

APPLICATION FOR  
**DISTRICT COURT JUDGESHIP**  
**Seventeenth Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: Douglas Keith Womack
  - a. What name do you commonly go by? Douglas
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes
3. Home Address: [REDACTED] Phone: [REDACTED]
4. Office Address: 320-A Expressway, Missoula, MT 59808 Phone: (406) 541-2399
5. Length of residence in Montana: 9-1/2 years
6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
November 2010–present	Missoula	Montana
February 2008–November 2010	Ninemile (Huson)	Montana

**B. EDUCATIONAL BACKGROUND**

7. List the names and location of schools attended beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Autauga County HS	Prattville, Alabama	May 1969	HS diploma
Auburn University	Auburn, Alabama	May 1975	BS Economics
Texas A&M University	College Station, Texas	May 1976	MS Economics
South Texas College of Law	Houston, Texas	May 1979	JD Law
American College of Acupuncture & Oriental Medicine	Houston, Texas	December 2004	Masters

8. List any scholarships, awards, honors and citations that you have received:

AV rating by Martindale-Hubbell (5.0 of 5.0)  
Currently member of Montana Medical Board Acupuncture Committee  
2013 Treasurer, Montana Acupuncture Association  
2010 Vice President, Montana Acupuncture Association  
1978-79 Editor in Chief of Law Review, South Texas College of Law  
1978 Who's Who in American Colleges and Universities  
1976 Freshman Senator, South Texas College of Law

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

I was Editor in Chief of the Law Review at South Texas College of Law, 1978-1979

### **C. PROFESSIONAL BACKGROUND AND EXPERIENCE**

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
All State and Federal Courts in Montana	October 2009
All State Courts in Texas	November 1979
U.S. District Court for the Southern District of Texas	November 1979
Montana Medical Board, Acupuncture License	2004
Idaho Acupuncture Board, Acupuncture License	October 2015

11. Indicate your present employment. (List professional partners or associates, if any).

Owner, Montana Acupuncture Associates, Missoula, Montana

Womack Law Firm, Missoula, MT. Currently not actively practicing law; partner- Leta J. Womack

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Montana Acupuncture Associates, Missoula, MT	Owner	2008-present
Womack Law Firm, Missoula, MT (Not actively practicing save for sitting on the Montana Medical-Legal Panel as an attorney and handling litigation on a complex Probate matter in Texas in 2014.)	Partner	2009-present
Womack & Womack, LP, Houston, TX Managing partner of 5 attorney firm; heavy civil litigation, complex litigation, appellate and limited criminal work.	Managing partner	1990-2008
Womack & Westbrook, Houston, TX Managing partner of 2 attorney firm; heavy civil litigation, appellate, limited criminal work.	Managing partner	1988-1990
Womack, Cohom & Stone, PC, Houston, TX Chief litigator for 3 attorney firm; civil litigation, family/probate litigation, limited criminal	Chief litigator	1985-1988
Womack, Powell & Brown, Houston, TX Complex Federal Litigation; Oil & Gas; Condemnation	Partner	1983-1985
Douglas K. Womack, Attorney, Houston, TX Personal injury, criminal, civil litigation	Sole proprietor	1979-1983

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

*N/A*

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

- As of 2008, I have not actively practiced law, save for a complex probate matter in Houston, TX, where I handled the negotiations and strategy to avoid litigation, and hired local counsel to pursue the administrative aspect of the probate in Houston.
- I periodically sit on the Montana Medical Legal Panel.
- In 2009, I passed the Montana and Multi-State exams. I have consistently exceeded my Continuing Legal Education commitments since I have been licensed in Montana, in order to obtain and maintain familiarity with Montana law, caselaw and procedure.
- I continue to maintain an active Texas law license. Throughout my legal career in Texas, I handled cases constituting -

- Federal civil cases 25%
- State civil litigation 45%
- State criminal litigation 10%
- State probate litigation 15%
- Administrative 5%

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

*NIA*

16. If you specialize in any field of law, what is your specialty?

I have never specialized in a particular field of law.

