

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR JUDICIAL NOMINEES**

PUBLIC

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

Barbara Milano Keenan
(Former names: Barbara Louise Milano and Barbara Milano Ardis)

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

United States Circuit Judge for the Fourth 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.

Office: 110 N. Royal Street, Suite 305, Alexandria, VA 22314

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

1950; Vienna, Austria, United States Legation Hospital

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.

07/1990-05/1992, University of Virginia School of Law; L.L.M., 1992

09/1971-06/1974, George Washington University Law School; J.D., 1974

Summer, 1970, Trinity College, no degree

09/1967-06/1971, Cornell University; B.A., 1971

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.

Judicial Service:

1991 – Present	Justice, Supreme Court of Virginia
1985 – 1991	Judge, Court of Appeals of Virginia
1982 – 1985	Judge, Circuit Court of Fairfax County, VA
1980 – 1982	Judge, General District Court of Fairfax County, VA

Appointments by the Circuit Court of Fairfax County, VA:

1975 – 1980	Commissioner in Chancery, Fairfax County, VA
1978 – 1980	Board of Zoning Appeals, Fairfax County, VA

Law Practice:

1978 – 1980	General practice of law, Keenan, Ardis, and Roehrenbeck, Fairfax, VA
1976 – 1978	General practice of law, self-employed, Fairfax, VA
1974 – 1976	Assistant Commonwealth's Attorney, Fairfax County, VA
1973 – 1974	Law Clerk, Shomette, Stanhagen, and Durette, Falls Church, VA
1972 – 1973	Law Clerk, United States Department of Justice, United States Marshals Service, Washington, D.C.

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.

None.

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.

Influential Woman of the Year, Virginia Lawyers Weekly, 2009

Common Good's Annual Gatekeeper Award, 2004

Jurisprudence Award, Fairfax Bar Association, 1995

First Annual Belva Lockwood Memorial Award, Law Association for Women The National Law Center, George Washington University, 1993

Virginia Women Attorneys Association and Metropolitan Richmond Women's Bar Association, Outstanding Women Attorneys Award, 1986

George Washington University Law School Professional Achievement Award, 1983

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.

Virginia State Bar

American Bar Association, Judges' Section

Virginia Bar Association, Judges' Section

National Association of Women Judges

Virginia Association of Women Judges

Fairfax County Bar Association:

Secretary 1979 - 1980

Board of Directors 1977 - 1980

Treasurer 1977 - 1979

Grievance Committee 1977 - 1979

Judicial-related Committees:

Supreme Court of Virginia Judicial Wellness Initiative, Chairperson, 2008 - Present.

This program is being developed to address substance abuse and mental health issues of Virginia's judges.

Supreme Court of Virginia Historical Commission, Vice Chairperson, 2006 - Present.

Virginia Criminal Justice Conference, Supreme Court Member, 2006 - Present

Judicial Performance Evaluation Commission, Chairperson, 2004 - 2008

Commission on Virginia Courts in the 21st Century: To Benefit All, To Exclude None, Planning/Executive Committee, 2004 - 2006

Virginia Criminal Justice Conference Study Committee on Translators/Interpreters, 2006 - 2007

Virginia State Crime Commission Subcommittee on Actual Innocence Legislation, Supreme Court Member, 2003 - 2004

Judicial Performance Evaluation Interim Commission, Chairperson, 2003 - 2004

Bench-Bar Relations Committee to Develop New Juror Orientation Video, Supreme Court Member, 2002 - 2003

Judicial Performance Evaluation Task Force, Chairperson, 2001 - 2002

Interlocutory Appeals Legislative Committee, Supreme Court Member, 1999

Boyd Graves Conference, Virginia Bar Association, Participant, 1988 - Present

Appellate Law Section, Virginia State Bar, 1996

Bench-Bar Relations Committee, Virginia State Bar, 1995

American Bar Association, Central and East European Law Initiative, Commentator on Draft Constitution for Belarus, 1992

Commission on the Future of Virginia's Judicial System, Quality of Justice Task Force, Chairperson, 1987 - 1988

Virginia Supreme Court Commission on Jury Management, Circuit Court Member, 1984

10. Bar and Court Admissions:

- 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.

Virginia State Bar, June 1974

There has been no lapse in membership in this admission.

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

Supreme Court of Virginia, 1974

United States District Court for the Eastern District of Virginia, 1978

There have been no lapses in membership in these admissions.

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.

William & Mary Journal of Women and the Law, Advisory Panel, 2009
Women's Giving Circle of Alexandria, VA, 2007-Present
Old Town Sport and Health Club, Alexandria, VA, 2007-Present
Gold's Gym, Alexandria, VA, 2004-2007
Cape Henry Racquet Club, Virginia Beach, VA, 1995-2004
Wareing's Gym, Virginia Beach, VA, 1994-2004

- 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.

These organizations and clubs have never engaged in discrimination on the basis of race, sex, religion, or national origin.

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.

Barbara M. Keenan and Johanna L. Fitzpatrick, *Juvenile Justice System: A Circle Closed*, 15 LEX CLAUDIA (Spring, 1997)

- 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.

Supreme Court Judicial Wellness Initiative, Chairperson, 2008 - Present
No reports, memoranda, or policy statements have been prepared.

Supreme Court of Virginia Historical Commission, Vice Chairperson, 2006 - Present

I have not prepared or contributed to any reports, memoranda, or policy statements.

Virginia Criminal Justice Conference, Supreme Court Member, 2006 - Present
Letter to Cathleen Skinner and report dated August 30, 2007.

Judicial Performance Evaluation Commission, Chairperson, 2004 - 2008
Sections of reports of Judicial Council of Virginia.

Commission on Virginia Courts in the 21st Century: To Benefit All, To Exclude None, Planning/Executive Committee, 2004 - 2006

I have not prepared or contributed to any reports, memoranda, or policy statements.

Virginia State Crime Commission Subcommittee on Actual Innocence Legislation, Supreme Court Member, 2003 - 2004

Report of the Virginia State Crime Commission, "Writ of Actual Innocence Based on Non-Biological Evidence," dated 2004.

Judicial Performance Evaluation Interim Commission, Chairperson, 2003 - 2004
"Judicial Performance Evaluation Pilot Program Summary Report 2003 - 2004," dated November 1, 2004.

