

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Eric Claude Schulte

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.

Davenport, Evans, Hurwitz, and Smith, LLP
206 West 14th Street
Sioux Falls, South Dakota 57104

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

1972; 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.

1996 – 1999, University of South Dakota, Knudson School of Law; J.D., 1999

1990 – 1994, University of South Dakota; B.A., 1994

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.

2000 – present

Davenport, Evans, Hurwitz, and Smith, LLP
206 West 14th Street
Sioux Falls, South Dakota 57104
Partner (2005 – present)

Associate (2000 – 2005)

Spring 2023

University of South Dakota, Knudson School of Law
414 East Clark Street
Vermillion, South Dakota 57069
Adjunct Professor

1999 – 2000

Unified Judicial System, Second Judicial Circuit of South Dakota
Minnehaha County Courthouse
425 North Dakota Avenue
Sioux Falls, South Dakota 57104
Law Clerk

Summer 1998

Minnehaha County State's Attorney's Office
415 North Dakota Avenue
Sioux Falls, South Dakota 57104
Summer Intern (uncompensated)

1993 – 1998

Tradehome Shoes
5000 West Empire Mall
Sioux Falls, South Dakota 57106
Assistant Manager

Other Affiliations (uncompensated)

2020 – present

Promising Futures
834 South Phillips Avenue
Sioux Falls, South Dakota 57104
Director

2016 – present

South Dakota Bar Foundation
222 East Capitol Avenue
Pierre, South Dakota 57501
Director

2012 – 2016

South Dakota State Bar Association
111 West Capitol Avenue # 1
Pierre, South Dakota 57501
President (2015 – 2016)

Bar Commissioner (2012 – 2014)

2010 – 2011

Second Judicial Circuit Bar Association
President

2008 – 2020

The Banquet
900 East 8th Street
Sioux Falls, South Dakota 57104
Member, Executive Board (2014 – 2020)
President (2017 – 2018)
Member, Advisory Board (2008 – 2014)

2014 – 2017

East River Legal Services
335 North Main Avenue
Sioux Falls, South Dakota 57104
Director

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.

International Society of Barristers (2020 – present)

Chambers and Partners, Chambers USA, Leading Litigator in General Commercial Litigation (2011, 2019)

American Bar Foundation, Fellow (2018 – present)

Toast of the Trial Lawyers Award from the South Dakota Trial Lawyers Association (2007, 2013, 2018)

Lawyer of the Year – Second Judicial Circuit Bar Association (2017)

American Board of Trial Advocates (2016 – present)

Volunteer Service Award – University of South Dakota School of Law (2011)

Chambers and Partners, Chambers USA, Up-and-Coming Individual in General Commercial Litigation

University of South Dakota School of Law

Ruth M. West Moses and Lloyd R. Moses Scholarship (1996)

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

American Bar Foundation

Jackrabbit Bar Association, Chancellor (2021 – 2022)

Second Judicial Circuit Bar Association, President (2005 – 2006)

South Dakota State Bar Association

President (2015 – 2016)

Bar Commissioner (2012 – 2014)

Law School Committee (2013 – present)

SOLACE Committee (2016 – present)

Member, Chief Justice's Taskforce on Legal Services (2015 – 2016)

South Dakota State Bar Disciplinary Board (2019 – present)

South Dakota State Bar Foundation, President (2020 –2021)

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, 2000

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, 2002

United States District Court for the District of South Dakota, 2000

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.

Academy of American Poets
Member (2015 – present)

Audubon Society
Member (2020 – present)

The Banquet
Advisory Board and Executive Board (2008 – 2020)

Promising Futures
Board of Directors (2020 – present)

Saint Katharine Drexel Parish's Social Ministries Committee
Member (2016 – 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.

To the best of my knowledge, none of the 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.

Easter Moon, Pasque Petals – South Dakota State Poetry Society Magazine (Fall 2023). Copy supplied.

Hospital Poem, Pasque Petals – South Dakota State Poetry Society Magazine (Fall 2023). Copy supplied.

Los Lobos are America, Pasque Petals – South Dakota State Poetry Society Magazine (Spring 2023). Copy supplied.

Impression, Platte – Winner Bridge, Pasque Petals – South Dakota State Poetry Society Magazine (Spring 2023). Copy supplied.

