

Andrew R. Falk

Application for the Molter 2022 Vacancy
Indiana Court of Appeals



Application for Judicial Vacancy Indiana Appellate Courts

PART ONE

This document will become a matter of public record and may be published on the courts.in.gov website once your application is complete, so do not include confidential information that must be redacted.

1. Contact/General Information

- A. Full legal name and any former names.

Andrew Rudolph Falk

- B. State the full name (use initials for minor children), age, and relationship of each person residing in your household. For each adult living in the household (other than yourself), also state the person's occupation and employer.

Alaina Marie Falk, 43, wife; dental hygienist, Carmel Dental Group

C.A.J.F., age 17, child

P.M.R.F., age 17, child

T.P.F., age 13, child

E.D.X.F., age 11, child

M.A.F., age 4, child

- C. Business address, email, and telephone number.

Indiana Public Defender Commission

309 West Washington Street, Suite 501

Indianapolis, IN 46204

(317) 501-1302

andrew.falk@pdcom.in.gov

- D. Attorney number.

23869-49

E. Month and year you were admitted to the Indiana Bar.

April 2003

a. *Indicate current law license status (i.e. active/inactive/retired).*

Active

b. *If you are or have been a member of the Bar of any other state, identify the jurisdiction and provide date(s) of admission and current license status.*

- I was admitted to the Southern District of Indiana in October 2005, where my license remains active.
- I was also admitted to the Sixth Circuit of Appeals in June 2008, where my license remains active.

F. Date and place of birth.

I was born on October 20, 1974, in Clarinda, Iowa.

G. County of current residence and date you first became a resident.

I currently live in Marion County, Indiana. I first became a Marion County resident in February 2002.

2. Secondary Education/Military Experience

A. List all undergraduate colleges and universities you attended. Include the school name; dates enrolled; degree or certificate earned; and any academic honors, awards, or scholarships you received and when.

Indiana University, Kokomo, Indiana

Dates Enrolled: 1995—1999

Degree: B.A. Social & Behavioral Sciences

Academic Honors and Awards:

- Graduated with Highest Distinction and University Honors
- Outstanding Senior Student in Social & Behavioral Sciences Division, May 1999
- Benedict Fellowship - Alpha Chi National Honor Society for Research Paper, 1999
- IUK History Club Essay Contest Winner, May 1997, May 1999
- Stanley Scholarship, 1997-1999
- Chancellor's Scholarship, 1998-1999
- Titanic Scholarship, 1998-1999
- Kappa Kappa Kappa, Inc., Scholarship, 1998-1999

Ivy Tech Community College, Lafayette, Indiana

Dates Enrolled: 1994 (Fall Semester)

Degree: N/A

- B. If applicable, list any military service. Include the name of the military branch; dates of service; last rank achieved; and any honors, awards, or commendations received and when.

I did not serve in the military.

3. Post-Secondary Education

- A. List all law schools, graduate schools, and post-J.D. programs attended. Include the school name; dates enrolled; degree or certificate earned; class rank; and any academic honors, awards, or scholarships you received and when.

Indiana University School of Law, Indianapolis, Indiana

Doctor of Jurisprudence, *cum laude*, May 2002

- Executive Notes Editor, Indiana Law Review, 2001 – 2002
- Dean's List: Spring, Fall 2000; Spring, Fall 2001

Scholarships:

- Glenn D. Peters Scholarship
- Indiana Conference for Legal Education Opportunity (ICLEO)

4. Employment

- A. Provide your employment history since graduation from college. Include name of employer, titles or positions, locations, and dates of employment.

2019 – Present
Indiana Public Defender Commission
309 West Washington Street, Suite 501
Indianapolis, Indiana 46204
Staff Attorney

2019 – Present
Marian University
3200 Cold Spring Road
Indianapolis, Indiana 46222
Adjunct Professor

2015 – Present
Andrew Falk, Attorney at Law
8944 Log Run Drive
Indianapolis, Indiana 46234
Private Practitioner

2015 – Present
Sagamore Institute
6151 Central Avenue
Indianapolis, Indiana 46220
Senior Fellow

2017 – 2019
Hendricks County Public Defender
Hendricks County Government Center
355 S Washington Street
Danville, Indiana 46122
Public Defender

2014 – 2015
U.S. Customs & Border Protection
6650 Telecom Drive
Indianapolis, Indiana 46278
Attorney

2010 – 2014

Office of the Indiana Attorney General
302 West Washington Street, 5th Floor
Indianapolis, Indiana 46204
Deputy Attorney General, Appeals Division

2005 – 2010

Kroger, Gardis & Regas, LLP
111 Monument Circle, Suite 900
Indianapolis, Indiana 46204
Associate Attorney

2003 – 2005

The Honorable Brent E. Dickson
Supreme Court of Indiana
200 West Washington Street
Indianapolis, Indiana 46204
Judicial Clerk

2002 – 2003

The Honorable Kenneth L. Ryskamp, Senior Judge
U.S. District Court, Southern District of Florida
Paul G. Rogers Federal Building and U.S. Courthouse
701 Clematis Street # 453
West Palm Beach, Florida 33401
Judicial Clerk

Summer & Fall, 2001

Office of the Indiana Attorney General
302 West Washington Street, 5th Floor
Indianapolis, Indiana 46204
Law Clerk & Intern, Appeals Division

Spring 2001

The Honorable Margret G. Robb
Indiana Court of Appeals
115 West Washington Street
Indianapolis, Indiana 46204
Intern

Summer 2000
AFA Law & Policy Center
Tupelo, Mississippi
Law Clerk

Summer 1999
Beachy Construction, Marlin Beachy
3380 E 400 N, Kokomo, IN 46901
Custom residential carpenter

- B. If applicable, describe the nature and extent of your practice of law (present and former), and provide the names of your partners, associates, office mates, and employers.

