

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Ralph Robert Erickson

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

United States Circuit Judge for the Eighth Circuit

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

United States District Court
Quentin N. Burdick United States Courthouse
655 First Avenue North, Suite 410
Fargo, ND 58102

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

1959; Thief River Falls, Minnesota

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.

1981 – 1984, University of North Dakota School of Law; J.D. (with distinction), 1984

1977 – 1980, Jamestown College in North Dakota (now University of Jamestown); B.A. (magna cum laude), 1980

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.

2003 – Present
United States District Court for the District of North Dakota
Quentin N. Burdick United States Courthouse

655 First Avenue North, Suite 410
Fargo, ND 58102
United States District Judge

March 2017 – Present
University of Jamestown
6000 College Lane
Jamestown, ND 58405
Instructor

1995 – 2003
State of North Dakota
East Central Judicial District
211 9th Street South
Fargo, ND 58103
District Judge

1994
Traill, Steele, Griggs & Nelson Counties
Traill County Courthouse
114 West Caledonia Avenue
Hillsboro, ND 58045
County Judge

1993 – 1994
Cass County North Dakota
Cass County Courthouse
211 Ninth Street South
Fargo, ND 58108
County Magistrate

1991 – 1994
Erickson Law Office
120 West Main Avenue
West Fargo, ND 58078
Attorney in Solo Practice

1984 – 1991
Ohnstad Twichell, P.C.
901 13th Avenue East
West Fargo, ND 58078-0458
Attorney/Shareholder (1984 – 1991)
Law Clerk (Summer 1984)

1984 – 1991
Municipal prosecutor for the cities of West Fargo and Riverside, North Dakota

West Fargo Municipal Court
800 4th Avenue East #2
West Fargo, ND 58078

1990 – 1991
Municipal prosecutor for the city of Moorhead, Minnesota
Clay County Courthouse
807 11th Street North
Moorhead, MN 56560

1988 – 1989
Minnesota State University-Moorhead
1104 Seventh Avenue South
Moorhead, MN 56563
Instructor

Other Affiliations (Uncompensated):

2010 – Present
ShareHouse Foundation
4227 Ninth Avenue SW
Fargo, ND 58103
Director

2013 – Present
Federal Judges Association
9707 Key West Avenue, Suite 100
Rockville, MD 20850
At-Large Member, Board of Directors

2000 – 2003
Villa Nazareth/Friendship Village
Now CHI Friendship
801 Page Drive
Fargo, ND 58103
Director

2002 – 2003
Catholic Health Initiatives
198 Inverness Drive West
Englewood, CO 80112
Advisor/Director

1998 – 2002
Ronald N. Davies Inn of Court
c/o Michael Lopez

Integreon
3247 47th Street South
Fargo, ND 58104
Secretary, 1998 to 2000; Vice President, 2000 to 2001; President, 2001 to 2002

1998
Friends of Cardinal Muench Seminary
c/o Diocese of Fargo
5201 Bishops Boulevard South, Suite A
Fargo, ND 58104
President

1988 – 1994
North Dakota Association for Justice (formerly North Dakota Trial Lawyers Association)
c/o Tatum O'Brien
O'Keefe, O'Brien, Lyson & Foss
720 Main Avenue
Fargo, ND 58103
Board of Governors, 1988 to 1994; Secretary, 1990 to 1991; Treasurer, 1991 to 1992; Vice President, 1992 to 1993

1987 – 1993
West Fargo Library Board
109 Third Street East
West Fargo, ND 58078
Director, 1987 to 1993; President, 1992 to 1993

1988 – 1992
Cass County Bar Association
c/o Scott Diamond
3523 45th Street, Suite 140
Fargo, ND 58104
Secretary/Treasurer, 1988; Vice President, 1989; President, 1990 to 1992

1987 – 1990
State Bar Association of North Dakota
1661 Capitol Way
Bismarck, ND 58501
Secretary/Treasurer

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

I have never been in the armed forces. I have never registered for the draft, as I was born

in 1959 and fell within the limited time when no registration was required.

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 Jamestown Alumni Hall of Fame, 2008

Best Judge in Cass and Clay Counties, Forum Communications (the daily newspaper in Fargo, ND), Mar. 31, 2002

University of North Dakota School of Law, President of the Student Bar Association, 1983 to 1984

College Fellow in History and Political Science, University of Jamestown, 1980

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, 1984 to 1989; 2000 to 2003

Judicial Division, 2000 to 2003

Young Lawyers Division, 1984 to 1989

Regional representative to Young Lawyers Division Board, 1986 to 1988

Cass County Bar Association, 1984 to Present

Secretary/Treasurer, 1988; Vice President, 1989; President, 1990 to 1992

Eighth Circuit Judicial Council

Bankruptcy Committee, 2017 to Present

Defender Services Committee, 2017 to Present

Judicial Complaint Review Panel, 2004

Jury System Committee, 2003 to 2010 (Chair, 2005 to 2006)

Pattern Jury Instructions Committee, 2004 to Present (Chair, 2015 to Present)

Personnel Committee, 2003 to 2010; 2017 to Present

Public Defender Services Committee, 2003 to 2010

Tribal Committee, 2017 to Present

Tribal Courts Committee, 2003 to 2010

Federal Judges Association, 2005 to Present

At-Large Member, Board of Directors, 2013 to Present

Joint Commission on Attorney Standards (State Bar Association of North Dakota and North Dakota Supreme Court joint commission), 1994 to 2001

Chair, 1996 to 2001

Joint Committee on Family, 1995 to 1999
Chair, subcommittee on statutory review, 1995 to 1999

Joint Task Force on Family Law, 1999 to 2000

Judicial Conference Committee on Codes of Conduct, 2012 to Present
Chair Subcommittee on Certificates of Divestiture, 2016 to Present

Minnesota State Bar, 1986 to 2001

North Dakota Commission on the Status of Women, 1993 to 1994

North Dakota Commission on the Unfair Criticism of the Judiciary, 1988 to 1989

North Dakota Judicial Conference, 1994 to 2003
Committee on Judicial Compensation, 1995 to 2003
Chair, 2000 to 2003

North Dakota Juvenile Drug Court Advisory Committee, 1999 to 2002
Pilot Project Judge, 2000 to 2003 (Presided over first drug court in North Dakota)

North Dakota Supreme Court
Technology Committee, 1995 to 1997
Juvenile Drug Court Study Commission, 1997 to 1998
Juvenile Drug Court Project Implementation Committee, 1989 to 1990
Judicial Planning Committee, 1995 to 2001
Judicial Planning Commission, 2001 to 2003
Case Flow Management Committee, 2001 to 2002

North Dakota Trial Lawyers Association, 1984 to 1994
Board of Governors, 1988 to 1994; Secretary, 1990 to 1991; Treasurer, 1991 to 1992; Vice President, 1992 to 1993

Ronald N. Davies Inn of Court, 1997 to Present
Secretary, 1998 to 2000; Vice President, 2000 to 2001; President, 2001 to 2002

State Bar Association of North Dakota ("SBAND"), 1984 to Present
Ad Hoc Family Courts Study Commission, 1993 to 1994
Committee on Attorney Standards, 1992 to 1994
Ethics Committee, 1994 to 1995
Chair, 1995
Instructor SBAND People's Law School, 1998 to 2004
Legislative Committee, 1985 to 1990
Secretary/Treasurer, 1987 to 1990

U.S. Sentencing Commission Tribal Issues Advisory Group, 2015 to 2016

Chair, 2015 to 2016

U.S. Sentencing Commission Standing Tribal Issues Advisory Group, 2016 to Present
Chair, 2016 to Present

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

North Dakota, 1984
Minnesota, 1986

I took inactive status in the Minnesota bar in 2001. 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.

United States District Court for the District of North Dakota, 1984

There has been no lapse 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.

Blessed Sacrament Knights of Columbus, 1993 to 1997

Chesterton Society of Fargo, 1993 to 1996; 2015 to Present

Diocesan Pastoral Council, Catholic Diocese of Fargo, 1993 to 2002
Member, 1993 to 1994; Emeritus Member, 1994 to 2002

Friends of Cardinal Muench Seminary, 1998

St. Anne & Joachim Catholic Church Pastoral Council, 2016 to Present

St. Anne & Joachim Knights of Columbus, 1997 to Present

United Way of Cass and Clay Counties, 1998 to 1990
Campaign Chair, West Fargo Division, 1988 to 1990

Villa Nazareth/Friendship Village, 2000 to 2003

West Fargo Library Board, 1987 to 1993

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

The Knights of Columbus is a Catholic fraternal organization limited to men, although there is a corresponding organization for women. To my knowledge, none of the other 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.

Bob Lind, Neighbors: The more things change, the more they stay the same, Forum, Apr. 10, 2017 (discussing my email). Copy supplied.

Remembering Judge Ronald N. Davies: A Giant Among Us, 87 N.D. L. Rev. 203 (2012). Copy supplied.

Aboriginal Land Title in the United States and Canada, 60 N.D. L. Rev. 107 (1984). Copy supplied.

Between 1992 and 1994, I wrote three letters to the editor of the Fargo Forum while I was a candidate for the North Dakota House of Representatives or while I was the District Chair of the 13th District Republican Committee. I was unable to locate a copy of these letters.

In one letter, I endorsed Warren "Duke" Albrecht for North Dakota Attorney General.

Another letter related to means testing Social Security to preserve the system and to make sure that there were funds available to meet the needs of the neediest American workers.

I have no recollection of the final letter, other than to note that the editor titled it, "Old Fuss and Feathers," because I had quoted General Winfield Scott.

I authored an article in the Farm and Ranch Guide on no-fault insurance and automobile insurance that was published in 1986 or 1987. I was unable to locate a copy of the article.

- 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.

While I was an active member of the State Bar Association of North Dakota from 1984 to 2003, I served on committees and task forces that submitted reports to the North Dakota Supreme Court and the North Dakota Legislature. The topics included family law, tribal law, drug court, ethics, attorney standards, judicial compensation, judicial performance review, and judicial selection. I have supplied copies of the reports that I was able to obtain from the North Dakota Supreme Court.

- 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.

Attached is the May 16, 2016 Final Report of the Tribal Issues Advisory Group to the United States Sentencing Commission, of which I was the chair.

On February 5, 2003, I testified before the United States Senate Judiciary Committee at my confirmation hearing to be a United States District Judge for the District of North Dakota. A transcript of the hearing testimony is available at <https://www.congress.gov/108/chrg/shrg90303/CHRG-108shrg90303.htm>.

In 2003, while serving on the Attorney Standards Committee, I testified before the North Dakota Supreme Court regarding the adoption of Rule 8.4 of the Rules of Professional Conduct, which sought to prohibit lawyers from engaging in conduct that is prejudicial to the administration of justice or is biased based on race, sex, national origin, disability, age, or sexual orientation. I was unable to locate a transcript or recording of the testimony.

On March 6, 2001, as the Chair of the North Dakota Judicial Conference Committee on Judicial Compensation, I testified before the North Dakota House Appropriations Committee in support of an appropriations bill to increase judicial salaries. Copy supplied.

On January 17, 2001, as the Chair of the North Dakota Judicial Conference Committee on Judicial Compensation, I testified before the North Dakota Senate Appropriations Committee in support of an appropriations bill to increase judicial salaries. Copy supplied.

In 1985 or 1986, I assisted a partner of mine draft a letter related to Garrison Diversion and the promise of the Pick-Sloan Act. The letter was submitted to a congressional committee, but I have been unable to locate a copy.

- 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.

Since I became a United States District Judge, I have spoken to classes, civic groups, and legal groups approximately half a dozen times a year. I have not always kept notes or information about the presentations. I compiled the list below from a combination of a review of my records and searching publicly available databases, although there may be additional events that I am unable to recall.

May 6, 2017: Speaker, "On Being Welcomed to the Company of Educated Men and Women." Commencement address at University of Jamestown, Jamestown, ND. Copy supplied.

September 29, 2016: Speaker, Shanley High School Government Class Moral Foundations of Government. Shanley High School, Fargo, ND. Notes supplied.

September 15, 2016: Speaker, "Under Siege in America: Embracing the Constitution in Dangerous Times." Constitution Day--Minnesota State University Moorhead, Moorhead, MN. Notes supplied.

June 10, 2016: Report, U.S. Sentencing Commission's Judges Seminar. Notes supplied.

April 21, 2016: Speaker, "Freedom and Law." North Dakota State University

Criminal Justice Class. North Dakota State University, Fargo, ND. Notes supplied.

February 11, 2016: Speaker, "Why We Became Lawyers and What Went Wrong." Ronald N. Davies Inn of Court, Fargo, ND. Notes supplied.

September 30, 2015: Keynote Speaker, Midwest Drug Court Professional Conference held at the Cambria Suites and Conference Center in West Fargo, ND. Notes supplied.

August 15, 2015: Speaker, University of North Dakota School of Law pinning ceremony, Grand Forks, ND. Notes supplied.

July 22, 2015: Speaker, Eighth Circuit Model Jury Instruction update. Eighth Circuit District Judges Conference, Minneapolis, MN. Notes supplied.

April 22, 2014: Speaker, "Judging Pilate." Shanley High School Religious Class. Shanley High School, Fargo, ND. Notes supplied.

February 21, 2014: Speaker, "Waiting for a Bus that Never Comes." North Dakota Tribal Courts Conference. Copy supplied.

December 13, 2013: Speaker, "Faith and the Law," at the Lorentzen Center for Faith and Work, Concordia College in Moorhead, MN. Recording of the panel discussion can be found at <https://www.youtube.com/watch?v=ltCyll6fQ4M>.

October 17, 2013: Speaker, dedication of the University of Jamestown's School of Physical Therapy, Fargo, ND. Copy supplied.

August 1, 2013: Speaker, "There Ain't No One in Washington Coming to Solve the Problem." Tribal Consultation Conference. Copy supplied.

