

Tennessee Trial Court Vacancy Commission

Application for Nomination to Judicial Office

1/17/23

Name: Terry A. Fann

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(including county)

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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). 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. Your complete application, including both the original and digital copies, must be received by the Administrative Office of the Courts on or before the deadline prescribed in the Notice of Vacancy. 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.

Waldron, Fann & Parsley, Attorneys - Partner
101 North Maple Street
Murfreesboro, TN 37130

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

I was licensed to practice law in Tennessee in April of 1988, and my BPR number is 12968.

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 is the only state in which I am licensed to practice law.

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).

I have not.

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).

I began my legal career as an Associate Attorney at Steve Waldron & Associates in Murfreesboro in 1988. In 1990, I became a Partner, and our firm was known as Waldron & Fann until 2012. From 2012 to present, our firm has been Waldron, Fann & Parsley. I have practiced at the same location for 35 years. While in law school, I clerked for Shelby County Circuit Court Judges Wyeth Chandler and Charles McPherson.

Prior to entering law school, from 1983 to 1985, I was employed as a loan officer and promoted to assistant treasurer for the Murfreesboro Production Credit Association in Murfreesboro.

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.

I focus my practice on civil litigation with a concentration on personal injury and employment law. I estimate personal injury and other civil cases have comprised 70% and employment law 20%, with the remaining 10% of my practice a mixture of business, criminal defense, and workers' compensation.

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.

Over my 35 year legal career, my practice has been litigation oriented. I have handled and tried cases in Juvenile, General Sessions Civil and Criminal, Circuit Civil and Criminal, and Chancery Courts throughout many of the counties in Middle Tennessee, with both bench and jury trials. I have tried cases before juries in the Middle and Eastern Federal District Courts in Tennessee and handled cases in the Western Federal District Court. I have represented clients and argued cases before the Tennessee Court of Appeals, Court of Workers' Compensation Claims, Tennessee Workers' Compensation Appeals Board, National Labor Relations Board, Supreme Court of Tennessee Special Workers' Compensation Appeals Panel, Court of Criminal Appeals, and Sixth Circuit Federal Court of Appeals in Cincinnati. I have also handled and tried cases before the Tennessee Claims Commission.

In representing my clients in these various venues, I have handled a wide range of civil and criminal litigation, including divorce, custody, paternity actions, contractual disputes, premises liability, personal injury, workers' compensation, healthcare liability, defamation, partnership dissolutions, Tennessee Human Rights Act (THRA), Fair Labor Standards Act (FLSA), Public Employee Political Freedom Act (PEPFA), murder, attempted murder, and vehicular homicide. I have conducted hundreds of preliminary hearings, taken thousands of depositions, and incorporated a vigorous civil and criminal motion practice with cases that were on track to be tried by a jury.

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

During my career, I have been given the opportunity to litigate interesting and high-profile cases.

I was lead counsel in the first criminal jury trial broadcast nationally by "Court TV" cable network in Rutherford County, *State of Tennessee v. Ronald Killings*. My client was a Sergeant with the Rutherford County Sheriff's Office, responding to an active call by a fellow officer when he struck and killed a nine (9) year old child who ran across the street in front of him. Sgt. Killings was indicted for Vehicular Homicide, Tampering with Evidence, and Making a False Statement. Because of the extensive news media coverage and publicity, and after contentious

pretrial motions, the Trial Court granted my motion for an out-of-county jury for the criminal trial. We picked a jury from Hamilton County and returned to Murfreesboro to try the case for four (4) days. Within an hour of deliberation, the jury returned a verdict of not guilty on the most significant charge of Vehicular Homicide. The remaining counts were dismissed.

I represented an 82-year-old client who owned a 14-acre tract of property in Murfreesboro which was a significant parcel needed for a retail development when her son sold the property without her permission and mishandled her funds. He was in his 60s. This was a terrifically emotional family feud which was tried before a jury for four (4) days in Rutherford County Circuit Court. The jury found in favor of my client and awarded her compensatory and punitive damages against her son. Upon appeal, the jury verdict was affirmed by the Tennessee Court of Appeals. *McClaran v. McClaran*.

