

The Governor's Commission for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 34 hereby charges the Governor's Commission 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 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 original (unbound) completed application (*with ink signature*) and eight (8) copies of the form and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to debra.hayes@tncourts.gov, or via another digital storage device such as flash drive or CD.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Judge, Tennessee Court of Criminal Appeals.

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

1986 – BPR No. 011992

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 No. 011992

October 1986

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).

August 2011 – Present: Judge, Tennessee Court of Criminal Appeals – One of twelve judges in the State of Tennessee that sit on the intermediate appellate court that hears the appeals of all criminal cases from across Tennessee. I was appointed to this position by Governor Haslam in August 2011. I was elected to serve the remainder of the full term in the August 2012 general election.

March 2005 – August 2011; July 1999 – August 2000: Circuit Court Judge – 21st Judicial District—I served as a Circuit Court Judge for the 21st Judicial District, which includes Hickman,

Lewis, Perry and Williamson Counties. The Circuit Judges of the 21st Judicial District handle both criminal and civil matters at all times and sit in both Circuit Court and Chancery Court. I first was appointed to this position by Governor Don Sundquist in July 1999. I then lost the election to keep the judgeship in August 2000. I was appointed again to another vacancy by Governor Phil Bredesen in March 2005. I was unopposed in the election for a full eight-year term in August 2006.

April 2001 - February 2005; October 1986 – June 1995: Attorney at Law – Boulton, Cummings, Conners & Berry, PLC, Nashville, Tennessee—My primary areas of concentration were commercial litigation, mediation and arbitration, and antitrust law. My commercial litigation experience includes state and federal court experience in antitrust law, securities law, business contractual disputes, non-compete agreements, real estate law, property tax appeals, banking law, commercial torts and insurance coverage disputes. I have served as a mediator or arbitrator in matters ranging from complex business disputes to child custody matters. I was a Rule 31 Listed mediator for general civil matters. In the area of antitrust counseling, I have experience in the health care, publishing, appliances, apparel, footwear and dairy industries.

September 2000 – April 2001; October 1996 – July 1999: Assistant Commissioner/General Counsel – Tennessee Department of Personnel—I served as the Assistant Commissioner for Human Resources and General Counsel for the Tennessee Department of Personnel. In this position, I provided legal advice to the Commissioner and the staff of the department on all legal issues that arose in the department, and I provided legal advice to the Tennessee Civil Service Commission. Additionally, I presided over contested case hearings on behalf of the Commission involving legal proceedings in which employees sought a legal declaration of their rights under policies and procedures of the Department of Personnel. I also was responsible for the Employee Development and Equal Employment Opportunity Division, the Employee Relations Division, and the Technical Services Division of the department. Additionally, I was the lead legislative liaison for the department to the General Assembly. I reviewed and approved all state contracts for personal services and temporary employees. I also coordinated the hiring of all attorneys in the executive branch agencies of state government. Finally, I was the Commissioner's designee as a member of the State Insurance Committee and the Board of Claims.

Prior to my appointment as Assistant Commissioner and General Counsel, I performed many of the same functions in my position as Assistant to the Commissioner. However, the three divisions identified above did not report to me. One additional duty I had in this position was that I served as the State Coordinator for Tennessee State Government for the Americans with Disabilities Act. I served in this capacity from October 1996 through June 1997.

June 1995 – July 1996: Executive Vice President/General Counsel – Parker Bath Corporation—This company was the American subsidiary of a Great Britain corporation which assembled and distributed specialized bathing equipment and patient lifters to nursing homes and hospitals throughout the United States. My job entailed legal duties related to all aspects of the Company's business. Additionally, I was responsible for the day-to-day operations of this business. I was responsible for budgeting, financial reporting, accounts receivable, customer service, human resources, employee benefits and plant operations. During my time with this company, the company had annual sales of approximately \$6.3 million in 1995. This represented growth of over 20% in the previous fiscal year's revenues. My legal duties for this

company focused on the areas of patent protection, government contracts, employment, products liability and collections.

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.

Not applicable.

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.

As a judge on the Tennessee Court of Criminal Appeals, I no longer actually practice law. All of the cases I hear for this court are criminal matters. On occasion, I have sit by designation with the Tennessee Court of Appeals and participated in a few civil matters.

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.

