

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Ada Elene Brown

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

United States District Court for the Northern District of Texas

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.

600 Commerce Street, Suite 200
Dallas, Texas 75202

Residence: Plano, Texas

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

1974; Oklahoma City, Oklahoma

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.

1996 – 1999, Emory University School of Law; Doctor of Law, 1999

1992 – 1996, Spelman College; Bachelor of Arts (magna cum laude), 1996

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.

2013 – present
Fifth District Court of Appeals
600 Commerce Street, Suite 200
Dallas, Texas 75202
Justice

2008, 2009, 2012
Southern Methodist University
Dedman School of Law
3315 Daniel Avenue
Dallas, Texas 75205
Adjunct Professor of Trial Advocacy

2007 – 2013
McKool Smith, P.C.
300 Crescent Court, Suite 1500
Dallas, Texas 75201
Litigation Attorney

2005 – 2007
Dallas County Criminal Court Number 1
133 North Riverfront Boulevard
Dallas, Texas 75207
Judge

2000 – 2005
Dallas County District Attorney's Office
133 North Riverfront Boulevard, L.B. 19
Dallas, Texas 75207
Assistant District Attorney

1999 – 2000
Dallas County District Attorney's Office
133 North Riverfront Boulevard, L.B. 19
Dallas, Texas 75207
Family Violence Advocate

1998 – 1999
The Honorable Mori Irvine Mediation Services
56 Forsyth Street, NW
Atlanta, Georgia 30303
Research Assistant

Summer 1998
Sharon Ware and Associates
2400 Century Parkway, Suite 200
Atlanta, Georgia 30345
Summer Clerk

1997 – 1999
Summit Oaks Apartments
1108 Montreal Rd.
Clarkston, Georgia 30021
1997-1999
Apartment Cleaner

1996 – 1999
Emory University School of Law
Hugh F. MacMillan Law Library
1301 Clifton Road
Atlanta, Georgia 30322
Law Library Help Desk

Summer 1997
The Honorable Doris Downs
Superior Court of Fulton County
T7955 Justice Center Tower
185 Central Avenue, SW
Atlanta, Georgia 30303
Summer Intern

Other Affiliations (uncompensated):

2013 – 2016
Texas Department of Public Safety Foundation
9600 Escarpment Boulevard, Suite 46
Austin, Texas 78749
Vice President and Board Member

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

I did not serve in the military. I was not required to register for the 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.

UNT School of Law Mock Trial Competition Final Round Judge (2015)

Yellow Rose of Texas Gubernatorial Award (2013)

Honorary Texas Ranger Captain Award (2013)

SuperLawyers Rising Star (2005, 2012, 2013)

Best Volunteer Editorial Columnist Award, Dallas Morning News (2012)

Best Feature Story Award State Bar of Texas (2008)

Endorsed by Dallas Morning News in contested election to retain my bench (2005)

Award for Academic Excellence in Mediation (1999)

Presidential Scholar Emory University School of Law, 1996-1999

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 (2015 – present)

College of the State Bar of Texas (2008 – present (intermittent))

Collin County Bar Association (2014 – 2018)

Collin County Women Lawyer's Association (2016 – present)

Director (2016)

Advisory Board Member (2017 – present)

Committee for a Qualified Judiciary (2007)

Dallas Bar Association (2005 – present)

Bench Bar Committee (2013 – 2015)

Co-Vice Chair (2014)

Criminal Justice Committee Chair (2006, 2007)

Dallas Women Lawyers Association (2017 – present)

Federal Bar Association (2018 – 2019)

Federalist Society (2018 – present)

Higginbotham Inn of Court
Barrister (2010 – 2013)

House Bill 7 Task Force Committee (2017– present)

JL Turner Bar Association (2007 – present (intermittent))

National Bar Association (2008 – 2018 (intermittent))

SCRIBES American Society of Legal Writers (2009 – present (intermittent))

Texas Center for the Judiciary
Board member (2016 – 2018)
Chair-Elect (2018)

William “Mac” Taylor Inn of Court
Barrister (2014 – present)

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.

Texas, 2000

There have been no lapses in membership.

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

United States District Court for the Northern District of Texas, 2007
United States District Court for the Eastern District of Texas, 2007
Supreme Court of Texas, 2000

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.

African-African Republican Club of Collin County (2015 – present)

Alpha Kappa Alpha Sorority (1994 – present (intermittent))

Choctaw Nation of Oklahoma Tribal Member (1974 – present)

Dallas County Council of Republican Women
Recording Secretary (2010)

Daughters of the American Revolution, Elizabeth Gordon Bradley Chapter
(2010 – present)

Golden Corridor Republican Women's Club (2012 – present)
Lincoln Day Dinner Chair (2014)

Junior League of Dallas (2017 – present)
Diversity and Inclusion Committee (2018)

Mensa (1994 – present)

National Society of the Women Descendants of the Ancient and Honorable
Artillery Company (2010 – present)

Northway Christian Church
Volunteer Grief Counselor (2008 – 2009)

Supreme Court of Texas Beyond the Bench Planning Committee (2016 – 2017)

Texas Commission on Law Enforcement Officer Standards and Education
Commissioner (2007 – 2008)

Texas Department of Public Safety Commission
Commissioner (2008 – 2013)

Texas Department of Public Safety Foundation (2012 – 2018)
Vice-President and Member of Board of Directors (2013 – 2016)

Texas Mayflower Society and DFW Colony (2010 – present)

White Rock Republican Women's Club (2003 – 2013 (intermittent))

- 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.

Alpha Kappa Alpha Sorority is a sorority that is open only to women. Daughters of the American Revolution is a service organization open only to women, although I understand there to be an equivalent organization for men. The National Society of the Women Descendants of the Ancient and Honorable Artillery Company is open only to women, although I understand there to be an equivalent organization that was open only to men until 2012. The Choctaw Nation of Oklahoma is open only to descendants of Dawes Rolls original enrollees. To the best of my knowledge, none of the other organizations listed in response to question 11a 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.

Life Lessons of Downton Abbey, Dallas Morning News, Aug. 24, 2013. Copy supplied.

Courage in Kaufman, Dallas Morning News, Apr. 14, 2013. Copy supplied.

Pompoms and Good Lawyering, Dallas Morning News, July 28, 2012. Copy supplied.

On the Face of it—What Does a Criminal Look Like?, Dallas Morning News, June 9, 2012. Copy supplied.

The Negatives of Affirmative Action, Dallas Morning News, Apr. 21, 2012. Copy supplied.

DNA Isn't Definitive in Some Cases, Dallas Morning News, Mar. 3, 2012. Copy supplied.

TMI for Creeps—An Open Letter to McKenzie's Mom, Dallas Morning News, Jan. 14, 2012. Copy supplied.

New Year's Resolutions —for Others, Dallas Morning News, Dec. 31, 2011. Copy supplied.

Kim Who? Google "Trooper Daniel Shown," Dallas Morning News, Dec. 3, 2011. Copy supplied.

Racism 2.0, Dallas Morning News, Oct. 8, 2011. Copy supplied.

