

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Benita Yalonda Pearson

Benita Y. Pearson; Benita Pearson Render; and Benita Render

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

United States District Judge for the Northern District of Ohio

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.

Office: 480 U.S. Court House
Two South Main Street
Akron, Ohio 44308



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

1963; Cleveland, Ohio

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.

August 1992 -May 1995, Cleveland State University; Juris Doctorate, 1995
(Cleveland-Marshall College of Law)

August 1991- May 1992, Case Western Reserve ; No Degree Obtained
(Weatherhead School of Management M.B.A. Program)

August 1981- May 1985, Georgetown University; B.S. Accounting, 1985

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.

8/08 – Present
U.S. District Court Northern District, Ohio
480 U.S. Court House
Two South Main Street
Akron, Ohio 44308
Magistrate Judge

8/07 - Present
Cleveland-Marshall College of Law
1801 Euclid Avenue
Cleveland, OH. 44115
Adjunct Professor

7/00 - 8/08
Office of U.S. Attorney
U.S. Court House, Suite 400
801 W. Superior Ave
Cleveland, OH. 44113
Assistant United States Attorney

9/98 - 7/00
Jones Day Reavis & Pogue
North Point
901 Lakeside Avenue
Cleveland, OH. 44114
General Litigation Associate

8/98 - 8/00
Cleveland-Marshall College of Law
1801 Euclid Avenue
Cleveland, OH. 44115
Lecturer

7/96 - 8/98
U.S. District Court
Cleveland, OH 44114
Law Clerk (Judge Manos)

8/95 - 7/96
McDonald Hopkins
600 Superior Avenue, E.

Cleveland, OH. 44114
Litigation Associate

7/95 -8/95
U.S. District Court
201 Superior Ave
Cleveland, OH. 44114
Law Clerk (Judge Solomon Oliver)

5/94 - 5/95
McDonald Hopkins
600 Superior Avenue, E
Cleveland, OH. 44114
Summer Associate

5/92 - 5/94
Reminger & Reminger
1400 Midland Building
101 Prospect Avenue, W.
Cleveland, OH. 44115
Law Clerk

6/85-8/92
BP America (formerly Standard Oil of Ohio)
200 Public Square
Cleveland, OH 44114
Corporate Accountant (6/85-9/87)
Supervisor Retail Marketing Accounting (9/87 – 8/90)
Retail Sales (8/90 – 8/92)

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

I have not served in the military

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.

Cleveland-Marshall College of Law:

Executive Council, Moot Court Board of Governors; Dean's List, 1995; Order of Barristers, 1995; Dean's Moot Court Award, 1995; Best Advocate, Annual Fall Moot Court Night, 1995; Best Team, Annual Fall Moot Court Night, 1995; Law Alumni

Association's Hugo Black Award, 1994; Spangenberg, Shibley, Traci & Lancione Scholarship, 1994; 17th Annual Frederick Douglass Moot Court Competition, Member, Second Place Team, Midwest Region, Participated in National Finals in Houston, Texas, 1993; Dean's Scholar, 1992

Georgetown University:
Dean's List 1983 and 1985

Office of the U.S. Attorney, NDOH:
Recipient of U.S. Attorney's Special Act Award, 2005, 2006 and 2007;
Recognition by U.S. Attorney General, 2004

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.

Cleveland Metropolitan Bar (formerly Cleveland Bar Association): 1995 - 2004
Chair, Young Lawyers
Chair, Juvenile Justice Committee
Chair, School Visitation Committee
Volunteer, Minority Outreach Committee
Member, Membership Development Committee
Member, Board of Trustees
Member, Nominating Committee

Cleveland Bar Foundation: 2004 -2007
Member Board of Trustees, 2 terms ending June 14, 2007
Member, Fundraising Committee - Chair of Bench-Bar Run Event

Federal Bar Association: 2008 – Present
Member Board of Trustees (effective October 7, 2009)

Inns of Court:
Scanlon Inn, Member, Master Bencher, August 2009 - Present
Judge John M. Manos Inn, Member, September 2002 – August 2009
(formerly known as Celebreeze Inn)
Harold Burton Inn, Member, 2000- 2001 (approximately); Member,
Nominating Committee
William K. Thomas Inn, Member, 1998 - 2000 (approximately)

Law Fraternity:
Delta Theta Phi, 2000 - Present

Federal Magistrate Judges Association, Member

Information Technology Committee, Northern District of Ohio

Criminal Justice Panel Act Selection Committee, Northern District of Ohio

Library Fund Committee, Northern District of Ohio

Public Outreach Committee, Northern District of Ohio

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.

Supreme Court of Ohio: 1995
Federal Bar Admission: June 21, 1996

- 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 Ohio: 1995 to present
Federal Bar Admission: June 21, 1996 to present

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.

Eliza Bryant Village, Board of Trustees
Advent Lutheran Church
Synod, Evangelical Lutheran Church in America, Executive Council
Member
American Society for the Prevention of Cruelty to Animals, Member
Animal Legal Defense Fund, Member
U.S. Humane Society, Member

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national

origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.. If so, describe any action you have taken to change these policies and practices.

None of the 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.

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.

None

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

None

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

Testimony provided in a hearing *State of Ohio v. Philip George*, Case No. 02CR061237 in my role as a “privilege team” or “taint team” I was the Assistant United States Attorney responsible for segregating and safeguarding documents that had been seized during a search warrant issued in a criminal matter. I was responsible for reviewing the documents seized to determine if any were covered by the attorney-client privilege. After identifying privileged documents, I segregated them and returned them to the appropriate person (defense attorney) while ensuring that no one else had access to them.)

- 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.

I do not have a copy of any speeches, transcripts or recordings of remarks made or of any outlines or notes on which I may have relied upon at that time. Although I typically rely on brief notes, I usually do not retain them. Below is a summary of the remarks made for all my speaking engagements.

Ohio State Bar Association Annual Convention, Panelist, Role of Magistrate Judge, etc. – 2009:

I participated on two consecutive panels. One focused on the process used to select, appoint and reappoint Magistrate Judges in the Northern and Southern Districts of Ohio. The second panel focused on matters of concern regarding attorneys appearing before Magistrate Judges. I filled a vacancy on the second panel due to an unexpected absence. I do not recollect much of the presentation. Each panel lasted one hour and fifteen minutes and was facilitated by a moderator.

Advent Lutheran Church, Cleveland Ohio – Women's Day – 2009:

The Women's Day theme was "God's Work Our Hands." I spoke for about 30 minutes on what the women of the church could physically do to enact God's word. I used Michelle Obama's public service as an example. I also referenced her arms. You may know that her sleeveless outfits have earned some notoriety and inspired a local columnist to name her arms "Thunder" and "Lightning." I urged the women of the church to have Michelle Obama arms spiritually, if not physically. I also cited an example of discretion I'd shown a man charged with violating the terms of his supervised release who credibly explained that his ill-health and lack of money fueled his recent poor judgment. I cited an opportunity for service in the form of an elderly person's house I'd passed as I walked to the church whose grass was badly in need of mowing. I reminded my audience to be more patient as people count coins, put items back or ask for subtotals at the grocer's as we all adjust to the financial difficulties plaguing many, especially those in the low-income neighborhood where the church stands. Lastly, I reminded them that I'd lived just a few blocks away with my family before going to college.

Eighth District Court of Appeals, Panelist, Role of Race and Gender in the Courtroom – 2009:

I was on a panel with others; we were asked questions about our experiences with race and gender in the courtroom. I spoke no more than 5-7 minutes mostly about my experience as a prosecutor who faced the dual duty of trying to identify jurors who could judge the facts fairly and impartially while also not objecting to my race or gender.

