

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

David Augustin Ruiz

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

United States District Judge for the Northern District of Ohio

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

Office: Carl B. Stokes United States Courthouse  
801 West Superior Avenue, Suite 9B  
Cleveland, Ohio 44113

Residence: Rocky River, Ohio

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

1973; Toledo, Ohio

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.

1997 – 2000, The Ohio State University Moritz College of Law; J.D., 2000

1992 – 1997, The Ohio State University; B.A., 1997

1996, Cemanahuac Education Community, Cuernavaca, Mexico (no degree)

1993, The University of Toledo (summer course; 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.

2016 – present  
United States District Court, Northern District of Ohio  
Carl B. Stokes United States Courthouse  
801 West Superior Avenue, Suite 9B  
Cleveland, Ohio 44113  
United States Magistrate Judge

2010 – 2016  
United States Attorney's Office  
Northern District of Ohio  
801 West Superior Avenue, Suite 400  
Cleveland, Ohio 44113  
Assistant United States Attorney

2003 – 2010  
Calfee Halter & Griswold, LLP  
The Calfee Building  
1405 East Sixth Street  
Cleveland, Ohio 44114  
Senior Attorney (2007 – 2010)  
Associate (2003 – 2007)

2001 – 2003  
DKW Law Group, PC (defunct)  
600 Grant Street, 58th Floor  
Pittsburgh, Pennsylvania 15219  
Associate

2000 – 2001  
Thorp Reed & Armstrong, LLP (defunct)  
One Oxford Centre  
301 Grant Street, 14th Floor  
Pittsburgh, Pennsylvania 15219  
Associate

1999  
Delaware City Prosecutor's Office  
70 North Union Street  
Delaware, Ohio 42015  
Special Assistant Prosecutor/Prosecution Practicum (Unpaid, for Credit)

1999  
Thorp, Reed & Armstrong, LLP  
One Oxford Centre  
301 Grant Street, 14th Floor

Pittsburgh, Pennsylvania 15219  
Summer Associate

1999  
Honorable George C. Smith  
U.S. District Court for the Southern District of Ohio  
85 Marconi Boulevard  
Columbus, Ohio 43215  
Judicial Extern (Unpaid, for Credit)

1998  
Franklin County, Ohio Court of Common Pleas  
345 South High Street  
Columbus, Ohio 43215  
Court-Appointed Mediator/Mediation Practicum (Unpaid, for Credit)

1998  
Thompson Hine & Flory  
441 South High Street  
Columbus, Ohio  
Summer Associate

Other Affiliations (uncompensated):

2007 – 2010  
Catholic Charities Service Corporation  
7911 Detroit Avenue  
Cleveland, Ohio 44102  
Finance Committee (2008 – 2010)  
Board Member (2007 – 2010)

2007 – 2010  
Hispanic Roundtable  
Education Committee Member  
(This entity does not have a physical address.)

2006 – 2008  
Young Latino Network Cleveland  
Vice President  
(This entity does not have a physical address.)

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 the selective service upon turning 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.

Norman S. Minor Bar Association Trailblazer Award (2017)

Multiple United States Attorney's Office Advocate of the Month Awards (2011 – 2015)

American Marshall Memorial Fellow of the German Marshall Fund (2007)

Inducted into Kaleidoscope Magazine's Cuarenta/Cuarenta "40 under 40" Class of 2006

The Ohio State University College of Law Scholarship (1999 – 2000)

Managing Editor, The Ohio State University College of Law *Journal on Dispute Resolution* (1999 – 2000)

The CALI Excellence for the Future Award (1999)

The CALI Award for Excellence in Legal Writing (1998)

The Ohio State University Hispanic Leadership Award (1998)

Staff Member, The Ohio State University College of Law *Journal on Dispute Resolution* (1998 – 1999)

The Ohio State University Outstanding Leadership Award (1995)

The Ohio State University Full Tuition Scholarship (1992 – 1997)

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 (2000 – 2013)

Cleveland Metropolitan Bar Association (2003 – present)

Federal Bar Association (2017 – present)

Federal Magistrate Judges Association (2016 – present)

John M. Manos Inn of Courts (2017 – present)

Ohio Bar Association (2002 – 2011)

Ohio Hispanic Bar Association

United States District Court for the Northern District of Ohio

Reentry Court, presiding judge (2016 – present)

Personnel Committee (2016 – present)

Information Technology Committee (2016 – present)

William K. Thomas Inn of Court (2012 – 2015; 2021 – present)

10. **Bar and Court Admission:**

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

Pennsylvania, 2000

Ohio, 2002

There have been no lapses in membership. I have been an inactive member of both bars (judicial status) since my appointment to the bench in 2016.

- 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 Sixth Circuit, 2010

United States District Court for the Western District of Pennsylvania, 2001

United States District Court for the Northern District of Ohio, 2003

United States District Court for the Eastern District of New York, 2005

United States District Court for the Western District of Pennsylvania Bankruptcy Court, 2006

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.

Cleveland Playhouse Square (2019 – 2020)

Cuyahoga Valley Scenic Railroad (2019 – 2020)

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

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

*Asserting a Comprehensive Approach for Defining Mediation Communication*, 15 OHIO ST. J. DISP. RESOL. 851–82 (2000). Copy supplied.

Co-authored the Allegheny County Pennsylvania Civil Practice Manual (5th ed.) Settlement Section (2000). I am unable to obtain a copy.

In addition, while at Calfee Halter & Griswold, I recall co-authoring construction-related articles and litigation-related updates to the firm's clients. I am unable to obtain any copies.

- 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 searched my personal files, calendar, and the internet in an effort to identify all events responsive to this question. It is possible that I may have inadvertently omitted one or more events.

June 18, 2021: Judge, FBI Citizens Academy Future Agents in Training Program. I served as a judge during a mock search warrant presentation and participated in a question and answer session with high school students regarding my career, criminal and civil procedure, and federal courts. I have no notes, transcript, or recording. The address of the FBI is 1501 Lakeside Avenue, Cleveland, Ohio 44114.

April 27, 2021: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. Notes supplied.

March 9, 2021: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

February 24, 2020: Moot Court Guest Judge, Case Western Law School. I judged an internal ABA Moot Court Team competition. I have no notes, transcript, or recording. The address of Case Western Law School is 11075 East Boulevard, Cleveland, Ohio 44106.

January 21, 2020: Speaker, Northern District of Ohio United States Pretrial and Probation Department. I spoke to participants in the Leadership Program regarding my career path and views of leadership. I have no notes, transcript, or recording. The address of the Pretrial and Probation Department is 801 West Superior Avenue, Cleveland, Ohio 44113.

December 6, 2019: Presiding Judge, Naturalization Ceremonies, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

November 13, 2019: Guest Speaker, Buhrer Dual Language Academy. I participated in a question and answer session with grade school students regarding my career and federal courts. I have no notes, transcript, or recording. The address of Buhrer Dual Language Academy is 1600 Buhrer Avenue, Cleveland, Ohio 44109.

October 5, 2019: Presiding Judge, Naturalization Ceremony, Hispanic Roundtable Convencion at Max S. Hayes High School, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

September 27, 2019: Mock Trial Judge, Federal Bar Association for the Northern District of Ohio at the U.S. District Court. I judged a mock trial session. I have no notes, transcript, or recording. The address of the Court is 801 West Superior Avenue, Cleveland, Ohio 44113.

