



Indiana Judicial Nominating Commission

30 South Meridian Street, Suite 500
Indianapolis, IN 46204
(317) 232-4706

Application for the Indiana Supreme Court

The application for the Spring 2016 vacancy on the Indiana Supreme Court includes two parts. Both Part One and Part Two must be completed. Part Two *must* be provided separately as directed in the instructions. Answers in Part One and Part Two are a matter of public record and will be supplied to the media and public upon request. However, only answers in Part One may be posted online by the Indiana Judicial Nominating Commission.

Part One, Sections 1-11

1. Contact/General Information

- A. Full legal name and any former names.

Thomas Edward Wheeler, II

- B. State the full name (use initials for minor children), age, and relationship of each person residing in your household. For each adult living in the household (other than yourself), also state the person's occupation and employer.

Karen M. Wheeler (52 years old) – Spouse
Pediatrician – Indiana University Health

Thomas E. Wheeler, III (23 years old) – Son
Student – United States Naval Academy

Jonathan A. Wheeler (20 years old) – Son
Student – DePauw University

M.L.W. (17 years old) – Son
Student – Zionsville High School

- C. Business address, email, and telephone number.

201 North Illinois Street, Suite 1900
Indianapolis, Indiana 46204
twheeler@fbtlaw.com
(317) 237-3800

- D. Attorney number.
13800-49.
- E. Month and year you were admitted to the Indiana Bar.
October 16, 1987 – Indiana.
- a. Indicate current law license status, i.e. active/inactive/retired.
Active in Good Standing.
- b. If you are or have been a member of the Bar of any other state, identify the jurisdiction and provide date(s) of admission and current license status.
Kentucky - October, 1987 – Active.
- F. Date and place of birth.
Minneapolis, Minnesota – September 12, 1962.
- G. County of current residence and date you first became a resident.
Boone County - February, 1995.

2. Secondary Education/Military Experience

- A. List all undergraduate colleges and universities you attended. Include the school name; dates enrolled; degree or certificate earned; and any academic honors, awards, or scholarships you received and when.

Butler University – September 2, 1980 through December 15, 1981,
transferred to Indiana University.

Indiana University – December 15, 1981 through May 5, 1984.

Bachelor of Science in Public Affairs
Major: Policy & Administration
Major: Law & Public Policy
- B. Include with your original application a certified transcript from each school named in Subsection 2A, and attach copies of each transcript to each application copy. (If your social security number is on your transcripts, redact it *before* copying.)

See attached under Tab “A”.
- C. If applicable, list any military service. Include the name of the military branch; dates of service; last rank achieved; and any honors, awards, or commendations received and when. Attach a copy of your Certificate of Release or Discharge from active duty (“DD 214” paperwork).

Not applicable.

3. Post-Secondary Education

- A. List all law schools, graduate schools, and post-J.D. programs attended. Include the school name; dates enrolled; degree or certificate earned; class rank; and any academic honors, awards, or scholarships you received and when.

Indiana University Maurer School of Law – August 10, 1984 through May 9, 1987.

Doctor of Jurisprudence.

1986-87 American Bar Association Moot Court team.

- B. Include with your original application a certified transcript from each school named in Subsection 3A, and attach copies of each transcript to each application copy. (If your social security number is on your transcripts, redact it *before* copying.)

See attached under Tab “A”.

4. Employment

- A. Provide your employment history since graduation from college. Include name of employer, titles or positions, locations, and dates of employment.

Middleton & Reutlinger
401 South 4th Street, Suite 2600
Louisville, Kentucky 40202
(502) 584-1135
<http://www.middletonlaw.com>
Litigation Associate – August 1987 through March, 1988.

Kightlinger & Gray LLP
One Indiana Square, Suite 300
211 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 638-4521
<http://www.k-glaw.com>
Litigation Associate & Partner – March, 1988 through December, 1997.

Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
(317) 684-5000
<http://www.boselaw.com>
Litigation Partner – January, 1998 through July, 2000.

Frost Brown Todd LLC (formerly Locke Reynolds)
201 North Illinois Street, Suite 1900
Indianapolis, Indiana 46204
(317) 237-3800
<http://www.frostbrowntodd.com>
Litigation Member – August, 2000 – Present.

- B. If applicable, describe the nature and extent of your practice of law (present and former), and provide the names of your partners, associates, office mates, and employers.

I have always been a litigator and began in 1987, as most litigators do, by handling whatever matters landed on my desk. With my first job this consisted primarily of research and writing and a lot of “motion hour” hearings, a practice unique to Kentucky where every motion, no matter how small, is heard by a designated judge, and the youngest and greenest of associates get to attend and argue about extensions of time, minor discovery disputes and the like.

I returned to Indianapolis fairly quickly to join my then fiancé (now wife of twenty-six years) who was attending the Indiana University School of Medicine. Again, my work as a litigation associate at Kightlinger & Gray involved handling whatever hit my desk. This pretty quickly evolved from small claims court cases, to generic slip and fall cases and auto accident cases, and over time to higher exposure jury trials. For the next ten (10) years I had a very busy trial and appellate practice and began developing a specialty in school litigation because of my longstanding interest in public education and the novel Constitutional issues that come up in that environment.

I was eventually recruited to join the School Law group of Bose McKinney & Evans LLP as a school litigator. During this time I also became involved on the policy side of public education which led to my long-term involvement with the National School Boards Association where I eventually became a board member and Chair of its 3,000 member Council of School Attorneys.

While I love school litigation, I found that I wanted to return to a more diverse trial practice, and had the opportunity to do that at what was then Locke Reynolds LLP. Seven years ago Locke Reynolds merged to become my present day firm of Frost Brown Todd (“FBT”). At Locke/FBT I have had the opportunity to not only continue my work with schools, but also to enmesh myself in a much more diverse and complex litigation practice ranging across several states, many federal jurisdictions, and the United States Supreme Court where I have done a fair bit of *amici* work.

Middleton & Reutlinger
Litigation Associate
Mark S. Fenzel, Esq. – (502) 625-2769

Kightlinger & Gray LLP
Litigation Associate
Litigation Partner
Donald Dawson, Esq. – (317) 968-8133
Thomas J. Jarzyniecki, Jr. – (317) 968-8163
Robert M. Kelso – (317) 968-8154

Bose McKinney & Evans, LLP
Litigation Partner – Governmental Litigation – Constitutional Law
Mary M. Ruth Feldhake – (317) 684-5132
George T. Patton Jr. – (202) 470-1944

Frost Brown Todd LLC
Litigation Member – Governmental Litigation – Constitutional Law
Julia B. Gelinis, Esq. (317) 237-3845
Kevin C. Murray (317) 237-3855

During my time in practice I have received the following awards, honors, and recognitions:

- Two-time winner, Benjamin Harrison Writing Award, Indiana State Bar Association, 2003 and 2005;
- 2004 Burton Award for Legal Achievement, co-sponsored by the United States Library of Congress;
- The Best Lawyers in America®, 2007–2015;
- Indiana Super Lawyers®, 2009–2010, 2012–2015;
- AV® Rated, Martindale-Hubbell®; and,
- Indianapolis Bar Foundation Distinguished Fellow.