Akron Bar Association's Annual Bench Bar Luncheon, Keynote Speaker – 2009:

I spoke for approximately 15 minutes about my early impressions as a Magistrate Judge; including urging attorneys to be better prepared and more civil to one another. I praised my staff and my judicial colleagues -- many of whom attended, despite the 50-minute drive from Cleveland. I thanked the Akron Bar Association and its members for its warm reception.

Youth Excellence Performing Arts Workshop (YEPAW 365), Akron Ohio – 2009:

I spoke to a group of approximately 50 middle and high-school aged students and shared "my story" and talked about my professional experiences. YEPAW is a year-around after-school and weekend program that engages "at risk" students in activities designed to build leadership and performance arts skills, enhance academic achievement, teach career options in the arts, develop self-esteem, provide services to the neighborhood community and encourage team-building and decision-making skills

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

I have attached electronic copies of three recent news articles in which I am quoted or identified as the source. I am not aware of any other quotations.

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 am currently serving as a United States Magistrate Judge in the Northern District of Ohio. On August 29, 2008 I was appointed by the District Court Judges of the Northern District of Ohio to serve an eight-year term. The Northern District of Ohio is one of the two in Ohio and covers the 44 most northern counties in the state. My chambers are located in the Akron, Ohio Federal Court House. As a United States Magistrate Judge, I have frontline responsibility for initial criminal proceedings (such as arraignments) and

preside over a wide variety of other criminal and civil matters referred by the District Court Judges or Local Rule. Although the NDOH has eight Magistrate Judges, I am one of only two Magistrate Judges designated handle the civil cases that are assigned to the Youngstown District Court Judge and the only Magistrate Judge in the Akron, Ohio Court House. I am also assigned criminal cases as directed by the NDOH Local Rules. The authority of Magistrate Judges is primarily dictated by 28 U.S.C. Section 636 and enhanced by Local Rule and General Orders of the Court. As a federal judicial officer currently serving the Youngstown area, I offer a unique combination of federal legal expertise and a familiarity with the legal matters and concerns of the Youngstown area litigants and residents. This experience would allow me to transition smoothly into the new judicial position.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 1

i. Of these, approximately what percent were:

jury trials? 0 %; bench trials 100 % [total 100%]

civil proceedings? 0 %; criminal proceedings? 100 % [total 100%]

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

See attached

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).

See summaries below

Hammad v. Astrue, 2009 WL 700745 (N.D. Ohio March 13, 2009): This was an action for judicial review of the final decision of the Commissioner of Social Security Administration, which denied benefits to the plaintiff. The parties consented to my jurisdiction in this case. A copy of the entire decision is attached.

Tyler v. Sento Corp., 2008 WL 4999985, at page 2 (N.D. Ohio Nov. 25, 2008): This matter was referred to me by Judge Dowd for the issuance of a Report and Recommendation on Defendants' Motion to Dismiss for Lack of Personal Jurisdiction or, in the alternative, to Transfer Venue to Utah. Judge Dowd adopted my Report and Recommendation and reprinted it entirely in the decision cited above. A copy of the entire decision is attached.

R.D. Marks Consulting, Inc. v. Astra Holdings, LP, 2009 WL 1362972, at page 1 (N.D. Ohio May 14, 2009): This breach of contract matter was referred to me for general pretrial supervision. Under that umbrella, I issued a Report and Recommendation on Defendants' Motion to Dismiss for Lack of Personal Jurisdiction. Judge Dowd adopted my Report and Recommendation and reprinted it entirely in the decision cited above. A copy of the entire decision is attached.

Whittiker v. Deutsche Bank Nat. Trust Co., 2009 WL 6921923, at page 20 (N.D. Ohio May 14, 2009): This case involved mortgage holders, against whom state foreclosure actions had been filed in state court and adjudicated. The mortgage holders brought a putative class action in federal court against the banks and/or law firms that had initiated the foreclosure actions alleging violations of the Fair Debt Collection Practices Act. I issued a Report and Recommendation in this case that Judge Dowd slightly modified and adopted. Judge Dowd reprinted my Report and Recommendation in the decision cited above. A copy of the entire decision is attached.

In re Title Insurance Antitrust Litigation, No. 1:08-CV-00677 (N.D. Ohio Sept. 7, 2009): The above captioned case presents a putative class action lawsuit that challenges the propriety of state-regulated title insurance rates (*i.e.* price) under both federal and state antitrust laws. Summarily, Plaintiffs (individuals who have purchased title insurance) allege that Defendants illegally conspired to suppress price competition, artificially raise and maintain title insurance prices and deprive purchasers of title insurance of the benefit of free and open competition. Count One alleges violation of the Sherman Antitrust Act, a federal antitrust statute. Count Two alleges violation of the Valentine Act, Ohio's antitrust statute. Both Counts One and Two rely upon the same facts. All Defendants jointly seek dismissal of the Complaint in its entirety based upon Plaintiffs' failure to state a claim due to the Filed Rate Doctrine, pursuant to Federal Rule of Civil Procedure 12(b)(6), and, alternatively, lack of subject matter jurisdiction due to the McCarran-Ferguson Act, 15 U.S.C. § 1011, *et seq.*, pursuant to Federal Rule of Civil Procedure 12(b)(1). Additionally, one corporate parent defendant seeks dismissal, pursuant to Fed.R.Civ.P.12(b)(6), due to Plaintiffs' failure to allege that the parent agreed or conspired to commit anti-competitive behavior. That same corporate parent defendant and one other also seek dismissal due to lack of personal jurisdiction and improper venue, pursuant to Fed.R.Civ.P 12(b)(2) and (3). Magistrate Judge Pearson found the Filed Rate Doctrine and the McCarran-Ferguson Act bar the claim in Count One (the federal antitrust claim) and the Filed Rate Doctrine bars the claim in Count Two (the state antitrust claim). Magistrate Judge Pearson recommended: (1) Granting Defendants' Joint Motion to Dismiss relative to Counts One and Two of the Complaint without prejudice. (2) Granting the *sua sponte* dismissal of all other corporate parent defendants, with the exception of one corporate parent against whom all matters are stayed due to bankruptcy. (3) And, denying as moot the one remaining motion. The Honorable Judge David D. Dowd, Jr. has not yet ruled on Magistrate Judge

Pearson's Report and Recommendation. Objections are due October 9 and 23, 2009. A copy of that Report and Recommendation is attached.

Carleton E. Averill, II v. Gleaner Life Ins. Soc'y, et al., No. 3:06-CV-02867 (N.D. Ohio Feb. 27, 2009):

The above captioned matter involves a dispute over retirement benefits due Plaintiff Carleton E. Averill, II, formerly an insurance agent for Defendant Gleaner Life Insurance Society. Essentially, the parties disagreed on the interest rate that should be used to calculate Averill's lump sum retirement benefit and ask the Court, via Fed. R. Civ. P. 56(c), to determine as a matter of law the correct payout. As an alternative remedy, Averill asked the Court to compel discovery by granting Averill "direct access" to Gleaner's files. Averill's motion for summary judgment argues Defendant Gleaner breached the terms of the Gleaner Supplemental Savings Plan by using an interest rate contractually prohibited by the terms of the GSSP, specifically Article 4, to calculate the amount of Plaintiff's retirement benefit upon the termination of the Plan. Defendant Gleaner's motion for summary judgment urges that the rate it used to calculate Averill's retirement benefit amount did not run afoul of Article 4 because Gleaner used a rate more favorable than provided for by the terms of the GSSP. Because genuine issues of material fact precluded summary judgment, Magistrate Judge Pearson recommended denying both motions for summary judgment. Additionally, Magistrate Judge Pearson recommended granting Plaintiff's motion to compel discovery. Chief Judge James G. Carr adopted the findings of the R&R with respect to both motions for summary judgment but denied the motion to compel discovery.