17. Do you regularly appear in court? Not currently.

What percentage of your appearance in the last five years was in [see response to #14, as I have not actively practiced law since moving to Montana]:

Federal court	<u>25%</u>
State or local courts of record	<u>70%</u>
Administrative bodies	%
Other	<u>-0%</u>

18. During the last five years, what percentage of your practice has been trial practice?

My law practice in Texas was 90% litigation, including trial practice.

19. How frequently have you appeared in court?

While practicing in Texas, I appeared approximately 1-2 times per month in court on average.

20. How frequently have you appeared at administrative hearings?

Rarely, other than worker's compensation cases -probably twice a year.

21. What percentage of your practice involving litigation has been:

Civil	<u>85%</u>
Criminal	<u>10%</u>
Other	%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

I have not appeared before the Montana Supreme Court. However, I have appeared and argued in federal and appellate cases as reflected by the cited/published cases below, to-wit:

1. United States v. 5,507.38 Acres of Land, Civil Action No. L-81-73, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, LAREDO DIVISION, 643 F. Supp. 266; 1986 U.S. Dist. LEXIS 21550, August 14, 1986, Decided

... Attorney in Charge, (Lomex Corp. & Caithness Corp.) **Douglas K. Womack**, of Counsel, (for McFadden Oil Corp., Harmony ...

2. UNITED STATES v. 5,507.38 ACRES, CIVIL ACTION NO. L-81-73, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS LAREDO DIVISION, 1986 U.S. Dist. LEXIS 28527, March 6, 1986

... Christi, TX 78403, for Parker-Knupke Uranium; **Douglas K. Womack**, Counsel (for McFadden Oil Corp., Harmony Drilling ...

3. UNITED STATES v. 5,507.38 ACRES, CIVIL ACTION NO. L-81-73, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS LAREDO DIVISION, 1985 U.S. Dist. LEXIS 22666, February 12, 1985

... P.O. Box 2624, Corpus Christi, Texas 78403, **DOUGLAS K. WOMACK**, (for McFadden Oil Corp., Harmony Drilling Co., ...

4. Marshall v. Ryder Sys., NO. 14-94-00872-CV, COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON, 928 S.W.2d 190; 1996 Tex. App. LEXIS 2708, July 3, 1996, Rendered , July 3, 1996, Opinion filed

**Douglas K. Womack**, Leta J. Womack of Houston, Tx., for ...

5. Kay v. Sandler, No. B14-86-095-CV, COURT OF APPEALS OF TEXAS, Fourteenth District, Houston, 718 S.W.2d 872; 1986 Tex. App. LEXIS 8741, October 9, 1986, Decided, October 9, 1986, Filed , Rehearing Denied November 6, 1986.

Al Schulman, J Edwin Smith, for Appellant. **Douglas K. Womack**, Leo A. Kissner, for Appellee. . . .

6. Kay v. Sandler, No. C14-85-183CV, COURT OF APPEALS OF TEXAS, Fourteenth District, Houston, 704 S.W.2d 430; 1985 Tex. App. LEXIS 12673, December 26, 1985, Decided

... Edwin Smith, of Houston. Attorneys for Defendant: **Douglas K. Womack**, Womack, Cohom & Stone, P.C., of Houston; Jack.

23. State the number of jury trials that you have tried to conclusion in the last ten years. None.

24. State the number of non-jury trials that you have tried in the last ten years. None.

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

None.

