

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Irene Cornelia Berger

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

United States District Judge for the Southern District of West Virginia

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.

Office: Kanawha County Courthouse
111 Court Street, 7th Floor
Charleston, WV 25301

Residence: [REDACTED]

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

1954; Richlands, Virginia

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.

August 1976-May 1979, West Virginia University College of Law; Doctor of Jurisprudence, May 13, 1979

August 1972-May 1976, West Virginia University; Bachelor of Arts, May 16, 1976

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.

Employment:

July 15, 1994 – Present
West Virginia Supreme Court of Appeals
State Capitol 1900 Kanawha Boulevard East
Charleston, WV 25305
Circuit Judge of Kanawha County

May 1, 1994 – July 15, 1994
Office of the United States Attorney for the Southern District of West Virginia
500 Virginia Street East
Charleston, WV 25301
Assistant United States Attorney

February 1, 1982 – May 1, 1994
Office of the Kanawha County Prosecuting Attorney
700 Washington Street East
Charleston, WV 25301
Assistant and First Assistant

June 1979 – January 31, 1982
Legal Aid Society of Charleston
922 Quarrier St Fl 4
Charleston, West Virginia 25301
Staff Attorney

May 1978 – August 1978
Legal Aid of Morgantown, WV
Summer Intern

Other Affiliations:

West Virginia University Foundation Board of Directors, 2008-present

University of Charleston Board of Trustees, 2000-2003 and 2006-present
(Secretary 2001-2003; 2006-present)

West Virginia University Alumni Association Board of Directors, 1999-2004
(Chair 2003-2004)

West Virginia University Institutional Board of Advisors, 1998-1999

The Mattie V. Lee Home Board of Directors, 1995-1997

Keep A Child In School, Inc. Board of Directors, 1996-1997

The Legal Services Corporation Board of Directors, 1992-1994

Family and Children Together Board of Directors, Early 1980's

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 have not served in the military.

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.

2008 West Virginia University Eberly College of Arts and Sciences Departmental Alumni Award Mathematics

2007 Charleston, West Virginia Branch NAACP
NAACP Image Award for Leadership 2007

2006 Outstanding Alumna – West Virginia University Alumni Association

2004 Distinguished West Virginian Award

2004 Kanawha Institute for Social Research and Action
Community Champion Award

2003 Named American Bar Association Foundation Fellow

2003 Mountain State Bar Association Merit Award

2002 Named West Virginia State Bar Foundation Fellow

2002 West Virginia Women's Commission
West Virginia African American Woman of Distinction

2000 YWCA Woman of Achievement

2000 West Virginia University College of Law Women's Law
Caucus Outstanding Woman in the Law Award (Public Sector)

1997 West Virginia Women's Commission
West Virginia Celebrate Women Award in Government

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.

West Virginia State Bar
Kanawha County Bar Association;
Mountain State Bar Association
West Virginia Judicial Association
Fourth Circuit Judicial Conference
American Bar Association
Chair, West Virginia State Bar Symposium for Legal Services for the Poor (1998-2004)
Chair, John A. Field Jr. Inn of Court (approx year 2000)
Member, Judicial Hearing Board (1996-December 2000 and 2006- 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.

West Virginia State Bar, May 1976
There has been no lapse 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.

Supreme Court of Appeals of West Virginia and the Courts of West Virginia,
May 15, 1979

United States District Court for the Southern District of West Virginia, May 15
1979

Supreme Court of the United States, October 12, 2004

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.

West Virginia University Foundation Board of Directors, 2008-present

University of Charleston Board of Trustees, 2000-2003 and 2006-present
(Secretary 2001-2003; 2006-present)

West Virginia University Student Affairs Visiting Committee, 2005-present

West Virginia University Alumni Association Board of Directors, 1999-2004
(Chair 2003-2004)

West Virginia University President's Office of Social Justice Visiting Committee,
2001-2004

West Virginia Supreme Court Child Health Care Commission, 2000

West Virginia University Institutional Board of Advisors, 1998-1999

West Virginia University College of Law Visiting Committee, 1995-1999

The Mattie V. Lee Home Board of Directors, 1995-1997

Keep A Child In School, Inc. Board of Directors, 1996-1997

The Legal Services Corporation Board of Directors, 1992-1994

Governor's Domestic Violence Advisory Committee, 1993-1994

Juvenile Justice Committee, 1990-1993

Family and Children Together Board of Directors, Early 1980's

- 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.

None of the organizations listed in 11a currently discriminate or formerly discriminated on the basis of race, sex, religion, or national origin to the best of my knowledge. (This statement, of course, excludes the time period prior to Supreme Court opinions which prohibited institutions of higher learning from discriminating on the basis of race 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.

“From Classroom to Boardroom” West Virginia Alumni Magazine Fall 2003

- 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.

None.

- 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.

None

- 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.

SPEECHES:

May 16, 2003 ; West Virginia University Alumni Association Morgantown, WV

May 15, 2004; West Virginia University Alumni Association Morgantown, WV

October 27, 2006; Legal Services Corporation Luncheon Charleston, WV

December 10, 2006; West Virginia University Convocation Morgantown, WV

January 15, 2007; Ecumenical Service Honoring Dr. Martin Luther King
Charleston, WV

May 4, 2008; University of Charleston Commencement Charleston, WV

CONFERENCE/PANEL DISCUSSION MATERIALS:

March 25, 1995; Women Violence and the Law; Morgantown, WV

June 1, 1996; Criminal Offenses Involving Violence to Women; Charleston, WV

May 18, 1996; Update on West Virginia Criminal Law; Morgantown, WV

March 28, 1998; Ethics, Demeanor and Credibility in the Courtroom; White
Sulphur Springs, West Virginia

May 1, 1998; Ten Ways to Effectively Persuade a Jury; Bluefield, WV

October 20, 1998; Significant Civil Decisions of the West Virginia Supreme
Court of Appeals; Davis, WV

April 27, 1999; Authored Civil Decisions of the West Virginia Supreme Court of
Appeals; Martinsburg, WV

October 27, 1999; Significant Civil Opinions of the West Virginia Supreme Court
of Appeals; Pipestem, WV

May 18, 2000; Significant Civil Opinions of the West Virginia Supreme Court of
Appeals; Wheeling, WV

July 27, 2000; Sixth Annual West Virginia Professional Women's Forum;
Charleston, WV

December 5, 2000; Significant Civil Opinions of the West Virginia Supreme
Court of Appeals; Charleston, WV

March 29, 2001; Significant Civil Opinions of the West Virginia Supreme Court
of West Virginia; White Sulphur Springs, WV

May 15, 2001; Significant Civil Opinions of the West Virginia Supreme Court of
Appeals; Daniels, WV

October 16, 2001; Significant Civil Opinions of the West Virginia Supreme Court
of Appeals; Parkersburg, WV

May 8, 2002; Significant Civil Opinions of the West Virginia Supreme Court of Appeals; Charleston, WV

October 22, 2002; Significant Civil Opinions of the West Virginia Supreme Court of Appeals; Roanoke, WV

January 24, 2003; Update on the Law of Damages in West Virginia; Charleston, WV

May 8, 2003; Significant Civil Opinions of the West Virginia Supreme Court of Appeals; Snowshoe, WV

May 9, 2003; Significant Civil Opinions of the West Virginia Supreme Court of Appeals; Snowshoe, WV

- 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.

