

APPLICATION OF **Robert M. Clayton III**
TO THE APPELLATE JUDICIAL COMMISSION FOR THE
JUDGE BAKER 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: Commissioner, Missouri Public Service Commission (served as Chairman, 2009-2011)

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

3. (a) How many years have you been a citizen of the United States? 41 years
(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri? 21 years

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

Admitted September 30, 1994, and 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
Southern Methodist University	6425 Boaz Lane, Dallas, TX 75205	1987-1991	Bachelor of Arts (History, Minor in Business Administration)-1991

- (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 SMU in 1991 with a Bachelor of Arts in History from Dedman College and a minor in Business Administration from the Cox School of

Business. I participated in a number of social and political organizations including the finance committee of the student association, the video yearbook association and various offices within a social fraternity.

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-Kansas City School of Law	500 East 52 nd Street, Kansas City, MO 64111	1991-1994	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.

I enrolled at UMKC law school directly from college in 1991, and academically focused on practical training for practice of law with plans to return to Hannibal and join the family firm. Training included hands-on seminars on Criminal Law Procedure, Bankruptcy practice and Applied Evidence. I participated in a bankruptcy seminar with Judge Karen See, United States Bankruptcy Judge, Western District and was accepted into a student clerkship with Judge Frank Koger, United States Bankruptcy Judge, Western District. During parts of second and third year of law school, I clerked for Missouri Attorney General, in criminal and labor divisions.

I was selected as the Senior Articles Editor of *The Urban Lawyer*, a journal focusing on urban planning and land use planning law, based at the law school. As one of its editors, I was partially responsible for the editing notes and comments, preparation of book reviews for the journal and was partially responsible for overall management of the journal. Faculty oversight provided by nationally recognized land use planning professor and lawyer, Prof. Robert Freilich.

In 1993, I was elected as President of the Delta Theta Phi Law Fraternity. During my tenure, my goal was to foster the fraternity's relationship with the Young Lawyers' Section (YLS) of Kansas City Metropolitan Bar Association (KCMBA) to improve networking opportunities for law students. Organized the first ever, Young Lawyers' Section KCMBA Golf Tournament, and received the President's Award from the KCMBA Young Lawyers' Section in 1994.

During my final semester in law school, I was a candidate for State Representative.

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
See below.		

I worked in numerous non-law-related positions prior to law school. Many of the positions were during summer months. Employment since law school is listed in Item 9. Those jobs included stints as a camp counselor (Hannibal YMCA), in manufacturing (Buckhorn Rubber Products), vacant house demolition (Cardiff Properties, Inc.) and banking (Farmers & Merchants Bank). I will provide additional detail upon request.

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.

Began law school in September 1991:

Employer	Address	Dates of Employment	Position
Fedora Restaurant	47 th Street, Kansas City, MO (no longer exists)	Summer 1992	Server
Missouri Attorney General's Office	Fletcher Daniels State Office Bldg., 615 E. 13th St., Ste. 401, Kansas City, MO 64106	Summer 1993 - May 1994	Law Clerk—criminal and labor divisions
Clayton & Rhodes (later Clayton, Curl & Clayton and Clayton & Curl, L.L.C.)	999 Broadway, Hannibal, MO 63401	October 1994 - May 2003	Associate Attorney (1994-1996) & Partner (1996-2003)
Missouri General Assembly	State Capitol, Jefferson City, MO 65101	1995-2002	State Representative-10 th District
Missouri Public Service Commission	200 Madison, 9 th Floor, PO Box 360, Jefferson City, MO 65102	May 2003 - present	Commissioner (Served as Chairman January 2009-February 2011)

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

Bar Admission	Date
United States District Court, Eastern District--#56656	December 7, 1995 - December 31, 2003
United States Court of Appeals – 8 th Circuit--#99-0255	April 20, 1999 -

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.

- 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.

- 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.

Introduction:

Following graduation from law school and admission to the Bar, I joined my father’s firm as an associate. I eventually became a partner in 1996 where I practiced

until my appointment to the Missouri Public Service Commission in April 2003. Our firm handled cases typical of such a small-town practice including criminal law, probate, real estate, business litigation, contracts, estates and trusts, business organizations, workers' compensation, landlord-tenant, personal injury and bankruptcy. We handled cases in federal and state courts.

