

APPLICATION FOR CANDIDATE FOR SUPERIOR COURT JUDGE

Date of application: February 19, 2024

Position applied for: Superior Judge, Environmental Division

GENERAL

1. Name: Joseph S. McLean
2. Mailing address South Burlington, VT 05403
Business address: 171 Battery Street, P.O. Box 1507, Burlington, VT 05402-1507
Email address: jmclean@firmspf.com
3. Date of birth(required) :June 24, 1968
- 4a. Are you a Vermont resident (see 4 V.S.A. § 602(c)(1))? Yes No
- 4b. Town of primary residence: South Burlington
5. Telephone nos. Home: _____ Business: 802-660-2555 Cell: _____
- 6a. Years practicing law in the State of Vermont (minimum 10 years per (4 V.S.A. § 602(c)(1)): 28+
- 6b. Have you practiced law in Vermont for a least five years immediately preceding this application (see 4 V.S.A. § 602(c)(1))? Yes No
- 6c. If the answer to b. above is NO, are you seeking an exception to the five-year requirement (4 V.S.A. § 602(c)(1))? If so, please explain the basis for seeking this exception. Note: The Board may make exceptions to the five-year requirement for absences from practice for reasons including family, military, academic, or medical leave.

N/A

EDUCATION

7. List colleges and law schools, dates attended, and degrees or credits received:
Bowdoin College, 1986-1990, A.B. (English & Government/Legal Studies)
Vermont Law School, 1992-1995, J.D.

8. Academic honors at the college or law school level, if any:
Bowdoin College: Dean's List (1986-1990), James Bowdoin Scholar (1986-1990), Magna Cum Laude
Vermont Law School: Vermont Law Review (1993-1995), VLS Academic Excellence Award for Current Issues in Constitutional Law (1995), American Jurisprudence Prize Award for Criminal Law (1993), VLS Academic Excellence Award for Legal Writing (1993), Cum Laude

9. If you clerked for admission to the bar instead of attending law school, please state the dates and for whom you clerked.
N/A

PROFESSIONAL ADMISSIONS

- 10a. List all courts (including state bar admissions) and administrative bodies having special admission requirements in which you are presently admitted or have previously been admitted to practice, giving the date of admission in each case.

Presently admitted:
Vermont Supreme Court (1995)
United States District Court, District of Vermont (1996)
United States Supreme Court (2004)

Previously admitted:
United States Court of Appeals for the Second Circuit (2003 - expired)

- 10b. Has your license to practice in any jurisdiction been suspended, revoked, or limited at any time? If so, please provide the date(s) and circumstances that led to such action.
No.

EMPLOYMENT HISTORY

11. Please list below, or include an attached resume or curriculum vitae that lists all legal jobs you have held since being admitted to the bar, including name and location of the employing or contracting entity(ies), dates of employment, and title(s).

Law Office of John D. Hansen, Rutland, Vermont, Associate Attorney, September-December 1995

Stitzel, Page & Fletcher, P.C. (formerly Stitzel & Page, P.C.), Associate Attorney, January 1996-2000,
Owner/Partner, January 2001-Present

* Resume attached

12. Please list below, or include an attached resume or curriculum vitae that lists the name and location of employing or contracting entity(ies), dates of employment, and title(s) held for any other full-time employment since graduation.

Assuming the request to list other full-time employment "since graduation" refers to graduation from law school, none. Since graduating from Vermont Law School in 1995, I have been employed on a full-time basis only in the positions listed above.

LEGAL EMPLOYMENT AND EXPERIENCE

13. Please describe your professional experience in each of the following legal arenas: family, civil, criminal, probate, juvenile, municipal, environmental or other. Include a description of any legal specialties you possess.

Since January 1996, I have advised all types of municipalities, including school districts, fire districts and union municipal districts, in every area of municipal law. This includes experience with election and annual meeting requirements, advising boards and councils on governance procedures and statutory authority, guiding consolidation of fire districts with towns and assisting in the formation of union municipal districts. I have worked with municipal managers, police departments, fire departments and libraries. I have advised clients regarding the application of parliamentary procedures and, because our practice is dedicated to representing municipalities and school districts, I have extensive experience with Vermont's Open Meeting Law and Public Records Act and train public bodies regarding their obligations thereunder. In addition, I have experience with the development and adoption of municipal policies and procedures, as well as with the drafting, adoption and enforcement of municipal ordinances of all kinds. I have experience with highway matters and have successfully litigated condemnation cases involving both necessity and damages. My experience also includes working closely with municipal clients in drafting, reviewing, negotiating and enforcing contracts of many varieties, including those involving public infrastructure projects.