Bench-Bar Relations Committee to Develop New Juror Orientation Video, Supreme Court Member, 2002 - 2003
Script of video.

Judicial Performance Evaluation Task Force, Chairperson, 2001 - 2002
"Report of the Judicial Performance Evaluation Task Force," July 2001.

Interlocutory Appeals Legislative Committee, Supreme Court Member, 1999
I have not prepared or contributed to any reports, memoranda, or policy statements.

American Bar Association, Central and East European Law Initiative, Commentator on Draft Constitution for Belarus, 1992
"Comments on the Draft Constitution of the Republic of Belarus," 1992.

Commission on the Future of Virginia's Judicial System, Quality of Justice Task Force, Chairperson, 1987 - 1988
"Courts in Transition: The Report of the Commission on the Future of

Virginia's Judicial System.”

Virginia Supreme Court Commission on Jury Management, Circuit Court Member,
1984

“Standards Relating To Juror Use and Management in Virginia,” dated
January 1985.

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

I have not given any such testimony or made official statements or communications of this nature.

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

I do not have written speeches but speak extemporaneously or with written notes. I am providing to the Committee the notes and outlines I have used and retained during my career. I have made numerous other speeches on these and related subjects for which I have not retained notes.

Date unknown; Judicial Selection, Lunch speech to Bar Association

Date unknown, Should You Be A Judge? Speech to school-age children

Date unknown, General Speech on the Judiciary, Fairfax County High School

Date unknown, Plea Bargaining and Plea Agreements, Bar Associations,
Continuing Legal Education Seminar

July, 1987 Appeals Process For Commonwealth's Attorneys
Commonwealth's Attorneys Association

1988-1989 Criminal Cases in the Court of Appeals, Bar Associations,
Continuing Legal Education Seminar

1989	Family Court and the Court of Appeals, Bar Associations
1989-1990	The General District Court and the Juvenile Court/Impact on the Appellate Process, Bar Associations, Continuing Legal Education Seminar
1990's	Pro Se Representation in Civil and Criminal Cases, Bar Associations
1992	Certified Questions of Law Under Virginia Rule 5:42, Conference of the 4 th Circuit Court of Appeals
1995	Freedom of Religion and Virginia Law, Thomas Jefferson High School, Annandale, VA
1991-Present	Various Topics, Law Day events sponsored by certain law schools and Bar Associations within Virginia
1990's	Workshop Materials Virginia Judicial Conference
1990- Present	Appellate Advocacy, Bar Associations, Continuing Legal Education Seminars
May, 1998	Commencement Speech, The College of William and Mary School of Law
May, 1998	Professionalism, Virginia State Bar Professionalism Course
2005-2009	Legal Profession, Leadership in the Law Summer Camp, Loudoun County Bar Association
1992-1993	Ethical Issues in Tort Litigation, Virginia Trial Lawyers Association Continuing Legal Education Seminar
1997	Ethics in Attorney/Client Relationship, Harry L. Carrico Course on Professionalism sponsored by the Virginia State Bar
	Juror Misconduct, Bar Associations
2001-Present	Key Qualities of Brief Writing, Virginia State Bar, Continuing Legal Education Seminar
2002-Present	Brief Writing, Virginia State Bar, Continuing Legal Education Seminar

- 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.

Chris M. Kormis, *Is She Tough Enough? Women on the Bench*, The George Washington University National Law Center Magazine (June 1993).

Kathleen Kocks, *Justice Supreme*, GW Law School The George Washington University (Summer 2005).

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

I was appointed as a judge of the General District Court of Fairfax County, VA in 1980.

I was appointed as a judge of the Circuit Court of Fairfax County, VA in 1982.

I was appointed as a judge of the Court of Appeals of Virginia in 1985.

I was appointed as a justice of the Supreme Court of Virginia in 1991.

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

I presided over several thousand cases to judgment as a judge of the General District Court of Fairfax County, VA.

I presided as a circuit court judge in approximately 600 cases that proceeded to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials? 25%; bench trials 75% [total 100%]

civil proceedings? 50%

criminal proceedings? 50% [total 100%]

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

See attached list of cases.

- 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).

I presided over these cases during the period that I served as a judge on the Circuit Court of Fairfax County from 1982-85. Copies of the judgments in these cases are not readily available. I did not include any criminal cases because I did not have access to those files.

1. Jackson v. Sammis Construction Co., Case No. 64015
The court held that the plaintiff was entitled to recover attorney's fees under Virginia Code § 54-145.3:5 (c), which is part of the Virginia Contractor Transaction Recovery Act, and that the statutory amendment to this section did not affect the plaintiff's right to recover such fees.

Counsel:

Lawrence C. Melton, 227 Adams Ave., Alexandria, VA 22301
Richard C. Kast, Assistant Attorney General, 1010 N. 8th Street,
Richmond, VA 23219

2. Vandevender v. Wickline, Case No. 57526, and International Bldg. Methods, Inc. v. Wickline, Case No. 57469
The court denied the defendant's motion for summary judgment. The court held that the alleged defamatory statements were not privileged because the statements were made during an informal administrative proceeding that did not qualify as a judicial or quasi-judicial hearing.

Counsel:

James A. Hixon, Douglas L. Pierson, Soutzos & Pierson, 311 Maple Ave.
West, Suite G, Vienna, VA 22180
Edward Ashworth, Frank Labertta, Jr., Morgan Assocs, 1899 L. Street,
N.W., Washington, DC 20036
William M. Baskin, Jr., Baskin, Baskin & Jackson, 301 Park Ave., Falls
Church, VA 22046
The Honorable Gerald L. Baliles, former Attorney General, 101 N. 8th
Street, Richmond, VA 23219

3. Black v. Dwoskin, Case No. 62301
In this case involving an agency-principal relationship, the court granted the plaintiff's motion to strike the defendants' plea of the statute of limitations. The court held that the general rule stating that the statute of limitations begins to run upon the termination of the agency relationship was applicable in this case.

Counsel:

Haynie S. Trotter, Boothe, Prichard, & Dudley, 4103 Chain Bridge Road,
Fairfax, VA 22030

Harry Lewis MacPherson, III, Hazel, Beckhorn & Hanes, 4084 University
Drive, Fairfax, VA 22030

4. Richards v. State Farm Mutual Ins. Co., Case No. 83935

In this case involving an interpretation of an insurance contract, the court held that an exclusion in the contract violated Virginia Code § 38.1-355 and that, therefore, the policy covered the medical expenses incurred by the plaintiff.