In 2003, I was appointed to the Missouri Public Service Commission, which is regarded as a quasi-judicial and quasi-legislative position. Most of the work involves making decisions following evidentiary hearings in cases filed by utilities or by stakeholders against utilities.

Judicial Experience:

My experience as a member of the Missouri Public Service Commission is similar to the duties of a judge and is likewise very relevant in comparing skills necessary for applicants to the Court of Appeals. Decisions before the Commission are made following evidentiary hearings. Contested cases are adjudicated according to the rules of evidence and of civil procedure, although the Commission is given some latitude in organizing its process such as being relieved of certain technical rules of evidence. Orders are approved by a majority of the Commission and members draft opinions supporting or denouncing decisions. These opinions may be used by parties on appeal or by courts in issuing a decision of approval or disapproval of a PSC decision. The opinions include legal analysis and policy positions.

Having been appointed in 2003, I have presided over 3,400 cases filed by stakeholders as one of five commissioners. Contested administrative cases require due process for stakeholders, evidentiary rulings, procedural decisions, and each decision must be lawful and reasonable. Such a listing of cases would be too exhaustive to include in this application, but these decisions have included every major rate increase by utilities, mergers and acquisitions, financing cases, certification cases, complaints by PSC staff and complaints by customers against utilities.

I have issued over 100 opinions in concurrence or dissent. In item #26, I have included three representative writing samples which are actual opinions issued in decisions. These writing samples include a dissent to a merger, a dissent to an award of a Certificate of Convenience and Necessity for a power plant and a dissent to a rulemaking involving a legislatively approved customer surcharge.

I have attached to my application a comprehensive list of all cases in which I have authored a written opinion. A few highlights of that listing include opinions relating to:

- Reasonableness of Financial Awards to Public Utilities (Case Nos. ER-2006-0314, ER-2004-0570, GR-2006-0387, GR-2006-0422).

- Concerns Regarding Deregulation of Telecommunications (Case No. IO-2006-0108).
- Consumer Safeguards in Rules Granting Utilities “Alternative” Rate Making Treatment Through Surcharges (Case No. EX-2008-0105).
- Consumer Benefits in Mergers and Acquisitions (Case No. EM-2007-0374).
- Privacy (Case No. TX-2008-0090).
- Electricity Reliability (Case Nos. EO-2007-0037, EX-2008-0230, EX-2008-0231 and EX-2008-0232).

Trial Practice:

Our firm was a small town practice that would take just about any type of case that would come through the door. We handled family law, estates and trusts, criminal, real estate, business litigation, probate, landlord-tenant cases, bankruptcy, collections, workers’ compensation and some personal injury. The cases listed below are a significant representation of the cases I have tried. The list is not comprehensive as many cases pre-date case.net and court files are not readily searchable. This list does not include settled cases that did not make it trial, which are too numerous to list. Cases are listed in no particular order.

State v. Rita Bridgman

Lewis County Circuit Court (Case No. CR796-27M)

May 20, 1996

Represented the Defendant

Opposing Counsel: Prosecutor Jake DeCoster

Bench Trial before the Hon. Fred Westhoff

The Defendant was charged with misdemeanor in Lewis County, Missouri, with the charge of Possession of Alcohol as a minor. Case was taken to trial. Defendant was found not guilty.

Robert Schweitzer v. William Schweitzer,

Marion County Circuit Court (Case No. unknown)

January-February 1998

Represented the Respondent

Opposing Counsel: John W. Briscoe and Rodney Rodenbaugh

Bench Trial before the Hon. John J. Jackson

This case involved a contract dispute between two brothers over financial arrangements within their family. Matter was bench tried and the court found against my client. The matter was eventually settled.

Richard O'Brien v. Carol Fohey

Marion County Circuit Court (Case No. CV595-113SCX)

August 24, 1995

Represented the Petitioner

Opposing Counsel: Casey Welch

Bench Trial before the Hon. Glenn Norton

This case involved a landlord-tenant dispute over the return of a deposit and alleged damages to an apartment by the tenant. The landlord-Petitioner withheld the return of the deposit because of damage to the property, but failed to provide a notice of accounting or description of the damages. The Petitioner was also seeking additional relief for damages to the premises. The Court found in favor of the Respondent and awarded damages.

