



JAY MOODY

Circuit Judge
Third Division
Sixth Judicial Circuit

Kirby Miraglia
Case Coordinator

Tammie Foreman
Court Reporter

401 W Markham
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Little Rock, AR 72201
(501) 340-8426
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January 6, 2014

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

Dear Mr. Chairman,

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on July 25, 2013, to be a United States District Judge for the Eastern District of Arkansas. Incorporating the additional information below, I certify that the information contained in those documents and items is, to the best of my knowledge, true and accurate.

Question 12d:

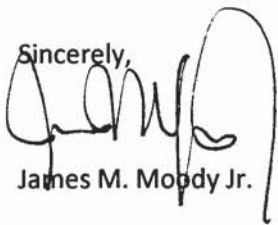
November 14, 2013: Panelist, Pulaski County Bar Association, Mediation and Negotiation Seminar, Little Rock, Arkansas. This was a panel discussion regarding a judge's view on mediation. I have no notes, transcripts, or recordings. The address of the Pulaski County Bar Association is the Bowen School of Law, 1201 McMath Avenue, Little Rock, AR 72202.

Question 14:

I have recused from one additional case, *Wright v. State of Arkansas*, Pulaski County Circuit Court Case No. 60CV-13-2662. I was approached by plaintiff's counsel and asked if I anticipated being able to preside over the case to conclusion in light of my pending nomination. I informed counsel I could not guarantee that I would be able to remain on the case to its conclusion. I was then asked by plaintiff's counsel to recuse so that a single judge could preside over the entire case. I agreed to recuse.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'James M. Moody Jr.', with a large, stylized flourish extending from the end of the signature.

Cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

James Maxwell Moody, Jr. (Jay Moody)

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

United States District Judge for the Eastern District of Arkansas

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.

Pulaski County Courthouse
401 West Markham, Room 240
Little Rock, Arkansas 72201

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

1964; El Dorado, Arkansas

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.

1986 – 1989, University of Arkansas Bowen School of Law; JD, 1989

1982 – 1986, University of Arkansas; BSBA, 1986

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.

2003 – present
Third Division Circuit Court for the Sixth Judicial District of Arkansas
Pulaski County Courthouse
401 West Markham, Room 240

Little Rock, Arkansas 72201
Circuit Judge

Spring Semester 2004, Spring Semester 2006
University of Arkansas Bowen School of Law
1201 McMath Avenue
Little Rock, Arkansas 72202
Adjunct Professor

1989 – 2003, Summer 1988
Wright Lindsey & Jennings LLP
200 West Capitol, Suite 2300
Little Rock, Arkansas 72201
Partner (1994 – 2003)
Associate (1989 – 1994)
Summer Associate (1988)

January 1987 – September 1987
Wilson, Engstrom, Corum & Dudley
200 West Commerce, Suite 600
Little Rock, Arkansas 72203
Law Clerk

Other Affiliations (uncompensated):

2007 – present
Circle S Ranch, Inc.
2901 North Fillmore
Little Rock, Arkansas 72207
One-Tenth Voting Shareholder

2007 – present
Little Prairie Land Company
322 Cypress Creek Road
Scott, Arkansas 72142
One-Tenth Voting Shareholder

2000 – present
James M. Moody Irrevocable Trust
From my private residence
(Trustee for Father's trust)

1997 – present
Moody's Manor, LLC
(Entity holds family real estate)
401 West Markham Room 240

Little Rock, Arkansas 72201

Managing Member

(As Managing Member I facilitate the collection of oil royalties and control the management of pine plantation acreage)

1997 – present

Hannah Neal Moody Irrevocable Trust

From my private residence

(Trustee for Daughter's trust)

1994 – present

Madison Elise Moody Irrevocable Trust

From my private residence

(Trustee for Daughter's trust)

2010

Pulaski County Bar Association

1201 McMath Avenue, Room 101

Little Rock, Arkansas 72202

Board of Directors

2005

The Cathedral School

310 West 17th Street

Little Rock, Arkansas 72206

School Board

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 U.S. Military. I timely registered 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.

Pulaski County Judge of the Year (2004, 2008, 2009, 2011, 2013)

Pulaski County Bar Association President's Award (2009)

Graduate of the National Judicial College General Jurisdiction (2003)

Leadership Greater Little Rock (2002)

Arkansas Business 40 Under 40 (2002)

Graduate of the National Institute of Trial Advocacy (1991)

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.

Arkansas Bar Association (1989 – present)
Arkansas Supreme Court Civil Rules Committee (2012)
Pulaski County Bar Association (1990 – present)
Board of Directors (2010)

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.

Arkansas State Bar, 1989

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.

All courts of Arkansas, 1989
United States District Court for the Eastern District of Arkansas, 1989
United States District Court for the Western District of Arkansas, 1989
United States Court of Appeals for the Eighth Circuit, 1989
Supreme Court of the United States, 1989

There have been no lapses in my 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.

Arkansas Association of Defense Counsel (1989 – 2003)
Arkansas Judicial Counsel (2003 – present)
Bailes Best Made Pet Food (family business) (1991 – 1995)
Circle S Ranch, Inc. (family business) (2007 – present)
One-Tenth Voting Shareholder
Defense Research Institute (1989 – 2003)

Little Prairie Land Company, Inc. (family business) (2007 – present)
One-Tenth Voting Shareholder
The Country Club of Little Rock (2003 – 2009)
Little Rock Racquet Club (2007 – present)
Moody's Chickens, LLC (family business) (1997 – 2005)
Moody's Manor, LLC (family business) (1997 – present)
Managing Member
William R. Overton Inns of Court (1995 – 2009)

- 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.

During my membership with the Country Club of Little Rock, it did not discriminate on the basis of race, sex, religion or national origin, but before I became a member, it did historically have an all-white membership. None of the other organizations listed above currently discriminates or has 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.

Defense Research Institute, *Products Liability Defenses, A State by State Compendium (Arkansas chapter)*, 2001. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed to the preparation of any 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.

I am required to go before the Pulaski County Quorum Court annually for approval of my operating budget. These appearances are largely ceremonial and have only resulted in my answering questions on one occasion, which occurred on November 8, 2005. I have no notes, transcripts or recordings of this testimony, but press coverage is supplied.

- 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.

Starting in 1995, I have been asked from time to time to speak at continuing education sessions of both the Arkansas Bar Association and the Pulaski County Bar Association. On each of these occasions I spoke without written materials, an outline, or notes other than handwritten notes I did not retain. Each of these sessions essentially reviewed the requirements of the Arkansas Model Rules for Professional Conduct. I have only spoken on the subjects of practical tips for lawyers in the courtroom and civility among lawyers and judges. I have listed the details for the events that I could recall based on a review of my records and the Internet.

May 2, 2013: Speaker, "A Day with the Judges, Civility in the Courtroom," Pulaski County Bar Association, Little Rock, Arkansas. I spoke with members of the Pulaski County Bar Association regarding civility to one another and the court. I have no notes, transcripts, or recording of this talk. The address for the Pulaski County Bar Association is 1201 McMath Avenue, Room 101, Little Rock, Arkansas 72202.

