

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Leonard Terry Strand

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

United States District Judge for the Northern District of Iowa

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 Courthouse  
320 Sixth Street, Room 104  
Sioux City, Iowa 51101

Residence: I currently reside in Dakota Dunes, South Dakota, which is a suburb of Sioux City that is located just across the state line. My wife and I are in the process of purchasing a home in Sioux City and expect to move this summer.

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

1965; Sioux City, Iowa

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.

1987 – 1990, University of Iowa College of Law, J.D. (with highest distinction), 1990

1983 – 1987, University of Iowa, B.A. (with high distinction), 1987

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.

2012 – present

United States District Court for the Northern District of Iowa  
United States Courthouse  
320 Sixth Street, Room 104  
Sioux City, Iowa 51101  
United States Magistrate Judge

Summer 1988; Summer 1989; 1990 – 2012  
Simmons Perrine Moyer Bergman PLC  
115 Third Street SE, Suite 1200  
Cedar Rapids, Iowa 52401  
Partner (1996 – 2012)  
Associate (1990 – 1995)  
Law Clerk Intern (Summer 1988; Summer 1989)

Summer 1989  
Vinson & Elkins LLP  
1001 Fannin Street, Suite 2500  
Houston, Texas 77002  
Law Clerk Intern

Summer 1987  
Sears  
1676 Sycamore Street  
Iowa City, Iowa 52240  
Customer Service Representative

Other Affiliations (uncompensated):

2008 – present  
The Northern District of Iowa Branch of The Historical Society of The United States  
Courts in The Eighth Circuit  
111 Seventh Avenue SE, Box 12  
Cedar Rapids, Iowa 52401  
Member, Board of Directors (2008 – present)  
President (2008 – 2012)

2009 – 2011  
Cedar Rapids Metro YMCA  
207 Seventh Avenue SE  
Cedar Rapids, Iowa 52401  
Member, Board of Directors

2005 – 2011  
Cedar Rapids Symphony Orchestra (now Orchestra Iowa)  
119 Third Avenue SE  
Cedar Rapids, Iowa 52401

Member, Board of Directors

1992 – 1998, 2000 – 2008

Witwer Center

605 Second Avenue SE

Cedar Rapids, Iowa 52401

Member, Board of Directors

1999 – 2004

Linn County Historical Society

716 Oakland Road

Cedar Rapids, Iowa 52402

Member, Board of Directors (1999 – 2004)

President (2003 – 2004)

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

I have not served in the military. I registered for selective service at age 18.

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

Recognized by *Super Lawyer* for Iowa and the Great Plains Region (approximately 2007 – 2012)

BTI Consulting, “BTI Client Service All-Star Team for Law Firms” (2009 and 2012)

University of Iowa College of Law, John F. Murray Prize (highest cumulative grade point average) (1990)

University of Iowa College of Law, Order of the Coif (1990)

University of Iowa College of Law, Presidential Scholar (1990)

University of Iowa College of Law, various American Jurisprudence Prizes (1987 – 1990)

University of Iowa, Phi Beta Kappa (1987)

University of Iowa, Laurence Fairall Scholarship (1986)

West High School, Sioux City, Iowa, Valedictorian (1983)

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

American Bar Association

Dean Mason Ladd American Inn of Court

International Association of Defense Counsel

Iowa Defense Counsel Association

Iowa State Bar Association

Linn County Bar Association

The Northern District of Iowa Branch of The Historical Society of The United States Courts in The Eighth Circuit

Member, Board of Directors (2008 – present)

President (2008 – 2012)

Woodbury County Bar Association

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.

Iowa, 1990

There has been no lapse 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 Court of Appeals for the Third Circuit, 1992

United States Court of Appeals for the Eighth Circuit, 1992

United States District Court for the Northern District of Iowa, 1990

United States District Court for the Southern District of Iowa, 1990

There have been no lapses in membership.

11. **Memberships:**

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

All Saints Catholic Church, Cedar Rapids, Iowa

Member (1993 – 2013)

Member, Parish Council (1999 – 2001)

Member, Capital Campaign Committee (2006 – 2007)

Blessed Teresa of Calcutta Catholic Church, Dakota Dunes, South Dakota

Member (2013 – 2014)

Cedar Rapids Metro YMCA, Cedar Rapids, Iowa

Member (2002 – 2013)

Member, Board of Directors (2009 – 2011)

Cedar Rapids Symphony Orchestra (now Orchestra Iowa), Cedar Rapids, Iowa

Member, Board of Directors (2005 – 2011)

Elmcrest Country Club, Cedar Rapids, Iowa

Member (2000 – 2002)

Linn County Historical Society, Cedar Rapids, Iowa

Member, Board of Directors (1999 – 2004)

President (2003 – 2004)

Mercy Medical Center, Cedar Rapids, Iowa

Member, Hospice Advisory Board (2006 – 2010)

Norm Waitt Sr. YMCA, Sioux City, Iowa

Member (2013 – present)

Rotary Club of Cedar Rapids, Cedar Rapids, Iowa

Member (1996 – 2011)

Sacred Heart Catholic Church, Sioux City, Iowa

Member (2014 – present)

Various Youth Sports Organizations, Cedar Rapids, Iowa

Volunteer soccer, basketball and baseball coach (2002 – 2009)

Witwer Center, Cedar Rapids, Iowa

Member, Board of Directors (1992 – 1998 and 2000 – 2008)

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

It is my understanding that Rotary International previously restricted its membership to men. That discriminatory practice ended before I became a Rotary member. To the best of my knowledge, none of the other organizations listed above currently 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.

“Know the ADA Rules on Medical Inquiries,” *Cedar Rapids Gazette* (September 1, 2005). Copy supplied.

“Tread Carefully with Employment Tests,” *Cedar Rapids Gazette* (March 1, 2005). Copy supplied.

*Comment, “Antitrust Law – Noerr Immunity in the Private Standard-Setting Context: Allied Tube & Conduit Corp. v. Indian Head, Inc.,”* 14 *Journal of Corporate Law* 1033 (1989) (reprinted in 3 *The Corporate Analyst* No. 2, at p. 23 (1991)). Copy supplied.

My former law firm occasionally published and distributed a client newsletter that contained announcements about the firm and some short and general articles about legal developments. I contributed some articles to this newsletter over the years, but have no records or recollection about them. All would have been brief overviews about developments that might have been of general interest to the firm’s wide and diverse client base.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If

you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

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

None.

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

June 25, 2015: Speaker, Avoiding and Resolving Discovery Disputes, presentation sponsored by the Northern District of Iowa Federal Practice Committee, Sioux City, Iowa. Outline supplied.

I have presided over six naturalization ceremonies in the District Court for the Northern District of Iowa in Sioux City, Iowa, between December 13, 2012, and June 5, 2015. I have a standard set of comments that I make at each ceremony. Outline supplied. Press coverage of December 6, 2013, naturalization ceremony is also supplied.

December 12, 2014: Participant, Magistrate Judges Panel, Federal Practice Seminar sponsored by the Iowa State Bar Association, Des Moines, Iowa. The panel was on federal court practice. I have no notes, transcript or recording. The address for the Iowa State Bar Association is 625 East Court Avenue, Des Moines, Iowa 50309.

October 17, 2014: Speaker, Discovery Practice, Federal Practice Seminar sponsored by the Iowa State Bar Association, Sioux City, Iowa. Outline supplied.

April 10, 2014: Guest Instructor, Courts Colloquium, University of Iowa College of Law, Iowa City, Iowa. Outline supplied.

February 2014: Speaker, Federal Court Practice Tips, Brown Bag Lunch Seminar sponsored by the Woodbury County Bar Association, Sioux City, Iowa. Outline supplied.

