

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Robert David Mariani  
(birth certificate states Robert Eugene Mariani)

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

United States District Judge for the Middle District of Pennsylvania

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.

SNB Plaza, Suite 1000  
108 North Washington Avenue  
Scranton, Pennsylvania 18503

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

1950; Scranton, Pennsylvania

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

1973 – 1976, Syracuse University College of Law; J.D. (*cum laude*), 1976  
1968 – 1972, Villanova University; A.B. (*cum laude*), 1972

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.

1993 – Present  
Robert D. Mariani, P.C. (formerly Law Office of Robert D. Mariani)  
SNB Plaza – Suite 1000  
108 North Washington Avenue  
Scranton, Pennsylvania 18503  
Attorney & Sole Shareholder (formerly Sole Proprietor)

1995 & 1980  
Penn State University  
201 Old Main  
State College, Pennsylvania 16802  
Instructor

1979 – 1993  
Mariani & Greco  
Bank Towers Building – 11th Floor  
Scranton, Pennsylvania 18503  
Partner

1980 – 1981  
Lackawanna College  
501 Vine Street  
Scranton, Pennsylvania 18509  
Instructor

1980 – 1981  
Pennsylvania State University  
University Park, Pennsylvania 16802  
Instructor

1978 – 1980  
Scranton/Dunmore Sewer Authority  
312 Adams Avenue  
Scranton, Pennsylvania 18503  
Solicitor

1976 – 1979  
Dunn & Byrne (since dissolved)  
Scranton, Pennsylvania 18503  
Associate Attorney

Late 1970s  
Lackawanna College  
501 Vine Street  
Scranton, Pennsylvania 18509  
Instructor (one semester)

Summer 1975  
Lackawanna County Public Defender's Office  
Lackawanna County Court House  
200 North Washington Avenue, 1st Floor  
Scranton, Pennsylvania 18503  
Summer Intern

Other Affiliations (uncompensated)

1991 – 1995  
Lackawanna County Bar Association  
338 North Washington Avenue, 3rd Floor  
Scranton, Pennsylvania 18503  
Director

1977 – 1981  
Scranton School District  
425 North Washington Avenue  
Scranton, Pennsylvania 18503  
President (1980 – 1981)  
Director (1977 – 1981)

1978 – 1980  
Philharmonic Society of Northeast Pennsylvania  
4101 Birney Avenue  
Moosic, Pennsylvania 18507  
Director

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

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

AV-Rated, Martindale-Hubbell (Highest Legal Ability & Ethical Standards) (1997 – 2010)  
“Super Lawyers,” *Philadelphia Magazine* in Labor and Employment Law (since 2005)  
Labor Law Award, Syracuse University College of Law  
Top 10 Percent of Class, Villanova University

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Arbitration Association

American Bar Association

Committee on Development of Law under the National Labor Relations Act

Section on Labor Law

Section on Litigation

Lackawanna County Bar Association

Board of Directors (1991 – 1995)

National Academy of Arbitrators

Annual Conference Advisory Committee (2010)

Pennsylvania Association for Justice

Pennsylvania Bar Association

Labor Relations Division

Third Circuit Bar Association

United States District Court for the Middle District of Pennsylvania

Chair, Magistrate Judge Merit Selection Panel (1991)

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.

Pennsylvania, 1976

There has been no lapse in membership.

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

Supreme Court of the United States, 1997

United States Court of Appeals for the Third Circuit, 1983

United States District Court for the Middle District of Pennsylvania, 1976

Pennsylvania Supreme Court, 1976

Court of Common Pleas of Lackawanna County, 1976

There have been no lapses in these 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.

Council for Community Affairs, Inc., Annual Joint Celebration of Dr. M.L. King, Jr.'s Birthday (1988 – 2006)

Hill Neighborhood Association (1988 – Present)

Parent Teacher Association for the Scranton School District (1983 – 2007)

Philharmonic Society of Northeast Pennsylvania

Board of Directors (1978 – 1980)

Scranton Skeet Club, Inc. (1982 – 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.

The above-listed organizations do not discriminate and, to the best of my knowledge, have not formerly discriminated on the basis of race, sex, religion, or national origin or upon any other invidious criterion.

**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.

*Liberty, Pursuit of Happiness Entwined with Decent Jobs*, The Scranton Times, (Guest Editorial), Labor Day 1995. Copy supplied.

Contributing Editor of *The Developing Labor Law* (3d ed.) (1990 – 1992), published by the ABA and the Bureau of National Affairs, Inc. and the 1994, 1996, 1997, 1998, and 1999 Supplements; and *The Developing Labor Law* (4th ed.) and the 2002 Supplement. I wrote the text of Subchapter IV of Chapter 28 entitled, "Preemption Under Section 301," and I have updated that subchapter in the above supplements. Copies 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.

None that I can recall or have been able to identify.

- 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.

On January 29, 1993, I presented oral testimony before the Governor's Panel on Health Care Reform in Pennsylvania at Marywood University, Scranton, Pennsylvania. The speech addressed the need for health care reform and focused on the difficulty of enacting health care reform at the state level because of the preemptive effect of federal labor law and the Employee Retirement Income Security Act (ERISA). I have no notes, transcript, or recording.

- 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.

This list represents the speeches and talks that I have identified through searches of my files and the internet. I have tried my best to list all such events, although there may be some that I have not been able to identify or locate.

May 28, 2010: Panelist, National Academy of Arbitrators 2010 Annual Meeting, Philadelphia, Pennsylvania. The subject of the panel discussion was "Abandon Ship! Or Not? – Dilemmas of Mid-Case Recusal." The panel addressed five separate scenarios where the issue of recusal of an arbitrator during a labor arbitration proceeding arose which raised ethical considerations for counsel and the arbitrator. The five scenarios are supplied, as is a transcript of the panel discussion in which I participated.

