

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 an attorney with Nahon, Saharovich, and Trotz, PLC.

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

I was licensed to practice law in Tennessee in 2000. My BPR number is 021018.

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 licensed to practice law in Tennessee. My license was issued October 26, 2000. My BPR number is 021018. My license is 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).

Shelby County District Attorney General

Upon completion of my legal education in May 2000, I was employed with the Shelby County District Attorney General's office. I was employed as a Victim Witness Coordinator in September 2000 before moving to a position as an Assistant District Attorney. I served as an Assistant District Attorney General from (approximately) January 2001- February 2006.

Nahon, Saharovich, & Trotz, PLC

February 2006- present

I practice in the litigation section.

During my early years with the District Attorney General's Office, I worked weekends and some nights at Ann Taylor- a women's clothing store. I began working there in December 2000. To the best of my recollection, I worked there until the spring of 2003. I also sold a retail line of clothing from my home for a period around 2005.

I have worked in my mother's retail business on occasion for as long as I can recall. Starting at about age 10 I began working in the various cotton related trade show booths associated with the family business. Since completing my legal education, my involvement is limited to a few times a year. I continue to work at the Mid-South Farm and Gin show on a yearly basis to support my family's business. I have also assisted with farm business as called upon.

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 currently practice in the area of civil litigation. 95% of my practice involves personal injury litigation. The remaining 5% is made up of occasional representation of defendants in criminal matters or appearances for a general litigation purpose. My practice involves preparing lawsuits, conducting written discovery, depositions of fact witnesses, expert depositions, motion practice, and both bench and jury trials. I routinely participate in alternative dispute resolution including mediation and arbitration.

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 have practiced in every State and General Sessions Court in Shelby County during my fifteen years of practice. During my time with the District Attorney General's office, I practiced in every division of General Sessions Criminal Court. I was briefly assigned to Division I of Criminal Court, and then to the Narcotics Unit where I worked alongside the West Tennessee Drug Task Force. I regularly advised law enforcement in both educational forums as well as in individual situations when called upon. In the Narcotics Unit I handled cases from arrest, through indictment by the Grand Jury, and in Criminal Court. I was then assigned to the Gang and Narcotics Unit where I also tried numerous jury and bench trials. I engaged in motion practice regularly. I also prosecuted matters civilly including forfeiture and nuisance actions. On several occasions, matters that began in Environmental Court were transferred to Chancery Court. I appeared in General Session Civil Court as well as in Bankruptcy Court as a representative of the Drug Dealer Eviction Program. While I did not argue appellate matters directly, I participated as needed in the writing and preparation for oral arguments involving cases that I tried.

My private practice is primarily devoted to representing injured parties as the result of the negligence of another. While in private practice, I have handled cases in every division of General Sessions Civil Court as well as Circuit and Chancery Courts. I have also practiced in many other Circuit Courts across the state. I have participated in appellate matters and argued before the Court of Appeals as necessary. I have occasionally represented defendants in Criminal Court.

I have handled matters with the Department of Labor and numerous matters with the Tennessee Claims Commission. While my practice is primarily in the State Courts, I have also practiced in Federal Court. I often appear in Bankruptcy Court regarding employment, automatic stays, and settlements.

Through representation of the State of Tennessee as well as injured parties, I have prosecuted lawsuits and been the party responsible to meet the burden of proof. Having been responsible for the substance of lawsuits places me in a unique position to evaluate cases from the bench. I have taken very seriously the obligation to put forward an accurate portrayal of the facts so as to best represent my client in all lawsuits in which I have taken part. I have interviewed countless witnesses and made determinations regarding credibility with a given lawsuit which were not always ideal, but at all times ethical. I have striven to always maintain integrity in my representation of both the State of Tennessee and the injured parties that I have represented.

Further, I realized from very early in my practice that it is incumbent upon all attorneys to conduct themselves in a manner that following the Rules of Professional Conduct not only in the office or a courtroom, but at all times. I have endeavored to honor my profession in all aspects of my life.

During my time as a prosecutor and in private practice, I have had occasion to call upon legislators regarding new legislation.

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

I have an extensive trial resume which includes matters in Criminal and Circuit Court. Some

matters of special note are the following:

State of Tennessee v. Reginald Rome 03-01497, Shelby County Criminal Court, Division V

I prosecuted this first degree murder case at the trial level along with Judge Bobby Carter (now Judge in Criminal Court Division 3). This case involved murder of Officer George Selby. I was personally acquainted with Officer Selby and many of the other officers involved prior to his murder.

