

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

James Andrew Wynn, Jr.

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

United States Circuit Judge for the Fourth Circuit

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

North Carolina Court of Appeals
Post Office Box 888
Raleigh, NC 27602



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

1954; Robersonville (Martin County), North Carolina

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.

January 2001; Judge Advocate School, Charlottesville, Va;
Military Trial Judge Certification

October 1979 to December 1979; Naval Justice School, Naval Education and Training Center, Newport, RI; Article 27(b) UCMJ Certification

June 1993 to May 1995; University of Virginia School of Law; Masters of Law in Judicial Process received May 1995

1976 - 1979; Marquette University Law School; J.D., 1979

1972 - 1975; University of North Carolina at Chapel Hill; B.A., May 1975

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.

2009-Present Vice President
National Conference of Uniform Law Commission
111 N. Wabash, Suite 1010
Chicago, IL 60602

2009-Present Chair
Judges Advisory Committee on Ethics
Standing Committee on Ethics and Professionalism
American Bar Association
321 N. Clark Street
Chicago, IL 60654

2009-Present Chair
Appellate Judges Ethics Committee
Appellate Judges Conference
American Bar Association
321 N. Clark Street
Chicago, IL 60654

2008-2009 Co-Chair
(completed) 2009 Diversity Conference
American Bar Association
321 N. Clark Street
Chicago, IL 60654

2007-2009 Division Chair
(completed) National Conference of Commissioners on Uniform State Laws
111 N. Wabash Avenue
Suite 1010
Chicago, IL 60602

2005-2009 Vice Chair
(completed) Board of Directors
Justice at Stake Campaign
717 D Street, N.W. Suite 203
Washington, DC 20004

1979-2009
(Retired) Judge Advocate General's Corps (Active & Reserve)
United States Navy
Washington Navy Yard
1322 Patterson Avenue, S.E.
Suite 3000
Washington, DC 20374

2007-2008 Chair
Judicial Division
American Bar Association
321 N. Clark Street
Chicago, IL 60654

2003-2006 Trustee
Interest on Lawyer Trust Account Committee
North Carolina State Bar
208 Fayetteville Street
Raleigh, NC 27601

2003-2004 Chair
Appellate Judges Conference
Judicial Division
American Bar Association
321 N. Clark Street
Chicago, IL 60654

2003-2004 Chair
Brown v. Board of Education Fiftieth Anniversary Committee
North Carolina Bar Association
8000 Weston Parkway
Cary, NC 27513

2002-2005 Executive Committee
National Conference of Commissioners on Uniform State Laws
111 N. Wabash Avenue
Suite 1010
Chicago, IL 60602

2000-2001 Vice President
North Carolina Bar Association
8000 Weston Parkway
Cary, NC 27513

2000 Board of Governors
American Judicature Society
The Opperman Center at Drake University
2700 University Avenue
Des Moines, IA 50311

1/99-Present Associate Judge
North Carolina Court of Appeals
Post Office Box 888
Raleigh, NC 27602

10/98-12/98 Associate Justice
Supreme Court of North Carolina
2 East Morgan Street
Raleigh, NC 27601

1998-2004 Executive Board Member
Program in the Humanities and Human Values
University of North Carolina, Chapel Hill
CB# 3425, UNC-Chapel Hill
Chapel Hill, NC 27599-3425

1990-1998 Associate Judge
North Carolina Court of Appeals
Post Office Box 888
Raleigh, NC 27602

1989-1994 Trustee
Pitt Community College
1986 Pitt Tech Road
Winterville, NC 28590

1988-1990 Partner
Fitch, Wynn & Associates
Attorneys at Law
615 East Nash Street
Wilson & Greenville, NC

1998-1990 Vice-Chairman
Greenville Environmental Advisory Commission
Greenville City Hall
200 West Fifth Street
Greenville, NC 27835

- 1998-1990 Trustee
North Carolina Health Care Advisory Board
Raleigh, NC

- 1986-1988 Partner
Fitch, Butterfield & Wynn
Attorneys at Law
615 East Nash Street
Wilson & Greenville, NC

- 1984-1986 Associate
Fitch & Butterfield
Attorneys at Law
615 East Nash Street
Wilson, NC

- 1983-1984 Assistant Appellate Defender
Office of the Appellate Defender for North Carolina
123 West Main Street, Suite 500
Durham, NC 27701

- 1979-1983 Judge Advocate General's Corps (Active)
United States Navy
Washington Navy Yard
1322 Patterson Avenue, S.E.
Suite 3000
Washington, DC 20374

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.

Yes, I have registered for selective service.

Military Service:

July 27, 1979 to September 30, 1983

United States Navy (Active)

October 1, 1983 to August 1, 2009

United States Navy (Reserve) (Retired)

Judge Advocate General's Corps

Rank: Captain (O-6)

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. H

2008 Raymond Pace Alexander Award, National Bar Association
2008 Harvey E. Beech Outstanding Alumni Award, University of North Carolina at Chapel Hill
2004 All-University Alumni Merit Award, Marquette University
2002 Hallows Fellow & Visiting Scholar, Marquette University Law School
1996 Martin Luther King Achievement Award, General Baptist State Convention of North Carolina
1995 Appellate Judge of the Year, North Carolina Academy of Trial Lawyers
1995 Warren Burger Scholarship, John Marshall Harlan Symposium on Comparative Law
1979 Order of the Barristers, Marquette University Law School
1979 Woolsack Society Award, Marquette University Law School
1979 Order of the Old Well, University of North Carolina at Chapel Hill

Military Decorations:

Meritorious Service Medal (Three Awards)
Navy Commendation Medal (Two Awards)
Naval Reserve Medal
National Defense Service Medal
Global War on Terrorism Medal

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Chair, Judges Advisory Committee on Ethics, 2009-Present
Chair, Appellate Judges Conference Ethics Committee, 2008-Present
Co-Chair, ABA 2009 Diversity Conference, 2008-2009 (completed)
Member, World Justice Commission, 2007-Present
ABA House of Delegates, 2004-2008
Standing Committee on Minorities in the Judiciary, 2000-2008
Chair, Judicial Division, 2007-2008
Chair, Appellate Judges Conference, 2003-2004
Joint Commission to Evaluate Model Code of Judicial Conduct, 2003-2007
Chair, Working Groups on First Amendment and Judicial Speech, 2002-2003
Standing Committee on Judicial Independence, 2001-2005
Standing Committee on State Judicial Selection Standards, 2001-2003

Executive Committee and Membership Committee Chair, Appellate Judges
Conference, 1996-1998
Appellate Judges Education Committee
 Chair, Appellate Judges Seminar, Reno, 2000
 Chair, Appellate Judges Seminar, Hawaii, 1999
Special Committee on Judicial Selection, Judicial Independence Commission,
1999

The American Law Institute
 Member, 2000-Present

National Bar Association
 Judicial Council, 1995-Present

North Carolina Association of Black Lawyers, 1983-Present
 Secretary, Judicial Council, 1997-2000

North Carolina Bar Association
 Vice President, 2000-2001
 Strategic Planning Committee, 2009-Present
 Chair, *Brown v. Board of Education* Fiftieth Anniversary Committee, 2003-2004
 Bench Bar Liaison Committee
 Legal Disaster Committee
 Public Information Committee

North Carolina Judicial Conference
 Treasurer, 1997-1998

National Conference of Commissioners on Uniform State Laws
 Vice President, 2009-Present
 Division Chair, 2007-2009
 Scope & Program Committee, 2005-2007
 Executive Committee, 2002-2005
 Drafting Committee, Revised Uniform Arbitration Act, 1997-2000
 Study Committee, Uniform Arbitration Act, 1997-1998
 Drafting Committee, Uniform Tort Apportionment Act, 2000-2003
 Drafting Committee, Uniform Protection of Genetic Information in Employment
 and Insurance Act, 2005-Present

Pitt County Bar Association

Wake County Bar Association

Wilson County Bar Association

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.

North Carolina State Bar, 1984

Wisconsin State Bar, 1979

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

United States Supreme Court, 1985

United States Court of Appeals, Armed Forces, 1985

United States Court of Appeals, Fourth Circuit, 1984

United States District Court, Eastern District of North Carolina, 1984

United States District Court, Middle District of North Carolina, 1984

United States Court of Appeals, Seventh Circuit, 1979

U. S. Military Courts, Article 27(b) Certification, 1979

U.S. Military Courts, Article 26(b), (c) and 42(a) - Military Trial Judge

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.

Member, Sigma Pi Phi Fraternity, Gamma Boule, 1995-Present

Member, Kappa Alpha Psi Fraternity, 1981-Present

Deacon, Providence Missionary Baptist Church, Robersonville,
North Carolina, 1965-Present

Member, American Judicature Society, 1995-1996

Member, National Association for Advancement of Colored People, 1988-1990
Member, North Carolina Academy of Trial Lawyers, 1985-1990
Cornerstone Missionary Baptist Church, Greenville, North Carolina, 1984-1992
Master Mason, Prince Hall Masonic Lodge, 1984-1990
Corinth Missionary Baptist Church, Milwaukee, Wisconsin, 1976-1979
VISTA Supervisor, Wesley Foundation of Greenville, 1975-1976

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

To the best of my knowledge, during the tenure of my membership in the above organizations, none had policies of discrimination based on race, sex, religion, or national origin.

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.

See below as well as documents attached.

State v. Mann: Judicial Choice or Judicial Duty?, 87 U.N.C. L. Rev. 991 (2009)

Judicial Diversity: Where Independence and Accountability Meet, 67 Alb. L. Rev. 775 (2004)

Judging the Judges, 86 Marq. L. Rev. 753 (2003)

All-University Alumni Merit Award Speech Excerpt, Marquette University Law Alumni Magazine 34 (2004)

Chair's Column, American Bar Association Judicial Division Record, Volume II Issue I (Fall 2007)

Chair's Column, American Bar Association Judicial Division Record, Volume II Issue IV (Summer 2008)

Contributor to Online ABA-CLE Program, *Race and Gender Bias in Judicial Election and Selection: Truth or Fiction? Are Women and Minority Judges More Likely to be Targeted by Special Interests?* (April 17, 2007)
<https://www.abanet.org/cle/clenow/raceandgenderbias.html>

Quoted in American Bar Association Magazine, *Revising the Rules Update of Judicial Conduct Code will Address the Changing Justice System* (February 2004 Issue)
http://www.abajournal.com/magazine/revising_the_rules/

Quoted in American Bar Association Magazine, *Bench Learners: The Judiciary's Changing Role Sparks Hotter Topics for CLE Courses* (June 2006 Issue)
http://www.abajournal.com/magazine/bench_learners/print/

- 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.

