Diane J. Humetewa
10236 N. Central Avenue
Phoenix, Arizona 85020

January 6, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on September 19, 2013, to be a United States District Court Judge for the District of Arizona. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Q.12d:

November 22, 2013: Moderator, "The Legal Landscape of Tribal Renewable Energy Development" Conference, Arizona State University, Sandra Day O'Connor College of Law, Tempe, Arizona. I moderated a panel presentation on legal ethics and professional responsibility. Presentation slides and notes supplied.

December 17, 2013: Speaker, "Fall 2013 American Indian Student Convocation" Arizona State University, Tempe, Arizona. I provided brief welcome remarks. I have no notes, transcript or recordings. The address of Arizona State University is 1151 South Forest Avenue, Phoenix, Arizona 85287.

I am also providing an updated Net Worth Statement and Financial Disclosure Report as required by the Senate Questionnaire. I appreciate the Committee's consideration of my nomination.

Sincerely,

Diane J. Humetewa

Diane J. Humetewa

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

THE LEGAL LANDSCAPE OF TRIBAL RENEWABLE ENERGY DEVELOPMENT
November 22, 2013
1:15-3:00

DIANE:

1. INTRODUCTIONS

2. DISCLAIMERS

HYPOTHETICAL 1: [NICCOLE TO LEAD]

You are the chief legal counsel for your tribe. ZEN Energy, a renewable energy company, and TRY, a tribal enterprise, have proposed developing valuable tribal renewable energy resources to the tribal leadership. The leadership asks you to enter into a Letter of Intent and to carry out the development of the project for the tribe. You have limited experience in developing renewable energy resources for an Indian tribe.

Q. What ethical issues arise?

*Who is the client? [*Discuss: Council delegates, President or Chairman, committees of the Council, tribal enterprise, competing governmental entities?]

Q. Are you able to hire independent counsel for the other governmental unit?

Discuss:

* Attorney role as mediator
* Charter responsibility for representation
* What are the objectives of representation?
* Has a final decision been made to develop the project?

Q. If you question the viability of the project or question the competence of the ZEN Energy, is it within your responsibility to investigate these issues?

MRPC Ethical Rule 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 16-101 of New Mexico Rules. & ABA MR 1.1

Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation **reasonably necessary for the representation**.

Q. How do you determine whether to handle the matter yourself or hire outside counsel?

Considerations: **Competence**

* Evaluate your own competence; honestly.
* Assess what you know about legal requirements for project development?
* What don't you know? Do you have sufficient knowledge on the complex issues involved? Including complex laws and regulations that are constantly changing, e.g., permitting, federal subsidies, financing vehicles, tax credits, etc.
* How much work will be required for you to get up to speed?
* Do you have the time?
* Whose ethical rules apply?
* Expertise of a general practitioner is required.
* Can you limit your representation?
* How will due diligence be conducted?

<u>DH Comment to 1.1: in determining competence – suggests focusing on the following factors: Relative Complexity of the Matter and the Specialized Nature of the Work</u>

Q. *How do you achieve competence to meet the parameters of the rule?*

DH Practical Considerations that I assume every tribal general counsel must consider:

THE LEGAL LANDSCAPE OF TRIBAL RENEWABLE ENERGY DEVELOPMENT
November 22, 2013
1:15-3:00

Q. If you need to hire outside counsel, how do you select a firm?

Discussion regarding selecting an outside firm:

* References. Check out any references yourself.
* Utmost care required
* Due diligence quandary - How do you know which attorneys to hire prior to completion of diligence?
* Lawyers do not know it all. You will also need industry experts. The right law firm should know of such experts. Insist on experts.
* Experience in the specific subject matter – you want someone who has done it before
* Expertise required of outside counsel
* Indian law knowledge * Knowledge of laws governing the tribe

Q. What do you do in special situations? For instance, what issues arise when the enterprise has its own counsel and partners? Is there an implied "association"?

Discuss:

* Be wary of sharing confidential information
* Attorney has discretion to make limited disclosures

New Mexico Rule 16-104 Communication ABA MR 1.4

A. <u>Status of Matters</u>. A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

B. <u>Client's Informed Decision-Making</u>. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Q. With a tribal government client – how do you comply with "Communication"?

* Obtaining tribal approvals
* Inclusion of approving committee members on project team
* Hiring expert consultants
* Committee reports

New Mexico Rule 16-106 Confidentiality of Information/ ABA MR 1.6

A. <u>Disclosure of Information Generally</u>. <u>A lawyer shall not reveal information relating to representation</u> of a client <u>unless the client consents after consultation</u>, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in Paragraphs B, C and D.

