

**APPLICATION OF ERWIN O. (ERV) SWITZER  
TO THE APPELLATE JUDICIAL COMMISSION FOR THE  
JUDGE NORTON VACANCY  
MISSOURI COURT OF APPEALS, EASTERN DISTRICT**

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

1. Present principal occupation or title:

Officer and General Counsel  
Greensfelder, Hemker & Gale, P.C.  
Co-Chair, Appellate Practice group  
Co-Chair, Constitutional Law group

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?

59 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 19, 1981. My license is and has always been in good standing.

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

United States Supreme Court  
United States Court of Appeals for the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Circuits  
United States District Court for the Eastern District of Missouri  
United States District Court for the Western District of Missouri  
United States District Court for the Eastern District of Michigan

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

St. Louis University, 221 North Grand Blvd, St. Louis, MO 63103  
Attended 1974-1978  
Bachelor of Arts, *magna cum laude*, 1978

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

- (1) *University News* student newspaper, 1975-78 (Editor-in-Chief, 1977-78)
- (2) Debate Team, 1974
- (3) Phi Beta Kappa
- (4) Academic Scholarship, four years

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, 3700 Lindell Blvd., St. Louis, MO 63108  
Attended 1978-1981  
J.D., *cum laude*, 1981

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

- (1) Rank: Top 10%, including No. 1 in class for one semester.
- (2) Co-Founding Editor-in-Chief of the St. Louis University Public Law Review
- (3) Research Editor, St. Louis University Law Journal
- (4) Order of the Woolsack scholastic honor society
- (5) Alpha Sigma Nu honor society
- (6) Thomas J. White Family Fellowship of Public Law and Government
- (7) Richard J. Childress Law School Scholarship
- (8) Certificate of Achievement from the U.S. Office of Government Ethics
- (9) Paper for Professor Roger Goldman's Bill of Rights Seminar was revised and published as the lead law review article: "Applying Criticisms of the Warren Court to the Burger Court: A Case Study of *Richmond Newspapers v. Virginia*," 5 U. of Arkansas - Little Rock Law Journal 2003 (1982)

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) **Non-law-related employment prior to law school:** I had a variety of summer jobs and part-time jobs, including working as a janitor, painter, and roofer (1972-1976). I was a Teamster warehouseman for Canada Dry in St. Louis (1976), Congressional intern for U.S. Rep. Melvin Price in Washington, D.C. (1977), Park Ranger for the National Park Service at the Gateway Arch (1978), and a local government reporter for the Suburban Newspapers in St. Louis (1978).

(b) **Employment from beginning of law school to the present:**

Marvin Klamen Law Offices  
Summer Associate  
Summer 1979  
Clayton, MO

U.S. Dept. of Justice, Civil Division  
Honors Law Clerk  
Summer 1980  
Washington, DC

U.S. Court of Appeals—8<sup>th</sup> Circuit  
Law Clerk to Hon. Floyd R. Gibson  
1981-1983  
Kansas City, MO

Bryan Cave LLP  
Partner, 1990-94  
Associate, 1983-90  
211 North Broadway, St. Louis, MO 63102

Missouri Attorney General's Office  
Chief Counsel-Eastern Region, 1994-2000  
Special Chief Counsel, 2001-2005  
Wainwright Building, 111 North Seventh St., St. Louis, MO 63101

Carmody MacDonald P.C.  
Principal  
2005-2007  
120 South Central, Clayton, MO 63105

Greensfelder, Hemker & Gale, P.C.  
Officer, 2007-present  
General Counsel, 2012-present  
Co-Chair, Appellate and Constitutional Law Practices 2008-present  
10 South Broadway  
St. Louis, MO 63102

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.

Not applicable.

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. It is your responsibility to redact any confidential information.)* 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.
  - 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.
  - 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.

