

The Governor's Council for Judicial Appointments
State of Tennessee
Application for Nomination to Judicial Office

Name: William Nicholas Blaylock

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(including county)

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INTRODUCTION

The State of Tennessee Executive Order No. 54 (May 19, 2016) 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. 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 Microsoft Word 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 Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original, hard copy (unbound), completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your hard-copy application, or the digital copy may be submitted via email to ceesha.lofton@tncourts.gov. See section 2(g) of the application instructions for additional information related to hand-delivery of application packages due to COVID-19 health and safety measures

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am the chief hearing officer for the Tennessee Department of Labor and Workforce Development's Unemployment Appeals Tribunal.

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

Year licensed: 2004 BPR number: 00023513

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, BPR number: 00023513, Date licensed: October 26, 2004. Status: 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).

10/07 to present: Tennessee Department of Labor and Workforce Development, Chief Hearing Officer and Hearing Officer. I adjudicated approximately 21,000 administrative unemployment appeals hearings. I determined the facts and applied the law in thousands of scenarios involving tens of thousands of citizens from every corner of Tennessee. I made evidentiary rulings, considered sworn testimony, worked with attorneys from every corner of Tennessee, ruled on the admissibility of documentary evidence, interpreted state statutes, and considered applicable case law.



08/04 to 10/07: Law Office of the Honorable D. Michael Kress II and the Honorable Gary Dodson. Associate Attorney/Solo Practitioner. Rural Tennessee general practice focusing on real property transactions, civil matters, and criminal matters. I represented clients in all local courts, drafted appropriate pleadings, and negotiated with opposing counsel. I researched a variety of legal issues for clients in order to zealously and effectively advocate on their behalf.

7/03 to 8/03: United States Attorney's Office, Western District of Tennessee. Law Clerk. I completed legal research for U.S. Attorney Terrell Harris and various assistant U.S. Attorneys as they prepared pleadings and for trial. I drafted appellate briefs for the United States Court of Appeals for the Sixth Circuit. I also wrote inter-office memorandums pertaining to federal case law and precedents.

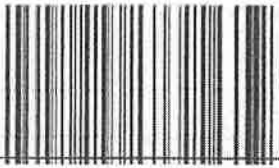
6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

None.

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 current law practice involves the supervision of all hearing officers conducting unemployment appeals hearings in Tennessee for the Tennessee Department of Labor and Workforce Development.

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.



10/07 to present: Tennessee Department of Labor and Workforce Development, Chief Hearing Officer and Hearing Officer. I adjudicated approximately 21,000 administrative unemployment appeals hearings. I determined the facts and applied the law in thousands of scenarios involving tens of thousands of citizens from every corner of Tennessee. I made evidentiary rulings, considered sworn testimony, worked with attorneys from every corner of Tennessee, ruled on the admissibility of documentary evidence, interpreted state statutes, and considered applicable case law. As the chief hearing officer, I am responsible for supervising all of the unemployment appeals hearing officers in Tennessee for the Tennessee Department of Labor and Workforce Development. I offer assistance to hearing officers seeking to understand and apply state statutes and applicable case law. I also make certain that the hearing officers afford the parties due process of law and conduct fair and impartial hearings.

08/04 to 10/07: Law Office of the Honorable D. Michael Kress II and the Honorable Gary Dodson. Associate Attorney/Solo Practitioner. Rural Tennessee general practice focusing on real property transactions, civil matters, and criminal matters. I represented clients in all local courts, drafted appropriate pleadings, and negotiated with opposing counsel. I researched a variety of legal issues for clients in order to zealously and effectively advocate on their behalf. Specifically, I represented clients in local general sessions court in a variety of capacities (misdemeanor and felony criminal matters, boundary line disputes, debt collection, and divorces). I represented clients in local circuit courts (plaintiff's attorney in car accident cases and assisted Attorney Kress with commercial motor vehicle accident cases). I represented clients in local juvenile courts (criminal delinquency cases, civil dependency and neglect cases and termination of parental rights cases). I represented clients in chancery court (child custody dispute). I represented clients in local traffic courts. (challenged motor vehicle violations). I represented clients in local criminal courts. (misdemeanor and felony charges, negotiated with the district attorney's office, and represented an inmate in a post-conviction matter).

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

None

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 adjudicated approximately 21,000 administrative unemployment appeals hearings. I



determined the facts and applied the law in thousands of scenarios involving tens of thousands of citizens from every corner of Tennessee. I made evidentiary rulings, considered sworn testimony, worked with attorneys from every corner of Tennessee, ruled on the admissibility of documentary evidence, interpreted state statutes, and considered applicable case law.

