



**APPLICATION OF JAMES RONALD (RON) CARRIER
FOR CIRCUIT OR ASSOCIATE CIRCUIT JUDGE
31st CIRCUIT JUDICIAL COMMISSION
GREENE COUNTY, MISSOURI (as adopted June 8, 2009)**

RESPONSES TO THESE QUESTIONS WILL BE MADE PUBLIC IF THE APPLICANT IS NOMINATED.

NOTE – Please submit seven (7) paper copies with attachments.

1. Present principal occupation and title:
I am an attorney with the Missouri Attorney General's Office. My present title is Chief Counsel of the Southwest Regional Office.

2. What is your age? **49**

3. (a) How many years have you been a citizen of the United States? **49**

(b) How long have you been a Greene County resident? **24 years**

(c) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri? **31**

4. State the date you were admitted to The Missouri Bar and whether your license is in good standing. If not, explain in detail.

I was admitted to The Missouri Bar in May 1989 and my license is in good standing.

5. List any other states, courts, or agencies in which you are licensed as an attorney.

United States District Court, Western District of Missouri

State of Colorado – my license is currently on inactive status due to not practicing in that state.

6. (a) State the name and address of all colleges and universities attended, other than law school, together with the dates and degrees received.

**Drury College (now Drury University)
900 N. Benton
Springfield, Missouri 65802
Dates of attendance: 1982 to 1986**

**Degree received: Bachelor of Arts, May 1986 (Major: Political Science;
Minors: Business Administration, History)**

(b) List/describe any college or university activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

**Graduated magna cum laude
Student Body Vice President
Mortar Board Senior Honor Society
Alpha Lambda Delta Freshman Honor Society
Phi Alpha Delta Pre-Law Fraternity
Drury Ambassadors
Student Union Board, Chair of Arts and Lectures Committee
Sigma Pi Fraternity; Sage (President), Fourth Counselor (Secretary), and
Herald (Pledge Educator)**

(c) Attach a certified copy of college, university and law school transcripts here, or have the institutions send transcripts direct to the contact person.

College transcript located at "A."

Law school transcript located at "B."

7. (a) State the name and address of all law schools attended together with the dates and degrees received.

**University of Missouri-Columbia School of Law
125 Jesse Hall
Columbia, Missouri 65211
Dates of attendance: 1986-1988
Degree received: Juris Doctor, December 1988**

(b) List/describe any law school activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

**Ike Skelton, Sr. Prize, awarded for best work in Trial Practice
Fred L. Howard Prize for Excellence in Appellate Advocacy
American Jurisprudence Prize for highest grade in Trial Practice
Order of the Barristers
Member and Judging Director, Board of Advocates
ABA Negotiation Competition Regional Team Member
First Year Moot Court Competition – Best Oralist
Dean's List (two semesters)**

8. State, in chronological order (starting with the earliest employment) (a) significant non-law-related employment prior to law school and (b) all employment from the beginning of law school to the present. To the extent reasonably available to you, include the name and address of each employer and the dates of employment, and, for legal employment, describe the positions you have held, e.g., associate, partner, law clerk, general counsel.

House Father - Sigma Pi Fraternity;

808 S. Providence Road, Columbia, Missouri 65203 (1986–1987)

Law Clerk - Sapp, Woods, Orr, Bley and Eng (firm is no longer in existence);

Contact Wally Bley, a former partner in the firm, at Bley & Evans, LC, 1000 West Nifong Boulevard, Building 4, Suite 200, Columbia, Missouri 65203 (1987–1988)

Associate Attorney - Harrison, Tucker, Geisler & Hyde;

1121 S. Glenstone, Springfield, Missouri 65804 (the firm is now known as Hyde, Love & Overby) (1989–1990)

Adjunct Faculty Member - Drury University (formerly Drury College);

900 N. Benton, Springfield, Missouri 65802 (various semesters, 1991–2007)

Assistant Prosecuting Attorney - Greene County Prosecuting Attorney's

Office; 1010 Boonville, Springfield, Missouri 65802 (1990–1996)

Greene County Prosecuting Attorney - Greene County Prosecuting

Attorney's Office; 1010 Boonville, Springfield, Missouri 65802 (1996–1998)

Chief Counsel (2002-present), Acting Chief Counsel (2000-2002), Assistant

Attorney General (1999-2000) - Missouri Attorney General's Office; 149 Park Central Square, Ste. 1017, Springfield, Missouri 65806

9. If you were a student at any school from which you were suspended, placed on probation, or expelled by school authorities, for any reason, describe the circumstances.

I have never been suspended, placed on probation, or expelled by school authorities of any school I have attended.

10. Describe the nature of your experience in trial and appellate courts and explain how they demonstrate the quality of your legal work. (*You either may take as*

much space as you need here or attach your response on separate sheets). Include in your response:

- a) **Appellate Experience:** Please include a representative list of cases you have briefed and/or argued (if you are a judge, include representative cases from your practice prior to your judicial appointment) including, to the extent reasonably available to you, the style, date, and court and, if published, the citation; identify the client(s) you represented and opposing counsel; give a one-paragraph description of the case and your role.

None. Pursuant to Section 27.050, RSMo, the Criminal Division of the Attorney General's Office is charged with handling all felony criminal appeals. As a result, I have not litigated any of the appeals taken in my felony criminal trials.

- b) **Trial-Level Experience:** Please include a representative list of cases and/or administrative hearings you have handled (if you are a judge, include representative cases from your practice prior to your judicial appointment) including, to the extent reasonably available to you, the style, date, and court; identify who you represented and opposing counsel; state whether the case was disposed of following a jury trial, bench trial or at what other stage; give a one-paragraph description of the case and your role.

I have tried over fifty jury trials (almost all felony jury trials), several felony bench trials, and a significant number of misdemeanor bench trials. The following is a representative list, in chronological order:

State of Missouri v. Ronald Lee Wright

Jury trial in March 1991

Greene County Circuit Court Case No. 31489CF1097A

Represented: State of Missouri

Opposing counsel: Jon Van Arkel

Defendant and co-defendant charged with forcible rape and forcible sodomy, which occurred in Greene County following victim's kidnapping in another county. Defendant was convicted and sentenced to life imprisonment in the Missouri Department of Corrections. I was co-counsel for the State in the case.

State v. Donald Robert McClintock

Jury trial in December 1992

Greene County Circuit Court Case No. 31192CF0014

Represented: State of Missouri

Opposing counsel: Diana Long

Defendant was charged with two counts of sodomy for the sexual abuse of two young boys. Defendant was convicted and sentenced to five years in the Missouri Department of Corrections. I was lead counsel for the State in the case.

State v. Scott E. Hope

Jury trial in August 1994

Greene County Circuit Court Case No. 31194CF0008

Represented: State of Missouri

Opposing counsel: Elizabeth A. Bock and Jill L. Geary

Defendant was charged with murder in the second degree and armed criminal action in the shooting death of a convenience store clerk. Defendant was convicted and sentenced to life imprisonment plus 200 years in the Missouri Department of Corrections. I was lead counsel for the State in the case.

