

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Camela Catherine Theeler
Camela Catherine Clark

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

United States District Judge for the District of South Dakota

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.

Minnehaha County Courthouse
425 North Dakota Avenue
Sioux Falls, South Dakota 57104

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

1975; Sioux Falls, South Dakota

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.

1998 – 2000, University of South Dakota School of Law; J.D., 2000

1994 – 1998, University of South Dakota; B.A., 1998

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.

2018 – present
South Dakota Unified Judicial System
425 North Dakota Avenue
Sioux Falls, South Dakota 57104

Circuit Court Judge, State of South Dakota, Second Judicial Circuit

2012 – 2018

United States Attorney's Office for the District of South Dakota
325 South 1st Avenue, Unit 300
Sioux Falls, South Dakota 57104
Deputy Civil Chief, Civil Division (2016 – 2018)
Assistant United States Attorney, Civil Division (2012 – 2016)

2003 – 2012

Lynn, Jackson, Shultz & Lebrun, P.C.
110 North Minnesota Avenue, #400
Sioux Falls, South Dakota
Partner (2008 – 2012)
Associate (2003 – 2008)

2002 – 2003

Morgan Theeler Law Firm, L.L.P.
1718 North Sanborn Boulevard
Mitchell, South Dakota 57301
Associate

Fall 2002

Dakota Wesleyan University
1200 West University Avenue
Mitchell, South Dakota 57301
Business Law Instructor

2001 – 2002

South Dakota Unified Judicial System
200 East 4th Avenue
Mitchell, South Dakota 57301
Law Clerk to the Judges of the First Judicial Circuit

2001

Morgan Theeler Law Firm, L.L.P.
1718 North Sanborn Boulevard
Mitchell, South Dakota 57301
Associate

Summer 2000

Morgan Theeler Law Firm, L.L.P.
1718 North Sanborn Boulevard
Mitchell, South Dakota 57301
Legal Extern

Summer 1999
May, Adam, Gerdes & Thompson, L.L.P.
503 South Pierre Street
Pierre, South Dakota 57501
Legal Intern

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

I did not serve in the military. I was not required to register for the 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.

United States Attorney's Office for the Eastern District of South Dakota, special recognition for work performed for the United States Fish and Wildlife Service (2016)

South Dakota Young Lawyer of the Year (2009)

Leadership Sioux Falls (2004)

University of South Dakota

Phi Beta Kappa Honor Society (1998)

Student Activities Center Outstanding Leadership and Service Award (1998)

Dorothy Thompson Chaney Scholarship Recipient (1997)

Mock Trial Outstanding Attorney Award at Regional Tournament (1998)

Margaret B. Sanger English Department Scholarship (1997)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Davison County Bar Association, President (2002 – 2003)

Second Circuit Bar Association (2003 – present)

South Dakota State Bar Association, Member (2001 – present)

Disciplinary Board (2016 – 2018)

Ethics Committee (2008 – 2017)

Young Lawyer's Speaker's Bureau Coordinator, 1st Judicial Circuit (2001 – 2002)

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.

South Dakota, 2001

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.

United States Court of Appeals for the Eighth Circuit, 2017

United States District Court for the District of South Dakota, 2003

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.

CASA (Court-Appointed Special Advocates) in Mitchell, South Dakota, Board Member, Vice President (2003)

City of Sioux Falls, Civil Service Board Member (2011 – 2012)

Junior Achievement, Instructor for High School Students (2015 – present)

Leadership Sioux Falls (2004)

Leukemia and Lymphoma Society, Team in Training (2004)

Lutheran Social Services, School-Based Mentor Advisory Program Committee Member (2005 – 2013)

Lutheran Social Services, Mentor for Elementary Student (2006 – 2009)

Mitchell Lions Club, Member (2001 – 2003)

Multi-Cultural Center of Sioux Falls, Board Member (2011 – 2012)

Society for Human Resource Management (2006 - 2012)

South Dakota Trial Lawyers Association (2004 – 2010)
Member, Board of Governors (2004)

Additionally, since 2021 I have been a member of the Choir Booster Club at my child's school.

- 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.

Long before I joined the organization in 2001, the Lions Club, an international service organization, limited its membership to men; it now welcomes men and women of all backgrounds. To the best of my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

Why South Dakota Employers Need Employee Handbooks, Sioux Falls Business Journal (August 2007). I am unable to locate a copy.

South Dakota Law Review, Dedication to Dr. Michael P. Roche, 51 S.D. L.Rev. i. Copy 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.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched my records, electronic databases, and the internet in an effort to identify all events responsive to this question, but there may be other events I have not been able to recall or identify.

May 4, 2023: Speaker, Spring Judicial Conference for the South Dakota Unified Judicial System. Materials supplied.

February 23, 2023: Panelist, "Opportunities and Support Systems for First Generation Law Students," University of South Dakota School of Law, First Generation Law Society, Vermillion, South Dakota. The discussion was about how first generation law students can develop networks to help them succeed in the legal profession. I have no notes, transcript, or recording. The address for the University of South Dakota is 414 East Clark Street, Vermillion, South Dakota 57069.

May 5, 2022: Speaker, Spring Judicial Conference for the South Dakota Unified Judicial System. Materials supplied.

March 2022 (specific date unknown): Panelist, "Leadership in the Legal Profession," University of South Dakota School of Law, Women in Law, Vermillion, South Dakota. This was a panel discussion with other female justices, judges, and attorneys. I have no notes, transcript, or recording. The address for the University of South Dakota is 414 East Clark Street, Vermillion, South Dakota 57069.

September 30, 2021: Speaker, Second Circuit Bar Association. Notes supplied.

April 23, 2021: Panelist, "Pathway to the Bench and Suggestions for Young

Attorneys as They Start Their Practice,” State Bar of South Dakota, Young Lawyers Section Bootcamp. This was a panel discussion on advice for new attorneys. I have no notes, transcript, or recording. The address for the South Dakota State Bar is 111 West Capitol Avenue, #1, Pierre, South Dakota 57501.

February 11, 2019: Speaker, Sioux Falls Christian Advanced Government Students, Sioux Falls, South Dakota. Materials supplied.

February 23, 2018: Speech made at investiture ceremony when I was sworn in as a State Court Judge for the Second Judicial Circuit. Notes supplied.

February 24, 2017: Speaker, South Dakota Young Lawyer’s Board, Sioux Falls, South Dakota. Notes supplied.

