

**APPLICATION OF HAROLD A. WALTHER
TO THE APPELLATE JUDICIAL COMMISSION FOR THE
JUDGE SMART VACANCY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

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

1. Present principal occupation or title:

Partner: Walther, Antel, Stamper & Fischer, P.C.

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**

(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri? **38**

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 1, 1979. My license is in good standing.

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

United States Supreme Court (2008)

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, Columbia, MO 65211 (1971-1975) B. A. in History

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

Lettered in Varsity Tennis 1971-1975

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

University of Missouri, Columbia, MO 65211 (1976-1979) Juris Doctor

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

Secretary, Student Bar Association (1977-1978)

Vice President, Student Bar Assn. (1978-1979)

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. **St. Joseph Racquet Club**
Head Tennis Professional
April, 1976 – July, 1976
3107 N. Belt Highway, St. Joseph, MO

b. **Boone County Public Defender (David Strauss)**
Student law clerk
Summer, 1978

Boone County Prosecuting Attorney (Joe Moseley)
Assistant Prosecuting attorney (1979-1980)
First Assistant Prosecuting Attorney (1980-1982)
September 1979 – April, 1982
705 E. Walnut Street, Columbia, MO 65201

Brown, Willbrand & Simon, P.C.
Associate
April, 1982 – June, 1988
601 E. Broadway, Columbia, MO 65201

Solo Practitioner
June, 1988 – May, 1990
717 Cherry Street, Columbia, MO 65201

Walther, Antel, Stamper & Fischer, P.C. (Partner)
May, 1990 - present
700 Cherry Street, Columbia, MO 65201

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.

I have briefed and argued at least 15 appellate cases beginning in 1983 and continuing to the present. I exclusively handled almost every one of those cases from trial through the appeals process. Here are four representative cases:

a. Hutchens v. Burrell, Inc., 342 S.W.3d 399 (Mo. App. W.D. 2011). I represented Defendant Burrell, Inc.; Mariam Decker represented Plaintiff Melissa Hutchens. Hutchens sued Burrell and alleged that Burrell failed to honor its agreement to pay her for time she spent while on call. Burrell defended by arguing that Hutchens was fully paid for her work and there was no agreement regarding payment for on call services. The case was tried to a jury and Hutchens received a \$48,000.00 verdict. The Western District Court of Appeals reversed the case, entered judgment for Burrell, and held that Hutchens failed to present sufficient evidence of an agreement between Burrell and Hutchens as to payment for on call services. I filed all pleadings, handled all discovery, tried the case to a jury, drafted the instructions and the post-trial motion, and I fully briefed and argued the appeal.

b. Rowe v. Hayes, 223 S.W. 3d 176 (Mo. App. W.D. 2007). I represented Plaintiff Karon Rowe; Tom Schneider represented several individual defendants. Rowe sued the defendants for specific performance of a real estate contract. The contract was signed in 2002 but a closing was never scheduled. Once the contract was signed, Rowe took possession of the property and began making the mortgage and tax and insurance payments. Eventually, the defendants attempted to transfer their interest in the real estate to third parties, and once Rowe found out about the transfer, she filed suit. After a bench trial, the trial court awarded the real estate to Rowe. The defendants appealed but were unsuccessful. I filed all pleadings, handled all discovery, tried the case to a judge, drafted the findings of fact and conclusions of law that the court adopted, and I fully briefed and argued the appeal.

c. State ex rel. Drury Displays, Inc. v. City of Columbia, 907 S.W.2d 252 (Mo. App. W.D. 1992). I represented Drury Displays; Susan Crigler represented the city of Columbia. The case began when the city of Columbia denied Drury a building permit to erect a billboard and the Board of Adjustment denied relief. Drury then filed an application for review in Boone County Circuit Court, and alleged that the city ordinance on which the permit denial was based was illegal because it was in conflict with state law. After a bench trial, the trial court ruled that the city ordinance prohibited that which state law permitted; consequently, the city ordinance was void. The Western District affirmed the trial court's judgment that the city ordinance at issue was void because it was in conflict with state law. I filed all pleadings, conducted the trial proceedings, drafted the findings of fact and conclusions of law, and I fully briefed and argued the appeal.

