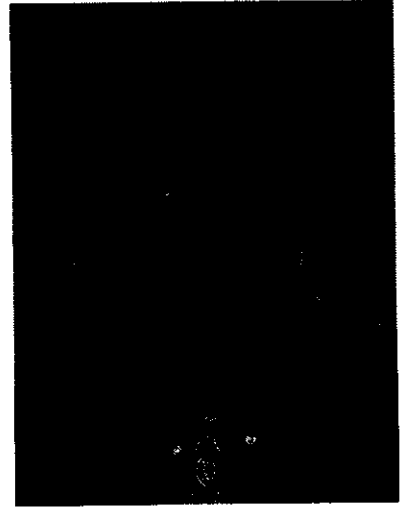


**SIXTEENTH CIRCUIT JUDICIAL COMMISSION
APPLICATION FOR CIRCUIT JUDGE
JACKSON COUNTY, MISSOURI**

***PLEASE NOTE: RESPONSES TO THESE QUESTIONS WILL BE MADE PUBLIC IF
THE APPLICANT IS SELECTED AS ONE OF THE NOMINEES FOR THE VACANCY.***

1. State your full name.

Kenneth Jefferson Cain



2. State your date and location of birth. May 18, 1952, Kansas City, Missouri
3. State your present principal occupation, place of work, and job title.
- Administrative Law Judge, Missouri Division of Workers' Compensation, K.C., Mo
4. Identify the Division of the Sixteenth Judicial Circuit for which you are applying:
- (a) Division Five only _____
- (b) Division Thirteen only _____
- (c) Divisions Five and Thirteen ____x____
5. Provide the following information concerning your eligibility for the office of Circuit Judge:
- (a) Are you at least thirty years of age? Yes

(b) Are you licensed to practice law in Missouri? Yes

(c) Have you been a citizen of the United States for at least ten years? Yes

(d) Have you been a resident of Jackson County for at least one year? Yes

6. State the year of your admission to the Missouri Bar and whether your license is and always has been in good standing. If not, please explain. September 1980. My license has always been in good standing.

7. List any other states, courts, or agencies in which you have been licensed as an attorney, and state whether your license is and always has been in good standing.

United States District Court for the Western District of Missouri, 9-80.

United States Eighth Circuit Court of Appeals, 3-81.

When I became an Administrative Law Judge and no longer practiced in the federal courts I did not renew my licenses.

8. State whether you are able, with or without a reasonable accommodation, to perform the essential functions of a Circuit Judge, including the ability to preside over trials, conduct legal research and analysis, attend court anywhere in the State of Missouri, communicate clearly and effectively both orally and in writing, and expeditiously decide issues coming before the court.

I am able to do each of those activities and I have done similar activities as an Administrative Law Judge for the past 23 years.

9. Provide the following information for all colleges or universities, other than law schools, you have attended:

(a) Name and location of institution

(b) Dates attended and degrees received

University of Missouri-Kansas City, 9-70 to 5-74, B.A. 5-74

University of Missouri-Kansas City, 8-74 to 12-76, M.A. 12-76

(c) Significant activities, achievements, honors, and awards

Dean's List

Omicron Delta Kappa – College Honor Society

Kansas City Board of Trustees Research Fellowship

Graduate Teaching Assistant

Wrote M.A. Thesis.

10. Provide the following information for all law schools you have attended:

(a) Name and location of law school

(b) Dates attended and degrees received

University of Missouri-Kansas City

8-77 to 5-80. J.D. 5-80.

(c) Significant activities, achievements, honors, and awards

Dean's List

American Jurisprudence Award for Excellence in the Study of Constitutional Law

Ranked first in class in constitutional law,

Ranked first in class in employment discrimination law

11. State whether you have ever been suspended or expelled as a student from any school or educational institution. If so, please explain. No.

12. List, in chronological order, all non-legal and legal employment you have held post-high school. Include the name and location of each employer, job title, dates of employment, and reason for termination of employment.

Teaching Assistant University of Missouri-Kansas City, 1974 to 1975; one year appointment

Substitute Teacher, Kansas City, Missouri School District, 1975 to 1976; resigned to

accept other employment

Assistant to Tax Manager – Universal Underwriters Insurance Company, Kansas City, Missouri 1976 to 1977, resigned to attend law school.

Instructor – University of Missouri-Kansas City, History Department, 1977 to 1978, one year appointment.

Library Assistant – University of Missouri-Kansas City Law Library, 1978 to 1979, resigned to accept other employment

Legal Intern, United States Department of Health and Human Services, 1979 to 1980, promoted to attorney upon passing the bar examination in 9-80.

Assistant Regional Attorney – United States Department of Health and Human Services, 1980 to 1983; resigned for other employment.

Sole Practitioner – 1983 to 1984, accepted position as an Assistant Attorney General in 1984..

Assistant Attorney General – Missouri Attorney General's Office, Head of Workers' Compensation Unit, 1984 to 1985; resigned to accept different employment

Legal Advisor/ Associate Administrative Law Judge – Missouri Division of Workers' Compensation, 1985 to 1987; appointed Administrative Law Judge effective 1-1-88.

Administrative Law Judge/Chief Administrative Law Judge – Missouri Division of Workers' Compensation, 1988 to present.

13. Describe the nature and extent of your experience as a practicing attorney in the trial and appellate courts, and explain how such experience demonstrates the quality of your legal work.

I had a litigation practice in the federal courts as an attorney with the United States Department of Health and Human Services and a litigation practice at the administrative level with the Missouri Attorney General's office. I drafted pleadings, wrote motions for summary judgment, handled pretrial discovery disputes, wrote briefs, appeared in Bankruptcy Court, tried cases, argued cases before the United States Eighth Circuit Court of Appeals, and handled cases before the Missouri Court of Appeals for the Western District. I also handled matters in the Circuit and Municipal Courts. I have worked on class-action cases. I appeared at and deposed 70 physicians' at depositions, including neurosurgeons, orthopedic surgeons, pulmonologists, cardiologists, gastroenterologists, general surgeons, internists, psychiatrists and general practitioners. I have deposed

psychologists and vocational experts.

When I was an attorney for the federal government I was recognized on several occasions by the central office in Washington, D.C. for my legal writing skills in drafting legal opinions to clients. One of my legal opinions was published in a national internal publication for use in making liability determinations.

