

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

J. Philip Calabrese

The given name on my birth certificate says "Jude Philip Calabrese" but I have gone by "J. Philip Calabrese" as long as I can remember.

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

United States District Judge for the Northern District of Ohio

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

Office:

1200 Ontario Street, Courtroom 21-D
Cleveland, Ohio 44113

Residence:

Shaker Heights, Ohio

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

1971; Evanston, Illinois

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.

Harvard Law School, 1997 – 2000; J.D. *cum laude*, 2000

University of Wisconsin, UW Center – Rock County, 1995 – 1996; no degree

American School of Classical Studies at Athens, 1993 – 1994; Fulbright Scholar, no degree

College of the Holy Cross, 1989 – 1993; B.A. *summa cum laude*, 1993

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.

2019 – Present

Cuyahoga County Court of Common Pleas
1200 Ontario Street, Courtroom 21-D
Cleveland, Ohio 44113
Judge

2017 – Present

Case Western Reserve University School of Law
11075 East Boulevard
Cleveland, Ohio 44106
Adjunct Professor

2014 – 2019

Porter Wright Morris & Arthur LLP
950 Main Avenue, Suite 500
Cleveland, Ohio 44113
Partner

2003 – 2014

Squire Sanders (US) LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114
Partner (2009 – 2014)
Senior Associate (2007 – 2008)
Associate (2003 – 2006)

2001 – 2003; Summer 2000; Summer 1999

Thompson Hine LLP
3900 Key Tower
127 Public Square
Cleveland, Ohio 44114
Associate (2001 – 2003)
Summer Associate (Summer 2000; Summer 1999)

2000 – 2001

Judge Alice M. Batchelder
143 West Liberty Street
Medina, Ohio 44256
Law Clerk

1999 – 2000; 1998 – 1999
Board of Student Advisors
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Member

Summer 1999; Summer 1998
Jones Day
North Point
901 Lakeside Avenue East
Cleveland, Ohio 44114
Summer Associate

1995 – 1997
Senator Lynn S. Adelman
Wisconsin State Senate
P.O. Box 7882
Madison, Wisconsin 53707
Legislative Assistant

Fall 1994
Representative Judy Robson
Wisconsin General Assembly
P.O. Box 8952
Madison, Wisconsin 53708
Legislative Assistant

Summer 1994
Representative Eric Fingerhut
19th Congressional District Office
Cleveland, Ohio
Intern

Summer 1993
Pizza Hut
South Euclid, Ohio
Delivery Driver

Other Affiliations (Uncompensated):

2019 – Present
Ohio Common Pleas Judges Association
65 South Front Street, 4th Floor
Columbus, Ohio 43215

Member

2014 – 2019

Ohio Innocence Project
2540 Clifton Avenue
Cincinnati, Ohio 45221
Board Member, Northeast Ohio Board of Advocates

2016 – 2019

The Cleveland Orchestra Advisory Council
11001 Euclid Avenue
Cleveland, Ohio 44106
Board Member

2018 – 2019

Bipartisan Political Education Project
Nunn Drive
Highland Heights, Kentucky 41099
Board Member

2008 – 2013

The Birchwood School
4400 West 140th Street
Cleveland, Ohio 44135
Board Member
Vice Chair (2009 – 2011)
Chair (2011 – 2013)

2006 – 2013

Trust for Public Land
1250 Old River Road, Suite 202
Cleveland, Ohio 44113
Ohio Advisory Council

2007 – 2016

The Club at Key Center
127 Public Square
Cleveland, Ohio 44114
Board Member
Vice Chair (2008)
Chair (2009)

2003 – 2006

Community Legal Services of Cleveland, Inc.
1223 West Sixth Street
Cleveland, Ohio 44113

Board Member

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

I have not served in the military. I registered for the selective service upon turning 18.

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

Best Lawyers in America (2010 – 2019) (selected based on peer review for products liability litigation)

Ohio Super Lawyers (2012 – 2019) (recognized for defense of personal-injury products liability claims as one of top five percent of Ohio attorneys based on independent selection and review process)

Cleveland's Best Lawyers (2012 – 2017) (selected based on peer-review evaluation for products liability litigation)

Rising Star, Ohio Super Lawyers Magazine (2005 – 2010)

Fulbright Scholarship, Athens, Greece (1993 – 1994)

Phi Beta Kappa (inducted 1993)

Alpha Sigma Nu (honor society of Jesuit colleges and universities)

Charles A. Dana Scholar (1991 – 1993) (one of 20 students selected on the basis of academic achievement and leadership)

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.

Cleveland Metropolitan Bar Association (2001 – Present)
Young Lawyers Section, Executive Council (2002 – 2006)

Evaluation Committee, Federal Defender, Northern District of Ohio (2010 – 2011)

Federal Bar Association (2008 – Present)
Bench/Bar Relations Committee (2019 – Present)
Government Relations Committee (2016 – 2019)

Task Force on Nominations and Elections (2017 – 2018)
Foundation Scholarship Selection Committee (2019 – 2020)
Fellow of the Foundation of the Federal Bar Association (2019 – Present)

Federal Bar Association, N.D. of Ohio Chapter (2008 – Present)
Chapter Delegate to Federal Bar Association (2018 – 2019)
President (2017 – 2018)
Vice President (2016 – 2017)
Secretary (2015 – 2016)
Treasurer (2014 – 2015)
Member, Board of Directors (2008 – Present)

John M. Manos Inn of Court (2008 – Present)

Justinian Forum (2001 – Present)

Life Member, Judicial Conference of the U.S. Court of Appeals, Sixth Circuit (2010 – Present)

Northern District of Ohio Advisory Group (2017 – 2019)

Ohio State Bar Association (2004 – Present)

Ohio State Bar Foundation (Fellows Class of 2011)

Sixth Circuit Advisory Committee on Rules (2009 – 2019)
Chair (2012 – 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.

Ohio, 2000.

There have been no lapses in membership.

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

United States Supreme Court, 2003
United States Court of Appeals, Second Circuit, 2014
United States Court of Appeals, Third Circuit, 2004
United States Court of Appeals, Sixth Circuit, 2001

United States Court of Appeals, Seventh Circuit, 2003
United States Court of Appeals, Eighth Circuit, 2004
United States Court of Appeals, Ninth Circuit, 2014
United States Court of Appeals, Eleventh Circuit, 2012
United States Court of Appeals, D.C. Circuit, 2003
United States Court of Appeals, Federal Circuit, 2002
United States District Court, Northern District of Ohio, 2001
United States District Court, Southern District of Ohio, 2004
United States District Court, Eastern District of Michigan, 2010
United States Court of Federal Claims, 2001
United States Tax Court, 2001

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.

City Club of Cleveland (2001 – present)

DRI (approximately 2017 – 2019)

Federalist Society (2005 – present)

Harvard Club of Northeast Ohio (2000 – Present)

Harvard Law School Alumni Association (2000 – Present)

Northern Ohio Italian-American Foundation (approximately 2005 – present)

Product Liability Advisory Council (PLAC) (2015 – 2019)

Holy Cross Club of Northern Ohio (2000 – Present)

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

to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

More Information Will Help Bring Fairness to Sentencing, Cleveland Plain Dealer, Jan. 23, 2020. Copy supplied.

With Daniel R. Karon, "*Can't We All Just Get Along?*" *Civility Across the V*, The Benchers (American Inns of Court), May 2019. Copy supplied.

A Generation of Sociopaths, The Federal Lawyer, May 2018. Copy supplied.

Ruling on Short Sandwiches May Cast a Long Shadow, Law360, Jan. 18, 2018. Copy supplied.

With Daniel R. Karon, *How Plaintiffs and Defense Counsel Misperceive Each Other*, Law360, Sept. 25, 2017. Copy supplied.

With Caroline Gentry & Tracy Francis, *Resolve That Class Action Lawsuit Before It Is Filed*, Association of Corporate Counsel, Northeast Ohio, 2Q17. Copy supplied.

Discipline for Sexual Battery Too Lenient, Cleveland Metropolitan Bar Journal, Jan. 2017. Copy supplied.

With Brian Augustine, *FDA New Food Safety Rule Spans Stakeholders from Farm to Fork*, Porter Wright Law Alert, May 20, 2016. Copy supplied.

W. Kelly Johnson, *Department of Justice Makes Food Safety a Prosecution Priority*, Cincinnati Bar Report, April 2016. Copy supplied.

With Dante A. Marinucci, *Far-Reaching Consequences of NFL Concussion Litigation*, Law360, May 3, 2013. Copy supplied.

With Stephanie E. Niehaus, *Nano-Torts on the Horizon*, Nanotechnology Law & Business, Fall 2012. Copy supplied.

Raising Taxes in a Fragile Economy Wrong for Shaker Heights, Letter to the Editor, Sun Press, July 30, 2012. Copy supplied.

With Trevor G. Covey, *Life After Mohawk: Protecting the Privilege in Ohio*, Ohio Lawyer, November/December 2011. Copy supplied.

With Michelle H. Oliver, *Toward a Uniform Standard for Compelling*, ABA Appellate Practice Journal, Fall 2010. Copy supplied.

An Unexpected Surprise: An Open Issue on a Fundamental Issue in Sixth Circuit Summary-Judgment Practice, with Thomas S. Kilbane, paper presented at Ohio State Bar Association Bench-Bar Conference. I have been unable to locate a copy of this paper.

IRS Cracking Down on Abusive Tax Shelters, Crain's Cleveland Business, Oct. 14-20, 2002. Copy supplied.

Antitrust and Baseball, Harvard Journal on Legislation, 1999. Copy supplied.

Book Review, Harvard Journal on Legislation, 1998. Copy supplied.

Reed and Gabriel Rank Among '92's Best, The Crusader, January 29, 1993. Copy supplied.