5. Trial/Judicial Experience

A. Describe the extent of your jury trial experience, if any.

I have tried several dozen jury trials, mostly first chair, over the last thirty (30) years in both state and federal courts. A representative listing of cases is attached under Tab “B”.

B. Describe the extent of your bench trial experience, if any.

I have tried more than one hundred bench trials in various venues including administrative proceedings, state and federal court (including temporary restraining orders, preliminary injunction hearings and similar matters), pupil discipline proceedings, teacher termination due process proceedings and related matters. See Tab “B”.

- C. If applicable, describe the nature and extent of your judicial experience (including as a judge *pro tempore*). Include a description of your experience presiding over jury trials, if any.

Following my appointment by Governor Mitch Daniels to be Chair of the four member Indiana Election Commission¹ I gained extensive experience acting as an administrative law judge over a six (6) year period. After the 2010 election I was also asked to serve as Chair of the three member Indiana Recount Commission when the Secretary of State was disqualified due to alleged voter fraud.² The bench trials presided over and ultimate decisions made during the time I chaired these two different and highly partisan commissions were characterized by collegiality and were almost always unanimous. They have resulted in a number of appellate decisions including ones by the Indiana Supreme Court affirming our decisions. See e.g. *Charlie White, Thomas E. Wheeler, II, Gordon Durnil, and Bernard L. Pylitt, in their official capacities as members of the Indiana Recount Commission v. Indiana Democratic Party ex rel. Parker*, 963 N.E.2d 481 (Ind. 2012) (affirming Recount Commission decision in highly publicized and contested Secretary of State election); *Wyatt v. Thomas Wheeler, et al.*, 963 N.E.2d 232 (Ind.Ct.App. 2010); and, *MicroVote Gen. Corp. v. Indiana Election Comm'n*, 924 N.E.2d 184 (Ind.Ct.App. 2010).

6. Professional Experience

Include as writing samples, four selections (in total) from the written materials listed below in Subsections 6A – 6C.

- A. If applicable, list up to five trial or appellate briefs and/or judicial opinions you have written. Refer to them by caption, case number, and filing date.

[1] **Student Drug Testing Case (U.S. Supreme Ct.)** - Drafted *amicus* brief for National School Boards Association before the United States Supreme Court in the successful defense of a school drug testing policy against a 4th Amendment challenge by a student. *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls*, 536 U.S. 822 (2002). A copy of which is attached under Tab “C-1”.

¹ <http://www.in.gov/sos/elections/2404.htm>.

² <http://www.in.gov/sos/elections/2919.htm>.

[2] **Constitutionality of Lake County Tax (Ind. Supreme Ct.)** - *Dep't. of Local Gov't. Finance v. Griffin*, 784 N.E.2d 448 (Ind. 2003) briefed and argued case to the Indiana Supreme Court on the constitutionality of the HCI tax under Article 10, § 1 of the Indiana Constitution as applied to Lake County taxpayers.

[3] **Scope of Employment Tort Issue (Ind. Supreme Ct.)** - Drafted *amici* brief and argued case to the Indiana Supreme Court in *Barnett v. Clark*, 889 N.E.2d 281 (Ind. 2008) in successful appeal regarding scope of employment issues for a municipal employee.

[4] **Appeal of Administrative Determination (Ind. Supreme Ct.)** - *First Am. Title Ins. Co. v. Robertson ex rel. Indiana Dep't of Ins.*, 990 N.E.2d 9 (Ind.Ct.App.) *reh'g denied* (June 28, 2013), *transfer granted, opinion vacated*, 997 N.E.2d 356 (Ind. 2013) *and opinion Aff'd in part, vacated in part sub nom. First Am. Title Ins. Co. v. Robertson*, 19 N.E.3d 757 (Ind. 2014) *amended on reh'g*, 27 N.E.3d 768 (Ind. 2015) drafted all briefs at all levels.

[5] **Constitutionality of School Christmas Program (N.D.Ind.)** - *Freedom From Religion Foundation v. Concord Community Schools*, Cause No. 3:15-CV-00463-JD-CAN, currently pending in the United States District Court for the Northern District of Indiana, South Bend Division. Defending Concord High School's "Christmas Spectacular" from 1st Amendment Establishment Clause Challenge based on use of a nativity scene. A copy of the School's Reply Brief in this matter is attached under Tab "C-2".

- B. If applicable, list up to five legislative drafts or court rules you have written or to which you contributed significantly. Refer to them by official citation, date, and subject matter.

[1] **Insurance Rating Bureau Legislation** – In 2013, based on concerns over the issuance of homeowners' title insurance policies in Indiana I drafted legislation amending the insurance code and creating a rating bureau to set title insurance rates (Senate Bill 370) the bill passed nearly unanimously and was eventually codified at I.C. § 27-1-22-28 *et seq.*

[2] **Protection for teachers imposing reasonable discipline on students** – At Governor Mitch Daniels' request, and in cooperation with the Indiana State Teachers Association and the Indiana School Boards Association, I drafted a statute that provided protection to teachers who act reasonably in disciplining students under validly adopted school discipline policies. This bill was codified at I.C. § 34-13-3-3(20).

- C. If applicable, list up to five of your contributions to legal journals or other legal publications. Provide titles, official citations, and a brief description of the subject matter.

[1] *Facebook Fatalities, Social Networking, and the First Amendment*, 31 Pace L. Rev. 182 (2011); A copy of which is attached under Tab "C-3".

[2] *Lessons from the Lord of the Flies: The Responsibility of Schools to Protect Students from Internet Threats and Cyber-Hate Speech*, 215 Ed.Law Rep. 227 (February 22, 2007).

[3] *Striking a Faustian Bargain: The Boundaries of Public Employee Free Speech Rights*, Res Gestae (September, 2006). This article received the Indiana State Bar Association's 2005 Harrison Legal Writing Award which commemorates the first president of the Indiana State Bar Association, former U.S. President Benjamin Harrison and recognizes articles of significant subject matter, practicality and timeliness, with high quality research and legal analysis. A copy of which is attached under Tab "C-4".

[4] *Slamming in Cyberspace: The Boundaries of Student 1st Amendment Rights*, The Computer & Internet Lawyer, Vol. 21, No. 4, p. 14 (April, 2004). This article received the prestigious Burton Award for Legal Achievement, co-sponsored by the United States Library of Congress as well as the Indiana State Bar Association's 2003 Harrison Legal Writing Award.

