

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Kevin Charles McNulty

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

United States District Judge for the District of New Jersey

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.

Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102

Residence: Short Hills, New Jersey

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

1954; Elizabeth, New Jersey

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.

1980 – 1983, New York University School of Law; J.D. (*cum laude*), 1983
1976 – 1977, Brown University (Graduate School); no degree awarded
1972 – 1976, Yale University; B.A., 1976

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.

1998 – present
Gibbons P.C.
(formerly Gibbons, Del Deo, Dolan, Griffinger & Vecchione)

One Gateway Center
Newark, New Jersey 07102
Director (2000 – present)
Of Counsel (1998 – 2000)

1987 – 1998
United States Attorney's Office for the District Of New Jersey
970 Broad Street
Newark, New Jersey 07102
Chief, Appeals Division (1995 – 1998)
Deputy Chief, Criminal Division (1992 – 1995)
Assistant United States Attorney (1987 – 1998)

1984 – 1987
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Associate

1983 – 1984
Hon. Frederick B. Lacey (now retired)
United States District Judge, District of New Jersey
Frank R. Lautenberg U.S. Post Office and Courthouse Building
Federal Square
Newark, New Jersey 07101
Judicial Clerk

Summer 1983
Arnold & Porter
555 Twelfth Street, NW
Washington, DC 20004
Summer Associate

Summer 1982
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Summer Associate

Summer 1981
Bernard Flaton, Esq.
One Penn Plaza
New York, New York 10119
Summer Associate

1978 – 1979
East Haven Shore Line Associations
50 Coe Avenue
East Haven, Connecticut 06512
Program Administrator

1978
Yale University
Human Resources/Personnel office
155 Whitney Avenue
New Haven, Connecticut 06520
Field interviewer, Medical School public health project

1977 – 1978
Mattatuck Historical Society
119 West Main Street
Waterbury, Connecticut 06702
Archivist

1976
New Haven Historical Society
114 Whitney Avenue
New Haven, Connecticut 06520
Archivist

Other Affiliations (uncompensated):

2010 – present
Bar Association for the Third Federal Circuit
c/o Nieves Heimall
P.O. Box 4041
Brick, New Jersey 08723
Member, Board of Governors

2010 – present
The Historical Society of the United States
Court of Appeals for the Third Circuit
No physical address
Member, Board of Directors

2005 – 2010
Urban League of Essex County, New Jersey
508 Central Avenue
Newark, New Jersey 07107
Member, Board of Directors

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 registered for the selective service in 1972. I did not serve 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.

Best Lawyers in America (2011 and prior years)
Super Lawyers (2011 and prior years)
Lawyer of the Year, New Jersey Law Journal (2008)
U.S. Attorney's Office: Performance Awards (Unknown dates, 1987 – 1998)
Federal Law Enforcement Officers Association Award (Unknown date, 1987 – 1998)
Law Review Alumni Association Award (1983)
John Norton Pomeroy Prize (1983)
Order of the Coif (1983)
New York University Law Review Articles Editor (1982 – 1983)
New York University Law Review (1981 – 1982)
American Judicature Society Prize (1981)
Moot Court Advocacy Award (1981)

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 (2004 – present)
Association of the Federal Bar of New Jersey (1999 – present)
Bar Association of the Third Federal Circuit (2010 – present)
 Member, Board of Governors (2010 – present)
Historical Society of The United States Court of Appeals for the Third Circuit (2010 – present)
 Member, Board of Directors (2010 – present)
New Jersey State Bar Association (2004 – present)
 Appellate Practice Committee (2010 – present)
Third Circuit Lawyers' Advisory Committee (1997 – 1999)

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.

New York, 1985

New Jersey, 1988

There have been no lapses in my memberships.