* Issue of disclosure to enterprise and ZEN Energy attorneys
* Non-Disclosure Agreements
* Executive Sessions
* Tribal Access to Information Acts [**[How many here work for or know of tribes who have enacted these kinds of laws]?**
* Who is authorized to consent to disclosure of confidential or attorney client privileged information?

New Mexico Rule 16-103 Diligence / ABA MR 1.3

A lawyer shall act with reasonable diligence and promptness in representing a client.

DH Comment states that lawyers shall pursue the matter despite opposition, obstruction or personal inconvenience.

Discuss diligence considerations:

* Get expert consultants quickly.
* If the tribe will contribute financing or guarantee the project
  Do feasibility and market studies
    * Bank loan will require bond counsel
* What natural or renewable resources of the tribe will be utilized?
    * If water is to be used, is there a water right and is there an available supply?
    * Will the tribe discount the value of resources it provides to the enterprise?
        * Beware of escalated commitment
        * Enterprises' participation should be long term feasible
* Infrastructure availability
    * Transportation facilities
    * Pipelines, transmission lines, railroads, trucking
* Time to bring the project to completion
    * Environmental assessments or EIS
    * Federal action
    * Endangered species Act compliance
* Critical path
    * Investment tax credit
    * PPA with utility company necessary for financing
    * Transmission and interconnection rights
    * Environmental/endangered species/cultural resource studies
* Construction within allowable time frames to qualify for tax credits

THE LEGAL LANDSCAPE OF TRIBAL RENEWABLE ENERGY DEVELOPMENT
November 22, 2013
1:15-3:00

<u>HYPOTHETICAL 2</u>: [PETER TO LEAD]

Attorney A in your firm's Texas office represents Client A in a loan transaction. The matter is small and ongoing, although there has been no activity recently. After some time, Client B seeks to have Attorney B in your firm's Sacramento office represent Client B in an energy development project in California. Client A is one of many entities who have a role in the California transaction. 2 clients; same firm but 2 attorney's in the firm handling each client

<u>What issues arise</u>? <u>What if Client A is a former client</u>?

Conflicts of Interest!

- **MRPC Rule 1.7 Conflict Of Interest: Current Clients**

  (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

  (1) the representation of one client will be directly adverse to another client; or

  (2) there is a <u>significant risk</u> that the representation of one or more clients will be <u>materially limited</u> by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Q. *What if you identify that adversity present*? See **Model Rules Comments 6 and 7 to Rule 1.7.** ("Absent consent a lawyer may not act as an advocate in one matter against the person the lawyer represents in some other matter, even when the matters are wholly unrelated.").

Q. *Could the representation of Client A or B materially limited*? What if the firm represents Clients A and B in an economic development project?

Could the lawyer be limited in his representation due to the duty of loyalty to each?

<u>Comment: consider whether the representation will interfere w/lawyers "independent professional judgment"</u>

Accordingly, the lawyer may be limited in its ability to recommend all possible positions that each Client may take. See Model Rules Comment 8 to Rule 1.7.

- Consider also attorney's knowledge of confidential information about a client that may be adverse the interests of other client. For example - What is Client B's source of funds?

 MRPC Rule 1.7(b). Waiver.[Informed Consent]

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) **the lawyer reasonably believes** that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives **informed consent**, confirmed in writing.

 What is the math on reasonable belief? Could the attorney undertake the representation despite the presence of a concurrent conflict?

Consider professional judgment, **independence**, **duty of loyalty,** potential for material limitation, potential for disagreements and prejudice from any conflict.

Consider how antagonistic the Client's interests are with respect to each other.

 Can the Client consent? And more importantly, how would the lawyer's representation of each be impacted? Can the lawyer provide competent and diligent representation to each client. See **MRPC Rules 1.1, 1.3.**

[Informed consent is described in MR 1.0 (6)– terminology – Requires a reasonable effort to ensure that the client possesses information to make an informed decision]

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.1 Comment 1: "In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question."

 What if a portion of the subject matter is outside of a lawyer's wheelhouse?

o In for a penny in for a pound?

o Coming to speed.

o Association?

o Limitation of representation. See **Arizona State Bar Opinion 05-06**. But see **MRPC Rule 1.8(h)**(“a lawyer shall not make an agreement prospectively limiting the lawyer’s responsibility to a client for malpractice unless the client is independently represented in making the agreement.”)

- Consider attorney “competence” vs. a wonderful opportunity for malpractice.

MRPC Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.3 Comment: “A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.” But see Arizona: removal of “and with zeal in advocacy upon the client's behalf.”

- Attorney availability and responsiveness.

o Consider prejudice to client interests in business negotiations. See also Rule 1.4 – Communication. See the discipline section of the Arizona Attorney magazine for various transgressions involving failure to communicate and failure to take action by a required date.

