

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Eric Steven Miller

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

United States Attorney for the District of Vermont

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.

Sheehey Furlong & Behm P.C.  
30 Main Street, Sixth Floor  
Burlington, Vermont 05401

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

October 19, 1969, in Menomonee Falls, Wisconsin.

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.

Yale Law School, 1992-1995, J.D awarded May 1995  
Duke University, 1988-1992, B.A. awarded May 1992  
University of Glasgow, Fall 1991, Semester Abroad

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.

Employment

Sheehey Furlong & Behm P.C. (1999-Present)  
Partner (2002-Present)  
Associate Attorney (1999-2002)

30 Main Street, Sixth Floor  
Burlington, Vermont 05401

The Honorable Fred I. Parker (1998-1999)  
Judicial Clerk  
11 Elmwood Avenue  
Burlington, Vermont 05401

O'Melveny & Meyers (1996-1998)  
Associate Attorney  
Two Embarcadero Center, 28<sup>th</sup> Floor  
San Francisco, California 94111

The Honorable Steven McAuliffe (1995-1996)  
Judicial Clerk  
55 Pleasant Street  
Concord, NH 03301

O'Melveny & Meyers (Summer 1994)  
Summer Associate  
Two Embarcadero Center, 28<sup>th</sup> Floor  
San Francisco, California 94111

Quarles & Brady (Summer 1993)  
Summer Associate  
411 East Wisconsin Ave., Ste. 2400  
Milwaukee, Wisconsin 53202

#### Non-Profit Board Experience

Board Member, University of Vermont Medical Center (2014-Present)

Member, Vermont Bar Foundation IOLTA Committee (2013-Present)

Board Member, Flynn Center for the Performing Arts (2011-Present)

Board Member, Turning Point Center of Chittenden County (2010-2012)

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 United States Military. I registered for the selective service prior to my 18<sup>th</sup> birthday.

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.

I have been recognized as one of Vermont's leading litigators by Chambers USA Guide to America's Leading Business Lawyers, Benchmark Litigation, and Super Lawyers.

While at Yale Law School, I served as a Coker Teaching Fellow.

While at Duke University, I was a member of Phi Beta Kappa and graduated magna cum laude.

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.

**Bar Associations**

I am or have been a member of the American Bar Association, the Vermont Bar Association, the Chittenden County (Vermont) Bar Association, and the Vermont Association of Criminal Defense Attorneys. I have not held any offices in those groups.

**Judicial-Related Committees**

Member, Federal Court Oversight Committee, United States District Court, District of Vermont (2014-Present)

Member, Civil Jury Instruction Committee, United States District Court, District of Vermont (2013-Present)

**Selection Panels**

Member, Criminal Justice Act Appellate Attorney Selection Panel, Second Circuit Court of Appeals (2014-Present)

Member, Merit Selection Panel for Reappointment of Federal Public Defender for the District of Vermont (2015)

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.

California. Admitted October 28, 1996. I have maintained my license in California on inactive status since moving from California to Vermont in 1998.

Vermont. Admitted March 17, 1999.

- 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.

Vermont Supreme Court. Admitted March 17, 1999.

United States District Court, District of Vermont. Admitted December 13, 1999.

United States Court of Appeals, Second Circuit. Admitted December 28, 2009.

United States District Court, District of New Hampshire. Admitted August 30, 1996.

United States Court of Appeals, Ninth Circuit. Admitted July 29, 1997.

United States District Court, Northern District of California. Admitted August 18, 1997. This membership automatically became inactive when my California bar membership became inactive (see above) on January 1, 1999.

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.

To the best of my recollection, I have not belonged to any organizations apart from those listed in response to Questions 6, 9, and 10 above.

I have contributed to other charitable organizations over the years. I have not included any organizations to which I contributed money but did not otherwise participate in the organizational activities, although some of those organizations may label me as a member because of my contributions.

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

**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.

Note, Compound-Complex Criminal Statutes and the Constitution, Demanding Unanimity As To Predicate Acts, *Yale Law Journal*, Vol. 104, No. 8 (1995).  
Copy attached at Tab 1.

