

**APPLICATION OF** (name) **Philip M. Hess**  
**TO THE APPELLATE JUDICIAL COMMISSION FOR THE**  
**JUDGE CRANE VACANCY**  
**MISSOURI COURT OF APPEALS, EASTERN DISTRICT**

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

1. Present principal occupation or title:  
Attorney at Law
  
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?  
55 years  
  
(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri?  
37 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.  
  
I was admitted to the Bar on September 22, 1983. My license is in good standing.
  
5. List any other states, courts, or agencies in which you are licensed as an attorney.  
Illinois
  
6. (a) State the name and address of all colleges and universities attended, other than law school, together with the dates and degrees received.  
  
Rockhurst University  
1100 Rockhurst Road  
Kansas City, MO 64110  
August 1976 through May 1980  
B.A. double major in Economics and Philosophy

(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, all eight semesters
- Cooperative Education Program, worked for Federal Deposit Insurance Corporation as Student Assistant Bank Examiner
- Sigma Alpha Epsilon Fraternity

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

University of Missouri – Columbia School of Law  
920 North College Avenue  
Columbia, MO 65201  
August 1980 – May 1983  
Degree Received: 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.

- Dean's List Fall semester 1981
- 1980-81 First Year Moot Court Competition, Best Oral Argument award

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) Summer 1975 - *Senate Page*, United States Senate, Washington, D.C.

1978-1979 - *Student Assistant Bank Examiner*, Federal Deposit Insurance Corporation, Kansas City, MO.

b) Summer 1981 – *Law Clerk*, Pannell, Dodson & Robinson (now the Breeze Law Firm) 610 Collins Avenue, Festus, MO 63028.

Fall 1981 to Spring 1983 – *Law Clerk*, Student Research Assistant, Missouri Supreme Court, 207 West High Street, Jefferson City, MO 65101.

Summer 1983 – *Law Clerk*, Weier, Sherby & Hockensmith (now Hockensmith, McKinnis, Hamill, P.C.), 12801 Flushing Meadow Drive, St. Louis, MO 63131.

September 1983 to December 1985 – *Associate*, Weier, Sherby & Hockensmith.

December 1985 to June 1987 – *Associate*, Brown & Crouppen, 720 Olive Street, Suite 1800, St. Louis, MO 63101.

June 1987 to April 1998 – *Associate*, Randall, Keefe & Griffiths (now Keefe & Griffiths, P.C.), 10 South Broadway, Suite 500, St. Louis, MO 63102.

April 1998 to September 2012 – *Partner*, Larsen, Feist & Hess, P.C., 1108 Olive Street, 4<sup>th</sup> Floor, St. Louis, MO 63101.

September 2012 to present – *Partner*, Larsen & Hess, P.C., 1108 Olive Street, 4<sup>th</sup> Floor, St. Louis, MO 63101.

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:
- a) **Appellate Experience:** Please include a representative list of cases you have briefed and/or argued (if you are a judge, include representative cases from your practice prior to your judicial appointment) including, to the extent reasonably available to you, the style, date, and court and, if published, the citation; identify the client(s) you represented and opposing counsel; give a one-paragraph description of the case and your role.
  - b) **Trial-Level Experience:** Please include a representative list of cases and/or administrative hearings you have handled (if you are a judge, include representative cases from your practice prior to your judicial appointment) including, to the extent reasonably available to you, the style, date, and court; identify who you represented and opposing counsel; state whether the case was

disposed of following a jury trial, bench trial or at what other stage; give a one-paragraph description of the case and your role.

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

My practice is concentrated in the field of Workers' Compensation. I handle all aspects of my client's matters including initial interview, client counseling, discovery, mediation, hearing, and appeal.

I have, in the past, represented employers in Workers' Compensation. I also represented the Second Injury Fund as a Special Assistant Attorney General. Since 1985, I exclusively represent injured employees. Workers' Compensation hearings require marshalling complex facts and voluminous medical evidence. Substantial knowledge of orthopedics and neurology is essential. Workers' Compensation is an area of law so frequently amended in recent years that practitioners have more experience than in almost any other area of law in attempting to reconcile statutory conflicts and/or to determine legislative intent.

My practice requires a working knowledge of a broad range of other legal areas. My clients often need my advice and assistance regarding issues such as FMLA, ADA, Social Security, Medicare, Medicaid, ERISA, employment discrimination, family law, contract law, labor law, decedents' estates and bankruptcy.

Further, many clients also have civil claims co-existent with their work injury. I have co-counseled countless civil liability claims in this regard including motor vehicle accidents, premises liability, defective products liability and medical negligence.

Workers' Compensation is a high volume practice. My case load ranges between 200-300 open matters. I practice over the entire eastern half of Missouri. I have had the pleasure of representing between 4,400 - 5,400 people in my career. I appreciate the diversity of my clients. My clients are diverse by age, race, gender, geography, religion, and socio-economic background.

