

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

1. **Name:** State full name (include any former names used).

Albert Diaz

2. **Position:** State the position for which you have been nominated.

United States Circuit Judge for the Fourth Circuit

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

North Carolina Business Court  
832 East Fourth St., Suite 9600  
Charlotte, NC 28202

4. **Birthplace:** State year and place of birth.

1960; Brooklyn, New York

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1992 – 1993, George Washington University; no degree

1989 – 1993, Boston University; M.S. Business Administration, 1993

1985 – 1988, New York University School of Law; J.D., 1988

1980 – 1983, Wharton School, University of Pennsylvania; B.S. Economics, 1983

1979 – 1980, State University of New York, Maritime College; no degree

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises,

partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

August 2005 – Present  
North Carolina Business Court  
832 East Fourth St., Suite 9600  
Charlotte, NC 28202  
Special Superior Court Judge for Complex Business Cases

September 2007 – Present  
University of North Carolina Charlotte  
8701 Mallard Creek Rd.  
Charlotte, NC 28262 – 6007  
Part-time instructor (Paralegal Program)

September 2006 – Present  
Central Piedmont Community College  
8120 Grier Rd.  
Charlotte, NC 28215  
Part-time instructor (Paralegal Program)

March 2005 – October 2006  
U.S. Navy-Marine Corps Court of Criminal Appeals  
Office of the Judge Advocate General of the Navy  
Washington Navy Yard  
716 Sicard St. SE, Suite 1000  
Washington, DC 20374-5047  
Reserve Appellate Military Judge

December 2001 – July 2005  
North Carolina Superior Court  
Criminal Courts Bldg.  
700 East Fourth St., Suite 3304  
Charlotte, NC 28202  
Superior Court Judge

May 2000 – March 2005  
U.S. Navy-Marine Corps Trial Judiciary  
Piedmont Judicial Circuit  
67 Virginia Dare Drive, Suite 145  
Camp Lejeune, NC 28542  
Reserve Military Judge

August 1995 – December 2001  
Hunton & Williams, L.L.P.  
101 S. Tryon St., Suite 3500  
Bank of America Plaza  
Charlotte, NC 28280  
Associate (August 2000 – December 2001)  
Associate, Raleigh, NC office (August 1995 – July 2000)

August 1991 – May 2000  
Office of the Judge Advocate General of the Navy  
Navy-Marine Corps Appellate Review Activity  
Washington Navy Yard  
716 Sicard St., SE, Suite 1000  
Washington, DC 20374-5047  
Reserve Appellate Defense Counsel (September 1995 – April 2000)  
Appellate Government Counsel (August 1991 – July 1995)

November 1988 – July 1991  
United States Marine Corps  
Legal Services Support Section  
2d Force Service Support Group  
59 Molly Pitcher Rd.  
Camp Lejeune, NC 28542  
Prosecutor (November 1988 – December 1989)  
Defense Counsel (January 1990 – January 1991)  
Chief Review Officer (February 1991 – July 1991)

1985 – 1988  
United States Marine Corps  
(full time law student)

June 1983 – August 1985  
United States Marine Corps  
Third Tank Battalion, Seventh Marine Regiment  
Marine Corps Air Ground Combat Center  
Twentynine Palms, CA 92284  
Supply Officer (May 1984 – August 1985)  
Officer Training, Quantico, VA & Camp Johnson, NC (June 1983 – March 1984)

### **Non-Employment Affiliations**

Marine Corps Coordinating Council of Greater Charlotte  
8494 Plantation Way  
Harrisburg, NC 28075  
Board of Advisors (2008 – Present)

Florence Crittenton Services  
1300 Blythe Blvd.  
Charlotte, NC 28203  
Board of Directors/Advisors (January 2003 – Present)

Chief Justice William H. Bobbitt Inn of Court  
c/o Judge Hugh B. Lewis, Treasurer  
832 East Fourth St., Suite 9600  
Charlotte, NC 28202  
Member/Secretary (2003 – Present)

Providence Crossing Homeowners Association  
c/o William Douglas Management Company  
4523 Park Rd., Suite 201A  
P.O. Box 37109  
Charlotte, NC 28237-7109  
Board Member & Vice-President (January 2002 – January 2004)

United Family Services  
601 E. 5th St., Suite 400  
Charlotte, NC 28202-3095  
Board of Directors (2001 – 2004)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I served in the United States Marine Corps from 1978 to 2006. I enlisted March 10, 1978 and served until August 1979, when I went to college on a Naval Reserve Officer Training Corps scholarship. I became a Commissioned Officer in May 1983 and served on active duty until 1995, when I transferred to the United States Marine Corps Reserve. In October 2006, I retired at the rank of Lieutenant Colonel.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

U. S. Marine Corps Funded Law Education Program Scholarship (1985 – 1988)

Moot Court Advocacy Award, NYU School of Law (1986)

American Jurisprudence Award-Creditors' Rights and Debtors' Protection, NYU School of Law (1986)

NYU School of Law Moot Court Board, Senior Casebook Editor (1987 – 1988)

Navy Commendation Medal for meritorious service as a military appellate government counsel (1993)

Meritorious Service Medal for outstanding meritorious service as a military appellate government counsel (1995)

Letter of Appreciation for outstanding support of the mission of the Appellate Defense Division (1997)

Award of Excellence for outstanding performance of duties as a military appellate defense counsel (1999)

E. Randolph Williams Award for distinguished pro bono service (1999 & 2000)

Meritorious Service Medal for outstanding meritorious service as a military appellate judge (2006)

National Defense Service Medal (1991 & 2003)

Armed Forces Reserve Medal (2006)

Selected Marine Corps Reserve Medal (1998 & 2001)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association, (1989 – Present)

Member, Litigation Section (1989 – Present)

Member, Judicial Division & Conference of State Trial Judges (2001 – Present)

Member, Business and Commercial Courts Committee, (2005 – Present)

Member, Standing Committee on Minorities in the Judiciary (2008 – 2009)

Member, Construction Law Committee (No recollection of dates)

Co-chair, Mechanics Lien and Miller Act Subcommittee (November 2000 – 2001)

Business Court Representative, Business Law Section (2007 – 2008)

New York State Bar Association (1989 – 2001)

Association of Trial Lawyers of America (1989 – 1993)

Judge Advocates Association (approximately 1992 – 1995)

North Carolina Bar Association (1995 – Present)  
Vice-President (June 2007 – June 2008)  
Chair, CLE Committee, Litigation Section (July 2003 – July 2004)  
Member, Construction Law Section (1995 – 2000)  
Member, Minorities in the Profession Committee (approximately 1995 – 2000)  
Member, Hispanic Latino Lawyers Committee (approximately 1995 – 2000)

Defense Research Institute (1995 – 2001)  
Member, Insurance Law Committee (No recollection of specific dates)

Mecklenburg County Bar (2000 – Present)  
Board of Directors (June 2009 – Present)  
Member, Nominating Committee (2007)  
Co-Chair, Mecklenburg County Bar Special Committee on Diversity (May 2009 – Present)  
Member, Nominating Subcommittee, Julius L. Chambers Diversity Champion Award (2007 – Present)  
Member, Hispanic Latino Lawyers Bar (May 2009 – Present)

North Carolina State Judicial Council (September 2001 – March 2004)

Conference of North Carolina Superior Court Judges (2005 – Present)  
Member, Judicial Education Committee

American College of Business Court Judges (2008 – Present)  
Member, Corporate Governance and Business Litigation Committee (2008 – Present)

Hispanic National Bar Association (1995 – Present)  
Member, Judicial Council (2001 – Present)

National Conference of Bar Examiners  
Member, Contract Law Drafting Committee (July 2009 – Present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

North Carolina, August 4, 1995 (no lapses in membership)

New York (2nd Department), February 8, 1989 (presently on retired status)

District of Columbia, September 27, 1990 (presently on inactive status)

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Fourth Circuit, 1997  
United States Court of Appeals for the Third Circuit, 1996  
United States District Court for the Eastern District of North Carolina, 1995  
United States District Court for the Middle District of North Carolina, 1995  
United States District Court for the Western District of North Carolina, 1995  
United States Navy-Marine Corps Court of Criminal Appeals, 1992  
United States Court of Appeals for the Armed Forces, 1991

State courts of New York (1989),  
Courts of the District of Columbia (1990)  
State courts of North Carolina (1995)

There have been no lapses in membership.

**11. Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Marine Corps League (approximately 2001 – 2004)

St. Gabriel Catholic Church Men's Club (approximately 2001 – 2005)

WFAE Radio (local NPR station) (2006 – Present)

United Agenda Structure Design Team (2007)

Navy Mutual Aid Association (1983 – Present)

United Services Automobile Association (1983 – Present)

Navy Federal Credit Union (1983 – Present)

American Automobile Association (2007 – Present)

Marine Corps Association (1983 – Present)

Marines' Memorial Association (April 2009 – Present)

Wharton Alumni Club (2007 – 2008)

Brooklyn Tech High School Alumni Club (approximately 2004 – Present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The St. Gabriel Catholic Church Men's Club is a religious service organization whose membership has traditionally been limited to men. Because it is an organization dedicated exclusively to fellowship, spiritual growth, and participation in a variety of service projects, I do not believe the Club's membership limitation results in invidious discrimination.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

"Lunch with a Lawyer," *The Mecklenburg Bar News*, October 2009

"The New North Carolina Business Court," *North Carolina State Bar Journal*, Spring 2008 (co-author with my law clerk)

Letter to the Editor, *The Charlotte Observer*, February 2007

"The Least Among Us," *The Mecklenburg Bar News*, March 2005

"View from the Bench: Professionalism," *The Mecklenburg Bar News*, July 2003

Letter to the Editor, *The Charlotte Observer*, August 2003

Letter to the Editor, *The Charlotte Observer*, August 2002

Letter to the Editor, *The Charlotte Observer*, July 2002



2 Douglas Forms, *Civil Litigation*, Ed. Hunton & Williams. Albany: Matthew Bender, 1997 – 1999 (assisted in preparing 1997 – 1999 supplements) (I do not have a copy of the supplement)

NYU School of Law Moot Court Board, *Moot Court Casebook*, (1987) (served as Senior Casebook Editor and drafted a moot court problem for publication)

Letter to the Editor, *The New York Times*, (August 1, 1982) (co-author with Clark A. Brett)

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Mecklenburg County Bar 2009 Diversity Initiative Report

2006 – 2008 Report of the North Carolina Business Court to the General Assembly

North Carolina Bar Association, E-Discovery Committee Report on Proposed Amendments to the North Carolina Rules of Civil Procedure

North Carolina Bar Association, E-Filing Committee Report on Proposed E-filing Pilot Project Rules (I do not have the report)

North Carolina Bar Association, 8000 Weston Parkway, Cary, NC 27513  
Litigation Section Council Local Rules Sub-Committee (2007) (I do not have a copy of the report.)

Chief Justice's Commission on the Future of the North Carolina Business Court—  
Final Report and Recommendation (Oct. 28, 2004)

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On or about June 27, 2002, I responded to a survey promulgated by Court Watch of North Carolina regarding a bill then pending before the North Carolina General Assembly, which called for the public financing of judicial appellate elections. I believe the survey responses were submitted to the General Assembly for its consideration. I do not have a copy of my original responses.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have spoken at other events that I cannot recall and for which I have no records. I have submitted materials where available, although they may not reflect my remarks as delivered.

