

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Dana Lewis Christensen

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

United States District Judge for the District of Montana

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.

Christensen, Moore, Cockrell, Cummings, & Axelberg, P.C.
P.O. Box 7370
145 Commons Loop, Suite 200
Kalispell, Montana 59904

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

1951; New York, 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.

1973 – 1976, University of Montana School of Law; J.D., 1976

1969 – 1973, Stanford University; B.A., 1973

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.

1996 – Present

Christensen, Moore, Cockrell, Cummings & Axelberg, P.C.

145 Commons Loop, Suite 200

P.O. Box 7370

Kalispell, Montana 59904

Founding Shareholder, President

1981 – 1996

Murphy, Robinson, Heckathorn & Phillips, P.C.

P.O. Box 759

Kalispell, Montana 59904

Shareholder

1977 – 1981

Moulton, Bellingham, Longo & Mather, P.C.

P.O. Box 2559

Billings, Montana 59103

Associate

1975 – 1976

Garlington, Lohn & Robinson, PLLP

199 West Pine

P.O. Box 7909

Missoula, Montana 59807

Legal intern

Other affiliations (uncompensated):

2003 – 2011

The Montana Nature Conservancy

32 South Ewing, Suite 215

Helena, Montana 59601

Trustee (2003 – 2011)

Chair of the Board of Trustees (2008 – 2011)

1992 – 1998

Flathead Festival

No physical address

Board Member (1992 – 1998)

President of the Board (1995 – 1996)

1992 – 1993

Montana Defense Trial Lawyers

36 South Last Chance Gulch, Suite A

Helena, Montana 59601

President

1985 – 1992
Friendship House
606 Second Avenue West
Kalispell, Montana 59901
Board Member

1981 – 1985
Kalispell Chamber of Commerce
15 Depot Park
Kalispell, Montana 59901
Board Member

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 did not serve in the U.S. Military. I registered for the Selective Service upon turning 18.

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.

Chambers USA – highest ranking (“Star Individual”) (2008 – present)
Super Lawyers – top 75 lawyers in northwest United States (2008 – present)
Best Lawyers in America (1995 – present)
Martindale-Hubbell AV ranking (1994 – present)
Flathead County Bar Association “Boss of the Year” Award (1990)
Recipient, University of Montana School of Law Award for highest grades in clinical and trial advocacy courses (1976)
Member, University of Montana School of Law Moot Court Team (1975)
Student Body President, Sentinel High School, Missoula, Montana (1968 – 1969)
Governor, Montana Boys State (1968)
Eagle Scout and Boy Scout God and Country Award (1966)

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.

Advisory Board of the Ninth Circuit (2010 – present)
American Bar Association (1976 – present)
American Board of Trial Advocates (1994 – present)
American College of Trial Lawyers (ACTL), Fellow (2001 – present)
Chair, Montana Chapter (2005 – 2006)

Association of Ski Defense Attorneys (1993 – 2002)
Defense Research Institute (DRI) (1990 – 2000)
Federal Bar Association (2003 – present)
Federal Court Local Rules Revision Committee (1999 – present)
International Association of Defense Counsel (IADC) (2000 – present)
 Medical Defense & Health Law Committee (2000 – present)
 Professional Liability Committee (2000 – present)
Montana Defense Trial Lawyers, Inc. (MDTL) (1985 – 2004)
 President (1992 – 1993)
Montana Supreme Court Advisory Commission on Rules of Civil and Appellate
Procedure (1998 – present)
Ninth Circuit Judicial Conference, Lawyer Representative (2007 – 2009)
State Bar of Montana (1976 – present)
State Bar of Montana Lawyers Helping Lawyers Network (1986 – present)
United States Supreme Court Historical Society (2001 – present)

I also served on the Merit Selection Panels which resulted ultimately in the appointments of U.S. District Court Judge Donald W. Molloy and U.S. Magistrate Judge Carolyn S. Ostby. I was chairperson of the panel associated with Judge Molloy's appointment.

At the request of U.S. Senator Max Baucus I vetted the names of U.S. Attorney applicants for the State of Montana in December 2008 – January 2009.

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.

State Bar of Montana, 1976.

There have been no lapses in membership.

- 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 Ninth Circuit, 1986.
United States District Court for the District of Montana, 1976.
Montana Supreme Court and Montana State Courts, 1976.

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.