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

None.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

*NIA*

#### **D. PROFESSIONAL AND PUBLIC SERVICE**

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

National Association of Criminal Defense Lawyers	2015-2016
Montana Association of Criminal Defense Lawyers	2015-2016
Western Montana Bar Association	2013-2015
State Bar of Montana	2009-2016
State Bar of Texas	1979-2016

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

Currently member of Montana Medical Board Acupuncture Committee  
2013 Treasurer, Montana Acupuncture Association  
2010 Vice President, Montana Acupuncture Association  
Aircraft Owners and Pilots Association (AOPA); I hold a commercial pilot's license  
6<sup>th</sup> degree black belt, Aikido (martial arts)  
1<sup>st</sup> degree black belt, Judo (martial arts)

30. Have you ever run for or held public office? If so, provide the details.

I have neither run for nor held public office. However, in 2007 after I had completed my Oriental Medicine 4 year College (Houston,) while I was managing partner of Womack & Womack law firm (Houston) and was considering relocating to Montana, I was contacted by Judge Kathleen Stone, my former law partner, and a group of law firms. They requested that I run for Harris County District Judge in Houston. Judgeships are partisan in Texas, or as Judge Stone would say, you are either a conservative democrat or a liberal republican - such is required to preserve the neutrality and integrity of the bench. Judge Stone was to provide a strong endorsement and her political network for my anticipated campaign. I returned to Texas to consider my options, but ultimately determined that I was not willing to forego my desire to live in Montana.

31. Explain your philosophy of public involvement and practice of giving your time to community service.

It is imperative that parents and leaders of the community be actively involved in the activities and sports of our youth. I coached Little League Baseball, T-Ball, and Soccer. My firm financially sponsored several children's athletic teams, including Swim Team where I also participated in helping to put on the swim meets.

#### **E. PROFESSIONAL CONDUCT AND ETHICS**

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No.

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No.

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

No.

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.

No.

36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No.

#### F. BUSINESS AND FINANCIAL INFORMATION

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

I started Montana Acupuncture Associates in Missoula, Montana in early 2008. I am the owner and sole practitioner of the practice.

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

I am the owner of Montana Acupuncture Associates. I intend to sell or close down my acupuncture practice if appointed.

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

Montana Acupuncture Associates	90%
Probate case in Houston, Texas	10%

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

No.

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes.

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?  Yes  No

If not, please explain.

*NIA.*

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?  
 Yes  No

If yes, please explain.

*NIA.*

44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No.

## G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

Over the last five years, I have not researched or briefed any legal issues. I have edited briefs, letters and motions as a courtesy to others.

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

*NIA.*

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.

Attached.

48. What percentage of your practice for the last five years has involved research and legal writing?

Although I have not practiced law for the last five years, my entire legal career has involved substantial legal research and writing, as is evident by my listing of published/cited cases (see response to Question #22). Thirty page briefs were not unusual.

49. Are you competent in the use of Westlaw and/or Lexis?

Yes.

## **H MISCELLANEOUS**

50. Briefly describe your hobbies and other interests and activities.

I am a commercial pilot and certified Mountain Search Pilot of Montana. I will be taking another Mountain Search Pilot Course in Helena next month.

I have five horses and have spent the last three years learning to train a two year old, taking courses from great trainers. I've learned that I don't bounce as well as I used to.

I hunt, but have not found the time yet to fish - it is on my list.

I have just finished my first sojourn into the Bob Marshall Wilderness and I suspect it will not be my last.

I have seven children. The oldest two boys served two tours in Iraq, in the Marine Corps and the Army. One received a degree in forestry from Colorado State University, the other from Texas A&M University followed by a Master's degree in environmental engineering. One daughter is also a graduate of Colorado State, another from the University of Montana. My youngest twin daughters will resume their courses at the University of Montana in the Spring. My youngest son is a junior at Montana Tech in petroleum engineering. After they all graduate perhaps I can learn to fly fish.

In the last few years I have learned to snow ski, albeit I only ski the black diamonds by mistake.

I practice and have taught martial arts; I hold a 6<sup>th</sup> degree black belt in Aikido, and a 1<sup>st</sup> degree black belt in Judo.

51. Describe the jobs that you have held during your lifetime.

At age 11, I was the only Caucasian chopping cotton near Marbury, Alabama. My father had a third grade education but was determined his three sons would be educated. However, he knew he could not pay for it, so we started working for it early. At fifteen, and throughout high school, I always had up to three jobs at any one time. These included working graveyard at a cotton mill during the summers while I attended summer school, driving a school bus, teaching wrestling at the YMCA [I was second in State in wrestling], buffing floors after-hours for the local drugstore where after school I was the delivery boy.

