

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Halil Suleyman Ozerden. My nickname is Sul Ozerden.

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

United States Circuit Judge for the Fifth Circuit Court of Appeals

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.

2012 15th Street, Suite 714
Gulfport, Mississippi 39501

Residence: Biloxi, Mississippi

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

1966; Hattiesburg, Mississippi

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.

1995 – 1998, Stanford Law School; J.D., 1998

1985 – 1989, Georgetown University, School of Foreign Service; B.S.F.S. 1989

1986, 1996, Mississippi Gulf Coast Community College; no degree conferred

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.

2007 – present

United States District Court for the Southern District of Mississippi

2012 15th Street, Suite 714
Gulfport, Mississippi 39501
District Judge

1999 – 2007
Dukes, Dukes, Keating & Faneca, P.A.
2909 13th Street, 6th Floor
Post Office Drawer W
Gulfport, Mississippi 39502
Partner (2003 – 2007)
Associate (1999 – 2003)

1998 – 1999
Judge Eldon Fallon
United States District Court for the Eastern District of Louisiana
500 Poydras Street
New Orleans, Louisiana 70130
Law Clerk

July 1997 – August 1997
United States Attorney's Office, Southern District of Mississippi
1575 20th Avenue
Gulfport, Mississippi 39501
Summer Intern

June 1997 – July 1997
Eaton & Cottrell, P.A. (now Balch & Bingham)
1310 25th Avenue
Gulfport, Mississippi 39501
Summer Intern

July 1996 – August 1996
Harrison County District Attorney's Office
Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501
Summer Intern

June 1996 – July 1996
Judge Kosta Vlahos
Second Circuit Court District of Mississippi
Harrison County Courthouse
1801 23rd Avenue
Gulfport, Mississippi 39501
Summer Law Clerk

1989 – 1995
United States Navy

Other Affiliations

2000 – present
The Russell-Blass-Walker American Inn of Court
Gulfport, Mississippi
Member (2000 – present)
President (2008 – 2009)

2000 – 2007
Gulfport Chamber of Commerce
Gulfport, Mississippi
Board Member (2000 – 2007)
President (2006)

1999 – 2007
Rotary Club of Gulfport
Gulfport, Mississippi
Board Member (2002 – 2004 & 2006 – 2007)
Honorary Membership (2007 – present)

1999 – 2007
Gulfport Business Club
Gulfport, Mississippi
Treasurer (2003)
Vice President (2004 – 2005)
President (2006)

2005 – 2007
Harrison County Republican Club
Gulfport, Mississippi
Board Member

2005 – 2007
Seisin, LLC
Gulfport, Mississippi
Member

2005 – 2006
Mississippi Gulf Coast Chamber of Commerce
Gulfport, Mississippi
Board Member

2000 – 2003

Harrison County Young Lawyers Association
Gulfport, Mississippi
Treasurer (2000 – 2001)
Vice President (2001 – 2002)
President (2002 – 2003)

1971 – present
St. Peter's by-the-Sea Episcopal Church
Gulfport, Mississippi
Vestry Member (2002 – 2004 & 2006 – 2007)
Building Committee (2006 – 2007)

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 served six years on active duty in the United States Navy, from May 1989 – May 1995. I received an Honorable Discharge with the rank of Lieutenant/O-3. I served in the inactive reserve from May 1995 – July 1997. My serial number was my Social Security Number. I registered for Selective Service when I was 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.

The Sun Herald Newspaper, "South Mississippi's Top Ten Business Leaders under 40," 2005

Recipient, Harold Jenner Volunteer of the Year Award, Gulfport Chamber of Commerce, 2003

Graduate, Leadership Gulf Coast, Mississippi Gulf Coast Chamber of Commerce, 2002 – 2003

Paul Harris Fellow, Rotary Club of Gulfport, 2002

Johnson and Bibbs Law Review Award, Outstanding Contribution as an Associate Editor, Stanford Law Review, 1998

Associate Editor, Stanford Law Review, 1997 – 1998

Four-year Navy ROTC Scholarship, Georgetown University, 1985 – 1989

Degree from Georgetown University conferred *magna cum laude*, 1989

Phi Beta Kappa, Georgetown University, 1989

Finalist, Rhodes Scholarship Competition, 1988 – 1989

Eagle Scout and Order of the Arrow, Boy Scouts of America, Troop 209, Gulfport, Mississippi, 1981 – 1982

Military Awards, 1989 – 1995

Navy Commendation Medal for combat missions flown over Iraq and Somalia in Operations

Southern Watch (Iraq) and Restore Hope (Somalia)

Navy Achievement Medal

Joint Meritorious Unit Award

Southwest Asia Service Medal

Armed Forces Expeditionary Medal

National Defense Service Medal

Sea Service Ribbon (Second Award)

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.

Mississippi Bar Foundation, Fellow, 2019 – present

Judicial Council of the Fifth Circuit, 2017 – present

Space and Staffing Subcommittee, 2013 – present

Chair, 2018 – present

Federal Bar Association, 2015 – present

Federal Judges Association, 2007 – present

Board Member, 2011 – 2013

Fifth Circuit District Judges Association, 2007 – present

Pattern Civil Jury Instruction Committee, 2011 – 2018

United States District Court for the Southern District of Mississippi

Security Committee, Chair, 2011 – present

Clerk of Court Hiring Committee (ad hoc)

Court Reporter Hiring Committee (ad hoc)

Chief United States Probation Officer Hiring Committee (ad hoc)

Judicial Conference of the United States

Space and Facilities Committee, 2013 – 2018
Rent Management Subcommittee, Chair, 2017 – 2018
GSA Service Validation Initiative Subcommittee (ad hoc)

Harrison County Bar Association, 2002 – present

The Russell-Blass-Walker American Inn of Court, 2000 – present
President, 2008 – 2009

Alabama Bar, 2000 – present

Florida Bar, 1999 – present

Louisiana State Bar Association, 1999 – present

Mississippi Bar, 1998 – present

Bar Association of the Fifth Federal Circuit, 2000 – 2007

American Bar Association, 1999 – 2007

Harrison County Young Lawyers Association, 2000 – 2003
Treasurer, 2000 – 2001
Vice President, 2001 – 2002
President, 2002 – 2003

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.

Alabama, 2000
Florida, 1999
Louisiana, 1999
Mississippi, 1998

There have been no lapses in memberships. Upon taking my current position in 2007, I elected to take inactive status in Alabama and Florida.

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

United States Court of Appeals for the Fifth Circuit, 1998
United States District Court for the Middle District of Alabama, 2000

United States District Court for the Northern District of Alabama, 2000
United States District Court for the Southern District of Alabama, 2000
United States District Court for the Northern District of Florida, 2000
United States District Court for the Eastern District of Louisiana, 1999
United States District Court for the Northern District of Mississippi, 1998
United States District Court for the Southern District of Mississippi, 1998

As a member of the federal judiciary, I am not engaged in the practice of law. I am not considered an active member of the Fifth Circuit, the Northern District of Alabama, the Southern District of Alabama, the Middle District of Alabama, the Eastern District of Louisiana, and the Northern District of Florida.

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 Federalist Society, Mississippi Gulf Coast Chapter, 2019 – present

Mississippi Bar Foundation, 2019 – present

Bayou Bluff Tennis Club, 2004 – 2008 & 2014 – present

Phi Beta Kappa, 1989 – present

St. Peter's by-the-Sea Episcopal Church
Vestry Member, 2002 – 2004 & 2006 – 2007
Building Committee, 2006 – 2007

Gulfport Yacht Club, 1972 – present

Gulfport Chamber of Commerce, 2000 – 2007
Board Member, 2000 – 2007
President, 2006

Rotary Club of Gulfport, 1999 – 2007
Board Member, 2002 – 2004 & 2006 – 2007
Honorary Member, 2007– present

Great Southern Club, 2003 – 2007

Gulfport Business Club, 1999 – 2007
Treasurer, 2003

Vice President, 2004 – 2005
President, 2006

Seisin, LLC, 2005 – 2007

Les Cavaliers Mardi Gras Krewe, 2005 – 2007

Mississippi Gulf Coast Chamber of Commerce, 2005 – 2006
Board Member, 2005 – 2006

Krewe of Neptune Mardi Gras Krewe, 2000 – 2002

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.

It is my understanding that until 1987, Rotary International, the parent organization for the Rotary Club of Gulfport, did not admit women as members. In 1987, in response to the United States Supreme Court's decision in *Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, Rotary Clubs in the United States began admitting women as members. At all times that I was a member of the Rotary Club of Gulfport it has accepted women as members.

From 2005 to 2007, I was a member of the Mardi Gras Krewe of Les Cavaliers, and from 2000 to 2002, I was a member of the Krewe of Neptune Mardi Gras Krewe. Although traditionally all-male krewes, neither group, at any time I was a member, invidiously discriminated on the basis of gender, race, religion, or national origin. Both groups complied with all laws of the State of Mississippi.

Except as set forth above and to the best of my knowledge, none of the other organizations listed in 11.a. currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

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

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

None.

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

Committee on Pattern Civil Jury Instructions, *Fifth Circuit Pattern Jury Instructions (Civil)* (2014 ed.). Copy available at:
<http://www.lb5.uscourts.gov/viewer/?/juryinstructions/Fifth/2014civil.pdf>.

Space and Facilities Committee, Judicial Conference of the United States (2013 – 2018). I have served as the Fifth Circuit representative on the Space and Facilities Committee. The Chair of the Committee (a position I have never held) submits periodic reports to the Chief Justice and the Judicial Conference. These reports are not public. I do not have records of these reports and to my knowledge they are not readily available from online sources.

District Judges' Association of the Fifth Circuit (2013 – 2018). In my capacity as the Fifth Circuit representative to the Space and Facilities Committee, I submitted summaries of the Committee's activities for the Fifth Circuit District Judges' Association Newsletter, which was distributed twice yearly to the judges in our Circuit. Copies of the newsletters are not publicly available, as they are intended for distribution to the judges, and I do not have any copies of these past newsletters. Because the publications are compiled by the Secretary of the Association and this position rotates among different district judges, there is no formal address for the Association.

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.

On March 13, 2007, I testified before the United States Senate Committee on the Judiciary at my confirmation hearing to be a United States District Judge for the Southern District of Mississippi. My testimony is available at
<https://www.gpo.gov/fdsys/pkg/CHRG-110shrg37658/html/CHRG-110shrg37658.htm>.

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.

January 15, 2019: Introduction of Speaker, United States Circuit Judge Kurt Engelhardt,

Inaugural Meeting of the Mississippi Gulf Coast Chapter of the Federalist Society, Gulfport, Mississippi. I introduced the speaker at this meeting. I have no notes, transcript, or recording. The address for the organization is Attn: Russ Nobile, The Federalist Society, Wise, Carter, Child & Caraway, P.A., 2510 14th Street, Suite 1125, Gulfport, Mississippi 39501.

