

COMMISSION ON JUDICIAL SELECTION APPLICATION

EIGHTH JUDICIAL DISTRICT
DEPARTMENT XXIX

By

(David Gardner)



Personal Information

1.	Full Name	David Michael Gardner
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	No
3.	How long have you been a continuous resident of Nevada?	30.5 years
4.	City and county of residence	Las Vegas and Clark County
5.	Age	41

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	State of Nevada, Office of the Attorney General
Phone	702.486.3420
Physical Address & Website	555 E. Washington Ave., Suite 3900, Las Vegas, NV 89101 www.ag.nv.gov
Date(s) of Employment	May 2018 - present
Supervisor's Name and Title	Greg Ott, Chief Deputy Attorney General
Your Title	Senior Deputy Attorney General
Describe Your Key Duties	<ul style="list-style-type: none"> - I handle the legal issues for 11 state agencies to varying degrees. Some of the state agencies I handle everything, while with others I provide support to their in-agency attorneys. - I handle their litigation, statutory compliance, administrative hearings, navigation of the regulatory process, public records requests and questions, open meeting law questions, privilege and confidentiality review of records, helping with the drafting of bill draft requests, questions made during their meetings/hearings, and any questions my clients have during the Nevada Legislative Session regarding prospective legislation. - In addition, I'll handle their research requests including opinion letters and attorney general opinions if needed.
Reason for Leaving	I've always wanted to be a judge. I consider it to be the pinnacle of a legal career.

Previous Employer	Real Water
Phone	Business closed
Address & Website	Business closed
Date(s) of Employment	December 2016 – May 2018
Supervisor's Name and Title	Brent Jones, Owner
Your Title	In house counsel
Describe Your Key Duties	- I primarily handled the litigation for the company, both directly and through managing outside counsel.
Reason for Leaving	I received an opportunity to join the Office of the Attorney General.

Previous Employer	Connor & Connor
Phone	702.750.9139
Address & Website	2580 Anthem Village Drive, Henderson, NV 89052 www.connorpllc.com
Date(s) of Employment	April 2016 – December 2016
Supervisor's Name and Title	Derek Connor, Owner
Your Title	Associate Attorney for first few months and then Of Counsel for remainder.
Describe Your Key Duties	- Worked on marijuana client's statutory clients' documents. - Handled litigation for clients.
Reason for Leaving	I received an opportunity to join Real Water as in house counsel.

Previous Employer	Pengilly Law Firm
Phone	Firm closed
Address & Website	Firm closed
Date(s) of Employment	January 2014 – April 2016
Supervisor's Name and Title	James Pengilly, Owner
Your Title	Associate Attorney
Describe Your Key Duties	- Handled all aspects of clients' litigation needs, primarily business and contract litigation.
Reason for Leaving	I received an opportunity to join Connor & Connor.

Previous Employer	Jacoby & Meyers – Bankruptcy, LLP
Phone	Firm closed

Address & Website	Firm closed
Date(s) of Employment	May 2012 – December 2013
Supervisor's Name and Title	Kevin Van Hout, Firmwide Training Management Lead
Your Title	Associate Attorney for two months and then Managing Attorney
Describe Your Key Duties	<ul style="list-style-type: none"> - Handled all aspects of bankruptcy filings, including both Chapter 7 and 13 filings and post-confirmation motions. - Managed staff of several paralegals. - Gave legal advice on an extensive set of factual situations.
Reason for Leaving	Firm closed.

Previous Employer	Springel & Fink
Phone	702.804.0706
Address & Website	9075 W. Diablo Drive, Suite 302, Las Vegas, NV 89148 www.springelfink.com
Date(s) of Employment	November 2011 – May 2012
Supervisor's Name and Title	Leonard Fink, Owner
Your Title	Associate Attorney
Describe Your Key Duties	<ul style="list-style-type: none"> - Handle complex litigation cases involving insurance defense. - Prepare motions and complete research on a variety of issues. - Attend depositions, court hearings and special master hearings.
Reason for Leaving	I was laid off.

I was unemployed between August 2011 and November 2011 while I waited for my bar exam results.