May 24, 2013: Speaker, speech on occasion of drug court's anniversary. Notes supplied.

March 15, 2013: Speaker, "Freedom of Conscience: Religious Liberty." North Dakota Catholic Medical Association. Notes supplied.

March 1, 2013: Speaker, Use of Risk Assessment in Pre-Sentence Reports. District meeting Missouri Western. Notes supplied.

September 17, 2012: Speaker, "Mr. Madison We Have a Problem: This Constitution is Wonderful and All But We Can't Agree on What it Means." FM Community/Minnesota State University-Moorhead, Moorhead, MN. Notes supplied.

September 28, 2012: Speaker, Ethics and Art of Trial Lawyering. Notes supplied.

September 20, 2012: Panelist, Use of PCRA in a Pre-Sentence Report. Sentencing Policy Institute. Notes supplied.

December 22, 2011: Speaker, "Leadership for Lawyers." Cass County Bar Association. Notes supplied.

October 27, 2011: Speaker, "Liberty in a time of Great Unrest: Schenck and its progeny." Fargo South High School, Fargo, ND. Notes supplied.

September 14, 2011: Speaker, Gunderson lecture. University of South Dakota School of Law, Vermillion, SD. Copy supplied.

August 21, 2011: Speaker, dedication of Davies High School, Fargo, ND. Copy supplied.

January 7, 2011: Speaker, Fireside Chat with Federal Judge Ralph Erickson, Terrence J. Murphy Institute for Catholic Thought, Law, and Public Policy at St. Thomas University, 2115 Summit Avenue, St. Paul, MN 55105. I have no notes, transcript, or recording of the chat.

October 8, 2010: Speaker, "The Morality of Sentencing." St. Thomas University School of Law, Minneapolis, MN. Notes supplied.

August 13, 2009: Speaker, Eulogy for Judge Webb. Copy supplied.

July 13, 2009: Speaker, Ethics & Morality Under Law. ND Governor's Schools. Notes supplied.

September 25, 2008: Speaker, "Conspiracy Law Suitable for Federal Judges and Other Neophytes." Cass County Bar Association. Notes supplied.

September 17, 2008: Speaker, "Constitution, Schmonstitution: We're Writing Laws Here! Or Judges Gone Wild." Shanley High School, Fargo, ND. Notes supplied.

June 13, 2008: Speaker, "Come Hell or High Water." SBAND Annual Meeting. Notes supplied.

June 13, 2008: Speaker, "A Walk Through *Apprendi* and its Progeny." SBAND Annual Meeting. Notes supplied.

May 10, 2008: Speaker, Commencement address at University of North Dakota School of Law, Grand Forks, ND. Copy supplied.

October 17, 2007: Speaker, Presiding Over a Capital Punishment Trial. Copy

supplied.

September 17, 2007: Speaker, "The Moral Foundations of Constitutional Republicanism." Constitution Day speech Minnesota State University-Moorhead, Moorhead, MN. Notes supplied.

September 10, 2007: Speaker, "The Moral Foundations of Constitutional Republicanism." University of Notre Dame School of Law, Notre Dame, IN. Notes supplied.

May 3, 2007: Remarks, Fargo National Day of Prayer. Copy supplied.

April 30, 2006: Speaker, Liberty Under Law: Separate Branches/Balanced Powers. I gave this speech at a law day luncheon, but I cannot recall the group. Notes supplied.

September 22, 2005: Speaker, "Why Call Me? What every Lawyer Who Doesn't Practice Criminal Law Needs to Know." Cass County Bar Association. Notes supplied.

August 22, 2005: Speaker, investiture for Dan Crothers. Copy supplied.

December 28, 2004: Speaker, investitures for Steve McCullough and Steve Marquart. Copy supplied.

June 30, 2004: Speaker, Use of Demonstrative Evidence in Opening and Closing: "Hey I'm a Lawyer—I persuade People. Don't I?" Notes supplied.

June 8, 2004: Speaker, investiture for Doug Herman. Copy supplied.

November 21, 2003: Speaker, "Legal Issues in Higher Education." Minot State University, Minot, ND. Notes supplied.

September 2003 to Present: Speaker, Naturalization ceremonies. Copies supplied (dated September 10, 2004 and August 21, 2014).

July 26, 2003: Speaker, investiture for Wade Webb. Copy supplied.

June 12, 2003: Speaker, Evidence a View from the Bench. SBAND Annual Meeting. Notes supplied.

June 6, 2003: Speaker, speech on the Occasion of My Investiture. Copy supplied.

June 26, 2003: Speaker, "State v. Hauptmann" Constructing a Closing Argument. Cass County Bar Association. Notes supplied.

I frequently speak at Alcoholics Anonymous meetings and conferences. Some recordings exist. Nearly all involve telling the story of how I came to find sobriety. I have supplied a representative recording.

I have also participated in panel discussions on literature and the law, including a few discussions of Shakespeare and the law. I have no notes or recordings from any of these events.

I reviewed the materials submitted to the Senate Judiciary Committee in 2003 and, based on that information and my recollection, I note:

Before my appointment to the federal bench, I spoke frequently to bar association groups, CLE meetings and the like, usually on topics relating to professional responsibility and ethics, evidence, workers compensation, drug courts, and courtroom practices. I also spoke frequently to service clubs, classes, and church groups on our system of justice, the jury system, juvenile courts, and drug courts. I was unable to locate any notes, transcripts, or recordings of these speeches.

In the mid-1990's, I gave the Memorial Day address at the Clarence McCormick Post 195 American Legion, located at 37201 264th Avenue Northwest, Donnybrook, North Dakota 58734. I was unable to locate any notes, transcripts, or recordings of this address.

In the early 1990's, I gave the commencement address at Chaffee High School in Chaffee, North Dakota. The school closed in 1994, and I do not have the address. I was unable to locate any notes, transcripts, or recordings of this speech.

- 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 recall appearing on the Joel Heitkamp radio show for a law day program and on the Scott Hennen radio show for a law day program. As far as I know, no recordings exist.

The Case of a Lifetime, North Dakota Law Alumni Publication, Summer 2007. Copy supplied.

Odd S. Lovoll interviewed me for a book he was writing entitled "The Promise Fulfilled: A Portrait of Norwegian Americans Today." I have never seen a copy of the book, but online sources say that something from my interview appears on page 115 of the book.

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.

2003 to Present: Appointed United States District Judge for the District of North Dakota, a trial court of limited jurisdiction. I was nominated by President George W. Bush and unanimously confirmed by the United States Senate for my current position. I took office on March 14, 2003.

1995 to 2003: Elected District Judge, East Central Judicial District, State of North Dakota, a trial court of general jurisdiction. I was elected to the East Central Judicial District bench in 1994 and re-elected in 1996 and 2002.

1994 to 1994: Appointed County Judge for Traill, Steele, Nelson, and Griggs Counties of North Dakota, a trial court of limited jurisdiction. I was appointed County Judge for Traill, Steele, Nelson, and Griggs Counties effective July 1, 1994 by the county commissions for Traill, Steele, Nelson, and Griggs Counties.

1993 to 1994: County Magistrate for Cass County, North Dakota. I presided over traffic court, small claims, mental health proceedings, and warrant proceedings. I was hired as Cass County Magistrate by the Cass County Commission on the recommendation of the presiding judge for the Cass County Court in February of 1993.

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

I have presided over approximately 455 cases that have gone to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials:	40%
bench trials:	60%
civil proceedings:	20%
criminal proceedings:	80%

I have presided over 170 jury trials and approximately 285 bench trials during my tenure as a state and federal trial judge. The vast majority of my bench trials were conducted during my time on the state bench. Since taking the federal bench, I have tried 81 jury trials and 11 bench trials.

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

According to a search of the court's electronic database in CM/ECF, I have authored over 9,000 opinions and orders. Please see attached list of citations for all orders and opinions available on Westlaw as of June 8, 2017.

- 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).

During my tenure on the United States District Court bench, significant trials include:

1. *United States v. Rodriguez*, 389 F. Supp. 2d 1135 (D.N.D. 2005), 380 F. Supp. 2d 1041 (D.N.D. 2005), and 2007 WL 466752 (D.N.D. Feb. 12, 2007), *aff'd*, 581 F.3d 775 (8th Cir. 2008), *cert. denied*, 562 U.S. 981. *See also United States v. Rodriguez*, 2006 WL 487117 (D.N.D. Feb. 28, 2006), and 2006 WL 435581 (D.N.D. Feb. 21, 2006).

This was perhaps the highest profile trial tried in North Dakota during the past 40 years. Rodriguez was charged with kidnapping resulting in death with special circumstances. It was the first death penalty case tried in North Dakota since 1913. Jury selection commenced on July 6, 2006. Opening statements were heard on August 14, 2006. The defendant was found guilty of the offenses charged on August 30, 2006. The jury returned a death verdict on September 22, 2006. Rodriguez was sentenced in February of 2007. The case was affirmed on appeal and is currently pending on post-conviction relief claims assigned to me. Because of this status, I respectfully cannot describe the case any further.

Counsel for the United States:

Drew Wrigley, then United States Attorney
Sanford Health Systems
300 North Seventh Street
Bismarck, ND 58501
701-323-6104

Norman Anderson, then Assistant United States Attorney
East Central District Judge
P.O. Box 2806
Fargo, ND 58108
701-451-6940

Keith Reisenauer, Assistant United States Attorney
655 First Avenue North, Suite 250
Fargo, ND 58102
701-297-7400

Counsel for Rodriguez:

Richard Ney
Ney & Adams Law Firm

200 North Broadway Street
Wichita, KS 67202
316-264-0100

Robert G. Hoy
Ohnstad Twichell, P.C.
P.O. Box 458
West Fargo, ND 58078
701-282-3249

2. *United States v. Keiser*, No. 05-cr-80, 2007 WL 152115 (D.N.D. Jan. 17, 2007), *aff'd*, 578 F.3d 897 (8th Cir. 2009). *See also United States v. Keiser*, 2007 WL 642933 (D.N.D. Feb. 26, 2007), 2006 WL 3751452 (D.N.D. Dec. 19, 2006), and 2006 WL 3501278 (D.N.D. Dec. 04, 2006).

Keiser was charged and convicted of 22 counts of wire fraud, money laundering and conspiracy to defraud. The case involved a scheme promoting the use of non-extant bank debentures to defraud a series of transactions designed to create and secret away the proceeds of a pyramid scheme for an organization called Preferred Trust Management. The overall scheme included other defendants one of whom, Neville Solomon, also went to trial in a separate trial. The total losses attributable to Preferred Trust exceeded \$14 million. On appeal, Keiser asserted that I had let him defend himself when he was not mentally fit to do so, that I violated his due process rights by failing to continue his sentencing hearing, that I had erred in allowing an expert to testify on fiduciary duties arising out of the trust management relationship, and that the sentencing guidelines had been miscalculated. The Eighth Circuit Court of Appeals rejected Keiser's arguments and affirmed on all issues.

Counsel for the United States:

Brett M. Shasky, Assistant United States Attorney
655 First Avenue North, Suite 250
Fargo, ND 58102
701-297-7400

Counsel for Keiser:

Frederick W. Keiser, *pro se*

3. *United States v. Bagola*, No. 12-cr-63, 2013 WL 11322598 (D.N.D. Dec. 05, 2013), *aff'd*, 796 F.3d 903 (8th Cir. 2015).

Bagola, an Indian within the meaning of the U.S. Code, was charged with two counts of first-degree murder on the Spirit Lake Nation Indian Reservation. After the trial, the defendant appealed, asserting an insufficiency of the evidence and challenging the jury instructions (which were the ones specifically requested by the

defendant at trial) and the court's rulings which limited his ability to cross-examine a witness. The case was unusual in that the investigators originally suspected the victims' father of the offense and, during the course of an interrogation, he confessed. Later DNA brought attention on Bagola who expressed knowledge of the intimate facts of the case that had not been disclosed to the public. He asserted that his supposed knowledge was actually fed to him in the course of his interrogation. Bagola also objected that I had improperly prohibited him from introducing the results of a polygraph examination that the victims' father had submitted to. Finally, Bagola asserted that his confession was insufficiently corroborated so as to be admissible. The Eighth Circuit Court of Appeals rejected Bagola's arguments and affirmed.

Counsel for the United States:

Christopher C. Myers, USA
655 First Avenue North, Suite 250
Fargo, ND 58102
701-297-7400

Janice M. Morley, Assistant United States Attorney
655 First Avenue North, Suite 250
Fargo, ND 58102
701-297-7400

Clare R. Hochhalter, Assistant United States Attorney
P.O. Box 699
Bismarck, ND 58502
701-530-2420

Counsel for Bagola:

Christopher J. Lancaster, Assistant Federal Public Defender
112 Roberts Street North, Suite 200
Fargo, ND 58102
701-239-5111

Richard Henderson, then Assistant Federal Public Defender
112 Roberts Street North, Suite 200
Fargo, ND 58102
701-239-5111

Jana Miner, Assistant Federal Public Defender
101 South Pierre Street, Third Floor
Pierre, SD 57501
605-224-0009

4. *United States v. Aaron Johnson*, No. 13-cr-01 (D.N.D.), and *United States v. Derek Johnson*, No. 14-cr-03 (D.N.D.). Copies of the judgments supplied. See also Amended Judgment for Aaron Johnson, 2015 WL 13310204 (D.N.D. Dec. 8, 2015), *aff'd*, 821 F.3d 1031 (8th Cir. 2016).

