

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).
Answer: Richard Carl Wesley

2. **Position:** State the position for which you have been nominated.
Answer: United States Circuit Judge of the U.S. Court of Appeals for the Second Circuit

3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.
Answer:
Home Chambers:
Livingston County Government Center
6 Court Street
Geneseo, New York, 14454
(585) 243-7910

Courthouse Chambers:
20 Eagle Street
Albany, New York 12207-1095

Temporary Courthouse Chambers:
286 Washington Avenue Extension
Albany, New York 12203
(518) 455-7736

4. **Birthplace:** State date and place of birth.
Answer:
August 1, 1949 in Canandaigua, New York

5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.
Answer:
Married to Kathryn Rice Wesley (maiden name: Rice)
Occupation: Kindergarten Teacher
Livonia Central School
6 Puppy Lane
Livonia, New York 14487
Number of Dependent Children: 1 (one)

RB

Counsel:

Theodore S. Kantor counsel for defendant
16 East Main Street Suite 950
Rochester, New York 14614
(585) 262-4700

- (a) This case was not reported.
- (b) This was an ancillary proceeding involving maintenance and other payments pursuant to a divorce decree.
- (c) I represented the plaintiff, Carol L. Buell.
- (d) I handled all aspects of the case.

20. Criminal History: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

Answer: No

* 21. Party to Civil or Administrative Proceedings: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Answer: Yes.

Actions Against Court of Appeals

✓ 1. Matter of N.Y. State Assn. of Criminal Defense Lawyers v Kaye et al. (96 NY2d 512 [2001]) Article 78 proceeding in which the petitioners challenged the Court's authority to alter reimbursement rates for assigned counsel in capital appeals. The Court determined that the Court had the administrative authority to establish those rates and dismissed the petition.

2. Hudson v State of New York (No. 02-CIV-6600[RCC])

This action was commenced in the U.S. District Court for the Southern District of New York. Mr. Hudson was a party to a State court action to quiet title to property in Dutchess County. Among other things, he made a motion for leave to appeal to the Court of Appeals (Hudson v Edgett, No. 97/782). That motion was denied. Mr. Hudson then asked the Court to certify a document he had submitted to the Court of Appeals, but court personnel were unable to locate it in the file. Although Mr. Hudson's action is directed against the Court of Appeals, I was not personally served in the matter. The Attorney General's Office is handling the matter and I would be more than happy to supply any additional information concerning that matter or refer any inquiries in that regard to the appropriate Assistant Attorney General.

3. Liang-Houh Shieh v Pataki, et al. (OAG No. 98-000881-0)*

Dr. Shieh, apparently disgruntled over a bar admission matter, obtained criminal judgments against members of the Court of Appeals and others in Taiwan without ever serving any member of the Court. Again, the New York State Attorney General's Office is working on the matter with outside counsel to have these "criminal" judgments vacated in Taipei. However, that process is not as of yet entirely successful. Any documents that we have received are in Chinese. Again, I would be more than happy to provide further materials, if necessary, along with the name and address of the Assistant Attorney General handling the matter.

* There is also a related matter involving the Taipei Economic and Cultural Office in New York.

4. Multani v U.S. DOJ, et al (97 - CV - 628)

Bruce Feldman, head of the Attorney General's Litigation Bureau, reports that this case was dismissed, and the Attorney-General's file closed, in January 1999. This Federal court action followed proceedings in State courts bearing the same title. On June 5, 1996, the State action was dismissed by Supreme Court, Erie County (Whelan, J., Index No. I-1996-1923). Multani appealed to the Appellate Division, Fourth Department, which affirmed in an order entered November 8, 1996 (Denman, P.J., Green, Wesley, Doerr and Boehm, JJ., No. 1723). Multani appealed to the Court of Appeals, which dismissed the appeal *sua sponte* upon the ground that no substantial constitutional question is directly involved on January 9, 1997 (Titone and Wesley, JJ. taking no part, Mo. No. 1716, SSD 117). Apparently Multani then unsuccessfully sought review in the Supreme Court of the United States. The complaint in the Federal action attempts to allege a violation of Multani's right to due process as a result of "judicial malpractice." Multani's motion for default judgment in the Federal action was denied, and the action later was dismissed.

