

**Tennessee Trial Court Vacancy Commission**  
***Application for Nomination to Judicial Office***

9/8/20

Name: James L. Cresswell, Jr.

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38024

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**INTRODUCTION**

Tennessee Code Annotated section 17-4-301 et seq. charges the Trial Court Vacancy 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 Microsoft Word format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687. website [www.tncourts.gov](http://www.tncourts.gov)). The Commission requests that applicants obtain the Microsoft Word form and respond directly on the form. Respond in the box provided below each question. (The box will expand as you type in the document.) **Review the separate instruction sheet prior to completing this document. Submit by the noon deadline date an original (unbound) completed application (with ink signature) to the Administrative Office of the Courts.** In addition, submit a digital copy with electronic or scanned signature via email to [ceesha.lofton@tncourts.gov](mailto:ceesha.lofton@tncourts.gov), or via another digital storage device such as a flash drive. See section 1(g) of the application instructions for additional information related to hand-delivery of application packages.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.  
**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

Member, Petkoff and Feigelson, PLLC

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

Year licensed: 2007. BPR number: 026257

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, 026257, 10/29/07, active
- Mississippi, 102374, 10/11/06, active
- Arkansas, 2009034, 4/8/09, active
- Kentucky, 98832, 8/12/20, 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).

- Judicial law clerk; Hinds County Circuit Court; Jackson, Mississippi; August 2006-July 2007
- Judicial law clerk; Mississippi Court of Appeals; Jackson, Mississippi; August 2007-July 2008
- Associate attorney; McDonald Kuhn, PLLC; Memphis, Tennessee; August 2008-

October 2010

- Associate attorney; Petkoff & Feigelson, PLLC; Memphis, Tennessee; October 2010-February 2015
- Member; Petkoff & Feigelson, PLLC; Memphis, Tennessee; February 2015-present

6. 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 primarily consists of civil defense. The major areas of law in which I practice are the following: aviation (30%), general insurance defense (20%), insurance coverage (10%), breach of contract (5%), Federal Aviation Administration administrative actions (1%), freight claims (3%), employment law (1%), and Tennessee Governmental Tort Liability Act litigation (30%). My practice includes cases in both federal and state courts in states throughout the Southern United States.

I represent commercial airlines, aviation insurers, airports, shippers, pilots, pilots' estates, and aerial applicators. These cases range in complexity from baggage claims to multi-person death cases. I have also defended and advised airports and pilots regarding FAA enforcement actions and had the honor of defending Federal Express.

My law firm also represents insurance companies directly. I have defended insurance companies in contentious lawsuits involving bad faith allegations and determinations of insurance coverage.

I have also represented trucking companies in automobile accident lawsuits and transportation brokers in freight cases. Our law firm's defense of the Memphis-Shelby County Airport Authority has involved premises liability cases and high-profile Americans with Disabilities Act claims. In the area of general insurance defense, I have defended the Memphis Zoo, the Memphis Grizzlies, and sports teams.

7. 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.

My legal career began as a judicial law clerk for the Circuit Court of Hinds County, Mississippi. I researched and drafted memorandum opinions and orders analyzing various aspects of criminal and civil law, including motions for summary judgment, arbitration, motions to dismiss, workers' compensation appeals, motions to suppress evidence, and petitions for post-conviction collateral relief. I also prepared the Court for weekly hearings and trials in the busiest trial court in the state by reviewing pleadings, analyzing facts, drafting research memoranda, drafting opinions, and preparing jury instructions.

As a law clerk for the Mississippi Court of Appeals, I drafted opinions and dissents, researched and analyzed complex legal issues spanning nearly all areas of law, and conferred and negotiated with judges and other law clerks regarding their positions on issues before the Court. While serving as a clerk, I drafted 35 opinions and 1 dissent for the Court of Appeals. These decisions involved civil, criminal, and administrative cases. Below are some of the civil and criminal opinions that I authored:

- *Waters v. Allegue*, 980 So.2d 314 (Miss. Ct. App. 2008),
- *Franklin v. BSL, Inc.*, 987 So. 2d 1050, 1051 (Miss. Ct. App. 2008),
- *Frazier v. Mississippi Dep't of Transp.*, 970 So. 2d 221, 222 (Miss. Ct. App. 2007),
- *Sacks v. Necaise*, 991 So. 2d 615, 625 (Miss. Ct. App. 2007) (Griffis, J., dissenting),
- *Andrews v. Ford*, 990 So. 2d 820, 821 (Miss. Ct. App. 2008),
- *Mask v. State*, 996 So. 2d 106 (Miss. Ct. App. 2008),
- *Brown v. State*, 983 So. 2d 1059 (Miss. Ct. App. 2008),
- *Sawyer v. State*, 2 So. 3d 655 (Miss. Ct. App. 2008),
- *Young v. State*, 987 So. 2d 1074 (Miss. Ct. App. 2008), and
- *McDowell v. State*, 984 So.2d 1003 (Miss. Ct. App. 2007).