[5] *Defining Judicial Activism Under the Indiana Constitution*, Indiana Lawyer (October 24, 2000).

These writings have been cited in pleadings filed with various appellate courts, including several filed with the United States Supreme Court. See e.g. Petition for Writ of Certiorari, *Blue Mountain School Dist. v. Snyder*, 2011 WL 5014761 (U.S.), 23; Amicus Brief, *Easton Area School Dist. v. B.H.*, 2014 WL 69412 (U.S.), 7.

- D. Identify the five most significant legal matters entrusted to you, whether as a judge or lawyer, and describe why you believe them to be so.

Combatting Student Drug Use:

I am not sure how many matters this would count as, but probably the most important set of matters entrusted to me over the years involves my efforts to assist schools in combating student drug use. As I saw the degree to which drugs had infiltrated schools and the consequent damage being done to our youth, I felt that student drug testing was one way to combat the rampant drug use. I did this not because such programs catch kids, by and large they do not catch drug use, but because studies show that they are fairly effective in deterring drug use by giving kids a reason to say no. To that end I have successfully litigated drug testing cases throughout the United States and here at home in Indiana. While I will not say that this is the chief reason, or even one of the top three reasons why there has been a marked decrease in teenage drug use according to the annual Monitoring the Future survey of drug use and attitudes among American 8th, 10th, and

12th graders³, I believe that my work in asserting the constitutionality of this important tool was at least one small factor.

My efforts in this regard include the following cases:

- *Board of Education of Tecumseh v. Lindsay Earls*, 536 U.S. 822 (U.S. 2002) (Drafted *amicus* brief for the National School Boards Association in Supreme Court's rejection of student's 4th Amendment challenge to student drug testing program).
- *Joy v. Penn-Harris-Madison School Corporation*, 212 F.3d 1052 (7th Cir. 2000) (Obtained summary judgment for school in 4th Amendment challenge to school's extracurricular student drug testing program).
- *Willis v. Anderson Community School Corporation*, 158 F.3d 415 (7th Cir. 1998) *cert. denied* (March 22, 1999) (Drafted *amicus* brief for Indiana School Boards Association on Petition for *Certiorari* to the United States Supreme Court in student drug testing case).
- *Northwestern School Corporation v. Linke*, 734 N.E.2d 252 (Ind.Ct.App.) *vacated and reversed* 763 N.E.2d 972 (Ind. 2002) (Briefed and argued case where Indiana Supreme Court affirmed a school's drug testing policy under Article I, § 11 of the Indiana Constitution).

I have also spoken and written extensively on these issues, including a number of high profile national debates with my friends from academia and the American Civil Liberties Union⁴:

- "Drug Testing and Schools", Indiana Civil Liberties Union, Indianapolis, Indiana (December 10, 2004).
- Debate with ACLU Executive Director Steve Shapiro on Student Rights in Schools (1st & 4th Amendment rights), National School Boards Association's Annual Conference, New Orleans, Louisiana (April 5, 2002).
- *National Public Radio: Justice Talking*. Nationally broadcast debate with American University Constitutional Law Professor Jamine

³ "2014's Monitoring the Future survey of drug use and attitudes among American 8th, 10th, and 12th graders continued to show encouraging news about youth drug use, including decreasing use of alcohol, cigarettes, and prescription pain relievers; no increase in use of marijuana; decreasing use of inhalants and synthetic drugs, including K2/Spice and bath salts; and a general decline over the last two decades in the use of illicit drugs." <http://www.drugabuse.gov/publications/drugfacts/high-school-youth-trends>.

⁴ A complete listing of my legal writing and speeches presented in chronological order is attached under Tab "D".

Raskin on student 1st and 4th Amendment rights, Philadelphia, Pennsylvania (2001).

Combatting Cyberbullying and Student Suicide:

A second, and just as important legal matter that I tackled was the heartbreaking issue of cyberbullying and student suicide. In conjunction with my school practice I saw that as the internet became more pervasive, children acted as they sometimes do, with a great deal of cruelty to one another, frequently from behind the anonymous cloak of the internet. As I saw the nature and frequency of these cases increase dramatically in my practice, including student bullying suicide cases (*see e.g. Estate of Lucas v. Greensburg Community School Corporation, et al.*, Cause No. 1:12-CV-1249-SEB-DKL), I felt a need to educate schools and the public about this danger. To that end I wrote and spoke extensively on the dangers posed as well as the Constitutional limitations on schools' abilities to address student speech on the internet through the disciplinary process. In various law review articles I suggested innovative legal frameworks that would allow schools to address this conduct within the limitations imposed by the 1st Amendment, several of which were subsequently adopted by the courts.⁵

⁵ See e.g. "Student Free Speech Issues", National School Boards Association's Annual Conference, San Francisco, California (April 7, 2003); "Can You Shout Food Fight in a Crowded Cafeteria?", Virginia Commonwealth University, Virginia Education Law Conference, Williamsburg, Virginia (April 25, 2003)(EA# 032481); "Slamming in Cyberspace: The Boundaries of Student 1st Amendment Rights", Res Gestae (October, 2003); "Fools' Names and Fools' Faces ... Internet Temptations", Indiana Lawyer (January 28, 2004); "Slamming in Cyberspace: The Boundaries of Student 1st Amendment Rights", The Computer & Internet Lawyer, Vol. 21, No. 4, p. 14 (April, 2004); "Slamming in Cyberspace: The Boundaries of Student 1st Amendment Rights", American School Board Journal, (January, 2005); "Lessons from the Lord of the Flies: The Responsibility of Schools to Protect Students from Internet Threats and Cyber-Hate Speech", The Journal of Internet Law, Vol. 10, No. 1, p. 3 (July, 2006); "Cyberbullying: What Should Schools Know and Do", Educator's Guide to Controlling Sexual Harassment, Vol. 14, No. 8 (May, 2007); "Lessons from the Lord of the Flies: The Responsibility of Schools to Protect Students from Internet Threats and Cyber-Hate Speech", 215 Ed.Law Rep. 227 (February 22, 2007); "Lessons from the Lord of the Flies: Techniques for Handling Cyberbullying", Indiana School Boards Association's School Law Seminar, Indianapolis, Indiana (December 14, 2007); "How far is too far? Limiting cyber-speech by students", School Board News, (April 2008); "1st Amendment Rights of Students", American Civil Liberties Union of Indiana Legal Seminar, Indianapolis, Indiana (December 5, 2008); "Cell Phones in Schools", Indiana School Boards Association's School Law Seminar, Indianapolis, Indiana (December 12, 2008); "Hold Your Tongue, Mates: Cyber-Bullying and the Boundaries of Student Free Speech", 2009 PGIT® Membership Conference, "Navigation through Education", Orlando, Florida (May 7, 2009); "Tips and Tactics for Responding to Cyber-Bullying and Other Problem Electronic Communications", National School Boards Association Annual Conference, San Diego, California (April 5, 2009); "Dangers of Cyberspeech: Cyber-Bullying, Cyber-Communication, and Sexting", Indiana School Safety Specialist Academy, Indianapolis, Indiana (October 26, 2010); "The 1st Amendment in the Classroom", Indiana State University, Guest Lecturer (November 18, 2010); "Problems with Predators: The Dark Side of Social Networking", Indiana School Boards Association's School Law Seminar, Indianapolis, Indiana (December 10, 2010); "Student Cyberspeech, Facts & Figures", Boone County Juvenile Justice Meeting Lebanon, Indiana (March 2010); "Issues with Electronic Communication", Indiana State University, Guest Lecturer (April 14, 2010); "Dangers of Cyberspeech: Cyber-Bullying, Cyber-Communication, and Sexting", Indiana School Safety Academy, Indianapolis, Indiana (April 19, 2010); "Cyberlaw Seminar: RU on FACEBOOK?", Ohio School Boards Association Conference, Columbus, Ohio (May 19, 2010); "Facebook Fatalities: Student, Social Networking, & the 1st Amendment", National School Boards Association Annual Conference, San Francisco, California (April 10, 2011); "Hazing in Schools - A School Attorney's Guide",

