

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Max Oliver Cogburn, Jr.

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

United States District Judge for the Western District of North Carolina

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.

Cogburn & Brazil, P.A.
77 Central Avenue, Suite E
Asheville, North Carolina 28801

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

1951; Cambridge, Massachusetts

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1973-1976, The Samford University Cumberland School of Law; J.D., 1976

1969-1973, University of North Carolina at Chapel Hill; B.A., 1973

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

2006-Present
Cogburn & Brazil, P.A.
77 Central Avenue, Suite E
Asheville, North Carolina 28801
Partner

2004-2006

Cogburn, Goosmann, Brazil & Rose, P.A.
77 Central Avenue, Suite H
Asheville, North Carolina 28801
Partner

1995-2004

United States District Court for the Western District of North Carolina
100 Otis Street
Asheville, North Carolina 28801
United States Magistrate Judge

1995

Cogburn, Cogburn, Goosmann & Brazil, P.A.
BB&T Building
Asheville, North Carolina 28801
Partner

1992-1995

Yurko & Cogburn, P.A.
402 West Trade Street, Suite 101
Charlotte, North Carolina 28202
Partner

1980-1992

United States Attorney's Office for the Western District of North Carolina
100 Otis Street
Asheville, North Carolina 28801
Chief Assistant United States Attorney (1986-1988)
Lead Attorney, Organized Crime and Drug Enforcement Task Force
(1982-1986 & 1988-1991)
Assistant United States Attorney (1980-1992)

1976-1980

Roberts, Cogburn & Williams (now Roberts & Stevens, P.A.)
BB&T Building, Suite 1100
One West Pack Square
Asheville, North Carolina 28801
Partner (1979-1980)
Associate (1976-1978)

1975

The Samford University Cumberland School of Law
800 Lakeshore Drive
Birmingham, Alabama 35229
Administrative Assistant

Summers 1973 & 1974
Ball Corporation
Glass Bottle Manufacturer
Hendersonville Road
Asheville, North Carolina 28803
Summer Maintenance Worker

Other affiliations (uncompensated)

2005-Present
North Carolina Lottery Commission
2100 Yonkers Road
Raleigh, North Carolina 27604
Commissioner

2003-Present
Cogburn Family Properties, LLC
77 Central Avenue, Suite E
Asheville, North Carolina 28801
Member

2002-2010
Rhododendron Brigade of Guards
Post Office Box 15041
Asheville, North Carolina 28813
Protocol Officer

2004-2008
Pisgah View Ranch, Inc.
70 Pisgah View Ranch Road
Candler, North Carolina 28715
President

2002-2008
Biltmore Forest Country Club
31 Stuyvesant Road
Asheville, North Carolina 28803
Board of Governors (2002-2008)
Treasurer (2006-2008)

2003-2006
Ranchland Incorporated
77 Central Avenue, Suite E
Asheville, North Carolina 28801
President

1994-2000

Carolina Day School

1345 Hendersonville Road

Asheville, North Carolina 28803

Member, Board of Trustees

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 selective service.

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.

AV Preeminent Peer Rating Martindale-Hubbell (1992-Present)

U.S. Drug Enforcement Administration, Professional Appreciation Award (1986 & 1992)

Federal Bureau of Investigation, Professional Appreciation Award (1980-1992)

U.S. Department of Treasury, Professional Appreciation Award (1980-1990)

U.S. Customs Service, Professional Appreciation Award (1980-1992)

U.S. Park Service, Professional Appreciation Award (1980-1992)

U.S. Forest Service, Professional Appreciation Award (1980-1992)

U.S. Marshals Service, Professional Appreciation Award (1980-1992)

U.S. Fish & Wildlife Service, Professional Appreciation Award (1980-1992)

Dean's Award, The Samford University Cumberland School of Law (1977)

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.

American Association for Justice

Fourth Circuit Judicial Conference, Permanent Member

North Carolina Bar Association

28th Judicial District Bar (f/k/a/ Buncombe County Bar Association)

United States District Court for the Western District of North Carolina

Selection Committee for Clerk (1993-1994)

Selection Committee for Chief Probation Officer (1994)

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.

North Carolina, 1976

There has been no lapse in membership.

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

United States Court of Appeals for the Fourth Circuit, 1980

United States District Court for the Middle District of North Carolina, 1995

United States District Court for the Western District of North Carolina, 1977

Supreme Court of North Carolina, 1976

There has been no lapse 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.

Biltmore Forest Country Club (1992-Present)

Board of Governors (2002-2008)

Treasurer (2006-2008)

Candler [North Carolina] Jaycees (1977-1979)

Carolina Day School Board of Trustees (1994-2000)

Delta Tau Delta Fraternity, U.N.C. Chapel Hill (1970-Present)

Rams Club (at U.N.C. Chapel Hill) (approximately 2000-Present)

Rhododendron Brigade of Guards (1995-2010)

Protocol Officer (2002-2010)

University of North Carolina at Chapel Hill Alumni Association (Life Member)

- 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, no organization listed above currently discriminates, or previously discriminated, on the basis of race, sex, religion, or

national origin, except as follows. I understand that the Biltmore Forest Country Club and the Rhododendron Brigade of Guards discriminated prior to my becoming a member in 1992 and 1995, respectively. The Biltmore Forest Country Club changed its bylaws in 1991, and the Rhododendron Brigade of Guards changed its bylaws in approximately 1991 or 1992, to reflect non-discrimination policies. Delta Tau Delta Fraternity is an all male fraternity that engages in social service activities.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

From approximately 2001 until 2009 (and primarily from 2005 to 2009), I posted occasional comments to the University of North Carolina online athletics forums, *Inside Carolina* (<http://mbd.scout.com/mb.aspx?s=78>). I did not retain copies of the postings, except for the most recent dated October 30, 2009, which I have supplied. In preparing my response to this questionnaire, I contacted the site webmaster by e-mail and was informed that the site has not retained any of my earlier postings.

I searched my recollection, my files, and various Internet databases and did not identify any published material I have written or edited in addition to my sports forum postings described above. Despite my searches, there may be other items I have been unable to identify, find, or remember.

- 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.

The list below consists of materials I have identified from my recollection, from my files, and from search of Internet databases. Despite my searches, there may be other items I have been unable to identify, find, or remember.

North Carolina Education Lottery Commission, Annual Reports 2006-2009; Financial Reports 2008-2009; and Popular Annual Financial Report 2008-2009. Copies 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.

None that I recall or have been able to identify.

- 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.

The list below consists of speeches or talks I have identified from my recollection, from my files, and from search of Internet databases. Despite my searches, there may be other speeches or talks I have been unable to identify, find, or remember.

Protocol Announcer ("Herald"), Rhododendron Brigade of Guards, Asheville, North Carolina (2002-2009). Script (that I read from but did not prepare) supplied.

In approximately 2006, I spoke to the 28th Judicial District Bar Association about the North Carolina Lottery Commission. I gave informal remarks about the Commission's work (including the use of all proceeds from the Lottery to support North Carolina public schools) and took questions. I have no notes, transcripts or recordings of the event.

"View From the Bench" panel presentations (1995-2004) (approximately), U.S. District Court for the Western District of North Carolina, Asheville, North Carolina (and once in Charlotte, North Carolina). As a Magistrate Judge, I participated once or twice a year in programs for attorneys practicing before our court based on topics of interest to the bar or in the format of question and answer sessions. I have no notes, transcripts or recordings of the events.

"Perspectives from the Bench – A Judge's View of Employment Law Issues," Western North Carolina Human Resources Association, March 10, 2004. I have no notes, transcripts or recordings of the event.

Welcome Remarks to Continuing Legal Education seminars for Federal Public Defenders (1999-2003), Asheville, North Carolina. I presented at these seminars, which were produced by the Middle District of North Carolina Federal Defender's Office, on Federal Sentencing Guidelines and other issues in criminal defense. I have no notes, transcripts or recordings of my remarks,

Welcome Remarks, Vance Aycock Democratic Fundraiser, Asheville, North Carolina (2004). I have no notes, transcripts or recordings of the event.

I was a participant in the U.S. Sentencing Commission Symposium on Drugs and Violence in America June 1993, Washington, D.C. I did not make formal remarks, but I recall participating in public conversations on sentencing during the Symposium. I have no notes, transcripts or recordings of the event.

- 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.

The list below consists of interviews I have identified from my recollection, from my files, and from search of Internet databases. A copy is supplied for each interview. Despite my searches, there may be other interviews I have been unable to identify, find, or remember.