I derive a great deal of satisfaction when my work has a real, positive and life changing impact on my clients and their families. Given the volume of my practice, it is not possible to list all the hearings I have conducted on behalf of my clients. They number in the hundreds.

a) **Appellate Experience**

- *Forshee v. Landmark Excavating*, 165 S.W. 3d 533 (Mo. App. 2005)

I represented Mr. Forshee, the respondent. Ms. Heidi Jennings of Kortenhof & Ely represented Landmark, the appellant. Ms. Laura Wagner, Assistant Attorney General, represented the Second Injury Fund, another respondent.

Mr. Forshee presented a claim for permanent total disability benefits against the employer. The employer/insurer felt the Second Injury Fund should be the responsible party, if any, for permanent total disability exposure. I handled all discovery, the trial, and all research and writing on appeal to the Labor & Industrial Relations Commission, as well as the Court of Appeals, Eastern District.

Permanent total disability benefits were awarded Mr. Forshee against the employer/insurer.

- *Frankenreiter v. Marrs-Winn, Co.*, 910 S.W. 2d 828 (Mo. App. 1995)

I represented Mr. Frankenreiter, the respondent. Mr. David Ware of Evans & Dixon represented the appellant.

Mr. Frankenreiter's case presented a matter of first impression regarding the Legislature's 1993 reform of the Workers' Compensation Act. The issues on appeal included a new definition of "accident" and whether Mr. Frankenreiter's work injury was "a substantial factor" resulting in his medical condition and need for surgery. I only represented Mr. Frankenreiter before the Labor and Industrial Relations Commissions and the Eastern District Court of Appeals.

Ultimately the Court decided Mr. Frankenreiter's case on standard of review and sufficiency of the evidence issues. The Court did not address the issues of first impression.

- *Lane v. Ameren UE*, injury number 03-141467. Labor and Industrial Relations Commission, March 5, 2007.

I represented Mr. Lane, the respondent. Mr. John P. Kafoury of Holtkamp, Liese, Childress & Schultz represented the appellant. I handled all aspects of Mr. Lane's trial and appeal to the Industrial Commission.

Mr. Lane's case involved causally disputed bilateral carpal tunnel syndrome. The employer also asserted Mr. Lane was an independent contractor not covered by the Workers' Compensation law. Mr. Lane won the disputed medical issues and was ruled a statutory employee of Ameren.

b) **Trial-Level Experience, recent**

- *Richardson v. Proffer Produce et al*, injury numbers 95-142856 and 95-410716. Tried on February 3, 2000 before the Division of Workers' Compensation, Cape Girardeau, Cape Girardeau County, Missouri.

I represented Mr. Richardson. The employers and insurers were represented by Mr. Stephen McManus of McAnany, Van Cleave and by Mr. Michael Banahan of Evans & Dixon. The case was tried before an Administrative Law Judge.

Mr. Richardson's hearing was a hardship hearing to obtain additional medical treatment, including surgery for his injury. I handled all aspects of discovery and trial. Additional treatment was awarded as were costs and fees from one of the employers for the frivolous defense of the claim.

- *Fuwell v. CP Clare Corp.*, injury number 00-102585. Tried on December 11, 2001 before the Division of Workers' Compensation, St. Louis.

I represented Ms. Fuwell. Mr. Jeffrey Atkinson of McAnany, Van Cleave represented the employer/insurer. This case was bench tried. I handled all aspects of discovery and trial.

The issues of Ms. Fuwell's complicated case included causally disputed bilateral carpal tunnel syndrome, additional medical care, lost time benefits, whether Ms. Fuwell was a "borrowed servant" and which insurance company would be responsible for any benefits owed. The case was tried on a hardship basis, not for final award. Ms. Fuwell won all issues.

- *Clemente Guerrero v. Second Injury Fund*, injury number 97-427295. Tried on September 17, 2002 before the Division of Workers' Compensation, Rolla, Phelps County, Missouri.

I represented Mr. Guerrero. Michael Blum, Assistant Attorney General, represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Guerrero worked for his employer, a shoe manufacturer, for 39 years. For 30 of those years he suffered from increasingly severe rheumatoid arthritis, resulting in multiple surgical procedures. A fall at work shattered Mr. Guerrero's right leg. Mr. Guerrero was awarded permanent total disability benefits from the Second Injury Fund. No appeal was taken.

- *Boswell v. Ryder Integrated Logistics*, injury number 06-079033. Tried on June 23, 2008 before the Division of Workers' Compensation, Farmington, St. Francois County, Missouri.

I represented Mr. Boswell. Mr. Randall Schroer of Baty, Holm & Numrick represented Ryder. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Boswell injured his left shoulder and neck when his tractor trailer struck a pick-up truck, which had previously crashed and was straddling the lanes of south bound I-55. Mr. Boswell underwent surgery to his shoulder. The issues in Mr. Boswell's case included the nature and extent of his shoulder injury, whether the neck complaints were causally related to the work injury, and whether he was entitled to future medical treatment. Mr. Boswell won on all issues except the future medical treatment.

- *Barnes v. Second Injury Fund*, injury number 06-002240. Tried on December 1, 2009 before the Division of Workers' Compensation in Hannibal, Marion County Missouri.

