

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Ryan Douglas Nelson

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

Circuit Judge, United States Court of Appeals for the Ninth 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.

Melaleuca, Inc.
4609 West 65th South
Idaho Falls, Idaho 83402

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

1973; Idaho Falls, Idaho

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.

1996 – 1999: J. Reuben Clark Law School, Brigham Young University; J.D., 1999

1991 – 1992, 1994 – 1996: Brigham Young University; B.A., 1996

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.

2009 – present
Melaleuca, Inc.
4609 West 65th South
Idaho Falls, Idaho 83402
General Counsel Emeritus (2017 – present)

General Counsel (2009 – 2017)
Assistant Secretary (2013 – present)

2005 – 2017
Palmer Green, LLC (real estate investment)
Idaho Falls, Idaho 83404
Manager

2009
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510
Special Counsel

2008 – 2009
Executive Office of the President
Office of Management and Budget
1650 Pennsylvania Avenue
Washington, D.C. 20503
Deputy General Counsel

2006 – 2008
United States Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue, Northwest
Washington, D.C. 20530
Deputy Assistant Attorney General

2001 – 2006
Sidley Austin LLP
1501 K Street, Northwest
Washington, D.C. 20005
Associate

2000 – 2001
Iran-United States Claims Tribunal
Parkweg 13
2585 JH The Hague
The Netherlands
Law Clerk to the Honorable Charles N. Brower and Richard M. Mosk

1999 – 2000
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue
Washington, D.C. 20001
Law Clerk to the Honorable Karen LeCraft Henderson

Summer 1999
Kirkland & Ellis LLP
655 Fifteenth Street, Northwest
Washington, D.C. 20005
Summer Associate

1998 – 1999
United States Senate Legal Counsel
United States Senate
Senate Hart Office Building
Room 642
Washington, D.C. 20510
Law Clerk

Summer 1998
Brownstein Hyatt Farber Schreck
410 17th Street
Denver, Colorado 80202
Summer Associate

1997 – 1998
J. Reuben Clark Law School, Brigham Young University
341 East Campus Drive
Provo, Utah 984602
Research and Teaching Assistant to Professors Richard Wilkins and Thomas Lee

Summer 1997
Kirton McConkie
Kirton McConkie Building
50 East South Temple
Salt Lake City, Utah 84111
Summer Associate

Summer 1996
Apex Mortgage Group
580 South State Street
Orem, Utah 84058
Loan Specialist

1994 – 2002
Sunrise Investment Co., LLC (real estate investment)
2751 Glenwood Drive
Idaho Falls, Idaho 83404
Manager

As part of my employment with Melaleuca, I have also served as an officer or director in the following entities:

2013 – present
Melaleuca of Mexico Distribution Holdings, Inc.
4609 West 65th South
Idaho Falls, Idaho 83402
Secretary

2013 – present
Melaleuca of Mexico Holdings, Inc.
4609 West 65th South
Idaho Falls, Idaho 83402
Secretary

2013 – present
Melaleuca of Mexico Distribution, Inc.
4609 West 65th South
Idaho Falls, Idaho 83402
Assistant Secretary

2013 – present
Gem State Utility Development Group, LLC
490 Memorial Drive, Suite 200
Idaho Falls, Idaho 83402
Member of Board of Managers

2010 – present
Primer Contacto USA, Inc.
4609 West 65th South
Idaho Falls, Idaho 83402
Assistant Secretary

2010 – 2017
Melaleuca Export, Inc.
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Secretary and Director

2010 – 2017
Melaleuca of Canada and Japan Export, Inc.
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Secretary and Director

2010 – 2017
Melaleuca of Asia Export, Inc.
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Secretary and Director

2010 – 2017
Melaleuca of Southeast Asia Export, Inc.
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Secretary and Director

2012 – 2017
Melaleuca of Australia Export, Inc.
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Secretary and Director

2011 – 2017
Melaleuca of Europe (Germany) GmbH
Hessenring 13 b / Warenannahme Melaleuca
D-64546 Morfelden-Walldorf
Germany
Managing Director and Secretary

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 registered for the 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.

Outstanding High School Debate Judge, Tiger-Grizz Debate Invitational, Idaho Falls, Idaho (2012 & 2013)

Outstanding Service Award, Environment and Natural Resources Division, Department of Justice (2008)

Honorary Naval Aviator for arrested landing on the USS Ronald Reagan (2008)

Tommy Thompson Award for Outstanding Service, Colonial District, National Capitol Area Council, Boy Scouts of America (2008)

Brigham Young University Law School
Order of the Coif (1999)
BYU Law Review, Lead Articles Editor (1998 – 1999)
BYU Law Review, Staff Member (1997 – 1998)
Moot Court, Best Brief Runner-Up & Oralist Semi-Finalist (1997)
International Legal Fraternity of Phi Delta Phi, Sutherland Inn (1997)
Trustee Scholar (full-tuition scholarship) (1996 – 1999)

Brigham Young University (1991 – 1992; 1994 – 1996)
Creative Arts and Research Scholarship (1996)
The Honor Society of Phi Kappa Phi (1996)
Alvina S. Barret Academic Scholarship (full-tuition) (1995 – 1996)
Mae Covey International Study Scholarship, BYU London Study Abroad (1995)
Dean's List, English Department (1995)
University Scholar (full-tuition) (1991 – 1992)

Outstanding Spokesman for Freedom, Voice of Democracy, Veterans of Foreign Wars (1990)

Eagle Scout, Boy Scouts of America (1987)

Hope of America Award, Idaho Falls Kiwanis Club (1985)

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

American Bar Association (2013 – present)
Councilmember, Section of Administrative Law and Regulatory Practice (2015 – present)
Co-Chair, Corporate Counsel Committee, Section of Administrative Law and Regulatory Practice (2014 – present)
Member, General Counsel Advisory Committee, Section of Administrative Law and Regulatory Practice (2013 – 2014)

The Eagle Rock American Inn of Court (2010 – present)

Federal Bar Association, Idaho Chapter (2011 – present)
Federal Litigation Section (2011 – present)
Judiciary Division (2011 – present)

Republican National Lawyers Association (2005 – present)
Appellate Section (2005 – present)
Litigation Section (2005 – present)

J. Reuben Clark Law Society (1999 – present)
D.C. Mid-Atlantic Chapter (1999 – 2009)
Idaho Upper Snake River Valley Chapter (2009 – present)

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.

