

**APPLICATION OF ZEL MARTIN FISCHER
TO THE APPELLATE JUDICIAL COMMISSION FOR
JUDGE, SUPREME COURT OF MISSOURI**

***RESPONSES TO THESE QUESTIONS WILL BE MADE PUBLIC IF THE
APPLICANT IS ONE OF THE NOMINEES FOR THE VACANCY***

1. Present principal occupation or title:

Associate Circuit Judge
Atchison County, Missouri

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?

45

(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri?

27

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 in 1988 and have always been in good standing

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

U.S. District Court Western District of Missouri

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

- Rock Port R-II High School, Valedictorian, Class of 1981
- William Jewell College, 1981-1985, BA Degree with double majors in Philosophy and Political Science, GPA 3.506, Harry S. Truman Most Outstanding Political Science Major -- Class of 1985
- Summer 1984, Campus Extension of William Jewell College, Cordoba, Spain

(Question 6 continued)

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

In addition to my academic achievements at William Jewell College, I played four years of varsity football and was a team captain my senior year. I became a member of the Kappa Alpha Order and served in various leadership roles including the Number 2 (VP) my senior year. These activities demonstrate my ability to be both a leader and team player.

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

University of Missouri School of Law at Kansas City
I started August of 1985 and graduated May of 1988.

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

Graduated 1988 Juris Doctor, with distinction, Order of the Bench and Robe, Law Review Staff, Dean's Honor List, American Jurisprudence Award – Administrative Law

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.

The day after high school graduation in May of 1981 I went to work for a beef packing plant near Rock Port, Missouri commonly known as Missouri Beef Packers. I worked in the box cooler stacking boxes of meat and in the sales cooler pushing swinging meat to the fabrication cooler that summer and all subsequent summer, Christmas, and spring break vacations until college graduation. My supervisor was Jim Roup, and his current phone number is (660) 744-2866.

(Answer to Question 8 continued)

My first year of law school I was a law clerk for the Platte County law firm of Witt, Boggs, Shaw and VanAmburg. During my second and third years of law school, I was a law clerk for the Law Office of James D. Boggs located in Platte County. During these terms of employment, I interviewed witnesses, completed legal research, drafted pleadings and briefs.

Public Service. After law school, I was appointed to a Law Clerk position with the Missouri Supreme Court by the Honorable Andrew Jackson Higgins. My responsibilities included writing opinions, reviewing briefs, preparing memorandums for Judge Higgins and the Missouri Supreme Court regarding transfer applications, petitions for extraordinary writs, and recommendations regarding case outcomes.

Private Practice. After the year of employment by the Missouri Supreme Court, I went into private practice with the Law Office of James D. Boggs from 1989-1992; this was a general practice with my emphasis on civil and criminal litigation, including wrongful death, plaintiff's personal injury, criminal defense, domestic law, and some commercial and construction litigation. I also handled estate planning, probate matters, and business formations.

1992-2006, Private practice of law at the Law Offices of Zel M. Fischer which at one time had offices in Atchison, Nodaway and Holt Counties. The primary office was always located in Rock Port, Missouri. The practice was a general practice with an emphasis on civil and criminal litigation including every variety of work, including but not limited to:

Criminal cases: murder, assault stalking, drug offenses, rape and other sex offenses, property crimes, driving while intoxicated and traffic.

Civil cases: wrongful death; personal injury; product liability; electrocution; automobile collision cases; insurance coverage; declaratory judgments; adverse possession; family law, including dissolutions, adoptions and termination of parental rights; landlord/tenant; probate estate; guardianship and conservatorship estates; trust litigation; real estate; commercial; construction; eminent domain; juvenile justice issues; administrative law and municipal court.

(Answer to Question 8 continued)

Return to Public Service: I was elected as the Atchison County Associate Circuit Judge in the November, 2006 election and was sworn into office by the retired Judge Andrew Jackson Higgins December 29, 2006. In addition to my regular jurisdictional responsibilities as the Associate Circuit Judge in Atchison County, I am by local rule assigned certain Circuit Division cases which include all domestic relation matters in Atchison County, and I am also assigned to a majority of Circuit Division cases in the 4th Judicial Circuit (Atchison, Holt, Nodaway, Worth and Gentry Counties) involving felony criminal matters and civil litigation if the Circuit Judge is disqualified or recuses. I currently also preside over a contested Circuit docket in Jackson County, Missouri known as Division IV-C with three other 4th Circuit Judges and have been assigned to other counties including Greene County.

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)*. Include in your response:

SEE ATTACHED FOR RESPONSE TO THIS PARAGRAPH
AND ALL SUB PARAGRAPHS.

- 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.

