 2008 – March 2009

**Honorable Howard Fell**  
Pima County Superior Court  
(520) 724-4250

**Chris Kimminau** (counsel for defendant Encinas)  
(520) 887-7816  
[cjkimminau@msn.com](mailto:cjkimminau@msn.com)

In this criminal case, the defendant and his accomplice were gang members who saw three teenage boys of a different race walking through their neighborhood after dark (they were in fact just walking home from a movie) and confronted them. The defendant pointed a gun at the 16-year-old victim's chest and shot him once, killing him.

This case was significant not only because it was a racially motivated murder of a teenage boy walking home from the movies, but also because my office entrusted me as sole counsel on a high-profile murder trial that had been selected by A&E Network as a featured homicide investigation on their television show, *The First 48*. When the case went to trial in February of 2009, the judge refused to allow the network or other media to film the trial or jury deliberations, but there was still continuous media attention. This required me as a prosecutor to ensure the defendant's right to a fair trial was not compromised, and I made certain that everyone working on the case complied at all times with Ethical Rules 3.6 (Trial Publicity) and 3.8 (Special Responsibilities of a Prosecutor).

The defendant was convicted at trial of first-degree murder. This was the final case I tried before transitioning to civil practice, and I have stayed in contact with the victim's mother over the past 13 years. The homicide conviction and sentencing were affirmed on appeal. *State v. Encinas*, 2 CA-CR 2009-0182, 2010 WL 2560044 (Ariz. App. June 25, 2010) (mem. decision).

3. **Moreno v. Verdugo**  
August 2012 – May 2017

**Honorable Kimberly Corsaro** (Retired)  
Santa Cruz County Superior Court

**Honorable Stanley Feldman** (Retired; co-counsel for plaintiff on appeal)  
(520) 792-3836  
[sfeldman@mpfmlaw.com](mailto:sfeldman@mpfmlaw.com)

**Marc Bleaman** (trial counsel for defendants)  
(520) 323-1808  
[mbleaman@bleamanlawfirm.com](mailto:mbleaman@bleamanlawfirm.com)

**Andrew Petersen** (appellate counsel for defendants)  
(520) 795-1900  
[apetersen@humphreyandpetersen.com](mailto:apetersen@humphreyandpetersen.com)

My client has given informed consent pursuant to Ethical Rule 1.6(a) of the Arizona Rules of Professional Conduct to include the following information in this application.

This civil case began with a jury trial in Nogales, Arizona, and traveled to the Arizona Court of Appeals, the United States District Court, and eventually, the United States Court of Appeals for the Ninth Circuit before it was finally resolved.

I represented a Nogales man whose two-year-old son died after being



abused by his mother's boyfriend. The child and his mother lived with her parents (the child's grandparents) during much of the time the abuse was occurring. The child's grandfather, a physician, concealed the abuse by taking the child for treatment to family friends in Nogales, Sonora, on multiple occasions after he was abused, instead of to a hospital in Arizona where the abuse would have been reported. My client alleged that the defendants owed both a common law duty pursuant to the Restatement (Second) of Torts §§ 323 and 324 to exercise reasonable care when seeking medical attention for their abused grandson, as well as a statutory duty under A.R.S. §§ 13-3620 and 13-3623 because of their status as both a physician (grandfather) and a "person who has responsibility for the care or treatment of the child." The latter imposes mandatory reporting requirements for one who "reasonably believes that a minor is or has been the victim of physical injury, abuse, [or] child abuse." The defendants filed a motion for summary judgment on these issues, which was denied. My partner and I tried the case to a jury in Santa Cruz County and the jury returned a substantial award in my client's favor.

This case was significant because the trial was only the beginning. Throughout litigation, the defendants' homeowners' insurance carrier defended the claim. However, just prior to trial, the insurer filed a declaratory judgment action in United States District Court seeking a determination of coverage. After the Nogales jury returned its verdict, the District Court granted summary judgment in favor of the insurer, holding that the exclusion in the homeowner's policy for "actions arising out of abuse" barred coverage under our facts. We appealed this decision to the United States Court of Appeals for the Ninth Circuit, which ultimately affirmed the District Court. Concurrently, the insured grandparents appealed the Santa Cruz County verdict, I appeared as appellate counsel of record, the grandparents negotiated an assignment of their insurance bad faith claim against the insurer to my client, and a new lawsuit was filed in Santa Cruz County. In the new case, my client and the child's grandparents became the plaintiffs, the insurance carrier became the defendant, and my law partner and I became fact witnesses regarding the underlying case. The insurance bad faith lawsuit later settled for a confidential amount.

This case illustrates how federal court rulings (here, regarding the enforceability of an exclusion in an insurance contract) can potentially nullify a state court verdict. It also shows how our legal system provides additional remedies (the grandparents' ability to bring suit against their own insurance company for a failure to act in good faith) that protect the rights of litigants.

4. **Gonzales v. Holley**  
February 2011 – June 2014

**Honorable Gus Aragon** (Retired)  
Pima County Superior Court

**Lance Wood** (counsel for defendant)  
(520) 448-3723  
[lance@yourtucsonlawfirm.com](mailto:lance@yourtucsonlawfirm.com)

**Burr Udall** (appellate counsel for defendant)  
(520) 623-4353  
[dbudall@udalllaw.com](mailto:dbudall@udalllaw.com)

While the underlying facts of this case were largely undisputed, the single issue presented on appeal was not. In this civil case, I represented my client through a Rule 72 compulsory arbitration, an appeal from that arbitration award under Rule 77, a jury trial de novo, an appeal to the Court of Appeals, oral argument, and finally a petition for review to the Arizona Supreme Court, which was ultimately denied.

My client was injured in a motor vehicle collision. Because the value of her claim was less than \$50,000, her case was subject to compulsory arbitration instead of a jury trial. She offered to settle her claim for \$20,500 via a Rule 68 offer of judgment, which the defense rejected. Following arbitration, she was awarded \$38,500. The defendant appealed the award pursuant to Rule 77, and the case proceeded to a jury trial de novo, where she was awarded \$22,000 in damages. Because my client was also awarded an additional \$16,425.86 in Rule 68 sanctions, the total judgment following trial was \$38,425.86.

At the time, Rule 77(f) provided that “[i]f the judgment on the trial de novo is not more favorable by at least 23% than the monetary relief granted by the arbitration award,” the appellant was required to pay to the appellee her taxable costs, reasonable attorney’s fees, and reasonable expert witness fees. My client argued that the \$38,425.86 final judgment following trial de novo was not a 23% improvement by the appellant (as compared to the arbitration award), and she was therefore entitled to her attorney’s fees under Rule 77(f). The defendant argued that the Rule 68 sanctions should not be included in the 23% analysis, and the trial court agreed, denying my client’s motion for attorney’s fees. Following a full briefing and oral argument, the Court of Appeals affirmed the trial court in holding that Rule 68(g) sanctions should be omitted from the calculation and viewed as independent from the underlying arbitration award and judgment. *Gonzales v. Holley*, 2 CA-CV 2013-0126, 2014 WL 1691067 (Ariz. App. Apr. 24, 2014) (mem. decision).

This case was significant because it clarified an important question of law that was, at the time, arising with some frequency in the realm of compulsory arbitration claims where one or both parties had filed a Rule 68 offer of judgment. On a personal note, even though I was ultimately on the losing side of this argument at the Court of Appeals, I had the opportunity to argue it opposite Burr Udall, one of the finest attorneys in southern Arizona, and someone whom I have always admired.