Charleston Daily Mail interview July 15, 1994
West Virginia State Bar Magazine interview October 1994
Charleston Gazette interview July 5, 1995
ABA Journal interview November 1996
Charleston Gazette interview December 3, 1997
Charleston Daily Mail interview January 19, 1998
Charleston Gazette interview July 20, 1998
Charleston Gazette interview February 9, 2000
West Virginia University Alumni News interview Summer 2003

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.

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

I have presided over approximately one hundred seventy seven (177) cases which have gone to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials:	97.2%
bench trials:	2.8%

civil proceedings:	55.4%
criminal proceedings:	44.6%

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

I have not written any published opinions.

- 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. William D. Calfee, Jr. et.al. v. WV Parkways, Economic Development and Tourism (Civil action number 06-C-21)

The plaintiffs alleged that the defendant had unlawfully increased the toll on the West Virginia Turnpike without giving proper public notice and hearing as required by statute. The defendant claimed that proper notice had, in fact, been given and that the toll increases were lawful. After full hearing and a review of the exhibits, I determined that although notice of a “monthly meeting” had been published, no notice of the purpose of the meeting had been given as was required by the applicable statute and ordered the immediate rollback of the toll. The attorneys who litigated the case were: Anthony Veneri 1600 West Main Street, Princeton, WV 24740; James Crockett, Jr., c/o Spilman Thomas and Battle P.O. Box 273, Charleston, WV 25321-0273 and Alex Macia c/o Spilman Thomas P.O. Box 273, Charleston, WV 25321-0273.

2. Karen Fritz v. Tifney Terry et.al (Civil action number 07-MISC-148)

The plaintiff, a resident of Nitro, WV filed an action for injunctive and other relief, alleging that the Treasurer of the city of Nitro had not posted bond in keeping with applicable municipal code after her election to the position. The matter was presented to me for decision on the defendants’ motions to dismiss and the plaintiff’s motion for summary judgment. The motions to dismiss alleged mootness and no justiciable controversy inasmuch as the defendant, treasurer had posted a bond by the time the action was filed. The plaintiff’s motion for summary judgment sought removal of the treasurer based on the language of the applicable code. I ordered the treasurer’s removal based on the code language which indicated that the position “shall be deemed vacant” if the bond is not posted within the time prescribed by law. The attorneys who litigated the issues were Mike Clifford 723 Kanawha Blvd. E. Ste.300, Charleston, WV 25301, Troy Giatras c/o The Giatras Law Firm PLLC, 118 Capitol Street Ste.400, Charleston, WV 25301, Mark French c/o Criswell and French PLLC, 405 Capitol Street Ste. 1007, Charleston, WV 25301 and James R. Akers II c/o Akers Law Offices PLLC, P.O. Box 11206, Charleston, WV 25339.

3. State ex rel City of Charleston v. Board of Public Works et.al.

(Civil action number 03-C-582) The Plaintiff, City of Charleston filed a declaratory judgment action seeking to prevent the West Virginia Lottery Commission, a state agency, from relocating outside of the city limits of Charleston, WV, the capital city and seat of government. The parties presented the issue on cross motions for summary judgment. Given the constitutional history and language, I ruled that the agency could not move outside of the city limits. The Supreme Court refused the case. The attorneys who litigated the case include G. Nicholas Casey, Jr. c/o Lewis Glasser Casey and Rollins, 300 Summers Street Ste. 700, Charleston, WV 25301, Robert B. Allen, c/o Allen Guthrie McHugh and Thomas LLC, P.O. Box 3394, Charleston, WV 25333-3394, Dolores A. Martin, P.O. Box 2749, Charleston, WV 25330, Kelli D. Talbott, State Capitol Complex, Building 1, Room E-26, Charleston, WV 25305, Steven E. Dragisish, State Capitol Complex, Building 1, Room W-435, Charleston, WV 25305, Jennifer D. Scragg, 3389 Winfield Road, Winfield, WV 25213 and Harvey D. Peyton, P.O. Box 216, Nitro, WV 25143.

4. Nancy K. Cartwright v. Herbert J. Thomas Memorial Hospital Assoc.
(Civil Action 03-C-2040)

The nurse plaintiff alleged age discrimination and retaliatory discharge against her former employer, defendant hospital. She alleged that she was discharged primarily because of her many protests that the hospital was doing too many cesarean births and that they were being done for the convenience of the doctors. The evidence was that the percentage of these births at the defendant, hospital was higher than the local and national averages. After several days of testimony, jury returned a multimillion dollar verdict in favor of the plaintiff including punitive damages against the defendant, hospital. The amount of the verdict was significant in the hospital community and the evidence raised local awareness through the news media of the claim regarding hospitals increasing the number of cesarean births. Subsequent to the verdict there were significant issues of insurance coverage between the parties. These issues were presented on motion and cross motion for summary judgment. Attached is a letter opinion which addressed those issues. Final Orders are also attached. The attorneys involved in the case included Mark Atkinson c/o Atkinson and Polak PLLC, P.O. Box 549 Charleston, WV 25322, John Polak, c/o Atkinson and Polak PLLC, P.O. Box 549, Charleston, WV 25322 and John Tinney c/o Tinney Law Firm, Bank One Tower Ste 1202, 707 Virginia Street East, Charleston, WV 25337.

5. Leo S. Appel et.al. v. Beazer East et.al. consolidated with John R. Parry et.al v. Beazer East (Civil action numbers 98-C-2847 and 98-C- 2872)

The Plaintiffs were former employees, family members of employees and residents of the town where the defendant, employer, Beazer East made creosote. The allegations were that there was a higher incidence of cancer among the

residents of this town than there is nationally and that the cancer was caused by the unsafe use of creosote. The case presented novel claims for summary judgment consideration. I have attached a letter opinion. After weeks of trial, the jury returned a verdict in favor of the plaintiffs. The attorneys who litigated the case include Guy Bucci and J. Kristofer Cormany, c/o Bucci Bailey & Javins LC, P.O. Box 3712, Charleston, WV 25337, Alan Silko 707 Grant Street, Gulf Tower, Ste. 600, Pittsburgh, PA 15219, H. Blair Hahn P.O. Box 1792, Mount Pleasant, SC 29465, John H. Tinney Bank One Tower, Suite 1202, 707 Virginia Street East, Charleston, WV 25337-3752, Neva G. Lusk c/o Spilman Thomas & Battle, 300 Kanawha Blvd. East, Charleston, WV 25301 and Anthony G. Hopp 225 West Wacker Drive, Chicago, IL 60606-1229.

