

Tennessee Judicial Nominating Commission
Application for Nomination to Judicial Office

Rev. 22 December 2011

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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 seventeen (17) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to 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.

General Counsel

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

1992

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.

Tennessee--15480—licensed in 1992 and 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).

Law Office of Robert M. Brannon, Jr.—associate attorney

Law Office of William D. Massey—associate attorney

Law Office of R. Price Harris—owner/attorney

EUSA of Memphis, Inc.—General Counsel

City of Gallaway, TN—municipal judge

City of Germantown, TN—municipal judge

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.

Currently, I am engaged in the practice of corporate law as general counsel. My job duties include contact with the following areas of law—contract law, employment law, landlord tenant issues, administrative law, litigation, workers compensation, and general civil litigation. I also still have occasion to work on matters set in General Sessions Criminal Court and in Criminal Court itself. The majority of my time (approximately 70%) is spent on contract matters and civil litigation. The balance of my time is split among the other areas as well as tending to the day to day matters that arise.

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 have been fortunate in the twenty years I have been licensed as an attorney to have practiced in both civil and criminal court as well as in state and federal courts. I have had a wide range of experiences as an attorney and have handled administrative matters involving the Equal Employment Opportunity Commission, the Tennessee Department of Safety, the Tennessee Department of Labor and Workplace Development, the Tennessee Alcohol Beverage

Commission, the City of Memphis Alcohol Commission, all ten Criminal Courts in Shelby County, all fifteen divisions of General Sessions Court (civil and criminal), Circuit Court in Shelby County for a variety of civil matters, the Tennessee Court of Appeals—Middle Division, the Tennessee Court of Criminal Appeals—Western Division, as well as various other courts across Tennessee including Somerville, Dyersburg, Millington, Bartlett, Ripley, Covington, and Ashland City. I have practiced before various city courts throughout west Tennessee including Memphis, Piperton, and Oakland. Lastly, I have also appeared as an attorney before courts in Horn Lake, Mississippi, Southaven, Mississippi, and in Gilbert, Arizona. I have also attended hearings before the State of Ohio involving the contest of property tax values placed on parcels of real property located in the state of Ohio. Additionally, I have also represented parties in Federal Court here in the Western District of Tennessee as well as in Bankruptcy court. As part of my representation of clients in the aforementioned courts, the matters on which I have appeared have included a wide variety of felonies and misdemeanors such as simple possession charges, felony possession charges, driving while license suspended, revoked, or cancelled, no drivers license, driving while an habitual motor vehicle offender, failing to register as a sexual offender, rape, sexual battery, incest, assault (including aggravated assault and especially aggravated assault), domestic violence (assaultive) offenses, violations of protective orders, driving under the influence, reckless driving, theft (all grades), murder, attempted murder, robbery (simple, aggravated, and especially aggravated), prostitution, pedestrian soliciting rides, resisting arrest, evading arrest, public intoxication, and more. There are very few crimes in the state penal code for which I have not represented someone to date. Additionally, I have represented clients in civil matters over my legal career which include the following: Petitions to remove habitual motor vehicle offender status, petitions for post-conviction relief, forcible entry and detainer cases, consumer protection claims, automobile accident cases, replevin actions, collection cases, and other types of civil matters. I was especially proud of the work I did in the matter of *Coleman v. Pryor Oldsmobile*, 1996 WL 544440 (Tenn Ct. App. 1996) which stood as one of the most requested cases on consumer protection law involving the sale of automobiles in the state for quite a while. I have also become involved with a number of writs of certiorari and supercedeas matters (both statutory and common law), writs of mandamus, and declaratory actions. As part of my representation as general counsel, I have had occasion to represent my client in transactional matters involving the purchase and sale of numerous parcels of real estate not only in Tennessee but in other states as well like Arizona and Florida.

