STATE JUDICIAL NOMINATION COMMISSION AND OFFICE OF THE GOVERNOR JOINT JUDICIAL APPLICATION

Please complete this application by placing your responses in normal type, immediately beneath each request for information. Requested documents should be attached at the end of the application or in separate PDF files, clearly identifying the numbered request to which each document is responsive. Completed applications are public records. If you cannot fully respond to a question without disclosing information that is confidential under state or federal law, please submit that portion of your answer separately, along with your legal basis for considering the information confidential. Do not submit opinions or other writing samples containing confidential information unless you are able to appropriately redact the document to avoid disclosing the identity of the parties or other confidential information.

PERSONAL INFORMATION

1. **State your full name.**

   Joshua Paul Schier

2. **State your current occupation or title. (Lawyers: identify name of firm, organization, or government agency; judicial officers: identify title and judicial election district.)**

   Partner, Cray Law Firm, PLC

3. **State your date of birth (to determine statutory eligibility).**

   April 12, 1980

4. **State your current city and county of residence.**

   Burlington, Des Moines County, Iowa

PROFESSIONAL AND EDUCATIONAL HISTORY

5. **List in reverse chronological order each college and law school you attended including the dates of attendance, the degree awarded, and your reason for leaving each school if no degree from that institution was awarded.**

   - The University of Iowa, College of Law 2011 – 2014
     - Juris Doctorate

- Western Michigan University 2005 – 2011
  - I was a PhD student at WMU specializing in early North American history and Native North America. I left when I was ABD (all but dissertation) to pursue my law degree.

- Western Illinois University 2003 – 2005
  - Master of Arts in American History

- Western Illinois University 2001 – 2003
  - Bachelor of Arts in American History

- Southeastern Community College 2000 – 2001
  - Associate of Arts

- University of Northern Iowa 1998 – 2000
  - I attended UNI for three semesters before leaving due to medical reasons.

6. Describe in reverse chronological order all of your work experience since graduating from college, including:

a. Your position, dates (beginning and end) of your employment, addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the name of your supervisor or a knowledgeable colleague if possible.

- Cray Law Firm, PLC 2017 – present
  - Partner
  - 420 N. Roosevelt Ave, Ste. 110
    Burlington, IA 52601
  - Partners – James W. Miller, Mitchell L. Taylor, Ryan D. Gerling

- Cray Law Firm, PLC 2014 – 2017
  - Associate Attorney
  - 420 N. Roosevelt Ave., Ste. 110
    Burlington, IA 52601
  - Supervising Partners – James W. Miller, Mitchell L. Taylor, Ryan D. Gerling

- Johnson County Attorney's Office 2013-2014
  - Prosecuting Intern
  - 500 S. Clinton Street, Ste. 400
    Iowa City, IA 52244
  - Supervising Prosecutor: Rachel Smith

- 8th Judicial District for the State of Iowa — May – August 2012
  - Judicial Extern
  - Wapello County Courthouse
    101 West 4th Street
    Ottumwa, IA 52501
  - Supervising Judge: Honorable Michael Schilling

- Instructor of Record / Doctoral Associate — 2006 – 2011
  - Western Michigan University, Dept of History
  - 1903 W Michigan Ave
    Kalamazoo, MI 49008
  - Supervising Professor: Dr. Jose Antonio Brandao

b. Your periods of military service, if any, including active duty, reserves or other status. Give the date, branch of service, your rank or rating, and present status or discharge status.

Not applicable.

7. List the dates you were admitted to the bar of any state and any lapses or terminations of membership. Please explain the reason for any lapse or termination of membership.

2014 – present, Iowa

8. Describe the general character of your legal experience, dividing it into periods with dates if its character has changed over the years, including:

a. A description of your typical clients and the areas of the law in which you have focused, including the approximate percentage of time spent in each area of practice.

My first legal experience began in law school during the summer after my 1L year. I worked as a Judicial Extern for the Honorable Michael Schilling. I spent my days with Judge Schilling, observing a variety of court proceedings and then discussing the legal issues that were presented later with him. I also researched legal issues and assisted with drafting rulings.

Beginning my second summer and continuing through the time I graduated from law school, I worked as a prosecuting intern for the Johnson County Attorney's office. As a prosecuting intern, I was allowed to prosecute simple misdemeanors under Iowa Court Rule 31.15. I managed my own docket of weekly cases, prosecuting all simple misdemeanors scheduled for one day each week. I worked with victims, interviewed witnesses, and prosecuted a variety of simple misdemeanors ranging from theft in the 5th degree to disorderly conduct to interference with official acts to public intoxication to simple domestic abuse

assault, to name a few. I also assisted prosecutors with preparing for jury trials, and I researched and wrote resistance briefs for suppression motions.

Following graduation from law school, I have worked as a private practice attorney at the Cray Law Firm. My practice is quite broad in scope. A substantial portion of my work has always been devoted to court-appointed work. I believe it is important to offer this service to the courts and to the indigent residents of our judicial district. I have taken appointments in adult mental health cases, juvenile mental health cases, juvenile delinquencies, child in need of assistance cases (CINA's) and criminal cases. I have also been appointed as guardian ad litem in guardians, conservatorships, and for imprisoned parties in divorces. I have served as best interest attorney is several paternity disestablishments, and I have been appointed to represent parties in contempt matters. Finally, I have been appointed to several termination of parental rights cases, both as guardian ad litem for the child and as counsel for the father. All of the clients in these matters are indigent and unable to retain private counsel.

In addition to my court-appointed work, I practice in a broad variety of areas. I have handled cases involving criminal charges, dissolution of marriage, custody, guardianship, conservatorship, termination of parental rights, adoption, contract law, probate, estate planning, trusts, real property disputes (easements, partition, quiet title, failure to disclose), contempt, personal injury, employment issues, unemployment, small claims, forcible entry and detainers, and DOT appeals. I have assisted with the formation of both for-profit and nonprofit organizations. Further, I have served as the city attorney for the City of Danville since 2017. As the city's attorney, I have handled drafting ordinances and a 28E agreement, contracts, bidding for city projects, nuisances, and municipal infractions as well as completing a recodification of the city code in 2020-2021. Finally, I have done a large amount of real estate work that does not involve litigation, such as purchase agreements, disclosures, deed packages, and title opinions.

b. The approximate percentage of your practice that has been in areas other than appearance before courts or other tribunals and a description of the nature of that practice.

I would estimate that approximately 30% of my practice involves areas that do not come before the courts. This would include the majority of my work as a city attorney, real estate transactions, business law, and estate planning.

c. The approximate percentage of your practice that involved litigation in court or other tribunals.

I would estimate that 70% of my practice involves litigation in court.

d. The approximate percentage of your litigation that was: Administrative, Civil, and Criminal.

Approximately 5% of my litigation experience has been before an administrative law judge. Approximately 35% of my practice involves civil litigation. Approximately 25% of my practice involves criminal law. Approximately 35% of my practice involves juvenile law, which includes both CINA's and delinquencies.

e. The approximate number of cases or contested matters you tried (rather than settled) in the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel, and whether the matter was tried to a jury or directly to the court or other tribunal. If desired, you may also provide separate data for experience beyond the last 10 years.

Regarding criminal matters, I tried more than 80 bench trials while I was a prosecuting intern. I was the sole counsel on all of these cases, which ranged from traffic infractions to simple misdemeanors such as public intoxication, possession of alcohol under legal age, disorderly conduct, assault, theft in the 5th degree, interference with official acts, and simple domestic abuse assault. As a defense attorney and sole counsel, I have tried three traffic matters to the bench and one domestic abuse assault. As co-counsel I tried a murder in the first degree / kidnapping in the first-degree case before a jury in 2019. I have also tried one juvenile delinquency matter (sexual abuse in the second degree) before the bench.

In civil matters, I have participated in several different types of trials/hearings. I have participated as associate counsel in one dissolution of marriage case and tried two dissolution of marriage cases as sole counsel (one against a pro se respondent). One of the dissolutions was solely regarding assets, and the other involved both assets and custody. I served as guardian ad litem in a contested custody modification trial. I have been sole counsel in approximately half a dozen contempt matters, ranging from failure to pay child support to withholding visitation to failure to answer a subpoena. Further, I have served as sole counsel for civil domestic abuse hearings, and as sole counsel in a contest guardianship trial. I have also served as sole counsel in a large number of contested mental health hearings. All of these matters were before the bench.

In small claims court, I have tried one forcible entry and detainer as sole counsel before the bench.

In juvenile court I have participated in a number of contesting evidentiary hearings. These include private termination of parental rights (as petitioner's attorney, respondent's attorney, and guardian ad litem), contested CINA removal hearings, contested CINA adjudicatory hearings, contested CINA permanency hearings, and contested CINA termination hearings. I have served as both a parent's attorney and a guardian ad litem in each type of contested CINA hearing.

f. The approximate number of appeals in which you participated within the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel. If desired, you may also provide separate data for experience beyond the last 10 years.

I have participated in four appeals in four separate areas of the law.

The first appeal I participated in was dissolution of marriage. My partner, Mitchell Taylor, was the chief counsel for the case and tried the case. As associate counsel, I assisted with the case up to the point of trial. Our client, the father, was awarded primary physical care of the minor child. After the trial, the mother appealed the Court's decision. I handled the appeal for our client and drafted the appellate brief. We also cross-appealed regarding the division of one of a settlement the mother had received from a previous employer. The district court's opinion regarding both physical care and division of assets was affirmed.