6. Sonie Petry et.al v. West Virginia University Board of Governors (Civil action number 07-MISC-272)

The plaintiffs, who were employees of West Virginia University Institute of Technology, brought an action seeking a mandamus to compel its governing body, the defendant, Board of Governors to develop a plan addressing faculty salary levels and capital improvement needs in keeping with the applicable statute. The defendant argued that it had previously developed the plan. After full hearing and a review of the exhibits, I found that the plan required by the statutory provisions, had not been developed and ordered the same to be developed within sixty (60) days of the entry of an order. The letter opinion and final order are attached. The attorneys who litigated the issue are Kevin Nelson P.O. Box 3786, Charleston, WV 25337-3786 and Jendonnae L. Houdyschell Senior Asst. Attorney General, Legal Division 8th Floor, 1018 Kanawha Blvd. East, Charleston, WV 25305.

7. State v. Robert Joseph Bradley (Criminal action number 01-F-291)

The defendant was charged with the murder of a man after an argument. Years prior to the incident charged in the indictment, the defendant had suffered a head injury. The defense was that the defendant's head injury caused him to be more impulsive and to act quicker than the average person would under the circumstances. I heard the testimony of the defendant's psychiatric expert in camera and since he did not testify that the defendant suffered from a disease or defect that rendered him incapable of forming the requisite intent, I ruled that the psychiatric testimony would be excluded. The jury convicted the defendant of murder. On appeal, the Supreme Court reversed the conviction finding reversible error in my excluding the psychiatric testimony. According to the opinion, the evidence was relevant to show the defendant's diminished capacity. The case was tried again. The psychiatric testimony was admitted and the defendant was convicted of murder. The West Virginia Supreme Court's opinion is attached. The attorneys who litigated the case are Donald P. Morris 700 Washington St. E. 4th Floor, Charleston, WV 25301, K. Michele Drummond 700 Washington St. E.

Charleston, WV 25301 and John Mitchell Sr. 206 Berkeley Street, Charleston, WV 25302.

8. State ex rel Jessica A. Justice v. Monongalia County Board of Education et.al. (Civil action number 94-MISC-5000)

The plaintiff brought original jurisdiction mandamus before the Supreme Court of Appeals of West Virginia against her county board of education and the West Virginia Board of Education asking that the defendants be compelled to provide services to her disabled child as required by law under his individual educational plan (IEP). The Supreme Court appointed me special master to take evidence and submit a report regarding the implementation of the required IEP. After numerous hearings and expert submissions, the report was written and submitted to the Court. A copy is attached. The attorneys who litigated the case include Harry M. Rubenstein c/o Dinsmore & Shohl 215 Don Knotts Blvd. Ste. 310, Morgantown, WV 26501, Joseph Price c/o Robinson & McElwee PLLC, P.O. Box 1791, Charleston, WV 25326, Michael Carey c/o Carey Scott & Douglass PLLC, P.O. Box 913, Charleston, WV 25323, Clarke VanDervort P.O. Box 4190 Bluefield, WV 24701 and Dina Mohler c/o Charleston Area Medical Center, P.O. Box 3669 Charleston, WV 25326.

9. Coal River Mountain Watch v. Ellis et.al (Civil action number 06-C-257)

The plaintiffs claimed that legislation which permitted trucks hauling coal to exceed established weight limits in specified parts of the state violated the equal protection clause of the state constitution and also claimed that the legislative enactments violated the separation of powers doctrine in view of certain constitutional amendments. After full hearing and review of counsel's written submissions, I found no constitutional violations. The attorneys who litigated the issues include John H. Skaggs, 500 Randolph Street, Charleston, WV 25302, Albert Sebok c/o Jackson Kelly PLLC, P.O. Box 553, Charleston, WV 25322-0553, Jeffrey J. Miller c/o WVDOH Legal Division, 1900 Kanawha Blvd. E, Room A519-B-5, Charleston, WV 25305-0430, and Richard M. Allen c/o WV Public Service Commission 201 Brooks Street, Charleston, WV 25301-1827.

10. University of West Virginia Board of Trustees et.al. v. Jeffrey Jessen, et.al. (Civil action number 95-AA 290)

The petitioners appealed the decisions of an administrative law judge relative to reclassification of employees of West Virginia University which affected salaries and benefits. Both the University and certain affected employees filed appeals. The cases were consolidated and after lengthy review of the various records, briefs, exhibits and pertinent authority, I affirmed, in large part, the rulings of the administrative law judges. A copy of the order is attached. Attorneys involved in the cases include James Haviland P.O. 3465, Charleston, WV 25334, Robert M. Steptoe, Jr. c/o Steptoe & Johnson, P.O. Box 2190, Clarksburg, WV, James

St.Clair 630 ½ 7th Ave. Huntington, WV 25701, Mary R. Brandt 135 Northwoods Drive, Morgantown, WV 26508 and Connie A. Bowling 237 Central Ave., South Charleston, WV 25303.

- 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.

Generally, no formal “opinions” are issued. All orders relative to a specific case can be found in the office of the Circuit Clerk, the custodian of all court records. In some cases, I have issued letter opinions to counsel in an effort to guide them in the preparation of an Order.

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

92-AA-73	Shawnee Bank v. Paige
93-C-3708	Riddle v. Housing Authority of Charleston
93-C-6021	Steele v. DOH, et al.
94-AA-17	McIntosh v. WV CPRB
94-AA-163	WVU Board of Trustees v. Graf
94-AA-225	Glass V. Dillon, et al.
94-C-1055	Jones v. Bundy, et al.
94-C-1276	Daigle v. WV Governor’s Office
94-C-1530	Fernatt v. WV DOH
94-C-1693	Hoffman v. Yost, et al.
94-C-1707	McGraw v. American Tobacco Co., et al.
94-C-1732	Evans v. E.I. Dupont, et al.
94-C-2198	Brown v. Carvill
94-C-2389	Jain v. Ditrapano & Jackson, et al.
94-MISC-687	Webb v. WV Board of Medicine
95-AA-15	Hanlon v. Logan County BOE
95-AA-156	Hazlewood v. Mercer County BOE
95-AA-181	Conner v. Barbour County BOE
95-AA-285	Mahoodian v. WV Board of Medicine
95-AA-290	Board of Trustees/WVU v. Jessen, et al.
95-C-160	Hayes v. State Farm, et al.’
95-C-192	Blake v. CAMC
95-C-233	Connell, et al. v. Smith
95-C-2147	Fleming v. Ferrell
95-C-2878	McKemy v. City of Charleston
95-C-3022	Jeffrey v. WV DPS, et al.
95-C-3652	Hammond v. Bland, et al.
95-MISC-171	Boyd v. WV DNR, et al.
95-MISC-465	Kimberly Industries v. Riley
95-MISC-607	O’Daniels v. City of Charleston