- Assuming you have the time, subject matter expertise, and feel comfortable representing the client in a transaction where a conflict may be present, how does the client consent to such representation?

- Informed consent. What is informed consent? **Comment 6 to Model Rule 1.0**. It depends upon the situation.

“The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid."

- Consider how to request a waiver. Engagement letter or other writing with discussion.

  The more detail the better. But consider Rules regarding confidentiality.

Organization as Client

- Entity Consent. Who is the client? Is it a state or tribal law entity? Governmental agency? A government?

- **Illinois State Bar Opinion 07-01**.

  - "We conclude that for the purpose of conflict of interest questions, there is not one entity, composed of all state agencies. But, we caution this does not mean that each state governmental agency is necessarily a separate entity from every other state governmental agency. On a case-by-case basis additional information must be considered, such as "whether or not each government entity has independent legal authority to act on the matter in question, and whether representation of one government entity has any importance to the other government entity. Because the state government is not one entity composed of all departments under the jurisdiction of the Governor for purposes of resolving conflict of interest questions, a lawyer may represent one government agency while representing a private party adverse to another state government agency."

- Waiver of conflict of interest by Government? Some jurisdictions do not permit public entities to waive conflicts of interest. Look to particular jurisdiction.

- The identity of the entity client is largely dependent upon facts and law. **NY City Ethics Opinion 2004-03**.

- Limitation on scope of representation of entities in Arizona. **Arizona Bar Opinion 02-06**.

  A lawyer may form a business entity for various individuals and be counsel only for the yet-to-be-form entity, if appropriate disclosures and consents occur. Alternatively, a lawyer may represent all of the incorporators collectively, with appropriate disclosures.

  Consider:

  - **MRPC Rule 1.6 – Confidentiality**

  - **MRPC Rule 1.7 – Conflict of Interest General Rule**

  - **MRPC Rule 1.13 – Organization as Client** o What is informed consent for the entity? Are the individuals providing informed consent? What disclosures should be made? Representation of the LLC vs. representation of the members.

 Majority Rule re Corporate Families. A lawyer who represents a corporation or other organization does not by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Comment 34 to Model Rule 1.7. That being said, consider the facts and circumstances.

MRPC Rule 1.13 Organization As Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

- *Who speaks for the Entity Client? Confirm this early and often. Who gets to say yes?*
- *What are the ultimate approvals? Are there delegations of authority in place?*
- *When do you notify higher authorities within the entity?*

Former Clients

What if Client A is a former client? How might this impact your representation?

MRPC Rule 1.9 Duties To Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

- Consider knowledge gained in prior representation.

- Informed consent waiver. *Who provides?*

Negotiation Ethics. Communication, Omissions and Truthfulness.

- The Model Professional Responsibility Rules have a number of communication rules to consider during the negotiation of any transaction.

- A large transaction may involve a number of players which may include both attorneys and the actual represented parties. Due to subject matter expertise, individual parties may take an active role within contract negotiations. The following are a few of the rules which can be triggered in the agreement negotiations.

- Don’t lie.

Rule 1.4 Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation

o Confirm informed decisions with client. Consider communication reports when client is an organization.

o Clarity regarding legal counsel role.

Rule 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

o Note materiality standard.

o Representation by omission?

o Rule 1.6 – Confidentiality considerations.

Rule 4.2 Communication With Person Represented By Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

o See Formal Opinion 92-362 (2002) and 06-443 (2006) of ABA Ethics Committee.

o More recently, ABA Ethics Committee Formal Opinion 11-461.

o Set expectations and obtain consent.

Rule 4.3 Dealing With Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

o Disclosure of role of attorney.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

This broad rule applies to communications with adverse parties and opposing counsel.

HYPOTHETICAL 3 [ROXANN TO LEAD]

Due to the complexity of tribal energy development transactions, a request for legal services by tribes and tribal entities asks responding firms to identify similar clients and transactions that they have worked on in the past.

*Q. Is the identification of those **clients** or **transactions** a violation of the ethical rules regarding confidentiality?*

Yes, a lawyer must have the consent of the clients prior to providing the responses or must identify the transaction so generally that the client cannot be surmised.

1.6 Confidentiality. A lawyer shall not disclose information about a client that the lawyer has gained in the professional relationship. Some rules are broad and would hold that even disclosure of the name would violate ethical rules and some rules say that only if the information is embarrassing or detrimental must the lawyer withhold it.

A lawyer may, however reveal the information with the consent of the client.

