

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Jeri Kaylene Somers; Jeri Kaylene Thiede-Somers

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

Judge, United States Court of Federal Claims

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 Civilian Board of Contract Appeals
1800 M Street, NW, Suite 600
Washington, D.C. 20036

Residence: Arlington, VA

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

1961; Wichita, Kansas

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.

1983 – 1986, American University Washington College of Law; J.D., 1986
1980 – 1983, George Mason University; B.A., 1983
1979 – 1980, College of William and Mary; no degree received

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.

2007 – present
United States Civilian Board of Contract Appeals
1800 M Street, NW, Suite 600

Washington, D.C. 20036
Vice Chair (2008 – present)
Board Judge (2007 – 2008)

June 2013 – December 2013
(from my private residence)
Private Mediator/Arbitrator (independent contractor)

2008 – Present
George Washington University School of Law
2000 H Street, NW
Washington, D.C. 20052
Professorial Lecturer in Law

1986 – 2007
United States Air Force
The Judge Advocate General's Corps
Pentagon, Washington, D.C.
(At various locations throughout service)
Military Judge (2004 – 2007)
Reserve Judge Advocate (1991 – 2007)
Active duty Judge Advocate (1986 – 1991)

2003 – 2007
United States Department of Transportation Board of Contract Appeals
400 7th Street, NW
Washington, D.C. 20590
Administrative Judge

2001 – 2003
Miller & Chevalier Chartered
655 15th Street NW, Suite 900
Washington, D.C. 20004
Counsel

1994 – 2001
Office of the United States Attorney, Eastern District of Virginia, Alexandria Division
2100 Jamieson Avenue
Alexandria, VA 22314
Assistant United States Attorney

1994 – 2001
University of Maryland, University College Long Distance Learning
3501 University Boulevard East
Adelphi, MD 20783
Adjunct Professor

1991 – 1994
United States Department of Justice
Commercial Litigation Branch, Civil Division
PO Box 480, Ben Franklin Station
Washington, D.C. 20044
Trial Attorney

Other Affiliations (uncompensated):

2012 – present
Capital Girls Lacrosse Club
(no physical address)
Board member

2012 – present
Yorktown High School Girls Lacrosse Booster Club
(from my private residence)
President and Treasurer

2010 – 2012
Borromeo House (BHI)
Borromeo Housing, Inc.
3304 Washington Blvd.
Arlington, VA 22201
Board member

2005 – 2006
The American Inns of Court, George Mason Chapter
George Mason Law School
3301 N. Fairfax Drive
Arlington, VA 22201
President

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.

2004 – 2007
United States Air Force Reserves
Lieutenant Colonel
Honorable Discharge (Retired)

1996 – 2004
D.C. Air National Guard

Lieutenant Colonel
Honorable Discharge

1993 – 1996
D.C. Army National Guard
Captain
Honorable Discharge

1991 – 1993
United States Air Force Reserves
Captain
Honorable Discharge

1986 – 1991
United States Air Force
Captain
Honorable Discharge

I was not required to register for selective service.

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.

District of Columbia Minuteman Award (2004)

District of Columbia National Guard Community Service Ribbon for participation in International Monetary Fund Service (2000)

Certificate of Appreciation, U.S. Department of State, Office of the Inspector General (2000)

Certificate of Appreciation, U.S. Patent and Trademark Office (2000)

Air Force Meritorious Service Medal (1999)

Sustained Superior Performance Award, U.S. Attorney's Office (1999)

Certificate of Recognition for military service during the Cold War (Air Force) (1998)

United States Attorneys' Commendation (July 1997)

Letter of Appreciation: *Mathis v. Perry* (awarded by the Defense Contract Audit Agency) (1996)

Letter of Appreciation: *Williams v. Dalton* (awarded by the Department of the Navy) (1995)

Letter of Commendation: *Alcan Electrical & Engineering Co. v. United States* (awarded by the Department of the Army (1992)

National Defense Service Medal (1991)

Air Force Commendation Medal (Second Oak Leaf Cluster) (1991)

Air Force Longevity Service Award Ribbon (1990)

Air Force Overseas Long Tour Ribbon (1990)

Air Force Outstanding Unit Awards (multiple) (1990 – 1999)

Air Force Commendation Medal (First Oak Leaf Cluster) (1990)

Air Force Commendation Medal (1988)

Small Arms Expert Marksmanship Ribbon (1987)

Air Force Training Ribbon (1986)

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 Bar Association

Commission on Racial and Ethnic Diversity in the Profession
Section Liaison (2002 – 2012)

Judiciary Division, National Conference of Administrative Law Judiciary
Executive Committee Member (2011)

Public Contract Law Section

Annual and Quarterly Program, Co-Chair (2006 – 2007)

Budget Officer (2012 – 2014)

Contract Claims and Disputes Committee

Co-Chair (2003 – 2006)

Vice Chair (2006 – present)

Council, Elected Member (2005 – 2008)

Federal Procurement Institute, Co-Chair (2011)

General Interest Division, Co-Chair (2011 – 2012)

Membership, Diversity and Outreach, Vice-Chair (2002 – 2011)

Nominating Committee (2008)

Procurement Fraud Committee, Vice-Chair (2002 – 2004)

Public Contract Law Education Project (2006 – 2007)

Public Contract Law Journal
Associate Editor (Submissions) (2003 – present)

American Inns of Court, George Mason Chapter
President (2005 – 2006)

Asian Pacific American Bar Association

Board of Contract Appeals Bar Association
Board of Governors (2003 – 2005)

Board of Contract Appeals Judges Association

Federal Bar Association
Conference Planning Committee, 2003 Annual Conference

Judge Advocates Association

National Association of Women Judges

Northern Virginia Black Attorneys Association

Virginia Bar Association
Special Issues Committee

Virginia State Bar
Disciplinary Committee
Chair (1998 – 2003)
Professionalism Committee
Chair (2005 – 2006)
Professionalism for Law Students
Special Committee on Access to Legal Services

Women's Bar Association
Judicial Endorsements Committee
Co-Chair (2002 – 2003)

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.

Virginia, 1986
District of Columbia, 1989

There have been no lapses in membership, although I converted to judicial status in 2003, upon appointment to the position of administrative judge.

- 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, 1999
United States Court of Appeals for the Fourth Circuit, 1994
United States Court of Appeals for the Federal Circuit, 1991
United States Court of Military Appeals, 1986
United States District Court for the District of Maryland, 2001
United States District Court for the Eastern District of Virginia, 2000
United States Court of Federal Claims, 1991

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Army Navy Country Club, member (2006 – present)
Borromeo Housing, Inc. (2010 – 2012)
Board member
Capital Girls Lacrosse Club (2012 – present)
Board member
U.S. Lacrosse, certified U.S. Lacrosse Official (2013 – present)
Yorktown High School Girls Lacrosse Booster club (2012 – present)
President and Treasurer

- 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.

Foreword: The Boards of Contract Appeals: A Historical Perspective, 60 Am. U. L. Rev. 745 (2011). Copy supplied.

From JAG to Judge, “Voices” column, Perspectives Magazine, quarterly magazine of the American Bar Associations Commission on Women in the Profession, Spring 2008. Copy supplied.

Since 2003, I have been an Associate Editor for the Public Contract Law Journal for the American Bar Association. I generally serve as a submissions editor, which involves reviewing pieces submitted for possible publication while the law student members of the journal provide substantive edits to pieces that are selected for publication.