Counsel:

Gary V. Davis, 1315 Vincent Place, McLean, VA 22102

Philip B. Morris, Browder, Russell, Morris & Butcher, 1200 Ross
Building, Richmond, VA 23219

5. Pierce v. Heritage/Chrysler-Plymouth Sales, Inc., Case Nos. 59047, 62129

The court sustained the defendants' demurrer based on the doctrine of res judicata. The court applied the rule announced by the Supreme Court of Virginia that when a demurrer is sustained with leave to amend upon certain terms and a litigant fails to amend the complaint, the order sustaining the demurrer becomes final and constitutes a bar to further proceedings upon the same cause against the same parties.

Counsel:

Stephen W. Robinson, Boothe, Prichard & Dudley, 4103 Chain Bridge
Road, Fairfax, VA 22030

Michale P. Valois, 309 Mill Street, Occoquan, VA 22125

6. Cobb v. Parson, Case No. 84940

The court concluded that the reconciliation of the parties after their execution of a property settlement agreement did not abrogate their agreement. Thus, the court held that the agreement constituted a valid and enforceable contract that included a valid waiver of a wife's statutory rights in the estate of her late husband.

Counsel:

John H. Rust, McCandlish, Lillard, Rush & Church, 4060 Chain Bridge
Road, Fairfax, VA 22030

H.J.M. Melaro, 1137 N. Highland Street #5, Arlington, VA 22201

Laurie L. Dolson, 10521 Judicial Drive, Fairfax, VA 22030

7. Nova Mechanical Constr., Inc. v. First Virginia Bank, Case No. 66241

The court held that a provision of Virginia Code § 8.4-406(4) was a notification provision, requiring that a customer preserve her rights by

discovering and reporting an alteration to a bank by a certain time, and did not constitute a statute of limitations controlling the time in which she may bring suit against the bank.

Counsel:

Martin R. Mann, 311 Park Avenue, Falls Church, VA 22046
Kathryn Anderson, First Virginia Bank, 6400 Arlington Blvd., Falls Church, VA 22046

8. Satterthwaite v. AT&T Comm. of Virginia, Case No. 64999
The court sustained the defendant's plea in bar based upon the six-month statute of limitations as stated in Section 301 of the Labor Management Relations Act.

Counsel:

Roy J. Baldwin, 2915 Hunter Mill Road, Suite 18, Oakton, VA 22124
Stephen W. Robinson, Boothe, Prichard & Dudley, 4103 Chain Bridge Road, Fairfax, VA 22030

9. Whitley v. Bass, Case No. 61348
In this case involving a petition for writ of habeas corpus in which the petitioner was sentenced to death for capital murder, the court ordered that an evidentiary hearing be held to consider whether petitioner's trial counsel adequately interviewed witnesses and conducted a proper investigation of psychiatric evidence for sentencing. The court dismissed the petitioner's remaining claims.

Counsel:

Jaclyn Leonhard, Hall, Surovell, Jackson & Colten, 4010 University Drive, Fairfax, VA 22030
Richard Smith, Assistant Attorney General, 101 N. 8th Street, Richmond, VA 23219

10. Cessna v. Thompson, Case No. L055231 and L050823.
In this products liability case involving an allegedly faulty fuel gauge on an airplane involved in an accident, judgment was entered in favor of the defendants.

Counsel:

Patrick M. Regan, 1919 M Street, N.W., Suite 350, Washington, DC 20036
Thomas L. Appler, Wilson, Else, Moskowitz, Edelman & Dicker LLP, 844 Westpark Drive, Suite 510, McLean, VA 22102

- 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.

The following opinions are among the most significant decisions that I have written while serving as a justice on the Supreme Court of Virginia:

1. Alliance to Save the Mattaponi v. Commonwealth Dep't of Env'tl. Quality ex rel. State Water Control Bd., 270 Va. 423, 621 S.E.2d 78 (2005), cert. denied, 126 S. Ct. 2862 (2006)

In a dispute over construction of a reservoir, the Court held that Virginia Code § 62.1-44.29 waives the Commonwealth's sovereign immunity for judicial review of Water Control Board actions. The Board properly applied Virginia Code § 62.1-44.15:5(c), and the judgment under the Administrative Process Act was affirmed. On separate claims transferred from the Court of Appeals, that portion of the circuit court's judgment holding that a particular Treaty is Virginia law was affirmed. The circuit court's judgment that it lacked jurisdiction to consider the separate Treaty claims was reversed, and those claims were remanded for further proceedings.

Counsel:

Deborah M. Murray, Southern Environmental Law Center, 201 W. Main Street, #14, Charlottesville, VA 22902, 434-977-4090. Counsel for appellants.

R.R. Linker, Commonwealth of Virginia, Assistant Attorney General, 900 E. Main Street, Richmond, VA 23219, 804-786-2071, and James E. Ryan, Jr., Troutman Sanders, LLP, PO Box 1122, Richmond, VA 23218, 804-697-1200. Counsel for appellees.

2. Lovitt v. Warden, 266 Va. 216, 585 S.E.2d 801 (2003), cert. denied, 541 U.S. 1006 (2004)

In a petition for a writ of habeas corpus by a prisoner convicted of capital murder and sentenced to death, the Court held that neither the failure of the prosecution to disclose allegedly exculpatory information to defense counsel before trial, nor destruction of evidence after the trial, provided a valid basis for habeas corpus relief. Petitioner's claim that his trial counsel was ineffective was also rejected. The petition was dismissed.

Counsel:

Ashley C. Parrish, King & Spaulding, 1700 Pennsylvania Ave., NW, Suite 200, Washington, D.C., 20006, 202-626-2627. Counsel for appellant.

Katherine P. Baldwin, Commonwealth of Virginia, Senior Assistant Attorney General, 900 E. Main Street, Richmond, VA 23219, 804-786-2071. Counsel for appellee.

3. Tauber v. Commonwealth ex rel. Kilgore, 263 Va. 520, 562 S.E.2d 118 (2002), cert. denied, 537 U.S. 1002 (2002)

In an accounting of the assets of a defunct charitable corporation, the Court held that the chancellor properly applied a constructive trust, determined the value of the assets, adopted a cy pres distribution, imposed prejudgment interest, fixed the appeal bond, and denied recovery of attorney's fees and costs. The Court further held that the chancellor erred in reducing the amount of the award from the sums established in admitted testimony.