State of Tennessee v. Gerald Pendleton, 02-00512, Shelby County Criminal Court, Division I

I prosecuted this first degree murder case at the trial level with Judge James Lammey (now Judge in Criminal Court Division 5). This was my first involvement with a first degree murder case. It involved the murder of a minor child, J.W., as the result of aggravated child abuse and neglect. During the trial, I realized how important it is for all that are able to make a difference in the lives of others through education and other positive experiences by serving their community however possible.

Marriott Applewhite v. James Blanchard, 2011 Tenn.App.LEXIS 43, Shelby County Circuit Court, Division III

This matter was appealed after a directed verdict was granted by the trial court. The appeal was successful and the matter remanded for a new trial.

I have had very diverse experience during my fifteen years of practice. I have practiced in all divisions of Circuit, Criminal, and Chancery Court in Shelby County and many others across the State.

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 not served as a mediator, arbitrator, or judicial officer.

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.

I have served as guardian ad litem in personal injury cases involving injuries to minors on multiple occasions. My duty as a result of those appointments was to review settlements, confirm any subrogation issues, and discuss any disability that the injured minor might have and make a determination as to the fairness of the settlement. I have also served as guardian ad litem in appeals from Juvenile Court involving termination of parental rights. I spent time with the children independently and visited parents in their homes before reporting my findings to the Court.

I serve as the Assistant Treasurer for the Leo Bearman, Sr. American Inn of Court.

I have both chaired and managed judicial campaigns. I directed payments and collected donations in accordance with the reporting requirements.

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

I served as the Judicial Law Clerk for The Honorable James F. Russell in Division II of Circuit Court of Shelby County from May 1999 to May 2000. I prepared the motion docket, researched issues, and drafted opinions. Before ever practicing myself, I saw how important hard work and judicial temperament are to litigants and attorneys.

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 Memphis, Bachelor of Business Administration, *Cum Laude*

August 1993-May 1997

- Early Scholar's Academic Scholarship
- John Elkington Scholarship

University of Memphis, Juris Doctor

August 1997- May 2000

- Phi Delta Phi
- Who's Who Among American Law Students
- Law School Ambassador
- Dean's Award Products Liability

PERSONAL INFORMATION

15. State your age and date of birth.

I am 40 years old. My date of birth is August 14, 1975.

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

I have lived continuously in the State of Tennessee for 40 years.

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

I have lived continuously in Shelby County since August 1998.

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

I am registered to vote in Shelby 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 now on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No.

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 identify the number of formal complaints you have responded to that were 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. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

None.

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.

Valerie Smith v. Bill McAnally, General Sessions Court of Shelby County, 1103236, Dismissed May 12, 2008. The dispute involved a home inspection.

Valerie Smith v. Eric Roe, CT-002280-11, Circuit Court of Shelby County, Division 1, Dismissed October 7, 2011. The lawsuit was filed on May 11, 2011, regarding serious injuries I received in a car accident.

Both actions have been resolved.

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.

Mid-town Memphis Rotary Club

- Board member- 2013
- Secretary 2013-2014

Junior League of Memphis

Shelby County Republican Party

- Candidate Selection Committee- 2014
- Contest and Credentials Committee-2015
- Candidate Recruitment Committee-2015
- District 93 Representative for the Steering Committee-2015

The Exceptional Foundation of West Tennessee- Board Member

Mid- South Spay Neuter Services Board Member

- Ombudsman- 2015

University of Memphis Law Alumni Board

University of Memphis Alumni Association

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.

- Alpha Gamma Delta, Gamma Zeta Chapter, University of Memphis – this is a female sorority.
- I am a sustaining member of the Junior League of Memphis. Our official mission statement is “The Junior League of Memphis is an organization of women committed to promoting volunteerism, developing the potential of women and improving communities through the effective action and leadership of trained volunteers. Its purpose is exclusively educational and charitable.”

Both organizations limit their membership to women. I intend to remain an active alumna of my sorority, Alpha Gamma Delta, and a sustaining member of the Junior League of Memphis. I believe both organizations are beneficial to the community.

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.

Memphis Bar Association: 2006- present

- Nominating Committee- 2014
assisted in the slate of board of directors and officers to be elected by the membership
- Co- Chair Bench Bar 2016
one of three co-chairs responsible for developing CLE topics and securing speakers

Association of Women Attorneys: 2006- present

Tennessee Association for Justice: 2006- present

(I believe that my membership lapsed for a period, but was then renewed.)

