

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

John Baylor Nalbandian

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

United States Court of Appeals Judge for the Sixth Circuit

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202

Residence: Union, Kentucky

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

1969; Fort Ord, California

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.

1991 – 1994: University of Virginia School of Law; J.D., May 1994

1987 – 1991: University of Pennsylvania; B.S. (*magna cum laude*), May 1991

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.

2000 – present
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800

Cincinnati, Ohio 45202
Partner, 2004 – present
Associate, 2000 – 2003

1995 – 2000
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Associate

1994 – 1995
The Honorable Jerry E. Smith
United States Court of Appeals for the Fifth Circuit
515 Rusk Avenue
Houston, Texas 77002
Law Clerk

1994
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
Summer Associate

1993 – 1994
Professor William Stuntz
University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia 22903
Research Assistant

1993
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW, Room 3322
Washington, DC 20530
Summer Law Clerk

1992
Professor Richard Bonnie
University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia 22903
Research Assistant

1991
Footprints

1339 Massachusetts Street
Lawrence, Kansas 66044
Shipping Clerk

Other affiliations

2002 – 2003
The Conservative Forum
1250 Audubon Road
Park Hills, Kentucky 41011
Board Member

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 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.

Best Lawyers in America in Appellate Law, 2007 – present

Cincy Magazine, Cincy Leading Lawyers, 2014 – present

Best Lawyers in America, Appellate Lawyer of the Year, Cincinnati, 2016

Ohio State Bar Association Certified Specialist in Appellate Law, 2008 (Re-certified 2014)

Ohio Super Lawyers Rising Star in Appellate Law, 2005 – 2007

Leadership Northern Kentucky Class of 2003

University of Virginia School of Law Order of the Coif, 1994

Managing Editor, Virginia Law Review, 1993 – 1994

Degree from the University of Pennsylvania conferred *magna cum laude*

University of Pennsylvania John Marshall Honor Society

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, 1995 –2006 (intermittent); 2006 – present
Litigation Section Member, 2006 – present
Council of Appellate Lawyers, 2014 (approximate) – present
Judicial Division, Appellate Judges Conference, 2014 (approximate) – present

Asian Pacific American Bar Association/Southwest Ohio, 2016 – present
Board Member, 2016 – present

Cincinnati Bar Association, 2000 – 2017 (intermittent)

Federal Bar Association, 2015 – present

Federalist Society, 1991 – present
President, Cincinnati Lawyers Chapter, 2000 – 2008
Advisory Board Member, Cincinnati Lawyers Chapter, 2010 – present

Greater Cincinnati Minority Counsel Program, 2011 – present
Treasurer and Executive Committee, 2014 – present
Board Member, 2011 – present

Merit Selection Panel for Appointment of Federal Bankruptcy Judge in Cincinnati, Ohio,
2010

Merit Selection Panel for Appointment of Federal Magistrate Judge in Covington,
Kentucky, 2009

National Asian Pacific American Bar Association, 2015 – present

Ohio State Bar Association, 2005 (approximate) – present
Appellate Practice Specialty Board, 2012 – present

Republican National Lawyers Association, 2008 – present

United States Court of Appeals for the Sixth Circuit Judicial Conference
Life Member, 2008 – present
Life Member Committee Board Member, 2012 – 2017

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.

Virginia, 1995
District of Columbia, 1997

Ohio, 2000
Kentucky, 2006

I am currently an inactive member of the Virginia Bar. I have not sought to practice as a Virginia attorney since becoming inactive. There have been no other lapses in membership.

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

Supreme Court of the United States, 1999
United States Court of Appeals for the Second Circuit, 2009
United States Court of Appeals for the Third Circuit, 2009
United States Court of Appeals for the Fourth Circuit, 2004
United States Court of Appeals for the Sixth Circuit, 2000
United States Court of Appeals for the Seventh Circuit, 2016
United States Court of Appeals for the Eighth Circuit, 1999
United States Court of Appeals for the Ninth Circuit, 2007
United States Court of Appeals for the Eleventh Circuit, 1998
United States Court of Appeals for the Federal Circuit, 2007
United States District Court for the Eastern District of Kentucky, 2012
United States District Court for the Southern District of Ohio, 2003
United States District Court for the Eastern District of Virginia, 1998

I am considered inactive in the United States Court of Appeals for the Eleventh Circuit. There have been no other lapses in 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.