September 20, 2019: Presiding Judge, Naturalization Ceremony, Solon, Ohio Public Library. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

August 16, 2019: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

July 19, 2019: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

June 14, 2019: Speaker, "Federal Practice," Cleveland Metropolitan Bar Association, Cleveland, Ohio, Federal Practice Seminar. Notes supplied.

May 20, 2019: Panelist, My Brothers' Keeper Law Day, U.S. District Court, Northern District of Ohio. I participated in a question and answer session with students regarding my career path and the role of a magistrate judge. I have no notes, transcript, or recording.

May 17, 2019: Speaker: "The Role of the Magistrate Judge," Federal Bar Association-U.S. District Court Northern District of Ohio, Cleveland, Ohio. Presentation supplied.

April 19, 2019: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

April 5, 2019: Presiding Judge, Naturalization Ceremony, U.S. District Court,

Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

April 5, 2019: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

February 1, 2019: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

January 30, 2019: Moot Court Judge, Black Law Student Association Frederick Douglas Moot Court Night at Tucker & Ellis, Ernst & Young Building. I was one of three judges who presided over the final round of the internal moot court competition. I have no notes, transcript, or recording. The address of Tucker & Ellis is 950 Main Avenue, 10th Floor, Cleveland, Ohio 44113.

October 30, 2018: Panelist, FBI Hispanic Heritage Month. I participated in a panel discussion with FBI employees in connection with their Hispanic Heritage Month activities. I have no notes, transcript, or recording. The address of the FBI is 1501 Lakeside Avenue, Cleveland, Ohio 44114.

October 5, 2018: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

September 21, 2018: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

July 6, 2018: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

June 1, 2018: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

May 18, 2018: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

April 20, 2018: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

December 1, 2017: Speaker: "The Role of the Magistrate Judge," Federal Bar Association-U.S. District Court Northern District of Ohio, Cleveland, Ohio. Presentation supplied.

November 3, 2017: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

October 27, 2017: Award Recipient, Norman S. Minor Bar Association, Trail Blazer Luncheon at The Cleveland Marriott Grand Ballroom. Notes supplied.

September 13, 2017: Speaker, Federal Bar Association, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. Notes supplied.

August 18, 2017: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

July 27, 2017: Mock Court Judge, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I judged a mock trial session sponsored by the United States Attorneys' Office. I have no notes, transcript, or recording. The address of the Court is 801 West Superior Avenue, Cleveland, Ohio 44113.

July 7, 2017: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

June 2, 2017: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

May 24, 2017: Speaker: "The Role of the Magistrate Judge," Federal Bar Association-U.S. District Court Northern District of Ohio, Cleveland, Ohio. I used a presentation that was substantially similar to the presentation on December 1, 2017.

May 19, 2017: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

May 5, 2017: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

March 17, 2017: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes

that were provided for the naturalization ceremony on April 27, 2021.

February 3, 2017: Speaker, Investiture Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. Notes supplied.

September 16, 2016: Presiding Judge, Naturalization Ceremony, U.S. District Court, Northern District of Ohio, Cleveland, Ohio. I used substantially the same notes that were provided for the naturalization ceremony on April 27, 2021.

2006 through 2016 (approximate): Volunteer, Cleveland Metropolitan Bar Association (“CMBA”) 3Rs (Rights, Realities, and Responsibilities) Program. During this time, I volunteered with colleagues to work with students in various Cleveland Public High Schools. The goals of this program were to discuss lesson materials provided by the CMBA to further the students’ understanding and appreciation of the U.S. Constitution, to promote passage of the civics portion of the high school graduation requirements, and to share experiences and information about how students can work toward achieving their goals during and beyond high school. I do not have records of specific sessions, and I have no notes, transcripts, or recordings. The sessions occurred at various Cleveland Public High Schools.

Additionally, following each Naturalization Ceremony over which I presided, I participated in a question and answer session with grade school students, who observed the Ceremony, regarding my career, federal courts, and the Ceremony. I have no notes, transcript, or recording for these sessions.

- 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.

Eric Heisig, *Two Named to Magistrate Judge Posts: Litigator, U.S. Prosecutor to Fill Bench Retirement Vacancies*, Cleveland Plain Dealer, June 10, 2016 (reprinted in multiple outlets). Copy supplied.

Jonathan Leikin & Justin Herdman, *The AUSAs*, Cleveland Metro. Bar J., Apr. 2014. 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 served as a United States Magistrate Judge for the United States District Court, Northern District of Ohio since October 2016. I was appointed, pursuant to 28 U.S.C. § 631, by the district judges of the court, after a 27-member merit selection committee recommended candidates for their consideration. As a U.S. Magistrate Judge, I am vested

with judicial authority under 28 U.S.C. § 636 and Local Rules of the Northern District of Ohio to preside over the following: all proceedings in civil matters, upon consent of the parties; pretrial case management and supervision in civil actions; mediations/settlement conferences; all proceedings in misdemeanor criminal matters; pretrial matters in felony criminal proceedings; grand jury proceedings; and other matters as assigned by the district judges.

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

I have presided over nearly 80 civil cases that have resulted in a verdict or judgment, the vast majority of which are social security appeals, which are presented as cross-motions for summary judgment and decided on the administrative record. I have presided over two criminal bench trials in misdemeanor or petty offense cases.

- i. Of these cases, approximately what percent were:

jury trials:	0%
bench trials:	100%

- ii. Of these cases, approximately what percent were:

civil proceedings:	0%
criminal proceedings:	100%

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

See attached list of opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Livingston v. Calvillo et al.*, Case No. 1:17 cv 01936, ECF No. 75 (N.D. Ohio July 15, 2020). Copy supplied.

In this case, before me upon the parties' consent, Plaintiff filed a seven-count Complaint against Defendants, the City of Cleveland, Cleveland Fire Department Chief Calvillo, and Department Executive Officer Odum, alleging reverse race discrimination, retaliation and hostile work environment in violation of Title VII and Ohio Revised Code § 4112, along with a Fourteenth Amendment claim under 42 U.S.C. § 1983. Plaintiff did not have direct evidence to support his claims and

sought to rely upon circumstantial evidence under the *McDonnell Douglas* burden-shifting standard. After considering the record before the court in the light most favorable to Plaintiff and drawing all reasonable inferences in the nonmovant's favor, I found that Plaintiff failed to establish a prima facie case and granted Defendants' motion for summary judgment as there was no genuine issue of material fact. There was no appeal.