IMPD/Marion County Sheriff's Labor Negotiations:

In 2007 Indianapolis Mayor Bart Peterson and Marion County Sheriff Frank Anderson asked me to take over as lead negotiator in what at the time were very contentious negotiations with the Fraternal Order of Police, Lodge 86 which represented the Indianapolis Police Department ("IPD") Officers and Marion County Sheriff's Department ("MCSD") Deputies. This was during the merger between IPD and the MCSD, and at the time the officers had been without a contract for more than two years.

Because of the failed negotiations the officers were very upset and began to engage in a series of protests and job actions including incidents of blue flu, work slowdowns, and outright protests including outbursts at a City-Council meeting where press reports indicated that "Officers crowded a city-county council meeting then took their protest outside the RCA Dome, 6 News' Dan Spehler reported." At the Colts game the officers protested and handed out thousands of flyers: "'It says, 'Bart lied,' and it refers directly to the retroactive pay and the promise of a contract,' said Indianapolis police Officer Shay Foley."

Mayor Peterson, also frustrated, responded to the protests as follows: "'Look, I'm used to this. This is the same thing that happened four years ago when the whole effort was made to ... get rid of me because they wanted somebody they could control better,' Peterson said. 'They know they can't control me. So, the reality is I'm just going to keep doing what I'm doing—stand up for the people of this city.'"⁶ The FOP had a similar position: "'Everybody is really, really angry. Morale is at an all-time low, but sometimes administrations don't want to hear that,' said Aaron Sullivan, the local president of the Fraternal Order of Police."⁷

Because of the stalemate and the direct impact on public safety from these job actions, Mayor Peterson and Sheriff Anderson asked me to restart negotiations as leader of the new combined Indianapolis Metropolitan Police Department negotiating team. This request was based on strong relationships with the rank and file officers whom I had defended in the past for the City of Indianapolis, and the fact that my brother was a Lieutenant with IMPD. After four months of intense negotiations our team was able to overcome the rancor, and in June of 2007 settled a three-year contract whose framework has been the basis for all subsequent contracts between the City and IMPD. There has been no subsequent labor strife.

NSBA/COSA's Inquiry & Analysis (April, 2011); and "*Student Free Speech in the Age of Social Media, Texting and Sexting*", ABA Section of Litigation, Annual CLE Conference, Washington D.C. (April 19, 2012).

⁶ <http://www.theindychannel.com/news/mayor-responds-to-police-protest>.

⁷ http://www.fop.net/servlet/display/news_article?id=201&XSL=xsl_pages%2Fpublic_news_individual.xsl&nocache=28697137

Charlie White Secretary of State Dispute:

As former Chief Justice Shepard characterized the dispute in this matter: “This case comes before us only after deliberative actions taken by the executive branch, the Indiana Recount Commission, the General Assembly, the court system, and—most significantly—almost two million Indiana voters who cast their ballots for Secretary of State in November 2010. The Indiana Democratic Party sought to have the winner in the election, Republican Charlie White, declared ineligible to assume office because he had not been registered to vote at the address at which he resided on July 15, 2010, the deadline for certifying candidates for state office. The Indiana Recount Commission dismissed this petition and later denied it, but the Marion Circuit Court reversed.” *Charlie White, Thomas E. Wheeler, II, Gordon Durnil, and Bernard L. Pylitt, in their official capacities as members of the Indiana Recount Commission v. Indiana Democratic Party ex rel. Parker*, 963 N.E.2d 481, 482-483 (Ind. 2012).

After the challenge was filed to Mr. White’s election as Secretary of State, Governor Mitch Daniels appointed me to Chair the bi-partisan Indiana Recount Commission which acted as a three-judge panel to resolve the dispute. In the harsh glare of the media spotlight⁸, after several days of evidence and argument, we issued a unanimous decision upholding Mr. White’s election despite our concerns about his actions, because Mr. White’s conduct, while highly questionable, technically complied with Indiana’s antiquated residency laws. As the press reported at the time:

Indiana Democratic Party Chair Dan Parker, who brought the complaint against White, says he got off on a technicality and should not continue to serve. “Well,” he said, “given the admonition he just got from the chairman of this commission I think he has absolutely no credibility to enforce the election laws of this state.”

White wouldn’t comment on Parker’s remarks about his conduct, saying that while he’s happy with the result, he’s disappointed by everything that led up to the decision. “I never thought, in a million years,” he said, “that politics would get so personal and dirty.”

Though the Recount Commission ruled unanimously for White, declaring him to be eligible for office, commission chairman Tom Wheeler says he feels like their hands are tied because of the wording of voter registration laws. “These laws are antiquated,” he said. “They don’t reflect our current society.” Wheeler says the legislature needs to address what he calls a flaw in the system. White

⁸ <http://www.theindianalawyer.com/article/print?articleId=27817>.

echoed Wheeler's comments, saying he hopes the general assembly updates the law.⁹

As noted in the quote, which was made from the bench as part of our ruling, while we felt that Mr. White had engaged in misconduct, under the laws as written there was simply no basis to remove him from office. This was a difficult decision in a highly publicized and partisan case, but was ultimately the right one as noted by the Indiana Supreme Court: "We therefore reverse the decision of the trial court and affirm the Commission's dismissal." *White*, 963 N.E.2d at 490.¹⁰

Estate of Stavos v. Lucas:

In this case I had the opportunity to assist a mother and a small child whose father was killed in an automobile accident. The case involved a whitewash of the true cause of the accident to protect the teenage driver of the car that killed Peter Stavos, a construction worker. The accident occurred in Carmel, Indiana in the late evening and there were no witnesses to the accident other than the teenager, who did not recall what had happened. The initial accident reconstruction done by a police officer who also happened to be employed as a part-time security guard for the teenager's father determined that Mr. Stavos had been speeding at the time of the accident based upon a long "skid mark" that led toward the collision location. Based on the reconstruction the teenager's family sued the Estate of Mr. Stavos alleging negligence on his part and seeking damages.