Fellow Memphis Bar Foundation 2015

Leo Bearman, Sr. American Inn of Court: 2013- present

- Team Administrator 2014-2015
facilitated team involvement and presentation of a speaker of the meeting assigned to my team;
- Membership Committee: 2015
assisted in the slate of potential members to the organization;
- Assistant Treasurer: 2015-2016
responsible for collection of dues, budgeting, and payment of invoices.

NEXUS mentor: Class of 2013. Attended classes and participated in projects one on one with a protégé in order to guide her through her professional life. NEXUS is a one year commitment which required attendance as well as participation in team building exercises.

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.

- Super Lawyers, Rising Star- 2009, 2010, 2012
- Leo Bearman, Sr. American Inn of Court, Outstanding Barrister- 2015

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

Valerie L. Smith, Discovery is the Key to Successful Nursing Home Litigation, The Tennessee Trial Lawyer, Winter 2006-7 at 18.

Valerie L. Smith, Businesses Can Reduce Bottom Line Exposure by Taking Steps to Avoid Litigation, Memphis Business Journal, June 12-18, 2009, at 6A.

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.

- “Death and Litigation” I presented a course involving the pitfalls that occur when a Plaintiff, Defendant, or witness dies while a case is in litigation. I also addressed substitution of parties and the best mechanisms to employ in differing scenarios. This was presented in conjunction with the MBA young lawyers division.
- “Wait... Can I Do That?” I am a co-presenter of this CLE. It addresses the ethical rules surrounding scenarios commonly presented to attorneys. This presentation is done in conjunction with the MBA. The presentation was made in December 2014, May 2015, and is scheduled again for December 2015.
- “Bridging the Gap Between Being a Lawyer and Being a Candidate.” I was part of a panel which discussed support of local parties in partisan races, campaign finance, and tips on campaigning. This CLE was presented by the Association of Women Attorneys.

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.

Not applicable.

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.

Valerie L. Smith, *The Law is Not All Black and White*, *The Commercial Appeal*, May 27, 2007 at V5. I wrote this article after making the transition from the District Attorney’s Office to private practice. I was able to take what I had learned in one environment and transition it to my current practice. The article discusses changing hats as a metaphor for reinventing my practice. Through this application, I am seeking the opportunity to shift my legal career back to one that is service driven as a Circuit Court Judge.

Marriott Applewhite v. James Blanchard, Jr., 2011 Tenn.App.LEXIS 43

I have attached the Plaintiff’s appellate brief in this case. This appellate matter involved an appeal from a directed verdict granted at the close of Plaintiff’s proof. Liability was questionable as the proof was presented. I submit this memorandum as an example of my determination to see the law applied correctly. An incorrect standard was used in the Court’s ruling. The matter was reversed and remanded shortly after oral argument.

ESSAYS/PERSONAL STATEMENTS

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

I seek this position to serve the legal community as a fair and impartial jurist. Since my college days, a line from my sorority's purpose has rung true for me: "To welcome the opportunity of contributing to the world's work in the community where I am placed because of the joy of service thereby bestowed and the talent of leadership multiplied." I am qualified to serve as a Judge in Circuit Court. I will bring dedication, humility, and hard work to the bench. Having practiced across the state, I am aware of what litigants and attorneys expect from judges before whom they appear. I will dedicate myself to learning what I do not yet know, to respecting everyone with whom I come in contact, and to making a firm commitment to fairness toward all. Through those ideals, I would be honored to serve the citizens of Shelby County.

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)*

I have participated in legal clinics over the years and done my best to be of assistance to those who attended. I served for a number of years as the Advocacy Chair for the American Diabetes Association. In that role, I guided persons with diabetes or their children through individual situations in order to make sure their rights were protected. While serving on numerous boards, I have provided legal guidance in many capacities including employment issues and liability questions. I have further dedicated myself to being of assistance to clients after the conclusion of my representation whenever possible. I have also served as a mock trial coach for several schools. I have served as a judge in both college and high school mock trial and debate competitions whenever I have been called upon.

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)*

The Judgeship I seek through this application is one of nine divisions of Circuit Court of Shelby County. Unlike many Circuit divisions across the state, this division is limited to civil matters. The types of cases heard before the Court are those with which I am most familiar. I have had great experience with jury trials during my fifteen years of practice. I have also dealt with many collateral issues involving contracts through declaratory judgment actions as well as domestic situations wherein the spouses of injured parties were affected by the negligence of another. My selection as the Judge for Division Three of Circuit Court would bring a breadth of knowledge in many areas of the law with a judicial temper appreciated by all. I understand the complexities of trials and am committed to fostering an atmosphere of fairness and competence through hard work and dedication.

