

**250 MUÑOZ RIVERA AVENUE  
SUITE 800  
SAN JUAN, PUERTO RICO 00918**

January 6, 2014

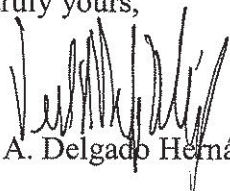
The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on June 26, 2013, to be a United States District Judge for the District of Puerto Rico. I certify that the information contained in that document is and remains, to the best of my knowledge, true and accurate.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Very truly yours,



Pedro A. Delgado Hernández

c: The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Pedro Alberto Delgado Hernández

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

United States District Judge for the District of Puerto Rico

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

Office: O'Neill & Borges LLC  
American International Plaza  
250 Muñoz Rivera Avenue, Suite 800  
San Juan, Puerto Rico 00918

Residence: Toa Baja, Puerto Rico

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

1956; San Juan, Puerto Rico

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1979 – 1983, University of Puerto Rico School of Law; J.D. (*magna cum laude*), 1983

1974 – 1979, University of Puerto Rico; B.S., 1979

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1996 – present  
O'Neill & Borges LLC

American International Plaza  
250 Muñoz Rivera Avenue, Suite 800  
San Juan, Puerto Rico 00918  
Capital Partner

1995 – 1996  
Circuit Court of Appeals of Puerto Rico  
675 César González Street  
San Juan, Puerto Rico 00917  
Judge

1993 – 1995  
Department of Justice of Puerto Rico  
601 Olimpo & Axtmayer Street  
Stop 11  
San Juan, Puerto Rico 00902  
Solicitor General

1986 – 1993  
O'Neill & Borges  
Chase Manhattan Bank Building  
254 Muñoz Rivera Avenue, Tenth Floor  
San Juan, Puerto Rico 00918  
Non-Capital Partner (1990 – 1993)  
Associate Attorney (1986 – 1990)

1984 – 1986  
United States District Court for the District of Puerto Rico  
United States Court of Appeals for the First Circuit  
José V. Toledo U.S. Courthouse  
300 Recinto Sur, Fourth Floor  
San Juan, Puerto Rico 00901  
Law Clerk to the Honorable Juan R. Torruella

October 1983 – August 1984  
Institute of Judicial Studies  
(Predecessor to Judicial Academy of Puerto Rico)  
Courts Administration Office of Puerto Rico  
677 César González Street  
San Juan, Puerto Rico 00917  
Law Clerk

September 1982 – May 1983  
Research Assistant to Professor Herminio M. Brau  
University of Puerto Rico Law School  
San Juan, Puerto Rico 00931

May 1979 – May 1985

United States Army Reserve

Reserve Duty, 301st Military Police Company, Puerto Rico (August 1979 – May 1985)

Active Duty for basic and advanced individual training, Ft. McClellan, Alabama (May 1979 – August 1979)

Other Affiliations (uncompensated)

January 1994 – March 1994

Ballet Concierto de Puerto Rico

316 De Diego Avenue

Santurce, Puerto Rico 00907

President of the Board

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 registered for selective service upon turning 18 and served in the military in the following capacities:

May 1979 – May 1985

United States Army Reserve

Honorable Discharge: Specialist (E-4)

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.

University of Puerto Rico School of Law, *magna cum laude* (1983)

University of Puerto Rico School of Law, Manuel Resumil Aragunde Award (1983)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (2010 – present)

Federal Bar Association (2008 – present)

Ethical Investigation Committee, United States District Court for the District of Puerto Rico (2002 – 2003)

Puerto Rico Bar Association (1984 – 2010)

**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.

Puerto Rico, 1983

There have been no lapses in membership.

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

Supreme Court of Puerto Rico, 1983

United States Court of Appeals for the First Circuit, 1986

United States District Court for the District of Puerto Rico, 1986

There have been no lapses in membership.

**11. Memberships:**

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

Association of Labor Relations Practitioners (2011 – present)

Ballet Concierto de Puerto Rico (January 1994 – March 1994)

President of the Board

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

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, or religion, or

national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

*Documentation: A Sword and a Shield*, Personnel Law Update, Council on Education in Management, San Juan, Puerto Rico, March 1997. Copy supplied.

*Reducciones de Personal y Cierres de Operaciones* (Corporate Shutdowns and Reductions in Force), Seminario Laboral, Puerto Rico Chamber of Commerce, San Juan, Puerto Rico, April 1991. Copy supplied.

*Bono de Navidad En El Sector Privado* (Private-Sector Christmas Bonus in Puerto Rico), Derecho Laboral, Boletín Informativo de la Comisión de Derecho Laboral del Colegio de Abogados de Puerto Rico, Vol. 4 (Sept. 1989 – Oct. 1990). Copy supplied.

*Derechos En Cierres De Planta, Despidos y Cesantías Económicas* (Shutdowns, Layoffs and Economic - Related Dismissals), Boletín Informativo de la Comisión de Derecho Laboral del Colegio de Abogados de Puerto Rico, Vol. 3 (1988 – 1989). Copy supplied.

*COBRA* (Medical Plan Continuation Coverage), Boletín Informativo de la Comisión de Derecho Laboral del Colegio de Abogados de Puerto Rico, Vol. 2 (1987 – 1988). Copy supplied.

*Cuando No Se Puede Tomar Más de Uno: La Opción del Conductor a la Prueba de Embriaguez* (Sobriety Tests), Boletín Judicial, Vol. 6, N.2 (1984). Copy supplied.

*La Regla 95.1 De Procedimiento Criminal: Uso y Desuso* (Rule 95.1 of Puerto Rico Rules of Criminal Procedure), Boletín Judicial, Vol. 5, N.4 (1983). Copy supplied.

*Reflexiones Sobre Los Efectos Jurídicos De La Adopción Por Nnuestro Tribunal Supremo De La Doctrina Civilista De La Causalidad Adecuada Para Imponer Responsabilidad Extracontractual* (Test adopted in Puerto Rico to assess causality in context of extracontractual liability), with Professor Herminio M. Brau, Revista del Colegio de Abogados de Puerto Rico, Vol. 44, No. 2 (1983). Copy supplied.

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

None.

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

None.

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

February and March 2012: Speaker on personnel contracting and just cause for employment termination in light of recent decisions of the Puerto Rico Supreme Court, Client Briefing, O'Neill & Borges, San Juan, Puerto Rico. I have no notes, transcript or recording. The address of O'Neill & Borges is American International Plaza, 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918.

February and March 2011: Speaker on statutory leaves of absence and developments in employment-related torts, Client Briefing, O'Neill & Borges, San Juan, Puerto Rico. I have no notes, transcript or recording. The address of O'Neill & Borges is American International Plaza, 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918.

February 2010: Speaker on developments on workplace harassment, Client Briefing, O'Neill & Borges, San Juan, Puerto Rico. I have no notes, transcript or recording. The address of O'Neill & Borges is American International Plaza, 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918.

October 2007: Panelist, Hispanic National Bar Association Convention, Litigation Panel, San Juan, Puerto Rico. Opening remarks supplied.

February 1999: Panel Moderator, Labor Law Conference, Inter-American University School of Law, San Juan, Puerto Rico. Opening remarks supplied.

May 1998: Speaker on employer rights under the Family and Medical Leave Act, Personnel Law Update, Council on Education in Management, San Juan, Puerto Rico. I have no notes, transcript or recording. The address of the Council on Education in Management is 350 North Wiget Lane, Suite 100, Walnut Creek, CA 94598.