April 29, 2013: Panelist, "Civility in the Courtroom," Arkansas Trial Lawyers Association, Little Rock, Arkansas. I spoke to the Arkansas Trial Lawyers Association regarding civility among one another and to the court. I have no notes, transcripts, or recording of this talk. The address for the Arkansas Trial Lawyers Association is 1400 West Markham, Suite 307, Little Rock Arkansas 72201.

October 13, 2011: Speaker, "A Day with the Judges," Pulaski County Bar Association, Little Rock, Arkansas. I spoke to members of the Pulaski County Bar Association on practical tips for trial preparation in my court. Topics included handling of exhibits, the manner in which I conduct voir dire, and objections. I have no notes, transcripts, or recording of this talk. The address for the Pulaski County Bar Association is 1201 McMath Avenue, Room 101, Little Rock, Arkansas 72202.

May 4, 2011: Speaker, "Pulaski County Bar Association Law Week, Judicial CLE," Pulaski County Bar Association, Little Rock, Arkansas. I spoke to members of the Pulaski County Bar Association on practical tips for trial preparation in my court. Topics included handling of exhibits, the manner in which I conduct voir dire, and objections. I have no notes, transcripts, or recording of this talk. The address for the Pulaski County Bar Association is 1201 McMath Avenue, Room 101, Little Rock, Arkansas 72202.

June 11, 2009: Panelist, "Infallibles v. Hoi Polloi," Arkansas Bar Association, Hot Springs, Arkansas. This appearance consisted of a mock game show mimicking the Family Feud television show with legal trivia. I have no notes, transcripts, or recording of this talk. The address for the Arkansas Bar Association is 2224 Cottondale Lane, Little Rock, Arkansas 72202.

August 22, 2008: Speaker, "A Day with the Judges," Pulaski County Bar Association, Little Rock, Arkansas. I spoke to members of the Pulaski County Bar Association on practical tips for trial preparation in my court. Topics included handling of exhibits, the manner in which I conduct voir dire, and objections. I have no notes, transcripts, or recording of this talk. The address for the Pulaski County Bar Association is 1201 McMath Avenue, Room 101, Little Rock, Arkansas 72202.

- 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.

Matthew S.L. Cate, *Arkansans Flock to Fill Seats on Federal Bench*, Arkansas Democrat Gazette, February 1, 2009. Copy supplied.

40 under 40, Arkansas Business, June 17, 2002. 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.

In 2003, I was elected to a six-year term as the circuit judge for the Third Division of the Sixth Judicial District in Arkansas. This position is a state court general jurisdiction trial

court, including over criminal, civil, domestic, juvenile, and probate cases. During my first term, I was assigned primarily civil cases and later some domestic cases. In 2009, I was re-elected to the same position and continued to handle mostly civil cases. I currently am assigned only civil cases but sit occasionally for mental health cases. In addition, during this time period I have been assigned by the Arkansas Supreme Court to hear cases in other judicial districts within Arkansas.

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

During the ten years that I have served as a judge, I have been assigned approximately 1400 cases a year. Of those cases roughly 100 have gone to a jury and final verdict. I have presided over approximately 350 bench trials during this period. The remainder of the cases either settled, default judgments were entered or the cases were dismissed.

- i. Of these, approximately what percent were:

jury trials:	30%
bench trials:	70%
civil proceedings:	99.9%
criminal proceedings:	0.1%

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

According to Rule 58 of the Arkansas Rules of Civil Procedure, “upon a general or special verdict, or upon a decision by the court granting or denying the relief sought, the court may direct the prevailing party to promptly prepare and submit, for approval by the court and opposing counsel, a form of judgment or decree which shall then be entered as the judgment or decree of the court.” Therefore, I have not written any opinions in the traditional sense, but rather approved opinions drafted by the prevailing party in a case. If I disagreed with the prevailing party’s draft opinion, I would require them to correct any misstatements of law or fact before approving them.

- 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. *Farm Fresh Producers, LLC v. Catfish Producers, LLC*, Pulaski County Circuit Court No. 60CV-04-8775.

This case involved alleged fraud and breach of contract in the purchase and sale

of a catfish processing plant in southeast Arkansas. The defendants, a group of catfish farmers, purchased a catfish processing plant to have a ready market for their fish, essentially vertically integrating their product chain. The plant was mismanaged and was in financial distress. Another group of farmers, the plaintiffs, was invited to invest. The plant failed, and millions of dollars were lost by all involved. The case took six weeks to try, and the jury found in favor of all defendants. The case was subsequently settled while on appeal.

Counsel for Farm Fresh Producers, LLC

Stuart W. Hankins
Hankins Law Firm, P.A.
800 West Fourth Street
North Little Rock, AR 72114
(501) 371-9226

David Hargis
Attorney at Law
807 West Third Street
Little Rock, AR 72201
(501) 371-0900

Counsel for Baxter

Honorable Kristine G. Baker
United States District Court for the Eastern District of Arkansas
(Formerly of Quattlebaum, Grooms, Tull & Burrow)
500 West Capitol Avenue
Little Rock, AR 72201
(501) 604-5351

John E. Tull III
Quattlebaum, Grooms, Tull & Burrow, PLLC
111 Center Street, Suite 1900
Little Rock, AR 72201
(501) 379-1705

John M. Jewell
Baxter & Jewell, P.A.
One Information Way, Suite 210
Little Rock, AR 72202
(501) 664-9555

Counsel for Pugh

Richard N. Watts

Watts, Donovan & Tilley, P.A.
200 River Market Avenue, Suite 200
Little Rock, AR 72201
(501) 372-1406

Counsel for Yocum

Dylan Potts
Gill Ragon Owen, P.A.
425 West Capitol Avenue, Suite 3801
Little Rock, AR 72201
(501) 801-3808

John P. Gill
Gill Ragon Owen, P.A.
425 West Capitol Avenue, Suite 3801
Little Rock, AR 72201
(501) 801-3802

Counsel for Friday, Eldredge & Clark, LLP

Robert L. Henry III
Barber Law Firm
400 West Capitol Avenue
2700 Regions Center
Little Rock, AR 72201
(501) 372-6175

Counsel for Arkansas Development Finance Authority

James Dowden
Attorney at Law
212 Center Street, Tenth Floor
Little Rock, AR 72201
(501) 324-4700

2. *The Ruth R. Rimmel Revocable Trust v. Regions Financial Corporation*, 369 Ark. 392, 255 S.W.3d 453 (2007).

This case involved fraud and breach of contract claims in the sale of a family owned insurance agency. The Rimmel family alleged that it had been defrauded by Regions as to the value of the agency. The agency became much more lucrative after the sale and under Regions' management. I granted Regions' motion to compel arbitration of the complaint and also referred the defendants' joint counterclaim to arbitration. The arbitrator denied the Rimmel family's claims and Regions' counterclaim. I denied the Rimmel family's motion to

vacate the award, confirmed the award, and dismissed the Remmel family's third amended complaint that had been filed the day the order to arbitrate was entered. The appellate court affirmed.