CURRENT EMPLOYMENT

Indiana Public Defender Commission, Staff Attorney (2019 – Present):

I am a staff attorney with the Commission. My supervisor is Derrick Mason and the colleagues with whom I primarily work are Andrew Cullen, Torrin Liddell, and Jennifer Pinkston. When I first began at the Commission, my work was roughly split between legal and policy research and auditing counties' quarterly requests for reimbursement. More recently, however, I have begun to focus on projects designed to create an environment in which quality public defense can occur. For example, I have been researching and drafting a law review article on public service attorney recruitment and retention (*see* 6.C.1, below), surveying all Commission counties to ensure that public defenders are paid the same as or similar to deputy prosecutors (*see* 7.A.4, below), and collaborating with my colleagues to develop quality indicators for public defenders to insure that individuals receive competent representation (*see* 7.A.5, below).

Marian University: Adjunct Professor (2019 – Present):

In 2019, a fellow teacher at the Indiana Women's Prison (IWP), Lesley Neff, asked me to design a course on criminal justice reform for paralegal students at Marian University. Our original plan was to include both women from the prison as well as Marian students. Unfortunately, due to the Covid-19 pandemic and ongoing restrictions at IWP, I was forced to design and later teach the course only to Marian students. Nevertheless, the class was successful and I have been able to continue teaching it at Marian.

Andrew Falk, Attorney at Law: Private Practitioner (2015 – Present):

Since 2015, I have taken about half a dozen civil cases as a private practitioner. The first was a personal injury case I took to help a family member. The next five or six were appeals referred to me by Jeffrey Boggess. The issues in these cases have ranged from transfer of venue in a construction dispute to college support controversies between ex-spouses.

Sagamore Institute: Senior Fellow (2012 – 2014, 2015 – Present):

Jay Hein, then President of the Sagamore Institute, invited me to become a Senior Fellow at the Institute in 2012. I worked with Donald Cassell and John Waters to research and draft policy papers regarding environmental and energy issues in the United States and Africa. I also began researching, drafting, and presenting articles analyzing private property (land tenure) and its influence on environmental issues in Africa (*see* 6.C.3, below). It was also exciting to draw on my legal training and to consult with the president of an African college regarding the potential development of a pre-law program.

I placed my status as a Senior Fellow at Sagamore on hold when I joined the U.S. Customs and Border Protection in 2014 to avoid any potential conflicts of interest. In 2015, however, I was hired full-time by Sagamore to gather data, analyze information, and draft reports regarding Indiana's criminal code reforms (*see* 6.C.2, below). In this capacity, I led a team to provide two annual reports to then Governor Mike Pence, the Indiana Criminal Justice Institute (ICJI), and members of the General Assembly.

After completing the 2016 report on Indiana's criminal code reforms, the ICJI decided to produce the 1006 report internally. Thus, my role with Sagamore changed again, and I have played a smaller role there since then. Nevertheless, I have continued as a Senior Fellow at Sagamore, where my role consists largely of recruiting and mentoring undergraduate and law students as Sagamore interns.

PREVIOUS EMPLOYMENT

Hendricks County Public Defender: Appellate Public Defender (2017 – 2019):

Jeremy Gooch, the Hendricks County Chief Public Defender, was looking for an appellate attorney about the same time I was seeking additional legal work while working with the women at the Indiana Women's Prison. For two years, I represented indigent individuals from Hendricks County on appeal. Having spent more than four years working with the Office of Indiana Attorney General to defend convictions and sentences, it was a new challenge to confer with men and women who had been convicted of offenses, examine their trial transcripts, discuss their cases with trial counsel, and research the law to ascertain the strongest grounds to make an appeal on their behalf. Some of the individuals I represented were suspicious of me, a few did not trust public defenders at all, and one candidly asked me if he would be better represented if he hired a private attorney. Nevertheless, almost all of them not only appreciated my work but also were eager if not

desperate for the help that I could provide for them. I came to appreciate in a new way the importance of a high-quality public defense for these people—my clients. I also came to recognize the importance of providing sufficient funding for public defenders.

Constructing Our Future: Executive Director (2016 – 2019):

While I was gathering information for the second HB 1006 report on Indiana’s criminal justice reforms, I was invited to speak to a group of public policy students at the Indiana Women’s Prison. The first visit led to a second, and soon I volunteered to teach a public policy class at the prison to incarcerated women. The chosen topic was the collateral consequences of a conviction—what restrictions does the law place on individuals who have been convicted of an offense?

As I was teaching that class, I learned about a program the women in the class had designed to enable formerly incarcerated women to find housing, jobs, and education. Within another six months, I had agreed to become the executive director of a new non-profit organization, Constructing Our Future, dedicated to the dual purposes of helping women leave prison and thrive while also reducing urban blight. For the next several years, most of my time and effort was spent (a) working with the incarcerated women inside the prison to design the program while also (b) meeting with state and local government officials, community leaders, and potential donors to build the organization.

My official role with Constructing Our Future concluded in July 2019. I continued visiting the prison and teaching the public policy class until it was shut down due to the Covid-19 pandemic in 2020.

U.S. Customs & Border Protection: Attorney (2014 – 2015)

In 2014 I left the Attorney General’s Office and joined the U.S. Customs and Border Protection (CBP) Office of Chief Counsel in Indianapolis. My supervisors were Jeffrey Bloxsome, Jeffrey Sajdak, and Andrew Kosegi. There I gained valuable experience interpreting federal statutes, regulations, and executive orders in a variety of complex cases, frequently involving issues of first impression. Among my most rewarding cases was one in which we work to settle a RCRA case before litigation was filed against CBP. I researched and prepared memoranda analyzing complex legal problems, including environmental, employment, international trade, and administrative law. My eye for detail and my construction law background led to several reviews of directives and policies for CBP station design as well as legal sufficiency. I also worked to collect duties and fees owed to the agency.

Office of the Indiana Attorney General: Deputy Attorney General, Appeals Division (2010 – 2014)

My primary supervisors and colleagues at the Office of the Attorney General were Gary Secrest, Steve Creason, Andrew Kobe, Ian McLean, Ellen Meilaender, and Angela Sanchez, among others. I spent most of my time researching and drafting criminal appellate

briefs, motions, and petitions for transfer or responses thereto. Because of my civil practice background, and particularly my work in environmental law, I also assisted with several appeals in which the Attorney General represented IDEM. I successfully argued multiple cases before the Indiana Supreme Court and Court of Appeals. One of my favorite roles was training and supervising summer law clerks and helping them to develop their writing skills and appellate advocacy.

