

• **APPLICATION OF Michael D. Burton
TO THE APPELLATE JUDICIAL COMMISSION FOR THE
JUDGE BAKER VACANCY
MISSOURI COURT OF APPEALS, EASTERN DISTRICT**

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

A. PERSONAL INFORMATION

1. Present principal occupation or title: **Circuit Court Judge**

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? **50 years**

(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri? **25 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. **November, 1985. My license is in good standing.**

B. EDUCATIONAL BACKGROUND

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

| Name | Address | Dates Attended | Degree |
|---------------------------------|-----------------------|------------------|---------------------|
| University of Notre Dame | South Bend, IN | 1978-1982 | B.A. (Govt.) |
| | | | |
| | | | |

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

**Dean's List
Dormitory President
Dormitory Social Awareness Chairman**

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

| Name | Address | Dates Attended | Degree |
|------------------------------|----------------------|------------------|-------------|
| Washington University | St. Louis, MO | 1982-1985 | J.D. |
| | | | |
| | | | |

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

**Moot Court Team – represented Wash.U. Law School
Student Legal Research and Writing Adjunct Instructor**

7. 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**

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

8. State, in chronological order (starting with the earliest employment), significant non-law-related employment prior to or since law school. To the extent reasonably available to you, include the name and address of each employer and the dates of employment.

| Employer | Address | Dates of Employment |
|--|--|------------------------|
| Elmhurst Park District (Tennis Instructor/ Coach) | 186 S. West Ave. Elmhurst, IL 60126 | 1976-1981 |
| Grace Hall Food Sales | Univ. of Notre Dame South Bend, IN | 1979-1982 |
| Elmhurst Mem'l Hospital (Dock Man) | 200 Berteau Ave. Elmhurst, IL 60126 | 1979-80 summers |
| Marshall Field's Co. (Delivery Man/Bartender) | Oak Brook Shopping Center Oak Brook, IL 60521 | 1981-83 summers |
| Y.M.C.A. (Day Camp Organizer) | 211 West First Ave. Elmhurst, IL 60126 | 1983 summer |

9. State, in chronological order (starting with the earliest employment), all employment from the beginning of law school to the present. For legal employment, describe the positions you have held, e.g., associate, partner, law clerk, general counsel.

| <u>Employer</u> | <u>Address</u> | <u>Dates of Employment</u> | <u>Position</u> |
|---|--|-----------------------------------|--|
| a. Botti, Maranaccio and Maksym, L.L.C. | 720 Enterprise Dr. Oak Brook, IL 60521 | 5/84 – 8/84 | Law Clerk |
| b. Federal Public Defender's Office | 1010 Market St., Ste.200 St. Louis, MO 63101 | 4/85 – 8/85 | Law Clerk |
| c. Special Public Defender's Office | Civil Courts Bldg. 10 N. Tucker, St. Louis | 11/85 – 7/89 | Asst. Public Defender |
| d. Margulis, Grant, Burton and Margulis, P.C. (f/k/a Margulis and Grant, P.C.) | 11 S. Meramec Ave., Ste. 1330 Clayton, MO 63105 | 7/89 – 5/99 | Trial Atty. |
| e. St. Louis County Family Court | 501 S. Brentwood Blvd. Clayton, MO 63105 | 1/96 – 5/99 | Guardian-ad-Litem |
| f. St. Louis Univ. School of Law | 3642 Lindell Blvd. St. Louis, MO 63108 | 8/92 – present | Adjunct Prof. (Civil Pretrial Practice; Trial Advocacy) |
| g. Wash. Univ. School of Law* | 1 Brookings Dr. St. Louis, MO 63131 | 1/97 – present | Adjunct Prof. (Trial Advocacy; Advanced Practical Crim. Procedure) |
| * Will be teaching Evidence, starting in the spring session of 2012 | | | |
| h. State of Mo. | St. Louis Co. Courthouse 7900 Carondelet Ave. Clayton, MO 63105 | 5/99 – 3/04 | Assoc. Cir. Ct. Judge (21 st Circuit) |
| i. State of Mo. | St. Louis Co. Family Court Center 501 S. Brentwood Blvd. Clayton, MO 63105 | 3/04 – present | Circuit Court Judge (21 st Circuit) |
| j. State of Mo. | St. Louis Co. Family Court Center 501 S. Brentwood Blvd. Clayton, MO 63105 | 1/08 – present | Admin. Judge Family Court (21 st Circuit) |