State v. Charles Ervon Mahan

Jury trial in May 1997

Greene County Circuit Court Case No. 31196CF0165

Represented: State of Missouri

Opposing counsel: Thomas Patrick Deaton, Jr.

Defendant was charged with creating a grave and justifiable risk of HIV infection. Defendant was convicted and sentenced to five years in the Missouri Department of Corrections. I was lead counsel for the State in the case.

State of Missouri v. Richard D. Floyd

Jury trial in August 1998

Greene County Circuit Court Case No. 31197CF0081

Represented: State of Missouri

Opposing counsel: Dee Wampler and Joseph Passanise

Defendant was charged with murder in the first degree for the strangulation death of his wife. Defendant claimed he was not guilty by reason of mental disease or defect excluding responsibility. Defendant was convicted and sentenced to life imprisonment in the Missouri Department of Corrections, without the possibility of parole. I was lead counsel for the State in the case.

State of Missouri v. Clarence W. Stevens

Jury trial in 2004

Greene County Circuit Court Case No. 31103CF0176 (venue was changed to Cass County)

Represented: State of Missouri

Opposing counsel: Jason Coatney

Defendant was charged with multiple counts of securities fraud and the

making of false statements to the commissioner of securities involving a company of which he was the chief financial officer and subsequently president. Defendant was convicted of multiple counts of making false statements to the commissioner of securities and sentenced to five years in the Missouri Department of Corrections; Defendant was found not guilty on securities fraud counts. The investigation of the Defendant's scheme also led to convictions of the company's in-house legal counsel and outside legal counsel, an accountant, and a company officer. I served as lead counsel for the State in this case.

**State ex rel. Nixon v. Reliable Imports & Motor Homes, Inc.
Consent Judgment and Permanent Injunction entered in May 2005
Greene County Circuit Court Case No. 31104CC2761
Represented: Plaintiff**

Opposing counsel: Jason Brown and Joseph Johnson

Defendant advertised that a bankruptcy judge had ordered a sale of vehicles to be conducted at Defendant's place of business, when in fact there had been no such order. A temporary restraining order was obtained which stopped the sale; that temporary restraining order was subsequently modified by the Court to allow the sale to proceed but, at Plaintiff's request, Defendant was required to post signage at each entrance to Defendant's place of business advising consumers misrepresentations had been contained within the advertisements. A Consent Injunction and Final Judgment was ultimately entered into by which Defendant was required to make payment to the Missouri Merchandising Practices Revolving Fund and pay civil penalties. I was sole counsel for the Plaintiff in the case.

**State v. Joseph Edward Wright
Jury trial in December 2006
Wright County Case No. 44R060300726
Represented: State of Missouri**

Opposing counsel: Jason W. MacPherson

Defendant was charged with two counts of statutory sodomy in the first degree and two counts of child molestation in the first degree. Defendant claimed he had given a false confession. Defendant was found guilty and sentenced to twelve years in the Missouri Department of Corrections. I was sole counsel for the State in the case.

**State of Missouri v. Alton Louis Vaughn, Sr.
Jury trial in June 2009
Greene County Circuit Court Case No. 31106CF0085
Represented: State of Missouri**

Opposing counsel: Brady Musgrave, Peter Bender, Brian Delleville, and Carlos Romious prior to trial. Defendant represented himself at trial.

Defendant was charged with four counts of unlawful merchandising practices as a result of Defendant representing he could provide consumers with legal services even though he was not a lawyer. Litigation was complicated by the myriad of issues arising from Defendant's self-representation. Defendant was convicted of all counts and sentenced to six years in the Missouri Department of Corrections. I was lead counsel for the State in the case.

State of Missouri v. William D. Strong

Bench trial in February 2012

Greene County Circuit Court Case No. 1131-CR00894

Represented: State of Missouri

Opposing counsel: Stuart Huffman

Defendant was charged with one count of securities fraud and four counts of unlawful merchandising practices relating to the sale of real estate. Defendant was convicted of one count of securities fraud and two counts of unlawful merchandising practices; Defendant was found not guilty of two counts of unlawful merchandising practices. Defendant received probation. I was lead counsel for the State in the case.

- c) **Judicial Experience:** If you are a judge, commissioner, or are serving or have served in other judicial capacity, please describe the nature and extent of your judicial responsibilities, including the dates you have served as a judge at each level, the types of dockets you have handled, and any special expertise you have developed that you believe is relevant to your qualifications for the position for which you are applying.

Not applicable.

11. (a) Describe any additional legal experience that you believe may be relevant to the commission's decision, including clients by category that you have represented.
- (i) **"A prosecutor has the responsibility of a minister of justice and not simply that of an advocate." This quote from the *Comment to Missouri Rule of Professional Conduct 4-3.8* emphasizes for every prosecutor the uniqueness of the position she or he holds. Being entrusted with that authority comes the power to impact lives forever by initiating a criminal charge. You are vested with discretion that, when abused or misused, can negatively impact the lives of individuals and the reputation of our judicial system. While I do not have judicial experience, I believe my experiences as a prosecutor have resulted in me having a unique, heightened appreciation for, and reverence of, the important responsibility placed in the hands of our judges.**

- (ii) Throughout my career, I have presented several continuing legal education courses. The following is a listing of those courses:

Charging and Disposition of Cases in Family Violence Cases –
Greene County Prosecuting Attorney's Office

The Recanting and Absent Victim in Family Violence Cases –
Greene County Prosecuting Attorney's Office

Identity Theft: What You Need to Know to Protect Your Clients, Your Firm and Yourself - Springfield Metropolitan Bar Association

Can Criminal and Civil Be Pursued: Protecting the Chinese Wall in Appearance as Well as in Fact – Consumer Protection Division,
Missouri Attorney General's Office

The "New" 4.2, Finally – Consumer Protection Division,
Missouri Attorney General's Office

Criminal Enforcement – Consumer Protection Division,
Missouri Attorney General's Office

Do You Want What's Behind Door #1, Door #2 or Door #3: A Guide to Finding What You're Looking For Utilizing Search Warrants in Consumer Fraud Cases – Consumer Protection Division,
Missouri Attorney General's Office

Decoy Operations – Consumer Protection Division,
Missouri Attorney General's Office

Common Criminal Evidentiary Issues: Evidence of Other Crimes –
Missouri Attorney General's Office

Serving Your Clients, Serving the Public: What Every Practitioner Needs to Know About Missouri's Sunshine Law –
Springfield Metropolitan Bar Association

An Overview of Grand Jury Practice and Procedure – Consumer Protection Division, Missouri Attorney General's Office

Temporary Restraining Orders and Preliminary Injunctions –
Consumer Protection Division, Missouri Attorney General's Office

- (b) Describe any non-legal experience that you believe may be relevant to the commission's decision.