To start my education at Auburn, I drove an ambulance at the college infirmary for room and board and worked other various jobs for the University for work-study. I drove a milk truck at the University at 4 a.m. for 2 hours for additional funds.

After two years, I dropped out of college and started the Freewheeler Bicycle Shop in Auburn, financed by three of my math professors. We set up the largest bike races in the southeast. I then returned to school, and graduated.

Between undergraduate and graduate school, I pumped gas at a local station for 12 hours a day. I had been recommended by my professors for enrollment in the Texas A&M doctoral program, skipping my Masters; after starting at Texas A&M, I was accepted to law school, so I finished with a Masters degree to attend law school.

My third year of law school, I clerked for Fulbright & Jaworskin in Houston until I received a full scholarship as Editor-in-Chief of the Law Review.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

*N/A.*

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

As an Air Force dependent, I relocated to Alabama in 1963 just in time for the race riots. My family started a small country store at Oates Crossing, where 4 houses were located about 20 miles from Montgomery and 30 miles from Selma. I worked in the fields chopping cotton, picking butter beans and squash. Since I was the only white person in the fields, the black families did not quite know what to do with me. The schools were segregated and the black children went to the Catholic School and had to pay for the textbooks that were provided free to me. They earned the money for those books working in the fields. The father who was old, white haired and bearded, would drive his mule and wagon over to our store for groceries. I would ride with him to his place in the backwoods, talk and then go shoot a rabbit for their dinner. He would let me cut a stalk of his sugarcane and run barefoot 5 miles back home. For many years later, I would take friends from college and my own children to meet this family. Since the country school did not provide the courses required for college, we moved just outside Montgomery to Prattville, Alabama. The idea of integration was not well received as reflected by the televised riots at the time. In 1966 the school was integrated. The sidelines were no longer an option. More than one teacher tried to have me expelled; threats were made to burn a cross in my yard. My father, who was trying to start a watch repair business in the town was told that unless he could bring my views into line, his business would have no chance of success in that town. George Wallace was revered and those who opposed were castigated. Physical confrontations were a weekly occurrence, but my father and the principal for the school both supported me. During this time, I learned of Federal Judge Frank M. Johnson, a ninth generation Alabamian, and his decisions regarding Rosa Parks. I learned that for his landmark decisions on civil rights, which were ongoing, Judge Johnson was vilified and considered a traitor to his race and Alabama. I learned that he suffered threats routinely, that his house was fire bombed, that his son committed suicide because of the pressure of his father's decisions and yet he did

not falter. My situation paled and I was embarrassed that I complained. Later when President Clinton wanted to nominate him to the U.S. Supreme Court, it was blocked by the southern politicians stating that he was too controversial due to his landmark decisions during that era.

I read Clarence Darrow's book about fighting for mine workers. I read Louis Nizer and how he helped break the back of McCarthyism. At an Editor-in-Chief conference in Winston-Salem, North Carolina, I had the chance to meet and talk with Mr. Nizer about his career. He was well into his '70's at the time. When he was asked "... out of all your many cases, what is the most important one, in your opinion?" His response - "The next one."

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

There are, of course, the obvious ones of legal acumen, integrity, commitment to the rule of law and to community and country. But as with Judge Johnson and the others mentioned, there must be that ability to look beyond just the immediate community and the people and circumstances that provide its comfort factor. There must be that burning insatiable desire for justice and the ideals that we strive for. But most importantly to have the courage and conviction to stand for those ideals when it would be more comfortable to just go along.

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

Courts of record do not enjoy the same latitude as those Courts not of record. While legislators write laws with good intent to correct an injustice, many times the language is in-artful and has unintended consequences. Thus the interpretation of the courts results in building precedent. The challenge of course, is when similar fact situations render dissimilar results.

