

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

William Joseph Kayatta, Jr.

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

United States Circuit Judge for the First Circuit

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

Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101

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

1953; Pawtucket, Rhode Island

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.

1976 – 1979, Harvard Law School; J.D. (*magna cum laude*), 1979
1972 – 1976, Amherst College; B.A. (*magna cum laude*), 1976

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1980 – present
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101
Partner (1986 – present)
Associate (1980 – 1985)

1979 – 1980
United States Court of Appeals for the First Circuit
156 Federal Street
Portland, Maine 04101
Law Clerk for Chief Judge Frank M. Coffin

Summer 1979
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, New York 10019
Summer Associate

Spring 1979
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Research Associate

Summer 1978
Hale & Dorr
(now Wilmer Hale)
60 State Street
Boston, Massachusetts 02109
Summer Associate

Summer 1977
Harvard Law School
156 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant for Professor Philip Areeda

Summer 1976
Racket & Fitness Center
2445 Congress Street
Portland, Maine 04102
Assistant Tennis Professional

Other Affiliations (uncompensated):

2010 – present
American College of Trial Lawyers
19900 MacArthur Boulevard, Suite 530
Irvine, California 92612
Regent

2005 – present
Pericles Foundation
c/o Michael R. Currie, President
H.M. Payson & Co.
One Portland Square
Portland, Maine 04101
Secretary

1996 – present
University of Maine School of Law
246 Deering Avenue
Portland, Maine 04102
Board of Visitors

1997 – 2005
Maine Bar Foundation
40 Water Street
Hallowell, Maine 04347
President (2004)
Board Member, Officer (2001 – 2004)

1978
Harvard Law Review
Gannett House
1511 Massachusetts Avenue
Cambridge, Massachusetts 02138
Officer

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 registered for selective service upon turning 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Chambers USA, 2011 Client Guide, Star Individual in Commercial Litigation (Maine) (2011)

Best Lawyers in America, Various Litigation Categories (2001 – 2011)

Howard H. Dana Award, Maine Bar Foundation (2010)

Lawdragon, The Lawdragon 500 Leading Litigators (United States) (2006)

Giraffe “Champions for Children Award,” Maine Children’s Alliance (2003)

Maine Equal Justice Partners’ Appreciation Award (2003)

Special Recognition Award, Disability Rights Center of Maine (2001)

Editor and Officer, Harvard Law Review (1978 and 1979)

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.

Advisory Committee on Maine Rules of Civil Procedure (2008 – present)

American Bar Association (1981 – present)

Summit on Civil Justice Improvements, Maine Representative (1993)

Standing Committee on the Federal Judiciary (2007 – 2010)

American Bar Foundation (2009 – present)

American College of Trial Lawyers (2002 – present)

Regent (2010 – present)

Ad Hoc Commission on Judicial Compensation, Vice-Chair (2007)

Emil Gumpert Award Committee (2002 – 2010)

Chair (2008 – 2010)

Regent Liaison to the Atlantic States Committees (2010 – present)

Regent Liaison to the Teaching/Trial & Appellate Advocacy Committee (2010 – present)

Regent Liaison to the Emil Gumpert Award Committee (2010 – present)

Maine State Committee (2003 – 2008)

Chair (2006 – 2008)

American Law Institute (2005 – present)

Campaign for Justice, Chair (2006)

Cumberland County Bar Association (1980 – present)

Maine Bar Foundation (1997 – 2005)
Officer (2001 – 2004)
President (2004)

Maine Board of Bar Examiners (1985 – 1990)
Chair (1988 – 1990)

Maine Legal Services Response Team, Co-Chair (2001 – 2003)

Maine State Bar Association (1980 – present)

Professional Ethics Commission of the Maine Board of Overseers of the Bar (1995 – 2002)
Chair (2002)

Supreme Court Historical Society (1994 – 1995; 2003 – 2007; 2008 – present)

United States Magistrate Judge Merit Selection Committee, District of Maine, Chair (2007)

10. **Bar and Court Admission:**

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

Maine, 1980

There have been no lapses in membership.

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

Supreme Court of the United States (1987)
United States Court of Appeals for the First Circuit (1984)
United States Court of Appeals for the Second Circuit (2010)
United States Court of Appeals for the Sixth Circuit (2007)
United States Court of Appeals for the Ninth Circuit (2004)
United States Court of Appeals for the Eleventh Circuit (2002)
United States District Court for the District of Maine (1980)
United States Court of Federal Claims (2008)
United States Tax Court (2001)
State of Maine (all courts) (1980)

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Gignoux Inn of Court (1994 – 1996)

Pericles Foundation
Secretary (2005 – present)

Purpoodock Club (2005 – present)

University of Maine School of Law
Board of Visitors (1996 – present)

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

I am told that, more than twenty years before I joined, the Purpoodock Club, a golf club, discriminated against women in assigning tee times on weekends. Other than that, to the best of my knowledge the organizations listed in response to 11(a) do not discriminate and did not formerly discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Charles Harvey, MAINE CIVIL PRACTICE (3rd ed. 2011) published by West. As explained in the 2010 preface to this treatise, I co-edited the final draft of this three-volume treatise when the author died before completion. Copies of the preface and the table of contents are supplied.

Maine: Decisions Interpreting Rule 23 of the Maine Rules of Civil Procedure, in Survey of State Class Action Law (American Bar Association, Section of Litigation, ed., 2003 – 2007). I have supplied a copy of the 2007 version, which contains all material included in earlier versions.

Maine's New Business Court, Benchmark Litigation at 153 (Legal Media Group 2007). Copy supplied.

Year in Review: 2006 Accomplishments, Campaign for Justice Annual Report (2006). Copy supplied.

Kristina H. Allaire, Byrne J. Decker, Elizabeth L.B. Greene, Joseph M. Hamilton, William J. Kayatta Jr., Brooks Magratten, & Geraldine G. Sanchez, *First Circuit*, in ERISA SURVEY OF FEDERAL CIRCUITS (Brooks Magratten, ed., 2005). Copy supplied.

Looking Forward...A Message from William J. Kayatta, Jr., Campaign for Justice Annual Report (2005). Copy supplied.

President's Report, 2004 Annual Report of the Maine State Bar Foundation (2005). Copy supplied.

Developments in the Law – Corporate Crime: Regulating Corporate Behavior through Criminal Sanctions, 92 HARV. L. REV. 1227 (1979). I was a co-editor of this article. Copy supplied.

