

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Richard Mark Gergel

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

United States District Judge for the District of South Carolina

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

1519 Richland Street
Columbia, South Carolina 29201

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

1954, Columbia, South Carolina

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.

1975-77, 78-79; Duke University School of Law; J.D., 1979

Summer, 1974; New College, Oxford University; No Degree

1972-75, Duke University; B.A., *summa cum laude*, 1975

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.

1983 -- Present
Gergel, Nickles and Solomon, P.A
1519 Richland Street
Columbia, South Carolina 29201
President/Sr. Partner

The firm has been known by a variety of different names as some attorneys have come and gone:

Gergel and Burnette
Gergel, Burnette and Nickles
Gergel, Burnette, Nickles, Grant and Ouzts
Gergel, Burnette, Nickles, Grant and LeClair
Gergel and Nickles

1981 -- 1982
Medlock and Gergel
1320 Richland Street
Columbia, South Carolina 29201
Partner

1981
Medlock, Davis and Gergel
1518 Richland Street
Columbia, South Carolina 29201
Partner

1979 -- 1980
Medlock and Davis
1320 Richland Street
Columbia, South Carolina
Associate
Law Clerk (April- August 1978)

August 1977 -- March 1978
McNeil Smith For U.S. Senate
Greensboro, North Carolina
Campaign Aide

Summer 1977
Brown, Wood, Ivey, Mitchell & Petty
1 Liberty Plaza
New York, N.Y.
Law Clerk

Summer 1976
State Circuit Judge John Grimball (deceased)
Richland County Courthouse
Columbia, South Carolina 29201
Law Clerk

May – August 1975
Senator McNeill Smith
Box G
Greensboro, North Carolina
Legislative Aide

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

I did not serve in the armed forces. I did register with the selective service upon my 18th birthday but this was after the adoption of the all volunteer army. I did not receive any type of draft status designation.

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.

Rated "AV", Martindale Hubbell
Listed in "Best Lawyers in America" (Personal Injury Litigation)
Listed in "South Carolina Super Lawyers"
Permanent Member, Fourth Circuit Judicial Conference
Member, International Society of Barristers
Jonathan Jasper Wright Award, University of South Carolina Black Law Students Association (2001)
Phi Beta Kappa (Duke University 1974)
Staff Member and Member of the Editorial Board, Duke Law Journal

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.

I served as founding president of the South Carolina Supreme Court Historical Society (1999-2000) and have worked closely with South Carolina Chief Justice Jean H. Toal in organizing day long conferences for the Society, three of which resulted in books being published of the papers delivered at the conferences by the University of South Carolina Press. I served on the Bar's Ethics Advisory Committee in 1980-81.

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.

I was admitted to the South Carolina Bar on November 8, 1979.
There has been no lapse in membership.

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

South Carolina Courts; November 8, 1979
United States District Court for the District of South Carolina; January 17, 1980
United States Court of Appeals for the Fourth Circuit; April 4, 1980.
I have had no lapses in memberships.

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.

Tree of Life Congregation; Lifelong Member
President (1987, 2007), Board Member, Sunday School Teacher

Columbia Hebrew Benevolent Society; 1992- present
President (1997- present), Vice President (1996-1997)

Jewish Historical Society of South Carolina; 1997- present
President (2002-2003), Board Member

South Carolina Trial Lawyers Association/ South Carolina Association for Justice; 1982-present; Member, Advisory Board for Association's Legislative Committee (2003-2005)

Spring Valley Country Club; Mid 1990's- 2001; Member

Capital City Club; Mid 1990's- present; Member

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

The Spring Valley Country Club had a history of racial and religious exclusion from its founding in the 1960's. When my family moved into the Spring Valley neighborhood in 1990, the religious exclusion policies had been eliminated but the racial exclusion was clearly in place. This was particularly unfortunate because the Spring Valley neighborhood was becoming increasingly diverse and the club was in the position to play an important role in promoting a tolerant inclusive atmosphere in the neighborhood. I declined suggestions to join the neighborhood club because of this racial exclusion policy. I was informed that a board member of the club and former president, Mr. Frank Murphey, was actively seeking a change in club bylaws to remove the ability of a single member to blackball a candidate for admission, which was the key method by which the racial exclusionary policy was maintained. I called Mr. Murphey to encourage his efforts and to inform him that my wife and I would not join the club as long as it remained segregated. Mr. Murphey asked my advice at that time regarding the proposed language for the desired bylaw change and asked my permission to use my name as someone who would join the club only if it became desegregated. I told him he was free to repeat to anyone my intention to join Spring Valley only if it eliminated its racial exclusion practices. In late 1990, Mr. Murphey obtained the desired bylaw change and promptly sponsored as members Mr. Ronald and Dr. Juanita Burton. They were formally admitted in December 1990, which represented one of the first instances in Columbia where an African American family was been admitted to one of the city's preeminent country clubs. Mr. Murphey thereafter asked to sponsor my wife and me as members of Spring Valley, which we were now willing to do as result of the desegregation of the club. We became members in February 1991. To my knowledge, the club has been continuously desegregated since that time. My wife and I resigned from the club in 2002 after we moved out of the Spring Valley neighborhood.

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.

In Pursuit of the Tree of Life: A History of the Early Jews of Columbia, South Carolina, coauthored with Dr. Belinda Gergel (Tree of Life Press 1996);

“To Vindicate the Cause of the Downtrodden: Associate Justice Jonathan Jasper Wright and Reconstruction in South Carolina”, coauthored with Dr. Belinda Gergel, published in At Freedom’s Door: African American Founding Fathers and Lawyers in Reconstruction South Carolina (USC Press 2000);

“Matthew J. Perry’s Contribution to the Development of Constitutional Law”, coauthored with Professor Leon Friedman of Hofstra University School of Law, published in Matthew J. Perry: The Man, His Times and His Legacy, Lewis Burke and Belinda Gergel, Editors (USC Press 2004);

Entries on United States District Judge Matthew J. Perry and South Carolina Associate Justice Jonathan Jasper Wright in South Carolina Encyclopedia, Walter Edgar, Editor (USC Press 2007);

“A Bright Day Now Dawns Upon Us: Jewish Economic Opportunities, Religious Freedom and Political Rights in Colonial and Antebellum South Carolina”, coauthored with Dr. Belinda Gergel, published in The Dawn of Religious Freedom in South Carolina, James Underwood and Lewis Burke, Editors (USC Press 2006);