During my career as a licensed attorney before I became a judge, the primary areas of my private practice were commercial litigation, mediation and arbitration, and antitrust law. My commercial litigation experience includes state and federal court experience in antitrust law, securities law, business contractual disputes, non-compete agreements, real estate law, property tax appeals, banking law, commercial torts and insurance coverage disputes. I have served as a mediator or arbitrator in matters ranging from complex business disputes to child custody matters. I was a Rule 31 Listed mediator for general civil matters. In the area of antitrust counseling, I have experience in the health care, publishing, appliances, apparel, footwear and dairy industries.

I did handle a few criminal matters after my first stint as a trial court judge, but the majority of my practice remained in the areas outlined above.

I would estimate that I have appeared in trial courts (state and federal) in approximately 350

cases. Additionally, I appeared before Administrative Law Judges and the Board of Review for the State Board of Equalization on property tax matters on approximately five occasions.

During my time with Parker Bath Corporation, I supervised litigation by outside counsel, supervised patent and copyright filings, practiced employment law, and represented the company before unemployment compensation tribunals and property tax appeals panels.

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

Crawford, et al v. Tennessee Consolidated Retirement System, 732 S.W.2d 293 (Tenn. App. 1987). This case involved a dispute over retirement benefits for certain district attorneys and focused on constitutional issues. I was responsible for about 75% of the work on the brief, and I argued the case before the Court of Appeals.

Lowe, et al v. Gulf Coast Development, et al, 1991 Tenn. App. LEXIS 860 (Tenn. App. 1991). This case involved a dispute arising from the development and construction of a Shoney's Inn in Lebanon, Tennessee. The case involved issues of fraudulent inducement, breach of contract, piercing the corporate veil and easements. I was one of the two attorneys who tried the case. I only participated in some assistance with the brief on appeal because I was out of state on another matter during much of this time.

Metropolitan Government of Nashville and Davidson County v. Tennessee State Board of Equalization, et al, 817 S.W.2d 953 (Tenn. 1991). This case involved a challenge by the Metro Property Assessor to the exemption from property taxation enjoyed by church parsonages. I was one of the approximately six lawyers who actively participated in the representation of the approximately 142 churches and congregations named as defendants. I wrote a brief on behalf of my church and attended but did not argue at the hearing before the Supreme Court.

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.

State of Tennessee v. Letalvis Cobbins, et al., No. E2012-02025-CCA-10B-DD, 2012 WL 5266427 (Tenn. Crim. App. Oct. 25, 2012). I participated on the panel and assisted in the opinion in this appeal which resulted in the recusal of the replacement judge in three major murder cases out of Knox County Criminal Court.

State of Tennessee v. Christ Koulis, Williamson County Circuit Court, Case No. I-CR111479. The defendant in this case was a plastic surgeon charged with second degree murder involving the drug overdose death of his fiancé. The case received substantial national and local media

attention. The trial lasted two weeks and was the subject of segments on CBS' *48 Hours* and NBC's *Dateline*. The Nashville area media also covered it from beginning to end.

State of Tennessee v. Malinda McCready, Williamson County Circuit Court, Case No. I-CR054341. I presided over the sentencing hearing of Mindy McCready, the former country music star, on charges of prescription drug fraud. The defendant initially had been granted judicial diversion but was revoked due to probation violations. As a result, I conducted a sentencing hearing on her original prescription drug fraud charges.

In Re: Sentinel Trust Company, Lewis County Chancery Court, Case No. 4781. This case is a receivership action involving a trust company headquartered in Lewis County and owned by the brother of an elected official in Lewis County. The Commissioner of the Tennessee Department of Financial Institutions took possession of the trust company and commenced liquidation proceedings through this receivership action in Lewis County Chancery Court. The proceedings involved several multi-million dollar bond issues. Creditors included both individual and corporate bondholders from across the country. I presided over the receivership action from March 2005 through December 2005.

State of Tennessee v. Martin Frankel, Williamson County Circuit Court, Case No. I-1099-351. This case involved the theft of over \$200 million from insurance policyholders through the use of bogus insurance companies in Tennessee, Mississippi, and Connecticut. The defendant eventually pled guilty to ten counts of theft over \$60,000 in Tennessee, as well as entering guilty pleas to federal charges out of the United States District Court for the District of Connecticut and state charges in the State of Mississippi. The case garnered international notoriety when the defendant fled to Germany in an attempt to avoid prosecution from the charges in all three jurisdictions. The sentencing hearing began on November 4, 2005 but was continued to allow authorities from the States of Tennessee and Mississippi to seek additional information from the defendant about the location of any remaining funds. The hearing concluded on December 13, 2005, after both sides represented to the Court that they were satisfied with the defendant's cooperation.