Bay Mills Code of Ethical Conduct Rule 2.303(E), California Rules of Professional Conduct Rule 3-100, ABA Model Rule 1.6

HYPOTHETICAL 4 [PETER TO LEAD]

During the course of negotiating the structure of a tribal energy transaction for Tribe X, the client asks the lawyer who is known to have recently worked on a similar transaction for Tribe Y, how Tribe Y structured their transaction.

Q. Can the lawyer reveal this information?

Q. If the lawyer cannot reveal the information, can they nevertheless use the same structure?

1. Confidentiality1.6 . A lawyer shall not disclose information about a client that the lawyer has gained in the professional relationship.

2. Duties to Former Clients. A lawyer who has formerly represented a client shall not thereafter reveal information relating to the representation. Is this practical? ***ABA Model Rule 1.7 and 1.8***

Q. What if Tribe X's energy project will compete directly with Tribe Y's energy project?

Duties to Former Clients. A lawyer who has formerly represented a client shall not thereafter use information relating to the representation to the disadvantage of the former client (except including when the information becomes generally known). ***ABA Model Rule 1.9***

Q. Can the lawyer use documents from Tribe Y transaction as the base documents for the Tribe X transaction?

Q. If the same forms are used but adapted for Tribe X, can the lawyer charge the same amount for legal fees associated with drafting the documents?

1. Fees. A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) **the time and labor required, the novelty and difficulty of the questions involved,** and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

THE LEGAL LANDSCAPE OF TRIBAL RENEWABLE ENERGY DEVELOPMENT
November 22, 2013
1:15-3:00

ABA Model Rule 1.5

HYPOTHETICAL 5 [NICCOLE TO LEAD]

The lawyer represents two separate tribal utility authorities both owned and operated by the same tribal nation. Both authorities provide energy and both want to apply for the same federal grant funds. Both entities have asked the lawyer to assist in the preparation and submission of their grant applications.

Q. Is it a conflict of interest for the lawyer to represent both entities in this situation? Is it a waivable conflict?

> Conflict of Interest: A lawyer shall not represent a client if the representation of the client is directly adverse to another client, unless the lawyer reasonably believes the representation will not adversely affect the relationship with either client and the clients consent after consultation.

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyers responsibilities to another client unless the lawyer reasonably believes that the clients would not be adversely affected and the clients consent.

NOTE: Consent includes a full explanation of the implications of the common representation, the scope and the risks and advantages involved. Bay Mills Code of Ethical Conduct Rule 2.303(F), California Rules of Professional Conduct Rule 3-310; ABA Model Rule 1.7 and 1.8

HYPOTHETICAL 6 [ROXANN TO LEAD]

A lawyer has developed an expertise for a specific type of tribal solar projects. Sometimes the lawyer is engaged by the tribe and sometimes by the development company. After completing a number of projects, the lawyer discovers an error in the project documents that could be fatal the project structure. The error is in the documents for most of the projects that have been completed.

Q. Does the lawyer have a duty to report the error to his existing clients? How about his former clients? What if fixing the error in the deal with Tribe X would harm his other client, Tribe Y or his current development client?

HYPOTHETICAL 7 **[DIANE or ROXANN TO LEAD]**

A lawyer represents a utility created by the tribal governmental authority. Most of the lawyer's work is requested by the entity's most senior employee, which is a CEO in this instance. The CEO calls the lawyer and tells him that the entity's Board of Directors is micromanaging him and asks for the lawyer's assistance in defining his and the Board's duties pursuant to the entity's governing documents. The lawyer agrees to the task. Later that week the the lawyer gets a call from the Board chair complaining about the CEO and asking the lawyer to perform a due diligence investigation of the CEO.

Q. Is there a conflict now proceeding against the CEO when the lawyer was previously acting at his request?

California Rules of Professional Conduct Rule 3-600, ABA Model Rule 1.13

In representing an organization, a lawyer shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body or constituent overseeing the engagement.

If you find out that person is acting in a way that is or may be a violation of the law, the lawyer may take such actions that are in the best interest of the organization, including (i) urging reconsideration or (ii) reporting it to the next higher internal authority. If no response, then the lawyer must resign. **Q. Is the work request by the CEO in the interest of the organization?**

In dealing with the board, the lawyer must explain the identity of the client and must explain that the individual members are not the clients. The board cannot be mislead into believing that they are entitled to individual confidentiality.

DH 1.13 "Comment : provides that the organization can only act through its officers, directors, etc… so if any of those officers, directors etc.. speaks to the organization's lawyer – and does so in his capacity as an officer – ABA MR. 1.6 -Confidentiality is also implicated [READ Comment]"

<u>HYPOTHETICAL 8</u> [DIANE and/or ROXANN TO LEAD]

Similarly, the lawyer is engaged as borrower's counsel for a tribe borrowing money to make improvements to utility facilities. The tribe does not have sufficient expertise to operate the utility and has hired an outside management company. All of the lawyer's work is at the request of a senior employee of the management company and paid for out of the authority's operating account. One day the tribe decides to fire the management company and the new tribal president calls the lawyer and asks why the lawyer has been doing work at the request of the management company rather than at the request of the tribe?