Kroger, Gardis & Regas, LLP: Associate Attorney (2005 – 2010)

My first experience in private practice was at the law firm of Kroger, Gardis & Regas. I was hired for my research and writing skills, as the firm was engaged in an environmental cleanup action against a Fortune 500 company. My primary supervising attorney was Greg Cafouros, but I also worked with Bill Bock, Brian Bosma, Jim Knauer, David Wright, and Syd Steele, and others. I was given a wide variety of responsibilities, including conducting discovery, drafting contracts and settlement agreements, preparing briefs and dispositive motions before multiple Indiana state and federal courts, and drafting correspondence to clients and opposing counsel. My colleagues and I successfully represented two different clients in a major construction defect case, and we worked with insurance carriers, government agencies, and clients to negotiate cleanups and close out Superfund sites.

My supervising partner, Greg, taught me two valuable lessons that I have sought to emulate to this day: first, even in a city the size of Indianapolis, the legal community is relatively small and tight, and your opponent today may be your ally tomorrow, so always be respectful and never burn bridges. Second, and similarly, never speak ill of the court: even if you disagree with a lower court, never disparage the court, even if you must disagree with its ruling. These lessons have stood me in good stead in the fifteen-plus years since.

The Honorable Brent E. Dickson, Supreme Court of Indiana: Judicial Clerk (2003 – 2005)

As much as my wife and I loved our time in Florida, Indiana is our home, so after a year in Florida, we moved back to Indiana. Here I began a clerkship for Justice Dickson on the Indiana Supreme Court. I researched and drafted proposed opinions on various legal issues, including attorney discipline, the death penalty, elections, property, and constitutional law. Justice Dickson, my fellow judicial clerks, and I had innumerable conversations about the law, what the law required in each case, how the Court could communicate it most effectively, and how justice could be done. Justice Dickson and I often discussed relatively arcane matters, such as whether the period after an “*id.*” should be italicized, but also deep issues of jurisprudence and life itself. My clerkship with Justice Dickson was one of the most important, formative experiences of my early legal career and has helped shape my abiding vision for the important work of a judge.

The Honorable Kenneth L. Ryskamp, Federal District Court, S.D. Florida: Judicial Clerk (2002 – 2003)

My first job after law school required a move to West Palm Beach, Florida, to work as a judicial clerk for Judge Ryskamp. Judge Ryskamp preferred to handle his criminal caseload himself, so he split the civil docket between my co-clerk and me. I quickly learned to manage my half of the docket and to always keep cases moving forward. I drafted orders and memoranda on various legal issues, including admiralty, antitrust, labor and employment, and securities law. My co-clerk and I also interviewed, hired, trained, and supervised the office's interns.

Office of the Indiana Attorney General: Law Clerk & Intern (Summer & Fall, 2001)

In addition to drafting my first real criminal appeals, I participated in several “moots” (practice arguments that were usually more intense than the actual arguments) as the office critiqued and prepared attorneys for oral arguments. I strategized with several senior attorneys preparing petitions for rehearing en banc before the Seventh Circuit and for writ of certiorari to the United States Supreme Court.

The Honorable Margret G. Robb, Indiana Court of Appeals: Intern (Spring 2001)

Although I had limited contact with Judge Robb, I still recall being impressed by her approach to reviewing appellate briefs. While she trusted her career and term clerks, she also paid close attention to the briefs herself. I also learned the vital importance of the rules of evidence—a class I was taking at the time of the internship and that I soon realized would have been very helpful to have already completed.

AFA Law & Policy Center: Law Clerk (Summer 2000)

My plan, when I began law school, was to practice constitutional litigation. In the six weeks I spent at the Law & Policy Center, I helped investigate potential cases, researched constitutional issues, drafted memos, prepared interrogatories, contacted clients, and edited and proofread briefs. Although I have spent little time practicing civil constitutional law since then, I maintain a firm conviction regarding the importance of the role that the Constitution plays in our society and I continue to be a scholar on the topic.

5. Trial/Judicial Experience

A. Describe the extent of your jury trial experience, if any.

I spent five years in private practice preparing for jury trials: drafting discovery requests, reviewing documents, taking and defending depositions, conducting pre-trial litigation, drafting trial briefs, and planning jury instructions. All the cases in which I participated, however, settled before trial.

I have researched, drafted, and filed briefs in several hundred appeals, and jury trials have been at the center of many of those cases. As a public defender, I have scrutinized five jury trials, looking for issues and errors to serve as the grounds for a reversal of the conviction or sentence on appeal—studying jury instructions, examining evidence admitted or excluded, reviewing voir dire, analyzing comments made to or about or by the jury, considering *Batson* issues, and evaluating objections that were or that should have been made.

Conversely, as a deputy attorney general, my job was different, as I was primarily concerned about the errors or omissions raised by the appellants. Still, I dissected more than 100 jury trial transcripts to understand the case and raise the best defenses.

Additionally, both in my work analyzing Indiana’s criminal code reforms and in the classes I have taught regarding criminal justice reform, I have frequently recognized and emphasized for my students the importance of jury trials. Increasing the frequency of jury trials—and thus involving more citizens in the criminal justice system—is one of the most needed reforms, I believe.

Thus, I have spent significant time preparing for jury trials, analyzing them after the fact, and advocating for their increased use.

B. Describe the extent of your bench trial experience, if any.

My work at the attorney general’s office, in private practice, and as a public defender have given me a broad perspective on bench trials. My work has primarily involved preparation before or analysis after such trials. Although my opportunities to actually present before the bench have been limited, I am confident that I have the experience and understanding required to review what has happened at a bench trial and decide issues arising therefrom.

The business litigation in which I engaged was undertaken with the goal of avoiding an expensive trial: I drafted discovery, waded through mountains of documents, participated in depositions, and drafted motions to compel or to dismiss or for summary judgment. I also engaged in various hearings before the court, which, though not bench trials, had some of the same elements, such as examining witnesses and entering exhibits and making arguments. Similarly, I appeared before several small claims courts on various wage garnishment and eviction issues.

Additionally, bench trials were at the heart of about fifty of the criminal appeals in which I have been involved. In my public defense work, I evaluated nine bench trials, again looking for appealable issues as grounds for a reversal of the conviction or sentence on appeal, paying particular attention to what evidence was admitted or excluded and evaluating objections that were made or that should have been made.

