

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Beverly Baldwin Martin

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

United States Circuit Judge for the Eleventh Circuit

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

2388 U.S. Courthouse
75 Spring Street, SW
Atlanta, GA 30303

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

1955; Macon, Georgia

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.

1978-1981, University of Georgia School of Law; Juris Doctorate, awarded June, 1981

1973-1976, Stetson University, Bachelor of Arts awarded June, 1976

1972-1973, Mercer University, 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.

Employment:

August 2000 to present
United States Courts
2388 U.S. Courthouse
75 Spring Street, SW
Atlanta, GA 30303
United States District Judge

1994 – 2000
Office of the United States Attorney
300 Mulberry Street
Macon, GA 31201
United States Attorney (1998-2000)
Acting United States Attorney (1997-1998)
Assistant United States Attorney (1994-1997)

1984 – 1994
Office of the Attorney General of Georgia
40 Capitol Square
Atlanta, GA 30334
Assistant Attorney General

1981 – 1984
Martin & Snow
240 Third Street
Macon, GA 31201
Attorney

1980
Office of the Attorney General of Georgia
40 Capitol Square
Atlanta, GA 30334
Summer Intern

1977 - 1978
Butler, Binion, Rice, Cook & Knapp
Washington, D.C. (No longer a going concern)
Receptionist/Paralegal

1977
Can Manufacturers Institute
1730 Rhode Island Avenue, NW
Washington, D.C. 20036
Receptionist

Other affiliations:

1990 – 2003

Lone Star Corporation
P. O. Box 1606
Macon, GA 31202
Member, Board of Directors

Since approximately 1990

J.M. & Star
P. O. Box 1606
Macon, GA 31202
Minority (6%) partner

1999 – 2000

Macon State College Foundation
100 College Station Drive A-228
Macon, GA 31206
Member, Board of Directors

1982 – 1984

Cronin-Martin, Inc.
(Exercise studio, no longer in business)
Shareholder

Approximately 1985-2000

Career Women's Network
Board member 1996-1997

2002-2005

Mercer University Walter F. George School of Law
1021 Georgia Avenue
Macon, Georgia 31207
Board of Visitors

2008 - present

Member, Board of Directors
Georgia Women of Achievement
P.O. Box 5851
Atlanta, GA 31107

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

I have never served in the military.

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.

Named "Woman of Achievement" by Career Women's Network in Macon, Georgia in 1999.

Named "Alumni of the Year" by Stratford Academy in Macon, Georgia in 1999.

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 Georgia (1981 to present)

Atlanta Bar Association (approximately 2003 - 2008)

Macon (Georgia) Bar Association (approximately 1995-2000)

District Representative to Younger Lawyers Executive Comm (1981-1984)

Member, Attorney General's Advisory Committee (January 2000 – August 2000)

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.

State Bar of Georgia: 1981

There has been no lapse in membership.

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

Georgia Trial Courts: June, 1981

Georgia Court of Appeals: October 22, 1981

Georgia Supreme Court: October 22, 1981

United States District Court for the Middle District of Georgia: August 15, 1981

United States District Court for the Southern District of Georgia: May 22, 1989

United States District Court for the Northern District of Georgia: April 22, 1991

United States Court of Appeals for the Eleventh Circuit: November, 1981

Supreme Court of the United States: December 11, 1989

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.

Career Women's Network
Approximately 1985-2000
Board member 1996-1997
Chair, Scholarship Committee 1996-1997

Georgia Association of Women Lawyers
sporadically between 1981-1997

Habitat for Humanity
Member, Nurturing Committee, 1997

Lawyers Club of Atlanta
approximately 1985 to 2007

Board of Visitors, Mercer University Law School
2002-2005

American Judicature Society
approximately 1999

Georgia Women of Achievement
Board member, 2008 - present

- 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.

None of the 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.

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.

My only published article was one I did in law school. The name of the article was "European Economic Community— Article 119—British Equal Pay Act of 1970—Referral to European Court of Justice—Applicability to British Pension Plan and to Successive Employment Cases." (10 Ga. J. Int'l & Comp. L. 203 (1980)).

- 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.

I testified before the United States Senate Judiciary Committee on May 25, 2000 in connection with my nomination to be United States District Judge for the Northern District of Georgia.

- 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 number of Continuing Legal Education seminars, primarily for Georgia lawyers. To the best of my recollection, this is a list of my speaking engagements.

Panel member, Federal Bar Association Continuing Legal Education for new lawyers on June 19, 2009.

State Bar of Georgia sponsored Continuing Legal Education for new lawyers on March 13, 2009.

Investiture of Chief Judge Yvette Miller for the Georgia Court of Appeals (I was one of seven speakers who gave brief remarks.)

Ceremony honoring the Honorable Orinda Evans for her public service on February 7, 2008.

Panel member, meeting of Federal Public Defenders in Phoenix on March 7, 2007.

Commencement address at Mercer University Law School on May 6, 2005.

Continuing Legal Education seminar held by the Atlanta Lawyers' Club on January 26, 2005.

Panel member, American Bar Association meeting in Atlanta on August 6, 2004.

Panel discussion at a meeting of the Federalist Society in Atlanta, Georgia on October 23, 2003.

I met with a small number of employment lawyers regarding federal employment practice on May 14, 2002.

I spoke at a continuing legal education seminar called Federal Civil Litigation in Georgia on May 1, 2001.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

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

Mercer Law School Commencement Address, Mercer Univ. News-Releases, June 1, 2005

"Martin Glides Through Senate," *Macon Telegraph*, June 20, 2000

"U.S. Attorney's Office Collects \$4.5 Million," *Macon Telegraph*, December 4, 1999

"Police Keep Eye on Local Felons," *The Red & Black*, September 17, 1999

"Let state rules guide federal prosecutors." *The Atlanta Journal and Constitution*, July 18, 1999.

"Fort Hill 'Drug Kingpin' Receives Life Sentence," *Macon Telegraph*, May 20, 1999

"Law Enforcement Agencies Split \$520,000 Seizure: Macon Police Take Home More Than \$260,000," *Macon Telegraph*, April 20, 1999

"DuPont Settles Charges of Withholding Evidence," *New York Times*, January 2, 1999

"DuPont to donate \$ 10 million to Georgia law schools to end settlement," *The Associated Press* January 2, 1999.

"DuPont to Give Millions to State's 4 Law Schools," *The Augusta Chronicle* January 2, 1999.

"State senator's son, football coach arrested in fire at car dealership," *The Associated Press* , December 11, 1998.

"Alleged drug dealer built mansion," *The Atlanta Journal and Constitution*, August 7, 1998.

"Police sweep nets 257 arrests in Atlanta," *The Atlanta Journal and Constitution*, May 30, 1998.

"Macon Woman Tapped To Be U.S. Attorney," *Macon Telegraph*, June 5, 1997.

"2 Georgians may get federal legal posts," *The Atlanta Journal and Constitution*, June 4, 1997.

“Macon Man Sentenced to Life Without Parole: Alleged Victim Speaks at Sentencing,” *Macon Telegraph*, June 29, 1996

“2 more former DFACS workers facing charges,” *The Atlanta Journal and Constitution*, June 29, 1996.

“A 30 second glance at state and local news,” *The Atlanta Journal and Constitution*, October 12, 1991.

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.

On August 3, 2000, after confirmation by the United States Senate, President Clinton appointed me to be United States District Judge for the Northern District of Georgia. I presently hold that office and have held no other judicial office.

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

During my time as a judge, approximately 3100 cases have been assigned to me, and of those, 1990 cases went to verdict or judgment. Of these approximate 1990 cases which went to judgment or verdict, 69 of them went to trial.

- i. Of these, approximately what percent were:

jury trials? 75%; bench trials 25% [total 100%]

civil proceedings? 57%; criminal proceedings? 43% [total 100%]

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

See attached list.

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

1. Jack Alderman v. James Donald, 1:07-cv-1474-BBM

Mr. Alderman challenged Georgia's lethal injection method of execution in his capacity as a death row inmate. The Supreme Court of the United States decided a similar case challenging Kentucky's lethal injection method of execution in *Baze v. Rees*, __ U.S. __, 128 S. Ct. 1520 (2008) during the pendency of my case. Under Eleventh Circuit precedent, Mr. Alderman's complaint was time-barred.

