

**APPLICATION OF MICHAEL PAUL DAVID
TO THE APPELLATE JUDICIAL COMMISSION FOR THE
JUDGE DRAPER VACANCY
MISSOURI COURT OF APPEALS, EASTERN DISTRICT**

***RESPONSES TO THESE QUESTIONS WILL BE MADE PUBLIC IF THE APPLICANT IS
NOMINATED FOR THIS VACANCY***

A. PERSONAL INFORMATION

1. Present principal occupation or title: Circuit Judge, 22nd Judicial Circuit

2. Are you at least 30 years of age? Yes (x) No ()

3. (a) How many years have you been a citizen of the United States? My life (60 years)

 (b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri? 39 years

4. State the date you were admitted to The Missouri Bar and whether your license is in good standing.

 September 9, 1977; license is in good standing.

 If not, explain in detail.

B. EDUCATIONAL BACKGROUND

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

Name	Address	Dates Attended	Degree
University of Mo – St. Louis		Sept. 1969 – May, 1973	B.S. Business Administration

- (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; member of Beta Gamma Sigma (national business honor society).

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

Name	Address	Dates Attended	Degree
St. Louis University	St. Louis, MO	August 1974 – May 1977	J.D.
National Judicial College	University of Nevada - Reno	1990, 1991, 2004	Courses in General Jurisdiction (2) and Mediation techniques

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

Member and writer of Law Journal for St. Louis University School of Law (1976 – 77).

7. 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. N/A

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

8. State, in chronological order (starting with the earliest employment), significant non-law-related employment prior to or since law school. To the extent reasonably available to you, include the name and address of each employer and the dates of employment.

Employer	Address	Dates of Employment
Steak n' Shake	Since torn down (Florissant, MO)	Jan – June '68; part-time
Golde's Dept. Store	Village Square Shopping Ctr., Hazelwood, MO 63042	June '68 – June '70; part-time
Chase Park Plaza	212 N. Kingshighway, St. Louis, MO 63108	Sept. '70 – April '71
Brooks Brothers	Equitable Bldg., St. Louis, MO 63101	April '71 – Aug. '74

9. State, in chronological order (starting with the earliest employment), all employment from the beginning of law school to the present. For legal employment, describe the positions you have held, e.g., associate, partner, law clerk, general counsel.

Employer	Address	Dates of Employment	Position
Aronson's Men's Store	Afton, MO (since closed)	Summer '75	Store manager
Fruit Growers Express	E. St. Louis, Il.	Summer '75	Refrigerated car fuel inspector

Joint Program with Law School & School of Social Work	St. Louis University School of Law	Summer '76	Case worker
Office of the Public Defender – St. Louis	Tucker & Market Sts., St. Louis, MO	May '77 – Sept. '79	Assistant public defender
Simon & Fitzgibbons (later Fitzgibbons & Glenn)	2255 Gravois, St. Louis, MO, 63104	Sept. '79 – June '80	Associate
Office of the Public Defender – Jefferson County	300 Main St., Hillsboro, MO 63050	June '80 – June '82	Part-time assistant public defender
Solo practitioner	816 Lafayette, St. Louis, MO 63104	June '80 – April (est.) '83	lawyer
Missouri House of Representatives	Capitol Bldg., Jefferson City, MO	Jan. '83 – April '89	State Representative
David & Geissal	816 Lafayette and later 2022 So. 12 th St., both St. Louis, MO 63104	April (est.) '83 – April '89	Partner

10. List any other states, courts or agencies in which you are licensed as an attorney. N/A

11. 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). To the extent reasonably available to you:
- i. State the style, date, court and, if published, the citation;
 - ii. Identify the client(s) you represented and opposing counsel; and
 - iii. Give a one-paragraph description of the case and your role in it.

Prior to my appointment as a judge in 1989, my appellate experience was limited to briefs and oral arguments on criminal cases (most recent of which were State v. Gibbs, 651 S.W.2d 611 (Mo.App. E.D. 1983) and State v. Ousely, 668 S.W.2d 643 (MoApp. E.D. 1984).

- 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). To the extent reasonably available to you:
- i. State the style, date and court;
 - ii. Identify who you represented and opposing counsel;

- iii. State whether the case was disposed of following a jury trial, bench trial or at what other stage; and
- iv. Give a one-paragraph description of the case and your role in it.

During my two plus years as a full-time assistant public defender in the City of St. Louis (1977 – 1979), I tried (as best as I can remember) 24 felony jury trials ranging from felony shoplifting (at that time it was stealing of a value of over \$50) to murder (twice). Unfortunately, due to the fact that these cases were tried before the Clerk's office had electronic record keeping, I have found no way to retrieve specific information on these cases. Thereafter, the nature of my practice (coupled with some representation of small businesses and my time in the Legislature) greatly reduced the frequency of trials. To the best of my ability, the following represent the nature of the cases I did try (estimated at between fifteen and twenty) after my tenure with the Office of the Public Defender and prior to my first judicial appointment in 1989.