May 2013 (specific date unknown): Speaker, South Dakota Trial Lawyers Association, Sioux Falls, South Dakota. Notes supplied.

October 26, 2011: Speaker, South Dakota CPA Society, Sioux Falls, South Dakota. Materials supplied.

August 9, 2011: Speaker, Sioux Empire Society for Human Resource Management, Sioux Falls, South Dakota. Materials supplied.

June 22, 2011: Speaker, South Dakota State Bar Convention, Sioux Falls, South Dakota. Materials supplied.

May 19, 2011: Speaker, “10 Legal Topics in 60 Minutes: Surprises in Law: Tips & Techniques,” “Termination Checklist & Employee Handbook Tune-Up,” and “When Should I Call My Lawyer,” South Dakota Society for Human Resource Management State Conference, Deadwood, South Dakota. Materials supplied.

March 29, 2011: Speaker, “OMG!!! What Are Your Employees Texting? Social Media Issues for Employers,” Sioux Falls Chamber Business Sense Workshop, Sioux Falls, South Dakota. Materials supplied.

March 23, 2011: Speaker, Southeast Technical Institute, Sioux Falls, South Dakota. Notes supplied.

December 15, 2010: Speaker, “Harassment, Retaliation & Offensive Behavior Training,” Sioux Valley Energy, Colman, South Dakota. Materials supplied.

March 24 & 25, 2010: Co-presenter, “As You Turn 18,” Lincoln, Washington, and Roosevelt High Schools, Sioux Falls, South Dakota Notes supplied.

May 1, 2009: Speaker, “Creating Layoff Plans to Avoid Legal Issues,” South Dakota Society for Human Resource Management State Conference, Sioux Falls,

South Dakota. Materials supplied.

March 18, 2009: Co-presenter, "As You Turn 18," Lincoln High School, Sioux Falls, South Dakota. I presented on the legal rights and responsibilities of adulthood. I have no notes, transcript, or recording. The address for Lincoln High School is 2900 South Cliff Avenue, Sioux Falls, South Dakota 57105.

February 17, 2009: Speaker, "Top 20 Ways Employers Get Sued and How to Avoid Them," Sioux Falls Chamber Business Sense Workshop, Sioux Falls, South Dakota. Materials supplied.

November 18, 2008: Speaker, "Agricultural Labor and Employment Issues You Should Know," Brookings, South Dakota. I presented on state and federal employment laws that applied to the agricultural industry. I have no notes, transcript, or recording. I have not been able to locate the name of the organization that sponsored the conference.

November 13, 2008: Speaker, "Sexual Harassment & Offensive Behavior Training," Pierre Central Society for Human Resource Management, Pierre, South Dakota. I presented on the importance of having appropriate employment policies regarding sexual harassment and offensive behavior and conducting investigations of employment complaints. I have no notes, transcript, or recording. The address for Central South Dakota Society for Human Resource Management is 306 East Capitol Avenue, Suite 200, Pierre, South Dakota 57501.

October 18, 2007: Speaker, "Employee Handbooks, Hiring Practices, Performance Appraisals, Conducting Workplace Investigations," Brookings Area Society for Human Resource Management, Brookings, South Dakota. I presented on the importance of having appropriate employment policies and conducting investigations of employment complaints. I have no notes, transcript or recording. The address for the Brookings Area Human Resources Association is Box 22, Brookings, South Dakota 57006.

March 28, 2007: Speaker, "Everything you Wanted to Know About the Administrative Process of the South Dakota Division of Human Rights, the Sioux Falls Human Relations Commission, and the EEOC, But Were Afraid to Ask," Employment Law Class, University of South Dakota, Vermillion, South Dakota. Materials supplied.

February 27, 2007: Speaker, "Employment Law from A to Z," Lorman Education Services, Sioux Falls, South Dakota. Materials supplied.

March 22, 2006: Co-presenter, "As You Turn 18," Lincoln High School, Sioux Falls, South Dakota. I presented on the legal rights and responsibilities of adulthood. I have no notes, transcript, or recording. The address for Lincoln High School is 2900 South Cliff Avenue, Sioux Falls, South Dakota 57105.

February 21, 2006: Speaker, "Top 10 Things Employers Do to Get Sued," Sioux Falls Chamber Business Sense Workshop, Sioux Falls, South Dakota. I presented on best practices for employers and the importance of having and following appropriate employment policies. I have no notes, transcript, or recording. The address for the Sioux Falls Chamber of Commerce is 200 North Phillips Avenue, Suite 200, Sioux Falls, South Dakota 57104.

- 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.

Keloland News (February 23, 2018). Copy supplied.

Sioux Falls Women Magazine, *Social Media: Maintaining Control and Safety While Networking Online* (April 2, 2012). Copy supplied.

Rob Swenson, *Texting poses pitfalls for employers*, Argus Leader (April 10, 2011). Copy supplied.

Trading Jobs, New Headlines, ABC KSFY News (July 17, 2006). Copy supplied.

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

Since February 2018, I have served as a Circuit Court Judge for the State of South Dakota, located in the Second Judicial Circuit. I was appointed to the position by Governor Dennis Daugaard in February 2018. My judicial position was on the ballot in November 2022. The election was uncontested, and I was elected to an eight-year term. The State of South Dakota Circuit Court is a trial court of general jurisdiction under Article V of the South Dakota Constitution. South Dakota Circuit Courts hear felony criminal proceedings, civil lawsuits, divorce, probate, guardianships, adoptions, juvenile proceedings, and abuse and neglect proceedings, as well as certain appeals from magistrate court or administrative agencies.

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

I have presided over 57 trials that have gone to verdict or judgment.

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

jury trials:	58%
bench trials:	42%

ii. Of these cases, approximately what percent were:

civil proceedings:	51%
criminal proceedings:	49%

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

I have not written any opinions that appear in an official reporter, Westlaw, and/or Lexis. However, I have sat with the South Dakota Supreme Court on two separate occasions and concurred with the majority opinion in each case. The cases were in *Garrido v. Team Auto Sales, Inc.*, 913 N.W.2d 95 (S.D. 2018), and *State v. Kurtenbach*, 980 N.W.2d 681 (S.D. 2022).

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *In the Matter of K.G. and M.G.*, 49 JUV 22-918 (South Dakota Circuit Court)

This was a dispositional court trial in an abuse and neglect proceeding. There were concerns the children had been exposed to substance abuse and domestic violence. I heard testimony from a number of witnesses including law enforcement officers and Department of Social Services employees. I entered findings of fact and conclusions of law and ordered termination of parents' rights. The findings of fact and conclusions of law are sealed as required by law. The decision was not appealed.