Donna Harvey v. Ronald Harvey

Marion County Circuit Court (Case No. CV391-422DR)

March 23, 2000 and September 9, 2001

Represented the Respondent

Opposing Counsel: James Terrell

Bench Trial before the Hon. John J. Jackson

This case was a modification of a dissolution involving child support. The ex-wife was attempting to increase the amount of child support paid by the Respondent, ex-husband. This was a case that I litigated through the trial process and through an eventual appeal. The Court awarded an increased child support amount against my client. We appealed, see below, and the court of appeals reversed the Circuit Court and found in favor of the child support amount suggested by my client.

Nicole Kramer v. Hallmark Homes

Marion County Circuit Court--Palmyra (Case No. unknown)

2002

Represented the Respondent

Opposing Counsel: Charles E. Rendlen III

Bench Trial before the Hon. John J. Jackson

This case involved a contract dispute between a former salesperson of a manufactured housing dealer, Hallmark Homes. The dispute involved payments allegedly due her following sales of homes. The case was taken to a bench trial following mediation and extensive negotiations. During trial, the matter was settled.

Corey King v. Alma Yvette King

Marion County Circuit Court (Case No. CV396-165DR)

March 17, 1997

Represented the Petitioner

Opposing Counsel: pro se

Bench Trial before the Hon. Ronald McKenzie

This matter was a dissolution of marriage involving child custody, child support, visitation and marital property distribution. The matter was bench tried. My client was awarded custody, child support and his requests for marital property.

Bonnie Sue Robinson v. Robert Joe Robinson

Marion County Circuit Court (Case No. CV301-548DR)

November 18, 2002

Represented the Respondent

Opposing Counsel: James Terrell

Bench Trial before the Hon. John J. Jackson

This matter was a dissolution of marriage involving property distribution. The Court granted the dissolution and the property distribution based on my client's recommendation.

Kimberly Goodhart v. Russell Goodhart

Ralls County Circuit Court (Case No. CV897-76DR)

July 21, 1997

Represented the Petitioner

Opposing Counsel: James Terrell

Bench Trial before the Hon. Glenn Norton

This matter was a dissolution of marriage involving child custody, child support and property distribution. The Court granted the dissolution and partially awarded my client custody and property.

Graves v. Alliance Blue Cross-Blue Shield

Marion County Circuit Court (Case No. unknown)

2000 (estimate)

Represented the Respondent

Opposing Counsel: John Morthland

Bench Trial before the Hon. John J. Jackson

The Petitioner filed a case against his health insurance provider which had denied coverage for certain health care services. The Respondent argued that its policy provisions excluding coverage for preexisting conditions or illnesses supported its

position to deny coverage for back pain treatment. The Petitioner had sought treatment for back pain prior to purchasing the insurance policy. The policy was a month-to-month policy that would cover nothing that existed prior to its purchase. The Court sided with the Petitioner and found that the back pain was not a preexisting condition and that the services were covered under the policy.

Michael T. Welch v. Jennifer D. Welch

Ralls County Circuit Court (Case No. CV897-62DR)

March 1, 2001

Represented the Petitioner

Opposing Counsel: James Cary

Bench Trial before the Hon. Carroll Blackwell

This matter was a dissolution of marriage case involving child custody, child support and marital property distribution. The Court awarded the dissolution and partially granted my client custody.

Kevin Lorensen v. Candy Lorensen

Monroe County Circuit Court (Case No. CV697-43DR)

April 27, 1998

Represented the Respondent

Opposing Counsel: Steve Porter

Bench Trial before the Hon. Ronald McKenzie

This matter was a dissolution of marriage involving child custody, child support and marital property distribution. The Court awarded the dissolution and partially granted my client custody and property.

Amanda Lee Tapley v. Robert Murphy

Marion County Circuit Court (Case No. CV301-576DR)

November 30, 2001

Represented the Respondent

Opposing Counsel: pro se

Bench Trial before the Hon. John J. Jackson

This case was filed as an adult abuse action by the Petitioner alleging threats by the Respondent. The Order was contested by the Respondent and taken to trial. The Court entered Judgment of Protection against the Respondent.