Later in this application you will note various organizations through which I have sought to contribute to our community. Together with those commitments, however, there have been other ways in which my wife and I have dedicated ourselves to being part of our community. From filling weekend food backpacks for children at Portland Elementary School, to speaking on issues at city council meetings, to volunteering at local arts events, to helping with the food pantry at my church, to taking advantage of

the myriad of speakers and programming offered by our libraries, universities, and community organizations, we have immersed ourselves in the people and community around us. In doing so, we have been exposed to many diverse people and aspects of where we call home. I am rooted in the experiences I just cited, and they remind me each moment of the unique lives and experiences of others. Each day as a judge I will face an “alphabet soup” of people and concerns. My experiences in our community will allow me to acknowledge the various perspectives of those who will appear before me in court.

12. List all bar associations and other professional societies of which you are a member, with any offices held and dates.

Missouri Bar, Member (1989–present)

Springfield Metropolitan Bar Association, Member (Board of Directors, 2003-2005) (Chair, Criminal Law Committee, 2009)

American Bar Association, Member (2003-2004)

Missouri Association of Trial Attorneys, Member (1989-1990)

13. (a) List any professional articles or books authored by you that have been published or any special recognition or award of a professional nature you have received.

AV® Preeminent™ Peer Review Rated

I have received this rating, which is the highest rating available, after being reviewed by other members of the bar and the judiciary. Martindale-Hubbell identifies an AV® Preeminent™ rating as “a significant accomplishment - a testament to the fact that a lawyer's peers rank him or her at the highest level of professional excellence.” This rating is obtained through an assessment of a lawyer’s ethical standards, legal knowledge, analytical capabilities, judgment, communication ability, and legal experience.

AV® Preeminent™ are certification marks of Reed Elsevier Properties, Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies.

Co-Prosecutor of the Year, Mothers Against Drunk Driving

Given by Missouri Mothers Against Drunk Driving for excellence in combating the crime of driving while intoxicated.

The Roosevelt Award, Greene County Drug Court

This award was for my contributions in the formation of the Greene County Drug Court.

Recognized by the U. S. Federal Deposit Insurance Corporation/Office of Inspector General and Federal Bureau of Investigation

Given for outstanding work during the successful prosecution of a complex, four-year federal and state securities and bank fraud investigation.

Extraordinary Contribution Award, Missouri Attorney General's Office

Award was given in recognition of my efforts to serve victims of Joplin's 2011 tornado in providing public awareness, education, and advice, as well as litigation efforts in pursuing fraud cases arising from this tragedy.

(b) List any other articles, reports, letters to the editor, editorial pieces, or other material authored by you that have been published within the last five (5) years.

None.

14. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations in which you have significantly participated. 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.

Southern Missouri Consumer Fraud Task Force (2012-present)

Missouri Attorney General's Office representative to this multi-disciplinary task force of federal, state, and local law enforcement and consumer advocacy agencies. The Task Force brings awareness to the community regarding deceptive practices and provides tips and information to allow citizens to make informed decisions about their consumer affairs.

Greene County 100 Club (2010-present)

Advisory board member of not-for-profit organization that provides financial support to the surviving spouse and dependent children of law enforcement officers and firefighters killed in the line of duty in Greene County. Surviving spouses are given immediate financial support, within hours of the death of the law enforcement officer or firefighter.

Community Partnership of the Ozarks, Inc. (1996-1998, when known as Ozarks Fighting Back, Inc.) (1998-2002; 2008-2012)

Past member of this not-for-profit corporation's board of directors, consisting of business, community, and law enforcement leaders. CPO serves as a link between citizens, agencies, organizations, businesses, and neighborhood associations in Springfield, Greene County, and the Ozarks. CPO is involved in community initiatives in such areas as education, health, and social services.

The Child Advocacy Center, Inc. (1996-2010)

Original member of the board of directors, past treasurer, and past president of this multi-disciplinary not-for-profit corporation, formed to create a child-friendly environment for the investigation of child sexual abuse allegations.

Greene County Sheriff's Review Committee (2005-2006)

Member of eight-person committee created by the Greene County Sheriff to review all operations of the Greene County Sheriff's Office, including the county jail, and make final report of findings and recommendations to the Sheriff. Review involved interviewing Sheriff's Department personnel, conducting an employee survey, reviewing departmental policies and procedures manual, reviewing statistical information, and interviewing professionals in other law enforcement agencies.

Senior and Lawmen Together Council (various dates from late 1990's through 2012)

Representative on this multi-disciplinary group designed to address law enforcement, safety, and consumer protection needs of seniors through programming and other services.

Violence-Free Families (mid-1990's-early 2000's)

Former two-time chairperson and former member of this community-based team of twenty agencies designed to tackle the problem of family violence. The coalition used a multi-prong approach that included education, prevention strategies, and a comprehensive approach to punishing and treating perpetrators.

Task Force on Gangs and Youth Violence (late 1990's)

A multi-agency organization dedicated to gathering and sharing information related to youth violence and gangs. Collaborative efforts were instituted to reduce the causes of youth violence and gang behavior.

The Victim Center, Inc. (1996-1998)

Member of board of directors of this not-for-profit corporation that offers counseling and advocacy services to victims of violent or sexual crimes.

Schweitzer United Methodist Church (2010-present)

Member; small group co-leader.

Asbury United Methodist Church (early 1990's-2010)

Member; church council chairperson; also served as member of staff/parish relations, merger, and finance committees.

Drury College/University Alumni Council (1998-2001)

Former member and secretary of this governing body of the Alumni Association, consisting of alumni leaders from a range of class years, a member from the Drury faculty and a member from the Drury administrative staff.

Rotary Club of Springfield (1996-2000)

Member of this not-for-profit service organization.

Ozark Greenways, Inc. (1996-present)

Member of and volunteer for this not-for-profit corporation. OGI works to develop linear parks of natural habitat through the Springfield metropolitan area. For eight years I volunteered significant amounts of time on the planning committee for an adventure race fundraiser for the organization.

Springfield/Greene County VISION 20/20 Neighborhoods Focus Group (mid-1990's)

The VISION 20/20 process was a joint effort of the citizens of Springfield and Greene County to formulate a long-range plan for the community. The Neighborhoods Focus Group worked to identify those priorities needed to maintain strong and vibrant neighborhoods.

Big Brothers/Big Sisters of the Ozarks, Inc. (1993)

Member of board of directors of this non-for-profit corporation whose mission is "to provide children facing adversity with strong and enduring, professionally supported one-to-one relationships that change their lives for the better."

15. Do you now hold or have you ever held an elective or an appointive public office or position? If yes, provide details.

Yes. In February 1996 I was appointed by Governor Mel Carnahan to serve as Prosecuting Attorney of Greene County. I served in that position until December 31, 1998.

16. Please list any client(s) or organization(s) for which you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organization(s).

I have performed no lobbying activities.

17. Provide the branches and dates of (a) military service or (b) other public service not otherwise disclosed in this application. If discharged from the military, state whether the discharge was other than honorable.

