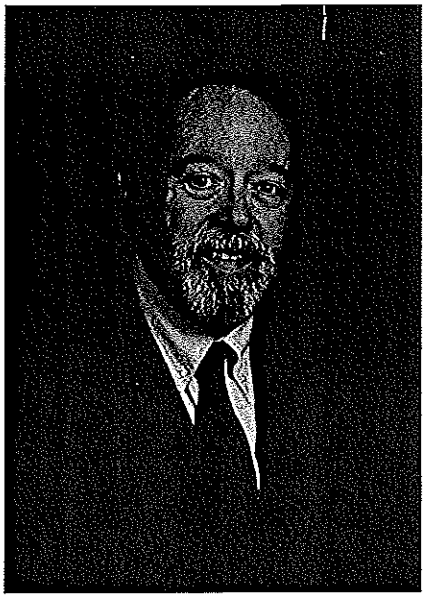

APPLICATION (Revised April 2008)
21ST CIRCUIT JUDICIAL COMMISSION
ASSOCIATE CIRCUIT JUDGE

SE QUESTIONS WILL BE MADE PUBLIC IF THE APPLICANT NOMINEE.

NAME: **John D. Warner, Jr.**

1. State your present principal occupation: **Trial attorney**

2. Are you at least 25 years of age? **Yes**

3. (a) How long have you been a citizen of the United States? **57 years**
   (b) Have you been a resident of the County of St. Louis for at least one year immediately prior to the date of this application? **Yes**
   (c) How long have you been a qualified voter of Missouri? **36 years**

4. Are you licensed to practice law in Missouri? **Yes**

   List any other states, courts, or agencies in which you are licensed as an attorney: **Illinois (also U. S. District Court for the Eastern and Western Districts of Missouri and Supreme Court of the United States)**

5. State the date you were admitted to the Bar in Missouri? **September 21, 1982**

   Missouri Bar Number: **30580**

(In completing items 6 and 7, please account for all time periods between post-high school education and the date of this application.)

6. State the name and address of all colleges and universities you have attended, together with the dates and degrees received: **University of Missouri - St. Louis, 1970-1972 and 1977-1979, B.A. English. St. Louis University Law School, 1979-1982, J.D.**

7. State, in chronological order, your entire working career, including non-legal employment, if any. Include the name and address of each firm, corporation, partnership, or governmental body with which you have been associated, and the dates thereof. (Start with earliest date, conclude with present.)

Working career:

Baskin Robbins, Millbrook and Big Bend, St. Louis, MO 63130
Approximately 1969-1971

Burger Chef Restaurant, Maplewood, MO (No longer in business)
Approximately 1971-1972

Famous-Barr Company, 601 Olive, St. Louis, MO 63101
Approximately 1972-1974

Wohl Shoe Company, Maryland Avenue, St. Louis, MO (No longer in business)
Approximately 1973 or 1974-1977

Famous-Barr Company, 601 Olive, St. Louis, MO 63101
1977-1982

University of Missouri at St. Louis (English Department)
1977-1979

Gallop, Johnson, Krebs & Newman (n/k/a Gallop, Johnson & Newman) 101 South Hanley, St. Louis, MO 63105
1980-1981

Evans & Dixon, 1100 Millennium Office Center, 515 Olive, St. Louis, MO 63101
1981

Attorney Charles Douglas, 2 Butternut Lane, Glen Carbon, IL 62034
1981-1982

Kortenhof & Ely, 1015 Locust, Suite 500, St. Louis, MO 63101
1982-2000

Gault & Warner, LLC, 222 South Central Avenue, Suite 500, Clayton, MO 63105
2000-Present

8. Are you able, with or without a reasonable accommodation, to perform the essential functions of a judge including the ability to preside over trials, perform legal research, attend court anywhere in the state, communicate clearly and effectively both orally and in writing, and expeditiously decide issues coming before the court? **Yes**