I represented Mr. Barnes. The case was tried against the Second Injury Fund. Mr. Neil Mookerjee, Assistant Attorney General represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Barnes was found to be permanently and totally disabled as a result of a combination of his primary work disability and his preexisting disabilities.

- *Hayes v. Second Injury Fund*, injury number 00-006589. Tried on August 17, 2010 before the Division of Workers' Compensation, St. Louis.

I represented Ms. Hayes (deceased) and her heirs at law. Assistant Attorney General Karin Schute represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Ms. Hayes tragically died before her case could be taken to trial. The case was tried based upon the medical evidence, medical depositions and her deposition. Ms. Hayes was declared permanently and totally disabled as a result of a combination of her work related disabilities and her preexisting disabilities. Her heirs at law were paid the accrued weeks of benefits up to the date of Ms. Hayes' death.

- *Joyce v. Second Injury Fund*, injury number 04-038009. Tried on October 13, 2010 before the Division of Workers' Compensation, St. Charles, St. Charles County, Missouri.

I represented Mr. Joyce. The case was tried against the Second Injury Fund. Ms. Tracey Cordia, Assistant Attorney General represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Joyce alleged he was permanently and totally disabled as a result of his work related disabilities and his prior disabilities. The court so found, ordering the Second Injury Fund to pay Mr. Joyce weekly, permanent total disability benefits for life.

- *Thomas v. Second Injury Fund*, injury numbers 05-141882 and 06-065765. Both cases were tried on October 18, 2010 before the Division of Workers' Compensation, St. Louis.

I represented Mr. Thomas on both matters. The cases were tried against the Second Injury Fund. Ms. Eileen Krispin, Assistant Attorney General represented the Second Injury Fund on both matters. These cases were bench tried. I handled all aspects of discovery and trial.

With regard to injury number 05-141882, Mr. Thomas alleged he was permanently and partially disabled as a result of this work related injury taken in combination with his prior disabilities. The court so found.

With regard to injury number 06-065765, Mr. Thomas alleged that he was permanently and totally disabled as a result of all of his prior

disabilities and this primary work related disability. Again, the court so found awarding Mr. Thomas weekly permanent total disability benefits for life.

- *Brumfield v. Second Injury Fund*, injury number 08-052306. Tried on March 1, 2011 before the Division of Workers' Compensation, St. Louis.

I represented Mr. Brumfield. The case was tried against the Second Injury Fund. Mr. David Morin, Assistant Attorney General represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Brumfield alleged permanent total disability based upon a combination of his work related disability and his preexisting disabilities. His work related disability was a severely fractured left leg and hip. Mr. Brumfield's priors included end stage juvenile onset diabetes, COPD, depression and chronic bronchitis. The court found him to be permanently and totally disabled as a result of a combination of his disabilities. Weekly permanent total disability benefits were awarded against the Second Injury Fund.

- *Govero v. Second Injury Fund*, injury number 04-002093. Tried on May 25, 2011 before the Division of Workers' Compensation, Crystal City, Jefferson County, Missouri.

I represented Mr. Govero. The case was tried against the Second Injury Fund. Assistant Attorney General Ms. Eileen Krispin represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Govero was 34-years old at the time of the hearing. He was 27 when he had his work injury in January 2004. Mr. Govero had a complicated back surgery prior to his work injury. The work injury resulted in further back surgery. He alleged that he was permanently and totally disabled as the result of the combination of both of these disabilities. The court so found, awarding Mr. Govero weekly permanent total disability benefits for life.

- *Boswell v. Second Injury Fund*, injury number 07-128354. Tried on August 24, 2011 before the Division of Workers' Compensation, Farmington, St. Francois County, Missouri.

I represented Mr. Boswell. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Gregg Johnson represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Boswell alleged that he suffered permanent partial disability as a result of a combination of his preexisting disabilities and his work disability. Mr. Boswell had primary disability in his right knee and preexisting disability in his left shoulder. The Administrative Law Judge found that Mr. Boswell did have Second Injury Fund permanent partial disability as a result of the synergistic combination of these disabilities and awarded a lump sum to Mr. Boswell.

- *Robinson v. Exterior Building Supply*, injury number 08-078687. Tried on October 11, 2011 and November 9, 2011 before the Division of Workers' Compensation, St. Louis.

I represented Mr. and Mrs. Robinson. The case was tried against the employer and insurer. Mr. Bradley McChesney of Rouse & Cary represented the employer/insurer. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Robinson was severely injured at work. The result of his injury was C7 quadriplegia. The case was tried for a temporary or partial award regarding the issue of the reasonable value of the services Mrs. Robinson was performing for Mr. Robinson as his primary care giver and home health aide. Mr. Robinson's wage rate entitled him to receive \$683.64 per week in temporary total disability benefits. The Robinsons were awarded an additional \$2,750.00 per week for the nursing care services provided by Mrs. Robinson (110 hours per week at \$25.00 per hour). The case was not appealed by the employer/insurer.

- *Gill v. Second Injury Fund*, injury number 08-117600. Tried on October 24, 2011 before the Division of Workers' Compensation, St. Louis.