City Hall Bombing, SPARTANBURG HERALD-JOURNAL, Aug. 17, 1983

Drug Dealers' Posh House Goes on Block, THE DISPATCH (DURHAM, N.C.), Dec. 13, 1984

Brunswick Man Held in Drug Case, WILMINGTON MORNING STAR, STAR-NEWS, Aug. 9, 1985

Jury Convicts Jerry Rushing of Assault, CHARLOTTE OBSERVER, Aug. 18, 1988

A Burgeoning Illegal Market for Bear Parts, PHILADELPHIA INQUIRER, Oct. 2, 1988

Jury Seated in PTL Perjury Case, LOS ANGELES TIMES, Apr. 9, 1990

Testimony Begins in PTL Perjury Case, UNITED PRESS INTERNATIONAL, Apr. 9, 1990

Colombian Receives 30 Years for Role in Drug Smuggling, CHARLOTTE OBSERVER, Aug. 20, 1991

Longtime Prosecutor Shifts to the Defense, CHARLOTTE OBSERVER, Sept. 6, 1992

Private Practice-Former Federal Prosecutor Finds Himself on Other Side, Defending Criminal Suspects, ASHEVILLE CITIZEN-TIMES, Sept. 19, 1992

5 Seek Prosecutor Position, Clinton Will Make Final Appointment, CHARLOTTE OBSERVER, Nov. 18, 1992

Outgoing U.S. Attorney Praises Reagan, Helms, CHARLOTTE OBSERVER, Apr. 2, 1993

Young Actor Traces Mountain Journey; TV Movie is Based on Woman's Life, NEW ORLEANS TIMES-PICAYUNE, Jan. 16, 1994

Big Quarter Complex Hits Market; Beaufort House Listed for \$2 Million Enters Active; Investor Market, NEW ORLEANS TIMES-PICAYUNE, June 24, 1995

Three-generation Judge Takes Oath of Office, ASHEVILLE CITIZEN-TIMES, Jan. 3, 1996

Hendricks Both Plead Not Guilty; Car Dealer no Flight Risk, Officials in Court Agree, CHARLOTTE OBSERVER, Dec. 20, 1996

Hendrick Lawyers Win Target Ruling, CHARLOTTE OBSERVER, Apr. 12, 1997

Decision to Target Car Dealer Under Scrutiny, HERALD-SUN (DURHAM, N.C.), Apr. 13, 1997

Open-and-Shut Case Not Closed, CHARLOTTE OBSERVER, Mar. 28, 1999

Bombs Found at Rescue Chief's Home; Transylvania County Official Facing Federal Firearms Charges, ASHEVILLE CITIZEN-TIMES, Sept. 18, 1999

Twomey Pleads Not Guilty to Bomb Charges, ASHEVILLE CITIZEN-TIMES, Sept. 28, 1999

Twomey Will Stay in Custody Until Trial, ASHEVILLE CITIZEN-TIMES, Oct. 14, 1999

Guilty Plea Entered in Bomb Case; Twomey's Attorney Says Explosives Intended as Learning Tool for Lawmen, ASHEVILLE CITIZEN-TIMES, Oct. 27, 1999

Peppertree Owner: Illness Kept Him from Investigating Harassment Claims, ASHEVILLE CITIZEN-TIMES, Nov. 19, 1999

Judge: Police Suit Not Fit for Trial, ASHEVILLE CITIZEN-TIMES, Apr. 27, 2000

Federal Magistrate Finds Police Suit Not Fit for Trial, ASSOCIATED PRESS STATE & LOCAL WIRE, Apr. 27, 2000

Family, Friends Reflect on Life of Prominent Judge, ASHEVILLE CITIZEN-TIMES, Dec. 23, 2002

Marine Veteran Still Sits in Limbo in NC Jail, no Sentence After Two Years, TRIBUNE PAPERS, Feb. 20, 2003

Psychological Evaluation Sought for Woman Accused in Abortion Clinic Shooting, ASHEVILLE CITIZEN-TIMES, Mar. 6, 2003

Judge to Rule on Woman's Dance Moves, ASHEVILLE CITIZEN-TIMES, May 13, 2003

Out There; News and Briefs from Around the Region, Quote of the Day, ASHEVILLE CITIZEN-TIMES, May 13, 2003

Asheville Man Faces Charges of Net Fraud, ASHEVILLE CITIZEN-TIMES, May 16, 2003

Western N.C. Federal Court Judges to Replace Magistrate, ASSOCIATED PRESS STATE & LOCAL WIRE, Jan. 22, 2004

Judge Won't be Reappointed, ASHEVILLE CITIZEN-TIMES, Jan. 22, 2004

Lottery Panel Gets New Voice from WNC, ASHEVILLE CITIZEN-TIMES, Dec. 16, 2005

Powerball to be Part of Lottery, ASHEVILLE CITIZEN-TIMES, Dec. 20, 2005

Deals Make N.C. Lottery Come Closer to Reality, ASHEVILLE CITIZEN-TIMES, Jan. 31, 2006

N.C. Lottery Finally Gets a Logo, LOTTERY POST, Feb. 22, 2006

Get Used to it - You'll See it a Lot in the Coming Years, FOUROBOROS (blog), Mar. 31, 2006

Patent Gives Firm a Claim on Lottery; Scientific Games Could Collect Fee, NEWS & OBSERVER (RALEIGH, N.C.), Apr. 19, 2006

N.C. Lottery Will Pay Scientific Games One Way or the Other, LOTTERY POST, Apr. 19, 2006

Lottery Looks to Power of New Game; State Hopes Powerball Will Pull Up Sales, ASHEVILLE CITIZEN-TIMES, May 28, 2006
No Broadcast Yet for Powerball Lottery in Western N.C., LOTTERY POST, June 9, 2006
Lottery Likely to Fall Short of Forecast Education Take, NEWS & OBSERVER (RALEIGH, N.C.), June 13, 2006
Upping the Ante; Good Start, but Some Want More From Lottery, ASHEVILLE CITIZEN-TIMES, July 12, 2006
WNC Fights for Bigger Piece of Lottery Pie, ASHEVILLE CITIZEN-TIMES, July 23, 2006
Views on Slope Rules Clash, ASHEVILLE CITIZEN-TIMES, May 18, 2007
Lottery Takes a Chance on Steady Sales, &NEWSOBSERVER.COM, (blog), May 21, 2008
Lottery Commission Foresees Rising Sales; The \$1.27 Billion Budget the Panel Adopted for Next Year Anticipates the State Lottery Having its Best Year Yet, NEWS & OBSERVER (RALEIGH, N.C.), May 22, 2008
Probe in Gambling Case Proceeds, ASHEVILLE CITIZEN-TIMES, Oct. 14, 2008
Judge Deals Out Prison Sentence in Corruption Scandal, MOUNTAIN XPRESS, Oct. 15, 2008
Perdue Makes State History, ASHEVILLE CITIZEN-TIMES, Jan. 11, 2009
Judge Declares Noel Indigent, BLUERIDGENOW.COM, June 6, 2009
Former Teacher Gets 11 years, ASHEVILLE CITIZEN-TIMES, July 24, 2009

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.

In December 1995, I was appointed by the U.S. District Court for the Western District of North Carolina to serve an eight-year term as a United States Magistrate Judge. My eight-year term was extended by six months and I held the office through June 2004. The court is a Federal trial court of general jurisdiction.

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

I have presided over approximately 15 cases to verdict.

- i. Of these, approximately what percent were:

jury trials:	80%
bench trials:	20%
civil proceedings:	70%
criminal proceedings:	30%

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

See attached list of opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. Bock v. Peppertree Resorts, LLC, 1:98cv104 (W.D.N.C. 1999). Plaintiffs, two female employees who were fired, alleged on-the-job sexual harassment and retaliation in violation of Title VII. I denied defendant's motion for summary judgment. After trial, the Jury returned a verdict of \$35,000. The verdict was not appealed.

Counsel for Plaintiffs were Matthew C. Billips, Miller, Billips & Ates, P.C., 730 Peachtree Street, Suite 750, Atlanta, Georgia 30308, 404-969-4101; and Paul Louis Bidwell, 29 North Market Street, Suite 700, Asheville, North Carolina 28801, 828-252-0490.

Principal counsel for Defendants were Sharon Tracey Barrett, now a state district court judge, c/o Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina 28801; 828-232-2760; and Alan Z. Thornburg, now a state superior court judge, c/o Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina 28801, 828-232-2772.

2. Butler v. Fairmont Homes, Inc., 1:98cv130, Butler v. Fairmont Homes, Inc., 1999 WL 33315672 (W.D.N.C.1999); Butler v. Fairmont Homes, Inc., 1999 WL 34969953 (W.D.N.C.1999). Plaintiffs alleged negligence and breach of express and implied warranties in construction of manufactured home purchased by defendants that was destroyed by fire. I ruled that there was sufficient evidence that the breach of both express and implied warranties should allow the case to go to the jury. Jury verdict for defendant.

Counsel for Plaintiff was John C. Cloninger, Cloninger, Elmore & Searson, PLLC, 366 Merrimon Avenue, Asheville, North Carolina 28801, 828-252-1786.

Counsel for Defendant were Walter L. Currie, Roberts & Stevens, P.A., Post Office Box 7647, Asheville, North Carolina 28802, 828-252-6600; and Wyatt S. Stevens, Roberts & Stevens, P.A., Post Office Box 7647, Asheville, North Carolina 28802, 828-258-6992.

3. Christopher's Arizona Transp. Servs., Inc. v. Duncan, 1:97cv327 (W.D.N.C. 1999). Plaintiff alleged fraud in defendant's sale of consigned high-end aircraft. Jury verdict for plaintiff for \$1,260,212. On cross post-judgment motions, I amended the verdict to \$660,212 after finding that the damage

award, based upon the state common law tort of fraud, lacked sufficient evidence to prove the element of reliance. The plaintiffs appealed my ruling regarding the North Carolina tort of fraud and the Fourth Circuit reversed and remanded this one aspect of the case, finding there was sufficient evidence of reliance to support the jury's verdict on the fraud issue. Christopher's Arizona Transp. Servs., Inc. v. Duncan, 2000 WL 895257 (4th Cir. July 6, 2000).