Previous Employer	Haines & Krieger
Phone	Firm closed
Address & Website	Firm closed
Date(s) of Employment	March 2010 – August 2011
Supervisor's Name and Title	David Krieger, Owner
Your Title	Law clerk
Describe Your Key Duties	<ul style="list-style-type: none"> - Prepared Chapter 7 and 13 signings from start through finish. - Managed Chapter 13 post-confirmation dept. including all motions to dismiss, modified plans and conversions. - High volume, handled more than 60 cases a week in post-confirmation and over 1,000 cases in total.
Reason for Leaving	I was laid off.

Previous Employer	Sentry Commercial Realty Advisors
Phone	702.951.2800
Address & Website	PO Box 400275, Las Vegas, NV 89140
Date(s) of Employment	December 2003 – August 2007, June 2008 – March 2010
Supervisor's Name and Title	Robert Gardner, Owner
Your Title	Assistant Property Manager
Describe Your Key Duties	- Helped run reports on the properties - Helped managed repairs at properties
Reason for Leaving	I was graduating from law school and wanted to work in the legal field.

From January 2003 – December 2003, I was a college student and I did not hold an outside job.

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.
 - Durango High School, 7100 W. Dewey Dr., Las Vegas, NV 89113, August 1996 – June 2000, Honors High School Diploma, Graduated.
 - Brigham Young University, 150 E. 1230 N, Provo, UT 84602, January 2003 – June 2003, no degree awarded, I moved to Cedar City, UT.
 - Southern Utah University, 351 W. University Blvd, Cedar City, UT 84720, August 2003 – December 2003, no degree awarded, I moved to Las Vegas, NV.
 - Utah Valley University, 800 W. University Parkway, Orem, UT 84058, January 2004 – June 2004, no degree awarded, I moved to Las Vegas, NV.
 - University of Nevada, Las Vegas, 4505 S. Maryland Parkway, Las Vegas, NV 89154, January 2004 – June 2004, January 2006 – July 2007, Bachelor of University Studies, Graduated.

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.
 - I was in both the concert and madrigal choirs for the majority of high school.
 - I participated in several choir and personal singing competitions, including honor choirs and all state choirs, and competitions for the choirs I was in.
 - I lettered on the football team and also participated on the cross-country team.
 - I prepared and completed an eagle scout project collecting goods for the Shade Tree. I obtained my eagle scout award after that.
 - I served as a missionary in Northern Italy for my church from December 2000 – December 2002.
 - I graduated with Honors in High School and I graduated Magna Cum Laude in College.
 - I worked through college and was able pay for college between academic scholarships and working.

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9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

Boyd School of Law, Juris Doctor on December 11, 2010, I was not ranked.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

I worked full time after my first year (which was on academic scholarship), I worked at Sentry Commercial Realty Advisors, a property management company, from July 2008 – March 2010. I then worked at Haines & Krieger, a bankruptcy firm, from March 2010 – August 2011.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

I worked full time from my second year of law school on and I had my first and second children while I was in law school, so I studied, worked, helped with my kids, ate, and slept for those years.

Law Practice

12. State the year you were admitted to the Nevada Bar.

2011

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

None

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

50% total. 25% administrative work, 20% trial work, 5% appellate work.

16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	0%
Juvenile matters	0%
Trial court civil	20%
Appellate civil	5%
Trial court criminal	0%
Appellate criminal	0%
Administrative litigation	25%
Other: Please describe	50%

The other 50% of my time has been statutory interpretation and compliance, legal opinions (including attorney general opinions), regulatory hearings, public meetings, public records requests and questions, open meeting law questions, privilege and confidentiality reviews of records, helping with bill drafts for my clients and answering their questions about the consequences of proposed legislation.

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

Most of my cases were won on a motion to dismiss or motion for summary judgment, those that went to trial were 100% non-jury trials.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

I have not tried to a conclusion as lead counsel either a jury or non-jury case in the last five years.

19. List courts and counties in any state where you have practiced in the past five years.

U.S. District Court, District of Nevada, 8th Judicial District Court, 1st Judicial District Court, Nevada Supreme Court, 3rd Judicial District Court.