(a) I have not served in our military.

(b) The following is other public service not otherwise disclosed in this application:

U. S. Department of Justice/International Criminal Investigative Training Assistance Program (2011)

I served as a consultant for this program in Kosovo, leading a four-day training program addressing various aspects of investigating and prosecuting public corruption crimes. Approximately fifty Kosovar prosecutors and law enforcement officials attended the training, which covered such topics as the importance of pursuing corruption prosecutions, search warrant execution protocol, seizure of electronic evidence, use of cooperating witnesses/informants, interagency cooperation, and case studies.

U.S. Department of Justice Missing and Exploited Children Comprehensive Action Program (mid-1990's)

I served as a consultant for this multidisciplinary training and technical assistance program that emphasized community-wide, interagency collaboration, self-assessment, information sharing, and comprehensive case management to address the needs of and respond to missing and exploited children and their families. My assignments were to assessment teams, which performed separate on-site reviews of services in Baton Rouge, Louisiana and Las Vegas, Nevada.

18. State whether you are able, with or without a reasonable accommodation, to perform the essential functions of being a trial judge. **Yes.**
19. Were you ever refused admission to the bar of Missouri or the bar of another state or the federal courts? **No.** If yes, provide details.
20. Have you ever been disciplined, admonished or cited for breach of ethics or professional conduct by the Supreme Court of Missouri or by any court or bar association or committee thereof? **No.** If yes, provide details.
21. If you are or were a member of the judiciary of the State of Missouri, please state:
 - a) Whether an order of discipline ever has been entered against you by the Supreme Court of Missouri for breach of the Code of Judicial Conduct or the Canons of Judicial Conduct. If yes, provide details. **Not applicable.**
 - b) Whether a reprimand or admonition ever has been entered against you by the Commission on Retirement, Removal and Discipline for any of the

causes specified in Supreme Court Rule 12.07. If yes, provide details.
Not applicable.

22. Have you have ever been held in contempt of court? **No.** If yes, provide details.
23. Have you ever been sued by a client or been a party to any other litigation, other than as guardian ad litem, plaintiff ad litem, or defendant ad litem? **Yes.**

If your answer is yes, state the style of the case, where it was filed, and explain in detail. If you are a judge and you have been sued in your judicial capacity, list only those cases where you are or were other than a nominal party.

During my time in public service, a variety of lawsuits have been brought against me by pro se litigants.

Venturavera v. Westbrooke, et al.; United States District Court, Western District of Missouri, Southern Division; Case No. 96-3370-CV-S-3-P

Pro se Plaintiff filed suit against two employees of the Greene County Jail, the physician for the Greene County Jail, two Greene County Circuit Court judges, the Greene County Prosecuting Attorney, four Greene County assistant prosecuting attorneys, the District Public Defender, an attorney in the law firm of the Greene County Counselor, the Greene County Counselor, the Assistant Greene County Counselor, the Greene County Sheriff, the City of Springfield, two individuals, and myself. Suit was brought pursuant to 42 U.S.C. § 1983. Case was dismissed as to others and myself. No settlement, release from liability, or admission of fault were made by me or the public service entity by which I was employed at the time.

Monteer v. Nixon, et al.; United States District Court, Western District of Missouri, Southern Division; Case No. 97-3108-CV-S-4-P

Pro se Petitioner filed suit against the Attorney General of Missouri, a Greene County Associate Circuit Court judge, an assistant public defender, the Parks Director of the City of Fair Grove, and myself. The lawsuit was an application for habeas corpus under 28 U.S.C. § 2254, 2241, 2242, 2243. The Court held that the case was construed to be a 28 USC 2241 petition, and the case was dismissed without prejudice, for failure to exhaust adequate and available state remedies.

Boisjolie v. Carrier; United States District Court, Western District of Missouri, Southern Division; Case No. 97-CV-03128-JES

Pro se Petitioner filed petition for writ of habeas corpus 28 U.S.C. § 2241. Court denied petition for writ of habeas corpus and case was dismissed with prejudice.

Wade v. Carrier, et al.; United States District Court, Western District of Missouri, Southern Division; Case No. 97-CV-03245-DW

Pro se Plaintiff filed suit against a Greene County Associate Circuit Court judge, two Springfield police officers, an attorney, and myself. Suit was brought pursuant to 42 U.S.C. § 1983. Plaintiff was required by Court to file an amended complaint within a certain time, Plaintiff failed to make such filing, and the Court dismissed the case without prejudice.

Monteer v. Carrier, et al.; United States District Court, Western District of Missouri, Southern Division; Case No. 97-3254-CV-S-8-P

Pro se Petitioner filed suit against the Attorney General of Missouri and myself. The lawsuit was an application for habeas corpus under 28 U.S.C. §§ 2254, 2241, 2242, 2243 and 2244. The Court held that because Petitioner had failed to allege the type of special circumstances that would warrant intervention by the court at that time, the case was dismissed without prejudice.

Clayton v. Holden, et al.; United States District Court, Western District of Missouri, Southern Division; Case No. 97-CV-03325-DW

Pro se Plaintiff filed suit against a Greene County Circuit Court judge, three Springfield police officers, and myself. Suit was brought pursuant to 42 U.S.C. § 1983. Case was dismissed by the Court as frivolous.

Parham v. Carrier, et al.; United States District Court, Western District of Missouri, Southern Division; Case No. 97-CV-03502-JES

Pro se Plaintiff filed suit against two assistant public defenders, a Greene County Circuit Court judge, and myself. Suit was brought pursuant to 42 U.S.C. § 1983. Case was dismissed by the Court as legally frivolous.

Perkel v. City of Springfield, Missouri, et al.; United States District Court, Western District of Missouri, Southern Division; Case No. 98-3486-CV-S-AE

Pro se Plaintiff filed suit against the City of Springfield, four Springfield police officers, the Springfield Chief of Police, a Greene County assistant prosecuting attorney, the Springfield City Manager, the Springfield Mayor, eight Springfield City Council members, and myself. The Plaintiff alleged that the Defendants had violated his civil rights under the 4th, 5th, 6th, 8th and 14th amendments of the United States Constitution by false arrest, illegal search, false imprisonment, and malicious prosecution. Defendant filed his dismissal of the lawsuit as to the Greene County assistant prosecuting attorney and myself with prejudice. No settlement, release from liability, or admission of fault were made by me, the Greene County assistant prosecuting attorney, or the public service entity employing us at the time.