Michael Abdelshahid v. Michael J. Astrue, Comm'r of Soc. Sec., No. 1:08-CV-01480 (N.D. Ohio July 10, 2009):

The above captioned matter involved Plaintiff Michael Abdelshahid who sought judicial review of the Social Security Administration's final decision denying his application for Supplemental Security Income, pursuant to 42 U.S.C. § 405(g). This is an unfortunate case wherein the record was clearly ambiguous or otherwise incomplete in certain important respects. The ambiguity centered around the functional effects of Plaintiff Michael Abdelshahid's hearing loss in both ears ("bilateral") and was so pervasive as to convince the Court that the Agency's denial and the testimony of the Medical Expert were, at crucial times, based upon speculation rather than substantial evidence. Magistrate Judge Pearson determined that the instant record was insufficient to support the ALJ's finding that Plaintiff Michael Abdelshahid did not demonstrate at least a marked limitation in the domains of (1) acquiring and using information, (2) interacting and relating with others, and (3) health and physical well-being. Magistrate Judge Pearson found that the lack of medical and objective evidence clearly articulating Michael's ability to hear creates a conflict in the evidence, which the reviewing court may not resolve. Magistrate Judge Pearson recommended that the Court reverse and remand the final decision of the Commissioner denying benefits,

pursuant to the Fourth Sentence of 42 U.S.C. § 405(g) with instructions that, upon remand, the ALJ evaluate the extent of Michael Abdelshahid's bilateral hearing loss and the effect of that hearing loss on his ability to function in a manner consistent with governing regulations. The Defendant objected but Judge Peter C. Economus adopted Magistrate Judge Pearson's R&R.

Michael S. Smith v. Stuart Hudson, Warden, No. 1:08-CV-01010 (N.D. Ohio Aug. 27, 2009):

The above captioned matter involved Petitioner Michael Smith who sought a writ of habeas corpus pursuant to Title 28 U.S.C. § 2254. Smith raised four grounds for relief alleging trial court error and that he was denied effective assistance of trial and appellate counsel. Respondent Stuart Hudson, Warden, argued to dismiss the petition as procedurally defaulted and lacking merit. Upon review, Magistrate Judge Pearson found that Grounds One through Three and two claims within Ground Four were procedurally defaulted. The remaining two claims within Ground Four lacked merit because Smith could not satisfy the required element of the *Strickland* test in order to prove ineffective assistance of appellate counsel. Judge Dan Aaron Polster adopted the R&R and denied Petitioner's writ for habeas corpus.

Dwain Farrow v. Carl Anderson, Warden, 2009 WL 3004024 (N.D. Ohio Sept. 15, 2009):

The above captioned matter involved Petitioner Dwain Farrow who sought a writ of habeas corpus pursuant to Title 28 U.S.C. § 2254. Finding that the grounds upon which the habeas petition were sought were non-cognizable and/or time-barred, Magistrate Judge Pearson recommended dismissing the case. District Court Judge Christopher Boyko adopted the R&R over Petitioner Farrow's objections and denied the writ of habeas corpus.

Henry Smith v. Julius Wilson, Warden, 2009 WL 700419 (N.D. Ohio March 11, 2009):

The above captioned matter involved Petitioner Henry Smith who sought a writ of habeas corpus pursuant to Title 28 U.S.C. § 2254, claiming that his trial attorney labored under an actual conflict of interest. Finding that there was no conflict of interest and that the petition was time-barred, Magistrate Judge Pearson recommended dismissing the case. District Court Judge Sara Lioi adopted the R&R and denied the writ of habeas corpus.

- 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.

Citations for these cases and copies of the opinions are attached. Attorney contact information as follows:

Hammad v. Astrue, 2009 WL 700745 (N.D. Ohio March 13, 2009):

Counsel for Plaintiff Kim Hammad – Paulette Balin, 7372 Lakeshore Blvd., Mentor, Ohio 44060, 440-257-0096. Counsel for Defendant Commissioner of The Social Security Administration, Lynne Buck, Office of the U.S. Attorney, Suite 400, 801 W. Superior Avenue, Cleveland, Ohio 44113, 216-622-3712.

Tyler v. Sento Corp., 2008 WL 4999985, at page 2 (N.D. Ohio Nov. 25, 2008):

Counsel for Plaintiff Thomas Tyler – John C. Weisensell and Michael Palumbo, 301 Nantucket Bldg., 23 South Main Street, Akron, Ohio 44308; 330-434-1000. Counsel for Defendants Sento Corp. and Xtrasource – Gary Johnson, Brian Riley and Warren Rosman, Weston Hurd Law Firm, 1900 Tower at Erieview, 1301 East Ninth Street, Cleveland, Ohio 44114, 216-687-3295.

R.D. Marks Consulting, Inc. v. Astra Holdings, LP, 2009 WL 1362972, at page 1 (N.D. Ohio May 14, 2009):

Counsel for Plaintiff R.D. Marks – Irving Surgerman, Goldman & Rosen, 11 South Forge Street, Akron, Ohio, 330-255-0714. Counsel for Defendant Ad Astra Holdings, Clifford Mendelsohn and James DeFeo, Thompson Hine, 3900 Key Tower, 127 Public Square, Cleveland, Ohio 44114, 216-566-5856.

Whittiker v. Deutsche Bank Nat. Trust Co., 2009 WL 6921923, at page 20 (N.D. Ohio May 14, 2009):

Lead Counsel for Plaintiff Jerry Whittiker, et al. – Colin Sammon, Novak Robenalt & Pavlik, 950 Skylight Office Tower, 1660 West Second Street, Cleveland, Ohio 441113. Counsel for Deutsche Bank, Hugh McKay, Porter Wright, 1700 Huntington Bldg., 925 Euclid Avenue, Cleveland, Ohio 44115, 216-443-2580 and Jami Wintz McKeon, Morgan Lewis & Bockius, San Francisco, One Market Street, San Francisco, California 94105, 415-442-1405; Counsel for Defendant Weltman, Weinberg & Reis, Francis Goins, Ulmer & Berne, 1100 Skylight Office Tower, Cleveland, Ohio 44113, 216-583-7202; Counsel for Defendant Manley Deas, Robert Tucker, Baker & Hostetler, 2100 Capital Square, 65 East State Street, Columbus, Ohio 43215, 614-462-2680; Counsel for Defendant Reisenfeld & Associates, Orville Reed, Buckingham Doolittle & Burroughs, Ste. 300, 3800 Embassy Parkway, P.O. Box 1500, Akron, Ohio 44333, 330-258-6523.

In re Title Insurance Antitrust Litigation, No. 1:08-CV-00677 (N.D. Ohio Sept. 7, 2009):

The following attorneys along with other represent members of the putative class action (Plaintiffs):

Bruce K. Cohen
Meredith Cohen Greenfogel & Skirnick
1521 Locust Street 8th Floor
Philadelphia, PA 19102

215-564-5182
Fax: 215-569-0958 Email: bcohen@mcgslaw.com
LEAD ATTORNEY for Jordan Katz

Daniel B. Allanoff
Meredith Cohen Greenfogel & Skirnick
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Philadelphia, PA 19102
215-564-5182
Fax: 215-569-0958
Email: dallanoff@mcgslaw.com
LEAD ATTORNEY for Jordan Katz, Gaby Hasrouni, Gina Hasrouni, Craig Mintz, Sean Nightingale, Micah Watts, Carol Rhamy, Katherine Wirkus, and Adam Falkner

Todd B. Naylor
Murdock, Goldenberg, Schneider & Groh
35 East Seventh Street Ste. 600
Cincinnati, OH 45202
513-345-8291
Fax: 513-345-8294
Email: tnaylor@mgsllaw.com
LEAD ATTORNEY for Jordan Katz, Gaby Hasrouni, Gina Hasrouni, Craig Mintz, Sean Nightingale, Micah Watts, Carol Rhamy, Katherine Wirkus, and Adam Falkner

