

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

Name: David Eugene Ferguson

Office Address: Not applicable
(including county)

Office Phone:

Facsimile:

INTRODUCTION

The State of Tennessee Executive Order No. 41 hereby charges the Governor's Council 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 Council'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 Council 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 www.tncourts.gov). The Council 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 document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) 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.

I will begin working at the Shelby County Criminal Clerk's Office June 1, 2015.

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

1983; BPR #10223

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, 1983; BPR 10223 (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).

April 1983-September 1990: Private Law Practice. The first two years overlapped with full time employment at Federal Express, where I was a sort manager at the Federal Express Hub, Memphis.

September 1990-August 1997: Chief Staff Attorney, Juvenile Court of Memphis and Shelby County, Tennessee

August 1997-September 2002: Director, Child Support Services Division, Juvenile Court of

Memphis and Shelby County, Tennessee. I directed the IV-D child support agency in Shelby County, which had a budget of \$9 Million, and supervised the implementation of TCSES (Tennessee Child Support Enforcement System) in Shelby County. Additionally, I supervised a staff of more than 170 personnel, established workload assignments and monitored progress of federally mandated goals. Finally, I served as spokesman for the court in local print and broadcast media.

July 2003-June 2008: Joyce Meredith, Somerville Tennessee. I served as a contract IV-D attorney providing IV-D legal services in the 25th, 27th, and 28th Judicial Districts.

July 2008-July 2009: Child Support Attorney, Juvenile Court of Memphis and Shelby County, Tennessee.

July 2009-February 2015: Juvenile Court Magistrate, Juvenile Court of Memphis and Shelby County, Tennessee.

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.

During my appointment as Child Support Director, I found myself in an ethical conflict. The Juvenile Court Judge who appointed me refused to set child support in IV-D cases as required by law. I persisted in attempting to enforce the law and authorized the filing of an appeal, after which the Juvenile Court Judge asked me to resign. The Juvenile Court Judge's position was overturned by the Tennessee Court of Appeals, *Theus v. Woods*, No. W2002-00342-COA-R3-JV. I wrote a book about my experience, which remains unpublished.

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.

Since 1990, I have served as counsel for the Juvenile Court in Memphis and Shelby County, for child support agencies or contractors of child support agencies. Prior to 1990, 90% of my practice was domestic relations, including divorce and juvenile court where I served as guardian ad litem in Dependent and Neglected cases, and juvenile defender in Delinquency 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 Council 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 Council. Please provide detailed information that will allow the Council 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 the first seven years of law practice, I practiced before the Chancery and Circuit Courts of Memphis. I also represented clients in general sessions and criminal courts. I tried an armed robbery before a jury. I tried a paternity case before a jury.

On my own initiative, as a sole practitioner, I worked with Mid-South title to qualify to close numerous real estate transactions.

I assisted the Memphis Area Legal Services providing legal services to indigents through the PADLS program, Private Attorneys Delivering Legal Services. I assisted them in obtaining divorces.

I provided guardian ad litem services for the Circuit Court as well as the Juvenile Court.

I filed and completed a Partition lawsuit in the Chancery Court of Hardeman County.

For two years, I worked at a real estate law firm. I reviewed titles, and closed real estate transactions as needed. I also continued general practice of law during that time.

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

During my practice as child support attorney, I was required to prepare and defend the state's child support enforcement actions before administrative law judges.

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.

When I was a staff attorney at the Juvenile Court in early 1900's, (probably 1993) I was asked to serve as a part-time referee (now magistrate) because of multiple unexpected absences. I did so almost weekly until I was appointed as Child Support Director. After my appointment, I declined

further requests to serve as referee because I thought it was an ethical conflict.

I returned to the Juvenile Court in 2008 as a child support attorney. I was appointed Child Support Magistrate in 2009. I heard establishment and enforcement child support cases.