November 2, 2017: Presider, Naturalization Ceremony, United States District Court for the Southern District of Mississippi, Gulfport, Mississippi. I gave brief remarks in the course of presiding over one of the district's naturalization ceremonies. Copy of outline supplied.

September 19, 2017: Speaker, "Federal Practice Pointers," Mississippi Chapter of the Federal Bar Association, Biloxi, Mississippi. Outline supplied.

May 5, 2017: Panelist, "Lunch and Learn CLE Seminar, Federal Practice and Procedure," New Lawyers Division of the Mississippi Association for Justice, Gulfport, Mississippi. I had no notes or prepared text for this panel presentation but utilized the same outline as that utilized for my September 19, 2017, presentation. Copy supplied.

March 31, 2017: Panelist, "Q & A with Judges," New Orleans Bar Association Bench and Bar Conference, Point Clear, Alabama. I participated in this roundtable question and answer session between lawyers and myself and other judges regarding practice pointers for appearing in court. I have no notes, transcript, or recording. The address for the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

May 5, 2016: Presider, Naturalization Ceremony, United States District Court for the Southern District of Mississippi, Gulfport, Mississippi. I gave brief remarks in the course of presiding over one of the district's naturalization ceremonies. Copy of outline supplied.

November 13, 2015: Panelist, "Federal Trial Practice," Elmo Lang Memorial CLE Seminar, Hattiesburg, Mississippi. I served on a panel with other federal judges regarding tips for practicing in federal court. I have no notes, transcript, or recording. The address for the sponsor is Elmo Lang Memorial CLE Seminar, c/o Hon. David Ishee, Justice, Mississippi Supreme Court, Gartin Justice Building, 450 High Street, Post Office Box 249, Jackson, Mississippi 39205.

October 30, 2015: Panelist, "Federal Practice and Procedure," Northern District of Mississippi Bench and Bar Conference and CLE, Oxford, Mississippi. I served on a panel discussion of practice pointers for lawyers appearing in federal court. I have no notes, transcript, or recording. The address is United States District Court, Northern District of Mississippi, 911 Jackson Avenue East, Oxford, Mississippi 38655.

October 9, 2015: Speaker, "Practice Pointers in Federal Court," Harrison County Bar Association, Biloxi, Mississippi. This was a talk on practice pointers for lawyers

appearing in federal court. I have no notes, transcript, or recording. The current address is Harrison County Bar Association, c/o Ashley Gunn, President, Wise, Carter, Child & Caraway, P.A., 2510 14th Street, Suite 1125, Gulfport, Mississippi 39501.

March 9, 2015: Speaker, "The Court System," Boy Scout Troop 209, Gulfport, Mississippi. I gave a brief talk to a group of Boy Scouts at their weekly meeting about the structure of the court system in the United States. I have no notes, transcript, or recording. The address for this organization is Boy Scout Troop 209, Westminster Presbyterian Church, 5005 Lawson Avenue, Gulfport, Mississippi 39507.

November 14, 2014: Panelist, "Federal Trial Practice," Elmo Lang Memorial CLE Seminar, Hattiesburg, Mississippi. I served on a panel with other federal judges regarding tips for practicing in federal court. I have no notes, transcript, or recording. The address for the sponsor is Elmo Lang Memorial CLE Seminar, c/o Hon. David Ishee, Justice, Mississippi Supreme Court, Gartin Justice Building, 450 High Street, Post Office Box 249, Jackson, Mississippi 39205.

March 27, 2014: Panelist, "Learn How to Better Your Practice as a Young Lawyer from Judges," Young Lawyers Division of the Mississippi Bar, Jackson, Mississippi. I served as a panelist with other federal judges discussing practice pointers for young lawyers. Transcript supplied.

September 19, 2013: Co-President, Naturalization Ceremony, United States District Court for the Southern District of Mississippi, Gulfport, Mississippi. I gave brief remarks and introduced another judge who was the primary presider in the course of presiding over one of the district's naturalization ceremonies. I have no notes, transcript, or recording. The address is the United States District Court for the Southern District of Mississippi, 2012 15th Street, Gulfport, Mississippi 39501.

April 16, 2013: President, Naturalization Ceremony, United States District Court for the Southern District of Mississippi, Gulfport, Mississippi. I did not make any remarks in the course of presiding over this naturalization ceremony, and I have no notes, transcript, or recording. The address is the United States District Court for the Southern District of Mississippi, 2012 15th Street, Gulfport, Mississippi 39501.

December 16, 2012: Speaker, "The Transformative Power of Naturalization," St. Peter's By-the-Sea Episcopal Church, Gulfport, Mississippi. I have no notes, transcript, or recordings. The address of St. Peter's By-the-Sea Episcopal Church is 1909 15th Street, Gulfport, Mississippi 39501.

December 2, 2012: Speaker, "Practice Pointers," Jackson County Bar Association Meeting, Ocean Springs, Mississippi. I gave a talk on practice pointers for appearing in federal court. I have no notes, transcript, or recording. The current address is Jackson County Bar Association, c/o April McDonald, 711 Delmas Avenue, Post Office Box 1407, Pascagoula, Mississippi 39568.

April 21, 2012: Introduction of Speaker, United States District Judge Eldon Fallon, American College of Trial Lawyers Regional Meeting, Biloxi, Mississippi. I introduced the speaker who was giving a talk on how to manage cases in Multi-District Litigation. I have no notes, transcript, or recording. The address for the organization is American College of Trial Lawyers, 19900 MacArthur Boulevard, Irvine, California 92612.

April 19, 2011 (estimated): Speaker, "Youth of the Year Awards," Gulfport Exchange Club, Gulfport, Mississippi. I gave a brief talk on the importance of education and academic achievement at a dinner honoring high school students who had achieved academic success. I have no notes, transcript, or recording. The address is Exchange Club of Gulfport 1705, Gulfport, Mississippi 39502.

April 16, 2011: Panelist, "Ethics Panel," New Orleans Bar Association Bench and Bar Conference, Biloxi, Mississippi. I participated in this panel discussion along with other judges on the subject of legal ethics. I have no notes, transcript, or recording. The address for the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

February 10, 2011: Presider, Naturalization Ceremony, United States District Court for the Southern District of Mississippi, Gulfport, Mississippi. I gave brief remarks in the course of presiding over one of the district's naturalization ceremonies. My remarks were similar to those I have offered at other naturalization ceremonies at which I have presided, outlines for which are supplied.

October 1, 2010: Panelist, "Federal Trial Practice," Elmo Lang Memorial CLE Seminar, Hattiesburg, Mississippi. I served on a panel with other federal judges regarding tips for practicing in federal court. I have no notes, transcript, or recording. The address for the sponsor is Elmo Lang Memorial CLE Seminar, c/o Hon. David Ishee, Justice, Mississippi Supreme Court, Gartin Justice Building, 450 High Street, Post Office Box 249, Jackson, Mississippi 39205.

August 4, 2010: Presider, Naturalization Ceremony, United States District Court for the Southern District of Mississippi, Gulfport, Mississippi. I gave brief remarks in the course of presiding over one of the district's naturalization ceremonies. My remarks were similar to those I have offered at other naturalization ceremonies at which I have presided, outlines for which are supplied.

March 23, 2010: Speaker, "Federal Bar Association Luncheon," Mississippi Chapter of the Federal Bar Association, Jackson, Mississippi. I was the speaker at this presentation on practice pointers for appearing in federal court. I have no notes, transcript, or recording. The address is The Federal Bar Association, 1220 North Fillmore Street 444, Arlington, Virginia 22201.

June 25, 2009: Participant, "City of Gulfport Oath of Office Ceremony," Gulfport, Mississippi. I administered the oath of office to one of the incoming city council members. I did not make any remarks or statements and have no notes. The address for

the organization is City of Gulfport, Mississippi, 2309 15th Street, Post Office Box 2309, Gulfport, Mississippi 39502.

February 19, 2009: Guest Speaker, "Beta Club Induction Ceremony," Gulfport, Mississippi. I spoke about the importance of education at the induction ceremony for this high school group. I have no notes, transcript, or recording. The address is Gulfport Beta Club, Gulfport High School, 100 Perry Street, Gulfport, Mississippi 39501.

December 5, 2008: Speaker, "Practice Pointers," Federal Public Defender/CJA Training, Gulfport, Mississippi. I gave a brief talk regarding procedural dos and don'ts for panel counsel in criminal proceedings. I have no notes, transcript, or recording. The address is Federal Public Defender for the Southern District of Mississippi, 2510 14th Street, Suite 902, Gulfport, Mississippi 39501.

October 2, 2008: Participant, "Mississippi Bar Swearing-In Ceremony," Jackson, Mississippi. I administered the oath of admission for new lawyers to practice in the United States District Court for the Southern District of Mississippi. I gave brief remarks on the importance of professionalism and then administered the oath. I have no notes, transcript, or recording. The address is The Mississippi Bar, 643 North State Street, Post Office Box 2168, Jackson, Mississippi 39225.

September 4, 2008: Presider, Naturalization Ceremony, United States District Court for the Southern District of Mississippi, Gulfport, Mississippi. I gave brief remarks in the course of presiding over one of the district's naturalization ceremonies. Copy of outline supplied.

November 29, 2007: Presider, Naturalization Ceremony, United States District Court for the Southern District of Mississippi, Gulfport, Mississippi. I gave brief remarks in the course of presiding over one of the district's naturalization ceremonies. Copy of outline supplied.

October 10, 2007: Participant, "Mississippi Bar Swearing-In Ceremony," Jackson, Mississippi. I administered the oath of admission for new lawyers to practice in the United States District Court for the Southern District of Mississippi. I gave brief remarks on the importance of professionalism and then administered the oath. I have no notes. The address is The Mississippi Bar, 643 North State Street, Post Office Box 2168, Jackson, Mississippi 39225.

August 23, 2007: Speaker, "Investiture Ceremony," United States District Court for the Southern District of Mississippi, Gulfport, Mississippi. I spoke at my investiture ceremony as United States District Judge for the Southern District of Mississippi. Transcript and press reports supplied.

October 18, 2006: Speaker, "Minimum Standards for Airport Tenants," Georgia Airports Association Conference, Savannah, Georgia. While in private practice, I was asked to stand in for the original speaker at this organization's conference to give a brief talk to

airport managers regarding tips for developing uniform minimum standards by airports for use in managing the activities of their tenants. I did not have a prepared text and am no longer in possession of the handwritten notes I used. The address is Georgia Airports Association, Post Office Box 9814, Savannah, Georgia 31412.

