

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Patricia Mary McCarthy

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

Judge, United States Court of Federal Claims

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.

Commercial Litigation Branch
Civil Division, U.S. Department of Justice
Ben Franklin Station, P.O. Box 480
Washington, DC 20044

Residence: Chevy Chase, Maryland

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

1962; Medford, 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.

1986 – 1989, Cornell Law School; J.D., 1989

August – December 1985, Massachusetts Institute of Technology; no degree received

1980 – 1984, Colby College; A.B. (*cum laude*), 1984

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.

1994 – present
United States Department of Justice
Civil Division
Commercial Litigation Branch
Ben Franklin Station, P.O. Box 480
Washington, DC 20044
Assistant Director (2003 – present)
Senior Trial Counsel (2001 – 2003)
Trial Attorney (1994 – 2001)

1989 – 1994, Summer 1988
Bingham, Dana & Gould (now Bingham McCutchen)
150 Federal Street
Boston, MA 02110
Associate (1989 – 1994)
Summer Associate (Summer 1988)

June 1994
Plymouth County District Attorney's Office
Fourth District Court of Plymouth County
2200 Cranberry Highway
West Wareham, MA 02576
Special Assistant District Attorney (while at Bingham, Dana & Gould)

1984 – 1989
Houghton Mifflin Company
One Beacon Street
Boston, MA 02108
Production Freelancer

September 1987 – May 1988
Professor Steven H. Shiffrin
Cornell Law School
Myron Taylor Hall
Ithaca, NY 14853
Research Assistant

Summer 1987
Amnesty International U.S.A.
1665 Massachusetts Avenue
Cambridge, MA 02140
Public Interest Fellow

1985 – 1986
The Kerry Committee
84 State Street

Boston, MA 02108
Database Manager

Summer 1984
John Leonard Associates
One Post Office Square
Boston, MA 02109
Temporary Secretary

Other Affiliations (uncompensated):

2012 – present
United States Court of Federal Claims Bar Association
Board of Governors
Ben Franklin Station, P.O. Box 7614
Washington, DC 20044

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 am not required to register 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.

Training and Professional Development Award, Civil Division, U.S. Department of Justice, for Legal Writing Team (2013)
Attorney General's John Marshall Award for Outstanding Legal Achievement in the Trial of Litigation (2010, 2007)
Perseverance Award, Civil Division, U.S. Department of Justice (2010)
Special Commendation, Civil Division, U.S. Department of Justice, for Outstanding Service on the Softwood Lumber Arbitration Team (2008)
Special Commendation, Civil Division, U.S. Department of Justice, for Outstanding Service (2006)
Special Commendation, Civil Division, U.S. Department of Justice, for Outstanding Contributions to the Government's Alternative Dispute Resolution Negotiations in the A-12 Litigation (2000)
Meritorious Civilian Service Award, Department of the Navy (2000)
Merit awards Civil Division, U.S. Department of Justice, for superior performance of duties (1998 – 2013)
Pi Sigma Alpha (1984)
Colby College's F. Harold Dubord Prize in Political Science (1984)

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.

Advisory Rules Committee of the United States Court of International Trade (2004 – 2010)

American Bar Association

Boston Bar Association

Customs and International Trade Bar Association

Federal Circuit Bar Association

Chair, Subcommittee on Performance Issues and Contract Disputes, Federal Circuit Bar Association Study of Best Practices and Opportunities for Improvements in Federal Procurement Contracting conducted by Federal Circuit Bar Association Government Contracts Committee (2013 – present)

Massachusetts Bar Association

Planning Committees for the United States Court of International Trade Judicial Conference (2004, 2006)

United States Court of Federal Claims Bar Association

Member, Board of Governors (2012 – present)

Editor-in-Chief, *Inside 717* (2011 – 2013)

Women's Bar Association of Massachusetts

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.

Massachusetts, 1989

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 District Court for the District of Nebraska, 2010

United States Court of International Trade, 2003

United States Court of Federal Claims, 1994

United States District Court for the District of Massachusetts, 1990

There have been no lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Chevy Chase Elementary School Parent-Teachers' Association (2003 – 2007)

Chevy Chase Recreational Association (2007 – 2013)

Parents Association of Lab School (PALS) (2007 – present)

Rosemary Hills Primary School Parent-Teachers' Association (2000 – 2005)

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

To the best of my knowledge, none of the organizations listed in response to 11a 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.

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.

As editor-in-chief of the Court of Federal Claims Bar Association's Inside 717 publication, I have been involved in editing the following volumes:

Inside 717, vol. 7, no. 2, April – June 2013. Copy supplied.

Inside 717 online update, issued May 18, 2013. Copy supplied.

Inside 717, vol. 7, no. 1, Jan. – March 2013. Copy supplied.

Inside 717, vol. 6, no. 4, Oct. – Dec. 2012. Copy supplied.

Inside 717, vol. 6, no. 3, July – Sept. 2012. Copy supplied.

Inside 717, vol. 6, no. 2, Apr. – June 2012. Copy supplied.