Idaho, 2010
District of Columbia, 2001
Colorado, 2000

I voluntarily took inactive status in the D.C. bar in 2009. I returned to active status in the D.C. bar in 2017. I voluntarily took inactive status in the Colorado bar in 2001. There have been no other 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 Supreme Court, 2004
United States Court of Appeals for the District of Columbia Circuit, 2001
United States Court of Appeals for the Second Circuit, 2007 (inactive)
United States Court of Appeals for the Third Circuit, 2004
United States Court of Appeals for the Fourth Circuit, 2008
United States Court of Appeals for the Fifth Circuit, 2006
United States Court of Appeals for the Seventh Circuit, 2006
United States Court of Appeals for the Ninth Circuit, 2004
United States Court of Appeals for the Tenth Circuit, 2004
United States District Court for the District of Idaho, 2010
United States District Court for the District of Columbia, 2002 (inactive)

In the Second Circuit and D.C. District Court, I have become inactive due to the length of time since I last practiced before those courts. There have been no other 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.

Boy Scouts of America (2004 – 2009)
Committeeman, National Capitol Area Council (2004 – 2009)

BYU Alumni Association (1999 – present)

Citizens for the Common Defense (2004)

City Club of Idaho Falls (2012 – present)

Direct Selling Association (2009 – present)
DSA Board of Directors (2011 – 2012)
Chairman, International Council (2011 – 2012)
Member, Strategic Planning Committee (2013 – 2014)
Member, General Counsel Committee (2011 – 2017)
Member, Ethics and Self-Regulation Committee (2009 – 2017)
Member, Government Relations Committee (2009 – 2017)

Federalist Society for Law and Public Policy Studies (1997 – present)
Brigham Young Student Chapter (1997 – 1999)
Washington, D.C. Chapter (2001 – 2009)
Idaho Lawyers Chapter (2009 – present)

Friends of Colonial Williamsburg (2000 – 2007)

George W. Bush Presidential Center Founding Member (2010 – present)

Idaho Community Foundation (2009 – 2011)

Idaho Falls Arts Council (2012 – present)

Idaho Republican Party (2010 – present)

Massanutten Property Owners Association (2004 – present)

Massanutten Vacation Homeowners Association (2006 – present)

Professional Association of Dive Instructors (2006 – present)
Open Water (2006)
Advanced Open Water (2006)
Enriched Air (2015)

Snake River Triathlon Club (2012 – present)

SouthPoint Property Owners Association (2010 – present)

USA Triathlon (2012 – 2015)

Washington Area Bicyclist Association (2008 – 2009)

White House Historical Association (2010 – present)

Winslow Farr Sr. Family Organization Association (2000 – present)

World Federation of Direct Selling Associations (2011 – 2012)
DSA Representative (2011 – 2012)

Yellowstone Forever (2017 – 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.

The Boy Scouts of America previously limited youth membership in Cub Scouting, Boy Scouting and Varsity Scouting to boys. In October 2017, the organization announced that it will open the Cub Scouting program to girls and deliver a Scouting program for older girls in 2018. 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.

With Richard M. Mosk, *The Effects of Confirming and Vacating an International Arbitration Award on Enforcement in Foreign Jurisdictions*, 18 J. Int'l Arbitration 463 (2001). Copy supplied.

As a research assistant, I edited the following article:

Thomas R. Lee, *Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court*, 52 VANDERBILT L. REV. 647 (1999). Copy supplied.

The following are letters that I wrote to media for a client that were published:

Troy Dooly, "MLM Perspective: Former Melaleuca Distributors Share Their Perspectives On Policy 20," publishing Letter from R. Nelson to T. Dooly, Jan. 14, 2013. Copy supplied.

Lou Abbott, "Melaleuca Loses Important Ruling in Idaho," www.mlm-thewholetruth.com/network-marketing-news/melaleuca-loses-important-ruling-in-idaho, Dec. 5, 2010, publishing Letter from R. Nelson to L. Abbott, Dec. 10, 2010. 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.

To the best of my recollection, I have not prepared or contributed to any reports, memoranda, or policy statements responsive to this question.

- 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.

To the best of my knowledge, the following materials are responsive to this request for testimony or official statements made on my own behalf (as opposed to statements made on behalf of a client) to public bodies or public officials on matters of public policy or legal interpretation:

United States Senate, Committee on Energy and Natural Resources, "September 7, 2017 Hearing: Pending Nominations Questions for the Record Submitted to Mr. Ryan Nelson," Sept. 2017. Copy supplied.

United States Senate, Committee on Energy and Natural Resources, "Statement of Ryan Douglas Nelson, Nominee for the Position of Solicitor of the Department of the Interior," Sept. 7, 2017. Copy supplied.

Letter to Chairman Hatch and Ranking Member Wyden in Support of Brent J. McIntosh as General Counsel for Department of the Treasury, June 6, 2017. Copy supplied.

Letter to Utah Judicial Selection Committee in Support of Thomas Lee as Utah Supreme Court Justice, March 24, 2010. Copy supplied.

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

The following reflects my best efforts to identify all speeches and talks I have delivered responsive to this question. I constructed this list by consulting my own files and calendar and by searching publicly available sources on the Internet. Despite my best efforts, there may be additional speeches or talks that I cannot remember or otherwise identify.

November 15, 2017: Speaker, "Principles in Leadership," Idaho Falls High School, Idaho Falls, Idaho. My remarks were based in part on leadership principles learned through my professional experiences. I have no notes, transcript, or recording. The address of Idaho Falls High School is 601 South Holmes Avenue, Idaho Falls, Idaho 83401.

August 12, 2016: Speaker, "Best Practices in Representing a Corporate Client," J. Reuben Clark Law Society, Idaho Upper Snake River Valley Chapter, Idaho Falls, Idaho. Copy supplied.

March 18, 2016: Speaker, "Presentation of 2016 J. Reuben Clark Law Society Distinguished Service Award to Doug Nelson," Idaho Falls, Idaho. Copy supplied.

March 7, 2014: Panelist, Fourth Annual March Madness CLE, "Best Litigation Practices," J. Reuben Clark Law Society, Nevada Las Vegas Chapter, Las Vegas, Nevada. My panel remarks were based in part on my litigation perspective as in-house counsel. I have no notes, transcript, or recording. The address of the J. Reuben Clark Law Society is BYU Law School, 239 J. Reuben Clark Building, Provo, Utah 84602.