### APPELLATE EXPERIENCE

As an appellate law clerk, I was involved writing approximately half of the opinions for Judge Floyd Gibson. Thereafter, I have had an active appellate practice, being the lead counsel and participating in oral argument in dozens of appeals, and having a major role as counsel of record in other cases. I have argued appeals before the United States Court of Appeals for the Eighth Circuit, the Missouri Supreme Court, and the Eastern and Western Districts of the Missouri Court of Appeals. In addition, I have prepared briefs and other filings for the United States Supreme Court, the Southern District of the Missouri Court of Appeals, and several federal appellate circuit courts. As a Chief Counsel in the Attorney General's Office and as Co-Chair of the Appellate Practice at Greensfelder, I have reviewed, edited, and/or consulted on dozens of other appellate filings without being identified as counsel of record. A recent representative case in which I was a contributor to and editor of the brief is *Zweig v. Metropolitan Sewer District*, 412 S.W.3d 223 (Mo. banc 2013). Our client was a group of ratepayers bringing a Hancock Amendment challenge to a charge imposed by the Metropolitan Sewer District. The Missouri Supreme Court ruled in favor of our clients that a Hancock violation had occurred and sustained an attorneys' fees lodestar multiplier. Opposing counsel was John Gianoulakis of Kohn, Shands, Elbert, Gianoulakis & Giljum.

Following is a representative list of appeals in which I was lead counsel. I argued all of the following cases except for first one, involving an *amicus* brief before the U.S. Supreme Court.

- (1) *Virginia v. Hicks*, 539 U.S. 113 (2003). I wrote an Amicus Curiae brief on behalf of 16 states in support of Petitioner, the State of Virginia. Opposing counsel was Steven Benjamin of Richmond, Virginia. The defendant was convicted of trespassing onto public housing property for low-income residents after having been barred from the property for prior trespassing violations. The Virginia Supreme Court declared the anti-trespassing rules unconstitutional, and the State of Virginia appealed. The United States Supreme Court ruled in favor our position, upholding the trespassing conviction on a 9-0 vote. Justice Ginsburg made statements at oral argument that expressed a central theme of our brief: low-income persons should be able to live in gated communities that restrict access to non-residents, just as wealthier persons are able to do.
- (2) *Nixon v. Wentzville Park Associates, L.P.*, 77 S.W.3d 659 (Mo. App. E.D. 2002). On behalf of the Plaintiff-Appellant Attorney General Nixon, I appealed the Circuit Court's dismissal of an injunction action brought against a nursing home following the death of a resident who strangled on a physical restraint. I was the author of the briefs on behalf of the Attorney

General. Opposing counsel was Terrence O'Toole of Bryan Cave. The Court unanimously ruled in our favor and held that the Attorney General's suit stated a cause of action. The Court also addressed issues regarding the finality of the circuit court's decision.

- (3) *Ford Motor Co. v. Director of Revenue*, 97 S.W.3d 458 (Mo. banc 2003). I represented the Missouri Department of Revenue in this appeal to the Missouri Supreme Court. I was the author of the Department's briefs. Opposing counsel was James Owen of McCarthy, Leonard, Kaemmerer, Owen. The issue was whether Ford had timely applied for a refund of allegedly overpaid taxes. The Supreme Court unanimously reversed the ruling of the Administrative Hearing Commission and found the refund application was not timely.
- (4) *Walls v. Allen Cab Co.*, 903 S.W.2d 937 (Mo. App. E.D. 1995). I represented the State Treasurer as Custodian of the Second Injury Fund as the Respondent-Cross-Appellant. I was the author of the Fund's briefs. Opposing counsel was J. Bradley Young of Roberts, Perryman, Bomkamp & Meives. The Court unanimously agreed with the Fund's and claimant's position that a bank was liable as the alter ego of a cab driver's employer in light of the involvement of the bank in the taxicab operations. The Court also agreed that the Fund was not liable.
- (5) *R.G. v. Mo. Dep't of Insurance, Financial Institutions & Professional Registration*, 389 S.W.3d 660 (Mo. banc 2013). On behalf of a mortgage loan originator who had been denied a state license, I served as lead counsel in a challenge to the constitutionality of the licensing statute. Opposing counsel was James McAdams, General Counsel for the Department of Insurance. A Missouri statute barred the state from issuing such licenses to persons who had made a suspended-imposition-of-sentence plea to a felony, regardless of whether the plea preceded the enactment of the statute. The trial court found the statute unconstitutional as applied to my client. The Missouri Supreme Court upheld the validity of the statute.
- (6) *Union Electric v. Director of Revenue*, 425 S.W.3d 118 (Mo. banc 2014). I served as lead counsel in representing a retailer on the issue of whether an exemption from sales taxes for processing in connection with energy consumption applied to the retailer's operations. Opposing counsel at the Supreme Court was Jeremiah Morgan of the Attorney General's Office. The Supreme Court held that the exemption did not apply.

