

**Tennessee Judicial Nominating Commission**  
***Application for Nomination to Judicial Office***

*Rev. 26 November 2012*

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**INTRODUCTION**

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission'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 Commission 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 <http://www.tncourts.gov>). The Commission 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 word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) *and* electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit fourteen (14) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to [debra.hayes@tncourts.gov](mailto:debra.hayes@tncourts.gov).

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

Private Practice Attorney (Self employed)

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

2006

BPR # 024902

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.

Texas (Admitted February 3, 1978) Inactive. Have not practiced in Texas since 1993

Alabama (Admitted September 29, 1981) ASB-2887-163D

Louisiana (Admitted October 9, 1981) Inactive. Have not practiced in Louisiana since 1984

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. I would be listed as inactive in both Texas and Louisiana because I have not renewed my licenses in those jurisdictions.

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).

1. I attended Law School while on active duty with the United States Marine Corps. Upon graduation, I was ordered to the Naval Justice School when, upon completion, I was designated as a judge advocate and was assigned as the senior trial counsel at the Marine Corps Base,

Twenty-Nine Palms, California. I was responsible for the prosecution of all Special and General Courts- Martials convened. Thereafter, I served as the Deputy Staff Judge Advocate for the Fourth Marine Aircraft Wing in New Orleans, LA and then as the Officer in Charge of the Legal Assistance Program in Okinawa, Japan. I also attended the Military Judge's Course at the Army Judge Advocate General's School in Charlottesville, VA.

2. In 1984, I resigned my commission in the Marines and accepted an appointment as an Assistant United States Attorney for the United States Attorney's Office for the Eastern District of Louisiana. I was responsible for the prosecution of general crimes. I remained there a short time and then returned to the Marine Corps.

3. Upon retirement from the Marines on June 30, 1991, I accepted a position as an Assistant United States Attorney with the United States Attorney's Office for the Eastern District of Texas. While so employed, I prosecuted general crimes against the United States. During this period, I was admitted to the U.S. District Court for the Eastern District of Texas and to the U.S. Fifth Circuit Court of Appeals.

4. I accepted a position as an Assistant United States Attorney with the United States Attorney's Office for the Eastern District of Tennessee in January of 1993. I served as an Organized Crime Drug Enforcement Task Force prosecutor until my retirement on January 31, 2006. During this period, I prosecuted in excess of 1000 defendants and was sole counsel in at least 100 trials to jury. Additionally, I was the sole counsel involved in at least 150 appeals to the U.S. Sixth Circuit Court of Appeals.

5. I began my private practice in early 2007. I concentrate almost exclusively in criminal defense law. However, I have accepted a few civil cases that have included divorce, probate and personal injury. Those civil case comprise about 10% of my practice.

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.

N/A

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.

My practice would be described as criminal defense law in both state and federal court. My practice is at least 90% criminal defense. But during my six years of private practice, I have represented clients in personal injury cases and I have prepared petitions to probate wills and I have also represented a couple of clients in divorce proceedings. I estimate that these other matters represent 10% or less of my practice.

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 Commission 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 Commission. Please provide detailed information that will allow the Commission 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. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

I am a trial lawyer. In the Marine Corps my first job after my designation as a judge advocate was as Chief Trial Counsel for the Marine Corps Air-Ground Combat Center in Twenty-Nine Palms, CA. Over three years, I prosecuted about 150 cases at either Special or General courts. Of those cases, approximately 30 were tried to a military jury. I also supervised the work and trial presentations of four additional prosecutors in that office. Thereafter, I was assigned to the Fourth Marine Aircraft Wing in New Orleans, LA as the Deputy Staff Judge Advocate. My function was to advise the Commanding General of his legal options relative to his command. This included interpretation of legislative and regulatory dictates as well as implementation of binding direction from Headquarters Marine Corps. I was also tasked with the inspection and supervision of the legal staffs assigned to the 27 subordinate sites of the 4<sup>th</sup> Wing that were located throughout the United States.