Precedent gives us guiding principals in the pursuit of justice. Then as jurists we apply those principals to the unique facts of the instant case. The application of the law to those facts provides the flexibility. Should a judge vary too widely from the precedent, then appellate review is the safeguard. And there are times when a judge takes a stand against precedent knowingly sending it up on appeal, to have the appellate court change what has long been precedent, but no longer is appropriate.

This is the genius of the system. Without this reasoned and learned application of law to facts, we might as well design a computer program and shut down the judicial system.

56. In the space provided, state the reasons why you are seeking office as a district court judge.

I have had the opportunity to practice before many outstanding jurists who were able to grasp concepts beyond our 30 page briefs and arguments. Their questions to counsel were insightful and learned. My opposing attorneys and I always felt smarter walking out of their courtrooms than into them. It made us better lawyers and the legal system a better and more just arena.

At the same time, I litigated cases across Texas in small communities where I routinely found that the quality and integrity of the judiciary was exemplary. Not only did they know the law, they revered it, studied it and responsibly and ethically applied it. With 62 courts in Houston, as I suspect with many large cities, justice can many times be lost to politics.

From the time I can remember, I have tried to fight for what is right. As many in Montana, my heroes were Davy Crockett, Daniel Boone, Sgt. York, and Audie Murphy. As I grew and read, my heroes became Louis Nizer, Clarence Darrow, Judge Frank Johnson. In a few of the Federal District Courts I was inspired, yet it was in the State Courts of small communities that I realized how important to our way of life is the perception of law, justice and equality.

This would be my contribution to the continuation of that legacy that is the cornerstone of our democracy from which I have been the beneficiary.

57. What items or events in your career have distinguished you or of which you are most proud?

A young black man supporting his wife and her two very young daughters fell on hard times and wrote an insufficient check for \$200 for food, and was given 2 years probation. Then a second occurrence, same circumstances, probation revoked and 2 years prison. The now ex-con, having difficulty finding work, was salvaging scrap metal which appeared to be abandoned in weeds next to railroad tracks. He was questioned and told to throw the metal back into the weeds, until they ran his record and arrested him for theft. He was left in jail for 3 months before the court appointed me as his attorney. The 3-strike rule was in play - 3<sup>rd</sup> felony and automatic life sentence. The jury would decide guilt/innocence and sentencing. Except it is a bifurcated trial, with guilt/innocence being tried first, then a second mini-trial for sentencing. What the jury would not be aware of, and I could not tell them, was that if they found him guilty, the jury would be dismissed and the judge would impose the mandatory sentence. The prosecutors, sitting on a mandatory life sentence, would offer no less than 20 years. The judge felt the same. I hired an expert to attack the right-of-way of the highway and of the railroad as well as the neighboring landowners that had complained of the "junk" for years. I created enough questions and verified the circumstances of his prior acts, that after 2 more months, I pled him for time served.

I was able to convince the court to reset a case for a year, so that the 14 year old daughter would not be able to hold probation over her mother's head. The 14 year old daughter was running away with a 22 year old man waiting in his car. Mom intervened and as the daughter tried to push through mom, the daughter's arm was fractured. The man disappeared and the mom was arrested. The court offered mom probation but I argued that was tantamount to putting the daughter in control, and we might as well write this daughter off. I proposed that I bring in the family Pastor and extended family, have the judge get commitments from them to assist in this family matter; have the judge reprimand the daughter in

front of the mom, and reprimand the mom privately. Then we waived speedy trial and reset the case for 1 year. So, mom was not free and clear, but still got to be the mom. Not only did the case get dismissed without incident in one year, but the court commended the mom for her community involvement as she called the local TV station to film as she and a group of other mothers confronted those selling drugs on the street corners of their neighborhood.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

My career has not been exclusively practicing law and it has been since 2007 that I practiced law full time. I also went 4 or 5 years not flying aircraft, but now am a Montana Mountain Search Pilot; I just had to re-familiarize myself with the aircraft. The skill was still there.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

I cannot tell you that I would be the best district court judge applicant. I can tell you what I bring to the table which is unique to me.