- 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.

I have served as a Council Member for the Public Contract Law Section of the American Bar Association from 2005 to 2008 and as a Budget Officer since 2012. During that time period, the Section prepared and presented white papers or comment letters on a variety of issues in the public procurement arena. As a matter of course, I always recused myself from the preparation of these papers or letters in the event that such matters became relevant in any of my cases, at the time or in the future. Although I did not participate in any of these letters or recommendations, it has come to my attention during this nomination process that some of the letters inadvertently left out the footnote noting my recusal. I did, however, recuse myself each time.

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

None.

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

February 6, 2014: Panelist, "A Pathway to the Bench," ABA Judicial Clerkship Program, Chicago, Illinois. I participated with other judges on a panel that focused on the individual panelists' career paths, as well as a short question-and-answer session. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

April 17, 2013: Panelist, American Bar Association Public Contract Law Section, Contract Claims and Disputes Committee, Washington, DC. The panel discussed pre-hearing techniques before the Board of Contract Appeals. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

June 13, 2012: Panelist, "Ask the Judge," American Bar Association Public Contract Law Section, Contract Claims and Disputes Committee, Washington, DC. I participated on a panel discussing practice and procedure before the Board of Contract Appeals and the Court of Federal Claims. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

April 26, 2012: Participant, Pathway to the Bench Conference, American Constitution Society for Law and Policy, Washington, DC Lawyer Chapter, Washington, DC. I participated with other judges on a panel that focused on the individual panelists' career paths, as well as a short question-and-answer session. I have no notes, transcript, or recording. The address of the American Constitution Society for Law and Policy is 1333 H Street, NW, Washington, DC 20005.

September 14, 2011: Panelist, "Interesting Government Contract Cases," Practicing Law Institute, Washington, DC. I participated on a panel discussing

the most interesting government contract cases for the year. I have no notes, transcript, or recording. The address for the Practicing Law Institute is 1177 Avenue of the Americas, 2nd Floor (Entrance on 45th Street), New York, NY 10036.

June 8, 2011: Panelist, “Ask the Judge,” American Bar Association Public Contract Law Section, Contract Claims and Disputes Committee, Washington, DC. I participated on a panel discussing practice and procedure before the Board of Contract Appeals and the Court of Federal Claims. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

March 3-5, 2011: I was a moderator at an event hosted by the American Bar Association and the Federal Procurement Institute in Annapolis, Maryland. I served as moderator and introduced various panels and speakers. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

November 8, 2010: I was a panelist at a conference hosted by the American University School of Law in Washington, DC. The panel discussed government contract cases from the United States Court of Appeals for the Federal Circuit. I have no notes, transcript or recording. The address of the American University Law School is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

March 6, 2010: Panelist at the Color of Justice Program, hosted by various bar associations, including the Fairfax Bar Association, in Alexandria, Virginia. I discussed my career progression to the bench. I have no notes, transcript, or recording. The address of the Fairfax Bar Association is 4110 Chain Bridge Road, Suite 216, Fairfax, VA 22030.

October 22, 2009: Panelist, “Ask the Judge,” Board of Contract Appeals Bar Association Annual Meeting, Washington, DC. I discussed practice tips for litigating before the Board of Contract Appeals. I have no notes, transcript, or recording. The address of the Board of Contract Appeals Bar Association is P.O. Box 66612, Washington, DC 20035.

July 23, 2009: Panelist, “Getting to Know Our Specialized Courts,” National Association of Women Judges, held in Washington, D.C. I have no notes, transcript, or recording. The address of the National Association of Women Judges is 1341 Connecticut Avenue, NW, Suite 4.2, Washington, DC 20036-1834.

September 25, 2008: Panelist on a panel organized by the Just The Beginning Foundation, held in Herndon, Virginia. I discussed career paths in the legal field with high school students. I have no notes, transcripts or recording. The address

of the Just The Beginning Foundation is 233 South Wacker Drive, Suite 6600, Chicago, IL 60606.

September 17, 2008: Panelist, George Mason Inn of Court, Arlington, Virginia. I participated on a panel in which we discussed the career progression for becoming a judge. I have no notes, transcript, or recording. The address of the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, VA 22314.

June 11, 2008: Panelist, American Bar Association Contract Claims and Disputes Committee, in Washington, D.C. The panel discussed electronic discovery. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

April 15, 2007: Panelist, 11th Annual Sylvania Woods Conference on African Americans and the Law, American University School of Law, Washington, DC. I participated in informal conversations with students about career path in a loosely configured panel format. I have no notes, transcript, or recording. The address of the American University School of Law is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

February 17, 2007: Speaker, Virginia State Bar Young Lawyers Minority Event, Arlington, VA. I provided brief remarks concerning my career progression. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

May 4, 2006: Moderator, Virginia State Bar Professionalism Course, Chesapeake, Virginia. I provided brief introductions of each of the speakers. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

September 22, 2005: Moderator, Virginia State Bar Professionalism Course, Richmond, Virginia. I provided brief introductions of each of the speakers. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

August 25, 2005: Moderator, Virginia State Bar Professionalism Course, Roanoke, Virginia. I provided brief introductions of each of the speakers. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

July 20, 2005: Moderator, Virginia State Bar Professionalism Course, McLean, Virginia. I provided brief introductions of each of the speakers. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

January 13, 2005: Speaker, Virginia State Bar Professionalism Course, McLean,

Virginia. I provided brief remarks at lunch on the issue of professionalism. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

October 27, 2004: Speaker, George Mason Inn of Court of the American Inns of Courts, Arlington, Virginia. I participated in a panel discussion on federal discovery and practice. I have no notes, transcript, or recording. The address of the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, VA 22314.

October 13, 2004: Panelist, "Ask the Judge," American Bar Association Public Contract Law Section, Contract Claims and Disputes Committee, Washington, DC. I participated on a panel discussing practice and procedure before the Board of Contract Appeals and the Court of Federal Claims. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654-7598.

February 27, 2004: Panelist, American Bar Association Procurement Institute, Case Review, Annapolis, Maryland. I participated with other judges on a panel focused on current government contracts cases. The panel was a question-and-answer format and the panelists discussed the issues arising in various government contract opinions issued by the Board of Contract Appeals, the Court of Federal Claims, and the Court of Appeals for the Federal Circuit. I have no notes, transcript, or recording. The address of the American Bar Association is 321 N. Street, Chicago, IL 60654-7598.

- 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.

John K. Harms, "Judicial Profile – Judge Jeri K. Somers," Federal Bar Association, July 2013. Copy supplied.

Mary Jefferson, "Member Focus – Jeri Somers," Women on Course, July 16, 2012. Copy supplied.

Rob Margetta, "CQ Homeland Security – For Disputes Over Disaster Aid, a New Arbitration System A Focus on Expediency and Independence," CQ Homeland Security, Congressional Quarterly, August 6, 2009. Copy supplied.

Jerry Markon, "7 Named on Short List for U.S. Bench Senators Identify Talent; Choice is in Bush's Court," Washington Post, May 17, 2007. 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.

The Secretary of the Department of Transportation appointed me to be an administrative judge with the U.S. Department of Transportation Board of Contract Appeals (DOTBCA) in April 2003. In January 2007, I became a Board Judge with the U.S. Civilian Board of Contract Appeals, created from the consolidation of eight separate boards of contract appeals, which included the DOTBCA. The boards of contract appeals hear and decide contract disputes between government contractors and civilian executive agencies under the provisions of the Contract Disputes Act, 41 U.S.C. Sections 7107-7109.