Speaker, "The North Carolina Business Court," Latin American Chamber of Commerce of Charlotte, Charlotte, NC, October 2009

Presiding Judge, Mecklenburg County Bar Fall Swearing-in Ceremony, Charlotte, NC, October 2009

Panelist, "Court Specialization: Fad or Effective Strategy?" Hispanic National Bar Association Conference, Albuquerque, NM, September 2009

Panelist, "Civil Litigation Forum," Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, February 2009 & February 2008 (No notes—gave general update on Business Court docket)

Panelist, "Judicial Independence," Charlotte School of Law Symposium, Charlotte, NC, February 2009

Speaker, "Orientation Program for New Superior Court Judges," UNC-Chapel Hill School of Government, Chapel Hill, NC, February 2009 & December 2006

Panelist, Charlotte-Mecklenburg Schools, 701 E. Martin Luther King, Jr. Blvd., P.O. Box 30035, Charlotte, NC 28202, January 2009 (No notes—gave media briefing on importance of mentoring and discussed Lunch with a Lawyer Program)

Speaker, "Personal Jurisdiction/Servicemembers Civil Relief Act," Conference of Superior Court Judges, Chapel Hill, NC, October 2008

Panelist, "Administrative Law," Mecklenburg County Bar, Charlotte, NC, September 2008

Panelist, "The Growing Importance of Unfair Trade Practices Claims," North Carolina Association of Defense Attorneys, Hilton Head, SC, June 2008 (No

notes—was one of three panelists discussing North Carolina’s Unfair and Deceptive Trade Practices Act)

Speaker, Merry Oaks Elementary School Graduation and Awards Ceremony, Charlotte, NC, June 2008

Welcoming Remarks, Judge James B. McMillan, Jr., Fellowship Dinner, Charlotte, NC, April 2008 (No notes—I gave brief welcoming remarks)

Speaker, “Corporate Finance for Business Court Judges,” American College of Business Court Judges, Searle Center on Law, Regulation, and Economic Growth Northwestern University College of Law, 357 East Chicago Ave., Chicago, IL 60611-3069, April 2008 (No notes—discussed and summarized business court decisions)

Speaker, “Advanced Litigation Strategies for Trial and Beyond: Avoiding Common Pitfalls and Coming Out on Top,” North Carolina Bar Association, Asheville, NC, April 2008

Speaker, “Spanish Nite,” Hispanic League of the Piedmont Triad, Winston-Salem, NC, March 2008

Panelist, “Diversity and the Bench: Diversity’s Role in Charlotte’s Judiciary,” Charlotte School of Law, 2145 Suttle Ave., Charlotte, NC 28208, March 2008 (No notes—participated with other judges in a panel discussion on the importance of a diverse bench)

Panelist, “All Star Trial Advocacy,” Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, February 2008 (No notes—participated in judges roundtable on best practices before the Court)

Speaker, Wake Forest Babcock Graduate School of Management, One Morrocroft Centre, 6805 Morrison Blvd., Suite 150, Charlotte, NC 28211, November 2007 (No notes—spoke to graduate students on history and operation of the North Carolina Business Court and discussed contract law issues that frequently come before the Court)

Moderator, “Developing and Supporting Collegiality and Professionalism,” Superior Court Judges of the Seventh and Eighth Divisions, Gastonia, NC, October 2007 (No notes—lead group discussion and presented summary of judges’ responses to civility scenarios)

Speaker, “Business Court Perspective,” Charlotte School of Law, Charlotte, NC October 2007

Panelist, “An Introduction to Business Courts and Complex Litigation Courts—What Works Best and Why,” ABA Annual Meeting, 321 N. Clark St., Chicago, IL, 60654-7598, August 2007 (No notes—part of panel discussion on business courts)

Panelist, “Forum Selection—Has the Business Court Changed the Equation?” North Carolina Association of Defense Attorneys, Hilton Head, SC, June 2007 (No notes—spoke on practice and procedure before the North Carolina Business Court and, in particular, the procedure for transferring cases to the Court)

Speaker, Central Piedmont Community College Paralegal Graduation Ceremony, Charlotte, NC, April 2007.

Panelist, “An Introduction to Business Courts,” ABA Business Law Section, 321 N. Clark St., Chicago, IL, 60654-7598, March 2007 (No notes—I participated in a panel discussion on business courts)

Panelist, “Minorities in the Law,” Charlotte School of Law, 2145 Suttle Ave., Charlotte, NC 28208, February 2007 (No notes—I participated in a panel discussion on challenges facing minority lawyers in the profession)

Speaker, “Business Court Perspectives,” American College of Trial Lawyers, Charleston, SC, February 2007

Panelist, “Increasing Diversity in the Legal Profession,” Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, February 2007 – 2009 (No notes—annual conference targeted at high school and college students interested in a career in the law)

Panelist, “Diversity Matters,” Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, February 2007 (No notes—I spoke as part of a panel on the importance of diversity in the legal profession)

Panelist, “All-Star Trial Advocacy,” Mecklenburg County Bar, Charlotte, NC, January 2007

Speaker, Youth Civics 101, Kids Voting Mecklenburg County, Charlotte, NC, August 2006

Speaker, “North Carolina Unfair and Deceptive Trade Practices Act,” Conference of North Carolina Superior Court Judges, Asheville, NC, June 2006

Speaker, The Business Court Expansion & Practice before the Business Court, North Carolina Association of Defense Attorneys, Hilton Head, SC, June 2006

Panelist, "Beyond the Basics of Civil Litigation," North Carolina Bar Association, Greensboro, NC, May 2006

Speaker, "Nuts and Bolts of Practice in the Business Court," Sole Practitioner/Small Firm Section, Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, May 2006 (No notes—I spoke over lunch on best practices before the Business Court)

Speaker, "Business Torts: Deception Fraud and the Usual Suspects," Mecklenburg County Bar, 438 Queens Rd., Charlotte, NC 28207, April 2006 (No notes—panelist over lunch on best practices before the Court)

Speaker, "Top Ten List for Young Trial Lawyers," Mecklenburg County Bar, Young Lawyers Section, Charlotte, NC, April 2006

Speaker, "Business Litigation Forum," Mecklenburg County Bar, Civil Litigation Section, 438 Queens Rd., Charlotte, NC 28207, February 2006 (No notes—panelist on business litigation issues)

Speaker, "Business Court Update," Conference of North Carolina Superior Court Judges, Chapel Hill, NC, October 2005 (No notes—gave short summary of recently passed legislation expanding the Business Court)

Moderator, "Deposition Evidence," Joint session, Conference of North Carolina Superior Court Judges and Litigation Section, North Carolina Bar Association, Asheville, NC, June 2005 (No notes)

Panelist, "Update on Civil Practice Basics (Jury Instructions)," Mecklenburg County Bar, Charlotte, NC, February 2005

Speaker, "Findings of Fact and Conclusions of Law," Conference of North Carolina Superior Court Judges, Chapel Hill, NC, November 2004

Speaker, "South Carolina Oath Affirmation Program," North Carolina Bar Association, Charlotte, NC, November 2004 (Administered an oath required by the South Carolina Supreme Court for attorneys jointly licensed in North and South Carolina and also facilitated a discussion on legal ethics)

Speaker, Latin American Coalition, High School Graduation Ceremony, Charlotte, NC, late May or early June 2004

Co-Course Planner & Moderator, "All-Star Trial of a Business Case," North Carolina Bar Association, Greensboro, NC, May 2004 (No notes—I did not give remarks, except in my capacity as moderator)

Speaker, Reception for Prospective Students, Hispanic/Latino Law Student Association, University of North Carolina at Chapel Hill School of Law, Chapel Hill, NC, November 24, 2003

Speaker, High School Law Career Conference, North Carolina Bar Association, Minorities in the Profession Committee, Charlotte, NC, October 2003 (No notes—I spoke about different career opportunities in the law)

Speaker, Latin American Festival, Charlotte, NC, October 2003. (Gave invocation)

Speaker, Fifth Grade Recognition and Awards Ceremony, Montclair Elementary School, Charlotte, NC, June 2003

Speaker, S.T.O.P & Change Direction Graduation Exercise Albemarle Correctional Institution, Badin, NC, May 20, 2003

Speaker, Civics 101 (in Spanish), League of Women Voters, Charlotte, NC, March 2003

Panelist, Increasing Diversity in the Legal Profession, University of North Carolina School of Law, 160 Ridge Rd., CB #3380, Chapel Hill, NC 27599-3380, February 22, 2003. (No notes—I was on a panel discussing the pros and cons of a career in the law)

Panelist, Hispanic Heritage Month, sponsored by Evergreen Investments, Three Wachovia Bldg, 401 S. Tryon St. Charlotte, NC 28202, September 17, 2002 (No notes – I discussed what it means to be Hispanic in the United States, what interactions the panelists have with the Hispanic community, and the importance of the services we provide to the Hispanic community.)

Speaker, Matthews Executive Group, P.O. Box 433, Matthews, NC, 28106, September 11, 2002. (No notes—I gave a general presentation on the state's court system)

Speaker, Judicial Candidate Forum, Uptown Optimist Club, 428 East 4th St. Suite 200 Charlotte, NC 28202, June 2002 (No notes—This was a Q&A session during my 2001 – 2002 campaign for judicial election. I spoke at many other events during the election campaign, but I have no notes or other records that detail the dates and/or the substance of my remarks, except that they all focused on my qualifications for judicial office.)

Speaker, North Carolina Migrant Education AIM Leadership Conference, Gardner Webb University, Boiling Springs, NC, June 19, 2002. (No notes—I spoke to Latino high school students from across the state about my experiences working in the justice system and the importance of getting an education.)

Speaker, Merry Oaks Elementary School Latino Symposium, "Recognizing Heroes and Sheroes in Charlotte," 3508 Draper Ave., Charlotte, NC, 28205 (No notes—I was part of a panel discussing my work as a state court judge.)

Speaker, "Appellate Government Practice," Naval Justice School, 360 Elliot St., Newport, RI 02841, August 1994 (No notes—I gave a general overview of the work of the appellate government division)

Speaker, "Capital Litigation in the Military," Minneapolis, MN, November or December 1994 (No notes—I gave a general update on capital cases in the military)

Speaker, "Article 32 Investigations," U.S. Marine Corps, Marine Corps Combat Development Command, Quantico, VA, July 1994 (No notes—I presented on the use of pre-trial investigations in the military)

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all items requested in this question, but I may have given other interviews that I cannot recall and for which I have no records.

August 10, 2009: Print interview with *The South Charlotte Weekly*, and TV interviews with News Channel 14 and one other local TV outlet, all regarding the Mecklenburg County Bar's Lunch with a Lawyer Program

August 6, 2009: Print interview with *My School Rocks! Magazine* regarding the Lunch with a Lawyer Program

November 21, 2008: Print interview with *Mi Gente* regarding the importance of responding to a jury service summons

August 16, 2008: Print interview with *The Charlotte Observer* on the growth of the North Carolina Business Court

June 13, 2008: Print interview with *The Charlotte Business Journal* on the growing role of the North Carolina Business Court

December 2007: Print interview with *My School Rocks! Magazine* regarding the Mecklenburg County Bar's Lunch with a Lawyer Program

October 9, 2007: Radio Interview with WFAE (local NPR station) for “Charlotte Talks” program on the criminal justice system (I do not have a copy of the transcript)

August 2007: TV Interview (in Spanish) with Central Piedmont Community College regarding my personal and professional background for program called “Perfiles Latinos”

March/April 2007: Print interview with *North Carolina Lawyer* following dedication ceremony for the new Mecklenburg County courthouse

December 2006: Print interview with *The Mecklenburg Bar News* for an article on my personal and professional background

December 2006: Print interview with *The Charlotte Business Journal* as part of an article on “Who to Watch” in 2007

November 2006: Print interview with *North Carolina Business Law Magazine* on the North Carolina Business Court

August 15, 2006: Print interview with *The Mecklenburg Times* regarding the Mecklenburg County Bar’s Lunch with a Lawyer Program

January 26, 2006: Print interview with *The Charlotte Observer* regarding the expansion of the North Carolina Business Court

March 2005: Print interview with *The Hunton & Williams Reporter* for its alumni news section

November 6, 2002: Print interview with *The Charlotte Observer* regarding the results of my campaign for election to the Superior Court

November 2002: Print interview with *The Charlotte Observer* regarding my request for recount of the votes in the election for Superior Court

November 2002: Print interview with *El Pueblo Magazine* regarding my appointment to the Superior Court bench

October 2002: Print interview with *The Asian Herald* for a piece on my personal and professional background

October 26, 2002: Print interview with *The Charlotte Observer* in advance of the November 2002 judicial elections

July 2002: Print interview with *The Charlotte Observer* regarding Juror Appreciation Week



June 28, 2002: Print interview with *The Charlotte Observer* regarding the effect of *Republican Party v. White*, 536 U.S. 765 (2002), on judicial campaigns

June 2002: Print interview with *El Progreso Hispano* regarding my campaign for election to the Superior Court

January 30, 2002: TV interview with local public access channel 21 for "Charlotte Tonight" program on Diversity in the Legal System (I do not have a copy of the transcript.)