In May 2010, I was appointed Juvenile Court Magistrate. I presided over cases regarding dependent and neglect, delinquency, custody and visitation and truancy/ violation of compulsory school attendance laws. I also conducted preliminary matters such as preliminary hearings and detention hearings.

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.

I served as a guardian ad litem in dependent and neglected cases at Shelby County Juvenile Court. And I have also served as guardian ad litem at the pleasure of the Circuit Court in Shelby County.

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

Not applicable.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council 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 have never submitted an application for Judicial Appointment.

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.

Memphis State University, 1970-1974 BS, Physical Chemistry

Memphis State University, 1974-1978, Masters of Public Administration

Memphis State University, 1979-1983, Juris Doctor

PERSONAL INFORMATION

15. State your age and date of birth.

62; November 13, 1952.

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

Since birth; November 13, 1952.

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

Since birth; November 13, 1952.

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

Shelby 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.

An attorney filed a complaint with the Board of Judicial Conduct for an ex parte communication in August 2014. It was dismissed by the prosecutor after a review with opening a complaint.

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.

No.

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.

St. George's Episcopal Church. I have held no title or office there.

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.

Memphis Bar Association. Before working at the Juvenile Court, I sat on the Fee Dispute Committee.

Enrolled in the US District Court of Tennessee, Western Division

Enrolled in the Sixth Circuit Court of Appeals

Enrolled in the Supreme Court of the United States

National Juvenile and Family Court Judges 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.

Not applicable.

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

Not applicable.

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.

I delivered three CLE courses when I was the IV-D attorney in the 25th Judicial District.

Chancellor Whittenton wanted to establish a Bar Association, and I worked with him and the Fayette Bar to provide legal education through the bar.

I taught a CLE course for the Fayette Bar Association about three (3) years ago, Ethics of the Juvenile Magistrate.

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.

Republican candidate for State Representative for District 99 in 1978 and 1980.

Appointed Staff Attorney of the Juvenile Court of Memphis Shelby County September, 1990.

Appointed Child Support Director of the Child Support Office at the Juvenile Court Shelby County in 1997.

Appointed Child Support Attorney for the 30th Judicial District, July 1, 2008.

Appointed Magistrate of the Juvenile Court of Memphis Shelby County, July 1, 2009.

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.

I have attached a Brief and Memorandum of Law filed in State of Tennessee ex rel. Kennamore v. Thompson, Juvenile Court of Hardeman County, Tennessee at Bolivar, No. 05-07-45. I have also attached a chapter from the unpublished book.

ESSAYS/PERSONAL STATEMENTS

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

I have always had reverence for the Chancery Court. My first trial was in Chancery Court. The court's equitable jurisdiction and its history make the Court special.

Many domestic relations cases come before the Court. I have had an entire career to develop an understanding of problems of domestic relations.

As Juvenile Court Staff Attorney, I was charged with the responsibility of setting up procedures when the law was amended to allow juvenile court to her surrender of parental rights. I was disappointed at the lack of attention of the Chancellor when I went to observe the Chancery Court in a surrender.

The Court also terminates parental rights. I believe these issues arise among the weakest of our society and proper care must be given in hearing these matters to resolve them not only for the best interest of the parties but also the community.

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)*

I provided legal services for the Memphis Area legal services. They had a backlog of divorces and asked private attorneys to assist. Usually the problem of settling a divorce was the issue of child support. The parties rarely owned property. I took advantage of the local rule that allowed Juvenile Court to hear child support matters. I would file a child support case in juvenile court. With the support issue resolved, then a marital dissolution agreement declaring that the parties had heretofore divided their property to their mutual satisfaction completed the process.

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 seek appointment to the bench as Chancellor in the Thirtieth Judicial District, one of three positions. I have had experience hearing cases of similar subject matter in the juvenile court. These cases represent a significant portion of the Chancery caseload. My appointment would positively impact the court because I have over thirty years of experience and knowledge of law in this area. Further, I have experience as a fact-finder in dealing with attorneys, litigants and professionals who appear in these cases.

