

II. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Matthew George (Matt) Whitaker

2. Address: List current place of residence and office address(es.)

Home: Urbandale, Iowa

Work: 1900 Hub Tower, 699 Walnut Street, Des Moines, Iowa 50309

3. Date and place of birth.

October 29, 1969, Des Moines, Iowa

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married

Marca Dawn (Andrle) Whitaker

Civil Engineer

Howard R. Green & Associates

Des Moines, Iowa

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Iowa (1988-1995) BA—1991, MBA—1995, JD—1995

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1993—Finley Alt Smith, Summer Associate

1994—Robins Kaplan Miller & Ciresi, Summer Associate

1994-1995 The University of Iowa, Teaching Assistant

1995-1996—Robins Kaplan Miller & Ciresi, Associate

1996-1998—Briggs & Morgan, Associate

1998-2001—SUPERVALU INC., Corporate Counsel  
2001-present—Finley Alt Smith, Attorney  
2002-present—Road Husky Trailer Co., LLC, President  
2003-present—LEI Acquisition, LLC, President  
2003-present—Buy The Yard Concrete, LLC, Sr. Vice President

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Athletic Scholarship--Football, University of Iowa, 1988-92  
Big Ten Medal of Honor 1992  
National Association of Collegiate Directors of Athletics Scholarship 1992  
Graduated from Iowa Law School with Distinction  
Senior Associate Editor, Iowa Law Review

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

Hennepin County (Minnesota) Bar Association  
Minnesota State Bar Association  
Iowa State Bar Association  
Polk County (Iowa) Bar Association  
American Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying:  
American Bar Association  
Iowa State Bar Association

Other:

The Federalist Society  
Republican Party of Iowa  
Christian Coalition of Iowa  
Rotary International  
For Our Grandchildren  
Bull Moose Club (a young professional Republican organization in Polk  
County, Iowa)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Minnesota 1995-present\*

Iowa 2002-present

US District Court for the District of Minnesota 1995-present

US District Court for the Northern District of Iowa 2003-present

US District Court for the Southern District of Iowa 2003-present

US Eighth Circuit Court of Appeals 2004-present

\*Although my membership has not lapsed, I feel it appropriate to mention that from October 1999 through February 2001, my employer, SUPERVALU, failed to pay my Minnesota bar dues because of an administrative error. As soon as the oversight was brought to my attention, SUPERVALU paid for all amounts in full. No further action was required.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Iowa's Limited Liability Company Act: An Entrepreneur's Dream, Iowa Law Review 1994, 79 Iowa Law Rev. 1181

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent  
November 1999

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

2002 Candidate, Treasurer--State of Iowa (unsuccessful)

15. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. 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;  
  
No
  2. whether you practiced alone, and if so, the addresses and dates;  
  
I have not practiced alone.
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Robins Kaplan Miller & Ciresi  
Associate  
2800 LaSalle Plaza  
800 LaSalle Ave.  
Minneapolis, MN 55402  
1994 (Summer Associate), 1995-1996 (Associate)

Briggs & Morgan  
2400 IDS Center  
80 S. 8th Street

Minneapolis, MN 55402  
1996-1998 (Associate)

SUPERVALU INC.  
11840 Valley View Road  
Eden Prairie, MN 55344  
1998-2001(Corporate Counsel)

Finley Alt Smith Scharnberg Craig Hilmes & Gaffney  
604 Locust  
Suite 400  
Des Moines, IA 50309  
1993 (Summer Associate), 2001-present (Attorney)

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

While at the Robins firm (1995-1996), the general nature of my practice was general commercial and litigation. While at the Briggs firm (1996-1998), the general nature of my practice was general commercial, transactional and dispute resolution. While with SUPERVALU (1998-2001), the general nature of my practice was transactional and general commercial. Currently at the Finley firm (2001-present), the general nature of my practice is commercial litigation.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical former client would be companies involved in commercial for profit enterprises. I have specialized in litigation, mergers and acquisitions and technology contracts.