I was lead counsel in a trial in the Eastern District Federal Court in Chattanooga representing four (4) Bedford County Sheriff's officers and the jail maintenance employee for violations of the Fair Labor Standards Act (FLSA), Public Employee Political Freedom Act (PEPFA), and retaliation for reporting a violation of federal law. Bedford County defended the case vigorously, and it was tried for two (2) weeks in Chattanooga. The federal jury returned a verdict in favor of my clients, finding the Defendant liable on each theory and awarding compensation to each individual. Since the Plaintiffs were successful, the Court awarded attorney fees and costs. *Sakich, et al. v. Bedford County, Tennessee, et al.*

In *State of Tennessee v. James Clayton Young*, my partner and I represented Mr. Young who was initially convicted by a Rutherford County jury of Felony Murder for which he received a life sentence. We appealed his conviction, and the Court of Criminal Appeals found that a combination of nine (9) errors by the Trial Court, as identified in my brief, required a reversal of the conviction and a new trial. We tried the case a second time, and Mr. Young was convicted of the much lesser offense of Reckless Homicide, and he was promptly released.

I represented a client on homicide charges filed by the Rutherford County Sheriff's Office for a "cold case" which was being prosecuted based on an event that occurred over 30 years earlier. It posed interesting legal and evidentiary issues and was resolved in my client's best interest. *State of Tennessee v. Perkins*.

I have tried several employment cases under the Tennessee Human Rights Act (THRA), including sexual harassment, retaliation, gender, and age discrimination claims in state and federal courts with much success. I have found that employment cases are very adversarial and emotional for not only the employee, but the employer.

I also represented a young man who was on the run from the FBI as a suspect for a bank robbery in Murfreesboro. I was able to convince him and his family it was best for him to turn himself in to authorities rather than live as a fugitive. I negotiated with the FBI agent to surrender him at my office in a safe and peaceful manner. I received a letter of appreciation from the U.S. Attorney for my assistance.

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

Over the last 30 years, I have represented numerous members of law enforcement in officer-involved shootings and other disciplinary matters. Some officers were members of the Fraternal Order of Police and/or Police Benevolent Association, and others I assisted at the request of their department. I am immediately notified when an officer fires his weapon in the line of duty and a suspect is injured or killed. I generally respond quickly and arrive at the scene to assist the officer in his initial interrogation with investigators from the TBI. Just within the last four (4) years, I have appeared at crime scenes and assisted officers involved in shootings with the Rutherford County Sheriff's Office, Smyrna Police Department, and Williamson County Sheriff's Office. The process oftentimes does not end with just a TBI investigation, but a presentation to the Grand Jury. I have also represented Murfreesboro Police Department officers in numerous disciplinary matters. I have gained a vast knowledge of not only the legal process, but human emotion and stress placed on everyone when there is an officer-involved shooting. These are also, generally, events which generate immediate high interest with the media which also must be handled appropriately.

For over 20 years, I have served as legal counsel for the Rutherford/Cannon County Child Advocacy Center (CAC). I have also served as a board member and officer during that time. The CAC is a non-profit which serves child abuse victims, child sexual abuse victims, and drug endangered children and seeks safety, justice, and healing for child sexual abuse and child abuse victims. It has been a privilege and honor to assist the CAC in assuring that these children and the employees of the CAC are protected, and these much needed services remain available for the children of our Judicial District.

I previously served as an attorney member of the Board of Professional Responsibility. During my tenure, I sat on hearing committees for attorneys who disagreed with recommended discipline and requested a hearing before the Board. On two (2) occasions, I served as Panel Chair for the Hearing Committee, and Judgments were prepared and entered just as a Trial Judge. One of the matters for which I sat as Panel Chair involved a two (2) day trial of a former elected District Attorney General for which disbarment was sought by the Board's Counsel. Sitting on the Hearing Committee of the Board afforded me the rare opportunity as a practicing attorney to hear and decide ethical matters in a courtroom setting.

I have also represented elected Tennessee Sheriffs in several counties who decided to file suit over budgetary issues and failure of the County to properly fund the Sheriff's Office. These cases are purely statutory pursuant to Tenn. Code Ann. §8-20-101, et seq. Being hired by the Sheriff, because he is underfunded, is an important task as his office requires the resources to adequately protect the citizens. This has been a privilege and has provided me with yet another opportunity to work with law enforcement.

Since 2018, I have been certified and served as a Rule 31 Civil Mediator. My experience as a litigator has allowed me to successfully mediate civil cases with a variety of causes of action, including some with complicated issues.

