

APPLICATION FOR CIRCUIT JUDGE
16TH CIRCUIT JUDICIAL COMMISSION
JACKSON COUNTY, MISSOURI (revised May 2008)



ALL INFORMATION CONTAINED HEREIN WILL BE MADE PUBLIC IF THE APPLICANT IS

NAME: JAMES M. TOBIN

1. State your present principal occupation: **Attorney in private law practice, partner, Murphy & Tobin law firm**
2. Are you at least 30 years of age? **Yes**
3.
 - (a) How long have you been a citizen of the United States? **Lifetime**
 - (b) Have you been a resident of Jackson County for at least one year immediately prior to the date of this application? **Yes**
 - (c) How long have you been a qualified voter of Missouri? **Thirty-eight years**
4. Are you licensed to practice law in Missouri? **Yes**

List any other states, courts, or agencies in which you are licensed as an attorney:
U.S. Federal District Court, Western District of Missouri
U.S. Court of Military Appeals

5. State the date you were admitted to the Bar in Missouri: **September 4, 1976**
 - (a) Missouri Bar Number **25697**

(b) Are you currently a member in good standing of the Missouri Bar? **Yes**

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

6. State the name and address of all law schools, colleges and universities you have attended, together with the dates and degrees received:

Rockhurst University, 1300 Rockhurst Road, Kansas City, MO 64110

1967-1971 B.A. English, Minor in Industrial Relations

Juris Doctor, University of Missouri at Columbia School of Law, 203 Hulston Hall, Columbia, MO 65211 – 1973-1976

University of Central Missouri, P.O. Box 800 - Warrensburg MO 64093

1980 – 1981 (coursework in Masters Degree program - Criminal Justice Administration – exhausted GI Bill education benefits)

In addition to CLE related to my civil practice and military law, I have attended Judicial Education courses at least annually since 1990. Sponsors include: The National Judicial College, the Missouri Municipal & Associate Circuit Judge Association (MMACJA), the Center for State Courts, Bureau of Justice Assistance, National Association for Court Management and the National Judicial Institute on Domestic Violence;

Military education:

Diploma Judge Advocate General Corps Basic Course, 1983;

Diploma Judge Advocate General Officer Advanced Course, 1988;

Diploma U.S. Army Command & General Staff College, Ft. Leavenworth, 1993;

Diploma Reserve Component National Security Course, National Defense University, Fort McNair, Virginia, March 2002;

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

June 1967 – July 1967: Colliers Encyclopedia, 12th & Walnut Bldg., Kansas City, MO

July 1968 – October 1971: (mixed part-time and full-time during college)

Plastic Sales & Manufacturing Co., 3030 McGee Trafficway, Kansas City, MO

June 1969 – January 1971: (full-time in alternating semesters as part of the Rockhurst Business Cooperative degree program) Western Auto Company – Advertising Department, 2107 Grand Blvd., Kansas City, MO 64108

October 1971 – August 1973: U.S. Army (active duty) various locations as ordered, last assigned as bomb technician, 551st EOD Detachment, Tooele Army Depot, Tooele, UT

May 1974 – August 1974: Ford Motor Company - Kansas City Assembly Plant. 8121 U.S. NE Highway 69, Claycomo, MO 64119

May 1975 – August 1975: Missouri Public Defender (Law Clerk), Liberty, MO

September 1976 – February 1979: Missouri Public Defender, Jackson County Community Justice Building, 1315 Locust, Kansas City, MO 64106

March 1979 – December 1979 Management Science Associates, Labor Law Consultant, 4240 Blue Ridge Blvd., STE 723, Kansas City, MO 64133

January 1980 – September 1983: Self-employed attorney, law practice, 306 E. 12th Street, Kansas City, MO 64106

May 1981 – Present: U.S. Army Reserve, various locations as ordered, active duty overseas in Germany and Iraq January 2003 – February 2004

October 1983 - April 1984: Taylor & Murphy law firm (associate attorney), 4240 Blue Ridge Blvd., STE 825, Kansas City, MO 64133

May 1984 – Present: Murphy & Tobin law firm (partner), 4240 Blue Ridge Blvd., STE 410, Kansas City, MO 64133

October 1989 – Present: (part-time) City of Lee's Summit, Municipal Judge (elected) 10 NE Tudor Rd., Lee's Summit, MO 64086

January 1990 – December 1995: (part-time instructor – Criminal Justice Department) Kansas City Metropolitan Community College, 3200 Broadway, Kansas City, MO 64111