Capturing 4 a.m., Pasque Petals – South Dakota State Poetry Society Magazine (Spring 2023). Copy supplied.

Du Fu Proclaims his Love for East River, Pasque Petals – South Dakota State Poetry Society Magazine (Spring 2023). Copy supplied.

Buckhorn Beer, Pasque Petals - South Dakota State Poetry Society Magazine (Fall 2022). Copy supplied.

A Twenty-First Century Wasicu Visits Redshirt Table, Pasque Petals – South Dakota State Poetry Society Magazine (Fall 2022). Copy supplied.

Write the Prairie, South Dakota Magazine, (March/April 2022). Copy supplied.

Reaching for the Night Sky, Pasque Petals – South Dakota State Poetry Magazine (Spring 2022). Copy supplied.

The Absolutely True Story of the Red Finch at my Feeder, Pasque Petals – South Dakota State Poetry Magazine (Spring 2022). Copy supplied.

Eddie Van Halen is a Comet, Pasque Petals – South Dakota State Poetry Society Magazine (Spring 2022). Copy supplied.

City of Hustle: A Sioux Falls Anthology, The Banquet, Belt Publishing (2022). Copy supplied.

Sunday Morning, Late June, Pasque Petals – South Dakota State Poetry Society Magazine (Fall 2021). Copy supplied.

Buddha Spends the Day at Covell Lake, Pasque Petals - South Dakota State Poetry Society Magazine (Fall 2021). Copy supplied.

Ode to Mad Dog's Cucumber Salad, Pasque Petals – South Dakota State Poetry

Society Magazine (Spring 2021). Copy supplied.

Poem for Scott August, Pasque Petals – South Dakota State Poetry Society Magazine (Spring 2021). Copy supplied.

Spring in the Japanese Gardens, Pasque Petals – South Dakota State Poetry Society Magazine (Spring 2021). Copy supplied.

When You Read Jim Harrison Before Going to Bed, Tangled Serenity, an Anthology, Scurfpea Publishing (2021). Copy supplied.

Another Poem About Cold Weather in East River, Tangled Serenity, an Anthology, Scurfpea Publishing (2021). Copy supplied.

One Road to the Temple, Tangled Serenity, an Anthology, Scurfpea Publishing (2021). Copy supplied.

Having Beers with Mad Dog, Pasque Petals – South Dakota State Poetry Society Magazine (Fall 2020). Copy supplied.

The Road to Damascus Goes Through Manderson, Pasque Petals – South Dakota State Poetry Society Magazine (Fall 2020). Copy supplied.

Watching Wood Ducks at Covell Lake During the Plague, South Dakota Magazine, (July/August 2020). Copy supplied.

Shoeshine Pasque Petals – South Dakota State Poetry Society Magazine (Spring 2020). Copy supplied.

Heretic, Pasque Petals – South Dakota State Poetry Society Magazine (Fall 2019). Copy supplied.

President's Letter, The Banquet (Nov. 15, 2017). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (June 2016). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (May 2016). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (April 2016). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (March 2016). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (February 2016). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (January 2016). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (December 2015). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (November 2015). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (October 2015). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (September 2015). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (August 2015). Copy supplied.

President's Page, South Dakota State Bar Association Newsletter (July 2015). Copy supplied.

Reflections on the Anniversary of Dr. Martin Luther King's "I Have a Dream" Speech and Shelby County, Alabama v. Holder, South Dakota Trial Lawyers Magazine, (2014). 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.

The following list reflects my best efforts to identify the speeches or talks that I have delivered. It is possible, however, that there may be other speeches or talks I have been unable to recall.

November 15, 2023: Guest lecturer, South Dakota Law Practice Management Course, University of South Dakota Knudson School of Law. I was a guest lecturer in this course to discuss complaints filed before the South Dakota State Bar's Disciplinary Board and lawyers' responsibilities under the Rules of Professional Conduct. I have no notes, transcript, or recording. The University of South Dakota, Knudson School of Law's address is 414 East Clark Street, Vermillion, South Dakota 57069.