“Palmetto Jews: Celebrating 300 Years in this ‘Happy Land’”, coauthored with Dr. Belinda Gergel, Sandlapper Magazine (Fall 2002);

“Wade Hampton and the Rise of One Party Racial Orthodoxy in South Carolina”, Proceedings of the South Carolina Historical Association (1976);

“School Desegregation: A Student View”, New South Magazine (Winter 1971);

“Jane Doe v. EMS”: Viewing EMS Under the Legal Microscope”, Journal of Emergency Medical Services, Walt Stoy and Richard Gergel (Oct. 2004);

“The Gergels of Aleksandrovka: Reunited After 100 Years”, The Jewish Historical Society of South Carolina Newsletter (Fall 2008);

“A Snare to the Unwary: Private Appearing Entities May Be Persons Covered by the Tort Claims Act”, South Carolina Trial Lawyers Bulletin, Richard M. Gergel and John Kassel (Spring 2008);

“Colonial South Carolina Was a Haven for Religious Dissenters”, Richard and Belinda Gergel, Op-ed, State Newspaper, May 28, 1997.

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

None

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

None

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

“Recovery of Non-Economic Damages and Use of Expert Witnesses Under the New Medical Malpractice Act”, 2005 South Carolina Tort Law Update, South Carolina Bar CLE, October 28, 2005.

“Maximizing Recoveries Under the New Medical Malpractice Statute”, delivered jointly with O. Fayrell Furr, Newly Adopted Medical Malpractice and General Tort Statutes Seminar, South Carolina Trial Lawyers Association, October 14, 2005.

“Jonathan Jasper Wright”: I have delivered a number of talks on South Carolina’s and America’s first African American appellate judge, Jonathan Jasper Wright. These have included talks in February 1997 in a special ceremony before the South Carolina Supreme Court in Columbia, South Carolina, at the dedication of gravestone at his previously unmarked grave in Charleston, South Carolina, at the 2005 Conference of Chief Justices held in Charleston, South Carolina on July 30, 2005. The general substance of my talks can be found in my speech delivered to the Conference of Chief Justices and in the chapter on Justice Wright referenced above that was published in 2000 by the USC Press.

“The Jews of South Carolina”/ “Early Jews of Columbia, South Carolina”: I, generally with my wife, Dr. Belinda Gergel, have delivered dozens of talks on South Carolina Jewish history over the last 15 years. These talks have been delivered to meetings of the Jewish Historical Society of South Carolina and programs sponsored by Jewish religious organizations, churches, teacher training programs and general civic groups. The substance of our talks are derived from our 1996 book on the Jews of Columbia, the 2002 article in Sandlapper Magazine and the 2006 chapter on colonial and antebellum Jews published by USC Press. An example is the speech on the Jewish-Catholic experience in South Carolina that I delivered at the Columbia Jewish Community Center on October 19, 2006 as part of a Jewish-Catholic dialogue.

Abolition of Video Poker: I was co-lead counsel in the federal court action which ultimately led to the demise of video poker in South Carolina. In the course of that several year long battle, I gave many speeches on this issue, most particularly in 1999, when there was a scheduled public referendum on the question of whether South Carolinians wished to continue to authorize video gambling. I have no records to indicate the date or locations of those talks. I spoke to many civic and religious groups across the state about the severe social consequences of uncontrolled and unregulated video gambling and urged the abolition of video gambling. The General Assembly ultimately banned video gambling, effective July 1, 2000, and that ban was upheld by the South Carolina Supreme Court and the federal courts.

“Applying Principles of Medical Malpractice Litigation to General Civil Litigation”, delivered in a CLE sponsored by the South Carolina Bar CLE Division, October 25, 1995.

“Inappropriate Use of 15 Passenger Vans to Transport School Children”: I have spoken to many local and national meetings about federal prohibition of the sale of vans not meeting school bus safety standards to schools to transport school children to and from school or school related activities. My involvement in this issue arose out of my representation of the Strebler Family in the tragic loss of their six year old son, Jacob, in a 15 passenger van not meeting school bus safety standards. After successfully prosecuting the Strebler case, the family devoted portions of their recovery to promoting a model state statute prohibiting the use of 15 passenger vans by schools and not just the sale of those vehicles by car dealers. South Carolina was the first state to adopt “Jacob’s Law” and the Streblers’ highly visible campaign lead to more effective enforcement by federal officials of the federal statute and regulations. I, along with Mrs. Strebler, delivered a talk to the School Transportation News Western States Conference in Los Vegas, Nevada on August 11, 1998, later delivered a similar talk to a group of Northeastern transportation officials meeting in Rhode Island and spoke to school transportation officials in South Carolina at one of their annual meetings.

“Employment Law Overview”, delivered to 1988 program of Law for Non-Lawyers sponsored by the South Carolina Bar.

“Winning the Medical Negligence Case”, delivered at a CLE sponsored by the South Carolina Bar titled “Selected Issues in Tort Litigation”, held on September 14, 1988.

“Preventing Medical Errors”, delivered to the Lexington Hospital Medical Staff, October 25, 2004. I delivered a similar talk to a meeting of hospital quality assurance officers from across South Carolina in 2008.

“Teacher Rights and Remedies”: Early in my legal career, primarily in the 1980's and early 1990's, I spoke to many educator groups in my capacity as an outside counsel to the South Carolina Education Association. These included statewide meetings as well as local meetings of the Association. My general talk concerned the rights of teachers under state and federal law and the legal parameters associated with the then developing evaluation instruments. I have records indicating talks to the Union County Education Association on May 9, 1991 and to the South Carolina Administrators Association on November 5, 1986. I also recall speaking almost annually before the Spartanburg County Education Association in the 1980's and early 1990's. These are but a few examples of dozens of such speeches I made during the early part of my legal career.

Speech to the Keenan High School Honors Banquet: This was a speech given in 1996 to the honor students at my alma mater, Keenan High School. I was the first student body president of Keenan High School, which was created to facilitate desegregation of Richland School District No. 1 in Columbia, South Carolina. Keenan was approximately one-half black and one half white when I graduated in 1972 and the school became essentially all African American in the 1990's forward. I have maintained an interest in Keenan High School and have given a number of speeches to the students over the years but have no notes other than from this 1996 talk. I recently spoke in 2008 with Congressman Jim Clyburn at the dedication of the new Keenan High School campus.

