

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Marc Thomas Treadwell

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

United States District Judge for the Middle District of Georgia

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

Office: Adams, Jordan & Treadwell, P.C.
 577 Mulberry Street, Suite 1250
 P.O. Box 928
 Macon, Georgia 31202

Residence: 

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

1955; Fort Campbell, Kentucky

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.

1978-1981, Walter F. George School of Law, Mercer University; J.D. (*cum laude*), 1981

1973-1978, Valdosta State University; B.A., 1978

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.

2000 – Present
Adams, Jordan & Treadwell, P.C.
577 Mulberry Street, Suite 1250
P.O. Box 928
Macon, Georgia 31202
Partner-Shareholder

1998 – Present
Walter F. George School of Law
1021 Georgia Avenue
Macon, Georgia 31207
Adjunct Professor of Law

1985 – 2000
Chambless, Hidgon & Carson, LLP
577 Walnut Street, Suite 200
Macon, Georgia 31202
Associate (1985 – 1987)
Partner (1987 – 2000)

1980 – 1985
Kilpatrick & Cody (now Kilpatrick Stockton, LLP)
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Associate (1981 – 1985)
Summer Associate (1980)

1981 (April, May)
Hall, Bloch, Garland & Meyer, LLP
577 Mulberry Street, Suite 1500
Macon, Georgia 31201
Law Clerk

1979
Administrative Office of the Courts of Georgia
Savannah Office
415 West Broughton Street
Savannah, Georgia 31401
Summer Clerk (Case Counter)

1978
Administrative Office of the Courts of Georgia
Valdosta Office
P.O. Box 1025
Valdosta, Georgia 31095
Summer Clerk (Case Counter)

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

I did not serve in the military. I registered for the Selective Service upon turning age 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.

Omicron Delta Kappa Honor Society (1977)
Brainerd Currie Honor Society (1980)
Order of Barristers (1980)
Mercer Law Review (1980 – 1981)
Editor, Eleventh Circuit Survey Issue (1981)
Member, Intrastate Moot Court Championship Team (1980)
Intrastate Moot Court Best Brief Award (1980)
Martindale Hubbell Law Directory AV Rating (1992 – Present)
Georgia Super Lawyer (2004 – Present)
The Best Lawyers in America (2001 – Present)
American College of Trial Lawyers (2003 – Present)
International Academy of Trial Lawyers (2009 – Present)

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.

Fellow, American College of Trial Lawyers (2003 – Present)
Vice Chair, Georgia State Committee (2008 – Present)
Federal Rules of Evidence Committee (2006)
Fellow, International Academy of Trial Lawyers (2009 – Present)
State Bar of Georgia (1981 – Present)
Federal Courts Liason Committee (1998 – 2002)
Editorial Board, *Georgia State Bar Journal* (1993 – 1995)
Executive Council, Younger Lawyers Section (1983 – 1985)
Master, William Augustus Bootle Inn of Court (1999 – Present)
President (2009 – Present)
Vice-President (2008 – 2009)
Chairman, Local Rules Committee, United States District Court, Middle District of Georgia (1998 – 2002)
Middle Georgia Trial Lawyers Association (2000 – Present)
President (2005)
Macon Bar Association (1985 – Present)
Federal Bar Association (1990 – Present)
Georgia Association of Trial Lawyers (1998 – Present)

American Association for Justice (2000 – Present)

10. Bar and Court Admission:

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

Georgia, 1981

There has been no lapse in membership.

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

Supreme Court of the United States, 1988

United States District Court for the Middle District of Georgia, 1985

United States District Court for the Northern District of Georgia, 1981

United States District Court for the Southern District of Georgia, 1985

There have been no lapses in memberships in the Bars of these Courts.

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.