## TRIAL-LEVEL EXPERIENCE

My employment has always been devoted primarily to litigation in state and federal courts in Missouri. The bulk of my practice has been in civil litigation, but I have been involved in criminal cases as a prosecutor and defense attorney, as well in civil litigation dealing with collateral consequences of convictions. I brought numerous civil consumer protection cases on behalf of the State Attorney General as plaintiff. I have represented both plaintiffs and defendants. Following is a list of some of my trial-level cases, including those that ended before trial.

- (1) *State v. Gallagher* (St. Louis County Circuit Court, No. 2103R-02321). I prosecuted a consumer fraud criminal case as lead counsel for the Attorney General against a person who solicited donations of automobiles claiming to operate a charity, but there was no charity. After a bench trial in May 2004, the defendant was found guilty on all five counts and sentenced to one year in prison. Opposing counsel was Brad Kessler.
- (2) *Union Electric Co. d/b/a Ameren Missouri v. Director of Revenue* (Mo. Administrative Hearing Commission, No. 11-0427 RS). I was the lead attorney in this review of an administrative determination regarding a tax refund being sought by Ameren Missouri on behalf of a retailer. The issue related to whether certain energy purchases by the retailer qualified for an exemption. After a two-day hearing on July 27 and August 4, 2011, the Commission ruled in favor of the State on December 19, 2013. Opposing counsel was Kati Kiefer, Missouri Department of Revenue.
- (3) *State of Missouri v. Roussin, et al.* (United States District Court, Eastern District of Missouri, No. 4:93-cv-02633-DJS). I was the co-lead attorney in a civil RICO case on a team of at least seven lawyers against 11 defendants associated with the Second Injury Fund. The State alleged fraud and corruption in the administration of the Fund. Opposing counsel included David Capes of Capes Sokol, Joshua Schindler, Barry Short of Lewis Rice, Mark (now Judge) Neill, Ronald Jenkins of Jenkins & Kling, and James Leonard of Devereaux and Stokes. Settlements were reached with all defendants except one, against whom a default judgment was entered. The final settlement was reached the day before trial, in June 1997, after three years of litigation. The State recovered \$1.3 million dollars from the settlements, in addition to \$240,000 obtained in restitution in prior criminal cases against some of the defendants for the same acts. The St. Louis Post-Dispatch identified the Second Injury Fund matter as one of the 125 biggest stories in its 125 year history (St. Louis Post-Dispatch, 12/14/03).
- (4) *Nixon v. MuscleTech Research and Development* (St. Louis City Circuit Court, No. 22034-00889). I was the lead attorney in a suit filed on behalf of the Attorney General in March 2003 against the manufacturer of a diet

supplement and purported “fat-burner” containing ephedra. The suit alleged that (a) safety risks associated with ephedra were not properly disclosed, (b) claims of efficacy of the product were not substantiated, and (c) the marketing was misleading, such as failing to disclose that a “before” picture in a before/after photo-set depicted the woman shortly after giving birth. Opposing counsel was Clark Cole of Armstrong Teasdale. The case was settled in May 2004 with an agreement by the manufacturer to pay \$100,000 and to never sell products containing ephedra in the State of Missouri in the future. See <http://en.wikipedia.org/wiki/Hydroxycut>.

- (5) *Uram v. Larimore Associates* (St. Louis County Circuit Court, No. 618736) (8/13/1992). I represented the plaintiff, a minority shareholder, in a claim for payment after being merged out of ownership. Opposing counsel was John Kinsella, now of Bryan Cave. The jury returned a verdict for payment to my client in the amount of \$50,000.

In addition to these litigation matters, I have been involved in several significant matters that were resolved before or at the beginning stages of litigation, including: (1) serving as part of the Attorney General’s legal team that helped lead to the National Football League to change its position and allow the Rams to move to St. Louis (1995), (2) in private practice, restoring a real estate license to a person who had lost his real estate license four years before I was retained by challenging the constitutionality of the statute that stripped the client of his license, (3) in private practice, keeping a day care center open that served a “welfare-to-work” population in the face of an ex parte attachment that could have shut down the center, which would have harmed clients and employees (2008), (4) conducting many investigations for the Attorney General involving consumer protection issues, including avoiding a foreclosure and obtaining cancellation of a loan on the residence of an elderly woman who had been induced by a caregiver to take out a loan when the monthly payments exceeded her income, (5) for the Attorney General, inducing contractors to make new multi-family residential buildings accessible to the disabled, and (6) serving as a witness in an election dispute in November 1992 in which un-notarized absentee ballots of disabled voters had not been counted. The Election Board later counted the disputed ballots and the result of one race was changed.