Derek and Aaron Johnson are brothers who were charged with conspiracy to defraud the United States, making false statements to influence the United States Department of Agriculture, and making false statements in the course of an enforcement action. The Johnson brothers were potato farmers in North Dakota. The Risk Management Agency sold them a policy insuring their potato crop against various losses, including soft rot. The brothers allegedly conspired to make a false claim by intentionally damaging their own potatoes by lacing them with organic material (Rid-X) and by raising the temperature of the piles. Since the organisms in the septic cleaner are naturally occurring, the evidence was largely circumstantial and based on comments attributed to Aaron Johnson. The jury convicted the Johnson brothers. Aaron appealed claiming that the amount of the loss found by the court was in error and challenging the sufficiency of the evidence. The Eighth Circuit Court of Appeals affirmed.

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5. *FleetPride, Inc. v. Inland Truck Parts*, No. 13-cv-91 (D.N.D.). Copy supplied of my order granting in part and denying in part summary judgment.

FleetPride, Inc. sued Inland Truck and its employees asserting that it had improperly raided its employees to start a competing business. FleetPride asserted

six bases for relief: (1) misappropriation of trade secrets, (2) tortious interference with business relationships or expectancies, (3) breach of duty of loyalty on the part of its former employees, (4) aiding and abetting that breach on the part of Inland, (5) breach of contract by defendant Wellen, and (6) tortious interference with an existing contract. Inland and related defendants denied all wrongdoing. The case was tried to a jury verdict in favor of all defendants on all claims.

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6. *Lonesome Dove Petroleum v. Holt*, No. 13-cv-99 (D.N.D.), appeal pending.
Copy supplied of: (1) my order granting in part and denying in part summary judgment; and (2) my order denying equitable relief or for a new trial.

Lonesome Dove asserted that it and John H. Holt and Holt Oil Properties were part of a four-member partnership engaged in a joint venture formed for the purpose of buying oil and gas leases in the area east of the Nesson Anticline in North Dakota and selling them for a profit. Lonesome Dove's principal, Brett Boedecker, was alleged to have brought all the partners together. They acquired certain lease holdings in Montrail and Burke Counties in North Dakota. It is undisputed that at some point some of the participants in the joint venture, including the Holt parties began to develop other "oil plays." Holt asserted that the original joint venture had been fully performed and that everyone made some money. Lonesome Dove entities assert that some members of the original joint venture froze them out of the part of the original scope of the joint venture. The jury found in favor of the defendants in the entirety. Since the case remains on appeal, I will make no further comment.

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7. *Kerrivan v. R.J. Reynolds*, No. 09-cv-13703 (M.D. Fla.). Copy of the judgment supplied.

Kerrivan is part of the Engel cases in Florida. Judge Young handled the pre-trial proceedings and I presided over the final stages of the pretrial and trial. The case involved issues related to the plaintiff's addiction to nicotine, causation, and reliance. The case was tried over a three-week period in October 2014. The jury returned a total verdict of \$41.1 million. There are pending post-trial motions. A stay granted at the request of the Plaintiff has recently been lifted, and the pending

motions set for hearing. Since the case is still active, I will make no further comment.

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During my tenure on the state bench, my most significant cases over which I presided include:

8. *State v. Garcia*, No. CR-96-0180 (N.D. Dist.), *aff'd*, 61 N.W.2d 599 (N.D. 1997), *cert. denied* 522 U.S. 874 (1997).

On November 15, 1995, at approximately 10:00 p.m., Barry Garcia, then 16 years old, approached a car operated by Pat Tendeland and in which Cheryl Tendeland, his wife, and Connie Guler, a friend, were passengers. The Tendelands and Guler were returning home after attending a funerary prayer service in Hillsboro, ND. Garcia had a partially concealed sawed-off shotgun. Apparently taking slight at the way that Mrs. Tendeland looked at him, Garcia fired at point blank range killing Cheryl Tendeland and wounding both Pat Tendeland and Connie Guler. Garcia and a number of other young men on the scene fled, eventually ending up in a fast-food restaurant where Garcia threatened a worker. Eventually Garcia and three companions were arrested in Moorhead, Minnesota. The case was very high profile as it was the first alleged gang-related killing in North Dakota. The trial was broadcast on the radio and garnered significant regional print, television, and radio attention. The issues raised at trial included (1) whether Garcia was the shooter; (2) was the trial tainted by the original criminal street gang charges; (3) whether the partial closing of the trial to the press violated Garcia's right to a public jury trial; (4) whether accomplice testimony was sufficiently corroborated; and (5) whether a sentence of life without the possibility of parole was in violation of Garcia's due process rights. Pretrial I dismissed the criminal street gang as being unsupported by probable cause. Neither Pat Tendeland nor Connie Guler were able to specifically identify Garcia, but his codefendants testified that Garcia was the one with the gun. I found that the evidence was sufficiently corroborated to be admissible. During the trial, the youngest codefendant refused to testify because of the presence of a television camera, a radio feed, the defendant's family and friends. I conducted a hearing outside the presence of the jury and decided to eliminate the expanded media coverage, allowed a media representative to remain as well as the immediate family of Mr. Garcia and Mrs. Tendeland. The North Dakota Supreme Court affirmed, and the Supreme Court denied certiorari.

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9. *Dahlberg v. Lutheran Soc. Services*, No. CV-98-02372, 2000 WL 35444901 (N.D. Dist. Mar. 28, 2000), *aff'd*, 625 N.W.2d 241 (N.D. 2001).

Dahlberg, a therapeutic recreational therapist at Luther Hall which is a residential treatment center for adolescents and youth, sued her former employer alleging a breach of contract, retaliatory discharge, and intentional infliction of emotional distress. I granted summary judgment in favor of the defendants. As part of her claim Ms. Dahlberg asserted that the process for termination set forth failed to follow the procedures found in the employee handbook, that she had pled a sufficient case of outrage for her intentional infliction of emotional stress claim to survive and that she should have been protected by the whistleblower statute found at N.D.C.C. § 34-01-20. I held that the employment relationship was an at-will relationship and that the employee handbook disclaimed a contract making the process non-binding. I further held that the defendant's conduct was not sufficiently outrageous to support a claim for infliction of distress. As for Dahlberg's whistleblower claim, the facts established that she had set forth her concerns not to raise a question of unlawful conduct but to assert that she had been subjected to disparate disciplinary treatment. I held that this was not a sufficient to raise the protections of the whistleblower statute. The North Dakota Supreme Court affirmed. The case has become significant in North Dakota law because it established a precedent for the proposition that N.D.C.C. § 34-01-20 intends to prohibit an employer from discharging an employee who makes a good faith report to the employer of a violation or suspected violation of state law with a purpose of exposing illegality and that it provides no protection when the employee has another purpose in mind.

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10. *North Dakota Fair Hous. Council v. Peterson*, No. CV-99-02563625, 2000 WL 35445485 (N.D. Dist. Mar. June 5, 2000), *aff'd*, 625 N.W.2d 551 (N.D. 2001).

The North Dakota Fair Housing Council (“NDFHC”) filed suit against Peterson, a landlord, alleging discriminatory housing action against landlords who refused to rent property to tenants because they were unmarried and admitted that they would unlawfully cohabit. I dismissed the NDFHC for lack of standing. As to the named individual plaintiffs, I held that the refusal to rent did not violate the North Dakota Human Rights Act because the cohabitation violated North Dakota’s then-existing unlawful cohabitation statute, which was found at N.D. Cent. Code § 12.1-20-10. The North Dakota Supreme Court affirmed. I would note that a dissent asserts that the court assumed without adequate evidence that the parties’ conduct would have violated the cohabitation statute. While I no longer have the transcript of the deposition of the named plaintiff, I checked the transcript at the time the appeal was decided to make sure that, in the course of the deposition, the plaintiff actually conceded that he and his partner proposed to violate the cohabitation statute. He did.

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
1. *United States v. Rodriguez*, 389 F. Supp. 2d 1135 (D.N.D. 2005), 380 F. Supp. 2d 1041 (D.N.D. 2005), and 2007 WL 466752 (D.N.D. Feb. 12, 2007), *aff’d*, 581 F.3d 775 (8th Cir. 2008), *cert. denied* 562 U.S. 981. *See also United States v. Rodriguez*, 2006 WL 487117 (D.N.D. Feb. 28, 2006), and 2006 WL 435581 (D.N.D. Feb. 21, 2006).

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2. *Twombly v. City of Fargo*, 388 F. Supp. 2d 983 (D.N.D. 2005).

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3. *United States v. Williams*, No. 09-cr-55, 2010 WL 9137843 (D.N.D. Jan. 22, 2010), *aff'd in part, rev'd in part*, 647 F.3d 855 (8th Cir. 2011).

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4. *United States v. Cavanaugh*, 680 F. Supp. 2d 1062 (D.N.D. 2009), *rev'd*, 643 F.3d 592 (8th Cir. 2011), *cert. denied*, 132 S.Ct. 1542 (2012).

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5. *Spirit Lake Tribe v. Benson County, North Dakota*, No. 10-cv-95, 2010 WL 4226614 (D.N.D. Oct. 21, 2010).

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6. *Fair Hous. of the Dakotas v. Goldmark Prop. Mgmt*, 778 F. Supp. 2d. 1028
(D.N.D. 2011).

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7. *Spirit Lake Sioux Tribe of Indians v. Nat'l Collegiate Athletic Ass'n*, No. 11-cv-95, 2012 WL 12886993 (D.N.D. May 1, 2012), *aff'd*, 715 F.3d 1089 (8th Cir. 2013).

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8. *In re Racing Services, Inc.*, 504 B.R. 549 (D.N.D. 2014), *aff'd*, 779 F.3d 498 (8th Cir. 2015).

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9. *North Dakota v. Envtl. Prot. Agency*, 127 F. Supp. 3d 1047 (D.N.D. 2015).

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10. *Consumer Fin. Prot. Bureau v. Intercept*, No. 16-cv-144 (D.N.D. Mar. 17, 2017). Copy supplied of my order granting defendants' motion to dismiss the complaint.

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

United States v. Bear, No. 13-cr-143, Doc. No. 88 (D.N.D. Nov. 13, 2015), *aff'd*, 844 F.3d 981 (8th Cir. 2016), *cert. pending*.

Moe v. Pringle, No. 15-cv-98, 2016 WL 3406087 (D.N.D. 2016), *certificate of appealability denied*, No. 16-3070 (8th Cir. 2016), *cert. denied*, ___ S. Ct. ___ (May 15, 2017).

United States v. Trotter, No. 14-cr-6, Doc. No. 131 (D.N.D. July 28, 2015), *aff'd*, 837 F.3d 864 (8th Cir. 2016), *cert. denied*, 137 S. Ct. 1125 (2017).

United States v. St. Claire, No. 14-cr-197, Doc. No. 51 (D.N.D. Nov. 13, 2015), *aff'd*, 831 F.3d 1039 (8th Cir. 2016), *cert. denied*, 137 S. Ct. 1604 (2017).

United States v. Royston, No. 09-cr-155, Doc. No. 724 (D.N.D. Apr. 19, 2016), *certificate of appealability denied*, No. 16-2316 (8th Cir. 2016), *cert. denied*, 137 S. Ct. 1235 (2017).

United States v. Adetiloye, No. 08-cr-28, Doc. No. 276 (D.N.D. Dec. 8, 2014), *aff'd*, No. 15-1087 (8th Cir. Dec. 3, 2015), *cert. denied*, 135 S. Ct. 2044 (2016).

United States v. Adetiloye, No. 08-cr-28, Doc. No. 280 (D.N.D. Dec. 17, 2014) (after remand), *aff'd*, 623 Fed. App'x 825 (8th Cir. 2015), *cert. denied*, 137 S. Ct. 216 (2016).

United States v. Evans, No. 13-cr-9, Doc. No. 99 (D.N.D. March 20, 2014), *aff'd*, 802 F.3d 942 (8th Cir. 2015), *cert. denied*, 137 S. Ct. 536 (2016).

United States v. Scheiring, No. 09-cr-56, Doc. No. 124 (D.N.D. Dec. 17, 2014), *aff'd*, No. 15-1088 (8th Cir. 2015), *cert. denied*, 136 S.Ct. 237 (2015).

United States v. Anderson, No. 10-cr-123, Doc. No. 84 (D.N.D. Jan. 21, 2014), *certificate of appealability denied*, No. 14-1231 (8th Cir. 2014), *cert. denied*, 135 S. Ct. 501 (2014).

United States v. Shipton, No. 09-cv-29, Doc. No. 284 (D.N.D. June 10, 2014), *sum. aff'd*, No. 14-2638 (8th Cir. 2014), *cert. denied*, 135 S. Ct. 1568 (2015).

United States v. Adetiloye, No. 08-cr-28, 2012 WL 2885634 (D.N.D. 2012), *aff'd in part and rev'd in part*, 716 F.3d 1030 (8th Cir. 2013), *cert. denied*, 134 S. Ct. 1775 (2014).

United States v. Frohlich, No. 11-cr-105, Doc. No. 80 (D.N.D. Feb. 12, 2013), *aff'd*, 737 F.3d 527 (8th Cir. 2013), *cert. denied*, 134 S. Ct. 1781 (2014).

United States v. Tovar, No. 12-cr-31, Doc. No. 332 (D.N.D. May 2, 2013), *aff'd*, 589 Fed. App'x 478 (8th Cir. 2014), *cert. denied*, 135 S. Ct. 499 (2014).

United States v. Zamudio-Orosco, No. 08-cr-169, Doc. No. 110 (D.N.D. Nov. 22, 2013), *sum. aff'd*, No. 13-3647 (8th Cir. 2014), *cert. denied*, 135 S. Ct. 729 (2014).

Wheeler v. DeSautel, No. 12-cv-45, Doc. No. 27 (D.N.D. Jan. 25, 2013), *remanded for assessment of filing fees, petition for rehearing denied*, No. 13-1202 (8th Cir. June 25, 2013), *cert. denied*, 134 S. Ct. 837 (2014).

Wheeler v. DeSautel, No. 12-cv-00045, Doc. No. 43 (D.N.D. Dec. 6, 2013), *sum. aff'd*, No. 14-1170 (8th Cir. June 25, 2013), *cert. denied*, 135 S. Ct. 741 (2014).