d. Zumalt v. Boone County, Missouri, 921 S.W.2d 12 (Mo. App. W.D. 1996). I represented Boone County; Tom Schneider represented A. K. and Virginia Zumalt in an inverse condemnation case. The Zumalts filed suit against Boone County when the Zumalt house developed significant foundation damage. The Zumalts contended that the cause of

the damage was due to the movement of public concrete streets into the Zumalt driveway, which in turn was pushed into the Zumalt house. Boone County took the position that the damage was caused by the connection between the street and the private Zumalt driveway and that the Zumalts were solely responsible for that connection. The trial court found the issues in favor of Boone County and the Zumalts appealed. The Western District affirmed the ruling of the trial court that the Zumalts failed to establish a causal connection between the damage and the County's maintenance of its concrete streets. I filed all pleadings, tried the case to a judge, drafted the findings of fact and conclusions of law, and I briefed and argued the appeal.

- 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.

As an assistant prosecuting attorney, I conducted approximately 45 jury trials over a 30 month period and in almost each instance was the only attorney representing the State of Missouri. In the Boone County Prosecuting Attorney's Office, each attorney was assigned responsibility for certain types of crimes, which meant that each attorney made charging decisions and then handled each respective case from its inception to its conclusion. During my employment, I was at various times responsible for all traffic cases, all DWI cases, felony and misdemeanor assaults, burglaries, all stealing cases, drug cases, some robberies, all manslaughter cases, and involuntary mental health commitment proceedings. During my employment, I tried several hundred non-jury misdemeanor trials and preliminary hearings.

As a private attorney, I have been the lead attorney in approximately a dozen civil jury trials and I have handled another approximately one hundred non-jury civil trials. Here are two representative criminal and two representative civil cases:

a. State v. Teter, 633 S.W.2d 417 (Mo. App. W.D. 1982). I represented the State of Missouri; the Honorable Jodie Asel represented the defendant as an assistant public defender. The defendant was charged with manslaughter and leaving the scene of a motor vehicle accident after he fled from pursuing police officers after a traffic violation, and in the process of flight, the defendant struck and killed a young man on a motorcycle. The case was tried in Cole County to a jury before the Honorable James Riley, and the jury returned guilty verdicts and sentences of six and two years, respectively. There were several interesting evidentiary issues to address and resolve. I exclusively handled all aspects of the case from charging the defendant to the conviction.

b. State v. Williams, 678 S.W.2d 430 (Mo. App. W.D. 1984). I represented the State of Missouri; David V. Bear III represented Doyle Williams. The defendant was charged with the non-code offense of attempting to obtain a controlled substance by forged prescription. Dr. Domann was a Mexico, Missouri physician who testified at the

preliminary hearing that he had not signed the prescription used by Doyle Williams to obtain dilaudid. Soon after the preliminary hearing, Williams murdered Dr. Domann but then surrendered to federal authorities on a federal parole violation. I assumed responsibility for the case after the preliminary hearing and extracted Williams from federal custody for trial. The case was tried to a jury in Moniteau County Circuit Court before the Honorable Dean Whipple and Williams was convicted. I was able to successfully argue that (a) Williams was a persistent offender; (b) the non-code offense with which Williams was charged was the equivalent of an A felony; and (c) Williams should be sentenced to life imprisonment for the offense, which was the maximum authorized range of punishment. I exclusively handled all aspects of the pre-trial preparation after the preliminary hearing and I conducted all aspects of the jury trial. Williams was charged with two unrelated murders that were pending in Callaway County, Missouri and the case I handled was tried before either of the two murder trials. It was not at all clear at the time that Williams would be convicted of either murder; consequently, it was of paramount importance that Williams receive the maximum allowable sentence.