Tubman African American Museum (2000 – Present)

Sons and Daughters in Touch (2007 – Present)

Society of the First Infantry Division (2007 – Present)

Museum of Arts and Sciences (1990 – Present)

Historic Macon Foundation, Inc. (2000 – Present)

Hay House Foundation (off and on since 1985)

Friends of the Ocmulgee Heritage Trail (2006 – Present)

Macon Arts (2004 – Present)

Idle Hour Country Club (1988 – Present)

Ansley Golf Club (1984 – 1995)

Stonehill Homeowner's Association (2004 – Present)

Fripp Island (South Carolina) Property Owners Association (2000 – Present)

Fripp Island (South Carolina) Club (2000 – Present)

Okefenokee Golf Club (1989 – 2009)

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

None of the organizations I have listed presently discriminates or has discriminated during the time I have been a member on the basis of race, sex, religion, or national origin. I understand that Idle Hour Country Club, which has existed for approximately a century, once discriminated on the basis of race. Throughout my membership, the Club has had strong anti-discriminatory recruitment and membership policies and today has a diverse membership. I have assisted in recruitment efforts toward a diverse membership. I am not aware of discrimination prior to my membership by any of the other organizations listed, though it is possible that such discrimination occurred well prior to any affiliation I had with those organizations.

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.

Authored five-part, 22,000 word series for *The Macon Telegraph* on the 1963 murder of Army Lt. Col. Lemuel Penn by members of the Ku Klux Klan. The Macon Telegraph, September 4, 1994 at A1; September 11, 1994 at B1; September 18, 1994 at B1; September 25, 1994 at B1; October 2, 1994 at B1.

Whisper to the Black Candle: Voodoo, Murder, and the Case of Anjette Lyles, by Jaclyn Weldon White (Macon: Mercer University Press, 1999), 9 *J. of S. Legal His.* 191 (2001). (Book Review)

Aretz v. United States: Fifth Circuit Announces Major Development in Georgia Tort Law? 31 Mercer L. Rev. 1095 (1980).

1986 Eleventh Circuit Survey: Evidence, 38 Mercer L. Rev. 1253 (1987).

1987 Eleventh Circuit Survey: Evidence, 39 Mercer L. Rev. 1259 (1988).

1988 Annual Survey of Georgia Law: Evidence, 40 Mercer L. Rev. 225 (1988).

1988 Eleventh Circuit Survey: Evidence, 40 Mercer L. Rev. 1291 (1989).

1989 Annual Survey of Georgia Law: Evidence, 41 Mercer L. Rev. 175 (1989).

1989 Eleventh Circuit Survey: Evidence, 41 Mercer L. Rev. 1357 (1990).

1990 Annual Survey of Georgia Law: Evidence, 42 Mercer L. Rev. 223 (1990).

An Analysis of Georgia's Proposed Rules of Evidence, 26 Ga. State Bar J. 173 (1990).

1990 Eleventh Circuit Survey: *Evidence*, 42 Mercer L. Rev. 1451 (1991).

1991 Annual Survey of Georgia Law: *Evidence*, 43 Mercer L. Rev. 257 (1991).

1991 Eleventh Circuit Survey: *Evidence*, 43 Mercer L. Rev. 1173 (1992).

1992 Annual Survey of Georgia Law: *Evidence*, 44 Mercer L. Rev. 213 (1992).

1992 Eleventh Circuit Survey: *Evidence*, 44 Mercer L. Rev. 1209 (1993).

1993 Annual Survey of Georgia Law: *Evidence*, 45 Mercer L. Rev. 229 (1993).

1993 Eleventh Circuit Survey: *Evidence*, 45 Mercer L. Rev. 1291 (1994).

1994 Annual Survey of Georgia Law: *Evidence*, 46 Mercer L. Rev. 233 (1994).

Evidence of Other Transactions in Civil Cases, Ga. Defense Lawyers' Association J. (1994).