Committee Member & Contributor, *The National Conference of Commissioners on Uniform State Laws*, Uniform Apportionment of Tort Responsibility Act (2003)

Current Drafting Committees: Business Organizations Act; Misuse of Genetic Information in Employment and Insurance Act; Relocation of Children Act; Notarial Acts; Harmonize Legal Framework for Unincorporated Nonprofit Associations in North America

Current Study Committees: Model Drug Dependence and Rehabilitation Act; Administrative Procedures for Interstate Compact Entities Act

- 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.

Not applicable.

- 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.

Before becoming a judge, I sometime spoke at churches and community events such as Men's Day and Youth Day. The talks' subject matter varied but generally followed the pattern of a personal introduction, a reference to the organization, and then general remarks usually addressing a theme given to me by the group that invited me. The church talks generally centered around religious commitment and stewardship. Additionally, I occasionally spoke to civic groups on legal issues, such as estate planning. I have neither transcripts/recordings nor notes of these speeches.

During my contested judicial campaigns in 1990, 1998, 2000, 2004, and 2008, I gave numerous extemporaneous campaign speeches that were typically no more than ten minutes long. These campaign speeches did not touch on any issues that could come before the court for which I was running, but rather generally addressed, first, my educational and professional background, second, the role of a judge and North Carolina's court system, and, finally, an appeal for election-day support. I have neither transcripts/recordings nor notes of these speeches.

Aside from judicial election-related speeches, since becoming a member of the judiciary, my speeches have been based on general drafts with extemporaneous comments to fit the occasion.

A list of such speeches and the groups to whom they were presented, and copies of the speech drafts are attached as APPENDIX A.

- 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.

See below as well as attached documents.

PBS News Hour Interview with Video, May 11, 2005, "Judging Judges"
Interviewed by Gwen Fill with Judge Charles Pickering on confirmation process.
http://www.pbs.org/newshour/bb/congress/jan-june05/judges_5-11.html

PBS News Hour Story with Video, May 8, 2001, "Race and Justice"

Kwame Holman report on diversity on the federal bench which includes interview with Judge Wynn, Sen. John Edwards and others.

http://www.pbs.org/newshour/bb/race_relations/jan-june01/justice_05-08.html

PBS News Hour Story, January 5, 2000, "Clearing the Bench"

Kwame Holman report on the politics of the federal bench with interviews of Judge Wynn, Sen. John Edwards, Sen. James Clyburn and others

http://www.pbs.org/newshour/bb/law/jan-june00/backlog_1-5.html

Womble Carlyle North Carolina Appellate Blog Interview with Judge Wynn

http://womblencappellate.blogspot.com/2006/10/spotlight-on-judges-series-judge-james_20.html

UNC TV Online Election 2008 Biography, Video Statement, and Audio Interview

http://www.unctv.org/election/candidates/courts/james_wynn.html

Virginia Lawyers Weekly: "Minimal Presence of N.C. Judges on 4th Circuit Raises Concerns" By Guy Loranger, September 29, 2008

Judge Wynn interviewed

<http://www.valawyersweekly.com/weeklyedition/2008/09/29/minimal-presence-of-nc-judges-on-4th-circuit-raises-concerns/>

"Abolish Assignments of Error, Says N.C. Appeals Court Judge," Daily Record and the Kansas City Daily News-Press, Jul 30, 2006 by Ertel Berry

http://findarticles.com/p/articles/mi_qn4181/is_/ai_n16648546

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.

NORTH CAROLINA COURT OF APPEALS

General Court of Justice

Statewide Jurisdiction

This State intermediate appellate court decides all types of appeals, with the exception of capital murder and utility rate cases. It is composed of fifteen judges elected for terms of eight years in nonpartisan statewide elections. The judges sit in panels of three at the Court of Appeals Building in Raleigh. One three-judge panel may not overrule another panel's decision, and therefore prior panels' decisions are binding. However, a dissenting opinion confers an appeal of right based on the dissent to the Supreme Court of North Carolina.

Elected: November 30, 1990 to December 31, 1992

Reelected: November 3, 1992 to September 30, 1998

Appointed: January 1, 1999 to December 31, 2000
Reelected: November 7, 2000 to December 31, 2008
Reelected: November, 4 2008 to Present

SUPREME COURT OF NORTH CAROLINA
General Court of Justice
Statewide Jurisdiction

North Carolina's highest court reviews by discretion on all appeals except capital murder and utility rate cases, as well as appeals based on Court of Appeals dissents, which are heard as a matter of right. The Court is composed of seven justices elected for terms of eight years in nonpartisan statewide elections. The justices sit en banc at the Supreme Court Building in Raleigh.

Appointed: October 1, 1998 to December 31, 1998

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

i. Of these, approximately what percent were:

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

civil proceedings? 65%; criminal proceedings? 35% [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).

1. *State v. Jones*, 133 N.C. App. 448, 516 S.E.2d 405 (1999).

State's Counsel: Isaac Avery, Jonathan Babb, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

Defense Counsel: David B. Freeman, 301 N. Main St., Suite 1100, Winston-Salem, NC 27101, (336) 725-1304

Outcome: I dissented from an affirming judgment, which was reversed by the Supreme Court of North Carolina.

Summary: I dissented from the majority opinion, which affirmed a first-degree felony murder conviction where the underlying felony was a traffic violation with culpable or criminal negligence. The traffic offense and facts were extremely serious – a drunk driver struck a car, killing two passengers and seriously injuring three others. However, the conviction was not at all specific to driving while intoxicated but rather was for assault with a deadly weapon, *i.e.*, a car – a charge that could also be supported by a person who goes more than fifteen miles over the speed limit and has a minor accident. I would have held that subjecting such drivers to potential first-degree felony murder charges, with the attendant possibility of capital punishment, violated due process for lack of fair notice as to the potential consequences of the conduct. I also would have held that applying the felony murder rule as done in this case impermissibly expanded the legislative intent of the felony murder statute and that any such expansion should be undertaken by the General Assembly and not the judiciary. Upon review, the Supreme Court of North Carolina reversed based on my dissent.

2. *Hyde v. Abbott Laboratories, Inc.*, 123 N.C. App. 572, 473 S.E.2d 680 (1996).

Plaintiff's Counsel: Raymond D. Large, Jr., Diane E. Sherrill, 28 Maple St., Sylva, NC 28779, (828) 586-4051

Defense Counsel: James Exum, Larry Sitton, Richard Coughlin, Smith Moore Leatherwood, 300 N. Greene St., Greensboro NC 27401, (336) 378-5200

Outcome: Reversed

Summary: In this case, the defendants had successfully moved to dismiss plaintiff's North Carolina statutory antitrust claims for lack of standing because plaintiff consumers were indirect purchasers. The court reversed, holding that the statute did not limit standing to direct purchasers and the General Assembly, in its last, 1969, amendment broadened the statute, evidencing legislative intent that the statute apply broadly. Further, the court noted that while a similar federal statute has been held not to provide relief to indirect purchasers, the federal case law so holding post-dated the General Assembly's last statutory amendment, and the case law at that time primarily went the other way.

3. *State v. Tutt*, 171 N.C. App. 518, 615 S.E.2d 688 (2005).

Defense Counsel: Terry F. Rose, 212 Bridge St., Smithfield, NC 27577, (919) 938-1616

State's Counsel: Kimberly Duffley, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

Outcome: Affirmed

Summary: This case confronted the court with a recent statutory amendment that conflicted with a North Carolina rule of appellate procedure. The amendment, to a rule in the Evidence Code, made unnecessary renewing an objection to evidence when a motion *in limine* had been made. The appellate rules, however, expressly require renewal to preserve the objection for appeal. Because the North Carolina Constitution vests in the Supreme Court of North Carolina the exclusive authority to make rules of appellate practice and procedure, and because of the conflict, the General Assembly's amendment therefore was struck down as unconstitutional. The court nevertheless reviewed the merits to prevent manifest injustice and found no error.

4. *Broderick v. Broderick*, 175 N.C. App. 501, 623 S.E.2d 806 (2006).

Plaintiff's Counsel: Timothy M. Stokes, 122 N. McDowell St., Charlotte, NC 28204, (704) 376-6874

Defense Counsel: Susan v. Thomas, 19410 Jetton Rd., Suite 130, Cornelius, NC 28031, (704) 896-7570

Outcome: Dismissed

Summary: This alimony-related appeal was dismissed due to appellate rules violations relating to assignments of error. While I concurred in result, I authored a concurring opinion urging the Supreme Court of North Carolina to consider abolishing assignments of error, which purportedly limit the issues on appeal but which are unnecessary, have been abolished in numerous jurisdictions, and have lead to the dismissal of numerous appeals, resulting in denial of access to justice for many North Carolinians. I also urged the Supreme Court to provide the Court of Appeals with guidance as to when, if at all, it could invoke discretionary review to avoid manifest injustice, pointing out numerous inconsistent cases in the Court of Appeals. The Supreme Court of North Carolina has now abolished assignments of error, effective October 1, 2009.

5. *Nelson v. Freeland*, 349 N.C. 615, 507 S.E.2d 882 (1998).