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)*

I have never refused to participate in community service or organizations, but I have been very careful not to compromise my role as a judicial officer, or as a government employee for that matter.

I attend St. George's Episcopal Church in Genmantown, TN. I am a member of the adult choir and the Compline Mens' Choir. It takes up to four or five hours per week.

39. Describe life experiences, personal involvements, or talents that you have that you feel

will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

I have not been involved in many community projects. I raised three daughters who are now beautiful young women with their own careers and families.

In 1988, at the suggestion of my oldest after her second grade capital project, we began a project to visit all fifty state capitals. We arrived in Honolulu, our 50th capitol in June 1999. Over the course of the eleven years, a visit to capitals turned into a discovery of America. We drove the West, saw ten baseball games, visited national parks and participated in July 4th celebrations in Fort Scott and D.C. We met a celebrated volunteer tour guide in the New York capital who offered my girls jelly beans and his brand of New York hospitality. We walked the Freedom Trail in Boston. We saw the genius of Ford's dream in Dearborn and saw the glory of creation at the Grand Canyon riding down to Phantom Ranch on the backs of mules. We all treasure the time we spent together as a family.

We traveled each spring break and when we could in the summer, and I prepared the itineraries and executed each trip to fit in as much in a week as possible. I learned the benefits of patience and the value of travel. More importantly, I learned to set long-term goals and stick with them despite obvious challenges and difficulties. I came to learn many valuable things while traveling across the United States- about government, about family and about myself.

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 have upheld the law even though I disagree. In my writing sample, I argued before the court that a father should be financial responsible back to the time of birth even if the mother were married. They court found that a mother would be estopped to claim support if she alleged in divorce that the child was born if the marriage. I believe that it would be unconstitutional because the father never has to acknowledge that the child is his outside of marriage. He may conceal his paternity but the mother may never conceal her maternity. She will always be required to acknowledge her adultery but the father will not. Her failure to acknowledge the truth in the pleading then works against the child whose legitimate father is excused from supporting him until the truth is discovered.

The issue has arisen during a child support case in the juvenile court. I followed the law and set support at the time of the genetic test.

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 Council or someone on its behalf may contact these persons regarding your application.

A . George Blancett, retired Judge;
B. Herbert J. Lane, retired Chief Magistrate;
C. Curtis S. Person, retired Judge;
D. Grant Bales, flight instructor;
E. Wendy Stiles, retired;

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] Chancery Court for the Thirtieth Judicial District of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, 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 Council 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 Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: __May 25_____, 20__15__.

_/s/David Ferguson_____
Signature

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



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS
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 Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

David Eugene Ferguson _____
Print Name

_/s/David Ferguson _____
Signature

__ May 25, 2015 _____
Date

__ 10223 _____
BPR #

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

Chapter One

Historical Review of Child Support

Child support is a financial obligation in which a non-custodial parent, or NCP (usually the father) pays a sum of money periodically, (weekly, monthly, etc.) to a custodial parent or CP (usually the mother). It has been offered as a solution to fix virtually every problem suffered by American families, broken by divorce and illegitimacy, in the last half of the twentieth century. This emphasis on child support has followed changing social conditions after World War II, which resulted in higher divorce rates and illegitimacy rates as well as the advancement of women's civil rights in America.

Until recently, the father was primarily liable for the support of his children with the mother liable in the event that the husband failed or refused to support his children. As a result of Supreme Court rulings regarding equal protection between husband and wife, the law now equally charges each parent to support their children. In fact, there was remarkably little change in the social obligations of family over the centuries in Anglo-American jurisprudence until the last half of the twentieth century.