I have always considered myself a motivated person and, in fact, ran my own office for almost ten years before accepting my current position as general counsel. I have typically researched, wrote/typed, printed and filed my own pleadings, documents, letters, and motions. I also preferred to answer my own telephone and maintain direct contact with my clients. I have always maintained an open-door policy with my clients wherein they were invited to just drop in if they wanted to talk. I also have always been accessible to my clients whether it was during weekends, on holidays, or after hours.

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

Coleman v. Pryor Oldsmobile, 1996 WL 544440 (Tenn Ct. App. 1996)

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 am currently a sitting municipal judge for the cities of Gallaway, Tennessee and Germantown, Tennessee. I was appointed as the city judge in Gallaway in January, 2000 and am currently still employed as such. My court meets every third Tuesday of the month and I am charged with handling all municipal citations issued by the city. I was also appointed to serve in Germantown as a special municipal judge and have done so monthly for approximately three years. I continue to do so even now and am currently scheduled to next sit in Germantown on Wednesday, August 1, 2012. In the fall of 2006, I also attended and completed the Rule 31 training needed to become a mediator but have never done so owing to my status as a judge.

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 been appointed as a guardian ad litem previously through Shelby County Juvenile Court as well as through Circuit Court

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

Earlier this year, I was awarded a scholarship by the Tennessee Municipal Judges Conference as overseen by the Administrative Office of the Courts to attend a week-long, judicial seminar about the realities of judging. I was part of a group of judges assembled from across the country and this group included one member of the Arkansas Supreme Court, several members of the Texas Court of Appeals, several members of the Louisiana Court of Appeals, several members of the Ohio Court of Appeals, the chief justice of the Mississippi Supreme Court, as well as judges from Indiana, Michigan, and Tennessee. In 2008, I previously was awarded another judicial scholarship by this group to attend the municipal conference presented by the American Bar Association.

Also, I have been instrumental in establishing a mentoring and orientation program for new municipal judges and wrote the manual currently in use by the Tennessee Municipal Judges

Conference. I have attached a copy of this manual to this application as one of my writing samples.

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.

I submitted an application after Judge McLin was appointed to the Court of Criminal Appeals to replace him in Division IX of Criminal Court here in Shelby County. I was one of a large number of applicants but was not one of the finalists submitted to the Governor for consideration.

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.

University of Memphis—1989 through 1992—J.D.; was awarded the Am Jur award for trial advocacy

University of Memphis—1985 through 1988—Bachelor of Arts—My major was in English and my minor was in business. I was frequently listed on the Dean's List during my tenure as a student at what was then called Memphis State University.

Christian Brothers University—1984 through 1985—transferred to U of M after my Freshman year since I wanted to attend law school there as well.

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PERSONAL INFORMATION

15. State your age and date of birth.

45 years old. DOB: 08/15/1966

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

43 years. Since 08/15/1968

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

41 years. I moved to Shelby County on December 10, 1970.
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18. State the county in which you are registered to vote.

Shelby

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.

N/A

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.

Yes. In 1999, I sued for damages I received in an automobile accident and, consequently, was sued by the other party. The case was filed in Circuit Court in Shelby County and the docket number was 304381T. The matter was settled in March, 2004 and the case was dismissed.

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.

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

Tennessee Municipal Judges Conference—Secretary/Treasurer—2010-present

Tennessee Municipal Judges Conference—Board of Governors—2008-present

Tennessee Municipal Judges Conference—Education Committee Chair—2006-2008

Tennessee Municipal Judges Conference—Education Committee Member—2004-current

Memphis Bar Association—2011-present

Tennessee Bar Association—2011-present

American Bar Association—2010-2011

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.

TMJC scholarship—American Bar Association Municipal Judges Conference—2008

TMJC scholarship—American Institute for Justice—Realities of Judging--2012

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

Tennessee Municipal Judges Conference—Municipal Court Judge Orientation Manual—2011

“How to Choose the Expert Witness,” Evidence in Trial Practice, NBI (December 2006).

