

Tennessee Judicial Nominating Commission
Application for Nomination to Judicial Office

Rev. 22 December 2011

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INTRODUCTION

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website <http://www.tncourts.gov>). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) **and** electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit seventeen (17) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to debra.hayes@tncourts.gov.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Deputy District Attorney General, 30th Judicial District, at Memphis.

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

1984, 010750

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, #10750, April 26, 1984 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).

Assistant Public Defender, Shelby County Public Defender, July 1984 till October 1985.

Assistant District Attorney General, 30th Judicial District, November 1985 till present.

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

N/A

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

I am currently the Deputy District Attorney in the 30th Judicial District that encompasses Shelby County, Tennessee. I am responsible for the day to day running of an office that has 109 attorneys and 100 support staff. In a typical year the office handles 125,000 criminal offenses in General Sessions and Criminal Court. As Deputy I am the person in the office tasked to consider appeals on plea offers from defense attorneys and advise assistants on trial and legal questions. This composes about 60% of my practice. I have a limited caseload that includes pending homicide trials as well as post-conviction matters on capital cases. This composes about 25% of my practice. I am also assigned other duties that include community outreach and drafting legislation. This composes about 15% of my practice.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Commission needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Commission. Please provide detailed information that will allow the Commission to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

My legal career has almost exclusively occurred within the confines of the Shelby County Criminal Justice Center, 201 Poplar Avenue. I served as a judicial clerk while still in law school, which gave me insight into the thoughts of the judge as he considers matters before the court. I was appointed as an Assistant Public Defender, after I received my license, and practiced in the Major Violators Court, Division 8 in front of Judge Joseph McCarty. Anyone who is old enough remembers Judge McCarty and his unique way of conducting business. It was always very stressful and I had to deal with offenders who had been in and out of the system many times. I learned a lot about the legal system during the time I was a public defender.

I was then appointed an Assistant District Attorney on November 1, 1985 and since that time I have been assigned to a number of duties within the office. I was assigned to the Major Violators Unit in 1993 and handled a number of complicated cases. I prepared the indictments and handled the matters until disposition. In 1995 I was made a Division Leader and assigned to Division 9 of Criminal Court and Judge Joseph Brown. After my assignment in Division 9, I was assigned to Division 10 in front of Judge James Beasley, Jr. and Division 1 in front of Judge Bernie Weinman. I was a division leader until I was promoted to a Special Assistant in 2001. As a Special Assistant I supervised the State side of the Gun Program begun under the federal Project Safe Neighborhoods initiative in conjunction with the United States Attorney. I have been appointed a Special Assistant United States Attorney. I also was assigned the duty of handling nuisance cases that are filed against problem properties in Environmental Court in Shelby County. In addition to these duties I also maintained a trial load involving homicide cases. Though I am not presently trying cases regularly in the courts, I have, over my career, tried over 100 jury trials including everything up to capital murder. I also handle all capital post-conviction cases for the office. This requires conducting evidentiary hearings on ineffective assistance of counsel and involves litigation concerning experts in areas of mental health, forensics and other specialties. A number of cases that I have prosecuted have resulted in rulings that are at the cutting edge of the law in those particular areas. I am also the legislative liaison with the District Attorney Generals Conference, the Public Safety Coalition, and the General Assembly. This assignment has me in Nashville during the time the General Assembly is in session to testify about bills that the Conference is supporting. As part of this assignment I was appointed to a Summer Study on capital punishment that convened the Summer of 2010.

Since January 2011 I have been the Deputy District Attorney General in Shelby County. This job is very demanding in that the Deputy is responsible for the day-to-day running of the office for the DA. This includes personnel issues, legal questions, public outreach and as a liaison with the courts. Plea negotiations on serious cases are discussed with the Deputy and the Deputy must approve any reductions in offer. This requires the Deputy to mediate between the Assistant DA and the defense attorney in coming to a resolution. The Deputy is also responsible for deciding if a defendant is a good candidate for pre-trial diversion and if denied must draft a rejection letter that can be appealed to the trial court.