Counsel for the Remmel Family

James H. Penick III
Eichenbaum Liles, P.A.
124 West Capitol Avenue, Suite 1900
Little Rock, AR 72201
(501) 376-4531

Counsel for Herrington

Jess L. Askew III
Williams & Anderson, PLC
111 Center Street, 22nd Floor
Little Rock, AR 72201
(501) 396-8810

Counsel for Regions Financial Corporation and McDowell

Philip E. Kaplan
Williams & Anderson, PLC
111 Center Street, 22nd Floor
Little Rock, AR 72201
(501) 396-8432

William A. Waddell, Jr.
Friday, Eldredge & Clark, LLP
400 West Capitol Avenue, Suite 2000
Little Rock, AR 72201
(501) 370-1510

3. *Crawford v. Arkansas State Board of Education*, 363 Ark. 281, 213 S.W.3d 607 (2005).

This was a school consolidation case that was covered extensively in the press. A small rural school was being incorporated into a much larger school district 45 minutes away. The case was brought under the Arkansas Administrative Procedure Act and sought a temporary restraining order. Originally, I granted the temporary restraining order but denied a permanent restraining order. That order was dissolved by the Arkansas Supreme Court on the basis that the Bryant School District was a necessary party. I ultimately affirmed the decision of the Board of Education to close the school under the Administrative Procedure Act. Plaintiffs

appealed, but the appeal was abandoned prior to review by the Arkansas Supreme Court.

Counsel for Crawford

Christopher Heller
Friday, Eldredge & Clark, LLP
400 West Capitol Avenue, Suite 2000
Little Rock, AR 72201
(501) 376-2011

Counsel for Bryant School District

James M. Llewellyn
Thompson and Llewellyn, P.A.
412 South 18th Street
Fort Smith, AR 72902
(479) 785-2867

Counsel for Arkansas Board of Education

D. Scott Smith
Arkansas Attorney General's Office
#4 Capitol Mall, Room 404-A
Little Rock, AR 72201
(501) 370-1510

4. *Campbell v. Asbury Automotive Group, Inc.*, 2011 Ark. 157, 381 S.W.3d 21 (2011).

This was a class action lawsuit against local car dealerships who were charging a documentary fee to complete bills of sale and purchase contracts with the sale of each new car. The complaint alleged these actions were the unauthorized practice of law and also alleged unjust enrichment and deceptive trade violations. During the years this case was litigated, both parties filed motions for summary judgment and renewed motions for summary judgment on different aspects of the case. The plaintiffs filed two separate motions to certify a subclass, both of which I denied for different reasons. After I entered summary judgment to the defendants on the claims that had not previously been addressed by order, the plaintiffs filed an appeal and the defendants cross-appealed on the multiple decisions I had made to date.

On direct appeal, the Arkansas Supreme Court affirmed the denial of the plaintiffs' motion to amend their complaint and motion for class certification to add a claim for breach of fiduciary duty. It also affirmed on each of the three issues raised in the defendants' cross-appeal: the granting of plaintiffs' motion for

summary judgment on the issues of the unauthorized practice of law, the finding of a fiduciary relationship, and my ruling that the defendants were not entitled to the defense of good-faith reliance. The court reversed the decision to grant the defendants' motion for summary judgment on the Arkansas Deceptive Trade Practices Act and the claim of unjust enrichment and to deny the plaintiffs' motion for class certification on the financing-fee claim. The case was subsequently settled.

Counsel for Campbell

H. Gregory Campbell
Campbell Law Firm
212 Center Street, Suite 700
Little Rock, AR 72201
(501) 372-5659

Counsel for Asbury

E. Powell Miller
The Miller Law Firm, P.C.
950 West University Drive, Suite 300
Rochester, MI 48307
(248) 841-2200

Edwin L. Lowther, Jr.
Wright, Lindsey & Jennings, LLP
200 W. Capitol Ave, Suite 2300
Little Rock, AR 72201
(501) 212-1294

David Donovan
Watts, Donovan & Tilley, P.A.
200 River Market Avenue, Suite 200
Little Rock, AR 72201
(501) 372-1406

5. *Dockery v. Morgan*, 2011 Ark. 94, 380 S.W.3d 377 (Ark. 2011). (Order Granting Defendants' Motion to Dismiss supplied).

This issue in this case was whether proceeds from natural gas leases should be retained and spent by the Arkansas Game & Fish Commission (AGFC) or whether the proceeds should go into the general revenue of the state. The case dealt with Arkansas constitutional issues but did not change existing law. I ruled that the AGFC was a separate constitutional entity and could sign leases and collect revenue without tendering it to general revenue. The Arkansas Supreme Court affirmed.

Counsel for Dockery

Samuel Perroni
Attorney at Law
13804 West Highway 16
Fayetteville, AR 72704
(Phone number unavailable)

Counsel for the Game and Fish Commission

Robert K. Jackson
John P. Marks
Arkansas Game & Fish Commission
Two Natural Resources Drive
Little Rock, AR 72205
(501) 223-6327

Steven W. Quattlebaum
Quattlebaum, Grooms, Tull & Burrow, PLLC
111 Center Street, Suite 1900
Little Rock, AR 72205
(501) 379-1700

6. *Arkansas Surgical Hospital v. Bowman*, Pulaski County Circuit Court No. 60CV-08-4335.

This case came to me as an administrative appeal under the Arkansas Administrative Procedure Act. The Arkansas Insurance Commission ruled against Arkansas Surgical Hospital's request for relief. The ground for appeal was that Bowman, the chairman of the commission, made the ruling, which was beneficial to a competitor while actively negotiating employment with that competitor. I ruled that, at a minimum, the negotiations between Bowman and the competitor amounted to an appearance of impropriety and remanded the case back to the commission to be decided without Bowman's participation.

Counsel for Arkansas Surgical Hospital, LLC

Samuel Perroni
Attorney at Law
13804 West Highway 16
Fayetteville, AR 72704
(479) 444-6712

Counsel for The Surgical Hospital of Jonesboro, LLC, Ouachita Regional
Diagnostic, and Surgery Center

Thomas Staley
Williams T. Marshall
Robinson, Staley, Marshall & Duke
400 West Capitol Avenue, Suite 2891
Little Rock, AR 72201
(501) 374-3818

Counsel for Bowman and Arkansas Insurance Commissioner

Zane Chrisman
Arkansas Insurance Department
1200 West Third Street
Little Rock, AR 72201
(501) 371-2820

Robert Alexander
Arkansas Insurance Department
1200 West Third Street
Little Rock, AR 72201
(501) 371-2820

Counsel for Arkansas Blue Cross & Blue Shield

Steven W. Quattlebaum
Joseph Falasco
Quattlebaum, Grooms, Tull & Burrow, P.L.L.C.
111 Center Street, Suite 1900
Little Rock, AR 72205
(501) 379-1700

Counsel for QCA Health Plan, Inc.