Attorneys for Plaintiff:

Elizabeth K. Quinn, Hanna F. Madbak, James M. Ringer, Jeanette R. Blair,
Maryana A. Kodner, Michael A. Siem, Sarah M. Chopp
Clifford Chance LLP
31 W. 52nd Street
New York, NY 10019
212-878-3489

Jason Richard Edgecombe, William E. Hoffman, Jr.
King & Spalding
1180 Peachtree Street, NE
Atlanta, GA 30309
404-572-4600

Thomas H. Dunn
Georgia Resource Center
303 Elizabeth Street
Atlanta, GA 30307
404-222-9202

Attorney for Defendant:

Eddie Snelling, Jr.
Office of State Attorney General
40 Capital Square, SW
Atlanta, GA 30334
404-463-8850

2. United States v. Davis, et al., 1:05-cr-316-BBM

This was a mortgage fraud case, charging twenty-one defendants with numerous counts of bank fraud, wire fraud and money laundering. The majority of defendants pled guilty, but five defendants went to trial, and all but one of the twenty-one defendants were convicted.

Counsel for the government were Douglas W. Gilfillan, who can be reached at 404-581-6186, William L. McKinnon, Jr., who can be reached at 404-581-6000, and Gale McKenzie, who can be reached at 404- 581-6045.

The defendant's lawyers were as follows:

Counsel for Clarence Davis was Donald Samuel, who can be reached at 404-262-2225.

Counsel for Virginia Novrit was Steven H. Sadow, who can be reached at 404-577-1400.

Counsel for Olympia Ammons were Edwin Marger, who can be reached at 706-692-3060, Lynn Fant, who can be reached at 404-550-2375 and Jeffrey M. Witt, who can be reached at 314-607-6469.

Counsel for Mohammed Bayorh was Steven H. Sadow, who can be reached at 404-577-1400.

Counsel for Joseph Costanzo was Edward T. M. Garland who can be reached at 404-262-2225.

Counsel for Mohammad Hassamadi were Jay Strongwater, who can be reached at 404-872-1700, as well as Keri Patterson Ware and Robert Earl Wilson who can both be reached at 404-377-3638.

Counsel for Joe Jetton were Thomas Scott Clegg, who can be reached at 404-373-6420, Jennifer M. Daniels, who can be reached at 404-264-1500, and John R. Lovell who can be reached at 404-760-1116.

Counsel for David Kroll was Paul S. Kish, who can be reached at 404- 588-3991, and Seth Kirschenbaum who can be reached at 404-688-2000.

Counsel for Leon Lumsden was David MacKusick, who can be reached at 678-231-4268.

Counsel for Ronald D. Martin, Jr. was Dorian Murry who can be reached at 404-873-0093 and Kristopher P. Shepherd, who can be reached at 706-548-7249.

Counsel for Ricardo Myrie was Georgetta Graves-Innes, who can be reached at 678-992-2675.

Counsel for Hassan Nimapoo was Bruce Howard Morris, who can be reached at 404-262-2500, and Wilmer ("Buddy") Parker III, who can be reached at 404-875-2700.

Counsel for Attemerell Smith was Robert L. Mack, Jr., who can be reached at 678-610-8155.

Counsel for Daryl Smith was Ricky Richardson, who can be reached at 404-892-6420.

Counsel for Randall Tharp was Patrick D. Deering, who can be reached at 404-659-6161.

Counsel for Fabian Wiltshire was Janice Singer, who can be reached at 404-262-6277.

Counsel for Gregory Wings was Brian Steel, who can be reached at 404- 605-0023.

Counsel for Calvin Wright was Akil K. Secret, who can be reached at 404-241-8890.

3. M.C. Asset Recovery, LLC v. The Southern Co., 1:06-cv-417-BBM
This action was brought on behalf of certain creditors of Mirant Corporation, which was a wholly-owned subsidiary of Southern Company. M.C. Asset was appointed by the Bankruptcy Court to represent those creditors. Mirant was incorporated to serve as a holding company for Southern Company's merchant energy business operations, and ultimately went bankrupt. M.C. Asset brought this action alleging that the transfers to Southern Company constituted fraudulent transfers. Plaintiffs allege fraudulent transfers in the amount of \$2 billion. This case has been actively litigated for three years, and the parties recently notified me that they had resolved the case by settlement. I wrote a number of Orders in the case during its pendency. One of my rulings is reported at 2006 WL 5112612. Counsel for M.C. Asset Recovery are the following:

A. Ross Rommel , Jr.,
Andrews & Kurth-TX
111 Congress, 17th Floor
Austin , TX 78701
512-320-9203

Basil A. Umari, Charles Yancey, David Griffith, Jennifer Gore, Paul Moak,
Richard H. Caldwell, Robin Russell, David Zdunkewicz, John A. Lee, W. Scott
Locher
Andrews & Kurth-TX
600 Travis Street
Suite 4200
Houston , TX 77002
713-220-4200

Charles E. Campbell and Nathan Garroway
McKenna Long & Aldridge-GA
303 Peachtree Street, N.E.
One Peachtree Center, Suite 5300
Atlanta , GA 30308-3201
404-527-4000

Counsel for The Southern Company

Gordon Lee Garrett , Jr., Janine C. Metcalf, David C. Kiernan and Ryan P. Reavis
Jones Day-Atlanta
1420 Peachtree Street, NE

Suite 800
Atlanta , GA 30309-3053
404-521-3939

Gregory M. Gordon
Jones Day-Dallas
2727 North Harwood Street
Dallas , TX 75201
214-969-3759

Richard A. Chesley
Jones Day-Chicago
77 West Wacker Drive
Suite 3500
Chicago , IL 60601-1692
312-269-1525

Michael J. Bowers and Chris Annulewicz
Balch & Bingham LLP-Atlanta
Suite 700
30 Ivan Allen Jr. Boulevard, NW
Atlanta , GA 30308
404-261-6020

4. Acuity Brands, Inc. et al. v. Thomas & Betts Corp., 1:05-cv-228-BBM
This was a commercial dispute regarding representations which had been made to Acuity by Thomas & Betts when Acuity bought Thomas & Betts. I tried the case without a jury during February - March, 2007. The parties settled the case before I entered my findings of fact and conclusions of law.

Counsel for Acuity Brands, Inc. were:

Ronald Thomas Coleman , Jr., David B. Darden, Jodi Emmert Zysek, and
Trishanda L. Treadwell
Parker Hudson Rainer & Dobbs
285 Peachtree Center Avenue, N.E.
1500 Marquis II Tower
Atlanta , GA 30303
404-523-5300

Counsel for Thomas & Betts were:

Harold Turner Daniel , Jr. and Kelli Smith Lott
Holland & Knight-Atlanta
1201 West Peachtree Street, N.E.
One Atlantic Center, Suite 2000

Atlanta , GA 30309-3400
404-817-8500

Eric A. Robben, Jonathan E. Strouse, Karen Elaine Gossman, Richard R. Winter,
Sarah E. Pace and
Holland & Knight, LLP-Chicago
30th Floor
131 South Dearborn Street
Chicago , IL 60603
312-263-3600

5. United States v Middlebrook, et al., 1:03-cr-431-BBM

This was the prosecution of five defendants for their role in a \$2 million bank heist from the Wachovia money processing center. Some of the defendants pled guilty, but the remainder went to trial in March, 2004. All defendants were convicted.

Counsel for the government was Thomas Aloysius Devlin , Jr., who can be reached at 404-581-6000.

Counsel for Jonathan Remon Middlebrook was Cathy Morris Alterman, who can be reached at 404-688-8400.

Counsel for Darryl Dennard Shortt was Akil K. Secret, who can be reached at 404-241-8890.

Counsel for Larry Preston was Michael John Trost, who can be reached at 404-352-9300.

Counsel for Elester Middlebrook was R. Gary Spencer, who can be reached at 404-946-1830.

Counsel for Sal Mineo Simpson was Thomas C. Rowsey, who can be reached at 770-993-5317.

6. United States v. Knight, 1:02-cr-585-BBM

This was a multi-defendant drug case. A number of defendants pled guilty, and five went to trial in December, 2003. All defendants were convicted.

Counsel for the government were Robert C. McBurney, who can be reached at 404-581-6184, and Sandra Elizabeth Strippoli who can be reached at 404-581-6304.

Counsel for Ronald Knight were Jerome J. Froelich, who can be reached at 404-881-1111, and P. Bruce Kirwan, who can be reached at 404- 876-8111.

Counsel for Byron Knight was W. Michael Maloof, who can be reached at 404-373-8000.

Counsel for Corey Lewis was Leonard Louis Franco, who can be reached at 404-875-1300.

Counsel for Gerald Thomas was Howard Jay Manchel, who can be reached at 404-522-1701.

