

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Rudolph Contreras

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

United States District Judge for the District of Columbia

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.

United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530

Residence: Fairfax, Virginia

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

1962; Staten Island, New York

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.

1988 – 1991, University of Pennsylvania Law School; J.D. (*cum laude*), 1991
1982 – 1984, Florida State University; B.S., 1984
1980 – 1982, University of Miami; no degree

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.

2006 – present
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
Chief, Civil Division

2003 – 2006
United States Attorney's Office for the District of Delaware
1007 Orange Street, Suite 700
Wilmington, Delaware 19899
Assistant United States Attorney
Chief, Civil Division

1994 – 2003
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
Assistant United States Attorney

Summer 1990, 1991 – 1994
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Associate (1991 – 1994)
Summer Associate (Summer 1990)

Fall 1990
United States Attorney's Office for the Eastern District of Philadelphia
615 Chestnut Street, Suite 1250
Philadelphia, Pennsylvania 19106
Extern

Summer 1989
United States District Court for the District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
Fourth & Cooper Streets
Camden, New Jersey 08101
Student Intern for the Honorable Stanley S. Brotman

1985 – 1988
Miami Herald
One Herald Plaza
Miami, Florida 33132
Account Executive

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 military. I registered for selective service upon turning 18.

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

Silver Medal for Superior Service, Environmental Protection Agency (2006)

Executive Office for United States Attorneys Director's Award for Superior Performance as an Assistant United States Attorney (1999)

Order of the Coif, University of Pennsylvania Law School (1991)

Presidential Scholarship, University of Miami (1980 – 1982)

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.

Department of Justice Associate Attorney General's Electronic Discovery Task Force

Hispanic Bar Association of the District of Columbia

United States Attorneys' Offices Civil Chiefs' Working Group

United States District Court for the District of Columbia Civil Rules Committee

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.

District of Columbia, 1992

Florida, 1991

Pennsylvania, 2005

I retired from the Pennsylvania bar in 2006 and am currently in inactive status in the Florida bar. Otherwise, there have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the District of Columbia Circuit, 1994

United States Court of Appeals for the Third Circuit, 2003 – 2006

United States District Court for the District of Columbia, 1994

United States District Court for the District of Delaware, 2003 – 2006

In each of these courts, I was admitted as a government attorney. My admission to practice before the Third Circuit and the District Court for the District of Delaware coincided with my time working in the United States Attorney's Office for the District of Delaware. During that same time, my admissions before the District of Columbia Circuit and the District Court for the District of Columbia lapsed.

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.

Boy Scouts of America (2009 – present)

Jewish Community Center (Summer Pool) (2004)

Mantua Swim & Tennis Club (2006 – present)

Mentors, Inc. (1992 – 1995)

Timber Lane Swim Club (2005)

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

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

national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

I have not published any books, articles, reports, or letters.

- 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.

In 2009, I was a member of the Department of Justice Associate Attorney General's Electronic Discovery Task Force, which prepared an internal report. That report is privileged, and thus is not supplied.

In 2006, I participated in an effort to revise the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware. In particular, I focused on Rule 83.5(f)(1), which governs the admission of federal government attorneys to practice in that court. In addition, I reviewed other sections of the rules and participated in a number of meetings. I left the U.S. Attorney's Office in Delaware before the revision was finalized. The current version of the rules, which were revised again in 2010, is available at <http://www.ded.uscourts.gov/>.

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

I have not provided any such testimony, official statements, or other communications.

- 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.

June 2, 2011: I participated on a luncheon panel for the Federal Judicial Center's Civil Case Management Seminar: Achieving the Promise of Rule 1. I have no notes, transcript or recording. The FJC's address is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20002.

March 7, 2011: I spoke at the Attorney Admission Ceremony for the United States District & Bankruptcy Courts for the District of Columbia. Notes supplied.

April 12, 2007: I participated in a panel discussion at George Mason University School of Law sponsored by the Hispanic Bar Association of the District of Columbia. I have no notes, transcript or recording. The address of the Hispanic Bar Association of the District of Columbia is P.O. Box 1011, Washington, D.C. 20013.

March 8, 2007, December 7, 2006, and Spring 2006: I gave lectures on E-Discovery. The March 2007 and Spring 2006 lectures were for U.S. Attorney's Offices, and the December 2006 presentation was to the General Services Administration, one of our client agencies. I prepared Powerpoint presentations for these events, but they were prepared in anticipation of litigation, contain attorney work product, and are considered privileged.