December 13, 2013: Participant, Magistrate Judges Panel, Federal Practice Seminar sponsored by the Iowa State Bar Association, Des Moines, Iowa. The panel was on federal court practice. I have no notes, transcript or recording. The address for the Iowa State Bar Association is 625 East Court Avenue, Des Moines, Iowa 50309.

November 15, 2013: Speaker, Observations and Practice Tips for Civil Trial Lawyers Based on a Little over a Year on the Bench, Labor and Employment Law Seminar sponsored by the Iowa State Bar Association, Des Moines, Iowa. Outline supplied.

August 8, 2013: Participant, Magistrate Judges Panel, Eighth Circuit Judicial Conference sponsored by the United States Court of Appeals for the Eighth Circuit, Estes Park, Colorado. The panel was on issues that arise in detention hearings when the defendant is subject to an immigration detainer. I have no notes, transcript or recording. The address for the United States Court of Appeals for the Eighth Circuit is Thomas F. Eagleton Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

December 14, 2012: Participant, Magistrate Judges Panel, Federal Practice Seminar sponsored by the Iowa State Bar Association, Des Moines, Iowa. The panel was on federal court practice. I have no notes, transcript or recording. The address for the Iowa State Bar Association is 625 East Court Avenue, Des Moines, Iowa 50309.

October 25, 2012: Speaker, Thoughts and Questions After Four Months, Federal Public Defender Seminar sponsored by the Federal Public Defender for the Northern and Southern Districts of Iowa, Sioux City, Iowa. Outline supplied.

June 7, 2012: Speaker, Investiture of Leonard Strand as a United States Magistrate Judge, Sioux City, Iowa. Transcript supplied.

As an attorney in private practice, I regularly made educational presentations on legal issues to various attorney and non-attorney groups. My former law firm has provided me with copies of all materials that still exist for any of these events. The presentations I am able to recall based on my review of these materials are:

May 27, 2010: Speaker, HR Training, Employee Training Event sponsored by RMT, Inc., Madison, Wisconsin. Outline supplied.

Approximately May 2009: Speaker, What Is a 'Former' Client, and Other Conflict of Interest Questions. Location and sponsoring organization unknown. PowerPoint supplied.



Unknown date in 2008: Speaker, FMLA Developments, Leave as an ADA Accommodation, and Employment Related Internet and Blogging Issues, client seminar sponsored by Benefits Solutions, Cedar Rapids, Iowa. Outlines and PowerPoints supplied.

Unknown date in 2007: Speaker, Public Policy Exception to Wrongful Termination. Location and sponsoring organization unknown. Outline supplied.

January 11, 2006: Speaker, Terminating Employees and Leaves of Absence, Fundamentals of Employment Law in Iowa Seminar, Cedar Rapids, Iowa. Sponsoring organization unknown. Outlines supplied.

January 25 – 26, 2005; Speaker, FMLA Challenges. Location and sponsoring organization unknown. Outline supplied.

August 8 and 13, 2003: Speaker, Wrongful Discharge Claims, Employment Discrimination Update in Iowa Seminars. Location and sponsoring organization unknown. Outline supplied.

March 2003: Speaker, FMLA Update: Avoiding the Traps. Location and sponsoring organization unknown. Outline supplied.

November 19, 2002: Speaker, Complying with Overlapping Laws: FMLA, ADA, Pregnancy, Workers' Comp and State Leave Laws. Location and sponsoring organization unknown. Outline supplied.

October 12, 2001: Speaker, Recent Iowa Ethics Opinions, Nuts & Bolts 2001 Seminar. Location and sponsoring organization unknown. Outline supplied.

July 19 – 20, 2001: Speaker, Handling the Corporate Raiding Case. Location and sponsoring organization unknown. Outline supplied.

April 27, 2000: Speaker, Family and Medical Leave Act – How to Avoid (some of the) Land Mines, Spring Client Seminar sponsored by Simmons, Perrine, Albright & Ellwood, P.L.C., Cedar Rapids, Iowa. Outline supplied.

Unknown date: Speaker, Sexual Harassment Update: A Survey of Lower Court Decisions Applying *Ellerth*, *Faragher* and *Oncala*. Location and sponsoring organization unknown. Outline supplied.

Unknown date: Speaker, What Are the Most Common Challenges Our Clients Face in Administering the Family and Medical Leave Act and How Can They Be Managed, client seminar sponsored by True North, Cedar Rapids, Iowa. PowerPoint supplied.

Unknown date: Speaker, Keeping it Legal: Interviewing and Hiring Applicants Without Breaking the Law. Location and sponsoring organization unknown. Outline supplied.

Unknown date: Speaker, Top Ten Problems and Pitfalls When Employers Use Social Media and Other Internet Resources for Employment Decisions. Location and sponsoring organization unknown. Outline supplied.

Unknown date: Speaker, Americans with Disabilities Act. Location and sponsoring organization unknown. Outline supplied.

May 1983: Speaker, West High School Commencement Ceremony, Sioux City, Iowa. I have no notes, transcript or recording.

- 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.

“Fund-Raising Drive Halts Sales of Museum Building,” The Associated Press State & Local Wire, Dec. 20, 2003. Copy supplied.

“Foreclosure Could Force Move of Museum,” The Associated Press State & Local Wire, Oct. 17, 2003. Copy supplied.

Donna Walter, “Eighth Circuit Court of Appeals Rules Foreign Settlement Has No Effect on Licensing Lawsuit,” St. Louis Daily Record, Mar. 30, 2001. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have been a United States Magistrate Judge for the Northern District of Iowa since June 2012. My jurisdiction is as conferred by 28 U.S.C. § 636, along with various rules of civil and criminal procedure. In general, I have the authority to handle virtually all pretrial matters in both civil and criminal cases. When I am assigned to handle a matter that is potentially dispositive of the case (e.g., a motion to suppress evidence in a criminal case or a motion for summary judgment in a civil case), I issue a report and recommendation to the presiding district judge. The parties may then file objections to the report and recommendation, with the district judge ultimately deciding whether to adopt or reject my recommended disposition.

Moreover, in civil cases the parties may consent to have a magistrate judge handle the

entire case, including trial, with any appeal going directly to the Eighth Circuit Court of Appeals. In civil cases that are consented to me, there is no involvement by a district judge. As such, I rule on all motions, even dispositive ones, directly rather than by issuing a report and recommendation.

Finally, while our court does not handle many misdemeanor criminal charges, in those cases the defendant may consent to have a magistrate judge handle the entire case, including (when applicable) sentencing.

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

Most of the civil cases that have been assigned to me with the consent of the parties have terminated due to settlement or the entry of summary judgment. I have had only one civil case that has gone to verdict via trial.

- i. Of these, approximately what percent were:

jury trials:	100%
bench trials:	0%
civil proceedings:	100%
criminal proceedings:	0%

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

A list of decisions selected for publication by West Publishing is supplied. In addition, I post any ruling that involves substantial legal analysis on the court's website. They can be accessed at [http://www.iand.uscourts.gov/e-web/decisions.nsf/\(Judge%20Strand\)](http://www.iand.uscourts.gov/e-web/decisions.nsf/(Judge%20Strand)).

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

1. *JTV Mfg., Inc. v. Braketown USA, Inc.*, \_\_\_ F. Supp. 3d \_\_\_, 2015 WL 1565193 (N.D. Iowa Apr. 8, 2015).

The third-party defendant, an Italian company, filed a motion to dismiss the third-party complaint for lack of personal jurisdiction. The third-party defendant relied on its limited contacts with the State of Iowa and a contractual forum-selection clause that specified Milan, Italy, as the venue for any litigation. I found that the record demonstrated sufficient purposeful activities toward Iowa to establish personal jurisdiction over the third-party defendant. With regard to the forum-

selection clause, I noted that a recent United States Supreme Court decision held that a motion to dismiss for lack of personal jurisdiction is not the appropriate procedural mechanism for enforcement of such a clause. The case is currently pending.

