

**APPLICATION OF JOHN E. PRICE
TO THE APPELLATE JUDICIAL COMMISSION FOR THE
JUDGE BARNEY VACANCY
MISSOURI COURT OF APPEALS, SOUTHERN 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: **Attorney at law**
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? **58**

(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri? **34**
4. State the date you were admitted to The Missouri Bar and whether your license is in good standing. If not, explain in detail. **1979, 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.

**University of Northern Iowa, Maucker Union, Cedar Falls, Iowa 50614-0006.
1971-75, B. A. in Political Science.**

(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 with Highest Honors, 3.77 Cum. GPA
Dean's List 6 semesters**
6. (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, Hulston Hall, Columbia,
Mo. 65211. 1976-1979. Juris Doctor.**

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

**Graduated Cum Laude, Class Rank 7th
Order of the Coif
Missouri Law Review, Note and Comment Editor**

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.

Masonry Equipment, Inc., Waterloo, Iowa. Employed 25 hours per week throughout undergraduate years 1971-1975 as a welder, drill press and press break machine operator and shipping supervisor. The company no longer exists and the owner is deceased.

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.

1) Department of Agricultural Economics, Univ. of Missouri-Columbia, Columbia, Mo. 65211. Employed as a law clerk during my first year of law school, 1976-77.

2) MacMen Financial Services, Inc., Columbia, Mo. Employed as an account representative the summer after my first year of law school, 1977. The company no longer exists.

3) Missouri Administrative Hearing Commission, Room 640, Truman State Office building, 310 High St., Jefferson City, Mo. 65102. Telephone: 573-751-2422. Employed as a law clerk to Commissioner Mike Horn during my second and third years of law school, 1977-1979.

4) Greene, Cassity, Carnahan, Freeman and Greene, P.C., Springfield, Mo. Employed as a law clerk during the summer of 1978 following my second year of law school. The firm no longer exists, but the most senior partner remaining in active practice is John M. Carnahan, III, 2805 S. Ingram Mill Rd., Springfield, Mo. 65804. Telephone: 417-447-4400.

5) Missouri Court of Appeals, Southern District, 300 John Q. Hammons Parkway, Ste. 300, Springfield, Mo. 65802. Employed as a research attorney

from September 1979 through spring 1980.

6) Woolsey, Fisher, Whiteaker & McDonald, P.C., Springfield, Mo. Employed from spring 1980 through July 1, 1985 as an associate, and from July 1, 1985 through approximately July 31, 1995 as a partner/shareholder. The firm no longer exists, but the most senior partner remaining in active practice is Raymond E. Whiteaker, 1919 E. Battlefield Rd., Springfield, Mo. 65804. Telephone: 417-882-7400.

7) Price, Fry & Robb, P.C., Springfield, Mo. Employed as a partner/shareholder from approximately July 31, 1995 through November 30, 1999. The firm no longer exists, but the other primary partner remaining in active practice is Virginia L. Fry, 901 E. St. Louis St., Springfield, Mo. 65806. Telephone: 417-268-4059.

8) Carnahan, Evans, Cantwell & Brown, P.C., 2805 S. Ingram Mill Rd., Springfield, Mo. 65804. Employed as of-counsel from December 1, 1999 through approximately April 30, 2000, and as a partner/shareholder from approximately April 30, 2000 through the present.

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

Bar Admission	Date
U.S. District Court, W.D. Mo.	1979
U. S. Court of Appeals, Eighth Circuit	1985
United States Supreme Court	1987

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:

I have had the good fortune to practice law in many different subject areas over my career. I was originally hired to be a defense litigator at the firm of Greene, Cassity, Carnahan, Freeman and Greene, P.C., for whom I clerked as a second year law student. That firm split during my third year of law school, and I was fortunate to obtain a position as research attorney at the Missouri Court of Appeals, Southern District, where I began my career working with each of the judges on the court and reviewing filings for compliance with the court's rules. When hired by the Woolsey, Fisher firm, I started in real estate law, but due to firm workloads I was soon moved into insurance defense work and later plaintiffs' personal injury and products liability litigation, and then environmental law. In 1995 when the firm of Price, Fry & Robb was formed my practice evolved to a concentration in environmental law and business and real estate litigation. After joining

Carnahan, Evans in 1999 I have continued in those practice areas, and have worked in probate and estate litigation.

