

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Jonathan Allen Kobes

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

United States Circuit Judge for the Eighth 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.

United States Senator M. Michael Rounds  
320 North Main Avenue, Suite A  
Sioux Falls, South Dakota 57104

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

1974; Sioux City, Iowa

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.

1997 – 2000, Harvard Law School; J.D., 2000

1992 – 1996, Dordt College; B.A., 1996

Summer 1995, University of Notre Dame; no degree (Pew Younger Scholars Program)

Summer 1991, Florida State University; no degree (summer class while in high school)

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.

2014 – present

United States Senator M. Michael Rounds

320 North Main Avenue, Suite A

Sioux Falls, South Dakota 57104

General Counsel (2016 – present)

Ethics Certification Officer (2014 – 2018)

Deputy Chief of Staff and Counsel (2015 – 2016, Washington, District of Columbia)

Political Fund Designee (2014 – 2016)

Deputy Director, Transition (2014 – 2015, Washington, District of Columbia)

2013 – 2014

Raven Industries

205 East 6th Street

Sioux Falls, South Dakota 57104

Director of Corporate Compliance

2012 – 2013

DuPont Pioneer

7000 Northwest 62nd Avenue

Johnston, Iowa 50131

Senior Regulatory Counsel

2008 – 2012

POET, LLC

4615 North Lewis Avenue

Sioux Falls, South Dakota 57104

Counsel, Advisor, and Senior Counsel

2005 – 2008

Murphy, Goldammer & Prendergast, LLP (now Redstone Law Firm, LLP)

101 North Phillips Avenue

Sioux Falls, South Dakota 57104

Associate

2003 – 2005

United States Attorney's Office

District of South Dakota

201 Federal Building, 515 9th Street

Rapid City, South Dakota 57701

Assistant United States Attorney

2002 – 2003

Central Intelligence Agency

George Bush Center for Intelligence

McLean, Virginia 22101

Honors Attorney

Fall 2001

Woods, Fuller, Shultz & Smith  
300 South Phillips Avenue  
Sioux Falls, South Dakota 57104  
Law Clerk

2000 – 2001

Chief Judge Roger L. Wollman  
United States Court of Appeals for the Eighth Circuit  
400 South Phillips Avenue  
Sioux Falls, South Dakota 57104  
Law Clerk

Summer 2000

United States Attorney's Office  
Northern District of Iowa  
Ho-Chunk Building, Suite 670  
600 4th Street  
Sioux City, Iowa 51101  
Law Clerk

Summer 1999

McDermott, Will & Emery  
444 West Lake Street  
Chicago, Illinois 60606  
Summer Associate

Summer 1997

Eastern Christian Schools  
50 Oakwood Avenue  
North Haledon, New Jersey 07508  
Janitor

1996 – 1997

Zurich Kemper Investments (now Deutsche Asset Management)  
222 South Riverside Plaza  
Chicago, Illinois 60606  
Shareholder Services Representative and Sales Support Representative

Summer 1996

Becton Dickinson & Company  
1 Becton Drive  
Franklin Lakes, New Jersey 07417  
Order Entry Clerk

Other Affiliations (uncompensated)

2014 – 2016

Lincoln County Republican Party, Central Committee  
46787 273rd Street  
Tea, South Dakota 57064  
Precinct Committeeman

2012

Bethany Christian Services  
400 South Sycamore Avenue, Suite 103-1  
Sioux Falls, South Dakota 57110  
Board Member

2009 – 2012

Growth Energy  
701 8th Street, N.W., Suite 450  
Washington, District of Columbia 20001  
Special Litigation Counsel (in connection with my employment at POET, LLC)

Spring 1999

Massachusetts Attorney General's Office  
One Ashburton Place  
Boston, Massachusetts 02108  
Law Clerk

Summer 1998

United States Senate Committee on the Judiciary, Subcommittee on Administrative  
Oversight and the Courts  
224 Dirksen Senate Office Building  
Washington, District of Columbia 20510  
Law Clerk

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

I have not served in the United States military. I registered for the selective service upon turning 18.