Inside 717, vol. 6, no. 1, Jan. – March 2012. Copy supplied.

Inside 717, vol. 5, no. 3, Oct. – Dec. 2011. Copy supplied.

Inside 717, vol. 5, no. 2, Apr. – Sept. 2011. Copy supplied.

With Emily S. Ullman, *Trade Adjustment Assistance Cases: 28 U.S.C. § 1581(d) – Department of Labor and Department of Agriculture Decisions Under the Trade Adjustment Assistance Statutes*, 39 Geo. J. Int'l L. 105 (2007). Copy supplied.

An Importer's Election: Whether to Invoke Attorney Advice in Defense or to Preserve Privilege, 39 J. Marshall L. Rev. 17 (2005). Copy supplied.

I wrote a book review for a student publication at some point during my attendance at Colby College. I do not have a copy of the book review and have been unable to locate one.

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

I have served as a Governor of the United States Court of Federal Claims Bar Association since 2012, and I served as a member of the Advisory Rules Committee of the United States Court of International Trade between 2004 and 2010. Both organizations are comprised of members of the private and public bars. As an employee of the Department of Justice lacking authority to determine issues of policy in external organizations, I have not authored or been a signatory to any reports, memoranda, or policy statements by these organizations.

- 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.

I have not given any testimony, official statements, or other communications relating, in whole or in part, to matters of public policy or legal interpretation to public bodies or public officials.

- 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.

May 15, 2014: Panelist, Women in Government Contracts Law Forum, Wiley Rein LLP, Washington, DC. I spoke on a panel of women government contracts practitioners, from both the private and public bars, at an inaugural event attended by practitioners, law clerks, and law students. I have no notes, transcript, or recording. The address of Wiley Rein LLP is 1776 K Street, N.W., Washington, DC 20006.

June 21, 2013: Speaker, Town Hall Meeting of the Government Contracts Section of the Federal Circuit Bar Association, Federal Circuit Bench and Bar Conference, Colorado Springs, CO. I called in to present the status of the draft report of the Subcommittee on Performance Issues and Contract Disputes, Federal Circuit Bar Association Study of Best Practices and Opportunities for Improvements in Federal Procurement Contracting. PowerPoint prepared by study co-chair (including the subcommittee's slides) supplied.

April 18, 2013: Speaker, Working Session of the Federal Circuit Bar Association Study of Best Practices and Opportunities for Improvements in Federal Procurement Contracting, Washington, DC. I presented best practice areas and topics of the Subcommittee on Performance Issues and Contract Disputes. I have no notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 I Street, N.W., Suite 801, Washington, DC 20006.

March 21, 2013: Panelist, "Leading Trade Remedy Issues," Customs and International Trade Bar Association and the Federal Circuit Bar Association, New York, New York. I discussed new developments in jurisprudence concerning the scope of antidumping and countervailing duty orders. I have no notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 I Street, N.W., Suite 801, Washington, DC 20006.

February 28, 2013: Panelist, "Best Practices at the Court of Federal Claims," Federal Bar Association, Younger Lawyers Division, Washington, DC. I discussed best practices for practitioners who appear before the Court of Federal Claims. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, VA 22201.

January 25, 2013: Panelist, “Representing the Public as a Government Attorney,” Cornell Law School Public Interest Law Career Symposium, Ithaca, New York. I discussed the unique responsibilities and opportunities afforded to attorneys who represent the United States in litigation. I have no notes, transcript, or recording. The address of Cornell Law School is Myron Taylor Hall, Ithaca, NY 14853.

October 16, 2012: Panelist, “Revisiting *Blue & Gold* and Other Timeliness Issues at the Court and at GAO,” Bid Protest Committee of the ABA Public Contract Law Section Meeting, Washington, DC. I discussed new developments in jurisprudence concerning the circumstances in which a disappointed bidder may waive its ability to challenge a procurement decision. I have no notes, transcript, or recording. The ABA Public Contract Law Section has no physical address.

May 17, 2012: Panelist at the international trade breakout session of the United States Court of Appeals for the Federal Circuit Judicial Conference in Washington, DC. I discussed the judicial standards that apply to determining the scope of remand orders to the Court of International Trade and to administrative agencies. I have no notes, transcript, or recording. The address of the Federal Circuit is 717 Madison Place, N.W., Washington, DC 20005.

October 27, 2011: Panelist, “Ambiguity in the Law after Judicial Review,” Court of International Trade Bench & Bar Conference, Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

February 26, 2010: Speaker at the Georgetown 2010 International Trade Update in Washington, DC. I spoke regarding enforcement of antidumping and countervailing duty collection. A copy of my unpublished paper on which my discussion was based and my PowerPoint are supplied.

April 17, 2009: Panelist, “Handling Import Violations in a New Enforcement Era,” ABA Section of International Law 2009 Spring Meeting in Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

May 15, 2008: Panelist, “‘Deemed Liquidation’ Jurisprudence: Practical and Policy Issues Facing Courts and Parties,” International Trade Breakout Session of the United States Court of Appeals for the Federal Circuit Judicial Conference, Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

March 1, 2007: Panelist at the 13th Annual Federal Procurement Institute, ABA Section of Public Contract Law, Annapolis, Maryland. A copy of my unpublished paper on which my discussion was based is supplied.