The Conservative Forum, 2002 – 2003
Board Member, 2002 – 2003

- 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.

The Conservative Forum no longer exists. To my knowledge, during its existence it did not discriminate, on the basis of race, sex, or 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.

With Michael Solimine, *How Not to Confirm Judges*, Cin. Post, Apr. 9, 2002. Copy supplied.

With Christopher F. Dugan, *NAFTA Chapter 11 Arbitral Tribunal: Ethyl Corp. v. Canada*, 38 I.L.M. 700 (1999). Copy supplied.

With Ethan Shenkman, *Tribute to Hilda*, 81 Va. L. Rev. 269 (1995). 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.

None.

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

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.

April 7, 2016: Instructor, Appellate Practice CLE Seminar, Ohio State Bar Association. Presentation materials and notes supplied.

August 7, 2015: Panelist, United States District Court for the Eastern District of Kentucky Judicial Fellows Program, Covington, Kentucky. I participated in a panel discussion concerning appellate practice. I have no notes, transcript, or recordings. The address of the United States District Court for the Eastern District of Kentucky is 35 West 5th Street, Covington, Kentucky 41011.

April 16, 2015: Instructor, Appellate Practice CLE Seminar, Ohio State Bar Association. Presentation materials and notes supplied.

August 8, 2014: Panelist, United States District Court for the Eastern District of Kentucky Judicial Fellows Program, Covington, Kentucky. I participated in a panel discussion concerning appellate practice. I have no notes, transcript, or recordings. The address of the United States District Court for the Eastern District of Kentucky is 35 West 5th Street, Covington, Kentucky 41011.

April 16, 2014: Instructor, Appellate Practice CLE Seminar, Ohio State Bar Association. Presentation materials and notes supplied.

August 2, 2013: Panelist, United States District Court for the Eastern District of Kentucky Judicial Fellows Program, Covington, Kentucky. I participated in a panel discussion concerning appellate practice. I have no notes, transcript, or recordings. The address of the United States District Court for the Eastern District of Kentucky is 35 West 5th Street, Covington, Kentucky 41011.

April 11, 2013: Instructor, Appellate Practice CLE Seminar, Ohio State Bar Association. Presentation materials and notes supplied.

July 20, 2012: Panelist, United States District Court for the Eastern District of Kentucky Judicial Fellows Program, Covington, Kentucky. I participated in a panel discussion concerning appellate practice. I have no notes, transcript, or recordings. The address of the United States District Court for the Eastern District of Kentucky is 35 West 5th Street, Covington, Kentucky 41011.

April 12, 2012: Instructor, Appellate Practice CLE Seminar, Ohio State Bar Association. Presentation materials and notes supplied.

August 12, 2011: Panelist, Kentucky Election Law, Republican National Lawyers Association, Summer Election Law Seminar. Notes supplied.

July 22, 2011: Panelist, United States District Court for the Eastern District of Kentucky Judicial Fellows Program, Covington, Kentucky. I participated in a panel discussion concerning appellate practice. I have no notes, transcript, or recordings. The address of the United States District Court for the Eastern District of Kentucky is 35 West 5th Street, Covington, Kentucky 41011.

April 7, 2011: Instructor, Appellate Practice CLE Seminar, Ohio State Bar Association. Presentation materials and notes supplied.

April 8, 2010: Instructor, Appellate Practice CLE Seminar, Ohio State Bar Association. Presentation materials and notes supplied.

September 2008: Instructor, Appellate Practice CLE Seminar, Ohio State Bar Association. Presentation materials and notes supplied.

Outside of wholly personal speeches or talks I may have given – for example, toasts, eulogies, and religious instruction or commentary – the above represents my best recollection of all speeches or talks I have delivered since high school.

- 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.

Cincy Leading Lawyers 2015: John B. Nalbandian, Cincy Mag., Feb./Mar. 2015. Copy supplied.

Stephanie Salmons, *Delegates Go to GOP Convention*, Cin. Enquirer, Aug. 30, 2012. Copy supplied.

