

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Mark Allan Goldsmith

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

United States District Judge for the Eastern District of Michigan

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: Oakland County Circuit Court
 1200 North Telegraph Road
 Pontiac, Michigan 48341

Residence: [REDACTED]

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

1952; Detroit, Michigan

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.

1974 – 1977, Harvard Law School; J.D. (cum laude), 1977

1970 – 1974, University of Michigan; B.A. (awarded with High Distinction and High Honors in Economics), 1974

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.

2004 – present
Oakland County Circuit Court
1200 North Telegraph Road
Pontiac, Michigan 48341
Circuit Court Judge

2002 – 2004
Oakland County 45B District Court
13600 Oak Park Blvd.
Oak Park, Michigan 48237
Part-time Magistrate

1998 and 2001
Wayne State University Law School
471 Palmer Street
Detroit, Michigan 48202
Adjunct Instructor (part-time)

1996 – 2004
Michigan Attorney Discipline Board
211 West Fort Street, Suite 1410
Detroit, Michigan 48226
Hearing Panelist (part-time)

1987 – 2004
Honigman Miller Schwartz and Cohn
2290 First National Building
Detroit, Michigan 48226
Associate (1987 – 1988)
Partner (1988 – 2004)

1980 – 1987
Sole Practitioner
280 North Woodward Avenue
Birmingham, Michigan 48009

1980s
Oakland County 45B District Court
13600 Oak Park Boulevard
Oak Park, Michigan 48237
Court-Appointed Mediator (part-time)

1979 – 1980

Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Litigation Associate

1976

Cleary, Gottlieb, Steen & Hamilton
One Liberty Plaza
New York, New York 10006
Summer Associate

1974

Camp Ramah
Utterson Ontario, Canada
Summer Camp Counselor

Other Affiliations (uncompensated)

2008 - present

Council of Orthodox Rabbis of Greater Detroit
18877 West Ten Mile Road
Southfield, Michigan 48075
Member, Board of Directors

2006 - present

Wayne State University Center for the Study of Citizenship
3089 Faculty/Administration Bldg.
Wayne State University
Detroit, Michigan 48202
Member, Executive Board

1999

Forgotten Harvest Food Bank
21800 Greenfield Road
Oak Park, Michigan 48237
Member, Board of Directors

1993 – 1997

Maxal Investment Company (family trust)
2290 First National Bldg.
Detroit, Michigan 48226
President

1987 - present
Congregation Beth Shalom
14601 Lincoln Street
Oak Park, Michigan 48237
President (1997-1999)
Member, Board of Directors (1987-2005)

1980 - 2004
Goldsmith Group, Ltd.
66 W. 88th Street #4-D
New York, New York 10024
Secretary

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

I have not served in the U.S. Military. I 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.

Wings of Justice Award, Oakland County Democratic Party (2009)

Fellow, Michigan State Bar Foundation (2005)

Awarded certificates of appreciation for my pro bono services by the Pro Bono Civil Assignment Panel of the U.S. District Court for the Eastern District of Michigan (1997 and 2003)

Second Century Award for Leadership, Jewish Theological Seminary of America (1997)

Member of the Honors Program in Economics, University of Michigan (1971-1974)

Branstrom Freshman Prize for academic excellence, University of Michigan (1971)

James B. Angell Scholar (academic excellence), University of Michigan (1971-1974)

Phi Beta Kappa (1973)

Chairman, Central Student Judiciary, University of Michigan (1971-1974)

College Scholarship, Stone Container Corporation (1970-1974)

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

B'nai B'rith Barristers

Vice President for Religious Affairs (2009-present)

Federal Bar Association, Eastern District of Michigan Chapter
Member, Board of Directors (2001 – 2002)
President (2007-2008)
President-elect (2006-2007)
Vice-President (2005-2006)
Secretary (2004-2005)
Treasurer (2003-2004)
Program Chair (2002-2003)
Co-chair, Pro Bono Committee (2001-2007)
Metropolitan Detroit Bar Association
Michigan State Bar Association
Member, Committee on the Unauthorized Practice of Law
Oakland 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.

Michigan, 1978
New York, 1979
Texas, 1989

There has been no lapse in any membership.

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

Supreme Court of the United States, 1993
United States Court of Appeals for the Sixth Circuit, 1982
United States District Court, Eastern District of Michigan, 1982
United States District Court, Western District of Michigan, 1988
United States District Court, Eastern District of New York, 1980
United States District Court, Southern District of New York, 1980
United States District Court, Southern District of Texas, 1989
United States Court of Military Appeals, 1987
United States Air Force Court of Military Review, 1985
United States Tax Court, 1982
Michigan Supreme Court, 1978
New York State Supreme Court Appellate Division, First Department, 1979
Texas Supreme Court, 1989

There has been no lapse in any membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Oakland County Criminal Justice Coordinating Council (2008 - present)

JUST US, Oakland County Circuit Court (2008 - present)

Legal Aid and Defender Association, Inc.,

Member, Fair Housing Advisory Board (Oakland County) (2007- present)

American Israel Public Affairs Committee (1990s – present)

Huntington Woods Men’s Club (2007-2008)

American Constitution Society, Michigan Lawyers Chapter

Member, Board of Directors (2005-present)

Circle of Friends (1997-1999)

B’nai B’rith Anti-Defamation League

Member, Regional Advisory Board (1986-1994)

Jewish Federation of Metropolitan Detroit

Chair, Executive Committee of the Young Adult Division (1985-1986)

- 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 11 a 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.

I have never been a member of any organization that currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin. The Huntington Men’s Club is a community service organization that has never discriminated in its membership. Despite its name, the organization has male and female members.

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.

Receiverships in the Real Estate Setting, THE MICHIGAN BUSINESS LAW JOURNAL, Vol. XXVIII, Issue 2 (Summer 2008) (co-authored with Gregory J. DeMars)

Judge Gives Thanks for Democracy, OAKLAND PRESS (11/25/07)

Jury Duty Is an Opportunity for Community Building, OAKLAND PRESS (February 2005)

Turning 50, FBA NEWSLETTER (Winter 2007)

President's Column, FBA NEWSLETTER (Fall 2007)

Civility – Not Just A Matter of Etiquette, FBA NEWSLETTER (Spring 2008)

Interior Design, FBA NEWSLETTER (Summer 2008)

Column, *Federal Opinion Notes – Eastern District*, MICHIGAN BAR JOURNAL (March 1997; July 1997; October 1997; February 1998; June 1998; October 1998; and January 1999)

Guaranteed Income for the Elderly, Senator Vance Hartke, 6 INDIANA LAW REVIEW 220 (1972) (researcher and editor)

President's Column, CONGREGATION BETH SHALOM NEWSLETTER (1997-99) Copies are unavailable.

- 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.

Recommended Initiatives and Activities, Federal Bar Association Eastern District of Michigan Chapter Diversity Task Force (2009)

- 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.

None.

- 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.