Early explanations of the legal obligation to support children appear to arise from the natural law. According to Blackstone,

“The duty of parents to provide for the maintenance of their children, is a principle of natural law, an obligation says Puffendorf, laid on them not only by nature itself, but by their own proper act, in bringing them into the world for they would be in the highest manner injurious to issue, if they only gave their children life, that they might afterwards see them perish. By begetting them, therefore, they have entered into a voluntary obligation to endeavor, as far as in them lies, that the life which they have bestowed shall be supported and preserved. And thus the children well have a perfect *right* of receiving maintenance from their parents. And the president Montesquieu has a just observation upon this head: that the establishment of marriage in all civilized states is built on this natural obligation of the father to provide for his children; for that ascertains and makes known the person for who is bound to fulfill his obligation; whereas, in promiscuous and illicit conjunctions, the father is unknown; and the mother finds a thousand of obstacles in her way;---shame, remorse, the constraint of her sex and the rigor of laws;--that stifle her inclinations to perform this duty: and beside she generally wants ability”.

Blackstone described the parents' obligation to provide maintenance for the children as natural one but the obligation was not prescribed early on in the civil law. Family matters were a matter for the ecclesiastical courts in England after the eleventh century. Marriage was a sacrament of the church and while annulments were permitted, divorce could be obtained in England only by act of Parliament until 1857.

Furthermore there was no obligation at common law (case law) to support illegitimate children. It was not unusual for women to conceive before marriage but so long as the child was born in lawful wedlock or within a competent time afterwards, the child was considered legitimate. "In 1576, the Elizabethan Poor Law gave the illegitimate child a civil law claim for support from his father." The claim was enforceable in the ecclesiastical courts. The procedure "looked criminal, starting with arrest and a preliminary hearing, before the justice of the peace... It's chief purpose was to relieve the parish from supporting the child."

When the United States was established there were no ecclesiastical courts. Some states in New England did enact divorce laws. In North Carolina, there was no divorce law. Tennessee was created out of North Carolina and when the state entered the Union, there was no common law or statutory law of divorce. A divorce could be obtained only by act of the legislature. Between 1799 and 1836 the legislature had concurrent jurisdiction with the courts until the constitution was amended in 1836 giving exclusive jurisdiction to the courts.

In America, attitudes about family were different before the nineteenth century. Love was not a prerequisite to marriage. Marriage was about putting a good household together; the groom provided land, a house and tools, and the bride provided a dowry of household goods, clothing and money. Father would rule the family, the basic unit of society. The father was responsible for the education and rearing of the children. The children may not be allowed to start a family until late in life.

The Puritans were particularly hard on their children. They thought that they were the embodiment of guilt and sin. They required to be broken from their disobedience. They were required to work and many were fostered as apprentices between seven and fourteen.

By the early nineteenth century, attitudes towards marriage had changed. Couples became more affectionate as they gained more choice in choosing a spouse (the illegitimacy rate started to rise, as well) and the model of husband as bread winner and wife as mother and homemaker appeared. A “cult of domesticity” glorified motherhood, associated women with piety, purity and spirituality”. The democratic experiment in America depended on the success of the mother in the home.

Attitudes toward children also changed. They remained in the home longer. Family oriented celebrations appeared in the middle nineteenth century. Family also became important to the slaves after they became free. Immigrants and the poor all had family networks although children worked to help the family survive.

If the family did end in divorce, there was no provision for child support. “At common law there seems to be no legal obligation on the father’s part to support his child,” however, the wife could enforce the husband’s duty to support her and the family by charging the necessities to the account of the husband, invoking the doctrine of necessities. “His liability is imposed by law, on principles of restitution or quasi-contract, in order to provide wives and children with support, and is not dependent on consent.” In the nineteenth century the courts began to find this obligation and although there the legal basis was uncertain, the courts argued that it must grant relief on moral grounds because the family would become destitute. Simply put, the father had a moral duty to support his children and the mother could charge the necessities against his account and he must be liable to pay the expenses, but it was available to the wealthy or middle classes who could bring the case to court.