John R. Tisdale
Wright, Lindsey & Jennings, LLP
200 West Capitol Avenue, Suite 2300
Little Rock, AR 72201
(501) 212-1256

Counsel for United Healthcare of Arkansas, Inc. and United Healthcare Insurance
Co.

Allan Gates
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

425 West Capitol Avenue, Suite 1800
Little Rock, AR 72201
(501) 688-8816

Counsel for Arkansas Medical Society

Emily Sneddon
Mitchell, Blackstock, Ivers & Sneddon, P.L.L.C.
1010 West Third Street
Little Rock, AR 72201
(501) 378-7870

7. *Butler v. Union Planters Bank*, Pulaski County Circuit Court No. 60CV-02-4985.

This was a malicious prosecution case brought by Butler against Union Planters because the bank failed to recall a warrant for a hot check charge after Butler had repeatedly informed the bank that they had the wrong Butler. Butler was pulled over for speeding then arrested on the hot check warrant. He spent a night in jail. The bank failed to answer the complaint and was found in default. A six-person jury trial on damages was held. The jury returned a verdict for \$9 million dollars. Once the bank received the judgment, they entered an appearance asking that the judgment be set aside. I set the verdict aside, granted the bank a new trial on damages, but maintained the default judgment. The case was later settled.

Counsel for Butler

Jack Wagoner III
Wagner Law Firm, P.A.
1320 Brookwood, Suites D & E
Little Rock, AR 72202
(501) 663-5225

John Ogles
Ogles Law Firm
200 South Jeff Davis
Jacksonville, AR 72078
(501) 982-8339

Counsel for Union Planters Bank

Robert Trammell
Attorney at Law
13608 Kanis Road
Little Rock, AR 72211
(501) 223-3100

8. *Gatzke v. Weiss*, 375 Ark. 207, 289 S.W.3d 455 (2008).

This case was filed by several local contractors against the State of Arkansas for an interpretation of the meaning of Article 19, Section 16 of the 1874 Arkansas Constitution, which requires bidding for certain contracts. Historically only contracts at the county level required bids. The contractors wanted the bid requirement to apply to all state contracts. I found as a matter of law that the phrase “in any county” meant contracts for county work. The Arkansas Supreme Court affirmed.

Counsel for Gatzke

Ronald A. Hope
Hope, Trice, & O’Dwyer, P.A.
211 Spring Street
Little Rock, AR 72201
(501) 372-4144

Counsel for Nabholz Construction Corp., CDI Contractors, and DEL-JEN, Inc.

Jeffrey H. Moore
Friday, Eldredge & Clark, LLP
400 West Capitol Avenue, Suite 2000
Little Rock, AR 72201
(501) 370-1518

Counsel for Kinco Construction, LLC

Byron Freeland
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.
425 West Capitol Avenue, Suite 1800
Little Rock, AR 72201
(501) 688-8810

Counsel for F & F Construction Co., Inc.

David Grace
Hardin & Grace,
500 Main Street, Suite A
North Little Rock, AR 72119
(501) 378-7900

Counsel for James H. Taylor & Sons Construction Company, Inc.

Stephen Wood
Attorney at Law
701 Calvin Avery Drive
West Memphis, AR 72301
(870) 732-1203

Counsel for Hardin

Tom Courtway
University of Central Arkansas
201 Donaghey, Wingo Hall 205
Conway, AR 72035
(501) 852-2659

Counsel for Sugg

Mark A. Hagemeyer
Attorney at Law
1211 Mellon Street
Little Rock, AR 72207
(501) 686-2520

Counsel for Weiss and Laidlaw

Lori Freno
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 682-1314

Counsel for Potts

Lucinda McDaniel
Arkansas State University
P.O. Box 3077
Jonesboro, AR 72403
(870) 932-0900

9. *Rose v. Arkansas State Plant Board*, 363 Ark. 281, 313 S.W.3d 607 (2005).

This case involved a group of cotton farmers from northeast Arkansas contesting the Arkansas Plant Board's imposition of monetary assessments to finance an eradication program under the Arkansas Boll Weevil Eradication Act, Ark. Code Ann. §2-16-601 and Ark. Code Ann. §2-16-614. It was the plaintiffs' contention

that the regulations promulgated under the statutes were not authorized by law. A non-jury trial was held and I rendered a verdict for the plant board. The case was appealed and affirmed.

Counsel for Rose

Allan Gates
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.
425 West Capitol Avenue, Suite 1800
Little Rock, AR 72201
(501) 688-8816

Cal McCastlain
Dover, Dixon, Horne P.L.L.C.
425 West Capitol 37th Floor
Little Rock, AR 72201
(501) 375-9151

Allen Dobson
Cross, Gunter, Witherspoon & Galchus, P.C.
500 President Clinton Avenue
Little Rock, AR 72201
(501) 371-9999

10. *Redus v. Beebe*, Jefferson County Circuit Court No. 35CV-12-502 (Assigned to me by the Arkansas Supreme Court.).

This case was brought by Mayor Redus of Pine Bluff asking for an interpretation of Ark. Code Ann. §14-43-303, Ark. Code Ann. §14-43-305 and Ark. Code Ann. §14-37-113. Arkansas mayoral elections are held at different election cycles depending on the size of a city's population. Pine Bluff's population had risen and fallen above and below the 50,000 bench mark, leaving a question as to when the mayoral election should take place. I ruled that an election should take place in 2012.

Counsel for Redus

Gene McKissick
McKissick, Gene & Associates
Post Office Box 9587
Pine Bluff, AR 71611
(870) 534-6332

Counsel for Beebe

D. Scott Smith
Arkansas Attorney General's Office
Number 4 Capitol Mall, Room 404-A
Little Rock, AR 72201
(501) 370-1510

- 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.

As noted above, Rule 58 of the Arkansas Rules of Civil Procedure provides for the prevailing party to prepare a draft judgment or decree and submit it to the court for approval. Although I have required parties to correct any misstatements of law or fact before approving the judgment, I have not written any opinions in the traditional sense.

- 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.

Although I have not written opinions in the traditional sense, I have provided a summary of all cases in which my substantive or procedural rulings were reversed or criticized.

Evins v. Carvin, 2013 Ark. App. 185 (Ark. Ct. App. 2013). I denied the defendant's motion to dismiss a third action by the same plaintiff because the second action had been dismissed without prejudice. The Arkansas Court of Appeals reversed on the basis that the language of the rule dictated that the second dismissal operated as an adjudication on the merits and barred the filing of a third complaint.

White v. Clay, 2013 Ark. App. 166 (Ark. Ct. App. 2013). The plaintiff moved to strike the answer and for default judgment on the basis that the answer was not signed by the defendant or by an attorney on his behalf and was void. I denied the motion to strike and for default, and I granted the defendant's motion for summary judgment on the basis of the statute of limitations. The Arkansas Court of Appeals, noting that there were no Arkansas cases directly on point with these

particular facts, relied on a case from Virginia to reverse the denial of the motion to strike.