8. If you are presently an associate circuit judge and have served for two years or longer, attach a list of ten significant cases over which you presided to completion. Set forth the style, cause number, date and name and current address of the primary attorneys participating in each case, identifying the party each attorney represented. Indicate whether bench or jury tried and give a one-three sentence description of each case and its outcome. **N/A**
- (a) In addition, you may attach a list of cases you tried as an attorney in the last five years before becoming a judge. Set forth the style, cause number, date and jurisdiction and identify who you represented, whether you were first or second chair and the name and address of opposing counsel. State for each case whether bench or jury tried and give a one-three sentence description of each case and its outcome. **N/A**
9. Are you able, with or without a reasonable accommodation, to perform the essential functions of a judge including the ability to preside over trials, perform legal research, attend court anywhere in the state, communicate clearly and effectively both orally and in writing, and expeditiously decide issues coming before the court?
Yes
10. If you have never served as an associate circuit judge or have served for fewer than two years, attach a list of cases you have tried in the last five years. Set forth the style, cause number, date, and court, and identify who you represented, whether you were first or second chair, and the name and address of opposing counsel. Indicate for each case whether bench or jury tried and provide a one to three sentence description of each case and its outcome. If, during any of the last five years, you served as a commissioner or in any other judicial capacity, set forth the dates of same and a description of the duties performed.

R.K. Mathews and Desiree Lester v Robert Throneberry and William and Sally Fry (Jackson County, Div. 1 cause #0516-CV35335) Tried Jury-waived (first chair) January 9, 2008. I represented defendants and cross claimants William and Sally Fry. Opposing counsel for Mathews and Lester was Doug Patterson, Esq., 6700 W. 121st St., STE 102, Overland Park, KS and for Throneberry was Gary Haggerty, Esq. Brancato, Haggerty & Palmentere, L.C., 2023 Holmes, Kansas City, MO 64108. After settlement with Mathews and Lester and entry of interlocutory judgment against Throneberry I presented evidence of damages against Throneberry. Judgment in favor of my clients quieting title, for ejection, for damages and other relief. Judgment satisfied in full on August 8, 2008.

Melinda Johnson v Joseph Jareczek, et. al. (Jackson County, Div. 6 cause #0616-CV07488) Served as Special Master in dispute between next of kin in division of proceeds from wrongful death action. Counsel for Plaintiff Johnson was R. Deryl Edwards, Esq., 606 S. Pearl, Joplin, MO 64801. Counsel for Plaintiff/Intervenor Dan Nagel was Jon Blongewicz, Esq., 11350 Tomahawk Creek Pkwy., STE 100, Leawood, KS 66211. All other parties settled before I was appointed and after discovery and a pretrial conference, the remaining parties agreed on a division of proceeds that was approved by the Court.

Robertson CECO Corporation v D&D Construction Services, Inc. (Jackson County, Div. 16 cause #04-CV-209954) Served as Discovery Commissioner (pursuant to Rule 57.06) to resolve pre-trial discovery dispute between opposing parties. Counsel for Plaintiff Robertson CECO was Stanley M. Thomas, Esq., P O BOX 26530, 1100 Main, SUITE 2890, Kansas City, MO 64196-6530; counsel for Defendant D&D Construction Services was Robert M. Pitkin, Esq., P O BOX 26530, 1100 Main, Suite 2890, Kansas City, MO 64196; counsel for defendant Old Town Marketplace, LLC was Anthony L. Gosserand, Esq. King Hershey, et. al., PC 2345 Grand Blvd Suite 2100 Kansas City, MO 64108; counsel for Pinnacle Bank was Kim M. Roam, Esq. 601 NW Jefferson Street, P O BOX 550, Blue Springs, MO 64013.

Tax Increment Financing Commission of Kansas City v KC Club Developers, LLC, et. al. (Jackson County, Div. 2, cause 04CV-219791) Served as Commissioner to assess value in condemnation of real estate. Counsel for plaintiff was Michelle Clark, Esq. 3500 One Kansas City Place, 1200 Main, Kansas City, MO 64105; Counsel for Defendant was Rhonda E. Smiley, Esq. McDowell, Rice, Smith & Gaar 605 W. 47th Street, Suite 350, Kansas City, MO 64112.

Ruth Julien v Martha L. Butler, et. al. (Jackson County, Div. 2, cause 03CV221049) served as Special Commissioner to conduct auction and evict unauthorized occupants after judgment of partition affecting real estate of an intestate decedent. Counsel for one of the parties was Joyce Kerbed, Esq., 3600 S. Noland Road, Independence, MO 64055.