Leadership Within SGA, The Crusader, November 20, 1992. Copy supplied.

Blatant Violence Not a Joke, Letter to the Editor (one signatory of many), The Crusader, October 9, 1992. Copy supplied.

With Thomas R. Cincotta, *What About the Assaults?*, The Crusader, September 25, 1992. Copy supplied.

Silence Only Approves, The Crusader, April 3, 1992. Copy supplied.

Hypocritical Censorship, The Crusader, February 21, 1992. Copy supplied.

Bush's New World Chaos, The Crusader, September 20, 1991. Copy supplied.

Refusing the CIA's Recruitment, Letter to the Editor (one signatory of many), The Crusader, October 27, 1989.

Sex, Lies, and Videotape, The Crusader, September 29, 1989. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If

you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

The Sixth Circuit Advisory Committee on Rules periodically considered proposed revisions to the Court's Local Rules and produced reports to the Court on the proposals, including a comprehensive updating and rewriting of the Local Rules in approximately 2012. I have not located copies of these reports.

The Northern District of Ohio Advisory Group reported to the Court on various issues and proposals, including proposed revisions to the Court's Local Rules. In 2018, I proposed changing the Local Rules from page limits for motions and briefs to word limits, but that proposal was not adopted by the Court. I have not located a copy of these reports.

As part of the committee evaluating the performance of the Federal Defender for the Northern District of Ohio in 2010 – 2011, I contributed to the report the committee prepared and delivered to the Sixth Circuit. I have not located a copy of that report.

- 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.

To the best of my knowledge, I have given no such testimony nor made any such official statements.

- 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.

November 7, 2019: Panelist, A View from the Bench, Northeast Ohio Association of Corporate Counsel, Cleveland, Ohio. I spoke addressing case management practices in civil litigation. I have no notes, transcript, or recording. The address of Association of Corporate Counsel is 1001 G Street NW, Suite 300W, Washington, D.C. 20001.

October 3, 2019: Panelist, Best Practices in Civil Litigation, Cleveland Metropolitan Bar Association, Cleveland, Ohio. I spoke addressing civil case

management and tips and best practices for attorneys. I have no notes, transcript, or recording. The address of Cleveland Metropolitan Bar Association is 1375 East 9th Street, Floor 2, Cleveland, Ohio 44114.

September 10, 2019: Speaker, Investiture, Cleveland-Marshall College of Law Cleveland, Ohio. Recording supplied.

December 6, 2018: Speaker, Class Action Developments, Porter Wright Annual Ethics & Trends in Litigation CLE Program, Columbus, Ohio. I spoke updating practitioners and clients on recent developments of note in these areas of civil practice. I have no notes, transcript, or recording. The address of Porter Wright is 41 South High Street, Suites 2800 – 3200, Columbus, Ohio 43215.

December 8, 2017: Speaker, Trends in Class Actions, Mass Torts, and MDLs, Porter Wright Annual Ethics & Trends in Litigation CLE Program, Columbus, Ohio. I spoke updating practitioners and clients on recent developments of note in these areas of civil practice. I have no notes, transcript, or recording. The address of Porter Wright is 41 South High Street, Suites 2800 – 3200, Columbus, Ohio 43215.

December 9, 2015: Speaker, 2015 Appellate Year in Review, Porter Wright Annual Ethics & Trends in Litigation CLE Program, Columbus, Ohio. I spoke reviewing key decisions of interest to practitioners and clients. I have no notes, transcript, or recording. The address of Porter Wright is 41 South High Street, Suites 2800 – 3200, Columbus, Ohio 43215.

July 11, 2017: Speaker, *Russ v. Reynoldsburg* Presentation to OSBA Animal Law Section, Ohio State Bar Association, Columbus, Ohio. I spoke reviewing recent decision from the Ohio Court of Appeals, Fifth District and its significance for municipalities around the State. I have no notes, transcript, or recording. The address of the Ohio State Bar Association is 1700 Lake Shore Drive, Columbus, Ohio 43204.

November 21, 2014: Speaker, Fast Cars and Dangerous Rides: Ethical Considerations in Managing a Litigation Portfolio, Crain's General and In-House Counsel Summit, Cleveland, Ohio. I spoke using the GM ignition-switch litigation as a case study for exploring various ethical issues facing in-house counsel. I have no notes, transcript, or recording. The address of Crain's Cleveland Business is 700 West St. Clair, Suite 310, Cleveland, Ohio 44113.

September 23, 2014: Speaker, E-Discovery, Lunch and Learn, KeyBank, Cleveland, Ohio. I spoke addressing practical considerations in discovery of electronically stored information. I have no notes, transcript, or recording. The address of KeyBank is 127 Public Square, Cleveland, Ohio 44114.

November 20, 2013: Speaker, Nanotechnology as an Emerging Source of Litigation, Tucker Ellis, Cleveland. I spoke addressing issues at the intersection of law and science as part of a panel discussion for practitioners and in-house counsel. I have no notes, transcript, or recording. The address of Tucker Ellis LLP is 950 Main Avenue, Suite 1100, Cleveland, Ohio 44113.

September 13, 2012: Speaker, Sixth Circuit Webinar, Squire Sanders, Cincinnati, Ohio. I spoke reviewing key decisions of interest to practitioners and clients. I have no notes, transcript, or recording. The address of Squire Patton Boggs is 201 East Fourth Street, Suite 1900, Cincinnati, Ohio 45202.

October 14, 2011: Speaker, The Practice That Never Sleeps: Reexamining the Class-Action Practice and Considering Where It – Indeed, We – Go From Here, 15th Annual ABA National Institute on Class Actions, New York, New York. I spoke presenting views from the defense bar on issues in class action practice as part of a panel discussion. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

September 12, 2011: Speaker, Nanotechnology Litigation to Come: A Case Study, PLI, online. I addressed emerging issues at the intersection of law and science for audience of lawyers and scientists. I have no notes, transcript, or recording. The address of the Practising Law Institute is 1177 Avenue of the Americas, New York, New York 10036.

September 8, 2011: Speaker, Sixth Circuit Webinar, Squire Sanders, Cleveland, Ohio. I spoke reviewing key decisions of interest to practitioners and clients. I have no notes, transcript, or recording. The address of Squire Patton Boggs is 4900 Key Tower 127 Public Square, Cleveland, Ohio 44114.

May 18, 2011: Speaker, Nanotechnology: The Next Big Thing?, Cleveland Metropolitan Bar Association Litigation Section, Cleveland, Ohio. I spoke presenting overview of potential litigation in emerging area of tort law. I have no notes, transcript, or recording. The address of Cleveland Metropolitan Bar Association is 1375 East 9th Street, Floor 2, Cleveland, Ohio 44114.

March 16, 2011: Speaker, Case Study: Monopolization and Panel on Civil Antitrust Litigation, Federal Bar Association, Cleveland, Ohio. I spoke addressing key issues in civil antitrust litigation from the perspective of practitioners as part of panel discussion. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

February 4, 2011: Moderator, Debate on Second Amendment, City Club of Cleveland, Cleveland, Ohio. I moderated a debate on the Second Amendment. I

have no notes, transcript, or recording. The address of the City Club of Cleveland is 850 Euclid Avenue, 2nd Floor, Cleveland, Ohio 44114.

November 19, 2010: Speaker, Antitrust and Other Complex Litigation, Federal Bar Association, Cleveland, Ohio. I spoke highlighting issues in this area of complex litigation for new lawyers. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

October 2, 2010: Speaker, Alumni Colloquium: Vision for the Church, College of the Holy Cross, Worcester, Massachusetts. I spoke about the influence of Kim McElhaney, Chaplain at the College of the Holy Cross, on my life and faith at a memorial service. I have no notes, transcript, or recording. The address of College of the Holy Cross is 1 College Street, Worcester, Massachusetts 01610.

November 13, 2009: Speaker, Antitrust and Other Complex Litigation, Federal Bar Association, Cleveland, Ohio. I spoke highlighting issues in this area of complex litigation for new lawyers. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

February 125, 2008: Speaker, Pro Bono Appellate Practice, Cleveland Metropolitan Bar Association, Cleveland, Ohio. I spoke encouraging lawyers to participate in Sixth Circuit program by representing indigent defendants on appeal. I have no notes, transcript, or recording. The address of Cleveland Metropolitan Bar Association is 1375 East 9th Street, Floor 2, Cleveland, Ohio 44114.

May 23, 2006: Speaker, Motion Practice in Federal Court, Lorman Education Services, Cleveland, Ohio. I spoke providing overview for practitioners of key requirements under Federal Rules of Civil Procedure and Local Rules. I have no notes, transcript, or recording. The address for Lorman Education Services is 2510 Alpine Road, Eau Claire, Wisconsin 54703.

March 1, 2006: Moderator, Debate on Abortion, City Club of Cleveland, Cleveland, Ohio. I moderated a debate between two other individuals. I have no notes, transcript, or recording. The address of the City Club of Cleveland is 850 Euclid Avenue, 2nd Floor, Cleveland, Ohio 44114.

February 2, 2006: Speaker, Career Paths Panel, Cleveland-Marshall College of Law, Cleveland Bar Association, Young Lawyers Section, Cleveland, Ohio. I spoke providing view of civil practice at a law firm for current law students. I have no notes, transcript, or recording. The address of Cleveland Metropolitan Bar Association is 1375 East 9th Street, Floor 2, Cleveland, Ohio 44114.

August 18, 2005: Speaker, CAFA: Class Action Problems & Solutions, Cleveland Metropolitan Bar Association, Cleveland, Ohio. I spoke discussing newly enacted statute in presentation for practitioners. I have no notes, transcript, or recording. The address of Cleveland Metropolitan Bar Association is 1375 East 9th Street, Floor 2, Cleveland, Ohio 44114.