- b. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As an attorney for the Robins law firm and the Briggs law firm, I would occasionally appear in court. As an attorney for SUPERVALU, I did not appear in court, except for an

occasional pro-bono matter. Currently with the Finley law firm, I appear in court on a weekly basis.

2. What percentage of these appearances was in:

(a) federal court;  
Robins/Briggs ~15%  
Finley ~25%

(b) state courts of record;  
Robins/Briggs ~85%  
Finley ~75%

(c) other courts. 0%

3. What percentage of your litigation was:

(a) civil:  
Robins/Briggs 100%  
Finley ~90%

(b) criminal.  
  
Robins/Briggs 0%  
Finley ~10%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5 sole counsel  
3 chief counsel  
2 associate counsel

5. What percentage of these trials was:

(a) jury; 10%  
(b) non-jury. 90%

16. Litigation: Describe the ten most significant litigated matters which you personally handled. 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:

- (e) the date of representation;
- (f) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (g) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) John Harkness v. Samuel Burt

Iowa District Court—Polk County Case No. CL90571 (6/17/03)  
Personal injury claim resulting from driver of automobile driving over Mr. Harkness' leg.

Claim settled out of court

I represented the plaintiff, Mr. Harkness

I was the lead attorney in this matter handling all aspects of the case including, drafting and arguing motions, conducting depositions and the negotiation of the settlement.

**Judge:** The Honorable James Rosenberg

**Co-counsel:** Brian Stowe, Finley Alt Smith, 604 Locust, Suite 400, Des Moines, Iowa 50309 (515) 288-0145

**Opposing Counsel:** Elizabeth Nigut, Bradshaw, Fowler, Proctor & Fairgrave, P.C., 801 Grand, Suite 3700, Des Moines, Iowa 50309 (515) 246-5879

(2) Jane Johnston v. Hy-Vee, Inc. and Ronnie and Mechelle Woodruff d/b/a Lenox Cleaners

Iowa District Court—Union County Case No. SCSC008600 (8/21/03)

Breach of Contract and Negligence Claim arising out of dry cleaning performed by Lenox Cleaners that operated out of a Hy-Vee store in Creston, Iowa

I represented the defendant, Hy-Vee, Inc.

Judgement against Lenox Cleaners, Ruling in favor of Hy-Vee.

I was the lead trial attorney that handled all aspects of the trial.

**Judge:** Hon. James L. Pedersen

**Opposing Counsel:** Loretta Harvey, 109 W Montgomery, Creston, Iowa 50801 (641) 782-7051

**Co-Defendant Counsel:** Megan Wolfe, Bradshaw, Fowler, Proctor & Fairgrave, P.C., 801 Grand, Suite 3700, Des Moines, Iowa 50309

(515) 246-5851

- (3) Beth Manning & Jody Sprock d/b/a Beth Manning, Jody Sprock Interiors & Associates v. Bertini Marble & Tile L.C.  
Iowa District Court—Polk County  
Case No. SCSC371771 (6/20/03)  
Breach of Contract for home remodeling performed at residence of Thomas and Michelle Brown.  
I represented defendant, Bertini Marble & Tile  
I was lead trial attorney that litigated this matter  
Judgement against Bertini Marble & Tile  
**Judge:** Hon. Carol Egly  
**Opposing Counsel:** William Wickette—Patterson Law Firm, 505 Fifth Ave., Suite 729, Des Moines, IA 50309, (515) 283-2147
- (4) Gilcrest/Jewett Lumber v. Betts & Beer Construction Co., Inc.  
Iowa District Court—Polk County  
Case No. SCSC371923 (6/24/03)  
Breach of Contract claim by subcontractor against general contractor  
I represented defendant Betts & Beer Construction Co., Inc.  
I was lead trial attorney that litigated this matter.  
Judgement against defendant, Betts & Beer  
**Judge:** Hon. Carol Coppola  
**Opposing Counsel:** David Wetsch, Wetsch & Abbott, 974 73rd Street, Des Moines, Iowa 50312 (515) 223-6000.
- (5) Continental Machinery Movers v. Midland International Tileworks, Inc.  
Iowa District Court—Polk County  
Case No. CV 3936  
Breach of Contract and Execution of Foreign Judgment  
I was lead counsel on this matter representing Continental Machinery Movers in collection of significant charges for dismantling, transporting and reassembling industrial equipment. I performed the execution of the foreign judgement, attended sheriff's sale and negotiated the ultimate settlement of this matter.  
**Opposing Counsel:** Donald Neiman, Bradshaw, Fowler, Proctor & Fairgrave, 801 Grand Ave., Suite 3700, Des Moines, Iowa 50309, (515) 246-5808.