- 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.

I have been involved in high profile issues for most of my career and have been interviewed by members of the media frequently. I have made no effort to document or track those interviews and cannot reliably provides dates and times for all media interviews. I have used various search engines to locate articles where I have been interviewed and listed them below. While these references

may not identify every media interview, they represent the substantial majority and the general substance of my media interviews. I have listed below general areas for most of my media interviews and finished with a catch-all “miscellaneous” category for subjects in which there are not multiple articles:

1. Jonathan Jasper Wright: My wife and I did significant research on a long neglected early African American lawyer and the country’s first black appellate court justice, Jonathan Jasper Wright. I initially made a presentation on Justice Wright in a special ceremony during Black History Month in 1997 and then headed a committee to raise funds for an oil portrait of Justice Wright which now displayed in the lobby of our State Supreme Court. We organized the inaugural meeting of the South Carolina Supreme Court Historical Society in 1998 with a focus on Justice Wright and other early African American lawyers in South Carolina and thereafter arranged for a placement of a headstone on Wright’s previously unmarked grave, which was located by my wife and me. All of these activities generated news articles, which included the following:

A. “A Justice Has Won His Case: Court’s First Black Jurist Takes Place in History”, State Newspaper, February 20, 1997;

B. “Here’s Some Heritage for All South Carolinians”, State Newspaper, Editorial, February 23, 1997;

C. “Artist Lifts First Black Justice from the Shadows of History”, State Newspaper, February 26, 1998;

D. “Marker Brings First Black Justice to Life: Headstone to be Dedicated at Charleston Cemetery Where Reconstruction Official is Thought to be Buried”, State Newspaper, February 17, 2000.

2. South Carolina Retirement System Litigation: I was retained by the State of South Carolina in 2000 to represent the State Retirement System after it had lost a benefits dispute before the South Carolina Supreme Court which would cost the System approximately \$1 billion dollars. I petitioned the Court for rehearing and persuaded the Court to reverse itself. News coverage of the litigation included interviews with me after the Court had ruled in the favor of the Retirement System. These included the following articles:

A. “S.C. Court Strikes Down Retiree Benefit Increases”, State Newspaper, May 23, 2001;

B. “Lawyer’s Clear Thinking Leads to Court’s Reversal”, State Newspaper, May 27, 2001.

3. Video Poker: This involved a protracted legal battle in State and Federal Court, the South Carolina General Assembly and in the public arena. My interviews on this subject included the following:

A. "Filibuster on Gaming Successful", Augusta Chronicle, April 9, 1998;

B. "They Call it Crack Cocaine", Time Magazine, June 1, 1998;

C. "Fired Up, Poker King Fights Back", State Newspaper, October 9, 1999;

D. "Video Poker Has Potent Foe: Columbia Lawyer Skilled, Persistent", State Newspaper, January 10, 1999;

E. "People Like Richard Gergel Make Lawyer Jokes Fall Flat", State Newspaper, Editorial, November 9, 1999

F. "Playing the Machines", Canadian Broadcast Network, July 7, 2009.

4. School Bus Safety/ 15 Passenger Vans: My representation of families who have lost children in collisions involving school vans not meeting federal school bus safety standards have resulted in the following media interviews:

A. "Child's Death Spurs Quest for Van Safety: Empty Room, Obscure Law Propel Mother's Crusade", State Newspaper, June 26, 1997;

B. "Fatal Crash Likely to Start Debate Over Safety of Vans", State Newspaper, February 19, 1999;

C. "Mom Pushes Bill After Son's Death", State Newspaper, March 14, 2005;

D. "Child Care Centers Must Use Buses, Not Vans", State Newspaper, July 1, 2006.

5. James Michael Shortt/ Dubious Alternative Medicine Practices: I represented the estates of two former patients of Dr. James Michael Shortt whose deaths were hastened by Dr. Shortt's highly unconventional medical treatments, including the provision of intravenous hydrogen peroxide. Dr. Shortt ultimately lost his medical license and went to federal prison as a result of information which came to light in the course of discovery in our litigation. The striking facts related to Dr. Shortt's medical practices and the slowness of the South Carolina Medical Board to revoke his license was the source of great media interest. My media interviews included the following:

- A. "Death Puts Spotlight on Doctor and Regulators", New York Times, October 6, 2004;
- B. "A Prescription for Death?", 60 Minutes, January 12, 2005;
- C. "Tougher Standards Urged for Doctors", State Newspaper, March 20, 2005;
- D. "Dr. Failed to Report Felony", State Newspaper, September 24, 2004;
- E. "Steroids Prescribed to NFL Players", 60 Minutes, March 30, 2005;
- F. "Disciplining Medical Practitioners: Study Says S.C. Board Too Lax", State Newspaper, May 30, 2005.

6. Miscellaneous:

- A. "State to Get Disputed \$700 Million", State Newspaper, June 5, 2009;
- B. "Courts' 'Sunshine' Might Spread", State Newspaper, April 4, 2008;
- C. "Court Rejects Suit on Budget Board", State Newspaper, November 20, 2007;
- D. "S.C. Hospitals Launching Patient Safety Initiatives", State Newspaper, January 28, 2007;
- E. "Debate on Tort Reform Upsets Victims", State Newspaper, January 19, 2005;
- F. "How a Hospital Failed a Boy Who Did Not Have to Die", State Newspaper, June 16, 2002;
- G. "Strom Thurmond Jr. Fits the Job Profile—By S.C. Standards", State Newspaper, January 17, 2001;
- H. "Columbia Jews Celebrated", State Newspaper, January 14, 1996;
- I. "Thrift Case Led Lawyer to Troubling Questions", State Newspaper, February 6, 1992;
- J. "Columbian Realizes Father's Dream of Law Career, Attorney's Rapid Rise To Partnership Shows Ability, Determination", State Newspaper, March 7, 1988;

K. "Columbia Widow Gets \$700,000 in Ladder Death", State Newspaper, August 7, 2005.

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.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
 - i. Of these, approximately what percent were:

jury trials? ____%; bench trials ____% [total 100%]

civil proceedings? ____%; criminal proceedings? ____% [total 100%]
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the

opinions listed were not officially reported, provide copies of the opinions.

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

I have not previously held judicial office.

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.

I have not served as a judge.