State of Tennessee v. John Hackney, Williamson County Circuit Court, Case No. I-900-302. This case involved the same criminal conduct as State v. Frankel. This defendant was the president of the insurance companies utilized by the defendants to defraud the policyholders. This defendant was a very popular and well-connected member of the Williamson County community before these charges came to light. I presided over the sentencing hearing in this case. This defendant pled guilty to two counts of theft over \$60,000. The sentencing hearing took place on June 27, 2005 before a courtroom packed with supporters of the defendant. Because of the unexpectedly light sentence received by the defendant on his federal charges, I rejected the joint sentencing recommendation of the state and the defense. I ordered that the defendant's state sentence would run consecutive to his federal sentence.

State of Tennessee v. Johnny Lynn, a/k/a Jerome Alvin Buss, Lewis Circuit Court Case No. 7450. I presided over this case involving the charges against the defendant of child rape and aggravated sexual battery. The alleged victim was the defendant's step-granddaughter. The defendant was convicted on all counts. I sentenced the defendant to an effective 54-year

sentence. The conviction and the sentence were affirmed on appeal.

State of Tennessee v. Robert Zaloba, Williamson County Circuit Court Case No. I-CR011593. I presided over this case involving charges against the defendant of child rape, rape, and aggravated sexual battery. The alleged victim was the adoptive son of the defendant. The son had been adopted from Russia along with his younger brother. The defendant was convicted on all counts. I sentenced the defendant to an effective 48-year sentence. The conviction and the sentence were affirmed on appeal.

State of Tennessee v. Brian K. Henneberg, Williamson County Circuit Court Case No. I-CR033303. I presided over a first degree murder trial in which a young husband was charged with brutally beating, stabbing, and choking his wife. The defendant was convicted after a multi-day trial. He was sentenced to life in prison. The conviction and the sentence were affirmed on appeal.

Tennessee Football, Inc. v. Adam "Pacman" Jones, Williamson County Chancery Court Case No. 33822. I presided over this action in which the Titans were seeking to enjoin Pacman Jones from wrestling in a pay-per-view event during a period of time when he was suspended from playing football.

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.

None.

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

None.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Commission for Judicial Appointments 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 to the Judicial Nominating Commission for my current Court of Criminal Appeals position in May 2011. The date of the Commission meeting was June 6, 2011. My name was submitted to Governor Haslam as a nominee, and the Governor appointed me.

I submitted an application to the Judicial Selection Commission for a position as Circuit Court Judge for the 21st Judicial District in December 2004. The Commission met in January 2005.

My name was submitted to Governor Bredesen as a nominee, and the Governor appointed me.

I submitted an application to the Judicial Selection Commission for a position as Circuit Court Judge for the 21st Judicial District in June 1999. The date of the Commission meeting was late June or early July 1999. My name was submitted to Governor Sundquist as a nominee, and the Governor appointed me.

I submitted an application to the Commission for two positions on the Middle Section Court of Appeals in 2007. The date of the first Commission meeting was in approximately July 2007, and the second meeting was in approximately October 2007. My name was not submitted to the Governor on either occasion.

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.

1978 – 1979: University of the South, Sewanee, Tennessee. I attended Sewanee as a freshman in college during the 1978-79 school year. I was named a Wilkins' Scholar at Sewanee, which, at that time, was the highest honor awarded to an incoming freshman. While at Sewanee, I was one of only three freshmen elected to the Student Assembly (the legislative body of student government at Sewanee). I also was a newscaster for the campus radio station. The Wilkins' Scholar award was a four-year scholarship, but it was not a full scholarship. Sewanee did not award full scholarships. I knew that I wanted to attend law school at some point in time, and I knew that I would have to incur substantial debt to attend law school. Based on those career plans, at the end of my first year at Sewanee, I decided that I would leave Sewanee and attend East Tennessee State University because of cost issues. Anticipating the debt I would incur in law school, I felt that this was the more prudent course of action for me at the time.

1979 – 1982: East Tennessee State University, Johnson City, Tennessee. B.A. Degree, magna cum laude, 1982. Political science major with criminal justice minor. While at ETSU, I consistently made the Dean's List for academic achievement and was a member of the Phi Kappa Phi Honorary Society and the Pi Sigma Alpha Political Science Honor Society. I served in the Student Senate for one semester and was appointed as the Vice President of the Student Government Association when a vacancy occurred in that position during the middle of the school year. I then won election to a full term as Vice President. The Vice President presided over the Student Senate.