I have also participated in a CINA appeal. My client, the mother, was granted a six-month extension and wished to appeal the permanency order. She requested that her children be returned home immediately and the case closed. I was the sole counsel for this matter. The juvenile court's opinion was affirmed.

As guardian ad litem I have participated in the appeal of a private termination of parental rights. The juvenile court terminated the biological father's rights and he appealed. One of his contentions on appeal was that I did not appropriately do my job as guardian ad litem and attorney for the minor child. I filed an appellate brief and addressed that issue as well the other issues raised on appeal. The juvenile court's opinion was affirmed.

The most recent appeal I have participated in was a small claims matter. My clients obtained a default judgment pro se. The defendant retained an attorney after the judgment and filed multiple motions to set the default aside. When the magistrate denied those motions, the defendant appealed to the district court. At that point I was retained by the plaintiffs. The Defendant appealed the matter twice to the district court and then appealed to the Court of Appeals, which denied the defendant's application for discretionary review.

9. Describe your pro bono work over at least the past 10 years, including:

a. Approximate number of pro bono cases you've handled.

b. Average number of hours of pro bono service per year.

c. Types of pro bono cases.

I recently accepted a case pro bono after the Honorable John Linn requested that I serve as guardian ad litem for an imprisoned individual in a divorce. The petitioner, his wife, would have been responsible for my fees but she lived on a small disability so I agreed to do that matter pro bono. I have also assisted some

former clients for free, such as CINA clients who need help with custody modifications. But I have never reported those hours for pro bono recognition.

I have also done a lot of work at reduced rates. I take cases from the Department of Human Services, such as guardianship or adoptions, and assist for a small fee.

I have also maintained my public defender contract and kept court-appointed work as a sizable portion of my practice. While this is paid work, it is paid at a substantially lower rate than private work. I take those cases because I enjoy the work and enjoy helping individuals who cannot normally afford an attorney.

10. If you have ever held judicial office or served in a quasi-judicial position:

a. Describe the details, including the title of the position, the courts or other tribunals involved, the method of selection, the periods of service, and a description of the jurisdiction of each of court or tribunal.

Not applicable.

b. List any cases in which your decision was reversed by a court or other reviewing entity. For each case, include a citation for your reversed opinion and the reviewing entity's or court's opinion and attach a copy of each opinion.

Not applicable.

c. List any case in which you wrote a significant opinion on federal or state constitutional issues. For each case, include a citation for your opinion and any reviewing entity's or court's opinion and attach a copy of each opinion.

Not applicable.

11. If you have been subject to the reporting requirements of Court Rule 22.10:

a. State the number of times you have failed to file timely rule 22.10 reports.

Not applicable.

b. State the number of matters, along with an explanation of the delay, that you have taken under advisement for longer than:

i. 120 days.

ii. 180 days.

iii. 240 days.

iv. **One year.**

12. **Describe at least three of the most significant legal matters in which you have participated as an attorney or presided over as a judge or other impartial decision maker. If they were litigated matters, give the citation if available. For each matter please state the following:**
    - **a. Title of the case and venue,**
    - **b. A brief summary of the substance of each matter,**
    - **c. A succinct statement of what you believe to be the significance of it,**
    - **d. The name of the party you represented, if applicable,**
    - **e. The nature of your participation in the case,**
    - **f. Dates of your involvement,**
    - **g. The outcome of the case,**
    - **h. Name(s) and address(es) [city, state] of co-counsel (if any),**
    - **i. Name(s) of counsel for opposing parties in the case, and**
    - **j. Name of the judge before whom you tried the case, if applicable.**

Case 1

a. State of Iowa vs. Markell D. Price, Des Moines County Cause No. FECR008466.
b. Mr. Price was charged with Murder in the First Degree and Kidnapping in the First Degree for the kidnapping and murder of Edward Alan Breuer.
c. Personally, this case was significant as it was both the first jury trial I participated in and the first Class A felony trial I participated in. The case received a great deal of media attention as the victim was well-known and well-liked in the area, while Mr. Price and the co-defendant were not native to the region. I believe we presented a thorough and solid defense for Mr. Price, and as a result he was convicted of two lesser-included charges.
d. I represented Markell D. Price.
e. I was co-counsel with Heid Van Winkle.
f. I was appointed April 1, 2019 and allowed to withdraw on October 8, 2021 when appellate counsel took over the matter.
g. Mr. Price was convicted of Murder in the Second Degree and Kidnapping in the Third Degree.
h. My co-counsel was Heidi Van Winkle, Burlington, Iowa. Mr. Price was tried at the same time as Majestic Malone, whose attorneys were Curt Dial, Keokuk, Iowa and Reyna Wilkens, Fort Madison, Iowa.
i. The State of Iowa was represented by Lisa Schaefer, Des Moines County Attorney, and Scott Brown, Assistant Attorney General.
j. The case was tried before the Honorable Mark Kruse.

Case 2

a. In re the Interest of N.G., J.G., K.G., and K.G. Des Moines County Juvenile No. JVJV005189, 5190, 5191 and 5192.
b. This was a CINA case. The family had been involved with DHS on dozens of occasions. The oldest child had several special needs – she was diagnosed with

cerebral palsy, congenital CMV, epilepsy, was confined to a wheelchair, and was completely dependent on others for her care. The mother was a single parent with a history of trauma, mental health issues, and substance abuse. The court was involved in 2017 briefly but the CINA was dismissed. This matter was filed again after the oldest child almost died from neglect. The mother's home had significant issues, including mold, a lack of heat source, broken windows, and was not suitable for habitation. The mother was incredibly resistant to services and would not admit that she could not care for her oldest daughter and was failing to provide adequate care for her younger children.

c. This case is significant because it is the perfect example of what the Court can do for a family. By all accounts, this family was destined for termination. The mother had been involved with the Department of Human Services literally dozens of times. She could not care for herself, let alone her children. She was even jailed at one point for contempt of court during the CINA because she removed the children from their placement and DHS could not find her for a brief period. She was not a bad person, she just had a significant history of trauma, mental health issues, and substance abuse (methamphetamine). The Court, working with DHS, its providers, and the attorneys, was able to reunify this family. The oldest child was placed in a medical facility where she was able to receive adequate care and continue to have contact with her mother and siblings. The mother successfully completed inpatient treatment, found housing and employment in Des Moines, and was reunified with her other three children. She has maintained her sobriety and continued to be a success to this day, even serving as a resource for other parents.

d. I served as the guardian ad litem and attorney for the minor children.

e. As guardian ad litem, I participated in the case in several ways. I interviewed the children several times and made sure their position was always known to the Court. I also visited each of the residences the children resided in. I visited potential placements, such as one of the father's homes. I of course participated in Court hearings and supplied the Court with written reports prior to each hearing.

f. The first CINA was filed in late January 2017 and dismissed in April 2017. The second CINA was filed in December 2017 and dismissed in February 2020.

g. The CINA was dismissed when the three youngest children were successfully reunified with the mother and the oldest child was placed in a medical facility.

h. I did not have a co-counsel.

i. The State of Iowa was represented by Erin Stensvaag. The mother was represented by Reyna Wilkens. One father was represented by Trent Henkelvig, and the other father was represented by Lisa Schaefer.

j. The judge for the case was the Honorable Jennifer Bailey.

Case 3

a. In the Interest of O.A.G., Des Moines County Juvenile No. JVJV005487.

b. This case was a private termination of parental rights. The father had been in and out of the minor child's life, and part of his absence occurred while he was incarcerated.

c. All termination of parental rights cases are incredibly significant. Once a parent's rights are terminated, they are never able restore them and their legal relationship with that child is forever severed. In this case, the child was adamant that she wanted to be adopted by her stepfather, who had served as her dad for her entire life. The child was mixed-race, and her biological father argued that his rights should not be terminated due to his incarceration and his child's need to be educated in her cultural heritage.

d. I served as guardian ad litem and attorney for the minor children.

e. As guardian ad litem, I interviewed the minor child, her mother and stepfather, and her biological father. I also visited the minor child's home. I participated in the two-day contested evidentiary hearing, and I wrote a guardian ad litem report to the court at the conclusion of the hearings. When the matter was appealed, I submitted an appellate brief as well.

f. I was appointed in January 2019. The case was affirmed on appeal on September 23, 2020.

g. The Court terminated the father's parental rights. The Court of Appeals affirmed the juvenile court's decision.

h. I did not have a co-counsel.

i. The mother was represented by Lucas Helling. The biological father was represented by Ciara Vesey.

j. The judge for the case was the Honorable Jennifer Bailey.

13. Describe how your non-litigation legal experience, if any, would enhance your ability to serve as a judge.

I have significant non-litigation experience that will enhance my ability to serve as a judge. In the areas of my practice that do not go before the court, such as real estate work, municipal work, and for-profit and non-profit corporation law, I have had to face complex issues and resolve them without the benefit of another factfinder. I have had to use my own research and critical thinking skills to solve problems for my client. These same skills would be used as a judge daily.

