

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 41 hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website www.tncourts.gov). The Council requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to debra.hayes@tncourts.gov, or via another digital storage device such as flash drive or CD.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am currently employed as General Sessions Court Judge, Part I, Roane County, Tennessee.

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

I received my license to practice law in Tennessee in 1999 and my BPR number is 20330. I was admitted to practice before the United States District Court for the Eastern District of Tennessee in 2000.

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

I am only licensed to practice law in Tennessee, my BPR number is 20330, and my license is currently active.

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

General Sessions Court Judge, Part I, Roane County, Tennessee. 2006 to present.

Law Office of Jeffery H. Wicks, Kingston, Tennessee, 2003 to 2006.

McPherson Law Office, Kingston, Tennessee, 2001 to 2003.

Municipal Court Judge, City of Rockwood, Tennessee, 2001 to 2005.

Baker, Donelson, Bearman and Caldwell, Knoxville, Tennessee, 1999 to 2001.

Baker, Donelson, Bearman and Caldwell, Knoxville, Tennessee, Law Clerk, 1998 to 1999.
Manier and Herod, Nashville, Tennessee, Law Clerk, summer of 1998.
Lewis, King, Krieg, Waldrop & Cantron, Knoxville, Tennessee, Law Clerk, 1997 to 1998.
State Farm Insurance Co., Westlake, Ohio, 1994 to 1996.
U.S. Secret Service, Special Agent, Cleveland, Ohio, 1990 to 1994.
Bureau of Alcohol, Tobacco and Firearms, Special Agent, Nashville, Tennessee, 1987 to 1990.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not Applicable.

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

I am currently a judge for the Roane County General Sessions Court, Part I, and do not practice law. I have criminal, juvenile, domestic, civil and probate jurisdiction. There are two General Sessions Judges in Roane County and we both have the same jurisdiction. I hold court five days a week. On average, there are approximately 10,500 cases filed every year in Roane County General Sessions Court. The breakdown is as follows:

Criminal - 4200

Traffic - 3800

Civil - 1100

Divorce - 200

Orders of Protection - 200

Juvenile Delinquent and Unruly – 500

Juvenile Dependent and Neglected/Custody – 300

Probate – 200

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters,

regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

I began my legal career in 1999 with Baker, Donelson, Bearman & Caldwell in Knoxville, Tennessee. I had clerked for the firm during the summer of 1998, continued working as a clerk during my final year of law school and while I studied for the bar exam. While with Baker Donelson, I was a litigator and handled collection and property recovery matters in General Sessions courts in East Tennessee. I also handled matters for creditors in Federal Bankruptcy Court. In addition, I worked on various transactional matters relating to commercial real estate, telecommunications, and environmental law.

After the birth of my first child, my wife Lisa and I decided to return to Roane County to be closer to our families. In 2001, I began practicing law with the McPherson Law Office in Kingston. As a lawyer in a small town practice, I personally handled almost any matter that walked through the door, including worker's compensation, divorces, civil matters, criminal matters, juvenile child custody matters, property disputes, and probate matters. I practiced in General Sessions, Juvenile, Circuit, Chancery and Criminal Courts. My first year back in Roane County, I was appointed by the Rockwood City Council to the position of Municipal Court Judge for the City of Rockwood. This was a part-time position where I presided over a traffic court and heard cases involving violations of municipal ordinances.

In 2003, I left the McPherson Law Office and began my own general practice. Again, as a small town law office, I personally handled a wide variety of cases including worker's compensation, divorces, criminal matters, civil matters, child custody matters, property disputes, products liability, personal injury, construction and probate matters. I practiced in General Sessions, Juvenile, Circuit, Chancery and Criminal Courts. I also appeared before an Administrative Law Judge on two separate occasions while represented two clients, a prison guard and a prison nurse, who were fired from Morgan County Regional Correction Facility. I only had the occasion to file two (2) briefs before the Court of Criminal Appeals and one (1) before the Court of Appeals, but I never argued before the appellate courts. The two criminal cases, Baston v. State Of Tennessee, 2004 Tenn. Crim. App. LEXIS 498, and Roysden v. State of Tennessee, 2005 Tenn. Crim. App. LEXIS 1186, were court appointed cases where the clients were seeking post-conviction relief on the grounds of ineffective assistance of counsel. In both of these cases, the trial court's decision denying relief was affirmed. In the third case, Landaiche v. Jenkins, et al., 2006 Tenn. App. LEXIS 559, my clients filed suit against some of their neighbors who had been trespassing across their property on what we argued was an abandoned easement. After a two (2) day trial in Chancery Court, the Chancellor ruled that the easement had been abandoned. The neighbors appealed and I filed a brief on my clients' behalf. I was appointed to General Sessions Judge before oral arguments and so I referred the case to one of my former colleagues at Baker Donelson. The Court of Appeals affirmed the Chancellor's decision.

