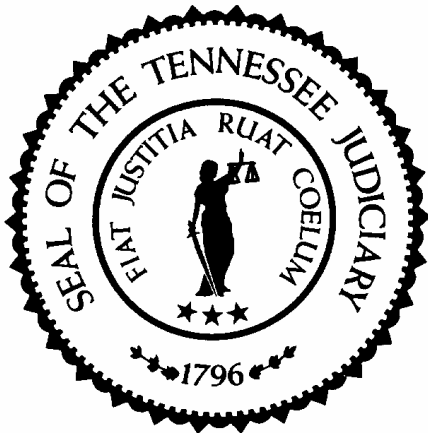


TENNESSEE
APPELLATE
JUDGES
EVALUATION
REPORT



2008

Prepared by the
JUDICIAL
EVALUATION
COMMISSION

INTRODUCTION

In 1994, the Tennessee General Assembly changed the method of electing state appellate judges by adopting the *Tennessee Plan*. Under the Plan, every appellate judge who seeks election to fill either an unexpired or full eight (8) year term of office must be evaluated by the Judicial Evaluation Commission prior to a scheduled August election. The purpose of the evaluation process is two-fold: (1) to assist the public in evaluating the performance of incumbent appellate court judges; and (2) to promote self-improvement among all judges.

The Judicial Evaluation Commission is made up of twelve (12) members and includes lawyers, non-lawyers and state court judges. The commission, by law, must represent gender, racial, and geographic balance. Members participating in the 2008 evaluation process include Quincy Barlow, John Day, Telford Forgety, Jr., Barbara Haskew, William Massey, Carol McCoy, Susan McGannon, Roger Page, Howell Peoples, Barbara Walls, and William C. Whitesell, Jr., chair.

The commission's report contains the evaluation results and retention recommendations for the two Supreme Court justices, two court of appeals judges, and the one court of criminal appeals judge who are standing for retention election in August 2008. Under the guidelines outlined in Supreme Court Rule 27, as required by the Plan, evaluations are based upon the following criteria:

1. Integrity
2. Knowledge and Understanding of the Law
3. Ability to Communicate
4. Preparation and Attentiveness
5. Service to the Profession
6. Effectiveness in Working with Other Judges and Court Personnel

In developing individual evaluations, the commission considered the following: results of performance evaluation survey questionnaires; opinions written by each judge; personal information self-reported by each judge; caseload and workload statistics for each judge; and any public input that may have been received. Applications previously submitted by the judges to the Judicial Selection Commission were also made available for review by the commission. The commission conducted a formal interview with each judge to discuss judicial performance issues as part of the evaluation process.

The commission used the results of the survey questionnaires to identify both performance strengths and areas for potential improvement in developing each individual evaluation. The surveys contained questions concerning oral argument, written opinions, administrative performance and general performance of each appellate judge. For each question, respondents could rate the judge on a scale from 1 to 10, with 1- being "poor" and 10 being "excellent". The complete ratings are as follows: A rating of 1-2 is Poor; a rating of 3-4 is Fair; a rating of 5-6 is Adequate; a rating of 7-8 is Good; and, a rating of 9-10 is Excellent. Survey forms were distributed to four groups of respondents who have interaction with the appellate bench: attorneys, court personnel, trial court judges, and appellate court judges. Because Justice William Koch and Court of Appeals Judges Andy Bennett and Richard Dinkins were in office for less than one year at the time of the evaluation, survey results were not available for them.

The evaluations contained herein express the commission's impressions of each judge's experience and performance and include the commission's vote and recommendation regarding retention. It should be noted that two commissioners were unavailable and were excused from participation in the evaluation of Court of Appeals Judge Richard Dinkins.

SUPREME COURT

JUSTICE WILLIAM C. KOCH, JR.