Counsel:

Stephen D. Rosenthal, Troutman Sanders, PO Box 1122, Richmond, VA 23218, 804-697-1200. Counsel for appellants.

Marc E. Bettius, Commonwealth of Virginia, Office of the Attorney General, 900 Main Street, Richmond, VA 23219, 804-786-2071. Counsel for appellees.

4. Mitchem v. Counts, 259 Va. 179, 523 S.E.2d 246 (2000)

The Court held that Virginia Code § 2.1-725(D) of the Virginia Human Rights Act (VHRA) does not bar a common law action for wrongful termination of employment based on violation of public policies not reflected in the VHRA, when the conduct alleged also violates a public policy reflected in the VHRA.

Counsel:

Terry N. Grimes, King, Fulghum, Snead, Nixon & Grimes, Elm Ave. Roanoke, VA 24016. Counsel for appellant.

Bruce M. Steen, McGuire Woods, 100 N Tyron Street, Suite 2900, Charlotte, NC 28202, 704-353-6244. Counsel for appellees.

5. Advanced Marine Enters. v. PRC, Inc., 256 Va. 106, 501 S.E.2d 148 (1998)

The Court held that (1) Virginia Code § 18.2-499 does not require proof of actual malice; rather, that statute requires proof of legal malice, namely, that the engineering firm and the former employees acted intentionally, purposefully, and without lawful justification, (2) the non-competition clause of the former employees' employment contracts was enforceable because the clause was not unduly harsh and oppressive in curtailing the legitimate efforts of the former employees to earn a livelihood, and the clause was reasonable from a public policy standpoint, (3) there was sufficient evidence to support the amount of damages and the formula upon which damages were based, and (4) the chancellor had jurisdiction to award treble damages and punitive damages under the statute.

Counsel:

Frank K. Friedman, Woods Rogers, 10 S. Jefferson Street, Roanoke, VA 24038, 540-983-7649. Counsel for appellants.

Thomas C. Papson, McKenna, Long & Aldridge, 1900 K Street, Washington, DC, 20006, 202-496-7500. Counsel for appellee.

6. Shaw v. Titan Corp., 255 Va. 535, 498 S.E.2d 696 (1998)
Upon two questions of Virginia law certified by the United States Court of Appeals for the Fourth Circuit, the Court held that the federal district court did not err in refusing to give the jury an explicit “but-for causation, sole-cause, or mixed-motive” instruction. The Court determined that the plaintiff who asserted a cause of action for wrongful termination of employment was not required to prove that the employer’s improper motive was the sole cause of the wrongful termination. The Court also held that punitive damages may be recovered for wrongful termination in violation of public policy when the public policy violated is embodied in the Virginia Human Rights Act because the cause of action derived solely from the common law and the plaintiff pleaded and proved an intentional tort under that common law.

Counsel:

K. Stewart Evans, Jr., Pepper Hamilton, 600 14th Street, NW, Washington, DC, 20005, 202-220-1200. Counsel for appellant.

Elaine C. Bredehoft, Charlson & Bredehoft, 1260 Roger Bacon Drive, Reston, VA 20190, 703-318-6800. Counsel for appellee.

7. Mueller v. Murray, 252 Va. 356, 478 S.E.2d 542 (1996)
The Court held that the “new rule” announced by the Supreme Court of the United States in Simmons v. South Carolina, 512 U.S. 154 (1994) does not apply retroactively to the defendant’s conviction for capital murder the year before Simmons was announced.

Counsel:

Michael HuYoung, Barnes & Diehl, P.C., Three Paragon, 6806 Paragon Place, Suite 110, Richmond, VA 23220, 804-762-9500, and Angela D. Whitley, Boone Beale, P.C., 27 North 17th Street, Richmond, VA 22079, 804-780-1729. Counsel for appellant.

Robert H. Anderson, Commonwealth of Virginia, Office of the Attorney General, 900 E. Main Street, Richmond, VA 23219, 804-786-2071.
Counsel for appellee.

8. Gilmore v. Landsidle, 252 Va. 388, 478 S.E.2d 307 (1996)
The Court held that because the enrolled House Bill 29 is the same bill

enacted by the General Assembly, the bill was published “at length” within the meaning of Article IV, Section 12 of the Constitution of Virginia, and the bill did not impair the Governor’s item veto power or his ability to ensure that expenses for the biennium did not exceed revenues. The Court refused to award a writ of mandamus as requested by the Attorney General.

Counsel:

Catherine Hammond, formerly of Commonwealth of Virginia, Office of the Attorney General, currently judge of Circuit Court of Henrico County, PO Box 90775, Henrico, VA 23273, 804-501-5022, and Gregory E. Lucyk, formerly with the Commonwealth of Virginia Office of Attorney General, currently Chief Staff Attorney for the Supreme Court of Virginia, 110 N. 9th Street, Richmond, VA 23214, 804-786-2259. Counsel for petitioners.

William Poff, Woods Rogers, 10 S. Jefferson Street, Roanoke, VA 24038, 540-983-7649. Counsel for respondent.

9. Middlekauff v. Allstate Ins. Co., 247 Va. 150, 439 S.E.2d 394 (1994)
The Court reversed the circuit court’s judgment, and held that the plaintiff employee’s claim for intentional infliction of emotional distress based on gender-related harassment and verbal abuse from her supervisor was not barred by the exclusivity provision of the Virginia Workers’ Compensation Act because the alleged pattern of abusive behavior was not an “injury by accident” within the meaning of the Act.

Counsel:

Arthur P. Strickland, 23 Franklin Road S.W., Roanoke, VA 24001, 540-982-2909. Counsel for appellant.

Dana L. Rust, McGuire Woods, 901 E. Cary Street, Richmond, VA 23219, 804-775-1082. Counsel for appellees.

10. Hiatt v. Lake Barcroft Community Ass’n., Inc., 244 Va. 191, 418 S.E.2d 894 (1992)
In this case involving a release required for a swimmer’s participation in a triathlon, the Court held that that the pre-injury release from liability for negligence was void and violated public policy. The Court stated that it long had prohibited a release from liability for personal injury that might be caused by future acts of negligence, and that this prohibition had not been altered by cases upholding the right to contract for the release of liability for property damage.

