

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

William Martin Conley

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

United States District Judge for the Western District of Wisconsin

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.

150 East Gilman Street
Madison, WI 53703

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

1956; Rice Lake, Wisconsin

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

1979 to 1982 – University of Wisconsin Law School; Juris Doctor, May 1982

1975 to 1978 – University of Wisconsin; Bachelor of Arts (double major in Economics & Political Science), May 1978

1974 to 1975 – University of Wisconsin – Center Barron County; no degree

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.

1984 – present
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703
Partner (1992 to present)
Associate (1984 to 1992)

1982 – 1984
Chambers of the Honorable Thomas E. Fairchild
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, IL 60604
Law Clerk

Summer 1982
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703
Law Clerk

Summer 1981
Hughes, Hubbard & Reed
350 South Grand Avenue, 36th Floor
Los Angeles, California 90071-3442
Law Clerk

Summer 1980
Legal Assistant to Institutional Persons Program
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706
Law Clerk

Summers 1979 & 1978
City of Rice Lake
30 E. Eau Claire Street
Rice Lake, WI 54868
Life Guard

Fall 1978
Rice Lake School District
700 Augusta Street
Rice Lake, WI 54868
Swimming Instructor

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 did not serve in the military. I registered for selective service upon turning 18 years of age in 1974.

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.

Selected for Inclusion in *Best Lawyers in America* (2010 ed.) Bet-the-Company and Commercial Litigation

Selected for Inclusion in *Wisconsin Super Lawyers* (2008 ed.)

State Bar of Wisconsin, President's Award (1989)

National Institute Trial Advocacy, Diploma – Trial Advocacy Skills (1990)

University of Wisconsin Law School law degree, cum laude and Order of the Coif (1982)

University of Wisconsin undergraduate degree, with honors (1978)

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.

State Bar of Wisconsin, 1982 to present. I am a member of the following sections: Litigation (1982 to present), Appellate (1999 to present), and Business (approximately 1992 to present).

American Bar Association, 1984 to present. I am a member of the following sections: Litigation (1984 to present), Franchise (approximately 1990 to present), Antitrust (approximately 1995 to present).

Seventh Circuit Bar Association, 1982 to present. I served as Editor of *Circuit Rider* (approximately 1986 to 1990); as a Board member (1992 to 1996); and as Western District of Wisconsin "liaison" (1998 to 2005).

Western District of Wisconsin Bar Association, 1992 to present.

James Doyle American Inn Of Court , creation to approximately 2000. I was a member of the Inn's board (approximately 1996 to 2000) and Counselor to the Inn (1998 to 2000).

Friends of Remington Center, University of Wisconsin Law School, 2000 to present. I serve on the board of directors (2000 to present).

American Judicature Society, 1984 to present.

Southern Poverty Law Institute, approximately 1986 to present.

Wisconsin Equal Justice Fund, creation to present. I am a member of the board of directors (1998 to present) and served as its President (2006 to 2007).

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.

The State Bar of Wisconsin, admitted June of 1982. There have been no lapses in membership.

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

Supreme Court of the United States, admitted 1991.

Wisconsin Supreme Court, admitted 1982.

United States Court of Appeals for the Seventh Circuit, admitted 1982.

United States District Court for the Western District of Wisconsin, admitted 1982.

United States District Court for the Eastern District of Wisconsin, admitted 1994.

United States District Court for the Northern District of Illinois, admitted 2001.

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.

Nakoma Golf Club, Madison, WI, approximately 1998 to present.

Seminole Pool & Tennis Association, 1999 to present.

Seminole Neighborhood Association, 1999 to present. I served on the board (approximately 2001 to 2004).

- 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.

I have not been a member of any organization that currently discriminates or recently discriminated on the basis of race, sex, or religion, or national origin. I believe that neither of the Seminole organizations listed above ever have had such a policy. With respect to the Nakoma Golf Club, I am unaware of any such past policy; however, it is possible the Club once had such a policy given its existence for most of the last century and the fact that such policies were sadly part of some Madison private clubs into the 1960s.

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.