Counsel for Plaintiff:

Bruce Allen Moothart  
Seyferth, Blumenthal & Harris, LLC  
4801 Main Street, Suite 310  
Kansas City, MO 64112  
(816) 285-0559

William K. Klinker  
Smith, Grigg, Shea, Klinker & Queck  
120 South Hayes Avenue  
P.O. Box 98  
Primghar, IA 51245  
(712) 757-5465

Counsel for Defendants:

Jeff W. Wright  
Heidman Law Firm, LLC  
1128 Historic Fourth Street  
P.O. Box 3086  
Sioux City, IA 51101  
(712) 255-8838

Oscar R. Trejo  
Atom Law Group, LLC  
770 North LaSalle Street, Suite 700  
Chicago, IL 60654  
(312) 943-8000

Counsel for Third-Party Defendant:

Constance M. Alt  
Dana L. Oxley  
Samuel E. Jones  
Shuttleworth & Ingersoll  
115 Third Street SE, Suite 500  
P.O. Box 2107  
Cedar Rapids, IA 52406  
(319) 365-9461

2. *Myers v. Hog Slat, Inc.*, 55 F. Supp. 3d 1145 (N.D. Iowa 2014).

This case presented numerous issues under Iowa and federal law arising from plaintiff's claim that his employment was terminated because of his daughter's serious medical condition. I denied the defendant's motion for summary judgment with regard to most claims because the summary judgment record presented material issues of fact for the jury to consider as to the defendant's motives for discharge. The parties settled shortly before trial.

Counsel for Plaintiff:

Thomas Foley and Katie Carlson  
Babich Goldman, P.C.  
501 SW Seventh Street, Suite J  
Des Moines, IA 50309  
(515) 244-4300

Counsel for Defendant:

Benjamin Roach and Angel West  
Nyemaster, Goode, West, Hansell & O'Brien  
700 Walnut Street, Suite 1600  
Des Moines, IA 50309  
(515) 283-3100

3. *United States v. Mosley*, 2014 WL 5454575 (N.D. Iowa Oct. 27, 2014) (my report and recommendation of September 26, 2014, is appended to the cited opinion).

The defendant was charged with several drug and gun-related felony offenses. I filed a report and recommendation in which I concluded that his motion to suppress evidence should be granted because local law enforcement authorities conducted an improper warrantless search of a bag he dropped in his back yard before attempting to flee. Judge Mark Bennett later affirmed my ruling and adopted my report and recommendation. At that point, the government elected to dismiss the case rather than pursue an appeal to the Eighth Circuit Court of Appeals.

Counsel for the Government:

Shawn Wehde  
United States Attorney's Office  
600 Fourth Street, Suite 670  
Sioux City, IA 51101  
(712) 255-6011

Counsel for Defendant:

Robert Rehkemper  
Gourley, Rehkemper & Lindholm, PLC  
440 Fairway Drive, Suite 210  
West Des Moines, IA 50266  
(515) 226-0500

4. *United States v. Himes*, 2013 WL 6909480 (N.D. Iowa Dec. 30, 2013).

The defendant was charged with possession of a firearm and explosives as a felon after a warrantless search of his car and a subsequent search of his house based on evidence found in the car. After an evidentiary hearing, I recommended that his motion to suppress evidence be granted because the local law enforcement agents who conducted those searches violated his Fourth Amendment rights. Rather than appeal my decision to Judge Mark Bennett, the government dismissed the indictment.

Counsel for the Government:

Jamie Bowers  
United States Attorney's Office  
600 Fourth Street, Suite 670  
Sioux City, IA 51101  
(712) 255-6011

Counsel for Defendant:

Joshua Weir  
Dornan, Lustgarten & Troia PC LLO  
1403 Farnam Street, Suite 232  
Omaha, NE 68102  
(402) 884-7044

5. *Mapleton Processing, Inc. v. Society Ins. Co.*, 2013 WL 3467190 (N.D. Iowa July 10, 2013).

Plaintiff sued for proceeds under an insurance policy after its premises were damaged by a tornado. The insurance company raised defenses that included the insured's failure to submit to an examination under oath before filing suit. Although the plaintiff barely raised the issue, I concluded that Iowa law required the insurer to prove that it suffered prejudice as a result of the alleged noncompliance. As such, I denied the defendant's motion for summary judgment. The case settled shortly before trial.

Counsel for Plaintiff:

Andrew Hope  
Hope Law Firm, PLC  
317 Sixth Avenue, Suite 700  
Des Moines, IA 50309  
(515) 255-3559

Shannon Henson  
Henson Law Office, PLC  
8565 Harbach Blvd, Suite 307  
Clive, IA 50325  
(515) 758-5291

Counsel for Defendant:

David May and Caroline Bettis  
Bradshaw, Fowler, Proctor & Fairgrave, P.C.  
801 Grand Avenue, Suite 3700  
Des Moines, IA 50309  
(515) 246-5888

6. *Perzynski v. Cerro Gordo County*, 953 F. Supp. 2d 916 (N.D. Iowa 2013).

Defendant, a former county employee, was discharged after the county discovered that she had been tampering with her timecards. Criminal charges were brought against her but ultimately dismissed. She then sued the county and certain officials for damages arising from the criminal prosecution. I granted the defendants' motion for summary judgment, finding that the arrest and prosecution of the plaintiff had been supported by probable cause, even though the charges were later dismissed. The Eighth Circuit Court of Appeals affirmed my ruling on March 10, 2014. *See Perzynski v. Cerro Gordo County*, 557 Fed. Appx. 619 (8th Cir. 2014).

Counsel for Plaintiff:

Mark Sherinian  
Sherinian & Hasso Law Firm  
3737 Woodland Avenue, Suite 630  
West Des Moines, IA 50266  
(515) 224-2079

Counsel for Defendant:

Jason Craig  
Ahlers & Cooney, P.C.  
100 Court Avenue, Suite 600

Des Moines, IA 50309  
(515) 246-0372

7. *United States v. Poole*, 2013 WL 1694776 (N.D. Iowa Apr. 18, 2013).

Defendant was charged with drug and firearm offenses arising out of a traffic stop that included an alert by a drug-detecting dog. He raised several arguments in an effort to invalidate the search and suppress the resulting evidence. Both sides presented expert testimony concerning the validity of the dog's training and handling. I ultimately recommended that the motion to suppress be denied based on precedent from the Eighth Circuit Court of Appeals. Judge Bennett later adopted my report and recommendation. See *United States v. Poole*, 2013 WL 3808243 (N.D. Iowa July 22, 2013). Defendant pleaded guilty and was sentenced by United States District Judge Mark Bennett to 126 months' imprisonment.

Counsel for the Government:

Shawn Wehde  
United States Attorney's Office  
600 Fourth Street, Suite 670  
Sioux City, IA 51101  
(712) 255-6011

Counsel for Defendant:

John Greer  
Greer Law Office  
13 West Fourth Street  
P.O. Box 215  
Spencer, IA 51301  
(712) 262-1444

8. *United States v. Mathison*, 909 F. Supp. 2d 1060 (N.D. Iowa 2012).

Mr. Mathison was one of five defendants named in an indictment. The other four were charged with several counts arising from the armed robbery of a grocery store. Mr. Mathison, however, was charged only with being in possession, at one point, of an illegal firearm that was ultimately used during the robbery. He was not charged with any offense relating to the robbery itself. He filed a motion to sever his trial from that of the other defendants on grounds that he could face a prejudicial "spillover" effect if the same jury deciding the limited charge against him also heard evidence of a violent robbery to which he had no connection. While noting that the severance of defendants in a criminal case is appropriate under only rare circumstances, I found that this case presented such circumstances. Thus, I granted the motion and ordered that Mr. Mathison be tried separately from the other defendants. Defendant pleaded guilty and was



sentenced by United States District Judge Mark Bennett to 60 months' imprisonment.