April 24, 2007: Presenter, Northeastern Pennsylvania Labor Management Council and Pennsylvania Bureau of Mediation, Luzerne County Community College, Nanticoke, Pennsylvania. I participated in a program entitled, "Witness to an Arbitration," which included a mock discharge arbitration and a discussion of the process of and preparation for arbitration. I have no notes, transcript or recording. The address of the Labor Management Council is 100 North Wilkes-Barre Boulevard, 2nd Floor, Wilkes-Barre, Pennsylvania 18702.

October 2004: Panelist, Lackawanna County Economic Development Summit, Scranton, Pennsylvania. The substance of my presentation included an evaluation of the Scranton area which emphasized the work ethic and skills of the local work force as a basis on which to attract new sources of employment in the area. I have no notes, transcript or recording. The address of the County Planning & Economic Development Summit is 135 Jefferson Avenue, Scranton, Pennsylvania 18503.

September 12, 2003: I presented remarks at an American Arbitration Association seminar in Philadelphia, PA, on labor arbitration. Notes supplied.

October 31, 2002: Participant, Sexual Harassment Mock Trial, sponsored by Northeastern Pennsylvania Labor Management Council and Pennsylvania Bureau of Mediation, William J. Nealon Federal Courthouse, Scranton, Pennsylvania. I have no notes, transcript or recording. The address for the Labor Management Council is 100 Wilkes-Barre Blvd., 2nd Floor, Wilkes-Barre, Pennsylvania 18702.

October 4 and 5, 2001: Principal Speaker, Pennsylvania Public Employee Labor Law Conference sponsored by the Pennsylvania Bar Institute. The subject matter of the speech was the most recent decisions of the appellate courts of Pennsylvania applying the Pennsylvania Public Employee Relations Act. I have no notes, transcript, or recording. The address of the Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

November 3, 2000: Speaker, Pennsylvania Bar Institute, First Annual PBI Labor Law Symposium, Philadelphia, Pennsylvania. I submitted a 15-page article entitled, *Application of the Americans with Disabilities Act in the Context of Collective Bargaining Agreement - A Response of the Circuit Courts Thus Far*. I have no notes, transcript, or recording, but a copy of the article I submitted is supplied. The address of the Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

April 2000: Presenter, Pennsylvania Bar Institute's Employment Law Institute, Philadelphia, Pennsylvania. I presented a paper entitled *Enforceability of Arbitration*. I have no notes, transcript, or recording, but a copy of the paper I presented is supplied. The address of the Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

Approx. 2000: Speaker, rededication ceremony of the John Mitchell statue and memorial, Courthouse Square, Scranton, Pennsylvania. From my recollection, I presented a summary of Mr. Mitchell's achievements as a labor leader and his role in improving the working conditions of coal miners in Northeastern Pennsylvania in the early 20th century. I have no notes, transcript, or recording.

September 21, 1999: Speaker, ABA Section of Labor and Employment Law and Region 4 of the NLRB One-Day Program, Law and Procedure under the National Labor Relations Act, Philadelphia, Pennsylvania. I also participated in a panel discussion on the nature of ethical issues arising in communications with current and former employees of an adversarial party. I have no notes, transcript, or recording. The address of the ABA is 321 N. Clark Street, Chicago, Illinois 60610.

1996: Presenter, Lackawanna County Bar Association's "People's Law School," Marywood University, Scranton, Pennsylvania. I delivered a lecture on employer-employee rights and responsibilities under federal and state law. I have no notes, transcript, or recording. The address of the Association is 338 North Washington Avenue, 3rd Floor, Scranton, Pennsylvania 18503.

1995: Commentator, Pennsylvania Bar Institute Seminar, produced by Philadelphia Regional Office of the National Labor Relations Board in cooperation with the Labor and Employment Law Section of the Pennsylvania Bar Association. I have no notes, transcript, or recording. The address of the Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

December 14, 1994: Commentator, National Labor Relations Board and the Pennsylvania Bar Institute seminar, "NLRB Current Perspectives." I do not recall the specific subject matters discussed, but I do recall that the topic, generally, was recent developments under the National Labor Relations Act. I have no notes, transcript, or recording. The address of the Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

Approx. November 1987: Presenter, Fifth Annual Bench-Bar Conference of the Lackawanna County Bar Association. I presented a paper entitled, "The Employment At Will Doctrine In Pennsylvania: A Chronological Assessment." A copy of the paper is supplied.

In addition, for several years in the early- to mid-1990s, I taught courses on labor law in the Union Leadership Academy Program, which was sponsored by Pennsylvania State University. I do not have any course materials.

Finally, as part of the counseling side of my practice, I have occasionally given seminars to local unions on employment- and labor-law related topics. I do not recall the dates or the specifics of these seminars, and I do not have any notes, transcripts, or recordings.

- 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.

In responding to this request, I searched my memory, records and the internet to identify interviews I may have given, in particular, as a member of the Board of Directors of the Scranton School District, as an attorney, or as a private citizen. While I recall that there were occasions when I was questioned by reporters from local newspapers or radio or television stations during my tenure as a School Board member with respect to issues related to the operation of the Scranton School District and with respect to matters in which I was engaged as an attorney, I have no specific recollection of the comments or statements I may have made.

Listed below are the newspaper articles I was able to find in which statements, comments, or answers to questions I gave are reported:

Libby A. Nelson, *Obama Nominates Scranton Attorney to District Judge Position*, The Times-Tribune, Dec. 2, 2010. Copy supplied.

Charles Schillinger, *County Union Gets 12 Percent Raise*, The Times-Tribune, July 15, 2010. Copy supplied.

Borys Krawczeniuk, *Sources: Nealon, Minora, Mariani to be Submitted for Nomination to Federal Bench*, The Times-Tribune, July 8, 2010. Copy supplied.

Leo Strupczewski, *Board May Not Solely Rely on Accrediting Agency, Court Rules*, Pennsylvania Law Weekly, July 6, 2010, at 6. Copy supplied.

Mark Guydish, *Schools Fight Health Trust Over Surplus: Dallas and Pittston Area Want Cash from the Insurance Consortium They Withdrew from in June 2007*, Times Leader, Jan. 24, 2010. Copy supplied.

Charles Schillinger, *Lackawanna Deputies Union Files Grievance Over Cipilewski Dismissal*, The Times-Tribune, Aug. 4, 2009. Copy supplied.