I have drafted numerous court briefs and motions. I believe that my extensive legal writing experience is relevant to any judicial position. In fact, as a judge I have been recognized by my employer for my writing skills. I also believe that my extensive experience in Court has proven to be valuable in developing my skills in the courtroom.

14. Provide a representative list of at least ten cases in which you served as the primary attorney at trial or an administrative hearing. The list should include the style of each case, court or administrative agency, identification of your client, and the nature and date of disposition.

I have been a judge for the last 26 years. I have tried more than 800 cases as a judge. Due to the nature of my practice I have not maintained my files from previous employment, other than some labor and employment law cases where I thought the information might be useful in similar cases in the future. I will note that as the only attorney in the labor department for the Missouri Attorney's General's Office in Kansas City I tried as the primary attorney numerous cases in the western part of the state at the administrative level. I also had trial experience in other prior jobs as the primary attorney.

My labor and employment cases were before the Merit Systems Protection Board. The cases were as follows:

1. Martha Carolyn Andrews v. Department of Health and Human Services, Case No. 07528110678 (April 1981)

The issue involved whether the Agency's decision to terminate the employee's employment was based on legally valid reasons. The employee was a white female over the age of 55. She alleged that her termination was based on age and race discrimination. Her supervisor was an African-American female of similar age.

I defended the case by offering statistics which I believed showed that the job action taken by the Agency was performance based and not related to race or age. The Agency's decision to terminate the employee's employment was affirmed by the Merit Systems Protection Board.

2. Randall Fulk v. Department of Health and Human Services, Case No. SL075811 0118 (June 1981).

The issue again involved whether there was a valid reason for the Agency's decision to terminate the employee's employment with the Agency. The employee was assigned to work in a building leased by the Agency. The employee alleged that the Agency provided substandard working conditions by requiring its employees to work in a building which he alleged contained unsanitary working conditions and health hazards. The employee picketed the building and complained to local media about what he perceived to be unsafe work conditions. The employee referred to his supervisor and the manager as fascists and a Nazi in his placards while picketing the building before and after work and during his lunch hour.

The employee was suspended. While on suspension the employee returned to the building and during work hours while other employees were trying to work he began distributing literature to the employees which was critical of the Agency.

The Agency then terminated the employee's employment. I was not consulted prior to the termination. The termination notice provided that the decision was based on the employee's conduct in seeking out the media and in picketing the building with what the Agency considered to be derogatory and inflammatory messages.

I defended the case at the trial on the basis that although an employee did not forfeit his First Amendment rights by becoming a federal employee, his employer could prescribe the First Amendment rights in a reasonable manner as to time and place. I argued that in exercising his First Amendment rights the employee did not have the right to disrupt the workforce by returning to the building while on suspension and by distributing literature to his fellow employees who were trying to work and being paid to work. I argued that the Agency had used progressive discipline in the case by warning the employee in writing and suspending him prior to terminating his employment. I also cited cases where Courts had held that federal employees could be disciplined and terminated for activities which undermined the credibility, authority and good will of the Agency. The Merit Systems Protection Board ruled against the Agency and ordered the employee reinstated to his position.

3. Steven Mathews v. Department of HHS, Case No. SL53108210022 (10-81) involving a denial of a salary increase. The Merit Systems Protection Board affirmed the Agency's decision following the trial
4. Edwin Fleming v. Department of HHS, Case No. SL5310821055 (10-82) involving a denial of a salary increase. The Merit Systems Protection Board affirmed the Agency's decision following the trial.

15. If you have appellate experience, provide a representative list of cases in which you served as the primary attorney on appeal. The list should include the style of each case, appellate court or administrative agency, identification of your client, and the nature and date of disposition.

Barker v. Harris, 650 F.2d 138 (8th Cir. 1981). I represented the Department of Health and Human Services. I argued the case and wrote the appellate brief. The Eighth Circuit affirmed the lower Court's decision in my client's favor.

Stone v. Harris, No. 80-1595 (8th Cir. 1981). I represented the Department of Health and Human Services. I argued the case and wrote the appellate brief. The Eighth Circuit affirmed the lower Court's decision in my client's favor.

Brenner v. Schweiker, 711 F.2d 96 (8th Cir. 1983). I represented the Department of Health and Human Services. I wrote the appellate brief. The Eighth Circuit affirmed the lower Court's decision in my client's favor.

Belles v. Schweiker, 720 F.2d 509 (8th Cir. 1983). I wrote the appellate brief. The Eighth Circuit affirmed the lower Court's decision in my client's favor.

Bauher v. Heckert, No. 82-2510 (8th Cir. 1983). I wrote the appellate brief. I do not know the disposition of the case.

16. If you are serving or have served in a judicial capacity, describe the nature and extent of your judicial responsibilities, the types of dockets handled, and any special expertise developed.

I have been an administrative law judge for 23 years. I primarily handle workers' compensation and crime victims' compensation cases. I have handled some Tort Victims' Compensation cases.

I have presided over more than 800 trials. I write legal opinions with findings of fact and conclusions of law after each trial. I rule on objections to the admissibility of evidence. I judge and weigh the credibility of witnesses. I preside over pretrial evidentiary disputes and motions. I issue discovery and other orders. I apply the Missouri Rules of Evidence and I have lectured before the bar on evidence.

Frequent experts in the trials include orthopedic and neurosurgeons, pulmonary specialists, psychiatrists and psychologists, cardiologists and pain management specialists. Other experts include chemists, physicists, economists, accident reconstruction specialists, life care planning specialists, toxicologists, engineers and vocational specialists.

I preside over numerous mediations. I have handled cases involving personal injuries, motor vehicle accidents, slip and falls, and exposure to toxic substances such as asbestos, silica and chemicals. I have addressed numerous employment issues ranging from discrimination to whether a job action appearing neutral on its face was a pretext to a prohibited job action. I have addressed alleged medical malpractice issues. I have addressed numerous cases with issues involving what constitutes a crime under Missouri law. I have handled cases requiring an interpretation of Missouri statutes, insurance contracts, employment contracts and tax and corporate laws. I have also handled numerous cases with dual jurisdiction and conflicts of law issues.

My special areas of expertise involve workers' compensation cases, personal injuries and medical/legal issues in general.