February 2, 2007: Panelist, “Customs: 19 U.S.C. § 1592 and the Duty of Reasonable Care,” Georgetown 2007 International Trade Update, Washington,

DC. A copy of my unpublished paper on which my discussion was based is supplied.

May 19, 2006: Panelist, "Briefing and Oral Arguments in Complex Trade Cases: Do Current Procedures Give Parties Their Day in Court?," International Trade Breakout Session of the United States Court of Appeals for the Federal Circuit Judicial Conference, Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

April 2006: Panelist at the annual educational program sponsored by the Board of Contract Appeals Judges Association addressing "Key Case Review: Impact of Federal Circuit, Board and Court of Federal Claims Decisions on Government Contracts Law," Alexandria, Virginia. I discussed new Federal Circuit precedent concerning government contracts issues. I have no notes, transcript, or recording. The Judges Association has no physical address.

February 23, 2006: Panelist, "Litigating Trade Adjustment Assistance Cases Before the Court of International Trade," at an event sponsored by the Court of International Trade, the Customs and International Trade Bar Association, and the American Bar Association in Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

April 19, 2005: Panelist, "Litigating Trade Adjustment Assistance Cases Before the Court of International Trade," at an event sponsored by the Court of International Trade, the Customs and International Trade Bar Association, and the American Bar Association in New York, NY. A copy of my unpublished paper on which my discussion was based is supplied.

March 2, 2005: Panelist, "Trade and Customs Law: Introduction and Refresher," Georgetown 2005 International Trade Update, Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

March 1, 2005: Panelist, "Appeals of Customs and Trade Cases at the Federal Circuit: Perspectives of the Bench, Government, and Private Bar," at an event sponsored by the Customs and International Trade Bar Association and the Federal Circuit Bar Association in Washington, DC. A copy of my unpublished paper on which my discussion was based is supplied.

November 8, 2004: Panelist at the customs breakout session at the Court of International Trade 13th Judicial Conference held in New York, NY. A copy of my unpublished paper on which my discussion was based is supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

None.

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

I have not held any judicial office.

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

- i. Of these, approximately what percent were:

jury trials: _____%
bench trials: _____% [total 100%]

civil proceedings: _____%
criminal proceedings: _____% [total 100%]

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

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held any judicial office.

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

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have held no public offices. I have never been a candidate for elective office or a nominee to any 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.

From early 1985 through the summer of 1986, I was paid to help manage the donor database for The Kerry Committee, the election committee for then-United States Senator John Kerry, which was based in Boston, Massachusetts. My work for The Kerry Committee ended when I moved to Ithaca, New York to attend law school. In 1984, I volunteered for the Jim Shannon for U.S. Senate primary campaign in Boston, Massachusetts. I coordinated other volunteers and participated in volunteer activities, including driving surrogates to events. I performed similar activities later that year for the John Kerry for U.S. Senate general election campaign, also in Boston, Massachusetts. I held no title on either campaign.

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 a law clerk to a judge.

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

I have never practiced alone.

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

1989 – 1994
Bingham, Dana & Gould (now Bingham McCutchen)
150 Federal Street
Boston, MA 02110
Associate

June 1994
Plymouth County District Attorney's Office
Fourth District Court of Plymouth County
2200 Cranberry Highway
West Wareham, MA 02576
Special Assistant District Attorney (while at Bingham, Dana & Gould)

1994 – present
United States Department of Justice
Civil Division

Commercial Litigation Branch
Ben Franklin Station, P.O. Box 480
Washington, DC 20044
Trial Attorney (1994 – 2001)
Senior Trial Counsel (2001 – 2003)
Assistant Director (2003 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

During my five years in private practice at Bingham, Dana & Gould (now Bingham McCutchen), I worked primarily on federal and state court litigation arising from disputes involving commercial banking, bankruptcy, products liability, franchises, closely-held corporations, and patent infringement.

From 1994 to 2001, I served as a Trial Attorney in the Commercial Litigation Branch of the Civil Division in the Department of Justice. My practice consisted of work before the Court of Federal Claims and the Court of Appeals for the Federal Circuit. Although I handled some appeals before the Federal Circuit, the vast majority of my time was devoted to a single case, the A-12 litigation, which concerned two contractors' challenge to the Navy's termination of their \$4.8 billion contract for default. As a member of the trial team, I developed various legal issues on the case, took and defended numerous depositions, worked with damages experts, and developed the government's position paper submitted in a mediation with former Secretary of State Warren Christopher held in 1999. After the case did not settle at that time, I played a key role in the six-week merits trial, which took place in 2001. Among the numerous witnesses for whom I was responsible were the Navy program manager, the contracting officer, and the chief engineer. I also cross-examined the contractors' chief executive officers and other senior executives. The court sustained the default termination in a 2001 decision that was later vacated on appeal.