William M. Conley and Bree Grossi Wilde, *Expedited Appeals, Emergency Appeals, and Temporary Relief Pending Appeal* in 1 Stephen E. Arthur, et al., *The Attorney's Guide to the Seventh Circuit Court of Appeals* ch. 3 (4th ed. 2009)

William M. Conley, *Antitrust Issues in Product Distribution Law Guide*, ch. 9 (2d ed. 2009)

William M. Conley, John S. Skilton and Nancy Y.T. Hanewicz, *Burden of Proof, Admissibility and Objections* in Gene E. Brooks, Nathan A. Fishbach, Danny E. Glass and Howard A. Pollack, *Federal Civil Procedure and Evidence During Trial – 7th Circuit* ch. 9 (1997)

William M. Conley, *Restricting the Admission of Psychiatric Testimony on a Defendant's Mental State: Wisconsin's Steel Curtain*, 1981 Wis. L. Rev. 733

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

None.

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

None.

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

I have spoken at a variety of bar and law firm sponsored seminars on a variety of legal topics, as well as other client-focused events.

Warranty Obligations and Emerging Trends in Dealer Reimbursement Requirements, The 16th Annual Law of Product Distribution and Franchise Seminar, 2007

Antitrust Pitfalls of Joint Purchasing Agreements and Other Competitor Collaboration, The 15th Annual Law of Product Distribution and Franchise Seminar, 2006

What To Do When You Are Asked To Assure Antitrust Compliance: Necessary and Cost-Effective Program, The 13th Annual Law of Product Distribution and Franchise Seminar, 2004

Dealership Renewals, The Law of Product Distribution and Franchising, 2002

Termination II: The Termination from Hell, The Law of Product Distribution and Franchising, 2001

State Regulation on Distribution Relationship or, Fools Rush In . . ., The Law of Product Distribution and Franchising, 1999

Changing the Distribution Relationship: Pitfalls and Opportunities, The Law of Product Distribution, 1998

Opportunities and Pitfalls in Consolidating Distribution Lines: Looking Before you Leap, The Law of Product Distribution, 1997

The Current Legislative Landscape In Distribution Regulation, The Law of Product Distribution, 1996

- 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.

None.

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 not served as a judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
 - i. Of these, approximately what percent were:
jury trials? ___%; bench trials ___% [total 100%]
civil proceedings? ___%; criminal proceedings? ___% [total 100%]
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- 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).
- 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.

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

I have not served as a judge.

- 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.

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.

I have not held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office

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

Abrahamson for Wisconsin Supreme Court, legal researcher, 1999 & 2009

Feingold for United States Senate, Member of Initial Steering Committee, approximately 1991 to 1992

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

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

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

From 1982 to 1984, I served as a law clerk to the Honorable Thomas E. Fairchild, Senior Circuit Judge of the United States Court of Appeals for the Seventh Circuit.

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

I have not practiced law alone.

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

1984 – present
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703
Partner (1992 to present)
Associate (1984 to 1992)

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

I have served as a mediator, early neutral evaluator and arbitrator in a variety of disputed matters over the years. My most significant such work has been as early neutral evaluator, a volunteer position created by the United States District Court for the Western District of Wisconsin. In that capacity I have offered third-party neutral facilitation and non-binding mediation, as well as an early evaluation of the case, to assist participating litigants in reaching a cost-effective resolution of their dispute outside of court. I also have acted as a mediator for various contractual, commercial, consumer and personal injury matters, and on at least one occasion have been retained to act as an arbitrator in private commercial dispute as part of a three-judge arbitration panel. Some significant, representative matters in which I was involved in these capacities were:

1. Sexual discrimination claim against a public school district under Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991.
2. Claim against a Wisconsin state agency for failure to provide adequate accommodation in the workplace under the Americans with Disability Act.
3. Commercial contract dispute under Wisconsin common law.
4. Insurance coverage arbitration.
5. Dispute over award of statutory attorneys' fees.