I have served as Special Judge on occasion in the Rutherford County and Town of Smyrna General Sessions Courts, hearing pleas and conducting preliminary hearings.

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

I have not previously made application for any judicial position.

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.

University of Tennessee, Knoxville - 1979 to 1983. I received a Bachelor of Science degree in Agriculture Business with High Honors.

Middle Tennessee State University - 1984 to 1985. I began my MBA studies as a part-time student while working full time for Murfreesboro Production Credit Association. I did not receive a degree from MTSU as I left to enter law school in the fall of 1985.

University of Memphis, Cecil C. Humphreys School of Law - 1985 to 1987. I received a Juris Doctor. I completed law school in two and-a-half (2 ½) years, graduating in December 1987. I was a member of the Moot Court Board, the National Moot Court Team, and with my law school partner, was Mock Trial Champion Counsel.

PERSONAL INFORMATION

12. State your date of birth.

1961

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

I am a lifelong resident of the State of Tennessee.

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

35 ½ years

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

Rutherford County

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.

I have not served in the military.

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.

I have not.

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.

I am not.

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.

I have responded to three (3) complaints filed against me with the Board of Professional Responsibility. They were in 1995, 1999, and 2005. Each complaint was dismissed upon investigation by the Board.

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)?

I have not.

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.

Yes. I was named as one of many party Defendants, along with other homeowners of the townhomes at Cottages on Clark, in a boundary dispute between an adjoining landowner and the developer for the townhomes project. The lawsuit was filed on January 13, 2020, in the Chancery Court for Rutherford County, Docket No. 20CV-49, *Wright v. Loveless, et al.* With the other individual homeowners, I was dismissed from the case by Order of the Court entered on June 10, 2020, and the HOA was substituted as the appropriate party Defendant.

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.

Rutherford/Cannon County Child Advocacy Center: Board Member for the last 20 years, serving three (3) terms as Vice President and four (4) terms as President.

Belle Aire Baptist Church, Murfreesboro, Tennessee.

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.

I have not.

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.

Rutherford/Cannon County Bar Association, since 1988.

Certified Civil Trial Specialist by the National Board of Trial Advocacy, 1995-2022.

Rutherford/Cannon County Bench/Bar Liaison Committee, previously and currently.

Tennessee Bar Association, since 1988.

American Bar Association, since 1988.

Tennessee Association of Criminal Defense Lawyers, since 1988.

National Association of Criminal Defense Lawyers, since 1996.

Tennessee Trial Lawyers Association, for over 25 years.

American Association for Justice, since 1989.

The National Trial Lawyers Association: Civil Plaintiff Top 100 member, 2011-2022;
Wage/Hour Top 10, 2012-2014.

Litigation Counsel of America, 2008-2016.

Trial Law Institute, 2008-2016.

Diversity Law Institute, 2008-2016.

Order of Justitia, Barrister, 2008-2016.

Who's Who in American Law, 2002-2006.

Who's Who in Executives and Professionals, 2003.

American Association of Premier DUI Attorneys, Executive Member, 2016-2021.

The American Society of Legal Advocates, 2012-2015, 2017-2018, named Top 100 Litigation Lawyer in the State of Tennessee, 2015, 2017-2018.

Legal Aid Society of Middle Tennessee and the Cumberland Leadership Cabinet, 2004-2006, 2009-2020, and 2022.

The Association of Wage and Hour Attorneys, 2012.

The National Advocacy for DUI Defense, 2014-2016, named Top 100 DUI Attorney in Tennessee, 2014 and Superior DUI Attorney, 2015-2016.

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.

Child Advocacy Center Hometown Hero, 2018.

DNJ Ruthie's Award - Favorite Attorney.

Martindale Hubbell AV and AV Preeminent Peer Rated for Highest Level of Professional Excellence.

Martindale Hubbell Client Reviewed.

Martindale Hubbell AV Preeminent Rated Attorney Specializing in Civil Rights Law, 2023.

Martindale Hubbell Highest Possible Rating in Both Legal Ability and Ethical Standards, 2023.

Martindale Hubbell Judicial Edition Highest Position Rating in Both Legal Ability & Ethical Standards Reflecting the Confidential Opinions of Members of the Bar and Judiciary, since 2016.

Super Lawyers Top Rated Personal Injury Attorney since 2007. Named Top 100: 2023 Tennessee Super Lawyer and Top 50: 2023 Nashville Super Lawyer.