Scott Wartman, *Kentucky Plans to Show Its Clout at GOP Convention*, Messenger, Aug. 27, 2012. Copy supplied.

Boone Lawyer Considered for Federal Board, Cin. Enquirer, Dec. 24, 2009. Copy supplied.

Denise J. Callahan, *Attorney: Widmer Will Appeal Murder Conviction*, Middletown (Ohio) J., April 10, 2009. 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.

Pursuant to Ky. Const. § 110(3) and Ky. Rev. Stat. Ann. 21A.120, on August 31, 2007, I was appointed by the Governor of Kentucky to serve as a Special Justice

on the Kentucky Supreme Court for the limited purpose of considering two cases for which a petition for review had been filed to the Kentucky Supreme Court. On April 16, 2008, the Court voted unanimously to deny the petitions for review. Other than this limited appointment, 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:
- 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.

Except as set forth in response to Question 13, I have not held judicial office.

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.

State Justice Institute Board of Directors (2010 – present)

Nominated by President Barack Obama, December 23, 2009

Confirmed by the United States Senate, June 22, 2010

Northern Kentucky Tri-County Economic Development Board of Directors (2006 – 2012)

Appointed by Boone County, Kentucky Judge/Executive Gary Moore, April 2006 (approximate)

Approved by Boone County Fiscal Court, April 2006 (approximate)

Telecommunications Board of Northern Kentucky (2001 – 2008)

Appointed by Boone County, Kentucky Judge/Executive Gary Moore, Fall 2001 (approximate)

Approved by Boone County Fiscal Court, Fall 2001 (approximate)

- 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.

Commonwealth Political Action Committee
Member, Board of Directors (2001 – present)
Chairman (2003)

Boone County, Kentucky GOP Executive Committee
Member (2008 – 2012)

Alternate Delegate to the 2008 Republican National Convention

Alternate Delegate to the 2012 Republican National Convention

Delegate to 2016 Republican National Convention

Republican Party of Kentucky
General Counsel and State Executive Committee Member (2010 – 2016)

In my role as General Counsel, I participated in Election Day operations and gave advice to the following campaigns:

Senator Mitch McConnell (2014)
State Senator David Williams' gubernatorial campaign (2013)
Senator Rand Paul (2010)
Congressman Andy Barr (2010)

As an attorney at Taft Stettinius & Hollister, I have worked on a number of legal matters involving candidates and campaigns:

Republican Party of Kentucky (2014)
Ohio Representative Al Landis (2013)
Ohio State Representative Louis Blessing (2012)
Ohio Senator Thomas Niehaus (2012)
Romney for President in Ohio (2012)
Congressman Geoff Davis (2002 – 2012)
John Williams for Hamilton County Juvenile Court Judge (2010)
Congressman Mike Turner (2002)

I have volunteered on numerous campaigns on an informal basis without any official title or role.

Jamie Comer and Chris McDaniel, Kentucky Governor and Lieutenant Governor, 2015
Wil Schroder, Kentucky State Senate, 2014
Chris McDaniel, Kentucky State Senate, 2012
Gary Moore, Boone County Judge/Executive, 2002, 2006 & 2010
Steve Smith, Boone County Commissioner, 2010
Trey Grayson, U.S. Senate, 2010
Trey Grayson, Kentucky Secretary of State, 2003 & 2007

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 served as a law clerk to Hon. Jerry E. Smith, U.S. Court of Appeals for the Fifth Circuit from 1994 to 1995.

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.

1994

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
Summer Associate

1995 – 2000

Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Associate

2000 – present

Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
Associate, 2000 – 2003

Partner, 2004 – present

- 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 never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

From 1995 to 2000, I was an associate in the Washington, D.C. office of Jones Day. I focused on appellate practice but worked generally on commercial litigation cases. I also worked on antitrust matters and international arbitration and trade cases.

In 2000, I joined the Cincinnati office of Taft, Stettinius & Hollister LLP as an associate. I became a partner of the firm in 2004. My practice has focused on appellate matters but I have also handled general commercial litigation as well as labor and employment, environmental, campaign and election law, and antitrust issues. I have also worked on criminal matters.