My Verdict Is In on the Courthouse—Three Lessons I Learned on the Bench, Dallas Morning News, Aug. 13, 2011. Copy supplied.

Remorse No Reason for Delay, Dallas Morning News, July 22, 2011. Copy supplied.

About Caraway's Judgment, Dallas Morning News, Feb. 13, 2011. Copy supplied.

It's All About CPS' Image, Dallas Morning News, Feb. 23, 2008. Copy supplied.

Keep Cats Inside, Dallas Morning News, Jan. 13, 2008. Copy supplied.

Premiums from a Turnip, Dallas Morning News, Dec. 9, 2007. Copy supplied.

Batson and Peremptory Strikes in Criminal and Civil Cases, Dallas Bar Association Headnotes, Sept. 1, 2007. Copy supplied.

I Apologize, and I Accept, Dallas Morning News, Apr. 8, 2007. Copy supplied.

I Like Being a Lawyer!, Texas Lawyer, Feb. 12, 2007. Copy supplied.

You Have to Make It Hurt, Dallas Morning News, Oct. 8, 2006. Copy supplied.

Ann Richards' Legacy, Dallas Morning News, Sept. 16, 2006. Copy supplied.

What Lawyers Should Know About Internet Predators, Dallas Bar Association Headnotes, Sept. 1, 2005. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the

name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

House Bill 7 Task Force, *Report of the House Bill 7 Task Force for Procedural Rules in Suits Affecting the Parent-Child Relationship Filed by a Governmental Entity*, Nov. 27, 2017. Copy supplied.

- 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 given any such testimony or statements.

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

July 11, 2017: Speaker, "Best Practices for Appealing Business Cases," Dallas Bar Association, Dallas, Texas. I spoke with appellate practitioners about best practices for appellate cases. I have no notes, transcript, or recording. The address of the Dallas Bar Association is 2101 Ross Avenue, Dallas, Texas 75201.

August 15, 2016: Panel member, "The Jury Charge: Preservation, Pitfalls and Pointers." State Bar of Texas, Dallas, Texas. I spoke on a panel about the importance of a correct jury charge for appellate review. I have no notes, transcript or recording. The address for the State Bar of Texas is 1414 Colorado Street, Austin, Texas 78701.

August 7, 2016: Panel member, "Meet the Justices," Dallas Bar Association, Dallas, Texas. I spoke with appellate practitioners about best practices for appellate cases. I have no notes, transcript, or recording. The address of the Dallas Bar Association is 2101 Ross Avenue, Dallas, Texas 75201.

July 18, 2016: Presenter, "How to Properly Preserve Error for Appellate Review in Cases with Expert Witnesses," State Bar of Texas, Austin, Texas. Recording and handout supplied.

July 13, 2016: Speaker, "Evidentiary Issues in Family Law," Dallas Bar Association, Dallas, Texas. I spoke about the evidentiary issues that tend to occur

in family law cases. I have no notes, transcript, or recording. The address of the Dallas Bar Association is 2101 Ross Avenue, Dallas, Texas 75201.

July 8, 2016: Moderator, "Minority Clerkship Luncheon," Dallas Bar Association, Dallas, Texas. I was a moderator for a panel speaking about the importance of diversity in the legal profession. I have no notes, transcript, or recording. The address of the Dallas Bar Association is 2101 Ross Avenue, Dallas, Texas 75201.

June 22, 2016: Panelist, "Judicial Panel Discussion on Changing Perspectives for Women in Practice," Collin County Women Lawyers Association, Plano Texas. I spoke about the issues facing women lawyers in the legal community. I have no notes, transcript, or recording. The address of the Collin County Women Lawyers Association is 1125 Legacy Drive, Suite 320, Frisco, Texas 75034.

May 11, 2015: Presenter, "Top Ten Evidentiary Reasons for Reversal," Texas Center for the Judiciary's College for New Judges, Dallas, Texas. Powerpoint supplied.

May 1, 2015: Presenter, "Achieving Excellence," DPS Command Staff College, Austin, Texas. I spoke about tips for achieving excellence. I have no notes, transcript or recording. The address of Texas DPS Command Staff College is 5805 North Lamar Boulevard, Austin, Texas 78752.

April 3, 2015: Presenter, "Top Ten Evidentiary Reasons for Reversal," Texas Center for the Judiciary, Austin, Texas. I spoke about the most common evidentiary reasons trial judges get reversed by the appellate court. I have no notes, transcript, or recording. The address of the Texas Center for the Judiciary is 1210 San Antonio Street, Austin, Texas 78701.

February 20, 2015: Presenter, "The Importance of Diversity in the Legal Profession," Texas A&M University School of Law, Fort Worth, Texas. I spoke of the importance of diversity in the legal profession. I have no notes, transcript or recording. The address for the Texas A&M University Law School is 1515 Commerce Street, Fort Worth, Texas 76102.

February 8, 2015: Presenter, "Introduction to the Court of Appeals," Coppell Republican Women's Club, Coppell, Texas. I spoke about the structure of the appellate court system in Texas and discussed the type of cases heard by my appellate court. I have no notes, transcript or recording. The address for the Coppell Republican Women's Club is Post Office Box 2151, Coppell, Texas 75019.

January 21, 2015: Presenter, "Tips for New Appellate Practitioners," Dallas Bar Association, Dallas, Texas. I spoke about appellate practice points for new appellate practitioners. I have no notes, transcript, or recording. The address of the Dallas Bar Association is 2101 Ross Avenue, Dallas, Texas 75201.

November 18, 2014: Presenter, "DAYL New Lawyers Swearing In Ceremony," Dallas Bar Association, Dallas, Texas. I spoke about lawyering with ethics. I have no notes, transcript, or recording. The address of the Dallas Bar Association is 2101 Ross Avenue, Dallas, Texas 75201.

October 23, 2014: Panelist, "Emerging Appellate Issues," Dallas Bar Association, Dallas, Texas. I spoke about trends in appellate law. I have no notes, transcript, or recording. The address of the Dallas Bar Association is 2101 Ross Avenue, Dallas, Texas 75201.

July 26, 2014: Presenter, "Evidence in an Electronic Age," State Bar of Texas, Austin, Texas. Recording and handout supplied.

July 24, 2013 – August 1, 2013: Teacher, National Institute for Trial Advocacy (NITA) National Session, Boulder, Colorado. I taught the fundamentals of trial advocacy to lawyers. I have no notes, transcript, or recording. The address of NITA is 1685 38th Street, Boulder, Colorado 80301.

July 23, 2013: Presenter, "Evidence in an Electronic Age," State Bar of Texas, Austin, Texas. Recording and handout supplied.

May 9 – 10, 2012: Teacher, National Institute for Trial Advocacy (NITA) Maryland Foster Care Improvement Project, Baltimore MD. I taught the fundamentals of trial advocacy to lawyers. I have no notes, transcript, or recording. The address of NITA is 1685 38th Street, Boulder, Colorado 80301.

February 19, 2011: Presenter, "Law Trends," Texas Center for the Judiciary, Austin, Texas. I spoke about trends in various areas of law. I have no notes, transcript, or recording. The address of the Texas Center for the Judiciary is 1210 San Antonio Street, Austin, Texas 78701.