March 22, 2023: Panelist, discussion on the practice of law, South Dakota State University, Brookings, South Dakota. The panel was hosted by the South Dakota Supreme Court and was meant to encourage students to consider a career in the law. I have no notes, transcript, or recording. The address for the South Dakota Supreme Court is 500 East Capitol Avenue, Pierre, South Dakota 57501.

September 30, 2022: Volunteer, South Dakota State Bar, Presentation to Native American high school students on the practice of law, Cheyenne River BIE High School, Eagle Butte, South Dakota. I was part of a presentation to high school students about what it means to be a lawyer and encouraging them to consider legal careers. We also participated in a mock trial involving the high school students. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501. A copy of the Agenda for the 2022 Jackrabbit Bar Conference is attached.

September 30, 2022: Volunteer, South Dakota State Bar, Presentation to Native American grade school students on the practice of law, Cheyenne River Eagle Butte Upper Elementary. I was part of a presentation to grade school students about what it means to be a lawyer and encouraging them to consider legal careers. We also participated in a mock trial involving the grade school students. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

June 3, 2022: Panelist, a discussion of the South Dakota State Bar's recruitment efforts in Indian Country, Jackrabbit Bar Conference, Springhill Suites, Deadwood South Dakota. The panel was hosted by the South Dakota State Bar in

conjunction with the Jackrabbit Bar Conference. The discussion summarized for state bar leaders in other states the South Dakota State Bar's various efforts in encouraging Native American students to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

June 15, 2021: Panelist, Discussion of *White Fragility*, South Dakota Bar Convention, Sioux Falls, South Dakota. The panel was hosted by the South Dakota State Bar Association's Diversity and Inclusion Committee and talked about issues raised in the book. I have no notes, transcript, or recording of the panel discussion. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

March 21, 2019: Volunteer, South Dakota State Bar, Presentation to Native American College students on the practice of law, Native American Cultural Center, University of South Dakota. I was part of a presentation to college students about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

February 12, 2018: Guest lecturer, South Dakota Drafting & Legal Practice Course – Civil Pretrial Practice & Procedure, University of South Dakota Knudson School of Law. I was a guest lecturer in a skills course on civil litigation. I lectured on civil practice and assigned students the task of drafting jury instructions and an answer based on a hypothetical fact pattern. I have no notes, transcript, or recording. The University of South Dakota, Knudson School of Law's address is 414 East Clark Street, Vermillion, South Dakota 57069.

April 20, 2017: Volunteer, South Dakota State Bar, mock trial and question and answer session for Native American grade school students, Flandreau Indian School, Flandreau, South Dakota. I was part of a group presenting to grade school students on what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

February 13, 2017: Guest lecturer, South Dakota Drafting & Legal Practice Course – Civil Pretrial Practice & Procedure, University of South Dakota Knudson School of Law. I was a guest lecturer in a skills course on civil litigation. I lectured on civil practice and assigned students the task of drafting jury instructions and an answer based on a hypothetical fact pattern. I have no notes, transcript, or recording. The University of South Dakota, Knudson School of Law's address is 414 East Clark Street, Vermillion, South Dakota 57069.

October 11, 2016: Volunteer, South Dakota State Bar, Presentation to Native American high school students on the practice of law, Cheyenne River BIE High School, Eagle Butte, South Dakota. I was part of a presentation to high school

students about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

June 21, 2016: Speaker, Farewell Address as President of State Bar, State Bar of South Dakota, Sioux Falls, South Dakota. Notes supplied.

October 19, 2015: President of State Bar, Swearing-In as President of State Bar, State Bar of South Dakota, Pierre, South Dakota. Notes supplied.

October 1, 2015: President of the State Bar, Presentation to Native American college students on the practice of law, Sinte Gleska University, Rosebud, South Dakota. I was part of a presentation to college students about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording, but press coverage is supplied. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

October 1, 2015: President of the State Bar, Presentation to Native American high school students on the practice of law, Todd County High School, Mission, South Dakota. I was part of a presentation to high school students about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

October 1, 2015: President of the State Bar, Presentation to Native American grade school students on the practice of law, Saint Francis Indian School. Saint Francis, South Dakota. I was part of a presentation to grade school students about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

September 31, 2015: President of State Bar, Presentation to Native American college students on the practice of law, South Dakota School of Mines and Technology, Rapid City, South Dakota. I was part of a presentation to college students about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