Article, When the Government Comes Knocking On Your Door, Preventative Measures Can Help Reduce The Likelihood Of A Government Investigation Into Your Cataract Practice, *Ophthalmology Management*, June 1, 2006.  
Copy Attached at Tab 1.

- 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.

None.

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

None.

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

On January 17, 2009, I participated in a CLE panel discussion entitled "Effective Trial and Appellate Brief Writing," in Montreal, Canada at an event sponsored by the Vermont Bar Association. I have not retained or located any notes or other record of my remarks at the conference, but I attach at Tab 2 a copy of the meeting schedule, which lists the panel discussion.

On two occasions, I participated in panel discussions at ophthalmology conferences. The first took place at the Hawaiian Eye ophthalmology conference in Maui in the winter of 2006. The second took place on February 12, 2011, at the ACES Caribbean Eye conference in St. Thomas, U.S. Virgin Islands. Both of those panels addressed billing issues related to the performance of cataract surgery. I did not speak from a prepared text at either event and I have not retained or located any notes or other records of my remarks. I attach at Tab 2 a copy of the meeting schedule for the ACES conference, which lists the panel discussion.

I have given introductory remarks at a number of private fundraising events for charitable organizations and candidates for public office. The charitable organizations include Burlington City Arts (2013) and the Flynn Center for the Performing Arts (2014). The political candidates include Vermont Governor Peter Shumlin (2010, 2012), United States Representative Peter Welch (2012), and Burlington, Vermont Mayor Miro Weinberger (2011). In each instance, I introduced the organization or the candidate to the assembled guests but did not give a substantive speech regarding policy issues. I am aware of no record of these speeches and I did not preserve any notes from which I spoke. No press was present at any of these events.

- 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.

With client consent, I have answered press inquiries regarding a number of litigated cases. I have done my best to identify all such press statements after reviewing my personal files and searching public databases. Despite my searches, there may be other press statements or short interviews that I have been unable to identify. I have located the following:

State Probes Eye Doctor's Practices, Associated Press, December 28, 2003  
Copy Attached (as reprinted on Boston.com) at Tab 3

Burlington Eye Doctor Indicted, WCAX-TV, September 16, 2004  
Copy Attached at Tab 3

Police Win Riot Tape Legal Battle, WCAX-TV, August 26, 2005

Copy Attached at Tab 3

Will Charitable Trusts Protect Parishes, WCAX-TV, May 15, 2006  
Copy Attached at Tab 3

Mount Holly Man Acquitted On Charge For Allegedly Trying To Bring Gun On Plane, Rutland Herald, December 14, 2007  
Copy Attached at Tab 3

Fletcher Allen Sports Surgeon Faces New Sex Charges, WCAX-TV, October 31, 2007  
Copy Attached at Tab 3

Hung Jury Ends Joseph Abate Trial, WCAX-TV, May 22, 2009  
Copy Attached at Tab 3

Surprise Plea in Abate Case, WCAX-TV, January 19, 2010  
Copy Attached at Tab 3

Vt. Doctor Pleads No Contest In Sex Case, Associated Press, January 20, 2010  
Copy Attached (as reprinted on Boston.com) at Tab 3

Fair Game, 7 Days, October 26, 2011  
Copy Attached at Tab 3

2 Prison Health Administrators Disciplined Over '09 Vermont Jail Death, Burlington Free Press, October 31, 2011  
Copy Attached at Tab 3

Burlington Doctor Gets Deferred Sentence in Prescription Fraud Case, Burlington Free Press, November 2, 2012  
Copy Attached at Tab 3

Burlington Seeks to Squeeze Online Travel Companies For Unpaid Taxes, Burlington Free Press, March 24, 2014  
Copy Attached at Tab 3

License Suspended For Doc Who Wrote Fake Prescriptions, Burlington Free Press, May 14, 2014  
Copy Attached at Tab 3

**13. 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.

Board Member and Vice-Chair, City of Burlington Development Review Board  
(2003-2009)

Appointed by Burlington City Council

- 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.