April 1991: Speaker on Corporate Shutdowns and Layoffs, Seminar, Puerto Rico Chamber of Commerce, San Juan, Puerto Rico. I spoke from notes based on paper distributed in the seminar. Paper previously supplied in response to Question 12a.

March 1990: Speaker on Federal Minimum Wage in Puerto Rico, Seminar, Puerto Rico Chamber of Commerce, San Juan, Puerto Rico. I have no notes, transcript or recording. The address of the Puerto Rico Chamber of Commerce is 100 Tetuan Street, San Juan PR 00901.

- 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.

*Buena Acogida Togada a Designación de Gelpi*, EL NUEVO DÍA, April 26, 2006. 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 served as a judge on the Puerto Rico Circuit Court of Appeals from 1995 to 1996 after being appointed by the Governor of Puerto Rico and confirmed by Puerto Rico's Senate. The Circuit Court of Appeals, currently known as the Court of Appeals, is the intermediate court of appeals in Puerto Rico. It has statutory jurisdiction over judgments and orders issued by the Court of First Instance of Puerto Rico in civil and criminal cases, and over orders issued by administrative agencies in the Commonwealth. The Court has 39 judges organized in three-judge panels. The Puerto Rico Supreme Court reviews the decisions of the Court of Appeals.

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

As a judge in the Court of Appeals, I did not preside over cases to verdict or judgment.



i. Of these, approximately what percent were:

jury trials:	____%
bench trials:	____%
civil proceedings:	____%
criminal proceedings:	____%

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

I wrote the opinion in the following 56 published decisions:

(1) *Primerica Life Insurance Company v. García et al.*, No. KLAN 95-00719 & KLCE 95-00959, 1996 PR App. LEXIS 1016 (P.R. Cir. May 30, 1996).

(2) *Pueblo de Puerto Rico en interés del menor J.L.Q.R.*, No. KLCE 96-00281 96 DTA 818 (P.R. Cir. May 30, 1996).

(3) *Mercado Del Valle, et al. v. Panthers Military Society et al.*, No. KLAN 95-00801, 1996 PR App. LEXIS 796 (P.R. Cir. April 30, 1996).

(4) *López Velardo v. García, et al.*, No. KLAN 95-00917, 1996 PR App. LEXIS 1195 (P.R. Cir. April 30, 1996).

(5) *Nieves Méndez, et al. v. Mercado Rivera et al.*, No. KLAN 95-00777, 1996 PR App. LEXIS 1196 (P.R. Cir. April 30, 1996).

(6) *Padilla Lugo v. Carlo Maya*, No. KLCE 96-00334, 1996 PR App. LEXIS 1204 (P.R. Cir. April 30, 1996).

(7) *Pérez Hidalgo, et al. v. Rovira, et al.*, No. KLAN 95-00990, 1996 PR App. LEXIS 1213 (P.R. Cir. April 30, 1996).

(8) *Sociedad Legal de Gananciales et al. v. Municipio de Aguada, et al.*, No. KLAN 95-00861, 1996 PR App. LEXIS 942 (P.R. Cir. March 29, 1996).

(9) *Vázquez Rivera v. American Express Travel Related Services Co., Inc., Amex Assurance Company*, No. KLCE 96-00132, 1996 PR App. LEXIS 962 (P.R. Cir. March 29, 1996).

(10) *Vázquez Rivera, et al. v. Giles et al.*, No. KLAN-96-00064, 96 DTA 633 (P.R. Cir. February 29, 1996).

(11) *La Cruz Azul de P.R., Inc. v. Polanco Martínez et al.*, KLAN 95-00040, 1996 PR App. LEXIS 1623 (P.R. Cir. February 22, 1996).

- (12) *Secretario del Trabajo y Recursos Humanos de Puerto Rico v. Pepsi Cola Puerto Rico Bottling Co.*, No. KLAN 96-00040, 1996 PR App. LEXIS 1625 (P.R. Cir. February 22, 1996).
- (13) *Pueblo de Puerto Rico v. Santiago Rodríguez*, No. KLCE 95-00993, 1996 PR App. LEXIS 1626 (P.R. Cir. February 22, 1996).
- (14) *Pueblo de Puerto Rico v. Vargas González*, No. KLCE-96-00145, 96 DTA 577 (P.R. Cir. February 21, 1996).
- (15) *Pueblo de Puerto Rico v. Rivera Hernández*, No. KLCE 96-00086, 1996 PR App. LEXIS 1297 (P.R. Cir. January 31, 1996).
- (16) *Baco Rodríguez et al. v. Bumble-Bee International, Inc.*, No. KLAN 95-01411, 1996 PR App. LEXIS 1298 (P.R. Cir. January 31, 1996).
- (17) *Pueblo de Puerto Rico v. Carlo Padilla*, No. KLCE 96-00049, 1996 PR App. LEXIS 1312 (P.R. Cir. January 31, 1996).
- (18) *Sociedad de Gananciales v. Sociedad de Gananciales*, No. KLAN 95-00711, 1996 PR App. LEXIS 1313 (P.R. Cir. January 31, 1996).
- (19) *Vélez Montalvo v. Ocasio Sepúlveda et al.*, No. KLAN 95-00723, 1996 PR App. LEXIS 1322 (P.R. Cir. January 31, 1996).
- (20) *Estancias de Yauco, S.E. v. Clamil Construction et al.*, No. KLCE 96-00065, 1996 PR App. LEXIS 1323 (P.R. Cir. January 31, 1996).
- (21) *Pueblo de Puerto Rico v. Carlo Padilla et al.*, No. KLCE 96-00069, 1996 PR App. LEXIS 1325 (P.R. Cir. January 31, 1996).
- (22) *Núñez Acevedo v. McGAW de Puerto Rico, Inc.*, No. KLCE-95-01071, 96 DTA 556 (P.R. Cir. January 30, 1996).
- (23) *Ayala, Et al v. Estado Libre Asociado de PR, et al.*, No. KLCE 95-01023, 1996 PR App. LEXIS 1253 (P.R. Cir. January 25, 1996).
- (24) *Tirado Colón et al. v. Reina de Los Ángeles, Inc. et al.*, No. KLCE 95-00264, 1996 PR App. LEXIS 1432 (P.R. Cir. January 11, 1996).
- (25) *Acevedo Rodríguez v. Bonilla Avilés*, 95 DTA 1190, 95 DTA 1190 (P.R. Cir. December 15, 1995).
- (26) *Pueblo de Puerto Rico v. Crespo Cardona*, No. KLAN-95-01372, 95 DTA 1002 (P.R. Cir. December 14, 1995).