May 22, 2006: Panelist, "Emergency Purchasing Considerations," Southeastern Chapter of the American Association of Airport Executives Annual Conference (SEC-AAE). While in private practice, I was asked to stand in for the original panelist at an airport legal procedures conference in Nashville, Tennessee, sponsored by the SEC-AAE. I gave a brief presentation as part of a panel discussion on legal procedures airports may need to follow when making emergency purchases under state public purchasing laws following a natural disaster such as Hurricane Katrina. I did not have a prepared text for this presentation and am no longer in possession of the handwritten notes I used. The address is Southeastern Chapter of the American Association of Airport Executives, The Barclay Building, 601 Madison Street, Alexandria, Virginia, 22314.

July 15, 2005: Speaker, "How to Try a Car Wreck Case," University of Mississippi Center for Continuing Legal Education. I was a presenter at this CLE held in Biloxi, Mississippi. The subject matter was to offer some general practice pointers one may wish to consider in trying a car accident case from the defense perspective. Outline supplied.

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.

Terryl Rushing, *From the Federal Bench, Personal Perspectives on Naturalization*, Capital Area Bar Association (CABA) Magazine, April 2015. Copy supplied.

David Elliott, WLOX Evening News, Feb. 10, 2011. I was briefly interviewed by the local television station following a naturalization ceremony, which has been identified in response to 12.d. An excerpt of my responses was played in a news clip on the local news that evening. Copy supplied.

Ana Radelat, *Hattiesburg Native Confirmed to U.S. District Court Bench*, Clarion-Ledger (Jackson, MS), April 25, 2007, at 1B. Copy supplied.

Brendan McKenna, *Senate Confirms Ozerden as Judge; Hattiesburg Native Joins District Court*, Biloxi Sun Herald (Biloxi, MS), April 25, 2007, at A2. Copy supplied.

Robin Fitzgerald, *Ozerden Tapped to Replace Bramlette*, Biloxi Sun Herald (Biloxi, MS), Sept. 8, 2006, at A2.

Michael Newsom, *Ozerden Found His Cup Overflowing in America*, Biloxi Sun Herald (Biloxi, MS), Aug. 20, 2006, at A18. Copy supplied.

Melissa Scallan & Tracy Dash, *Gulfport Plans New Downtown; Housing Called 'Biggest Need'*, Biloxi Sun Herald (Biloxi, MS), Jan. 21, 2006, at A1. Copy supplied.

David Garey, *A Lifetime of Scouting*, Biloxi Sun Herald (Biloxi, MS), Feb. 21, 2003, at 5. 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 was nominated by President George W. Bush on September 5, 2006, and renominated on January 8, 2007 to serve as a United States District Judge for the Southern District of Mississippi. I was unanimously confirmed by the United States Senate on April 24, 2007. I received my commission to serve as a United States District Judge for the Southern District of Mississippi on May 1, 2007.

The United States District Court for the Southern District of Mississippi has jurisdiction as set forth principally at Chapter 85 of Title 28 of the United States Code.

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

Sixty-nine.

- i. Of these, approximately what percent were:

jury trials:	80%
bench trials:	20%[total 100%]
civil proceedings:	74%
criminal proceedings:	26% [total 100%]

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

A list of citations to opinions I have written is included at Appendix 13b.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *United States v. Ayelotan*, No. 1:14-cr-33-HSO-JCG, 2017 WL 3113315 (S.D. Miss. June 5, 2017), *aff'd*, 917 F.3d 394 (5th Cir. 2019), *as revised* (Mar. 4, 2019).

Three Nigerian citizens residing in South Africa, among others, were extradited to the United States to face numerous federal fraud charges in the Southern District of Mississippi. On October 7, 2014, a grand jury returned a nine-count Second Superseding Indictment against the three defendants and 17 co-defendants alleging a vast international internet fraud scheme with numerous victims. After a three-week trial, the jury returned guilty verdicts on multiple counts against the three defendants who went to trial. All three defendants appealed, and the Fifth Circuit affirmed in all respects.

Counsel

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Peter Roman
U.S. Department of Justice
1301 New York Avenue, N.W.
Washington, District of Columbia 20005
(202) 514-2000

2. *United States v. Bennett*, 230 F. Supp.3d 546 (S.D. Miss. 2016), *aff'd*, 874 F.3d 236 (5th Cir. 2017).

A 14-count indictment charged a nurse and her husband with conspiracy to distribute controlled substances and distributing or dispensing controlled substances outside the

scope of professional practice. The nurse, Ms. Bennett, was also charged with three counts of bankruptcy fraud. Following a two-week jury trial, the jury returned a verdict of guilty as to Ms. Bennett on all counts and a verdict of guilty as to Mr. Bennett on the conspiracy charge and six charges of distributing or dispensing controlled substances. Both defendants appealed. The Fifth Circuit affirmed on Ms. Bennett's appeal and dismissed Mr. Bennett's appeal for want of prosecution.

Counsel

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3. *Hagan v. Byrd*, No. 1:13-cv-268-HSO-RHW (S.D. Miss. 2016).

Plaintiff, a former city alderman, was arrested and charged in state court with molestation, embezzlement of a laptop computer, and possession of child pornography. After the state grand jury returned a "no true bill" for the molestation and embezzlement charges and the district attorney dismissed the child pornography charge, plaintiff filed a complaint in federal court asserting federal and state-law claims against Jackson County, Mississippi, its sheriff, and other officers of the Jackson County Sheriff's Office. After the Court resolved the parties' dispositive motions and dismissed plaintiff's § 1983 claims, the claims remaining for trial were plaintiff's state-law claims for malicious prosecution and punitive damages as to the embezzlement charge against two defendants, in their individual capacities. After a four-day jury trial, the jury returned a verdict in favor of defendants. No appeal was filed.

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4. *United States v. Muhammad*, No. 1:14-cr-36-HSO-RHW-2 (S.D. Miss. 2015).

Defendant, who was using the internet to sell and distribute nationwide what he claimed were legal substances, was charged in an eight-count indictment with knowingly and willfully conspiring to possess with intent to distribute controlled substances and controlled substance analogues with intent for human consumption, and with knowingly and intentionally possessing with intent to distribute controlled substances or controlled substance analogues with intent for human consumption. Following a five-day jury trial in January 2015, the jury returned a verdict of guilty on the conspiracy charge and on five counts of possession with intent to distribute controlled substances and controlled substance analogues. The Fifth Circuit initially dismissed the defendant's appeal but on June 10, 2019, reinstated the appeal.

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5. *United States v. Jackson*, No. 1:14-cr-3-HSO-JCG (S.D. Miss. 2014), *aff'd*, 805 F.3d 200 (5th Cir. 2015).

A local orthopedic surgeon was indicted for violation of federal income tax laws. Defendant claimed to be a minister with an entity called the Church of Compassionate Service ("CCS") and asserted that he had taken a vow of poverty. The Government maintained that defendant knowingly and willfully participated in an illegal tax evasion scheme run by CCS and had in effect avoided paying tax on 90% of his income. A jury heard the case over six days and found defendant guilty on all five counts. Defendant

was sentenced to a total term of imprisonment of 75 months. Defendant appealed, and the Fifth Circuit affirmed.

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6. *Dey v. State Farm Mut. Auto. Ins. Co.*, No. 1:12-cv-332-HSO-RHW, 2014 WL 11906644 (S.D. Miss. 2014), *aff'd*, 789 F.3d 629 (5th Cir. 2015).

Plaintiff was involved in an automobile accident and was the named insured on two State Farm Mutual Automobile Insurance Company policies that provided uninsured motorist coverage with a total limit of \$100,000.00. Plaintiff received an advance payment on his uninsured motorist claim in the sum of \$37,000.00, but State Farm denied Plaintiff's full claim. Plaintiff's contract claim proceeded to a jury trial, and the jury returned a verdict in Plaintiff's favor finding that he had sustained injuries totaling \$229,440.50. Based upon the policy limits, and after applying a \$37,000.00 credit, judgment was entered in Plaintiff's favor in the total amount of \$63,000.00. Plaintiff appealed, arguing that the Court erred in dismissing his bad-faith claim before trial and by applying the policy limits to reduce the jury verdict. The Fifth Circuit affirmed.

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7. *Weisler v. United States*, No. 1:09-cv-622-HSO-JMR, 2012 WL 13018502 (S.D. Miss. 2012).

This case involved a security contractor who was injured on a concrete walkway at the National Aeronautics and Space Administration ("NASA") Facility near Stennis,

Mississippi. The plaintiff filed suit asserting negligence claims against several Defendants, including the United States of America, W.G. Yates and Sons Construction Company, Whitesell-Green, Inc., and Class A Painting, LLC. The plaintiff's employer intervened in light of its payment of workers' compensation benefits. After a six-day trial, the United States was dismissed on Motion for Judgment pursuant to Federal Rule of Civil Procedure 52, and the jury returned a verdict in favor of the other defendants. Plaintiff filed a Motion to Amend Findings of Fact and Conclusions of Law and/or for New Trial, which was denied. No party appealed.

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8. *Penthouse Owners Ass'n, Inc. v. Certain Underwriters at Lloyds, London*, No. 1:07-cv-568-HSO-RHW (S.D. Miss. 2011), *appeals dismissed*, Nos. 12-60285 & 12-60320 (5th Cir. 2012).

The owner of a condominium complex on the beach in Pass Christian, Mississippi, brought contractual, extra-contractual, and bad faith insurance claims against its insurer after Hurricane Katrina destroyed the condominiums. After a different district judge interpreted the policy as covering destruction of the insured's buildings by storm surge, the case was reassigned to me and the insurer sought an interlocutory appeal, which was granted. The Fifth Circuit reversed the earlier interpretation of the policy, holding that coverage did not extend to include water losses associated with windstorms. *See Penthouse Owners Ass'n, Inc. v. Certain Underwriters at Lloyds, London*, 612 F.3d 383 (5th Cir. 2010). The case was remanded for trial. Following an eight-day jury trial in February 2008, the jury returned a verdict in plaintiff's favor on the contract claim. The matter settled on appeal, and the appeal and cross-appeal were dismissed.

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9. *Shoemake v. Rental Serv. Corp.*, No. 1:06-cv-426-HSO-JMR (S.D. Miss. 2008).

The plaintiff construction worker was severely injured when a forklift struck a large unsecured steel beam, knocking it onto the plaintiff, crushing him and rendering him a paraplegic. The plaintiff's negligence claim against one defendant was tried before a jury over six days in April 2008. The plaintiff alleged that defendant had been deficient in training the forklift operator. The jury returned a defense verdict, and neither party appealed.

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10. *Osprey Ship Mgmt., Inc. v. Jackson Cty. Port Auth.*, No. 1:05-cv-390-HSO-RHW, 2008 WL 4371376 (S.D. Miss. 2008), *aff'd*, 387 F. App'x 425 (5th Cir. 2010).