While I have a broad background in all areas of municipal law, the focus of my professional work has been in the area of land use regulation, permitting, development review and enforcement, including municipal planning and zoning, Act 250 and Section 248 proceedings. I routinely advise municipal staff/quasi-judicial boards in connection with applications (zoning, subdivision and other permits) and enforcement matters. I have been involved in countless proceedings before the Environmental Division, involving land use and environmental appeals, development applications (as both proponent and opponent of development projects) and enforcement actions; I have appeared before District Environmental Commissions and the former Environmental and Water Resources Boards. Early in my career, I was counsel of record in the Environmental Court appeal that resulted in Montpelier being the only state capital without a McDonald's. For an approximately five year period from 2005-2010, I represented municipal clients before the VT Public Service Board (now the Public Utility Commission) in CPG proceedings related to VELCO's NRP and Lamoille County electric transmission projects, which involved over 50 days of contested hearings. I have also successfully represented municipalities in proceedings under Section 248a of Title 30 (telecommunications).

Regarding civil practice, I have successfully litigated numerous cases on behalf of municipalities throughout the State, both as defense and plaintiff. I have represented municipal clients in court actions involving subjects such as discrimination claims, contract claims, § 1983 claims, town highway disputes, multi-million dollar road contractor claims, condemnation claims, health orders, livestock running-at-large, Rule 75 appeals, and more. I have participated in all phases of civil litigation, including pleadings, discovery, depositions, motions, hearings, trials, and appeals.

I have limited legal experience with family, criminal, probate and juvenile matters, although I did spend a semester in practice with the Chittenden County State's Attorney's office in 1994.

14. During the past ten years what percentage of your work experience has involved litigation, including motions, hearings, appellate arguments, administrative hearings, trials, and other contested hearings? Please briefly describe the role you played in the litigation.

As noted above, a substantial portion of my practice involves litigation work, including all of the components of litigation practice listed above. I estimate that during the past ten years litigation work represents approximately 50% of my practice, although my litigation workload ebbs and flows. In terms of the role(s) that I have played, I have been involved in all aspects of litigation, particularly in the Environmental Division -- I have engaged in discovery practice, prepared and filed motions to dismiss or clarify Statements of Questions, prepared and filed motions for summary judgment, argued motions, tried cases on both a de novo and on-the-record basis, and both appealed and defended appeals to the Vermont Supreme Court. As noted above, I have also represented municipalities in contested Act 250 proceedings and have participated in Act 250 appeals both to the Environmental Board and, later, to the Environmental Court/Division. I also have very substantial experience litigating before the PSB/PUC and have defended and argued cases before the HRC.

15. During the past ten years what percentage of your work experience has involved each of the following:

a. family matters	<u>0 %</u>
b. juvenile matters	<u>0 %</u>
c. civil matters	<u>10 %</u>
d. criminal matters	<u>0 %</u>
e. probate	<u>0 %</u>
f. administrative	<u>10 %</u>
g. municipal	<u>70 %</u>
h. environmental	<u>10 %</u>
i. other	<u>0 %</u>

16. Please estimate how many evidentiary hearings, including trials, you have participated in and briefly describe your role(s).

As noted above, it is difficult to estimate, with a reasonable degree of accuracy, how many evidentiary hearings I have been involved in, but it is likely well over a hundred. Since 1996, I have been involved in numerous appeals and enforcement proceedings before the Environmental Court/Division (to the point where former Judge Meredith Wright once jokingly told me that I had singlehandedly captured 10% of the Court's docket). These evidentiary hearings have ranged from proceedings to determine standing to full-blown merits hearings in which I have represented the involved municipality. Many of the full Environmental Division merits hearings occurred earlier in my career, although I still actively litigate in the Environmental Division. As noted above, I also participated in approximately 50 contested evidentiary hearings before the Public Service Board during the VELCO NRP and Lamoille County CPG proceedings. I have tried cases before District Environmental Commissions, the Environmental Board, the Civil Division of the Superior Court (primarily the Washington, Chittenden and Franklin Units) and the Judicial Bureau. My role in these evidentiary hearings has evolved over time -- early in my career I was sometimes "second chair" and responsible for the direct or cross-examination of one or two witnesses and, later, as I learned and grew, I handled evidentiary proceedings, including trials, entirely on my own. I believe my last full court trial was in the Civil Division, Washington Unit, in November 2022 (a permanent injunction hearing).

17. Estimate the percentage of your total court time spent in each of the above courts over the last ten years.

a. criminal	_____	0 %
b. family	_____	0 %
c. civil	_____	20 %
d. probate	_____	0 %
e. federal trial	_____	0 %
f. federal appellate	_____	0 %
g. Vermont Supreme Court	_____	5 %
h. administrative body	_____	5 %
i. environmental court	_____	70 %
j. other court	_____	0 %

18. Please describe your professional experience in each of the following areas:

a. academics, including teaching, presentations, seminars

As noted above, I have presented at seminars and given trainings on a variety of municipal law topics, including, most notably, the Public Records Act, the Open Meeting Law, municipal governance, land use planning and zoning topics, the Fair Housing Act and First Amendment issues in schools. Some of these seminars and trainings have been sponsored by the Vermont League of Cities and Towns, or similar organizations, and others have been given directly to municipal boards.

