

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

William Joseph Powell

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

United States Attorney, Northern District of West Virginia

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:
120 South George Street
P.O. Box 729
Charles Town, West Virginia 25414

Residence:
Martinsburg, West Virginia

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

1960; Manhasset, New York

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.

West Virginia University College of Law, 1982-1985
J.D. 1985

Salem College, Salem, West Virginia, 1978-1982
Bachelor of Arts, Public Administration, 1982

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.

Compensated Employment

April 2017-Present

Chief Deputy Prosecuting Attorney

Jefferson County West Virginia Prosecuting Attorney's Office

120 South George Street

Charles Town, West Virginia 25414

2002-2017

Managing Attorney

Jackson Kelly PLLC

310 West Burke Street

Martinsburg, West Virginia 25401

1992-2002

Member Attorney

Jackson Kelly PLLC

1600 Laidley Tower

Charleston, West Virginia 25301

1990-1992

Assistant United States Attorney

500 Quarrier Street

Charleston, West Virginia 25301

1985-1990

Associate Attorney

Jackson Kelly Holt & O'Farrell

1600 Laidley Tower

Charleston, West Virginia 25301

Summer 1984

Law Clerk

Law Offices of Donald Saxton

1200 Washington Road

Washington, Pennsylvania 15301

Summer 1983

Law Clerk

Law Offices of Donald Saxton

1200 Washington Road

Washington, Pennsylvania 15301

Summer 1982

Bartender

Bridgeport Country Club
17 Meadowbrook Road
Bridgeport, West Virginia 26330

Uncompensated Affiliations

February 2017-April 2017
Board Member
Berkeley County Development Authority
300 Foxcroft Avenue
Martinsburg, West Virginia 25301

2016-present
Owner
Reasonable Man Defense LLC
144 Avenue Jubilee
Martinsburg, West Virginia 25403
(Inactive Educational Entity)

2014-2017
Vice President/Board Member
Eastern Panhandle Bar Charitable Foundation
101 South Queen Street
Martinsburg, West Virginia 25401
(Non-Profit)

2013-Present
Board Member
Eastern Panhandle Bar Association
P.O. Box 4320
Martinsburg, West Virginia 25402
(Non-Profit)

2012-2015 and 2017
Board Member
Berkeley County Chamber of Commerce
198 Viking Way
Martinsburg, West Virginia 25401

2010-2014
Past President and Board Member
Martinsburg Sunrise Rotary
P.O. Box 2031
Martinsburg, West Virginia 25402

2010-2013

Assistant District Governor

Rotary District #7360

No Address/Responsible for Eastern Panhandle of West Virginia

2009-2016

President/Director

Martinsburg Sunrise Rotary Foundation

P.O. Box 2331

Martinsburg, West Virginia 25402

(Non-Profit)

2009-2012

Board Member

Shenandoah Area Council, Boy Scouts

107 Youth Development Court

Winchester, Virginia 22602

(Non-Profit)

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

I have not served in the U.S. Military. I have registered for Selective Service.

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

Professional

2011, American Bar Association Bar Foundation Fellow

2010, West Virginia Bar Foundation Fellow

2007 (est), Martindale Hubbell, AV Rating

2002 (est.), Best Lawyers in America, Criminal Law, 10+ years

1992, USDA, Certificate of Appreciation

1992, Bureau of Alcohol, Tobacco and Firearms, Certificate of Appreciation (Project Triggerlock)

1992, Department of Justice Commendation Award

Community

2016, Rotary Presidential Citation

2011, Rotarian of the Year

2010, West Virginia Press Association, Best Lifestyle Columnist

2010, Rotary Distinguished Service Award

2007, Rotarian of the Year

1976, Eagle Scout

Academic

1985, West Virginia University College of Law, Order of the Barristers

1984-1985, West Virginia University College of Law, Editorial Board, Law Review

1982, Salem College, Magna Cum Laude Graduate

1981, Gamma Beta Phi Honor Society

1978-1982, Salem College Academic Scholarships

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.