5. **State v. Adrian Valenzuela**  
July 2006 – November 2008

**Honorable Edgar Acuna** (Deceased)  
Pima County Superior Court

**Jill Thorpe** (counsel for defendant)  
(520) 620-1849  
[jill@jillthorpe.com](mailto:jill@jillthorpe.com)

In this criminal case, I prosecuted one of the leaders of the Southside Posse Bloods, a criminal street gang. He was charged with a 32-count indictment as a result of a series of five home invasions committed by this gang over the course of one night. One invasion resulted in the murder of a man in his bedroom who was attempting to protect his wife and young son from the gang members invading his home. This defendant was the getaway driver and the ringleader; he stayed in the car while two other gang members kicked down doors, tied homeowners up at gunpoint, and stole their belongings. As a result, there were no eyewitnesses who could identify this defendant. The evidence against him was largely circumstantial and relied upon the testimony of a codefendant who had accepted a plea agreement in exchange for testimony. I tried this case to a jury in August 2008 under a theory of accomplice liability. Approximately 30 witnesses testified, including 18 victims from five different homes, and there were dozens of evidentiary exhibits. The case took three weeks to present to a jury. The defendant ultimately was convicted of first-degree murder and 31 other counts. He was sentenced to life in prison plus an additional 34 years.

The defendant was 22 years old at sentencing and had already been a leader of his gang for several years. He was convicted of a felony as a juvenile, and I had handled a case, two years earlier, where he was arrested for being a felon in possession of a firearm while riding as a passenger in a vehicle. Witnesses in the gun case had refused to testify against him and the case was dismissed for lack of evidence. His gang had carried out countless violent crimes under his command, and he had always been able to escape prosecution until this series of home invasions when witnesses finally were willing to testify against him. As a prosecutor, I took great pride in making our community safer by taking this case to trial and seeking justice for his victims. The convictions and life sentence were affirmed on appeal. *State v.*

**Valenzuela, 2 CA-CR 2008-0398, 2010 WL 626694 (Ariz. App. Feb. 23, 2010) (mem. decision).**

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

**I have served as a court-appointed arbitrator in 2013, 2018, and 2021 pursuant to Rule 72 of the Arizona Rules of Civil Procedure. I conducted an arbitration hearing and filed a notice of decision in each case. I also was selected in 2017 to be part of a three-person arbitration panel to decide a claimant's right to recover underinsured motorist benefits under her automobile insurance policy. The panel conducted a hearing and issued a decision.**

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

1. **Maldonado v. Rodriguez**  
March 2013  
Pima County Superior Court

**Michelle Lespron** (counsel for plaintiff)  
(520) 888-2599  
[info-tucson@injuryshield.com](mailto:info-tucson@injuryshield.com)

**Blaine Gaub** (counsel for defendant)  
(520) 589-8422  
[gaub@cox.net](mailto:gaub@cox.net)

**I was a court-appointed arbitrator pursuant to Rule 72 of the Arizona Rules of Civil Procedure. I conducted an arbitration hearing for a motor vehicle collision case wherein the plaintiff sought damages for injuries she sustained in the collision. After the hearing, I filed a decision pursuant to Rule 76(a)(4). This case was significant to me because, although it did not involve any complex legal issues, it was my first opportunity to serve in a judicial capacity, ruling on objections and deciding the case.**

2. **Le v. Coast National Insurance Company**  
May 2017

**Kenneth Graham** (counsel for claimant)  
(520) 622-7494  
[kk@risnerandgraham.com](mailto:kk@risnerandgraham.com)

**Karla Starr** (counsel for insurer)  
(Deceased)

This arbitration was conducted in accordance with the contract provisions of an automobile insurance policy and therefore was not subject to the jurisdiction of the court.

I was selected to serve as an arbitrator on an underinsured motorist claim as part of a three-person arbitration panel. The claimant sought financial recovery under the terms of her own insurance policy, alleging the at-fault driver carried inadequate insurance to cover her damages. The hearing was conducted and the panel deliberated following the hearing. One of the other panel members sent out the written decision following deliberation. This case was significant to me because, rather than being court-appointed, I was selected by my peers to serve as an arbitrator to decide the value of a claim, and it required significant discussion and collaborative effort by a panel of three attorneys with opposing positions on what the evidence had proven.

3. **Araya v. Arido**  
March 2018  
Pima County Superior Court

**Gregory Stoltz** (counsel for plaintiff)  
(520) 333-3333  
[greg@defenseaz.com](mailto:greg@defenseaz.com)

**Ron Huser** (counsel for defendant)  
(602) 275-3999  
[ron@huserlawfirm.com](mailto:ron@huserlawfirm.com)

I was again a court-appointed arbitrator pursuant to Rule 72 of the Arizona Rules of Civil Procedure. I conducted an arbitration hearing for a negligence claim wherein the plaintiff was seeking damages for alleged injuries. After the hearing I filed a decision pursuant to Rule 76(a)(4). This case was significant to the parties involved, and the arbitration provided an efficient and relatively inexpensive resolution.

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

I have personally appeared and argued legal motions in city court, justice court, superior court (juvenile, probate, criminal and civil), United States District Court, the Court of Appeals, and the Arizona Supreme Court. I have also personally appeared and litigated contested civil cases to resolution in Cochise, Graham, Pima, Pinal, Maricopa, Santa Cruz, Yavapai, and Yuma Counties. This breadth of experience in diverse courts and jurisdictions has given me a familiarity with nearly every court within Division Two.

As a partner in a private law firm, I have experienced firsthand the challenges and considerations of operating a business in Arizona for the past 13 years. Just like so many other Arizona businesses, we navigated our way through the pandemic and all of the financial, staffing, and regulatory challenges that our business community faced. My finance degree and business school education have always helped me better understand the business side of the law, and would assist me as a judge in deciding issues that arise in commercial cases.

I have also had significant experience interacting with pro se litigants. As a prosecutor I handled several cases against unrepresented defendants, and I appreciate the special considerations that arise when parties represent themselves. In addition, as a volunteer attorney with Step Up To Justice, I regularly meet with unrepresented persons. The people I help at the free legal clinic either cannot afford to hire an attorney or do not have a case that an attorney will take. I sit with them, listen to them, and try to simplify the procedural steps in their cases in a way that will help them through the process. It has taken a lot of practice to concisely explain to a pro se litigant the meaning of summary judgment or how to present oral argument.

My experience at juvenile court, while serving as a Rule 38(d) student attorney, gave me insight into how socioeconomic factors affect juvenile recidivism. Additionally, as a prosecutor I read hundreds of presentence reports documenting adult defendants' childhoods, education, and encounters with the criminal justice system, which often began at a very young age.

<b>BUSINESS AND FINANCIAL INFORMATION</b>
---

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **No.** If so, give details, including dates.

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No**. If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

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

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes**. If not, explain.

33. Have you paid all state, federal and local taxes when due? **Yes**. If not, explain.

34. Are there currently any judgments or tax liens outstanding against you? **No**. If so, explain.

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

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

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No**. If so, explain.

38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No**. If so, explain.

### CONDUCT AND ETHICS

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

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

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

**I was given diversion by Pima County Juvenile Court after three other boys and I were arrested for stupidly setting fire to a portable toilet at a construction site in 1996. I spent the summer bussing tables to pay the restitution, and I attended a presentation by the fire department. The record was expunged after I became an adult.**

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. **Not applicable.**
42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

**In 2007, a criminal defendant charged with first-degree murder sent a letter to the State Bar of Arizona accusing the judge, his attorney, and me of conspiring against him. The allegations were dismissed without the need for a response.**

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. **None.**
44. List and describe any sanctions imposed upon you by any court.

**In 2011, I was sanctioned for a disclosure violation that occurred in the middle of a jury trial. On the first night of trial, our expert witness informed my senior partner and me that he had just reviewed the defense's trial exhibits, which included medical literature that he believed bolstered his own opinions. My senior partner and I discussed whether we were obligated to disclose this information under Rule 26.1 and believed we were not, because it had already been disclosed by the defense to us. The expert relied on the defense's literature when he testified the next day, the defense objected, and a mistrial was declared. The court later ruled that the expert's reliance should have been disclosed that morning and imposed sanctions for jury fees and defense costs and fees for the second day of trial and a subsequent hearing.**

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

**I self-reported the matter referenced in question 44 to the State Bar of Arizona and received a diversion order "of a non-serious nature," requiring**



**me to watch 3.5 hours of online CLE on civil disclosure rules and ethics for trial lawyers. I did this and the matter was expunged.**

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

**PROFESSIONAL AND PUBLIC SERVICE**

50. Have you published or posted any legal or non-legal books or articles? **Yes.** If so, list with the citations and dates.

