

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Jonathan William Katchen

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

United States District Judge for the District of Alaska

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.

Holland & Hart LLP
1029 West Third Avenue, Suite 550
Anchorage, Alaska 99516

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

1975; Livingston, New Jersey

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.

2001 – 2004, University of California, Hastings College of the Law; J.D., 2004

1999 – 2001, Boston College; M.A., 2001

1994 – 1998, Boston College; B.A. (*cum laude*), 1998

1997, University of Otago (New Zealand); no degree

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations; non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2017 – Present

Holland & Hart LLP
1029 West Third Avenue, Suite 550
Anchorage, Alaska 99516
Of Counsel

2012 – 2017
Crowell & Moring LLP
1029 West Third Avenue, Suite 550
Anchorage, Alaska 99516
Of Counsel

2010 – 2012
State of Alaska, Department of Natural Resources
550 West 7th Avenue, Suite 1360
Anchorage, Alaska 99501
Intergovernmental Coordinator

2006 – 2010
State of Alaska, Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501
Special Assistant to the Attorney General (2009 – 2010)
Assistant Attorney General (2006-2009)

2005 – 2006, Summer 2004, Summer 2003
Feldman, Orlansky & Sanders (now defunct)
(formerly Feldman & Orlansky)
Associate (2005 – 2006)
Summer Associate (2003 and 2004)

2004 – 2005
Honorable Maryanne Trump Barry
United State Court of Appeals for the Third Circuit
Frank R. Lautenberg United States Courthouse & Post Office Building
50 Walnut Street
Newark, New Jersey 07101
Judicial Law Clerk

2002
California Appellate Project
101 2nd Street #600.
San Francisco, California 94105
Summer Associate

2000 – 2001
Boston College

140 Commonwealth Avenue
Chestnut Hill, Massachusetts 02467
Healing the Wounds of Murder Conference Organizer

1998, 1999 – 2001
Carlo's Cucina
131 Brighton Avenue
Allston, Massachusetts 02134
Waiter

1998 – 1999
Tongass Community Counseling Center (now defunct)
222 Seward Street
Juneau, Alaska 99801
Alternatives to Domestic Violence and Anger Control Training Counselor

Other Affiliations (Uncompensated)

2017 – Present
Holland & Hart Foundation
555 17th Street
Denver, Colorado 80202
Committee Chair

2002 – 2003
Office of the Federal Public Defender
450 Golden Gate Avenue
San Francisco, California 94102
Intern (part-time)

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. I registered for the selective service upon turning 18.

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

Chambers USA: America's Leading Lawyers for Business, Environment, Natural Resources & Regulatory Industries, Up and Coming (2015 – 2017)

Witkin Award and Cali Award for Academic Excellence, Negotiations & Settlement (2004)

U.C. Hastings Moot Court, Best Brief, Honorable Mention (2004)

Witkin Award and Cali Award for Academic Excellence, Jurisprudence (2003)

Witkin Award and Cali Award for Academic Excellence, Antitrust (2002)

Golden Key National Honor Society (1998)

Degree from Boston College conferred *cum laude* (1998)

Dean's List, Boston College (1994 – 1998)

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.

Alaska Bar Association (2004 – present)

Administrative Law Section (2010 – 2016, 2018)

Environmental and Natural Resources Section (2012 – 2014, 2018)

Anchorage Bar Association (approximately 2007 – approximately 2009)

10. **Bar and Court Admission:**

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

Alaska, 2004

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.

United States Supreme Court, 2015

United State Circuit Court of Appeals for the Third Circuit, 2004

United States District Court for the District of Alaska, 2005

Alaska State Courts, 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.

Holland & Hart Foundation (2017 – Present)
Committee Chair (2017 – Present)

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

To the best of my knowledge, none of the organizations listed above currently discriminates 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.

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.

Part of Alaska's Fiscal Solution Is To Fill the Pipeline, Alaska Dispatch News, Oct. 27, 2016. Copy supplied. Reprinted in multiple outlets.

Walker's Comments on Point Thomson Settlement Missed the Mark, Alaska Dispatch News, Sept. 28, 2014. Copy supplied.

SB 21 Has Fired up Investment in Alaska's Oil and Gas, Alaska Dispatch News, July 22, 2014. Copy supplied. Reprinted in multiple outlets.

Attack Failed to Damage Sullivan's Record atop Alaska Department of Law, Alaska Dispatch News, May 22, 2014. Copy supplied. Reprinted in multiple outlets.

With Jon Sands, Steven Kalar, Geoffrey Hansen, Chris Miles, and Peter Davids, *Prosecutorial Misconduct*, Office of the Federal Public Defender, 2010. Copy

supplied.

Humans Responsible for Their Actions, Not God, Juneau Empire, Nov. 16, 1998. Copy supplied.