b. management, including business, law firm, human relations, or other

I have served as a co-managing owner of Stitzel, Page & Fletcher, P.C., for several years and, in that capacity, have been exposed to all aspects of running a small business, including financial management, partner/employ relations, regulatory compliance (particularly in the context of the Covid-19 pandemic), and succession planning. Combined, the firm has a dozen attorneys and staff.

c. mediation, arbitration, or other dispute resolution

I have experience participating in mediation and, particularly, mediation recommended or required by the Environmental Division. I am a strong proponent of alternative dispute resolution to resolve land use cases. I have also successfully participated in mediation that has resolved proceedings in the Civil Division and in other contexts. I do not recall participating in arbitration. Regarding "other dispute resolution," I consider direct negotiation another form of dispute resolution and I have successfully resolved many cases through direct negotiation with an opposing party.

d. writing, including articles, journals, books, etc.

While legal writing, in the form of motion practice or other court filings, has been a very significant aspect of my practice, and I routinely write for the benefit of our firm's clients (in the form of opinion letters, draft decisions, legal analysis, emails, etc.), I have not written extensively in the form of articles, journals or books since law school. As indicated on my resume, however, I did receive an award for legal writing at Vermont Law School and my Vermont Law Review note was published and selected to represent the Law School in a national competition. Also, I was selected for Vermont Law Review on the basis of my writing (i.e., I "wrote my way" onto the Law Review).

19. If not otherwise described above, please describe why you have sufficient trial or other comparable experience that ensures knowledge of the Vermont Rules of Evidence and courtroom procedure (see 4 V.S.A. § 602(d)(9)).

While I do not claim to have a mastery of all aspects of the Vermont Rules of Evidence or courtroom procedure, I have had a reasonable amount of practical experience in evidentiary proceedings, including before the Environmental Division, as noted above. I have presented evidence, including both lay and expert witness testimony, introduced, authenticated and moved the admission of exhibits, cross-examined the opposing party's witnesses, and raised and argued objections. I also try to prepare by studying the Rules when I anticipate a challenging evidentiary issue or problem.

JUDICIAL EXPERIENCE

20. Have you ever held judicial office? If so, please state your position, the name of the court(s) and dates of your service.

No.

21. Have you ever served as an Acting Judge or Acting Magistrate in the Vermont court system? If so, please state the courts to which you have been assigned, approximate dates and the approximate number of assignments you have had.

No.

22. Have you ever served as an arbitrator, hearing officer, administrative law judge, or other administrative decision maker? If so, please describe the service and the approximate number of assignments you have had.

No.

23. Please state any quasi-judicial boards or commissions on which you have served, including the name(s) of the agency(ies) for which you served, the position(s) held, the issues under your jurisdiction, and the dates of such service.

None - as stated above, I routinely advise quasi-judicial boards, but have not served on any. As counsel to these quasi-judicial boards, including zoning/development review boards, planning commissions and local legislative bodies, I have worked behind the scenes to assist with deliberations, organize evidence, draft written decisions, prepare orders and manage contested hearings. As counsel to quasi-judicial boards, I have examined witnesses on behalf of the board to assist with fact-finding. I have also sat with boards to assist with parliamentary procedures.

24. Calculating all of your judicial or quasi-judicial experience, approximately how many times have you:

- | | |
|--|---------------|
| a. prepared a written decision on a contested matter | <u>50-100</u> |
| b. issued an oral decision on a contested matter | <u>5-10</u> |
| c. handled motions or other contested proceedings | <u>50</u> |
| d. conducted an evidentiary hearing or proceeding | <u>5-10</u> |

PUBLICATIONS

25. If you have published any books or articles not identified in response to previous questions, please list them, giving titles, citations, and dates.

"Streamflow Policy in Vermont: Managing Conflicting Demands on the State's Waters," Vermont Law Review, Fall 1994 (*Selected to represent Vermont Law School in the American Society of Writers on Legal Subjects "Scribes" Competition, 1995)

PROFESSIONAL, CIVIL AND PUBLIC SERVICE

26. If you have experience as a member of any administrative, legislative, judicial, or regulatory boards, commissions, study committees, or agencies, or any private, corporate or non-profit boards, please list them, giving names and dates served.

Associate to the Vermont Board of Bar Examiners, 2006-2009

27. If you have served as an appointed or elected official in any local, county, state, or federal government position, please provide details and dates.

N/A

28. Please list all Bar associations and professional societies of which you are a member, give the titles and dates of any office which you may have held in such groups, and identify committees in which you were active.

Vermont Bar Association

29. List any honors, prizes or awards you have received, including the name of the award, the organization granting it, and the date of the award.

None other than as listed above (since 1995).

30. Please list all other non-profit, community service, or other organizations, of which you have been a board member during the past ten years, including the titles and dates of any offices which you have held in each such organization, and/or any other significant volunteer experience.

