

• **APPLICATION OF WILLIAM WALLACE FRANCIS, JR. TO THE APPELLATE JUDICIAL COMMISSION FOR THE JUDGE PARRISH VACANCY MISSOURI COURT OF APPEALS, SOUTHERN DISTRICT**

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

1. Present principal occupation or title: **Practicing attorney and partner, Placzek & Francis Law Firm**

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? **57 Years**

(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri? **39 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 Missouri Bar in 1977. My license is in good standing.

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

I am licensed in the U.S. Court for the Western and Eastern Districts of Missouri.

I am licensed in the U.S. Court of Appeals for the 8th Circuit.

I am licensed in the U.S. Court of Federal Claims.

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

I attended Southwest Missouri State University (currently Missouri State University), in Springfield, Missouri from 1970-1974. I graduated with a B.S. in Political Science.

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

I graduated cum laude with a 3.58 cumulative grade point average.

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, Juris Doctor, 1977

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

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) **Beginning in 1971, I was an investigator for Miller, Fairman, Sanford, Carr & Lowther, 926 Woodruff Building, Springfield, Missouri, where I took witness statements, adjusted insurance claims, served legal process and investigated facts pertaining to pending cases. I worked there until 1974.**

(b) **From 1974 through 1977, I was a law clerk with Miller, Fairman, Sanford & Carr, 926 Woodruff Building, Springfield, Missouri, during vacation breaks from law school and during summer breaks.**

(c) **From 1977 through 1982, I was an associate with Miller, Fairman, Sanford & Carr (which evolved into Miller & Sanford), 926 Woodruff Building, Springfield, Missouri.**

(d) **From 1982 to 1989, I was a partner in Miller & Sanford in Springfield, Missouri. That firm merged with Lathrop & Gage after my departure and the current office is located at 1845 S. National Ave., Springfield, Missouri.**

(e) **From 1989 to 1990, I was a partner in Joyner, Placzek & Francis, located at 1722 S. Glenstone Ave., Suite J, Springfield, Missouri, 65804.**

(f) **From 1990 until present, I have been a practicing attorney and partner in Placzek & Francis, located at 1722 S. Glenstone Ave., Suite J, Springfield, Missouri, 65804.**

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.

None.

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.

I have been engaged in the private practice of law for more than 32 years. In the course of that practice I have had experience in a wide variety of the law. When I began my practice as an associate with Miller, Fairman, Sanford & Carr, I represented clients in the areas of civil litigation, domestic relations, criminal law, workers' compensation as well as exposure to an office practice including estate planning and corporate practice. Since 1989, I have emphasized in my practice civil trial work and workers' compensation. I have represented and tried cases for plaintiffs, defendants, corporations and individuals, with a wide variety of clients in this practice; the subject matters have included insurance defense, products liability, medical negligence, personal injury, vaccine injuries, complex business litigation, copyright infringement, contracts, real estate and more simple types of cases. I have

been fortunate enough to achieve seven-figure recoveries for some of my clients and defend other clients successfully where multi-million dollar claims were asserted against them. I have been lead trial counsel and have tried more than 30 jury trials, more than 15 bench trials, and 113 workers' compensation hearings which resulted in awards, and in some cases appeals to the appellate courts. I have been exposed to and have had to analyze issues pertaining to all phases of civil trial work, workers' compensation, social security disability, Medicare regulations, and various aspects of complex litigation involving medical and engineering issues. The broad scope of my practice, including widespread exposure and devotion to research, writing, all phases of advocacy and representation of diverse clients which has been required in my practice, provides an excellent background for a member of the judiciary.

a) **Appellate Experience:** At the appellate level I have either been lead counsel or participated actively in more than 34 appeals before the United States Courts of Appeals for the 8th Circuit, the Missouri Supreme Court, the Missouri Court of Appeals, and the Missouri Labor and Industrial Relations Commission. The following is a representative list of my recent appellate work in reverse chronological order:

- *Terrill Sell v. Carlisle Power Transmission Products, Inc.*, No. SD 29510, 2009 WL 3086495, at *1, Application for Transfer and/or Rehearing denied (Mo.App. S.D. filed Sept. 29, 2009):

I represented Terrill Sell in a personal injury action against Carlisle Power Transmission Products, Inc. for his claim for personal injury arising out of a defective ladder owned by Carlisle. I was lead trial and appellate counsel. Carlisle was represented by Randy Scheer of Husch Blackwell Sanders, LLP, 901 St. Louis St., Suite 1800, Springfield, Missouri 65806. The key legal issue was whether or not Mr. Sell was a statutory employee of Carlisle. The jury returned a verdict for Terrill Sell, which was reversed upon appeal when the appellate court held Terrill Sell was, as a matter of law, a statutory employee so that his exclusive remedy was in the workers' compensation forum.