The following attorney was designated Liaison for Defense Counsel (Defendants had nearly 20 counsel of record):

Deborah A. Coleman
Hahn, Loeser & Parks - Cleveland
2800 BP Tower
200 Public Square
Cleveland, OH 44114
216-621-0150
Fax: 216-241-2824
Email: dacoleman@hahnlaw.com
ATTORNEY TO BE NOTICED for Defendants

These attorneys also appeared to serve major roles for the defense:

Patricia A. Screen
Brouse McDowell - Cleveland
Ste. 1600
1001 Lakeside Avenue Cleveland, OH 44114
216-830-6830

Fax: 216-830-6807
Email: pscreen@brouse.com
ATTORNEY TO BE NOTICED

David G. Greene
Locke Lord Bissell & Liddell - New York
26th Floor
885 Third Avenue
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212-812-8338
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LEAD ATTORNEY for Old Republic National Title Insurance

Russell J. Kutell
Frost Brown Todd - Columbus
Ste. 2300
10 West Broad Street
Columbus, OH 43215
614-559-7280
Fax: 614-464-1737
Email: rkutell@fbtlaw.com
ATTORNEY TO BE NOTICED for Old Republic National Title Insurance

Carleton E. Averill, II v. Gleaner Life Ins. Soc'y, et al., No. 3:06-CV-02867 (N.D. Ohio Feb. 27, 2009):

Plaintiff's Counsel:
Robert E. Searfoss , III
Magee & Searfoss
347 North Main Street
Bowling Green, OH 43402
419-353-1856
Fax: 419-353-1858
Email: searfoss.law@gmail.com
LEAD ATTORNEY

Timothy A. Magee
Magee & Searfoss
347 North Main Street Bowling Green, OH 43402
419-353-1856
Fax: 419-353-1858
Email: law.magee@gmail.com
LEAD ATTORNEY

Defense Counsel:
Mark A. Bush
Fraser, Trebilcock, Davis & Dunlap
Ste. 1000
124 West Allegan Street
Lansing, MI 48933
517-482-5800
Fax: 517-482-0887
LEAD ATTORNEY

Michael Abdelshahid v. Michael J. Astrue, Comm'r of Soc. Sec., No. 1:08-CV-01480 (N.D. Ohio July 10, 2009)

Plaintiff's Counsel:
Marcia W. Margolius
Margolius, Margolius & Associates
1100 Illuminating Bldg.
55 Public Square
Cleveland, OH 44113
216-621-2034
Fax: 216-621-1908
Email: marcia@margoliuslaw.com

Defense Counsel:
Kathleen L. Midian
Office of the U.S. Attorney - Cleveland
Northern District of Ohio
Ste. 400
801 Superior Avenue, W
Cleveland, OH 44113
216-622-3748
Fax: 216-522-4542
Email: kathleen.midian@usdoj.gov

Michael S. Smith v. Stuart Hudson, Warden, No. 1:08-CV-01010 (N.D. Ohio Aug. 27, 2009):

Pro se Inmate:
Michael S. Smith
#493-636
M.A.N.C.I.
P.O. Box 788
Mansfield, OH 44901

Defense Counsel:
Thelma Thomas Price
Office of the Attorney General - Corrections Litigation
State of Ohio
16th Floor
150 East Gay Street
Columbus, OH 43215
614-644-7233
Fax: 614-728-9327
Email: thelma.price@ohioattorneygeneral.gov

Dwain Farrow v. Carl Anderson, Warden, 2009 WL 3004024 (N.D. Ohio Sept. 15, 2009):

Plaintiff's Counsel:
Paul A. Mancino, Jr.
Ste. 1016
75 Public Square
Cleveland, OH 44113
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Henry Smith v. Julius Wilson, Warden, 2009 WL 700419 (N.D. Ohio March 11, 2009):

Pro Se Plaintiff:
Henry Smith, Jr.
#461-808
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P.O. Box 8107
Mansfield, OH 44901

Defense Counsel:
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Fax: 614-728-9327
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- e. Provide a list of all cases in which certiorari was requested or granted.

None

- 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.

To date, I have been reversed (*i.e.* my recommendation has not been adopted) twice. *See* the summaries below. Copies of both my opinion and the reversals are attached.

Report and Recommendation: *Karger v. Comm'r Soc. Sec.*, No. 5:08CV1713, (N.D. Ohio July, 31, 2009)

Plaintiff Juliette Karger sought judicial review of the Social Security Administration's final decision denying her application for Supplemental Security Income pursuant to 42 U.S.C. § 405(g).

The undersigned recommended that the final Agency decision denying Karger benefits be reversed and that the case be remanded, pursuant to the Fourth Sentence of 42 U.S.C. § 405(g), because: (1) the ALJ violated the treating source rule with respect to the opinions of Dr. Dana Watts, by not providing good reasons for the weight determination of a treating source; (2) the ALJ erred by failing to mention, determine and explain the weight given to the State Agency reviewing psychologist's, Dr. Menken, opinion; (3) these errors and omissions were not harmless, as the ALJ's written decision did not represent the entire record; and (4) the ALJ did not apply the proper legal standards in evaluating Karger's medical opinions, and must now reassess Karger's RFC.

For the foregoing reasons, the undersigned recommended with instructions that, upon remand, the ALJ: (1) re-evaluate the weight given and provide good reasons

for such weight to the medical opinions of treating source Dana Watts, Ph.D. consistent with this opinion, Sixth Circuit law, and applicable Agency Regulations, (2) re-evaluate the remaining medical source evidence consistent with this opinion, Sixth Circuit law, and applicable Agency Regulations, and (3) conduct a reassessment of Karger's residual functional capacity, before determining whether Karger is disabled and eligible for Supplemental Security Income.

Reversal Decision Summary: *Karger v. Comm'r Soc. Sec.*, No. 5:08CV1713, (N.D. Ohio Aug. 28, 2009)

In accordance with Federal Rule of Civil Procedure 72, the Court reviewed the Report and Recommendation of this case *de novo* and considered all of the pleadings and filings of the parties. Further, the Court reviewed the ALJ's findings in Plaintiff's administrative proceedings under the substantial evidence standard. After careful evaluation of the record, the Court declined to adopt the Report and Recommendation.

The Court found merit in Defendant's position that, although the ALJ did not expressly mention the opinions of Dr. Watts or Dr. Menken, the ALJ reasonably relied on five contrary opinions, in addition to Plaintiff's activities, in finding Plaintiff not disabled. Because the Court found that the ALJ's determination was supported by substantial evidence, Defendant's Objections to the Report and Recommendation were SUSTAINED and the decision of the ALJ was AFFIRMED.

Report and Recommendation Summary: *Gearhart v. Comm'r of Soc. Sec. Admin.*, No. 5:08-CV-01252, (N.D. Ohio July 17, 2009)

I. Introduction

This was an action for judicial review of the final decision of the Commissioner of Social Security Administration ("Commissioner" or "Agency") denying the application of Plaintiff Jimmie G. Gearhart for Disability Insurance Benefits ("DIB") pursuant to Title II of the Act, 42 U.S.C. §§ 416(I) and 423, and Supplemental Security Income ("SSI") pursuant to Title XVI of the Act, 42 U.S.C. § 1382c(a).

After reviewing the record as a whole, including: (1) the medical evidence presented; (2) Gearhart's testimony and statements made to his medical care providers; and (3) the legal standards applied, Magistrate Judge Pearson found that the ALJ's decision was supported by substantial evidence and based upon properly applied relevant legal standards. As such, the undersigned recommended that the final Agency decision be affirmed and the matter be dismissed.