Furthermore, we do not have the judicial resources to see every case that is filed go to trial. It is imperative that parties be able to have their voices heard yet work together to reach a fair and equitable resolution to their conflicts. I have had a great deal of experience doing this, and the vast majority of my cases have settled rather than go to trial because of this experience. I have learned how to break down the issues for my clients, communicate the strengths and weaknesses of their case, and evaluate the best course of action for them to pursue.

Finally, my non-litigation experience has helped me with time management and accountability. When dealing with matters that are not before the court, it can be easy for one to push them aside because there is no upcoming trial date or court deadline. But that does not mean the matters are not important. One has to learn how to balance those clients and those commitments with the cases that do have trial deadlines. I believe this experience of understanding the needs of my private, non-litigant clients and being

answerable to them would help me to efficiently manage a district court docket as a judge.

14. If you have ever held public office or have you ever been a candidate for public office, describe the public office held or sought, the location of the public office, and the dates of service.

Not applicable.

15. If you are currently an officer, director, partner, sole proprietor, or otherwise engaged in the management of any business enterprise or nonprofit organization other than a law practice, provide the following information about your position(s) and title(s):

a. Name of business / organization.
b. Your title.
c. Your duties.
d. Dates of involvement.

- Mississippi Valley Council, Boy Scouts of America
  - Member, Council Executive Board
  - Participate in decision making, guided by national policy, regarding program, member recruitment, fundraising, and use of organization properties.
  - 2014 – Present

- Camp Eastman Development Association
  - Nonprofit board dedicated to raising funds and working for the improvement of Camp Eastman, a camp that serves the Mississippi Valley Council Boy Scouts of America.
  - 2016 - present

- Burlington Notre Dame Foundation
  - President (2021 – 2022)
  - Participate in decision making regarding the management of funds, raising funds, and promoting the Burlington area Catholic school system.
  - 2018 - present

- Alcohol and Drug Dependency Services (ADDS)
  - Member, Board of Directors
  - Participate in decision making regarding programming, staff policies, annual budget, and the overall operations of the organization which is dedication to treating and working with those who suffer from addictions and mental health issues.
  - 2018 - Present

- Burlington Parks and Recreation Endowment Fund
  - Member, Board of Directors
  - Assist in creation of organization to fundraise for an endowment to benefit the parks of Burlington, Iowa.
  - 2020 – Present

- Des Moines County Historical Society
  - Member, Board of Directors
  - January 2021 – Present

16. List all bar associations and legal- or judicial-related committees or groups of which you are or have been a member and give the titles and dates of any offices that you held in those groups.

Iowa State Bar Association	2014 – present
Des Moines County Bar Association	2014 – present
Des Moines County Magistrate Appointing Commission	2016 - 2020

17. List all other professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed above, to which you have participated, since graduation from law school. Provide dates of membership or participation and indicate any office you held. "Participation" means consistent or repeated involvement in a given organization, membership, or regular attendance at events or meetings.

- Troop 3, Boy Scouts of America
  - Assistant Scoutmaster
  - I have been a continuous member of Troop 3 since 1991.

- Kiwanis Club, Des Moines County, Iowa
  - Member 2014 – 2018

- Shoquoquon District, Mississippi Valley Council, Boy Scouts of America
  - District Vice Chairman 2016 – 2017
  - District Chairman 2017 – 2019

18. If you have held judicial office, list at least three opinions that best reflect your approach to writing and deciding cases. For each case, include a brief explanation as to why you selected the opinion and a citation for your opinion and any reviewing entity's or court's opinion. If either opinion is not publicly available (i.e., available on Westlaw or a public website other than the court's electronic filing system), please attach a copy of the opinion.

Not applicable.

19. **If you have not held judicial office or served in a quasi-judicial position, provide at least three writing samples (brief, article, book, etc.) that reflect your work.**

Sample 1

- Sample 1 is a Motion for a New Trial & Motion in Arrest of Judgment filed in State of Iowa vs. Markell Price, Des Moines County Case No. FECR008466. I received assistance drafting pages five and six from co-counsel, but I have left that portion in for context.

Sample 2

- Sample 2 is the Closing Argument from Sankus vs. Sankus, Des Moines County Equity No. CDCV004961. This was a custody modification case in which I served as guardian ad litem for the minor child.

Sample 3

- Sample 3 is the Petition on Appeal for the CINA permanency appeal that I filed.

OTHER INFORMATION

20. **If any member of the State Judicial Nominating Commission is your spouse, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, father, mother, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister, state the Commissioner's name and his or her familial relationship with you.**

Not applicable.

21. **If any member of the State Judicial Nominating Commission is a current law partner or business partner, state the Commissioner's name and describe his or her professional relationship with you.**

Not applicable.

22. **List the titles, publishers, and dates of books, articles, blog posts, letters to the editor, editorial pieces, or other published material you have written or edited.**

Not applicable.

23. **List all speeches, talks, or other public presentations that you have delivered for at least the last ten years, including the title of the presentation or a brief summary of the subject matter of the presentation, the group to whom the presentation was delivered, and the date of the presentation.**

- CLE Presentation on Chapter 232D – Minor Guardianships
    - Des Moines County Bar Association
    - Summary of the changes in Chapter 232D that were implemented in January 2020
    - March 4, 2020

24. List all the social media applications (e.g., Facebook, Twitter, Snapchat, Instagram, LinkedIn) that you have used in the past five years and your account name or other identifying information (excluding passwords) for each account.

Facebook – Joshua Schier.

Twitter – @JoshSchier- I had a twitter account for several years that I did not use. It is no longer active.

Snapchat – I had a snapchat account that is no longer active. I do not recall the username.

LinkedIn – Joshua Schier I had a LinkedIn account that I created when I began my job search but did not use and is no longer active.

Pinterest – Joshua Schier.

25. List any honors, prizes, awards or other forms of recognition which you have received (including any indication of academic distinction in college or law school) other than those mentioned in answers to the foregoing questions.

- University of Iowa, College of Law
    - Iowa Law School Foundation Scholarship
    - Boyd Service Award

- Western Michigan University
    - History Graduate Student Mentor
    - Robert Russell Writing Award
    - All-University Graduate Teaching Effectiveness Award
    - Doctoral Associateship

- Western Illinois University
    - Graduate Student Research and Professional Development Grant
    - Phi Alpha Theta
    - Graduate Assistantship
    - Student Government Association, Speaker of the Senate
    - Dean's List 2002 – 2003

26. Provide the names and telephone numbers of at least five people who would be able to comment on your qualifications to serve in judicial office. Briefly state the nature of your relationship with each person.

- Ryan D. Gerling, Cray Law Firm, PLC
  - 319-752-4537
  - I have practiced with Mr. Gerling my entire career.

- Marlis J. Robberts, Robberts & Kirkman, L.L.L.P.
  - 319-758-9800
  - Ms. Robberts and I have had several cases against each other, ranging from divorce to custody to contempt.

- Todd Chelf, Associate General Counsel at Great River Health System
  - 319-850-2124
  - While Mr. Chelf was an Assistant County Attorney I had several cases against him, including both juvenile and criminal matters.

- Heidi D. Van Winkle, Van Winkle Law Office
  - 319-752-4585
  - Ms. Van Winkle and I have been involved in a large number of CINA's together, sometimes working together as parents' counsels and sometimes at odds with one of us being the guardian ad litem and one of us being a parent's attorney. We were also co-counsel for a murder trial in August, 2019.

- The Honorable Michael Schilling, District Court Judge, Eight Judicial District
  - 319-372-3523
  - I worked for Judge Schilling as a judicial extern in law school, and I have appeared before him many times in my career in a wide range of matters.

27. Explain why you are seeking this judicial position.

When I chose to go to law school, I wanted to be an attorney to assist people. I never planned to be a businessperson. Throughout law school, I chose internships that were in line with that goal – first as a judicial extern and then as a prosecuting intern. I found myself in private practice because of the necessity of securing employment prior to taking the bar exam. During my time in private practice, I have maintained a large caseload of court-appointed work because of my continued desire to help people. While I enjoy working with my private clients immensely, nothing matches the satisfaction of assisting someone who never thought they could afford an attorney and was at one point overwhelmed by the unfamiliar legal system. As a judge, I believe I can continue to assist people, whether they are pro se litigants or represented by attorneys.

I believe many people would identify my ability to see the big picture and find a fair resolution for my clients as one of my strengths as an attorney. I remind my clients, particularly my family law clients, that they are often tied to the opposing party for the rest of their lives, and they need to consider those ties throughout the case. My clients have to live with the results of a case for the rest of their lives – it is not just another win or loss for them. That is why many of my cases settle out of court. I will not litigate a

matter just for the sake of litigation. I do not see the practice of law as an opportunity to argue or just "win" a case. In many cases, there are no long-term winners, everyone loses a little. I believe this kind of big-picture perspective is important for a judge to have. We need to remember how important each case is to a litigant and allow that litigant to feel that the are heard and that they have received a fair hearing.

28. Explain how your appointment would enhance the court.

I came to the practice of law late in life, after spending several years in academia. I believe my time in academia helped shape the lawyer that I am today and was an invaluable experience. As a graduate student and instructor of history, I spent years learning how to research and write. For eight years I regularly wrote history papers based on both secondary and primary research. As an instructor, I learned how to communicate the knowledge I learned through research to a broader, non-specialist audience. I regularly taught classes of sixty students for five and a half years. Because of this experience, one of my strengths as an attorney has been to communicate with my clients and break-down the legal process and legal system into understandable terms. My clients have been able to make better decisions because of the knowledge I can give them in a way that they understand. This would be a useful tool as a judge dealing with the ever-growing number of pro se litigants that are seen in our court system.