Chittenden County Democratic Committee, Treasurer (Approximately 2000-2002)

Burlington City Democratic Committee, Member (Approximately 2000-2002)

I served as an informal, unpaid, and private advisor to Burlington Mayor Miro Weinberger during his 2012 and 2015 campaigns.

14. **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;

The Honorable Steven McAuliffe (1995-1996)  
Federal District Court, District of New Hampshire

The Honorable Fred I. Parker (1998-1999)  
United States Court of Appeals, Second Circuit

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

I have never practiced alone.

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

Quarles & Brady (Summer 1993)  
Summer Associate  
411 East Wisconsin Ave, Ste. 2400

Milwaukee, Wisconsin 53202

O'Melveny & Meyers (Summer 1994)  
Summer Associate  
Two Embarcadero Center, 28<sup>th</sup> Floor  
San Francisco, California 94111

O'Melveny & Meyers (1996-1998)  
Associate Attorney  
Two Embarcadero Center, 28<sup>th</sup> Floor  
San Francisco, California 94111

Sheehey Furlong & Behm P.C. (1999-Present)  
Partner (2002-Present)  
Associate Attorney (1999-2002)  
30 Main Street, Sixth Floor  
Burlington, Vermont 05401

- 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 not served as a mediator or arbitrator.

b. Describe:

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

My law practice consists predominately of civil and criminal litigation before state and federal courts and administrative agencies. I also represent clients in connection with civil and criminal investigations, as well as their own internal investigations. I counsel clients regarding disputes that have not resulted in litigation. The character of my practice has remained stable over the past decade, although the percentage of my time devoted to criminal versus civil cases varies substantially from year to year.

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

I represent individuals and corporate entities. Both my individual and corporate clients engage in a wide variety of businesses. Over the past 10 years, an increasing percentage of my practice consists of representing clients involved in providing health care. Those health care clients now make up a plurality of my clients.

- 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.

Approximately 95% of my practice has been litigation, and I appear in court frequently.

- i. Indicate the percentage of your practice in:

1. federal courts;  
Approximately 30%
2. state courts of record;  
Approximately 50%
3. other courts;  
0%
4. administrative agencies  
Approximately 20%

- ii. Indicate the percentage of your practice in:

1. civil proceedings;
2. criminal proceedings.

The percentage of my practice devoted to civil and criminal proceedings has varied widely from year to year. On average, approximately 20% of my practice is devoted to criminal cases. However, in some years, one or two large criminal cases will make up the majority of my practice.

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried five cases to verdict or final decision. I was lead counsel on four of those cases and co-counsel on the fifth.

- i. What percentage of these trials were:

1. jury;  
60%
2. non-jury.  
40%

- 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.

15. **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. David Chase**  
**2:04-CR-0135-wks-1**  
**2004-2005**

The United States charged David Chase, M.D., a Burlington, Vermont ophthalmologist, with performing and billing insurers for medically unnecessary cataract surgeries. Dr. Chase was indicted on 71 counts of health care fraud and making false statements. I represented Dr. Chase in the criminal case and a related licensing proceeding (see below). I prepared Dr. Chase's defense and was co-counsel with my partner, Jeff Behm, at the three-month-long criminal trial. I performed the majority of witness direct- and cross-examinations during the trial and argued most pre-trial and evidentiary motions. At the close of the government's case, the Court dismissed 56 of the 71 counts. After the close of evidence, the jury acquitted Dr. Chase on 23 counts and hung on two counts. The government later dismissed those two counts.