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1
Case name and date: Shea, et al. v. State of Nevada, et al.; March 2020 – May 2022
Court and presiding judge and all counsel:

1 st Judicial District, Judge James Wilson, then before the Nevada Supreme Court; Plaintiffs' attorneys – Bradley Schrager, Daniel Bravo and Amanda Morgan, Defendants' attorneys – Aaron Ford, Steve Shevorski, Sabrena Clinton, Heidi Parry Stern
Importance of the case to you and the case's impact on you: This is probably the most important case I've worked on. The plaintiffs sued the State saying that the Nevada Constitution requires additional funding to be spent on education as the Court should require the State to spend more. It was important to me as it was a high profile case that I could help with and Nevada was the last State that had not been subjected to this type of adequacy lawsuit. At least since I was in law school, education lawyers have debated whether an adequacy lawsuit would win in Nevada and it was nice to get a definitive answer and to be able to see it happening up close. It impacted me mostly in how different high-profile cases are from your run of the mill case and how the actions of the judge and lawyers are aggressively interpreted by the media.
Your role in the case: I helped draft some of the filings and advised Defendants' attorneys on education law.

Case 2
Case name and date: Nevada Department of Conservation and Natural Resources, Plaintiff(s) vs. Eli Mizrachi; April 2019 – January 2021
Court and presiding judge and all counsel: 8 th Judicial District Court, Judge Nancy Allf; Plaintiff's counsel - Craig Burkett and David Gardner, Defendant's counsel – Sigal Chattah
Importance of the case to you and the case's impact on you: This case was a lawsuit enforcing provisions of an agreement with the owner of the Huntridge at the time. The State had given money to help preserve the Huntridge to the owners, but it came with strings attached but the owners never did fulfilled their duties. I liked enforcing the State's contract to save a piece of Las Vegas history (I remember going to concerts at the Huntridge when I was younger). The most important to me though was the outcome. The working with the Huntridge owners and the City of Las Vegas, the State was able to jumpstart the process of the Huntridge being restored. Out of my typically cases, I do not get to see actual results like this and that was really fun.
Your role in the case: Secondary counsel for Plaintiff.

Case 3
Case name and date: AAA et al v. Clark County School District et al.; April 2020 – February 2022
Court and presiding judge and all counsel: U.S. District Court, District of Nevada; U.S. District Judge Jennifer Dorsey and Magistrate Judge Brenda Weksler; Plaintiff – pro se, CCSD Defendants' counsel: Phoebe Redmond, Department of Education Defendants' counsel: David Gardner.
Importance of the case to you and the case's impact on you: Two things stuck out to me with this case. First, there are quite a few legal rules that as attorneys we expect everyone to just know. When dealing with a pro se litigant, it took a lot more time to go over everything as the Plaintiff just did not know. I noticed this made it

harder to defend the case as Plaintiffs would challenge rules or orders that attorneys usually would not. Second, that pro se litigants are at a severe disadvantage in the Courts. In time, money, experience, knowledge, their disadvantage impacts every part of the case and while Courts can be more lenient on them for rule infractions, Courts cannot just let them off the hook. Courts need to control their courtrooms and offer some leniency on those who are not trained in the law. It was very informative watching the Court balance these interests.
Your role in the case: Lead counsel for Department of Education Defendants.

Case 4
Case name and date: Harmon Wilson, et al. v. John Montijo, et al.; March 2017 – November 2017
Court and presiding judge and all counsel: 8 th Judicial District Court, Judge Linda Bell; Plaintiff's attorneys – Mario Lovato, AffinityLifeStyles.com, Inc. attorney – David Gardner
Importance of the case to you and the case's impact on you: This case was important as this was the first case I handled without the support of a firm. I was a newly hired in-house counsel when this case was dropped in my lap. It really made me appreciate all of the help that an attorney's staff complete. There were several times in this case where I believe I spent more time doing the background work than litigating. This case made me appreciate my staffers much more as I now knew the amount of work it took to keep our cases running smoothly. This appreciation for staff has been very helpful in my career.
Your role in the case: Lead counsel for AffinityLifeStyles.com, Inc.