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.

Fellow, Heyman Program on Government Service, Harvard Law School (2002)

Harvard Journal of Law and Public Policy, Business Manager (1999 – 2000) and Editor (1998 – 1999)

Honors Scholarship, Dordt College (1992 – 1996)

Louis and Tina Van Dyke History Scholarship, Dordt College (sometime between 1993 – 1996)

Van Til History, Philosophy & Theology Scholarship, Dordt College (sometime between 1993 – 1996)

Study Abroad Scholarship, Dordt College (1994)

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.

Eighth Circuit Bar Association (2016 – 2017)

Iowa Bar Association (intermittently, 2002 – 2013)

Second Circuit (South Dakota) Bar Association (2005 – present)

South Dakota Bar Association (2004 – present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Iowa, 2002 (inactive status)  
South Dakota, 2004

There have been no lapses in membership. I first took voluntary inactive status in Iowa in February 2005, reinstated my active membership in October 2005, and again took voluntary inactive status in 2013.

- 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 Court of Appeals for the Eighth Circuit, 2002  
United States District Court for the District of South Dakota, 2003

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.

To the best of my recollection:

American Bar Association (2002 – 2003)

Association of Corporate Counsel (2008 – 2014)

BIO (Biotechnology Innovation Organization), Food and Agriculture Law Committee (2013 – 2014)

Defense Research Institute (2005 – 2007)

Federalist Society (1999 – 2004)

Growth Energy (approximately 2009 – 2014)

National Rifle Association (2013 – 2014)

South Dakota Trial Lawyers (approximately 2005 – 2008)

- 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 my knowledge none of these organizations discriminates or formerly discriminated on the basis of 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.

I have not written or edited any such published material.

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

I have not prepared or contributed to any such reports, memoranda, or policy statements, except for written materials that I prepared as Special Litigation Counsel for Growth Energy, which are attorney work product and protected by the attorney-client privilege.

- 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.

Letter to the Federal Election Commission, Advisory Opinion Request, May 6, 2011. Copy supplied.

Testimony before the Federal Election Commission, June 15, 2011. Audio recording available at <https://classic.fec.gov/audio/2011/2011061507.mp3>.

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

I have not delivered any such speeches or talks.

- 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.

On June 20, 2017, I gave an interview to W.B. Kranendonk of the Dutch newspaper *Reformatorisch Dagblad*. Although the interview was in English, Mr.

Kranendonk subsequently wrote three Dutch-language articles based on the interview: *Trump én media versterken negativiteit*, published July 7, 2017; *Op Reis door het hartland van Trump*, published July 15, 2017; and *Sioux Center koestert zijn immigranten*, published July 20, 2017. These articles repeatedly and extensively misquoted what I had said in English during the interview. Because I was able to obtain a complete audio recording of the interview, I am supplying the complete audio of the interview as well as copies of the articles.

David Montgomery, *Rounds Hires Campaign Manager as Chief of Staff*, Argus Leader (Sioux Falls), Dec. 18, 2014. Copy supplied.

David Montgomery, *Rounds Sets Sights on Armed Services, Banking Committees*, Argus Leader (Sioux Falls), Nov. 20, 2014. Copy supplied.

*Court appearances set in campaign charges*, Associated Press, Oct. 23, 2007. Copy supplied. Reprinted in multiple outlets.

Sally Jongsma, *Summers sharpen students' sights*, The Voice (Dordt College), Oct. 1995. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- 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: \_\_\_\_\_% [total 100%]

civil proceedings: \_\_\_\_\_%  
criminal proceedings: \_\_\_\_\_% [total 100%]

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

- e. Provide a list of all cases in which certiorari was requested or granted.
  - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - 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.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. 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.
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:

I have not held judicial office.

- 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.

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.

General Counsel (2016 – present). Appointed October 2016 by Senator Rounds.