Counsel:

Bernard S. Cohen, Sandra M. Rohrstaff, formerly of Cohen, Dunn &

Sinclair. Ms. Rohrstaff is now with Reiner, Rohrstaff & Spivey, 10605 Judicial Drive, Suite B6, Fairfax, VA 22030, 703-273-9500. Counsel for appellant.

Joseph D. Roberts, Slenker, Brandt, Jennings & Johnson, 2908 Merrifield, VA 22116, 703-849-8600. Counsel for appellees.

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

Supreme Court of Virginia
Cases in which I wrote the majority opinion:

Miller-Jenkins v. Miller-Jenkins, 276 Va. 19, 661 S.E.2d 822 (2008), cert. denied, 129 S. Ct. 726 (2008).

Alliance to Save the Mattaponi v. Commonwealth Dep't of Env'tl. Quality ex rel. State Water Control Bd., 270 Va. 423, 621 S.E.2d 78 (2005), cert. denied, 126 S. Ct. 2862 (2006).

Pilli v. Va. State Bar, 269 Va. 391, 611 S.E.2d 389 (2005), cert. denied, 546 U.S. 977 (2005).

Lovitt v. Warden, 266 Va. 216, 585 S.E.2d 801 (2003), cert. denied, 541 U.S. 1006 (2004).

Beeton v. Beeton, 263 Va. 329, 559 S.E.2d 663 (2002), cert. denied, 537 U.S. 1020 (2002).

Yarbrough v. Commonwealth, 262 Va. 388, 551 S.E.2d 306 (2001), cert. denied, 535 U.S. 1060 (2002).

Schmitt v. Commonwealth, 262 Va. 127, 547 S.E.2d 186 (2001), cert. denied, 534 U.S. 1094 (2002).

Lovitt v. Commonwealth, 260 Va. 497, 537 S.E.2d 866 (2000), cert. denied, 534 U.S. 815 (2001).

Johnson v. Commonwealth, 259 Va. 654, 529 S.E.2d 769 (2000), cert. denied, 531 U.S. 981 (2000).

Supreme Court of Virginia
Cases in which I wrote the dissenting opinion:

Magruder v. Commonwealth, 275 Va. 283, 657 S.E.2d 113 (2008), cert. granted sub nom. Briscoe v. Virginia, ___ U.S. ___, 129 S. Ct. 2858 (2009). (No. 07-11191).

Powell v. Warden, 272 Va. 217, 634 S.E.2d 289 (2006), cert. denied, 551 U.S. 118, 127 S. Ct. 2942 (2007).

Brown v. Commonwealth, 246 Va. 460, 437 S.E.2d 563 (1993), cert. denied 522 U.S. 1126, 118 S. Ct. 1073 (1998).

Court of Appeals of Virginia
Case in which I wrote the majority opinion:

Fitzgerald v. Bass, 6 Va. App. 38, 366 S.E.2d 615 (1989), cert. denied sub nom. Fitzgerald v. Thompson, 493 U.S. 943 (1989).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

There are 6 appellate opinions that fall into this category.

Walls v. Commonwealth, 2 Va. App. 639, 347 S.E.2d 175 (1986).

In Commonwealth v. Jones, 267 Va. 532, 593 S.E.2d 204 (2004), the Supreme Court of Virginia rejected the analysis I had applied in Walls v. Commonwealth, 2 Va. App. 639, 347 S.E.2d 175 (1986) with regard to the “inevitable discovery” rule. I had relied on United States v. Cherry, 759 F.2d 1196 (5th Cir. 1985), cert. denied, 479 U.S. 1056 (1987), which stated a three-part test to determine whether evidence is admissible under the “inevitable discovery” exception to the exclusionary rule.

Diehl v. Commonwealth, 9 Va. App. 28, 384 S.E.2d 801 (1989).

The panel decision in Diehl v. Commonwealth, 9 Va. App. 28, 384 S.E.2d 801 (1989), which I wrote, was reversed by the Court of Appeals sitting en banc in Diehl v. Commonwealth, 10 Va. App. 139 (1990). The en banc decision was issued by order, without opinion, as is customary when the judgment of a circuit court is affirmed on appeal by “an equally divided court.”

Bellfield v. Commonwealth, 11 Va. App. 310, 398 S.E.2d 90 (1990).

In Commonwealth v. Donkor, 256 Va. 443, 507 S.E.2d 75 (1998), the Supreme Court of Virginia criticized the analysis I applied in Bellfield v. Commonwealth, 11 Va. App. 310, 398 S.E.2d 90 (1990), regarding when a jury instruction should be given on a “lesser-included” offense.

Roach v. Commonwealth, 251 Va. 324, 468 S.E.2d 98 (1996), and Mueller v. Commonwealth, 244 Va. 386, 422 S.E.2d 380 (1992).

In Morrisette v. Warden, 270 Va. 188, 613 S.E.2d 551 (2005), cert. denied, 546 U.S. 1216 (2006), the Supreme Court of Virginia held that a defendant in a capital murder trial is entitled to a verdict form in the sentencing phase of trial that expressly corresponds to the trial court's sentencing instructions, and that the statutory verdict form therefore was deficient. This holding was based on a new argument not raised in either Roach v. Commonwealth, 251 Va. 324, 468 S.E.2d 98 (1996), cert. denied, 519 U.S. 951 (1996), or Mueller v. Commonwealth, 244 Va. 386, 422 S.E.2d 380 (1992), cert. denied, 507 U.S. 1043 (1993), reh'g denied, 508 U.S. 968 (1993). In Roach and Mueller, I wrote opinions stating that the statutory verdict forms fully apprised the jury of its sentencing options when considered in conjunction with the trial court's sentencing instructions.

Johnson v. Commonwealth, 267 Va. 53, 591 S.E.2d 47 (2004).

In Roper v. Simmons, 543 U.S. 551 (2005), the Supreme Court of the United States invalidated the application of the death penalty to juvenile offenders. This holding reversed an earlier decision I had written in Johnson v. Commonwealth, 267 Va. 53, 591 S.E.2d 47 (2004), vacated, 544 U.S. 901 (2005), in which I relied on the holding of Stanford v. Kentucky, 492 U.S. 361 (1989) affirming a death sentence imposed on a capital murder defendant who was 16 years old at the time of the offense.