- (27) *Vélez Valle v. Rodríguez*, No. KLCE-95-00520, 95 DTA 1165 (P.R. Cir. November 28, 1995).
- (28) *Vázquez Bonilla v. Valentín Vazquez et al.*, No. KLCE-95-00533, 95 DTA 951 (P.R. Cir. November 28, 1995).
- (29) *Pueblo de Puerto Rico v. Rivera Rivera et al.*, No. KLCE-95-00632, 95 DTA 1153 (P.R. Cir. November 17, 1995).
- (30) *Ferrer Pabón v. Departamento de Hacienda*, No. KLCE95-00604, 1995 PR App. LEXIS 946 (P.R. Cir. November 7, 1995).
- (31) *Díaz Vicente v. Hospital General Menonita, Inc. y Otros*, No. KLCE 95-00401, 95 DTA 846 (P.R. Cir. October 31, 1995).
- (32) *Peña Rondón et al. v. Seguros Triple S Inc. et al.*, No. KLAN-95-00290, 95 DTA 305 (P.R. Cir. September 30, 1995).
- (33) *Espinosa Cabrera v. Mass Services Corporation H/N/C Farmacias El Amal*, No. KLAN- 95-00382, 95 DTA 304 (P.R. Cir. September 30, 1995).
- (34) *Secretario del Trabajo y Recursos Humanos de Puerto Rico v. Banco Popular de Puerto Rico*, No. KLAN 96-00222, 95 DTA 303 (P.R. Cir. September 30, 1995).
- (35) *Román Román v. Manzano et al.*, No. KLCE-95-00598, 95 DTA 958 (P.R. Cir. September 25, 1995).
- (36) *Figueroa Rodríguez et al. v. Flores et al.*, No. KLAN 95-00162, 1995 PR App. LEXIS 16 (P.R. Cir. August 31, 1995).
- (37) *Nieves Nieves et al. v. Sanabria et al.*, No. KLCE 95-00263, 1995 PR App. LEXIS 721 (P.R. Cir. August 31, 1995).
- (38) *Administración de Reglamentos y Permisos v. Meléndez et al.*, No. KLCE 95-00170, 1995 PR App. LEXIS 724 (P.R. Cir. August 31, 1995).
- (39) *Sánchez Sánchez et al., v. Irizarry Pérez et al.*, No. KLAN95-00141, 1995 PR App. LEXIS 752 (P.R. Cir. August 31, 1995).
- (40) *Solís, et al. v. Corporación Azucarera de Puerto Rico*, No. KLCE95-00340, 1995 PR App. LEXIS 709 (P.R. Cir. August 30, 1995).
- (41) *Fondo del Seguro del Estado v. Edcar Industries, Inc.*, No. KLCE 95-00277, 1995 PR App. LEXIS 626 (P.R. Cir. August 18, 1995).

- (42) *Felipez Montes v. Díaz et al.*, No. KLAN 95-00165, 1995 PR App. LEXIS 627 (P.R. Cir. August 18, 1995).
- (43) *Bernal Ayala v. Searle & Co. y Fondo del Seguro del Estado*, No. KLAN 95-00296, 1995 PR App. LEXIS 629 (P.R. Cir. August 18, 1995).
- (44) *Banco Santander de Puerto Rico v. Fajardo Farms Corporation*, No. KLAN 95-00177, 1995 PR App. LEXIS 628 (P.R. Cir. August 18, 1995).
- (45) *Gerena Mendoza v. Velázquez Contreras*, No. KLAN 95-00146, 1995 PR App. LEXIS 690 (P.R. Cir. May 26, 1995).
- (46) *Santander National Bank (Sustituido por Olympic Mortgage Bankers Corp.) v. Pérez & Pérez Auto Parts, Inc. et al.*, No. KLAN 95-00168, 1995 PR App. LEXIS 267 (P.R. Cir. May 26, 1995).
- (47) *Quiros Torres v. Depto. de Educación Pública et al.*, No. KLAN 95-00169, 1995 PR App. LEXIS 268 (P.R. Cir. May 26, 1995).
- (48) *Gerena Mendoza v. Velázquez Contrera*, No. KLAN 95-00146, 1995 PR App. LEXIS 269 (P.R. Cir. May 26, 1995).
- (49) *Ávila Velázquez v. Municipio de San Juan et al.*, No. KLAN 95-00166, 1995 PR App. LEXIS 270 (P.R. Cir. May 26, 1995).
- (50) *Rosario De León v. Rodríguez Ramírez*, No. KLAN 95-00167, 1995 PR App. LEXIS 275 (P.R. Cir. May 26, 1995).
- (51) *Troncoso et al. v. Blanco et al.*, No. KLAN 95-00164, 1995 PR App. LEXIS 276 (P.R. Cir. May 26, 1995).
- (52) *Cooperativa de Ahorro y Crédito Guayama o Cooperativa de Ahorro y Crédito Maunabo v. Torres et al.*, No. KLCE 95-00174, 1995 PR App. LEXIS 277 (P.R. Cir. May 26, 1995).
- (53) *Nieves v. Poncebank Corp.*, No. KLCE 95-00200, 1995 PR App. LEXIS 279 (P.R. Cir. May 26, 1995).
- (54) *Blanco De La Torre et al. v. Campo et al.*, No. KLCE 95-00125, 1995 PR App. LEXIS 279 (P.R. Cir. April 28, 1995).
- (55) *Rodríguez h/n/oc Super Service, et al. v. Harper-Wyman Company, et al.*, No. KLCE 95-00113, 1995 PR App. LEXIS 121 (P.R. Cir. April 28, 1995).

(56) *M & A Financial Corp. v. Hernández Lizardi et al.*, No. KLCE 95-00180, 1995 PR App. LEXIS 126 (P.R. Cir. April 28, 1995).

- 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).

When I left the Circuit Court of Appeals of Puerto Rico in 1996, I did not take my files with me. Unfortunately, the information relating to the attorneys assigned to the case from this time period exists only in the hard copy files. These closed case files have been moved to an offsite warehouse facility.

(1) *Pueblo de Puerto Rico en interés del menor J.L.Q.R.*, No. KLCE 96-00281, 96 DTA 818 (P.R. Cir. May 30, 1996).

The issue in this case was whether the trial court erred in amending the indictment over the prosecution's objection, to charge a juvenile with a crime carrying a lesser sentence. After a judicial finding of probable cause, the defendant had been charged with possession with intent to distribute a controlled substance. On the day of the trial, the judge amended the indictment *sua sponte*, after which the defendant pled guilty to the lesser crime and was sentenced accordingly. The prosecution objected it was entitled to present evidence of the crime originally charged.

In a unanimous opinion I authored, the court of appeals held that the trial court may not deprive the prosecutor of the prerogative of presenting evidence of the crime charged in the indictment by reducing the crime without hearing the evidence in support of the charge.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(2) *Velardo v. Garcia et al.*, No. KLAN 95-00917, 1996 PR App. LEXIS 796 (P.R. Cir. Apr. 30, 1996).

The issue in this case was whether the owner of a leased property had the right to reclaim the property for commercial development based on his asserted intent to so develop under the Puerto Rico Reasonable Leases Act. The owner filed an eviction action against the lessee to recover possession of the property to open a restaurant. The trial court rejected the owner's claim because even though he had expressed the intent to open a restaurant, he had no experience in the restaurant industry, and had not sought advice on the matter.

In a unanimous opinion I authored, the appeals court held that there was no basis to reject the lessor's claim of intent to open a restaurant in the property. First, the lessee admitted in the answer to the complaint and during the trial that the owner intended to open a restaurant. Second, the Puerto Rico Supreme Court had never imposed upon owners the obligation to obtain specialized advice as a condition precedent to reclaim property for commercial development but had rather recognized eviction actions under analogous circumstances.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(3) *Secretario del Trabajo y Recursos Humanos de Puerto Rico v. Pepsi Cola Puerto Rico Bottling Co.*, No. KLAN 96-00040, 1996 PR App. LEXIS 1625 (P.R. Cir. February 22, 1996).

The issue in the case was whether the defendant employer was entitled to relief from a default judgment in a case seeking payment of discharge indemnity under the Puerto Rico Unjust Discharge Act. Plaintiff sued the employer pursuant to a special statute governing the judicial transmittal of labor and employment claims. The trial court entered a default judgment against the defendant employer, after which the employer unsuccessfully moved for relief from judgment.