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

| Bar Admission | Date |
|---|-----------------------|
| Illinois | April, 1986 |
| U.S. District Court (E.D. Mo.) | February, 1990 |
| Eighth Circuit Court of Appeals | August, 1990 |
| Seventh Circuit Court of Appeals | April, 1994 |
| | |
| | |

11. 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). To the extent reasonably available to you:
- i. State the style, date, court and, if published, the citation;
 - ii. Identify the client(s) you represented and opposing counsel; and
 - iii. Give a one-paragraph description of the case and your role in it.

As an assistant public defender, I handled most of my clients' appeals. These appeals not only stemmed from adverse jury verdicts, but also adverse orders from judges when my appointed clients sought "post-conviction" relief. In total, I estimate that I handled at least forty appeals from my public defender clients.

The number of my appeals from guilty verdicts was considerable because, in many instances, the juries would give mixed verdicts, acquitting on some counts and convicting on other counts. Any lost counts were appealed. I kept some limited records of the trials that I had when I was an assistant public defender, more than two decades ago. Although I do not have all of the details, here are some appeals that I solely handled after I had represented (as the chief trial attorney) the defendants in trial:

1. a. State of Missouri v. Robert Burroughs, 729 S.W. 2d 571 (Mo.App. E.D. 1987), St. Louis County Circuit Court;

b. Opposing counsel: Assistant Prosecuting Attorney - William Meiners;

c. The State of Missouri charged Robert Burroughs with escaping from the Eastern Missouri Correctional Center. Correctional officers all admitted that a five-man crew of penitentiary inmates was left unattended outside the walls of the penitentiary for nearly half an hour. Burroughs and another inmate (who were both serving lengthy prison sentences) were missing when the correctional officer returned. Burroughs was later arrested in Arkansas. The defendant's defense centered on his allegation of involuntary intoxication. (Alcohol was found on the correctional center's premises.) The trial court refused to grant a jury instruction on this issue, despite the defendant's efforts to present such an instruction. The Court of Appeals denied the defendant any relief, finding the trial court's refusal to provide an instruction to be proper.

2. a. State of Missouri v. Edward Claypool, 763 S.W. 2d 313 (Mo.App. E.D. 1988), St. Louis City Circuit Court;

b. Opposing Counsel: Assistant Circuit Attorney Jerry Tanner;

c. Claypool and his friend were accused of robbing and assaulting an elderly man from their neighborhood. The defense was able to show that the investigating police officers had tampered with significant evidence, specifically failing to produce documents to show that the victim was intoxicated and had initially never admitted to knowing the robbers.

At trial, the victim did identify the defendants, but not until after some questionable police involvement. (He also maintained that he was sober all evening long.) Nonetheless, the defendants' guilty verdicts were affirmed.

3. a. State of Missouri v. Richard Pruitt, 800 S.W. 2d 765 (Mo. App. E.D. 1990), St. Louis City Circuit Court;

b. Opposing Counsel: Assistant Circuit Attorney Shirley Rogers;

c. Richard and his twin brother, Ricky, were charged with two counts of Robbery in the Second Degree. The jury came back with a verdict finding Richard guilty of both counts.

The issue on appeal related to certain sentencing considerations - and whether or not the state had adequately established Pruitt's persistent offender status. (Such a status would enhance the range of punishment that the court could consider.) The Court of Appeals believed that the State's proof was sufficient.

4. a. State of Missouri v. Lance Etherton, 779 S.W. 2d 12 (Mo. App. E.D. 1989), St. Louis City Circuit Court;

b. Opposing Counsel: Assistant Circuit Attorney Steve Ohmer;

c. The State charged Lance Etherton of burglary and stealing a large number of motorcycle parts. The jury found him guilty of two felonies, but acquitted Etherton of other counts of theft. The issue on appeal related to the alleged improprieties of the prosecutor in his cross-examination of the defendant - questions that arguably impermissibly addressed his right to remain silent. The appellate court did not find the questioning to be problematic.