Karen J. Smith, in the interest of D.T v. Robert Murphy

Marion County Circuit Court (Case No. CV301-577DR)

November 30, 2001

Represented the Respondent

Opposing Counsel: pro se
Bench Trial before the Hon. John J. Jackson

This case was a companion case to the adult abuse action listed above by a former girlfriend for an Order of Child Protection. The Order was contested by the Respondent and taken to trial. The Court entered a Judgment of Child Protection against the Respondent.

Appellate Practice:

Betty Hall et al. v. Eldon Janes et al., Appealed from the Shelby County Circuit Court to the Missouri Court of Appeals, Eastern District (Case No. ED73296)

February 25, 1999

Represented the Respondent, Eldon Janes

Opposing Counsel: Charles E. Rendlen Jr. and Charles E. Rendlen III

I handled only the appeal of trial court decision representing the Respondent. Dispute involved a contractual and family financial matter. Decision of the lower court was sustained.

Donna Harvey v. Ronald Harvey, Appealed from the Marion County Circuit Court (Case No. CV391-422DR) to the Missouri Court of Appeals, Eastern District (Case No. ED77778)

July 24, 2001

Represented the Respondent, Ronald Harvey

Opposing Counsel-James Terrell (eventual withdrawal)

Citation: 48 S.W.3d 674 (Mo.App., E.D. 2001).

Following a decision of the lower court to increase my client's child support obligation, we appealed to the Eastern District alleging error in the support calculation in the Form 14. Appellate court reversed, supporting my client's position, with instructions for taking additional evidence and issuing new decision in line with the appellate court decision.

Hugh Wilson Haden; Karen Sue Haden; Richard D. Hughes; Edith May Hughes; Jerry Clay, Debtors-Appellees, v. Joel Pelofsky, U. S. Trustee; Frederick J. Cruse, Standing Trustee, Appellants, Case Nos. 98-3035, 98-3036

April 21, 2000

Represented the Debtors--Appellees

Opposing Attorney: Frederick J. Cruse

Joel Pelofsky, United States Trustee ("UST"), and Fredrich J. Cruse, Standing

Trustee ("standing trustee") (collectively "trustees"), appealed from a final order entered by the Honorable E. Richard Webber, United States District Judge for the Eastern District of Missouri, which affirmed the bankruptcy court's confirmation of three Chapter 12 bankruptcy plans over the trustees' objections, by the Honorable David P. McDonald, United States Bankruptcy Judge for the Eastern District of Missouri. See *Cruse v. Haden (In re Haden)*, No. 2:96CV00092 ERW (E.D. Mo. June 2, 1998) (hereinafter "Dist. Ct. Order"), aff'g Nos. 94-20111-293/94-20178-293/93-20183-293 (Bankr. E.D. Mo. Oct. 3, 1996) (hereinafter "Bankr. Ct. Order"). For reversal, the trustees argue that the district court below erred in reading *In re Wagner*, 36 F.3d 723 (8th Cir. 1994) (*Wagner*), to mandate confirmation of Chapter 12 plans in which the debtors proposed to pay certain creditors directly, without the oversight of the Chapter 12 trustee and without payment of trustee's fees. The Court affirmed the lower court decision and sustained my clients' positions.

Citation: 212 F.3d 466, 35 Bankr.Ct.Dec. 276, Bankr. L. Rep. P 78,150 (8th Cir. 2000).

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).

See items 11 and 27.

I served as a state legislator for eight years. During my tenure, I was appointed to numerous law-related committees including the Judiciary, Criminal Law and the Joint Committee on Administrative Rules (JCAR). I participated in the debate on most issues before those committees including significant reforms of the statutes involving driving while intoxicated, sex offender statutes and registration, judicial compensation and retirement issues, court administration and other matters. I participated in the rewriting of the procedure associated with JCAR through an ad hoc committee working with the executive branch.

I was also appointed to several committees which involved legal issues as attorney-member of the committee. In 2000, an election contest was filed in the House of Representatives and the matter was referred to the Elections Committee, which established a process to receive legal argument and briefs. The Committee found the contest to be without merit and dismissed the petition.

I was also appointed to Chair the House Ethics Committee, the tribunal made up of equal number of members of both parties for the purpose of hearing charges of ethical violations by members. The Committee established rules similar to the rules of civil procedure and was designed to take evidence in accordance with the rules of evidence.