Johnson v. Windstream Communications, Inc., 2012 Ark. App. 590 (Ark. Ct. App. 2012). I granted summary judgment for the defendant in a suit pursuant to the Americans with Disabilities Act and the Arkansas Civil Rights Act. The Arkansas Court of Appeals reversed and remanded for further findings of fact.

Guy Maris Trust v. Truemper, 2012 Ark. App. 232 (Ark. Ct. App. 2012). After finding that my interpretation that the logging statute applied was correct and affirming the summary decision on the negligence claim, the Arkansas Court of Appeals reversed the granting of summary judgment, concluding that genuine issues of material fact remained regarding agency.

Grayson & Grayson v. Couch, 2012 Ark. App. 20, 388 S.W.3d 96 (Ark. Ct. App. 2012). The Arkansas Court of Appeals affirmed the granting of summary judgment on the lawyer's counterclaim but reversed as to the portion of the decision granting summary judgment in favor of the firm, finding that there were questions of material fact remaining.

Carter v. Cline, 2011 Ark. 474, 385 S.W.3d 745 (Ark. 2011). A jury entered a verdict for the sellers, and I denied the prospective buyer's motion for judgment notwithstanding the verdict, including a Rule 54(b) certification. After approving the Rule 54(b) certification, the Arkansas Supreme Court agreed with the prospective buyer that a condition precedent regarding financing had not been met and, therefore, reversed the denial of his motion for directed verdict and subsequent motion for judgment notwithstanding the verdict.

PHH Mortgage Corporation v. Yeager, 2011 Ark. App. 313 (Ark. Ct. App. 2011). The Arkansas Court of Appeals affirmed the decision to let a default judgment stand but reversed as to the damage calculation.

Campbell v. Asbury Automotive, Inc., 2011 Ark. 157, 381 S.W.3d 21 (Ark. 2011). The Arkansas Supreme Court reversed the granting of defendants' motion for summary judgment on the issue of the applicability of the Arkansas Deceptive Trade Practices Act, the denial of subclass certification of a hidden financing fee claim, and the granting of defendant's motion for summary judgment on the claim of unjust enrichment. However, the Arkansas Supreme Court affirmed the decision to deny the plaintiffs' attempt to amend the complaint post-certification and the rulings as to the three issues raised by the defendants in their cross appeal.

Quality Petroleum, Inc. V. Windward Petroleum, Inc., 2011 Ark. App. 116, 378 S.W.3d 818 (2011). The Arkansas Court of Appeals reversed the grant of defendant's motion for summary judgment acknowledging that neither party had identified a case directly on point and relying on the Restatement (Second) of

Torts. The Court concluded that questions of material fact remained now that it had determined that the claim was not extinguished as a matter of law.

McClane Southern, Inc. v. Arkansas Tobacco Control Board, 2010 Ark. 498, 375 S.W.3d 628 (2010). This was an action for judicial review of decision of the Arkansas Tobacco Control Board and for declaratory judgment. While the Arkansas Supreme Court affirmed the decisions regarding the denial of declaratory relief and the plaintiff's lack of standing, it disagreed in its *de novo* review of the Board's opinions with my affirmance of the Board's interpretation of a portion of the statute at issue, Arkansas Code Annotated § 4-75-701.

Young v. Kajkenova, 2010 Ark. App. 783 (Ark. Ct. App. 2010). I granted the defendant's motion to strike the plaintiff's medical expert for failure to comply with a discovery order. The Court of Appeals reversed and remanded for additional analysis. On remand, I again struck the witness after hearing further argument. On the second appeal, my decision was affirmed.

Turley v. Staley, 2009 Ark. App. 840, 372 S.W.3d 821 (Ark. Ct. App. 2009). After a bench trial, I dismissed the buyer's complaint, granted the trustee's counterclaim and granted the seller husband's complaint for possession of the property. The Arkansas Court of Appeals reversed the decision, relying on the maxim that forfeitures are not favorites of the law and on the seller's lack of clear renunciation of their acceptance of untimely payments.

Roeben v. BG Excelsior Limited Partnership, 2009 Ark. App. 646, 344 S.W.3d 93 (Ark. 2009). The Arkansas Court of Appeals affirmed the decision as to the application of the statute of limitations to dismiss *BG* but found that genuine issues of material fact remained requiring reversal of the summary judgment as to the two defendant employees.

Staton v. State, 372 Ark. 387, 277 S.W.3d 190 (Ark. 2008). In a previous class action, the plaintiffs had obtained a consent judgment. The plaintiff class subsequently filed a petition for judicial review of the Board's decision to deny the plaintiff's request that it make demand on the bonds posted by the deferred-presentment corporation. I affirmed the decision of the Board, relying on the language of the bonds that limited their coverage to a violation of the Check-Cashers Act or a Board rule or regulation. In its *de novo* review of the Board's decision, the Arkansas Supreme Court reversed the finding of the Board.

Bomar v. Moser, 369 Ark. 123, 251 S.W.3d 234 (Ark. 2007). This was a legal malpractice action against two lawyers. I granted summary judgment to one of the lawyers. The Arkansas Supreme Court reversed my decision, finding that there were fact questions on the standing issue and also on the issue of whether fraudulent concealment tolled the statute of limitations.

Miller v. Centerpoint Energy Res. Corp., 98 Ark. App. 102, 250 S.W.3d 574 (Ark. Ct. App. 2007). I granted the owners' motion for summary judgment, which was affirmed, and granted the gas company's motion to dismiss based on the statute of limitations. The Arkansas Court of Appeals reversed the granting of Centerpoint's motion to dismiss finding that the wrongful-death claim was not derivative of the survival claim in this case because the survival claim had not been reduced to a final judgment and was thus not barred by the statute of limitations.

Arkansas State Board of Education v. Honorable James M. Moody Jr., 367 Ark. 181, 238 S.W. 3d 607 (Ark. 2006). The Arkansas Supreme Court reversed and dissolved my entry of a temporary restraining order after concluding that the Bryant School District should be added as a necessary party in the case.

Garrison v. Pickering, Arkansas Court of Appeals No. CA06-59 (unpublished opinion, copy supplied.). I granted the defendant sellers' motion for summary judgment based on the lack of proof of justifiable reliance on any statements made by the sellers, relying on the contractual disclaimers and the decision by the buyers to hire two inspectors. The Arkansas Court of Appeals reversed, concluding that the contractual disclaimers did not bar reliance as a matter of law and that there were material fact questions remaining.

Chandler v. AR APPR. LIC., 92 Ark. App. 423, 214 S.W.3d 861 (2005). This was an administrative appeal in which I affirmed the Board's decision and on appeal the Arkansas Court of Appeals raised the issue *sua sponte* of the lack of findings of fact by the Board. The Court remanded the case to me so that I could remand it to the Board for findings of fact to support its decision.