c. Neuner et ux. v. Crouse, Case No. 97CC74274, Boone County Circuit Court (1999). I represented Candy and Brian Neuner in their suit against builder Ron Crouse in a construction defect case; Roland Walker represented Mr. Crouse. The controversy began when the Neuners objected to the workmanship of Crouse and they refused to pay the outstanding bill, causing Crouse to abandon the project. The Neuners filed suit and alleged that the construction work did not conform to the customary standard of workmanship. Crouse counterclaimed for the unpaid invoice. The case was tried to a jury, which rendered a verdict against Mr. Crouse on his claim for breach of contract (failure to pay contract price in full) and for the Neuners on their claim for defective construction, and damages of \$71,000.00 were awarded to the Neuners. I filed the petition, conducted all discovery, and conducted all aspects of the jury trial. Several experts were used to prove damages and the applicable standard of workmanship required of builders and whether or not Mr. Crouse met that standard.

d. Courtney et ux. v. Sagner et ux., Case No. 06BA-CV04552, Boone County Circuit Court (2009). I represented Martha and Bobby Courtney in their suit for reformation of a real estate deed against Charles and Teresa Sagner and their lender First Franklin Financial Corporation. The Courtneys and the Sagners were parties to a real estate contract whereby the Courtneys were the sellers and the Sagners were the buyers of several acres of rural real estate in Randolph County, Missouri. The Courtneys discovered after the real estate closing that there was an error in the legal description used in the deed. The Courtneys contended that the signed deed erroneously described more acreage than they intended to sell and they sought reformation of the deed so that it accurately described the parties' intention. The Sagners argued that they intended to acquire all of the acreage that was described in the deed, and they pointed out that a survey of the acreage was present at closing so the sellers should have known what they were selling. The case was tried to the Honorable Jodie Asel, who ruled for the Courtneys and ordered the deed (and deed of trust) reformed. The Sagners ultimately provided the Courtneys with a deed as to the disputed real estate. I filed the petition, handled all discovery and solely conducted the trial.

My experience as a trial attorney and as an appellate attorney has reinforced the principle that preparation and diligence are crucial keys to success. While I have not been 100% successful at either trial or on appeal, I believe my record demonstrates my competence as a trial and appellate attorney. Additionally, I have tried a wide variety of cases dealing with issues involving criminal law, breach of contract, real estate conveyancing, personal injury, property damage, construction defect, landlord tenant, insurance coverage, family law, land use, inverse condemnation, suits on account, etc.

- 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.

N/A

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 have conducted approximately 10 mediations as a mediator in the last 10 years, and I have participated as an arbitrator in two cases in the past two years.

I recently served as a defense expert regarding the reasonableness of attorney's fees in an insurance coverage case that resulted in a \$20,000,000.00 judgment and where the prevailing attorneys were seeking fees (based on an hourly rate) in excess of \$7,000,000.00.

I have 33 years of experience in advising clients regarding real estate issues, including preparation of contracts, deeds, debt instruments and security agreements, and regarding business organizations, including asset and stock purchase agreements and related documentation and general corporate governance issues and general tax matters, and regarding land use matters, estate planning and probate matters. I believe the breadth of my legal experience would be helpful as an appellate court judge.

I have defended attorneys charged by OCDC with ethical violations.

I am currently serving as the Chair of the Commission on Retirement, Removal and Discipline of Judges, which reviews and processes complaints regarding judicial conduct. This work requires that I be familiar with the Code of Judicial Conduct and assist in making judgments as a group concerning the validity of the complaints we receive, which usually number more than 200 per year.