Counsel for Plaintiffs were Hywell Leonard, Carlton Fields Ward Emmanuel & Lewis, Post Office Box 3239, Tampa, Florida, 33601-3239, 813-223-7000; and Stephen B. Williamson, Katten Muchin Rosenman LLP, 401 South Tryon Street, Suite 2600, Charlotte, North Carolina 28202, 704-444-2017.

Counsel for Defendants were Mark C. Martin, Patla Straus Robinson & Moore, Post Office Box 7625, Asheville, North Carolina 28802, 828-255-7641; and Sharon Tracey Barrett, now a state district court judge, c/o Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina 28801, 828-232-2760

4. Coleman v. BASF Corp., 1:00cv106 (W.D.N.C. 2001) & Cooper v. BASF Corp., 1:00cv108 (W.D.N.C. 2001). Jury trial, cases consolidated for trial. Plaintiffs alleged age discrimination in violation of the Age Discrimination in Employment Act for termination from employment in a reduction-in-force. Plaintiffs were over 50 years of age and were nearing the maximum retirement age of 55 at the time they were terminated. The jury returned a verdict for the defendant.

Counsel for Plaintiffs were Reed G. Williams, Elmore, Elmore & Williams, P.A., 17 North Market Street, Asheville, North Carolina 28801, 828-255-0100; Robert Edward Dungan, Dungan & Associates, P.A., One Rankin Avenue, 3rd Floor, Asheville, North Carolina 28801, 828-254-4778; and Theodore Fuller Mitchell; Gray, Layton, Kersh, Solomon, Sigmon, Furr & Smith, PA, Post Office Box 2636, Gastonia, North Carolina 28053, 704-865-4400.

Counsel for Defendant were Kristofer Karl Strasser, 106 Ramblewood Lane, Greenville, South Carolina 29615, 864-322-9756; and Michael S. Pitts, Nexsen Pruet, LLC, Post Office Drawer 10648, Greenville, South Carolina 29603, 864-370-2211.

5. Edwards v. Etowah Timberlane Condominium Assoc. No.1., 1:01cv85, 2002 WL 1794719 (W.D.N.C. 2002). Plaintiffs alleged that defendant had violated the Fair Housing Act of 1968 by interfering with enjoyment of residence of a family with minor children. I denied the defendant homeowners association's motion for summary judgment. Jury verdict for plaintiffs for \$75,000; attorneys fees awarded to plaintiffs for \$84,378.

Counsel for Plaintiffs were Clifford C. Marshall, Jr., Marshall & Roth, PC, Post Office Box 769, Asheville, North Carolina 28802, 828-281-2100; and Philip J. Roth, Marshall & Roth, PC, Post Office Box 769, Asheville, North Carolina 28802, 828-281-2100.

Principal counsel for Defendants were Andrew James Santaniello, Clawson and Staubes, LLC, 756 Tyvola Road, Suite 130, Charlotte, North Carolina 28217, 704-940-9128; Frank J. Contrivo, Jr., 20 North Spruce Street, Asheville, North Carolina 28801, 828-252-3777; and Cynthia S. Grady, Roberts & Stevens, P.A., Post Office Box 7647, Asheville, North Carolina 28802, 828-252-6600.

6. Gilliand v. Eaton Corp., 1:97cv250 (W.D.N.C. 1998). Plaintiff alleged racial discrimination in employment in violation of Title VII of the Civil Rights Act of 1964. Plaintiff was employed at defendant corporation when the decision was reached to close one of the defendant corporation's plants. Some individuals were allowed to transfer to another plant, but plaintiff was terminated. This case was tried before a jury, which returned a verdict for the defendant.

Counsel for Plaintiff was Geraldine Sumter, Ferguson, Stein, Chambers, Gresham & Sumter, P.A., 741 Kenilworth Avenue, Suite 300, Charlotte, North Carolina 28204, 704-375-8461.

Counsel for Defendant was Jill S. Cox, Constangy, Brooks & Smith, LLC, 100 North Cherry Street, Suite 300, Winston-Salem, North Carolina 27101, 336-721-1001; and John J. Doyle, Jr., Constangy, Brooks & Smith, LLC, 100 North Cherry Street, Suite 300, Winston-Salem, North Carolina 27101, 336-721-1001.

7. Gooden v. Fishburne Int'l, Inc., 1:97cv360 (W.D.N.C. 1998). Plaintiff brought claims for denial of rights under the Americans with Disabilities Act (ADA). Plaintiff was discharged from her employment at the defendant corporation. She alleged that she had been dismissed because she had become disabled during her employment. Among the issues tried were whether she was a disabled person under the ADA; if so, whether the defendant had failed to accommodate her disability; and whether the firing was a pretext. Following trial, the jury returned a verdict in favor of the defendant.

Counsel for Plaintiff was Heather Newton, Post Office Box 2866, Asheville, North Carolina 28802, 828-254-7177.

Counsel for Defendant was Elizabeth E. McConnell, Northup McConnell & Sizemore, PLLC, 123 Biltmore Avenue, Asheville, North Carolina 28801, 828-232-4481.

8. Wilson v. Bell, 2:99cv239 (W.D.N.C. 2001). Obstetric medical malpractice action concerning failure to diagnose and treat child at birth resulting in permanent injuries, including brain damage. After the jury was impaneled and the evidence had begun, the case was settled.

Counsel for Plaintiff were Mark Russell Melrose, Melrose, Seago, & Lay P.A., Post Office Box 1011, Sylva, North Carolina 28779, 828-586-3200; and Randal Seago, Melrose, Seago, & Lay P.A., Post Office Box 1011, Sylva, North Carolina 28779, 828-586-3200.

Counsel for Defendants were Mark Clifford Kurdys, Roberts & Stevens, P.A., Post Office Box 4647, Asheville, North Carolina 28802, 828-210-6820; and Isaac Noyes Northup, Jr., Northup, McConnell & Sizemore, PLLC, 123 Biltmore Avenue, Asheville, North Carolina 28801, 828-232-4481.

9. Reynolds v. Nortenn, Inc., 4:98cv115 (W.D.N.C. 1999). Plaintiff contended that defendant breached his employment contract when he was terminated. The issues left for trial involved the plaintiff's deferred compensation package and whether or not there was an agreement between plaintiff and defendant as to how that was to be handled (involved tax charges). Case settled after jury impaneled.

Counsel for Plaintiff were E. Thomison Holman, Adams, Hendon, Carson, Crow, & Saenger, PA, Post Office Box 2714, Asheville, North Carolina 28802, 828-252-7381; and George Ward Hendon, Adams, Hendon, Carson, Crow, & Saenger, PA, Post Office Box 2714, Asheville, North Carolina 28802, 828-252-7381.

Counsel for Defendant were Kiran H. Mehta, Kennedy, Covington, Lobdell & Hickman, LLP, Hearst Tower, 47th Floor, 214 North Tryon Street, Charlotte, North Carolina 28202, 704-331-7437; Raymond E. Owens, Jr., K&L Gates LLP, 214 North Tryon Street, Hearst Tower 47th Floor, Charlotte, North Carolina 28202, 704-331-7496; and Russell F. Sizemore, K&L Gates LLP, 214 North Tryon Street, Hearst Tower 47th Floor, Charlotte, North Carolina 28202, 704-331-7514.

10. Whisnant v. Dalkon Shield Claimant's Trust, 4:97cv33 (W.D.N.C. 1998). Products liability action stemming from plaintiff's use of Dalkon Shield in 1970s. Damages included lost pregnancies and reproductive harm. Bench verdict for plaintiff for \$354,000.

Counsel for Plaintiff was John Alan Jones, Jones, Martin, Parris & Tessener, 410 Glenwood Avenue, Suite 200, Raleigh, North Carolina 27603, 919-821-0005.

Counsel for Defendant were Charles Q. Socha, Tilly & Graves, P.C., 3773 Cherry Creek North Drive, Suite 1001, Ptarmigan Place, Denver, Colorado 80209-3830, 303-321-8811; Larissa J. Erkman, Smith Moore LLP, Post Office Box 21927, Greensboro, North Carolina 27420, 336-378-5200; and William L. Young, Smith Moore LLP, Post Office Box 21927, Greensboro, North Carolina 27420, 336-378-5200.

- 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.

1. Willis v. Town of Marshall, 2003 WL 22231259 (W.D.N.C. 2003), aff'd in part, vacated in part, and remanded, Willis v. Town of Marshall 426 F.3d 251 (4th Cir. 2005).

Counsel for Plaintiff were Jonathan Drew Sasser, Thomas Hamilton Segars, Ellis & Winters, LLP, Post Office Box 33550, Raleigh, North Carolina 27636, 919-865-7010; Marc Christopher Tucker, Smith Moore, LLP, 2800 Two Hannover Square, BB&T Building, Raleigh, North Carolina 27601, 919-755-8713; and Seth H. Jaffe, American Civil Liberties Union of North Carolina Legal Foundation, Post Office Box 28004, Raleigh, North Carolina 27611, 919-834-3466.

Counsel for Defendant were Gene Benton Johnson, Johnson Law Firm, PA, Post Office Box 1288, Arden, North Carolina 28704, 828-650-0913; Larry B. Leake, Leake Scott & Stokes, One West Pack Square, Suite 501, Asheville, North Carolina 28801, 828-253-3661; and Sandra M. King, Russell & King, PA, Post Office Box 7668, Asheville, North Carolina 28802, 828-252-7651.