This was a suit in admiralty arising out of an allision between an oceangoing semi-submersible heavy-lift vessel and a submerged submarine launchway owned by a shipyard that occurred in the Pascagoula River in Jackson County, Mississippi. The vessel owners sued the local compulsory harbor pilot and the shipyard, among others. Following a ten-day bench trial, fault for the allision was allocated 50% to the pilot, 50% to plaintiffs, and 0% to the launchway owner. Plaintiffs and the pilot appealed. The United States Court of Appeals for the Fifth Circuit dismissed the pilot's appeal and affirmed in all other respects.

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

1. *Mississippi ex rel. Hood v. Meritplan Ins. Co.*, No. 3:15-cv-944-HSO-JCG, 2016 WL 8857931 (S.D. Miss. Sept. 29, 2016).

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2. *Gonzalez v. United States*, No. 1:14-cv-62-HSO-RHW, 2015 WL 9473672 (S.D. Miss. Dec. 28, 2015), *aff'd*, 851 F.3d 538 (5th Cir. 2017).

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3. *Long v. James*, No. 1:13-cv-343-HSO-RHW, 2015 WL 5604222 (S.D. Miss. Sept. 23, 2015), *aff'd*, 667 F. App'x 862 (5th Cir. 2016).

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4. *Hemphill v. State Farm Mut. Auto. Ins. Co.*, No. 2:13-cv-201-HSO-RHW, 2015 WL 11216643 (S.D. Miss. Jan. 13, 2015), *aff'd*, 805 F.3d 535 (5th Cir. 2015), *cert. denied*, 136 S. Ct. 1166 (2016).

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5. *Ward Gulfport Props., L.P. v. United States Army Corps of Eng'rs*, No. 1:10-cv-8-HSO-JMR, Order [123] (S.D. Miss. Nov. 21, 2012).

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6. *Woodring v. Robinson*, 892 F. Supp. 2d 769 (S.D. Miss. 2012).

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7. *In re S. White Transp., Inc.*, 473 B.R. 695 (S.D. Miss. 2012), *aff'd*, 725 F.3d 494 (5th Cir. 2013).

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8. *Griffin v. Lee*, 621 F.3d 380 (5th Cir. 2010) (per curiam).

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9. *Osprey Ship Mgmt., Inc. v. Foster*, No. 1:05-cv-390-HSO-RHW, 2008 WL 4371376 (S.D. Miss. Sept. 18, 2008), *aff'd*, 387 F. App'x 425 (5th Cir. 2010).

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10. *Cole v. Noble Drilling Corp.*, No. 1:05-cv-479-HSO-JMR, 2007 WL 2475944 (S.D. Miss. Aug. 28, 2007), *aff'd*, 288 F. App'x 931 (5th Cir. 2008).

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

Certiorari was requested and granted in the following cases where I presided at trial:

On May 31, 2016, the Supreme Court granted certiorari in *State Farm Fire & Cas. Co. v. United States ex rel. Rigsby*, 136 S. Ct. 2386 (2016), a case over which I presided at trial as a district judge. The Court affirmed the judgment of the Fifth Circuit in *State Farm Fire & Cas. Co. v. United States ex rel. Rigsby*, 137 S. Ct. 436 (2016).

On June 8, 2015, the Supreme Court granted certiorari in *Nobach v. Woodland Village Nursing Center, Inc.*, 135 S. Ct. 2803 (2015), a case over which I presided at trial as a district judge. The Court vacated the judgment of the Fifth Circuit and remanded the case for further consideration in light of *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028 (2015).

The following are cases where petitions have been filed and remain pending:

Jenkins v. King, No. 1:15CV28-HSO-RHW, 2016 WL 80663 (S.D. Miss. Jan. 7, 2016);
Jenkins v. King, No. 1:15CV28-HSO-RHW, 2017 WL 27960 (S.D. Miss. Jan. 3, 2017),
aff'd sub nom. Jenkins v. Hall, 910 F.3d 828 (5th Cir. 2018).

Please see Appendix 13e for a list of cases where certiorari was requested but denied.

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.

According to our court's electronic filing system records, in the twelve years that I have been on the district court bench, a total of approximately 351 appeals of my decisions have been taken. The following is a list of those appeals where my decision was either reversed or affirmed in part and reversed in part. This list also includes cases that were reversed based upon a ruling made by another judge before the case was reassigned to me.

Cases where my decisions were reversed or vacated:

United States v. Allen, No. 1:15-cr-36-HSO-RHW, Memorandum Opinion and Order [26] (S.D. Miss. 2017), *vacated and remanded*, 918 F.3d 457 (5th Cir. 2019).

Defendant was indicted on one count of conspiracy to possess with intent to distribute a controlled substance. Defendant pleaded guilty pursuant to a plea agreement with the Government, in which Defendant agreed to cooperate and the Government agreed to inform the district court of the nature and extent of Defendant's cooperation. The presentence investigation report prepared prior to sentencing discussed Defendant's cooperation in the underlying drug case. Defendant did not raise any objections. After I sentenced the Defendant, he filed a postconviction motion under 28 U.S.C. § 2255, asserting that the Government breached the plea agreement by failing to inform me of his cooperation, and that his counsel had been ineffective for not objecting to this omission by the Government. I denied the Defendant's motion.

The Fifth Circuit held that Defendant had procedurally defaulted his claim that the Government breached the plea agreement but concluded I should have conducted an evidentiary hearing to determine whether the Government had in fact breached the plea agreement by not informing me of the Defendant's cooperation in an unrelated murder investigation, in order to then determine whether defense counsel was ineffective for not objecting to any such breach. The Fifth Circuit recognized that it might well be that no violations occurred and that I was correct to deny Defendant's entire motion on its merits, but it vacated and remanded for a limited evidentiary inquiry into whether the Government breached its obligation by not informing me of Defendant's cooperation in the unrelated murder investigation, and if so, whether defense counsel was ineffective for failing to raise the issue.

E.E.O.C. v. Rite Way Servs., Inc., No. 1:13-cv-464-HSO-RHW, 2015 WL 1485035 (S.D. Miss. March 31, 2015), *rev'd*, 819 F.3d 235 (5th Cir. 2016), *reh'g en banc denied*, No. 15-60380 (5th Cir. Nov. 9, 2016) (reflecting poll of 5 judges voting in favor of rehearing (Judges Jolly, Jones, Smith, Owen, and Elrod), and 10 judges voting against rehearing (Chief Judge Stewart, and Judges Davis, Dennis, Clement, Prado, Southwick, Haynes, Graves, Higginson, and Costa)).

The Equal Employment Opportunity Commission ("EEOC") commenced this action against Rite Way on behalf of Rite Way's former employee, claiming that it had retaliated against her for reporting harassment of another employee by a supervisor, to which the former employee was a witness. Rite Way moved for summary judgment. I found that the EEOC had not demonstrated that the former employee had engaged in protected activity under either the opposition clause or the participation clause of Title VII. I also determined that the EEOC had not cited to record evidence to support its assertion that the former employee held a good faith, reasonable belief that an unlawful employment practice under Title VII had occurred. The Fifth Circuit reversed, holding that there was a fact issue concerning whether the employee could have reasonably believed that the conduct about which she chose to speak violated Title VII. On a petition for rehearing en banc filed by Rite Way, five judges voted in favor of rehearing, with ten voting against. On remand, the parties entered into a Consent Decree.

New Orleans Glass Co., Inc. v. Roy Anderson Corp., No. 1:14-cv-177-HSO-RHW, 2015 WL 13376525 (S.D. Miss. Jan. 22, 2015), *rev'd*, 632 F. App'x 166 (5th Cir. 2015).

This dispute arose out of the construction of a condominium complex. After work was completed, the condominium developer and owners' association initiated arbitration proceedings against the general contractor and the architect. The general contractor filed a third-party demand in arbitration against fifteen of its subcontractors. One of the subcontractors filed a complaint in federal court against the general contractor, seeking a declaratory judgment to avoid the existing arbitration. The general contractor filed a motion to compel arbitration, which I denied based upon a provision in the subcontract that stated the general contractor and the subcontractor agreed to litigate claims between them in court. I concluded that the subcontractor had not agreed to arbitrate its claim. The general contractor appealed. The Fifth Circuit reversed, holding that the subcontract required the subcontractor to join in the general contractor's existing arbitration or litigation with a third party if the dispute involved the same general subject matter as the subcontractor's claim or dispute, and if the general contractor elected to invoke the provision.

Kinsale Ins. Co. v. Advanced Servs., Inc., No. 3:12-cv-728-HSO-RHW, 2014 WL 11290895 (S.D. Miss. Sept. 29, 2014), *rev'd sub nom. Kinsale Ins. Co. v. Georgia-Pac., L.L.C.*, 795 F.3d 452 (5th Cir. 2015).

An insurer, Kinsale, sued an idled plywood plant operator, Georgia Pacific, and a company, Advanced, that had been removing materials from the plant pursuant to a subcontract with Georgia Pacific, when a fire destroyed the structure. Advanced had rented equipment from H&E Equipment, and during the fire a piece of H&E's equipment was damaged. H&E filed a lawsuit in state court against Advanced, seeking damages for unpaid rent and reimbursement for the fair market value of the damaged equipment. Advanced filed a third-party demand against Kinsale and Georgia Pacific, seeking indemnification. That action was stayed. Kinsale then filed a complaint in federal court seeking a declaratory judgment that it did not owe defense or indemnity either to its insured, Advanced, or to Georgia Pacific, which Kinsale did not dispute was an additional insured, under the insurance policy. The parties filed competing dispositive motions related to certain provisions of the policy. I found that the policy's "insured versus insured" exclusion applied as to the claim between Advanced and Georgia Pacific and granted Kinsale's motion for summary judgment, awarding it a declaratory judgment that it owed no defense or indemnity to Advanced or Georgia Pacific. Georgia Pacific appealed. The Fifth Circuit found the policy exclusion did not apply and reversed.

United States v. Mahanera, No. 1:13-cr-67 (S.D. Miss. 2014), *vacated*, 611 F. App'x 201 (5th Cir. 2015), *as revised* (June 10, 2015).

Defendant pleaded guilty to one count of trafficking in and attempting to traffic in counterfeit goods. As part of defendant's judgment, I imposed certain special conditions of supervised release, including requiring defendant to participate in a program of testing and/or treatment for alcohol and/or drug abuse as directed by the probation office, and

prohibiting defendant from possessing, ingesting, or otherwise using a synthetic cannabinoid or other synthetic narcotic unless prescribed by a licensed medical practitioner. Defendant did not object to these special conditions, but then appealed them. The Fifth Circuit held that I should have explained how the special conditions related to the applicable statutory sentencing factors, vacated the two special conditions, and remanded in light of its opinion.