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

I have specialized in appellate practice and have not been confined to any particular industry or specialty area.

The typical clients that I have worked for in commercial and appellate matters have been public and private companies. My representative clients include British Petroleum, RJ Reynolds, The Loewen Group, Goodyear, Cincinnati Bengals, RPM Inc., Leggett and Platt, PowerNet Global Communications, David J. Joseph Company, Conwood Company, Federal Home Loan Bank of Cincinnati, UC Health, Duke Energy, and FiberLight, LLC. I have also represented smaller, privately held companies and corporations and, on occasion, individuals.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Essentially all of my practice has been in litigation. On occasion I have provided legal advice with respect to commercial transactions or on issues concerning

trade. I have appeared principally in courts of appeal and the frequency of these appearances has varied.

i. Indicate the percentage of your practice in:

1. federal courts: 60%
2. state courts of record: 35%
3. other courts: 0%
4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 85%
2. criminal proceedings: 15%

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.

None.

i. What percentage of these trials were:

1. jury: _____%
2. non-jury: _____%

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 filed approximately 30 briefs in the Supreme Court, including merit briefs, amicus briefs, and certiorari briefing. I have not presented oral argument in the Supreme Court.

Petition for Writ of Certiorari, *Tamburrino v. Office of Disciplinary Counsel of Sup. Ct. of Ohio*, 137 S. Ct. 2170 (2017) (No. 16-1188). Brief available at 2017 WL 1244425.

Petitioner's Reply Brief, *Ascira Partners, LLC v. Daniel*, 137 S. Ct. 648 (2017) (No. 16-560). Brief available at 2016 WL 7048328.

Petition for Writ of Certiorari, *Ascira Partners, LLC v. Daniel*, 137 S. Ct. 648 (2017) (No. 16-560). Brief available at 2016 WL 6247560.

Application to Recall and Stay Mandate, *Ascira Partners, LLC v. Daniel*, No. 16A326 (Sept. 29, 2016). Copy supplied.

Petitioner's Reply Brief, *Direccion General de Fabricaciones Militares v. Rote*, 137 S. Ct. 199 (2017) (No. 16-83). Brief available at 2016 WL 4548436.

Petition for Writ of Certiorari, *Direccion General de Fabricaciones Militares v. Rote*, 137 S. Ct. 199 (2017) (No. 16-83). Brief available at 2016 WL 3902688.

Application to Recall and Stay Mandate, *Fabrica Militar Fray Luis Beltran v. Rote*, No. 15A1155 (May 9, 2016). Copy supplied.

Supplemental Brief for Petitioners, *Carpenter Co. v. Ace Foam, Inc.*, 135 S. Ct. 1493 (2015) (No. 14-577). Brief available at 2015 WL 410702.

Petitioner's Reply Brief, *Carpenter Co. v. Ace Foam, Inc.*, 135 S. Ct. 1493 (2015) (No. 14-577). Brief available at 2015 WL 77673.

Petition for Writ of Certiorari, *Carpenter Co. v. Ace Foam, Inc.*, 135 S. Ct. 1493 (2015) (No. 14-577). Brief available at 2014 WL 6467870.

Petitioner's Reply Brief, *Rhodes v. E. I. du Pont de Nemours & Co.*, 565 U.S. 977 (2011) (No. 11-156). Brief available at 2011 WL 4642665.

Petition for Writ of Certiorari, *Rhodes v. E. I. du Pont de Nemours & Co.*, 565 U.S. 977 (2011) (No. 11-156). Brief available at 2011 WL 3467257.

Reply Brief for Petitioner, *Rose Acre Farms, Inc. v. United States*, 559 U.S. 935 (2010) (No. 09-342). Brief available at 2010 WL 109394

Petition for Writ of Certiorari, *Rose Acre Farms, Inc. v. United States*, 559 U.S. 935 (2010) (No. 09-342). Brief available at 2009 WL 3006231.

Application to Recall and Stay Mandate, *Hamilton Cty. Bd. of Elections v. Hunter*, No. 10A989 (Apr. 9, 2011). Copy supplied.

Emergency Application to Stay Mandate, *Grzelak-Johannsen v. Wasniewski*, No. 07A16 (Aug. 28, 2007). Copy supplied.