17. If you are serving or have served in a judicial capacity, provide a representative list of at least ten cases over which you have presided to completion. The list should include the style of each case and the nature and date of disposition.

1. Wells v. Brown, 33 S.W. 3rd 190 (Mo. banc 2000)

The primary issue involved whether an accident, which occurred prior to the start of the workday in the parking lot for the building where the employer leased office space, arose out of and in the course and scope of the employee's employment.

My decision finding that the accident arose out of and in the course of the employee's employment was reversed by the Court of Appeals for the Western District, but reinstated by the Missouri Supreme Court.

2. Farmer - Cummings v. Future Foam, Inc. 110 S.W. 3rd 818 (Mo. 2003) and 44 S.W. 3rd 830 (Mo. App. W.D. 2001)

Primary Issues:

1. Environmental Law - Whether the employee's alleged exposure to Toluene Diisocyanates caused her to develop asthma;
2. Medical Bills - Whether the employer was liable for medical bills written off as uncollectible by the health care

providers and Medicaid if the evidence showed that the employee had no further liability for the bills;

3. Subrogation Interest - Whether the employer had a subrogation interest in a 3rd party recovery resulting from alleged medical malpractice in treating the employee's alleged work related impairments if the treatment was rendered by non- authorized physicians and health care providers, due to the employer's denial of liability in the case.

My decisions on compensability, subrogation and liability for the medical bills were affirmed at the appellate level. The Missouri Supreme Court's decision on issue 2, as set out above, remains the seminal ruling on an employer's liability for medical bills which were written off as uncollectible by a medical provider and for which the employee had no remaining liability.

3. Higgins v. D.W. F. Wholesale Florists, 14 S.W. 3rd (Mo. App. W.D. 2000)

Primary Issues:

1. Whether the employee's alleged intoxication was the proximate cause of her motor vehicle accident; and
2. Whether the employer could avail itself of the new alcohol defense as set out in the Missouri statutes if the employer failed to prove all the elements contained in the statute as a prerequisite to a valid alcohol defense.

My decision finding that the employee's intoxication was the proximate cause of the accident was affirmed by the Missouri Court of Appeals for the Western District of Missouri. My decision finding that the employer could avail itself of the alcohol defense contained in the Missouri statutes was also affirmed by the Court.

My decision finding in favor of the employer on the alcohol defense, as set out in the statutes, was premised on the unique facts of the case. The statute in effect at the time of the

accident provided that the employer's alcohol policy had to be posted in a conspicuous place on the employer's premises.

Ms. Higgins, the employee, worked for an out of state company. Ms. Higgins was in charge of the local office. She admitted that she was furnished with a copy of the employer's alcohol policy and that she was instructed to post it in a conspicuous place. She admitted that she had knowledge of the alcohol policy. She admitted that she failed to follow her employer's instructions and that she did not post the policy. She argued that because the policy was not posted as required by the statute, her employer could not validly assert the alcohol defense contained in the statute.

The Court of Appeals affirmed my decision in the employer's favor and specifically noted that proof of actual knowledge of the alcohol policy by the employee was sufficient to meet the requirements contained in the statute, regardless of whether the policy was posted.

4. Vallejo-Davila v. Osco Drug, Inc., 895 S.W. 2nd 49 (Mo. App. W.D. 1995); 872 S.W. 2nd 511 (Mo. App. W. D. 1994); 851 S.W. 2nd 533 (Mo. App. W.D. 1993) and 743 S.W. 2nd 423 (Mo. App. W.D. 1987)

Primary Issues:

1. Whether an employee's dependents in a death case may bring an action against the employer in civil court if the alleged accident resulted from the employee being murdered at work during a robbery by a store security guard and the security guard's accomplices;
2. Whether the employer had a subrogation interest in the 3rd party recovery from the security guard's employer, if as alleged, the employer did not cooperate in the prosecution of the 3rd party law suit and as alleged made it more difficult for the employee's dependents to effectuate the 3rd party recovery;
3. Whether interest accrued from the date of the crime and the deceased employee's death if payments on account of the death were immediately tendered to the dependents, but declined by the dependents who asserted a lack of

jurisdiction and the right to pursue the matter in civil court;

4. What method, if any, should be used to calculate any alleged subrogation interests asserted by the employer; and
5. How to calculate any subrogation interest per the Court's guidance in Reudiger v. Kallmeyer Bros. Service, 501 S.W.2d 56 (Mo. banc 1973)?

My decisions on the five issues were affirmed in their entirety by the Court of Appeals. I found jurisdiction; that the employer had a subrogation interest in the 3rd party recovery; that interest no longer accrued after payments were tendered, but declined; and, that the subrogation interest should be based on the amount of money paid by the 3rd party tortfeasors to purchase the annuities for the surviving spouse and the minor daughter and not the actual payouts to the dependents pursuant to the annuity contracts.

5. Stillwell v. Universal Construction Co., 922 S.W. 2d 448 (Mo. App. W.D. 1996)

Primary Issues:

1. What constitutes dependency; and
2. Does a child adopted by her natural grandfather and his wife prior to the death of the child's natural father, remain a child of the natural father who dies in a job-related accident for purposes of determining her entitlement to death benefits.

Indirect issues involved the rules of consanguinity, intestate succession and wrongful death classes.

The applicable Missouri statute defined a total dependent as the deceased employee's spouse and/or minor child or children. Child was defined as a natural, posthumous or adopted child.

Mr. Stillwell, the deceased employee, was 21 years old at the time of his death. He had never married, but he had fathered one child, a daughter. The child was adopted prior to Mr. Stillwell's death by his father and his stepmother. The adoption was final prior to Mr. Stillwell's death.

The child through her adopted parents argued that the child was entitled to death benefits as the child of the deceased employee.

The Court of Appeals affirmed my decision that the child was not the legal child of Mr. Stillwell, the deceased employee at the time of his death. Based on the adoption prior to the deceased employee's death, the child had legally become the deceased employee's sister. The child, as the deceased employee's sibling, was not entitled to death benefits as a child and total dependent of the deceased employee.