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

Holland & Hart Foundation, *Annual Report 2017*. Copy supplied.

- 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.

After diligent review of my files, calendar, and the Internet, I have done my best to account for all testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation that I have issued or provided, or that others presented on my behalf. My testimony, official statements and communications are listed below. It is possible, however, that I have inadvertently left out some official statements or communications.

Testimony Regarding Point Thomson Settlement Agreement to the Alaska Senate Judiciary Standing Committee (approximately June 2012). I have conducted a thorough search of my own records and public documentation and I have been unable to locate any materials related to this testimony.

Testimony Regarding Point Thomson Settlement Agreement to the Alaska Senate Judiciary Standing Committee (Apr. 27, 2012). Minutes supplied.

Testimony on Point Thomson Settlement Agreement before Joint Session of the Alaska Legislature (approximately March 2012). I have conducted a thorough search of my own records and public documentation and I have been unable to locate any materials related to this testimony.

Testimony Regarding Senate Joint Resolution 2 to the Alaska Senate Judiciary Standing Committee (Mar. 25, 2011). Minutes supplied. Audio available at <http://www.akleg.gov/basis/Meeting/Detail?Meeting=SRES%202011-03-25%2015:30:00>.

Testimony Regarding State's Obligations under the Alaska Gasline Inducement Act to the Alaska House Resources Standing Committee (Apr. 10, 2010).

Minutes and audio available at

http://www.legis.state.ak.us/BASIS/get_single_minute.asp?session=26&beg_line=00626&end_line=00676&time=1303&date=20100412&comm=RES%20%20%20%20%20%20%20&house=H.

- 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.

December 5, 2017: Presenter, "Joint Venture Agreements Now," American Exploration & Mining Association's 123rd Annual Meeting, Reno, Nevada. PowerPoint supplied.

August 17, 2017: Panelist, Congressional Western Caucus, Anchorage, Alaska, Roundtable discussion on Alaska resource development issues and federal commitments made to the state under the Alaska Statehood Act. I have no notes, transcript, or recording. The Congressional Western Caucus's address is 2057 Rayburn HOB, Washington, D.C. 20515.

September 6, 2016: Presenter, "Industry in Turmoil: An Exploration of Financing, Workout, and Bankruptcy Issues Unique to the Oil & Gas Industry," American Bar Association 2016 Business Law Section Annual Meeting, Boston, Massachusetts. Presentation supplied.

November, 4, 2015: Presenter, Alaska Industrial Development and Export Authority Public Forum on the Interior Energy Project, Fairbanks, Alaska. Presentation supplied.

May 28, 2014: Presenter, "Improving Federal and State Oversight of Resource Development Projects in Alaska," Institute of the North's Northern Regions Mining Summit, Vancouver, Canada. Presentation supplied.

- 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.

Kristen Nelson, *Cook Inlet Energy Argues Case to AOGCC*, Petroleum News, Sept. 18, 2016. Copy supplied.

Liz Ruskin, *Supreme Court Hears Alaska Hovercraft Case*, Alaska Public Media, Jan. 20, 2016. Copy supplied.

Liz Ruskin, *State, Native Interests Also Ride on Hovercraft Case in Supreme Court*, APRN, Jan. 18, 2016. Copy supplied.

Elwood Brehmer, *Final Interior Gas Decision by AIDEA Approaches*, Alaska J. Com., Nov. 11, 2015. Copy supplied.

Elwood Brehmer, *Miller Makes Bid for Buccaneer as Gas Dispute Continues*, Peninsula Clarion (Kenai, AK), Sept. 23, 2014. Copy supplied.

Kristen Nelson, *AOGCC Hears Kenai Loop Escrow Issues*, Petroleum News, Feb. 16, 2014. Copy supplied.

Lisa Demer, *Alaska Lawmakers Question Point Thomson Settlement*, Anchorage Daily News, Apr. 28, 2012. Copy supplied. Reprinted in multiple outlets.

Wesley Loy, *Point Thomson Settled*, Petroleum News, Apr. 8, 2012. Copy supplied.

State says Point Thomson Won't Lead to 500 Million Barrel Oil Loss, Fairbanks Daily News-Miner, Apr. 4, 2012. Copy supplied.

Alex DeMarben, *Alaska's Point Thomson Settlement Raises Hopes for Fabled Gasline*, Alaska Dispatch News, March 30, 2012. Copy supplied. Reprinted on multiple dates.

Wesley Loy, *Point Thomson Impatience*, Petroleum News, Apr. 3, 2011. Copy supplied.

Becky Bohrer, *Parnell: Alaska Seeks to Settle Gas Lease Dispute*, Anchorage Daily News, Oct. 16, 2010. Copy supplied. Reprinted in multiple outlets.

State Files Motions Backing Lawsuit to Lift Arctic Drilling Moratorium, Targeted News Serv., Oct. 12, 2010. Copy supplied. Reprinted in multiple outlets.