As an associate attorney with McDonald Kuhn, PLLC, I litigated cases in the following areas: medical malpractice defense, automobile accident defense, collections, subrogation, bankruptcy, premises liability defense, plaintiff's cases on behalf of businesses, eviction proceedings, replevin actions, insurance coverage, ERISA, trucking litigation, social security disability litigation, and workers' compensation. I also tried cases in general sessions court and circuit court and drafted and argued motions in federal, circuit, and chancery courts in Mississippi, Tennessee, and Arkansas.

As an associate and partner at Petkoff and Feigelson, PLLC, I have practiced in the areas of insurance defense, aviation, breach of contract, trucking litigation, FAA administrative proceedings, construction litigation, insurance coverage, automobile litigation, Tennessee Governmental Tort Liability actions, freight claims, appellate practice, employment law, and Americans with Disabilities Act claims. The nature of my practice requires detailed analysis of complex issues involving preemption, negligence per se, and the balancing of state and federal law before many different federal and state courts and administrative agencies.

8. Describe any matters of special note involving your practice in trial courts, appellate courts, and administrative bodies.

I have handled several cases worth noting, which include the following:

- *Am. Nat'l Prop. & Cas. Co. v. Est. of Farese*, No. 3:18CV0177-TSL-RPM, 2021 WL 1206601 (S.D. Miss. 2021). The United States District Court granted my client's Motion for Summary Judgment finding that there was no insurance coverage. In this high-profile case involving six deaths, five prominent law firms opposed my Motion for

Summary Judgment. Additionally, the case was very contentious and included extensive motion practice.

- *Campbell v. Memphis-Shelby Cty. Airport Auth.*, No. W2013-01641-COA-R3CV, 2014 WL 2810204, at \*1 (Tenn. Ct. App. June 20, 2014). The Circuit Court granted the Airport Authority's Motion for Summary Judgment in a premises liability case, which the Tennessee Court of Appeals affirmed. I drafted the Motion for Summary Judgment, the Appellate Brief, and conducted the oral argument before the Court of Appeals.
- *Atl. Cas. Ins. Co. v. Cheyenne Country*, No. 11-2273-STA-DKV, 2012 WL 1637432, at \*13 (W.D. Tenn. May 9, 2012), aff'd, 515 F. App'x 398 (6th Cir. 2013). In this case, the District Court granted our Motion for Summary Judgment finding that there was no insurance coverage for an incident involving the death of a bar patron outside of a bar. I drafted the Motion for Summary Judgment, and I helped draft the brief on appeal.
- *Cohen v. Transportation Security Administration*, 2:16-CV-02529 (2017). I defended the Memphis-Shelby County Airport Authority and the Airport Authority Police Department in a highly publicized lawsuit involving allegations under the Americans with Disabilities Act. The Court granted the Motion for Summary Judgment that I drafted.
- *Nat'l Bankers Tr. Corp. v. Total Quality Logistics, LLC*, No. 12-CV-02208-TMP, 2013 WL 12100719, at \*7 (W.D. Tenn. Sept. 30, 2013). The United States District Court granted our client's Motion for partial summary judgment allowing an offset for pending invoices related to freight claims.
- *Vicky Love v. Memphis-Shelby County Airport Auth.*, CT-004243-16 (Cir. Ct. Shelby Cty 2016). This case involved a slip and fall at the Memphis Airport. The Court granted the Motion for Summary Judgment that I drafted.
- *Watts v. Schindler Elevator Corp.*, 2:2018cv02436 (W.D. Tenn. 2018). In this case, the plaintiff alleged that she was trapped in an elevator and injured due to my client's negligence. The District Court granted the Motion for Summary Judgment that I drafted.
- *CTI Aviation Services v. Millington Airport Auth.*, FAA Docket No. 16-20-02 (2021). In this administrative proceeding before that Federal Aviation Administration, a tenant of the Millington Airport Authority alleged that the Airport Authority violated certain federal grant assurances by discriminating against it. The FAA Director determined that Airport Authority did not violate any grant assurances.
- *Bennet v. U.S. Airways, Inc.*, C3661 (Cir. Ct. Sullivan Cty 2015). In this lawsuit, the plaintiff alleged that the airline I represented violated his rights under the Air Carrier Access Act and under Tennessee negligence law. The Court granted our Motions for Summary Judgment and dismissed all claims against my client with prejudice.

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

While attending Mississippi State University, I interned at the National Cotton Council where I analyzed, prepared, and disseminated information to cotton farmers regarding the 2000 farm bill. I also helped craft legislation and regulations and prepared information for members of Congress regarding the Council's position on various proposed bills.