Counsel for Henry Green was Dwight Lowell Thomas, who can be reached at 404-522-1400.

Counsel for Anthony Garza was Jose E. Chapa , Jr., who can be reached at 956-682-4308.

Counsel for Jose Hernandez Taurino was Bruce Harvey, who can be reached at 404-659-4628.

Counsel for Salomon Alvarez was Page Anthony Pate, who can be reached at 404-223-3310.

Counsel for Rudy Perez was Akil K. Secret, who can be reached at 404-241-8890.

Counsel for Kendell Ivory was Steven Howard Sadow, who can be reached at 404-577-1400.

Counsel for Timothy McClendon was George O. Lawson , Jr., who can be reached at 404-522-6964.

Counsel for Jose Garza was Stanley M. Baum, who can be reached at 404-262-6272.

7. United States v. Lewis Clay, 1:02-cr-380-BBM

This was a drug prosecution, which was not unusual except that it resulted in my imposing the only life sentence I have imposed during my time as a judge.

Counsel for the government was Jeff Brickman, who is now in private practice, and can be reached at 678-420-9300.

Counsel for Mr. Clay was Page Anthony Pate, who can be reached at 404-223-3310.

8. United States v. Charles Levon Smith, 1:01-cr-841-BBM

This was the prosecution of a number of convenience store robberies and a bank robbery. It is significant because I tried Mr. Smith three times - the first two trials

ended in mistrials. At the third trial, Mr. Smith was convicted of the bank robbery.

Counsel for the government was William G. Traynor, who can be reached at 404-581-6294.

Counsel for Mr. Smith was Brian Mendelsohn, who can be reached at 404-688-7530.

9. Bogle, et al. v. McClure, et al., 1:00-cv-2071-BBM

This was a race discrimination case brought by seven librarians in the Atlanta library system against the City of Atlanta Public Library Board of Trustees. The case received a lot of press attention, and resulted in a very large monetary verdict against the members of the Library Board of Trustees, and in favor of plaintiffs.

The plaintiffs were represented by Michael J. Bowers and Christopher Scott Anulewicz, who can both be reached at 404-261-6020, and Kelly Jean Beard, who can be reached at 404-961-7233.

The defendants were represented at trial by June D. Green and Willie Jake Lovett, Jr. who can be reached at 404-730-7750.

10. Riverwood Int'l Corp. (k/n/a Graphic Packaging Int'l, Inc.) v. R. A. Jones & Co., 1:98-cv-2840-BBM

This was a patent case I inherited upon my arrival to the bench. This case was tried to a jury during July and August, 2001. The jury invalidated many of Riverwood's patents. The verdict was overturned by the Federal Circuit on account of a ruling I made regarding prior art.

Counsel for Riverwood at trial were Wellington M. Manning, Jr. and Tim F. Williams, who can be reached at 864-271-1592.

Counsel for R. A. Jones were Gregory F. Ahrens, who can be reached at 513-241-2324 and Jerry Blackstock, who is now deceased.

- 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. MC Asset Recovery, LLC v. The Southern Co., 1:06-cv-417-BBM
2006 WL 5112612 (12/11/06)

This action was brought on behalf of the creditors of Mirant Corporation, which was a wholly-owned subsidiary of Southern Company. M.C. Asset was appointed by the Bankruptcy Court to represent certain Mirant creditors. Mirant was

incorporated to serve as a holding company for Southern Company's merchant energy business operations, and ultimately went bankrupt. M.C. Asset brought this action alleging that the transfers to Southern Company constituted fraudulent transfers. Plaintiffs allege fraudulent transfers in the amount of \$2 billion. This case has been actively litigated for three years, and the parties recently notified me that they had resolved the case by settlement. I wrote a number of Orders in the case during its pendency. One of my rulings is reported at 2006 WL 5112612.

Attorneys for Plaintiff:

A. Ross Rommel, Jr.
Andrews Kurth, LLP-TX
17th Floor
111 Congress
Austin, TX 78701
512-320-9203

Basil A. Umari, Chasless L. Yancey, David P. Griffith, Jennifer M. Gore, Paul D. Moak, Richard H. Caldwell, Robin Russell, David A. Zdunkewicz, John A. Lee, W. Scott Locher
Andrews & Kurth-TX
600 Travis Street
Suite 4200
Houston, TX 77002
713-220-4200

Charles E. Campbell, Nathan Lewis Garroway
McKenna Long & Aldridge-GA
303 Peachtree Street, N.E.
One Peachtree Center, Suite 5300
Atlanta, GA 30308-3201
404-527-4000

Attorneys for Defendant:

Gordon Lee Garrett, Jr., Janine Cone Metcalf, David Craig Kiernan, Ryan Preston Reavis
Jones Day-Atlanta
1420 Peachtree Street, NE
Suite 800
Atlanta, GA 30309-3053
404-521-3939

Gregory M. Gordon
Jones Day-Dallas
2727 North Harwood Street
Dallas, TX 75201
214-969-3759

Richard A. Chesley
Jones Day-Chicago
77 West Wacker Drive
Suite 3500
Chicago , IL 60601-1692
312-269-1525

Christopher Scott Anulewicz, Michael J. Bowers
Balch & Bingham
Suite 700
30 Ivan Allen Jr. Boulevard, NW
Atlanta , GA 30308
404-261-6020

2. Kish v. SunTrust Banks, Inc., 1:06-cv-968-BBM

Order on class certification (12/16/07) - docket no. 89

This was a consumer class action lawsuit brought against SunTrust Banks. The class asserted that SunTrust marketed and sold certificates of deposit representing that the interest rate paid on the CDs could bump up during the term of the CD, if market rates rose during that time. The class claimed that the representations made by SunTrust were illusory, and the system was set up such that the interest rate paid to consumers never bumped up. I certified the class, and the case ultimately settled.

Attorneys for Plaintiff:

Brian Nathan Smiley
Smiley Bishop & Porter, LLP
1050 Crown Pointe Parkway
Suite 1250
Atlanta , GA 30338
770-829-3850

Kenneth S. Canfield, Kimberly Jean Johnson
Doffermyre Shields Canfield Knowles & Devine
1355 Peachtree Street, N.E.
Suite 1600
Atlanta , GA 30309
404-881-8900

Attorneys for Defendant:

Barry Goheen, Dayton Stout Velarde, Jennifer DeRelle Fease
King & Spalding
1180 Peachtree Street, N.E.
Atlanta , GA 30309
404-572-4600

3. Weeks v. Harden Mfg. Corp. (11th Circuit sitting)
291 F.3d 1307 (11th Cir. 2002)

I was sitting by designation with the Eleventh Circuit, and was primarily responsible for writing this opinion. The plaintiff employee argued that his refusal to sign an employment contract containing a mandatory arbitration provision was statutorily protected activity, as required for a prima facie case of retaliation under Title VII or other employment statutes. The panel rejected the plaintiff's position.

Attorneys for Plaintiffs-Appellees:

Rocco Calamusa, Jr., Brian M. Clark, Dennis George Pantazis
Wiggins, Childs, Quinn & Pantazis, LLC
The Kress Building
301 - 19th Street North
Birmingham, AL 35203
205-314-0500

Attorneys for Defendant-Appellant:

Jonathan B. Lowe, formerly of Lowe, Mobley & Lowe in Haleyville, AL
now Judge, State of Ala. Municipal Court
P.O. Box 98
Addison, AL 35540
256-747-2971

Susan Salonmier Wagner, Frank S. James, III
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
420 20th Street North
Suite 1600
Birmingham, AL 35203
205-215-8310

Attorney for Amici Curiae, Equal Advisory Council & Chamber of Commerce of
United States:

Ann Elizabeth Reesman
Norris Tysse Lampley & Lakis, LLP
1501 M Street, NW
Suite 400
Washington, D.C. 20005
202-629-5600

4. Buckley v. Haddock (11th Circuit sitting)
292 F. App'x 791 (11th Cir. 2008) (dissenting opinion)
Mr. Buckley brought this excessive force case against a Deputy Sheriff who tasered Mr. Buckley when he failed to follow orders after an arrest on a traffic violation. I was sitting by designation with the Eleventh Circuit, and each member of the three judge panel wrote a separate opinion. I wrote the dissenting opinion setting forth my conclusion that the Deputy's conduct constituted a Fourth Amendment violation and that the Deputy had fair notice that his conduct violated the Fourth Amendment.