Fitzwater, et al. v. Ray, et al.; United States District Court, Western District of Arkansas; Case No. 08-CV-03023-JLH

Pro se Plaintiffs filed suit against three attorneys, an Arkansas Circuit Court trial court assistant, an Arkansas Circuit Court judge, three business entities, two individuals, the Attorney General of Missouri, a Missouri assistant attorney general, an investigator of the Missouri Attorney General's Office, and myself. Plaintiffs alleged their action was brought under 42 U.S.C. §§ 1983, 1985, 1986 and 1988, for equitable relief under 28 U.S.C. §§ 2201 and 2202, for relief under 4 U.S.C. § 1988, 18 U.S.C. 1961-68, 29 U.S.C. §§ 216(b), 626(b), 1140, 29 U.S.C. § 626(b), 29 U.S.C. §§ 216 and 1132(g) and FED. R. Civ. P. 54, and Arkansas public policy. The Court issued an Order requiring Plaintiffs to amend their Complaint within fourteen days to comply with F.R.C.P. 8, failing which the Complaint would be subject to dismissal. Plaintiffs failed to amend their Complaint as ordered and the Court dismissed the case without prejudice.

Johnson, Jr., et al. v. Nixon, et al; United States District Court, Western District of Missouri, Southern Division; Case No. 08-CV-03228-GAF

Pro se Plaintiffs filed suit against the Attorney General of Missouri, the Missouri Attorney General's Office, two Missouri assistant attorneys general, an investigator of the Missouri Attorney General's Office, a Greene County assistant prosecuting attorney, the Missouri Department of Social Services, five employees of the Missouri Department of Social Services, the Missouri Department of Revenue, the director of the Missouri Department of Revenue, the Missouri Department of Conservation, the director of the Missouri Department of Conservation, two private attorneys, two individuals, and myself. Plaintiffs alleged their action was brought pursuant to 42 U.S.C. §§ 1983, 1985, 1986, 1988, 28 U.S.C. §§ 2201 and 2202, 4 U.S.C. § 1988, 18 U.S.C. 1961-68, Missouri public policy, 29 U.S.C. §§ 216(b), 626(b), 1132(g), 1140 and FED.R. Civ. P. 54. The Court dismissed Plaintiffs' claims against me without prejudice because Plaintiffs' pleading set forth no decipherable allegations that could support an actionable claim for relief.

Romious, Sr. v. Nixon, et al.; United States District Court, Eastern District of Louisiana; Case No. 2-12-cv-00013-KWR

Pro se Plaintiff filed suit against the Governor of Missouri, the Attorney General of Missouri, a Missouri assistant attorney general, the Clerk of the Louisiana Supreme Court, multiple Louisiana Supreme Court judges, two assistant public defenders, the Secretary of State of Missouri, an individual, the Sheriff of Greene County, the Treasurer of Missouri, multiple Missouri Circuit Court judges, a court bailiff, the Circuit Clerk of Greene County, a court reporter for the Circuit Court of Greene County, an attorney representing the Chief Disciplinary Counsel for the State of Missouri, the Director of the Missouri Department of Revenue, multiple Missouri Supreme

Court judges, multiple Kansas Supreme Court judges, a United States District Judge, an assistant to a United States District Judge, the court reporter for a United States District Judge, two law clerks for a United States District Judge, and myself. The lawsuit alleged breach of oral contract, violation of 42 U.S.C. § 1983, violations of various federal rules, laws and regulations applicable to the Social Security Administration, violation of the Racketeer Influenced and Corrupt Organizations Act, violation of federal wire fraud laws, violation of federal antitrust laws, violation of federal laws applicable to wire and/or cellular phone wiretapping, violation of provisions of the 1st, 2nd, 5th, 8th, 9th, 10th, 11th, 13th, 14th, and/or 15th Amendments to the United States Constitution, intentional infliction of emotional distress, tortious interference with contractual relationships, negligent infliction of emotional distress, assault, violation of the Americans with Disabilities Act, libel, slander, and false imprisonment. In its *Order and Reasons* filed by the Court, the Court noted it had ordered the Plaintiff to show good cause why he had failed to prosecute his case against myself and multiple other of the Defendants; Plaintiff failed to respond as required. The Court further noted “Plaintiff’s frivolous complaint failed to state claims against any of the Defendants named” (including myself) and those Defendants were dismissed with prejudice.

24. Have you ever been convicted or received a suspended imposition of sentence for a felony or misdemeanor in state, federal or military court? (*Note that this question does not require that traffic offenses or other infractions be listed.*) No.

If your answer is yes, state the style of the case, where it was filed, and explain in detail.

25. Are you delinquent in the payment of any federal, state, county or city taxes? No. If yes, provide details.
26. You must attach to this application one writing sample of your choice. The only rule, limitation or instruction is that you must indicate whether it was edited by anyone else, and if so, to what degree.

Located at “C.” The writing sample was not edited by anyone else.

27. List/describe any additional honors or awards you have received, activities you have performed, or any other information not set out above that demonstrates the quality of your work as an attorney or that you otherwise believe is relevant to the commission’s decision.

Distinguished Young Alumni Award, Drury University

This award recognizes an alumnus of Drury University who has earned special distinction in his or her career, reflecting honor on the University and its alumni. The award is given to a person who graduated and whose accomplishment set a standard for lifelong excellence.

The John P. Ferguson Award for Child Advocacy

The Child Advocacy Center, Inc., of Springfield, gives this award to honor a community member who has shown an outstanding commitment to children who have suffered abuse.

The following are additional qualities and skills which I believe are relevant to the commission's decision:

A. **A Passion for Public Service:** I have practiced in the public service law field for more than 23 years. Public service requires patience, the capacity to listen to all views, the ability to take appropriate action, and the capability to make decisions that respect the law and the rights of all people. I have exhibited and exercised those characteristics and skills throughout my public service career. To be selected as Greene County's new Associate Circuit Judge is the opportunity to continue the honor of the Greene County judiciary—one of the highest levels of public service that exists.

B. **Diversity of Legal Experience:** I have a wide array of civil and criminal experience which will serve me well if chosen to serve as Associate Circuit Court Judge. While with the Missouri Attorney General's Office, my practice has been split between civil litigation and criminal prosecution. My civil litigation practice has provided me the opportunity to tackle such wide-ranging legal issues as real estate finance, landlord/tenant, product advertising, business organization structure, bankruptcy, and enforcement of the Sunshine Law. In my criminal prosecution practice I have handled cases involving securities fraud, consumer fraud, public corruption, violent crime, and child sexual abuse. During my time with the Greene County Prosecuting Attorney's Office, I was exclusively involved with criminal prosecution. While in private practice, I handled cases involving personal injury litigation (representing plaintiffs and defendants), products liability litigation (representing plaintiffs and defendants), medical malpractice litigation (representing defendants), worker's compensation claims (representing claimants and employers), business organization matters, family law, probate matters, and criminal defense.

C. **Managerial Experience:** In addition to my litigation experience, for the past 17 years I have also been charged with managerial responsibilities. As a result, I have become an effective multi-tasker and have balanced these

management tasks while exercising effective control of my personal caseload. It will be imperative that the person chosen as Associate Circuit Judge has the ability to immediately, effectively, and efficiently manage the caseload assigned to them. My managerial skills will be an asset in establishing this new judgeship.