When I began looking at the case I noted several anomalies. For example, the original investigating officer believed that Mr. Stavos was intoxicated based on the fact that there were a large number of opened beer cans in the bed of his truck, yet the autopsy showed he had no blood alcohol content. It turned out that Mr. Stavos collected empty aluminum cans from his job sites and sold them to support his two year old daughter who was then living with her mother in New Orleans. In addition, when we looked at the so-called "skid mark" we discovered that it started in a fresh patch of asphalt and continued to the collision location. The "skid mark" faded in color, and also showed a repeating tire defect, indicating that the car was not skidding, but instead the tires were rotating, negating the possibility of a skid. With the elimination of the "skid mark", there was no evidence of speeding and the subsequent reconstruction experts all concluded that the

⁹ <http://indianapublicmedia.org/news/white-eligible-run-office-recount-commission-17272>.

¹⁰ Mr. White was ultimately convicted in "February 2012 of six Class D felony charges, which stemmed from his residency while he served on the Fishers Town Council" which included charges of theft, perjury, and voter fraud. <http://www.indystar.com/story/news/politics/2014/12/29/appeals-court-throws-convictions-charlie-white-case/20999255>. The Indiana Court of Appeals affirmed the conviction on three of the felonies and overturned the others as duplicative. *White v. State*, 25 N.E.3d 107 (Ind.Ct.App. 2014), *reh'g denied* (Mar. 12, 2015), *transfer denied*, 34 N.E.3d 685 (Ind. 2015) and *cert. denied*, No. 15-6542, 2015 WL 6005347 (U.S. Dec. 7, 2015).

accident was the fault of the teenager who had turned directly in front of Mr. Stavos.

Based on this information I brought a counterclaim on behalf of Mr. Stavos' two year old daughter. The teenager's attorneys eventually agreed to dismiss the underlying lawsuit and settled the wrongful death claim by creating a trust fund for Mr. Stavos' daughter, but not until after a decision was rendered in the Estate's favor by the Indiana Court of Appeals. *See Lucas v. Estate of Stavos*, 609 N.E.2d 1114, 1116 (Ind.Ct.App. 1993). I believe I had the opportunity to prevent a miscarriage of justice with this representation.

7. Efforts to Improve the Legal System, Administration of Justice, or Society

- A. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) toward the improvement of the law, the legal system, or the administration of justice. Include a description of any management or leadership roles you undertook to achieve these goals, and describe any specific instances in which your collaborative efforts helped achieve these goals.

I have a tremendous interest in the Indiana Constitution, its genesis, its development, and its impact on Indiana jurisprudence. This began during my time at the Indiana University School of Law where I took every Constitutional Law class taught by the late Pat Baude. I was also fortunate to be permitted to work with him on an independent research project for his 1987 article, "Is There Independent Life in the Indiana Constitution?"¹¹ which was written my last year in law school.

As a young practicing attorney I watched with great interest and was deeply influenced by the ongoing discourse between former Chief Justice Shepard, Chief Justice Dickson, other members of the Court, and Professor Baude over the extent to which the Indiana Constitution expands individual rights beyond the federal standard. *See e.g.* Hon. Randall T. Shepard, *Second Wind for the Indiana Bill of Rights*¹² and subsequent articles recently summarized former Justice Frank Sullivan, Jr.¹³

In addition to litigating some of the key cases during that period of time (*see e.g. Northwestern School Corporation v. Linke*, 763 N.E.2d 972 (Ind. 2002) and *State v. Gerschoffer*, 763 N.E.2d 960 (Ind. 2002)), I also had the opportunity to participate in this discourse directly by chairing a legal education program which included Professor Baude, former Chief Justice Shepard,

¹¹ Patrick Baude, "Is There Independent Life in the Indiana Constitution?", 62 Ind. L.J. 263 (1987).

¹² Randall T. Shepherd, "Second Wind for the Indiana Bill of Rights," 22 Ind.L.Rev. 575 (1989).

¹³ Frank Sullivan, Jr., "Selected Developments in the Indiana Constitutional Law (1993-2012)", 47 Ind.L.Rev. 1217 (2014).

former Chief Justice Dickson and other luminaries discussing these topics for the Indiana Continuing Legal Education Foundation.¹⁴ I also had the opportunity to discuss this topic for the Indiana Historical Society in “*What Makes Indiana Special: The 1851 Indiana Constitution*” presented at the Indiana Historical Society’s 81st Annual Indiana History Conference, in November of 2011. Over the years I have written and taught extensively on this topic.¹⁵

Other examples of my efforts to improve the law, the legal system, and the administration of justice are discussed under prior or subsequent sections of this application such as my efforts to combat student drug use, cyber-bullying, and to promote election reform. In addition to my public speaking and writing on these issues, I have also been an aggressive advocate for them in leadership roles in various professional and bar associations, including an eight year stint as the Indiana representative on the Seventh Circuit Bar Association’s Board of Governors, service as President of the Indianapolis Chapter of the Federal Bar Association, eleven years of service on the Board of Directors for the National School Boards Association’s Council of School Attorneys, and service as a Board member and Vice-Chair for Programming for the Republican National Lawyers Association.

I also served as a member of the Steering Committee for the Historical Society of the United States District Court for the Southern District of Indiana, Inc. and as a lead fundraiser for the 2003 Centennial Celebration of the historic Birch Bayh Federal Building and United States Courthouse in Indianapolis.

Finally, I also had the honor of being a chapter author for the Indiana Historical Society’s publication, *Justices of the Indiana Supreme Court* published in 2010.

- B. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) concerning civic, political, or social issues. Include a description of any management or leadership roles you undertook in this area, and describe any specific instances in which your collaborative efforts in this area led to a successful result.

¹⁴ “*Suing the Sovereign: New Theories, New Defenses*”, Indiana Continuing Legal Education Foundation, Indianapolis, Indiana (April 27, 1999).