Flathead Festival (non-profit organization that sponsored summer music festivals in Flathead County, Montana)

Board Member (1992 – 1998)

President of the Board (1995 – 1996)

Flathead Land Trust (2007 – present)

Friendship House (non-profit residential senior assisted living facility, Kalispell, Montana)

Board Member (1985 – 1992)

Governor's Advisory Council, Montana Department of Corrections (relating to treatment of alcoholism and chemical dependency at the Montana State Prison and other State of Montana facilities) (1988 – 1993)

Kalispell Chamber of Commerce

Board Member (1981 – 1985)

Montana Land Reliance (1998 – present)

The Montana Nature Conservancy

Trustee (2003 – 2011)

Chair of the Board of Trustees (2008 – 2011)

Trout Unlimited (1999 – present)

University of Montana School of Law

Development Committee (2005 – 2009)

Board of Visitors (1981 – 1984)

- 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.

To the best of my knowledge, none of the organizations listed above discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

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.

Two Montana Defense Trial Lawyers Association "President's Message" Editorials, both from 1992. Copies supplied.

- 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.

Report to the Montana Supreme Court Advisory Commission on Rules of Civil and Appellate Procedure, dated April 18, 2008. Copy supplied.

Report to the Montana Supreme Court Advisory Commission on Rules of Civil and Appellate Procedure, dated January 12, 2008. Copy supplied.

Since 1999, I have served as a member of the Federal Court Local Rules Revision Committee. As a member, I have voted on multiple occasions to make changes to the procedural rules, but I have not authored any of these proposed amendments. I do not have a record of the amendments, but the current version of the local rules reflects the decisions of the committee. A version of the rules is available on-line at <http://www.mtd.uscourts.gov/rules.htm>.

- 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.

In July 2009, I endorsed an open letter from the Montana Chapter of the American Board of Trial Advocates about the jury verdict in a trial against W.R. Grace's mining operations. Copy supplied.

- 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.

November 13, 2009: Participant, Trial Demonstration of a personal injury case at the University of Montana School of Law, American Board of Trial Advocates. I gave the closing argument on behalf of the defense for a hypothetical automobile accident case. I have no notes, transcript or recording. The address of the ABOTA is 2001 Bryan Street, Suite 3000, Dallas, Texas 75201.

March 16, 2007: Seminar Presentation, CLE Institute State Bar of Montana, All Ethics, Nothing But Ethics, "Conflicts of Interest: Appearance of Impropriety," Butte, Montana. Outline supplied.

June 27, 2005: Presentation on Informed Consent, Northwest Montana Physicians Association. Outline supplied.

December 3, 2003: Presentation on Claims Handling, Northwest Montana Physicians Association. Outline supplied.

September 20, 2002: Keynote address, "A Tribute to Bill Bellingham," State Bar of Montana Annual Meeting. I discussed the role of mentors in the development of new attorneys. I have no notes, transcript or recording. The address of the State Bar is 7 West Sixth Avenue, Suite 2B, P.O. Box 577, Helena, Montana 59624.

July 27, 2000: Speech – "Preserving the Right to Trial by Jury," Montana Trial Lawyers Association "Seminar of the Masters," Polson, Montana. I have no notes, transcript or recording. The address of the MTLA is 32 South Ewing, Suite 312, P.O. Box 838, Helena, Montana 59624.

October 16-17, 1998: Seminar Presentation, ABOTA "Masters Trial Notebook – Montana Ultimate Trial Notebook (Direct Examination)," University of Montana School of Law, Missoula, Montana. Outline supplied.

In addition, from 1997 to 2009, I have served as a faculty member of an advanced trial advocacy course offered every spring at the University of Montana School of Law. This course is offered to approximately 20 second and third year law students and practicing attorneys, and is five days long. The faculty consists of practicing Montana trial lawyers, and the program is based on the NITA trial programs. The faculty members demonstrate certain aspects of a trial, and the students perform all aspects of a trial, from jury voir dire to closing arguments based on the fact scenario presented in the course materials. For the last ten years the course subject has involved a medical malpractice case. I have demonstrated jury voir dire, opening statement, direct and cross-examination of an expert, and closing argument. I have no notes, transcript or recording. The address of the School of Law is The University of Montana, Missoula, Montana 59812.

- 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.

Jessica Headley, *Flathead Valley Man Nominated for District Judge Position*, NBCMontana.com, May 4, 2011. Copy supplied.

Tristan Scott, *Kalispell Attorney Dana Christensen Nominated to Replace Judge Molloy*, The Missoulian, Feb. 12, 2011 (quotes re-printed in multiple outlets). Copy supplied.

Tom Lutey, *Kalispell Attorney Recommended for U.S. Judge Molloy's Post*, The Billings Gazette, Feb. 11, 2011. Copy supplied.

Daniel Person, *Meet Donald Molloy, Missoula Judge Who Presided Over Wolf Case*, The Missoulian, Sept. 20, 2010. Copy supplied.

Matthew Brown, *Baucus Girlfriend Eyed US Attorney Post for Years*, Associated Press, Dec. 8, 2009. Copy supplied.

