

**APPLICATION OF MICHAEL W. MANNERS
TO THE APPELLATE JUDICIAL COMMISSION FOR THE
JUDGE PRICE VACANCY
SUPREME COURT OF MISSOURI**

***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 Court Judge
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? 61
 (b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri? 40
4. State the date you were admitted to The Missouri Bar and whether your license is in good standing. If not, explain in detail.

September 4, 1976; my license is in good standing.

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
Central Missouri State University	Warrensburg, MO	1968-1972	B.A.(Major in History and Political Science)
Georgetown University	Washington, DC	Fall 1972	Not obtained

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

I graduated from CMSU *summa cum laude*. I was active in forensics and student government, where I served on the student supreme court. Upon graduation, I received the Charno Award as the outstanding graduating man in the Class of 1972.

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

Name	Address	Dates Attended	Degree
University of Missouri at Kansas City Law School	Kansas City, Missouri	1973-1976	JD

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

I was a member of the *Urban Lawyer* staff. I received the second place Sheridan Award in the Ellison Moot Court Competition my Second Year and was a member of the National Moot Court Team my Third Year.

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.

Not applicable.

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
Mid-Continent Public Library	Independence, MO	January 1966 – August 1968
Truman Library	500 W. US Highway 24 Independence, MO 64050	Summer 1969
United States Senate	Washington, DC	August 1972 – August 1973

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
Independence Police Department	223 N. Memorial Drive Independence, MO	June 1974 – August 1974	File Clerk
		June 1975 - August 1975	Legal Intern
Graham, Paden, Welch, Martin & Albano, PC	311 W. Kansas Ave. Independence, MO	October 1975 – September 1976	Law Clerk
Graham, Paden, Welch, Martin & Albano, PC	311 W. Kansas Ave. Independence, MO	September 1976 – ca. June 1981	Associate
Welch, Martin, Albano & Manners, PC	311 W. Kansas Ave. Independence, MO	Ca. June 1981 – December 2000	Shareholder
Jackson County Circuit Court	308 W. Kansas Ave. Suite 214 Independence, MO	December 2000 – present	Judge

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

Bar Admission	Date
United States District Court for the Western District of Missouri	September 11, 1976 (No longer active)
United States Court of Appeals for the Eighth Circuit	September 15, 1980 (No longer active)
United States Supreme Court	January 24, 1983

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.

I participated in about 100 appeals in the Missouri Court of Appeals (all three Districts), Missouri Supreme Court, Kansas Supreme Court, and the United States Court of Appeals for the Eighth Circuit. I also filed four petitions for writs of certiorari with the United States Supreme Court, although none were granted. Representative cases I briefed and argued include the following:

- i. ***Rimmer v. Colt Industries Operating Corp.***, 656 F.2d 323 (8th Cir.1981).
 - ii. I represented the appellant, Jerry Rimmer (plaintiff in the trial court); opposing counsel was Charles German.
 - iii. My client sued the defendant for failing to provide him with a proper service letter as required by Missouri law. The case was removed to the U.S. District Court for the Western District of Missouri. The District Judge declared the Missouri Service Letter Law to be unconstitutional as violating the First and Fourteenth Amendments to the United States Constitution, *Rimmer v. Colt Industries Operating Corp.*, 495 F.Supp. 1217 (W.D.Mo. 1980). On appeal I wrote the brief and presented the oral argument. The Eighth Circuit reversed the District Court judgment.
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- i. ***Hanch v. KFC National Management***, 615 S.W.2d 28 (Mo. 1981).
 - ii. I represented *amicus curiae*; Charles German represented the opposing *amicus curiae*.
 - iii. After the decision of the District Court in *Rimmer*, the Eastern District of the Missouri Court of Appeals opined in *Hanch* that the Service Letter Law was unconstitutional for the same reasons set out in the *Rimmer* opinion, for which reason the court ordered transfer to the Missouri Supreme Court. I wrote an *amicus curiae* brief filed in the Supreme Court, arguing that the Law was constitutional. The Supreme Court upheld the Law's constitutionality.
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- i. ***Essex v. Getty Oil Co.***, 661 S.W.2d 544 (Mo.App. 1981).
 - ii. I represented the appellant, Arlo Essex (plaintiff in the trial court); John Martin represented the defendant/respondent.
 - iii. My client was a service station operator for Getty. He was told that as long as he did a good job, his lease would be renewed every year. In reliance on those promises, he invested substantial time and money in two service stations, including Getty's oldest station in the Kansas City area, whereupon Getty refused to renew his lease. After jury verdicts in favor of the plaintiff, the trial court granted judgment in favor of Getty, notwithstanding the verdicts of the jury. I appealed the trial court's judgment, wrote the brief, and argued the case in the Western District of the Missouri Court of Appeals. The Court of Appeals reinstated a portion of the jury's verdict.