December 8 – 10, 2011: Teacher, National Institute for Trial Advocacy (NITA) Deposition Skills Rocky Mountain, Boulder, Colorado. I taught the fundamentals of taking depositions. I have no notes, transcript, or recording. The address of NITA is 1685 38th Street, Boulder, Colorado 80301.

September 2011: Presenter, "Civil Case Law Update" Texas Center for the Judiciary Annual Conference, Dallas, Texas. I spoke about the changes in civil case law in the past year. I have no notes, transcript or recording. The address of the Texas Center for the Judiciary is 1210 San Antonio Street, Austin, Texas 78701.

August 10 – 12, 2011: Teacher, National Institute for Trial Advocacy (NITA) Utah Child Advocacy Training Program, Salt Lake City, Utah. I taught lawyers fundamental trial skills. I have no notes, transcript, or recording. The address for NITA is 1685 38th Street, Boulder, Colorado 80301.

September 2010: Presenter, “Civil Case Law Update” Texas Center for the Judiciary Annual Conference, Dallas, Texas. I spoke about the changes in civil case law in the past year. I have no notes, transcript or recording. The address of the Texas Center for the Judiciary is 1210 San Antonio Street, Austin, Texas 78701.

September 2009: Presenter, “Civil Case Law Update” Texas Center for the Judiciary Annual Conference, Dallas, Texas. I spoke about the changes in civil case law in the past year. I have no notes, transcript or recording. The address of the Texas Center for the Judiciary is 1210 San Antonio Street, Austin, Texas 78701.

September 2008: Presenter, “Civil Case Law Update” Texas Center for the Judiciary Annual Conference, Dallas, Texas. I spoke about the changes in civil case law in the past year. I have no notes, transcript or recording. The address of the Texas Center for the Judiciary is 1210 San Antonio Street, Austin, Texas 78701.

September 2007: Presenter, “Civil Case Law Update” Texas Center for the Judiciary Annual Conference, Dallas, Texas. I spoke about the changes in civil case law in the past year. I have no notes, transcript or recording. The address of the Texas Center for the Judiciary is 1210 San Antonio Street, Austin, Texas 78701.

November 12, 2005: Presenter, “Prosecution of Internet Predators” Dallas Bar Association, Dallas, Texas. I spoke about prosecution of internet crimes against children. I have no notes, transcript, or recording. The address of the Dallas Bar Association is 2101 Ross Avenue, Dallas, Texas 75201.

July 21, 2005: Presenter, “Prosecution of Internet Crimes” Presented at State Bar of Texas Advanced Criminal Law, Austin, Texas. I spoke about prosecution of internet crimes against children. I have no notes, transcript, or recording. The address of the State Bar of Texas is 1414 Colorado Street, Austin, Texas 78701.

- 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 G. Browning, *Chief Justice Carolyn Wright: A Profile in*

Excellence, Journal of the Texas Supreme Court Historical Society, Summer 2018. Copy supplied.

An Interview with Justice Ada Brown, Attorney at Law Magazine, Feb. 2015. Copy supplied.

Natalie Posgate, *McKool Smith's Ada Brown Secures Dream Job, Returns to Judgeship*, Texas Lawbook, Sept. 6, 2013. Copy supplied.

McKool Smith Associate Ada Brown Appointed to the Dallas 5th Court of Appeals, Tex Parte, Sept. 4, 2013. Copy supplied.

McKool Smith Attorney Ada Brown Appointed as Justice of Texas 5th Court of Appeals, McKool Smith, Sept. 3, 2013. Copy supplied.

Texas Senate Confirms Commissioners Brown and Watson, Targeted News Service, Apr. 17, 2013. Copy supplied.

Wick Allison, *The Abysmal Mess That Is the Texas DMV*, D Magazine, Mar. 30, 2012. Copy supplied.

Pure Genius: Black Mensa Members, BET.com, Feb. 22, 2012. Copy supplied.

Michael Landauer, *Welcome to the Living Well in North Texas Blog*, Dallas Morning News, Feb. 7, 2012. Copy supplied.

Michelle Healy, *Mensa Gets on a Young Brain Wave*, USA Today, Oct. 11, 2010. Copy supplied.

John Council, *Life after the Bench*, Texas Lawyer, Mar. 24, 2008. Copy supplied.

County Criminal Court: We Recommend These Candidates in Fall Election, Dallas Morning News, Sept. 26, 2006. Copy supplied.

Steve McGonigle et al., *A Process of Juror Elimination*, Dallas Morning News, Aug. 21, 2005. Copy supplied.

Steve McGonigle et al., *Prosecutor Tackles Race Issue Head-On*, Dallas Morning News, Aug. 21, 2005. Copy supplied.

Robert Tharp, *Child Porn Cases Hit Brick Wall*, Dallas Morning News, July 14, 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 was a trial court judge from 2005-2007. This position was appointed and I had jurisdiction over criminal misdemeanor cases in Dallas County. Since 2013, I have been an appellate court judge. I was initially appointed in 2013 and elected to my position in 2014. I have jurisdiction over criminal and civil appeals from six counties.

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

As an appellate justice, I do not preside over cases that go to verdict or judgment, but since I joined the appellate bench, I have heard approximately 1500 appeals and I have written over 500 opinions. As a trial court judge, I presided over approximately 50 jury trials and 100 bench trials.

- i. Of these, approximately what percent were:

jury trials:	33%
bench trials:	67% [total 100%]
civil proceedings:	50%
criminal proceedings:	50% [total 100%]

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

See Appendix 13(b).

- 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. *Brantley v. State*, No. 05–13–01060–CR, 2015 WL 846749 (Tex. App.—Dallas Feb. 26, 2015, no pet.) (not designated for publication).

After a jury found Defendant guilty of murder and assessed a thirty-five year prison sentence for a shooting arising out of an altercation in a nightclub's parking garage, Defendant filed a motion for new trial on the grounds of prosecutorial misconduct. Instead of holding the motion for new trial hearing in open court, the trial judge held the hearing in his chambers, allowed the state to be present for the proceedings but excluded Defendant and his attorney from attending the in-chambers portion of the hearing. The court allowed defense counsel to propose a list of questions the judge himself would ask prosecutors

during his in camera ex-parte interview of the prosecutors accused of Brady violations. Finding the motion for new trial hearing violated Defendant's constitutional rights, I authored an opinion reversing the trial court's denial of Defendant's motion for new trial, unsealing the record, and remanding the case for a new hearing.

Counsel for Appellant:

Lynn Richardson
Dallas County Public Defender
133 North Riverfront Boulevard, L.B. 2
Dallas, Texas 75207
(214) 653-3550

Christi Dean
Assistant Public Defender
133 North Riverfront Boulevard, L.B. 2
Dallas, Texas 75207
(214) 653-3550

Brad Lollar
Assistant Public Defender
133 North Riverfront Boulevard, L.B. 2
Dallas, Texas 75207
(214) 653-3550

Lead Counsel for State:

Lori Ordiway
Former Assistant District Attorney
350 North St. Paul Street, #2010
Dallas, Texas 75201
(214) 236-7027

Martin Peterson
Assistant District Attorney
133 North Riverfront Boulevard, L.B. 19
Dallas, Texas 75207-4399
(214) 653-3600

Faith Johnson
Former District Attorney
1717 Main Street, Suite 3800
Dallas, Texas 75201
(214) 276-0552

2. *Trejo v. Huy*, No. 05-14-00310-CR, 2015 WL 4109989 (Tex. App.—Dallas July 8, 2015, pet. denied) (mem. op.).