### **JUDICIAL EXPERIENCE**

Although I have never served as a judge, I served in a role similar to that of an appellate judge when I was a member of the Board of Police Commissioners of the St. Louis Metropolitan Police Department. Certain personnel matters for the Department were tried before a hearing officer. The hearing officer then issued a recommendation to the Board. The members of the Board reviewed the recommendation of the hearing officer, the written submissions of the parties, and the record of proceedings. The Board then issued its written decision.

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).

I served as a faculty member at a Trial Advocacy program sponsored by the National Institute for Trial Advocacy and the Missouri Attorney General's Office. I also spoke at in-house seminars for the Attorney General's Office on writing appellate briefs, discovery, alternative dispute resolution, and depositions.

12. List all bar associations and other professional societies of which you are a member, with any offices held and dates.
- (1) American Bar Association, appointed to Leadership Group in Antitrust/Consumer Protection Section, 2013-present
  - (2) Bar Association of Metropolitan St. Louis (BAMSL)
    - Co-Chair, Appellate Practice Committee (1998-2004, 2009-2010)
    - Board of Governors, Member-at-large (2003-2009)
    - Wills for Heroes Task Force (free wills for police and firefighters) (2007-2009)
    - Elections Task Force and Committee (2008-2009)
    - Chair, Public Policy Positions Task Force (2007)
    - Chair, Amicus Appellate Briefs Review Committee (2007)
    - Chair, Task Force and Steering Committee on BAMSL Headquarters Location (2001-03)
    - Government Lawyers Committee, Steering Committee
    - Consumer Law Committee, member
  - (3) St. Louis Bar Foundation, Board of Directors (2003-06)
  - (4) Bankruptcy Practice Memorial Fund, Governing Board (2006-2010)
  - (5) Award of Honor Selection Committee for The Lawyers Association of St. Louis, 2011
  - (6) Differentiated Case Management Task Force, appointed by Chief Judge Jean Hamilton of the United States District Court, Eastern District of Missouri (1999-2000)
  - (7) The Lawyers Association of St. Louis, member
  - (8) Women Lawyers' Association of Greater St. Louis, member
  - (9) Mound City Bar Association, member

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.

**A. Bar Committees:**

In addition to the items listed in response to Question 12, I have engaged in the following Bar activities.

- (1) The Missouri Bar appointed me to serve on the Appellate Judicial Evaluation Committee since its inception in 2008. The Committee, comprised of lawyers and lay persons from around the state, evaluate appellate judges who are standing for retention. I have now participated in three retention cycles.
- (2) The American Bar Association appointed me as the State Consumer Protection Law editor for its treatise: *Consumer Protection Law Developments*. This involved hundreds of hours in editing and coordinating the work of Consumer Protection attorneys nationwide for the Supplement published in 2013 and the new edition to be published in 2015.

**B. Pro Bono:**

I am involved in the management of my law firm's pro bono efforts, largely through Legal Services of Eastern Missouri. The Firm's efforts were recognized by the St. Louis University Public Interest Law Group with an award in March 2013 and by LSEM in 2015.

**C. CLE's Presented:**

I am a frequent speaker and organizer of seminars on a variety of topics including the following:

- (1) Legal Writing. Moderator with Hon. Duane Benton, Bench & Bar Conference, sponsored by BAMSL, scheduled for 5/29/15
- (2) Appellate Judges Roundtable, Moderator, Mo Bar Annual Meeting, 9/11/14
- (3) Common Professional Responsibility Issues, 6/27/ 14
- (4) Ethics Issues for In-House Counsel, 6/15/14
- (5) Appellate Judges Roundtable, Moderator, Mo Bar Annual Meeting, 9/19/13
- (6) Tips and Traps: Understanding Key Differences Between State and Federal Appellate Practice, Co-presenter with Hon. Duane Benton, Bench & Bar Conference, sponsored by BAMSL, 5/31/13
- (7) Appellate Judges Roundtable, Moderator, Mo Bar Annual Meeting, 10/18/12