In March of 2006, I was appointed by the Roane County Commission to my current position of General Sessions Court Judge, Part I. There are two General Sessions Judges in Roane County with jurisdiction to hear criminal, juvenile, domestic, civil, and probate matters. Due to the large number of cases filed each year in general sessions court, approximately 10,500, I have proven that I can effectively manage a very large docket. I hold court Monday thru Friday every week. On the fourth (4th) Tuesday of every month at 4:00 p.m., I preside over a truancy court. I was instrumental in moving truancy court to after school because I thought it was a bit odd to compel students charged with truancy to miss school to attend court. On the third (3rd) Thursday of the month, I preside over a collection docket in order to insure that defendants pay their fines and court costs. Due to the diverse jurisdiction, I have a thorough knowledge and understanding of criminal law and procedure, traffic laws, the rules of evidence, the rules of civil procedure, juvenile law and procedure, divorce law and orders of protection, landlord and tenant law, the statutes relating to wills and estates, and conservatorships.

I also believe that a judge should be very knowledgeable about the cases he/she is to hear on any given day. That's why I arrive early every day and review the files of every contested matter before court and conduct any needed research. A judge should be accessible to attorneys or others during working hours and beyond. I remember how frustrated I would get while in private practice when I would go to the courthouse in the afternoon to have an order signed, seek emergency custody of a child or a temporary restraining order and could not find a judge. That's why I do not leave the courthouse as soon as court is over. I make myself available during courthouse hours and afterwards. I have been awakened many times in the middle of the night by police officers seeking the issuance of a search warrant and I most often will drive to meet them.

In my nine (9) years as a General Sessions Judge, I have presided over hundreds of motion hearings and trials. Many contested divorces and child custody matters have lasted multiple days. I believe that due to my background, experience, and knowledge of the law, I have made sound decisions in the cases I have presided over. Over the past nine (9) years, there have only been six (6) cases appealed to the Court of Appeals, consisting of (1) divorce case, (1) juvenile case, (3) probate cases, and (1) child support case. In the divorce case, the appeals court affirmed my decision to award alimony but modified the amount and duration. In the juvenile case, my decision to terminate the father's parental rights was affirmed. My rulings in two of the probate cases involving conservatorships were affirmed and the third case was affirmed, but the amount of the judgment was modified from \$10,238.00 to \$7,588.00. The child support case was affirmed but modified due to an error in an order of the court dating back to 1992.

Some people have told me that I should not take the risk and seek the appointment to this position because I have a lot to lose. If appointed, I would be trading 6 years and 8 months left on my term as General Sessions Judge for 8 months as a Criminal Court Judge. If I lost the special election in August of 2016, I would be unemployed. However, I believe that there are times in your life when the risk of losing is worth the reward of winning.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

Although I have presided over numerous trials, one of the most difficult matters I have encountered as a judge was a termination of parental rights case. In this matter a 2 year old child was pronounced dead at a local hospital from what appeared to be malnutrition. I initially signed a restraining order presented by The Department of Children's Services to prevent the parents from coming about their other child, a 6 year old boy. As the facts developed, it became apparent that the 2 year old child died due to starvation. At that time, DCS filed a termination of parental rights case against both parents in regard to the 6 year old boy. Due to the complexity of this case, it remained on the docket for almost two (2) years. The evidence presented regarding how this child died was horrific. I vividly remember the photographs of the deceased child and the facts surrounding his horrible death by starvation. I found that the parents basically strapped him in a car seat in their home, refused to feed him, and even left him all alone in the home for days at a time. In the end, I granted custody of the 6 year old boy to his maternal grandparents and entered a permanent no contact order between the parents and the child. After this ruling, DCS dismissed its termination of parental rights case. The parents were indicted for murder and are awaiting trial. If I am appointed Criminal Court Judge, I will recuse myself from this matter.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I have never served as a mediator or arbitrator.

I have served as a judicial officer for approximately 14 years. In 2001, I was appointed by the Rockwood City Council to the position of Municipal Court Judge for the City of Rockwood, Tennessee. This was a part-time position where I presided over a traffic court and heard cases involving violations of municipal ordinances. I resigned from this position in 2005, in accordance with the Code of Judicial Conduct, after I announced I was a candidate for District Attorney General.

In March of 2006, I was appointed by the Roane County Commission to my current position of General Sessions Court Judge, Part I. In August of 2006, after a contested election, I was elected to this position. I was re-elected in August of 2014 after being unopposed.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

While in private practice, I served as guardian ad litem in juvenile court on dependent and neglected cases and in probate court in conservatorship cases.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Council.

My experience as a Special Agent with the U.S. Secret Service and with the Bureau of Alcohol, Tobacco and Firearms, has proven to be a great asset to me as both a lawyer and a judge. As a Special Agent, I received training on how to detect deception when interviewing a suspect. This knowledge has been valuable to me as a judge when weighing the credibility of a witness. I have experience in investigating arsons, bombings, violations of federal firearms laws, outlaw motorcycle gangs, narcotics, counterfeiting, credit card and check fraud, and forgery. I have interviewed suspects and witnesses, conducted surveillance, worked undercover, drafted affidavits and search warrants, executed search warrants, arrested suspects, drafted case summaries for trial, testified before federal grand juries and in federal court. I also had the opportunity to work closely with Assistant U.S. Attorneys in preparation for trial. These hands on experiences have been very beneficial to me when presiding over criminal matters as a General Sessions Court Judge and will be of great assistance to me if I am appointed Criminal Court Judge.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

None

EDUCATION

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

University of Tennessee College of Law (1997-1999) juris doctor. I received recognition for finishing first academically in my trial advocacy class.