July 10, 2006: I spoke at the Attorney Admission Ceremony for the United States District & Bankruptcy Courts for the District of Columbia. Notes supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Bill Myers, *Blowing Whistle Pays Off Big for Fortunate Few*, Washington Examiner, May 27, 2009. Copy supplied.

Bill Myers, *'Ringer' of a Lawyer Wins Millions*, Washington Examiner, Oct. 25, 2008. Copy supplied.

John McArdle, *First Lawsuit Filed against Chief Morse Dismissed*, Roll Call, July 16, 2007. Copy supplied.

Lee Williams and Esteban Parra, *U.S. Marshals Question Care of Federal Inmates in State Prison*, Wilmington News Journal, Oct. 28, 2005. Copy supplied.

On September 20, 2005, I made remarks as part of a press conference to announce the settlement of an environmental enforcement action against Motiva. The press conference was covered by the local and national press. Press coverage of the event is listed below, and my notes are supplied:

Josh Cable, *\$23.7 Million Motiva Settlement Brings 'Tragic Chapter' to Close*, EHS Today, Oct. 28, 2005. Copy supplied.

Motiva, Premcor to Settle for \$23.7 Million, U.S. Environmental Protection Agency Oil Program Update, Oct. 2005. Copy supplied.

Randall Chase, *Motiva Settles Lawsuit Stemming from Tank Explosion*, Associated Press, Sept. 20, 2005. Copy supplied.

Press release, *Motiva Enterprises Settles Federal-State Lawsuit Resulting from Explosion at Delaware City Refinery*, U.S. Department of Justice Environment & Natural Resources Division, Sept. 20, 2005 [quotes re-printed in multiple outlets]. Copy supplied.

Randall Chase, *Motiva to Pay \$12 Million to Settle Government Lawsuit over 2001 Fatal Explosion*, Associated Press, Sept. 19, 2005. Copy supplied.

Jeff Montgomery, *Heavy Polluter Settles Lawsuit*, Wilmington News Journal, June 29, 2005. 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: _____% [total 100%]

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

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

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not 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.

I have not held any public offices. I have not been a candidate for public office or a nominee 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 not been a member of or held office in a political party or election committee. In or around 1980, I volunteered to help with the campaign of Xavier Suarez, who unsuccessfully ran for a position as Miami City Commissioner. As a volunteer, I canvassed door-to-door on behalf of the candidate.

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 to a judge after law school.

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

I have never practiced law 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.

1991 – 1994
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Associate

1994 – 2003
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
Assistant United States Attorney

2003 – 2006
United States Attorney's Office for the District of Delaware
1007 Orange Street, Suite 700
Wilmington, Delaware 19899
Assistant United States Attorney
Chief, Civil Division

2006 – present
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
Chief, Civil Division

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

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

b. Describe:

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

After graduation from law school, I worked as an associate in the General Litigation group at the law firm of Jones Day. I worked extensively on discovery issues, including a series of toxic tort cases involving dioxin emanated from paper mills.

Since 1994, I have spent my entire legal career as an Assistant United States Attorney in the Civil Division of the offices in the Districts of the District of Columbia and Delaware. In that capacity, I have represented the United States and its departments and agencies at both the trial and

appellate levels in civil actions filed in both the District of Columbia and Delaware. During the first four years of my tenure as Assistant United States Attorney in the District of Columbia, from 1994 to 1998, I handled cases in which the government was the defendant. From 1998 to 2003, I handled affirmative litigation wherein the government was the plaintiff, primarily pursuant to the False Claims Act.

As Chief of the Civil Division in the District of Delaware from 2003 to 2006, I supervised the litigation of a small staff of attorneys and additionally maintained a case load focusing on False Claims Act cases and environmental enforcement.

Since 2006, when I became the Chief of the Civil Division in the District of Columbia, my practice has been almost exclusively supervisory in nature. I supervise and manage a Division of 40 Assistant United States Attorneys, 6 Special Assistant United States Attorneys (agency detailees), and 31 support staff. The Civil Division of the United States Attorney's Office represents the United States and its departments and agencies at both the trial and appellate levels in civil actions filed in the District of Columbia. The activities of the Civil Division primarily involve defensive civil actions in the United States District Court and United States Court of Appeals. The types of cases handled by the Civil Division include employment cases involving allegations of discrimination; common law tort suits under the Federal Tort Claims Act; challenges to agency actions under the Administrative Procedure Act; requests for records under the Freedom of Information Act and/or Privacy Act; and the defense of government officials sued in their individual capacities for alleged Constitutional violations (*Bivens*). The Division also brings civil actions under the False Claims Act to recover money owed to the United States Government by those who submit false claims or commit fraud against the government.