2017-present, American Bar Association

2014-2017, Eastern Panhandle Charitable Bar Foundation

2014-2017, VP and Board Member, Eastern Panhandle Charitable Bar Foundation

2015-2016, President, West Virginia Bar Association

2013-2016, West Virginia State Bar Chair, White Collar Crime Committee

2013-present, Board of Directors, Eastern Panhandle Bar Association

2012-2015, West Virginia State Bar Board of Governors

2010-present, West Virginia Bar Association

2010-2015, Executive Board Member, West Virginia Bar Association

2002-present, Association of Defense Trial Attorneys

1985-present, West Virginia State Bar

1985-1990, 1993-200 (est.), 2003-2016 (est.), Defense Research Institute

No membership lapses.

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.

West Virginia, Admitted May 21, 1985, Active

No membership lapses.

- 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.

April 17, 1995, United States Supreme Court

June 28, 1993, United States District Court, Northern District of West Virginia

March 12, 1992, United States Fourth Circuit Court of Appeals

May 21, 1985, United States District Court, Southern District of West Virginia

May 21, 1985, Supreme Court of Appeals of West Virginia.

No membership lapses.

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.

2017, Berkeley County Development Authority Board Member
2017, Back Creek Valley Bow & Gun Club
2016-present, Appalachian Trail Conservancy
2016-2017, National Wild Turkey Federation
2015-present, Trout Unlimited
2014-present, Kansas City Barbeque Society, Barbeque Judge
2013-present, Peacemaker National Training Center
2012-present, International Defense Pistol Association
2012-present, Izaak Walton League, Kearneysville, West Virginia
2012, Member of Working Group appointed by Governor Tomblin
re: Constitutional Amendment for Lt. Governor
2011-2014, Assistant District Governor, Rotary District 7360
2010-2012, Cress Creek Country Club
2010-2012, District Chairperson, Boy Scouts, Potomac District
2007-2017, Berkeley County Chamber of Commerce, Board Member
2006-2007, Den Leader, Cub Scouts
2002-present, Member, Martinsburg Sunrise Rotary
2002-present, Chateau Gai Homeowners Association
1990-present, National Rifle Association

- b. 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.

Rotary did not permit women members until 1989. This occurred more than ten years before I joined, and is no longer the policy. Otherwise, to my knowledge, none of these organizations discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

I have done my best to identify all books, articles, reports, letters to the editor, editorial pieces and other published material, including through a review of my personal files, and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find, or remember. I have located the following:

Around the Panhandle Magazine, *Hiking around the Panhandle*, April-May 2017. Copy supplied.

Co-Author, *Corporate Miranda: Not Just For Criminal Lawyers*, DRI, For the Defense (October 2010). Copy supplied.

Co-Author, *Prosecutorial Discretion under the Federal Sentencing Guidelines: Is the Fox Guarding the Henhouse?* 97 W.Va. L. Rev. 373 (Winter 1995). Copy supplied.

The Journal

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. July 9, 2017: A Good Husband, Comparatively Speaking. Copy Supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. June 11, 2017: Movie Education. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. May 21, 2017: New “Virtual” Woman. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. April 9, 2017: End Domestic Violence. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. March 26, 2017: Finding the Right Stress Relief. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. February 26, 2017: Crisis Bike. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. February 12, 2017: Outliving the Dog. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. January 8, 2017:
The Christmas Eve Escape. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. December 24,
2016: Christmas Memories Awaken Holiday Magic. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. December 19,
2016: The Gift of Independence for Christmas. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. November 26,
2016: The Ringer of the Bell. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. November 12,
2016: The Last Chance for Music. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. October 29, 2016:
Sitting Pretty at Dog School. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. October 15, 2016:
Empty Nest at Last! Not so Fast. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. May 17, 2015:
The Sounds of Summer. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. April 19, 2015:
Family Dog is Canine Bully. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. March 15, 2015:
Bad Combination. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. February 15, 2015:
The Home Repair Blues. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. January 18, 2015:
A New Year's Resolution with Substance. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. December 12,
2014: Living in the Moment. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. November 16,
2014: Nothing Like the Brotherly Bond