This appeal arose out of a bench trial on a premises liability claim. When the case was called for trial, the trial judge determined Plaintiff, who was pro se, would need an interpreter. The judge said, “I am simply unable to envision completing this trial without [Plaintiff] having the services of an interpreter. I can’t understand him. I doubt the jury would be able to understand him...” After making the determination that Plaintiff needed an interpreter, the judge sua sponte suggested the parties waive a jury trial. Before an interpreter was provided, the judge asked Plaintiff to waive his right to a jury trial. I wrote an opinion finding the trial court abused its discretion in failing to ensure Plaintiff knowingly waived his constitutional right to a jury trial. Finding fundamental error, I reversed the trial court’s judgment and remanded the case for a new trial on liability and damages.

Lead Counsel for Appellant:

James J. Doyle, III
The Doyle Law Firm
4054 McKinney Avenue, Suite 310
Dallas, Texas 75204
(214) 522-6202

Lead Counsel for Appellee:

Walker M. Duke
Duke Seth PLLC
325 North St. Paul Street, Suite 2220
Dallas, Texas 75201
(214) 965-8100

3. *Daugherty v. Highland Capital Management*, No. 05-14-01215-CV, 2016 WL 4446158 (Tex. App.—Dallas Aug. 22, 2016, no pet.) (mem. op.).

This was an appeal of a multimillion dollar jury award arising from a contract. Plaintiff sued Defendant, its former employee, for claims including breach of contract, breach of fiduciary duty, defamation, and theft of trade secrets. Defendant answered and asserted counterclaims against Plaintiff for breach of contract and defamation. Defendant also sued Highland Employee Retention Assets (HERA) for breach of contract and conversion. On appeal, Defendant challenged the judgment’s award of \$2.8 million in attorney’s fees and an injunction against him in Plaintiff’s favor. Plaintiff challenged the jury’s finding of zero appellate attorney’s fees. HERA challenged the judgment of \$2.6 million against it for breach of an implied duty of good faith and fair dealing. I wrote an opinion affirming the trial court’s judgment.

Lead Counsel for Appellant Patrick Daugherty:

Charles T. Frazier, Jr.
Alexander, Dubose, Jefferson & Townsend LLP
4925 Greenville Avenue, Suite 510
Dallas, Texas 75206
(214) 369-2358

Lead Counsel for Appellee Highland Capital Management, L.P.:

Scott Brister
Andrews Kurth LLP
111 Congress Avenue, Suite 1700
Austin, Texas 78701
(512) 320-9220

Marc D. Katz
DLA Piper LLP
1717 Main Street, Suite 4600
Dallas, Texas 75201
(214) 743-4534

Counsel for Appellee HERA:

Michael K. Hurst
Lynn Pinker Cox & Hurst
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
(214) 981-3838

A. Shonn Brown
Lynn Pinker Cox & Hurst
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
(214) 981-3807

4. *In re Priestler*, No. 05-16-00965-CV, 2016 WL 7010583 (Tex. App.—Dallas Nov. 21, 2016, orig. proceeding)(mem. op.).

This was a mandamus where I found the trial court had a mandatory duty to grant a motion to vacate an expedited foreclosure order. Finding the court abused its discretion by denying the motion to vacate, I conditionally granted the writ of mandamus.

Counsel for Relator:

James Mosser
Mosser Law
2805 North Dallas Parkway

Plano, Texas 75093
(972) 733-3223

Nicholas Mosser
Mosser Law
2805 North Dallas Parkway
Plano, Texas 75093
(972) 733-3223

Lead Counsel for Real Party in Interest:

Jeffrey Seewald
McGlinchey Stafford
1001 McKinney St Ste 1500
Houston, TX 77002-6420
(713) 520-1900

5. *In Re Michelin N. Am., Inc.*, No. 05-15-01480-CV, 2016 WL 890970
(Tex. App.—Dallas Mar. 9, 2016, orig proceeding) (mem. op.).

This was a petition for writ of mandamus filed after the trial court ordered Respondent to produce tire specifications and financial information in a products liability suit arising from an auto accident. The trial court signed an order expanding the scope of discovery to include information that constituted trade secrets. My appellate panel determined the trial court abused its discretion by ordering Respondent to produce aspect and tire specifications Respondent successfully proved were covered by the trade secret privilege and which had no apparent connection to the alleged defects of the tire at issue in this case. I wrote the opinion which conditionally granted mandamus relief and ordered the trial court to vacate the overbroad portions of its order.

Counsel for Real Parties in Interest:

Luis P. Guerra
Law Offices of Luis P. Guerra
6225 North 24th Street, Suite 125
Phoenix, Arizona 85016
(602) 381-8400

David C. Shapiro
Law Offices of Luis P. Guerra
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Phoenix, Arizona 85016
(602) 381-8400

David S. Coale
Lynn Tillotson Pinker & Cox, LLP
2100 Ross Avenue, Suite 2700

Dallas, Texas 75201
(214) 292-3601

James B. Ragan
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Corpus Christi, Texas 78401
(361) 884-7787

Counsel for Relator:
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(512) 472-0288

Chris A. Blackerby
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Debra Alsup
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(512) 469-6100

Nathan Palmer
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6. *Renate Nixdorf GMBH & Co. v. TRA Midland Props. LLC*, No. 05-17-00577-CV, 2019 WL 92038 (Tex. App.—Dallas Jan. 3, 2019, no pet.)(mem. op.).

This was an appeal from a trial court's granting a motion to dismiss under Rule 91(a) and an appeal of the trial court's granting a plea to the jurisdiction. I wrote an opinion finding that the trial court erred in granting the motion to dismiss because plaintiff's live pleadings satisfied the minimum requirements and determining the court also erred in granting the plea to the jurisdiction.

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Lead Counsel for Appellee Pillar Asset Mgmt. Inc.:

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7. *Oncor Elec. Delivery Co. v. S. Foods Grp. L.L.C.*, 444 S.W.3d 699 (Tex. App—Dallas 2014, no pet.).

This was an appeal from a jury's verdict, finding the negligence of Appellant caused a fire at a milk processing plant owned by Appellee. Based on the jury's verdict, the trial court rendered judgment for Appellee for \$357,095.72. Appellant contended the evidence was legally and factually insufficient to support the jury's verdict and the trial court's judgment. Finding under the strict standards for expert testimony of causation required by the Texas Supreme Court, the evidence presented by Appellee was legally insufficient to establish Appellant's negligence was a cause in fact of the fire, I wrote an opinion for my panel reversing the trial court's judgment and rendering judgment for Appellant.