Plaintiff's Counsel: E. Thomas Maddox, 100 S. Elm St., Suite 313, Greensboro, NC 27420, (336) 272-8149; A. Wayland Cooke, 100 S. Elm St., Suite 300, Greensboro, NC 27420, (336) 275-9867

Defense Counsel: Walter K. Burton, David K. Williams, James D. Sector, Burton & Sue LLP, 419 N. Elm St., Greensboro, NC 27420, (336) 275-0512

Outcome: Reversed

Summary: In this premises liability case, the court modified law, doing away with the licensee/invitee distinction that had caused confusion and conflict in North Carolina jurisprudence. The court adopted in its stead the reasonable duty of care standard, homogenizing the duty to all lawful entrants, though maintaining the distinction regarding the lesser duty owed trespassers.

6. *Hospira Incorporated v. Alphagary Corporation*, __ N.C. App. __, 671 S.E.2d 7 (2009).

Plaintiff's Counsel: R. Stephen DeGeorge, Jonathan C. Krisko, Robinson Bradshaw & Hinson, 101 N. Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-8314

Defense Counsel: Bradley Kutrow, Brian Kahn, McGuire Woods, 100 N. Tryon St., Charlotte, NC 28202, (704) 373-8999

Outcome: Affirmed in part, reversed in part

Summary: In this recent tort case, a medical devices manufacturer who outsourced production of device components to a contracting manufacturer sued a third-party manufacturer, who produced parts for the contractor. The plaintiff sued for fraud, Unfair Trade Practices Act deception, negligent misrepresentation, and negligence. The court limited the indirect liability, holding that where the allegedly fraudulent, deceptive, or negligently misrepresentative statements were not made by the defendant or an agent of the defendant, the plaintiff's claims could not lie. The court did uphold the negligence claims, however, noting that because the plaintiff and defendant had no contractual relationship, the economic loss doctrine did not bar the claim.

7. *Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007).

Plaintiff's Counsel: George Mast, Bradley Schulz, Ron Trimyer, 1 Courthouse Square, Smithfield, NC 27577, (919) 934-6187

Defense Counsel: Marcia Armstrong, 602 S. Third St., Smithfield NC 27577, (919) 934-1575

Outcome: Affirmed

Summary: The court upheld the trial court's determination that the North Carolina Child Support Guidelines did not violate the Supremacy Clause. 42 U.S.C.S. §§ 651-669b prescribed minimal requirements and encouraged states to act in accordance with them to receive full federal funding. The plaintiff's argument that custodial parents were a suspect class under equal protection was meritless, and plaintiff, who had attended a two-day hearing, had been given ample due process. The court held that the State has a compelling interest in regulating child support obligations, the North Carolina laws were narrowly drawn, and there was no constitutional violation.

8. *Okuma America Corporation v. Bowers*, 181 N.C. App. 85, 638 S.E.2d 617 (2007).

Plaintiff's Counsel: Jonathan C. Krisko, Robinson Bradshaw & Hinson, 101 N. Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-8314

Defense Counsel: Gary Hemric, Preston Odom, Adam Ross, Fred Parker, 600 S. College St., Charlotte NC 28202

Outcome: Reversed

Summary: The court held a non-compete clause to be enforceable where the clause barred the employee, a high-level executive, from taking a similar job anywhere the international employer operated for six months. The clause's broad geographic application should be read together with its relatively brief term, six months, as well as its not prohibiting the executive from taking another, different type of job during that time frame and in those geographic areas.

9. *Middleton v. The Russell Group, Ltd.*, 126 N.C. App. 1, 483 S.E.2d 727 (1997).

Plaintiff's Counsel: Jack W. Floyd, Constance Floyd Jacobs, 219 W. Washington St., Greensboro, NC 27401, (336) 273-0589

Defense Counsel: Harold Mahler, Cynthia Jarrell, Torin Fury, 217 Edgedale Dr., High Point, NC 27262

Outcome: Affirmed in part, reversed in part

Summary: A former employer and his wife sued the employer, the benefit administrator, and the insurer seeking to recover medical benefits. The court held that the insurer was liable for the mistake in determining that the former employee and his family were not entitled to continued medical coverage under the Consolidated Omnibus Reconciliation Act (COBRA), that the employee and his family were indeed entitled to coverage at the time of the employee's termination,

and that the attorneys' fees awarded against the employer, the benefit administrator, and the insurer were not an abuse of discretion. However, the court struck down the trial court's enhancement of the attorneys' fees award, held that the trial court lacked a basis for imposing joint and several liability as to the defendants for unpaid medical expenses, and held that ERISA preempted the plaintiffs' State claims for, *inter alia*, breach of contract and unfair and deceptive trade practices.

10. *In re N.C. Pesticide Board File Nos. IR94-128, IR94-151, IR94-155*, 349 N.C. 656, 509 S.E. 2d 165 (1998).

Petitioner's Counsel: David H. Permar, Tina Frazier, 327 Hillsborough St., Raleigh, NC 27603, (919) 856-3940

State's Counsel: Melissa H. Taylor, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

Outcome: Reversal of North Carolina Court of Appeals

Summary: A licensee challenged an administrative decision revoking his license for aerial application of pesticides for one year and imposing fines for pesticide regulations. The court held that the evidence supported the administrative findings supporting the regulations' violation, that the regulations did not violate due process or equal protection, and that the licensee could seek judicial review as opposed to administrative rulings on constitutional issues, which are for the judiciary and not administrative boards to decide.

- 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.

State v. Jones, 133 N.C. App. 448, 516 S.E.2d 405 (1999).

State's Counsel: Isaac Avery, Jonathan Babb, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

Defense Counsel: David B. Freeman, 301 N. Main St., Suite 1100, Winston-Salem, NC 27101, (336) 725-1304

Hyde v. Abbott Laboratories, Inc., 123 N.C. App. 572, 473 S.E.2d 680 (1996).

Plaintiff's Counsel: Raymond D. Large, Jr., Diane E. Sherrill, 28 Maple St., Sylva, NC 28779, (828) 586-4051

Defense Counsel: James Exum, Larry Sitton, Richard Coughlin, Smith Moore Leatherwood, 300 N. Greene St., Greensboro NC 27401, (336) 378-5200

State v. Tutt, 171 N.C. App. 518, 615 S.E.2d 688 (2005).
Defense Counsel: Terry F. Rose, 212 Bridge St., Smithfield, NC 27577, (919) 938-1616
State's Counsel: Kimberly Duffley, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

Broderick v. Broderick, 175 N.C. App. 501, 623 S.E.2d 806 (2006).
Plaintiff's Counsel: Timothy M. Stokes, 122 N. McDowell St., Charlotte, NC 28204, (704) 376-6874
Defense Counsel: Susan v. Thomas, 19410 Jetton Rd., Suite 130, Cornelius, NC 28031, (704) 896-7570

Nelson v. Freeland, 349 N.C. 615, 507 S.E.2d 882 (1998).
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Hospira Incorporated v. Alphagary Corporation, __ N.C. App. __, 671 S.E.2d 7 (2009).
Plaintiff's Counsel: R. Stephen DeGeorge, Jonathan C. Krisko, Robinson Bradshaw & Hinson, 101 N. Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-8314
Defense Counsel: Bradley Kutrow, Brian Kahn, McGuire Woods, 100 N. Tryon St., Charlotte, NC 28202, (704) 373-8999

Row v. Row, 185 N.C. App. 450, 650 S.E.2d 1 (2007).
Plaintiff's Counsel: George Mast, Bradley Schulz, Ron Trimyer, 1 Courthouse Square, Smithfield, NC 27577, (919) 934-6187
Defense Counsel: Marcia Armstrong, 602 S. Third St., Smithfield NC 27577, (919) 934-1575

Okuma America Corporation v. Bowers, 181 N.C. App. 85, 638 S.E.2d 617 (2007).
Plaintiff's Counsel: Jonathan C. Krisko, Robinson Bradshaw & Hinson, 101 N. Tryon St., Suite 1900, Charlotte, NC 28246, (704) 377-8314
Defense Counsel: Gary Hemric, Preston Odom, Adam Ross, Fred Parker, 600 S. College St., Charlotte NC 28202

Middleton v. The Russell Group, Ltd., 126 N.C. App. 1, 483 S.E.2d 727 (1997).
Plaintiff's Counsel: Jack W. Floyd, Constance Floyd Jacobs, 219 W. Washington St., Greensboro, NC 27401, (336) 273-0589

Defense Counsel: Harold Mahler, Cynthia Jarrell, Torin Fury, 217 Edgedale Dr., High Point, NC 27262

In re N.C. Pesticide Board File Nos. IR94-128, IR94-151, IR94-155, 349 N.C. 656, 509 S.E. 2d 165 (1998).

Petitioner's Counsel: David H. Permar, Tina Frazier, 327 Hillsborough St., Raleigh, NC 27603, (919) 856-3940

State's Counsel: Melissa H. Taylor, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

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

See attached

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.

Blankenship v. Bartlett, 184 N.C. App. 327, 646 S.E.2d 584 (2008), *rev'd in part*, 363 N.C. 518, 681 S.E.2d 759 (2009).

This opinion held that the Equal Protection Clause does not require proportionality in districting for judicial elections, and also that the trial court erred in failing to consider certain evidence offered by the Defendants. The Supreme Court ruled that the "one man, one vote" principle of the Equal Protection Clause is applicable to judicial elections, as judges hold a representative capacity under North Carolina's constitution. The Supreme Court affirmed regarding the admission of excluded evidence.

State v. Icard, 190 N.C. App. 76, 660 S.E.2d 142 (2008), *rev'd in part*, 363 N.C. 303, 677 S.E.2d 822 (2009).

This opinion held that a defendant was unlawfully seized under the Fourth Amendment when approached by a police officer, but that she consented to a subsequent search of her personal items. The Supreme Court agreed that the defendant was unlawfully seized under the Fourth Amendment, but ruled that the evidence discovered subsequently was required to be excluded as fruit of the poisonous tree.

State v. Turnage, ___ N.C. App. ___, 660 S.E.2d 129, *rev'd in part*, 362 N.C. 491, 666 S.E.2d 753 (2008).

This opinion held that the State failed to carry its burden at trial to produce sufficient evidence showing that an entry occurred for purposes of burglary, and that the defendant was the perpetrator of the offense alleged. The Supreme Court ruled that the State produced sufficient evidence to show that the defendant was the perpetrator and remanded to the North Carolina Court of Appeals.