December 9, 2001: Print interview with *La Noticia* regarding my appointment as the first Hispanic judge on the North Carolina Superior Court

November 22, 2001: Print interview with *The Raleigh News & Observer* following my appointment to the Superior Court bench

November 22, 2001: Print interview with *The Charlotte Observer* following my appointment to the Superior Court bench

October 2001: Print interview with *The Hunton & Williams Reporter* on my appointment to the Superior Court bench

Open/Net en Espanol, North Carolina Department of Administration, 116 West Jones St., Raleigh, NC, 27603. I appeared on this public service radio call-in show to answer questions in Spanish regarding the state's justice system. I have not been able to find the date of the program, but I believe it was sometime in 2002.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

May 2000 – March 2005: Appointed by the Judge Advocate General of the Navy as a military trial judge. The Court's jurisdiction is exclusively criminal, extending to misdemeanor and felony offenses, which are heard either by the military judge alone or by a panel of members.

November 2001 – November 2002: Appointed by the Governor of North Carolina as a Resident Superior Court Judge for Mecklenburg County, an elected position. The Superior Court of North Carolina is a trial court of general jurisdiction, which handles all criminal felony cases, all civil cases where the demand exceeds \$10,000, and a few special categories of cases, such as those involving appeals from administrative agencies and constitutional issues.

December 2002 – Present: Twice appointed by the Governor of North Carolina as a Special Superior Court Judge, each for a five-year term. As a Special Superior Court judge, I continue to exercise general jurisdiction over criminal felony cases and civil cases.

August 2005 – Present: Designated by the Chief Justice of the Supreme Court of North Carolina as a Special Superior Court Judge for Complex Business Cases. The Business Court is a specialized forum of the Superior Court assigned to hear cases that fall within a defined statutory category of “mandatory” complex business cases.

March 2005 – October 2006: Appointed by the Judge Advocate General of the Navy as a Judge of the U.S. Navy-Marine Corps Court of Criminal Appeals. The Court conducts mandatory review, unless waived by the appellant, of all courts-martial of members of the naval service referred to the Court pursuant to law.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over approximately 120 cases that have gone to verdict following a trial. I have presided over thousands of civil and criminal matters, many of which resulted in entry of judgment without trial (although I can provide no precise figure).

- i. Of these, approximately what percent were:

|                       |     |
|-----------------------|-----|
| jury trials:          | 90% |
| bench trials:         | 10% |
| civil proceedings:    | 50% |
| criminal proceedings: | 50% |

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of citations.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *State v. Sapp*, 02 CRS 238989, 03 CRS 2597-2603, 2605-2609, Mecklenburg County, *aff'd*, 661 S.E.2d 304 (N.C. Ct. App. 2008), *appeal dismissed, rev. denied*, 2009 N.C. LEXIS 969 (N.C. Oct. 8, 2009)

Defendant was charged with capital murder and other offenses. At trial, the State's evidence showed that Defendant and an accomplice entered an apartment in search of money and drugs. The apartment belonged to the murder victim's girlfriend, whose mother, brother, and three young children were also present. Both Defendant and his accomplice raped the victim's girlfriend. The mother, brother, and three young children were confined to a bedroom. After the murder victim directed Defendant and his accomplice to the items, Defendant shot and killed the victim.

A jury convicted Defendant of first-degree murder, first-degree burglary, three counts of first-degree rape, two counts of first-degree kidnapping, and five counts of second-degree kidnapping. Following a capital sentencing hearing, the jury recommended a sentence of life without parole on the murder conviction. I imposed that sentence, along with consecutive prison sentences on the remaining convictions. Defendant appealed, but the North Carolina Court of Appeals affirmed his conviction and sentence.

Counsel for the State: R. David Wallace and Glenn Cole III, District Attorney's Office, Mecklenburg County Courthouse, 700 East Trade St., Second Floor, Charlotte, NC 28202 (704) 417-1889.

Counsel for the Defendant: R. Locke Bell, Gaston County Courthouse, 325 North Marietta St., Suite 2003, Gastonia, NC 28052, (704) 852-3113 and William A. Anthony, III, 223 West Main Ave., Suite A, Gastonia, NC 28053 (704) 867-3688.

2. *State v. Montgomery*, 07 CRS 215042, 215044, Mecklenburg County (Pending but I do not anticipate having further involvement in the case)

I have presided over two motions in this capital murder case. Defendant is charged with the shooting deaths of two Charlotte-Mecklenburg Police Department officers who were responding to a domestic violence call. The media sought access to the 911 recordings and police radio transmissions generated on the day the officers were killed.

The State moved for an order prohibiting the release of the recordings, contending their release would undermine its criminal investigation and jeopardize the right of the State and Defendant to a fair trial. The State also contended that several potential witnesses (including some who called 911 following the shootings) feared for their safety if their identities were disclosed.

To test the State's claims, I conducted an *in camera* review of the recordings and transmissions. Following that review, I concluded that North Carolina state law governing access to public records required that I release redacted versions of the recordings and transmissions.

Defendants' lawyers also sought to have their client declared incompetent to stand trial. I presided over a four-day hearing on this issue, and thereafter denied the motion.

Counsel for the State: Marsha L. Goodenow, Elizabeth Freeman Greene, and Glenn Cole, III, District Attorney's Office, Mecklenburg County Courthouse, 700 East Trade St., Second Floor, Charlotte, NC 28202 (704) 358-6299, (704) 358-6258.

Counsel for Defendant: Duane L. Bryant, 1207 Brentwood St., High Point, NC, 27260, (336) 887-4804, and Bruce Lee, 701 E. Market St., Greensboro, NC 27401, (336) 272-8273.

Counsel for The Charlotte Observer and other media outlets: Jonathan Buchan, McGuire Woods, Bank of America Corporate Center, 100 North Tryon St., Suite 2900, Charlotte, NC 28202-4011, (704) 343-2063.

3. *State v. Freeman*, 06 CRS 218510, 28031, Mecklenburg County

Defendant was convicted of first degree murder and possession of a firearm by a felon. Prior to trial, Defendant moved to discharge his lawyer. Another member of my court granted the motion, but also directed that the lawyer remain as standby counsel.

Defendant was subsequently ordered committed to a mental hospital for examination on his capacity to proceed to trial. Following receipt of a report by a staff psychiatrist, I determined that Defendant was in fact competent to stand trial. I also held, based on the U.S. Supreme Court's recent decision in *Indiana v. Edwards*, 128 S. Ct. 2379 (2008), that Defendant lacked the mental capacity to represent himself at trial, given his significantly limited intellectual and academic skills (as described in the report of the state psychiatrist), and his refusal to cooperate with the Court's processes. As a result, I ordered standby counsel to resume his representation of Defendant. The case is on appeal.

Counsel for the State: Marsha L. Goodenow and Elizabeth Freeman Greene, District Attorney's Office, Mecklenburg County Courthouse, 700 East Trade St., Second Floor, Charlotte, NC 28202, (704) 358-6299, (704) 358-6258.

Counsel for the Defendant: Eric A. Bach, P.O. Box 33566, Charlotte, NC 28233, (704) 364-6580.

4. *Ehrenhaus v. Baker*, 08 CVS 22632, 2008 NCBC LEXIS 21 (N.C. Super. Ct. Dec. 5, 2008)

Plaintiff (a Wachovia Bank shareholder) filed a putative class action alleging that Wachovia and its board of directors breached their fiduciary duties toward the

public shareholders of the Bank in connection with a merger agreement between the Bank and Wells Fargo, Inc. Plaintiff sought to enjoin the merger and recover money damages.

The case garnered substantial media and public interest because of the turmoil roiling the financial and credit markets at the time. The dispute also was complicated by the fact that a shareholder vote on the proposed merger was scheduled for the end of the year. I held that, with one limited exception, Plaintiff failed to show a likelihood of success on the merits of his claim alleging a breach of fiduciary duty because the decision-making process of the directors, although necessarily compressed given the extraordinary circumstances confronting them, was reasonable and fell within the standard of care demanded by law. Accordingly, I allowed the merger vote to proceed.

Plaintiff's Counsel: Greg Jones, 3015 Market St., Wilmington, NC 28403, (910) 251-2240, Robert M. Kornreich, Chet Waldman, Carl L. Stine, and Anthony Green, all of Wolf Popper L.L.P., 845 Third Ave., New York, NY 10022, (212) 759-4600.

Counsel for Defendants Wachovia and its Board: Robert W. Fuller, Mark W. Merritt, Garland S. Cassada, and Katherine G. Maynard, all of Robinson, Bradshaw & Hinson, P.A., 101 North Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-2536.

Counsel for Wells Fargo & Company: T. Thomas Cottingham, III, Winston & Strawn, L.L.P., 214 N. Tryon St., Charlotte, NC 28202, (704) 350-7700, Patrick L. Robson and Edward J. Fuhr, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd St., Richmond, VA 23219, (804) 788-8200, Paul K. Rowe and George T. Conway, III, of Wachtell, Lipton, Rosen & Katz, 51 West 52nd St., New York, NY, 10019, (212) 403-1000, and Eric Seiler of Friedman Kaplan Seiler & Adelman, L.L.P., 1633 Broadway, New York, NY 10019-6708, (212) 833-1100.

5. *Speedway Motorsports International, Ltd. v. Bronwen Energy Trading, Ltd.*, 08 CVS 9450, 2009 NCBC LEXIS 17 (N.C. Super. Ct. Feb. 18, 2009)

In a case of first impression in North Carolina, I held that a Defendant bank, which was not a party to contracts containing mandatory forum selection clauses compelling litigation in the commercial court of Paris, France, could nevertheless enforce the forum selection provision against co-Defendant Swift Aviation Group, Inc., which was a party to the contracts and who had filed cross-claims against the bank related to the underlying contracts.

Counsel for the Defendant BNP Paribas, S.A.: William K. Davis and Edward B. Davis, Bell, Davis & Pitt, P.A., 227 W. Trade St., Suite 2160, Charlotte, NC 28202-1697, (704) 227-0400.

Counsel for Swift Aviation Group, Inc.: James P. Cooney, III, Debbie W. Harden, and Meredith J. McKee, all of Womble Carlyle Sandridge & Rice, P.L.L.C., One Wachovia Center, Suite 3500, 301 South College St., Charlotte, NC 28202-6037, (704) 331-4900.

6. *Fisher v. Communications Workers of America*, 08 CVS 3154, 2008 NCBC LEXIS 19 (N.C. Super. Ct. Oct. 30, 2008)

Plaintiff employees sued Defendant unions alleging that the unions violated the North Carolina Identity Theft Protection Act (NCITPA), committed unfair and deceptive trade practices under state law, and invaded their privacy by posting the employees' names and social security numbers on bulletin boards at work.

Defendants moved to dismiss the Complaint. In a first impression ruling, I held that Plaintiffs stated viable claims under the NCITPA and for unfair and deceptive trade practices, but that their claim alleging invasion of privacy failed as a matter of law because the alleged injury was not the type of intentional intrusion, physically or otherwise, necessary to state a claim for invasion of privacy.