Lead Counsel for Appellant:

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Lead Counsel for Appellee:

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8. *Neese v. Lyon*, 479 S.W.3d 368 (Tex. App.—Dallas 2015, no pet.).

Appellants hired Appellee to represent them on a contingent fee basis in litigation connected to a pipeline explosion. Appellees filed suit and, after settlement, Appellants discovered Appellee retained a private investigator to solicit them. Appellants then sued Appellee, Appellee's law firm, an attorney employed there, and the private investigator for ten causes of action. After a hearing on summary judgment motions, the trial judge signed a take-nothing judgment in favor of Appellees. I wrote an opinion addressing whether the alleged barratry entitled Appellants to avoid their contingency fee agreement and recover fees and expenses paid under the agreement. My opinion held Appellants could seek to recover on their breach of fiduciary duty claim; that defendants' receipt of an improper benefit is an element of a breach of fiduciary duty claim; and, if Appellees committed barratry, their fees could constitute an improper benefit. I reversed the trial court's judgment on 6 of the 10 claims made by Appellants.

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9. *Global Tel*Link Corp. v. Securus Tech. Inc.*, No. 05-16-01224-CV, 2017 WL 3275921 (Tex. App.—Dallas July 31, 2017, pet. dism'd) (mem. op.).

This was an appeal of a denial of competitor's motion to dismiss a lawsuit under the Texas Citizen's Participation Act. I wrote an opinion finding that the evidence was sufficient to show that the suit against the competitor was based on or related to the competitor's right to petition and reversed the trial court's motion to dismiss.

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10. *RBC Capital Markets, LLC v. Highland Capital Mgmt., L.P.*, No. 05-13-00948-CV, 2015 WL 7873712 (Tex. App. –Dallas Dec. 4, 2015, pet. denied) (mem. op.).

This was an appeal from a jury's \$21.5 million verdict for Appellee against Appellant for breach of contract. The primary issue on appeal was whether the oral communications between the parties created an enforceable agreement. Applying New York Law, which required a meeting of the minds on the essential terms for a contract to be formed, Appellant did not accept and could not have accepted the conditions because they required agreement by the note holders. Because material terms of the contract remained to be negotiated, no contract had

been formed. I wrote an opinion finding the parties failed to reach an agreement, reversing the trial court's judgment, and rendering a take-nothing judgment.

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- 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. *Brantley v. State*, No. 05–13–01060–CR, 2015 WL 846749 (Tex. App.—Dallas Feb. 26, 2015, no pet.) (not designated for publication).

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2. *Trejo v. Huy*, No. 05-14-00310-CR, 2015 WL 4109989 (Tex. App.—Dallas July 8, 2015, pet. denied) (mem. op.).

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3. *Daugherty v. Highland Capital Management*, No. 05-14-01215-CV, 2016 WL 4446158 (Tex. App.—Dallas Aug. 22, 2016, no pet.)(mem. op.).

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4. *In re Priester*, No. 05-16-00965-CV, 2016 WL 7010583 (Tex. App.—
Dallas Nov. 21, 2016, orig. proceeding)(mem. op.).

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5. *In Re Michelin N. Am., Inc.*, No. 05-15-01480-CV, 2016 WL 890970
(Tex. App.—Dallas Mar. 9, 2016, orig. proceeding)(mem. op.).

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6. *Renate Nixdorf GMBH & Co. v. TRA Midland Props., LLC*, No. 05-17-00577-CV, 2019 WL 92038 (Tex. App.—Dallas Jan. 3, 2019, no pet.)(mem. op.).

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7. *Oncor Elec. Delivery Co. v. S. Foods Grp., L.L.C.*, 444 S.W.3d 699 (Tex. App.—Dallas 2014, no pet.).

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8. *Neese v. Lyon*, 479 S.W.3d 368 (Tex. App.—Dallas 2015, no pet.).

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9. *Global Tel*Link Corp. v. Securus Tech. Inc.*, No. 05-16-01224-CV, 2017 WL 3275921 (Tex. App.—Dallas July 31, 2017, pet. dism'd) (mem. op.).

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10. *RBC Capital Markets, LLC v. Highland Capital Mgmt., L.P.*, No. 05-13-00948-CV, 2015 WL 7873712 (Tex. App. –Dallas Dec. 4, 2015, pet. denied) (mem. op.)

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

Dunnington v. State, No. 05-14-00127-CR, 2015 WL 5121383 (Tex. App.—
Dallas Aug. 31, 2015, pet. ref'd) (mem. op., not designated for publication), cert.
denied, 137 S. Ct. 86 (2016).

- 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.

In re Inppamet Ltd., 466 S.W.3d 1 (Tex. App.—Dallas 2018, orig. proceeding) (mem. op.), *mand. granted sub nom. In re RSR Corp.*, No. 18-0189, 2019 WL 638769 (Tex. Feb. 15, 2019) (per curiam).

The trial court denied as “untimely, dilatory in nature, and/or waived” relators’/defendants’ motion to reconsider the disqualification of plaintiff’s attorneys under the standard set out in *In re Meador*, 968 S.W.2d 346 (Tex. 1998) (orig. proceeding). My opinion granted relators’ petition for writ of mandamus and ordered the trial court to reconsider the merits of the motion under *Meador*. The Texas Supreme Court determined the trial court did not clearly abuse its discretion in declining to reconsider the merits of disqualification.

RSL Funding, LLC v. Newsome, 559 S.W.3d 169 (Tex. App.—Dallas 2016), *rev’d*, 2018 WL 6711316 (Tex. 2018).

This case involved a dispute that arose about the trial court’s orders approving the transfer of payments under a structured settlement agreement. The transfer agreement contained an arbitration clause. My opinion affirmed the trial court’s denial of arbitration under the unique facts. The Supreme Court of Texas reversed, concluding that the issue of arbitrability was for an arbitrator to decide.

ExxonMobil Pipeline Co. v. Coleman, 464 S.W.3d 841 (Tex. App.—Dallas 2015), *rev’d*, 512 S.W.3d 895 (Tex. 2017) (per curiam).

Coleman sued his former employer and supervisors for defamation and other claims, alleging the supervisors made false statements about his job performance. The defendants moved to dismiss the lawsuit under the Texas anti-SLAPP law. I wrote an opinion holding the defendants did not show the anti-SLAPP law applied to the lawsuit. The Texas Supreme Court reversed, holding the statements related to a matter of public concern and thus were made in the exercise of the right of free speech.

State v. Hill, Nos. 05-13-00421-CR, 05-13-00423-CR, 05-13-00424-CR, 05-13-00425-CR, 2014 WL 7497992 (Tex. App.—Dallas Dec. 29, 2014) (mem. op., not designated for publication), *rev’d*, 499 S.W.3d 853 (Tex. Crim. App. 2016).

The State of Texas appealed the trial court’s order dismissing with prejudice four indictments against Defendant. My opinion held the trial court erred in conducting a pretrial evidentiary hearing on Defendant’s motion to quash and dismiss the indictments because Defendant did not establish a prima facie case of alleged constitutional violations. We vacated the dismissal order and remanded with instructions to reinstate the indictments. The court of criminal appeals disagreed and held the trial court did not abuse its discretion in conducting an evidentiary hearing.