I served as a military judge for the United States Air Force from 2004 to 2007. As such, I presided over criminal misdemeanor and felony courts-martial, including both jury and bench trials, arising under the Uniform Code of Military Justice.

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

As an administrative judge, both with the Department of Transportation Board of Contract Appeals, and with the United States Civilian Board of Contract Appeals, I have presided over approximately 150 cases that have gone to judgment. These cases have been bench trials, although cases are frequently resolved by decision on motion.

As a United States military judge, I presided over numerous military bench and jury trials that resulted in verdicts or judgments. However, the records in military proceedings are not accessible to the general public, and I do not have personal access to the number of cases over which I presided that went to verdict or judgment. Based on supposition alone, I would approximate 25 matters went to verdict or judgment, of which 10 were tried by a jury.

Based upon a rough approximation of those cases that proceeded to trial, I have provided a breakdown below. I have also provided an estimated breakdown of civil and criminal over which I have presided in the course of these two judicial offices that were resolved by judgment or verdict.

- i. Of these, approximately what percent were:

jury trials:	5%
bench trials:	95%
civil proceedings:	95%
criminal proceedings:	5%

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

Please see attached list.

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

1. *USIA Underwater Equipment Sales Corporation v. Department of Homeland Security*, CBCA 2579, 2014 CIVBCA LEXIS 19 (2014); 2012 CIVBCA LEXIS 332 (2012).

The Coast Guard had a contract to purchase 777 dry suits from USIA for use in training. The Coast Guard terminated the contract for default, based upon the contractor's failure to provide dry suits that did not leak. In addition, the government sought reprourement costs from the contractor. After extensive briefing, we denied the parties cross-motions for summary relief, and set the case for trial. After hearing the evidence at trial, and evaluating all of the evidence, we determined that the Coast Guard had properly terminated the contractor for default, but had failed to properly claim excess reprourement costs because it had never issued a final decision assessing such costs.

Counsel for appellant: Joseph Billings, Miles & Stockbridge, PC, 100 Light Street, Baltimore, MD 21202; 410-385-3497.

Counsel for Respondent: Wilbur Jones, Office of Procurement Law, U.S. Coast Guard, Department of Homeland Security, 2100 Second Street, SW, Mail Stop 7121, Washington, DC 20593-0001; 202-372-3843.

2. *Turner Construction Co. v. Smithsonian Institution*, CBCA 2862, 2013 CIVBCA Lexis 90; 13-1 BCA (CCH) ¶ 35,290.

The Smithsonian Institute contracted with Turner Construction Company to provide design and construction services for a long term public space renovation at the National Museum of American History. The total contract price ultimately reached \$75 million after multiple contract modifications. The parties filed a motion for summary relief on a limited issue – whether the parties had agreed upon a contract price for the construction work in accordance with the contract's terms. After evaluating the contract, all modifications and other evidence, we held that the parties had never reached agreement on the final contract price, and that the Smithsonian owed Turner Construction a reasonable amount for the work that had been performed on the contract for which it had not yet been paid. The case is currently pending before us on the issue of quantum.

Counsel for appellant: Douglas Patin, Bradley Arant Boult Cummings LLP, 1615 L Street, NW, Suite 1350, Washington, DC 20036; 202-719-8241

Counsel for respondent: Peter D'Ambrosio and Todd Conley, Womble Carlyle Sandridge & Rice, LLP, 1200 Nineteenth Street, NW, Suite 300, Washington, DC 20036; 202-857-4516 (withdrawn); currently Craig A. Holman and Kara L. Daniels, Arnold & Porter, LLP, 555 12th Street, NW, Washington, DC 20004; 202-942-5768.

3. *Systems Integration & Management Inc. v. General Services Administration*, CBCA 1512, 1537, 2013 CIVBCA LEXIS 188; 13-1 BCA ¶ 35,417.

Appellant Systems Integration & Management Inc. (SIM) alleged that GSA owed it over \$1 million for ten unpaid task orders. The case presented a novel issue before the Board – whether the Board possessed jurisdiction over a claim when, at the time of filing the claim, the contractor corporate status had become forfeited or void under the law of the state of incorporation. In this case, SIM had filed its claim in 2008. GSA discovered shortly before trial that SIM, a Delaware corporation, was not operating as a corporation in good standing. SIM took actions to reinstate its corporate status, and GSA filed a motion to dismiss. We held that under Delaware law, once the corporation had been reinstated, all actions are deemed to have been done and performed “with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect.” Once properly reinstated, all corporate actions, whether before reinstatement or after, are validated under Delaware Law. We also issued a decision on the merits of the case, finding that GSA had failed to rebut SIM’s evidence that it had submitted invoices to the government, together with supporting documentation, and GSA had failed to rebut appellant’s evidence. GSA filed a motion for reconsideration, which we denied.

Counsel for appellant: Stuart W. Turner and Emma V. Broomfield, Arnold & Porter, LLP, 555 12th Street, NW, Washington, DC 20004; 202-942-5759.

Counsel for respondent: Nathan C. Guerrero, Office of General Counsel, General Services Administration, 1800 F Street, NW, Room 544, Washington, DC 20205; 202-501-0501.

4. *Fluor Intercontinental Inc. v. Department of State*, CBCA Nos. 490, et al, 2012 CIVBCA LEXIS 89, 12-1 BCA ¶ 34,989, *affirmed without opinion*, *Fluor Intercontinental v. Kerry*, 2013 U.S. App. LEXIS 19073 (Fed. Cir. Sept. 16, 2013).

The Department of State contracted with Fluor Intercontinental Inc. (Fluor) to design and construct an embassy complex in Astana, Kazakhstan for a firm fixed price of over \$63 million. Fluor experienced significant difficulty obtaining

appropriate materials, delay because of the absence of electricity and other utilities and infrastructure, and problems in the actual construction due to the harsh weather conditions. The contract had a challenging construction schedule and Fluor quickly fell behind. Fluor filed multiple claims, totaling approximately \$24 million, for delay, changed conditions, and acceleration, among other claims. After a multi-week trial involving multiple experts and an appeal file containing millions of documents, we held that Fluor had failed to prove entitlement. Ultimately, the contract put the risk on the contractor, and Fluor could not show any evidence or present any legal theories that would shift the risk of performance from the contractor back to the government. Fluor appealed the decision to the United States Court of Appeals for the Federal Circuit, which affirmed the decision.

Counsel for Appellant: Edward Parrott, Watt, Tieder, Hoffar & Fitzgerald, LLP, 8405 Greensboro Drive, Suite 100, McLean, VA 22102; 703-749-1000.

Counsel for Respondent: John Sawyer and Thomas Dinackus, Office of the Legal Advisor, Buildings and Acquisitions, Department of State, PO Box 12408, Rosslyn, VA 22209; 703-516-1539.

5. *URS Energy & Construction Inc. v. Department of Energy*, CBCA 2260, 2012 CIVBCA LEXIS 169, 12-2 BCA ¶35,094.