In a unanimous opinion I authored, the appeals court held that the statute pursuant to which the complaint had been filed requires motions for relief from judgment to be filed under oath, which the employer had not done. Therefore, relief from judgment had been properly denied for failure to comply with this statutory requirement.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(4) *Núñez Acevedo v. McGAW de Puerto Rico, Inc.*, No. KLCE-95-01071, 96 DTA 556 (P.R. Cir. January 30, 1996).

The issue in the case was whether a debtor in bankruptcy had the obligation to list a particular claim in schedules filed with the Bankruptcy Court, and could pursue in state court a claim for payment of services rendered. Plaintiff sued the defendant to collect amounts allegedly due for unpaid services and for related damages. Defendant sought dismissal claiming that (1) plaintiff had committed fraud because he had filed for bankruptcy and failed to list the claim against the defendant in the schedules submitted to the Bankruptcy Court, and (2) plaintiff lacked standing to bring the action because it corresponded to the bankruptcy trustee. The trial court denied the motion to dismiss.

In a unanimous opinion I authored, the appeals court held that even though then existing provisions of the Bankruptcy Code required plaintiff to list claims for

services rendered prior to the bankruptcy filing, the claims at issue in the case were based on services rendered after the filing. Likewise, notwithstanding the fact that the trustee represented the estate, the claims at issue originated after the bankruptcy filing and hence, were not part of the estate. Accordingly, the motion to dismiss had been properly denied.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(5) *Pueblo de Puerto Rico v. Rivera Rivera*, No. KLCE-95-00632, 95 DTA 1153 (P. R. Cir. November 17, 1995).

The issue in this case was whether to uphold the trial court's order that the prosecutor must provide the defendant with a copy of a sworn statement prior to the hearing to be held to determine if probable cause existed to accuse defendant of the crimes for which he had been arrested.

In the majority opinion I authored, the appeals court held the Rules of Criminal Procedure regulate discovery, providing in relevant part that defendants are entitled to examine sworn statements of witnesses the prosecution uses at the preliminary hearing. In this case, however, the prosecution did not intend to use the declarant as a witness during that hearing. Therefore, the defendant was not entitled to examine the sworn statement at that stage of the process.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report in Court of Appeals. Since the Supreme Court reviewed the case, the names of the attorneys was included in the Supreme Court's decision, as follows: for petitioner Rivera Rivera, Zinia Acevedo (Legal Aid Society of Puerto Rico); for the government (Pueblo de Puerto Rico), Carlos Lugo Fiol, Jacqueline Novas, Ricardo Alegría Pons, and Angel Rivera. No additional contact information appears in the published decision.

(6) *Espinosa Cabrera v. Mass Services Corporation H/N/C Farmacias El Amal*, No. KLAN- 95-00382, 95 DTA 304 (P. R. Cir. September 30, 1995).

The issue in the case was whether a sale of assets qualified as a transfer of an ongoing business under the Puerto Rico Unjust Discharge Act. Plaintiff was discharged during a probationary period but alleged entitlement to the statutory indemnity under the Unjust Discharge Act because she came to be an employee of the defendant when the company for which she was working was sold to the defendant. The trial court agreed with plaintiff.

In a unanimous opinion I authored, the appeals court reversed. The court held that the statute prohibits the assets purchaser from conditioning employment of the seller's employees upon successful completion of a probationary period only

when it has purchased an ongoing business, and no such purchase existed in the case. The purchaser had acquired the assets of plaintiff's former employer but had immediately liquidated the business rather than manage it as an ongoing concern. Consequently, there was no ongoing business precluding the purchaser from conditioning plaintiff's employment at a different facility upon successful completion of a probationary period.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(7) *Solís et al. v. Corporación Azucarera de Puerto Rico*, No. KLCE95-00340, 1995 PR App. LEXIS 709 (P. R. Cir. August 30, 1995).

The issue in the case was whether a genuine issue of material fact precluded summary judgment dismissing plaintiffs' overtime claims. Puerto Rico law requires payment of overtime to non-exempt executive, administrative, and professional employees. Eight plaintiffs filed a complaint seeking overtime pay. Defendant filed a motion for summary judgment requesting dismissal, alleging plaintiffs were exempt executive employees. The trial court denied the motion for summary judgment.

In a unanimous opinion I authored, the appeals court held that based on the regulatory factors used to define an executive employee, the evidence submitted in support of the motion for summary judgment was insufficient to conclude plaintiffs were exempt executive employees as a matter of law. Therefore, the motion for summary judgment had been correctly denied.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(8) *Cooperativa de Ahorro y Crédito Guayama o Cooperativa de Ahorro y Crédito Maunabo v. Torres et al.*, No. KLCE 95-00174, 1995 PR App. LEXIS 279 (P. R. Cir. May 26, 1995).

The issue in the case was whether a joint debtor should have been excluded from an adverse judgment issued in a collection action. A credit union sued the respondent and another person to collect a loan in arrears. The trial court entered judgment against the defendants, both of whom had signed a promissory note, but subsequently amended the judgment to exclude the respondent because the creditor had not attempted to renegotiate the debt with her, and allegedly she had not been notified of the trial date.

In a unanimous opinion I authored, the appeals court held that respondent was not entitled to be excluded from the adverse judgment. First, the record showed she was notified of the trial date. Second, since the Puerto Rico Civil Code entitles creditors to collect from any or all of the joint debtors, she was a proper party in



the case. Third, the Civil Code similarly provides a creditor need not accept a lesser payment than the parties have agreed on, such that the respondent could not compel the creditor to agree to a restructuring of the debt through a payment plan.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(9) *Nieves v. Poncebank Corp.*, No. KLCE 95-00200, 1995 PR App. LEXIS 279 (P. R. Cir. May 26, 1995).

The issue in the case was whether a default judgment should have been entered against the defendant employer. Plaintiff sued defendant alleging employment discrimination, retaliation, and unjust discharge. In lieu of filing an answer, the defendant moved for dismissal or summary judgment based on *res judicata* because plaintiff had unsuccessfully filed similar claims in the past. Plaintiff countered the trial court should have ordered entry of a default judgment against defendant because the case had been filed under the special statute for the judicial transmittal of labor and employment claims, and the statute requires a default to be entered if the defendant does not answer within a number of days after being served. The trial court denied plaintiff's motion.

In an opinion I authored, the appeals court unanimously held that default was not proper based on Puerto Rico Supreme Court precedent. Consequently, the trial court correctly denied plaintiff's request for a default judgment.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(10) *M & A Finacial Corp. v. Hernández Lizardi et al.*, No. KLCE 95-00180, 1995 PR App. LEXIS 126 (P. R. Cir. April 28, 1995).

The issue in the case was whether a preferential creditor is an indispensable party in a collection action initiated by a subordinated creditor. Petitioners were sued for failure to satisfy a personal loan. Judgment was entered, a lien was recorded on their property, the title was transferred, and an order of eviction issued. Petitioners claimed the judgment was void because the property was subject to a first mortgage, and the mortgagee had not been made a party in the case despite being in their view an indispensable party. The trial court rejected the claim.

In an opinion I authored, the appeals court unanimously held that based on the concept of "indispensable party" incorporated in the Puerto Rico Rules of Civil Procedure, and in light of rights the Commonwealth's Mortgage Act accords to preferential creditors, the holder of a first mortgage is not an indispensable party in a personal or real action brought by a subordinated creditor against the debtor. The preferential credit is not altered by any such action because it is protected

against potentially conflicting claims that may be brought by the subordinated creditors.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

- 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. For the cases where you don't have contact information – is this information available on the docket?