Q. Has the lawyer committed an ethical violation by acting at the request of an outside management company, rather than the tribe? Who is the client?

Though it is unlikely that an ethical violation was committed in either instance, these are both areas were COMMUNICATION at the outset and identification of the client would likely have avoided the issues.

<u>HYPOTHETICAL 9</u> [DIANE and/or ROXANN TO LEAD]

The lawyer is licensed in Arizona but is engaged as special counsel for a tribe located in Oklahoma. The energy project documents specify that state law will apply to certain portions of the contract (e.g., the perfection of security interests) and the documents contain a limited waiver of sovereign immunity. The lawyer is asked to give an opinion regarding the enforceability of the project documents. The opinion would therefore require the lawyer to opine on both tribal law and State of Oklahoma law.

Can the lawyer give this opinion without breaching the ethical rules?

Can the lawyer give this opinion if he relies on the opinions of other counsel whom he associates with for the deal, for example, the tribe's in-house counsel and an attorney licensed in the state of Oklahoma?

What if the tribe has adopted State law as a fill-in where they don't have applicable laws. Are you bound by State law?

1. <u>The Unauthorized Practice of Law</u> A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction. Arizona Ethical Rule 5.5, California Rules of Professional Conduct Rule 1-300

2. Competence. A lawyer shall not handle a legal matter which the lawyer knows that the lawyer is not competent to handle, without associating a lawyer who is competent to handle it. Bay Mills Code of Ethical Conduct Rule 2.303(A)

HYPOTHETICAL 10 [DIANE TO /ROXANN TO LEAD]

A lawyer has served as counsel to the office of the tribal president for several years. In this capacity, the lawyer has advised the President X on projects related to coal technology. A new tribal president, President Y, has been elected and has decided to go in the direction of green technology. President Y has asked the lawyer to prepare materials to be used in a lobby effort against the use of coal and for the development of green technology instead.

Q. What are the potential conflicts involved?

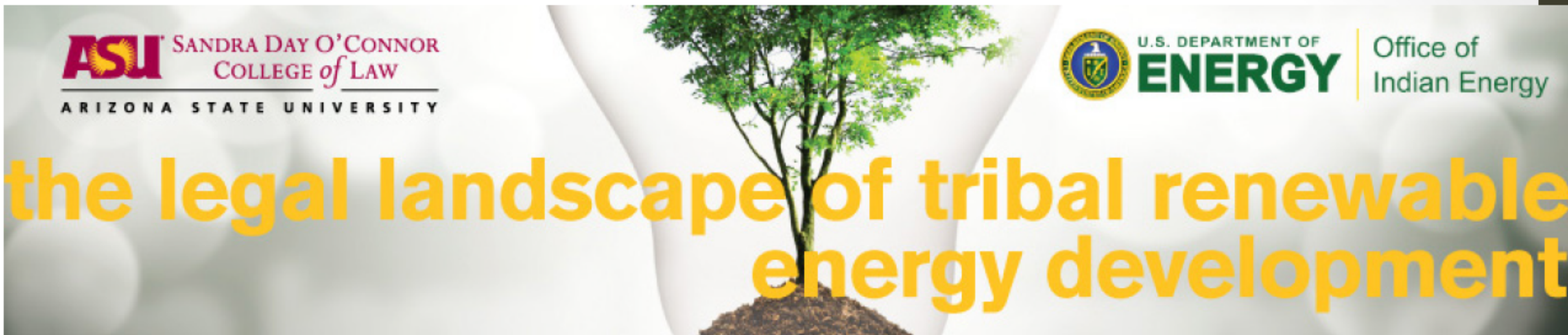
Q. Is the lawyer obligated to complete this request? What if the lawyer knows that abandoning coal production will cause the loss of a significant number of jobs?

> Lawyer as Advisor. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation. ABA Model Rule 2.1

HYPOTHETICAL 11 [ROXANN TO LEAD]

In order to get out of the coal business, President Y asks the lawyer to find loopholes in the contracts that the lawyer previously helped negotiate.

What should the lawyer do?