Attorney for Plaintiff-Appellee:

James V. Cook
Law Office of James V. Cook
314 W. Jefferson Street
Tallahassee, FL 32301-1608
850-222-8080

Attorney for Defendant-Appellant:

John W. Jolly, Jr.
Jolly & Peterson, P.A.
2145 Delta Boulevard
Suite 200
Tallahassee, FL 32303-4209
850-422-0282

5. United States v. Melo, (11th Cir. sitting); 259 F. App'x 248 (11th Cir. 2007)
I was sitting by designation with the Eleventh Circuit when I was assigned primary writing responsibility for this per curiam opinion. It was an appeal of the sentence imposed by the trial judge after a guilty plea by Mr. Melo. The panel found that the evidence in the record was not sufficient to support the sentence imposed, and remanded the case to the trial court for resentencing.

Attorney for Defendant-Appellant:

Neal Gary Rosensweig P.A.
P.O. Box 814598
Hollywood, FL 33081
954-962-7720

Attorneys for Plaintiff-Appellee:

Jeanne M. Mullenhoff, Anne R. Schultz
U.S. Attorney's Office
99 N.E. 4th Street
Miami, FL 33132
305-961-9000

6. United States v. Rodriguez (11th Circuit sitting)
259 F. App'x 270 (11th Cir. 2007)

I was sitting by designation with the Eleventh Circuit when I was assigned primary writing responsibility for this per curiam opinion. This was the second appeal of his conviction by Mr. Rodriguez, and the issues considered in this Order were limited to those from the pendency of the case on remand. The opinion addressed evidentiary rulings made by the trial judge, as well as a claim that certain delays earlier in the case were sufficient to constitute a due process violation. The panel upheld the conviction and sentence.

Attorneys for Plaintiff-Appellee:

Dawn Bowen, Anne R. Schultz, Lisette M. Reid
U.S. Attorney's Office
99 N.E. 4th Street
Miami, FL 33132
305-961-9000

Attorney for Defendant-Appellant:

William Donald Matthewman
Seiden, Alder & Matthewman & Bloch, P.A.
7795 NW Beacon Square Blvd.
Suite 201
Boca Raton, FL 33487
561-416-0170

7. United States v. Molina, 1:02-CR-586-19
Order re § 2255 petition (3/21/08) - doc. no. 1158

This was a federal habeas action brought by Ms. Molina, who learned after she had been tried and convicted of a drug conspiracy charge and a gun violation, that the government had offered her a plea deal prior to trial. The government did not dispute that a 5-year plea offer had been made to Ms. Molina's counsel. A hearing was held, during which the testimony revealed that in fact, the plea offer was not communicated to Ms. Molina perhaps not at all, but certainly not in Spanish, the only language she spoke. Thus, habeas relief was granted.

Attorney for Government:
William H. Thomas, Jr.
Office of the U.S. Attorney
600 U.S. Courthouse
75 Spring Street, SW
Atlanta, GA 30303
404-581-6000

Attorneys for Defendant:
Derek Mikal Wright

P.O. Box 50647
1429 Ralph David Abernathy Boulevard
Atlanta , GA 30302
404-756-9292

Lynn Fant, PC
P.O. Box 244
Waco , GA 30182
404-550-2375

8. Womack v. IRS (11th Circuit sitting)
510 F.3d 1295 (11th Cir. 2007)

I was sitting by designation with the Eleventh Circuit when I was assigned primary writing responsibility for this per curiam opinion. Both Chief Judge Edmondson and Judge Dubina contributed to the opinion, which addressed the tax treatment of lottery winnings. The panel held that such winnings should be treated as ordinary income, as opposed to a long term capital asset.

Attorney for Appellants:

Steven M. Kwartin
Steven Kwartin, P.A.
P.O. Box 813818
Hollywood, FL 33081
305-987-7440

Attorney for Appellee:

Regina S. Moriarity, Richard Farber
Justice Dept. Tax Division Appellate Section
Room 4324
950 Pennsylvania Avenue, NW
Washington, DC 20530
202-514-3732

9. Alderman v. Donald, 1:07-CV-1474-BBM

Order re prisoner civil rights (5/2/08) - doc. no. 148

Mr. Alderman was a Georgia death row inmate, who brought this action to challenge Georgia's lethal injection method of execution. The Supreme Court of the United States decided a similar case challenging Kentucky's lethal injection method of execution in Baze v. Rees, __ U.S. __, 128 S. Ct. 1520 (2008) during the pendency of my case. Under Eleventh Circuit precedent, Mr. Alderman's complaint was time-barred.

Attorneys for Plaintiff:

Elizabeth K. Quinn, Hanna F. Madbak, James M. Ringer, Jeanette R. Blair,
Maryana A. Kodner, Michael A. Siem, Sarah M. Chopp
Clifford Chance LLP
31 W. 52nd Street
New York, NY 10019
212-878-3489

Jason Richard Edgecombe, William E. Hoffman, Jr.
King & Spalding
1180 Peachtree Street, NE
Atlanta, GA 30309
404-572-4600

Thomas H. Dunn
Georgia Resource Center
303 Elizabeth Street
Atlanta, GA 30307
404-222-9202

Attorney for Defendant:

Eddie Snelling, Jr.
Office of State Attorney General
40 Capital Square, SW
Atlanta, GA 30334
404-463-8850

10. Tommy Hilfiger Licensing, Inc. v. Goody's Family Clothing, Inc., No. 00-cv-1934-BBM, 2003 WL 22331254 (5/9/03)

Tommy Hilfiger brought this action claiming that Goody's was selling counterfeit versions of its clothing. I conducted a bench trial in this matter, and concluded that the claims made by Hilfiger were supported by the evidence. A significant judgment was entered in favor of Hilfiger.

Attorneys for Plaintiff:

Bruce A. Schoenberg, Joseph H. Lessem, Louis S. Ederer, Vincent J. Wiscovtch,
Walter Eliot Bard
Gursky & Ederer
1350 Broadway
11th Floor
New York, NY 10018
212-904-1234

Stephen M. Schaetzel
King & Spalding

1180 Peachtree Street, NE
Atlanta, GA 30309
404-572-4600

Attorneys for Defendant:

Arthur Daniel Brannan
DLA Piper US LLP
2800 One Atlanta Center
1201 West Peachtree Street
Atlanta, GA 30309-3450
404-736-7803

Benjamin Franklin Johnson, IV
Hunton & Williams
600 Peachtree Street, NE
Suite 4100
Atlanta, GA 30308
404-888-4000

Edward A. Pennington, James Hamilton, Neil Alan Steiner, Warren Anthony
Fitch
Swidler Berlin Shereff Friedman
3000 K Street, NW
Suite 300
Washington, DC 20007
202-424-7500

Joseph Frederick Hession
Carlton Fields, PA
1201 West Peachtree Street
Suite 3000
Atlanta, GA 30308
404-815-2706

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

Because I sit in a trial court, I do not have reliable records regarding which of my cases go on from the Eleventh Circuit to request or receive Certiorari.

- 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.

United States v. Patrol Services, Inc., 1:98-cv-1348-BBM

The Eleventh Circuit reversed my award of attorneys fees to the relator's counsel in this case, finding that I had reduced the attorneys fees beyond what was legally permissible. The court remanded the case to me for reconsideration and recalculation of the award of attorneys fees. A copy of the Eleventh Circuit opinion is attached.

Riverwood Int'l Corp. (k/n/a Graphic Packaging Int'l, Inc.) v. R. A. Jones & Co., 1:98-cv-2840-BBM

After the trial of this patent case, the Federal Circuit reversed one of my rulings regarding prior art, and vacated the juror's verdict based on that ruling. Riverwood Int'l v. R.A. Jones & Co., 324 F.3d 1346 (Fed. Cir. 2003).

Rene Clinton v. City of Atlanta, 1:99-cv-338-BBM

I granted summary judgment to the City of Atlanta on Ms. Clinton's Americans with Disabilities Act claims, and the Eleventh Circuit reversed the ruling.

Thomas James Mahone v. Walter Ray, 1:99-cv-1001-BBM

I dismissed Mr. Mahone's claims against the Georgia Board of Pardons and Paroles and several of its members. The Eleventh Circuit reversed my ruling in part. Mahone v. Ray, 326 F.3d 1176 (11th Cir. 2003).

William Chavis v. Clayton County Sch. Sys., 1:99-cv-2843-BBM

Mr. Chavis brought this action against his employer, alleging that the school system retaliated against him because of his testimony at a hearing in a state magistrate court hearing about the conduct of one of his colleagues. I granted summary judgment to the school system, and the Eleventh Circuit reversed the judgment and remanded the case for trial. Chavis v. Clayton County Sch. Dist., 300 F.3d 1288 (11th Cir. 2002).