Brief of Amici Curiae Center for Equal Opportunity and Project 21 in Support of State Respondents, *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008) (Nos. 07-21 & 07-25). Brief available at 2007 WL 4340895.

Petition for Writ of Certiorari, *cab Produkttechnik GmbH & Co. KG v. Tharo Systems, Inc.*, 549 U.S. 1117 (2007) (No. 06-734). Brief available at 2006 WL 3415353.

Petitioner's Reply Brief, *Gilligan v. Medtronic, Inc.*, 546 U.S. 1094 (2006) (No. 05-578). Brief available at 2005 WL 3543125.

Petition for Writ of Certiorari, *Gilligan v. Medtronic, Inc.*, 546 U.S. 1094 (2006) (No. 05-578). Brief available at 2005 WL 2985727.

Motion for Leave to Proceed *in Forma Pauperis*, *Huffman v. Frazier*, 541 U.S. 1095 (2004) (No. 03-1382). Copy supplied.

Brief for Respondent in Opposition, *Huffman v. Frazier*, 541 U.S. 1095 (2004) (No. 03-1382). Copy supplied.

Petitioner's Reply Brief, *Gross v. Comm'r of Internal Revenue*, 537 U.S. 827 (2002) (No. 01-1880). Brief available at 2002 WL 32135686.

Petition for Writ of Certiorari, *Gross v. Comm'r of Internal Revenue*, 537 U.S. 827 (2002) (No. 01-1880). Brief available at 2002 WL 32135677.

Respondent's Brief in Opposition, *Baltimore Scrap Corp. v. David J. Joseph Co.*, 533 U.S. 916 (2001) (No. 00-1592). Brief available at 2001 WL 34125579.

Petitioner's Reply Brief, *Connecticut Gen. Life Ins. Co. v. Comm'r of Internal Revenue*, 528 U.S. 1003 (1999) (No. 99-258). Brief available at 1999 WL 33639569.

Petition for Writ of Certiorari, *Connecticut Gen. Life Ins. Co. v. Comm'r of Internal Revenue*, 528 U.S. 1003 (1999) (No. 99-258). Brief available at 1999 WL 33640521.

Reply Brief for Petitioner, *Muscarello v. United States*, 524 U.S. 125 (1998) (No. 96-1654). Brief available at 1998 WL 113910.

Brief for Petitioner, *Muscarello v. United States*, 524 U.S. 125 (1998) (No. 96-1654). Brief available at 1998 WL 25501.

Brief for the Respondent in Opposition, *Dushaw v. Roadway Express, Inc.*, 517 U.S. 1120 (1996) (No. 95-1217). Brief available at 1996 WL 33438533

Brief of Treehouse Farms, Inc. as Amicus Curiae in Support of the Respondent, *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457 (1997) (No. 95-1184). Brief available at 1996 WL 554412.

Brief of the National Association of Counties, *et al.* as Amicus Curiae in Support of Petitioner, *Board of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397 (1997) (No. 95-1100). Brief available at 1996 WL 345589.

Reply for Petitioners, *Nippon Carbide Indus. Co., Inc. v. Minnesota Mining & Mfg. Co., Inc.*, 516 U.S. 1184 (1996) (No. 95-1082). Brief available at 1996 WL 33439281.

Petition for Writ of Certiorari, *Nippon Carbide Indus. Co., Inc. v. Minnesota Mining & Mfg. Co., Inc.*, 516 U.S. 1184 (1996) (No. 95-1082). Brief available at 1996 WL 33439278.

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. *TransPro, Inc. v. Leggett & Platt, Inc.*, 297 F. App'x 434 (6th Cir. 2008).

I represented Leggett & Platt in a commercial dispute arising from an agreement between Leggett and TransPro, Inc. concerning the sale of a division of TransPro to Leggett. The Northern District of Ohio granted summary judgment to Leggett. I prepared briefs and argued the case on appeal. The Sixth Circuit affirmed.