November 22, 2013

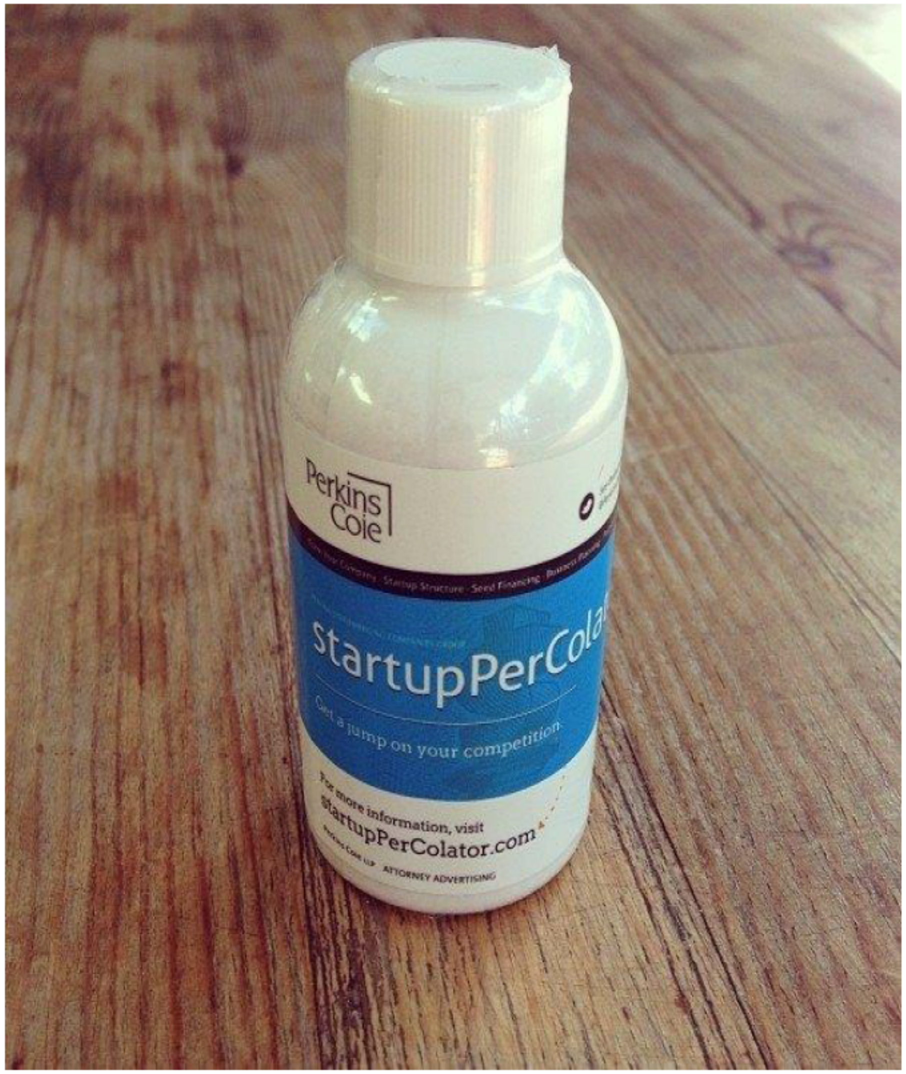
By:

Diane Humetewa, Special Advisor to ASU President Michael M. Crow, Special Counsel, General Counsel's Office & Professor of Practice, College of Law

Louis Denetsosie, Breach of Trust Counsel for the Navajo Nation

Peter Larson, Partner, Lewis Roca Rothberger LLP

Roxann Gallagher, Sacks Tierney P.A.



SUDDENLY, THE PERKINS COIE FOLKS BEGAN TO REALIZE THEY HAD TERRIBLY MISUNDERSTOOD THE TRENDING "ENERGY LAW" SECTOR.

Disclaimers

- The hypotheticals have been created for discussion only and are not necessarily reflective of any actual experience, client, lawyer, firm, or other entity. Further, the opinions that each of us are expressing today are our own and are not to be attributed to any employing firm, entity or any other individual attorney.

- Unless otherwise indicated, for discussion purposes the ABA Model Rules of Professional Conduct ("**MRPC**") are referenced. A selection of the MRPC Rules discussed in this presentation have been included as an Appendix. Please note that tribal and state law may be different so please consult the laws of all applicable jurisdictions.

Hypothetical 1

You are the chief legal counsel for your tribe. ZEN Energy, a renewable energy company, and TRY, a tribal enterprise, have proposed developing valuable tribal renewable energy resources to the tribal leadership. The leadership asks you to enter into a letter of intent and to carry out the development of the project for the tribe. You have limited experience in developing renewable energy resources for an Indian tribe.

- *What ethical issues arise?*

Hypothetical 2

Attorney A in your firm's Texas office represents Client A in an loan transaction. The matter is small and ongoing, although there has been no activity recently. After some time, Client B seeks to have Attorney B in your firm's Sacramento office represent Client B in an energy development project in California. Client A is one of many entities who has a role in the California transaction.