1994 Eleventh Circuit Survey: *Evidence*, 46 Mercer L. Rev. 1377 (1995).

1995 Annual Survey of Georgia Law: *Evidence*, 47 Mercer L. Rev. 127 (1995).

1995 Eleventh Circuit Survey: *Evidence*, 47 Mercer L. Rev. 837 (1996).

1996 Annual Survey of Georgia Law: *Evidence*, 48 Mercer L. Rev. 323 (1996).

1996 Eleventh Circuit Survey: *Evidence*, 48 Mercer L. Rev. 1607 (1997).

1997 Annual Survey of Georgia Law: *Evidence*, 49 Mercer L. Rev. 149 (1997).

1997 Eleventh Circuit Survey: *Evidence*, 49 Mercer L. Rev. 1027 (1998).

1998 Annual Survey of Georgia Law: *Evidence*, 50 Mercer L. Rev. 229 (1998).

1998 Eleventh Circuit Survey: *Evidence*, 50 Mercer L. Rev. 1019 (1999).

1999 Annual Survey of Georgia Law: *Evidence*, 51 Mercer L. Rev. 279 (2000).

1999 Eleventh Circuit Survey: *Evidence*, 51 Mercer L. Rev. 1165 (2000).

2000 Annual Survey of Georgia Law: *Evidence*, 52 Mercer L. Rev. 263 (2001).

2000 Eleventh Circuit Survey: *Evidence*, 52 Mercer L. Rev. 1403 (2001).

2001 Annual Survey of Georgia Law: *Evidence*, 53 Mercer L. Rev. 295 (2002).

2001 Eleventh Circuit Survey: *Evidence*, 53 Mercer L. Rev. 1399 (2002).

2002 Annual Survey of Georgia Law: *Evidence*, 54 Mercer L. Rev. 309 (2002).

2002 Eleventh Circuit Survey: *Evidence*, 54 Mercer L. Rev. 1487 (2003).

2003 Annual Survey of Georgia Law: *Evidence*, 55 Mercer L. Rev. 249 (2003).

2003 Eleventh Circuit Survey: *Evidence*, 55 Mercer L. Rev. 1219 (2004).

2004 Annual Survey of Georgia Law: *Evidence*, 56 Mercer L. Rev. 235 (2004).

2004 Eleventh Circuit Survey: *Evidence*, 56 Mercer L. Rev. 1273 (2005).

2005 Annual Survey of Georgia Law: *Evidence*, 57 Mercer L. Rev. 187 (2005).

2005 Eleventh Circuit Survey: *Evidence*, 57 Mercer L. Rev. 1083 (2006).

2006 Annual Survey of Georgia Law: *Evidence*, 58 Mercer L. Rev. 151 (2006).

2006 Eleventh Circuit Survey: *Evidence*, 58 Mercer L. Rev. 1219 (2007).

2007 Annual Survey of Georgia Law: *Evidence*, 59 Mercer L. Rev. 157 (2007).

2007 Eleventh Circuit Survey: *Evidence*, 59 Mercer L. Rev. 1181 (2008).

2008 Annual Survey of Georgia Law: *Evidence*, 60 Mercer L. Rev. 135 (2008).

2008 Eleventh Circuit Survey: *Evidence*, 60 Mercer L. Rev. 1211 (2009).

2009 Annual Survey of Georgia Law: *Evidence*, 61 Mercer L. Rev. 135 (2009).

Testimonial for website of Premier Settlement Services, Inc.

Pre-Trial Evidence Points, GTLA Trial Practice Manual (Written by Hon. Martha Christian, updated by Marc Treadwell).

- 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.

I served as Chairman of the Local Rules Committee of the United States District Court for the Middle District of Georgia from 1998-2002. As part of the Committee's ongoing work, we occasionally reported recommended changes to specific rules. I have not retained copies of any such reports.

I served for one year on the Federal Rules of Evidence Committee of the American College of Trial Lawyers (19900 MacArthur Blvd., Suite 610, Irvine, CA 92612). I recall only one report, on proposed Rule 502 of the Federal Rules of Evidence, of which I have not retained a copy.

