

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Kimberly Jo Mueller (Kim Mueller, Kim J. Mueller, Kimberly J. Mueller)

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

United States District Judge for the Eastern District of California

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

United States District Court
Robert T. Matsui United States Courthouse
501 I Street, Suite 8-230
Sacramento, California 95814

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

1957; Newton, Kansas

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.

1992-1995, Stanford Law School; J.D., 1995
1976-1981 (employment leave 1979-1980), Pomona College; B.A., 1981

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.

2003-Present
United States District Court for the Eastern District of California
501 I Street, Suite 8-230
Sacramento, California 95814
United States Magistrate Judge

2009 & 2000-2001
University of the Pacific
McGeorge School of Law
3200 Fifth Avenue
Sacramento, California 95817
Adjunct Professor (uncompensated in 2009)

2000-2003
Law Offices of Kim J. Mueller
451 Arden Way
Sacramento, California 95815
Sole Practitioner

1999
UC Davis School of Law
King Hall
400 Mrak Hall Drive
Davis, California 95616
Adjunct Professor (Spring Term)

1995-1999 & Summer 1994
Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall, Suite 3000
Sacramento, California 95814
Associate (1995-1999)
Summer Associate (partial summer 1994)

1995
Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, California 94305
Research Assistant to Professor Barbara Babcock (spring semester)

Summer 1994
Nossaman, Guthner, Knox & Elliott
915 L Street
Sacramento, California 95814
Summer Associate (partial summer)

Summer 1993
Diepenbrock, Wulff, Plant & Hannegan (since dissolved)
300 Capitol Mall
Sacramento, California 95814
Summer Associate

1983-1993

California Firefighter Foundation (and predecessor entities)
1780 Creekside Oaks Drive
Sacramento, California 95833
Health and Safety Consultant (1992-1993) (part-time)
Health and Safety Director (1984-1992) (part-time after 1987)
Assistant Health and Safety Director (1983-1984)

1987-1992

City of Sacramento
915 I Street
Sacramento, California 95814
City Councilmember (part-time)

1983

Office of Assemblymember Lloyd Connelly
California State Assembly, State Capitol
Sacramento, California 95814
Special Toxics Assistant (unpaid internship)

1981-1983

Williamson Act Program, California Department of Conservation
1416 Ninth Street
Sacramento, California 95814
Graduate Student Assistant

Fall 1981

Contract Employment
Davis, California 95616
Temporary Agricultural Fieldworker (picked melons and tomatoes)

Summer 1981

Kellogg Foundation – Food, Land & Power Program
California Agrarian Action Project
(now Community Alliance with Family Farmers)
Glide Ranch
36355 Russell Blvd
Davis, California 95616
Summer Intern

Other Affiliations (uncompensated)

2007-Present

Sacramento Trust for Historic Preservation
c/o 1931 E Street
Sacramento, California 95811
Vice President (2008-Present)
Director (2007-Present)

2003-Present

United States District Court for the Eastern District of California Historical Society
8001 Folsom Boulevard
Sacramento, California 95826
Director

2000-2003 (approx.)

Sacramento Tree Foundation
191 Lathrop Way, Suite D
Sacramento, California 95815
President (2003; approx.)
Director (2000-2003; approx.)

2001-2002

Uptown Community Development Corporation
492 Arden Way
Sacramento, California 95815
Director

1998-2001

Education First for Grant
c/o Olson, Hagel & Fishburn LLP
555 Capitol Mall, Suite 1425
Sacramento, California 95814
Treasurer

1999

Sacramento Public Library Foundation
828 I Street, Third Floor
Sacramento, California 95814
Director

1992-1997

Uptown Arts, Inc.
492 Arden Way
Sacramento, California 95815
Director

1990-1992
Cleaner Air Partnership
2320 Broadway
Sacramento, California 95818
Steering Committee

1984-1986
Sacramento Area Council on Occupational Safety & Health
c/o Sacramento Area Fire Fighters
3101 Stockton Boulevard
Sacramento, California 95820
Officer

1984-1985 (approx.)
Sacramento Natural Foods Coop
1900 Alhambra Boulevard
Sacramento, California 95816
Director

1985-1986
Sacramento Women's Campaign Fund
1700 L Street
Sacramento, California 95814
Chair

1984-1986
Toxics Coordinating Project
c/o California Agrarian Action Project
(now Community Alliance with Family Farmers)
Glide Ranch
36355 Russell Blvd
Davis, California 95616
Steering Committee

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

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

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.

Sacramento Business Journal, "Women Who Mean Business" (June 2009)
Sacramento Public Library Foundation, Achievement Award (1999)
Sacramento News & Review, "Best Councilmember" (1992, 1991, 1990)
Environmental Council of Sacramento, Environmentalist of the Year (1989)
Glen Elder Improvement Association, Community Service Award (1989)
Sacramento Magazine, "Best and Brightest" (Nov. 1998)
American Council for Young Political Leaders, U.S.A-U.S.S.R. Exchange (1988)
Pomona College, Phi Beta Kappa (1980)

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
Intellectual Property Section (1995-2003)
American Intellectual Property Law Association
Anthony M. Kennedy Inn of Court
California Lawyers for the Arts
Director (approx. 1997-2000)
Federal Bar Association, Sacramento Chapter
Programs Co-Chair, Sacramento Chapter (2001-2002)
Treasurer, Sacramento Chapter (2002)
National Convention Chair (1999)
Milton L. Schwartz Inn of Court
Sacramento County Bar
ADR Section (1996-2003)
Intellectual Property Law Section (1995-2003)
President (1997)
State Bar of California
Access to Justice Commission, Federal Courts Subcommittee (2008-Present)
Intellectual Property Law Section Executive Committee (2001-2003)
United States District Court for the Eastern District of California
Committee on Ninth Circuit Resource Committee Report (2008-Present)
Ad Hoc Committee on Local Rules re Protective Orders and Sealing (2006-2009)
Ad Hoc Committee on Local Rules re Patent Litigation (2006-2007)
Committee on Voluntary Dispute Resolution Program (approx. 2003-2005)
Judicial Advisory Committee (2001-2003)
Annual Conference Co-Chair, Monterey, California (2001)
Voluntary Dispute Resolution Panel (2000-2003)

United States Court of Appeals for the Ninth Circuit
Committee on Alternative Dispute Resolution (2002-2008)
Lawyer Representative (E.D. Cal.) to Circuit Conference (1999-2003)
Women Lawyers of Sacramento

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.

California, 1995

In California, a person serving as a judge is not considered a member of the State Bar. There has been no other lapse in membership.

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

United States Court of Appeals for the Ninth Circuit, 1995
United States District Court for the Eastern District of California, 1995
United States District Court for the Northern District of California, 1996
United States District Court for the District of Delaware, 1998
United States District Court for the District of Colorado, 1998
Supreme Court of California, 1995

In California, a person serving as a judge is not considered a member of the State Bar. I am not aware of any other lapse 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.

American Leadership Forum, Mountain Valley Chapter Class XIII (2009-2010)
Education First for Grant (1998-2001)
Treasurer (1998-2001)
Families for Better Education (2000-2002)
Treasurer & Community Petition Chair (2000-2002)
Friends of the Library, North Sacramento-Hagginwood Branch (2006)
Leaders for Effective Government (2000-2002)

Ninth Judicial Circuit Historical Society (2001-2002, 2003-2004, 2008-2009)
 Operation Protect & Defend (2002-Present)
 Steering Committee & Volunteer (2003-Present)
 River City Rowing Club (2008-Present)
 Rotary Club of Sacramento (2004-Present)
 Director-Elect (two-year term starting July 2010)
 Youth Incentive Program mentor (2007-Present)
 World Community Services Committee Co-Chair (2009-2010)
 Programs Committee (2007-2008), Co-Chair (2008-2009)
 Literacy Committee (2006-2007)
 World Peace Fellows Liaison (2006-2008)
 Sacramento Natural Foods Coop (approx. 1982-Present)
 Director (approx. 1984-1985)
 Sacramento Public Library Foundation (1999)
 Director (1999)
 Sacramento Tree Foundation (approx. 1989-Present)
 President (2003)
 Director (2000-2003)
 Events Chair (2000-2001)
 Fund Development Chair (2001-2002)
 Co-founder, Trees for Tomorrow Campaign (1990)
 Sacramento Trust for Historic Preservation (2007-Present)
 Vice President (2008-Present)
 Director (2007-Present)
 United States District Court for the Eastern District of California Historical Society
 Director (2003-Present)
 Uptown Arts (1992-1997)
 Director (1992-1997)
 Uptown Community Development Corporation
 Director (2001-2002)
 Woodlake Garden Club (approx. 2004-Present)
 Woodlake Neighborhood Association (1995-Present)
 Woodlake Swim Club (approx. 2006-Present)

In addition to the organizations listed above, I have been termed a “member” by cultural organizations that use the term to reflect payment of admission fees and by non-profit organizations that use the term based on the fact of a charitable contribution alone. The organizations in this category that I recall are the California State Railroad Museum, Crocker Art Museum, Capital Public Radio, KVIE Public Television, the Museum of Modern Art, and the Metropolitan Museum of Art.

- 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 has discriminated on the basis of race, sex, religion, or national origin during the time I have been a member. The Rotary Club did not accept women as members until the 1980s. The Woodlake Garden Club did not accept men as members until some time prior to my joining. I am not aware of any other instance of former discrimination.

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.