Counsel for the Government:

Forde Fairchild  
United States Attorney's Office  
600 Fourth Street, Suite 670  
Sioux City, IA 51101  
(712) 255-6011

Counsel for Defendant:

Scott Rhinehart  
Rhinehart Law, PC  
2000 Leech Avenue  
Sioux City, IA 51106  
(712) 258-8706

9. *Vails v. United Community Health Ctr.*, 2012 WL 6045941 (N.D. Iowa Dec. 5, 2012).

This was a civil case in which the plaintiff, a physician, sought damages from her former employer and certain of its employees for breach of contract, wrongful termination, tortious interference with contract, fraud and promissory estoppel. The defendants filed a motion for summary judgment that required analysis of numerous legal issues, some of which are unsettled under Iowa law. In this ruling, I granted the motion in part and denied it in part after a lengthy discussion of the relevant issues. The case settled shortly before trial.

Counsel for Plaintiff:

Stanley Munger  
Munger, Reinschmidt & Denne  
600 Fourth Street, Suite 303  
P.O. Box 912  
Sioux City, IA 51102  
(712) 233-3635

Counsel for Defendant:

Mary Frank and David Bower  
Nyemaster Goode Voigts West Hansell & O'Brien, PC  
700 Walnut, Suite 1600  
Des Moines, IA 50309  
(515) 283-3100

10. *Wells Enterprises, Inc. v. Olympic Ice Cream*, 903 F. Supp. 2d 740 (N.D. Iowa 2012).

This was a trademark infringement case in which the defendant sought to compel arbitration pursuant to an agreement between the plaintiff and another entity, while the plaintiff sought to enjoin a pending arbitration case that was filed by the other entity. The motions required review and resolution of various issues arising under the Federal Arbitration Act. I found that the defendant was not entitled to compel arbitration and the plaintiff was not entitled to enjoin the pending arbitration. The parties settled while an appeal was pending.

Counsel for Plaintiff:

Christine Lebron-Dykeman  
McKee, Voorhees & Sease, PLC  
801 Grand Avenue, Suite 3200  
Des Moines, IA 50309  
(515) 288-3667

Counsel for Defendant:

Douglas Fulton  
Brick, Gentry, PC  
6710 Westown Parkway, Suite 100  
West Des Moines, IA 50266  
(515) 274-1450

Richard Schurin  
Gottlieb, Rackman & Reisman, PC  
270 Madison Avenue  
New York, NY 10016  
(212) 684-3900

- 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. *JTV Mfg., Inc. v. Braketown USA, Inc.*, \_\_\_ F. Supp. 3d \_\_\_, 2015 WL 1565193 (N.D. Iowa Apr. 8, 2015).

Counsel for Plaintiff:

Bruce Allen Moothart  
Seyferth, Blumenthal & Harris, LLC

4801 Main Street, Suite 310  
Kansas City, MO 64112  
(816) 285-0559

William K. Klinker  
Smith, Grigg, Shea, Klinker & Queck  
120 South Hayes Avenue  
P.O. Box 98  
Primghar, IA 51245  
(712) 757-5465

Counsel for Defendants:

Jeff W. Wright  
Heidman Law Firm, LLC  
1128 Historic Fourth Street  
P.O. Box 3086  
Sioux City, IA 51101  
(712) 255-8838

Oscar R. Trejo  
Atom Law Group, LLC  
770 North LaSalle Street, Suite 700  
Chicago, IL 60654  
(312) 943-8000

Counsel for Third-Party Defendant:

Constance M. Alt  
Dana L. Oxley  
Samuel E. Jones  
Shuttleworth & Ingersoll  
115 Third Street SE, Suite 500  
P.O. Box 2107  
Cedar Rapids, IA 52406  
(319) 365-9461

2. *Myers v. Hog Slat, Inc.*, 55 F. Supp. 3d 1145 (N.D. Iowa 2014).

Counsel for Plaintiff:

Thomas Foley and Katie Carlson  
Babich Goldman, P.C.  
501 SW Seventh Street, Suite J  
Des Moines, IA 50309  
(515) 244-4300

Counsel for Defendant:

Benjamin Roach and Angel West  
Nyemaster, Goode, West, Hansell & O'Brien  
700 Walnut Street, Suite 1600  
Des Moines, IA 50309  
(515) 283-3100

3. *United States v. Mosley*, 2014 WL 5454575 (N.D. Iowa Oct. 27, 2014).

Counsel for the Government:

Shawn Wehde  
United States Attorney's Office  
600 Fourth Street, Suite 670  
Sioux City, IA 51101  
(712) 255-6011

Counsel for Defendant:

Robert Rehkemper  
Gourley, Rehkemper & Lindholm, PLC  
440 Fairway Drive, Suite 210  
West Des Moines, IA 50266  
(515) 226-0500

4. *United States v. Himes*, 2013 WL 6909480 (N.D. Iowa Dec. 30, 2013).

Counsel for the Government:

Jamie Bowers  
United States Attorney's Office  
600 Fourth Street, Suite 670  
Sioux City, IA 51101  
(712) 255-6011

Counsel for Defendant:

Joshua Weir  
Dornan, Lustgarten & Troia PC LLO  
1403 Farnam Street, Suite 232  
Omaha, NE 68102  
(402) 884-7044

5. *Mapleton Processing, Inc. v. Society Ins. Co.*, 2013 WL 3467190 (N.D. Iowa July 10, 2013).

Counsel for Plaintiff:

Andrew Hope  
Hope Law Firm, PLC  
317 Sixth Avenue, Suite 700  
Des Moines, IA 50309  
(515) 255-3559

Shannon Henson  
Henson Law Office, PLC  
8565 Harbach Blvd, Suite 307  
Clive, IA 50325  
(515) 758-5291

Counsel for Defendant:

David May and Caroline Bettis  
Bradshaw, Fowler, Proctor & Fairgrave, P.C.  
801 Grand Avenue, Suite 3700  
Des Moines, IA 50309  
(515) 246-5888

6. *Perzynski v. Cerro Gordo County*, 953 F. Supp. 2d 916 (N.D. Iowa 2013).

Counsel for Plaintiff:

Mark Sherinian  
Sherinian & Hasso Law Firm  
3737 Woodland Avenue, Suite 630  
West Des Moines, IA 50266  
(515) 224-2079

Counsel for Defendant:

Jason Craig  
Ahlers & Cooney, P.C.  
100 Court Avenue, Suite 600  
Des Moines, IA 50309  
(515) 246-0372

7. *United States v. Poole*, 2013 WL 1694776 (N.D. Iowa Apr. 18, 2013).

Counsel for the Government:

Shawn Wehde  
United States Attorney's Office  
600 Fourth Street, Suite 670  
Sioux City, IA 51101  
(712) 255-6011

Counsel for Defendant:

John Greer  
Greer Law Office  
13 West Fourth Street  
P.O. Box 215  
Spencer, IA 51301  
(712) 262-1444

8. *United States v. Mathison*, 909 F. Supp. 2d 1060 (N.D. Iowa 2012).

Counsel for the Government:

Forde Fairchild  
United States Attorney's Office  
600 Fourth Street, Suite 670  
Sioux City, IA 51101  
(712) 255-6011

Counsel for Defendant:

Scott Rhinehart  
Rhinehart Law, PC  
2000 Leech Avenue  
Sioux City, IA 51106  
(712) 258-8706

9. *Vails v. United Community Health Ctr.*, 2012 WL 6045941 (N.D. Iowa Dec. 5, 2012).