While I believe the above list is representative of my work in these capacities, having acted as a mediator periodically for the last 20 years and as an early neutral evaluator periodically for the last 15 years. I am unable to recall additional specific examples meriting mention as significant.

b. Describe:

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

Except for two years clerking at the United States Court of Appeals for the Seventh Circuit for Senior Circuit Judge Thomas E. Fairchild, my entire legal career has been spent at Foley & Lardner LLP, principally working out of the firm's Madison office. From my arrival in 1984 until I was

made a partner in 1992, I acted as a commercial litigation associate primarily responsible for supporting lead counsel in a variety of litigation matters ranging from general commercial, labor law, constitutional law, regulatory law, distribution and antitrust law. I also regularly accepted pro bono representations in state and federal courts on behalf of various indigent or not-for-profit clients referred to me by the University of Wisconsin Law School, the United States District Court for Western District of Wisconsin, and the United States Court of Appeals for the Seventh Circuit. The first ten years of my time as a partner at Foley & Lardner LLP (approximately 1992 to 2002), I practiced as a commercial litigation partner with an emphasis in representing private parties in contract, distribution, antitrust, regulatory and constitutional law matters, principally as lead counsel. I also continued to accept pro bono representations, most often dealing with post-conviction or collateral criminal challenges and conditions of confinement cases. The last seven to eight years of my practice have continued to involve this same variety of work, but also an increasing role as counselor to established regional, national and international companies on antitrust, distribution, regulatory and constitutional law matters.

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

Consistent with the above, I have represented national and international industrial, dairy, chemical, commercial and retail companies on a wide variety of legal matters, most often involving antitrust, distribution, contract, constitutional and regulatory law matters. I also have represented local manufacturers, distributors, retailers, other businesses and individuals in the same areas of law, as well as in criminal grand jury proceedings. Finally, throughout my legal career, I have continued to accept criminal and civil pro bono clients referred by the University of Wisconsin, the Western District of Wisconsin, and the United States Court of Appeals for the Seventh Circuit Court, referred by state and local bar associations, and through individual referrals. This work has involved federal appellate representations, civil tort and fraud claims, more sophisticated claims under the Wisconsin and United States Constitutions, state and federal securities laws, and consumer protection laws.

- 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.

While I have become involved in more counseling to my continuing clients in the antitrust and distribution fields in recent years, the vast majority of my work since joining Foley & Lardner LLP has been in litigation, particularly antitrust, contract, distribution, constitutional and regulatory law. All of this has required

me to appear in courts across the country, and particularly in the federal district courts of Wisconsin and the United States Court of Appeals for the Seventh Circuit.

i. Indicate the percentage of your practice in:

- | | |
|----------------------------|-----|
| 1. federal courts; | 65% |
| 2. state courts of record; | 20% |
| 3. other courts; | 10% |
| 4. administrative agencies | 5% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings; | 90% |
| 2. criminal proceedings. | 10% |

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

I have been involved in a large number of matters which have been resolved favorably for my clients on dispositive motions, negotiations leading up to trial and various appellate proceedings. The nature of my commercial law practice is such that few of these disputes end up being tried to verdict. I have tried 11 matters to verdict, judgment or final decision involving the live presentation of witnesses to a judge or jury. In four of those matters I acted as associate counsel, assisting lead counsel from our firm, and in the remaining seven as the lead counsel in the matter.

i. What percentage of these trials were:

- | | |
|-------------|-----|
| 1. jury | 36% |
| 2. non-jury | 74% |

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 represented parties seeking and opposing certiorari review and submitted briefs on behalf of amicus on the merits in the following cases:

Levine v. Heffernan, 493 U.S. 873 (1989)

Keller v. State Bar of California, 496 U.S. 1 (1990)

Gibson v. Florida Bar, 502 U.S. 104 (1991)

1-800-Flowers.com, Inc. v. Jahn, 537 U.S. 882 (2002)

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. Foskett v. Great Wolf Resorts, Inc., 518 F. 3d 518 (7th Cir. 2008).

Dates of representation: June 2007 to November 2008. I represented third-party defendants, the previous owners of a resort and water park. The defendant in the suit was the current owner of the resort, who sought indemnification for personal injury claims asserted by a visitor to the resort. Before my involvement, the United States District Court for the Western District of Wisconsin had already granted the current owner's motion, and denied the prior owners' cross-motion, for summary judgment on the issue of indemnification. I took over the case as lead counsel on appeal, briefing and arguing the matter to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit reversed, holding that a provision of the asset purchase agreement for sale of the resort and water park required buyer to indemnify sellers. I also represented the sellers as lead counsel on remand where the Court ordered full reimbursement to our clients of all attorneys' fees and costs pursuant to the indemnification agreement. Plaintiff counsel was Jan Ohlander, Reno & Zahm, 2902 McFarland Road, Rockford, IL 61107, telephone 815-987-4050. Defendant counsel was Mary C. Turke, Michael Best & Friedrich LLP, One South Pinckney Street, Madison, WI 53703, telephone 608-283-0113. Judge Shabaz was the initial district court judge; Chief Judge Easterbrook wrote the opinion for the Court of Appeals in which and Judges Cudahy and Ripple joined; Judge Crabb handled matters on remand.