Dates of Representation: 2007 – 2008

Sixth Circuit Panel: Hon. Ronald L. Gilman; Hon. Deborah L. Cook; and Hon. Joseph M. Hood (sitting by designation)

Opposing Counsel

Andrew Wronski
Foley & Lardner
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
(414) 297-5518

2. *Frazier v. Huffman*, 343 F.3d 780 (6th Cir. 2003), *cert. denied*, 541 U.S. 1095 (2004).

I briefed and argued this capital habeas case in the Sixth Circuit on behalf of convicted capital defendant Richard Frazier. The Sixth Circuit held that Mr. Frazier had been deprived of effective assistance of counsel during the sentencing phase of his trial and vacated the death sentence. I also successfully opposed certiorari in the United States Supreme Court.

Dates of Representation: 2002 – 2003

Sixth Circuit Panel: Hon. Ronald L. Gilman; Hon. Eric L. Clay; and Hon. Alice M. Batchelder

Co-Counsel

David P. Bradley
[formerly with Gallagher, Sharp, Fulton & Norman]
Cole, Scott & Kissane, P.A.
222 Lakeview Avenue, Suite 120
West Palm Beach, Florida 33401

Opposing Counsel

Michael L. Collyer
[formerly Ohio Assistant Attorney General – Capital Crimes Section]
United States Attorney's Office for the Northern District of Ohio
801 West Superior Avenue, Suite 400
Cleveland, Ohio 44113
(216) 622-3600

3. *Northeast Ohio Regional Sewer Dist. v. Bath Township*, 44 N.E.3d 246 (Ohio 2015).

I briefed and argued an appeal involving a challenge to a proposed stormwater management program on behalf of a number of local communities in northeast Ohio. The Ohio Supreme Court held that the Northeast Ohio Regional Sewer District possessed the requisite authority to implement the program.

Dates of Representation: 2013 – 2015

Ohio Supreme Court: Hon. Maureen O'Connor; Hon. Paul E. Pfeifer; Hon. Terrence O'Donnell; Hon. Judith Ann Lanzinger; Hon. William M. O'Neill; Hon. Sharon L. Kennedy; and Hon. Judith L. French.

Opposing Counsel

Mark I. Wallach
[formerly Calfee, Halter & Griswold, L.L.P.]
Thacker Robinson Zinz, LPA
2330 One Cleveland Center
1375 East Ninth Street

Cleveland, Ohio 44114
(216) 456-3848

4. *Adventis, Inc. v. Consol. Prop. Holdings, Inc.*, 124 F. App'x 169 (4th Cir. 2005).

I briefed and argued this intellectual property trademark case in the Fourth Circuit on behalf of Consolidated Property Holdings, Inc. The parties to the underlying trademark action cross-appealed the district court's denial of their motions for summary judgment. The Fourth Circuit vacated the district court's order and the case subsequently settled.

Dates of Representation: 2004 – 2005

Fourth Circuit Panel: Hon. J. Michael Luttig; Hon. Allyson K. Duncan; and Hon. Diana G. Motz

Opposing Counsel

Martin B. Pavane
[formerly with Cohen, Pontani, Lieberman & Pavane LLP]
Cozen O'Connor
277 Park Avenue, 16th Floor
New York, New York 10172
(212) 883-4994

5. *Florida Power Corp. v. FirstEnergy Corp.*, 810 F.3d 996 (6th Cir. 2015).

This case involved a dispute between the parties concerning the clean-up of contaminated sites under the Comprehensive Environmental Response, Compensation, and Liability Act. I represented plaintiff Florida Power Corp. (Duke Energy Florida), which sought contribution from defendant FirstEnergy. The trial court dismissed my client's contribution claim as time barred. I briefed and argued the case in the Sixth Circuit, obtaining a reversal of the trial court's dismissal. The case is currently pending appeal again in the Sixth Circuit.

Dates of Representation: 2014 – present

Sixth Circuit Panel: Hon. Richard A Griffin; Hon. Richard F. Suhrheinrich; and Hon. Barbara Stafford (sitting by designation)

Opposing Counsel

Paul Clement
[formerly with Bancroft PLLC]
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5000

6. *Al-Dabagh v. Case Western Reserve Univ.*, 777 F.3d 355 (6th Cir. 2015), *cert. denied*, 135 S. Ct. 2817 (2015).