6. Ronald Clark v. Harts Auto Repair, __ (Mo. App. W.D. 1-09_)

Primary Issues:

1. liability of the employer for fees and costs where the employer admitted liability, but the insurer refused to make any offers to settle the case and allegedly refused to accept any phone calls from its attorney to relay settlement demands made by the employee; and
2. Whether the employee was rendered permanently and totally disabled by the injuries he sustained in the accident.

The Court of Appeals affirmed my decision that pursuant to the standards as prescribed by the Court in Landman v. Ice Cream Specialties, 107 S.W. 3d 240 (Mo. banc 2003); and Monroe v. Wal-Mart Associates, Inc., 163 S.W. 3d 501 (Mo. App. E.D. 2005), the employer's actions constituted an unreasonable defense and that fees and costs should be awarded. The Court also affirmed my decision as to how to appropriately apply the costs based on the employer's actions in putting on a vigorous defense of the case at the trial. The Court affirmed my decision that the employee was rendered permanently and totally disabled as a result of the injuries he sustained in the accident.

7. Stephanie Meyer-Linquist v. Shughart, Thomson & Kilroy, Injury No. 99-091115.

Primary Issues:

1. What constitutes an occupational disease under Missouri law;
2. Is the employer liable for the consequences of alleged medical malpractice by authorized treating physicians? and
3. What are the consequences for an employee's refusal to accept treatment in a prescription drug detoxification program?

The Missouri Labor and Industrial Relations Commission affirmed my decision in its entirety. I found that the employee had sustained an occupational disease under Missouri law due to repetitive use of her upper extremities, resulting in reflex sympathetic dystrophy and complex regional pain syndrome. I found that the employee was not rendered permanently and totally disabled by her impairments as demonstrated by the bail bond business she owned subsequent to developing the occupational disease and the type of work she did in furtherance of her business.

I found that the employer was liable for any injuries that the employee sustained as a result of the alleged medical malpractice and that the employer had a subrogation interest in any recovery made by the employee for the alleged medical malpractice.

I found that the employer could suspend all liability for future payments until the employee submitted to reasonable and necessary medical treatment including a prescription drug detoxification program.

8. Glen Thompson (deceased) and Lydia Thompson (widow) vs. Missouri Portland Cement Co. Injury No. AS 132911.

Primary issue involved whether the deceased employee's death resulting from lung cancer was caused by his alleged exposure to silica at work.

The employee was a heavy smoker for 40 years. In the employee's job he did not work in the cement processing part of the plant and the most credible

evidence showed that his exposure to silica was minimal at best.

The employee's expert witness was a pulmonologist who had failed the test for board certification on four occasions. The employer's expert was a board certified pulmonologist and professor of medicine at the University of Kansas Medical Center.

The employer's expert testified that the employee died of adenocarcinoma or small cell cancer caused by cigarette smoking. He noted that the biopsy of the employee's lung tissue did show fibrosis or benign scar tissue, but no silica particles, a necessity for establishing a diagnosis of silicosis. He concluded that the employee died of lung cancer caused by years of heavy cigarette smoking.

My decision in favor of the employer was affirmed in its entirety on appeal.

9. Richard Campbell v. Jerre & Billie Wickman, Injury No. 98-142852

Primary Issues:

1. Employee-Employer relationship; and
2. What constitutes a procedural or substantive change in the law?

I found that based on the employee's testimony, pay stubs, and the testimony of other alleged employees that the employee proved an employee-employer relationship.

I also found that the August 1998 change in the law for calculating an employee's average weekly wages for purposes of permanent disability benefits based on the employee's multiple employments was not procedural and that therefore the change could not be applied retroactively to an injury occurring in May 1998.

Prior to the change in the law the employee's average weekly wages in each of the multiple employments could be added together and the employer where the injury on the job occurred was liable for a compensation rate based on the total amount of the employee's wages from each of the multiple employments.

The August 1998 change in the law provided that the Second Injury Fund would be liable for the benefits resulting from the increased compensation rate due to multiple employments. The August 1998 statute reinstated such liability of the Second Injury Fund after such liability of the Fund had expired effective with an August 28, 1996 statute.

The employer argued that the Second Injury Fund which was not named as a party in the case was liable for the increased benefits based on the August 1998 statute.

I found that the Second Injury Fund could not be liable for such benefits for injuries which occurred prior to August 28, 1998 when the new statute became effective because the change in the law created a new substantive right against the Fund. I found that the employer was liable for the benefits.

10. Paul Williams, M.D. v. Pediatric Associates, Injury No. 93-132227
(temporary or partial decision)

Primary issue involved whether an injury which occurred while the employee, a pediatrician, was driving home from work arose out of and in the course and scope of his employment.

The employee was the on-call physician for Pediatric Associates on the night of his motor vehicle accident. As the on-call physician the employee was responsible for handling all after hours medical calls or emergencies. The employee was required to carry a beeper at all times and to maintain contact with the answering service for the medical group. He was expected to stay home as the on call physician. In similar cases in other jurisdictions the Courts had found that the accident had occurred in the course and scope of employment.

My decision finding that the employee was in the course and scope of his employment was affirmed by the Labor and Industrial Relations Commission. The employer filed an appeal with the Missouri Court of Appeals for the Western District, but later withdrew the appeal.

11. Paul Williams, M.D. v. Pediatric Associates, Injury No. 93-132227 (final

award l)

I found that the employee was permanently and totally disabled due to his brain trauma. I ordered the employer to pay \$445,676.93 for past medical treatment and \$126,393.80 for past temporary total disability benefits in addition to the permanent total disability benefits.

The Labor and Industrial Relations Commission affirmed my decision, and assessed a penalty against the employer in the amount of \$544,833.80 for the alleged failure to comply with my temporary award. It also ordered the employer to pay interest in the amount of \$204,372.90 on the medical bills. The parties settled the case while the penalties and interest were on appeal.

12. Derick Mitchell (deceased) v. Crime Victims' Compensation Fund, No.CV 2003-1852

Primary issue involved whether a crime had occurred when the decedent was shot and killed by a police officer who had been summoned to an address where shots were being fired.

The decedent's mother who was not present at the time of the shooting testified that her son was shot several times in the back by a police officer as her son was running from the scene.

The police report and the testimony was that when the police officers arrived at the scene, the decedent began running and that the decedent was carrying a large gun.