2. Henderson Amusement, Inc. v. Good, 172 F.Supp. 2d 751 (W.D.N.C., 2001), aff'd, 59 Fed.Appx. 536 (4th Cir. 2003)

Counsel for Plaintiffs was Winford Robinson Deaton, Jr., now deceased.

Counsel for Defendant was Scott Douglas MacLatchie, Womble, Carlyle, Sandridge & Rice, 301 South College Street, Suite 3500, Charlotte, North Carolina 28202-6025, 704-331-4942.

3. Dia-Compe, USA, Inc. v. Team Vision Int'l Corp., 2000 WL 1409867 (W.D.N.C. Aug. 11, 2000)

Counsel for Plaintiff were Gilberto M. Villacorta, Foley & Lardner, LLP, 3000 K Street, N.W., Suite 600, Washington, D.C. 20007-5109, 202-295-4199; Mark L. Hogge, Greenberg Traurig, 2101 L Street, N.W., Suite 1000, Washington, DC 20037, 202-331-3100; and Vincent D. Childress, Wyatt S.

Stevens, Roberts & Stevens, PA, Post Office Box 7647, Asheville, North Carolina 28802, 828-252-6600.

Counsel for Defendant were Phillip Scott Anderson, Long, Parker, Warren, Anderson & Payne, P.A., Post Office Box 7216, Asheville, North Carolina 28802, 828-258-2296; and Philip P. Mann, Mann Law Group, 1420 Fifth Avenue, Suite 2200, Seattle, Washington 98101, 206-274-5100.

4. Cottom v. Town of Seven Devils, 2000 WL 1808990 (W.D.N.C. Aug 1, 2000). See also related decision Cottom v. Town of Seven Devils, 2001 WL 1019410 (W.D.N.C. June 13, 2001), aff'd, 30 Fed.Appx. 230 (4th Cir. 2002)

Counsel for Plaintiff were G. Gray Wilson, Wilson & Coffey, 110 Oakwood Drive, Suite 400, Winston-Salem, North Carolina 27103, 336-631-8866; and S. Ranchor Harris, III, Suite 250, 2150 Country Club Road, Winston-Salem, North Carolina 27104.

Counsel for Defendants were Frank J. Contrivo, Jr., 20 North Spruce Street, Asheville, North Carolina 28801, 828-252-3775; Isaac T. Avery, III, Post Office Box 10174, Raleigh, North Carolina 27605, 919-829-2523; and Reuben F. Young, 103 Hobblebrook Court, Cary, North Carolina 27518.

5. Chairworks Taiwan Ltd. v. Candler Town Chairworks, Inc., 1999 WL 33320961 (W.D.N.C. Mar. 19, 1999)

Counsel for Plaintiff were Eugene V. Handy, Jr., Post Office Box 52, Sparkhill, New York 10976, 201-768-5815; and George Ward Hendon, Adams, Hendon, Carson, Crow & Saenger, PA, Post Office Box 2714, Asheville, North Carolina 28802, 828-252-5018.

Counsel for Defendants were David M. Carter, Carter & Schnedler, Post Office Box 2985, Asheville, North Carolina 28802, 828-252-6225; and W. Perry Fisher, II, Perry Fisher, P.A., 1 North Pack Square, Suite 402, Asheville, North Carolina 28801, 828-505-4300.

6. Guthrie v. Blue Ridge Sav. Bank, 159 F.Supp. 2d 903 (W.D.N.C. 2000), aff'd, 215 F.3d 1318 (4th Cir. 2000) (Table), 2000 WL 665392 (4th Cir. 2000)

Counsel for Plaintiff was Steven Kropelnicki, Jr., Carter & Kropelnicki, 181 Charlotte Street, Asheville, North Carolina 28801, 828-251-1580.

Counsel for Defendant were Kimberly A. Lyda, Post Office Box 1330, Salisbury, North Carolina 28145, 704-633-8250; Mitchell R. Moss (unable to locate); and Robert B. Long, Jr. and William Andrew Parker, Jr., Long, Parker, Warren, Anderson & Payne, P.A., Post Office Box 7216, Asheville, North Carolina 28802, 828-258-2296.

7. Shuler v. Town of Waynesville, 1999 WL 33315654 (W.D.N.C. Mar. 25, 1999)

Counsel for Plaintiff were Kimberly A. Lyda, Post Office Box 1330, Salisbury, North Carolina 28145, 704-633-8250; Mitchell R. Moss (unable to locate); and Robert B. Long, Jr., Long, Parker, Warren, Anderson & Payne, P.A., Post Office Box 7216, Asheville, North Carolina 28802, 828-258-2296.

Counsel for Defendants was Wyatt S. Stevens, Roberts & Stevens, P.A., Post Office Box 7647, Asheville, North Carolina 28802, 828-258-6992.

8. Brown v. French, 1996 WL 33170227 (W.D.N.C. Dec. 3, 1996)

Counsel for Plaintiff were Bruce T. Cunningham, Jr., 225 North Bennett Street, Southern Pines, North Carolina 28387, 910-693-3999; and Henderson Hill, Ferguson, Stein, Chambers, Gresham & Sumter, PA, 741 Kenilworth Avenue, Suite 300, Charlotte, North Carolina 28204, 704-375-8461.

Counsel for Defendants were Barry Steven McNeill, Special Deputy Attorney General, Post Office Box 629, Raleigh, North Carolina 27602, 919-716-6500; and Joan Herre Erwin, 3244 Grand Oak Lane, New Hill, North Carolina 27562, 919-387-7882.

9. United States v. Colville, 1998 WL 1818928 (W.D.N.C. June 23, 1998)

Counsel for Plaintiffs was Reid G. Brown, 285 North Main Street, Waynesville, North Carolina 28786, 828-454-6510; and Robert Osley Saunooke, 18620 South West 39th Court, Miramar, Florida 33029, 561-302-5297.

Counsel for Defendants was W. Scott Jones, Cloninger, Barbour, Searson & Jones, PLLC, 21 Battery Park Avenue, Suite 201, Asheville, North Carolina 28801, 828-252-5555.

10. Scott v. Norfolk Southern Ry. Co., 1:97cv91-C, Dkt. No. 9 (W.D.N.C. 1997)

Counsel for Plaintiffs was James M. Kimzey, 39 East Main Street, Post Office Box 506, Brevard, North Carolina 28712, 828-883-4200.

Counsel for Defendant was Richard S. Daniels, Patla Straus Robinson & Moore, Post Office Box 7625, Asheville, North Carolina 28802, 828-255-7641.

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

I am not aware of any cases for 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.

Cherry v. Champion Int'l Corp., 1:97cv145 (W.D.N.C. 1998). Following my grant of summary judgment in favor of Champion International Corporation in an unpublished decision, defendant Champion sought imposition of its costs against plaintiff Cherry, which I denied. My ruling was reversed by the Fourth Circuit. Cherry v. Champion Int'l Corp., 186 F.3d 442 (4th Cir. 1999).

Christopher's Arizona Transp. Service Inc. v. Duncan, 2000 WL 895257 (W.D.N.C. July 6, 2000), rev'd in part and remanded, 217 F.3d 838 (4th Cir. 2002). Following a jury verdict for the plaintiff on all issues, I ruled on a motion NOV that the plaintiff had failed to prove the North Carolina common law tort of fraud by failing to prove the element of reliance, and set aside the jury's verdict as to the fraud claim. On appeal, the Fourth Circuit reversed and reinstated the portion of the verdict I had set aside.

Jones v. Buchanan, 164 F. Supp. 2d 734 (W.D.N.C. 2001), rev'd 325 F.3d 520 (4th Cir. 2003). I granted summary judgment in favor of defendants on an alleged excessive force case. On appeal, the Fourth Circuit reversed, finding that in the light most favorable to the plaintiff it could not be concluded that defendant was entitled to qualified immunity as a matter of law.

District Memorial Hosp. of Southwestern North Carolina, Inc. v. Thompson, 261 F. Supp. 2d 378 (W.D.N.C. 2003), rev'd 364 F.3d 513 (4th Cir. 2004). The Court of Appeals reversed my decision granting summary judgment to the defendant Secretary of Health and Human Services.

Champion Int'l Corp. v. United Paperworks Int'l Union, 1997 U.S. Dist. LEXIS 21938 (W.D.N.C. Dec. 1, 1997), rev'd, 168 F.3d 725 (4th Cir. 1999). I affirmed an arbitration award entered in favor of defendant United Paperworks International Union. On appeal, Champion alleged that the agreement that had been the subject of the arbitration was not the proper one to be considered. On appeal, the Fourth Circuit agreed that the grievance was filed on the wrong agreement and reversed my ruling.

Sloop v. Mem'l Mission Hosp., Inc., 1998 U.S. Dist. LEXIS 16441 (W.D.N.C. Aug. 28, 1998), vacated, 198 F.3d 147 (4th Cir. 1999). Plaintiff brought an action against defendant hospital alleging unlawful termination and retaliation, and I granted summary judgment. On appeal, the Fourth Circuit vacated and dismissed her case based on her failure to exhaust administrative remedies.