(Question 10 continued)

- 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.
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 am one of just twelve judges in Missouri to have been selected by the Trial Judge Education Committee and The Advanced Science and Technology Adjudication Resource Center (ASTAR) to participate in the 2008 ASTAR Program.

The ASTAR project provides intensive education in the field of science and technology where these fields intersect with the courts. Programs encompass a broad backdrop in forensics, biological evidence and the life sciences. This education focuses on the cutting edge study of neurosciences and related technologies, complex health cases; genetic predispositions, susceptibilities and related risks; and the biology of addictive disorders. Judicial determination of underlying scientific methodology and technical authenticity are a theme throughout this course of study.

RE: Zel M. Fischer Application

12. List all bar associations and other professional societies of which you are a member, with any offices held and dates.
 - American Bar Association
 - Missouri Bar Association (Previous committee work includes Civil Practice and Procedure Committee, Appellate Practice Sub-committee, Law and Education Committee and several years served on Young Lawyers Section Council first representing Clay and Platte County and later the rural Northwest Missouri area.)
 - Missouri Association of Trial Attorneys (former member Board of Governors)
 - 4th Circuit Judicial Bar Association (former President)
 - Former member of Platte County Bar Association, Clay County Bar Association and Kansas City Metropolitan Bar Association

13. 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.
 - Previous Instructor: Missouri Bar Professional Ethics Seminar required for first year attorneys. This class was presented at the University of Missouri at Columbia School of Law and University of Missouri at Kansas City School of Law.
 - Original author of Chapter 40, Strict Liability of Product Manufacturers and Sellers -- Manufacturing Defect of the Products Liability Handbook published by UMKC CLE
 - American Jurisprudence Award Administrative Law
 - Order of Bench and Robe (based on class rank in law school class)
 - UMKC School of Law -- Law Review Staff

RE: Zel M. Fischer Application

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

- Rock Port Rotary Club
- Public Announcer of numerous High School sporting events
- Community Awareness Team
- Atchison County DARE
- Coach Tarkio High School Cross Country Team 2002-2006 and many youth athletic teams including NWMo Hoopsters
- Fellowship of Christian Athletes -- Leadership Board Northwest Missouri FCA
- Tarkio First Baptist Church
- Atchison County Economic Development Board of Directors (resigned upon becoming judge)
- Tarkio Rodeo Board of Directors and Vice-President (resigned upon becoming judge)
- 4-H activities including Horsemanship and Archery

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

YES, Law Clerk for Missouri Supreme Court and Associate Circuit Judge of Atchison County

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

NONE

17. 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 to perform these essential functions and I am in good health.

RE: Zel M. Fischer Application

18. Were you ever refused admission to the bar of Missouri or the bar of another state or the federal courts? If yes, provide details.

NO

19. Have you ever been disciplined, admonished or cited for breach of ethics or professional conduct by the Supreme Court of Missouri or by any court or bar association or committee thereof? If yes, provide details.

NO

20. If you are or were a member of the judiciary of the State of Missouri, please state:

- a) Whether an order of discipline ever has been entered against you by the Supreme Court of Missouri for breach of the Code of Judicial Conduct or the Canons of Judicial Conduct. If yes, provide details.

NO

- b) Whether a reprimand or admonition ever has been entered against you by the Commission on Retirement, Removal and Discipline for any of the causes specified in Supreme Court Rule 12.07. If yes, provide details.

NO

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

NO

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

NO (I have been court appointed as an administrator dbn and later personal representative. That case is referenced below. The probate court upon my motion removed the personal representative and his attorney and ordered fees previously paid to the prior personal representative and his attorney to be repaid to the estate.)

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.

RE: Zel M. Fischer Application

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.

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

NO

25. 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 appellate briefs attached.

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

I was previously honored by this commission by being selected to be on the panel sent to Governor Matt Blunt to fill a position on the Missouri Court of Appeals for the Western District of Missouri.

Please indicate the names and complete mailing addresses 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, address, telephone and e-mail address.**

1. NAME: Honorable Andrew Jackson Higgins
 TITLE: Former Chief Justice, Judge and Commissioner of
 Missouri Supreme Court, and currently attorney
 with English & Monaco
 ADDRESS: 237 E. High Street
 P.O. Box 67
 Jefferson City, MO 65102
 TELEPHONE: Office (573) 634-2522
 Home (573) 635-2235
 E-MAIL: No electronic mail

2. NAME: Honorable Roger M. Prokes
 TITLE: Current Presiding Circuit Judge of 4th Judicial
 Circuit
 ADDRESS: 204 Courthouse
 305 N. Main Street
 Maryville, MO 64463
 TELEPHONE: Office (660) 582-4231
 E-MAIL: roger.prokes@courts.mo.gov