“So You Want To Be A Judge? Consider the Role of a Federal Magistrate Judge!” *CWL News* (Fall 2006) (report on remarks made at June 24, 2006 workshop)

“Inmates’ Civil Rights Cases and Appointment of Counsel,” *Sacramento Lawyer* (May/June 2006)

“Don’t be defined by the fences,” This I Believe Series, *Sacramento News & Review* (January 19, 2006)

Federal Bench and Bar Media Handbook, Project of Eastern District Lawyer Representatives (drafted and edited First Edition, issued in approx. July 2003)

“Intellectual Property and Internet Law Update: Selected Cases and Legislation” (2001-02), *Intellectual Property & Business Law Sections, California State Bar*, March 2002 (co-written with Mark Leonard)

“The IP Portal” (occasional columns on intellectual property and e-commerce issues targeted to Sacramento legal community; appeared in the *Daily Recorder* in 2000):

“Now UCITA, Now You Don’t”

“Think ICANN: ADR for Trademark Plaintiffs Seeking to Recover Domain Names”

“Caveat emptor: Pitfalls Ex Arte”

“An Ounce of Prevention . . . A Few Of The Simple But Important Rules Of Copyright And Trademark Protection”

- “Orrick Represents DigArts in Win Against Corel,” *Intellectual Property Update*, Orrick, Herrington & Sutcliffe LLP (March 2000)
- “Recent Trade Secret Decisions by U.S. and State Courts: January 1995 to May 24, 1996,” *1996 ABA Meeting* (1996) (co-written with Gary E. Weiss) (no copy retained)
- “Inmates’ Civil Rights Cases and the Federal Courts: Insights Derived From A Field Research Project In The Eastern District of California,” 28 *Creighton L. Rev.* 1255 (1995)
- Symposium Co-editor, *Stanford Law & Policy Review*, Stanford Law School, Volume 5, Issue 1 (Industrial Policy Symposium, Fall 1993) (assisted with editing of article entitled “On the Folly and Illegitimacy of Industrial Policy,” by Roger Pilon)
- Letter to the Editor, “Steinberg for City Council,” *Sacramento Bee*, May 25, 1992
- Letter to the Editor, *Sacramento News & Review*, Mar. 3, 1992 (responding to editorial regarding proposed Civilian Review Board)
- “California’s personal exposure reporting system,” *Fire Engineering*, Volume 144 (Sept. 1991) (co-written with James J. Beaumont and Richard Kennedy) (no copy retained; *citation available at* 1991 WLNR 202281)
- “The additions, subtractions of the city budget,” *Sacramento Bee* (July 11, 1991) (opinion editorial explaining recently adopted city budget)
- “Fixing a future for McClellan, the Army Depot,” *Sacramento Bee* (March 13, 1991) (explanation of proposal made to Base Realignment Commission)
- “Transit opportunities in a post-interstate world,” *Sacramento Bee* (July 6, 1989) (opinion editorial regarding 1991 reauthorization of Highway Trust Fund)
- Firefighters and AIDS*, California Firefighter Foundation and American Red Cross (Sacramento Chapter) (First Edition, approx. 1986) (handbook regarding best practices, taking into account state-of-the art public health information on communicable diseases, for first responders called to provide emergency medical care) (out of print; no copy retained)
- The Firefighter Personal Exposure Record*, California Firefighter Foundation, (approx. 1985) (title based on best recollection; handbook regarding worker-based epidemiology project for tracking firefighter exposures; prepared with input from advisory committees of firefighters and medical professionals) (out of print; no copy retained)
- Preserving agricultural lands : an international annotated bibliography*, California Institute of Public Affairs (1984) (one of three assistants to editor Thaddeus C. Trzyna)
- The Nuclear Power Issue: A Guide to Who’s Doing What In The U.S. and Abroad*, California Institute of Public Affairs (1981) (editor)
- California Museum Directory: a guide to museums, zoos, botanic gardens, and similar institutions in the Golden State*, California Institute of Public Affairs (1st ed., 1980) (edited with the assistance of Karen L. Hertzberg)
- California Environmental Directory*, California Institute of Public Affairs (4th ed., 1979) (assisted primary editor Ted Trzyna in preparation)

I do not recall, and after searching my files and available research databases have not identified, any other published materials I have written.

- 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.

Revised Proposed Local Rule on Sealing and Redaction (E.D. Cal. Aug. 2009)
Response to Ninth Circuit Resource Committee Recommendations (E.D. Cal. June 2008) (internal court document transmitted only to Ninth Circuit Committee)

Proposed Local Rule on Sealing and Redaction (E.D. Cal. Feb. 2007)
Resolution supporting work of Ninth Circuit ADR Committee (Ninth Circuit Conference, Resolution No. 1, 2001)

White Paper on Faculty Lecture Rights (2000) (paper reviewing state statutory and common law with respect to protection of intangible lecture material; prepared for Davis Faculty Association, 1270 Farragut Circle, Davis, California 95616) (no copy retained)

In addition, I served as a Councilmember of the City of Sacramento from 1987-1992. I contributed daily to the Council's work and to all of its work product during that period by virtue of my position.

- 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 served as a Councilmember of the City of Sacramento from 1987-1992, during which time I participated in all City Council proceedings. During this period, I occasionally provided testimony in my official capacity to other bodies, such as the Defense Base Realignment and Closure Commission. I have not retained copies of such testimony. In my efforts to be a conscientious representative, I regularly corresponded by mail with constituents. I did not retain copies.

Earlier in my career prior to serving as an elected representative and prior to becoming an attorney, I occasionally appeared before public bodies and made official statements. I recall two such instances. In the mid-1980s, I testified before the Sacramento City Council in support of a local ordinance, ultimately adopted, that created a registry identifying the locations of toxic materials stored and used in the City. On a second occasion, also in the mid-1980s, I appeared before the Cal/OSHA Standards Board in my capacity as Health and Safety Director for the California Firefighter Foundation in support of an updated OSHA

standard for firefighter protective gear. I have not retained copies of this testimony.

As a law student at Stanford, I joined a group consisting of approximately half the law school faculty members and one third of students in opposing California Proposition 209 in 1995. A quote attributed to me was included in a press release issued by the University describing faculty and student stances on the Proposition.

From approximately 1998 to 2002, I was active in a neighborhood movement to improve public school administration and unify our local school districts (so as to create a single district for K-12 education, replacing separate district structures for elementary and for high school education). My role was primarily organizational, but my name may have appeared on official statements or communications on this issue.

I do not recall, and after searching my files and available research databases have not identified, any other testimony, official statements, or communications that I have written on matters of public policy or legal interpretation.

- 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.

Guest, Civil Rights Class, University of the Pacific McGeorge School of Law, Sacramento, California, October 28, 2009 (question and answer session with Professor/Judge William B. Shubb; no notes)

Presenter, "The First Monday in October," A Celebration of the 219th Term of the United States Supreme Court, hosted by the American Constitution Society, University of the Pacific McGeorge School of Law, Sacramento, California, October 5, 2009

"Women Who Mean Business Awards Luncheon," Sacramento Business Journal, Sacramento, California, June 19, 2009

Annual Meeting, Association of State Correctional Officers, Colorado Springs, Colorado, June 9, 2009 (brief presentation and question and answer session with Ninth Circuit's Prison Litigation Coordinator regarding prisoner litigation and ADR; no notes)

Keynote Speaker, Charles P. Nash Prize Award Dinner, University of California, Davis, California, April 24, 2009

Panelist, Job Forum, Grant Union High School, Sacramento, California, April 17, 2009 (question and answer session before student assembly; no notes)

Update on Pro Bono Panel for Prisoners' Civil Rights Cases, Sacramento County Bar Association, Civil Rights and Constitutional Law Section Luncheon, March 19, 2009

Presenter, "The Law of Habeas Corpus," Orientation Seminar for U.S. Magistrate Judges, Federal Judicial Center, Washington, D.C., October 23, 2008

Co-panelist, "Litigation Strategy: Views from the Bench," 37th Annual Institute on Employment Law, Practising Law Institute, San Francisco, September 2008 (question and answer session focusing on discovery disputes and general federal litigation issues; no notes)

Guest Speaker, Alternate Dispute Resolution Class, Pacific McGeorge School of Law, Sacramento, California, August 28, 2008

Introduction of Speaker Frank Porter, Rotary Club of Sacramento, Sacramento, California, August 11, 2008

Status of Prisoners' Civil Rights Litigation in the Eastern District, Sacramento County Bar Association, Civil Rights and Constitutional Law Section Luncheon, Sacramento, California, July 17, 2008

"Federal Nuts and Bolts," Sacramento Barristers' Club, Sacramento, California, June 25, 2008

Speaker, Women of Stanford Law, Stanford Law School, Stanford, California, March 4, 2008 (question and answer session with law students; no notes)

Speaker, Sacramento Legal Secretaries Association Annual Dinner, Sacramento, California, February 21, 2008

Swearing-in Ceremony for New Lawyers, Pacific McGeorge School of Law, Sacramento, California, December 3, 2007

Presentation of New Sacramento Rotary Fellow Senior District Judge William B. Shubb, Rotary Club of Sacramento, Sacramento, California, November 26, 2007

Host, "Brown Bag" Tour of U.S. District Courthouse for Members of Rotary Club of Sacramento, Sacramento, California, October 22, 2007 (general remarks regarding federal courts, followed by tour of courtrooms, chambers, Marshals facility; no notes)

Panelist, Professions Day, Rotary Club of Sacramento, Sacramento, California, August 27, 2007

Presenter, Discussion of U.S. Courts and Legal System, University of California at Davis Orientation Program for International Students, Davis, California, July 25, 2007

Introduction of Speaker Nancy Saracino, Rotary Club of Sacramento, Sacramento, California, July 23, 2007

Panelist, "How to Avoid Jail While Complying With Electronic Discovery Requests," Fourth Annual E-Commerce Best Practices, Stanford Law School, June 2007