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

Supreme Court of the United States, 1999

United States Court of Appeals for the Second Circuit, 1987

United States Court of Appeals for the Third Circuit, 1987

United States Court of Appeals for the Fourth Circuit, 2009

United States Court of Appeals for the Fifth Circuit, 2000

United States Court of Appeals for the Eighth Circuit, 2001

United States Court of Appeals for the Eleventh Circuit, 2006

United States Court of Appeals for the District of Columbia Circuit, 2011

United States Court of Appeals for the Federal Circuit, 2010

United States District Court for the Southern District of New York, 1985

United States District Court for the Eastern District of New York, 1985

United States District Court for the District of New Jersey, 1988

There have been no lapses in my memberships.

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.

Colony Pool & Tennis Club (1999)

Montclair Beach Club (1994 – 1998)

Museum of Modern Art (2010 – 2011)

Urban League of Essex County, New Jersey (2005 – 2010)

Member, Board of Directors (2005 – 2010)

- 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 these organizations 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.

With Jed Goldstein, *A Re-Examination of the Third Circuit's Open Policy Toward the Submission of Amicus Curiae Briefs in Light of the Government's Recent Advocacy in Other Circuits of a More Restrictive Standard*, Bar Association for the Third Federal Circuit Newsletter, Spring 2011. Copy supplied.

Third Circuit Appellate Practice Manual, Penn. Bar Inst., 2d ed., 2010 (Co-authored chapter 22 re: Criminal Appeals). Copy supplied. A copy of the same chapter from the superseded first edition (2006) is also supplied.

With Victoria K. Pérez, *Federal Appellate Trap for The Unwary: The Tenth Circuit Rules in Vanderwerf v. SmithKline Beecham Corp. That the Deadline for Filing a Notice of Appeal Was Not Suspended After Plaintiffs Withdrew Their Motion for Reconsideration*, Business & Commercial Litigation Newsletter, June 8, 2010. Copy supplied.

With Christopher Walsh, *What Lies Ahead; Preview of arbitration cases currently on the docket*, New Jersey Law Journal, March 30, 2009. Copy supplied.

As an editor of the New York University Law Review (1981 – 1983), I had some editorial responsibility for a number of articles, notes and comments. I had no responsibility for the content, and my name would not be listed except in the masthead of the law review volume.

- 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.

June 12, 2007: Testimony before the New Jersey Courts Committee on Attorney Advertising about Super Lawyers and Best Lawyers. I have no notes, transcript or recording, but press coverage is supplied.

- 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.

July 8, 2009: NJ-ICLE (New Jersey Institute for Continuing Legal Education) accredited class taught at Gibbons, P.C. (single one-hour session); Basics of Appellate Procedure, Federal and New Jersey. Notes supplied.

May 17, 2007: Panelist, New Jersey State Bar Association Annual Meeting Atlantic City, New Jersey. This was a panel and question/answer session concerning the then-pending litigation over Ethics Opinion 39, which essentially banned participation in, or lawyer's communications of, ratings in Super Lawyers, Best Lawyers, and other similar publications. Attorneys for both sides participated. I have no notes, transcript, or recording, but press coverage is supplied. The address of the New Jersey State Bar Association is 1 Constitution Square, New Brunswick, NJ 08901.

- 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.

Interview, *Q&A with Gibbons' Kevin McNulty*, Law360, Nov. 25, 2009. Copy supplied.

Mary Pat Gallagher, *N.J. Court Weighs Proposed Easing of Super Lawyers Ban*, New Jersey Law Journal, Sept. 28, 2009 (reprinted in multiple outlets). Copy supplied.

Henry Gottlieb, *Champions for Free Commercial Speech*, New Jersey Law Journal, Dec. 29, 2008. Copy supplied.

Dana Sullivan, *Deciding Super Lawyers*, New Jersey Lawyer, July 7, 2008. Copy supplied.

Henry Gottlieb, *Binding Arbitration Not Appealable If Reviewed Below*, New Jersey Law Journal, June 23, 2008. Copy supplied.

Daniel Wakin, *A Prosecutor Known for His Common Sense and Straightforward Style*, New York Times, Nov. 2, 2005. Copy supplied.

Rudy Larini, *Developer, Out of Jail, Now Entitled to New Trial*, Star-Ledger, Sept. 28, 2005. Copy supplied.