5. a. State of Missouri v. Macon Coleman, 773 S.W. 2d 199 (Mo. App. E.D. 1989), St. Louis City Circuit Court;

b. Opposing Counsel: Assistant Circuit Attorney Robert Garrison;

c. Coleman was tried in two separate cases - the first trial involved a felony assault. He testified at this trial - and was ultimately acquitted. The State then charged Coleman with perjury (for lying under oath at his assault trial - after the jury had acquitted him. . .), which subsequently caused this appeal. The court of appeals ultimately did not accept defendant's claims of double jeopardy and prosecutorial vindictiveness.

6. One of the many post-conviction relief cases that I both handled at the trial level and ultimately appealed was:

a. State of Missouri v. Vicky Williams, 778 S.W. 2d 688 (Mo. App. E.D. 1989), St. Louis County Circuit Court;

b. Opposing Counsel: Asst. Pros. Attorney Douglas Sidel;

c. Williams had been convicted of murdering her husband, an individual who had regularly subjected his wife to horrible acts of domestic violence. The battered wife syndrome (now known as the battered partner syndrome) had not yet been officially recognized by the Missouri legislature or the courts.

Nonetheless, movant attempted to show that such a defense should have at least been attempted at her trial. Unfortunately for appellant, the circuit court and the appellate court disagreed. (Thirty years after her conviction, in late 2010, Ms. Williams received parole, after a statutory revision was enacted, allowing certain female inmates - who were victims of domestic violence - to receive parole.)

7. During the ten years that I was in private practice, I rarely did my own appeals. However, I handled approximately ten appeals from those cases in which the verdict was not completely in defendants' favor. One such case was:

a. Edward Wright v. State of Missouri, 975 S.W. 2d 477 (Mo. App. E.D. 1998), St. Louis County Circuit Court;

b. Opposing Counsel: Assistant Prosecuting Attorney Margaret Landolt;

c. The State of Missouri charged Edward Wright with Sexual Assault in the First Degree, Sodomy and Attempted Rape of his teenage step-daughter (who ultimately recanted her allegation). A St. Louis County jury found Wright guilty of the first count and acquitted him of the second and third counts. One of the points on appeal related to the admissibility of certain inconsistent statements from the victim.

On a yearly basis, the Federal Court appointed me (i.e., ordered me) to represent defendants who had already been convicted of certain offenses. Three of my appointed appeals were as follows:

8. a. Mose Young v. Michael Bowersox, 161 F. 3d 1159 (8th Cir. 1998);

b. Opposing counsel: Attorney General's Office;

c. This was a federal habeas corpus death penalty matter. My co-counsel and I first attempted to set aside the mandate in state court. We then wrote a lengthy, state petition for a writ of habeas corpus. Once that relief was denied in state court, we sought federal relief, writing a lengthy petition for a writ of habeas corpus (which was denied as well.) In all venues, numerous claims were made relating to ineffective assistance of counsel and prosecutorial misconduct.

The matter was ultimately appealed to the Eighth Circuit Court of Appeals. All such federal relief was ultimately denied. The petitioner was executed in 2001.

9. a. **Chester Blum v. United States of America**, 65 F. 3d 1436 (8th Cir. 1995);

b. Opposing counsel: Assistant U. S. Attorney Thomas Mehan;

c. The Government charged appellant Blum with armed robbery of a bank. Blum insisted on representing himself at trial, despite many warnings from the Court. During his cross examination of one of the victims, Blum was able to get her to clearly state that he was in fact the robber (when the prosecutor - out of an abundance of caution - did not attempt to do so . . .). The appeal centered in part on appellant's claim that he never should have been allowed to represent himself - and should have been granted substitute counsel. There were also some claims of improper questioning (by the Government) of prospective jurors during jury selection. The Eighth Circuit did not grant any relief sought by Blum or his wife (the co-defendant).

