

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Michael Scott Bogren

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

United States District Judge for the Western 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: 950 Trade Centre Way
Suite 310
Kalamazoo, Michigan 49002

Residence: Hastings, Michigan

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

1958; Kalamazoo, 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.

1979 – 1982, University of Detroit School of Law; J.D., *cum laude*, May 1982

1975 – 1979, Western Michigan University; B.A., *cum laude*, April 1979

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.

1985 – Present
Plunkett Cooney, P.C.
Kalamazoo Office

950 Trade Centre Way
Suite 310
Kalamazoo, Michigan 49002
Chair, Board of Directors (2013 – Present)
Shareholder and Office Managing Attorney (1990 – Present)
Secretary/Treasurer and Director (2003 – 2013)
Regional Department Leader (2003 – 2012)
Associate (Flint, Michigan Office; 1985 – 1989)

1983 – 1985
Harvey, Kruse, Westen & Milan, P.C.
Current Address:
1050 Wilshire Drive
Suite 320
Troy, Michigan 48084
Associate

1982 – 1983
Michigan Court of Appeals
350 Ottawa, NW
Grand Rapids, Michigan 49503
Prehearing Attorney

1981 – 1982
St. Clair County Prosecuting Attorney
210 McMorran Boulevard
Suite 3300
Port Huron, Michigan 48060
Legal Intern

1980 – 1981
Detroit Landlord Tenant Clinic
Lafayette Building
Detroit, Michigan 48226
Legal Intern

1977 – 1979
MC Sports
6272 South Westnedge Avenue
Portage, Michigan 49002
Sales Clerk

Other Affiliations (Uncompensated)

2004 – 2005

City of Portage Zoning Board of Appeals
7900 South Westnedge Avenue
Portage, Michigan 49002
Member

2000 – 2003 (Est.)

West Portage Little League
6669 South 12th Street
Portage, Michigan 49024
Member, Board of Directors

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 never served in the military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Best Lawyers in America (2008 – Present)

Super Lawyers, Michigan (2008 – Present)

Leading Lawyer, Michigan Civil Rights/Constitutional Law/Municipal Law (2016)

Martindale Hubbell Preeminent AV Rated

Alpha Sigma Nu, National Jesuit Honor Society (1982)

Justice Frank Murphy Honor Society (1982)

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 (1985 – Present)

Co-Chair, Subcommittee/Federalism, Section of State and Local Government
(1997 – 1998)

Association of Government Risk Pools (AGRiP) (2005 – 2015) (Est.)

Defense Research Institute (DRI) (1985 – 2018)

Detroit Bar Association (1983 – 1985)

Federal Bar Association (2012 – Present)

Federalist Society for Law and Public Policy Studies (2004 – 2007) (Est.)

Foundation for Individual Rights in Education (2012 – 2014) (Est.)

Genesee County Bar Association (1985 – 1989)

International Municipal Lawyers Association (IMLA) (2005 – 2015) (Est.)

Kalamazoo County Bar Association (1990 – Present)

Michigan Defense Trial Counsel (1985 – 2018)

Republican National Lawyers Association (2004 – 2010) (Est.)

State Bar of Michigan (1982 – 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.

Michigan, 1982

There has been no lapse in membership.

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

Supreme Court of the United States, 1992

United States Court of Appeals for the Sixth Circuit, 1991

United States District Court for the Northern District of Indiana, 1998

United States District Court for the Eastern District of Michigan, 1983

United States District Court for the Western District of Michigan, 1982

Nottawaseppi Huron Band of Potawatomi Indians Tribal Court, 2010

Pokagon Band of Potawatomi Indians Tribal Court, 2010

To my knowledge there have been no lapses in membership in any court.

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.

City of Portage Zoning Board of Appeals (2004 – 2005)

Kalamazoo Country Club (1990 – 2012)

St. Joseph County Conservation & Sportsman Club (2017 – Present)

West Portage Little League (2000 – 2003) (Est.)

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

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Local Anti-Discrimination Ordinances and the First Amendment: Walking a Fine Line, Plunkett Cooney Municipal Matters Newsletter, May 2018. Copy supplied.

A Sign of the Times – U.S. Supreme Court Ruling Impacts Municipal Sign Ordinances, Plunkett Cooney Municipal Matters Newsletter, December 2015. Copy supplied.

Municipal Liability Under Section 1983, in *Sword and Shield: A Practical Approach to Section 1983 Litigation* (ABA Publishing, 4th ed. 2015). Copy supplied.