The police report further stated that when the decedent was told to stop by the police officer the decedent turned around and pointed the gun at the police officer who fired the fatal shot. The conclusion by the medical examiner in the autopsy report was that the track of the fatal wound from the gunshot was from the decedent's front to his back. There were other wounds to the decedent's back, buttock and hip.

The Grand Jury refused to find the police officer criminally at fault in the death of the decedent. The Grand Jury found that based on the evidence the

decedent was fatally shot in the front and then spun around from the impact of the first shot and that he then received the additional wounds.

I found that based on the Grand Jury's conclusion which was not contradicted by any evidence offered at the trial that the police officer had acted in self-defense and that a justifiable homicide had occurred. Therefore, I found that the police officer's shooting had not resulted in a crime under Missouri law.

13. Julie Hunt v. Quik Trip Corporation, No. 04-068508 (January 5, 2011).

Primary issue involved whether an employer was liable to the employee for medical expenses incurred by the employee after the employer had refused to provide medical treatment.

The bills for the initial treatment rendered after the accident had been discharged in bankruptcy. The employer would have been liable for those bills. Those bills were for treatment rendered by two neurosurgeons and a specialist in treating injuries to the brain and spine. The three specialists concluded that the employee did not need back surgery.

Despite the opinions of the three specialists, the employee sought treatment with an orthopedic surgeon who concluded that she did not need surgery. Two months later she went to another orthopedic surgeon who ordered the same tests as the previous orthopedic surgeon and concluded that the employee did need surgery. The employee's testifying expert at the trial, a different physician, concluded that she did not need back surgery.

I found that the employee had failed to prove that back surgery constituted reasonable and necessary treatment based on the opinions of five doctors who rendered opinions on her behalf. I found that the employer was not liable for the medical bills incurred after three specialists had told her that she did not need back surgery.

14. Dean Harrison (deceased) v. Wayne Jones Trucking, Injury No. 98-177674

Primary Issues:

1. Whether the alleged deceased employee was an employee or an independent contractor, and
2. Whether the limitation period had expired prior to the filing of the claim by the deceased's employee wife and his two minor children?

The deceased employee's wife offered into evidence her husband's pay stubs showing the hours he worked for the alleged employer and the withholdings and deductions from his paychecks by the alleged employer. She also offered a document from the employer's records entitled "Payroll" which listed the employer's employees, including the deceased employee and the amount of their pay for each week. I found that the deceased employee's wife had proven an employee-employer relationship.

The deceased employee was killed in a trucking accident on April 10, 1998 while making a delivery for his alleged employer. He was survived by his widow and two children, born in 1990 and 1994 respectively.

The statute of limitations in effect at the time of the deceased employee's death provided that the claim had to be filed within two years of the date of the accident. The claim was filed on May 3, 2000.

I found that the limitation period had expired prior to the widow's filing of her claim. There was no evidence that the limitation period had been tolled as to her claim. I found that the limitation period had not expired as to the claim filed by the two minor children on May 3, 2010. I found that the limitation period had been tolled as to the claim filed by the two minor children. I noted that in similar cases Missouri Courts had found that the limitation period was tolled as to minors until the minor child reached the age of majority.

I noted that the Missouri Supreme Court in Strahler v. St. Luke's Hospital, 706 S.W.2d 7 (Mo. banc 1986) had found the Missouri medical malpractice statute containing the limitation period to be unconstitutional as it applied to minors because the statute had unconstitutionally limited a minor child's right to access to the court system. The Court noted in Strahler that a minor did not have the legal capacity to bring the malpractice action within the limitation period contained in the statute. The Court stated that it was not willing to force a minor child to depend on a third party to vindicate the minor child's legal rights.

I found that the same legal reasoning the Court used in Strahler applied in the Harrison case. The minor children were 8 and 4 years old at the time of their father's death. Neither child had the legal capacity to file the lawsuit. Both minors as those in Strahler were dependent on a third party to vindicate their rights under Missouri law.

15. John Wilson v. CC Southern, Inc, Central Transport International and Kerr Cartage Company, Injury No.: 98-035536

Primary issue involved whether CC Southern and Central Transport were employers within the meaning of the Workers' Compensation Act for purpose of awarding death benefits?

The employee was killed in a trucking accident. The employee was hired by Kerr Cartage Company to drive the truck. Central Transport was a freight broker which arranged for the transportation of good with various providers such as CC Southern. CC Southern then contracted with Kerr Trucking Company to make certain deliveries.

The deceased employee was hired by Kerr Trucking to make deliveries pursuant to its contract with CC Southern. CC Southern pursuant to its contract with Kerr was to pay all expenses for the truck and the compensation for the driver. The name on the doors of the truck used to make the delivery was CC Southern. Evidence was offered showing that the ICC regulations required a decal on the truck and the decal on the truck used by the deceased employee was under the name CC Southern.

Kerr Trucking Company ceased doing business shortly after the deceased employee's fatal accident. I found that Kerr Trucking was the general employer because it had hired the deceased employee and controlled the deceased employee's daily activities. I found that CC Southern was a special employer under Missouri law and that as such it was equally liable for death benefits. I found that Central Transport International was a freight broker and not an employer and that it had no direct or indirect control over the employee in performing his duties pursuant to his direct contract of employment with Kerr or his indirect contract of employment with CC Southern.

Missouri law provides that a special employer relationship exist if the employee has 1) consented to work for the alleged special employer, either

expressly or impliedly, 2) began to actually work for the alleged special employer and 3) if the alleged special employer has the power to control the details of the work. Ballard v. Leonard Bros. Transport, Co., 506 S.W.2d 346 (Mo. 1974); Bradshaw v. Richardson Truck, Inc. 467 S.W.2d 945 (Mo. banc 1971); Feldman v. Dot Delivery Service, 425 S.W. 2d 491 (Mo. App. 1968); Ellegood v. Brashear Freight Lines, Inc., 162 S.W.2d 628 (Mo. App. 1941); Wright v. Habco, Inc., 419 S.W.2d 34 (Mo. 1997). The special employer is liable for the benefits along with the general employer. Ballard; Bradshaw; Feldman.

My decision ordering CC Southern to pay the benefits and to seek contribution from Kerr should it choose to do so was affirmed in its entirety.