Deputy Chief of Staff and Counsel (2015 – 2016) to Senator Rounds. Appointed January 2015 by Senator Rounds.

Republican Precinct Committeeman (2014 – 2016), Lincoln County, Sioux Falls 1-18, South Dakota. Elected June 2014.

Deputy Director - Transition for Senator Rounds (November 12, 2014 – January 3, 2015). Appointed November 2014 by Senator Rounds.

- 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.

Adviser, Rounds for Senate (2012 – present). Although I do not have a formal title, I provide occasional compliance, legal, fundraising, and strategic advice to the Senator's campaign committee and leadership political action committee. I have also attended fundraising events in Washington on behalf of the campaign and the leadership political action committee and I am involved with ensuring that Senator Rounds remains in compliance with United States Senate ethics rules related to campaign activities.

Republican Precinct Committeeman, Lincoln County, Sioux Falls, South Dakota 1-18, (2014 – 2016). I was a member of the Lincoln County Republican Central Committee, although not an active member. As Precinct Committeeman, I attended the 2014 Republican State Convention as a delegate.

Adviser, Shantel Krebs for Secretary of State (2013 – 2014). I provided infrequent general and strategic advice to Shantel Krebs' campaign staff. In addition, I attended the 2014 Republican State Convention as a delegate supporting Shantel Krebs and I was involved in whip counting votes and seeking support for Secretary Krebs the evening prior to the convention vote for Secretary of State.

Poll Watcher, Romney for President / Lawyers for Romney (2012).

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;

From 2000 through 2001, I served as a law clerk to the Honorable Roger L. Wollman, Circuit Judge of the United States Court of Appeals for the Eighth Circuit.

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

I have not practiced law 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.

Spring 1999  
Massachusetts Attorney General's Office  
One Ashburton Place  
Boston, Massachusetts 02108  
Law Clerk

Summer 1999  
McDermott, Will & Emery  
444 West Lake Street  
Chicago, Illinois 60606  
Summer Associate

Summer 2000  
United States Attorney's Office  
Northern District of Iowa  
Ho-Chunk Building, Suite 670  
600 4th Street  
Sioux City, Iowa 51101  
Law Clerk

Fall 2001  
Woods, Fuller, Shultz & Smith  
300 South Phillips Avenue  
Sioux Falls, South Dakota 57104  
Law Clerk

2002 – 2003  
Central Intelligence Agency  
George Bush Center for Intelligence  
McLean, Virginia 22101  
Honors Attorney

2003 – 2005  
United States Attorney's Office  
District of South Dakota  
201 Federal Building, 515 9th Street  
Rapid City, South Dakota 57701  
Assistant United States Attorney

2005 – 2008  
Murphy, Goldammer & Prendergast, LLP (now Redstone Law Firm, LLP)  
101 North Phillips Avenue  
Sioux Falls, South Dakota 57104  
Associate

2008 – 2012  
POET, LLC  
4615 North Lewis Avenue  
Sioux Falls, South Dakota 57104  
Counsel, Advisor, and Senior Counsel

2012 – 2013  
DuPont Pioneer  
7000 Northwest 62nd Avenue  
Johnston, Iowa 50131  
Senior Regulatory Counsel

2013 – 2014  
Raven Industries  
205 East 6th Street  
Sioux Falls, South Dakota 57104  
Director of Corporate Compliance

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

I have not served as a mediator or arbitrator.

b. Describe:

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

character has changed over the years.

From 2002 to 2003, I worked as an Honors Attorney in the Litigation Division, Office of General Counsel at the Central Intelligence Agency. My primary task was protecting Central Intelligence Agency classified information that could be disclosed in litigation. I worked with Department of Justice attorneys and classification experts at the Central Intelligence Agency.

From 2003 to 2005, I served as a criminal division Assistant United States Attorney in Rapid City, South Dakota. I handled all stages of criminal prosecution, including grand jury investigations, pre-trial proceedings, jury and bench trials, and appeals. I primarily prosecuted narcotics violations and violent crime on the Pine Ridge Indian Reservation, although I also handled a variety of other criminal cases.