Further, I describe five cases below in which my decisions made as a trial judge, rendered between 1982 and 1985, were reversed, or reversed in part, by the Supreme Court of Virginia.

Cox v. Commonwealth, 227 Va. 324, 315 S.E.2d 288 (1984).

The Court held that I had erred in ruling that certain bank records requested by a party were not material to the case. The Court reversed my decision and remanded the case.

Commonwealth v. Croatan Books, Inc., 228 Va. 383, 323 S.E.2d 86 (1984)

In this case, the Commonwealth had filed a complaint against a bookstore owner seeking to enjoin a nuisance caused by homosexual, sexually-explicit activities taking place at the store. I ruled that the activities constituted a public nuisance under Virginia Code § 48-7 but that Virginia Code § 48-12, which would have required closure of the store, was unconstitutional as applied to the facts of the case because such action "reach[ed] far beyond the remedy necessary for the abatement of the complained of nuisance." Instead, I ordered a more limited remedy that permitted the bookstore to remain open. On appeal, the Court reversed my decision and held that the closure of the bookstore was a proper exercise of the Commonwealth's police power and did not constitute an impermissible infringement on First Amendment freedoms. The Court remanded the case.

Stone v. Ethan Allen, Inc., 232 Va. 365, 350 S.E.2d 629 (1986)

In this case, certain consumers had purchased a defective refrigerator that caused a fire and damaged their property. I entered summary judgment in favor of the suppliers of the refrigerator based on the applicable statute of limitations. The Court affirmed the dismissal of the breach of warranty claims but reversed the dismissal of the negligence claims holding that the five-year limitation for those claims began to run from the time of the fire, not from the time of delivery of the refrigerator. The Court affirmed in part, reversed in part, and remanded the case.

Raney v. Four Thirty Seven Land Company, Inc., 233 Va. 513, 357 S.E.2d 733 (1987)

In this case, the Court held that I had erred in holding that a land company was a necessary party to a landowner's prior fiduciary action concerning ownership of a strip of land used by both parties to reach the public road. The Court also dissolved the injunction that I had issued and reinstated the orders entered in favor of the landowner in the fiduciary action. The Court reversed my decision and entered final judgment.

Duggin v. Adams, 234 Va. 221, 360 S.E.2d 832 (1987)

In this case, the Court ruled that I had erred in sustaining the defendant's demurrer. The Court held that the plaintiff had asserted a prima facie case of tortious interference with a contract and that the motion for judgment contained adequate factual allegations. The Court reversed my decision and remanded the case.

- 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.

As a justice of the Supreme Court of Virginia, I have not issued any unpublished opinions. During my service as a judge of the Court of Appeals of Virginia, about 22% of my opinions were unpublished. They are available either on a computerized legal database or by obtaining a copy of the opinion from the Clerk of the Court of Appeals.

- 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.

This list contains a representative sample of significant constitutional issues I have considered during my service on the Supreme Court of Virginia. Of particular note, I recused myself from three cases involving the constitutionality of a Virginia statute prohibiting the burning of a cross because my husband, who was a judge serving on the Circuit Court of the City of Virginia Beach, had issued

pretrial rulings upholding the constitutionality of that statute. See Black v. Commonwealth, Elliott v. Commonwealth, O'Mara v. Commonwealth, 262 Va. 764, 553 S.E.2d 738 (2001), aff'd. in part, vacated in part, 538 U.S. 343 (2003), remanded to 262 Va. 764, 553 S.E.2d 738 (2001).

Jones v. Commonwealth, 277 Va. 171, 670 S.E.2d 727 (2009)

Gray v. Virginia Sec'y of Transp., 276 Va. 93, 662 S.E.2d 66 (2008)

Porter v. Commonwealth, 276 Va. 203, 661 S.E.2d 415 (2008) (Keenan wrote dissenting opinion.)

Virginia Baptist Homes, Inc. v. Botetourt County, 276 Va. 656, 668 S.E.2d 119 (2008)

McCain v. Commonwealth, 275 Va. 546, 659 S.E.2d 512 (2008)

Marshall v. Northern Virginia Transp. Auth., 275 Va. 419, 657 S.E.2d 71 (2008)

Gilman v. Commonwealth, 275 Va. 222, 657 S.E.2d 474 (2008) (Majority opinion written by Keenan.)

Magruder v. Commonwealth, 275 Va. 283, 657 S.E.2d 113 (2008), cert. granted sub nom. Briscoe v. Virginia, ___ U.S. ___, 129 S. Ct. 2858 (2009). (Keenan wrote dissenting opinion.)

Anderson v. Commonwealth, 274 Va. 469, 650 S.E.2d 702 (2007), cert. denied, 128 S. Ct. 2473 (2008)

Judicial Inquiry & Review Comm'n v. Shull, 274 Va. 657, 651 S.E.2d 648 (2007) (Majority opinion written by Keenan.)

McCabe v. Commonwealth, 274 Va. 558, 650 S.E.2d 508 (2007)

McDonald v. Commonwealth, 274 Va. 249, 645 S.E.2d 918 (2007)

Gray v. Commonwealth, 274 Va. 290, 645 S.E.2d 448 (2007), cert. denied, 128 S. Ct. 1111 (2008)

Kopalchick v. Catholic Diocese of Richmond, 274 Va. 332, 645 S.E.2d 439 (2007)

In re Moseley, 273 Va. 688, 643 S.E.2d 190 (2007), cert. denied, 128 S. Ct. 659 (2007)

West v. Dir. of the Dep't of Corr., 273 Va. 56, 639 S.E.2d 190 (2007) (Majority opinion written by Keenan.)

Hoffman Family, LLC v. City of Alexandria, 272 Va. 274, 634 S.E.2d 722 (2006) (Majority opinion written by Keenan.)

Bethel Inv. Co. v. City of Hampton, 272 Va. 765, 636 S.E.2d 466 (2006)

Powell v. Warden, 272 Va. 217, 634 S.E.2d 289 (2006) (Keenan wrote dissenting opinion.), cert. denied, 127 S. Ct. 2942 (2007)

Jenkins v. Dir. of the Va. Ctr. for Behavioral Rehab., 271 Va. 4, 624 S.E.2d 453 (2006)

Alliance to Save the Mattaponi v. Commonwealth Dep't of Env'tl. Quality ex rel. State Water Control Bd., 270 Va. 423, 621 S.E.2d 78 (2005), cert. denied, 126 S. Ct. 2862 (2006) (Majority opinion written by Keenan.)