- *What ethical issues arise?*

- *What if Client A is a former client?*

Hypothetical 3

Due to the complexity of tribal energy development transactions, a request for legal services by tribes and tribal entities asks responding firms to identify similar clients and transactions that they have worked on in the past.

- *Is the identification of those clients or transactions a violation of ethical rules regarding confidentiality?*

Hypothetical 4

During the course of negotiating the structure of a tribal energy transaction for Tribe A, the client asks the lawyer who is known to have recently worked on a similar transaction for Tribe B, how Tribe A structured their transaction.

Hypothetical 4 Questions

- *Can the lawyer reveal this information?*
- *If the lawyer cannot reveal this information, can the lawyer still use the same transaction structure?*
- *Can the lawyer use documentations from the Tribe A transaction as the base documents for the Tribe B transaction?*
- *What if Tribe A's energy project will compete directly with Tribe B's energy project?*
- *If the same forms are used but adapted for Tribe B and all other things being equal, can the lawyer charge the same amount for legal fees associated with drafting the documents that they charged Tribe A?*

Hypothetical 5

A lawyer represents two separate tribal utility authorities both owned and operated by the same tribal nation. Both authorities provide energy and both want to apply for the same federal grant funds. Both entities have asked the lawyer to assist in the preparation and submission of their grant applications.

- *Is it a conflict of interest for the lawyer to represent both entities in this situation?*

- *If so, is the conflict waiveable?*

Hypothetical 6

A lawyer has developed an expertise for a specific type of tribal solar projects. Sometimes the lawyer is engaged by the tribe and sometimes by the development company. After completing a number of projects, the lawyer discovers an error in the project documents that could be fatal to the project structure. The error is in the documents for most of the projects that have been completed.

- *Does the lawyer have a duty to report the error to his existing clients?*
- *How about former clients?*
- *What if fixing the error for Tribe A would harm his other client, Tribe B or his current energy company client?*

Hypothetical 7

A lawyer represents a utility created by the tribal governmental authority. Most of the lawyer's work is requested by the entity's most senior employee, which is a CEO in this instance. The CEO calls the lawyer and tells him that the entity's board of directors is micromanaging him and asks for the lawyer's assistance in defining his and the board's duties pursuant to the entity's governing documents. The lawyer agrees to the task. Later that week the lawyer gets a call from the board chair complaining about the CEO and asking the lawyer to perform a due diligence investigation of the CEO.

- *Is there a conflict now proceeding against the CEO when the lawyer was previously acting at his request?*

Hypothetical 8

A lawyer is engaged as borrower's counsel for a tribe borrowing money to make improvements to utility facilities. The tribe does not have sufficient expertise to operate the utility and has hired an outside management company. All of the lawyer's work is at the request of a senior employee of the management company and paid for out of the authority's operating account. One day the tribe decides to fire the management company and the new tribal president calls the lawyer and asks why the lawyer has been doing work at the request of the management company rather than at the request of the tribe?

- *Who is the client?*
- *Has the lawyer committed an ethical violation by acting at the request of the management company rather than the tribe?*

Hypothetical 9

A lawyer is licensed in Arizona but is engaged as special counsel for a tribe located in Oklahoma. The energy project documents specify that state law will apply to certain portions of the contract and the documents contain a limited waiver of sovereign immunity. The lawyer is asked to give an opinion regarding the enforceability of the project documents. The opinion would therefore require the lawyer to opine on both tribal law and State of Oklahoma law.

- *Can the lawyer give this opinion without breaching the ethical rules?*
- *Can the lawyer give this opinion if he relies on the opinions of other counsel whom he associates with for the deal (e.g., the tribe's in-house counsel and an attorney licensed in the State of Oklahoma)?*

Hypothetical 10

A lawyer has served as counsel to the office of the tribal president for several years. In this capacity, the lawyer has advised the President A on projects related to coal technology. A new tribal president, President B, has been elected and has decided to go in the direction of green technology. President B has asked the lawyer to prepare materials to be used in a lobby effort against the use of coal and for the development of green technology instead.

- *What potential conflicts are involved?*
- *Is the lawyer obligated to complete this request?*
- *What if the lawyer knows that abandoning coal production will cause the loss of a significant number of jobs?*

Hypothetical 11

Same facts as Hypothetical 10. In order to get out of the coal business, President B asks the lawyer to find loopholes in the contracts that the lawyer previously helped negotiate and draft?