- 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.

Practically all of my criminal opinions, which constitute about 50 percent of my opinions, are not published. The unpublished opinions are filed in electronic form and kept in perpetuity.

All civil opinions are considered published and all have precedential value.

- 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 do not have any significant 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 never 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.

I have never been asked to recuse myself from any cases, and I have only volunteered to recuse myself once. In that circumstance, I was dating a district court judge whose cases I would normally have reviewed on appeal. Before I began dating him, I voluntarily recused myself from hearing his cases.

My court does not have an automatic recusal system. It is up to the individual justice to determine when recusal is appropriate unless a party moves for recusal on a particular justice. I have never had anyone file a recusal motion directed towards me.

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 was appointed by Governor Rick Perry as a Commissioner on the Texas Public Safety Commission in 2008 and reappointed by Governor Perry in 2011.

I have had no unsuccessful candidacies for elective non-judicial office or unsuccessful nominations for appointed non-judicial 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.

In 2002, I volunteered each Saturday for several months with the campaign to re-elect Republican District Attorney Bill Hill. I walked neighborhoods throughout Dallas County, knocking on doors and encouraging Republican voters to vote for Bill Hill and to vote straight ticket for Republican candidates on the ballot in 2002.

At the same time, I also worked the phone bank at the Dallas County GOP headquarters and helped bundle and distribute campaign literature for District Attorney Hill, Congressman Pete Sessions, and for other Republican judicial candidates.

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 was not a clerk to a judge.

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

I have never 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.

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2007 – 2013
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- 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 an arbitrator.

b. Describe:

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

I was a criminal prosecutor from 2000–2005. I left the DA's office to become a judge. I served as a trial court judge from 2005 – 2007 and was defeated in the general election in November 2006. In 2007, I joined the civil law firm of McKool Smith where I practiced primarily civil law in federal court. I left McKool Smith in 2013 when I was appointed to the appellate bench.

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

From 2000–2005 my typical clients were crime victims. From 2007–2013 my typical clients were businesses involved in patent infringement or

commercial disputes. I also handled a significant pro bono docket during this time, where my typical client would be a citizen charged with a misdemeanor crime or needing to file for divorce. Most of the pro bono cases I handled were criminal but a handful dealt with child custody and divorce.

- 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.
- i. Indicate the percentage of your practice in:
 - 1. federal courts: 30%
 - 2. state courts of record: 70%
 - 3. other courts: 0%
 - 4. administrative agencies: 0%
 - ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 40%
 - 2. criminal proceedings: 60%
- 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.

I have tried approximately 215 cases to verdict—100 bench trials and 115 jury trials. I was chief counsel in all of these cases and sole counsel in approximately 25% of these cases.

- i. What percentage of these trials were:
 - 1. jury: 53%
 - 2. non-jury: 47%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

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

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

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

1. *Seibert v. State*, No. 05–03–01131–CR, 2004 WL 2804795 (Tex. App.—Dallas 2004, pet. ref'd) (not designated for publication).

Trial Judge: Mark Nancarrow, 204th Judicial District Court, Dallas County, Texas

Date of representation: 2002

In this murder case, I prosecuted a man who was accused of shooting and killing a man in the parking lot of a Dallas commercial complex. Defendant raised and then abandoned an insanity defense, ultimately choosing to argue that the killing was in self-defense. At the first trial, the jury was unable to reach a verdict. At the second trial, the jury convicted the Defendant of murder and sentenced him to twenty-five years' confinement. The conviction and sentence were affirmed on appeal. I was the lead prosecutor in both trials and prepared the case, presented the evidence, picked the jury, made opening and closing arguments, and examined most of the witnesses.

Co-counsel on original trial:

Kate Porter (deceased)

Co-counsel on retrial:

Andy Beach

Then with the Dallas County District Attorney's Office

P.O. Box 101464

Fort Worth, Texas 76185-1464

(817) 271-5408

Lead Counsel for Defendant:

Paul Johnson

The Law Offices of Paul Johnson

900 Jackson Street, Suite 650

Dallas, Texas 75202

(214) 761-0707

2. *Jordan v. Holder*, No. 2:09-CV-00396 (E.D. Tex).

Trial Judge: The Honorable David Folsom, United States District Court for the Eastern District of Texas

Date of representation: 2009

I represented a retired police officer, and sued the federal government on his behalf for employment discrimination when he was wrongly terminated after an inconclusive hearing test ended his career as a marshal in federal court. I handled all discovery, found and retained an expert witness, devised a litigation strategy, and ultimately helped conduct settlement negotiations on my client's behalf. The case settled after discovery and my client received a significant financial settlement. This was a pro bono case.

Co-counsel:

Samuel Baxter
McKool Smith
104 East Houston Street, Suite 300
Marshall, Texas 75670
(903) 923-9000

Lead Counsel for Defendant:

Bradley E. Visosky
US Attorney's Office
101 East Park Boulevard, Suite 500
Plano, Texas 75074
(972) 509-1217

3. *Burden v. State*, Nos. 05-02-01796-CR, 05-02-01797-CR, 2004 WL 237758 (Tex. App.—Dallas Feb. 10, 2004, no pet.) (mem. op., not designated for publication).

Trial Judge: The Honorable Mark Nancarrow, 204th Judicial District Court, Dallas County, Texas

Date of representation: 2005

I was the lead prosecutor in the aggravated kidnapping and aggravated sexual assault jury trial of Defendant. Defendant kidnapped a young woman who was walking to her car late at night. She was taken hostage and terrorized when Defendant repeatedly stabbed and raped her over the course of several days. Defendant's aggravated sexual assault and aggravated kidnapping convictions and sentences were affirmed on appeal. I prepared the case for trial, presented most of the evidence, picked the jury, and made closing arguments to the jury during the guilt/innocence phase and during the punishment phase of the trial. I performed

direct examination of most of the witnesses called by the State. I also cross-examined most of the witnesses called to testify by the defense.

Co-counsel:

Kate Porter (deceased)

Lead Counsel for Defendant:

Paula Michelle Moore
Dallas County Public Defender's Office
133 North Riverfront Boulevard, L.B. 2
Dallas, Texas 75207
(214) 653-3550

Brad Lollar
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133 North Riverfront Boulevard, L.B. 2
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4. *Hanks v. State*, No. 05-04-00456-CR, 2005 WL 704807 (Tex. App.—Dallas Mar. 29, 2005, pet. ref'd) (mem. op., not designated for publication).

Trial Judge: The Honorable Faith Johnson, 363rd Judicial District Court, Dallas County, Texas

Date of representation: 2003

I was the lead prosecutor in the jury trial of Defendant for felony solicitation of a minor to commit a sexual assault. Defendant was a Little League umpire who had contact with thousands of children during his career. Defendant believed he had been grooming a deaf girl in an internet chat room he frequented online. Defendant showed up at the child's school with the intent to molest her, but was instead arrested as part of a sting operation by a local police department. I prepared the case for trial, selected the jury, and performed direct examination of all witnesses called by the State. I also cross-examined all witnesses called by defense. I presented all of the evidence during the trial and presented opening and closing arguments. Defendant had no criminal record and was eligible for probation. I asked the jury to give him the maximum prison sentence available for his crime, and they did. Defendant's conviction and ten-year prison sentence were both affirmed on appeal.