State v. Duncan, 188 N.C. App. 508, 656 S.E.2d 597, *rev'd*, 362 N.C. 665, 669 S.E.2d 738 (2008).

This opinion held that the defendant received ineffective assistance of counsel where his counsel failed to request an instruction on diminished capacity in a first-degree murder trial. The Supreme Court reversed upon the reasoning that the trial court was in a better position than the North Carolina Court of Appeals to assess the defendant's counsel's performance.

Williams v. Vonderau, 181 N.C. App. 18, 638 S.E.2d 644, *rev'd in part*, 362 N.C. 76, 653 S.E.2d 144 (2007).

This opinion dismissed an appeal from a domestic violence civil no-contact order as moot because the order had expired at the time the appeal was heard. The Supreme Court reversed upon the rationale that a judgment creating potential adverse legal consequences for an appellant is not rendered moot.

State v. Locklear, 178 N.C. App. 732, 632 S.E.2d 516 (2006), *vacated in part*, 361 N.C. 688, 361 N.C. 700, 654 S.E.2d 704 (2007).

This opinion found that an indictment was defective because it failed to allege an essential element of the charged offense, and remanded the case for re-sentencing on a lesser included offense which had been properly alleged. The Supreme Court vacated the order of remand for resentencing based upon precedent requiring the State to obtain a new indictment.

State v. Oglesby, 174 N.C. App. 658, 622 S.E.2d 152 (2005), *vacated in part*, 361 N.C. 550, 648 S.E.2d 819 (2007).

Among other things, this opinion found *Blakely* error in the trial court's finding and imposing aggravating factors without a jury. The Supreme Court vacated that part of the decision, and remanded for application of harmless error review.

State v. Hernandez-Madrid, 617 S.E.2d 724, 2005 WL 2125044 (2005) (unpublished), *rev'd in part*, 361 N.C. 421, 646 S.E.2d 105 (2007) (per curiam).

This opinion found *Blakely* error where the trial court found and imposed an aggravating factor, and remanded for re-sentencing. The Supreme Court reversed on this point and remanded for application of the harmless error doctrine.

D'Aquisto v. Mission St. Joseph's Health Sys., 171 N.C. App. 216, 614 S.E.2d 583 (2005), *rev'd in part*, 360 N.C. 567, 633 S.E.2d 89 (2006).

This opinion held, in part, that the trial court did not abuse its discretion in awarding attorney's fees against a worker's compensation defendant for lack of reasonable grounds in defending the claim. The Supreme Court reversed on this point, ruling that the defendant had reasonable grounds to defend the claims.

Myers v. McGrady, 170 N.C. App. 501, 613 S.E.2d 334, *rev'd*, 360 N.C. 460, 628 S.E.2d 761 (2006).

This opinion held that the North Carolina Division of Forest Resources was not shielded from liability by the public duty doctrine because the defendant forest ranger was not a law enforcement officer. The Supreme Court reversed, holding that the Division of Forest Resources was protected from liability by the public duty doctrine because the statutes creating that agency imposed a duty to protect the public.

Sawyers v. Farm Bureau Insurance of N.C., Inc., 170 N.C. App. 17, 612 S.E.2d 184, *rev'd*, 360 N.C. 158, 622 S.E.2d 490 (2005).

This opinion held that a non-party was bound by an out-of-State judgment upon proper service. The Supreme Court of North Carolina reversed upon the reasoning that the out-of-State judgment did not bind the nonparty, despite proper service, because that party had not been a part of the prior action.

Young v. Young, 169 N.C. App. 31, 609 S.E.2d 795, *appeal dismissed and vacated by*, 360 N.C. 58, 620 S.E.2d 674 (2005).

The Supreme Court of North Carolina vacated this decision and dismissed the appeal on mootness grounds.

North Carolina Dept. Transp. v. Stagecoach Village, 166 N.C. App. 272, 601 S.E.2d 279 (2004), *vacated*, 360 N.C. 46, 619 S.E.2d 495 (2005).

This opinion held that the appellants had no right to immediate review of an interlocutory trial court order because that order did not affect a substantial right. The Supreme Court found a substantial right making the trial court's order immediately appealable and remanded to the North Carolina Court of Appeals for full consideration of the issue.

State v. Blackwell, 603 S.E.2d 168, 2004 WL 1964878 (2004) (unpublished), *aff'd in part rev'd in part*, 361 N.C. 41, 638 S.E.2d 452 (2006).

This opinion found, in part, *Blakely* error in the trial court's finding and imposing an aggravating factor without a jury. The Supreme Court reversed the order of remand for a new sentencing hearing, instead finding that the *Blakely* error was harmless beyond a reasonable doubt.

Whitt v. Harris Teeter, Inc., 165 N.C. App. 32, 598 S.E.2d 151 (2004), *rev'd*, 359 N.C. 625, 614 S.E.2d 531 (2005).

This opinion held that a claim for wrongful discharge in violation of public policy exists in North Carolina, even where the discharge is constructive. The Supreme Court reversed, holding that a claim for wrongful discharge in violation of public policy does not exist in North Carolina where the discharge is constructive.

Jonesboro United Methodist Church v. Mullins-Sherman Architects, L.L.P., 591 S.E.2d 598, 2004 WL 191758 (2004) (unpublished), *rev'd*, 359 N.C. 593, 614 S.E.2d 268 (2005).

This opinion held that certain claims related to construction of a building were not barred by the doctrines of res judicata, collateral estoppel, and the compulsory counterclaim rule. The Supreme Court reversed, holding that the claims were barred by the compulsory counterclaim rule.

Brown v. Floyd Travis Millsap, 161 N.C. App. 282, 588 S.E.2d 71 (2003), *rev'd*, 358 N.C. 212, 594 S.E.2d 1(2004).

This opinion held that the trial court erred by adding court costs and prejudgment interest to a jury's award of damages, taking the total judgment over the statutory threshold for eligibility for attorney's fees. The Supreme Court reversed, reasoning that the trial court lacked discretion not to apply prejudgment interest to the total judgment, thereby surpassing the statutory threshold in any event.

State v. Sneed, 161 N.C. App. 331, 588 S.E.2d 74 (2003), *rev'd*, 358 N.C. 538, 599 S.E.2d 365 (2004).

This opinion vacated a defendant's conviction of possession of a firearm by a felon where the indictment alleged only prior misdemeanor offenses. The Supreme Court reversed based upon one of its subsequent decisions declaring that a misdemeanor conviction may, in some instances, be treated as a felony for purposes of habitual felon indictments.

Howerton v. Helmet Ltd., 158 N.C. App. 316, 581 S.E.2d 816, *rev'd*, 358 N.C. 440, 597 S.E.2d 674 (2004).

This opinion held that North Carolina adheres to the federal *Daubert* standard for determining the admissibility of expert testimony. The Supreme Court reversed, ruling that North Carolina does not adhere to the *Daubert* standard.

In re Barnes, 157 N.C. App. 144, 579 S.E.2d 585 (2003), *rev'd*, 358 N.C. 143, 592 S.E.2d 688 (2004).

This opinion held that caveators offering a second will executed by the testator lacked standing and the trial court did not acquire subject-matter jurisdiction over the caveat because, having only a copy, they failed to rebut the presumption that the testator's first will was revoked. The Supreme Court reversed upon the reasoning that the trial court acquired subject-matter jurisdiction over the estate because a statute gave the caveators standing to litigate the caveat.

State v. Phelps, 156 N.C. App. 119, 575 S.E.2d 818 (2003), *rev'd*, 358 N.C. 142, 592 S.E.2d 687 (2004).

This opinion held that the trial court erred in admitting the defendant's statements to police prior to receiving *Miranda* warnings, but concluded that those statements were harmless beyond a reasonable doubt because of other evidence admitted during the trial. The Supreme Court reversed, holding that the admission of the pre-*Miranda* statements was not harmless.

In re Maharishi Spiritual Ctr. of Am., 152 N.C. App. 269, 569 S.E.2d 3 (2002), *rev'd*, 357 N.C. 152, 579 S.E.2d 249 (2003).

This opinion held, in part, that the evidence did not support a finding by the Tax Commission that the taxpayer's property was not the kind commonly employed for educational purposes, and therefore, the taxpayer was entitled to an educational tax exemption. The Supreme Court reversed, reasoning that the evidence was sufficient to sustain the Tax Commission's findings of fact under a deferential standard of review.

Arp v. Parkdale Mills, Inc., 150 N.C. App. 266, 563 S.E.2d 62 (2002), *rev'd*, 356 N.C. 657, 576 S.E.2d 326 (2003).

This opinion held that an employee's injury, occurring toward the end of a work day when the employee attempted to leave the employer's premises by scaling a fence, was compensable under the Worker's Compensation Act as it arose out of the scope of the employment. The Supreme Court reversed, holding that the

injury was not in the course and scope of the employment because the means by which the employee attempted to leave the premises were unreasonable.

Deadwood, Inc. v. North Carolina Dept. of Revenue, 148 N.C. App. 122, 557 S.E.2d 596 (2001), *rev'd*, 356 N.C. 407, 572 S.E.2d 103 (2002).

This opinion held that a privilege tax assessed on a live entertainment business created an unreasonable classification under the North Carolina Constitution where movie picture businesses were not subject to the same taxation. The Supreme Court reversed, concluding that the tax was sustainable given that different interests lay behind live entertainment and movie picture entertainment, and giving deference to legislative determinations, North Carolina's General Assembly could have found rational distinctions to support the classification.

Swinson v. Lejeune Motor Co., Inc., 147 N.C. App. 610, 557 S.E.2d 112 (2001), *rev'd*, 356 N.C. 286, 569 S.E.2d 646 (2002).

This opinion held that a jury question was presented as to whether the hazard existing on the defendant's property, which caused the plaintiff's injury, was open and obvious. The Supreme Court reversed, finding the evidence insufficient to create a jury question on whether the hazard was open and obvious.