Workshop on Prisoner Section 1983 Cases, Sacramento Chapter of the Federal Bar Association, Sacramento, California, April 25, 2007

Host, "Brown Bag" Tour of U.S. District Courthouse for Members of Rotary Club of Sacramento, Sacramento, California, March 8, 2007 (general remarks regarding federal courts, followed by tour of library, public art, ceremonial courtroom, chambers, Marshals facility, U.S. Attorney's office)

"Bridging the Gap" Seminar for New Lawyers, Barristers Club of Sacramento, Sacramento, California, January 20, 2007

Presiding Judge, New Attorney Admissions Ceremony, U.S. District Court, Sacramento, California, December 4, 2006

Thought for the Day on "Kids' Day," Rotary Club of Sacramento, Sacramento, California, November 2, 2006

Discussion Leader on Ex Parte Contact Rules, Anthony M. Kennedy Inn of Court, Sacramento, California, October 17, 2006

"So You Want To Be A Judge? Consider the Role of a Federal Magistrate Judge!" California Women Lawyers Workshop, Sacramento, California, June 24, 2006

Speaker, Kops 'n Kids Summer Day Camp, Sacramento, California, June 23, 2006

Presentation on the Job of Magistrate Judge, California Third District Court of Appeal, Sacramento, California, May 8, 2006

Workshop on Magistrate Judge Selection Process, Women Lawyers of Sacramento, Sacramento, California, April 20, 2006

Emcee, Retirement Celebration for Magistrate Judge Peter A. Nowinski, March 24, 2006

Moderator and Discussion Leader, "The Declaration of Judicial Independence," Anthony M. Kennedy Inn of Court, Sacramento, California, February 21, 2006

Host, Courthouse Tour, Rotary Youth Exchange, Rotary Club of Sacramento, January 26, 2006 (general remarks regarding federal courts, followed by tour of courtrooms, chambers, Marshals facility; no notes)

"Inmate Cases and Appointed Counsel," Sacramento County Bar Association, Civil Rights and Constitutional Law Section, November 22, 2005

"Nuts and Bolts" Seminar, Sacramento Barristers Club, Sacramento, California, June 23, 2005

"Top Ten Fantasies of a U.S. Magistrate Judge (when it comes to Civil Cases)," Intellectual Property Section, Sacramento County Bar Association, June 16, 2005

Moderator and Discussion Leader, "Sympathy for the Adjuster: When Non-Lawyers Call the Shots," Anthony M. Kennedy Inn of Court, September 21, 2004

Team Member, "Cirque de Pro Se," Anthony M. Kennedy Inn of Court, Sacramento, California, May 18, 2004

Discussion Leader, Intellectual Property Interactive Discussion, Milton L. Schwartz Inn of Court, Davis, California, May 12, 2004

"IP Practice & Discovery in the Eastern District; Practical Insights From the Bench," Sacramento County Bar Association, Intellectual Property Section, September 10, 2003

“Federal Nuts and Bolts,” Sacramento Barristers’ Club, Sacramento, California,
June 19, 2003

In addition, since becoming a U.S. Magistrate Judge:

On the following dates I presided over Naturalization Ceremonies and either offered congratulatory remarks or introduced guest speakers who offered congratulatory remarks: September 17, 2003; January 7, April 14 and August 18, 2004; March 16, June 15 and October 12, 2005; April 19, May 29, June 21, September 22, October 20 and November 22, 2006; April 27, July 27, September 19 and November 27, 2007; January 30 and October 22, 2008; and January 27 and May 19, 2009.

On the following dates I served as a discussion leader, without notes, with the Operation Protect & Defend Project in Sacramento, California: April 22, 2003 (Luther Burbank High School Government Class); February 22, 2008 & March 5, 2009 (McClatchy High School Senior Classroom); March 3, 2009 (Grant Union High School Criminal Justice Academy Class).

On the following dates I have hosted the Sacramento Metro Chamber’s Leadership Class on its Law & Order Day at the U.S. Courthouse in Sacramento, California, making general remarks and answering questions regarding federal court practice: November 8, 2007 and November 12, 2009.

On the following dates I have co-hosted general discussion meetings with practitioners litigating prisoner cases brought under 42 U.S.C. § 1983: June 17, 2004, August 9, 2005, November 16, 2006, April 18, 2008 and August 19, 2009.

On the following dates I have co-hosted general discussion meetings with practitioners litigating prisoner habeas petitions cases filed under 28 U.S.C. § 2254: August 3, 2005, November 13, 2006, May 15, 2007 and April 18, 2008 and September 16, 2009.

I only have complete files on speeches and talks going back to March 2003, when I was appointed a U.S. Magistrate Judge. I have reconstructed the following list of talks given prior to that date from my best recollection and based on the limited copies of talking point notes or outlines I have retained.

Panelist, “Mixed IP Track,” California State Bar 27th Annual Intellectual Property Institute, Santa Barbara, California, November 8-9, 2002 (no notes)

Moderator, “The Use (and Potential Abuse) of Protective Orders in Federal Court,” Sacramento Chapter, Federal Bar Association, Sacramento, California, September 18, 2002 (no notes)

Artist's Moral Rights, Workshop sponsored by California Lawyers for the Arts, Sacramento, California, May 13, 2002

Panelist, Understanding Basic Copyright Law in California, Lorman Education Services Seminar, Sacramento, California, February 1, 2002 (Copyright History and Basics, Protections for Visual Artists)

Copyright for the Visual Artist, Workshop sponsored by California Lawyers for the Arts, Sacramento, California, January 23, 2002

Introduction of Keynote Speaker David Boies, Annual Conference of the United States District Court, Eastern District of California, Monterey, California, Fall 2001

Moderator, "The Weakest Legal Link," Annual Conference of the United States District Court, Eastern District of California, Monterey, California, Fall 2001

Participant, Davis Faculty Association (DFA) Forum on Faculty Copyrights, Davis, California, January 16, 2001

"Mp3.com, Napster and Lawyerly Responses: Protectors of Perpetual Values or Twenty-First Century Dinosaurs?," Intellectual Property Section, Sacramento County Bar Association, September 29, 2000

Co-presenter, Business Success Stories, A Woman's Day Conference & Exposition, 1999, Sacramento, California

Co-presenter, *California Journal v. The Wall Street Journal*, U.C. Davis School of Law, Intellectual Property Club, Davis, California, April 19, 1999

"Copyright: Ownership, Enforcement And The Internet," Workshop Presented by Orrick, Herrington & Sutcliffe LLP, Sacramento, California, April 28, 1998

Co-presenter, When David Met Goliath: Common Law Trademark Rights in the Case of *California Journal v. The Wall Street Journal*, Intellectual Property Section, Sacramento County Bar Association, Sacramento, California, Spring 1997

The foregoing list includes all of the speeches or talks I am able to identify for the time period since I became an attorney in 1995. Prior to that time, and particularly between 1986 and 1992 when I ran for and then served on the Sacramento City Council, I gave speeches and talks weekly, if not daily at times. I have not retained records of what I said on those occasions.

- 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.

M. Anderson, "Kim Mueller: U.S. District Court," Women Who Mean Business 2009, *Sacramento Business Journal*, June 19, 2009

John Roemer, "Prison Justice," *San Francisco Daily Journal*, Feb. 26, 2007

Cheryl Miller, "Mueller left behind politics, IP law for federal bench," *The Recorder*, Aug. 29, 2006

Cynthia Hubert, "Bench mark: Kim Mueller, the only female U.S. magistrate judge in Sacramento, has a lifelong commitment to public service," *Sacramento Bee*, Oct. 2, 2003

Profile in Special Issue on Sacramento Women, *Sacramento Magazine*, Oct. 2003

James Houpt, "New Magistrate Judge Took Unconventional Path to Federal Bench," *Sacramento Lawyer* (Sacramento County Bar Association), May/June 2003

Profile, "On the Rise: 13 Women to Watch," *Sacramento Magazine*, July 1999

When I ran for and then served on the Sacramento City Council, between 1986 and 1992, I gave interviews periodically to local newspapers, radio stations and television stations in the Sacramento area. When I left the City Council in Fall 1992, I discarded virtually all of my campaign materials and discarded or left with the City virtually all of the records related to my Council tenure. I have searched for available news accounts of interviews; there are literally hundreds of news accounts that at least mention my name or include a single quote from me for this time period. Having comprehensively reviewed what material I have been able to locate, I have identified the following reports on interviews I provided in which I am featured as the primary subject:

A Metro Cable Profile: Elected Officials Leaving Office in '92, *Metro Cable*, Sacramento, California, Fall 1992 (video)

Deb Kollars, "Mueller Won't Run Again, Will Pursue Law Degree," *Sacramento Bee*, Mar. 7, 1992

Ken Chavez, "Planning Agency Criticized; Councilwoman May Seek Outside Audit," *Sacramento Bee*, Dec. 11, 1990

Ilana Debare, "Mueller hopes to raise profile in District 6," *Sacramento Bee*, Jan. 8, 1989

"Best & Brightest: Twenty People to Watch," *Sacramento Magazine*, Nov. 1988

Ross Farrow, "Sound walls, sororities keep Mueller busy," *Neighbors Section (Rancho Cordova Edition)*, *Sacramento Bee*, July 28, 1988

Tim Holt, "Council's New Face," *Sutters News*, Mar. 31 – Apr. 7, 1988

Jim Sanders, "Mueller Captures Close Council Race; Runoff in District 2," *Sacramento Bee*, Sept. 23, 1987

Jim Sanders, "District 6 Race: 7,000 Doorbells Later, Challenger Keeps Trying," *Sacramento Bee*, Sept. 19, 1987

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.