Case 5
Case name and date: Jonathan Freidrich v. Rancho Bel Air Property Owners Association Unit 2 Inc.; December 2014 – April 2016
Court and presiding judge and all counsel: 8th Judicial District Court, Judge William D. Kephart. Plaintiff's counsel - Joel Hansen, Defendant's counsel - James Pengilly and David Gardner
Importance of the case to you and the case's impact on you: This was the first case I had with a friend on the other side. I had met Jonathan Friedrich a year or two before this case and so when I saw the case caption, I knew it was going to be a odd case. I informed both sides and no one had any issues, but it was odd to handle discovery and motion practice knowing the person who would have to response to everything. This case made me think a lot more about what the party on other side of a case goes through and I think made me much more understanding and flexible with opposing counsel.
Your role in the case: Lead counsel for Defendants.

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21. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

No

22. Describe any pro bono or public interest work as an attorney.

I have mostly provided legal advice pro bono to a few non-profits.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

Nevada bar, 2011 – present.

Clark County Black Caucus, 2016 – present.

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

Yes. Please see courses below.

22nd Annual Commercial Real Estate Institute

Fashion and Retail Law 2021: Trends and Developments

Illinois Professional Responsibility MCLE Marathon 2021

Advanced Compliance and Ethics Workshop 2021

51st Annual Estate Planning Institute

Employment Discrimination Law & Litigation 2020, Prog. ID 303931

NCAA Amateurism in Flux: NCAA Bylaws, California's Fair Pay to Play

Ethics & Social Media (Updates) 2020

The Disease of Addiction - A Professional, Community, & Family Affairs

Sports Betting Discussion

Virtual Annual Meeting

Ethics & Bias in the Workplace, Part 1 of 4

Intellectual Property - Enforcement

2019 10 NAGTRI Appellate Advocacy (NV)

Let's Talk (Wellness Summit)

Overview of Nevada's Open Meeting Law, NRS Chapter 241

Simple Estate Planning

Ethics for Public Attorneys

Asset Protection Planning: What Every Practitioner Should Know

Gamblification: The Legal Status Of Gambling Mechanics In Interactive games

Reporter's Privilege & the Proper Representation of Reporters

Fair Use: Making Sense of Transformative Use

It's Not Just Naming a Guardian: The Young Family Estate Planning To

The Americans with Disabilities Act in the Digital Age

From the Initial Phone Call to the Closing Letter

An Introduction to §1983 Civil Rights Pleading Practice

Legal Ethics in Government Contracting

The National Landscape of Charter School Laws

Immigration for Sports & Entertainment Part 1 (Update)

Immigration for Sports & Entertainment Part II (Update)

M&A Transactions in the Oil Industry

Civil Rights Litigation Part II: Legal Ethics for the Civil Rights L

School Bullying Law: Know Your Rights & Obligations

Advanced Defense of ADA Lawsuits

Key Points in Record Label Contracts, Music Publishing Deals, & Digi

U.S. Immigrant Visas

The Syndication Process: A Private Equity Sponsor's Perspective

LGBT Rights in the Workplace

3D Printing: The Newest Dimension in IP Protection

The Four Most Important Agreements in The Recording & Music Publishing

Securities Law for the Non-Securities Attorney (Update)

Here Comes Trouble: Early Detection and Mitigation of Conflicts

Overview of 21st Century Insurance Law Issues

An Attorney's Guide to Ethically Advising Start-Ups 2015 Update

Design Patents, Copyrights, & User Interfaces

Negotiating Tactics & Strategies in Entertainment Industry Agreement

Employer Liability & the Cat's Paw Theory

Ethical Issues and Malpractice Claims Unique to Corporate Lawyers

Current Trends in Derivatives Law

From Client Intake to Verdict: The Nuts & Bolts of Trying a Civil Case

Recent Litigation & Legislation in Insurance Law

The Cost of Bullying in the Workplace: What Employers Need to Know

Advocating for the Educational Rights of Homeless Children and Youth

The Future of Legal Malpractice: Cybersecurity

Taking the High Road: How to Deal Ethically with Bullies Who Don't

Mental Health & the Courts

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

I work for a governmental agency.

Business & Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Yes.

- I worked as a staffer at Zuka Juice from September 1998 – November 1998.
- I worked as a warehouse worker at Brady Industries from July 2000 - December 2000.
- I worked as a warehouse worker at Walmart from August 2003 – December 2003
- I worked as an assistant property manager for Sentry Commercial Realty Advisors from December 2003 – March 2010.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:

- a. the nature of the business
- b. the nature of your duties
- c. the extent of your involvement in the administration or management of the business
- d. the terms of your service
- e. the percentage of your ownership

I managed a branch office of Jacoby & Meyers – Bankruptcy, LLP.