Wesley Loy, *Point Thomson Case on Ice*, Petroleum News, Feb. 21, 2010. Copy supplied.

Cassandra Sweet and Angel Gonzalez, *Exxon Seeks Alaska 'Unit' – Oil Giant Is Dealt Setback on Revoked Drilling Licenses*, Wall Street J., Apr. 15, 2009. Copy supplied.

Kristen Nelson, *AOGCC Hears Exxon on Forced Unitization*, Petroleum News, Feb. 15, 2009. Copy supplied.

Kristen Nelson, *Fish or Cut Bait*, Petroleum News, July 15, 2007. Copy supplied.

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

I have not held judicial office.

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

- i. Of these, approximately what percent were:

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

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues,

together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

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

I have not held judicial office.

- 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.

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 never held or sought elected office.

From 2006 to 2009, I served as Assistant Attorney General in the Department of Law for the State of Alaska. I was appointed to this position by Attorney General David Marquez.

From 2009 to 2010, I served as Special Assistant to the Attorney General in the Department of Law for the State of Alaska. I was appointed to this position by Attorney General Dan Sullivan.

From 2010 to 2012, I served as Intergovernmental Coordinator in the Department of Natural Resources for the State of Alaska. I was appointed to this position by DNR Commissioner Dan Sullivan.

- 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.

In 2014, I volunteered for Dan Sullivan's campaign for the United States Senate. During this campaign I assisted in the development of white papers on policy issues and discussed these issues with now-Senator Sullivan and his campaign team. I also assisted with fundraisers and submitted an op-ed in his defense.

In 2008, I volunteered for Barack Obama's campaign for the Presidency by spending one day phone banking.

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;

From 2004 to 2005, I served as a law clerk for the Honorable Judge Maryanne Trump Barry, United States Court of Appeals for the Third Circuit.

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

I have never practiced alone.

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

2005 – 2006; Summer 2004; Summer 2003
Feldman, Orlansky & Sanders (now defunct)
(formerly Feldman & Orlansky)
500 L Street
Anchorage, Alaska 99501
Associate (2004 – 2005)
Summer Associate (2003 and 2004)

2006 – 2010

State of Alaska, Department of Law

1031 West 4th Avenue, Suite 200

Anchorage, Alaska 99501

Special Assistant to the Attorney General (2009 – 2010)

Assistant Attorney General (2006-2009)

2010 – 2012

State of Alaska, Department of Natural Resources

550 West 7th Avenue, Suite 1360

Anchorage, Alaska 99501-3557

Intergovernmental Coordinator

2012 – 2017

Crowell & Moring LLP

1029 West Third Avenue, Suite 550

Anchorage, Alaska 99516

Of Counsel

2017 – Present

Holland & Hart LLP

1029 West Third Avenue, Suite 550

Anchorage, Alaska 99516

Of Counsel

- 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 never served as a mediator or arbitrator.

b. Describe:

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

From 2005 to 2006, I worked as an associate at Feldman, Orlansky, and Sanders. My practice primarily focused on defending clients in tort actions or contract disputes. I worked on civil cases in both trial and appellate courts. I drafted research memoranda, motions and briefs, conducted depositions, and responded to discovery requests.

From 2006 to 2009, I served as an Assistant Attorney General at the Alaska Department of Law. In this role, I litigated in federal and state courts, and before various administrative agencies where I primarily

defended agency decisions involving oil and gas leasing disputes, oil and gas tax matters, royalty disputes, land use and permitting decisions, and environmental issues. I also provided legal advice to the Governor and the Departments of Natural Resources and Revenue.

From 2009 to 2010, I served as special assistant to the Alaska Attorney General (now Senator) Dan Sullivan. In this capacity, I worked closely with the Attorney General on a broad range of legal issues, supervised litigation, participated in settlement negotiations, drafted Attorney General opinions, advised sister agencies and the Governor on public policy and legal matters, and assisted in developing and implementing the Choose Respect Initiative, which was designed to address Alaska's high rates of domestic violence and sexual abuse. While in this position, I also drafted or revised briefs and motions in an array of matters including litigation involving the U.S. and Alaska constitutions, NEPA, the Outer Continental Shelf Act, the Endangered Species Act, the Indian Child Welfare Act, election disputes, and the Affordable Care Act.

From 2010 to 2012, I served as the Intergovernmental Coordinator at the Alaska Department of Natural Resources (DNR). In this role, I served as chief counsel to the Commissioner (now Senator) Dan Sullivan. I was responsible for, among other things, overseeing and directing DNR's administrative appeals, serving as a hearing officer, drafting and revising decisional documents, and collaborating with the Department of Law on litigation matters. I also served as the lead negotiator of DNR's negotiating team on a landmark case involving the Point Thomson field.