Charles Schillinger, *Fired County Deputy Says Dismissal "Reeks Of Politics;" Sheriff Denies Claim*, The Times-Tribune, July 30, 2009. Copy supplied.

Mark Guydish, *Health Trust Trying Mediation: Pittston, Dallas Districts, Which Left, Want Share of Surplus*, Times Leader, Oct. 23, 2007. Copy supplied.

Elizabeth Zygmunt, *Unions, Employers Often Fall into Groupthink*, The Times-Tribune, Mar. 4, 2007. Copy supplied.

Erin L. Nissley, *Sheriff Wins Grievance Over Scheduling*, The Times-Tribune, Mar. 2, 2007. Copy supplied.

Kris Wernowsky, *Union: Don't Leave Health Group*, Times Leader, July 13, 2006. Copy supplied.

Nichole Dobo, *Ten Districts Consider Leaving Health Trust*, Citizen's Voice & Sunday Voice, July 13, 2006. Copy supplied.

*Openness of Health Consortium Eyed; Solicitor Says State-Level Case Will Determine Whether Future Meetings Are Open*, Times Leader, May 25, 2006, at A12. Copy supplied.

Nichole Dobo, *Health Trust Grapples with \$12 M Surplus; Taxpayers in Local Public School Entities Paid the Premiums for Teachers, Staffers*, Citizen's Voice & Sunday Voice, May 24, 2006. Copy supplied.

Michael Race, *Union Files Suit Against County*, The Times-Tribune, Nov. 25, 2005, at A4. Copy supplied.

Joel Berg, *Labor Split Could Spur Local Organizing Drives*, Northeast Pennsylvania Business Journal, Oct. 1, 2005, at 9. Copy supplied.

Kalen Churcher, *Health Trust Finances on the Rebound; Involved School Districts Were Told the Group Would be Debt Free in Two Years*, Times Leader, Feb. 8, 2004, at 3A. Copy supplied.

Bonnie Adams, *New Math Aims to Cut Districts' Health Costs; Health Consortium Has Altered Computation Methods to Use Last Three Years of School Districts' Health Costs to Determine Rates*, Times Leader, Oct. 17, 2002. Copy supplied.

Bonnie Adams, *Health Trust Director Gets Significant Pay Hike; Andrew Marko's Salary Will Go from His Current \$35,000 to \$60,000 Next Year*, Times Leader, Sept. 19, 2002. Copy supplied.

Christine Fanning, *State of the Unions: Debatable*, Northeast Pennsylvania Business Journal, Sept. 1, 2001, at 1. Copy supplied.

Christina Dubitsky, *Public or Private? School Health Trust's Status Debated; Controversy Stems from Appointment of Andrew Marko as Director of the Consortium at an Unadvertised Meeting*, Times Leader, Aug. 18, 2001, at 7A. Copy supplied.

Bonnie Adams, *10-Year-Old Bias Case Nears Trial; An Appeals Court Ruling Sends a Disabled Area Woman's Claim of Discrimination to Lackawanna County Court for Action*, Times Leader, Mar. 25, 2000, at 1B. Copy supplied.

Chris Johnson, *Crestwood Teachers Shun Deal on Policy Because Union Officials Have So Far Refused to Sign a Health Insurance Pact as Part of a Consortium, Crestwood Could Lose \$250,000 a Year on Health Insurance, Says Official*, Times Leader, Aug. 24, 1999, at 1A. Copy supplied.

Joe Healey, *Senior Topps Workers Benefit Most from Deal by a Vote of 253-176, Former Duryea Plant Employees Accept Company's Last Offer of \$450 for Every Year of Service, Plus Unused Vacation Pay*, Times Leader, Sept. 29, 1997, at 1A. Copy supplied.

Pamela C. Turfa, *Topps' New Offer Will Go to Vote; the Company's Latest Proposal for Former Employees Would Increase Payments to Those with Higher Seniority and Reduce Payments to Others*, Times Leader, Sept. 27, 1997, at 1A. Copy supplied.

Jennifer L. Henn, *Former Topps Workers Vote to Negotiate Settlement*, Times Leader, Sept. 14, 1997, at 3A. Copy supplied.

Pamela C. Turfa, *Ex-Topps Workers Offered \$2,500-\$6,000; Schott Glass Technologies is Interested in Buying the Duryea Plant and Adding Jobs*, Times Leader, Sept. 11, 1997, at 1A. Copy supplied.

Sanjay Bhatt, *Parties in Strike Shut Out; Courthouse Meeting Results Only in Lecture from Judge to Attorneys Representing Both Sides in Pittston Area Strike*, Times Leader, Nov. 15, 1996, at 3A. Copy supplied.

Jerry Lynott, *Topps Workers Union Takes Case to NLRB*, Times Leader, Nov. 14, 1996. Copy supplied.

Sanjay Bhatt, *Judge Scolds Union, Board; Court Orders Pittston Area Teachers Back to School and Bargaining Sessions Held Every Day. Judge Raps Board for Not Having Committed Negotiating Team*, Times Leader, Nov. 5, 1996, at 1A. Copy supplied.

Brian Malina, *Topps Denies Rumors of Foreign Production Plans*, Times Leader, Oct. 7, 1996, at 1A. Copy supplied.

John Decker, *Topps Union Votes to Give Concessions; Workers Meet Only Days After Being Told the Plant Where Some Have Been Employed for Decades Might Close*, Times Leader, Oct. 6, 1996, at 1A. Copy supplied.

Rich Mates, *Ex-Affiliated Workers to Split \$400,000*, Scranton Times, Sept. 14, 1996, at A3. Copy supplied.

*Hauler, Teamsters Agree to Limit Pickets at Pocono Terminal*, The Morning Call, Apr. 20, 1994, at B4. Copy supplied.

Mitch Grochowski, *Court Grants Jobless Pay to Strikers*, Scranton Tribune, July 1984. 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.

I have not held judicial office.