Willis v. Town of Marshall, 2003 WL 22231259 (W.D.N.C. 2003), rev'd, 293 F.Supp. 2d 608 (W.D.N.C. 2003), rev'd, 426 F.3d 251 (4th Cir. 2005). I recommended denial of the defendant town's motions for summary judgment on several constitutional grounds related to the plaintiff's dancing at a city owned venue. The district court declined to adopt my recommendation and granted summary judgment in favor of the town. The Court of Appeals reversed the district court's decision and ruled that plaintiff had a First Amendment claim to be heard. The case was later settled at the trial court level.

Hyatt v. Town of Lake Lure, Case No. 1:02cv94 (W.D.N.C. Oct. 10, 2003). I recommended that summary judgment be granted to plaintiff, the owner of lakeshore property who filed a civil rights action against a town and its officials. My recommendation was not adopted by the district court, which instead granted defendants' motion for summary judgment. Hyatt v. Town of Lake Lure, 314 F.Supp. 2d 562 (W.D.N.C. 2003).

Strawbridge v. Sugar Mt. Resort, Inc., No. 1:02cv92, Dkt. No. 60 (W.D.N.C. Feb. 6, 2004), memorandum and recommendation adopted in part, 2004 U.S. Dist. LEXIS 14561 (W.D.N.C. 2004). In this ski accident case, I recommended summary judgment for the defendants on all issues. Judge Thornburg adopted my recommendation on punitive damages for the corporate defendant, but declined to adopt my recommendations on all other claims.

Barnes v. Bellsouth Corp., 2003 U.S. Dist. LEXIS 16968 (W.D.N.C. Aug. 14, 2003), memorandum and recommendation adopted in part, 2003 U.S. Dist. LEXIS 18766 (W.D.N.C. Oct. 20, 2003). I recommended that plaintiff's motion to settle the administrative record and motion for summary judgment be granted. The district court denied plaintiff's motion to settle the record, but accepted my recommendation for summary judgment in favor of plaintiff.

Rice v. BellSouth Adver. & Publ. Corp., 2002 U.S. Dist. LEXIS 13129 (W.D.N.C. July 18, 2002), memorandum and recommendation adopted in part, 240 F. Supp. 2d 526 (W.D.N.C. 2002). I recommended denial of defendant's motion to dismiss and granting of the motion to transfer to Georgia after a detailed evaluation of factors. The district court affirmed denial of defendant's motion to dismiss, but denied defendant's motion to transfer.

Dove Air, Inc. v. Bennett, 2002 U.S. Dist. LEXIS 14953 (W.D.N.C. July 26, 2002), memorandum and recommendation not adopted, 226 F. Supp. 2d 771 (W.D.N.C. 2002). I recommended that the case be transferred to Nevada based on a forum selection clause in the underlying contract or, in the alternative, that the case be dismissed without prejudice to re-filing in Nevada. The district court refused to transfer and denied defendant's motion to dismiss.

Robinson v. Corrections. Corp. of Am., 2002 U.S. Dist. LEXIS 14943 (W.D.N.C. July 31, 2002), memorandum and recommendation adopted in part, 2002 U.S.

Dist. LEXIS 23645 (W.D.N.C. Aug. 26, 2002). I recommended the case be remanded to state court for lack of subject matter jurisdiction or, in the alternative, that the case be dismissed for failure to state a claim. The district court accepted the recommendation that the case be dismissed.

Fid. & Guar. Ins. Co. v. Bradley, 2002 U.S. Dist. LEXIS 11814 (W.D.N.C. June 12, 2002), memorandum and recommendation adopted in part, 212 F. Supp. 2d 163 (W.D.N.C. 2002). In a case involving a performance bond, I ruled that a contractor, which was not an enrolled member of the Eastern band of Cherokee Indians, could prosecute its civil action in federal court against the Eastern Band of Cherokee Indians while a dispute was pending before the Tribal Court of the Eastern Band of Cherokee Indians. The district court dismissed without prejudice, ruling that the Tribal Court case must be concluded first.

Arnett v. Leviton Mfg., 2001 U.S. Dist. LEXIS 13174 (W.D.N.C. Aug. 14, 2001), memorandum and recommendation not adopted, 174 F. Supp. 2d 410 (W.D.N.C. 2001). This was a Title VII retaliation and discrimination case, removed by defendant to federal court. I denied plaintiff's motion to remand to state court. The district court acknowledged a split on the issue within the circuit courts, but remanded action to state court.

SuperGuide Corp. v. DirecTV Enters., Inc., 202 F.R.D. 460 (W.D.N.C. 2001), memorandum and recommendation not adopted, 141 F. Supp. 2d 616 (W.D.N.C. 2001). In this patent case, I denied a defense motion to disqualify plaintiff's counsel. The district court overruled my recommendation and disqualified plaintiff's counsel, based on information filed with the district court after my memorandum and recommendation were issued.

Simpson v. Macon County, 2000 U.S. Dist. LEXIS 21297 (W.D.N.C. Mar. 10, 2000), memorandum and recommendation adopted in part, 132 F. Supp. 2d 407 (W.D.N.C. 2001). The defendant removed this case to federal court based on federal question jurisdiction and I recommended that plaintiff's motion to remand be denied. The district court subsequently considered additional materials and granted defendant's motion for summary judgment in part. In its order, the district court also remanded remaining state-based claims to state court.

Wilkerson v. Thrift, 124 F. Supp. 2d 322 (W.D.N.C. 2000), memorandum and recommendation adopted in part, 124 F. Supp. 2d 322 (W.D.N.C. 2000). In this Section 1983 action involving alleged police brutality, I recommended that the court grant some, but not all, of the several Rule 12 motions filed by defendant. The district court adopted some of my recommendations and overruled others.

Ferguson v. Maita, 2000 U.S. Dist. LEXIS 21289 (W.D.N.C. Apr. 26, 2000), memorandum and recommendation adopted in part, 162 F. Supp. 2d 433 (W.D.N.C. 2000). This case involved a dispute between members and a former member of a local law firm that attempted to bring federal action against a

departing attorney under RICO. I recommended dismissal of the RICO claims, but recommended that the plaintiff's cause of action under the Lanham Act (an intellectual property claim) survive. The district court dismissed both the RICO and the Lanham Act claims.

Simmons v. Justice, 2000 U.S. Dist. LEXIS 19444 (W.D.N.C. Oct. 31, 2000), memorandum and recommendation not adopted, 87 F. Supp. 2d 524 (W.D.N.C. 2000). In this case, involving the alleged use of excessive force by police on a minor child, I recommended that plaintiff's action be dismissed because the statute of limitations had expired. After my recommendation was entered, plaintiff argued for the first time that he had lacked a general guardian at the time his claim accrued. Based on this new contention, the district court denied the motion to dismiss.

Reese v. Meritor Auto., Inc., 2000 U.S. Dist. LEXIS 21254 (W.D.N.C. Feb. 2, 2000), memorandum and recommendation adopted in part, 113 F. Supp.2d 822 (W.D.N.C. 2000). In this Title VII sexual harassment case, I recommended that the corporate defendant's motion for summary judgment be denied, and that the individual defendant's motion for partial summary judgment be allowed. The district court rejected my recommendation in part and granted the corporate defendant's motion for summary judgment.

Petty v. Freightliner Corp., 1999 U.S. Dist. LEXIS 22790 (W.D.N.C. Nov. 24, 1999), memorandum and recommendation adopted not adopted, 113 F. Supp. 2d 808 (W.D.N.C. 2000). Plaintiff contended that defendant violated the Americans With Disabilities Act by failing to provide a reasonable workplace accommodation for plaintiff's alleged disability. I recommended that defendant's motion to dismiss be granted. The district court disagreed and denied defendant's motion.

Wilkerson v. Hester, 1:99cv130 (W.D.N.C. Oct. 15, 1999), memorandum and recommendation adopted in part, 1999 U.S. Dist. LEXIS 21395 (W.D.N.C. Dec. 17, 1999). In this false arrest and excessive force case, I recommended that defendants' motions to dismiss be granted. The district court agreed with dismissal of all but one claim (unlawful seizure) and allowed plaintiff to go forward on that claim, which was later dismissed at summary judgment.

Turnamics, Inc. v. Advanced Envirotech Sys., 1999 U.S. Dist. LEXIS 22829 (W.D.N.C. Apr. 23, 1999), memorandum and recommendation not adopted, 54 F. Supp. 2d 581 (W.D.N.C. 1999). This case was removed to federal court on the basis of diversity jurisdiction. I recommended that a motion to remand the case back to state court be denied, but the district court disagreed and the case was remanded.

Kephart v. Cherokee County, 1999 U.S. Dist. LEXIS 22819 (W.D.N.C. Mar. 17, 1999), memorandum and recommendation adopted in part, 52 F. Supp. 2d 598

(W.D.N.C. 1999), aff'd in part, rev'd in part, 2000 U.S. App. LEXIS 18924 (4th Cir. 2000). This was a Family Medical Leave Act case in which I recommended that defendant's motion for summary judgment be granted in part. My recommendation would have left both the FMLA claim and several other claims for trial. The district court agreed with most of my recommendation, but only allowed the FMLA claim to go forward.