George Jordan, *Financiers Appeal \$27M Tax Collection Verdict*, Star-Ledger, May 6, 2003. Copy supplied.

Matthew Dowling, *Sending Districts Seek Greater Presence*, Star-Ledger, Apr. 15, 2003 (reprinted in multiple outlets). Copy supplied.

Mitchel Maddux, *Party Boss's Bribery Conviction Overturned*, The Record, Mar. 20, 2003 (quote reprinted in multiple outlets). Copy supplied.

Mitchel Maddux & Josh Gohlke, *Ex-GOP Chief in Passaic Freed Pending Appeal*, The Record, Oct. 19, 2002. Copy supplied.

Robert Seidenstein, *New High Hurdle: Going After Docs Who Lie about Credentials*, New Jersey Lawyer, June 24, 2002. Copy supplied.

Michael Booth, *High Court Lengthens Coattails of Its Anti-Profiling, Consent-Search Edict*, New Jersey Law Journal, May 6, 2002 (reprinted in multiple outlets). Copy supplied.

William Safire, *On Language*, New York Times, Mar. 31, 2002. Copy supplied.

Henry Gottlieb, *N.J. Joins Minority of States that Ban Freewheeling Consent Searches*, New Jersey Law Journal, Mar. 15, 2002 (reprinted in multiple outlets). Copy supplied.

Laura Mansnerus, *High Court in New Jersey Strictly Limits Auto Searches*, New York Times, Mar. 5, 2002. Copy supplied.

Robert Schwaneberg, *High Court Ruling Limits Police on Car Searches*, Star-Ledger, Mar. 5, 2002. Copy supplied.

Josh Gohlke, *Ex-County GOP Chairman Begins Prison Term Today*, The Record, Nov. 2, 2001. Copy supplied.

Tim O'Brien, *Malicious Prosecution Remains New Jersey's Toughest Tort*, New Jersey Law Journal, Oct. 29, 2001. Copy supplied.

Former Prosecutor's Wife Loses Conviction Appeal, New York Times, Feb. 14, 1998. Copy supplied.

Dana Coleman, *Mental Disorders Could Mean Lighter Fed Sentence*, New Jersey Lawyer, Oct. 6, 1997. Copy supplied.

Joseph Slobodzian, *Volition New Factor in Sentencing*, National Law Journal, Sept. 15, 1997. Copy supplied.

Matt Ackermann, *Lack of Control May Warrant Shorter Term, Court Rules*, New Jersey Law Journal, Sept. 8, 1997. Copy supplied.

Henry Gottlieb, *Sorry, Wrong Number: 911*, New Jersey Law Journal, June 10, 1996. Copy supplied.

Lisa Brennan, *The Singing Prosecutor*, New Jersey Law Journal, May 27, 1996. Copy supplied.

Steven Crabill, *Former Banker Gets 51 Months in Prison*, The Record, Dec. 24, 1991. Copy supplied.

Two Former Officials of New Jersey Banks Plead Guilty to Fraud, Wall Street Journal, Aug. 15, 1991. Copy supplied.

Boca Raton Man Indicted in Drug, Credit Card Scheme, Miami Herald, Mar. 9, 1991. Copy supplied.

Chris Mondics, *8 Indicted in Drug, Counterfeit Ring*, The Record, Mar. 9, 1991. 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 not held any judicial office.

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

i. Of these, approximately what percent were:

jury trials:	____%
bench trials:	____% [total 100%]
civil proceedings:	____%
criminal proceedings:	____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to

an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held any judicial office.

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

15. Public Office, Political Activities and Affiliations:

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

I have never held public office. I have never been a candidate for elective office or a nominee for appointed office.

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

I have never held office in or rendered services to any political party or election committee. I have never held a position or played a role in a political campaign.

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;

Hon. Frederick B. Lacey, United States District Judge for the District of New Jersey, 1983 – 1984

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

I have never 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.