D. Consistency: Upon deciding to seek the appointment as Greene County's next Associate Circuit Judge, I spent a significant amount of time speaking with other members of the bar about the qualities they admired most in the judges before who they practiced. One attorney told me, "I want a judge who I know is going to be consistent." The attorney went on to explain that he needed to be able to advise his clients as to what they could expect in litigation, and accomplishing that was far easier when he was before a judge whose rulings were consistent. Throughout my career, I have strived to be consistent in addressing legal and factual situations. While opposing counsel may not agree with my assessment of a particular case, I do believe I have a consistent manner in approaching legal issues and cases. While each judicial decision must be made applying the law to the particular facts of the case at hand, litigants and attorneys should have an expectation that a judge will rule consistently in like cases.

E. Mentoring Skills: One of the joys of my career has been the opportunity to mentor young attorneys, law students, and pre-law students. I am recognized state-wide in our Consumer Protection Division as someone always available to young attorneys as a resource on practical aspects of litigation, as well as how to gauge what should be expected of them by judges, opposing counsel, and colleagues. Much of this cannot be taught in law school but comes only with "trial by fire." Associate circuit court is where young attorneys begin cutting their teeth when it comes to appearing in court and I have witnessed many who are intimidated during their first several appearances. The judges I hold in the highest esteem have shown appreciation for the challenges faced by new attorneys and consider it part of their calling to tactfully help them "learn the ropes."

F. Public Educator: I have always viewed part of a judge's role to be that of communicator and educator—so that attorneys, litigants, victims, and the public understand the reasoning and rationale behind procedural actions and the basis for court rulings. Communication serves to eliminate confusion and foster better understanding of the judicial process. My experience in educating the public about legal issues, through innumerable presentations and community forums, will be of value in effectively communicating my rulings as a judge.

Please list the names of *five* persons whom you will ask to provide letters of reference for you with respect to your judicial qualifications. Do **not** list as a reference a judge of the court involved. As to each of the (5) references, **please provide name, title, mailing address, telephone and e-mail address. Please note that it is your responsibility to contact your references** and to see that they send the requested letters in a timely manner and in accordance with the Guidelines for References.

The Honorable J. Miles Sweeney
(Retired Judge, 31st Judicial Circuit)
2523 S. Marlan
Springfield, Missouri 65804
(417) 838-5277
jmilessweeney@gmail.com

The Honorable Don M. Henry
Associate Circuit Judge
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West Plains, Missouri 65775-3400
(417) 256-4050
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Roseann Bentley
Greene County Commissioner, 2nd District
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rbentley@greencountymo.org

Deborah K. Dodge
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Springfield, Missouri 65808-4609
(417) 890-8700
ddodge@hallansley.com

David R. Mercer
First Assistant Public Defender for the
Western District of Missouri
901 St. Louis St., Ste. 801
Springfield, Missouri 65806
(417) 873-9022
david_mercer@fd.org

DEPT.	COURSE NO.	COURSE TITLE	HOURS ATTEND.	GRADE	HOURS EARN	QUAL POINTS
FALL	84 CARRIER	JAMES	R			
	491-78-5877					
	86 CARRIER	JAMES	R			
	491-78-5877					

BADM	301	ORGANIZA BEHAV I	3.0 A-	3.0	11.1
LLIT	211	MAJOR AMER WRITERS	0.0 S	4.0	4.0
MUSC	149	COLLEGE CHOIR	1.0 A	1.0	4.0
PLSC	201	COMP POL SYS-EURO	4.0 A-	4.0	14.5
THTR	376	TAP I	2.0 F	2.0	8.0
SEM.	10.0	ATM.	37.9	3.700	GPA
CUM.	73.0	ATM.	80.0	EARN.	273.5
			PTS.	3.767	GPA

DEPT.	COURSE NO.	COURSE TITLE	HOURS ATTEND.	GRADE	HOURS EARN	QUAL POINTS
SPRG	85 CARRIER	JAMES	R			
	491-78-5877					

ACCT	210	MGMT ACCOUNTING	3.0 A	3.0	12.0
HIST	493	S SM:AMER/VIET WAR	3.0 A	3.0	12.0
PHIL	390	SEL TP:PHIL OF LAW	3.0 A-	3.0	11.1
PLSC	330	POLITICAL BEHAVIOR	3.0 A	5/23/85	
SOCI	100	WORLD GEOGRAPHY	3.0 A	3.0	12.0
SEM.	15.0	ATM.	52.0	PTS.	3.800
CUM.	88.0	ATM.	98.0	EARN.	330.5
			PTS.	3.756	GPA

DEPT.	COURSE NO.	COURSE TITLE	HOURS ATTEND.	GRADE	HOURS EARN	QUAL POINTS
FALL	85 CARRIER	JAMES	R			
	491-78-5877					

BADM	315	PRODLOPERA MANAGT	3.0 B+	3.0	9.9
BIOL	103	BIOLOGY CONCEPTS	0.0 S	3.0	
HIST	290	SEL TOP:LEADER/TILL	3.0 A	3.0	12.0
PLSC	300	MMUN-UNITED STATES	3.0 A	1.0	5.0
PLSC	493	SEN SEM:NUCLEAR	3.0 A	3.0	12.0
PLSC	498	INTERNSHIP	0.0 S	3.0	
SEM.	9.0	ATM.	35.9	PTS.	3.767
CUM.	97.0	ATM.	110.0	EARN.	366.4
			PTS.	3.757	GPA

Self pick-up 1/20/83 FREE

TRANSCRIPT ISSUED TO:

University of Missouri - Columbia
Official Transcript

Name: **Carrier, James Ronald**
 Student ID: **08199208**
 Date of Birth: **07/07/XXXX**
 Soc. Sec. Number: **XXX-XX-5877**

This transcript has been produced for:
JAMES RONALD CARRIER

Course Number	Course Title	Grade	Hours	Remarks
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Course Number	Course Title	Grade	Hours	Remarks																		
Awards																						
University of Missouri - Columbia	Law-JD		12-17-1988																			
University College	BA		05-1986																			
FALL 1986																						
Univ of MO-Col	Law	Law_Jd																				
101L	Contracts I	88	3.0																			
103L	Torts I	81	3.0																			
105L	Procedure I	78	3.0																			
107L	Property I	74	3.0																			
111L	Criminal Law I	74	2.0																			
116L	Legal Res. & Writing	78	1.0																			
<table border="0"> <tr> <td></td> <td>GPA</td> <td>Hrs Att</td> <td>Hrs Em</td> <td>Qual Pt</td> <td>GPA</td> </tr> <tr> <td>W Term:</td> <td>15.0</td> <td>15.0</td> <td>1189.00</td> <td>79.267</td> <td></td> </tr> <tr> <td>W CUM:</td> <td>15.0</td> <td>15.0</td> <td>1189.00</td> <td>79.267</td> <td></td> </tr> </table>						GPA	Hrs Att	Hrs Em	Qual Pt	GPA	W Term:	15.0	15.0	1189.00	79.267		W CUM:	15.0	15.0	1189.00	79.267	
	GPA	Hrs Att	Hrs Em	Qual Pt	GPA																	
W Term:	15.0	15.0	1189.00	79.267																		
W CUM:	15.0	15.0	1189.00	79.267																		