November 18, 2004: Speaker, Career Paths Panel, Cleveland-Marshall College of Law, Cleveland Bar Association, Young Lawyers Section, Cleveland, Ohio. I spoke providing view of civil practice at a law firm for current law students. I have no notes, transcript, or recording. The address of Cleveland Metropolitan Bar Association is 1375 East 9th Street, Floor 2, Cleveland, Ohio 44114.

May 17, 2004: Host, Regionalism Program, City Club of Cleveland, New Leaders, Cleveland, Ohio. I have no notes, transcript, or recording. I welcome participants in the program and introduced the speakers. The address of the City Club of Cleveland is 850 Euclid Avenue, 2nd Floor, Cleveland, Ohio 44114.

November 4, 2003: Speaker, Career Paths Panel, Case Western Reserve University Law School, Cleveland Bar Association, Young Lawyers Section, Cleveland, Ohio. I spoke providing view of civil practice at a law firm for current law students. I have no notes, transcript, or recording. The address of Cleveland Metropolitan Bar Association is 1375 East 9th Street, Floor 2, Cleveland, Ohio 44114.

- 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.

Cory Shaffer, *New Judge Appointed to Cuyahoga County Common Pleas Court Bench*, Cleveland.com, June 21, 2019. Copy supplied.

Zachary Zagger, *Reggie Bush Injury Award Likely to Spur Pro-Athlete PI Suits*, Law360, June 19, 2018. Copy supplied.

Zachary Zagger, *Uncapped Nature of NFL Concussion Deal Causing Hiccups*, Law360, Mar. 23, 2018. Copy supplied.

Adam Rhodes, *Counsel Could Help Esports Players Level Up, Attys Say*, Law360, Oct. 20, 2017. Copy supplied.

Press Release, *Court ruling strikes down breed specific city ordinance*, Porter Wright, May 11, 2017. Copy supplied.

Zachary Zagger, *Fee Disputes Cause Hiccup in NFL Concussion Settlement*, Law360, Apr. 13, 2017. Copy supplied.

Zachary Zagger, *Justices' Punt on Head Injuries Buys NFL Claims Approach*, Law360, Dec. 12, 2016. Copy supplied.

Zachary Zagger, *Pro-Athlete Personal Injury Liability Claims Taking Hold*, Law360, Oct. 31, 2016. Copy supplied.

Zachary Zagger, *High Court Unlikely To Tackle NFL Concussion Deal Science*, Law360, Sept. 2, 2016. Copy supplied.

Zachary Zagger, *New NCAA Injury Suits Could be Negated by Concussion Deal*, Law360, July 14, 2016. Copy supplied.

Zachary Zagger, *3rd Circ. Puts an End to Objections in NFL Concussion Deal*, Law360, Apr. 18, 2016. Copy supplied.

Zachary Zagger, *Questions on NFL's CTE Stance Unlikely to Upend Settlement*, Law360, Mar. 29, 2016. Copy supplied.

Sindhu Sundar, *Ex-NCAA Player's Public Beef with Atty Imperils \$75M Deal*, Law360, June 16, 2015. Copy supplied.

Press Release, *Phil Calabrese adds insights to article in ABA/BNA Lawyers' Manual on Professional Conduct*, Porter Wright, May 18, 2015. Copy supplied.

Sindhu Sundar, *NFL Judge's Hands-On Role Sets Tone for Concussion Fights*, Law360, Feb. 3, 2015. Copy supplied.

Jake Simpson, *Squire Patton Global Push Leads to Ohio Atty Departures*, Law360, Aug. 21, 2014. Copy supplied.

Sindhu Sundar, *NCAA Concussion Deal Discourages Future Recovery Suits*, Law360, July 31, 2014. Copy supplied.

Squire Patton Boggs, *Practitioner Perspective: Oral Arguments*, Sixth Circuit Appellate Blog, Feb. 12, 2014. Copy supplied.

Greg Ryan, *NHL Wields Formidable Defenses in Concussion Action*, Law360, Nov. 26, 2013. Copy supplied.

In 2007, in connection with representing my client in the *Cavel v. Madigan* litigation in Illinois, I gave periodic oral statements to the media regarding the status of the case. I have not been able to find the stories that resulted from these press statements.

Kimberly Bonvissuto, *Scaled-Back Hiring Leaves Attorneys Looking for Work*, Crain's Cleveland Business, Feb. 2002. Copy supplied.

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

Judge, Cuyahoga County Court of Common Pleas (appointed effective July 15, 2019) with jurisdiction over all felony criminal cases and civil cases with no dollar limit.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? 3

- i. Of these, approximately what percent were:

jury trials:	100%
bench trials:	0% [total 100%]
civil proceedings:	0%
criminal proceedings:	100% [total 100%]

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

The opinions I have authored have not yet been published. The most significant opinions I have written (summarized below) are provided.

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

1. *State v. Thorpe*, Case No. CR-18-634964-A

The State indicted Defendant Alonzo Thorpe Jr. for murder in connection with the death of his 34-year-old cousin Nicole Thorpe. At the time of the offense, Mr. Thorpe was 15 years old, and at the time of trial he was 17. Before I took over the case, he had been bound over from juvenile court to be tried as an adult. Defendant maintained his innocence. Before trial, I wrote two opinions on a motion to suppress and an order setting forth a protocol for testing of the firearm used in the offense. Each of these rulings is provided. During the course of trial proceedings, I ruled on a *Daubert* motion, various discovery issues, and motions for judgment of acquittal. I also excused a juror for misconduct. Each of my rulings is memorialized on the docket, and I stated my reasons on the record rather than writing an opinion.

Trial began on October 7, 2019. After deliberations that spanned three days, the jury returned a verdict on October 23, 2019. The jury acquitted the defendant of murder, but convicted of the lesser-included offense of reckless homicide. The judgment of conviction is provided. Defendant's appeal remains pending.

Counsel for State:

Gregory Mussman
John Kirkland
Yasmine Hasan
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

Counsel for Defendant Alonzo Thorpe Jr.:

Meredith A. O'Brien
Kenneth R. Bailey
Bailey Legal Group
220 West Market Street
Sandusky, Ohio 44870
(419) 625-6740

Kate Pruchnicki
Jay Milano
Milano Law Building
2639 Wooster Road
Rocky River, Ohio 44116
(440) 356-2828

2. *Lam v. City of Cleveland*, Case No. CV-18-902688

Plaintiff, a police sergeant and decorated infantry captain in the Ohio National Guard, alleged that the City of Cleveland violated the Ohio Veterans Act, which parallels the federal Uniformed Services Employment and Reemployment Rights Act of 1994, by offsetting compensation for his military service against his public salary. Plaintiff brought his claims as a class action on behalf of similarly situated public employees in Cincinnati, Dayton, Akron, Parma, and other municipalities. Accordingly, the case had broad reach throughout Ohio, and potentially beyond.

I held oral argument on the record on the parties' cross-motions for summary judgment on September 18, 2019. On October 1, 2019, I issued a 33-page opinion denying Plaintiff's motion for summary judgment and granting Defendant's cross-motion for summary judgment. The ruling, which Plaintiff appealed, is provided.

Counsel for Plaintiff David H. Lam:

Daniel G. Morris
The Law Offices of D.G. Morris, LLC
4205 Woodbridge Avenue
Cleveland, Ohio 44109
(216) 965-1325

Counsel for Defendant City of Cleveland:

Ami J. Patel
Jon M. Dileo
Zashin & Rich
950 Main Avenue, Suite 400
Cleveland, Ohio 44113
(216) 696-4441

3. *State v. Tejeda*, Case No. CR-18-630656-A

This case was the first where I presided at a jury trial. The State charged Defendant Rafael Tejeda with rape and felonious assault. The indictment arose from the alleged digital rape of the woman the defendant was dating at the time, on a night where the two had been drinking. Trial began on August 5, 2019. Because the defendant did not speak English, the trial required interpreters. After three days of trial, the jury returned a verdict on August 8, 2019. The jury found Defendant not guilty of rape and felonious assault, but convicted of the lesser-included offense of simple assault, a misdemeanor. The judgment of conviction is provided.

Counsel for State:

Glenn Ramdhan
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

Counsel for Defendant Rafael Tejeda:

Alan S. Levine
Gary W. Eisner
Katie L. Fitzsimmons
4700 Rockside Road, Suite 408
Independence, Ohio 44131
(216) 696-1233

4. *State v. Murray*, CR-19-637647

On November 10, 2018, Mercedes Stewart picked up Defendant Edmond Murray when he was released from jail upon completion of a sentence for drunk driving. The two, now in their 40s, had known each other since they were teenagers and

been variously interested in a romantic relationship, but never available at the same time. On the drive home, the two discussed possibly having a relationship. Later that day, the two had a sexual encounter, which Stewart characterized as a non-consensual rape and Murray described as consensual. Following a three-day jury trial and two days of deliberations, the jury deadlocked. I declared a mistrial, and the case is scheduled for a new trial in January 2020.

Counsel for State:

Jennifer King
Karen Green
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

Counsel for Defendant:

W. Scott Ramsey
55 Public Square, Suite 2100
Cleveland, Ohio 44113
(216) 696-5520

Adam Parker
3764 Mayfield Road, #1
Cleveland Heights, Ohio 44121

5. *McCloud v. Cuyahoga County Board of Commissioners, et al.*, CV-19-922292

Plaintiffs Shabrina McCloud, the mother of Ta'-Naejah McCloud, a minor, and Kevin Lipman, as administrator of the estate of Ta'-Naejah McCloud, filed suit based on allegations that the defendants, including Cuyahoga County and its Department of Children and Family Services, among others, failed to investigate, protect, and ensure the safety of Ta'-Naejah McCloud resulting in her abuse and death in March 2017.