Counsel for Plaintiffs: Philip M. Van Hoy and Stephen Dunn of Van Hoy, Reutlinger, Adams & Dunn, P.L.L.C., 737 East Blvd., Charlotte, NC 28203, (704) 375-6022, and Matthew C. Muggeridge, National Right to Work Legal Defense Foundation, Inc., 8001 Braddock Rd., Springfield, VA 22160, (703) 321-8510.

Counsel for Defendants: Joyce M. Brooks, 6845 Fairview Rd., Charlotte, NC 28210, (704) 765-4899, Robert M. Weaver, Nakamura, Quinn, Walls, Weaver & Davies L.L.P., Suite 380, 2700 Highway 280 East, Birmingham, AL 35233, (205) 870-9989, and Ann Groninger, Patterson Harkavy, L.L.P., 521 East Blvd., Charlotte, NC 28203, (704) 200-2009.

7. *Wake County v. Hotels.com, L.P.*, Master File 06 CVS 16256, 2007 NCBC LEXIS 35 (N.C. Super Ct. Nov. 20, 2007)

Plaintiffs are state counties that have enacted an occupancy tax based on the gross receipts derived from hotel room rentals within each county. Defendants are business entities that sell hotel rooms over the Internet. In their Complaint, Plaintiffs alleged that Defendants were not remitting the full amount of the occupancy tax purportedly due on each sale. The Complaint alleged claims for violations of the Occupancy Tax statute, conversion, and unfair and deceptive trade practices.

Defendants moved to dismiss the Complaint. I granted the motion as to the claims for unfair trade practices and conversion, but denied it as to the alleged failure to pay the full amount of the occupancy tax. I also granted a separate

motion to dismiss as to Plaintiff Cumberland County based on the county's failure to exhaust administrative remedies it had established to resolve tax disputes.

Plaintiffs' Counsel: Kieran J. Shanahan, The Shanahan Law Group, 128 E. Hargett St., Suite 300, Raleigh, NC 27601, (919) 856-9494, Scott W. Jones and Steven R. Warren, Long, Parker, Warren & Jones, P.A., 14 South Pack Square, Suite 600, Asheville, NC 28802, (828) 258-2296, and Hugh R. Overholt and Gary J. Rickner, Ward & Smith, P.A., Wade II, Suite 400, 5430 Wade Park Blvd. (27607), P.O. Box 33009, Raleigh, NC 27636-3009, (919) 277-9100.

Defendants' Counsel: Charles B. Neely, Jr., Nancy S. Rendleman, and Robert W. Shaw, Williams Mullen Maupin Taylor, P.A., Highwoods Tower One, 3200 Beechleaf Court, Suite 500, Raleigh, NC 27604, (919) 981-4000, Darrel J. Hieber, Skadden, Arps, Slate, Meagher & Flom, L.L.P. & Affiliates, 300 South Grand Ave., Suite 3400, Los Angeles, CA 90071, (213) 687-5220, and Karen L. Valihura, Skadden, Arps, Slate, Meagher & Flom, L.L.P. & Affiliates, One Rodney Square, P.O. Box 636, Wilmington, DE 19899 (302) 651-3140 .

8. *Media Network, Inc. v. Mullen Adver., Inc.*, 05 CVS 15428, 2007 NCBC LEXIS 1 (N.C. Super. Ct. Jan. 19, 2007), *aff'd*, 678 S.E.2d 671 (N.C. Ct. App. 2009)

A jury returned a verdict for the Plaintiff on a claim alleging a violation of North Carolina's Unfair and Deceptive Trade Practices Act and awarded damages of \$1,258,695.00, which I trebled pursuant to the statute. I declined, however, to award Plaintiff its attorney fees. Both parties appealed.

The North Carolina Court of Appeals affirmed, concluding that the jury's verdict was supported by the evidence and that I properly exercised my discretion in declining to award attorney fees.

Plaintiff's Counsel: Jackson N. Steele and Erik M. Rosenwood, Hamilton Moon Stephens Steele & Martin, P.L.L.C., 201 South College St., Suite 2020, Charlotte, NC 28244, (704) 344-1117.

Defendant's Counsel: James H. Kelly, W. Mark Conger, and Elliot A. Fus, Kilpatrick Stockton L.L.P., 1001 West Fourth St., Winston-Salem, NC 27101-2400, (336) 607-7300.

9. *Wachovia Bank, N.A. v. Harbinger, Capital Partners Master Fund I, Ltd.*, 07 CVS 5097, 2008 NCBC LEXIS 6 (N.C. Super. Ct. Mar. 13, 2008)

Wachovia Bank funded part of a credit agreement to a third-party borrower and created a syndicate to fund the balance. The third-party borrower (LeNature's, Inc.) filed for bankruptcy following discovery of a massive internal fraud allegedly perpetrated by management. Thereafter, Defendants purchased interests in the syndicate and purported to receive an assignment of tort claims. Wachovia

sued Defendants in North Carolina, seeking a declaratory judgment that North Carolina law barred an assignment of tort claims. Defendants moved to stay the North Carolina action, contending that a more comprehensive action was pending in New York federal district court.

After weighing the relevant factors, I granted the motion to stay in favor of the New York action, in part because the far broader scope of the New York suit was more likely to fully and finally resolve the dispute, and because New York was an equally convenient, reasonable, and fair forum for resolution of the case.

Counsel for Plaintiffs: Robert W. Fuller and Katherine G. Maynard, Robinson, Bradshaw & Hinson, P.A., 101 North Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-2536.

Counsel for Defendants: C. Richard Rayburn, Jr., James B. Gatehouse, Ross R. Fulton, Rayburn Cooper & Durham, 227 W. Trade St., Suite 1200, Charlotte, NC, 28202-1672, (704) 334-0891, Michael B. Carlinsky, Robert S. Loigman, Adam Wolfson Quinn Emanuel Urquhart Oliver & Hedges, L.L.P., 51 Madison Ave., 22nd Floor, New York, NY 10010-1601, (212) 849-7000.

10. *Windsor Jewelers, Inc. v. Windsor Fine Jewelers, L.L.C.*, 08 CVS 24643, 2009 NCBC LEXIS 19 (N.C. Super Ct. February 16, 2009)

This is a state trademark infringement case. I granted Plaintiff's request for a temporary restraining order but later denied the motion for a preliminary injunction. I concluded that, whether viewed as a function of Plaintiff's "market penetration" or its "zone of natural expansion," Plaintiff's market presence in the relevant market was insufficient to warrant preliminary injunctive relief for infringement of its "Windsor Jewelers" mark.

Plaintiff's counsel: Eric A. Rogers, Joseph J. Santaniello, and Dawn Barker Floyd, Shumaker, Loop & Kendrick, L.L.P., 128 S. Tryon St., Suite 1800 Charlotte, NC 28202-5013, (704) 375-0057.

Defendants' counsel: Anthony T. Lathrop and J. Mark Wilson, Moore & Van Allen, P.L.L.C., 100 North Tryon St., Suite 4700, Charlotte, NC 28202-4003, (704) 331-1000.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.



1. *United States v. Orellana*, 62 M.J. 595 (N-M.C.C.A. 2005)

Counsel for the United States: Maj. Raymond Beal, USMC (No contact information available)

Counsel for the Appellant: Lt. M.J. Navarre, JAGC, USNR (No contact information available)

2. *Ehrenhaus v. Baker*, 08 CVS 22632, 2008 NCBC LEXIS 21 (N.C. Super. Ct. Dec. 5, 2008)

Plaintiff's Counsel: Greg Jones, 3015 Market St., Wilmington, NC 28403, (910) 251-2240, Robert M. Kornreich, Chet Waldman, Carl L. Stine, and Anthony Green, all of Wolf Popper L.L.P., 845 Third Ave., New York, NY 10022, (212) 759-4600

Counsel for Defendants Wachovia and its Board: Robert W. Fuller, Mark W. Merritt, Garland S. Cassada, and Katherine G. Maynard, all of Robinson, Bradshaw & Hinson, P.A., 101 North Tryon St., Suite 1900 Charlotte, NC 28246, (704) 377-2536

Counsel for Wells Fargo & Company: T. Thomas Cottingham, III, Winston & Strawn, L.L.P., 214 N. Tryon St., Charlotte, NC 28202, (704) 350-7700, Patrick L. Robson, and Edward J. Fuhr, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd St., Richmond, VA 23219, (804) 788-8200, Paul K. Rowe and George T. Conway, III, of Wachtell, Lipton, Rosen & Katz, 51 West 52nd St., New York, NY 10019, (212) 403-1000, and Eric Seiler of Friedman Kaplan Seiler & Adelman L.L.P., 1633 Broadway, New York, NY 10019-6708, (212) 833-1100

3. *Wachovia Bank, N.A. v. Harbinger, Capital Partners Master Fund I, Ltd.*, 07 CVS 5097, 2008 NCBC LEXIS 6, (N.C. Super. Ct. Mar. 13, 2008)

Counsel for Plaintiffs: Robert W. Fuller and Katherine G. Maynard, Robinson, Bradshaw & Hinson, P.A., 101 North Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-2536

Counsel for Defendants: C. Richard Rayburn, Jr., James B. Gatehouse, Ross R. Fulton, Rayburn Cooper & Durham, 227 W. Trade St., Suite 1200, Charlotte, NC 28202-1672, (704) 334-0891, Michael B. Carlinsky, Robert S. Loigman, Adam Wolfson, Quinn Emanuel Urquhart Oliver & Hedges, L.L.P. 51 Madison Ave., 22nd Floor, New York, NY 10010-1601, (212) 849-7000

4. *Speedway Motorsports International, Ltd. v. Bronwen Energy Trading, Ltd.*, 08 CVS 9450, 2009 NCBC LEXIS 17 (N.C. Super. Ct. Feb. 18, 2009)

Counsel for the Plaintiff: Michael G. Adams, and William L. Esser, IV, Parker, Poe, Adams & Bernstein, L.L.P., Three Wachovia Center, Suite 3000, 401 South Tryon St., Charlotte, NC 28202, (704) 372-9000

Counsel for Defendant BNP Paribas, S.A.: William K. Davis and Edward B. Davis, Bell, Davis & Pitt, P.A., 227 W. Trade St., Suite 2160, Charlotte, NC 28202-1697, (704) 227-0400

Counsel for Defendant BNP Paribas (Suisse) SA: Nash E. Long, III and Valerie B. Mullican, Winston & Strawn, 214 N. Tryon St., Charlotte, NC 28202, (704) 350-7700

Counsel for Swift Aviation Group, Inc.: James P. Cooney, III, Debbie W. Harden, and Meredith J. McKee, Womble Carlyle Sandridge & Rice, P.L.L.C., One Wachovia Center, Suite 3500, 301 South College St., Charlotte, NC 28202-6037, (704) 331-4900

5. *Classic Coffee Concepts, Inc. v. Anderson*, 06 CVS 2941, 2006 NCBC LEXIS 24 (N.C. Super. Ct. December 1, 2006)

Plaintiff's Counsel: Eric H. Cottrell, Mayer, Brown, Rowe & Maw, L.L.P. 214 North Tryon St., Suite 3800, Charlotte, NC 28202, (704) 444-3500, and Daniel L. Tedrick, 4609 Charlestowne Manor Dr., Charlotte, NC 28211, (704) 641-1753

Defendant's Counsel: Marna M. Albanese and Allan W. Singer, McNair Law Firm, P.A., Two Wachovia Center, 301 South Tryon St., Suite 1615, Charlotte, NC 28282, (704) 347-1170

6. *Wake County v. Hotels.com, L.P.*, Master File 06 CVS 16256, 2007 NCBC LEXIS 35 (N.C. Super Ct. November 20, 2007)

Plaintiffs' Counsel: Kieran J. Shanahan, The Shanahan Law Group, 128 E. Hargett St., Suite 300, Raleigh, NC 27601, (919) 856-9494, Scott W. Jones and Steven R. Warren, Long, Parker, Warren & Jones, P.A., 14 South Pack Square, Suite 600, Asheville, NC 28801, (828) 258-2296, and Hugh R. Overholt and Gary J. Rickner, Ward & Smith, P.A., Wade II, Suite 400, 5430 Wade Park Blvd., (27607), P.O. Box 33009, Raleigh, NC 27636-3009, (919) 277-9100

Defendants' Counsel: Charles B. Neely, Jr., Nancy S. Rendleman, and Robert W. Shaw, Williams Mullen Maupin Taylor, P.A., Highwoods Tower One, 3200 Beechleaf Court, Suite 500, Raleigh, NC 27604, (919) 981-4000, Darrel J. Hieber, Skadden, Arps, Slate, Meagher & Flom, L.L.P. & Affiliates, 300 South Grand Ave., Suite 3400, Los Angeles, CA 90071, (213) 687-5220, and Karen L.