Attorneys' Fees in Section 1983 Litigation, in *Sword and Shield: A Practical Approach to Section 1983 Litigation* (ABA Publishing, 4th ed. 2015). Copy supplied.

Qualified Immunity and Fourth Amendment Issues in Municipal Litigation, *Representing Municipalities in Litigation: Leading Lawyers Analyze Recent Trends and Guide Municipal Clients in Litigation*, 2013 WL 9701 Thomson Reuters/Aspatore. Copy supplied.

U.S. Supreme Court Upholds Jail Strip Search Policy, Plunkett Cooney Municipal Matters Newsletter, May 2012. Copy supplied.

Letter to the Editor, *Kalamazoo Gazette*, July 16, 2010, "Vote for Fred Upton in Aug. 3 Republican Primary." Copy supplied.

With Marcia L. Howe, Carlito H. Young, Rebekah Page-Gourley, Marcellyn A. Stepanski, & Phil Erickson, *Federal Law Update*, Pub. Corp. L.Q. (Fall 2008). Copy Supplied.

With Phil Erickson, Edward D. Dudendorf, Carlito H. Young, Timothy S. Wilhelm, Rebekah Page-Gourley, & Marcia Howe, Esq, *Federal Law Update*, Pub. Corp. L.Q. (Summer 2008). Copy Supplied.

With Marcia Howe, Rebekah Page, Tim Wilhelm, Phil Erickson, & Edward D. Dubendorf, *Federal Law Update*, Pub. Corp. L.Q. (Fall 2007). Copy Supplied.

With Marcia L. Howe, Phil Erickson, Edward Dubendorf, & B.I. Stanczyk, *Federal Law Update*, Pub. Corp. L.Q. (Summer 2007). Copy Supplied.

The Impact of Poor Zoning Decisions, Plunkett Cooney publication, May 2007. Also published in *Michigan Municipal Review*, July/August 2007. Copy supplied.

Municipal Liability Under Section 1983, in *Sword and Shield: A Practical Approach to Section 1983 Litigation* (ABA Publishing, 3d ed. 2006). Copy supplied.

Proper Application of Zoning Laws Results in Dismissal of \$800 Million Claim, Plunkett Cooney Rapid Report, November 1, 2005. Copy supplied.

How-To Kit: Responding to a Request Under the Michigan Freedom of Information Act, Michigan Institute of Continuing Legal Education, 2005. Copy supplied.

Recent Developments in Governmental Liability, 35 Tort and Ins. Law Journal 349 (2000). Copy supplied.

Municipal Liability Under Section 1983, in *Sword and Shield Revisited: A Practical Approach to Section 1983* (ABA Publishing, 1998). Copy supplied.

The Continued Viability of a Federal Substantive Due Process Remedy In Local Land Use Litigation, DRI Governmental Liability Newsletter, May/June 1991. Copy supplied.

The Constitutionalization of Consortium Claims, 68 Univ. Detroit L. Rev. 479 (1991). Copy supplied.

- 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.

In May 2012, I drafted a Response to Senate Bill No. 1084 for the Michigan Municipal League (MML). The Bill was a proposed amendment to Michigan's Governmental Tort Liability Act. The MML provided the Response to the Senate Committee on Energy and Technology which was considering the amendment. Copy supplied.

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

I spoke on behalf of clients at the City of Portage Council Meeting in March 2014 related to the City's search for a new City Manager. A copy of a report from the Kalamazoo Gazette dated March 26, 2014 is attached. *Little Outcry Over Portage Council's Recent Actions On Acting City Manager, Deputy Manager's Retirement*, Kalamazoo Gazette, March 26, 2014.

I testified before the Michigan Senate Committee on Energy and Technology on behalf of the Michigan Municipal League in May 2012 regarding Senate Bill No.

1084, which was a proposed amendment to Michigan's Governmental Tort Liability Act. My testimony was consistent with the points raised in the Response I drafted. I do not have copies of the testimony or any other documentation apart from the Response, which is supplied.

I spoke at a public meeting of the Spring Lake Township Board of Trustees in April 2004 regarding a proposed settlement in pending litigation. I represented the Township in the litigation. A copy of a Muskegon Chronicle article dated April 13, 2004 covering the meeting is attached. *Board OKs Settling of Developer's Lawsuit*, Muskegon Chronicle, April 13, 2004.

- 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.

September 2012: Presenter, "Open Meetings Act Update," Michigan Municipal League Seminar, Lansing, Michigan. PowerPoint supplied.

2012: Presenter, "Effective Use of Dash Cameras in Civil Litigation," Lorman Education Services, Eau Claire, Wisconsin. Teleconference. PowerPoint supplied.

