

July 10, 2009

Honorable Jeff Sessions
Ranking Member, United States Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20515

Dear Senator Sessions:

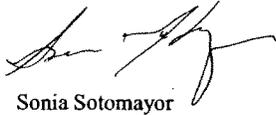
It was a pleasure to meet with you again in person yesterday. I appreciate the opportunity to address these questions in writing prior to my hearing, so that we can remain focused during the hearing on my qualifications and my record. I have provided answers to the best of my recollection below.

1. My practice was informal and was therefore never incorporated.
2. Yes. I sought and received the consent of the DA's office through my immediate supervisor, Silvio Mollo.
3. Yes. At the time of my employment there, the DA's office engaged in a case-by-case analysis of whether to allow any particular outside employment. As Robert Morgenthau has stated publicly, such permission was regularly granted during that period.
4. I do not know whether the DA's office distinguished between forming an outside law firm and working with an independent law firm.
5. Yes. I informed one or both of two litigation partners, Fran Bernstein and David Botwinik.
6. There was no objection to my continuing to counsel my family and friends.
7. My informal assistance to my family and friends never presented any conflict with my other employment.

8. Sotomayor & Associates was an informal practice that allowed me to provide legal advice to family members and friends on simple matters such as will preparation, uncontested divorces, real estate closings, and other business prospects.
9. No, I never appeared in my Sotomayor & Associates capacity before any court or other judicial body.
10. Given that the work was performed decades ago, I do not recall all of the clients for whom I provided legal advice. I recall that I assisted Ken Kinzer, the husband of a close friend of mine, in setting up his dry cleaning business. I recall advising my cousin Miriam Gonzerelli prior to her separation and divorce, and also advising Miriam's mother prior to her own separation and divorce. And I recall assisting my uncle Alfred Gutierrez, an independent insurance salesman, primarily by reviewing contracts for him.
11. No, I never had clients sign retainer agreements.
12. No, I performed no other solo work from 1983 to 1986.
13. No, I never received any compensation for referring a client or anyone else to any law firm.
14. Yes, I received compensation and on occasion gifts—which I valued and reported as income—for the legal services I provided to family and friends.
15. No, I did not send out bills; the compensation was agreed upon in a more informal manner.
16. My family members and friends paid what they could afford for my services, which was always below market rate.
17. No associates worked for me.
18. No, Sotomayor & Associates engaged in no advertising.
19. I do not recall making or using letterhead.

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Sincerely,



Sonia Sotomayor

CC:

Honorable Patrick Leahy
Chairman, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20515

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152 Dirksen Senate Office Building
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Dear Senator Sessions:

You have asked a number of additional questions regarding my recusals during my six years as a District Court Judge and my eleven years as a Circuit Court Judge. I have always been especially scrupulous about following the Code of Judicial Conduct. As I previously stated on my Senate Questionnaire, I have chosen to remove myself from cases, even when not technically required by ethical rules, to avoid even the appearance of impropriety. I appreciate the opportunity to provide additional clarity on these questions now so that we can, as you suggest, focus on other issues during my confirmation hearing.

1. You asked about my recusal from *Cohen v. Empire Blue Cross & Blue Shield*, which I listed on my Questionnaire as docket number 94-241. You suggest in your letter that I provided an incorrect docket number, but I have reconfirmed that *Cohen v. Empire Blue Cross & Blue Shield* is indeed docket number 94-241. This case was on the docket of the Southern District of New York and can be found by searching the Public Access to Court Electronic Records (PACER) database for number 94-241. I do recall recusing from this case. As I explained on my Questionnaire, I recused because I was serving on a court subcommittee at the time that was addressing changes to the court's Blue Cross policy and because I expected at the time of my recusal in 1996 to have potential claims disputes with Blue Cross as my personal insurer. Those conditions no longer existed in 2001, which is why I did not recuse from the two more recent Blue Cross cases you cite.
2. You asked about my participation in *United States v. Giffen*. As you note, I did in fact participate in *United States v. Giffen*. The indication on my Questionnaire that I had recused was a mistake generated by an error in the Court's reporting system. As I explained in my Questionnaire, the Clerk's Office records recusals, known as judicial disqualifications ("DQs") on internal records, which are available only to court personnel. To help me complete my Questionnaire, the Clerk ran a database search for all DQ mentions during my tenure. That report generated 120 results for cases of mine containing a reference to a "DQ." Normally, only cases from which a judge recused are marked in this system with a "DQ." In *United States v. Giffen*, the report specifically indicated that I was not DQ'd, an indication that caused it to appear when the Clerk