I represented Mr. Gill. The case was tried against the Second Injury Fund. Assistant Attorney General Ms. Da-Niel Cunningham represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Gill asserted he was permanently and partially disabled as a result of his primary and preexisting disabilities. The judge so concluded and awarded a lump sum of Second Injury Fund disability benefits.

- *Burts v. Second Injury Fund*, injury number 03-125234. Tried on November 23, 2011 before the Division of Workers' Compensation, Mexico, Audrain County, Missouri.

I represented Mr. Burts. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Charles Clark represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Burts suffered a low back injury in the course and scope of his employment. Mr. Burts had two prior low back injuries which were also work related events. Mr. Burts was alleging that he was permanently and totally disabled as the result of a combination of his current and prior disabilities. The court so found, awarding Mr. Burts weekly permanent total disability benefits for life.

- *McNece v. Second Injury Fund*, injury number 05-128958. Tried on January 3, 2012 before the Division of Workers' Compensation, St. Louis.

I represented Mr. McNece. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Michael Finneran represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. McNece suffered a work related injury to his neck and left shoulder. He had prior disabilities to both the neck and the left shoulder as well. Mr. McNece alleged that he was permanently and totally disabled as a result of the combination of his disabilities. The court so found ordering the Second Injury Fund to pay weekly, permanent total disability benefits to Mr. McNece for his lifetime.

- *Monia v. Second Injury Fund*, injury number 04-061891. Tried on March 23, 2012 before the Division of Workers' Compensation, Ironton, Iron County, Missouri.

I represented Mr. Monia. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Kevin Nelson represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Monia alleged that he was permanently and totally disabled as a result of his primary work related injury, an injury to his neck, in combination with multiple preexisting disabilities including his neck,

chronic TMJ and trigeminal nerve pain, left foot, mid back, and right bicep disabilities. Part of Mr. Monia's disabilities track to injuries which occurred during his service to his country in the Marines.

The judge agreed Mr. Monia was permanently and totally disabled as the result of the combination of his disabilities and awarded weekly permanent total disability benefits to Mr. Monia for life.

- *Kubley v. Second Injury Fund*, injury number 09-031104. Tried on April 5, 2012 before the Division of Workers' Compensation, Rolla, Phelps County, Missouri.

I represented Mr. Kubley. The case was tried against the Second Injury Fund. Assistant Attorney General Ms. Cara Harris represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Kubley alleged that he was permanently and partially disabled as a result of the combination of his work related disability, an injury to his right shoulder, and his preexisting disabilities which included his low back, right elbow, right wrist and left elbow.

The judge agreed and so found awarding Mr. Kubley a lump sum of permanent partial disability benefits.

- *McCluskey v. Second Injury Fund*, injury number 08-068922. Tried on April 11, 2012 before the Division of Workers' Compensation, Hannibal, Marion County, Missouri.

I represented Ms. McCluskey. The case was tried against the Second Injury Fund. Assistant Attorney General Ms. Jucinda Thudium represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Ms. McCluskey alleged that she was permanently and partially disabled as a result of her primary Workers' Compensation disability to her right forearm and her preexisting low back and right foot disabilities. The judge so found and awarded a lump sum of permanent partial disability paid by the Second Injury Fund.

- *Varvil v. Second Injury Fund*, injury number 09-014119. Tried on April 24, 2012 before the Division of Workers' Compensation, St. Louis.

I represented Mr. Varvil. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Michael Finneran represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Varvil alleged that he suffered permanent partial disability as a result of the combination of his primary disability, an injury to his back, and his preexisting disability, also to his back.

The judge agreed and ordered the Second Injury Fund to pay Mr. Varvil a lump sum of permanent partial disability benefits.

- *Leonard v. Second Injury Fund*, injury number 10-050725. Tried on April 24, 2012 before the Division of Workers' Compensation, St. Louis.

I represented Mr. Leonard. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Michael Finneran represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Leonard alleged that he was permanently and partially disabled as a result of the combination of his work related disability, an injury to his low back, and his preexisting disabilities which was an injury to his left knee.

The judge agreed and so found awarding Mr. Leonard a lump sum of permanent partial disability benefits.

- *Barton v. Second Injury Fund*, injury number 09-024475. Tried on May 16, 2012 before the Division of Workers' Compensation, Farmington, St. Francois County, Missouri.

I represented Ms. Barton. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Jonathan Lintner represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Ms. Barton alleged that she was permanently and partially disabled as a result of the combination of her primary right shoulder injury with prior disabilities to her neck, right shoulder, right wrist, and left foot.

The court agreed and ordered a lump sum of permanent partial disability benefits.

- *Greathouse v. Second Injury Fund*, injury number 07-043187. Tried on June 6, 2012 before the Division of Workers' Compensation, St. Louis.

I represented Ms. Greathouse. The case was tried against the Second Injury Fund. Assistant Attorney General Ms. Rachel Houser represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Ms. Greathouse alleged that she was permanently and partially disabled as a result of her primary right and left elbow injuries together with her preexisting right wrist disability.

The court agreed and so found awarding her a lump sum of permanent partial disability benefits.