9. Attach a list of cases you have tried in the last five years. Set forth the style, cause number, date, and court, and identify who you represented, whether you were first or second chair, and the name and address of opposing counsel. Indicate for each case whether bench or jury tried and provide a one to three sentence description of each case and its outcome. If, during any of the last five years, you served as a commissioner or in any other judicial capacity, set forth the dates of same and a description of the duties performed. **See Attached**

10. Have you briefed or argued any case in an appellate court? **Yes**
If yes, attach a list showing the citation for each case and describe the extent of your participation in briefing and arguing the case. **See Attached**

11. Set forth any additional information that demonstrates the quality of your legal work as an attorney.

Including the cases listed in 9 and 10 above, I have tried over 100 jury trials and probably as many non-jury trials in the last 26 years. Further, beginning in late 1992 or early 1993 and continuing to January 2000, I was elected every year by my partners/shareholders at Kortenhof & Ely as managing partner. In January 2000, while keeping some of the responsibilities of managing partner, I chose not to continue as managing partner so that I could concentrate more on my cases and development of new clients.

In May 2000 I formed a Partnership/LLC with Jeffrey P. Gault, which has allowed me to broaden my practice so as to represent plaintiffs in personal injury litigation and workers' compensation cases, as well as defendants and corporations in the defense of personal injury litigation, including but not limited to automobile accidents, premises liability cases and product liability litigation.

12. Have you ever been convicted of a misdemeanor or felony? **No**

If yes, provide details, including the style of the case, cause number, name of the jurisdiction, and date of conviction: **Not Applicable**

13. 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 yes, provide details, including the style of the case, cause number, name of the jurisdiction and the approximate year in which such litigation was commenced and in which it was terminated: **See Attached**

14. Have you ever been disciplined or cited for breach of ethics or professional conduct by a court or by any bar association or committee thereof? **No**

    If yes, provide details: **Not Applicable**

15. Have you ever been held in contempt of court? **No**

    If yes, provide details: **Not Applicable**

16. If you are or were a member of the Judiciary of the State of Missouri, please state: **Not Applicable**

    (a) Whether an order of reprimand, removal, retirement, suspension or other disciplinary action has ever 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, state the nature of such breach, the date discipline was imposed and the exact nature and duration of the discipline imposed:

    (b) Whether a reprimand or admonishment has ever been entered against you by the Commission on Retirement, Removal and Discipline for any of the causes specified in Rule 12.07 of the Supreme Court Rules Governing the Judiciary.

    If yes, provide details including date the order was entered, the date of your consent, and a description of the conduct you were ordered to cease and desist:

    (c) Whether, to your knowledge, you have been a subject of a complaint and investigation by the Commission on Retirement, Removal and Discipline, which did not result in any action by the Commission? If yes, provide details:

17. To your knowledge, have you been investigated by a court or by any bar association or committee thereof for breach of ethics or professional conduct? **Yes**

    If yes, provide details: **See Attached**

18. List all bar associations and other professional societies, of which you are a member, with any offices held and dates: **Missouri Bar, Illinois State Bar, BAMSL and Lawyers Association of St. Louis**

19. Describe your community activities, including any organizations, not listed above, with which you are affiliated:

    Member, St. Mary Magdalen Church, Brentwood, MO (1987 - present)
    Member, St. Mary Magdalen – St. Vincent DePaul Society (2008 – present)
    President, St. Mary Magdalen School Board, Brentwood, MO (2006 - 2007; 2007 - 2008)

Vice President, St. Mary Magdalen School Board, Brentwood, MO (2005 - 2006)
Member, St. Mary Magdalen School Board, Brentwood, MO (2004 - 2008)
Volunteer, Mentor St. Louis (1998 - present)
Volunteer, Legal Services of Eastern Missouri, Inc. (approximately 1990 - present)
Volunteer Judge, S.T.A.R. Court Program (Students Toward Academic Responsibility) in the Ferguson/Florissant School District, formerly Truancy Court (2006 - present)

20. Do you now hold or have you ever held any elective or appointive public office or position? **No**

    If yes, provide details: **Not Applicable**

21. Provide the branches and dates of (a) military service, or (b) other public service, not otherwise covered in this application. If discharged from the military, was the discharge other than honorable? If military service continues, so state: **Not Applicable**