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

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

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

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

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

In 1977, I was elected to a six-year term on the Board of Directors of the Scranton School District. I was elected Board President for the 1980-1981 year by the members of the Board. I resigned from the Board at the conclusion of the fourth year of my term in 1981.

In 1993, I was nominated by Governor Robert P. Casey to fill an interim vacancy on the Pennsylvania Superior Court. I declined the appointment for business reasons.

In 1995, I was an unsuccessful candidate for election to be Judge of the Court of Common Pleas of Lackawanna County.

I have not otherwise held public office, had unsuccessful candidacies for elective office, or had unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held office in or rendered service to a political party or election committee. I have never held a position or played a role in a political campaign.

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

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

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

I did not serve as a law clerk to a judge.

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

I have not practiced alone. In 1993, I opened my own practice but since that time I have always employed other attorneys as associates or as of counsel to my practice.

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

1976 – 1979

Dunn & Byrne (no longer in existence)  
Scranton, Pennsylvania  
Associate Attorney

1978 – 1980

Scranton/Dunmore Sewer Authority  
312 Adams Avenue  
Scranton, Pennsylvania 18503  
Solicitor

1979 – 1993  
Mariani & Greco  
Bank Towers Building - 11th Floor  
Scranton, Pennsylvania 18503  
Partner

1993 – 2001  
Law Office of Robert D. Mariani  
SNB Plaza – Suite 1000  
108 North Washington Avenue  
Scranton, Pennsylvania 18503  
Proprietor

2001 – Present  
Robert D. Mariani, P.C.  
SNB Plaza – Suite 1000  
108 North Washington Avenue  
Scranton, Pennsylvania 18503  
Sole Shareholder

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

I have served as a mediator and as an arbitrator. Described below are the 10 most significant matters in which I served as an Arbitrator:

- (1) *Pre-Fab Panelwall, Inc. & Jewelcor, Inc.*, AAA Case No. 14 110 0382 87 H/E.

I served as Neutral Arbitrator on a tri-partite panel of arbitrators who were selected to hear and decide a dispute arising with respect to the construction of the exterior glass fiber reinforced concrete walls of the building. The building owner claimed that the walls were so defectively constructed that the integrity of the building was jeopardized and the builder counterclaimed that the owner failed to pay pursuant to the AIA Contract entered into by them, and further interfered with the “critical path” of construction thereby delaying and ultimately preventing the project’s completion. The panel heard testimony from lay and expert witnesses over 100 days of hearings in the period 1987 to 1989. The panel found for the owner on many of its specific monetary claims as well as on several of the counterclaims of the builder. The result was a molded verdict in favor of the owner.

(2) *In the Matter of the Arbitration between: Elm Park United Methodist Church and Munley, Mattise & Kelly, P.C.*

I served as Neutral Arbitrator on a Board of Arbitrators in 1998 who resolved a dispute between the Elm Park United Methodist Church and the Law Firm of Munley, Mattise & Kelly, P.C., which arose out of a lease agreement between the parties. After hearing, the board found that the Munley Law Firm was entitled under the initial five-year term lease agreement to amortize the sum of \$90,000.00 of the \$115,591.69 it incurred in costs for repairs and modernization of the leased premises against the monthly rental payment it was required to pay. The board further found that in the second five-year term of the lease, the Munley Law Firm was entitled to amortize against the rental payments due in the sum of \$48,321.96, leaving a balance of rent owing in the amount of \$88,638.94. Additional issues with respect to the application of the lease agreement were resolved in a written award.

(3) *DeLeo v. Allstate Ins. Co., Ct. Com. Pl. of Lackawanna Cnty.*

I served as the Neutral Arbitrator in connection with plaintiff's claim for personal injuries arising out of an automobile accident on May 18, 1988. The Panel of Arbitrators was required to determine the existence of coverage in light of his contention that the accident was caused by a "phantom" vehicle, which forced his vehicle off the road, but did not remain at the scene of the accident. The panel ruled that it was not required to decide whether the policy language in question was valid since DeLeo produced competent evidence other than his own testimony, which established that a hit-and-run accident did in fact occur with a "phantom" vehicle. The Panel found that the accident was caused by the negligence of the "phantom" vehicle, but that DeLeo's comparative negligence was also a substantial factor in causing this accident. The Panel apportioned 30% negligence to Mr. DeLeo and reduced its award of damages to him accordingly.

(4) *Jean Pierre, Individually, and as the Ex'x of the Estate of Margaret Hughes, Deceased v. Keystone Ins. Co., Ct. Com. Pl. of Lackawanna Cnty., Nos. 90-CIV-3531, and 93-CIV-3523.*

In this case, I served as the Neutral Arbitrator in connection with a claim for damages pursuant to the underinsurance arbitration provisions of an automobile insurance policy issued to the decedent. The claim arose from an automobile accident which resulted in the death of the woman whose estate brought the claim. The Panel of Arbitrators, after hearing, awarded damages to plaintiff.

(5) *Mills v. Allstate Ins. Co.*, May 28, 1997.

I served as the Neutral Arbitrator on a Panel of Arbitrators convened pursuant to the underinsurance arbitration provisions of plaintiff's automobile insurance policy. The Panel issued an award of damages to plaintiff, which was molded to take into account certain credits, deductions, and off-sets to which defendant was entitled.

(6) *Garrison v. Cont'l Cas. Co.*, November 11, 1997.

In this underinsured motorist claim, I served as the Neutral Arbitrator on a Panel of Arbitrators convened to hear the claim of plaintiff arising from an automobile accident in which plaintiff's decedent, in attempting to make a left-hand turn across a two lane highway, was struck and killed by an oncoming vehicle. The Arbitration Panel entered an award of damages to the decedent's estate, which was reduced by one-third under the comparative negligence law of Pennsylvania.

(7) *Cody M. Snell, a Minor, by and through his Natural Parents and Legal Guardians, Michael P. Snell, Jr. and Kimberlee Snell v. Encompass Ins. Co.*, May 23, 2003.