Mississippi College School of Law (1996-1997) I did not earn a degree. After completing my first year of law school, I transferred to the University of Tennessee College of Law.

University of Tennessee (1982-1986) Bachelor of Arts in Geology.

Roane State Community College (1981-1982) I did not earn a degree. I transferred to the University of Tennessee after completing my first year.

PERSONAL INFORMATION

15. State your age and date of birth.

I am 52 years old and my date of birth is December 31, 1962.

16. How long have you lived continuously in the State of Tennessee?

I have lived continuously in Tennessee from 1962 to 1990, and from 1997 to present.

17. How long have you lived continuously in the county where you are now living?

I have lived continuously in Roane County from 1962 to 1987 and from 2001 to present.

18. State the county in which you are registered to vote.

Roane County

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not applicable.

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

In 1983, while a student at UT, I pleaded guilty to reckless driving in Knox County General Sessions Court. I paid a fine and court costs.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No

22. Please state and provide relevant details regarding any formal complaints filed against you with any supervisory authority including, but not limited to, a court, a board of

professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you.

While in private practice, I never had a complaint filed against me by a client.

In 2006, a complaint was filed against me with the Board of Professional Responsibility by my client's mother, who happened to a beneficiary in a probate case. As I recall, I was representing the executrix of the estate and she and her mother, a beneficiary, had a very contentious relationship. The complaint alleged that I breached a fiduciary duty to the beneficiaries of the estate. I believe she alleged that it was taking too long to settle the estate. The beneficiary had forged my client's name on a deed to the decedent's home in an attempt to sell the home. I was forced to sue the beneficiary in Chancery Court and the fraudulent deed was set aside. I filed an answer to the complaint and it was dismissed.

I have had four (4) complaints filed against me with the Board of Judicial Conduct as a General Sessions Court Judge (2006, 2007, 2008, and 2010). None of these complaints alleged any unethical behavior and they were all dismissed without me having to respond. As I recall, one involved a defendant in a criminal proceeding who complained because I did not take a lunch break. Another complaint was filed by the mother of a party in a divorce proceeding who did not agree with my ruling. I do not recall the allegations in the other two (2) complaints.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

Yes, I was a co-defendant in a case styled Rocky Joe Houston vs. Jeff Wicks, James Buddy Scott, J. Scott McCluen, Brad Nealon, Angela Randolph, Charles C. Snow, Randy G. Rogers, James F. Logan, Jr., State of Tennessee, and Roane County, United States District Court Eastern District of Tennessee At Knoxville, Case No. 3:06-CV-387

In this case, Rocky Joe Houston, *pro se*, filed a lawsuit in federal court on October 5, 2006,

against me,(in my capacity as a General Sessions Court Judge), the Criminal Court Judge, the District Attorney General for the 9th Judicial District, a TBI Agent, the Roane County Circuit Court Clerk, the Roane County Grand Jury Foreman, his own attorneys, the State of Tennessee, and Roane County. He alleged that the defendants participated in a conspiracy to violate his civil rights in violation of 42 U.S.C. § 1983, by obtaining a murder indictment against him, unlawfully executing an arrest warrant, and refusing to hold a preliminary hearing. Chief Judge Curtis L. Collier entered an order dismissing the case with prejudice after finding that the plaintiff's accusations were "baseless, and without merit" and granted a motion for sanctions filed on behalf of all defendants. The Order further restrained Mr. Houston from filing any new civil actions in the United States District Court for the Eastern District of Tennessee arising out of the same facts relating to the broad conspiracy alleged in this case.

Rocky Joe Houston appealed the District Court's ruling to the United States Court of Appeals for the Sixth Circuit in Case No. 07-5819. The Court of Appeals affirmed the District Court's ruling.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

First Baptist Church, Rockwood, Tennessee. Member of the Constitution and By-Laws Committee.

Rockwood Civitan Club

Association of Former Agents U.S. Secret Service

Roane County St. Jude Events Committee

National Rifle Association

Roane County Chamber of Commerce. Member of the Green Team Committee.

Roane County Courthouse Security Committee

Roane County Public Records Committee

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

- a. If so, list such organizations and describe the basis of the membership limitation.

- b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

Roane County Bar Association. (2001 to present) I was the president on two different occasions.
Tennessee General Sessions Judges Conference. (2006 to present)
Tennessee Council of Juvenile and Family Court Judges.(2006 to present) I served as a member of the Legislative Committee.
Tennessee Municipal Judges Conference (2003 to 2005).

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

I received the Rockwood High School Wall of Fame Alumni Award in 2010.
I received recognition from the Roane County Anti-Drug Coalition for my contributions to the summer C.A.M.P. program.
I received recognition for my support of the Court Appointed Special Advocates (CASA) of the Ninth Judicial District.

30. List the citations of any legal articles or books you have published.

None

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

None

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

General Sessions Court Judge, Part I, Roane County. I was first appointed to this position in March of 2006. I was elected to this position in August of 2006, and again in August of 2014.

I was the Municipal Court Judge for the City of Rockwood from 2001 to 2005. This was an appointed position.

I was a candidate for District Attorney General for the 9th Judicial District in 2005, but withdrew after I decided to run for General Sessions Court Judge.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

I have attached two (2) Memorandum of Opinions that I drafted, typed and entered this year.