I have no other recollection or record of reports, memoranda, or policy statements that I prepared or contributed in the preparation of that was issued by an organization of which I was a member.

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

None.

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

I speak once or twice a year at Continuing Legal Education seminars on evidence and trial issues. I have done so with this frequency for about ten years, and taught similar seminars on occasion for 15 years prior to that. In these presentations, I do not speak from a prepared text. In most cases, I have no transcripts or notes. As an example of a typical presentation, I most recently spoke on October 1, 2009, at a seminar at the State Bar of Georgia headquarters in Atlanta, Georgia.

As an officer of the Bootle Inn of Court since 2008, I have presided occasionally over programs and introduced featured speakers. I recall only one occasion on which I gave substantial remarks, during a program on September 10, 2009, honoring our local Federal judges who had recently taken senior status.

- 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.

Steve Harvey, *Local News*, Atlanta Journal & Constitution, March 11, 1992, at F2.

Mike Wynn, *Crash Victim's Relatives Sue Swainsboro Officer*, Augusta Chronicle, March 21, 2002, at B5.

S. Heather Duncan, *Junod Appointed Bibb Tax Assessor*, Macon Telegraph, May 15, 2002, at B1.

S. Heather Duncan, *Macon-Bibb Tax Talks Begin; County Seeks Dramatic Increase*, Macon Telegraph, July 3, 2002, at B5.

Mike Wynn, *City Settles Suit Over Chase Death*, Augusta Chronicle, July 9, 2002, at B5.

S. Heather Duncan, *Macon-Bibb Sales Tax Split Going to Mediator*, Macon Telegraph, Sept. 6, 2002, at B3.

S. Heather Duncan, *Bibb Bemoans Tax Exempt Carlyle Place; State Law Relieves Nonprofit Organizations that House the Elderly from Paying Property Taxes*, Macon Telegraph, Oct. 13, 2002, at A1.

S. Heather Duncan, *Macon Offers to Reduce Its Sales Tax Share to 2/3; Despite Cut, City and Bibb County Unable to Reach Deal*, Macon Telegraph, Nov. 6, 2002, at B1.

Mike Donila, *Options Are Few if Sales Tax Expires; Without Macon, Bibb Agreement on Split, Residents Would Have to Wait a Year to OK Similar Tax*, Macon Telegraph, Nov. 16, 2002, at B1.

Mike Donila, *Macon, Bibb Halt Tax Talks Without Deal*, Macon Telegraph, Dec. 7, 2002, at A1.

Mike Donila, *Sales Tax Stall Over Rec. Dept.*, Macon Telegraph, Dec. 13, 2002, at A1.

Travis Fain, *Bibb Makes Its Final Offers on Tax Split*, Macon Telegraph, Dec. 17, 2002, at D1.

Travis Fain, *Macon, Bibb Agree on Tax Split; City to Get 60 Percent, County to Get 40 Percent*, Macon Telegraph, Dec. 24, 2002, at A1.

Becky Purser, *Court Orders Insurance Provider to Pay Houston Man's Health Costs*, Macon Telegraph, March 30, 2004, at B3.

Treadwell Latest Alum Inducted Into Trial Lawyers, Mercer Law Letter, Summer 2004.

Becky Purser, *Appeals Court Sides With Former Kathleen Man Battling Cancer*, Macon Telegraph, Feb. 16, 2005, at A1.

Jonathan Ringel, *Transplant Ruling Survives Appeal*, Federal Daily Report, Feb. 23, 2005.

Becky Purser, *Authority to Ask State Court to Review Case*, Macon Telegraph, March 22, 2005, at B7.

Chuck Thompson, *Cancer Patient Who Won Battle With Insurer Dies*, Macon Telegraph, Oct. 11, 2005, at B1.

Alyson Palmer, *Court Deals Wins on Both Sides of Tort Suits*, Fulton Daily Report, June 9, 2009.

Political Notebook: Alls Not Quiet at the Capitol, Macon Telegraph, Oct. 17, 2009, at B1.