Parents were expected to support their children that they brought into the world as a

matter of natural obligation, but this argument was made to avoid the liability being assumed by others. If a child were illegitimate, the law provided a procedure for the state to establish paternity to make the father support his child. If there was divorce, the father perhaps was required to support his children by law but may not have been ordered by a court because, while not absolute, he was almost always entitled to custody of his children. In the United States, there was a prima facie right of custody in the father. If a child was illegitimate, the mother had the primary or in some jurisdictions the exclusive right to custody.

It is not difficult to understand why there was no legal development in the rights and obligations of parents to support their children in nineteenth century America. There were few divorces because most people lived and worked on a farm. Life required the efforts of both husband and wife and as many children as the wife could bear. There was little money and if the husband ran off, there was neither the money nor the need to divorce the husband. If the woman wanted to leave, she could not take the children because she did not have the means to support herself, much less her children. If divorce were contemplated, the laws were strict and the church forbade its use.

Consider William “Devil Bill” Rockefeller, father of John D. Rockefeller, Sr., “a sworn foe of conventional morality who had opted for a vagabond existence, a “flimflam man”, a smooth talking purveyor of dreams and tawdry trinkets...” He would be gone for long periods from his family. “After weeks or months running up credit bills and waiting for the Father’s return, Bill would abruptly materialize, a jolly Santa Claus, swimming in lucre. He would compensate for his long absence by extravagant shows of generosity with his children”, but the family never could count on him. He married another woman in 1855. In 1857, he built a house for his first family and charged John rent before he abandoned the family just as his son and soon to be the wealthiest man in the world was beginning his career. His wife lived on an annuity from her father and of course, enjoyed the success of her son.

In my family legends, Fleet Morphis, my great great-great grandfather, who lived in the middle nineteenth century was reported to have a second family in Florida where he would go in the winter. He even forwarded his pension from service in the Union Army while he was there. And another great great grandfather was married and had children of his wife and had another family by his wife's sister. It was not unusually in rural areas for people to forego civil conventions even if they might be frowned upon. There was no remedy for the breach in the civil courts and likely no money to pay for it even if there was.

The power of the state to protect children and act in their welfare was a part of equity jurisdiction in England as early as the 17th century derived from the prerogative of the crown described as *parens patriae*. Near the end of the nineteenth century, in response to the extreme poverty resulting from the period, the states assumed its obligations under the principle of *parens patriae* and began to enact legislation requiring parents to support their children. Non support statutes were passed making it a crime for a father to fail to support his children. The tender years doctrine gained acceptance, in which it was preferred that children of a young age should remain with the mother.

Divorce rates rose sharply at the end of the nineteenth century and into the twentieth century. The Great Depression reduced the rate of divorce but the desertion rate soared. Aid for Families with Dependent Children (AFDC) was established in 1939 when survivor benefits were divided from benefits for abandoned mothers.

The demand to enforce the child support obligation in the latter half of the twentieth century resulted from soaring rates of divorce and illegitimacy. In 1950, there were 385 divorces per thousand. By 1970, the divorce rate had almost doubled to 708. By 1990 the divorce rate had almost tripled to 1182 per thousand.

Illegitimacy rates also rose after World War II. In 1950, 4% of births were to unmarried women. In 1999, 33% of all children were born out of wedlock. The sexual freedom that women demanded had resulted in less freedom as more women were trapped in poverty

as result of their new-found sexual freedom.

The Congress recognized a need for government to assist in enforcing child support orders and in 1974, passed legislation adding a new part to the Social Security Act (Title IV-D). The Committee noted that “of the 11 million recipients of AFDC, 4 out of every 5 are on the rolls because they have been deprived of the support of a parent who has absented himself from the home.” The committee cited a study by the Rand Corporation, which said,

“many lawyers and officials find child support cases boring, and are actually hostile to the concept of fathers’ responsibility for children. A report to the Governor (of California) expresses concern at the ‘cavalier attitudes on the subject of child support expressed by some individuals whose work responsibilities put them in daily contact with persons affected by the problem.’ It continues, ‘Some of these individuals believe that child support is punitive and that public assistance programs are designed as a more acceptable alternative to the enforcement of parental responsibility.’”