State v. Jeffrey Meeks, #801-00127, was tried before a jury on October 15 – 17, 1980 in Division 23 of the Circuit Court for the City of St. Louis (22nd Judicial Circuit), Hon. Thomas Challis presiding. I represented the Defendant and the State was represented by Mr. Joseph Bauer. The Defendant, on probation for the sale of a controlled substance, was charged with four counts of possession of controlled substances. Although he passed a lie detector test administered by the late (and well respected) Herb Wilhelm, and was subsequently acquitted of three of the counts, the jury found him guilty of one (felony possession of marijuana). While Judge Challis, under the circumstances, was prepared to grant probation on this case with fifteen consecutive week-ends confinement, the Defendant's probation was revoked and, instead, Judge Challis sentenced Mr. Meeks to a concurrent sentence.

State v. Anthony Gibbs, #811-01173, was tried before a jury on June 9 – 12, 1981 in Division 19 of the Circuit Court for the City of St. Louis (22nd Judicial Circuit), Hon. James J. Sanders presiding. I represented the Defendant and the State was represented by Mr. Dwight Warren. The Defendant was charged with Murder in the First Degree. The Defendant was the sixth of thirteen children rejected by his mother and family. Although legally competent to stand trial, the Defendant was the mentally and emotionally challenged grandson of the victim with whom he lived and who, it appeared, killed her in some sort of fit of rage. He was convicted of manslaughter and sentenced to ten years in the Department of Corrections.

Elder v. Watkins, et al., #852-01739, was tried before the Court (bench trial) on July 29, 1986 in Division 8 of the Circuit Court for the City of St. Louis (22nd Judicial Circuit), Hon. Richard J. Meehan, presiding. I represented Plaintiff in a motor vehicle accident. Mr. Gary Bollinger represented the Defendant driver and James Childress represented a builder and contractor who had erected a fence around a building project that altered the drivers' lines of sight. Plaintiff settled her claims against Defendant builder and contractor and the Judge, thereafter, found each driver equally at fault.

Mead v. Mead, #842-01922, was tried before a jury on November 20 – 21, 1986 in Division 8 of the Circuit Court for the City of St. Louis (22nd Judicial Circuit), the Hon. Richard J. Meehan presiding. The case was brought by the former wife of Defendant for

breach of contract involving a promise to transfer half interest in a tavern in exchange for work performed. Plaintiff was represented by Mr. Mark Bahn and I represented the Defendant. Jury verdict for Plaintiff.

c. **Judicial Experience:** If you are a judge, commissioner, or are serving or have served in another judicial capacity, please describe the nature and extent of your judicial responsibilities:

- i. Include the dates you have served at each level;
- ii. Identify the types of dockets you have handled; and
- iii. State any special expertise you have developed that you believe is relevant to your qualifications for the position for which you are applying.

Associate Circuit Judge (April 1989 – November 1992) – handled felony preliminary hearings, misdemeanors (pleas and bench trials), civil jury trials, small claims and landlord- tenant cases.

Circuit Judge (November 1992 – present) – handled civil and criminal trials (settlements and pleas), equity, and served as the Circuit’s elected Presiding Judge 2003-2004. As a court of general jurisdiction, I have handled (by jury trial, bench trial and pleas of guilty) felonies ranging from thefts and drug possessions to capital murders and civil cases (by jury trial, bench trial and settlements) ranging from motor vehicle and “slip and fall” accidents to medical malpractice and wrongful death.

Over the last several years I have, also, handled and/or managed, from relative beginning to end, a number of extremely complex cases with wide arrays of complicated legal issues, including more than one hundred FELA cumulative trauma cases (resulting in trials, settlements, consolidations and arbitrations thereof) and two recently concluded tobacco cases (one, a four month trial early this year brought by 37 hospitals against the six major cigarette manufacturers and the other, a two month class action case against Philip Morris USA).

12. Describe any additional legal experience that you believe may be relevant to the decision of the commission (e.g., work as a law professor, in government, as corporate or other legal counsel).

Drafted and amended legislation while a member of the Missouri General Assembly; and during law partnership served as general counsel for small furniture and appliance retail, distribution and manufacturing chain, Christa Enterprises.

As a member of the Judiciary, I served on the collaborative “Opinion Writing for Judges” project between the National Center for State Courts (NCSC) and the Supreme Court’s Judicial Education program (2006 – 2008) and currently serve on the Supreme Court’s Executive Council and on its Legislative Committee (for the second time) and am co-Trustee of the State Judges’ Voluntary Fund. I was on the organizational committee and currently serve as a master in The Theodore

McMillian Inns of Court for St. Louis in conjunction with the St. Louis University School of Law; and have spoken on numerous occasions at bar or bar related functions on topics ranging from mediation, closing arguments, the right to confrontation in light of recent Supreme Court cases, as well as various “views from the bench”.

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

Missouri Bar Association
The Lawyers Association
Circuit Judges Association (Secretary-Treasurer 1998-99 &
President 1999-2000)

14. 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.