I have infrequently been interviewed and have no specific recollection or records of any interview other than those I have listed.

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 never held a 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 never been a judge.

- 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 represented Bibb County as an attorney and my law partner serves as the County Attorney, but I have not myself held public office. I have had no

unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

In May 2008, I was a named co-host at a reception in support of the Democratic Party of Georgia. I do not recall any memberships or other services rendered to a political party or election committee.

16. Legal Career: Answer each part separately.

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

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

I did not serve as clerk to a judge.

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

I have never practiced alone.

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

2000 – Present
Adams, Jordan & Treadwell, P.C.
577 Mulberry Street, Suite 1250
P.O. Box 928
Macon, Georgia 31202
Partner-Shareholder

1985 – 2000
Chambless, Hidgon & Carson, LLP
577 Walnut Street, Suite 200
Macon, Georgia 31202
Associate (1985 – 1987)
Partner (1987 – 2000)

1981 – 1985

Kilpatrick & Cody (now Kilpatrick Stockton, LLP)

1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309-4528

Associate

- 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.

At Kilpatrick & Cody (1981-1985), I represented both plaintiffs and defendants in civil litigation. During my association with Chambless, Higdon & Carson, LLP (1985-2000), I represented both plaintiffs and defendants in civil litigation. Initially, my practice was primarily defense oriented but within a few years of joining the firm my practice became more plaintiff oriented. During my later years with the firm, I primarily represented plaintiffs in personal injury and wrongful death actions. At Adams, Jordan & Treadwell, P.C. (2000-Present), I have represented primarily plaintiffs in personal injury and wrongful death actions. My partner, Virgil L. Adams, is Bibb County Attorney and I have represented Bibb County in many contested matters.

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

For the last fifteen years, my practice has primarily focused on representing plaintiffs in personal injury and wrongful death actions. Thus, my typical clients have been individuals. While I have handled a wide variety of personal injury litigation, most of my time has been spent in complex litigation such as product liability, medical malpractice, and catastrophic injury litigation.

- 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.

Nearly 100% of my practice has been in litigation. I appear in court frequently, although the frequency of appearances has decreased as the cases I have handled

have become more complex. In my early legal career, I tried numerous "small cases" and thus appeared in court much more frequently.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 20% |
| 2. state courts of record: | 79% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 1% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 99% |
| 2. criminal proceedings: | 1% |

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 estimate that I have tried 75 to 100 cases to verdict or judgment, almost all as lead counsel. I sat "second chair" at three trials while at Kilpatrick & Cody and three while at Chambless, Higdon & Carson.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 70% |
| 2. non-jury: | 30% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

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

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and

- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Hosp. Auth. of Houston County v. Bohannon*, 272 Ga. App. 96, 611 S.E.2d 663 (2005). Tried non-jury before Houston Superior Court Judge George Nunn in 2004.

I represented the Plaintiff “pro bono” in this declaratory judgment action seeking a determination that the Plaintiff’s health benefit plan provided coverage for a stem cell transplant as treatment for the Plaintiff’s kidney cancer. Because of the urgency of the matter, the case was tried non-jury ten days after filing and Judge Nunn entered judgment in favor of the Plaintiff. A six-judge panel of the Georgia Court of Appeals, Judges Andrews and Blackburn dissenting, affirmed. The majority reasoned that the health benefit plan was a contract of adhesion and held that Judge Nunn properly ordered the Defendants to provide coverage for the Plaintiff’s treatment. I believe the case is significant because the Court of Appeals’ holding provides some protection for patients, consumers and insureds who are presented with, as the Court of Appeals’ majority put it, “take it or leave it” contracts.

Opposing Counsel: Frank L. Butler, III
Constangy, Brooks & Smith, LLC
577 Mulberry Street, Suite 710
P.O. Box 1975
Macon, Georgia 31202
(478) 750-8600

Lewis Hassett
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326
(404) 233-7000

2. *Ledbetter v. First State Bank & Trust Company*, 85 F.3d 1537 (11th Cir. 1996). Tried before Judge Duross Fitzpatrick and a jury for approximately three weeks in March 1997.