Nobach v. Woodland Vill. Nursing Home Ctr., Inc., No. 1:11-cv-346-HSO-RHW, 2013 WL 2145723 (S.D. Miss. May 15, 2013), *rev'd*, 762 F.3d 442 (5th Cir. 2014), *cert. granted, judgment vacated*, 135 S. Ct. 2803 (2015), and *rev'd*, 799 F.3d 374 (5th Cir. 2015), *cert. denied*, 136 S. Ct. 1166 (2016).

A former employee brought a Title VII action against her former employer, alleging that she was discharged from her position as a nursing home activities aide for refusing to pray the rosary with a patient because it was against her religious beliefs (Jehovah's Witness). Following a jury verdict in plaintiff's favor, I denied former employer's motion for judgment as a matter of law. Among other things, I found that a jury question had been presented on whether the employer knew of plaintiff's religious beliefs. On appeal, the Fifth Circuit reversed, finding plaintiff had not produced evidence of defendant's knowledge, before termination, of plaintiff's religious beliefs. The former employee filed a petition for writ of certiorari, which the United States Supreme Court granted. The Supreme Court vacated the Fifth Circuit's judgment and remanded the case to the Fifth Circuit for reconsideration in light of *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028 (2015). On remand, the Fifth Circuit held that the evidence was insufficient to support a finding that defendant knew or suspected that plaintiff's religious beliefs required accommodation from praying the rosary prior to her termination, and reversed and remanded for entry of judgment consistent with its opinion.

VT Halter Marine, Inc. v. Wartsila North America, Inc., No. 1:11-cv-250 (S.D. Miss. 2011), *rev'd*, 511 F. App'x 358 (5th Cir. 2013).

VT Halter Marine, a company hired to construct several vessels for a ship operator, brought an action against another company, Wartsila, hired by the ship operator to supply components for the vessels. VT Halter Marine alleged claims for breach of warranty and tortious interference with contract. Wartsila filed a motion to compel arbitration, and VT Halter Marine conceded that its breach of warranty claim was subject to arbitration. I granted Wartsila's motion and VT Halter Marine appealed. The Fifth Circuit concluded that because there were actually three parties and two contracts involved, and VT Halter Marine was not a signatory to the contract that contained the arbitration provision, the case should be reversed and remanded for a determination of whether equitable estoppel would nevertheless compel VT Halter Marine to arbitrate its claims.

Saucier v. Aviva Life & Annuity Co., No. 1:10-cv-429-HSO-JMR, 2011 WL 13079213 (S.D. Miss. June 17, 2011), *rev'd*, 701 F.3d 458 (5th Cir. 2012).

This case arose out of a dispute over who was entitled to the proceeds of an annuity held by Aviva Life and Annuity Company on behalf of the plaintiff Saucier. The Chancery Court of Harrison County, Mississippi, First Judicial District, had initially approved the purchase of plaintiff's annuity by RSL, a structured settlement company, under the Mississippi Structured Settlement Protection Act. However, plaintiff later filed a petition to set aside the Chancery Court's Order, which the Chancery Court granted. RSL appealed, and plaintiff and RSL became embroiled in extensive state court litigation regarding ownership of the annuity payments. When payment under the annuity contract became due from Aviva, plaintiff filed suit in Chancery Court claiming that Aviva would not release the funds due to RSL's pending appeal in state court. Aviva removed the case to federal court and sought to interplead the funds and join two RSL entities as interpleader counter-defendants. Saucier sought remand to state court. I originally denied the motion to remand, but when plaintiff clarified that he was not asserting any claim against Aviva separate and apart from his claim to the funds, I reconsidered my order and found that abstention was appropriate in deference to the parallel state proceeding. RSL appealed. The Fifth Circuit weighed the same six factors as I had, but reached a different conclusion on some and reversed and remanded for further proceedings.

A.K.W. ex rel. Stewart v. Easton-Bell Sports, Inc., No. 1:09-cv-703-HSO-JMR, 2011 WL 13199149 (S.D. Miss. March 23, 2011), *rev'd sub nom. A.K.W. ex rel. Stewart v. Easton Bell Sports, Inc.*, 454 F. App'x 244 (5th Cir. 2011).

A.K.W., a ninth grade student, was injured in a football team practice scrimmage and brought a state court action alleging defective design of his football helmet against the manufacturer Riddell. The helmet A.K.W. was wearing when he was injured was lost, and there were at least four different types of Riddell helmets in use on the date of A.K.W.'s injury. After considering the record evidence and arguments advanced, I determined that plaintiff had not proved causation on the state-law design defect claim beyond mere speculation and had not offered any argument or record evidence in support of any other claims. I granted defendants' motion for summary judgment, and A.K.W. appealed. The Fifth Circuit held that A.K.W. had presented sufficient evidence of each element of the products liability claims to survive summary judgment, and reversed. On remand the case was tried to a jury, which returned a verdict in favor of the defendant Riddell.

Cromwell v. Driftwood Elec. Contractors, Inc., No. 1:07-cv-996, 2009 U.S. Dist. LEXIS 71105 (S.D. Miss. March 5, 2009), *rev'd*, 348 F. App'x 57 (5th Cir. 2009).

Workers sued their purported employers under the Fair Labor Standards Act ("FLSA"), alleging they were not paid for overtime work restoring damaged telecommunications lines along the Mississippi Gulf Coast in the wake of Hurricane Katrina. Defendants moved for summary judgment, arguing that the plaintiffs were independent contractors, not employees, such that they were exempt from the overtime provisions of the FLSA. I considered the balancing test adopted by the Fifth Circuit and determined that the undisputed facts weighed in favor of a finding of independent contractor status as to both

plaintiffs. I granted the defendants' motion for summary judgment, and the workers appealed. The Fifth Circuit noted that the relevant balancing factors appeared to be in near equipoise, but that while there were facts that clearly weighed in favor of independent contractor status, those facts were not sufficient to establish, as a matter of economic reality, that the plaintiffs were in business for themselves during the relevant time. The Fifth Circuit vacated and remanded.

Time Ins. Co. v. White, No. 1:08-cv-16, 2008 WL 5233381 (S.D. Miss. Dec. 10, 2008), vacated, 354 F. App'x 80 (5th Cir. 2009).

An insurer brought an action against its insured seeking a declaration of its contractual rights and obligations pursuant to a health insurance certificate, and the insured advanced a counterclaim against the insurer. The insured maintained that his original copy of the policy, if he received one, was destroyed by Hurricane Katrina in 2005. The copy of the certificate attached to the insurer's complaint limited the insurer's liability to \$2,500.00 per year. The insurer subsequently filed a motion for judgment on the pleadings, and in response, the insured presented his and his insurance agent's affidavit in which they both averred that the certificate attached to the complaint was not the one sent to the insured in 2005. Based upon the insured's earlier admission in his answer that this health certificate was issued to him, I held that the insured could not then create a dispute of fact by submitting contrary evidence in response to the motion and granted the insurer's motion for judgment on the pleadings. The insured appealed. The Fifth Circuit held that the insured did not make an admission that he waived his right to contest whether the policy attached to insurer's complaint accurately reflected the policy that he purchased, and vacated the judgment. On remand, I granted the insurer's motion for summary judgment, which the insured again appealed. The Fifth Circuit affirmed me on the second appeal. See *Time Ins. Co. v. White*, 803 F. Supp. 2d 552 (S.D. Miss.), *aff'd sub nom. Time Ins. Co. v. Estate of White*, 447 F. App'x 561 (5th Cir. 2011).

Gulf Coast Hotel-Motel Ass'n v. Mississippi Gulf Coast Golf Course Ass'n, No. 1:08-cv-1430-HSO-JMR, 2010 WL 3168032 (S.D. Miss. Aug. 10, 2010), *rev'd*, 658 F.3d 500 (5th Cir. 2011).

A hotel association that sold vouchers for rounds of golf at local golf courses brought an antitrust action against a competitor who also sold golf vouchers, asserting both federal and state-law claims. After two rounds of motions to dismiss and after I allowed plaintiff to file two amended complaints, defendants moved again to dismiss under Federal Rule of Civil Procedure 12(b)(6). I determined that plaintiff's federal claims were insufficiently detailed, granted the motion, and dismissed the federal claims with prejudice. I exercised my discretion to dismiss plaintiff's state law claims without prejudice, declining to exercise supplemental jurisdiction over them. Plaintiff appealed. The Fifth Circuit recognized that the complaint, even after prompting by me, was sparse, but held that what was alleged was sufficient to survive a motion to dismiss and reversed. The case settled on remand.

Cases where my decision was reversed, but the Fifth Circuit opinion was later abrogated

by the Supreme Court:

Tate v. Lentz (In re Tate), No. 1:08-cv-32-HSO-JMR, 2008 WL 4489761 (S.D. Miss. Sept. 29, 2008), *rev'd*, 571 F.3d 423 (5th Cir. 2009), *abrogated by Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61 (2011).

After the Bankruptcy Court entered an Order granting the United States Bankruptcy Trustee's motion to dismiss the debtors' Chapter 7 petition for abuse on grounds that debtors' monthly income exceeded the limitations provided in 11 U.S.C. § 707(b)(2), the debtors appealed. The main issue presented to me on the appeal was whether transportation ownership expenses for two vehicles were properly deducted under § 707(b)(2)(A)(ii)(I). There was no Fifth Circuit case directly on point, and I determined that a debtor may not deduct the vehicle ownership expense unless the debtor has a monthly note or lease payment on a vehicle, and affirmed the Bankruptcy Court's dismissal. Debtors appealed.

As a matter of first impression in the Fifth Circuit, it adopted the approach set forth by the Seventh Circuit. Under this approach, the Fifth Circuit concluded that the deduction should have been allowed, and reversed and remanded for further proceedings.

The United States Supreme Court has since abrogated the Fifth Circuit's ruling and adopted the approach I had followed, holding that, under § 707(b)(2)(A)(ii)(I), when a debtor owns his car free from any debt or obligation he may not claim the transportation ownership costs allowance because he will not incur any loan or lease payments during the bankruptcy plan. *See Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 80 (2011).

Cases where my decisions were reversed or vacated in part and affirmed in part:

In re C.F. Bean, L.L.C., Nos. 1:13-cv-77-HSO-RHW & 1:13-cv-84-HSO-RHW, 2015 WL 8147250 (S.D. Miss. Nov. 16, 2015) & 2015 WL 7454670 (S.D. Miss. 2015), *aff'd in part and rev'd in part*, 841 F.3d 365 (5th Cir. 2016).

A boater's estate filed a wrongful death action against the owner and operators of a dredge-pipe, seeking recovery in connection with boater's fatal accident, where his boat's outboard engine struck an underwater dredge pipe that flipped into his boat and struck him. The dredge-pipe owner and operators filed a third-party complaint for contribution and indemnity against Suzuki, the manufacturer of the outboard motor. The estate's claims against the dredge-pipe owner and the operators settled. Suzuki then sought to exclude certain expert testimony proffered by the dredge-pipe owner and operators and sought summary judgment. I excluded the expert testimony and, as a result, granted summary judgment to Suzuki. The dredge-pipe owner and operators appealed.