Note, *The Sixth Amendment Right to Have Use Immunity Granted to Defense Witnesses*, 91 HARV. L. REV. 1266 (1978). Copy supplied.

I edited a few other student notes or comments while on the Harvard Law Review in 1978 and 1979, but have no record or memory of which notes or comments I might have edited in some manner.

Class of 1976 Notes, AMHERST MAGAZINE (Fall 1979 to Summer 2001). Copies supplied.

- 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.

American College of Trial Lawyers, American Code of Conduct for Trial Lawyers and Judges Involved in Civil Cases with Self-Represented Parties (2011). This document was published while I was a member of the Board of Regents. I had no role at all in its preparation. Copy supplied.

American College of Trial Lawyers, White Paper on Judicial Elections (2011). This document was published while I was a member of the Board of Regents. I had no role at all in its preparation. Copy supplied.

Since 2008, I have been a member of the Advisory Committee on Maine Rules of Civil Procedure. This committee considers, drafts, and comments on rule changes presented to the Maine Supreme Judicial Court for its consideration. The current version of the Rules is available at http://www.courts.state.me.us/rules_adminorders/rules/TableMRCivPPplus6-10.html.

American College of Trial Lawyers, Judicial Compensation: Our Federal Judges Must Be Fairly Paid (2007). This was prepared by a committee of which I was the vice-chair, and I participated in editing this publication. Copy supplied.

Campaign for Justice Annual Report (2006). Copy supplied in response to 12(a).

2004 Annual Report of the Maine State Bar Foundation (2005). Copy supplied.

In 2004, I was interviewed for a report by the Legal Services Corporation entitled *Evaluation of the Maine State Justice Community Report*. I played no role in authoring the report, nor am I quoted in it. Copy supplied.

In my capacity as a member of the American Bar Association's Standing Committee on the Federal Judiciary between August 2007 and August 2010, I prepared written reports on the judicial candidates for whom I was assigned the role of lead investigator. Under Committee rules, these reports were distributed only to Committee members and were treated as highly confidential. Even after a potential or actual nominee is confirmed and appointed, or withdraws, only one copy of the report is maintained for future use by the Committee, in confidence, and only in the event the person evaluated is later nominated for the same or another Article III 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.

Nomination of Patrick Ende to be a Judge On Maine's District Court, Hearing before the Maine Legislature's Joint Standing Committee on the Judiciary (Aug. 18, 2010) (testimony in support of nomination). Audio recording supplied; my remarks begin about 46 minutes into the recording.

Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States, Hearing before the Committee on the Judiciary, United States Senate, 111th Congress (July 2, 2010) (testimony given as a member of the ABA's Standing Committee on the Judiciary). A recording of my brief oral testimony can be found at: <http://www.c-spanvideo.org/program/294266-2> (at 03:37:30).

Statement of Kim J. Askew, Chair of the American Bar Association Standing Committee on the Federal Judiciary, Concerning the Nomination of the Honorable Elena Kagan to be Associate Justice of the Supreme Court of the United States, before the Committee on the Judiciary, United States Senate (July 1, 2010). I helped draft this statement, a copy of which is supplied.

Letter to Chairs, Maine Legislature's Joint Standing Committee on the Judiciary (Feb. 17, 2009) (supporting the re-appointment of Chief Justice Leigh Saufley). Copy supplied.

Biennial Budget 2008-2009, Hearing Before the Maine Legislature's Joint Standing Committee on Appropriations and Financial Affairs & Joint Standing Committee on Judiciary (Mar. 5, 2007) (supporting the judiciary's proposed budget). I have no notes, transcript or recording of my testimony.

Nomination of Hon. Leigh Saufley as Chief Justice of the Maine Supreme Judicial Court, Hearing Before the Maine Legislature's Joint Standing Committee on the Judiciary (Dec. 5, 2001) (testimony in support of nomination). I have no notes, transcript, or recording of my testimony.

- 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.

May 5, 2011: Continuing Legal Education presentation with Peter J. Guffin on "Data Security Breach: Now What?" at a meeting of the Northeast Chapter of the Association of Corporate Counsel at Pierce Atwood LLP, in Portsmouth, New Hampshire. Copy of presentation slides supplied.

October 26, 2010: Introduction of Frank M. Coffin Lecturer Stephen H. Oleskey at the Portland Museum of Art Auditorium, sponsored by the University of Maine School of Law. Copy supplied.

September 25, 2010: Introduction of Speaker Joseph Olimpi of the Neighborhood Legal Services Association of Pittsburgh, Pennsylvania, at the Annual Meeting of the American College of Trial Lawyers in Boston, Massachusetts. I have no notes, transcript or recording. The address of the ACTL is 19900 MacArthur Boulevard, Suite 530, Irvine, California 92612.

August 5, 2010: Continuing Legal Education presentation on “Merchant Exposure in the Wake of Credit Card Data Theft” at a conference on Data Security and Management in Global Commerce sponsored by the Maine Center for Entrepreneurial Development. Copy of presentation slides supplied.

July 29, 2010: Emil Gumpert Award Presentation to the Neighborhood Legal Services Association of Pittsburgh, Pennsylvania, in Pittsburgh, Pennsylvania, on behalf of the American College of Trial Lawyers. I have no notes, transcript or recording, but press coverage is supplied. The address of the ACTL is 19900 MacArthur Boulevard, Suite 530, Irvine, California 92612.

June 12, 2010: Panelist, “The Challenges of Self-Represented Litigants” at the 2010 Northwest Regional Meeting of the American College of Trial Lawyers in Halifax, Nova Scotia, Canada. Copy of presentation slides supplied.

January 21, 2010: Acceptance Remarks delivered upon receipt of 2010 Howard H. Dana Award at the Annual Meeting of the Maine State Bar Association. Copy of remarks supplied.

October 20, 2009: Continuing Legal Education presentation, “Devising Procedural Strategies in ERISA Class Actions” at the American Conference Institute Conference on ERISA Litigation. Copy of accompanying materials supplied.

October 10, 2009: Introduction of Speaker Lynn Burns of Pro Bono Law Ontario, Toronto, Canada, at the Annual Meeting of the American College of Trial Lawyers in Washington, D.C. I have no notes, transcript or recording. The address of the ACTL is 19900 MacArthur Boulevard, Suite 530, Irvine, California 92612.

September 24, 2009: Emil Gumpert Award Presentation to Pro Bono Law Ontario of Toronto, Canada, at the reception following the Annual Opening Ceremony for the Provincial Courts in Ottawa, Canada, on behalf of the American College of Trial Lawyers. I have no notes, transcript or recording, but ACTL

coverage is supplied. The address of the ACTL is 19900 MacArthur Boulevard, Suite 530, Irvine, California 92612.