Gates v. Wetherington, 1:00-cv-581-BBM

I granted summary judgment in favor of the defendant prison guards in Mr. Gate's excessive force case. The Eleventh Circuit reversed, and remanded the case for trial.

Covad Commc'ns Co. v. Bellsouth Corp., 1:00-cv-3414-BBM

This case required an analysis of whether the Telecommunications Act of 1996 preempted antitrust claims brought pursuant to the Sherman Antitrust Act. I concluded that it did, and dismissed the anti-trust claims. On appeal, the Eleventh Circuit held that it did not, and reversed my ruling. See Covad Commc'ns Co. v. BellSouth Corp., 299 F.3d 1272 (11th Cir. 2002). At the time, there was a split among the Circuits on this question, and when the Supreme Court of the United States considered the question, it vacated the Eleventh Circuit's opinion. See,

BellSouth Corp. v. Covad Commc'ns Co., 540 U.S. 1147 (2004). When the Eleventh Circuit considered the issue on remand, it revised its earlier opinion to agree with what I said in my original Order as to some claims, but not as to others. See Covad Commc'ns Co. v. BellSouth Corp., 374 F.3d 1044 (11th Cir. 2004).

United States v. Steven and Byron Pitts, 1:01-cr-733-BBM

The Pitts brothers appealed the sentence I imposed, arguing in part that I sentenced them at a time when the United States Sentencing Guidelines were deemed to be mandatory. Between the time that I sentenced the Pitts, and the time that the Eleventh Circuit considered their appeal, the Supreme Court of the United States decided United States v. Booker, 543 U.S. 220 (2005). Based on the Booker decision, the Eleventh Circuit remanded the case so that I could sentence the Pitts with knowledge that the sentencing guidelines were advisory, and not mandatory.

Loren F. v. Atlanta Indep. Sch. Sys., 1:01-cv-1532-BBM

Loren F.'s parents sued the Atlanta school system seeking reimbursement for the cost of sending him to private school. The parents alleged that the school system had failed to provide Loren F. with the special education services he was entitled to under the Individuals with Disabilities Education Act. I granted judgment to the school system as a matter of law. The Eleventh Circuit remanded the case for a bench trial. Loren F. ex rel. Fisher v. Atlanta Indep. Sch. Sys., 349 F.3d 1309 (11th Cir. 2003).

United States v. Carolyn Mitchell, 1:02-cr-393-BBM

The Eleventh Circuit remanded this case for resentencing, with direction to apply a one-level reduction in Ms. Mitchell's offense level. A copy of the unpublished Eleventh Circuit opinion is attached.

United States v. Henry Green, 1:02-cr-585-BBM-5

I imposed sentence upon Mr. Green at a time when the United States Sentencing Guidelines were deemed to be mandatory. After I sentenced him, and before the Eleventh Circuit addressed his appeal, the Supreme Court of the United States decided United States v. Booker, 543 U.S. 220 (2005). For that reason, the Eleventh Circuit remanded the case so that I could sentence Mr. Green based on an advisory guideline system.

United States v. Adan Miranda, 1:02-cr-586-BBM-4

The Eleventh Circuit reversed two of my rulings in this case. At the conclusion of his criminal trial, and after he had been convicted by the jury, I granted Mr. Miranda's Motion for a Judgment of Acquittal. The Eleventh Circuit found that there had been sufficient evidence to convict Mr. Miranda, and remanded the case for me to make a determination on Mr. Miranda's new trial motion. See United States v. Miranda, 425 F.3d 953 (11th Cir. 2005) Upon remand, I granted Mr. Miranda a new trial. The Eleventh Circuit reversed this decision as well, stating

that Mr. Miranda's motion for a new trial had not been timely filed, and specifically reversing my finding of prosecutorial misconduct. United States v. Miranda, 220 F. App'x 965 (11th Cir. 2007).

United States v. Eliany Molina, 1:02-cr-586-BBM-19

After the jury convicted Ms. Molina, I granted her Motion for Judgment of Acquittal. The Eleventh Circuit reversed my ruling, and remanded the case for me to impose sentence upon Ms. Molina for the crimes of which she had been convicted. United States v. Molina, 443 F.3d 824 (11th Cir. 2006).

United States v. Jose Jaimes Cambray, 1:02-cr-586-BBM-2

I imposed sentence upon Mr. Cambray at a time when the United States Sentencing Guidelines were deemed to be mandatory. After I sentenced him, and before the Eleventh Circuit addressed his appeal, the Supreme Court of the United States decided United States v. Booker, 543 U.S. 220 (2005). For that reason, the Eleventh Circuit remanded the case so that I could sentence Mr. Cambray based on an advisory guideline system.

Parker v. Scrap Metal Processors, Inc., 1:02-cv-925-BBM

The Eleventh Circuit reversed two of my rulings in this case. After a substantial jury award, the defendants appealed and argued that I committed error in my charge to the jury. The charge I gave was provided by the plaintiff, and no one objected to it at the time I gave it. Nevertheless, the Eleventh Circuit held that I committed plain error in the jury charge, and remanded the case for retrial. See Parker v. Scrap Metal Processors, Inc., 386 F.3d 993 (11th Cir. 2004). On remand, I realized that only state law claims remained, and I remanded the case to state court for lack of federal jurisdiction. The Eleventh Circuit held that I abused my discretion in not exercising supplemental jurisdiction. Parker v. Scrap Metal Processors, Inc., 468 F.3d 733 (11th Cir. 2006).

Chep USA v. Mock Pallet Co., 1:02-cv-2053-BBM

After a jury trial in which the defendant received an award against the plaintiff, and the plaintiff recovered nothing, the Eleventh Circuit reversed a number of my rulings, and affirmed others. Chep USA v. Mock Pallet Co., 138 F. App'x 229 (11th Cir. 2005)

Williams v. Chatman, 1:02-cv-3362-BBM

This was the federal habeas action brought by Wayne Williams, who had been convicted in Atlanta's highly publicized child murders during the 1980's. I did not grant federal habeas relief to Mr. Williams, and the Eleventh Circuit did not disturb this outcome. However, on appeal, the Eleventh Circuit found that I did not have jurisdiction to address some of the issues I ruled on, and I did have jurisdiction to rule on some of the issues I failed to address. Williams v. Chatman, 510 F.3d 1290 (11th Cir. 2007).

United States v. Middlebrooks, 1:03-cr-431-BBM

The Eleventh Circuit remanded this case for resentencing of two defendants after the Supreme Court decided United States v. Booker, 543 U.S. 220 (2005). I first sentenced these defendants prior to the Booker decision, and pursuant to what was deemed a mandatory guideline system. The Eleventh Circuit also found that I abused my discretion in making an evidentiary ruling, but found that the error was harmless. United States v. Middlebrooks, 141 F. App'x 834 (11th Cir. 2005).

United States v. Kirk Burns, 1:03-cr-506-BBM

The Eleventh Circuit remanded this case for resentencing in light of United States v. Davidson, 360 F.3d 1374 (11th Cir. 2004). The Circuit opinion is attached.

Ajaka v. Brooksamerica Mortgage Corp., 1:03-cv-977-BBM

I held that Mr. Ajaia was estopped from asserting certain claims under the Truth in Lending Act because he had failed to report his law suit on those claims in the schedules to his bankruptcy proceeding. My opinion is published at 2005 WL 6075374. The Eleventh Circuit reversed. See Ajaia v. Brooksamerica Mortgage Corp., 453 F.3d 1339 (11th Cir. 2006).

Hashemi v. Rutledge, 1:03-cv-2370-BBM

I granted summary judgment to two Deputy Sheriffs in this case asserting excessive force claims against them, and the Eleventh Circuit reversed the judgment. A copy of the Eleventh Circuit opinion is attached.

United States v. Hoang Nguyen, 1:04-cr-232-BBM

The Eleventh Circuit remanded this case with direction that I correct a clerical error in Mr. Nguyen's Judgment and Commitment Order. United States v. Hoang Nguyen, 2008 WL 4291613 (11th Cir. Sept. 19, 2008).

United States v. Michael Diaz, 1:04-cr-251-BBM

I ruled that Mr. Diaz requested to proceed with his trial without a jury. The Eleventh Circuit felt that the record demonstrated otherwise, and remanded the case for retrial with a jury. United States v. Diaz, 540 F.3d 1316 (11th Cir. 2008).