1984 – 1987

Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Associate

1987 – 1998

United States Attorney for the District Of New Jersey
970 Broad Street
Newark, New Jersey 07102
Assistant United States Attorney (1987 – 1998)
Deputy Chief, Criminal Division (1992 – 1995)
Chief, Appeals Division (1995 – 1998)

1998 – present

Gibbons P.C.
(formerly Gibbons, Del Deo, Dolan, Griffinger & Vecchione)
One Gateway Center
Newark, New Jersey 07102
Of counsel (1998 – 2000)
Director (2000 – present)

- 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 an arbitrator or mediator.

b. Describe:

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

My law practice has been devoted to civil and criminal litigation at the trial and appellate levels.

From 1984 through 1987, I was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison, in New York City. My work involved a mix of civil litigation in both state and federal court, as well as some white collar criminal defense.

From 1987 to 1998, I was a federal prosecutor in the United States Attorney's Office for the District of New Jersey. From 1987 to 1991, as a member of the Criminal Division, I prosecuted a wide variety of firearms, narcotics, fraud and immigration offenses. In 1990, I was selected to head the Organized Crime and Drug Enforcement Task Force, which handled the largest cases in the Criminal Division, including RICO prosecutions. From 1991 to 1992, I prosecuted large white-collar fraud cases in the Frauds Division. In 1992, I was appointed Deputy Chief of the Criminal Division, and maintained a full caseload while supervising other attorneys. In early 1995, I was appointed Chief of Appeals. In that position, I briefed and argued criminal appeals to the United States Court of Appeals for the Third Circuit, supervised the other attorneys in the Division, served as Ethics Officer, and acted as general legal adviser to the Office and the United States Attorney.

In 1998, I joined Gibbons P.C., where I am a Director. I am chair of the firm's appellate practice, and a member of the Business & Commercial Litigation department. My time is equally divided between appeals and trial work.

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

From 1984 through 1987 I was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York. I had no subspecialty. Most of my clients were corporations, and the majority of my practice was civil litigation.

From 1987 to 1998, as an Assistant United States Attorney, I represented the United States. From 1987 to 1995, my practice consisted of prosecution of criminal cases in the United States District Court for the District of New Jersey. From 1995 to 1998, as Chief of Appeals, I specialized in criminal appellate practice, representing the United States before the United States Court of Appeals for the Third Circuit.

From 1998 to the present, at Gibbons P.C., I have resumed my practice of predominantly civil litigation. The majority of my clients are corporations. Civil matters have largely consisted of litigations between commercial entities, and have typically included antitrust, securities, patent and contract disputes, but have also encompassed constitutional and

other claims. My criminal cases have almost all been white-collar defense representations.

- 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.

Nearly 100% of my practice has been in the field of civil and criminal litigation. When in the Criminal Division at the United States Attorney's Office (1987 – 1994), I appeared in court frequently, sometimes daily, although the frequency decreased as my cases came to involve more pre-indictment investigation and my supervisory responsibilities grew. In private practice, my court appearances have been regular, but less frequent.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 80% |
| 2. state courts of record: | 20% |
| 3. other courts: | 0% |
| 4. administrative agencies: | <1% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 50% |
| 2. criminal proceedings: | 50% |

- 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 twelve cases to verdict, judgment, or final decision: four as lead counsel (or co-lead counsel); six as sole counsel; and two as associate counsel.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 58% |
| 2. non-jury: | 42% |

- 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 argued before the Supreme Court. I took the major role in drafting amicus briefs in two Supreme Court cases:

Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029 (2000) (concerning duties of criminal defense attorney to counsel client regarding right to appeal and to file notice of appeal)

United States v. Peguero, 526 U.S. 23, 119 S. Ct. 961 (1999) (obligation of court to advise defendant of right to appeal in criminal case)

Copies of the briefs are supplied.