Recommendation: RETAIN

Commission Vote: 12 FOR RETENTION - 0 AGAINST RETENTION

Legal Education and Experience: Justice William C. Koch, Jr. received a law degree from Vanderbilt University School of Law in 1972 and an L.L.M. from the University of Virginia School of Law in 1996. He was a member of the Attorney General's Office from 1972 to 1979, rising to the position of Deputy Attorney General. Justice Koch served as Tennessee Commissioner of Personnel from 1979 to 1981 and as Counsel to the Governor from 1981 to 1984. He also completed the American Academy of Judicial Education, Appellate/Trial Judges Writing Seminar at the University of Colorado in 1987 and the Institute of Judicial Administration, Intermediate Appellate Judges Seminar at New York University in 1986. He was appointed to the Court of Appeals in June 1984, was elected in August 1984, and was reelected in 1990, 1998 and 2006. He served as Presiding Judge of the Middle Section of the Tennessee Court of Appeals from September 2004 until June 2007. Justice Koch was appointed by the governor to serve on the Supreme Court in June 2007.

Service to the Profession: Justice Koch is a Fellow of the Nashville and Tennessee Bar Foundations, is President of the Harry Phillips American Inn of Court and is Secretary for the American Inns of Court Foundation Board of Trustees. He has served as chair of the Judicial Conference Committee on Compensation and Retirement and co-chair of the Court Advisory Commission on Technology. Justice Koch, a former adjunct instructor at Vanderbilt University School of Law, is currently an instructor at the Nashville School of Law. He has published several articles in legal journals and is a frequent lecturer on legal topics.

Performance Evaluation: Justice Koch has extensive experience as a civil appellate judge and has previously been acknowledged by his peers and members of the Bar as a talented jurist, with well-written opinions. Appellate judges, trial judges and members of the Bar previously rated his use of structured and logical reasoning and his knowledge of substantive law as excellent. Justice Koch was appointed four months prior to his evaluation and no additional survey results were available for the Commission's consideration.

Interview: The interview with Justice Koch supported the previous survey opinions of his legal ability. Justice Koch addressed his efforts to update his knowledge of criminal procedure and substantive criminal law. He expressed his personal commitment to issuing quality opinions on a timely basis. Justice Koch, in noting the importance of sitting on a court of last resort, emphasized the need to develop the common law in a thoughtful, coherent and prudent fashion.

Recommendation: The Commission unanimously recommends the retention of Justice William C. Koch, Jr. on the Tennessee Supreme Court.

RESPONSE BY JUSTICE KOCH: I am grateful that the Commission has unanimously endorsed my work as an appellate judge and has recommended me for retention on the Tennessee Supreme Court. It was a privilege for me to serve on the Court of Appeals for twenty-three years, and it is now my privilege to serve on the Tennessee Supreme Court.

Every case that the Tennessee Supreme Court considers receives serious and thoughtful consideration. I will review each case personally, and I strive to continue to write clear, precise opinions that are faithful to the law and the facts of the case. In addition to the Commission's recognition of the excellence of my work, I am grateful that the American Board of Trial Advocates named me Appellate Judge of the Year in 2002 and that I was recognized in 2006 as one of the *500 Leading Judges in America*.

Our legal system must strive to render equal justice under the law. If re-elected, I pledge that I will continue to approach my work with skill, professionalism, and civility, striving always for excellence.

SUPREME COURT

JUSTICE GARY R. WADE

Recommendation: RETAIN

Commission Vote: 12 FOR RETENTION – 0 AGAINST RETENTION

Legal Education and Experience: Justice Gary R. Wade received a law degree from the University of Tennessee College of Law in 1973. He engaged in the private practice of law in Sevierville from 1973 to 1987. He also served as Mayor of Sevierville from 1977 to 1987. Justice Wade was appointed to the Court of Criminal Appeals in 1987, was elected in 1988, and was reelected in 1990, 1998 and 2006. He attended the New York University Institute of Judicial Administration. Justice Wade served as Presiding Judge of the Tennessee Court of Criminal Appeals from May 1, 1998 until August 31, 2006. Justice Wade was appointed by the governor to begin serving on the Supreme Court effective September 1, 2006.