The name and contact information for the attorneys who played a significant role in the case is not available from published opinion reports. When I left the Circuit Court of Appeals of Puerto Rico in 1996, I did not take my files with me. Unfortunately, the information relating to the attorneys assigned to the case from this time period exists only in the hard copy files. These closed case files have been moved to an offsite warehouse facility.

(1) *Pueblo de Puerto Rico en interés del menor J.L.Q.R.*, No. KLCE 96-00281, 96 DTA 818 (P.R. Cir. May 30, 1996).

(2) *López Velardo v. García, et al.*, No. KLAN 95-00917, 1996 PR App. LEXIS 796 (P.R. Cir. Apr. 30, 1996).

(3) *Secretario del Trabajo y Recursos Humanos de Puerto Rico v. Pepsi Cola Puerto Rico Bottling Co.*, No. KLAN 96-00040, 1996 PR App. LEXIS 1625 (P.R. Cir. February 22, 1996).

(4) *Núñez Acevedo v. McGAW de Puerto Rico, Inc.*, No. KLCE-95-01071, 96 DTA 556 (P.R. Cir. January 30, 1996).

(5) *Pueblo de Puerto Rico v. Rivera Rivera*, No. KLCE-95-00632, 95 DTA 1153 (P.R. Cir. November 17, 1995). Name and contact information for the attorneys who played a significant role in the case not available from published opinion report in Court of Appeals. Since the Supreme Court reviewed the case, the names of the attorneys were included in the Supreme Court's decision, as follows: for petitioner Rivera Rivera, Zinia Acevedo (Legal Aid Society of Puerto Rico); for the government (El Pueblo de Puerto Rico), Carlos Lugo Fiol, Jacqueline Novas, Ricardo Alegría Pons, and Angel Rivera. No additional contact information appears in the published decision.

(6) *Espinosa Cabrera v. Mass Services Corporation H/N/C Farmacias El Amal*, No. KLAN- 95-00382, 95 DTA 304 (P.R. Cir. September 30, 1995). Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(7) *Solís et al. v. Corporación Azucarera de Puerto Rico*, No. KLCE95-00340, 1995 PR App. LEXIS 709 (P.R. Cir. August 30, 1995).

(8) *Cooperativa de Ahorro y Crédito Guayama o Cooperativa de Ahorro y Crédito Maunabo v. Torres et al.*, No. KLCE 95-00174, 1995 PR App. LEXIS 279 (P.R. Cir. May 26, 1995).

(9) *Nieves v. Poncebank Corp.*, No. KLCE 95-00200, 1995 PR App. LEXIS 279 (P.R. Cir. May 26, 1995).

(10) *M & A Financial Corp. v. Hernández Lizardi et al.*, No. KLCE 95-00180, 1995 PR App. LEXIS 126 (P.R. Cir. April 28, 1995).

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

None.

- 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.

*Banco Santander de Puerto Rico v. Fajardo Farms Corporation*, No. KLAN 95-00177, 1995 PR App. LEXIS 628 (P.R. Cir. Aug. 18, 1995); *rev'd*, 141 D.P.R. 237 (P.R. 1996).

In a unanimous opinion, the court of appeals concluded that a motion for additional findings of fact did not toll the statutory period within which to seek review of the trial court's denial of a request for relief from judgment, because as enacted, the motion for additional findings refers to requests on facts to be included in a judgment rather than in an order denying relief from judgment. The Supreme Court reversed, finding the motion for additional findings of fact tolls the period to seek review of denial of a motion for relief from judgment if relief is grounded on the trial court's lack of personal jurisdiction.

*La Sociedad Legal de Gananciales compuesta por Pablo Salas Mangual, et al. v. Municipio de Aguada, et al.*, No. KLAN 95-00861 1996 PR App. LEXIS 942 (Mar. 29, 1996), *rev'd*, 144 D.P.R. 114 (P.R. 1997).

In a unanimous opinion, the court of appeals concluded that a paved trail constituted an easement (servitude) of passage or right of way by sign on a property because the trial judge had properly inspected the area in question and confirmed the trail had been constructed prior to appellants' acquisition of the property and was used by the public at large. Further, appellant's purchase title did not negate or qualify the right of way. The Supreme Court reversed, holding

no right of way had been established by sign because the paved trail ran through three parcels of land, and the record did not evidence the trail had been constituted by a single owner prior to transferring the corresponding titles.

- 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.

I estimate that 5% of my decisions were unpublished opinions. Unpublished decisions are maintained in the corresponding court files. In closed cases, the files are kept in official offsite storage at a warehouse with the Office of Court Administration of Puerto Rico.

- 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.

None.

- 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.

None.

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.

The issue of recusal did not arise in any matter in which I was involved. Rule 63.1 of the Puerto Rico Rules of Civil Procedure sets forth the grounds upon

which a judge should disqualify himself or herself from a proceeding, and establishes the procedure by which recusal is perfected. Recusal may be entered sua sponte or by motion. A recusal motion must be sworn, stating the facts upon which it is grounded. If the judge decides recusal is not appropriate, the motion is referred to another judge to adjudicate the recusal request. Grounds for recusal include instances where the judge's impartiality might reasonably be questioned, such as when a judge may have a personal bias or prejudice concerning a party or a party's attorney, personal interest in the outcome of the case, and family relationship with any of the parties or their attorneys.

**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.

Solicitor General of Puerto Rico (1993 – 1995). I was appointed by the Governor of Puerto Rico (Hon. Pedro Rosselló-González), and confirmed by Puerto Rico's Senate. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

2007 – 2008: Campaigns of Pedro Pierluisi for Resident Commissioner (Puerto Rico's non-voting member of Congress), and of Luis Fortuño for Governor of Puerto Rico. I was a volunteer providing assistance on compliance and legal issues throughout the campaign.

2012: Reelection Campaigns of Pedro Pierluisi for Resident Commissioner, and of Luis Fortuño for Governor of Puerto Rico. I was a volunteer providing assistance on compliance and legal issues throughout the campaign.

**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 1983 to 1984, I served as a law clerk in the Institute of Judicial Studies of the Courts Administration Office of Puerto Rico. The Institute of Judicial Studies is the predecessor of the Judicial Academy of Puerto Rico. It provided assistance to trial judges with legal research and with writing of draft orders and judgments.

From September 1984 to November 1984, I served as a law clerk to the Honorable Juan R. Torruella, Chief Judge of the United States District Court for the District of Puerto Rico. From November 1984 to August 1986, I continued to clerk for the Honorable Juan R. Torruella after he was appointed as a Circuit Judge of the United States Court of Appeals for the First Circuit.

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

I have never practiced law alone.

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

1986 – 1993  
O'Neill & Borges  
Chase Manhattan Bank Building,  
Tenth Floor  
254 Muñoz Rivera Avenue  
San Juan, Puerto Rico 00918  
Associate Attorney (1986 – 1990)  
Non-Capital Partner (1990 – 1993)

1993 – 1995  
Department of Justice of Puerto Rico  
601 Olimpo & Axtmayer Street  
Stop 11  
San Juan, Puerto Rico 00902  
Solicitor General

1995 – 1996  
Circuit Court of Appeals of Puerto Rico  
Current Address:  
675 César González Street.  
San Juan, Puerto Rico 00919  
Judge

1996 – present  
O'Neill & Borges

American International Plaza  
250 Muñoz Rivera Avenue, Suite 800  
San Juan, Puerto Rico 00918  
Capital Partner (1996 – present)

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

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

b. Describe:

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

After completing my clerkship, I began private practice in 1986 at O'Neill & Borges. As an associate, and then as a partner beginning in 1990, I worked on a mix of trial court and appellate matters before federal and state courts, the diversity and complexity of which have increased over the years. Initially, these matters involved issues such as wrongful discharge, and corporate reorganizations and shutdowns.