II. The ALJ Properly Evaluated and Denied Gearhart's Impairment Without the Aid of a Medical Expert

Gearhart asserted two arguments regarding in support of why a medical expert should have been present at his hearing before the ALJ. First, his back impairments meet or medically equal Listing 1.04A and a medical expert would have confirmed this finding. Second, the ALJ erred by finding him not fully credible and had a medical expert been present, the medical expert would have helped to support Gearhart's credibility.

Magistrate Judge Pearson found that the ALJ correctly determined that Gearhart does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in Listing 1.04A. (Tr. 15.) And furthermore, coming "close" to equaling a Listing is not enough at Step Three. *See Dorton v. Heckler*, 789 F.2d 363, 367 (6th Cir. 1986). Magistrate Judge Pearson also found that the ALJ discussed several of the seven factors in his decision and therefore considered requisite evidence in rendering his determination that Gearhart's testimony was not fully credible. As such, substantial evidence existed to support the ALJ's decision to discredit (*i.e.* find less than completely credible) Gearhart's subjective statements of pain.

III. The ALJ Properly Analyzed the Opinions of the Treating Physician

Gearhart had two treating physicians of record, Dr. Pitt and Dr. Kalman. Gearhart argued that Dr. Pitt's medical opinions were consistent with objective medical evidence and that the ALJ failed to properly weigh Dr. Pitt's opinions. Gearhart further asserted that the ALJ erred by failing to adopt Dr. Pitt's opinions, that Gearhart has the capacity for less than sedentary work, and that his impairments meet or equal Listing 1.04A. Dr. Arthur Kalman, another treating physician, found that Gearhart had full strength in all extremities, negative straight leg raising, and full active range of motion of the cervical and lumbar spines, contradicting Dr. Pitt.

The undersigned noted that the ALJ observed that some of Dr. Pitt's opinions contradicted other medical evidence in the record. *See* 20 C.F.R. § 404.1527(c) (2) (Medical evidence may be discounted if it is internally inconsistent or inconsistent with other evidence). Consequently, the ALJ aptly and reasonably declined to give Dr. Pitt's opinions controlling weight because the ALJ determined that "only some of the restrictions are consistent with the findings on examination and the objective medical evidence."

In sum, Magistrate Judge Pearson found that the ALJ's decision evidences a reasonable explanation of how he resolved conflicting medical opinions, and the weight he gave the treating medical source opinions of record was adequate to support his decision. *See Bass v. McMahan*, 499 F.3d 506, 512 (6th Cir. 2007) ("Wilson requires reversal when a treating physician's opinion was ignored and no reasons for doing so were provided . . . That is not the case we have here.").

IV. The ALJ Properly Analyzed the Vocational Expert's Opinions

Gearhart argued that the ALJ erred at Step Five by failing to include Dr. Pitt's reported limitations in the ALJ's hypothetical question to the Vocational Expert ("VE"). The defendant asserted that the ALJ correctly incorporated only those limitations deemed credible. The ALJ observed that some of Dr. Pitt's opinions were internally inconsistent, and therefore the ALJ's hypothetical questions appropriately only included limitations that the ALJ found credible and that were supported by substantial evidence. The VE's testimony in response to a hypothetical question with the added limitations of Gearhart's counselor should not be afforded controlling weight because those limitations were not supported by substantial medical evidence.

The undersigned found that the ALJ observed the VE's testimony and determined that the testimony was reliable regarding the type and availability of jobs Gearhart could perform. Additionally, there was substantial evidence to support the ALJ's finding that Gearhart was able to perform light work and that a significant number of jobs existed in the national economy that he could perform.

V. Conclusion

For the foregoing reasons, Judge Pearson found that substantial evidence supported the ALJ's conclusion that Gearhart was not under a "disability" as defined by the Act and, therefore, not entitled to benefits. Judge Pearson recommended that the Agency's final decision denying benefits be affirmed in its entirety.

Reversal Decision Summary: *Gearhart v. Comm'r of Soc. Sec. Admin.*, No. 5:08-CV-01252, (N.D. Ohio Sept. 18, 2009)

I. Introduction

The Court reviewed the matter *de novo* on the Objections to the Magistrate Judge's Report and Recommendation filed by plaintiff Jimmie G. Gearhart (Gearhart). Because Gearhart objected only to that portion of the R & R relating to the weight given to the evidence offered at the hearing, the remainder of the R & R-including its statement of the factual and procedural history of the case- was accepted as written.

Upon *de novo* review of those portions of the R & R to which Gearhart has made objection, the Court REJECTED the R & R and held that the decision of the ALJ, which has become the final decision of the Commissioner pursuant to 20 C.F.R. § 416.1481, was REVERSED and the matter was REMANDED for further consideration and a new determination, and if the ALJ believes necessary, a new hearing.

II. Ruling

By his sole objection to the R & R, Gearhart complained that the ALJ and the Magistrate Judge improperly rejected his argument regarding the treatment and weight to be given to the opinion of his treating physician, Dr. Pitt. Specifically, Gearhart believed that the ALJ and the Magistrate Judge did not fully address Dr. Pitt's findings that Gearhart's impairments and treatment would cause him to be absent from work more than three (3) times a week. The Court agreed, and found that a remand was necessary to permit the ALJ an opportunity to evaluate this restriction.

Dr. Pitt filled out a residual Functional Capacity Questionnaire on September 26, 2006. In responding to the question "On the average, how often do you anticipate that your patient's impairments or treatment would cause your patient to be absent from work," Dr. Pitt placed a check mark next to the line reading "More than three times a month."

The ALJ's decision, however, noted that Dr. Pitt's report indicated that "[t]he claimant would be absent from work about once monthly because of his impairments." As such, the ALJ (and, in turn, the Magistrate Judge) misinterpreted the record.

In a footnote, the Court explained that the error was somewhat understandable, because Dr. Pitt's check marks were unusual in that they contained a common check combined with an "X". The Court, however, concluded that the "More than three times a month" line was actually checked.

In the instant matter, the potential impact of the ALJ's mischaracterization of the record was significant. Based on restrictions contained in the first hypothetical, the VE found that the hypothetical worker was still employable. It was not until Gearhart's counsel posed a second hypothetical, including the restriction that the hypothetical worker would miss three or more days each month, that the VE determined that the worker would be unemployable. Nonetheless, because the ALJ was misinformed about the nature of Dr. Pitt's evaluation, he would have found it appropriate to discount the VE's second opinion as not supported by the record. *See Stanley*, 39 F.3d at 118; *Hardaway*, 823 F.2d at 927-28.

As such, this action must be remanded for further review by the ALJ. On remand, the ALJ should consider the above-mentioned restriction placed on Gearhart by Dr. Pitt, and determine whether it affects his original finding of no disability.

- 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.

To date, all of my opinions are unpublished. Some are, however, available *via* online services such as WestLaw and Lexis. Additionally, my opinions are maintained on an electronic word processing database maintained by the United States District Court and accessible through Pacer at <http://pacer.psc.uscourts.gov/>.

- 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.

None

- 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.

None; I have not sat by designation.

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:

The Northern District of Ohio has an automated program that proactively seeks to prevent assigning judges to cases wherein a conflict may arise. To facilitate this, judges identify persons or entities that would likely create conflicts of interest necessitating recusal. Accordingly, I have submitted names that include organizations of which I am on the board of trustees, banks with which I have financial relationships, the church I attend, etc. The automated program prevents me from being assigned cases involving the parties I have identified, if they are identifiable parties at the time the matter is initially filed. Despite those automated precautions, which only address anticipated conflicts, inevitably, a matter is assigned to a judge that creates an actual or potential conflict due to unforeseen circumstances. Section 455 of Title 28 of the United States Code directs recusal as required, in those types of cases. I have relied upon section 455(a) to recuse myself on three occasions to date. One matter involved the alleged wrongful death of a relative of my nephew; the other two matters involved criminal investigations that I had exposure to while working as an Assistant United States Attorney. I have not had a litigant or party ask me to recuse myself. Below are answers relative to each of my recusals.