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

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

I have never held public elected or appointed office. I was an unsuccessful candidate in 1972 (at age 18) for the Richland School District Number 1 Board of Trustees. I ran with no intention or expectation of winning but sought as a prior student body president to speak out in support of public school desegregation in a campaign in which reactionary forces were inaccurately portraying the schools following several years of court ordered desegregation.

- 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.

I have been a financial supporter of the Democratic Party on a local, state and national level but have never held any party position. Prior to attending college, I worked in the joint campaign of the Richland County Democratic Party from August-November 1972 as a campaign aide. I worked as a driver and campaign aide to North Carolina State Senator McNeill Smith in his campaign in the Democratic Primary for the United States Senate from August 1977-March 1978. I had worked with Senator Smith in the North Carolina Legislature as an undergraduate and took a year off law school after my second year to work in his United States Senate campaign. After returning to South Carolina and beginning my law practice, I supported numerous candidates for public office, primarily as a donor. My law partner, Travis Medlock, ran successfully for Attorney General of South Carolina in 1982, and I actively assisted his campaign as a volunteer and contributor. I held no official title in Mr. Medlock's campaign. I was also active in the organizing effort for Senator Joe Lieberman's campaign for President in 2004 in the South Carolina Presidential Primary. My most direct hands on involvement with a campaign in South Carolina has been my wife's 2008 campaign for Columbia City Council. I assisted her in fundraising, attended campaign meetings, walked her city council district with her and stood at the polls on election-day.

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

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

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

I did not serve as a clerk.

- 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.

1979 – 1980
Medlock and Davis
1320 Richland Street
Columbia, South Carolina
Associate

1981
Medlock, Davis and Gergel
1518 Richland Street
Columbia, South Carolina 29201
Partner

1981 – 1982
Medlock and Gergel
1320 Richland Street
Columbia, South Carolina 29201
Partner

1983 – Present
Gergel, Nickles and Solomon, P.A.
1519 Richland Street
Columbia, South Carolina 29201
President/Sr. 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.

In regard to service as a mediator, I have not undergone training as mediator and have not actively sought to serve as a mediator. I was asked by United States District Judge Cameron Currie in 2006 to serve as a mediator in Thorn vs. Jefferson Pilot Life Insurance Company (C.A. No. 3:00-2782-22), which involved allegedly race based insurance premiums. After an intensive day of mediation, we were able to resolve those longstanding disputes. J.P. “Pete” Strom of Columbia, South Carolina was lead counsel in that mediation for Plaintiffs and Brent Clinkscale of Greenville, South Carolina, was lead counsel for Defendants.

b. Describe:

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

When I began my practice in 1979 after graduation from law school, I was an associate with Medlock and Davis and within a year became a partner. In 1983, I became the senior partner of the firm and have held that position or its equivalent continuously in every successor law firm to this day. I joined Medlock and Davis as an associate and was made a partner in 1980. The firm was then known as Medlock, Davis and Gergel. Craig Davis left that practice soon thereafter to start his own firm. The remaining firm became known as Medlock and Gergel, and we practiced under that name until my senior partner, Travis Medlock, was elected Attorney General of South Carolina in 1982. I formed a new law firm with M. Malissa Burnette in January 1983 (known as Gergel and Burnette) and W. Allen Nickles joined us in 1984 (firm became known as Gergel, Burnette and Nickles). Two additional attorneys became named partners in 1988, Helen Nelson Grant and Cynthia Ouzts (practicing under the name Gergel, Burnette, Nickles, Grant and Ouzts). Over the ensuing several years, Ms. Grant moved to Charlotte, North Carolina and Ms. Ouzts left for another position, and the firm again became known as Gergel, Burnette and Nickles. Thereafter, Tom LeClair joined the firm, which became known as Gergel, Burnette, Nickles and LeClair. Ms. Burnette and Mr. LeClair left the firm in 1998 to open their own practice, and the firm became known as Gergel and Nickles. Shortly thereafter, Carl Solomon joined the firm. We have practice for approximately the last decade under the name Gergel, Nickles and Solomon, P.A.

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

When I began my law practice with Medlock and Davis, the firm specialized in employment law, with the largest client being the South Carolina Education Association (SCEA). The firm represented members of the SCEA in various employment related disputes, including discharges, suspensions, and promotion related disputes. These matters were tried before school boards, state and federal administrative agencies, and the state and federal courts. The firm also provided labor defense counsel to various state agencies, which involved representation before state administrative agencies and some federal and state court litigation. The firm also represented individual public employees with labor related disputes, most notably university level academic employees in tenure and promotion disputes. As a beginning associate in an extremely busy

practice, I had the opportunity to participate in trial type administrative and court proceedings and gained remarkable trial experience in my early years of practice. I recall that I was lead counsel at a jury trial the first week or two after being sworn into the Bar and probably handled as lead counsel two dozen trial type administrative hearings in my first year of practice. I also participated in those early years in interesting federal court litigation involving Title VII/ Section 1983 race and sex discrimination issues and well as First Amendment freedom of speech and association issues.

After Mr. Medlock's election as Attorney General, I sought to expand the firm's practice into personal injury litigation, particularly in the area of medical malpractice. This was an emerging area of practice that was of particular interest to me, and I took every opportunity to pursue claims in this area. I tried to verdict a medical malpractice claim in 1984 in which the jury returned a \$2.1 million verdict, then one of the largest personal injury verdicts in the state's history. The news of this verdict spread rapidly among the Bar, and I soon began to receive more and more referrals and direct client contacts in medical malpractice claims. While employment law remained an important aspect of my law practice in the 1980's, an increasing percentage of my practice involved medical malpractice and other complex personal injury claims. In the early 1990's, I employed a registered nurse full time as my paralegal, something I have maintained to this day. By the mid 1990's, a majority of my practice was devoted to complex personal injury litigation, which included medical malpractice, products liability, serious vehicular collisions (particularly involving 18 wheeler collisions) and other catastrophic torts. I continue today to have the great majority of my practice devoted to complex personal injury litigation.

