

JUDGE ANDY BENNETT

Recommendation: RETAIN

Commission Vote: 7 FOR RETENTION • 2 FOR REPLACEMENT

Legal Education and Experience

Judge Andy D. Bennett received a law degree from the Vanderbilt University School of Law in 1982. Upon completing law school, Judge Bennett practiced law in the Tennessee Attorney General's Office, rising to the position of Chief Deputy Attorney General. Judge Bennett was appointed by the governor to the Court of Appeals in September 2007, and was elected in 2008.

Service to the Profession

Judge Bennett is a Fellow of the Tennessee Bar Foundation and a member of the Tennessee Bar Association. He received the William M. Leech, Jr. award for outstanding service to the Tennessee Attorney General's Office in 1998 and the Marvin Award from the National Association of Attorneys General for "outstanding leadership, expertise, and achievement in advancing the goals of the National Association of Attorneys General" in 2004. Judge Bennett is a frequent author and lecturer on legal topics to law students, lawyers, judges, legislators and other groups.

Survey Results and Interview

Judge Bennett was ranked highest overall by other appellate court judges. He ranked highly with court personnel. His opinions are circulated in a timely manner. In the aggregate, trial judges expressed concern over the clarity of Judge Bennett's opinions. Some attorneys expressed a similar concern. At his initial interview, Judge Bennett expressed some concern about what he described as the "amorphous" nature of the evaluation process. Judge Bennett requested, and was granted, a second interview.

Comments and Recommendation

Judge Bennett is favorably regarded by his fellow appel-

late judges. His productivity and timeliness are squarely within the range established by his peers. His service to the profession and the public is commendable. Although concerns exist with regard to Judge Bennett's jurisprudence, a majority of the Commission concluded that his overall performance, applied to the evaluation criteria, justified retention. A minority of the Commission was concerned by examples from Judge Bennett's opinions that suggest a willingness to justify the result reached in the case rather than have the outcome of the case arise out of the proper application of judicial precedent and the proper standard of review. Judge Bennett's responses to questions on this topic during the initial interview did not mitigate those concerns. In a subsequent interview with the Commission, Judge Bennett offered his assurances that he does and will continue to use the Supreme Court's review of his cases as a tool for improvement. Also in that second interview, Judge Bennett professed an appreciation of the importance of the proper application of the standards of appellate review and, in particular, the deference to be accorded a trial court's exercise of discretion.

The Commission recommends Judge Andy D. Bennett be retained on the Tennessee Court of Appeals.

Judge Bennett's Response

I deeply appreciate the Commission's strong recommendation that I be retained. I am pleased that the Commission found that I satisfy all the criteria for retention. I feel, however, that two of the comments in the Commission's recommendation require some response. In discussing the surveys, the comments suggest that trial judges and attorneys have expressed concerns about the clarity of my opinions. But, the survey results do not support that comment. When asked whether my opinions clearly explain the conclusion and the basis

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for the conclusion, two-thirds of the judges ranked me above average or better and 75% of the attorneys ranked me above average or better. All of the appellate judges ranked me above average or better. Thus, the data reveals a different result from the written comments of the Commission.

That said, I believe in and will practice continual self-improvement. I also feel compelled to address a concern that was included in the Commission's comments, but voiced by only two members: that certain of my cases "suggest" a willingness to justify a particular result. I do not approach cases that way. Four former Tennessee At-

torneys General, as well as numerous attorneys across the state and other appellate judges provided the Commission with letters attesting to the analytically sound nature of my opinions. I follow the facts and the law to arrive at the conclusion. I respectfully submit that the view of the two members who voted against me has no basis in fact. I am gratified that the other seven members disagreed with them and voted for me.

Again, I appreciate the Commission's recommendation in favor of retention. I hope to be reelected and to continue to serve the people of Tennessee.

COURT OF APPEALS