In 2003, I was appointed by the United States District Court for the Eastern District of California to serve an eight-year term as a United States Magistrate Judge. I preside over civil cases on a limited basis on reference from district judges and in full where the parties consent; I also preside over a criminal arraignment calendar and misdemeanor and petty offense docket.

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

I have presided over 52 trials and a total of approximately 230 cases to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials:	10%
bench trials:	90%

civil proceedings:	14 %
criminal proceedings:	86 %

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

See attached lists of opinions.

- 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. *United States v. Cardoso*, Case No. CR S-07-0023, 2009 WL 57631 (E.D. Cal. Jan. 9, 2009). In this felony criminal case, I was the presiding criminal duty judge at the time of defendant's initial appearance and when he brought a later motion for bail review. Defendant was charged with possession of one or more matters containing depictions of minors engaged in sexually explicit conduct. To assist in reaching my decision on the bail review motion, I ordered a psychiatric examination of defendant. I denied defendant's motion for release.

Government counsel was Heiko Coppola, Assistant U.S. Attorney, 501 I Street, Sacramento, CA 95814; 916-554-2700. Defendant's counsel was Dwight Samuel, 117 J Street, Suite 202, Sacramento, CA 95814-2212; 916-447-1193.

2. *Bridgewater v. Roe*, Case No. CIV-S-02-00971, 2007 WL 2794952 (E.D. Cal. Sept. 24, 2007), *adopted by* 2007 WL 3226669 (E.D. Cal. Oct. 30, 2007). In this case, referred to me for all pre-dispositive purposes, I ordered and presided over an evidentiary hearing concerning whether the habeas corpus petitioner's mental illness provided a valid basis for equitable tolling of the applicable limitations period. I found circumstances giving rise to equitable tolling under the law and my recommendation was adopted in full by the District Judge.

Petitioner's counsel was Assistant Federal Defender Allison Claire, 801 I Street, Third Floor, Sacramento, CA 95814; 916-498-6666. Counsel for respondent was Deputy Attorney General Harry Colombo, California Attorney General's Office, 1300 I Street, Sacramento, CA, 95814; 916-324-5170.

3. *McCaskill v. County of Shasta*, Case No. CIV-S-04-704 (E.D. Cal. May 22, 2007). By consent of the parties, I presided over the jury trial held in this case. Plaintiff brought an excessive force claim against a Deputy Sheriff based on the sheriff's use of a dog during plaintiff's arrest, which had resulted in injuries to plaintiff. After four days of trial and a partial day of deliberations, the jury returned a verdict in favor of the defendant.

Plaintiff's counsel was Larry Baumbach, Law Offices of Larry L. Baumbach, 686 Rio Lindo Ave., Chico, CA 95926; 530-891-6222. Defendant's counsel was Laurence L. Angelo, Angelo, Kilday & Kilduff, 601 University Ave., Suite 150, Sacramento, CA 95825, 916-564-6100, x201.

4. *Vega v. Branich*, Case No. CIV-S-02-1977 (E.D. Cal. Mar. 13, 2007). By consent of the parties, I presided over the jury trial held in this case, which concerned an inmate's excessive force claim against a prison guard. Prior to trial, I had denied defendant's motion to dismiss. The jury returned a verdict in favor of the defendant.

Plaintiff's counsel was Mary Beth Moylan, McGeorge School of Law, 3200 Fifth Ave., Sacramento, CA 95817; 916-739-7223. Defendant's counsel was Van Kamberian, Office of the Attorney General, 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244; 916-324-3892.

5. *Isaac v. Morgan Stanley*, Case No. CIV-S-04-1707 (E.D. Cal. Oct. 18, 2005). I presided over this securities litigation for all purposes by consent of the parties. Following briefing and oral argument, I entered an order granting plaintiff's motion to compel arbitration, applying the Federal Arbitration Act in the course of a complex choice of law analysis.

Counsel for plaintiff was William Philip Torngren, Law Offices of William P. Torngren, 117 J Street, Suite 300, Sacramento, CA 95814; 916-554-6447. Counsel for defendant was Kenneth C. Mennemeier, Jr., Mennemeier Glassman and Stroud, 980 Ninth Street, Suite 1700, Sacramento, CA 95814; 916-553-4000.

6. *McIver v. CalExpo*, Case No. CIV-S-01-1967 and *ISC, Inc. v. CalExpo*, Case No. CIV-S-04-1790 (E.D. Cal. December 16, 2005). These related actions were brought under the Americans with Disabilities Act against the public entity operating the California State Fairgrounds and an amusement ride operator. I presided over extensive, serial settlement conferences leading to a comprehensive global settlement of all claims, and entered a consent decree memorializing the parties' agreements. The parties to this case consented to my presiding for all purposes.

Counsel for plaintiff was Timothy S. Thimesch, Thimesch Law Offices, 158 Hilltop Crescent, Walnut Creek, CA 94597-3452; 925-588-0401. Counsel for defendant was Stephen E. Horan, Porter Scott, P.O. Box 255428, 350 University Ave., Suite 200, Sacramento, CA 95865; 916-929-1481.

7. *Comm. Ctr., Inc. v. Hewitt*, Case No. CIV-S-03-1968 (E.D. Cal. Apr. 5, 2005). In this trade secrets and unfair competition action, I presided over a complex discovery dispute based on plaintiff's claim that defendant deliberately destroyed computer evidence, using software called "Evidence Eliminator," in violation of a discovery order. Following hearing, briefing and argument, I entered an Order and Findings and Recommendations recommending default and an award of fees and costs to plaintiff. The District Judge adopted my Findings and Recommendations in part, as to fees and costs.

Counsel for plaintiff was Michael Daponde, Pillsbury Winthrop LLP, 400 Capitol Mall, Suite 1700, Sacramento, CA 95814; 916-329-4768. Counsel for defendant were Robin Perkins and Christopher Wohl, Palmer Kazanjian Wohl Perkins LLP, 520 Capitol Mall, Suite 600, Sacramento, CA 95814; 916-442-3552.

8. *United States v. Knox*, Violation Nos. D2530, 2531 (E.D. Cal. Dec. 13, 2004). These consolidated cases charged assimilated petty offenses based on the California Vehicle Code. I decided as an issue of first impression in our Court that the Federal Assimilative Crimes Act, which provides for "like punishment" for the assimilated crime, does not include California's penalty assessments and restitution fines in addition to the base fine.

Plaintiff's counsel was Samantha Spangler, Assistant United States Attorney, Office of the U.S. Attorney, 501 I Street, 10th Floor, Sacramento, CA 95814; 916-554-2700. Defendant's counsel was Kresta Daly, Rothschild, Wishek & Sands, 901 "F" Street, Suite 200, Sacramento, CA 95814; 916-444-9845.

9. *McKesson Info. Solutions, Inc. v. Bridge Med., Inc.*, Case No. CIV-S-02-2669 (E.D. Cal. Nov. 9, 2004 & Apr. 15, 2005). In this patent infringement action involving a medical device patent, I presided over a *Markman* hearing, referred to me by the District Judge. Following extended presentation of expert testimony at hearing, briefing and oral argument, I entered Findings and Recommendations construing the patent's claim elements. My recommendations, as supplemented, were adopted in full by the District Judge.

Counsel for plaintiff was Mark K. Dickson, 205 De Anza Blvd., Suite 212, San Mateo, CA 94402; 650-346-6675, and James Pistorino, Howrey Simon Arnold & White, 1950 University, 4th Floor, East Palo Alto, CA 94303; 650-798-3580. Counsel for defendant was Jose L. Patiño, Jones Day, 12265 El Camino Real, Suite 200, San Diego, CA 92130; 858-314-1156.

10. *Anzo v. Union Pac. R.R. Co.*, Case No. CIV-S-99-2292 (E.D. Cal. Feb. 4, 2004). By consent of the parties, I presided over a twelve-day jury trial of an injured employee's claim brought under the Federal Employers Liability Act (FELA). After five days of deliberation, I declared a mistrial and reset the case for trial. The case settled before the new trial date.

Counsel for plaintiff was Larry Lockhshin, 555 University Avenue, Suite 200, Sacramento, CA 95864; 916-649-3779. Counsel for defendants was Michael L. Johnson, Union Pacific Law Department, 10031 Foothills Boulevard, Suite 200, Roseville, CA 95747; 916-789-6227.

- 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. *Jones v. Blanas*, Case No. CIV-S-00-2811, 2008 WL 5411967 (E.D. Cal. Dec. 30, 2008), *adopted by* 2008 WL 5411967 (E.D. Cal. Feb. 12, 2009). Plaintiff's lead counsel was Scott Fink, Gibson, Dunn & Crutcher LLP, 555 Mission, Suite 3000, San Francisco, CA 94105-2933; 415-397-5554. Defendants' lead counsel was David Melton, Porter Scott, 350 University Ave., #200, Sacramento, CA 95825; 916-929-1481.

2. *Osband v. Ayers*, Case No. CIV-S-97-0152 (E.D. Cal. June 13, 2008), *adopted by* 2009 WL 230636 (E.D. Cal. Jan. 30, 2009). Counsel for petitioner was Tivon Schardl, Assistant Federal Defender, Office of the Federal Defender, 801 I Street, Third Floor, Sacramento, CA 95814; 916-498-6666; and Tim Brosnan, Attorney at Law, 1116 Guerrero Street, San Francisco, CA 94110; (415) 285-5417. Counsel for respondent was Ward Campbell, Supervising Deputy Attorney General, Office of the California Attorney General, 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244; 916-324-5251.