At issue were two expert reports, a deficient, conclusory first report and an untimely second, or "supplemental," expert report. The Fifth Circuit affirmed the exclusion of the first report. As for the second report, the Fifth Circuit held that I had correctly determined that the second expert report did not merely supplement the first and agreed

with my finding that the second report was untimely, but found that exclusion of the second report resulting in dismissal was too harsh of a sanction. Circuit Judge Edith Jones dissented on this point. The Fifth Circuit remanded for further proceedings. On remand, the case settled.

United States ex rel. Rigsby v. State Farm Fire & Cas. Co., No. 1:06-cv-433-HSO-RHW, 2014 WL 691500 & 2014 WL 12769371 (S.D. Miss. Feb. 21, 2014), *aff'd in part and rev'd in part*, 794 F.3d 457 (5th Cir. 2015), *aff'd*, 137 S. Ct. 436 (2016).

Relators filed a *qui tam* action in 2006 under the False Claims Act (“FCA”) against State Farm alleging State Farm submitted false claims to the Government for payment on Government-backed Standard Flood Insurance Policies for damages caused by Hurricane Katrina. This case was originally assigned to a different district judge and was reassigned to me in April 2011. The previous judge had determined in an order entered August 10, 2009, 2009 WL 2461733, that a trial would proceed as to the single property that relators acknowledged was the only one of which they had personal knowledge, and was the only property identified in relators’ complaint. The 2009 order indicated that, if relators prevailed on the merits as to this single property, the judge would then consider whether additional discovery into other claims was warranted. I entered judgment on a jury verdict in relators’ favor, denied relators’ request to conduct further discovery, and denied State Farm’s motions for a new trial and judgment notwithstanding the verdict. Both sides appealed. The Fifth Circuit reversed only as to the decision to deny relators discovery into additional claims.

State Farm filed a petition for writ of certiorari as to two questions. The United States Supreme Court granted certiorari to consider Question 1, specifically whether any violation of the FCA’s seal requirement mandates dismissal of a relator’s claim. The Supreme Court held that relators’ violation of the FCA’s seal requirement did not mandate automatic dismissal of their complaint and affirmed the Fifth Circuit. This case remains pending in the district court.

Rankin v. United States, No. 1:10-cv-278-HSO-JMR, 2012 WL 5381823 (S.D. Miss. Oct. 31, 2012), *aff'd in part, vacated in part*, 556 F. App’x 305 (5th Cir. 2014).

A prisoner brought an action against the United States and multiple individual defendants under the Federal Tort Claims Act (“FTCA”) and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging that the Government had breached its plea agreement with him. The Government filed an FTCA certification that the individual defendants were at all relevant times acting within the course and scope of their employment with the Government, and moved for summary judgment. The plaintiff moved to set aside the certification. I denied plaintiff’s motion to set aside the certification, granted the Government’s motion for summary judgment, and dismissed the case with prejudice. Plaintiff appealed.

The Fifth Circuit held that the plaintiff’s motion to set aside the Government’s certification was properly denied and affirmed my dismissal of the case, but vacated the

final order of dismissal because it was with prejudice and remanded for entry of an order of dismissal without prejudice.

Craven v. Cashman Equip. Corp., No. 1:06-cv-545-HSO-JMR, Findings of Fact and Conclusions of Law [133] (S.D. Miss. 2008), *aff'd in part and remanded in part*, 350 F. App'x 851 (5th Cir. 2009).

The plaintiff was a seaman acting as a deckhand aboard a tugboat while employed by Offshore Specialty Fabricators, Inc. ("OSFI"). Cashman Equipment Corporation ("Cashman") owned a fleet of barges. OSFI leased or chartered a large oceangoing barge from Cashman. While the plaintiff was aboard the dredge that night, he stepped into an unmarked and uncovered tear or hole on the dredge's deck and fell, injuring himself. The plaintiff sued OSFI and Cashman, and OSFI asserted a cross-claim against Cashman. After a bench trial, I found the plaintiff 5% at fault, OSFI 10% at fault, and Cashman 85% at fault. OSFI and Cashman both appealed. On Cashman's appeal, the Fifth Circuit affirmed me. OSFI appealed only my not awarding prejudgment interest on its recovery from Cashman. The Fifth Circuit remanded for consideration of such an award in the first instance since this issue had not been explicitly addressed at trial. Following remand, the case was dismissed with prejudice upon the parties' Joint Motion.

Saucier v. Coldwell Banker JME Realty, No. 1:04-cv-686-HSO-RHW, 2008 U.S. Dist. LEXIS 7101 (S.D. Miss. 2008), *aff'd in part and rev'd in part*, 302 F. App'x 302 (5th Cir. 2008).

A real estate agent brought an action against a real estate broker and the broker's co-listing agent for sales commissions she believed she was entitled to receive in connection with a condominium development. After a jury returned an award in plaintiff's favor on a breach of contract claim, I granted the defendants' motion for judgment as a matter of law in part and dismissed plaintiff's claims against the broker, and reduced the judgment against the defendant agent. I also conditionally granted the defendant agent a new trial on the breach of contract claim. Plaintiff appealed.

The Fifth Circuit affirmed my dismissal of the broker under Rule 50(b). As for the reduction in damages, the Fifth Circuit held that I properly reduced damages from sales that occurred while plaintiff was employed by the defendant broker, and affirmed me on that issue. The Fifth Circuit determined that the plaintiff was entitled to damages from sales that took place after her resignation, and reversed in part and remanded for further proceedings on that issue.

Appeals where the case was assigned to me at the time of the reversal, but the decisions reversed were those of an earlier-assigned district judge:

Carl E. Woodward, LLC v. Acceptance Indem. Co., No. 1:09-cv-781-LG-RHW, 2011 WL 98404 (S.D. Miss. 2011), *rev'd*, 743 F.3d 91 (5th Cir. 2014).

A general contractor and its insurer commenced an action against a subcontractor's insurance company alleging breach of the duty to defend the general contractor in an arbitration proceeding under a commercial general liability insurance policy. The case was originally assigned to a different district judge who, on motions for partial summary judgment, determined that the defendant subcontractor's insurer owed a duty to defend the general contractor and lacked an arguable basis for failing to do so, but that a genuine dispute of material fact existed as to the duty to indemnify. The case was later reassigned to me, and I conducted a jury trial in March 2011. After a verdict in the general contractor's favor, I held a bench trial to determine additional issues and entered a Final Judgment awarding plaintiffs compensatory and extra-contractual damages. Defendant appealed. The Fifth Circuit reversed the earlier judge's holding that the defendant subcontractor's insurer owed a duty to defend and remanded for entry of judgment in defendant's favor.

Penthouse Owners Ass'n, Inc. v. Certain Underwriters at Lloyds, London, No. 1:07-cv-568-LTS-RHW, 2008 WL 2699775 (S.D. Miss. 2008), 2008 WL 2894387 (S.D. Miss. 2008), 2009 WL 175501 (S.D. Miss. 2009), *rev'd*, 612 F.3d 383 (5th Cir. 2010).

The owner of a condominium complex on the beach in Pass Christian, Mississippi, brought contractual, extra-contractual, and bad faith insurance claims against its insurer after Hurricane Katrina destroyed the condominiums. The district judge originally assigned to the case interpreted the policy as covering destruction of the insured's buildings by storm surge. The case was later reassigned to me and the insurer sought an interlocutory appeal of the first judge's rulings, which I certified and the Fifth Circuit granted. The Fifth Circuit reversed the earlier judge's interpretation of the policy, holding that coverage did not extend to include water losses associated with windstorms, and the case was remanded for trial. I did not decide the earlier, reversed 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.

All opinions I have issued are available in the court records maintained by the Clerk of the Court for the Southern District of Mississippi or (for those cases where I sat by designation) the Clerk of Court for the Fifth Circuit Court of Appeals. These opinions are generally available through the PACER system.

Some of my opinions are available through electronic databases including Westlaw and LEXIS. A search of Westlaw conducted May 28, 2019, lists 1,416 opinions, 27 (approximately 2%) of which are reported. A search of LEXIS conducted May 28, 2019, lists 1,338 opinions, 27 (approximately 2%) of which are reported.

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.

Patel v. United States Dep't of Agric., No. 3:17-cv-59 (S.D. Miss. 2017).

United States v. Hennis, Nos. 3:14-cv-248, 3:12-cr-91, 2015 U.S. Dist. LEXIS 6022 (S.D. Miss. 2015).

Indus. & Crane Servs., Inc. v. Crane & Rig Servs., LLC, No. 1:14-cv-255, 2014 WL 6471474 (S.D. Miss. 2014).

Trustmark Nat. Bank v. Sevier Cty. Bank, No. 3:13-cv-527, 2014 WL 4816154 (S.D. Miss. 2014).

Arevalo v. Mgmt. & Training Corp., No. 4:13-cv-83, 2013 WL 5506272 (S.D. Miss. 2013).

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

I sat by designation on the Fifth Circuit Court of Appeals on the following cases:

Dillard v. City of Austin, 837 F.3d 557 (5th Cir. 2016).

Doe v. United States, 831 F.3d 309 (5th Cir. 2016).

Davis v. Davis, 826 F.3d 258 (5th Cir. 2016).

United States v. Williams, 821 F. 3d 656 (5th Cir. 2016), *reh'g denied*, 833 F.3d 449 (5th Cir. 2016).

United States v. Lamid, 663 F. App'x 319 (5th Cir. 2016), *reh'g denied*, No. 15-30572 (5th Cir. 2016).

Burst v. Shell Oil Co., 650 F. App'x 170 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 312 (2016).

United States v. Hernandez, 647 F. App'x 426 (5th Cir. 2016).

Quality Infusion Care, Inc. v. Health Care Serv. Corp., 628 F.3d 725 (5th Cir. 2010).

In re Scopac (Bank of New York Trust Co., N.A. v. Pac. Lumber Co.), 624 F.3d 274 (5th Cir. 2010), *opinion modified on denial of reh'g*, 649 F.3d 320 (5th Cir. 2011).

The Compliance Source, Inc. v. Greenpoint Mortg. Funding, 624 F.3d 252 (5th Cir. 2010).

Brown v. Callahan, 623 F.3d 249 (5th Cir. 2010), *reh'g denied*, No. 09-10843 (5th Cir.

2010), *cert. denied*, 563 U.S. 1021 (2011).

Griffin v. Lee, 621 F.3d 280 (5th Cir. 2010).

United States v. Gamboa-Garcia, 620 F.3d 546 (5th Cir. 2010).