Plaintiff's counsel  
Kimberly Hall  
Critchfield Critchfield & Johnston  
225 North Market Street  
Wooster, OH 44691  
(330) 264-4444

Defense counsel  
Patrick Watts  
Zashin & Rich  
950 Main Street, 4th Floor  
Cleveland, OH 44113  
(216) 696-4441

2. *Southern v. BASF Corporation*, Case No. 1:19-cv-00067, 2020 WL 1322842 (N.D. Ohio Mar. 20, 2020)

In this case, removed from state court and before me upon the parties' consent, Plaintiff's complaint alleged employment discrimination under Ohio Revised Code § 4112. Plaintiff relied upon circumstantial evidence under the *McDonnell Douglas* burden-shifting standard, as he lacked direct evidence of racial discrimination. Defendant did not dispute that Plaintiff, an African-American, was a member of a protected class, who was qualified for the employment and was terminated, thereby suffering an adverse employment action. The dispositive issue was whether Plaintiff was treated differently than similarly situated members outside his protected class. After considering the record before the court in the light most favorable to Plaintiff and drawing all reasonable inferences in the nonmovant's favor, I granted Defendant's motion for summary judgment finding that Plaintiff had not established a prima facie case of race discrimination because there was no evidence that he was treated less favorably than a similarly-situated employee outside of his protected class. In addition, Plaintiff failed to establish other employees were similarly situated to him because there was no evidence they engaged in the same conduct as Plaintiff—allegedly sleeping on the job and violating company policies by taking worksite pictures that were shared on social media. There was no appeal.

Plaintiff's counsel  
John F. Myers  
234 Portage Trail

Cuyahoga Falls, OH 44221  
(330) 819-3695

Defense counsel  
John Gerak and Corey N. Thrush  
Ogletree Deakins Nash Smoak & Stewart  
127 Public Square, Suite 4100  
Cleveland, OH 44114  
(216) 241-4733

3. *Millennium Health, LLC v. Roberts et al.*, Case No. 1:19-cv-2381, 2020 WL 2814440 (N.D. Ohio Mar. 4, 2020)

In this case, before me upon referral by Judge Donald C. Nugent, Millennium filed a complaint for injunctive relief and damages against its former employee Mr. Roberts and his new employer HealthTrackRx/AIT. Roberts was a Millennium Regional Sales Director overseeing a seventeen-state territory, based in Ohio, who resigned and moved to Texas to become CEO of co-Defendants. Millennium sought an injunction based in large part on its claims that Robert's breached the non-competition and confidentiality provisions in his employment agreement.

After conducting a full-day evidentiary hearing and considering the parties' post-hearing briefs, I issued a report and recommendation recommending that Judge Nugent deny Plaintiff's motion for preliminary injunction. I found that the employment agreement was enforceable, that the provisions concerning non-disclosure of Millennium's confidential information and trade secrets were reasonably intended to protect a legitimate business interest, and that the agreement's one-year ban on solicitation of Millennium's customers and employees were reasonably intended to protect a legitimate business interest. But I concluded, at this initial stage, that Millennium had presented no evidence that Roberts breached those provisions of the agreement. In addition, I found that Millennium had not carried its burden to establish by clear and convincing evidence that the "Restricted Area" provision of the Agreement should have the broad, nationwide, application urged; and, on the present record, imposing a nationwide non-compete would likely be an unreasonable and unenforceable interpretation of the Agreement. Therefore, I recommended denial of the motion as Plaintiff had not shown a substantial likelihood of success. Judge Nugent adopted my R&R on May 29, 2020. The case was set for trial, but the parties settled.

Plaintiff's counsel  
Kevin M. Cloutier  
Shawn D. Fabian  
David M. Poell  
Amy I. Harwath

Sheppard Mullin Richter & Hampton LLP  
70 West Madison Street, 48th Floor  
Chicago, IL 60602  
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David A. Riepenhoff  
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Fishel Downey Albrecht & Riepenhoff LLP  
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(612) 340-2600

Justin D. Harris  
Reminger Co.  
237 West Washington Row  
Sandusky, OH 44870  
(419) 609-4324

4. *In re: National Prescription Opiate Litigation*, MDL No. 1:17-md-02804; *The Muscookee (Creek) Nation v. Purdue Pharma LP et al.*, Case No. 1:18-op-45459, 2019 WL 2468267 (N.D. Ohio Apr. 1, 2019) *adopted in part and rejected in part*, 2019 WL 3737023 (N.D. Ohio June 13, 2019)

I am the Magistrate Judge working with Judge Dan Aaron Polster and a team of special masters presiding over the Opiate Multidistrict Litigation. This MDL, established in 2017, has been characterized as the most complex and significant litigation in our nation's history. It is a consolidation of thousands of cases filed around the country by cities, counties, health systems, labor unions, Native American Tribes, and other groups and individuals alleging manufacturers of opioid products, distributors of the products, pharmacies dispensing the products and other entities have contributed to the opioid epidemic in their cities, counties, and territories. In order to administer the MDL in an efficient manner, we

identified bellwether cases to proceed through discovery, dispositive motion briefing, and if necessary trial. Judge Polster referred several of those cases to me to consider the Defendants' motions to dismiss and issue reports and recommendations.

At issue in this decision was Plaintiff Muscogee (Creek) Nation's ten-count first amended complaint (FAC) pursuing claims under RICO, the Lanham Act, and Oklahoma state law for nuisance, negligence and negligence per se, unjust enrichment, and civil conspiracy. The Manufacturer, Distributor, Pharmacy, and Generic Manufacturing Defendants each moved to dismiss the FAC. After thoroughly considering the Defendants' various arguments, I recommended dismissing the Lanham Act claim as Plaintiff's allegations were insufficient to constitute an injury to its "commercial interest in reputation or sales," under the Act. Also, in reliance on pertinent jurisprudence, I recommended dismissing certain claims against the Generic Manufacturers as preempted. However, I further recommended denying the remainder of the Defendants' motions to dismiss.

Many of the arguments overlapped with the Summit County case (referenced below), and therefore, received similar analysis. Unique to this case, however, was an argument that the Plaintiff, in seeking to vindicate sovereign interests, did not qualify as a "person" within the meaning of the RICO Act. I rejected the argument, finding it lacked support in case law and the applicable statute. Defendants also argued Plaintiff's claims should be dismissed to the extent they were seeking to recover for medical expenses paid by the tribe with funds provided under the Indian Self Determination and Education Assistance Act. For those expenses, Manufacturers asserted that the only available cause of action rested under the Medical Cost Recovery Act, 25 U.S.C. § 1621e (MCRA). After analyzing the arguments, I determined that the MCRA did not provide the exclusive remedies for Plaintiff to recover for the injuries alleged.

In reviewing the matter de novo, Judge Polster adopted the R&R with respect to all the recommendations, with the sole exception of finding the plaintiffs had not sufficiently pleaded negligence per se. There was no appeal.

Counsel for Plaintiff Muscogee (Creek) Nation  
Attorney General Kevin Dellinger  
Muscogee (Creek) Nation  
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Chicago, IL 60654  
(312) 494-4400  
Counsel for Walgreens Boots Alliance, Inc. and Walgreen Co.

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5. *Perrine v. Berryhill*, Case No. 1:18-CV-49, 2019 WL 1331597 (N.D. Ohio Mar. 25, 2019)

Plaintiff challenged the Social Security Commissioner's final decision denying his applications for disability benefits and Supplemental Security Income. The case was before me pursuant to consent of the parties. After considering the pertinent filings, I found that the Administrative Law Judge (ALJ) gave great weight to the state agency psychologists' opinions, but erred by failing to include limitations, which the ALJ ostensibly credited from the state agency psychologists, into the residual functional capacity (RFC) determination. Because the decision did not adequately explain the reasons for not including the limitations into Plaintiff's RFC, the ALJ committed error. I further found the ALJ's decision failed to sufficiently consider and explain the weight provided to the opinions from Plaintiff's treating provider. I reversed and remanded the Commissioner's final decision for proceedings consistent with this opinion and to re-evaluate the weight accorded the opinions at issue. There was no appeal.