95-MISC-741	WVU Board of Trustees v. Brewer, et al.
96-AA-37	McVicker v. Kanawha County BOE
96-AA-115	Conner v. Barbour County BOE
96-C-537	Trump v. Long-Airdox
96-C-890	Brunetti v. Winans Sanitary Supply
96-C-964	Lamaar v. KVRTA
96-MISC-84	WV Board of Medicine v. Wang
96-MISC-180	Carey v. Regan, et al.
97-AA-7	Deavers v. Board of Trustees, et al.
97-AA-143	WVU Board of Trustees v. Hickman
97-C-2306	Carvey v. WV BOE, et al.
98-AA-79	Klandorf, et al. V. WVU Board of Trustees
98-AA-138	Bostic v. Kanawha County BOE
98-C-2262	Dunbar FOP v. City of Dunbar
98-MISC-331	Basham v. State of WV
99-AA-148	Cambers v. WV DMV, et al.
99-C-216	D.R., et al. v. Salvation Army, et al.
99-C-991	One Valley Bank v. Borromeo
99-C-1159	Huffman v. Gabbert
99-C-2225	C & H Consolidated Rail Corp.
99-C-2228	Pierce v. Pierce, et al.
99-C-2745	In Re: Kenna Homes
00-AA-3	Simons v. WV DOT, et al.
00-AA-35	WV DNR v. WV Human Rights Commission
00-AA-64	Midkiff v. Wayne County BOE
00-AA-69	Gray v. Kanawha County BOE
00-AA-74	Woods v. BOE of Monroe County
00-AA-85	Akers v. Mercer County BOE
00-AA-95	B B Enterprises v. Palmer, et al.
00-AA-96	JDA Management v. Palmer, et al.
00-AA-179	Haun v. Monongalia BOE
00-AA-194	Richards v. WV DHHR, et al.
00-C-95	Prichard v. Beneficial WV, et al.
00-C-374	Huffman v. Criner
00-C-1155	Dunlap v. Friedman's, et al.
00-C-1434	Ellison v. Doe, et al.
00-C-1593	Sanson v. Brandywine Homes, et al.
01-AA-22	PSC of WV v. Elswick
01-AA-50	Tri-State Concrete Plumbing v. Tax Commissioner of WV
01-AA-65	Body Shop v. WV HRC, et al.
01-AA-102	Hoss v. Pritt, et al.
01-C-955	Jarrell v. Cavender
01-C-2110	Cottrill v. Tucker, et al.
01-C-2740	Spencer v. McClure
01-C-2745	Shannon v. Rubenstein, et al.
01-C-2891	Charleston Radiation Therapy v. Carelink Health Plan

01-C-3315	White v. Lucas, et al.
01-C-3328	King v. Heffernan, et al.
01-C-3776	Russell v. Verizon, et al.
02-C-1058	Hoover v. Moran
02-C-1334	National Fire Insurance v. MSB Leasing, et al.
02-C-1987	Dolan v. Desai
02-C-2234	Currey v. WV DPS, et al.
02-C-2770	Wilson v. Town of Pratt, et al.
02-C-2989	Givens v. Board of Risk & Insurance Mgmt., et al.
02-C-3107	Whittington v. Toad's Car Wash
02-MISC-8	Trozzi v. Board of Review, et al.
02-MISC-374	Chance v. Parry, et al.
03-AA-168	Berryman, et al. v. Division of Corrections
03-AA-183	International Industries v. Craig, et al.
03-C-90	Scible v. Dawson, et al.
03-C-136	Pruitt v. WV DPS, et al.
03-C-1651	Perdue, et al. v. Wise, et al.
03-C-1758	Aluise v. Nationwide
03-MISC-28	Isabell v. McBride
03-MISC-97	Burdette v. McBride
03-MISC-296	Jarvis v. WV DOC, et al.
04-AA-32	Summers v. WV CPRB
04-AA-39	Butler v. Gilmer County BOE
04-AA-40	Cobb v. Putnam County BOE
04-AA-109	Fraternal Order of the Owls v. Board of Zoning
04-AA-133	Mayflower Vehicle v. Lewis, et al.
04-C-1291	Fraternal Order of the Owls v. City of Charleston, et al.
04-C-2067	Coleman v. Tableting & Packaging Services, et al.
04-C-2197	McClure v. Manchin
04-C-2576	Blessing v. National Engineering, et al.
04-C-2670	Neal v. Marion, et al.
04-C-2728	Caruso v. Pearce, et al.
04-MISC-78	Daily v. Haines
04-MISC-212	Maynard v. Stump
04-MISC-273	Burton v. McBride
05-AA-89	Nelson v. Pocahontas BOE
05-C-645	France v. Heflin
05-C-2499	Sanson v. St. Paul Mercury Insurance Co., et al.
05-MISC-476	Willis v. McBride
06-AA-75	Redmond-Hager v. WV CPRB
06-AA-143	Alderman v. Pocahontas County BOE
06-AA-150	Putnam County BOE v. Sargent
06-AA-176	CAMC v. Shinn, et al.
06-C-257	Coal River Mountain Watch v. Ellis, et al.
06-C-859	McComas v. T & M General Contracting
06-C-1001	J.H. v. WV DRS

06-MISC-157	Branham v. Seifert
06-MISC-212	Craig v. McBride
06-MISC-243	Barritt v. WV Parole Board
06-MISC-479	Joseph v. McBride
07-AA-153	Hardy County BOE v. Haukland
07-C-1441	Goodman v. Caldwell, et al.
07-MISC-310	McGraw v. Able Debt Settlement
95-F-180	State v. Luther Basham
95-F-258	State v. Charles Lamp, Jr.
95-F-339	State v. Carnes Brown
96-F-301	State v. Glenn Aaron
96-F-364	State v. Charles Guthrie
97-F-71	State v. Taz Allen Whitt
97-F-211	State v. James Isabell
97-F-343	State v. Robert Daily
98-F-413	State v. Elbie Thurman, Jr.
99-F-42	State v. Cory Brown
99-F-79	State v. Samuel Stone
99-F-121	State v. Jerome Williams
99-F-287	State v. James Marcum
00-F-337	State v. David Jeffrey
01-F-291	State v. Robert Joseph
02-F-426	State v. Tracey Brown
03-F-230	State v. Jesse Willis
03-F-416	State v. Myra Angell
04-F-162	State v. Robert Dickerson
04-F-360	State v. Robert Dickerson
04-F-394	State v. Earl Saxton
05-F-129	State v. Earl Saxton
05-F-272	State v. Adonis Thompson
06-F-141	State v. Joshua Slater
06-F-299	State v. Jonathan Lind
07-F-214	State v. Shelby Moore
08-F-125	State v. Marcus Jerdine

- 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.