¹⁵ See e.g. “*Indiana Supreme Court Clarifies Search Standards Under Indiana Constitution*”, Indiana Municipal Lawyers Association (Spring, 2002); “*Indiana Constitutional Claims*”, Municipal Law XVIII, Indiana Municipal Lawyers Association/Indiana Association of Cities and Towns, Indianapolis, Indiana (June 12, 2001); “*Drugs, Alcohol & The Indiana Constitution*”, Indiana Association of Cities & Towns: Actionlines (June, 2001); “*Drug Testing and Other Searches Under the Indiana Constitution*”, Indiana School Boards Association, Indianapolis, Indiana (December 7, 2000); “*Message in a Bottle: Judicial Activism Under the Indiana Constitution*”, Defense Trial Counsel of Indiana Annual Meeting, Indianapolis, Indiana (November 16, 2000); “*Defining Judicial Activism Under the Indiana Constitution*”, Indiana Lawyer (October 24, 2000); “*Skating on the Edge of Malpractice: Claims under the Indiana Constitution*”, Indiana Lawyer (April 1, 1999).

Military Voting Rights and Election Integrity:

I grew up during the 1960s and 1970s in the Vietnam War era. During these formative years I lived on various military bases including Eglin Air Force Base in Florida and Bolling Air Force Base in Washington, D.C. These experiences led me to have some very strong feelings about our Nation's military and the sacrifices that the men and women in uniform make to keep us safe. These feelings, shared by my family, no doubt influenced my oldest son's decision to attend the United States Naval Academy, where he will graduate this summer and then attend flight school.

A key area where I believe our Nation's service members have been slighted involves their ability to cast votes and to have those votes counted, particularly during times of conflict where these individuals may be based in remote areas around the world. My interest in this area became crystallized during the 2000 presidential election when I was involved in the recount in Florida which revealed that thousands of validly cast military ballots were thrown out.¹⁶

These experiences led me to take a very active role on voting rights issues and ensuring that elections are open, free, and honest. To that end, in addition to my work here in Indiana, I have taken a national leadership role primarily through my service as Vice-Chairman for the Republican National Lawyers Association. During this time I have spoken frequently to national audiences on voting rights issues, including appearances on NPR and the BBC. I have also testified in legislative hearings on election integrity issues, primarily photo identification laws, based on my experiences in implementing Indiana's Photo ID law when I chaired the Indiana Election Commission.¹⁷ Finally, in 2012 I represented a broad

¹⁶ See e.g. *Bush v. Hillsborough Cty. Canvassing Bd.*, 123 F. Supp. 2d 1305 (N.D. Fla. 2000) where the Bush campaign sued five Florida counties for discarding 1,547 overseas military and overseas absentee ballots — about 40 percent of the total Florida received, because they did not have a postmark. Judge Collier found that this process violated the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) and disenfranchised military voters.

¹⁷ See e.g. “EAC and Military Voting Issues.” Panel Chair, Republican National Lawyers Association Annual Election Law School, Las Vegas, Nevada (August 11, 2014); “Ethics in Campaigns, an Oxymoron?” Republican National Lawyers Association, Election Law School, Chicago, Illinois (August 7, 2013); “Are We Ready for the New Politics?” BGD Legislative Conference, Indianapolis, Indiana (December 13, 2012); “Litigation Over Indiana's Photo ID Law.” Republican National Lawyers Association, Election Law School, Sarasota, Florida (August 24, 2012); “Election Commission and Recount Commission Proceedings.” Indiana Continuing Legal Education Foundation, Indianapolis, Indiana (December 22, 2011); “Indiana's Photo ID Law and ACORN Voter Fraud.” Republican National Lawyers Association National Election Law School, Ronald Reagan Presidential Library, Simi Valley, California (August 14, 2009); “Indiana's Photo ID Law.” Testimony to the Texas Senate meeting as a Joint Committee, Austin, Texas (March 10, 2009); “Election Law.” Seminar Chair, Indiana Continuing Legal Education Forum, Indianapolis, Indiana (March 18, 2008); “Same Day Voting and Voter Registration.” Republican National Lawyers Association 2004 Election Law School, Milwaukee, Wisconsin (July 17, 2004).

based consortium of military groups in defending their right to vote when they intervened in *Obama for American v. Husted*, 888 F.Supp. 2d 877, *aff'd* 697 F.3d 423 (6th Cir. 2012). I believe that my efforts have, in small part, helped to improve the integrity of elections, not only in Indiana but throughout the United States.¹⁸

Naval Academy Selection Committee:

I have been privileged to serve on Congresswoman Susan Brooks' United States Academy Nomination Committee for the last few years, reviewing applications interviewing candidates, and making recommendations to the Congresswoman on appointments to the United States Naval Academy.

Elective Service & Lucas Oil Stadium:

I also had the privilege of serving as an elected member of the Boone County Council beginning in 2002 and concluding in 2005 when I resigned after being appointed by Governor Mitch Daniels to Chair the Indiana Election Commission. While I was on the Boone County Council I was asked by Governor Daniels to help spearhead the "doughnut county" involvement in funding for the construction of Lucas Oil Stadium, and successfully worked with the administration and the counties to draft, pass, and implement the multi-county food and beverage tax which was a key component of the stadium project.

- C. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) to improve your local, state, or national community through charitable work or public service. Include a description of any management or leadership roles you undertook in this area, and describe any specific instances in which your collaborative efforts in this area led to a successful result.

National School Boards Association Board of Directors/Council of School Attorneys Chairman.

As discussed in other sections of this application, I have a passion for the public education system, and have spent much of my career working to preserve and enhance the system. This includes twelve years of service as a member of the Board of Directors for the National School Boards Association and its Council of School Attorneys, culminating in a stint as Chairman of the Council of School Attorneys.¹⁹ These roles allowed me a

¹⁸ A University of Missouri study by Professor Jeffrey Milyo found that Indiana's photo voter ID law had no effect on voter turnout in counties with higher concentrations of minority, poor, elderly or less educated voters, indeed voter turnout actually increased in counties with Democratic majorities after the implementation of the photo identification law. See http://www.in.gov/sos/elections/files/EffectsPhotographicIdentificationVoter_-_Jeffrey_Milyo.pdf.

¹⁹ The NSBA represents state school boards associations and their more than 90,000 local school board members and through them more than 50,000,000 students nationwide. NSBA advocates for equity and excellence in

pulpit to champion public education as well as to attack the scourges of student drug use and cyberbullying as noted in preceding sections.

Indiana School Safety Academy.

I was one of the founding members of the Indiana School Safety Academy, which was created following the tragic school shootings in Columbine. Since that time I have worked extensively with the Academy in curriculum development, and have been a featured speaker at many of its annual training sessions.²⁰

Timmy Global Health.