September 31, 2015: President of State Bar, Presentation to Native American college students on the practice of law, National American University, Rapid City, South Dakota. I was part of a presentation to college students about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

September 31, 2015: President of State Bar, Presentation to Native American

college students on the practice of law, Black Hills State University, Spearfish, South Dakota. I was part of a presentation to college students about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

September 30, 2015: President of State Bar, Presentation to Native American grade school children on the practice of law, Little Wound School, Kyle, South Dakota. I was part of a presentation to grade school children about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

September 30, 2015: President of State Bar, Presentation to Native American high school children on the practice of law, Red Cloud Indian School, Pine Ridge, South Dakota. I was part of a presentation to high school children about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

September 30, 2015: President of State Bar, Presentation to Native American high school children on the practice of law, Ogalala Lakota College, Kyle, South Dakota. I was part of a presentation to college students about what it means to be a lawyer and encouraging them to consider legal careers. I have no notes, transcript, or recording. The South Dakota State Bar's address is 111 West Capitol Avenue # 1, Pierre, South Dakota 57501.

August 11, 2015: Orientation speech to new law students at the University of South Dakota School of Law. As President of the South Dakota State Bar, I spoke to incoming 1L students to welcome them to the legal community. I have no notes, transcript, or recording. The University of South Dakota's School of Law's address is 414 East Clark Street, Vermillion, South Dakota 57069.

November 7, 2013: Guest speaker, Defending IMEs at Depositions and Trial, State Bar of South Dakota, Sioux Falls, South Dakota. Remarks supplied.

September 17, 2013: Guest speaker, Minnehaha County Drug Court Graduation, Sioux Falls, South Dakota. Remarks supplied.

- 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.

November 22, 2022: I was interviewed by South Dakota Public Broadcasting on the radio show In the Moment about food insecurity in Sioux Falls and an essay I

authored on the founding of a local feeding ministry called the Banquet.
Recording available at <https://listen.sdpb.org/tags/eric-schulte>.

Tom Dennis, *N.D. Law Grads See Far Lower Debt*, Bismarck Tribune, January 21, 2018. Copy supplied.

Mark Walker, *USD Aims to Attract Native Americans to its Law School Roll*, Sioux Falls Argus Leader, Sept. 16, 2016. 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 cases, approximately what percent were:

jury trials: _____%
bench trials: _____% [total 100%]

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

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 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).
- 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.

None.

- 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 2022 I served as chair of the Douglas Barnett for Circuit Court Judge Campaign Committee in Sioux Falls, South Dakota. This was a non-partisan election. My duties as chair included raising money for the campaign and participating in campaign-related events.

In 2014 I served on a committee helping John Hinrichs run in an election for Circuit Court Judge in Sioux Falls, South Dakota. This was a non-partisan election. As a committee member my duties included fundraising and campaigning for Mr. Hinrichs.

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 for the judges of the Second Judicial Circuit in Sioux Falls, South Dakota. I clerked for the Honorable Judith Meierhenry, the Honorable Joseph Neiles, the Honorable William Srstka, the Honorable Peter Lieberman, the Honorable Kathleen Caldwell, the Honorable Glen Severson, and the Honorable Gene Paul Kean.

- 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;

2000 – present
Davenport, Evans, Hurwitz, and Smith LLP
206 West 14th Street
Sioux Falls, South Dakota 57104
Partner (2005 – present)
Associate (2000 – 2004)

- 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 been an arbitrator in one matter involving a dispute between a student and a school. The dispute centered around whether a violation occurred of the school's code of conduct as outlined in a student handbook.

Between June 2023 until present I was the mediator for approximately seven matters. In these matters, some of which were pre-filing, I helped facilitate the exchange of settlement offers between the parties. South Dakota law requires that these matters are confidential, and I am unable to provide additional details.

b. Describe:

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

After completing my clerkship for the Second Judicial Circuit, I joined Davenport, Evans, Hurwitz, and Smith LLP (Davenport Evans) as a litigation associate. I have been a partner since 2005 and currently serve on the firm's management committee.