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

While in private practice at the beginning of my career, most of the work I did was for International Paper Co., defending a series of toxic tort cases involving dioxin emanated from paper mills. Since 1994, my only client has been the United States government.

- 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 entire legal career has been spent in litigation. As an associate at Jones Day, I did not appear in court at all. As an Assistant United States Attorney in the

District of Columbia from 1994 to 2003, I frequently appeared before the United States District Court for the District of Columbia and occasionally before the United States Court of Appeals for the District of Columbia Circuit. As Chief of the Civil Division in the District of Delaware from 2003 to 2006, I occasionally appeared before the United States District Court for the District of Delaware and once before the United States Court of Appeals for the Third Circuit. As Chief of the Civil Division in the District of Columbia, I rarely, if ever, appear in court.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|------|
| 1. federal courts: | 100% |
| 2. state courts of record: | 0% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | 0% |

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.

Not counting cases that were resolved on the pleadings or by summary judgment, I tried four civil cases to verdict, judgment or final decision. For one of these trials, the only contested issue was damages, as the liability phase had been handled by someone else. I served as lead counsel in three of the trials and as second-chair in the other.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 50% |
| 2. non-jury: | 50% |

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 never 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. *United States ex rel. Perkins v. Centennial Healthcare Corp.*, Civ. No. 02-203 (D.D.C.) (Kollar-Kotelly, J.)

This matter involved allegations of substandard care at the Grant Park nursing home and was resolved through settlement in 2008. Although the matter was referred to us pursuant to the False Claims Act, the focus of our investigation involved resident/patient care. Accordingly, although the resolution of the matter resulted in a financial recovery, the focus of the settlement agreement was the complementary Corporate Integrity Agreement, implemented through HHS, which required significant reporting on, and third-party monitoring of, the care provided to the vulnerable nursing home patients. I began this case as the lead attorney and completed it as a supervisory attorney supervising the work of former AUSA Paul Mussenden.

Co-counsel: AUSA Paul Mussenden, Deputy Chief of Staff and Senior Advisor to the Assistant Secretary, United States Department of the Interior, 1849 C Street, N.W., Washington D.C. 20240, (202) 208-3038.

Opposing Counsel: Eric A. Dubelier, Esq., Reed Smith LLP, 11301 K Street, N.W., Suite 1100 – East Tower, Washington, D.C. 20005, (202) 414-9291.

Relator's Counsel: Steven Pavsner, Joseph, Greenwald & Laake, 6404 Ivy Lane, Greenbelt, Maryland 20770, (240) 553-1211.

2. *Evans v. Atwood (USAID)*, Civ. No. 96-2746 (D.D.C.) (Urbina, J.) (177 F.R.D. 1; 1999 WL 1032811, 38 F. Supp. 2d 25)

This was an age discrimination class action brought by Foreign Service Officers who had been subjected to a reduction in force at the United States Agency for International Development. The case went through multiple rounds of briefing on the merits and class certification, through lengthy and voluminous discovery, and through a bench trial in the fall of 1999. After trial, the case settled. The settlement agreement contained several provisions providing preferential re-hiring treatment to the employees who had been let go because of budgetary necessities, rather than poor performance, allowing these unfortunate employees a measure of substantive assistance that was otherwise not available to them. I was the sole

lead attorney until just short of trial, at which point AUSA Humphreys was added to the trial team.

Co-counsel: Michael Humphreys, Assistant United States Attorney, United States Attorney's Office for the District of Nevada, 333 Las Vegas Boulevard South, Suite 5000, Las Vegas, Nevada 89101, (702) 388-6336.

Opposing counsel: Raymond C. Fay; Mehri & Skalet, 1250 Connecticut Avenue, N.W., Washington, D.C. 20036, (202) 822-5100.

3. *United States v. Motiva Enterprises*, Civ. No. 02-1292 (D. Del.) (Robinson, J.)