As a deputy attorney general, I worked through many of the same considerations, evaluating another forty bench trial transcripts to understand the case and formulate my arguments in an attempt persuade the Court of Appeals to affirm the trial court’s conviction

of the defendant, the defendant's sentence, or both. I also reviewed approximately eighty additional appeals involving probation revocation, sentence modification, juvenile adjudication, and other issues tried to the bench.

- C. If applicable, describe the nature and extent of your judicial experience (including as a judge pro tempore). Include a description of your experience presiding over jury trials, if any.

I do not have any judicial experience; my experience consists of clerking for Justice Brent Dickson on the Indiana Supreme Court and for Judge Kenneth Ryskamp in the Southern District of Florida as well as interning with Judge Margret Robb of the Indiana Court of Appeals.

6. Professional Experience

**As part of your Supplemental Materials, include as writing samples four selections (in total) from the written materials listed below in Questions 6A through 6C.*

- A. If applicable, list up to five trial or appellate briefs and/or judicial opinions you have written. Refer to them by caption, case number, and filing date.

1. **Appellant's Brief**, *Harrison v. Knight*, 127 N.E.3d 1269 (Ind. Ct. App. 2019) (Writing Sample No. 1).

My client, Mr. Harrison, was being held without recourse to either his speedy trial rights or to a parole violation hearing. I argued, and the Court of Appeals agreed, that he was "up a creek without a paddle," and the Court granted habeas relief.

2. **Appellant's Interlocutory Brief**, *Freeman v. Timberland Home Ctr., Inc.*, 148 N.E.3d 321 (Ind. Ct. App. 2020) (Writing Sample No. 2).

My clients, Floyd Freeman and Clover Homes, Inc. brought this interlocutory appeal of a trial court order granting a motion to transfer venue. I argued that because the original plaintiffs filed this case in a county with preferred venue, the trial court erred by transferring the action to another county with preferred venue. The Court of Appeals agreed and reversed.

3. **Appellant's Brief**, *Granger v. State*, 113 N.E.3d 773 (Ind. Ct. App. 2018) (Writing Sample No. 3).

My client, Mr. Granger, was convicted of possession of paraphernalia. I argued that where the paraphernalia in question was a grinder, the evidence was insufficient to establish that he possessed an instrument intended for use to introduce into his body a controlled substance. The grinder could not be used to introduce a controlled substance into his body. The Court reversed Mr. Granger's conviction.

4. Appellee's Petition to Transfer, *Nicholson v. State*, 963 N.E.2d 1096 (Ind. 2012).

This Petition to transfer argued that the Indiana Supreme Court should accept the case for three reasons: first, the Court of Appeals imposed time restrictions on the Indiana stalking statute that the Indiana General Assembly did not require; second, the holding of the Court of Appeals conflicted with another panel of the Court; and third, the Court of Appeals unnecessarily limited the enforcement of the Indiana stalking statute, thereby reducing its effectiveness. The Supreme Court agreed, granted transfer, and reversed.

5. Amicus Brief for American Council of Engineering Companies, *Indianapolis-Marion Cnty. Pub. Libr. v. Charlier Clark & Linard, P.C.*, 929 N.E.2d 722 (Ind. 2010).

In this case, my colleague and I prepared an amicus brief focusing on the public policy reasons why the economic loss rule should be upheld in Indiana. I also argued this case to the Indiana Supreme Court. The Supreme Court cited our brief in affirming the application of the economic loss doctrine.

- B. If applicable, list up to five legislative drafts or court rules you have written or to which you contributed significantly. Refer to them by official citation, date, and subject matter.

1. Draft Restoration of Parental Rights Statute

Due in part to my personal interest in adoption (we have adopted all five of our children) and in part to some of the cases I have handled, I was asked by members of the Child Welfare Improvement Committee to research and draft a proposed restoration of parental rights statute. Several states have recognized that when parental rights are terminated, but the child or children are not or cannot be placed for an adoption with another family, at times it is in the best interest of the child to be re-adopted by his or her biological parents. The draft statute I prepared would provide parents in Indiana with a mechanism to re-adopt their biological children. I believe the proposed statute is still being considered by the Committee.

- C. If applicable, list up to five of your contributions to legal journals or other legal publications. Provide titles, official citations, and a brief description of the subject matter.

1. Growing Our Own Avocados: How Indiana (and Others) Can Reduce the Public Sector Lawyer Shortage (*forthcoming Fall 2022*).

Based on studies completed by the American Bar Association and multiple state organizations, it is becoming increasingly clear that there is a significant shortage of attorneys willing and available to serve as public defenders (and in public service generally). This article discusses (a) to what extent there actually is an attorney shortage in public

service, (b) what various states are doing to curb this problem, and (c) what more can and should be done to address attorney shortages, particularly in public defense.

2. HB 1006 Reports

In early 2015, the Sagamore Institute hired me to lead the effort to write a report for the Indiana Criminal Justice Institute (ICJI) analyzing the impact of House Bill 1006, Indiana's criminal code reform legislation.

- *Second Annual Evaluation of Indiana's Criminal Code Reforms*, July 2016 (available at https://www.in.gov/cji/files/2016-Report_on_1006-Final.pdf).

- *An Initial Evaluation of Indiana's Criminal Code Reform (HEA 1006)*, July 2015 (available at <https://www.in.gov/cji/grant-opportunities/files/Final-Draft-ICJI-2015-1006-Report.pdf>).

3. *Ahead of the Curve: Promoting Land Tenure Security in Sub-Saharan Africa to Protect the Environment*, 15 SEATTLE J. FOR SOC. JUST. 1 (Summer 2016) (Writing Sample No. 4).

This article recognizes that alleviating poverty and protecting the natural environment are interconnected and critical elements for sustainable development. The article explores how secure land tenure addresses both elements, with a particular focus on environmental protection. It discusses the benefits of tenure security generally as well as particularly how it helps protect the environment. It also proposes specific policies that promote strong property rights and, by extension, a reduction in poverty and protection of the Sub-Saharan environment.