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6. *In re: National Prescription Opiate Litigation*, MDL No. 1:17-md-02804; *County of Summit, Ohio et al. v. Purdue Pharma L.P. et al.*, Case No. 1:18-op-45090, 2018 WL 4895856 (N.D. Ohio Oct. 5, 2018) *adopted in part and rejected in part*, 2018 WL 6628898 (N.D. Ohio Dec. 19, 2018)

In this case Summit County, Ohio, and the City of Akron, filed suit against manufacturers, distributors, and pharmacies who each moved to dismiss the second amended complaint. Judge Polster referred the case to me to consider the

dispositive motions. After considering the voluminous filings in the case, I issued a Report and Recommendation on October 5, 2018. The first four counts of the second amended complaint alleged claims under the Racketeer Influenced and Corrupt Organizations Act § 1961 *et seq.* and Ohio's Corrupt Practices Act, O.R.C. § 2923.31 *et seq.*, based on marketing enterprise theories against manufacturers, and supply chain enterprise theories against both manufacturers and distributors. I recommended that the court deny the motions to dismiss these claims. I further recommended rejecting Defendants arguments that the state law claims were preempted by, for example, FDA medication labeling decisions. In addition, as the complaint sufficiently alleged fraudulent concealment and continuing violation theories, I recommended tolling the applicable statutes of limitations. Regarding common law and statutory public nuisance claims, I concluded that, through the Ohio Product Liability Act (OPLA), O.R.C. §§ 2307.71 to 2307.80, the legislature abrogated Plaintiffs' common law public nuisance cause of action; although I recommended Plaintiffs' statutory public nuisance claim survive the motions. Further applying pertinent Ohio statutes, I recommended rejecting Defendants' arguments seeking to limit Plaintiffs' available remedies recoverable in public nuisance actions. But I also determined that, under the plain language of Ohio statutes at issue, the City of Akron lacked standing to pursue its statutory public nuisance claim. In addition, I recommended finding that Plaintiffs sufficiently pleaded their other state law claims such as negligence, fraud, unjust enrichment, and civil conspiracy to survive the motions to dismiss.

Judge Polster adopted the R&R regarding: preemption, fraud, statewide concern doctrine and Article III standing, Plaintiff's RICO claims, civil conspiracy, negligence claims, and other Ohio state law claims, but did not adopt my recommendation that the court find the OPLA abrogated Plaintiff's common law public nuisance claim. The court also adopted my finding that the City of Akron lacked standing to bring a statutory public nuisance claim. There was no appeal.

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7. *Bogardus-Nichols v. Central Transport LLC et al.*, Case No. 17-2169, ECF No. 32 (N.D. Ohio May 4, 2018). Copy supplied.

In this employment case, removed from state court and before me on the parties' consent, Plaintiff's complaint alleged sexual harassment by a supervisor and employment retaliation for reporting allegations of sexual harassment.

The parties engaged in extensive discovery in this case and a previous state-court lawsuit, which led to Defendants' motion for discovery sanctions seeking dismissal or in the alternative an order barring Plaintiff from using certain audio recordings, text messages, and draft emails in support of her case. While that issue was pending, Defendants filed an additional discovery dispute and moved the court to order Plaintiff to produce her cell phone and personal computer for electronic imaging. After informal efforts per Local Rule were unsuccessful in resolving the dispute, I ruled that dismissal was not an appropriate sanction after finding that Defendants had not shown they were prejudiced by the delayed discovery. I further ruled that barring Plaintiff from relying on the belatedly produced records, text messages, or handwritten email drafts was premature. Finally, I denied the Defendants request to conduct forensic imaging of Plaintiff's cell phone and personal computer, finding they had not shown either was justified or proportional to the needs of the case. The Order is dated May 4, 2018. There was no appeal.

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8. *Jackson v. Willoughby Eastlake Sc. Dist.*, Case No. 1:16-cv-3100, 2018 WL 1468666 (N.D. Ohio Mar. 23, 2018)

In this case, parents of a minor student filed a five-count complaint against the School District, Board of Education, and individual district employees. Plaintiffs asserted the Defendants failed to take affirmative steps to report, document and prevent bullying and retaliation against their child and other students, thereby violating substantive due process rights and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and the students' rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681. Judge Christopher A. Boyko referred to me Plaintiffs' motions to compel and for sanctions as well as Defendants' motion for a protective order for resolution. At issue were Defendants' objections to discovery requests on the grounds that responsive documents included educational records that were confidential under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and other records destroyed by a fire.

I granted the motion to compel and ordered the production of student disciplinary records and personnel records, subject to procedures and protections that afforded a student-parent/guardian notice and objection period, labelling the documents attorneys-eyes-only pursuant to the parties' protective order, and redacting personally identifiable information. I denied the Plaintiffs' motion for sanctions for alleged negligent spoliation of historical records concerning bullying, discipline and related matters. After finding that the Defendants had taken reasonable measures to preserve the relevant documents in the District's administration building, I concluded the building and documents were destroyed by an unforeseeable, unanticipated fire, which did not support sanctions. There was no appeal.

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9. *United States v. Betts*, Case No. 4:17-cr-00044, ECF No. 36 (Feb. 20, 2018 N.D. Ohio), *aff'd*, 806 F. App'x 426 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 436 (Oct. 5, 2020). Copy supplied.

In this case, Defendant Betts was charged with 1) knowingly and intentionally possessing more than 28 grams of a controlled substance, crack cocaine, with intent to distribute, 2) knowingly and intentionally possessing a controlled substance, heroin, with intent to distribute, and 3) illegally possessing a firearm after having previously been convicted of a felony. Defendant moved to suppress evidence seized during the search of his vehicle and Judge Donald C. Nugent referred the matter to me. After an evidentiary hearing, I determined that the officer had reasonable suspicion to justify an investigatory stop and canine sniff of Defendant's vehicle, further finding that the canine sniff was not a search requiring a warrant under the Fourth Amendment. In addition, because the vehicle could not be operated without valid license plates, I found that the stop was not unreasonably prolonged for a tow truck to arrive. The district judge adopted the Report and Recommendation and the Sixth Circuit affirmed the decision denying the motion to suppress.

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10. *Columbiana Cty. Bd. of Comm'rs v. Strabala*, Case No.: 4:94 CV 1482, 2017 WL 1214454 (N.D. Ohio Feb. 17, 2017)

Plaintiff Columbiana County obtained a judgment in 1995 against Defendants. Defendants made payments toward the judgment, but it became dormant. In 2016, Plaintiff filed a motion to revive dormant judgment and Judge Solomon Oliver, Jr. referred the matter to me to conduct a hearing, as provided in Ohio Revised Code (O.R.C.) § 2325.17, and issue a Report and Recommendation. I held a hearing at which the parties participated through counsel, afforded Defendants an opportunity, pursuant to O.R.C. § 2325.17, to show cause why a judgment should not be revived, and accepted post hearing briefs. This dispute centered on the interpretation of the statute of limitations for reviving a dormant judgment. Relying upon established Ohio case law, I found that without an expression of retroactivity, statutes are not to be applied retroactively. The plain language of the statute, as amended, did not provide for retroactive application. Therefore, I determined that the statute in existence at the time of the judgment applied. Rejecting Defendants' request to apply the current statute retroactively, I

determined that Plaintiff's motion to revive dormant judgment was timely filed under Ohio law, and found that interest continued to accrue during the dormancy period. As such, I recommended that the court enter an order reviving the judgment in favor of Plaintiff for the sum of \$20,461,641.89. Judge Oliver adopted my Report and Recommendation in full and ordered the same. There was no appeal.