- Lynda Dejournett Houser v. City of Akron, Case No. 5:08cv02774:

- 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;

My recusal was *sua sponte*.

- b. a brief description of the asserted conflict of interest or other ground for recusal;

I recused myself after learning that the decedent in the above-described civil rights case was the cousin of my half-sister's son, Ryan Dejournett.

- c. the procedure you followed in determining whether or not to recuse yourself;

I relied upon the language in 28 U.S.C. section 455(a) that states "(a) any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

- 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 recused immediately after learning that I was assigned as Magistrate Judge to a civil rights case wherein my nephew was related to the decedent whose immediate family allegedly died as the result of neglectful treatment while he was in police custody. Magistrate Judges are automatically assigned to all civil cases, dependent upon the location in which the magistrate judge serves. I was randomly assigned to this case in November 2008 but had not been called upon to assist the District Court Judge in any way so I was not aware of the identity of the parties, the facts of the case, or its existence. On February 18, 2009, I learned of my assignment to the case and my familial connection. I filed my recusal the next day. I played no role in the case as a judicial officer.

- USA v. Barkus and Lombardo, Case No. 1:09cr386:

- 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;

My recusal was *sua sponte*.

- b. a brief description of the asserted conflict of interest or other ground for recusal;

I recused after learning that this matter had been automatically assigned to me. I served as a “taint team” A.U.S.A., meaning that I reviewed documents seized from Defendant Barkus *via* a search warrant and/or provided through discovery to cull out any that may have been protected by attorney-client privilege.

- c. the procedure you followed in determining whether or not to recuse yourself;

I relied upon the language in 28 U.S.C. section 455(a) which states “(a) any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

- 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 recused immediately after learning that I was assigned as Magistrate Judge to the case wherein I had acted as a “taint team” A.U.S.A. Magistrate Judges are assigned to all matters as a matter of course. I was alerted to my assignment to the case by a telephone call to my staff by the A.U.S.A. prosecuting the matter. I filed my recusal the day after the indictment was returned. I played no role in the case as a judicial officer.

- USA v. Payne, Case No. 1:09cr272:

- 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*;

My recusal was *sua sponte*.

- b. a brief description of the asserted conflict of interest or other ground for recusal;

Although I had not been directly involved in the matter, I recused after learning that this matter had been automatically assigned to me and was one that was under investigation by A.U.S.A.’s serving in the same unit in which I had worked while an A.U.S.A.

- c. the procedure you followed in determining whether or not to recuse yourself;

I relied upon the language in 28 U.S.C. section 455(a) which states “(a) any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

- 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 recused myself immediately after learning that this matter had been automatically assigned to me and was one, although I was not directly involved, was being investigated by attorneys serving in the same unit I worked in while I was an A.U.S.A. I played no role in the case as a judicial officer.

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, other than judicial offices. I was unsuccessful in my first attempt in securing a federal magistrate judge position. That vacancy was filled by Magistrate Judge Greg White approximately eight months before my current appointment.

- 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.

None

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;

July 1996- August 1998: Law Clerk to District Court Judge John M. Manos, United States District Court for the Northern District of Ohio

July 1995 – August 1995: Law Clerk to District Court Judge Solomon Oliver, Jr., United States District Court for the Northern District of Ohio

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.

August 2009 Present: U.S. District Court, Northern District of Ohio, United States Magistrate Judge, 201 South Main Street, Akron, Ohio 44308;

July 2000 -- August 2009: Office of the U.S. Attorney, Northern District of Ohio, Federal Prosecutor, serving in Organized Crime and Public Corruption Strike Force located at 801 West Superior Avenue, 4th Floor, Cleveland, Ohio 44113;

September 1998 – July 2000: Jones Day, Associate in General Litigation, located at North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114;

July 1996 - August 1998: U.S. District Court, Northern District of Ohio, Law Clerk to Judge Manos (deceased). Chambers was located at 127 Key Tower, Cleveland, Ohio;

August 1995 – July 1996: McDonald Hopkins, Associate in Litigation Section, located at 600 Superior Avenue, E., Cleveland, Ohio 44114. I also worked as a student law clerk from May 1994 to May 1995;

July 1995 – August 1995: U.S. District Court, Law Clerk to Judge Solomon Oliver, Jr., NDOH located at 801 West Superior Avenue, Cleveland, Ohio 44113;

May 1992 – May 1994: Reminger & Reminger, Student Law Clerk, law firm is currently located at 1400 Midland Building, 101 Prospect Avenue, W., Cleveland, Ohio 44115.

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 did not serve as a mediator prior to becoming a judicial officer. I have not served as an arbitrator in any capacity.

b. Describe:

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

1995- Mid 1996: Private Practice, representing small to mid-sized corporate and individual clients in civil litigation;

Mid 1996- 1998 and summer 1995: Law Clerk to Federal Judge, drafting opinions and jury instructions in civil and criminal matters, including a death penalty habeas petition;

1998-2000 and 2007 to present: Teaching Advanced Brief Writing and Oral Advocacy and Animal Law at Cleveland-Marshall College of Law;

1998-2000: Private Practice, representing primarily large corporate clients in complex civil litigation, including antitrust and complex contract matters;

2000-2009: Federal Prosecutor, Office of U.S. Attorney, NDOH, serving in Organized Crime and Public Corruption Strike Force, primarily prosecuting violations of public corruption laws.

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

In private practice, my client was typically a corporation seeking to protect a commercial interest *via* the enforcement of the terms of a contract or protection under antitrust laws.

As a federal prosecutor, my sole client was the United States. My typical target or subject of an investigation was a very influential and well-respected first-time offender who is extremely resistant to allegations of ill repute. These individuals were usually represented by highly competent legal counsel and were determined to clear their names despite any wrongdoing. My work ethic and temperament remains well suited to these matters because I am well prepared, firm and fair.

- 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.

- July 1995 – August 1995: As a Law Clerk to Judge Oliver, I did not attend court proceedings;

- August 1995- July 1996: While an Associate at McDonald Hopkins, I had my first solo trial in a civil matter in Rocky River, Ohio Municipal Court;
- July 1996 – August 1998: As a Law Clerk to Judge Manos, I was involved in federal court matters often daily;
- August 1998 – August 2000: as a Lecturer at Cleveland-Marshall, I did not appear in court;
- September 1998 – July 2000: As an Associate at Jones Day, I was present in court regularly for trial related matters but had a speaking role only once during a hearing regarding the admission of exhibits. My primary role was to assist the lead partner in conducting examinations or preparing pleadings;
- July 2000- August 2009: As a federal prosecutor, I appeared in court occasionally because the cases were complex and required long investigations prior to going to trial. During trials, I appeared daily;
- August 2007 – Present: My role as an Adjunct Professor at Cleveland-Marshall does not require court appearances; and
- August 2009 – Present: As a U.S. Magistrate Judge, I preside over matters in court as often as necessary. I also frequently manage my docket via telephonic and in-person conferences.

i. Indicate the percentage of your practice in:

1. federal courts: 90%
2. state courts of record: 10%
3. other courts;
4. administrative agencies

ii. Indicate the percentage of your practice in:

1. civil proceedings; 10%
2. criminal proceedings. 90%

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 tried five cases; two cases as co-counsel and three cases a lead counsel.

i. What percentage of these trials were:

1. jury: 100%
2. non-jury.

- 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.