April 1, 2009: Classroom lecture on "Preparation for Bar Exam on Professional Responsibility," presented to third-year students of the University of Maine Law School. Copy of presentation slides supplied.

February 27, 2009: Eulogy for Charles Harvey at the Cathedral Church for Saint Luke, 143 State Street, Portland, Maine. Copy supplied.

March 8, 2008: Mock Debate on the proposition "Roger Clemens Should Be Barred for Life from Baseball's Hall Of Fame" at the Annual Meeting of the American College of Trial Lawyers in La Quinta, California. Copy of notes supplied.

October 11, 2006: Remarks for Opening Law Court Arguments at South Portland High School, South Portland, Maine. Copy of notes and press coverage supplied.

May 3, 2005: Presentation on "Make-Whole Relief Post-*Davila*" at the Law Conference on Health Insurance Plans: Bridging the Gap between Providers and Insurers. Copy of outline supplied.

October 22, 2004: Panelist, "The Vanishing Jury Trial" at the District of Maine Judicial Conference. I have no notes, transcript, or recording. The address for the U.S. District Court for the District of Maine is 156 Federal Street, Portland, Maine 0411.

April 23, 2001: Classroom lecture on "The Ins and Outs of Civil Litigation," presented at the University of Maine School of Law. Copy of presentation slides supplied.

October 20, 2000: Continuing Legal Education presentation on "Employment Discrimination Litigation Case Filing Data," at the 2000 Judicial Conference of the United States District Court for the District of Maine. Copy of presentation slides supplied.

May 1, 2000: Classroom lecture on "Civil Pretrial Practice," presented to third-year students at the University of Maine School of Law. Copy of annotated outline supplied.

April 13, 2000: Continuing Legal Education presentation on "The Aftermath of *Unum v. Ward*," at a meeting of the Defense Research Institute. Copy of presentation slides and outline supplied.

January 31, 2000: Classroom lecture on "Effective Appellate Advocacy," presented to first-year students at the University of Maine School of Law. Copy of outline and presentation slides supplied.

February 13, 1998: Panelist, "Jury Reform: Using Existing Rules to Improve the Quality of Information Given to Jurors," presented at the mid-winter meeting of the Committee on Corporate Counsel of the American Bar Association. Copy of outline supplied.

December 17, 1997: Continuing Legal Education presentation on "Don't Be Disabled by ERISA" at a Continuing Legal Education program sponsored by the Maine State Bar Association. Copy of outline supplied.

April 4, 1997: Panelist, "Use of Depositions at Trial" at the Maine State Bar Association Continuing Legal Education program. Copy of outline supplied.

1994: Presenter or panelist, "Recent Trends in Employment Litigation in the District of Maine," District of Maine Judicial Conference. I have no notes, transcript or recording. The address for the U.S. District Court for the District of Maine is 156 Federal Street, Portland, Maine 04101.

April 16, 1993: Presenter, "A Primer in Trademark Litigation for General Litigation Practitioners," Maine State Bar Association. Copy of handout supplied.

November 1, 1991: Presentation of observations gathered in defending law enforcement officials, at a conference on police misconduct litigation sponsored by the University of Maine School of Law and the Maine Civil Liberties Union. I have no notes, transcript or recording. The address of the University of Maine School of Law is 246 Deering Avenue, Portland, Maine 04102. The address of the MCLU is 121 Middle Street, Suite 301, Portland, Maine 04101.

It is possible that I participated in other events, none recent, that I have been unable to recall or identify through searches of personal and public records.

- 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.

Trevor Maxwell, *Portland Lawyer Leads Panel Reviewing Kagan*, Portland Press Herald (July 3, 2010) (reprinted in multiple outlets). Copy supplied.

Sheri Qualters, *No Quiet Retirement for Justice Souter*, National Law Journal (Apr. 19, 2010) (reprinted in multiple outlets). Copy supplied.

Trevor Maxwell, *Lawyers Told Volunteering To Help Poor More Critical*, Portland Press Herald (Jan. 22, 2010). I was interviewed for this article, but not quoted. Copy supplied.

Judy Harrison, *Judge, Lawmaker Frank Coffin Dies*, Bangor Daily News (Dec. 9, 2009). Copy supplied.

Trevor Maxwell, *He Was a National Treasure*, Portland Press Herald (Dec. 9, 2009). Copy supplied.

Trevor Maxwell, *Taking Measure of a Legal Giant*, Portland Press Herald (July 12, 2009). Copy supplied.

Trevor Maxwell, *A Lawyer Who Won Cases and Respect*, Portland Press Herald (Apr. 1, 2009). Copy supplied.

Trevor Maxwell, *Federal Judge Steps Down after 20 Years of Service*, Portland Press Herald (Mar. 31, 2008). Copy supplied.

Tess Nacelewicz, *Panel Backs City, Rejects Key Scotia Prince Claims*, Portland Press Herald (Sept. 22, 2007). Copy supplied.

Noel K. Gallagher, *Maine Lawyers Prove Their Worth in California Rate Case*, Portland Press Herald (Dec. 26, 2006). Copy supplied.

Press release, *Pierce Atwood LLP Wins Landmark Case Affecting Future Regulation of Nation's Electricity Industry*, Pierce Atwood LLP (Dec. 21, 2006). Copy supplied.

David Johnston, *Court Says U.S. Oversight of Power Industry Was Lax*, New York Times (Dec. 20, 2006). Copy supplied.

Interview by Jack Friedman and Barry Diskin for their article *Nuclear Waste Disposal: A Taxing Real Estate Issue*, Real Estate Issues (July 1, 2006). Although I was not directly quoted, a copy is supplied.

Taylor Smith, *The Supreme Experience*, MaineBiz.com (May 15, 2006). Copy supplied.

Tom Nugent, *Portland Fails to Fix Sea Terminal*, Boston Globe (Mar. 18, 2006). Copy supplied.

Jeff Montgomery, *BP Gas Terminal Dealt Setback*, The News Journal (Jan. 24, 2006). Copy supplied.

Guy Taylor, *Roberts Made His Mark Quietly, Early at Harvard*, The Washington Times (Sept. 2, 2005). Copy supplied.

Janny Scott, *Roberts's Roots as Conservative*, New York Times (Aug. 21, 2005) (quotes reprinted in multiple outlets). Copy supplied.