Valihura, Skadden, Arps, Slate, Meagher & Flom, L.L.P. & Affiliates, One  
Rodney Square P.O. Box 636, Wilmington, DE 19899, (302) 651-3140

7. *Battleground Veterinary Hospital, P.C. v. McGeough*, 05 CVS 18918, 2007  
NCBC LEXIS 33 (N.C. Super. Ct. Oct. 19, 2007)

Plaintiff's Counsel: Paul H. Derrick and Kimberly Doyle, Jackson Lewis, L.L.P.,  
1400 Crescent Green, Suite 320, Cary, NC 27518, (919) 854-0044

Defendant's Counsel: Jacqueline M. Druar, 125-5 North Main St., Mooresville,  
NC 28115, (704) 663-0772

8. *Green v. Short*, 06 CVS 22085, 2007 NCBC LEXIS 8 (N.C. Super. Ct. Mar. 9,  
2007)

Plaintiff's Counsel: Ted F. Mitchell and William E. Moore, Jr., Gray, Layton,  
Kersh, Solomon, Sigmon, Furr & Smith, P.A., 516 South New Hope Rd.  
P.O. Box 2636, Gastonia, NC 28053-2636, (704) 865-4400

Defendant's Counsel: J. Daniel Bishop, Bishop, Capitano & Moss, P.A., 4521  
Sharon Rd, Suite 350, Charlotte, NC 28211-3781, (704) 716-1200

9. *Piedmont Ventures Partners, L.P. v. Deloitte & Touche, L.P.P.*, 06 CVS 10418,  
2007 NCBC LEXIS 6 (N.C. Super. Ct. Mar. 5, 2007)

Plaintiffs' Counsel: Walker P. Badham, III and Brannon J. Buck, Badham &  
Buck, 420 20th St. N., Suite 2585, Birmingham, AL 35203, (205) 521-0036, Kurt  
F. Hausler and Gary W. Jackson, The Jackson Law Group, 521 East  
Blvd., Charlotte, NC 28203-5109, (704) 377-6690, Arcangela M. Mazzariello,  
P.O. Box 1574, Gastonia, NC 28053, (704) 864-8883

Defendants' Counsel: John S. Buford, Jim W. Phillips, Jr., and Jennifer K. Van  
Zant, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., P.O. Box 26000,  
Greensboro, NC 27420-6000, (336) 373-8850

10. *Media Network, Inc. v. Mullen Adver., Inc.*, 05 CVS 7255, 2007 NCBC LEXIS 1  
(N.C. Super. Ct. Jan. 19, 2007)

Plaintiff's Counsel: Jackson N. Steele and Erik M. Rosenwood, Hamilton Moon  
Stephens Steele & Martin, P.L.L.C., 201 South College St., Suite 2020,  
Charlotte, NC 28244, (704) 344-1117

Defendant's Counsel: James H. Kelly, W. Mark Conger, and Elliot A. Fus,  
Kilpatrick Stockton L.L.P., 1001 West Fourth St., Winston-Salem, NC 27101-  
2400, (336) 607-7300

- e. Provide a list of all cases in which certiorari was requested or granted.

None, to the best of my knowledge.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. *Blitz v. Agean, Inc.*, 05 CVS 441, 2007 NCBC LEXIS 21 (N.C. Super Ct. June 25, 2007), *aff'd in part, rev'd in part*, 677 S.E.2d 1 (N.C. Ct. App. 2009)

I denied Plaintiff's motion for class certification for claims arising under the Telephone Consumer Protection Act. The North Carolina Court of Appeals reversed, and Defendant has petitioned for discretionary review by the Supreme Court of North Carolina.

2. *Hospira, Inc. v. AlphaGary Corp.*, 05 CVS 6371, Mecklenburg County, *aff'd in part, rev'd in part*, 671 S.E.2d 7 (N.C. Ct. App. 2009)

I dismissed Plaintiff's claims for fraud, negligent misrepresentation, negligence, estoppel, third party beneficiary breach of contract, and violation of the North Carolina Unfair and Deceptive Trade Practices Act. The North Carolina Court of Appeals reversed only my decision on the negligence claim.

3. *State v. Morgan*, 05 CRS 225657, Mecklenburg County, *rev'd*, 189 N.C. App. 716, 660 S.E.2d 545 (2008)

I held that the Double Jeopardy Clause did not bar Defendant's prosecution where previous charges had been dismissed on grounds unrelated to factual guilt or innocence. The North Carolina Court of Appeals reversed.

4. *State v. Stone*, 02 CRS 245456 & 03 CRS 079221, Mecklenburg County, *rev'd* 179 N.C. App. 297, 634 S.E.2d 244 (2006), *aff'd* 362 N.C. 50, 653 S.E.2d 414 (2007)

I denied Defendant's motion to suppress a police officer's seizure of narcotics from Defendant's person, finding that the officer's brief look into Defendant's sweat-pants was within the scope of Defendant's general consent to a search of his person for drugs. The North Carolina Court of Appeals reversed, and the Supreme Court of North Carolina affirmed the Court of Appeals.

5. *State v. Gilbert*, 04 CRS 18296-97, 26161, 64133, 64779 Gaston County, *aff'd in part, rev'd in part*, 180 N.C. App. 476, 637 S.E.2d 307 (2006)

I entered separate judgments for convictions based on the taking and possession of the same items. The North Carolina Court of Appeals vacated one of the convictions.

6. *United States v. Reyes*, 2005 CCA LEXIS 132, (N-M.C.C.A. Apr. 29, 2005), *aff'd in part, rev'd in part*, 63 M.J. 265 (C.A.A.F. 2006)

On appeal, I determined that the military judge committed errors that were plain and obvious but not prejudicial. The United States Court of Appeals for the Armed Forces reversed with respect to prejudice.

7. *North Carolina Department of Transportation v. Haywood County*, 01 CVS 78, Haywood County, *rev'd* 167 N.C. App. 55, 604 S.E.2d 338 (2004), *rev'd*, 360 N.C. 349, 626 S.E.2d 645 (2006)

I granted the State's motion for a directed verdict as to Defendant's expert testimony. The North Carolina Court of Appeals reversed, but the Supreme Court of North Carolina reversed the Court of Appeals and affirmed my ruling.

8. *MMR Holdings, L.L.C. v. City of Charlotte*, 04 CVS 919, Mecklenburg County, *rev'd*, 174 N.C. App. 540, 621 S.E.2d 210 (2005)

I affirmed a municipal zoning board decision. The North Carolina Court of Appeals reversed.

9. *Nolan v. Village of Marvin*, 03 CVS 01701, Union County, *aff'd* 172 N.C. App. 84, 615 S.E.2d 898, *rev'd*, 360 N.C. 256, 624 S.E.2d 305 (2006)

I affirmed the involuntary annexation of Petitioner's property by Respondent. The North Carolina Court of Appeals affirmed, but the Supreme Court of North Carolina reversed.

10. *State v. Price*, 02 CRS 61580, 15483, 61581, 65019, 03 CRS 9087, 050310, Buncombe County, *aff'd in part, rev'd in part*, 170 N.C. App. 672, 613 S.E.2d 60 (2005)

I entered judgment following a jury's conviction of Defendant on multiple counts. The North Carolina Court of Appeals vacated certain of the convictions on the ground that the indictments were inadequate.

11. *Transland Financial Services, Inc. v. Pompeii*, 02 CVS 15910, Mecklenburg County, *rev'd*, 2005 N.C. App. LEXIS 841 (N.C. Ct. App. Apr. 19, 2005)

I granted Plaintiff's motion for summary judgment as to Defendant's counterclaim alleging negligent supervision. The North Carolina Court of Appeals reversed.

12. *Gallis v. M&R Investors*, 01 SP-3391, 02 SP-1197, Mecklenburg County, *rev'd*, 2004 N.C. App. LEXIS 2325 (N.C. Ct. App. Dec. 21, 2004)

I granted Petitioner's motion for summary judgment regarding ownership of surplus funds following a foreclosure sale. The North Carolina Court of Appeals reversed.

13. *Odom v. Lane*, 01 CVS 7283, Mecklenburg County, *rev'd*, 161 N.C. App. 534, 588 S.E.2d 548 (2003)

I granted summary judgment in favor of Defendants, finding that they were entitled to governmental immunity. The North Carolina Court of Appeals reversed.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have issued hundreds of unpublished orders during my tenure as a state trial judge. These orders are filed in the paper case files, but are not otherwise retrievable via conventional electronic databases.

Since my appointment to the North Carolina Business Court, I have authored over fifty unpublished opinions in business court cases, all of which may be retrieved via the Court's website, LEXIS or Westlaw.

During my tenure as a reserve military appellate judge, I authored 13 opinions (two published) all of which are retrievable via LEXIS or Westlaw.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
1. *United States v. Orellana*, 62 M.J. 595 (N-Mil. Ct. Crim. App. 2005), *pet. rev. denied*, 63 M.J. 295 (C.A.A.F. May 26, 2006)

Appellant pled guilty at a general court-martial to a number of offenses, including adultery. He appealed, contending that the criminalization of adultery was unconstitutional under *Lawrence v. Texas*, 539 U.S. 558 (2003).

Appellant engaged in a sexual relationship with an adult female in his quarters on occasions when his wife and children were away. He also had sexual intercourse at his quarters with a minor female who was a friend of the female adult and invited another Marine to engage in sex with the females.

I held that *Lawrence* did not extend to the misconduct charged in this case, because (1) appellant's conduct went far beyond a private consensual encounter with another adult, and (2) the military had a legitimate interest in proscribing misconduct that was prejudicial to good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces. The U.S. Court of Appeals for the Armed Forces declined to grant further review of my decision.

2. *State v. Sings*, 02 CRS 200244, Mecklenburg County, *aff'd*, 182 N.C. App. 162, 641 S.E.2d 370 (2007) (no trial court opinion available). Defendant was charged with capital murder, but he pled no contest to voluntary manslaughter pursuant to a plea agreement. I presided over Defendant's sentencing hearing and, over his objection, admitted hearsay testimony that Defendant offered a witness a bribe to suppress the witness's testimony. The North Carolina Court of Appeals affirmed, holding that because the Rules of Evidence do not apply in sentencing, the admitted evidence did not violate the Confrontation Clauses of the federal and state constitutions.
3. *Robbins v. Ingham*, 04 CVS 17626, Mecklenburg County, *aff'd*, 635 S.E.2d 610 (N.C. Ct. App. 2006); *Rodgers v. Ingham*, 04 CVS 15629, Mecklenburg County, *aff'd*, 2006 N.C. App. LEXIS 2114 (N.C. Ct. App. Oct. 17, 2006)

In these companion cases, I granted the individual Defendants' motions to dismiss for lack of personal jurisdiction, holding that (1) Plaintiffs failed to show any activity by Defendants that would satisfy the requirements of North Carolina's long-arm statute, and (2) Defendants did not have the required minimum contacts to support personal jurisdiction consistent with due process. The North Carolina Court of Appeals affirmed on both points.