My most significant volunteer experience has been with Chittenden-South Burlington Youth Hockey, Inc., a Vermont non-profit organization, for which I served as a volunteer girl's hockey coach for six years, from 2012 to 2017. This involved a substantial time commitment, as each season ran from September to March, with practices and games 3-4 days per week on average. I also volunteered to coach a boys youth hockey team from two seasons (2018 and 2019), with a similar practice/game schedule. This experience, which involved working with young people and, particularly, girls from ages 8-14, allowed me to help teach not just hockey skills, but also character development, with an emphasis on the values of focus, effort, dedication, selflessness, perseverance and leadership. It has been rewarding to observe how many of the players I coached, who are now on the threshold of adulthood, have grown to become self-confident, thoughtful and motivated future leaders.

POTENTIAL CONFLICTS

31. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service to the Court? If so, please explain.

No.

32. Do you have any personal or professional relationship(s) which might present conflicts of interest in the position you are seeking? If so, please explain.

There are other members of my firm who practice before the Environmental Division and, for some period of time, this may require me to disclose and/or recuse myself from proceedings in which they are involved. In addition, I have represented many municipalities over the years. Appeals from decisions of municipal boards and commissions, as well as municipal enforcement actions, are within the jurisdiction of the court. It may be necessary for me to disclose my past representation of municipal clients in certain instances and evaluate whether recusal for conflict is appropriate.

33. Identify the categories of litigation and financial arrangements that are most likely to present potential conflicts of interest if you are appointed to the position for which you are applying. Include any deferred income arrangements, stock options, uncompleted contracts, and other future benefits which you expect to derive from current or prior professional relationships.

None that I am aware of.

34. Explain how you will resolve any potential conflict of interest including those identified in questions 32 and 33 above.

As noted above, there are members of my current firm who practice before the Environmental Division. For some period of time (perhaps indefinitely), it will likely be necessary for me to disclose that former relationship and recuse myself from matters in which they are involved. Fortunately, there are two judges in the Environmental Division between whom cases may be divided. I would expect that there may also be some circumstances in which municipalities that I have previously represented, or municipal employees with whom I have worked, come before me, and there, again, it would likely be necessary (for some period of time) to disclose and, potentially, recuse myself to avoid a conflict. Certainly, I would consult the VCJC and colleagues as necessary and appropriate.

MISCELLANEOUS

35. Have you ever been convicted by federal, state or other law enforcement authorities for a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations, unless it also included a jail sentence.

Please be advised that the Judicial Nominating Board conducts a criminal background check on every applicant.

No.

36. Have you ever had a civil judgment against you? If so, please provide details about the case and its disposition. Please also state whether you have ever defaulted on a judgment and under what circumstances.

No.

37. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, please give particulars, including the amounts paid.

No.

38. Have you ever been disciplined for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, professional group, or Professional Conduct or Responsibility Board in any jurisdiction? If so, please provide details.

No.

39. Are all your taxes paid? (federal, state and local) current (i.e., filed and paid) as of the date of this application? If not, are you on an approved payment plan?

Yes.

40. Has a tax lien or other collection procedure (including receipt of balance due notices) ever been instituted against you by any federal, state, or local tax authority? If so, please explain and describe the outcome.

No.

41. Have you ever been the subject of any audit or investigation for federal, state or local taxes? If so, give full details.

No.

42. Have you ever declared bankruptcy? If so, give details.

No.

JUDICIAL OFFICE QUESTIONS

43. Why do you want to hold the judicial position for which you are applying?

While I have great respect for Vermont's judges, I am not someone who has long aspired to the judiciary. I have never before even considered applying to fill a judicial vacancy. In the past, I have been inclined to think that others are better, smarter and more capable than I am to serve in this capacity. In this instance, however, I do believe that my background and experience, as outlined above, make me uniquely qualified for the intellectual challenges of serving in the Environmental Division. I routinely think about and analyze legal issues that the Environmental Division faces on an almost daily basis. Importantly, however, I also attempt to think broadly and holistically about problems, to "see the forest through the trees," and consider the proper role of government and the courts in addressing those problems. I am practical, reasonable, balanced, considerate and strive every day to treat both clients and litigation opponents with the utmost respect. I am not perfect, but I endeavor to always adhere to the guidelines of civility and professionalism in the practice of law. I pride myself on my ability to develop strong, cooperative, trusting relationships with party opponents and their counsel in even the most hotly contested matters. In other words, I believe that I have the aptitude, experience and personal characteristics/temperament to do the job well.