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

I worked as a conservator representative for Comcare, Inc. in Greeneville, Tennessee in approximately 2009. I worked as a conservator advocating for mentally disabled clients and worked with staff to craft plans for the clients.

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

While in law school, I worked in the University of Memphis Child Advocacy Clinic with Professor Christina Zawisza. As duly authorized student attorneys, we represented children and served as guardians ad litem in Shelby County Juvenile Court.

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 or similar 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.

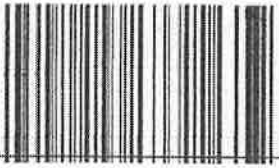
None

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.

2013-2017: Austin Peay State University, Master of Arts in Military History, Graduated *summa cum laude*.

2001-2004, University of Memphis, Juris Doctor, Articles Editor for the *Tennessee Journal of*



Practice and Procedure, recipient of the Dean's Distinguished Service Award 2004, CALI award for academic excellence in Land Use Planning, and recipient of the Charles Hough Memorial Scholarship.

1997-2000 University of Tennessee—Knoxville, Bachelor of Arts. Graduated *magna cum laude*, Major: Political Science (Honors) Minors: English Literature and History, concentrated study in Japanese language, member of Phi Beta Kappa National Honor Society, Member of Golden Key National Honor Society, and Member of Phi Eta Sigma National Honor Society.

PERSONAL INFORMATION

15. State your age and date of birth.

42 years old. [REDACTED] 1979.

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

42 years

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

Since August 2004. 17 years.

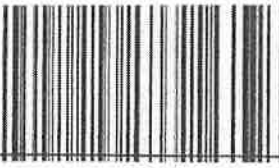
18. State the county in which you are registered to vote.

White 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.

none

20. Have you ever pled guilty or been convicted or placed 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.

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 that you have held in such organizations.

Bear Cove Baptist Church—Deacon. 2007 to present
White County Bar Association
Cookeville Community Band
White County Beekeepers' Association
Putnam County Master Gardeners
University of Tennessee Alumni Association—White County Chapter

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

No.

ACHIEVEMENTS

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

White County Bar Association, 2004 to present.

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.

None.

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

"The Rule of Completeness in the Sixth Circuit," *Tenn. J. Prac. & Pro.*, Vol. 5, No. 2 (Spring 2003), 20-23.

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

None.

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

None.

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

No.

34. Attach to this application 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.

ESSAYS/PERSONAL STATEMENTS

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

I desire to serve the citizens of Tennessee and use the legal training and talents I've been blessed to receive to do so. My fraternal grandfather had a third grade education and I am the first person in my family to graduate from any college. If I were able to tell my grandfather that I was able and qualified to apply for a position on the Tennessee Supreme Court, he would have laughed out loud in disbelief. It is the epitome of the American dream that a person like myself, with my family's educational background, can hope to aspire to and apply for such a lofty, esteemed position.

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 advised my church on various matters related to church governance, incorporation, and day-to-day operations on a *pro bono* basis since 2004.

I have provided free advice to persons who entered my office while I was a solo practitioner. Often, they were confused as to what options they had available to them to pursue and did not have the financial resources to hire an attorney in civil matters.

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)*

Associate Justice of the Tennessee Supreme Court. (Middle or Eastern Grand Division, appellate cases from the Tennessee Court of Appeals and the Tennessee Court of Criminal Appeals. Five justices serve on the court. My selection would impact the court by providing the perspective of rural Tennessee legal communities and of a long-time practitioner in Tennessee administrative proceedings.

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)*

Cookeville Community Band: The band plays a summer concert series of approximately six (6) concerts during the summer months and one (1) holiday concert each December. I would play the clarinet if I were appointed to the position.

Bear Cove Baptist Church: I serve as a deacon in my church and have done so since 2007. I would continue serving in that capacity.

Putnam County Master Gardeners: I would serve as a volunteer in the master gardener program to help maintain local public gardens and provide educational opportunities for school and civic groups pertaining to horticulture.

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)*

Attorney Gary Dodson was a mentor for me when I started practicing law. He had been practicing law longer than I had been alive and was always willing to listen to my concerns and offer his advice on how best to proceed in various matters. Sadly, he passed away in mid-2021. As a former general sessions judge, he was a good listener and, by his example, taught me to be a good listener. Thoughtful, effective jurisprudence requires someone to carefully listen to the parties' arguments, ask questions, and apply the law in a fair and impartial way.