3. NAME: Honorable Glen A. Dietrich
 TITLE: Associate Circuit Judge, Nodaway County of
 4th Judicial Circuit and past President of Missouri
 Association of Probate and Associate Circuit Judges
 ADDRESS: Courthouse Annex
 303 North Market Street
 Maryville, MO 64468
 TELEPHONE: (660) 582-4221
 E-MAIL: glen.dietrich@courts.mo.gov

RE: Zel M. Fischer Application

4. NAME: R. Edward Murphy
TITLE: Attorney at Law
ADDRESS: Murphy, Taylor, Siemens and Elliott
3007 Frederick Avenue
P.O. Box 6157
St. Joseph, MO 64506
TELEPHONE: (816) 364-6677
E-MAIL: edmurphy@mtselaw.com
5. NAME: Sharleen Pritt-Bothwell
TITLE: Attorney at Law, former Prosecuting Attorney
ADDRESS: 201 South Main Street
Rock Port, MO 64482
TELEPHONE: (660) 744-6115
E-MAIL: bothwelllaw@rpt.coop

Provide your references with the attached Guidelines for References. The commission must receive your letters of reference, **via e-mail**, to by the date indicated in the Instructions to Applicants. ***It is your responsibility to see that your references send the requested letters in a timely manner – the commission will not contact your references directly to request them to provide a letter.***

Answer to 10: Describe the nature of your experience in trial and appellate courts and explain how they demonstrate the quality of your legal work.

I have argued two cases in the Missouri Supreme Court and in both cases I was hired by other trial counsel to do so. Both cases were retransferred to the Court of Appeals for the Western District of Missouri to have the Court of Appeals opinion reinstated.

a. I have briefed and argued numerous cases in the Court of Appeals for the Western District of Missouri. In some of these cases I was trial counsel and in some of these cases I was retained after trial specifically to handle the appeal. The Clerk of the Court of Appeals for the Western District was kind enough to provide me with this list of cases that I have been the attorney of record in that court, and the total number was forty. Not all resulted in published opinions and some were not briefed and argued because they involved writ proceedings or appeals which were dismissed.

I have handled several cases in the Court of Appeals and a sampling of my more recent appellate cases demonstrating my abilities would be as follows:

1. American Family v. Thomas Southard, 73 S.W.3d 68, (Mo.App. 2002) I was attorney for Johnson Respondents. This was an insurance coverage dispute. The opposing counsel was Keith Schieber of Ferguson and Schieber of St. Joseph, Missouri. For a detailed discussion of this case, see the brief I prepared for the Johnson Respondents which is provided as a writing sample.
2. Rhodes Engineering Company, Inc. v. Public Water District No. 1 of Holt County et al, 128 S.W.3d 550 (Mo.App. 2004) I was attorney for Respondent Bartlett & West Engineers Inc. This case involved the claims of breach of contract, tortious interference with contract rights or business expectancy, and fraud. Attorney for Appellant was David M. Duree of David M. Duree & Associates P.C. in St. Louis, Missouri.
3. Parshall v. Buetzer and Green Hills Ins. Co., 195 S.W.3d 515 (Mo.App. 2006) I was attorney for Respondent Parshall. The opposing counsel at the trial level were Thomas R. Larson, David E. Larson, and Jimmy E. Allen, Jr. of Larson and Larson P.C. in Kansas City, Missouri. The opposing counsel at the appellate level was Scott D. Hofer of Foland, Wickens, Eisfelder, Roper & Hofer P.C. of Kansas City, Missouri. For a detailed discussion of this case, see the brief I prepared for Respondent Parshall which is provided as a writing sample.

(Answer to Question 10a continued)

4. **Stulz v. CB&T and Hall Realty, 160 S.W. 2d 423, (Mo.App. 2005)**
I was attorney for Respondent Hall Realty on appeal. The trial court granted Hall Realty's motion to dismiss the Plaintiff's case at the close of the Plaintiff's evidence. Plaintiff's claim was for conversion. The Court of Appeals affirmed the trial court's dismissal of the case which the Court of Appeals determined was a judgment on the merits. Martin M. Bauman of Bauman & Bauman P.C. in St. Joseph, Missouri was attorney for Appellant Stultz.

5. **Warren Wright v. Sprint, 144 S.W. 3d 313 (Mo. App. 2004)**
I was attorney for Defendant Sprint at trial and for Respondent Sprint on appeal. Warren Wright was pro se Plaintiff and Appellant. This was a lawsuit filed by the Plaintiff against Sprint for certain billing practices which Plaintiff claimed was a breach of contract. The trial court found in favor of Sprint which was affirmed by the Court of Appeals.