In terms of "why" I want to hold the position, I have a strong desire to serve the State of Vermont and its people. I love Vermont and am a Vermonter through-and-through. I was born in Barre City Hospital and raised in Northfield. Both of my parents were public employees for forty years. While I have been fortunate in my career to work closely with local government, I consider service to the State (and, by extension, to its people) a tremendous honor. I view this position as an opportunity to contribute the knowledge and skills that I have developed over the last 28+ years to improving the lives of Vermonters, not only by helping to resolve differences that impact their quality-of-life and environmental and fiscal well-being, but in doing so in a manner that is prompt, fair, well-considered and enhances respect for the judicial process and the rule of law. Vermont is unique in many ways, but it is not immune to the divisions that plague our society, particularly around issues of land use, development and the environment. To maintain respect for democracy and democratic values, it is critical for the judiciary to continually emphasize, through its words and actions, the concepts of equal justice under law, respect for all persons and civil discourse. I want to hold the position of Environmental Division judge to further promote these concepts, to help ensure that all parties before the Court are heard and respected, that the law is fully and clearly explained, and that parties are strongly encouraged to talk to, hear and respect each other, thus contributing to a culture of civility that heals divisions and promotes respect for democratic institutions and values in Vermont.

44. Please describe a legal case or experience that has a special significance in shaping you as a lawyer, as a person, or both, and explain why.

As mentioned above, my experience representing five separate municipalities in the VELCO NRP case before the Public Service Board was a defining experience for me because I knew nothing about public utility law in 2005 when the case began and over the course of 50 technical hearings involving a dozen or more represented parties, I grew in confidence and ability as an attorney and advocate. Despite vigorous opposition from VELCO and the Department of Public Service, and initial reluctance by the Board, I was ultimately able to convince the Board that it was in the public good to order VELCO to underground its transmission lines in several environmentally or aesthetically sensitive locations, which the Board had never previously ordered in a contested proceeding.

45. Please describe a personal experience that you believe will influence your ability to serve as a successful justice and explain why?

In 1997, I stood on the sidelines of the Vermont City Marathon, having never been a distance runner, and announced to the person next to me, "next year, I'm running this thing." Once committed in my mind, I did not turn back, despite the hardship of balancing work with training and significant doubt about my ability to complete the 26.2 mile distance. The night before the race, I was extremely nervous. But, I gathered myself, completed the marathon and, later, I added eleven more marathons to my running resume. The point being, whether it is running or serving as a judge, I am not afraid to put in hard work and effort, to set my mind toward endeavors that I have not previously attempted, despite some obstacles, and to persevere until I have accomplished a higher task or goal.

46. Please describe your experiences working with diverse populations.

While Vermont, historically, has not been a particularly racially diverse State, in representing municipal boards and councils, I have had experience working successfully with people of different races, backgrounds, education levels, sexes, sexual orientations, gender identities, national origins, marital status and political persuasions. I have twice represented disabled veterans and I currently have three pro bono clients who are foreign nationals of mixed race. I have also worked pro bono to assist a client in addressing his undocumented immigration status. My municipal clients, both cities/towns and school districts, must comply with State and federal anti-discrimination and public accommodations laws and I have routinely advised them regarding such compliance.

47. What do you see as the primary issues facing the judiciary today? What would you propose to address or resolve the issues you've identified?

While I do not know if I am qualified to comment on the primary issues facing the judiciary broadly, I believe that the perception among some members of the public that outcomes are politically driven or predetermined based on factors other than the application of controlling law to fact presents a very substantial risk to the legitimacy of the judiciary and to democracy. As suggested above, I believe that one approach to combat this is to ensure that all parties feel fully and fairly heard, that the process of judicial review is clearly and carefully explained, that parties understand that the law and the facts (and no other factors) will drive decision-making, that judicial determination is but one way to resolve disputes, that parties are strongly encouraged to both talk to and hear each other, and that civility and respect form the basis of proceedings before the Court.

48. Please describe any administrative and managerial experience that would make you a successful Superior Court judge.

As noted above, I have experience as a co-managing owner of our firm and, in that capacity, work closely with our office manager and the other co-managing owner to coordinate all of the business aspects of our practice, including reviewing balance sheets, addressing billing and financial issues, addressing staffing and internal operational issues, and communicating with other owners and staff regarding the administrative needs of the firm.

49. Reflecting on your career to date, which individual has had the most profound impact on your work and why?

The person who has had the most profound impact on my work and career is my former boss and, later, law partner, Steven F. Stitzel. He was a mentor to me in many ways until he retired. Steve was extremely dedicated to representing public entities, with a focus on local government, and he believed that such work was fundamental to democracy. He conveyed that passion to me. Steve also has an exceptionally analytical, detail-oriented mind; he helped me learn to identify issues and to think, write and argue in a clear and concise manner. While extremely busy, Steve was also generous and went out of his way to assist me, personally, in lasting and meaningful ways.