I have tried approximately thirty-five civil cases in Missouri circuit courts, and have tried approximately ten administrative law cases before various administrative agencies in Missouri. These cases reflect the practice mix discussed above. While I have had varying results as always happens in trials, I have received compliments from judges and other attorneys numerous times on my preparation and presentation of cases.

I have also had an extensive practice in appeals courts throughout my career. I argued my first appeal in 1981, and while I have lost count of the total number of appeals I have handled, it is well over 75. I have had the pleasure of handling most of the appeals for the firms with whom I have been associated, and I have received regular referrals of appeals from trial counsel across southwest Missouri. These appeals have also been in widely varying practice areas, including civil cases for both plaintiffs and defendants, family law, probate and trust law, commercial and contract cases, workers compensation, environmental and a few criminal cases. I believe this gives me a breadth of experience in appellate work that qualifies me for this position.

- 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.

1. ***Mihlfeld & Associates, Inc. v. Bishop & Bishop, L.L.C.*, 295 S.W.2d 163 (Mo. App. S.D. 2009).** I represented the plaintiffs-appellants Mihlfeld & Associates, Inc. and Global Transportation Systems, Inc. Opposing counsel were Joseph L Johnson and Brian Berry of Lathrop, Gage, L.C., Springfield, Missouri and Gregory Groves of Lowther, Johnson, Springfield, Missouri. The case was an action seeking injunctive relief to enforce a restrictive covenant in an employment agreement and damages for the breach of that agreement. Plaintiffs appealed the adequacy of the damage award and defendant Michael Rootes appealed the duration of the injunctive relief granted by the trial court. The judgment was affirmed in part and reversed in part, holding in pertinent part that plaintiffs were entitled to recover attorney fees from Rootes for the breach of his agreement, but that the duration of the court's injunction exceeded the time set forth in the employment agreement.

2. ***Warren Davis Properties V, L.L.C. v. United Fire and Casualty Co.*, 111 S. W.3d 515 (Mo. App. 2003).** I represented the plaintiff-respondent Warren Davis Properties V, L.L.C. United Fire was represented by Robert Cockerham of St. Louis, Missouri. This was an action to recover on a property and casualty insurance policy and for vexatious refusal to pay. After a jury verdict totaling \$2,187,166.00, the insurer appealed contending, inter alia, that plaintiff's building was vacant at the time of the occurrence, so there was no coverage, and claiming that there had been a misrepresentation of the value of the building, that voided the policy. The court of appeals affirmed the judgment, finding that there was "construction" as defined in Missouri law ongoing in the building at the time of the loss so that the building was not vacant, and that the evidence, viewed most favorably to the insurer, did not show any misrepresentation of the building's fair market value by plaintiff.
3. ***Barnes v. Morris Oil Co.*, 263 S.W.3d 697 (Mo. App. 2008).** I represented defendant-respondent Morris Oil Company on this appeal. The opposing counsel were Christian Horton and Richard Schnake of Springfield, Missouri. The case was a claim by Barnes' that their restaurant property in Branson had been damaged by migration of petroleum under the property from the adjacent Morris Oil petroleum bulk plant. The jury returned a verdict in favor of Morris Oil. On appeal, Barnes claimed that the jury instruction on trespass was erroneous, in that it required the jury to find that the contamination was at levels that caused an actual interference with the plaintiffs' possession of their property. The court of appeals affirmed, holding that the controlling Missouri law on trespass in pollution cases did require a jury finding on the actual interference issue, and that all other objections to the instruction had been waived.
4. ***Cushman v. Mutton Hollow Land Development, Inc.*, 782 S.W.2d 150 (Mo. App. 1990).** I represented plaintiffs Gerald and Amanda Cushman and their corporation, Mutton Hollow Enterprises, Inc. in this action. Opposing counsel were Elmer Meyer and Gene Redding of Branson, Missouri. Plaintiffs sought to enjoin defendant from using the name "Mutton Hollow" for a commercial development immediately adjacent to plaintiffs' attraction using that name. The trial court denied relief and plaintiffs appealed. The court of appeals found that the overwhelming weight of the evidence showed the Mutton Hollow name had acquired a secondary meaning as a trade name for plaintiffs' development, that there was clear evidence of confusion to the public from defendants' use of the similar name. The court ruled that plaintiffs had a protectable common law trademark in the name, and granted the injunction requested by plaintiffs.