November 3, 2011: Presenter, "Emergency Managers Under Act 4," Michigan Municipal League Seminar, Troy, Michigan. PowerPoint supplied.

March 23, 2011: Presenter, "Introduction to Zoning," Michigan Association of Municipal Attorneys Basics for Municipal Attorneys, Lansing, Michigan. PowerPoint supplied.

August 17, 2010: Presenter, "Canine Law Update," Lorman Education Services, Eau Claire, Wisconsin. Teleconference. Presentation materials supplied.

February 10, 2010: Presenter, "Critical Incidents," Michigan Association of Chiefs of Police Conference, Lansing, Michigan. PowerPoint supplied.

February 8, 2008: Panelist, "In the Trenches: Practical Advice for the Police Officer's Lawyer; Advising Police Departments, Officials, and Officers," State Bar of Michigan Public Corporation Law Section Winter Conference, Plymouth, Michigan. I sat on a panel and did not prepare presentation materials. I have no notes, transcript, or recording. The address for the State Bar of Michigan is 306

Townsend Street, Lansing, Michigan 48933.

July 2007: Author and Presenter, Resolution Honoring the Memory of Attorney Robert C. Burkholz, Kalamazoo County Bar Association, Kalamazoo, Michigan. Copy supplied.

December 11, 1989, Presenter, "Public Sector Damage Suits," Michigan ICLE, Troy, Michigan. I presented on damage suits in the public sector. I have no notes, transcript, or recording. The address for Michigan ICLE is 1020 Greene Street, Ann Arbor, Michigan 48109.

- 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.

Trump Picks First Black Female Judge Nominee As He Tries to Fill Mich. Vacancies, Detroit News, March 8, 2019. Copy supplied.

Bay View Vote May Influence Ruling, Petoskey News, September 11, 2018. Copy supplied.

Bay View Lawsuit Case in Limbo Pending Upcoming Bylaw Vote, Petoskey News, July 31, 2018. Copy supplied.

Federal Court Delays Issuing Opinion in Bay View Case, WCMU, July, 30, 2018. Copy supplied.

Federal Agency Investigating Alleged Discrimination by Bay View Association, Up North Live, May 17, 2018. Copy supplied.

Feds to Probe Bay View Discrimination Allegations, Petoskey News, May 16, 2018. Copy supplied.

Michigan Fights Tribe's Challenge to Defenses in Boundary Row, April 26, 2018, law360. Copy supplied.

We've Got Issues: Bay View Religious Discrimination Case Moves Forward, Interlochen Public Radio, April 26, 2018. Copy supplied.

Methodist Resort in Michigan Says Only Christians Can Buy Property There, NPR Morning Edition, March 30, 2018. Copy supplied.

Simon Contract Gives Her Lifetime of Perks, Detroit News, January 26, 2018. Copy supplied.

Judge Drops Four of Nine Counts in Country Mill's Lawsuit Against East Lansing, State News, November 30, 2017. Copy supplied.

Farmer's Suit Against East Lansing Can Proceed, Lansing State Journal, November 26, 2017. Copy supplied.

Plunkett Cooney Elects Jereck to Board of Directors, Plunkett Cooney Media Release, September 25, 2017. Copy supplied.

Banning Farmer From EL Market 'Clear Retaliation Against Free Speech,' Lawyer Says, Lansing State Journal, September 13, 2017. Copy supplied.

I was also interviewed by WILX TV, Lansing, Michigan on September 13, 2017 following oral argument in the *Country Mill Farms v. City of East Lansing* case. To my knowledge the interview was not aired and I do not have a copy of it.

Lawsuit Against East Lansing Farmer's Market Could Reach Supreme Court, Lawyer Says, Lansing State Journal, September 12, 2017. Copy supplied.

City Procures Co-Counsel for Farmer's Market Case, State News, June 29, 2017. Copy supplied.

White Policeman With African Ancestry Tests Borders of Race Bias Laws, Bloomberg News, June 6, 2017. Copy supplied.

Report on ABC v. City of Lansing, Crain's Detroit Business, July 25, 2016. Copy supplied.

Time-Out for Used Car Lots in Warren, Detroit News, September 3, 2015. Copy supplied.

Good Intention or Public Nuisance? Cities Brace for a Resurgence of Clothing Donation Bins, Los Angeles Times, August 14, 2015. Copy supplied.

Mullendore Suing Belding City Council, The Daily News, May 2, 2015. Copy supplied.