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? *(150 words or less)*

I think that my background and experience has prepared me to make the step from General Sessions Court Judge to Criminal Court Judge. As a special agent with both ATF and the Secret Service, I drafted affidavits, search warrants, case summaries, testified before federal grand juries and in federal court. I also assisted U.S. Attorneys with trial preparation in federal courts. In my private law practice, I defended clients charged with criminal offenses ranging from public intoxication to first degree murder in both General Sessions and Criminal Court. As a General Sessions Judge, I have presided over thousands of criminal matters, numerous preliminary hearings, bench trials, motions, suppression hearings and bond hearings. I have served the citizens of Roane County as their General Sessions Judge for the past nine (9) years and would like to serve the citizens of the Ninth Judicial District as their Criminal Court Judge.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

As a judge, I am strongly committed to equal justice under the law. In my opinion, some of the

most challenging cases a judge can hear are those involving *pro se* litigants. Either when one party is *pro se* or both. For most of the *pro se* litigants, this is their only encounter with the court system and I try my best to make the experience as pleasant as possible for those involved. Most often, these litigants are not familiar with the rules of evidence, the rules of civil or juvenile procedure, or the statutes that may govern their particular case. Due to their unfamiliarity with the court system, *pro se* litigants normally take much longer to try their cases. As such, judges must learn, as I did, to be more patient and understanding when presiding over these cases. I hear several *pro se* cases almost every week, including but not limited to, divorces, landlord and tenant actions, civil lawsuits, orders of protection, juvenile custody cases and probate cases.

While in private practice, I drafted wills and power of attorneys for free to clients that could not afford them. I never once withdrew from a case after I was hired because my client could no longer afford to pay me. I felt it was my duty to continue my representation

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. **(150 words or less)**

I am seeking the seat of Criminal Court Judge for the Ninth Judicial District which consists of Loudon, Meigs, Morgan and Roane counties. There are three (3) trial court judges in the district (Criminal Court, Circuit Court and Chancery Court). The Criminal Court Judge is responsible for presiding over all felony cases in the district, any misdemeanor cases which are indicted by the grand jury, and appeals from both General Sessions Court and Juvenile Court.

I think my selection would have a positive impact on the court. Due to my experience and background, I would be ready on day one to assume the duties of Criminal Court Judge. I have a strong work ethic and have experience managing very large dockets. I believe that during my time on the bench I have earned the respect of other judges, lawyers, law enforcement officers, clerks, court officers, and the community at large.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? **(250 words or less)**

I strongly believe that a judge should be involved in the community and in organizations that help the community. Since 2001, I have been a member of the Rockwood Civitan Club, which is a volunteer organization dedicated to serving individual and community needs. For the past 14 years, I have been a member of the Roane County St. Jude Events Committee. This committee was formed to raise money for St. Jude Children's Hospital by hosting a yearly golf tournament, motorcycle ride, and fishing tournament. Although the Code of Judicial Conduct does not allow me to participate in seeking donations, I am allowed to lend my services by helping to plan, coordinate, and volunteer at these events. The committee also raises money to help people in our community who have incurred medical bills or other financial hardships. This year our committee raised over \$80,000.00 for St. Jude. I speak on a yearly basis about the U.S. Constitution, with emphasis on the Bill of Rights, to the Daughter's of the American Revolution. Every year I participate in Student Government Day when high school students from around Roane County come to the courthouse to learn about local government. I also speak every year to

the Leadership Roane County class about our local judicial system. I have coached softball for the Kingston Girls Softball Association and basketball for the Kingston Optimist Club.

I will continue to be involved in these organizations if I am appointed judge.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

I made a trip to Washington D.C. my senior year in college which changed the course of my life. By chance, I met a special agent with the Naval Investigative Service and after describing his job, he encouraged me to pursue a career in federal law enforcement. Although my degree was in geology and I had no prior law enforcement experience, I knew I wanted to be a federal agent. When I returned from D.C., I applied for a position with the Bureau of Alcohol, Tobacco and Firearms (ATF). Some people told me I was wasting my time because of my age and lack of experience, but after a long year and a half selection process, I was hired as one of the youngest special agents in ATF. I attended the Federal Law Enforcement Training Center (FLETC), finished with the highest grade point average in ATF history, and received a U.S. Treasury Special Achievement Award. In 1988, after assisting the Secret Service with providing security for visiting Presidential Candidates, I applied for a position with the agency. After an almost two year selection process, I accepted a special agent position with the Secret Service. My job required extensive travel across the United States and in foreign countries such as Russia, Saudi Arabia, Germany, Poland, Spain, Bulgaria, and Iceland. These experiences taught me that you never know when you may meet someone who will change your life, don't let people tell you that you can't do something, and if you want something bad enough it's worth the wait.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

Yes, I took an oath to uphold the Constitution and the laws of Tennessee. In addition, the Code of Judicial Conduct requires me to comply with the law. A judge also has the duty to follow the decisions of appellate courts and their interpretation of the law. No judge has the pleasure of only applying the laws that he or she agrees with.