The Congress insinuated the federal government into child support enforcement by requiring the state to submit a plan for effective child support enforcement in order to receive matching federal funds for the AFDC program.

“In view of the fact that most States have not implemented in a meaningful way the provisions of present law relating to the enforcement of child support and establishment of paternity, the Committee believes that new and stronger legislative action is required in this area which will create a mechanism to require compliance with the law. The Committee bill builds upon the provisions of existing law which are basically sound. It mandates more aggressive administration at both the Federal and local levels with various incentives for compliance and with penalties for noncompliance.”

The legislation required that the child support enforcement program of the states, the IV-D agency, to be closely administered with the AFDC program. “Paper compliance would no longer suffice audit.”

The legislation conditioned eligibility of public assistance on the recipient’s cooperation to assign her right of support to the state. The state was then obligated to proceed to establish paternity if necessary and obtain a support order. It also required states to seek enforcement of support orders and to cooperate with other states attempting to enforce

support orders. The benefits were aimed at AFDC recipients but were made available to non-AFDC recipients as well.

The Internal Revenue Service could be garnished for assets of the obligor that it held. There was also a provision to have the Secretary of the Department of HEW certify a case to be tried in the federal courts. The IV-D agency was responsible to establish a parent locator service and the federal government was establishing a Federal Parent Locator Service, if the state program was unable to locate the absent parent. The legislation allowed for garnishment of the wages of federal employees. The federal government provided 75% of the funding for the program.

In response to criticism that enforcement efforts were ineffective, Congress again responded and The Child Support Enforcement Amendments of 1984 required additional remedies and procedures to improve the child support program. Federal law mandated income withholding, where the employer would withhold the child support from the wages of his employees if the obligor fell behind in the payment of his obligation. The state also had to have a procedure to initiate liens, required security for the payment of child support, state tax refund intercept and reporting deficiencies to credit bureaus.

The Act expanded IRS tax refund intercept to non-AFDC cases to collect past due child support up to the full amount of the refund. It permitted the collection of a \$25 fee in order to process the application for IRS garnishment.

The act required expedited processes for establishment and enforcement of child support, if the state did not have a timely and effective process. It proposed either an administrative process run by an executive agency or a quasi-judicial system working within the courts, assuring access to the protections of the judicial system. The act left the state to work out the “expedited process” and the procedural protections for the process.

The 1984 Act also initiated the need for guidelines for support awards. “Congress was concerned with several factors in enacting this provision: 1 unfairly low support awards

(and occasionally unfairly high ones); the fact that the economic situation of the custodial parent and children usually deteriorated following divorce while that of the noncustodial parent actually improved; and the disparity in support awards made in similar situations. Each state was required to establish support guidelines by October 1, 1987.

The Act required the states to monitor and track support payments through a clearinghouse and provided 90% funding for automated data processing systems that tracked payments. The state could require that IV-D child support payments be paid through the clearinghouse, usually the court clerk although they could create a wage withholding agency. This would be beneficial to all parties because it created an indisputable pay record.

The Act extended the statute of limitations of paternity action at least until the child was eighteen and increase the incentive to pay for laboratory test for paternity by excluding the costs in calculating incentive payments. The statute allowed for the collection of spousal support because child support had been called alimony to get a favorable tax treatment. The enforcement was not required if there was not a minor in the home. The Act also requires the IV-D agency to petition the court for the inclusion of medical support and required the IV-D agency and Medicaid program to cooperation to share information about the availability of health insurance.