Conflicting Prevailing-Wage Rulings Head to State's High Court, Crain's Detroit Business, February 23, 2015. Copy supplied.

Racketeering and Bribery Claims Alleged Against Retired Van Buren Circuit Court Judge, Michigan Lawyers Weekly, February 20, 2014. Copy supplied.

Ex-Football Player Claims WMU Discriminated Against Him, Legal Issues in Collegiate Athletics, February 2014. Copy supplied.

Former Western Michigan University Football Player Files Discrimination Lawsuit Against School, Seeks \$75,000, mlive, January 27, 2014. Copy supplied.

Plunkett Cooney Welcomes New Members To Its Board of Directors, Plunkett Cooney Media Release, March 20, 2013. Copy supplied.

Bill Strikes at Forced Sick Pay, Crain's Detroit Business, March 18, 2013. Copy supplied.

Plunkett Cooney Law Firm Names Three New Shareholders, Plunkett Cooney Media Release, February 1, 2013. Copy supplied.

Student Hurt in Chemistry Class Can't Sue Teacher, Associated Press, January 23, 2013. Copy supplied.

Audrey Forbush Among Legal Publication's 'Women in the Law', Plunkett Cooney Media Release, October 24, 2012. Copy supplied.

Bankruptcy Remains a Possibility for Detroit With Implications for All of Michigan, Detroit News, April 4, 2012. Copy supplied.

Former Sturgis Hospital Doctor Sues Over 2008 Case, Kalamazoo Gazette, August 21, 2011. Copy supplied.

Royal Oak's New DDA Rule in Dispute, Crain's Detroit Business, May 17, 2010. Copy supplied.

Fired Police Chief Gets \$19,000 in Settlement, The Herald Palladium, December 18, 2009. Copy supplied.

Bloomington Ex-Police Chief John Josten Settles Lawsuit With Village, Kalamazoo Gazette, December 16, 2009. Copy supplied.

House Divided – Douglas Residents Split Over Appeal Decision, Holland Sentinel, June 7, 2009. Copy supplied.

Judge to Review EMU Document, Ann Arbor News, February 19, 2004. Copy supplied.

Prosecutor Questions 'House Arrest' in Jordan Case, Muskegon Chronicle, October 4, 2001. Copy supplied.

Judge Delays Ruling on Discrimination Claim, AP, April 20, 2000. Copy supplied.

Village Council to File Suit to Force Sewer Line Route, South Bend Tribune,

September 18, 1997. 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.

I was appointed by the Portage, Michigan City Council to serve as a member of the City of Portage Zoning Board of Appeals. I served on the Zoning Board of Appeals from 2004 – 2005.

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

None.

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

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

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

I did not serve as a clerk to a judge.

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

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1982 – 1983
Michigan Court of Appeals
350 Ottawa, NW
Grand Rapids, Michigan 49503
Prehearing Attorney

1983 – 1985
Harvey, Kruse, Westen & Milan, P.C.
Current Address:
1050 Wilshire Drive
Suite 320
Troy, Michigan 48084
Associate

1985 – Present
Plunkett Cooney, P.C.
Kalamazoo Office
950 Trade Centre Way
Suite 310
Kalamazoo, Michigan 49002
Chair, Board of Directors (2013 – Present)
Shareholder and Office Managing Attorney (1990 – Present)
Secretary/Treasurer and Director (2003 – 2013)
Regional Department Leader (2003 – 2012)
Associate (Flint, Michigan Office; 1985 – 1989)

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.

When I began my career in private practice in 1983, I worked for Harvey, Kruse, Westen & Milan, P.C. as a litigation associate. I represented entities and individuals in civil litigation in which they were named as defendants. The cases were premises liability claims, automobile negligence claims, products liability claims, and insurance coverage claims.

Since I began my career at Plunkett Cooney in 1985, I have focused my practice on litigation involving governmental entities. Nearly all of my practice has been defending governmental entities and officials named as defendants in civil litigation. Since approximately 1990 my practice has become more focused on representing governmental entities and officials in constitutional and civil rights litigation in federal court.

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

When I began my career in private practice in 1983 for Harvey, Kruse, Westen & Milan, P.C., my clients were entities and individual named as defendants in civil lawsuits. I did not have any specific areas of expertise beyond civil litigation defense.

Since I began at Plunkett Cooney in 1985, my clients have been primarily state and local governmental entities and governmental officials named as defendants in lawsuits. I have also represented some companies and individuals who were named as defendants in civil litigation. My areas of specialty are civil rights, constitutional law, and employment litigation.

- 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.

Nearly all of my practice has been in civil litigation. I have appeared in court frequently throughout my career.