Introduction of Governor Granholm, Federal Bar Association luncheon, Detroit, Michigan (April 2004)

Remarks on the Private Faith of a Public Man, First Presbyterian Church, Birmingham, Michigan, (November 2004). No transcript or notes available.

Presentation of Torah Legacy Award to Brent and Nancy Triest, Machon L'Torah, Southfield, Michigan (June 23, 2002)

Presentation of Leadership Award to Michael and Debbie Balkin, Congregation Shaarey Zedek, Southfield, Michigan (May 28, 2002)

Remarks at Oakland County Bar Association Swearing-In Ceremony (Nov. 17, 2004). The event was summarized in LACHES (January 2005)

"Judicial Tips for Litigators," Michigan Association for Justice Rapid Fire Seminar, Dearborn, Michigan (June 2008)

Dedication of the Woodward Avenue Shul, Royal Oak, Michigan (August 24, 2008)

Remarks on the completion of a Talmudic tractate, Woodward Avenue Shul, Royal Oak, Michigan (September 20, 2008)

Remarks to the American Constitution Society on the Impact of the 2008 Elections on Michigan Courts, Detroit Michigan (November 11, 2008)

Invocation at Swearing-In of Jessica Cooper as Oakland County Prosecutor, Pontiac Michigan (January 21, 2009)

"Festivals in Ancient Times." Woodward Avenue Shul, Royal Oak, Michigan (May 28, 2009)

"Judicial Tips for Litigators," Michigan Association for Justice Rapid Fire Seminar, Dearborn, Michigan (May 8, 2009)

Remarks, Federal Bar Association Annual Dinner, Detroit, Michigan (June 17, 2008)

Remarks, Federal Bar Association State of the Court Luncheon, Detroit, Michigan (Sept. 11, 2008)

Remarks on Supreme Court decision in *Caperton* for American Constitution Society program, Wayne State University Law School, Detroit, Michigan (June 29, 2009)

Remarks at the Phil Hart Dinner of the Oakland County Democratic Party upon receiving the "Wings of Justice" Award, Troy, Michigan (Oct. 4, 2009)

Remarks at my investiture to Oakland County Circuit Court, Pontiac, Michigan (May 10, 2004)

Secular Courts' Treatment of Issues Pertaining to a Beth Din (Religious Court), Congregation Mogen Avraham, Southfield, Michigan (June 2008)

- 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.

None.

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

In August 2002, I was appointed by the 45B District Court of Oakland County, Michigan to serve as a part-time magistrate. As a magistrate, I handled traffic violations and conducted arraignments and hearings. That court has jurisdiction over misdemeanors, civil infractions and civil disputes under \$25,000. I resigned my appointment in March 2004 when I was appointed by Governor Granholm to be an Oakland County Circuit Court Judge. The Circuit Court has exclusive jurisdiction over all felonies, civil claims in excess of \$25,000 for which another court does not have exclusive jurisdiction and equitable claims. I was elected to the position in November 2004 and re-elected in November 2006.

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

I have presided over approximately 177 cases to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials: 90%

bench trials: 10%

civil proceedings: 24%

criminal proceedings: 76%

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

See attached list of opinions.

- 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. *City of Troy v. Premium Construction*, Oakland Circuit Court Case No. 01-035191-CC. This was a condemnation bench trial, involving complex environmental questions. I found in favor of the property owner and awarded \$3.9 million in just compensation and \$1.1 million in attorney fees.

Plaintiff's counsel was Susan Lancaster, 500 W. Big Beaver Rd., Troy, MI 48084 (248-540-3320). Defendant's counsel was Ronald Reynolds, Berry, Reynolds and Rogowski, 33493 W. 14 Mile Rd., Suite 100, Farmington Hills, MI 48331 (248-851-3434).

2. *People v. Nouri*, Oakland Circuit Court Case No. 07-218065-FC. This was a jury trial in which Defendant was convicted of criminal sexual conduct. I later granted Defendant a new trial based on ineffective assistance of counsel. The Michigan Court of Appeals reversed in an unpublished 2-1 decision. *People v Nouri*, 2009 WL 3199532 (Oct. 6, 2009). Defendant's application for leave to appeal to the Michigan Supreme Court was denied. 2010 WL 322194 (Mich. Jan. 27, 2010).

The prosecutor was Hala Jarbour, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5575). The defendant was represented by David Griem, 500 Griswold, Ste 2400, Detroit, MI 48226 (313-961-1200); and Deanna Kelley, 31700 W. 13 Mile Rd., Ste. 96, Farmington Hills, MI 48334 (248-737-2770). Defendant's post-trial counsel was Mark Kriger, 645 Griswold, Suite 1717, Detroit, MI 48226 (313-967-0100).

3. *Ameritech Michigan v. The Detroit Edison Company*, Oakland Circuit Court No. 01-030537-NZ. This was a jury trial, conducted in two phases before different juries, to resolve the question of which entity owed the other for rental fees for use of utility poles. Detroit Edison was found to be owed \$15.6 million.

Plaintiff's counsel was Michael Vartanian, Dickinson Wright, PLLC, 301 E. Liberty, Ste. 500, Ann Arbor, MI 48104 (734-623-1690). Defendant's counsel was Timothy Young, Cummings, McClory, Davis & Acho, PLC, 2200 Schoolcraft, Ste. 2000, Livonia, MI 48150 (734-261-2400).

4. *Lear Corporation v. Dura Automotive Systems, Inc.*, Oakland Circuit Court No. 06-075939-CK. I granted a preliminary injunction regarding the use of offset rights after an extensive evidentiary hearing over several days.

Plaintiff's counsel was Thomas Tallerico, Bodman LLP, 1901 St. Antoine St., Detroit, MI 48226 (313-259-7777). Defendant's counsel was Ann Marie Uetz, Foley & Lardner, 150 W. Jefferson, Detroit, MI 48226 (313-234-7113).

5. *People v. Capito*, Oakland Circuit Court Case No. 06-208991-FC. This was a trial for assault with intent to murder, tried before two juries, in which they returned guilty verdicts as to three co-defendants. The "leader" of this group was a promising college student who had disemboweled the victim.

The prosecutor was Brett Chudler, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-452-8692). Defense counsel was Delphia Burton, 547 E. Jefferson, Detroit, MI 48226 (313-963-1960).

6. *People v. Light*, Oakland Circuit Court Case No. 05-204084-FC. Defendant was convicted by a jury of first degree murder, based on DNA evidence left at the murder scene some 10 years earlier.

The prosecutor was Brett Chudler, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-452-8692). Defense counsel was Joseph Lavigne, 31700 W. 13 Mile Rd., Ste. 96, Farmington Hills, MI 48334 (248-539-3144).

7. *People v. Cummins*, Oakland Circuit Court Case No. 05-200525-FH. Defendant, who was charged with malicious destruction of property belonging to a rival within the same political party, pled no contest after his jury trial was nearly completed.

The prosecutor was Jeffrey Hall, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-452-8690). Defense counsel was Jeffrey Leib, 30445 Northwestern Hwy., Ste. 140, Farmington Hills, MI 48334 (248-851-7800).