1983 – 1986: Vanderbilt University School of Law. J.D. Degree, May 1986. Official Class Rank, Top Quarter. Unofficial Rank, Top 12%. Executive Administration Editor (Third Year) and Staff Member (Second Year), Vanderbilt Journal of Transnational Law. Member, Moot Court Board. Finalist, Appellate Advocacy Scholarship.

PERSONAL INFORMATION

15. State your age and date of birth.

Age 53. Date of Birth: August 31, 1960

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

All of my life.

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

Approximately 28 years.

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

Williamson 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.

Not applicable.

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. Please state and provide relevant details regarding any formal complaints 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.

In approximately 2007, a litigant in Perry County filed a complaint with the Court of the Judiciary against me for failing to resolve a case in which he was involved in a timely manner. Disciplinary counsel asked me to respond. Upon my own investigation, I discovered that the opinion I had written disposing of the case had not been received and filed by the Clerk and Master for Perry County. I still had the opinion in my word processing files, and I had a signed hard copy in my files. We were never able to resolve whether the opinion simply was lost in the mail or exactly what happened. At that point, I immediately made sure that it was filed with the Clerk and served on the parties. We also set up a better and more detailed procedure in my office to make sure orders and opinions were actually received and filed by the appropriate clerk. I reported all of this back to the disciplinary counsel, and the complaint was dismissed.

I also recall receiving a few letters from the disciplinary counsel over the time I was a trial judge informing me that a complaint against me had been dismissed without the necessity of a response from me. I would estimate that that may have happened 3 or 4 times over the course of the time I was a trial judge. I did not maintain any records that would allow me to provide any more details on those matters.

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.

I, along with many other state executive, legislative, and judicial branch officials, are named defendants in John Jay Hooker's most recent lawsuit challenging the constitutionality of the judicial selection and election method for appellate judges in Tennessee. The case is styled John Jay Hooker, et al. v. Governor Bill Haslam, et al., No. M2012-01299-SC-R11-CV. The case currently is pending before a Special Tennessee Supreme Court.

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.

July 2013 – Present – Member, Board of Directors, Williamson County Education Foundation

April 2013 – Present – Member, Board of Directors, Tennessee Intercollegiate State Legislature (“TISL”)

Oct. 2012 – June 2013 – Steering Committee for the formation of an education foundation for Williamson County public schools

2007 – 2009 - Board of Directors, Against the Grain Ministries

Sept. 2004 – March 2005 - Member, Williamson County Library Board of Trustees

2002 – 2005 - Member, Franklin Tomorrow; Co-Chair Housing Task Force (moderately priced housing issues)

2002 - Graduate, Leadership Franklin

1994 – Present - Member, Franklin Christian Church, Franklin, TN

--1997 – Deacon

-- 1998 – 2000; 2002 – 2004; 2006 – 2010 – Elder

--1999 – Vice Chairman of Board

--2004 – Chairman of the Board

1996 – 2007 – Member, Girls Softball Association of Franklin

--2000 – 2002 – Board of Directors

--1998 – 2003; 2007 – Assistant Coach

--2004 – 2006 – Head Coach

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.

- a. If so, list such organizations and describe the basis of the membership limitation.

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

No.

ACHIEVEMENTS

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

2005 – Present – Member, Tennessee Judicial Conference

--June 2013 - Present - Moving Vice President and Member of Executive Committee

--Spring 2011 – Present – Co-Chair, Retirement and Compensation Committee

--June 2011 – June 2012 – Chairman, Ad Hoc Committee on Court of Judiciary

Legislation

--June 2010 – June 2011 – Member, Executive Committee – Middle Tennessee

Representative

--Summer 2009 – Summer 2010 – Co-Chair, Tennessee Judicial Conference Annual

Conference and Member of Executive Committee

July 2012 – Present – Member, Tennessee Board of Judicial Conduct

--Legislative Liaison (statutory position)

2009 – Present – Fellow, Tennessee Bar Foundation

1999 – Present – Member, John Marshall American Inn of Court

--Fall 2003 – 2009 – President

2013 – Present – Member, Harry Phillips American Inn of Court

1986 – 2005; 2012 - Present – Member, Tennessee Bar Association

--July 1994 – June 1995 – Executive Committee of Antitrust Section

--June 1989 – May 1992 – Board of Directors, Young Lawyers Division

1999 – Present – Member, Williamson County Bar Association

Aug. 2011 – June 2012 – Member, Tennessee Court of the Judiciary

Sept. 2009 – August 2011 – Member, Tennessee Judicial Performance Evaluation Commission

2005 – August 2011 – Member, Tennessee Trial Judge Association

1986 – 1995; 2001 – 2005 – Member, Nashville Bar Association

--Federal Court Committee

--Fees Disputes Committee

--Young Lawyers Division

1987 – 1995 – Member, Tennessee Trial Lawyers Association

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.