- i. Indicate the percentage of your practice in:

1. federal courts: 70%
2. state courts of record: 25%
3. other courts: 0%
4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 95%
2. criminal proceedings: 5%

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

I have tried approximately 25 cases to verdict or judgment.

i. What percentage of these trials were:

1. jury: 60%
2. non-jury: 40%

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 never practiced before the Supreme Court of the United States.

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

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

1. *Middaugh v. City of Three Rivers, et. al*, No. 1:13-CV-909, 2015 WL 505793 (W.D. Mich. Feb. 6, 2015), *aff'd*, 629 F. App'x 710 (6th Cir. 2015), *cert. granted, judgment vacated sub nom. Piper v. Middaugh*, 136 S. Ct. 2408 (2016), and *rev'd*, No. 15-1140, 2017 WL 1179375 (6th Cir. Mar. 29, 2017).

This was a case involving the proper application of the qualified immunity doctrine. I represented the City of Three Rivers and two of its police officers who were sued after a self-help repossession of an automobile by the plaintiff's former sister-in-law. The police officers were at the premises on a "stand-by" as peace officers. The plaintiff alleged the officers violated the Fourth Amendment by providing assistance in the repossession. The district court denied the officers' motion for summary judgment based on qualified immunity. The Sixth Circuit affirmed the district court's decision. The United States Supreme Court vacated the Sixth Circuit's decision and remanded for further consideration. The Sixth Circuit then reversed the district court and held the officers were entitled to qualified immunity. I was lead counsel in the case. I drafted all district court filings and was primarily responsible for drafting the Sixth Circuit brief.

My representation was from 2013 until 2017. The case was brought in the United States District Court for the Western District of Michigan, Hon. Gordon J. Quist.

Opposing counsel:
William F. Piper
1611 West Centre Avenue Suite 209
Portage, Michigan 49024
(269) 321-5008

2. *Gavitt v. City of Ionia, et. al.*, No. 14-12164, 2014 WL 7157187 (E.D. Mich. Dec. 15, 2014), *aff'd sub nom. Gavitt v. Born*, 835 F.3d 623 (6th Cir. 2016).

This was a case filed by a man who was convicted of three counts of murder in 1986 following a house fire that killed his wife and two children. A jury convicted him of arson for setting the fire and felony murder, and he was sentenced to life in prison. Twenty-six years later, on June 6, 2012, the Ionia County Prosecutor and the plaintiff stipulated that all charges against the plaintiff be immediately dismissed and that the court order his immediate release from prison based on new advances in fire science that established no arson occurred. The plaintiff then filed suit against the prosecutors and the investigating officers in the original investigation, as well as the governmental entities that employed them, alleging he was unconstitutionally convicted and imprisoned. I represented the City of Ionia, the lead investigating detective, and the former Chief of Police. The district court granted my motion for judgment on the pleadings under Rule 12(c), holding the convictions were not unconstitutional. The Sixth Circuit affirmed the district court's ruling. I was lead counsel in the case. I drafted all district court filings and was primarily responsible for drafting the Sixth Circuit brief.

My representation was from 2014 until 2017. The case was filed in the United States District Court for the Eastern District of Michigan, Hon. Nancy G. Edmunds.

Opposing counsel:
Ven R. Johnson
535 Griswold Street, Suite 2632
Detroit, Michigan 48226
(313) 324-8300

J. Paul Janes
99 Monroe Avenue NW, Suite 700W
Grand Rapids, Michigan 49503
(616) 235-5500

Counsel for Co-Defendants:
Allan C. Vander Laan (P33893)
Attorney for Defendants Ionia County, Gabry, Voet, Schafer
Cummings, McClorey, Davis & Acho
2851 Charlevoix Drive, S.E., Suite 327
Grand Rapids, Michigan 49546
(616) 975-7470

Mark E. Donnelly (P39281)
Joseph T. Froehlich (P71887)
Attorneys for Defs Kalman, Fatchett, Hough,
Davis, Madden, Munoz, Sturdivant & Etue
Michigan Attorney General's Office
Public Employment, Elections & Tort Division
P.O. Box 30736
Lansing, Michigan 48909
(517) 373-6434

3. *Pearson v. City of Grand Blanc*, 756 F. Supp. 314 (E.D. Mich. 1991), *aff'd*, 961 F.2d 1211 (6th Cir. 1992).