Stewart v. U.S. Corrections Corp., 1999 U.S. Dist. LEXIS 22834 (W.D.N.C. Mar. 17, 1999), memorandum and recommendation adopted in part, 1999 U.S. Dist. LEXIS 9910 (W.D.N.C. Apr. 21, 1999). In this matter, a prison warden brought claims against his employer under the Fair Labor Standards Act and the Wage and Hour Act, and for breach of contract and tortious interference with contract. I recommended that defendants' motion for summary judgment be allowed only as to the FLSA and WHA claims. The district court granted summary judgment for defendants on all claims except the breach of contract claim, which it dismissed.

Cox v. Indian Head Indus., 2000 U.S. Dist. LEXIS 20118 (W.D.N.C. May 16, 2000), memorandum and recommendation adopted in part, 2000 U.S. Dist. LEXIS 19435 (W.D.N.C. 2000). See also 1999 U.S. Dist. LEXIS 22534 (W.D.N.C. 1999). This case involved allegations of sexual harassment under Title VII. I recommended that defendants' motions for summary judgment be granted in part and denied in part. The district court concurred with most of the recommendation, but disagreed with the recommended disposition of supplemental claims for wrongful discharge asserted under state law.

French v. United States, 2:98CV15 (W.D.N.C. Nov. 30, 1998), memorandum and recommendation adopted in part, 55 F. Supp. 2d 379 (W.D.N.C. 1999). I recommended that both plaintiff's allegation under the Federal Tort Claims Act and her attendant state claims be dismissed with prejudice. The district court dismissed plaintiff's FTCA claim but declined to rule on the state law claims and dismissed them without prejudice.

CM v. Bd. of Pub. Educ., 1:98cv66 (W.D.N.C. Sept. 4, 1998), memorandum and recommendation adopted in part, 1999 U.S. Dist. LEXIS 868 (W.D.N.C. Jan. 4, 1999), aff'd in part, rev'd in part, 241 F.3d 374 (4th Cir. 2001). I recommended that two of plaintiff's claims, under the Individuals with Disabilities in Education Act, go forward and that all other remaining claims be dismissed. The district court concurred with most of the recommendation but dismissed all of plaintiff's claims. The Fourth Circuit subsequently affirmed in part, reversed in part, and remanded the matter back to district court.

EEOC v. Tar Heel Capital, Inc., 1:98cv84 (W.D.N.C. Sept. 28, 1998), memorandum and recommendation not adopted, 1998 U.S. Dist. LEXIS 22268 (W.D.N.C. Dec. 2, 1998). This was a sexual harassment case in which the defendant moved to dismiss a supplemental state law claim alleging retaliatory discharge for opposition to sexual harassment. I recommended that the motion to

dismiss be allowed, but the district court rejected the recommendation after finding that a cause of action existed under state law. In a subsequent case, McLean v. Patten Cmty., Inc., 332 F.3d 714, 719 (4th Cir. 2003), the Fourth Circuit recognized that no such private right of action existed under North Carolina law.

Peterson v. Lemler, Holt & Robinson, P.A., 1:97cv357 (W.D.N.C. Sept. 28, 1998), memorandum and recommendation adopted in part, 1998 U.S. Dist. LEXIS 18650 (W.D.N.C. Oct. 9, 1998). I recommended that plaintiff's claims, which related to allegations of discrimination in employment based on her pregnancy, not be dismissed. The district court disagreed and dismissed the claims.

- 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.

As a United States Magistrate Judge, all of my orders and opinions were entered and accessible to the public through the Court Clerk's Office, including, in the later years of my term, through the Court's CM/ECF system. I did not designate my decisions for publication in any reporter system. A significant minority of the written decisions I issued are available through Westlaw and LexisNexis.

- 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.

Willis v. Town of Marshall, 2003 WL 22231259 (W.D.N.C. 2003), rev'd, 293 F.Supp. 2d 608 (W.D.N.C. 2003), rev'd, 426 F.3d 251 (4th Cir. 2005)

Cottom v. Town of Seven Devils, 2001 U.S. Dist. Lexis 9098 (W.D.N.C. Apr. 17, 2001) (summary judgment); see related decision Cottom v. Town of Seven Devils, 2001 WL 1019410 (W.D.N.C. June 13, 2001) (decision of Judge Thornburg), aff'd, 30 Fed.Appx. 230 (4th Cir. 2002)

Brown v. French, 1996 WL 33170227 (W.D.N.C. Dec. 3, 1996), aff'd, 147 F.3d 307 (4th Cir. 1998)

Hyatt v. Town of Lake Lure, 314 F.Supp. 2d 562 (W.D.N.C. 2003)

Henderson Amusement, Inc. v. Good, 172 F. Supp. 2d 751 (W.D.N.C. 2001) summary judgment granted by 2001 U.S. Dist. LEXIS 17971 (W.D.N.C., Nov. 2, 2001), aff'd, 59 Fed. Appx. 536 (4th Cir. 2003)

Rice v. Norfolk S. R.R. Co., 2001 U.S. Dist. LEXIS 26193 (W.D.N.C. Aug. 6, 2001)

Olvera v. Edmundson, 151 F. Supp. 2d 700 (W.D.N.C. 2001)

Merrill v. McClatchy Newspapers, Inc., 1998 U.S. Dist. LEXIS 23267 (W.D.N.C. Oct. 2, 1998)

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

I have not sat by designation on a federal court of appeals.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Our court implemented an automatic recusal system during my term as a magistrate judge. Under that system, I provided the District Court Clerk's office a list of parties and attorneys from whose cases I would recuse myself. Those cases were not assigned to me. My list included former clients, law partners, businesses, and family members.

To the best of my recollection, all of my recusals were *sua sponte*, as follows:

- (1) United States v. \$13,943.00, 2:93cv236 (W.D.N.C. 1996). I recused myself because I had prosecuted the criminal action underlying the civil forfeiture action.
- (2) D'Allesandro v. Westall, 4:95cv70 (W.D.N.C. 1996). I recused myself based on my brother's appearance as counsel in this case.

- (3) Garland v. Paul Revere Life Insur. Co., 1:96cv295 (W.D.N.C. 1997). I recused myself in all Paul Revere Life cases as I had life insurance policies with the company.
- (4) Hicks v. Paul Revere Life Insur. Co., 1:97cv329 (W.D.N.C. 1997). I recused myself in all Paul Revere Life cases as I had life insurance policies with the company. After entry of this Order, the Clerk's office automatically recused me in all future Paul Revere Life cases.
- (5) United States v. Patterson, 1:97cv120 (W.D.N.C. 1997). Section 2255 action. After a visiting judge referred the case to me, I recused myself upon recognition of the named defendant as a person I had prosecuted.
- (6) EEOC v. Shoneys of Biltmore, Inc., 1:96cv293 (W.D.N.C. 1997). Civil rights action. During the Initial Pretrial Conference, I recused myself as I knew socially one of the defendant owners of such local business.
- (7) United States v. Bogatov, P6332594 (W.D.N.C. 1996)(Petty offense). I recused myself when defendant employed a former law partner of mine.
- (8) Rose v. Lee, 1:00cv20 (W.D.N.C. 2000). Section 2254 death penalty action. I recused myself because one of the investigating agents co-owned several horses with me.

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.

In December 2005, I was appointed by Jim Black, the Speaker of the North Carolina House of Representatives, to the North Carolina Lottery Commission. I was reappointed by Joe Hackney, Speaker of the North Carolina House.

I have not had unsuccessful candidacies for elective office, and I have not had 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.

North Carolina Democratic Party State Executive Committee
11th Congressional District Democratic Party Delegate
Buncombe County Democratic Party Delegate to County Convention
Member, Buncombe County Democratic Men
Member, Buncombe County Democratic Women

I volunteered for the Obama for America campaign on November 4, 2008.

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 not practiced law alone.

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

1976-1980

Roberts, Cogburn & Williams (now Roberts & Stevens, P.A.)
BB&T Building, Suite 1100
One West Pack Square
Asheville, North Carolina 28801
Associate (1976-1978)
Partner (1979-1980)

1980-1992

United States Attorney's Office for the Western District of North Carolina
100 Otis Street
Asheville, North Carolina 28801
Assistant United States Attorney (1980-1992)
Lead Attorney, Organized Crime and Drug Enforcement Task Force
(1982-1986 & 1988-1991)
Chief Assistant United States Attorney (1986-1988)

1992-1995
Yurko & Cogburn, P.A.
402 West Trade Street, Suite 101
Charlotte, North Carolina 28202
Partner

1995
Cogburn, Cogburn, Goosmann & Brazil, P.A.
BB&T Building
Asheville, North Carolina 28801
Partner

2004-2006
Cogburn, Goosmann, Brazil & Rose, P.A.
77 Central Avenue, Suite H
Asheville, North Carolina 28801
Partner

2006-Present
Cogburn & Brazil, P.A.
77 Central Avenue, Suite E
Asheville, North Carolina 28801
Partner

- 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.

Mediation became part of my practice in about 2006 and now, as a certified mediator, I mediate frequently. Last year, in 2009, I mediated approximately 75 cases involving a wide range of state and federal matters. The 10 most significant cases are:

1. Suit brought by plaintiffs alleging damage from run off and erosion down stream from an upscale development. Case settled.
2. Lawsuit over life insurance policy in face amount of \$250,000. Defendant insurance company refused to pay on death of insured due to alleged false answers to health questions. Case settled.
3. Plaintiff alleged that defendant's failure to deliver modular home damaged her in the amount of \$261,000. Case settled.
4. Plaintiff's executrix alleged plaintiff was injured due to being improperly transported in nursing home van. Case settled.