8. *Schiller v. Masri*, Oakland Circuit Court Case No. 05-063355-NH. The jury found no cause of action in this medical malpractice case involving the allegedly negligent insertion of a pacemaker.

Plaintiff's counsel was Samuel Meklir, Sommers, Schwartz, Silver & Schwartz, PC, 2000 Town Ctr. Ste. 900, Southfield, MI 48075 (248-355-0300). The defendants' counsel was Daniel Beyer, Kerr, Russell & Weber, PLC, 500 Woodward Ave., St. 2500, Detroit, MI 48226 (313-961-0200).

9. *People v. Hunt*, Oakland Circuit Court Case No. 06-210955-FH. After a jury trial, Defendant-stepfather was found not guilty as to one act of criminal sexual conduct involving his stepdaughter; the jury was hung as to another count.

The prosecutor was Shareen Lynch, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5240). Defense counsel was Lisa Dwyer, 710 N. Crooks Rd., Clawson, MI 48017 (248-435-8539).

10. *People v. Powell*, Oakland Circuit Court Case No 04-195957-FC. Defendant was convicted of 12 out of 13 counts of criminal sexual conduct against a neighborhood boy.

The prosecutor was Cynthia Brown, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5232). Defense counsel was Mitchell Ribitwer, Ribitwer & Sabbota, LLP, 26862 Woodward Ave., Unit 200, Royal Oak, MI 48067 (248-543-8000).

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *American Axle & Mfg. Inc. v. Ashanti*, Oakland Circuit Court Case No. 08-096252-CB. Plaintiff's counsel was William Schaefer, Driggers, Schultz & Herbst, PC, 2600 W. Big Beaver Rd., Ste. 550, Troy, MI 48084 (248-649-6000). Defendant's counsel was Jay Schreier, 20225 Victory Pkwy., Ste. 425, Livonia, MI 48152 (248-542-8400).
2. *People v. Gallusser*, Oakland Circuit Court Case No. 07-213137-FH. The prosecutor was Josh Arnkoff, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5574). Defendant's counsel was Jeffrey Quas, 827 N. Main St., Ste. A, Royal Oak, MI 48307 (248-652-7799).
3. *People v. Hicks*, Oakland Circuit Court Case No. 08-218786-FH. The prosecutor was Josh Arnkoff, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5574). Defendant's counsel was Vincent Giovanni, 26111 W. 14 Mile Rd., Ste. 201, Franklin, MI 48025 (248-851-2280).
4. *Lear Corporation v. Dura Automotive Systems, Inc.*, Oakland Circuit Court Case No. 06-075939-CK. Plaintiff's counsel was Thomas Tallerico, Bodman LLP, 1901 St. Antoine St., Detroit, MI 48226 (313-259-7777). Defendant's counsel was Ann Marie Uetz, Foley & Lardner, 150 W. Jefferson, Detroit, MI 48226 (313-234-7113).
5. *Ameritech Michigan v. The Detroit Edison Company*, Oakland Circuit Court Case No. 01-030537-NZ. Plaintiff's counsel was Michael Vartanian, Dickinson Wright, PLLC, 301 E. Liberty, Ste. 500, Ann Arbor, MI 48104 (734-623-1690). Defendant's counsel was Timothy Young, Cummings, McClory, Davis & Acho, PLC, 2200 Schoolcraft, Ste. 2000, Livonia, MI 48150 (734-261-2400).
6. *People v. Nouri*, Oakland Circuit Court Case No. 07-218065-FC. The prosecutor was Hala Jarbour, 1200 N. Telegraph Rd., Pontiac, MI 48341 (248-858-5575). The Defendant's trial counsel was David Griem, 500 Griswold, Ste 2400, Detroit, MI 48226 (313-961-1200) and Deanna Kelley, 31700 W. 13 Mile Rd., Ste. 96, Farmington Hills, MI 48334 (248-737-2770). Defendant's post-trial counsel was Mark Kriger, 645 Griswold, Suite 1717, Detroit, MI 48226 (313-967-0100).
7. *City of Troy v. Premium Construction*, Oakland Circuit Court Case No. 01-035191-CC: Plaintiff's counsel was Susan Lancaster, 500 W. Big Beaver Rd., Troy, MI 48084 (248-540-3320). Defendant's counsel was Ronald Reynolds, Berry, Reynolds and Rogowski, 33493 W. 14 Mile Rd., Suite 100, Farmington Hills, MI 48331 (248-851-3434).
8. *Board of Oakland County Road Commissioners v. West Bloomfield Office Center, PLLC*, Oakland Circuit Court Case No. 06-077907-CC: Plaintiff's counsel was Peter Webster, Dickinson Wright, PLLC, 38525 Woodward

Ave., Ste. 2000, Bloomfield Hills, MI 48304 (248-433-7200). Defendant's counsel was Alan Ackerman, Ackerman, Ackerman & Dynkowski, 100 W. Long Lake Rd., Ste. 210, Bloomfield Hills, MI 48304 (248-537-1155).

9. *U.S. Energia, LLC v. E-1 Power, Inc.*, Oakland Circuit Court Case No. 07-082717-CZ. Plaintiff's counsel was Rodger D. Young, Young & Susser, PC, 26200 American Dr., Ste. 205, Southfield, MI 48034 (248-353-8620). Defendants' counsel was I.W. Winsten, Honigman Miller Schwartz and Cohn, PLLC, 2290 First National Bldg., Detroit, MI 48226 (313-465-7608).
10. *Northern Insurance Co v. Olga's Kitchen, Inc. et al.*, Oakland Circuit Court Case No. 03-054961-CZ. Plaintiff's counsel was Peter Kupelian, Kupelian, Ormond & Magy, PC, 25800 Northwestern Hwy., Ste. 950, Southfield, MI 48075 (248-357-0000). Defendants' counsel was Bruce Segal, Honigman Miller Schwartz and Cohn, LLP, 38500 Woodward Ave., Bloomfield Hills, MI 48302 (248-566-8482) and Leonard Henk, Kallas & Henk, PC, 43902 Woodward Ave., Ste. 200, Bloomfield Hills, MI 48302 (248-335-5450).

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

None to my knowledge.

- 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.

People v. Jambour, 729 N.W.2d 569 (Mich. Ct. App. 2007). I granted a motion in limine to exclude certain fingerprint evidence (white fingerprint cards) on the grounds that it had not been properly authenticated under MRE 901. The fingerprint technician died before trial; the People called an officer who had been present at the crime scene. He testified that he had observed the technician processing black fingerprint cards, which ultimately were determined to bear the prints of someone other than Defendant. Based on the lack of evidence establishing that the technician had processed white fingerprint cards at the scene, I excluded the evidence and dismissed the case. On appeal by the People, the Court of Appeals affirmed. 717 N.W.2d 889 (Mich Ct. App. 2006). The Michigan Supreme Court reversed the Court of Appeals, finding that the fingerprints had been sufficiently authenticated. 720 N.W.2d 746 (Mich. 2006). On remand, the Court of Appeals reversed the dismissal order on issues on which I had not ruled. 729 N.W.2d 569 (Mich Ct. App. 2007).