3. *United States v. Real Property*, 590 F. Supp. 2d 1295 (E.D. Cal. 2008). Counsel for plaintiff was Courtney Jack Linn, Former Assistant U.S. Attorney, now with Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, CA 95814; 916-329-4700. No appearance was made on behalf of the real property defendant.
4. *Sylvester v. Rawers*, Case No. CIV-03-1301, 2008 WL 360459 (E.D. Cal. Feb. 8, 2008), *adopted by* 2008 WL 782481 (E.D. Cal. Mar. 20, 2008). Petitioner's counsel was Ann McClintock, Office of the Federal Defender, 801 I Street, 3rd Floor, Sacramento, CA 95814; 916-598-5700. Respondent's counsel was Deputy Attorney General Brian Means, Office of the Attorney General, P.O. Box 944255, Sacramento, CA 94244; 916-324-2960.
5. *United States v. Garcia-Guizar*, Case No. CR-S-95-411, 2007 WL 1098553 (E.D. Cal. Apr. 12, 2007), *adopted by* 2007 WL 1747046 (June 18, 2007). Movant's counsel was Krista Hart, Law Offices of Krista Hart, 1710 Broadway, #88, Sacramento, CA 95818; 916-498-8398. Respondent's counsel was William Sze Wong, Assistant United States, 501 I Street Suite 10-100, Sacramento, CA 95814; (916) 554-2790.
6. *Wilson v. Cal. Dep't of Corr.*, Case No. CIV-S-02-2169, 2006 WL 707434 (E.D. Cal. Mar. 21, 2006), *adopted by* 2006 WL 1552561 (E.D. Cal. June 1, 2006). Plaintiff's counsel was Carter White, King Hall Civil Rights Clinic, UCD Clinical Programs, One Shields Ave., Building TB30, Davis, CA 95616; 530-752-5440. Defendants' counsel was Oliver R. Lewis, Office of the Attorney General, 1300 I Street, Sacramento, CA 95814; 916-324-5495.
7. *Fredericks v. Knowles*, Case No. CIV-S-05-0334, 2007 WL 4526514 (Dec. 19, 2007), *adopted by* 2008 WL 275693 (Jan. 30, 2008). Petitioner was *pro se*. Counsel for respondent was Steve Acquisto, Office of the Attorney General, 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244; 916-324-1456.
8. *Nunes v. Ramirez-Palmer*, Case No. CIV-S-98-1333, 2005 WL 2135199 (E.D. Cal. Sept. 2, 2005), *adopted by* Case No. CIV-S-98-1333 (E.D. Cal. Feb. 10, 2006), *aff'd*, 485 F.3d 432 (9th Cir. 2007), *cert. denied*, 552 U.S. 962 (2007). Petitioner's counsel was Suzanne Luban, 3758 Grand Ave., Suite 4, Oakland, CA, 94610; 510-832-3555. Respondent's counsel was Deputy Attorney General Frances Dogan, California Attorney General's Office, 455 Golden Gate Ave., #1100, San Francisco, CA, 94102; 415-703-1234.
9. *Turner v. Hickman*, 342 F. Supp. 2d 887 (E.D. Cal. 2004). Plaintiff's counsel was Harry Olivar, Quinn Emanuel Urquhart and Hedges, 865 S. Figueroa St., 10th Floor, Los Angeles, CA 90017; 213-624-7707. Defendants' counsel was Michael G. Lee, Agricultural Labor Relations Board, 915 Capitol Mall, Third Floor, Sacramento, CA 95814; 916-651-7605.

10. *United States v. Camacho*, Case No. CR-S-03-0280 (E.D. Cal. Sept. 4, 2003), *aff'd*, Case No. CR-S-03-0280 (Feb. 9, 2004), *aff'd*, 413 F.3d 985 (9th Cir. 2005). Defendant's counsel was Timothy Zindel, Assistant Federal Defender, 801 I Street, 3rd Floor, Sacramento, CA 95813; (916) 498-5700. Plaintiff's counsel was Matthew Stegman, Assistant United States Attorney, 501 I Street, Suite 10-100, Sacramento, CA 95814; (916) 554-2800.

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

Nunes v. Ramirez-Palmer, Case No. CIV-S-98-1333, 2005 WL 2135199 (E.D. Cal. Sept. 2, 2005), *adopted by* Case No. CIV-S-98-1333 (E.D. Cal. Feb. 10, 2006), *aff'd*, 485 F.3d 432 (9th Cir. 2007), *cert. denied*, 552 U.S. 962 (2007).

I am not aware of any other cases over which I presided in which certiorari has been 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.

i) My decisions as the consent judge pursuant to 28 U.S.C. § 636(c), or the referral magistrate judge, were reversed in the following six cases:

Larson v. McDonald, Case No. CIV-S-06-2094 (E.D. Cal. Feb. 22, 2008), *rev'd*, Case No. 08-15624 (slip op.) (9th Cir. Apr. 18, 2008). The Court of Appeals found that an element of an order I had issued required adoption by a District Judge.

Carter v. Astrue, Case No. CIV-S-05-2358 (E.D. Cal. Mar. 29, 2007), *rev'd*, 308 Fed. Appx. 75 (9th Cir. 2009). The Court of Appeals held that I erred in this Social Security appeal by failing to discuss findings of the treating physician.

Hayes v. Comm'r, Case No. CIV-S-04-1621 (E.D. Cal. Sept. 22, 2006), *rev'd*, 281 Fed.Appx. 653 (9th Cir. 2008). The Court of Appeals held that I erred in this Social Security case evaluating a residual functional capacity determination.

Hayes v. Astrue, Case No. CIV-S-04-2652 (E.D. Cal. Mar. 29, 2006), *rev'd*, 270 Fed. Appx. 502 (9th Cir. 2008). The Court of Appeals held that I erred in this Social Security case by finding sufficient evidence for the ALJ's conclusion.

Taniguchi v. Prudential Ins. Co., Case No. CIV-S-03-2306 (E.D. Cal. Oct. 28, 2005), *vacated*, 250 Fed.Appx. 227 (9th Cir. 2007). The Court of Appeals vacated my entry of summary judgment in this denial of coverage action.

Sorn v. Barnhart, Case No. CIV-S-02-1388 (E. D. Cal. Mar. 31, 2004), *rev'd*, 178 Fed.Appx. 680 (9th Cir. 2006). The Court of Appeals held that I erred in this Social Security case by finding sufficient evidence for the ALJ's conclusion.

ii) In the following seven cases, my Findings and Recommendations were adopted in full by the District Judge, and then the District Judge's final order was reversed:

Avina v. Medellin, Case No. CIV-S-02-2661 (E.D. Cal. Mar. 2, 2007 & Mar. 30, 2007), *aff'd in part, vacated in part and remanded*, 339 Fed. Appx. 739 (9th Cir. 2009). The Court of Appeals affirmed in part but found that the plaintiff had exhausted administrative remedies and was entitled to proceed on one claim.

Grayson v. Carey, Case No. CIV-S-03-1694 (E.D. Cal. Aug. 10, 2006 & Sept. 11, 2006), *rev'd and remanded*, 291 Fed. Appx. 17 (9th Cir. 2008). The Court of Appeals reversed in light of *Whorton v. Bockting*, 549 U.S. 506 (2007), decided after my initial opinion, and on my analysis of a procedural bar.

Chappell v. Bess, Case No. CIV-S-01-1979 (E.D. Cal. Mar. 8, 2006 & Apr. 2006), *rev'd*, 275 Fed. Appx. 711 (9th Cir. 2008). The Court of Appeals reversed summary judgment based on stipulation of the parties in this Section 1983 prisoner civil rights case.

Davis v. Silva, No. CIV-S-04-0236, 2005 WL 1540201 (E.D. Cal. June 28, 2005), *adopted*, 2005 WL 2001002 (E.D. Cal. Aug. 19, 2005), *rev'd*, 511 F.3d 1005 (9th Cir. 2008). The Court of Appeals reversed a determination that the habeas petitioner had failed to exhaust state court remedies and found he had satisfied the "fair presentation" requirement even though he did not "present a clear narrative."

O'Neal v. Price, Case No. CIV-S-02-1824 (E.D. Cal. Feb. 17, 2004 & Mar. 3, 2004), *rev'd*, 130 Fed. Appx. 916 (9th Cir. 2005). The Court of Appeals remanded for reconsideration in light of a new decision issued while this case was pending on appeal.

Orner v. Farmon, CIV-S-00-0017 (E.D. Cal. Aug. 15, 2003 & Sept. 30, 2003), *rev'd*, 116 Fed. Appx. 844 (9th Cir. 2004). The Court of Appeals found in this habeas petition that trial counsel had been ineffective for failing to investigate evidence that was impeachable and agreeing to exclude favorable evidence.

Chappell v. McCargar, CIV-S-02-2299 (E.D. Cal. May 12, 2003 & July 2, 2003), *rev'd*, 152 Fed. Appx. 171 (9th Cir. 2005). The Court of Appeals held that this prisoner's civil rights case alleging denial of access to courts and retaliation stated a First Amendment claim, reversing the dismissal I recommended.

iii) My Findings and Recommendations were not adopted, or not adopted in full, by the District Judge in the following nine matters:

Avila v. Olivera Egg Ranch, Case No. 08-2488 (E.D. Cal. Sept. 11, 2009), *request for recon. granted*, Case No. 08-2488 (Feb. 18, 2010). The District Judge granted plaintiff's request for reconsideration of a discovery ruling, and remanded for determination of expenses to be awarded to the prevailing party.

Integon Preferred Ins. Co. v. Isztojka, Case No. 07-526 (E.D. Cal. Oct. 6, 2008), *rejected by* Case No. 07-256 (E.D. Cal. Dec. 9, 2008), *rev'd*, Case No. 09-15702 (9th Cir. Feb. 26, 2010). The District Judge rejected my recommendation that summary judgment be denied. The Ninth Circuit reversed the District Judge.

