

APPLICATION FOR

**DISTRICT COURT JUDGESHIP  
Eighteenth Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: **Andrew J. Breuner**
  - a. What name do you commonly go by? **"Andy"**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**
3. Home Address: [REDACTED]  
Phone: [REDACTED]
4. Office Address: **Belgrade City Court, 91 E. Central Ave., Belgrade, MT 59714**  
Phone: **(406) 388-3774**
5. Length of residence in Montana: **17 ½ years**
6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
Nov. 2002-present	Gallatin Gateway	MT

**B. EDUCATIONAL BACKGROUND**

7. List the names and location of schools attended beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Miramonte HS	Orinda, CA	June 1985	HS diploma
UCSD	San Diego, CA	March 1990	BA Political Science
Santa Clara University	Santa Clara, CA	May 1993	JD

8. List any scholarships, awards, honors and citations that you have received:

**Community Dispute Resolution Center (Missoula)-Foundations of Mediation (certificate of completion) (Feb. 2017)**

**MTLA Trial Academy (certificate of completion) (Fall 2006)**

**School of Law Merit Scholarship (Santa Clara University)**

**School of Law Certificate of Excellence in Legal Analysis, Research and Writing (Santa Clara University)**

**Graduated with distinction (*cum laude*) (UCSD)**

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

**Senior Comments Editor, Santa Clara Law Review.**

*Expression by Association: Towards Defining an Expressive Association Defense in Unruh-Based Sexual Orientation Based Discrimination Actions*, 33 Santa Clara L. Rev. 467 (1993).

*Comment was addressed to the scope and interpretation of California's Unruh Civil Rights Act in the context of sexual orientation-based discrimination actions brought against associations as public accommodations.*

### **C. PROFESSIONAL BACKGROUND AND EXPERIENCE**

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
<b>State Bar of Montana</b>	<b>Oct. 2003</b>
<b>U.S. Court of Appeal (9<sup>th</sup> Cir.)</b>	<b>Feb. 1994</b>
<b>U.S. District Court (N. Dist. CA)</b>	<b>Jan. 1994</b>
<b>State Bar of California</b>	<b>Dec. 1993</b>

11. Indicate your present employment. (List professional partners or associates, if any).

**City Judge for Belgrade, MT**

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
<b>City of Belgrade</b>	<b>City Judge</b>	<b>Mar. 2015---present</b>
<b>Attorney/self (contracted to Beaverhead County Accountability/DUI Treatment Court)</b>	<b>Defense counsel on treatment court team</b>	<b>Aug. 2018-Oct. 2019</b>
<b>Law Office of Andrew J. Breuner</b>	<b>Owner</b>	<b>Oct. 2003-Oct. 2018</b>
<b>Santa Clara University (Criminal Defense Clinic)</b>	<b>Co-director</b>	<b>Aug. 1998-May 1999 Aug. 1996-Dec. 1997</b>
<b>Crosby, Heafey, Roach &amp; May (now ReedSmith) Oakland, CA</b>	<b>Litigation associate</b>	<b>Oct. 1993- Nov. 1994</b>

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

<b>Office of the San Francisco Public Defender</b>	<b>Volunteer attorney</b>	
	<b>Adult Division</b>	<b>Mar. 1996-July 1997</b>
	<b>Juvenile Division</b>	<b>Aug. 1995-Feb. 1996</b>

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

**Full-time city judge for Belgrade, Montana. 100%.**

*I address my law practice as the Law Office of Andrew J. Breuner (2003 to 2018) in nos. 15-16 below.*

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

<b>Montana State University (Bozeman)</b>	<b>Adjunct instructor</b> (taught upper division sociology course (Sociology 313-Foundations in Criminal Law and Procedure)	<b>Fall 2019 Spring 2020</b>
<b>Law Office of Andrew J. Breuner</b>	<b>Owner</b> (Non-primary practice areas included construction, personal injury, civil rights/§1983, business law)	<b>Oct. 2003- Oct. 2018</b>
<b>Santa Clara University School of Law</b>	<b>Adjunct instructor</b> (taught semester of criminal procedure to second and third year law students)	<b>Spring 1999</b>
<b>Santa Clara University School of Law</b>	<b>Co-director</b> (taught criminal defense practice and procedure to clinic students)	<b>Aug. 1998- May 1999; Aug. 1996- Dec. 1997</b>
<b>Crosby, Heafey, Roach &amp; May (Now ReedSmith), Oakland, CA</b>	<b>Litigation associate</b> (insurance defense)	<b>Oct. 1993- Nov. 1994</b>