United States v. McClarin, No. 09-155, Doc. No. 552 (D. N.D. June 28, 2012), *sum. aff'd*, No. 13-1280 (8th Cir. 2012), *cert. denied*, 134 S. Ct. 488 (2013).

United States v. Patterson, No. 09-cr-85, Doc. No. 205, (D.N.D. Sept. 13, 2011), *aff'd*, 684 F.3d 794 (8th Cir. 2012), *cert. denied*, 133 S. Ct. 992 (2013).

United States v. Slagg, No. 09-cr-69, Doc. No. 668 (D.N.D. Sept. 17, 2012), *sum. aff'd*, No. 12-3248 (8th Cir. 2012), *cert. denied*, 133 S. Ct. 1844 (2013).

United States v. Lee, No. 09-cr-155, Doc. Nos. 390, 392, 394 (D.N.D. Sept. 1, 2010), *aff'd in part, rev'd in part*, 687 F.3d 935 (8th Cir. 2012), *cert. denied* 133 S. Ct. 1743 (2013).

United States v. Boyle, No. 11-cr-86, Doc. No. 58 (D.N.D. Dec. 22, 2011), *aff'd*, 790 F.3d 1138 (8th Cir. 2012), *cert. denied*, 133 S. Ct. 2371 (2013).

United States v. Slagg, No. 09-cr-69, Doc. No. 683 (D.N.D. Feb. 28, 2013), *request for successive petition denied*, No. 13-1648 (8th Cir. 2012), *cert. denied*, 134 S. Ct. 356 (2013).

United States v. Royston, No. 09-cr-155, Doc. No. 392 (D.N.D. Sept. 1, 2010), *aff'd*, 687 F.3d 935 (8th Cir. 2012), *cert. denied*, 133 S. Ct. 1743 (2013).

United States v. Alonzo, No. 03-cr-90, Doc. Nos. 821, 822 (D.N.D. Sept. 12 and Oct. 4, 2011), *sum. aff'd*, Nos. 11-3163 and 11-3317 (8th Cir. 2011), *cert. denied*, 133 S. Ct. 133 (2012).

United States v. Cavanaugh, 680 F. Supp. 2d 1062 (D.N.D. 2009), *rev'd*, 643 F.3d 592 (8th Cir. 2011), *cert. denied*, 132 S. Ct. 1542 (2012).

United States v. Raysor, No. 09-cr-155, Doc. No. 379 (D.N.D. Aug. 27, 2010), *rev'd*, 661 F.3d 987 (8th Cir. 2011), *cert. granted, judgment vacated and remanded* 133 S. Ct. 70 (2012).

Libertarian Party v. Jaeger, No. 10-cv-64, Doc. No. 16 (D.N.D. Sept. 3, 2010), *aff'd*, 659 F.3d 687 (8th Cir. 2011), *cert. denied*, 566 U.S. 939 (2012).

Iverson v. VenuWorks/Compass Facilities Mgmt., Inc., No. 11-cv-41, Doc. No. 12 (D.N.D. May 27, 2011), *appeal dismissed*, No. 11-2078 (8th Cir. 2011), *cert. denied*, 565 U.S. 1125 (2012).

United States v. Zamudio-Orosco, No. 08-cr-169, Doc. No. 73 (D.N.D. Nov. 17, 2009), *aff'd*, 405 Fed. App'x. 83 (8th Cir. 2010), *cert. denied*, 565 U.S. 871 (2011).

United States v. Peterson, No. 08-mj-16, Doc. No. 78, 2008 WL 4922413, (D.N.D. March 1, 2010), *aff'd*, 632 F.3d 1038 (8th Cir. 2011), *cert. denied*, 563 U.S. 1034 (2011).

United States v. Booker, No. 09-cr-55, Doc. No. 198 (D.N.D. July 20, 2010), *aff'd*, 639 F.3d 1115 (8th Cir. 2011), *cert. denied*, 565 U.S. 1043 (2011).

Sczygelski v. U.S. Customs & Border Prot. Agency, No. 09-cv-75, 2009 WL 2982871 and 2010 WL 11449065 (D.N.D. 2009 and 2010), *aff'd*, 419 Fed. App'x 680 (8th Cir. 2011), *cert. denied*, 565 U.S. 1094 (2011).

McDowell v. United States, No. 08-cr-86, Doc. No. 160 (D.N.D. Nov. 5, 2010), *certificate of appealability denied*, No. 10-3749 (8th Cir. 2010), *cert. denied*, 565 U.S. 863 (2011).

United States v. Rodriguez, No. 04-cr-55, Doc. No. 652 (D.N.D. Feb. 8 2007), *aff'd*, 581 F. 3d 775 (8th Cir. 2009), *cert. denied*, 562 U.S. 981 (2010).

Allen v. U.S. Air Force, 07-cv-3, 2008 WL 4379175, Doc. No. 43, (D.N.D. Sept. 25, 2008), *aff'd*, 603 F.3d 423 (8th Cir. 2010), *cert. denied*, 562 U.S. 1113 (2010).

United States v. Martinez, No. 06-cr-14, Doc. No. 1195 (D.N.D. Dec. 23, 2008), *aff'd*, 364 Fed. App'x. 305 (8th Cir. 2010), *cert. denied*, 560 U.S. 946 (2010).

Newman v. Redmann, No. 09-cv-63, Doc. No. 30 (D.N.D. Oct. 22, 2009), *aff'd*, No. 09-3624 (8th Cir. Mar. 31, 2010), *cert. denied*, 562 U.S. 934 (2010).

Knutson v. City of Fargo, No. 07-cv-68, Doc. No. 11, 2008 WL 879735 (D.N.D. March 28, 2008), *aff'd*, 600 F. 3d 992 (8th Cir. 2010), *cert denied*, 562 U.S. 897 (2010).

United States v. Martinez, No. 06-cr-106, Doc. No. 392 (D.N.D. Feb. 20, 2009), *aff'd*, 557 F.3d 597 (8th Cir. 2009), *cert. denied*, 558 U.S. 926 (2009).

United States v. Molsbarger, No. 07-cr-16, Doc. No. 60 (D.N.D. Dec. 14, 2007), *aff'd*, 551 F.3d 809 (8th Cir. 2009), *cert. denied*, 556 U.S. 1226 (2009).

United States v. Clow, No. 05-cr-10, Doc. No. 573 (D.N.D. 2006), *sum. aff'd*, No. 08-2213 (8th Cir. 2008), *cert. denied*, 555 U.S. 1089 (2008).

Lambert v. U.S. Dep't of State, No. 04-cv-140, Doc. No. 32 (D.N.D. Mar. 14, 2006), *aff'd*, 224 Fed. App'x. 552 (8th Cir. 2007), *cert. denied*, 552 U.S. 890 (2007).

Fraternal Order of Police, North Dakota v. Stenehjem, 287 F. Supp. 1023 (D.N.D. 2005), *rev'd*, 431 F.3d 591 (8th Cir. 2005), *cert. denied*, 547 U.S. 1129 (2006).

Johnson v. North Dakota, No. 04-cv-112, Doc. No. 12 (D.N.D. May 27, 2005), *certificate of appealability denied*, No. 05-2839 (8th Cir.), *cert. denied*, 546 U.S. 1218 (2006).

United States v. Yorie Von Kahl, No. A3-96-55, 2003 WL 21715352 (D.N.D. 2003), *aff'd*, 95 F. App'x 200 (8th Cir. 2004) (per curiam), *cert. denied*, 543 U.S. 1122 (2005).

Longie v. Spirit Lake Tribe, No. 03-cv-76 (D.N.D. 2004), *aff'd*, 400 F.3d 586 (8th Cir. 2005), *cert. denied*, 546 U.S. 885 (2005).

State v. Garcia, No. CR-96-0180 (N.D. Dist.), *aff'd*, 561 N.W.2d 599 (N.D. 1997), *cert. denied* 522 U.S. 874 (1997).

- 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.

Davis v. United States, No. 12-cr-109, Doc. No. 243 (D.N.D. Mar. 30, 2016), *rev'd*, ___ F.3d ___, 2017 WL 2295789 (8th Cir. 2017). Copy supplied. I granted the defendant's motion to vacate his conviction and sentence under 28 U.S.C. § 2255 on the basis that the trial lawyer did not communicate the law of conspiracy and the risks and benefits of the government's proposed plea offer in a manner in which the defendant could understand. I determined that, based on the evidence in the record and on my perception and experience with Davis, Davis had a mental illness that impaired his ability to understand and make reasoned decisions. The Eighth Circuit Court of Appeals concluded that Davis's mental health records did not support a finding of mental illness that impaired his ability to understand legal advice and make reasoned decision and that there was no basis for finding Davis's trial lawyer should have known about Davis's mental health issues. In addition, the Court of Appeals determined that the trial lawyer's communication style and reliance on telephone communication did not provide a basis for an ineffective assistance of counsel claim. Lastly, the Court of Appeals found that the record was unclear with regard to whether Davis was prejudiced by his trial lawyer's advice on the applicability of the safety-valve exception to the mandatory minimum 10-year sentence. The case was remanded on this narrow issue; however, the mandate has not yet been issued and thus the case remains pending.

Am. Fire & Cas. Co. v. Hegel, No. 14-cv-00089, 2015 WL 12591724 (D.N.D. Nov. 23, 2015), *rev'd*, 847 F.3d 956 (8th Cir. 2017). I applied North Dakota law in finding that the employer's insured was obligated to provide underinsured motorist coverage in an accident in which a Papa John's pizza delivery driver was killed in the scope of his employment. The court held that Kentucky law, rather than North Dakota law, applied in determining whether the employer's insurer was obligated to provide underinsured motorist coverage and that tortfeasor's vehicle was not an "underinsured motor vehicle."

United States v. Reyes, No. 05-cr-10-04, Doc. Nos. 707, 708 (D.N.D. Aug. 28, 2015), *rev'd*, 668 F. App'x 673 (8th Cir. 2016) (per curiam). Copies supplied. Reyes pleaded guilty to drug and firearms charges. The court held it was error not to set forth the amended guidelines range in a motion to reduce under Amendment 782, and thus reversed and remanded.

United States v. Evans, No. 3:13-cr-09, Doc. Nos. 97, 99 (D.N.D. Mar. 11 and 20, 2014), *rev'd*, 802 F.3d 942 (8th Cir. 2015). Copies supplied. The court criticized the admission of evidence relating to the presence of stories pertaining to adult men engaging in sexual acts with minors found on the defendant's media device in a trial for possession of child pornography. Despite the admission of the evidence, the court determined the error was harmless.

Taylor v. United States, No. 3:09-cr-69, Doc. No. 723 (D.N.D. Jan. 30, 2014), *rev'd*, 792 F.3d 865 (8th Cir. 2015). Copy supplied. The court determined that the

petitioner/defendant's amended ineffective assistance of counsel claim was untimely and did not relate back for statute of limitations purposes and thus reversed the grant of relief.

Belcourt Public School Dist. v. Davis, 997 F. Supp. 2d 1017 (D.N.D. 2014), *rev'd*, 786 F.3d 653 (8th Cir. 2015). I decided that the tribal court had jurisdiction over the tribe members' claims. The court held that the agreement between the school district and the tribe was not a "consensual relationship" within the meaning of the exception to the general rule that a tribe may not regulate activities of nonmembers and, in addition, the claims did not involve conduct that threatened or directly affected the political integrity, economic safety, or health/welfare of the tribe. For these reasons, the court held the tribal court lacked jurisdiction over the tribe members' claims.

Fort Yates Pub. Sch. Dist. No. 4 v. Murphy ex rel. C.M.B., 997 F. Supp. 2d 1009, (D.N.D. 2014), *rev'd*, 786 F.3d 662 (8th Cir. 2015). In a companion case to the case above, the court reversed my decision finding the tribal court had jurisdiction and held the agreement between the tribe and school district was not a consensual relationship that granted tribal court jurisdiction over the parent's suit against the school district and the suit did not involve conduct that threatened or directly affected the political integrity, economic safety, or health/welfare of the tribe. Further, the court concluded that sovereign immunity barred the school district's suit against the tribal court.

Partlow v. Stadler, No. 12-cv-80774, 2014 WL 12059001 (D.N.D. Jan. 22, 2014), *rev'd*, F.3d 497 (8th Cir. 2014). I found that police officers who shot a suicidal man were not entitled to qualified immunity on the basis that there was a dispute about whether the man threatened the officers with a shotgun and a reasonable jury could find the officers did not have probable cause to believe that the man posed a threat of serious physical harm either to the officers or others. The court reversed, holding the police officers were entitled to qualified immunity from section 1983 excessive force claim because their actions were objectively reasonable.

Nord v. Walsh Cty., No. 10-cv-114757, 2012 WL 12848433 (D.N.D. Aug. 30, 2012), *rev'd*, 757 F.3d 734 (8th Cir. 2014). The plaintiff claimed that the sheriff fired him under an "unwritten rule" that deputy sheriffs who run against the sheriff will be fired and for other statements made during the campaign. The court held, under the test set forth in *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968) and *Connick v. Myers*, 461 U.S. 138 (1982), the sheriff was entitled to qualified immunity from deputy's first amendment retaliation claim.

Koenig v. North Dakota, No. 10-cv-34, Doc. No. 33 (D.N.D. Apr. 25, 2012), *rev'd*, 755 F.3d 636 (8th Cir. 2014). Copy supplied. The court held that my determination that petitioner was not entitled to counsel on direct appeal in state proceedings was contrary to clearly established law and waiver cannot be inferred from the failure to request appellate counsel.

Commercial Res. Group, LLC v. J.M. Smucker Co., No. 10-cv-101, 2012 WL 12848435 (D.N.D. Apr. 11, 2012), *rev'd*, 753 F.3d 790 (8th Cir. 2014). The court disagreed with my interpretation of North Dakota law and concluded that an automatic renewal provision in a commercial lease agreement was an option to terminate and enforcement of the renewal provision was not substantively unconscionable.