- *Harness v. Southern Copyroll, Inc.*, 291 S.W.3d 299 (Mo.App. S.D. 2009):

I represented the widow of a deceased employee who was killed in an automobile accident while returning from a specific errand required by his employer. I was lead trial and appellate counsel. Southern Copyroll was represented by Kevin Hays Dunaway of Neale & Newman, LLP, 1949 E. Sunshine, Suite 1-130, Springfield, Missouri

65804. The key issue was whether or not under the 2005 statutory revisions to Chapter 287 an employee going to or from work on a specific errand was entitled to workers' compensation benefits. The Missouri Labor & Industrial Relations Commission awarded benefits to the widow, which was affirmed by the appellate court.

- *Criswell v. Short*, 70 S.W.3d 592 (Mo.App. S.D. 2002):

I represented Harry Criswell who was injured in an automobile collision, which was tried to a jury and resulted in a defendant's verdict. I was lead trial and appellate counsel. Defendant Short was represented by John L. Mullen of Franke, Schultz & Mullen, P.C., 8900 Ward Parkway, Kansas City, Missouri 64114. The appellate court reversed the verdict on the basis of an error by the trial court when the trial court refused to allow me to argue that a pre-existing back condition did not prevent recovery for damages from the rear-end collision at issue. The case was settled for the limits of the insurance policy prior to a re-trial.

- *McHaffie by and through McHaffie v. Bunch, et al.*, 891 S.W.2d 822 (Mo. 1995):

I represented an individual truck driver and his employer in defense of a claim for personal injuries by the plaintiff following a head-on collision on Interstate 44. The plaintiff was represented at trial by Cynthia O. MacPherson, currently at 421 E. State St., Mt. Grove, Missouri 65711 and on appeal by Thomas Strong of Strong Garner Bauer, 415 E. Chestnut Expressway, Springfield, Missouri 65802. The case resulted in a jury verdict for the plaintiff which was reversed on appeal and established law in Missouri concerning responsibility of an employer for negligently hiring an employee under circumstances where an employer accepts responsibility for the actions of the employee. The Supreme Court held that when an employer admits an agency relationship with an employee, and accepts vicarious liability for the employee's torts, it is error to permit a separate assessment of fault to the employer based upon a negligent entrustment or negligent hiring theory of liability and that it would also be error to admit evidence on those theories once the employer has accepted responsibility for the conduct of the employee.

- *Linegar v. Armour of America, Inc.*, 909 F.2d 1150 (8th Cir.(Mo.) Jul 26, 1990):

I represented the widow of Trooper Jimmy Linegar in a product liability action against the manufacturer of the bullet-resistant vest he was wearing at the time of his death. I was lead trial and appellate counsel. The defendant was represented by David W. Hall, Jr. of Neal & Newman, LLP, 1949 E. Sunshine, Suite 1-130, Springfield, Missouri 65804 at trial, and by Mr. Hall and Hugh C. Griffin of Hall, Prangle and Schoonveld, LLC, 200 S. Wacker Dr., Suite 3300, Chicago, Illinois 60606, on appeal. The case resulted in a jury verdict of \$1,500,000, which was reversed by the 8th Circuit Court of Appeals; however, the result of the case was more widespread use of bullet-resistant vests for law enforcement officers along with improved designs of the vests.

- *Kloppenburg v. Queen Size Shoes, Inc.*, 704 S.W.2d 234 (Mo. 1986):

I represented the employer and insurer in a workers' compensation claim involving issues as to whether or not the injury to the employee was idiopathic or arose out of her employment. The employee was represented by Jerry L. Reynolds of Reynold & Conway, P.C., 1855 S. National Ave., Springfield, Missouri 65804. The administrative law judge held that the employee's injuries did not arise out of her employment. The Labor & Industrial Relations Commission reversed the award and entered an award for the employee. That award was affirmed by the Southern District of the Missouri Court of Appeals and the Supreme Court granted transfer. The Supreme Court held that an injury arose "out of" employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury.

- b) **Trial-Level Experience:** The following is a representative list of my recent trial experience.

- *Michael Steen v. Benjamin Williamson*, in the Circuit Court of Webster County, Missouri, Case No. CV901-013CC:

I represented Benjamin Williamson in an action against him for personal injuries which was filed by his passenger. Mr. Steen alleged Mr. Williamson was negligent in operating his vehicle causing Mr. Steen to fall out of the vehicle. I was the lead trial counsel. Steve Garner of Strong Garner Bauer, 415 E. Chestnut Expressway, Springfield 65802, Missouri 65802 represented the plaintiff. Following a five day jury trial in December, 2009, the jury returned a verdict in

favor of my client, the defendant. Post-trial motions have not been filed as of yet.