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 believe strongly in community service. I have been a member of the Junior League of Memphis since 2002, and am now a sustaining member. I was fortunate to be able to serve the community in a variety of ways during that time including as a mentor to women undergoing treatment at the Salvation Army, working with children in multiple areas, and serving the JLM internally by developing training classes and fundraising. I served on the board of the American Diabetes Association as the Advocacy Chair. I answered questions and ensured that those with diabetes were treated fairly and not discriminated against in their workplaces or schools. I served on the board of The Exceptional Foundation of West Tennessee which serves to enrich the lives of people with intellectual disabilities by meeting their social, recreational and continued educational needs. I currently serve on the board of Mid-South Spay Neuter Services which is dedicated to reducing pet overpopulation and high euthanasia rates by offering affordable spay and neuter surgeries to the public. I am also a member of the Mid-Town Memphis Rotary Club which exists to provide service to others, promote integrity, and advance world understanding, goodwill, and peace through its fellowship of business, professional, and community leaders. I have participated in a variety of political campaigns in various capacities since 2006. If selected for this position, I will continue my community involvement as allowed by the Judicial Canons.

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 grew up in Tipton County, Tennessee. I was raised to appreciate family, close friends, honesty, and integrity. As a child I was fortunate to spend time with my grandparents; both grandfathers were farmers. My grandmothers were strong, talented, dedicated women. I vividly recall my time spent with each as a little girl and being in awe of the respect shown to them. It was common to be told that I was a very lucky little girl to have them as family. My father is a retired chemical engineer and manages our farmland. My mother taught high school English before she started her own business in order to spend more time with my brother and me. I respect my parents more than any two people in this world. Among the countless lessons I have learned from my mother and father are the value of hard work, respect for others, deliberate decision making, and individual responsibility. I was taught from an early age that every person in the world is to be respected and the advantages I have had should never be taken for granted. I realize that I am fortunate to have lived the life I have. Consequently I have devoted countless hours to improve and assist the lives of others. I strive to earn the level of respect shown to those that came before me by living my life according to the values passed on to me.

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 will uphold the law, regardless of whether or not I agree with it. Litigants and attorneys alike should demand adherence to the law as written without a personal twist from an individual jurist. Consistency, fairness, and stability from the bench are a must. Over the years I have been acutely aware of what a jury was or was not allowed to know which might make for a clearer picture in a given case. Examples include prior convictions not being allowed in criminal cases, testimony excluded for various reasons, or other matters which were not deemed admissible by trial courts. Regardless of personal beliefs, there must be no greater guarantee to all litigants than the promise that each and every one receive a fair and impartial trial under the law.

As a prosecutor in the Narcotics Unit, I struggled with charging and prosecuting those that transported drugs through this community. I was told repeatedly that those defendants were 'mules' and should not be held as accountable as the person in charge. That was not a decision for me to make. I was individually approached by defendants who pleaded with me to understand their actions. Despite my sympathy for their situations, I advised each only that they must speak only with their own counsel. In each situation, I then prosecuted the case to the best of my ability on behalf of the State of Tennessee.

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. David Kustoff
Kustoff & Strickland
Attorney at Law

B. Amy Weirich
Shelby County District Attorney General

C. Mary Wagner
Rice, Amundsen, & Caperton, PLLC
Attorney at Law

D. Mark Luttrell
Shelby County Mayor

E. Michael Shearin
Major, Memphis Police Department

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 Circuit Court, Division III of Shelby County, 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: November 28, 2015.

Debbie L. Smith
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**

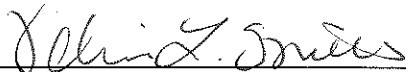
511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
AND OTHER LICENSING BOARDS**

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

Valerie L. Smith



Signature

11/28/15

Date

BPR# 021018

<p>Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.</p> <p><u>none</u></p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
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MY THOUGHTS

The law is not all black and white

By VALERIE L. SMITH
Special to *Vicupoint*

I ALWAYS WANTED to be a lawyer. My big brother did it first, of course, and maybe better. As kids, we loved to watch old movies and wear cowboy costumes. Something from those days of childhood seems to categorize lawyers today.

Hats categorized positions in the movies. Black was bad, but we loved to watch them. And white was really good — and always won.

People, and probably most in the legal profession, see lawyers with hats. You wear a gray, white or black hat.