During my time at Davenport Evans my practice has primarily focused on civil litigation, with an emphasis on insurance defense work. I have worked on a variety of matters, including personal injury cases, contract disputes, construction disputes, insurance bad faith litigation, and medical malpractice defense. I have engaged in every aspect of civil work, including the drafting of pleadings, researching and drafting motions and briefs, conducting written discovery, taking depositions, trying cases, and arguing appeals. I represent both plaintiffs and defendants in civil litigation. A small portion of my practice is criminal defense work, primarily in state court. I also devote a significant amount of time to pro bono work.

In my role as a member of Davenport Evans's management committee, I am directly involved in firm governance. I also mentor and supervise junior lawyers on various cases.

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

My clients include individuals, insurance companies, banks, and

corporations. My specialization is civil litigation.

- 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.

My entire practice has been in litigation. I appear in court frequently.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 30% |
| 2. state courts of record: | 60% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 10% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 90% |
| 2. criminal proceedings: | 10% |

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

I have tried 22 jury trials to verdict (21 in South Dakota state court and one in the District of South Dakota, Southern Division). In 20 of these cases, I was sole counsel. In one case, I was lead counsel and assisted by associate counsel. In one case I was associate counsel.

Additionally, I have argued seven times before the South Dakota Supreme Court. In these cases, I was sole counsel six times and co-counsel one time. I have participated in the briefing of several other appeals, and conducted numerous arguments in state and federal court.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 90% |
| 2. non-jury: | 10% |

- 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 practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases

were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Krogh v. State Farm Mutual Automobile Insurance Company*, 4:20-cv-4194, United States District Court for the District of South Dakota, Southern Division.

From 2019 through 2020 I represented Ms. Krogh in a lawsuit against her automobile insurance carrier for underinsured motorist benefits. This matter was brought in the United States District Court for the District of South Dakota, Southern Division. The Honorable Karen Schreier presided over the case. This action arose out of a motor vehicle accident Ms. Krogh was involved in with a negligent tortfeasor. The tortfeasor's insurance carrier paid close to her policy limits. Thereafter, Ms. Krogh made a claim to her carrier for underinsured motorist coverage. Initially, Ms. Krogh's insurer denied her claim. I then brought a claim on Ms. Krogh's behalf for breach of contract, attorneys' fees, and bad faith. Written discovery was initiated and completed after which the parties agreed to mediate. While the case did not settle at mediation, it settled amicably shortly thereafter in 2020.

Defendant's counsel

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2. *Berget v. Young*, 49CIV. 15-001099, Circuit Court, Second Judicial Circuit, State of South Dakota, Minnehaha County.

From 2016 through 2018 I represented Mr. Berget in a habeas corpus proceeding in state circuit court before the Honorable Douglas Hoffman. Mr. Berget previously pled guilty to murdering a prison guard and was sentenced to death. Mr. Berget filed a habeas corpus action in state court. His court-appointed habeas counsel withdrew and I was appointed by Judge Hoffman as replacement counsel in June 2016. Approximately one week after I was appointed, Mr. Berget decided to withdraw his habeas action and end his appeals. In the first week I was involved in the case, however, I discovered information in the file suggesting that Mr. Berget may have been intellectually disabled. Because the

U.S. Supreme Court has held that the Constitution forbids the execution of individuals with an intellectual disability, I advised Judge Hoffman that the issue needed to be litigated regardless of Mr. Berget's wishes. I zealously litigated the issue of intellectual disability, which culminated in a trial before Judge Hoffman from January 30, 2018, through February 1, 2018. I called multiple witnesses and a retained expert on the issue of intellectual disability. The State of South Dakota called multiple witnesses and an expert as well. Judge Hoffman ultimately determined Mr. Berget was not intellectually disabled. Mr. Berget did not wish to appeal. A law firm that was not counsel of record filed emergency appeals attempting to halt the execution with both the South Dakota Supreme Court and United States Supreme Court, both of which refused to halt the execution. Mr. Berget was executed on October 29, 2018.