Isabell v. McBride --- The Supreme Court of Appeals remanded this case for full hearing on the petitioner's allegation of ineffective assistance of counsel made in his petition for habeas corpus. All habeas relief had previously been denied by

this Court. (Supreme Court of Appeals of West Virginia #31651, 2004; No formal opinion issued)

Roth v. Connolly --- The Supreme Court of Appeals reversed and remanded the case for new trial finding that, given the facts of the case, this Court had erroneously failed to give an instruction on comparative negligence and had erroneously given an instruction on the doctrine of sudden emergency. (203 W.Va. 607, 509 S.E.2d 888, 1998)

Jeffrey v. West Virginia Department of Public Safety et. al. --- The plaintiff appealed the dismissal of his wrongful death claim against the West Virginia Division of Corrections based on the public duty doctrine. The Supreme Court of Appeals remanded the case to this Court for a determination as to whether this state agency had procured applicable insurance coverage. The Court found that the dismissal was premature until a determination about coverage had been made by this Court. (198 W.Va. 609, 482 S.E.2d 226, 1996)

Trozzi v. The Board of Review of the West Virginia Bureau of Employment Programs The Supreme Court reversed this Court's Order denying attorney's fees in a case in which the petitioner had successfully pursued a writ of mandamus against the respondent, Board of Review. (214 W.Va. 604, 591 S.E.2d 162, 2003)

Hoover v. Moran --- The Supreme Court reversed this Court's dismissal, pursuant to Rule 12(b)6 of the West Virginia Rules of Civil Procedure, of the plaintiff's complaint against the defendant, Moran, in his individual capacity. The Supreme Court found that the allegations of the complaint were sufficient to put the defendant, Moran, on notice that he was being sued in his individual capacity. (222 W.Va. 112, 662 S.E.2d 711, 2008)

Pruitt v. West Virginia Department of Public Safety et.al --- The Supreme Court reversed this Court's Order granting summary judgment in favor of the West Virginia Department of Public Safety finding that there were genuine issues of material fact regarding the plaintiff's claims that this defendant failed to adequately train a trooper involved in a shooting death and further finding deficiency in the findings and conclusions contained in this Court's Order. (222 W.Va. 290, 664 S.E.2d 175, 2008)

BB Enterprises, Inc. v. Palmer AND JDA Management Inc. v. Joseph Palmer The Supreme Court reversed this Court's Order affirming an administrative law judge's finding that taxes should be assessed against the taxpayers, who operated exotic show bars and adult entertainment establishments, for special drinks and private dances which could be purchased inside the establishments once the patron entered after paying the cover charge. (214 W.Va. 571, 591S.E.2d 129, 2003)

Mayflower Vehicle Systems, Inc. v. Vincent Cheeks, et. al. --- The Supreme Court reversed this Court's Order awarding back pay to the appellee, Cheeks, and remanded the case for a factual determination as to the proper date on which discrimination against the appellee occurred thereby determining the date that back pay should began to accrue. (218 W.Va. 703, 629 S.E.2d 762, 2006)

Neal v. J. D. Marion et.al. --- The Supreme Court reversed this Court's Order granting summary judgment in favor of the defendant, Marion, having found that the claim against Marion was filed outside of the applicable ten-year statute of limitations. The Supreme Court found there was evidence of fraud and misrepresentation that fell within the statutory ten-year statute of limitations. (222 W.Va. 380, 664 S.E.2d 721, 2008)

State of West Virginia ex rel. Dunlap v. Berger et.al. --- The Supreme Court granted a Petition for Writ of Prohibition finding that this Court's entry of an Order, staying the petitioner's claims and finding that the petitioner was required by contractual language to arbitrate his claims, was erroneous. (211 W.Va. 549, 567 S.E.2d 265, 2002)

Dunbar Fraternal Order Of Police, Lodge #119 v. The City of Dunbar --- The Supreme Court reversed that portion of this Court's Order requiring the City of Dunbar to pay the full health care premiums for those members of the plaintiff Organization who were under a HMO health care plan. (218 W.Va. 239, 624 S.E.2d 586, 2005)

State of West Virginia v. Robert Bradley Joseph --- The Supreme Court reversed this Court's ruling to exclude certain psychiatric testimony in the defendant's trial for murder and expressly adopted diminished capacity as a defense in this State. (214 W.Va. 525, 590 S.E.2d 718, 2003)

McClung v. The Board of Education of the County of Nicholas --- The Supreme Court reversed this Court's Order affirming the decision of the West Virginia Education and State Employees Grievance Board that the petitioner was not entitled to a school bus operator position for the summer of 1999. The Supreme Court found, given the unique facts of this case, the petitioner was entitled to the position based on seniority. (213 W.Va. 606, 584 S.E.2d 240, 2003)

Herbert J. Thomas Memorial Hospital v. Board of Review of the West Virginia Bureau of Employment Programs et.al. --- The Supreme Court reversed the decision of this Court, which affirmed the ruling of the Board of Review, finding the acts of a former employee of the petitioner, who had stolen food from the cafeteria, did not rise to the level of gross misconduct thereby disqualifying the former employee from receiving unemployment benefits. The Supreme Court found the act was gross misconduct within the meaning of the statute and, therefore, found the employee was disqualified from receiving unemployment benefits. (218 W.Va. 29, 620 S.E.2d 169, 2005)

Summers et.al. v. The West Virginia Consolidated Public Retirement Board

The Supreme Court reversed the Order of this Court which had denied the appellants' request to include lump-sum payment for accumulated vacation pay in the calculation of their final average salaries for the purpose of determining retirement benefits. (217 W.Va. 399, 618 S.E.2d 408, 2005)

The Honorable John D. Perdue et.al. v. The Honorable Bob Wise, et.al. --- The Supreme Court reversed the Order of this Court which found that the issuance of general revenue bonds pursuant to the Pension Liability Redemption Act did not violate the West Virginia Constitution. The Supreme Court found the issuance was, in fact, unconstitutional in that the Constitution prohibited the state, as a general rule, from incurring debt. (216 W.Va. 318, 607 S.E.2d 424, 2004)

Blessing v. National Engineering & Contracting Company --- The Supreme Court reversed an Order granting summary judgment in favor of the West Virginia Department of Transportation based on the doctrine of sovereign immunity, inasmuch as there was no insurance coverage for the acts complained of in the complaint. The Supreme Court reversed finding genuine issues of material fact existed relative to the issue of coverage. (222 W.Va. 267, 664 S.E.2d 152, 2008)

The University of West Virginia Board of Trustees v. Graf --- The Supreme Court reversed this Court's Order granting the appellee attorney's fees finding that the Order was erroneous because the appellee had previously recovered damages up to the limits of the insurance coverage of the appellant and that, therefore, any additional grant of attorney's fees would violate the doctrine of sovereign immunity. (205 W.Va. 118, 516 S.E.2d 741, 1998)