From 2005 to 2008, I was an associate at Murphy, Goldammer & Prendergast, LLP, a small law firm in Sioux Falls. I had a general civil litigation practice in federal and state court. I handled a wide range of cases, including personal injury, insurance defense, commercial litigation, constitutional law, and criminal defense. I handled all stages of civil litigation, including drafting pleadings, conducting discovery, drafting and arguing motions, and trial.

In 2008, I transitioned to in-house practice. The character of my practice was different with each employer. From 2008 to 2012, I worked for POET, LLC in Sioux Falls. At POET, I initially managed general litigation. Later, I focused on public policy, regulatory issues, and regulatory litigation. During this time I also served as Special Litigation Counsel for Growth Energy, an ethanol trade organization, where I was lead counsel for the ethanol industry's effort to obtain regulatory approval for 15% ethanol fuel. From 2012 to 2013, I worked as a regulatory attorney at DuPont Pioneer, where I provided legal support for business and regulatory employees seeking to obtain worldwide approval for production and export of genetically engineered seeds and crops. From 2013 to 2014, I worked at Raven Industries as Director of Corporate Compliance. My primary focus at Raven was providing general compliance for the company's business operations and specifically export compliance for the AeroStar Division's export of defense articles and services.

In 2014, I joined the office of Senator M. Michael Rounds, where I am responsible for all legal, compliance, and ethics issues. I also have a legislative portfolio that includes law enforcement, judicial nominations, civil rights, and immigration. As Deputy Chief of Staff, I managed the Senator's Washington office.

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

As an Assistant United States Attorney and an attorney for the Central Intelligence Agency, my client was the United States of America. As a prosecutor I specialized in criminal litigation, and at the CIA I specialized in providing support to the Department of Justice to ensure that CIA classified material was protected in litigation.

As in-house counsel, I represented my employers or their related entities, such as POET, LLC, and Growth Energy. The areas I specialized in varied with each employer. At POET, LLC and Growth Energy, I specialized in regulatory issues and regulatory litigation involving the Environmental Protection Agency, the State of California, and several Midwestern states. I also handled political compliance for the POET political action committee and registered lobbyists. At DuPont Pioneer, I provided legal support for DuPont Pioneer's efforts to obtain worldwide regulatory approval for the production and export of genetically engineered agriculture products. At Raven Industries, I worked primarily with the company's Aerostar division to ensure compliance with regulations governing the export of defense articles and services.

In private practice, I worked primarily on civil matters, although I handled a few criminal cases. I represented both plaintiffs and defendants in federal and state court. My clients included a few large corporations, but mostly small businesses, non-profit entities and churches, and individuals.

- 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.

As an Assistant United States Attorney, I appeared in federal district court multiple times a week. While in private practice, I appeared occasionally in state and federal court. As in-house counsel, I rarely appeared in court.

- i. Indicate the percentage of your practice in:
  - 1. federal courts: 85%
  - 2. state courts of record: 15%
  - 3. other courts: 0%
  - 4. administrative agencies: 0%
  
- ii. Indicate the percentage of your practice in:
  - 1. civil proceedings: 20%
  - 2. criminal proceedings: 80%

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

I have tried six cases to verdict. I was sole counsel in one criminal jury trial, associate counsel in three criminal trials, sole counsel in one federal Indian country juvenile delinquency adjudication (bench trial), and associate counsel in one state court civil bench trial. (As associate counsel in the three criminal prosecutions, I generally gave the government's opening statement, examined witnesses and handled objections. In the state court civil bench trial, I examined all of the witnesses and handled all of the objections.)

- i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 67% |
| 2. non-jury: | 33% |

- 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:

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

1. *United States v. White Face, et al.*, 383 F.3d 733 (8th Cir. 2004).