This case involved a claim by URS Energy & Construction Inc. (URS) for reimbursement of \$8 million, which was the cost paid to its surety as part of an indemnity obligation. The claim resulted from litigation between URS and a subcontractor in the United States District Court of Colorado, which URS lost. In order to appeal, the district court required URS to provide an appeal bond, known as a supersedeas bond. URS signed an indemnity agreement with its surety. Ultimately, the surety paid the appeal bond pursuant to the indemnity agreement with URS. As required by the agreement, URS reimbursed the surety. URS subsequently sought reimbursement from the Department of Energy (“DOE”) pursuant to the terms of the cost reimbursement contract. Applying cost accountability standards to determine whether the costs were allocable and allowable under the contract, we found URS was entitled to receive reimbursement of all amounts paid to the surety. We denied DOE’s motion for reconsideration.

Counsel for Appellant: Daniel Frost, Snell & Wilmer LLP, 1200 Seventeenth Street, Suite 1900, Denver, CO 80202; 303-634-2038.

Counsel for Respondent: Brady Jones III, Office of Legal Services, Environmental Management Consolidated Business Center, Department of Energy, 250 East Fifth Street, Suite 500, Cincinnati, Ohio 45202; 513-246-0543.

6. *Shaw Environmental v. Department of Homeland Security*, CBCA 2177, 2367, 2012 CIVBCA LEXIS 312, 13-1 BCA ¶ 35,188.

Shaw Environmental installed travel trailers purchased by FEMA for use by disaster survivors of Hurricanes Katrina, Rita and other disasters. Later, thousands of plaintiffs filed suit against the contractors, including Shaw, for exposure to formaldehyde. Shaw incurred legal expenses defending these lawsuits, and sought reimbursement of these expenses from FEMA pursuant to its cost-reimbursable contract. In the first set of cases, we held that the appeal was moot because FEMA paid Shaw for all amounts due in the outstanding invoices. In the most recent case, we held that Shaw may be entitled to reimbursement for those costs, but that Shaw had to prove entitlement. The case is still pending.

Counsel for Appellant: Thomas Lemmer, McKenna Long & Aldridge, 1400 Wewatta Street, Denver, CO 80202; 303-634-4000.

Counsel for Respondent: Audrey Liebross, Office of the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW, Room 717, Washington, DC 20472; 202-646-7664.

7. *Arctic Slope Native Association, Ltd v. Department of Health and Human Services*, CBCA No. 1953 (190-ISDA)-REM, 1954 (289-ISDA)-REM, 1955 (290-ISDA)-REM, 1956 (291-ISDA)-REM, 1957 (292-ISDA)-REM, 1958 (293-ISDA)-REM 2011 CIVBCA LEXIS 163; 11-2 BCA ¶ 34,778, *reversed and remanded* 699 F.3d 1289 (Fed. Cir. 2012).

Appellant Arctic Slope Native Association (ASNA) provided health care services to its members under self-determination contracts with the Department of Health and Human Services (DHHS), issued under the Indian Self-Determination and Education Assistance Act. This appeal from DHHS is one of hundreds of cases pending before the board, the Court of Federal Claims and various district courts addressing the issue of whether the tribes are entitled to be paid for additional amounts of indirect contract support costs. Because each fiscal year is a different claim, the original cases were assigned to different judges and have led to multiple appeals. This appeal originally covered claims for additional amounts of indirect contract support costs for five fiscal years (FY 1996 – 2000). The original panel assigned to this case granted a motion to dismiss six claims for FY 1996 – 1998 on the grounds that the court did not possess jurisdiction to consider the claims because they had not been filed within six years after they accrued, but denied the motion to dismiss as to FY 1999 – 2000 on the ground that the Board could not determine based upon the record whether the additional funds for contract support costs would cause the agency to exceed the available funding appropriated for such costs.

With the retirement of one judge on the panel, I was assigned to join the panel to preside over the FY 1999 – 2000 portion of the case. We ruled for the

government, concluding that the record supported the government's argument that no appropriate funds remained to pay the claims because the government had already reached the caps contained in the contracts. The Federal Circuit affirmed, and ASNA appealed to the Supreme Court. In a parallel case, the Supreme Court held that the agency must pay all costs, holding, among other things, that an agency's inability to pay a contract in full because agency funds run out does not preclude money damages in court for breach of contract, and that all contract provisions and the Indian Self-Determination Act must be liberally construed in favor of the tribes. *Salazar v. Ramah Navajo Chapter*, 567 U.S. ___, 132 S. Ct. 995 (2012). Referencing its decision in *Ramah*, the Supreme Court remanded the Arctic Slope case for further actions consistent with that decision. The portion of the case relating to FY 1999 – 2000 settled on remand.

In the interim, the Federal Circuit remanded the panel's previous decision as to FY 1996 – 1998 for a determination as to whether equitable tolling should apply. On remand, I wrote the majority opinion concluding that equitable tolling was not warranted because ASNA did not exercise reasonable diligence to protect its rights. In a split decision, the Federal Circuit reversed and remanded, concluding that equitable tolling was warranted, relying in part on the special relationship between the government and the Indian tribes. We dismissed the case as to FY 1996 – 1999 upon the parties' request upon settlement of the claims.

Counsel for Appellant: Lloyd Miller, Sonosky, Chamber, Satche, Miller & Munson, 900 W. 5th Avenue, Suite 700, Anchorage, AK 99501; (907) 258-6377.

Counsel for Respondent: Sean Dooley, Office of General Counsel, Department of Health and Human Services, 5600 Fishers Lane, Room 4A-53, Parklawn Bldg., Rockville, MD 20857; 301-443-0405.

8. *Nu-Way Concrete Company, Inc. v. Department of Homeland Security*, CBCA 1411, 2010 CIVBCA LEXIS 323, 11-1 BCA ¶ 34,636.

FEMA hired Nu-Way Concrete Company, Inc. (Nu-Way) to deactivate mobile homes and travel trailers used in support of disaster operations. Nu-Way complained about overzealous inspections, which it alleged greatly increased its costs. Nu-Way presented some testimonial evidence that FEMA inspectors may have been overzealous in some inspections. However, in the absence of records or evidence to support its claims for \$2.5 million in increased costs, we found that Nu-Way could not support its claim. Under case precedent, in the absence of quantum, the claim can be denied, even if some evidence supports the allegations in the claim.

Counsel for Appellant: J. Marshall Gilmore of the Law Office of J. Marshall Gilmore, 1150 Louisiana Avenue, Suite 4, Winter Park, FL 32789; 407-629-7322.

Counsel for Respondent: Jean Hardin, Office of Chief Counsel, Federal

Emergency Management Agency, Department of Homeland Security, 500 C Street, NW, Washington, DC 20472; 202-646-4059.

9. *TAS Group, Inc. v. Department of Justice*, CBCA 52, 2008 CIVBCA LEXIS 135, 08-1 BCA ¶33,866.

The United States Marshall's Service at the Department of Justice entered into a contract with TAS Group, Inc., (TAS), which required TAS to provide passenger aircraft for use by the government. Under the contract, TAS remained liable for all damage to the aircraft except where damage arose from the government's negligence. At the beginning of a flight, the engine became damaged during a "hot start." TAS filed a claim for damages exceeding \$800,000. The government filed a motion to dismiss on the grounds that the case sounded in tort rather than contract. We determined that although the claim arose under a tort theory, the contract clauses governed and we could hear the case. Using an analysis grounded in common law negligence (and after addressing the fact that the negligent actions occurred in a foreign country), after evaluating the evidence adduced at trial, we found that TAS had established that the engine damage arose from a pilot's failure to properly anticipate and respond to a "hot start" and that the government owed TAS damages in the amount of \$827,743.