(6) Ramp v. City of Des Moines & Brooks Borg Skiles

United States District Court for the Southern District of Iowa  
Case no. 4:01-CV-70384

This case involved a construction dispute over the design and construction of the parking ramp at the Des Moines International Airport. The City of Des Moines sued Ramp Engineering as the project consultant alleging delay, damages and change orders of approximately \$2.8 million dollars. Ramp then sued Brooks Borg Skiles as the sub-consultant architect. Our firm represented Brooks Borg Skiles in this matter.

My role included drafting motions, preparing clients for deposition and taking depositions of representatives of Ramp and The City of Des Moines.

The case was resolved by way of negotiated settlement.

**Judge:** Hon. Thomas J. Shields, U.S. Magistrate

**Co-Counsel:** Kevin Driscoll, Finely Alt Smith, 699 Walnut, 1900 Hub Tower, Des Moines, IA 50309 (515) 288-0145

**Opposing counsel:** H.R. "Randy" Duncan and Martin Kenworthy, Duncan, Green, Brown, Langeness & Eckley P.C., 400 Walnut Street, Suite 380, Des Moines, Iowa 50309 (515) 288-6440.

(7) Mass Transit Authority v. Design Alliance, et al.

Iowa District Court of Polk County, Case No. EQCV CL 85724:

This case involved allegations that the failure to obtain a performance and payment bond resulted in approximately \$750,000.00 in damages when the general contractor went bankrupt. My firm represented defendant, Design Alliance. The sub-contractor sued the City of Des Moines, Mass Transit Authority, United States Fidelity as the bonding company, Lamair-Mulock & Condon as the agent and Design Alliance as the architect for failure to procure the bond.

This matter was resolved by negotiated settlement.

My involvement in this case included depositions of opposing parties, preparation of expert witnesses, and preparing of legal briefs and summary judgment motions.

**Judge:** D.J. Stovall

**Co-Counsel:** Kevin Driscoll, Finely Alt Smith, 699 Walnut, 1900 Hub Tower, Des Moines, IA 50309 (515) 288-0145

**Opposing Attorneys:** James R. Bowers, BRICK, GENRY, BOWERS, SWARTZ, STOLTZE, SCHULING & LEVIS, P.C. 550 – 39<sup>th</sup> Street, Suite 200, Des Moines, IA 50312 (515) 274-1450; Ronald Riley, HANSEN, McCLINTOCK & RILEY 218 – 6<sup>th</sup> Avenue 8<sup>th</sup> Floor, Des Moines, IA 50309-4092 (515) 244-2141; Rick Olson, 2635 Hubbell Avenue, Des Moines, IA 50317 (515) 265-8877; Gregory Ervanian DICKINSON LAW FIRM 699 Walnut Street, Suite 1600 Des Moines, IA 50309-3968 (515) 244-2600; Roger T. Stetson BELIN LAW FIRM 666 Walnut Street, Suite 2000 Des Moines, IA 50309-3989 (515) 243-7100; Dick L. Jensen DREHER, SIMPSON JENSEN, P.C. 604 Locust Street, Suite 222 Des Moines, IA 50309 (515) 288-5000; Debra L. Hulett NYEMASTER, GOODE, VOIGTS, WEST, HANSELL & O'BRIEN, P.C. 700 Walnut Street, Suite 1600 Des Moines, IA 50309 (515) 283-3100 Jeffrey D. Stone 3737 Woodland Ave., Ste. 437 West Des Moines, IA 50265 (515) 225-3737