United States v. Emly, No. 12-cr-18, Doc. No. 74 (D.N.D. Apr. 4, 2013), *aff'd in part, rev'd in part*, 747 F.3d 974 (8th Cir. 2014). Copy supplied. The court concluded that the defendant's possession of copies of several different electronic files containing child pornography on separate devices constituted only a single violation and the appropriate remedy was to vacate the convictions on multiplicitous counts.

United States v. Adetiloye, No. 08-cr-28, 2012 WL 2885634 (D.N.D. Mar. 26, 2012), *aff'd in part, rev'd in part*, 716 F.3d 1030 (8th Cir. 2013). The court reversed my award on restitution and forfeiture on a mail fraud conviction, holding the United States should be given an additional opportunity to present evidence on the victims' losses and the forfeiture order required additional evidence of the defendant's proceeds.

Halvorson v. Auto-Owners Ins. Co., No. 09-cv-75, Doc. No. 128 (D.N.D. Feb. 23, 2012), *rev'd*, 718 F.3d 773 (8th Cir. 2013). Copy supplied. I certified as a class action a class of persons covered by the defendant's medpay or PIP policies issued in North Dakota who submitted claims and were paid less than their submitted medical expenses and were paid less than the policy limits for their claims. The court reversed my decision on class certification, finding the class of insured claiming the automobile insurer breached its contract did not satisfy the predominance requirement for certification.

Tollefson v. Pladson, No. 11-cv-62, 2012 WL 3396389 (D.N.D. Aug. 14, 2012), and 2012 WL 12886994 (D.N.D. Sept. 13, 2012), *rev'd*, 508 F. App'x 593 (8th Cir. 2013). I entered default judgment and judgment on plaintiff's unopposed summary judgment motion after the defendant failed to respond despite an adequate opportunity to do so. The court reversed, concluding the grant of summary judgment on an "unsupported" summary judgment motion was not justified.

United States v. Raysor, No. 09-cr-155, Doc. No. 379 (D.N.D. Aug. 27, 2010), *rev'd*, 485 F. App'x 851 (8th Cir. 2012). Copy supplied. The court vacated the defendant's sentence and remanded for resentencing because it was unable to determine the mandatory minimum that applied under the Fair Sentencing Act, in which the Supreme Court held applied retroactively to those sentenced after August 3, 2010.

United States v. Lee, No. 09-cr-155, Doc. Nos. 390, 392, 394 (D.N.D. Sept. 1,

2010), *aff'd in part, rev'd in part*, 687 F.3d 935 (8th Cir. 2012), *cert. denied* 133 S. Ct. 1743 (2013). Copies supplied. Two of the defendant's sentences were vacated in light of the Supreme Court's decision that the Fair Sentencing Act applied retroactively and the case was remanded for resentencing under the "new, more lenient mandatory minimum" provisions of the Fair Sentencing Act.

Red River Freethinkers v. City of Fargo, 749 F. Supp. 2d 940 (D.N.D. 2010), *rev'd*, 679 F.3d 1015 (8th Cir. 2012). This case involved a Ten Commandment monument donated by the Fraternal Order of Eagles to the City of Fargo. I dismissed the complaint on the basis that the plaintiff lacked standing to bring a First Amendment establishment clause action. The court determined that the plaintiffs had standing and the case was remanded for a decision on establishment clause claim.

United States v. Olson, No. 10-cr-26, Doc. No. 47 (D.N.D. Feb. 28, 2011), *rev'd*, 667 F.3d 958 (8th Cir. 2012). Copy supplied. The court vacated the judgment and remanded for resentencing on the issue of whether I improperly imposed a consecutive sentence in order to enable the defendant to receive treatment and promote rehabilitation because of the comments I made at the time of sentencing, and in light of the Supreme Court's decision in *Tapia v. United States*, 564 U.S. 319 (2011).

United States v. Raysor, No. 09-cr-155, Doc. No. 379 (D.N.D. Aug. 27, 2010), *rev'd*, 661 F.3d 987 (8th Cir. 2011), *cert. granted and vacated* 133 S. Ct. 70 (2012). Copy supplied. I imposed a sentence of 52 months' imprisonment under USSG Section 5G1.3 to account for the time that the defendant had already served on his state sentence, which was to run concurrent to the federal sentence. The court reversed, holding that I did not have the authority to make such an adjustment in the face of a 60-month mandatory minimum. The Supreme Court granted certiorari, vacated the Eighth Circuit's decision, and remanded for reconsideration in light of *Dorsey v. United States*, 567 U.S. 260 (2012).

Martinez v. United States, No. 06-cr-45, Doc. No. 121 (D.N.D. Apr. 5, 2011), *rev'd*, 423 F. App'x 650 (8th Cir. 2011). Copy supplied. The court reversed my dismissal of a motion under 28 U.S.C. § 2255 as barred by the one-year statute of limitations period on the basis that the government may waive its statute-of-limitations defense and thus it must affirmatively assert the defense.

United States v. Williams, No. 09-cr-55, 2010 WL 9137843 (D.N.D. Jan. 22, 2010), *rev'd*, 647 F.3d 855 (8th Cir. 2011). I granted a post-verdict motion for judgment of acquittal and, alternatively, a new trial. The court disagreed with my decision for acquittal. The court affirmed the new trial grant and remanded for a new trial.

United States v. Cavanaugh, 680 F. Supp. 2d 1062 (D.N.D. 2009), *rev'd*, 643 F.3d 592 (8th Cir. 2011). I found that a Native American defendant's uncounseled prior convictions in tribal court could not be used to enhance a later federal charge. I found that use of such convictions would, essentially, give rise to a sixth

amendment violation by imposing federal punishment, in part, based upon an uncounseled conviction used to prove the element of a federal offense. The court disagreed, concluding that prior convictions may be used to establish an element of an offense in federal court in the absence of allegations of irregularities or claims of actual innocence surrounding the tribal court convictions and where there was no actual constitutional violation in the court of conviction.

Ackerland v. United States, No. 07-cr-31, Doc. Nos. 312, 315 (D.N.D. Feb. 8, 2010 and Mar. 9, 2010), *rev'd*, 633 F.3d 698 (8th Cir. 2011). Copies supplied. I granted the defendant relief under 28 U.S.C. § 2255 on the ground that the defendant's sentencing guidelines were misapplied because of a miscalculation in the defendant's criminal history score. The court vacated my order granting relief on the ground that the defendant's sentence was within the statutory range and the "illegal sentence exception" in the plea agreement was not a basis to avoid the defendant's appeal waiver.

United States v. Robertson, No. 08-cr-62, Doc. No. 65 (D.N.D. Feb. 18, 2009), *rev'd*, 606 F.3d 943 (8th Cir. 2010). Copy supplied. The defendant was convicted of attempted aggravated sexual abuse and attempted sexual abusive sexual contact. The court held that I erred in not recognizing a double jeopardy violation when the defendant's conduct involved an attempt to engage in a single sexual act with the victim by force. The defendant's conviction on Count II was reversed and the case was remanded for sentencing on the remaining count.

United States v. Cvijanovich, No. 07-cr-55, Doc. No. 81 (D.N.D. Dec. 7, 2007), *rev'd*, 359 F. App'x 675 (8th Cir. 2010). Copy supplied. The court determined that a former defendant in a criminal proceeding was entitled to copies of original documents and that remand was necessary to hold an evidentiary hearing and determine whether the government needed to retain a copy of the original documents.

Allen v. United States, No. 07-cv-2, 2009 WL 77094 (D.N.D. Jan. 8, 2009), *aff'd in part, rev'd in part*, 590 F.3d 541 (8th Cir. 2009). The parties consented to proceed before Magistrate Judge Karen K. Klein court. On appeal, the Eighth Circuit reversed the judgment on the merits of a patient's informed consent claim and held that jurisdiction on the informed consent claim was lacking because the patient failed to exhaust her administrative remedies as to that claim.

United States v. DeMarce, No. 07-cr-64, 2008 WL 1776418 (D.N.D. Apr. 17, 2008) and 2007 WL 4276561 (D.N.D. Nov. 26, 2007), *aff'd*, 564 F.3d 989 (8th Cir. 2009). The court concluded that I erred in finding that defendant did not invoke his right to remain silent at his first interrogation because the defendant's statements and conduct evinced a direct, unambiguous, and unequivocal intention to remain silent. The error was deemed harmless.

United States v. Chalupnik, No. 06-cr-94, Doc. No. 23 (D.N.D. Feb. 5, 2007), *rev'd*,

514 F.3d 748 (8th Cir. 2008). Copy supplied. The defendant was convicted of misdemeanor copyright infringement in connection with taking several thousand CDs and DVDs from the post office trash and selling them to used record stores. After I entered judgment, which included restitution in the amount of \$78,818.00, the court issued its decision in *United States v. Petruk*, 484 F.3d 1035 (8th Cir. 2007) that clarified the applicable law. Under the clarified standard, the court held that the government failed to prove the seller sustained any actual loss and remanded for further proceedings.

Auto-Owners Ins. Co. v. Tribal Court of Spirit Lake Indian Reservation, No. 04-cv-129, Doc. No. 44 (D.N.D. Sept. 7, 2006), *rev'd*, 495 F.3d 1017 (8th Cir. 2007). Copy supplied. The action involved a declaratory judgment action over whether a commercial general liability policy and a commercial umbrella policy covered the alleged sexual assault of a student. I granted the insurer's summary judgment motion. The court held that federal subject matter jurisdiction was lacking over insurer's state-law contract action against an Indian elementary school and the education board.

United States v. Bala, No. 03-cr-112, Doc. No. 118 (D.N.D. July 14, 2005), *rev'd*, 489 F.3d 334 (8th Cir. 2007). Copy supplied. The court determined that the defendants did not violate any North Dakota state gaming laws. The jury's verdict and subsequent judgment of conviction for operating illegal gambling business was reversed.

Wishnatsky v. Rovner, No. 04-cv-1, Doc. No. 34 (D.N.D. Sept. 3, 2004), *rev'd*, 433 F.3d 608 (8th Cir. 2006). Copy supplied. A prospective client of the North Dakota School of Law's clinical program brought section 1983 action against director of program alleging a violation of his first amendment rights when the program declined his request for representation. I granted the director's motion for judgment on the pleadings. The court determined that there were factual issues regarding the prospective client's allegation that the program refused him as a client because of his previously expressed views about the program, its director, and its lawsuit challenging a public display of the Ten Commandments and thus the action should not have been dismissed on the pleadings.

Fraternal Order of Police, North Dakota State Lodge v. Stenehjem, 287 F. Supp. 2d 1023 (D.N.D. 2003), *rev'd*, 431 F.3d 591 (8th Cir. 2005). I found unconstitutional part of North Dakota's statute that prohibits certain telephone solicitations of certain North Dakota residents on the ground that it was a content-based regulation that failed strict scrutiny. The court concluded that North Dakota's statute prohibiting professional charitable solicitation via telephone calls to "do not call" registrants was content neutral and constitutional.

North Dakota v. Keilen, Nos. CR-09-01-K2403, CR-09-01-K-2516, CR-09-01-K-2402, CR-09-01-K-2406, CR-09-01-K-2517 (N.D. Dist. 2002), *rev'd*, 649 N.W.2d 224 (N.D. 2002). Copy supplied. I held that a proper community caretaker contact

had taken place where the police received a call from a neighbor of a loud domestic dispute, heard murmuring voices beyond the door and no other response to their knocks. The police knocked and announced and then entered. They observed a female who showed signs of an altercation. When the occupants denied a need for assistance the officers continued to question them. Shortly thereafter a third officer entered the premises and observed the presence of marijuana and paraphernalia in plain view. The court reversed.

State v. Perreault, No. CR-00-03128 (N.D. Dist. 2001), *rev'd*, 638 N.W.2d 541 (N.D. 2002). Copy supplied. I found that prosecution for a conversion of partnership property under a disputed oral agreement for a draw of a salary against partnership assets failed for want of probable cause under North Dakota's Civil Disputes doctrine. The court reversed holding that the defendant's claim may constitute a defense it did not prohibit the application of North Dakota's theft statute.

Warner & Co. v. Solberg, No. CV-98-00786, 2000 WL 35532011 (N.D. Dist. Sept. 14, 2000), 2000 WL 35444899 (N.D. Dist. Sept. 21, 2000), 2000 WL 35532014 (N.D. Dist. Oct. 3, 2000), 2000 WL 35532013 (N.D. Dist. Nov. 16, 2000), *aff'd in part, rev'd in part*, 634 N.W.2d 65 (N.D. 2001). I granted summary judgment holding that an employment contract was a contract in restraint of trade and void under North Dakota law. The court reversed holding that genuine issues of material fact existed about issues related to allegations of misappropriation of trade secrets and breach of a duty of loyalty existed for the finder of fact.

Rodenburg v. Fargo-Moorhead Young Men's Christian Ass'n, No. CV-98-00954 (N.D. Dist.), *aff'd in part, rev'd in part*, 632 N.W.2d 407 (N.D. 2001). Copies supplied. I found that North Dakota was without sufficient contacts with two Iowa residents who merely lent a firearm to a person who they knew to be out on bail and who had said he was "going to North Dakota to collect the money Cliff Rodenburg owes me." The court reversed holding that the exercise of personal jurisdiction did not offend fundamental notions of justice when the firearm was later used to shoot Rodenburg at the Fargo, ND YMCA.

Powers v. State of North Dakota Job Service, No. CV-98-00961 (N.D. Dist. 1999), *rev'd*, 598 N.W.2d 817 (N.D. 1999). Copy supplied. I upheld a Job Service hearing officer's determination that the claimant had failed to timely file his unemployment compensation claim card holding that the claimant had given conflicting answers at least some of which supported the hearing officer's conclusion. The court reversed and remanded for further proceedings to clarify the conflicting testimony.