- *Heartland Warehouse and Distribution Services, Inc. v. Regions Insurance, Inc.*, in the Circuit Court of Greene County, Missouri, Case No. 107CC2335:

I represented Heartland Warehouse and Distribution Services, Inc. in a negligence action against their insurance broker for failing to secure appropriate workers' compensation insurance coverage. I was lead trial counsel. The defendant was represented by Brian Asberry of Neale & Newman, LLP, 1949 E. Sunshine Ave., Suite 1-130, Springfield, Missouri 65804. The jury returned a verdict in the amount of \$137,275.87, which was paid by the defendant in full without an appeal.

- *Mike Harris v. Laclede County I-44 Speedway, LLC, d/b/a Lebanon I-44 Speedway*, in the Circuit Court of Laclede County, Missouri, Case No. CV304-794ACX:

I represented Mike Harris in a case for personal injuries he sustained when a large rock became dislodged from a dirt racetrack and came crashing through his helmet and into his face. I was lead trial counsel. The defendant was represented by Bruce Hunt and Joel Block of Burkhart & Hunt, P.C., 242 S. National Ave., Springfield, Missouri 65802. After a 5 day jury trial, the jury returned a verdict for the defendant.

- *Rodney Lee Inman v. Milfred Leon Colbert*, in the Circuit Court of Greene County, Missouri, Case No. 103CC4150:

I represented Rodney Inman for knee injuries he sustained in an automobile collision with the defendant. I was lead trial counsel. The defendant was represented by James E. Godfrey, Jr. of Evans & Dixon, LLC, 515 Olive St., Suite 1100, St. Louis, Missouri 63101. After a 4 day jury trial, a verdict was returned in his favor in the amount of \$177,213.10, which was paid in full by the defendant without an appeal

- *Adams v. Cooper Industries, et al.*, U.S. District Court, Western District of Missouri, Case No. 83-3009-CV-S-2:

I represented Cooper Industries in an action filed by Lewis Adams for personal injuries. I was lead trial counsel. The case involved theories of negligence, breach of warranty, and strict liability in tort. Plaintiff

was represented by Thomas Strong of Strong Garner Bauer, 415 E. Chestnut Expressway, Springfield, Missouri 65802. My present partner, Mathew Placzek, was in partnership with Mr. Strong at that time. The case commenced on July 3, 1984, and was completed on September 25, 1984. At the time of the trial, it was the longest civil case in the State of Missouri. The case was also unique in that after the Missouri Supreme Court rendered its decision in *Gustafson v. Benda*, 661 S.W.2d 11 (Mo. 1983), the defendants were permitted to add as a third party defendant the employer for Lewis Adams so that the jury might compare their fault among all other parties. It is the only known case tried in the State of Missouri where the employer was added as a third party defendant and a jury was permitted to compare its fault with the other defendants. A verdict was returned for the plaintiff and while on appeal, a settlement was negotiated among the parties before a decision was rendered by the 8th Circuit Court of Appeals.

11. Describe any additional legal experience that you believe may be relevant to the decision of the commission (e.g., work as a law professor, in government, as corporate or other legal counsel).

I have been frequently requested by the Missouri Bar Association, University of Missouri – Columbia Law School, University of Missouri – Kansas City Law School, The Springfield Metropolitan Bar Association, and other business organizations to serve as a lecturer on issues related to trial practice or workers’ compensation. The specific subject matters have included observations and appellate decisions on jury selection; investigating and preparing litigation for trial, including presentation of evidence; suggestions and tips for taking depositions; how to prepare and try workers’ compensation claims for an employee or employer; presentation of proof on specific medical issues; updates on the law with respect to trial practice and workers’ compensation; and statutory revisions to the workers’ compensation statute in the State of Missouri and its effect on employees and employers.

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

- **The Missouri Bar**
 - **Vice Chairman, Insurance Law Committee, 1979-1988**
 - **Workers Compensation Committee, 1981-Present**
 - **Chairman, 1998-2000**
 - **Vice Chairman, 1992-1997**
 - **Legislative Review Subcommittee, 2003-2005**
- **American Bar Association**
 - **Member, Section on:**

- **Tort & Litigation**
- **Springfield Metropolitan Bar Association**
 - **President, 1987**
 - **Past Member, Board of Directors, 1985-1986**
 - **Library Committee, 1984**
 - **Charter & Bylaws Committee, 1986**
 - **Workers' Compensation Committee, Chairman, 1991**
 - **Member of Medical/Legal Workers' Compensation Committee, 1990-1996**
 - **Bench and Bar Committee, 2007-2010**
- **American Association of Justice**
- **Missouri Association of Trial Attorneys**
 - **Board of Governors, 2005-Present**
- **National Childhood Vaccine Litigation Group**
- **Defense Research Institute (Past Member)**
- **International Association of Insurance Defense Counsel, 1987-1995**
 - **Board of Editors, International Association of Insurance Defense Counsel Journal, 1990-1995 (Past Member)**
- **Defense Research and Trial Lawyers Association (Past Member)**
- **National Institute of Trial Advocates (Past Member)**
- **American Judicature Society (Past Member)**

13. List any professional articles or books authored by you that have been published or any special recognition or award of a professional nature you have received.