22. List any professional articles or books which have been published or any special recognition or award of a professional nature which you have received: **Cross Examination - A Defense Perspective; Get What You Can, Don't Bore the Jury and Sit Down, XXIX No. 8, St. Louis Lawyer 9 (Dec. 1989)**

23. Furnish the names and addresses, including zip codes and telephone numbers of not more than five persons, who are not judges, as references with respect to your judicial qualifications:

    Joseph M. Kortenhof
    Kortenhof & Ely
    1015 Locust Street, Suite 500
    St. Louis, MO 63101
    (314) 621-5757

    Theodore H. Hoffman
    Hoffman & Gelfman
    133 South 11th Street, Suite 310
    St. Louis, MO 63101
    (314) 241-1020

    Maurice B. Graham
    Gray, Ritter & Graham, P.C.
    701 Market Street, Suite 800
    St. Louis, MO 63101
    (314) 241-5620

Kevin F. O'Malley
Greensfelder, Hemker & Gale, P.C.
10 South Broadway, Suite 2000
St. Louis, MO 63102
(314) 241-9090

John Michener
Evans & Dixon, L.L.C.
1100 Millennium Office Center
515 Olive Street
St. Louis, MO 63101
(314) 621-7755

24. State any additional data you deem relevant: **See Attached**

9. List of cases tried:

Bryant Moore, Jr., et al. v. Bi-State Development Agency

Venue: St. Louis City Circuit Court, Cause No. 992-07102

Facts: The minor plaintiff was dropped off in the dark by defendant Bi-State's bus driver along the edge of a narrow two lane road. There was no shoulder or safe place for him to stand and when he attempted to cross the road, which had a 45 mile per hour speed limit, he was struck by a pickup truck traveling in the opposite direction. The minor plaintiff sustained many serious and disabling injuries, including brain damage resulting in permanent tremors. His medical specials were approximately $500,000. Represented plaintiff. (Co-counsel Jeffrey P. Gault, Richard Banks and Vincent Banks)

Trial: First chair, jury trial.

Verdict: Returned April 27, 2001 for plaintiff, $7.9 Million with 49 percent fault to plaintiff, resulting in a net verdict of $3.9 Million.

Opponent: James Whaley, 705 Olive, Suite 1100, St. Louis, MO 63101

Bonnie Suter v. Marriott International, Inc.

Venue: St. Louis City Circuit Court, Cause No. CV002-1445

Facts: Plaintiff was visiting defendant's Tan-Tar-A Resort at the Lake of the Ozarks when she was caused to fall due to water on some interior steps. Represented plaintiff.

Trial: First chair, jury trial

Verdict: Returned June 5, 2002 for defendant.

Opponent: John Schultz, 911 Main Street, Suite 2100, Kansas City, MO 64105

Casey M. Scheipeter v. Casey M. Welch

Venue: St. Louis City Circuit Court, Cause No. 022-10990

Facts: Plaintiff was rear ended while stopped waiting to make a left turn. There was minimal damage to the rear of plaintiff's vehicle. Represented plaintiff.

Trial: First chair, jury trial

Verdict: Returned May 20, 2004 for plaintiff $2,938.07.

Opponent: Amy Surber, 1807 Park 270, Suite 200, St. Louis, MO 63146

10. Appellate Court Experience:

State ex. rel. Clem Trans., Inc. v. Gaertner, 688 S.W.2d 367 (Mo. 1985) (argued and appeared on brief).

Petersen v. Farberman, 736 S.W.2d 441 (Mo.App.E.D. 1987) (appeared on brief).

Buffa v. Hauser, 781 S.W.2d 172 (Mo.App.E.D. 1989) (argued and appeared on brief).

Nagy v. Missouri Highway & Transportation Commission, 829 S.W.2d 648 (Mo.App. E.D. 1992) (argued and appeared on brief).

Hurt v. Dow Chemical Company, 963 F.2d 1142 (8th Cir. (Mo.) 1992) (appeared on brief).