- *Jefferson v. Second Injury Fund*, injury numbers 05-049694 and 09-007538. Both cases were tried on June 6, 2012 before the Division of Workers' Compensation, St. Louis.

I represented Mr. Jefferson. The cases were tried against the Second Injury Fund. Assistant Attorney General Ms. Rachel Houser represented the Second Injury Fund with regard to both injury numbers. These cases were bench tried. I handled all aspects of discovery and trial.

With regard to injury number 05-049694, Mr. Jefferson alleged that he was permanently and partially disabled as a result of the combination of his work related disability, an injury to his right shoulder, and his preexisting disabilities which included his right wrist and left wrist.

The judge agreed and so found awarding Mr. Jefferson a lump sum of permanent partial disability benefits.

With regard to injury number 09-007538, Mr. Jefferson alleged that he was permanently and partially disabled as a result of the combination of his work related disability, an injury to his left hand, and his preexisting disabilities which included his right shoulder, right wrist and left wrist.

The judge agreed and so found awarding Mr. Jefferson a lump sum of permanent partial disability benefits.

- *Mayberry v. Second Injury Fund*, injury number 10-111523. Tried on September 4, 2012 before the Division of Workers' Compensation, St. Louis.

I represented Mr. Mayberry. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Michael Finneran represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Mayberry alleged that he was permanently and partially disabled as a result of the combination of his work related injury of carpal tunnel syndrome, disability to his wrists bilaterally and his preexisting disabilities to his left knee.

The judge agreed and so found awarding Mr. Mayberry a lump sum of permanent partial disability benefits.

- *Benjamin v. Second Injury Fund*, injury number 08-038516. Tried on September 5, 2012 before the Division of Workers' Compensation, Macon, Macon County, Missouri.

I represented Mr. Benjamin. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Curtis Schube represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Benjamin alleged that he was permanently and partially disabled as a result of the combination of his work related disability, an injury to his neck with spinal fusion, and his preexisting disabilities which included his partially amputated left long finger, multiple low back injuries and his right knee.

The judge agreed and so found awarding Mr. Benjamin a lump sum of permanent partial disability benefits.

- *Tripp v. Cassens Transport*, injury number 08-111965. Tried on October 25, 2012 before the Division of Workers' Compensation, Crystal City, Jefferson County, Missouri.

I represented Mr. Tripp. Mr. L. David Green of Knapp, Ohl & Green represented the employer/insurer. This case was bench tried. I handled all aspects of discovery and trial.

This case was tried as a temporary or partial award with regard to Mr. Tripp's need for additional medical care as a result of his injury at work.

The judge disagreed with Mr. Tripp and denied additional medical care for his work related injury.

- *Mulnik v. Second Injury Fund*, injury number 10-041563. Tried on October 30, 2012 before the Division of Workers' Compensation, St. Louis.

I represented Mr. Mulnik. The case was tried against the Second Injury Fund. Assistant Attorney General Ms. Rachel Houser represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Mulnik alleged that he was permanently and partially disabled as a result of the combination of his work related disability, an injury to his bilateral wrists, and his preexisting disabilities which included body as a whole cardiovascular and right shoulder.

The judge agreed and so found awarding Mr. Mulnik a lump sum of permanent partial disability benefits.

- *Santarelli v. Second Injury Fund*, injury number 09-100225. Tried on October 30, 2012 before the Division of Workers' Compensation, St. Louis.

I represented Mr. Santarelli. The case was tried against the Second Injury Fund. Assistant Attorney General Ms. Rachel Houser represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Santarelli alleged that he was permanently and partially disabled as a result of the combination of his work related disability, an injury to his right shoulder, and his preexisting disabilities which included his left knee.

The judge agreed and so found awarding Mr. Santarelli a lump sum of permanent partial disability benefits.

- *Shackleton v. Second Injury Fund*, injury number 10-032993. Tried on January 16, 2013 before the Division of Workers' Compensation, Cape Girardeau, Cape Girardeau County, Missouri.

I represented Mr. Shackleton. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Jonathan Lintner represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Shackleton alleged that he was permanently and partially disabled as a result of the combination of his work related disability, an injury to his bilateral elbows, and his preexisting disabilities which included his neck and bilateral wrists.

The judge agreed and so found awarding Mr. Shackleton a lump sum of permanent partial disability benefits.

- *Eddleman v. Second Injury Fund*, injury number 09-094481. Tried on February 6, 2013 before the Division of Workers' Compensation, Hannibal, Marion County, Missouri.

I represented Ms. Eddleman. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Michael Finneran represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Ms. Eddleman alleged that she was permanently and partially disabled as a result of the combination of her work related disability, neck fusion, and her preexisting disabilities which included chronic low back pain and the right knee.

The judge agreed and so found awarding Ms. Eddleman a lump sum of permanent partial disability benefits.

- *Gordy v. Second Injury Fund*, injury number 10-030742. Tried on February 6, 2013 before the Division of Workers' Compensation, Hannibal, Marion County, Missouri.

I represented Mr. Gordy. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Michael Finneran represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Gordy alleged that he was permanently and partially disabled as a result of the combination of his work related disability, an injury to his right knee and left shoulder, and his preexisting disabilities which included his left ankle.