From 2001 to 2003, I served as a Senior Trial Counsel in the Commercial Litigation Branch. I continued to devote substantial time to the

contractors' appeal of the A-12 judgment, but I also handled more of my own cases individually, both at the trial and the appellate levels. These cases involved oil and gas leases, suits by telecommunications companies, and appeals to the Federal Circuit involving federal personnel law.

Since 2003, I have served as an Assistant Director in the Commercial Litigation Branch. As a supervisory attorney, I have spent the majority of my time over the next six or seven years supervising our office's international trade group, which practices before the Court of International Trade and the Federal Circuit. In this capacity, I consult with the assigned trial attorneys, providing guidance and support in how to approach their cases and making suggestions about litigation strategy. I personally review all of the trial attorneys' written work, and I mentor attorneys to ensure their sound professional development. I also have assumed responsibility for the international trade moot court program, ensuring that all attorneys presenting argument in trade cases participated in at least one moot court, and personally judging most of these moots.

Since 2010, I have continued to supervise attorneys in the international trade group, but I also have assumed more supervisory responsibility for government contract cases. Among other things, I have co-managed our office's bid protest team. Their expertise ensures that we provide consistent representation to our client agencies, and the team also provides an important resource for other attorneys in the office handling the heavy bid protest docket. I also now devote substantial time to advising and counseling other attorneys, from the Department of Justice and from other federal agencies.

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

While I was at Bingham Dana & Gould, my billable clients were commercial banks, manufacturers, engineering firms, shareholders in closely-held corporations, large law firms, franchisees, and biotech companies, among others. My *pro bono* clients were a death-row inmate, home buyers, and firefighters.

During the past 20 years as an attorney for the Department of Justice, my client has been the United States. I have specialized in the areas of government contracts and international trade since joining the Department of Justice in 1994.

- 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.

Overall, 95% of my practice has been in litigation. The nature of my litigation practice changed dramatically when I moved from private practice to government service in 1994. When I was at Bingham, Dana & Gould, approximately 50% of my practice was in Massachusetts Superior Court, with the remainder in federal district and bankruptcy courts, as well as in commercial arbitration. I also had some criminal practice in my pro bono work and in a month-long rotation in the Plymouth County District Attorney's Office. As a junior to mid-level associate at a large firm, I primarily appeared in court in a second-chair capacity on dispositive matters, and I also appeared frequently in Massachusetts Superior Court and federal bankruptcy courts to present argument on procedural motions. In addition, I tried two small contract cases in Massachusetts district court as sole counsel. Since joining the Department of Justice in 1994, all of my cases have been civil cases in federal courts, although within the last few years I have had three civil cases in the LCIA (formerly London Court of International Arbitration). Since joining the Department of Justice, I have appeared frequently in court. The following indicates a rough aggregate of my practice throughout my career:

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 88%
 - 2. state courts of record: 10%
 - 3. other courts: 2%
 - 4. administrative agencies: 0%
- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 99%
 - 2. criminal proceedings: 1%
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While I was at Bingham, Dana & Gould, to the best of my recollection, I was sole counsel on two small contract cases that proceeded to judgment following bench trials in Massachusetts state district court. I also was associate counsel on one large bench trial that proceeded to judgment in Massachusetts Superior Court; two jury trials that proceeded to verdicts in federal district court in Massachusetts; a design patent bench trial that proceeded to judgment issued by a United States magistrate judge; and two trials in adversary proceedings in federal bankruptcy court. In addition, while still in private practice, I participated in a month-long rotation at the Plymouth County District Attorney's office in Massachusetts. During that rotation, I prosecuted as sole counsel six misdemeanor jury trials to verdicts in Massachusetts state district court.

Since joining the Department of Justice nearly 20 years ago, I have tried to

judgment, as part of different teams, several cases in the Court of Federal Claims and the LCIA. I also have been the supervisory attorney for dozens of trials. None of the cases were jury trials. For those matters, I reviewed all filings and provided substantial advice regarding trial strategy. The following indicates an estimate of my practice throughout my career:

- i. What percentage of these trials were:
 - 1. jury: 5%
 - 2. non-jury: 95%
- 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.

Although I was not counsel of record, I have participated in writing the following briefs:

Agredano v. United States, No. 10-99, *cert. denied*, 131 S. Ct. 994 (2011) (brief in opposition, available at 2010 WL 4959746)

General Dynamics Corporation v. United States, Nos. 09-1298, 09-1302, 131 S. Ct. 1900 (2011) (brief in opposition to petition for writ of certiorari, available at 2010 WL 3300134; brief for the United States, available at 2010 WL 5099376)

United States v. Eurodif, S.A., Nos. 07-1059, 07-1078, 555 U.S. 309 (2009) (petition for writ of certiorari, available at 2008 WL 437010; reply brief, available at 2008 WL 905193; brief for the United States, available at 2008 WL 2794014; reply brief, available at 2008 WL 4650592)

NTN Corporation v. United States, No. 07-449, *cert. denied*, 552 U.S. 1165 (2008) (brief in opposition, available at 2007 WL 4613635)