State v. Hearst, 147 N.C. App. 298, 555 S.E.2d 357 (2001), *rev'd*, 356 N.C. 132, 567 S.E.2d 124 (2002).

This opinion concluded that a probationer that spent part of his probationary term in an alternative, motivational program, and subsequently found to have willfully violated terms of his probation resulting in his original sentence being activated, was not entitled to have the time spent at the alternative program credited to his activated sentence. The Supreme Court reversed, determining that the probationer was committed to or confined in a correctional institution during the time spent in the alternative program, and thus he was entitled to have that time credited to his active sentence.

Hanes Const. Co. v. Hotmix & Bituminous Equip. Co., Inc., 146 N.C. App. 24, 552 S.E.2d 177 (2001), *rev'd*, 354 N.C. 560, 557 S.E.2d 529 (2001).

This opinion concluded that the trial court had personal jurisdiction, under North Carolina's long-arm statute, over an out-of-State seller on the in-State buyer's breach of contract claims. The Supreme Court reversed on the reasoning that the out-of-State seller's in-State activity was insufficient to support personal jurisdiction.

Dep't of Transp. v. Rowe, 138 N.C. App. 329, 531 S.E.2d 836 (2000), *rev'd*, 353 N.C. 671, 549 S.E.2d 203 (2001).

This opinion held, in part, that a North Carolina statute allowing juries to consider general benefits of a taking when calculating just compensation was unconstitutional in that it violated the takings and equal protection clauses of the State constitution. The Supreme Court reversed, reasoning that a jury's consideration of general benefits does not violate equal protection and was a proper element of compensation to consider.

Parker v. Barefoot, 130 N.C. App. 18, 502 S.E.2d 42 (1998), *rev'd*, 351 N.C. 40, 519 S.E.2d 315 (1999).

This opinion held that the trial court reversibly erred by failing to give a requested jury instruction relating to a defense to a nuisance claim. The North Carolina Supreme Court reversed, holding that the instruction was not necessary because the evidence did not support it.

Isenhour v. Hutto, 129 N.C. App. 596, 501 S.E.2d 78 (1998), *aff'd in part rev'd in part*, 350 N.C. 601, 517 S.E.2d 121 (1999).

This opinion held, in part, that a crossing guard was not susceptible to individual liability in negligence for the death of a school child crossing the street because the guard was an immune public official. The North Carolina Supreme Court reversed, holding that plaintiff had sufficiently alleged that the crossing guard's duties were ministerial in nature, such that the crossing guard was not immune.

Goins v. Puleo, 130 N.C. App. 28, 502 S.E.2d 621 (1998), *rev'd*, 512 S.E.2d 748 (1999).

Defendant made requests for admissions, and Plaintiff never responded. Defendant sought summary judgment, contending that the requests were deemed admitted. The trial court denied the defendant's motion. The Court of Appeals affirmed, and the Supreme Court reversed, holding that the "trial court could not have reasonably concluded that plaintiff made any motion in this case to withdraw or amend her admissions."

County of Carteret v. Long, 128 N.C. App. 477, 495 S.E.2d 391, *rev'd*, 507 S.E.2d 39 (1998).

The Court of Appeals found that a county's lien for ad valorem taxes under the Machinery Act had priority over the state's tax lien under the Revenue Act. The Supreme Court reversed, holding that the Machinery Act is subject to the provisions of the Revenue Act prescribing the priority of the lien for State taxes.

Harlow v. Voyager Comm. V, 126 N.C. App. 492 S.E.2d 45 (1997), *rev'd*, 348 N.C. 568, 501 S.E.2d 72 (1998).

The Court of Appeals held that under North Carolina law, when a plaintiff alleges joint liability against multiple defendants of which only one defaults, a default judgment may not be entered against the defaulting defendant until after the court adjudicates the liability of the non-defaulting defendant. The Supreme Court reversed, holding that because the plaintiff alleged that the defendants were both jointly and severally liable as oppose to being only jointly liable, each defendant's liability may stand alone.

State v. Ruff, 127 N.C. App. 575, 492 S.E.2d 374 (1997), *rev'd*, 349 N.C. 213, 505 S.E.2d 579 (1998).

Defendant was convicted of first-degree kidnapping and first-degree rape. The trial court entered judgment sentencing defendant for second-degree kidnapping. The trial court, however, enhanced the second-degree conviction on the basis of the defendant's use of a firearm while committing the felony. The Court of Appeals vacated the enhanced sentence, but the Supreme Court reversed.

Hartsell v. Integon Indemnity Corp., 126 N.C. App. 511, 495 S.E.2d 893, *rev'd*, 347 N.C. 385, 493 S.E.2d 740 (1997).

Plaintiff leased a car insured by the defendant. The car was stolen and set on fire, and the defendant insurer paid the actual cash value to the named Loss Payee--Wachovia Auto Leasing (which held title to the car)--while refusing to provide any payment to plaintiff on the ground that he had no ownership interest in the vehicle. The Court of Appeals affirmed, but the Supreme Court reversed, saying that the plaintiff was entitled to insurance proceeds to the extent of his interest in the vehicle, such as overpayment.

Creech v. Melnik, 124 N.C. App. 502, 477 S.E.2d 680 (1996), *rev'd*, 347 N.C. 520, 495 S.E.2d 907 (1998).

The Supreme Court concluded that the Court of Appeals improvidently affirmed the trial court's summary judgment order in a medical malpractice case.

State v. Davidson, 123 N.C. App. 326, 473 S.E.2d 387 (1996), *rev'd*, 345 N.C. 496, 480 S.E.2d 701 (1997).

The Court of Appeals reversed the defendant's second-degree murder conviction on the ground that there was not enough evidence to support a finding that the defendant was the perpetrator of the offense. The Supreme Court reversed, determining that there had been sufficient evidence.

N.C. Steel, Inc. v. Nat. Council on Compensation Ins., 123 N.C. App. 163, 472 S.E.2d 578 (1996), *rev'd*, 347 N.C. 627, 496 S.E.2d 369 (1998).

Plaintiffs contended that the defendants withheld evidence from the Insurance Commissioner in a rate case causing the Commissioner to approve excessive rates for workers' compensation insurance. The Supreme Court affirmed part of this decision but disagreed on the question of whether the plaintiffs can recover on a "non-rate" theory.

Lee v. Lyleryly, 120 N.C. App. 250, 461 S.E.2d 775 (1995), *rev'd*, 343 N.C. 115, 468 S.E.2d 60 (1996).

Plaintiff sued defendant for defamation. Defendant was granted summary judgment on the ground that the conversation was privileged and that plaintiff failed to show actual malice. This opinion agreed, but the Supreme Court concluded that there was a genuine issue of material fact as to whether the defendant had actual malice.

Royster v. Culp, Inc., 119 N.C. App. 598, 459 S.E.2d 65 (1995), *rev'd*, 343 N.C. 279, 470 S.E.2d 30 (1996).

Plaintiff was struck by a car while attempting to walk across a public highway that separated her place of employment from a parking lot which was owned and operated by defendant-employer. This opinion held that the accident arose out of employment, and the Supreme Court reversed under the "coming and going" rule.

State v. Patton, 119 N.C. App. 229, 458 S.E.2d 230 (1995), *rev'd*, 342 N.C. 633, 466 S.E.2d 708 (1996).

Defendant was convicted for numerous charges relating to forgery. This opinion remanded, holding that there must be a separate habitual felon indictment for each separate felony indictment. The Supreme Court reversed, finding that the habitual felon statute does not require a separate habitual felon indictment for each substantive felony indictment.

Bray v. N.C. Farm Bureau Mut. Ins. Co., 115 N.C. App. 438, 445 S.E.2d 79 (1994), *rev'd*, 341 N.C. 678, 462 S.E.2d 650 (1995).

The Supreme Court affirmed most of this opinion, but it reversed the part of the opinion applying a member/household-owned exclusion to uninsured motorist coverage above the statutory minimum liability limits.

Lavelle v. Guilford Area Mental Illness, Mental Retardation, and Substance Abuse Authority, 115 N.C. App. 75, 443 S.E.2d 761 (1994), *rev'd*, 340 N.C. 250, 456 S.E.2d 827 (1995).

This opinion affirmed the trial court's summary judgment because plaintiff had received the relief requested, i.e. records. The Supreme Court reversed because the plaintiff had sought a declaratory judgment, not just records.

Crowell Constructors, Inc. v. Cobey, 114 N.C. 75, 440 S.E.2d 848 (1994), *rev'd*, 342 N.C. 838, 467 S.E.2d 675 (1996).

This opinion dealt with whether a prevailing party can recover attorney's fees when the State brings a claim that it loses. The Supreme Court reversed, holding that one must look at what the agency knew when it filed the action.

Able Outdoor, Inc. v. Harrelson, 113 N.C. App. 483, 439 S.E.2d 245 (1994), *rev'd*, 341 N.C. 167, 459 S.E.2d 626 (1995).

The Supreme Court overruled part of this opinion dealing with whether the petitioner could have execution against the State (Petitioner won rule 11 sanctions against the State).

Haas v. Warren, 112 N.C. App. 574, 436 S.E.2d 259 (1993), *rev'd*, 341 N.C. 148, 459 S.E.2d 254 (1995).

Plaintiffs sued their former attorneys for legal malpractice. The trial court granted directed verdict for defendant, and this opinion affirmed. The Supreme Court reversed, saying there was a jury question as to whether the defendant-attorney breached the standard of care.

Thrift v. Food Lion, Inc., 111 N.C. App. 758, 433 S.E.2d 481 (1993), *rev'd*, 336 N.C. 309, 442 S.E.2d 504 (1994).

Plaintiff sued Food Lion and an independent contractor when she slipped on a puddle of melted ice. This opinion affirmed summary judgment in favor of the contractor on the basis of the "completed and accepted" rule, and the Supreme Court reversed on the grounds that the "completed and accepted" rule applies only in the context of contracts for construction.

State v. Brooks, 111 N.C. App. 558, 432 S.E.2d 900 (1993), *rev'd*, 337 N.C. 132, 446 S.E.2d 579 (1994).