- i. ***Jensen v. ARA Services, Inc.***, 736 S.W.2d 374 (Mo. 1987).
- ii. I represented the appellant, Ronda Jensen (plaintiff in the trial court); Stephen Carlton represented the defendant.
- iii. My client's husband was a Joplin Fire Fighter. While off-duty, he was riding a motorcycle in a rural part of Joplin at night when he collided with an unlighted truck parked on the traveled portion of the roadway, killing him. The case was tried once in Carthage and resulted in a verdict for the two defendants. I took the case up to the Southern District of the Missouri Court of Appeals, which reversed and remanded the case for a new trial, *Jensen v. Pappas*, 684 S.W.2d 528 (Mo.App. 1984). After reversal, we settled the case with one of the defendants, and retried the case as to the remaining defendant, resulting in a verdict for the plaintiff, with percentages of fault assessed against decedent and the remaining defendant. The trial judge reduced the award to plaintiff by the percentage of fault assessed to her husband and then further reduced the award by the amount of the settlement with the other defendant. I appealed this judgment to the Southern District, which transferred the case to the Supreme Court. I wrote the brief in that court. The Supreme Court reversed the trial court, holding that the settlement should have been deducted from the judgment before assessment of fault.

- i. ***Hartman v. Hartman***, 821 S.W.2d 852 (Mo. 1991).
- ii. I represented the appellant, Tracy Armstrong (plaintiff in the trial court); John Reddoch was opposing counsel.
- iii. Tracy Armstrong was injured while pushing her mother's car off the road at her mother's direction when a van ran into the mother's vehicle. Tracy's brother, Michael, was killed in the same incident. Tracy sued the driver of the van and her mother. The trial court dismissed the action against the mother based on the doctrine of parental immunity. I was hired to handle the appeal which was consolidated in the Supreme Court with another appeal out of the Eastern District, *Hartman v. Hartman*. I wrote the brief and argued the case in the Missouri Court of Appeals and the Supreme Court. The Supreme Court abolished the parental immunity doctrine, bringing Missouri law in line with the majority rule in the United States.

- i. ***Nazeri v. Missouri Valley College***, 860 S.W.2d 303 (Mo. 1993).
- ii. I represented the appellant, Janet Nazeri (plaintiff in the trial court); Robert Hoemeke and Robert Guinness represented the respondents.
- iii. Janet Nazeri was employed by the teacher certification section of the Missouri Division of Elementary and Secondary Education. When a committee she chaired recommended that the defendant's teacher education program be decertified by the state, the vice president of the College falsely accused the plaintiff of leaving her husband and children to take up an adulterous relationship with a lesbian. She sued

the College for slander and the case was dismissed by the trial judge. I was hired to handle the appeal. I wrote the brief and argued the case in the Eastern District of the Missouri Court of Appeals. After that court affirmed the trial court's judgment, I filed a motion for transfer to the Supreme Court which that court granted. I then filed a new brief and argued the case to the Supreme Court, which issued an opinion that changed the law of defamation in Missouri.