50. What makes you well qualified to hold the position you are seeking?

As described above, my background and experience make me uniquely qualified for the intellectual challenges of serving in the Environmental Division. Perhaps unlike many people, I frequently think about and analyze specific issues that the Environmental Division faces, such as "is short-term rental a use of land?" or "are the statutory standing requirements under Chapter 117 of Title 24 sufficient to confer constitutional standing where an interested person has not suffered an injury-in-fact?" I also attempt to think broadly and holistically about problems, to "see the forest through the trees," and consider the proper role of government and the courts in addressing those problems. I am practical, reasonable, balanced, considerate and strive every day to treat both clients and litigation opponents with the utmost respect. I endeavor to always adhere to the guidelines of civility and professionalism in the practice of law. I pride myself on my ability to develop strong, cooperative, trusting relationships with party opponents and their counsel in even the most hotly contested matters. I also am very willing to share my knowledge and experience -- it is common for other members of the "Environmental Division bar" to contact me to discuss a zoning or land use issue. In fact, I have had such conversations with several former lawyers who are now members of the judiciary. In addition to the foregoing, I think it is important to know that while I, of course, have political beliefs, I do not wear my politics "on my sleeve" -- I believe that it is crucial to be able to administer justice, and for a judge to be perceived as administering justice, impartially, irrespective of politics or political persuasion. Finally, on the issue of qualifications, I have very good, respectful relationships with all of the judges and courthouse staff I have encountered through the years.

51. Please attach a representative writing sample appropriate for the position for which you are applying. (Maximum of 10 pages.)

52a. In the space below, please explain why you selected this writing sample.

I selected my writing sample because it concisely illustrates my writing style and is exclusively my own work product (i.e., it was not extensively edited by others). The writing sample is also meaningful to me because I was the final submission in a hard-fought telecommunications siting case that I handled for the Town of Waterbury in which the Town and the Vermont Agency of Natural Resources opposed the siting of a telecommunications tower in the middle of a critical wildlife connectivity corridor. The PUC's denial of Verizon's application for a CPG under 30 V.S.A. § 248a represented the first time that a proposed telecommunications tower had ever been rejected and shortly thereafter new legislation was adopted to further safeguard areas of wildlife connectivity.

53. List the names, addresses, e-mail addresses, and phone numbers of four references. Please include at least two professional adversaries. Please describe how each named reference knows you. *Please be advised that Judicial Nominating Board rules permit Board members to contact non-references for additional information about applicants.*

Reference 1

Kimberly K. Hayden, Esq., P.O. Box 1307, Burlington, VT 05402-1307
KHayden@pfclaw.com

[REDACTED]
Litigation opponent in VELCO NRP case and other utility-related matters

Reference 2

Christopher D. Roy, Esq., P.O. Box 190, Burlington, VT 05402-0190
croy@drm.com

[REDACTED]
Litigation opponent in various Environmental Division proceedings and VT Supreme Court appeal

Reference 3

Hon. Thomas Durkin, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401
JUD.EnvironmentalDivision@vermont.gov

[REDACTED]
One time litigation opponent and presiding judge in numerous Environmental Division proceedings


Reference 4

L. Brooke Dingleline, Esq., P.O. Box 625, Barre, VT 05641
lbrooke@vdmlaw.com

[REDACTED]
Vermont Law School, interactions in various municipal/land use/public utility contexts

AFFIDAVIT

Joseph S. McLean, being first duly sworn, deposes and says that all of the information I have provided in this Application is true.

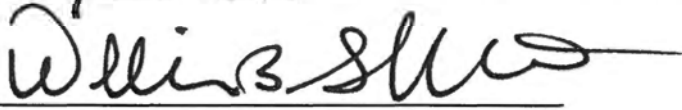


Signature of Candidate

STATE OF VERMONT

COUNTY, SS

At Burlington VT, in said County, Joseph McLean personally appeared and subscribed and swore to the truth of the above before me this 19th day of February, 2024.



Notary Public


My commission expires: 1/31/25

157.0010381

WAIVER

I hereby waive my right to privacy as it relates to the Judicial Nominating Board for any information I have provided herein, including the right of the Board to freely communicate with any names listed on my reference sheet with the understanding that any information will be held in confidence by the Board. I also understand and agree that if my name is forwarded to the Governor's office it will be accompanied by this full application.

Dated: 2/19/24



Signature of Candidate

STITZEL PAGE & FLETCHER PC

ATTORNEYS AT LAW

Joseph S. McLean - jmclean@firmspf.com - (802)660-2555

August 28, 2017

VIA ELECTRONIC MAIL & FIRST-CLASS MAIL

Judith C. Whitney, Clerk of the Commission
Vermont Public Utilities Commission
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Re: Docket No. 8601 – *Petition of Vermont RSA Limited Partnership and Celco Partnership, for a certificate of public good, pursuant to 30 V.S.A. § 248a, for the installation of telecommunications equipment in Waterbury, Vermont*

Dear Ms. Whitney:

I am writing on behalf of the Town of Waterbury in response to Verizon's Comments in Response to Proposal for Decision ("PFD") and Request for Oral Argument, dated August 9, 2017, filed in the above-captioned docket.