Peter Grier, *Roberts Blends Low-Key Style, High Ambition*, Christian Science Monitor (July 25, 2005). Copy supplied.

Richard Serrano, et al., *Roberts Was Ready at Every Turn*, Los Angeles Times (July 25, 2005). Copy supplied.

Nancy Gibbs, *Judging Mr. Right*, Time (July 24, 2005). Copy supplied.

Jeff Tuttle, *Maine Groups Divided on Roberts*, Bangor Daily News (July 21, 2005). Copy supplied.

Nina Easton and Kevin Cullen, *To Many, He Is a Quiet Conservative*, Boston Globe (July 21, 2005) (quote reprinted in multiple outlets). Copy supplied.

Todd S. Purdum et al., *Court Nominee's Life is Rooted in Faith and Respect for Law*, New York Times (July 21, 2005) (quotes reprinted in multiple outlets). Copy supplied.

Trevor Maxwell, *Portland Lawyer's Ties to Roberts Span Decades*, Portland Press Herald (July 21, 2005). Copy supplied.

Portland Lawyer Talks Up Supreme Court Nominee John Roberts, Associated Press (July 20, 2005). Copy supplied.

Taylor Smith, *Policing Lawyers*, Mainebiz.com (Nov. 22, 2004). Copy supplied.

Justin Ellis, *Berry Grower to Halt Aerial Spraying of Pesticides* (Oct. 5, 2004). Copy supplied.

Allison Bell, *Group Disability Insurers Fight for Flexibility*, National Underwriter Life & Health Financial Services (Aug. 9, 2004). Copy supplied.

Katherine Cassidy, *Final OK Given in Blueberry Settlement*, Bangor Daily News (June 26, 2004). Copy supplied.

Katherine Cassidy, *2 Blueberry Processors Opt to Settle*, Bangor Daily News (Feb. 13, 2004). Copy supplied.

Aurelia Scott, *Doing Well and Doing Good*, Maine Times (Dec. 2003). Copy supplied.

Barbara Walsh, *State Fails Again on Children's Services*, Portland Press Herald (Feb. 13, 2003) (reprinted in multiple outlets). Copy supplied.

Barbara Walsh, *Crying for Help, Seldom Heard*, Portland Press Herald (Aug. 18, 2002). Copy supplied.

Settlement Will Extend In-Home Care to Hundreds of Mentally Disabled Kids, Associated Press (May 9, 2002). Copy supplied.

Gregory Kesich, *State Agrees to Speed Home Care for Mentally Disabled Youths*, Portland Press Herald (May 9, 2002). Copy supplied.

Gregory Kesich, *Legal Fees: Nil. Satisfaction: Plenty*, Portland Press Herald (May 9, 2002). Copy supplied.

Tom Chard, *Full Circle: The Kayatta Sisters of Cape Elizabeth and a Powers from Waynflete Are Carrying on Rich Tennis Traditions*, Portland Press Herald (May 14, 2001). Copy supplied.

Multi-Million Dollar Contamination Lawsuit Settled for \$35,000 in Maine, Insurance Times (Jan. 23, 2001). Copy supplied.

David Hench, *Lawyers Settle MTBE-Related Suit*, Portland Press Herald (Jan. 11, 2001). Copy supplied.

Peter Pochna, *Mental-Health Suit Survives Challenge*, Portland Press Herald (Oct. 14, 2000). Copy supplied.

State Asks for Dismissal of Lawsuit over Services to Children, Associated Press (July 20, 2000) (reprinted in multiple outlets). Copy supplied.

Peter Pochna, *State Attacks Suit Over Services for Troubled Children*, Portland Press Herald (July 20, 2000). Copy supplied.

Peter Pochna, *Suit Faults Mental Health Services*, Portland Press Herald (June 13, 2000) (reprinted in multiple outlets). Copy supplied.

Joshua Weinstein, *MCLU Drops Maine Med Suit*, Portland Press Herald (Apr. 12, 2000) (reprinted in multiple outlets). Copy supplied.

Dieter Bradbury, *Judge Rules against MTBE Class-Action Suit*, Portland Press Herald (Mar. 4, 2000). Copy supplied.

Michelle Emery, *Judge Rejects Class-Action Status for MTBE Lawsuit*, Associated Press (Mar. 3, 2000) (quotes reprinted in multiple outlets). Copy supplied.

Chris Santella, *Instant Gratification in Courtrooms*, Law Technology News (Dec. 1999). Copy supplied.

Clarke Canfield, *Judge Dismisses Suits Filed over Biweekly Wages*, Portland Press Herald (Nov. 19, 1999) (quotes reprinted in multiple outlets). Copy supplied.

Judge Removes Defendants from MTBE Lawsuit, Associated Press (Sept. 1, 1999) (reprinted in multiple outlets). Copy supplied.

Michelle Emery, *MTBE Not Gone, Not Forgotten, After Change to New Gas*, Associated Press (July 16, 1999) (reprinted in multiple outlets). Copy supplied.

Kathleen Burge, *Vermont Ski Area Embroiled in Discrimination Suit*, Boston Globe (Apr. 25, 1999). Copy supplied.

Micmac-Killington Discrimination Trial Begins, Associated Press (Apr. 13, 1999). Copy supplied.

Jason Wolfe, *Lawyer Cites Conflict in Court's Decision*, Portland Press Herald (Aug. 31, 1996). Copy supplied.

Jerry Harkavy, *Maine Court Throws Out Judgment against Chubb Life*, Journal of Commerce (Aug. 15, 1996) (reprinted in multiple outlets). Copy supplied.

Peter Pochna, *Judge Throws Out Part of Suit against Maine Yankee*, Portland Press Herald (May 3, 1996). Copy supplied.

David Sharp, *Students Exposed to Gas Sue Maine Yankee*, Bangor Daily News (Nov. 10, 1995). Copy supplied.

Peter Pochna, *Students Sue over Radiation Exposure*, Portland Press Herald (Nov. 10, 1995). Copy supplied.

Scott Rosenberg, *Law Students Begin New Winter Term*, The Crimson (Jan. 8, 1979). Copy supplied.

On several occasions, none recent, I was interviewed by local radio or broadcast television reporters in connection with events that were most likely the subject of print media coverage. I have no memory or record of the subject matter or of the dates, nor any means of acquiring a tape or transcript. It is also likely that I have

spoken with a print reporter on other occasions concerning which I have no memory or record.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by the United States Supreme Court to serve as Special Master in *Kansas v. Nebraska and Colorado*, No. 126 Orig. (U.S.), on April 4, 2011, and I continue to hold that position.