I have been involved throughout my career in complex governmental law litigation, having represented the State of South Carolina and (until recently) the City of Columbia in a broad range of matters. My representation of the State has included a \$1 billion Retirement System dispute, federal litigation by Indian tribes over gambling related issues, a challenge to the constitutionality of the State Budget and Control Board brought in the original jurisdiction of the State Supreme Court, an independent investigation of alleged corruption in the Department of Transportation's road paving program; a federal claim brought by a suspended lawyer against the South Carolina Supreme Court and the individual justices, and federal litigation over the judicial independence of State Worker Compensation Commissioners in the face of certain Executive Orders of the Governor presuming to establish legal standards for their judicial decisions. My representation of the City of Columbia

involved primarily employment related matters, including the discharge of the City Manager and defense in state and federal court litigation. When my wife filed as a candidate for Columbia City Council in 2007, I advised Council that I would no longer be able to represent the City.

- 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.

My practice is almost 100% litigation related and that generally has been the case for my nearly 30 years of practice. I appear in the state and federal courts frequently.

- i. Indicate the percentage of your practice in:

- | | |
|----------------------------|-----|
| 1. federal courts: | 35% |
| 2. state courts of record; | 55% |
| 3. other courts; | |
| 4. administrative agencies | 10% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings. | |

- 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.

In my early years of practice, I tried between 100 and 200 trial type administrative hearings to verdict, mostly involving dismissals of teachers and other public employees

Over the last 15 years, I have tried approximately 30 matters in state and federal court.

With the exception of a limited number of cases in my first year of practice, I have served as lead counsel or lead co-counsel in almost all cases I have been involved in a trial type proceeding.

- i. What percentage of these trials were:

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

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

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

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

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Johnson vs. Collins Entertainment Co. Inc. et. al (United States District Court for the District of South Carolina, Civil Action Nos. 98-2225, 99-1601, 99-1709):

These cases, commonly known as the "Video Poker Litigation", represented some of the most intense and significant litigation in the District Court of South Carolina in the last decade. These cases were assigned to United States District Judge Joseph Anderson and challenged the lawfulness of South Carolina's \$3 billion video gambling industry. Judge Anderson would eventually issue over 100 orders in the case and twice certified questions to the South Carolina Supreme Court. The case also was reviewed by the Fourth Circuit Court of Appeals. See, 199 F. 3d 710 (4th Cir. 1999); 349 S.C. 613, 564 S.E. 2d 653 (S.C. 2002); 333 S.C. 96, 508 S.E. 2d 575 (S.C. 1998). The critical rulings of Judge Anderson finding that the video gambling industry was routinely violating state statutory law were eventually confirmed by the South Carolina Supreme Court and contributed to the ultimate banning of the industry by legislation effective July 1, 2000. Chief Justice Jean H. Toal of the South Carolina Supreme Court also has extensive knowledge regarding this litigation and my role as counsel for Plaintiffs. Chief Justice Toal's contact information is Supreme Court Building, 1231 Gervais Street, P.O. Box 12456, Columbia, South Carolina 29211, 803-734-1584. Our clients were hundreds of addicted gamblers who we asserted were victimized by the Defendants unlawful gambling activities.

I, along with Lawrence Richter, served as co-lead counsel for the Plaintiffs, and worked

closely with a team of highly capable lawyers. Mr. Richter's contact information is: Richter Law Firm, 622 Johnnie Dodds Blvd., Mt. Pleasant, South Carolina 29465, 843-849-6000. My law partner, Carl Solomon, was also a critical member of the Plaintiffs' legal team. He can be reached at 1519 Richland Street, Columbia, South Carolina 29201, 803-779-8080. Principal Counsel for the Defendants included Richard Harpootlian, 1410 Laurel Street, P.O. Box 1090, Columbia, South Carolina 29202, 803-252-4848; A. Camden Lewis, Lewis and Babcock, 1513 Hampton Street, Columbia, South Carolina 29201, 803-771-8000; and Dwight Drake, Nelson Mullins Riley and Scarborough, 1320 Main Street, P.O. Box 11070, Columbia, South Carolina 29211, 803-799-2000. All of the claims were eventually settled after the legislative abolition of video gambling in 2000.

2. David Bibeau, as Personal Representative of the Estate of Katherine Ann Kurtz-Bibeau vs. James Michael Shortt, M.D., et. al.: (United States District Court for the District of South Carolina, C. A. No. 3:04-22306-MJP):

This wrongful death diversity action challenged the unconventional medical practices of an "alternative medicine" physician, Dr. James Michael Shortt, that included the intravenous administration of hydrogen peroxide. The pharmacy and pharmacist that compounded the hydrogen peroxide at Dr. Shortt's request were also parties to the action. Revelations from the civil discovery eventually led to Dr. Shortt's federal indictment, guilty plea and the revocation of his medical license. We represented the Plaintiff. All parties ultimately settled after Senior United States District Judge Perry granted summary judgment to the Plaintiff.

I served as lead counsel for the Plaintiff and my co-counsel was Warren V. Bigelow, 1000 Superior Blvd., Suite 300, Wayzata, Minnesota 55391, 952-475-4000. Principal defense counsel included William L. Howard, Young, Clement Rivers LLP, 28 Broad Street, P.O. Box 993, Charleston, South Carolina 29402, 843-577-4000, and M. Dawes Cooke, Jr., Barnwell, Whaley, Patterson and Helms, LLC, P.O. Drawer H, Charleston, South Carolina 29402, 843-577-7700.

3. Kennedy vs. South Carolina Retirement System, 349 S.C. 339, 549 S.E. 2d 243 (S.C. 2001) and Whele vs. South Carolina Retirement System, 363 S.C. 394, 611 S.E. 2d 240 (2005):

I was asked to assume responsibility for the defense of the South Carolina Retirement System in the Kennedy matter after the South Carolina Supreme Court had ruled 4-1 against the Retirement System, finding the System liable for past retirement benefits totaling nearly \$1 billion. I moved to have the South Carolina Supreme Court reconsider its ruling, asserting that the alleged benefit increase was never intended and was based upon a tortured reading of a poorly drafted statute. The Court agreed to rehear the case, allowed us to reargue and reversed itself 4-1, with Chief Justice Jean H. Toal writing for the majority. Plaintiffs then sought to bring a second action, Whele, which the Supreme

Court assigned to then South Carolina Court of Appeals Judge John Kittredge as a special master. We tried the case on the merits before Judge Kittredge, who ruled for the Retirement System. Judge Kittredge's report was then unanimously affirmed by the South Carolina Supreme Court.