Course Number	Course Title	Grade	Hours	Remarks																		
FALL 1987																						
Univ of MO-Col	Law	Law_Jd																				
102L	Contracts II	79	3.0																			
104L	Torts II	79	3.0																			
106L	Procedure II	72	3.0																			
108L	Property II	72	3.0																			
115L	Criminal Law II	72	3.0																			
117L	Advocacy & Research	82	1.0																			
<table border="0"> <tr> <td></td> <td>GPA</td> <td>Hrs Att</td> <td>Hrs Em</td> <td>Qual Pt</td> <td>GPA</td> </tr> <tr> <td>W Term:</td> <td>16.0</td> <td>16.0</td> <td>1204.00</td> <td>75.250</td> <td></td> </tr> <tr> <td>W CUM:</td> <td>31.0</td> <td>31.0</td> <td>2393.00</td> <td>77.194</td> <td></td> </tr> </table>						GPA	Hrs Att	Hrs Em	Qual Pt	GPA	W Term:	16.0	16.0	1204.00	75.250		W CUM:	31.0	31.0	2393.00	77.194	
	GPA	Hrs Att	Hrs Em	Qual Pt	GPA																	
W Term:	16.0	16.0	1204.00	75.250																		
W CUM:	31.0	31.0	2393.00	77.194																		

Course Number	Course Title	Grade	Hours	Remarks																		
FALL 1987																						
Univ of MO-Col	Law	Law_Jd																				
228L	Estates & Trusts I	86	3.0																			
306L	Agriculture Law	85	3.0																			
<table border="0"> <tr> <td></td> <td>GPA</td> <td>Hrs Att</td> <td>Hrs Em</td> <td>Qual Pt</td> <td>GPA</td> </tr> <tr> <td>W Term:</td> <td>6.0</td> <td>6.0</td> <td>513.00</td> <td>85.500</td> <td></td> </tr> <tr> <td>W CUM:</td> <td>37.0</td> <td>37.0</td> <td>2906.00</td> <td>78.541</td> <td></td> </tr> </table>						GPA	Hrs Att	Hrs Em	Qual Pt	GPA	W Term:	6.0	6.0	513.00	85.500		W CUM:	37.0	37.0	2906.00	78.541	
	GPA	Hrs Att	Hrs Em	Qual Pt	GPA																	
W Term:	6.0	6.0	513.00	85.500																		
W CUM:	37.0	37.0	2906.00	78.541																		

Course Number	Course Title	Grade	Hours	Remarks
FALL 1987				
Univ of MO-Col	Law	Law_Jd		
220L	Constitutional Law	83	4.0	
221L	Evidence	90	4.0	
225L	Business Organizations	82	4.0	
372L	Professional Responsibility	78	2.0	

	GPA	Hrs Att	Hrs Em	Qual Pt	GPA
LAW Term:	14.0	14.0	1176.00	84.000	
LAW CUM:	51.0	51.0	4082.00	80.039	

Course Number	Course Title	Grade	Hours	Remarks
WINT 1988				
Univ of MO-Col	Law	Law_Jd		
224L	Remedies	72	3.0	
300L	Administrative Law	77	3.0	
326L	Debtors & Credit Rights	63	2.0	
327L	Commercial Law	70	2.0	
362L	Local Government Law	79	3.0	
391L	Adv Advocacy Research	5	1.0	

	GPA	Hrs Att	Hrs Em	Qual Pt	GPA
LAW Term:	13.0	14.0	950.00	73.077	
LAW CUM:	64.0	65.0	5032.00	78.625	

Course Number	Course Title	Grade	Hours	Remarks
SUM 1988				
Univ of MO-Col	Grad	Post_Bac		
C454	Legal Aspects of Educatn	A	3.0	

	GPA	Hrs Att	Hrs Em	Qual Pt	GPA
GRAD Term:	3.0	3.0	12.00	4.000	
GRAD CUM:	3.0	3.0	12.00	4.000	

Course Number	Course Title	Grade	Hours	Remarks
SUM 1988				
Univ of MO-Col	Law	Law_Jd		
316L	Clinical Placement	S	2.0	
335L	Family Law	83	3.0	

	GPA	Hrs Att	Hrs Em	Qual Pt	GPA
LAW Term:	3.0	5.0	249.00	83.000	
LAW CUM:	67.0	70.0	5281.00	78.821	

Course Number	Course Title	Grade	Hours	Remarks
FALL 1988				
Univ of MO-Col	Law	Law_Jd		
370L	Products Liability	81	2.0	
371L	Problems in Practice	5	2.0	
375L	Real Estate Finance	75	3.0	
379L	Sports Law	85	2.0	
384L	Trial Practice	98	4.0	
389L	Sel Sem Tp:Commun	S	2.0	

	GPA	Hrs Att	Hrs Em	Qual Pt	GPA
LAW Term:	11.0	15.0	949.00	86.273	
LAW CUM:	78.0	85.0	6230.00	79.872	

In accordance with the Family Educational Rights and Privacy Acts of 1974, information on this transcript may not be released to a third party without written consent of the student. If you are unable to comply fully with this requirement, please return this record immediately.

RAISED SEAL
NOT REQUIRED

James V. Selman

University Registrar



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

STATE OF MISSOURI, ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 08-3076-CV-S-JTM
)	
JEFFREY KODBA,)	
an individual,)	
d/b/a JSK COMPUTERS,)	
)	
and)	
)	
ORLANDO BEVILACQUA,)	
an individual,)	
)	
and)	
)	
THE BEVILACQUA GROUP, INC.,)	
a Kansas corporation,)	
)	
Defendants.)	

PLAINTIFF'S MOTION TO REMAND

COMES NOW Plaintiff State of Missouri, by and through Assistant Attorney General J.

Ronald Carrier, and for its Motion to Remand states to the Court as follows:

Procedural History of the Case

On February 8, 2008, Plaintiff filed its Application for Temporary Restraining Order, Without Notice, Petition for Injunctive Relief, Civil Penalties, and Other Court Orders (hereinafter referred to as "Petition") in the Circuit Court of Greene County, Missouri; said pleading is attached to Defendant's Notice of Removal as Exhibit "1" and is incorporated herein by reference. On February 8, 2008, The Honorable J. Dan Conklin, Judge of the Circuit Court of

Greene County, Missouri, Division III, entered a Temporary Restraining Order; said Temporary Restraining Order is attached to Defendants' Notice of Removal as Exhibit "2" and is incorporated herein. On March 3, 2008, the three Defendants filed pro se a joint Notice of Removal to this Court. None of the Defendants have filed an Answer or Counterclaim to Plaintiff's Petition.

Defendants' Alleged Bases for Removal

In their Notice of Removal, the Defendants jointly claim that this Court would have original jurisdiction of this matter pursuant to 28 U.S.C. Sec. 1332 (diversity of citizenship) and 28 U.S.C. Sec. 1331 (federal question).