- the nature of the business – it was a bankruptcy law firm
- the nature of your duties – I managed the legal cases and legal questions from clients. All money and most customer service were handled by the national office.
- the extent of your involvement in the administration or management of the business – I did not manage the business completely as I solely handled the legal filings for clients, but I was listed as the managing attorney.
- the terms of your service – I was the managing attorney from July 2013 – December 2013.
- the percentage of your ownership – 0%

I am a part owner of a management company, Sentry Real Estate.

- the nature of the business – It is a management firm
- the nature of your duties – I am an investor in the business and do not participate in the day-to-day activities.
- the extent of your involvement in the administration or management of the business – I am an investor in the business, so I do not handle the day-to-day activities.
- the terms of your service – I was the managing attorney from Jan 2018 – Present.
- the percentage of your ownership – 50%

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28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

I have served as a trustee for my parents trust since it was created after my father's death in the summer of 2014. I help make decisions regarding the investments and expenses of the trust. I have been a trustee since its inception. I have no ownership interest in the trust.

Civic Professional & Community Involvement
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29. Have you ever held an elective or appointive public office in this or any other state?

Yes

Have you been a candidate for such an office?

Yes

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

Elected

- I was elected to office in the Nevada Assembly and I served in the Nevada Legislature for two years from Nov 2014 through Nov 2016.
- I ran to be a Clark County School District Trustee in 2018, but I dropped out of the race to take a job with the Office of the Attorney General.

Appointed

- I was appointed to the State Public Charter School Authority and served on the Board from 2017 – 2018.
- I was appointed to the Council to Establish Academic Standards Board and served on it from 2016 – 2018.
- I was appointed to the Assembly Select Committee on Ethics and served on it from 2017 – 2018.
- I was appointed to the Advisory Committee to Develop a Plan to Reorganize the Clark County School District – Technical Advisory Committee and served on it from 2015 – 2016.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

I have held several ecclesiastical positions of leadership including leading the teaching of Sunday school 2017 – 2018 and handling finances 2020 – present.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

I have not taught any courses or continuing education programs.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I served my church as a missionary in Northern Italy for 2 years and I spent many years helping with boy scouts' troops and youth.

33. List honors, prizes, awards, or other forms of recognition.

I wrote and helped pass AB 394 (it would become AB 469) and I was given a note of recognition from then Governor Sandoval.

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

I wrote Attorney General's Opinion No. 2021-01, I do not believe I have any other published works.

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List avocational interests and hobbies.

I have six children and so I spend most of my free time with my family. Typically, that could be going to our local park, playing soccer, watching a movie, going to the beach or playing video games. Personally, I enjoy watching college football and basketball and still, on occasion, play basketball.

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

No

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

I am not aware of anything.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

I have not previously submitted a questionnaire or application.

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

See Attachment A.

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

I have lived in Las Vegas since 1992 where I attend Booker 6th grade center, before going to Johnson Middle School, Durango High School, UNLV and Boyd School of Law. I have seen the area grow and would like the chance to help it keep growing. Thank you for your time and consideration.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

See Attachment B.

ATTACHMENT A

26. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

First, I would say that I am a long-term resident with roots that have grown long. My family moved to Las Vegas from Bountiful, Utah in 1992 when I was 11. Since that time, I have attended Booker 6th grade center, Johnson Middle School, Durango High School, UNLV, and Boyd School of Law. The entire time I have been an active member of the Las Vegas area community. I now have six children, five of who are school age and attending school here in Las Vegas. How this community grows and how it develops matters to me as I am here for the long haul. While promises are nice, what I can show is my actions. Of my seven siblings, 5 of them live here as does my widowed mother. Even my in-laws are now Nevada residents, both my father-in-law (who lives with us) and my mother-in-law and her husband all have moved to the Las Vegas area over the last few years from Washington State.