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. October 26, 2014:
Cooking Calm. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. September 26, 2014: High-Tech Snake Oil. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. August 17, 2014: Mental Health: Trying to Remove the Stigma. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. July 20, 2014: Time Has Come to Simplify. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. June 15, 2014: Happy Father's Day Mr. Chapin. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. May 18, 2014: Family Harmony, Better Late than Never. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. April 20, 2014: Spring Guilt. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. March 23, 2014: Knowing My Limitations. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. February 16, 2014: Moms Are Women Too. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. January 19, 2014: Me, Me, Me.... Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. December 15, 2013: Parents Are Not Indestructible. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. November 17, 2013: Peaceful Easy Feeling. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. October 27, 2013: Bring on the Empty Nest. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. September 15, 2013: Open Letter to Miley Cyrus. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. August 18, 2013: Army Training...Sir. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. July 27, 2013: Service is a Great Lesson. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. June 16, 2013: Good Dad or Not? Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. May 19, 2013: I'm Not Old Yet. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. April 21, 2013: Just Taking a Walk. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. March 17, 2013: Hurtful Comments: That's Just Rude. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. February 17, 2013: Another Lesson from Dad. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. January 20, 2013: Growing Up. Copy supplied.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. Fall 2011: I know Why Moms Talk to Dogs. Copy not available.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. Winter 2011: Put Your Jacket On. Copy not available.

Lifestyle Columnist, The Journal, Martinsburg, West Virginia. Summer 2009: Are You Ready for Some Football? Copy not available.

theTrek.co (formerly Appalachian Trials Blog)

Contributing Writer, theTrek.co (formerly Appalachian Trials Blog), October 14, 2015: Trying to Fill the Void. Copy supplied.

Contributing Writer, theTrek.co (formerly Appalachian Trials Blog), August 8, 2015: Is that New Gear? Copy supplied.

Contributing Writer, theTrek.co (formerly Appalachian Trials Blog), July 3, 2015: Hiker Bribery. Copy supplied.

Contributing Writer, theTrek.co (formerly Appalachian Trials Blog), June 4, 2015: Wildlife: We're in Their World Too. Copy supplied.

Contributing Writer, theTrek.co (formerly Appalachian Trials Blog), May 3, 2015: Why I Hate/Love Thru-Hikers. 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.

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of personal files and searches of publicly available electronic databases. I frequently use the text of a speech from a prior event, speak without notes, or speak from a handwritten outline. I did not retain the majority of the handwritten outlines and have attached all that I could find. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

April 7, 2017

Eastern Panhandle Bar Association
Seminar Presentation; Martinsburg, WV
Topic: Deadly Force: When is it justified?
Outline of presentation supplied.

April 22, 2016

Association of Defense Trial Attorneys, Seminar Presentation; Monterey, CA
Topic: Stand Your Ground
Outline of presentation supplied.

October 2, 2015

Judicial Scholars Program
Presentation: Wheeling, WV

Topic: Deadly Force
Copy not available.

August 2014

West Virginia Bar Association, Annual Meeting Seminar; Warm Springs, VA

Topic: Self Defense Law

Outline of presentation supplied.

I ran for Circuit Court Judge in 2016 in a non-partisan race, and made numerous remarks at public events. No recordings, notes or transcripts exist of those remarks that I am aware of or was able to find. I did not keep calendars to be able to provide specific dates.

- 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.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publically available electronic databases.

I am unaware of available transcripts of radio interviews I have done associated with community events or my unsuccessful judicial campaign. I did find links to interviews done on or about May 4, March 30 and March 10, 2016 for WRNR in Martinsburg, West Virginia. I have set forth below the links to WRNR interviews:

WRNR, May 4, 2016, Circuit Court Judge election. Audio of interview available at:

<https://soundcloud.com/talkradiowrnr-705556938/3-30-6-bill-powell-rod-snyder>

WRNR, March 30, 2016, Circuit Court Judge election. Audio of interview available at:

<https://soundcloud.com/talkradiowrnr-705556938/3-10-16-eric-householder-mike-folk-and-harley-wagner-bill-powell>

WRNR, March 10, 2016, Circuit Court Judge election. Audio available at:

<https://soundcloud.com/talkradiowrnr-705556938/5-4-16-erich-zimny-bill-powell-justice-brent-benjamin>

I also appeared on WEPM in Martinsburg, but have no dates or links to provide except that they were in 2016.