- **Missouri Civil Trial Practice, 2nd ed., Chapter 2 “Investigation and Preparation,” published by Missouri Bar (1998)**
- **Missouri Civil Trial Practice, 3rd ed., Chapter 2 “Investigation and Preparation,” published by Missouri Bar (2002)**
- **Worker’s Compensation-Current Legal and Medical Issues, Vol. 1987, No. 2 and No. 3; “The Unitary Approach for Determining Compensability of a Workers’ Compensation Claim: Erosion of Traditional Prerequisites,” Defense Research Special Monograph**
- **Worker’s Compensation in Missouri, “Issues and Answers,” National Business Institute, 1988 and 1989**
- **Trial Advocacy in Missouri, National Business Institute, “Observations on Jury Selection,” 1989**
- **Missouri Workers’ Compensation Law, 2nd ed., Chapter 9, “Third Party Practice and Subrogation,” published by Missouri Bar (1994)**
- **Missouri Workers’ Compensation Law, 3rd ed., Chapter 10, “Third Party Practice and Subrogation,” published by Missouri Bar (2008)**

I have been an “AV” rated attorney by Martindale Hubbell for several years.

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

I am an active member of First & Calvary Presbyterian Church in Springfield. I have been ordained as an Elder and Deacon, and have served as a trustee for the church. I am an occasional lecturer there in adult church school classes. I am active in the American Cancer Society, American Alzheimer's Association, Missouri State University, where I am a member of the Founders Club, and was certified in 1988 by youth organizations to coach in soccer and baseball.

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

No.

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

I have not served in the military.

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

I am able to perform all of the essential functions of an appellate judge without any accommodation.

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.
 - 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.

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?

Yes, I have been a party in two cases.

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.

The two cases are described below:

- *Placzek & Francis v. The Division of Employment Security*, 49 S.W.3d 717, Mo.App. S.D., June 14, 2001 (NO. 23907), was an appeal by my law firm following an employee's claim for unemployment benefits which my law firm challenged. The employee had resigned due to family responsibilities and was subsequently offered her employment again, which she declined. The appellate court held that the employee had good cause to decline the employment because she could not work the hours required. Her unemployment benefits were permitted.
- *Mathew W. Placzek and William W. Francis, Jr., d/b/a Placzek & Francis, a Partnership v. St. John's Regional Health Center*, Case No. 31195CC1422, in the Circuit Court of Greene County, Missouri. This was a petition for declaratory judgment seeking an opinion from the court as to whether or not a law partnership was subject to the notice provisions of hospital liens pursuant to Section 430.230 and 430.235 of the Revised Statutes of Missouri. The suit was filed in order to seek a determination of whether or not an injured party's recovery against responsible third parties

could be jeopardized by filing a hospital lien notice pursuant to these statutory sections. A resolution in favor of our partnership was reached within three months of the date the case was filed and it was voluntarily dismissed when the defendant agreed that our law partnership was not subject to the notice of a hospital lien pursuant to these sections.

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

No.

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

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

No.

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

I have attached three writing samples developed in the course of my practice:

- 1) **Worker's Compensation-Current Legal and Medical Issues, Vol. 1987, No. 2 and No. 3; "The Unitary Approach for Determining Compensability of a Workers' Compensation Claim: Erosion of Traditional Prerequisites," Defense Research Special Monograph.**
- 2) **Missouri Workers' Compensation Law, 3rd ed., Chapter 10, "Third Party Practice and Subrogation," published by Missouri Bar (2008).**
- 3) ***Sandra Lynn Linegar, Individually and as Next Friend of Jennifer Nicole Linegar and James Michael Linegar v. Armour of America, Inc.*, Appeal No. 89-1535 WM. Brief of Plaintiffs/Appellees.**

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

When I served as the President of the Springfield Metropolitan Bar Association in 1987, I was the youngest member elected to that position. I have served on the Bench & Bar Committee for the Springfield Metropolitan Bar Association since 2007. My past experience in representing defendants

was recognized when I was selected for the Board of Editors for the International Association of Insurance Defense Counsel for the years 1990 through 1995. I would be pleased to provide any other information on any of these activities or to answer questions on any part of my experience in the law referenced 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.

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