I represented a trust beneficiary, a member of the Haley family in Albany, in an action against his trustee, First State Bank & Trust Company. Although the Haley family, directly or through trusts, owned a majority of the stock of First State, my client contended that non family bank management was improperly exercising voting control over First State through the bank’s trust department in an effort to delay a merger with a larger bank, to enhance management’s compensation plans, and for other improper purposes. Judge Fitzpatrick granted summary judgment to First State, but the Eleventh Circuit reversed, reinforcing the principle of Georgia

law that “the foremost duty which a fiduciary owes to its beneficiary is undivided loyalty.” The decision is of particular significance for corporate trustees managing trusts that hold stock in the corporate trustee. Upon remand and after a lengthy trial, my client largely prevailed. The jury awarded only nominal damages but also awarded attorneys’ fees against the Defendant.

Opposing Counsel: John T. Marshall, William G. Leonard
Powell, Goldstein, Frazer & Murphy
(now Bryan Cave, LLP)
One Atlantic Center, Fourteenth Floor
1201 W. Peachtree Street, NW
Atlanta, Georgia 30309
(404) 572-6615

3. *Moss v. Klein Tools, Inc.* (No. 88-00224, M.D. Ga. filed July 6, 1988). Tried before Judge Wilbur Owens and a jury.

In this product liability action involving a “rebar hook,” the jury returned a verdict in favor of Plaintiffs in the amount of \$1,910,778.96 for special, general and punitive damages. At the time, according to Middle District Court Clerk Greg Leonard, the verdict was the largest product liability verdict in the Middle District. The case was also significant because the actual rebar hook was never found, and thus the Plaintiffs faced considerable product identification obstacles. The case was settled on appeal.

Opposing Counsel: Peter K. Kintz
2970 Peachtree Road, NW
Suite 320
Atlanta, Georgia 30305
(404) 816-1222

Robert E. Arroyo
Jackson Lewis
320 West Ohio Street
Suite 500
Chicago, Illinois 60654
(312) 787-4949
(Jackson Lewis handled the appeal)

4. *Pate v. Oakwood Mobile Homes, Inc.*, 374 F.3d 1081 (11th Cir. 2004) and *Phillips v. United States*, 956 F.2d 1071 (11th Cir. 1992). *Pate* was tried before Judge Clay Land in 2003. *Phillips* was tried before Judge Robert Elliott in 1990.

I mention these cases together because both involved negligent inspection claims against Federal agencies (Corp of Engineers in *Phillips* and OSHA in *Pate*) and ended in Eleventh Circuit decisions after substantial district court judgments in

favor of the Plaintiffs. In *Phillips*, the Eleventh Circuit clarified precedent regarding the discretionary function and independent contractor exceptions to the Federal Tort Claims Act. The Eleventh Circuit's opinion also provides guidance regarding the liability of a party who voluntarily assumes safety responsibilities and then performs those duties negligently. Unfortunately for my client in *Pate*, the Eleventh Circuit, although reinforcing *Phillips*, held that OSHA did not owe a duty to the Plaintiff. Judge Land's opinion and judgment, then and now, appears to be the only case imposing liability against OSHA for the negligent performance of its inspection responsibilities.

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Gail Johnson (opposing in *Phillips*)
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5. *Cooper v. Edwards*, 235 Ga. App. 48, 508 S.E.2d 708 (1998); *Childers v. Cooper* No. 96-1273 (Laurens Superior Court filed September 26, 1996). These cases were jointly tried before Judge William Towson and a jury in January 1998.

Although these cases were fairly routine tractor-trailer cases, the Court of Appeals' decision in *Cooper* is significant for its ruling with regard to proper venue under Georgia's Long Arm Statute. At the time suit was filed, one of the Defendants was incarcerated in federal prison in Estill, South Carolina and the court held this was sufficient to establish non-residency for purposes of the Long Arm Statute, thus making venue appropriate in the county where the cause of action arose.