Lead Counsel for Defendant:

Deric K. Walpole
5900 South Lake Forest Drive, Suite 410
McKinney, Texas 75070
(214) 726-1450

5. *Medtronic Vascular, Inc., v. Boston Scientific Corp.*, No. 2:06-cv-00078 (E.D. Tex.).

Trial Judge: The Honorable T. John Ward, United States District Court for the Eastern District of Texas

Date of representation: 2007

I was a member of the trial team representing Plaintiffs in a medical device patent infringement lawsuit against Defendants. After a week-long trial, the jury found that nine of the Defendants' stent delivery catheters infringed asserted claims of Plaintiffs' '364 patent; that ten of the Defendants' products infringed asserted claims of Plaintiffs' '358 and '057 patents. During the jury trial, I presented Plaintiffs' evidence and expert witness testimony related to damages for all three of Plaintiffs' patents at issue. The jury awarded my client \$250 million. This was the 12th highest civil verdict in the nation for 2008. The lawsuit settled after judgment was entered by the district court.

Lead Counsel for Plaintiffs Medtronic USA, Inc., Medtronic Vascular Galway, Ltd., Medtronic Vascular, Inc., Medtronic, Inc.:

Samuel Baxter
McKool Smith
104 East Houston Street, Suite 300
Marshall, Texas 75670
(903) 923-9000

Lead Counsel for Defendants Boston Scientific Corp., Boston Scientific Scimed, Inc., Scimed Life Systems Inc.:

Sidney Calvin Capshaw, III
Capshaw DeRieux LLP
114 East Commerce Avenue
Gladewater, Texas 75647
(903) 845-5770

6. *Versata Software, Inc. v. SAP Am., Inc.*, No. 2:07-cv-153 (E.D. Tex.).

Trial Judge: The Honorable Roy S. Payne, United States District Court for the Eastern District of Texas

Date of representation: 2009

I was a member of the trial team that represented Plaintiff in a retrial of a patent infringement case against Defendant. The patents involved product configuration and pricing software. In the original trial, the jury found Defendant infringed two of Plaintiff's patents and awarded Plaintiff a \$138.6 million verdict. The trial

court later granted Defendant judgment as a matter of law on noninfringement of one of the two patents at issue, ordered the judgment set aside, and ordered a retrial on damages. I presented evidence to the jury in the one-week retrial on damages. My witnesses and evidence explained the history and technology of Plaintiff's '350 patented invention. I also assisted with jury selection, prepared witnesses to testify and be cross-examined, and prepared evidence for admission at trial. At the conclusion of the retrial, the jury found Defendant infringed Plaintiff's '350 patent. The jury awarded my client \$260 million in lost profit damages and \$85 million in reasonable royalties. The \$345 million verdict increased to \$391 million on final judgment, including prejudgment interest. This was the tenth largest civil verdict in the nation for 2011.

Lead Counsel for Plaintiff:

Samuel Baxter
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Marshall, Texas 75670
(903) 923-9000

Lead Counsel for Defendant:

Thomas Melsheimer
Winston and Strawn
2121 North Pearl Street, Suite 900
Dallas, Texas 75201
(214) 453-6500

7. *Wi-LAN v. Acer, Inc. et al*, No. 2:07-cv-00473 (consolidated with 2:07-cv-474) and *Wi-LAN v. Research In Motion Corp. et al*, 2:08-cv-00247 (E.D. Tex.).

Trial Judge: The Honorable T. John Ward, United States District Court for the Eastern District of Texas

Date of representation: 2010

I represented Plaintiff in its patent infringement lawsuits against Defendants Intel, Broadcom, Apple, Dell, Hewlett-Packard, Sony, LG Electronics, and Motorola, among others. Our lawsuit alleged Defendants infringed Plaintiff's patents related to wireless computer communications and power consumption in digital subscriber line products as well as patents involved in Wideband Orthogonal Frequency Division Multiplexing and other wireless technologies used in WiFi, Code Division Multiple Access, and Bluetooth devices. My role in both cases was primarily related to discovery. I was responsible for obtaining and organizing information about the many accused products from each Defendant for discovery and depositions, and for amicably resolving discovery disputes. This case involved complex technology, many parties and many lawyers, so organization

was paramount. The *Wi-LAN v. Acer* case settled after jury selection. The *Wi-LAN v. RIM* case settled after a motions hearing.

Lead Counsel for Plaintiff Wi-LAN:

Samuel Baxter
McKool Smith
104 East Houston Street, Suite 300
Marshall, Texas 75670
(903) 923-9000

Lead Counsel for Defendant Intel Corporation:

Robert M. Parker
Parker, Bunt and Ainsworth, P.C.
100 East Ferguson, Suite 1114
Tyler, Texas 75702
(903) 531-3535

Lead Counsel for Defendants 2Wire, Inc., Acer America Corp., Gateway, Inc.,
Netgear, Inc., Sony Computer Entertainment America Inc., Sony Electronics Inc.,
Westell Technologies, Inc.:

Eric Hugh Findlay
Findlay Craft
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Tyler, Texas 75702
(903) 534-1100

Lead Counsel for Defendant Apple, Inc.:

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Milbank, Tweed, Hadley, McCloy
2029 Century Park East, 33rd Floor
Los Angeles, California 90067
(424) 386-4580

Lead Counsel for Defendants Atheros Communications, Inc. and D-Link Systems,
Inc.:

Rickey L. Faulkner
Coglan Crowson
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Longview, Texas 75606
(903) 758-5543

Lead Counsel for Defendant Belkin International, Inc.:

Trey Yarbrough
Yarbrough Wilcox PLLC
100 East Ferguson, Suite 1015
Tyler, Texas 75702

(903) 595-3111

Lead Counsel for Defendant Broadcom Corporation:

Clyde Moody Siebman
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300 North Travis Street
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Lead Counsel for Defendant Dell, Inc.:

Daniel T. Conrad
Kraft Heinz Foods Company
200 East Randolph Street, Suite 7600
Chicago, Illinois 60601
(847) 646-2000

Lead Counsel for Defendant Hewlett-Packard Co.:

David J. Levy
Morgan Lewis Bockius
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Lead Counsel for Defendant Lenovo:

Fred I. Williams
Vinson and Elkins
2801 Via Fortuna, Suite 100
Austin, Texas 78746
(512) 542-8430

Lead Counsel for Marvell Semiconductor, Inc.:

Jennifer Parker Ainsworth
Wilson, Robertson & Cornelius LLP
909 ESE Loop 323, Suite 400
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(903) 509-5000

Lead Counsel for Defendant Toshiba America Information Systems, Inc.:

Guy N. Harrison
P.O. Box 2845
Longview, Texas 75606
(903) 758-7361

8. *Myklatun v. Halliburton Energy Services, Inc.*, No. 5:09-cv-00770
(W.D. Okla).