Second, as you can tell from my Application, I have kept myself out of trouble. I have always strived to uphold the highest ethics as I believe that is what makes our country so great. I have seen the legal systems of Mexico and Russia where bribery is common. I have seen the legal system of Italy where you are often considered guilty until proven innocent or you can just bribe your way out of it. I have always been proud to tell my kids that at least here the law matters and it applies equally to everyone. I am not naïve to the issues with our legal system, it is far too expensive and it leaves people who need help the most at the mercy of the Courts. I hope to be a judge who will provide that mercy. I hope to be a judge that can balance the need to follow the law, with the need for the law to be a protector of the weak and oppressed. I do not mean to say that I will go beyond what the law says, but I will do my very best to ensure that the process is

fair. That each person that comes before me gets a fair shot and feels like they got a fair shot. I know this is a high goal and I will undoubtedly fail at some point, but I still think it is a worthwhile goal to have. This is important whether it be criminal matters or civil matters.

Third, my experience living, not just vacationing but actually living, in other countries has provided me with an appreciation of our constitution and laws. While we all know the importance of our laws and the constitution, I've found my appreciation increased exponentially when I lived in a country where those rights that we often take for granted are not enshrined or enforced. Where money decides whether justice is available or not. I know that type of thing happens here as well, but the wealthy and powerful do not have the seemingly guaranteed win they have in other legal systems. All people deserve a legal system that can be trusted and that follows the laws that have been provided to the people. I feel I can be a judge that is not a respecter of persons and that will follow the law as it is written without regard for how it impacts my election status. If we have to elect judges (which I hope we don't one day), then we need judges that are bold enough to follow the law. I know this is easier said than done and it will be a different story if my family will go hungry if I don't make the "correct" call as far as my election prospects go, but it is a worthwhile to not only look to but to try to achieve.

Fourth, I am humble enough to know that I will have a significant amount of work to do this job correctly. A lot of long hours of thankless work is unfortunately the calling of those who want a better tomorrow. I am willing to put in the time. I am not a criminal law expert as I have solely practiced in the civil arena, but if I am appointed, I will put in the time to bring my knowledge to level that is needed. When I was helping with the Shea v. State of Nevada case, I was not an expert on education funding adequacy lawsuits, but by the end I had a significant amount of knowledge. By the end of the case before the First Judicial District Court, my knowledge

had grown to a high level on the subject. I commit to putting in the time to know criminal law to the same level of expertise. I understand that currently Department XXIX has a civil court docket, but I also understand that those things can change.

Fifth, I plan on being a team player and helping with other judge's caseloads if I can. Here at the Office of the Attorney General, one of the things I love best is that we are a team united to deliver for the State of Nevada. If someone goes on maternity or paternity leave, then the rest of us pitch in. If a department or division is getting hammered with an abnormal amount of legal issues, such as the Unemployment Division was during the COVID-19 Pandemic, the rest of us help lift the load until it becomes more manageable. My biggest client is the Department of Education, but I have helped with unemployment law, water law, escheat law, and others. I am by no means an expert in those areas of law, but I've had a willing heart and mind and knew our filings before the hearings. I knew enough to be able to competently represent the State and defend our interests. If I needed to do it on a more permanent basis, I would obviously learn the area more in depth as I have with unclaimed property law. I did not enough know the area of law exists, but when the Unclaimed Property Division became my client, I scoured NRS 120A and NAC 120A for the intricacies of the law. I did not find all of them as I still occasionally get stumped by my clients, but I learned it well enough that I can answer the vast majority of their questions rather quickly. As I have done currently, I plan to do if I am appointed. I will help out as needed so that the job can get done. I thank you for your time and your consideration. I wish you the best no matter the outcome.

ATTACHMENT B

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9 FIRST JUDICIAL DISTRICT COURT OF NEVADA

10 CARSON CITY

11 EUREKA COUNTY SCHOOL DISTRICT,
12 a political subdivision of the State of
Nevada,

13 Plaintiff,

14 vs.