The Journal, Attorney: Mormon Church denies leaders sex-abuse coverup, November 1, 2013. Copy supplied.

13. 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.

2007

I was nominated to the office of United States District Court Judge for the Northern District of West Virginia. The Senate did not consider my nomination.

May 2017-Present

Chief Deputy Assistant Prosecuting Attorney, Jefferson County WV
Appointed by Matthew Harvey, Prosecuting Attorney

Candidacies

I ran for Circuit Court Judge in a non-partisan race in 2016 in the 23rd Judicial Circuit, West Virginia. I was not elected.

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

None

14. Legal Career: Answer each part separately.

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

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

I never served as a clerk.

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

I 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.

May 2017-Present
Jefferson County WV Prosecuting Attorney's Office
120 South George Street
Charles Town, West Virginia 25414
Chief Deputy Assistant Prosecuting Attorney

2002-2017
Jackson Kelly PLLC
310 West Burke Street
Martinsburg, West Virginia 25401
Managing Lawyer/Firm Member

1992-2002
Jackson Kelly PLLC
1600 Laidley Tower
Charleston, West Virginia 25301
Firm Member

1990-1992
United States Attorney's Office
500 Quarrier Street
Charleston, West Virginia 25301
Assistant United States Attorney

1985-1990
Jackson Kelly Holt & O'Farrell
1600 Laidley Tower
Charleston, West Virginia 25301
Associate Attorney

- 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 served as a mediator in fewer than 10 mediations. Each of the mediations were civil matters, for which I was appointed by the court or privately retained. All but one were pre-litigation disputes for individuals in personal injury matters or businesses with business disputes. The only mediation for a case in litigation concerned an employment discrimination matter, styled Plotner v. Wexford Health Services, filed in the Circuit Court of Berkeley County West Virginia. It concerned allegations of wrongful termination of an employee who made allegations of improper conduct by a fellow employee. It was successfully resolved, and the case was dismissed. There was no mediation report filed and the resolution was confidentially forwarded to the court for handling.

b. Describe:

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

During this past year I accepted a job as a county prosecutor that involves the prosecution of state criminal offenses. Previously, for more than 25 years, my practice has been a litigation defense practice. I have represented individuals, small businesses and large businesses in several areas of the law, though most commonly business disputes, medical negligence, and general negligence cases. I have also spent considerable time defending clients involved with federal criminal investigations. Previously, I also served as an Assistant United States Attorney in the Criminal Division of the Southern District of West Virginia

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

As an associate lawyer I concentrated on civil litigation defense of clients in state and federal court. Clients were mostly larger businesses.

In 1990 I assumed my duties as an Assistant United States Attorney where I prosecuted violent crimes and government fraud matters.

Since 1992, I have been one of my firm's resources for federal criminal matters, and my clients have included individuals to large businesses. For the last 15 years, clients were primarily individuals and smaller businesses, though there was a period of representing physicians in significant medical malpractice defense matters. I have represented both plaintiffs and defendants in civil litigation. I also started to be engaged as a mediator in civil matters.

Currently, I represent the State of West Virginia in criminal prosecutions.

- 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.

More than 90% of my practice has been in litigation matters and frequently involved court appearances. The frequency of court appearances varied from year to year and from case to case. It is not possible to identify by dates the changes in court appearance frequency. All of my current time involves representing the State of West Virginia prosecuting criminal matters in Circuit Court.

- i. Indicate the percentage of your practice in:
 1. federal courts; 30% approximately

2. state courts of record; 70% approximately
3. other courts; none
4. administrative agencies. none

- ii. Indicate the percentage of your practice in:
 1. civil proceedings; 70% approximately
 2. criminal proceedings. 30% approximately

- 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.

Although my records are not complete and West Virginia records are not available, I estimate that I have tried more than thirty-five cases to verdict. In more than half I was chief or sole counsel.