I do not recall having a conflict with any laws or rules while in private practice. As a judge, I disagree with the Federal Rule that prohibits a holder of a commercial driver's license (CDL) who receives a traffic citation while operating his or her personal vehicle from attending a traffic school. A person holding a regular driver's license (class D) is allowed to attend a traffic school. Although I disagree with the rule, I uphold it every time it is at issue.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A. Senator Ken Yager , G19 War Memorial Bldg., Nashville, TN
B. Hon. Russell Johnson , District Attorney General for the Ninth Judicial District,
C. Jack Stockton , Sheriff of Roane County,
D. Sean Muirgaen , Esq. Regional General Counsel, Department of Children's Services,
E. Lloyd Cook ,

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the **Criminal Court for the Ninth Judicial District of Tennessee**, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: August 21, 2015.



Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS
ADMINISTRATIVE OFFICE OF THE COURTS**

511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
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__Jeffery H. Wicks__
Type or Print Name

Signature

Date

__20330__
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

WRITING SAMPLE # 1

IN THE GENERAL SESSIONS COURT FOR ROANE COUNTY, TENNESSEE

PLAINTIFF,

VS.

No. [REDACTED]

DEFENDANT.

MEMORANDUM OPINION

This matter was heard before Jeffery H. Wicks, judge of the General Sessions Court for Roane County, Part I, on April 22, 2015, upon a request to set child support. The Court heard the testimony of the parties in open court and thirteen (13) exhibits were entered into evidence. The Court also heard the statements and arguments of counsel, and reviewed the record as a whole. From all of the foregoing, the Court issues this, its memorandum opinion incorporating findings of fact and conclusions of law.

Facts

The parties were divorced by an order of this court entered on March 14, 2012, *nunc pro tunc* August 18, 2011. The parties have one minor child, who was born on [REDACTED]. Prior to entry of the final decree, the parties submitted a Permanent Parenting Plan ("PPP") to the court for approval. The PPP was signed by the mother, (hereinafter referred to as "Mother") on November 30, 2011 and by the father, (hereinafter referred to as "Father") on December 5, 2011. The PPP was filed with the clerk's office on February 16, 2012, and entered by the court on the same day. Pursuant to the PPP, Mother would spend 182.5 days with the child and Father would spend

ENTERED
DATE: July 7, 2015
TIME: 1:00 PM
BY: Susan Pradler

182.5 days with the child. The Final Decree and the PPP reserved the issue of child support to the magistrate.

Father was born on February 7, 1947, and is currently sixty-eight (68) years old. At the time of the parties' separation in June of 2010, he was employed in the field of _____ and earned \$98,983.00 that year. In July of 2011, Father was terminated for cause from his employment with _____ and he then applied for and began receiving Social Security benefits. He earned a total of \$70,578.00 in 2011, which included his salary prior to his termination, \$7,776.00 in Social Security benefits and \$4,372.00 in Social Security benefits on behalf of the parties' minor child. Father has submitted job applications to approximately 50 companies since his termination in 2011. He was offered employment with a company at approximately \$98,000.00 a year, but he would have been required to move out of state. Father declined the job offer due to his fifty-fifty co-parenting arrangement set forth in the PPP. He has had no other job offers. Father has suffered from congestive heart failure, problems with his prostate and has issues with hearing loss. In 2012, Father's income consisted of \$24,176.30 in Social Security benefits and an additional \$13,596.00 in Social Security benefits on behalf of the parties' minor child, for a combined income of \$37,772.30. In 2013, Father's income consisted of \$24,586.80 in Social Security benefits and an additional \$13,824.00 in Social Security benefits on behalf of the parties' minor child, for a combined income of \$38,410.80. In 2014, Father received a total income of \$40,184.40 which consisted of \$24,958.80 in Social Security benefits, \$14,040.00 in Social Security benefits on behalf of the parties' minor child, and \$1545.60 from _____

Mother was born on September 6, 1972 and is currently forty-two (42) years old. She is presently employed with _____ where she contracts with the _____ and she earns \$49.44 per hour. In 2011, Mother earned \$66,512.43 from her employment with _____. For the year 2012, Mother had a combined income of \$65,489.00 from her employment with _____, and unemployment compensation. In 2013, Mother had income totaling \$42,349.00 and in 2014, Mother's total income was \$108,348.00.

The minor child, _____ currently attends _____ located in _____. This is a private school with an annual tuition of \$6,900.00. The PPP provides that the child could attend _____ for her 2nd grade year and that father would pay the tuition. At the end of the 2nd grade year, the child would be allowed to express her preference as to which school she wanted to attend. However, the child's preference would not be the controlling factor in the parents' decision. The PPP provides that the parents have joint decision making authority on educational decisions. The minor child has continued to attend _____ after completing the 2nd grade and Father has been paying fifty percent (50%) of the tuition and _____ has been paying the other fifty percent (50%).

In accordance with the PPP, Mother shall maintain health insurance for the minor child and she shall be given credit for the premiums on the child support worksheet. The parties announced in open court that they were not seeking any uncovered medical expenses they have paid on behalf of the minor child to date and any future uncovered medical expenses will be divided evenly between the parties. Neither parent presented proof that they are currently incurring expenses for recurring work-related child care expenses, however there were some incurred by both parents in the years since the separation.

Statement of the Case

The court was asked to determine child support, make a decision regarding whether the child will attend [redacted] and which parent would be responsible for the tuition. Mother argued that due to the fact that Father was terminated for cause from his job where he earned \$98,000.00 and he turned down a job offer with a \$98,000.00 salary, he is willfully and/or voluntarily underemployed or unemployed and that the court should impute income to Father. Mother also argues that if Father wants the child to attend [redacted] he should be responsible for the tuition.