4. *State v. Byers*, 01 CRS 51748, 51749, Mecklenburg County, *aff'd*, 175 N.C. App. 280, 623 S.E.2d 357 (2006) (no trial opinion available)

A jury convicted Defendant of first-degree murder. At trial, Defendant objected to the introduction of certain out of court statements, contending that such evidence violated the Confrontation Clause and the dictates of *Crawford v. Washington*, 541 U.S. 36 (2004). I overruled Defendant's objections, and the North Carolina Court of Appeals affirmed, holding that the evidence was properly admitted for purposes other than for the truth of the matters asserted and thus did not violate Defendant's right of confrontation.

5. *State v. Stanley*, 03 CRS 260027, Mecklenburg County, *aff'd*, 175 N.C. App. 171, 622 S.E.2d 680 (2005)

Police received a tip from a confidential informant (who, over the course of 14 years, had provided the police with information leading to over 100 arrests and numerous convictions) that an individual was selling drugs outside a local convenience store. A police officer approached Defendant, who was in the area and fit the description provided by the informant. Defendant initially gave the officer consent to search, but subsequently resisted. Defendant was then arrested, and a search uncovered crack cocaine. I denied Defendant's motion to suppress, concluding that the informant's description to the police of the individual selling drugs was sufficient to constitute probable cause for the officer to arrest and search Defendant. The North Carolina Court of Appeals affirmed, holding that defendant's arrest and subsequent search were permissible under the state and federal constitutions.

6. *City of Concord v. Stafford*, 01 CVS 02632, Cabarrus County, *aff'd*, 173 N.C. App. 201, 618 S.E.2d 276 (2005)

The City commenced a condemnation proceeding, seeking rights of way for a road widening project. Defendant owners contended that the City was improperly exercising its police powers for aesthetic rather than public safety reasons. Defendants also presented an appraisal showing the corresponding reduction in value of their remaining property to be almost \$104,000.00, the majority of which was attributable to the restriction of access to lanes in only one direction of travel because of the median built by the City. The City, however, contended that Defendants were only entitled to approximately \$12,000.00 for the taking. I granted partial summary judgment for the City and denied Defendants' claim to recover for the alleged reduction in property value.

The North Carolina Court of Appeals affirmed, holding that the City was properly exercising its police power because the proposed median was intended to promote public safety and the means used to accomplish the City's purpose were reasonable. As a result, Defendants were not entitled to recover for the alleged reduction in value of the remaining property.

7. *State v. Blount*, 03 CRS 55881-55882, Union County (N.C. Super Ct. Oct. 12, 2005)

In this capital murder case, I denied Defendant's motion seeking a change of venue, concluding that: (1) the print media coverage of the case was largely factual, informative, and non-inflammatory; and (2) given the limited circulation of the print media carrying the articles, Defendant failed to show that prospective jurors would be tainted by the media coverage.



8. *Mascaro v. Mountaineer Land Group*, 06 CVS 3016, Mecklenburg County (N.C. Super. Ct. Oct. 17, 2006)

I denied a third-party defendant's motion to dismiss for lack of personal jurisdiction, finding that North Carolina's long-arm statute supported the exercise of jurisdiction, and that the third-party defendant had sufficient minimum contacts with North Carolina to satisfy any due process concerns.

9. *Vandiver v. Town of Huntersville*, 01 CVS 9801, Mecklenburg County (N.C. Super. Ct. Jun. 10, 2002)

I granted Defendants' cross-motion for summary judgment in a zoning ordinance case, concluding that the Defendant Board of Commissioners did not violate Plaintiffs' due process rights in approving a rezoning petition filed by a third party.

10. *State v. Price*, 02 CRS 61580, 65019, 50310, 61581, 15483, 03 CRS 9087 Buncombe County (N.C. Super. Ct. Oct. 28, 2003)

Defendant was charged with several counts of breaking into city parking meters. I granted Defendant's motion to suppress evidence seized from his person after concluding that the police did not have a sufficient reason to frisk him.

11. *State v. McIlwaine*, 01 CRS 47549, 47550, 47551, Mecklenburg County (N.C. Super. Ct. Feb. 19, 2003)

Defendant was charged with several drug offenses. Police seized the drugs that formed the basis for the charges during a traffic stop, after Defendant gave consent to search. At trial, Defendant denied that he had given consent and moved to dismiss the charges because of the State's failure to preserve the police cruiser videotape that Defendant claimed would corroborate his version of the events.

I denied the motion to dismiss, holding that the destroyed videotape did not contain "materially exculpatory" evidence or even potentially useful evidence and that there was no bad faith or willful intent on the part of the police.

12. *State v. Blanton*, 05 CRS 213467, Mecklenburg County (N.C. Super. Ct. Aug. 14, 2006)

Defendant was charged with possession of cocaine. I granted Defendant's motion to suppress a crack cocaine rock seized during a search of his person. I held that, while the police lawfully initiated an investigative stop of Defendant's car, the officers lacked probable cause to search Defendant.

13. *State v. Grimm*, 01 CRS 015312-14, 015318-20, Mecklenburg County (N.C. Super. Ct. May 17, 2002)

Defendant moved to dismiss the drug trafficking charges against him, contending that the State's attempt to prosecute him following the assessment of a controlled substance tax on the drugs seized by the police (which Defendant paid) violated the Double Jeopardy Clause.

I denied Defendant's motion, concluding that the relevant tax statute did not have such fundamentally punitive characteristics as to run afoul of the Double Jeopardy Clause.

14. *State v. Covington*, 05 CRS 232844, 232845, 232847, Mecklenburg County (N.C. Super. Ct. Aug. 15, 2006)

Police seized marijuana from Defendant after he was stopped at a license and registration checkpoint. I granted Defendant's motion to suppress the evidence (as well as statements Defendant made to the officers at the checkpoint), holding that the State had failed to show that the checkpoint had been established for a proper programmatic purpose.

15. *State v. Staley*, 01 CRS 143571-74, Mecklenburg County (N.C. Super. Ct. Feb. 26, 2003).

Defendant moved to suppress an undercover police officer's pre-trial and in-court identifications of Defendant as the perpetrator of the charged drug offenses. Although the single photo array shown to the undercover officer was unnecessarily suggestive, I held that the totality of the relevant circumstances nevertheless favored admission of the officer's pretrial identification and that the officer's in-court identification was of independent origin and was not tainted by the pre-trial identification procedure.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

In assessing the necessity or propriety of recusal, I have adhered to the North Carolina Code of Judicial Conduct, and in particular Canon 3C of the Code.

During my first four years on the bench, I recused myself from any cases involving my former law firm or clients of the firm with whom I dealt. Additionally, I have recused myself from cases involving my wife's employer, although I have heard such cases where the parties waived any potential disqualification. While I served as a member of the board of my local homeowners association, I recused myself from cases involving the law firm that represented the association.

*In Ehrenhaus v. Baker*, 08 CVS 22632 (pending in Mecklenburg County), I disclosed that a putative class member objecting to a proposed settlement had supported my appointment to the bench and had contributed to my 2002 campaign for judicial office. I did not believe it necessary for me to recuse myself on these facts, and no party requested that I do so.

I recall at least one personal injury case where I disclosed that I carried automobile and homeowner's insurance with the insurance carrier funding the defense. I did not believe it necessary for me to recuse myself on these facts, and no party requested that I do so.

*In J. Freeman Floor Company, LLC v. Freeman*, 08 CVS 691 and 08 CVS 1120 (both pending in Henderson County), Plaintiffs requested that I recuse myself based on my former law firm's having represented the company for which the Defendant's attorney had previously served as general counsel. I declined to recuse myself because, to the best of my knowledge and recollection, I had no involvement in my former firm's representation of that company.

I recused myself *sua sponte* in *City of Charlotte v. Hurlahe*, 02 CVS 22903 (Mecklenburg County), based on my having acted *ex parte* to schedule a hearing on shortened notice, as authorized by the North Carolina Rules of Civil Procedure, after the Plaintiff requested an *ex parte* order extending the time to serve a proposed record

on appeal. Although I believed there was absolutely no basis for recusal, I elected to recuse myself as authorized by the North Carolina Code of Judicial Conduct.

**15. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office other than judicial office.

On November 21, 2001, I was appointed to the Superior Court bench in Mecklenburg County, North Carolina. I took the oath of office as a judge on December 17, 2001. I lost my bid to retain the seat in the November 2002 election, but was subsequently reappointed to the bench by the Governor.

In or around November 2003, I applied for appointment as a U.S. Magistrate Judge for the Western District of North Carolina. I was one of five finalists interviewed for the seat, but did not receive the appointment.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held a membership or office in any political party or election committee. I was a candidate for judicial office from December 2001 to November 2002 in Mecklenburg County, North Carolina, when I ran to retain my seat as a resident superior court judge.

**16. Legal Career: Answer each part separately.**

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1988 – 1991

United States Marine Corps  
Legal Services Support Section  
2d Force Service Support Group  
59 Molly Pitcher Rd.

Camp Lejeune, NC 28542

Prosecutor (November 1988 – December 1989), Defense Counsel  
(January 1990 – January 1991) & Chief Review Officer (February 1991 –  
July 1991)

1991 – 2006

Office of the Judge Advocate General of the Navy  
Washington Navy Yard  
716 Sicard St., Suite 1000  
Washington, DC 20374-5047

Appellate Government Counsel (1991 – 1995)

Reserve Appellate Defense Counsel (1995 – 2000)

Reserve Appellate Military Judge (2005 – 2006)

1995 – 2001

Hunton & Williams, L.L.P.  
101 S. Tryon St., Suite 3500

Bank of America Plaza

Charlotte, NC 28280

Associate (2000 – 2001)

Associate, Raleigh, NC office (1995 – 2000)

2000 – 2005

U.S. Navy-Marine Corps Trial Judiciary

Piedmont Judicial Circuit

67 Virginia Dare Dr., Suite 145

Camp Lejeune, NC 28542

Reserve Military Judge

2001 – Present

North Carolina Business Court

832 East Fourth St., Suite 9600

Charlotte, NC 28202

Resident Superior Court Judge (2001 – 2002)

Special Superior Court Judge (2003 – 2005)

Special Superior Court Judge for Complex Business Cases (2005 –  
Present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1988 – 1995, I served on active duty as a Marine lawyer. I first served at Camp Lejeune, North Carolina from 1988 – 1991. There, I prosecuted cases and defended clients in over 80 felony and misdemeanor cases (including 15 contested cases), and later served as the legal section's chief review officer, where I supervised three attorneys and 10 support staff in the post-trial processing of a daily docket of over 100 criminal cases.

From 1991 – 1995, I served as an appellate government counsel in the Office of the Judge Advocate General of the Navy. In that role, I represented the United States in over 200 criminal appeals and personally argued 18 cases before the U.S. Court of Appeals for the Armed Forces and the U.S. Navy-Marine Corps Court of Criminal Appeals. I also worked with the Solicitor General to prepare responses to certiorari petitions filed in the U.S. Supreme Court by convicted service members, and served as lead military counsel in a case before the Supreme Court questioning whether the method of appointing military judges and the lack of a fixed term of office for those judges violated the U.S. Constitution.

From 1995 until December 14, 2001, I was a trial lawyer for Hunton & Williams, L.L.P., one of the largest law firms in the country. I represented corporate clients in a wide variety of matters before federal and state courts, regulatory agencies, arbitration panels, and other alternative dispute forums.

After leaving active military duty in 1995, I served as a reserve appellate defense counsel for five years, representing over 200 clients in criminal cases before the military appellate courts.

Since December 17, 2001, I have served as a judge of the North Carolina Superior Court, which has included service as a Business Court Judge from August 2005 to the present.

From May 2000 to March 2005, I served as a military trial judge. My final duty assignment in the military before my retirement in October 2006 was as a Judge of the U.S. Navy-Marine Corps Court of Criminal Appeals.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As a Marine lawyer, I represented the United States as well as individual Marines and Sailors in criminal proceedings, with the bulk of that practice concentrated on appellate work.