As it turns out, Plaintiff initiated suit by having Chicago counsel file and serve the complaint. Under Ohio law, out-of-state counsel may not commence litigation, and this requirement is not a technical defect that may be cured through a later application for admission *pro hac vice*. Accordingly, as required by Ohio law, I dismissed the complaint without prejudice. The ruling is provided.

Counsel for Plaintiffs:

Jay Deratany
Megan O'Conner
Roosevelt Allen
The Deratany Law Firm

221 North LaSalle Street, Suite 2200
Chicago, Illinois 60601
(312) 857-7285

Thomas J. Silk
Obral, Silk & Associates, LLC
55 Public Square, Suite 1700
Cleveland, Ohio 44113
(216) 529-9377

Counsel for Cuyahoga County Defendants:

Robert F. Cathcart
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

6. *Brennan v. North Coast Administrators, Inc.*, Case No. CV-17-888769

Plaintiff worked for approximately sixteen years for Defendant, an administrator of employee benefits programs. Plaintiff alleged that, following her diagnosis with cancer, she suffered adverse employment actions and was ultimately terminated. Defendant disputed the claims, pointing to (among other things) the cancer diagnosis its principal received at about the same time. When the case did not settle in mediation, I actively managed the final pretrial workup, including motion practice on various issues, which ultimately resulted in a settlement on the eve of trial.

Counsel for Plaintiff Peggy Brennan:

Patrick M. Ward
Matthew A. Dooley
5455 Detroit Road
Sheffield Lake, Ohio 44054
(440) 930-4001

Counsel for Defendant North Coast Administrators & Cheryl A. Donovan:

Michael J. O'Shea
700 West St. Clair Avenue, Suite 110
Cleveland, Ohio 44113
(216) 241-0011

Kevin T. Roberts
The Roberts Law Firm
7622 Columbia Road
Olmsted Falls, Ohio 44138
(440) 793-6255

7. *State v. Morris*, Case No. CR-19-641877-A

The State charged Defendant with aggravated assault based on an incident in which he allegedly attacked an ex-girlfriend and choked her. He pled guilty to lesser charges of domestic violence. Because of the nature of the offense and the severity of the conduct, I sentenced Mr. Morris to prison, notwithstanding the statutory presumption in favor of a less-restrictive community control sanction. The judgment of conviction is provided.

Counsel for State:

Kelly C. Needham
Chad Cleveland
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

Counsel for Defendant Kenyatta Morris:

Adrienne R. Cavender
Office of the Cuyahoga County Public Defender
310 Lakeside Avenue, Floor 4
Cleveland, Ohio 44113
(216) 443-7295

8. *State v. Ferrante*, Case No. CR-19-637347-A

Defendant pled guilty to three felonies in connection with stealing money while a home health aide for an elderly gentleman who passed away recently at age 96. He and his wife had their assets in trust for their middle-aged son who had disabilities, including autism. Her theft was detected by the trust's lawyers, who alerted law enforcement. A single mother, Ferrante then quit and went to work as a waitress to support herself and her 12-year-old son. At sentencing, the adult son and the prosecutor requested a sentence of time in prison. After stating that non-violent crime can often be even more serious than violent crime, I sentenced Ms. Ferrante to two years of probation, with one year of house arrest with work release so she could continue to support herself and make restitution, which I considered the most important aim under the circumstances, particularly with a son who would otherwise enter the foster care system. The judgment of conviction is provided.

Counsel for State:

Erica Barnhill
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113

(216) 443-7800

Counsel for Defendant:

Gregory S. Robey
Robey & Robey
14402 Granger Road
Cleveland, Ohio 44137
(216) 581-8200

9. *State v. Krieger*, Case No. CR-18-635559-A

In my first sentencing as a judge, Defendant had pled guilty to aggravated vehicular assault after he left a Christmas party having had too much to drink. He crossed the center line and struck an oncoming car, seriously injuring the passenger. Following his arrest at the scene, the defendant—a 62 year-old firefighter and EMT—checked himself in to an inpatient alcohol treatment program and accepted responsibility for the consequences of his actions. Because the passenger of the vehicle struck was the wife of a retired police officer, law enforcement officers and representatives packed the court, supporting the State and the defendant. I sentenced Stefan Krieger to a term of imprisonment. The judgment of conviction is provided.

Counsel for State:

Yasmine Hasan
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

Counsel for Defendant:

David A. Schroeder
117 West Main Street
Geneva, Ohio 44041
(440) 466-1184

10. *State v. Miller*, CR-19-639539-A

At age 18, high school senior Latrell Miller was walking home from school and robbed a classmate of his of \$200 and a cell phone, using a gun during the commission of the offense. For this offense, Miller, who had no criminal record (neither juvenile delinquencies, nor arrests) and a stable, supportive family, faced between six and fourteen years in prison, with a mandatory minimum of four years based on the charges. He pled guilty to a lesser offense, but still faced three to eleven years in prison, and a statutory presumption in favor of prison time. At sentencing, I gave the defendant a term of probation, with the threat of time in prison for another offense. The judgment of conviction is provided.

Counsel for State:

Kelly C. Needham
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

Counsel for Defendant:

James J. Hofelich
The Hofelich Law Firm, LLC
614 West Superior Avenue, Suite 1310
Cleveland, Ohio 44113
(440) 655-2275

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Lam v. City of Cleveland*, Case No. CV-18-902688. Copy supplied.

Counsel for Plaintiff David H. Lam:

Daniel G. Morris
The Law Offices of D.G. Morris, LLC
4205 Woodbridge Avenue
Cleveland, Ohio 44109
(216) 965-1325

Counsel for Defendant City of Cleveland:

Ami J. Patel
Jon M. Dileo
Zashin & Rich
950 Main Avenue, Suite 400
Cleveland, Ohio 44113
(216) 696-4441

2. *Scott v. Sarchione Ford*, Case No. 909439. Copy supplied.

Counsel for Plaintiff John J. Scott:

James S. Wertheim
24700 Chagrin Blvd, Suite 309
Beachwood, Ohio 44122
(216) 902-1719

Counsel for Defendant Sarchione Ford:

Robert Terback
Rema A. Ina
Gallagher Sharp
1501 Euclid Avenue, 6th Floor
Cleveland, Ohio 44115
(216) 241-5310

3. *State v. Thorpe*, Case No. CR-18-634964-A. Copy supplied.

Counsel for State:
Gregory Mussman
John Kirkland
Yasmine Hasan
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

Counsel for Defendant Alonzo Thorpe Jr.:
Meredith A. O'Brien
Kenneth R. Bailey
Bailey Legal Group
220 West Market Street
Sandusky, Ohio 44870
(419) 625-6740

Kate Pruchnicki
Jay Milano
Milano Law Building
2639 Wooster Road
Rocky River, Ohio 44116
(440) 356-2828

4. *State v. Thorpe*, Case No. CR-18-634964-A. Copy supplied.

Counsel for State:
Gregory Mussman
John Kirkland
Yasmine Hasan
Cuyahoga County Prosecutor's Office
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(216) 443-7800

Counsel for Defendant Alonzo Thorpe Jr.:
Meredith A. O'Brien

Kenneth R. Bailey
Bailey Legal Group
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(419) 625-6740

Kate Pruchnicki
Jay Milano
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2639 Wooster Road
Rocky River, Ohio 44116
(440) 356-2828

5. *Ruffing Montessori School v. Samad*, Case No. CV-18-904267. Copy supplied.

Counsel for Plaintiff Ruffing Montessori School:

Amanda Rasbach Yurechko
Weltman Weinberg & Reis Co.
Lakeside Place, Suite 200
323 West Lakeside Avenue
Cleveland, Ohio 44113
(216) 685-1060

Counsel for Defendant Nyesha Moore-Samad

Jeffrey J. Fanger
Gerry Davidson
36 Alpha Park
Highland Heights, OH 44143
(440) 605-9641

6. *Fowerbaugh v. Sliman*, Case No. CV-18-908090. Copy supplied.

Counsel for Plaintiffs/Counter-Claim Defendants:

Joseph B. Jerome
John D. Grauer
55 Public Square, Suite 1950
Cleveland, Ohio 44113
(216) 241-9990

Counsel for Defendants/Counter-Claim Plaintiffs:

Stephen D. Dodd
8440 Station Street
Mentor, Ohio 44060
(440) 220-7457

Counsel for Third-Party Defendants:

Richard T. Lobas
Cynthia A. Lammert
20600 Chagrin Blvd., Suite 1100
Cleveland, Ohio 44122
(216) 278-7100

7. *State v. Melendez*, Case No. CR-03-436652-ZA & CR-03-4366543-A.
Copy supplied.

Counsel for State:

Frank Romeo Zeleznikar
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

Defendant Estarling Melendez

Pro Se
#A452804
2500 South Avon-Belden Road
Grafton, Ohio 44044
(440) 748-1161

8. *State v. Taylor*, Case No. CR-17-622339-B. Copy supplied.

Counsel for State:

Jennifer M. Meyer
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

Defendant Demershion D. Taylor

Pro Se
#A752937
Lake Erie Correctional Institution
501 Thompson Road
P.O. Box 8000
Conneut, Ohio 44030
(440) 599-4100

9. *State v. Taylor*, Case No. CR-17-622339-B. Copy supplied.

Counsel for State:

Jennifer M. Meyer

Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

Defendant Demershion D. Taylor

Pro Se
#A752937
Lake Erie Correctional Institution
501 Thompson Road
P.O. Box 8000
Conneut, Ohio 44030
(440) 599-4100

10. *McCloud v. Cuyahoga County Board of Commissioners, et al.*, CV-19-922292. Copy supplied.