UNUM Life Ins. Co. v. Edwards, 362 Ark. 624, 210 S.W.3d 84 (2005). The jury returned a verdict in favor of the plaintiff on the breach of contract claim, which was not appealed, and on the bad faith claim. I granted the plaintiff's motion for statutory penalty and attorney's fees. On appeal, the Arkansas Supreme Court found that there was not substantial evidence to support the jury's verdict of bad faith and overturned the verdict but affirmed the award of penalty and fees.

Wilmans v. Sears, Roebuck and Co., 355 Ark. 668, 144 S.W.3d 245 (2004). This was an action by a plaintiff seeking a declaratory judgment. She offered that it may have been her daughter, who now lived in Mexico, who had made the unauthorized charges. The defendant moved to dismiss based on the plaintiff's failure to join the daughter as a necessary party. I granted the motion, and the Arkansas Supreme Court reversed with two dissents.

- 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.

There are no published opinions or decisions from my court. In March 2013 the

Pulaski County Circuit Clerk began electronic filing. Prior to that time paper records were filed and later scanned into digital records. While records can be retrieved by case name or number, they cannot be searched electronically for content. Records prior to 2005 are kept in off-site storage in paper form.

- 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.

Although I have not written opinions in the traditional sense, I have presided over the following cases involving constitutional issues, which are summarized in the appellate decisions listed below.

Munson v. Arkansas, 375 Ark. 549, 294 S.W.3d 409 (Ark. 2009)

Gatzke v. Weiss, No. CV2007-3981, *aff'd* 375 Ark. 2007, 289 S.W.3d 455 (Ark. 2008)

McLane Southern v. Davis, No. CV 03-7958 (Final Judgment supplied), *aff'd* 366 Ark. 164, 233 S.W.3d 674 (Ark. 2006)

Rose v. Arkansas State Plant Board, 363 Ark. 281, 313 S.W.3d 607 (Ark. 2005)

Brooks v. Bd. of Certified Court Reporters Examiners, 360 Ark. 296, 200 S.W. 3d 900 (Ark. 2005)

- 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.

The circuit courts of Arkansas do not have an automatic recusal system. Each case I accept is evaluated on a case-by-case basis. There have been a few occasions in which every judge in this judicial district has recused. Those cases usually involve a judge or local government official as a party or a lawyer who has a large number of cases before a large number of the judges.

I have recused on very few cases and each has been sua sponte as a result of a personal relationship I have had with a party.

I have one lawyer on my permanent recusal list. He is Luther Sutter recently of Harrill and Sutter. His cases are assigned to other judges regardless of the nature of the case. I believe other judges in this district as well as federal judges in the Eastern District of Arkansas likewise recuse on Mr. Sutter's cases. I have recused in the following cases which were filed by Luther Sutter:

Briggs v. The Kroger Co., Pulaski County Circuit Court Case No. CV-13-222 (2013).

Lillian Agee v. Starbucks Corporation, Pulaski County Circuit Court Case No. CV-12-2362 (2012).

Leon Dulmer v. City of Little Rock, Pulaski County Circuit Court Case No. CV-11-4400 (2011).

Sharon McCluler v. University of Arkansas System, Pulaski County Circuit Court Case No. CV-11-2641 (2011).

Linda Webb v. Department of Workplace Services, Pulaski County Circuit Court Case No. CV-11-484 (2011).

Cheryl Matthews v. Lisa Hayes et al., Pulaski County Circuit Court Case No. CV-10-3447 (2010).

Janann Johnson v. Windstream. Pulaski County Circuit Court Case No. CV-09-7248 (2009).

I have also recused myself sua sponte in the following cases:

Thomas Koller v. ADF&A, Pulaski County Circuit Court Case No. CV-13-1366 (2013). I recused sua sponte because my daughter was on the same basketball team as the defendant. An order was entered notifying the parties.

U.S. Bank v. Welch and Kitchens, Pulaski County Circuit Court Case No. CV-13-1091 (2013). Chip Welch is a sitting circuit judge in my judicial

district. The administrative judge entered an order recusing every judge in this district.

Jim Lynch v. Mark Stodola, Pulaski County Circuit Court Case No. CV-13-360 (2013). Mark Stodola served as my campaign manager during my first election. An order of recusal was entered sua sponte notifying the parties.

Bennie O'Neil v. Alice Gray et al., Pulaski County Circuit Court Case No. CV-12-816 (2012). Alice Gray is a sitting circuit judge in my judicial district. The administrative judge entered an order recusing every judge in this district.

James Warren et al. v. Herman Anderson, Pulaski County Circuit Court Case No. CV-12-437 (2012). Judge Warren is a sitting circuit judge in my judicial district. The administrative judge entered an order recusing every judge in this district.

John Doe v. Arkansas State Agency, Pulaski County Circuit Court Case No. CV-11-3977 (2011). This was a suit to forbid the sealing of records. The administrative judge entered an order recusing every judge in this district.

Justin Couch v. Cameryn Miller, Pulaski County Circuit Court Case No. CV-10-6140 (2010). I recused sua sponte because Miller's father is a close friend. An order was entered notifying the parties.

Willard Proctor v. Charlie Daniels, Pulaski County Circuit Court Case No. CV-10-1439 (2010). This case was filed by Willard Proctor, a sitting judge in my district. The administrative judge entered an order recusing every judge in this district.

Janann Johnson v. Windstream, Pulaski County Circuit Court Case No. CV-09-7248 (2009). The parties originally agreed to waive any appearance of impropriety stemming from the fact defense counsels was a law partner of mine six years earlier. The case was tried, appealed and reversed for further findings. After the appeal, plaintiff's counsel announced he would run against me in the next election so I recused sua sponte.

First Security Bank v. Bamco Gas, LLC. Pulaski County Circuit Court, Case No. CV-09-3281 (2009). I recused sua sponte due to my personal relationship with Ernest Barlett, a principle in Bamco. Our daughters are friends and basketball team mates. An order was entered notifying the parties.

Tina K. Williams v. RPM, Inc. et al., Pulaski County Circuit Court Case No. CV-02-10148 (2002). The case involved a class action asserting claims under the Arkansas Deceptive Trade Practices Act. I recused sua sponte due to the fact that defense counsel was a law partner of mine the previous year. I notified the parties by letter.

Jane Tagle Amy v. Al Mccorkle, Pulaski County Circuit Court Case No. CV- 02-4724 (2002). I recused sua sponte because defense counsel, Scott Clevenger defended me in civil law suit involving an automobile collision. I notified the parties of my recusal by letter.

There have also been cases in which I have notified the parties of a familiarity I might have with a party and invite the parties to accept or decline to have me preside over their case. On each of these occasions I have been asked by all of the parties to remain on their respective cases. The following is a list of the cases in which a personal relationship with a party was identified but a waiver was entered by the parties and I was asked to remain on the case:

Wendolyn Brandon v. Benton Brandon, Pulaski County Circuit Court Case No. DR-05-5617 (2005). This was a divorce case in which I knew both of the parties socially. Both parties waived any conflict verbally on the record. The case was ultimately settled.