16. If you specialize in any field of law, what is your specialty?

**Law office practice (15 years) was primarily criminal defense and Title 41/dependency-neglect (primarily representing parents).**

17. Do you regularly appear court? **Most days last 15 years.**

What percentage of your appearance in the last five years was in:

Federal court	-
State or local courts of record	5%
Administrative bodies	-
Other	95%

18. During the last five years, what percentage of your practice has been trial practice? **< 5%**

19. How frequently have you appeared in court? **Most days.**
20. How frequently have you appeared at administrative hearings?  
**0 times per month on average.**
21. What percentage of your practice involving litigation has been:
- |          |            |
|----------|------------|
| Civil    | <b>35%</b> |
| Criminal | <b>65%</b> |
| Other    | <b>-</b>   |
22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.
- No.**
23. State the number of jury trials that you have tried to conclusion in the last ten years. **6**
24. State the number of non-jury trials that you have tried in the last ten years. **3**
25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.
- In 2018, entered appearance for plaintiff after entry of default judgment in justice court. After denial of our motion to set aside default judgement, I withdrew and facilitated transfer to new counsel. Case was Belgrade Professional Center, LLC v. Apex, Inc., (Gallatin Co.) Justice Court Cause no. SM-100-2018-68 (Hon. Rick West) ((406) 582-2191). Opposing counsel was Matthew I. Sack, Esq. ((406) 587-3736).*
26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.
- None.**
27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

**Please see teaching positions referenced above.**



#### **D. PROFESSIONAL AND PUBLIC SERVICE**

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

**State Bar of Montana 2003-present**

**State Bar of California 1993-present**

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

**None.**

30. Have you ever run for or held public office or sought a judicial appointment? If so, provide the details.

**Applied for Montana Eighteenth Judicial District judgeship in September 2016.**

31. Explain your philosophy of public involvement and practice of giving your time to community service.

*Community service promotes humility and good character. It also vests persons from different backgrounds in a common good.*

*My wife and I have largely pursued community service through our church communities. We also served three (3) and five (5) year terms (respectively) as school board members.*

#### **E. PROFESSIONAL CONDUCT AND ETHICS**

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

**No.**

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

**No.**

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

*Between spring semester of senior year in high school and spring semester of freshman year in college:*

<b>MIP alcohol</b>	<b>May 1985 (Bay-Richmond (CA) Municipal Ct.)</b>	<b>Paid fine</b>
<b>Disturbing the peace</b>	<b>July 1985 (Tahoe Forest/Placer Co. (CA) Justice Ct.)</b>	<b>Paid fine</b>
<b>DUI</b>	<b>May 1986 (Walnut Creek-Danville (CA) Municipal Court)</b>	<b>Fully suspended sentence with fine, ACT and community service</b>

*These offenses involved the illegal, irresponsible use of alcohol and poor judgment. I certainly regret them. I fully discharged these sentences. I do believe these experiences help me to understand issues of peer pressure and drug and alcohol use by young adults----which is something I regularly discuss with young people in city court.*

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.
- No.**
36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.
- No.**

#### **F. BUSINESS AND FINANCIAL INFORMATION**

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.
- |  |                      |                            |
|--|----------------------|----------------------------|
| <b>Manhattan Christian School</b>  | <b>Asst. Janitor</b> | <b>Aug. 2018-June 2019</b> |
| <b>B&amp;B Finest Custom Coffees<br/>(Commercial roasting, packaging<br/>and distribution to wholesale accounts;<br/>certified organic production and packaging)</b> | <b>Owner</b>         | <b>May 1999-Oct. 2002</b>  |

**Squaw Valley Ski Corp.**

**Instructor**

**Winter 2001-2002  
Winter 1994-1995**

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

**None.**

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

**None.**

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

**None.**

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest?

**Yes.**

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? **Yes.**

If not, please explain.

**NA**

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?

**No.**

If yes, please explain.

**NA**



44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No.

### G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

*I remain current on the law (primarily) through Montana Law Week; the Supreme Court Clerk's weekly digest; and the state bar website among other media sources. I look at statutes and cases on Fastlaw on a weekly basis. As a city judge, I have daily access to discussions among limited jurisdiction judges addressed to procedural issues and changes in the law. I attend six (6) days of judge school each year and take a judge's examination every four (4) years. For the past two (2) semesters at MSU, I also prepared daily (MWF) lesson plans for an upper division sociology/criminal law and procedure class drawn from textbooks, the Montana Code Annotated and current events. I conduct legal research as necessary to address legal issues and contested causes in the city court.*

*I prepare written orders every day. These include written legal analysis where appropriate.*

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

*I have prepared orders on an almost daily basis for the past five (5) years.*

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable. The writing sample should be as recent as possible.