**I wrote an article for an issue of *The Advocate* in approximately 2010 about new trial strategies centered around building trust with a jury in today's changing landscape of civil litigation.**

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.** If not, explain.

**In addition to the annual CLE requirements for all active members of the State Bar of Arizona, I also maintain compliance with the State Bar of California's continuing legal education requirements, which mandate additional education for all active members in the areas of elimination of bias in the profession and the detection and elimination of substance abuse and**

mental health issues. Furthermore, I comply each year with the heightened CLE requirements that come with my designation by the State Bar of Arizona as a Certified Specialist.

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes**. If so, describe.

I have given dozens of presentations over the years to attorneys and law students on behalf of the State Bar of Arizona and other entities on trial advocacy, courtroom procedure, the role of the prosecutor and other issues. The following are some examples, but the list is not exhaustive:

**2019**

I served as a judge for the Regional Law Student Trial Competition.

**2018**

I served on the faculty of the State Bar of Arizona's annual "Bench and Bar" seminar.

I served on the faculty of a Deposition Workshop course held over the course of three consecutive days at the University of Arizona James E. Rogers College of Law.

I also gave a presentation to the Health Law Club at the College of Law regarding civil trial work.

**2017**

I presented a lecture to a Law and Medicine class at the University of Arizona James E. Rogers College of Law about the pitfalls of medical malpractice cases.

**2015**

I gave a presentation at the request of the Arizona Association for Justice on the interplay between Rule 68 offers of judgment and Rule 77 arbitration appeals for its *Learn at Lunch* curriculum.

**2014**

I gave a presentation for the State Bar of Arizona's annual "CLE by the Sea" event. I was asked to speak because I had received one of the *Top 10 Civil Verdicts of the Year*, and I spoke about the case and the trial.

**2012**

I taught a Basic Trial Advocacy course to University of Arizona law students alongside attorney Laura Udall. This four-month course met once a week and taught law students how to prepare for success in the courtroom. The course

focused on giving opening statements and closing arguments, handling evidence, and examining witnesses.

I gave a presentation for the State Bar of Arizona on opening statements and closing arguments entitled, *Entering the Arena*.

I gave a presentation entitled, *Be One of the Good Guys: A Guide to Your First Legal Job* at the State Bar of Arizona's New Lawyer Seminar.

#### 2011

I presented a lecture at the annual trial advocacy conference for AzAJ (Arizona Association for Justice) entitled, *Your Client: The Key to Full and Fair Compensation*.

I gave a presentation for the State Bar of Arizona entitled, *Why You Need to Try Personal Injuries Cases to a Jury*.

#### 2010

I gave a presentation entitled, *The Art of Cross-Examination* as part of a panel sponsored by the State Bar of Arizona providing instruction on cross-examination.

#### 2008

I gave a presentation for APAAC (Arizona Prosecuting Attorneys' Advisory Council) entitled, *Closing Arguments: What You Can Say, What You Cannot Say, and What You Need to Say*. I also gave this presentation in 2007.

#### 2007

I gave a presentation for the students at the University of Arizona James E. Rogers College of Law about different gang issues in Tucson and how to prosecute violent crimes.

#### 2006

I was a faculty advisor for APAAC at its annual Intermediate Trial Advocacy College. I also served in this capacity in 2007.

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

I have been a member of the Pima County Bar Association (PCBA) since 2009. My firm, Hollingsworth Kelly, has been a frequent sponsor for PCBA events including the Young Lawyers Division Judicial Reception and the Skyline Event.

I have been a member of the Arizona Association for Justice (AzAJ)

**and the Arizona Trial Lawyers Association (AZTLA) since 2009. My firm has been a longtime sponsor for the AzAJ's annual trial advocacy conference. I have been a member of the American Bar Association (ABA) since 2019.**

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

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

**In addition to the many CLE presentations I have given for the State Bar of Arizona, I have also volunteered for Step Up To Justice since 2017 at its Federal Service Center Clinic, providing pro bono legal services on a wide range of subjects including employment law claims, tort claims, and criminal and civil procedure. Clients come to the clinic every Thursday with procedural questions or for advice as to whether they have a meritorious claim. At each clinic session, I typically meet with two to four unrepresented litigants, many of whom have already filed a lawsuit on their own and have advanced well into the litigation process. I am consistently impressed by the amount of dedication and perseverance pro se litigants demonstrate.**

**My law firm also has a long history of taking pro bono cases. These are not just favors for friends or family members, but for strangers who contact us with a legal issue that is too small for another lawyer to undertake. I have helped pro bono clients negotiate and settle their own claims with insurance companies, written letters to apartment complexes to help clients with lease-termination issues, helped clients draft letters to hospitals and medical providers regarding erroneous bills, and at times taken their cases all the way through litigation, arbitration, and even jury trials.**

**For instance, I recently resolved a case for a pro bono client that required several depositions, extensive motion practice, and an arbitration hearing in Maricopa County. My client was an 89-year-old Phoenix man with a prosthetic left eye and advanced macular degeneration in his right eye who was no longer able to drive a car and therefore experienced a loss of independence. The defendant sold him a \$2,166 pair of bioptic telescopes and told him that he would be able to drive again if he wore them. When the device did not work, he attempted to return it and was denied a refund. I was unable to resolve the matter with the business and was forced to file a complaint for consumer fraud. After two years of litigation, I prevailed at an arbitration hearing and recovered my client's money. My firm spent over 50 hours and more than \$4,000 in costs on this pro bono case.**

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

**I was raised to understand the importance of public service, and I have always believed that to appreciate the challenges facing the community and our state as a whole, one must be actively engaged. I have consistently sought opportunities to be involved in my community, not only in ways that rely on my legal background, but also in ways that have nothing to do with the law.**

**In 1997 and 1998, I was part of a traveling theater group that went to different elementary schools throughout Pima County to bring the fine arts to children from different neighborhoods and backgrounds. We traveled with our entire set design, cast, and crew, and put on short plays of two or three acts. Many of the students had never seen a play before. We answered questions and encouraged them to get involved in the fine arts programs within their schools.**

**From approximately 2001 to 2004, I served on the Board of Directors for my homeowners' association. I enjoyed getting to know my neighbors and providing instruction and guidance to them and the other members of the board related to the CC&Rs, bylaws, operating procedures, and budget issues. I always strove to balance the desire for neighborhood aesthetics and enjoyment against the need for increased monthly dues, and I endeavored to resolve any disputes that arose amongst neighbors in a fair and diplomatic way.**

**From 2007 to 2009, I worked with the Tucson Police Department's Citizen's Academy as part of its curriculum on violent crime and the socioeconomic factors involved in gang activity. I presented annually on *The Role of the Prosecutor*, explaining the justice system and the interplay between law enforcement and criminal prosecution. Additionally, I worked with members of my community in the Citizen's Prosecution Academy, which focused on the inner workings of the Pima County Attorney's Office and the procedural steps involved in a criminal case. I also gave a presentation in 2007 to a community organization called "People for a Safe Tucson" on local gang issues and neighborhoods.**

**As a prosecutor, I worked with the Southern Arizona Law Enforcement Training Center (SALETC) as part of its 16-week curriculum for training and qualifying new police officers. In 2007 and 2008, I presented a lecture entitled *Courtroom Testimony and Demeanor*, which was designed to teach new officers how to testify before both a judge and a jury, and how to understand the procedural steps and different burdens of proof in hearings and trials.**

**During 2011 and 2012, through Big Brothers Big Sisters of Southern Arizona, I was the big brother to an at-risk young man from a home in conflict. I took him to the park to play catch and to the driving range to hit golf balls, and worked with him on his communication skills, persuasive writing, social etiquette, and other life skills that were not available to him in his home.**