Levine v. World Financial, et al., 1:04-cv-1283-BBM

I granted a motion to dismiss the plaintiff's complaint for failure to state a claim on his Fair Credit Reporting Act claim. The Eleventh Circuit concluded that he had stated such a claim, and remanded the case in order that it could proceed to discovery. Levine v. World Fin. Network Nat'l Bank, 437 F.3d 1118 (11th Cir. 2006).

Eduardo Diaz v. Marcus Moseley, M.D., 1:04-cv-3056-BBM

I granted a Motion to Dismiss filed by the defendants who were prison doctors. The Eleventh Circuit reversed the Judgment stating that the record was not sufficiently developed to permit appellate review. A copy of the Eleventh Circuit opinion is attached.

United States v. Campos-Diaz, 1:05-cr-241-BBM

The Eleventh Circuit did not disturb the substance of any rulings I made, but remanded the case for correction of a clerical error in the Judgment and Commitment Order. United States v. Campos-Diaz, 472 F.3d 1278 (11th Cir. 2006).

United States v. Ledbetter, 1:05-cr-409-BBM

The Eleventh Circuit remanded the case for resentencing, stating that the government had breached its plea agreement with Mr. Ledbetter at sentencing. A copy of the Eleventh Circuit opinion is attached.

Hawes v. Howerton, 1:05-cv-683-BBM

The Eleventh Circuit remanded this case to me twice. First, the court held that I entered an Order granting Mr. Hawes's Motion for Reconsideration when I did not have jurisdiction to do so, and remanded the case for me to vacate my Order. A copy of the Eleventh Circuit's opinion dated September 28, 2006 on this issue is attached. Thereafter, I granted the Warden's Motion to Dismiss Mr. Hawes's habeas petition because it was barred as a second or successive petition, or alternatively because it was time barred. The Eleventh Circuit remanded the case again stating that the record in the case was insufficient to establish whether Mr. Hawes's petition was successive. This opinion was dated December 27, 2007, and it is attached as well.

Skop v. City of Atlanta, 1:05-cv-1754-BBM

I granted summary judgment to the police officer in this case based on qualified immunity. The Eleventh Circuit concluded that the officer had committed a Fourth Amendment violation which was well established, and remanded the case for trial. Skop v. City of Atlanta, 485 F.3d 1130 (11th Cir. 2007).

United States v. Holmes, 1:06-cr-109-BBM

I denied a Motion to Suppress the search of Mr. Holmes's residence. On appeal, the Eleventh Circuit found that I had failed to consider one of the necessary factors in my evaluation of the search, and remanded the case for reconsideration. United States v. Holmes, 270 F. App'x 767 (11th Cir. 2008).

Mortgage Elec. Registration Sys. v. Booker, 1:06-cv-166-BBM

I denied Ms. Booker's Motion to Appeal *In Forma Pauperis*, and the Eleventh Circuit remanded with instruction to vacate the Order denying appeal, insofar as I had been without jurisdiction to issue it. A copy of the Opinion is attached. [Doc. No. 21]

United States v. Abdul L. Holyfield, 1:06-cr-175-BBM

Mr. Holyfield was charged with numerous counts of bank fraud and aggravated identity theft. The jury convicted him of seven of those counts. The Eleventh Circuit found that I admitted hearsay evidence into the trial, and reversed Mr. Holyfield's conviction on two of the seven counts for that reason. Mr. Holyfield's

case was remanded for resentencing for that reason. United States v. Thomas, et al., 2009 WL 449184 (11th Cir. Feb. 24, 2009).

United States v. Smith, 1:06-cr-376-BBM

In a lengthy opinion, the Eleventh Circuit upheld Mr. Smith's conviction and the term of the sentence I imposed. However, the court held that I did not properly provide for Mr. Smith to serve his sentence concurrently with a state sentence imposed for the same conduct which was the subject of his federal conviction. Thus, the case was remanded with direction that I sentence Mr. Smith to the same term as the original sentence, but with express direction that it run concurrently with the state sentence. United States v. Smith, 2009 WL 567243 (11th Cir. Mar. 6, 2009).

United States v. Talbin D. Andrews, 1:07-cr-15-BBM

The Eleventh Circuit remanded this case for a correction of a clerical error in the Judgment & Commitment Order. A copy of the Opinion is attached.

Morgan v. Pac. Specialty Ins. Co., 1:07-cv-502-BBM

I granted summary judgment to the defendant insurance company. The Eleventh Circuit found that there were issues of fact to be decided by the jury, and reversed the judgment. A copy of the Eleventh Circuit opinion is attached [114].

Nicholson v. Shafe, 1:07-cv-2724-BBM

I granted the Defendant's Motion to Dismiss and awarded attorneys fees against the plaintiff. The Eleventh Circuit ruled that I committed error in dismissing the case. Nicholson v. Shafe, 558 F.3d 1266 (11th Cir. 2009).

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I place all of my decisions on our court's CM/ECF system. This means that any decision I write is available to the public on the PACER system. I rarely designate whether a particular opinion of mine should be published or not published.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

United States v. Farley, 1:07-CR-0196-BBM

The defendant filed a motion asserting that a portion of 18 U.S.C. § 2241(c) was unconstitutional as applied to him. I agreed, and a copy of my order is attached.

The Lamar Co. v. City of Marietta, 1:07-cv-764-BBM

This was a First Amendment challenge to the City of Marietta's sign ordinance. I concluded that the ordinance did not impose sufficient time limits within which

local officials were required to make a decision regarding a sign permit application. A copy of my order dated February 25, 2008 is attached.

Lamar Advertising Co. v. City of Douglasville, 1:02-cv-1554

Plaintiff challenged the City of Douglasville's sign ordinance as an unconstitutional restriction on the freedom of speech. I concluded that five provisions of the ordinance were unconstitutional prior restraints on speech under the First Amendment. 254 F.Supp.2d 1321 (N.D. Ga. 2003).

Marlyn Tillman v. Gwinnett County Sch. Sys., 1:04-cv-1180

This lawsuit asserted that the dress code for the Gwinnett County school system violated the First Amendment rights of Ms. Tillman's son, who was a student. I concluded that one of the dress codes at issue was void for vagueness, and granted certain declaratory relief to Ms. Tillman. This case was ultimately settled by the parties. A copy of my Order, dated November 23, 2005 is attached. Ms. Tillman filed a Motion for Reconsideration of the November 23, 2005 Order, which I granted in part. A copy of that Order, dated July 27, 2006, is attached as well.

Zibtluda, LLC v. Gwinnett County, 1:01-cv-1416-BBM

This action was brought as a First Amendment challenge to Gwinnett County, Georgia's adult entertainment ordinance. I entered a preliminary injunction prohibiting the county from enforcing the ordinance against the plaintiff. I held that the ordinance failed to set a definite time period within which county officials had to approve or deny an application for a license, thus constituting an unconstitutional prior restraint on speech. Gwinnett County quickly enacted a new ordinance which did meet constitutional requirements and I upheld the new ordinance. The Eleventh Circuit dismissed the appeal of my injunction Order as moot in light of the newly enacted ordinance, and affirmed my opinion upholding the new ordinance. A copy of my decision dated September 16, 2003 is attached.

Jack Alderman v. James Donald, 1:07-cv-147-BBM.

A Georgia death row inmate filed a § 1983 claim challenging Georgia's three-drug lethal injection method as unconstitutional. I denied Plaintiff's motion for summary judgment, and granted defendants' motion, thus dismissing the inmate's complaint because his claim was time-barred and the lethal injection protocol was substantially similar to that of Kentucky, which had been upheld by the Supreme Court in Baze v. Rees, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008) (plurality opinion). The Eleventh Circuit affirmed the dismissal.

Florida Association of Professional Lobbyists, Inc. v. Div. of Legislative Info

Services, 525 F.3d 1073 (11th Cir. 2008). A state association of lobbyists attacking the constitutionality of a Florida statute that would have regulated legislative and executive lobbying in the State of Florida. Sitting by designation on the Eleventh Circuit, I wrote for the panel's opinion, which affirmed the District Court's decision to uphold the Act on First Amendment grounds. The

panel certified three questions to the Florida Supreme Court because they presented novel questions of Florida constitutional law.