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. It is not my place to like or dislike a rule or statute. It is my place to fairly and impartially enforce the applicable rule or statute. Those who disagree with the law are free to petition the Tennessee General Assembly to change the law or run for public office.

As an unemployment appeals hearing officer, I have heard numerous telephone appeals hearings involving individuals who have crying children in the background. As a father myself, I understand the urgency and importance of providing income for my family so that we can purchase food and other basic necessities. However, some of those same claimants, after testifying as to the facts of what caused their employment to end, were clearly disqualified from receiving unemployment compensation benefits. I did not like to deny unemployment benefits in those circumstances but the law required it and I was duty-bound to fairly and impartially apply the law. I've heard it said that, "if you don't occasionally disagree with the judgments you render as a judge/hearing officer, you are doing it wrong."

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. Attorney John Knowles, [REDACTED]

B. Pastor Scott Foshie, [REDACTED]

C. David McCulley, Owner of Morgan's Furniture, [REDACTED]

D. Melinda Williams, former chief of staff to Commissioner Burns Phillips [REDACTED]

E. Scott Wilson, Teacher in White County Schools, [REDACTED]

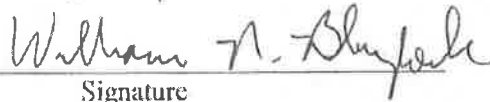
AFFIRMATION CONCERNING APPLICATION

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 Supreme of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended application with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this application 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 8, 2021.



Signature

When completed, return this application to Ceesha Lofton, 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**

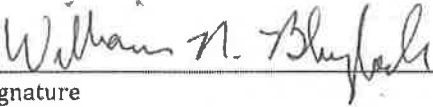
511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

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

WAIVER OF CONFIDENTIALITY

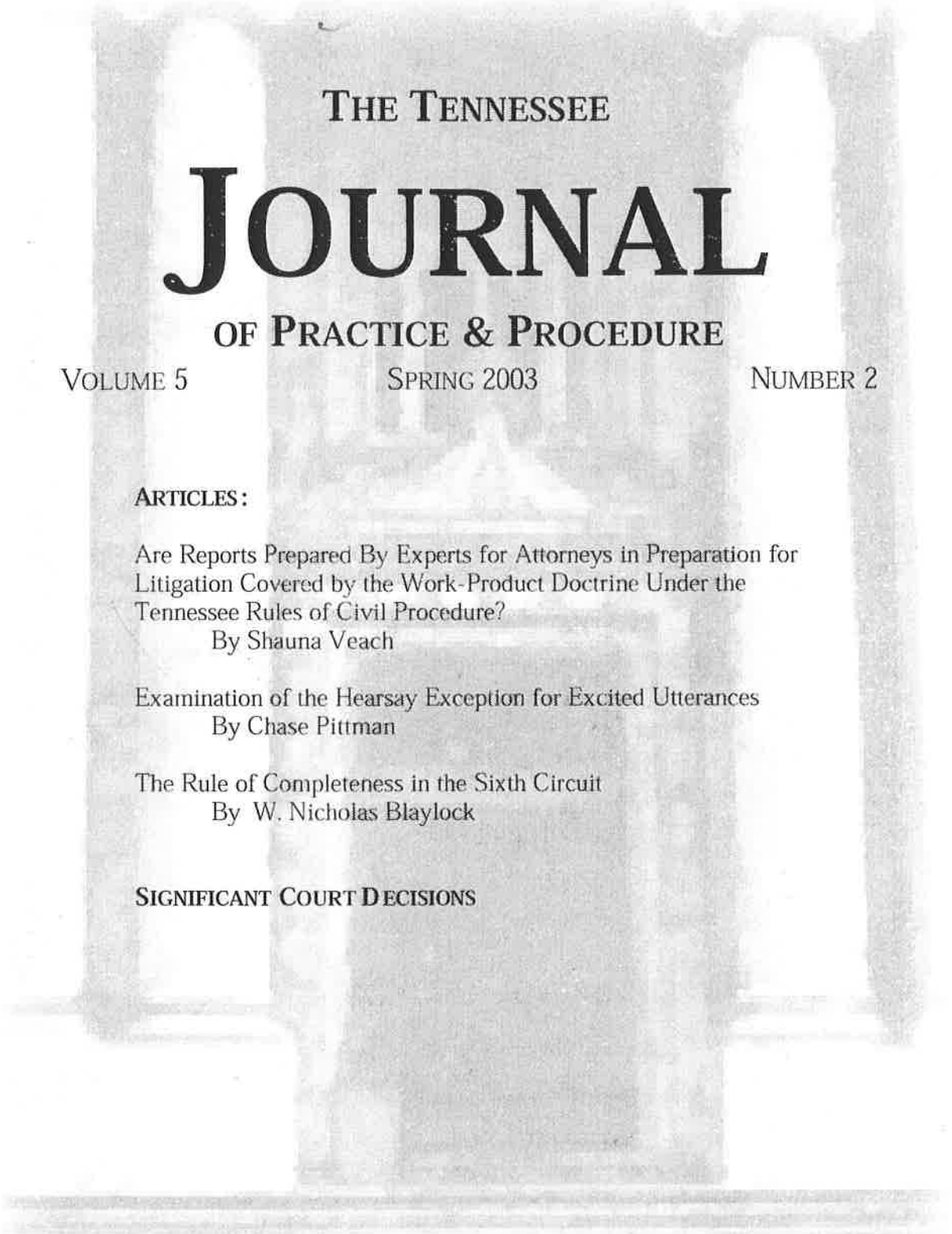
I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board 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.