Counsel for Plaintiff:

Stanley Munger  
Munger, Reinschmidt & Denne  
600 Fourth Street, Suite 303  
P.O. Box 912  
Sioux City, IA 51102  
(712) 233-3635

Counsel for Defendant:

Mary Frank and David Bower  
Nyemaster Goode Voigts West Hansell & O'Brien, PC  
700 Walnut, Suite 1600  
Des Moines, IA 50309  
(515) 283-3100

10. *Wells Enterprises, Inc. v. Olympic Ice Cream*, 903 F. Supp. 2d 740 (N.D. Iowa 2012).

Counsel for Plaintiff:

Christine Lebron-Dykeman  
McKee, Voorhees & Sease, PLC  
801 Grand Avenue, Suite 3200  
Des Moines, IA 50309  
(515) 288-3667

Counsel for Defendant:

Douglas Fulton  
Brick, Gentry, PC  
6710 Westown Parkway, Suite 100  
West Des Moines, IA 50266  
(515) 274-1450

Richard Schurin  
Gottlieb, Rackman & Reisman, PC  
270 Madison Avenue  
New York, NY 10016  
(212) 684-3900

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

None.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

I am aware of five cases in which my decisions were reversed, and none in which my decision was affirmed but with significant criticism. As noted below, one of the reversals was, itself, later reversed by the Eighth Circuit Court of Appeals,

meaning that the final outcome of the case was consistent with my report and recommendation. The cases are listed below.

*Barrows v. Colvin*, 2014 WL 3339790 (N.D. Iowa July 1, 2014), *reversed in part*, 2015 WL 1510159 (N.D. Iowa Mar. 31, 2015). This was a Social Security Appeal in which I recommended that Judge Bennett reverse the Social Security Commissioner's decision that the claimant was not disabled. Judge Bennett accepted my recommendation with regard to three issues but disagreed with my conclusion that the administrative law judge had failed to fully develop the record. As such, he rejected my recommendation on that issue and affirmed the Commissioner's denial of benefits.

*Cornell v. Jim Hawk Truck Trailer, Inc.*, unpublished order filed March 26, 2014, *reversed*, 2014 WL 2860422 (N.D. Iowa May 30, 2014). This was a civil case in which I denied the plaintiff's motion for leave to file a second amended complaint on grounds that the motion was untimely and the plaintiff failed to show good cause to justify an untimely amendment. Plaintiff appealed my order to Judge O'Brien, the presiding judge, who reversed based on a finding that good cause did exist. As such, he allowed plaintiff to file the second amended complaint. A copy of my unpublished order is supplied.

*Figgins v. Colvin*, 2014 WL 28648 (N.D. Iowa Jan. 2, 2014), *reversed*, 2014 WL 1686821 (N.D. Iowa Apr. 29, 2014). This was a Social Security appeal in which I recommended that Judge Bennett reverse the Social Security Commissioner's determination that the claimant was not disabled. Judge Bennett disagreed, finding that the Commissioner's decision was supported by substantial evidence. As such, he directed that judgment be entered against the claimant.

*Kinseth v. Colvin*, 2013 WL 1343702 (N.D. Iowa Apr. 4, 2013), *reversed*, 2013 WL 4482998 (N.D. Iowa Aug. 20, 2013). This was a Social Security appeal in which I recommended that Judge Bennett affirm the Social Security Commissioner's determination that the claimant was not disabled. Judge Bennett disagreed, finding that the Commissioner had not provided good reasons to discredit the opinions of the claimant's treating physicians. As such, he remanded the case to the agency for further proceedings.

*Escobedo v. Lund*, 2012 WL 3860569 (N.D. Iowa Sept. 6, 2012), *reversed*, 948 F. Supp. 2d 951 (N.D. Iowa 2013), *reversed*, 760 F.3d 863 (8th Cir. 2014). This was a habeas corpus case in which the petitioner was an inmate in an Iowa state prison, having been convicted of first degree murder. I recommended that the petition for writ of habeas corpus be denied pursuant to the highly-deferential standard that applies to federal-court review of state court convictions. Judge Bennett disagreed, finding that the petitioner's trial counsel had been ineffective in not requesting a mistrial under circumstances that arose during jury deliberations. He thus granted the petition for writ of habeas corpus but stayed his ruling pending appeal. On appeal, the Eighth Circuit Court of Appeals



reversed, finding that the petitioner was not entitled to relief and that the petition for writ of habeas corpus should be denied.

- 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 believe all decisions that include substantial analysis and reasoning should be made available to the public. As such, I instruct my chambers staff to have all such decisions posted on our court's public website. Most are then picked up by West Publishing and either (a) published as a reported decision or (b) made available on Westlaw as an unreported decision. Even those that are not selected by West Publishing remain available on the court's website. In short, I do not intentionally designate any decision that includes significant analysis as an "unpublished" opinion.

- 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.

*United States v. Mosley*, 2014 WL 5454575 (N.D. Iowa Oct. 27, 2014)

*United States v. Rojas*, 2014 WL 5107052 (N.D. Iowa Oct. 3, 2014)

*United States v. Orellana*, 2014 WL 3767381 (N.D. Iowa July 31, 2014)

*United States v. McCammon*, 2014 WL 268573 (N.D. Iowa Jan. 23, 2014)

*United States v. Himes*, 2013 WL 6909480 (N.D. Iowa Dec. 30, 2013)

*United States v. Sandoval*, 2013 WL 4735695 (N.D. Iowa Sept. 3, 2013)

*United States v. Barragan*, 2013 WL 4606611 (N.D. Iowa Aug. 27, 2013)

*United States v. Hansen*, 2013 WL 3199988 (N.D. Iowa June 19, 2013)

*United States v. Poole*, 2103 WL 1694776 (N.D. Iowa Apr. 18, 2013)

*United States v. Mathison*, 909 F. Supp. 2d 1060 (N.D. Iowa 2012)

*United States v. Barber*, 901 F. Supp. 2d 1119 (N.D. Iowa 2012)

*United States v. Stephenson*, 2012 WL 2562397 (N.D. Iowa June 27, 2012)

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

None.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

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

Our court has an automatic recusal procedure based on a conflicts list supplied by each judge. My list currently includes my wife's employer (and its parent company) and a few entities with whom I have a financial relationship. If any party to a case in our court appears on my conflicts list, the clerk's office automatically reassigns the case to another magistrate judge.

No party has filed a motion asking that I recuse myself from a case. However, I pay close attention to each case to make sure I have no relationship to the case or any of the parties that might cause anyone to reasonably question my impartiality. I have recused myself without input from any party in one case, *Wells v. Lamplight Farms., Inc., et al.*, No. 13-cv-4070. That occurred after Senator Grassley announced the members of the committee that would interview applicants for district judgeships in the Northern and Southern Districts of Iowa. One of the members of the committee was the attorney of record in a case to which I was assigned. Because I was an applicant, I made the *sua sponte* decision to recuse myself from that case. I advised the parties of this decision and directed the clerk to assign a different magistrate judge to the case.

In addition, in two cases I have brought facts to the parties' attention to allow them to decide whether to request recusal. In *Thiele v. City of Sioux City, et al.*, No. 12-cv-4039, I was assigned to conduct a settlement conference in a civil action brought by a former firefighter against the Sioux City Fire Department. I advised counsel that my father had been a firefighter with the Sioux City Fire Department and that he had retired approximately twenty years ago. While I did not know any of the individuals involved in the case, I offered to have another judge conduct the settlement conference at the request of either party. Both parties agreed that I should conduct the conference.