Gray hats go to the lawyers that do something that most folks do not understand. Things like blue sky and complex patent work. These are things that many of us who are duly licensed attorneys could not discuss intelligently to save our lives. My big brother wears a gray hat.

White hats go to those lawyers doing a service to the community. Prosecutors putting away criminals, and those doing pro bono work: lawyers representing a person in an abusive marriage who can't afford counsel, or one who sticks with a custody battle for years without a dime for the sake of the kids.

That leaves the black hat. Often criminal defense attorneys come to mind; that is, until someone familiar gets in a little trouble. Big businesses, corporations, and insurance companies assign the black hat to those of us who sue people.

No matter what color we might feature our own hat, as a whole, lawyers get a bad rap. We are the brunt of jokes. We're accused of being in the profession only for the money and told by just about everyone that they would have made a better lawyer.

That happens until someone needs help, and we step in to get the job done.

Disputes can be long and tedious. It often takes the justice system's intervention to settle a dispute.



Valerie Smith

What has brought out this oh-so-clever analogy? I changed hats, or so I thought. I was fortunate enough to serve the citizens of Shelby County as an assistant district attorney general for five-plus years. I prosecuted and helped prosecute people who hurt others needlessly.

I spent weeks in sequestered trials with little sleep and a fear that the defendant might hurt someone else if I did not do a good job. I was fortunate in my experiences, and am happy to say that I learned from the best of trial lawyers.

Why would one leave such a rewarding career? Why trade in my one government-issue white hat for a number of designer ones? What color would my new hat be?

I moved to Nahon Saharovitch & Trolz about a year ago. As I have reinvented my career, I have learned that my hat is anything but black.

While reviewing thousands of pages of medical records in nursing home cases, I wondered about my new hat. I missed criminal work — the fire inside that came with knowing I was doing the right thing. Making my way through the piles of paper, the fire returned with a new intensity.

It is not right that a person could be injured through no fault of his own, be over-medicated to stop his cries and die of a gangrenous infection. I phoned another attorney late in the night to express my indignation and anger. His response: "Welcome aboard. We have work to do."

Nursing home litigation is here, and rightfully so. The elderly citizens of this community need help. Many are discovering that there is a course of action, but the bed sores, the tracheostomy tubes that are not suctioned and the physical abuse are still present.

People who can't help themselves are being hurt. The prosecutor in me is still here, but in a different arena.

Yes, we are filing lawsuits against the corporations that are profiting as a result of the suffering of others. I don't say any of this to slam lawyers on the other side. Every lawyer has a client to represent and should be respected for doing their job.

I don't see any lawyer's hat as black, so don't label mine for standing up for the elderly. I'm proud of the work that I'm doing and hope that I can make a difference in the way others are treated.

Valerie L. Smith is an attorney with Nahon Saharovitch & Trolz, PLC and is a member of its Nursing Home Practice Group. She served as law clerk for Circuit Court Judge James F. Russell and then practiced as trial lawyer for the Shelby County District Attorney General's Office.

IN THE COURT OF APPEALS FOR THE WESTERN DISTRICT OF TENNESSEE

AT JACKSON

Marriott Applewhite,

Plaintiff/ Appellant,

v.

W2010-00343-COA-R3-CV

James Blanchard, Jr.

Defendant/ Appellee

BRIEF OF APPELLANT

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ORAL ARGUMENT REQUESTED

STATEMENT OF ISSUE

Can a trial court grant a directed verdict when there were lingering questions regarding apportionment of fault, conflicting testimony regarding the color of a traffic light, questions of credibility of witnesses regarding material issues of fact, for all of which reasonable minds could draw more than one conclusion?

STATEMENT OF THE CASE

On January 28, 2005, a Complaint was filed by Plaintiff, Marriott Applewhite in the Circuit Court of Shelby County against James Blanchard. (Vol. 1, R. 1-6). An Answer of Geico Insurance Company to Complaint was filed on April 15, 2005. (Vol. 1, R. 10-15). An Answer of James Blanchard, Jr. was filed on April 27, 2005. (Vol. 1, R. 16-19). An Amended Answer to Include Counter-Complaint of Defendant, James Blanchard, Jr. was filed on May 10, 2005. (Vol.1, R. 20-24). An Answer of Marriott Applewhite to Counter Complaint was filed on July 8, 2005. (Vol. 1, R. 28-32). A consent order of dismissal with Prejudice as to Defendant's Counter-Complaint Only was entered on February 7, 2006. (Vol.1, R. 42-43)

A jury trial was held on March 23-24, 2009. At the close of Defendant's proof, a motion for directed verdict was made, and granted by the Court. The Order Granting Directed Verdict was entered on April 17, 2009. (Vol. 1, R. 74-77) A Motion for New Trial was Filed by Plaintiff on May 13, 2009. (Vol. 1, R. 79-83). Oral Argument was heard by the Court, and an Order Denying the Motion for New Trial was entered on January 15, 2010. (Vol. 1, R. 137-138)

Plaintiff filed her Notice of Appeal on February 3, 2010. (Vol. 1, R. 145-6).