In 1993, I was appointed Solicitor General of Puerto Rico. As Solicitor General, I was responsible for investigating ethical complaints against practicing attorneys and for representing the Government of Puerto Rico on appellate matters before the Commonwealth's Supreme Court and the United States Court of Appeals for the First Circuit. I represented the government on a broad variety of civil and criminal issues, including the constitutionality of amendments to the Constitution of Puerto Rico, the statutory arrest authority of municipal police officers, and tort liability.

In 1995, I was appointed as a judge in the Circuit Court of Appeals of Puerto Rico, currently known as Court of Appeals. The Court serves as the intermediate court of appeals in the Commonwealth, with jurisdiction over civil and criminal cases originating in the Court of First Instance, and over orders issued by administrative agencies pursuant to the Puerto Rico Uniform Administrative Procedure Act. Its decisions are reviewed by the Puerto Rico Supreme Court.

In 1996, I returned to private practice as a partner in O'Neill & Borges. Upon return to the firm, I expanded the scope of my practice to include litigation related to employment, commercial, and administrative matters in federal and Puerto Rico Courts. In June 1998, the State Elections Commission of Puerto Rico retained me while in O'Neill & Borges to

provide legal services to the Commission. I did so until June 2006.

As outside counsel to the Commission, I advised and represented the agency before federal and state courts in cases involving different aspects of the electoral law, such as the legality of political-party registration requirements; validity of permanent ineligibility for public office; deadlines to comply with candidacy qualification requirements; right of political parties to disqualify certified candidates from the ballot; status option representation in status plebiscites; and the Government's right to speech financed with public funds during electoral campaigns.

From December 1998 until November 1999, I was Assistant Managing Partner of O'Neill & Borges, and from December 1999 until November 2002, I was the Managing Partner of the firm.

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

I have provided legal services to companies in the airline, banking, construction, product-distribution, food-processing, insurance, manufacturing, pharmaceutical, restaurant, and telecommunication industries, and to government entities such as the Puerto Rico State Elections Commission, the Commonwealth's Hotel Development Corporation, and the Corporation of the State Insurance Fund, which administers the state's worker's compensation system. Initially, I devoted most of my time to labor and employment law and litigation. Upon returning to private practice after serving as Solicitor General and judge in the Commonwealth's Circuit Court of Appeals, I expanded my practice to include employment law, commercial, and administrative matters.

- 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.

Approximately 90% of my practice has been in litigation. Over the course of my career, I have appeared in court frequently to attend court conferences, oral arguments, and evidentiary hearings.

- i. Indicate the percentage of your practice in:

- |                             |      |
|-----------------------------|------|
| 1. federal courts:          | 50 % |
| 2. state courts of record:  | 45 % |
| 3. other courts:            | 0 %  |
| 4. administrative agencies: | 5%   |



ii. Indicate the percentage of your practice in:

- |                          |      |
|--------------------------|------|
| 1. civil proceedings:    | 100% |
| 2. criminal proceedings: | 0%   |

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

I have tried 25 cases to verdict, judgment or final decision (one of the cases was tried before a jury): 16 as sole counsel, eight as chief counsel, and one as associate counsel.

i. What percentage of these trials were:

- |              |      |
|--------------|------|
| 1. jury:     | 4%   |
| 2. non-jury: | 96 % |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced law before the Supreme Court of the United States.

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

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. Specifically describe the trials and holdings. Also, consider substituting some older cases with more recent ones.

(1) *Rosselló-González v. Calderón-Serra et al.*, 398 F. 3d 1 (1st Cir. 2005).

This case involved the exercise of federal jurisdiction in a state electoral dispute related to one of the candidates for governor and a number of voters who had voted for him in the general election. I represented the co-defendant State

Elections Commission as chief counsel at trial, and assisted Professor Richard Pildes of New York University on appeal.

Plaintiffs challenged the legality of certain ballots cast in the election that resulted in the plaintiff's losing the election by approximately 3,800 votes out of more than two million votes cast. The ballots in question contained a mark under the insignia of one political party and marks next to another political party's candidates for governor and resident commissioner. The State Elections Commission decided the ballots contained valid votes for both the marked candidates and the marked party.

Plaintiffs initiated the action in the U.S. District Court for the District of Puerto Rico asserting various federal constitutional claims. A parallel action was initiated against the Commission and the Electoral Commissioners in state court by voters who alleged to have voted in the way being challenged in federal court. One of the defendants removed the case to the United States District Court, which exercised jurisdiction holding three weeks of extensive evidentiary hearings.

The First Circuit reversed and ordered dismissal, holding plaintiffs had not shown voter disenfranchisement necessary to rebut the presumption of federal non-intervention in state election disputes or a viable claim under *Bush v. Gore*, 531 U.S. 98 (2000).

United States District Court:

Judge Daniel R. Domínguez

United States Court of Appeals:

Judge Juan R. Torruella  
Judge Norman H. Stahl  
Judge Jeffrey R. Howard

Opposing Counsel:

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207 Del Parque Street  
Third Floor

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Counsel for Codefendant Incoming  
Transition Committee:

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Sánchez- Betances & Sifre  
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San Juan, P.R. 00918  
(787) 756-7880

Co-counsel for State Elections  
Commission:

Ramón Walker Merino  
255 Recinto Sur Street  
San Juan, P.R.  
(787) 275-2068

Co-counsel for State Elections  
Commission:

Eileen García Wirshing  
(currently law clerk to the Hon. Aida  
Delgado-Colón, Chief Judge of the  
United States District Court for the  
District of Puerto Rico)  
Clemente Ruiz Nazario U.S.  
Courthouse

150 Carlos Chardón Street  
San Juan, P.R. 00918  
(787) 772 3195

(2) *Casiano Montañez, et al. v. Corporation of the State Insurance Fund et al.*, 852 F. Supp. 2d 177 (D.P.R. 2012), 703 F. 3d 124 (1st Cir. 2013).

At issue was the exercise of federal jurisdiction pending parallel state proceedings involving a potentially dispositive issue of state law. I was chief counsel for the public official defendants before the district court, and on appeal.

Plaintiffs are former and current employees of the Corporation of the State Insurance Fund of Puerto Rico who were either demoted or discharged in 2010 following an audit finding their appointments void. They challenged the defendants' decisions as discriminatory because of their political affiliation in violation of the First Amendment, and as a violation of due process of law.

Initially defendants sought dismissal arguing the allegations were insufficient to sustain a cause of action and subsequently filed a supplemental motion to dismiss requesting the Court's abstention pending resolution of parallel state proceedings involving the same underlying issues as the case in the United States District Court. The Court dismissed the complaint without prejudice, based on abstention principles. On appeal, the First Circuit held the lawsuit should be stayed pending resolution of a parallel case pending before the Puerto Rico Supreme Court involving a potentially dispositive issue of state law. Accordingly, the District Court stayed federal court proceedings while the state court proceedings are being exhausted. I am not involved in the state court litigation, which is currently ongoing.

United States District Court: Judge Daniel R. Domínguez

United States Court of Appeals: Judge Jeffrey Howard  
Judge Sandra Lynch  
Judge Bruce Selya

Opposing Counsel: Celina Romany  
Celina Romany Law Offices  
PMB 291 #1353 Road 19  
Guaynabo, P.R. 00966  
(787) 754-9304

(3) *Figueroa v. Caribbean Restaurants et al.*, DKDP 2005 0301 (704) (Puerto Rico Superior Court).