Approximately September 15, 2011: Speaker, "General Counsel Summit," Direct Selling Association Regulatory Conference, Washington, D.C. My panel remarks addressed general legal trends affecting direct sales companies. I have no notes, transcript, or recording. The address of the Direct Selling Association is 1667 K Street, Northwest, Suite 1100, Washington, D.C. 20006.

December 2, 2008: Speaker, "Remarks on Departure from the Department of Justice," Environment and Natural Resources Division, Washington, D.C. My comments reflected my professional experience at the Department of Justice. I

have no notes, transcript, or recording. The address of the Department of Justice is 950 Pennsylvania Avenue, Northwest, Washington, D.C. 20530.

March 24, 2008: Speaker, "*Commonwealth of Massachusetts v. EPA*: CO2 Emissions Strategies and Regulations," Washington, D.C. Copy supplied.

January 22, 2008: Speaker, "Ronald J. Tenpas Swearing in as Assistant Attorney General," Department of Justice, Washington, D.C. Copy supplied.

December 6, 2007: Speaker, "Reducing CO2 Emissions: Short-Term and Long-Term Strategies," Economic and Legal Drivers, Second Annual Energy & Resource Conference, New York, New York. Slides supplied.

Approximately June 4-10, 2007: Instructor, National Institute for Trial Advocacy, Washington, D.C. I provided instruction for a training weekend and presented on jury trial skills. I have no notes, transcript, or recording. The address of the National Institute for Trial Advocacy is 1685 38th Street, Suite 200, Boulder, Colorado 80301.

May 8, 2007: Speaker, "*Massachusetts v. EPA* and Regulation of Greenhouse Gases," Yale Federalist Society, New Haven, Connecticut. My remarks were based in part on my work in *Massachusetts v. EPA*. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, Northwest, Suite 300, Washington, D.C. 20006.

April 17, 2007: Speaker, "The Forest Service Water Compact with Montana," Rattlesnake horse trailhead, Missoula, Montana. On behalf of the Department of Justice, I commemorated the water compact agreed to between the United States Forest Service and the State of Montana. I have no notes, transcript, or recording. The address of the Department of Justice is 950 Pennsylvania Avenue, Northwest, Washington, D.C. 20530.

March 30, 2007: Speaker, "*Massachusetts v. EPA*, The Domestic Response to Global Climate Change: Federal, State and Litigation Initiatives," University of San Francisco Law School, San Francisco, California. My remarks were based in part on my work in *Massachusetts v. EPA*. I have no notes, transcript, or recording. The address of the University of San Francisco Law School is 2130 Fulton Street, San Francisco, California 94117.

November 11, 2006: Speaker, "*Massachusetts v. EPA*: Standing, Statutory Construction, and Agency Discretion not to Regulate on Demand under the Clean Air Act," Environmental Law Journal Symposium, Villanova University School of Law, Villanova, Pennsylvania. My remarks were based in part on my work in *Massachusetts v. EPA*. I have no notes, transcript, or recording. The address of the Villanova University School of Law is 299 North Spring Mill Road, Villanova, Pennsylvania 19085. Copy of program supplied.

November 7, 2006: Speaker, "2005 Term of the U.S. Supreme Court: Environmental Case Review including *Rapanos* and *S.D. Warren*," Tennessee Wildlife Resource Agency, Norfolk, Virginia. My remarks were based in part on my work on environmental cases before the Supreme Court. I have no notes, transcript, or recording. The address for the Tennessee Wildlife Resource Agency is Ellington Agricultural Center, Post Office Box 40747, Nashville, Tennessee 37204. Copy of program supplied.

Approximately Spring 1996: Speaker, "Support of my election as Delegate to the Utah State Republican Convention," Provo, Utah. I gave brief remarks to a group of about 30 voters in support of being elected as a Delegate to the 1996 Utah State Republican Convention. To the best of my recollection, this local precinct event was sponsored by the Utah Republican Party. I have no notes, transcript, or recording. The address of the Utah Republican Party is 117 East South Temple Street, Salt Lake City, Utah 84111.

- 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.

The following reflects my best efforts to identify all interviews I have given to the press. I constructed this list by consulting my own files and calendar and by searching publicly available sources on the Internet. Despite my best efforts, there may be additional interviews that I cannot remember or otherwise identify.

Bryan Clark, "Melaleuca attorney tapped for DOI Solicitor," Idaho Falls Post Register, Aug. 2, 2017. Copy supplied.

EastIdahoNews.com, "Trump Selects Local Attorney as Solicitor for Department of Interior," Aug. 1, 2017. Copy supplied.

Press Release, Department of the Interior, "Zinke Applauds Nomination of Idaho's Ryan Nelson to Serve as Interior Solicitor," Aug. 1, 2017. Copy supplied.

Phil Davidson, "IF Native's New Job Has Him Reporting to Bush," People in Government, Idaho Falls Post Register, Sept. 19, 2008. Copy supplied.

Press Release, United States Department of Justice, "Joint Settlement Will Ensure Reduction of Hazardous Pollutants from Hammond, Indiana Plant," Aug. 13, 2007. Copy supplied.

Approximately Feb. 1995: I was invited as an audience member on a TV talk show in London, England and made some comments. I do not recall the specific show or comments. I cannot locate any recording of the show.

V.K., "Jonge Mormoonse zendelingen verkondigen geloof in Kortrijk: Jim Usevitch een van de 75 leden," Het Volk, at 22, Kortrijk, Belgium, Feb. 17, 1993. Copy supplied.

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

I have not held judicial office.

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

- i. Of these, approximately what percent were:

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

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an “automatic” recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

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

15. **Public Office, Political Activities and Affiliations:**

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

In approximately Spring 1996, I was elected as a Delegate to the Utah Republican Convention. I have not run for any other public office.

I have been nominated to or held the following appointed positions:

Deputy Assistant Attorney General (2006 – 2008), Environment and Natural Resources Division, United States Department of Justice, Washington, D.C.; appointed by Attorney General Alberto R. Gonzales.

Deputy General Counsel (2008 – 2009), Office of Management and Budget, Executive Office of the President, Washington, D.C.; appointed by Director Jim Nussle.

Special Counsel to the Senate Judiciary Committee (2009), United States Senate, Washington, D.C.; appointed by Ranking Member Jeff Sessions.