Because of my belief that certain issues transcend national boundaries, I have been involved in Timmy Global Health. Timmy Global Health's goal is to expand access to healthcare and empower students and volunteers to tackle today's most pressing global health challenges. Timmy sends medical service teams to support the work of international partner organizations and channels financial, medical, and human resources to community based health and development projects throughout Central and South America and the Caribbean. <https://timmyglobalhealth.org>. I am a member of the Board of Directors and Chair the Fundraising Committee.

- D. Describe the nature and extent of any *pro bono* legal services you have contributed.

Pro bono service was actually the conduit for discovering my passion for litigation. I was, at best, an indifferent student in law school (which my grades reflect) because it was difficult for me to see the "real life" application of what was being taught. Fortunately for me an adjunct SPEA professor who was also a lawyer, John Irvine, invited me to volunteer at an entity he operated called Student Legal Services ("SLS"). As noted on its website: "SLS is a non-profit, on-campus law office serving only IU students. We have a staff of highly qualified attorneys and legal interns to walk you through the process of finding the solution to your legal situation." <https://getlegal.indiana.edu/home.php>. John allowed me to be an intern throughout my law school career, and I usually spent 10 to 20 hours a week as an SLS legal intern providing *pro bono* legal services to Indiana University students.

public education and believes that education is a civil right necessary to the dignity and freedom of the American people, and all children should have equal access to an education that maximizes his or her individual potential. <https://www.nsba.org>.

²⁰ "Investigating Student Sexual Misconduct", Indiana School Safety Academy (September 30, 2015); "Shooting in Martinsville, A School in Crisis: Tips & Tactics for Handling Parents, Police & Press", Indiana School Safety Academy (April 24, 2012); "Dangers of Cyberspeech: Cyber-Bullying, Cyber-Communication, and Sexting", Indiana School Safety Academy, Indianapolis, Indiana (April 19, 2010); "Why is it so Hard to Fire Bad Teachers?" Indiana Department of Education, Indianapolis, Indiana (July 16, 2009).

As with most *pro bono* activities, I received far more than I gave. This three year stint interviewing clients, analyzing legal issues, and preparing and assisting attorneys in litigating cases (and in my 3rd year actually litigating cases under the supervision of an attorney) instilled in me a life-long passion for litigation and a belief in the jury system that has not waned over the years.

Since that time I have engaged in a wide variety of *pro bono* activities, ranging from “Ask a Lawyer” programs to helping on the “We the People Competition” to providing advice and programs on issues such as combatting student drug use and cyberbullying as discussed in detail in earlier sections.

I also frequently provide free legal services in the context of the electoral process. These services range from assisting small entities with setting up political action committees, local candidates in setting up campaign committees, and serving in numerous deployments throughout the United States for entities ranging from Presidential and Senatorial candidates to local school board candidates and everything in between.²¹ This also includes acting as counsel for and a Board Member of Indiana Works, a charity which has distributed hundreds of thousands of dollars to various needy Indiana organizations, including more than \$100,000.00 to the Indiana National Guard Relief Fund.

- E. Indicate your experience teaching law. Provide the dates, names of institutions or programs, and a description of the subject matter taught.

In addition to my interests in public education and voting rights and my efforts in that regard, as noted earlier I have a very specific interest in teaching about the 1851 Indiana Constitution in various forums. I have also been involved extensively with the Indiana Continuing Legal Education Foundation on a wide variety of topics, both as a speaker and as a seminar organizer and chair.²² I have also been a guest lecturer on legal

²¹ Some notable activities in this regard include 2014 NRSC Deployment, Joni Ernst for Senate, Iowa; 2014 Bruce Petit for Boone County Judge; 2012 Mitt Romney for President; 2008 John McCain for President; 2008 Mitch Daniels for Governor; 2005 Virginia Republican Party; 2004 RNC 72 Hour Deployment, Pennsylvania & Florida; 2004 Mitch Daniels for Governor; 2000 Volunteer Attorney Bush/Cheney Recount Florida.

²² See e.g. “*Election Commission and Recount Commission Proceedings*”, Indiana Continuing Legal Education Foundation, Indianapolis, Indiana (December 22, 2011); Seminar Chair - “*Election Law*”, Indiana Continuing Legal Education Forum, Indianapolis, Indiana (March 18, 2008); “*Suing the Sovereign: New Theories, New Defenses*”, Indiana Continuing Legal Education Foundation, Indianapolis, Indiana (April 27, 1999). “*The Requirements of Trial Rule 56*”, Co-Author, Indiana Continuing Legal Education Foundation (1993).

topics at various colleges and universities²³ as well as many bar association legal education events.²⁴

Finally, I make it a point to return to the Indiana University Maurer School of Law each year to give back by participating in judging the Sherman Minton Moot Court competition.

8. Memberships and Other Activities

- A. List any memberships and offices you have held in professional organizations, including dates and descriptions of the purposes of the organizations and of your involvement.
- Seventh Circuit Bar Association: Board of Governors, Indiana Representative 2005-2013;
 - Federal Bar Association: Indianapolis Chapter, past President;
 - Republican National Lawyers Association: Vice-Chair for Programming, 2014-2016, Board Member, 2013-2016;
 - National School Boards Association: Council of School Attorneys, Board of Directors, 2004-2014, Chair, 2010-11;
 - Defense Trial Counsel of Indiana, past Director, 1990-present;
 - Indiana Republican Lawyers Association, past Chair, 2005-2007;
 - Defense Research Institute, 1988 - 2002;
 - Federalist Society, 1986 - present;
 - Indianapolis Bar Association, 1988 - present;
 - Boone County Bar Association, 2004 - 2012;
 - Indiana State Bar Association, 1988 - present;
 - Kentucky Bar Association, 1987 - present; and
 - American Bar Association, 1987 - present.
- B. List any memberships and offices you have held in civic, charitable, or service organizations, including dates and descriptions of the purposes of the organizations and of your involvement.

²³ See e.g. “*Ritz v. SBOE & Other Epic Battles in the 2015 Indiana General Assembly*”, Indiana State University, Guest Lecturer (April 22, 2015); “*Legislative Update: Indiana’s Educational Reform.*” Indiana State University, Guest Lecturer (April 13, 2011) “*Issues with Electronic Communication*”, Indiana State University, Guest Lecturer (April 14, 2010); “*The 1st Amendment in the Classroom*”, Indiana State University, Guest Lecturer (November 18, 2010); “*Personnel Issues for School Superintendents*”, Guest Lecturer, Ball State University, Muncie, Indiana (March 8, 2007).

²⁴ See e.g. “*Student Free Speech in the Age of Social Media, Texting and Sexting*,” ABA Section of Litigation, Annual CLE Conference, Washington D.C. (April 19, 2012); “*Introduction to the 1st Amendment*”, Boone County Bar Association Annual CLE Program, Lebanon, Indiana (November 4, 2011); “*Appellate and Trial Court Advocacy for the School Attorney*”, Kentucky School Boards Association, Louisville, Kentucky (January 27, 2006); “*Appellate and Trial Court Advocacy for the School Attorney*”, National School Boards Association’s Council of School Attorney’s Annual School Law Conference, Savannah, Georgia (October 8, 2004); “*The Federal Courts an Inside Look*”, Federal Bar Association, Indianapolis Chapter, Indianapolis, Indiana (September 26, 2003).