People v. Mullen, 762 N.W.2d 170 (Mich. Ct. App. 2008). Defendant was charged with operating a vehicle under the influence of liquor. He moved to exclude the result of a blood alcohol test on the grounds that the blood draw was

secured based on a warrant that was not supported by probable cause. After conducting an evidentiary hearing, I found that the officer's affidavit in support of the warrant intentionally and/or recklessly contained misrepresentations and I granted defendant's suppression motion. On appeal, the Court of Appeals reversed, 762 N.W.2d 170 (Mich Ct. App. 2008), finding that, although none of my factual findings was clearly erroneous, the officer's misrepresentations and omissions were not material.

Smith v. Khouri, 751 N.W.2d 472 (Mich. 2008) . In this dental malpractice action, I awarded reasonable attorney fees as case evaluation sanctions to Plaintiff, to which he was entitled following his success at trial. The Court of Appeals affirmed in an unpublished decision. 2006 WL 3333669 (Mich. Ct. App. Nov. 16, 2006). In a 4-3 decision, the Supreme Court reversed, announcing a new analysis for the determination of reasonable attorney fees. 751 N.W.2d 472 (Mich. 2008).

Perrelli v. Secretary of State. I had reversed the Driver's License Appeal Division's revocation of petitioner's driver's license on a due process violation in that there had been inadequate notice of the nature of the hearing. In an unpublished decision on April 29, 2005 (docket no. 260424), the Michigan Court of Appeals reversed, stating without explaining, that petitioner had contributed to the error.

Zavradinos v. JTRB, Inc., 753 N.W.2d 60 (Mich. 2008). I had found that a brokerage account established by a husband and wife was created as a joint tenancy with rights of survivorship, rather than as a tenancy by the entireties. In a 2-1 decision, the Michigan Court of Appeals reversed, holding that Plaintiff had not overcome the presumption in favor of entireties ownership. 2007 WL 2404612 (Mich. Ct. App. Aug. 27, 2007). In a 4-3 order, the Michigan Supreme court denied the application for leave to appeal. 753 N.W.2d 60 (Mich. 2008).

People v. Shelton, 2006 WL 1085242 (Mich. App. Ct. Apr. 25, 2006). Appeal of a sentencing guideline decision. The Michigan Court of Appeals vacated the sentence and remanded for resentencing because, after sentencing, the Michigan Supreme Court overruled the Michigan Court of Appeals precedent on which I had relied. 2006 WL 1085242 (Mich. App. Ct. Apr. 25, 2006).

McManigal v. Levosinski, 2009 WL 250314 (Mich. Ct. App. Feb. 3, 2009). After I had denied summary disposition to Defendant, finding that Plaintiff had established under the no-fault law his entitlement to recovery of noneconomic loss for "serious impairment of an important body function," the Michigan Court of Appeals reversed, finding Plaintiff suffered no serious impairment, even though Plaintiff's doctor had attested that Plaintiff would likely suffer life-long pain and that Plaintiff testified that he could not perform routine household chores. 2009 WL 250314 (Mich. Ct. App. Feb. 3, 2009). The Michigan Supreme

Court is holding the application for leave to appeal in abeyance, pending its decision in another case. 769 N.W. 2d 905 (Mich. 2009).

Hall v. Pontiac School District, 2006 WL 2987702 (Mich. Ct. App. Oct. 19, 2006). I had denied summary disposition to the school district, rejecting its claim of governmental immunity, where the individual defendant (the district's general counsel and human resources director) had allegedly falsely informed Plaintiff's disability insurer that Plaintiff was not truly disabled. The Michigan Court of Appeals reversed, finding that the individual defendant was engaged in a governmental function of preventing abuse of the medical leave policy, even though Plaintiff's disability policy was not purchased through the district. 2006 WL 2987702 (Mich. Ct. App. Oct. 19, 2006).

People v. Nouri, 2009 WL 3199532 (Mich. Ct. App. Oct. 6, 2009). I granted Defendant's motion for a new trial based on ineffective assistance of counsel and denial of the right to testify. The Michigan Court of Appeals initially denied the People's application for leave to appeal. In lieu of granting the People's application for leave to appeal, the Michigan Supreme Court remanded the case to the Court of Appeals as if on leave granted. 766 N.W.2d 808 (Mich. 2009). The Michigan Court of Appeals then reversed the grant of a new trial. 2009 WL 3199532 (Mich. Ct. App. Oct. 6, 2009). Defendant's application for leave to appeal to the Michigan Supreme Court was denied. 2010 WL 322194 (Mich. Jan. 27, 2010).

Al-Naimi v. Foodland Distributors, Inc., 773 N.W.2d 904 (Mich. 2009). After I granted summary disposition against the judgment creditor, the Michigan Court of Appeals affirmed. 2009 WL 1564956 (Mich. Ct. App. June 2, 2009). The Michigan Supreme Court reversed, adopting the dissenting opinion in the Court of Appeals, which was based on arguments never presented to the trial court. 773 N.W.2d 904 (Mich. 2009).

- 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.

The custom of the Oakland County Circuit Court is not to publish opinions. Written decisions are maintained by the Clerk of the Court in the relevant case files, either in paper form or electronic form. I also maintain paper copies of some opinions in my chambers.

- 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.

People v. Nouri, No. 07-218065-FC, slip op. (Oakland Cir. Court, Jan. 21, 2009). On appeal, *People v. Nouri*, 766 N.W.2d 808 (Mich. 2009) (remanded to

Michigan Court of Appeals) and reversed *People v. Nouri*, 2009 WL 3199532 (Mich. Ct. App. Oct. 6, 2009).

People v. Hicks, No. 08-218786-FH, slip op. (Oakland Cir. Court, Mar. 17, 2008).

People v. Gallusser, No. 07-213137-FH, slip op. (Oakland Cir. Court, June 25, 2007).

People v. James, No. 08-219528-FH, (Oakland Cir. Court, Apr. 18, 2008).

People v. Nguyen, No. 05-204358-FH, (Oakland Cir. Court, Jan. 31, 2007).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Our court does not have an automatic recusal system. Pursuant to court rule, for the first two years following my appointment to the circuit court, I automatically disqualified myself from any case where my former firm, Honigman Miller Schwartz and Cohn, appeared as counsel. Thereafter, in any case where my former firm appeared, I disclosed to the parties, in writing, that I receive payments from my former firm pursuant to the firm's partnership agreement. I notify the parties that I will disqualify myself unless the parties stipulate that I remain on the case.

Other than cases in which my former firm appeared as counsel, the only cases I recall recusing myself *sua sponte* are the following:

In *Deangelis v. Kirsch*, Oakland County Circuit Court Case No. 03-047042-NH, I recused myself because I was a personal friend of one of the parties.

In *Cotton v. Kirsch*, Oakland County Circuit Court Case No. 09-099788-CZ, I recused myself because I was a personal friend of one of the parties.