JTEKT Corporation v. United States, No. 06-1632, *cert. denied*, 552 U.S. 1007 (2007) (brief in opposition, available at 2007 WL 2781068)

Corus Staal B.V. v. United States, No. 06-1057, *cert. denied*, 551 U.S. 1144 (2007) (brief in opposition, available at 2007 WL 1552212)

Timken U.S. Corporation v. United States, No. 06-44, *cert. denied*, 549 U.S. 1030 (2006) (brief in opposition, available at 2006 WL 2944534)

Folden v. United States, No. 04-1106, *cert. denied*, 545 U.S. 1127 (2005) (brief in opposition, available at 2005 WL 1240077)

United Technologies Corporation v. Rumsfeld, No. 03-128, *cert. denied*, 540 U.S. 1012 (2003) (brief in opposition, available at 2003 WL 22429187)

Duren v. Alabama, No. 91-7300, *cert. denied*, 503 U.S. 974 (1992) (petition for writ of certiorari is unavailable on Westlaw, and I have been unable to locate a hard copy).

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. The A-12 Litigation

In 1991, two large defense contractors working jointly to develop the A-12, a carrier-based stealth aircraft for the Navy, brought suit in the Court of Federal Claims after the government terminated their \$4.8 billion contract for default and demanded repayment of \$1.35 billion in progress payments for work the government never accepted. The contractors sought to retain the payments and obtain an additional \$1.2 billion in unreimbursed performance costs. In 2011, after five trials and three appeals over 20 years of litigation, much of it classified, the United States Supreme Court vacated the judgment sustaining the default termination. Disagreeing with the lower courts' treatment of the effect of the state secrets privilege, the Court remanded the case for resolution of certain issues. *See Gen'l Dynamics Corp. v. United States*, 131 S. Ct. 1900 (2011). In July 2013, the parties reached a settlement that was contingent on legislative authorization, which ultimately occurred in December 2013. This 22-year litigation established important precedent regarding the legal standards for default terminations, especially for failure to make progress, and also for the effect of an agency's invocation of the state secrets privilege in a government contracts setting.

Because the case settled only recently, I worked on this litigation nearly the entire time that I have been with the Department of Justice. Although I was not the counsel of record, I played a key role in developing the government's strategy and personally. deposed, defended, and examined or cross-examined at trial the principal witnesses in the case. In addition, I provided extensive support to the Solicitor General's office during the Supreme Court litigation. I had a continuing role as a principal author of all Court of Federal Claims, Federal Circuit, and alternative dispute resolution briefing in or after

1999. *E.g.*, *McDonnell Douglas Corp. v. United States*, 567 F.3d 1340 (Fed. Cir. 2009) (before Chief Judge Michel, and Judges Moore and Huff); *McDonnell Douglas Corp. v. United States*, 323 F.3d 1006 (Fed. Cir. 2003) (before Judges Michel, Clevenger, and Linn); *McDonnell Douglas Corp. v. United States*, 182 F.3d 1319 (Fed. Cir. 1999) (before Chief Judge Mayer, and Judges Michel and Clevenger); *McDonnell Douglas Corp. v. United States*, 76 Fed. Cl. 385 (2007) (before Judge Hodges); *McDonnell Douglas Corp. v. United States*, 50 Fed. Cl. 311 (2001) (before Judge Hodges); *McDonnell Douglas Corp. v. United States*, 35 Fed. Cl. 358 (1996) (before Judge Hodges).

The government's counsel of record was Bryant G. Snee, Deputy Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Ben Franklin Station, P.O. Box 480, Washington, DC 20044 (202.616.0315). Primary opposing counsel for General Dynamics Corporation was David Churchill, Jenner & Block, 1099 New York Avenue, N.W., Suite 900, Washington, DC 20001-4412 (202.639.6056). Primary opposing counsel for The Boeing Company (successor to McDonnell Douglas Corporation) were Charles J. Cooper and Michael W. Kirk, Cooper & Kirk, 1523 New Hampshire Avenue, N.W., Washington, DC 20036 (202.220.9671).

2. *Rumsfeld v. United Technologies Corporation*, 315 F.3d 1361 (Fed. Cir.) (before Judges Newman, Lourie, and Dyk), *cert. denied*, 540 U.S. 1012 (2003).

In this appeal concerning Cost Accounting Standards (CAS) regulations, a defense contractor contended that the payments it made to foreign suppliers to acquire parts under "collaboration agreements" were not "costs" for purposes of calculating overhead costs to be allocated between its government and commercial contracts under the CAS. By not treating these payments as costs, the defense contractor sought to allocate more of its overhead expenses to its government contracts, resulting in additional costs to be borne by the government exceeding \$250 million. The Armed Services Board of Contract Appeals agreed with the contractor, relying in part on expert testimony regarding the meaning of the CAS. On appeal, the Federal Circuit overturned the board's decision. First, the Federal Circuit ruled that a court or board may neither receive nor consider expert testimony regarding interpretive issues such as the proper meaning of regulations. Second, the Federal Circuit emphasized its reliance on dictionary meanings for undefined terms such as "costs." Third, the court clarified that evidence of affirmative misconduct is necessary to invoke equitable estoppel against the government in a government contracts setting. I personally handled, as counsel of record, the government's appeal to the Federal Circuit.