(8) Swan Packing, et al. v. Millard Refrigerated Services and Midwest Automatic Fire Sprinkler Company

Iowa District Court for Polk County, Case No. CL80531.

This case involved a fire and damages of approximately \$1.5 million to meatpackers inventory held at a cold storage facility owned and operated by Millard.

My firm represented defendant Midwest Sprinkler Company. My involvement included producing client representatives for depositions, deposing opposing party representatives, and taking trial testimony for presentation at trial. I also participated in final mediation.

Case was resolved by negotiated settlement through mediation.

**Judge:** Hon. Robert D. Wilson/Judge Donald Nickerson  
**Co-Counsel:** Kevin Driscoll, Finely Alt Smith, 699 Walnut, 1900  
Hub Tower, Des Moines, IA 50309 (515) 288-0145  
**Opposing Attorney:** Mark Polansky, Cozen & O'Connor Suite 1500  
222 South Riverside Plaza Chicago, IL 60606-6000 (312) 382-3165  
**Co-defendant Attorney:** Scott Lautenbaugh--The Exchange  
Building, 1905 Harney Street, Suite 800 Omaha, Nebraska 68102,  
(402) 342-6233

- (9) Kevin Askins d/b/a Community Builders v. J.P. Mann Construction  
Company & United States Fidelity and Guaranty Company.

Iowa District Court of Polk County, Case No. CL 89023

My firm represented defendant J.P. Mann Construction Company.  
This case involved a dispute between a general contractor and a sub  
contractor. My involvement included preparing this case for trial  
and participating in the mediation. This case was settled prior to  
trial.

**Judge:** Arthur Gamble  
**Co-Counsel:** Kevin Driscoll, Finley Alt Smith, 699 Walnut, 1900  
Hub Tower, Des Moines, IA 50309 (515) 288-0145  
**Appearing Attorneys:** William J. DeBauche, 120 West 12th, Suite  
1300, Kansas City, MO 64105, (816) 471-7000; Jeffrey D. Stone,  
Pingel & Templer, P.C., 3737 Woodland Avenue, Suite 437, West  
Des Moines, Iowa 50266

- (10) City of Eldora et. al. v. Mercy Medical Center et. al.

Iowa District Court of Hardin County; Case No. LACV078-997-  
0701

The City of Eldora, Iowa sued a state-wide hospital system following  
the closing of a hospital/clinic in Eldora, Iowa. The suit started as a  
class action matter with claimed damages of \$20 million. My firm  
represented Mercy. My involvement included preparing motions  
and preparing this case for trial. This case was settled prior to trial.

**Judge:** Judge William J. Pattinson

**Co-Counsel:** Kevin Driscoll, Finley Alt Smith, 699 Walnut, 1900 Hub Tower, Des Moines, IA 50309 (515) 288-0145

**Appearing Attorneys:** David J. Dutton, Dutton, Braun, Staack & Hellman, P.L.C. 3151 Brockway Road, P. O. Box 810, Waterloo, IA 50704, (319) 234-4471; Roberta M. Anderson, Schroeder & Anderson, 119 Second Street NW, Mason City, IA 50401, (641) 423-4935

17. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

SUPERVALU's acquisition of Richfood Holdings  
Lead in-house attorney in \$1.5 billion transaction  
Coordinated entire legal team  
Transaction closed August 31, 1999