William N. Blaylock
Type or Print Name


Signature

November 8, 2021
Date

00023513
BPR #



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NUMBER 2

ARTICLES:

Are Reports Prepared By Experts for Attorneys in Preparation for
Litigation Covered by the Work-Product Doctrine Under the
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Examination of the Hearsay Exception for Excited Utterances

By Chase Pittman

The Rule of Completeness in the Sixth Circuit

By W. Nicholas Blaylock

SIGNIFICANT COURT DECISIONS



THE RULE OF COMPLETENESS IN THE SIXTH CIRCUIT

By W. Nicholas Blaylock*

Imagine the following situation: In the course of a criminal prosecution, Joe Prosecutor discovers a document written by the defendant containing an inculpatory statement that could be very damaging to the defendant at trial. The statement is relevant, properly authenticated, satisfies the best evidence rule, and passes as a party-opponent admission, any hearsay objections.

Assume also that in a different portion of the document there is a large section containing exculpatory statements that will be greatly beneficial to the defendant. The exculpatory statements, however, mention nothing of the prior inculpatory statement or anything close to it. Joe Prosecutor wants to admit the inculpatory statements and the defendant wants to admit the entire document so the jury can see the exculpatory statements. Should the rule of completeness apply here so that the defendant can counter the admission of inculpatory statements in one portion of a letter with exculpatory statements in another portion?

The answer, according to the Sixth Circuit Court of Appeals, is no. The Rule of Completeness is found in Federal Rule of Evidence 106, which states, "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part, or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it."¹ The Advisory Committee's Note states that the rule is based on two considerations. "The first is the misleading impression created by taking matters out of context. The second is the inadequacy of repair work when delayed to a point later in the trial." Further, in *Beech Aircraft Corp. v. Rainey*, the Supreme Court defined the completeness rule by quoting Professor Wigmore when it stated, "the opponent, against whom a part of an utterance has been put in, may in his turn complement it by putting in the remainder, in order to secure for the tribunal a complete understanding of the total tenor and effect of the utterance."²

In *United States v. Costner*, a jury

* W. Nicholas Blaylock is a third year student at the Cecil C. Humphreys School of Law at The University of Memphis.

¹ FED. R. EVID. 106.

convicted the defendant of making a false statement to a federally insured bank for the purpose of influencing the bank to lend him money.³ A witness for the defense was an investigator who used reports he had prepared of his investigation of the events to refresh his memory while he testified.⁴ Pursuant to Federal Rule of Evidence 612, the prosecution was entitled to introduce into evidence the portions of the reports, otherwise inadmissible hearsay, that the witness had used to refresh his recollection for the purpose of attacking the witness' credibility. The prosecution moved, however, that the entire document be admitted into evidence and the defense objected, arguing that only the portion of the reports relevant to the witness' testimony should be admitted.⁵ Nonetheless, the trial judge admitted the reports in their entirety.⁶

The Court of Appeals reversed, holding that just because a portion of a document is admitted does not mean an opponent can automatically compel admission of the whole document.⁷ Citing the common-law

definition of the rule of completeness, the court noted that the "rule is subject to the qualification that only the other parts of the document which are relevant and show light upon the parts already admitted become competent upon its introduction."⁸ Further, the court added, "[t]here is no rule that either the whole document, or not part of it, is competent."⁹ The court held "Rule 106 is intended to eliminate the misleading impression created by taking a statement out of context. The rule covers an order of proof problem: it is not designed to make something admissible that should be excluded."¹⁰