16. Lisa Reed v. Sherri Kahler and Missouri State Treasurer as Custodian of the Second Injury Fund, Injury No. 01-068573

Primary Issues:

1. Accident
2. Whether the employee's deposition could be used at trial if the employee did not sign the deposition.

The employee was a resident of Connecticut at the time of her trial. The Second Injury Fund had deposed the employee by phone. Notice of the taking of the deposition was sent on a timely basis to the employee and the employer. The employer was in default in filing its answer at the time of the deposition and the employer did not appear at the deposition either in person or by phone.

The employer and the Second Injury Fund argued at trial that the deposition could not be used because the employee had not signed the deposition. In my decision, I noted that Rule 57.03 (f) of the Missouri Rules of Court provides that the witness and the parties may waive signature by the witness. I found that the Second Injury Fund had waived signature of the deposition when it stated that it had done so at the conclusion of the deposition.

I found that the employer was in default at the time of the deposition and that it chose not to attend the deposition or to object when the parties who had attended the deposition specifically agreed to waive signature. I found that the deposition could be used at trial. I also noted that the case cited by the employer as support for its position, Peters v. Johnson & Johnson Products, 783 SW. 442 (Mo. App. E.D. 1990) was distinguishable. In Peters all the parties had attended the deposition and signature had not been waived. Thus, the deposition could not be used in Court. Also, as the Court noted in Peters, the deposition was not admissible because the court reporter was not licensed in Missouri.

On the issue of accident, I found that the employer had not admitted accident based on its failure to file a timely answer. I found that the failure to file a timely answer resulted in the admission of facts as stated in the pleadings, but not a legal conclusion, such as whether the facts as admitted had resulted in an accident as defined by Missouri Law. Limbard-Bock v. Winchell's Donut Shop, 939 S.W.2d 456 (Mo. App. W.D. 1996); Lambert v. Vess Beverages, 986 S.W.2d 720 (Mo. App. E.D. 1998).

17. H. Michael Coburn (deceased) v. State of Missouri, Sixteenth Judicial Circuit, Injury No. 94-178768

I found that the employee had sustained an accident as defined by Missouri law and I awarded to the deceased employee's widow the costs of the past medical bills, burial expenses and death benefits.

18. David M. Eimer v. Board of Police Commissioners, Injury No. 90-056227.

Primary issue involved whether the employer was liable for any damages.

The employee had previously injured his neck and low back in an injury at work and settled his case based on a permanent partial disability of 16.5 percent to his body as a whole. The statute in effect at the time of the employee's May 1990 accident at work and the subject of his trial provided that there was a conclusive presumption that any preexisting disability to a body part or parts continued undiminished whenever the employee sustained a subsequent injury to the same body part or parts. § 287.190 .6; Helm

v. SCF, 761 S.W.2d 199 (Mo App. 1988).

The employee reinjured his neck and low back in the May 1990 accident at work. Thus, I found that to prove his employer's liability for any compensation he had to prove that he now had more than a permanent partial disability of 16.5 percent to his body as a whole as reflected by the prior settlement. The employee had also injured his neck and low back in a July 1990 motorcycle accident although he denied any such injuries at trial. The motorcycle accident resulted in more serious injuries than the May 1990 injury at work.

The employee's expert physician's initial evaluation of the employee occurred subsequent to the July 1990 motorcycle accident. The employee's expert physician was not aware of the prior or subsequent neck and low back injuries. The expert concluded that the employee had a permanent partial disability of 20 percent to his body as a whole due to his neck and low back impairment. The expert did not find that the May 1990 accident had resulted in a permanent partial disability of 20 percent to the body as a whole.

I found that the employee did not prove his employer's liability for any compensation. Based on the statute the 16.5 percent permanent partial disability from the prior settlement had continued undiminished. The subsequent neck and low back injury was clearly more serious than the May 1990 injury.

The Labor and Industrial Relations Commission reversed my decision and found that the employer was liable for a permanent partial disability of 20 percent to the body as a whole. The Missouri Court of Appeals for the Western District in an unpublished opinion reversed the Labor and Industrial Relations Commission decision and reinstated my decision in its entirety.

19. Phil Maez v. alleged employers Maez Engineering, LLC, Anderson Construction, Wildeck and Siemens-Dematic, Injury No. 02-148680

Primary issue involved which employer if any was liable for benefits.

I set out in my decision the requirements in Missouri law for distinguishing between an independent contractor and an employer. I noted that an independent contractor was someone who contracted to do work according to

his or her own methods without being subject to the control of the other party to the contract except as to the ultimate result of the work being performed. White v. Dallas & Mavis Forwarding Co., Inc. 857 S.W. 2d 278 (Mo. App. W.D. 1993). I noted that such factors as control, payment of wages, withholdings from wages, and whose equipment and tools were being used were critical in determining whether an employee-employer relationship existed. Id.

I found that Mr. Maez who owned his own company and was doing work pursuant to a contract between his company and Anderson Construction when he sustained the injury was in fact an independent contractor and that therefore his company was primarily liable for his damages. I also found, however, that Anderson Construction and Wildeck were statutory employers under Missouri law. § 287.040 RSMo. 1994. Siemans was not a statutory employer. The injury occurred while Mr. Maez and the other companies were constructing an extension to the existing building on Siemans property.

I found that Anderson Construction which hired Maez Engineering was secondarily liable. The statute provides that if the primarily and secondarily liable employers fail to insure as did both Maez Engineering and Anderson Construction, that the general contractor, Wildeck in Mr. Maez's case shall be liable for the damages. Id. Wildeck, pursuant to the statute did have the right to pursue an action against any employer whose liability was primary to its for reimbursement. Id. My decision was affirmed in its entirety.

20. Steven West v. America's Body Company, Injury Nos.: 02-151207

Primary Issues:

1. The nature and extent of the disability sustained by the employee;
2. Whether the employee's injuries resulted from the accident;
3. Liability of the Employer for past medical bills; and
4. Liability of the Employer for fees and costs based on an alleged unreasonable defense.

I ruled in the employee's favor on the first three issues in the 2002 case and

in the employer's favor on the fourth issue. The employee alleged accidents at work in November 2002 and in March 2003. The alleged injuries were to the same part of the employee's body. The evidence showed that the alleged March 2003 injury did not arise out of and in the course and scope of the employee's employment. The employer argued that it was not liable for fees and costs because the employee had failed to prove that his injuries resulted from the November 2002 accident as opposed to the non-compensable March 2003 accident.