SUPERVALU's acquisition of Randall Foods  
Co-counsel on \$100 million transaction  
Coordinated closing matters  
Transaction closed January 4, 1999

SUPERVALU's sale of Hazelwood Farms Bakeries to Pillsbury  
Co-counsel on \$250 million transaction  
Transaction closed May 22, 1999

SUPERVALU's Sale of \$600 million of Notes  
Co-counsel  
Transaction closed July 30, 1999 and September 14, 1999

Merger of Valujet with Air Tran Airways  
Associate counsel on legal team representing Air Tran including due diligence, document drafting and closing transaction.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None

2. 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.

In the event of a potential conflict of interest, I will consult with the ethics officials for the Executive Office for United States Attorney, Department of Justice.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

I do not intend to pursue outside employment.

4. 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, patents, 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.)

The Financial Disclosure Report is attached

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Candidate, Treasurer of State-Iowa Campaign from September 2001 until November 2002.

Caucus co-chair, George W. Bush 2000. 1999-2000. Coordinated precinct caucus activities for Minnesota precinct caucuses for my local precinct. Distributed literature and made phone calls.

Dave Vaudt for State Auditor Steering Committee. 2003. Serve on advisory committee for current state auditor of Iowa. Help develop fund-raising plans and campaign strategy.

### III. GENERAL (PUBLIC)

1. 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 take my pro bono obligation seriously. That is why I have participated in many free legal clinics in both Minnesota and Iowa. I have also represented several not for profit corporations from start-up and on-going operations. I represented a not for profit faith-based group that acquired a house in the inner-city of Minneapolis and created an apartment for single teenage mothers. I represented a christian high school in the Twin Cities in various matters, including employment law matters. I also coached a high school mock trial team that competed in a high school tournament. I have also represented a documentary filmmaker on various film projects.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

No

**FINANCIAL STATEMENT**

**NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	3,000	Notes payable to banks-secured	
U.S. Government securities-add schedule	0	Notes payable to banks-unsecured	13,235
Listed securities-add schedule	0	Notes payable to relatives	0
Unlisted securities--add schedule	233,000	Notes payable to others	0
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid tax and interest	0
Doubtful	0	Real estate mortgages payable-add schedule	224,810
Real estate owned-add schedule	270,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	15,000	(see schedule 5)	\$16,000
Cash value-life insurance	0		
Other assets itemize:			
Spouse's IRA/401K	45,000	Total liabilities	254,045
		Net Worth	311,955
Total Assets	566,000	Total liabilities and net worth	566,000
<b>CONTINGENT LIABILITIES</b>		<b>GENERAL INFORMATION</b>	
As endorser, comaker or guarantor	737,693* *See Note 1	Are any assets pledged? (Add schedule)	No
On leases or contracts	0	Are you a defendant in any suits or legal actions?	No
Legal Claims	0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	0		
Other special debt	0		



\*Note 1-This represents guarantee's made by me on 3 business loans for Little Endeavors Childcare, Buy the Yard Concrete and NW Trailer Sales and Service. Each of these loans is fully secured on the assets of each company and each company has more assets than necessary to cover the outstanding loan amount. Schedule 2 lists the value of each company after accounting for these loans.

**Schedule 1  
Listed Securities**

Marci Whitaker 401K/IRA \$45,000

**Schedule 2  
Unlisted Securities**

Little Endeavors Childcare	\$150,000.00
NW Trailer Co.	\$ 50,000.00
MMCL Partners	\$ 13,000.00
Buy The Yard Concrete	\$ 20,000.00
	<hr/>
	\$ 233,000.00

**Schedule 3  
Real Estate Owned**

Residence- Urbandale, Iowa \$270,000

**Schedule 4  
Real Estate Mortgages**

ABN AMRO	\$160,810
Iowa State Bank	<u>\$64,000</u>
	\$224,810

**Schedule 5  
Other Debts**

Credit Card Debt \$16,000