Smith v. Yates, Case No. CIV-S-06-2072, 2008 WL 707376 (E.D. Cal. Mar. 14, 2008), *rejected by* 2008 WL 3992730 (E.D. Cal. Aug. 25, 2008). The District Judge found an error in my calculation of statutory tolling time.

Somers v. Schwartz, Case No. CIV-S-04-698 (E.D. Cal. July 27, 2007), *rejected by* Case No. CIV-S-04-698 (E.D. Cal. Dec. 18, 2007). The District Judge declined to adopt my recommended grant in a parole habeas case.

Mehl v. Blanas, Case No. CIV-S-03-2682 (E.D. Cal. Dec. 1, 2006), *vacated in part*, 241 F.R.D. 653 (E.D. Cal. Mar. 27 2007). The District Judge issued a broader protective order on discovery than I had in this Section 1983 suit.

Bogan v. Runnels, Case No. CIV-S-02-1408, 2005 WL 2089811 (E.D. Cal. Aug. 30, 2005), *adopted in part by* Case No. CIV-S-02-1408, 2005 WL 2671405 (E.D. Cal. Oct. 19, 2005). The District Judge granted summary judgment in full, whereas I had recommended a partial grant.

Comm. Ctr., Inc. v. Hewitt, Case No. CIV-S-03-1968 (E.D. Cal. Apr. 5, 2005). The District Judge declined to adopt my recommendation for entry of default based on evidence spoliation.

Sass v. Cal. Bd. of Prison Terms, Case No. CIV-S-01-0835 (E.D. Cal. Mar. 16, 2005), *declined to adopt*, 376 F. Supp. 2d 975 (E.D. Cal. 2005), *aff'd in part*, 461 F.3d 1123 (9th Cir. 2006). The District Judge declined to adopt my finding of a liberty interest in state parole protected by the Fourteenth Amendment; the Court of Appeals agreed with me. The District Judge rejected my analysis of whether due process had been afforded and the Court of Appeals found that it had.

Riel v. Warden, Case No. CIV-S-01-0507 (E.D. Cal. July 15, 2003 & Apr. 11, 2008). *See also* 2008 WL 1734786 (E.D. Cal. Apr. 14, 2008) and 2009 WL 805332 (E.D. Cal. Mar. 27, 2009). The District Judge reversed two discovery orders I issued in this capital habeas case. My first order denied petitioner's motion to conduct discovery on the breadth of murders eligible for the death penalty in California. My second order denied a hearing on the guilt phase aspects of petitioner's ineffective assistance of counsel claim.

- 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 do not designate decisions published or unpublished; I file all my decisions with our Court Clerk. Many of my written opinions are available through Westlaw and Lexis and almost all are accessible through our Court's Case Management / Electronic Case Filing system. In the rare petty offense case in which I issue a written decision, the decision is publicly available through the Clerk's Office.

- 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.

Reynoso-Rodriguez v. Napolitano, 2009 WL 3157477 (E.D. Cal. Sept. 28, 2009).

Osband v. Warden, Case No. CIV-S-97-0152 (E.D. Cal. June 13, 2008), *mot. for recon. denied*, Case No. CIV-S-97-0152 (E.D. Cal. Jan. 30, 2009).

United States v. Garcia-Guizar, 2007 WL 1098553 (E.D. Cal. Apr. 12, 2007), *adopted as modified by* 2007 WL 1747046 (E.D. Cal. June 18, 2007).

Smith v. Curry, 2007 WL 841747 (E.D. Cal. Mar. 20, 2007), *adopted by* 2007 WL 2253520 (E.D. Cal. Aug. 3, 2007), *aff'd*, 580 F.3d 1071 (9th Cir. 2009).

Sass v. Cal. Bd. of Prison Terms, Case No. CIV-S-01-0835 (E.D. Cal. Mar. 16, 2005), *declined to adopt*, 376 F. Supp. 2d 975 (E.D. Cal. 2005), *aff'd in part*, 461 F.3d 1123 (9th Cir. 2006).

Turner v. Hickman, 342 F. Supp.2d 887 (E.D. Cal. 2004).

United States v. Johnson, Case No. CR-S-03-310 (E.D. Cal. Nov. 13, 2003).

United States v. Camacho, Case No. CR-S-03-0280 (E.D. Cal. Sept. 4, 2003), *aff'd*, Case No. CR-S-03-0280 (Feb. 9, 2004), *aff'd*, 413 F.3d 985 (9th Cir. 2005).

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:
 - a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I participate in our Court's automatic recusal system by which I regularly provide the Clerk with a list of potential conflicts and screen cases during case assignment that could present conflicts based on this list. I also carefully evaluate each case—both at the time of initial reference and again if it is to be assigned to me for all purposes on consent of the parties. Whenever called for by the Code of Conduct for United States Judges, the recusal statutes, or a general interest in maintaining impartiality and the appearance of impartiality of the Court, I disclose relationships and/or recuse myself.

I have recused *sua sponte* in approximately .003 percent of all cases that have been assigned to me since I began service as a United States Magistrate Judge.

In the following cases, I recused because counsel for a party is affiliated with a law firm that provides legal services to my husband's business:

Cal. Shock Trauma Air Rescue v. State Comp. Ins. Fund, CIV-S-09-0090
Swarbrick v. Umpqua Bank, CIV-S-08-0532
Azucena Negrete v. Oldcastle APG West, Inc., CIV-S-08-0477
Golden Gate Beverage Co. v. DMH Ingredients, CIV-S-07-2247
Jonelle Lewis v. Starbucks Corp., CIV-S-07-490

In the following cases, I recused because I or a member of my chambers staff had a family relationship, friendship, or prior professional relationship with an attorney:

Fourscore Res. Capital, LLC v. Nat'l Credit Acceptance, Inc., CIV-S-09-0032
Reclamation Dist. No. 2116 v. Arcady Oil Co., CIV-S-96-1473
Sharon Martin v. Jennell Parks, CIV-S-07-2796
Johnson v. Roche, CIV-S-06-1676
Miller v. Butte County Sheriff's Dep't, CIV-S-06-489
Wilson v. Rebound Action Sport, CIV-S-00-1264

In the following cases, I recused because I, a member of my chambers staff, or a colleague on the bench had a family relationship, friendship, or prior professional relationship or imputed professional relationship with a litigant:

Cofield v. United States, CIV-S-06-1798
Hinton v. Pliler, CIV-S-01-1174
Acuna v. Hedgepeth, CIV-S-09-1538
Fields v. Tefeeries, CIV-S-05-2292
Tholmer v. Pliler, CIV-S-04-1368
Ware v. Sacramento County, CIV-S-06-913

In the following case, I recused because I either still had some law school loans with Sallie Mae, or had only recently paid off such loans:

Virgen v. Sallie Mae, CIV-S-06-341

In the following cases, I recused in order to avoid any appearance of a conflict, in light of my close involvement, until shortly before becoming a United States Magistrate Judge, with efforts to pass a bond measure, and to promote school district unification, both of which affected the school district parties in the cases:

Sparks v. North Sacramento School Dist., CIV-S-05-2496
Slade v. Grant Joint Union High School Dist., CIV-S-05-1483

In the following cases, I recused for reasons I am not able to determine at this time:

Hall v. Pliler, CIV-S-05-1556
Wong et al. v. Heinrich Props. Gen. Props. CIV-S-03-0050

The cases in which a party has requested my recusal, and in which I recused, are as follows:

Johnson v. Couturier, Jr., CIV-S-05-2046. I recused myself from presiding over a non-dispositive motion reference when a party requested my recusal based on one attorney having been my colleague when I was a law firm associate.

Pratt v. Cal. State Bd. of Pharmacy, CIV-S-05-345. I recused myself when a party requested by recusal based on an attorney having been my former neighbor.

The cases in which a party has requested my recusal, and in which I declined to recuse because I found no grounds for recusal after careful consideration of the factors prescribed by 28 U.S.C. § 455, are as follows:

Bowman v. Schwarzenegger, CIV-S-07-2164 (pro se prisoner's civil rights action)

Kirkland v. Levi, CIV-S-06-2596 (pro se prisoner's civil rights action)

Cohea v. Salter, CIV-S-06-2260 (pro se prisoner's civil rights action)

Penilton v. County of Sacramento, CIV-S-03-1966 (pro se prisoner's civil rights action)

Kenneth Driessen v. Tehama County, CIV-S-03-0069 (civil pro se plaintiff)

United States v. Sukup, 97-CR-0461 (federal habeas petition)

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 from 2001-2003 as a public member of the Cal/OSHA Standards Board by appointment of Governor Gray Davis.

I served from 1987-1992 as a Councilmember for District 6 of the City of Sacramento. I was elected in a nonpartisan election in September 1987 and did not run for reelection. While a Councilmember, I served as Vice-Mayor in 1989, and was an appointee from the Council to the following other decision-making bodies: Metro Transportation Commission, Regional Transit Board, Sacramento Metropolitan Flood Protection Task Force (alternate), Sacramento Theatre Company Board of Directors, Sacramento Transportation Authority (Vice-Chair) and Sacramento/Yolo Port District/Board of Electors.

I served from approximately 1985 to 1987 as a member of the Sacramento City Toxics Commission by appointment of the Sacramento City Council.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

From 1998 to 2001, I was Treasurer for Education First for Grant, a general purpose county committee formed to support candidates for the Grant Joint Union High School District. From 2000 to 2002, I was Treasurer and Community Petition Chair for Families for Better Education from 2000 to 2002, an organization that worked to place a measure on the local ballot, through signature-gathering, to unify local elementary and high school districts. Also from 2000-2002, I was a Board Member of Leaders for Effective Government, a committee formed to support candidates for the California State Senate.