I found that it was not unreasonable for the employer to defend the cases on the basis as set out above. In my decision, I noted that a determination that a party had a reasonable basis for either defending a claim or prosecuting a claim was not dependent upon the ultimate outcome of the case. The determination must be based on the facts in the case and the law. That the employer lost the 2002 case did not mean that its defense was unreasonable. Similarly, that the employer prevailed in the March 2003 case did not mean that the employee had prosecuted the case on an unreasonable basis and, therefore, the employer's request for fees and costs in that case was denied. The style of the March 2003 case was Steven West v. America's Body Co., Injury No.: 03-023511.

18. If you do not have significant experience in litigation or in a judicial capacity, describe any other legal experience or accomplishments in the legal profession that may qualify you to serve in the office of Circuit Judge.
19. List all bar associations and other professional societies of which you are or have been a member, with any offices held and dates of membership.

Missouri Bar Association 9-80 to present.

Kansas City Metropolitan Bar Association.

Jackson County Bar Association.

Federal Bar Association, President Young Lawyers' Section

20. List any published articles or books you have authored and any significant programs or events for which you served as a primary speaker. See answer to Question Number 30.

21. Do you now or have you ever held any elective or appointive public office or position? If so, please explain.

Appointed Legal Advisor/Associate Administrative Law Judge for the Missouri Division of Workers' Compensation, 1985.

Appointed Administrative Law Judge for the Missouri Division of Workers' Compensation , 1988.

Appointed Chef Administrative Law Judge, 1991.

22. Provide the branches and dates of any military service or other public service not otherwise covered in this application. If discharged from the military, state whether the discharge was other than honorable. N/A

23. Describe your community and volunteer service activities, including any organizations (outside the legal profession) with which you are affiliated and any offices held.

Niles Home for Children - Board of Directors and Parliamentarian. I was also the chairman of the Human Resources Committee and under my direction we drafted a new employee handbook and clarified the procedures for instituting employee discipline and grievances.

University of Missouri-Kansas City Alumni Association – Board of Directors

University of Missouri-Kansas City Alumni Association for the College of Arts and Sciences - Board of Directors and Board President

University of Missouri-Kansas City Alumni Ambassador

Recruiter for University of Missouri-Kansas City

Commencement Speaker on two occasions for the College of Arts and Sciences at the University of Missouri-Kansas City.

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24. List any significant honors, awards, or recognition you have received that otherwise have not been covered in this application.

I have received numerous commendations from various organizations for my public speaking.

I am a Judicial Master at the University of Missouri-Kansas City School of Law.

I have been a commencement speaker at the University of Missouri-Kansas City College of Arts and Sciences on two occasions.

I have been asked by my current employer on two occasions to teach a course on how to write judicial opinions. I first taught the course to new judges. The following year I was asked to teach the course to all the judges.

25. Are you delinquent in the payment of any federal, state, county or city taxes? If so, please explain. No.
26. Have you ever been convicted of a misdemeanor or felony or received a suspended imposition of sentence in any federal, state, or military court? If so, please explain and provide the style of the case (including case number), the court, the date of the conviction, and the sentence or fine imposed. No.
27. Have you ever been held in contempt of court? If so, please explain. No.
28. Have you ever been sued by a client or been a party to any litigation, other than as a guardian ad litem, plaintiff ad litem, or defendant ad litem? If so, please explain and provide the style of each case, the court, your role as plaintiff or defendant, and the nature and date of disposition. No.
29. 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? If so, please explain. No.
30. If you are or were a member of the judiciary of the State of Missouri, please state: N/A
 - (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? If so, explain the details of such breach and the date, 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. If so, explain the details of such cause and the date and nature of the discipline imposed.
 - (c) Whether, to your knowledge, you are the subject of a complaint that is currently under investigation by the Commission on Retirement, Removal and Discipline. If so, explain that nature of such complaint and the status of the investigation.

31. Provide any additional information that you consider relevant to your qualifications for the office of Circuit Judge.

I have been honored to serve the citizens of the State of Missouri as an administrative law judge since January 1, 1988. During those 23 years, I have strived to be fair, honest, impartial, prompt, courteous and polite. I have tried to conduct myself with integrity and in a professional manner.

I believe that those qualities are important in any judicial office. In addition, however, I believe that it is essential for a circuit judge to demonstrate the ability to communicate effectively. I have presided over more than 800 trials. I have written legal opinions with findings of fact and conclusions of law after each trial. Our administration has asked me on two occasions to teach the other administrative law judges how to write judicial opinions.

I also believe that I have demonstrated the ability to communicate effectively through public speaking. I have made more than 200 speeches. Since September 2005, I have made more than 40 speeches to bar and other professional organizations. The following is a partial list of my speeches during that period:

1. September 22, 2005, Missouri Bar Association's Annual Convention – moderator and speaker on a panel discussion about legislative changes.
2. September 28, 2005, spoke at Zurich Insurance Company's regional seminar. I had spoken at the local seminar in April 2005.
3. October 21, 2005, spoke at the Kansas City Metropolitan Bar Association and the University of Missouri-Kansas City's Workers' Compensation Institute seminar.
4. November 19, 2005, spoke at a committee meeting for the Kansas City Metropolitan Bar Association. My topic included legislative changes and the procedures adopted by the Kansas City office in response to the changes.
5. January 18, 2006, speech to the Kansas City Metropolitan Bar Association.
6. January 26, 2006, speech on how to write awards to new administrative law judges in Jefferson City, Missouri.
7. March 15, 2006, speech at the luncheon meeting of the Kansas City Metropolitan Bar Association's workers' compensation committee.