Counsel for the State of South Dakota:

Brianna Palomaki
Minnehaha County State's Attorney's Office
415 North Dakota Avenue
Sioux Falls, SD 57104
(605) 367-4226

Counsel for Mother:

Jacqueline Meile
Minnehaha County Public Advocates Office
415 North Dakota Avenue
Sioux Falls, SD 57104
(605) 367-7392

Counsel for Children:

Erin Johnson
300 North Dakota Avenue, #406
Sioux Falls, SD 57104
(605) 338-2626

2. *State of South Dakota v. Aadland*, 49 CRI 20-7570 (South Dakota Circuit Court Jan. 25, 2023). Decision supplied.

This was a criminal case where defendant faced charges for first and second degree murder, manslaughter, and possession of a firearm by a convicted felon. The jury acquitted defendant on the murder and manslaughter charges and found him guilty of possession of a firearm by a convicted felon. The case involved many witnesses involved in drug trafficking and drug use, and the victim was an alleged drug dealer. The witnesses provided conflicting stories about what happened the night of the murder. I ruled on numerous pretrial issues, including a motion to sever, discovery disputes, other acts evidence, third party perpetrator evidence, and multiple motions in limine. On the possession of firearm by a convicted felon charge, I sentenced Aadland to two years in the penitentiary with credit for 834 days served. Therefore, he did not serve any additional prison time. The jury's verdict was not appealed.

Counsel for the State of South Dakota:

Mandy Mowery
Ryan McFall
Minnehaha County State's Attorney's Office
415 North Dakota Avenue
Sioux Falls, SD 57104
(605) 367-4226

Counsel for Defendant:

Ryan Kolbeck
Kolbeck Law Office
505 West 9th Street, Suite 102
Sioux Falls, SD 57104
(605) 937-8376

George Johnson
Johnson Pochop Law Office
405 Main Street
Gregory, SD 57533
(605) 835-8391

3. *State of South Dakota v. Kwai*, 49 CRI 20-6158 (South Dakota Circuit Court), *aff'd*, 2023 S.D. 42, 994 N.W.2d 712 (2023)

This was a criminal case involving multiple counts of aggravated assault and hit and run. Defendant was convicted on all counts. The parties were engaged in a road rage incident during which defendant assaulted the victim, first punching the victim in the mouth, then beating the victim with a metal pipe, and finally running over the victim with his car. I denied defendant's motion for judgment of acquittal on the felony hit and run charge, holding that the statute applied even if the defendant's acts were unintentional. On the aggravated assault charge I sentenced him to 15 years in the penitentiary with five years suspended, credit for 409 days served. On the hit and run charge I sentenced him to two years in the penitentiary with two years suspended, to run concurrent to the aggravated assault charge. Defendant appealed to the South Dakota Supreme Court, arguing that the felony hit and run statute should not apply to intentional conduct. The Supreme Court affirmed.

Counsel for the State of South Dakota:

Lori Ehlers
Minnehaha County State's Attorney's Office
415 North Dakota Avenue
Sioux Falls, SD 57104
(605) 367-4226

Counsel for Defendant:

Edward Angel
Angel Law Prof. LLC
300 North Dakota Avenue, Suite 106
Sioux Falls, SD 57104
(605) 271-3216

4. *State of South Dakota v. Ahmed*, 49 CRI 20-5487 (South Dakota Circuit Court), *aff'd*, 2022 S.D. 20, 973 N.W.2d 217 (2022)

This is a criminal case where defendant was charged with multiple counts arising from two separate incidents involving an alleged shooting and a later confrontation between defendant and two men. The jury found defendant guilty of seven counts including aggravated assault by physical menace with a dangerous weapon, driving under the influence, and grand theft by receiving stolen property. The jury found defendant not guilty on the charges arising from the alleged shooting. I sentenced him to 10 years in prison with five years suspended on one of the aggravated assault charges. On the driving under the influence charge, I sentenced him to five years in prison with four years suspended. On the remaining charges I suspended both prison and jail time. The sentences on all counts ran consecutive to each other and to three other files he was sentenced on that day. Defendant appealed the case to the South Dakota Supreme Court, arguing that I erred when I denied the motion for judgment of acquittal because there was insufficient evidence to support the convictions. The Supreme Court affirmed.

Counsel for the State of South Dakota:

Crystal Johnson
Minnehaha County State's Attorney's Office
415 North Dakota Avenue
Sioux Falls, SD 57104
(605) 367-4226

Counsel for Defendant:

Lyndsay DeMatteo
DeMatteo Law Firm, Prof. L.L.C.
224 North Phillips Avenue, #207
Sioux Falls, SD 57104
(605) 607-5171

5. *State of South Dakota v. Long*, 49 CRI 20-3639 (South Dakota Circuit Court Nov. 2, 2020). Decision supplied.

This was a criminal case involving multiple counts of aggravated assault with a dangerous weapon and multiple counts of abuse of or cruelty to a minor. Defendant was the stepfather of the four minor victims and was accused of zapping them with a cattle prod, among other charges. Defendant was acquitted on the aggravated assault charges and convicted on the abuse of or cruelty to a minor charges. On each count I sentenced him 10 years in the penitentiary with six years suspended, and credit for 307 days served. I required that he comply with parole and the Department of Corrections and that any violation would be considered a violation of the suspended sentence. I ordered no contact with the victims and required that he pay court costs. The sentencing on each count ran concurrent to the other counts. The jury's verdict was not appealed.

Counsel for the State of South Dakota:

Lori Ehlers
Minnehaha County State's Attorney's Office
415 North Dakota Avenue
Sioux Falls, SD 57104
(605) 367-4226

Counsel for Defendant:

Michelle Thomas
Minnehaha County Public Advocates Office
415 North Dakota Avenue
Sioux Falls, SD 57104
(605) 367-7392

6. *State of South Dakota v. Cook*, 49 CRI 19-6422 (South Dakota Circuit Court Mar. 30, 2021). Decision supplied.

This was a criminal case where defendant faced charges for attempted first-degree murder, aggravated assault, and possession of a weapon by an inmate. Cook and the victim were both inmates in the South Dakota State Penitentiary. While the victim was eating, Cook came up behind him, pulled his head back, and sliced across his neck, causing cuts that required stitches. I denied defendant's motion to suppress. The jury convicted defendant on all charges. Defendant then pled guilty to the habitual offender information with the parties agreeing to a cap of 50 years. I sentenced defendant to 50 years in the penitentiary on the attempted murder charge, to run consecutive to the charges he was currently serving. Defendant appealed to the South Dakota Supreme Court, but later moved to dismiss the appeal.