As an attorney in private practice from 2012 to the present, roughly sixty percent of my practice has focused on transactional and regulatory issues related to oil and gas, mining, telecommunications, hydro, and rail projects. In this capacity, I counsel clients on land use, regulatory, tax, and financing, and environmental issues. I also handle a variety of transactional matters, including purchase-sale agreements, credit agreements, operating agreements, master service agreements, and loan agreements. The remainder of my practice is spent in litigation, including challenges to state and federal agency decisions or governmental authorizations. I have also litigated contract and tort disputes, violations of the Unfair Trade Practices Act, nuisance disputes, shareholder disputes, insurance coverage disputes, and employment matters. I practice in federal and state courts and have represented clients before the United States Supreme Court, the United States Court of Appeals for the Ninth Circuit, the United States District Court for the District of Alaska, the Alaska Supreme Court, and the Alaska Superior Court. I also represent clients in administrative tribunals, specifically, the Alaska Office of Administrative Hearings, the Alaska Department of Natural Resources, the

Alaska Department of Revenue, and the Alaska Oil and Gas Conservation Commission.

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

When I worked for the State of Alaska, my client was the State of Alaska and its agencies. I specialized in litigating administrative appeals involving natural resource issues.

While at Holland & Hart and Crowell & Moring, many of my clients are independent oil and gas companies and mining companies. I also counseled borrowers and lenders on financing transactions and have litigated a diverse set of issues in federal and state courts.

- 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.

Between 2005 and 2006, I worked in private practice as an associate and worked almost exclusively on litigation matters. I did not appear in court.

Between 2006 and 2009, when I served as Assistant Attorney General for the State of Alaska, approximately 80 percent of my time was devoted to litigation. I occasionally appeared in court, or before administrative law judges, to argue motions or conduct evidentiary hearings.

Between 2009 and 2012, I worked for the State of Alaska and supervised litigation. During this period, I spent approximately 75 percent of my time on litigation matters, although I did not appear in court.

From 2012 to the present, my practice has been split between transactional and regulatory work (approximately 60 percent) and litigation (approximately 40 percent). During this period, I occasionally appeared in court and before administrative law judges.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 5% |
| 2. state courts of record: | 60% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 35% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | 0% |

- d. State the number of cases in courts of record, including cases before

administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have litigated approximately 34 cases to verdict, judgment, or final decision. (This number does not include the cases that I supervised when I served as Special Assistant to the Attorney General.) Of those, approximately ten cases were tried in courts of record where judgments were entered after dispositive motions; one case was tried to verdict after a bench trial; twelve were appeals to appellate courts; and approximately eleven cases were tried before an administrative law judge (or agency hearing officer).

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 0% |
| 2. non-jury: | 100% |

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 drafted an amicus brief for the Alaska Congressional Delegation in *Sturgeon v. Frost*, 136 S. Ct. 1061 (2016). The brief is available at 2015 WL 7450410.

I also recall offering revisions and edits to an amicus brief of Alaska and 21 other states (and the Commonwealth of Northern Mariana Islands) in support of the respondent in *Skinner v. Switzer*, 562 U.S. 521 (2011). The brief is available at 2010 WL 3641075. I likewise recall offering revisions and edits to the petition for writ of certiorari in *Hogan v. Kaltag Tribal Council*, No. 09-960. The petition is available at 2010 WL 8544318.

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:

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *ExxonMobil Corp. v. Alaska Dep't of Nat. Res.*, 3AN-06-13751 CI (Consolidated Appeals) Case No. 3AN-06-13760 CI, Case No. 3AN-06-13773 CI, Case No. 3AN-06-13799 CI, Case No. 3AN-07-04634 CI, Case No. 3AN-07-04620 CI, Case No. 3AN-07-04621 CI. (Alaska Super. Ct.)

These consolidated cases involved administrative hearings and appeals to the Alaska Superior Court and Alaska Supreme Court. The litigation centered on whether the Alaska Department of Natural Resources (DNR), as lessor, had the authority to terminate ExxonMobil's interest in an oil and gas field based on ExxonMobil's failure to cure a default. The case raised many novel issues and tested the scope of the State's authority over oil and gas lessees. In the initial appeal of DNR's decision, the Alaska Superior Court remanded the matter to the Department of Natural Resources for additional process. On remand, the agency then held an extensive evidentiary hearing. After receiving an adverse decision, ExxonMobil and its partners again appealed the matter. The litigation continued with additional hearings, briefings, and arguments and eventually came to an end when the parties reached a landmark \$4 billion settlement. The litigation began in late 2006 and ended in 2012.

I played a central role in developing the litigation strategy and drafting briefs and motions for the State of Alaska. During the administrative proceedings, I advised the DNR Commissioner on legal issues and drafted decisional documents issued by the agency. I also served as the State's lead negotiator in the settlement negotiations and played a significant role in drafting the settlement agreement. The dates of my representation were from 2006 to 2012.