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

I am presiding over a single case in my role as Special Master, which has yet to go to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0% [total 100%]
civil proceedings:	0%
criminal proceedings:	0% [total 100%]

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

I have issued no opinions. All procedural orders can be found at <http://www.pierceatwood.com/KansasversusNebraskaandColorado126Original>.

- 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Kansas v. Nebraska and Colorado*, No. 126 Orig. (U.S. filed May 3, 2010)

This case is an original action on the docket of the United States Supreme Court. By Order dated April 4, 2011, the Court appointed me as Special Master “to fix the time and conditions for the filing of additional pleadings, to direct subsequent proceedings, to summon witnesses, to issue subpoenas, and to take such evidence as may be introduced” I am further directed to submit reports to the full Court as I may deem appropriate. The parties’ dispute arises under the Republican River Compact, as enacted by Congress. 57 Stat. 86 (1943). The subject of the

dispute concerns the parties' respective use of groundwater and implementation of a prior settlement agreement resolving a prior original action. The action is pending.

Kansas's lead counsel: John B. Draper
Montgomery & Andrews, PA
PO Box 2307
Santa Fe, New Mexico 87504
(505) 982-3873

Nebraska's lead counsel: Justin D. Lavene
Assistant Attorney General
Office of the Attorney General
2115 State Capitol Building
PO Box 98920
Lincoln, Nebraska 68509
(402) 471-2682

Colorado's lead counsel: Peter J. Ampe
First Assistant Attorney General
Federal & Interstate Water Unit
Natural Resources and Environment Section
Office of the Attorney General
State of Colorado
1525 Sherman Street, 7th Floor
Denver, Colorado 80203
(303) 866-5032

United States' lead counsel: James J. DuBois
U.S. Department of Justice
Environment and Natural Resources
Division
Natural Resources Section
999 18th Street
South Terrace, Suite 370
Denver, Colorado 80202
(303) 844-1375

- 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.

There are no opinions.

- e. Provide a list of all cases in which certiorari was requested or granted.
There are no cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
There are none.
- 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.
There are none.
- 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.
There are none.
- 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.
There are none.

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.

The issue of recusal has never arisen in the single matter over which I am presiding. Before accepting appointment by the Court, I conducted the conflict search and analysis as instructed by the Clerk of the Court.

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.

Member (1985 – 1990), and Chair (1988 – 1990), Maine Board of Bar Examiners; appointed by Maine’s Governor.

Member (1995 – 2002), and Chair (2002), of the Professional Ethics Commission of the Maine Board of Overseers of the Bar; appointed by Order of Maine’s Supreme Judicial Court.

Chair (2007), United States Magistrate Judge Merit Selection Committee for the District of Maine; appointed by the Chief Judge for the District of Maine.

Member (2008 – present), Advisory Committee on Rules of Civil Procedure; appointed by Order of Maine’s Supreme Judicial Court.

- 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.

1982: O’Leary for Congress Campaign. John J. O’Leary was a friend and colleague at my law firm who ran for the Democratic nomination to the U.S. House of Representatives from Maine’s First Congressional District. I had no title. I was a volunteer actively involved in most aspects of the unsuccessful campaign.

1990: Brennan for Governor Campaign. Joseph Brennan was a sitting U.S. Congressman and former Governor who ran again for Governor in 1990. I had no title. I was briefly involved with this ultimately unsuccessful campaign in providing advice on whether and how one might combine Maine’s district and superior courts.

1994: Diamond for Congress. I attended a meeting to discuss campaign strategy for G. William Diamond, an unsuccessful candidate for the Democratic Nomination to the U.S. House of Representatives from Maine's First Congressional District. I had no title.

2007: Cote for Congress. I attended an organizing meeting for an ultimately unsuccessful primary campaign by Adam Cote for the Democratic nomination to the U.S. House of Representatives from Maine's First Congressional District. I had no title, nor any further involvement after June of 2007.

2007: Obama for President. I attended an organizing meeting for a Maine state committee supporting Barack Obama in the Democratic primary campaign. I had no title, nor any involvement after June of 2007.

1998 – 2008: Anne Swift-Kayatta for Town Council. I supported and counseled my wife when she successfully ran in non-partisan campaigns for the Cape Elizabeth, Maine, Town Council. I had no title.

I may have been listed on a "host committee" for one of U.S. Representative Thomas Allen's campaign fundraisers for Congress between 1996 and 2007, but I have no record of it.

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

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

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

I served as law clerk to Chief Judge Frank M. Coffin, United States Court of Appeals for the First Circuit, from 1979 to 1980.

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

I have never practiced law alone.

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

Summer 1979
Cravath, Swaine & Moore LLP
825 Eighth Avenue

New York, New York 10019
Summer Associate

1980 – present
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101
Partner (1986 – present)
Associate (1980 – 1985)

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

I have not served as an arbitrator.

I served as a mediator in *Morse, Payson & Noyes v. Wyman*, Dkt. No. CV-98-665 (Me. Super. Ct.), Dec. 16, 1999. At the request of counsel for the parties, I mediated this dispute arising out of the movement of an employee from one insurance broker to another. The mediation lasted one-half day, and did not result in an immediate settlement.

- b. Describe:

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

After completing my clerkship, I began private practice in September 1980 at Pierce Atwood in Portland, Maine, where I have remained. As an associate, and then as a partner beginning in 1986, I worked on a mix of trial court and appellate matters, the size and complexity of which have increased over the years.

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

In civil litigation and dispute resolution, I have usually represented relatively large companies, but also smaller companies and individuals. I have also represented numerous law firms, municipal and state governmental agencies, and non-profit organizations. Working from a small city in a small state, my work has involved a wide and ever-changing range of subject matters, including energy regulations and contracts, ERISA, antitrust, construction, banking, and class actions. I have argued approximately 37 appeals, yet tried enough cases to become a Fellow and Regent in the American College of Trial Lawyers. I have

appeared in small claims court, the United States Supreme Court, and essentially all levels of courts in between. In addition to my paying work, a substantial minority of my time each year is devoted to unpaid work for legal aid organizations, their clients, or organizations supporting the administration of justice and our court system.

- 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.

With the exception of the occasional arbitration matter, the entirety of my practice has been in litigation. I appeared frequently in courts throughout my career, on motion practice, in hearings, in trial, and on appeal.

- i. Indicate the percentage of your practice in:

1.	federal courts:	75%
2.	state courts of record:	20%
3.	other courts:	0%
4.	administrative agencies:	5%

- 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.