As Chairman of the Joint Committee on Legislative Research, had the opportunity to supervise the Revisor of Statutes, the director assigned with the task of compiling bills enacted into law. This Committee also supervised the bill drafters who had the responsibility of preparing bill drafts for senators and representatives.

Lastly, my service in the legislature afforded great opportunities to participate in lawyer-related issues affecting the practice of law and members of the Bar. The first bill sponsored in 1995 was a Missouri Bar proposal to expand penalties for the unauthorized practice of law, designed to stop those who unscrupulously took advantage of vulnerable consumers. Also, I had the chance to participate in such matters as expanding the funding for Legal Services of Missouri, including accessing the unspent funds within the tort victim's compensation fund. I also sponsored legislation to support the Court Appointed Special Advocate program through surcharges in civil process.

Legislative experience provided me a great opportunity to learn how one branch of our government functions, how legislative intent is important and how laws are written. While the judicial branch cannot write law and is limited to interpreting the laws, having such an understanding and appreciation for an equal branch provides an unique and helpful perspective.

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

Missouri Bar Association
American Bar Association—Section of Public Utility, Communications and Transportation (member of the Electricity Council)
Federal Communications Bar Association
10th Circuit Bar Association
National Association of Regulatory Utility Commissioners
Former Board Member
Former Chairman, Committee on International Relations
Mid-America Regulatory Conference
Former member of the Council of State Governments (former board member) and the Southern Legislative Conference (former Board member)

While in law school, I joined the Kansas City Metropolitan Bar Association and while in private practice, I was a member of the Bar Association of Metropolitan St. Louis.

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.

While I have not yet been published, I have written numerous opinions in decision-making process (See Item 26). I have also received numerous awards relating to the practice of law (See Item 27).

I have also jointly authored numerous reports stemming from individual investigations at the Missouri PSC (See Item 27).

- Commissioners' Report on Missouri Broadband Availability, Case No. TO-2008-0087
- Commissioners' Supplemental Report on Emergency Communications Planning, Case No. TO-2008-0052.
- Commissioner's Report on the Status of Missouri Farm Taps, Case No. GO-2008-0065.
- Report on Natural Gas Capacity in Northeast Missouri (Case No. GW-2007-0397).

D. PUBLIC SERVICE

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

Active in a number of organizations in and around Hannibal, Missouri:

Current associations:

Mark Twain Home Foundation (Board Member)-The Foundation is a non-profit organization which manages the historic properties relating to downtown Hannibal, including the boyhood home of Mark Twain. The Foundation manages the rehabilitation and restoration of various properties, manages several retail shops and acts as a leader in promoting historic Hannibal.

Affordable Community Education, Inc. (ACE) (Board Member)-ACE was established for the purpose of raising funds to support a Hannibal community college campus affiliated with Moberly Area Community College. Rather than raise funds through taxation, ACE raises private funds and leverages with private and public grant programs. The goal is to construct facilities that would support a Hannibal campus and enable degree achievement without the need of travel. ACE is currently in a multi-million dollar capital campaign.

Attend Trinity Episcopal Church, Hannibal, MO.

Former Affiliations:

Northeast Missouri Sheltered Workshop (NEMO)-(former Board member)
NEMO serves the developmentally disabled in Hannibal and surrounding communities by offering employment opportunities. NEMO pays its employees a wage and provides valuable services to the community from carpentry work to recycling. Resigned because of incompatible meeting schedules with duties out of town.

Avenues (former Board Member)-Avenues is a non-profit organization serving victims of domestic abuse and violence in the Hannibal area. Avenues provides support through the court process, housing and coordination with other government programs. Resigned because of incompatible meeting schedules with my duties out of town.

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

I was appointed to the Missouri Public Service Commission in 2003, and served as Chairman from January 2009 through February 2011. The PSC is the state regulatory authority of investor-owned utilities including electricity, natural gas, telecommunications, water and sewer services. The PSC is made up of approximately 190 staff members and governed by an independent five-member Commission with a budget of \$16.2 million. The PSC annually processes more than 500 cases and formulates state policy on energy and telecommunications. See items #9, 11 and 14.