10. a. **Joseph Paoloca v. United State of America**; 36 F. 3d 1099 (7th Cir. 1994);

b. Opposing counsel: Assistant U.S. Attorney Kit Morrissey (from the Southern District of Illinois);

c. This was an "interlocutory" appeal. Defendant Paoloca entered a guilty plea, but the Government agreed, as part of the plea bargain, that he could challenge his stop and ultimate seizure of a sizeable amount of marijuana in his vehicle. One of the criticisms of the stop involved the arresting officer's suspicion of Paoloca because he was one of the few drivers on the highway that was driving within the posted speed limits. The defendant also claimed that he did not give consent to search the trunk of his car - that the

officer's search of the trunk was outside the scope of his consent. Paoloca's claims for relief were denied by the Seventh Circuit Court of Appeals.

- 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). To the extent reasonably available to you:
- i. State the style, date and court;
 - ii. Identify who you represented and opposing counsel;
 - iii. State whether the case was disposed of following a jury trial, bench trial or at what other stage; and
 - iv. Give a one-paragraph description of the case and your role in it.

As a trial attorney for the first fourteen years of my legal career, I represented many hundreds of clients in many hundreds of court proceedings. I have had approximately sixty jury trials, three of which were death penalty cases. Most of these trials were state criminal cases (but I have had civil and federal trials as well). In all cases mentioned below, I was the chief defense attorney (with co-counsel for the first three cases) - except for the Simmons case in which I handled the sentencing phase and a portion of the jury selection.

1. **People of Illinois v. Tammy Corbett Eveans**; No. 91-FC-82, February, 1993 (Macoupin County Illinois);

a. Opposing counsel: Macoupin County Prosecutor Vincent Moreth and Assistant Illinois Attorney Generals Frank Nowicki and Joseph Claps;

b. Bench Trial;

c. Tammy Corbett Eveans was accused of suffocating her three children in a rural Illinois area, sixty miles northeast of St. Louis. The State sought the death penalty. The defense presented testimony to establish that Eveans had significant mental health issues throughout her life (as supported by numerous experts and non-experts). The judge gave her life sentences.

2. State of Missouri v. Mark Ebright, No. CR195-1F; October 1995 (Franklin County, Missouri);

a. Opposing counsel: Missouri Attorney General Jay Nixon and Assistant Attorney General Robert Ahsens;

b. Jury Trial;

c. Mark Ebright and his partner were involved in several shootings that ultimately claimed the lives of the Maries County sheriff and Ebright's partner. A deputy sheriff was also injured. Due to extensive local media attention, the defendant's motion for a change of venue to Franklin County was granted. The State of Missouri sought the death penalty. The defense presented testimony that emphasized Ebright's relatively minor role in the shooting - and his being greatly influenced by the very strong personality of his partner. The jury gave him a life sentence.

3. State of Missouri v. Christopher Simmons, No. CR193-1592FX; June, 1994 (Jefferson County, Missouri);

a. Opposing counsel: Jefferson County Prosecuting Attorney George McElroy and Asst. Prosecuting Attorney John Applebaum;

b. Jury Trial;

c. Seventeen year-old Christopher Simmons and his juvenile co-defendant were charged with the murder of a neighbor woman in Jefferson County. Simmons was found guilty of First Degree Murder. This was one of the first cases in which the State of Missouri used the expanded victim impact statute, allowing the prosecution to present more background information about the victim during the sentencing phase. The jury gave Simmons a sentence of death. Approximately ten years later, the United States Supreme Court overturned Simmons' death sentence, finding that the execution of a seventeen year-old violated the Eighth Amendment. (The decision received a great deal of attention, not only because of the death sentence and the juvenile's age, but

also because the Supreme Court judges looked outside of the United States for guidance on the sentencing issues, doing a comparative analysis of other countries' practices on sentencing youths charged with murder.)

4. People of Illinois v. Michael Hoare, No. 93-CF-583; March 1996, (St. Clair County, Illinois);

a. Opposing counsel: St. Clair County Assistant State's Attorney Eric Rhein;

b. Jury Trial;

c. Prominent St. Louis attorney Michael Hoare was charged with Involuntary Manslaughter, having driven on the wrong side of the highway, killing a young driver. The State sought a significant term of imprisonment after a guilty verdict (which occurred after a second jury deliberation; the first jury had hung). The defense presented significant mitigating testimony at the sentencing hearing to show the defendant's considerable contributions to the community. The judge sentenced Hoare to six months in the local county jail.