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. Marval*, Crim. No. 88-245 (District of New Jersey), *aff'd by judgment order*, 908 F.2d 965 (Table) (3d Cir. 1990); Hon. Anne E. Thompson, United States District Judge (Hon. Dickinson R. Debevoise re-entered two guilty pleas when a potential conflict of interest emerged regarding Judge Thompson)

In 1988, I supervised and conducted an investigation of a ring that supplied fraudulent immigration documents to visa applicants, netting millions of dollars from the applicants, only to leave them in legal jeopardy. The means of investigation included the use of cooperating informants, grand jury subpoenas, undercover tapes and search warrants. A number of defendants pled guilty, and four went to trial. I was sole counsel for the United States at the trial, which occupied several weeks and involved thousands of documents, as well as numerous witnesses. Three defendants pled guilty after the presentation of the government's case, and a fourth was found guilty by the jury.

Counsel for Defendant L. Marval:
Francis J. Hartman
505 South Lenola Road
Moorestown, New Jersey 08057
(856) 235-0220

Counsel for Defendant S. Marval:

Dominic F. Amorosa
86 Stewart Road
Short Hills, New Jersey 070078
(973) 467-7999

[successor post-trial; trial counsel, Charles Nugent, is deceased]

Counsel for Defendant Gervasoni:

John S. Furlong
Furlong & Krasny
820 Bear Tavern Road
West Trenton, New Jersey 08628
(609) 882-0288

Counsel for Defendant Meier:

Donald Roscoe Brown
333 West State Street
Trenton, New Jersey 08618
(609) 915-3705

2. *United States v. Parlavecchio, et al.*, Crim. No. 91-35 (District of New Jersey), *aff'd by judgment order*, No. 92-5216 (3d Cir. 1993), *cert. denied*, 511 U.S. 1126 (1994); Hon. Garrett E. Brown, Jr., United States District Judge

From 1989 to 1991, I conducted and supervised a two-year wiretap investigation that resulted in multiple indictments. A large group of conspirators engaged in a wide range of criminal activities, including narcotics trafficking and counterfeiting of financial instruments, in the United States, Brazil and Italy. Most pled guilty, but in 1991 four defendants went to trial before a jury on RICO, narcotics, counterfeit credit card and counterfeit money order charges. Assisted by a junior AUSA, I conducted the jury trial, which lasted over a month, and obtained guilty verdicts against all defendants. I also briefed and argued the appeal, obtaining affirmances of all convictions in 1993.

For Defendant N. Parlavecchio:

Thomas R. Ashley
50 Park Place, #1400
Newark, New Jersey 07102
(973) 623-0501

For Defendant A. Parlavecchio:

(on appeal)
Alan L. Zegas
552 Main Street
Chatham, New Jersey 07928
(973) 701-7080

(at trial)
Robert J. DeGroot
56 Park Place
Newark, New Jersey 07102
(973) 643-1930

For Defendant Dellisanti:
Kim Otis, Esq
Haveson & Otis
194 Nassau Street #9
Princeton, New Jersey 08542
(609) 921-0090

For Defendant Zirpoli:
David E. Schafer
Assistant Federal Public Defender
22 South Clinton Avenue
Station Plaza #4, 4th Floor
Trenton, New Jersey 08609
(609) 989-2160

3. *Ssangyong (USA), Inc. v. Innovation Group Ltd.*, Civ. No. 3-96-10165 *et al.*
(consolidated cases) (S.D. Iowa); Hon. Ronald E. Longstaff, United States District
Judge.

In this commercial contract case, a financing entity sued our client, a cookware importer, and our client counterclaimed for breach of the covenant of good faith and fair dealing. Together with a partner, I conducted a bench trial in which we obtained a verdict on our counterclaim, while the plaintiff recovered on a smaller claim. I was co-counsel in the case from 1998 to 2001. I conducted depositions, briefed and argued motions, prepared witnesses, and examined witnesses at trial.