Glass v. Cathy s. Gatson, Clerk of the Circuit Court et.al --- The Supreme Court reversed an Order of this Court, which had affirmed the decision of the Board of Review, that held the Petitioner had voluntarily quit her employment without good cause involving fault on the part of the employer thereby rendering her ineligible to receive employment compensation benefits. (200 W.Va. 181, 488 S.E.2d 456, 1997)

Brown v. Carvill --- On petition for rehearing the Supreme Court, after initially affirming this Court's decision granting summary judgment, reversed the decision and found that there were genuine issues of material fact as to whether the appellee acted willfully or wantonly towards the petitioner, trespasser, and also found that there were genuine issues of material fact regarding whether the appellee had created a dangerous condition on his property. (206 W.Va. 605, 527 S.E.2d 149, 1998)

Blake v. Charleston Area Medical Center, Inc. (1997) The Supreme Court reversed an Order entered by this Court finding the claim to be barred by the doctrine of res judicata. (201 W.Va. 469, 498 S.E.2d 41, 1997)

Clay Foodland v. State of West Virginia ex rel. WV Department of Health and Human Resources et.al. (2000) The Supreme Court reversed the Order of this Court upholding the decision of the Department of Health and Human Resources' sanction of the Petitioner for an overcharge violation in the WIC program. Here, the overcharge was the result of employee theft and although employers like the appellant can be held liable for the actions of its employees under the WIC regulations, the Supreme Court found sanctions were inappropriate where the overcharge was the result of theft of which the appellant had no knowledge or participation. (207 W.Va. 392, 532 S.E.2d 661, 2000)

O'Daniels v. City of Charleston (1996) The Supreme Court reversed the Order of this Court due to the failure to join an indispensable party and because of a failure to specifically define the boundaries of the municipal street at issue in the controversy. (200 W.Va. 711, 490 S.E.2d 800, 1997)

Alderman v. Pocahontas County Board of Education (2009) The Supreme Court reversed the Order of this Court which found that the petitioner below, a teacher, engaged in constitutionally protected speech when he criticized his local Board of Education. Further, this Court found that in the event the speech was not protected, mitigation of punishment less severe than termination should have been considered under applicable law. The Supreme Court reversed on both issues. (Supreme Court of Appeals of West Virginia slip opinion #33922, 2009)

Caruso V. Pearce and P&T Trucking, Inc. (2009) In a 3-2 decision, the Supreme Court reversed the Order of this Court which dismissed a complaint pursuant to Rule 41(b) of the West Virginia Rules of Civil Procedure due to the plaintiff's failure to prosecute. The majority opinion found that the inactivity on the part of the plaintiff was due, in part, to this Court not having entered a scheduling order in the case and, therefore, reversed the dismissal. Two justices entered a dissenting opinion and one of the justices who joined in the majority opinion issued a separate concurring opinion. (Supreme Court of Appeals of West Virginia slip opinion #34144)

- 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.

Generally, no formal "opinions" are issued. All orders relative to a specific case can be found in the office of the Circuit Clerk, the custodian of all court records. In some cases, I have issued letter opinions to counsel in an effort to guide them in the preparation of an Order.

- 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.

State ex rel City of Charleston v. Board of Public Works et.al

Civil action number 03-C-582 (The case involved a state constitutional issue of whether a state agency could be located outside of the city limits of the state capital or the seat of government)

Coal River Mountain Watch v. Ellis et.al.

Civil action number 06-C-257 (The case involved the issues of whether certain legislation which permitted trucks hauling coal to exceed established weight limits in certain parts of the state violated the equal protection clause of the state constitution and whether the legislature's enactment of the statutes violated the separation of powers doctrine in view of certain state constitutional amendments).

- 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 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.

I have assessed the necessity or propriety of recusal in keeping with Canon 3E by first ascertaining if there is an actual conflict and secondly by ascertaining whether there is an appearance of conflict.

In instances where there could be an appearance of conflict, I resolve any doubt in favor of recusal. In instances where I had knowledge of a conflict or an appearance of conflict, I have notified counsel on the record in the courtroom or by letter, if no court proceeding

was imminent. I voluntarily recuse myself from all cases involving parties with whom I have a close personal or professional relationship.

1. In Matter of Charles G. Brown (exact style of case cannot be located due to age)
A motion was made verbally in Court by Mr. Brown's counsel on the day trial was scheduled to begin. Mr. Brown was a public official who had been prosecuted by the office of the Kanawha County Prosecuting Attorney during my employment there. I was minimally involved in the investigation of the case but signed his plea agreement with the office. Although the motion was untimely, and although I thought I could be fair to Mr. Brown, I recused myself. I recused myself finding there to be, at least, a very strong appearance of conflict.
2. John A. Lane, M.D. v. Frank M. Armada (Civil action number 00-C-2372)
A written motion to recuse me was made by Counsel representing Mr. Armada. Mr. Armada had represented a plaintiff in a tort claim filed against my husband and me approximately ten or twelve years earlier. I gave consideration to the fact that Mr. Armada was a party in the lawsuit. I recused myself, finding there to be, at the very least, the appearance of a conflict.
3. Hornbeck v. Fahrenz, et.al. (Civil Action number 96-C-354)
Monty Preiser, one of the party defendants in this legal malpractice case, appeared on the morning of a scheduled hearing and filed a pro se motion to recuse. Prior to this date, Mr. Preiser had been represented by two different attorneys on two prior separate occasions and had never personally appeared. The motion alleged bias in favor of the plaintiff and/or plaintiff's counsel based on prior rulings in the case. I gave consideration to the claims made by Mr. Preiser and to the timing of the motion. Finding the allegations to be baseless and the motion to be untimely, for purposes of the hearing, I denied the motion and proceeded with the hearing. However, since the motion was made more than thirty (30) days before the scheduled trial, I forwarded the matter to the West Virginia Supreme Court pursuant to local trial rules, for its consideration. The Supreme Court denied the motion to recuse.
4. In the Matter of University of Charleston (Correct style of case cannot be located)
The parties and their counsel appeared for hearing and I advised them that I was a member of the Board of Directors of the University of Charleston. I also advised counsel that I thought recusal was appropriate. After a recess to discuss it with their clients, one of the lawyers made a verbal motion to recuse. I recused myself given my involvement as a member of the Board of Directors of the defendant institution.
5. Case involving pro se defendant's habeas who had filed an ethics complaint
Pro se defendant filed a Petition for Habeas Corpus. He subsequently filed a motion to recuse me. I was unaware of the motion to recuse and issued an order denying the petition. The defendant alleged that he had filed an ethics complaint against me and that, therefore, I should recuse myself. I was also unaware of the ethics complaint when I issued the Order denying the petition. Once I became aware of the filing of the ethics complaint, I recused myself finding there to be, at least, an appearance of a conflict.