This opinion held that a search was illegal because the agent's approaching the car was a stop without reasonable suspicion. The Supreme Court reversed, saying

there was no stop since police officers can approach people in public places so long as a reasonable person feels free to leave.

Morrell v. Flaherty, 109 N.C. App. 628, 428 S.E.2d 492 (1993), *rev'd*, 338 N.C. 230, 449 S.E.2d 175 (1994).

This opinion held that the North Carolina Division of Social Services' policy of determining an assistance unit was unlawful because it contravened federal regulations. The Supreme Court reversed based on the Department of Health and Human Service's interpretation made subsequent to the Court of Appeals' decision.

Anderson v. Baccus, 109 N.C. App. 16, 426 S.E.2d 105 (1993), *rev'd*, 335 N.C. 526, 439 S.E.2d 136 (1994).

This opinion held that summary judgment should not have been granted for defendants on plaintiff's negligent infliction of emotional distress claim since it was foreseeable that the plaintiff would suffer such distress. The Supreme Court reversed.

United Services Automobile Ass'n v. Universal Underwriters Ins. Co., 104 N.C. App. 206, 408 S.E.2d 750 (1991), *rev'd*, 332 N.C. 333, 420 S.E.2d 155 (1992).

A test driver had an accident, had personal insurance, and the dealer had garage owner's liability insurance. The dealer's insurance had a clause which said it was not primarily liable if the driver had personal insurance. The Court of Appeals held that the clause was unlawful, and the Supreme Court reversed.

State v. Ballard, 127 N.C. App. 316, 489 S.E.2d 454 (1997), *rev'd*, 349 N.C. 286, 507 S.E.2d 38 (1998).

In part, this opinion concluded that the evidence supported the trial court's finding of an aggravating factor, and otherwise found no prejudicial error in the defendant's trial. The North Carolina Supreme Court reversed, holding that the evidence was insufficient to support the aggravating factor at issue.

State v. Smith, 123 N.C. App. 162, 472 S.E.2d 610 (1996) (*unpublished*), *rev'd*, 346 N.C. 794, 488 S.E.2d 210 (1997).

The defendant moved to suppress evidence seized during a warrantless search of his residence. The trial court granted defendant's motion, the Court of Appeals affirmed, and the Supreme Court reversed, holding that the police officer's "knock and talk" procedure did not taint the consent or render the procedure *per se* violative of the Fourth Amendment and that the trial court's failure to make a

specific finding on the conflicting evidence as to whether the resident of the house voluntarily consented to a search of the room she and defendant occupied required remand.

DKH Corp. V. Rankin-Patterson Oil Co., 126 N.C. App. 634, 487 S.E.2d 588 (1997) (*unpublished*), *rev'd*, 348 N.C. 583, 500 S.E.2d 666 (1998).

A lessee of a service station/convenience store sued lessor for, *inter alia*, unfair and deceptive-trade practices. The trial court granted the lessor partial summary judgment, dismissing lessee's unfair practice claim. The Court of Appeals dismissed the appeal as interlocutory, but the Supreme Court held that the Court of Appeals had jurisdiction over the appeal.

In re Thompson, 117 N.C. App. 731, 453 S.E.2d 877 (*unpublished*), *rev'd*, 342 N.C. 401, 464 S.E.2d 45 (1995).

The Supreme Court reversed the Court of Appeals' holding affirming a trial court order dismissing Wake County Department of Social Services' petition for the termination of the respondent's parental rights.

- 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.

Roughly 60% of the North Carolina Court of Appeals' opinions are unpublished. Unpublished opinions dating back to 1996 are available at the North Carolina Administrative Office of the Courts' internet site (<http://www.aoc.state.nc.us/www/public/html/opinions.htm>), as well as on Westlaw and Lexis.

- 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.

1. *State v. Mangino*, __ N.C. App __, __ S.E.2d __, 2009 WL 3381669 (October 20, 2009).
2. *State v. Christian*, __ N.C. App. __, 680 S.E.2d 903, 2009 WL 2137428 (Unpublished).
3. *Bryant v. Jones*, __ N.C. App. __, 680 S.E.2d 271, 2009 WL 1664066 (Unpublished).
4. *State v. Best*, __ N.C. App. __, 674 S.E.2d 467 (April 07, 2009).
5. *State v. Icard*, __ N.C. App. __, 660 S.E.2d 142 (May 6, 2008).

6. *Heatherly v. State*, 189 N.C. App. 213, 658 S.E.2d 11 (2008), *aff'd*, 363 N.C. 115., ___ S.E.2d ___ (March 20, 2009).
7. *State v. Sellers*, 185 N.C. App. 726, 649 S.E.2d 656 (2007).
8. *Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007), *disc. review denied*, 362 N.C. 238; 659 S.E.2d 741 (2008).
9. *McIntosh v. McIntosh*, 184 N.C. App. 697, 646 S.E.2d 820 (2007).
10. *Blankenship v. Bartlett*, 184 N.C. App. 327, 646 S.E.2d 584 (2007).
11. *Winebarger v. Peterson*, 182 N.C. App. 510, 642 S.E.2d 544 (2007).
12. *Bowling v. Margaret R. Pardee Memorial Hosp.*, 179 N.C. App. 815, 635 S.E.2d 624 (2006).
13. *DirecTV, Inc. v. State*, 178 N.C. App. 659, 632 S.E.2d 543 (2006).
14. *Philip Morris USA Inc. v. Tolson*, 176 N.C. App. 509, 626 S.E.2d 853 (2006), *disc. review denied*, 361 N.C. 356, 644 S.E.2d 231 (2007).
15. *Fox v. Gibson*, 176 N.C. App. 554, 626 S.E.2d 841 (2006).
16. *A.R. Haire, Inc. v. St. Denis*, 176 N.C. App. 255, 625 S.E.2d 894 (2006).
17. *State v. Wright*, 172 N.C. App. 464, 616 S.E.2d 366, *aff'd*, 360 N.C. 80, 621 S.E.2d 874 (2005).
18. *State v. Ledwell*, 171 N.C. App. 328, 614 S.E.2d 412, *disc. review denied*, 360 N.C. 73, 622 S.E.2d 624 (2005).
19. *State v. Watson*, 169 N.C. App. 331, 610 S.E.2d 472 (2005).
20. *Lemon v. Combs*, 164 N.C. App. 615, 596 S.E.2d 344 (2004).
21. *State v. Cathey*, 162 N.C. App. 350, 590 S.E.2d 408 (2004).
22. *State v. Haskins*, 160 N.C. App. 349, 585 S.E.2d 766, *disc. review denied*, 357 N.C. 580, 589 S.E.2d 356, (2003).
23. *Lea v. Grier*, 156 N.C. App. 503, 577 S.E.2d 411 (2003).
24. *Wilson County ex rel. Egbert v. Egbert*, 153 N.C. App. 283, 569 S.E.2d 727 (2002).
25. *Deadwood, Inc. v. North Carolina Dept. of Revenue*, 148 N.C. App. 122, 557 S.E.2d 596 (2001).
26. *Hanes Constr. Co. v. Hotmix & Bituminous Equip. Co., Inc.*, 146 N.C. App. 24, 552 S.E.2d 177 (2001), *rev'd*, 354 N.C. 560, 557 S.E.2d 529
27. *In re Allison*, 143 N.C. App. 586, 547 S.E.2d 169 (2001).
28. *State ex rel. Barker v. Ellis*, 144 N.C. App. 135, 547 S.E.2d 166, (2001).
29. *Comer v. Ammons*, 135 N.C. App. 531, 522 S.E.2d 77 (1999).
30. *State v. Chisholm*, 135 N.C. App. 578, 521 S.E.2d 487 (1999).
31. *Polaroid Corp. v. Offerman*, 349 N.C. 290, 507 S.E.2d 284 (1998), *cert. denied*, 526 U.S. 1098, 143 L. Ed. 2d 671 (1999).
32. *Hinton v. Hinton*, 128 N.C. App. 637, 496 S.E.2d 409 (1998).
33. *Meads v. North Carolina Dept of Agric.*, 349 N.C. 656, 509 S.E.2d 165 (1998).
34. *Armstrong v. North Carolina State Bd. Of Dental Examiners*, 129 N.C. App. 153, 499 S.E.2d 462 (1998).
35. *Hanton v. Gilbert*, 126 N.C. App. 561, 486 S.E.2d 432 (1997).
36. *Bullard v. U.S. Air, Inc.*, 114 N.C. App. 791, 443 S.E.2d 80 (1994).

37. *State v. Harris*, 111 N.C. App. 58, 431 S.E.2d 792 (1993).
38. *County of Hoke v. Byrd*, 107 N.C. App., 421 S.E.2d 800 (1992).
39. *In re Belk*, 107 N.C. App. 448, 420 S.E.2d 682 (1992).
40. *State v. Mauney*, 106 N.C. App. 26, 415 S.E.2d 208 (1992).

- 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.

Not applicable.

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

State v. Philip Morris, USA, Inc., __ N.C. App. __, 666 S.E.2d 783 (2008). I recused myself *sua sponte* because the treasurer for my then-current re-election campaign, while not an attorney of record, was nevertheless staffed to that case by the law firm for which she worked.

Land v. Tall House Bldg. Co., 165 N.C. App. 880, 602 S.E.2d 1 (2004). I recused myself *sua sponte* because the issue on appeal concerned the application of stucco as a building material to a home, and I had encountered the same issue personally regarding the use of synthetic stucco on my home.

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.

Public Offices:

North Carolina Health Care Advisory Board, 1988-1990

Appointed by Speaker, NC House of Representatives

Greenville Environment Advisory Committee, 1988-1990

Appointed by Greenville City Council

Pitt Community College Board of Trustees, 1989-1994

Appointed by Pitt County Board of Commissioners

National Conference of Commissioners on Uniform State Laws

Appointed by Governor - June 1993-Present

Candidacies (unsuccessful):

Associate Justice, Supreme Court of North Carolina, 2004 (special election that included a field of eight candidates in a plurality race).