24 such cases: 12 as sole counsel, 7 as chief counsel, 3 as co-counsel, and 2 as associate counsel.

- i. What percentage of these trials were:

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

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have argued two cases before the Supreme Court of the United States:

UNUM Life Insurance Co. of America v. Ward, 119 S. Ct. 1380 (1999), 119 S. Ct. 334 (1999). Copy of Petitioner's Reply Brief and Supplemental Brief (I did not author the main brief) and the oral argument transcript are supplied.

S.D. Warren Co. v. Maine Board of Environmental Protection, 547 U.S. 370 (2006). Copy of briefs and the oral argument transcript are supplied.

I have in addition filed merits briefs with the Court in the following other actions:

Morgan Stanley Cap. v. Pub. Util. Dist. No. 1, 554 U.S. 527 (2008). Copy supplied.

Yates v. Hendon, 541 U.S. 1 (2004) (on behalf of UnumProvident Corporation as amicus). Copy supplied.

Black & Decker Disability Plan v. Nord, 538 U.S. 822 (2003) (on behalf of American Council of Life Insurers as amicus). Copy supplied.

Finally, I have authorized and filed as counsel of record, or otherwise appeared on, briefs seeking or opposing grants of certiorari in the following cases:

Sempra Generation v. Public Util. Comm'n of the State of California, 129 S. Ct. 445 (2007). Copy supplied.

Patrick v. Unum Life Ins. Co. of America, 122 S. Ct. 2619 (2002). Copy supplied.

Nelson v. Unum Life Ins. Co. of America, Inc., 120 S. Ct. 1998 (2000). Copy supplied.

Unum Corp. and Unum Life Ins. Co. of America v. United States, 119 S. Ct. 42 (1998). Copy supplied

Colford v. Chubb Life Ins. Co. of America, 117 S. Ct. 2433 (1997). Copy supplied.

Hannaford Bros. Co. v. Ciampi, 117 S. Ct. 685 (1996). Copy supplied.

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

- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *S.D. Warren Co. v. Maine Bd. of Envir. Prot.*, 547 U.S. 370 (2006). The issue in this case was whether water run through turbines in a dam may result in a “discharge into ... navigable waters” under section 401 of the Clean Water Act. If so, then state environmental authorities may impose conditions upon FERC’s re-licensing of the dam. Maine’s highest court ruled that the dam results in a “discharge into” the river because the water loses its character as waters of the United States when diverted into the dam, and is then added back into (or “discharged into”) U.S. waters when exiting the dam. After other lawyers in my firm who handled the state administrative and court proceeding successfully secured a grant of certiorari, I took the lead on briefing and arguing the case to the Supreme Court. In an opinion authored by Justice Souter, the Court unanimously rejected the rationale adopted by Maine’s highest court but affirmed on an alternative rationale.

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2. *UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999). This was an action in which an insured beneficiary under an ERISA welfare benefit plan sought benefits after failing to provide the timely notice of claim to the plan fiduciary, Unum, as required under the plan. The Ninth Circuit ruled that Unum could not deny the claim due to late notice for two possible reasons: (1) California common law rendered such clauses unenforceable absent a showing that the lateness of the notice caused prejudice; and (2) under California common law, notice delivered to the employer sufficed because the employer that established the benefit plan could be deemed to be an agent of the plan fiduciary

insuring the plan. The Supreme Court granted certiorari on two questions: Was application of California's "notice-prejudice" rule to an ERISA plan preempted by ERISA; and was application of California common law deeming the employer to be an agent of the fiduciary-insurer preempted by ERISA? In a unanimous opinion written by Justice Ginsburg, the Court affirmed the Ninth Circuit on the first issue (holding that the notice-prejudice rule is not preempted) and reversed the Ninth Circuit on the second issue (holding that California common law deeming the employer to be an agent for purposes of receiving notice is preempted). I was retained by Unum after the opening briefs were filed, I assisted prior lead counsel in drafting the reply brief and I argued the case to the Supreme Court.

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3. *Public Util. Comm'n of California v. F.E.R.C.*, 474 F.3d 587 (9th Cir. 2006), vacated and remanded, *Sempra Generation v. Public Util. Comm'n of California*, 128 S. Ct. 2993 (U.S. June 27, 2008) and *Dynegy Power Marketing, Inc. v. Public Util. Comm'n of California*, 128 S. Ct. 2993 (U.S. June 27, 2008); and remanded, *Public Util. Comm'n of California v. F.E.R.C.*, 550 F.3d 767 (9th Cir. 2008). This action arose out of the western energy crisis of 2000 to 2001, during which an agency of the State of California signed approximately \$43 billion worth of long term contracts for the purchase of electricity in the midst of price spikes that wiped out the ability of investor-owned utilities to purchase and supply electricity throughout California. The California Electricity Oversight Board and the California Public Utilities Commissions filed complaints on behalf of California consumers and rate payers with the Federal Energy Regulatory Commission seeking to have contracts with 24 counter-party suppliers vacated or modified as unjust and unreasonable. The California agencies retained my firm to prosecute

the actions. I served as lead trial counsel in the FERC proceedings, which resulted in a 2-1 decision by the Commission rejecting the complaints. I then argued the appeal to the Ninth Circuit Court of Appeals, which reversed the Commission. The panel decision was authored by Judge Marcia Berzon, and joined in by Judges Browning and Pregerson. The U.S. Supreme Court vacated the Ninth Circuit decision for remand and reconsideration in light of its 2008 decision in *Morgan Stanley Cap. Group Inc. v. Pub. Util. District No. 1*, 554 U.S. 527 (2008). The Ninth Circuit then remanded the action to FERC for further proceedings in accord with the Supreme Court's *Morgan Stanley* decision. Our clients thereafter settled the few remaining claims that had not previously been settled over the course of these proceedings.

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4. *In re New Motor Vehicle Canadian Export Antitrust Litigation*, 522 F.3d 6 (1st Cir. 2008). Plaintiffs in this action commenced one nationwide class action under the federal antitrust law and 23 state class actions under the antitrust laws of 23 states against the world's largest motor vehicle manufacturers, alleging a conspiracy to tighten restraints on the import into the United States of vehicles sold in Canada at lower prices. The actions were consolidated into a single multi-district proceeding. After the trial court certified the various class actions under Federal Rule of Civil Procedure 23 and one defendant (Toyota) entered into a settlement agreement, the principal remaining defendants (General Motors, Ford, Honda, Nissan and my clients Chrysler and Mercedes) engaged me to present collectively on their behalf the principal argument on the appeal of the certification ruling. The First Circuit vacated the certification ruling, remanding for further proceedings in the trial court. Chief Judge Lynch authored the Court's opinion, in which Judge Torruella and Senior Judge Selya joined. On remand, I argued in opposition to a renewed motion for class certification and in support of a motion for summary judgment, the latter of which the district court granted, terminating the action save for proceedings concerning the class-wide settlement negotiated by Toyota before the First Circuit's ruling. The district court opinion, by Judge D. Brock Hornby, is published at 632 F. Supp. 2d 42.