Throughout my practice I have worked in a number of different areas of the law. I have experience in criminal law (both as a prosecutor and a defense attorney), civil law, juvenile law, and administrative law. I have participated in a jury trial, civil and criminal bench trials, contested evidentiary hearings in juvenile court, and administrative law hearings. I have participated in mediations. I have drafted countless motions, reports, child support guidelines, contracts, stipulations, proposed orders, and municipal ordinances. I have encountered many of the matters that a district judge will encounter, and I have done so on a regular basis. I believe I have a reputation for competence, integrity and a strong work ethic, and I would bring those qualities to the bench.

29. Provide any additional information that you believe the Commission or the Governor should know in considering your application.

Thank you for your consideration.

I hereby certify all the information in this joint judicial application is true and correct to the best of my knowledge.

Signed: _____ Date: December 14, 2021

Printed name: Joshua P. Schier

IN THE IOWA DISTRICT COURT IN AND FOR DES MOINES COUNTY

STATE OF IOWA	)	
	)	
Petitioner,	)	Case No.: FECR008466
	)	
vs	)	MOTION FOR A NEW TRIAL
	)	&
MARKELL PRICE	)	MOTION IN ARREST OF JUDGMENT
	)	
Defendant.	)	

COMES NOW the Defendant, Markell Price, by and through his attorneys, Heidi D. Van Winkle and Joshua P. Schier, and in support of his Motion for a New Trial pursuant to Iowa Rule of Criminal Procedure 2.24(2)(b)(5), 2.24(2)(b)(6), 2.24(2)(b)(9) and Motion in Arrest of Judgment pursuant to Iowa Rule of Criminal Procedure 2.24(3) respectfully states to the Court as follows:

1. Defendant was charged with one count Murder in the First Degree and one count of Kidnapping in the First Degree.
2. On August 13, 2019 a jury in Des Moines County returned a guilty verdict as the charge of Murder in the Second Degree and Kidnapping in the Third Degree.
3. The Defendant incorporates into this Motion all arguments made previously on the record during trial.

MOTION FOR NEW TRIAL

4. Pursuant to Iowa Rule of Criminal Procedure 2.24(2)(b)(5), Defendant requests a new trial because the Court has erred in the decision of a question of law during the course of trial.
    a. The Defendant was prevented from calling a key witness, Stanley Baldwin.
        i. Mr. Baldwin was the first person present on the day of the incident and the last person to leave the scene, so he was available to witness everything that happened.
        ii. Mr. Baldwin was not charged with any level of Murder or Kidnapping.
        iii. Despite the fact that he was not charged with either Murder or Kidnapping, Mr. Baldwin was allowed to make a blanket assertion that he would invoke his 5th Amendment rights because his testimony would

incriminate himself.

iv. In *State v. Heard*, the Iowa Court of Appeals addressed this issue. The Court cited *Harris v. United States*, stating that a witness's Fifth Amendment privilege "is narrower than that of a defendant, and extends only to specific questions; it does not encompass a refusal to take the stand at all." *State v. Heard*, 2019 Iowa App. LEXIS 45, *7-8, quoting *Harris v. United States*, 614 A.2d 1277, 1282 (D.C. 1992). Further, "a witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself – his say-so does not of itself establish the hazard of incrimination." Id. at *8, quoting *Hoffman v. United States*, 341 U.S. 479, 486, 71 S. Ct. 814, 95 L. Ed. 1118 (1951). The Court determined that the witness "could only assert the privilege in response to specific questions to which his answers would incriminate him." *Heard* at *9. The Court held that "the district court's failure to determine the extent and validity of Brown's reported assertion of his Fifth Amendment privilege on his second round of testimony result in a violation of Heard's right to compulsory process." Id. at *11. Simply put, "[the witness's] unequivocal statement of his intent to assert his Fifth Amendment privilege is not sufficient to justify his blanket claim of privilege." Id. at *11.

v. In the present case, the Court allowed Mr. Baldwin to make the determination that his answers would incriminate himself. He was never presented with specific questions, nor was the Court ever presented with specific questions to determine the extent and validity of Mr. Baldwin's assertion of his Fifth Amendment privilege.

vi. Further, the Court never brought the witness in to ask whether he desired to assert his Fifth Amendment privilege. There is not a clear record establishing his assertion only the statements of his attorney and no statements specifically outlining that she spoke with him about it.

vii. Because the Court erred in ruling that Mr. Baldwin could not testify, the Defendant has a right to a new trial under Iowa Rule of Criminal Procedure 2.24(2)(b)(5).

b. The Defendant was not allowed to introduce the recorded 911 CALL into evidence.
    i. At trial the Defendant sought to introduce the recorded 911 call made by the State's primary witness, Owen Laird.
    ii. The State objected on the ground that the 911 call was hearsay.
    iii. The Court sustained the State's objection without allowing the Defendant to offer any argument on the objection.
    iv. There is clear case law that 911 calls are admissible at trial and fall within multiple hearsay exceptions such as present sense impression or excited utterance. See *State v. Augustine*, Iowa App. 458 N.W.2d (1990) 859 at 860-861; *Bennett v. State*, Iowa App. Lexis 922 (2004) at *5-*6; *State v. Moore*, Iowa App. Lexis 629 (2012) at *7-*8; *State v. Wright*, Iowa App. Lexis 88 (2015) at *3-*6.
    v. The defendant was prejudiced by the fact that the 911 call was excluded from evidence.
    vi. Because the Court erred in excluding the 911 call from evidence, the Defendant has a right to a new trial under Iowa Rule of Criminal Procedure 2.24(2)(b)(5).

5. Pursuant to Iowa Rule of Criminal Procedure 2.24(2)(b)(6), Defendant requests a new trial because the verdict was contrary to law or evidence.
    a. There was insufficient evidence to convict the Defendant beyond a reasonable doubt of either charge.

MURDER IN THE SECOND DEGREE

    b. To prove that the Defendant committed Murder in the Second Degree, the State must prove beyond a reasonable doubt the following elements:
        i. On or about the 17th day of March, 2019, the Defendant or another he aided and abetted struck Edward Alan Breuer.
        ii. Edward Alan Breuer died as a result of being struck.
        iii. The Defendant acted with malice aforethought, and/or aided and abetted

another, with knowledge the other had malice aforethought.

c. There was no physical evidence in this case that linked the Defendant to murdering or even assaulting the victim. The only physical evidence presented showed the victim's blood on two other individuals who assaulted the victim prior to the Defendant's arrival at the scene, Stanley Baldwin and Owen Laird.

d. The evidence in this case was entirely testimonial. The testimony from the State's witnesses was severely lacking in credibility. The State's primary witness, Owen Laird, the only witness who allegedly was present inside the home with the Defendant during the kidnapping and murder, had previously confessed to the murder, admitted to assaulting and kidnapping the victim, and gave several contradictory stories throughout this case to the police, to family members, during depositions, and during trial. During trial the witness admitted to making admissions regarding the murder.

e. None of the State's witnesses testified to seeing the Defendant, Markell Price, strike the victim at any time.

f. The State's other witnesses admitted to being afraid of and intimidated by the State's primary witness. The State's other witnesses also gave several contradictory statements throughout this case. None of the State's other witnesses testified to seeing the Defendant strike or harm the victim.

g. No evidence was presented that the Defendant acted with malice aforethought.

KIDNAPPING IN THE THIRD DEGREE

h. To prove that the Defendant committed Kidnapping the Third Degree, the State must prove beyond a reasonable doubt the following elements:

   i. On or about the 17th day of March, 2019, the Defendant and/or another he aided and abetted confined Edward Alan Breuer.

   ii. The Defendant and/or another he aided and abetted did so with the specific intent to inflict serious injury upon Edward Alan Breuer.

   iii. The Defendant knew he did not have the consent of Edward Alan Breuer to do so and/or he aided and abetted another with knowledge the other did not have the consent of Edward Alan Breuer to do so.

i. The State presented evidence that two other individuals, first Stanley Baldwin and then Owen Laird, assaulted and confined the victim before the Defendant was even present.

j. The only evidence presented in regard to kidnapping was that the Defendant walked inside a house with the victim. No witness testified to the Defendant confining the victim without the victim's consent.

6. Pursuant to Iowa Rule of Criminal Procedure 2.24(2)(b)(9), the Defendant requests a new trial because the Defendant did not receive a fair and impartial trial.

a. In *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), *215 the Supreme Court held that a prosecutor could not use his peremptory challenges to engage in purposeful racial discrimination. *Batson*, 476 U.S. at 100, 106 S.Ct. at 1725, 90 L.Ed.2d at 90. *State v. Mootz*, 808 N.W.2d 207, 214–15 (Iowa 2012), as corrected (Feb. 22, 2012), as corrected (Apr. 9, 2012)

Courts use the Batson test to determine if a litigant is using peremptory challenges to engage in purposeful racial discrimination. The Supreme Court has summarized the Batson test as follows:

> Under our Batson jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination. *State v. Mootz*, 808 N.W.2d 207, 215 (Iowa 2012), as corrected (Feb. 22, 2012), as corrected (Apr. 9, 2012).