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Livingston v. Calvillo et al.*, Case No. 1:17 cv 01936, ECF No. 75 (N.D. Ohio July 15, 2020). Decision previously supplied in response to Q13c.

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3. *Millennium Health, LLC v. Roberts et al.*, Case No. 1:19-cv-2381, 2020 WL 2814440 (N.D. Ohio Mar. 4, 2020)

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4. *In re: National Prescription Opiate Litigation*, MDL No. 1:17-md-02804; *The Muscogee (Creek) Nation v. Purdue Pharma LP et al.*, Case No. 1:18-op-45459, 2019 WL 2468267 (N.D. Ohio Apr. 1, 2019), *adopted in part and rejected in part*, 2019 WL 3737023 (N.D. Ohio June 13, 2019)

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5. *Perrine v. Berryhill*, Case No. 1:18-CV-49, 2019 WL 1331597 (N.D. Ohio  
Mar. 25, 2019)

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6. *In re: National Prescription Opiate Litigation*, MDL No. 1:17-md-02804; *County of Summit, Ohio et al. v. Purdue Pharma L.P. et al.*, Case No. 1:18-op-45090, 2018 WL 4895856 (N.D. Ohio Oct. 5, 2018), *adopted in part and rejected in part*, 2018 WL 6628898 (N.D. Ohio Dec. 19, 2018)

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7. *Bogardus-Nichols v. Central Transport LLC*, Case No. 17-2169, ECF No. 32  
(N.D. Ohio May 4, 2018). Opinion previously supplied in response to Q13c.

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8. *Jackson v. Willoughby Eastlake Sc. Dist.*, Case No. 1:16-cv-3100, 2018 WL 1468666 (N.D. Ohio Mar. 23, 2018)

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9. *United States v. Betts*, Case No. 4:17-cr-00044, ECF No.36 (N.D. Ohio Feb. 20, 2018), *aff'd*, 806 F. App'x 426 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 436 (Oct. 5, 2020). Opinion previously supplied in response to Q13c.

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10. *Columbiana Cnty. Bd. of Comm'rs v. Strabala*, Case No.: 4:94 CV 1482, 2017 WL 1214454 (N.D. Ohio Feb. 17, 2017)

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

*United States v. Betts*, Case No. 4:17-cr-00044, ECF No. 36 (N.D. Ohio Feb. 20, 2018), *aff'd*, 806 F. App'x 426 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 436 (Oct. 5, 2020).

- 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.

*Clayton v. Comm'r of Soc. Sec.*, Case No. 1:20-cv-00553, ECF. No. 22 (N.D. Ohio Aug. 3, 2021), *report and recommendation rejected*, 2021 WL 4271976 (N.D. Ohio. Sept. 20, 2021). Copy supplied. In this social security appeal, I recommended affirming the Commissioner's decision denying social security benefits and denying a motion to remand to consider records that did not exist when the ALJ rendered the decision. I concluded that the ALJ applied the proper legal standards and reached a decision supported by substantial evidence; and found that the new evidence showed a worsening condition, which under Sixth Circuit precedent did not support remand. The district judge disagreed, finding that the records of a worsening condition after the ALJ's decision show disease progression that may have changed the ALJ's decision. The district judge vacated the Commissioner's decision and remanded for further proceedings.

*Brewer v. Comm'r of Soc. Sec.*, Case No. 5:19CV1854, 2020 WL 10459638, *report and recommendation rejected*, 2021 WL 1214837 (N.D. Ohio Mar. 31, 2021). In this social security appeal, I recommended affirming the Commissioner's decision denying social security benefits. The district judge disagreed, finding that the ALJ erred by relying on a provider's opinion based on an incomplete record. The district judge vacated the Commissioner's decision and remanded for further proceedings.

*Perry v. Comm'r of Soc. Sec.*, Case No. 1:19 CV 02383, 2020 WL 8768345 (N.D. Ohio Dec. 30, 2020), *report and recommendation rejected*, 2021 WL 848967 (N.D. Ohio Mar. 5, 2021). In this social security appeal, I recommended affirming the Commissioner's decision denying social security benefits. The district judge disagreed, determining that the ALJ did not articulate sufficient reasons for discounting Plaintiff's absenteeism testimony regarding her recent employment. The district judge vacated the Commissioner's decision and remanded for further proceedings.

*Huse v. Saul*, Case No. 3:19-cv-02935, 2021 WL 863428 (N.D. Ohio Jan. 6, 2021), *report and recommendation adopted in part, rejected in part*, 2021 WL 320755 (N.D. Ohio Feb. 1, 2021). In this social security appeal, I recommended affirming the Commissioner's decision denying social security benefits. The district judge agreed with and adopted the report and recommendation, but noted that the R&R did not directly address the argument Plaintiff raised in her objections to the R&R. The district judge overruled the objections and affirmed the Commissioner's decision.

*Shepard ex rel. C.J. v. Comm'r of Soc. Sec.*, Case No. 3:18CV2310, 2020 WL 9849785 (N.D. Ohio Jan. 3, 2020), *report and recommendation rejected*, 2020 WL 1481451 (N.D. Ohio Mar. 23, 2020). In this social security appeal, I recommended affirming the Commissioner's decision denying social security benefits after finding that substantial evidence supported the ALJ's decision regarding Plaintiff's limitations. The district judge disagreed, determining that the ALJ lacked substantial evidence to support a finding of a "less than marked" limitation in attending and completing tasks. The district judge vacated the Commissioner's decision and remanded for further proceedings.

*Chilgren v. Comm'r of Soc. Sec.*, Case No. 5:19CV0026, 2019 WL 12346963 (N.D. Ohio Dec. 20, 2019), *report and recommendation adopted in part, rejected in part*, 2020 WL 994656 (N.D. Ohio Mar. 2, 2020). In this social security appeal, I recommended affirming the Commissioner's decision denying social security benefits after finding that the ALJ's failure to consider a medical record was harmless error and substantial evidence supported the ALJ's decision. The district judge disagreed, determining the ALJ's error was not harmless, although the decision adopted the remainder of the report and recommendation. The district judge vacated the Commissioner's decision and remanded for further proceedings.

*Beery v. Comm'r of Soc. Sec.*, Case No. 3:18-cv-2087, 2019 WL 5698953 (N.D. Ohio July 29, 2019), *report and recommendation adopted in part, rejected in part*, 2019 WL 5697154 (N.D. Ohio Nov. 4, 2019). In this social security appeal, I recommended reversing the Commissioner's decision denying Plaintiff social security benefits. I found the ALJ erred by failing to consider necessary regulatory factors when assigning no weight to a doctor's opinions and concluded that the ALJ's decision lacked substantial evidence. The district judge agreed that the ALJ erred when analyzing the doctor's opinions, but found it harmless error and affirmed the Commissioner's decision.