Counsel for Appellant: Carolyn Callaway, CSI Aviation Services, Inc., 1428 Catron Avenue, SE, Albuquerque, NM 87123; 505-529-9774.

Counsel for Respondent: Timothy McIlmail, Commercial Litigation Branch, Civil Division, 1100 L Street, NW, Washington, DC 20005; 202-307-0290.

10. *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 982, 2008 CIVBCA LEXIS 231, 08-2 BCA 33,974.

The government hired Tidewater Contractors, Inc. to perform road work in California. The contractor sought an extension of the contract completion date, arguing that the government had failed to timely issue a notice to proceed. The government argued that it had issued two notices to proceed, one that allowed the contractor to perform some preparatory work and the other instructing the contractor to begin contract performance. After trial, we analyzed the various arguments related to the extension of time and delay and held that the contractor had established it was entitled to a portion of the damages sought. We denied a motion for reconsideration.

Counsel for Appellant: Joseph Yazbeck, Yazbeck, Cloran & Hanson, LLC, 1300 S.W. Fifth Avenue, Suite 2750, Portland, OR 97201; 503-227-1428.

Counsel for Respondent: David Sett, Federal Highway Administration, 12300 W. Dakota Avenue, Lakewood, CO 80228; 720-963-3445.

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

1. *URS Energy & Construction Inc. v. Department of Energy*, CBCA 2260, 2012 CIVBCA LEXIS 169, 12-2 BCA ¶35,094.

Counsel for Appellant: Daniel Frost, Snell & Wilmer LLP, 1200 Seventeenth Street, Suite 1900, Denver, CO 80202; 303-634-2038.

Counsel for Respondent: Brady Jones III, Office of Legal Services, Environmental Management Consolidated Business Center, Department of Energy, 250 East Fifth Street, Suite 500, Cincinnati, OH 45202; 513-246-0543.

2. *Turner Construction Co. v. Smithsonian Institution*, 2013 CIVBCA Lexis 90; 13-1 BCA (CCH) ¶ 35,290.

Counsel for appellant: Douglas Patin, Bradley Arant Boult Cummings LLP, 1615 L Street, NW, Suite 1350, Washington, DC 20036; 202-719-8241.

Counsel for respondent: Peter D'Ambrosio and Todd Conley, Womble Carlyle Sandridge & Rice, LLP, 1200 Nineteenth Street, NW, Suite 500, Washington, DC 20036; 202-857-4516 (withdrawn); currently Craig A. Holman and Kara L. Daniels, Arnold & Porter LLP, 555 12th Street, NW, Washington, DC 20004; 202-942-5768.

3. *Systems Integration & Management Inc. v. General Services Administration*, CBCA 1512, 1537, 2013 CIVBCA LEXIS 188; 13-1 BCA ¶ 35,417.

Counsel for appellant: Stuart W. Turner and Emma V. Broomfield, Arnold & Porter, LLP, 555 12th Street, NW, Washington, DC 20004; 202-942 5759.

Counsel for respondent: Nathan C. Guerrero, Office of General Counsel, General Services Administration, 1800 F Street, NW, Room 544, Washington, DC 20205; 202-501-0501.

4. *Fluor Intercontinental Inc. v. Department of State*, CBCA Nos. 490, et al, 2012 CIVBCA LEXIS 89, 12-1 BCA ¶ 34,989, *affirmed without opinion*, *Fluor Intercontinental v. Kerry*, 2013 U.S. App. LEXIS 19073 (Fed. Cir. Sept. 16, 2013).

Counsel for Appellant: Edward Parrott, Watt, Tieder, Hoffar & Fitzgerald, LLP, 8405 Greensboro Drive, Suite 100, McLean, VA 22102; 703-749-1000.

Counsel for Respondent: John Sawyer and Thomas Dinackus, Office of the Legal Advisor, Buildings and Acquisitions, Department of State, PO Box 12408, Rosslyn, VA 22209; 703-516-1539.

5. *Shaw Environmental v. Department of Homeland Security*, CBCA 2177, 2367, 2012 CIVBCA LEXIS 312, 13-1 BCA ¶ 35,188.

Counsel for Appellant: Thomas Lemmer, McKenna Long & Aldridge, 1400 Wewatta Street, Suite 700; Denver, CO 80202; 303-634-4000.

Counsel for Respondent: Audrey Liebross, Office of the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, S.W., Room 717, Washington, DC 20472; 202-646-7664.

6. *USIA Underwater Equipment Sales Corporation v. Department of Homeland Security*, CBCA 2579, 2014 CIVBCA LEXIS 19 (2014); 2012 CIVBCA LEXIS 332 (2012).

Counsel for appellant: Joseph Billings, Miles & Stockbridge, PC, 100 Light Street, Baltimore, MD, 21202; 410-385-3497.

Counsel for Respondent: Wilbur Jones, Office of Procurement Law, U.S. Coast Guard, Department of Homeland Security, 2100 Second Street, S.W., Mail Stop 7121, Washington, DC 20593-0001; 202-372-3843.

7. *Arctic Slope Native Association, Ltd v. Department of Health and Human Services*, CBCA No. 190-ISDA, et al, 2011 CIVBCA LEXIS 163; 11-2 BCA ¶ 34,778, *reversed and remanded*, 699 F.3d 1289 (Fed. Cir. 2012).

Counsel for Appellant: Lloyd Miller, Sonosky, Chamber, Sachse, Miller & Munson, 900 West Fifth Ave., Suite 700, Anchorage, AK 99501; 907-258-6377.

Counsel for Respondent: Sean Dooley, Office of General Counsel, Department of Health and Human Services, 5600 Fishers Lane, Room 4A-53 – Parklawn Bldg., Rockville, MD 20857; 301-443-0405.

8. *Nu-Way Concrete Company, Inc. v. Department of Homeland Security*, CBCA 1411, 2010 CIVBCA LEXIS 323, 11-1 BCA ¶ 34,636.

Counsel for Appellant: J. Marshall Gilmore of the Law Office of J. Marshall Gilmore, 1150 Louisiana Avenue, Suite 4, Winter Park, FL 32789; 407-629-7322.

Counsel for Respondent: Jean Hardin, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, S.W., Washington, DC 20472; 202-646-4059.

9. *TAS Group, Inc. v. Department of Justice*, CBCA 52, 2008 CIVBCA LEXIS 135, 08-1 BCA ¶33,866.

Counsel for Appellant: Carolyn Callaway, CSI Aviation Services, Inc.
1428 Catron Ave., SE, Albuquerque, NM, 87123; 505-529-9774.

Counsel for Respondent: Timothy McIlmail, Commercial Litigation Branch,
Civil Division, U.S. Department of Justice, 1100 L Street, NW, 8th Floor,
Washington, DC 20005; 202-307-0290.

10. *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 982-C(50), 2008 CIVBCA LEXIS 231, 08-2 BCA 33,974.

Counsel for Appellant: Joseph Yazbeck, Yazbeck, Cloran & Hanson, LLC, 1300
S.W. Fifth Avenue, Suite 2750, Portland, OR, 97201; 503-227-1428.

Counsel for Respondent: David Sett, Federal Highway Administration, 12300 W
Dakota Avenue; Lakewood, CO, 80228; 720-963-3446.