Stuart v. Stammen, No. CV-97-15 (N.D. Dist. 1998), *rev'd*, 590 N.W.2d 224 (N.D. 1999). Copy supplied. I found that Stuart waived his right of first refusal on a real estate sale when he told Stammen that if he received an offer close to the one he was describing he should "go for it." Stammen later received an offer that included an offer for some personal property as well that was approximately \$22,000 less

than the amount discussed. Stuart objected because he thought the offer they were discussing was for the real estate only and he would have exercised his right of first refusal for the portion of the purchase price assigned to the real estate. The court reversed saying that the conversation in question was not sufficiently fully informed to constitute a knowing and voluntary waiver.

Daley v. Am. States Preferred Ins. Co., 587 N.W.2d 159 (N.D. 1998). I granted summary judgment for the automobile insurer, holding that *Am. Family Mut. Ins. Co. v. Farmers Ins. Exch.*, 505 N.W.2d 307 (N.D. 1993) had modified the applicability of *Vigen Const. Co. v. Miller Nat'l Ins. Co.*, 436 N.W.2d 386 (N.D. 1989) and *Apollo Sprinkler Co. v. Fire Sprinkler Suppliers & Designs, Inc.*, 382 N.W.2d 386 (N.D. 1986) to no-fault contracts. Applying Minnesota law, I determined that the insurer had to pay Daley's no-fault insurance benefits and indemnify Nodak for the no-fault benefits it had provided to Daley. The court acknowledged the existence of a legitimate dispute as to the choice of law analysis, and held that *American Family* did not represent a break from North Dakota's previous law but was rather an elucidation. The court reversed, concluding that North Dakota law applied. I contacted the State District Clerk of Court to locate a copy of my opinion. Unfortunately, no copy exists.

City of Fargo v. Sivertson, 571 N.W.2d 137 (N.D. 1997). Sivertson was arrested for DUI for stopping at the scene of a traffic accident and waiting for instructions to move—conduct that was consistent with North Dakota's statute on the matter. At an administrative hearing the arresting officer testified he approached the defendant because he did not stop and then slowly drive around the scene as other drivers did which resulted in a finding that there was no probable cause for the stop. At the criminal omnibus hearing on the question of suppression the officer testified that he approached the car for a caretaker stop. I held that the hearing transcript testimony belied this contention. The court held that the prior testimony was not competent evidence because the copy offered by defense counsel was not certified. I contacted the State District Clerk of Court to locate a copy of my opinion. Unfortunately, no copy exists.

State v. Osier, No. CR-94-4508 (N.D. Dist. 1996), *rev'd*, 569 N.W.2d 441 (N.D. 1997). Copy supplied. This case actually reversed a judge who had adopted a previous evidentiary ruling I made in a prior trial that resulted in a hung jury. I held a day long evidentiary hearing and at the conclusion decided that some prior bad acts evidence being offered by the government was properly admissible as *modus operandi* evidence. North Dakota has never adopted a version of Rule 414 of the Federal Rules of Evidence. On appeal the government apparently abandoned *modus operandi* claim and argued motive. The court held that the motive claim was simple bad act evidence and dated at that.

State v. Holecek, 545 N.W.2d 800 (N.D. 1996). I held that a November 22, 1994 arrest pursuant to an order dated October 25, 1991 had expired on its face where N.D. Cent. Code Section 32-06-03 states "In no case shall a longer period than six

months elapse before the hearing on the merits of case shall be had for purpose of deciding the question as to the justice or necessity of making a temporary restraining order permanent.” The court held that the statutory provision was not self-effectuating that the parties needed to affirmatively seek relief from the order rather than simply ignoring it. I contacted the State District Clerk of Court to locate a copy of my opinion. Unfortunately, no copy exists.

- 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 I have issued over 13,000 unpublished orders, opinions, or memoranda since I first became a state judge. The unpublished opinions and orders comprise approximately 98% of the opinions and orders I have authored. Most are routine, many of them are standard form orders.

- 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.

Twombly v. City of Fargo, 388 F. Supp. 2d 983 (D.N.D. 2005).

Clark v. Bertsch, No. 12-cv-02, 2013 WL 5434000 (D.N.D. Sept. 27, 2013), *aff'd* 780 F.3d 873 (8th Cir. 2015).

Red River Freethinkers v. City of Fargo, No. 08-cv-32, Doc. No. 71 (D.N.D. 2013), *aff'd* 764 F.3d 948 (8th Cir. 2014). Order supplied.

United States v. Cavanaugh, 680 F. Supp. 2d 1062 (D.N.D. 2009), *rev'd*, 643 F.3d 592 (8th Cir. 2011), *cert. denied* 132 S.Ct. 1542 (2012).

United States v. Quintero, No. 10-cv-51, 2010 WL 3522251 (D.N.D. Sept. 8, 2010), *aff'd* 648 F.3d 660 (8th Cir. 2011).

Fraternal Order of Police v. Stenehjem, 287 F. Supp. 2d 1023 (D.N.D. 2003), *rev'd* 431 F.3d 591 (8th Cir. 2005), *cert. denied* 126 S.Ct. 2058 (2006).

United States v. Norwood, 343 F. Supp. 2d 860 (D.N.D. 2004), *aff'd* 420 F.3d 888 (8th Cir. 2005).

United States v. Longie, 370 F. Supp. 2d 941 (D.N.D. 2005).

United States v. Grey Water, 395 F. Supp. 2d 850 (D.N.D. 2005).

Reimers v. Super Target, 363 F. Supp. 2d 1182 (D.N.D. 2005).

United States v. Owlboy, 370 F. Supp. 2d 946 (D.N.D. 2005).

United States v. Rodriguez, 380 F. Supp. 2d 1041 (D.N.D. 2005), and 389 F. Supp. 2d 1135 (D.N.D. 2005), *aff'd* 581 F.2d 775 (8th Cir. 2008).

North Dakota v. Keilen, Nos. CR-09-01-K2403, CR-09-01-K-2516, CR-09-01-K-2402, CR-09-01-K-2406, CR-09-01-K-2517 (N.D. Dist. 2002), *rev'd*, 649 N.W.2d 224 (N.D. 2002). Copy supplied.

Horsley v. North Dakota Workers Comp. Bureau, No. CV-99-02864 (N.D. Dist. May 31, 2000), on appeal 623 N.W.2d 377 (N.D. 2001). Copy supplied.

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

I sat by designation with the Eighth Circuit on 51 cases and with the Ninth Circuit on 41 cases, a handful of which are still pending.

Kwan v. SanMedica International, 854 F.3d 1088 (9th Cir. 2017). I authored the opinion. The panel determined that neither California's Unfair Competition Law nor California's Consumers Legal Remedies Act provided consumer with a private cause of action to enforce substantiation provisions of California's unfair competition or consumer protection laws and consumer failed to state a claim for false advertising under California law.

Engel v. Novex Biotech, LLC, -- F. App'x --, 2017 WL 1420347 (9th Cir. Apr. 21, 2017).

United States v. Davis, -- F. App'x --, 2017 WL 1396213 (9th Cir. Apr. 19, 2017).

Crim v. Mann, -- F. App'x --, 2017 WL 1350744 (9th Cir. Apr. 12, 2017).

United States v. Cohen, -- F. App'x --, 2017 WL 1164430 (9th Cir. Mar. 29, 2017).

United States v. Morehead, -- F. App'x --, 2017 WL 371351 (9th Cir. Jan. 26, 2017).

Schmid v. Sonoma Clean Power, -- F. App'x --, 2017 WL 281756 (9th Cir. Jan. 23, 2017).

Abpikar v. Sanchez, -- F. App'x --, 2017 WL 243346 (9th Cir. Jan. 20, 2017).

United States v. Pena, -- F. App'x --, 2017 WL 167473 (9th Cir. Jan. 17, 2017).

Richard & Sheila J. McKnight 2000 Family Trust v. Barkett, -- F. App'x --, 2017 WL 117160 (9th Cir. Jan. 12, 2017).

United States v. Zavesky, 839 F.3d 688 (8th Cir. 2016). I authored the opinion. The panel primarily determined the district court had reasonable cause to order a competency evaluation and did not violate due process in ordering the evaluation at a hearing when the defendant was not present. The panel also determined there was no speedy trial violation, no *Miranda* violation when the defendant made incriminating statements, no violation of double jeopardy for convictions of receipt and possession of child pornography, and probable cause to detain the defendant's semi-truck and laptop computer.

United States v. Thirty-two thousand eight hundred twenty dollars and fifty-six cents (\$32,820.56) in United States Currency, 838 F.3d 930 (8th Cir. 2016). I authored a concurring opinion, commenting on the exercise of discretion by the Department of Justice in the case.

United States v. Notman, 831 F.3d 1084 (8th Cir. 2016). I authored the opinion. The panel concluded that the affidavit in support of the search warrant provided probable cause to believe that child pornography would be found in defendant's home, and that supervised release conditions restricting the defendant's possession or use of a computer and use of photographic recording devices without the approval of the probation officer were not unduly restrictive.

United States v. Beltramea, 831 F.3d 1022 (8th Cir. 2016).

Cullor v. Baldwin, 830 F.2d 830 (8th Cir. 2016).

Olmsted v. Saint Paul Pub. Sch., 830 F.3d 824 (8th Cir. 2016). I authored the opinion. The panel determined that the tenured teacher's resignation after investigation was commenced regarding student-related complaints was not product of duress; the teacher could not unilaterally rescind his resignation; and the resignation was not voidable.

Munt v. Grandlienard, 829 F.3d 610 (8th Cir. 2016).

United States v. McDonald, 826 F.3d 1066 (8th Cir. 2016).

United States v. Jefferson, 822 F.3d 477 (8th Cir. 2016).

Ramona Equip. Rental, Inc. ex rel. U.S. v. Carolina Cas. Ins. Co., 755 F.3d 1063 (9th Cir. 2014). I authored a dissenting opinion, joining other courts that have adopted the more stringent notice requirement set forth in the Miller Act.

Technica LLC ex rel. U.S. v. Carolina Cas. Ins. Co., 749 F.3d 1149 (9th Cir. 2014).

Lima-Lima v. Holder, 545 F. App'x 648 (9th Cir. 2013).

Sayari v. Metropo. Life Ins. Co., 543 F. App'x 733 (9th Cir. 2013).

United States v. Nwobi, 543 F. App'x 706 (9th Cir. 2013).

Francia v. City of San Jacinto, 543 F. App'x 656 (9th Cir. 2013).

Candido-Carcamo v. Holder, 543 F. App'x 629, (9th Cir. 2013).

Lemus-Everado v. Holder, 543 F. App'x 649 (9th Cir. 2013).

United States v. Colbert, 542 F. App'x 700 (9th Cir. 2013).

Ramos v. Holder, 542 F. App'x 655 (9th Cir. 2013).

Jimenez v. Holder, 542 F. App'x 660 (9th Cir. 2013).

Glassman v. Crown Life Ins. Co., 542 F. App'x 663 (9th Cir. 2013).

Garcia v. U.S. Secretary of Health & Human Services, 542 F. App'x 648 (9th Cir. 2013).

Guinooban v. Holder, 542 F. App'x 614 (9th Cir. 2013).

Whatley-Bonner v. Pacific Telesis Group Comprehensive Disability Ben. Plan, 542 F. App'x 620 (9th Cir. 2013).

United States v. Augustine, 530 F. App'x 606 (8th Cir. 2013).

Beets v. County of Los Angeles, 669 F.3d 1038 (9th Cir. 2012).

United States v. Cisneros-Flores, 467 F. App'x 634 (9th Cir. 2012).

Poghosyan v. Holder, 476 F. App'x 667 (9th Cir. 2012).

Developmental Services Network v. Douglas, 666 F.3d 540 (9th Cir. 2011).

Pulliam v. Uribe, 458 F. App'x 625 (9th Cir. 2011).

United States v. Betts, 458 F. App'x 630 (9th Cir. 2011).

Fuentes v. Gonzalez, 457 F.App'x 695 (9th Cir. 2011).

AIDS Healthcare Found. v. Douglas, 457 F. App'x 676 (9th Cir. 2011).

Sandberg v. City of Torrance, 456 F. App'x 711 (9th Cir. 2011).

Wang v. Bear Stearns & Co., Inc., 456 F. App'x 670 (9th Cir. 2011).

Bagoyan Sulakhyan v. Astrue, 456 F. App'x 679 (9th Cir. 2011).

Arellano v. Curry, 454 F. App'x 622 (9th Cir. 2011).

United States v. Ok, 454 F. App'x 615 (9th Cir. 2011).

Najera v. Cates, 454 F. App'x 563 (9th Cir. 2011).

United States v. Hernandez, 454 F. App'x 571 (9th Cir. 2011).

United States v. Nelson, 454 F. App'x 574 (9th Cir. 2011).

United States v. Watson, 434 F. App'x 569 (8th Cir. 2011).

United States v. Smith, 656 F.3d 821 (8th Cir. 2011).

Bass v. United States, 655 F.3d 758 (8th Cir. 2011). I authored the opinion. The panel concluded that the defendant was not prejudiced by counsel's alleged ineffectiveness in failing to object to a witness's testimony and the prosecutor did not engage in improper vouching.

United States v. Benitez-De Los Santos, 650 F.3d 1157 (8th Cir. 2011).

United States v. Garrett, 648 F.3d 618 (8th Cir. 2011). I authored the opinion. The panel determined that the district court did not err in denying a mistrial on charges of being a felon in possession of firearm due to drug testimony; that two counts of being a felon in possession were properly joined; and the court did not err in declining to sever the two counts.

United States v. Woodard, 423 F. App'x 650 (8th Cir. 2011).