Shivae v. Commonwealth, 270 Va. 112, 613 S.E.2d 570 (2005), cert. denied, 126 S. Ct. 626 (2005)

Dixon v. Commonwealth, 270 Va. 34, 613 S.E.2d 398 (2005) (Majority opinion written by Keenan.)

Commonwealth v. Hilliard, 270 Va. 42, 613 S.E.2d 579 (2005) (Majority opinion written by Keenan.)

Martin v. Zihel, 269 Va. 35, 607 S.E.2d 367 (2005)

Winston v. Commonwealth, 268 Va. 564, 604 S.E.2d 21 (2004), cert. denied, 126 S. Ct. 107 (2005)

Alderson v. County of Alleghany, 266 Va. 333, 585 S.E.2d 795 (2003)

In re Phillips, 265 Va. 81, 574 S.E.2d 270 (2003) (Majority opinion written by Keenan.)

Murphy v. Commonwealth, 264 Va. 568, 570 S.E.2d 836 (2002) (Majority opinion written by Keenan.)

Commonwealth v. Hill, 264 Va. 541, 570 S.E.2d 805 (2002) (Majority opinion written by Keenan.)

Commonwealth v. Washington, 263 Va. 298, 559 S.E.2d 636 (2002) (Keenan joined dissenting opinion.)

Wilkins v. West, 264 Va. 447, 571 S.E.2d 100 (2002)

Jae-Woo Cha v. Korean Presbyterian Church, 262 Va. 604, 553 S.E.2d 511 (2001), cert. denied, 535 U.S. 1035 (2002)

Virginia College Bldg. Auth. v. Lynn, 260 Va. 608, 538 S.E. 682 (2000) (Keenan joined, concurring in part and dissenting in part.)

Earley v. Landside, 257 Va. 365, 514 S.E.2d 153 (1999) (Majority opinion written by Keenan.)

Gilmore v. Landside, 252 Va. 388, 478 S.E.2d 307 (1996) (Majority opinion written by Keenan.)

Town & Country Properties v. Riggins, 249 Va. 387, 457 S.E.2d 356 (1995)

Williams v. Garraghty, 249 Va. 224, 455 S.E.2d 209 (1995) (Keenan joined, concurring in part and dissenting in part.)

Scott v. Commonwealth, 247 Va. 379, 443 S.E.2d 138 (1994)

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

I have never been asked to sit on a case by designation.

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

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

for recusal.

I always have been guided by the Virginia Canons of Judicial Conduct. Additionally, my general basis for assessing the necessity or propriety of recusal is when my impartiality might reasonably be questioned. The factors I use in applying this standard are: 1) my individual and family interests; 2) former professional contacts, i.e., former client, former law partner, etc.; 3) other considerations that may be suggested from the subject matter or parties involved in each individual case.

During my tenure with the Supreme Court of Virginia, I have employed an automatic recusal policy involving cases in which my husband, Alan E. Rosenblatt, participated as a circuit court judge of the City of Virginia Beach or by designation on a panel of the Court of Appeals of Virginia. Additionally, I employed an automatic recusal policy for any cases filed by an attorney in a Public Defender's Office while my husband was Interim Executive Director of the Indigent Defense Commission between July 28, 2005 and December 31, 2005.

I employed an automatic recusal system for cases appealed to the Supreme Court from the Court of Appeals that had been pending in the Court of Appeals while I was a judge of that court. A letter from Patricia L. Harrington, Clerk of the Supreme Court of Virginia is attached to this application (see Tab 14a) in verification of these procedures. I have also appended a letter from Cynthia L. McCoy, Clerk of the Court, Court of Appeals of Virginia, (see Tab 14b) confirming that I employed a general recusal policy involving any case appealed from the Circuit Court of Fairfax County in which I had signed any order in my former capacity as a judge of that court. Because the Court of Appeals does not keep a list of the specific cases from which a judge has recused himself or herself, I am unable to provide any more specific information for that period of my judicial service.

I also have employed an automatic recusal policy for cases involving BB&T Corporation and Pfizer, Inc., based on the amount of shares I hold in those entities. Pursuant to Supreme Court of Virginia policy, in other instances in which I hold a small amount of stock, the Clerk of the Court is directed to inform counsel that an unidentified judge of the Court holds a small amount of securities in the corporation before the Court and inquire whether the interested parties would prefer that the judge recuse himself or herself from the proceedings. In the one case that I have been requested to do so, I have recused myself.

I also automatically recused myself from any cases involving America Online during the time that my sister was employed as an officer of that company.

The sole case in which a litigant has requested that I recuse myself was Halifax Corporation v. Wachovia Bank, Record Number 032444. The motion for recusal was directed to any justice who held even a minimal amount of stock in Wachovia Bank. I voluntarily removed myself from the case.

I also made the following recusals on a *sua sponte* basis:

Prieto v. CW, Rec. Nos. 082464 & 082465: I had personal knowledge of facts not included in record.

VEPCO, et al. v. Norfolk Southern Ry. Co., Rec. No. 081294: Counsel assisting me with process of applying for 4th Circuit judgeship.

Appalachian Voices v. State Corporation Commission, Rec. No. 081433: Counsel assisting me with process of applying for 4th Circuit judgeship.

Seguin v. Northrop Grumman Systems Corp., et al., Rec. No. 080217: At the time of this litigation, my brother-in-law was an attorney in law firm representing a party in case.

Heron, et al v. Transportation Cas. Ins. Co., et al., Rec. No. 061813: My niece worked on case for one party.

McLaughlin v. Schewe, et al., Rec. No. 061940: A personal friend was involved in lawsuit.

Jones, et al. v. Brandt, etc., Rec. No. 061086: My sister-in-law's law firm was counsel in case.

Juniper v. Commonwealth, Rec. Nos. 051423 & 051424: I am a personal friend of parents of major witness in case.

Judicial Inquiry Review Commission v. Judge Peatross, Rec. No. 042306: I had personal knowledge of facts not included in record.

DiJoseph v. Virginia State Bar, Rec. No. 040528: Appellant appeared regularly before me when I was a trial judge.

Bradick v. Grumman Data Systems Corp., Rec. No. 962531: My brother-in-law worked as an attorney with law firm representing one party.