*Order (4 pp.) and motion (4 pp.) attached.*

48. What percentage of your practice for the last five years has involved research and legal writing?

**10%**

49. Are you competent in the use of Westlaw and/or Lexis?

*Yes, but I primarily use Fastcase now.*

## H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.

*My wife and I have been married for 23 years. We are 'empty nesters' but spend as much time with our 20 year old son as he will tolerate. I also enjoy reading, walking, cooking and gardening; caring for our dog, cats, chickens and sheep; military history and designing and building model aircraft; following Bay Area sports teams and, especially, Stanford athletics.*

51. Describe the jobs that you have held during your lifetime.

*Please see jobs referenced above.*

*I worked at a retail plant nursery throughout high school and college and did landscaping, painting and construction as well.*

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

*None with respect to indigent clients though I have advised a number of non-profit organizations.*

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

*In 1989 I interned with the Office of the San Francisco Public Defender's Juvenile Division. This was at the height of the crack cocaine epidemic. The city's juvenile justice system was notorious for over-incarceration of African American youths from the poorest neighborhoods (e.g., Bayview-Hunters Point, Western Addition etc.). I gained first-hand knowledge of a court overwhelmed by chronic poverty, racism, gang violence and chemical dependency and the role of advocacy in that environment. I returned to the Juvenile Division as a volunteer attorney several years later.*

*I was also profoundly impacted by my high school English teacher Frank Thomas----who will turn 90 this next month and with whom I still maintain regular contact. He shared his life experiences with students including his work with at-risk youth, as a minister, as a chaplain at the San Quentin State Prison, and as an educator. His life lessons were also incorporated into the literature we read and class discussion. Through Frank Thomas, I learned the importance of developing a moral conscience in the larger world I was about to enter.*

*Finally, the pontificates of both John Paul II and, currently, Pope Francis, with their emphasis on human rights and dignity, and the role of government (and the justice system) in observing and upholding these rights.*

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

*These include confidence, decisiveness, efficiency, pragmatism, and compassion. I have witnessed these qualities in district court judges before whom I have practiced---and believe that they must be particularly important in courts of general jurisdiction with a wide variety of legal issues and large dockets.*

*Additionally, our district court judges are part of a Law and Justice Center community of professionals that requires cooperation, good communication and leadership. The qualities I mentioned appear particularly important to me given the kinds of changes that are being discussed for the Center as well as the limits of the current facilities.*

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

*Following precedent promotes desirable predictability and stability in the law. However, mechanical applications of the law that result in manifest injustices are a misguided use of stare decisis. The law should promote and serve justice. Also, trial courts are called upon and expected to exercise timely judicial discretion and flexibility with respect to the specific circumstances and dynamics before the court as they arise and change.*

56. In the space provided, state the reasons why you are seeking office as a district court judge.

*I believe I possess a unique combination of life and professional experience, knowledge of the local community and justice system, and temperament to do the job well.*

57. What items or events in your career have distinguished you or of which you are most proud?

*I believe I am profoundly privileged to be a lawyer and, more recently, to serve as Belgrade's city judge. My life has been enriched by the professionals and others I have worked with in these roles. The jobs have been both challenging and rewarding.*

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

*Below are some experiences I have that I believe contribute to my qualifications to be a district judge:*

*The Belgrade City Court is Montana's second largest city court (next to the Butte City Court) in terms of annual cases processed (about 1200 to 1500 filings per year). We generally have between 40 and 70 contested criminal causes at each of our twice-per-month omnibus calendars.*

*We have one senior clerk and two associate clerks.*

*In 2017 we operated the court, without interruption, through a clerks office expansion that required us to move all operations into the courtroom for over a month.*

*More recently, Belgrade was one of the first cities in Montana to completely close its facilities to address COVID (on March 17, 2020). We adjusted our court protocol, both followed and adapted to Governor Bullock's and Chief Justice McGrath's recommendations and orders and remained open by processing files and hearing cases remotely. We then opened the court to physical appearances (on May 11, 2020)---two weeks prior to city hall being open to the public generally---and created a protocol for that process as well.*

*We maintained good communication with attorneys and self-represented parties about our status and received positive feedback about that.*

*In each of these cases, I worked in coordination with my clerks and other city departments. I do believe there will be similar dislocations in district court operations in the future that will require judicial leadership, collaboration and flexibility. I am familiar with working through these situations.*