Opposing counsel was Kent R. Morrison, Crowell & Moring LLP, 1001 Pennsylvania Avenue, N.W., Washington, DC 20004-2595 (202.624.2610).

3. *Folden v. United States*, 379 F.3d 1344 (Fed. Cir. 2004) (before Judges Schall, Gajarsa, and Prost), *cert. denied*, 545 U.S. 1127 (2005); *Folden v. United States*, 56 Fed. Cl. 43 (2003) (before Judge Horn).

Disappointed applicants for seven cellular licenses filed a \$145 million suit in the Court

of Federal Claims alleging that the Federal Communications Commission (FCC) had breached implied-in-fact contracts to award the licenses by lottery and had violated their constitutional rights by taking their contractual rights without compensation. After the initial lottery winners proved to be unqualified to receive licenses, the FCC announced it would conduct rielotteries. Before the FCC conducted the rielotteries, however, Congress acted to require the FCC to institute new rules to award licenses by auction. The FCC then issued an order rejecting the applicants' license applications. Rather than appealing the FCC's order, the applicants instead filed a suit for money damages directly in the Court of Federal Claims, asserting contract and takings theories. Both the trial and appellate courts recognized Congress's intent that the D.C. Circuit be the exclusive forum for challenges to FCC license decisions and ruled that dismissal was proper. I personally handled the litigation at both the trial and appellate levels as counsel of record for the government.

Opposing counsel was Russell D. Lukas, Lukas, Nace, Gutierrez & Sachs, LLP, 8300 Greensboro Drive, Suite 1200, McLean, VA 22102 (703.584.8678).

4. *Cellco Partnership d/b/a Verizon Wireless v. United States*, 54 Fed. Cl. 260 (2002) (before Judge Wilson).

In 2001, Verizon Wireless successfully bid \$8.69 billion for reaucted wireless spectrum licenses and deposited approximately \$1.7 billion with the FCC. The FCC had originally awarded the licenses to two other carriers that had experienced difficulty raising the capital necessary to make the license installment payments. The FCC ruled that the licenses were automatically cancelled and reaucted them, resulting in litigation in the D.C. Circuit. After the D.C. Circuit issued a ruling requiring the FCC to return the licenses to the original carriers, the FCC ordered partial refunds to the bidders on the reaucted licenses and requested public comment regarding their proper disposition. Verizon Wireless, a bidder, filed suit in the Court of Federal Claims seeking money damages, alleging that the FCC had created a contract when it accepted Verizon Wireless's high bid and later materially breached the contract by failing to timely deliver the reaucted licenses. After Verizon Wireless filed a motion for summary judgment, the government immediately sought to stay the Court of Federal Claims litigation, asserting that the various related proceedings in other courts, including the D.C. Circuit, had created a risk of inconsistent results. After the court denied the government's motion for stay, the parties settled out of court. As counsel of record for the government, I personally handled the litigation and settlement negotiations with Verizon Wireless and numerous other bidders with potential claims against the government.

Opposing counsel was William T. Lake, currently Bureau Chief, Office of the Bureau Chief, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554 (202.418.7200).

5. *Amber Resources Company v. United States*, 538 F.3d 1358 (Fed. Cir. 2008) (before Judges Lourie, Bryson, and Gajarsa); *Amber Resources Company v. United States*, 73 Fed. Cl. 738 (2006) (before Judge Bruggink); *Amber Resources Company v.*

United States, 68 Fed. Cl. 535 (2005) (before Judge Bruggink).

Oil and gas companies holding 40 offshore leases in California brought suit in the Court of Federal Claims seeking over \$2 billion in damages following a federal district court decision (later affirmed) holding that certain amendments to the Coastal Zone Management Act enacted by Congress had imposed additional, unbargained-for procedures on lessees seeking lease suspensions from the Department of the Interior. Relying on *Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604 (2000), the lessees argued that the change in law had materially breached their leases by increasing the risk associated with their successful development and production. The Court of Federal Claims agreed that the change in law was a repudiation of the leases, but it rejected the lessees' claims that they were entitled to collect both restitution and reliance damages for the breach. Requiring the lessees to make an election, the court granted the lessees rescission of their leases and ordered the government to return the \$1 billion paid for 35 of the leases. The court rejected the lessees' claim for an additional \$727 million in sunk costs. The Federal Circuit rejected both cross-appeals and affirmed the court's judgment. The government later successfully reduced its liability for the remaining five leases. I was counsel of record for the government at both the trial and appellate stages.

Opposing counsel was Steven J. Rosenbaum, Covington & Burling LLP, 1201 Pennsylvania Avenue, N.W., Washington, DC 20004-2401 (202.662.5568).