I mention all this to show that I have experience in many areas of criminal law and have served in many courts with very diverse judicial attitudes. This experience has given me insight into how I believe a judge should conduct matters in his courtroom and interact with the parties that come before him.

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

In 1992 I was assigned the James Earl Ray post-conviction case that was filed with much fanfare. During the ensuing 6 years I was involved in several scientific tests on the murder weapon and conducted several hearings that were covered by media from all over the world.

This case resulted in several appeals culminating with the removal of the trial judge for bias. As a result of the case, I appeared in documentaries produced by CNN and PBS and The Discovery Channel. I was also interviewed by Hampton Sides when he wrote his book *Hellhound on His Trail* about James Earl Ray and the King assassination.

In 2005, Robert Hood was convicted of Murder in the First Degree and received the death penalty. While the case was on appeal, evidence was found in the property room that undermined the testimony of a critical state's witness. This was brought to my attention and I felt that this evidence, had it been known at the time of trial, would have resulted in a different prosecution decision and verdict. The trial prosecutors and I met with the public defender and told them what we had found and felt that the case should be reversed. Since the matter was on appeal I suggested that the public defender file a petition for Writ of Error *Coram Nobis* for this newly discovered evidence. This would give the trial court jurisdiction to hear the matter. We stipulated that the defendant should get a new trial and this was done. His death sentence was reversed and he entered a plea to Murder in the Second Degree.

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.

N/A

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

N/A

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

For two years I was a judicial law clerk with the Criminal Court judges. This gave me great experience working with the judges in drafting orders and assisting in decision making.

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission or any predecessor commission or body. Include the

specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

I submitted an application in 2007 when there was a vacancy in Division 6 of Criminal Court in Shelby County. The Judicial Selection Commission met on July 23 – 24, 2007. I was one of the three names submitted to the Governor. Judge Fowlkes was appointed.

EDUCATION

14. List each college, law school, and other graduate school which you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant. and your reason for leaving each school if no degree was awarded.

Christian Brothers College, September, 1976 – 1977. The History Department was too small and I wanted to have a larger college experience.

Memphis State University, 1977 – 1980 BA in History.

Memphis State University, Cecil C. Humphreys School of Law, 1980 –1983. JD

PERSONAL INFORMATION

15. State your age and date of birth.

I am 53 years old, September 11, 1958.

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

53 years

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

53 years

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

Shelby County, Tennessee

19. Describe your military Service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

N/A

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

No

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No

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

No. I have an AV rating with Martindale-Hubble.

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.

Workman v. Summers, et al. 3:01-0290 (Middle District of Tennessee), Phillip Workman, a death row inmate, filed a §1983 action against the parole board, the Attorney General, the Governor and me alleging that he was not given a fair clemency hearing in his death penalty case. This action was dismissed by Judge Campbell, no relation, October 2001. Workman appealed but I never heard another thing about the case. I checked with the Attorney General's Office in Nashville and they do not show this case is still active.

Gretchen Swift v. John Campbell et al., 159 S.W.3d 565 (Tenn.Ct.App. 2004), attorneys for Phillip Workman file an "open records" request demanding the District Attorney, 30th District, turn over his files for inspection. At the time Workman's case was on appeal in the federal courts and he had filed for clemency. The court found that Workman's file was not subject to open records because his case was still pending and was therefore not a "closed" file. The decision of the Chancery Court denying relief was affirmed by the appellate court.

Fletcher v. City of Memphis et al., 86-2065-GA (Western District of Tennessee), former public defender client filed a §1983 action against the police department, the witnesses who testified against him at trial and me, his public defender. Case was dismissed in the trial court.

Fletcher v. City of Memphis, et al., 86-2317-HA (Western District of Tennessee), filed March 3, 1986 by the same plaintiff as above, contained same allegations as above action and was dismissed by the trial court. Supreme Court denied cert. 11-30-1987.