Trial Judge: The Honorable Stephen P. Friot, United States District Court for the Western District of Oklahoma

Date of representation: 2011

I represented Defendant Halliburton in a lawsuit filed against it by Plaintiffs, an individual and a Norwegian oil company that accused Halliburton of tortiously interfering with a contract the oil company had with another defendant to distribute chemical microemulsion additives. The court granted summary judgment on Plaintiffs' fraud claim and tortious interference with contract claim, leaving the remaining civil conspiracy claim to be tried before a jury. I spent several weeks in Oklahoma preparing trial exhibits for admission into evidence, drafting proposed voir dire questions, preparing witnesses to testify and to be cross-examined, and preparing cross-examinations for Plaintiffs' witnesses. Two days before jury selection was scheduled to begin, we settled the case.

Lead Counsel for Plaintiffs Bjorn Myklatun and Oil Innovations, AS:

Charles L. Richardson
Richardson, Richardson, Boudreaux PLLC
7447 South Lewis Avenue
Tulsa, Oklahoma 74136
(918) 347-6456

David R. Keesling
McMurray Keesling
6660 South Sheridan Road, Suite 250
Tulsa, Oklahoma 74133
(918) 998-9350

Lead Counsel for Defendant Halliburton:

Robert Manley
McKool Smith
300 Crescent Court, Suite 1500
Dallas, Texas 75201
(214) 978-4000

Counsel for Defendants Flotek Industries, Inc., Chemical and Equipment Specialties Inc., Jerry D. Dumas, Sr., and John Todd Sanner:

Anton J. Rupert
Rupert & Steiner PLLC
14001 Quail Springs Parkway
Oklahoma City, Oklahoma 73134
(405) 607-1494

Geren T. Steiner
Rupert & Steiner PLLC
14001 Quail Springs Parkway
Oklahoma City, Oklahoma 73134
(405) 607-1494

9. *Candela Corp. v. Palomar Medical Technologies, Inc.*, No. 9:06-cv-00277
(E.D. Tex.).

Trial Judge: The Honorable Ron Clark, United States District Court for the
Eastern District of Texas

Date of representation: 2008

I represented Plaintiffs in their patent infringement lawsuit against Defendant.
This lawsuit concerned patents related to laser and pulsed-light skin rejuvenation
and wrinkle reduction technology. I was a member of the trial team who presented
Plaintiffs' case to the jury. I cross-examined Defendant's damages expert at trial. I
also prepared witnesses and evidence for the damages portion of Plaintiffs' case.
At the conclusion of the nine-day trial, the jury found Defendant did not infringe
Plaintiffs' patents and the patents were obvious due to prior art.

Lead Counsel for Plaintiffs Candela Corporation and the General Hospital
Corporation d/b/a Massachusetts General Hospital:

Samuel Baxter
McKool Smith
104 East Houston Street, Suite 300
Marshall, Texas 75670
(903) 923-9000

Lead Counsel for Defendant:

David J. Beck
Beck, Redden & Secrest
1221 McKinney Street, Suite 4500
One Houston Center
Houston, Texas 77010
(713) 951-3700

10. *Ericsson Inc., v. D-Link Corp.*, No. 6:10-cv-473, (E.D. Tex.).

Judge: The Honorable Leonard Davis, United States District Court for the Eastern
District of Texas

Date of representation: 2011 – 2013

I represented Plaintiffs in their patent infringement action against wireless chipmaker Intel and laptop and router manufacturers D-Link Systems, Netgear, Acer, Gateway, Dell, Toshiba, and Belkin. Plaintiffs sued Defendants for infringing Ericsson's patents related to Wi-Fi technology and which are standard essential patents for the Institute of Electrical and Electronics Engineers (IEEE) 802.11(n) standard. Defendant Dell raised licensing with Plaintiffs' subsidiary as an affirmative defense. I spent several weeks before the jury trial and during trial preparing witnesses to testify and to be cross-examined. I also assisted with the presentation of evidence on damages. The case took eight days to try, and ultimately the jury found three patents infringed and awarded Plaintiffs \$10 million in damages.

Lead Counsel for Plaintiffs Ericsson, Inc., Telefonaktiebolaget LM Ericsson, and Wi-Fi One LLC:

Mike McKool
McKool Smith
300 Crescent Court, Suite 1500
Dallas, Texas 75201
(214) 978-4000

Lead Counsel for Defendants Acer, Inc., Acer America Corp., D-Link Systems, Inc., and Gateway, Inc.:

Robert A. Van Nest
Keker, Van Nest and Peters LLP
633 Battery Street
San Francisco, California 94111
(415) 391-5400

Lead counsel for Defendant Belkin International, Inc.:

Ryan K. Yagura
O'Melveny & Myers
400 South Hope Street
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(213) 430-6189

Lead Counsel for Defendant Dell, Inc.:

Michael J. Newton
Alston & Bird, LLP
2828 North Harwood Street, 18th Floor
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(214) 922-3423

Lead Counsel for Defendant Intel, Corp.:

Adam R. Alper
Kirkland & Ellis LLP
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(415) 439-1876

Counsel for Defendant Netgear, Inc.:

Scott D. Baker
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, California 94105
(415) 659-5901

Debra Elaine Gunter
Findlay Craft PC
102 North College Avenue, Suite 900
Tyler, Texas 75702
(903) 534-1100

Lead Counsel for Defendants Toshiba America Information Systems, Inc. and
Toshiba Corporation:

John J. Feldhaus
Foley & Lardner
3000 K Street NW, Suite 500
Washington, DC 20007
(202) 672-5403

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.)

I spent approximately 25% of my time while at the McKool Smith law firm representing defendants in criminal and civil pro bono cases. With the exception of one case, they never went to trial. I was usually the lead lawyer who communicated with both opposing counsel and the court about the case.

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.

Trial Advocacy, Dedman School of Law, Southern Methodist University, 2008, 2009, 2012. The course taught the fundamentals of trial skills to law students. I do not have a syllabus of the course.

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

I do not have any arrangements to be compensated in the future for any financial or business interest.

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

I do not have any plans, commitments or agreements to pursue outside employment.

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.

If confirmed, I will recuse in any litigation where I have ever played a role. I will evaluate any other real or potential conflict, or relationship that could give rise to an appearance of conflict, on a case-by-case basis and determine appropriate action with the advice of parties and their counsel, including recusal where necessary.

- 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 will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States

Judges, and any and all other laws, rules, and practices governing such circumstances.

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.

As an attorney with McKool Smith, I provided pro bono representation to numerous individuals charged with misdemeanor offenses and individuals seeking divorces or child custody. I devoted approximately 25% of my time to such matters while at the law firm.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In April 2018, I interviewed with the Federal Judicial Evaluation Committee set up by Senator Cornyn and Senator Cruz. I then received a call in July from the senators informing me that I had been selected to move forward in the process. I interviewed with White House Counsel's Office and the Department of Justice on July 23, 2018. Since then, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy. On March 15, 2019, the President announced his intent to nominate me, and on March 26, he transmitted 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.