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6. *West v. Mache of Cochran, Inc.*, 187 Ga. App. 365, 370 S.E.2d 169 (1988). The case was tried twice before Judge Phil West and juries in the Superior Court of Bleckley County, first in 1987 and again in 1989.

In this action, the Plaintiff alleged that a Western Auto store, by engaging in a straw man transaction to avoid federal firearm laws, negligently sold a firearm to a customer who was ineligible to purchase a firearm. Shortly thereafter, the customer shot and killed the Plaintiff's wife. I believe the case has some significance because of the Court of Appeals' holding that the Plaintiff, by demonstrating that the store intentionally engaged in a straw man transaction, was entitled to a verdict on liability as a matter of law.

Other Counsel: Thomas Richardson (lead counsel for Plaintiffs)
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Opposing Counsel: Edgar Neeley, III (deceased)

7. *Hogg, In her Capacity as Clerk of the Macon County Superior Court v. Allen, Chairman of the Macon County Board of Commissioners*, No. 2003-C-239 (Macon Superior Court filed July 15, 2003).

I represented the Macon County Board of Commissioners in a dispute involving hiring practices in the offices of County constitutional officers, principally the Superior Court Clerk and the Probate Judge. Generally, Georgia law grants constitutional officers the exclusive power to hire and fire their employees. The Board of Commissioners, however, was concerned that the white constitutional officers would continue to hire only white employees. The issue was brought to a head when the Commissioners challenged a particular hiring decision and the Superior Court Clerk and Probate Court filed suit. After a series of conferences, mediation and hearings, and with the assistance of Judge Tommy Day Wilcox, the parties agreed to a consent order that gave the Board of Commissioners unprecedented input in hiring practices by the Superior Court Clerk and the Probate Judge. The consent order has led to improved diversity in newly-hired court staff since its implementation in 2003.

Other Counsel: Mr. Jon L. Coogle (co-counsel for Macon County)
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Opposing Counsel: Mr. Charles E. Jones
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8. *Robinson v. SKE Support Service, Inc., et al.*, No. 5:06-CV-193 (M.D. Ga. filed June 8, 2006).

I served as lead counsel in this complex product liability action involving the collapse of a manlift at Robins Air Force Base. The case presented particular challenges because the Air Force, after two exhaustive investigations, could not determine the cause of the failure. Fortunately, the Air Force preserved the lift and we were able, with the help of multiple experts, to determine the cause of the malfunction and to recreate the incident. Our client was a 20-year-old airman who suffered numerous injuries, most significantly a head injury that left him totally physically disabled and with the mental faculties of a five-year-old child. Consequently, our client and his parents were in desperate need of significant and expensive care far in excess of that provided by his military and veteran benefits. As a result of the 2007 confidential settlement of the case, not only have the client's needs been met, but he has been able to obtain intense and innovative therapy and he has substantially improved.

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9. *Monday v. Putnam County Hospital Auth.*, No. 07-CV-3551ST (State Court of Baldwin Co. filed September 28, 2007).

In this tragic case, the Plaintiffs' 10-year-old son was reduced to a near vegetative state as a result of excessive administration of fluids while being treated for diabetic ketoacidosis. The case presented particular challenges because of Georgia's new "emergency room immunity" legislation and the fact that the Defendants and potential defendants had limited insurance. Moreover, the two principal Defendants had "eroding limits" policies, which meant that the cost of defense would reduce the available coverage. Through a series of maneuvers, we were able to convince the various Defendants and potential Defendants to tender their coverages and, after a significant reduction in fees, the settlement proceeds were structured in a manner that will allow the Plaintiffs to care for their son for the remainder of his life.