Charles S. Johnson, *Baucus Says Hanes Nomination Handled in "Above-Board Way," Despite Failure to Reveal Relationship*, The Missoulian, Dec. 8, 2009. Copy supplied.

Brody Mullins and Julie Jargon, *Baucus Tie to Nominee Kept Mum*, The Wall Street Journal, Dec. 7, 2009. Copy supplied.

John Grant Emeigh, *Montana Power Co. Shareholders Reach \$115M Settlement with Defunct Company*, The Missoulian, Oct. 3, 2009. Copy supplied.

Tristan Scott, *Obama Still Hasn't Selected U.S. Attorney for Montana*, The Missoulian, June 22, 2009. Copy supplied.

Jodi Rave, *2 Interviewed for U.S. Attorney Post*, The Missoulian, Mar. 12, 2009. Copy supplied.

Michael Jamison, *Plum Creek Conservation Deal Biggest in U.S.*, The Missoulian, July 1, 2008. Copy supplied.

Dan Testa, *Baucus, Plum Creek, Conservation Groups Announce Massive Land Deal*, Flathead Beacon, June 30, 2008. Copy supplied.

Susan Gallagher, *Baucus, Plum Creek Announce Land Agreement*, Associated Press, May 24, 2008. Copy supplied.

Montana in Short, Associated Press, Dec. 3, 2004. Copy supplied.

Charles Johnson, *Investors Agree to \$67M from TA*, The Billings Gazette, July 14, 2004 (re-printed in multiple outlets). Copy supplied.

Lawsuit Delays Add \$2 Million to Montana College Project, Community College Week, July 5, 2004. Copy supplied.

Heal Thyself, A Suit Alleges Negligence at UM's Curry Health Center, The Missoula Independent, Dec. 5, 2002. Copy supplied.

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.

I have not served as a judge.

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

- i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- 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).
- 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.
- e. Provide a list of all cases in which certiorari was requested or granted.
- 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.

- 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.
 - 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.
 - 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.
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.

I have not served as a judge.

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. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- 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 was an elected Montana Delegate to the 1992 Democratic National Convention in New York City.

I have not held any other offices in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

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 have never served as a clerk to a judge.

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

I have never practiced 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.

1977 – 1981

Moulton, Bellingham, Longo & Mather, P.C.

P.O. Box 2559

Billings, Montana 59103

Associate Attorney

1981 – 1996

Murphy, Robinson, Heckathorn & Phillips, P.C.

P.O. Box 759

Kalispell, Montana 59904

Partner and Shareholder

1996 – present

Christensen, Moore, Cockrell, Cummings & Axelberg, P.C.

P.O. Box 7370

Kalispell, Montana 59904

Partner and Shareholder, President

- 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 served as one of three arbitrators in the following two matters:

Monroe v. Anonymous (Decision March 2008). This arbitration involved 12 different cases filed against a Montana orthopedic surgeon. The first case was heard in arbitration and decided against the physician and the remaining 11 cases settled.

BNSF Railway Co. v. Central Montana Rail, Inc. (2008 – 2009). This arbitration involved a dispute between BNSF and the Central Montana Railway. The case was decided in favor of BNSF, by a 2-1 arbitrator's decision. I was one of the two arbitrators that decided in favor of BNSF.

I also serve as a settlement mediator in cases approximately 15-20 times per year. The majority of the cases I mediate are medical malpractice claims. All of the cases I mediate are confidential proceedings. The last ten cases I mediated are summarized as follows:

08/31/10: *The Estate of Willson v. Addison*, Montana Eighth Judicial District Court Cause No. BDV-09-004. This was a medical malpractice case brought by the husband for alleged forced terminal sedation which resulted in a lethal overdose to his wife who was terminally ill with breast cancer. This case did not settle after a five-hour mediation.

09/02/10: *Setzer and Galloway as Personal Representatives of the Estate of Setzer, Deceased Minor v. Karsh, et al.*, Montana First Judicial District Court Cause No. ADV-2-1-628. This was a medical negligence claim brought against a radiologist who was alleged to have misread a cranial CT scan which revealed a malignant intracranial tumor known as a medulloblastoma in a 19-month old girl. After two hours of telephonic mediation this case settled post mediation.

12/08/10: *Ussin-Hunter v. St. Vincent Healthcare, et al.*, Montana Thirteenth Judicial District Court Cause No. DV-09-0950. In this medical malpractice case, Mrs. Ussin-Hunter had undergone cardiovascular surgery at St. Vincent Healthcare which resulted in open compartment syndrome. This case was settled after a nine-hour mediation.