Counsel for the State of South Dakota:

Katie Mallery
South Dakota Attorney General's Office
2000 East 52nd Street North
Sioux Falls, SD 57104
(605) 773-3215

Counsel for Defendant:

Betsy Doyle
Minnehaha County Public Defender
413 North Main Avenue
Sioux Falls, SD 57104
(605) 367-4242

Derek Friese

United States Attorney's Office (Formerly at the Minnehaha County
Public Defender's Office)
225 South Pierre Street, Suite 337
Pierre, SD 57501
(605) 224-5402

7. *Fodness v. City of Sioux Falls*, 49 CIV 18-3031 (South Dakota Circuit Court Mar. 18, 2019), *aff'd*, 2020 S.D. 43, 947 N.W.2d 619 (2020). Decision supplied.

This is a civil case that arose when an apartment building collapsed after a contractor working on the building demolished certain portions of a load-bearing wall. The plaintiff was in her apartment at the time of the collapse and was injured. She brought a negligence action against the City of Sioux Falls for issuing a building permit for the project. The City moved to dismiss the case based on the public duty rule, and I granted the motion. The matter was appealed to the South Dakota Supreme Court, which affirmed.

Counsel for Plaintiffs and Appellants:

Daniel R. Fritz
Timothy R. Rahn
Ballard Spahr, L.L.P.
101 South Reid Street, Suite 302
Sioux Falls, SD 57301
(605) 978-5200

Counsel for Defendant:

James A. Moore
Alexis A. Warner
Woods, Fuller, Shultz & Smith, P.C.
300 South Phillips Avenue, Unit 300
Sioux Falls, SD 57104
(605) 336-3890

8. *Dutenhoffer v. Dutenhoffer*, 49 DIV 17-336 (South Dakota Circuit Court)

This was a divorce case where the parties had substantial assets, including bank stock which had been placed in trust for the wife. There was a dispute over the division of property and the impact the trust had on the equitable division of the marital estate. I divided the property and ruled that the wife's interest in the trust was not relevant to the equitable division of property. My decision was not appealed.

Counsel for Plaintiff/Wife:

Greg Brewers
Strange, Farrell, Johnson & Brewer, P.C.
4420 South Technology Drive
Sioux Falls, SD 57106
(605) 339-4500

Counsel for Defendant/Husband:

Jason Sutton
Boyce Law Firm, L.L.P.
300 South Main Avenue
Sioux Falls, SD 57104
(605) 336-2424

9. *Estate of Helmbolt*, 49 PRO 16-52 (South Dakota Circuit Court)

This was a three day jury trial that arose from a dispute between siblings after their mother died. The case included claims of undue influence and a dispute over testamentary intent. The jury ultimately found that the disputed will was valid, and no undue influence existed. The jury's verdict was not appealed.

Counsel for the Personal Representative:

Lee Schoenbeck
Schoenbeck & Erickson, P.C.
1200 Mickelson Drive, Southeast #310
Watertown, SD 57201
(605) 886-0010

Counsel for Interested Party:

Robert Meadors
Aaron Salberg
Brende & Meadors
2900 South Phillips Avenue, Unit 100
Sioux Falls, SD 57105
(605) 333-0070

10. *Agreva, LLC v. Eide Bailly, L.L.P.*, 49 CIV 15-1104 (South Dakota Circuit Court June 16, 2019), *aff'd*, 2020 S.D. 59, 950 N.W.2d 774 (2020). Decision supplied.

This was a civil case that arose after the purchase of a medical practice management service. The buyer sued the seller for breach of contract, non-compete, non-solicitation, and confidentiality clauses in several contracts. There were also various tort claims, including tortious interference with a contract, misappropriation of a trade name, misappropriation of trade secrets, civil conspiracy and fraud. I granted summary judgment to seller on the majority of the claims made because seller had not violated the asset purchase agreement and the consultant that signed a separate consulting agreement was not a party to the asset purchase agreement. Further, I found that the consultant's non-compete agreement was unenforceable because he was not an employee. The matter was appealed by buyer to the South Dakota Supreme Court which affirmed.

Counsel for Plaintiff and Appellant Agreva, LLC:

Patrick L. Sealey
Heidman Law Firm
1128 Historic 4th Street
Sioux City, IA 51101
(712) 255-8838

Thomas C. Koessl
Williams, Bax & Saltzman, P.C.
221 North LaSalle Street, Suite 3700
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Eric R. Lifvendahl
L & G Law Group, L.L.P.
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Lisa M. Prostrollo
Redstone Law Firm, L.L.P.
1300 West 57th Street, Unit 101
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(605) 331-2975

Counsel for Defendant Eide Bailey, L.L.P.:

Brent Edison
Vogel Law Firm
218 Northern Pacific Avenue
Fargo, ND 58102
(701) 237-6983

Counsel for Defendants Brandt, Kampmann & LJB, Inc.:

Tim R. Shattuck
Sander J. Morehead
Woods Fuller, Shultz & Smith, P.C.
300 South Phillips Avenue, Unit 300
Sioux Falls, SD 57104
(605) 336-3890

- 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. *State of South Dakota vs. Austin*, 49 CRI 22-4202, Apr. 12, 2023. Opinion supplied.

Counsel for the State of South Dakota:

Melinda Avise
Crystal Johnson
Minnehaha County State's Attorney's Office
415 North Dakota Avenue
Sioux Falls, SD 57104
(605) 367-4226

Counsel for Defendant:

Jan Olson
Olson Law Firm, P.L.L.C.
519 West 10th Street
Sioux Falls, SD 57104
(605) 271-1422

2. *State of South Dakota v. Aadland*, 49 CRI 20-7570, Jan. 25, 2023. Opinion previously supplied in response to Question 13c.

Counsel for the State of South Dakota:

Mandy Mowery
Ryan McFall
Minnehaha County State's Attorney's Office
415 North Dakota Avenue
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(605) 367-4226

Counsel for Defendant:

Ryan Kolbeck
Kolbeck Law Office
505 West 9th Street, Suite 102
Sioux Falls, SD 57104
(605) 937-8376

George Johnson
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Gregory, SD 57533
(605) 835-8391

3. *State of South Dakota v. Thunder*, 49 CRI 20-2066, Mar. 31, 2021. Opinion supplied.