In this underinsured motorist arbitration, I served as Neutral Arbitrator on a Panel of Arbitrators, which awarded damages to a 6-year-old child who sustained physical and psychiatric injuries when the vehicle in which he was a passenger was struck by another motor vehicle, which crossed into its lane of travel.

(8) *Nancy Casey & Patrick A. Casey v. Selective Ins. Co.*, August 22, 2003.

In this underinsured motorist arbitration, I served as Neutral Arbitrator on a Panel of Arbitrators convened to hear the claims of plaintiffs arising from a rear end auto collision in which one of the plaintiffs, at that time a 37-year-old mother of five and a certified critical care and trauma nurse, sustained serious injuries. The Panel of Arbitrator awarded damages to plaintiffs, which were reduced by a credit to which defendant insurance company was entitled.

(9) *Bremer v. Prudential Prop. & Cas. Ins. Co.*, September 15, 2003.

In this underinsured motorist arbitration, I served as Neutral Arbitrator on a Panel of Arbitrators convened to hear the claims of plaintiff, who was injured when his vehicle was struck by two other vehicles. The Panel of Arbitrators awarded damages to plaintiff, which were reduced by a credit to which defendant insurance company was entitled.

(10) *Dorsan Constructors, Inc. v. Most Reverend Timlin, D.D., Bishop of the Roman Catholic Diocese of Scranton, PA, as Tr. for Saint Luke's Roman Catholic Parish of Stroudsburg, PA, & Saint Luke's Roman Catholic Church*, April, 1996.

In this dispute between a building contractor and the Roman Catholic Diocese of Scranton, PA, I was selected to serve as Neutral Arbitrator with respect to the contractor's claims for additional payments arising out of work it performed as part of renovations to a church, including the contractor's claims for reimbursement for sales tax which it paid for materials purchased for the project. After hearing, the Panel of Arbitrators found in favor of plaintiff in the amount of \$5,394.94, representing the amount of Pennsylvania sales tax found to be owing. Plaintiff's other claims for additional payments were denied.

b. Describe:

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

From 1976 to 1980, I practiced in the area of labor and employment law, as well as in the areas of commercial transactions, real estate, and civil and criminal litigation. I also served as Solicitor to the Scranton-Dunmore Sewer Authority, and in that capacity, I gained experience in municipal law.

Beginning in 1980, I was able to develop my practice with a greater emphasis on labor and employment law so that, by 1984, I began to practice almost exclusively in the area of labor and employment law, although I also devoted time to corporate and real estate law. Thereafter, and continuing to the present, my practice has been almost exclusively in the area of labor and employment law, including collective bargaining and labor arbitration, practice before the NLRB, EEOC, and Pennsylvania HRC, federal and state court labor litigation, and employee pension and benefit law under ERISA and the Internal Revenue Code. In addition, I serve as counsel to two public school health trusts, formed by the public school districts, vocational-technical schools, and intermediate units in Luzerne and Berks Counties.

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

My typical clients have been labor unions, such as Teamsters Local 229, United Food & Commercial Workers, Local 1776, Machinists Locals 847 and 2905, Carpenters Local 645, Laborers' Local 130, Sheet Metal

Workers, Local 44, Operating Engineers, Local 367, Lackawanna County Adult, Juvenile, and Domestic Relations Employees Union, and the Lackawanna County Deputy Sheriffs' Association, individual employees, employee benefit trust funds of Laborers' Local 130, Sheet Metal Workers, Local 44 and the Carpenters' funds, public sector trusts, such as the Northeast Pennsylvania School District Health Trust and the Berks County School Districts Health Trust, and, to a lesser extent, employers, such as the University of Scranton and Connaught Laboratories, now Sanofi Pasteur. My practice is almost exclusively in the area of labor and employment law, including bargaining and labor arbitration, practice before the NLRB, EEOC, the Pennsylvania HRC and the PLRB, federal and state court labor litigation, and employee pension and benefit law under ERISA and the Internal Revenue Code.

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

Approximately 75% of my practice has been in litigation in federal or state court, before the NLRB or PLRB, and in labor arbitration. I frequently appear in federal court since private sector labor and employment law, including enforcement of the anti-discrimination statutes, is federal in nature.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 75% |
| 2. state courts of record:  | 15% |
| 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.

Approximately 30. In addition, I have tried over 250 cases to decision in labor arbitration proceedings. Further, I have had a number of cases resolved in court on my motion for summary judgment. My involvement in these cases, with one exception, was as sole counsel.

- i. What percentage of these trials were:

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

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

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. *Local 730 v. Pa., Unemployment Comp. Bd. of Review*, 480 A.2d 1000 (Pa. 1984). This case further delineated the test for assessing the responsibility for a work stoppage under Pennsylvania unemployment compensation law. I represented Local 730 before the Unemployment Compensation Referee, the Unemployment Compensation Board of Review, the Commonwealth Court, and the Pennsylvania Supreme Court. I wrote all of the briefs submitted on behalf of the union in this case, including the union's brief as appellant in the Commonwealth Court and the union's brief as appellee in the Pennsylvania Supreme Court. Additionally, I represented the union at hearings before the Commonwealth Court and the Supreme Court on The Trane Company's motion for a stay of the Commonwealth Court's Order pending appeal to the Supreme Court. I twice presented oral argument before the Pennsylvania Supreme Court, which upheld my client's position.

The judges of the Commonwealth Court before whom I appeared were Judges Craig, MacPhail, and Blatt. I appeared before Judge Blatt at the hearing on the motion of The Trane Company for a stay of the Commonwealth Court's Order.

I appeared before then-Judge Hutchinson at the hearing on The Trane Company's motion to the Supreme Court for a stay of the Commonwealth Court's Order and I presented oral argument on two occasions before the entire Pennsylvania Supreme Court.

Opposing counsel were Lawrence Zimmerman (no current contact information) and Sondra Berman (retired).

2. *Ne. Dep't ILGWU Health & Welfare Fund v. Teamsters Local 229 Welfare Fund*, 764 F.2d 147 (3d Cir. 1985). I represented the Local 229 Welfare Fund in the district court and also in the Third Circuit, where I wrote the appellant's brief and presented oral argument before the court. The Third Circuit upheld my client's position and applied the fiduciary standards of Section 1104 of ERISA to invalidate escape clauses by which a provider of health insurance benefits under ERISA would exclude an otherwise eligible employee from coverage on the basis that such employee had coverage through his or her spouse's employment.