In *Lichterman v. ITEC*, Oakland County Circuit Court Case No. 09-098423-CK, I recused myself because of personal knowledge of facts.

In *Pontiac City v. Pelmar Investments*, Oakland County Circuit Court Case No. 06-074803-NZ, I disqualified myself because a member of our bench with whom I am friendly was a material witness in the case.

The only cases I recall where I have been asked to recuse are:

In *Machining Enterprises, Inc v. Wausau Business Insurance Co*, Oakland County Circuit Court Case No. 04-056594-CK, Plaintiff filed a motion seeking my disqualification in an insurance coverage case under MCR 2.003(B), which requires disqualification where the judge was member of a firm representing a party within the preceding two years. The Honigman firm (where I had been a partner within the preceding two years) represented General Motors in the underlying litigation. GM was not a party to the insurance coverage dispute and the Honigman firm did not appear in the insurance coverage action. I denied the motion to disqualify. Chief Judge Potts denied the motion, as well, and the Court of Appeals affirmed the denial in an unpublished decision (Court of Appeals Docket no. 277950), decided December 16, 2008.

In *Fogel v. The Akiva Hebrew Day School*, Oakland County Circuit Case No. 06-074386-NO, I informed counsel for both parties, *sua sponte*, that I had certain contacts with the defendant-school. My nephews and a niece attended the school, and I had made minor charitable contributions to the school. Plaintiff then filed a motion to disqualify. After conducting a hearing, but before I had ruled on the motion, Plaintiff decided to withdraw the recusal motion, so no ruling was required.

In *Entech Personnel Services v. Feliciano Transport*, Oakland County Circuit Case No. 02-042875-CZ, Plaintiff filed a motion for disqualification, claiming I was biased. I held a hearing and denied the motion because I was not biased.

In *People v. Kamp*, Oakland County Circuit Case No. 08-223473-FH, Defendant filed a motion for disqualification alleging that I had conducted *ex parte* discussions with a court-appointed psychologist who had evaluated Defendant in connection with sentencing. I conducted a hearing and denied the motion on the grounds, *inter alia*, that Defendant had consented to the contact.

In *Turcas v State Farm Ins. Co.*, Oakland County Circuit Case No. 07-084832-NF, Plaintiff sought disqualification, claiming I had personal knowledge of evidentiary facts. Based on the motion papers, I denied the motion as I had no such knowledge.

In *Hartford Ins. Co. v Professional Temperature Heating and Air Conditioning, Inc.*, Oakland County Circuit Case No. 09-098423-CK, Defendant sought to disqualify me based on my involvement with a charitable organization. After a hearing, I denied the motion because the charitable organization was not a party to the action and, having been paid under the insurance policy at issue, it did not stand to gain or lose based of any outcome in the case. Further, any familial relationship I had with the organization's executive director was beyond the degree of consanguinity that would require disqualification under the court rule.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office other than judicial office. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

Michigan Democratic Party, Member (various years 1987-2008).

Stabenow for U.S. Senate, Chair, Lawyers for Stabenow (2000) and Finance Committee Member (2000). Granholm for Governor, Finance Committee (2002). Friends of Senator Carl Levin, Chair, Lawyers for Carl Levin (2002).

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

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

I have not served as a clerk to a judge.

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

From 1980-1987, I was a sole practitioner at various addresses (29610 Middlebelt #1301 Farmington Hills, Michigan 48334; 755 W. Big Beaver Rd., Troy, Michigan 48084; and 280 N. Woodward #407 Birmingham, Michigan 48009).

- 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 – 1980

Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Litigation Associate

1987 – 2004

Honigman Miller Schwartz and Cohn
2290 First National Bldg.
Detroit, Michigan 48226
Associate (1987 – 1988)
Partner (1988 – 2004)

- 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.

At some point in the 1980s, I served as a court-appointed mediator for the 45B District Court. I do not recall, and do not have access to, any of the matters I may have mediated.

b. Describe:

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

After law school, from 1979 to 1980, I was litigation associate at the New York firm of Paul, Weiss Rifkind, Wharton & Garrison, specializing in securities, antitrust, and other commercial matters. After my return to Michigan, I was a sole practitioner from 1980 to 1987, with my practice divided roughly 25% criminal and 75% civil. The criminal cases primarily were felonies. My civil matters were mostly business litigation, including partnership disputes, real estate, debtor/creditor and tax matters. When I joined the Honigman firm in 1987, I began to specialize in the

areas of environmental law, insurance coverage, real estate and general commercial matters. I continued to handle occasional criminal matters. Throughout my years in private practice years, although my practice included all phases of litigation, I placed special emphasis on appellate work. I appeared in federal and state trial and appellate courts at all levels and in military appellate courts. I have presided over criminal and civil matters since I was appointed to the state trial bench in 2004.

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

During my years at the Paul, Weiss firm, my clients typically were large corporations. While I was a sole practitioner, my typical clients were individuals and small businesses. When I joined the Honigman firm in 1987, my typical clients were individuals, small businesses and large corporations.

- 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.

Throughout my career, my practice has been essentially 100% litigation. I appeared in court frequently.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 45%
- 2. state courts of record: 45%
- 3. other courts: 0%
- 4. administrative agencies: 10%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 90%
- 2. criminal proceedings: 10%

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

I tried 10 cases to judgment. I was sole counsel in five, lead counsel in two, and co-counsel in three.

- i. What percentage of these trials were:

- 1. jury: 10%
- 2. non-jury: 90%

- 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 assisted in the preparation and filing of the Brief of Amicus Curiae Michigan Governor Jennifer M. Granholm in *Grutter v. Bollinger* and *Gratz v. Bollinger*, U.S. Supreme Court Case Nos. 02-241 and 02-516. The amicus brief appears at 2003 WL 399363 (Feb. 14, 2003). I prepared and filed Petitions for Writ of Certiorari on behalf of my clients in *Futernick v. Sumpter Township*, 78 F3d 1051 (6th Cir. 1996); *United States v. Robinson*, 26 M.J. 361 (1988); *Even v. United States*, 83-1319 (6th Cir. 1983); and *United States v. Williams*, 704 F2d 315 (6th Cir. 1983).