While requiring the states to accomplish all the new responsibilities, the federal share of the cost of the program was reduced to 70% in FY88 and FY 89 and to 66% in FY90 and thereafter. Federal Law did expand incentives for non-AFDC collections. Incentives of 6% were available for cost effective programs. The states would receive 115% of the AFDC payments in FY90. If costs were decentralized, the payments must be passed to the local level.

The Act relaxed the requirement that all state procedures had to be exhausted before the state sought the aid of the federal Parent Locator Service. The statute reduced the audits to one every three years but strengthened reporting requirements.

Even after all these legislative prescriptions to solve the problem, according to Federal regulators, "...despite Federal and State efforts in the 13 years since the inception of the IV-D program, the child support problem continues to grow." The Family Support Act of 1988 was designed to restructure the basic program of public assistance for families in ways that emphasize parental responsibility through the enforcement of child support and expanded opportunities in education and training. The Act required the states to develop a jobs program for fathers and further to develop an automated enforcement system. The 1984 Amendments had required the secretary to fund automated systems at 90% but now it would be mandatory. The 1988 Act also required wage withholding in all IV-D cases, required a presumption of correctness to child support guidelines and began to measure paternity establishment, requiring genetic testing and extending the statute of limitations at least until a child reaches eighteen.

In 1974, the Senate Finance Committee had concluded that "The immediate result (of the Act) will be a lower cost to the taxpayer, but more importantly as an effective support collection system is established, fathers will be deterred from deserting their families to welfare and children will be spared the effects of family break-up," but family break-ups continued. By 1996, the demand for personal responsibility of the welfare beneficiary and the father of children of welfare resulted in drastic welfare reform. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 overhauled the nation's welfare program and required child support enforcement programs to meet federal requirement in order to assist welfare recipients, who would be moving into jobs from the welfare rolls. The Federal Parent Locator Service (FPLS) was expanded to require employers to report new hires to a state agency, which was reported to the FPLS and a Federal Case Registry of all support orders. Welfare reform required states to adopt the Uniform Interstate Family Support Act to replace the Uniform Reciprocal Enforcement of Support Act which had been adapted by so many states that it was no longer uniform and hindered effective enforcement of child support orders. The states could locate

working fathers and share this information, strengthening enforcement efforts.

Welfare reform also changed the nature of audit from a process audit to a performance audit. The audit extended its technical assistance to help the states perform a self assessment (state level self-review/monitoring) of its program. It required that administrative actions be taking in additional areas of establishment of support orders.

Welfare reform also required that the automated computer system required by the Family Support Act of 1988 be functional by October, 1997 and it added a new automated feature. It required centralized collection of child support payments by October, 1999.

The child support program had begun in 1974 to assist welfare agencies in reimbursing welfare programs and obligating fathers of welfare recipients in order to help them out of poverty. The program was deemed ineffective and more resources were added but more obligations on the states were required. The program was extended to non-AFDC cases. Establishment and enforcement proceedings were expedited, administrative processes substituted for court proceedings, direct wage withholding required, liens, and other bank fund seizures and finally data processing systems were required. The budget of the OCSE grew from \$xx in 1974 to \$xx by 1997 funding state child support programs and dictating policy to state governments with restricted flexibility.

The history of federal child support legislation has been set out to show the extent of the federal government's expansion into child support enforcement. The reach of this legislation was extensive and the state governments were charged with implementing this federal legislation through state programs. This expansion impacted state and local governments of Tennessee financial and politically as they attempted to adapt the federal law to the laws and the customs of the state. The new format would have to fit within the structure of state government and it would be no more difficult than in Shelby County, the largest county with the largest child support enforcement needs of the state.

The increase in federal dollars to the state provided the state with more authority and required the state to assume more control over the Shelby County program but the

juvenile court was not willing to yield that control. And TCSES would require the state to exercise complete authority but whether the state government or rather the Department of Human Services was sovereign over the juvenile judge of Shelby County could not be taken for granted.