I was fortunate enough to get some rather large cases in federal courts early in my career. I handled some small cases and some light criminal work at the same time. Within two years of being licensed, I successfully represented 50 Heirs at Law (including 3 judges) of the Sarita East Estate in the United States District Court against Exxon. In a subsequent, unrelated case, I was successful in obtaining a multi-million dollar verdict against the Department of Interior. I was also representing a coffee importer from Mexico requiring coordination of litigation from Mexico City, Houston and New York. My peers were handling up to 140 open cases at one time and were in court daily, often trying a case in an afternoon. My practice usually had about 5 cases that took the majority of my time. On the 5,507.38 Acre condemnation suit with the Department of Interior, we litigated land ownership issues for a year as land title in south Texas includes Spanish Land Grants which had to be reconciled to determine

the rightful parties. Then the battle of the experts began to determine the value of the Oil & Gas reserves under the subject land. Judge Kazen in Laredo appointed a Special Commission to hear the case due to the anticipated length of trial. We tried the case every other week for 6 months.

Law firms engaged my services to handle cases outside their expertise or as they said "cases for which there were no form books." My reputation was being able to step into difficult cases or cases in trouble. My civil practice was varied, intense and required extensive research and planning. Thirty page briefs were not unusual. I also periodically accepted court appointments to represent indigent criminal defendants. As noted above, some of these were my proudest successes.

My forte' was developing innovative strategies for litigation. My last large case involved a Will that had been executed 30 days prior to the death of the Testator, at the behest of his CPA, even though the Testator and CPA had been out of the family business for a decade. The CPA was named Executor and the beneficiaries' bequest became valueless. Five different law firms advised the beneficiaries there was no recourse. I instituted two interim law suits, coordinated with some 15 beneficiaries, removed the CPA, modified the Will with the approval of the Probate Court, and provided the beneficiaries their just inheritance.

I then became interested in Chinese Medicine as it appeared to provide alternatives to certain conditions for which Western medicine had no alternatives. As is my nature, I threw myself into it, finished a 4 year program at night, then went to China to study and work in the Hospitals for 4 months. When I returned, I moved to Montana and set up a clinic.

The practice of the medicine provided me with more insight into people - their strengths, frailties and situations; their feeling of hopelessness when there are no good alternatives or the perpetrator (disease) ravages their lives and there is no recourse. To combat the injustice I have had to devise creative strategies for which I have acquired the reputation of specializing in difficult cases. I attack the

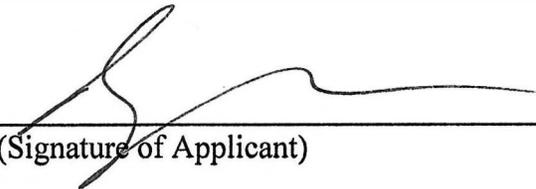
afflictions the same as I did my lawsuits; with creative but realistic strategies, and a tremendous amount of research. My time not focused exclusively on law I feel would make me a better judge than if I had not, because of the continued learning and growth I have experienced because of it.

As a Judge, I would bring to the bench a varied legal career, including unique life experiences, judgment and perhaps wisdom accumulated from a multitude of various types of litigation and forums. I bring a thirst for knowledge and a passion for justice.

### CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 17th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

f- I - clc > / ?  
(Date)

  
(Signature of Applicant)

---

A signed original and an electronic copy of your application and writing sample must be submitted by **5:00 p.m. on September 1, 2016.**

**Mail the signed original to:**

**Office of Court Administrator  
c/o Lois Menzies  
P.O. Box 203005  
Helena, MT 59620-3005**

**Send the electronic copy to: [mtsupremecourt@mt.gov](mailto:mtsupremecourt@mt.gov)**

ERNEST B. BUGH, JR., Independent	) (	IN PROBATE COURT NO. FOUR
Executor of the Estate of A. Paul	) (	
Robishaw, Deceased, et.al.,	) (	
Plaintiffs	) (	
	) (	
<b>vs.</b>	) (	OF
	) (	
JAY M. GILBERT, et.al.,	) (	
Defendants	) (	HARRIS COUNTY, TEX As