6. *AINS, Inc. v. United States*, 365 F.3d 1333 (Fed. Cir. 2004) (before Judges Bryson, Gajarsa, and Prost); *AINS, Inc. v. United States*, 56 Fed. Cl. 522 (2003) (before Judge Block).

AINS, a contractor providing information technology services to the United States Mint, brought suit in the Court of Federal Claims alleging a breach of contract. Because judgments of the Court of Federal Claims are paid out of appropriated funds, the government filed a motion to dismiss the case for lack of jurisdiction, contending that the Mint had become a non-appropriated funds instrumentality, otherwise known as "NAFI," in 1995 when Congress created the Mint's public enterprise fund, and that the United States had not waived its sovereign immunity for suits based on contracts with NAFIs. Both the Court of Federal Claims and the Federal Circuit agreed that the Mint was no longer receiving appropriated funds and that the Court of Federal Claims therefore lacked jurisdiction to entertain AINS's claim and enter a money judgment that would be paid out of appropriated funds. This case set the NAFI doctrine and the criteria for determining whether a governmental entity is a NAFI until that doctrine was subsequently set aside in another case in 2011. I personally handled the *AINS* litigation at the trial stage as counsel of record for the government, and I presented the government's oral argument at the Federal Circuit.

Opposing counsel was Craig A. Holman, Arnold & Porter LLP, 555 12th Street, N.W., Washington, DC 20004-1206 (202.942.5722).

7. *Agredano v. United States*, 595 F.3d 1278 (Fed. Cir. 2010) (before Judges Mayer, Clevenger, and Dyk), *cert. denied*, 131 S. Ct. 994 (2011).

This is a case in which a Mexican national purchased a car at a U.S. Customs and Border Protection forfeiture auction held just over the border in San Diego, drove the car back home to Mexico, and later was imprisoned for more than a year after Mexican authorities discovered concealed marijuana during a routine traffic stop. Mr. Agredano initially brought suit in federal district court under the Federal Tort Claims Act, but that suit was later dismissed after the Supreme Court issued *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), holding that a statutory exception bars all claims based on an injury suffered on foreign soil. Mr. Agredano then brought a breach of contract claim in the Court of Federal Claims, contending the sale agreement, which contained an “as is” clause, nonetheless contained an implied-in-fact warranty that the car was free of contraband, and that Customs had breached this warranty by not following its procedures adequately to ensure that all contraband was removed. After trial, the court found that there was an implied warranty and awarded Mr. Agredano damages. The Federal Circuit reversed, holding that Customs’ regulatory obligations to inspect forfeited cars for contraband were not part of the contract, and that in any event the express terms of the sale agreement disclaiming any warranty precluded the court from finding a contrary implied-in-fact obligation. I personally handled the government’s appeal as counsel of record and was the supervisory attorney for the case when it was before the Court of Federal Claims.

Opposing counsel was Teresa Trucchi, Suppa, Trucchi, & Henein LLP, 3055 India Street, San Diego, CA 92103 (619.297.7330).

8. *United States v. Canada*, LCIA No. 111790 (July 26, 2012) (before Messrs. Sachs, van den Berg, and Veeder); *United States of America v. Canada*, LCIA No. 91312 (Sept. 28, 2009) (before Messrs. Böckstiegel, Hanotiau, and Veeder); *United States of America v. Canada*, LCIA No. 7941 (Feb. 23, 2009) (before Messrs. Böckstiegel, Hanotiau, and Veeder).

In a series of state-to-state arbitrations brought for the first time in the LCIA (formerly London Court of International Arbitration), the United States has sought to enforce its rights under the 2006 Softwood Lumber Agreement (SLA) between the United States and Canada. The United States agreed to forgo trade remedies available under domestic law in exchange for Canada’s agreement to regulate exports of softwood lumber to the United States and to maintain a more market-based system under which provincial and national governments sell timber from public lands to Canadian sawmills. In the first arbitration, No. 7941, the tribunal found that Canada had breached the SLA by failing to apply certain charges, and it awarded the United States CDN \$68.26 million in additional charges as compensation. Later, Canada initiated a follow-on arbitration, No. 91312, in which it claimed that it had cured its breach by offering the United States a lump sum payment of USD \$34 million. The tribunal agreed with the United States’ position that Canada’s USD \$34 million settlement offer failed to wipe out the consequences of the breach identified by the tribunal. In the most recent arbitration, No. 111790, the United States contended that Canada had breached the SLA by selling logs to its domestic industry for

a flat minimum price instead of a higher variable price dictated by the system grandfathered by the SLA. After a two-week hearing, the tribunal ruled that the United States had not presented sufficient direct evidence of a breach. I was counsel of record for the United States in all three arbitrations, working with a large team in each case.

Canada's counsel of record in Nos. 7941 and 91312 was Guillermo Aguilar-Alvarez, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (212.556.2145). Canada's counsel of record in No. 111790 was John M. Townsend, Hughes, Hubbard & Reed, LLP, 1775 I Street, N.W., Washington, DC 20006-2401 (202.721.4640). Joanne E. Osendarp, Hughes, Hubbard & Reed, LLP, 1775 I Street, N.W., Washington, DC 20006-2401 (202.721.4740), served as counsel to Canada in all three of the arbitrations in which I was involved.