I appeared before Judge Nealon at the district court and, on appeal, I presented oral argument to a Third Circuit panel consisting of Judges Becker, Sloviter, and Fullam.

Opposing counsel was Charles Johnston, 150 Corporate Center Drive, Camp Hill, PA 17011; (717) 975-5500.

3. *Carpenters Local 261 Health & Welfare Fund, Annuity Fund v. Nat'l Union Fire Ins. of Pittsburgh, Pa.*, 686 A.2d 1373 (Pa. Cmwlth. 1996), *pet. for allowance of app. denied* (May 20, 1997). I represented the Carpenters Local 261 employee benefit trust funds named above in an action to collect unpaid benefit contributions on two public projects pursuant to the Pennsylvania Public Works Contractors' Bond Law from the surety on each such project, which had issued the payment bond required as a prerequisite to the award of a public construction contract. The Courts of Common Pleas of Pike and Monroe Counties entered judgment against the Carpenters' Funds on the basis that their suit to collect the unpaid trust fund contributions was preempted by federal law, specifically Section 514 of ERISA, 29 U.S.C. § 1144.

On appeal to the Commonwealth Court, I successfully argued before the court en banc that the Pennsylvania Bond Law was not preempted by ERISA and that the trust funds were entitled to judgment in their favor for the full amount of the contributions, to be paid by the bankrupt contractors' surety, the National Union Fire Insurance Company. This was a case of first impression in the Commonwealth of Pennsylvania.

Opposing counsel were William D. Clifford and John McGinley, of Dickie, McCamey & Chilcote, Suite 400, Two PPG Place, Pittsburgh, PA 15222; (412) 281-7272. Mr. McGinley's present address is Eckert Seamans, 600 Grant Street, Pittsburgh, PA 15219; (412) 566-1984.

4. *Chipkevich v. Univ. of Scranton*, Civil Action No. 92-1283 (M.D. Pa.). I represented the University of Scranton in a suit brought by plaintiff who claimed that his dismissal from the university's Master's Degree Program violated the Americans with Disabilities Act and the Rehabilitation Act of 1973. I successfully argued to the court that the University of Scranton, as a Catholic, Jesuit university was exempt from the obligations imposed under Subchapter III of the Americans with Disabilities Act by Section 12187 thereof, which exempts "religious organizations or entities controlled by religious organizations." On that basis, the ADA count was dismissed. The plaintiff

appealed, challenging the scope of the Section 12187 exemption. At the conclusion of oral argument, the court suggested that the case be submitted to the court's mediation program where it was subsequently settled. I represented the university in all phases of this matter.

Opposing counsel was Thomas Feissner, 218 North Wyoming Street, Hazleton, PA; (570) 455-4558.

5. *United Food & Commercial Workers Union Local 1776 v. Excel Corp.*, 470 F.3d 143, 180 LRRM 3205 (3d Cir. 2006). In this case, which the Third Circuit termed a "novel issue for this court," I brought suit on behalf of Local 1776 to enforce an arbitration award which ordered the reinstatement with back pay of Excel employee Jose Diaz, who, along with his spouse, had been discharged for allegedly stealing meat from the employer's plant. The company reinstated the spouse and made her whole for lost wages. With respect to Mr. Diaz, however, the company simultaneously reinstated him, paid him two days' wages for the period between the date of his suspension and the date of his discharge, and discharged him a second time on the ground that he had engaged in violent and abusive conduct at the meeting held with respect to his original termination. The union sought to enforce the arbitration award in favor of Mr. Diaz and, in particular, to obtain the back pay owing to him under the arbitration award. The district court held that the grievant must be reinstated pursuant to the initial arbitration award, but that the employer was free to terminate the employee a second time. Both Local 1776 and Excel, also known as Cargill Meat Solutions Corporation, appealed from the district court's order. The Third Circuit held that Excel had an independent reason to terminate the grievant a second time since the arbitrator declined to consider this additional basis for the grievant's discharge, and that the union was free to place the second discharge of Mr. Diaz before another arbitrator. In accordance with the Third Circuit's direction, a second arbitration was held, which resulted in the second discharge of the grievant being reversed and an award of approximately \$120,000 in back pay.

I represented Local 1776 at the initial arbitration with respect to the grievant's and his spouse's discharge, in all proceedings before the district court and the Third Circuit, and in the second arbitration reversing the discharge and awarding back pay.

I appeared before Judge Kosik in district court. The Third Circuit opinion was written by Judge Sloviter.

Opposing counsel were Anne Liese Wermuth and Joseph E. Tilson, Meckler, Bulger & Tilson, 123 North Wacker Drive, Chicago, IL 60606; (312) 474-7900; and Vincent Candiello, Post & Schell, 17 North 2nd Street, Harrisburg, PA 17101; (717) 731-1970.

6. *Barcola v. Interim Health Care Servs.*, No. 3:CV-97-1363 (M.D. Pa.), *aff'd*, 31 F. App'x 791, 2002 WL 463286 (3d Cir. 2002). I represented a registered nurse who took a pregnancy-related leave of absence from her job as home care supervisor and then, after the birth of her child, was told that her employer had no work for her. She subsequently learned that her position as Medicare Home Supervisor had been given to another

employee. I brought suit on behalf of plaintiff under the Family and Medical Leave Act, 29 U.S.C. § 2601, *et seq.*, and pursuant to the Pregnancy Discrimination Provisions of Title VII of the Civil Rights Act, 42 U.S.C. § 2000(e), *et seq.*

A three-day jury trial was conducted in December 1999, and the jury returned a verdict in favor of plaintiff against all three defendants. The jury found that defendants were liable under the FMLA and awarded back pay in the amount of \$31,400, front pay in the amount of \$9,000, and compensatory damages in the amount of \$15,000. On March 19, 2001, the district court denied defendants' motion for judgment as a matter of law or a new trial. The court also added \$9,000 to the judgment for front pay and entered judgment in favor of plaintiff and against defendants in the amount of \$85,057.18. Defendants appealed from the judgment, and plaintiff appealed from the court's order that each party should bear its own costs and attorneys' fees. On appeal, the judgment of the district court was affirmed.