Counsel for Warden Young and the State of South Dakota:

Marty Jackley
Paul Swedlund
South Dakota Attorney General
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(605) 773-3215

3. *Laird v. Dakota Lodging*, CIV. 10-22, Circuit Court, Fifth Judicial Circuit, State of South Dakota, Brown County

From 2012 through 2013 I represented Dakota Lodging in this personal injury lawsuit before the Honorable Scott Myren of the South Dakota Circuit Court, Brown County. The lawsuit commenced in 2010, but I began working on the matter in 2012. Ms. Laird claimed she suffered a toxic exposure damaging her lungs when she stayed in a hotel room owned by my client. Ms. Laird claimed the exposure was likely caused by cleaning materials used in the room. Liability and damages were contested, ultimately resulting in a four-day jury trial for which I was sole counsel representing Dakota Lodging. Multiple witnesses were called, including medical experts. The jury returned a defense verdict in favor of my client.

Counsel for Plaintiff

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Robert Trzynka (associate plaintiff's counsel)
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4. *Bren-Phillips v. Graham*, MD, CIV. 05-3207, Circuit Court, Second Judicial Circuit, State of South Dakota, Minnehaha County

In 2011, I represented with co-counsel the defendant in this medical malpractice case in South Dakota Circuit Court before the Honorable Patricia Riepel. I assisted as co-

counsel in this case when one of my law partners became ill and could not be involved. Plaintiff alleged malpractice against our client, a general surgeon, because blood clots developed in her legs after gastric bypass surgery. I was involved in researching and briefing motions, pretrial hearings, and examining witnesses at trial. After trial in 2011, the jury returned a defense verdict in favor of our client.

Co-/lead counsel

Melissa Hinton (retired)

Plaintiff's counsel

John Hughes
Hughes Law Office
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5. *Hass v. Wentzlaff et al.*, 816 N.W.2d 96 (S.D. 2012)

From approximately 2009 through 2012 I represented with co-counsel North American Company for Life & Health Insurance in this tort action. The case was before the Honorable William Srstka in South Dakota Circuit Court, Second Judicial Circuit, Minnehaha County. The plaintiff was an elderly man who had several thousands of dollars stolen from him by an independent insurance agent who fraudulently caused the surrender of plaintiff's life insurance policies and annuities without the plaintiff's knowledge and stole the money. Plaintiff argued the defendant insurance companies were vicariously liable for the agent's conduct and alleged a variety of tort theories. I participated in written discovery and depositions and assisted in researching and briefing a motion for summary judgment. The trial court granted our motion for summary judgment, and on appeal the South Dakota Supreme Court affirmed. I was lead counsel before both the trial court and South Dakota Supreme Court, where I participated in oral argument on appeal.

Co-counsel

Timothy Gebhart (retired)

Plaintiff's counsel

Bruce Ford (retired)
Jonathan K. Van Patten
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Co-defendant's counsel

Jason Sutton
Boyce Law Firm, LLP

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6. *Mickalowski & Mickalowski v. Dakota Contracting Corporation*, CIV. 09-2775,
Circuit Court, Second Judicial Circuit, State of South Dakota, Minnehaha County

From 2008 through 2012 I represented plaintiffs Mr. and Mrs. Mickalowski in a personal injury action against Dakota Contracting Corporation. The action was brought in South Dakota Circuit Court and presided over by the Honorable Patricia Riepel. Mr. Mickalowski was paralyzed in a tragic bicycle accident when he rode into wet cement that appeared to be dry. The accident happened on a public street. I brought a negligence claim on behalf of the Mickalowskis against the contractor that poured the cement. I was sole counsel for the Mickalowskis. Extensive written discovery and depositions were completed. The defendant also moved for summary judgment, which I successfully resisted. The case settled amicably shortly before a jury trial was scheduled to begin.

Defendant's counsel

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(605) 275-9599

7. *Norstad v. Hofer, Pleasant Valley Colony of Hutterian Brethren, Inc., and Anderson*;
CIV. 08-1492, Circuit Court, Second Judicial Circuit, State of South Dakota,
Minnehaha County

From 2008 through 2010 I represented one of the defendants, Mr. Anderson, in this personal injury action in South Dakota Circuit Court before the Honorable Bradley Zell. My client was involved in a significant motor vehicle accident on the interstate, which resulted in a claim that his negligence caused the plaintiff to suffer a traumatic brain injury. The co-defendants Mr. Hofer was also involved in the accident. His employer, Pleasant Valley Colony of Hutterian Brethren, was also named as a defendant under a theory of vicarious liability. I was sole trial counsel for my client. A five-day jury trial took place in 2010 resulting in a verdict in favor of the plaintiff for \$500,000. The co-defendants were assessed by the jury to have caused 95 percent of plaintiff's damages while my client was assessed as causing 5 percent of the damages.