Kidd v. Cox, 1:06-cv-997

I sat on a three-judge panel which considered a constitutional challenge to Georgia Senate Bill 386. SB386 redistricted Georgia Senate Districts 46, 47 and 49, changing voting districts in Athens - Clarke County, Georgia and adjacent counties. The panel concluded that the plaintiffs failed to (1) carry their burden of showing that the redistricting plan was unrelated to legitimate redistricting criterion; (2) articulate manageable or politically-neutral standards that would make an equal protection political gerrymandering claim justiciable; or (3) demonstrate that the redistricting plan violated rights protected under the First Amendment. 2006 WL 1341302 (N.D. Ga., May 16, 2006)

- 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 been designated to sit with the Eleventh Circuit on two occasions—once during 2002, and once in October, 2007. I authored some opinions, and wrote or otherwise participated in other *per curiam* opinions. The following is a list of those opinions:

Weeks v. Harden Mfg. Corp., 291 F.3d 1307 (11th Cir. 2002)

This case was brought by an employee asserting that his refusal to agree to a compulsory arbitration provision constituted protected activity for purposes of establishing a prima facie case of retaliation. Our panel held that it did not. I authored this opinion, and Judge Ed Carnes contributed to it as well.

Womack v. Comm'r, 510 F.3d 1295 (11th Cir. 2007)

This opinion addressed the tax treatment of lottery winnings, holding that such winnings should be treated as ordinary income, as opposed to a long term capital asset. I authored this opinion with input from Chief Judge Edmondson and Judge Dubina.

Florida Ass'n of Prof'l Lobbyists, Inc. v. Div. of Legislative Info. Servs., 525 F.3d 1073 (11th Cir. 2008)

This per curiam opinion addressed a Constitutional challenge to a Florida statute which limited expenditures made by lobbyists, and set reporting requirements for lobbyists. The panel certified a question about the Florida Constitution to the Supreme Court of Florida. I was not primarily responsible for writing this opinion.

Canon Latin Am., Inc. v. Lantech (CR), S.A., 508 F.3d 597 (11th Cir. 2007)

This per curiam opinion vacated an injunction against a Cost Rican corporation

which had been imposed by a lower court, and enjoined a legal action brought in Costa Rica. I did not have primary writing responsibility for this opinion.

Buckley v. Haddock, 292 F. App'x 791 (11th Cir. 2008)

This opinion addressed an excessive force claim. An opinion was written by each member of the 3-judge panel. I filed a dissenting opinion setting forth my analysis which would have resulted in a jury trial for the plaintiff.

United States v. Rodriguez, 259 F. App'x 270 (11th Cir. 2007)

This was a criminal appeal. I was primarily responsible for writing this opinion.

United States v. Melo, 259 F. App'x 248 (11th Cir. 2007).

This criminal appeal challenged Mr. Melo's sentence. I was primarily responsible for writing this opinion.

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:

Our court has a conflicts screening system. I am automatically recused, for example, from any case in which my husband's law firm is counsel. I have provided a list of any securities owned by my husband or by me, and the screening system automatically blocks any case involving those companies from being assigned to me. Because cases involving my husband's law firm and companies in which we own stock are never assigned to me, the issue of recusal never comes up. Nevertheless, I review the Certificates of Interested Persons called for by the Rules of our court to be sure they don't indicate any other type of conflict.

Prior to the time our court got the conflicts screening software, I entered an Order in each case in which I had a conflict. My conflicts were always a result of either the involvement of my husband's law firm, or ownership of stock in one of the parties by my husband or me. I have attached a list of every case in which I entered an Order of recusal. The two cases I next describe were unusual, and I believe require further explanation.

Prior to the time our court got the conflicts software, I relied on the parties to file the Certificate of Interested Parties called for by our rules, in order to determine whether I had a conflict. In the case of In re Mirant Securities, 1:02-cv-1467, the parties failed to file a Certificate of Interested Persons, and I issued some Orders in the case before I realized that I owned stock in more than one company named as a defendant in the case.

I held a hearing with counsel to explain what I had done, and recused myself sua sponte, from the case by Order dated September 19, 2003.

I recused myself in a products liability case after handling it for some time. I realized that the son-in-law of the plaintiff was a friend, business associate and banker with whom my husband had a long term relationship. The son-in-law knew that the case was assigned to me, and he also knew I was married to his friend. He mentioned the case to my husband a couple of times. During the pendency of the case, we were moving, and my husband was shopping for a mortgage. Without thinking about my case, my husband ended up in discussions with my plaintiff's son-in-law about obtaining our loan. I felt this could create an appearance of impropriety, and recused myself sua sponte, without explanation. We did not ultimately get our loan with this banker. The case was Leathers v. Pfizer, Inc. 1:04-cv-615-BBM.

- 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;

I have had two *pro se* litigants sought to have me disqualified from their cases. The first is Walter Aycock, who sought to have me removed in two cases: Aycock v. City of Atlanta, 1:01-cv-88-BBM and Aycock v. Calk, 1:02-cv-736-BBM. I declined to recuse myself because Mr. Aycock's complaints about me related to rulings I had made in his case. The second *pro se* litigant who has sought my recusal is Jessie Ray Cox, has done so in two cases: 1:08-cv-1456 and 1:08-cv-3238. I declined to recuse myself in this case as well, because Mr. Cox's assertions of bias on my part related to rulings I had made in his cases.

- b. a brief description of the asserted conflict of interest or other ground for recusal;

Mr. Aycock sought to have me removed from his cases because he felt I was biased in favor of the defendants, and did not give proper consideration to his exhibits. Mr. Cox asserted that my rulings indicated biased against all poor people of color.

- c. the procedure you followed in determining whether or not to recuse yourself;

In the Aycock and Cox cases, I declined to recuse myself based on the precedent in this Circuit, which provides that adverse rulings do not constitute a legal basis for recusal.

- 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.

After I realized my conflict belatedly in the Mirant case, I sold all of my equities, and invested the money in mutual funds to avoid similar problems in the future.

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 served as Assistant Attorney General for the State of Georgia from December 1984 - May 1994. I was hired for that position by then-Attorney General Mike Bowers.

I served as United States Attorney in the Middle District of Georgia from 1997 to 2000. I became the acting United States Attorney on November 2, 1997. After Senate confirmation, I was appointed United States Attorney by President Clinton on March 2, 1998.

- 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.

When I graduated from college, I worked for several months (June - November, 1976) as a volunteer for the father of a friend of mine who was running for U.S. Congress (Billy Adams Campaign for Congress.) I generally did office work.

16. Legal Career: Answer each part separately.

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

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

I did not serve as a law clerk to a judge.

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

I have not practiced alone.

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

1994 – 2000
Office of the United States Attorney
300 Mulberry Street
Macon, GA 31201
United States Attorney (1998-2000)
Acting United States Attorney (1997-1998)
Assistant United States Attorney (1994-1997)

1984 – 1994
Office of the Attorney General of Georgia
40 Capitol Square
Atlanta, GA 30334
Senior Assistant Attorney General

1981 – 1984
Martin & Snow
240 Third Street
Macon, GA 31201
Attorney

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

As an associate at Martin & Snow, I did ERISA work, represented creditors in bankruptcy proceedings, and sometimes represented indigent criminal defendants in state court.

From 1984-1991, while working as an Assistant Attorney General I represented the state in personal injury and property damage cases throughout Georgia. I did some employment litigation as well as some appellate work. I was given a supervisory position in 1991. In this position I supervised the work of other lawyers and the nature of my practice changed. I represented licensing boards in prosecuting health care professionals for matters affecting their licensure, and I also represented Georgia state court judges when they got sued.

From May, 1994-November, 1997 I prosecuted crimes charged by the

Office of the U.S. Attorney for the Middle District of Georgia. I handled all aspects of my cases including the grand jury investigation, pretrial hearings, negotiating guilty pleas, trials and sentencing. I served as United States Attorney in the Middle District of Georgia from 1997 to 2000. I became the acting United States Attorney on November 2, 1997. After Senate confirmation, I was appointed United States Attorney by President Clinton on March 2, 1998. This was an office with approximately 60 employees. I worked with state, local and federal officials in the 70 county area in my district. I worked for the development of "Weed and Seed" sites in Albany, Athens, Macon and Valdosta. I served on the Attorney General's Advisory Council and as chair of the Executive Council for the Organized Crime Drug Enforcement Task Force for the Southeast Region.

Since August, 2000 I have served as a United States District Judge in Atlanta, Georgia. I preside over civil and criminal cases filed in my court, and issue written Orders on motions filed by the parties.

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

At Martin & Snow, my typical client was a bank or small business needing to have a claim filed in bankruptcy court, or requiring a profit sharing or retirement plan. During the time I was an Assistant Attorney General, my clients were state agencies and state employees. During the time I was a federal prosecutor, I worked with federal agencies to prosecute those who violated federal criminal statutes.

- 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.