12/14/2010: *Baily v. Iverson, et al.*, Montana First Judicial District Court Cause No. CDV-2010-248. This case involved an open reduction and fixation (ORIF) of Baily's right ankle performed by Dr. Iverson. Mr. Baily eventually had to have a fusion of his ankle due to a 30-40 degree external rotation. This case was settled after an eight-hour mediation.

01/13/11: *Stokes as Personal Representative of the Estate of Carter, Deceased v. Ford Motor Co., et al.*, Montana Thirteenth Judicial District Court Cause No. DV-05-1236. This was a wrongful death case in which it was alleged that Mr. Carter was partially ejected from his vehicle during a crash due to its poor design. After a 5.5-hour mediation this case remained unsettled.

01/18/11: *Iron Horse Ranch, LLC v. U.S. Forest Service*, U.S. District Court, Montana, Missoula Division Case No. DV-09-140-M-DWM. This concerned a prescribed burn which resulted in property damage. This case was settled after a five-hour mediation.

01/20/11: *Estate of McAllister v. LaVeau, et al.*, Montana Thirteenth Judicial District Court Cause No. DV-10-1817. This was a medical malpractice case involving an alleged misinterpretation of a stress echocardiogram exam with motion wall abnormalities secondary to myocardial ischemia. This case was settled after a 13-hour mediation.

01/24/11: *Lauderbaugh v. Northwest Spine & Pain Center, et al.*, Montana Eleventh Judicial District Court Cause No. 09-1180A. This medical malpractice case was brought as a result of an alleged failure to diagnose a heart attack. The case was settled after a three-hour mediation.

01/26/11: *Martin v. Benefis Healthcare*, Montana Eighth Judicial District Court Cause No. CDV-04-421. This is a medical malpractice case concerning an alleged anoxic brain injury following resuscitation for respiratory depression. This case settled after a six-hour mediation.

03/10/11: *Engebretson v. Reynolds Excavating, Inc., et al.*, Montana Fourth Judicial District Court Cause No. DV-09-880. This was a premises liability claim resulting in injury to Mr. Engebretson when he fell into a 12-foot deep hole that had been excavated that day. This case was not settled after an eight-hour mediation.

b. Describe:

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

During the first three years of my legal career at Moulton, Bellingham, Longo & Mather, P.C. in Billings, Montana, my practice focused on natural resources law, representing coal mining and oil and gas companies in a large number of litigation and administrative matters, including permitting issues associated with two coal mines in eastern Montana. During my fourth year as an attorney at that firm, my practice began to transition from the practice area of natural resources to a more general insurance defense litigation practice. During the early years at Murphy, Robinson, Heckathorn & Phillips, P.C. in Kalispell, Montana, my practice focus was insurance defense litigation, representing defendants in civil litigation involving automobile accidents, products liability suits, construction disputes, ski area accidents, etc. Beginning in approximately 1990, the majority of my law practice involved the defense of medical malpractice cases against doctors, hospitals, nurses, nursing homes and other healthcare providers, which has been the focus of my practice to this date. I have also represented defendants in large class action lawsuits filed in Federal Court in Montana.

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

My typical clients since 1990 have been doctors, hospitals, nurses, nursing homes and other healthcare providers. Prior to that I represented defendants in civil litigation, and coal mining and oil and gas companies.

- 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.

Since 1977, 95% of my practice has involved litigation. I appear frequently in court.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 50%
- 2. state courts of record: 25%
- 3. other courts: 0%
- 4. administrative agencies: 25%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 98%
- 2. criminal proceedings: 2%

- 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 more than 40 jury and non-jury trials in state and federal courts in Montana. I have represented healthcare providers in excess of 200 matters before the Montana Medical Legal Panel, which is a confidential administrative hearing process that screens all medical malpractice claims. I have represented at least 15 physicians in confidential disciplinary proceedings before the Montana Board of Medical Examiners. I have been sole or chief counsel in all of these matters.

- i. What percentage of these trials were:
 - 1. jury: 90%
 - 2. non-jury: 10%

- 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.

I have not appeared before the Supreme Court of the United States.

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) *McGreevey v. Montana Power Co.*, U. S. District Court, Montana, Butte Division, Cause No. CV-03-01-BU-SEH.

Dates of representation: 2001 – 2010

Presiding Judge: Hon. Sam E. Haddon

Capsule Summary: This was a class action suit brought by the former shareholders of the Montana Power Company alleging that the officers and directors of the company failed to obtain a shareholder vote in connection with the divestiture of the assets of the former Montana Power Company and the formation of Touch America, a telecom company, which went bankrupt. Also named as defendants in this lawsuit were the purchasers of

the generating, distribution, coal and oil and gas assets of the former Montana Power Company, and the company's financial (Goldman Sachs) and legal advisors (Milbank Tweed). This case was one of five separate cases arising out of the Touch America bankruptcy, all of which were settled and dismissed in 2010 for the sum of \$126 million. I represented the former officers of the Montana Power Company.