DEFENDANTS, BILLIE C. TAYLOR, INDIVIDUALLY AND  
ROBISHAW ENTERPRISES, INC., 'S  
MOTION FOR SUMMARY JUDGMENT AGAINST  
GEORGE L. WHEELER

TO THE **HONORABLE** JUDGE OF **SAID** COURT:

COMES NOW BILLIE C. TAYLOR ("TAYLOR"), Individually, and **ROBISHAW ENTERPRISES, INC. ("ROBISHAW")**, and file this their Motion for **Summary** Judgment **against** GEORGE L. WHEELER ("WHEELER"), and in support thereof would show as follows:

**II.**

summary of Facts

On December 30, 1988, A. Paul Robishaw, now deceased, created the Employees' 1988 Trust under a Revocable Trust Agreement ("TRUST"), a copy being attached hereto and made a part hereof for all purposes as Exhibit "A". The Trust Agreement named certain individuals, including WHEELER, as beneficiaries under the TRUST, but conditioned the eligibility of said beneficiaries on events occurring outside the TRUST, i.e., the continued employment of such beneficiary by ROBISHAW.

By letter dated January 20, 1989, TAYLOR notified all beneficiary employees of the creation of the TRUST, a copy of said letter being attached hereto as Exhibit "B" and made a part hereof

for all purposes. WHEELER acknowledged receipt of said letter and completed the beneficiary designation form on January 24, 1989, a copy being attached hereto as Exhibit "C" and made a part hereof for all purposes.

On January 1, 1990, A. Paul Robishaw died, a copy of his death certificate being attached hereto as Exhibit "D". On January 9, 1990, Mr. Robishaw's Last Will was filed for probate in the instant court, and was admitted to probate on January 24, 1990, of which Defendants pray that this Court take judicial notice.

On February 15, 1990 WHEELER'S employment with ROBISHAW was terminated, as a result of WHEELER leaving the job site and not returning. See WHEELER's deposition, page 32, lines 18-25, through page 39, lines 1-5, attached hereto as Exhibit "E" and made a part hereof for all purposes.

By letter dated February 16, 1990, a copy being attached hereto as Exhibit "F" and made a part hereof for all purposes, TAYLOR notified WHEELER of his eligibility for certain Group Health Benefits, and later met with him to discuss same (see Exhibit "E"). At no time did WHEELER request reinstatement of his job, nor inquire as to early retirement. see WHEELER's deposition, page 42, lines 5-25 through page 43, lines 1-7, attached hereto as Exhibit "G" and made a part hereof for all purposes.

on May 29, 1992, Plaintiffs filed a petition with the instant court to modify and terminate the TRUST. Plaintiffs served notice on all named beneficiaries under the TRUST, including WHEELER. Said petition claimed that WHEELER had forfeited his rights as a beneficiary pursuant to Section **J(B)** of the TRUST which provides

for forfeiture upon termination of employment for reasons other than early or normal retirement, death or disability.

On June 12, 1992, WHEELER filed an Original Answer claiming that he was not terminated from ROBISHAW and that he took early retirement and/or if he was terminated, it was without ROBISHAW disclosing the existence of the TRUST.

On September 1, 1992, WHEELER filed his First Amended Answer and Cross-Action, and requested that the Court find WHEELER **is a** beneficiary under the TRUST or, alternatively, to award damages pursuant to his allegations alleging breach of fiduciary duty and equitable estoppel. He also sought recovery of reasonable attorneys' fees.