Counsel for Plaintiffs:

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Megan O'Conner
Roosevelt Allen
The Deratany Law Firm
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Thomas J. Silk
Obral, Silk & Associates, LLC
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Cleveland, Ohio 44113
(216) 529-9377

Counsel for Cuyahoga County Defendants:

Robert F. Cathcart
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
(216) 443-7800

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

None.

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.

None.

- 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.

My practice is to write an opinion on dispositive motions in civil cases. On significant issues in criminal cases, I either write a decision or place my reasoning on the record. Whether decisions I author are published or not is, to the best of my knowledge, not a decision within my control. In each case, the decisions are filed with the clerk and are available on the Court's public docket.

- 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.

Lam v. City of Cleveland, Case No. CV-18-902688. Copy supplied.

State v. Thorpe, Case No. CR-18-634964-A, ruling and supplemental ruling on motion to suppress. Copies supplied.

- 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.

None.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;

- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Upon taking the bench, I reviewed all cases on my docket for potential recusal. In that review, I identified any cases in which my former firm (Porter Wright) represented a party and any of my former clients. As a result of that process, I recused myself from a handful of cases involving clients I was representing when I took the bench. To identify these cases, I reviewed a report from the clerk of courts, which I returned to the Court's administrative judge. I did not retain a copy and am unable to identify these specific matters by case name or number.

Since then, I have recused myself from one case, in which a former partner of mine from Porter Wright represented a party. I did so as soon as my former partner appeared on behalf of a party in response to the filing of the action.

In each case in which I have recused myself, I have done so *sua sponte*, and no party or other interested person made such a request.

15. Public Office, Political Activities and Affiliations:

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

In 1995, I ran unsuccessfully for a non-partisan, at-large city council seat in Beloit, Wisconsin where I lived from 1994 to 1997.

City of Beloit Ethics Board, Beloit, Wisconsin, 1995 to 1997

Citizen member appointed by city council to enforce and provide opinions about compliance with the city's code of ethics for public officials and employees.

City of Shaker Heights Neighborhood Revitalization Committee, 2006 to 2007

Citizen member appointed by mayor to committee addressing strategic issues related to strengthening neighborhoods and enhancing the quality of housing.

City of Shaker Heights Housing Council, Shaker Heights, Ohio, 2007 to 2010

Citizen member appointed by mayor to board charged with implementation and oversight of the City's Community Reinvestment Area tax credit, reporting to the Ohio Department of Development.

- 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.

State Senator Lynn Adelman, 1996, volunteer

Republican Party of Cuyahoga County, member (approximately 2005 to present)

Ohio Republican Party, member (approximately 2005 to present)

In 2006, I served as the treasurer for the campaign committee for Joel Ratner, who ran unsuccessfully for state representative in the district in which I live in Northeast Ohio. Following the election, Mr. Ratner eventually wound down the committee.

16. **Legal Career:** Answer each part separately.

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

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

From 2000 to 2001, I served for a one-year term as a law clerk to Judge Alice M. Batchelder of the U.S. Court of Appeal for the Sixth Circuit.

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

I have not 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.

2001 – 2003; Summer 2000
Thompson Hine LLP
3900 Key Tower
127 Public Square
Cleveland, Ohio 44114
Associate (2001 – 2003)
Summer Associate (Summer 2000)

2003 – 2014
Squire Sanders (US) LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114

Partner (2009 – 2014)
Senior Associate (2007 – 2008)
Associate (2003 – 2006)

2014 – 2019
Porter Wright Morris & Arthur LLP
950 Main Avenue, Suite 500
Cleveland, Ohio 44113
Partner

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

I served as an arbitrator in a handful of civil cases referred to arbitration in the Cuyahoga County Court of Common Pleas. In each case, I served on a panel of three arbitrators and rendered a unanimous decision. To the best of my recollection, the last such case I participated in was in 2014. I do not recall the details of those cases.

b. Describe:

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

Generally, my practice involved all phases of civil litigation, from investigation and pleadings through class certification, discovery, expert testimony, trial, and appeal. Most of my practice involved defense of businesses named as defendants in class actions or defense of product liability and personal injury claims. That work accounts for approximately 80% of my practice. The balance was appellate, including an active pro bono practice, which generally involved appeals in state and federal court from convictions and sentences in criminal and habeas cases.

My practice involved a variety of industries, including oil and gas, pharmaceutical, medical device, automotive, specialty chemical, telecommunications, food, consumer products, banks, financial services, manufacturing, and professional sports franchises. I have also represented individuals, quasi-governmental agencies and organizations, and tax-exempt organizations.

Since taking the bench in July 2019, I have managed a docket of approximately 430 cases and served on the Court's Civil Rules Committee and Commissions Committee and on the Ohio Judicial Conference's Technology Committee and Civil Law and Procedure Committee.

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

Consistent with the nature of my practice, my former clients are typically businesses from a variety of industries that range in size from small, privately held companies to publicly-traded Fortune 50 companies. On average, my former clients are middle-market businesses with limited experience in litigation.

Additionally, I represented some individuals in civil litigation, both as plaintiffs and defendants. Some are wealthy, others are professionals who ended up in litigation, and some are average people with problems I helped resolve through the judicial system.

- 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.

In practice, I appeared in court frequently, often as lead counsel or having significant responsibility for all aspects of a variety of complex civil litigation in state and federal courts around the country, from pre-suit investigation (when representing plaintiffs) and pleadings to motion practice, taking evidence through written and deposition discovery and at evidentiary hearings, regular appearances in court, and development of fact and expert witnesses, through trial (bench and jury) and appeal.

In addition, I managed the day-to-day work-up of many cases for trial. Those that did not go to trial generally settled on the courthouse steps, often with the involvement of a court or mediator in resolution efforts. Typically, these cases required me to manage and coordinate teams of lawyers across jurisdictions to develop the record and prepare a consistent defense against the backdrop of different state substantive law and the procedural rules of different courts. These cases often involved complex legal issues and, frequently, scientific and expert testimony from several different disciplines.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 50% |
| 2. state courts of record: | 40% |
| 3. other courts: | 5% |
| 4. administrative agencies: | 5% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 90% |
| 2. criminal proceedings: | 10% |

- 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.

To the best of my recollection, I have tried between 11 and 13 cases to verdict, including cases arbitrated.

I have tried two cases to verdict in federal courts before juries (each lasted approximately three weeks), one in the Northern District of Ohio, the other in the Western District of New York. In these cases, I was second chair (associate counsel).

I have also had three bench trials in federal courts in the Northern District of Ohio (lead counsel) and the Northern District of Illinois (lead counsel)—two lasted one full day, the third involved several days of testimony and arguments spread over a couple months. Other trial experiences include a bench trial in Ohio state court (lead counsel), arbitrations lasting between a few days to more than a month (associate counsel), and administrative proceedings (sole counsel). Most recently, in January 2019, I served as lead counsel in a criminal case in state court that went to verdict.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 15% |
| 2. non-jury: | 85% |

- 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.

Essef Corp. v. Silivanch, No. 03-573 (U.S. Oct. 14, 2003). Petition for certiorari available at 2003 WL 22490633. Reply in support of certiorari available at 2003 WL 22896673.

Ruimveld v. Birkett, No. 04-7447 (U.S. Nov. 23, 2004). Petition for certiorari supplied.

Bridgestone Corp. v. City of Monroe Employees Retirement System, No. 05-170 (U.S. Aug. 1, 2005). Petition for certiorari available at 2005 WL 1864081.

Sosa v. Jones, No. 05-5097 (U.S. June 30, 2005). Petition for certiorari supplied.

Cavel Int'l v. Madigan, No. 07-962 (U.S. Jan. 18, 2008). Petition for certiorari available at 2008 WL 194305. Reply in support of certiorari available at 2008 WL 2219973.

Cleveland Browns Football Company LLC v. Bentley, No. 11-1008 (U.S. Feb. 13, 2012). Petition for certiorari available at 2012 WL 486889. Reply in support of certiorari available at 2012 WL 1010404.

Majid v. Noble, No. 18-7858 (U.S. Feb. 6, 2019). Petition for certiorari supplied.

Public records also indicate that I was listed as a counsel on the following cases. I have been unable to locate copies of these filings.

Mendoza v. Berghuis, No. 08-8683 (U.S. Feb. 12, 2009). Petition for certiorari.

Tucker v. Palmer, No. 08-10592 (U.S. May 28, 2009). Petition for certiorari and reply in support of certiorari.

Torrez v. McKee, No. 09A1108 (U.S. May 18, 2010). Application for a certificate of appealability.

Cruz v. Holder, No. 11-8012 (U.S. Dec. 23, 2011). Petition for certiorari.

Evans v. Booker, No. 12-5320 (U.S. July 6, 2012). Petition for certiorari.

Rizk v. Prelesnik, No. 12-8414 (U.S. Jan. 28, 2013). Petition for certiorari and reply in support of certiorari.

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. *In re Gadolinium-Based Contrast Agents Prods. Liab. Litig.*, MDL No. 1909, No. 1:08-gd-50000 (N.D. Ohio).

The Judicial Panel on Multidistrict Litigation transferred all cases filed in federal courts throughout the country to the U.S. District Court for the Northern District of Ohio, which conducted coordinated pretrial proceedings, discovery, and trial.

In this litigation, the plaintiffs alleged that administration of gadolinium-based contrast agents, which are used to enhance the images generated in magnetic resonance imaging and angiography procedures, cause a rare condition known as nephrogenic systemic fibrosis (“NSF”), which can result in skin thickening and hardening in a small subset of patients with end-stage renal disease. NSF was first identified as a disease in 2000, about ten years after FDA approved the first GBCAs as safe and effective. In 2006, the medical literature first hypothesized a correlation between GBCAs and NSF.