On August 2, 2017, President Donald J. Trump nominated me as Solicitor for the Department of the Interior. On September 19, 2017, the Senate Energy and Environment Committee unanimously voted me out of Committee. On January 3, 2018, the Senate returned my nomination to the President under the provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

On January 8, 2018, President Donald J. Trump re-nominated me as Solicitor for the Department of the Interior. On January 30, 2018, the Senate Energy and Environment Committee voted me out of Committee on an unrecorded voice vote. On May 10, 2018, the White House withdrew my nomination.

- 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.

In 2012, I served on the Regulatory Policy Advisory Committee for the Romney Presidential Campaign.

In 2012, I served as an Idaho Republican Party Chairman for the Idaho Republican presidential caucus, in Idaho Falls, Idaho.

In 2004, I served as a legal advisor for the Bush Presidential Campaign for about a week during the early election voting in Florida. On election night, I served as a legal advisor at the Bush Presidential Campaign headquarters in Washington, D.C.

In 1996, I was elected and served as a Republican Delegate for the Utah State Convention.

All of these offices have been on a volunteer basis without compensation except partial reimbursement of expenses from the Bush Presidential Campaign as a legal advisor for the early voting in Florida in 2004.

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 1999 to 2000, I served as a law clerk to the Honorable Karen LeCraft Henderson, Circuit Judge of the United States Court of Appeals for the District of Columbia Circuit.

From 2000 to 2001, I served as a law clerk to the Honorable Charles N. Brower and the Honorable Richard M. Mosk, judges on the Iran-United States Claims Tribunal in The Hague, The Netherlands.

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

I have not 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 – 2006
Sidley Austin LLP
1501 K Street, Northwest
Washington, D.C. 20005
Associate

2006 – 2008
United States Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue, Northwest
Washington, D.C. 20530
Deputy Assistant Attorney General

2008 – 2009
Executive Office of the President
Office of Management and Budget
1650 Pennsylvania Avenue, Northwest
Washington, D.C. 20503
Deputy General Counsel

2009
United States Senate Committee on the Judiciary

224 Dirksen Senate Office Building
Washington, D.C. 20510
Special Counsel

2009 – present
Melaleuca, Inc.
4609 West 65th South
Idaho Falls, Idaho 83402
General Counsel Emeritus (2017 – present)
General Counsel (2009 – 2017)

- 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 in alternative dispute resolution proceedings.

b. Describe:

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

From 2001 to 2006, I was an associate at Sidley Austin in Washington, D.C. My practice focused on civil and appellate litigation and I handled a wide range of issues on constitutional, administrative law, telecommunications, and class action matters. I practiced primarily in the Supreme Court and appellate courts, but also handled complex litigation in trial courts and before administrative agencies.

From 2006 to 2008, I served as Deputy Assistant Attorney General, Environment and Natural Resources Division, at the United States Department of Justice. I was a senior manager of approximately 600 attorneys and staff with specific management responsibility for the Appellate, Natural Resources, and Wildlife and Marine Resources Sections. I defended agency decisions and handled cases arising under more than 200 complex environmental statutes. I oversaw more than 500 appeals in all federal courts of appeals on civil and criminal matters and personally argued 13 federal appellate cases in 9 of the 13 federal appellate courts. I also served as Division counsel advising on several Supreme Court cases at all stages. From 2007 to 2008, I assumed additional duties of the Principal Deputy Assistant Attorney General.

From 2008 to 2009, I served as Deputy General Counsel to the White House Office of Management and Budget. I reviewed appellate briefs regarding significant administration policies and coordinated dozens of

rulemakings from several federal agencies. I served as legal counsel to more than 500 staff members, advising on a range of regulatory, legislative, budgetary and management issues. I also administered Executive Orders regarding Office of Management and Budget regulatory and legislative review.

In 2009, I served as Special Counsel to the United States Senate Committee on the Judiciary, specifically advising Ranking Member Jeff Sessions and other members of the Minority on the Judiciary Committee in review of the nomination and ultimate confirmation of Justice Sonia Sotomayor as Associate Justice on the United States Supreme Court. I also reviewed other judicial nominations for lower courts and various legislative proposals.

Since 2009, I have served as General Counsel and, since October 2017, as General Counsel Emeritus, to Melaleuca, Inc. As General Counsel, I served on a senior corporate management team and oversaw a legal and policy staff of 20 attorneys and employees. My responsibilities have included managing global regulatory compliance, corporate compliance, contract review, human resources, litigation, and corporate strategic planning. I have argued several cases for the company in federal courts, the Idaho Supreme Court, Idaho state district courts, and various state regulatory bodies.

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

During my time as an associate at Sidley Austin from 2001 to 2006, I represented both plaintiffs and defendants, including large corporations, governmental entities, non-profit organizations, private individuals, and various pro bono clients. I handled general complex commercial litigation and specialized in Supreme Court and appellate work, as well as First Amendment issues.

During my time at the Department of Justice from 2006 to 2008, the Executive Office of the President from 2008 to 2009, and the United States Senate in 2009, my client was generally speaking the United States of America, its agencies, and its officials. I handled primarily environmental and other agency matters, with a specific emphasis on appellate issues, as well as complex litigation and administrative law. At the United States Senate, I advised on judicial nominations and legislative matters.

During my time as General Counsel at Melaleuca, Inc. from 2009 to present, my primary client has been Melaleuca, Inc., its subsidiaries and affiliates, and the executives and officers of those corporate entities. I

have represented all legal interests of the companies on a broad range of issues ranging from litigation, legislative, human resources, administrative and corporate matters, as well as foreign legal issues in more than 18 countries. I have also represented various corporate executives and officers on legal matters vital to corporate interests.

In all capacities, my work was primarily civil, but I also occasionally handled criminal matters as well.

- 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.

The majority of my practice has been in litigation.

From 2001 to 2006, during my time at Sidley Austin, approximately 90 per cent of my practice was litigation, with the remainder focused on administrative action, including litigation before administrative bodies. I appeared in court frequently and argued several motions before federal district courts and an appeal before the D.C. Court of Appeals. I also took or defended several depositions.

From 2006 to 2008, at the Department of Justice, approximately 85 per cent of my practice was litigation, with the remainder advising on agency and administrative action or contract issues. I appeared in court frequently, arguing 13 court of appeals cases and several matters in federal district court, including important discovery and summary judgment motions.

From 2008 to 2009, at the Office of Management and Budget, approximately 30 per cent of my practice was litigation, with the majority being counseling on administration and agency action or legislative issues. I did not appear in court during that time.