From 1995 until I was sworn in as a Superior Court Judge on December 17, 2001, I was a trial lawyer for one of the largest law firms in the country. I represented a variety of corporate clients in matters before federal and state courts, regulatory agencies, arbitration panels, and other alternative dispute forums.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Virtually my entire practice has been devoted to litigation, either trial or appellate. During my service as a Marine lawyer, I appeared frequently in the military trial and appellate courts. As a lawyer at Hunton & Williams, I appeared in court much less frequently.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 10%
- 2. state courts of record: 10%
- 3. other courts: 75% (military courts)
- 4. administrative agencies: 5%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 25%
- 2. criminal proceedings: 75%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 17 cases to verdict, 15 as sole counsel, one as chief counsel, and another as associate counsel. Eleven of these cases were jury trials. In addition, I tried four cases to verdict before arbitration panels, one as sole counsel, and three others as co-counsel.

- i. What percentage of these trials were:
  1. jury: approximately 52%
  2. non-jury: approximately 48%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

While serving as an appellate government counsel in Washington, D.C., I assisted the Solicitor General in preparing responses to certiorari petitions filed in the Supreme Court by convicted service members. In 1993, I worked with Solicitor General Drew S. Days, III, and other lawyers in his office to draft the Government's brief and prepare General Days for oral argument before the Supreme Court in a case addressing whether the method of appointing military judges violated the Appointments Clause of the Constitution, and whether the lack of a fixed term of office for military judges violated the Fifth Amendment's Due Process Clause. On January 19, 1994, the Court issued its opinion in *Weiss v. United States*, 510 U.S. 163 (1994), ruling unanimously in favor of the Government on the disputed issues.

*Mitchell v. United States*, 513 U.S. 874 (1994)

*Weiss v. United States*, 510 U.S. 163 (1994)

*Figueroa v. United States*, 507 U.S. 910 (1993)

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.



1. *Weiss v. United States*, 510 U.S. 163 (1994) (Before Chief Justice Rehnquist, and Associate Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Blackmun)

Petitioners Weiss and Hernandez challenged their court-martial convictions alleging that (1) the method of appointing the military judges who heard their cases violated the Appointments Clause of the Constitution, and (2) the lack of a fixed term of office for military judges violated the Fifth Amendment's Due Process Clause. On January 19, 1994, the Supreme Court ruled unanimously in favor of the Government on the disputed issues.

I was lead military counsel for the United States. In that role, I prepared the first draft of the brief in opposition and helped to prepare the Solicitor General for oral argument.

Co-counsel: Drew S. Days, III, Solicitor General, now on the faculty of the Yale Law School, P.O. Box 208215, New Haven, CT 06520, John C. Keeney, then Acting Assistant Attorney General (no contact information available); William C. Bryson (then in the solicitor general's office), now a Judge on the United States Circuit Court for the Federal Circuit, Paul J. Larkin, Jr. (then in the Solicitor General's office), now Assistant General Counsel, Verizon Communications, 1515 North Court House Rd., Arlington, VA 22201, (703) 251-3900, Thomas E. Booth, an attorney at the Department of Justice, Robert F. Kennedy Building, Washington, DC 20530, (202) 514-5201; and Brigadier General Theodore G. Hess, USMC (Ret.), 804 Colorado Ave., Suite 200, Glenwood Springs, CO 81601, (970) 949-1144

Opposing counsel: Alan B. Morrison, The George Washington University Law School, 2000 H St., N.W. Washington, DC 20052, (202) 994-7120, Philip D. Cave, 1318 Princess St., Suite 200, Alexandria, VA 22314, (703) 298-9562, Col. Dwight H. Sullivan, USMCR, U.S. Air Force Appellate Defense Division, 112 Luke Ave., Bolling AFB, Washington, DC 20032-8000 (no phone number available), Eugene R. Fidell, Feldesman, Tucker, Leifer & Fidell, L.L.P., 2001 L St., NW, Second Floor, Washington, DC 20036, (202) 466-8960, and Ronald W. Meister (no contact information available)

2. *Mitchell v. United States*, 513 U.S. 874 (1994) (Before Chief Justice Rehnquist, and Associate Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer).

Petitioner in this case contended that the role of the Judge Advocate General in preparing fitness reports for military officers who serve as judges on the military courts of criminal appeals undermined their independence and violated due process. I was lead military counsel for the United States and assisted in preparing the brief in opposition to the petition for certiorari.

On October 3, 1994, the Supreme Court denied the petition for certiorari.

Co-counsel: Drew S. Days, III, Solicitor General, now on the faculty of the Yale Law School, P.O. Box 208215, New Haven, CT 06520; and Brigadier General Joseph Composto, USMC (Ret.), now serving as Director of Security and Installation Operations Directorate of the National Geospatial-Intelligence Agency, NGA Office of Corporate Communications, Public Affairs Division, MS D-54, 4600 Sangamore Rd., Bethesda, MD 20816-5003, (703) 755-5900 and (800) 777-6104

Opposing counsel: Lieutenant Alice B. Lustre, JAGC, USN (no contact information available)

3. *United States v. Curtis*, 44 M.J. 106 (C.A.A.F. 1996) (Before Chief Judge Cox, and Judges Crawford, Wiss, Sullivan, and Gierke)

I was co-counsel for the United States in this death penalty case. I assisted in drafting the Government's brief on appeal before the U.S. Court of Appeals for the Armed Forces ("CAAF") and helped to prepare lead counsel for oral argument.

Appellant raised 76 assignments of error. The CAAF concluded that appellant received a fair trial free from any prejudicial errors affecting his substantial rights, and affirmed his conviction and death sentence. A year later, however, the CAAF granted appellant's petition for reconsideration and set aside the sentence of death.

Co-counsel: Commander Stephen A. Stallings, JAGC, USN (Ret.), 214 W. Texas Ave., Suite 600, Midland, TX, 79701 (432) 638-8170, Brigadier General Theodore G. Hess, USMC (Ret.), 804 Colorado Ave., Suite 200, Glenwood Springs, CO 81601, (970) 949-1144; and Lieutenant Brian B. Rippel, JAGC, USNR, 810 Vermont Ave. NW, Mail Code 027, Washington, DC 20420, (202) 639-4854

Opposing counsel: Commander Mary T. Hall, JAGC, USN (Ret.), P.O. Box 637, Hollywood, MD 20636, (301) 373-8601; Lieutenant William M. Schrier, JAGC, USNR (no contact information available), and Lieutenant David P. Sheldon, JAGC, USNR, Law Offices of David P. Sheldon, P.L.L.C., Barracks Row, 512 8th St., SE Washington, DC 20003, (202) 546-9575

4. *United States v. Thomas*, 43 M.J. 550 (N-Mil. Ct. Crim. App. 1995) (Before Chief Judge David C. Larson, and Judges W.A. DeCicco, Edwin W. Welch, T.D. Keating, E.D. Clark, James E. Orr, Albert A. Reed, and R.M. Mollison)

I was lead counsel for the United States in this death penalty case. I supervised the drafting of the Government's brief on appeal before the U.S. Navy-Marine Corps Court of Criminal Appeals and argued the case before the Court *en banc*.

The appellant raised 89 issues on appeal. The Court of Criminal Appeals affirmed. On further appeal, the U.S. Court of Appeals for the Armed Forces affirmed the appellant's

conviction but set aside the sentence of death. *United States v. Thomas*, 46 M.J. 311 (C.A.A.F. 1997).

Co-counsel: Lieutenant Commander Lyle H. Bowen, JAGC, USN (Ret.), no contact information available; Lieutenant Jack R. Livingston, Jr., JAGC, USN, 4914 Tarheel Way, Annandale, VA 22003, (703) 425-4418, Colonel Daren K. Margolin, USMC, Depot Law Center (BLDG 293), Marine Corps Recruit Depot, Unit 18001, Parris Island, SC 29905-8001, (843) 228-2790/2558, Major Michael K. Lambert, USMCR (no contact information available).

Opposing counsel: Major David S. Jonas, USMC, now General Counsel, National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, D.C. 20585, (202) 586-5000, and Lieutenant Philip L. Sundel, JAGC, USNR, now Deputy Legal Advisor in the Washington Regional Delegation of the International Committee of the Red Cross, Suite 500, 1100 Connecticut Ave., NW, Washington, DC 20036, (202) 587-4600

5. *United States v. Kossman*, 38 M.J. 258 (C.M.A. 1993) (Before Chief Judge Sullivan, and Judges Cox, Crawford, Gierke, and Wiss)

Appellant moved to dismiss certain charges for lack of speedy trial. The military judge granted the motion, and the Government appealed. The U.S. Navy-Marine Corps Court of Military Review affirmed. The Government then appealed to the U.S. Court of Military Appeals (now known as the Court of Appeals for the Armed Forces).

That Court reversed, and in doing so established a new standard for determining when charges may be dismissed for violating a military accused's right to a speedy trial.

I was lead counsel for the United States in the appeal before the lower military appellate court and the U.S. Court of Military Appeals. I prepared the government's briefs and delivered the arguments before both courts.

Co-counsel: Commander Stephen A. Stallings, JAGC, USN (Ret.), 214 W. Texas Ave., Suite 600, Midland, TX, (432) 638-8170, Brigadier General Theodore G. Hess, USMC (Ret.), 804 Colorado Ave., Suite 200, Glenwood Springs, CO 81601, (970) 949-1144

Opposing counsel: Lieutenant Michael C. Pallesen, JAGC, USNR (no contact information available)

6. *United States v. Gonzalez*, 39 M.J. 459 (C.M.A. 1994) (Before Chief Judge Sullivan, and Judges Crawford, Cox, Gierke, and Wiss)

Appellant was convicted of the premeditated murder of his wife, who was found dead in Rota, Spain. At trial, Appellant requested the appointment of an independent investigator

to explore defense theories and interview witnesses. The trial judge appointed a Spanish language interpreter for the defense team, but otherwise denied the motion.

The U.S. Navy-Marine Corps Court of Criminal Appeals affirmed. Appellant then appealed to the U.S. Court of Military Appeals, contending that the military trial judge erred in refusing to provide an independent investigator.

I was lead counsel for the United States before the U.S. Court of Military Appeals. I prepared the response brief and argued the cause before the CMA. That Court affirmed.

Co-counsel: Commander Stephen A. Stallings, JAGC, USN (Ret.), 214 W Texas Ave., Suite 600, Midland, TX, 79701, (432) 638-8170, Brigadier General Theodore G. Hess, USMC (Ret.), 804 Colorado Ave., Suite 200, Glenwood Springs, CO 81601, (970) 949-1144, and Major Laura L. Scudder, USMC (Ret.), 61 Eagle Trail, Fairfield, PA 17320, (717) 642-8680.

Opposing counsel: Lieutenant Phillip L. Sundel, JAGC, USNR, now Deputy Legal Advisor in the Washington Regional Delegation of the International Committee of the Red Cross, Suite 500, 1100 Connecticut Ave., NW, Washington, DC 20036, (202) 587-4600, and LT. Ruth G. Finn, JAGC, USNR (no contact information available)

7. *Fisher v. American General Finance, Co.*, CA 00-350-2 (S.D.W.Va.) (Before Judge Elizabeth V. Hallanan), *rev'd in part, vacated in part*, 52 F. App'x. 601 (4th Cir. 2002) (Before Judges Wilkins, Magill, and Hudson).

I was lead counsel for Defendants at trial. Plaintiffs sued Defendants for bad faith, fraud, violations of the Truth in Lending Act and violations of related West Virginia consumer protection statutes. A jury found for Plaintiffs, and awarded damages, civil penalties, and attorney fees.

On appeal, the Fourth Circuit held that: (1) the trial court erred in admitting (over my objection) testimony about Defendants' general practice of falsifying loan applications because the alleged prior bad acts were dissimilar to the acts giving rise to the suit; (2) the trial court erred in denying Defendants' motion for judgment as a matter of law on the claim alleging bad faith; and (3) Plaintiffs' evidence of emotional distress was insufficient to justify a damages award on the state law claims.