## II.

### Argument and Authorities

#### A. WHEELER's Claim Against ROBISHAW

WHEELER has claimed that ROBISHAW, acting by and through its directors, officers, agents, servants and employees, breached its fiduciary duty to WHEELER by failing to advise WHEELER that it was possible for an employee to take early retirement prior to **age** fifty-five (**55**) years at Company request. WHEELER has failed to establish any duty of ROBISHAW to inform him that an employee could take early retirement at Company request. Clearly, the fact that any early retirement was at the option of ROBISHAW and not the employee precludes the imposition of any duty on ROBISHAW to advise WHEELER of ROBISHAW's unilateral employee decisions.

As has long been the law in the State of Texas, unless there exists an employment contract, the employer may terminate an

employee at will. Schroeder v. Texas Iron works, Inc., 813 s.W.2d 483 (Texas 1991). **There did not exist, and WHEELER** has not claimed, that an employment contract existed between ROBISHAW and WHEELER. ROBISHAW therefore owed no duty to WHEELER to keep him employed, and was well within its rights, under the circumstances and considering that WHEELER left his job voluntarily, to terminate WHEELER.

Finally, as this Court has previously determined, the TRUST was and is not an employer benefit plan. Therefore, **ROBISHAW** cannot be charged with the duty to inform WHEELER of the provisions of said TRUST, as the TRUST was established separate and apart from company policies and company-provided benefits.

ROBISHAW is entitled to summary judgment against WHEELER as WHEELER has failed to establish any duty owed him by **ROBISHAW** to advise him of Company determined early retirement or the duty to keep him employed.

B. WHEELER's Claim Against TAYLOR

Although WHEELER has named TAYLOR as an individual defendant in his Cross-Action, he has failed to state throughout said Cross-Action any claim against TAYLOR, other than as a co-Trustee. Therefore, as a matter of law, TAYLOR is entitled to summary judgment against WHEELER in her individual capacity for his failure to **state a** claim.

c. summary Judgment

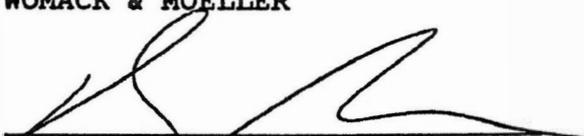
A Movant is entitled to summary judgment if it can show there are no genuine issues of material fact and is therefore entitled to judgment as a matter of law. Clark v. Pruett, 820 s.W.2d 903

(Tex.ct.App. - Houston [1st Dist.] 1991, no writ). Baubles & Beads-Y, -Louis Vuitton, 766 s.w.2d 377 (Tex.ct.App. - Texarkana 1989, no writ). Because WHEELER has failed to establish any duty on behalf of ROBISHAW, and further, has failed to state a claim against TAYLOR individually, both named defendants are entitled to judgment as a matter of law.

WHEREFORE, PREMISES CONSIDERED, ROBISHAW and TAYLOR pray that this Court grant a summary judgment in their favor and against WHEELER as sought hereinabove, and for such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted,

**WOMACK & MOELLER**



---

**Douglas K. Womack**  
**TBC #21874500**  
**1111 Bagby**, Suite 2630  
Houston, Texas 77002  
Telephone: (713) 951-0471  
Telecopier: (713) 951-0474  
ATTORNEYS FOR BILLIE C. TAYLOR  
AND ROBISHAW ENGINEERING, INC.

NOTICE OF HEARING

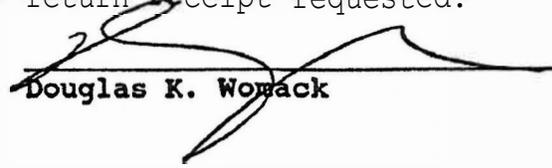
Notice is hereby given that the hearing on the Motion for Summary Judgment has been scheduled and will be had on the 8th day of December, 1992, at 2:00 p.m., in the courtroom of Probate Court No. 4, Harris County, Texas.

---

Clerk, Probate court No. 4

CERTIFICATE OF SERVICE

I hereby certify that on this the 17th day of November, 1992, a true and correct copy of the foregoing Motion for Summary Judgment was provided to all counsel of record by hand delivery, telecopier, and/or certified mail, return receipt requested.



---

**Douglas K. Womack**