15 STATE OF NEVADA, ex rel.,
16 DEPARTMENT OF EDUCATION; and
DEPARTMENT OF TAXATION,

17 Defendants,

18 and

19 LEGISLATURE OF THE STATE OF
20 NEVADA,

21 Intervenor-Defendant.

Case No. 22OC 0091 B

Dept. No. I

22 **ORDER DENYING PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY**
RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

23 **I. PROCEDURAL HISTORY**

24 Plaintiff, Eureka County School District ("ECSD"), brought this action against
25 Defendants, the Department of Education and the Department of Taxation on August 10,
26 2022. A Verified Amended Complaint was filed on September 2, 2022. At the same time,
27 Plaintiff filed its Ex Parte Application for Temporary Restraining Order and Motion for
28 Preliminary Injunction and Affidavit of Justin M. Townsend. Plaintiff's Amended

1 Complaint brought two claims of relief against Defendants (Declaratory Relief and
2 Injunctive Relief) as Plaintiff alleges that the Net Proceeds of Minerals Tax ("NPMT")
3 that is protected by Article 10, Section 5 of the Nevada Constitution was taken or
4 threatened to be taken by the Department of Education in violation of the Nevada
5 Constitution.

6 This Court granted the Plaintiff's request for Temporary Restraining Order on
7 October 4, 2022, and extended it on October 12, 2022 until the Court could hear Plaintiff's
8 Motion for Preliminary Injunction on November 10, 2022. At the hearing, this Court
9 denied Plaintiff's request for a preliminary injunction for the following reasons.

10 II. STATEMENT OF UNDISPUTED FACTS

11 1. On August 10, 2022, Plaintiff filed its Complaint against Defendants.

12 2. On September 2, 2022, Plaintiff filed its Verified Amended Complaint and its
13 Ex Parte Application for Temporary Restraining Order and Motion for Preliminary
14 Injunction and Affidavit of Justin M. Townsend.

15 3. On September 12, 2022, the Parties stipulated for the Legislature to intervene
16 in the case as an Intervenor-Defendant, which this Court approved on September 27, 2022.

17 4. On September 20, 2022, Defendants and Intervenor-Defendant filed their
18 Oppositions to Plaintiff's Ex Parte Application for Temporary Restraining Order and Motion
19 for Preliminary Injunction.

20 5. On September 27, 2022, Plaintiff filed its Reply to Defendants' and Intervenor-
21 Defendant's Oppositions to its Ex Parte Application for Temporary Restraining Order and
22 Motion for Preliminary Injunction.

23 6. On October 4, 2022, this Court granted Plaintiff's Ex Parte Application for
24 Temporary Restraining Order.

25 7. On October 12, 2022, this Court extended the Temporary Restraining Order
26 until the hearing on Plaintiff's Motion for Preliminary Injunction.

27
28

1 8. On November 10, 2022, the Court held the hearing on Plaintiff's Motion for
2 Preliminary Injunction, in which this Court denied Plaintiff's request and dissolved the
3 Temporary Restraining Order.

4 **III. LEGAL STANDARD**

5 A preliminary injunction is available when the moving party can demonstrate that
6 the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for
7 which compensatory relief is inadequate and that the moving party has a reasonable
8 likelihood of success on the merits. *See* NRS 33.010; *University Sys. v. Nevadans for*
9 *Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); *Dangberg Holdings v. Douglas*
10 *Co.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999).

11 In considering preliminary injunctions, courts also weigh the potential hardships
12 to the relative parties and others, and the public interest. *Univ. & Cmty. Coll. Sys. of*
13 *Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). The
14 grant or denial of preliminary injunctive relief is entrusted to the sound discretion of the
15 district court, *Labor Comm'r of State of Nev. v. Littlefield*, 123 Nev. 35, 38, 153 P. 3d 26,
16 28 (2007). The moving party bears the burden of providing testimony, exhibits, or
17 documentary evidence to support its request for an injunction. *Coronet Homes, Inc. v.*
18 *Mylan*, 84 Nev. 435, 437, 442 P.2d 901, 902 (1968); compare 11A Charles Alan Wright,
19 Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil*, § 2949, at 237
20 (2013) (to sustain a preliminary injunction, “[e]vidence that goes beyond the unverified
21 allegations of the pleadings and motion papers must be presented”), with *Las Vegas*
22 *Novelty, Inc. v. Fernandez*, 106 Nev. 113, 787 P.2d 772 (1990) (noting that NRCP 65 was
23 drawn from an earlier version of FRCP 65, making it appropriate to look to federal cases
24 and treatises in construing our rule). *Hosp. Int'l Group v. Gratitude Group, LLC*, 132
25 Nev. 980, 387 P.3d 208 (2016).