5. Sinacore v NY Ct. of Appeals (8:02-CV-0761-T-27MSS)

The Assistant Attorney General handling this case (Steve Schwartz, tel. 518-473-8047) reports that plaintiff's claims were dismissed with prejudice in late November, 2002. Mr. Sinacore sued the Court of Claims and other State courts, including the Court of Appeals for dismissing his lawsuit challenging certain disciplinary matters involving his employment as a corrections officer. Specifically, he sued the Court of Appeals for not granting leave to hear his appeal of the dismissal below. In an order dated November 19, 2002, the District Court dismissed with prejudice the claims against, *inter alia*, the Court of Appeals, upon the ground that "Judicial Defendants enjoy absolute immunity from Plaintiff's purported Claims."

Additional information concerning any actions brought against the Court of Appeals of the State of New York can be obtained from the Clerk of the Court, the Honorable Stuart M. Cohen, 20 Eagle Street, Albany, NY 12207 (518-455-7810).

22. Potential Conflict of Interest: Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

Answer: My general procedure to resolve a potential conflict of interest has been, and remains, to examine carefully every case before me to determine if I have any familiarity

with the parties outside the confines of that case. If I would not feel comfortable ruling against a party because of that relationship, I will not sit on the case. To ensure no conflicts arise, I have compiled a list of all my investments, boards on which I sit, organizations of which I am a member and people with whom I have worked closely. I routinely cross-reference the parties in a case before me against this list to guarantee that neither a potential conflict of interest exists nor the appearance of such. I have always adhered to the New York Code of Judicial Conduct in that regard (see, Canon 3[C]) and will adhere to the requirements of the Code of Judicial Conduct (28 USC § 455).

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

Answer: No

24. Sources of Income: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. 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.

Answer: See Financial Disclosure Report, attached as **schedule 2**.

25. Statement of Net Worth: Complete and attach the financial net worth statement in detail. Add schedules as called for. See attached Net Worth Statement.

- * 26. Selection Process: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Answer: Yes.

- (a) If so, did it recommend your nomination?

Answer: No. The Governor's Screening Committee reviews candidates for the District Court.

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

Answer: I was called to the White House on September 18, 2002 with regard to a vacancy at the Second Circuit. I was interviewed by White House Counsel Alberto Gonzales and staff, along with someone from the Department of Justice. During the interview, I discussed my work at the Court of Appeals and my personal and professional background.

In late December, I was contacted by the White House and told they would like me to complete some paperwork for a background check. I completed several forms, including an SF-86, a White House Questionnaire, the Senate Committee on the Judiciary Questionnaire and a financial disclosure form. I forwarded those forms to the Office of Legal Policy at the Department of Justice.

Thereafter, I was interviewed over the phone by a representative of the Office of Legal Policy -- the interview lasted several hours and covered most of my professional and personal life. I was also interviewed in person by an F.B.I. agent in my Albany chambers. That interview also covered my professional and personal life experiences. I also spoke with the Agent over the phone on two or three occasions to answer questions he had.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

Answer: No.

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

CONFIDENTIAL

NAME:

HOME ADDRESS:

TELEPHONE NUMBER:

1. **Employment History:** State whether you have ever been discharged from employment for any reason or have ever resigned after being informed that your employer intended to discharge you.
2. **Bankruptcy and Tax Information:** Information under this heading must be provided for yourself and your spouse.
 - (a) Have you and your spouse filed and paid all taxes (federal, state, and local) as of the date of your nomination? Please indicate if you filed "married filing separately." Did you make any back tax payments, and if so, indicate if you have made any back tax payments with in the past three (3) years. If so, please provide full details.
 - (b) Has a tax lien or other collection procedure(s) ever been instituted against you or your spouse by federal, state, or local authorities? If so, please provide full details.
 - (c) Have you or your spouse ever been the subject of any audit, investigation, or inquiry for federal, state, or local taxes? If so, please provide full details.
 - (d) Have you or your spouse ever declared bankruptcy? If so, please provide full details.
3. **Past Investigations and Complaints:** State whether, to your knowledge, you have ever been under federal, state, or local investigation for a possible violation of any civil or criminal statute or administrative agency regulation. If so, please provide full details.
 - (a) Has any organization of which you were an officer, director, or active participant ever been the subject of such an investigation with respect to activities within your responsibility? If so, please provide full details.
 - (b) Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for a breach of ethics, unprofessional conduct or a violation of any rule of practice? If so, please provide full details.
4. **Disclosure:** Please advise the Committee of any unfavorable information that may affect your nomination, including prior use, possession, purchase or distribution of any illegal substance.