City of Independence v Edwin D. Dieckman, et. al. (Jackson County, Div. 2, cause 04CV209708) Served as Guardian *ad Litem* in condemnation of real estate. Counsel for Plaintiff was Colin A. Dietiker, Esq. 111 E Maple Independence, MO 64050; counsel for USAA Federal Savings Bank was Richard D. Schreiber, Esq. 7321 South Lindbergh Blvd., Suite 400, St. Louis, MO 63125; counsel for Jackson County Director of Collections was Jay Haden, Esq. 415 E. 12th Street, Kansas City, MO 64106.

Shirkey v Smith (Jackson County, Div. 32 cause #03CV200545) Tried Jury-waived January 21, 2005. I represented plaintiffs Carol and Robert Shirkey. Opposing counsel was Paul R. Mudd, Esq. 400 W. Kansas, Independence, MO 64050 (note that Case.net erroneously shows judgment against Shirkey when it was actually a verdict against Smith). Judgment debt collected in full after judgment domesticated in Kansas and bank garnishment initiated;

Having served as Municipal Judge in Lee's Summit for over 18 years, I have presided over many hundreds of Municipal trials of everything from Animal Control cases to aggravated traffic matters involving serious injuries, drunk driving, leaving the scene of injury accidents, etc. I have also presided over the Domestic Violence and Mental Health Court dockets for a number of years.

11. Have you briefed or argued any case in an appellate court? **Yes**

If yes, attach a list showing the citation for each case and describe the extent of your participation in briefing and arguing the case.

Cox Standard Station, Inc. v Taylor, 682 S.W.2d 193 (Mo.App.W.D. 1984)
Briefed and argued for prevailing party Taylor

Brown v Syntex Laboratories, Inc. 353 F.2d 668 (8th Cir. 1985)
Assisted with brief and preparation of argument by senior partner
Second chair role at trial in Federal District Court

Mercantile Bank and Trust Co. v. Vilkins, 712 S.W.2d 1 (Mo.App.W.D. 1986)
Briefed and argued

Strick Corp. v. Western Trailer Service, 766 S.W.2d 167 (Mo.App.W.D. 1989)
Briefed and argued

Royal Banks of Missouri v. Fridkin, 819 S.W.2d 359 (Mo.banc 1991)
Argued at Western District, jointly briefed with co-counsel
Submitted to Supreme Court on briefs only

12. If your experience as an attorney is not in litigation, you may list up to five (5) of your most significant accomplishments in your law career. **N/A**
13. Set forth any additional information that demonstrates the quality of your legal work as an attorney.
14. Have you ever been convicted of a misdemeanor or felony?
No

If yes, provide details, including the style of the case, cause number, name of the jurisdiction, and date of conviction: **N/A**

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

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

Suit was filed against me in Nebraska 1989 alleging that I had failed to pursue a commercial collection matter. I do not remember the name of the plaintiff. Although I denied accepting the plaintiff company as a "client" because I had referred them to another lawyer, the company sued me anyway. I settled the claim on payment of Five Hundred and no/100ths dollars (\$500.00) to avoid the expense of retaining Nebraska counsel.

In 1994 while serving as Personal Representative for my late father's estate (Estate of Theodore Tobin, Jackson County #167008), the first person to sign a contract to purchase my father's house refused to close for reasons I deemed legally insufficient. After I refused to release the earnest money, a small claims suit was filed against me personally (Hayes v Tobin, Jackson County #16SC94-01304). The suit was dismissed.

I was briefly named as a third party defendant in a case titled *The Coves Homes Association, Inc. v Don B. Roberson and Lois D. Roberson* (Clay County #CV105-000184CC, Division 2). In that case I am one of the attorneys for Plaintiff, Coves Homes Association in a suit to collect unpaid homeowners dues and assessments from the Robersons. In February, 2008 Donald B. Roberson, Esq., and his spouse filed (without leave of Court) a third party petition against me (as well as another lawyer for another party) for "interference with contract rights." On June 27, 2008 the Court entered its Order Striking Defendants'/Third Party Plaintiffs' Amended Counterclaim and Third Party Petition. In two other orders dated May 30, 2008 the Court granted Partial Summary Judgment in favor of my client and Summary Judgment in favor of another third party defendant Curry Association Management, Inc.