In *Newbrough v. Bishop Heelan Catholic Schools, et al.*, No. 13-cv-4114, I was assigned to a civil action after the parties unanimously consented to trial and disposition by a magistrate judge. The defendants included a local Catholic school and several individuals. In reviewing the case, I realized that one of the named defendants was the Bishop of the diocese that includes my parish. I immediately advised the parties that I am a member of a parish located within the

Bishop's jurisdiction. The plaintiff expressed concern about my continued involvement. As such, I recused myself and directed the clerk to assign the case to a different magistrate judge.

**15. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

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

None.

**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 did not serve as a clerk to a judge.

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

I did not practice alone.

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

1990 – 2012  
Simmons Perrine Moyer Bergman PLC  
115 Third Street SE, Suite 1200  
Cedar Rapids, Iowa 52401  
Associate (1990 – 1995)  
Partner (1996 – 2012)

- 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 did not serve as a mediator. However, in 2010 I was selected as an arbitrator for the American Arbitration Association and completed that organization's training program. I was assigned two cases, both of which settled before hearing. I did not retain any records and am not able to recall the name of either case. In November 2011, upon being notified that I had been selected for my current position, I asked to be placed on the Association's inactive list.

b. Describe:

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

I joined Simmons Perrine Moyer Bergman PLC as an associate in its commercial litigation group and spent the first few years working with experienced attorneys on various matters, many of which were complex. At some point in 1993 or 1994, the firm's employment law group was extremely busy and short-staffed. I had an interest in employment law and offered to devote time to that area, as well. I began attending seminars and doing independent study to learn the basics of employment law. That part of my practice grew quickly and I found it to be a good complement to my commercial litigation practice. Throughout the rest of my private practice career, commercial litigation and employment law (including employment litigation) were, by far, the two largest areas of my practice.

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

Throughout my career in private practice, my typical clients were businesses. These ranged from small locally-owned businesses to large, Iowa-based businesses and major national or international companies that had need for litigation counsel in Iowa. I represented those clients as both plaintiffs and defendants, depending on the situation. While I occasionally was retained by insurance companies to defend their insureds, that was a small fraction of my overall practice and had declined to virtually zero over the last few years of my career. In addition, and as some of the cases I will describe below illustrate, I sometimes represented individuals as plaintiffs in various types of cases.

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

your appearances in court varied, describe such variance, providing dates.

Approximately 75% of my practice involved civil litigation matters. During the first several years of my career I appeared in court regularly. Over time, the frequency of court appearances dropped to some extent because a greater percentage of motions were decided without oral argument and the percentage of cases that proceeded to trial decreased. Even then, however, I continued to appear in court at least occasionally.

i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 25% |
| 2. state courts of record:  | 70% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 5%  |

ii. Indicate the percentage of your practice in:

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

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

I tried approximately 30 civil cases to verdict and/or judgment. In addition, I obtained summary judgment terminating actions in dozens of cases. I was chief counsel (and, often, sole counsel) in approximately one-half of the cases that went to trial. In the other cases, I was either associate counsel or co-counsel (meaning trial responsibilities were shared on a generally-equal basis).

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 70% |
| 2. non-jury: | 30% |

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

None.

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

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

1. *Umbdenstock v. Interstate Power and Light Co.*, appellate decision reported at 756 N.W.2d 481 (Iowa Ct. App. 2008) (table).

I represented Interstate Power and Light (IPL), a utility company, in the defense of a “stray voltage” claim, wherein a dairy farmer claimed that low levels of electricity escaped from IPL’s distribution system and affected the health and production of his dairy cows. The case was filed in 2005 and tried to a jury in 2007. The jury returned a defense verdict, which was then affirmed on appeal. The case presented complex legal and scientific issues, including expert testimony from veterinarians, electrical engineers and economists. I was the only attorney representing my client in this case and thus handled the entire matter myself.

Approximate dates of representation: 2006 – 2008

Court and Judge: Iowa District Court for Linn County  
Mitchell Turner, District Court Judge  
and  
Iowa Court of Appeals

Opposing Counsel:

Peter Riley  
Tom Riley Law Firm  
4040 First Avenue NE  
P.O. Box 998  
Cedar Rapids, IA 52406  
(319) 363-4040

2. *Christoffersen v. Yellow Book USA*, appellate decision reported at 536 F.3d 947 (8th Cir. 2008).

I represented the family of Mr. Christoffersen, a former executive at a Cedar Rapids company that was acquired by Yellow Book in 2002. Yellow Book allowed Mr. Christoffersen to resign upon signing several agreements, including a release agreement and an agreement that required Yellow Book to make severance payments, which were called consulting fees, for five years. In exchange, he gave up his right to receive valuable bonuses and stock option awards. When he died suddenly during the five-year

payment period, Yellow Book stopped making payments and contended that the payments were contingent on Mr. Christoffersen being available to perform consulting services. Upon review of the agreements, which expressly referenced each other, I argued that Yellow Book was wrong. However, both the trial court and the appellate court disagreed with me. My partner Iris Muchmore provided assistance on this case, however I was primarily responsible for handling the matter up until the time it was dismissed, including drafting the appeal brief and arguing the appeal.

Approximate dates of representation: 2006 – 2008

Court and Judge: United States District Court for the Northern District of Iowa  
Linda Reade, United States District Judge  
and  
United States Court of Appeals for the Eighth Circuit

Co-Counsel:

Iris Muchmore (now retired)  
Simmons Perrine Moyer Bergman PLC  
115 Third Street SE, Suite 1200  
Cedar Rapids, IA 52401  
(319) 366-7641

Opposing Counsel:

Mark Zaiger  
Shuttleworth & Ingersoll, PC  
P.O. Box 2107  
Cedar Rapids, IA 52406  
(319) 365-9461

3. *Quaker Oats Co. v. Coperion Corp.*, No. LACV53724 in the Iowa District Court for Linn County.

In 2005, Quaker Oats sued Coperion and others for damages based on alleged defects in certain food processing equipment installed at Quaker's plant in Cedar Rapids. I was asked to serve as Iowa counsel for Coperion and defended the case jointly with a New Jersey attorney, Warren Clark. Quaker claimed that the allegedly-flawed equipment caused it to shut down a production line for a lengthy period of time, resulting in millions of dollars of lost profits. We raised various contractual defenses and also argued that the equipment supplied by Coperion did not cause the failure. The case was tried to a jury in Cedar Rapids for three weeks, with the jury ultimately returning a verdict for the defendants. Quaker elected not to appeal. As such, there is no reported decision concerning this case. Mr. Clark and I divided responsibility for this case on a roughly-equal basis, with each of us handling various tasks and witnesses at trial.

Approximate dates of representation: 2005 – 2008

Court and Judge: Iowa District Court for Linn County  
Kristin Hibbs, District Court Judge

Co-Counsel:

Warren Clark  
Solo Practitioner  
79 Main Street, Number Two  
Hackensack, NJ 07601  
(201) 342-1720

Counsel for Co-Defendants:

Beth Hansen  
Swisher & Cohrt PLC  
P.O. Box 1200  
528 West Fourth Street  
Waterloo, IA 50704  
(319) 232-6555

Opposing Counsel:

Richard Fry  
Shuttleworth & Ingersoll, PC  
P.O. Box 2107  
Cedar Rapids, IA 52406  
(319) 365-9461

Dean Rauchwerger  
Clausen Miller PC  
10 South LaSalle Street  
Chicago, IL 60603  
(312) 855-1010

4. *Tenge v. Phillips Modern Ag Co.*, appellate decision reported at 446 F.3d 903 (8th Cir. 2006).