In this consolidated appeal, the appellants argued that the PROTECT Act, Pub. L. 108-21, 117 Stat. 650 (2003), requires federal district courts to provide notice and a written statement of reasons when revoking supervised release and sentencing a defendant to a term longer than recommended in Chapter 7 of the United States Sentencing Guidelines Manual. The Eighth Circuit (Wollman, Heaney, and Murphy,

JJ.) affirmed the judgments of the district courts. I drafted some of the underlying briefing (there were multiple cases) and argued the consolidated appeal.

Appellants' counsel:

Gary Colbath  
Federal Public Defender's Office  
District of Alaska  
601 West 5th Avenue #800  
Anchorage, Alaska 99501  
907-646-3400

2. *United States v. John Waters*, No. 5:04-cr-50131-AWB (D.S.D. 2005).

I obtained an indictment against the defendant, John Waters, for involuntary manslaughter in Indian Country. After a three-day jury trial before the late Honorable Andrew W. Bogue, the defendant was acquitted. I was the sole trial counsel.

Defense counsel:

Monica Colbath  
Federal Public Defender's Office  
District of Alaska  
601 West 5th Avenue #800  
Anchorage, Alaska 99501  
907-646-3400

3. *United States v. Dale Joseph Martin*, No. 5:03-cr-50075-KES (D.S.D. 2003), 411 F.3d 998 (8th Cir. 2005).

I charged the defendant by criminal complaint and subsequently obtained an indictment for possession with intent to distribute marijuana. The Honorable Karen E. Schreier presided. The defendant entered a conditional plea of guilty and appealed the district court's denial of his motion to suppress. On appeal, the Eighth Circuit (Colloton, Wollman, and Lay, JJ.) affirmed. I drafted the Eighth Circuit brief but did not argue the case for the United States due, to the best of my recollection, to lack of a sufficient travel budget.

Defense counsel:

Monica Colbath  
Federal Public Defender's Office  
District of Alaska  
601 West 5th Avenue #800  
Anchorage, Alaska 99501  
907-646-3400

4. *Metz Farms v. Fisher Sand & Gravel Co.*, No. 4:05-cv-04058-JES (D.S.D. 2005).

I was co-counsel for plaintiff Metz Farms in this diversity breach-of-contract suit in federal district court. Metz Farms alleged that the defendant had failed to properly pay for the sand and gravel that the defendant had removed from Metz Farms' property. I drafted a motion for summary judgment, and the court substantially ruled in favor of Metz Farms. The case subsequently settled. United States Magistrate Judge John E. Simko presided.

Co-counsel for the plaintiff:

James E. McMahon  
Redstone Law Firm  
101 North Phillips Avenue, Suite 402  
Sioux Falls, South Dakota 57104  
605-331-2975

Mr. E. Steeves Smith  
Tinan, Smith & Bucher  
305 North Kimball Street  
Mitchell, South Dakota 57301  
605-996-5542

Defense counsel:

Glen R. Bruhschwein  
11273 Deerwood Lane N.  
Dayton, Minnesota 55369  
701-290-8863

5. *Cellco Partnership D/B/A, Verizon Wireless v. Nelson*, 720 N.W.2d 670 (S.D. 2006).

I was co-counsel for Cellco Partnership D/B/A, Verizon Wireless in an original mandamus proceeding before the South Dakota Supreme Court. Verizon sought to place on the South Dakota ballot an initiated measure to appeal the four percent gross receipts tax on wireless telecommunications. The Court unanimously granted the writ (along with a writ in a companion case) and overruled *Christensen v. Carson*, 533 N.W. 2d 712 (S.D. 1995).

Co-counsel for the petitioner:

James E. McMahon  
Redstone Law Firm  
101 North Phillips Avenue, Suite 402  
Sioux Falls, South Dakota 57104

605-331-2975

Matthew McCaulley  
Redstone Law Firm  
101 North Phillips Avenue, Suite 402  
Sioux Falls, South Dakota 57104  
605-331-2975

Counsel for South Dakota (Secretary of State Nelson):

Jeffrey P. Hallem  
South Dakota Investment Council  
4009 West 49th Street, #300  
Sioux Falls, South Dakota 57106  
605-362-2820

6. *United States v. Thomas E. Harvey*, No. 5:02-cr-50087-KES (D.S.D. 2002).