5. City of St. Louis v. Khone Nhotiphay, No. 938-23; State of Missouri v. Khone Nhotiphay, No. 929-3198; Khone Nhotiphay v. Vitale et al; July 1992 and April 1993 (St. Louis City Circuit Court);

a. Opposing counsels: St. Louis City Assistant Counselor Patrick McCarthy, Assistant Circuit Attorney Christopher Goeke and Assistant St. Louis City Counselor George Fitzgibbons, respectively;

b. Jury Trials for the first two cases; settlement on the civil matter;

c. The City of St. Louis originally charged Khone Nhotiphay with assaulting his girlfriend and resisting arrest. The assault "victim" was Nhotiphay's girlfriend, whose brother was a St. Louis City police officer. The defense presented testimony

that established that the injuries to him were not caused by his resisting arrest but rather by a vindictive attack by the officer and four other fellow officers. A St. Louis City jury acquitted Nhotiphay of the resisting charge. Another jury found him guilty of the assault; he was ultimately sentenced to thirty days in the county jail - with work release authorized. Nhotiphay sued the police officers in federal court. (Evidence included extensive medical testimony, including a physician's description of a bruise on the defendant's back in the shape of a billy club. Numerous witnesses in Nhotiphay's neighborhood saw five officers throw him into a paddy wagon and then follow him inside, staying there for thirty minutes). On the eve of trial, the parties settled; Nhotiphay received a sizeable payment from the City.

6. State of Missouri v. Mark Pargo; September 1989 (St. Louis City Circuit Court);

a. Opposing counsel: Assistant St. Louis City Circuit Attorney, Dwight Warren;

b. Jury Trial;

c. The State of Missouri charged Mark Pargo with First Degree Murder, alleging that he had shot and killed a neighborhood hoodlum. The State sought a life sentence. Defendant Pargo presented significant evidence demonstrating that another teen in the neighborhood committed the murder. The jury hung. The State ultimately offered Pargo a reduced charge and sentence - which he eventually accepted.

7. State of Missouri v. Mark Colenburg; January, 1988 (St. Louis City Circuit Court);

a. Opposing counsel: Assistant Circuit Attorney Jane Geiler;

b. Jury Trial;

c. Colenburg was charged with Second Degree Murder when a small child darted out in front of him while he was driving a

stolen vehicle. There was never any credible evidence to establish that Colenburg was driving erratically. The legal issue was novel: whether or not the "felony murder" rule applied in all situations in which a felony was committed (in this case Tampering in the First Degree - operating a vehicle known to be stolen) when a death resulted. Despite a strong dissent, the appellate court found that the rule applied, regardless of how much time had lapsed since the theft of the vehicle. Colenburg received a sentence of seven years with the Missouri Department of Corrections.

8. United States of America v Douglas Burk, 1989 (U.S. District Court);

a. Opposing counsel: Assistant U.S. Attorney Howard Marcus;

b. Jury Trial;

c. The United States of America charged Douglas Burk with "assaulting" an I.R.S. agent with a "belly bump" as the agent tried to get into Burk's garage to investigate possible income-generating schemes. The jury found Burk guilty and the judge sentenced him to eleven months with the Federal Bureau of Prisons.

9. State of Missouri v. William Palmer, Case No. 90CR-6648, July, 1992 (St. Louis County Circuit Court);

a. Opposing counsel: Assistant Pros. Atty. John Lord;

b. Jury Trial;

c. The State of Missouri charged Kinloch Alderman William Palmer with felony stealing from the City of Kinloch. Palmer purportedly had unlimited access to the Kinloch Police Department evidence lockers. He was accused of stealing items from the lockers that had been seized from arrested individuals. Much of the State's case relied on the credibility of the Kinloch police chief - who had to explain many of his

questionable practices. The jury convicted Palmer; the judge sentenced him to six months in the County Jail.

10. State of Missouri v. Derrek Henry, No. 951-270A, July 1996 (St. Louis City Circuit Court);

a. Opposing counsel: Asst. Circ. Atty. James Gronski;

b. July Trial;

c. Derrek Henry was charged with stealing a large number of shoes from the St. Louis Rams (who had recently arrived to St. Louis). Henry denied the charges. The defense was able to establish that the Rams' accounting/inventory practices were so questionable that it was possible that the shoes had not even been stolen at all. The jury acquitted Henry.