Plaintiff's counsel

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Co-defendant's counsel

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Sioux Falls, SD 57108
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8. *Gruhlke v. Sioux Empire Federal Credit Union, Inc., et al.*, 756 N.W.2d 399 (S.D. 2008)

From 2006 through 2008 I represented Mr. Bednar in this tort action in South Dakota Circuit Court, Second Judicial Circuit, before the Honorable Brad Zell. I was sole counsel for my client in this matter. The plaintiff was a former employee of a credit union, and my client was her former supervisor. My client was sued for tortious interference with a business expectation for allegedly interfering with the plaintiff's attempt at renewing her employment contract. The co-defendant credit union was sued for wrongful termination. Mr. Bednar moved to dismiss for failure to state a claim, arguing the elements of tortious interference were not met as a matter of law. The trial court granted the motion to dismiss, and on appeal the South Dakota Supreme Court affirmed. I briefed and argued the appeal before the South Dakota Supreme Court.

Plaintiff's counsel

Richard Casey (retired)

Co-defendant's counsel

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9. *Dressen v. Christopher Bauer d/b/a Bauer Construction*, 4:15-cv-4100, United States District Court for the District of South Dakota, Southern Division

From 2015 through 2017 I represented the defendant in this personal injury case in United States District Court for the District of South Dakota, Southern Division. The Honorable Karen Schreier presided over the case. Plaintiff, a contractor, claimed substantial personal injuries after falling from a roof on a residential home that was being remodeled. My client, Mr. Bauer, was the general contractor on the project. Plaintiff claimed my client was negligent for both creating and failing to warn of an unsafe work environment. I was sole counsel in the defense of this matter. I conducted written discovery, depositions, and drafted various motions. The case largely centered around the application of OSHA guidelines and whether Plaintiff was contributorily negligent and assumed the risk of injury by failing to utilize fall protection equipment. Multiple motions were argued at a pre-trial conference. The case amicably settled shortly before trial.

Plaintiffs' counsel

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Jami Bishop
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10. *First Premier Bank v. Kolcraft Enterprises, Inc.*, 686 N.W.2d 430 (S.D. 2004)

From 2001 through 2004 I represented with co-counsel the defendant in this product liability matter in South Dakota Circuit Court, Second Judicial Circuit, before the Honorable William Srstka. My client, Kolcraft Enterprises, Inc., manufactured polyurethane pads for "playpens" used by children. Plaintiff, as guardian for a child who had been severely burned while sleeping in a playpen, brought suit against my client under the theory that the polyurethane pad at issue should have been treated with a specific fire retardant. I was not trial counsel in this matter but worked extensively on pre-trial filings, motions, and argued various hearings. The case culminated in a three-week jury trial in February 2002. The jury returned a defense verdict. On appeal, the South Dakota Supreme Court reversed, primarily on evidentiary issues. The case then settled on remand.

Counsel for Plaintiff

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Co-Counsel

Michael Luce (co-lead trial counsel)
Lynn Jackson Shultz and Lebrun
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Sioux Falls, SD 57104
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Charles J. Risch (co-lead trial counsel)
Lawrence Kamin
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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.)

In addition to the litigated matters identified above, I have been actively involved in hundreds of cases that have been resolved prior to trial in a variety of practice areas, including employment disputes, negligence cases, breach of contract cases, insurance bad faith cases, and criminal cases. I have also played an active role in the management of Davenport Evans. Since 2017 I have been a member of the firm's management committee, serving as chair since 2022. The management committee oversees all aspects of the firm's business.

I have also been heavily involved as a volunteer with the South Dakota State Bar Association. I served as President of the South Dakota State Bar from 2015 through 2016. As President, I focused on South Dakota's legal aid system and attempted to have our multiple aid organizations work together to create more efficiency. During my tenure, the Bar also started a dialogue with South Dakota's legislative leaders about the importance of funding legal services organizations to help the poor and underprivileged. I also initiated multiple tours of Indian Country with members of the Bar to speak to Native American students. One primary purpose of these tours was to encourage Native American students to consider careers in the law. The Bar has continued with these tours since the end of my term as President, with the only exceptions being 2020 and 2021 when the pandemic closed schools and impacted travel. Finally, I have also been involved as a volunteer in our local Drug Court program in Minnehaha County.