“We Don’t Bait and Switch: A First Amendment Analysis of Lawyer Advertising”, St. Louis University Law Journal, 1977.

“Judicial Independence: Our Freedom Depends on It”, St. Louis Daily Record, May 1, 2003, p. 5.

“To Win Equality by Law: Brown v. Board at 50”, St. Louis Daily Record, May 1, 2004, pp.3 & 10.

D. PUBLIC SERVICE

15. Describe your community activities, including any organizations not listed elsewhere with which you are affiliated.

Member, Fox Park, annual participant in Project Angel Tree; have spoken numerous times to community, school and cub/boy scout groups on the workings of the Court.

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

1981-1983: Member, Board of Commissioners, St. Louis Housing Authority (appointed by mayor)

1983-1989: State Representative (63rd District, City of St. Louis) 3+ terms;

1984-1986: Democratic Committeeman (7th Ward, City of St. Louis).

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. N/A

E. PROFESSIONAL CONDUCT AND ETHICS

18. Were you ever refused admission to the bar of Missouri or the bar of another state or the federal courts? If yes, provide details. No
19. 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? If yes, provide details. No
20. 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. No If yes, provide details.
 - 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. No If yes, provide details.
21. Have you have ever been held in contempt of court? No. If yes, provide details.
22. 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.

David v. David, #782-1098, Division 14 Circuit Court for City of St. Louis, commenced and concluded in 1978 (uncontested dissolution of marriage);

Print Mart Corp. v. David, #842-00464, Circuit Court for City of St. Louis, commenced and dismissed in 1984 (disputed campaign printing debt where plaintiff sued for insufficiently documented work they claimed they did);

Jewish Hospital v. David, #850-14908, Associate Circuit Court for City of St. Louis, commenced in 1985 and dismissed in 1986 (disputed account resulting from contest between two insurance policies I had regarding which had the primary responsibility);

David v. Conrad Properties, et al., #554846, Circuit Court for St. Louis County, commenced 1987 and settled in 1989 (for personal injuries resulting from an fall while an invitee at a new apartment site).

23. 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.

24. Are you delinquent in the payment of any federal, state, county or city taxes? No. If yes, provide details.

F. MISCELLANEOUS

25. State whether you are able, with or without a reasonable accommodation, to perform the essential functions of being an appellate judge, including participating in oral argument; performing legal research; communicating clearly and effectively, both orally and in writing; supervising the lower courts, serving on court committees and performing other administrative functions; and expeditiously deciding issues coming before the court.

Yes, I am able.

26. You must attach to this application at least one, but not more than three, writing samples that comply with the requirements set out in the instructions for applicants.

[see attached]

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.

Received Legislative Awards from the Saint Louis Symphony Orchestra; the Women's Self Help Center of Saint Louis, Missouri; the Missouri Industrial Development Council; the University of Missouri – St. Louis; and the Judicial Conference of Missouri (twice).

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 five references, **please provide name, title, mailing address, telephone and e-mail address**. *Please note that it is your responsibility to contact your references*, although if you intend to use as a reference a federal judge or other individual who only can provide a reference upon a specific request by the interviewing authority, please advise the commission and it will send that reference such a request. As to all references, it is your responsibility to see that they send the requested letters in a timely manner.

Provide your references with the attached Guidelines for References. The commission must receive your letters of reference, **via e-mail**, to EDJudgeVacancy@courts.mo.gov, by the date indicated in the Instructions to Applicants.

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***AUTHORIZATION FOR RELEASE OF AND CERTIFICATION
OF ACCURACY OF INFORMATION***

By my signature on this form, I certify that all statements made in my application and attachments thereto are correct and that if I am selected by the commission and appointed to the office for which I seek appointment, I will accept the appointment, qualify, and promptly enter upon the performance of the duties of that office as provided by law.

By my signature to this form, I further authorize (1) the commission by its chairperson to obtain relevant information, including but not limited to documents, records, and files about me from educational, law enforcement and disciplinary authorities and from employers and others who may have control of any documents, records, or other information pertaining to my application and suitability for the appointment I am seeking, and (2) the commission and its members to make such additional inquiries and to receive and share amongst themselves such additional information they shall deem appropriate in determining my qualifications for the position for which I seek appointment and the accuracy of my responses to the questions in this application and in otherwise fulfilling its duties. The information obtained under (1) and (2) above shall be made available only to the members of the Appellate Judicial Commission and their staff as necessary to perform their duties.

Notwithstanding the above, by my signature on this form, and in accordance with Supreme Court Rule 10, if I am one of the three nominees listed on the certificate of nomination sent to the governor, I authorize the commission to: (1) send a complete copy of this application and attachments to the governor and (2) publicly release a copy of the application and attachments, so as to inform the public as to my qualifications for the position for which I am applying, and thereby waive any objections and rights I have with reference to the privacy of all information contained in the answers and attachments to this form, with the exception of the cover page (which contains personal and confidential identifying addresses, telephone numbers and similar information).

This authorization shall remain in full force and effect until revoked by me in writing.

By: _____/s/ _____

Dated: __11/18/11_____