This was a case filed by a property owner who sought a rezoning of his property from residential to commercial after having obtained a conditional agreement to sell the property to a fast food franchise. After the rezoning request was denied, the property owner filed suit alleging the rezoning denial constituted a taking of property and was a substantive due process and equal protection violation. The district court granted the motion for summary judgment I filed on behalf of the city. The Sixth Circuit affirmed and established the framework still used to decide land use cases that are brought under the United States Constitution. I was lead counsel and drafted all district court and Sixth Circuit filings and argued the case in the Sixth Circuit.

My representation was from approximately 1989 until 1992. The case was filed in the United States District Court for the Eastern District of Michigan, Hon.

Stewart Newblatt.

Opposing counsel:
Steven P. Iamarino
5500 South Saginaw Road
Grand Blanc, Michigan 48480
(810) 695-8400

4. *Manistee Salt Works v. City of Manistee, et. al.*, No. 4:04-CV-95, 2005 WL 2600428 (W.D. Mich. Oct. 13, 2005).

The plaintiff owned a 30-acre parcel of land located within the City of Manistee, Michigan, and bordering on Manistee Lake. Manistee Lake is connected to Lake Michigan by a short channel. The plaintiff intended to develop the site into a 425 megawatt coal-fired power plant. Under a City ordinance, the plaintiff was required to obtain a special use permit to operate a power plant on the property. The City's Planning Commission denied the special use permit. The plaintiff filed suit, alleging a violation of the equal protection and due process clauses of the Fourteenth Amendment. The district court granted the motion for summary judgment I filed on behalf of the City of Manistee. The court agreed the City's decision was rationally related to significant governmental interests in the health, safety, and welfare of the community. I was lead counsel and drafted all of the filings.

My representation was from approximately 2004 until 2005. The case was filed in the United States District Court for the Western District of Michigan, Hon. Richard A. Enslin.

Opposing counsel:
Rodger A. Kershner
Howard & Howard
450 West 4th Street
Royal Oak, Michigan 48067
(248) 723-0421

5. *Naghtin v. Montague Fire Dist. Bd.*, 175 F. Supp. 3d 813 (W.D. Mich.), *aff'd*, 674 F. App'x 475 (6th Cir. 2016).

The plaintiff was a firefighter with the Montague Fire Department for over 30 years. In October 2011, he circulated a petition among the Department's firefighters urging reinstatement of the Department's previous captain. The plaintiff sent the petition to the Department's Fire Chief, and the members of the Montague Fire District Board. The Board construed the petition as an employee complaint that, according to the Department's personnel procedures, should have been turned over to the Fire Chief in the first instance. The Chief recommended that the Board terminate the plaintiff for failure to follow the prescribed

procedures, and the Board followed that recommendation. Following his termination, the plaintiff sued the Chief and the Board, asserting that his termination violated his rights under the First Amendment. The court granted the motion for summary judgment filed on behalf of the defendants and the Sixth Circuit affirmed. I was co-counsel and drafted or co-drafted the filings in the district court.

My representation was from 2014 to 2016. The case was filed in the United States District Court for the Western District of Michigan, Hon. Gordon J. Quist.

Opposing counsel:
Judy E. Bregman (P32252)
Bregman & Welch
P.O. Box 885
Grand Haven, Michigan 49417
(616) 846-3145

Co-counsel:
Robert A. Callahan
Plunkett Cooney
950 Trade Centre Way, Suite 310
Kalamazoo, Michigan 49002
(269) 226-8822

6. *Coakley v. Viper Security, et. al.*, Case No. 4:04-cv-0156 (W.D. Mich. 2004).

In this case, I represented a plaintiff alleging violations of the Fourth and Fourteenth Amendments against a private security company. The plaintiff was an African-American police officer who, while working undercover and coming off shift, noticed he was being followed. He ultimately pulled into the parking lot of a fire station where he was confronted at gunpoint by a private security guard who was in his company uniform and operating a company vehicle. The guard had heard police traffic on a scanner he monitored about a shooting and believed the plaintiff matched the description of the shooting suspect. After holding the plaintiff at gunpoint the guard requested the sheriff's department to respond to his location. After the plaintiff identified himself as a police officer, he was allowed to leave. The complaint alleged the security company was acting under color of law as it had an arrangement with the sheriff's department and was actually performing police work. We alleged violations of the plaintiff's rights under the Fourth Amendment for illegal search and seizure and under the Fourteenth Amendment for a violation of equal protection based on race. The defendants filed a motion for summary judgment which was denied, and the case was ultimately settled. My firm waived its fee so the plaintiff could receive the entire settlement amount. I was lead counsel in the case and drafted all court filings.