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. *Donahey v. Bogle*, Case No. 87-74771 (E.D. Mich.). I represented defendant Bogle, a land owner who was sued by her land vendee under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") seeking recovery of response costs for investigative and remedial work as a result of contamination caused by Bogle's corporate tenant, St. Clair Rubber Co. Additionally, Plaintiff sought rescission of the land contract on grounds of misrepresentation and mistake. Mrs. Bogle denied any liability for response costs; cross-claimed against St. Clair Rubber Co. and its sole shareholder, Seabourn Livingstone under CERCLA; and counter-claimed against Plaintiff for specific performance of the land contract. After Mrs. Bogle's motion to dismiss was granted in part, the district court conducted a two-and-a-half week trial in April 1991 on the issue of CERCLA liability and the land contract issue. The trial court entered a judgment in favor of Mrs. Bogle on the CERCLA claim and awarded her specific performance of the land contract. The United States Court of Appeals for the Sixth Circuit affirmed in part and reversed in part. *Donahey v. Bogle*, 987 F.2d 1250 (6th Cir. 1993) The Supreme Court of the United States vacated the judgment and remanded for a determination of whether attorney fees

were recoverable under CERCLA at all in the circumstances of the case. *Donahey v. Bogle*, 512 U.S. 1201 (1994). The case was re-argued before a new panel of the Sixth Circuit in 1995 and then re-argued *en banc*. In its *en banc* decision, the Sixth Circuit reinstated the prior panel decision in part, vacating certain rulings. *Donahey v. Bogle*, 129 F.3d 838 (1997). The Supreme Court then vacated the judgment and remanded for consideration of certain issues. *Donahey v. Bogle*, 524 U.S. 94 (1998). After remand, the case settled. I was chief trial counsel, prepared all appellate briefs, and argued all matters on appeal, which included three arguments before the Sixth Circuit, including the *en banc* argument. My client waived filing briefs in the Supreme Court; other parties handled the proceedings before the Supreme Court.

My co-counsel included Jay E. Brant and Daniel G. Helton, then my colleagues at Honigman Miller Schwartz and Cohn in Detroit. Both have since left the firm. Plaintiff's counsel was Herbert G. Sparrow, Dickinson, Wright, One Detroit Center, 500 Woodward Ave. #4000, Detroit, MI 48226 (313-223-5000). Third-party defendant St. Clair Rubber Co. was represented by C. Berry Wetherinton, then with Plunkett & Cooney, now with C. Berry Wetherington & Associates, P.O. Box 6, Birmingham, MI 48312 (248-631-6330). Seabourn Livingstone was represented by Henry N. Carnaby, then with Bodman, now with Continental Airlines, 1600 Smith, Fl 20, HQSHR, Houston TX 77002 (713-324-5322). The presiding judge was U.S. District Judge Lawrence P. Zatkoff.

2. *Bronson Plating Co. v. Michigan Millers Mutual Ins. Co.*, Case No. 86-09504-CK (Branch County (Mich.) Circuit Court). I represented Bronson Plating Co. in a significant insurance coverage action against ten insurance companies for declaration of coverage for environmental claims made by the EPA and the MDNR. The trial court dismissed the action, concluding that there was no "suit" because the EPA had only sent the insured a potentially responsible party letter ("PRP letter"), but had not filed a complaint in a court of law. On appeal, the Michigan Court of Appeals reversed, agreeing with our contention that a PRP letter is the functional equivalent of a complaint filed in a court of law, because legal prejudice can result from ignoring a PRP letter. 496 N.W.2d 373 (Mich. Ct. App. 1992). The Michigan Supreme Court agreed, holding that a PRP letter constitutes a "suit" and triggers the insurer's duty to defend. 519 N.W.2d 864 (Mich. 1994). On remand, the trial court granted the insurers' motion for summary disposition on different grounds. The Michigan Court of Appeals affirmed.

My co-counsel were Jay E. Brant and Daniel G. Helton, then my colleagues at Honigman Miller Schwartz and Cohn in Detroit. Opposition counsel for the insurers included John A. Yeager, Willingham & Cote, 333 Albert Ave. #500, E. Lansing, MI 48833 (517-324-1046)(Michigan Millers Mutual Ins. Co.); Michael B. Ortega, then with Miller, Canfield, now with Lewis Reed & Allen PC, 136 E. Michigan Ave. #800, Kalamazoo, MI 49007 (616-388-7600)(Federal Ins. Co.); W. Mack Faison, Miller, Canfield, 150 W. Jefferson #2500, Detroit, MI 48226

(313-496-7578) (Federal Ins. Co.); and Myra L. Willis, then with Howard & Howard, now with National City Corp Law Div, 245 N. Rose, Kalamazoo, MI 49007 (269-376-5401)(Auto-Owners Ins. Co.). The trial judge was Michael Cherry.

3. *Arco Industries Corporation v American Motorists Insurance Company*, Case No. A87-0218-CK (Kalamazoo County (Mich.) Circuit Court). I represented plaintiffs Arco Industries Corporation and Frederick C. Matthaei, Jr. in an environmental coverage action against several insurers to obtain defense and indemnity for environmental claims brought against Arco by the State of Michigan. Negotiations with certain insurers brought about settlements totaling over \$1.5 million. The case went to trial against the sole non-settling insurer, American Motorists Insurance Company. After a three-week trial in April 1990 before Circuit Court Judge William Schma, the court issued a 48-page ruling finding in our favor. The judgment was for the policy limits, which amounted to \$3.5 million. The Michigan Court of Appeals reversed the trial court but the Michigan Supreme Court reversed the Court of Appeals, affirming the trial court's finding and remanding to the intermediate court. 531 N.W.2d 168 (Mich. 1995) ("Arco I"). On remand to the Court of Appeals, that court again reversed the trial court but on a separate issue. 546 N.W.2d 709 (Mich. App. Ct. 1996). The Supreme Court again reversed the Court of Appeals and remanded. 572 N.W.2d 617 (Mich. 1998) ("Arco II"). The Supreme Court decisions in Arco I and Arco II are important decisions in Michigan insurance coverage law. On remand, the Court of Appeals sustained the trial court judgment in favor of Arco, 594 N.W.2d 61 (Mich. Ct. App. 1998), a decision affirmed by the Michigan Supreme Court. 617 N.W.2d 330 (Mich. 2000). I co-tried the case and was principally responsible for drafting the pre-trial and appellate briefs.

My co-counsel were Jay E. Brant and Daniel G. Helton, then my colleagues at Honigman Miller Schwartz and Cohn. Opposing counsel included T. Andrew Culbert and Paul H. Saint-Antoine, Drinker, Biddle & Reath, 1345 Chestnut Street, Philadelphia, Pennsylvania 19107 (215-988-2700); Kevin J. Moody and Sherry Katz-Crank, Miller, Canfield, Paddock and Stone, One Michigan Ave. #900, Lansing, Michigan 48933 (517-483-4989).

4. *Thomas Solvent Co. v. Auto-Owners Insurance Co.*, Case No. 90-2779-CK (Calhoun County (Mich.) Circuit Court). I represented insured-plaintiff Thomas and his related entities in an environmental insurance coverage action against three insurers, seeking a declaration that the insurers had a duty to defend and indemnify against environmental claims brought by the federal and state governments and private parties. Prior to trial, we successfully negotiated a series of settlements with various insurers that totaled nearly nine million dollars. We proceeded to trial against two insurers, whose policies could not be located. At trial, our task was to reconstruct through secondary evidence the relevant terms of the policies. Trial was conducted over a two-week period in March 1995. The trial court, presided over by Judge Sindt, dismissed our clients' claims, holding

that it was the insureds' burden is to prove all terms of the policies, whether or not they are relevant to the coverage claim at issue. Because there were potentially numerous riders and endorsements – none of which bore on our coverage claim, but which nonetheless could not be established – our claims were dismissed. The Michigan Court of Appeals affirmed in an unpublished decision in No. 192210 dated May 19, 1998. Our application for leave to appeal was denied by the Michigan Supreme Court.