The case involved the legality of personnel transfers, and the scope of the

employer's discretion to impose disciplinary measures. I was defendants' chief counsel.

Plaintiff claimed to have suffered damages when her employer and two corporate officials refused to discipline a manager who had allegedly falsified plaintiff's signature, and when plaintiff complained the employer retaliated by transferring plaintiff to another site. During trial, defendants presented testimony and documentary evidence to rebut plaintiff's allegations and to demonstrate the factual basis for the challenged decisions. The court weighed the parties' submissions, and found for defendants in 2007.

Puerto Rico Superior Court:

Judge Janet Cortés Vázquez

Opposing Counsel:

Iván Torres Rivera  
216 Las Marías Avenue  
Urb. Hyde Park  
San Juan, P.R. 00927  
(787) 763-0853

(4) *Riofrio, Anda et al. v. Purina*, 772 F. Supp. 46 (D.P. R), *aff'd* 959 F.2d 1149 (1st Cir. 1991).

The case involved contract damages, timeliness, federal pre-emption, and the District Court's discretion to manage its docket through initial scheduling orders. I represented the defendants (collectively "Ralston") as chief counsel at trial and on appeal.

After Ralston terminated Mr. Riofrio, he and his wife brought suit in the United States District Court for the District of Puerto Rico, asserting (1) breach of contract regarding salary and relocation expenses in case of termination; (2) wrongful discharge; (3) mental pain and suffering resulting from a search and escort; (4) right to accrued vacation pay; and (5) entitlement to pension liquidation. After discovery, Ralston successfully moved for summary judgment on the mental suffering claim based on timeliness, and on the pension liquidation claim based on pre-emption under the federal Employee Retirement Income Security Act ("ERISA").

The surviving claims were tried to a jury. At the conclusion of the evidence, Ralston moved for a directed verdict on the contract claims and on the vacation pay claim. The district court granted the defendant's motion with respect to the vacation pay, and the jury found for plaintiffs on the breach of contract claim. Ralston moved for judgment notwithstanding verdict as to the relocation expenses claim on the grounds it was pre-empted by ERISA, and in the alternative, that plaintiffs had failed to present any evidence of damages resulting from breach of contract. The court ruled ERISA was not controlling, but granted the motion

finding plaintiffs had failed to prove they had suffered any damages resulting from the breach of the relocation agreement.

Plaintiffs appealed the summary judgment ruling based on timeliness, and the judgment notwithstanding the verdict. The First Circuit affirmed.

United States District Court: Judge Héctor M. Laffitte (Ret.)

United States Court of Appeals: Judge Bruce M. Selya  
Judge Hugh Bownes  
Judge Bailey Aldrich

Opposing Counsel: Harry Anduze Montaña  
1454 Fernández Juncos Avenue  
San Juan, P.R. 00921  
(787) 723-7171

Guillermo Ramos Luiña  
Edificio VIG Tower Suite 1500  
1225 Ponce de León Avenue  
San Juan, P.R. 00907  
(787) 620-0527

(5) *García v. American Airlines*, 816 F. Supp. 72 (D.P.R.), *aff'd* 12 F. 3d 308 (1st Cir. 1993).

The case involved the extraterritorial applicability of Puerto Rico labor and employment law. I represented American Airlines as chief counsel before the district court, and on appeal.

Plaintiff was a flight attendant injured during a flight from Puerto Rico to New Jersey while trying to move a beverage cart which had become wedged in the aisle of the aircraft's cabin due to an allegedly defective wheel. Plaintiff received occupational disability payments and medical treatment and benefits through Travelers Insurance Company in Florida, and thereafter initiated the action in the United States District Court for the District of Puerto Rico under Puerto Rico's general tort statute seeking payment for mental anguish and suffering, physical damages, loss seniority and special benefits.

The District Court entered summary judgment for American Airlines, ruling that Puerto Rico would give effect to the exclusive remedy provision contained in the Florida workers' compensation statute. The First Circuit affirmed dismissal.

United States District Court: Judge Héctor M. Laffitte (Ret.)

United States Court of Appeals: Judge Juan R. Torruella

Judge Frank M. Coffin  
Judge Michael Boudin

Opposing Counsel:

Juan Rafael González-Muñoz  
González Muñoz Law Offices  
Edificio Polo Norte  
261 Tetuán Street  
San Juan, P.R. 00901  
(787) 766-5052

(6) *Landrau v. Caribbean Restaurants*, 14 F. Supp. 2d 185 (D.P.R. 1998).

This case involved sexual harassment and application of the affirmative defense the Supreme Court recognized in *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998). I represented Caribbean Restaurants as chief counsel.

Plaintiff claimed to have been sexually harassed and constructively discharged. After discovery, Caribbean Restaurants moved for summary judgment. The court entered summary judgment and dismissed the complaint, concluding plaintiff had not been sexually harassed. Moreover, finding plaintiff had suffered no tangible employment action, it applied the *Faragher/Ellerth* affirmative defense.

United States District Court:

Judge Héctor M. Laffitte (Ret.)

Opposing Counsel:

Luis Mellado  
Mercantil Plaza, Office No. 812  
No. 2 Ponce de León Avenue  
San Juan, P.R. 00918  
(787) 767-2543

(7) *Olguin et al. v. State Elections Board et al.*, Civil No. 1998-2297 (JP 1998) (United States District Court for the District of Puerto Rico).

The case involved the constitutionality of excluding voters from the official voter registry for not having voted in the previous general election, and whether a deadline established to vote in an upcoming plebiscite was set too far in advance of the special election to allow citizens to register, in violation of the First Amendment and Fourteenth Amendment. I represented the Puerto Rico State Elections Board as chief counsel.

Plaintiffs did not vote in the general election held in Puerto Rico in 1996, and as a result were automatically excluded from the voter registry. In 1998, the Puerto Rico Legislature passed a law providing for the holding of a political status plebiscite in December 1998. It set November 3, 1998, as the voter registration deadline. Plaintiffs failed to meet this deadline, and since they had been excluded

from the voter registry, were not eligible to vote in the plebiscite. As a result, they initiated the action challenging the automatic voter exclusion provision, and the deadline established to register.

After a bench trial, in 1998 the court rejected plaintiffs' claims. It analyzed the evidence related to the challenged requirements, concluded the requirements were reasonable, and dismissed the complaint.

United States District Court:

Judge Jaime Pieras Jr.  
(Now deceased)

Opposing Counsel:

Pedro Varela  
Esquire Bld., Office No. 402  
#2 Vela Street &  
Ponce de León Avenue  
San Juan, P.R. 00918  
(787) 751-3931

Counsel for codefendant  
Commonwealth of Puerto Rico:

Gustavo A. Gelpí, former Solicitor  
General of Puerto Rico (confirmed  
as Judge in the United States District  
Court for the District of Puerto Rico  
in 2006)  
José V. Toledo U.S. Courthouse  
Room 126  
300 Recinto Sur  
San Juan, P.R. 00901  
(787) 772-3102

Co-counsel:

Ramón L. Walker Merino  
Recinto Sur #255  
San Juan, P.R. 00901  
(787) 275-2068

(8) *Castro v. The Procter & Gamble Commercial Co.*, 565 F. Supp. 2d 343  
(D.P.R. 2008).

The case involved different aspects of the Americans with Disabilities Act and the Family and Medical Leave Act. I represented Procter & Gamble Commercial Company ("Procter") as chief counsel.