Co-counsel for Innovation Group Ltd.:
David E. De Lorenzi
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4743

Counsel for individual co-defendant:
Kevin H. Marino
Marino Tortorella P.C.
437 Southern Boulevard
Chatham, New Jersey 07928
(973) 824-9300

Counsel for Ssangyong:
Gregory M. Harvey
Montgomery, McCracken, Walker & Rhoads
123 South Broad Street
Philadelphia, Pennsylvania 19109
(215) 772-7684

4. *United States v. Murphy*, 323 F.3d 102 (3d Cir. 2003) (Judges Becker, Scirica, and McKee); on remand at Crim. No. 00-778 (D.N.J.); Hon. Garrett E. Brown, Jr., United States District Judge

In a lengthy, high profile political corruption trial, a county party Chairman was convicted of mail fraud and bribery in connection with a kickback scheme. We were retained to handle the appeal to the United States Court of Appeals for the Third Circuit. The Court of Appeals accepted our arguments that the government's theory of mail fraud did not properly extend to political patronage, despite Congress's general endorsement of the "honest services" theory. After oral argument and supplemental briefing, the Court *sua sponte* released Murphy from prison. In a published decision, the Court reversed Murphy's criminal conviction. I briefed the appeal, which was argued by my partner Lawrence S. Lustberg. On remand, after a negotiated plea, I argued the resentencing before the District Judge.

Counsel for United States:
George S. Leone, then Chief of Appeals, U.S. Attorney's Office
Currently a Judge of the New Jersey Superior Court
Camden County Hall of Justice
101 South Fifth Street, 1st Floor
Camden, New Jersey 08103
(856) 379-2371

5. *Varsolona v. Bankers Trust, et al.*, 360 N.J. Super. 292 (Appellate Division), 180 N.J. 605 (July 28, 2004).

I represented Bankers Trust (Deutsche Bank) on appeal of a class action judgment arising from a municipal program to securitize tax liens. The trial court, citing our State's tax sale law and consumer fraud act, had invalidated a program under which nonperforming tax liens served as collateral for a bond issue by a private trust and produced immediate cash flow for strapped municipalities. I drafted the appeal briefs in cooperation with co-counsel and argued the case in the Appellate Division and the New Jersey Supreme Court. The New Jersey Supreme Court affirmed the Appellate Division's reversal of the trial court's judgment and substantially adopted our positions.

Co-counsel for Bankers Trust (Deutsche Bank):
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Lead Attorney for the Plaintiff Classes:
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Attorneys for Defendants Breen Capital Service Corporation:
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Attorneys for Defendant FB TLC Trust:
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6. *ITT v. Pierre Development, A&P, et al.*, No. A2841-02T5 (Appellate Division, Dec. 3, 2004), *certification denied*, 183 N.J. 217 (2005).

The firm obtained a summary judgment in favor of ITT, arising from a mortgage foreclosure in which ITT's lien was incorrectly reported as having been discharged in bankruptcy or otherwise satisfied. Because of the difficulty of the legal issues, I was retained to brief and argue the appeal, and I obtained affirmance of the judgment.

Counsel for Defendants/Appellants:
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Freehold, New Jersey 07728
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Alan J. Brody, Esq.
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Florham Park, New Jersey 07932
(973) 360-7900

7. *United States v. Umbrell, et al.*, Crim No. 04-370 (E.D. Pa.), *aff'd*, 500 F.3d 257 (3d Cir. 2007); Hon. Michael M. Baylson, United States District Judge; Cowen, Smith, and Siler, J., 6th Cir., by designation, Circuit Judges

From 2004 to 2007, my partner and I represented Mr. Umbrell. This was a public corruption case involving the Philadelphia City Treasurer and others. Our client, a Vice President of Commerce Bank, was essentially accused of giving favorable treatment to a city official to obtain preferential treatment for the bank. I briefed and argued highly complex and voluminous motions. During the three-month trial, I was essentially in charge of briefing and arguing issues of law (motions, evidence questions, jury charges and the like). Our client was convicted. I substantially drafted the brief on appeal; co-counsel argued. Our client's conviction was affirmed by the Court of Appeals.

Counsel for United States:
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Co-counsel for Defendant Umbrell:
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Counsel for Defendant Holck:
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Counsel for Defendant Knight:
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(215) 790-4010

8. *In re Opinion 39 of Committee on Attorney Advertising*, trial before Special Master, Docket Nos. E 18, 19, 20 (Hon. Robert A. Fall, J.A.D. (retired)); 197 N.J. 66, 961 A.2d 722 (2008); proceedings to amend RPC 7.1(a)(3) (amended effective Nov. 2, 2009).