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 held no public office other than judicial. I have had no 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 am a member of the Democratic Party. I have held no office in any political party and have not been a member of an election committee. I have not held a position or played a role in a political campaign except, of course, as a candidate for the judicial position I now hold.

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 clerk for 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.

July 15, 1994 – Present
West Virginia Supreme Court of Appeals
State Capitol 1900 Kanawha Boulevard East
Charleston, WV 25305
Circuit Judge of Kanawha County

May 1, 1994 – July 15, 1994
Office of the United States Attorney, Southern District of West Virginia
500 Virginia Street East
Charleston, WV 25301
Assistant United States Attorney

February 1, 1982 – May 1, 1994
Office of the Kanawha County Prosecuting Attorney
700 Washington Street East
Charleston, WV 25301
Assistant and First Assistant

June 1979 – January 31, 1982
Legal Aid Society of Charleston
922 Quarrier St Fl 4
Charleston, West Virginia 25301
Staff Attorney

- 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 in alternative dispute resolution proceedings.

b. Describe:

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

During my tenure as a staff attorney with the Legal Aid Society, I primarily represented low income clients in matters involving domestic, consumer and landlord tenant disputes. As an assistant prosecuting attorney and an assistant United States attorney, I prosecuted violent and non-violent crimes representing the citizens of the State of West Virginia and the citizens of the United States of America.

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

During my tenure as a staff attorney with the Legal Aid Society, I primarily represented low income clients. As an assistant prosecuting attorney and an assistant United States attorney, I represented the State of West Virginia and the United States of America.

- 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.

During my career as an attorney, approximately 99 % of my time involved litigation. I appeared in court frequently.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 1% |
| 2. state courts of record: | 97% |
| 3. other courts: | 2% |
| 4. administrative agencies: | |

- ii. Indicate the percentage of your practice in:

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

- 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.

During twelve (12) years as an assistant prosecuting attorney I tried forty (40) felony cases and a much smaller number of misdemeanor cases in what was considered to be the court of record at the time. During my brief stint as an assistant United States attorney, I tried two (2) felony cases in the position of associate counsel. Of the forty (40) felony trials, I was sole counsel in eight (8), chief counsel in sixteen (16) and associate counsel in sixteen (16) cases.

- i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury. | |

- 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 practiced 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. State of West Virginia v. Dale Shawnessy O'Neil
(Criminal action number 87-F-268)

The defendant was charged with first degree sexual assault, aggravated robbery and malicious wounding of a young woman who he met on the evening of the incident. He threatened her with a knife and made shallow lacerations on her neck during the assault. The defendant was found guilty by the jury. I tried the case during the fall of 1987 before the Honorable Margaret Workman, then Circuit Judge of Kanawha County. The defendant was represented by Robert Bland, now deceased. The defendant, O'Neil was paroled in the past five years and shortly after his release on parole was charged with a murder.

2. State of West Virginia v. Michael Cotton
(Criminal action number 86-M-AP-21)

The defendant was charged with involuntary manslaughter for driving past a stopped school bus and killing a young girl on the first day of school. He had been convicted in the Magistrate Court of Kanawha County and had a right to an automatic de novo appeal to Circuit Court. John Frail and I represented the State and tried the case before the Honorable Judge Robert Abbott, sitting by special assignment during the spring of 1987. The defendant was acquitted. He was represented by Joyce Ofsa c/o Spilman Thomas & Battle, P.O. Box 273, Charleston, West Virginia 25321, Phone: 304-340-3847 and Scott Long, P.O. Box 11070, Charleston, West Virginia 25339, Phone: 304-346-5500. John Frail's address is 500 Virginia Street, Charleston, West Virginia 25301, Phone: 304-345-2200.

3. State of West Virginia v. Francis Ramsey
(Criminal action number 85-F-396)

The defendant was charged with first degree murder of an African American Greyhound bus driver who was passing through Charleston, WV on his route. The driver had gone to the bar of a local hotel and had a dance with a local Caucasian woman. The defendant used racial slurs against the driver. An argument ensued and the defendant killed the driver. He pled guilty to first degree murder on the morning of trial. Charles E. King, Jr. and I represented the State. The defendant was represented by W. Dale Greene 633 Virginia Street W., Charleston, WV 25302, Phone: 304-343-3633. Judge Charles

King can be contacted at 111 Court Street, 4th Floor, Charleston, WV 25301, Phone 304-357-0367.

4. State of West Virginia v. Bobby Ray Dawson
(Criminal action number 91-F-87)

The defendant was charged with the first degree murder of his estranged wife and the man the defendant believed she was seeing. He saw them driving on the interstate, shot at them. When they stopped and got out of their car he pulled over, chased them and shot them. The incident was witnessed by numerous travelers on the interstate. William Forbes, (then Prosecuting Attorney of Kanawha County) and I represented the State. The defendant was represented by Fran Hughes. The case was tried before the Honorable Herman Canady, then Circuit Judge of Kanawha, in December 1991. The defense was heat of passion or that the defendant lacked the requisite intent. He was convicted of two counts of second degree murder. William Forbes can be contacted at 28 Ohio Ave., Charleston, West Virginia 25302, Phone: 304-343-4050. Ms. Hughes can be contacted at 734 Hess Drive, Charleston, WV 25311, Phone: 304-558-2021.

5. State of West Virginia v. Floyd Dewey Dolin
(Criminal action number 82-F-259)

This defendant was charged with numerous acts of sexual abuse and assault of his young daughter. The case was tried during the spring of 1984 before the Honorable Patrick Casey, then Circuit Judge of Kanawha County. During the trial Charles King and I, as prosecutors, offered evidence of acts which were not charged in the indictment to show the defendant's intent. The jury convicted the defendant. The Supreme Court reversed the conviction based on the admission of the Rule 404(b) evidence. He was represented by Greg Campbell, c/o Campbell Law Offices, 802 Virginia Street East, Suite 300, Charleston, WV 25301, Phone: 304-342-4815. Judge Charles E. King, Jr. can be contacted at 111 Court Street 4th Floor, Charleston, WV; Phone 304-357-0367.

6. State of West Virginia v. Carla Massey
(Criminal action number 84-F-69)

The defendant was charged with aggravated robbery of a convenience store employee. She was tried during the spring of 1985 before the Honorable Patrick Casey, then, Circuit Judge of Kanawha County. She was convicted and sentenced to the minimum term of ten (10) years. The trial court took the position that under the applicable statutes, the defendant was not eligible for probation. She appealed her sentence and the Supreme Court issued an opinion finding that such a conviction did not preclude probation in instances where no firearm was used. She was represented by Charles Walker (now deceased) and Harry Taylor who can be contacted at 1304 Hunters Ridge Road, Charleston, WV 25314, Phone:304-744-3098. My co-counsel was Michele Rusen c/o Rusen & Auvil PLLC, 1208 Market Street, Parkersburg, WV 26101, Phone: 304-485-6360.