- (8) Brady v. National Football League: Scoring Points and Recovering Fumbles at Oral Argument, Co-presenter with Hon. Duane Benton, Bench & Bar Conference, sponsored by BAMSL, 5/31/12
- (9) Effective Oral Advocacy in Trial and Appellate Courts: Showstoppers or Case-stoppers?, Co-presenter with Hon. Duane Benton, Bench & Bar Conference, sponsored by BAMSL, 6/4/11
- (10) Consumer Protection Update, sponsored by the American Bar Association (telephonic), 11/3/2010
- (11) Appellate Judges Roundtable, Moderator, Mo Bar Annual Meeting, 9/30/10
- (12) Lawyer as Public Citizen/Public Servant, Moderator of presentation by Hon. Duane Benton, Bench & Bar Conference, sponsored by BAMSL, 6/4/10
- (13) Tips from the Appellate Bench: What Your Opponent Does Not Know About the Appellate Process (Moderator), sponsored by the Missouri Bar, 9/24/2009
- (14) Trial Masters: Expert Witnesses (Moderator), sponsored by BAMSL, 5/29/2009
- (15) State and Federal Appeals: Adapting to the Differences and Tips for Maximizing Your Effectiveness (assisted presenter Judge Duane Benton of the U.S. Court of Appeals for the Eighth Circuit), Bench & Bar Conference, sponsored by BAMSL, 5/30/2009
- (16) Missouri Bar 2009 Annual Meeting, Planning Committee, 2009
- (17) Don't Take Chances: What You Need to Know to Navigate the Pitfalls of Sweepstakes, Contests and Promotions, sponsored by BAMSL, 1/9/09
- (18) Consumer Protection Update, sponsored by the American Bar Association (telephonic), 12/8/2008
- (19) Preventing Lawsuits and Violations in Advertising and Promotions, sponsored by the National Business Institute, 7/30/08
- (20) St. Louis Bankruptcy Conference (Program Co-Chair), sponsored by BAMSL and Bankruptcy Practice Memorial Fund, 5/16/08
- (21) How to Respond to a Government Investigation, sponsored by Association of Corporate Counsel and BAMSL, 5/8/08
- (22) Antitrust and the Roberts Supreme Court, sponsored by BAMSL, 1/18/2008
- (23) Antitrust Enforcement, sponsored by BAMSL, 12/9/2005
- (24) Housing Discrimination, sponsored by Missouri Bar (moderator), 7/8/2005
- (25) Telemarketing Fraud—Unsolicited Faxes and No-Call Laws, sponsored by National Association of Attorneys General, 11/16/2004
- (26) Consumer Fraud/Predatory Lending, sponsored by BAMSL, 5/26/04
- (27) Appellate Practice, sponsored by BAMSL (moderator), 2/22/04
- (28) Affirmative Action/Drafting Diversity Policies, sponsored by the Women Lawyers' Association and the Mound City Bar Association, 11/6/03
- (29) Predatory Lending, sponsored by the Urban Land Institute and Professional Housing Resources, Inc., 10/23/03