4. Public Defender Commission Newsletter Articles

In 2021, I drafted a series of articles analyzing and discussing Indiana law and the Commission's Standards for the benefit and application of county public defender boards and chief public defenders.

5. ABA Section Newsletters

I researched and prepared several articles for ABA Sections of which I was a member, including the following:

- *Storing and Selling Sunshine*, Smart Growth and Green Buildings Committee Newsletter, ABA, February 2016.

- *Kroner for Forests: Norway's Payments for Tropical Rainforests*, Renewable, Alternative, and Distributed Energy Resources Committee Newsletter, ABA, August 2015.

- *Land Tenure Security and its Environmental Impact in Sub-Saharan Africa*, ABA Int'l Environmental Resources Committee Newsletter, August 2014.

- D. Identify the five most significant legal matters entrusted to you, whether as a judge or lawyer, and describe why you believe them to be so.

In answering this question, I will focus on legal matters of particular significance to me. In Section 7.A, below, I will discuss matters that, in most cases, I consider to be of greater significance for the improvement our legal system and our administration of justice. Nevertheless, the following cases have particular significance to me, as I explain with each description.

1. *Allgood v. General Motors Corp.* case (*see, e.g.*, 2006 WL 2669337 (S.D. Ind. Sept. 18, 2006)).

Allgood was one of the first cases I worked on in private practice. It was a huge case with literally dozens of plaintiffs litigating against a giant corporation. The pretrial litigation was marked by no-holds-barred arguments and endless disputes over discovery, allegedly inadvertently produced documents, avant-garde experts, and many other issues.

What marks this case as so significant for me, however, was that it was the first time I had ever worked with clients. Some of our client families lived almost two hours away from our office, and it took me a long time to meet them all. Since I joined the case several years after it began, it took me a while to develop a relationship with our clients. Gradually, however, they came to know, respect, and trust me.

Eventually, it became clear that the parties needed to settle. The litigation had run much of its course. The terms of settlement would likely never improve. Our clients were disappointed—bitterly so, in some cases—because they had hoped for or counted on a much larger settlement. Although many more experienced attorneys, including some from far away cities, had written and argued the motions in the case for our client, the principal partner turned to me, a relatively young attorney, to sit down with our clients and persuade them to accept the settlement offer. It was painful, but I was able to do it. I could do it because I knew the clients, and they had come to trust me.

Thus, this case was significant, not only on its own merits but for me personally, because I learned the importance of building a relationship of trust with clients—spending time with them to know them and to demonstrate trustworthiness to them. While I was very disappointed that the outcome was not what any of us expected or hoped for, I was gratified that I had fostered a strong relationship with our clients such that I could help them make the best of a difficult situation.

2. Nicholson case (*Nicholson v. State*, 963 N.E.2d 1096 (Ind. 2012)).

I inherited this case from another deputy attorney general, who drafted the State’s response to the appeal and then left the office before it could be argued. It was one of my first oral arguments, and I’ll never forget the question I received at oral argument—before I even introduced myself: “How long is too long?”

The case involved a family who had been subjected to harassing and voyeuristic phone calls. Indiana law provides that stalking is recognized as repeated acts of harassment. The defendant, Mr. Nicholson, had been convicted of stalking after the trial court/jury found that he had committed multiple acts of harassment, even though the incidents occurred approximately eighteen months apart.

The determinative question for the Court of Appeals, therefore, was how long was too long between the two acts of harassment. The Court decided that, in this instance, eighteen months was too long, and reversed Mr. Nicholson’s conviction.

I then drafted a petition to transfer, arguing that the holding of the Court of Appeals was bad law for several reasons. The Supreme Court granted transfer and affirmed the conviction, concluding that the gap was not too long.

I consider this to be one of the most significant matters with which I have been entrusted for several reasons. First, the case was significant to me as my first significant Supreme Court argument and the first time I petitioned for and was granted transfer. Second, I learned much about what issues are important to the Supreme Court when evaluating petitions for transfer, such as balancing power between the courts and the legislature, interpreting legislative intent, and settling conflicts between panels of the Court of Appeals. Finally, and perhaps most importantly, I was and remain sympathetic to the family victimized by Mr. Nicholson, and I believe that the General Assembly intended to protect victims like them by criminalizing such behavior. I believe this ruling was important for the protection of citizens like them.

3. Collateral consequences project

On my second visit to the public policy class at the Indiana Women’s Prison in the spring of 2016, the class was excitedly discussing a New York case in which a trial court sentenced a woman convicted of drug offenses – which normally could have carried a lengthy prison sentence – to only a moderate probation sentence (*United States v. Nesbeth*, 188 F. Supp. 3d 179 (E.D.N.Y. 2016)). The court explained, in great detail, that the woman would face a host of “collateral consequences” as a result of her conviction, and that those consequences were sufficient such that it did not need to add further to her sentence.

I further learned that the American Bar Association had also done a study of collateral consequences in all the states. In Indiana alone, we discovered, there were about 780 laws and regulations that impacted a person convicted of various offenses.

Knowing my background in the law, as well as my growing concern for incarcerated individuals, my contact at the prison suggested that I begin teaching the public policy class and focus on Indiana's collateral consequences. After considering the matter, I agreed.

Over the months that followed, we found the complete listing of Indiana's collateral consequences and divided them equally between each of the women in the class. The class then set out to analyze each of the statutes and regulations in an attempt to locate "low hanging fruit." Of course, no legislator would accept the political liability of allowing a person convicted of a violent felony to (for example) care for children, but the class recognized that there were certainly statutes with much lower, if any, risk with the voters if they were to be repealed or modified. For example, would anyone really care if formerly incarcerated individuals were allowed to own a junk yard?

For reasons discussed below (*see* 7.A.3, below, discussing a larger project in which the class became involved), the collateral consequences project was never fully completed. Nevertheless, I consider the work we did accomplish in that project to be one of the most significant matters entrusted to me for several reasons. First, I believe collateral consequences are one example of the sausage-making nature of our political system, and the truism that "bad facts make bad law." Too often a legislator hears about a bad situation and decides "there needs to be a law" to address it. After too many such enactments, we are left with a mess of law and undue, unwise restrictions. Second, and more importantly, I believe the collateral consequences project is a significant demonstration of what people can do—even people with felony records and who are forgotten by much of the world—when others care about and invest in them.