Counsel for the State of South Dakota:

Crystal Johnson
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415 North Dakota Avenue
Sioux Falls, SD 57104
(605) 367-4226

Counsel for Defendant:

Betsy Doyle
Minnehaha County Public Defender
413 North Main Avenue
Sioux Falls, SD 57104
(605) 367-4242

4. *State of South Dakota v. Cook*, 49 CRI 19-6422, Mar. 30, 2021. Opinion previously supplied in response to Question 13c.

Counsel for the State of South Dakota:

Katie Mallery
South Dakota Attorney General's Office
2000 East 52nd Street North
Sioux Falls, SD 57104
(605) 773-3215

Counsel for Defendant:

Betsy Doyle
Minnehaha County Public Defender
413 North Main Avenue
Sioux Falls, SD 57104
(605) 367-4242

Derek Friese
United States Attorney's Office (Formerly employed at the Minnehaha County
Public Defender's Office)
225 South Pierre Street, Suite 337
Pierre, SD 57501
(605) 224-5402

5. *Blazing Wings Properties, LLC v. Andrade, Vega, Gutierrez, and Puerto Vallarta Restaurant, LLC*, 49 CIV 19-745, Mar. 30, 2020. Opinion supplied.

Counsel for Plaintiffs and Appellants:

Lisa Prostrollo
Chris Sommers
Redstone Law Firm, L.L.P.
1300 West 57th Street
Sioux Falls, SD 57108
(605) 331-2975

Counsel for Defendant:

Joel Rische
Davenport, Evans, Hurwitz & Smith, L.L.P.
206 West 14th Street
Sioux Falls, SD 57104
(605) 336-2880

6. *Aqreva, LLC v. Eide Bailly, L.L.P.*, 49 CIV 15-1104 (South Dakota Circuit Court), 2020 S.D. 59, 950 N.W.2d 774, June 16, 2019. Opinion previously supplied in response to Question 13c.

Counsel for Plaintiff and Appellant Aqreva, LLC:

Patrick L. Sealey
Heidman Law Firm
1128 Historic 4th Street

Sioux City, IA 51101
(712) 255-8838

Thomas C. Koessl
Williams, Bax & Saltzman, P.C.
221 North LaSalle Street, Suite 3700
Chicago, IL 60601
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Eric R. Lifvendahl
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Lisa M. Prostrollo
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Counsel for Defendant Eide Bailey, L.L.P.:

Brent Edison
Vogel Law Firm
218 Northern Pacific Avenue
Fargo, ND 58102
(701) 237-6983

Counsel for Defendants Brandt, Kampmann & LJB, Inc.:

Tim R. Shattuck
Sander J. Morehead
Woods Fuller, Shultz & Smith, P.C.
300 South Phillips Avenue, Unit 300
Sioux Falls, SD 57104
(605) 336-3890

7. *Oseby v. City of Crooks, South Dakota, and Schantz, Municipal Finance Officers for the City of Crooks*, 49 CIV 19-906, Apr. 3, 2019. Opinion supplied.

Counsel for Plaintiff:

Thomas Wilka
Hagen, Wilka & Archer, L.L.P.
600 North Main Avenue
Sioux Falls, SD 57104
(605) 334-0005

Counsel for Defendant:

Justin Smith
Woods, Fuller, Shultz & Smith, L.L.P.
300 South Phillips Avenue, Unit 300
Sioux Falls, SD 57104
(605) 336-3890

8. *Fodness v. City of Sioux Falls*, 49 CIV 18-3031 (South Dakota Circuit Court), 2020 S.D. 43, 947 N.W.2d 619, Mar. 18, 2019. Opinion previously supplied in response to Question 13c.

Counsel for Plaintiffs and Appellants:

Daniel R. Fritz
Timothy R. Rahn
Ballard Spahr, L.L.P.
101 South Reid Street, Suite 302
Sioux Falls, SD 57301
(605) 978-5200

Counsel for Defendant:

James A. Moore
Alexis A. Warner
Woods, Fuller, Shultz & Smith, P.C.
300 South Phillips Avenue, Unit 300
Sioux Falls, SD 57104
(605) 336-3890

9. *McCain v. McCain*, 49 CIV 18-764, Feb. 24, 2019. Opinion supplied.

Counsel for Plaintiff:

Samuel Goodhope
Laura Rauenhorst
Kading, Kunstle, & Goodhope, L.L.P.
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Sioux Falls, SD 57108
(605) 336-1730

Counsel for Defendant:

Joshua Zellmer
Myers Billion, L.L.P.
230 South Phillips Avenue, #3
Sioux Falls, SD 57104
(605) 336-3700

10. *Kooiker v. Love's Travel Stops & Country Stores, Inc.*, 49 CIV 18-60, Feb. 24,

2019. Opinion supplied.

Counsel for Plaintiff:

Michael Snyder
Davenport, Evans, Hurwitz & Smith, L.L.P.
206 West 14th Street
Sioux Falls, SD 57104
(605) 336-2880

Counsel for Defendant:

Melanie Carpenter
Woods Fuller, Shultz & Smith, P.C.
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Sioux Falls, SD 57104
(605) 336-3890

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

Based on a review of my records and legal databases, certiorari has not been requested or granted in any of my cases.

- 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.

Luze v. New FB Co., 49 PRO 14-280 (South Dakota Circuit Court), *vacated in part and remanded*, 2020 S.D. 70, 952 N.W.2d 264 (2020). Decision supplied. This is a civil case that dealt with subrogation of a worker's compensation settlement after an employee was killed in a motor vehicle accident at work. The employee's widow brought suit against the negligent driver and settled the claim. The employee's estate also settled its claim against Zurich American Insurance Company ("Zurich"), the employer's insurer providing underinsured motorist coverage. Zurich was also the employer's worker's compensation insurance carrier. I determined that Zurich was entitled to a statutory worker's compensation lien of 50 percent of the settlement proceeds received by the estate and that Zurich was able to subrogate against its own settlement payment of underinsured motorist benefits. The matter was appealed to the South Dakota Supreme Court, which affirmed my decision that Zurich could subrogate against its own settlement payment of underinsured motorist benefits, but remanded as to the allocation of the lien on settlement proceeds.