Fletcher v. City of Memphis, et al., 88-6263 (Western District of Tennessee) filed March 22, 1988 by the same plaintiff as above. This complaint was for the same case that I had represented the plaintiff as a public defender in 1985. The case was dismissed in the trial court and I was never served with the complaint.

Fletcher v. Campbell, No. 105699-1 (Chancery Court Shelby County, Tennessee), Same plaintiff as above filed a state complaint in chancery court alleging that I did not represent him properly in his criminal case. This case was dismissed by the Chancellor on October 30, 1995.

Lamar Fletcher v. Shelby County Public Defender et al, No. 98-0694-1, (Chancery Court Shelby County, Tennessee), same plaintiff filed complaint that I had a conflict of interest when I was his public defender. This case was dismissed by the Chancellor April, 2002.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices which you have held in such organizations.

Quail Unlimited, Vice President 2010

Quail Forever

Mid-South Fly Fishers

St. Thomas More Catholic Lawyers Guild, President, 2001

27. Have you ever belonged to any organization, association, club or society which limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- 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 which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

Leo Bearman, Sr. Chapter, American Inns of Court, Master 2009-2012.

Tennessee District Attorney Association, 1985 to present.

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

President's Award Tennessee District Attorneys Conference, 2011.

Certificate of Special Congressional Recognition for Service to the Community, May 29, 2012, by the United States Congress from Congressman Steve Cohen.

AV rating from Martindale-Hubbe

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

The Practical Prosecutor, publication of the National College of District Attorneys, 2002 issue, *Cross Examination of the Runaway Witness*.

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.

National Advocacy Center, Columbia, SC, Faculty Development Course December 2006.

Administrative Office of the Courts June 2006 conference in Memphis, Tennessee, Post-conviction relief.

National Advocacy Center, Columbia, SC, Prosecution Ethics March 2006.

Tennessee District Attorneys Conference, Capital Litigation Post-Conviction, April 2010.

South Carolina Prosecutors Association, Capital Litigation Seminar, Cross-Examination of Experts, and Prosecution Ethics, May 2011.

Louisiana Prosecutors Association, Ethics, June 2011.

Oklahoma Prosecutors Association, Post-*Crawford* Hearsay, November 2011.

Pennsylvanian Prosecutors Association, Prosecutor's Discovery Obligation, February 2012.

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

I applied for an appointment to the vacancy in Criminal Court Division 6 in 2007

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

No

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings which reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

See attached. These writings were my sole work product.

ESSAYS/PERSONAL STATEMENTS

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

The legal system is dependant on a competent and hard working judiciary. I have the experience, knowledge and work ethic to perform the duties of judge. My work in the Criminal Justice System over the last 30 years has shown me what works and what doesn't in the way a courtroom is run. With the high caseloads here in Shelby County, it is important that judges work together to see that cases are resolved in a speedy manner. I have strived over my career to be respectful of opposing counsel and the court while still performing my responsibilities as a prosecutor. I have been told that my personality fits well with what is expected of a judge. The judges currently on the bench in the 30th Judicial District work together to achieve justice and I feel that I can and will work with them to continue the policies in place.

36. State any achievements or activities in which you have been involved which demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

Since a prosecutor cannot practice law, I have not engaged in pro-bono service. However, I was involved in the creation of a Veteran's Court in Shelby County to assist veterans who have fallen on hard times to get assistance in lieu of a criminal conviction. This effort was spearheaded by the office of congressman Steve Cohen and a collaboration of the Shelby County Public Defender, Veterans Administration, District Attorneys Office, Shelby County Court Coordinator, and interested citizens groups. The Court was designed to identify veterans who had come into the justice system and could be helped by being referred for services at the VA. The plan for the court was adopted by Shelby County Government and funds were found to create the court. This Court began on July 15, 2012.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

I am seeking appointment to the judgeship in Division 6 of Criminal Court of Shelby County. This court has general criminal jurisdiction for State felonies and misdemeanors. There are a total of 10 criminal court judges in Shelby County. Due to my experience with just about all types of cases that will come before the court, I feel that if I am selected I can immediately handle any matter that comes before the court and I have the experience and work ethic to keep

the Division current in its caseload.