- i. ***Ricketts v. City of Columbia***, 36 F.3d 775 (8th Cir. 1994), *cert. den.*, 514 U.S. 1103 (1995).
 - ii. I represented the appellants, Kimberly Roth and Paul Ricketts (plaintiffs in the trial court); Eugene Buckley represented the defendants/appellees.
 - iii. My client, Kimberly Roth, was married to a violent ex-convict. She left him and obtained an adult order of protection. Despite that order, the husband repeatedly threatened and harassed Ms. Roth, culminating in an incident where he confronted Ms. Roth at her parents' home. During that incident the husband murdered Ms. Roth's mother and kidnapped and raped Ms. Roth. The evidence at trial established that before this incident Ms. Roth repeatedly sought the aid of the Columbia Police Department in enforcing the order of protection, but that the police declined to assist her. Ms. Roth and her father sued the city on a theory that the inaction of the city violated their constitutional rights. A jury in federal court returned a verdict for the plaintiffs which the trial judge set aside. I was hired to take the appeal. I wrote the brief and argued the appeal in the Eighth Circuit. After that court ruled against my client, I filed a petition for writ of certiorari with the United States Supreme Court, which denied my petition. The case involved important issues concerning the rights of women under the equal protection clause of the 14th Amendment.
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- i. ***Carlson v. K-Mart Corp.***, 979 S.W.2d 145 (Mo. 1998).
 - ii. I represented the appellant, Jeannie Carlson (plaintiff in the trial court); Barry McCormick was opposing counsel.
 - iii. My client was hit on the head by a crock pot that fell off the top shelf of a merchandise rack in defendant's store, which caused her to fall and hurt her back. Six months later, she was involved in a car wreck that further injured her back. As a result of the fall and the wreck and preexisting degenerative disc disease, she suffered a herniated disc and had surgery on her back. We sued defendant for negligence in securing items stored on the top shelf of the rack. The trial court submitted a verdict-directing instruction, consistent with Missouri law, that allowed the jury to find for plaintiff if the defendant's negligence directly caused or directly *contributed to cause* plaintiff's injury. However, the court gave a damage instruction that only allowed the jury to award damages that were directly caused by the fault of the

defendant. After a verdict in favor of my client, I moved for a new trial on the ground that the damages were inadequate because the damage instruction was inconsistent with the verdict-directing instruction. When the court denied a new trial, I appealed to the Missouri Court of Appeals, where I wrote the brief and argued the case. That court affirmed the judgment of the trial court. I moved for transfer to the Supreme Court; that court granted my motion. I filed a new brief in that court and argued the case again. The Supreme Court reversed the trial court judgment and directed that damage instructions be modified in appropriate cases.

- i. *McBee v. Vandecnocke Revocable Trust*, 986 S.W.2d 170 (Mo. 1999).
- ii. I represented the Respondent, Teri McBee (plaintiff in the trial court); opposing counsel was Daniel Dunham.
- iii. My client successfully sued the defendants for specific performance of a real estate contract. Defendants appealed to the Missouri Court of Appeals. The Western District reversed the trial court on the ground that the plaintiff failed to join a necessary party, namely the trustee of the trust that owned the real estate. I was hired to seek transfer of the case, and I filed a motion to transfer with the Supreme Court. When the motion was granted, I wrote the brief in the Supreme Court and argued the case. The Supreme Court affirmed the trial court's judgment, holding that the body of the pleadings adequately joined the trustee.

- 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.

Before I became a judge, I served as lead counsel in approximately 44 civil jury trials and six criminal jury trials. This does not include court-tried cases or jury trials in which I was the second chair. Representative cases include:

- i. ***Gibbens v. Getty Oil Co.*** 1985, U. S. District Court for Kansas
 - ii. I represented the plaintiff, Buzz Gibbens; Gary Whittier represented the defendant.
 - iii. The case was settled following a jury verdict for plaintiff.
 - iv. My client was a Getty Oil lease operator who was terminated from his lease. He claimed that the termination violated the Petroleum Marketing Practices Act in that the termination was done in bad faith. I was lead counsel for the plaintiff.
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- i. ***England v. Norfolk & Western Ry.*** 1986, U.S. District Court for the Western District of Missouri.
 - ii. I represented the plaintiff, Vicki England; David Shinn represented the defendant.
 - iii. The case was tried to a verdict before a jury, and defendant paid the verdict.
 - iv. My client was severely injured when her car was struck by a freight train near Salisbury, Missouri. We claimed that the train failed to sound the warning required by Missouri law and the railroad's internal policies. I was lead counsel for the plaintiff.
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- i. ***Jenkins v. McLean Hotels.*** 1987, U.S. District Court for the Western District of Missouri.
 - ii. I represented the plaintiffs, Steven Jenkins and Mary Ann Bakke; Kenneth O. Smith represented the defendants.
 - iii. The case was tried to a jury. After verdict for the plaintiffs, defendants appealed, and the plaintiffs' judgments were affirmed on appeal, *Jenkins v. McLean Hotels*, 859 F.2d 598 (8th Cir. 1988).
 - iv. My client was an eight year old boy who ran through his hotel room's sliding glass door, not realizing it was closed. Contrary to building codes, the door had plate glass instead of safety glass, and the door shattered, badly injuring my client. Discovery revealed that this was the fourth child to be injured in the same manner at this hotel. The hotel policy was to only replace the existing glass with safety glass when glass doors broke. I was lead counsel for the plaintiffs.
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- i. ***Hoover v. Parker & Jones Development Co.*** 1989, Jackson County Circuit Court.
 - ii. I represented the plaintiffs, Glen and Sherry Hoover; Larry Tyril represented the defendants.
 - iii. The case was tried to a verdict. Defendants paid the judgment entered on a verdict for plaintiffs.
 - iv. My client was hired to repair a sewer line at a subdivision in Blue Springs, Missouri. The sewer line was dug up, and while my client was making repairs, the trench caved in, injuring him.

The subdivision developer failed to take adequate precautions required by OSHA regulations to guard against excavation collapse. I was lead counsel.

- i. ***Anderson v. Southwestern Bell Telephone Co.*** 1990, Jackson County Circuit Court.
- ii. I represented the plaintiff, Cheryl Anderson; Spencer Brown represented the defendant.
- iii. The case was tried to a jury. Defendants paid the verdict.
- iv. My client was stopped in traffic on her way to work at the Lake City Army Ammunition Plant when her car was struck in the rear by defendant's truck. She sustained a herniated disc and a closed head injury, rendering her totally disabled. I was lead counsel.

- i. ***L.G. v. McKinney.*** 1991, Jackson County Circuit Court.
- ii. I represented the plaintiffs; L. R. Magee represented the defendants.
- iii. I tried the case to a verdict. No appeal was taken by the defendants from the judgment entered on the jury's verdict.
- iv. My clients were a 26 month old little girl and her parents. The husband of the little girl's babysitter raped her and gave her a sexually transmitted disease. He was criminally prosecuted but received a suspended imposition of sentence, whereupon my clients hired me to sue the defendant civilly. I was lead counsel.

- i. ***Keith v. Employees Benefit Association.*** 1992, Jackson County Circuit Court.
- ii. I represented the plaintiff; Howard Bodney represented the defendant.
- iii. The case was tried to a jury. No appeal was taken by defendants from the judgment entered on the verdict for plaintiff.
- iv. My client was an insurance broker who procured a sizeable account for a third-party administrator. Defendant then refused to pay the agreed compensation to my client. The evidence established that defendant never intended to keep its promise to pay, and the jury found that defendant defrauded my client. I was lead counsel.

- i. ***Latimer v. Filtronetics.*** 1994, Jackson County Circuit Court.
- ii. I represented the plaintiff, Sandy Latimer; Mick Lerner represented the defendant.