I was second-chair trial counsel in this case charging the defendant with assault with a dangerous weapon and assault resulting in serious bodily injury on the Pine Ridge Indian Reservation. The defendant was acquitted after a two-day jury trial before the Honorable Karen E. Schreier.

Co-counsel for the United States:

Gregg S. Peterman  
Assistant United States Attorney  
U.S. Attorney's Office  
201 Federal Building  
515 9th Street  
Rapid City, South Dakota 57701  
605-342-7822

Counsel for the defendant:

James F. Margadant  
3812 West St. Louis Street  
Rapid City, South Dakota 57702  
605-431-3523

7. *United States v. Jim Michael Smith*, No. 5:03-cr-50082-AWB (D.S.D. 2003).

I was second-chair trial counsel in this case charging the defendant with possession with intent to distribute amphetamine. The defendant was convicted after a one-day jury trial before the late Honorable Andrew W. Bogue.

Co-counsel for the United States:

Mark A. Vargo  
Pennington County State's Attorney  
130 Kansas City Street, Suite 300  
Rapid City, South Dakota 57701  
605-394-2191

Counsel for the defendant:

Bryce A. Flint  
Post Office Box 37  
815 Junction Avenue  
Sturgis, South Dakota 57785  
605-490-9813

8. *United States v. Rudolph Leopold Olguin*, No. 5:04-cr-50086-AWB (D.S.D. 2004).

I was second-chair trial counsel in this case originally charging the defendant with distribution of a controlled substance resulting in serious bodily injury and death. A jury convicted the defendant of distribution of a controlled substance. The trial was before the late Honorable Andrew W. Bogue.

Co-counsel for the United States:

Mark A. Vargo  
Pennington County State's Attorney  
130 Kansas City Street, Suite 300  
Rapid City, South Dakota 57701  
605-394-2191

Counsel for the defendant:

Monica Colbath  
Federal Public Defender's Office  
District of Alaska  
601 West 5th Avenue #800  
Anchorage, Alaska 99501  
907-646-3400

9. *United States v. Fonnegra et al.*, No. 5:04-cr-5001-KES (D.S.D. 2004).

In this case I obtained a multi-count drug conspiracy indictment against three defendants. All defendants pleaded guilty and were sentenced to respective terms of 84 months' imprisonment, 36 months' imprisonment, and three years' probation. The Honorable Karen E. Schreier presided.

Counsel for the defendants:

George E. Grassby  
Whiting Hagg Hagg Dorsey & Hagg, LLP  
601 West Boulevard  
Rapid City, South Dakota 57701  
605-250-3003

Gary Colbath  
Federal Public Defender's Office  
District of Alaska  
601 West 5th Avenue #800  
Anchorage, Alaska 99501  
907-646-3400

10. *PrairieWave Communications v. Master Construction Co.*, No. 49-cv-05001725  
(Second Circuit, S.D.).

In this case I represented PrairieWave Communications in a lawsuit alleging that the defendant was liable for destruction of underground cables in violation of South Dakota Codified Laws Chapter 49-7A. After a one-day bench trial before the Honorable Stuart L. Tiede, the court ruled for my client.

Co-Counsel for the plaintiff:

Matthew McCaulley  
Redstone Law Firm  
101 North Phillips Avenue, Suite 402  
Sioux Falls, South Dakota 57104  
605-331-2975

Counsel for the defendant:

Mark R. Hanson  
Nilles Lawyers  
201 5th Street North  
Fargo, North Dakota 58102  
701-237-5544

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 provided legal and regulatory support for an application filed by Growth Energy and 54 ethanol manufacturers for a waiver under section 211(f) of the Clean Air Act for ethanol-gasoline blends of up to 15% by volume of ethanol — commonly known as E15. The EPA partially granted Growth Energy’s waiver application.