Over 600 cases were filed in the MDL. The primary defendants were the 4 manufacturers of GBCAs during the relevant time periods. I began representing GE Healthcare in 2007 in connection with this litigation and defended these claims through July 2019, though the MDL more or less ended in 2014 when the Sixth Circuit decided *Decker v. GE Healthcare Inc.*, 770 F.3d 378 (6th Cir. 2014).

In this litigation, my role began as a limited local counsel engagement, then grew when the MDL was created. During the heyday of the litigation, my role expanded to serve, functionally, as co-counsel with my client’s national counsel, and I had deep involvement with all aspects of fact development, expert discovery, and briefing various issues (many of which resulted in published or unpublished rulings), and I regularly appeared in court on the matter. Additionally, I played a role of liaison counsel between the defendants and the court and the plaintiffs’ bar.

Although a handful of individual cases remain pending, all but one of these cases were resolved. At the one trial, in the *Decker* case (which lasted about three weeks in the Northern District of Ohio), I was one of three lawyers at counsel table for GE Healthcare, and I cross-examined expert witnesses, presented defense witnesses, and argued most motions and the jury instructions. The court instructed the jury on three claims, and the jury returned a defense verdict on two, but a verdict for the plaintiff on the remaining claim.

Date of Representation: 2007 – 2019

Court Information: Judge Dan A. Polster presided in the MDL in the U.S. District Court, Northern District of Ohio. Judge Polster appointed Cathy Yanni of JAMS as a mediator and special master, and I worked with her in those capacities as well.

Counsel:

For GE Healthcare:
Heidi Levine (National Counsel)
Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
(212) 839-7366

Michael L. O'Donnell (Settlement Counsel)
Wheeler Trigg O'Donnell LLP

370 Seventeenth Street, Suite 4500
Denver, Colorado 80202-5647
(303) 244-1850

For Bayer:
Tarek Ismail
Goldman Ismail Tomaselli Brennan & Baum LLP
564 West Randolph Street, Suite 400
Chicago, Illinois 60661
(312) 881-5970

For Mallinckrodt:
Deborah A. Moeller
Shook, Hardy & Bacon L.L.P.
2555 Grand Boulevard
Kansas City, Missouri 64108-2613
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For Bracco:
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Baker Sterchi Cowden & Rice LLC
2400 Pershing Road, Suite 500
Kansas City, Missouri 64108
(816) 471-2121

Plaintiffs' Executive Committee:
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Cleveland, Ohio 44114
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2. Diacetyl Mass Tort Litigation for Givaudan Flavors Corporation.

From 2003 to 2007, I defended Givaudan Flavors Corporation, a Cincinnati-based subsidiary of a Swiss company that makes flavors and fragrances for the food industry, against claims that an ingredient (diacetyl) used in butter flavoring for microwave popcorn caused permanent and irreversible lung damage in workers that packaged the popcorn for consumer sale.

After an \$18 million judgment against a competitor, this litigation exploded, resulting in lawsuits arising out of various factories around the country. In the litigation, I was second chair to Damond R. Mace. He and I worked up all aspects of the case, including investigation with our client, expert discovery, discovery from plaintiffs, and preparation for trial. As the litigation grew, the team grew, but I remained in the key role of developing the defense, working up cases for trial, and coordinating strategy among the various cases pending in state and federal courts around the country. Ultimately, the cases we defended settled on the courthouse steps on the eve of two trial dates. In 2007, Givaudan's general counsel took a new position, and the new general counsel used different outside counsel from that point forward.

Date of Representation: 2003 – 2007

Court Information: This litigation included significant cases in the following jurisdictions:

Marion County, Ohio Common Pleas Court—*Arthur v. Givaudan Flavors Corp.* (I have not been able to locate a case number, related cases were filed at 2004-cv-0541) (Judge Robert S. Davidson);

Hamilton County, Ohio Common Pleas Court—*Mitchell v. International Flavors & Fragrances*, Hamilton C.P. No. A-0404929 (Judge David P. Davis);

Cook County, Illinois—*Lopez v. Givaudan Flavors Corp.*, 2004-L-007262 (Judge Daniel M. Locallo);

Hamilton County, Ohio Common Pleas Court—*Doane v. Givaudan Flavors Corp.*,
Hamilton C.P. No. A-0700452 (Judge Steven E. Martin);

Cook County, Illinois—*Campbell v. International Flavors & Fragrances*, 2005-L-
007720 (Judge Daniel M. Locallo);

U.S. District Court, Northern District of Iowa—*Remmes v. International Flavors &
Fragrances* (Judge Mark W. Bennett);

U.S. District Court, Northern District of Iowa—*Kuiper v. International Flavors &
Fragrances* (Judge Mark W. Bennett); and

St. Louis County, Missouri—*Bowling v. Kerry* (I have not been able to locate a state
court case number or the state court Judge; in federal court the Judge was Catherine D.
Perry, U.S. District Court, E.D. Missouri).

These various cases resulted in the following published opinions:

Kuiper v. International Flavors & Fragrances, Inc., 240 F.R.D. 438 (N.D. Iowa 2007)
(dismissing fraud and conspiracy claims)

Remmes v. International Flavors & Fragrances, Inc., 453 F. Supp. 2d 1058 (N.D. Iowa
2006) (dismissing fraud and conspiracy claims)

Remmes v. International Flavors & Fragrances, Inc., 435 F. Supp. 2d 936 (N.D. Iowa
2006) (motion to dismiss claims against trade association)

Bowling v. Kerry, Inc., 406 F. Supp. 2d 1057 (E.D. Mo. 2005) (removal and remand of
case with fraudulently joined party)

Remmes v. International Flavors & Fragrances, Inc., 389 F. Supp. 2d 1080 (N.D. Iowa
2005) (motion to dismiss trade association defendant for lack of personal jurisdiction)

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3. *Robin Industries, Inc. v. Lois E. Nonneman*, No. 1:17-cv-1838 (N.D. Ohio) and No. CV-18-892814 (Cuyahoga County Common Pleas).

The founder of a successful, privately held automotive supply company passed away in 2006, leaving the company to his three daughters. They decided to realize their father's dream of having his employees own the company. To accomplish this, they professionalized management and the board and created an employee stock ownership plan (an "ESOP").

To transfer ownership without hurting the business, the family decided to complete the sale in two steps. First, in 2012, the family shareholders sold 49% of their stock to the ESOP. The company issued notes to the shareholders (on very favorable terms for the company) to finance the transaction. Upon payment of the notes, the parties agreed that the company would redeem the shareholders' remaining 51% of stock at a price to be determined in connection with an independent third-party valuation.

The company paid off the notes in 2017, the third-party valuation determined the worth of the stock for the redemption, but the company insisted on proceeding with a

redemption at a lower price. Eventually, the company filed suit in federal court alleging violations of the Employee Retirement Income Security Act of 1974 ("ERISA").

When the company sued, the family engaged me to defend their interests in the litigation and redemption because their longstanding counsel had a conflict. I served as lead counsel for the family shareholders. Notwithstanding months of negotiations, the company insisted on a redemption at a below-market price. For my clients, I obtained dismissal of the federal ERISA lawsuit. The company responded by bringing claims for breach of contract in state court, and the family shareholders filed counterclaims. The company also sued the family's former counsel.

After further negotiations, the parties resolved the litigation, resulting in a \$30 million redemption transaction.

Date of Representation: 2017 – 2018

Court Information: Judge Dan A. Polster presided in the U.S. District Court, Northern District of Ohio. Magistrate Judge Jonathan D. Greenberg served as a mediator in mediation sessions that spanned many weeks.

In state court, Judge Nancy A. Fuerst of the Cuyahoga County Court of Common Pleas presided over the case.

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4. *SunOpta, Inc. v. Abengoa Bioenergy New Techs., Inc.*, No. 4:08-cv-78 (E.D. Mo.)
& AAA No. 58 198 Y 00060 08.

SunOpta (a Canadian company) and Abengoa Bioenergy New Technologies ("ABNT") (a Spanish company) essentially formed a joint venture to develop new technology for the production of cellulosic ethanol using corn stover. The project ran into difficulties and eventually collapsed.

SunOpta then filed suit in federal court in Missouri against ABNT and a former SunOpta employee named David Weidong He. SunOpta alleged theft of trade secrets, among other things, and also sought a preliminary injunction that would have had the effect of shutting ABNT down. Along with a team of lawyers at my firm, I represented ABNT, essentially handling the day-to-day management and development of the case. That included successfully moving to compel arbitration, developing counterclaims to assert against SunOpta, managing offensive and defensive discovery, preparing ABNT's expert witnesses, and examining the key ABNT employees in the arbitration on whom SunOpta was relying to prove their claims.

After an arbitration in St. Louis that lasted several weeks, the arbitrator issued a ruling in favor of ABNT.

Date of Representation: 2008 – 2010

Court Information: In the U.S. District Court, Eastern District of Missouri, Judge Jean C. Hamilton handled the case. The arbitrator selected through the American Arbitration Association was David L. Evans.

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5. *Radatz v. Federal National Mortgage Association*, 145 Ohio St. 3d 475, 2016-Ohio-1137, 50 N.E.3d 527.

When a residential borrower pays off a mortgage, Ohio law requires that the mortgagor record a notice of satisfaction of the mortgage within 90 days. The statute is a strict liability statute that offers few defenses and provides for statutory damages of \$250. Previously, the Ohio Supreme Court ruled that class actions were appropriate for borrowers to enforce the statute.

In 2003, Plaintiff sued Federal National Mortgage Association (“Fannie Mae”) under that statute, seeking to recover on behalf of a class the statutory damages due to late recordation of mortgage satisfaction where Fannie Mae was the mortgagor. I defended Fannie Mae in this litigation, and my role changed over time. Initially, I was an associate working on the Ohio law aspects of the case and with national counsel (O’Melveny & Myers). Because the case lasted so long, I eventually assumed greater day-to-day responsibility in the case, both among Ohio and national counsel.