- i. What percentage of these trials were:
 1. jury; 99%
 2. non-jury. 1%

- 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.

My name appears as a lawyer in one Supreme Court case when an opposing party sought a writ of certiorari. Writ was denied and no argument was made.

15. **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. Joy et al v. Richmond American Homes et al
Circuit Court of Jefferson County, West Virginia 08-C-431

Judge David Sanders
2008-2012

I was one of the attorneys hired to defend Richmond American Homes in a significant civil action involving more than twenty plaintiffs complaining of radon exposure due to poor construction practices by Richmond. Plaintiffs complained of future personal injury as a result of alleged exposure to radon. The case was ultimately settled by global agreement amongst the various contractors.

Co-Counsel:
Al Emch
Jackson Kelly PLLC
1600 Laidley Tower
Charleston, West Virginia 25301
304-340-1000

Opposing Counsel:
Andrew Skinner
115 E Washington Street
Charles Town, West Virginia 25414
304-725-7029

Counsel for Co-Defendants:
Suzanne Williams McAuliffe
114 S. Maple Avenue
Martinsburg, West Virginia 25401
304-596-2596

Teresa Dumire
Kay Casto
1085 Van Voorhis Road
Morgantown, West Virginia 26505
304-225-0970

2. Eubanks v. James Carrier M.D.
Circuit Court of Berkeley County, West Virginia/07-C-1134
Judge Gina Groh (now a federal District Court Judge)
2007-2010

This was case alleging medical malpractice and personal injuries from a surgery performed by Dr. Carrier. I represented Dr. Carrier at the trial that lasted 3-4 days. The jury returned a verdict in Dr. Carrier's favor.

Co-Counsel:
Rob Aliff

Jackson Kelly PLLC
1600 Laidley Tower
Charleston, West Virginia 25301
304-340-1000

Opposing Counsel:
Christopher Nace
1615 New Hampshire Avenue NW
Washington, DC 20036
202-463-1999

3. Marlyn Keesecker et al v. Avon Hills Farm and Mervin Roderick
Circuit Court of Jefferson County, West Virginia 06-C-368
Appeal 2014 WL 2682036
Judge David Sanders
2006-2014

I represented Marlyn Keesecker against her stepbrother, Mervin Roderick, who managed the family business known as Avon Farms. Over the course of years, Mr. Roderick siphoned millions of dollars in assets away from the business for personal gain. He refused to produce accounting records or other information. The case was brought on the grounds of fraud and mismanagement. A judgment was obtained on Ms. Keesecker's behalf and on behalf of other injured family members. The court awarded monetary damages and other equitable relief. Mr. Roderick appealed to the West Virginia Supreme Court but the appeal was rejected.

Co-Counsel for other plaintiff:
Kathy Santa Barbara
518 West Stephen Street
Martinsburg, West Virginia 25401
304-264-0000

Opposing Counsel:
Richard Gay
31 Congress Street
Berkeley Springs, West Virginia 25411
304-258-1966

4. Miller v. Tim Bowers M.D. et al
Circuit Court of Berkeley County, West Virginia/05-C-418
Judge David Sanders
2005-2008

This was a wrongful death action in which I represented a hematologist, Dr. Bowers. It was alleged that the medical care violated the standards of

care leading to the plaintiff's decedent bleeding to death. The trial lasted five days and Dr. Bowers was found to have no liability to the plaintiff.

Counsel for Co-Defendants:
Steve Brooks
Flaherty Sensabaugh Bonasso
1225 Market Street
Wheeling, West Virginia 26003
304-230-6600
(Represented Dr. Jalazo)

Mike Olszewski
Hancock, Daniel, Johnson & Nagle
3975 Fair Ridge Drive, Suite 475
Fairfax, Virginia 22033
(Represented City Hospital)

Opposing Counsel:
Barry Nace
1615 New Hampshire Avenue NW
Washington, DC 20036
202-463-1999

5. Jane Doe et al. al. v. Church of Jesus Christ of Latter Day Saints; Raleigh General Hospital; HCA, Inc.
Circuit Court of Raleigh County West Virginia/96-C-25-K
(Related Federal Matter: 5:96-cv-00133)
Judge H.L. Kirkpatrick
1998-1999

I represented HCA, Inc., in this personal injury action alleging sexual abuse of multiple children by an employee of Raleigh General Hospital, which was a related entity to HCA, Inc. The abuser was a member of the Mormon Church, which was also a named defendant. Claims were made that the defendants had knowledge of the abuse and concealed it. After significant discovery and legal arguments, HCA was dismissed by summary judgment.