STATEMENT OF FACTS

On January 28, 2005, a complaint was filed by Plaintiff Marriott Applewhite alleging negligence on behalf of James Blanchard as the result of a car accident that occurred on July 17, 2004. The accident that is the subject of this litigation occurred at Third and Carolina in Memphis, Shelby County, Tennessee. (Vol.1, R. p. 1). The Complaint alleges that Marriott Applewhite proceeded through a green light at the same time that James Blanchard disregarded a traffic control signal in the opposite direction resulting in a collision. Plaintiff's complaint alleged that the Defendant James Blanchard committed acts of common law negligence, to wit:

- a. In negligently failing to use that degree of care and caution in the operation of his vehicle as was required of a reasonable and prudent persons under the same or similar circumstances existing at the time and place of the aforementioned collision;
- b. In negligently failing to maintain a safe lookout;
- c. In negligently failing to devote full time and attention to the operation of his vehicle
- d. Disregarding a traffic control signal
- e. Failing to see what was there to be seen
- f. Failing to maintain control of his vehicle
- g. Failing to warn the other driver
- h. Driving in a reckless manner
- i. Failed to yield right of way to the other driver, Marriott Applewhite
- j. Maintaining his vehicle in a negligent condition to be unable to properly brake,
- k. Negligently loading his vehicle with in excess of what his vehicle could properly carry and drive in a safe manner. (R. 2-3)

Plaintiff further alleged violations of Tennessee Code Annotated including:

T. C. A. 55-8-110. Traffic Control Signals. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution" or "Stop" or exhibiting different colored lights successively one (1) at a time, or with arrows, the following colors only shall be used and the terms and lights shall indicate and apply to drivers or vehicles and pedestrians as follows:

(3) Red alone or "Stop":

(A) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before

entering the intersection and shall remain standing until green or "Go" is shown alone.

T. C. A. 55-10-205. Reckless driving.

(a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property commits reckless driving.

Answers were filed denying all allegations.

The trial of this matter commenced on March 23, 2009. Testimony was heard by three witnesses: Marriott Applewhite, Roger Ferrell, and James Blanchard. Plaintiff Marriott Applewhite testified that she traveled through a green light at the intersection of Third Street and Carolina:

Q. Okay. Where were you?

A. When the accident happened?

Q. Yes.

A. Okay. I was sitting at the red light at Third Street and Carolina.

Q. Okay.

A. You want me to tell you what happened?

Q. That's my next question. Tell us what happened.

A. Okay. I was sitting at the red light. Well, I was driving up to the red light, and the light changed to red as I was coming up to the light.

Q. Okay. Let me stop you there. Did you go—did you stop?

A. Yes.

Q. Okay. Go ahead.

A. I stopped at the light and sat there and waited until the light changed and turned to green. After the light changed to turn green, I immediately proceeded through the light.

Q. When you say “immediately,” did you have, you know, your foot on the gas and shoot through the light?

A. No. When I said “immediately,” I meant when the light changed, and I sat there for a couple of second, and I immediately went on through the light.

(Vol. 4, R, pp. 8, 9)

Q. Okay. And is it your practice to immediately go through a green light?

A. No. I mean, I didn’t—well, when I say “immediately,” I’m sorry. It’s just the normal thing once the light changes, after sitting there three, four five seconds, whatever, I proceeded to go through the light. I wasn’t in any hurry, so I wasn’t rushing.

Q. All right, after the accident occurred, tell us what happened, or tell us how the accident occurred.

A. Well, as I said before, I proceeded through the light. And I don’t think I even got half way through the light before I was hit. And I remember spinning around, hitting my face, and ending up on the north side of Third Street, facing south.

(Vol. 4, R. p. 9)

Independent Witness, Roger Ferrell testified that the Plaintiff proceeded through a green light after waiting a reasonable amount of time:

Q. Could you explain to us what happened after the – what happened at that point?

A. I was sitting there and I seen the pickup and the trailer coming going northbound on Third.

Q. Okay.

A. And I was sitting there. I was watching him; and the light changed, you know, and then she took off.

Q. Okay.

A. And, you know, I seen the - - all of it, but I thought she was going to miss him. I never thought she was going to bump him.