Notwithstanding the prior Ohio Supreme Court ruling, the legal question in the case was difficult because unlike prior defendants Fannie Mae acts only in the secondary mortgage market and is precluded by federal statute from serving as a mortgagor in the sense in which the state statute imposes liability. Additionally, the case had many procedural complications, involving potential federal jurisdiction, joinder of other parties (primary actors in the mortgage markets), and the like.

During the Great Recession, Congress enacted the Housing and Economic Recovery Act of 2008, which authorized the Federal Housing Finance Agency to place Fannie Mae in conservatorship and deprived courts of jurisdiction to affect agency orders to conserve Fannie Mae’s assets. In 2013, the FHFA issued an order to Fannie Mae to cease and desist from paying any statutory damages under the state statute. Based on that order, the trial court dismissed the case, which by then was a certified class action. On appeal, the Eighth District reversed. The Ohio Supreme Court accepted a discretionary appeal and ruled that dismissal was not appropriate, but that the FHFA’s order meant that Fannie Mae could not be liable under the statute so long as it remained in conservatorship (as it does today). Following the Ohio Supreme Court’s ruling, the parties reached a settlement, and the trial court granted final approval in 2017—after some 15 years of litigation—and resolved some remaining settlement administration issues in 2018.

Date of Representation: 2003 – 2018

Court Information: This case was filed in the Cuyahoga County Court of Common Pleas, where Judge Nancy A. Fuerst handled the case.

At different points in time, Fannie Mae removed the action to federal court. There, Judge Solomon Oliver, Jr., U.S. District Court, Northern District of Ohio, presided and issued two rulings, remanding the case to state court.

The Eighth District Court of Appeals heard two appeals in the case. The first involved an interlocutory appeal from class certification. That panel consisted of Judges Mary Eileen Kilbane, Kenneth A. Rocco, and Patricia A. Blackmon. *See Radatz v. Federal Nat'l Mortg. Ass'n*, 176 Ohio App. 3d, 2008-Ohio-1937, 891 N.E.2d 1236 (Ohio Ct. App. 2008).

Second, the Eighth District also decided the jurisdictional effect of FHFA's order to Fannie Mae. That panel consisted of Judges Sean C. Gallagher, Kenneth A. Rocco, and Tim McCormack. *See Radatz v. Fannie Mae*, 2014-Ohio-2179 (Ohio Ct. App. May 22, 2014) (jurisdiction over orders issued by Federal Housing Finance Agency).

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6. *Cavel International, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007).

The State of Illinois enacted legislation intended to shut down a slaughterhouse, which was owned and operated by a Belgian company and which packaged and sold all of its product for sale overseas. As lead counsel for the slaughterhouse, I obtained a preliminary injunction to allow the company to continue to operate during litigation challenging the Illinois statute under the Foreign Commerce Clause of the Constitution.

Following a bench trial, the Northern District of Illinois held that the statute was constitutional. After obtaining an injunction from the Seventh Circuit to allow the company to continue to operate during the appeal, *see Cavel Int'l, Inc. v. Madigan*, 500 F.3d 544 (7th Cir. 2007), I briefed and argued the case at the Seventh Circuit, which affirmed. The U.S. Supreme Court declined to grant a writ of certiorari to review the issue regarding the Foreign Commerce Clause.

Date of Representation: I undertook this representation in 2007 and it concluded the following year.

Court Information: Judge Frederick J. Kapala, U.S. District Court, Northern District of Illinois, presided over proceedings in the district court.

On appeal, a panel consisting of Judges Richard A. Posner, Frank H. Easterbrook, and Ilana Rovner heard all appeals involving this case.

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7. *Paul Cheatham IRA v. Huntington National Bank*, 6th Dist. Lucas No. L-16-1292, 2017-Ohio-9234, *reversed*, No. 2018-0184, 2019-Ohio-3342 (Aug. 22, 2019).

Lucas County issued \$6.59 million in revenue bonds in 1998 in connection with a nursing home project, which provided the revenue to pay interest and principal on the bonds. The obligor on the bonds was the operator of the nursing home, and Huntington National Bank served as trustee for the bond issue. The operator defaulted on the bonds, then filed for bankruptcy. Vulture investors acquired distressed bonds for pennies on the dollar and filed a class action lawsuit to try to recover the face amount of the bonds from Huntington as trustee.

In the trial court, my partners obtained dismissal of claims alleging breach of fiduciary duty, but not a breach of contract claim. When the plaintiff moved to certify a class, I stepped in as lead counsel on the class certification issues. In the trial court, class certification was denied, but on appeal the Sixth District reversed (without oral argument) based on its interpretation of Section 8-302 of the Uniform Commercial Code (codified in Ohio at R.C. 1308.16).

I sought discretionary review at the Ohio Supreme Court, which accepted jurisdiction to determine whether the mere sale of a municipal bond automatically vests in the buyer all claims and causes of action of the seller that arose before the transaction, absent a valid assignment of claims. There is little authority on this question, and courts split on the question. On February 19, 2019, I argued the case at the Ohio Supreme Court, which will be the first state supreme court to address the issue.

Date of Representation: 2015 – 2019

Court Information: Judge James D. Bates presided in the Lucas County Court of Common Pleas. The panel of the Sixth District Court of Appeals consisted of Judges James D. Jenson and Thomas J. Osowik, and Christine E. Mayle, who concurred with a separate opinion.

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8. *Bentley v. Cleveland Browns Football Co.*, 194 Ohio App. 3d 826, 2011-Ohio-3390, 958 N.E.2d 585 (8th Dist.).

In 2006, LeCharles Bentley signed a 6-year, \$36 million contract with the Cleveland Browns, making him the highest-paid center in NFL history at the time. On the first play of training camp later that year, Bentley sustained a career-ending knee injury. While recovering, he developed a Methicillin-resistant *Staphylococcus aureus* ("MRSA") bacterial infection. In 2010, Bentley filed suit against the Browns, alleging that he contracted the infection while rehabilitating at the team's training facility in Berea, Ohio and seeking damages for personal injuries and economic loss.

Since 2009, along with Fred Nance and Chaundra Monday, I had represented the Cleveland Browns in litigation involving different players and personnel making similar allegations. In these cases, I served as lead counsel for the team, handling all aspects of the matters on a day-to-day basis. In those earlier cases, the U.S. District Court for the Northern District of Ohio determined that the federal Labor Management Relations Act did not require arbitration of such claims pursuant to the NFL's collective bargaining agreement with the players' association. See *Jurevicius v. Cleveland Browns Football Co.*, No. 1:09-cv-1803, 2010 U.S. Dist. LEXIS 144096 (N.D. Ohio Mar. 31, 2010).

In *Bentley*, we moved to compel arbitration pursuant to the terms of Bentley's contract and the NFL collective bargaining agreement under state law. In a reported decision, the court declined to order arbitration. These rulings have figured into arbitrability of the NFL concussion litigation and claims involving other professional sports teams. When the case returned to the trial court, the parties engaged in substantial discovery, including from third-party medical experts and industrial hygienists. The case ended up settling at the deposition of the team's owner, when the plaintiff and the owner talked directly, without counsel.

These cases also gave rise to follow-on insurance coverage litigation, which I also handled.

Date of Representation: 2010 to 2013. Representation in connection with similar matters began in 2009.

Court Information: Judge Joseph D. Russo of the Cuyahoga County Court of Common Pleas initially handled the case. A panel (consisting of Judges Patricia A. Blackmon, Larry A. Jones, and Colleen Conway Cooney) of the Eighth District Court of Appeals affirmed, the Ohio Supreme Court declined to exercise jurisdiction on a 4-3 vote, and the U.S. Supreme Court denied the petition for a writ of certiorari. On remand, Judge Nancy R. McDonnell presided over the case until it settled.

Then-Chief Judge Solomon Oliver of the U.S. District Court, Northern District of Ohio, presided over a prior case. *Jurevicius v. Cleveland Browns Football Co.*, No. 1:09-cv-1803, 2010 U.S. Dist. LEXIS 144096 (N.D. Ohio Mar. 31, 2010).

Judge Dan A. Polster, U.S. District Court, Northern District of Ohio, presided over one of the follow-on insurance coverage cases, including mediation of a resolution of that

dispute. Judge Christopher A. Boyko, U.S. District Court, Northern District of Ohio, was assigned to the other.

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9. *Cleveland v. Bradshaw*, 65 F. Supp. 3d 499 (N.D. Ohio 2014).

In this case, Alfred Cleveland sought habeas relief for his murder conviction, arguing that the evidence established he is actually innocent of the offense. Cleveland filed a petition for a writ of habeas corpus in federal court, which dismissed his claim on statute of limitations grounds. The Sixth Circuit reversed because Cleveland made a sufficient showing that he was actually innocent of the victim's murder. *See* 693 F.3d 626 (6th Cir. 2012).

On remand from the Sixth Circuit to the Northern District of Ohio, I represented Cleveland on a pro bono basis, with co-counsel from the Ohio Innocence Project. Together, we prepared the case for an evidentiary hearing, investigated the facts, prepared witnesses, and ultimately presented evidence that, on the night of Blakely's murder, Cleveland was in New York and could not have made it to Lorain, Ohio in time to have had any involvement in the murder. The district court denied relief, and the Sixth Circuit declined to hear the discretionary appeal. My work and investigation on the case continued until July 2019.

At the evidentiary hearing on Cleveland's habeas petition, I served as lead counsel. I delivered the opening statement and closing argument, and I cross-examined the state's key experts and fact witnesses. I also presented the testimony of an investigator who spent eight years on the case. Also, I had primary responsibility for post-trial and appellate briefing.