In 2009, at the United States Senate, none of my practice was litigation, focusing instead on vetting judicial nominees, including Justice Sotomayor and other lower court judges, through review of their judicial record and cases and other areas of review. I also advised on several legislative matters. I did not appear in court.

At Melaleuca since 2009, approximately 50 per cent of my practice has been litigation, but at times the percentage was much higher depending on the company's litigation docket. I have appeared in court frequently and argued several motions in federal and state courts, including the Ninth Circuit, Idaho Supreme Court, the United States District Court for the District of Idaho and various state courts, including primarily the Seventh Judicial District of Idaho for Bonneville County. I have also taken or defended dozens of depositions and have been involved in foreign litigation in Korea, China and elsewhere worldwide. The rest of my practice has involved administrative and legislative matters,

human resources, corporate compliance, contract negotiation and review and general legal advice to corporate executives and officers on numerous strategic corporate initiatives.

i. Indicate the percentage of your practice in:

1. federal courts: 50%
2. state courts of record: 25%
3. other courts: 5%
4. administrative agencies: 20%

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.

For most of my career, I have served as counsel in appellate courts, including the United States Supreme Court. I personally argued 13 federal appellate cases in 9 of the 13 federal appellate courts, and have argued appeals in the Idaho Supreme Court and the D.C. Court of Appeals.

I have not tried a case to verdict, but I have frequently appeared in trial courts, including matters such as preliminary injunction hearings tried before a judge with opening and closing arguments and the examination of witnesses. *See, e.g., Melaleuca v. Independence Energy Alliance*, No. CV-2012-520-OC (7th Jud. Dist. Dec. 17, 2012) (judge granting preliminary injunction after bench trial); *Melaleuca v. Max Int'l, LLC*, No. 09-CV-572-WFD (D. Idaho Jan. 7, 2010) (granting preliminary injunction after hearing).

I served as support counsel in an expedited trial before an administrative law judge for the Federal Communications Commission. *See In re AT&T Corp. v. BellSouth, Inc.*, No. EB-04-MD-010, FCC 04-278 (F.C.C. Dec. 8, 2004).

More recently, I have served as lead counsel in several adjudications before various federal and state administrative law judges on a variety of issues. These include numerous appeals to unemployment commissions in various jurisdictions, which have included presentation of witness testimony, briefing and argument. *See, e.g., In re Rodrigo R. Palmer*, No. 4511 (Pa. Mar. 2016); *In re Rebera*, No. 0114 (Ohio Sept. 2014); *In re Brower*, No. 8489 (Pa. Aug. 2014).

I have also served as lead counsel or counsel in several employment cases adjudicated before administrative law judges at the state and federal level. *See, e.g., Mason v. Melaleuca, Inc.*, No. AD-0616-403 (Idaho HRC Nov. 2016);

Paniagua v. Melaleuca, Inc., No. 16H-2014-00881 (EEOC Nov. 2015); *Coulter v. Melaleuca, Inc.*, No. 846-2015-22166 (EEOC Sept. 2015).

At the Department of Justice, I managed the Wildlife and Marine Resources Section and the Natural Resources Section, the largest trial section in the Environment and Natural Resources Division, overseeing nearly 150 trial attorneys. In that capacity, I oversaw at a high level dozens of ongoing cases and trials at all stages of preparation and personally argued dispositive motions in some of those cases. *See, e.g., Trunk v. City of San Diego*, 547 F. Supp. 2d 1144 (S.D. Cal. 2007).

- i. What percentage of these trials were:
 - 1. jury: 80%
 - 2. non-jury: 20%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not presented oral argument before the Supreme Court.

In private practice, I served as supporting counsel for either petitioner or appellant in the following merits cases, including at the certiorari stage:

Brief of Petitioner, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (No. 03-339), 2004 WL 162761.

Reply Brief of Petitioner, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (No. 03-339), 2004 WL 597235.

Petition for a Writ of Certiorari, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (No. 03-339). Copy supplied.

Reply Brief, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (No. 03-339), 2003 WL 22977860.

Brief of Appellants, *Utah v. Evans*, 536 U.S. 452 (2002) (No. 01-714), 2002 WL 237369.

Reply Brief of Appellants, *Utah v. Evans*, 536 U.S. 452 (2002) (No. 01-174), 2002 WL 452858.

I also served as supporting counsel for *Amici Curiae* in the following merits cases:

Brief of Citizens for the Common Defense as *Amicus Curiae* in Support of Respondents, *Al Odah v. United States*, 542 U.S. 466 (2004) (Nos. 03-334 & 03-343), 2004 WL 442301.

Brief of AT&T Corp., Cavalier Telephone, and Competitive Telecommunications Association as *Amici Curiae* in Support of Respondent, *Verizon Comm'ns, Inc. v. Law Officers of Curtis V. Trinko*, 540 U.S. 398 (2004) (No. 02-682), 2003 WL 21767975.

Brief of *Amici Curiae* Alabama, Nebraska, Nevada, North Dakota, Oklahoma, Utah, and Wyoming in Support of Petitioner, *Tennessee v. Lane*, 541 U.S. 509 (2004) (No. 02-1667), 2003 WL 22176110.

Brief of Senator Orrin G. Hatch as *Amicus Curiae* in Support of Respondent, *Eldred v. Ashcroft*, 537 U.S. 186 (2003) (No. 01-618), 2002 WL 1836680.

Brief of the States of Missouri, Nebraska, Nevada, Oklahoma, Utah, Indiana, West Virginia, Mississippi, Louisiana, Hawaii, Pennsylvania, Oregon, Connecticut, Rhode Island, Idaho, and the Territory of Guam as *Amici Curiae* in Support of Respondents, *Hope v. Pelzer*, 536 U.S. 730 (2002) (No. 01-309), 2002 WL 471808.

I have filed briefs as supporting counsel on behalf of a petitioner in the following cases:

Petition for a Writ of Certiorari, *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. First Unitarian Church of Salt Lake City* (No. 02-1350) (U.S. Mar. 12, 2003).

Reply in Support for a Writ of Certiorari, *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. First Unitarian Church of Salt Lake City* (No. 02-1350) (U.S. Apr. 22, 2003).

At the Department of Justice, I managed the Appellate Section of the Environment and Natural Resources Division. In that capacity, I oversaw the Division's appeals and was advisory and reviewing counsel on the Division's Supreme Court docket in the following merits cases, where the Office of the Solicitor General was counsel of record:

Brief for the Federal Respondents Supporting Petitioners, *Coeur Alaska, Inc. v. Southeast Ala. Conservation Council*, 557 U.S. 261 (2009) (Nos. 07-984 & 07-990), 2008 WL 4278530.