Judge: Judge Sharon Gleason

Co-Counsel

Richard Todd (retired)
Larry Ostrovsky (retired)
Jeff Landry (retired)
Alaska Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501
(907) 269-5255

Matt Findley
Mark Ashburn (deceased)
Ashburn & Mason
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
(907) 276-4331

Dani Crosby
(Then at Ashburn & Mason)

Anchorage Superior Court
825 West Fourth Avenue
Anchorage, Alaska 99501
(907) 264-0561

Moiria Smith
(Then at Ashburn & Mason)
ENSTAR Natural Gas
3000 Spenard Road
Anchorage, Alaska 99503
(907) 277-5551

Opposing Counsel

John Daum (deceased)
M. Randall Oppenheimer
Dawn Sesito
O'Melveny & Myers
400 South Hope Street
Los Angeles, California 90071
(213) 430-6000

William (Bart) Rozell
(deceased)

George Lyle
Guess & Rudd
1029 West Third Avenue
Anchorage, Alaska 99501
(907) 793-2200

Stephen Ellis
Delaney Wiles, Inc.
1007 West Third Avenue, Suite 400
Anchorage, Alaska 99501
(907) 279-3581

Spencer Sneed
(deceased)

2. *In re the Matter of the Petition of Exxon Mobil Corp. Pursuant to AS 31.05.110 for Approval of Unitization of the Point Thomson Sands Unit*, Docket No. CO-08-01, Conservation Order No. 584 (2009)

After the Alaska Department of Natural Resources (DNR) terminated ExxonMobil's right to operate its Point Thomson field, ExxonMobil filed a compulsory unitization

application before DNR's sister agency, the Alaska Oil and Gas Conservation Commission (AOGCC). ExxonMobil, and its partners, submitted this application in an attempt to preserve its oil and gas leases. The AOGCC held several hearings and, eventually, sided with my client in concluded that it should not hear ExxonMobil's petition. The case addressed issues of first impression involving the extent of the AOGCC's jurisdiction over oil and gas lease disputes between the DNR, lessor, and ExxonMobil, lessee. This matter was litigated between 2007 and 2009. I was the lead counsel in this matter. I drafted the motions and briefs and argued all motions before the AOGCC. The dates of my representation were from 2007 to 2009.

Judges: Commissioner John Norman (retired); Commissioner Cathy Foerster;
Commissioner Dan Seamount

Co-Counsel

Richard Todd (retired)
Larry Ostrovsky (retired)
Jeff Landry (retired)
Alaska Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501
(907) 269-5255

Matt Findley
Mark Ashburn (deceased)
Ashburn & Mason
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3. *Sparks v. Campbell*, Case No. 3PA-16-01381CI (Alaska Super. Ct.); Supreme Court No. S-16814 (March 21, 2018)

This *pro bono* case involved a custody dispute over a four-year-old boy. My client was involved in an extremely unstable and abusive relationship. After years of abuse, she fled the relationship in April 2016. Shortly afterwards, I was retained by the Alaska Network on Domestic Violence and Sexual Assault, *pro bono*, and secured a long-term protective order after a three day evidentiary hearing. After this hearing, the court also granted my client interim custody of her son. The father's parents then moved to intervene and sought custody or, alternatively, court-ordered visitation. The trial occurred over four days between May and July 2017. The court awarded my client sole legal custody, prohibited the father from having visitation until he completes counseling, and denied the paternal grandparents custody or visitation. The father then appealed the court's final judgment to the Alaska Supreme Court but his appeal was dismissed.

I was the lead counsel in this case and was primarily responsible for drafting motions and briefs and managing discovery. At trial, co-counsel and I split the witnesses. I was also the lead attorney in the appeal to the Alaska Supreme Court. The dates of my representation were from 2016 to 2018.

Judge: Judge Kari Kristiansen

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4. *C&C Techs., Inc. v. Old Harbor Native Corp.*, Case No. 3AN-12-11141CI (Alaska Super. Ct.); *Khan v. C&C Techs.*, No. S-15545, No. 1573 (Alaska 2016) (unpublished)

C&C (my client in this matter) was hired to conduct marine survey work for a fiber optic cable project. The contract provided that C&C would be paid in installments after completing various milestones. After spending millions of dollars mobilizing vessels from Seattle to Alaska and conducting survey work, it became clear that the counterparty to the contract did not have the funds to pay C&C and had misled C&C about its ability to pay for the work performed. To avoid the contract's arbitration provision, and an unenforceable judgment against an insolvent company, my client filed suit against the executives who negotiated the contract and against the companies that owned the insolvent subsidiary. C&C's action sought tort remedies and monetary damages under the Alaska Unfair Trade Practices Act for the defendants' malfeasance, deceit, and unfair and deceptive trade practices. After extensive discovery and motions practice, C&C secured a favorable settlement where it recouped its losses. This case was litigated between 2012 and 2014. One of the defendants appealed various issues, including the superior court's denial of his motion for attorney's fees, to the Alaska Supreme Court. The Alaska Supreme Court issued a decision in 2016 that rejected all of his arguments and affirmed the superior court's decision.