“Attorney-Client Privilege,” Managing Attorney-Client Privilege and the Work-Product Doctrine in Tennessee, NBI (December 2003).

“Getting Started,” The Criminal Trial From Start to Finish in Tennessee: The Defense, NBI (December 2004).

“Effective Opening Statements,” The Criminal Trial From Start to Finish in Tennessee: The Defense, NBI (December 2004).

“Examination of Witnesses,” The Criminal Trial From Start to Finish in Tennessee: The Defense, NBI (December 2004).

“Ethics and Professionalism,” The Criminal Trial From Start to Finish in Tennessee: The Defense, NBI (December 2004).

“The Defense Begins: Handling Initial Appearances,” Successful Criminal Cases, NBI (December 2007).

“Negotiating the Best Possible Plea for Your Client,” Successful Criminal Cases, NBI (December 2007).

“Using Jury Selection to Increase Your Success at Trial,” Litigating to Win Through Advanced Trial Advocacy, NBI (December 2007).

“Using Jury Selection to Increase Your Success at Trial,” Litigating to Win Through Advanced Trial Advocacy, NBI (December 2008).

“Ethical Considerations,” The Mechanics of Tennessee Civil Procedure, NBI (December 2010).

“Locating Persons and Finding Background Information,” Find It Fast and Free on the Net: Strategies for Legal Research on the Web, NBI (with Terri C. Harris) (November 2008).

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.

TMJC—Orientation for New Municipal Judges—Annual Conference—November, 2012 (upcoming event)

TMJC—Orientation for New Municipal Judges—Annual Conference—August, 2011

TMJC—Orientation/Mentoring for Municipal Judges—Annual Conference—August, 2010

TMJC—Court Costs and Alternative Sentencing--Annual Conference—August, 2009

NBI— Applying the Rules of Evidence: What Every Attorney Needs to Know—December, 2012 (upcoming event)

NBI—Litigating to Win Through Advanced Trial Advocacy—December, 2007

NBI—Litigating to Win Through Advanced Trial Advocacy—December, 2008

NBI—Building Your Civil Trial Skills—December, 2008

NBI—The Mechanics of Tennessee Civil Procedure—December, 2010

NBI—Find It Fast and Free On the Internet: Strategies For Legal Research On the Web—November, 2007

NBI—Find It Fast and Free On the Internet: Strategies For Legal Research On the Web—November, 2008

NBI—Commercial Collections For the Non-Attorney: Getting Your Money Step-By-Step—October, 2008

NBI—Successful Criminal Cases—December, 2007

Germantown Police Citizens Academy—Courts, Search and Seizure, and Difficult Areas of the Law, March 15, 2012

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.

Municipal Judge—City of Gallaway—January, 2000-present

Special Municipal Judge—City of Germantown—2009-present

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.

I have included with this application the manual I wrote which is in use currently for training new municipal judges. It was created as part of a mentoring program that I was instrumental in organizing and creating. I have also included a copy of the handout I recently wrote and presented to the students of the Germantown Police Citizens Academy on March 15, 2012.

ESSAYS/PERSONAL STATEMENTS

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

I am currently the city judge for Gallaway and also sit monthly as a special municipal judge for the City of Germantown. I have twelve years experience as a sitting judge. I have sat as a special judge for all divisions of Shelby County General Sessions Criminal Court as well as City Court in Memphis, Grand Junction, and Germantown. I am very proud of the work I have been able to accomplish in my role as a judge and feel that I would make a great selection to fill the vacancy in Division 6. I am impartial and have rarely been overturned on any decision I have rendered as a judge. Over the years, I have worked hard to hone my skills as a judge and feel that I work well with the public at large. If chosen, I will see to it that justice will prevail and that everyone who comes in contact with Division 6 will have been treated fairly and with dignity, irrespective of the outcome of their matter.