Judge: Honorable William K. Sessions, III  
United States District Court, District of Vermont  
11 Elmwood Avenue  
Burlington, Vermont 05401  
(802) 951-6350

Co-Counsel: Jeff Behm  
Sheehey Furlong & Behm P.C.  
30 Main St.  
Burlington, VT 05401  
(802) 864-9891

Opposing Counsel: Steven Kelly, AUSA

Joseph Perella, AUSA  
United States Attorney's Office  
11 Elmwood Avenue  
Burlington, Vermont 05401  
(802) 951-6725

**2. In re: David S. Chase**  
**Docket No. MPC15-0203**  
**2005-2009**

The Vermont Medical Practice Board sought to revoke the medical license of David Chase, M.D., a Burlington, Vermont ophthalmologist, for allegedly performing medically unnecessary cataract surgeries. The Board charged Dr. Chase with multiple counts of unprofessional conduct and summarily suspended his medical license pending its investigation. I was lead counsel for Dr. Chase at the merits hearing conducted by the Board over the course of three months, performing opening and closing statements and the majority of the witness examinations. I also briefed and argued Dr. Chase's subsequent appeal to the Vermont Supreme Court. Dr. Chase was found to have engaged in unprofessional conduct, but his license was not revoked. The Board's decision was published and is available on the Vermont Department of Health's website at: [http://healthvermont.gov/hc/med\\_board/documents/04042008MPC15-0203etal.pdf](http://healthvermont.gov/hc/med_board/documents/04042008MPC15-0203etal.pdf). The Vermont Supreme Court's decision is reported at 186 Vt. 355 (2009).

Tribunal: Vermont Medical Practice Board  
P.O. Box 70  
Burlington, Vermont 05402-0070

Co-Counsel: Jeff Behm  
Sheehey Furlong & Behm P.C.  
30 Main St.  
Burlington, VT 05401  
(802) 864-9891

Opposing Counsel: Joseph Winn, Assistant Attorney General  
103 Main St.  
Waterbury, VT 05671  
(802) 769-2175

**3. State v. Joseph Abate**  
**No. 2295-6-07**  
**2007-2010**

The State of Vermont charged an orthopaedic surgeon, Joseph Abate, M.D., with sexual assault arising from his physical examinations of seven patients. I represented Dr. Abate in the criminal case. I prepared Dr. Abate's defense and acted as lead counsel at trial, performing opening and closing statements and the majority of witness examinations.

After a three-week trial, the jury hung on all counts. The State dropped most of the charges against Dr. Abate, but proceeded toward retrial on narrowed charges. The case resolved when Dr. Abate pleaded guilty to a single misdemeanor on the eve of retrial.

Judge: Honorable Patricia Zimmerman (now retired)  
Vermont Superior Court, Chittenden County, Criminal Division  
32 Cherry St., Ste 200  
Costello Courthouse  
Burlington, Vermont 05401  
802-651-1805

Co-Counsel: Ian Carleton  
Sheehey Furlong & Behm P.C.  
30 Main St.  
Burlington, VT 05401  
(802) 864-9891

Opposing Counsel: Cindy Maguire, Assistant Attorney General  
Lauren Bowerman, Assistant Attorney General  
32 Cherry Street  
Costello Courthouse  
Burlington, Vermont 05401  
(802) 652-4137

**4. United States v. Sheldon Hochman**  
**No. 106-cr-00091**  
**2006-2007**

The United States charged Sheldon Hochman with intentionally attempting to bring a firearm and ammunition onto an airplane, after the TSA found a gun and bullets in his carry-on bag as he passed through security at the Rutland, Vermont airport. I represented Mr. Hochman, who admitted bringing the gun and bullets through security, but denied knowing that they were in his bag at the time. I acted as lead counsel at trial, performing opening and closing statements and the majority of witness examinations. The jury acquitted Mr. Hochman after a three-day trial.

Judge: The Honorable Garvin J. Murtha  
United States District Court, District of Vermont  
P.O. Box 760  
Brattleboro, VT 05302  
(802) 258-4413

Co-Counsel: Brady Toensing  
diGenova & Toensing  
1776 K Street, N.W., Ste 737  
Washington, DC 20006

(202) 289-7701

Opposing Counsel: Elizabeth Woodcock, AUSA  
United States Attorney's Office  
11 Elmwood Avenue  
Burlington, Vermont 05401  
(802) 951-6725

**5. Wake Robin Corp. v. Town of Shelburne**  
**No. S0133-11 CnC**  
**2012- 2013**

Wake Robin Corporation is a continuing care residential community, often referred to as a retirement home, in Shelburne, Vermont. In 2008, the Town of Shelburne raised the assessed value of the Wake Robin property from approximately \$31 million to approximately \$49 million after Wake Robin expanded its campus. My law partner, Debra Bouffard, prepared the case for trial. I acted as lead counsel for Wake Robin at trial in its appeal of the Town's tax valuation. At trial, Wake Robin argued that the assessed value was \$40 million. Shelburne argued that it was \$53 million. After a two-day bench trial, the Court issued an unpublished written opinion, dated January 14, 2013, valuing the property at \$40 million.