Q. Okay. So when you say you saw a truck and—what type of vehicle did you see coming northbound?

A. A pickup with a trailer behind it.

Q. Okay. And when you saw that trailer come through--, or truck and trailer come through, what color was the light you were sitting at?

A. I—the light was red- but then the light turned green.

Q. Okay. The light turned green. And at that point did Ms. Applewhite begin to proceed through the intersection?

A. After it turned green.

(Vol.3, R. p. 7)

Q. Did you have any way of knowing what color light the truck and trailer had on the other side?

A. No, I couldn't see them.

(Vol. 3, R. pp. 9-10)

Q. Did it appear to you that it was trying to stop?

A. It was going on.

Q. Okay. And it was going on, and the light in front o you at that time was what color?

A. It was red, and then it turned green.

Q. Okay. Do you have any estimate of how long the light had turned green before Ms. Applewhite proceeded through the intersection?

A. No, I wouldn't remember that.

Q. Okay. Was it—

A. I'd say three to four seconds at least.

Q. Okay. Did it appear to you that she waited a reasonable period of time?

A. I think so.

(Vol. 3, R., p. 13)

Defendant Blanchard testified that he went through a yellow light.

Q. And you sped up at this yellow light, correct?

A. I gave it a little gas.

(Vol. 4, R. 108)

At the conclusion of testimony, the Defendant renewed a Motion for Directed Verdict.

The Court granted said Motion stating only:

The law requires a driver having a green light is still required to use reasonable care under the circumstances. The driver should not proceed if the driver, using reasonable care, sees or should see that another vehicle is in the intersection or so near to it that a collision is likely unless the driver slows or stops.

And I'll grant the directed verdict.

(Vol. 6, R. pp. 6-7)

ARGUMENT

Can a trial court grant a directed verdict when there were lingering questions regarding apportionment of fault, conflicting testimony regarding the color of a traffic light, questions of credibility of witnesses regarding material issues of fact, for all of which reasonable minds could draw more than one conclusion?

The law in Tennessee is well settled that a motion for directed verdict should be granted only when there is no controversy as to any material fact that would be determinative or when evidence is clear and not conflicting and there can only be one conclusion drawn. Hurley v. Tennessee Farmers Mutual Ins., 922 S.W.2d 887 (Tenn. 1996) In the instant case, the Court made no determination that reasonable minds could or could not differ, and made no statement indicating what determinations could be drawn.

It is clear from the testimony that reasonable minds could differ as to the fault of the accident. The Court in its ruling cited the testimony of the independent witness only in part. The Appellant submits that the testimony of all of the witnesses taken as a whole provided a fact pattern for which reasonable minds could differ as to the fault of the parties. Decisions regarding the credibility of the witnesses and their testimony as it applied to the facts of the case are those for the jury to make. McCandless v. Oak Constructors, Inc., 546 S.W.2d 592 (Tenn.App. 1976). The Court in this instance erred in not allowing the jury to weigh the evidence and reach a verdict.

The testimony of the independent witness, Roger Ferrell, did indicate that the Plaintiff waited a reasonable amount of time before she entered the intersection to proceed through the green light. (Vol. 3, R. p. 13) Whether or not Defendant James Blanchard was negligent in his

decision to proceed through the light and what color that light was when he entered the intersection is a decision that should have been made by the jury. Additionally, Defendant James Blanchard testified that he should have exercised additional care since he was traveling with a heavy load and that he would have difficulty stopping. (Vol. 4, R. p. 114). Whether he was guilty of Reckless Driving as alleged in the Complaint was a decision for the jury to make. (Vol. 1, R. p. 5) Whatever the percentage of negligence that may have been attributed to the Plaintiff or the Defendant was a decision for the jury to make.