As a preliminary matter, having reviewed the Agency of Natural Resources' ("ANR" or "Agency") August 21, 2017 response to the above-referenced comments, I am authorized to state that the Town agrees with and adopts the Agency's various responses. Simply put, the Agency has clearly and concisely rebutted each of Verizon's claims of error in the Proposal for Decision. The overwhelming, credible record evidence in this case, developed through the testimony of witnesses for the Agency (and supported by witnesses for the Town), strongly supports the Hearing Officer's conclusion that Verizon's proposal would result in an undue adverse impact on the natural environment under 30 V.S.A. § 248a(c)(1). By contrast, the record also demonstrates Verizon's persistent failure to produce any evidence -- credible or otherwise -- on certain critical issues in this case (as outlined in the Agency's August 21 letter). The applicable legal standard under § 248a(c)(1) is unambiguous and the Public Utilities Commission ("PUC" or "Commission") has broad authority to identify and regulate impacts to the natural environment. Therefore, the Hearing Officer acted reasonably and appropriately in applying the facts to the applicable law in this case, and in recommending denial of Verizon's application for a CPG under § 248a.

By this letter, the Town further observes that, in addition to the points raised in the Agency's filing, Verizon's comments on the Proposal for Decision are largely devoid of any discussion of the alternate basis for the Hearing Officer's recommendation of denial in this case – *i.e.*, the conclusion that "there is not sufficient good cause to reject the recommendations of Waterbury in this case."

In his Proposal for Decision, the Hearing Officer correctly states that, under 30 V.S.A. § 248a(c)(2), Verizon has the burden of proof to demonstrate that good cause exists not to substantially defer to the Town's recommendation that the Project be relocated to an area that is not in the Conservation District and is not in an area of critical wildlife habitat. He finds that, in this regard, Verizon's arguments are "unpersuasive." The Town agrees. Indeed, Verizon's tepid assertions regarding the State's interest in supporting the availability of wireless communications and its assorted claims regarding the "detrimental" and "chilling" effect of denying this particular application, as set forth in its response to the PFD, are almost wholly unsupported by the evidentiary record in this case. This is clear in Section V of Verizon's responsive filing, in which its various claims regarding the PFD's alleged "detrimental effect on the public good" are baldly set forth without citation to the record. Simply put, Verizon utterly failed to meet its burden of proof relative to the "good cause" standard.

By contrast, the Hearing Officer's finding that "Waterbury has made a reasonable recommendation regarding the Project with respect to its town plan and zoning regulations and articulated a reasonable basis for that recommendation" is well supported by the record. The record evidence -- particularly Schneider and Lotspeich pf. at exh. DS-1 and Exhibits Town-Sup-1 and Town-Sup-2 -- support the Town's recommendations in this case, as extensively briefed by Waterbury both prior to and following the technical hearings. The Hearing Officer, in his PFD, analyzed in detail the critical distinctions between Waterbury's recommendations in this case and prior cases in which the Commission found that there was good cause to reject a municipality's recommendations. Here, the Hearing Officer found, based on the evidentiary record, that Waterbury's recommendations were well-founded, and that complying with those recommendations would not frustrate the primary coverage goal of the Project. Therefore, the Commission should adopt the Hearing Officers PFD on this issue.

Verizon argues in Section IV of its responsive filing that the Hearing Officer misunderstood its coverage objectives in this case. This is highly doubtful. That issue was the subject of exhaustive testimony and cross-examination and was briefed at length by Waterbury, which supported its briefing with direct quotations and point citations (page and line) to the technical hearing and deposition testimony in this case. *See* Waterbury's Post-Hearing Brief, dated June 9, 2017, and Post-Hearing Responsive Brief, dated June 30, 2017. The Hearing Officer's statement that "complying with the Town's recommendation would not frustrate the primary coverage goal of the Project to provide coverage throughout Northern Waterbury" (PFD at 21) very obviously included an understanding of the impacts -- or lack thereof -- of a potential relocation on coverage in Waterbury along Route 100 to the Waterbury-Stowe town line (the record evidence demonstrates that Verizon already has coverage on Route 100 in Stowe to the Waterbury-Stowe town line from the so-

Judith C. Whitney, Clerk of the Commission
August 28, 2017
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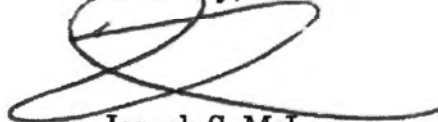
called Stowe 2 tower). Moreover, Verizon made a conscious, strategic decision not to provide the Hearing Officer and the other parties with the mapping necessary to directly compare its existing 3G coverage with the coverage that could be attained from any other tower site, including ANR's proposed alternate site, as discussed in detail in Waterbury's post-hearing briefing. Therefore, there is no basis to conclude that coverage along Route 100 in Waterbury will significantly degrade as a result of complying with the Town's recommendation.

Finally, Verizon suggests in Section VI of its responsive filing that former Board Chair Volz should be "substituted for current Commission Chair Roisman" on the basis of 30 V.S.A. § 3(e). The statutory language does not support this request. Former Chair Volz did not "hear[] all or a substantial part of this case." See 30 V.S.A. § 3(e) (second sentence). Indeed, other than issuing its *Order Re: Scope of Proceeding and Motions to Intervene*, entered July 8, 2016, which also designated Mr. Faber as the Hearing Officer, neither former Chair Volz nor any other member of the PUC was actively involved in this case -- the Hearing Officer alone conducted a site visit, reviewed and ruled on extensive pre- and post-hearing filings, managed the multi-day technical hearings, and issued his PFD. There is nothing to suggest that former Chair Volz has familiarity with the substantive evidence in this case. Therefore, it stretches credulity to contend that former Chair Volz heard "all or a substantial part of" this case prior to retiring from office and that substitution of the current Chair is required by law. The PUC should reject this request by Verizon.