I briefed and argued this case on behalf of my client Case Western Reserve University in the Sixth Circuit. The Sixth Circuit reversed an injunction ordering Case Western to award a degree to a medical student with disciplinary problems. The Sixth Circuit held that the school's determination that the student did not satisfy the requisite professionalism was not arbitrary and capricious.

Dates of Representation: 2014 – 2015

Sixth Circuit Panel: Hon. Alice M. Batchelder; Hon. Jeffrey S. Sutton; and Hon. Deborah L. Cook

Opposing Counsel

Peter A. Holdsworth
Wegman, Hessler & Vanderburg
6055 Rockside Woods Boulevard, Suite 200
Cleveland, Ohio 44131
(216) 642-3342

7. *PRM Energy Sys., Inc. v. Primenergy, LLC, and Kobe Steel, Ltd.*, 592 F.3d 830 (8th Cir. 2010).

I briefed and argued this contract and arbitration case on behalf of Kobe Steel, Ltd. before the Eighth Circuit. The Eighth Circuit affirmed the district court's grant of my client's motion to compel arbitration.

Dates of Representation: 2009 – 2010

Eighth Circuit Panel: Hon. Michael J. Melloy; Hon. Clarence A. Beam; and Hon. Raymond W. Gruender

Opposing Counsel

Danny R. Crabtree
Danny R. Crabtree, Attorney at Law
114 South Pulaski
Little Rock, Arkansas 72201
(501) 372-0080

8. *United States v. Romanini*, 502 F. App'x 503 (6th Cir. 2012).

I briefed and argued this criminal sentencing case before the Sixth Circuit. The Sixth Circuit held that the district court's sentence was procedurally unreasonable and vacated my client's sentence.

Dates of Representation: 2011 – 2012

Sixth Circuit Panel: Hon. Julia S. Gibbons; Hon. Jeffrey S. Sutton; and Hon. Patrick J. Duggan (sitting by designation)

Opposing Counsel

Laura McMullen Ford
Assistant U.S. Attorney
United States Attorney's Office for the Northern District of Ohio
801 West Superior Avenue, Suite 400
Cleveland, Ohio 44113
(216) 622-3600

9. *Graiser v. VisionWorks*, 819 F.3d 277 (6th Cir. 2016)

I represented Visionworks of America, Inc. in this case brought pursuant to the Class Action Fairness Act. Visionworks removed the case from an Ohio state court to the United States District Court for the Northern District of Ohio. The district court, however, granted the plaintiffs' motion to remand to state court. I briefed the case on appeal. The Sixth Circuit exercised its discretion to review the district court's decision and reversed the decision to remand.

Dates of Representation: 2015 – 2016

Sixth Circuit Panel: Hon. Ralph B. Guy; Hon. Karen N. Moore; and Hon. David W. McKeague.

Opposing Counsel

Drew Legando
Landskroner, Grieco & Merriman LLC
1360 West 9th Street, Suite 200
Cleveland, Ohio 44113
(216) 487-7534

10. *Bartlett v. E.I. DuPont de Nemours & Co.*, No. 16-3310 (6th Cir.)

I briefed and argued this toxic tort case on behalf of the plaintiff-appellee in the Sixth Circuit. The case involved claims arising out of contamination of water supplies in West Virginia and Ohio. Approximately 3,500 cases were consolidated as multidistrict litigation. The plaintiff prevailed at trial in the first bellwether case. I briefed and argued that first case in the Sixth Circuit. The case (and all of the cases) settled shortly after the argument for \$671 million.

Dates of Representation: 2016 – 2017

Sixth Circuit Panel: Hon. Jane B. Stranch; Hon. Alice M. Batchelder; and Hon. Bernice B. Donald.

Opposing Counsel

Pierre Bergeron
Squire Patton Boggs
221 East Fourth Street
Cincinnati, Ohio 45202
(513) 361-1289

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.)

Although the principal focus of my practice has been appellate litigation, I have also pursued legal activities within my practice and on a *pro bono* basis that do not involve litigation.