- (30) Consumer Protection, sponsored by St. Louis County Bar Assn., 5/9/03
  - (31) Predatory Lending, sponsored by HUD, part of St. Louis Regional Fair Housing Summit, 4/29/03
  - (32) Consumer Protection, sponsored by the Cape Girardeau Bar Association, 3/28/03
  - (33) Appellate Practice, sponsored by BAMSL (moderator), 2/27/03
  - (34) Sunshine Law and High Profile Cases, sponsored by BAMSL, 11/7/02
  - (35) Appellate Forum–Participant in panel discussion at conference for Missouri intermediate appellate court judges, 4/15/02
  - (36) Bioterrorism Fraud–Exploitation of Fears, sponsored by BAMSL, 3/1/02
  - (37) Appellate Practice, sponsored by BAMSL (moderator), 2/22/02
  - (38) U.S. Court of Appeals–8th Circuit Planning Committee for 2001 Judicial Conference
  - (39) Legal Ethics: Rule 4.2 of Code of Professional Responsibility, sponsored by U.S. Judge Advocate General’s Office, 5/01
  - (40) Effective Legal Writing, sponsored by BAMSL, 4/01
  - (41) State Appellate Practice Seminar, sponsored by BAMSL, 3/01 (moderator)
  - (42) Public Sector Lawyers, sponsored by BAMSL, Moderator on ethics issues discussions and Planning Committee, 12/00
  - (43) State Appellate Practice Seminar, sponsored by BAMSL, 5/00, 1/99 (Planning Committees)
  - (44) Consumer Fraud Litigation, sponsored by BAMSL, 11/99
  - (45) Geriatric Fraud and Abuse, sponsored by SLU Medical School, 6/99
  - (46) Elder Law Symposium: Fraud Upon Seniors, sponsored by BAMSL, 3/99
  - (47) Appellate Practice, sponsored by BAMSL, 2/99
  - (48) Appellate Advocacy, sponsored by University of Missouri - Kansas City Law School, 6/95
14. List your community activities, including any organizations not listed elsewhere with which you are affiliated.

My non-governmental and non-Bar community activities include the following:

- (1) Sue Shear Institute for Women in Public Life at the University of Missouri-St. Louis, Advisory Board member (2013 to present)
- (2) FOCUS St. Louis, Board of Directors (2003-2009); Community Policy Committee member (2003-2012); member of Task Force that produced the report “Racial Equality in the St. Louis Region: A Community Call to Action” (July 2001), a critical examination of the state of race relations in the St. Louis region
- (3) Paraquad (disability services & advocacy), Board of Directors (1995-2007)
- (4) St. Louis Coalition to Promote Reputable Lending (an anti-predatory-lending group) (2004-2005)
- (5) St. Louis Public Library Foundation (fundraising support group), Director (2002-06)

- (6) Leadership St. Louis, Class of 1996-97
  - (7) Leadership St. Louis 25<sup>th</sup> Anniversary Celebration Committee (2001)
  - (8) U.S. Attorneys' Hate Crimes Task Force (2001-2005)
  - (9) Better Business Bureau Consumer Fraud Task Force (2001-2005)
  - (10) Martha Rounds Academy for Children, Advisory Board and Executive Director search/selection committee (1997)
  - (11) St. Louis 2004, speaker at Community Forums (1997)
  - (12) Resident Assistance Corporation (not-for-profit for public housing residents), Executive Committee, (1990-94)
  - (13) St. Louis University Law School alumni and reunion activities
  - (14) Fundraising activities for St. Louis University High School, including serving on the Alumni Board, Annual Appeal solicitations, chairing Lawyer Alumni appeal, making reunion committee solicitations, and serving on reunion committees
  - (15) Nerinx Hall High School: active in Fathers Club and solicitations (committee chair, drafted Club by-laws, Fathers Club President's Award 2011)
  - (16) Backstoppers, Member
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.

In addition to the presentations and publications listed above, I speak to school groups on government, citizenship, and consumer protection. The audiences have ranged from elementary school students to high school seniors. Those presentations are the subject of an article of mine that was published by the Bar Association of Metropolitan St. Louis: "Speaking to Students About the Law—and Life," *St. Louis Lawyer*, 9/2004.

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.

**A. Recognitions:**

- (1) *Sprit of Justice Award*, presented by the St. Louis Bar Foundation for "demonstrated accomplishment, leadership, and integrity in fostering and maintaining the rule of law and administration of justice," October 2014
- (2) *Missouri-Kansas Super Lawyers* in Consumer Protection
- (3) *The Best Lawyers in America*® in Appellate Practice (Woodward/White, Inc.)
- (4) *Benchmark Litigation* (Future Star) in Appellate Practice, White Collar Crime, Commercial Litigation and Antitrust

- (5) Selected by FOCUS St. Louis in 2013 for inclusion in its online videos: “Profiles in Leadership/Oral History Project”
- (6) President’s Award, Bar Association of Metropolitan St. Louis, 2008
- (7) President’s Award, Bar Association of Metropolitan St. Louis, 2002
- (8) Martindale-Hubbell -- “AV” rating
- (9) Threw ceremonial “First Pitch,” Busch Stadium, Cardinals v. Pirates, 8/23/00, caught by now-Cardinals Manager Mike Matheny