8. April 27, 2006, speech at the Missouri Bar Association's Workers' Compensation Seminar.
9. May 2, 2006, two hours speech, presentation and training session for the Employee Health Nurses' Association's seminar in Kansas City, Missouri. The seminar provided continuing nursing education credits.
10. May 17, 2006, speech to the Kearney, Missouri, Chamber of Commerce.
11. June 5, 2006, moderator of panel discussion and speaker at the Kansas City Metropolitan Bar Association's Annual Legislative Update seminar.
12. June 24, 2006, participated on panel with judges on various courts, at the Missouri Association of Trial Attorneys' Annual Convention.
13. August 16, 2006, speaker at the Advanced Workers' Compensation Law and Practice Seminar sponsored by Sterling Education Services, Inc.
14. September 9, 2006, interviewed job applicants for attorney and legal intern positions with the Department of Labor and the Division of Workers' Compensation at the Heartland Diversity Job Fair, sponsored by the Kansas City Metropolitan Bar Association. One staff attorney and two legal interns were hired by the Department.
15. January 8, 2007, speaker at the Kansas City Metropolitan Bar Association's luncheon seminar.
16. February 2, 2007, speaker at the Missouri Insurance Auditors' Association seminar.
17. February 7, 2007, speaker at the Kansas City Metropolitan Bar Association's workers' compensation committee meeting.

18. March 30, 2007, one and one-half hours lecture at the University of Missouri-Kansas City School of Law.
19. April 18, 2007, speaker and hosted an open house at our new offices as part of the Kansas City Metropolitan Bar Association's Workers' Compensation Committee's monthly meetings.
20. April 26, 2007, speaker on a judge's perspective on the new law at the Missouri Bar Association's Workers' Compensation Seminar.
21. April 26, 2007, speaker on disability and the new law at the Missouri Bar's seminar as referenced above.
22. May 5, 2007, speaker at the University of Missouri-Kansas City's commencement exercises.
23. May 23, 2007, presented a seminar to the Missouri Employers' Mutual Insurance Company.
24. June 8, 2007, speaker at the Kansas City Metropolitan Bar Association's legislative update seminar.
25. November 30, 2007, speaker and panel member at the Evans and Dixon Law Firm's seminar.
26. December 16, 2007, speaker at the Missouri Insurance Auditors' Association seminar.
27. February 15, 2008, prepared presentation for Morrow, Wilnauer and Klosterman Law firm's seminar.
28. March 28, 2008, speaker at Fox, Stretz and Quinn Law Firm's seminar.
29. June 6, 2008, speaker at the Kansas City, Metropolitan Bar Association's legislative update seminar.

30. June 20, 2008, speaker at the Missouri Association of Trial Attorneys' seminar.
31. September 9, 2008, speaker on how to write awards at the Division of Workers' Compensation's Annual Seminar in Jefferson City, Missouri.
32. September 12, 2008, speaker at Gallagher-Basset seminar to nurses, claims adjustors and health care professionals at the Lake of the Ozarks.
33. October 17, 2008, speaker on evidence at the Kansas City Metropolitan Bar Association and University of Missouri-Kansas City's seminar. (90 minutes presentation)
34. November 4, 2008 speaker at the regional seminar for Zurich Insurance Company.
35. January 7, 2009, speaker at regional meeting of Missouri and Kansas Insurance Auditors' Association.
36. June 5, 2009, speaker at Kansas City, Metropolitan Bar Association's Legislative Update and CLE seminar.
37. June 20, 2009, speaker at Missouri Association of Trial Attorneys' seminar.
38. September 18, 2009, speaker at seminar for Travelers' Insurance Company
39. January 8, 2010, speaker at Missouri and Kansas Insurance Auditors' Association seminar.
40. April 23, 2010, speaker at Missouri Bar Association's Workers' Compensation Institute seminar.
41. May 13, 2010, speaker at Travelers' Insurance Company seminar.
42. June 4, 2010, speaker at Kansas City Metropolitan Bar Association Workers' Compensation Seminar.
43. November 17, 2010, speaker at Sterling Education Services, Inc.'s 5th Annual Workers' Compensation Law & Practice Seminar.

Finally, I have always considered public service to be an honor. In my profession I believe that there is no higher honor than to serve the public in a judicial capacity.

32. List the names and contact information (title, mailing address, telephone, and email

address) of the **five** persons whom you have requested to provide letters of reference regarding your character and judicial qualifications. Do not list as a reference any judge who currently sits in the Sixteenth Judicial Circuit.

1. Scott Mach, The Popham Law Firm, PC, 712 Broadway, Ste.100, Kansas City, Mo. 64105; (816) 512-2633; smach@pophamlaw.com
2. Brian Fowler, Evans & Dixon, LLC, 2000 City Center Sq., 1100 Main St., Kansas City, Missouri 64105-2119; (816) 472-4600; bfowler@evans-dixon.com
3. Lee Baty, Baty, Holm & Numrich, PC; 210 Plaza West Bldg., 4600 Madison Ave., Kansas City, Missouri 64112-3012; (816) 531-7201; lbaty&batyholm.com
4. Thomas Thompson, T.K. Thompson and Associates, 100 N. Main St., Ste.200, Liberty, Missouri 64068 (816) 792-4750 thompsonlaw@kc.rr.com
5. James Morrow, Morrow, Willnauer, Klosterman & Church LLC Executive Hills East, Bldg. A, 10401 Holmes, Ste.300, Kansas City, Missouri, (816) 382-1382 jmorrow&mwklaw.com

CERTIFICATION OF ACCURACY AND AUTHORIZATION FOR RELEASE OF INFORMATION

By my signature to this form, I certify that all statements made in my application for the office of Circuit Judge and attachments thereto are truthful and correct. I further certify that if I am nominated by the Sixteenth Circuit Judicial Commission and appointed to the office of Circuit Judge, I will accept the appointment and perform the duties of that office as provided by

By my signature to this form, I certify that all statements made in my application for the office of Circuit Judge and attachments thereto are truthful and correct. I further certify that if I am nominated by the Sixteenth Circuit Judicial Commission and appointed to the office of Circuit Judge, I will accept the appointment and perform the duties of that office as provided by law.

By my signature to this form, I authorize: (1) the Commission, through its Chairperson, to obtain relevant information, including but not limited to documents, records, and files, with respect to my medical, law enforcement, 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. It is my understanding that the information obtained pursuant to this authorization shall be made available only to the members of the Sixteenth Circuit Judicial Commission and their staff as necessary to perform their duties.

Notwithstanding the above, in accordance with Supreme Court Rule 10.28 (e), 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.

This certification and authorization shall remain in full force and effect until revoked by me in writing.

Kenneth J. Cain
Signature of Applicant

2-16-11
Date

Kenneth Jefferson Cain
Printed Full Name of Applicant