*Demarco v. Comm'r of Soc. Sec.*, Case No. 4:17CV1376, 2018 WL 4565868 (N.D. Ohio June 21, 2018), *report and recommendation adopted in part, overruled in part*, 2018 WL 3616258 (N.D. Ohio July 30, 2018). In this social security appeal, I recommended remanding the Commissioner's decision denying social security benefits, after finding the ALJ committed reversible error when determining that Plaintiff could perform past relevant work. The district judge

agreed with my report and recommendation findings, but found the ALJ's error was harmless, and affirmed the Commissioner's decision.

*Davidson v. Comm'r of Soc. Sec.*, Case No. 3:16CV2794, 2017 WL 8426467 (N.D. Ohio Nov. 9, 2017), *report and recommendation rejected*, 2018 WL 1453472 (N.D. Ohio Mar. 23, 2018). In this social security appeal, I recommended affirming the Commissioner's decision denying social security benefits. I concluded that ALJ considered a state agency provider's opinions, expressly adopted proposed limitations into the residual functional capacity and implicitly adopted other limitations concerning flexibility of breaks. The district judge disagreed, determining that the ALJ erred by not expressly discussing all the doctor's opined limitations. The district judge vacated the Commissioner's decision and remanded for further proceedings.

*Schild v. Comm'r of Soc. Sec.*, Case No. 1:16-cv-2926, 2017 WL 7058236 (N.D. Ohio Nov. 21, 2017), *report and recommendation rejected*, 2018 WL 571920 (N.D. Ohio Jan. 26, 2018). In this social security appeal, I recommended affirming the Commissioner's decision denying social security benefits. I concluded that the ALJ provided sufficient reasons for discounting the opinion of a treating provider; and, consistent with Sixth Circuit precedent, that the provider's opinion was an unsupported check-box opinion. The district judge disagreed, determining that the ALJ did not cite the check-box format as a basis for discounting the provider's opinion and further erred when discounting the opinion. The district judge vacated the Commissioner's decision and remanded for further proceedings.

*Miller v. Comm'r of Soc. Sec.*, Case No. 5:16cv1817, 2017 WL 9478423 (N.D. Ohio May 31, 2017), *report and recommendation adopted in part, rejected in part*, 2017 WL 2952780 (N.D. Ohio July 11, 2017). In this social security appeal, I recommended affirming the Commissioner's decision denying social security benefits. I concluded that substantial evidence supported the ALJ's determination, and that it was proper for the ALJ to consider the Plaintiff's failure to follow recommended treatment. The district judge agreed with my recommendation to affirm the underlying decision, but also determined that it was error for the ALJ to rely upon Plaintiff's failure to follow through with treatment options because although doctors recommended further treatment, none formally prescribed such treatment and opined it would restore Plaintiff's ability to work. The district judge affirmed the Commissioner's decision.

*Marsh v. Comm'r of Soc. Sec.*, Case No.: 4:16-cv-1621, 2017 WL 2539840 (N.D. Ohio May 8, 2017) *report and recommendation rejected*, 2017 WL 2537077 (N.D. Ohio June 9, 2017). In this social security appeal, I recommended affirming the Commissioner's decision denying social security benefits. I concluded that the ALJ provided sufficient reasons for discounting the opinions of a treating provider. The district judge disagreed, determining that although the ALJ discussed an exhibit, which included multiple opinions from the provider, it was

unclear whether the ALJ considered each of the pertinent opinions. The district judge vacated the Commissioner's decision and remanded for further proceedings.

- 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.

As a United States Magistrate Judge, the majority of my decisions are unpublished opinions that are available on services such as Westlaw and Lexis. All of my opinions and orders are filed on our court's electronic case filing system.

- 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 have not written any significant opinions on federal or state constitutional issues.

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

I have not sat by designation on any federal court of appeals.

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.

No attorney or party has requested that I recuse myself due to an asserted conflict of interest. As a United States Magistrate Judge, I have followed the provisions of 28 U.S.C.

§ 455. Moreover, I have recused from any case in which: my wife or her law firm is counsel of record; a party with whom I had a prior attorney/client relationship while in private practice and the subject matter of that relationship would overlap with the matter that would be pending before me; and if I had a prior attorney/client relationship while at the U.S. Attorney's Office and that representation would overlap with the matter that would be pending before me.

I have recused myself from the following cases:

*Scott Fetzer Company v. Zurich American Insurance Company*, Case Number 1:16CV1570-DCN. I recused because my wife's law firm appeared as counsel of record.

*Strowder v. United States of America et al.*, Case Number 1:16CV689-CAB. I recused because this case was being handled by colleagues at the U.S. Attorney's Office when I was an Assistant U.S. Attorney.

*Glanz v. Commissioner of Social Security*, Case Number 5:17CV01437-BYP. I recused because I represented the Commissioner, as an Assistant U.S. Attorney, in a related case that Plaintiff filed.

*Lindon v. Cuyahoga County Common Pleas Probation Department et al.*, Case Number 1:18CV01788-DCN. I recused because my wife's law firm appeared as counsel of record.

*Hakeem v. State Farm Insurance Co. et al.*, Case Number 1:18CV02622-CAB. I recused because my wife's law firm appeared as counsel of record.

**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 other than as a judicial officer.

- 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 have not served as a law clerk.

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;

2000 – 2001

Thorp Reed & Armstrong, LLP (defunct)  
One Oxford Centre  
301 Grant Street, 14th Floor  
Pittsburgh, Pennsylvania 15219  
Associate

2001 – 2003

DKW Law Group, PC (defunct)  
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Associate

2003 – 2010

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Associate (2003 – 2007)

2010 – 2016

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Assistant United States Attorney

2016 – present

United States District Court

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United States Magistrate Judge

- 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.

Other than conducting settlement conferences and mediations as a magistrate judge, I have not served as a mediator or arbitrator in significant matters.

b. Describe:

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

Before joining the judicial branch, my legal career included six years in public service as an Assistant U.S. Attorney and ten years as a commercial and corporate litigator in private practice. Through my public service and private practice, I represented clients in both civil and criminal matters, working with governmental administrators, business persons, federal and state law enforcement, victims of crimes, and state and federal judiciary.

While serving as a defensive Civil AUSA, I represented the United States of America, its federal agencies, and employees in a wide variety of district court and appellate cases. I worked with federal agency counsel, agency management, agency employees, and expert witnesses to conduct internal investigations and analyze Plaintiffs' allegations. As trial counsel, I frequently appeared in case management conferences, status conferences, settlement conferences, mediations, state and federal court hearings and, if the case was not resolved via motion practice or settlement, then at trial.

My diverse caseload involved the following areas: medical malpractice; employment and civil rights; administrative appeals challenging the Social Security Commissioner's final agency decisions regarding supplemental security income and social security disability benefits; prisoner lawsuits and Sixth Circuit appeals from actions pursuing petitions for writ of habeas corpus and/or challenging the nature or constitutionality of their sentence, detention or conditions of release; Administrative Procedure Act cases raising statutory and constitutional challenges to government programs; tax-related matters; environmental litigation; immigration-related lawsuits; and criminal discovery requests in state court actions seeking testimony and documents from federal employees and agents. In

addition, I prosecuted a violent offender for carjacking and carrying a firearm during and in relation to the carjacking.