Co-Counsel:
Gretchen Callas
Jackson Kelly PLLC
1600 Laidley Tower
Charleston, West Virginia 25301

Counsel for Co-Defendants:
Mark Atkinson

John Polak
Atkinson & Polak
300 Summers Street, Suite 1300
Charleston, West Virginia 25301
304-982-7577
(Represented Church Defendants)

William Watson
800 Main Street
Wellsburg, West Virginia 26070
304-737-0881

Honorable Paul Farrell
(Now a Circuit Court Judge)
750 5th Avenue
Huntington, West Virginia 25701
304-526-8603
(Represented Raleigh General Hospital)

Opposing Counsel:
Michael G. Sullivan
Patrick Nance
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Columbia, South Carolina 29210
803-252-4433

6. Gerald Wayne Davis v. Fred Zain
U.S. District Court, SDWV (Charleston)/2:96-cv-00806
Judge Charles Haden (deceased)
1996-1999

I represented Gerald Wayne Davis in this civil rights and misconduct action against Fred Zain, a West Virginia State Trooper Chemist who had worked in the crime lab. Mr. Zain falsified lab test results in criminal cases including Mr. Davis' criminal trial for rape. He testified that lab testing supported Mr. Davis as the rapist. After eight years in prison and subsequent DNA tests, it was determined that Mr. Davis was not guilty and that Mr. Zain falsified evidence. I was able to secure a sizable civil settlement on behalf of Mr. Davis.

Opposing Counsel:
Edward D. McDevitt
Bowles Rice
600 Quarrier Street
Charleston, West Virginia 25301
304-347-1100

7. United States v. Huseinovic
U.S. District Court, NDWV (Beckley)/5:91-cr-00254-3
Judge Elizabeth Hallanan (Deceased)
1991

I prosecuted Dzafer Jeff Huseinovic, among others, for drug and gun violations associated with a conspiracy to bring drugs into southern West Virginia and then, through straw purchasers, illegally obtain firearms for transport to the northeast. Mr. Huseinovic and others were found guilty by verdicts and pleas.

Co-Counsel:
Michael Fisher
Jackson Kelly PLLC
1600 Laidley Tower
Charleston, West Virginia 25301
304-340-1000

Opposing Counsel:
Hunt Lee Charach (Deceased)
Federal Public Defender

8. Athey, et al v. USAir, Inc., et al
U.S. District Court, SDWV (Beckley)/5:91-cv-00460
Judge Elizabeth Hallanan (deceased)
1991-1994

This case concerned the crash landing of a US Air Commuter plane at the Beckley, West Virginia airport, injuring more than twenty passengers. There were allegations of negligence and product liability. I was co-counsel for the airplane manufacturer, British Aerospace. The case was tried to a jury for nearly a month in 1994, and settled just before closing arguments.

Co-Counsel:
W.T. Shaffer (deceased)

Co-Defendant Counsel:
Clem C Trischler
William Piatragallo, II
Piatragallo Gordon
301 Grant Street
Pittsburgh, Pennsylvania 15219
412-263-2000

Opposing Counsel:
Jamie R. Lebovitz
Nurenborg Paris
600 Superior Avenue E
Suite 1200
Cleveland, Ohio 44114
216-621-2300

9. Huffman v. Appalachian Power
Circuit Court of Kanawha County/Appeal 415 S.E.2d 145
Judge Charles King
1989-1992

In 1989 a ten-day trial was held on Mr. Huffman's claims of negligence against Appalachian Power. I was one of the primary counsel representing Appalachian Power. Mr. Huffman claimed the power company was negligent in failing to build proper protection around a high voltage tower that Mr. Huffman had climbed and was subsequently electrocuted on. The jury returned a verdict for Mr. Huffman, but the Supreme Court of Appeals reversed and entered a verdict for Appalachian Power. The case established trespass law in West Virginia.