**From 2011 to 2013, I served on a committee for the Southern Arizona Juvenile Diabetes Research Foundation. Growing up with a younger sister with type 1 diabetes inspired me to get involved in the effort to raise money to find a cure. My law firm also helped sponsor fundraising events including golf tournaments, auctions and galas.**

**Through the University of Arizona and Pima County Bar Associations' First-Year Law Student Mentoring Program, I have mentored several first-year law students over the years, providing advice and guidance both while they were in law school and when they began practicing law.**

**From 2018 to 2021, I served on the Tucson Village Farm Board of Directors. This wonderful organization is a program of the Pima County Cooperative Extension and the University of Arizona, funded by grants from the university, the Angel Charity for Children, and private donors. The mission of the Farm is to create an actual, working urban farm that connects children with healthy nutrition, sustainable agriculture, and a healthy lifestyle, targeting urban youth from all ethnic and socio-economic backgrounds. I loved my time on the board and the sense of accomplishment that came with improving the health and lifestyles of the children in my community.**

**From 2018 to 2022, I also served on the Board of Directors for Southern Arizona Legal Aid. This organization provides free civil legal services to families and individuals who cannot afford to hire private attorneys for life-changing legal problems like consumer protection, eviction, foreclosure, domestic violence, and family law, serving Pima, Santa Cruz, Pinal, Navajo, Apache, Gila, Cochise, Graham, and Greenlee Counties.**

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

**The Board of Legal Specialization for the State Bar of Arizona certified me in 2015 as a specialist in Personal Injury and Wrongful Death Litigation, a certification which not only requires demonstration of honesty, integrity, and professionalism as defined by the Lawyer's Creed of Professionalism of the State Bar of Arizona, but also a degree of competence substantially higher than that possessed by a general practitioner. My application required**

documentation of my trial experience, trial results, and the complexity of the cases I've handled, in addition to a written examination.

I was recognized by *Super Lawyers* magazine as a Top Rated attorney in my practice area in 2021 and 2022, and as a "Southwest Rising Star" in 2014, 2018, and 2019.

I have been recognized as a "Best Lawyer" in my practice area by *Tucson Lifestyle* magazine in 2020, 2021 and 2022.

I was named one of the "Top 40 Under 40" by the *National Trial Lawyers* organization in 2013, 2015, and 2016.

My firm, Hollingsworth Kelly, has been recognized by *U.S. News & World Report* as a "Best Law Firm" since 2012.

I was awarded the "Top Gun Award" in 2006 for being the Pima County Attorney's Office trial lawyer of the year.

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

**I applied to be a Pima County Superior Court Judge in January, 2018.**

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

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

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

**I was born and raised in Tucson, and I love Arizona. I have visited every county in the State and explored all the diverse regions and landscapes Arizona has to offer. I like to compete in endurance and obstacle course races throughout the state, and always enjoy the challenge of signing up for something new, training for several months, and traveling across Arizona with a group of friends. Nine months ago, friends and I competed in the annual "Man vs. Horse" race in Prescott, Arizona, where the human runners get a head start, an hour later the horses are released, and the humans have to run 13 miles to the finish line before the horses catch up to them.**

I enjoy backpacking in the woods for days at a time, and like the challenge of ultralight backpacking where the “comfort gear” is kept to a minimum and the objective is to carry as little as is safely possible. I am a certified open-water scuba diver through PADI (Professional Association of Diving Instructors) and have enjoyed scuba diving in places like Australia and Belize. I go to the gym several days a week, and I play golf with my father and swim with my mother. I love playing board games with my family and friends. I have a 90-pound Mastiff rescue who likes to sleep under the kitchen table and who has witnessed hundreds of Saturday morning games of Scrabble.

As the father of a 12-year-old boy, I’m always looking for ways to explore Arizona and show him new things. I recently took my son on his first overnight backpacking trip near Mt. Graham, and on his first fishing trip where I taught him how to bait a hook, catch a smallmouth bass, and release it back into the river. I also love to cook. My son’s favorite meal is my goat cheese and jalapeño stuffed chicken breast, so I recently taught him how to make it himself. He claims that mine is better, but I think he only says that because he would rather text his friends than butterfly chicken breasts and dice peppers.

**HEALTH**

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

**ADDITIONAL INFORMATION**

59. The Arizona Constitution requires the Commission to consider the diversity of the state’s population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

I was born in Tucson and have lived here my entire life. I attended public school in three different districts because we moved several times in search of a school with a good special-needs program for my older brother, who has an autism disorder. Being 15 months apart, my brother and I were close growing up, but middle school and high school became very difficult for us, as I tried to defend my older brother from the cruelty of our classmates while also trying to fit in at new schools. Now 44 years old, my brother is kind, gentle, funny, and unwavering in his loyalty to his family. He is a proud uncle to his nephew and nieces.



**My younger sister also faced a challenge growing up; she was diagnosed with type 1 diabetes (T1D) at a young age. She had to inject herself with insulin multiple times a day as a little girl, and I remember how the tips of her fingers always had calluses on them from testing her blood glucose levels. I saw what it was like for her to feel different from other children and how much care and attention she had to devote to her health. Her experience inspired me, as an adult, to serve on a committee for the Juvenile Diabetes Research Foundation and help raise money to cure T1D. My siblings have given me insight as to the diverse needs of children in our community, both medical and educational.**

**I always have several Spanish-speaking clients at any given time, and I have continued to study the language and improve my Spanish consistently for 30 years. While I would not consider myself bilingual, I am fairly conversant, and I greatly enjoy speaking to my Spanish-speaking clients in their language. I have one excellent “dad joke” in Spanish that rarely disappoints (or perhaps rarely *fails* to disappoint, such as it is).**

**Working as a prosecutor in the Gang Unit at the Pima County Attorney’s Office exposed me to parts of our community that struggled with violent crime. The years I spent there brought me in close contact with a lot of different neighborhoods, many of which had high crime rates and community members who did not want to be involved in the criminal justice system either as witnesses, or as persons designated as victims. Some of this involved their values, some of it fear, and some of it a general distrust of our criminal justice system.**

**Similarly, having tried a large number of jury trials has allowed me to question thousands of our community members who were called for jury duty. These opportunities have taught me a lot about the diversity of the citizens of our community. I have learned what people from different neighborhoods think about crime, lawsuits, the police, the right to sue, and many other economic and social issues that face our community.**

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

**I am aware that judges on the Court of Appeals work in panels of three, where they must collaborate in order to reach decisions. I have worked for the past 13 years in a civil firm with three other attorneys who all have different backgrounds and politics, and often hold stridently different views about how to handle the myriad legal issues that arise within the cases we handle. I believe this experience would assist me on the appellate court bench.**

**Appellate court judges are also presented, at times, with cases and controversies where the substantive law is new to them. I understand and welcome the challenge in transitioning to entirely new areas of the law. I believe my experience demonstrates my commitment to a high quality of work, regardless of the substantive area. As both a prosecutor working for a government agency and as a civil practitioner in the private sector, I have worked hard to be successful in different substantive areas of law. In addition, criminal law, civil litigation, and appeals each have their own rules, procedures, and processes that take time, practice, and experience to master. Having handled a number of appeals from cases that I personally tried to a jury at the trial court level, I have additional insight that would benefit me as an appellate court judge.**

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

62. Attach a brief statement explaining why you are seeking this position.

**Please see Attachment A.**

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

**Please see Attachments B and C.**

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

**Please see Attachments D and E.**

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews. **Not applicable.**

# **ATTACHMENT A**

Response to  
Question #62

## Statement of Interest

I am seeking a position on the Court of Appeals because I want our citizens to have more trust in our courts. Judges and justices have a unique opportunity to build trust in ways that attorneys, as advocates, do not. When the judiciary consistently demonstrates that it is engaged in the application of constitutional laws as they are written, it builds trust and confidence through predictability. Predictability allows lawyers to advise their clients and it allows those clients to make informed decisions. I believe predictability benefits every individual, attorney, business, and organization that finds itself involved in our legal system.