Brief for the Federal Parties as Respondents Supporting Petitioners, *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009) (Nos. 07-588, 07-589 & 07-597), 2008 WL 2753248.

Brief for the Petitioners, *Summers v. Earth Island Institute*, 555 U.S. 488 (2009) (No. 07-463), 2008 WL 976399.

Reply Brief for the Petitioners, *Summers v. Earth Island Institute*, 555 U.S. 488 (2009) (No. 07-463), 2008 WL 2817674.

Brief for Respondents, *Carcieri v. Salazar*, 555 U.S. 379 (2009) (No. 07-526), 2008 WL 3883433.

Brief for the Petitioners, *Winter v. Natural Resources*, 555 U.S. 7 (2008) (No. 07-1239), 2008 WL 3285392.

Reply Brief for the Petitioners, *Winter v. Natural Resources*, 555 U.S. 7 (2008) (No. 07-1239), 2008 WL 4448252.

Brief for the United States, *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130 (2008) (No. 06-1164), 2007 WL 2825624.

Brief for the Federal Respondent, *Massachusetts v. EPA*, 549 U.S. 497 (2007) (No. 05-1120), 2006 WL 3043970.

Brief for the United States as Respondent Supporting Petitioners, *Environmental Defense v. Duke Energy Corp.*, 549 U.S. 561 (2007) (No. 05-848), 2006 WL 2066660.

Reply Brief for the United States as Respondent Supporting Petitioners, *Environmental Defense v. Duke Energy Corp.*, 549 U.S. 561 (2007) (No. 05-848), 2006 WL 3014118.

Brief for Petitioner Environmental Protection Agency, *National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007) (Nos. 06-340 & 06-549), 2007 WL 542423.

Reply Brief for Petitioner Environmental Protection Agency, *National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007) (Nos. 06-340 & 06-549), 2007 WL 1074097.

Brief for the United States, *United States v. Atlantic Research Corp.*, 551 U.S. 128 (2007) (No. 06-562), 2007 WL 669263.

Reply Brief for the United States, *United States v. Atlantic Research Corp.*, 551 U.S. 128 (2007) (No. 06-562), 2007 WL 1130631.

Brief for the Respondents, *BP America Prod. Co. v. Burton*, 549 U.S. 84 (2006) (No. 05-669), 2006 WL 2262829.

I was personally involved in the following stay application:

Motion to Stay, *San Diegans for the Mt. Soledad Nat'l War Memorial v. Paulson*, (Kennedy, Circuit Justice, June 30, 2006) (Nos. 05-A-1233 & 05-A-1234).

I participated in the following briefs at the petition stage in an advisory and reviewing role:

Brief for the Federal Respondents in Opposition, *Coeur Alaska, Inc. v. Southeast Ala. Conservation Council*, 557 U.S. 261 (2009) (Nos. 07-984 & 07-990), 2008 WL 2071760.

Brief for the Federal Respondents in Opposition, *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009) (Nos. 07-588, 07-589 & 07-597), 2008 WL 582490.

Petition for a Writ of Certiorari, *United States v. Navajo Nation*, 556 U.S. 287 (2009) (No. 07-1410), 2008 WL 2050789.

Reply Brief for Petitioner, *United States v. Navajo Nation*, 556 U.S. 287 (2009) (No. 07-1410), 2008 WL 3895603.

Petition for a Writ of Certiorari, *Summers v. Earth Island Institute*, 555 U.S. 488 (2009) (No. 07-463), 2007 WL 2935801.

Reply Brief for the Petitioners, *Summers v. Earth Island Institute*, 555 U.S. 488 (2009) (No. 07-463), 2007 WL 4555588.

Brief of the United States in Opposition, *Burlington N. & Santa Fe Railway Co. v. United States*, 556 U.S. 599 (2009) (Nos. 07-1601 & 07-1607), 2008 WL 3977586.

Brief for the Respondents in Opposition, *Carcieri v. Salazar*, 555 U.S. 379 (2009) (No. 07-526), 2008 WL 225448.

Petition for a Writ of Certiorari, *Winter v. Natural Resources*, 555 U.S. 7 (2008) (No. 07-1239), 2008 WL 859374.

Reply Brief for Petitioners, *Winter v. Natural Resources*, 555 U.S. 7 (2008) (No. 07-1239), 2008 WL 2310302.

Petition for a Writ of Certiorari, *United States v. McWane*, No. 08-223 (Aug. 2008), 2008 WL 3884295.

Brief for the United States in Opposition, *W.R. Grace & Co. v. United States*, Nos. 07-1286 & 07-1287 (May 2008), 2008 WL 2199940.

Brief for the United States in Opposition, *Moses v. United States*, No. 07-1195 (May 2008), 2008 WL 2149852.

Brief for the Respondent in Opposition, *National Parks Conservation Ass'n v. Tennessee Valley Auth.*, No. 07-867 (May 2008), 2008 WL 2199956.

Brief for the Federal Respondents in Opposition, *Kickapoo Traditional Tribe of Texas v. Texas*, No. 07-1109 (Apr. 2008), 2008 WL 1892730.

Brief for the United States in Opposition, *Petro-Hunt, L.L.C. v. United States*, No. 07-563 (Jan. 2008), 2008 WL 261207.

Brief for the United States as *Amicus Curiae*, *Montana v. Wyoming*, No. 137, Original (Jan. 2008).

Brief for the United States in Opposition, *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130 (2008) (No. 06-1164), 2007 WL 1257289.

Brief for the Federal Respondent in Opposition, *Massachusetts v. EPA*, 549 U.S. 497 (2007) (No. 05-1120), 2006 WL 1358432.

Petition for a Writ of Certiorari, *National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007) (Nos. 06-340 & 06-549), 2006 WL 3005020.

Reply Brief for the Petitioner, *National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007) (Nos. 06-340 & 06-549), 2006 WL 3877330.

Petition for a Writ of Certiorari, *United States v. Atlantic Research Corp.*, 551 U.S. 128 (2007) (No. 06-562), 2006 WL 3024300.

Reply Brief for the United States, *United States v. Atlantic Research Corp.*, 551 U.S. 128 (2007) (No. 06-562), 2007 WL 81195.

Brief for the Federal Respondent in Opposition, *National Petrochemical & Refiners Ass'n v. South Coast Air Quality Mgmt. Dist.*, Nos. 07-311 and 07-333 (Dec. 2007), 2007 WL 4404228.