I was the candidate in my own campaign for Sacramento City Council in 1987. Prior to becoming a judge, I was an uncompensated volunteer without title in a number of campaigns. Typically, I walked precincts or stuffed envelopes, or lent my name in support. The specific campaigns in which I recall participating are:

Ray Tretheway for City Council (2001)
Bill Farrell for City Council (2000)
Rob Kerth for Mayor (2000)
School Bond Measure, North Sacramento School District (approx. 2000)
Lauren Hammond for City Council (1997)
Deborah Ortiz for Sacramento City Council (1993)
Rob Kerth for City Council (1992)
Bill Clinton for President (1992)
Jerry Brown for President (1992 (national convention delegate))
Kate Karpilow for Sacramento City Council (1989)
Grantland Johnson for County Supervisor (1986, 1990)
Peter Keat for SMUD Board (1988)
Leroy Greene for Senate (1986)
Ed Smeloff for SMUD Board (1986)
Joe Serna for Mayor (1982, 1986)
Lloyd Connelly for Assembly (1982)
Ann Evans for Davis City Council (1982)
Peter McNamee for Yolo County Clerk-Recorder (1982)
Tom Tomasi for Davis City Council (1982)
John Anderson for President (1980)
George McGovern for President (1972)

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

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

In addition to my current position as United States Magistrate Judge in the Eastern District of California, the following information describes my law practice and legal experience since graduation from law school.

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

I have not served as clerk to a judge. During the spring semester 1994, I was a full-time judicial extern to then-United States District Judge David F. Levi of the Eastern District of California. I received academic credit and was not compensated.

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

2000-2003

Law Offices of Kim J. Mueller

451 Arden Way

Sacramento, California 95815

During 2000 located at 520 Calvados Avenue

Sacramento, California 95815

- 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.

1995-1999

Orrick, Herrington & Sutcliffe LLP

400 Capitol Mall, Suite 3000

Sacramento, California 95814

Associate

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

I have served as a settlement judge in numerous cases during my time as a U.S. Magistrate Judge. The 10 most significant matters are as follows:

1. Mediated a complex ERISA action involving more than a dozen parties, resulting in a proposed consent decree providing for \$8.8 million in cash payments and transfer of a multi-million dollar real estate asset.
2. Mediated to full settlement a case against a joint powers agency based on alleged wrongful termination based on race.
3. Mediated to full settlement a civil rights case brought by a prisoner under 42 U.S.C. § 1983, alleging correctional officers' Eighth Amendment violations for failure to provide constitutionally adequate medical treatment.
4. Through mediation efforts, laid foundation for ultimate full settlement of civil rights case against a county, alleging violations of due process and Fourth Amendment rights arising from the county's seizure of horses.
5. Mediated to full settlement a case brought by a railway worker against his employer railroad, seeking compensation for alleged work-related injury under the Federal Employers Liability Act.
6. Mediated to full settlement a case for assault and battery brought against state employees and the California Youth Authority, removed to federal court from state court.
7. Mediated to full settlement a civil rights case brought under 42 U.S.C. § 1981 against a private employer, alleging employment discrimination based on race.
8. Mediated, over eight months, a comprehensive global settlement of all claims in two related, complex Americans with Disabilities Act actions against the public entity operating the California State Fairgrounds and a private amusement ride operator, culminating in my entry, as the consent judge, of a consent decree resolving fully injunctive relief.
9. Mediated to full settlement a diversity case alleging, *inter alia*, violations of the Uniform Commercial Code in connection with allegedly unauthorized transfers of \$340,000 in funds from plaintiff's bank account to an account in Africa not controlled by plaintiff.

10. Mediated to full settlement, over the course of 13 months and subject to approval of minor's settlements, two related complex civil rights cases brought against a local municipality and the owner of publicly-subsidized apartments by Hmong residents of the apartment complex, alleging Fair Housing Act violations in the form of harassment amounting to housing discrimination by another apartment resident.

b. Describe:

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

As a sole practitioner from 2000-2003, my practice consisted primarily of intellectual property matters (copyright, trademark, trade secret) with approximately 30 percent litigation, 30 percent licensing and related contractual work, 30 percent proactive protection (registration and auditing) and 10 percent pro bono matters. My prior practice at Orrick, Herrington & Sutcliffe LLP from 1995-1999 also emphasized intellectual property work, although the percentage of litigation at Orrick was higher, in the range of 90 percent.

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

When I managed my own practice, my client base consisted of small and medium-sized local and regional businesses, individuals, and other small to medium-sized law firms that did not have intellectual property capabilities in house. In my prior practice at Orrick, Herrington & Sutcliffe LLP, the client base consisted of larger, national and international corporate entities, with the exception of a few pro bono or sliding scale individual clients.

- 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.

When I was practicing, I appeared in court approximately 3 to 4 times per month.

- i. Indicate the percentage of your practice in:
- | | |
|-----------------------------|----------------|
| 1. federal courts: | 60% |
| 2. state courts of record: | 30% |
| 3. other courts: | 10% (T.T.A.B.) |
| 4. administrative agencies: | |

ii. Indicate the percentage of your practice in:

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

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

As a lawyer, I was on trial teams for three cases tried to a final judgment (two as associate counsel, and one as co-counsel).

i. What percentage of these trials were:

1. jury: 33.3%
2. non-jury: 66.6%

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 did not practice 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. *Fed. Trade Comm'n v. Scott*, Case No. CIV-S-02-2120 (E.D. Cal.; filed Sept. 27, 2002; stipulated order of judgment entered Oct. 3, 2002). District Judge Lawrence K. Karlton. The Federal Trade Commission alleged defendant's violation of the Federal Trade Commission Act through sale of a marketing program involving the provision of bulk e-mail lists. I served as lead counsel representing the defendant, and negotiated a pre-filing settlement that resolved the case promptly upon filing.

Lead government counsel was Craig Tregillus, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room H-238, Washington, D.C. 20580; 202-332-0291.

2. *Eros Int'l v. Digital Entm't*, Case No. CIV-S-02-757 (E.D. Cal.; filed April 11, 2002; stipulated order of attachment entered July 5, 2002; consent judgment entered after my withdrawal in Mar. 2003 in anticipation of assuming my current position). District Judge William B. Shubb. I served as local counsel for plaintiff in this action to enforce a foreign judgment of copyright infringement. I assisted in securing a stipulated order for attachment of defendant's assets, and helped lay the groundwork for entry of a consent judgment to achieve plaintiff's litigation objectives.

Co-counsel included Steven H. Bazerman (now deceased) and Jason Drangel, Epstein, Drangel, Bazerman & James LLP, 60 E. 42nd Street, Suite 820, New York, N.Y. 10165; 212-292-5390; and Mark Leonard, Davis & Leonard LLP, 8880 Cal Center Drive, Suite 180, Sacramento, CA 95826; 916-362-9000. Opposing counsel was Gregory J. Roberts, Barrus & Roberts PC, 7111 N. Fresno St., Suite 210, Fresno, CA 93720; 559-431-6800.

3. *Millennium Integrated Servs., Inc. v. NutraStar, Inc.*, Case No. 02AS02006 (Sacramento County Superior Court; filed Apr. 2, 2002; case settled after my withdrawal in Mar. 2003 in anticipation of assuming current position). Judge Joe Gray (ret.) and Judge Judy Holzer Hersher. In this breach of contract action, which also included related claims, I served as lead counsel representing plaintiff in all aspects of case. With one associate whom I supervised, we obtained multiple writs of attachment and successfully levied on them shortly after filing suit, laying the groundwork for settlement of the case.

Co-counsel was Mark Leonard, Davis & Leonard, 8880 Cal Center Drive, Suite 180, Sacramento, CA 95826; 916-362-9000. Opposing counsel was Dale C. Campbell, Weintraub Genshlea Chediak, 400 Capitol Mall, Suite 1100, Sacramento, CA 95814; 916-558-6014.

4. *Gemstone Educ. Mgmt. v. Computerized Home Vision Therapy Sys.*, Case No. CIV-S-02-0460 (E.D. Cal.; filed Mar. 1, 2002; action dismissed Sept. 25, 2002). District Judge William B. Shubb. In this declaratory relief action filed after plaintiff's receipt of a cease and desist demand, I served as sole counsel representing plaintiff. I was able to settle the case favorably prior to the initiation of discovery.

Opposing counsel was Ronald H. Schechtman, Pryor Cashman, 410 Park Ave., New York, New York 10022; 212-326-0102.

5. *Nintendo v. Pooler*, Case No. CIV-S-00-1674 (W.D. Wash.; filed Oct. 3, 2000; dismissed Mar. 29, 2001). District Judge Thomas S. Zilly. In this trademark infringement action based on internet domain name registrations, I served as sole counsel representing an individual defendant. I succeeded in having the case dismissed for lack of jurisdiction, laying the groundwork for defendant to sustain his position for a sufficiently long period of time to obtain an acceptable business resolution. Plaintiff refiled the case in the Eastern District of California on Apr. 10, 2001 as Case No. CIV-S-01-704 (E.D. Cal.); it was dismissed following settlement on Dec. 3, 2001.

Co-counsel was Scott T. Wilsdon, Yarmuth Wilsdon Calfo PLLC, 925 Fourth Ave., Suite 2500, Seattle, WA 98104; 206-516-3871. Opposing counsel were Nicholas Peter Gellert and William Rava, Perkins Coie LLP, 1201 Third Ave., Suite 4800, Seattle, WA 98101-3099, 206-359-8680 & 206-359-6338.