Hernandez v. Terrones, 397 F. App'x 954 (5th Cir. 2010), *reh'g denied*, No. 09-50659 (5th Cir. 2010), *cert. denied*, 563 U.S. 960 (2011).

United States v. Espinoza, 394 F. App'x 26 (5th Cir. 2010).

Abshure v. Prator, 392 F. App'x 267 (5th Cir. 2010), *reh'g denied*, No. 09-30895 (5th Cir. 2010).

Thomas v. Geren, 393 F. App'x 182 (5th Cir. 2010).

I authored, the opinion in the following case:

Davis v. Davis, 826 F.3d 258 (5th Cir. 2016).

Prisoner plaintiffs brought suit in federal court alleging violations of their rights under the First Amendment and Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, *et seq.*, based upon policies of the defendant Texas Department of Criminal Justice ("TDCJ") placing restrictions on the wearing of medicine bags, the use of pipes during Native American religious pipe ceremonies, and grooming. After the district court granted summary judgment in favor of defendants, plaintiffs appealed.

The Court of Appeals affirmed in part and vacated and remanded in part, holding that:

- (1) the prisoners abandoned their appellate challenge to the finding that defendant prison officials were entitled to qualified immunity;
- (2) the prisoners abandoned their appellate challenge to the finding that defendant prison officials employed least restrictive means by placing restrictions on wearing of medicine bags;
- (3) ban on prisoners personally smoking prayer pipes during pipe ceremonies did not violate rights to free exercise of religion;
- (4) remand was necessary for district court to consider prisoners' evidence in deciding summary judgment motion with respect to grooming policy and with respect to TDCJ's interests in enacting the grooming policy in light of the prisoners' specific characteristics.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by

which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

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

Our court utilizes an automatic system of screening for conflicts where the judges provide the Clerk with a list of any parties or attorneys from whose cases the judge should be recused. Upon filing, new cases are screened against this list and if a conflict appears, the case is automatically assigned to another judge. My list has included my former firm, my spouse who is an attorney, former clients, other attorneys with whom I may have a close personal relationship, and any company in which I may have owned stock or had some other financial interest at the time. In cases in which my former law firm entered an appearance after the case was assigned to me, I would enter an order of recusal *sua sponte*.

In cases that are assigned to me where a party or lawyer that is not on the automatic conflicts list with whom I independently determine may create a conflict or the appearance of a conflict, or where a person or entity on my conflicts list enters an appearance later in the case, I have entered orders of recusal in such cases. These again involve cases in which I may know the party personally on a level such that an appearance of impropriety might arise if I were to decide their case, such as cases involving a client of my wife's firm for whom she has performed legal work, cases filed by pro se litigants who may have previously sued me, and those in which an attorney may be a particularly close personal friend.

I have denied motions to recuse in the following cases:

United States v. Lepre, No. 1:16-cr-61 (S.D. Miss. 2018).

Ferrell v. Papania, No. 1:14-cv-426 (S.D. Miss. 2015).

United States v. Pahlavan, No. 1:14-cr-82 (S.D. Miss. 2015).

Blakely v. City of Laurel, No. 2:14-cv-82 (S.D. Miss. 2014).

United States v. Keys, No. 1:11-cr-79, 2013 WL 3354427 (S.D. Miss. 2013).

United States v. Owen, Nos. 1:12-cv-313, 1:09-cr-38, 2013 WL 12226542 (S.D. Miss. 2013).

Walker v. FEMA, No. 1:10-cv-170 (S.D. Miss. 2012).

Hollimon v. Potter, No. 1:07-cv-1282, 2009 U.S. Dist. LEXIS 58372 (S.D. Miss. 2009).

Lepre, Ferrell, Blakely, Keys, Owen, and Walker were cases in which either pro se civil litigants or criminal defendants whom I had sentenced filed improper motions or other pleadings, or were otherwise dissatisfied with my rulings or the legal process in general. Their motions to recuse were plainly based on dissatisfaction with my rulings or other vague or generalized complaints about the legal process, and I ruled accordingly. *Pahlavan* was a criminal case where the defendant sought my recusal on grounds that my spouse had performed legal work in a separate civil matter for a potential witness against him who had been indicted in a separate criminal case. *Hollimon* was a case in which counsel for the plaintiff sought my recusal based upon her representation of a different client in a separate matter. The Fifth Circuit affirmed my denial of the motion to recuse in this case.

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.

None.

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.

From 2005 to 2007, I served as a board member of the Harrison County, Mississippi Republican Club.

I participated in the following political campaigns:

Re-election campaign of George Payne, Jr., Republican candidate for Sheriff of Harrison County, Mississippi (Fall 2003). I attended campaign functions and assisted with fundraising.

Election campaign of Haley Barbour, Republican candidate for Governor of Mississippi (Fall 2003). I attended campaign functions and assisted with fundraising.

Election campaign of Tate Reeves, Republican candidate for State Treasurer of

Mississippi (Fall 2003). I attended campaign functions and assisted with fundraising. I also co-sponsored a "Meet the Candidate" Breakfast.

Re-election campaign of Billy Hewes, III, Republican candidate for re-election to Mississippi State Senate (Fall 2003). I assisted with fundraising.

Election campaign of Leonard Bentz, Republican candidate for Mississippi House of Representatives (Fall 2003). I assisted with fundraising.

Election campaign of Brent Warr, Republican candidate for Mayor of the City of Gulfport, Mississippi (Spring 2005). I attended campaign functions and assisted with fundraising. In conjunction with this campaign, I co-hosted a fundraiser and served on Mayor-Elect Warr's Transition Team prior to his taking office.

Re-election campaign for Chip Pickering, Republican Member of Congress (Fall 2005). I attended campaign function and assisted with fundraising.

Re-election campaign for Senator Trent Lott, Republican Senator for Mississippi (2006). I attended campaign function and assisted with fundraising.

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

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

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

From 1998 to 1999, I served as a law clerk to the Hon. Eldon Fallon, United States District Judge for the Eastern District of Louisiana.

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.

1999 – 2007
Dukes, Dukes, Keating & Faneca, P.A.
2909 13th Street, 6th Floor
Post Office Drawer W
Gulfport, Mississippi 39502
Associate (1999 – 2003)
Partner (2003 – 2007)

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 an alternative dispute resolution proceeding.

b. Describe:

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

During my entire time in private law practice (1999 – 2007), the general character of my law practice was one of general civil practice, primarily engaged in general civil defense litigation with some transactional work. My primary focus was on the representation of local governmental entities for which my law firm served as general counsel, as well as on representation of other clients in general civil defense litigation matters ranging from torts to contracts to constitutional claims.

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

Typical former clients included the Gulfport-Biloxi Regional Airport Authority, Harrison County Sheriff's Office, and Harrison County Emergency Communications Commission, local governmental clients for whom my firm was general counsel and for whom I performed both defense litigation and transactional work. Other former clients included Union Planters Bank (now part of Regions Bank), practicing in commercial litigation, and I also represented other, smaller business clients handling various contractual and commercial issues or disputes.

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.

During my time in private practice, I appeared regularly in court for trials, adversarial evidentiary hearings, scheduling conferences, pretrial conferences, and oral argument on various types of motions. I would estimate that 80% of my practice was in litigation.

i. Indicate the percentage of your practice in:

1.	federal courts:	40 %
2.	state courts of record:	40 %
3.	other courts:	10 %
4.	administrative agencies:	10%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 99 %
2. criminal proceedings: 1 %

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 litigated over 45 cases to judgment. 17 of these were actual trials in federal or state tribunals of record. I was sole counsel for 14 of these trials, lead counsel with another attorney assisting me for two others, and supporting counsel for one.

i. What percentage of these trials were:

1. jury: 15 %
2. non-jury: 85 %

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.

None.

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. *Harris v. Forrest County, Mississippi*, No. 2:03-cv-604-KS-MTP (S.D. Miss.).

I represented the Harrison County Sheriff and several individually named deputies in this matter, which was a federal civil rights lawsuit alleging that Plaintiff was wrongfully incarcerated for a period of four months in a case of mistaken identity. Plaintiff, a white male, was detained pursuant to a warrant for the arrest of a black male with the same name as the Plaintiff. I

obtained a partial dismissal in favor of my clients. While the remainder of the case remained on appeal, I was confirmed to my current position and withdrew from the case. Subsequently, the Fifth Circuit rendered judgment in favor of my clients.

Dates of Representation: December 2003 – April 2007

Presiding Judge: Hon. Stanwood R. Duval, Jr. (retired)

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Defense Counsel (Harrison County)

Karen Young
[Now Inactive]

Defense Counsel (Forrest County)

James K. Dukes
Dukes, Dukes & Hunter
226 West Pine Street
Post Office Box 2055
Hattiesburg, Mississippi 39403
(601) 544-4121

2. *Blango v. Harrison County Sheriff's Dept.*, No. 1:03-cv-722-LG-JMR (S.D. Miss.).

I represented the Harrison County Sheriff's Department in this case, which was a federal civil rights lawsuit involving allegations of medical malpractice and wrongful death arising out of the death of an inmate incarcerated at the Harrison County jail. The decedent had been stabbed

several months prior to his incarceration, but his outer wounds had healed by the time he became incarcerated in Harrison County. While incarcerated, he died of complications connected to the remaining internal injuries which were not readily apparent. Plaintiff claimed that the Defendants violated his federal civil rights, denied him adequate medical treatment, and committed medical malpractice in not diagnosing his injuries and preventing his death. The Court rendered judgment in favor of the Harrison County Sheriff's Department in this case.

Date of Representation: December 2003 – August 2005

Presiding Judges: Hon. Louis Guirola, Jr. and Hon. John M. Roper (retired)

Opposing Counsel

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Defense Counsel (Harrison County)

Karen Young
[Now Inactive]

3. *Melear v. Harrison County*, No. 1:03-cv-674-JMR (S.D. Miss.).

I represented the Harrison County Sheriff in this case, which was a federal civil rights lawsuit and wrongful death claim pursuant to 42 U.S.C. § 1983 and related state law theories of liability. In this case, Plaintiff was incarcerated at the Harrison County Adult Detention Center awaiting trial on various child molestation charges when he became involved in an altercation with another inmate in which the other inmate gouged out the Plaintiff's eyeballs. Plaintiff died of other medical complications subsequent to the filing of suit. Plaintiff alleged that the Sheriff was liable to him for failure to protect him from the assault. The Court rendered judgment in favor of the Sheriff.

Date of Representation: July 2003 – March 2006

Presiding Judge: Hon. John M. Roper (retired)

Opposing Counsel

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[Deceased]

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Defense Counsel (Harrison County)
Karen Young
[Now Inactive]

4. *Adams v. City of Gulfport*, No. A2401-2003-3-14 (Miss. Cir. Ct.).