I was elected by my colleagues to serve as Chairman of the Missouri Universal Service Board (2005-2009), the governing body for the Missouri Universal Service Fund. The Fund is designed to assist low income customers in acquiring and maintaining telephone service.

In 1994, I was elected State Representative, serving Marion and Shelby Counties as the youngest member of the 88th General Assembly. I was appointed Chair of the House Ethics Committee and the Joint Committee on Legislative Research and was Vice Chair of the Committee on Criminal Law. I also served on Committees including the Judiciary, Elections, Appropriations, and Administrative Rules. I sponsored legislation which established funding mechanisms for the Court Appointed Special Advocate (CASA) program and Legal Services of Eastern Missouri. I also sponsored House companion bill to legislation which created the Missouri Historic Preservation Tax Credit. I have been active in national and regional organizations including the Southern Legislative Council, Council of State Governments and the National Conference of State Legislators. See Item #12.

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.

See items #11-12, 16.

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.

N/A

- 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.

N/A

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?

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 and I have never been a party to any litigation on a personal, individual basis.

I have been a party to legal actions while serving in official duties while employed at the Missouri Public Service Commission. Any injunction, appeal or extraordinary writ associated with the Missouri Public Service Commission frequently names each member of the Commission as a party, acting in official capacity. These cases have not been listed as they are numerous over 8 years of service and are not specific to me. They include all serving Commissioners at the time of appeal and Commissioners are added or removed upon change in Commission membership. Upon request, I will supply greater detail.

An exception to the above practice occurred in 2006. I opened an investigation into the actions of various telecommunications carriers over the unlawful release of private, personal information of law abiding customers in violation of state privacy rules. I issued lawful subpoenas to a number of Missouri carriers, including AT&T. Following the carrier's refusal to comply with the subpoenas, an action was filed in Cole County Circuit Court for enforcement of the statutorily authorized orders. All enforcement cases were enjoined and subject to newly drafted federal legislation designed to halt any investigation into telecommunications carriers' actions. Cases include the original enforcement action as well as a declaratory judgment action filed by the Department of Justice. Both were eventually dismissed by the U.S. District Court, Northern District of California.

Commissioner Robert M. Clayton, III, of the Missouri Public Service Commission, Plaintiff v. AT&T Communications of the Southwest, Inc., SBC Long Distance, L.L.C., SBC Advanced Solutions, Inc., TCG of St. Louis Holdings, Inc. dba TCG St. Louis and Southwestern Bell Telephone L.P., Defendants, Circuit Court of Cole County, Missouri Case No. 06AC-CC00578; removed to The United States District Court for the Western District of Missouri Case No. 2:06-cv-04177-NKL; conditionally transferred to the Judicial Panel for Multidistrict Litigation Case No. 1791; transferred to The United States District Court for the Northern District of California Case No. M: 06-cv-01791-VRW (Individual Case No. 3:07-cv-01187-VRW).

The United States of America, Plaintiff v. Robert M. Clayton, III, in his official capacity as Commissioner of the Missouri Public Service Commission; Southwestern Bell Telephone, L.P.; SBC Advanced Solutions, Inc.; SBC Long Distance, LLC; AT&T Communications of the Southwest, Inc.; TCG St. Louis Holdings, Inc.; TCG Kansas City, Inc., Defendants, The United States District Court for the Eastern District of Missouri Case No. 4:06cv01132; conditionally

transferred to the Judicial Panel for Multidistrict Litigation Case No. 1791; transferred to The United States District Court for the Northern District of California Case No. M: 06-cv-01791-VRW (Individual Case No. 3:07-cv-01242-VRW).

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.

N/A

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.

I am able to perform, without reasonable accommodation, the essential functions of being an appellate judge including participating in all elements of work such as oral arguments, performing legal research, communicating clearly and effectively, both orally and in writing, supervising lower courts, serving on court committees, performing other administrative functions and expeditiously deciding issues coming before the court.

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 three writing samples which include opinions I have drafted and filed before the Missouri Public Service Commission. The cases include:

Dissenting Opinion of Commissioners Robert M. Clayton III (and Steve Gaw), In the Matter of the Application of Aquila, Inc. for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Acquire, Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage Electrical Production and Related Facilities in Unincorporated Areas of Cass County, Missouri Near the Town of Peculiar, Case No. EA-2006-0309, September 15, 2006. This case was reversed by the Western District and returned to the Commission for further action.