A Batson challenge involves a three-step process. Importantly, when the party seeking to strike potential juror gives a race neutral reason, the Court must make a determination as to whether the reason given is a pretext for racial discrimination. "After the striking party offers its race-neutral reason for the strike, the district court must then determine whether the "stated reason

constitutes a pretext for racial discrimination." *Hernandez*, 500 U.S. at 363, 111 S.Ct. at 1868, 114 L.Ed.2d at 408.

In this matter the reasons given for the strike of the potential juror are simply pretextual and are racial discrimination. One of the reasons given was that the juror had worn a shirt with a picture of a cat. If the Court is seriously going to allow jurors to be struck because they were shirts with pictures of cats, then any juror can be struck and Constitutional requirements which are protected by Batson are meaningless.

Another reason given by the State was that the juror worked second shift and would be at work during the evening. However, the juror indicated that she would be able to stay awake and focused at trial.

The third reason given was that the potential juror had answered a question different at the last trial. However, there is no record of this and no way to establish that this is actually true. The State presented no transcripts showing the juror has in fact answered any questions differently at a prior trial.

In this case the Court found that the reasons provided by the State were not pretextual and allowed the African American potential juror to be removed. Therefore, it must be asked, would the Court find that a white juror should not be allowed to serve on a jury because the white juror wore a shirt with a picture of a cat? Most likely this answer is No.

Further, would the Court find that a white juror was not able to serve on a jury because they worked second shift? It must be remembered that in this matter the potential juror indicated that she could concentrate and focus at trial even though she worked second shift. However, even though the juror stated this, the Court found this was not correct. Therefore, the Court either believed the potential juror was lying or decided the Court knew better. Once again, the question must be asked, if this juror were white would the Court find they were not being honest or determine that the Court knew better than the potential juror? Once again, this answer is No.

Finally, the Court also found that since the juror had allegedly changed an answer from a prior trial, this juror should be removed. As set forth above, there

is absolutely no proof that this actually happened. The State presented no transcripts of the prior jury selection and no witnesses were presented as to this allegation. Importantly, the potential juror never stated this was correct.

If the Court is going to allow the State to make allegations that cannot be verified and the Court has no way to know if are true or not, then once again there is no reason to even consider Batson challenges as this gives no protection to the Defendant which is the purpose of Batson.

For these reasons, when the Court allowed an African American juror to be removed for clearly a pretext for racial discrimination, the Court erred in removing the African American juror and a new trial must be granted.

MOTION FOR ARREST OF JUDGMENT

7. Pursuant to Iowa Rule of Criminal Procedure 2.24(3), the Defendant requests an Arrest of Judgment because based upon the whole record, no legal judgment can be pronounced.
    a. No evidence was presented on the record which proved beyond a reasonable doubt that Defendant Markell Price committed the crimes of Murder in the Second Degree and Kidnapping in the Third Degree.
    b. The record shows no physical evidence linking the Defendant to the crime.
    c. The only evidence contained in the record was testimonial. The testimony of the State's witnesses was severely lacking in credibility. The witnesses' stories contradicted earlier versions that they gave during sworn depositions, as pointed out during trial on the record. The witnesses' stories contradicted each other during the trial.
    d. None of the witnesses testified to seeing the Defendant, Markell Price, strike the victim at any time.

WHEREFORE, the Defendant respectfully requests that the Court enter an Order arresting judgment and Ordering a new trial.

RESPECTFULLY SUBMITTED,

/s/ Heidi D. Van Winkle

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IN THE IOWA DISTRICT COURT FOR DES MOINES COUNTY
In Re the Marriage of ELIZABETH ANNE SANKUS and STEVE T. SANKUS

Upon the Petition of
ELIZABETH ANNE SANKUS n/k/a
ELIZABETH ANNE VAUGHN,

Petitioner,

And Concerning, Equity CDCV004961

STEVE T. SANKUS,

Respondent.

CLOSING ARGUMENT

COMES NOW, the undersigned, as Guardian Ad Litem for the minor child, T.J.S., and for his Closing Argument states as follows:

I. <u>Modification of Custody</u>

Both parties in this matter agree that the general principles guiding a Court's decision to modify custody have been well-established in Iowa. A party must show substantial and material changes in circumstances that were not contemplated by the court when the decree was entered, and these changes are not temporary. *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). For a parent who wishes to modify physical care, the burden is even greater, requiring the parent seeking the change to show the ability to offer superior care. *In re Marriage of Malloy*, 687 N.W.2d 110, 113 (Iowa Ct. App 2004). Any custody decision must keep in mind that the standard is the best interest of the child – "physical care issues are not to be resolved based upon perceived fairness to the *spouses*, but primarily upon what is best for the *child*. The objective of a physical care

determination is to place the children in the environment most likely to bring them to health, both physically and mentally, and to social maturity." *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007).

When determining what is in the best interest of the child, the court must look to a number of factors, as each custody case is unique. Among these factors, the Iowa Code states that the court shall consider "whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity." **Iowa Code 598.41(3)(f)**. The courts have long agreed, holding that the "preferences of minor children while not controlling are relevant and cannot be ignored." *Meyer v. Harris*, 2015 Iowa App. LEXIS 515*, 868 N.W.2d 202, *9 (Iowa App. 2015). When considering the child's preferences and what weight to give those preferences, the court looks at "his age and education level, the strength of his preference, his relationship with family members, and the reasons he gives for his decision." *In re Marriage of Jahnel*, 506 N.W.2d 473, 475 (Iowa Ct. App. 1993).

II. Elizabeth Vaughn's Petition for Modification

Elizabeth contends that there has been a substantial and material change in circumstances, that a) T went to Delaware for his summer 2019 visitation and did not return as planned on August 18, 2019, and b) Steve intended to enroll T in school in Delaware and requested his transcripts. The fact that T 's return trip was initially cancelled and that he wished to remain in Delaware following the summer of 2019 is undisputed. Elizabeth, Steve, and T all testified to these facts during the trial. It was also agreed that Steve and T desired for T to attend school in Delaware and

Steve did request T 's transcripts from Burlington Notre Dame.

Steve's cancellation of the return ticket for T , and his request for transcripts with the intention to enroll T in a Delaware school, were certainly recent changes in circumstances, as testified to and stated in Respondent's Closing Argument (*Respondent's Closing Argument*, 7). With the exception of his visits to Delaware, T had lived in Burlington his entire life and attended school in Burlington. T 's failure to return and enrollment in a Delaware school was not contemplated by the Court in the original decree.

Elizabeth's claim appears to be based solely on Steve's actions, and not on T 's desires, which Steve purports are the motives behind his actions. Because Elizabeth's claim is based on Steve's actions, her argument that there has been a substantial change in circumstances fails as Steve's actions were not permanent. T 's failure to return was temporary, and T did in fact return to Iowa on August 26, 2019. Elizabeth argues that the only reason for this return was her legal action. (*Petitioner's Closing Argument*, 8). While T 's return did comply with this Court's order, that does not change the fact that he did return. T has since had visitation over Christmas break in Delaware and did return from that trip without incident. Furthermore, T returned to Burlington Notre Dame on the first day of school, and he has remained enrolled in school there throughout the current school year. Therefore, it can be argued that Steve's cancellation of T 's return ticket and intention to enroll T in a Delaware school was temporary, and not permanent, and thus there has been no substantial change in circumstance to justify Elizabeth's request for a modification.

If the Court accepts Elizabeth's argument that Steve's actions constituted a substantial change in circumstances that warranted modification, her requested change fails because it is not in T 's best interest. The testimony and evidence presented clearly showed that T has a very strong connection to his father and a strong emotional bond with him. Regardless of whether T 's relationship with his mother has suffered because of her actions or some other unknown reason, the fact remains that T feels closer to his father, particularly since the death of his paternal grandparents. He maintains daily contact with his father and his stepmother and feels that they offer him a great deal of emotional support. This was testified to by both T and Steve. Elizabeth also recognizes T 's close connection to his father, as she has not limited T 's ability to communicate with Steve and even allowed T to spend several hours each evening prior to the trial with his father. (*Petitioner's Closing Argument*, 7). Elizabeth testified that she believes Steve's parenting time needs to be limited, as the current visitation is too long for T to go without communicating to her. This does not show a concern about what is best for the child, but rather what is best for the parent, which is clearly not the standard. If Elizabeth is truly committed to "meet any and all of T 's emotional needs," as indicated in her testimony and in Petitioner's Closing Argument, then she should recognize the importance of T 's time with his father. (*Petitioner's Closing Argument,* 4). For that reason, it would not be in T 's best interest to reduce his visitation with Steve.

III. Steve Sankus' Petition for Modification

Steve has also argued that there has been a substantial and material change in circumstances. Based upon the evidence presented at trial, the substantial and material change in circumstances is T 's desire to now reside with his father in Delaware. A move across the country, to a home that he has never resided full time in, is certainly a substantial and material change. As stated above in relation to Elizabeth's argument, T 's desire to live with his father was first expressed in the summer of 2019, so it is a recent change that was not contemplated at the time of the decree. Where Steve's argument differs from Elizabeth's and succeeds while hers fails is that T 's desire to live with his father is not a temporary change, but a permanent one. T has but one year left of high school, and during that time it is extremely unlikely that he would change his mind regarding his living situation, particularly given his unwavering adherence to his desire to live with his father over the last year in spite of the opposition from his mother and brother.