Crump v. State Farm Mut. Auto. Ins. Co., 961 F.2d 725 (8th Cir. (Mo.) 1992) (appeared on brief and argued).

Bryant v. National Super Markets, et al., 619 N.E.2d 550, 250 Ill.App.3rd 303, 188 Ill. Dec. 925 (Ill.App.5th Dist. 1993) (appeared on brief and argued).

Moore, ex rel. Moore v. Bi-State Dev. Agy., 87 S.W.3d 279 (Mo.App.E.D. 2002) (appeared on brief).

Moore, ex rel. Moore v. Bi-State Dev. Agy., 132 S.W.3d 241 (Mo.banc 2004) (appeared on brief and argued).

13. Party to litigation:

John D. Warner, Jr. v. Pamela Jean (Vickers) Warner, Cause No. 392496, St. Louis County Circuit Court. In this litigation I was divorced from my first wife, Pamela Jean (Vickers) Warner on May 12, 1977. I was the moving party and was awarded custody of our only child, John D. Warner, III, in the decree of dissolution and he has remained in my custody and has been raised by me exclusively until my second marriage in June of 1980, following which my second wife has participated in the raising of my son.

Walter J. Lembeck v. Judge Stephen Limbaugh, et al., Cause No. 84-2947-C-(4), U.S. District Court, Eastern District of Missouri. [Later consolidated with Walter J. Lembeck v. Judge Harry Stussie, et al., Cause No. 84-1721-C-(5)].

In the first Lembeck case filed against Judge Stussie and others, the plaintiff claimed that his civil rights were violated via some form of conspiracy among various judges, attorneys and individuals arising out of a divorce/custody suit between himself and his ex-wife, defendant Linda A. Kaufman, the daughter of Judge Harry J. Stussie.

Kortenhof & Ely and John D. Warner, Jr. entered their appearance on behalf of three of the 60 plus named defendants in the first lawsuit styled Walter J. Lembeck v. Judge Harry Stussie, et al. In December 1984 plaintiff Lembeck filed a second lawsuit styled Walter J. Lembeck v. Judge Stephen Limbaugh, et al. renaming all the defendants in the original suit plus adding as named defendants every attorney and law firm that had entered their appearance on behalf of any other defendants in the first lawsuit, along with naming the federal judge presiding over the first lawsuit as a defendant. After the first federal judge, Stephen Limbaugh, was sued in the second lawsuit, both cases were assigned to the Honorable Judge Clyde S. Cahill.

On January 24, 1986 Judge Cahill entered his order dismissing all defendants from the consolidated cases except Judge Harry Stussie. The plaintiff was granted 20 days within which to file an amended petition stating a cause of action against Judge Stussie. On April 2, 1977 Judge Cahill entered an order dismissing, with prejudice, the only remaining defendant in the case, Judge Stussie.

Following the above disposition of the case, plaintiff filed both an appeal and a petition for declaratory judgment with the Eighth Circuit Court of Appeals. The Eighth Circuit denied the plaintiff's petition for declaratory judgment and dismissed Mr. Lembeck's appeal as frivolous.

On January 19 or 20, 1988 Mr. Lembeck filed a petition for writ of certiorari to the Supreme Court of the United States. On March 21, 1988 the United States Supreme Court denied Mr. Lembeck's petition for writ of certiorari. His petition for rehearing on the writ was also denied.

In Negwer Materials, Inc., et al. v. Kortenhof & Ely, I was sued, along with Kortenhof & Ely, Joseph M. Kortenhof, Ben Ely, Jr., Robert T. Hart, K. Steven Jones, Peter B. Hoffman, John G. Enright, William J. Glaser and Michael R. Swafford, my partners/shareholders, and one former partner/shareholder, as a result of a default judgment that was taken in a case being handled by Ben Ely, Jr. (Please see Sprung v. Negwer Materials, Inc., 775 S.W.2d 97 (Mo.banc 1989).

I was dismissed from the above lawsuit shortly after it was filed because I was not directly involved in the Sprung case at any time, and I was not a shareholder in Kortenhof & Ely when the default was taken in March of 1985.