The judge agreed and so found awarding Mr. Gordy a lump sum of permanent partial disability benefits.

- *Gowen v. Second Injury Fund*, injury number 07-048010. Tried on March 25, 2013 before the Division of Workers' Compensation, Farmington, St. Francois County, Missouri.

I represented Mr. Gowen. The case was tried against the Second Injury Fund. Assistant Attorney General Mr. Gregg Johnson represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Gowen alleged that he was permanently and totally disabled as a result of the combination of his work related disability, an injury to his bilateral shoulders, and his preexisting disabilities which included his right leg, neck and low back.

The judge agreed and so found awarding Mr. Gowen weekly permanent total disability benefits for life.

- *Collins v. Second Injury Fund*, injury number 10-000485. Tried on April 5, 2013 before the Division of Workers' Compensation, St. Louis.

I represented Mr. Collins. The case was tried against the Second Injury Fund. Assistant Attorney General Ms. Da-Niel Cunningham represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Collins alleged that he was permanently and partially disabled as a result of the combination of his work related disability, an injury to his right foot, and his preexisting disabilities which included his right elbow, left elbow and low back.

The judge agreed and so found awarding Mr. Collins a lump sum of permanent partial disability benefits.

- *Rose v. Second Injury Fund*, injury number 09-060528. Tried on June 17, 2013 before the Division of Workers' Compensation, Sikeston, Scott County, Missouri.

I represented Mr. Rose. The case was tried against the Second Injury Fund. Assistant Attorney General Ms. Jennifer Kornblum represented the Second Injury Fund. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Rose alleged that he was permanently and totally disabled as a result of his work related disability, an injury to his left shoulder in

combination with is preexisting injuries including aggravation of his previous psychiatric disabilities, neck, low back, left elbow, left shoulder, and right wrist.

No decision has been entered, the award is pending.

- *Athmer v. TSI Global Companies*, injury number 11-058670. Tried on July 22, 2013 before the Division of Workers' Compensation, St. Charles, St. Charles County, Missouri.

I represented Mr. Athmer. Mr. John R. Fox of Fox, Stretz & Quinn represented the employer/insurer. This case was bench tried. I handled all aspects of discovery and trial.

Mr. Athmer alleged permanent partial disability and disfigurement associated with the amputation of the distal tip of the left small, ring and long fingers.

No decision has been entered, the award is pending.

c) **Judicial Experience**

Not applicable

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).

Since approximately 1997 I have read and analyzed every bill in the Missouri Legislature impacting the judiciary, Workers' Compensation, and the civil justice rights of Missourians on behalf of the Missouri Association of Trial Attorneys, Legislative Review Committee. Service on this Committee resulted in numerous opportunities to testify before Missouri House and Senate Committees. I participated in drafting and negotiating legislation on behalf of numerous House and Senate members. This experience has provided insight and expertise in analyzing and construing statutory language.

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

- Missouri Bar Association, 1983 to the present  
Workers' Compensation Committee Chair 1999 through 2001
- The Bar Association of Metropolitan St. Louis  
Workers' Compensation Committee Chair 1996 through 1998
- The Lawyers Association
- The Jefferson County Bar Association
- Workers Injury Law and Advocacy Group
- American Association for Justice
- Missouri Association of Trial Attorneys  
Board of Governors, 1998 to 2013  
Legislative Review Committee, 1999 to the present  
Executive Committee, 2004 to 2013  
Constitutional Review Committee, co-chair, 2007 to 2011  
President, 2011-2012
- Fellow, The College of Workers' Compensation Lawyers, March 2009 – present

13. Describe your efforts (e.g. work on bar committees, pro bono efforts, CLEs presented, etc.) to contribute to the improvement of the law, the legal system and the administration of justice.

See answer to number 12 above. Additionally, I am a frequent author and/or lecturer on Workers' Compensation issues in continuing legal education seminars. Below is a list of my presentations:

“SB1.2 Legislative Update” Speaker, Mid-America Labor/Management Conference, 7/16/13.

“Legislative Update” Speaker, Workers' Compensation Seminar, 6/7/13.  
Sponsor: Kids' Chance of Missouri

“Workers' Compensation, a Missouri and Kansas Legal Update” Speaker, Mid-America Labor/Management Conference, 7/18/12.

“Mediation Techniques in Missouri Workers' Compensation Cases, A Panel Discussion” Speaker, 2012 Administrative Law Judge Conference, 6/12/12. Sponsor: Division of Workers' Compensation

“2013 Legislative Updates” Speaker, Workers' Compensation Seminar, 6/1/12. Sponsor: Kids' Chance of Missouri

“Workers' Compensation: Developments and Trends Post MARA v. DOLIR” Speaker, Workers' Compensation Seminar, 6/25/10. Sponsor: Missouri Association of Trial Attorneys

“Recent Developments in Workers' Compensation Law: MARA v. DOLIR and McCracken” 10/2/09. Sponsor: Jefferson County Bar Association

“Implications of the MARA v. DOLIR Decision,” Workers' Compensation Seminar, 6/26/09. Sponsor: Missouri Association of Trial Attorneys

“Perspectives on Exclusive Jurisdiction,” Speaker, Workers' Compensation Seminar, 6/19/09. Sponsor: Kids' Chance of Missouri

“The New World of Workers' Compensation” Speaker, Workers' Compensation Seminar, 3/20/09, St. Louis, Missouri. Sponsor: Missouri Association of Trial Attorneys

“Annual Update on Workers' Compensation Law,” Speaker, Workers' Compensation Seminar, 6/20/08, Lake of the Ozarks, Missouri. Sponsor: Missouri Association of Trial Attorneys.