Reasonable minds can also differ as to what color the light was when the Defendant Blanchard entered the intersection. The testimony of the Plaintiff and Witness Roger Ferrell indicate repeatedly that Plaintiff, Applewhite, traveled through a green light. Reasonable minds could easily reach the conclusion that the Defendant proceeded through his light after it turned red, or apportion fault to him for traveling through a yellow light with such a heavy load. Allegations of his failure to properly obey the traffic signal were made in the original complaint. (Vol. 1, R. 4-5)

Further, a directed verdict should not be granted *even in* the case of uncontradicted evidence when the credibility of one of the witnesses has been called into question. Anderson v. Mason, 141 S.W.3d 634 (Tenn.Ct.App. 2004) In this case, the credibility of the Defendant was repeatedly called into question during cross examination. His testimony by way of deposition, his answers to interrogatories, and his testimony at trial were at times inconsistent. (Vol. 4, R. p. 109, p 112, pp. 104- 105) Having shown that his credibility was at issue, it was inappropriate for the Court to then grant a directed verdict. Moreover, the credibility of witnesses, the weight to be given to their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact. State of Tenn. v. Campbell, 245 S.W.3d 331 (Tenn. 2007) By

granting a directed verdict, the Court in effect, deprived the jury of its duty to weigh the credibility of the witness and reconcile the facts as presented through the testimony.

All evidence must be taken in the light most favorable to the Plaintiff when a Motion for Directed Verdict is made. Hurley v. Tennessee Farmers Mutual Ins., 922 S.W.2d at 894, (Tenn. 1996). A motion *must* be denied in any case where all reasonable persons would not reach the same conclusion. A directed verdict should not be granted except where a reasonable mind could draw but one conclusion. Mercer v. Vanderbilt University, Inc., 134 S.W.3d 121 (Tenn. 2004)

By granting a directed verdict in a case involving a question of negligence such as this, the Court is in effect stating that the Appellant, Marriott Applewhite, was 50% or more at fault for the accident that is at issue. It is the Appellant's position that the jury should have been allowed to make the decision as to the percentage of fault of the parties.

The court in its ruling did not apportion fault, but simply recounted portions of the testimony and recited the law. The court stated the law as follows:

The law requires a driver having a green light is still required to use reasonable care under the circumstances. The driver should not proceed if the driver, using reasonable care, sees or should see that another vehicle is in the intersection or so near to it that a collision is likely unless the driver slows or stops.

And I'll grant the directed verdict.
(Vol. 6, R. p. 6-7)

The above language, even if true, leaves several outcome determinative questions remaining. What percentage of negligence if any, should be assessed against the Plaintiff for allegedly failing "to use reasonable care" when traveling through this green light? Even if the

Defendant was already in the intersection, did the Plaintiff have reason to believe that the defendant would obey the law and yield to the Plaintiff who had the green light? If so, what percentage of fault should be assessed against the Plaintiff for rightfully, but in hindsight incorrectly, assuming that the Defendant would obey the law by yielding to Plaintiff's right of way?

The testimony of Roger Ferrell indicated that he was in a larger vehicle to the left of the Plaintiff. (Vol. 3, R., p. 9) Whether or not something was in the line of sight of the Plaintiff preventing her from seeing what might have been there to be seen is a question for the jury to reconcile.

The Tennessee Pattern Jury Instruction 5.05 actually invites the jury to weigh Plaintiff's right to assume defendant has a red light when her light is green against whether Plaintiff should have seen defendant in the intersection, and if so, how much negligence should be apportioned to each party. (T.P.I. – Civil 5.05) The pattern instruction clearly contemplates a case with facts as are presented here and provides instruction for *a jury* to make a determination.

Directed verdicts are inappropriate when material facts are in dispute, or when there is substantial disagreement concerning the conclusions to be drawn from the evidence. Long v. Mattingly, 797 S.W.2d 889, (Tenn.Ct.App. 1990) It is clear from the unanswered questions in this case that this matter should have been allowed to proceed to the jury for a decision.

The error in granting this directed verdict was seasonably called to the attention of the trial court in the Plaintiff's Motion for New Trial which was filed on May 13, 2009. (Vol. 1., R. p. 79-81) Oral argument took place on July 17, 2009. (Vol. 2, R. p. 4-24). Appellant was prejudiced by the decision of

the trial court grant the Motion for Directed Verdict thereby substituting her own judgment for that of the jury. (Vol. 7, R. p. 6-7).

Conclusion

At the close of proof in this case, reasonable minds could have differed as to the fault of the parties and thus apportioned fault for each party in any amount equal to 100%. What was reasonable care to use under the circumstances was a decision for the jury. Sufficient proof was presented to have allowed the jury to reach a verdict. As this is a matter that the jury should have been allowed to determine, the Court erred in Granting the Motion for Directed Verdict and in Denying the Plaintiff's Motion for New Trial. Appellants respectfully request that the Court reverse the decision of the Trial Court and grant a New Trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been forwarded via United States Mail to below listed counsel on this the 27th day of July, 2010.

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