Brief for the Respondents in Opposition, *Alabama-Tombigbee Rivers Coalition v. Kempthorne*, No. 07-364 (Nov. 2007), 2007 WL 4142595.

Brief for the United States as *Amicus Curiae*, *Teck Cominco Metals, Ltd. v. Pakootas*, No. 06-1188 (Nov. 2007), 2007 WL 4142586.

Brief for the Respondents in Opposition, *Gros Ventre Tribe v. United States*, No. 06-1672 (Aug. 2007), 2007 WL 2375746.

Brief for the United States as *Amicus Curiae*, *UGI Utilities, Inc. v. Consolidated Edison Co. of N.Y., Inc.*, No. 05-1323 (Dec. 2006), 2006 WL 3825272.

Petition for a Writ of Certiorari, *United States Forest Serv. v. Earth Island Institute*, No. 06-797 (Dec. 2006), 2006 WL 3609969.

Reply Brief for the Petitioners, *United States Forest Serv. v. Earth Island Institute*, No. 06-797 (Feb. 2007), 2007 WL 617997.

Brief for the United States in Opposition, *San Carlos Apache Tribe v. Arizona*, Nos. 06-173 & 06-333 (Dec. 2006), 2006 WL 3618016.

Brief for the Federal Respondents, *Pacific Gas & Elec. Co. v. San Luis Obispo Mothers for Peace*, No. 06-466 (Dec. 2006), 2006 WL 3740624.

Brief for the Respondents, *E.I. du Pont de Nemours & Co. v. United States*, No. 06-726 (Dec. 2006), 2006 WL 3825278.

Petition for a Writ of Certiorari, *EPA v. New York*, No. 06-736 (Nov. 2006), 2006 WL 3419830.

Reply Brief for the Petitioner, *EPA v. New York*, No. 06-736 (Feb. 2007), 2007 WL 445196.

Brief for the Federal Respondents in Opposition, *District of Columbia Water & Sewer Auth. v. Friends of the Earth, Inc.*, No. 06-119 (Nov. 2006), 2006 WL 3419811.

Brief for Federal Respondents, *Mineral County, Mont. v. Ecology Ctr., Inc.*, No. 06-344 (Nov. 2006), 2006 WL 3387961.

Brief for the United States in Opposition, *Hecla Mining Co. v. United States*, No. 06-61 (Sept. 2006), 2006 WL 2644163.

Brief for the United States in Opposition, *Means v. Navajo Nation*, No. 05-1614 (Aug. 2006), 2006 WL 2453502.

Brief for the United States in Opposition, *W.R. Grace & Co. v. United States*, Nos. 05-1363 (Aug. 2006), 2006 WL 2569808.

Brief for the Respondents in Opposition, *South Dakota v. Department of the Interior*, No. 05-1428 (July 2006), 2006 WL 1993227.

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. *Melaleuca, Inc. v. Indep. Energy All.*, No. CV-2012-520-OC (7th Jud. Dist. Idaho Dec. 17, 2012)

I was co-trial counsel for a three-day bench trial on Melaleuca's motion for a preliminary injunction and presented oral argument and trial witness examination. The court (Judge Shindurling) enjoined Independence Energy Alliance from continuing its systematic targeting of Melaleuca's Marketing Executives in violation of non-solicitation agreements. Independence Energy Alliance went out of business prior to a trial on the merits and settled the case with Melaleuca.

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2. *Melaleuca v. Max Int'l, LLC*, No. 09-CV-572-WFD (D. Idaho Jan. 7, 2010)

I served as co-trial counsel for Melaleuca, Inc. on a motion for preliminary injunction against a competitor, Max International, LLC, which had systematically induced Melaleuca Marketing Executives to leave the company and violate their non-solicitation agreements with the company. The district court (Judge Downes) enjoined Max International. As a result of the injunction and discovery in the case, Max fired its CEO and President for unethical conduct, issued a public apology to Melaleuca and settled the case for \$1.2 million.

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3. *Melaleuca, Inc. v. Foundation for Nat'l Progress*, No. CV-2013-532-OC (7th Jud. Dist. Idaho Oct. 6, 2015); *Melaleuca, Inc. v. Zuckerman*, No. CV-2014-2510 (7th Jud. Dist. Idaho Oct. 15, 2015)

I served as counsel in these consolidated cases. Melaleuca sued separate defendants for defamation based on related false and defamatory statements. The court (Judge Williamson) denied Defendant Zuckerman's motion for summary judgment and granted Melaleuca's motion for partial summary judgment based on false statements Mr. Zuckerman made on *The Rachel Maddow Show*. That case settled with an acknowledgement from Mr. Zuckerman that he had publicly made false statements. The judge granted summary judgment to Defendant *Foundation for National Progress* based on First Amendment protections. The judge noted, however, that the extensive case record established that the Defendant's reporting style was "anything but a 'guardian of true liberty'" as envisioned by the Founding Fathers, and instead "little more than mud-slinging, advertised as journalistic fearlessness."

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4. *Atamirzayeva v. United States*, 524 F.3d 1320 (Fed. Cir. 2008)

I argued before the Federal Circuit that the Fifth Amendment did not apply extraterritorially to property allegedly taken by the United States on foreign land. The Federal Circuit (Judge Bryson writing, joined by Judges Mayer and Gajarsa) unanimously agreed with the Government's position in this case.

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5. *Benzman v. Whitman*, 523 F.3d 119 (2d Cir. 2008)

I argued on behalf of Environmental Protection Agency (EPA) Administrator Christine Todd Whitman that the Plaintiffs' claim under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) failed because the EPA had discretionary duties under the National Contingency Plan, promulgated under CERCLA. The Second Circuit (Judge Newman, writing, joined by Judge Cabranes) unanimously held in favor of the EPA Administrator and EPA.

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6. *Paulson v. City of San Diego*, 475 F.3d 1047 (9th Cir. 2007); *Trunk v. City of San Diego*, 568 F. Supp. 2d 1199 (S.D. Cal. 2008), *rev'd* 629 F.3d 1099 (9th Cir. 2011)

In *Paulson*, I argued before the Ninth Circuit as *amicus curiae* that the pending injunction against the City of San Diego to remove a Latin cross as part of a war memorial under the California Constitution was moot after the United States Congress unanimously passed a legislative taking of the war memorial, making it federal property. In light of the pending legislative taking, Justice Kennedy stayed the injunction to remove the cross. *See City of San Diego v. Paulson*, Sup. Ct. No. 05-A-1234 (Kennedy, Circuit Justice, June 30, 2006). The Ninth Circuit (Judge Gould, writing, joined by Judges Pregerson and Clifton) unanimously held the *Paulson* case was moot. In *Trunk*, after extensive discovery, I argued that the Latin cross as part of a war memorial was constitutional under the Establishment Clause. The district court (Judge Burns) held that the war memorial, including the Latin cross, was constitutional. I was not involved in further proceedings in this case.