Dissenting Opinion of Commissioner Robert M. Clayton III, In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc. for Approval of the Merger of Aquila, Inc., with a Subsidiary of Great Plains Energy Incorporated and for Other Related Relief, Case No. EM-2007-0374, September 17, 2008. This matter is currently on appeal before the Missouri Supreme Court.

Dissenting Opinion of Commissioner Robert M. Clayton III, In the Matter of Proposed Rules 4 CSR 240-3 .162 and 4 CSR 240-20.09, Environmental Cost Recovery Mechanisms. Case No. EX-2008-0105, June 3, 2008. This matter was eventually withdrawn by the Commission and started over to address potential error in process.

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.

Service within several bar associations has been recognized for support of bar activities and policies improving the practice of law in Missouri.

Awards:

President's Award of the Young Lawyers' Section of the Kansas City Metropolitan Bar Association, while a student at UMKC (for improving networking opportunities between students and the bar) (1993).

President's Award from the Missouri Bar Association (for work associated with Legal Services of Eastern Missouri) (2001).

President's Award from the Missouri Bar Association (for serving on the Commission for the Impartiality of the Judiciary and the Missouri Non-partisan Court Plan) (2005).

Recognition from Legal Services of Eastern Missouri (for work associated

with increased funding for low income legal services) (Oct. 5, 2000).

Legislative Service Awards from the Missouri Bar for service on improving the practice of law while serving as State Representative (1995, 1997, 1999, 2000 and 2002).

Decade Award from the University of Missouri—Kansas City School of Law (recognized among my class for achievements for work performed in first 10 years in practice of law) (2004).

Service Award from the National Association for the Advancement of Colored People for the promotion of Program and Equal Opportunity (August 30, 1997).

Numerous recognitions for agricultural service from organizations including the Missouri Farmer's Union and the Missouri Farm Bureau (1996, 1998, 2000 and 2001).

Received recognition from educational associations for service in support of education including organizations such as the Retired Teachers Association, the Shelby County R-IV Board of Education and the Missouri National Education Association (1995, 1996 and 1998).

Received recognition from business community including the Hannibal Chamber of Commerce and the Junior Chamber of Commerce (1995, 1996, 1997, 1998 and 2003).

Activities:

I have been involved in regulatory activities at a state and national level. Commissioners have the responsibility to advocate for energy and telecommunications policies affecting Missouri consumers and utilities.

Telecommunications policy: I have been active in the National Association of Regulatory Utility Commissioners (NARUC) and serve on the Telecommunications Committee. The Federal Communications Committee (FCC) appointed me to serve on the Section 706 Joint Conference on Advanced Services and the North American Numbering Council. I have also served as Chairman of the Missouri Universal Service Board.

Energy policy: I have been appointed by the Federal Energy Regulatory Commission (FERC) to serve on the FERC/NARUC Smart Grid Collaborative. I serve on the Electric Power Research Institute's (EPRI) Advisory Group on Energy Efficiency and Smart Grid. I have also been a participant in the activities

of the Regional State Committee of the Southwest Power Pool and serve as a member of the State Energy Efficiency Action Network. I have previously served on the Missouri Oil and Gas Council and on the Governor's Homeland Security Advisory Committee.

PSC Reform, Transparency and Modernization: Following appointment to Chairmanship, I pressed for implementation of new policies on open meetings, sunshine law requests, document retention and a new diversity plan. New Ethics rules were passed limiting communications with regulated entities, more in line with the Code of Judicial Conduct. I also pushed for reforms in public outreach and education with revised Local Public Hearing procedure, public broadcast of all public meetings and hearings and an organized media outreach effort to further explain regulatory practice and policy. I also spearheaded implementation of a small complaint process for utility consumers.

Presided Over Major Shifts in Energy Policy: During tenure as Chairman, presided over the most significant changes in state energy policy in recent memory including implementation of rules associated with Missouri's renewable energy standard (Prop C) (Case No. EX-2010-0169), rules associated with the Missouri Energy Efficiency Investment Act (MEEIA or SB376)(Case No. EX-2010-0368) and rules associated with electric utility integrated resource planning (IRP)(Case No. EX-2010-0254).

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