Judge: Honorable Geoffrey Crawford (since appointed a federal judge)  
Vermont Superior Court, Chittenden County, Civil Division  
175 Main St.  
Burlington, Vermont 05401  
(802) 863-3467

Co-Counsel: Debra Bouffard  
Sheehey Furlong & Behm P.C.  
30 Main St.  
Burlington, VT 05401  
(802) 864-9891

Opposing Counsel: Robert E. Fletcher  
Stitzel, Page & Fletcher P.C.  
171 Battery St.  
Burlington, VT 05401  
(802) 660-2555

**6. Heco v. Johnson Controls Inc.**  
**No. 2013-473**  
**2013-2014**

Dzemila Heco was paralyzed after her car was struck from behind and her driver's seat collapsed backward, ejecting her into the back seat. She sued the company that designed

and manufactured the seat, Johnson Controls, Inc., alleging the seat was defective. Ms. Heco was represented at trial by a group of attorneys specializing in automotive defect cases. They obtained a \$43 million verdict, which remains the largest jury verdict in Vermont history. Johnson Controls appealed, and Mrs. Heco's trial team hired me to defend the verdict on appeal to the Vermont Supreme Court. I was the lead author of the Appellee's Brief and argued the case before the Vermont Supreme Court. The appeal presented a number of complex issues of first impression for the Court. After the appeal was briefed and argued, but before the Court issued its decision, the parties settled the case.

Tribunal: Vermont Supreme Court

Co-Counsel: Robin C. Curtiss, Esq.  
Kristin Ross, Esq.  
Van Dorn & Curtiss, PLLC  
P.O. Box 263  
Orford, NH 03777-0263  
(603) 353-4000

James Gilbert, Esq.  
The Gilbert Law Group  
5400 Ward Road, Building IV, Suite 200  
Arvada, CO 80002  
(303) 431-1111

Robert Langdon, Esq.  
Adam Graves, Esq.  
Langdon and Emison  
P.O. Box 220  
Lexington, MO 64067  
(800) 397-4910

Opposing Counsel: John T. Sartore  
Paul Frank + Collins P.C.  
P.O. Box 1307  
Burlington, VT 05402  
(802) 658-2311

Richard Wray  
Reed Smith LLP  
10 S. Wacker Drive, 40<sup>th</sup> Floor  
Chicago, IL 60606  
(312) 207-1000

**7. Peoples United Bank v. Kenneth MacKay**  
**No. S0257-08 CnC**  
**2008-2013**

Kenneth MacKay embezzled money from his employer, Willis Management, using bank accounts that Willis maintained at Peoples United Bank. Once discovered, Mr. MacKay's embezzlement triggered several interrelated civil and criminal actions in state and federal courts. I represented Peoples in connection with civil claims brought by Willis, seeking to recover its loss from the Bank. The parties' complex claims and defenses arose under the UCC and common law. Those claims and defenses also intersected with federal forfeiture law in the criminal case brought by the United States against Mr. MacKay. Most of the relevant litigation occurred in State court, but the parties also litigated forfeiture issues in the United States District Court for the District of Vermont and the Second Circuit. I was the attorney primarily responsible for the defense of Peoples in all forums. My law partner, Debra Bouffard, briefed and argued the client's case before the Second Circuit. In the State case, we gained partial summary judgment in favor of Peoples in an unpublished Order dated December 28, 2011. The parties were then able to settle the remainder of Willis's claims prior to trial in State court.