In this environmental case under the Clean Air and Clean Water Acts, the government sued owners of an oil refinery at which an explosion occurred, killing one individual, injuring others, and spilling thousands of gallons of sulfuric acid into the Delaware River and the atmosphere. I was involved as part of a sizable team in the factual investigation and lengthy settlement discussions from 2003 through 2006. In this capacity, I reviewed thousands of documents and created a detailed fact chronology that would have formed the basis of much of the subsequent litigation if the case had gone forward. I was also involved as an active member of the negotiation team. The case ultimately settled, resulting in significant injunctive relief in the form of changes in how the refinery was operated that resulted in increased safety for the refinery workers.

Co-counsel: Robert Klotz and John Sither, Senior Attorneys, Environment and Natural Resources Division, 601 D Street, N.W., Washington, D.C. 20530, (202) 514-5516.

Opposing Counsel: Charles Swinburn (departed firm), Morgan Lewis, 1111 Pennsylvania Avenue, Washington, D.C. 20004, (202) 739-3000.

4. *United States ex rel. Fletcher v. Pacificare*, Civ. No. 98-2709 (D.D.C.) (Robertson, J.)

This matter was a False Claims Act *qui tam* case in which a provider of health benefit plans to federal workers was alleged to have overcharged the government by not giving the government its best price as required by contract. I was part of a team that settled the matter in 2002 for \$87 million which, at the time, was the largest recovery ever for the office. In this capacity, I was centrally involved in the settlement negotiations and helped develop the theory on which a "knowing" violation of the False Claims Act was established.

Co-counsel: Doris Coles-Huff, Assistant United States Attorney, United States Attorney's Office for the District of Columbia, 555 Fourth Street, N.W., Washington, D.C. 20530, (202) 514-7170; Sondra Mills, Consumer Litigation,

450 Fifth Street, N.W., Washington, D.C. 20530, (202) 616-2375; Daniel Spiro, Civil Frauds, 601 D Street, N.W., Washington, D.C. 20530, (202) 616-3898.

Opposing Counsel: Joel Michaels, McDermott Will & Emery, 600 13th Street, N.W., Washington, D.C., 20005, (202) 756- 8000; John C. Dwyer, Cooley Godward, LLP, Five Palo Alto Square, 3000 El Camino Real, Palo Alto, California 94036, (650) 843-5228.

Relator's Counsel: Bradley S. Weiss, 513 Central Avenue, 4th Floor, Highland Park, Illinois 60035, (847) 681-9090.

5. *Doyle v. United States*, Civ. No. 96-0275 (D.D.C.) (Sullivan, J.)

In this medical malpractice case, a retired admiral suffered loss of sensation in his saddle area and incontinence allegedly due to an epidural administered during vein stripping procedure. The plaintiff alleged that the epidural, an extraordinarily safe procedure, was negligently administered. The defense of the claims required extensive work with multiple experts. The matter was settled in 1997 after extensive fact and expert discovery. I was the sole attorney on this matter.

Co-counsel: None.

Opposing Counsel: Gary Freeman (deceased), Harlow Case, Jack Olender & Associates, 888 17th Street N.W., 4th Floor, Washington, D.C. 20006, (202) 879-7777.

6. *Polsdorfer v. Gearan (Peace Corps)*, Civ. No. 96-0078 (D.D.C.) (Flannery, J.).

A Peace Corps physician in Africa brought suit claiming that he had been illegally terminated for exercising his First Amendment rights by refusing to advocate condom usage for the prevention of HIV/AIDS. Because of the high incidence of HIV/AIDS in Africa and the high level of sexual activity by Peace Corps volunteers, the Peace Corps thought it was extremely important that the volunteers be taught about condom usage. But plaintiff believed otherwise and would only advocate abstinence. When plaintiff was terminated based on budget reductions, he sued claiming that it was due to his protected speech on the topic. The government's dispositive motion was granted in 1997 after extensive discovery. Dismissal was affirmed on appeal in 1998. I was the sole attorney on this matter.

Co-counsel: None.

Opposing Counsel: Craig Parshall, 32 Waterloo Street, Suite 19, Warrenton, Virginia 20196, (540) 341-1997.

7. *Tomasello v. Rubin*, Civ. No. 93-1326 (D.D.C) (Greene, J.), 67 F.3d 612 (D.C. Cir. 1999).