5. ***Peck v. Jadwin*, 704 S.W.2d 708 (Mo. App. S.D. 1986).** I represented the plaintiffs, purchasers of a resort at Table Rock Lake. Defendants were represented by Gary W. Allman of Branson, Missouri. The suit was originally for fraud in the sale of the resort, and to recover on a promissory note given to Pecks by Jadwins when the resort was transferred back to Jadwins. At trial, only the claim on the promissory note was submitted to the jury, which returned a verdict for Pecks. On appeal, the main issue was whether the Pecks were required to elect between their fraud claims and the promissory note claim before presenting any evidence to the jury. The court of appeals affirmed the judgment, ruling that Jadwins had not shown before the introduction of evidence that Mr. Peck knew of the alleged fraudulent acts, and there was no legal basis for requiring an election of remedies when Jadwins' motion was presented to the trial court.
6. ***City of Gainesville v. Gilliland*, 718 S.W.2d 553 (Mo. App. S.D. 1986).** I represented the appellant City of Gainesville in a quiet title action. The respondents were represented by Douglas Harpool and Patrick Platter of Springfield, Missouri and by Don M. Henry and David Dunlap of West Plains, Missouri. The case involved a dispute over title to property near the City airport. The trial judge ruled that the land was owned by Gilliland, by adverse possession, abandonment and acquiescence in Gilliland's claims. On appeal, the court reversed the judgment, holding that there was no substantial evidence to support the trial court's judgment and that title to City land could not be acquired by adverse possession. The court also held that the evidence did not show the City had misled Gilliland about her property boundaries so as to create an estoppel against the City, and that there was insufficient evidence to establish abandonment or acquiescence by the City. The court entered a quiet title judgment in favor of the City.
7. ***Jones v. Jones*, 724 S.W.2d 615 (Mo. App. 1986).** I represented the appellant, Harlan Jones in this family law case over child custody. The mother was represented by Gary Kamp of Marble Hill, Missouri. Here the trial court had modified the child custody provisions of a Texas divorce decree that had granted custody to the father, finding that the mother had developed a bonding relationship with her minor son. The minor daughter had returned to live with her father in Texas, and the mother's evidence was that this separation caused her bonding with her son to be even more pronounced. The father appealed, claiming there was insufficient evidence to justify the modification. The court of appeals reversed the judgment, holding that the mother's bonding relationship was insufficient, standing alone, to justify separating the minor siblings where no special circumstances had been shown.
8. ***Rozell v. Stiffermann*, 726 S.W.2d 342 (Mo. App. W.D. 1987).** I represented the appellant Mr. Rozell. The respondent was represented

by Attorney General William Webster, and his assistant Edward Downey of Jefferson City, Missouri. This was an action for libel against a state official, and the trial court dismissed the petition for failure to state a claim on the ground the official was protected by official immunity. The appeal was referred to me. The court of appeals reversed the judgment of dismissal, ruling that there was no substantial evidence in the record to show the official was an executive officer entitled to absolute privilege, and that the petition adequately alleged the official made statements with malice or bad faith which could overcome a claim of official immunity.