Martindale-Hubbell – Rating of “av.”

Fellow, Nashville Bar Foundation

Fellow, Tennessee Bar Foundation

President’s Award, Williamson County Bar Association

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

“The Refugee Act of 1980 – What Burden of Proof: Controversy Lives on After “Stevic,” 18 Vanderbilt Journal of Transnational Law 875 (1985)

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.

2011- Present – Criminal Law Updates and Legislative Updates to Tennessee Judicial

Conference meetings and to Tennessee Judicial Academy

2008, 2009, and 2010 - Panel Member for Judges' presentation to Nashville Bar Association Domestic Law Committee

2009 and 2010 – Presenter, Civil v. Criminal Contempt, M. Lee Smith Publishing Company

2010 – Presenter, Civil v. Criminal Contempt, Nashville School of Law

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.

March 2005 (Appointed) August 2006 (Elected to full 8-Year Term) – Circuit Court Judge, 21st Judicial District

July 1999 (Appointed) August 2000 (Candidate) – Circuit Court Judge, 21st Judicial District

August 2002 (Elected) – Member, Williamson County Commission

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 that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

Derrick Bush v. State, No. M2011-02133-CCA-R3-PC, 2012 WL 2308280 (Tenn. Crim. App. June 15, 2012), affirmed, Derrick Bush v. State, ___ S.W.3d ___ (2014), 2014 WL 295187 (Tenn. Sup. Ct. January 28, 2014) – 100%

State v. Jerome Teats, No. M2012-01232-CCA-R3-CD, 2014 WL 98650 (Tenn. Crim. App. Jan. 10, 2014) – 100%

ESSAYS/PERSONAL STATEMENTS

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

I have always had a keen interest in government. As I have progressed through my education and professional life, I have always had a career goal to serve on the Tennessee Supreme Court. I want to make a difference in my community. I consider this position as a great opportunity to satisfy a long-time career goal and to continue public service. I believe that the combination of my experience as a trial court judge, my experience as an intermediate appellate judge, my legal skills, my personality, my temperament, and my past diverse experiences in my professional and personal life provide me with the skills to be a very good supreme court justice.

I also believe that my record as a circuit court judge and appellate judge demonstrates that I can be a very good supreme court justice. As an example of my performance as a trial court judge, in a poll of members of the Williamson County Bar Association in 2000, I received a 90% approval rating (70% excellent; 20% good). Additionally, the fact that I was unopposed for a full eight-year term when I stood for election after my 2005 appointment evidences my performance as a member of the judiciary. As an appellate judge, I have received a unanimous recommendation for retention from the Judicial Performance Evaluation Commission in 2012 and again in 2014. In the surveys sent by the Commission to various groups for the 2014 evaluation, I had the highest overall scores of any member of the Court of Criminal Appeals.

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)**

In my position as Assistant Commissioner and General Counsel for the Tennessee Department of Personnel, I was responsible for the Equal Employment Opportunity Division. During my tenure, we implemented mandatory sexual harassment prevention training for all employees of the executive branch. Additionally, I supervised a number of sexual harassment and racial discrimination investigations and have recommended strong disciplinary action, including terminations, in some cases.

I also served as the State Coordinator for the Americans with Disabilities Act. In that capacity, it was my responsibility to work with all agencies of state government to insure compliance with the ADA. In my initial stint with Boulton, Cummings, Connors & Berry, I handled a number of cases from the Nashville Pro Bono program. The majority of these cases were in the area of unemployment compensation benefits. Additionally, I represented my own church on a pro bono basis in litigation initiated by the Assessor of Property of the Metropolitan Government of Nashville, Davidson County, Tennessee, involving a challenge by the Assessor of the constitutionality of property tax exemptions for congregational parsonages. This case was litigated up to the Tennessee Supreme Court and was remanded back to the Davidson County Chancery Court for further proceedings, if necessary. The case ultimately settled with the property tax exemption remaining in place. I also handled a number of matters for members of my church and for non-profit entities on a pro bono basis. Additionally, I served as a pro bono

mediator from time to time.