Co-Counsel: Hon. Keith Strong, Missouri River Courthouse, 125 Central Avenue West, Suite 311, Great Falls, Montana 59404; Telephone: (406) 727-0028; Stephen D. Bell, Dorsey & Whitney, LLP, 370 Seventeenth Street, Suite 4700, Denver, Colorado 80202; Telephone: (303) 629-3405; James H. Goetz, Goetz Gallik & Baldwin, PC, P.O. Box 6580, Bozeman, Montana 59771; Telephone: (406) 587-0618; James E. Burns Jr., Orrick Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, California 94105; Telephone: (415) 773-5935.

Opposing Counsel: Milton Datsopoulos, Datsopoulos MacDonald & Lind, PC, 201 West Main Street, Suite 201, Missoula, Montana 59802; Telephone: (406) 728-0810; Wade J. Dahood, Knight Dahood McLean Everett & Dayton, 113 East Third Street, Anaconda, Montana 59711; Telephone: (406) 563-3424; Allan M. McGarvey and Roger M. Sullivan, McGarvey Heberling Sullivan & McGarvey PC, 745 South Main Street, Kalispell, Montana 59901; Telephone: (406) 752-5566; Sean Frampton, Morrison & Frampton PLLP, P.O. Box 1090, Whitefish, Montana 59937; Telephone: (406) 862-9600.

(2) *In Re: Touch America Holdings, Inc.*, Debtors, U.S. Bankruptcy Court for the District of Delaware, Chapter 11 Case No. 03-11915(KJC).

Dates of representation: 2003 – 2010

Presiding Judge: Hon Steven J. Carey, Bankruptcy Court, Delaware

Capsule Summary: This was an adversary proceeding initiated by the Touch America Bankruptcy Trustee as part of the litigation described above. In this adversary proceeding the Trustee alleged that the former officers and directors breached their fiduciary duties to the corporation in connection with the divestiture of the assets of the former Montana Power Company. This claim was also part of the settlement described above, in which I represented the former officers of the Montana Power Company.

Co-counsel: Joseph H. Huston, Jr., Stevens & Lee PC, 1105 North Market Street, 7th Floor, Wilmington, Delaware 19801; Telephone: (302) 425-3310; Stephen D. Bell, Dorsey & Whitney, LLP, 370 Seventeenth Street, Suite 4700, Denver, Colorado 80202; Telephone: (303) 629-3405.

Opposing counsel: Robert A. Julian, Winston & Strawn, LLP, 101 California Street, Suite 3900, San Francisco, California 94111; Telephone: (415) 591-1000; Robert F. James, Ugrin, Alexander, Zadick & Higgins, PC, # 2 Railroad Square, Suite B, P.O. Box 1746, Great Falls, Montana 59403; Telephone: (406) 771-0007.

(3) *In Re: Columbia Falls Aluminum Profit-Sharing Litig.*, U. S. District Court, Montana, Missoula Division, Cause Nos. CV-92-27-M-JDS, CV-92-41-M-JDS, and CV-92-142-M-JDS.

Dates of representation: 1994 – 1999

Presiding Judge: Hon Jack D. Shanstrom

Capsule summary: This was a class action lawsuit brought by the salaried and union employees of Columbia Falls Aluminum Company alleging that the two shareholders failed to pay profit sharing as promised. I represented the minority shareholder, Jerome T. Broussard, who owned 45% of the company. The case was settled and dismissed in 1999 for \$100 million.

Co-counsel: Hon. Sam E. Haddon, Missouri River Courthouse, 125 Central Avenue West, Suite 311, Great Falls, Montana 59404; Telephone: (406) 727-8877; Harry Huge, Harry Huge Law Firm, 25 East Battery Street, Charleston, South Carolina 29401; Telephone: (843) 722-1628.

Opposing Counsel: Allan M. McGarvey and Roger M. Sullivan, McGarvey Heberling Sullivan & McGarvey PC, 745 South Main Street, Kalispell, Montana 59901; Telephone: (406) 752-5566; Joan Jonkel, Jonkel Law Offices, P.O. Box 8687, Missoula, Montana 59807; Telephone: (406) 721-1837.

(4) *Fardeen as PR of Estate of Sands, deceased v. Glacier Ear, Nose and Throat – Head and Neck Surgery*, Montana Eleventh Judicial District Court, Cause No. DV-07-439(C).

