

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

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

1. Present principal occupation or title: Circuit Judge, 22nd Judicial Circuit
2. Are you at least 30 years of age? Yes (x) No ()
3. (a) How many years have you been a citizen of the United States? 62 years.
(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri? 41 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.

September 9, 1977; license in good standing
5. List any other states, courts, or agencies in which you are licensed as an attorney.

None
6. (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 Missouri – St. Louis, 1 University Blvd., St. Louis, MO 63121;
attended Sept. 1969-May, 1973; B.S. degree in Business Administration

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

Graduated *magna cum laude*; member of Beta Gamma Sigma (national business honor society).
7. (a) State the name and address of all law schools attended together with the dates and degrees received.

St. Louis University School of Law, 100 North Tucker, St. Louis, MO 63101
(current address); attended August, 1974 to May, 1977; received Juris Doctor;
National Judicial College at the University of Nevada – Reno in 1990, 1991 and 2004
for courses in General Jurisdiction (2) and Mediation Techniques.

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

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

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

(a) Prior to law school, I worked at (1) Steak n' Shake (at location in Florissant, MO that no longer exists) as a part-time curb waiter for Jan – June, 1968; (2) Golde's Department Store, Village Square Shopping Center, Hazelwood, MO 63042 as a part-time clothing salesman from June 1968 – June 1970; (3) the Chase Park Plaza Hotel, 212 N. Kingshighway, St. Louis, MO 63108, full time (nights) setting up banquet and meeting rooms from Sept. 1970 – April 1971; and (4) Brooks Brothers, Equitable Building, St. Louis, MO 63101 (no longer at that location) as full time (days) men's clothing salesman from April 1971 to August 1974.

(b) From the beginning of law school, I worked at or for (1) Aronson's Men's Store, Afton, MO (now closed) as the store manager during the summer of 1975; (2) Fruit Grower's Express, E. St. Louis rail yards, as a refrigerated car fuel inspector, also in the summer of 1975; (3) a Joint Program with the St. Louis University's Law School and School of Social Work through Legal Services of Eastern Missouri as a case worker in the summer of 1976; (4) the Office of the Public Defender – St. Louis, Tucker & Market Streets, St. Louis, Mo as an assistant public defender from May 1977 to September 1979; (5) the law office of Simon & Fitzgibbons (later Fitzgibbons and Glenn), 2255 Gravois, St. Louis, MO as an associate attorney from September 1979 to June 1980; the Office of the Public Defender – Jefferson County, 300 Main St, Hillsboro, MO as a part-time assistant public defender from June 1980 to June 1982; solo practitioner at 816 Lafayette St. Louis, MO from June 1980 to April (est) 1983; as a partner in the firm of David & Geissal, first at 816 Lafayette and later 2022 So. 12th St, St. Louis, MO from April (est) 1983 to April 1989; and for the State of Missouri as a member of the Missouri House of Representatives, Capitol Building, Jefferson City, MO from January 1983 to April 1989.

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

10. Describe the nature of your experience in trial and appellate courts and explain how they demonstrate the quality of your legal work. (*You either may take as much space as you need here or attach your response on separate sheets*). Include in your response:

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

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

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

During my two plus years as a full-time assistant public defender in the City of St. Louis (1977-79), I tried (to the best of my recollection) 24 felony jury trials ranging from felony shoplifting (at the time it was stealing of a value of over \$50) to murder (twice). Unfortunately, due to the fact that these cases were tried before the Clerk's office had electronic record keeping, I have no way to retrieve specific information on these cases. Thereafter, the nature of my practice (coupled with some representation of small businesses and my time in the Legislature) greatly reduced the frequency of trials. To the best of my ability, the following represent the nature of the cases I did try (estimated at between fifteen and twenty) after my tenure with the Office of the Public Defender and prior to my first judicial appointment in 1989.

State v. Jeffrey Meeks, #801-00127, was tried before a jury on October 15 – 17, 1980, in Division 23 of the Circuit Court for the City of St. Louis (22nd Judicial Circuit), Hon. Thomas Challis presiding. I represented the Defendant and the State was represented by Mr. Joseph Bauer. The Defendant, on probation for the sale of a controlled substance, was charged with four counts of possession of a controlled substance. Although he had passed a lie detector test administered by the late (and well respected) Herb Wilhelm and was subsequently acquitted of three of the counts, the jury found him guilty of one (felony possession of marijuana). While Judge

Challis, under the circumstances, was prepared to grant probation on this case with fifteen consecutive week-ends confinement, the Defendant's probation was revoked and, instead, Judge Challis sentenced Mr. Meeks to concurrent time.