I served as lead counsel. My principal co-counsel were W. Allen Nickles, Gergel, Nickles and Solomon, P.A., 1519 Richland Street, Columbia, South Carolina, 803-779-8080, and Ed Evans, General Counsel to the South Carolina Budget and Control Board, Box 11608, Columbia, South Carolina 29211, 803-734-1261. Principal opposing counsel were Michael Spears, 172 E. Main Street, Suite 200, Spartanburg, South Carolina 864-583-3535, and A. Camden Lewis, Lewis and Babcock, 1513 Hampton Street, Columbia, South Carolina 29201, 803-771-8000.

4. Michael and Lisa Strebler, as Personal Representatives of the Estate of Jacob Strebler vs. Milner Super Gas et. al (Richland County Court of Common Pleas, C.A. No. 94-CP-40-4582):

This wrongful death action was brought against a car dealer which sold a vehicle not meeting federal school bus safety standards to a school to transport school children in violation of 15 U.S.C. Sections 1391-1397, 49 U.S.C. 30112 and 49 C.F.R. 571, a private school which utilized the van with knowledge that it had been sold the vehicle unlawfully and a trucking company which employed a truck driver who had collided with the van after running a red light. We represented the Plaintiffs. In the course of our litigation, which was based on negligence *per se* theory of tort liability, we discovered that the United States Department of Transportation had done little to enforce the federal statutory prohibitions. After extensive pretrial motions and discovery and on the eve of trial, the case settled for the largest amount ever paid at that time for the death of a child in South Carolina. The Strebler family then undertook a nationwide campaign to alert parents to the dangers of these widely used but unlawful school vans. They purchased full page ads in Time and Newsweek and were featured in a Dateline NBC segment. Mrs. Strebler traveled the country giving speeches on the need for effective federal enforcement, and I accompanied her at my own expense on several of these occasions. I also assisted her in drafting model legislation prohibiting schools and day care centers from utilizing the vans (federal law applied only to the car dealers) and provided strategic advice as she lobbied the South Carolina General Assembly to adopt what became known as "Jacob's Law." The statute, South Carolina Code Section 15-5-195, was adopted by the South Carolina General Assembly in 2000 and has essentially eliminated the use of 15 passenger vans by schools in South Carolina. Mrs. Strebler's vocal criticism of federal enforcement efforts was also very effective, and the numerous federal administrative enforcement actions across the country that followed her public campaign led to a dramatic decline in the sale of 15 passenger vans to schools to transport school children across the entire country.

I served as lead counsel. My co-counsel was the late Senator Isadore Lourie. Principal

opposing counsel included William Sweeny, Sweeny, Wingate and Barrow, 1515 Lady Street, Box 12129, Columbia, South Carolina 29211, 803-256-2233; E. Crosby Lewis, 2519 Devine Street, Columbia, South Carolina, 803-256-6099; and Monteith Todd, Sowell, Gray, Stepp and Lafitte, 1310 Gadsden Street, Box 11449 Columbia, South Carolina 29211, 803-929-1400. State Circuit Judge L. Casey Manning heard critical motions in the case and played a central role in facilitating a mediated settlement of the litigation. Judge Manning's contact information is Richland County Judicial Center, 1701 Main Street, Box 192, Columbia, South Carolina 29202, 803-576-1773.

5. Mark A. Reed vs. Charles Robert Coxe, M.D. et. al (Richland County Court of Common Pleas, 2000-CP-40-3842):

This medical malpractice action arose out of negligent emergency room care at a major hospital in Columbia, South Carolina in which a patient suffering from incredible pain on presentation was given powerful pain medications, fell asleep and was essentially lost to follow up for an entire shift. When he awoke and was "rediscovered" by the emergency room staff he had become a paraplegic. We represented the Plaintiff. The transcript of my deposition of the defendant physician, in which he ultimately admitted liability and described the events of that day as the worst of his career, has been widely distributed in the Bar as a model cross examination. The defendants ultimately paid Mr. Reed \$7 million in a 2003 settlement, which remains today one of the largest payments ever made in a medical malpractice settlement in South Carolina.

I served as lead counsel. My co-counsel was Luther Battiste, Johnson, Toal and Battiste, 1615 Barnwell Street, P.O. Box 1431, Columbia, South Carolina 29202, 803-252-9700. My opposing counsel was William H. Davidson, Davidson, Morrison and Lindermann, 1611 Devonshire, 2nd Floor, Box 8568, Columbia, South Carolina 29202, 803-806-8222.

6. Lynne and Curt Stines vs. Teri and Dean Edgar vs. Garden City Wings LLC et. al (Horry County Court of Common Pleas, 08-CP-26-1550 and 1551):

These wrongful death dram shop actions involve the death of two young women at the hands of a drunk driver who had consumed large amounts of alcohol at a Wild Wings Cafe in Garden City Beach, South Carolina. We asserted claims on behalf of Plaintiffs against the franchise and owner of the Garden City location, the franchiser (on grounds of negligent supervision because of actual knowledge that the location was in managerial free fall) and the drunk driver. Evidence obtained included security video from the bar showing the customer/drunken driver stumbling around, dancing with his buddies and bumping into customers and then being served additional alcohol. We also provided technical assistance to the Solicitor prosecuting the drunk driver, who was ultimately sentenced to 21 years in prison. The parties settled on the eve of trial in June 2009, with an ultimate recovery for the families in excess of \$4.4 million. This is thought to be the largest payment ever made in South Carolina in a dram shop action.

I served as lead counsel. My co-counsel was Douglas Jennings, 151 Broad Street, P.O. Drawer 995, Bennettsville, South Carolina 29512, 843-479-2865. Principal opposing counsel included Mark Barrow, Sweeny, Wingate and Barrow, 1515 Lady Street, Box 12129, Columbia, South Carolina 29211, 803-256-2233; Thomas G. Salane, Turner, Padgett, Graham and Laney, 1901 Main Street, 17th Floor, Box 1473, Columbia, South Carolina 29202, 803-254-2200, Robert McKenzie, McDonald, McKenzie, Rubin, Miller and Lybrand, 1704 Main Street, 2nd Floor, Box 58, Columbia, South Carolina 29202, 803-252-0500; and Anthony Livoti, Murphy and Grantland, 4406-B Forest Drive, Box 6648, Columbia, South Carolina 29260, 803-782-1400.