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

If yes, provide details: **N/A**

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

If yes, provide details:

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

- (a) Whether an order of reprimand, removal, retirement, suspension or other disciplinary action has ever been entered against you by the Supreme Court of Missouri for breach of the Code of Judicial Conduct or the Canons of Judicial Conduct? **No**

If yes, state the nature of such breach, the date discipline was imposed and the exact nature and duration of the discipline imposed:

- (b) Whether a reprimand or admonishment has ever been entered against you by the Commission on Retirement, Removal and Discipline for any of the causes specified in Rule 12.07 of the Supreme Court Rules Governing the Judiciary. **No**

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

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

If yes, provide details:

Sometime in early March, 2008 James M. Smith, Administrator and Counsel for the Commission telephoned me to ask two questions. The questions were: 1. "Are you Judge in Lee's Summit?" and number 2. "Are you a full-time judge or a part-time judge?" When I answered that I was a part-time judge, Mr. Smith advised me that he had received a complaint that I had engaged in political activity and since part-time judges were explicitly made exempt from Canons 4 and 5 of the Judicial Canons, the complaint would be summarily dismissed. I also explained to Mr. Smith that I was in a contested race for re-election as Municipal Judge and that the election was set for April 8, 2008.

On, or about April 2, 2008, I received a certified mail letter from Mr. Smith. His letter described a complaint that I had improperly refused to recuse myself as judge in a case on March 4, 2008. I responded the same day I received his letter. My response included a copy of my March 4, 2008 court order recusing myself. I have attached to this application copies of Mr. Smith's letter (Exhibit "A") advising me that the Commission found no probable cause to believe I had violated the Code of Judicial Conduct, my response to the complaint (Exhibit "B"), my March 4, 2008 order (Exhibit "C") and my February 11, 2008 Memorandum to All Court Staff (Exhibit "D").

19. To your knowledge, have you been investigated by a court or by any bar association or committee thereof for breach of ethics or professional conduct? **No**

If yes, provide details: **N/A**

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

Missouri Bar Association since 1976
Missouri Bar - Military Law Committee (Chair 1992-95)

U.S. Federal District Court, Western District of Missouri since 1976

Missouri Municipal and Associate Circuit Judge Association (MMACJA), member since 1990, President 1995-96, member board of directors 1992-99

Kansas City Metropolitan Bar Association, member since 1980

Eastern Jackson County Bar Association, member since 1983

U.S. Court of Military Appeals since 1992

National Association for Court Management since 1996

Jackson County Mental Health Court Committee since 2002
(Appreciation Award June 20, 2006)

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

Lee's Summit Noon Rotary Club 1990 through 1999;
Charter Member Lee's Summit Sunrise Rotary Club 1999-2001 (I will remain inactive in Rotary until retired from the Army Reserve);
Life Member Veterans of Foreign Wars (VFW);
Perpetual Member Military Order of the World Wars (MOWW) (Commander, Greater KC Chapter 1997-1998, Missouri Department Commander, 1999-2000);
Life Member Reserve Officers Association (ROA);
Military Officers Association of America (MOAA);
Trustee - Liberty Memorial Association;

22. Do you now hold or have you ever held any elective or appointive public office or position? **Yes**

If yes, provide details:

Municipal Judge, Division 263, City of Lee's Summit 1989-present: The city council appointed me to fill the newly formed second division of the municipal court. My first contested election was April 1990 and I have been re-elected every election cycle since then, most recently in a contested race on April 8, 2008.

23. Are you delinquent in the payment of any federal, state, county or city taxes?
Yes () No (X)
If your answer is yes, please state details. N/A

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

U.S. Army (active duty enlisted) October 1971 – August 1973

Inactive Ready Reserve September 1973 – September 1977

Honorable Discharge

Army Reserve (enlisted) May 1981 – February 1983

Army Reserve (direct commission as First Lieutenant, Judge Advocate)

February 1983 – present (now Colonel) Staff Judge Advocate

Mobilized with my assigned unit (3rd Corps Support Command) for Operation Iraqi Freedom January 2003 – February 2004. I was released from active duty March 2004 and DD214 characterized active duty as Honorable. Additional details of my service are set forth in answer to question #27 below.

Military Awards Include:

Bronze Star Medal

Combat Action Badge

Meritorious Service Medal (w/1 OLC)

Explosive Ordnance Disposal Badge

Global War on Terrorism Expeditionary Medal

National Defense Service Medal with 1 Bronze Service Star

25. List any professional articles or books which have been published or any special recognition or award of a professional nature which you have received:

“Military Law and Family Law – They Really Can Work Together” written for, published and presented to Annual Meeting of Missouri Bar 1995 and sponsored jointly by the Military Law Committee and the Family Law Section of the Bar.

26. No more than five (5) persons may mail a letter of reference with respect to your character and judicial qualifications. See instructions for deadline for submission. **DO NOT INCLUDE AS A REFERENCE ANY ACTIVE SITTING JUDGES FROM THE CIRCUIT FOR WHICH YOU ARE APPLYING.** List the names of the persons

from whom each member of the commission will receive letters.