Board of Directors, Fundraising Chair, Timmy Global Health. <https://timmyglobalhealth.org>. See preceding section for detailed discussion of the organization and my role.

Board of Directors – National School Boards Association, Chairman/Board of Directors – Council of School Attorneys – <https://www.nsba.org>. See preceding section for detailed discussion of the organization and my role.

- C. List any memberships you hold in social clubs or organizations. If any restrict its membership on the basis of race, sex, religion, or national origin, please describe your efforts within the organization to eliminate restrictions.

Member, Zionsville United Methodist Church.

- D. Describe your hobbies and other leisure activities.

I am an incorrigible soccer fanatic. I have played soccer at all levels starting at Pike High School, going to Indiana University as a walk-on, and eventually culminating in brief semi-professional stints during law school.

Since that time I have spent more than twenty (20) years coaching soccer at all levels, from pre-k to leading Zionsville High School to the State finals twice, and one State Championship. More recently my leisure time has been spent going to high school band concerts with my youngest son and learning about the musical world, especially the thrill of watching indoor percussion and the Zionsville Indoor Percussion group win the Indiana State Championships, and place tenth at the WGI World Championships in 2015. I am also “that parent” at my son Jonathan’s college soccer games, and travel to DePauw games as often as possible, especially during their recent NCAA tournament successes. Finally, I also spend as much time as I can, traveling to Annapolis to visit my oldest son, Tommy, who is in his last year at the Naval Academy and who recently received his assignment to Pensacola Naval Air Station to train to become a Navy Pilot. I am inordinately proud of my children and will talk about them all day if given the chance.

9. Legal Proceedings

- A. List any lawsuits or legal proceedings in any jurisdiction, including but not limited to bankruptcies, dissolutions, and criminal matters to which you have been a party. Provide dates, case numbers, courts, names of other parties, and, if needed, a brief explanation. (If minor children are involved [i.e. an adoption], use initials only.)

Wheeler v. Hamby, Cause No. 1:10-cv-1277, United States District Court for the Southern District of Indiana, Indianapolis Division. Residential real estate dispute, eventually resolved and dismissed. As noted earlier, I have been named

as a Defendant in several cases based on my roles as Chair of the Indiana Election Commission and/or the Indiana Recount Commission.

- B. If you ever have been arrested or cited for any violation of the law other than for routine traffic violations, provide dates, jurisdictions, and an explanation of the event and its resolution.

No.

- C. If you have been disciplined or cautioned, formally or informally, by the Indiana Supreme Court Disciplinary Commission, by the Indiana Commission on Judicial Qualifications, by the Indiana Supreme Court, or by similar entities in any other jurisdiction, identify each instance by date, case number (if applicable), and describe the circumstances and the nature of the outcome or resolution.

No.

- D. If you have any outstanding federal, state, or local tax obligations, please itemize and explain.

No.

10. References

- A. Provide the names of three attorneys who have been your professional adversaries in your practice or who have litigated substantial cases in your court and who would be in positions to comment on your qualifications for appointment to the Indiana Supreme Court (contact information to be included in Part Two of this application).

Ken Falk, Esq. - Executive Director ACLU of Indiana;

Anthony Long, Esq. - Long & Mathies;

Bernard L. "Buddy" Pylitt, Esq. – Katz & Korin.

- B. Provide the names of three professional references other than those listed in Subsection 10A (contact information to be included in Part Two of this application).

Frank Anderson, Former Marion County Sheriff;

James Dimos, Esq., Deputy Executive Director, American Bar Association;

John C. Trimble, Esq. President, Indianapolis Bar Association.

- C. Provide the names of three personal references other than those listed in Subsection 10A or 10B (contact information to be included in Part Two of this application).

Steven M. Samuels, M.D.;

Julia Gelinas, Esq.;

Fred Klipsch.

11. State Police Release Form and Photograph

- A. Complete a State Police release form printed on green paper (you may obtain the release form by contacting the Nominating Commission Office at 317-232-4706). Include the release form with the original application only and not with the copies.
- B. Attach a recent photograph of you to the front of the original application and to each copy of your application. (This allows the Commission members to put a face with a name if you are interviewed in person.)

01/22/16

Date

/s/Thomas E. Wheeler

Applicant's Signature

Thomas E. Wheeler II

Printed Name

Waiver and Statement of Consent

The undersigned applicant authorizes the release to the Indiana Judicial Nominating Commission or its staff or agents any records, reports, and documents, whether or not otherwise confidential, which may be requested by the Commission in the performance of its evaluations of candidates pursuant to I.C. § 33-27-3-2. The scope of this authorization extends to, but is not necessarily limited to, requests from the Commission for Federal, State or local tax records, criminal and driving histories from any jurisdiction, attorney and judicial disciplinary records from any jurisdiction, whether pending or closed, and credit reports and histories. The undersigned releases and discharges the Judicial Nominating Commission, its individual members, its employees, agents and representatives, the Indiana State Police, the Indiana Department of Revenue, the Indiana Supreme Court Disciplinary Commission and any other agency or person or their agents or representatives providing information to the Commission from any and all liability arising from the furnishing and use of information concerning the undersigned applicant.

The undersigned agrees and understands that the Indiana Judicial Nominating Commission or its members, agents, or employees may interview or otherwise consult with members of the legal, judicial, and general community concerning the professional qualifications and the integrity of the applicant, that the name of the applicant will be released by the Commission upon its receipt of the application and this waiver, and that if, pursuant to I.C. § 33-27-3-2(d), the applicant is given further consideration as a candidate after the Commission's initial screening of candidates, or if no such screening occurs and all applicants are considered, the application will be made public. This waiver does not constitute an election by the applicant pursuant to I.C. § 33-27-3-2(g)(3)(C) to authorize the release of investigatory records which are excepted from public inspection pursuant to I.C. § 33-27-3-2(g)(1) and (2).

The undersigned agrees to immediately supplement this application upon any event or circumstance substantially affecting any answer provided in the application.

The undersigned acknowledges having read the Instructions attached to the application.

The undersigned agrees to resign from office or membership in any political organization upon submission of this application.

The undersigned affirms that, if nominated by the Judicial Nominating Commission to the Governor and thereafter appointed to this judicial office, the candidate will accept the appointment.

01/22/16

Date

/s/ Thomas E. Wheeler

Applicant's Signature

Thomas E. Wheeler II

Printed Name