The outcome of any legal case should depend on the facts of that case and the law that applies to those facts, provided the law is constitutional. I believe that judges should not abdicate their responsibility to ensure that legislation is constitutional, and that the law should be applied the same way by any judge, regardless of the judge's personal opinion of what the law should be. Legal outcomes that affect the lives and interests of people, businesses, and other organizations should not hinge on which judges decide them.

I believe the law should be written clearly, in a way that is accessible to and understandable by all. One should not need an advanced degree to read and understand an opinion from the United States Supreme Court, or from a state Court of Appeals. When the law is written clearly, so that it can be understood by all, it creates clarity and predictability which build trust in our system of justice.

Throughout 18 years of practice as an attorney, I have engaged in the practice of law in ways that I believe have benefited my community and enhanced the reputation of the legal profession. I am inherently curious, energetic, and passionate about the law, and I am now ready to transition from representing clients to serving my community by working to build more trust in our courts. It would be a tremendous honor to serve on the judicial branch of our Arizona government.

# **ATTACHMENT B**

Response to  
Question #63

Writing Sample #1

This is a portion of a  
Supplemental Brief filed at the  
Arizona Supreme Court

## INTRODUCTION

¶ 1 Plaintiff ██████████ asks this Court to affirm the opinion of the court of appeals. The primary issue on review concerns the determination of the interest rate applicable to the sanction of “prejudgment interest on unliquidated claims.” Rule 68(g), Ariz. R. Civ. P. Because the rule does not specify a rate of interest, the parties and the court of appeals have turned to A.R.S. § 44-1201 to determine the rate. The court of appeals agreed with ██████████ that the rate should be ten percent, the rate applicable to an “obligation” or “indebtedness,” pursuant to A.R.S. § 44-1201(A). Defendant ██████████ ██████████ asserts it should be one percent plus prime, the rate applicable to a “judgment,” pursuant to A.R.S. § 44-1201(B).

¶ 2 ██████████ also asks this Court to affirm the court of appeals decision that ██████████ is entitled to continuing Rule 68(g) prejudgment interest on the amount ██████████ refused to pay on April 28, 2011, when it made an unconditional tender of the amount it agreed was due.

¶ 3 Finally, the court of appeals did not decide ██████████’s claim that she had a vested right to calculation of Rule 68(g) sanctions at ten percent interest on March 16, 2011, when the court of appeals issued its mandate ordering the entry of final judgment. ██████████ requests that this Court remand the case to the court of

appeals for consideration of that issue if the decision of the court of appeals is reversed.

### STANDARD OF REVIEW

¶ 4 The Supreme Court reviews *de novo* questions of statutory interpretation. *North Valley Emergency Specialists, L.L.C. v. Santana*, 208 Ariz. 301, ¶ 8, 93 P.3d 501, 503 (2004). A statute’s language is “the best and most reliable index of a statute’s meaning.” *Id.* at ¶ 9, 93 P.3d at 503, quoting *State v. Williams*, 175 Ariz. 98, 100, 854 P.2d 131, 133 (1993). “If the language is clear, the court must ‘apply it without resorting to other methods of statutory interpretation,’ unless application of the plain meaning would lead to impossible or absurd results.” *Id.*, quoting *Bilke v. State*, 206 Ariz. 462, 464, ¶ 11, 80 P.3d 269, 271 (2003). The same principles apply to interpretation of rules of court. *Chronis v. Steinle*, 220 Ariz. 559, ¶ 6, 208 P.3d 210, 211 (2009). “Rules and statutes ‘should be harmonized whenever possible and read in conjunction with each other.’” *State v. Hansen*, 215 Ariz. 287, ¶ 7, 160 P.3d 166, 168 (2007), quoting *Phoenix of Hartford, Inc. v. Harmony Rests., Inc.*, 114 Ariz. 257, 258, 560 P.2d 441, 442 (App. 1977).

## ARGUMENT

### I. The sanction of Rule 68(g) prejudgment interest constitutes an obligation or indebtedness.

¶ 5 Interest is at the rate of ten percent on any obligation or indebtedness. A.R.S. § 44-1201(A). An obligation is something one is bound to do. *Merriam-Webster's Collegiate Dictionary* (10th ed. 2001). An indebtedness is something that is owed. *Id.* When the court of appeals issued its mandate in this case on March 16, 2011, in which it reversed the trial court's grant of a new trial on liability, affirmed the denial of a new trial on damages, and remanded for entry of final judgment in favor of ██████, ██████ owed and was bound to pay the sanction of Rule 68(g) prejudgment interest. *See Metzler v. BCI Coca-Cola Bottling Co.*, No. 2 CA-CV 2010-0023, ¶ 16, 2011 WL 917330 (memorandum decision filed Mar. 16, 2011). That sanction thus became an obligation and an indebtedness.

¶ 6 *DKI Corporation/Sylvan Pools v. Industrial Commission of Arizona*, 173 Ariz. 535, 845 P.2d 461 (1993) supports the conclusion that the Rule 68(g) sanction in this case, at least, was an obligation or indebtedness. In that case, this Court held that a liquidated claim constitutes an obligation or indebtedness. "A claim is liquidated if the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance upon opinion or discretion." *Id.* at 539, 845 P.2d at 465. When the mandate from the court of appeals issued on March 16, 2011, the prejudgment interest sanction indisputably



was established and could be calculated with exactness.<sup>1</sup> *DKI Corporation/Sylvan Pools* directly supports ██████’s position that the Rule 68(g) prejudgment interest sanction was an obligation or indebtedness.

**II. Rule 68 prejudgment interest on unliquidated claims is not interest on a judgment.**

¶ 7 A.R.S. § 44-1201(B) provides that the rate of interest on any judgment shall be at the lesser of ten percent or one percent plus prime. But Rule 68 prejudgment interest is not the same thing as interest on a judgment. The word “prejudgment” necessarily means something occurring prior to judgment. Prejudgment interest on unliquidated claims pursuant to Rule 68(g) accrues from the date of the offer of judgment up to the date final judgment is entered. *Metzler v. BCI Coca-Cola Bottling Co.*, 230 Ariz. 26, 279 P.3d 1188 (App. 2012). “[T]he term ‘prejudgment’ in ‘prejudgment interest’ necessarily implies a period ending at judgment.” *Id.* at ¶ 7, 279 P.3d at 1190. Prejudgment interest is “interest accrued either from the date of the loss or from the date when the complaint was filed up to the date the final judgment is entered.” *Black’s Law Dictionary* 887 (9th ed. 2009). By definition prejudgment interest is not interest on a judgment pursuant to A.R.S. § 44-1201(B).

---

<sup>1</sup> See Appendix 1 attached to Response to Petition for Review.

**III. A predetermined prejudgment interest rate of ten percent best serves the purpose of Rule 68.**

¶ 8 This Court must determine whether the sanction of prejudgment interest pursuant to Rule 68(g) is ten percent or one percent plus prime. Rule 68(g) provides for an award of prejudgment interest on unliquidated claims if a defendant rejects the plaintiff's offer of judgment and "does not later obtain a more favorable judgment." The rule is intended to promote settlement and avoid protracted litigation. *Warner v. Sw. Desert Images, LLC*, 218 Ariz. 121, ¶ 52, 180 P.3d 986, 1002 (App. 2008). When Rule 68 was amended in 1992 to add the inducement of prejudgment interest on unliquidated claims, the then-existing statutory interest rate on all judgments, obligations and indebtedness was ten percent. The intent of the amendment was "to make the offer of judgment procedure an even more effective vehicle for the settlement of claims." Rule 68, State Bar Committee Note to 1992 amendments.