My co-counsel was Jay E. Brant, then my colleague at Honigman Miller Schwartz and Cohn. Opposing counsel included Myra L. Willis, then with Howard & Howard, now with National City Corp Law Div, 245 N. Rose, Kalamazoo, MI 49007 (269-376-5401); and Lon A. Berke, Wiley, Rein & Fielding, 1776 K Street, N.W. Washington, D.C. 20006 (202-429-7000).

5. *United States v. Robinson*, U.S. Air Force Court of Military Review, ACM 24420. Defendant was a staff sergeant in the United States Air Force, stationed in West Germany, where he was tried and convicted in 1983 by court martial of the murder and rape of a fellow service member. I represented Defendant on appeal. The central issue in the appeal was whether Defendant's rights under the Constitution and the Code of Military Justice were violated when he was interrogated by investigating officers a few months after he had been interviewed by other investigators who had placed Defendant under a hypnotic trance to learn the identity of the perpetrator. The conviction was affirmed by the U.S. Air Force Court of Military Review, 21 M.J. 937 (1986) and by the U.S. Court of Military Appeals, 26 M.J.361 (1988). Certiorari was denied by the Supreme Court of the United States. 488 U.S. 1005 (1989). The significance of the case is that it rejected a per se rule that hypnotically refreshed testimony is inherently unreliable and inadmissible.

My civilian co-counsel was Clyde B. Pritchard, P.O. Box 250677, Franklin, MI 48025 (248-865-0775) and my military co-counsel were Lt. Col. Richard F. O'Hair and Captain Mark R. Land, last known address: Office of the Judge Advocate General, U.S. Air Force, HG USAF/JAJD, Bldg. 5683, Bolling AFB, DC 20332-6128 (202-767-1562). Opposing counsel were Captain Marc Van Nuys, Lt. Col. Robert E. Giovagnoni, Col. Joe R. Lamport, last known address: Office of the Judge Advocate General, U.S. Air Force (202-767-1546).

6. *Futernick v. Sumpter Township*, 78 F.3d 1051 (6th Cir. 1996). I represented plaintiff Futernick in an appeal from the dismissal by the District Court for the Eastern District of Michigan of his Section 1983 claims against a Michigan state environmental enforcement official who had engaged in selective enforcement of the laws against plaintiff. The U.S. Court of Appeals for the Sixth Circuit affirmed the dismissal. Certiorari was denied by the Supreme Court of the United States. 519 U.S. 928 (1996).

My co-counsel was Joseph Polito, Honigman Miller Schwartz and Cohn, 2290 First National Bldg., Detroit, MI 48226 (313-465-7000). Opposing counsel was Julie McCann-O'Connor, O'Connor, De Grazia, Tamm & O'Connor PC, 411 Andover Rd., #300E, Bloomfield Hills, MI 48302 (248-433-2000); Christopher Koch, then with O'Connor, De Grazi, now with Lennox International, 2140 Lake Park Blvd., Richardson, TX 75080 (972-497-5215); John C. Scherbarth, Mich. Asst. Attorney General, P.O. Box 30755, Lansing, MI 48909 (517-373-7540); R. Phillip Brown, then with the Office of the Michigan Attorney General, current address unknown.

7. *Theophelis v. United States*, 751 F.2d 165 (6th Cir. 1984). I represented plaintiff Theophelis in an appeal from a grant of summary judgment by the U.S. District Court for the Eastern District of Michigan in favor of the United States on Plaintiff's challenge to his tax assessment by the IRS. The U.S. Court of Appeals for the Sixth Circuit affirmed.

My co-counsel was Fred Gordon, 115 S. Main St. #300, Royal Oak, MI 48067 (248-546-7600). Opposing counsel were Glenn L. Archer, Jr. and Michael L. Paup, then with the U.S. Attorney's Office, current address unknown; Richard Perkins and John P. Griffin, then with Tax Division, Department of Justice, Washington, D.C., current address unknown.

8. *United States v. Bettley*, Case Nos. 82-1397 and 83-1277 (6th Cir.). On appeal, I represented defendant Bettley, who was convicted by a jury of bank fraud in the U.S. District Court for the Eastern District of Michigan. I argued that the bank fraud statute under which he was convicted did not encompass the check-kiting scheme alleged by the government. The U.S. Court of Appeals for the Sixth Circuit agreed and reversed.

My co-counsel was Clyde B. Pritchard, P.O. Box 250677, Franklin, MI 48025 (248-865-0775). Opposing counsel was F. William Soisson, 211 W. Fort Detroit, MI 48226 (313-226-9668); Maura Corrigan, then with the U.S. Attorney's Office, now Justice of the Michigan Supreme Court, Hall of Justice, 925 W. Ottawa, Lansing, MI 48909 (517-373-1244).

9. *Even v. United States*, Case No. 83-1319 (6th Cir.). I represented plaintiff Even on appeal from the dismissal of his claim by the U.S. District Court for the Eastern District of Michigan. He alleged that he was entitled to judicial review of the Air National Guard's decision to terminate his civilian employment with the Guard. The U.S. Court of Appeals for the Sixth affirmed the dismissal. Certiorari was denied by the United States Supreme Court. 469 U.S. 1086 (1984).

My co-counsel was Clyde B. Pritchard, P.O. Box 250677, Franklin, MI 48025 (248-865-0775). Opposing counsel was Assistant U.S. Attorney L. Michael Wicks

10. *United States v. Williams*, 704 F.2d 315 (6th Cir 1983). On appeal, I represented defendant Williams, who was convicted by a jury in the U.S. District Court for the Eastern District of Michigan for attempted possession of cocaine. The question on appeal was whether compelling the Defendant to speak at his trial – so that a witness who had allegedly heard him on the phone could identify his voice – violated Defendant’s Fifth Amendment right to remain silent. The U.S. Court of Appeals for the Sixth Circuit affirmed the conviction. Certiorari was denied by the Supreme Court of the United States. 464 U.S. 991 (1983).

My co-counsel was Clyde B. Pritchard, P.O. Box 250677, Franklin, MI 48025 (248-865-0775). Opposing counsel: was Ellen Dennis, then with the U.S. Attorney’s Office, now at Law Offices of Ellen Dennis, 101 S. Ann Arbor St. #203A, Saline, MI 48176 (734-944-5819) and Elizabeth Wild, then with the U.S. Attorney’s Office, now an assistant Berrien County prosecutor, 811 Port, St. Joseph, MI 49085 (269-983-7111).

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.)