As the Respondent pointed out in his Closing Argument, a child's desire to live with a parent, in the right circumstances, can be the primary factor in showing a substantial change of circumstances (Respondent's Closing Argument, page 5, citing *In re Kueter*, 828 N.W.2d 325 (Iowa Ct. App. 2013). The courts have agreed with this argument. (see *Jahnel* at 474; *In re Marriage of Reinking*, 2016 Iowa App. Lexis 624*, 885 N.W.2d 220, *2 (Iowa Ct. App. 2016); and *In re Marriage Hopp*, 2012 Iowa App. Lexis 667*, 821 N.W.2d 777, *12 (Iowa Ct. App. 2012)). In *Jahnel*, the parties' fifteen-year-old son left his mother's home and moved into his father's home, and that served as the basis for the

modification. *Jahnel* at 474. In *Reinking*, the parties' fifteen-year-old son's "strong preference" to live with his father led the Court to determine that a substantial change in circumstances had occurred. *Reinking* at *2. Similarly, in *Hopp*, the Court of Appeals agreed with the District Court which "found there had been a substantial change in circumstances due to the children's express preferences to live with [their father]." *Hopp* at *12. The case law shows that when the courts are presented with older, mature teenagers who express a desire to change homes, that desire can be viewed as a substantial change in circumstances.

In addition to proving there has been a substantial change in circumstances, the evidence at trial also showed that Steve could offer superior care to the minor child. The condition of the Petitioner's home has nothing to do with whether or not Steve could provide superior care. Elizabeth has cared for T for the last sixteen years, and no one disputes that T is an exceptional young man who has excelled in school and a variety of extracurricular activities. As pointed out in the Petitioner's Closing Argument, the condition of Elizabeth's home is nothing new, and Steve doesn't have any safety concerns regarding his other son, B , remaining in the home.

Steve would be able to provide superior care to T because Steve has a closer bond and relationship with T r. There is no doubt that Elizabeth (and Jon) have done something right in raising T , and he would not be the young man he is today without their support. But to say that "Steve has had no role in performing parenting duties with respect to T 's education or extra-curricular activities" does not accurately portray Steve's relationship with T . (*Petitioner's Closing Argument*, 6). No,

Steve has not attended parent-teacher conferences or provided transportation for T to extracurriculars. But Steve has communicated with T , encouraged T , and offered support to T . The geographic distance between Steve and T prevents Steve from being as active a parent as someone local. That being said, Elizabeth admitted herself during testimony that she has missed many of T 's events or activities and has scant knowledge of T 's interests because she has to divide her time between her other children at all. This is not to criticize Elizabeth, but merely to point out that there is more to parenting than to attend each activity or parent teacher conference, or to providing transportation. Emotional support and encouragement, particularly at this point in T 's life as he prepares to make decisions that will shape his future, is also a key parenting role.

T testified to his bond with his father and cited that as his primary reason for wanting to live with his father. As stated in the Respondent's Closing Argument, the courts have often found that in the right circumstances a child's wishes should be given great weight. Teenage children in particular have their preference taken into consideration by the courts. For example, the court in *In re Marriage of Lindemier* agreed with a modification of custody in part at least because of the children's "sincere desires" to live with their father, which "were much more than their belief they would 'have more things at his home.'" *In re Marriage of Lindemier*, 2015 Iowa App. LEXIS 417*, 867 N. W.2d 195, *14 (Iowa Ct. App. 2015). Similarly, in *Meyer*, the Court

> agreed with the district with the district court's conclusion that the child's preference should be entitled to considerable weight. As the court stated:

> R.A.M. is fifteen years of age. She is a straight A student in the Riverside School System, and she is third in her class. She is active with extracurricular activities, including Volleyball. R.A.M. is interested in culinary arts and wants to pursue education in that area after high school. R.A.M. was described as socially outgoing, goal-setting, fit, mature, healthy, and with a good attitude. There is no evidence that either parent pressured R.A.M. to state a preference…. Evidence was presented in part that R.A.M.'s preference was based, in part, on her perception of the quality of education that she will receive in Washington as opposed to Iowa…. Given R.A.M.'s academic performance, maturity, and the reasons she has given for her parental preference, her preference is entitled to considerable weight. *Meyer* at *11-*12.

As stated earlier, the child's preference in *Reinking* was not only the substantial change, but also the justification for the change of custody. The District Court found the minor child, J.R., to be "a mature, well-adjusted teenager who has expressed a genuine and legitimate preference for a change in placement" including career goals, his relationship with each parent, and his desire to be part of his father's faith. *Reinking* at *3. The Court of Appeals agreed with the District Court's modification, stating that "J.R. is of sufficient age and maturity for the court to consider his preference." *Id*. at *4.

The courts do not just listen to teenagers when they want to change homes, but also take into account their wishes when they do not want to modify a current custody arrangement. In the case of *In re Marriage of Stahr*, the teenage daughters did not want to change the current custody arrangement. The District Court did not modify, and the Court of Appeals agreed, stating "we give weight to the statements and preferences of these two teenagers because of their age and both appear by their testimony to be mature, intelligent, and have provided a reasonable explanation for their opinion." *In re Marriage*

of Stahr, 2018 Iowa App. LEXIS 148*, 913 N.W.2d 274, *5 (Iowa Ct. App. 2018). Like the children in the above-cited cases, T is an older teenager who has excelled in school, been involved in extra-curricular activities, and shown himself to be a thoughtful and mature young man. For those reasons, the Court should give great weight to his wishes.

The Petitioner's Closing Argument challenged T 's "maturity and credibility." (*Petitioner's Closing Argument*, 4). Yes, T 's testimony was far from polished and at times he appeared confused and inconsistent regarding dates or times, such as school drop off times for "0 hour." It must be pointed out, however, that a sixteen-year-old child, though mature for his age, was being cross-examined by an experienced attorney on the issue of his unhappiness in his mother's home, a topic that was very difficult to express. The uncomfortableness of testifying in trial often leaves grown adults looking confused, unsure, emotional, and at times immature. Even though T wishes to reside with his father, that does not mean he does not care for his mother, as is evident from the emotion he showed on the stand and the emotion he showed when confronting his mother in **Exhibit O**.

Better evidence of T 's maturity can be seen in his actions. Although T adamantly wished to stay with his father last summer, he returned to Iowa when ordered by the Court. T did not attempt to run away. He did not throw fits or tantrums, or cause disruptions in his home. To Elizabeth and Jon's credit, they have given T space, have not pressed him on his reasons for wanting to leave, and have arranged counseling for T . But, as Elizabeth testified to, they did not have any trouble getting T to come home, go to school, and do what he is supposed to do throughout the past

year. Further, T participated in some of his old activities, such as band and wrestling during the past year. Elizabeth testified that she felt T was holding back from activities because of the case. Yet B 's testimony revealed that he too had eliminated almost all his own activities during the last school year. Rather than showing some kind of lack of maturity or attempt to sabotage his placement in Burlington, T 's change in activities can be viewed in the same light as B 's – a teenager's interests in activities change and evolve over time and any given year can change.

The statements and actions of the Petitioner contradict her contention that T lacks maturity. Elizabeth for years has recognized some level of maturity in T , as she has let him babysit his younger siblings. Further, in her testimony, Elizabeth stated that T was a mature kid and she took pride in that fact. Elizabeth testified to all that T has accomplished in school, his many extracurricular activities, and traditionally his willingness to assist with his siblings or with chores around the home.

Where Ta 's testimony was consistent and credible was in his assertion that his relationship with his brother had previously been very close but had deteriorated greatly after his paternal grandparent's death. Furthermore, T was quite consistent in his testimony that he did not feel he had a close relationship with his mother and did not view her as someone he could confide in or go to for emotional support. Finally, T r was adamant in his testimony that he wished to live with his father because their relationship was very close, and he viewed his father as a caring individual whom he could confide in and seek support from.

T has put a great deal of thought into his decision to live with his father. He

has explored this with his therapist for the past several months and has written down his thoughts, as was evident by the journal he testified about during trial. T has looked at colleges and wishes to attend the University of Delaware after serving in the Air Force. Living with his father would allow him to establish in-state tuition, a significant savings. Also, living with his father prior to joining the Air Force would allow T to be stationed at a base closer to his family in Delaware, whereas joining in Iowa would force him to relocate to Colorado. T has extended family and friends in Delaware and enjoys their company and support. T 's decision to reside with his father is not simply that of a petulant child rebelling against the rules of one parent, or looking for a more comfortable life with one parent, but rather that of a mature young man who sees more opportunities for his future and who is seeking the benefits and support that come from the closer emotional bond he shares with his father.

IV. Petitioner Elizabeth Vaughan's Application for Rule to Show Cause

The undersigned was appointed as Guardian ad Litem in this matter for T . As Guardian ad Litem, the undersigned believes his Closing Argument should be limited in scope to the issue of modification of custody, and that any opinion regarding the Application for Rule to Show Cause falls outside of his role as Guardian ad Litem and it would be inappropriate to make argument regarding that matter.

V. Conclusion

Although all custody cases are unique, this one in particular has its own challenges for the Court. Generally speaking, the courts do not want to base custody decisions solely upon the desires of minor children. Children can be very opinionated, but often what

they want is not what is in their best interest. So, at first glance, when a court is presented with a custody modification based largely upon the desires of a minor child it is easy to say the Court should dismiss the request.