9. *Vaughn v. Michelin Tire Corp.*, 756 S.W.2d 548 (Mo. App. 1988). I wrote the brief and argued for the defendant-respondent Truxan Parts in this products liability action. The plaintiffs were represented by Thomas Strong and John Woodell of Springfield, Missouri and the appellant Michelin was represented by Jerry Redfern and Paul White of Springfield, Missouri. Based on the jury's verdict, the trial judge gave judgment for plaintiffs against the tire manufacturer, but entered judgment for the retailer, my client. The issue as to Truxan was whether the trial court erred in refusing to direct a verdict for plaintiffs that Truxan had sold the tire in question. The court of appeals affirmed the judgment, ruling that there was a genuine issue of fact for the jury on this issue.
10. *Branson Hills Associates, L.P. v. JISTA, Inc.*, 932 S.W.2d 406 (Mo. App. S.D. 1995). I represented the appellant JISTA on referral from another attorney. The respondent BHA was represented by Robert Stillings of Springfield, Missouri. In the trial court, summary judgment had been entered against JISTA directing it to release a future advances deed of trust upon payment of \$80,000 to JISTA by BHA. This was a case of first impression interpreting Section 443.055 RSMo. The question was whether JISTA was "irrevocably bound" by a statement it filed with the county recorder as required by the statute, claiming that it was owed \$80,000 by BHA, when the statement also referenced a promissory note for \$155,700 from BHA to JISTA that JISTA claimed was secured by the deed of trust. The court of appeals reversed the summary judgment, holding that JISTA gave proper notice of its claim for the additional \$155,700, and that the notice was not misleading.
11. *Mueller v. Missouri Hazardous Waste Management Commission*, 904 S.W.2d 552 (Mo. App. S.D. 1995). I represented the appellants on this appeal of an administrative agency decision to grant a hazardous waste management facility permit. The agency was represented by assistant attorney general Shelley Woods of Jefferson City, Missouri and the permit holder was represented by Byron Francis of St. Louis, Missouri. On a petition for review to the circuit court, the trial judge affirmed the issuance of the permit. The appeal followed. The court of appeals

agreed with appellants that the Commission had exceeded its statutory authority by unilaterally modifying the permit issued by MDNR, thereby bypassing public participation procedures mandated by statute, and reversed the judgment.

12. ***McCormick v. Stewart Enterprises, Inc.*, 916 S.W.2d 219 (Mo.App. W.D. 1995).** I represented the claimant Mr. McCormick in this workers compensation appeal. The employer was represented by William Ringer of Kansas City, Missouri. The Labor and Industrial Relations Commission made an award to Mr. McCormick. The employer appealed, claiming there was insufficient evidence the injury arose from the scope and course of employment, and that the employer should receive a credit for sums paid or payable by it against the net third party recovery received by the employee in a separate tort claim. The court of appeals affirmed, holding the cause of Mr. McCormick's injury was a fall at work, and that the reason for the fall (heatstroke v. an idiopathic seizure) was immaterial to the resolution of his claim. On the subrogation credit issue, the court ruled that the "Ruediger" formula applied to McCormick's claim and that because the employer had not paid any benefits to McCormick at the time of his tort recovery, the employer was not entitled to an immediate credit and the tort recovery was to be treated as an advance of future compensation benefits, with employer's payments to renew once the advance was exhausted. However, the court also ruled that medical expenses advanced by the employer were to be included in the Ruediger formula, and remanded the case for modification of the award in that respect.

- 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.

1. ***Barnes v. Morris Oil Co.*, 263 S.W.3d 697 (Mo. App. 2008).** I represented defendant-respondent Morris Oil Company. The opposing counsel was Christian Horton of Springfield, Missouri. The case was a claim by Barnes' that their restaurant property in Branson had been damaged by migration of petroleum under the property from the adjacent Morris Oil petroleum bulk plant. The jury returned a verdict for my client, Morris Oil that was affirmed on appeal. This was a difficult case factually in that the Morris Oil facility was adjacent to

the plaintiffs' property, which was clearly contaminated. I was able, through complicated factual and expert testimony on geology and hydrology, to convince the jury that there were numerous possible sources of the contamination other than Morris Oil, and that plaintiffs had not proven they were damaged by the contamination below the restaurant.