Dates of Representation: 2007 – 2010

Presiding Judge: Hon. Stewart E. Stadler

Capsule Summary: The plaintiff alleged that the deceased died of a pulmonary embolism following extensive neck surgery for cancer as a result of the negligent care of physicians employed by my client, Glacier Ear, Nose and Throat – Head and Neck Surgery. The patient died on the third post-operative day. He had been out of bed and ambulatory. An issue in the case was whether sequential compression devices had been improperly discontinued. The defendant physicians offered expert testimony from a forensic pathologist that the patient did not die from a pulmonary embolism. After five days of jury trial a verdict was rendered in favor of my client.

Co-counsel: Sean Goicoechea, Christensen Moore Cockrell Cummings & Axelberg PC, P.O. Box 7370, Kalispell, Montana 59904; Telephone: (406) 751-6000.

Opposing Counsel: Douglas A. Buxbaum and E. Craig Daue, Buxbaum Daue & Fitzpatrick PLLC, P.O. Box 8209, Missoula, Montana 59807; Telephone: (406) 327-8677.

(5) *Cunningham v. Sobba*, U.S. District Court, Montana, Missoula Division, Cause No. CV-03-83-M-DWM.

Dates of representation: 2002 – 2004

Presiding Judge: Hon. Donald W. Molloy

Capsule Summary: The plaintiff suffered a high-impact fall while skiing at Big Mountain resulting in a displaced clavicle fracture. The defendant, my client, treated the plaintiff for the fracture, following him conservatively for approximately 4 months before determining that plaintiff had a non-union of the clavicle fracture, which was producing shoulder instability and discomfort. Accordingly, the defendant performed surgery to reduce the clavicle fracture. Immediately following the surgery, the defendant noted that the patient had normal neurological function of his upper extremity. However, within 4 - 6 hours following the surgery, the patient's affected arm went numb. Initially, the patient suffered a near complete paralysis of his upper extremity. However, over the course of the next 10 to 12 months, the use and function of his arm was completely restored. This case proceeded to trial in October 2004. After only one hour of deliberations, the jury returned a unanimous verdict in favor of my client.

Co-Counsel: I had no co-counsel in this case.

Opposing Counsel: Peter Michael Meloy, Meloy Law Firm, P.O. Box 1241, Helena, Montana 59624, Telephone (406) 442-8670; Randy Kent Dix, Dix Hunt & McDonald, 310 East Broadway, Helena, Montana 59601; Telephone: (406) 443-4667.

(6) *Hampton v. Schimpff*, U.S. District Court, Montana, Missoula Division, Cause No. CV-98-41-M-DWM.

Dates of representation: 1997 – 1999

Presiding Judge: Hon. Donald W. Molloy

Capsule Summary: Plaintiff Hampton alleged that the defendants were negligent in failing to timely diagnose his wife's dural sinus thrombosis, which resulted in her death. The deceased presented to the Emergency Department of the local hospital with headache symptoms. She was examined at the time by the defendant physician, and carefully followed in the hospital. Her condition worsened and she was emergently transferred to a specialist at the Oregon Health Sciences University in Portland, Oregon, where aggressive anti-thrombolytic therapy was initiated. She ultimately died from the thrombosis in her brain. I represented defendant Dr. Schimpff, the local treating neurologist, who contended that he appropriately treated the deceased and transferred her

to a tertiary care facility in a timely manner. After a four-day trial, the jury returned a defense verdict.

Co-counsel: I had no co-counsel in this case.

Opposing Counsel: Douglas A. Buxbaum and E. Craig Daue, Buxbaum Daue & Fitzpatrick PLLC, P.O. Box 8209, Missoula, Montana 59807; Telephone: (406) 327-8677; Randy Kent Dix, Dix Hunt & McDonald, 310 East Broadway, Helena, Montana 59601; Telephone: (406) 443-4667.

(7) *Pula v. City of Chinook*, Montana Seventeenth Judicial District Court, Cause No. DV-98-17.

Dates of representation: 1997 – 1999

Presiding Judge: Hon. John McKeon

Capsule Summary: Plaintiff, who was an inmate in the Blaine County Jail, was allegedly raped by a Montana State Prison inmate who was being housed at the county jail as a result of his involvement in the Montana State Prison riot. Pula contended that the Department of Corrections was negligent in its placement of the perpetrator in the county jail, and its supervision of him. I represented the State of Montana, which received a defense verdict on the issue of causation after a six-day trial. This case was affirmed on appeal to the Montana Supreme Court (Case No. 99-315, reported at 40 P.3d 364 (Mont. 2002)).

Co-counsel: I had no co-counsel in this case.

Opposing Counsel: Robert M. Peterson, P.O. Box 1259, Lolo, Montana 59847; Telephone: (406) 493-1304; Hon. Daniel A. Boucher, Montana Twelfth Judicial District Court, 315 – 4th Street, Havre, Montana 59501; Telephone: (406) 265-5481.