Procedure Following Removal Pertaining to Motion to Remand

In pertinent part, 28 U.S.C. Sec. 1447 (c) requires that "[a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." Plaintiff is required to make its Motion to Remand within thirty (30) days after the filing of the Notice of Removal because one of the Defendants' defects in their Notice of Removal (the Defendants' erroneous claim of diversity jurisdiction) is a defect other than a lack of subject matter jurisdiction. With counsel for Plaintiff having been served the Defendants' Notice of Removal on March 3, 2008, and Plaintiff filing its Motion to Remand this date Plaintiff meets the time requirement for the filing of its Motion to Remand.

Burden of Proof on Motion to Remand

"On a motion to remand, the removing party has the burden of proving that removal was

proper and that the federal court has jurisdiction.” *State ex rel. Webster v. Best Buy Co., Inc.*, 715 F. Supp. 1455, 1456 (E.D. Mo. 1989).

**Defendants’ Removal Under 28 U.S.C. Sec. 1332 is Not Proper
Because Diversity of Citizenship Does Not Exist**

Under 28 U.S.C. Sec. 1332, “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.”

(cited in part)

In their Notice of Removal the Defendants alleged that Plaintiff State of Missouri ex rel. Jeremiah W. (Jay) Nixon, Attorney General, is a citizen of the State of Missouri and confirmed that Defendant Kodba is a citizen of the Commonwealth of Pennsylvania, and Defendants Bevilacqua and The Bevilacqua Group, Inc., are both citizens of the State of Kansas.

It is well established that states are not “citizens” for purposes of diversity jurisdiction. *State ex rel. Webster v. Best Buy Co., Inc.*, 715 F. Supp. 1455, 1457 (E.D. Mo. 1989). *Moor v. County of Alameda*, 411 U.S. 693, 717, 93 S.Ct. 1785, 1799, 1800, 36 L. Ed. 2d 596 (1973). “Therefore, diversity jurisdiction may not be asserted over an action to which a state is a real party in interest.” *Id. State Highway Commission v. Utah Constr. Co.*, 278 U.S. 194, 199-200, 49 S. Ct. 104, 105-106, 73 L. Ed. 262 (1920).

The State of Missouri is the real party in interest in actions brought by the Attorney General of Missouri pursuant to Section 407.100, RSMo. This issue directly addressed in *Best Buy Co., Inc.*. In *Best Buy Co., Inc.*, the State of Missouri, by its Attorney General, alleged that the defendant had violated the Missouri Merchandising Practices Act; the State of Missouri brought the case under Section 407.100, RSMo. *Best Buy Co., Inc.*, 715 F. Supp. at 1456. Although the case was originally filed in Missouri state court, the defendant sought to remove the case to federal court with defendant's basis being that diversity jurisdiction existed. The suit brought in *Best Buy Co., Inc.* is very similar to this case in that in both cases suit was filed under Section 407.100, RSMo, alleged that the sued parties had violated the Missouri Merchandising Practices Act, and sought injunctive relief, civil penalties and restitution to aggrieved consumers. *Id.* at 1457; Plaintiff's Petition in the instant case also requested sequestration of funds, payment by the Defendants to the Missouri Merchandising Practices Revolving Fund, an order that the Defendants pay all court costs incurred in this action and all costs of investigation and prosecution of this action, including a reasonable attorney's fee incurred by the Attorney General's Office, as provided by Section 407.130, RSMo.

The issue resolved in *Best Buy Co., Inc.*, which directly refutes the Defendants' claim that diversity jurisdiction rests with this Court, was "whether the action was, in essence, brought by the State of Missouri." *Id.* at 1457. The court in *Best Buy Co., Inc.* held that the main focus of the Attorney General of Missouri's action pursuant to Section 407.100, RSMo, was to "obtain injunctive relief designed to vindicate the State's interest in preserving fundamental honesty, fair play and right dealings in public transactions." *Id.* (*emphasis added*). In the instant case, as in *Best Buy Co., Inc.*, "...the State is the true party in interest. As such, the State is not a citizen

for diversity purposes. Thus, diversity of jurisdiction does not exist and this Court must remand this action to state court.” *Id.* at 1458.

**Defendants’ Removal Under 28 U.S.C. Sec. 1331 is Not Proper
Because a Federal Question Does Not Exist**

Under 28 U.S.C. Sec. 1331, “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” As discussed above, the Defendants also seek to remove this case from Missouri state court on the basis of federal question jurisdiction. Troubling, however, is that counterclaims which the Defendants *allege* they will file (because the record shows the Defendants have yet to file a responsive pleading) serve as the Defendants’ sole alleged basis for claiming that original jurisdiction rests with this Court pursuant to 28 U.S.C. Sec. 1331. “Whether a claim ‘arises under’ a federal law is ‘generally determined by the well-pleaded complaint rule, which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.’” *Hill v. BellSouth Communications, Inc.*, 364 F. 3d 1308, 1314 (11th Cir. 2004) citing *Smith v. GTE Corp.*, 236 F. 3d 1292, 1310 (11th Cir. 2001)(citation omitted). “Thus, ‘the plaintiff is the master of the complaint, free to avoid federal jurisdiction by pleading only state claims even where a federal claim is also available.’” *Id.* at 1314, citing *Marcus v. AT&T Corp.*, 138 F. 3d 46, 52 (2nd Cir. 1998). The only claim pending before the Court is that brought under Missouri state law by Plaintiff in its Petition. Plaintiff’s civil action does not arise under the Constitution, laws, or treaties of the United States. There is no federal question pending in this case which vests this Court with jurisdiction.

Conclusion

The Defendants have not met their burden of proof in attempting to remove this case from

Missouri state court to this Court. There is no factual or legal grounds to support either of the two bases upon which the Defendants argue there exists jurisdiction for this Court, those being diversity of citizenship jurisdiction under 28 U.S.C. 1332 and federal question jurisdiction under 28 U.S.C. 1331. Accordingly, the Plaintiff prays the Court to grant its Motion to Remand and to remand this case to the Circuit Court of Greene County, Missouri.

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

/s/ J. Ronald Carrier
J. Ronald Carrier, MO Bar #36587
Assistant Attorney General
149 Park Central Square, Suite 1017
Springfield, Missouri 65806
P: (417) 895-6567
F: (417) 895-6382
ron.carrier@ago.mo.gov
ATTORNEYS FOR PLAINTIFF

Certificate of Service

I hereby certify that on the 21st day of March, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

Defendant Jeffrey Kodba
2001 Peninsula Drive
Erie, Pennsylvania 16506

Defendant Orlando Bevilacqua
1709 North Locust Street
Pittsburg, Kansas 66762

Defendant The Bevilacqua Group, Inc.
Orlando Bevilacqua, Registered Agent
1709 North Locust Street
Pittsburgh, Kansas 66762

/s/ J. Ronald Carrier