2. Johnson v. Burmaster, 744 N.W. 2d 900 (Wis. Ct. App. 2008).

Dates of representation: October 2006 to June 2008. Individual citizens and the Wisconsin Education Association Council ("WEAC") filed suit against the Northern Ozaukee school district, its officials and school board, along with State Superintendent of Public Instruction, alleging violations of Wisconsin enrollment, charter school, and

teacher licensing statutes. The Ozaukee County Circuit Court granted summary judgment to the school district on all claims. The plaintiffs appealed and the Superintendent joined in part as a defendant-co-appellant. On appeal, I represented two amicus parties, the Wisconsin Cooperative Educational Service Agency No. 9 and the Wisconsin Virtual School, filing a brief in the Wisconsin Court of Appeals in support of plaintiffs and the Superintendent. The Court of Appeals held that: (1) school district's virtual charter school was in violation of a state statute prohibiting a contract for the establishment of a charter school located outside the school district; (2) the charter school was not in compliance with the full-time, open-enrollment statute; and (3) the charter school was not in compliance with statutory teacher licensure requirement. Plaintiff counsel was Lucy Brown, Wisconsin Education Association Council, 33 Nob Hill Drive, Madison, WI 53708, telephone 608-276-7711. Defendant counsel was Assistant Attorney General Paul Barnett, Wisconsin Department of Justice, 17 West Main Street, Madison, WI 53707, telephone 608-266-5366. Judge McCormack was the circuit court judge; Chief Judge Brown wrote the opinion for the Court of Appeals.

3. Go America LLC v. Kwik Trip, Inc., 715 N.W. 2d 746 (Wis. Ct. App. 2006).

Dates of representation: June 2003 to May 2006. Competitors brought a state action against our client, Kwik Trip, Inc., and another seller of motor vehicle fuel, alleging that defendants violated the Unfair Sales Act by selling gasoline below cost. I acted as Kwik Trip's lead counsel throughout. The Dane County Circuit Court granted defendant's motion for summary judgment, and one competitor appealed as to Kwik Trip. The Wisconsin Court of Appeals affirmed, holding that: (1) a gas station in Iowa was a competitor of Kwik Trip for purposes of Unfair Sales Act "meeting competition" exception; (2) Kwik Trip lowered its prices below cost in good faith to meet the existing price of a competitor on days it filed notices of meeting competition with the Wisconsin Department of Agriculture, Trade, and Consumer Protection; and (3) Kwik Trip was not required to raise its price of gasoline in response to a competitor's act in raising its price. Plaintiff counsel was Brian McGraw, 106 N. Wisconsin Ave., Muscoda, WI 53573, telephone 608-739-4234. Judge O'Brien was the circuit court judge; Judge Vergeront wrote the opinion for the Court of Appeals.

4. Jahn v. 1-800-FLOWERS.com, Inc., 284 F. 3d 807 (7th Cir. 2002).

Dates of representation: July 2000 to February 2003. I was lead counsel for defendants in the United States District Court for the Western District of Wisconsin and the United States Court of Appeals for the Seventh Circuit. Plaintiffs had sold a toll-free telephone number that spelled 800-FLOWERS to a company engaged in telephone floral sales, and brought suit for breach of agreement calling for royalty payments arising from use of number. The United States District Court for the Western District of Wisconsin dismissed the action. Plaintiffs appealed. The United States Court of Appeals for the Seventh Circuit reversed and remanded, holding that: (1) Federal Communications Commission regulation forbidding the sale of telephone numbers does not proscribe sales that occurred prior to adoption of regulation in 1997, and (2) deferred payments made after adoption of regulation in connection with lawful pre-adoption sale did not themselves violate

regulation. I continued to represent defendants as lead counsel on remand, ultimately settling matters to the clients' satisfaction. Plaintiff counsel was Earl Munson, Boardman LLP (formerly Boardman, Suhr, Curry & Field, LLP), One South Pinckney Street, Madison, WI 53703, telephone 608-283-1796. Judge Crabb was the district court judge; Chief Judge Flaum wrote the opinion for the Court of Appeals in which Judges Bauer and Easterbrook joined.