Associate Justice, Supreme Court of North Carolina, 1998

Nominations (unsuccessful):

United States Court of Appeals for the Fourth Circuit, August 1999

Nominated by President William Jefferson Clinton

United States Court of Appeals for the Fourth Circuit, January 2001

Nominated by President William Jefferson Clinton

- 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 played a significant role in my own election campaigns for the North Carolina Court of Appeals and Supreme Court of North Carolina in 1990, 1992, 1998, 2000, 2004, and 2008. I have not participated in campaigns for others seeking political office, except to the extent that my own campaigns intersected with other judicial campaigns going on during the same election cycles as my own.

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.
 - ii. whether you practiced alone, and if so, the addresses and dates;

I did not practice 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.

1979-present Judge Advocate General's Corps (Active & Reserve)
United States Navy
Washington Navy Yard
1322 Patterson Avenue, S.E.
Suite 3000
Washington, DC 20374

I served in the United States Navy on active duty for four years as an Assistant Judge Advocate General. After completing Naval Justice School, I was assigned to the Naval Legal Service Office (NLSO) in Norfolk, Virginia. I tried over 100 courts-martial cases. I also served as a Claims Attorney for claims brought under the Federal Torts Claims Act.

As a reservist, I have served in the following leadership roles:

Commanding Officer, Navy Trial Judiciary, 2004-2007

Military Judge, Navy Trial Judiciary, 2002-2007

Staff Judge Advocate, Navy Reserve Readiness Command Six, Washington, DC 2000-2002

Commanding Officer, Civil Law Support Activity, Navy Reserve Center, Atlanta, GA, 1998 - 2000

Commanding Officer, Naval Reserve Legal Service Office, Jacksonville, FL, 1996-1998

Deputy Reserve Senior Staff Judge Advocate to the Commander in Chief of the Atlantic Forces, 1994-1996

Executive Officer, Naval Reserve Legal Service Office, Raleigh, NC, 1988-1994

1983-1984 Assistant Appellate Defender
Office of the Appellate Defender for North Carolina
123 West Main Street, Suite 500
Durham, NC 27701

Worked as an Assistant Appellate Defender for North Carolina handling criminal appeals for indigent defendants before North Carolina's appellate courts.

1984-1990 Fitch, Wynn & Associates f/k/a Fitch, Butterfield & Wynn
f/k/a Fitch & Butterfield
Attorneys at Law
615 East Nash Street
Wilson & Greenville, NC

Worked first as an associate and then as a partner in this general practice law firm located in the Eastern North Carolina counties of Wilson and Pitt. My practice included criminal and civil litigation as well as administrative cases on the State and federal level. I also handled estate and probate matters.

- i. 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.

Summary of Character of My Legal Practice:

1979-1983: Judge Advocate General's Corps, United States Navy
65% -- Military Justice
30% -- Federal Tort Claims
2% -- Military Magistrate
3% -- Navy Officer Training Activities

1983-1984: Assistant Appellate Defender, Office of the Appellate Defender for North Carolina

100% -- Criminal Appellate Defense

1984-1990: Private Practice at Fitch, Butterfield & Wynn, Attorneys at Law

25% -- Real Estate

15% -- Social Security

10% -- Criminal

50% -- Civil litigation and Administrative

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

1. Assistant Judge Advocate General: As Defense Counsel, clients were active Navy personnel. As Federal Torts Claim Attorney, client was United States.

2. Assistant Appellate Defender: Indigent criminal defendants.

3. Private Practice of Law: Primarily citizens of Eastern North Carolina.

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.

Assistant Judge Advocate General (Active Service): Handled primarily litigation and appeared frequently in General and Special Courts-Martial Proceedings.

Assistant Judge Advocate General (Reserve): Handled litigation during occasional appearances as trial judge in General and Special Courts-Martial during periods of active reserve duty and on special assignments, 2002-2007. While serving as a Senior Trial Counsel in the reserve, I handled litigation and appeared occasionally during active reserve drills as a prosecutor for the government.

Assistant Appellate Defender: Handled only litigation, frequent practice in the appellate courts and appeared occasionally, when requested, to argue cases before North Carolina's appellate courts.

Private Practice: Handled primarily litigation, occasionally in District and Superior Courts. Appeared in Appellate Courts to handle appeals and before administrative agencies including the Social Security Administration and the North Carolina Industrial Commission.

SUMMARY OF COURT APPEARANCES AND PERCENTAGES IN COURT:

1979-1983: Appeared frequently in Military Court
1983-1984: Appeared in Supreme Court of North Carolina and North Carolina Court of Appeals
1984-1990: Appeared occasionally in Magistrate, District, and Superior Courts of North Carolina, in Supreme Court of North Carolina and North Carolina Court of Appeals, in Federal District Court, and before administrative law bodies

i. Indicate the percentage of your practice in:

1. federal courts;
1979-1983 -- 100%
1983-1984 -- 0%
1984-1990 -- 5%
2. State courts of record;
1979-1983 -- 0%
1983-1984 -- 100%
1984-1990 -- 65%
3. other courts;
1979-1983 -- 0%
1983-1984 -- 0%
1984-1990 -- 10%
4. administrative agencies
1979-1983 -- 0%
1983-1984 -- 0%
1984-1990 -- 25%

ii. Indicate the percentage of your practice in:

1. civil proceedings;
1979-1983: 10%
1983-1984: 0%
1984-1990: 70%
2. criminal proceedings.
1979-1983: 90%
1983-1984: 100%
1984-1990: 30%

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.

1979-1983: Approximately 30 cases -- Sole Counsel
Approximately 5 cases -- Co-Counsel
1983-1984: Appellate Litigation --

1984-1990: Approximately 35 cases -- Sole Counsel
 Approximately 3 cases -- Associate Counsel

i. What percentage of these trials were:

1. jury;

 1979-1983 -- 90%

 1983-1984 -- Not Applicable

 1984-1985 -- 20%

2. non-jury.

 1979-1983 -- 10%

 1983-1984 -- Not Applicable

 1984-1990 -- 80%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

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

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

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Hargrove v. Debase*, 82 Cas 79, Wilson County Superior Court

Plaintiff, Gertrude Hargrove, sued her brother, James Debase, Jr., alleging that in 1952 she gave him money to purchase in his name but for her three tracts of land to hold in trust for her. Nearly 30 years later, she sued him, and while the suit was initially dismissed, the North Carolina Court of Appeals found that Ms. Hargrove had alleged sufficient facts to warrant a trial on the issue of constructive or resulting trust. I tried that case representing Mr. Debase before a jury in the Wilson County Superior Court. A verdict on those issues was rendered in favor of Mr. Debase. However, the jury did find that he had converted other monies (\$2,000) from Ms. Hargrove.

Presiding Judge: Superior Court Judge Paul Wright

Date: 1988

Plaintiff's Attorney: Robert A. Farris, Jr., Farris and Farris, P.A., 303 Nash Street, Wilson, NC 27894, (252) 291-5945

2(a) *State v. Lee R. Trent*, – CAS --, Pitt County Superior Court

I represented the criminal defendant along with co-counsel. I prepared all motions and discovery documents, examined most witnesses, including expert witnesses, and gave opening and closing arguments. The trial resulted in a guilty verdict of first-degree rape and taking indecent liberties with a minor. Defendant was sentenced to life imprisonment.

Presiding Judge: Superior Court Judge David Reid (Deceased)

Date: 1986

Opposing Counsel: Thomas Haigwood, Pitt County District Attorney, P.O. Box 8185, Greenville, NC 27835, (252) 830-6434; Nancy Aycock, Assistant District Attorney, Pitt Memorial Hospital, Inc., 2100 Stantonsburg Road, Greenville, NC 27835

Co-Counsel: Milton F. Fitch, Jr., Wilson, P.O. Box 156, Thurber, NC 27886, (252) 823-4761

2(b) *State v. Lee R. Trent*, 320 N.C. 610, 359 S.E.2d 463 (1987)

I handled the defendant's appeal of his first-degree rape and taking indecent liberties with a minor convictions. I prepared the record on appeal, drafted the brief, and argued the issues before the Supreme Court of North Carolina (I moved, on the defendant's behalf, to bypass the Court of Appeals). The Supreme Court held that: (1) the indictment charging defendant with first-degree rape was fatally defective and should have been quashed; (2) the testimony of the pediatrician to the effect that child had been sexually abused was erroneously admitted; and (3) the erroneous admission of the pediatrician's testimony was prejudicial, and thus, defendant was entitled to new trial on charge of taking indecent liberties with a minor.

Judgment on conviction for first-degree rape arrested; new trial granted on charge of taking indecent liberties with minor.

Presiding Justices: Exum, Martin, Meyer, Webb, Frye, Mitchell, Whichard; Authoring Justice: Henry E. Frye

Date: 1987

Opposing Counsel: Stephen F. Bryant, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

Co-Counsel: Milton F. Fitch, Jr., Wilson, P.O. Box 156, Thurber, NC 27886, (252) 823-4761

3. *State v. Gustarivus Whitaker*, 76 N.C. App. 52, 331 S.E.2d 752 (1985)

I handled only the appeal of this case, challenging the defendant's conviction of second-degree kidnapping. The Court of Appeals held that the evidence was sufficient to supported and that the trial court did not err in refusing to instruct the jury on a lesser included offence. However, the court agreed that the indictment did not comport with best practice.

Presiding Judges: Hedrick, Cozort, Johnson; Authoring Judge was Jack Cozort

Date: 1985

Opposing Counsel: Michael Rivers Morgan, P.O. Box 351, Raleigh, NC, 27602, (919) 755-4100

Co-Counsel: Malcolm Ray Hunter, Jr., Office of the Appellate Defender for North Carolina, 123 West Main Street, Suite 500, Durham, NC 27701, (919) 560-3334

4. *State v. Toney Wiggins*, 78 N.C. App. 405, 337 S.E.2d 198 (1985)

I handled only the appeal of this case and challenged the defendant's conviction of armed robbery. The North Carolina Court of Appeals upheld the conviction, determining that a box cutter was a dangerous weapon *per se* and that the defendant was not entitled to an instruction on common-law robbery.