5. Suit brought by plaintiff seeking over \$230,000 on a construction contract. Case settled.
6. Plaintiffs alleged damage to home from severe weather damage. Defendant questioned the amount of damage. Plaintiffs started the mediation with a \$150,000 demand, defendant offered to pay \$5,000. Case settled.
7. Plaintiff (an attorney) sued her former employing firm for money allegedly owed to her when she left the defendant firm to join another practice. Case settled.
8. Plaintiffs were injured in an accident with defendants' tractor trailer. At mediation plaintiffs opened with a demand of \$1,500,000 while defendants offered \$50,000. Case settled.
9. Plaintiff alleged that defects in defendant's weighing equipment had resulted in plaintiff being underpaid for bulk asphalt it was selling. Defendant disputed that the admitted malfunction would have caused an incorrect weight issue. Case settled.
10. Plaintiff alleged fraud and irregularities with defendant's handling of her loan and deed of trust. Case settled.

b. Describe:

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

Between 1976 and 1980, I had a general private practice and handled criminal felonies and misdemeanors, civil torts, domestic cases and some corporate work. From 1980 to 1992, I served as an Assistant United States Attorney. In that position, I prosecuted murder cases on the Cherokee Indian Reservation, and I prosecuted drugs trafficking, voter fraud and a wide variety of other federal crimes. I had extensive appellate experience during this time, as well. I was again a private practitioner from 1992 to 1995. During this period, I primarily handled criminal litigation in the federal and state courts. I also handled some civil cases for those injured in accidents.

I served as a U.S. Magistrate Judge from 1995 to 2004. From 2004 to the present, I have again had a general private practice, one that includes extensive civil litigation for both plaintiffs and defendants, as well as state and federal criminal cases and some corporate work. I also have a growing mediation practice.

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

As a federal prosecutor, I represented the government in criminal prosecutions as well as some civil matters and appeals.

In three periods of private practice, I have been involved in civil litigation and criminal defense. My clients have included individuals and companies.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Ninety percent of my practice has been in litigation. I have appeared in court frequently.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 18% |
| 2. state courts of record: | 80% |
| 3. other courts: | 1% |
| 4. administrative agencies: | 1% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 50% |
| 2. criminal proceedings: | 50% |

- 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 tried between 70 to 100 cases in courts of record as chief counsel. In almost all of these cases I was sole counsel, except for a few where I had co-counsel.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 95% |
| 2. non-jury: | 5% |

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

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

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

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. United States v. Barnard, 2:83cr95 (W.D.N.C. 1983). Hon. Woodrow W. Jones. I prosecuted two candidates for sheriff of Clay County for buying votes. One candidate went to trial before a jury and was convicted and sentenced to prison. The second candidate entered a plea of guilty and was also sent to prison. Principal opposing counsel were Robert B. Long, Jr., Long, Parker, Warren, Anderson & Payne, P.A., Post Office Box 7216, Asheville, North Carolina 28802, 828-258-2296; and Merinda Swanson Woody, 137 Tusquittee Street Post Office Box 1519, Hayesville, North Carolina 28904, 828-389-0202.
 2. United States v. Odom, ST-CR-83-19-01 (W.D.N.C. 1983). Hon. Robert Potter. I prosecuted four defendants charged with mail fraud and conspiracy to cast false and fraudulent absentee ballots during the 1982 general election. The defendants, who had gone to a rest home and voted on behalf of mentally incompetent residents, were all convicted and received sentences ranging from probation to five years in prison. Opposing counsel were John Hall and Larry Moore (both now deceased); William C. Gray, Jr., William C. Gray, Jr., P.A., 105 West Main Street, Post Office Drawer 851, Wilkesboro, North Carolina 28697-2422, 336-838-7500; and the Honorable David B. Sentelle, now the Chief Judge for the United States Court of Appeals for the District of Columbia Circuit, 333 Constitution Avenue, Washington, D.C. 20001, 202-216-7330. The convictions were affirmed on appeal. 736 F.2d 104 (4th Cir. 1984).
 3. United States v. Bagguley, 3:85-CR64-02 (W.D.N.C. 1991). Hon. Robert Potter. I prosecuted prisoners, confined in Terre Haute, Indiana, who masterminded a drug trafficking operation that brought heroin from Thailand to North Carolina. The presiding judge and I both received death threats and had armed protection throughout trial. Those who did not plead guilty were convicted and received long prison sentences. Opposing counsel were George V. Laughrun, II, Goodman, Carr, Laughrun, Levine & Murray, P.A., 301 South McDowell Street, Suite 602, Charlotte, North Carolina 28204, 704-372-2770 and Richard M. Koch, County Attorney, 65 Church Street, Post Office Box 707, Concord, North Carolina 28025, 704-920-2100. The convictions were affirmed on appeal. 838 F.2d 468 (4th Cir. 1987).

4. United States v. Carbarcas, 3:85-CR62-15 (W.D.N.C. 1986). Hon. Robert Potter. I prosecuted a Colombian drug lord from Barranquilla who we were able to extradite during a brief time when Colombia allowed such extraditions. The defendant was convicted of sending huge amounts of marijuana into North Carolina. He received a 30 year sentence. Opposing counsel was James Frank Wyatt, III, 435 East Morehead Street, Charlotte, North Carolina 28202, 704-331-0767. The convictions were affirmed on appeal. 968 F.2d 1212 (4th Cir. 1992).
5. United States v. Rhodes, ST-CR-84-15-2 (W.D.N.C. 1984). Hon. Robert Potter. With colleagues, I prosecuted the first drug dealers in North Carolina convicted of operating a Continuing Criminal Enterprise under 21 U.S.C. Section 848. The prosecution paved the way for numerous other drug prosecutions in the Western District of North Carolina. Defendants Cheek and Rhodes received 75 years and 50 years, respectively. Opposing counsel was V. Edward Jennings, Post Office Box 458, Taylorsville, North Carolina 28681, 828-632-5869. The convictions were affirmed on appeal. 779 F.2d 1019 (4th Cir. 1985).
6. United States v. McHan, 2:90-CR41 (W.D.N.C. 1992). Hon. Richard Voorhees. I prosecuted a respected realtor in Cherokee County, North Carolina, who was bringing drugs out of Belize into Texas and North Carolina. The defendant was convicted of conducting a continuing criminal enterprise; he received 150 months in prison. The convictions were affirmed on appeal. 101 F.3d 1027 (4th Cir. 1996). Opposing counsel was Sean P. Devereux, Devereux & Banzhoff, PLLC, 22 South Pack Square, The Jackson Building, Suite 1100, Asheville, North Carolina 28801, 828-285-9455.
7. United States v. Porter, 3:85-CR62-01 (W.D.N.C. 1985). Hon. Robert Potter. My office convicted Porter, who ran a large drug operation out of Wilkes County, North Carolina, of operating a Continuing Criminal Enterprise under 21 U.S.C. section 848. Other defendants were convicted of various other drug offenses. Porter was sentenced to 75 years without parole on the continuing criminal enterprise. The convictions were affirmed on appeal. 821 F.2d 968 (4th Cir. 1987). Some of the defendants who went to trial were represented by Eben T. Rawls, Rawls, Dickinson & Scheer, PA, Suite 300, 1011 East Morehead Street, Charlotte, North Carolina 28204, 704-376-3200; Harold Bender, Suite 1000, 301 South McDowell Street, Charlotte, North Carolina 28204, 704-333-2169; and Lawrence Hewitt, Guthrie, Davis, Henderson & Staton, PLLC, 719 East Boulevard, Charlotte, North Carolina 28203, 704-372-5600.
8. United States v. Fletcher, 1:90-CR-231 (W.D.N.C. 1991). Hon. Richard Voorhees. I prosecuted a drug dealer under 21 U.S.C. section 848, for operating a large cocaine ring in Asheville, North Carolina. Fletcher and one of his lieutenants received a sentence of 360 months in prison and other co-defendants received lesser but substantial sentences. The convictions were affirmed on appeal. United States v. Fletcher, 993 F.2d 1540 (4th Cir. 1993). Opposing counsel were Sean P. Devereux, Devereux & Banzhoff, PLLC, 22 South Pack Square, The Jackson Building, Suite

1100, Asheville, North Carolina 28801, 828-285-9455; Stephen P. Lindsey, 90 Eagle Crest Way, Fairview, North Carolina 28739, 828-628-9855; Donald N. Patten, Brown & Patten, 370 North Main Street, Suite 206, Waynesville, North Carolina 28786, 828-452-1454; and John H. Byrd, 175 North Main Street, Rutherfordton, North Carolina 28139, 828-286-2443.