7. Wanda Jackson, as Personal Representative of the Estate of Mary Alice Jones vs. Midlands Emergency Physicians, P.A., David Paul Brown, M.D. et. al (Sumter County Court of Common Pleas, C.A. No. 2006-CP-43-230):

This wrongful death medical malpractice action arose out of astoundingly bad emergency room care rendered to a women presenting with the classic symptoms of a dissecting aortic aneurysm at Toumey Hospital in Sumter, South Carolina. Treatment for this condition is surgical and time is critical. Toumey Hospital was not competent to perform the life saving surgery and the patient needed a prompt transfer to a major cardiac hospital. Instead, Mrs. Jones received extremely slow work up for her troubling symptoms and was not transferred until she had markedly deteriorated. One of the emergency room physicians treating Mrs. Jones, who had a long history of brief employment in numerous emergency rooms across the country, could not be located by the parties. We retained a private investigator who finally located the defendant in a suburban hospital in Arizona. In depth investigation into his troubled past produced a dramatic deposition in which he finally confessed, "ok, you got me." The case settled in 2008 for \$2 million.

I served as lead counsel. My co-counsel was I.S. Leevy Johnson, Johnson, Toal and Battiste, 1615 Barnwell Street, Box 1431, Columbia, South Carolina 29202, 803-252-9700. Principal opposing counsel were G. Murrell Smith, Lee, Erter, James, Holler and Smith, 126 N. Main Street, Box 580, Sumter, South Carolina 29150, 803-778-2471; Julius W. McKay, II, McKay, Cauthen, Settana and Stuble, P.A., 1301 Gervais Street, Box 7217, Columbia, South Carolina 29202, 803-256-4645; Mark S. Barrow, Sweeny, Wingate and Barrow, 1515 Lady Street, Box 12129, Columbia, South Carolina 29211, 803-256-2233; Charles E. Hill, Turner, Padgett Graham and Laney, 1901 Main Street, Box 4706, Columbia, South Carolina 29202, 803-771-4400.

8. Margaret S. Hall vs. Marion School District No. 2, 860 F. Supp. 278 (D.S.C. 1993), aff'd 31 F. 3d 183 (4th Cir. 1994):

This employment dismissal case of a classroom teacher arose out of various public statements made by the teacher critical of her superintendent and school board. Evidence developed in the course of discovery revealed a scheme by the superintendent to

terminate Mrs. Hall in retaliation for her clearly protected first amendment activities. The case was tried before then United States District Judge William Traxler, now Chief Judge of the Fourth Circuit United States Court of Appeals. The trial and Judge Traxler's 15 page order were classics.

I was lead counsel and was assisted by my law partner, W. Allen Nickles. The National Education Association's General Counsel handled the Fourth Circuit appeal. My opposing counsel was Kenneth Childs, Childs and Halligan, 1301 Gervais Street, Suite 900, Box 11367, Columbia, South Carolina 29211, 803-254-4035.

9. Leila and Morgan Grimball, as Guardian Ad Litem for Elizabeth Grimball vs. University of South Carolina School of Medicine et. al: (Richland County Court of Common Pleas, 98-CP-40-3360):

This tragic medical malpractice claim involved a 10 year old child who complained of severe back pain several years after surviving childhood cancer. Rather than conduct a standard MRI of the spine to rule out spread of the child's cancer, multiple physicians evaluated the child and concluded she was faking. This diagnosis persisted as the child's symptoms progressively worsened and she ultimately was unable to walk. When the MRI was finally conducted, the child had a massive spinal tumor that could have been treated with earlier diagnosis. Instead, the child was left permanently paralyzed. I was lead counsel in the case, which settled after exhaustive discovery that took the parties across the country. The confidential settlement was at the time one of the largest payouts in a medical malpractice claim.

Opposing counsel included Weldon Johnson, Barnes, Alford, Stork and Johnson, Box 8448, Columbia, South Carolina 29202, 803-799-1111, and Robert Hood Sr., Hood Law Firm, 172 Meeting Street, Box 1508, Charleston, South Carolina 29402, 843-577-4435.

10. Nelson vs. The South Carolina Supreme Court, et. al (United States District Court for the District of South Carolina, C.A. No. 4:99-2015-24):

This federal action arose out of the suspension of an attorney who was dissatisfied with the South Carolina Supreme Court's refusal to reinstate his license. He sued the Supreme Court and each of the five justices individually in federal court, as well as a variety of other parties. This case raised classic judicial immunity defenses as well as preemption and other significant issues to challenge federal jurisdiction of this core state function, the licensing and disciplining of attorneys. We prepared a comprehensive and well researched brief in support of our motion to dismiss. John Hamilton Smith and I represented the defendants, equally sharing the brief preparation and oral argument. We argued our motion to dismiss before then United States Magistrate (now United States District Judge) Terry Wooten, who recommended dismissal of the action. The recommendation was followed by United States District Judge Margaret Seymour, who dismissed the case in May 2001.

The plaintiff represented himself *pro se*. Mr. Smith's contact information is Young Clement Rivers LLP, 28 Broad Street, Box 993, Charleston, South Carolina 29402, 843-577-4000.

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.)

Some of my significant activities as a lawyer have been efforts to advance the cause of public safety regarding matters which we have discovered in the course of litigation. These have included research, drafting and strategic support to the Strebler family in their efforts to promote the use of buses meeting federal school bus safety standards in the transportation of children to and from school. I have traveled across the country at my own expense and prepared detailed literature on federal and state mandates for school transportation officials, parents and others vitally interested in the safe transportation of children. I assisted Mrs. Strebler in drafting what is now known as "Jacob's Law" and gave her strategic advice on persuading the South Carolina General Assembly to adopt this important legislation. I provided similar assistance to another client, Helen Haskell, whose 15 year old son, Lewis Blackman, died at the Medical University of South Carolina after experiencing complications from a recent surgery. When Ms. Haskell asked for a "real" doctor (rather than a resident) to evaluate her son, she was told by a resident he was a "real" doctor. At Ms. Haskell's urging the South Carolina General Assembly adopted the "Lewis Blackman Act" which requires residents to wear badges clearly identifying them as in training. I represented the Blackman/Haskell family in the wrongful death claim against the Medical University of South Carolina and then assisted Ms. Haskell behind the scenes in the pursuit of her legislative remedy. In the Video Poker battle, I assisted legislators in reviewing drafts of highly technical legislation, much which were produced by the army of video poker lobbyists to scuttle any efforts to ban the games. I also assisted at their request then Speaker of the House David Wilkins and the late Rep. Terry Haskins in drafting the final legislation that led to the banning of video gambling in South Carolina. I have never served as a registered lobbyist.