Father argued that he is not willfully and/or voluntarily underemployed or unemployed and he has been seeking employment since his termination. He argued that he turned down the job offer with a salary of \$98,000.00 because it would require him to move out of state and disrupt his fifty-fifty co-parenting time with the minor child. He also argued that the minor child wants to attend [redacted] she is doing well at the school, and he and Mother should be equally responsible for the tuition.

Child Support

When a court sets child support it must ascertain the parents' gross income, which shall include income from any source such as wages, income from self-employment, interest income, unemployment benefits, and Social Security benefits paid to the parent or to the child. Tenn. Comp. R. & Regs. R. 1240-2-4-.04(3)(a)(1). (2015).

As set forth in Tenn. Comp. R. & Regs. R. 1240-2-4-.04(3)2(i), (ii) and (iii) (2015), income may be imputed to a parent if the court determines that a parent is willfully and/or voluntarily underemployed or unemployed. In making the determination, the court should look

to the reasonableness of the parent's occupational choices in light of the parent's obligation to support his or her children and to determine whether such choices benefit the children. This determination may be made on any intentional choice or act that adversely affects a parent's income. Once a parent that has been found to be willfully and/or voluntarily underemployed or unemployed, additional income can be allocated to that parent to increase the parent's gross income to an amount which reflects the parent's income potential or earning capacity, and the increased amount shall be used for child support calculation purposes. Further, this rule also sets forth certain factors to be considered in making the determination including, but not limited to, a parent's past and present employment, education, training, and ability to work.

In the case at hand, the court was asked to find that Father was willfully and/or voluntarily unemployed or underemployed due to his termination for cause from his employment with _____ in _____ and due to the fact that he declined a job offer with a salary of \$98,000.00. The evidence presented in this case does persuade the court to find that Father was either willfully and/or voluntarily underemployed or unemployed. Father has been seeking employment since his termination and received a job offer at a salary equal to what he was earning at the time of his termination. However, Father would have been required to move out of state to accept this job and that would have disrupted his fifty-fifty co-parenting time with the parties' minor child. The court finds that this decision was reasonable and was beneficial to the minor child. Furthermore, Father is currently 68 years old with several health issues, both of which may have a negative impact of his future employment prospects. Therefore, the court finds that current and past child support shall be calculated in accordance with the number of days the parents spend with the minor child, the parents' incomes as set forth in this memorandum opinion, and the minor child's health insurance premiums paid by Mother. As stated earlier,

neither parent presented proof that they are presently paying any recurring work-related child care expenses. However, both parties shall be credited with any recurring work-related child care expenses they have paid since the separation.

Education

The court further finds that the PPP grants the parties with joint decision making authority on educational decisions. The PPP further provides that the child could attend _____ for her _____ grade year and that father would pay the tuition. The minor child has continued to attend _____ after completing _____ grade and Father has been paying fifty percent (50%) of the tuition and _____ has been paying the other fifty percent (50%). Father wants the child to continue to attend _____ and the child is doing well at the school. Mother does not want to share in the tuition costs of _____ but does not otherwise object to the child attending _____. Since the parties have joint decision making authority regarding education, and they cannot agree on the school choice, the court is of the opinion that the minor child can attend _____ provided Father pays the tuition. Otherwise, the child shall attend any school that the parties may agree upon.

Attorney Fees

Each party shall be responsible for their own attorney fees.

Court Costs

The court costs in this matter shall be taxed equally to the parties.

An Order shall be prepared incorporating the findings of fact and conclusions of law set forth in this memorandum opinion. Further, child support worksheets shall be prepared setting current and past child support obligations of the parties.

ENTER this the 7th day of July, 2015.



Judge

CERTIFICATE OF SERVICE

I hereby certify that I have this day hand-delivered, e-mailed, faxed and/or deposited in the U. S. mail, with sufficient postage thereon, a copy of the foregoing Memorandum Opinion, on this the 7 day of July, 20 15 addressed to:

Laureen Biloski
109 W. Tennessee Ave.
Oak Ridge, In 37830

Margaret Held
1522 Highland Ave.
Knoxville, In. 37916

Susan Groover

Judge/Clerk

WRITING SAMPLE # 2

IN THE GENERAL SESSIONS COURT FOR ROANE COUNTY, TENNESSEE

Petitioner,

VS.

No.

TCSSES No.

Respondent.

MEMORANDUM OPINION

This matter was heard before Jeffery H. Wicks, judge of the General Sessions Court for Roane County, Part I, upon a Request for Hearing filed by Petitioner, (herein after referred to as "Petitioner") pursuant to Tenn. Code Ann. § 36-5-405 and a Motion for Relief Under Rule 60.02 filed by Respondent on February 10, 2015, (herein after referred to as "Respondent"). Both actions were seeking relief from the Findings and Recommendations of Charles J. Crass, Child Support Magistrate for the 9th Judicial District, entered on February 12, 2014. Also before the Court was a Petition to Establish Child Support Arrearages filed by Respondent on March 19, 2014, a Petition for Contempt filed by Respondent on March 19, 2014 and an Answer and Counter-Petition for Contempt filed by Petitioner on May 8, 2014. The Court heard the testimony of the parties and witnesses in open court and seven (7) exhibits were entered into evidence. The Court also heard the statements and arguments of counsel, and reviewed the record as a whole. From all of the foregoing, the Court issues this, its memorandum opinion incorporating findings of fact and conclusions of law.