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

Arctic Slope Native Association, LTD v. Sebelius, CBCA 294-ISDA, CBCA 295-ISDA, CBCA 296-ISDA, CBCA 297-ISDA, 09-2 BCA 34281, 2009 WL 3188059; 629 F.3d 1296 (Fed. Cir. 2010); 133 S.Ct. 22 (2012).

- 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.

Of the approximately 150 cases over which I have presided while on the Department of Transportation Board of Contract Appeals and with the United States Civilian Board of Contract Appeals, I am only aware of one case that has been remanded, albeit in two separate appeals:

Arctic Slope Native Ass'n, Ltd. v. Sebelius, CBCA No. 1963 (190-ISDA)-REM, et. al., 11-2 BCA ¶ 34778 (2011).

In a portion of the *Arctic Slope Native Association* litigation relating to FY 1996 – 1998, I wrote the majority opinion for the panel concluding that the equitable tolling was not warranted on this record because ASNA did not exercise reasonable diligence to protect its rights. In a split decision, the Federal Circuit reversed and remanded, concluding that equitable tolling was warranted, relying in part on the special relationship between the government and the Indian tribes identified in *United States v. Mitchell*,

463 U.S. 206, 225 (1983). On remand, we dismissed the case upon the parties' request upon settlement of the claims.

Arctic Slope Native Association, Ltd v. Department of Health and Human Services, CBCA No. 1953 (190-ISDA)-REM, 1954 (289-ISDA)-REM, 1955 (290-ISDA)-REM, 1956 (291-ISDA)-REM, 1957 (292-ISDA)-REM, 1958 (293-ISDA)-REM 2011 CIVBCA LEXIS 163; 11-2 BCA ¶ 34,778, *reversed and remanded* 583 F.3d 785 (2011).

In a portion of the *Arctic Slope Native Association* litigation relating to FY 1999 – 2000, we concluded unanimously that it would exceed the government's budgetary authority to pay ASNA's claims because the government had already reached the caps contained in the relevant contracts. The Federal Circuit affirmed. In a parallel case, the Supreme Court held that the fact that an agency runs out of funds under the terms of the contract does not preclude money damages for breach of contract. *Salazar v. Ramah Navajo Chapter*, 567 U.S. ___, 132 S. Ct. 995 (2012). In light of *Ramah*, the Supreme Court reversed and remanded. The parties settled on remand.

Because records in military proceedings are not accessible to the general public, I do not have personal access to this specific information concerning the cases over which I have presided. To respond to this question, I conducted an extensive appellate search of LexisNexis and Westlaw. Of the decisions reported in response to my query, the following is relevant to this question:

United States v. Charles R. Phillips, USAF, ACM 36412, 2008 CCA LEXIS 113 (March 19, 2008)

Serving as a military judge, sitting alone, I convicted appellant of failure to obey and order, carnal knowledge, making and uttering bad checks, and violating multiple other counts of the Uniform Code of Military Justice. I adjudged a sentence of dishonorable discharge, confinement for 28 years, and reduction to E-1. The appellate court affirmed the findings, found the sentence to be within legal limits, but used its discretion to reduce the sentence to 15 years. The appellate court determined that I should have included the records that I reviewed in camera in the record of trial, but found that the omission was insubstantial and did not render the record incomplete.

- 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.

United States Civilian Board of Contract Appeals and United States Department of Transportation Board of Contract Appeals: The Board's decisions, which

include decisions issued by me, are published on our website: www.cbca.gov, and, in addition, published in volumes maintained by the CCH Government Contracts Reporter.

Military Judge: I ruled from the bench, rather than issuing written opinions.

- 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 have not issued opinions on federal or state constitutional issues.

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

I have not sat by designation on a federal court of appeals.

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

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

Administrative Judge: In addition to the Board's internal conflict check, I monitor all civil cases for potential conflicts. I have not had a case, motion, or matter in which I assessed the necessity or propriety of recusal. I am unaware of any cases, motions, or matters that have come before me in which a litigant or party requested that I recuse myself due to an asserted conflict of interest or in which I recused myself sua sponte.

Military Judge: As a military judge, I approached each case on a case-by-case basis. I do not recall ever recusing myself sua sponte or being asked to recuse. Because the records

in military proceedings are not accessible to the public. I do not have personal access to information by which I could confirm this recollection.

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 held no public offices. I have not been a candidate for any appointed office or a nominee for any elected 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 or held a position in a political party or election committee.

16. Legal Career: Answer each part separately.

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

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

1986 – 2007

United States Air Force Trial Judiciary, Eastern Circuit

Air Force Legal Services Agency

Bolling Air Force Base, Washington, D.C.

(At various locations throughout service)

Reserve Judge Advocate (1991 – 2007)
Active duty Judge Advocate (1986 – 1991)

1991 – 1994
United States Department of Justice
Commercial Litigation Branch, Civil Division
PO Box 480, Ben Franklin Station
Washington, D.C. 20044
Trial Attorney

1994 – 2001
Office of the United States Attorney
Eastern District of Virginia, Alexandria Division
2100 Jamieson Avenue
Alexandria, VA 22314
Assistant U.S. Attorney

2001 – 2003
Miller & Chevalier Chartered
655 15th Street NW, Suite 900
Washington, D.C. 20004
Counsel

June 2013 – December 2013
(from my private residence)
Private Mediator/Arbitrator (independent contractor)

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

I served as an arbitrator in one alternative dispute resolution proceeding from June to December 2013, a bid protest matter in the case of *Stryker Communications (Stryker) v. Dallas County Hospital District d/b/a Parkland Health and Hospital System*, located in Dallas, Texas.

b. Describe:

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

From 1986 until 1991, I served on active duty in the United States Air Force, including time during Operation Desert Shield and Desert Storm. I prosecuted and defended criminal cases, provided legal advice to commanders on military issues, such as the laws of armed conflict, rules of engagement, international issues, employment and union issues, and

tort claims. I acted as the liaison to local United States Attorney's Offices. I represented the United States before the Armed Services Board of Contract Appeals. From 1991 to 1993, as a reservist and a member of the National Guard, I continued my service to the country. I litigated cases involving government contracts before the Board of Contract Appeals and the Court of Federal Claims. From 1993 to 1996, I served at the D.C. Army National Guard. My duties involved handling a variety of matters at the National Guard Bureau headquarters, including issuing legal opinions on personnel matters. From 1996 through 2004, I served as the D.C. Air National Guard Headquarters Staff Judge Advocate, and provided legal advice to the commanding general during the September 11, 2001 attacks on Washington, D.C.

While on reserve duty, I served as a Trial Attorney in the Commercial Litigation Branch of the Civil Division from 1991 until 1994. My practice consisted of work before the United States Court of Appeals for the Federal Circuit and the United States Court of Federal Claims. I served as lead trial attorney over a significant amount of trial level and appellate cases, as well as serving as one of the original members of the trial team in a case involving what has become known as the A-12 litigation. I also handled appeals before the United States Court of Appeals for the Federal Circuit.

From 1994 to 2001, I served as an Assistant United States Attorney in the United States Attorney's Office in the Eastern District of Virginia, Alexandria Division. I acted as lead trial attorney representing the United States before the United States District Court for the Eastern District and in state court in cases involving government contracts, employment disputes, regulatory matters, immigration issues, and claims arising under various federal statutes, as well as appeals before the United States Court of Appeals for the Fourth Circuit.