I represented plaintiff in the jury trial and before the district court and on appeal. I served as principal counsel in all of these proceedings.

Defendants were represented by Albert E. Nicholls, 1421 East Drinker Street, Dunmore, PA 18512; (570) 344-7171; and Frank Mroczka, United One Real Estate, 270 North Sherman Street, Wilkes-Barre, PA 18702; (570) 884-7811.

7. *Trowbridge v. Scranton Artificial Limb Co.*, 747 A.2d 862 (Pa. 2000), after remand to the Ct. Com. Pl. of Lackawanna Cnty., at No. 90-CV-3960, *aff'd*, 819 A.2d 125 (Pa. Super. 2003). I represented the Scranton Artificial Limb Company in a suit brought against it by a former employee who suffered from muscular dystrophy and filed suit after she was terminated alleging a violation of Section 955(a) of the Pennsylvania Human Relations Act, 43 P.S. § 951, *et seq.* Plaintiff's suit was dismissed on summary judgment. The trial court applied the doctrine of judicial estoppel and found that plaintiff's representations to the Social Security Administration that she was unable to work because of her disability were irreconcilable with her PHRA claim, which alleged that her disability did not substantially interfere with her ability to perform her job. On appeal, the Superior Court affirmed the trial court in an unpublished opinion.

The Supreme Court of Pennsylvania reversed, holding that appellant's claims made in her application for Social Security disability insurance benefits did not automatically estop her from maintaining a claim under the PHRA. It further ruled, however, that appellant, on remand, was required to "sufficiently explain how the claims she made in her Social Security disability benefits proceedings are consistent with her claims under the PHRA, in which she stated that she suffers from a non-job related handicap or disability." On remand, after trial, the court ruled that plaintiff could not reconcile her claim of disability in her application for Social Security benefits with her claim in the PHRA case that she was able to work and entered judgment in favor of the employer. On appeal, the Pennsylvania Superior Court affirmed.

Plaintiff's counsel was Peter G. Loftus, 1207 North Abington Road, Waverly, PA 18471; (570) 586-8604.

8. *Scott v. Graphic Commc'ns Int'l Union, Local 97-B*, 92 F. App'x 896, 2004 WL 516164, 93 FEP Cases 804 (3d Cir. 2004). I represented Graphic Communications International Union, Local 97B, in a suit brought by one of its members who alleged discrimination, harassment, and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2, *et seq.*, and the Pennsylvania Human Relations Act, 43 P.S. § 951, *et seq.*, as well as a claim for breach of the duty of fair representation. Local 97-B was a party to a collective bargaining agreement covering the terms and conditions of plaintiff's employment. Plaintiff alleged that the union had failed to pursue grievances for her in connection with her request for medical/pregnancy leave, which had been denied by her employer, and that she had been subjected to a hostile work environment as to which the union took no action. Defendant Local Union, as well as its International, filed motions to dismiss or for summary judgment, which were granted by the district court (Judge Jones).

On appeal, and after oral argument before Judges Nygaard, Fuentes, and O'Neill, the Third Circuit affirmed, ruling that there was no procedural defect in the summary judgment ruling and that Local 97-B did not discriminate against plaintiff/appellant. It relied upon the union's evidence that it "actively pursued plaintiff's grievance seeking maternity leave she was denied by Eureka," including submitting the grievance to final and binding arbitration where it was denied. The court found that her allegations of a hostile work environment did not reach a level of sufficient severity or pervasiveness to alter the conditions of her employment. The state law discrimination and harassment claims were found preempted by federal labor law.

I represented Local 97-B in all proceedings before the district court, as well as in all proceedings and oral argument before the Third Circuit.

Opposing counsel was Cynthia L. Pollick, 126 S. Main Street, Suite 201, Pittston, PA 18640; (570) 654-9675.

9. *Ronald E. Evans d/b/a Evans Sheet Metal, Barbara Ann Evans d/b/a Evans Sheet Metal, Ronald E. Evans, Inc. t/a Evans Sheet Metal and Evans & Evans, Inc. and Local 44, Sheet Metal Workers*, 337 NLRB No. 182, 170 LRRM 1502, *enforced*, 92 F. App'x 844 (3d Cir. 2003). I represented Sheet Metal Workers Local 44 in unfair practice proceedings before the National Labor Relations Board. I initiated unfair labor practice charges on behalf of Local 44 against the above-referenced respondents and alleged, *inter alia*, that the company known as Evans & Evans, Inc. was the alter ego of Ronald E. Evans d/b/a Evans Sheet Metal and Ronald E. Evans, Inc. The case was tried before Administrative Law Judge Miserendino who found that Ronald E. Evans d/b/a Evans Sheet Metal and Ronald E. Evans, Inc. were the alter ego of Evans & Evans, Inc. and accordingly ruled that each of these entities was bound by the collective bargaining agreement. The evidence at trial showed that respondent employers shared the same physical location, used the same equipment and employed many of the same non-union

workers. Further, Evans & Evans, Inc. was found to be a disguised continuance of Ronald E. Evans d/b/a Evans Sheet Metal. Additionally, the ALJ found that respondent employer was collaterally estopped from re-litigating the continued existence of the agreement by the judgment in *Local Union No. 44 Sheet Metal Workers v. Evans Sheet Metal*, No. 4:CV-96-1991 (M.D. Pa. 1999).

I represented Local 44 in a parallel district court proceeding as well, which was tried before Judge Caputo, who found in favor of Local 44.

In a 2-1 decision, the NLRB affirmed the ALJ's decision in its entirety, with Chairman Hurtgen and Member Liebman voting to affirm and Member Cowen dissenting.