I was the lead attorney and drafted all of the pleadings and motions, managed discovery, argued motions, and negotiated the settlement agreement. I was also the lead attorney in the appeal to the Alaska Supreme Court. The dates of my representation were from 2012 to 2016.

Judge: Judge Eric Aarseth

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5. *Cook Inlet Region, Inc. v. Buccaneer Alaska, LLC*, Case No. 3AN-13-09911 CI
(Alaska Super. Ct.)

The case centered on whether an oil and gas lessee had met conditions set forth in the lease. Under an oil and gas lease issued by Cook Inlet Region, Inc. (CIRI), my client, Buccaneer Alaska (Buccaneer), was obligated to drill one well on or near the lease within two years of lease issuance. The lease provided that Buccaneer was required to meet certain conditions to demonstrate that it would be able to drill the well such as securing by a particular date permits and a drilling rig for the well. The failure to meet any of these conditions would result in automatic termination of the lease. Buccaneer drilled the required well within months of acquiring the lease – and before the first condition had arisen – and then proceeded to drill three additional wells. Nonetheless, nearly two years after the well had been drilled, CIRI filed an action in superior court claiming that the lease had automatically terminated because Buccaneer did not comply with the conditions (e.g., it did not submit permits or a drilling contract to CIRI). Buccaneer counterclaimed and sought, among other things, declaratory relief that it had complied with the terms of the lease. After motions practice and argument, the superior court issued a decision finding that it did not have jurisdiction to hear some of CIRI's claims but agreed with CIRI that the lease had automatically terminated.

I was the lead counsel for Buccaneer in this matter, drafted the pleadings and motions, and argued before the superior court. The dates of my representation were from 2013 to 2014.

Judge: Judge Frank Pfiffner

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6. *Linc Alaska Res., LLC v. Arctic Falcon Exploration, LLC*, Case Nos. 3AN-12-10173 CI, 3AN-14-6657 CI (consolidated) (Alaska Super. Ct.)

This case began as a dispute between members of a limited liability company (Renaissance Umiat) over their respective rights and obligations under the operating agreement. In 2012, my client, Linc, filed a declaratory judgment action to clarify the meaning of the operating agreement to determine whether Arctic Falcon could be diluted for its failure to contribute funds to the company. Arctic Falcon counter-claimed alleging that Linc, as managing member, breached the operating agreement by not completing certain work. Discovery and motions practice ensued. The court granted Linc's summary judgment motion and found that Linc complied with its obligations under the operating agreement. In response, Arctic Falcon filed suit against Renaissance Umiat (the company) seeking, among other things, a constructive trust and return of the assets that Arctic Falcon had contributed to the company. The two suits were consolidated. After extensive discovery, briefing and argument, the superior court granted all of my client's dispositive motions. The parties eventually settled.

From 2012 to 2013, I was an associate counsel on this matter and handled discovery matters, motion practice and drafted briefs. From 2014 to 2015, I was the lead counsel in this matter, drafted pleadings and motions, argued motions, and led the settlement negotiations.

Judges: Judge Frank Pfiffner; Judge Eric Aarseth

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Christopher Cyphers
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7. *City of Valdez v. Alaska Dep't of Revenue*, No. S-12448 (Alaska Supreme Court 2009); *City of Valdez v. Alaska Dep't of Revenue*, Case No. 3VA-08-04CI (Alaska Super. Ct.); *In re the Matter of the City of Valdez Notice of Escaped Prop.*, OAH Nos. 04-0322-Tax (OAH 2008)

In 1997, the Alaska Department of Revenue (DOR) expanded its definition of taxable oil and gas property. This decision triggered extensive litigation between the City of Valdez, which receives a portion of the property tax revenue, and the State of Alaska. The case primarily focused on DOR's decision to not levy a tax on certain properties located near Valdez, which in turn meant that Valdez would not receive additional tax revenue. Valdez argued that DOR was obligated to tax all property that escaped taxation between 1974 and 1997. The Office of Administrative Hearings (OAH) agreed with the State that Valdez did not have a valid claim. The superior court affirmed. The litigation occurred before an ALJ at the OAH, the Alaska Superior Court, and the Alaska Supreme Court.

From 2007 to 2009, I was the lead counsel on this case and handled motions, discovery matters, briefing, and various hearings before the OAH, the Alaska Superior Court, and the Alaska Supreme Court.