(8) *Jacobsen. v. State of Montana Department of State Lands*, Montana Eleventh Judicial District Court, Cause No. 88-216.

Dates of representation: 1987 – 1989

Presiding Judge: Hon. Leroy McKinnon (deceased)

Capsule Summary: Plaintiffs, who were multiple landowners and insurance companies, sued the Montana Department of State Lands contending that it was negligent in failing to control and suppress the 12,000 acre Houghton Creek Fire between the cities of Kalispell and Libby, which caused the Plaintiffs to suffer property damages in excess of \$1 million. The case was bifurcated for trial. I represented the State of Montana, which received a defense verdict on liability after a five-day jury trial. The jury verdict was

affirmed on appeal to the Montana Supreme Court (Case No. 88-216, reported at 769 P.2d 694 (Mont. 1989)).

Co-counsel: I had no co-counsel in this case.

Opposing Counsel: Marshall H. Murray Jr., 101 Somerset Drive, Kalispell, Montana 59901; Telephone: (406) 314-4844; Daniel W. Hileman, Kaufman Vidal & Hileman, P.O. Box 728, Kalispell, Montana 59903; Telephone: (406) 755-5700.

(9) *Austin v. BNSF and MRL*, U.S. District Court, Montana, Missoula Division, Cause No. CV-99-39-M-LBE.

Dates of representation: 1998 – 2001

Presiding Judge: Hon. Leif B. Ericksen

Capsule Summary: Plaintiff Austin alleged toxic exposure to chlorine following the derailment of a Montana Rail Link (“MRL”) train in Alberton, Montana. Pursuant to a contract between MRL and Burlington Northern Santa Fe Railway (“BNSF”), it was contended that BNSF retained some control over the track where the derailment occurred. Plaintiff was one of approximately 100 individuals who contended they suffered toxic exposure to chlorine gas which was released from an MRL rail car damaged during the derailment. At the end of the first week of trial, my client BNSF settled that case, and approximately 100 other pending cases relating to the same derailment. At the end of the second week of trial, MRL obtained a defense verdict.

Co-counsel: My partner, Dale R. Cockrell, was co-counsel for BNSF. David B. Potter, Oppenheimer Wolff & Donnelly LLP, 45 South 7th Street, Suite 3300, Minneapolis, Minnesota 55402; Telephone: (612) 607-7412; and Randy J. Cox, Boone Karlberg PC, P.O. Box 9199, Missoula, Montana 59807; Telephone: (406) 543-6646, represented MRL.

Opposing Counsel: Alexander Blewett III, Hoyt & Blewett PLLC, P.O. Box 2807, Great Falls, Montana 59403; Telephone: (406) 761-1960; William Rossbach, Rossbach Hart PC, P.O. Box 8988, Missoula, Montana 59807; Telephone: (406) 543-5156; Mark S. Connell, Connell Law Firm, P.O. Box 9108, Missoula, Montana 59807; Telephone: (406) 327-1217.

(10) *In the Matter of the Rules of Professional Conduct and the Insurers Imposed Billing Rules and Procedures; Ugrin, Alexander, Zadick & Higgins PC and James, Gray, Bronson & Swanberg, PC, Petitioners*, Montana Supreme Court, Case No. 98-612, reported at 2 P.3d 806 (Mont. 2000).

Dates of representation: 1998 – 2000

Capsule Summary: This was an original proceeding before the Montana Supreme Court to determine the role of counsel in the tripartite relationship between counsel, insured and insurer, and to further define the responsibilities of insured counsel in billing and reporting to insurers. The Appellants in this proceeding were a select group of Montana insurance defense attorneys. The Appellees in the proceeding were multiple insurers providing insurance in Montana. Many of these insurers imposed on defense counsel written guidelines and third-party billing practices that allegedly interfered with the relationship between attorney and client. I represented The Doctors Company (a medical malpractice insurer). In its decision, the Montana Supreme Court held that: (1) an insured is the sole client of defense counsel appointed by the insurer, and thus the insurer is not a co-client of defense counsel; (2) the requirement of insurers that defense counsel obtain pre-approval before scheduling depositions, undertaking research, employing experts, preparing motions or undertaking other substantive work in the defense of the case violates the Rules of Professional Conduct by fundamentally interfering with defense counsels' exercise of their independent judgment and their duty to give undivided loyalty to insureds; and (3) disclosures to insurers' third-party billing auditors of detailed descriptions of professional services rendered by defense counsel required the contemporaneous, fully informed consent of insureds.

Co-Counsel: I had no co-counsel on behalf of TDC.

Opposing Counsel: Neil Ugrin, deceased; Robert F. James, Ugrin, Alexander, Zadick & Higgins PC, P.O. Box 1746, Great Falls, Montana 59403; Telephone: (406) 771-0007; Hon. Patricia Cotter, Montana Supreme Court, P.O. Box 203001, Helena, Montana 59620; Telephone: (406) 444-5570.