Waterbury would be happy to expand on any of the foregoing, at the Commission's request, at oral argument or otherwise.

Thank you for considering Waterbury's responsive comments. Please let me know if you have any questions.

Sincerely,



Joseph S. McLean

JSM/gc

cc: Alexander J. LaRosa, Esq.
Daniel Burke, Esq.
David L. Grayck, Esq.
Daniel P. Richardson, Esq.
Donald Einhorn, Esq.
Charles Safford, Stowe Town Manager
William Shepeluk, Waterbury Municipal Manager

WAY17-018 (North Hill Tower) JSM to PUC re Reserve Right to Reply in Oral Arg Req 17-08-07 ccc

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Professional Experience

Stitzel, Page & Fletcher, P.C., Burlington, Vermont

- **Associate, Owner, Co-Managing Owner** – January 1996-Present.
- Representing Vermont municipalities and school districts, as well as individual clients.
 - Legal work for public entity clients, including general municipal law/governance, zoning, environmental and land use matters, public utility siting and litigation, general and land use litigation, public infrastructure permitting and construction, eminent domain, construction disputes, policies, ordinances, contracts, administrative law and education law.
 - Representation of clients in all state courts and in the U.S. District Court for the District of Vermont, before District Environmental Commissions, the Public Utility Commission, administrative agency proceedings and mediation.
- **Notable Legal Matters:**
 - Co-counsel for the City of Montpelier in *In re Appeal of Jacobs* (1996), in which the trial court denied a zoning appeal seeking to establish a McDonald's restaurant in downtown Montpelier.
 - Represented five Vermont municipalities in VELCO *Northwest Reliability Project* CPG proceedings before the Vermont Public Service Board, resulting in first-ever order to underground transmission lines in a contested case (2005-2010).
 - Represented the Town of Stowe in VELCO *Lamoille County Project* in CPG proceedings before the Vermont Public Service Board (2005-2006).
 - Represented the Town of Waitsfield in condemnation proceedings, litigation and land use appeals related to the permitting and construction of public water system (2010-2013).
 - Represented the Vermont State Colleges and State of Vermont in connection with Act 250 and environmental permitting for the Vermont Agriculture and Environmental Laboratory (VAEL) project (2016-2017).
 - Represented the Town of Waterbury in connection with a proposal by Verizon to site a telecommunications tower in an identified conservation area/wildlife connectivity corridor, resulting in the first-ever denial of such a proposal by the Public Utility Commission in a contested case.

Law Office of John D. Hansen, Esq., Rutland, Vermont

- **Associate** – September – December 1995.
- General Practice, including Act 250, zoning, civil litigation, estate planning and probate

Education

Vermont Law School, South Royalton, Vermont

- **Juris Doctor, *Cum Laude***, May 1995.
- Vermont Law Review, 1993-1995
 - Note Editor, 1994-1995
 - Author, *Streamflow Policy in Vermont: Managing Conflicting Demands on the State's Waters*, published in Vermont Law Review, Fall 1994
 - Selected to represent Vermont Law School in the American Society of Writers on Legal Subjects *Scribes* Competition, 1995
- Vermont Law School Academic Excellence Award for Current Issues in Constitutional Law, 1995 (presented to the student attaining the highest grade in a First Amendment seminar)
- American Jurisprudence Prize Award Recipient for Criminal Law, 1993 (presented to the student attaining the highest grade in Criminal Law)
- Vermont Law School Academic Excellence Award for Legal Writing, 1993 (presented to the student attaining the highest grade in Legal Writing)
- Law Clerk, Chambers of Honorable Jerome J. Niedermeier, U.S. Magistrate Judge, United States District Court for the District of Vermont, Burlington, VT, Summer 1994
- Legal Internship/Semester-in-practice with Chittenden County State's Attorney's Office, Winter/Spring 1994

Bowdoin College, Brunswick, Maine

- **A.B., *Magna Cum Laude***, May 1990
- Dual Major in English & Government/Legal Studies
- Bowdoin College Dean's List, 1986-1990
- James Bowdoin Scholar, 1986-1990 (awarded for consistent distinction in scholarship)
- Bowdoin Men's Rugby Club, 1986-1990, Captain 1989-1990, Coach's Award 1990

Admissions & Activities

- Admitted: Vermont Supreme Court (1995), U.S. District Court for the District of Vermont (1996), U.S. Supreme Court (2004)
- Youth ice hockey coaching, cycling, Nordic/backcountry skiing and snowboarding, rugby