I was appointed in 2010 by President Obama to serve, and I continue to serve, on the Board of Directors of the State Justice Institute. The State Justice Institute awards grants to state court systems to further the ends and quality of justice in state courts. Priority areas for grants include combatting human trafficking, support for limited English proficiency litigants and pro se litigants, and programs to enhance public trust and confidence in the courts.

I currently serve on the board of two Cincinnati-area organizations, the Greater Cincinnati Minority Counsel Program and the Asian Pacific American Bar Association of Southwest Ohio, dedicated to promoting the interests of minorities in the legal profession.

I serve as a member of the Ohio State Bar Association's Appellate Specialty Committee. This committee determines which attorneys in Ohio should be designated as specialists in appellate law.

I have served on two Judicial Selection Merit Panels. In 2009 I served on a panel created by the United States District Court for the Eastern District of Kentucky to recommend a magistrate judge for appointment. In 2010 I served on a panel created by the United States District Court for the Southern District of Ohio to recommend a bankruptcy judge for appointment.

From 2010 to 2016, I served as General Counsel to the Republican Party of Kentucky. In this role I offered legal advice on a number of issues, including contract drafting and negotiation, election law, and the operation of the by-laws and rules of the Party.

Through my role as General Counsel I also provided advice and counsel to a number of election campaigns. These campaigns are set forth in response to Question 15.b.

I have also been retained in my capacity as an attorney with Taft, Stettinius & Hollister LLP to provide advice and counsel to a number of election campaigns. These campaigns are set forth in response to Question 15.b.

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.

I have a 401(k) and defined contribution plan through my law firm that I expect will roll over and will eventually be paid. I have a partnership capital account with the firm that will be paid out over 24 months after I leave the firm. I may be entitled to the payment of some bonus amounts or contingent fee amounts after I leave my firm for work that I performed while at the firm.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

My wife is employed by the United States Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau. I would recuse from any case involving this agency.

If confirmed, I will recuse in any litigation where I have ever played a role. For a period of time, I anticipate recusing in all cases where my current firm, Taft Stettinius & Hollister, represents a party.

I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

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

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

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

I represented, on a *pro bono* basis, two defendants on appeals to the Sixth Circuit:

United States v. Moses, 07-1919 (6th Cir.)

United States v. Jones, 09-3970 (6th Cir.)

In each case, my responsibilities included a review of the record, legal research, and the preparation of briefs and related filings.

Pursuant to the Criminal Justice Act and for reduced fees, I represented Richard Frazier in a capital habeas appeal to the Sixth Circuit, and in the preparation of a brief in opposition to a petition for a writ of certiorari. *Frazier v. Huffman*, 343 F.3d 780 (6th

Cir. 2003), *cert. denied*, 541 U.S. 1095 (2004). My responsibilities included a review of the record, legal research, the preparation of briefs and related filings, and oral argument on behalf of Mr. Frazier.

I have provided guidance and support to the Indiana University School of Law's Appellate Clinic on two cases.

I have also participated as a board member for a number of organizations where my status as a lawyer was an important part of that service. These include: the State Justice Institute; the Greater Cincinnati Minority Counsel Program; the Asian Pacific American Bar Association of Southwest Ohio; the Ohio State Bar Association's Appellate Specialty Committee; and the Judicial Conference for the United States Court of Appeals for the Sixth Circuit.

I have also served, on a voluntary basis, on two Judicial Selection Merit Panels. In 2009, I served on a panel created by the United States District Court for the Eastern District of Kentucky to recommend a magistrate judge for appointment. In 2010, I served on a panel created by the United States District Court for the Southern District of Ohio to recommend a bankruptcy judge for appointment.

I estimate that I average approximately 50 hours per year devoted to 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.

There is no selection commission in my jurisdiction. I expressed my interest in serving as a federal judge to Senate Majority Leader McConnell's staff in November 2016. I met with Senator McConnell's staff in December 2016. I then interviewed with Senator McConnell in January 2017. I was contacted by the White House Counsel's office about an interview in September 2017. I interviewed with attorneys from the White House and the Department of Justice on October 10, 2017 in Washington, D.C. On January 24, 2017, the President submitted my nomination to the Senate.

I have communicated regularly with the Office of Legal Policy in the preparation of my answers to this questionnaire and the completion of other related materials.

- 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.