26 **IV. DISCUSSION**

27 **A. ECSD Failed to Exhaust Administrative Remedies**

28 Before seeking the district court's intervention for relief from an agency decision, a

1 party must first exhaust available administrative remedies. See *Eggleston v. Stuart*, 137
2 Nev. Adv. Op. 51, 495 P.3d 482, 488 (2021) (quoting *Malecon Tobacco, LLC v. State, Dept.*
3 *of Taxation*, 118 Nev. 837, 839, 59 P.3d 474, 475-76 (2002)). One of the reasons for the
4 requirement to exhaust all administrative remedies before bringing the matter to the
5 Court is that actual issues and facts are adequately distilled for a Court to make an
6 informed decision.

7 In this case, the Court has practically no evidentiary facts and the factual record is
8 nonexistent. Here, the Court just has a pile of legal briefs debating facts that the Parties
9 have not established through evidence. For example, the Parties have not established
10 whether ECSD received one NPMT payment as the Nevada Constitution requires, or two.

11 The Court cannot grant the relief sought on a nonexistent factual record.

12 **B. ECSD Does Not Have a Reasonable Likelihood of Success**

13 Statutes are presumptively constitutional, and the burden is on the challenger to
14 show that the statute is invalid for constitutional reasons. *Halverson v. Secretary of State*,
15 124 Nev. 484, 487, 186 P.3d 893, 896 (2008). ECSD did not show that the Department of
16 Education was implementing the Pupil Centered Funding Plan (“PCFP”) in an
17 unconstitutional manner because ECSD did not show the statute would result in ECSD
18 receiving less money than that to which it is constitutionally entitled.

19 The undercurrent of the arguments, not established by evidence, was that ECSD
20 did receive NPMT funds as the Constitution requires. The Court suspects that both
21 Eureka County and the State paid ECSD when only one should have done so, and that at
22 some point it is likely that ECSD will need to pay that money back. The Court cannot
23 state this with certainty due to the lack of evidence.

24 However, as ECSD did not meet its burden of showing the applicable statute is
25 constitutionally invalid, it does not have a reasonable likelihood of success.

26 **C. ECSD Failed to Show Irreparable Harm**

27 ECSD argues that it will suffer irreparable harm unless the Court enjoins the
28 Defendants as it has budgeted the NPMT it received for the 2022-2023 school year. This

1 Court does not consider that irreparable harm. If ECSD already made its budget,
2 counting the money that it was presumably paid twice, it should revise its budget. It is
3 not irreparable harm for ECSD to have to revise its budget.

4 Therefore, ECSD has failed to show it will be irreparably harmed.

5 **D. The Public Interest is in Favor of Defendants**

6 While the Parties have not established this by evidence, the Court suspects that
7 ECSD was paid twice. The public interest is not served by allowing any school district to
8 be paid NPMT monies twice when the Nevada Constitution and law require it be paid
9 once. It is not in the public interest for one school district or any school district to receive
10 a windfall because the State of Nevada does not have a bottomless pit of money for
11 education. Any overpayment of money that goes to one school district means that another
12 school district or all other school districts are going to get short changed in one way or
13 another.

14 Therefore, the public interest weighs in favor of Defendants.

15 **E. ECSD has Failed to Show Hardship**

16 The Court cannot find any hardship to ECSD, assuming that it received NPMT
17 funds from both Eureka County and the State.

18 Therefore, the potential hardships of the parties weigh in favor of Defendants.

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1 V. ORDER

2 After the hearing on November 10, 2022, and after reviewing all the papers and
3 filings relevant to Plaintiff's Ex Parte Application for Temporary Restraining Order and
4 Motion for Preliminary Injunction, this Court finds that ECSD has not satisfied the
5 requirements for a preliminary injunction and so DENIES its motion.

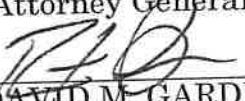
6 Further, this Court orders that the Temporary Restraining Order that it granted
7 on October 4, 2022 and extended on October 12, 2022 is DISSOLVED.

8 IT IS SO ORDERED.

9
10 DISTRICT COURT JUDGE

11
12 Submitted by:

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14 Attorney General

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