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)**

The Tennessee Supreme Court is comprised of five justices. No more than two can reside in any one grand division. This court is the final arbiter on all issues of law under the Tennessee Constitution. The court is also the final arbiter in all other cases except those which may involve issues under the United States Constitution. Cases involving those issues may be appealed to the United States Supreme Court; however, that occurs only rarely.

I believe that my background as a trial court judge and as an appellate judge would provide a positive impact on the court. Currently no justice has experience at both levels, and only one other justice will have trial judge experience as of September 1, 2014. Additionally, I believe that my broad experience in both civil and criminal law will be beneficial to the court.

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)**

For many years, I have participated in volunteer and leadership positions in community services and organizations. I have served on the Board of Directors of numerous non-profits and churches. I attend various community events on many evenings and weekends. I regularly speak to groups such as Leadership Franklin, Leadership Brentwood, Youth Leadership programs, and Citizens Police Academies sponsored by local city police departments and the County Sheriff. I also have addressed numerous civic organizations and schools about the judicial system, and I regularly volunteer for the Tennessee High School Mock Trial competition. If I were fortunate enough to receive this appointment, I would hope to continue these same activities.

Additionally, particularly during my time as an appellate judge, I have worked closely with the Governor's office and the General Assembly on behalf of the judiciary. I would hope to continue those relationships if I am appointed to this position.

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

I was born and raised in Kingsport, Tennessee. I have one sister and two brothers. My parents taught us the importance of hard work and a good character. Neither of them could afford to go to college, yet they both stressed the importance of education. My father worked for many years

at Tennessee Eastman Company before his retirement. He continued to work part time at a bank even in his late 70's. He passed away in 2006 at the age of 86. My mother worked as an elementary school aide for over 25 years and passed away unexpectedly in February 1999 shortly after her retirement.

Even though they could not contribute much financially, they gave their children support in every other way. My sister, Lyn, is retired from her job in commercial lending at a bank in Kingsport. My brother, Don, is a neurologist. My brother, Jerry, received his degree from UT. He is retired from being a full-time member of the Tennessee Air National Guard but continues to serve in as a consultant on similar matters. None of our successes would have happened without the love, guidance, and support of our parents.

In December 1996, my wife, Gail, was diagnosed with breast cancer, at a time when we had a six-year old and an 18-month old. Over the next eight months, Gail underwent surgery, chemotherapy, and radiation. During those eight long months, the support of friends, family, and church was truly astounding. Thankfully, today she remains cancer free.

Lastly, my older daughter was stricken with an illness beginning in December 2012 which resulted in her being wheelchair-bound for several months. She fought back and had returned to walking, driving, and working later in 2013. Unfortunately, she suffered a setback in December 2013 and is battling again to walk without assistance. Witnessing her faith, her tenacity, her drive, and her outlook on life throughout these struggles makes you realize what is truly important in life.

These examples of service and struggles by my parents and my family, along with other life experiences, have made me realize that I have an obligation to do more for my community and my State. I have served my community and my State as an elected county official, as a trial court judge, and now as an appellate court judge. I believe that this supreme court position offers me the opportunity to begin a new, and likely final, chapter of service to our community and to our State.

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

I will uphold the law regardless of my personal beliefs. I take an oath to do so and plan to honor that oath. The first example that comes to mind involves a request while I was a trial court judge of a doctor who was voluntarily dismissed by the plaintiff well before trial in a medical malpractice case. The doctor requested that his record be expunged and the facts involved clearly could have justified that result. While I was very sympathetic to the doctor's request, I denied the request because existing law does not provide for any such relief. The doctor's attorney argued that I had the "inherent" authority to grant the relief. I believe that all judges, but particularly trial court judges, must be careful not to "make law" through the use of the court's inherent authority, even when it produces a "good" result.

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. Jeff Long, Williamson County Sheriff – [REDACTED]
B. Debbie Barrett, Williamson County Circuit Court Clerk – [REDACTED]
C. Steve Marshall, Vice President of Operations, AmSurg – [REDACTED]
D. Julian Bibb, Esq., Stites & Harbison – [REDACTED]
E. Hon. Timothy L. Easter, Circuit Court Judge, 21 st Judicial District – [REDACTED]



**THE GOVERNOR'S COMMISSION FOR JUDICIAL APPOINTMENTS
ADMINISTRATIVE OFFICE OF THE COURTS**

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

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
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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 Commission for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Commission for Judicial Appointments and to the Office of the Governor.

Jeffrey S. Bivins
Name

Signature

Date

011992
BPR #

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