United States v. Lay, 1:07CR339 (and related cases):

Summary: I along with Co-Counsel represented the United States in a series of related prosecutions involving public corruption in the management of the billions of dollars controlled by the Bureau of Workers' Compensation. Several persons were convicted, including Chief Financial Officer Terry Gasper, Investment Advisors, Mark Lay and Clarke Bizzard. I was lead counsel and first-chaired two trials in related matters. I also led a multi-jurisdictional task force which included representatives of the U.S. Attorney's Office for the Southern District of Ohio and the County Prosecutor Offices for Franklin and Lucas County. The Grand Jury investigation was long-term and involved an inordinately large production of documentary evidence. Mark Lay's conviction involved a securities violation issue of first impression. The appeal is pending before the Sixth Circuit.

- (a) Dates of Representation: 2006-2009
- (b) Name of Court, Judge before whom the case was litigated: U.S. District Judge David Dowd, NDOH, presided.
- (c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

Co-Counsel:

Antoinette Bacon, A.U.S.A.
Office of the U.S. Attorney, United States Court House
801 West Superior Avenue, 4th Floor
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216-622-3600

Opposing Counsel:

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Roger Synenberg (Counsel for Michael Lewis)
Synenberg & Associates, LLC
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William Beyer (Counsel for Daniel O'Neill)
Wuliger, Fadel & Beyer
The Brownell Building 1340
Sumner Court
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Percy Squire (Counsel for Mark Lay)
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Richard Kerger (Counsel for Mark Lay)
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(419) 255 -5990

John Cunha and Helen Holcomb (Counsel for Clarke Blizzard)
Cunha & Holcomb
One State Street
Suite 500
Boston, MA 02109-3507
(617) 523-4300

United States v. Onunwor, 1:04CR211 and United States v. Gray, 1:04CR580:

Summary: I along with Co-Counsel represented the United States in related prosecutions involving public contracts corruptly obtained through the bribery of public officials. The following public officials were convicted: the sitting Mayor of the City of East Cleveland, Emmanuel Onunwor; sitting Cleveland Councilman, Joe Jones; and the sitting Chief of Staff to Mayor of Houston, Texas, Oliver Spellman, and Monique McGilbra, former Director of Parks and Recreation for the City of Houston, Texas, along with several other individuals. The Grand Jury investigation was long-term and involved the use of authorized electronic surveillance.

- (a) Dates of Representation: 2003-2006
- (b) Name of Court, Judge before whom the case was litigated: U.S. District Judge James Gwin, NDOH, presided.
- (c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

Co-Counsel:

Steven M. Dettelbach
Partner
Baker Hostetler
3200 National City Center
1900 East 9th Street Cleveland, Ohio 44114-3485
216-621-0200

Opposing Counsel:

John S. Pyle: (Counsel for Mayor Onunwor)
Gold & Pyle
526 Superior Avenue E., Suite 1140
Cleveland, Ohio 44114
(216) 696-6122

Jaime Serrat (Counsel for Mayor Onunwor)
2000 Standard Bldg
1370 Ontario Street
Cleveland, OH 44113
(216) 696-1718

Jerome Emoff (Counsel for Councilman Joe Jones)
Dworkin & Bernstein Co. L.P.A.
60 South Park Place
Painesville, Ohio 44077
(440) 352-3391

Robert Jenkins (Counsel for Gilbert Jackson)
631 St. Charles Avenue
New Orleans, LA 70130
(504) 586-1616

William Whitaker (Counsel for Nate Gray)
Union Point
190 North Union Street, Suite 301
Akron, Ohio 44304
(330) 762-0287

United States v. Michael Mirando, 1:07cr401:

Summary: I represented the United States in this second prosecution of an attorney who repeatedly and flagrantly violated taxation laws. The Grand Jury investigation was long-term and involved the use of an undercover operative.

- (a) Dates of Representation: 2006-2007
- (b) Name of Court, Judge before whom the case was litigated:
U.S. District Judge Solomon Oliver, NDOH, presided.
- (c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

Opposing Counsel:
David Doughten (Counsel for Michael Mirando)
4403 St. Clair Avenue
Cleveland, Ohio 44103
(216) 361-1112
(216) 622-2727

United States v. Norman Gore, 1:04cr267 (and related cases) :

Summary: I along with Co-Counsel represented the United States in a series of related prosecutions involving employees of the City of Cleveland Water Division accepting bribes from businesspersons conducting business with the City of Cleveland. Several persons were convicted, including City of Cleveland Water Division employees, Norman Gore and Kenneth McNeil, and several businesspersons, including Joe Sturman, Same Petrony, Arnold Kaufman and Michael Semlar. The Grand Jury investigation was long-term and involved the use of an undercover operative.

- (a) Dates of Representation: 2004-2006
- (b) Name of Court, Judge before whom the case was litigated: U.S. District Judge Patricia Gaughan, NDOH presided.

- (c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

Co-Counsel:

Steven M. Dettelbach
Partner
Baker Hostetler
3200 National City Center
1900 East 9th Street
Cleveland, Ohio 44114-3485
216-621-0200

Opposing Counsel:

William McGinty (Counsel for Norman Gore)
McGinty, Gibbons & Hilow Co. L.P.A.
614 W. Superior Ave. Suite 1300
Cleveland, Ohio 44113
(216) 344-9220

James Wooley (Counsel for Joe Sturman)

Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-7345

Niki Schartz (Counsel for Joe Sturman)

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United States v. Larry Dean Dusenbery, 5:91cr291:

Summary: Along with Co-Counsel, I represented the United States in this criminal post-conviction and appellate matter. The defendant was convicted of engaging in a continuing criminal enterprise (“CCE”), in addition to other criminal offenses. The CCE conviction was later vacated, the matter appealed and the defendant resentenced on the remaining criminal convictions.

- (a) Dates of Representation: 2000-2002 (approximately)
- (b) Name of Court, Judge before whom the case was litigated: U.S. District Judge Kathleen O'Malley, NDOH presided.
- (c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

Co-Counsel:

Ann Rowland, A.U.S.A.
Office of the U.S. Attorney
United States Court House
801 West Superior Avenue, 4th Floor
Cleveland, Ohio 44114
216-622-3600

Opposing Counsel:

Angelo Lonardo (Counsel for Larry Dean Dusenbery)
Yelsky & Lonardo
75 Public Square, Suite 800
Cleveland, Ohio 44113
(216) 781-6688

United States v. Carl Woodman, 115 Fed. Appx. 840, 2004 WL 2711025:

Summary: I along with Co-Counsel represented the United States in this tax prosecution both at trial and on appeal.

- (a) Dates of Representation: 2002-2004 (approximately)
- (b) Name of Court, Judge before whom the case was litigated: U.S. District Judge Solomon Oliver, NDOH presided.
- (c) The individual name, addresses, and telephone numbers of co-counsel for each of the other parties:

Co-Counsel:

Linda Betzer, A.U.S.A. (retired)
11917 Meadowridge Drive
Chesterland, Ohio 44026
(440) 729-3359

Opposing Counsel:

John Gibbons
Yelsky & Lonardo
75 Public Square, Suite 800
Cleveland, Ohio 44113
(216) 781-6688

Jeffry Kelleher
526 Superior Avenue
Cleveland, Ohio 44114
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John Gibbons
1370 Ontario Street
Cleveland, Ohio 44113
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Jaime Serrat
2000 Standard Bldg
1370 Ontario Street
Cleveland, OH 44113
(216) 696-1718

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.)

My most significant legal activity has been my steadfast commitment to administering equal justice to all. Throughout my legal career, I have dedicated myself to providing equal treatment under the law. My goal upon becoming a judicial officer was to ensure that every person who stood before the Court, regardless of race, wealth, gender or social status, received the same courtesies, respect and, most importantly, equal justice under law. This same determination now propels me to seek the position of United States District Court Judge. As a District Court Judge, I would rely upon my wealth of legal and personal experiences along with my commitment to public service to work towards reaffirming and reinvigorating the public's faith in the American judicial system.