6. *Kings Country Ownership Co. v. Micros Systems*, Case No. CIV-S-99-0384 (E.D. Cal.; filed Feb. 26, 1999; interlocutory appeal dismissed by 9th Cir. Feb. 1, 2000; case dismissed Mar. 8, 2000). District Judge David F. Levi. In this diversity action for breach of contract, I had day-to-day management of the case. I represented my client, one of the corporate plaintiffs, in motion practice. We prevailed in opposing a motion to compel arbitration. I also played an active role in settlement discussions convened by the district and appellate courts.

Co-counsel were Norman C. Hile and James E. Houpt, Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, CA 95814; 916-329-7900 and 916-329-7949, respectively. Opposing counsel was H. Ann Liroff, Kelly, Hockel & Klein, PC, 44 Montgomery Street, Suite 2500, San Francisco, CA 94101, 415-951-0535, James J. Long, Briggs & Morgan, 2400 IDS Center, 80 South Eighth St., Suite 2200, Minneapolis, MN 55402; 612-977-8582, and Honorable Raymond M. Cadei, Sacramento County Superior Court, Dept. 84, Carol Miller Justice Center, 320 Bicentennial Circle, Sacramento, CA 95826-2700; 916-875-7521.

7. *Cal. State R.R. Museum Found. v. Carlson, et al.*, Case No. 99AS03478 (Sacramento County Super. Ct.; filed June 22, 1999). In this trademark enforcement action alleging infringement of "Railfair" trademarks, I served as lead counsel representing plaintiff. I settled the case to the plaintiff's satisfaction following preliminary injunctive relief motion practice, avoiding extended, costly litigation.

The billing partner was Norm C. Hile, Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, CA 95814; 916-329-7900. Opposing counsel was Jeffrey L. Aran, P.O. Box 22833, Sacramento, CA 95822; 916-395-6000.

8. *Seminis Vegetable Seeds, Inc. v. Atlas Seeds, Inc.*, Case No. CIV-S-98-1499 DFL JFM (E.D. Cal.; filed Aug. 7, 1998; case dismissed Mar. 26, 1999). District Judge David F. Levi. In this unfair competition action involving hybridized seed, I served as local counsel for plaintiff, and assisted in early settlement of the case.

Lead co-counsel was Effie F. Anastassiou, Anastassiou and Associates, 242 Capitol St., P.O. Box 2210, Salinas, CA 93902, 831-754-2501. Opposing counsel was Pamela Jackson, 409 Boyd St., Vacaville, CA 95688; 707-446-2333.

9. *Berkla v. Corel*, Case No. CIV-S-98-1159 (E.D. Cal.; filed June 19, 1998; judgment entered Nov. 16, 1999). Magistrate Judge Gregory G. Hollows. In this Copyright Act action with pendent trade secret and unfair competition claims, I served as co-counsel representing plaintiff, who was the creator of a digital tool for use in creating graphic images. After substantial portions of plaintiff's case survived summary judgment, I served as co-counsel at a jury trial held from Oct. 25 to Nov. 8, 1999. Plaintiff succeeded in obtaining a liability verdict on all claims and a finding of willful conduct by defendant, and also obtained damages and punitive damages awards.

Co-counsel was Daniel P. Maguire, California Governor's Office, Legal Affairs, State Capitol, Sacramento, CA 95814, 916-445-0873. Opposing counsel were Brad Lewis, Barclays Global Investors, 400 Howard Street, Second Floor, San Francisco, CA 94105, 415-597-2311, and Patrick Premo, Fenwick & West LLP, 801 California Street, Mountain View, CA 94041, 650-335-7963.

10. *Info. for Public Affairs, Inc. v. Dow Jones & Co.*, Case No. 96AS05368 (Sacramento Superior Court; filed September 27, 1996; settled 1997). *See also* Case No. C024924 (Third District Court of Appeal; affirming Superior Court on July 24, 1997; unpublished decision). Superior Court Judge Earl Warren, Jr. (ret.); Appellate Justices Consuelo M. Callahan, Rodney Davis and Coleman Blease. My client, the plaintiff publisher of the *California Journal*, brought this trademark infringement and unfair competition action against the publisher of the *Wall Street Journal*, which had sought to create a new section using the *California Journal* name. I was lead associate and managed the litigation on a day-to-day basis. We succeeded in obtaining preliminary injunctive relief for our client, and in preserving the injunction on appeal.

Co-counsel were Norman C. Hile, Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, CA 95814; 916-329-7900, and Andrew W. Stroud, Mennemeier, Glassman & Stroud, 980 9th Street, Suite 1700, Sacramento, CA 95814; 916-551-2590. Lead opposing counsel was Rex Heinke, Akin Gump Strauss Hauer & Feld LLP, 2029 Century Park East, Suite 2400, Los Angeles, CA 90067; 310-229-1030.

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.)

While in private practice, my most significant legal activity comprised complex civil litigation with a primary emphasis on intellectual property including copyright, trademark, trade secret and unfair competition and patent litigation matters.

As a sole practitioner, my legal activity continued to include civil litigation emphasizing intellectual property matters. At the same time I engaged in business counseling and assisted clients with intellectual property protection. Where possible, I strove to assist clients in resolving disputes without litigation or early on in litigation, in order to avoid the attendant time and costs. An example of a matter I was able to resolve prior to any litigation involved a Bay Area artist whose marble installation in the foyer of a downtown high rise was slated for removal; through negotiations with the building owner and the local Arts Commission, I assisted the artist client in preserving the artwork for future re-installation. In another example of a dispute I was able to resolve early on, in the cases of *Blue Ribbon Maint. v. Mercado and Hudson*, I represented the defendants in related trade secret misappropriation actions in which I succeeded in negotiating a stipulated dismissal prior to costly discovery. See Case Nos. 01AS06409, 01AS06410 (Sacramento County Superior Court; filed Oct. 19, 2001; case dismissed Aug. 2002).

I have never been a registered lobbyist and I did not perform lobbying activities for any clients or organizations. I recall meeting on a few occasions in the 1980s with state and local legislators regarding proposed legislation, as a community volunteer. Also, I recall appearing once each before the Sacramento City Council in support of a local ordinance and the Cal/OSHA Standards Board in my capacity as Health and Safety Director for the California Firefighter Foundation in support of a proposed health and safety standard.

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.

Pacific McGeorge School of Law
Federal Courts (Fall 2009), co-taught with Courtney J. Linn
Copyright Law (Spring 2001)
Computer and Internet Law (Spring 2000, Fall 2000)

University of California, Davis, King Hall School of Law
Cyberlaw 101 (Spring 1999), survey course on emerging Internet legal issues

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 do not expect to derive any deferred income or future benefit from prior business relationships.

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.

Pacific McGeorge School of Law has asked me to team-teach Federal Courts again in Fall 2010, and I have accepted. I have no other plans, commitments, or agreements to pursue outside employment. In addition to the Federal Courts class, I hope to continue to teach, provided that I can do so consistent with my obligations to 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.

I have a small number of direct and family ownership interests that may present occasional conflicts. My husband is President of the North Sacramento Land Company, which owns and manages a handful of local properties, and my husband and I own a commercial studio building in Sacramento. If these entities or properties were involved in a case I would recuse myself. It has been my practice to recuse myself in cases where attorneys have performed work for my

husband's company and I anticipate that, if confirmed, I would continue to do so whenever there might be a reasonable appearance 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.

If confirmed to serve as a District Judge, I will continue my present practice with respect to identifying conflicts and determining whether recusal is appropriate. I will carefully review disclosure statements and direct provision of additional information where necessary to identify and treat any conflict or circumstance that could give rise to the appearance of conflict. As a case moves forward, during the review of any pleadings or in presiding over a status conference or hearing, I will remain vigilant for any new information that might require a disclosure or recusal. At any time I identify a possible conflict, or at any time it is suggested by a litigant, I will carefully consider my obligations under 28 U.S.C. § 455 and under the Code of Conduct for United States Judges and disclose or recuse myself as required.

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.

When I operated my own law practice, I regularly provided pro bono and sliding scale services to individuals and nonprofit organizations, particularly in litigation and contract negotiation matters. I offered my services pro bono to "walk in" clients when appropriate, as well as through the California Lawyers for the Arts' legal referral panel. In some cases, I continued to represent paying clients after their ability to pay ran out. Previously, when I practiced at Orrick, Herrington & Sutcliffe, I obtained approval for work on pro bono matters referred by California Lawyers for the Arts.

As a United States Magistrate Judge, I have expanded resources and recruitment for our court's pro bono panel of attorneys available for appointment to cases in which the court determines that the claims of a pro se incarcerated civil rights plaintiff warrant counsel. I also serve on the Federal Courts Subcommittee of the California State Bar's Access to Justice Commission.

As a judge, I also have remained active in community activities consistent with the judicial canons, such as by participating in a mentorship program sponsored by the Rotary Club.

26. Selection Process:

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

In response to Senator Boxer's call for applications for the current vacancy in the Eastern District of California, I completed and submitted an application to her Selection Committee for the District in February 2009. I interviewed with the Committee on April 27, 2009. On May 26, 2009, I met briefly with Congresswoman Doris Matsui at her invitation to discuss generally the fact that I had applied for the district judgeship position. Beginning in October 2009, I have been in contact with pre-nomination officials at the Department of Justice. On December 18, 2009, I interviewed in Washington with attorneys from the Department of Justice and the Office of White House Counsel. The President submitted my nomination to the Senate on March 10, 2010.

- 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, **KIMBERLY JO MUELLER**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/9/10
(DATE)

Kimberly Jo Mueller
(NAME)



Jo Ann M Lemmon
(NOTARY)