Judge: Judge Daniel Schally

Co-Counsel

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8. *Miller v. Campbell*, Case No. 3:10-cv-00252 (D. Alaska 2010)

After the 2010 election for U.S. Senate, Joe Miller sued the State of Alaska in U.S. District Court to challenge the Alaska Division of Elections' process for counting write-in votes cast in the November 2, 2010 election for Alaska's U.S. Senate seat. Miller then filed a motion for preliminary injunction to stop the vote count. The state opposed the motion, arguing that Miller could not show irreparable harm or likelihood of success on the merits. The state also filed a motion to dismiss, arguing that the district court lacked subject matter jurisdiction, or, in the alternative, that the court should abstain under the *Pullman* abstention doctrine. The district court denied Miller's motion for a preliminary injunction and granted the State's motion to dismiss. I assisted in the development of trial strategy, participated in drafting the State's opposition to Miller's motion for a preliminary injunction, and authored the *Pullman* abstention argument for the motion to dismiss. My involvement in the litigation occurred in 2010.

Judge: Judge Ralph Beistline

Co-Counsel

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9. *Cook Inlet Energy, LLC v. AOGCC*, Case No. 3AN-17-06628CI (Alaska Super. Ct.)

The Alaska Oil and Gas Conservation Commission (AOGCC) issued a notice of violation (NOV) to Cook Inlet Energy, LLC (CIE) for CIE's alleged failure to comply with

requirements set out in the AOGCC's safety valve regulations. The AOGCC proposed an \$806,000 penalty. CIE challenged the NOV in administrative proceedings. In response to these arguments, the AOGCC reduced the penalty to \$446,000. After the AOGCC issued a final decision, CIE appealed the decision to superior court. The AOGCC agreed to reduce the penalty to \$116,000 in exchange for CIE dismissing its appeal after CIE filed its opening brief challenging various aspects of the AOGCC's final decision.

I represented CIE during the informal and formal conference before the AOGCC and in the administrative appeal before the Alaska Superior Court. During these proceedings I filed briefs and motions, prepared witnesses, and submitted testimony. In addition to handling all aspects of the litigation, I also negotiated the settlement agreement. The dates of my representation were 2015 to 2018.

Judge: Judge Erin Marston

Opposing Counsel

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10. *Marathon Oil Co. v. Alaska Dep't of Nat. Res.*, 254 P.3d 278 (Alaska 2011);
Marathon Oil Co. v. Alaska Dep't of Nat. Res., Case No. 3AN-08-08644CI (Alaska Super. Ct.)

Oil and gas producers that lease land from the State of Alaska must pay royalties calculated on the value of the gas produced from the leased area. The value of the oil and gas can be calculated in two ways: (1) "higher of" pricing where DNR looks to the highest value received in the area for the commodity or (2) the actual contract sales price that the lessee received for its oil or gas. The higher of provision provides DNR with the ability to disregard the actual sales price if another lessee operating in the same field or area was able to secure a higher price for the oil or gas. The purpose of the higher of pricing mechanism is to ensure maximum royalty recovery to the State. State law, however, carves out a limited exception to this rule. The statute provides that a gas producer may apply to the DNR commissioner to use its contract price with a utility to determine royalty value for gas sales. If the DNR commissioner approves the request, the State waives its right to the "higher of" value, and the lessee's royalty value is fixed at its contract sales price. Marathon filed two requests with the DNR asking for the special treatment afforded by the statute – *i.e.*, for the contract price with utility companies to determine the State's royalty value of the gas it sold to these utilities. DNR granted the request on a prospective basis but rejected Marathon's requests to retroactively apply the contract price to sales in prior years. DNR found that it was not statutorily authorized to approve a retroactive request. Marathon appealed this decision to the Alaska Superior

Court, which affirmed DNR's decision. Marathon then appealed this decision to the Alaska Supreme Court, which also affirmed.

I was the lead attorney in the superior court appeal, where I briefed and argued the case. I supervised the appeal to the Alaska Supreme Court. The dates of my representation were 2008 to 2011.

Judge: Judge Suddock

Co-Counsel

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Catherine Rogers
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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.)

Point Thomson: The Point Thomson litigation, listed above, consumed a large amount of my time between 2006 and 2012. This multi-billion dollar case had major ramifications for the State of Alaska's economy and the scope of the Department of Natural Resources' authority over the State's most important industry. The sprawling litigation involved eight different actions that were heard before three administrative agencies, the Alaska Superior Court, and the Alaska Supreme Court. The novel legal issues raised in these cases had the potential to redefine how the State of Alaska manages the oil industry. I was directly involved in all aspect of the litigation, drafted motions and briefs, and argued against some of the country's top litigators. I also led the State's negotiating team.

Ultimately, the State and Exxon reached a fair settlement that allowed the State to achieve all of the objectives of the litigation: a commitment from Exxon to invest billions in the State of Alaska.