- iii. The case was tried to the court, and defendant appealed a judgment for plaintiff. After it was affirmed on appeal, *Estate of Lorenz v. Filtronetics*, 913 S.W.2d 51 (Mo.App. 1995), defendant satisfied the judgment.
 - iv. My client was a cancer survivor hired by the defendant. She was an excellent employee, but when her boss found out about her history of cancer, my client was fired. My client's theory was that her discharge violated the Missouri Human Rights Act. While the case was pending, my client's cancer returned, and she died a few days after the trial. I was lead counsel.
- i. ***McReynolds v. Midwest ADP***, 1998, U.S. District Court for the Western District of Missouri.
 - ii. I represented the defendant; Charles Fairchild represented plaintiff.
 - iii. The case was tried to a jury, which returned a verdict for defendant. No appeal was taken from the judgment entered on the jury verdict.
 - iv. The plaintiff was a woman who was a drug and alcohol counselor for my client, a company that provides probation services. Plaintiff's supervisor made off-color remarks which she found offensive, but she did not report the remarks to the company owner as required by the personnel manual. When my client's owner found out about the incident from another employee, he called in the supervisor, confirmed what happened, and immediately terminated him. A short time later the plaintiff quit her job, claiming that she was constructively discharged. She filed suit under Title VII of the Civil Rights Act of 1964. I was lead counsel for defendant.
- i. ***Goldman v. Truman Medical Center***. 1999, Jackson County Circuit Court.
 - ii. I represented the plaintiff, Martin Goldman, M.D.; Brian Finucane represented the defendant.
 - iii. The case was tried to the court for 29 days over a six month period. The court entered an injunction in my client's favor, and defendant thereafter settled the issues with the plaintiff.
 - iv. My client was the Chair of the Radiology Department at Truman Medical Center ("TMC") and at the Medical School of the University of Missouri at Kansas City. The Executive Director of TMC attempted to summarily remove my client and two other Department Chairs because (we alleged) the Chairs criticized his performance as Executive Director of TMC and Dean of the Medical School. The trial court found

that the attempted removal of my client violated the due process guaranteed by the Medical Staff Bylaws. The judgment entered in this case received national attention in the medical profession as a landmark in the development of the law protecting physicians who act as patient advocates. I was lead counsel for Dr. Goldman.

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.

i. I have been a Jackson County Circuit Court Judge from December 15, 2000 to the present.

ii. In 2001 I handled civil and criminal cases. That year I presided over 14 civil jury trials and 12 criminal jury trials. I also presided over 19 contested family court cases. In 2002 and 2003 I was exclusively a Family Court judge. In those two years, I presided over 925 contested bench trials involving dissolution actions, motions to modify, and paternity. After that I went back to hearing civil and criminal cases until 2006. Since 2006 judges in Independence have been on a continuous 12 week rotation consisting of six weeks of civil cases, three weeks of criminal cases, and three weeks of domestic cases. Through the end of June of this year, I have presided over 110 civil jury trials, 53 criminal jury trials, and 1,168 contested family law trials. Currently, my case load generally consists of about 200 open civil cases, 80 felony criminal cases, 110 domestic relations cases, and supervision of around 500 probationers at any one time. I have presided over many different kinds of civil cases, including car wrecks, product liability cases, medical malpractice cases, business disputes, claims against insurance companies, and one monkey trial. I have heard criminal cases involving allegations of first and second degree murder, kidnappings, child molestations, rapes, sodomies, burglaries, robberies, drunk driving, drug sales, and child endangerment.

iii. When I was in private practice, I had very limited exposure to felony criminal or family law cases. I think my experience with those dockets since I have gone on the bench has greatly enhanced my ability to handle the kinds of cases that are heard in the Supreme Court. I think the perspective I have gained, applying the rules for

trial judges formulated by the appellate courts, would be of value to the Court.

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).

I was the City Prosecutor for Smithville, Missouri from December 1982 until December 2000. I taught a class on Motor Vehicle Law for Central Missouri State University (now the University of Central Missouri) in 1979 and 1980. From 1983 to 1988, I served as a board member and, eventually, as President of the Jackson County Law Library. I was an Adjunct Professor at UMKC Law School in 1989 and 1990, teaching Trial Advocacy. I have lectured extensively at seminars for the Missouri Bar, the Missouri Organization of Defense Lawyers, Missouri Association of Trial Attorneys, Lawyers Association of Kansas City, Kansas City Metropolitan Bar Association, Eastern Jackson County Bar Association, Missouri Court Reporters Association, and National Court Reporter Association. I have taught at judicial education seminars for Missouri trial judges, and since 2004, Dudley McCarter and I have presented the annual review of civil cases at the summer and fall Judicial Colleges. In September of 2005 I moderated a panel discussion at the National Forum on Judicial Independence in San Francisco for the American Judges Association. A transcript of that forum was published under the title, *Balancing Act: Can Judicial Independence Coexist with Court Accountability?* 41 COURT REVIEW 44 (2005). Since 1994 I have served on the Supreme Court Civil Rules Committee, which considers, drafts, and recommends changes to Civil Court Rules.