The Sixth Circuit addressed this issue again in the context of admissibility of portions of deposition testimony in *Trepel v. Roadway Express, Inc.*¹¹ In that case, the plaintiffs offered into evidence a portion of the defendant's deposition testimony as a party-opponent admission without surrounding testimony to put the admitted portion into context.¹² The trial court admitted the deposition testimony without the surrounding testimony and the jury, in the end, awarded Roadway \$80,000 in damages.¹³

² *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 171 (1988) (quoting 7 J. Wigmore, *Evidence in Trials at Common Law* § 2113, p. 653 (J. Chadbourn rev. 1978)).

³ *United States v. Costner*, 684 F.2d 370, 371 (6th Cir. 1982).

⁴ *Id.* at 372.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 372-373.

⁸ *Id.* at 373 (citing *United States v. Littwin*, 338 F.2d 141 (6th Cir.), *cert. denied*, 380 U.S. 911 (1964)).

⁹ *Id.*

¹⁰ *Id.* at 372-373 (citing 1 Weinstein's *Evidence* P. 106(01) (1981)).

¹¹ 194 F.3d 708, 718 (6th Cir. 1999).

¹² *Id.* at 710.

¹³ *Id.*

The Sixth Circuit held that the plaintiff could "require that Roadway introduce enough of the deposition to put the originally admitted statement into context. . . ." ¹⁴ In so holding, the court cited Rule 106 of the Federal Rules of Evidence and Rule 32(a)(4) of the Federal Rules of Civil Procedure. ¹⁵ Similar to Federal Rule of Evidence 106, Federal Rule of Civil Procedure 32(a)(4) provides that if any part of a deposition is offered, the adverse party may require the offeror to introduce any other party "which ought in fairness to be considered." The court reiterated the concern of the *Costner* court, however, stating that the "completeness doctrine . . . should not be used to make something admissible that would otherwise be excluded." ¹⁶ The Sixth Circuit held that on remand, if Roadway intends to introduce the exculpatory statements, "it will be required to introduce enough of the surrounding questions and answers to put the statements into context." ¹⁷

In *United States v. Gallagher*, the Sixth Circuit addressed the issue of completeness in the context of the admissibility of a post-arrest statement of the accused. ¹⁸ After his arrest, the defendant made an inculpatory

statement to arresting agents. The prosecution sought to admit the inculpatory segments of the defendant's statement into evidence and rejected the defendant's request to admit the entire statement. On appeal from his conviction, Gallagher argued that the trial court erred in not admitting the entirety of his statement to law enforcement officials after his arrest.

The Sixth Circuit opined, "[c]ourts have interpreted Rule 106 to demand that 'a statement be admitted in its entirety when this is necessary to explain the admitted portion, to place it in context, or to avoid misleading the trier of fact, or to ensure a 'fair and impartial understanding' of the admitted portion.'" ¹⁹ The court mentioned that the purpose of admitting these sorts of statements is to put the document into its proper context. ²⁰ The court also held that, "'the completeness doctrine embodied in Rule 106 should not be used to make something admissible that would otherwise be excluded.'" ²¹ In the end, the court declared that the defendant's self-serving exculpatory statements were inadmissible hearsay and "could not be made admissible under the Rule 106 doctrine of completeness." ²⁵

While a few courts have stated with-

¹⁴ *Id.* at 719.

¹⁵ *Id.* at 718

¹⁶ ¹³ *Id.* (quoting *United States v. Costner*, 684 F.2d 370, 373 (6th Cir. 1982)).

¹⁷ ¹³ *Id.* at 719.

¹⁸ *United States v. Gallagher*, 57 Fed. Appx. 622, 627 (6th Cir. 2003).

¹⁹ *Id.* at 628 (citing *United States v. Marin*, 669 F.2d 73, 84 (2d Cir. 1982)).

²⁰ *Id.*

²¹ *United States v. Gallagher*, 57 Fed. Appx. at 629 (quoting *Trepel v. Roadway Express, Inc.*, 194 F.3d 708, 718 (6th Cir. 1999)).