Plaintiff claimed Procter discriminated against and harassed her because of a protected disability, failed to accommodate the disability, and wrongfully retaliated against her for engaging in protected conduct.



The Court entered summary judgment on behalf of Procter. Analyzing the record, it concluded plaintiff was not a qualified individual with a disability, had not established the negative performance evaluations she received were discriminatory, and had not been retaliated against.

United States District Court:

Judge Juan Pérez Giménez

Opposing Counsel:

Enrique Mendoza Méndez  
Mendoza Law Offices  
Edificio Centro de Seguros Suite 312  
701 Ponce de León Avenue  
San Juan, P.R. 00907  
(787) 722-5540

(9) *Rovira et al. v. Exxon Standard Oil et al.*, DPE 2002 0910 (2004)(Puerto Rico Superior Court), 2004 WL 3250899 (Puerto Rico Court of Appeals).

At issue was the starting point of the limitations period to claim extracontractual damages in Puerto Rico. I represented the defendants before the trial court, and on appeal.

Mr. Rovira was employed with the Exxon Standard Oil organization. He went on a leave of absence and did not report back to work. He initiated the action in the Bayamón Part of the Puerto Rico Court of First Instance, claiming to have been harassed and discriminated against because of his age.

After discovery, defendants filed a motion for summary judgment based on timeliness. The trial court denied the motion, reasoning the discrimination and harassment claims were time barred. However, it denied summary judgment as to plaintiff's claim for damages.

The defendants filed a certiorari petition with the Court of Appeals asking the appellate court to review the summary judgment denial. In 2004, the Court of Appeals did so, finding the record showed plaintiff had been aware of the damages he claimed more than a year before he filed the complaint. Accordingly, it held the claim barred by the one-year limitations period set for damage actions by the Puerto Rico Civil Code.

Puerto Rico Superior Court:

Judge Concepción Pilar Igartúa  
Pontón

Puerto Rico Court of Appeals:

Judge Guillermo Arbona Lago  
Judge Héctor Urgell Cuevas  
Judge Ivonne Feliciano Acevedo

Opposing Counsel:

Jeremiah Ocasio Silva  
Rh-1 Acacia Street  
Rosaleda #2  
Levittown, P.R. 00949  
(787) 784 2518

(10) *Martínez v. Caribbean Restaurants*, JPE 2007 0272 (Puerto Rico Superior Court), *aff'd* 2010 PR App. LEXIS 1956 (Puerto Rico Court of Appeals).

At issue was whether plaintiff had been constructively discharged. I represented Caribbean Restaurants before the trial court, and on appeal.

Plaintiff resigned from his employment with Caribbean Restaurants, and filed the action in the Ponce Part of the Puerto Rico Court of First Instance alleging to have been constructively discharged without just cause and entitlement to payment of unjust-discharge indemnity under the Puerto Rico Unjust Discharge Act.

After a bench trial in 2010, the Court ruled for Caribbean Restaurants, finding plaintiff did not prove to have been forced to resign, and hence, to have been discharged. The Appeals Court of Puerto Rico affirmed the trial court.

Puerto Rico Superior Court:

Judge Ismael Álvarez Burgos

Puerto Rico Court of Appeals:

Judge Carlos López Feliciano  
Judge Juan Hernández Serrano  
Judge Olga Birriel Cardona

Opposing Counsel:

Miguel Arroyo Díaz  
Condominio Alcázar 211  
Boulevard Avenue & Miguel Pou  
Ponce, P.R. 00731  
(787) 843-8671

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.)

Approximately 90% of my practice has been devoted to litigation. Around 10% of my time involves counseling organizations on a variety of issues covered by federal and Puerto Rico law in areas such as employment matters, election regulations, and administrative procedure. In this role, I provide advice on different aspects of personnel

administration, contracting, business reorganizations, electoral compliance, and processes to be followed in administrative agencies.

Over the course of my career, I have also participated in significant litigation that did not progress to trial due to settlement or dispositive motions. One example is *María del Carmen Pérez Rodríguez v. Caribbean Restaurants*, KDP 2010 1305 (804), where the Court dismissed through summary judgment in 2011, a damages action brought by a former managerial employee who was kidnapped during a car-jacking after the restaurant she was assigned to had closed for the day. The Court dismissed the complaint pursuant to statutory immunity against damages actions granted to employers who have provided workers' compensation coverage to their employees.

Likewise, in *Roberto Reyes v. Corporation of the State Insurance Fund of Puerto Rico et al.*, 2012 WL 4863714 (D. P.R. ) the Court dismissed through summary judgment a political discrimination action filed by the former director of the hiring/contract department of the Corporation of the State Insurance Fund of Puerto Rico, who claimed to have been discharged because of his political affiliation and without due process of law in violation of the First, Fifth, and Fourteenth Amendments to the Constitution of the United States, the tort provisions of the Puerto Rico Civil Code, the Commonwealth's anti-discrimination statute, and the Constitution of Puerto Rico. The Court rejected plaintiff's claims, granted defendant's motion for summary judgment, and dismissed the complaint.

On a related matter, the United States District Court for the District of Puerto Rico appointed me to a committee chaired by U.S. District Judge Jay García-Gregory, to investigate and submit a preliminary report respecting allegations of professional misconduct involving a stateside attorney admitted to practice in the District of Puerto Rico: Miscellaneous No. 02 0070 (JAG). The committee interviewed witnesses, examined documents, and prepared and submitted a report with recommendations.

I have not performed lobbying activities or 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.

I have not taught any courses.

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

If confirmed, O'Neill & Borges would liquidate my capital account with the firm. Similarly, the O'Neill & Borges Retirement Plan would liquidate my pension account. I have not made arrangements to be compensated in the future from any other source.

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.

If confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I would expect to recuse myself from all matters in which a lawyer associated with O'Neill & Borges appears, and from any case in which due to a current or past professional or personal relationship with a party, witness, or attorney, my impartiality might reasonably be questioned.

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

I would handle all matters involving actual or potential conflicts of interest in accordance with the Code of Conduct for United States Judges and any other relevant canons or statutes. I also would seek advice from my learned colleagues as appropriate.

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.

Beginning in 1987 until around 1993, I assisted the Labor Commission of the Puerto Rico Bar Association, and was a commission member from 1988 until 1993. I provided *pro bono* assistance to the inquiring public, mostly individuals with questions on labor and employment topics, to help them to understand the legal issues they faced. Since approximately 1988 I have assisted Ballet Concierto de Puerto Rico, a non-profit organization, with pro bono advice on different legal issues, such as those related to articles of incorporation, lease agreements, employment contracts, workers’ compensation, and statutory leaves of absence.

**26. Selection Process:**

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

In October 2011, Congressman Pedro Pierluisi asked me if I would be interested in serving as a judge on the United States District Court for the District of Puerto Rico. In February 2012, I met with a staff member for Congressman Pierluisi in his office in San Juan, Puerto Rico to discuss my interest. In March 2013, the staff member informed me that Congressman Pierluisi had recommended me to the White House. Since March 21, 2013, I have been in contact with the Office of Legal Policy at the Department of Justice. On May 1, 2013, I interviewed with attorneys from the White House Counsel’s Office and the Department of Justice in Washington, DC. On July 26, 2013, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

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

6-27-2013

(DATE)

Pedro A. Delgado Hernández

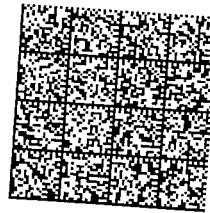
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