1. Hon. Karen Messerli, Mayor of Lee's Summit
2. Dr. Tony Stansberry, Supervisor of Instruction, Kansas City Area, Missouri Department of Elementary and Secondary Education
3. Fred Green, Adjunct Professor, UMKC Law School
4. F. Coulter deVries, Attorney and Mediator
5. Guyla Stidmon, Director, National Alliance for the Mentally Ill

27. State any additional information you deem relevant:

It has been my privilege to serve in the armed forces of our Nation. I was proud and honored that my Army Reserve unit was among the first reserve units to be called to active duty in January 2003. I will forever be deeply grateful to my wife Cindy, my children Kerri and Patrick, my law partner Tim Murphy, Lee's Summit Court Administrator Pam DeVault and her staff. They gave me the peace of mind to focus on my active duty responsibilities while on active duty for fourteen (14) continuous months.

I deployed to Germany when my unit was called to active duty on short notice in January 2003. I Served as Officer In Charge (OIC) of the V Corps Staff Judge Advocate Office at Hanau, Germany; in addition to command and Staff Judge Advocate functions, my duties included oversight of legal services to members of the 1st Armored Division for deployment to Iraq and duty as a State Department certified Foreign Trial Observer at the criminal trial of a U.S. civilian NAAFI employee being prosecuted in a German court.

After deployment to Iraq in July 2003, I served as Deputy Staff Judge Advocate for the Coalition Headquarters (CJTF-7) in Baghdad with special duty to assist the Coalition Provisional Authority (CPA) in rebuilding the Iraqi Ministry of Justice and establishing the Central Criminal Court of Iraq (CCCI). Among the first cases to be prosecuted by the Iraqi Ministry of Justice, was the prosecution of the Captain and First Mate of a Ukrainian-flagged oil tanker for stealing a large quantity of diesel fuel. After trial (in the Central Criminal Court of Iraq) lasting almost three (3) months, the two officers were convicted and the ship and cargo confiscated. In light of the delay caused by criminal prosecution of the smugglers, the CPA promulgated an Order permitting legal confiscation of property proven to have been used in criminal activity without requiring conviction of any person for the crime. On the effective date of the new order, I was assigned responsibility for coordination and execution of the seizure and legal confiscation of all ocean-going oil-smuggling vessels apprehended by Coalition Naval Forces in the North Arabian Gulf. Among other duties, my job was to accompany an Iraqi Magistrate in boarding detained vessels at sea, to help conduct on-board investigations,

examinations of ship's papers, to facilitate interrogations (by the Magistrate) of ships' masters, first mates and selected members of the crews, to ensure due process of law by coordinating the preservation and presentation of evidence, as well as timely notice to owners of detained vessels of the date, time and place of the confiscation hearing. Out of eighteen (18) ocean-going vessels detained, the Iraqi Ministry of Justice legally confiscated thirteen (13) ships and their cargoes of stolen petroleum. Vessel owners retained lawyers from Iraq and Dubai, United Arab Emirates (UAE) to contest confiscation in at least nine (9) of the cases.

My present Army Reserve assignment is as the reserve Staff Judge Advocate, for U.S. Army Japan ("USARJ") and the forward-deployed element of the Army's First Corps ("I" Corps). My duties include advising the commanding general with General Court Martial Convening Authority over all U.S. forces in Japan, Okinawa and other islands in the area. This responsibility involves joint coordination with U.S. Navy, Air Force and Marine commanders as well as with elements of the Japan Self Defense Force. It also involves responsibility to assist the next higher headquarters (U.S. Forces Japan) in maintaining contact and coordination with Japanese civil authorities, and the U.S. Embassy in contacts with the government of Japan in matters related to U.S. military operations, bases and personnel.

By my signature to this application, I authorize: (1) the Commission by its chairperson to obtain relevant information, including but not limited to documents, records and files with respect to my medical, police or disciplinary records, and (2) the Commission and its members to obtain additional relevant information regarding my qualifications as well as the accuracy of my responses to the questions on this application, with the understanding that the information described in (1) and (2) above is available only to the members of the Sixteenth Circuit Judicial Commission. Notwithstanding the above, in accordance with Supreme Court Rule 10, as amended effective February 29, 2008, if I am one of the three nominees listed on the certificate of nomination sent to the Governor, I authorize the Commission to send a complete copy of this application to the Governor and publicly release a copy of the application with personal and confidential information redacted as identified on the cover page of this application.

I hereby certify that all my statements as made above are correct, and that if I am appointed to the office of Circuit Judge of Jackson County, Missouri, I will accept the appointment, qualify, and promptly enter upon the performance of the duties of that office.

DATE: August 10, 2008

SIGNED: 