I represented the Defendant, Gulfport-Biloxi Regional Airport Authority, in this litigation that was originally filed in the Harrison County Circuit Court, removed to the United States District Court for the Southern District of Mississippi, and then remanded to Harrison County Circuit Court.

This case involved a property line dispute over the placement of a sewer line in conjunction with the development by the Airport Authority of an office park. Plaintiff alleged that the Airport Authority's tie-in to his sewer line, which he claimed he had privately constructed on his own property, gave rise to a federal takings and other constitutional claims, as well as state law causes of action for trespass, conversion, and related claims. The Court ultimately rendered a judgment in favor of the Airport Authority.

Date of Representation: June 2003 – May 2006

Presiding Judges: Hon. Jerry O. Terry (retired) (Miss. Cir. Ct.), and Hon. Louis Guirola, Jr. (S.D. Miss.).

Opposing Counsel

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[Deceased]

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5. *Carmel v. Union Planters Corp.*, No. A2401-2002-0581 (Miss. Cir. Ct.).

I represented Union Planters Bank in this matter, which involved allegations by Plaintiff, a business account holder with the Bank, that the Bank was liable for damages due to improper

deposits, withdrawals, and forged signatures on checks by some of the business' employees. Plaintiff claimed these items were improperly paid by the Bank, and that the Bank was liable to him for not preventing this forgery, pursuant to the Uniform Commercial Code and banking law. I obtained a judgment of dismissal in favor of the Bank.

Date of Representation: October 2002 – September 2003

Presiding Judge: Hon. Jerry O. Terry (retired)

Opposing Counsel

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6. *Hendrix v. Stanbro R.V. Ctr.*, No. 1:02-cv-784-LG (S.D. Miss.).

I represented Union Planters Bank in this matter. In this case, Plaintiff alleged that she had purchased a defective motor home from a co-defendant recreational vehicle dealer, and that by virtue of the assignment of the sales contract and financing agreement to Union Planters Bank, the Bank was also liable to her for rescission of the contract and return of her money. Plaintiff alleged theories of liability under the Uniform Commercial Code, various express and implied warranties under state law, and the Federal Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* I obtained a judgment of dismissal in favor of Union Planters Bank in the case.

Date of Representation: August 2002 – August 2004

Presiding Judge: Hon. David Bramlette

Opposing Counsel

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Defense Counsel (*Stanbro R.V. Center*)

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Defense Counsel (Gulf Stream, Inc.)

Joe Meadows

[Retired]

7. *Mullins v. Haden*, No. A2401-2002-0672 (Miss. Cir. Ct.).

I represented William A. Haden and the Harrison County Sheriff's Department in this matter. This case involved an automobile collision in which a Sheriff's investigator rear-ended the Plaintiff, causing minor vehicle damage but, according to Plaintiff, triggering severe medical injuries in connection with a condition from which he suffered known as trigeminal neuralgia. The Court rendered judgment in favor of my clients.

Date of Representation: August 2002 – January 2004

Presiding Judge: Hon. Robert Walker

Opposing Counsel

Brehm T. Bell

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Bay St. Louis, Mississippi 39520

(228) 467-0006

8. *In re ANC Rental Corp.*, Chapter 11 Case No. 01-11200-MFW (jointly administered) (Bankr. Del.).

I represented the Gulfport-Biloxi Regional Airport Authority in this matter, which was an adversarial trial in the context of a major national bankruptcy case, specifically, ANC Corporation, the parent company for National Car Rental and Alamo Rent-A-Car. I prepared all substantive pleadings filed on behalf of the Gulfport-Biloxi Regional Airport Authority, with modifications to conform to the local Delaware rules made by our Delaware co-counsel. I also traveled to Wilmington, Delaware, with the Airport's Executive Director and conducted an adversarial evidentiary trial in which I put on direct testimony and documentary evidence, and cross-examined the witness for the Debtors before the Bankruptcy Court. The substantive issue was the Airport Authority's objection to the attempts of the Debtors to reject their National Car Rental Lease with the Airport Authority and then assign that Lease to the parent company, ANC Rental Corporation, which then in turn was proposing to "dual brand" by permitting both of its subsidiary rental car companies, National and Alamo, to begin conducting operations at the Gulfport-Biloxi International Airport under a single lease, and without the permission of the Airport Authority. Following the trial, the Court expressed reservations about the Debtors' requested relief, ordered additional briefing and did not grant the relief that National Car Rental had requested, relief which it had previously granted National at the vast majority of other airports in the United States. While the Airport Authority's objection was still pending, Debtors formally withdrew their request to "dual brand" at the Gulfport-Biloxi Airport and agreed to pay Airport Authority attorneys' fees incurred in objecting to their proposed rejection of National Car Rental's Lease with the Airport.

Date of Representation: July 2002 – October 2003

Presiding Judge: Hon. Mary F. Walrath

Opposing Counsel (Debtors)

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Co-Counsel

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Local Delaware Co-Counsel for Gulfport-Biloxi Regional Airport Authority

Defense Counsel (Budget Rent-A-Car, Thrifty Rent-A-Car, and Avis Rent-A-Car)

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9. *Watford v. City of Biloxi*, No. 1:02-cv-11-LG-RHW (S.D. Miss.).

I represented Sheriff George Payne, Jr., Deputy Coley James Judy, and Deputy Brenda Lilyrose in this matter. In this case, Plaintiff was arrested on a charge of disorderly conduct and resisting arrest. Upon arrival at the Harrison County Jail, she claimed that she was subjected to excessive force, alleging she was beaten and pepper sprayed while restrained. The Court rendered a judgment in favor of my clients in this case.

Date of Representation: January 2002 – January 2005

Presiding Judges: Hon. Walter Gex and Hon. Louis Guirola, Jr.

Opposing Counsel

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Defense Counsel (Harrison County)
Karen Young
[Now Inactive]

Defense Counsel (City of Biloxi)
Emilie Whitehead
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(601) 481-5232

10. *Cooley v. Harrison Cty.*, No. 2:01-cv-62-CWP (S.D. Miss.).

I represented the Harrison County Sheriff's Department, Harrison County Sheriff George Payne, Jr., and Deputy Pauline Blackwell in this matter, which was a case involving a claim by Plaintiff of mistaken identity, false arrest, and false imprisonment. Plaintiff claimed that she was wrongfully arrested, pursuant to an indictment obtained by the Harrison County District Attorney and subsequent warrant, which the Harrison County Sheriff directed to the Sheriff of another County, Jones County, to execute, resulting in Plaintiff being arrested at her home and incarcerated during a Thanksgiving holiday. It was subsequently determined that a different individual with the same name as the Plaintiff was the person who should have been indicted, but that the Sheriff of Harrison County caused to be arrested the person who had, in fact, been indicted, the Plaintiff. The wrong biographical information was supplied to the District Attorney prior to indictment. The Court rendered judgment in favor of my clients.

Date of Representation: February 2001 – March 2003

Presiding Judge: Hon. Charles Pickering

Opposing Counsel
Leonard B. Melvin, Jr.
[Deceased]

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(601) 583-1990

Defense Counsel (Harrison County)

Karen Young
[Now Inactive]

Defense Counsel (Mississippi Bureau of Narcotics)

Peter Cleveland
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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 appeared in and litigated, whether as sole, lead, or co-counsel of record, numerous cases in federal and state courts and administrative tribunals, many of which involved federal constitutional or civil rights issues.

I drafted rules and regulations governing commercial use activities at the Gulfport-Biloxi International Airport, and was appointed to serve as Administrative Hearing Officer by the governing board of the Gulfport-Biloxi Regional Airport Authority.

I participated in drafting contracts for the Harrison County Emergency Communications Commission relating to the implementation of a fifteen million dollar project for a unified emergency communications system for all of Harrison County, Mississippi, which system ultimately resulted in Harrison County having an operable communications system during and after Hurricane Katrina.

I defended Equal Employment Opportunity Commission complaints filed by employees of some of the firm's clients. My involvement included researching the facts and law and preparing appropriate legal responses to the EEOC in each case.

I also engaged in activities aimed at promoting civility and professionalism within the practice of law in our local community by participating in American Inns of Court and becoming active in a leadership capacity in the Harrison County Young Lawyers Association. I served as Treasurer, Vice President, and then President of the Association. In my capacity as President of the Harrison County Young Lawyers Association, I also participated in state-wide meetings and functions of the Young Lawyers Division of the Mississippi Bar.

I have not performed lobbying on behalf of any client or organization, and I am not and

have never been registered as a lobbyist.

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.

None.

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

None.

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

No.

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

When my nomination is submitted to the Senate, I will file my mandated Financial Disclosure Report and provide a copy to this Committee.

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

See attached.

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.

Because my wife is a practicing attorney, I would automatically recuse myself from any

case that she appears as counsel of record. I would also recuse from any matter in which I have a financial interest. I would also recuse myself from any cases over which I may have presided in any way as a district judge. Should any other potential conflicts of interest arise, I will adhere to the Code of Conduct for United States Judges and other applicable authority regarding their resolution.

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

In addition to recusing myself as set forth above, I will continue to carefully review and address any real or potential conflicts of interest by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any other laws, rules, and practices governing such circumstances.

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

While in private practice, I represented an indigent criminal defendant in a criminal case in state court. I devoted approximately 30 hours of my time to this case.

In addition, while in private practice, from 1999 until 2006, I volunteered as a mentor for an at-risk student in the Gulfport Municipal Public School District. From 1999 until the time of his graduation from high school in 2006, I worked with the same student, beginning when he was in sixth grade. My role as a mentor was to assist and encourage him to remain in school and to earn a high school diploma, which he did. I estimate that I devoted approximately 300 hours over the course of six years working with this student.

As a U.S. District Judge, I have encouraged pro bono practice in our court, giving younger attorneys litigation experience in court.

26. **Selection Process:**

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

I interviewed with former Senator Cochran and his staff at his local office in Gulfport on

April 19, 2017, and interviewed with Senator Wicker at his office in Washington, D.C. on May 2, 2017. I was subsequently informed that my name was being submitted by Senators Cochran and Wicker to the White House for consideration for this position. On July 12, 2017, I interviewed with members of the White House Counsel's Office.

On April 17, 2018, I was contacted by the White House Counsel's Office and advised that the President had decided to move forward with the selection process. Since that time I have had follow-up communications with White House staff and the Department of Justice Office of Legal Policy in completing the relevant paperwork for submission.

On May 9, 2018, I met with Senator Wicker and his staff at his office in Washington, D.C. I also met that same day with Senator Hyde-Smith and her staff at her office in Washington, D.C. Since then I have had follow-up communications with the staffs of Senator Wicker and Senator Hyde-Smith.

There is no formal selection commission in our jurisdiction to recommend candidates for judicial nomination to federal courts.

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.