“Legislative Update, Workers' Compensation,” Speaker, Workers' Compensation Seminar, 6/22/07, Lake of the Ozarks, Missouri. Sponsor: Missouri Association of Trial Attorneys.

“Workers' Compensation,” Speaker, Workers' Compensation Seminar, 6/25/06, St. Louis, Missouri. Sponsor: Missouri Association of Trial Attorneys.

“Workers' Compensation,” Speaker, Workers' Compensation Seminar, 10/31/05, St. Louis, Missouri. Sponsor: Missouri Association of Trial Attorneys.

“New Workers' Compensation Law,” Speaker, Workers' Compensation Seminar, 6/24/05, Lake of the Ozarks, Missouri. Sponsor: Missouri Association of Trial Attorneys.

“New Workers' Compensation Law,” Speaker, Workers' Compensation Seminar, 6/11/05, Lake of the Ozarks, Missouri. Sponsor: The Bar Association of Metropolitan St. Louis.

“Legislative Update, Workers' Compensation,” Speaker, Workers' Compensation Seminar, 4/26/04, Lake of the Ozarks, Missouri. Sponsor: Missouri Association of Trial Attorneys.

“Annual Workers' Compensation Institute,” Speaker, Workers' Compensation Seminar, 4/23/04, St. Louis, Missouri. Sponsor: The Bar Association of Metropolitan St. Louis.

“Legislative Update, Workers' Compensation,” Speaker, Workers' Compensation Seminar, 6/22/03, Lake of the Ozarks, Missouri. Sponsor: Missouri Association of Trial Attorneys.

“Legislative Update, Workers' Compensation,” Speaker, Workers' Compensation Seminar, 5/29/03, St. Louis, Missouri. Sponsor: Kids' Chance.

“Legislative Update, Workers' Compensation,” Speaker, Workers' Compensation Seminar, 5/22/03, Columbia, Missouri. Sponsor: The Bar Association of Metropolitan St. Louis.

“Legislative Update, Workers' Compensation,” Speaker, Workers' Compensation Seminar, 6/23/02, Lake of the Ozarks, Missouri. Sponsor: Missouri Association of Trial Attorneys.

“Legislative Update, Workers' Compensation,” Speaker, Workers' Compensation Seminar, 6/4/02, St. Louis, Missouri. Sponsor: The Bar Association of Metropolitan St. Louis.

“Legislative Update, Workers' Compensation,” Speaker, Workers' Compensation Seminar, 6/24/01, Lake of the Ozarks, Missouri. Sponsor: Missouri Association of Trial Attorneys.

“Mock Workers' Compensation Trial,” Employee's Attorney, 10/23/00, St. Louis, Missouri. Sponsor: BJC Health Systems.

“Learning from the Maestros,” Speaker/Author, Workers' Compensation Annual Law Update, 6/25/00, Lake of the Ozarks, Missouri. Sponsor: Missouri Association of Trial Attorneys.

“Workers' Compensation in Missouri,” Speaker/Author, Recent Developments Impacting Workers' Compensation, 2/18/99, St. Louis, Missouri. Sponsor: National Business Institute.

“Legislative Update, Workers' Compensation,” Speaker, Workers' Compensation Seminar, 1/29/99, St. Louis, Missouri. Sponsor: The Bar Association of Metropolitan St. Louis.

“Ask a Lawyer”, Guest Expert, Workers' Compensation, 11/7/98. KMOX Radio, St. Louis, Missouri.

“A Guide from Injury to Closure,” Speaker, Missouri Issues in Workers' Compensation, 9/3/97, Columbia, Missouri. Sponsor: Missouri Department of Labor, Division of Workers' Compensation.

“Workers' Compensation Seminar,” Seminar Developer/Moderator, 3/28/97, St. Louis, Missouri. Sponsor: The Bar Association of Metropolitan St. Louis.

“Mock Workers' Compensation Trial,” Employee’s Attorney, 9/18/96, St. Louis, Missouri. Sponsor: BJC Health Systems and BarnesCare/OCCUMED.

“1995 Annual Workers' Compensation Seminar,” Seminar Developer/Moderator, 9/1/95, St. Louis, Missouri. Sponsor: University of Missouri – Kansas City, School of Law.

“1994 Annual Workers' Compensation Seminar,” Seminar Developer/Moderator, 9/1/94, St. Louis, Missouri. Sponsor: University of Missouri – Kansas City, School of Law.