*I am also well-familiar with how the professionals in court administration, law enforcement, corrections, executive departments, mental health and addiction, volunteer organizations, and other agencies and programs coordinate their activities with courts.*

*I served on Beaverhead County's DUI Accountability Court team under the Hon. Luke Berger's leadership in 2018-2019 (and, prior to that, served as a substitute defense counsel for the Gallatin County Drug Treatment Court under Judge Salvagni on numerous occasions). I understand the role of treatment courts as a dispositional alternative and as a benefit to both offenders and the community.*

*I have owned two businesses and understand the importance of the legal system in providing a venue for litigating disputes and providing appropriate remedies in civil matters.*

*I also have experience working with seniors, coordinating services for care, reviewing estate planning documents, and assessing financial needs and resources.*

*As courts of general jurisdiction, I appreciate the broad spectrum of legal issues---litigated and transactional---district court judges must competently address and believe I have the background to well meet these challenges.*

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

*Currently, we are witnessing the manifestation of social, historical wounds that are open and unresolved. While individual incidents, like the death of George Floyd and others, are profoundly tragic, the response (and counter-responses) are indicative of a much greater pathology.*

*I believe the overwhelming number of law enforcement officers are brave, skilled professionals who provide vital, essential services and protect and serve us well day and night.*

*With respect to the systemic racism that exists in America today, a narrative that says we need to look beyond race fails to acknowledge the feelings of marginalization and vulnerability that are everyday realities for people of color and other minorities or to honestly confront the causes of those realities.*

*Judges are expected to 'stay in their lane', administer the law with objectivity, and function as an especially independent branch of our republic. Those principles are all important. But I do not believe a judge can conscientiously administer the law or exercise meaningful discretion without an understanding of the larger society, his or her local community, and of the founding principles upon which the justice system relies to remain relevant.*

*My heart and experience tell me that I possess the ability to apply the law in a manner defined by the district court's constitutionally limited role and with principled, conscientious discernment.*

*Thank you for your consideration.*

#### **CERTIFICATE OF APPLICANT**

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 18th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

June 19, 2020

(Date)



(Signature of Applicant)



~~FILED 2019~~

**BELGRADE CITY COURT, GALLATIN COUNTY, STATE OF MONTANA**  
91 E Central, Belgrade, MT 59714 406.388.3774 406.388.3779-fax

STATE OF MONTANA, CITY OF BELGRADE

Case No: TK-125-2019-~~0000073~~

vs.

~~Elizabeth Boers~~  
~~280 Green Tree Dr~~  
~~Belgrade, MT 59714~~

Defendant.

**ORDER**

On December 10, 2019 this matter came before the Court for an evidentiary hearing addressed to defendant ~~Elizabeth Boers~~ Motion to Suppress.

Ms. ~~Boers~~ filed her motion and supporting papers on October 9, 2019.

The parties filed timely briefs thereafter.

Ms. ~~Boers~~ was present in Court and represented by attorney Elizabeth Musick.

The State was represented by City Prosecutor Christopher Gregory.

The State called Belgrade Police Officer Nicole Nelson who testified and was subject to cross examination.

The parties stipulated to the admission of Defense Exhibit A----which was a portion of Officer Nelson's bodycam video from her contact with Ms. ~~Boers~~ on the evening in question.

The video was played and Officer Nelson testified about it.

Counsel for the parties also answered questions posed by the Court and made arguments addressed to those questions and the issues presented herein.

On the evening of May 31, 2019, an anonymous caller reported an impaired driver at the Belgrade Taco Bell. The caller described a white Jeep, some plate numbers, as well as a number of general statements about the driver being intoxicated and impaired driving.

Officer Nelson responded. She found a vehicle in the Taco Bell drive-thru matching the description of the anonymous call.

Officer Nelson made contact with the driver, the defendant. Ms. ~~Boers~~ continued to maintain a cell phone conversation while Officer Nelson explained the basis for the contact.

Officer Nelson then asked Ms. ~~Beers~~ if she 'wanted' to pull up to a regular parking space.

Ms. ~~Beers~~ maintains that Officer Nelson's request to pull out of the drive-thru was, along with the other circumstances, an unlawful detention.

The State argues that Officer Nelson's request did not amount to a detention and, regardless, Officer Nelson had the requisite particularized suspicion when she made contact with Ms. ~~Beers~~.