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

Association

Offices

American Bar Association (past)

American Board of Trial Advocacy

American Judges Association

Association for Women Lawyers of
Greater Kansas City

Association (Continued)	Offices
Association of Trial Lawyers of America*	
Eastern Jackson County Bar Association	Secretary, 1985-86 Vice President, 1986-87 President, 1987-88
Kansas City Metropolitan Bar Association	Executive Committee, ca. 1988-94 Chair-CLE Committee, 1989-90 Legal Counsel, ca. 1990-91 Chair-Appellate Court Committee, 1989-90
Kansas Trial Lawyers Association*	
Missouri Association of Trial Attorneys*	Board of Governors, 1981-2000 Chair, <i>Amicus Curiae</i> Committee, 1985-87 Executive Committee, 1991-2000 Vice President, 1996-97 President-Elect, 1997-98 President, 1998-99

*I resigned from these associations on taking the bench.

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.

Professional articles include *Evidence of Post-Accident Repairs or Changes in Products Liability in Missouri*, 39 J.MO.BAR 130 (1983); *Appeals to the Circuit Court*, II MISSOURI APPELLATE PRACTICE AND EXTRAORDINARY REMEDIES (Mo. Bar 4th ed. 1989); and *Chapter 537 Settlements*, MISSOURI LITIGATION SETTLEMENTS (Mo. Bar 2d ed. 2001). I was also a member of the Missouri Bar Committee that reviewed MISSOURI EVIDENCE RESTATED (2d ed. 1993). I authored Chapter 51, *New Trial Motions*, BENCH BOOK FOR MISSOURI TRIAL JUDGES. Since 2004 I have co-authored (with Dudley McCarter) the *Survey of Recent*

Civil Trial Practice Cases presented at the Summer and Fall Judicial Colleges. In 1989 I was granted a Certificate of Civil Trial Advocacy from the National Board of Trial Advocacy, a process that is open to trial lawyers who have experience as lead counsel in a number of jury trials after background investigation and written examination. In 1995 I was invited to apply for membership in the American Board of Trial Advocacy, an organization of trial attorneys representing members of both the plaintiffs' and defense bar. I was twice included in the book, *THE BEST LAWYERS IN AMERICA*, most recently in the 2001-2002 edition shortly before I took the bench.

D. PUBLIC SERVICE

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

I am a member of Woods Chapel United Methodist Church and the United States Naval Institute. I also belong to the Jackson County Historical Society and in that connection, I have participated in historical reenactments of famous Missouri trials, including the trials of Frank James, Jesse James, Jr., and Dr. Bennett Clark Hyde. I am an Honorary Fellow in the Harry S. Truman Library Institute. I am a member of the President's Society of the University of Central Missouri. I have been a member of the collegiate honor society, Phi Kappa Phi, since I was an undergraduate student.

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

In 1982 I was appointed to be City Prosecutor for the City of Smithville, Missouri by that City's Board of Aldermen. I continued in that position until December 2000, when I resigned to take the bench.

In November of 2000 I was appointed to be the Judge of Division 2 of the Jackson County Circuit Court in Independence. I was sworn in on December 15, 2000, and I was retained in office in elections in 2002 and 2008. My current term will expire in 2014.

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.

None.

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. If yes, provide details.

No.

- 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.

No.

21. Have you have ever been held in contempt of court? If yes, provide details.

No.

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.