¶ 9 A fixed rate of ten percent prejudgment interest serves the purpose of Rule 68 much more effectively than an uncertain rate of one percent plus whatever prime is at the time judgment is entered. The practical application of the rule requires counsel to explain to his client the advantages of making a reasonable offer early in the case. By offering to settle the claim early, plaintiff gives up the opportunity for a larger verdict but is rewarded by the opportunity to earn prejudgment interest at ten percent from the date of the offer to entry of final

# **ATTACHMENT C**

Response to  
Question #63

Writing Sample #2

This is a portion of a  
Response to a Motion for  
Summary Judgment

1 The child's father, plaintiff [REDACTED] suspected the child was  
2 being physically abused when he learned of his son's broken leg in February 2011,  
3 whereupon he called the Santa Cruz County Sheriff on February 2, 2011, and Child  
4 Protective Services (CPS) on February 4, 2011. PSOF ¶ 10. The child and his mother  
5 were still living in the home of [REDACTED] at that time, until [REDACTED] and the child moved  
6 in with her boyfriend [REDACTED], after February 14, 2011. PSOF ¶ 11. The child died from  
7 cranial cephalic trauma on or about April 20, 2011. PSOF ¶ 13. The child's injuries at  
8 the time of death included bruising all over his body, two broken legs, and three  
9 fractures of the skull. PSOF ¶ 14. [REDACTED] admitted to authorities that [REDACTED] was  
10 responsible for inflicting the injuries that resulted in the child's death. PSOF ¶ 16.  
11  
12

13 **II. LEGAL ARGUMENT**

14 **A. STANDARD FOR SUMMARY JUDGMENT**

15 The court may grant summary judgment only when the moving party is able to  
16 show "that there is no genuine dispute as to any material fact and the moving party is  
17 entitled to judgment as a matter of law." *Ariz.R.Civ.P.* 56; *Orme School v. Reeves*, 166  
18 *Ariz.* 301, 305, 802 P.2d 1000, 1004 (1990). "Summary judgment procedure is not a  
19 catchpenny contrivance to take unwary litigants into its toils and deprive them of a  
20 trial..." *Orme School* at 305, 802 P.2d at 1004 (quoting *Whitaker v. Coleman*, 115 F.2d  
21 305, 307 (5<sup>th</sup> Cir. 1940)). Therefore, in determining whether there are any factual  
22 issues to resolve, the Court should view the record in the light most favorable to the  
23 party opposing the motion for summary judgment. *City of Phoenix v. Yarnell*, 184 *Ariz.*  
24 310, 909 P.2d 377 (1995); *Estate of Hernandez v. Arizona Bd. of Regents*, 177 *Ariz.*  
25 244, 866 P.2d 1330 (1994).  
26  
27  
28

1 Summary judgment is not appropriate if there is any genuine issue of material  
2 fact to be resolved or any doubt as to whether such an issue is present. *Nanini v.*  
3 *Nanini*, 166 Ariz. 287, 802 P.2d 438 (App. 1990). If there is even the *slightest doubt* as  
4 to whether a factual issue remains in dispute, that doubt must be resolved in favor of  
5 conducting a trial on the merits. *Brown v. Sears, Roebuck & Co.*, 136 Ariz. 556, 562,  
6 667 P.2d 750 (App. 1983) (emphasis added). Even when there is no factual dispute,  
7 summary judgment should not be granted where the possible inferences that could be  
8 drawn from the circumstances are conflicting. *Id.* "Where reasonable minds could  
9 reach different conclusions as to the existence of a genuine issue [of material fact],  
10 summary judgment should not be granted." *Tribe v. Shell Oil Company, Inc.*, 133 Ariz.  
11 517, 518, 652 P.2d 1040, 1041 (1982).

12 **B. UNDER THE FACTS OF THIS CASE, DEFENDANT [REDACTED]**  
13 **OWED BOTH A COMMON LAW DUTY AND A STATUTORY DUTY TO**  
14 **HIS GRANDCHILD, [REDACTED]**

15 **1. DEFENDANT [REDACTED]'S COMMON LAW DUTY**

16 Arizona has adopted the *Restatement (Second) of Torts* §§ 323 and 324. See  
17 *Tollenaar v. Chino Valley School Dist.*, 190 Ariz. 179, 945 P.2d 1310 (App.Div.1,  
18 1997). These legal doctrines impose a duty on a person who takes charge of another,  
19 where no duty would have otherwise existed but for the actor's undertaking.

20 Restatement § 323 provides:

21 One who undertakes, gratuitously or for consideration, to render services  
22 to another which he should recognize as necessary for the protection of  
23 the other's person or things, is subject to liability to the other for physical  
24 harm resulting from his failure to exercise reasonable care to perform his  
25 undertaking, if:

26 (a) his failure to exercise such care increases the risk of such harm, or:  
27  
28

1 (b) the harm is suffered because of the other's reliance upon the  
2 undertaking.

3 *Restatement (Second) of Torts § 323.* In this case, defendant [REDACTED] undertook  
4 supervision of [REDACTED]'s medical care, and thereby assumed responsibility  
5 for the child's treatment. [REDACTED] made the phone call himself to Dr. [REDACTED]  
6 in Mexico, and personally brought the child into Mexico to be seen by Dr. [REDACTED]  
7 [REDACTED]. These facts were confirmed by Dr. [REDACTED] at his deposition. PSOF ¶ 8, 9.  
8 In doing this, defendant [REDACTED] undertook a common law duty. Whether or not his  
9 subsequent failure to exercise reasonable care increased the risk of harm or harm was  
10 suffered because of reliance upon the undertaking are questions of fact for the jury.  
11

12  
13 Plaintiff has disclosed expert witnesses who will testify that [REDACTED] was  
14 negligent in seeking treatment in Mexico because such treatment was not reported to  
15 Child Protective Services ("CPS") in Arizona, and that if the child had been seen for  
16 evaluation and treatment in the United States, a medical doctor would have been  
17 required to report the injuries to CPS. With said report carrying the weight of a medical  
18 doctor behind it, the child would probably have been taken into protective custody and  
19 his life would have been saved. PSOF ¶ 17, 18, 19. This expert testimony creates a  
20 genuine issue of material fact precluding summary judgment.  
21

22  
23 Furthermore, Restatement § 324 also applies to the facts of this case. It  
24 provides that:

25 One who, being under no duty to do so, takes charge of another who is helpless  
26 adequately to aid or protect himself is subject to liability to the other for any  
27 bodily harm caused to him by:

28 (a) the failure of the actor to exercise reasonable care to secure the safety  
of the other while within the actor's charge, or

1 (b) the actor's discontinuing his aid or protection, if by so doing he leaves the  
2 other in a worse position than when the actor took charge of him.

3 *Restatement (Second) of Torts § 324.*

4 The difference between these two sections of the Restatement has been  
5 elucidated for us:

6  
7 The only difference between the two sections is the particular feature of §  
8 324 that the plaintiff is in a helpless position. Section 323 has no such  
9 requirement. In either event, we believe the good Samaritan doctrine  
10 applies when an actor, otherwise without any duty to do so, voluntarily  
11 takes charge of an intoxicated person who is attempting to drive a vehicle  
12 and, because of the actor's failure to exercise reasonable care, has  
13 changed the other's position for the worse.

14 *Ocotillo West Joint Venture v. Superior Court In and For County of Maricopa*, 173 Ariz.

15 486, 489, 844 P.2d 653, 656 (App. Div. 1, 1992). Just as in *Ocotillo*, defendant ■

16 ■ is liable in this case under both sections of the "good Samaritan" doctrine,  
17 because the person he took charge of was a helpless toddler of less than two years.

18 Again, plaintiff's expert witness testimony at trial will establish that it was ■'s  
19 decision to take charge of the child's medical care and redirect it into Mexico, away  
20 from the purview of CPS, which ultimately prevented a U.S. medical doctor from  
21 reporting the injuries and saving the child's life. This expert testimony creates a  
22 genuine issue of material fact precluding summary judgment.