- b. I have tried several jury trials. Some recent jury trials demonstrating my trial abilities would be as follows:
 1. **Parshall v. Buetzer and Green Hills Ins. Co., 195 S.W.3d 515 (Mo.App. 2006)** I was attorney for Plaintiff Roger Parshall. This was a professional negligence case tried to a jury in Harrison County after remand by the Court of Appeals for the Western District. Lead defense counsel at trial was Jimmy Allen, Jr. of Larson and Larson P.C. in Kansas City, Missouri and counsel for opposing party on appeal was Scott D. Hofer of Foland, Wickens, Eisfelder, Roper & Hofer P.C. of Kansas City, Missouri. I handled all aspects of the trial and appeal.

 2. **State v. William Taylor, CR894-481F** This was a first degree murder case where the Defendant was alleged to have murdered his wife by coaxing her to go under a combine to rescue a cat and pulling on a rope tied to a hydrostat lever to run over her. The Defendant had given a detailed recorded confession and the theory of defense was that Defendant had a mental defect or disease. The opposing counsel were Assistant Attorney Generals Kenny Hulshof and David Cosgrove. My co-counsel was Will Bunch of Kansas City, Missouri. My role was to prepare the very

(Answer to Question 10b (2) continued)

important pretrial motions and trial motions involved in this type case as well as the defense jury instructions. Additionally, I prepared both trial expert witnesses and conducted the examination of the defense expert witness, Bonita Peterson. In addition to the responsibilities in these criminal proceedings, I was the sole attorney responsible for the civil wrongful death case.

3. David R. Thomas and Janie Thomas v. Eldon E. Davis, Roger Smith and Douglas Tire Co., Atchison County Case No. CV101-147CC This was a personal injury case involving product liability claims and common negligence claims arising out of an automobile collision. I represented Defendant Eldon E. Davis along with attorney Rich Yocum from St. Joseph, Missouri. Opposing counsel were John Thomas and Chad Gaddie of Thomas, Burns & Holliday, P.C. in St. Joseph, Missouri.
 4. State v. Kyle Bradley, Gentry County Case No. CR402-22M I was attorney for Defendant, Kyle Bradley. This was a four count misdemeanor jury trial tried in Gentry County on change of venue from Holt County. The more serious of the charges was stalking. The jury rendered a not guilty verdict on all charges in 10 minutes. Opposing counsel was long-time Holt County Prosecuting Attorney, Robert R. Shepherd. I handled all aspects of the trial.
- c. I have also tried too many bench trials to keep track. A sampling of those cases would include the following:
1. In RE Matter S.L.N. et al v. D.L.N., WD 64632 Slip Op., (Mo. App. 2005) I was attorney for the Petitioner at trial who was the Respondent on Appeal. This was a private contested adoption case in Case No. JU103-18A In Atchison County, MO. The opposing counsel was Hugh Kranitz of Kranitz and Kranitz in St. Joseph, Missouri. I handled all aspects of the trial and appeal.

(Answer to Question 10c continued)

2. James A. Murphy v. Director of Revenue, 34 S.W.3d 453 (Mo.App. 1998) I was attorney for James Murphy who was the Petitioner at trial and the Respondent on Appeal. The issues at trial were related to my client's ability to maintain a driver's license. Case No. CV197-27CC in Atchison County, MO. The opposing counsel was Sharleen Pritt-Bothwell, Attorney at Law, in Rock Port, Missouri. I handled all aspects of the trial and appeal.
3. American Family v. Thomas Southard, 73 S.W.3d 68, (Mo.App. 2001) I was the attorney for conservator of minor who received personal injuries and parents of deceased child in their wrongful death claim who became the Respondents on Appeal. The trial case number is CV100-38CC in Atchison County, MO. and the opposing counsel at trial and on appeal was Keith Schieber of Ferguson and Schieber in St. Joseph, Missouri. I handled all aspects of the trial and appeal.
4. In Estate of Ross Johnson, Sr. PR Zel M. Fischer v. Theodore M. Kranitz, 168 S.W.3d 84 (Mo.App. 2005). I was court appointed as personal representative to bring contempt proceedings against original personal representative and his attorney. Opposing counsel at trial was Theodore Kranitz of Kranitz and Kranitz in St. Joseph, Missouri and opposing counsel on appeal was David Bryant King III, Attorney at Law, in Platte City, Missouri. I handled all aspects of the trial and appeal. For a detailed discussion of this case, see the Respondent's Brief provided as a writing sample.
5. Marriott v. Marriott, 882 S.W.2d 688 (Mo.App. 1994) I represented the Petitioner in the trial of this contested dissolution case including child custody, support and visitation. The opposing counsel for the Respondent at trial and on appeal was Jerold Drake of Stephens, Drake & Larison in Grant City, Missouri.