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

As a judge for the past twelve years, I have handled high volume criminal, civil, domestic (family) and juvenile cases. I have presided over thousands of trials and hearings. I have developed a "special expertise" in the areas relating to most of the types of cases that were on my dockets (with such a high volume of cases, one can quickly become an expert . . .)

1. I have held several positions as a judicial officer in St. Louis County:

- A. Associate Circuit Court Judge (1999-2004);
- B. Circuit Court Judge (2004-present);
- C. Administrative Judge of the Family Court (2008-present).

2. I have handled various dockets since becoming a judge:
 - A. As an Associate Circuit Court Judge, I handled the following dockets:
 - i. Family (Domestic) - This docket included dissolution cases, paternity cases, order of protection cases, and Child Support Enforcement de novo appeals.
 - ii. Associate Civil - This docket included mostly civil suits in which the damages were less than \$50,000, small claims matters, and landlord tenant cases.
 - iii. Equity - This docket, addressed a myriad of causes of action, including injunctions/restraining orders, covenants not to compete, partitions, adverse possessions, replevins, easements, actions to quiet title, and declaratory judgments.
 - iv. Associate Criminal - This docket included both preliminary hearings on felonies and misdemeanor trials (both bench and jury).
 - B. As a Circuit Court Judge, I have handled the following dockets:
 - i. Family (Domestic) - I handled the same type of cases as described in the previous section.
 - ii. Juvenile - This docket includes delinquency and abuse/neglect proceedings, adoptions, and termination of parental rights trials.
 - C. As the Administrative Judge of the Family Court of St. Louis County, I continue to have my juvenile docket. I also have participated in:

i. the creation of a Domestic Violence Court that strives to better protect the victims and hold offenders more accountable. One means of holding the offenders accountable is through the contempt process. I regularly meet with offenders through a contempt docket in which I determine whether or not the offenders' violations warrant their incarceration.

ii. the development of better ways for various groups in St. Louis County to collaborate to combat domestic violence. As the chairman of the Domestic and Family Violence Council of St. Louis County, I have:

- Authored a training manual for law enforcement officers in St. Louis County (and now statewide) on domestic violence issues.

- Developed and implemented an "after hours" procedure for all 92 municipalities (and 62 police departments) in St. Louis County to enable alleged victims to obtain orders of protection during weekends, nighttime and holidays.

- Met with members of all 24 school districts in St. Louis County to develop a "best practices" model for schools to use in addressing date rape, date stalking, cyber-bullying and other forms of domestic violence. (Several individuals and I are developing a manual for the school districts that will provide this model and also address many privacy/Fourth Amendment issues related to this topic.)

-- Assembled the key agencies in the metropolitan area that are responsible for creating and exchanging data on the internet to ensure that all groups have the necessary access to information relating to orders of protection and D.V. criminal cases.

iii. the creation of the St. Louis County Parenting Court. The purpose of this docket is to give fathers - who are deemed to be obligated to pay child support - an opportunity to see their children through court-established parenting plans. These dockets have proven to be extremely successful as parents tend to be more inclined to pay support if they are regularly interacting with their children.

iv. the creation of an Education Committee that focuses on five critical issues, with each being addressed through separate subcommittees: accountability (for the Children's Division, the school districts and the courts), alternate schooling, transitions (from one school district to another), special education and school discipline options. All of these subcommittees have established better relationships and policies that provide better services for children in the County.

D. In 2007, the Missouri Supreme Court asked me to be a Special Master for a case in which the defendant had received the death penalty. After the defendant's sentence in 1996, the United States Supreme Court issued the Atkins v. Virginia decision, which prohibited the execution of mentally retarded defendants. The Missouri Supreme Court gave me the task of determining whether or not the

defendant was "mentally retarded," as defined in the Atkins decision.

3. After having been a judge in the Family Court for nine of my twelve years, I believe that I have developed an expertise on family law issues - both domestic and juvenile. I also believe that with my development of the Domestic Violence Court and with my numerous presentations and trainings on domestic violence issues, I have developed significant domestic violence expertise. Finally, having tried hundreds of cases, both as a lawyer and a judge and (having taught trial advocacy for almost fifteen years), I believe that I have developed an expertise on the rules of Missouri evidence and procedure.