## 23 2. DEFENDANT ■'S STATUTORY DUTY

24 Defendants ■ also owed a duty to this child pursuant to A.R.S. §§ 13-  
25 3620 and 13-3623. Defendants argue in their motion for summary judgment that, as  
26 simply the grandparents of the child, they are *de facto* disqualified as people these  
27 statutes apply to. This is incorrect.  
28

1 A.R.S. § 13-3620 is the statute governing the duty to report child abuse, and  
2 provides, in pertinent part:

3 A. Any **person** who reasonably believes that a minor is or has been the  
4 victim **of physical injury, abuse, child abuse**, a reportable offense or  
5 neglect that appears to have been inflicted on the minor by other than  
6 accidental means or that is not explained by the available medical history  
7 as being accidental in nature or who reasonably believes there has been a  
8 denial or deprivation of necessary medical treatment or surgical care or  
9 nourishment with the intent to cause or allow the death of an infant who is  
10 protected under section 36-2281 **shall immediately report or cause**  
11 **reports to be made of this information** to a peace officer or to the  
12 department of child safety ...

13 For the purposes of this subsection, "**person**" means:

- 14 1. **Any physician**, physician's assistant, optometrist, dentist, osteopath,  
15 chiropractor, podiatrist, behavioral health professional, nurse,  
16 psychologist, counselor or social worker who develops the reasonable  
17 belief in the course of treating a patient.
- 18 2. Any peace officer, child welfare investigator, child safety worker,  
19 member of the clergy, priest or christian science practitioner.
- 20 3. The parent, stepparent or guardian of the minor.
- 21 4. School personnel or domestic violence victim advocates who develop  
22 the reasonable belief in the course of their employment.
- 23 5. **Any other person who has responsibility for the care or treatment**  
24 **of the minor.**

25 (Emphasis added). Under the facts of this case, defendants [REDACTED] and [REDACTED]  
26 certainly had responsibility for the care or treatment of the minor. The minor was living  
27 in their home during periods of abuse, [REDACTED] was his full-time babysitter (40  
28 hours per week), and [REDACTED] had not only personally treated the child himself but  
had also assumed supervision of the child's medical treatment by directing his care  
across the border and into Mexico. [REDACTED] was a physician who made enough of  
an assessment of the child's injuries that he recognized the need to seek additional



# **ATTACHMENT D**

Response to  
Question #64

Writing Sample #3

This is an Arbitrator's Decision  
filed after an arbitration hearing

1 **HOLLINGSWORTH KELLY**

2 **ATTORNEYS**  
3501 NORTH CAMPBELL AVENUE, SUITE 104  
TUCSON, ARIZONA 85719  
520.882.8080  
FAX 520.882.0428

4 LOUIS HOLLINGSWORTH, SB #011534 / PCC #26935  
MICHAEL F. KELLY, SB #022911 / PCC #65747  
lhollingsworth@hollingsworthkelly.com  
mkelly@hollingsworthkelly.com

5 ATTORNEYS FOR PLAINTIFF



6  
7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF PIMA**  
9

10 [REDACTED] a single  
11 person,

12 Plaintiff,

13 vs.

14 [REDACTED]  
15 [REDACTED] Husband and  
16 Wife, et al.

17 Defendants.

Case No.: C2011 6666

**DECISION OF ARBITRATOR**

Assigned: Hon. Scott Rash

Arbitrator: Michael F. Kelly

18 The Court-ordered compulsory arbitration occurred in this matter, pursuant  
19 to Rule 72 of the Arizona Rules of Civil Procedure, on February 15, 2013. The  
20 following memorandum sets forth the decision of the arbitrator, Michael F. Kelly,  
21 pursuant to Rule 76(a)(4).

22 The arbitrator spent approximately three hours reviewing the documents  
23 submitted by plaintiff and defendant the day prior to the arbitration (February 14,  
24 2013). The arbitrator spent approximately two and a half hours presiding over the  
25 arbitration hearing on February 15, 2013. The arbitrator then spent approximately  
26 two and a half hours reviewing plaintiff's exhibits and additional exhibits  
27 submitted by the defense prior while authoring this decision on February 18,  
28 2013.

1 The arbitrator finds that liability is not contested and therefore judgment  
2 must be entered in favor of the plaintiff, [REDACTED] and against the  
3 defendant, [REDACTED]

4 Plaintiff was involved in the subject motor vehicle collision on October 8,  
5 2009. She was rear ended while sitting at a red light. She did not hear the sound  
6 of tires screeching or brakes being applied prior to the impact. Plaintiff was not  
7 rear-ended by Defendant [REDACTED], but rather by the car that Defendant struck  
8 first, which was then propelled into the rear of plaintiff's vehicle. Plaintiff's  
9 vehicle suffered an impact which was hard enough to cause substantial property  
10 damage and misalign her glove box. Plaintiff denied medical treatment at the  
11 scene.

12 The arbitrator finds that the full amount of plaintiff's damages is difficult to  
13 calculate in this case. Plaintiff began treating for her back and neck injuries with  
14 chiropractic care and massage therapy. She incurred \$1,905 worth of medical  
15 expenses prior to January 27, 2010, when she was once again rear-ended in  
16 another automobile accident. This is where Plaintiff's damages become difficult  
17 to apportion between the subject accident and the intervening accident.

18 Plaintiff then incurred \$7,470 in additional chiropractic and  
19 neuropsychological treatment expenses over the next 27 months. The arbitrator  
20 believes that this number would have been lower if not for the January 27, 2010  
21 accident. The arbitrator also believes that this number would have been lower if  
22 plaintiff had only suffered the January 27, 2010 accident, without the subject  
23 accident preceding it only a few months prior. The arbitrator finds, in fairness to  
24 both the plaintiff and the defendant, that only half of these expenses (\$3,735) can  
25 be attributed to the subject collision of October 8, 2009.

26 The arbitrator therefore finds that the total amount of plaintiff's related  
27 medical expenses is \$5,640.

28

1 Plaintiff submitted receipts totalling \$376.50 for landscaping, maintenance,  
2 and repair of her property for the time period from April 22, 2011 to November 2,  
3 2011. The arbitrator finds, in fairness to both plaintiff and defendant, that one half  
4 of these required expenses (\$188.25) is attributed to the subject collision of  
5 October 8, 2009.

6 Plaintiff alleges lost earnings of \$7,499.75, encompassing what she claims  
7 is a forced relinquishment of a government contract approximately nine months  
8 earlier than she would have relinquished it if not for the subject collision and the  
9 January 27, 2010 collision, acting in concert to make it impossible for her to fulfill  
10 this contract in addition to her normal full-time employment. However, as the  
11 defense pointed out at arbitration, this contract was not relinquished until January  
12 of 2011, approximately a year after both collisions. Therefore, the arbitrator finds  
13 that the reason for relinquishing the contract early was only 50% due to the  
14 subject collisions and 50% due to other factors, including the "regime change"  
15 described by plaintiff at arbitration. Additionally, of the 50% attributed to the  
16 motor vehicle accidents, the arbitrator finds that only one half is attributed to the  
17 subject collision of October 8, 2009; or 25% of the total. Therefore, the arbitrator  
18 finds that plaintiff lost \$1,874.94 in earnings because of the subject collision of  
19 October 8, 2009.

20 In conclusion, the arbitrator finds that plaintiff's special damages total  
21 \$7,703.19.

22 Furthermore, the arbitrator finds that plaintiff is entitled to an additional  
23 award of damages for the nature, extent, and duration of her injuries, the pain,  
24 discomfort, suffering and anxiety already experienced and likely to be  
25 experienced in the future, and the loss of enjoyment of life she has experienced as  
26 a result of the October 8, 2009 collision.

27 The arbitrator has reviewed the records and reports of Dr. [REDACTED], plaintiff's  
28 clinical psychologist, Dr. [REDACTED], plaintiff's chiropractor, and Dr. [REDACTED], the

1 defendant's neurologist. The arbitrator agrees with both Dr. [REDACTED] and Dr.  
2 [REDACTED] that the plaintiff suffered a cervical and lumbar strain injury in the  
3 subject collision of October 8, 2009. The plaintiff agrees with Dr. [REDACTED] that  
4 plaintiff demonstrated evidence of mild traumatic brain injury for a period of time  
5 following the subject collision of October 8, 2009, which was further complicated  
6 by the subsequent collision on January 27, 2010. The arbitrator agrees with Dr.  
7 [REDACTED] that plaintiff's mild TBI symptoms have largely resolved at this point.