4. Stumpf case (*Stumpf v. State*, 2018 WL 2977063 (Ind. Ct. App. June 14, 2018)).

In the world's eyes, Ms. Stumpf's case is just another unpublished, sufficiency of the evidence case that almost every observer would take one glance at and move on, forgetting what was just seen. Looking at this case, however, I will forever see a broken, grieving woman surrounded by her loved ones, pleading for help to overturn her conviction. And I will never forget the sinking feeling that there was almost nothing I could do to help.

Ms. Stumpf was convicted of battery. She had been watching a room full of children and walked up to one to move him away from a television. As she recalled it, he tripped and fell, but was uninjured. She thought nothing more of it. An angry parent made a call, however, and a deputy prosecutor convinced a jury it was felony battery.

Although the outcome disappointed me, I understand the situation: no reviewing court would second-guess the jury, and the evidence had to be weighed in favor of the

finding of the lower court. What makes this case so significant to me, however, is that despite my limited ability to help Ms. Stumpf, I could be there with her, help her understand the process and the standards and the law, give it my best attempt, and thereby show her that her concerns mattered and deserved to be heard, even if they did not prevail. In some situations, that is all a defense attorney can do. While it's not enough, it is good and important work. And for that, I was happy to be her public defender.

5. Dickson clerkship responsibilities

Although it was not a single significant legal matter, clerking for Justice Dickson constituted in one opportunity an entire series of significant responsibilities, both in their intrinsic weight and in what they taught me. Under Justice Dickson's watchful eye, I researched and drafted proposed opinions on various legal issues, including attorney discipline, death penalty, election law, property disputes, and constitutional law. I learned that no detail is so small that it can be ignored, that facts always matter, that no party is so wrong that it can be disregarded, and that people are vitally important. He epitomized what a good judge should be: fair, impartial, and always intellectually honest. Even where his personal beliefs may have suggested a different result, he did what the law required.

Justice Dickson's impartiality was on full display when, years later, I had the opportunity to argue in front of him. When I rose to make my argument, he greeted me as he would any other attorney, with not a trace of favoritism or even an acknowledgement that I had spent two years in his chambers. Far from being offended, I marveled at and admired his objectivity. Nevertheless, he was (and remains) always warm, welcoming, and friendly—indeed, I am continually inspired by the humility and unpretentiousness he exuded in every situation. Today, as I apply to be a judge myself, I can only aspire to his wisdom, humility, impartiality, and unfailing dedication to public service.

7. Efforts to Improve the Legal System, Administration of Justice, or Society

- A. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) toward the improvement of the law, the legal system, or the administration of justice. Include a description of any management or leadership roles you undertook to achieve these goals, and describe any specific instances in which your collaborative efforts helped achieve these goals.

1. Mentoring interns and law clerks

When I was growing up, I knew few if any attorneys. When I was in high school, I met a judge who gave me some good advice about legal careers. A few years later, a friend introduced me to an attorney who became a mentor for me. This gentleman gave me the opportunity to see him at work, answered my many questions about law and the justice system, and walked me through my law school experience. He taught me much of what I know about legal writing and gave me counsel about clerkships, job opportunities, and many other questions I had. I am forever grateful.

In the years since then, I have sought to follow his example. Between law clerks at that Attorney General's Office, interns at the Sagamore Institute, and externs who have worked with me in most of my roles, I have attempted to build into the lives of young men and women and help them enjoy many of the positive benefits I enjoyed. In the last twelve years, I have worked with nearly three dozen interns and law clerks. Fourteen of them are now practicing attorneys; seven more are in law school now. My philosophy is that I treat them as colleagues, giving them the same work that I do. My door is always open to them. I tell them I expect them to ask questions, and I'll always be happy to answer, even if they ask the same question multiple times. Thankfully, a majority of my interns have thrived with me, helping me as much if not more than I help them. These efforts to improve our legal system have proved to be some of the most rewarding and fulfilling experiences I have had.

2. House Bill (HB) 1006 reports

During my time at the Office of the Attorney General, I frequently discussed with my colleagues some of the problems I began to see with our criminal justice system. For example, the penalty for some offenses seemed disproportionate to others. I was bothered by the high rates of recidivism (returning to prison after being released) I saw in many cases. Lengthy prison sentences seemed to do little to deter crime in many cases, and in other situations I wondered if they were really justified.

Thus, when I left the Attorney General's Office in June 2014, one of my biggest regrets was that I would not be able to see how Indiana's criminal code reforms, enacted in House Bill 1006 in 2013 and 2014 (and, subsequently, in 2015) would be implemented. To my delight, less than a year later the Sagamore Institute hired me in a full-time position to study the effects of that legislation. HB 1006 (2014) contained a provision requiring that a study be completed each year to determine what effect the criminal code reforms were having and what additional reforms should be enacted. The responsibility to complete the study was assigned to the Indiana Criminal Justice Institute (ICJI), and in early 2015 ICJI contracted with the Sagamore Institute to write the first report.

To complete the project, I met with elected officials, representatives from the Department of Correction (for prison populations), sheriffs (for jail data), Supreme Court

administrators (for felony and misdemeanor conviction rates, etc.), county and local leaders, judges, probation and parole board members and officers, executives of reentry organizations and other similarly-interested non-profits, and many others. At the same time, I also served on the statewide Evidence-Based Decision Making committee that was also considering justice reforms. I began to figure out what was working, what was not, and what could be improved. It was a welcome challenge to collect, double-check, and analyze data from multiple agencies and about tens of thousands of offenders before summarizing and explaining that information in such a way that citizen lawmakers could readily understand. In the drafting stages, I worked with and directed the efforts of multiple staff, interns, and volunteers to bring the report to timely completion. Once our draft was complete, I collaborated with a committee of state stakeholders to edit, expand, revise, and polish the report.

Two rewarding and exciting developments sprang from my work on the 1006 Reports. First, I met and grew to deeply respect Gregg Keesling and his organization, Recycle Force. Recycle Force employed men and women recently released from jail and prison. Men and women who completed the program not only found rewarding work but also had a much lower recidivism rate than others who did not participate in such programming. I became convinced that reentry efforts such as Recycle Force are one of the best ways to help reduce recidivism. Second, my work on the 1006 Reports opened the doors for me to visit the Indiana Women's Prison and become involved with several projects that would significantly shape my life going forward.