Presiding Judges: Whichard, Eagles, Cozort; Authoring Judge was Willis Whichard

Date: 1985

Opposing Counsel: John F. Maddrey, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

5. *State v. Walter Jackson, Jr.*, 74 N.C. App. 92, 327 S.E.2d 270 (1985)

I handled only the appeal of this case, challenging the defendant's conviction of assault with a deadly weapon upon a law enforcement officer. The Court of Appeals held that the evidence was sufficient to support defendant's conviction, unrefuted testimony supported admission of in-court and out-of-court identifications of defendant, and the trial court did not err in admitting the identification evidence without making factual findings.

Presiding Judges: Eagles, Arnold, Parker; Authoring Judge was Sidney Eagles

Date: 1985

Opposing Counsel: Michael Smith, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

6. *State v. Allen Mitchell Owens*, 73 N.C. App. 631, 327 S.E.2d 42 (1985)

I handled only the appeal of this case, challenging the defendant's conviction of common-law robbery. The Court of Appeals held that the trial court properly instructed jury that defendant could be found guilty of common-law robbery, as lesser included offense of indicted offense of robbery with a dangerous weapon.

Presiding Judges: Hedrick, Johnson, Cozort; Authoring Judge was Clifton Johnson

Date: 1985

Opposing Counsel: James Peeler Smith, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

7. *State v. Robert Bruce Marlowe*, 73 N.C. App. 443, 326 S.E.2d 351 (1985)

I handled the appeal of this case, in which the defendant was convicted of felonious larceny. The Court of Appeals that the trial court properly entered a judgment of felonious larceny and that the trial court's failure to summarize the evidence in its jury instructions was not reversible error.

Presiding Judges: Hedrick, Johnson, Cozort; Authoring Judge was Jack Cozort

Date: 1985

Opposing Counsel: Archie W. Andrews, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

8. *State v. Amy Riggsbee*, 72 N.C. App. 167, 323 S.E.2d 502 (1985)

I handled the appeal of the defendant's conviction of felonious child abuse. The Court of Appeals upheld the conviction, finding that the evidence was sufficient to reasonably infer the defendant's guilt, that examination about injuries to two other children sustained while in the defendant's care was within the scope of permissible impeachment, and that evidence of a prior striking of another infant by defendant was admissible.

Presiding Judges: Vaughan, Johnson, Whichard; Authoring Judge was Clifton Johnson

Date: 1985

Opposing Counsel: Jane Rankin Thompson, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

9. *State v. Hammie Lee Washington*, 71 N.C. App. 767, 323 S.E.2d 420 (1984)

I handled this appeal of the defendant's conviction of armed robbery, assault with a deadly weapon with intent to kill inflicting serious injury, and assault with a deadly weapon. The Court of Appeals upheld the conviction, holding, among other things, that instruction on common-law robbery was not required where the uncontradicted evidence showed that the robberies were committed with a dangerous weapon.

Presiding Judges: Whichard, Hedrick, Eagles; Authoring Judge was Willis Whichard

Date: 1984

Opposing Counsel: Steven F. Bryant, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

10. *State v. Larry James Atkins*, 311 N.C. 272, 316 S.E.2d 306 (1984)

I handled the appeal of this case, challenging the defendant's conviction of felonious breaking and entering and second-degree sexual offense. The Court of Appeals, in 66 N.C. App. 67, 310 S.E.2d 629, affirmed. On further appeal, the Supreme Court, Exum, J., held that evidence did not disclose excessive brutality, or physical pain, psychological suffering, or dehumanizing

aspects not normally present in second-degree sex offenses so as to support sentencing court's finding that defendant's second-degree sexual offense was especially heinous, atrocious, or cruel.

Presiding Justices: Branch, Exum, Meyer, Mitchell, Martin, Frye, Billings

Date: 1984

Opposing Counsel: Richard L. Kucharski, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602, (919) 716-6400

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

I litigated a large number of cases in the military trial courts during my active service between 1979 and 1983. Over 25 of those cases were tried before military members, the equivalent of the civilian jury. The charges at issue included property and violent crimes.

In my last year as an active-duty Navy lawyer, I acted as a military magistrate and determined whether military persons charged with crimes would be detained for trial. I also prepared litigation reports for the United States Attorney's Office in the Eastern District of Virginia on cases arising under the Federal Tort Claims Act. These matters generally involved medical malpractice claims made against Navy medical personnel by civilian dependents.

After completing my active Navy duty, I acted as an Assistant Appellate Defender, representing indigent criminal defendants in North Carolina. That work exposed me to all aspects of appellate advocacy and gave me the opportunity to hone my appellate skills, both written and oral.

Thereafter, I practiced general law in Wilson and Greenville, North Carolina. I represented a number of individuals in Social Security matters before Administrative Law Judges. I handled many real estate and contract actions. And I litigated cases dealing with land condemnation, including a condemnation proceeding against Sycamore Hill Baptist Church in Greenville; that matter was eventually resolved by settlement.

While I have varied work experience prior to going on the bench, I have never been engaged as a lobbyist.

In addition to the above activities, I have had extensive involvement in bar and legal organizations. In the North Carolina State Bar, I served as a Trustee for the IOLTA Board and made decisions on the expenditure of trust fund income in the provision of legal services for indigent persons.

In the North Carolina Bar Association, I have served in various capacities including Vice President. I was appointed by then President of the NCBA, Judge Allyson Duncan, to serve as the Chair of the NC Bar Association's Brown v. Board of Education 50th Anniversary celebration. The program included major media coverage and the presence of Dr. John Hope Franklin and Professor Jack Greenberg.

In the American Bar Association, I chaired the Appellate Judges Conference and the Judicial Division and I have served in a number of leadership roles including as a drafter of the recently adopted Revised ABA Model Code of Judicial Conduct. I served as a co-chair for the ABA National Diversity Summit in June, 2009. I serve on the World Justice Commission, which seeks to promote adherence to the Rule of Law around the world; the Commission met in the Fall of 2008 in Vienna, Austria with representatives from over 90 countries.

In the National Conference of Commissioners on Uniform State Laws, I have served on the Executive Committee, Scope and Program Committee, and now as a Division Chair overseeing the work of several drafting and study committees. Recently, the incoming President, Robert Stein, asked me to serve as Vice President for the coming year which is subject to the approval of the Executive Committee at the 2009 Annual Meeting.

I am also a member of the American Law Institute.

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.

While I have, with some frequency, given talks on various topics, I have not done so as an instructor of a course at an educational institution.

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

I am vested in the State of North Carolina Judicial Retirement System and I will be entitled to receive a pension at age 60 as a result of my active and reserve service in the U.S. Navy. I maintain a Thrift Savings Plan through the Navy Reserve.

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

I do not have plans, commitments, or agreements to pursue outside employment during service with the court. All of the various organizations to which I belong are voluntary. As for the United States Navy Reserve, I completed 30 years of service and retired on August 1, 2009.

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

See attached Financial Disclosure Report

23. Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not foresee any such conflicts.

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

Under the 2007 ABA Model Code of Judicial Conduct which I was a principal drafter, Rule 2.11 requires a judge to disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. This rule is counterbalanced by the commentary under Rule 2.7, which states that a judge should not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

When faced with a potential conflict of interest, I would disclose my concerns with the court's ethics advisor, or if appropriate, with the Chief Judge or designated judicial official. If it is a waivable conflict of interest matter, then I would disclose it to the parties and determine if they would like to waive the conflict to allow me to proceed. If it is not a waivable conflict, then I would disqualify myself from participating.

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.

I have served on a number boards, committees and commissions as a volunteer to promote adherence to the rule of law, enhance the public's confidence in the judiciary, and educate the public on the judiciary and our legal system. I have given countless talks in the school system to young students; made presentations at civic organizations on legal developments; and participated in workshops and conferences on legal subjects.

As an Assistant Appellate Defender, all of my working time was devoted to representing the disadvantaged. While in private practice, I represented individuals who were no able to afford legal fees, including through my representation of individuals seeking social security benefits at a time when the Legal Services Corporation in Wilson, North Carolina was overwhelmed with indigent clients; in fact, I agreed to accept referrals from them. Additionally, I provided free counsel to area churches on matters such as the drafting of church constitutions and by laws, as well as advising church members on the legal obligations of church trustees. Further, I gave numerous talks to community groups, including, for example, free lectures on wills and probate matters.

As a judge, I regularly speak to high school and community groups on the role of the judiciary, the importance of respecting the law, and law as a career field for all, even the most disadvantaged. I also spend a significant amount of time on bar committees that seek to improve the court system and address the relationship between the legal system and the public. For example, I served as Co-Chair of the ABA's 2009 Diversity Conference and was the Chair of the *Brown v. Board of Education* Fiftieth Anniversary Committee. I have also served community committees by, e.g., serving as a trustee for Pitt Community College and as a member of the Greenville Environmental Advisory Commission.

I have devoted countless hours toward the appointed work of the National Conference of Commissioners on Uniform State Laws. My work on the World Justice Commission has led me to make international presentations on the value of the Rule of Law in Ghana and Austria. At the behest of the United States State Department, I gave 10 lectures in North and South Vietnam on Judicial Independence and the Rule of Law.

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 first nominated to the United States Court of Appeals for the Fourth Circuit in 1999 and 2000 by then-President William Jefferson Clinton. Under a committee commissioned by Senator Kay Hagan of North Carolina, I was favorably endorsed, unanimously, for renomination this year. I earlier met with Senator Richard Burr's Chief Legal Counsel and received positive feedback. The White House communicated with me regarding whether I was interested in being re-nominated in March, 2009 and in April, 2009 advised me that the Justice Department would contact me soon. In May, 2009, the Justice Department provided these forms to me to assist in the vetting process.

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

6 NOV 09 James A. Wynn Jr.
(DATE)(NAME)



Crystal Wright
(NOTARY)

My commission expires: 6/15/2010