2. ***Warren Davis Properties V, L.L.C. v. United Fire and Casualty Co.***, 111 S. W.3d 515 (Mo. App. 2003). I represented the plaintiff-respondent Warren Davis Properties V, L.L.C. United Fire was represented by Robert Cockerham of St. Louis, Missouri. This was an action to recover on a property and casualty insurance policy and for vexatious refusal to pay. The case was tried twice. The first trial resulted in a defendant's verdict for United Fire. The trial court granted my motion for new trial, and that ruling was affirmed on appeal. In the second trial, the jury gave a verdict totaling \$2,187,166.00, which was also affirmed on appeal. The main issues were whether plaintiff's building was vacant at the time of the occurrence, thereby excluding coverage, and whether there had been a misrepresentation of the value of the building, that voided the policy. I presented a number of witnesses who were in the building during the relevant time to establish there were construction activities ongoing, and lay and expert witnesses to establish that the value of the building listed on the insurance application came from the insurer's agent, not the plaintiff. The jury was convinced the insurer had unreasonably denied the plaintiff's claim, and also awarded damages for vexatious refusal to pay including attorney fees.
3. ***Savannah Place, Ltd. v. Heidelberg***, Circuit Court of Greene County, Mo. 2002. I represented the plaintiff in this action to recover on promissory notes and guarantees with my partner, Rodney Nichols. Defendants were represented by Thomas Auner, Springfield, Missouri. This bench trial resulted in a judgment for plaintiff on its claims and defendants' counterclaims. The judgment was reversed on appeal on the ground that a jury trial was required. See 122 S.W.2d 74 (Mo. App. 2003). However, the case is representative of trial work I have done in that it was a very complex transaction, where the plaintiff and defendants had been in business together developing residential property, had a falling out, and plaintiff then purchased certain joint promissory notes the parties had executed and defendants' guarantees of those notes, and sought to recover on the notes from its former co-venturers. The trial involved extensive financial documentation and expert testimony by accountants. We were able to make a clear picture of these complicated transactions for the trial court, resulting in a judgment for plaintiffs on all claims.

4. ***Wilmoth Enterprises, Inc. v. Missouri Department of Revenue***, before the Missouri Administrative Hearing Commission, approximately October, 2000. I no longer have this file and have no record of the case number. This was an administrative action seeking a refund for the plaintiff of petroleum transport load fees improperly collected by the Missouri Petroleum Storage Tank Insurance Fund. I represented the plaintiff Wilmoth; the Department of Revenue was represented by Ms. Shelly Woods of the Attorney General's Office. Our claim was that the statute authorizing the fees in question only pertained to underground storage tanks, and that Wilmoth had only above-ground tanks. The matter was hotly contested due to the precedential nature of a recovery by Wilmoth for other tank owners. We were able to demonstrate that Wilmoth had complied with all regulations affecting its operations of the tanks, and that it could not obtain any benefit from the fees paid since it lacked underground tanks. Wilmoth was awarded a full refund of fees it paid for a 4 year period.
5. ***Journagan Quarries, Inc. v. Clever Stone Co.***, before the Missouri Air Conservation Commission, approximately 1997. I represented Journagan, who sought a permit for a quarry expansion in Christian County on land adjacent to Clever Stone's quarry. Clever Stone was represented by Matthew Placek of Springfield, Missouri. This approximately 3 week hearing involved complex issues of air pollution computer modeling and permit procedures. The case was tried to an MDNR hearing officer, attorney Evelyn Mangan of Springfield, Missouri. We were able to simply these issues and establish that all regulations for the permit had been followed, and the grant of the permit was upheld.

- 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.

Not applicable.

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).

Since 2007 I have served as regional litigation counsel in southwest Missouri for the Missouri Petroleum Storage Tank Insurance Fund, litigating third party damage actions brought against petroleum storage tank owners and

operators for property damage or economic loss allegedly caused by releases of petroleum products, and as an advisor to the Fund regarding legal issues, proposed legislation and regulations affecting environmental and insurance issues regarding the Fund and its insureds.