I was co-counsel for the defendant in this employment discrimination case. Plaintiff alleged she was wrongfully terminated based on her sex because the business owner's wife was concerned about a possible extramarital affair. The plaintiff's theory, in effect, was that discrimination occurred because the owner's wife was not jealous of the relationship between the owner and male employees. However, the evidence showed that the plaintiff had engaged in flirtatious behavior towards the owner, while male employees had not. We obtained summary judgment at the trial court level and the judgment was



affirmed on appeal. My partner Greg Lederer and I worked on the case together. I was primarily responsible for briefing the issues to the trial court and the appellate court. Mr. Lederer presented oral argument on appeal.

Approximate dates of representation: 2003 – 2006

Court and Judge: United States District Court for the Northern District of Iowa  
Edward McManus, Senior United States District Judge  
and  
United States Court of Appeals for the Eighth Circuit

Co-Counsel:

Greg Lederer  
Lederer Weston Craig PLC  
118 Third Avenue SE, Suite 700  
Cedar Rapids, IA 52401  
(319) 365-1184

Opposing Counsel:

Richard D. Stochl  
Iowa District Court (then with Elwood, O'Donohoe, Stochl, Braun & Churbuck)  
Chickasaw County Courthouse  
Eight East Prospect  
P.O. Box 467  
New Hampton, IA 50659  
(641) 394-2106

5. *Jensen v. Sattler*, appellate decision reported at 696 N.W.2d 582 (Iowa 2005).

I was co-counsel for a homeowner who discovered serious defects in his home shortly after purchasing it from the defendant, a home-builder who had lived in the home for several years after completing construction. Using a different attorney, the homeowner filed suit and alleged various theories, including a violation of Iowa's real estate disclosure act. After losing at trial, the homeowner asked me to review the case to determine if he had any valid appeal points. It was my opinion that the trial court had erred in instructing the jury that proof of actual fraud was necessary to prevail under the Iowa disclosure statute. As such, I advised him to appeal. I then handled the appeal with the assistance of two other attorneys in our firm. The Iowa Supreme Court agreed with our position, thus making new law concerning the duties of home sellers in Iowa. The case was remanded for a new trial. We then represented the plaintiff at the second trial, after which he prevailed on liability but was not awarded damages to the extent claimed. I was the attorney primarily responsible for evaluating the case and handling the appeal. My partner Steve Holtman and I then handled the re-trial on a roughly equal basis.

Approximate dates of representation: 2003 – 2007

Court and Judge: Iowa District Court for Linn County  
Patrick Grady, District Court Judge  
and  
Iowa Supreme Court

Co-Counsel:

Stephen Holtman  
Simmons Perrine Moyer Bergman PLC  
115 Third Street SE, Suite 1200  
Cedar Rapids, IA 52401  
(319) 366-7641

Opposing Counsel:

Sean W. McPartland  
Iowa District Court (then with Lynch Dallas, P.C.)  
Linn County Courthouse  
P.O. Box 5488  
Cedar Rapids, IA 52406  
(319) 398-3920

6. *Iowa Star Schools v. Midwest Security Life Ins. Co.*, No. 02-cv-2027 in the United States District Court for the Northern District of Iowa.

I filed suit in 2002 on behalf of the Iowa Star Schools 28E Retention Trust, a group of Iowa public school districts that joined together to form and administer a self-insured health insurance plan for their employees. The defendant had issued an excess-loss policy to protect the plan in the event that claims in a particular year were much higher than anticipated. When that event occurred during one particular plan year, my client made a claim under the policy for approximately \$700,000. The defendant denied coverage. After we filed suit in federal court, the defendant successfully compelled arbitration under a boilerplate arbitration clause in its policy. We then tried the case to an arbitrator, who ultimately awarded not only the full amount claimed by my client but also punitive damages based on a finding that the defendant had acted in bad faith. No reported decisions arose from the case. I was the only attorney representing my client in this case and thus handled the entire matter myself.

Approximate dates of representation: 2002 – 2004

Court and Judge: United States District Court for the Northern District of Iowa  
Linda Reade, United States District Judge  
and  
American Arbitration Association

Waldine H. Olson, Arbitrator

Opposing Counsel:

Patrick Roby  
Elderkin & Pirnie  
316 Second Street SE, Suite 124  
P.O. Box 1968  
Cedar Rapids, IA 52406  
(319) 362-2137

7. *Pearson v. Interstate Power and Light Co.*, appellate decision reported at 700 N.W.2d 333 (Iowa 2005).

I was co-counsel for defendant IPL in a wrongful death claim arising from a fire and explosion that killed Mr. and Mrs. Pearson at their home in Lone Tree, Iowa. The accident occurred because an old flexible gas connector located in the basement of the home failed, allowing natural gas to fill the basement and explode while the Pearsons were sleeping. While the case was unbelievably tragic, IPL had not made, sold or installed the failed connector and had no knowledge that it was located in the Pearsons' home. Up to this point, Iowa law seemed to be clear that appliances, lines and connectors located within a customer's home were not the gas utility company's responsibility. Thus, IPL elected to defend the case. After the Iowa District Court for Johnson County denied our motion for summary judgment, the case proceeded to a three-week trial. In their closing argument, plaintiffs' counsel asked for \$10 million in actual damages and \$90 million in punitive damages. The jury found for the plaintiffs but awarded damages that, after reduction for comparative fault, totaled just over \$4 million. The Iowa Supreme Court affirmed the judgment on appeal, with a minor adjustment. Mr. Holtman and I divided responsibility for this case on a roughly-equal basis, with each of us handling various tasks and witnesses at trial.

Approximate dates of representation: 2002 – 2005

Court and Judge: Iowa District Court for Johnson County  
David Good, District Court Judge  
and  
Iowa Supreme Court

Co-Counsel:

Stephen Holtman  
Simmons Perrine Moyer Bergman PLC  
115 Third Street SE, Suite 1200  
Cedar Rapids, IA 52401  
(319) 366-7641

Opposing Counsel:

A. John Arenz  
O'Connor & Thomas, P.C.  
700 Locust Street, Suite 200  
Dubuque, IA 52001  
(563) 557-8400

Timothy Aiken  
Aiken & Scoptur, S.C.  
2600 North Mayfair Road, Suite 1030  
Milwaukee WI 53226  
(855) 783-3786

8. *Pickwick Co. v. Infra-Red Tech.*, appellate decision reported at 2000 WL 1298738 (Iowa Ct. App. 2000).

I represented Pickwick, a Cedar Rapids manufacturing company, in a lawsuit against a Kansas City company that supplied Pickwick with defective industrial painting equipment. The case was tried to a jury, which returned a verdict in my client's favor on various contract and fraud theories and awarded both actual and punitive damages. On appeal, the Iowa Court of Appeals affirmed on liability and actual damages but found that the evidence did not support the award of punitive damages. This was the first complex lawsuit that I handled entirely on my own, from start to finish, through trial and appeal. I was retained by Pickwick shortly after the painting equipment was installed and was the only lawyer involved for Pickwick.

Approximate dates of representation: 1995 – 2000

Court and Judge: Iowa District Court for Linn County  
Patrick Grady, District Court Judge  
and  
Iowa Court of Appeals

Opposing Counsel:

Robert Hatala  
Simmons Perrine Moyer Bergman PLC (then with Crawford, Sullivan, Read &  
Roemerman, P.C.)  
115 Third Street SE, Suite 1200  
Cedar Rapids, IA 52401  
(319) 366-7641

9. *Schoff v. Combined Insurance*, appellate decision reported at 604 N.W.2d 43 (Iowa 1999).