9. United States v. Wingate, C-CR-87-19 (W.D.N.C. 1987). Hon. Robert Potter. I prosecuted a Charlotte-based drug trafficking organization involved in cocaine distribution. Thirteen defendants were tried at the same time and all were convicted at various levels in the organization. The convictions were affirmed on appeal. United States v. Wingate, 854 F.2d 1318 (4th Cir. 1988). Opposing counsel were Theo X. Nixon, now a state district court judge, c/o 9600 Courthouse, 832 East 4th Street, Charlotte, North Carolina 28202, 704-686-0100; Prosser D. Carnegie, Post Office Box 2270, Davidson, North Carolina 28036-5270, 704-892-1699; Harold Bender, Suite 1000, 301 South McDowell Street, Charlotte, North Carolina 28204, 704-333-2169; and Kenneth P. Andresen, Andresen & Arronte, PLLC, 2319 Crescent Avenue, Charlotte, North Carolina 28207, 704-377-8881.
10. United States v. Owen, B-CR-90-227-02 (W.D.N.C. 1991). Hon. Richard Voorhees. I prosecuted defendants for crimes stemming from a conspiracy among them and other co-defendants to distribute cocaine. Eight co-defendants entered guilty pleas, and a jury convicted two defendants of conspiracy and several counts of distribution and possession of cocaine and use of a communication facility in the commission of a felony. The convictions were affirmed on appeal. 966 F.2d 1445 (4th Cir. 1992). Opposing counsel were Stanford K. Clontz, One Oak Plaza, Suite 306, Asheville, North Carolina 28801, 828-281-0740; and V. Lamar Gudger, III, Gudger & Gudger, Post Office Box 336, Asheville, North Carolina 28802, 828-252-2227.
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.)

When I graduated from law school in 1976, I entered a general law practice. I represented individuals in civil and criminal matters and some companies in civil matters. In 1980, I became an Assistant United States Attorney in order gain additional trial experience, among other things. As an AUSA, I supervised other Assistant United States Attorneys during my time as Drug Task Force Attorney and Chief Assistant United States Attorney.

In 1992, I left the U.S. Attorney's Office to go into private practice. I primarily represented criminal defendants and plaintiffs in civil matters. During this period of private practice, I was appointed by the United States District for the Western District of

North Carolina to chair two merit selection panels for the Court, for a Clerk of Court and for a Chief Probation Officer.

In December 1995, I was selected as a United States Magistrate Judge. In addition to assignments from the District Judge, I had a large case load of my own as I was frequently selected by consent to handle the case as the Judge.

In 2004, I returned to private practice where I have a general practice representing individuals in criminal and civil cases in state and federal courts. I also represent a few companies. I also have developed a mediation practice in the last two years mediating at least one case nearly every week. I have been recognized by my peers with an AV Preeminent Rating in Martindale-Hubbell Legal Directory, the highest possible rating.

I have never performed any lobbying activities during the course of my legal career.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

During my time as an Assistant United States Attorney, I taught at the Attorney General's Advocacy Institute, in Washington, D.C. on at least two occasions. I do not have the dates of these sessions nor do I have any written material from them. The matters that were taught at these sessions were trial skills including how to properly admit evidence, direct and cross examination, and opening and closing statements.

In February 2010, I was asked to be an instructor at the National Advocacy Institute in Columbia, South Carolina (NAC). For two days I presided over mock trials for new Assistant United States Attorneys. The mock trial issues involved criminal procedure, evidence, and courtroom decorum.

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.

Based on my prior service as a U.S. Magistrate Judge, I have a current interest in retirement benefits from the U.S. Courts. I understand that if I am confirmed, these benefits would be subsumed under retirement provisions for U.S. District Judges.

I have no deferred income arrangements or future benefits anticipated from my law practice. My present firm has a handful of contingency cases but, if confirmed, I would not expect to retain any interest in them as part of my withdrawal from the firm.

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, with or without compensation, during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I have a daughter who is licensed to practice law in both North Carolina and Alabama. If confirmed, I would not handle any case in which she was involved and I would place her on my automatic recusal list.

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

I would resolve any potential conflict of interest by adhering to 28 U.S.C. § 455 and any other relevant statutes, the Code of Conduct for United States Judges, and any applicable policies and procedures of the United States Courts.

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 career I have done free legal work for those who needed it. As an example of a case early in my career, I helped an elderly person get a property deed to

her home free and clear of any further debt from unscrupulous creditors. In 2007, I spent approximately 30 hours successfully assisting a pro bono client in obtaining joint custody of her son. I also have devoted hundreds of hours of my time providing free legal service on criminal cases.

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 August 2009, I sent a resume to the Merit Selection Committee established by Senator Kay Hagan to screen candidates. I was interviewed by the Committee and thereafter met with Senator Hagan. Shortly after this interview I was informed I was one of three identified finalists for the position.

Since November 2009, I have been in communication with pre-nomination staff in the Department of Justice. On February 3, 2010, I interviewed in Washington, D.C., with attorneys from the Department of Justice and the White House Counsel's Office. My nomination was submitted to the United States Senate on May 27, 2010.

- 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.

FINANCIAL DISCLOSURE REPORT NOMINATION FILING

Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Cogburn, Jr., Max O.	2. Court or Organization North Carolina - Western District	3. Date of Report 05/28/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) ☒ Nomination, Date 05/27/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2009 to 04/30/2010
7. Chambers or Office Address 77 Central Avenue, Suite E Asheville, NC 28801	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Trustee	Trust 1
2. Commissioner	North Carolina Education Lottery
3. Member	Cogburn & Brazil, P.A.
4.	
5.	

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

☒ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Cogburn, Jr., Max O.

Date of Report

05/28/2010

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2008	Cogburn & Brazil, P.A. - Salary	\$137,601.09
2. 2009	Cogburn & Brazil, P.A. - Salary	\$120,500.12
3. 2010	Cogburn & Brazil, P.A. - Salary	\$41,346.20
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.**(Dollar amount not required except for honoraria.)*☒ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.**(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Cogburn, Jr., Max O.

Date of Report

05/28/2010

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*☐ NONE *(No reportable gifts.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*☐ NONE *(No reportable liabilities.)*

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. First Citizens Bank	Secured loan on family business property (1/4 of amount)	O
2. HomeTrust Bank	Secured loan on office building (1/5 of amount)	O
3. Bank of Asheville	Loan for family businesses	L
4.		
5.		

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Cogburn, Jr., Max O.

Date of Report

05/28/2010

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Cogburn Family Properties, LLC Buncombe Co, NC- Land Holding	A	Rent	P1	W	Exempt				
2. Ranchland Incorporated, Buncombe County, N.C. - Land Holding	A	Rent	P1	W					
3. Pisgah View Ranch, Inc. - Operating Business		None	M	W					
4. Pisgah Highland Conservancy LLC Buncombe Co NC-Land Holding		None	M	T					
5. Trust 1	A	Distribution	P1	T					
6. MET Life: Whole Life - (No Control)	D	Int./Div.	K	T					
7. Lincoln: Whole Life - (No Control)	A	Int./Div.	J	T					
8. IRA Account	D	Int./Div.	K	T					
9. -Van Kampen Growth Fund (Sole Asset)									
10. Westar Financial Services Corp	A	Int./Div.	J	T					
11. Double Eagle Stock		None	J	T					
12. Franklin Ltd Maturity U.S. Gov Securities (Bonds)	B	Int./Div.	L	T					
13. Paul Revere: Whole Life	C	Int./Div.	L	T					
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Cogburn, Jr., Max O.

Date of Report

05/28/2010

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

VII. Investments and Trusts

The first three entries in this section refer to two holding companies and an operating business for a contiguous piece of family owned real estate. The property is owned equally by my three siblings and me. The land is divided into two holding companies, Cogburn Family Properties, LLC and Ranchland Incorporated. The third company, Pisgah View Ranch, Inc. operates a guest ranch on the property. My siblings and I own another separate piece of land, which is held in the Pisgah Highland Conservancy, LLC (see entry 4).

FINANCIAL DISCLOSURE REPORT

Page 6 of 6

Name of Person Reporting

Cogburn, Jr., Max O.

Date of Report

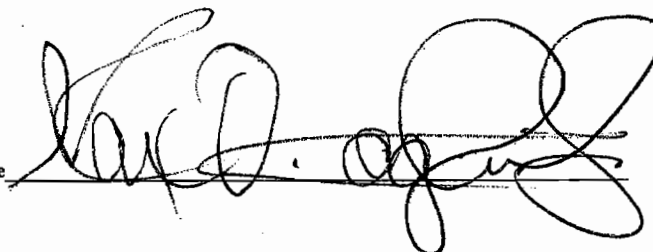
05/28/2010

IX. CERTIFICATION.

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

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

Signature



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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

Max Cogburn

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		40	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities - see schedule		10	762	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		1	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule	1	348	000
Real estate owned - see schedule	9	100	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		45	900				
Cash value-life insurance		50	000				
Other assets itemize:							
401(k) Retirement Plan		69	464				
Thrift Savings Plan		203	000				
IRA Account (Van Kampen Fund)		18	000	Total liabilities	1	349	000
				Net Worth	8	188	126
Total Assets	9	537	126	Total liabilities and net worth	9	537	126
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you a defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

Westar Financial Stock	\$ 9,782
Double Eagles Holdings Stock	980
Total Listed Securities	<u>10,762</u>

Real Estate Owned

Family-owned land (25% share)	\$ 7,500,000
Office building (20% share)	600,000
Personal residence	<u>1,000,000</u>
Total Real Estate Owned	<u>9,100,000</u>

Real Estate Mortgages Payable

Family-owned land (25% share)	\$ 625,000
Office building (20% share)	500,000
Personal residence	<u>223,000</u>
Total Mortgages Payable	<u>1,348,000</u>

AFFIDAVIT

I, MAX OLIVER COGBURN, JR., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6-3-10

(DATE)

Max Oliver Cogburn, Jr.

(NAME)

Gail Jackson

(NOTARY)

My Commission Expires