In this case, a Special Agent filed an employment discrimination suit against his employer, the ATF, alleging retaliation and discrimination based on national origin and age. Plaintiff claimed that his Irish-American boss had discriminated against him based on his Italian-American ancestry when he *inter alia* failed to select him for a number of positions, denied him awards, and transferred him to another office. He also claimed that a number of these actions were also done in retaliation for his EEO activity. Additionally, he also raised a number of Privacy Act claims. I became part of the trial team shortly before trial, was responsible for half of the pretrial pleadings and trial, and was solely responsible for the post-trial pleadings and appeal. Although the plaintiff had alleged about ten years worth of claims involving dozens of allegedly discriminatory acts, the government was only found liable for a single Privacy Act violation and damages were awarded in the amount of \$2,000.

Co-counsel: June Jeffries (retired AUSA), 10307 Green Holly Terrace, Silver Spring, Maryland 20902.

Opposing Counsel: Prather Randle (deceased) and John Davis, 1111 14th Street N.W., Washington, D.C. 20005, (202) 408-1952; John F. Karl, Jr., 1090 Vermont Avenue, N.W., Suite 500, Washington, D.C. 20005, (202) 293-3200.

8. *Varicon Int'l v. OPM*, Civ. No. 96-1124 (D.D.C) (Urbina, J.), 934 F. Supp. 440 (D.D.C. 1996).

This matter involved a challenge by a contractor to the award of a sole source contract. As part of the Clinton Administration's "Reinventing Government" initiative, OPM decided to privatize and spin off its investigation services. To do so, OPM created an employee-owned company and then awarded its investigation contract to that company on a sole source no competition basis. Private companies that already provided investigation services to the government, but were not allowed to compete for the contracts, brought suit. The court denied the motion for preliminary injunction and the parties settled on terms very favorable to the government. I was the sole attorney on this matter.

Co-counsel: None.

Opposing Counsel: Richard Donald Lieberman, 5814 Cheshire Drive, Bethesda, Maryland 20814, (301) 530-8123.

9. *Miller v. United States*, Civ. No. 01-0551 (D.Del.) (Robinson, J.), 2008 WL 2932161 (3d Cir. 2008).

This case was a personal injury negligence case involving a claim that a postal truck cut off a public bus, requiring it to stop short and injuring the bus's passengers. The government lost the liability phase of the trial, tried by another AUSA. I was counsel for the damages phase and was solely responsible for pre-trial pleadings and trial. After a bench trial in 2006, the court awarded zero damages to the plaintiff. The matter was later affirmed on appeal (handled by another AUSA).

Co-counsel: None.

Counsel for Co-Defendant (DART): Daniel Griffith, Whiteford, Taylor & Preston, 1220 North Market Street, Suite 608, Wilmington, Delaware 19801, (302) 357-3254.

Opposing Counsel: L. Vincent Ramunno, Ramunno & Ramunno, 903 French Street, Wilmington, Delaware 19801, (302) 482-4825.

10. *Everett v. United States*, Civ. No. 95-0769 (D.D.C.) (Sullivan, J.), 980 F. Supp. 490 (D.D.C. 1997), 158 F.3d 1364 (D.C. Cir. 1998).

This case involved a landowner whose property abutted a national forest who claimed that the government could not prevent him from landing his private helicopter on the federal land. The Forest Service claimed that he could not land his helicopter without a permit and refused to grant a permit because the area at issue was frequented by fisherman and picnickers and, thus, not suitable for helicopter usage. After extensive briefing, summary judgment was entered for the government. The judgment was affirmed on appeal. I was the sole attorney on this matter.

Co-counsel: None.

Opposing Counsel: Roger Marzulla, Marzulla Law, 1150 Connecticut Avenue, N.W., Suite 1050, Washington, D.C. 20036, (202) 822-6760.

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 an Assistant United States Attorney, I participated in many fraud investigations that were resolved short of litigation. The following four matters are examples of these.

1. *In re: First Health*: False Claims Act investigation involving the contractor responsible for processing Medicaid claims for the District of Columbia. The allegation was that the lack of appropriate controls in the contractor's computer systems resulted in the systematic payment of claims for ineligible beneficiaries, thus, squandering limited government funds. The investigation took place throughout 2002 and was resolved through a \$13 million settlement in early 2003. This matter was significant because it returned a significant amount of money to the District's overburdened Medicaid program.