9. *Michael Simon Design, Inc. v. United States*, 609 F.3d 1335 (Fed. Cir. 2010) (before Judges Bryson, Gajarsa, and Moore); *Michael Simon Design, Inc. v. United States*, 637 F. Supp. 2d 1218 (Ct. Int'l Trade 2009) (before Judge Barzilay).

Three importers of foreign-made goods brought actions in the Court of International Trade under the Administrative Procedure Act (APA), challenging certain modifications to the United States tariff schedule made by a Presidential proclamation following recommendations by the International Trade Commission. The government filed a motion to dismiss because the Commission's recommendations did not constitute final agency action that would be reviewable under the APA, and the President's act of adopting the Commission's recommendation is not subject to judicial review. The Court of International Trade granted the government's motion, and the Federal Circuit affirmed the judgment of dismissal. I personally handled the case at both the trial and appellate levels as counsel of record for the government.

Opposing counsel was Alan Goggins, Barnes, Richardson & Coburn, 475 Park Avenue South, 25th Floor, New York, NY 10016 (212.725.0200).

10. *PAM, S.p.A. v. United States*, 463 F.3d 1345 (Fed. Cir. 2006) (before Chief Judge Michel, and Judges Friedman and Mayer).

In an international trade case about the government's discretion to relax procedural requirements, the Court of International Trade had held that the Department of Commerce's completed administrative review of dumping by PAM, a foreign pasta producer, was void *ab initio* because the domestic industry had failed to serve PAM with its request to Commerce for the review, as required by Commerce's regulations. The Court of International Trade emphasized that the government is required to follow its own regulations and held that the agency should not have continued with the administrative review given the procedural violation. The government appealed the Court of International Trade's judgment as inconsistent with Supreme Court and Federal Circuit precedent allowing for the relaxation of procedural requirements absent a showing of substantial prejudice. The Federal Circuit reversed the judgment, clarifying

the correct standard and upholding the government's discretion. I personally handled the government's appeal as counsel of record.

Opposing counsel was David L. Simon, 1025 Connecticut Avenue, N.W., Suite 1000, Washington, DC 20036 (202.481.9000).

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.)

Apart from my litigation practice, I regularly review proposed legislation and regulations, as well as proposed changes in court rules. I also provide advice in a number of subject matter areas, most notably government contracts and international trade law, and jurisdictional issues regarding the federal courts. I also provided extensive internal training for attorneys on a range of issues, including legal writing, international trade, and appellate advocacy.

In addition, I have served in a number of capacities in various bar associations. For example, as a Governor of the United States Court of Federal Claims Bar Association, I have worked to find common ground between members of the private and public bars on practical issues, such as the efficient handling of confidential information subject to judicial protective orders. I also have reviewed submissions for the Bar Association's scholarship and writing contest programs.

I have never performed any lobbying activities.

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

None.

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

I do not have any arrangements for deferred income or future benefits from previous business relationships.

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.

If confirmed, I have no plans, commitments, or agreements to pursue outside employment.

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 am unaware of any individuals, family or otherwise, who are likely to present potential conflicts of interest. As a supervisory attorney at the Department of Justice, I am currently responsible for a large number of cases currently pending before the Court of Federal Claims. If confirmed, I would recuse myself from all cases in which I was either directly or indirectly involved during my tenure at the Department of Justice. For matters handled by the Department of Justice after my departure, I would apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine whether to recuse myself in other matters.

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

If confirmed, I would consult rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, and based on that consultation, I would compile a comprehensive list of matters for easy flagging of potential conflicts of interest. In close cases, I would consult

other judges and any individuals designated by the court or judicial organizations to provide advice on these types of questions as they arise.

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.

As a federal employee for the last 20 years, I have been restricted in my ability to provide pro bono legal advice. While an associate at Bingham, Dana & Gould, I worked on a number of pro bono cases. From 1989 to 1994, I worked with attorneys at Bingham, Dana & Gould on the direct appeals and preparation for the subsequent habeas petition for David Ray Duren of Alabama. I also worked on a number of pro bono matters in coordination with the Lawyers Committee for Civil Rights Under the Law and the Boston Bar Association, including a housing discrimination case, *Foster v. Mydas Associates*, 943 F.2d 139 (1st Cir. 1991), for which I prepared the jury instructions and assisted in the appellate briefing.

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 early 2013, I provided my resume and expression of interest to the Director of the Commercial Litigation Branch in the Civil Division of the Department of Justice, and she forwarded this information to the Office of Legal Policy at the Department of Justice. Since May 3, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. Since August 30, 2013, I have been in contact with officials from the White House Counsel's Office. On November 6, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 21, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or

implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Patricia M. McCarthy, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 22, 2014

(DATE)



(NAME)

Natalie Palmer

(NOTARY)

5/22/14

NATALIE R. PALMER
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 30, 2015