Outstanding Lawyers of America, 2003.

Tennessee Bar Journal Pro Bono Honor Roll, 2005.

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.

I have not been a candidate, applicant, nor held public office.

ESSAYS/PERSONAL STATEMENTS

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

I have enjoyed a challenging and rewarding career as a trial lawyer for 35 years. I am now ready for the next step.

Having handled civil and criminal cases in almost every court available, I am prepared to use my experience to serve the citizens and litigants of our judicial district. This is an unexpected opportunity that is being presented at the right time in my life and career. Over the years, I have gained wisdom not only in the law, but also in life, which is required by a Judge.

After 35 years, the best avenue for me to give back to my community is to serve in a capacity to the public as a whole, and not just my clients. I am qualified and prepared to take the bench as Circuit Court Judge and maintain the excellent reputation our local judges have enjoyed for decades.

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)*

I am seeking the position of Circuit Court Judge, Division I, for the 16th Judicial District which serves Rutherford and Cannon Counties with five (5) Circuit Court Judges and a Chancellor. I am prepared to immediately fill the position left vacant by Judge Rogers' retirement. Historically, Judge Rogers has handled the civil docket. With 35 years of experience in civil litigation, I can immediately take over the current docket as already scheduled and hear contested cases, rule on motions, and conduct bench and jury trials. There is always concern when a Judge leaves the bench that the remaining Judges must take over his docket while already managing their own crowded docket. With my experience, knowledge, and set of skills as a trial lawyer, I am prepared to assume the bench quickly and manage the docket efficiently to protect the integrity of the Court and preserve the rights of the litigants.

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)*

Absolutely. The duty of the Judge is to uphold and enforce the law, despite any personal opinions to the contrary.

Regarding damages for victims in employment cases under the Tennessee Human Rights Act (THRA), the legislature passed a statute capping non-pecuniary losses. Tennessee Code Annotated §4-21-313 establishes a statutory limitation for amounts of damages an employee

receives for non-economic damages if successful in litigation. The maximum amount awarded for damages directly correlates with the number of employees of the employer found liable for discrimination. Per the statute, if the employer has less than 8 employees, the cap is \$25,000.00; if based on 100 employees, \$50,000.00; 200 employees, \$100,000.00; 500 employees, \$200,000.00; and over 500 employees, \$300,000.00.

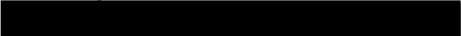

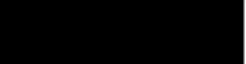

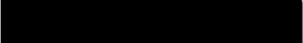

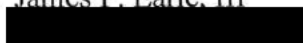

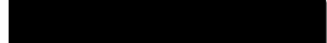
I have successfully represented clients whose non-pecuniary award was in excess of the statutory caps, due solely to the size of their employer. The Trial Court appropriately reduced the award to the maximum allowed by the statute.

The theory for limiting damages may be well-reasoned, but I struggle with the rationale that an employee who is sexually harassed, and her employer has less than 50 employees, is limited to maximum damages of \$50,000.00. However, if she worked for a larger employer and was a victim of the same conduct, her award could be six (6) times that amount, \$300,000.00. The only difference in her compensation is the size of her employer, not how the trauma affected her.

As a Judge, I would enforce the statutory caps which have been held to be constitutional.

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.

| | |
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| <p>A. Jim Kay  Nashville, TN 37201 </p> | <p>Attorney, Kay Griffin Evans PLLC</p> |
| <p>B. Honorable Judge Christy R. Little  Jackson, TN 38301 </p> | <p>General Sessions/Juvenile Court Madison County, Tennessee</p> |
| <p>C. Sharon DeBoer  Murfreesboro, TN 37130 </p> | <p>Director, Child Advocacy Center for Rutherford & Cannon Counties</p> |
| <p>D. James P. Earle, III  Murfreesboro, TN 37129 </p> | <p>Investment Manager</p> |
| <p>E. Jeff Peach  Smyrna, TN 37167</p> | <p>Attorney, Town of Smyrna</p> |

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 Circuit Court for the 16th Judicial District 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: July 24, 2023.



Signature

When completed, return this questionnaire to John Jefferson at the 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.

Terry A. Fann

Type or Print Name

Signature

Date

012968

BPR #

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

None