My representation was from 2004 until approximately 2005. The case was filed

in the United States District Court for the Western District of Michigan, Hon. David W. McKeague.

Opposing Counsel:

Stephen J. Hessen (P41663)
Attorney for Viper Security
Kreis, Enderle, Hudgins & Borsos, P.C.
One Moorsbridge
P.O. Box 4010
Kalamazoo, Michigan 49003
(269) 324-3000

Curtis J. Bell (P49730)
Attorney for Matthew Kerns
Mr. Bell is currently a Probate Court Judge in Kalamazoo, Michigan.
1536 Gull Road
Kalamazoo, Michigan 49048
(269) 383-8666

7. *Brown v. City of Hastings, et. al.*, Case No. 1:17-cv-00331-JTN.

This was a case brought by a police officer employed by the City of Hastings, Michigan against the Chief of Police, the City Manager, and other members of the police department. The plaintiff took a commercial DNA test and told his co-workers the results revealed that 18% of his genetic makeup was consistent with genetic markers from sub-Saharan Africa. The plaintiff alleged after he told people the results of the DNA test he was subjected to numerous actions which he claimed constituted adverse employment action. The plaintiff filed suit alleging racial discrimination under Title VII, a violation of the Genetic Information Nondiscrimination Act (GINA), a violation of the ADA, and a violation of the Michigan Civil Rights Act. I represented the defendants and filed a motion to dismiss pursuant to Rule 12(b)(6) in response to the complaint. While the motion to dismiss was pending the parties engaged in mediation and agreed to resolve the case, which included the plaintiff's resignation from the Hastings Police Department.

My representation was from 2017 through 2018. The case was filed in the United States District Court for the Western District of Michigan, Hon. Janet T. Neff.

Opposing Counsel:
Karie H. Boylan (P55468)
410 West University, Suite 201
Rochester, Michigan 48307
(855) 926-9526

8. *Country Mill Farms, LLC, Steve Tennes v. City of East Lansing*, Case No. 1:17-cv-00487-PLM.

The plaintiffs filed suit against the City of East Lansing after the City refused to allow them to lease a stall at the East Lansing Farmers' Market. The City learned that the plaintiffs refused to rent their business premises to same-sex couples for wedding ceremonies. The City's anti-discrimination ordinance includes sexual orientation as a protected class. The City informed the plaintiffs that because their general business practices discriminated on the basis of sexual orientation, the City would not lease a stall to them at the Farmers' Market. The plaintiffs filed suit alleging a violation of their First Amendment free speech rights and their rights under the free exercise clause. The plaintiffs alleged that because their sincerely held religious beliefs did not permit them to rent their business for same-sex wedding ceremonies, the City could not refuse to allow them to participate in the Farmers' Market. The City's position is that the ordinance is facially neutral and of general applicability, and the City cannot be forced to enter into a business relationship with an entity that is not in compliance with the anti-discrimination ordinance in conducting its general business practices. I represent the City of East Lansing.

My representation began in 2017 and is ongoing. The case was filed in the United States District Court for the Western District of Michigan, Hon. Paul L. Maloney.

Opposing Counsel:
Katherine L. Anderson
Alliance Defending Freedom (AZ)
15100 North 90th Street
Scottsdale, Arizona 85260
(480) 444-0020

9. *Bay View Chautauqua Inclusiveness Group v. The Bay View Association of the United Methodist Church*, Case No. 1:17-cv-00622-PLM.

The plaintiff is an informal group of members of The Bay View Association of the United Methodist Church, a summer residential association located near Petsokay, Michigan. The plaintiff filed suit against The Bay View Association alleging a violation of Title VIII and a violation of the First Amendment Establishment Clause. The plaintiff alleges a religious requirement in the membership by-law violates Title VIII and the First Amendment. The Bay View Association's position is that it is a religious entity under the religious exemption in Title VIII. Bay View also takes the position the First Amendment has no applicability because it is a private entity, not a state actor. Finally, Bay View takes the position that because the membership by-law has been amended to remove any religious requirement, the case is moot. Cross-motions for judgment on the pleadings under Rule 12(c) are pending. I represent the Bay View Association of the United Methodist Church.

My representation began in 2017 and is ongoing. The case was filed in the United States District Court for the Western District of Michigan, Hon. Paul L. Maloney

Opposing Counsel:
Sarah S. Prescott (P70510)
105 East Main Street
Northville, Michigan 48167
(248) 679-8711

10. *Little Traverse Bay Bands of Odawa Indians v. Governor Rick Snyder*, Case No. 1:15-cv-00850-PLM.