Outside of litigation, my most significant legal activity has been my involvement with the Federal Bar Association. I served as president of the Eastern District of Michigan chapter from 2007 to 2008, launching several innovative programs. I launched a diversity task force, which culminated in a report addressing ways to attract minority lawyers to federal practice. I also spearheaded a “Careers in Justice Day,” which brought judges, lawyers and law enforcement personnel to area schools in disadvantaged neighborhoods, to inform students of career opportunities in the justice system. I also developed a mentoring program for young lawyers to enhance their courtroom skills, by inviting seasoned practitioners and judges to teach and critique their performances. I created a book club for the bench and bar, through which books on legal themes were read and discussed. During my presidential year, our chapter won five national FBA awards for excellence in programming and activities.

Through the FBA, I also was able to discharge my pro bono responsibilities. I chaired or co-chaired the pro bono committee or served as officer liaison from 2001 to 2007. In that capacity, I helped develop seminars for teaching lawyers substantive and practice skill sets to assist pro bono clients. I also engaged in direct representation of pro bono clients.

Another significant activity was my involvement with the Inn of Court program of the Oakland County Bar Association from 2004 to 2007. I mentored young lawyers through simulated court performances and other instructional techniques. Both technical skills and ethical challenges were addressed.

Other significant legal activity in which I have engaged includes litigation touching on a variety of diverse subject matters. For example, in *Sunterra v. AlixPartners LLC*, I co-tried a matter before a New York AAA arbitration panel, resulting in dismissal of a \$2.6 million claim against our client and an award of \$225,000 in attorney fees. I handled expert witness issues concerning D&O insurance procurement practices and claims handling in bankruptcy. In *Andries v. Fleet-Car Lease, Inc.*, No. 99-Civ-71002 (E.D. Mich.), I tried a breach of contract claim that raised complex stock valuation issues, resulting in a jury verdict of no cause of action in my client's favor. In an administrative environmental matter, *In re: Part 301, Inland Lakes and Streams, and Part 303, Wetland Protection of the Natural Resources and Environmental Protection Act, Petition of Concerned Area Residents Speak (CARS) on the permit issued to GGP-Grandville, LLC*, File No. 96-09-640, I tried a contested case proceeding before a Michigan Department of Environmental Quality administrative law judge in which my client unsuccessfully challenged issuance of a wetlands permit. In *In Re Motion for Leave to Sue the Receiver of Venus Plaza Shopping Center*, 579 N.W.2d 99 (Mich. Ct. App. 1998), I wrote the briefs and argued in both the trial court and the appellate court, resulting in successfully defending a receiver from a claim of personal liability where there was no allegation of bad faith against the receiver. In *United States v. Griffin*, 1988 WL 9164 (6th Cir. Feb. 9, 1988), I wrote the briefs and argued in appellate court, securing remand from the Court of Appeals for the Sixth Circuit on the basis of insufficient district court rulings on evidentiary objections at my client's counterfeiting trial. In *45-B District Judge v. Oakland County Circuit Judge*, (Mich. Ct. App. No. 98541, Jan. 13, 1988), I wrote the brief and presented argument in the Michigan Court of Appeals, successfully challenging the Oakland County Circuit Court's policy of remanding to district courts all condemnation cases mediated under \$10,000. In *Centaur Management Co. v. UAW-GM Legal Services Plan*, (Mich. Ct. App. No. 198326, Aug. 21, 1988), a breach of commercial lease and tortious interference case that was filed in Eaton County (Mich.) Circuit Court, I wrote the appellate brief and argued in the Michigan Court of Appeals, securing a reduction worth nearly one million dollars to client from a damage award.

I have not provided lobbying activities on behalf of a client or organization.

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.

During the fall semester in 1998 and 2001, I served as an adjunct instructor at Wayne State University Law School, teaching Pretrial Advocacy. The course covered all aspects of pre-trial litigation.

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.

Under the partnership agreement with my former firm Honigman Miller Schwartz and Cohn, I receive a monthly payment of \$4,487.90, which will continue until August 2012.

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 have no plans, commitments or agreements to pursue outside employment if I am confirmed as a district judge. While I will always put court work first, I may wish to teach legal courses or seminars, as appropriate, from time to time.

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 anticipate recusing myself from any petition for review of a conviction for which I entered judgment while serving on the Oakland County Circuit Court. I do not foresee any recurrent basis for disqualification, except possibly in connection with matters in which my former firm is counsel for a party. If confirmed, I will carefully review and address any real of potential conflicts in accordance with the Code of Conduct for United States Judges and all laws, rules, and practices governed by such circumstances.

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

If confirmed, I will carefully review and address any real or potential conflicts in accordance with the Code of Conduct for United States Judges and all laws, rules, and practices governed by such circumstances. I also will seek the advice of colleagues and of the Judicial Conference as needed.

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 discharged my pro bono obligation in a number of ways. I have acted as the pro bono chair, co-chair and/or the officer liaison to that committee for our local Federal Bar Association chapter for approximately seven years. In that capacity, I have worked with the district court's pro bono committee, chaired by U.S. District Judge Hood, to conduct seminars in how to handle pro bono matters and to assist in locating others to handle pro bono matters. These activities have consumed dozens of hours every year. In addition, I have personally handled pro bono matters for the federal district court, representing prisoners in cases challenging prison conditions. These actions also typically have consumed a significant amount of time. Because of my commitment, I received certificates of appreciation from the Court in 1997 and 2003.

As just one example, my last pro bono case before my appointment to the bench consumed well over 200 hours in 2003-2004. In that action, I represented a prisoner who claimed his right to practice his religion was infringed by prison officials who had stripped him of several years of good time because he refused orders to work on his holy days. The case was ultimately concluded by way of a settlement in which the prisoner regained substantially all of his good time credit.

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.

On March 30, 2009, I submitted an application to the judicial advisory committee established by Sen. Carl Levin and Sen. Debbie Stabenow. I was interviewed by the committee on May 26, 2009 and was selected to be recommended to the Senators. I was informed by the Senators on June 9, 2009 that they intended to recommend me to the President for appointment to the federal district court

bench. Since July 2009, I have been in contact with pre-nomination officials at the Department of Justice. On November 2, 2009, I was interviewed by representatives of the Justice Department and the White House Counsel's Office. On February 3, 2010, Sen. Levin called me. The President submitted my nomination to the Senate on February 4, 2010.

- 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.

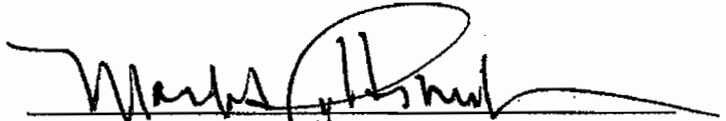
No.

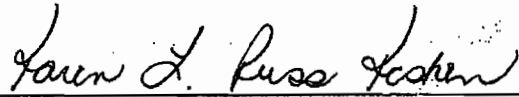
AFFIDAVIT

I, Mark A. Goldsmith, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/8/10

(DATE)


(NAME)



(NOTARY)

Karen L. Russ Koshen

Subscribed and sworn to before me, a Notary Public, in and for the County of Oakland, acting in Oakland County, State of Michigan, on the 8th day of February, 2010.

Karen L. Koshen
Notary Public, Oakland, County, Michigan
My commission expires: 10-07-12