Manners v. Manners, Jackson County Circuit Court Case No. DR89-05657, action for dissolution of marriage in 1989 and motion to modify custody (increasing parenting time) and adjust child support in 2006. Both cases were resolved without a contested hearing.

Clevenger v. Jackson County Circuit Court, U.S. District Court for the Western District of Missouri Case No. 02-1065-CV-W-DW, was a pro se action filed against several judges and Missouri officials in which the plaintiff claimed that her rights were violated in a child custody case. Plaintiff sought to join me as a party, claiming that I violated her rights by not awarding her custody of her child in 2003, but the District Court denied her motion.

Ledin v. Manners, et al., U.S. District Court for the Western District of Missouri Case No. 03-0671-CV-W-FJG, was a pro se claim alleging that I violated the plaintiff's civil rights by dividing his pension in a dissolution action. The case was dismissed in January of 2004.

Long v. Cross Reporting Service, Inc., U.S. District Court for the Western District of Missouri Case No. 01-1111-CV-W-HFS, was an action filed in 2001 in federal court, originally to enjoin Jackson County Circuit Court Judges from enforcing discovery orders in a civil action pending in the Circuit Court. In 2004 I was joined in the federal court action because I had sanctioned plaintiffs' counsel in the state court action, and counsel claimed that I had violated his civil rights. (The sanctions judgment I entered was affirmed by the Missouri Court of Appeals in *Long v. Cross Reporting Service*, 103 S.W.3d 249 [2003].) The case was eventually dismissed in 2008.

Kirkendoll v. Manners, et al., Jackson County Circuit Court Case No. 0516-CV05427, was an action for legal malpractice filed in 2005. The plaintiff was a client of my former law firm who hired my firm to sue the bankruptcy trustee for Allis Chalmers for the death of her husband in a tractor accident. Suit was filed in March of 1999 in state court and removed to federal court. On June 3, 1999, the plaintiff filed a dismissal of the action without prejudice, and on June 30, 1999, Judge Brook Bartlett, Chief Judge of the Western District, entered an order, dismissing the case without prejudice. Plaintiff filed a new action on June 22, 2000, less than one year after Judge Bartlett's order, within the time permitted by the Missouri savings statute, R.S.Mo. Sec. 537.100 (1994). Defendant moved to dismiss on the ground that the dismissal filed on June 3, 1999 triggered the

running of the savings statute. Plaintiff argued that Judge Bartlett's order was *res judicata* on the issue. The case was one of first impression involving the construction of Rule 41 (a) of the Federal Rules of Civil Procedure as to the running of a savings statute. Judge Ortrie Smith granted the motion and plaintiff appealed. The Eighth Circuit affirmed the District Court judgment, *Kirkendoll v. Bruemmer*, 287 F.3d 706 (2002). In 2005 plaintiff sued me, one of my associates, and my former law firm, claiming that we were negligent in not anticipating how Judge Smith would rule a case of first impression. We contested liability, but the matter was compromised without an admission of liability and dismissed in 2007.

Walk v. Manners, Jackson County Circuit Court Case No. 0616-CV00644, was an action filed by an inmate in the Missouri Department of Corrections. I was never served with process in this case and only know of its existence by virtue of a Casenet search. I do not know the legal basis of the claim; Casenet indicates that it was dismissed shortly after it was filed.

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.

Not applicable.

24. Are you delinquent in the payment of any federal, state, county or city taxes?

No.

If yes, provide details.

Not applicable.

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.

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.

I have attached an Order entered in *Cable v. St. Luke's East Hospital*, Case No. 0916-CV30145; an Order entered in *Rinehart v. Shelter General Insurance Co.*, Case No. 03CV225804; and the Brief of Appellants in *Armstrong v. Armstrong*, SC73568.

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.

I was selected by the Appellate Judicial Commission to be on judicial panels for vacancies on the Missouri Supreme Court in 1998, 2002, and 2011. Although I was not appointed by the Governor on any of those occasions, I believe being chosen for the panels was one of the greatest honors of my legal career.

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 JudgeVacancy@courts.mo.gov, by the date indicated in the Instructions to Applicants.

References

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