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

The Missouri Bar

President 2009-2010
President-Elect 2008-2009
Vice President, 2007-2008
Immediate Past President 2010-2011
Governor, Board of Governors, 1999-2011
Executive Committee member 2002-2003; 2006-2011
Finance Committee member 2003-2008
Member, Missouri Bar Foundation, 2009-2010, 2011-present
Chair, Legislative Committee, 2005-2007

Boone County Bar Association (1982-present) (Newsletter Editor, 1995-2001)
American Bar Association (1982-present)
Fellow, American Bar Foundation (2009-present)
Sustaining Fellow, National Conference of Bar Presidents (2012-present)
Missouri Association of Trial Attorneys (1982-2009)
American Association For Justice (1982-present)
Mound City Bar (2009-present)
Springfield Metropolitan Bar Association (2009-present)

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.

I received the Citation of Merit from the University of Missouri Law School in 2009. This award is the highest honor given to an alumnus by the MU Law School.

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

Treasurer:

Missourians for Fair and Impartial Courts Committee (campaign committee formed to defeat Amendment 3, a 2012 ballot measure to alter the Non Partisan Court Plan.

Past President/Chair:

Reality House Board of Directors (1987)
Columbia Country Club (1985-1986)
Cosmopolitan Luncheon Club of Columbia (1997-1998)
Columbia Pride/Phoenix Soccer Club (1998-2000)
Columbia Special Business District Board of Directors (2000-2003; 2005)
Downtown Columbia Community Improvement District (2011-2013)
Southwest Swim and Tennis Club (2003-2005)
Missouri District – Missouri Valley Tennis Association (2004-2006)
Trustees – First Presbyterian Church (2006)
Mayor’s Columbia Parking Task Force (2011 – 2013)

Past Director/Committee Member:

Columbia Special Business District Board of Directors (1997- 2011)
Downtown Columbia Community Improvement District Advisory Board (2009 – 2010)
Columbia Community Improvement District Board of Directors (2011 – 2013)
Boone County Chapter -- University of Missouri Alumni Association
Co-Chair of Mayor appointed task force “Citizens Advocating Recreation and Environment” (successful sales tax ballot measure to acquire Stephens Lake Park from Stephens College)
Mayor’s Community Recreation Center Executive Committee (1998-1999)
(successful sales tax ballot measure to finance construction of \$10,000,000.00 city recreation center)
Mayor’s Transportation Finance Advisory Committee (2004-2005) (create report advising city how best to finance future road construction and maintenance)

Past Chapter Advisor: Alpha Tau Omega Fraternity, University of Missouri

Elder:

First Presbyterian Church, Columbia, MO
Past Treasurer, FPC

Cub Scouts: Past Cubmaster, Pack 700, Columbia, MO

Past Coaching:

Baseball coach, Daniel Boone Little League, Columbia, MO
Softball coach, Daniel Boone Little League, Columbia, MO
Basketball coach, Columbia Youth Basketball Association
Soccer coach, Columbia Soccer Club/Columbia Pride
Tennis coach, private and volunteer

Miscellaneous:

Weekly Legal News Commentator, KOMU-TV (1998-2001)
Radio talk show host, KFRU-AM (2000-present)
Bingo caller for Cosmopolitan Club (member, 1984-present)

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

No.

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.

N/A

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.

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

No.

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

No.

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

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

N/A

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

N/A

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

No.

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

No.

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.

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.

Two appellate briefs are 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.

As an officer of the Missouri Bar, I travelled throughout the state of Missouri to give talks to civic organizations, bar associations, student groups and civics teachers on topics related to our justice system, our judicial selection system and on civic education. I made a significant commitment to prepare for each of those presentations and I made a concerted effort to understand the history of the judicial branch of government in Missouri.

I have advocated in support of the Non Partisan Court Plan in a variety of public forums, including testimony before committees of the Missouri General Assembly, in television news interviews, op ed pieces and letters that have appeared in newspapers throughout the state of Missouri and the Wall Street Journal, in many radio interviews, through my position as President of the Missouri Bar, and through more than one hundred public speaking engagements.

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.

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