As an Assistant United States Attorney in the Eastern Districts of Louisiana, Texas and Tennessee, I have prosecuted well in excess of 1000 defendants. From 1991 to January 2006, I tried to jury in excess of 100 trials. Between 1993 and 2003 (a time that represents the last time I checked) I represented the United States in 169 criminal cases on appeal to the U.S. Sixth Circuit Court of Appeals. All of these cases can be retrieved from the ECF database of the Sixth Circuit.

As a criminal defense attorney, I have tried five cases to jury and have represented four defendants on appeal to the Sixth Circuit. I have also served as sole counsel on appeal to the Tennessee Court of Criminal Appeals in three criminal matters and on one case to the Tennessee Court of Appeals.

My background, training and experience are almost exclusively in the trial arena.

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

N/A

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 served at various times during my Marine Corps career as a Summary Courts-Martial 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.

N/A

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

Attended and successfully completed the Military Judge's course at the Army's Judge Advocate General's School in Charlottesville, VA

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission 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.

N/A

### **EDUCATION**

14. List each college, law school, and other graduate school which 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.

Alabama College (Now University of Montevallo) 1965-1969 BA, Political Science, History  
South Texas College of Law 1974-1977 JD

**PERSONAL INFORMATION**

15. State your age and date of birth.

65 March 30, 1947

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

I have lived continuously in the State of Tennessee since January 1993

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

I have lived in Washington County, Johnson City since January 1993

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

Washington 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.

Active Duty, United States Marine Corps, October 4, 1970-June 30, 1991. Awarded the Meritorious Service Medal, Navy Commendation Medal, National Defense Service Medal w/1\*, Certificate of Commendation, Letter of Recognition, Letter of Appreciation (2), Rifle Expert Badge, Pistol Expert Badge 4<sup>th</sup> award. Honorably retired June 30, 1991.

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.

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. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

N/A

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.

No

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 which you have held in such organizations.

N/A

27. Have you ever belonged to any organization, association, club or society which 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.

N/A

**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 which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

Tennessee Bar Association 2006-present  
Alabama Bar Association 2002-present  
Texas Bar Association 2002-2006  
Tennessee Association for Justice 2007-2011

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

Recognized for the Case of the Year for the Southeastern Region of the Organized Crime Drug Enforcement Task Force for the years 2002 and 2005. Recipient of the Executive Office of United States Attorneys, Department of Justice Director's Award for Superior Performance as an Assistant United States Attorney for the years 1998 and 2003.

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

N/A

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.

N/A

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.



Was a Republican candidate for the 1<sup>st</sup> District U.S. House of Representative seat in 2006

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 which reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

1. U.S. v. Billie Faye Anderson- Appellant Brief to the Sixth Circuit Court of Appeals
2. State v. Alan Pope- Appellant Brief to the Tennessee Court of Criminal Appeals
3. State v. Robert Boling- Appellant Brief to the Tennessee Court of Criminal Appeals

The above appeals were drafted, edited, prepared in final form and presented at oral argument by me.

#### **ESSAYS/PERSONAL STATEMENTS**

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

Most of my adult life has been devoted to public service, first as a Marine Corps Officer and then as an Assistant U.S. Attorney in three separate jurisdictions. Washington County, Tennessee has been my home for twenty years, the longest period of time I have ever spent in any one particular place my entire life. Serving as a criminal court judge would be a continuation of my past public service and it would be directed to serving my own local community. It would be an honor and privilege to serve in that capacity.

36. State any achievements or activities in which you have been involved which 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)*

My positions as a Marine lawyer and Assistant U.S. Attorney over thirty-five years prevented any pro bono work as an attorney. However, I was routinely involved in providing updates on the status of the law to various law enforcement agencies. I routinely lectured at the Johnson City Police Department's in house training schools and at the Sheriff's Department in Unicoi County. As a private practice attorney, I accepted the appointment of Judge Montgomery to represent Robert Boling in his post-conviction petition. I have completed all of that representation to include two hearings, several motions, his appeal to the Court of Criminal Appeals and the oral

argument to that court. I have represented Mr. Boling pro bono throughout.