The White House's Senior Advisor's Office selected me as one of its interns for the summer of 2001. During this internship, I helped plan White House functions by investigating potential White House guests, researching political contributions, compiling guest lists, and contacting guests. The average workday began at 8:00 a.m. and ended at 7:30 p.m. I also had to analyze various bills related to the entertainment industry.

Prior to law school, I worked on Haley Barbour's successful campaign for Governor of Mississippi and was in charge of the campaign's absentee ballot and voter registration drives. As such, I studied and applied Mississippi's voter registration and absentee ballot requirements.

While in law school, I competed in the Duberstein Moot Court Competition in New York City, and I drafted and helped pass Mississippi's first version of the Human Trafficking Act, Miss. Code Ann. §97-3-54, *et seq.* I also served as a law clerk for the Tollison law firm in Oxford, Mississippi, and for the United States Attorney's Office for the Western District of Tennessee. As a law clerk for the United States Attorney's Office, I analyzed motions to suppress evidence, pre-trial motions, trial issues, and evidentiary issues.

From 2005 until 2009, I served on the Governor of Mississippi's Juvenile Justice Advisory Committee, which is tasked with recommending changes to Mississippi's juvenile justice system in order to bring it into compliance with federal mandates. I began the process of creating the bylaws for this group.

10. List and describe all prior occasions on which you have submitted an application for any state or federal judicial position.

I applied to be a judge for the Tennessee Court of Appeals on February 13, 2019.

### EDUCATION

11. 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.

- Mississippi State University

- August 1999 until May 2003
- Graduated Summa Cum Laude with a Bachelor of Arts in Political Science
- MSU President's List (1999-2003)
- Haley Barbour Scholar
- MSU Society of Scholars
- National Truman Finalist
- University of Mississippi School of Law
  - August 2003 until May 2006
  - Graduated Cum Laude
  - University of Mississippi School of Law's Dean's list (2004-2006)
  - American Jurisprudence Award in Legislation
  - University of Mississippi School of Law Dean's Scholar

**PERSONAL INFORMATION**

12. State your date of birth.

	1980
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13. How long have you lived continuously in the State of Tennessee?

12 years
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14. How long have you lived continuously in the county where you are now living?

6 years
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15. State the county in which you are registered to vote.

Dyer County
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16. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state

whether you received an honorable discharge and, if not, describe why not.

Not applicable

17. Have you ever pled guilty or been convicted or are now on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No

18. 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

19. 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. You may wish to request a report from the appropriate supervisory authority (or authorities) for a complete history.

None

20. 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

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

No

22. 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

23. 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.

- Volunteered with Youth Leadership of Memphis from 2013 to 2016. This organization teaches Christian values and attempts to instill a good work ethic in underprivileged children in Memphis by teaching them how to run a lawn care business.
- Member of the Dyersburg Cumberland Presbyterian Church
  - Member of the Deaconate from 2018 to present
  - Chairman of the Deaconate in 2019
  - Chairman of the Physical Plant Committee from 2018 to 2020
  - Volunteered as a supervisor for youth since 2015
- Dyer County Chamber of Commerce Adult Leadership Program Graduate in 2019
  - Member of the team that completed the first downtown mural project
- Board Member for the Dyer County Waste Advisory Board from 2018 to present. This organization advises the Dyer County Government regarding issues related to waste disposal and recycling.
- Board Member for the New Life Union Mission in Dyersburg from 2018 to present. This charitable organization is dedicated to assisting vulnerable and at-risk children with completing their education and becoming employable and self-sustaining members of society.
  - Treasurer and Chairman of the Finance Committee in 2020
  - Vice-Chairman in 2021
  - Chairman in 2022

- Member of the Sons of the American Revolution since June 2021 to present
  - Secretary of Forked Deer Chapter of the Sons of the American Revolution from July 2021 to present
- Member of the Dyer County Republican Party since 2015
  - Vice Treasurer for the Dyer County Republican Party in 2021 and resigned upon applying for this position

24. 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.

The National Society of the Sons of the American Revolution limits its membership to males. I would not resign from this organization unless required to do so by the Code of Judicial Conduct because it has a sister organization, the Daughters of the American Revolution. This is the largest male genealogical society in the country. Its goals are to promote patriotism, preserve American history related to the American Revolution, and promote civic education.

### **ACHIEVEMENTS**

25. 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.

- Mississippi Bar Association, 2006-present
- Kentucky Bar Association, 2020-present
- Memphis Bar Association, 2009-present
- Tennessee Defense Lawyers' Association, 2009-present
- Tennessee Bar Association, 2014-present
- Claims and Litigation Management, 2015-present

- Defense Research Institute, 2014-present
- Lawyer Pilot Bar Association, 2012-present
- Aircraft Owner and Pilot Association Panel Counsel, 2015-present
- The Transportation & Logistics Council, 2019-2020

26. 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.