Pickett v. Spain, Rec. No. 961958: Appellee was my decorator.

Sawyer v. Virginia State Bar, Rec. No. 001720: I had ongoing professional relationship with appellant when I practiced law.

Cook v. Board of Zoning Appeals, Rec. No. 911067: I had personal friendship with attorney for appellant.

Fairfax Bank v. Crestar Bank, Rec. No. 930585: I owned a relatively large amount of stock in Fairfax Bank.

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.

Board of Zoning Appeals, Fairfax County, VA, 1978-1980: I was appointed to this position by the circuit court judges of Fairfax County.

Commissioner in Chancery, Fairfax County, VA, 1975-1980. I was appointed to this position by the circuit court judges of Fairfax County.

I have not been a candidate for elected office. I was considered for appointment to the Supreme Court of Virginia in 1988 but was not appointed to the position at that time.

- 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.

I have never held membership or office in any political party or election committee. In 1975, I worked on the campaign of Robert F. Horan, Jr., who was seeking re-election as the Democratic Party candidate for Commonwealth's Attorney of Fairfax County, Virginia. I did not have a job title. My responsibilities included the distribution of yard signs.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.
 - ii. whether you practiced alone, and if so, the addresses and dates;

July 1976 - July 1978 Sole Practitioner, General Practice, Fairfax, VA
 - 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.

July 1974 - July 1976 Assistant Commonwealth's Attorney, Fairfax, VA

July 1978 - January 1980 Keenan, Ardis, and Roehrenbeck,
Partner in General Practice, Fairfax, VA

- 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 did not serve 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.

1974 - 1976: I prosecuted felony and misdemeanor cases in the Fairfax County Circuit and General District Courts.

1976 - 1980: I handled civil and criminal litigation matters. My civil litigation included representation of small businesses, personal injury claims, and family law matters. My criminal litigation included felony and misdemeanor cases.

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

As a prosecutor my client was the People of the Commonwealth of Virginia. In private practice my clients were small businesses and individuals.

- 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.

About 80% of my practice involved litigation, and I usually appeared in court four or five days per week.

- i. Indicate the percentage of your practice in:

- | | |
|---|-----|
| 1. federal courts | 5% |
| 2. state courts of record | 35% |
| 3. other courts
(General District and Juvenile
and Domestic Relations
District Courts) | 60% |
| 4. administrative agencies | 0% |

- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings 25%
 - 2. criminal proceedings 75%

- 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.

In courts of record, I tried about 100 cases to verdict, judgment, or final decision as sole counsel of record.

- i. What percentage of these trials were:
 - 1. jury 40%
 - 2. non-jury 60%

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

I did not practice before the Supreme Court of the United States.

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

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

My most significant litigated matters included numerous felony jury trials, both as a prosecutor and as a defense attorney. These cases included charges of murder and rape. I was the sole counsel in these cases. Because these events occurred 30 or more years ago, I am unable to provide more specific information.

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 civil cases that did not proceed to trial, I obtained settlements for my clients in contract disputes and on personal injury claims. I also prepared wills for clients, drafted property settlement agreements in domestic cases, and conducted real estate closings. In criminal cases that did not proceed to trial, I frequently obtained plea agreements for my clients. In other cases, I obtained dismissal of the charges based on pre-trial motions to suppress. I performed all the above work as the sole attorney representing my clients.

I have never performed lobbying activities on behalf of any client or organization.

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 courses of the described duration. However, I participate as a guest speaker at law schools and in continuing legal education programs in Virginia and in the Washington, D.C. metropolitan area.

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

None.

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

None.

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

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I would have potential conflicts of interest in cases involving Pfizer, Inc. and BB&T Corporation. My brother works as an attorney for Pfizer, Inc. In addition, a significant amount of my stock portfolio consists of shares of Pfizer, Inc. and of BB&T Corporation. I would anticipate recusing myself from cases involving these corporations.

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

If an issue is presented that raises a close question, or a meritorious issue, under applicable rules of ethics and/or the Code of Conduct for United States Judges, I would recuse myself.

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.

In my work as an attorney, I accepted reduced-fee referrals from the Fairfax Bar Association for cases in which individuals could not afford the regular services of an attorney. I also accepted several court-appointed criminal cases each month. During my service as a Commissioner in Chancery for the Fairfax County Circuit Court, I waived my fee in cases involving litigants who had "lower incomes."

In the past year, my most significant pro bono work has involved the development of a judicial wellness initiative to serve the needs of judges who have substance abuse and mental health problems. I have devoted between 5 and 10 hours per week to this project.

During my tenure as a judge, I also have donated hundreds of hours in continuing legal education work, including programs related to legal services for indigent clients. I have been a frequent speaker in the public schools, including schools primarily attended by children from "lower income" families. Specific activities have included the following: Model Judiciary Program, Volunteer Judge, Virginia Bar Association and Virginia YMCA; Leadership

in the Law Summer Camp, Volunteer, Loudoun County Bar Association; Seatack Elementary School, Volunteer Mentor, Virginia Beach; Fairfax County Public Schools, Volunteer Speaker.

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.

I submitted an application for this position to the Virginia State Bar, which recommended me as "highly qualified" by a unanimous (10-0) vote. In addition, the Virginia Women Attorneys Association "highly recommended" me for the position. The Old Dominion Bar Association rated me as "highly qualified" for the position. The Northern Virginia Black Attorneys Association "highly recommended" me for the position. The Virginia Trial Lawyers Association found that I am "highly qualified" for the position. The Asian Pacific American Bar Association "highly recommended" me for the position. The Virginia Bar Association and the Virginia Association of Defense Attorneys recommended me for the position, which was their highest category of recommendation. Finally, the Hispanic Bar Association recommended me for the position.

On May 1, 2009, I had interviews with staff members and Virginia lawyers designated by Senators Webb and Warner. On May 19, 2009, I met with Senators Webb and Warner.

I have had several telephone conversations with staff from the U.S. Department of Justice, regarding questions concerning information required to complete the paperwork for this position and the nomination process.

I had an interview with the White House Counsel staff and Department of Justice staff on August 3, 2009.

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

No.

AFFIDAVIT

I, Barbara Milano Keenan, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

September 18, 2009

Barbara Milano Keenan
(NAME)

Anne-Marie Bunch
Anne-Marie Bunch, Notary Public
Commission #7013168
My Commission Expires March 31, 2010