United States v. Christy, 647 F.3d 768 (8th Cir. 2011).

Borgman v. Kedley, 646 F.3d 518 (8th Cir. 2011).

United State v. Correa, 641 F.3d 961 (8th Cir. 2011).

United States v. Briasco, 640 F.3d 857 (8th Cir. 2011).

United States v. Inman, 558 F.3d 742 (8th Cir. 2009).

United States v. Henson, 550 F.3d 739 (8th Cir. 2008).

Structural Polymer Group, Ltd. v. Zoltek Corp., 543 F.3d 987 (8th Cir. 2008).

Velde v. Reinhardt, 294 F. App'x 242 (8th Cir. 2008). I authored the majority opinion. A bankruptcy trustee appealed the district court's decision that reversed and vacated prior decisions of the bankruptcy court in three adversary proceedings. The panel affirmed the district court's decision.

Velde v. Kirsch, 543 F.3d 469 (8th Cir. 2008). I authored the majority opinion. The panel affirmed the district court's decision, concluding that because a replacement check resulted in the release of a bank's security interest in collateral, it constituted a contemporaneous exchange for new value and fell within an exception to the trustee's avoidance powers.

Koch v. Compucredit Corp., 543 F.3d 460 (8th Cir. 2008).

United States v. Mosby, 543 F.3d 438 (8th Cir. 2008). I authored the opinion. The panel determined that the four-level enhancement for possessing a firearm in connection with another felony offense applied and the district court did not abuse its discretion by imposing a 108-month sentence.

Missouri Coalition for Env't Found. v. U.S. Army Corps of Eng'rs, 542 F.3d 1204 (8th Cir. 2008). I authored the opinion. The panel concluded that the United States Army Corps of Engineers' use of Vaughn index was adequate but remand was warranted in Freedom of Information action to allow the district court to conduct segregability analysis.

STL 300 N. 4th, LLC v. Value St. Louis Associates, L.P., 540 F.3d 788 (8th Cir. 2008).

Richey v. City of Independence, 540 F.3d 779 (8th Cir. 2008).

United States v. Mooney, 534 F.3d 944 (8th Cir. 2008). I authored the opinion. The panel concluded that the district court correctly recognized the advisory nature of the sentencing guidelines; the district court adequately considered the statutory sentencing factors; and defendant's 200-month sentence for being a felon in possession of a firearm was not substantively unreasonable.

United States v. Gray, 533 F.3d 942 (8th Cir. 2008).

United States v. Brandon, 521 F.3d 1019 (8th Cir. 2008).

Stiltner v. Carter, 268 F. App'x 496 (8th Cir. 2008).

United States v. Jefferson, 267 F. App'x 483 (8th Cir. 2008).

Regions Bank v. J.R. Oil Co., LLC, 387 F.3d 721 (8th Cir. 2004).

Hartfield v. Barnhart, 384 F.3d 986 (8th Cir. 2004).

Union Elec. Co. v. Sw. Bell Tel. L.P., 378 F.3d 781 (8th Cir. 2004). I authored the opinion. The panel concluded that the indemnity provision in joint use agreement was enforceable against the telephone company; the electric company was not barred by the doctrine of laches from seeking indemnity from the telephone company; the electric company's failure to follow the requirements of the National Electric Safety Code did not bar the electric company from seeking indemnity from telephone company; the electric company's alleged failure to protect the telephone company from an increased risk of loss to third parties did not bar electric company from seeking indemnity from telephone company; and remand on the reasonableness of the settlement was appropriate.

United States v. Templeton, 378 F.3d 845 (8th Cir. 2004).

McCurdy v. Arkansas State Police, 375 F.3d 762 (8th Cir. 2004).

Clark v. Kansas City Missouri Sch. Dist., 375 F.3d 698 (8th Cir. 2004).

United States v. Bean, 373 F.3d 877 (8th Cir. 2004). I authored the opinion. The panel determined that the evidence was sufficient to sustain a finding that the inmate suffered from a mental disease or defect and the inmate was afforded due process.

Slater v. Barnhart, 372 F.3d 956 (8th Cir. 2004).

Kelley v. Barnhart, 372 F.3d 958 (8th Cir. 2004).

United States v. Arrieta-Buendia, 372 F.3d 953 (8th Cir. 2004).

Ormerod v. Curators of University of Missouri, 97 F. App'x 71 (8th Cir. 2004).

Goff v. Barnhart, 97 F. App'x 693 (8th Cir. 2004).

Sanders v. Holloway, 95 F. App'x 842 (8th Cir. 2004).

Barnett v. Barnhart, 362 F.3d 1020 (8th Cir. 2004).

Al Khouri v. Ashcroft, 362 F.3d 461 (8th Cir. 2004).

United States v. Anderson, 94 F. App'x 402 (8th Cir. 2004).

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 District of North Dakota does not use an automated conflict-check system. I maintain a list of companies, individuals and law firms who cannot appear before me due to an actual conflict of interest or the appearance of such a conflict. The clerk of court checks to see if any conflict is apparent and if one appears the case is automatically assigned to the other district judge in the District of North Dakota.

I recused sua sponte in the following cases:

North Dakota v. Burwell, No. 16-cv-386 (D.N.D.), and *Catholic Benefits Ass'n v. Burwell*, No. 16-cv-432 (D.N.D.). In similar cases, plaintiffs filed complaints challenging a rule promulgated by the Department of Health and Human Services to protect transgender patients against discrimination. The Catholic Diocese of Fargo, North Dakota, was a co-plaintiff in the second suit, No. 16-cv-432, filed on December 28, 2016. Because I previously served on the Diocesan Pastoral Council, I recused and the cases were reassigned to Judge Hovland.

Tollefson v. Kleven, No. 14-cv-31 (D.N.D.). The plaintiff referred to me as DOE #1, although I was not specifically named as a defendant. I entered an order of recusal.

Tollefson v. Robertson, No. 15-cv-112 (D.N.D.). I recused based on a personal relationship involving one of the named defendants. I entered an order of recusal.

Vetter v. Cruff, No. 14-cv-121 (D.N.D.). The plaintiff was a former client of mine. I entered an order of recusal.

Wheat Growers IV v. K&M Construction, No. 09-cv-95 (D.N.D.). Defense counsel was my college and law school classmate. I entered an order of recusal.

Magnum LTL, Inc. v. Wells Fargo Bank, Nat'l Ass'n, No. 14-cv-117 (D.N.D.). Wells Fargo is an entity on my conflict list. This case was initially missed in the clerk's office. I entered an order of recusal and vacated my prior order.

North Dakota Family Alliance, Inc. v. Bader, No. 04-cv-115 (D.N.D.). Before my appointment to the federal bench, I served as a member of the American Bar Association's Working Group on the First Amendment and Elected Judiciary and offered opinions on the subject matter involved in the action. I decided to recuse myself on the basis that others might reasonably question my impartiality. I entered an order of recusal.

United States v. Johnson, No. 15-cr-04 (D.N.D.). The defendant was charged with mailing a threatening communication addressed to me. I entered an order of recusal.

United States v. Martinez, No. 06-cr-14 (D.N.D.). The defendant made allegations in an action under 28 U.S.C. § 2255 regarding a special relationship between me and his trial counsel. I entered an order of recusal.

United States v. Hunter, No. 13-cv-42 (D.N.D.), and *United States v. Hunter*, No. 14-cv-44 (D.N.D.). Michael Hunter named me as a defendant in a *Bivens* action. I entered an order of recusal.

United States v. Thompson, No. 12-cr-29 (D.N.D.). The defendant alleged in an action under 28 U.S.C. § 2255 that I improperly participated in plea negotiations and discussions. I entered an order of recusal.

The parties' requested recusal in:

Auer v. Trans Union, No. 14-cv-125 (D.N.D.). The plaintiff filed a motion for recusal, asserting I was taking too long to decide pending motions and the motions that I had decided were "one-sided, game-changing orders." I determined that no reasonable basis for recusal had been advanced and there was no reasonable basis to question my fairness or impartiality. I denied the motion.

Grzeskowiak v. Geico Ins., No. 09-cv-31 (D.N.D.). The plaintiff requested that I recuse from his case because he disagreed with my prior rulings in separate cases. I determined that my prior adverse rulings would not cause a reasonable person to question my impartiality in the current action. I denied the motion.

Grzeskowiak v. Fennel, No. 11-cv-18 (D.N.D.). The plaintiff filed a motion for recusal without identifying any basis or facts to support his request. I determined that his motion lacked merit and to the extent it was an objection to the magistrate judge's report and recommendation it failed to identify any factual or legal objections. I denied the motion.

United States v. Brown, No. 11-cr-84 (D.N.D.). The defendant filed a motion for recusal, asserting that I would not do the right thing because I sentenced him to a term of life imprisonment. I determined that no reasonable basis for recusal was presented and that the defendant simply was speculating that I would be unwilling to consider the possibility that I made a mistake during any of his proceedings. I denied the motion.

United States v. Woolsey, Jr., No. 12-cr-122 (D.N.D.). The defendant filed a motion for recusal among other motions. I denied the motion as premature as there was no pending matter before the court.

United States v. Keiser, No. 05-cr-80 (D.N.D.). The defendant filed a motion for recusal. I denied the motion, finding that my impartiality could not be reasonably questioned because I did not perceive, and the defendant did not present, any grounds showing this to be the case.

United States v. Slagg, No. 09-cr-69 (D.N.D.). The defendant filed a motion for recusal. I denied the motion, finding the basis was simply that the defendant was unhappy with my comments and rulings and that none rose to the level of bias or prejudice.

United States v. Karl, No. 14-cr-02 (D.N.D.). The defendant filed more than one motion for recusal. The defendant alleged the proceedings would not be fair with me as the judge. I found that the defendant's assertions were not supported by actual evidence and were merely delusional self-serving statements.

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.

In 1992, I was an unsuccessful endorsed Republican candidate for the North Dakota House of Representatives for District 13, which then encompassed all of West Fargo, North Dakota and parts of Fargo, North Dakota.

In 1993, I was appointed by Governor Edward T. Schafer to the North Dakota Commission on the Status of Women. When I was appointed county judge in 1994, I resigned my seat on the commission because sitting judges are prohibited from serving on commissions unless they directly relate to improvement of the law.

In 1993, I unsuccessfully sought appointment to a vacant seat on the North Dakota Public Service Commission. Governor Edward T. Schafer appointed someone else to the position.

- 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.

I am prohibited from involvement in any political activity in my current position. I have had no political involvement of any sort other than advocating for the judiciary, as allowed by the Code of Conduct, since I became a judge in 1994.

Before becoming a judge, I was an active member of the Republican Party between 1976 and 1994. I was a member of the 13th District Executive Committee from 1986 to 1994, Precinct 13-1 Committee Chair from 1986 to 1988, District 13 Vice Chair from 1989 to 1992, District 13 Chair from 1992 to 1994, and a member of the State Republican Committee from 1992 to 1994 and Executive Committee of the Unified Republican Committee of Cass County from 1992 to 1994.

Before becoming a judge, I volunteered on numerous campaigns dating back to the 1970's. I engaged in such activities as door-to-door campaigning for myself and other candidates, fundraising, non-scientific voter identification polling, get out the vote drives, literature drops, making speeches for myself and other candidates, writing newsletters, organizing volunteers, phone banks and the like. I was a typical "grass roots volunteer." At no time was I ever paid by any campaign, political party or political action committee.

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

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

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

I have never been employed as a law clerk to a judge.

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

I was employed as a sole practitioner between December 1991 and July 1994. My office address was 120 West Main Avenue, West Fargo, ND 58078.

- 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 1984 to October 1984
Ohnstad Twichell, P.C.
901 13th Avenue East
P.O. Box 458
West Fargo, ND 58078-0458
Law Clerk

October 1984 to November 1991
Ohnstad Twichell, P.C.
901 13th Avenue East
P.O. Box 458
West Fargo, ND 58078-0458
Attorney/Shareholder

- 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 recall sitting on a single occasion as a member of a Fee Arbitration Panel for the State Bar Association of North Dakota sometime in 1992 in a case involving a dispute over the fees incurred in a relatively simple divorce case.

b. Describe:

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

In 1984, immediately after I obtained my license, I became the primary prosecutor for the cities of West Fargo and Riverside, North Dakota. I was also an associate at Ohnstad Twichell, P.C. Up until the time I left the firm in 1991, I spent approximately one full day a week in municipal courts, and I spent approximately a half-day a month in County Court on municipal prosecutions.

As an associate, my court appearances were limited to municipal matters—e.g., eviction proceedings, uncontested motions, and default divorces. In addition, I litigated cases in front of the North Dakota Workers Compensation Commission. As time went on, I had increasing responsibility and more in-court appearances. I would estimate that about 20% of my time was spent in court and the balance in the office.

At Ohnstad Twichell, P.C., I tried approximately seven or eight family law trials and 25 eviction trials. In addition, I had an active practice involving workers compensation. I appeared in approximately five social security cases and one railroad retirement board case. At different points in my career, I represented banks in bankruptcy matters and I recall litigating two

adversary actions, one of which was tried to judgment. These calculations are based on information previously disclosed in my Senate Questionnaire when I was appointed to the District Bench and my recollection of my practice. All records from the time that I practiced at Ohnstad Twichell, P.C., and while I was a sole practitioner have been purged.

I left Ohnstad Twichell, P.C., to seek the Republican nomination for the state legislature. I was only engaged in the full-time practice of law for a short time. For much of 1992, I was engaged in setting up my practice, assisting in political campaigns, and running my own campaign for the state legislature.

When I became a solo practitioner, I no longer prosecuted cases and probably appeared in court less than ten percent of my time, as most of my practice involved discovery and motion practice. My practice was a general trial practice with the bulk of the work being in the areas of family, misdemeanor criminal work (primarily DUI's), personal injury, workers compensation and some real estate and simple wills.