**B. Publications:**

- (1) Appointed Editor/Vice Chair of the state law section of next edition of Consumer Protection Law Developments, to be published by the American Bar Association in 2015, coordinating and editing the work of more than 40 Consumer Protection lawyers from across the United States.
- (2) Editor/Vice Chair, of the state law section of the Supplement to the previous edition of Consumer Protection Law Developments, published by the American Bar Association in 2013.
- (3) Co-Chair, ABA Business Torts Eighth Circuit Casenotes (multiple summaries of key recent cases published on ABA website), 2011-12
- (4) Consumer Protection Law Developments Supplement, Contributor, American Bar Association, 2011
- (5) “Appellate Practice – What Can the Court Do,” St. Louis Bar Journal, 7/2009 (co-author)
- (6) Consumer Protection Law Developments, Contributor, American Bar Association, 3/2009
- (7) “How to Respond to Government Investigations,” Missouri Lawyers Weekly, 6/2008
- (8) “Top Court Opinions of 2005,” St. Louis Daily Record/Countian, 1/2006
- (9) “To Win in Mediation, Don’t Think Like a Litigator,” Missouri Lawyers Weekly, 12/2005
- (10) Contributing author, Eighth Circuit Bar Assn. Newsletter, 2/2005
- (11) “Top Court Opinions of 2004,” St. Louis Daily Record/Countian, 1/2005
- (12) “Speaking to Students About the Law—and Life,” St. Louis Lawyer, 9/2004
- (13) “Consumer Protection in the 21<sup>st</sup> Century: The Success of the Missouri Model--Aggressive Litigation at the State Level Protects Consumers and Prevents Unfair Trade Practices,” Antitrust magazine, published by the American Bar Association, 7/2004 (co-author with Attorney General Nixon), reprinted in ABA State Antitrust Committee Newsletter, 10/2004; ABA Unfair Trade Practices Magazine, 11/2004; and ABA Business Torts Journal, Spring 2005

- (14) "Preventing Telemarketing Fraud," St. Louis Argus, 4/1/2004
- (15) "Top Court Opinions of 2003," St. Louis Daily Record/Countian, 1/2004
- (16) "Protecting Senior Citizens from Consumer Fraud," Missouri Lawyers Weekly, 3/31/2003
- (17) "A Dream Deferred: A Primer on Predatory Lending," St. Louis Bar Journal, 4/2002 (co-author)
- (18) "Appeals and the Internet: The Effect of a Worldwide Audience on Appellate Practice," Missouri Lawyers Weekly, 2/25/2002
- (19) "Internet Gambling: An End Run Around Missouri's Gambling Laws?" St. Louis Lawyer, 12/2000 (co-author)
- (20) "Appellate Briefs: Summarize and Get to the Point," Missouri Lawyers Weekly, 4/3/2000
- (21) "Net Laws: Privacy or Disclosure?" Cahners Library Journal--Net Connect, 10/15/1999
- (22) "Applying Criticisms of the Warren Court to the Burger Court: A Case Study of *Richmond Newspapers v. Virginia*," 5 U. of Ark., Little Rock Law Journal 2003 (1982) (lead article)
- (23) "First Amendment Obstacles to Stopping the 'Revolving Door,'" published by Office of Government Ethics, *Proceedings from the First and Second Annual Conferences, 1980-81* [awarded Citation of Merit from Office of Government Ethics]

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

Yes. I have had appointments from the federal government, the State of Missouri, and the City of St. Louis, including City Board appointments from the last four Mayors of the City of St. Louis.

- (1) Board of Police Commissioners for the St. Louis Metropolitan Police Department (2012-2013). I was appointed by Governor Nixon on 10/2/2012. The Board was the governing body of the St. Louis City Police Department until local control was implemented on 9/1/2013. Actions include developing exculpatory evidence policy.
- (2) Federal Trade Commission, Monitor/Administrator of the Consent Decree in *Federal Trade Commission v. TALX Corp.*, Docket No. (2008-present). In that position I serve in a fiduciary capacity to the FTC to monitor compliance of a decree that resolved an antitrust Complaint by the FTC. That activity is ongoing.