- Selected to give a presentation related to sovereign immunity in airport litigation at the 2014 SMU Air Law Symposium, which was attended by approximately 2,500 aviation attorneys
- Recognized as a rising star in aviation and aerospace law by Super Lawyer Magazine in 2014, 2015, 2016, 2017, 2018, 2019, 2020, and 2021
- Received a 4.6 out of 5 rating by Martindale-Hubbell
- The Southern Methodist University Journal of Air Law and Commerce published my law journal article, "Applying the Discretionary Function Exception to the Waiver of Sovereign Immunity in Airport Litigation."
- The Drake Journal of Agriculture Law published my law journal article, "The Time Has Come to Reconsider the Issue of Liability in Aerial Application Cases."
- The Tennessee Bar Journal published my article, "Who Controls the Airspace? Issues Increase as Drones Fill Tennessee's Skies."

27. 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.

As discussed above, Governor Haley Barbour appointed me to his Juvenile Justice Committee from 2005 to 2009, and I applied to be a judge on the Tennessee Court of Appeals.

### **ESSAYS/PERSONAL STATEMENTS**

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

I have always had an interest in public service, which is shown by my internships at the National Cotton Council, the White House, and the United States Attorney's Office. Additionally, I have

an interest in and talent for legal research, writing, and analysis. This is supported by my judicial clerkship with the Circuit Court of Hinds County, Mississippi, and my clerkship with the Mississippi Court of Appeals. My legal interests are also not isolated to one area of the law. I have handled cases involving the following types of matters: bankruptcy, criminal law, tort, contract, workers' compensation, insurance coverage, and professional liability. These interests and abilities make me uniquely qualified for this position.

Additionally, my wife and I just had our first child, who is seventh generation Dyer Countian. We are deeply committed to our community, and I want help maintain the quality of life in this community for future generations.

29. 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 Circuit Court for the 29th Judicial District is the court of general jurisdiction for Dyer and Lake Counties. It tries civil and criminal cases and hears appeals from juvenile, municipal, and general sessions courts.

I will bring a diverse skill set to the Court. I clerked for a trial court for over a year, and I gained valuable experience by helping the judge prepare for dozens of civil and criminal trials. I also clerked for an appellate court, which sharpened my legal research and writing skills.

I have practiced law in several jurisdictions throughout the United States, which gives me insight into how different trial courts handle their dockets.

My greatest asset is my work ethic. Whether it is getting up early to help children in the Youth Leadership program or staying up late to draft law journal articles, none of this would have been possible without the work ethic that my father instilled in me at an early age while working on the family farm.

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

Yes, I will uphold the law regardless of my personal beliefs as required by my oath of office.

In *Hannan v. Alltel Publ'g Co.*, 270 S.W.3d 1 (Tenn. 2008), the Tennessee Supreme Court held that a party moving for summary judgment must either "affirmatively negate an essential element of the nonmoving party's claim or establish an affirmative defense." *Id.* This holding was contrary to the federal summary judgment standard and the standard adopted by a majority of other jurisdictions. This standard often required the movant to prove the absence of evidence, which is extremely difficult. Despite disagreeing with this standard, I often had to work within this standard to assist my clients because it was binding precedent until the Tennessee Supreme

Court overturned it.

**REFERENCES**

31. 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. Hon. James A. Hamilton III, Commissioner of Claims for the Western Division, [REDACTED] [REDACTED] Dyersburg, TN 38025-1170, [REDACTED]
B. Neal Chatham, Director of the New Life Union Mission, [REDACTED] Dyersburg, TN 38025, [REDACTED]
C. Leo Arnold, partner, Ashley & Arnold, [REDACTED] Dyersburg, TN 38024, [REDACTED]
D. Daniel Cossey, Director of Corporate Risk Management at Methodist Le Bonheur Healthcare, [REDACTED] Memphis, Tennessee, 38104, [REDACTED]
E. Rusty Grills, State Representative, District 77, [REDACTED] Cordell Hull Bldg., Nashville, TN 37243, [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 Twenty-Ninth Judicial District Circuit Court 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: October 6, 2021.

  
Signature

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



**TENNESSEE TRIAL COURT VACANCY COMMISSION  
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 Trial Court Vacancy Commission to request and receive any such information and distribute it to the membership of the Commission and to the Office of the Governor.

James L. Cresswell, Jr.

Type or Print Name

James L. Cresswell, Jr.  
Signature

Date

BPR #

10/6/21

026257

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

Mississippi Bar 102374

Arkansas Bar 2009034

Kentucky 98832