Ferguson v. Thaemert, 49 CIV 18-1484 (South Dakota Circuit Court), *rev'd*, 2020 S.D. 69, 952 N.W.2d 277 (2020). Order supplied. This was a civil case a patient brought against a physician, alleging the physician acted without informed

consent in making a vertical incision, rather than patient's requested horizontal incision, for anterior spinal surgery. I granted patient's motion to compel production of limited medical records of physician's non-party patients finding that the information sought was relevant as the physician had no specific recollection of his discussions or assessments of the patient and relied entirely on what the physician considered to be his general practice. The physician filed an intermediate appeal of that order to the South Dakota Supreme Court, and the Supreme Court reversed, holding that the records requested were not relevant to the issue of what was discussed between the patient and physician before the operation and that the records requested were not reasonably likely to lead to the discovery of relevant and admissible evidence.

- 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 have issued hundreds of orders, decisions, opinions, and memorandum orders. Most of these are routine, but approximately 100 to 150 rulings involved substantive factual or legal analysis. All of my rulings are stored in the electronic case management system maintained by the State of South Dakota.

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

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

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;

- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

South Dakota Codified Law § 15-12-21.1 allows parties to informally request recusal of a judge before filing a formal affidavit for change of judge. The statute does not require the requesting party to state his or her reason for the informal recusal request. If the judge refuses the request, the attorney or party may file a formal affidavit requesting recusal, pursuant to South Dakota Codified Law § 15-12-26. The affidavit must be made in good faith and not for the purpose of securing delay. The affiant must state that he or she “has good reason to believe and does actually believe that such party cannot have a fair and impartial trial before the named judge.” The affidavit need not state the ground or reason for such belief. In making recusal decisions, I consider each request on a case-by-case basis, applying the applicable statutes, Judicial Canons, and the Rules of Professional Conduct.

In two cases, *Zwart v. NORISH, LLC*, (49 CIV 17-1612) and *Fahey v. Fahey*, (49 DIV 16-444), I received informal requests for recusal from defense counsel. The requests did not indicate the reason for recusal, and I was not able to identify any conflict of interest. I denied the requests and the requesting parties filed formal affidavits requesting recusal. The affidavits did not indicate the grounds for the requests and the requests were granted in each case. I am not aware of any other cases where I have been recused or where I requested, sua sponte, to be recused.

15. Public Office, Political Activities and Affiliations:

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

I have not held any public office other than judicial office. I have not had any 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.

None.

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

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

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

From 2001 to 2002, I served as a law clerk to the Honorable Lee Anderson, the Honorable Ronald Miller, the Honorable Lee Tappe, and the Honorable Glen Engh. All four judges were South Dakota State Circuit Judges for the First Judicial Circuit.

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;

2001; 2002 – 2003
Morgan Theeler Law Firm, L.L.P.
1718 N. Sanborn Boulevard
Mitchell, South Dakota 57301
Associate Attorney

2003 – 2012
Lynn, Jackson, Shultz & Lebrun, P.C.
110 North Minnesota Avenue, #400
Sioux Falls, South Dakota
Associate (2003 – 2008)
Partner (2008 – 2012)

2012 – 2018
United States Attorney's Office for the District of South Dakota
325 South 1st Avenue, Unit 300
Sioux Falls, South Dakota 57104
Deputy Civil Chief, Civil Division (2016 – 2018)
Assistant United States Attorney, Civil Division (2012 – 2016)

2018 – present
South Dakota Unified Judicial System
425 North Dakota Avenue
Sioux Falls, South Dakota 57104

Circuit Court Judge, Second Judicial Circuit

- 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 never served as a mediator or arbitrator.

b. Describe:

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

During my work with Morgan Theeler, L.L.P. (approximately 2001 – 2003, with a break for my clerkship), my practice encompassed a wide variety of cases often found in a small town practice. This included: plaintiff's personal injury/worker's compensation, defense of personal injury/worker's compensation, business litigation, general business planning and advising, estate planning, family law, employment law, and criminal defense work.

During my practice with Lynn, Jackson, Shultz & Lebrun, p.c. (2003 – 2012), my practice included representing both plaintiffs and defendants in personal injury/worker's compensation cases, business litigation, appellate work, family law, and employment law (representing both plaintiffs and defendants, and working with businesses to prevent employment issues).

At the United State's Attorney's Office (2012 – 2018), the majority of my work was defending claims brought against government agencies. The cases included personal injury, medical malpractice, employment discrimination, property/water disputes, and claims under the Administrative Procedure Act. I also handled some civil affirmative cases, helping agencies enforce federal laws, as well as a criminal case for assault with a deadly weapon.

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

In private practice, my typical clients were small business owners involved in business or employment disputes, insurance companies, private citizens that had been involved in an accident or felt they had been wronged by an employer, or people that had been accused of a crime. At the U.S. Attorney's Office, my client was the United States and its agencies.

- 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.

As a lawyer, more than 80 percent of my practice involved litigation, and the remainder encompassed investigation and transactional work. I appeared in court occasionally throughout my career.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 45% |
| 2. state courts of record: | 50% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 5% |

ii. Indicate the percentage of your practice in:

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

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

As an attorney, I tried eight cases to verdict, judgment, or final decision. I served as sole counsel on four cases, and associate counsel on four cases.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 35% |
| 2. non-jury: | 65% |

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:

- the date of representation;
- 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. *Lightning Fire v. United States*, No. 3 15-CV-03015-RAL, 2017 WL 1944105 (D.S.D. May 9, 2017) (Hon. Roberto Lange)

In this case plaintiffs sued the United States under the Federal Tort Claims Act, alleging that the negligence of a federal employee caused a minor child to be burned by hot oil while the child was cooking frybread at the Cheyenne-Eagle Butte High School during a home economics class. In 2016 and 2017 I defended the United States, took and defended depositions, drafted pleadings, and filed a motion to dismiss for lack of jurisdiction as the classroom teacher was not a federal employee. The court agreed and dismissed the claim for lack of subject matter jurisdiction.

Counsel for Plaintiff:

Aaron Eiesland
Eiesland Law
4020 Jackson Boulevard, Suite 1
Rapid City, SD 57702
(605) 545-7667

2. *Ziegler v. Jewell*, No. CIV. 12-4042, 2015 WL 1822874, (D.S.D. Apr. 21, 2015) (Hon. Lawrence Piersol), *aff'd*, 637 F. App'x 246 (8th Cir. 2016)

This was an employment law case focused on the issue of whether the Department of the Interior violated the statutory requirements of the Older Worker's Benefit Protection Act when it bargained for and obtained Mr. Ziegler's Age Discrimination and Employment Act waiver in a global settlement of a variety of claims. From 2014 to 2016 I drafted pleadings, defended the Department in a two-day court trial, and responded to Mr. Ziegler's appeal to the Eighth Circuit Court of Appeals. The district court ruled that Mr. Ziegler's Age Discrimination in Employment Act waiver in the settlement agreement was obtained in compliance with 29 U.S.C. § 626(f) and dismissed Mr. Ziegler's claims with prejudice. The Eighth Circuit Court of Appeals affirmed.