“Point Counter Point, What is Being Used and What is Not, Senate Bill 251, a 1994 Legislative Update,” Co-speaker, Workers' Compensation Seminar, 5/19/94, St. Louis, Missouri. Sponsor: The Lawyers Association of St. Louis.

“Workers' Compensation: The New Law – Employee’s Perspective,” Author/Speaker, 10/15/93, Columbia, Missouri. Sponsor: The Missouri Bar.

“Senate Bill 251 – The Claimant’s Perspective,” Author/Speaker, 1993 Annual Workers' Compensation Continuing Legal Education Seminar, 9/24/93, Kansas City, Missouri. Sponsor: University of Missouri – Kansas City, School of Law.

“1993 Annual Workers' Compensation” Continuing Legal Education Seminar, Seminar Developer/Moderator, 9/23/93, St. Louis, Missouri. Sponsor: University of Missouri – Kansas City, School of Law.

“Special Ethical Issues in Workers' Compensation Cases,” Speaker, Workers' Compensation Continuing Legal Education Seminar, 4/14/93, St. Louis, Missouri. Sponsor: The Lawyers Association of St. Louis

“Medical Issues in Workers' Compensation,” Author/Speaker, Workers' Compensation in Missouri, Continuing Legal Education Seminar, 4/8/92, St. Louis, Missouri. Sponsor: Advanced Educational Seminars.

“Permanent Total Disability – The Employee’s Perspective,” Author/Speaker, Annual Workers' Compensation Institute, 8/16/91, St. Louis, Missouri. Sponsor: The Missouri Bar

“Initial Client Interview, Investigation and Preparation of Claim for Compensation – An Employee’s Perspective,” Author/Speaker, Workers' Compensation Continuing Legal Education Seminar, 3/22/91, St. Louis, Missouri. Sponsor: Missouri Association of Trial Attorneys.

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

St. Catherine Laboure Catholic Church, parishioner  
Cub Scouts & Boy Scouts, participating parent  
Red Cross – MATA Legal Emergency Response Team  
Kids Chance of Missouri, contributor

15. Describe your activities (e.g. speeches, presentations, educational activities, etc.) undertaken to further public understanding of and respect for courts and the judicial system and to promote access to justice for all.

I have worked with Missourians for Fair and Impartial Courts for years as a leader of one of its coalition partners, the Missouri Association of Trial Attorneys. Other coalition partners of MFIC include the Missouri Bar, Missouri Organization of Defense Lawyers, Missouri Republican Attorneys

for Civil Justice, the Chamber of Commerce of Kansas City, Missouri, the Defense Research Institute, Missouri AFL-CIO, the Missouri Municipal League, and the Lawyer Association of St. Louis.

Coalition efforts include lobbying against attempts to politicize the judiciary in Missouri. Most recently that included lobbying efforts against SJR 51 during the 2012 legislative session. SJR 51 was passed by the legislature and presented to the voters of the State as Amendment 3.

Other coalition efforts include fundraising, media messaging, and other efforts to defeat Amendment 3 at the polls in November 2012. Amendment 3 was rejected by the voters of Missouri with a massive margin, 76% voting no.

My participation in MFIC activities required the dedication of time for meetings, conference calls, review of emails, review of media messaging, monitoring staff, and fundraising.

I attended the National Summit on Defending Merit Selection held in St. Louis, Missouri on August 29-30, 2011. This event was a national coalition of lawyers, lawyers associations, and other interest groups dedicated to the preservation of the merit, non-partisan, selection of judges in states throughout the country.

Since 1997, I have dedicated a substantial amount of time in the Missouri legislature to promote access to justice for all, preserving the civil justice system, the right to trial by jury, and the rights of injured workers.

16. List any professional articles or books authored by you that have been published or any special recognition or award of a professional nature you have received.
  - Martindale Hubbell AV rated
  - Missouri Association of Trial Attorney's President's Award, June 2003
  - Elected a Fellow in the College of Workers' Compensation Lawyers, March 2009
  - Missouri Association of Trial Attorney's Outstanding Service Award, June 2012

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

No

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

Not applicable.

19. State whether you are able, with or without a reasonable accommodation, to perform the essential functions of being an appellate judge, including participating in oral argument; performing legal research; communicating clearly and effectively, both orally and in writing; supervising the lower courts, serving on court committees and performing other administrative functions; and expeditiously deciding issues coming before the court.

I am able to perform the essential functions of an Appellate Judge.

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

No

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

No

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

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

Not applicable.

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

Not applicable.

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

No

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

If your answer is yes, state the style of the case, where it was filed, and explain in detail. If you are a judge and you have been sued in your judicial capacity, list only those cases where you are or were other than a nominal party.

No

25. Have you ever been convicted or received a suspended imposition of sentence for a felony or misdemeanor in state, federal or military court? (*Note that this question does not require that traffic offenses or other infractions be listed.*)

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

No

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

No

27. You must attach to this application at least one, but not more than three, writing samples that comply with the requirements set out in the instructions for applicants.

See Attached.

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

See answers to number 13, 15 and 16 above.

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

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

## **REFERENCES**

The Honorable Lee A. Schaefer  
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