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)*

Most of my extracurricular work has been in the area of conservation. I still intend to be active in this regard. I also have been called upon to speak to the public, either by speaking at community functions or to the media, about issues in the law and the court system. In this capacity I have talked to neighborhood watch groups, school groups, police/citizen groups and the Memphis Bar Association to educate the public about the law and its impact on their lives. I have also been asked to speak at schools about the District Attorneys Office as well as the evils of drug and alcohol abuse.

For many years I was responsible for answering media questions about legal issues and I have appeared on television numerous times explaining a new law or legal concept. I feel that this is an important part of my job in that the public has a right to know how the criminal justice system works. As part of this responsibility I have become known as a teacher on legal ethics and have been asked to talk on ethics both locally and around the country. I intend to continue to focus on this area of the law.

As a judge I feel that I would have the same responsibility to be available to meet with the public and teach about the criminal justice system and how it works. I understand that I could not talk about cases that are pending on the docket but can discuss the law in general terms.

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

For some time I have been given the responsibility in the District Attorney's Office to prosecute cases that are high profile and somewhat messy. This experience has helped me handle cases in the media spotlight without losing my nerve. I am not afraid to make a decision that may be controversial. What people often fail to recognize is that an important job of the prosecutor, maybe the most important, is to make a charging decision. I have been tasked with making charging decisions in child sexual abuse cases, homicide cases and gun cases/violent crimes. Since we have a charging standard of "a reasonable probability of conviction", there have been a number of times that I have had to tell the police and family that I cannot approve charging an individual with a criminal offense. This causes more complaints and anguish than anything else a prosecutor does. I feel that this experience will serve me well if I am appointed to the bench. I have developed a reputation as somebody that is fair and can solve problems. Because of this reputation I have been asked to be involved in a number of committees and groups that were formed to address specific problems with the court system. I also feel, and have been told, that I work well with others. I have maintained a good reputation with the Bar, the Judiciary and the

public.

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)*

Of course. In this regard the office of judge and prosecutor overlaps to a great degree. The District Attorney cannot pick and choose what laws will be enforced and what will not. His job, as that of the judge, is to enforce the laws that have been enacted by the General Assembly as a representative of the people of Tennessee. If there are problems we have a responsibility to make them known to the General Assembly and seek changes. However, if the General Assembly, in its collective wisdom, feels that a law is proper we must enforce it unless it violates the Tennessee or federal Constitution. We as prosecutors and judges take an oath to follow the laws of the State of Tennessee and that oath does not have an opt-out provision.

On July 1, a new law became effective that allows persons to expunge a prior conviction from their record if the offense was an "E" felony or less, is not a violent crime or sex crime, and they have no other criminal conviction. This new law requires the District Attorney to assist applicants in filing their petitions. This law is not the easiest to understand and I have been assigned to assist the public with the expungements. I have seen many people who have old convictions that do not qualify for expungement disappointed that they could not get their records expunged. These people have not had criminal offenses for a number of years and cannot get jobs because of old convictions. I understand the hardship these people are going through but I cannot allow a petition to be filed that will ultimately fail. Also I cannot ignore the problem and allow an expungement order to be entered. Though this causes a hardship, I must follow the statute. I do keep people from wasting the \$450 filing fee.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

A. Stephen Jones, [REDACTED]

B. Amy P. Weirich, [REDACTED]

C. Gregory Wingo, [REDACTED]

D. Terry Harris, [REDACTED]
[REDACTED]

E. Dr. Meade Kendrick, [REDACTED]

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the [Court] Criminal Court Division 6, 30th 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 27, 2012.


Signature

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



TENNESSEE JUDICIAL NOMINATING COMMISSION

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

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

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information which