I was co-counsel for Mr. Schoff, who left a good job and gave up valuable benefits to become an insurance agent for Combined Insurance. He made this decision only after being assured by Combined that two prior misdemeanor convictions would not affect his ability to become bonded. This assurance turned out to be false. Instead, despite the fact that Mr. Schoff was a high-performing new agent, Combined terminated Mr. Schoff's employment after the bonding company rejected him. We argued that even though he was an at-will employee, the doctrine of promissory estoppel rendered his discharge improper. The Iowa District Court for Linn County rejected our position and granted summary judgment for the defendant. On appeal, the Iowa Supreme Court adopted our legal argument, holding for the first time that promissory estoppel is a valid exception to the at-will employment doctrine. However, the Court then found that the facts of record did not, as a matter of law, support application of promissory estoppel. As such, we won on the legal issue but still lost the case. I was the primary attorney on the matter, although my partner Iris Muchmore and I would have divided trial responsibilities on a roughly-equal basis.

Approximate dates of representation: 1997 – 1999

Court and Judge: Iowa District Court for Linn County  
Kristin Hibbs, District Court Judge  
and  
Iowa Supreme Court

Co-Counsel:

Iris Muchmore (now retired)  
Simmons Perrine Moyer Bergman PLC  
115 Third Street SE, Suite 1200  
Cedar Rapids, IA 52401  
(319) 366-7641

Opposing Counsel:

Connie Alt  
Nancy Penner  
Shuttleworth & Ingersoll, PC  
P.O. Box 2107  
Cedar Rapids, IA 52406  
(319) 365-9461

10. *The Iowa Eye Center antitrust litigation*, No. 95-cv-0288 in the United States District Court for the Northern District of Iowa.

I was one of three lawyers in our firm who represented Iowa Eye, P.C., an ophthalmology group based in Cedar Rapids, along with its member physicians, as plaintiffs in an antitrust lawsuit filed in the Northern District of Iowa. The defendants were

approximately 20 optometrists in the Cedar Rapids area, plus one ophthalmologist. The lawsuit alleged an illegal conspiracy between the defendant optometrists and the defendant ophthalmologist pursuant to which virtually all ophthalmology referrals in the Cedar Rapids area were being directed to the defendant ophthalmologist. We alleged that in exchange for receiving these referrals, the defendant ophthalmologist agreed not to compete with the optometrists by providing primary eye care services or operating an optical shop. My primary role was to handle the complex legal issues that arose during the lawsuit. This included resisting motions to dismiss and motions for summary judgment in order to get the case to trial. I was also in charge of written discovery (both producing and requesting) and took many depositions as the case proceeded. The case went to trial in 1998. I was assigned to handle numerous witnesses, but a confidential settlement was reached after approximately one week of trial. I have not been able to locate any published decisions.

Approximate dates of representation: 1995 – 1998

Court and Judge: United States District Court for the Northern District of Iowa  
Michael Melloy, (then) United States District Judge

Co-Counsel

Stephen Holtman  
David Hacker (now retired)  
Simmons Perrine Moyer Bergman PLC  
115 Third Street SE, Suite 1200  
Cedar Rapids, IA 52401  
(319) 366-7641

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Lederer Weston Craig PLC  
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(319) 365-1184

David J. Dutton  
James Hellman  
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3151 Brockway Road  
P.O. Box 810  
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(319) 234-4471

Counsel for Defendants Washburn, Parsons, Weaver, Hinson, Atteberry, Fisher, Fetty, Pipkin, Jansen, M. Davis, Mentzer, Skotowski, Hill, Scholl, S. Davis, Anderson, Brown and Weihe:

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David A. Elderkin  
Elderkin & Pirnie  
316 Second Street SE, Suite 124  
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(319) 362-2137

Christopher L. Bruns  
Iowa District Court (then with Elderkin & Pirnie)  
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Cedar Rapids, IA 52406  
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Martha L. Shaff  
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Davenport, IA 52807  
(563) 326-4491

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Tom Riley Law Firm  
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Counsel for Defendant Espe:

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Cedar Rapids, IA 52407  
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Counsel for Defendant Tappan:

Thomas R. Pence  
Thomas R. Pence Law Office  
P.O. Box 1533  
Cedar Rapids, IA 52406  
(319) 366-8016

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.)

With regard to significant non-litigation activities, I was retained by various clients to conduct confidential internal investigations of alleged discriminatory and/or unethical conduct. On several occasions I was entrusted with the task of investigating allegations that reached very high levels of upper management. These investigations required witness interviews, reviews of various records and, ultimately, the preparation of detailed reports with factual findings and recommendations.

I represented clients in the course of many disputes that were resolved before, or shortly after, litigation was commenced. Many of these involved employment termination situations, with my role being the negotiation and drafting of severance agreements to resolve all claims and disputes between the parties.

I was retained on numerous occasions to provide preventative employment law services to various clients, including drafting and/or review of various employee handbooks and policies and training sessions with employees about employment law issues (such as workplace harassment and discrimination). In addition, I regularly assisted clients in



navigating specific employment situations in compliance with applicable law.

I have performed no lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

None.

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

None.

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

None.

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

See attached financial disclosure report.

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

See attached net worth statement.

24. **Potential Conflicts of Interest:**

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

Because I have been a federal judge for three years, I do not expect that any new conflict-of-interest issues would arise if I were to be nominated and confirmed as a district judge. For example, I have no family members who regularly appear in federal court (e.g., attorneys or law enforcement officers). Like the other judges in our district, I maintain a publicly-available conflicts list. The clerk's office reviews the applicable conflicts list each time a matter is assigned to a particular judge. If a conflict exists, the matter is automatically assigned to another judge.

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

If a potential conflict arises despite the conflicts-list procedure, I would comply with Canon 3(C) of the Code of Conduct for United States Judges. If disqualification is mandatory pursuant to Canon 3(C)(1), subsections (a) through (3), I would recuse immediately. If disqualification is not mandatory, but circumstances are such that my impartiality might reasonably be questioned, I would either (a) recuse myself immediately if I felt that the potential appearance of impartiality was more than speculative or, at minimum, (b) follow the "remittal" process described in Canon 3(D) by making disclosure to the parties and allowing them to consider whether I should be disqualified.

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.

My former law firm participated in Iowa's Volunteer Lawyer Project (VLP), meaning that each attorney was contacted from time to time with requests to represent indigent parties in non-criminal matters. I accepted various representations over the years, most of which involved minor issues (such as landlord-tenant disputes) that could be resolved quickly. Early in my career I handled two family law matters through VLP that required substantial work. The number of pro bono hours varied from year to year.

In addition, one client (E.W.) I first represented through the VLP became a recurring pro bono client during much of my career in private practice. E.W. was referred to me in the early 1990s after her house was damaged by fire and she was swindled out of the insurance proceeds by a shady independent fire adjuster and a contractor with whom he was in cahoots. Over a period of several years I made various efforts through the courts and administrative agencies to obtain some relief for E.W. and her family. I ultimately obtained judgments and attempted to collect them, unfortunately with little success. Meanwhile, E.W. contacted me on many occasions to assist with other legal problems that she or her family members were facing, including small claims matters and one instance in which the City of Cedar Rapids was seeking to have the family dog put down for being vicious (the dog was ultimately spared). I handled these other matters outside the VLP and never billed E.W. or her family for legal services or expenses.

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 2014, Senator Grassley issued a press release inviting attorneys to apply for upcoming vacancies in the Northern and Southern Districts of Iowa. I submitted my initial application materials to his office on December 24, 2014. On January 14, 2015, I interviewed in Des Moines, Iowa, with a selection committee formed by Senator Grassley. On March 27, 2015, I participated in a second interview, with the same committee and Senator Grassley's Chief of Staff in Des Moines, Iowa. On April 14, 2015, I was advised that Senator Grassley had submitted my name to the White House as his recommendation to fill the vacancy in the Northern District of Iowa. Beginning May 22, 2015, I have been in contact with attorneys from the Office of Legal Policy at the Department of Justice. On July 6, 2015, I was interviewed in Washington, D.C., by representatives of the Office of White House Counsel and the Justice Department. On July 21, 2015, the President submitted my nomination to the Senate.

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

No.