Pro Bono Representation for Domestic Violence Victims: Alaska has one of the highest rates of domestic violence and sexual assault in the nation. In 2009 and 2010, I worked with then Attorney General Sullivan and Governor Parnell on a comprehensive statewide initiative to address this epidemic. The Choose Respect initiative secured funds for public safety and victim services, provided additional law enforcement in rural Alaska, developed a primary prevention plan, and funded a public awareness campaign designed to change public attitudes about domestic violence and sexual assault. The initiative also strengthened laws related to sexual assault, sexual exploitation of children, domestic violence, stalking, human trafficking, and the abuse and exploitation of vulnerable adults. And we worked with stakeholders in an effort to increase the number of attorneys providing *pro bono* representation to victims of domestic violence and sexual assault – studies show that one of the most effective ways to end the cycle of violence is by providing victims with legal representation. After leaving State service, I have continued to work with the Alaska Network on Domestic Violence and Sexual Assault in an effort to get more representation for victims. And in 2016 and 2017, I represented a domestic violence victim in a custody dispute. This representation liberated my client and her son from an abusive relationship and changed the trajectory of their lives.

I have never been a registered lobbyist.

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.

None.

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.

My law firm typically distributes a portion of its current year income on a quarterly basis. Under the terms of my employment contract, I am eligible to a portion of the income received on matters that I originated.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Statement of Net Worth.

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 currently represent or have represented companies pursuing oil and gas, mining, hydro, and telecommunications projects. Often the permits and authorizations issued for these projects are litigated in federal court. I would recuse myself in any matter in which I was involved, and would carefully review other cases in these areas for potential conflicts-related issues. Matters handled by other Holland & Hart and Crowell & Moring attorneys during my tenure would also create a potential conflict. While I would follow judicial guidelines in such circumstances, I would err on the side of caution and recuse myself in instances where there was even the appearance of a conflict. I would also recuse myself from any cases involving my wife's employer, Southcentral Foundation. I will evaluate any other real or potential conflict of interest, or relationship that could give rise to the appearance of a conflict of interest, on a case-by-case basis and determine appropriate action, including recusal, with the input of parties and consultation of applicable canons of judicial ethics.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar

Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

From 2016 to the present, I have represented a victim of domestic violence in a custody dispute against her abusive partner and his parents. See discussion of *Sparks v. Campbell* above. I spent approximately 320 hours on this matter.

In 2015, I drafted an amicus brief for the Alaska Congressional Delegation in *Sturgeon v. Frost*. The issue presented in this case had far reaching ramifications for rural Alaskans' ability to access and utilize lands and resources granted to the State and Native Corporations under federal law. I spent approximately 100 hours on this matter.

Victims of domestic violence and sexual assault are in need of legal representation, but most victims do not receive the legal representation that they need. To address this deficiency, I formed a working group with members of the Alaska Bar and Seattle University Law School to create and fund a fellowship position for the Alaska Network on Domestic Violence and Sexual Assault. The fellow would represent victims in civil proceedings. I spent approximately 100 hours on this initiative in 2015 and 2016. Unfortunately the effort to create the fellowship stalled when I switched law firms but I am currently working to identify potential parties who will provide funding for fellowships.

In 2013, my firm was hired by the Advancement Project to challenge the reduction of early voting days under Section 2 of the Voting Rights Act in Florida. I assisted in researching issues related to this topic. I spent approximately 20 hours on this matter.

In 2012, I advised the Alaska Blood Bank in a copyright dispute. I spent approximately 30 hours on this matter.

In 2005 or 2006, I worked on a death penalty appeal involving an intellectually disabled man who pled guilty to murder and was sentenced to death in 1998. At this time, mental disability was not grounds for exemption from the death penalty. We sought post-conviction relief from the Texas courts, alleging that the execution would be unconstitutional on this basis. We lost. I spent approximately 50 hours on this case.

During the time that I worked at the State of Alaska (2006 to 2012), the applicable regulations made it very difficult for state employees to practice law on behalf of any entity other than the state.

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.

The Alaska Bar Association notified Alaska attorneys about the judicial vacancy and requested attorneys to submit a letter expressing an interest in the position. I applied in February 2017. The Bar Association conducted a bar poll where it asked the bar to rate the qualifications of each applicant. The results were submitted to Senator Murkowski and Senator Sullivan for their review. I was interviewed by Senator Sullivan in March 2017 and by Senator Murkowski on May 1, 2017. My name was forwarded along with others to the White House. I was interviewed by attorneys at the White House and the Department of Justice in late May or early June 2017.

Since then, I have periodically communicated with individuals in the White House Counsel's Office and the U.S. Department of Justice. The President submitted my nomination to the Senate on April 12, 2018.

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

No.