7. State of West Virginia v. Leroy Owens
(Criminal action number 92-F-214)

The defendant was charged with the sexual assault of his middle aged landlady. The case was tried in November 1993 before the Honorable Herman Canady, then Circuit Judge of Kanawha County. The defense was identification. The jury convicted Mr. Owens of sexual assault in the second degree. He was represented by Nathan A. Hicks, Jr., 803 Quarrier Street Ste. 310, Charleston, WV 25301, Phone: 304-343-1343 and Gregory M. Courtright c/o Collins and Courtright 179 Summers Street Suite 306, Charleston, WV 25301, Phone: 304-345-0589. My co-counsel was John J. Frail 500 Virginia Street E., Charleston, WV 25301, Phone: 304-345-2200.

8. State of West Virginia v. Donna Robinson
(Criminal action number 82-F-9; 82-F-10)

The defendant and her co-defendant were charged with the aggravated robbery of two men they picked up at a gas station. They went to the apartment of one of the men and robbed them. The case was tried during the spring of 1983 before the Honorable John Hey, then Circuit Judge of Kanawha County. The defendant was convicted. She was represented by Michael Mincer, now deceased and Charles Gage whose contact information is now unavailable. Lead counsel for the State and my co-counsel was Dina Mohler c/o CAMC, P.O. Box 3669, Charleston, WV 25326, Phone: 304-388-3762.

9. State of West Virginia v. Hillard Sugg
(Criminal case number 83-F-135)

The defendant was charged with first degree felony murder in the death of his niece. He and his friends were drinking; he set a fire, purportedly to give his sleeping friend a "hot foot". His niece died in the resulting house fire. The case was tried in the summer of 1983 before the Honorable Patrick Casey, then Judge of the Circuit Court of Kanawha County. The defendant was convicted of felony murder. In post trial motions, the Court set the verdict aside finding that the elements of the underlying felony of arson were not satisfied under the facts of the case. The defendant was represented by William C. Forbes 28 Ohio Ave., Charleston, WV 25302, Phone: 304-343-4050 and my co-counsel was James C. Stucky, 111 Court Street, 6th Floor, Charleston, WV 25301, Phone: 304-357-0364.

10. State of West Virginia v. Michael Lloyd
(Criminal action number 83-F-256)

The defendant was charged with first degree murder of a man with whom he had an altercation on the street. My recollection is that he stabbed the victim. The case was tried during the summer of 1984 before the Honorable Robert Harvey, then Circuit Judge of Kanawha County. He was acquitted by the jury on his theory of self defense. He was represented by Edward Rebrook, 723 Kanawha Blvd. East, Suite 300, Charleston, WV 25301, Phone: 304-720-7660 and Don Sensabaugh c/o Flaherty Sensabaugh & Bonasso PLLC, P.O. Box 3843, Charleston, WV 25338, Phone: 304-347-4212. My co-counsel was Neva G. Lusk c/o Spilman Thomas & Battle, P.O. Box 273, Charleston, WV 25321, Phone: 304-340-3866.

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.)

My most significant legal activities, as an attorney, included prosecution of criminal conduct and representation of low income clients who, except through agencies like the Legal Aid Society, would not have had legal representation in civil matters. Insuring that these clients had representation on their habitability claims and in cases of unlawful evictions and consumer protection issues was a substantial part of this representation. As a judge, I had the honor to chair the West Virginia State Bar Symposium for Legal Services for the Poor for approximately five (5) years. This Symposium worked diligently to enhance the quality and efficiency of services provided to low income litigants and to enhance access to courts for pro se litigants. Additionally, for a number of years, after taking the bench, I spoke on the topic of ethics, demeanor and credibility at an annual program presented by the West Virginia State Bar titled "Bridge the Gap". The program was mandatory for young lawyers who had graduated, passed the bar exam but had not yet taken the oath to practice law. This presented a unique opportunity to impress upon young lawyers, as they began their careers, the importance of ethics and the importance of guarding their credibility with the bench and with their fellow lawyers. Lastly, on several occasions I have had the opportunity to go into the community and speak to lay persons about various aspects of the civil and criminal justice system in an effort to enhance their knowledge but, most importantly, their confidence in the system. I have not performed any lobbying activities during my career.

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 taught no 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/future benefits other than retirement benefits associated with current employment.

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.

I have no plans, commitments, or agreements to pursue outside employment during my service with the court.

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 have no family members or other persons, parties, categories of litigation and financial arrangements that are likely to present potential conflicts of interest.

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

Currently, I guard my personal and business associations in an effort to minimize the potential for conflicts of interest. I avoid impropriety and the appearance of impropriety as required by the Code of Judicial Conduct. In practice, I review the names of the parties in cases assigned to me prior to conducting any proceedings or issuing any rulings to insure that I have no conflict. If I have knowledge of a party, I make the necessary determination as to whether I should preside in the case given the dictates of the Code of Judicial Conduct and I always make counsel and/or the parties aware of any potential conflict. It has been my practice and will continue to be my practice to err on the side of caution and recuse myself if there is even an appearance of impropriety. If appointed, I will continue these procedures and will follow the Code of Conduct for United States Judges as well as any and all associated statutes, policies and procedures.

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.

My pro bono activities have included chairing the West Virginia State Bar Symposium for Legal Services for the Poor and speaking to community and legal groups regarding procedural and substantive areas of the law as referenced in question number eighteen (18) above. Additionally I have been a panelist/participant in segments taped for public television which were to be used to educate the public about the law. As an attorney, I served on the Juvenile Justice Committee which acted as an arm of the Supreme Court of Appeals of West Virginia and took steps to insure that juveniles involved in the juvenile justice system had appropriate representation and were not improperly incarcerated. Although salaried, I worked for the Legal Aid Society of Charleston providing representation to low income clients in civil matters for almost three (3) years. I have been on the bench for almost fifteen (15) years and have been unable to practice law. Immediately prior to that, I was an assistant prosecuting attorney and was prohibited from practicing law.

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.

There is no selection commission in West Virginia which recommends candidates for nomination to the federal courts.

Having previously contacted Senators Byrd and Rockefeller by letter to express my interest in a position on the United States District Court, I was honored to receive their recommendation in December of last year for the current vacancy. In March, 2009 I was contacted by the Department of Justice regarding pre-nomination paperwork. Since then, I have had a number of conversations with the Department of Justice and the White House regarding that paperwork and the nominations process. I interviewed with staff from the White House and Department of Justice on May 20, 2009. My nomination was submitted to the Senate on July 8, 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.

Absolutely no one has discussed with me any cases, legal issues or questions in a manner that could be interpreted as seeking any express or implied assurances concerning my position on a case, legal issue or question.

AFFIDAVIT

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

June 15, 2009
(DATE)

Irene C Berger
(NAME)

Karen E Sword
(NOTARY)