This case is not so simple. This case does not involved a spoiled, petulant child who is upset because he has stricter rules in one home, or who is rebelling against an unpopular step-parent (in fact, T testified that he had a good relationship with Jon, his stepfather). This is not a case where one parent can physically provide for a child and another clearly cannot. Finally, this is not a case where a child has failed to thrive in a home.

Instead, this is a case where both parents clearly love their son, as both have fought very hard in this court action, spending a great deal of time and money to do what they feel is best for their child. This case also involves a mature sixteen-year-old, one who by all accounts is a thoughtful, sensitive young man with a wide variety of interests who makes friends easily and is well-liked. In several cases with similar minor children, the courts have held that in cases such as this one the minor child's preference can be a reason for modification and should be given great weight.

While T and Elizabeth do not have the best relationship, Elizabeth has helped raise Ta to be the young man he is today and there is no argument that he has thrived. She has provided him with a home, enrolled him in an excellent school, and been supportive of his many activities. She has also arranged for counseling since his return from Delaware to help with the current situation.

Steve was not physically present due to the distance between he and T , he

but he still played a role in T 's upbringing. He saw T on his school breaks, and he offered him constant support. T and Steve clearly have a strong bond and T looks to Steve for support. Too often that bond is not present in noncustodial parents who reside in the same town, left alone half a country away. Steve has offered T a great deal of emotional support and encouragement, something that is difficult to quantify but extremely important for a young adult.

The behavior by both parents in the months leading up to this action has been less than ideal. There are concerning reports regarding T being bullied by his brother and his brother's friends at school, sometimes based upon information B could have only received from his mother. T felt that his mother was very cold and did not understand the difficult time he went through with his grandparents' passing. And while Elizabeth did give T space when he returned from Delaware, she did not participate in any counseling with him or take affirmative steps to improve her relationship with him.

Steve's failure to communicate with Elizabeth last summer is highly concerning. If Steve wishes to serve as a custodial parent, he must understand that he needs to communicate with the noncustodial parent. Just as it was important for Elizabeth to help maintain T 's relationship with Steve, so too will it be important for Steve to help maintain T 's relationship with Elizabeth. Failing to encourage communication between T and his mother would be absolutely unacceptable and not in T 's best interest. T needs to maintain a relationship with his mother, his siblings, and his extended family in Iowa.

Both parties appear to believe their sons are old enough to make decisions regarding where they stay. Elizabeth believed Steve should have accepted B 's decision to not want to visit during his winter and summer breaks, despite there being a custody order that required it. Steve felt Elizabeth should have accepted T 's decision to want to live in Delaware, despite his failure to discuss it with Elizabeth first. Both parents want the other parent to respect and listen to the child whose opinion matches their own. Neither parent believes the child who disagrees with them should have a say in where they stay.

What the court must consider in all of this is what is in T 's best interest. At this time, it is in T 's best interest to live with his father. T has clearly communicated this to anyone who will listen for the past eight months. He has put a great deal of thought into this decision and continued to work through it with a counselor. Even after returning to Iowa and going back to school with his friends at Notre Dame, T has maintained that he still desires to live with his father in Delaware.

Both parents can provide for T physically. Both can ensure that he is enrolled in school, that he attends medical appointments, that he plans for the future. But at this moment, only Steve is able to provide T with the emotional support that he requires. This has not been an easy decision for T , and it does not mean that Elizabeth has done something wrong. Emotional health is critical for all, especially for young adults as they prepare to go out on their own. T has a strong bond with his father, and because of that bond and their relationship, Steve can provide superior parenting to T at this time. It would be in T 's best interest for the custody in this matter to be modified so

that he is placed in Steve's care, and for visitation over breaks to be with his mother.

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IN THE SUPREME COURT OF IOWA

IN THE INTEREST OF	)	Supreme Court No. 19-0690 Des Moines No. JVJV005351, 5352 5353, 5354
L.H., J.H., C.H. & D.H.,	)	**PETITION ON APPEAL (CHILD IN NEED OF ASSISTANCE AND TERMINATION CASES)**
CHILDREN	)	

County: Des Moines Judge: Emily Dean

The names of the parties involved in this appeal and their designations in juvenile court are shown below in column A. Their respective attorneys' names, law firms, addresses, and telephone numbers are shown below in column B.

	Column A **Parties**	Column B Attorneys
Appellant:	Destiny Harris, Mother	Joshua P. Schier Cray Law Firm 420 N. Roosevelt Ave., Ste. 110 Burlington, IA 52601 (319) 752-4537
Appellees:	Angel Harris, Father	William Monroe 218 North 3rd St, Suite 300 Burlington, IA 52601 (319) 754-1402

State of Iowa	Erin Stensvaag Des Moines County Attorney Office 100 Valley Street Burlington, IA 52601 (319) 753-8209 MARY A. TRIICK Assistant Attorney General Hoover State Office Building 1305 E. Walnut Street, 2nd Floor Des Moines, Iowa 50319
Guardian Ad Litem	Heidi D. Van Winkle Van Winkle Law Office 204 Jefferson St. Burlington, IA 52601 (319) 752-4585

1. This Petition on Appeal is filed on behalf of Amber Woodward, the mother, in the above identified Child in Need of Assistance proceedings, with respect to the children:

Children's names	Dates of Birth
L.H.	08/05/2017
J.H.	02/09/2016
C.H.	02/02/2013
D.H.	04/25/2011

2. The statutory ground(s) the child was adjudicated in need of assistance was Iowa Code Section 232.2(6)(c)(2), 232.2(6)(e) and 232.2(6)(g) as to the mother

and father.

3. Appellant's attorney, Joshua P. Schier, is the attorney who represented appellant at the initial permanency hearing.

4. There are no other pending appeals involving the children.

5. The relevant dates regarding this appeal are the following:

a. Date of adjudication	June 14, 2018
b. Date of last removal (excluding any trial period at home of less than 30 days)	April 30, 2018
c. Date of disposition	July 26, 2018
d. Date(s) of any review hearings	November 1, 2018
e. Date of any permanency hearing	April 11, 2019
f. Date(s) termination petition filed/amended	n/a
g. Date(s) of termination hearing	n/a
h. Dates of child in need of assistance order(s) from which appeal was taken	April 12, 2019
i. Date of termination or dismissal order from which appeal was taken	n/a
j. Date of post-termination order from which appeal was taken	n/a
k. Date notice of appeal filed	April 26, 2019

6. Nature of case and relief sought: The Appellant seeks a reversal of the juvenile court order determining that a six month extension was necessary and that the placement of the children in family foster care continues to be necessary, that the return of the children to the parents' custody would be contrary to the welfare of the children in interest and that L.H., J.H., C.H., and D.H. shall remain in the custody of the Iowa Department of Human Services for continued placement in family foster care. The Appellant seeks the return of the children to her custody and care.

7. State the material facts as they relate to the issues presented for appeal:

On April 30, 2018, the parties' four minor children were temporarily removed and placed in foster care. On May 1, 2018 a CINA petition was filed, adjudication occurred on June 14, 2018. The Court found that clear and convincing evidence existed to support adjudication under Iowa Code § 232.2(6)(c)(2) (failure to exercise a reasonable degree of care in supervising the child), Iowa Code § 232.2(6)(e) (child was in need of medical treatment), and Iowa Code § 232.2(6)(g) (parent failed to supply the child with adequate food, clothing or shelter). The Court found that the facts were not sufficient to support the children were children in need of assistance under Iowa Code § 232.2(6)(n), specifically finding that no testimony or evidence was presented that any of the children were not provided with adequate care because of the

parents' illegal substance use or mental health conditions. At the time of adjudication, the Court found that the parents had moved to the Burlington area from Tennessee approximately three months ago. The parents, A.H. and D.H., did not have adequate housing, as they and their four children were sharing one small bedroom with only an air mattress on the floor for the mother and children to sleep on. The Court further found that the child C.H. had severely rotten and decaying teeth which the parents had knowledge of but had not yet addressed. The children L.H. and J.H. had not had well-baby checks since their birth, and the child D.H. had never been enrolled in or attended any type of educational program. The Court further found that the parents did refuse to provide consent for any of the children to be seen by a physician and/or dentist when the children were removed and placed in family foster care. However, when the child D.H. was ill in the foster home, the parents did grant consent for him to be seen by a physician for that emergency.

DHS also testified that the children's father, A.H., admitted to smoking marijuana and the children's mother, D.H., admitted to taking one prescription pain pill of her sister's one time while supervising the children. However, the Court found that there was no testimony or evidence that any of the children were not provided adequate care as a result of the parents'

illegal substance use, and there was no evidence regarding the parents' mental health conditions resulting in the children not receiving adequate care.

Disposition occurred on July 26, 2018. At that time, the Court found that the parents continued to reside in a home that was not appropriate for the children, but A.H. had recently obtained employment and D.H. was going to apply for low-income housing soon. The Court found that the parents were making progress toward reunification of the children.

A review hearing was held on November 1, 2018, at which time the Court addressed the parents' hesitency to sign authorizations for the children's medical, dental, and educational needs and releases for DHS. The parents did review the documents and sign the necessary waivers and releases at the hearing. The Court found that for reunification to occur, the parents must fully participate in all services provided to them by the Department, promptly sign all releases and authorizations needed for the children's care and participate in consistent and meaningful contact with the children at the discretion of the Department.