The Court reversed the denial of judgment as a matter of law on the bad faith claim, vacated the balance of the judgment in favor of Plaintiffs, and remanded for further proceedings.

Co-counsel: Carrie Goodwin Fenwick, Goodwin & Goodwin, L.L.P., 300 Summers St., Suite 1500, Charleston, WV 25301, (304) 346-7000

Opposing counsel: Daniel F. Hedges and Bren Joseph Pomponio, Mountain State Justice, Inc., 1031 Quarrier St., Suite 200, Charleston, WV 25301, (304) 344-3144

8. *United States v. Diaz*, NMCM 92 00955, 1995 CCA LEXIS 428 (N-Mil. Ct. Crim. App. June 19, 1995) (Before Judges James E. Orr, Albert A. Reed, and W.A. DeCicco)

Appellant was convicted of carnal knowledge. At issue on appeal was whether the military judge erred in admitting the results of DNA testing tying appellant to the crime, an issue of first impression in the Naval service.

I was lead counsel for the United States. I prepared the response brief and delivered the oral argument before the U.S. Navy-Marine Court of Criminal Appeals. The Court declined to address the evidentiary issue relating to the admission of the DNA evidence, concluding that, even if the military judge did err, any such error was harmless in light of the other overwhelming evidence pointing to appellant's guilt.

Co-counsel: None

Opposing counsel: Lieutenant William M. Schrier, JAGC, USNR (No contact information available)

9. *Jonas B. Crooke Interests, Inc. v. CTL En'g, Inc.*, CA-96-494-3 (E.D.Va.) (Before Judge James R. Spencer), *aff'd in part, rev'd in part*, 1999 U.S. App. LEXIS 5742 (4th. Cir. Mar. 29, 1999) (Before Judges Widener, Wilkins, and G. Ross Anderson, Jr.)

I was co-counsel for Plaintiff at trial and on appeal. At trial in the U.S. District Court for the Eastern District of Virginia, I conducted direct and cross-examination of witnesses. I also prepared the initial draft of the brief on appeal.

Plaintiff sued Defendant for claims arising out of negligent performance of an environmental site assessment. Plaintiff sought to recover the sums it expended on the construction project as well as the economic loss flowing from the Defendant's negligence. The jury verdict was limited to the sum Plaintiff expended on the project.

On appeal, the Fourth Circuit ruled that Plaintiff could recover its damages for economic loss. The Court remanded the case for a new trial on damages.

Co-counsel: Cheryl G. Ragsdale, Hunton & Williams, L.L.P., Riverfront Plaza, East Tower, 951 East Byrd St., Richmond, VA 23219, (804) 788-8601

Opposing counsel: Murray H. Wright and David E. Boelzner, Wright, Robinson, Osthimer & Tatum, 411 East Franklin St., Richmond, VA 23219, (804) 783-1104

10. *United States v. Isham*, 48 M.J. 603 (N-Mil. Ct. Crim. App. 1998) (Before Senior Judge William J. Lucas, and Judges John T. Oliver, and R.B. Leo)

I represented appellant on appeal. Appellant was convicted of communicating threats, based in part on testimony presented by a chaplain. The U.S. Navy-Marine Corps Court of Criminal Appeals reversed appellant's conviction and sentence and dismissed the charge with prejudice, accepting my argument that statements appellant made to the chaplain regarding his struggle with stress and depression and his plans to shoot others and then kill himself with his weapon while on the rifle range were privileged as confidential communications to a clergyman.

Co-counsel: Lieutenant Robert Attanasio, JAGC, USNR (No contact information available)

Opposing counsel: Lieutenant Russell J.E. Verby, JAGC, USNR, and Lieutenant Commander Paul Jones, JAGC, USNR (No contact information available)

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

During my tenure with Hunton & Williams, L.L.P., from August 1995 to December 2001, I engaged in a general commercial litigation practice, handling client matters in a myriad of subject areas, including construction law, bankruptcy, environmental law, international commercial law, labor law, professional malpractice, insurance law, copyright and trademark law, banking law, energy and telecommunications law, trust and estates, and tax law.

Despite my heavy workload with the firm, I devoted hundreds of hours to pro bono work, taking on the post-conviction representation of a North Carolina death row inmate, representing a federal criminal defendant in his direct appeal to the Fourth Circuit and subsequent parole hearing, staffing a pro bono legal clinic at the Mecklenburg County Shelter for Battered Women, and assisting an individual in recovering unpaid wages. For my efforts, I twice received the E. Randolph Williams Award, given annually by my former law firm for outstanding pro bono service.

From December 1997 to March 1998, I supervised the collection, review and production of documents in a federal class action suit brought against Colonial Pipeline Company for claims arising from a pipeline oil spill. This was one of a number of complex business cases where I managed all or part of the document discovery process, including the preparation of document databases.

In 1998, I also assisted in the defense of Philip Morris, USA, and other tobacco companies in cases brought by the states' attorneys general to recover funds spent by the states for the medical care and treatment of smokers. I conducted document review and prepared legal memoranda on issues related to the litigation.

I served as lead and/or co-counsel in proceedings before a number of North Carolina administrative agencies, including the North Carolina Utilities Commission, the North Carolina Real Estate Commission, the North Carolina Department of Insurance, and the North Carolina Property Tax Commission. I was also co-counsel in three arbitration proceedings, and lead counsel in a separate arbitration hearing.

In 1998, I served as a panel member charged with evaluating and screening candidates for appointment as federal administrative law judges.

As a Marine reserve appellate defense counsel, I assisted my active duty colleagues in researching issues related to potential attorney conflicts of interest in a death penalty appeal. For my work as an appellate defense counsel, I received the Reserve Navy Judge Advocate General's "Award of Excellence" for outstanding meritorious service.

From September 4, 2001 to approximately March 17, 2004, I served on the North Carolina State Judicial Council, a body tasked with studying and monitoring the operations of the court system, and identifying areas for improvement.

I served as a Vice-President of the North Carolina Bar Association from June 2007 to June 2008, and currently serve on the Board of Directors for the Mecklenburg County Bar.

In March 2007, I was appointed as one of three Business Court representatives to the Business Law section of the American Bar Association. In that role, I attended the annual spring and summer meetings of the Business Law section. I also appeared regularly on continuing legal education panels sponsored by the section and participated in committee proceedings.

Since 2005, I have been a member of the Education Committee for the North Carolina Conference of Superior Court Judges. The committee develops continuing judicial education programs for the Superior Court Bench. I am a frequent instructor at the conferences, and I also teach at the annual orientation program for new Superior Court Judges.

In the summer of 2007, I hosted an LLM student from Saudi Arabia, as part of Wake Forest University's School of Law Judicial Observation Program for International Law Students, Lawyers, and Judges. The program, which is sponsored by the Federal U.S. Judicial Conference Committee on International Judicial Relations, gives international law students an opportunity to gain an understanding of our civil and criminal justice system.

In January 2009, I (along with several judicial colleagues) hosted a delegation of trial judges from South Korea. I also recall participating in a similar event for a delegation of judges from Russia, but I cannot recall the specific date.

In addition to my regular duties as a Business Court judge, I have volunteered to preside over a wide variety of our district's miscellaneous dockets, including juror show cause hearings, vehicle forfeiture proceedings, sex offender registration hearings, and drug treatment court proceedings.

I have never performed lobbying activities for any client or organization.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Commercial Law, Paralegal Program, Central Piedmont Community College, Charlotte, NC (September 2006-Present)

Litigation, Paralegal Program, University of North Carolina, Charlotte (September 2007-Present)

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Military Pension at age 60 (approximately \$51,000/year)

North Carolina Judicial Pension: I am eligible to receive a reduced retirement benefit at age 50 of approximately \$20,400/year. Alternatively, I am entitled to a full retirement benefit of approximately \$37,080/year at age 65. I am also entitled to free individual medical insurance coverage from the state of North Carolina upon retirement.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If my judicial workload permits, I plan to continue teaching. In addition, I also would like to continue serving as a member of the Contract Law Drafting Committee of the



National Conference of Bar Examiners, if not otherwise inconsistent with the Code of Judicial Conduct for United States Judges.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any such conflicts.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would resolve any potential conflicts consistent with federal law and the requirements of the Code of Conduct for United States Judges.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have mentored public school and first-year law students, and have been a frequent speaker at high school and college law career conferences for minority students. As a member of the North Carolina Bar Association's Minorities in the Profession Committee, I have tutored minority law students preparing for the North Carolina bar examination and helped to develop a minority clerkship program.

I devoted hundreds of hours to pro bono work while in private practice, and was twice honored by my former firm for providing outstanding pro bono service.

As a member of the North Carolina Bar Association's Hispanic/Latino Lawyers Committee, I helped to create a directory of North Carolina bilingual attorneys for use in making referrals. I also served as co-chair of a 2001 symposium sponsored by the Committee to identify and address barriers to equal justice confronted by North Carolina's Latino community.

As a Superior Court Judge, I participated in a collaborative program designed to engage judges and other court personnel on issues of race, ethnicity, fairness and equality in the courtroom and develop solutions to foster positive systemic change.

In March 2003, I was the judicial speaker for the League of Women Voters Civics 101 class—the first such program ever presented entirely in Spanish. Additionally, I have appeared on numerous radio and television programs to educate the Latino community about our judicial system.

I volunteer annually as a judge for high school, college, and law school mock trial competitions, and served in 2005 as Presiding Judge of the Wade Edwards National Mock Trial Competition.

I currently serve as co-chair of the Mecklenburg County Bar's Special Committee on Diversity. I founded the Committee's "Lunch with a Lawyer" program, a mentoring program now in its fourth year, targeted at 8th grade students with an interest in the law. Since 2002, I have served as a substitute judge for our Drug Treatment Court, a program designed to rehabilitate and treat adult offenders by holding them accountable for complying with their court-ordered treatment plans.

Since 2005, I have also served as a volunteer Truancy Court Judge in two elementary schools. The Truancy Court program is a joint effort between North Carolina's 26th Judicial District and local public schools to address the causes of truancy and provide parents and their children with the tools to achieve academic success.

**26. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department

regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I wrote to Senator Kay Hagan's office in January 2009 expressing my interest in serving on the federal bench, either as a Circuit or District judge. I subsequently met with Senator Richard Burr's General Counsel (at his request) to discuss my interest.

I also sought the support and endorsement of the Hispanic National Bar Association for a judicial nomination, which I received on July 9, 2009.

Senator Hagan appointed a panel to screen candidates and make recommendations to her for U.S. Attorney and federal District Court vacancies. I do not know whether the panel made formal recommendations to Senator Hagan regarding the Fourth Circuit. On August 26, 2009, I interviewed with the panel regarding a vacancy on the U.S. District Court for the Western District of North Carolina.

On July 31, 2009, I met in Washington, D.C. with White House Counsel Greg Craig and two Associate Counsel to discuss my interest in a nomination. On August 14, 2009, I had a follow-up telephone conference with Associate Counsel.

On August 11, 2009, I met personally with Senator Hagan. On September 3, 2009, I spoke with Mr. Craig, who advised me that the President was considering nominating me to the Fourth Circuit. The next day, I received a call from staff from the Department of Justice regarding nomination paperwork and the process. I have had subsequent communication with Justice Department lawyers regarding the process.

On September 10, 2009, I received a call from Senator Burr's office inquiring generally about the status of my effort to seek the nomination. On September 11, 2009, I again spoke with Senator Hagan regarding my possible nomination to the Fourth Circuit.

On October 23, 2009, I met in Washington, D.C. with Deputy White House Counsel Cassandra Butts and other lawyers from the office of White House Counsel and the Department of Justice. My nomination was submitted to the United States Senate on November 4, 2009.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Albert Diaz, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

7 November 2009  
(DATE)

[Signature]  
(NAME)

Amel Bullard Mabrouk  
(NOTARY)