Since 1994, my practice has been exclusively litigation in federal court. As U.S. Attorney all of my practice was criminal. Before 1994, more than 90% of my practice was civil and in state court or administrative agencies.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 60%
- 2. state courts of record: 35%
- 3. other courts:
- 4. administrative agencies: 5%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 60%
- 2. criminal proceedings: 40%

- 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.

During my years as a lawyer, I remember trying twelve cases— seven as sole counsel, two as lead, and three as second chair.

- 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.

I have not practiced before the Supreme Court of the United States.

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

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

1. United States v. Major, et al., 5:94-cr-44-WDO (M.D. Ga.)

This was the prosecution of a drug conspiracy indicted in August, 1994 and tried in October, 1996. I tried the case with Assistant United States Attorney Charles Calhoun, who can be reached at 478-752-3511. The judge was the Honorable Wilbur Owens. Two of the defendants were represented by Mr. Frank Hogue, who can be reached at 478-750-8040 and Ms. Sandra Popson, who can be reached at 478-742-6481.

2. United States v. Dean, 3:95-cr-1-DF (M.D. Ga.)

This was a drug prosecution with five defendants. All defendants pled guilty during 1995. The judge was the Honorable Duross Fitzpatrick. Some of the

defendants were represented by Sandra Popson at 478-742-6481, Mr. Alan Wheeler at 478-742-7488 and Mr. Doye Green at 478-743-9517.

3. United States v. Graves, 5:95-cr-05-WDO (M.D. Ga.)
This was the prosecution of Mr. Graves for a firearms offense. The evidence was that Mr. Graves, who was a 3-time convicted felon used a firearm to facilitate the rape of a 14 year old girl. He was convicted by a jury in 1997, and sentenced to a term of life in prison.

I tried this case with Jessica Hagen, who can be reached at 404-572-4702. The judge was the Honorable Wilbur Owens. Opposing counsel was Robert Faulker, who no longer appears in the Georgia Bar directory as a practicing lawyer.
4. United States v. Pope, 5:95-cr-38-DF (M.D. Ga.)
I prosecuted Mr. Pope for possessing a firearm as a 3-time convicted felon. The case was tried in March, 1996. The judge was the Honorable Duross Fitzpatrick, and opposing counsel was Hale Almand, Jr. who can be reached at 404-746-2237.
5. United States v. Taylor, 5:93-cr-21-WDO (M.D. Ga.)
I prosecuted this counterfeit case. Mr. Taylor pled guilty and was sentenced in 1995. The judge was the Honorable Wilbur Owens, and opposing counsel was Floyd Buford, who can be reached at 478-742-3605.
6. In re: E.I. Dupont de Nemours & Co., 4:95-cv-36-HL (M.D. Ga.)
This was a case referred to me as United States Attorney for a contempt investigation regarding discovery violations committed by E.I. Dupont and its counsel. I did some fairly extensive work on the case. The trial judge, Hugh Lawson, ultimately imposed civil fines on Dupont and on its counsel. The lawyers involved in the case were Neal Pope who can be reached at 706- 324-0050, Richard Gill, who can be reached at 334-834-1180, Stephen Clay who can be reached at 404-815-6514, John Chandler, who can be reached at 404-572-4646, William Boice who can be reached at 404-815-6464 and John Fleming at 404-853-8000.
7. Price v. Ga. Dep't of Transp., 182 Ga. App. 353 (1987)
Price v. Ga. Dep't of Transp., 257 Ga. 535 (1987)
This case raised questions regarding protection of state employees by the state's sovereign immunity, and was litigated in both the Georgia Court of Appeals and Georgia Supreme Court. The trial judge was Rosser Malone, in the State Court of Dougherty County. Opposing counsel was Mr. Terry Marlowe, who can be reached at 229-878-6500.
8. Ga. Dep't of Transp. v. Bonnett, 257 Ga. 189 (1987)
This was a condemnation case raising legal questions which ultimately required a ruling from the Georgia Supreme Court. The trial judge was Judge John Crosby

in the Superior Court of Tift County, Georgia. Opposing counsel was Hugh Gordon, who can be reached at 229-386-8004.

9. Miller v. Med. Ass'n of Ga., 262 Ga. 605 (1992)
This case litigated the constitutionality of a statute which was addressed by the Georgia Supreme Court. My co-counsel was Julia Anderson, now at 404-463-3630. Opposing counsel included Demetrius Mazacoufa at 404-897-1000, and Everett Gee at 434-736-3630.

10. In the Matter of Franklin Thomas McElwaney, 40 B.R. 66 (1984)
This was a fight between the Bankruptcy Trustee and the Federal Land Bank of Columbia over the assets of Mr. McElwaney. The judge was the Honorable Robert F. Hershner, Jr.. Opposing counsel were Ms. Lillian Lockery at 478-742-6145, and Mr. Thomas Talbot at 478-745-0885.

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.)

During the time I served as United States Attorney, the Justice Department had a program available to communities called "Weed & Seed." The idea was to bring communities together to weed out crime, and seed in opportunities. The Middle District of Georgia had none of these programs, but from 1997 to 2000, we started programs in Macon, Athens, Valdosta and Albany. One of the greatest things about it was that we developed partnerships with military installations in each of those cities to have summer camps with children from the Weed & Seed neighborhoods. Law enforcement officers and/or military personnel served as counselors for these camps. I felt we were able to expose these children to opportunities they might not otherwise have known about. It was a wonderful experience.

During the time I was at the Attorney General's office, I worked on an investigation into the lending practices of Fleet Finance Company. Fleet had a large number of loans in Georgia, which raised claims of usurious lending practices and fraudulent home repair schemes. The investigation resulted in a settlement with Fleet, by which it created a multimillion dollar loan pool for the benefit of the victims to be administered by the State of Georgia.

I have never performed lobbying activities for any client.

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 taught no courses. I have occasionally spoken at Continuing Legal Education seminars for Georgia lawyers. Those occasions are set out above in response to 12d.

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.

I deferred a portion of my compensation into a retirement account while I was employed with the State of Georgia and have continued to do so as an employee of the United States. I recently rolled-over my state deferred compensation account into my IRA. I have no arrangement or expectation of any future payments for any previous business or financial relationship or work done.

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 plans, commitments or agreements to pursue outside employment during my service with the court.

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.

Our court has a conflicts screening system. I am automatically recused, for example, from any case in which my husband's law firm is counsel. I have provided a list of any securities owned by my husband or by me, and the screening system automatically blocks any case involving those companies from being assigned to me. Because cases involving my husband's law firm and companies in which we own stock are never assigned to me, the issue of recusal never comes up. Nevertheless, I review the Certificates of Interested Persons called for by the Rules of our court to be sure they don't indicate any other type of conflict.

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

I will not sit in cases in which my husband's law firm appears as counsel, so long as he continues to be a partner in that firm. In all circumstances, I will follow the Code of Conduct for United States Judges and all applicable statutes, policies and procedures related to avoiding or resolving actual or potential conflicts.

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 judge, federal prosecutor and assistant attorney general, there have been prohibitions on my representation of indigent clients. However, I currently serve on the Board of the Georgia Women of Achievement, which honors women in Georgia history. This Board emphasizes working with schools to expose young people to the accomplishments of these historic Georgia women.

While in Macon, Georgia, I served on the Board of Directors for a Community College Foundation, the purpose of which was to reach out to people who might otherwise not be able to pursue an education. Through my membership in the Career Women's Network, also in Macon, I worked on the scholarship committee. I spent time establishing an interview process, interviewing candidates, and awarding the scholarships. I also did work with the "Christmas in April" program and Habitat for Humanity while I was in Macon, both of which sought to improve housing for the needy.

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 April 14, 2009, I received a call from Cassandra Butts of the White House counsel's office asking if I would fill out the application forms for this position. I was not interviewed by a committee. I had a telephone interview with staff from the Justice Department on Monday, April 21, 2009. Since that date I have had conversations with staff from the Justice Department, about the nomination paperwork and an interview appointment. On May 21, 2009, I met with Mr. Tom Perrelli, the Associate Attorney General as well as staff from the Department of Justice and from the White House Counsel's office for an interview. On June 15, 2009, I had a telephone conversation with Ms. Butts regarding the nomination process. My nomination was submitted to the United States Senate on June 19, 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 involved in the process has sought an implied assurance from me about how I would rule on any issue, case or question that might come before me as a judge on the court where I currently serve, or any other court.

AFFIDAVIT

I, Reedy B. Martin, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

JUNE 19, 2009
(DATE)

Reedy B. Martin
(NAME)

Anne Marie Carver
(NOTARY)