From 2006 to 2009 I represented Key Professional Media, Inc., in a successful First Amendment challenge to State Committee On Attorney Advertising Opinion No. 39,

which prohibited the communication of lawyer ratings. The State Supreme Court stayed Opinion 39 and referred the case to a Special Master, the Hon. Robert Fall, for trial of the underlying factual issues. I conducted a lengthy trial at which I examined all witnesses, opened and closed. Judge Fall filed a 300-page report, substantially adopting our position. The Supreme Court vacated Opinion 39 and remanded for proceedings to amend New Jersey Rule of Professional Conduct 7.1. I argued before the Supreme Court in connection with the amendment proceedings. The Rule was amended consistent with our suggestions.

Bench trial before Hon. Robert A. Fall, J.A.D. (ret.)
1844 Bay Boulevard
Point Pleasant, New Jersey 08742
(732) 892-9394

Counsel for State Committee on Attorney Advertising:
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Anne Marie Kelly, D.A.G.
State of New Jersey
Office of the Attorney General
Department of Law & Public Safety
Division of Law
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(973) 648-2707

Co-counsel at trial:
For Key Professional Media (Super Lawyers):
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For Martindale-Hubbell:
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Graham Curtin, P.A.
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(973) 401-7117

For New Jersey Monthly:
Arnold H. Chait, Esq.
Vogel, Chait, Collins & Schneider
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Morristown, New Jersey 07960
(973) 538-3800

For Best Lawyers:
Frederick J. Dennehy, Esq.
Wilentz, Goldman & Spitzer
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Woodbridge, New Jersey 07095
(732) 855-6158

9. *Thomas & Betts Corp. v. Richards Mfg. Co.*, 342 Fed. App'x 754 (3d Cir. 2009); Barry, Smith, Circuit Judges, DuBois (E.D. Pa.), by designation; on remand at No. 01 cv 4677 (D.N.J.); Hon. Stanley R. Chesler, United States District Judge

This case arose from a research director's misappropriation of our client's confidential technical and business information on the eve of his acceptance of employment with a competitor, which promptly began manufacturing a competitive product. On a 25,000 page record, and hundreds of pages of opinions, the district court entered summary judgment against our client. I was retained to handle the appeal to the United States Court of Appeals for the Third Circuit. Aided by colleagues, I drafted the appellant's briefs, and I argued the appeal. The Court of Appeals reversed summary judgment and remanded to the district court for a jury trial.

On remand, I was retained as co-lead counsel, essentially in charge of legal issues and trial strategy. I prepared witnesses and, at trial, handled all briefing, jury charges and arguments of law. The jury returned a verdict and awarded damages to our client.

Co-counsel for Thomas & Betts:
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Scarpone & Vargo LLC
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(973) 623-4101 ext. 302

Lead counsel for Richards et al.:
Stephen B. Pokotilow
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
(212) 806-5400

10. *AO Techsnabexport v. Global Nuclear Services*, No. 09-2064 (4th Cir. 2010); Traxler, Davis and Keenan, Circuit Judges

This dispute arose from the Russian Federation's cancellation of a uranium sale contract, and arrived in the American courts after arbitration in Sweden. Representing the appellee, I obtained a Court of Appeals affirmance of the denial of a damages claim. I drafted the brief with others, and I argued the appeal before the Fourth Circuit.

Counsel for Appellant:
Andrew K. Fletcher
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1 Mellon Center, 50th Floor
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Pittsburgh, Pennsylvania 15219
(412) 454-5000

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.)

Virtually all of my practice has involved trial or appellate litigation. My career at the United States Attorney's Office involved supervision of other attorneys' cases. As my cases grew more complex, more of my time was devoted to investigation, including wiretaps and grand jury presentations. I was one of two New Jersey AUSAs (Robert J. Cleary was the other) assigned to the pre-arrest phase of the nationwide UNABOM investigation from 1994 to 1996. The matter was ultimately charged and resolved in the Eastern District of California.