5. Dean Foods Co. v. Brancel, 187 F. 3d 609 (7th Cir. 1999).

Dates of representation: October 1996 to August 1999. My client, Dean Foods, sought declaratory and injunctive relief preventing the Wisconsin Secretary of Department of Agriculture, Trade, and Consumer Protection from applying Wisconsin administrative rules regulating purchases of Wisconsin-produced milk at clients' Illinois processing plants. I took over lead counsel role after the district court entered summary judgment against Dean Foods. After United States District Court for the Western District of Wisconsin granted our motion to reconsider, we successfully tried the matter on an abbreviated schedule. The District Court granted plaintiff's motion for injunctive relief, 22 F. Supp.2d 931, (W.D. Wis. 1998), and the Secretary appealed. The United States Court of Appeals for the Seventh Circuit affirmed, holding that: (1) action was not barred by Eleventh Amendment; (2) due to extraterritoriality concerns, Wisconsin would not enforce challenged rules in connection with sales occurring wholly outside of Wisconsin; and (3) Wisconsin farmers' sales to processor occurred wholly outside of Wisconsin. Defense counsel was the Wisconsin Attorney General (now Governor) James E. Doyle and (believed now retired) Assistant Attorney General Susan K. Ulman, Wisconsin Department of Justice, 17 West Main St., Madison, WI 53703, telephone 608-266-5366. Judge Crabb was the district court judge; Chief Judge Flaum wrote the appellate opinion in which Judges Kanne and Rovner joined.

6. Noah's Ark Family Park v. Bd. of Review, 573 N.W. 2d 387 (Wis. 1998).

Dates of representation: November 1995 to March 1999. My client, Noah's Ark, petitioned for review by certiorari of decision by village board of review affirming real property assessment of taxpayer's water theme park. The Sauk County Circuit Court affirmed and we appealed. The Wisconsin Court of Appeals, 565 N.W.2d 230 (Wis. Ct. App. 1997), reversed. After granting the board's petition for review, the Wisconsin Supreme Court held that: (1) the constitutional requirement that taxation be uniform did not necessitate a showing by a taxpayer that its property was undervalued in relation to comparable property, and (2) the board's singling out of one commercial property and reassessing it based on a recent sale price, while ignoring recent sales of other commercial properties, violated constitutional uniformity requirement. I acted as lead counsel for Noah's Ark through out the proceedings before the Sauk County Circuit Court, Wisconsin Court of Appeals, Wisconsin Supreme Court, and for another full year on remand and assessment challenge the following year. Defense counsel was Richard W. Cross, Cross, Jenks, Mercer & Maffei, 221 3rd Avenue, Baraboo, WI 53913, telephone 608-356-3981. Judge Taggart was the circuit court judge; Chief Justice Abrahamson authored the opinion for the Wisconsin Supreme Court.

7. Carlson & Erickson Builders, Inc. v. Lampert Yards, Inc., 529 N.W. 2d 905 (Wis. 1995).

Dates of representation May 1990 to October 1996. I was trial counsel with my (now retired) partner Robert Binder and handled direct and cross-examination of witnesses, as well as all briefing and oral argument for a general contractor, who brought an antitrust action against a lumberyard and a competitor alleging that they violated antitrust statute by engaging in secret payments of unearned discounts and by engaging in price discrimination. After the jury found in favor of our client and awarded damages of \$177,100, before trebling and attorneys' fees, the Door County Circuit Court ordered remittitur. The defendants appealed and we cross-appealed the remittitur order. The Wisconsin Court of Appeals, 183 Wis. 2d 220, 515 N.W.2d 305 (Ct. App. 1994), affirmed in part and reversed in part and remanded. After granting our petition for review, the Wisconsin Supreme Court held that: (1) the burden of proof standard in private, civil antitrust actions brought under state statute is the ordinary civil burden of proof, and (2) the circuit court erred in ordering remittitur. The Supreme Court, therefore, reversed the Court of Appeals and remanded with directions to enter judgment, including treble damages and actual attorneys' fees and costs. Lead counsel at trial for the plaintiff was Robert Binder, Retired Partner, Foley & Lardner LLP, 777 East Wisconsin Avenue, Milwaukee, WI 53202-5306, telephone 414-271-2400; I acted as lead counsel on all appeals. Defense counsel was Thomas Rusboldt, Weld, Riley, Prens & Ricci SC, 3624 Oakwood Hills Parkway., Eau Claire, WI 54701, telephone 715-839-7786. Judge Koehn was the circuit court judge; Chief Justice Abrahamson authored the opinion for the Wisconsin Supreme Court.