13. List all bar associations and other professional societies of which you are a member, with any offices held and dates.
 - a. **The Missouri Bar, District 16 Young Lawyers Section Council Representative, 1983-1988.**
 - b. **The American Bar Association, House of Delegates, Missouri Bar Young Lawyers Section Council Representative, 1984-86.**
 - c. **Springfield Metropolitan Bar Association, Member of Board of Directors, 1992-94.**

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.
 - a. **The David J. Dixon Appellate Advocacy Award, The Missouri Bar Foundation, September 1988.**
 - b. **The Order of the Coif, University of Missouri-Columbia Law School, 1979.**
 - c. **The Missouri Bar, Environmental Law Deskbook, Chapter 5, "Impact of Environmental Laws on Business Transactions."**

D. PUBLIC SERVICE

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

I attended the Leadership Springfield academy sponsored by the Springfield Area Chamber of Commerce, graduating in 1990 as a part of Class V.

I served one term on the Springfield-Greene County Environmental Advisory Board in approximately 1987-89.

During the 1990s I served terms on the boards and as President of the Wilson's Creek National Battlefield Foundation and the Visiting Nurse Association of Springfield.

I served a two-year term as President of the Springfield Sister Cities Association ending in 2011, and have been a board member for 8 years.

I am currently serving as Chairperson of the Springfield-Greene County Park Board, and have served as a board member for 2 years.

In June 2012, I received a Gift of Time Award from the City of Springfield and the Springfield Area Council of Churches, recognizing substantial community service efforts in the Springfield community.

I have been a member of the Schweitzer United Methodist Church, and more recently, the National Avenue Christian Church in Springfield.

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

No.

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.

On June 9, 2011 the Region XV Disciplinary Committee issued an admonition letter to me as a result of a complaint filed by a former client, Mr. Ed Evans of Green Forest, Arkansas. Mr. Evans employed me to pursue a civil action on behalf of his company. The case was partially ruled against Mr. Evans on summary judgment, and his remaining claims were dismissed for failure to prosecute (after the circuit clerk's office failed to send notice of the dismissal docket to counsel). I refiled the dismissed claims at my expense to protect Mr. Evans' rights. The Committee concluded that I had not promptly responded to Mr. Evans' requests for information under Rule 4-1.4, and that I had not acted with reasonable diligence and promptness in representing Mr. Evans under Rule 4-1.3. The Committee found

that I had made mitigating efforts on behalf of Mr. Evans to protect his claims, and found no cause to file an information. This is the only complaint made in my 33 years of practice.

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.

 - 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.

21. Have you 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?

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.

I have never been sued by a client, but I have been a party in the following actions:

1) ***John E. Price and Janet L. Price vs. Gerald _____*** (last name unknown at this time), Circuit Court of Greene County, Missouri, Case No. _____ (unknown at this time), filed in approximately 1988. This was an action to recover unpaid rent on our rental house from the tenant. Judgment was entered for plaintiffs by default.

2) ***John E. Price v. Robert O. Dennis***, Case No. 31101CC3952, Circuit Court of Greene County, Missouri, filed October 19, 2001, disposed September 15, 2004. This was an action for personal injuries and property damage arising from an automobile accident. The case was settled.

3) ***Janet L. Price and John E. Price vs. Kimberly M. Lee***, Case No.

31395AC0306, Circuit Court of Greene County, Missouri, filed February 28, 1995, disposed July 24, 1995. This was an action for personal injuries and property damage arising from an automobile accident. The case was settled.

4) *In re the Marriage of John E. Price and Janet L. Price*, Case No. 195DR2945, Circuit Court of Greene County, Missouri, filed 1995, disposed August 13, 1998. This was an action for dissolution of marriage.

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.*)

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

No.

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

No.

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.

Attached are briefs I prepared and filed on behalf of clients in the cases of *Barnes v. Morris Oil Company*, 263 S.W.3d 697 (Mo. App. S.D. 2008) and *Warren Davis Properties V, L.L.C. vs. United Fire and Casualty Company*, 111 S.W.3d 515 (Mo. App. S.D. 2003).

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.

My extensive experience in appellate courts, discussed in section 10 above, is

my primary qualification for this position.

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

REFERENCES

The Honorable James C. England
Magistrate Judge, U.S. District Court for the Western District of Missouri
U.S. District Courthouse
222 N. John Q. Hammons Parkway
Springfield, MO. 65806
Phone: (417) 865-3761
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