Co-Counsel:
Alvin Emch
Thomas J Hurney, Jr. (Appeal Counsel)
Jackson Kelly PLLC
1600 Laidley Tower
Charleston, West Virginia 25301
304-340-1000

Opposing Counsel:
Alan Masinter (deceased)

10. Bd. of Education of McDowell County v. ZMM, Inc
Circuit Court of Kanawha County/Appeal 390 S.E.2d 796
Judge John Hey (deceased)
1987-1990

In a trial of nearly four weeks, I was co-counsel for the Board of Education in an architectural/engineering malpractice and breach of contract case over the construction of a county high school. Significant issues of first impression were addressed, including the right to settlement credits, and the interplay of tort and contract claims in same case. The West Virginia Supreme Court issued a ruling setting forth on settling co-defendants that are followed to this day by litigants and courts. We were able to obtain a verdict in excess of one million dollars, which was

affirmed on appeal.

Co-Counsel:
Stephen Crislip
Jackson Kelly PLLC
1600 Laidley Tower
Charleston, West Virginia 25301
304-340-1000

Opposing Counsel:
Daniel Schuda
232 Capitol St # 200
Charleston, West Virginia 25301
304-343-8928

16. **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 have not performed lobbying activities

Other legal activities of significance include:

Several legal matters in the criminal area are worth noting. I have had extensive opportunities to represent individuals who were subjects of federal Grand Jury investigations, and in most instances I have been able to assure that no indictment was returned against them. It was of great significance to clients to never be charged with a crime.

I represented the United States as an Assistant United States Attorney in an ongoing illegal gun and drug operation in southern West Virginia and successfully prosecuted several of the involved individuals.

I represented a day care center in Charleston, West Virginia that was accused of abusing a child. Given the nature of the allegations, the potential ramifications were gigantic. After much effort, we were able to have the case dismissed and have an apology issued. I believe our efforts saved the day care from shutting down.

I represented a recently widowed woman who was the subject of a scam conducted by a foreign individual and ultimately led to her unknowingly being part of a criminal fraud operation. Though initially arrested, I was able to convince the law enforcement and prosecuting authorities that my client was a victim and was not a person who should be

prosecuted. The end result helped put an end to the scam and saved my client's life savings.

Finally, my leadership roles in Bar-related organizations have been a very important part of my legal life. In addition to serving on governing bodies, my role as President of the West Virginia Bar Association places me in a position to promote what is great about my profession and set an example for younger lawyers. My work included promotion of professionalism and civility amongst the bar. I also took steps to highlight the numerous charitable activities our lawyers were engaged in, and helped create a foundation for our local bar association to further promote charitable ventures primarily for the benefit of underprivileged children in our community.

17. **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 also served as a firearms safety instructor at a local West Virginia gun club where I assisted members to safely handle firearms.

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

I retired from my former law firm, Jackson Kelly PLLC in 2017. They are paying out the supplemental monthly retirement benefit over the next two or three years.

19. **Outside Commitments During 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.

None

20. **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 my SF-278 as provided by the Office of Government Ethics.

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

See attached net worth statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.

In connection with the nomination process, I have consulted with the office of Government Ethics and Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflict of interest will be resolved in accordance with the terms of the ethics agreement that I have entered with the Department's designated agency ethics official.

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

In the event of a potential conflict of interest, I will consult with the ethics officials in the Executive Office for the United States Attorneys, Department of Justice.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I have done considerable pro bono work for individuals and small businesses in need of legal advice, and could not afford to hire a lawyer, and believed could benefit from legal advice. I also assisted non-profit groups to form tax-exempt legal entities to allow them to better serve the populations they served. Moreover, I have assisted several of our community charitable organizations feed the hungry, provide holidays meals and gifts to the needy, and I created our local Rotary Foundation which raises money year round to benefit the children of our community who have regular and critical needs. My efforts often exceeded 100 hours per year.