2. *In re: Bell Atlantic*: False Claims Act investigation involving the contractor responsible for providing telecommunications services to the Department of Education. Bell Atlantic's employees were involved in an elaborate conspiracy with a key agency employee. The agency employee would approve the contractors' fictitious overtime and the contractor would supply the agency employee with telecommunications equipment that would be falsely billed to the agency. The contract employees and the agency attorney were criminally prosecuted and convicted. I pursued Bell Atlantic under a theory of vicarious liability for its employees' illegal acts based on the company's deliberate ignorance of their activities despite obvious red flags. The matter was settled for \$2 million in 2003. This matter was significant because it returned a significant amount of money to the defrauded agency.

3. *In re: Harbor Health Healthcare & Rehabilitation Ctr.*: This matter involved a skilled nursing facility for severely impaired juveniles in Delaware and the allegation that Harbor billed the Medicaid program (paid for by the State and the United States) for substandard care given to its patients (many who died while in its care). The matter was settled in 2005 for a modest financial payment and extensive Corporate Integrity Agreement designed to improve patient care on an ongoing basis. Like the Grant Park case described above, the matter involved creative use of the False Claims Act to indirectly improve patient care for some of Delaware's most vulnerable citizens.

4. *In re: Professional Services Industries, Inc.*: This matter involved allegations that PSI billed the Delaware Department of Transportation, which in turn billed the Federal Highway Administration, for consulting services that were not provided. Specifically, evidence was developed that indicated that PSI's inspectors were not inspecting the bridges and other highway structures for the length of time or with the thoroughness they claimed. The matter was settled in 2005 for a significant monetary recovery. The matter was significant because it returned a significant amount of money to a defrauded agency, but also because certain fraudulent practices had become widespread in the industry and the investigation and settlement served as a deterrent to other inspection companies (a companion case was also settled with Penmoni, Inc.).

I have never performed lobbying activities or registered as a 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 have never taught a course at an educational institution.

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.

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation.

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.

My wife is a regulatory attorney at the Office of the Comptroller of Currency. I would recuse myself from cases involving that agency generally and regulations she helped draft specifically. My brother is Chief Financial Officer for Del Monte

Fresh. I would recuse myself from cases involving that company. I would recuse myself from all civil cases handled by the United States Attorney's Office for the District of Columbia which were filed before my appointment and over which I had supervisory responsibility. I would use existing court procedures to identify the cases in which the conflicts arise and take action accordingly.

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

It is my understanding that the District Court has procedures in place to identify conflicts based on financial holdings and other concerns. I would, of course, use these existing court procedures to identify the cases in which the conflicts arise and take action accordingly. For example, with respect to the cases handled by the United States Attorney's Office for the District of Columbia, this identical issue has already been confronted with the appointments of the Hon. Royce Lamberth and Hon. John Bates and the court was able to effectively deal with the conflicts. I am also familiar with 28 U.S.C. sections 144 and 455. I would resolve any potential conflict of interest by applying these statutes and 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.

Because of the actual and positional conflicts that frequently arise as a government attorney providing pro bono services, I have not provided traditional pro bono services since becoming a government attorney. However, while I was in private practice, I provided pro bono services: to an individual who sought Social Security Disability benefits because of her inability to work; an individual who sought political asylum based on persecution she would suffer if returned to El Salvador; an elderly couple who faced eviction from their long-held public housing unit based on the illegal acts of their grandson; and a grandmother who sought to legally adopt her grandkids after the untimely death of her daughter. Moreover, I have served the disadvantaged by serving as a mentor to Hispanic high school students in the District of Columbia and Hispanic law students from area law schools.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or

communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

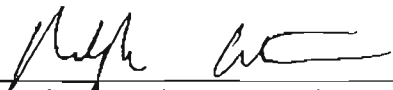
In December 2010, I submitted an application to the 17-member Federal Law Enforcement Nominating Commission established by D.C. Delegate Eleanor Holmes Norton to screen applicants for federal judgeships in the District of Columbia, and I was interviewed by the Commission on January 25, 2011. As I understand it, the Commission forwarded at least three names to Delegate Norton. On April 29, 2011, I was interviewed by the Delegate.

Since May 10, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 10, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On July 28, 2011, the President submitted my nomination to the Senate.

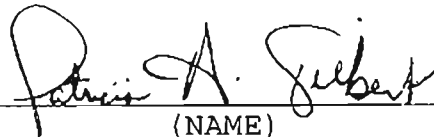
- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue,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

No.

AFFIDAVIT

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

July 29, 2011
(DATE)


(NAME)

Patricia A. Gilbert
Notary of Public
District of Columbia
Commission Expires: December 14, 2011

(NOTARY)