²⁵ *Id.* at 629.

out qualification that Rule 106 does not permit admission of otherwise inadmissible evidence,²⁶ these courts misapprehend the rule. The rule is one of relevance, providing merely that admission of a portion of a document may render another portion, otherwise inadmissible if offered for its truth, relevant for the distinct purpose of clarifying or explaining. Offered for that purpose, the “otherwise inadmissible” does indeed become admissible.

In Joe Prosecutor’s case, a document contains incriminating statements of the accused and the accused might request that other self-serving exculpatory statements in the letter also be admitted under the completeness rule in Rule 106. If, however, the statements do not clarify, prevent misleading the finder of fact, insure a fair/impartial understanding, or put the original statement into context, then the trial court should disallow the otherwise inadmissible statements.

²⁶ See *U.S. Football League v. Nat’l. Football League*, 842 F.2d 1335, 1375-76 (2d Cir. 1988).

manufacturer will be able to satisfy the judgment in product liability actions.

*Chris Davis is a third year student at the Cecil C. Humphreys School of Law at The University of Memphis.

Green v. Moore: Commencement of the Statute of Limitations Period Under Rule 4(a)

By *W. Nicholas Blaylock**

In *Green v. Moore*, 101 S.W.3d 415, 420 (Tenn. 2003), the Tennessee Supreme Court held that the thirty-day notice of appeal period under TENN. R. APP. P. 4(a) commences on the date the trial court enters an order confirming that all claims between all the parties have been adjudicated. The Tennessee Supreme Court reversed the appellate court's decision that the thirty-day period commenced on the date that one party filed a notice of voluntary dismissal, and that consequently the plaintiff's notice of appeal was untimely.

On July 31, 2000, Susan Green ("plaintiff") filed a complaint alleging that in August 1997, ShoLodge, Inc. and ShoLodge Franchise Systems, Inc. ("defendants") breached a 1996 settlement agreement. The trial court, on motion of the defendants, dismissed the plaintiff's tort claims, which fell under the one-year statute of limitations in

TENN. CODE ANN. § 28-3-104 (2002). The court did not, however, dismiss the plaintiff's claims for lost wages and loss of earning capacity, which were subject to the six-year statute of limitation for contracts in TENN. CODE ANN. § 28-3-109 (2000).

On November 22, 2000, the defendants answered the complaint and asserted a counterclaim. The trial court subsequently granted summary judgment dismissing all but one of the plaintiff's claims for damages. On September 18, 2001, another motion for summary judgment resulted in the dismissal of all of the plaintiff's claims, leaving the defendants' counterclaim as the sole remaining issue for adjudication in the matter. The defendants filed a written notice of voluntary non-suit with respect to their counterclaim on February 5, 2002. On March 13, 2002, the trial court entered an order confirming adjudication of all claims as of February 5, 2002.

The plaintiff filed a notice of appeal on April 11, 2002. The Court of Appeals held the notice untimely because it was not filed within thirty days of the notice of voluntary dismissal of the counterclaim. *Green*, 101 S.W.3d at 417-18.

The Tennessee Supreme Court reversed, holding that the thirty-day period for filing a notice of appeal began on March 13, 2002, when the trial court issued an order declaring all matters adjudicated. *Id.* at 418. In reaching its holding, the court followed the rationale of *Evans v. Perkey*, in which the Tennessee Court of Appeals held that "a [c]ourt speaks only through its written judg-

ments, duly entered upon its minutes.” *Evans v. Perkey*, 647 S.W.2d 636, 641 (Tenn. Ct. App. 1982). The *Green* court opined, “[i]f filing a notice of voluntary nonsuit was all that was required to conclude an action, the Court of Appeals could then receive the appeal without the trial court ever entering an order or assessing costs. Such a holding would be contrary to common sense and our own precedent.” *Green*, 101 S.W.3d at 420. The court also noted that the signature of the judge is mandatory to effectuate a judgment or order of final disposition according to the language of Rule 58 of the Tennessee Rules of Civil Procedure.

The Tennessee Supreme Court made it clear in this case that the thirty-day period for filing notices of appeal will not commence until a final order is issued by the trial court. A notice of voluntary non-suit, on its own, will not commence that thirty-day period. The Supreme Court has also submitted to the legislature a proposal amendment to Rule 41.01 that would codify the holding in *Green*. The amendment to be effective July 1, 2004, adds a new subsection (3A) stating that a “voluntary nonsuit to dismiss an action without prejudice must be followed by an order of voluntary dismissal signed by the court and entered by the clerk. The date of entry on the order will govern the running of pertinent time periods.”

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