After I had been working on the 1006 Reports for two years, ICJI undertook to complete further analysis of the code reforms internally. I worked with the ICJI personnel to share information and resources to help them start strong.

3. Constructing Our Future

I first visited the Indiana Women's Prison in the spring of 2016. As mentioned above (6.D.3), the collateral consequences project I began with the women at the Women's Prison was placed on indefinite hold due to the emergence—and urgency—of another project. In the middle of the public policy class discussions, I learned about a program the women themselves had envisioned and begun to design that could address two pressing problems: the challenges of successful reentry and urban blight. At the time, Indianapolis had over ten thousand abandoned homes. Meanwhile, many women had nowhere to live when they left prison and no jobs or job skills to help them earn their way in society. The women's plan was to buy (or receive as donations) abandoned houses that they could then restore and earn, through their sweat equity, and live in or sell them.

While the women had a plan, they had few contacts and fewer resources. From my research with the 1006 Reports, I knew how difficult reentry was and how few organizations there were that were willing and able to serve women after their release from prison. I had

also just seen the statistics on the growth in the women's prison population (it had gone up dramatically in the last 30 years) and the women's recidivism rate was also rising. A plan such as the women proposed, that would provide them with jobs, housing, and education, could address many of these issues.

Thus, from early 2017 through mid-2019, most of my time was dedicated to helping the women from IWP hone their plan, find partners and donors, and build the organization both inside (through the ongoing public policy class) and outside the prison. My co-founder and I advocated for a resolution in the legislature recognizing the Constructing Our Future program, which passed with bipartisan support. After the local public radio picked up the story, the women's efforts were lauded by groups as diverse as the Southern Poverty Law Center and the National Rifle Association. Among many less-formal presentations to individuals and potential partners and donors, I also gave the following presentations:

- "Re-Entry Panel Discussion," Evansville Promise Zone Federal Partner Convening, Evansville, Ind. 2019
- "Local Action in Indiana," panel discussion accompanying 2019 ESR Willson Lecture, Earlham School of Religion, Richmond, Ind. 2019
- "Constructing Our Future," pitches given in New York, LA, and Miami, 2018
- "Voices of Women in Prison: A Video & Personal Conversation with Women Constructing Futures," Society for Acad. Study of Social Imagery Conf., Greeley, Colorado, 2018
- "Restorative Justice Panel Discussion," Citizen 7, Indianapolis, Ind. 2018

In mid-2019, it became clear to the board of Constructing Our Future and to me that it was time for us to go separate ways due to differences of vision and strategy. Nevertheless, I was delighted to hear last year that the organization had opened their first house and that they were continuing to grow and serve incarcerated and formerly incarcerated women.

4. Pay parity project

The Indiana Public Defender Commission has promulgated standards requiring member counties to provide salaries to public defenders that are the same as that provided to deputy prosecutors. Similarly, compensation for contractual public defenders must be substantially comparable to similar positions in the prosecutor's office. Compliance with these provisions is one of the requirements that counties must satisfy to receive reimbursement from the Commission.

For the last several years at the Commission, it has been one of my primary responsibilities to survey all the Commission counties and verify that public defenders in those counties are receiving the same or similar compensation to the deputy prosecutors in those counties. This pay parity process helps to insure that public defenders are adequately

compensated for their work, which promotes quality representation and aids in the process of attracting and retaining skilled attorneys.

From my own experience as a public defender, I realize how necessary it is to pay attorneys enough to attract them to careers in public service. A commitment to serving others is important, but when there are student loans to pay and family members to support, compensation similar to other public service is vitally important.

5. Quality indicators project

Another of the projects I have worked on at the Public Defender Commission is to help develop a system to measure the quality of defense that indigent individuals receive. In other words, we have sought to enumerate certain measurable “quality indicators” that should be present in any representation of an indigent individual. Our committee reviewed sets of quality indicators assembled from around the country and selected ones that seemed particularly suited to the practice of criminal defense in Indiana.

Because in many counties public defenders operate relatively independently and without extensive supervision, it is hoped that Indiana’s public defense quality indicators can help supervising defenders measure and assess the quality of public defense provided. It is my hope that this will be just one more step to insure that individuals can receive the best possible public defense.

6. Continuing Legal Education

Throughout much of my career, I have sought to assist others by increasing their knowledge and understanding of the law. To this end, I have given the following CLE presentations:

In-House Presentations:

- “Ethics for the Government Attorney,” U.S. Customs & Border Protection Seminar, Indianapolis, Ind. 2014
- “Inside Baseball: How Appellate Judges Think & Work,” Office of the Indiana Attorney General Seminar, Indianapolis, Ind. 2011

National Business Institute:

- “Representing Your Client in Federal Court,” Indianapolis, Ind. 2013.
- “The Law of Jury Selection,” Indianapolis, Ind. 2013.
- “The Busy Attorney’s Toolkit to ‘Mobile’ Success,” Indianapolis, Ind. 2013.
- “Law & Popular Culture: Falsehoods, Truisms & Lessons Learned,” Indianapolis, Ind. 2012.

“How to Search Like a Pro” (Legal Research), Indianapolis, Ind. 2011, 2012.

“Writing Appellate Briefs & Other Legal Documents,” Indianapolis, Ind. 2010.

- B. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) concerning civic, political, or social issues. Include a description of any management or leadership roles you undertook in this area, and describe any specific instances in which your collaborative efforts in this area led to a successful result.

1. Indianapolis Bar Association Leadership Series: In 2007 through 2008, I worked with community assistance programs and engaged in activities and classes led by prominent Indianapolis attorneys, judges, and corporate leaders.

2. Sagamore Institute Brown Bag Lunches: Since 2005, I have lead discussions every summer with the entire class of Sagamore interns. I have usually chosen topics related to current issues regarding law, public policy, politics, and other social issues, and sought to tie them to historical themes and classic works of law and literature. This summer, for example, we had a lively discussion of *Dobbs v. Jackson Women’s Health Organization*, particularly as it was set in its historical context. I also used the time to provide a brief introduction to the interns (less than half of whom were law students) about how our Federal judicial system works, what precedent is, why it is important, and why various elements of the Court reasoned that precedent could be or should not be overturned.