17. I have never been disciplined for a breach of ethics or unprofessional conduct. However, I did have a bar complaint filed against me and Gary E. Wiseman of my office by a Mr. Alfred Page.

Alfred Page, a pro se plaintiff and the filer of many lawsuits and claims, two of which were tried in 1990 by the law firm of Kortenhof & Ely, filed a complaint arising out of a case that was litigated successfully by me. After Mr. Page lost his lawsuit, he complained that Gary Wiseman, under my direction, sent a form letter to five fact witnesses identified by Mr. Page, but not listed in the police report, advising these witnesses, who had been subpoenaed by Kortenhof & Ely to appear at trial, that the subpoenas would continue in full force and effect from trial setting to trial setting. Specifically, he complained that by sending this form letter we were interfering with Mr. Page's "personal" fact witnesses to the automobile accident giving rise to the lawsuit.

Mr. Page complained because the very last paragraph of the letter told the witnesses not to come to court until called. This sentence was included in the form letter because lawsuits in the City of St. Louis are tried in numerical sequence but the City subpoena tells the witness to appear on Monday morning of the trial at 9:00 a.m. Obviously, if such a statement advising the witnesses not to show up until they were called was not sent to the witnesses, the witnesses would be compelled by the subpoena to appear every Monday that the case was set for trial and presumably wait at the courthouse until the case was either tried or passed to the next docket.

It should be noted that two out of the five witnesses did appear and testify at trial on behalf of Mr. Page.

The Bar Committee of the Twenty-Second Judicial Circuit determined that there was no reasonable cause for Mr. Page's complaint.

24. Additional data:

Since 1982 when I was licensed to practice law in the State of Missouri, I have handled over 1,000 cases involving premises liability, products liability, automobile accidents, medical malpractice, legal malpractice, civil rights and environmental law. Accordingly, I have a wide range of experience in the trial and handling of lawsuits.

Further, for three years I organized and spoke at a CLE Seminar on Taking and Defending Depositions for UMKC Law School, I have given trial demonstrations at Washington University and UMKC Law School, and have been a speaker at a CLE on legal malpractice prevention presented by The Bar Plan. I have judged moot court competition at St. Louis University and for the local high school moot court competition. In 1998 I spoke at a Defense Research Institute Seminar on products liability in San Francisco.

I have also been a volunteer for Mentor St. Louis for over 10 years and a volunteer for Legal Services of Eastern Missouri, Inc. for 10-15 years. More recently (2006 - present), I have been a volunteer judge for the St. Louis County S.T.A.R. Court Program (Students Toward Academic Responsibility) in the Ferguson/ Florissant School District (formerly Truancy Court). Further, I was elected to the St. Mary Magdalen School Board to serve a three year term from 2004 - 2007. I was elected Vice President of the School Board for the 2005 - 2006 school year and was unanimously elected President of the School Board for the 2006 - 2007 school year, and unanimously asked to remain on the School Board as President for the school year 2007 - 2008. Plus, I am a charter member of The William B. Booth Society (Salvation Army) and I am also a member of the Cardinal Glennon Children's Hospital Godparents Society.

BIOGRAPHICAL SKETCH

Mr. Warner graduated from St. Louis University Law School in 1982 and was engaged in the practice of law at the law firm of Kortenhof & Ely from 1982-2000. In May 2000 he formed a law firm with Jeffrey P. Gault in Clayton, Missouri. The firm represents plaintiffs and defendants in personal injury matters and employees in workers' compensation matters. He is a member of the St. Mary Magdalen parish in Brentwood, Missouri and was unanimously elected to two consecutive terms as President of the St. Mary Magdalen School Board (2006 - 2007 and 2007 - 2008). He is an active participant in the Mentor St. Louis Program and he is a judge in the S.T.A.R. Court Program in the Ferguson/Florissant School District. He is a member of the Missouri and Illinois bar and is also licensed to practice law before the U.S. District Court for the Eastern and Western Districts of Missouri and the Supreme Court of the United States.