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5. *Risinger v. Concannon*, 201 F.R.D. 16 (D. Me. 2001) (certifying class) and 117 F. Supp. 2d 61 (D. Me. 2000) (denying motion to dismiss). At the request of the Maine Equal Justice Project and the Disability Rights Center of Maine, I agreed to serve pro bono as lead counsel in bringing and litigating this action on behalf of two children who were denied in-home mental health services under Medicaid. The Court (Carter, J.) denied the State's motion to dismiss. After further discovery and contested motions, the Court granted our motion to certify a state-wide class of approximately 500-800 children. After further discovery, the State agreed to provide the programmatic and procedural changes sought in the action, and the case was settled with a Consent Order. We then monitored and enforced the Order for an additional period of several years until full compliance was confirmed by an agreed-upon audit process.

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Hon. Patrick F. Ende
District Court Judge
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Margaret M. O'Keefe
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Opposing Counsel: Paul Stern
Nancy M. Macirowski
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6. *Bachelder v. Communications Satellite Corp.*, 837 F.2d 519 (1st Cir. 1988). I represented the defendant in this ERISA class action as lead counsel in the district court and on appeal, which I argued. The district court (Carter, J.) entered judgment for a certified national class, holding that cash distributions from an employee stock ownership plan should have been made in accord with the terms of a summary plan description, rather than the less favorable terms of the actual ERISA plan. On appeal, the First Circuit reversed, ordering the entry of judgment for defendant, because no class member relied or could have relied to his or her detriment on the summary plan description. Judge Torruella wrote the Court's opinion, in which Judges Campbell and Bryer joined.

Opposing Counsel: Robert Edmond Mittel
MittelAsen, LLC
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(207) 775-3101

7. *Board of Overseers of the Bar v. Warren*, 2011 ME 124, ___ A.3d ___. In the wake of the discovery that a senior partner had stolen hundreds of thousands of dollars of client funds, Maine's second largest law firm retained me to represent and counsel the firm on a broad array of issues. The portion of this particular action that I handled arose when the firm's recently departed general counsel sought to turn over his internal investigative files to bar counsel, who served a subpoena to facilitate the production. After a single justice of Maine's highest court denied a motion to quash the subpoena, the full court vacated the ruling, remanding for a full hearing and further proceedings before the single justice. *In re Motion to Quash Bar Counsel Subpoena*, 2009 ME 104, 982 A.2d 330. After

further proceedings and a two-day hearing, the single justice granted the motion to quash, and the full court thereafter affirmed.

Opposing Counsel: J. Scott Davis
Bar Counsel
Maine Board of Overseers of the Bar
97 Winthrop Street
PO Box 527
Augusta, Maine 04332
(207) 623-1121

8. *Federal Ins. Co. v. Maine Yankee Atomic Power Co.*, 183 F. Supp.2d 76 (D. Me. 2001). A surety, Federal Insurance Company, supplied the performance and payment bonds for the general contractor performing the decommissioning of a commercial nuclear power plant. In a decision of first impression arising out of a declaratory action by Federal against the plant owner, which I represented as lead counsel, the court (Hornby, J.) held that the owner may recover on an equitable subrogation theory under the payment bond the amounts the owner paid to the subcontractors and suppliers who were covered by the bond. The action ultimately settled for the payment of \$44 million under the performance and payment bonds collectively.

Opposing Counsel: Gerald F. Petruccelli
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Stephen A. Stallings
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9. *Diversified Foods v. First Nat. Bank of Boston*, 985 F.2d 27 (1st Cir. 1993). This action was one of several attempts by a defunct borrower to recover \$60 million from its lender on various so-called lender liability theories. I represented the defendant bank in the trial court and on appeal in this action brought under the Bank Holding Company Act, 12 U.S.C. § 1972. The action was related to a companion case brought in state court in which I also represented the defendant bank. *Diversified Foods, Inc. v. First Nat. Bank*, 605 A.2d 609 (Me. 1992). In an opinion written by Judge Boudin, with whom Circuit Judge Torruella and District Judge Keeton (sitting by designation) joined, the First Circuit affirmed the judgment below dismissing the complaint, concluding that doctrines of merger and bar precluded this companion federal action because federal court jurisdiction under the Bank Holding Company Act was not exclusive.

Opposing Counsel: Richard E. Poulos (since deceased)

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10. *In re Stone & Webster, Inc.*, 279 B.R. 748 (Del. 2008). This was an adversary proceeding in bankruptcy court brought by Maine Yankee Atomic Power Co. against the terminated general contractor charged with decommissioning Maine Yankee's nuclear power plant. I was lead trial counsel for Maine Yankee. After trial, the Court (McKelvie, J.) rejected the contractor's claims and determined that Maine Yankee was entitled to recover total damages from the contractor and its surety in the amount of \$64.8 million.

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

Other than litigating cases, the principal legal activities in which I have engaged all focus on increasing access to legal services and our courts for disadvantaged persons, or improving the quality of the administration of justice. Initially, my efforts consisted of handling individual pro bono cases on referral from the Maine Volunteer Lawyers Project. Subsequently, I also became actively involved in the leadership of a series of organizations devoted to one or both of these activities. Those organized efforts in which I took a leadership role include the following:

Legal Services Response Team, Co-chair. First Circuit Judge Frank Coffin appointed me co-chair of this organization that coordinated the involvement of the judiciary and the private bar with efforts of Maine's legal aid providers.

Maine Bar Foundation. I served as a board member, officer, and eventually President of this Foundation, the charitable arm of the Maine Bar Association. No longer a board member, I continue to provide pro bono legal advice and services to the Foundation on a recurring basis.

Campaign for Justice. In 2006 I chaired the joint fundraising campaign of the principal non-profit providers of legal aid services to disadvantaged Maine citizens, raising approximately \$382,000 annually (an amount that placed Maine lawyers second in the country on a per capita basis).