The plaintiff, a federally recognized Indian Tribe, filed suit against the Governor of the State of Michigan seeking a declaration that the Treaties of 1836 and 1855 established a permanent reservation of approximately 337 square miles in the northwest portion of Michigan's lower peninsula. Several entities intervened, including Michigan counties, cities, and townships and citizen groups. I represent the intervening defendants Emmet and Charlevoix County and the cities of Petoskey and Harbor Springs. The complaint alleges permanent reservations were created by the Treaties of 1836 and 1855. The Tribe alleges the area in question is all trust land and Indian Territory under federal law and that the Tribe has superseding jurisdiction. The State of Michigan and the Intervenors dispute the Tribe's claim that a permanent reservation was created.

My representation began in 2015 and is ongoing. The case was filed in the United States District Court for the Western District of Michigan, Hon. Paul L. Maloney.

Co-Counsel:
David K. Otis (P31627)
Plunkett Cooney
325 East Grand River, Suite 250
East Lansing, Michigan 48823
(517) 324-5612

Opposing Counsel:
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1935 West County Road B2, Suite 460
St. Paul, Minnesota 55113
(651) 842-9100

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 represented the City of Saugatuck in a case brought by the ACLU on behalf of a street musician who challenged the constitutionality of the City's ordinance that was used to bar him from performing. After concluding the ordinance was not constitutionally defensible, I negotiated a Consent Judgment on behalf of the City that was entered by the Court. *Waechter v. City of Saugatuck*, et. al., Case No. 1:14-cv-01291.

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 any courses.

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.

If I leave Plunkett Cooney, the Stock Repurchase Agreement provides the firm will repurchase my stock in the firm.

I will receive a profit sharing distribution from Plunkett Cooney into my 401(k) retirement account on or before September 15, 2019.

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

I do not have any plans, commitments or agreements to pursue outside employment during service with the court.

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).

Please 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).

Please 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.

My son Charles L. Bogren is an associate at the firm Kreis, Enderle, Hudgins & Borsos located in Portage, Michigan. My sister Nancy A. Bogren (Strzynski) is a practicing attorney in Michigan and has been appointed a Special Assistant United States Attorney for the Western District of Michigan. Neither of them could appear before me in any case. My wife, Katherine D. Lamb, is also a licensed attorney in the State of Michigan but she does not currently practice and has no plans to return to the practice of law.

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

In the event a conflict of interest did arise I would apply the standards in 28 U.S.C. § 455 and the Code of Conduct for United States Judges. If there is a conflict of interest, the appropriate response is recusal or disqualification. The impartiality of the federal judiciary is one of the bedrock principles of our country. I believe that even the appearance of impropriety or conflict of interest to an objective observer should result in recusal or disqualification. The integrity of the system is far more important than any other consideration. I would make it a practice to review any case that is assigned to me for potential conflicts of interest or other areas of concern and would do so as each party appears directly or through counsel. If a conflict of interest or the appearance of impropriety arises I would recuse or disqualify myself.

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 was one of the lead attorneys for Plunkett Cooney working as co-counsel with the Michigan Migrant Legal Assistance Program in a class action lawsuit brought by migrant agricultural workers against various entities. The case resulted in a judgment that had a significant impact on living conditions and wages for migrant workers in Michigan. *Roman v. Korson*, 918 F. Supp. 1108 (W.D. Mich. 1995). I spent hundreds of hours on the case over the course of nearly two years. More recently, I have donated the honoraria from presentations to legal aid organizations. I have provided free legal services to

organizations I have been associated with, including churches and youth sports organizations. I have also provided free legal assistance to firm employees. I would estimate I spend approximately ten to fifteen hours a year on these activities.

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.

Senator Stabenow's website announced her office was accepting applications for the U.S. District Court vacancies and the U.S. Attorney vacancies in both the Western and Eastern Districts of Michigan. I became aware of the announcement in July 2017 and submitted an application. I was contacted by the Chair of the Selection Committee established by the Michigan Senators to schedule an interview. I interviewed with the Committee in November 2017. In May 2018 the Chair of the Committee contacted me and said Senator Stabenow's office asked her to obtain a one page resume from me, which I provided. On Monday, May 21, 2018, I was contacted by the White House Counsel's Office to schedule an interview for the Western District vacancy. I was interviewed by attorneys from the White House Counsel's Office and the Department of Justice Office of Legal Policy on June 6, 2018 in Washington, D.C. Since that time, I have been in contact with attorneys from the White House Counsel's Office and the Office of Legal Policy. On March 8, 2019, President Trump announced his intent to nominate me.

- 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.