- C. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) to improve your local, state, or national community through charitable work or public service. Include a description of any management or leadership roles you undertook in this area, and describe any specific instances in which your collaborative efforts in this area led to a successful result.

1. Wheeler Mission: My family and I regularly visit the Women’s Facility and help prepare and serve meals to the women who are living there.

2. United Soccer Alliance of Indiana (USAI): I regularly volunteer with field preparation and guest services at USAI tournaments for visiting soccer teams.

3. Compassion International – Child Sponsorship Program: Our family supports a child from Africa and enjoys corresponding with him.

D. Describe the nature and extent of any *pro bono* legal services you have contributed.

For much of my career – while clerking for Judge Ryskamp and Justice Dickson, and during my employment at the Attorney General’s Office and at U.S. Customs & Border Protection – the practice of law outside my regular employment was frowned upon if not forbidden. Nevertheless, while I was in private practice with Kroger, Gardis & Regas, I was delighted to take a *pro bono*, step-parent adoption case. Moreover, while my strict *pro bono* activities have been limited, my career has almost entirely been devoted to public service, whether to the State of Indiana, the citizens of the United States, or through non-profit organizations.

E. Indicate your experience teaching law. Provide the dates, names of institutions or programs, and a description of the subject matter taught.

1. Marian University: LAW 350 – Current Events in Social and Criminal Justice

(2020 - present)

Description: This course will follow current events in the national news. Students will be expected to evaluate and analyze the impact of social, political and economic issues and influences on the criminal justice systems, from the courts to the prison systems. This course will familiarize students with the structure and history of sentencing and corrections systems. Students will study our criminal justice system and identify problems in our system and sentencing laws and identify trends in sentencing and alternatives to incarceration.

2. Indiana Women’s Prison – Law and Public Policy

(2016 – 2020)

The Law and Public Policy met once or twice weekly and discussed: current legal and political events, legal and policy issues related to criminal justice and justice reform, programs to help reduce recidivism and improve reentry, the process and procedure of state and federal courts, and similar topics.

8. Memberships and Other Activities

A. List any memberships and offices you have held in professional organizations, including dates and descriptions of both the organization’s purpose and your involvement.

1. American Bar Association (ABA): I have been a member of the American Bar Association (ABA) from 2005 through the present. At various times, I have been members

of the following sections, and as discussed in Section 6.C.5. above, I have researched and drafted articles in several of these sections:

- Section of Environment, Energy, and Resources
- Sustainable Development, Ecosystems and Climate Change Committee
- Environmental Constitutional Law Committee
- Special Committee on Smart Growth and Urban Policy

2. Indianapolis Bar Association (IBA): I was a member of the Indianapolis Bar Association from 2005 until 2013.

3. U.S. Green Building Council: In 2009, I studied for and passed the U.S. Green Building Council LEED AP exam. As a result, I was a member of the U.S. Green Building Council, Indiana Chapter, from 2009 to 2011.

4. Federalist Society: The Federalist Society is an organization of lawyers, judges, law students, and individuals that gather to discuss current legal and social issues. I was a member in law school from 2000 to 2002 and a member of the Indianapolis Lawyers Chapter from 2010 to the present.

- B. List any memberships and offices you have held in civic, charitable, or service organizations, including dates and descriptions of both the organization's purpose and your involvement.

1. Adoptions of Indiana (Ad-In): Ad-In is a child-placing agency. I was a board member from 2007 to 2011 and Board President from 2011 to 2014.

2. Eagle Crossing Homeowners Association Board: I was a member of the Board from 2003 to 2005 and chaired the sub-committee on architectural improvements.

- C. List any memberships and offices you hold in social clubs or organizations. If any club or organization restricts its membership on the basis of race, sex, religion, or national origin, please describe your efforts within the organization to eliminate restrictions.

None.

- D. Describe your hobbies and other leisure activities.

In the fall, the family gathers regularly to watch my two older sons play high school football. In the spring and fall, we attend my third son's travel soccer games. In the summer, we enjoy camping and traveling. We are always game to watch a new movie or our four-year-old's latest dance moves. I am rarely without a home renovation project (or three) that I'd like to start or need to finish. In my limited spare time, I enjoy reading and managing my fantasy football teams.

9. Legal Proceedings

- A. List any lawsuits or legal proceedings in any jurisdiction, including but not limited to bankruptcies, dissolutions, and criminal matters to which you have been a party. Provide dates, case numbers, courts, names of other parties, and, if needed, a brief explanation. (If minor children are involved [i.e. an adoption], use initials only.)

In the Matter of the Adoption of T.P., Cause No. 49D08-0809-AD-041394 (adoption proceeding and decree for our third child).

In the Matter of the Adoption of B.B.B., Cause No. 49D08-1804-AD-106566 (adoption proceeding and decree for our fifth child).

- B. If you ever have been arrested or cited for any violation of the law other than for routine traffic violations, provide dates, jurisdictions, and an explanation of the event and its resolution.

None.

- C. If you have been disciplined or cautioned, formally or informally, by the Indiana Supreme Court Disciplinary Commission, by the Indiana Commission on Judicial Qualifications, by the Indiana Supreme Court, or by similar entities in any other jurisdiction, identify each instance by date, case number (if applicable), and describe the circumstances and the nature of the outcome or resolution.

None.

- D. If you have any outstanding federal, state, or local tax obligations, please itemize and explain.

None.

10. References

- A. Provide the names of three attorneys who have been your professional adversaries in your practice or who have litigated substantial cases in your court and who would be in positions to comment on your qualifications for appointment to an Indiana Appellate Court (*contact information to be included in Part Two of this application*).

Dr. Matthew Klein

Andrew Kobe

Cara Wieneke

- B. Provide the names of three professional references other than those listed in Question 10A (*contact information to be included in Part Two of this application*).

The Honorable Brent Dickson

Derrick Mason

Lesley Neff

- C. Provide the names of three personal references other than those listed in Question 10A or 10B (*contact information to be included in Part Two of this application*).

Dr. Michael Lefebvre

Kevin Koons

Nathan Shaver