- *What should the lawyer do?*

AO 10 Rev. 1/2012	**FINANCIAL DISCLOSURE REPORT** **NOMINATION FILING**	*Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Humetewa, Diane J.	**2. Court or Organization** U.S. District Court, Arizona	**3. Date of Report** 01/06/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Court Judge	**5a. Report Type (check appropriate type)** ☑ Nomination Date 1/6/2014 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 1/1/2013 to 12/31/2013
7. Chambers or Office Address Arizona State University, Fulton Center 410, 300 E. University Drive P.O. Box 877705 Tempe Arizona 85287-7705		

***IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Special Advisor, Special Counsel & Professor of Practice	Arizona State University
2.	Member, Board of Trustees	Udall Foundation
3.	Member, Board ofTrustees	The Nature Conservancy in Arizona
4.	Member, Board of Trustees	National Indian Justice Center
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

Name of Person Reporting	Date of Report
Humetewa, Diane J.	01/06/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2012	Arizona State Government - salary	$194,714.00
2. 2013	Arizona State Government - salary	$124,670.79
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

☑ NONE *(No reportable non-investment income.)*

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

Name of Person Reporting	Date of Report
Humetewa, Diane J.	01/06/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Humetewa, Diane J.	01/06/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. American Century Diversified Bond Investment Class	A	Dividend	J	T	Exempt				
2. Fidelity Adv.New Insight Fund I	A	Dividend	K	T					
3. Brown Cap Management Small Cap	A	Dividend	J	T					
4. Dodge & Cox Income Fund	A	Dividend	K	T					
5. Fidelity Adv. Mid Cap II	A	Dividend	J	T					
6. General Money Market Fund	A	Dividend	J	T					
7. Harbor Bond Fund	A	Dividend	J	T					
8. Hartford High Yield A	A	Dividend	J	T					
9. Harbor Real Return	A	Dividend	J	T					
10. John Hancock Mid Cap Fund	A	Dividend	J	T					
11. PIMCO Commodity Strategy A	A	Dividend	K	T					
12. Columbia Acorn Intern'l A	A	Dividend	J	T					
13. MFS Value Fund	A	Dividend	K	T					
14. MFS Intern'l Growth I	A	Dividend	J	T					
15. Northern Small Cap Value Fund	A	Dividend	J	T					
16. Oakmark Intern'l Small Cap	A	Dividend	J	T					
17. Oakmark Intern'l Fund	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

Name of Person Reporting	Date of Report
Humetewa, Diane J.	01/06/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. NFJ Dividend Value A	A	Dividend	K	T					
19. Pimco Income Fund A	A	Dividend	K	T					
20. Templeton Global Bond Fund A	A	Dividend	J	T					
21. T Rowe Price Real Estate	A	Dividend	J	T					
22. Scout International Fund	A	Dividend	J	T					
23. Credit Suisse Commodity Return Strategy A	A	Dividend							
24. Eagle Small Cap Fund A	A	Dividend							
25. Perkins Mid Cap Value Fund Class T	A	Dividend							
26. T Rowe Emerging Market Stock Fund	A	Dividend							
27. Bank of America Cash Accounts	A	Interest	K	T					
28. First Credit Union Cash Accounts	A	Interest	L	T					
29. Northwest Mutual Whole Life Insurance "65 Life"	B	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

Name of Person Reporting	Date of Report
Humetewa, Diane J.	01/06/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

Please note that the Asset previously reported as AllianzGI NFJ Dividend Value Fund is now known and listed as NFJ Dividend Value Fund on line 18.

Name of Person Reporting	Date of Report
Humetewa, Diane J.	01/06/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Diane J. Humetewa**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		108	073	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		354	271	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		183	100
Real estate owned – personal residence		376	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000				
Cash value-life insurance		31	551				
Other assets itemize:							
Thrift Savings Plan		702	087				
				Total liabilities		183	100
				Net Worth	1	413	882
Total Assets	1	596	982	Total liabilities and net worth	1	596	982
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Century Diversified Bond Fund	$ 12,670
Brown Cap Management and Small Cap Fund	5,631
Columbia Acorn Fund	9,618
Dodge & Cox Income Fund	22,124
Fidelity Mid Cap II Fund	13,707
Fidelity New Insights Fund	53,239
General Money Market Fund	7,971
Harbor Bond Fund	12,778
Harbor Real Return Fund	9,128
Hartford High Yield Fund	12,986
John Hancock Mid Cap Fund	13,380
MFS International Growth Fund	14,998
MFS Value Fund	36,399
NFJ Dividend Value Fund	21,208
Northern Small Cap Value Fund	5,902
Oakmark International Fund	13,471
Oakmark International Small Cap	9,470
PIMCO Commodities Strategy Fund	18,699
PIMCO Income Fund	24,130
Scout International Fund	13,019
T. Rowe Price Real Estate Fund	14,495
Templeton Global Bond Fund	9,248
Total Listed Securities	$ 354,271