12. 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).

- Adjunct Professor of Law: Washington University School of Law (1997-present).
 - Two Classes: Advanced Practical Criminal Procedure and Trial Advocacy.
 - Authored the course materials (more than 500 pages) for the A.P.C.P. class.
 - Will be teaching Evidence during the 2011-2012 school year.
- Adjunct Professor of Law: St. Louis University School of Law (1992-present).
 - Two Classes: Trial Advocacy and Pre-trial Civil Procedure.
- Judicial Instructor: Missouri Judicial College (2000, 2005, 2006, 2007, 2011).
 - Topics include Civil Equity and Domestic Violence.
- Adjunct Judicial Instructor: National Judicial Institute on Domestic Violence and National Council of Juvenile and Family Court Judges (2008-present).
- Continuing Legal Education ("C.L.E.") Presenter: St. Louis County Bar, Bar Association of Metropolitan St. Louis and the Missouri Bar (1999-present).
 - Topics include numerous family law issues - for both domestic and juvenile matters.

13. List all bar associations and other professional societies of which you are a member, with any offices held and dates.
- St. Louis County Domestic and Family Violence Council (2007-present)
-- Chairman (2008-present).
 - Join Hands ESL, Inc. Board of Directors (2005-present).
-- President (2002-present).
 - St. Louis County Education Committee (2008-present).
-- Founder and Chairman (2008-present).
 - Truancy Court Board of Directors (2005-2008).
-- Chairman (2008).
 - Big Brothers/Big Sisters of Eastern Missouri Board of Directors (2003-2008).
 - FOCUS - Leadership St. Louis (Class of 2002).
-- Presenter for both Adult and Youth Programs.
 - St. Louis Post Dispatch Community Advisory Board (2007-2009).
 - St. Louis County Bar Association.
 - Bar Association of Metropolitan St. Louis.
14. 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.
- "MoBar" C.L.E. Family Law Desk Book Chapter Author (2011).
(Currently writing the Adult and Child Orders of Protection chapter)
 - Washington Univ. School of Law's Distinguished Young Alumni Award (2011).
 - Missouri Association of Family and Conciliation Courts' Leadership Award (First Annual "Ellen Cowell Award") (2011).
 - Washington University School of Law's Adjunct Professor Recognition Award (2010).
 - Legal Advocates for Abused Women's Special Recognition Award (2009).
 - Served as a Special Master (appointed by the Missouri Supreme Court) for a death penalty case (2007-2008).
 - Legal Services of Eastern Missouri's Children's Advocacy Award ("Ashley Award") (2007).
 - St. Louis University Law School's Public Service Award ("Clarence Darrow Award") (2006).
 - Served as a Visiting Missouri Supreme Court Judge on a designated case (2005).
 - Big Brothers/Big Sisters of Eastern Missouri's Legacy Award (2005).
 - St. Louis Magazine's A-List Award for "Gavel Wielder" (2005).
 - Missouri Bar's "Tom Cochran Community Service Award" (2004).
 - St. Louis Junior Chamber of Commerce's "Outstanding Young St. Louisan Award" (1998).
 - St. Louis County Bar Association's "Outstanding Young Lawyer of St. Louis County" Award (1996).
 - Received highest rating -- "Very High to Preeminent" in legal ability ("AV") (Martindale Hubbell Law Directory) (since 1995).

D. PUBLIC SERVICE

15. Describe your community activities, including any organizations not listed elsewhere with which you are affiliated.
- Join Hands ESL, Inc. (f/k/a Project Kids, Inc.), East St. Louis, IL.
 - Co-Founder and President of Boys Club (1991-present).
 - Founder and Co-Director of Teen Mentoring Program (2006-present).
 - Truancy Court of St. Louis County, Ferguson-Florissant School District.
 - Volunteer "Judge" at Airport Elementary School, Berkeley Middle School, Central Elementary School, Ferguson Middle School (2000-2008).
 - Big Brothers/Big Sisters of Eastern Missouri, St. Louis, MO.
 - Big Brother (1985-2002).
 - Co-Founder and President of Alumni Association (2000-2005).
 - St. Vincent DePaul Church, St. Louis, MO.
 - Parish Council Member and Chairman (1998-2001).
 - Developer and Coordinator of Cormack Fund for the Study of Poverty (2001-2004).
 - Co-Founder of the St. Vincent's Legal Clinic for the Homeless (1995-1999).
 - St. Louis Association for Retarded Citizens, St. Louis, MO.
 - Softball Coach, "Leisure Links" Volunteer (1992-1999).
16. Do you now hold or have you ever held an elective or an appointive public office or position? If yes, provide details.