Before joining the U.S. Attorney's Office, my legal career from 2000 to 2010, included substantial experience representing private-sector and government clients in complex commercial and corporate litigation, as both plaintiff and defense counsel. My practice focused on the following areas: complex federal and state litigation; government and white-collar issues; antitrust, consumer protection, and trade regulations; tort and breach of contract actions; construction-related disputes; conducting internal investigations regarding antitrust compliance, white-collar matters, and contracting misconduct; and serving as Special Counsel to the Ohio Attorney General and representing the Ohio Department of Transportation in breach of contract, fraud and construction-related matters.

In addition, I represented numerous pro bono clients through the Legal Aid Society, and resolved legal disputes as a court-appointed mediator and arbitrator in state common pleas courts.

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

As an Assistant U.S. Attorney in Cleveland, Ohio from 2010 to 2016, I represented the United States of America, its federal agencies, and employees in a wide variety of civil litigation in federal and state courts.

Before joining the U.S. Attorney's Office, my legal career from 2000 to 2010, included substantial experience representing private-sector and government clients in complex commercial and corporate litigation, as both plaintiff and defense counsel. I represented and counseled national and regional private and public-sector clients concerning complex federal and state litigation; government and white-collar issues; antitrust, consumer protection, and trade regulations; tort and breach of contract actions; and construction-related disputes.

- 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.

I have 21 years of litigation experience, which includes 16 years combined in public service and private practice – as an Assistant United States Attorney, commercial and corporate litigator, and counselor – plus five years presiding over civil and criminal litigation as a United States Magistrate Judge. Since my appointment as a magistrate judge in 2016, I have frequently presided over civil and criminal hearings. While an Assistant United States Attorney from 2010 to

2016, I frequently appeared in federal and state court representing the United States, its federal agencies, and employees. While in private practice from 2000 to 2010, I appeared less frequently in federal and state court.

i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 70% |
| 2. state courts of record:  | 30% |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 95% |
| 2. criminal proceedings: | 5%  |

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

I have tried three cases in federal and state court, which includes civil and criminal jury trials in federal court and a civil bench trial in state court.

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 67% |
| 2. non-jury: | 33% |

- 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:

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of

principal counsel for each of the other parties.

1. *McConnell, a Minor by and through her Mother and Natural Guardian McConnell v. United States of America*, Case No. 3:13cv1940 (N.D. Ohio). Presiding Judge: Hon. Jeffrey J. Helmick.

Plaintiff filed a \$29 million medical malpractice lawsuit, on September 4, 2013, asserting that negligence by birth unit staff resulted in substantial oxygen deprivation and traumatic birth injury resulting in profound lifelong impairments. I assumed the lead counsel role for the United States in May 2014. Due to the nature of the allegations and potential liability exposure, Department of Justice procedures required full fact and expert discovery before assessing settlement authority. The case involved about 12 experts—such as nursing experts, obstetricians, neonatal intensive care specialists, pediatric neuro-radiologists, economists, and life care planners—and depositions across the United States. The case settled through private mediation with former District Court Judge Richard McQuade, and was dismissed on July 16, 2015. One of the most important aspects of the settlement I negotiated included the establishment and funding of a Medical Care Trust to ensure that Plaintiff’s future care would be financially covered.

Plaintiff’s Counsel

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2. *Lyles v. Shinseki*, Case No.: 1:09cv01960 (N.D. Ohio). Trial Judge: Hon. James S. Gwin.

Plaintiff filed a complaint on August 20, 2009, asserting that certain Veteran Affairs employees retaliated against him for protected activity (prior EEO claim), nonselection for a promotion, harassment, hostile work environment, and failure to re-hire claims under Title VII of the Civil Rights Act. After the court denied Defendant’s summary judgment motion, I served as trial co-counsel. Following extensive pre-trial filings, I participated in jury selection and conducted the trial examination of the multiple witnesses. Judge Gwin employed an Advisory Jury, which returned a unanimous defense

verdict on October 6, 2010. Judge Gwin, thereafter, also ruled in the defense's favor.

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3. *Lybarger v. Gates*, Case No. 1:10cv00373 (N.D. Ohio). Presiding Judge: Hon. Lesley Wells.

Plaintiff filed a complaint on February 18, 2010, alleging gender discrimination, hostile work environment, and constructive discharge claims under Title VII of the Civil Rights Act. I was co-counsel for the defense. Following extensive discovery, Judge Wells granted the defense's summary judgment motion on March 30, 2012.

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4. *Proctor et al. v. SE Johnson Companies, Inc. et al.*, Case CV-06-592120, Cuyahoga

County Common Pleas Court. Presiding Judge: Hon. Nancy Fuerst.

In this case, I represented Plaintiff Ohio Department of Transportation (ODOT) as Special Counsel of the Ohio Attorney General. I filed the complaint on May 19, 2006, asserting breach of contract and fraud claims. This is one of many lawsuits that our team filed in Ohio state courts on ODOT's behalf. The claims in these cases stemmed from highway overpass and bridge painting projects that ODOT alleged the general contractors and sub-contractors failed to perform according to the contractual requirements. The contracts required the existing structures to be blast-cleaned to bare steel before applying a multi-step paint coating. If not performed to specifications, it would lead to premature rusting, impairing the integrity of the structure and requiring additional tax-payor expenditures to repaint the structure. The cases were complicated by the fact that on each project, the prime contractor hired various subcontractors to perform this work, which resulted in multi-party litigation, involving multiple bonds and insurance-related issues. The Defendants settled this case on October 7, 2008. Through this case and the many related actions throughout Ohio involving similar allegations against bridge painting contractors, our litigation team recovered millions for the State of Ohio.

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5. *United States v. Dial*, Case No. 1:11-CR-340 (N.D. Ohio). Trial Judge: Hon. Benita Y. Pearson.

Mr. Dial was charged on August 2, 2011, with carjacking, using a firearm during a crime of violence, and felon in possession of a firearm. I was co-counsel in this case. I handled the arraignment following a superseding indictment, briefed a suppression motion, examined witnesses during the suppression hearing, and successfully argued against the Defendant's motion to suppress the victim's photographic lineup identification evidence. At the final pre-trial, Defendant pleaded guilty to count three, felon in possession, but the case proceeded to trial on the remaining two counts. Trial began with jury selection on October 29, 2012. At trial, I participated in jury selection, conducted the trial examination of the carjacking victim, police, and fact witnesses, and presented closing argument to the jury. The jury returned a unanimous verdict of guilty on all counts charged, on October 31, 2012. Mr. Dial received a 20-year sentence of imprisonment.

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6. *Ream v. United States*, Case No. 4:11cv02707 (N.D. Ohio). Presiding Judge: Hon. Benita Y. Pearson.

Plaintiff Ms. Ream filed a complaint asserting a \$35,000,000 medical malpractice wrongful death claim, on December 14, 2011, following the post-surgical death of her husband Mr. Ream. Mr. Ream had substantial pre-existing conditions, including quadriplegia from a traumatic brain injury sustained while on active duty years before the surgery, but he otherwise was healthy, with substantial family connections and a significant life expectancy. My co-counsel and I analyzed the liability issues, conferred with subject matter experts regarding the medical care rendered, and worked proactively with opposing counsel to develop the case in a streamlined manner that focused on damages and facilitated meaningful settlement discussions. The parties settled the case through mediation on June 28, 2013.