I represented Local 44 throughout all proceedings before the administrative law judge and before the members of the NLRB. Opposing counsel was Thomas R. Davies, 2306 Columbia Avenue, Lancaster, PA 17603; (717) 291-2236.

10. *Affiliated Food Distribs., Inc. v. Teamsters Local 229*, 136 LRRM 2631, 1990 WL 284745 (M.D. Pa. 1990), *aff'd*, 925 F.2d 415, 136 LRRM 2648 (3d Cir. 1991). In this case, the question was whether the employer was obligated to submit to arbitration its decision to transfer a part of its warehouse operation. The employer initially sought to enjoin the union from proceeding to arbitration by an action in state court. On behalf of the union, I removed the action to the district court where I then moved to dismiss the employer's complaint. The district court granted the motion to dismiss and ruled that the employer was obligated to submit to arbitration its decision to transfer part of its warehouse operation to another entity. On appeal, the Third Circuit affirmed and ordered the employer to arbitrate.

This case was presented to Judge Conaboy. No oral argument was held before the Third Circuit. The decision affirming the order of the district court was written by Judge Rosen.

Opposing counsel was Jacob I. Nogi, 415 Wyoming Avenue, Scranton, PA 18503; (570) 963-8880.

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.)

As a labor and employment lawyer, I have engaged in a wide range of litigation. But I have also resolved many difficult labor disputes through negotiation and conciliation. For instance, I settled unfair labor practice charges that I brought on behalf of Teamsters Local 229 against the Topps Company, Inc., for the payment of over \$5 million in

severance pay to the employees of Topps whose jobs were eliminated by a plant closure. I have negotiated many collective bargaining agreements on behalf of various labor organizations, in most cases reaching an agreement on difficult issues without the necessity of a work stoppage. In 1999, I successfully negotiated a contractual guarantee of full time employment for the warehouse and shipping employees of HarperCollins Publishers at its warehouse in Dunmore, PA who are represented by Teamsters Local 229. The contractual guarantee of full-time employment has been carried forward in every successive collective bargaining agreement to the present time. I have served as both an advocate and counselor to the labor organizations and employers that I have represented, and, in doing so, I have tried to create and maintain positive and constructive relationships between labor and management, both in the private and public sectors.

I have also served as counsel to several private sector employee benefit trust funds, working closely with both labor and management trustees to make certain that the funds are properly administered and the trustees' fiduciary responsibilities are met.

In the public sector, I was selected in 1999 by 13 public school entities in Luzerne County, PA and the 13 unions representing the employees of these public school entities to serve as counsel to form a jointly administered labor-management health trust for the purpose of providing healthcare benefits on a self-insured basis. The trust formation has resulted in the stabilization of healthcare costs and the maintenance of these costs from year to year.

In 2009, I was selected by 19 school districts in Berks County, PA and the labor organizations representing their employees to form a jointly administered labor-management health trust to self-insure the healthcare benefits afforded to the employees of the participating school districts and their eligible dependents. I continue to serve as trust counsel.

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.

From 1980 to 1981, I taught an undergraduate Labor Law course at the Pennsylvania State University. The course presented an overview of federal labor legislation, specifically including the National Labor Relations Act, the Taft-Hartley Act, the Fair Labor Standards Act, Title VII of the 1964 Civil Rights Act, as amended, and the Age Discrimination in Employment Act. I no longer have a syllabus for the course.

Also from 1980 to 1981, I taught Business Law at Lackawanna College. The course focused on the law of commercial transactions and the law of contracts. I no longer have a syllabus for this course. I taught the same course for one semester in the late 1970s, but I am uncertain which year I did so.

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.

None.

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.

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I have represented a number of labor unions, employers, and employee benefit trusts during my career as a lawyer. For a period of time, if any of these parties were to come before me, I would give notice of my prior representation of the party and recuse myself.

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

If confirmed, I would carefully review each case for conflict or potential appearance of conflict and I would apply the federal recusal statutes and Canon 3 of the Code of Conduct for United States Judges.

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.

Through the Pennsylvania Bureau of Mediation, I have volunteered my time to present mock trials and arbitrations for the public. In particular, I and Attorney Alexia Blake planned and presented a mock sexual harassment trial in which Judge Thomas I. Vanaskie, at that time a United States District Judge, participated, along with students from the Abington Heights School District. Also, I participated in a mock discharge arbitration with Attorney Richard M. Goldberg and Arbitrator Walter Glogowski.

I also have granted free consultation and advice to individual members of Teamsters Local 229 on non-employment related matters pursuant to a program established by Local 229, which granted its members free consultation and advice on matters such as divorce, real estate, estate law, mortgage foreclosure, and debt collection.

I also have spoken on workplace issues at the Lackawanna County Bar Association's "People's Law School."

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.

There is a selection commission in the Middle District of Pennsylvania to recommend candidates for nomination to the federal court. I completed the Questionnaire for Judicial Nominees and submitted it to the Selection Commission for the Middle District of Pennsylvania. I was interviewed by the Selection Commission on March 31, 2010. Thereafter, the Commission recommended my nomination.

Since August 2010, I have been in contact with pre-nomination officials at the Department of Justice. On October 5, 2010, I interviewed in Washington, D.C., with attorneys from the White House Counsel's Office and the Department of Justice. On December 1, 2010, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

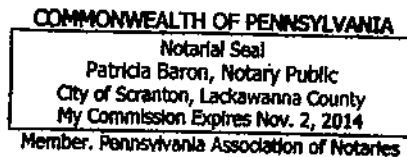
AFFIDAVIT

I, ROBERT DAVID MARIANI, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11/29/2010  
(DATE)

Robert David Mariani  
(NAME)

Patricia Baron  
(NOTARY)



ROBERT D. MARIANI, P.C.

ATTORNEY-AT-LAW

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ROBERT D. MARIANI  
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FACSIMILE NO. (570) 342-9990

January 5, 2011

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on December 1, 2010, to be United States District Judge for the Middle District of Pennsylvania. I certify that the information contained in my Senate Questionnaire as previously submitted is, to the best of my knowledge, true and correct.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Very truly yours,



Robert D. Mariani

cc: The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510