I am committed to equal Justice under the law. My entire career demonstrates that commitment.

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 is located in the 1<sup>st</sup> Judicial District that covers Washington, Carter, Unicoi and Johnson counties in Northeast Tennessee. The court is charged primarily with all of the felony criminal cases originating in this judicial district. It is one of two criminal court judges serving this district and is currently held by the Honorable Judge Lynn Brown who has announced his retirement.

I believe that my appointment would permit the courts to continue in the fair, just and swift administration of justice. I am confident that my background, training and experience in the myriad facets of criminal law will assist the system in ensuring justice for all to include the community, the victims of crime, and the perpetrators.

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 have had no participation in community services or organizations in the past. I attribute that failing to my complete pursuit of my job as a federal prosecutor. I would like to remedy my lack of community involvement in the future provided my appointment as a judge does not require all of my time to keep the docket current because even now that would be my primary obligation.

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

My dad was a career Army man. I had lived in Germany and Japan and about eight States before I was fourteen. I spent my teen years on a small farm in South Alabama milking cows, raising pigs and clearing and planting fields. I was the first in my family to go to college. But I had to work to go. I worked as a dispatcher for the police department of the Town of Montevallo in Alabama until I was 21. At 21, the town gave me a badge and I was a police officer for the last two years of college. After graduation, I taught sixth grade at Thorsby Elementary School for a year. Thereafter, I joined the Marine Corps, completed OCS, was commissioned a second lieutenant, attended the Basic School and the Army Artillery School at Fort Sill, Oklahoma. I then served with the 3<sup>rd</sup> Battalion 10<sup>th</sup> marines and then the 3<sup>rd</sup> Marine Aircraft Wing on Okinawa, Japan. The Marines then selected me to attend law school. I have detailed my legal experience above and all of this early experience is offered to demonstrate the well-rounded nature of my experiences. There are very few places that I have not been and there are very few

types of people I have not met and interacted with. I believe that this diverse background and upbringing coupled with my personal knowledge of the law in the trial arena makes me uniquely qualified for this criminal court judge position.

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)*

I will uphold the law. I abhor the activist judge.

### 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 Commission or someone on its behalf may contact these persons regarding your application.

A. Honorable J. Ronnie Greer, United States District Judge, Eastern District of Tennessee, 220 West Depot Street, Ste. 405, Greeneville, TN 37743 Phone [REDACTED]

B. Honorable Chief Magistrate Judge Dennis H. Inman, Eastern District of Tennessee, 220 West Depot Street, Ste 306, Greeneville, TN 37743 Phone [REDACTED]

C. Supervisory Assistant U.S. Attorney Robert M. Reeves, Eastern District of Tennessee, 220 West Depot Street, Ste 423, Greeneville, TN 37743 Phone [REDACTED]

D. Honorable Sheriff Edwin Graybeal, Washington County Sheriff's Office, Jonesborough, TN Phone [REDACTED]

E. Mr. Frank McCarver, Capital Bank, 503 North State of Franklin Rd. Johnson City, TN 37604 Phone [REDACTED]

### 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 [Court] \_Criminal Court, 1<sup>st</sup> Judicial District, Part II of Tennessee, and if appointed by the Governor, 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 Commission members.

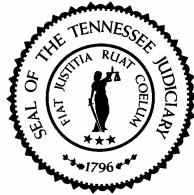
I understand that the information provided in this questionnaire shall be open to public inspection upon

filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: January 9, 2013.

/S/ D.R. Smith  
Signature

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



**TENNESSEE JUDICIAL NOMINATING COMMISSION**  
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 which 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 Tennessee Judicial Nominating Commission to request and receive any such information and distribute it to the membership of the Judicial Nominating Commission.

Danny R. Smith

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

Texas Bar, Alabama Bar, Louisiana Bar

/S/ D.R. Smith  
Signature

January 9, 2013  
Date

024902  
BPR #