I have been a state court judge since 1999 (as an associate circuit court judge from 1999 to 2004 and as a circuit court judge from 2004 to today).

17. 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**

E. PROFESSIONAL CONDUCT AND ETHICS

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?

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.

Yes – on two occasions:

- a. **A defendant who had been on my civil docket filed a lawsuit against my clerk and me for calling his name in court without his permission (and without paying him for the privilege of doing so). The case was immediately dismissed in federal court on a motion for summary judgment. (Howell v. Millsap & Singer, P.C., et al.; Case No. 4:02CV1198HEA; Federal Court of the Eastern District of Missouri; both filed and dismissed in 2003).**
- b. **A former client of mine, David McDermott, sued me on January 15, 2004, thirteen years after his conviction for armed criminal action, burglary in the first degree, robbery in the second degree and attempted stealing by coercion. He claimed that I breached my fiduciary, professional and legal duties by giving him incorrect advice regarding his parole eligibility. (An allegation that I adamantly denied.) (David McDermott v. Michael Burton, Jeremiah Nixon and Gary Kempker, Case No. 04CC-204). The case was dismissed on March 31, 2004. Appellant McDermott's appeal was denied on March 1, 2005. (No. ED85200).**

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

F. MISCELLANEOUS

25. 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.

I am able to perform the essential functions of being an appellate judge.

26. 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.

I am attaching the following three writing samples:

- a. **A judgment dissolving the marriage of two prominent business people in the community. The significant issues in the case related to the ownership and valuation of the parties' chief asset, their business (American Equity Mortgage). (Vinson v. Vinson, Cause No. 04FC-9863).**
- b. **A report written pursuant to my designation by the Missouri Supreme Court as a Special Master to determine whether or not a Missouri inmate was mentally retarded (as defined by a United States Supreme Court case, Atkins v. Virginia, 536 U.S. 304 (2002)). (State ex rel. Andrew Lyons v. Crawford and Nixon, Case No. 88625).**

- c. **A domestic violence manual for law enforcement officers in St. Louis County. This manual provides officers with all of the necessary statutes, rules, procedures and resources relating to domestic violence.**

I did not include any of the lengthy addenda, but those, of course, can be provided if requested. (In particular, two of the addenda that I have written summarize and analyze many appellate decisions relating to, first, the requisite proof for the causes of action for all domestic violence criminal offenses, and second, the effects of the landmark Supreme Court case, Crawford v. Washington, on victimless prosecutions).

27. 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 have been up for retention on three occasions and consequently have been evaluated by the St. Louis County Bar all three times (from evaluations conducted by the Bar Association of Metropolitan St. Louis and the Missouri Bar). On all instances, I have been rated from "Very Good" to "Excellent" on all rated qualities. Furthermore, I received a 96% or more approval rating on all three occasions. [96.9% (2006); 98.1% (2004); 97.1% (2000)]. I am up next for retention in 2012.

Please list the names of *five* persons whom you will ask to provide letters of reference for you with respect to your judicial qualifications. Do **not** list as a reference a judge of the court involved. As to each of the (5) references, **please provide name, title, mailing address, telephone and e-mail address. Please note that it is your responsibility to contact your references**, although if you intend to use as a reference a federal judge or other individual who only can provide a reference upon a specific request by the interviewing authority, please advise the commission and it will send that reference such a request. As to all references, it is your responsibility to see that they send the requested letters in a timely manner.

Provide your references with the attached Guidelines for References. The commission must receive your letters of reference, **via e-mail**, to EDjudgevacancy@courts.mo.gov, by the date indicated in the Instructions to Applicants.

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