At Gibbons, I have conducted or participated in internal investigations of potentially criminal or wrongful activity at major corporations, the subject matter and identity of which remain privileged. An example of legal activity that did not result in an appearance in court is my substantial participation in the confidential moot-courting of claims and ultimately the settlement of a large patent infringement claim involving a cancer drug. I also took the lead in researching and formulating the legal positions that led to a highly favorable confidential settlement of our pharmaceutical client's patent claims involving its sole product, and avoided hundreds of millions of dollars in potential losses.

My most significant bar association involvement has consisted of membership on the governing boards of the Bar Association for the Third Federal Circuit and the Third Circuit Lawyer's Advisory Committee. The purpose of these committees is to

disseminate useful practice information to the bar, to foster bench-bar relations, and to suggest improvements to the rules and practices of the Court. Issues discussed have included more convenient scheduling of oral arguments for out-of-state attorneys, development of model jury charges, suggested revisions to electronic filing procedures, and newsletter articles concerning legal developments.

I have performed no lobbying activities.

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

I have not taught any courses.

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

I have no arrangements for future or deferred compensation as described, other than the following:

If confirmed, I will resign my directorship at my present firm, Gibbons, P.C., which is the only paid position I hold. Upon my withdrawal, I will receive return of my capital contribution as of the date of withdrawal, and compensation owed as of that date, net of ordinary deductions.

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.

No.

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.

There are no areas of particular concern. I would recuse myself from any matter in which I had prior personal or supervisory involvement, however small. To avoid the appearance of a conflict, I would for an appropriate period of time recuse myself from all cases involving my firm, Gibbons P.C. My family members have never been litigants or counsel in the U.S. District Court for the District of New Jersey, but if this were to occur, I would of course recuse myself.

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

In addition to what is stated in (a), above, and the usual screening for financial conflicts of interest, I would diligently apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as other ethical rules that govern the conduct of attorneys and the judiciary. There are no particular categories of cases that would pose an ethical concern. I would recuse myself from any case in which a credible claim could be made that the outcome would affect my or my family's financial interests, or that my relationship with an attorney or litigant would affect my impartiality. In any situation that a party or member of the public could regard as constituting a conflict of interest, I would direct the parties to address and, if advisable, brief the issue.

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.

While at the Gibbons firm, I have done considerable unpaid, pro bono work. I do not have a breakdown of hours for individual matters, but matters tracked under a general pro bono number total 427 hours. Representative matters that I can recall include *Roe v. Flores-Ortega* and *United States v. Peguero* (two *amicus* briefs to U.S. Supreme Court regarding advice of right to appeal in criminal case); *State v. Carty* (*amicus* brief to New Jersey Supreme Court concerning State constitutional constraints on searches incident to traffic stops); *State v. Stafford* (appeal from reckless driving conviction); and *In re Hong Hong Zhan* (state appeal from denial of name change application).

I sat on the Board of the Urban League of Essex County for approximately five years (late 2005 – 2010), during which time I rendered legal advice. I did not record most of the time spent, but kept sporadic records reflecting 67 hours.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Senator Frank R. Lautenberg has convened a judicial selection committee, consisting of attorneys and members of his staff, to assist him in making his recommendations to the President. On October 5, 2009, I had an interview with that committee in connection with current and/or future vacancies. On November 12, 2009, I had an interview with Senator Lautenberg and a member of his staff. On March 10, 2010, I was interviewed by Senator Robert Menendez and a member of his staff. On July 11, 2011, I was again interviewed by Senator Lautenberg and a staff member. On September 27, 2011, Senator Lautenberg informed me that my name would be submitted to the President for consideration.

Since September 30, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 4, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On December 16, 2011, the President submitted my nomination to the Senate.

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

No.

AFFIDAVIT

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

12/19/2011

(DATE)



Kevin McNulty



(NOTARY)

RENEE V. WOODS
A Notary Public of New Jersey
My Commission Expires Mar 1, 2016