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.)

Other than the first three years of my practice, my focus has been litigation as described in response to questions 16 and 17 above.

From 1977 to 1981, I appeared multiple times before the Montana Oil and Gas Conservation Commission on behalf of oil and gas companies regarding permitting of oil and gas wells in eastern Montana. The issues involved depth of wells, well spacing and other regulatory matters.

Over the course of the last 20 years, I have represented at least 15 physicians in confidential disciplinary proceedings before the Montana Board of Medical Examiners. The issues involved in these proceedings ranged from quality of care provided to patients to competency to practice medicine.

I have represented healthcare providers in excess of 200 matters before the Montana Medical Legal Panel (“MMLP”), which is a confidential, non-binding, administrative hearing process that screens all medical malpractice claims. A claimant/patient cannot file suit in Montana against a healthcare provider without first presenting the claim to the MMLP. A separate 6-person panel is formed to review each claim, consisting of three attorneys and three healthcare providers. In order to initiate a claim, the patient files an application or complaint. The healthcare provider files an answer, and the claim is then set for hearing before the panel. Exhibits, including expert reports, are submitted before the hearing, and hearings usually take 3-6 hours. The claimant/patient and healthcare provider[s] normally provide sworn testimony. At the end of the hearing, the MMLP panel votes on two questions: (1) Is there substantial evidence of an act or omission constituting a breach of the standard of care; and, (2) if so, did this breach cause injury or damage to the claimant/patient.

I was a registered lobbyist in Montana in the late 1970s. I was registered on behalf of Westmoreland Coal Company, and I lobbied on behalf of this entity at the 1979 Montana Legislative Session, focusing on proposed legislation governing the permitting and regulation of surface coal mines.

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.

I have not taught any courses.

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.

I have no deferred income arrangements as described by this question.

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.

No.

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.

If I am confirmed, the most likely conflicts of interest would relate to the ownership of stocks and bonds by me and my spouse. In addition, conflicts may be presented by matters in which I previously represented a party as well as matters in which my former law partners participate. Although remote, a potential conflict of interest could also be present due to my son's employment with SVB Capital in Palo Alto, California, or my daughter's employment as a special education teacher in Seattle, Washington. I would handle all matters involving actual or potential conflicts through the careful application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions.

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

I understand the Clerk of Court of the Montana District maintains a computer listing of all stocks and bonds owned by judges and their spouses, which is compared against the parties in all litigation filed in the district and assigned to a particular judge to identify conflicts of interest. I also understand that all judges prepare annual financial disclosure statements and are required to adhere to the Guidelines of the Code of Judicial Conduct. Furthermore, I would be required to vigilantly analyze all cases to determine potential conflicts of interest and to recuse myself in all instances in which a conflict exists or if necessary to avoid the appearance of any sort of impropriety.

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.

From time to time I have represented indigent parties on a pro bono basis in dissolutions, custody disputes and landlord-tenant matters. I have provided pro bono representation to a subsidized elderly residential care facility, and handled adoptions for various placement agencies on a no-fee basis. I have also provided free representation to conservation organizations in litigation matters. In addition, I have been appointed multiple times by the Montana Commission on Practice (the Montana Supreme Court attorney disciplinary body) to investigate and prosecute disciplinary complaints against Montana attorneys, which I have performed on a pro bono basis. Finally, my current law firm contributes annually to the Montana Justice Foundation which supports entities providing free representation to the indigent (Montana Legal Services, etc.). I would estimate that over the years I have provided at least 50 hours a year in pro bono legal services to various individuals and entities.

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.

Senator Max Baucus formed a committee of five Montana attorneys to recommend to him a suitable replacement for Hon. Donald W. Molloy following Judge Molloy's announcement in December 2010 of his intent to take senior status in August 2011. I understand that I was the sole name recommended to Senator Baucus by the committee. I interviewed with Senator Baucus on January 18, 2011, and expressed my interest in this position at that time. Since February 3, 2011, I have been in contact with pre-nomination officials at the Department of Justice. On March 9, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 4, 2011, the President submitted my nomination to the Senate.

- 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

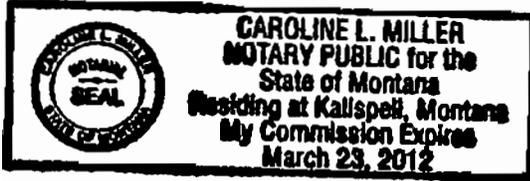
I, Dana L. Christensen, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 3, 2011

(DATE)

Dana L. Christensen

(NAME)



Caroline L. Miller

(NOTARY)