From 2001 to 2003, as Counsel at the law firm of Miller & Chevalier, I represented individuals and corporations in civil and criminal actions in federal courts. As such, I assisted parties in all phases of preparation for civil and criminal cases. I also represented corporations in "337" litigation before the United States International Trade Commission, and advised clients about issues arising under the Foreign Corrupt Practices Act. I provided counseling and training to government contractors and corporations on various employment and government contract issues.

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

For the majority of my legal career, my client has been the United States. I have specialized in the areas of federal government contracts and other

federal laws. From 2001 until 2003, I represented corporations and individuals in primarily civil actions in Federal and State Courts while at Miller & Chevalier.

- 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.

Almost all of my work has involved litigation, with the vast majority in federal courts or federal administrative agencies. I frequently appeared in court during my time on active duty in the United States Air Force, at the Commercial Litigation Branch, Civil Division, at the Department of Justice, and as an Assistant United States Attorney in the Office of the U.S. Attorney, Eastern District of Virginia, Alexandria Division. As Counsel at Miller & Chevalier, I appeared in federal courts and federal administrative adjudicatory forums infrequently.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 50% |
| 2. state courts of record: | 0% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 50% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 95% |
| 2. criminal proceedings: | 5% |

- 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.

Because I no longer have access to these records, I am providing my best estimate based upon my memory. I tried approximately 200 cases as primary counsel, including cases before military judges, federal judges, and administrative fora, including the boards of contract appeals, EEO hearings, ITC actions, and suspension and debarment matters.

- 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 been counsel of record or personally argued before the Supreme Court. I am listed as one of five attorneys from the Department of Justice on a brief submitted on behalf of respondent in opposition to a petition for a writ of certiorari in the case of *Janet M. Clark v. Department of the Army*, 1994 WL 16100883, filed on January 3, 1994, involving an appeal of an employment matter originally submitted before the Merit Systems Protection Board, appealed to the United States Court of Appeals for the Federal Circuit, and then to the U.S. Supreme Court.

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.

I no longer have access to my records from the U.S. Attorney's Office for the Eastern District of Virginia or the Department of Justice. I have provided the information for the following cases to the best of my recollection after reviewing copies of briefs that I had prepared for submission in the various cases.

1. *BTG, Inc. v. Department of Education, Civil Action No. 00-1069* (EDVA).

In 2000, BTG, Inc. filed a bid protest against the Department of Education (DOE), which involved a \$68 million contract award for computer services for the DOE. BTG, Inc. alleged that the agency should have used a negotiated procurement procedure under FAR Part 15 instead of procedure followed by the agency, using the simplified acquisition procedures set forth in FAR Part 8. After the government filed a motion for summary judgment, Judge Gerald Bruce Lee found for DOE. I served as the lead counsel on the case in 2000.

Counsel for BTG, Inc.: Sharon L. Babbin, Tighe, Patton & Babbin, PLLC, 1747 Pennsylvania Avenue, NW, Washington DC 202-383-1450.

Counsel for Intervenor's Counsel: James McCullough, Fried Frank Harris Schriver & Jacobson, 1001 Pennsylvania Avenue, Suite 800, Washington, DC 20004, 202-639-7000.

2. *CESC Plaza Limited Partnership v. U.S. Department of Commerce, Patent and Trademark Office*, Civil Action No. 98-1837-A (EDVA).

This case involved the largest lease agreement ever awarded at the time by the GSA for the consolidation of the U.S. Patent and Trademark Office from 18 separate buildings in Crystal City to a complex of buildings located in Alexandria. Filing in the Eastern District of Virginia, CESC Plaza Limited Partnership alleged that the agency included requirements in the solicitation for offers that impermissibly prejudiced the plaintiff's ability to compete with an offer of currently existing buildings. In essence, CESC argued that the agency violated the Administrative Procedure Act when it set forth requirements so that only newly constructed buildings could fulfill the requirements. After cross-motions for summary judgment, Judge James C. Cacheris granted the agency's motion for summary judgment and found that solicitation did not violate the APA or the Competition in Contracting Act. The Fourth Circuit affirmed. As lead counsel, I handled all aspects of the litigation from 1999 to 2000, including the appeal to the Court of Appeals for the Fourth Circuit.

Counsel for Plaintiff: Benjamin G. Chew, Patton Boggs, LLP, 2550 M Street NW, Washington, DC 20006, 202-457-7690.

3. *Friends of Iwo Jima v. National Capital Planning Comm'n*, Civil Action No. 97-1467-A (EDVA).

In a highly publicized case, plaintiffs (the citizen group "Friends of Iwo Jima" and Congressman Gerald Solomon) alleged that various government agencies had violated administrative procedural rules when they approved the placement of the Air Force Memorial near the Iwo Jima Memorial. The plaintiffs alleged that the agency's decision violated the Commemorative Works Act, and was infected with procedural error. Ruling on cross-motions for summary judgment, Judge Albert V. Bryan, Jr. determined that the agency had not violated administrative rules and that it had provided adequate notice of its planned action and complied with all procedural rules. As lead counsel, I represented the four government agencies through all aspects of the litigation from 1998 to 1999, including the appeal to the United States Court of Appeals for the Fourth Circuit.

Plaintiff's counsel: Thomas M. Buchanan, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005, 202-371-5700.

Counsel for Air Force Memorial Foundation: Mitchell Berger, Patton Boggs, 2550 M Street, NW, Washington, DC 20006, 202-457-5601.

4. *Hunt Building Corporation v. United States and Keller/Catellus Fort Carson, LLC*, Civil Action No. 97-1706-A (EDVA).

Plaintiff alleged that the Department of the Army had failed to comply with various

government procurement statutes and regulations. Specifically, the plaintiff alleged that the agency provided more information to the company ultimately awarded the contract than it provided to the plaintiff, and that the government improperly refused to engage in substantive discussions or to permit the plaintiff to submit a best and final offer in response to the solicitation. Plaintiff filed a motion for temporary and preliminary injunction against the award of this multi-million dollar contract for government housing. Judge Claude M. Hilton determined that, under the terms of the solicitation, the agency properly awarded the contract on the basis of initial offers without clarifications or discussions. As lead counsel, I handled all aspects of the litigation from 1997 to 1998.

Counsel for Plaintiff: David Hazelton, Lathan & Watkins, 1001 Pennsylvania Avenue, NW, Suite 1300, Washington, DC 20004, 202-637-2200.

5. *Hughes Missile Systems, Co. v. U.S. Department of the Air Force*, Civil Action No. 96-937-A (EDVA).

Plaintiff sought a preliminary injunction in the Eastern District of Virginia to cease performance under two contracts issued for the initial phase of the Joint Air-to-Surface Standoff Missile Program (known as the JASSM program) involving contracts worth an estimated \$3 billion pending resolution of the GAO protest decision, i.e., seeking to override the stay issued pursuant to the Competition in Contracting Act. The district court judge determined that the plaintiff had failed to establish the need to override the stay. I represented the United States, handling all aspects of the litigation in the Eastern District of Virginia in 1996.

Counsel for Plaintiffs; Thomas D. Yannucci, Kirkland & Ellis, 655 15th Street, NW, Suite 1200, Washington, DC 20005, 202-879-5000; Scott Arnold, (no current business contact information available); David V. Anthony (no current business contact information available).

6. *Logan v. United States*, Civil Action No. 98-1415-A (EDVA).