Judge: Honorable Geoffrey Crawford (since appointed a federal judge)  
Vermont Superior Court, Chittenden County, Civil Division  
175 Main St.  
Burlington, Vermont 05401  
(802) 863-3467

Co-Counsel: Debra Bouffard  
Sheehey Furlong & Behm P.C.  
30 Main St.  
Burlington, VT 05401  
(802) 864-9891

Opposing Counsel: Matt Byrne  
Robert Hemley  
Gravel & Shea P.C.  
76 St. Paul St.  
Burlington, VT 05401  
(802) 658-0220

**8. United States v. Joshua Welch**  
**No. 2:11-cr-152**  
**2010-2012**

Joshua Welch, M.D., intentionally accessed the medical records of a number of individuals without their consent. When the accesses were discovered, Dr. Welch became one of the first people ever charged with a criminal HIPAA violation. As a result, the criminal case involved issues of statutory interpretation that had not yet been

considered by any court. I represented Dr. Welch in the criminal case and an associated licensing proceeding. We resolved the criminal case when Dr. Welch pleaded guilty to a single misdemeanor violation of HIPAA and received a probationary sentence that allowed him to resume the practice of medicine.

Judge: Honorable William K. Sessions, III  
United States District Court, District of Vermont  
11 Elmwood Avenue  
Burlington, Vermont 05401  
(802) 951-6350

Opposing Counsel: Michael Drescher, AUSA  
United States Attorney's Office  
11 Elmwood Avenue  
Burlington, Vermont 05401  
(802) 951-6725

**9. Demag v. Better Power Equipment, Inc.  
No. 2013-120  
2013-2014**

My client, Rodney Demag, was injured while he was walking across property owned by Better Power Equipment. The trial court granted summary judgment in favor of Better Power, basing its decision on the traditional common-law duties of care that property owners owed to licensees and invitees. The trial court determined that Mr. Demag was a licensee rather than an invitee and was therefore entitled to a lesser standard of care. Although some states had abandoned this traditional common-law distinction in favor of a single duty of reasonable care, Vermont had not. My colleagues, Jeff Behm and Jon Alexander, litigated the case below and then appealed the trial court's decision to the Vermont Supreme Court. I joined the case in order to argue the appeal before the Supreme Court on behalf of Mr. Demag. The Supreme Court reversed the trial court's decision and, in the process, abrogated the common-law distinction between licensees and invitees in favor of a single duty of care applicable to all non-trespassing entrants on property. The Supreme Court's decision is reported at 102 A.3d 1101 (2014).

Tribunal: Vermont Supreme Court

Co-Counsel: Jeff Behm  
Jon Alexander  
Sheehey Furlong & Behm P.C.  
30 Main St.  
Burlington, VT 05401  
(802) 864-9891

Opposing Counsel: Robin Cooley  
Chip Wadhams

Pierson Wadhams Quinn Yates & Coffrin LLP  
253 S. Union St.  
Burlington, VT 05401  
(802) 863-2888

**10. In re Inquest Subpoena (WCAX)**  
**No. 05-004**  
**2004-2005**

After the Red Sox beat the Yankees in Game 7 of the American League Championship Series, students at the University of Vermont rioted in joy. The State of Vermont applied for and received an inquest subpoena seeking unaired video footage of the riot that was shot and retained by WCAX, a local television broadcaster. I represented WCAX in its effort to quash the subpoena on First Amendment grounds, arguing that the broadcaster possessed a qualified privilege to refuse to produce the subpoenaed footage. As lead counsel, I briefed and argued the constitutional issues in the trial court and Vermont Supreme Court. The trial court granted WCAX's Motion to Quash, holding that the television station possessed a qualified privilege to refuse production. On appeal, the Vermont Supreme Court reversed, holding that WCAX had no constitutional privilege to refuse to produce the footage because it recorded a public event and constituted evidence relevant to a criminal investigation. The Supreme Court's opinion is reported at 179 Vt. 12 (2005).

Tribunal: Vermont Supreme Court

Co-Counsel: Debra Bouffard  
Sheehey Furlong & Behm P.C.  
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Opposing Counsel: Robert Simpson (since retired)  
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16. **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.)