Permanency hearing was held on April 11, 2019. The father was not present for the hearing. The mother requested that the children be returned to her care, citing that the she had obtained an appropriate three-bedroom apartment and the children's medical treatment had been addressed over the

last several months. The Court found that the children could not be returned to the custody of their parents at that date, but that a six-month extension was appropriate.

8. State the legal issues presented for appeal, including a statement of how the issues arose and how they were preserved for appeal. Also, state what findings of fact or conclusions of law the district court made with which you disagree and why, generally referencing a particular part of the record, witnesses' testimony, or exhibits that support your position on appeal.

   a. **Issue I**: Whether the Court erred in finding that a six month extension was necessary and that the children could not be returned to their parents at the time of the Permanency Hearing.

Was error preserved? ___x___ **yes** _____ **no.** If yes, state how: Error was preserved by raising the issue at the time of hearing and the timely filing of Notice of Appeal.

Supporting legal authority for Issue I:

Iowa Code § 232.102

Iowa Code § 232.104

Iowa Code § 232.106

In re R.F., 471 N.W.2d 821, 824 (Iowa 19910

In re: A.G., O.S., and S.S., LEXIS 383, *10 (Iowa Ct. App. 2015)

Findings of fact or conclusions of law with which you disagree:

> The placement of the children in family foster care continues to be necessary because of the parents' lack of a safe and stable home, the parents' refusal to participate in any reunification service provided to them, the parents' refusal to address the extensive neglect of the children while in their care, the parents' inability to care for the children on a daily basis and provide for all their needs, the unaddressed mental health concerns of the parents, imminent risk of harm and death of the children in their parents' custody, imminent risk of neglect of the children in the parents' custody, and the children's young age and inability to self-protect. Permanency Order, at 4 (April 12, 2019).

The Court erred in finding that the children could not be returned to the custody of their parents at the time of Permanency Hearing. Iowa Code § 232.104(2)(a). The Code's preference is to permit children to remain at home with their parents, as long as the children are safe. In this case, the State failed to prove by clear and convincing evidence that the children could not safely be returned to their parent's care and that there would be imminent risk of harm if the children were returned. Iowa Code § 232.102(6).

Parents' Lack of a Safe and Stable Home. The Court erred in finding that the children could not be returned home. The Court found that the parents lacked a safe and stable home, but at the time of the hearing the parents had obtained a safe and stable residence. D.H. testified that the parents had been approved for a three-bedroom apartment and that she and A.H. would be moving into the apartment the next day (the day the Permanency Order was

actually issued). Mothers' Exhibit A. DHS also testified that the Department had agreed to assist with first month's rent. At the time of the Permanency hearing, the family had safe and stable housing.

Refusal to Participate in Reunification Services. Another reason cited by the Court to prevent the return of the children was that the parents had refused to participate in any reunification service provided to them. DHS testified at the hearing that over the last several months, the parents had participated in meaningful visitation with their children. Those visits were supervised by FSRP and recently moved to semi-supervised. Thus, the parents had contact with FSRP services three times a week for several months. Further, it was the testimony of DHS that the parents recently agreed to participate in parenting sessions. DHS also noted, however, that there were never any parenting concerns for the parents during their visits. The parents may not have participated in as many parenting sessions as the Department would have liked, but there was no evidence that there was a deficiency in their parenting ability or that this placed the children in imminent harm.

Medical Needs. One of the main issues at adjudication had been the medical needs of the children. By Permanency, however, the parents had addressed these issues. They signed all necessary releases and waivers. They

participated in doctors' appointments. They showed an active interest in the care of their children.

Inability to Care for the Children. The Court erred in finding that the parents refused to address the extensive neglect of the children while in their care and that the parents were unable to care for their children on a daily basis and provide for all their needs. DHS testified that there were no concerns regarding the parent's ability to care for the children during visits. Outside those times, the parents have not had the opportunity to show that they can care for the children on a day to day basis. Their time with the children has been restricted to three visits a week at the FSRP provider's offices. During those visits the parents have been attentive to their children and provided them with snacks and meals. The parents have done all that they can to show that the children's needs can be met in the limited opportunities that they have been given.

Even more telling, the parents have shown the ability to care for their youngest child, an infant. Since the inception of this case a fifth child was born to the parents. The baby has never been removed, is not the subject to of any court proceedings, and is in fact **thriving** in the parents' care. The parents have shown that they can care for a baby through their care of the youngest who is still with them. When a child can be safely cared for by their parents, and there are no distinguishing factors that would indicate the others could not also be

cared for, the Courts have held that other children could also be returned to their parents. *In re: A.G., O.S., and S.S.*, LEXIS 383, *10 (Iowa Ct. App. 2015). Put another way, if a helpless baby can be left in the parents care and thrive, it shows that they can take care of the older children as well.

Finally, the Court further found that the children could not return home because of the parents' unaddressed mental health concerns. Much of the testimony by DHS focused on the parents' mental health concerns and substance abuse concerns. The parents had been ordered to complete substance abuse evaluations and mental health evaluations. However, when a Court enters an order imposing terms and conditions on parents, "the order shall state the reasons for and purpose of the terms and conditions." Iowa Code § 232.106(1). However, the record dating back to adjudication shows that mental health and substance abuse was not the reason for the removal of the children nor the reason for the adjudication of the children. In fact, the Court specifically stated in the Adjudication Order that "there was no testimony or evidence that any of the children were not provided with adequate care as a result of the parents' illegal substance use, and there was no evidence regarding the parents' mental health conditions resulted in the children not receiving adequate care." Adjudication Order at 2-3.

Prior to Permanency, none of the Court's orders had stated any reason or purpose for mental health evaluations and substance abuse evaluations. Nevertheless, and despite the testimony of DHS that there was never a concern or indication of the mother using illegal substances, D.H. did complete a substance abuse evaluation which was filed with the Court on April 10, 2019, which recommended no treatment. D.H. also agreed to go above and beyond by submitting to a mental health evaluation, which had been scheduled at the time of the Permanency hearing.

There is no evidence of imminent risk of harm and death of the children in their parents' custody, nor imminent risk of neglect. The parents have addressed the issues on which this CINA was founded, housing and providing medical care. The mother has gone even further with a substance abuse evaluation and the scheduling of a mental health evaluation. Visits are appropriate and reflect the deep bond that exists between the parents and their children. No concerns have been noted regarding the parenting of the children during their visits. The children are in school or daycare, with mandatory reporters. Most telling, the parents have supported and cared for an infant during this case and that child is thriving in their care. The Courts have found that there is rebuttable presumption that the children's best interests are served by **parental custody**, and the State has failed to provide clear and convincing evidence that

overcomes that presumption. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). (emphasis added).

b. **Issue II**: Whether the Court errored in finding that the placement of the children in family foster care continues to be necessary.

Was error preserved? ___x___ yes _____ no. If yes, state how: Error was preserved by raising the issue at the time of hearing and the timely filing of Notice of Appeal.

Supporting legal authority for Issue II:

Iowa Code § 232.99

Iowa Code § 232.101

Iowa Code § 232.102

Iowa Code § 232.106

In re R.B., 832 N.W.2d 375, 380 (Iowa Ct. App. 2013).

Findings of fact or conclusions of law with which you disagree:

The placement of the children in family foster care is an appropriate placement for the children because it is the least restrictive, most family-like and most appropriate setting available, in close proximity to the children's parents and consistent with the best interest and special needs of the children. Permanency Order at 4 (April 12, 2019).

health affecting the parents' ability to care for their children, and that no previous order had stated the reasons for and purposes for substance abuse evaluations and mental health evaluations, it is no surprise that the parents had not completed these tasks. The children were removed and adjudicated because of housing and medical neglect. The parents addressed these issues. Thus, the least restrictive placement is with the parents.

It is in the best interests of children to be placed with their parents. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). The Court noted that the family was "tremendously bonded." Permanency Order at 3. DHS testified in the Permanency hearing that all the children were bonded to their parents, and the children did want to return home. The children have been in multiple foster homes and are not all currently placed together. It would be in their best interest to be placed together as a family with their parents if there are no safety concerns.

DHS testified that there were not concerns with the mother's ability to parent the children, nor concerns that D.H. has used illegal substances. DHS was concerned that if the children were returned to the mother, they would not have access to the children, to the home, to ensure safety. D.H., however, testified that she would have no issue with allowing DHS into her home to check on the children. Any concerns that DHS may have can certainly be addressed by following up with the family while the children are in the parents' care. The least

restrictive placement in this case that would be in the best interest of the children would be to place them with their parents.

9. I hereby certify that I will request within 30 days after the filing of the notice of appeal that the clerk of the trial court transmit immediately to the clerk of the supreme court:

a. The child in need of assistance court file, including all exhibits.

b. Any transcript of a child in need of assistance hearing from which an appeal has been taken.

The undersigned requests that the appellate court issue an opinion reversing the order of the juvenile court in this matter, or, in the alternative, enter an order setting this case for full briefing.

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ATTACHMENTS:

Child in need of assistance proceedings:
(1) Permanency Order

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this combined certificate was served on the 10th day of May, 2019 upon the following persons and upon the clerk of the supreme court:

/s/ Joshua P. Schier

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