Date of Representation: 2012 – 2019

Court Information: Judge Jack Zouhary of the U.S. District Court, Northern District of Ohio, presided over the habeas proceedings.

On appeal, the case was before a panel of the Sixth Circuit and the en banc court. I also petitioned Justice Elena Kagan in chambers for a certificate of appealability under 28 U.S.C. § 2253.

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10. *Winston v. Cuyahoga Metropolitan Housing Authority*, N.D. Ohio No. 1:17-cv-1352, 2018 U.S. Dist. LEXIS 202359 (Nov. 29, 2018).

Through the federal Housing Choice Voucher Program, local public housing authorities (such as CMHA) subsidize housing for low-income tenants in the private-sector housing market. Under that program, federal statutes and regulations treat certain costs and fees as “rent,” which a public housing authority subsidizes, and disallows subsidization of others. In *Velez v. CMHA*, 795 F.3d 578 (6th Cir. 2015), the Sixth Circuit ruled that fees landlords charge tenants for the convenience of having month-to-month leases (instead of an annual lease) count as rent as a matter of federal law and must be subsidized under the Housing Choice Voucher Program.

Following *Velez*, a putative class brought suit, seeking payments for all month-to-month fees that CMHA had failed to subsidize. As lead counsel for CMHA, I moved to dismiss the complaint on the basis that there is no private right of action under the Housing Act of 1937 that allows tenants to maintain a lawsuit to recover the fees at issue. The Supreme Court has held that language nearly identical to that establishing the Housing Choice Voucher Program allows private party lawsuits for tenants to challenge utility calculations. See *Wright v. City of Roanoke Redevelopment & Hous. Auth.*, 479 U.S. 418 (1987). On the basis of *Wright*, the First Circuit holds that tenants do have a private right of action under the Housing Choice Voucher Program. *Decambre v. Brookline Hous. Auth.*, 826 F.3d 1 (1st Cir. 2016). Nonetheless, I persuaded the district court that the First Circuit was incorrect and that the federal statute does not allow private lawsuits. As a result, the district court dismissed Plaintiff’s claims.

Date of Representation: 2017 – 2019

Court Information: Judge Christopher A. Boyko, U.S. District Court, Northern District of Ohio, presided over proceedings in the district court. Magistrate Judge David A. Ruiz handled discovery disputes in a related case (*Ray v. CMHA*, No. 1:17-cv-324).

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to the other matters described in response to this questionnaire, I have pursued the following legal activities:

Ohio Innocence Project. In addition to serving as co-counsel with a lawyer from the Ohio Innocence Project on the case of *Cleveland v. Bradshaw*, I served on the organization's NE Ohio Board of Advocates from June 2014 to July 2019. In this capacity, I provided informal legal advice and assistance on several cases in Northeast Ohio involving claims of actual innocence, including multiple cases that resulted in

exonerations of those who served time in prison for crimes they did not commit. Those experiences have been some of the most moving, meaningful, and powerful of my legal career.

Federal Bar Association, Northern District of Ohio Chapter. The Federal Bar Association is the bar association that represents the interests of the federal judiciary and those who practice before federal courts and agencies. I have served on the Board of the Chapter since 2008 and as an officer since 2014. During my recently completed term as President, I pursued two primary goals.

First, despite being the *Northern District of Ohio* Chapter, our Chapter has been focused on Cleveland. Accordingly, I worked to get the organization out of Cleveland to other parts of the District. Under my leadership, our Chapter held meetings and events in Akron, Toledo, Sandusky, and Canton to deepen the ties between the bench and bar across the Northern District.

Second, in partnership with the Cleveland Metropolitan School District (“CMSD”), our Chapter developed a smart phone “app” to bring useful and relevant content to our members regarding the federal courts, events, and other members-only features. Specifically, our Chapter worked with at-risk CMSD students at John Marshall IT High School—an innovative and first-of-its-kind school in Ohio dedicated to graduating seniors who can enter the job market in computer programming or go on to vocational or college programs in computer sciences and related fields. This project was a capstone for the 12 or so students who developed the app—a diverse group of students, almost all of whom were from economically disadvantaged backgrounds. Our Chapter’s primary contacts at John Marshall IT were Principal Chelsey Cook and instructor David Kelly.

After completing my term as Chapter President, I worked with our Chapter and Judges from the Northern District of Ohio to implement a Trial Academy program—a skills-based training program for less experienced lawyers—modeled on a similar program the District of Rhode Island conducts, in which I have participated as a faculty member. We conducted the first session of the Trial Academy in the Northern District of Ohio in September 2019.

Service to Federal Courts. I have served on the Sixth Circuit Advisory Committee on Rules since 2009 and on the Northern District of Ohio Attorney Advisory Group since 2017. In these committees, I have written local rules of practice that (I hope) have improved practice in the courts and the administration of justice, including on such topics as using word counts for briefs (instead of page limits) and advocating for opportunities for younger lawyers and diverse lawyers to argue motions and appear at hearings.

In-House Counsel Work. During my time at Squire Sanders, part of my practice involved advising the in-house general counsel on certain claims and other matters involving the business of the firm. Although client confidences preclude discussion of the specifics of those matters, this work was challenging and rewarding and deepened my knowledge of the law of lawyering and the sorts of ethical and conduct issues that can get lawyers into

trouble with courts and clients. This is work I undertook with and at the direction of James P. Murphy and Stacy D. Ballin, and occasionally others in management.

I have not performed any work that would require me to register as a lobbyist at the state or federal level. As a citizen, I participated in the Federal Bar Association's Capitol Hill Day as a representative of the Northern District of Ohio Chapter on two occasions (in 2017 and 2018) to meet with local members of Congress and their staff regarding the organization's mission and issues agenda.

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.

At Case Western Reserve University School of Law, I taught a two-credit, upper-level evidence course called Expert Witnesses and Scientific Evidence during the Fall 2018 and Fall 2019 semesters. This course covers substantive and procedural issues relating to the presentation of expert evidence in state and federal courts and the development of the governing doctrine and applicable rules, with an emphasis on issues arising in civil and criminal practice. The course syllabus for each year is provided.

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

I have no such arrangements or deferred income or compensation.

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

I do not have any such plans, commitments, or agreements, though I would consider teaching as an adjunct law professor should such an opportunity arise and be compatible with my schedule on the court.

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

When my nomination is formally transmitted to the Senate, I will file my mandated financial disclosure report and will submit a copy to this Committee.

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.

My wife owns mineral interests on property in Oklahoma that she inherited and receives fairly small amounts of royalty income (usually less than \$5,000 per year), and occasional rents, from mineral interests on property in Oklahoma that she inherited. I will recuse from any matter involving the entities associated with these interests (which, to the best of my knowledge, are generally fairly small local companies and unlikely to become involved in litigation in the Northern District of Ohio).

Given my recent past position as a partner in the law firm of Porter Wright, and my wife's employment in the Shaker Heights School District, I will recuse from any case in which a lawyer from Porter Wright appears as counsel until such time as my financial relationship with the firm has formally ended (which, out of an abundance of caution, I anticipate will be upon filing tax returns for the 2020 tax year). I will also recuse from any case to which my wife's employer is a party.

Finally, in the 2019 – 2020 academic year, I taught an advanced evidence course at Case Western Reserve University School of Law. I will also recuse from any case to which Case Western Reserve University is a party to avoid the appearance of a conflict.

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

I will maintain a list of parties and individual lawyers from whose cases I would recuse to avoid an actual conflict or the appearance of a conflict and provide that list to the Clerk of Court for use in making random case assignments. I will update that list annually.

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.

When admitted to the practice of law in Ohio, lawyers take an oath that we “will abide by the Code of Professional Responsibility,” which provides that “all lawyers should devote professional time and resources and use civic influence to ensure access to our system of justice those who because of economic or social barriers cannot afford or secure legal counsel.” Throughout my career I have sought to fulfill this oath by maintaining an active pro bono practice on behalf of clients who would not otherwise have counsel, typically representing criminal defendants in appeals from their convictions or on collateral review (habeas cases).

I dedicated a significant portion of my practice (generally 5% or more of my billable time each year) to providing pro bono legal services. I always tried to have one or two such matters active. Although some lawyers take pro bono cases that appear in the headlines or present issues for Supreme Court review, my practice has been to handle more typical cases. Without exception, the clients in these cases appreciated having counsel who consulted with them, explained the process (no easy task where federal habeas corpus is involved), and zealously advocated their cause. The experience of providing the representation that indigent clients should have had all along was one of the most rewarding and fulfilling dimensions of my practice. Regardless of the outcome, providing that sort of experience, where previous counsel may not have and courts too often did not truly afford due process, promoted the rule of law by helping my clients accept the results in their individual cases.

In recent years, even as I maintained my personal involvement in pro bono cases, I focused as much or more on involving associates and younger lawyers in these cases. In this way, I have sought to train and mentor younger lawyers and provide opportunities for associates.

To illustrate my level of commitment to pro bono work, on my most significant personal pro bono matter, the *Cleveland* case, my team (not including co-counsel, the Ohio Innocence Project) worked approximately 1,930 hours with a value of about \$660,000. Of those hours, I personally invested over 625 hours (worth over \$330,000).

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 April 2019, I submitted an application to Senator Rob Portman. The Ohio Senator's bipartisan judicial advisory commission interviewed me in Columbus, Ohio in October 2019. Within approximately two weeks, I was advised that the commission had advanced my name for further consideration. On Monday, October 14, 2019, I was interviewed by phone by Senator Portman and a member of his staff. I was later advised by Senator Portman's staff that my name was being forwarded to the White House. On November 1, 2019, I interviewed with attorneys from the Office of the White House Counsel and the Department of Justice in Washington, D.C. Since that time, I have been in regular contact with attorneys from those offices.

- 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.