Statement of the Case

The parties were divorced on May 9, 2008, by an order of this Court which required Petitioner to pay \$192.00 a week in child support to Respondent for the parties' two (2) minor

ENTERED
DATE: June 11, 2015
TIME: 9:00 am
BY: Susan Proctor

children, with payments to begin on May 15, 2008. At that time, Petitioner's gross monthly income was \$3915.60 and Respondent's gross monthly income was \$1098.50. Petitioner was to spend 100 days a year with the children and Respondent was to spend 265 days a year with the children.

Petitioner and his mother, _____, testified that in September of 2008, they reached an agreement with Respondent whereby in lieu of child support, Respondent and the parties' children could remain in the marital home, owned by _____ and pay no rent or utilities. The utilities included the electric bill and the water bill. Petitioner admitted that the agreement was not reduced to writing. Petitioner and _____ argued that the fair market value for the rental value of the home was \$800.00 a month, but this amount was never discussed with Respondent. Petitioner testified that he would reimburse his mother for these expenses from time to time when he was financially able to do so.

In contradiction to the agreement, Petitioner continued to pay his child support as ordered in September, October, and November of 2008. In December of 2008, Petitioner did not make any child support payments to Respondent and in fact, made no further child support payments to Respondent until May of 2013.

Respondent denied any such agreement, but did live in the home and paid no rent or utilities until January of 2013, after _____ lost her job. Respondent agreed to pay \$207.00 a month (the amount of the monthly mortgage on the home) and the utilities for the months of January, February, and March of 2013. Petitioner filed a *pro se* Petition for Modification of his child support on April 19, 2013, after he became unemployed. On July 25, 2013, Petitioner, through his attorney, filed another Petition for Modification of his child support, citing among

other factors, Respondent's substantial increase in income from the entry of the Final decree in May of 2008. At the time of the filing of the latest petition for modification, Respondent was earning approximately \$50,000.00 a year as a nurse. Neither the petition filed by Petitioner *pro se* nor the one filed by his attorney made any mention of the September 2008 agreement to allow Respondent to live in the marital home rent free in lieu of child support. In July of 2013, Respondent and her husband purchased the home from

On or about October 30, 2013, the parties agreed to modify their Permanent Parenting Plan originally entered on May 9, 2008. Prior to the modification, Respondent had allowed Petitioner to spend more time with the children than the Parenting Plan allowed. Under the Modified Plan, Petitioner would spend 145 days a year with the children and Respondent would spend 220 days a year with the children. All issues relating to child support were reserved for the Child Support Unit or the Child Support Magistrate. On December 5, 2013, this Court entered an Agreed Order of Modification which incorporated the modified Permanent Parenting Plan. After the birth of her son in 2014, Respondent voluntarily started working part-time as a nurse averaging 20-24 hours a week.

Petitions for Contempt

The parties announced in open court that they had agreed to dismiss their respective Petitions for Contempt and the Court accepted their agreement.

Child Support Modification

Petitioner argued that his current child support should be modified in accordance with the modified Permanent Parenting Plan and the parties' income at the time of the filing of his petition for modification. Further, Petitioner argued that Respondent is voluntarily underemployed and the court should impute income to Respondent at the rate she was earning at

the time he filed his petitions for modification in 2013. Respondent argues that she is not voluntarily underemployed but chose to work part-time in 2014 in the best interests of her minor child.

The statute addressing child support provides in pertinent part:

Any order for child support . . . shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. If the full amount of child support is not paid by the date when the ordered support is due, the unpaid amount is in arrears, shall become a judgment for the unpaid amounts, and shall accrue interest from the date of the arrearage, at the rate of twelve percent (12%) per year. All interest that accumulates on arrearages shall be considered child support. . . .

Tenn. Code Ann. §36-5-101(f)(1)(2015).

The rules governing modification of a child support order in this situation are set forth in Tenn. Comp. R. & Regs. R. 1240-2-4-.05(2)(c)(2015), which reads as follows:

(c) For all orders that were established or modified January 18, 2005 or after, under the income shares guidelines, a significant variance is defined as at least a fifteen percent (15%) change between the amount of the current support order (not including any deviation amount) and the amount of the proposed presumptive support order or, if the tribunal determines that the Adjusted Gross Income of the parent seeking modification qualifies that parent as a low-income provider, at least a seven and one-half percent (7.5% or 0.075) change between the amount of the current support order (not including any deviation amount) and the amount of the proposed presumptive support order.

As set forth in Tenn. Comp. R. & Regs. R. 1240-2-4-.04(3)2(i), (ii) and (iii) (2015), income may be imputed to a parent if the court determines that a parent is willfully and/or voluntarily underemployed. In making the determination, the court should look to the reasonableness of the parent's occupational choices in light of the parent's obligation to support his or her children and to determine whether such choices benefit the children. This determination may be made on any intentional choice or act that adversely affects a parent's

income. Once a parent that has been found to be willfully and/or voluntarily under or unemployed, additional income can be allocated to that parent to increase the parent's gross income to an amount which reflects the parent's income potential or earning capacity, and the increased amount shall be used for child support calculation purposes. Further, this rule also sets forth certain factors to be considered in making the determination including, but not limited to, a parent's past and present employment, education, training, and ability to work.