Farm Fresh Producers v. Catfish Producers, Pulaski County Circuit Court Case No. CV-04-8775 (2004). I informed the parties that I had a social relationship with Pugh, one of the defendants. I had each party to the law suit sign a letter acknowledging awareness of this fact and further acknowledging that they wanted me to continue to preside over the case. Each party did so. The same procedure was followed midway through the case regarding an attempted *ex parte* communications with the court by a defendant. They parties again signed a letter acknowledging the information and waiving any conflict.

Carolyn and John Brockway v. Daniel Dillard, MD, Pulaski County Circuit Court Case No. CV-01-3072 (2001). Winslow Drummund represented my father in a wrongful death case. The parties were made aware of this fact and agreed to waive any potential conflict verbally on the record.

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 never served as a public officer other than as a circuit judge.

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

I have not held any offices in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

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

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

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

I have not clerked for a judge.

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

I did not practice alone for any of my legal career.

- 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.

1989 – 2003
Wright, Lindsey & Jennings
200 West Capitol, Suite 2300
Little Rock, Arkansas 72201
Associate (1989-1994)
Partner (1995 – 2003)

- 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 not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

The general nature of my law practice both as an associate and a partner at Wright, Lindsey & Jennings was to litigate insurance defense claims. When I first began my practice, I would try 12 to 15 cases a year and would try these alone. These cases were low-exposure cases. As my practice developed and the potential exposure of cases rose, I would try five to six cases a year. Although I was lead counsel on most of these cases, due to the complexity of these cases I usually had co-counsel.

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

Initially, most of the litigation I handled was automobile claims as well as wrongful arrest claims involving shoplifters. My clients included Target, Nationwide Insurance, The Travelers, CNA, Allstate, Insurisk, and other like casualty companies. Later into my practice, I began to focus more on products liability defense as well as heavy trucking defense. I represented Hyster, Yamaha, GE, Whirlpool, Van Liner, United Trucking, USA Trucking, and Maverick Trucking among other clients.

- 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.

100% of my practice involved litigation, and I appeared in court frequently.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 25% |
| 2. state courts of record: | 75% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

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

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 60 cases to verdict in a court of record as a lawyer. I

would estimate that in 60% of these cases I was lead counsel. In the other 40% of these cases, I was second chair.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 80% |
| 2. non-jury: | 20% |

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.

There was one case that I defended, *Smith v. Buford*, 4:96-cv-00950-SMR (E.D. Ark.), where the plaintiff in a state court case moved for certiorari, which was denied. After reviewing the docket and my records, I do not believe that I filed an opposition to the petition for certiorari.

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. *Montgomery Ward & Co. v. Anderson*, 334 Ark. 561, 976 S.W.2d 382 (1998), appeal from Stone County Circuit Court; Honorable John Dan Kemp presiding.

On November 14, 1994, appellee Anderson was injured in a fall while shopping in appellant's Montgomery Ward store in Little Rock. Montgomery Ward personnel sent her to the hospital at the University of Arkansas for Medical Sciences ("UAMS") to be treated. Anderson had surgical and other medical-services expenses at UAMS totaling \$24,512.45. Montgomery Ward moved in limine to prohibit Anderson from presenting the total amount billed by UAMS as proof of her medical expenses and asked that her evidence be limited to the actual amount for which she would be responsible to pay. Anderson argued that she had reached an agreement with UAMS that UAMS would discount the bill by 50%. Anderson asserted that the collateral-source rule would prohibit Montgomery Ward from introducing evidence of the discount. I argued that UAMS essentially

changed the price of the medical services and that Anderson should not be able to recover the undiscounted cost of the services. I was the lead attorney of record for the defendant at trial and I was responsible for the appellate brief. The jury found for the plaintiff, and the appellate court affirmed.

Counsel for Anderson:

Wesley “Butch” Ketz
(Contact information unavailable)

2. *Johnny C. Goodnoh v. Kelly-Springfield Tire Company*, Eastern District of Arkansas Case No. 4-91-CV-609-SWW; Honorable Susan Webber Wright presiding.

This was a products liability case resulting from a tire failure in a tractor trailer tire repair shop. The plaintiff was trying to inflate a repaired tire by spraying ether into the inside of the tire and lighting it on fire to seat the beads of the tire. After the beads of the tire were seated, air was introduced into the tire and reignited the ether which caused pressure to build up into the tire. When the plaintiff attempted to lift the tire it exploded, propelling him into the rafters of the shop and badly injuring his hands and back. He sued Kelly-Springfield for producing an unreasonably dangerous product. I was co-counsel representing the defendant at trial. The jury returned a verdict for the defendant after a two-week trial.

Co-Counsel for Goodyear:

Honorable James Moody
(Formerly with Wright, Lindsey & Jennings)
500 West Capitol Avenue
Little Rock, AR 72201
(501) 604-5351

Counsel for Goodnoh:

J.T. Skinner
1141 East Main Street, # 300
Batesville, AR 72501
(888) 902-5580

3. *Ziegler v. T & S Sawmill*, Pulaski County Circuit Court No. CV-04-11958; Honorable David Bogard presiding.

This case arose out of an industrial accident within a warehouse at T & S Sawmill. Ziegler was a trucker working near some stacks of lumber when he was pinned between his truck trailer and a large fork lift that was being driven in

reverse. Ziegler later died from his injuries. The theory of liability was negligent hiring and training of the employee driving the fork lift. I was sole counsel on this case for the defendant. The case was tried to a jury, which returned a verdict for plaintiff.

Counsel for Ziegler:

Greg Kitterman
1101 Garland Street
Little Rock, AR 72201
(501) 374-1145

4. *Kenneth Graham v. Searcy Yamaha*, White County Circuit Court No. CV-96-323; Honorable Judge Bill Mills presiding.

This case arose out of an accident Graham had while operating a Yamaha four-wheeler. Graham had the four wheeler fitted with a windshield by Searcy Yamaha. It was alleged that the installation of the windshield restricted the flow of hydraulic fluid to the breaks causing a failure. I was sole counsel for the defense on this case. The case was tried to a jury, which rendered a verdict for the defense after a one-week trial.

Counsel for Graham:

J.T. Skinner
1141 East Main Street, # 300
Batesville, AR 72501
(888) 902-5580

5. *Thomas v. Lincare*, Jefferson County Circuit Court No. CV-99-284; Honorable Judge Berlin Jones presiding.

This lawsuit was brought against the manufacturer of a medical gas portable oxygen unit. A young boy of two was using the device when super cooled air and liquid oxygen flowed through his cannula onto his nose causing severe frost bite. I defended Lincare as sole counsel. The case was settled before trial.

Counsel for Thomas:

Gary Holt
708 West Second Street
Little Rock, AR 72201
(501) 372-0266

6. *Kimberly Rogers v. Vidiots, Inc. and MP Productions*, Pulaski County Circuit Court No. CV-91-7138; Honorable Jack Lessenberry presiding.

This case arose out of the construction of a bank of loud speakers at the Crosby Stills and Nash concert in Little Rock. The plaintiff was a spectator at the concert and was near the front of the stage when the wind blew the bank of speakers over onto to her. She received severe facial fractures that required extensive reconstructive surgery to her face. I was second chair defending MP Productions and participated in all aspects of the litigation. After extensive discovery, the case settled just prior to trial.