As the parties correctly point out, *State v. Pratt* (1997) set forth three factors to consider when assessing particularized suspicion based on a citizen informant's tip. These include: 1) whether or not the informant identifies themselves; 2) whether the report is based on the informant's personal observations; and 3) whether law enforcement is able to corroborate the informant's information.

With respect to first factor, there is no dispute here that the call was anonymous.

With respect to the second factor, the substance of the call described in-person interactions with an impaired driver and personal observations of intoxication and impaired driving. The information also appeared to be relaying timely information----shortly after or as the subject vehicle was arriving at or on the Taco Bell premises.

While the information provided was somewhat generalized, the Court does not agree that it could be reasonably interpreted as fabricated for purposes of a *Pratt* assessment.

That said, the Supreme Court in *State v. Gill* (2012)(and citing *Pratt*) recognized that innocent behavior could supply sufficient corroboration *where the first two factors were satisfied*.

Here, there was corroboration with respect to the vehicle, location, plate number, and presence of the defendant.

But these are all innocent observations.

Additionally, Officer Nelson testified that she did not believe that she possessed particularized suspicion at the time she requested that Ms. ~~Beers~~ pull out of the drive-thru.

Therefore, the critical question is whether or not Ms. ~~Beers~~ was detained at the time Officer Nelson requested that she pull out of the drive-thru.

The State references two (2) authorities, *State v. Questo* (2019) and *State v. Wilkins* (2009), for the proposition that a detention does not occur just because law enforcement makes contact with an individual, otherwise unrestrained, with investigatory intent and initial inquiries

about their sobriety or reason for being in a particular place.

Ms. ~~Beers~~ argues that under the spatial circumstances of the drive-thru, Officer Nelson's presence at the car window following-up on a report of impaired driving, as well as Officer Nelson's request for Ms. ~~Beers~~ to move her car for further questioning, there was clearly a *Terry* stop situation where no reasonable person would have felt at liberty to terminate the police contact and drive away.

The Court is not convinced, however, that a detention occurred by way of Officer Nelson merely approaching a driver for purposes of following-up on an anonymous call (which accurately was corroborated as to time, place, vehicle and location of person facts).

The question is whether Officer Nelson's request to Ms. ~~Beers~~ ("Do you want to pull right there so that I can talk to you?") transformed the contact into an unlawful detention.

There are a number of reasons why that conclusion lacks merit:

First, this was not a traffic stop in the ordinary sense. As in *Wilkins*, the contact was directed to a vehicle that was already stopped and approached by an officer on foot.

Second, Officer Nelson's request was by its express terms a request or invitation and not a demand.

Third, the primary function of the request was not to confine Ms. ~~Beers~~-----rather it was incidental to the otherwise consensual encounter. In other words, Officer Nelson was asking Ms. ~~Beers~~ to move the conversation to a place where they would not be blocking drive-thru traffic, business activity and where the communication would not be distracted by these dynamics.

It appears that such a move also provides a safer environment for officer and driver and one where the former can better and more accurately evaluate the situation-----even, potentially, to the benefit of the driver.

In *Questo*, the officer requested that the field sobriety tests be moved to get out of the wind---but the Court did not find that that fact changed the voluntary nature of the initial request for tests.

If a person agrees to move the encounter a short distance to a neutral place where it may be carried on more freely (away from distracting elements), that appears to be a normal extension of the initial encounter.

Finally, such a request is certainly less restraining and 'criminality-focused' than the

officer's request in *Questo* that the defendant perform field sobriety maneuvers. Yet that Court concluded that the tests were a part of a consensual encounter.

Here, the Court is unwilling to conclude that Officer Nelson's initial encounter with Ms. ~~Beers~~ under the circumstances of that encounter, transformed it into a detention.

Therefore, an assessment of particularized suspicion under the *Pratt* factors or otherwise is not dispositive for purposes of the interaction between Officer Nelson and Ms. ~~Beers~~ at issue here.

Rather, it appears that investigative detention occurred later and only after Officer Nelson had accumulated and assessed information from the initial call, initial contact and subsequent investigation at the parking space.


**IT IS ORDERED THAT:**

~~Ms. Beers~~' motion is denied.

This matter is now scheduled for an omnibus hearing on **Thursday, January 16, 2020** at **9:00 a.m.**

DATED:

12/11/19

  
\_\_\_\_\_  
Andrew Breuner  
Belgrade City Court Judge

cc:

<sup>ASB</sup>  
12/11/19

☒ <sup>C. G. Goy</sup> City Prosecutor  
☐ Defendant

☒ <sup>E. M. K. K.</sup> Defendant's attorney  
☐ \_\_\_\_\_