A commitment to the administration of equal justice requires an unwavering belief that all - the poor and rich, the likable and unlikable, the pretty and ugly, the first-time offender and repeat offender - are to be afforded the same, equal, treatment under the law. This means that regardless of race, wealth or any other possible discriminating factor, judicial officers are to extend the same courtesies, respect and, most importantly, adjudication to all who stand before them. I believe this with every fiber of my being and my personal and professional actions demonstrate my commitment to equal justice under the law. Moreover, in my legal practice, I have found my devotion to achieving equal justice under the law has been deeply satisfying, both intellectually and emotionally.

As a Magistrate Judge, in criminal matters, it is often my responsibility to appoint counsel for indigent defendants and to explain to defendants recently charged or arrested their rights under the law and the procedures to be followed. I take these responsibilities very seriously. I often engage in a lengthy dialogue with a defendant and/or his or her attorney until I am satisfied that the defendant and his or her attorney understands. This same opportunity presents itself most often in civil matters during mediation or settlement conferences or any other proceedings where a non-attorney client or *pro se* litigant is present. I take advantage of these opportunities to anticipate and answer questions and ensure that the litigants have a reasonable understanding of how matters will proceed.

As a federal prosecutor, I often found myself in situations where I could assist in the administration of justice by doing more than simply applying facts and circumstances to the applicable law. I often dealt with an unrepresented person or an attorney who was unfamiliar with the workings of federal law, investigative procedures and/or the federal court system. In those cases, I made a point of (1) never taking unfair advantage and (2) coaching to the extent necessary to ensure that proceedings were fair. For example, some attorneys would neglect or forget to ask the status (*i.e.*, target, subject or mere witness) of his or her client in the investigation. This important fact is one best addressed immediately and, if not asked of me, I routinely offered that information, immediately.

Another example involved my habit of extending proffer letter agreements. While not affording full immunity, proffer letter agreements provide protection for the witness who may have some exposure to criminal prosecution by restraining the government's use of that witness's statements made during an interview. A proffer letter is usually extended in criminal investigative matters unless there is a legitimate reason to withhold it. A firmly held belief that the witness will not truthfully answer questions or, even if truthful, the answers will not aid the investigation, are typically the reasons for which I would withhold a proffer letter.

It has been my experience that those criminal defense attorneys who were the least experienced were the ones most likely to agree to permit their clients to be interviewed without first asking for a proffer letter. In those cases, it was usually my experience that the attorney had also not fully debriefed the witness and did not know all that the witness might reveal that could later prove problematic for the witness. Additionally, in most of my investigations, the witnesses had some level of culpability even though they were not subjects or targets of the investigation, making the protections of a proffer letter all the more important. In these situations, I routinely brought up the subject of the proffer letter and suggested that such a letter agreement be entered. I never had a defense attorney refuse to enter a proffer agreement after I had suggested it.

There were times when a potential witness/defendant needed more than the protections of a proffer letter agreement. On one such occasion, a target approached me and offered to cooperate, after he realized that his criminal conduct had been discovered. The target could not afford counsel. On his behalf, I petitioned the Court to inquire about whether

the target qualified for appointed counsel. He did. With appointed counsel, the target cooperated and entered a plea of guilty to a public corruption violation.

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.

Cleveland State University's Cleveland-Marshall College of Law, 1801 Euclid Avenue, Cleveland, Ohio 44115:

Animal Law, Fall Semester of 2007, 2008 and 2009. The syllabus for 2009 is attached; the syllabi for 2007 and 2008 were very similar. Animal Law surveys all aspects of the intersections of animals and local, state and federal laws. As the syllabus shows, the topics are wide-ranging, *e.g.* from tort law to estates and trusts.

Advanced Brief Writing and Oral Advocacy, Fall Semester 1998, 1999 and 2000. Syllabus no longer available. This course focused on improving the students' ability to communicate both orally and in writing with the court.

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

None

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

I plan to continue law school teaching.

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).

In the past, I have earned approximately \$2000 per semester for teaching at Cleveland-Marshall College of Law. I do not intend to pursue any other income-generating activity outside of work.

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 do not anticipate any conflicts of interest. Out of an abundance of caution, I requested an advisory opinion on whether a conflict would arise from my mother's employment as a nanny by the recently appointed. U.S. Attorney serving the Northern District of Ohio. The Committee on Codes of Conduct of the Judicial Conference of the United States responded that it did "not believe that the Code requires [my] disqualification in a case in which my mother's private employer . . . [is] the U.S. Attorney. [It] therefore advise[d] that [my] mother's employment as a nanny by the [] U.S. Attorney in [my] district does not raise a conflict for [me]."

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

The United States District Court in the Northern District of Ohio has a procedure for identifying potential conflicts of interest. (*See also* response to Question 14.) I began following that procedure immediately after my appointment. I do not anticipate any litigation or financial arrangements that are likely to present conflicts of interest. If necessary, there is also a recusal procedure such as that described in 28 U.S.C. Section 455(a) and discussed in response to Question 14.

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.

To date, my work as a federal prosecutor has been my greatest contribution to the public. Restrictions in my ability to represent clients other than the United States caused me to focus as described below.

I have spent approximately eleven years (over two-thirds of my legal career) in public service. Towards the end of my career as a federal prosecutor, I began investigating and

prosecuting civil rights violations. Overall, regardless of the case I prosecuted, my foremost concern was to best serve the public.

I have served on the board of the Eliza Bryant Village for over a decade. Eliza Bryant Village was founded by a woman of the same name who was the daughter of a freed slave. Eliza watched as her mother and other aged African Americans were turned away from nursing homes because of their race. These circumstances motivated Eliza Bryant to start a nursing home dedicated to caring for needful African American elderly. Today, the nursing home has bloomed into a multi-facility campus where impoverished elderly of all races live in a dignified, compassionate and secure environment and receive qualified medical care and social stimulation. Well over 90% of the campus residents are totally reliant upon government subsidies. I willingly volunteer my time to this worthwhile organization.

After becoming a federal prosecutor, I seriously curtailed my charitable and community service activities to avoid any improprieties or potential conflicts of interests. Prior to that time, however, I was heavily involved in promoting the services provided to attorneys by the Cleveland Metropolitan Bar Association, formerly known as the Cleveland Bar Association. As my resume reflects, I am a Past Member Board of Trustees of both the Bar Association and its Foundation; Past Chair of Young Lawyers Division; and Past Co-Chair of a fundraiser, the Bench-Bar Run.

I am actively involved in a local church and serve in many capacities, including being a member of the Bell Choir and Altar Guild, member of the Executive Council for our regional Synod and past secretary for the church's Council, member of the Ministry Board and past Chair of the Mutual Ministry Committee.

26. Selection Process:

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

I was aware that Judge Economus would be eligible for Senior Status and that, if he transitioned to Senior Status, an opening would then exist on the District Court in the Northern District of Ohio. I watched for opportunities to apply for the expected judicial vacancy and sent a letter of interest to Senator Brown's office after Judge Economus' transition to Senior Status was announced. I met with Senator Brown's State Director who informed me that Senators Sherrod Brown

and George Voinovich would be jointly establishing a Commission to accept applications and inquiries. I kept myself apprised of the Commission's formation by following updates on Senator Brown's Senate website. After the bipartisan Commission had been formed, I sent the same letter of interest that I had earlier forwarded to Senator Brown's office directly to the Commission. I eventually began receiving emails from persons acting on behalf of the Commission. I interviewed with the Commission on June 29, 2009 and was notified that I had made the list of three finalist *via* email. Senator Brown interviewed me on July 19, 2009. On July 21, 2009, Senator Brown notified me of my selection for recommendation by himself and Senator Voinovich. I was contacted by the Department of Justice regarding the nomination paperwork to complete.

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

12-2-09

(DATE)

Benita Y. Pearson

(NAME)



Kathleen Conley
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 12/15/2013.

Kathleen Conley
(NOTARY)