Co-Counsel for MP:

Honorable James M. Moody
(Formerly with Wright, Lindsey & Jennings)
500 West Capitol Avenue
Little Rock, AR 72201
(501) 604-5351

Counsel for Rogers:

Phillip Duncan
900 South Shackleford Road, Suite 725
Little Rock, AR 72211
(501) 228-7600

7. *Strom v. Willbanks d/b/a/ J&D Willbanks Bushhogging and Johnson*, Grant County Circuit Court CV-2001-70-1; Honorable John Cole presiding.

Strom was traveling on a highway when a private contractor working for the Highway Department pulled his tractor from the median into the path of Strom. The driver of the tractor claimed it was too muddy to turn around in the median. Strom's medical bills were in excess of \$950,000. The case rapidly became a coverage-dispute case. The agent for the contractor sold the contractor \$2,000,000 in coverage and collected premiums on that limit of coverage. The insurance company claimed the agent only had the authority to write \$1,000,000 in coverage. A favorable settlement agreement was reached. I was lead counsel for the plaintiff.

Counsel for Willbanks:

Bruce Munson
400 West Capitol Avenue, Suite 1900
Little Rock, AR 72201
(501) 374-6535

Co-Counsel for Strom:

Steve Lancaster
200 West Capitol, Suite 2300
Little Rock, AR 72201
(501) 212-1238

8. *Baker v. Meadows*, USDC 95-CV-2084; Honorable Jimm Hendren presiding.

This was a motor vehicle accident involving two tractor trailers and a passenger vehicle. The case went to trial with the truck companies trying to place liability on one another. The jury found in favor of the plaintiff and assessed damages against the defendant. I was lead counsel for the defendant.

Counsel for Baker:

Greg Kitterman
1101 Garland Street
Little Rock, AR 72201
(501) 374-1145

Counsel for Proline Carriers:

Miriam Hopkins
400 West Capitol, Suite 2400
Little Rock, AR 72201
(501) 372-1887

9. *Privett v. K-Mart and Huffy*, Lonoke Circuit Court No. CV-1994-456; Honorable Lance Hanshaw presiding.

This was a products liability case that involved an adult male playing basketball on a Huffy Slam Jam Rim. The Slam Jam rim is a breakaway basketball goal sold and marketed to withstand dunking. This particular rim was not as advertised, and Privett received a serious laceration of his face. The primary defense centered on the fact that Privett was hanging from the rim when it failed. Since there were no warnings not to hang from the rim that accompanied the product, the carrier ultimately decided to settle the case. This was one of the first product liability cases I defended without co-counsel.

Counsel for Privett:

Honorable Morgan Chip Welch
(Formerly with the Welch Law Firm)
401 West Markham Street, Suite 310

Little Rock Arkansas 72201
(501) 340-8542

10. *E-Ton Dynamics Industries Corp. v. Hall*, 83 Ark. App. 35, 115 S.W. 3d 816 (2003); Honorable David Burnett presiding.

This case involved a products liability claim against E-Ton for manufacturing a miniature ATV with an exposed chain guard. Hall, who was four years old, was riding in front of her father on the ATV bare footed when her toes were caught in the chain drive. All of the toes on her on her right foot were severed. During the trial, plaintiff's medical expert was allowed to testify as to speculative future damages. The jury found for plaintiff. The case was appealed on the issue of the doctor's testimony, and the court of appeals reversed and remanded the case for a new trial. I represented E-Ton as sole counsel at trial and on appeal. I joined the bench while the case was on remand, but I understand that it was settled by replacement counsel.

Counsel for Hall:

Troy Henry
630 South Main
Jonesboro, AR 72401
(870) 932-4522

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 career prior to taking the bench primarily was devoted to litigating cases involving product liability claims as well as defending common carriers in personal injury litigation. On occasion I would represent individuals or companies in contract disputes. The cases were litigated in both state and federal court. While in private practice, most of the cases I handled as an attorney settled before they went to trial. Typically in those cases, I would engage in extensive discovery, including expert discovery, to evaluate my client's case and reach a satisfactory settlement agreement. For example, one significant case involved the installation of sod for a golf course being built in Collierville, Tennessee. The supplier of the sod had sued the course owner for failing to pay for the work performed and materials provided. After extensive discovery the case was finally resolved by mediation. Many other cases were won on motions to dismiss or on motions for summary judgment.

I have also benefited greatly from my involvement in the Pulaski County Bar

Association. As I member of the board of directors, I have had many panel discussions with other attorneys on how to improve civility and professionalism among lawyers while associated with this organization.

I have never engaged in lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have taught twice as an adjunct professor at the University of Arkansas Bowen School of Law. Each time I taught a workshop on trial advocacy and courtroom procedure. There was no syllabus for the workshop. Each week the students would attempt to perform the various segments of a trial they had discussed in class such as voir dire, opening statements, direct examinations, cross examinations, and closing arguments. The final consisted of a complete mock trial.

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 have already vested in the Arkansas Judicial Retirement System and expect to receive benefits under that plan at age 65.

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.

If confirmed, the only plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the courts would be to teach and manage Moody Manor, LLC, a family limited liability company that holds property in El Dorado, Arkansas, consistent with the restrictions imposed on the federal judiciary.

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 my father, James Maxwell Moody, returns to the practice of law, I would recuse. Should any other potential conflicts arise, I will adhere to the Code of Conduct for United States Judges and other applicable authority in resolving any conflicts of interest.

- 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 be guided by 28 U.S.C. 455, Canon 3 of the Code of Conduct for United States Judges and other applicable authority in resolving any conflicts of interest.

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.

My role as judge prohibits me from actively engaging in other pro bono legal work. However, I have engaged in many community activities with my church as allowed under the judicial canons. These activities include mentoring confirmands, teaching Sunday school class and coaching the church basketball team.

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 January 2013, I spoke by telephone with Senator Mark Pryor about my desire to serve as a judge in the Eastern District of Arkansas. In late January, I met with an aide for Senator John Boozman in Little Rock, Arkansas. On March 6, 2013, Senator Pryor informed me that I was among the candidates he had recommended to the White House, and on April 11, 2013, he notified me that I had been selected to move forward. Since April 12, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 21, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 25, 2013, the President submitted my nomination to the Senate.

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

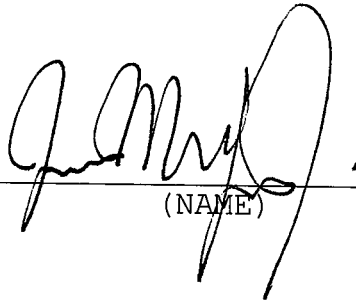
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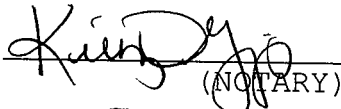
I, James Maxwell Moody Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 25, 2013

(DATE)



(NAME)



(NOTARY)