8. Crosetto v. State Bar of Wis., 12 F.3d 1396 (7th Cir. 1993).

Dates of representation 1990 to 1994. Bar members sued our client, the State Bar of Wisconsin, alleging that compulsory membership and dues aspects of integrated bar violated their free speech and due process rights. The United States District Court for the Western District of Wisconsin, 810 F. Supp. 966 (N.D. Ill. 1992), granted summary judgment for the Bar and its executive director. Plaintiffs appealed. The United States Court of Appeals for the Seventh Circuit held that: (1) additional factual development was necessary to determine whether district court should have dismissed claims against bar for lack of subject matter jurisdiction; (2) members' claim against justices of Wisconsin Supreme Court did not present a justiciable controversy; (3) the Bar's executive director was entitled to qualified immunity; and (4) mandatory bar dues did not violate the First Amendment. I acted as co-counsel for Defendants throughout this litigation with John Skilton, then with Foley and now with Perkins Coie, LLP, One East Main Street, Suite 201, Madison, WI 53703-5118. telephone 608-663-7474. Plaintiff counsel was Amedeo Greco, (resigned from the bar) 6240 South Highlands Avenue, Madison, WI 53705, telephone 608-233-9796. Senior District Judge, Roszkowski, sitting by designation was the district court judge; Judge Flaum wrote the opinion for the Court of Appeals, with Judges Easterbrook and Kanne joining.

9. Datapoint Corp. v. M&I Bank, 665 F. Supp. 722 (W.D. Wis. 1987).

Dates of representation 1986 to 1988. My client, the plaintiff and beneficiary of a letter of credit, sued the issuing bank for breach of contract by refusing to honor drafts drawn on the letter. The United States District Court for the Western District of Wisconsin granted our motion for summary judgment, holding that: (1) the bank was precluded from claiming that draft varied from the terms of a letter of credit where it failed to notify beneficiary of dishonor by telecommunication or other expeditious means; (2) the requirement that draft include a reference to the letter was not a "notation credit"; and (3) Wisconsin statute providing for 12% interest from date of unaccepted the settlement offer was applicable where judgment is equal to or greater than the offer. I was lead counsel for the plaintiff. Defense counsel was H. Robert Kilkelly, Lee, Kilkelly, Paulson & Younger SC, One West Main Street, Seventh Floor, Madison, WI 53703, telephone 608-256-9046. Judge Crabb was the district court judge.

10. Levine v. Heffernan, 864 F. 2d 457 (7th Cir. 1988).

Dates of representation 1988 to 1990. I represented defendant justices of the Wisconsin Supreme Court and the State Bar of Wisconsin as associate counsel to John Skilton and Edward Marion. Plaintiff raised a First Amendment challenge to Wisconsin's integrated bar, which requires attorneys to join the State Bar Association as a precondition to practicing law in the state. The United States District Court for the Western District of Wisconsin held that the integrated bar was unconstitutional. The United States Court of Appeals for the Seventh Circuit reversed, holding that: (1) the Supreme Court's earlier decision upholding the integrated bar has not been implicitly overruled, and (2) Wisconsin's integrated bar does not violate First Amendment rights of association and speech. Plaintiff pro se was Steven Levine, Public Service Commission, 610 North Whitney Way, Madison, WI 53707, telephone 608-267-2890. Defense co-counsel were John Skilton, then with Foley and now with Perkins Coie, LLP, One East Main Street, Suite 201, Madison, WI 53703-5118. telephone 608-663-7474, and Edward Marion, then with the Wisconsin Department of Justice, and now with the Offices of Edward S. Marion Attorney-at-Law LLC, 716 Ottawa Trail, Madison, WI 53711, telephone 608-334-9741. Chief Judge Crabb was the district court judge; Judge Flaum authored the decision for the Seventh Circuit.