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.

I taught an undergraduate course at Columbia College in Columbia, South Carolina one semester in the early 1980's titled "An Introduction to the Legal Process". The course was primarily for students considering a career in the law. We read a number of major

United States Supreme Court cases and discussed such concepts as equal protection, due process, the supremacy clause, freedom of speech and freedom of the press. I do not now have the course syllabus or any materials from the course.

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

I have made at this point no formal arrangements with my law partners regarding compensation for legal matters which are in progress and may not be completed at the time I leave the private practice of law. I anticipate some equitable arrangement will be made on such unfinished work that is fair both to me and to my partners who must complete the work. Since such matters cannot be known at this time and all involve contingency fees, it is not possible to provide an amount of such future sources of income. I anticipate essentially all such matters should be completed within 24 months of my departure from the firm. I am at this point attempting to bring to trial all outstanding litigation matters on which I am working and hope that there will be few unfinished matters at the time I leave the firm. I also own a 40% interest in 1519 Richland Street LLP, which owns our law firm's office building. I would like to sell that interest to my partners at some point but do not wish to unduly burden them as I am departing the firm. I also may receive some modest compensation for my share of the physical assets of the firm but this has not yet been discussed with my partners. I do not intend to seek compensation from my partners or the firm for good will or for cases in progress in which I have not been working or did not produce.

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

I have no such plans.

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

See attached Financial Disclosure Report

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

See attached Net Worth Statement

24. Potential Conflicts of Interest:

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

Two potential sources of conflict of interest that come to mind involve my wife's service as a member of the Columbia City Council and any matters involving my present law partners. I would certainly recuse myself from any matter in which the City of Columbia was a party as long as my wife is a member of Columbia City Council. I would also recuse myself from any action in which my then former law partners were involved to the extent there remained any financial relationship between myself and my former partners. This would include any continuing involvement in my former cases or ownership of the firm's office building.

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

I intend to undertake any issue of potential recusal with the principles of the Code of Conduct for United States Judges firmly in mind, which mandate the upholding and promoting of the impartiality of the judiciary and the avoidance of any appearance of bias or impropriety.

- 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.

I have attempted over the years to use my talents as an attorney and historian to promote a safer and more tolerate world. In the early 1990's, I brought a suit in the original jurisdiction of the South Carolina Supreme Court challenging the continued flying of the Confederate Battle Flag over the State House because such action was based on a legislative resolution that had expired decades earlier. My clients included the Mayor of Columbia, the state's largest city, and the CEO's of some of the state's largest banks and corporations. The Supreme Court granted our petition for original jurisdiction and appeared poised to grant our request. Unfortunately, the General Assembly responded by adopting a statute authorizing the continued flying of the Confederate Flag, thereby mooting our lawsuit. The state of South Carolina would then endure another decade of racially divisive debate before finally bringing down the Battle Flag from the State House Dome. I handled the entire case, including all litigation costs, out of my pocket, although many of my clients volunteered to contribute to the cause. I spent hundreds of attorney hours in this matter.

I have frequently donated my time and skills to promote the cause of my clients outside the legal arena. As mentioned in response to earlier questions, I provided assistance and support to the Strebler family in their efforts to promote safer transportation for school children. I have traveled to speeches around the country at my personal expense and prepared materials and draft legislation to further the cause. I provided similar services without charge to the Haskell/Blackman family in support of their efforts to require residents to be clearly identified as in training to their patients and families. I also provided without compensation many hours of legal time to legislators seeking a careful review of proposed legislation to ban or restrain video gambling in South Carolina. I have produced in the news articles in response to Question 12(e) a column by State Newspaper editorial writer Cindy Ross Scoppe dated November 9, 1999 that describes in detail my pro bono activities in support of the efforts to ban video gambling in South Carolina.

I have also devoted thousands of hours over the last 20 years to scholarly research and writing that promote tolerance and inclusiveness. This has included original research of our state's first African American lawyer and judge, Jonathan Jasper Wright, and programs which highlight the extraordinary contributions of Sr. United States District Judge Matthew Perry as a civil rights lawyer and jurist. I have written extensively on South Carolina's notable history of religious civility and tolerance and argued that we should apply should practices in our dealings with other minority citizens. I have sought to promote more knowledge of our state's African American history and tradition of religious tolerance by organizing and moderating day long meetings of the South Carolina Supreme Court Historical Society. The Society has brought into the state national scholars and utilized South Carolina's home grown talent to produce first class programs, three of which culminated in published books by the University of South Carolina Press. Our conferences have included such topics as the early African American Bar in South Carolina, South Carolina's history of religious tolerance, women and the law and a program to honor Judge Matthew Perry on the occasion of the dedication of the federal courthouse in his name. I hope to continue my work researching and writing about the history of South Carolina.

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.

I had several discussions with Congressmen John Spratt and James Clyburn in which they advised me that they intended to recommend me to the President as a United States District Judge. At Congressman Spratt's suggestion, I met with Senator Lindsey Graham, who also indicated to me that he supported my appointment as a United States District Judge. I was contacted on July 23, 2009 by staff from the United States Department of Justice, regarding pre-nomination paperwork which needed to be completed. I was interviewed by telephone on September 10, 2009 by Mr. Jonathan Meyer, Deputy Assistant Attorney General of the United States, and Susan Davies, Associate Counsel to the President. I have had subsequent telephone conversations with Department of Justice staff regarding the nomination paperwork and process. I participated in an interview at the United States Department of Justice in Washington, D.C. on September 24, 2009. Those in attendance included Associate Attorney General Thomas J. Perrelli and staff from the Department of Justice and the White House Counsel's Office. My nomination was submitted to the United States Senate on December 22, 2009.

- 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.

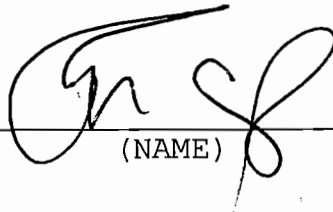
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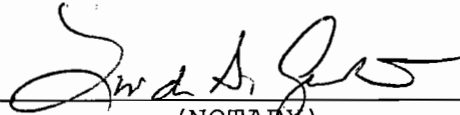
I, Richard Mark Gengel, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

12/20/09

(DATE)



(NAME)



(NOTARY)