The great majority of my legal activities have involved trial or litigation, and the most

significant are described above. I have on many occasions represented individual and organizational clients in connection with civil and criminal investigations performed by state and federal authorities. In many of those instances, the client was able to avoid resulting criminal or civil litigation. I have also performed internal investigations on behalf of organizational clients and helped them report the results of those investigations to their stakeholders. I also occasionally assist clients in navigating regulatory requirements associated with their business activities. Finally, I often counsel clients with respect to general legal issues that arise in connection with their businesses. I have not performed lobbying activities.

17. **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.

I have not taught a course since I was a Coker Teaching Fellow at Yale Law School. As a Coker Teaching Fellow, I helped professors teach legal writing to first year law students and supported the professors' other teaching duties.

18. **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.

None. When I leave my current law firm to begin service as the United States Attorney, I anticipate that the firm will liquidate and pay my trailing revenues pursuant to a formula it has used with departing attorneys in the past. At that time, I will ensure that my arrangement complies with all applicable legal and ethical guidelines.

19. **Outside Commitments During 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 do not plan to pursue outside employment during my government service.

20. **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).

I received compensation from Sheehey Furlong & Behm P.C. in 2014 as follows:

Wage Income: \$367,184

Employer 401k Contribution: \$10,400  
Employer Profit Sharing Contribution: \$22,971  
Interest on Loan to Firm: \$1871

I have received compensation in 2015 year-to-date from Sheehey Furlong & Behm as follows:

Wage Income: \$111,621  
Employer 401k Contribution: \$4,464

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

See attached net worth statement and schedules.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.
- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Any potential conflicts of interest will be resolved in accordance with the Department of Justice's ethics guidelines, the United States Attorney's Manual, and applicable rules of professional responsibility.

I am currently in the process of transferring my active federal criminal cases to other defense attorneys. In the event those cases are still pending when I first become the United States Attorney for the District of Vermont, I will recuse and screen myself from any involvement in or knowledge of the United States Attorney's Office's work on those matters, or others in which I or my law firm were involved as defense attorneys.

My wife, Elizabeth Miller, is currently the Chief of Staff to Vermont's Governor, Peter Shumlin. I expect that she will no longer hold that position by the time I begin serving as United States Attorney for the District of Vermont. Nonetheless, I anticipate that because of my relationship with the Governor I would recuse and screen myself from any involvement in or knowledge of cases that would implicate the Governor or his staff. I will also take any other measures required by Department of Justice guidelines or ethics rules in order to avoid a conflict of interest.

I am aware of no other factors that are likely to pose potential conflicts of interest when I first assume the position.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I have devoted substantial time to serving the disadvantaged members of our community. My work in this regard falls into three major categories.

First, in my legal practice, I perform significant pro-bono and discounted legal work for individuals and organizations that cannot afford an attorney. For instance, my associate attorney and I recently represented, on a pro bono basis, the patients of a methadone clinic in a Vermont Supreme Court appeal regarding the location and operation of the clinic. I also serve on the Criminal Justice Act panel of the federal court. Through my work on that panel, I represent indigent criminal defendants in federal criminal cases at an hourly rate that is well below my normal hourly rate. I normally carry one or two CJA cases as part of my caseload. Finally, each year I provide approximately 50 hours of pro bono legal services to needy individuals and non-profits on a wide variety of issues.

Second, I regularly serve on the boards of directors of non-profit organizations that provide services to the less advantaged, among others. For instance, I recently served on the board of the Turning Point Center of Chittenden County, which provides recovery services to individuals struggling with addictions of all types. I also serve on the board of the Flynn Center for the Performing Arts, which provides arts education and scholarships to disadvantaged children. I devote approximately 5-10 hours per month to non-profit board activities.

Third, I serve on the IOLTA Committee of the Vermont Bar Association's Access to Justice Foundation. The Committee works to raise money for access-to-justice related projects by encouraging local financial institutions to pay above-market interest rates on the IOLTA accounts of lawyers and law firms. I spend approximately 1 hour each month on work for this Committee.