Plaintiff proceeded pro se.

3. *Gesinger v. Burwell*, 210 F. Supp. 3d 1177 (D.S.D. 2016) (Hon. Charles Kornmann)

This was an employment law claim brought by a nurse for Indian Health Services ("IHS") who sued the Department of Health and Human Services asserting that IHS discriminated against her for her disability under the Americans with Disabilities Act and retaliated and discriminated against her under the Rehabilitation Act. In 2015 I defended the Department of Health and Human Services, took and defended depositions, and filed a motion to dismiss the claims under the Americans with Disabilities Act based on lack

of subject matter jurisdiction. I also filed a motion for summary judgment on the claims under the Rehabilitation Act. The court dismissed Ms. Gesinger's claims under the Americans with Disabilities Act for lack of subject matter jurisdiction, as the United States did not fit the definition of "employer" under that Act. The court denied the motions for summary judgment on the Rehabilitation Act, holding that there were genuine issues of material fact on Ms. Gesinger's claims for discrimination and retaliation. Ms. Gesinger's remaining claims were resolved through settlement after the parties participated in mediation.

Counsel for Plaintiff:

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James Law, P.C.
721 Douglas Avenue
Yankton, SD 57078
(605) 665-0594

Daniel Rasmus
Hovland, Rasmus, Brendtro & Trzynka, P.L.L.C.
6800 France Avenue, Suite 190
Edina, MN 55435
(612) 874-8550

4. *United States of America v. Mayfield Hutterite Brethern, Inc., a/k/a Mayfield Colony*, Civ. 4:14-cv-04100-KES (D.S.D.) (Hon. Karen Schreier)

This was an affirmative case I brought in 2014 on behalf of the United States for the restoration of damaged federal wetland areas. The Mayfield Hutterite Colony obtained land that was encumbered by a federal wetland easement. The Colony was not aware of the easement and installed drain tile to drain the wetland. I filed a complaint for restoration of the damaged federal wetlands and asked for injunctive relief against future drainage of the wetlands. I handled the case on my own, conducted extensive discovery, took and defended depositions, and filed a motion for summary judgment. Instead of responding to the motion, the Colony entered into a consent decree, agreeing to remove the drain tile and restore the wetland.

Defense Counsel:

Jeffrey T. Sveen
Siegel, Barnett & Schultz, L.L.P.
P.O. Box 490
Aberdeen, SD 57402
(605) 225-5420

5. *United States of America v. 2035, Inc., a corporation, and Lytle, an individual, d/b/a 2035 PMA and QLASERS PMA*, Civ. 14-cv-5075-JLV (D.S.D.) (Hon. Jeffrey Viken)

This was an affirmative case brought on behalf of the United States Food and Drug

Administration in 2014 to stop Mr. Lytle and his businesses from violating the Food, Drug & Cosmetic Act. Mr. Lytle distributed QLaser devices with false and misleading labeling claims, touting their use for treating medical conditions such as cancer, HIV/AIDS, and diabetes, even though his QLaser devices had only been approved for treatment of osteoarthritis of the hand. I worked with attorneys from the Department of Consumer Affairs Division and the Food and Drug Administration. We obtained a preliminary injunction but Mr. Lytle continued to distribute his devices which led to a two-day court trial on an order to show cause for violation of the preliminary injunction. The matter was ultimately resolved when Mr. Lytle agreed to enter into a permanent injunction. During the course of the litigation Mr. Lytle filed four separate appeals to the Eighth Circuit. I drafted and argued motions before the district court and assisted in drafting responses to Mr. Lytle's appeals to the Eighth Circuit Court of Appeals. The case continued after I was appointed to the bench, and another attorney took over the file.

Co-counsel:

Ross Goldstein
Department of Justice, Consumer Protection Branch
950 Pennsylvania Avenue, Northwest
Washington DC, 20530
(205) 514-2007

Sonia Nath
Cooley, L.L.P.
1299 Pennsylvania Avenue, Northwest
Washington DC, 20004
(202) 776-2120

Defendant proceeded pro se

6. *Robinson v. Patrick Donahoe, Postmaster General*, 957 F. Supp. 2d 1119 (D.S.D. 2013) (Hon. Karen Schreier)

This was an age and gender discrimination case initiated by Ms. Robinson against the United States Postal Service. Ms. Robinson, a postal clerk, claimed she lost seniority status, hours, wages, and other job benefits after she made claims for prior and ongoing employment discrimination and retaliation. I took and defended multiple depositions, drafted motions, and argued motions before the court, including a motion to dismiss and a motion for summary judgment. The court dismissed Ms. Robinson's claims of discrimination because she failed to exhaust her administrative remedies and raise claims in her Equal Employment Opportunity complaint. The court granted the Postal Service summary judgment on Ms. Robinson's remaining claims because she could not meet her burden to prove the reasons for her adverse employment action were pretext for discrimination, and she could not establish a causal connection between her protected activity and adverse employment action.

Counsel for Plaintiff:

Patrick Kane (deceased)

7. *Koenigsfeld, Individually, and as Personal Representative of the Estate of Koenigsfeld, deceased, and as Guardian Ad Litem for Koenigsfeld v. Barrs, d'Auguste, Hummel, and Hummel's Farm and Dozers*, Civ. No. 10-410 (South Dakota State Court) (Hon. Steven Jensen)

This was a wrongful death case I handled from 2010 to 2012 for a young, pregnant widow whose husband was killed in a construction accident when an excavation for a residential home caved in on him. The parties did extensive discovery to determine the negligence and duty issues between the homeowner, contractor, and excavator, who were all named defendants. I took and defended multiple depositions, worked with three expert witnesses, responded to motions, and argued motions before the court. The circuit court rejected the defendants' summary judgment arguments. The case was ultimately resolved at mediation.

In addition to the wrongful death claim, I assisted Ms. Koenigsfeld with a number of related issues including worker's compensation claims, subrogation claims, estate planning, the appointment of a guardian ad litem for her daughter, the probate of Mr. Koenigsfeld's estate, and assistance with real estate issues from the sale of her home.