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.)

In addition to the litigation matters described above, I have had the pleasure of handling a variety of high stakes contract disputes between private corporations, security laws claims on behalf of plaintiffs and defendants, significant constitutional law litigation for

and against public bodies and officials, and a variety of interesting regulatory matters before the Wisconsin Department of Agriculture, Trade and Consumer Protection, the Wisconsin Department of Regulation and Licensing, and the Wisconsin Department of Revenue. In addition, I have been fortunate to provide meaningful, ongoing counseling to companies engaged in the manufacture, distribution and retailing of a variety of industrial and consumer products with regard to developing, changing or terminating various programs.

I formed the Wisconsin Diesel Engine Manufacturer & Distributors Association and lobbied on its behalf in opposition to efforts by Wisconsin Automobile & Truck Dealers Association to include engines as part of the Wisconsin Motor Vehicle Dealer Law, Wis. Ch. 218. While I have engaged in no other formal lobbying, I have assisted in educating various lobbyists on behalf of firm clients' efforts to pass or oppose new legislation and/or regulations.

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

I have not taught any formal courses.

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

If I leave the firm before age 55, all deferred income would be derived from my 401(k) plan account, and defined contribution plan account, and frozen defined benefit plan.

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.

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.

I will follow 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other applicable rules, guidance and/or practice. If confirmed, I anticipate recusing myself from any litigation involving Foley & Lardner LLP pending at the time of my departure from the firm and in any future litigation involving Foley & Lardner LLP in which I played some role in the past; litigation filed on behalf of or against a former client with whom I have had a long-standing relationship or may have gained potentially relevant information during the course of a more limited representation; and litigation matters filed on behalf of clients of my brother Daniel E. Conley (Quarles & Brady). Of course, I would also take care to consider and disclose any other relationship with counsel or litigant in a particular matter, and recuse myself where appropriate.

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

First, determine whether I believe there is any possibility of my impartiality being compromised as a result of the potential conflict; second, disclose all potential conflicts and provide the parties an opportunity to comment upon those and any other potential conflicts they perceive; third, assess whether there is any reasonable argument for the appearance of partiality; and fourth, refer to the applicable rules of judicial ethics and case law. If any one of those seem to raise legitimate concerns, I anticipate recusing myself, barring substantial mitigating circumstances.

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

I have taken seriously the obligation of every lawyer to serve the disadvantaged. Among a wide variety of pro bono representations, I have: provided representation of incarcerated Mariel boat refugees (200 – 300 hours); provided legal representation to individuals referred by Legal Action (25 – 50 hours); provided legal representation to individuals on direct and

indirect appeals to United States Court of Appeals for the Seventh Circuit from criminal conviction (350 – 500 hours); and handled an inadequate medical treatment challenge pursuant to a 28 U.S.C. § 1983 by an inmate held at the Waupun State Prison (50 – 100 hours).

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.

On March 2, 2009, I submitted a detailed application for a judgeship on the United States District Court for the Western District of Wisconsin application to the Federal Nominating Commission appointed by U.S. Senators Feingold and Kohl. I was contacted later in March by an employee of the State Bar of Wisconsin charged with assisting the Nominating Commission. He arranged the time for a formal, in-person interview by the entire Commission, which took place on Sunday morning, March 29th. My name was forwarded by the Commission to Senators Feingold and Kohl, along with three others, in early April. Senator Kohl interviewed me in his Milwaukee office on April 14; Senator Feingold interviewed me in his Middleton office on April 15. The Senators subsequently forwarded my name (among others) to the White House for consideration for nomination by the President. Since then I have been in communications with pre-nomination officials at the Department of Justice for guidance on preparation of paperwork and for an initial telephone interview. On September 10, 2009 I was interviewed in Washington by United States Associate Attorney General Thomas Perrelli and staff of the Department of Justice and the Office of White House Counsel. My nomination was submitted to the Senate on October 29, 2009.

- 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 one has discussed a currently pending or specific case, legal issue or question in a manner that sought, or could reasonably be interpreted as seeking, any express or implied assurances concerning my position on any such case, issue, or question.

AFFIDAVIT

I, William M. Conley, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 4, 2009
(DATE)

William M. Conley
(NAME)

Heidi R. Ernst
(NOTARY)