The Final Decree entered on May 9, 2008, required Petitioner to pay \$192.00 a week in child support to Respondent for the parties' two (2) minor children. This amount was calculated using Petitioner's gross monthly income of \$3915.60 and Respondent's gross monthly income of \$1098.50. Petitioner was allowed 100 days a year with the children and Respondent was allowed 265 days a year with the children. It is clear from the wording in Tenn. Code Ann. §36-5-101(f)(1) that Petitioner's child support could not be modified prior to the filing of his first Petition for Modification in April of 2013.

Respondent testified that in 2013, she earned approximately \$50,000.00 a year as a nurse. In 2014, several months after the petitions for modification were filed, Petitioner decided to voluntarily reduce her hours at work so that she could spend more time with her newborn son. Although this reduction in hours worked may have benefited her newborn son, she still had an obligation to support her two children born during her marriage to Petitioner. There was no proof that her reduction in hours and income was beneficial to her other two children. By choosing to work only 20 to 24 hours a week, Respondent adversely affected her income. Therefore, the court finds that Respondent was voluntarily underemployed and income will be imputed to her at her 2013 earning level of \$3961.67 a month.

Under the modified Permanent Parenting Plan, Petitioner would spend 145 days a year with the children and Respondent would spend 220 days a year with the children. When these numbers, along with Petitioner's income of \$3,640.00 a month, Respondent's inputed income of \$3961.67 a month, and Respondent's portion of the children's health care premiums are applied to the income shares guidelines, Petitioner's child support obligation is reduced from \$832.00 a month to \$416.00. This is more than a 15% reduction in Petitioner's child support obligation and therefore, the Court finds a significant variance exists. (See Exhibit 4) As such, Petitioner's petitions for modification are granted and will be retroactive to the date of filing, April 19, 2013.

Child Support Arrearages

As set forth earlier, Respondent filed her Petition to Establish Child Support Arrearages on March 19, 2014, after the Child Support Magistrate either failed to award any arrearages or failed to address the issue. Petitioner stopped paying child support to Respondent in December of 2008 and made no further payments until May of 2013. Petitioner argued that in determining any child support arrearages, the Court should enforce the September 2008 agreement in lieu of child support or in the alternative, he should be given credit for the rent and utilities paid on behalf of Respondent and their children. Respondent argues that there never was an agreement in lieu of child support in September of 2008 and she should be awarded child support arrearages from 2008 to present.

Pursuant to Tenn. Code Ann. §36-5-101(f)(1) (2015), "[i]f the full amount of child support is not paid by the date when the ordered support is due, the unpaid amount is in arrears, shall become a judgment for the unpaid amounts, and shall accrue interest from the date of the arrearage, at the rate of twelve percent (12%) per year." However, courts have allowed credit to

an obligor parent for non-conforming payments. Under the "necessaries rule," a court may give credit to the obligor parent for the children's necessities which were not being supplied by the custodial parent. Oliver v. Oczkowicz, No. 89-396-II, 1990 Tenn. App. LEXIS 354, 1990 WL 64534, at *2. (Tenn. Ct. App. May 18, 1990).

In the case at hand, Respondent lived in the former marital home owned by Petitioner's mother, and did not pay any rent or utilities from September 2008 until January 2013. This court would consider housing and utilities to be necessities for the children and Respondent was not supplying them for the children. Therefore, Petitioner shall be given credit towards his child support payments for the actual expenditures associated with Respondent and their children living in the home. These shall include the mortgage payments of \$207.00 a month, and not the arbitrary \$800.00 a month rent payment, plus the water and electric bills. For the months where Petitioner was unable to ascertain the actual amount spent on the electric bills (September of 2008 to December of 2010) the Court will give Petitioner a credit of \$134.87 a month, which the Court calculated as the average electric bill paid from July of 2010 until December of 2012. (See Exhibit 5) The parties stipulated that Respondent's child support arrearage would be \$51,767.31 if there was no modification and no credits. Due to the modification and credits allowed, the Court calculated Petitioner's child support arrearage to be \$21,334.40 and a judgment in this amount shall be awarded to Respondent with the statutory interest rate of 12%. Petitioner shall pay \$200.00 a month toward this arrearage.

Attorney Fees

Each party shall be responsible for their own attorney fees.

Court Costs

The court costs in this matter shall be taxed equally to the parties.

An Order shall be prepared incorporating the findings of fact and conclusions of law set forth in this memorandum opinion.

ENTER this the 11th day of June, 2015.


Judge

CERTIFICATE OF SERVICE

I hereby certify that I have this day hand-delivered, e-mailed, faxed and/or deposited in the U. S. mail, with sufficient postage thereon, a copy of the foregoing Memorandum Opinion, on this the 11 day of June, 2015 addressed to:

Atty. Thomas Parker
108 Sherway Road
Knobville, In. 37922

Atty. Jennifer Rabey
1021 Waterford Place
Kingston, In 37763

Susan Groover
Judge/Clerk