Co-counsel for Plaintiff:

Thomas Fritz
Lynn, Jackson, Shultz, & Lebrun, P.C.
909 St. Joseph Street, Suite 800
Rapid City, SD 57709
(605) 342-2592

Dana Van Beek Palmer
Lynn, Jackson, Shultz, & Lebrun, P.C.
110 North Minnesota Avenue, #400
Sioux Falls, SD 57104
(605) 332-5999

Hon. Jon Sogn (formerly employed at Lynn, Jackson, Shultz, & Lebrun, P.C.)
Minnehaha County Courthouse
425 North Dakota Avenue
Sioux Falls, SD 57104
(605) 782-3028

Counsel for Defendant Baars:

John C. Gray
Heidman Law Firm, L.L.P.
1128 Historic 4th Street
Sioux City, IA 51102
(712) 255-8838

Counsel for Defendant d'Auguste:

Steven K. Huff
Johnson, Miner, Marlow, Woodward & Huff
200 West Third Street
Yankton, SD 57078
(605) 665-5009

Counsel for Defendant Hummel and Hummel's Farm and Dozers:

Rene C. Lapierre
Klass Law Firm
4280 Sergeant Road, Suite 290
Sioux City, IA 51106
(712) 252-1866

8. *Robinson v. Janet Napolitano, Secretary, Department of Homeland Security, Transportation Security Administration*, Civ. 08-4084-KES (D.S.D.) (Hon. Karen Schreier)

This was a hostile work environment and retaliation lawsuit initiated by the plaintiff, Mr. Robinson, before I started at the United States Attorney's Office. I took over the handling of the case in 2012, defending the Travel Security Administration (TSA). Mr. Robinson, an attorney, served as his own counsel with limited assistance from counsel. Mr. Robinson alleged he was subject to a hostile work environment and was retaliated against while working as a supervisor for the TSA in 2002. The TSA claimed Mr. Robinson was terminated for poor performance as a supervisor, unprofessional conduct, derogation of TSA's policies and personnel, failure to follow standard operating procedures, and failure to report suspicious activity to the law enforcement officer on duty while the activity was occurring. The case went to a four-day bench trial, which I handled by myself, handling numerous witnesses and arguments to the court. At the conclusion of the case the district court issued judgment for the United States.

Plaintiff proceeded pro se

9. *Kennedy v. M-Tron Industries, Inc., the Travelers*, 730 N.W.2d 150 (S.D. 2007).

This was a worker's compensation case I handled from 2006 to 2007 where I defended the employer and insurer at the administrative hearing and before the South Dakota Supreme Court on appeal. The issue in dispute was whether Ms. Kennedy's work-related injury was a major contributing cause of her continued symptoms and disability. I handled the administrative hearing, drafted motions, argued motions before the Administrative Judge, responded to Ms. Kennedy's appeal to the South Dakota Supreme Court, and made oral argument to the South Dakota Supreme Court. The Department of Labor and Regulation Administrative Judge ruled that the work-related injury was not a major contributing cause of Ms. Kennedy's disability, and she was not entitled to

permanent disability benefits. Ms. Kennedy appealed to the South Dakota Supreme Court, and the Department's decision was summarily affirmed.

Counsel for Claimant:

Dennis W. Finch (deceased)

10. *Welch v. Haase*, 2003 S.D. 141, 672 N.W.2d 689

This was a civil case involving a car accident that occurred after a group of high school students attended a party to celebrate their graduation. One of the students, Welch, died as a result of the accident. His grandfather, as special administrator of his estate, initiated a wrongful death and survival action against the driver of the vehicle, the driver's mother, and the two landowners who hosted the party immediately preceding the accident. I assisted in defending the landowners at the trial in 2003. The jury returned a general verdict in favor of all defendants. The matter was appealed to the South Dakota Supreme Court on a number of issues, including the trial court's instruction on the law governing landowner liability and the furnishing of alcoholic beverages by social hosts. The Supreme Court affirmed the trial court on the landowner liability issue.

Co-counsel for Defendant Landowners:

John S. Theeler
Morgan Theeler Law Firm, L.L.P.
1718 North Sanborn Boulevard
Mitchell, SD 57301
(605) 996-5588

Counsel for Plaintiff:

George Johnson
Stephanie Pochop
Johnson Pochop Law Office
405 Main Street
Gregory, SD 57533
(605) 835-8391

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.)

The vast majority of my work as a lawyer involved litigation, but I also participated in other legal activities including investigation and transactional work. While at the United States Attorney's Office, I participated in an investigation of a civil rights action that did not ultimately lead to litigation. While in private practice I assisted clients with

businesses in investigating and responding to employment law issues.

I have not performed any lobbying activities, and I am not and have never been registered as a lobbyist.

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

In Fall 2002, I taught a Business Law class at Dakota Wesleyan University. The class covered general principles of contracts, torts, and property as applied to business relationships. I am unable to locate the syllabus.

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

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that 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.

If confirmed, I would follow the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other relevant ethical laws, rules, or canons. I would recuse myself from cases handled by my father-in-law, who practices law in Mitchell, South Dakota, and occasionally litigates cases in the District of South Dakota.

- 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, I would evaluate and resolve any potential conflict of interest by applying the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other relevant ethical laws, rules, or canons.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a Circuit Judge for the State of South Dakota from 2018 to present, and during my tenure as an Assistant United States Attorney from 2012 to 2018, I am and was unable to take on direct pro bono representations. While in private practice, I handled pro bono cases and projects and devoted significant time to that work.

Throughout my career, I have sought to serve the community in other ways, especially through supporting and participating in volunteer programs focused on youth and students. For example, I served as a mentor to an elementary student from 2006 to 2009 and served on the Lutheran Social Services School-Based Mentor Advisory Program Committee from 2005 to 2013. I have been presenting to high school students through Junior Achievement from 2015 to present, and I have presented for years to high school seniors about their legal responsibilities as adults. I have also volunteered on various boards in my community, including the Civil Service Board and the Multi-Cultural Center Board. I often welcome students to visit the courthouse and give tours and conduct mock trials to help educate them about the legal system.

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 December 8, 2023, I submitted a resume to Senator John Thune's office regarding a position on the United States District Court for the District of South Dakota. On December 18, 2023, I interviewed with attorneys from the Office of the White House Counsel. Since December 21, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 4, 2024, I met with Senator Michael Rounds. On February 7, 2024, the President announced his intent to nominate me.

- 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.