- (3) Governor's Council on Disability (2009-2012). The Council monitors and advises state agencies on disability-related issues. Projects include by-law and policy reviews and encouragement of Universal Design.
  - (4) St. Louis Public Library (1994-2005): I was appointed to the Board of Directors by Mayor Freeman Bosley in 1994, and re-appointed by Mayor Clarence Harmon and Mayor Francis Slay. I served the maximum of two terms as Board President (1998-2002). Important actions included (a) beginning the efforts for the recently completed renovation of the Central Library in downtown St. Louis, (b) sponsoring and drafting a diversity policy for contractors, (c) eliminating the policy of providing immunity for members of the Board of Directors from fines for overdue books, and (d) overseeing as Board President and as a Director the renovation and property acquisition for many of the branch libraries in the system.
  - (5) St. Louis Housing Authority (1989-1994; Chair, 1991 to 1993). I was appointed by Mayor Vincent Schoemehl to the Board of Commissioners. A Post-Dispatch editorial recognized me and others for "implementing better management policies" and removing the Authority from "troubled" status, leading to a greatly improved rating from the Department of Housing and Urban Development. See *HUD Is Sold on St. Louis*, 5/16/93.
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.

Not applicable.

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.

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.
- 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.

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? 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 or been a party to litigation in a personal capacity.

Suits against the St. Louis Police Department typically name members of the Board of Police Commissioners who hold that that position as of the time the suit is filed. Board members are named in these suits in their official capacity. I have been advised by the Police Department that I have been named in my official capacity in 20 suits as of the time of preparation of this application, most of which involve incidents that occurred when I was not on the Board. In three cases the incidents referenced in the suit occurred or are alleged to have occurred while I was a member of the Board. Those three cases are:

(1) *Wiegert v. St. Louis Board of Police Commissioners et al.*, No. 4:13-cv-00465-RWS (U.S. E.D. Mo.). Plaintiff, a sergeant with the SLMPD, sought declaratory judgment and injunctive relief after allegedly being denied his right to free speech by the Police Department, regarding his secondary employment as a lobbyist. Case was dismissed without prejudice 5/30/2013.

(2) *Taylor et al. v. St. Louis Board of Police Commissioners et al.*, 1322-CC08692 (dismissed 08/2013), and later re-filed as 1322-CC009322 (City of St. Louis Circuit Court). Plaintiffs sued for the alleged April 2013 wrongful death of their son and father. Case was dismissed with prejudice 12/2014, after I left the Board.

(3) *Fletcher v. Tomlinson, et al.*, No. 4:14-CV00999 (U.S. E.D. Mo.). Civil rights complaint. Pending. This suit was filed after the local control took effect the terms of Board members expired.

If requested, information on other official capacity suits could be provided or obtained from the Police Department.

In checking case.net and PACER, I found two cases in which I was named in my official capacity as a Commissioner of the St. Louis Housing Authority: *Grice Group Architects v. St. Louis Housing Authority*, St. Louis City Circuit Court, No. 22944-00014 (dismissed in 1997, several years after I left the Board); *Wilburn v. St. Louis Housing Authority*, No. 4:93cv02011-CAS, U.S. E.D. Mo. (filed 1993, dismissed with prejudice in 1997). I also found a case that named all partners of Bryan Cave as defendants, including me, that was both filed and dismissed after I left that law firm. *Rawlings Sporting Goods Co., Inc. v. Finley, et al.*, No. 4:95cv01216-LOD, U.S. E.D. Mo. (filed 1995, dismissed with prejudice 6/97). I have no information on these three cases other than what is available on-line.

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.*)

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

No.

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

No.

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.

See three attached writing samples.

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.

(1) I am part of the first generation in my family to attend college. Although my parents' education ended at high school, they put a great value on education and public service. My three sisters and I paid for college through part-time jobs and financial aid. My sisters engaged in public service as educators, serving as (a) a teacher in schools serving children from low-income families and as a university professor, (b) a principal at a U.S. Department of Education "Blue Ribbon" public school in north St. Louis County, and (c) an elementary school teacher in Springfield, Missouri.

(2) When I was the chief administrator for the Attorney General in St. Louis, I assisted the Attorney General in his efforts to increase diversity in the Attorney General's St. Louis Office. There were significant increases in the number of minority and female lawyers in supervisory positions during Attorney General Nixon's administration in all offices.

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](mailto:EDjudgevacancy@courts.mo.gov), by the date indicated in the Instructions to Applicants.

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