After the EPA partially granted Growth Energy’s waiver application, I was lead in-house counsel for Growth Energy in *Grocery Manufacturers Association, et al. v. EPA*, a challenge by the petroleum, small engine, and food industries to the partial waiver. Growth Energy intervened in support of the EPA and challenged the petitioners’ standing under Article III. Ultimately, a divided panel of the District of Columbia Circuit adopted Growth Energy’s arguments and dismissed the petitions for review. *See* 693 F.3d 169 (D.C. Cir. 2012).

I served as primary in-house counsel in the early stages of *Rocky Mountain Farmer’s Union, et al. v. Corey*, 730 F.3d 1070 (9th Cir. 2015), a challenge by the ethanol industry and agricultural groups to California’s Low Carbon Fuel Standard. The district court ruled in favor of the ethanol industry on Dormant Commerce Clause grounds. The Ninth Circuit affirmed in part and reversed and remanded in part. Another lawyer at POET managed the merits briefing at the district court level and the appeal; I oversaw the initial pleadings and the early strategy decisions. I also assisted with a suit filed by POET in California state court challenging the state’s approval of the Low Carbon Fuel Standard regulations. As in the *Rocky Mountain Farmer’s Union*, I retained the outside counsel and oversaw the initial pleadings and the early strategic decisions. Another POET attorney handled the subsequent litigation. The history of this case can be located at *POET, LLC et al. v. State Air Resources Board et al.*, 12 Cal. App. 5th 52 (2017).

While at Raven Industries, I provided legal and regulatory support for a sales opportunity involving the export of defense articles and services. I provided legal advice during all phases of the pursuit and travelled with the business development team during the sales process.

I have never registered as a lobbyist, although at POET I did provide legal, compliance, and other support for the company’s registered lobbyists. I also performed minimal lobbying activities that did not reach the reporting threshold under the Lobbying Disclosure Act, 2 U.S.C. § 1601 et seq. These lobbying activities involved federal ethanol policy, and were primarily directed at the United States Congress, the Environmental Protection Agency, and the United States Department of Agriculture.

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

I have not taught a course.

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

None.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I am not aware of any specific circumstances that are likely to present a conflict of interest. If confirmed, I will recuse myself in any litigation where I have ever played a role. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case-by-case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

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

If confirmed, I will review and address any real or potential conflict of interest pursuant to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and all other laws, rules, and practices governing such circumstances.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While I was in private practice, I either did not bill or reduced the bills for multiple economically disadvantaged clients. I also worked on two pro bono cases. In *Planned Parenthood of Minnesota, et al. v. Rounds, et al.*, No. 4:05-cv-04077-KES (D.S.D.), I served as local counsel for the intervenor non-profit entities in federal district court. In *Castaneira v. Ligtenberg, et al.*, No. 4:03-cv-04167-LLP (D.S.D.), I represented a South Dakota prisoner in a Section 1983 action.

Since 2015, I have served as a volunteer judge for the annual Sam Masten Moot Court Competition at the University of South Dakota School of Law, which takes about a day each year. In 2017, I began judging high school debate, as well, at a local Sioux Falls high school; each debate competition takes approximately four or five hours and I have judged three competitions.

I also serve as a volunteer interviewer for Eastern South Dakota applicants to Harvard College, which takes approximately 15 hours per year.

In the spring of 2012, I served on the board of directors for Bethany Christian Services in Eastern South Dakota, giving the organization approximately three to five hours per month.

26. **Selection Process:**

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

In June 2017, an official in the White House Counsel's office contacted me and asked if I would be interested in being considered for a nomination to the Eighth Circuit, should a vacancy occur. Over the next four months I had additional communications with the White House Counsel's office about scheduling an

interview.

On November 15, 2017, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. Since then I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy. On May 21, 2018, I met with the White House Counsel. On June 11, 2018, the President submitted my nomination to the Senate.

There is no judicial selection commission in South Dakota.

- 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.