Plaintiff asserted claims under the Federal Tort Claims Act and under common law for wrongful arrest, assault, battery, and intentional infliction of emotional distress. Mr. Logan's claims arose from an altercation with a Secret Service agent. Judge Gerald Bruce Lee rejected all claims after hearing all evidence at trial. As sole counsel, I handled all aspects of the litigation from 1998 to 1999.

Counsel for Plaintiff: Mark Petrovich, Martin, Arif & Petrovich, 8001 Braddock Road, Suite 105, Springfield, VA 22151 (no phone number available).

7. *Wheatley v. United States*, Civil Action 98-580-A (EDVA).

Plaintiff-mother alleged that military guards at the post entry point at Fort Belvoir acted negligently when they stopped plaintiff and her daughter, who had suffered an

asthma attack at home, attempted treatment, and called for emergency transport. The daughter subsequently died. Plaintiff filed suit under the Federal Tort Claims Act. Judge Claude M. Hilton granted the government's motion for summary judgment, in which we argued that the government guards were protected by the Good Samaritan Act. As lead counsel defending this action, I handled all aspects of the litigation from 1998 to 1999. The United States Court of Appeals for the Fourth Circuit affirmed the district court decision.

Counsel for Plaintiff: Michael J. Miller, Miller & Associates, 809 Cameron St., Alexandria, VA 22314 (no current business contact information available).

8. *Medina v. United States*, Civil Action 99-1498-A (EDVA).

Plaintiff, a former diplomat, asserted a claim under the Federal Tort Claims Act against INS agents who arrested and deported him based upon the INS's interpretation that plaintiff's conviction for criminal assault constituted a "crime against moral turpitude." The district court concluded that plaintiff could not present a valid claim under the Federal Tort Claims Act. As lead counsel, I handled all aspects of the litigation at the trial level in 2000.

Counsel for Plaintiff: Edward S. Rosenthal, Rosenthal Rich & Costle, LLP, 1317 King Street, Alexandria, VA 22314, 703-836-7441.

9. *Seldowitz v. Office of the Inspector General, U.S. Department of State*, Civil Action 99-1031-A (EDVA).

Plaintiff, a career foreign service officer, alleged inaccuracies in his personnel records that led to a civil prosecution for fraud. Plaintiff entered into a settlement agreement with the government in which he agreed to pay restitution to the government for overpayment of per diem, but pursued an action pursuant to the Privacy Act, seeking correction of the records. I handled the case at both the trial level and on appeal, from 1999 to 2000. Judge Gerald Bruce Lee granted our motion for summary judgment, in which we asserted that the records correctly reflected the actions that resulted in the settlement. The case was remanded by the Fourth Circuit in part to permit discovery related to a limited category of the records. I did not participate in the case on remand because I had joined the bench.

Counsel for Plaintiff: Andrew Grosso, Grosso & Associates, 1101 30th Street, NW, Washington, DC 20007.

10. *Tilden v. George J. Tenet, Director of Central Intelligence, Central Intelligence Agency*, Civ. No. 00-987-A (EDVA).

Plaintiff alleged discrimination in this Title VII case against the CIA. I represented the CIA and filed a motion to dismiss based upon the assertion of the state secrets privilege by the Director, which presented the first time the state secrets privilege had

been ever asserted in the Eastern District of Virginia in a Title VII case. Judge Claude M. Hilton determined that the state secrets privilege had been properly applied in this instance and dismissed the case. As lead counsel, I handled all aspects of the litigation in 2000.

Plaintiff's Counsel W. Steven Paleos, Paleos & Krieger, PC, 803 Cameron Street, Alexandria, VA 22314 (703) 519-7233.

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

In addition to my litigation practice, during my time as a military lawyer, I provided legal advice to commanders and military members in a number of subject matter areas, including federal personnel law, military justice, law of armed conflict, rules of engagement, and international issues. For example, General David Wherley, the Commander of the D.C. National Guard, sought my advice upon receiving an order from the military representative from the White House related to the events on September 11.

I have never performed any lobbying activities.

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 April 2012 to the present, I have co-taught the Craft of Judging at the George Washington University School of Law. The focus of this course is current issues in judicial ethics, judicial administration, and the trial and appellate process. Topics include standard of review, statutory interpretation, and the role of precedent. This course is required for students enrolled in a judicial placement. A syllabus is attached.

From January 2012 to the present, I have co-taught a course entitled the Performance of Government Contracts at the George Washington University School of Law. The focus of this course is the discussion of the substantive problems that most frequently arise during the performance of government contracts, including how to interpret specifications and the most generally used contract clauses. We analyze the methods that can be used by the parties to a government contract to obtain legal relief, including detailed coverage of the disputes procedure, actions for breach of contract, and forms of equitable and extraordinary relief. A syllabus is attached.

From September 2008 until the present, I have taught an advanced legal writing course at

the George Washington University School of Law. The focus of the course is legal scholarship and the students are required to produce an original piece of legal scholarship. A copy of the syllabus is attached.

From 1994 through 2001, I taught Introduction to Paralegal Studies at the University of Maryland, University College, through the Distance Learning Program. The University of Maryland no longer offers a certificate in paralegal studies. I taught introduction to law for paralegals, which offered an introduction to the law with a focus on the role of the paralegal in the legal environment. I do not have a copy of the syllabus for this program.

From 1998 to 1990, I taught at the Aviation Law and Aviation Insurance Law, Embry-Riddle Aeronautical University (graduate program). These courses were available for military members stationed in the United Kingdom pursuing a graduate degree. I taught basic administrative law, as related to aviation law, and included concepts in topics such as contracts, torts, property, and criminal law common law concepts. Aviation Insurance Law included more focus upon the underlying concepts for insurance. I do not have a copy of the syllabus.

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

I do not have any arrangements for deferred income or future benefits from previous business arrangements.

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 during service with the court.

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

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 am unaware of any individuals, family or otherwise, that are likely to present potential conflicts of interest. As a judge before the Civilian Board of Contract Appeals, I am currently responsible for cases for which the United States Court of Federal Claims possesses concurrent jurisdiction. If confirmed, I would recuse myself from all cases in which I was either directly or indirectly involved during my tenure with the Civilian Board of Contract Appeals. For matters handled by the Civilian Board of Contract Appeals after my departure, I would apply the standards of 28 U.S.C. 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine whether to recuse in other matters.

- 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 consult rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. 455 and the Code of Conduct for United States Judges, and based on that consultation, I would compile a comprehensive list of matters for easy flagging of potential conflicts of interest. In close cases, I would consult with other judges and persons designated by the court or judicial organizations to obtain advice on such questions as they arise.

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.

Mindful of the limitations of providing pro bono representation as an administrative judge, the focus of my pro bono efforts have been to mentor law students in various voluntary bar activities. For example, I have participated in the American Bar Association Judicial Division Judicial Mentor Program for a few years. This program introduces minority law students to the value in pursuing a judicial clerkship.

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 early 2013, I sent my resume to an official with the White House Counsel's Office to express my interest in serving on the Court of Federal Claims. On February 19, 2014, an official from the White House Counsel's Office called me to discuss my interest in the position. Since March 4, 2014, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 7, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 21, 2014, 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, Jerri Kaylene Somers, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

22 May 2014
(DATE)

Jerri Kaylene Somers
(NAME)

Amy Stekern
(NOTARY)