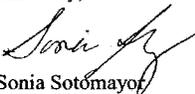
searched for mentions of “DQ” in my record. The DQ records do not normally indicate cases from which a judge was *not* disqualified. I do not know why there was a specific entry indicating the absence of a DQ from this case, but this entry resulted in the Clerk mistakenly listing that case as one from which I had recused when in fact I had not.

3. You asked why I employed a different standard of recusal for Pavia & Harcourt, my former firm, than I did for the non-profit organizations for which I had previously volunteered as an outside board member. As you point out, I noted on my Questionnaire to the Senate during my nomination to the Circuit Court that I recused from any matter in which my former firm or its clients, or a former client with whom I worked, was involved because my former firm continued to advise me on personal matters. I also noted that I recused from hearing any matter involving issues in which I participated while a member of the Board of Directors of any of the non-profit organizations listed on Part III, Question I of that Questionnaire. I believed then and continue to believe that my continuing relationship with Pavia & Harcourt at the time required a broad recusal policy. Although at the time of my confirmation to the Court of Appeals I had a continuing relationship with Pavia & Harcourt, my volunteer service with the organizations listed on my Questionnaire had concluded at the time I took the district bench—and had long since concluded by the time I was nominated to the Circuit Court.
4. You have asked about my participation in *Grant v. Local 638*, 373 F.3d 104 (2d Cir. 2004), a case in which an attorney of the Puerto Rican Legal Defense and Education Fund served as counsel for the plaintiff-intervenors. It appears that the relevant intervention occurred in 2003, more than ten years after my service to PRLDEF as an outside Board Member had concluded. Although I do not recall the precise analysis I performed, I am certain I considered whether I had any relationship with the attorney involved; the attorney in this case was one with whom I had not worked previously. I would also have considered whether I participated personally in the issue during my period of involvement with PRLDEF. If the answers to both questions were negative, I would not have been required to recuse. Prevailing judicial ethics do not require a lifetime recusal from cases involving entities with which a judge was once affiliated.
5. Yes—I considered the factors just described.
6. Yes.
7. You have asked how I defined an “issue” that I worked on during my volunteer work on the Boards of Directors of various non-profits for recusal purposes. I would not say I defined it narrowly or broadly. If a case came before me involving matters on which my prior non-profit work would have posed a conflict under the Judicial Code, I would have

recused. To try to illustrate, I volunteered for the Stanley D. Heckman Educational Trust, which granted college scholarships. I would not have seen that as a reason to recuse from any cases involving college scholarships. On the other hand, had a case come before me regarding one of the scholarships granted by the Trust in which I had any personal involvement, I would have recused.

8. You asked about my former membership in the National Council of La Raza (NCLR), one of the nation's leading Hispanic civic organizations, and whether I ever considered recusing from cases in which they were a party or intervened. I do not recall ever having to consider that question. Between 1998 and 2004, when I was a member of NCLR, only one case came before me in which NCLR was a party – *National Council of La Raza v. Department of Justice*, which I listed on my Questionnaire. As also noted on my Questionnaire, I recall recusing from that case because one of the lawyers was a former law clerk of mine. Because that issue alone mandated my recusal, I do not recall if I considered any other reasons for recusal.
9. You asked what factors I considered in deciding whether or not to recuse from cases involving NCLR. As noted, I do not recall ever having to address this question since in the only case in which it would have arisen, I had to recuse for the other reasons just stated.
10. No other case involving NCLR came before me between 1998 and 2004.

Sincerely,



Sonia Sotomayor

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