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 office door has been open for twenty years to helping people find a way into court, irrespective of their ability to pay and I have handled matters for years on a pro bono basis where

the need arose. I have voluntarily counseled with many pro se litigants to answer their questions about how to handle their cases. I also have lectured groups such as at my local police citizens academy and at local schools to advise people as to their rights as citizens. Unfortunately, there are a number of people who are unaware of what rights are afforded to us as citizens of the United States and of the state of Tennessee and greatly benefit from these lectures.

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 wish to be appointed to fill the vacancy in Division 6 of Criminal Court here in Shelby County, Tennessee. This court serves the entire county and is responsible for handling criminal cases from indictment to disposition. I believe that my selection will impact the court in a positive way given the dearth of experience I possess as well as my familiarity with the court and the court system. For the majority of my legal career, I have practiced in Criminal Court and have handled numerous matters in this particular division. I am a quick study and I believe that I could start immediately by handling matters currently on the docket in an efficient manner so as to prevent a backlog of cases while ensuring that each defendant and victim are treated fairly. I know the law, I am eager to begin, and I would appreciate the opportunity to serve my community.

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)*

My involvement in community services has primarily consisted of volunteering to teach at my local police-citizens academy as well as at my church and my children's school. My family has a strong commitment to serving others as evidenced by my wife, who is currently is the legislative chair for the Shelby County PTA, and my daughter, who performs numerous hours of community service as part of her membership in Beta Club as well as the Honors Academy at her high school.

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)*

I feel that my community involvement, my family, and my legal career have helped to mold me into a good jurist. I think that a good jurist is one who is knowledgeable in the letter of the law and also in the practical application of the law. I believe that a good jurist is orderly and punctual. And, I believe that a good jurist is one who is perceptive as to the needs of all people in the courtroom whether it be a witness, a juror, or an attorney. Personally, I believe that I possess these abilities as well as the ability to listen and not just hear what someone says to me. As an attorney and as a father, I have learned to have patience in some situations while being

stern in others. In volunteering to help the children at my church, I have found it most helpful to try to reach them on their level and not talk in such a way so as I am necessarily comfortable in speaking. I believe that everyone has their own personal set of lenses with which they view life. The trick is trying to understand that person's point of view by looking at the event as best as possible through their set of lenses.

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 would most assuredly uphold the law even in situations where I might disagree with the law as such is required by the oath administered to judges. As an example of this, I would like to cite the current situation involving Tennessee drivers who do not possess active and valid insurance at the time of a stop but who obtain such prior to coming to court on their ticket. As a judge, I am currently prohibited from being allowed to dismiss a driver's ticket when such person obtains the required insurance after the issuance of a ticket but prior to coming to court. Personally, it seems inconsistent for the Legislature to limit me as a judge from being allowed to dismiss such a ticket as the import of the law seems to be geared toward having a driver comply and obtain insurance much as the laws involving drivers licenses do. But, the Legislature has seen fit to say that such tickets shall not be dismissed by a judge in these circumstances. While I personally disagree with this limit on my power as a judge, I am, nonetheless, duty bound to obey the law and I do not dismiss these cases.

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. Robert M. Brannon, Jr., attorney and Germantown City Judge [REDACTED]

B. Rex L. Brasher, Jr., attorney at law, [REDACTED]

C. Tony Sarwar, Vice-mayor for the City of Collierville, Tennessee [REDACTED]

D. Curry Todd, [REDACTED]

E. David Pickler, attorney at law, [REDACTED]

3 [REDACTED]

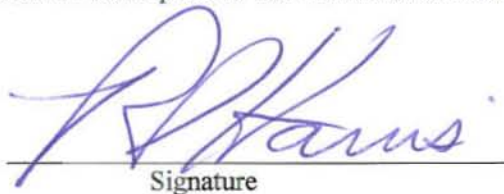
AFFIRMATION CONCERNING APPLICATION

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 Shelby County Criminal Court of Tennessee, Division VI, 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: July 31, 2012.


Signature

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