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10. *Hosp. Auth. of Lowndes County v. Meeks*, 294 Ga. App. 649, 669 S.E.2d 667 (2008), *aff'd*, 285 Ga. 521, 678 S.E.2d 71 (2009).

In this medical malpractice and negligent credentialing action, the Court of Appeals reversed a trial court ruling completely barring any discovery of hospital credentialing files. The Georgia Supreme Court granted certiorari and on June 8, 2009 affirmed the Court of Appeals. These decisions clarified the scope of Georgia's peer review privilege.

Other Counsel: O. Wayne Ellerbee (co-counsel for *Meeks*)
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Opposing Counsel: Mr. Glenn Whitley
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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.)

Throughout my career, I have been a civil trial lawyer and my most significant legal activities have been in the courtroom. The American College of Trial Lawyers inducted me as a member in 2003, recognizing my experience and expertise in this area. In recent years, I primarily have represented injured plaintiffs in cases ranging from minor torts to complex liability litigation. I have also represented individual and corporate defendants and engaged in legal work for Bibb County, Georgia. I have occasionally performed non-litigation legal services, such as in negotiating the division of sales tax revenues between Bibb County and the City of Macon in 2002.

Writing and teaching about the law and rules of evidence, Georgia and Federal, are also substantial professional activities for me. Since 1986, I have authored the Evidence Survey Article for Mercer Law School's Annual Eleventh Circuit Survey and since 1988, I have authored the Evidence Survey Article for Mercer Law School's Annual Survey of

Georgia Law. In addition, I speak frequently at Continuing Legal Education seminars on evidence topics.

I have performed no lobbying activities.

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.

Since 1998, I have taught one term each year at Mercer Law School, instructing a third-year course on Georgia Civil Practice and Procedure.

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

I have made no arrangements for future compensation.

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

I have no plans, commitments or agreements to pursue outside employment, if confirmed, during my service with the court. If confirmed, I hope to continue to teach at Mercer Law School, so long as I can do so consistent with my court responsibilities.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

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

The only likely potential conflicts of interest of which I am aware that would arise if I am confirmed would be cases in which my current firm serves as counsel for a party or where I have previously represented a party. I will recuse myself from those cases when I first take the bench, if confirmed

- 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 handle all matters involving actual or potential conflicts of interest through the careful and diligent application of Canon 3 of the Code of Conduct for United States Judges as well as other relevant Canon and statutory provisions.

- 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.

Throughout my 28 years of practice, I have frequently performed legal services at no charge or on a reduced fee basis for financially disadvantaged people.

In my single most extensive pro bono case, I won a declaratory judgment action seeking a determination that my client's health benefit plan provided coverage for a stem cell transplant as treatment for his kidney cancer. I estimate that I spent well over 100 hours in the expedited trial and appeal of this case.

Since 2000, I have performed legal services intermittently for Adopt-A-Role Model, a local non-profit organization that provides mentoring services and opportunities to young African-American males between the ages of 6 and 11 who are from female-headed households living in public housing. My work included filing suit to resolve title issues relating to a house purchased by Adopt-A-Role Model. I estimate I have spent over 100 hours on behalf of the organization, without fee.

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.

In February 2009, Georgia's Democratic Congressional Delegation announced formation of a Judicial Advisory Panel to evaluate candidates for a vacancy on the United States District Court for the Middle District of Georgia, and for other offices. I made an initial submission of interest to the Panel that month and submitted a full questionnaire in March 2009. The Panel interviewed me and other applicants on March 28, 2009. I understand that, based on the Panel's evaluations, the Delegation recommended three candidates, including me, to the White House for the District Court seat.

Since October 14, 2009, I have been in contact with pre-nomination officials at the Department of Justice. I was interviewed on December 9, 2009 by members of the White House Counsel's Office and the Department of Justice. On February 4, 2010, the President submitted my nomination to the Senate.


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


No such communications have taken place.

AFFIDAVIT

I, **MARC THOMAS TREADWELL**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 5, 2010
(DATE)


(NAME)


(NOTARY)