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

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

Mead v. Mead, #842-10922, was tried before a jury on November 20 – 21, 1986, in Division 8 of the Circuit Court for the City of St. Louis (22nd Judicial Circuit), Hon. Richard J. Mehan, presiding. The case was brought by the former wife of Defendant for breach of contract involving a promise to transfer half interest in a tavern in exchange for work performed. Plaintiff was represented by Mr. Mark Bahn and I represented the Defendant. Jury verdict for Plaintiff.

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

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

Circuit Judge (November 1992 – present) – handled civil and criminal trials (settlements and pleas), equity, and served as the Circuit's elected Presiding Judge 2003-2004. As a court of general jurisdiction, I have handled (by jury trial, bench

trial and pleas of guilty) felonies ranging from thefts and drug possessions to capital murders and civil cases (by jury trial, bench trial and settlements) ranging from motor vehicle and “slip and fall” accidents to medical malpractice and wrongful death. Over the last several years, I have, also, handled and/or managed from relative beginning to end a number of extremely complex cases with wide arrays of complicated legal issues, including more than one hundred FELA cumulative trauma cases (resulting in trials, settlements, consolidations and arbitrations thereof) and, in 2011, two tobacco cases (one, a four month trial brought by 37 hospitals against six major cigarette manufacturers and the other, a two month class action case against Philip Morris USA).

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

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

As a member of the Judiciary, I served on the collaborative “Opinion Writing for Judges” project of the National Center for State Courts (NCSC) and the Supreme Court’s Judicial Education program (2006-2008) and currently serve on the Supreme Court’s Executive Council and as co-Trustee of the State Judges’ Voluntary Fund. I was on the organizational committee and currently serve as a master in The Theodore McMillian Inns of Court for St. Louis in conjunction with the St. Louis University School of Law. And, I have spoken on numerous occasions at bar or bar related functions on topics ranging from mediation, closing arguments, the right to confrontation in light of recent Supreme Court cases, as well as various “views from the bench”.

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

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

13. Describe your efforts (e.g. work on bar committees, pro bono efforts, CLEs presented, etc.) to contribute to the improvement of the law, the legal system and the administration of justice.

In addition to the mentoring activities associated with being a master at The Theodore McMillian Inns of Court for St. Louis as described in answer to question 11 above, I have spoken to groups of younger lawyers at a number of law firms,

including Sandberg, Phoenix & von Gontard PC, Williams, Venker & Sanders LLC, and Thompson Coburn LLP.

In addition, along with then President of the Missouri Bar William Corrigan, Jr. organized and presented a LEGISLATORS' DAY for the 22nd JUDICIAL CIRCUIT on March 29, 2004, wherein the functions of the Court were explained to area legislators. I have made a number of presentations and various bar functions, including participation in the Missouri Bar's 2004 Alternative Dispute Resolution Conference CLE "Judicial Roundtable – State of ADR in Missouri's State and Federal Courts" on October 15, 2004, and in the Missouri Bar's 2005 CLE "Tips From the Bench: Award-Winning Ideas From the Bench" on January 20, 2005. I presented "The Right to Confrontation under Crawford vs. Missouri's Chapter 491" in the joint Missouri Bar and Missouri Association of Criminal Defense Lawyer's CLE "Handling a Child Sexual Abuse Case: 'Find Words' to Remove the Mystery" on January 19, 2007, and I participated in the Missouri Bar's Annual Meeting CLE "Objection Sustained – Recognizing and Defending Against Abusive and Unethical Trial Tactics" on September 25, 2009. Most recently, I participated in a panel discussion at the National Employment Lawyers Association dinner on June 4, 2012.

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

Member, Fox Park Neighborhood Association; annual participant in Project Angel Tree.

15. Describe your activities (e.g. speeches, presentations, educational activities, etc.) undertaken to further public understanding of and respect for courts and the judicial system and to promote access to justice for all.

Have spoken over the years to numerous neighborhood organizations, schools and cub/boy scout groups.

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

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

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

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

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

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

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

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

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

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

20. 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.

21. 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.

22. 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.

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

No.

24. Have you ever been sued by a client or been a party to any other litigation, other than as guardian ad litem, plaintiff ad litem, or defendant ad litem? Yes.

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

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

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

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

David v. Conrad Properties, et al, #554846, Circuit Court for St. Louis County (21st Judicial Circuit) for personal injuries resulting from a fall while an invitee at a new apartment site – case settled.

25. 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.

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

27. 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.

Please find attached.

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

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

Please list the names of *five* persons whom you will ask to provide letters of reference for you with respect to your judicial qualifications. Do **not** list as a reference a judge of the court involved. As to each of the (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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