I have not registered as a lobbyist or engaged in any lobbying activities.

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

Discovery Practice, University of South Dakota Knudson School of Law, Spring 2023. This is a skills course focusing on taking and defending depositions. In addition, the course focuses on the Federal Rules of Civil Procedure applicable to deposition practice. Syllabus attached.

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

Upon withdrawal from the partnership at Davenport, Evans, Hurwitz, and Smith LLP my

points contributions and accrued partnership distribution would be paid.

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 cannot think of any family members that would create conflicts of interest. If an immediate family member was a party in a case assigned to me, I would recuse myself. I would also recuse myself from litigation in which I have ever played a role. I also anticipate recusing myself for a period of time from any cases involving Davenport, Evans, Hurwitz, and Smith, LLP. I will evaluate any other real or potential conflict of interest as well as anything giving rise to the appearance of a conflict of interest on a case-by-case basis and determine the appropriate action as required by the judicial canons and in consultation with the parties and counsel, including recusing when 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 review and address any real or potential conflicts of interest by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and all other laws or rules governing the circumstances at issue.

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

I perform approximately 100 hours of pro bono legal work each year. My cases have varied. In the last two years, I have represented a number of individuals pro bono who received Pandemic Unemployment Assistance (PUA) benefits under the CARES Act during the pandemic only to be told several months or a year later that they must repay all of this money to the State of South Dakota. This work involves briefing, contested administrative hearings, and appeals to Circuit Court and potentially the South Dakota Supreme Court. For example, I recently prevailed in one of these cases before the South Dakota Supreme Court in *Bracken v. South Dakota Department of Labor and Regulation, Reemployment Assistance Division*, 2023 SD 22. In *Bracken*, the claimant was a self-employed owner of a bed and breakfast who received PUA benefits. Several months after the benefits ceased, the claimant was ordered to repay them because the South Dakota Department of Labor claimed it had erroneously given her the benefits in the first place. Notably, the claimant was without fault in receiving the benefits and there was no allegation of fraud. The legal dispute centered around whether she was entitled to receive benefits under the CARES Act as a self-employed individual and the proper legal standard for paying such benefits. The South Dakota Supreme Court ruled the claimant properly received PUA benefits and did not need to repay them.

I have also recently taken on immigration cases pro bono for unaccompanied minors from Central America seeking Special Immigrant Juvenile Status under the federal immigration code. I also have taken on one pro bono asylum case for a woman from Central America. This work involves research, fact gathering, and briefing.

In the past I have taken on pro bono family law cases through South Dakota’s legal aid organizations. In addition, I have taken on pro bono cases in misdemeanor criminal matters as well.

I have also been involved in serving on boards for non-profit organizations in Sioux Falls, South Dakota. Specifically, I served from 2008 through 2020 on boards for The Banquet feeding ministry in Sioux Falls. The Banquet serves food to the poor and underprivileged and is entirely funded by donations from our community. Since 2020 I have served on the board for Promising Futures, a non-profit organization dedicated to helping public school students in Sioux Falls living at or below the poverty line. Promising Futures is particularly focused on creating interest in reading for grade school students through its “Book a Month” club, which gives grade school students a book each month they can keep to read and also to start their own personal library. In addition, Promising Futures also funds and sponsors field trips for students to a number of locations, including museums, concerts, college campuses, trade schools, and athletic events.

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 January 9, 2023, I spoke with Mr. Randy Seiler, the Chair of the South Dakota Democratic Party, about my interest in applying for the position of United States District Judge for the District of South Dakota. My understanding is Mr. Seiler forwarded my resume to the White House's representatives to review. On March 16, 2023, I was interviewed by attorneys from the White House Counsel's Office. Since March 16, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. In addition, I have spoken briefly with representatives from the offices of Senators Thune and Rounds. I also met with Senator Rounds on June 28, 2023, and Senator Thune on July 31, 2023. 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.