8 The arbitrator has specifically reviewed the records from plaintiff's primary  
9 care physician's office dated October 27, 2009 to October 26, 2011. These  
10 records fail to support plaintiff's own description of the nature and extent of her  
11 injuries for that time period. They do not support the level of financial award  
12 (approximately \$25,000) that plaintiff has requested as her general "pain and  
13 suffering" damages as a result of the subject collision. Rather, they demonstrate  
14 fluctuating symptoms and somewhat non-specific claims. Nevertheless, the  
15 arbitrator believes that plaintiff did suffer some level of a mild traumatic brain  
16 injury which did have an effect on her life, in addition to cervical and lumbar pain  
17 which impacted her ability to perform the activities she enjoyed.

18 Therefore, the arbitrator finds that plaintiff is entitled to an award of general  
19 damages in the amount of \$15,000, in addition to the \$7,703.19 in special  
20 damages, for a total arbitration award of \$22,703.19.

21 The arbitrator will await a proposed form of award and verified statement  
22 of costs, pursuant to Rule 76(a).

23 DATED this 4 day of March, 2013.

24  
25  
26  
27 By      
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORIGINAL filed this 5 day  
of March, 2013, with:

Clerk of the Court (Civil)  
Pima County Superior Court  
110 W. Congress St.  
Tucson, Arizona 85701

With a copy hand delivered to the  
Civil Arbitration Desk

COPY of the foregoing mailed  
this 5 day of March, 2013, to:

Michelle E. Lespron  
Pincus & Lespron, P.L.C.  
5425 N. Oracle Rd., Ste 185  
Tucson, Arizona 85704  
*Attorney for Plaintiff*

Blaine S. Gaub, Esq.  
Patrick C. Hurd & Associates  
177 N. Church Ave., Ste 900  
Tucson, Arizona 85701  
*Attorney for Defendant*

# **ATTACHMENT E**

Response to  
Question #64

Writing Sample #4

This is an Arbitrator's Decision  
filed after an arbitration hearing



3501 NORTH CAMPBELL AVENUE, SUITE 104  
TUCSON, ARIZONA 85719  
520.882.8080  
FAX: 520.882.0428

LOUIS HOLLINGSWORTH, SB #011534 / PCC #26935  
MICHAEL F. KELLY, SB #022911 / PCC #65747  
JOHN F. KELLY, SB #004109/PCC #30884  
DAVID D. BUECHEL, SB #03388  
lhollingsworth@hollingsworthkelly.com  
mkelly@hollingsworthkelly.com  
jkelly@hollingsworthkelly.com  
dbuechel@hollingsworthkelly.com

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF PIMA**

[REDACTED] an individual,

Plaintiff,

vs.

[REDACTED]  
wife and husband.

Defendants.

Case No. C2017-1666

**NOTICE OF ARBITRATOR'S  
DECISION PURSUANT TO RULE  
76(a)(5)**

Arbitrator: Michael F. Kelly

This case came for arbitration hearing on March 12, 2018. The undersigned arbitrator hereby files this notice of decision on March 12, 2018 pursuant to Rules 76(a)(1), (4), and (5) of the Arizona Rules of Civil Procedure. Pursuant to Rule 76(a)(3), the parties are hereby notified that their exhibits are available for retrieval. The arbitrator has considered the testimony, evidentiary exhibits and arguments of counsel.

On April 26, 2015 the plaintiff, [REDACTED] was the seat-belted driver of a Nissan Altima traveling northbound on Palo Verde Avenue in Tucson, Arizona



1 approaching its intersection with Flower Street. The defendant, [REDACTED] failed to  
2 stop for the stop sign for westbound travel on Flower Street and caused a collision with  
3 plaintiff's vehicle. Liability is not in dispute.  
4

5 Plaintiff first presented to Tucson Medical Center's emergency department on  
6 April 29, 2015 complaining of shoulder pain, upper arm pain, neck pain, and low back  
7 pain. The record reflects that his history is limited by a language barrier, but also that he  
8 does understand and speak English.<sup>1</sup> He was prescribed ibuprofen, cyclobenzaprine, and  
9 tramadol, and discharged with instructions to follow up with his physician as needed. He  
10 presented to Dr. [REDACTED] on May 12, 2015 and x-rays were taken of his cervical spine  
11 and lumbar spine, which showed no significant abnormalities. He was told to follow up  
12 in one month if his symptoms did not improve and was offered a referral to physical  
13 therapy. He sought no treatment between May 12 and July 30, 2015, at which time he  
14 returned to Dr. [REDACTED]. He did however refill prescriptions for ibuprofen and  
15 cyclobenzaprine on May 31, 2015. At the July 30 visit, he complained of migraines,  
16 nausea and vomiting and was prescribed omeprazole, but the record does not document  
17 the status of his shoulder, neck, and back pain. The record again indicates that English is  
18 a second language and that he is a refugee from East Africa. The plaintiff began physical  
19 therapy [REDACTED] and attended 23 total sessions of physical therapy for his neck  
20 and back pain over the next four months, which left him generally feeling much improved  
21  
22  
23  
24  
25  
26  
27

28 <sup>1</sup> The plaintiff was born in Ethiopia where he lived until the age of 12. He was then deported to Eritrea where he lived in a refugee camp for approximately seven years. He emigrated from Africa to the United States in 2011.

HOLLINGSWORTH KELLY  
ATTORNEYS  
3501 NORTH CAMPBELL AVENUE, SUITE 104  
TUCSON, ARIZONA 85719  
520.882.8080  
FAX 520.882.0428

1 from his collision-related injuries. He has pursued no further treatment since December 9,  
2 2015.

3 The plaintiff incurred \$380 in lost wages for the weeks immediately following the  
4 collision. His submitted medical expenses total \$6,682.58 and the arbitrator finds these to  
5 be reasonable and necessarily incurred as a result of the collision. He is awarded lost  
6 wages and medical expenses in the amount of \$7,062.58. In addition, the arbitrator finds  
7 that the plaintiff's dedication to physical therapy (23 total visits over 17 weeks)  
8 demonstrates not only that he was in real discomfort as a result of the collision, but also  
9 that he fully discharged his own duty to mitigate his damages. The plaintiff acknowledges  
10 that he currently experiences only intermittent pain and discomfort which are transient  
11 and have not prevented him from obtaining a commercial driver's license and becoming  
12 a long-haul truck driver since the collision.  
13

14 Therefore, the arbitrator awards an addition \$8,000 in general damages for a total  
15 award of **FIFTEEN THOUSAND AND SIXTY-TWO DOLLARS AND 58/100**  
16 **(\$15,062.58)**.  
17

18 DATED AND ENTERED this 12<sup>th</sup> day of March, 2018.  
19

20  
21  
22 By: \_\_\_\_\_  
23 Michael F. Kelly  
24 Arbitrator

25 Original filed this 12<sup>th</sup> day of  
26 March, 2018 with:

27 Clerk of the Pima County Superior Court  
28 110 W. Congress St.  
Tucson, AZ 85701

**HOLLINGSWORTH KELLY**  
**ATTORNEYS**  
3501 NORTH CAMPBELL AVENUE, SUITE 104  
TUCSON, ARIZONA 85719  
520.882.8080  
FAX 520.882.0428

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Copies emailed this 12<sup>th</sup> day of  
March, 2018 to:

Gregory Stoltz  
GRABB & DURANDO, P.C.  
2929 E. Broadway Blvd.  
Tucson, AZ 85716  
[gstoltz@grabblaw.com](mailto:gstoltz@grabblaw.com)

Ron Huser  
HUSER LAW FIRM  
8689 E. San Alberto Drive  
Scottsdale, AZ 85258  
[ron@huserlaw.com](mailto:ron@huserlaw.com)

By: Amelia Guice