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7. *South Dakota v. United States Dep't of the Interior*, 475 F.3d 993 (8th Cir. 2007)

I argued that the Department of the Interior had legally taken land into trust for the Flandreau Santee Sioux Tribe because section 5 of the Indian Reorganization Act does not violate the nondelegation doctrine, the Department acted within its statutory authority and the land was “Indian Country.” The Eighth Circuit (Judge Smith, writing, joined by Judges Bowman and Colloton) unanimously agreed with the Government’s position.

Co-Counsel

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Opposing Counsel

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8. *Dean v. United States*, 938 A.2d 751 (D.C. 2007)

I represented Marthell Dean, a young man convicted of murder and killing a police officer in Washington, DC, and sentenced to two life sentences. In two consolidated appeals, I argued that his convictions violated the Fourth and Eighth Amendments; that

his confession was coerced and inadmissible; and that DC. Rule 33, as amended for procedures to seek a new trial, should apply retroactively to permit a motion for new trial. The D.C. Court of Appeals (Judge Ruiz writing, joined by Chief Judge Washington and Senior Judge King) affirmed the trial court decisions in both appeals.

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9. *Utah Gospel Mission v. Salt Lake City Corp.*, 425 F.3d 1249 (10th Cir. 2005)

I served as counsel for *Amici Curiae* representing the National League of Cities, International Municipal Lawyers Association, National Association of Counties and U.S. Conference of Mayors in this case challenging a land transfer of a pedestrian easement to a religious organization under the Establishment Clause and arguing that the land remained a public forum under the First Amendment. The Tenth Circuit (Judge Kelley, writing, joined by Judges Briscoe and Lucero) affirmed the district court and held that the land transfer was constitutional under the First Amendment and that it no longer remained a public forum. This case was related to a prior petition for certiorari that I had filed as supporting counsel, seeking review of the Tenth Circuit's prior decision that a City easement across private property constituted a First Amendment public forum. *See Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. First Unitarian Church of Salt Lake City*, No. 02-1350 (2003).

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10. *Utah v. Evans*, 536 U.S. 452 (2002)

I was supporting counsel on this merits appeal challenging the Census Bureau's use of hot deck imputation to estimate household sizes for households that did not respond to the Census Bureau questions. The Supreme Court upheld the Census Bureau's actions on a 6-3 vote. The majority opinion was written by Justice Breyer, joined by Chief Justice Rehnquist and Justices Stevens, Souter and Ginsburg and partially joined by Justice O'Connor. Justice O'Connor filed an opinion concurring in part and dissenting part. Justice Thomas filed an opinion concurring in part and dissenting in part, joined by Justice Kennedy. Justice Scalia filed a dissenting opinion, holding that the Court lacked jurisdiction because Utah could not enjoin the President even for a ministerial task such as certifying the Census.

Co-Counsel

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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.)

As a litigator, my most significant matters involve litigation in federal and state courts, with primary focus over the years on appellate litigation before the United States Supreme Court, the United States Courts of Appeals and various state Supreme Courts, as well as federal and state district courts around the country. But I have also appeared before various government bodies—including several federal and state regulatory agencies and officers, as well as federal and state legislative bodies and legislators. As General Counsel for Melaleuca, I have also engaged in significant international legal work, including working with lobbyists in Australia to educate government officials in Australia regarding proposed legislation affecting direct sales companies; practicing with foreign counsel in foreign courts in Korea and China on litigation matters; and advising and defending the company on regulatory matters before administrative agencies in several foreign countries. I have also been involved in significant contract negotiation and review, as well as corporate compliance issues and establishing corporate entities.

To the best of my recollection, I have never 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.

I have not taught any courses.

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

None to my knowledge.

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

No.

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

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I will recuse in any litigation where I have ever played a role. For a period of time, I anticipate recusing in all cases where my current company, Melaleuca, Inc., is involved. I will also recuse in any case where Douglas Roy Nelson, my father and a practicing Idaho attorney, or his law firm Nelson Hall Parry Tucker PLLC, represents any party. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

- 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 will carefully review and address any real or potential conflicts of interest by reference to section 455 of Title 28 of the United States Code and all applicable canons of the Code of Conduct for United States Judges, as well as any and all other laws, rules, practices and procedures governing such circumstances.

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.

During my time in private practice, I represented clients in a range of pro bono matters, from individuals to states to a United States Senator. For example, in *Dean v. United States*, I represented defendant Marthell Dean before the D.C. Court of Appeals in his appeal of his convictions and denial of a motion for a new trial. (*Dean v. United States*, 938 A.2d 751 (D.C. 2007)). I spent 275 hours on this pro bono matter.

In *Hope v. Pelzer*, I represented 15 states and the Territory of Guam, as *Amici Curiae*, on the issue of the application of qualified immunity for state officials under *Bivens* actions. (*Hope v. Pelzer*, 536 U.S. 730 (2002)). I spent 136 hours on this pro bono matter.

In *Eldred v. Ashcroft*, I represented Senator Orrin G. Hatch as *Amicus Curiae* in a petition for a writ of certiorari interpreting the power afforded to Congress in the Copyright Clause of the Constitution in adopting the Copyright Term Extension Act. (*Eldred v. Ashcroft*, 537 U.S. 186 (2003)). I spent 86 hours on this pro bono matter.

In addition to these specific pro bono matters, I have handled several smaller pro bono matters for various clients over the years.

26. **Selection Process:**

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

In November 2017, I had conversations with the offices of Senator Crapo and Senator Risch regarding a position as Circuit Judge for the Ninth Circuit. On February 8, 2018, I received a call from the White House Counsel's Office inviting me to interview for the position. On February 12, 2018, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice in Washington, D.C. Since then, I have been in contact with officials from the White House Counsel's Office, the Department of Justice Office of Legal Policy, and the offices of Senator Crapo and Senator Risch regarding my nomination.

On May 15, 2018, 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.