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7. *Weltman v. Panetta et al.*, Case No. 1:11cv01229 (N.D. Ohio). Presiding Judge: Hon. Patricia A. Gaughan.

Plaintiff was an accountant with the Defense Finance and Accounting Service Agency of the Department of Defense. He filed a complaint on June 14, 2011, asserting age discrimination in violation of the Age Discrimination in Employment Act, and religious discrimination and retaliation in violation of Title VII of the Civil Rights Act. I was lead defense counsel. Following extensive discovery, the defense moved for summary judgment arguing that Plaintiff could not present a prima facie case for any of his claims; and, in addition, the record established that Defendant had legitimate non-discriminatory reasons for terminating Plaintiff's employment during his one-year probationary period. Judge Gaughan granted that motion on October 16, 2012.

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Co-counsel:  
Kathleen Midian (retired)

8. *Curlee-Jones v. United States*, Case No. 1:14cv2351 (N.D. Ohio). Presiding Judge: Hon. Patricia A. Gaughan.

Plaintiff filed a medical malpractice and wrongful death action on October 22, 2014, seeking \$4.5 million. The complaint alleged medical staff at the VA Medical Center were negligent in assessing Mr. Jones's condition following an emergency room diagnosis of severe sepsis and group A strep bacteremia with myositis and cellulitis of the neck and throat, when performing a bedside tracheostomy, and when interpreting CT scan imaging as indicating the presence of an abscess rather than a hematoma. As lead defense counsel, I worked with the medical providers, expert witnesses, and Plaintiff's counsel to understand the care rendered, streamline the litigation, and reach an early resolution. The case settled in September 2015.

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9. *Love v. Shartle*, Case No. 10-cv-1347 (N.D. Ohio), *aff'd*, Case No. 10-4058 (6th Cir. July 14, 2011). Presiding District Court Judge: Hon. Donald C. Nugent

Petitioner-Appellant Mr. Love was a federal prisoner proceeding pro se in an appeal to the Sixth Court of Appeals from Judge Donald Nugent's denial of a petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241. I was lead defense counsel before the Sixth Circuit. Mr. Love had been convicted of manufacturing and possessing with the intent to distribute methamphetamine with an offense-level enhancement for manufacturing methamphetamine in a manner that created a substantial risk of harm to human life because he was manufacturing methamphetamine and storing hazardous chemicals in the mobile home where he, his mother, and his sister lived. Under 18 U.S.C. § 3621, the Bureau of Prison (BOP) may reduce a nonviolent offender's sentence by up to one year after successfully completing a drug treatment program. Appellant argued that the BOP abused its discretion when it notified him that he was accepted into a residential drug abuse program, but that he was excluded from a sentence reduction pursuant to BOP regulations that excluded persons whose offense presented a serious risk of physical force against person or property. On appeal, I argued that the BOP did not abuse its discretion, and it could reasonably conclude that the inherent dangers associated with manufacturing methamphetamine in a mobile home where persons resided created a substantial risk of harm to human life and property due to the serious risk of physical injury and property damage from an explosion or chemical exposure. The Sixth Circuit found the BOP could permissibly determine that the dangers inherent in Mr. Love's offense rendered him ineligible for a sentence reduction.

Plaintiff was represented pro se.

10. *Worldhomecenter.com, Inc. v. L.D. Kichler Co.*, Case No. 05-cv-3297, Case No. 08-cv-020, 2009 WL 936675 (E.D.N.Y. Mar. 31, 2009). Presiding Judge: Hon. Denis R. Hurley.

In these cases, I was the lead associate defense counsel representing Kichler, a manufacturer of lighting products. Kichler sold its products to distributors and dealers who operated brick-and-mortar stores. Worldhomecenter.com, Inc. (WHC) was an online reseller of home improvement products who purchased Kichler lighting products from distributors for resale on the internet. In 2005, Kichler unilaterally implemented an Internet Minimum Advertising Program (IMAP), which provided that each Kichler customer was free to establish its own resale price, but the IMAP precluded customers

from advertising Kichler products on the internet at a price less than the IMAP, or from selling Kichler products to others who sold such products below the IMAP. In implementing the policy, Kichler indicated it was responding to the growth of internet channels of commerce, the substantial financial investment that distributors made in brick-and-mortar showrooms, the difficulty competing with low price internet websites, and its desire to protect the integrity of its brand. WHC's first lawsuit, filed in July 2005, challenged Kichler's IMAP program under federal and state antitrust and consumer protection statutes, asserting it eliminated their ability to sell Kichler's products at a discount. Kichler defended its program and in July 2007, WHC dismissed its lawsuit. Thereafter, in January 2008, WHC filed a second lawsuit against Kichler, but this time asserting the IMAP violated New York's price-fixing statute. Judge Hurley presided over that case too and granted Defendant's motion to dismiss on March 31, 2009, because Plaintiff's complaint did not allege any contract with Defendant actionable under the price-fixing statute.

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

Since joining the federal bench, I have devoted substantial time each month preparing for and presiding over the United States District Court for the Northern District of Ohio Reentry Court in Cleveland, Ohio with my colleagues. Our mission is to identify persons, who are returning to society from lengthy federal prison terms and are assessed as having a high likelihood of recidivism, to facilitate their return to the community and to work with them to develop the skills, experience and confidence to be successful, productive members of society. Each summer, I supervise one or more law students working as judicial externs. While at the United States Attorney's Office and in private practice, I

frequently mentored junior attorneys, summer associates, and externs.

I have not performed lobbying activities or registered as a lobbyist.

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

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.

My wife is a practicing attorney in Cleveland, Ohio. Since my appointment to the federal bench, I have recused myself from all cases in which she or any attorney from her law firm is counsel of record. If confirmed, I would continue to do so.

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

If confirmed as a district court judge, I would continue to resolve any potential conflict of interest by following the Code of Conduct for United States Judges, 28 U.S.C. § 455, and all applicable policies and procedures of the United States Courts.

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.

As a magistrate judge, I am not permitted to represent clients in any capacity.

While in private practice, I represented multiple clients pro bono through the Cleveland Legal Aid Society. These representations included protecting an older individual's property rights from a family member seeking to take control of the family home, defending tenants being evicted from their rental home against property damage claims, and counseling an individual on her rights in connection with the purchase of a used vehicle. Although ethics regulations prohibited me from representing pro bono clients while an Assistant U.S. Attorney, I continued to serve the community through brief advice clinics offered by the Hispanic Bar Association and Legal Aid Society.

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.

I submitted an application in March 2021 to the United States Senate Judicial Nominations Commission for the Ohio Federal Courts established jointly by Senator Sherrod Brown and Senator Rob Portman. I then interviewed with the Commission members on May 22, 2021. The Commission recommended me for further consideration to fill one of the district court vacancies in the Northern

District of Ohio. Thereafter, I interviewed with Senator Brown's staff on June 4, 2021. I interviewed with Senator Portman and his staff on June 14, 2021. I also interviewed with Senator Brown and his staff on June 26, 2021. I received an email communication from attorneys from the White House Counsel's Office on July 9, 2021, regarding my potential candidacy. I spoke with attorneys from the White House Counsel's Office on July 13, 2021, and was advised that I was being considered for one of the district court vacancies in my district. Since that date I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 30, 2021, my nomination was submitted 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.