By February of 1994, I knew that I was going to become a full-time judge and that it was likely that I would be appointed to the county bench. I began to wind down my practice and, for all practical purposes, my practice was shut down on March 15, 1994.

I was appointed to the county bench effective July 1, 1994 and began working immediately. I was elected to the state district court bench in November and took office on January 1, 1995.

As a state district judge, I tried approximately 80 jury trials and 250 bench trials. I would estimate that between 40 and 50 of the bench trials were divorce trials that lasted a day or more. The rest of the bench trials would have been evictions, traffic misdemeanors, collection cases, and trials in equity in which there was no right to trial by jury. In addition to these cases, I presided over many traffic-infraction bench trials.

During the five months I spent as a county judge, I tried four jury trials and approximately 25 bench trials. The bench trials included traffic matters and divorces that were assigned to me by the District Court.

During the time I spent as the county magistrate, I presided over all small claims actions, preliminary hearings in mental health matters, and traffic court. I estimate that I tried 2,500 small claims matters to judgment and presided over approximately 300 mental health matters. I presided over all traffic infraction cases during the time that I was the county magistrate and would estimate that these cases total more than 1,500. As county magistrate, I was the issuing judge on hundreds of search warrants and more

than 1,000 arrest warrants.

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

1984 to 1991: As a prosecutor, my clients were the cities of West Fargo and Riverside, North Dakota (which merged into West Fargo in 1989).

1990 to 1991: As a prosecutor, my client was the city of Moorhead, Minnesota.

1984 to 1991: As an associate and shareholder at Ohnstad Twichell, P.C., I primarily represented individual clients. I also represented Northwestern Bell Telephone Company (personal injury work) and the North Dakota Insurance Reserve Fund on two matters: a section 1983 claim for excessive force and a sewer backup case in Devils Lake, North Dakota. I represented the Kindred State Bank and West Fargo State Bank on some collection matters and loan foreclosures.

1992 to 1994: As a solo practitioner, I represented individuals.

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

As a lawyer, I spent the vast majority of my time in litigation and appeared in court frequently.

1984 to 1991: I prosecuted cases on behalf of the cities of West Fargo and Riverside, North Dakota, and frequently appeared in court. As an associate and shareholder at Ohnstad Twichell, P.C., I focused on litigation and occasionally appeared in court (about 20% of my time).

1990 to 1991: I prosecuted cases in Moorhead, Minnesota, and appeared in court frequently.

1991 to 1994: As a solo practitioner, I primarily represented individual clients in litigation and appeared in court occasionally (less than ten percent of my time).

- i. Indicate the percentage of your practice in:

- 1. federal courts: 5%
- 2. state courts of record: 50%
- 3. other courts: 20%
- 4. administrative agencies: 25%

- ii. Indicate the percentage of your practice in:

1. civil proceedings: 35%
2. criminal proceedings: 65%

- 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 estimate that I prosecuted thousands of traffic infraction and misdemeanor bench trials in West Fargo and Riverside, North Dakota between 1984 and 1991. I also prosecuted cases in Moorhead, Minnesota, for about 10 months between 1990 and 1991. I did not try any jury trials in Moorhead, but I would estimate that I tried approximately 25 to 30 bench trials, nearly all of them traffic matters.

At Ohnstad Twichell, P.C., I was sole trial counsel on three or four jury trials in courts of record, and I tried as sole counsel approximately seven or eight family law trials and 25 eviction trials before a judge. I appeared as sole counsel in approximately five social security cases and one railroad retirement board case. I represented banks as sole counsel in bankruptcy matters and I recall litigating two adversary actions, one of which was tried to judgment.

- i. What percentage of these trials were:

1. jury: <1%
2. non-jury: 99%

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

I have never practiced before the Supreme Court of the United States.

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

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

Twenty-three years have elapsed since I last practiced law. Since that time, all of the files from my solo practice and from my practice with Ohnstad Twichell, P.C. have been purged. I am unable to recall with sufficient specificity the cases I worked on to adequately describe them. The vast bulk of the work that I litigated involved municipal court prosecutions, divorce and custody matters and practice before administrative hearing officers on workers compensation claims and the like. I was counsel of record in four reported cases:

1. *Grace v. North Dakota Workers Comp. Bureau*, 395 N.W.2d 576 (N.D. 1986). East Central Judicial District, Fargo, ND; Honorable Lawrence A. Leclerc (deceased).

I represented James Grace, a mason who was employed as a job foreman on a construction site on the campus of North Dakota State University in Fargo, ND. Grace had not been retained as a job foreman for a number of years, had been unemployed due to a slowdown in the economy and had taken the position as work was scarce. Construction ran behind schedule and work was being pushed on the project as costs were burgeoning as a result of delays. The crew led by Grace was working in an enclosed elevator shaft where temperatures exceeded 140 degrees. A crane was working overhead which made Grace extremely nervous. Grace testified that he had never worked with a crane working overhead as usually they completed that work before the masons went to work—but because of the delays they were compelled to work with the crane operating above. Grace suffered a heart attack and filed a claim for workers compensation benefits. The Bureau denied benefits claiming that Grace had failed to establish facts sufficient to meet the unusual stress rule. Following a hearing before the N.D. Workers Compensation Commission, Grace's original lawyer was suspended from the practice of law. Disciplinary counsel for the state supreme court asked if I would handle his appeals and I agreed to do so. On appeal, the sole issue was whether the facts of the case established unusual stress. In a 3-to-2 decision, the North Dakota Supreme Court held that they did not.

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2. *Jepson v. North Dakota Workers Comp. Bureau*, 417 N.W.2d 184 (N.D. App. 1988). East Central Judicial District, Fargo, ND; Honorable Michael Owens McGuire (retired 2004).

I represented Russell R. Jepson in a workers compensation claim arising out of a dislocated shoulder. Jepson had a previous history of a single shoulder separation in the past, and medical records confirmed that he had reached a full recovery and had suffered no loss of functionality from his prior injury. The Bureau agreed to a percentage of liability and that the injury was work related. The only issue for litigation was whether the aggravation statute should be applied to reduce Jepson's benefits. The Bureau applied the aggravation

statute and the hearing officer affirmed. Appeal was taken on the record to the district court, which affirmed. Appeal was taken to the North Dakota Supreme Court, which assigned the case to the intermediate court of appeals. The appeals court reversed the workers compensation bureau and awarded the benefits sought. Subsequently the legislature amended the statute to make plain that it applied to cases like Jepson's.

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3. *In re the Matter of Kyle Smith*, 119 B.R. 714 (Bankr. D.N.D. 1990). United States Bankruptcy Court for the District of North Dakota; Honorable William Hill (retired 2011).

I represented Kyle Smith in a personal injury claim arising out of a pickup/motorcycle accident. Smith was a single father who had a history of menial jobs and who had failed to finish high school. On April 24, 1989, Smith suffered serious injuries when a pickup truck struck his motorcycle. Smith had no no-fault coverage on his motorcycle and no medical insurance. He was in a coma for a number of weeks and suffered serious brain injuries as a result of the incident. Smith's short term memory and cognitive abilities were substantially impaired. The driver of the pickup had \$100,000 of insurance coverage. Smith had medical bills in excess of \$57,000. The bills were owed both to the hospital and the physicians. Smith's father was appointed guardian for Smith and I advised him that under North Dakota law we might be able to claim an annuity as exempt and protect the asset for Mr. Smith's benefit. I informed the insurance carrier that we were interested in structuring the payment and that we intended to file for bankruptcy in the hopes of avoiding some of the medical bills. Our purpose in pursuing this path was the obvious deficits that Smith had and the apparent difficulty he would have in handling his affairs in the future. We arranged a settlement under the terms of which Smith received \$10,000 (\$5,656 of which was paid in attorney's fees and costs for both the personal injury and the anticipated bankruptcy) in a lump sum with the balance being used to purchase an annuity. The settlement was presented to the county court for approval and it was approved by Judge Frank L. Racek. During the subsequent bankruptcy, the hospital, clinic and physicians asserted that the case had been settled in contravention of their hospital lien. Smith countered that the failure to perfect the lien was a fatal flaw and that since no fraud existed the proceeds of the annuity should be exempt from process under North Dakota law. Shortly before the trial, Smith's father and guardian suffered a stroke that rendered him incapable of recalling anything related to the settlement. Smith was unable to recall anything as a result of his short-term memory loss. Because no one else was able to testify as to what had happened, I became a witness in the case. At the end of the trial, Bankruptcy Judge William Hill concluded that all transactions had been open and approved by the county court, that no improper conduct had been taken but that actual notice of the hospital bills was sufficient to perfect the hospital lien but the lien did not extend to the physicians'

or clinic's bills.

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4. *Sellie v. North Dakota Ins. Guaranty Assoc.*, 494 N.W.2d 151 (N.D. 1992). South Central Judicial District, Mandan, ND; Honorable Dennis Schneider (deceased).

I represented Mildred Sellie in a personal injury claim for damages arising out of an incident that occurred while Sellie was on a senior citizen's bus tour of New England. Sellie was 74 at the time of the injury. While in a crowded hotel lobby, an employee of the tour company pushed a loaded four-wheeled luggage cart into her. Sellie suffered a serious back injury which effectively limited all of her daily activities. The company did not have a comprehensive general liability policy and the only possible policy that provided coverage was the motor vehicle policy covering the bus. The insurance company went bankrupt prior to commencement of the action and the North Dakota Insurance Guaranty Association succeeded to the company's coverage. The Association asserted that the policy did not provide coverage as the incident did not arise out of the use of an automobile. The policy, however, stated that it did not provide coverage for "Bodily injury or property damage resulting from the movement of property by a mechanical device (other than a hand truck) not attached to the covered auto."

The Guaranty Association denied all coverage. I settled the case for a sum of \$128,000 and Sellie agreed to look only to the insurance company for payment. Notice was given to the Guaranty Association of the terms that we agreed to settle the case on. They declined to appear and defend. We then commenced a declaratory judgment action. The case turned on whether a four-wheeled cart was a "hand truck" within the meaning of the policy. By the time the case came to trial, I was no longer with the firm and Mrs. Sellie was represented by Steven McCullough, who is now an East Central Judicial District Judge.

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activities I have pursued in my career are related to my 23 years on the bench. I presided over several high-profile cases, but I also helped reform North Dakota's criminal justice system. I volunteered to serve on a commission, established by the North Dakota Supreme Court, to study and then implement a juvenile drug court for addicted offenders to seek treatment under the supervision of a team (including the judge). I presided over the first drug court in North Dakota, and the program successfully reduced recidivism rates. Other counties followed, and the drug-court program expanded statewide to treat not only juvenile but also adult offenders.

I have never performed lobbying activities on behalf of a client.

I served on several committees as a state judge. While serving on the Attorney Standards Committee, I testified before the North Dakota Supreme Court in 2003 regarding Rule 8.4 of the Rules of Professional Conduct, which sought to prohibit lawyers from engaging in conduct that is prejudicial to the administration of justice or is biased based on race, sex, national origin, disability, age, or sexual orientation.

As the Chair of the North Dakota Judicial Conference Committee on Judicial Compensation, I testified before the North Dakota House Appropriations Committee in March 2001, and before the North Dakota Senate Appropriations Committee in January 2001, in support of an appropriations bill to increase judicial salaries.

I have also served on several committees as a federal judge, including several the Eighth Circuit's bankruptcy committee, defender services committee, personnel committee, and

tribal committee. In addition, I served as the chair of the U.S. Sentencing Commission Tribal Issues Advisory Group from 2015 to 2016.

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.

From 1988 to 1989, I taught a single course on the Fundamentals of Banking Law at Minnesota State University Moorhead in Moorhead, Minnesota. No syllabus exists.

During the spring semester of the 2017 term, I taught a class on Justice and Forgiveness in the Masters of Arts in Leadership program at the University of Jamestown in Jamestown, North Dakota. A copy of the syllabus is supplied.

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

None.

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

I have no such plans or agreements.

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

Please refer to the attached financial disclosure report.

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

Please see the attached statement of net worth.

24. **Potential Conflicts of Interest:**

a. Identify the family members or other persons, parties, categories of litigation, and

financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My wife is a self-employed optometrist which poses only a small risk of conflict. I would recuse myself should any conflict arise. My daughters are currently students and are not involved in activities likely to create a conflict. I own a limited number of stock in a small number of companies. I intend to sell or transfer all individual shares; while very few conflicts arise in the District of North Dakota as a result of my holdings, such conflicts would be more predictable on the circuit bench. I would recuse from any matter in which I have a financial interest. I will adhere to the Code of Conduct for United States Judges and any guidance and authority on related matters.

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

I will continue to follow the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, 28 U.S.C. § 455, and other relevant recusal guidelines. I would recuse myself from any case in which I presided as a judge on the District of North Dakota bench and any case on which I presided as a state district judge.

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.

During my time as a practicing lawyer I had substantial pro bono practice. I was a member of the SBAND pro bono panel and routinely had at least one file open at all times. Since becoming a judge, I have given back to the legal community in other ways, including financial contributions where permitted by the Code of Conduct. I have spoken on issues on indigent defense, participated in CLE for indigent defense counsel, volunteered for organizations that are involved in treatment and homeless related issues.

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 December of 2016, I sent a letter to Senator John Hoeven along with a resume indicating I was interested in a possible appointment to the Eighth Circuit Court of Appeals. Shortly thereafter, I contacted Senator Heidi Heitkamp's staff.

In February 2017, I was informed by Senator Hoeven's Chief of Staff that my name was included on a list of candidates recommended to the White House. On March 24, 2017, I was contacted by the White House Counsel's Office to set up an interview. I was interviewed by attorneys from the Office of White House Counsel and the Department of Justice on March 30, 2017.

I was asked by the Department of Justice to complete nomination forms, and, since April 2017, I have been in contact with Department officials regarding these forms.

- 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.