American College of Trial Lawyers. As Chair of the College's committee that gives an annual \$50,000 award and recognition to programs that further access to justice, as vice-chair of the College's Ad Hoc Committee on Federal Judicial Compensation, and now as a Regent of the College, I have worked with other Fellows around the country on a series of projects and white papers aimed at improving the administration of justice.

I have never registered as a lobbyist, or been paid for any lobbying services. When I was co-chair of the Legal Services Response Team, and while I was on the Board of the Maine Bar Foundation, lawyers working with the respective organizations communicated with Maine state legislators on subjects of court funding and access to courts. While I have been a Fellow of the American College of Trial Lawyers, the College has communicated with members of Congress on matters concerning our courts, including judicial compensation and proposed rules of evidence and procedure.

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

I have never taught a course, although I served as an instructor in 2007 at Harvard Law School's Trial Advocacy Program for law students. I have no writings or syllabus concerning that instruction.

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.

Upon retirement and age qualification, I will be entitled to receive pension payments from the defined pension benefit plan established by Pierce Atwood LLP. I will also be entitled to be paid back certain partnership notes and to receive payouts under the buyout provisions of the partnership agreement. The timing and amounts of these payments are reflected in my Net Worth Statement.

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.

If I am confirmed, then with the consent of the Supreme Court and the Chief Judge of the Circuit, I would expect to continue serving as Special Master in *Kansas v. Nebraska and Colorado* if the action is not yet completed at the time I join the Court. I would not receive compensation for the work.

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.

Family members: My older daughter practices law in Boston as an associate at the firm of Robinson & Cole LLP. My younger daughter is a third year law student at Boston College School of Law. I would expect to recuse myself from any case in which either of them has any involvement or interest of any type, and

to follow established Circuit practice consistent with applicable canons of conduct regarding any cases in which their firms, but not either of my daughters, are involved.

Firm and clients: For some yet to be determined period of time (at least until after receipt of any payments to me from the firm or for which it could be liable) I would expect to recuse myself from all matters in which a lawyer associated with Pierce Atwood appears. I would also recuse myself from any case on which I worked myself, as well as any case where, due to a current or past professional or personal relationship with a party, witness, or attorney, my impartiality might reasonably be questioned.

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

I would handle all matters involving actual or potential conflicts of interest in accordance with the Code of Conduct for United States Judges and any other relevant canons or statutes.

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.

On average for the past 15 years I have devoted approximately 10% or more of my work hours to unpaid work aimed at providing access to justice for disadvantaged persons and improving the administration of justice. This work has included both individual representations through the Maine Volunteer Lawyers Project, and group representations such as *Risinger v. Concannon*, 201 F.R.D. 16 (D. Me. 2001) (pro bono representation of a class of mentally and emotionally disabled Maine children). Additionally, as president of the Maine Bar Foundation, as chair of the Campaign for Justice, as a regent of the American College of Trial Lawyers, and as the court-appointed chair of several committees and organizations, I have led and participated in efforts targeted at either improving the efficacy and efficiency of the delivery of legal services to disadvantaged Maine citizens or improving more generally the administration of justice through our state and federal courts. My efforts have been recognized by the Disability Rights Center of Maine, by the Maine Equal Justice Project, by the Maine Children's Alliance and most notably by my receipt of the Maine Bar Foundation's Howard H. Dana Award in 2010.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so,

please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On April 8, 2011, U.S. Representatives Chellie Pingree and Michael Michaud announced formation of a nine member screening panel to assist and advise them as they prepared to make recommendations to President Obama on the appointment of the next judge for the U.S. Court of Appeals for the First Circuit. Because of my prior service on the ABA's Standing Committee on the Federal Judiciary, I did not apply. The Standing Committee rules provide that members "agree[] not to seek or accept a federal judicial nomination while serving on the Committee and for at least one year thereafter." Backgrounder at 2 (2009).

After the application deadline had passed, I received a call from several people, including the chair of the Pingree-Michaud screening panel, inquiring why I had not applied. When I explained why, the chair asked that I write to the congressional representatives' staff, explaining why I had not applied and whether I would likely apply in the future if the position were still open. I did so.

I next received a call from a member of Representative Pingree's staff, who asked if I could speak to the screening panel if invited. I declined. She then asked if she could ask the ABA whether I could accept a sua sponte invitation to meet with the panel. I demurred, and then called Kim Askew, who was Chair of the Standing Committee on the Federal Judiciary during my last year on the committee, and Ben Hill, the incumbent chair of the Standing Committee on the Federal Judiciary. I explained the invitation to each of them, separately, and supplied to each a copy of my letter explaining why I had not applied. Ms. Askew and Mr. Hill each confirmed that I could accept an invitation to meet with the screening panel as long as I informed the entire panel of my status, as explained in my letter. I confirmed for Mr. Hill, as well, that I had done no work for the Standing Committee since my term expired, and that, while on the Standing Committee, I had not evaluated any potential nominee from Maine.

I thereupon met with the Pingree-Michaud screening panel on May 16, 2011. On May 27, 2011, I was notified by Congressional staff that Representatives Pingree and Michaud were recommending me and one other person to the President.

On September 2, 2011, I was called by the White House Counsel's Office to discuss the Circuit Court vacancy. Since October 28, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 1, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On January 23, 2012, the President submitted my nomination to the Senate.

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

No.

AFFIDAVIT

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

1-24-12 W J Kayatta Jr.
(DATE) (NAME)

Denise M. Plourde
(NOTARY)

DENISE M. PLOURDE
Notary Public, Maine
My Commission Expires April 1, 2014

WILLIAM J. KAYATTA, JR.



January 3, 2013

Hon. Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
437 Russell Senate Building
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on January 23, 2012, to be a United States Circuit Judge for the First Circuit Court of Appeals. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Question #6

- As of December 31, 2012, I ceased being a partner at Pierce Atwood LLP. I am now employed by the firm at will as special counsel.
- I am no longer secretary for the Pericles Foundation.

Question #13(c)

- Lead Counsel for State of Colorado is now:

Scott Steinbrecher
Assistant Attorney General
Federal and Interstate Water Unit
Natural Resources and Environment Section
Colorado Office of the Attorney General
1525 Sherman Street, 3rd Floor
Denver, CO 80203
T: (303) 866-5117

Question #16

- As indicated regarding Question #6, above, I am no longer a partner at Pierce Atwood LLP.

Question #24(a)

- My younger daughter now practices law in Boston as an associate at Arrowood Peters LLP.

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



William J. Kayatta, Jr.

Enclosure

cc: Hon. Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510