Service to the Profession: Justice Wade is a Fellow of the Tennessee Bar Foundation. He is a member of the Hamilton Burnett American Inn of Court. He is a member and past President of the Tennessee Judicial Conference, a member of the Knoxville Bar Association, a past member of the Tennessee Sentencing Commission and past member of the Commission on the Future of the Tennessee Judicial System. Justice Wade is the founder of the Tennessee Judicial Conference Foundation and served on the Governor's Task Force on Sentencing. In 2004 he was given the Judicial Excellence Award by the Knoxville Bar Association and was named Appellate Judge of the Year by the American Board of Trial Advocates. He has authored legal publications and is a frequent lecturer on legal topics.

Performance Evaluation: Justice Wade's overall survey ratings from appellate judges, attorneys, and court personnel were good to excellent. Appellate and trial judges rated him excellent on his participation in oral argument, on his written opinions, and on his administrative and general performance.

Interview: Justice Wade expressed deep commitment to the Commission about his new responsibilities as a Justice on the Tennessee Supreme Court. He acknowledged his expertise in criminal law resulting from his 19 years of service on the Court of Criminal Appeals but promised to aggressively immerse himself in civil law issues that come before the Court. Justice Wade discussed the increasing burden of administrative duties borne by each member of the Supreme Court and the challenge of addressing those responsibilities efficiently and effectively. Despite the time required to perform his judicial and administrative duties Justice Wade spoke forcefully about his commitment to remain active in the broader community and to be available to answer questions and concerns about Tennessee's judicial system.

Recommendation: The Commission unanimously recommends the retention of Justice Gary R. Wade on the Tennessee Supreme Court.

COURT OF APPEALS

JUDGE ANDY D. BENNETT

Recommendation: RETAIN

Commission Vote: 12 FOR RETENTION – 0 AGAINST RETENTION

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.

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.

Performance Evaluation: Because of the short duration of Judge Bennett's service, no survey results were available for consideration by the Commission.

Interview: The Commission used the information available in Judge Bennett's application to the Judicial Selection Commission to conduct the interview. As a result of the interview, the Commission found Judge Bennett to have a broad range of experience in criminal and civil law. His primary duties as an Assistant Attorney General and Chief Deputy Attorney General required research, analysis and writing of legal opinions concerning statutory construction and constitutional law issues. He appears to possess the knowledge and writing ability to serve on the appellate court. The Commission found Judge Bennett to be current in writing opinions assigned to him.

Recommendation: The Commission unanimously recommends the retention of Judge Andy D. Bennett on the Tennessee Court of Appeals.

COURT OF APPEALS

JUDGE RICHARD H. DINKINS

Recommendation: RETAIN

Commission Vote: 10 FOR RETENTION – 0 AGAINST RETENTION
2 NOT PARTICIPATING

Legal Education and Experience: Judge Richard H. Dinkins received a law degree from the Vanderbilt University School of Law in 1977. Upon completing law school, Judge Dinkins engaged in the private practice of law, practicing for twenty-six years in a general civil practice. His practice included civil rights and constitutional litigation, as well as serving as counsel for Fisk University and the Metropolitan Development and Housing Agency. Judge Dinkins was appointed Chancellor of Part IV of the Chancery Court for Davidson County in September 2003. He was elected to the same position in August 2004 and reelected in August 2006. Judge Dinkins was appointed by the governor to the Court of Appeals in January 2008.

Service to the Profession: Judge Dinkins is a Fellow of the Tennessee Bar Foundation and a member of the Tennessee, Nashville and Napier-Looby Bar Associations, currently serving on the Board of Directors of the Nashville Bar Association. He is also a member of the National Bar Association Judicial Council. He received the William M. Leech, Jr. Public Service Award from the Tennessee Bar Association in June 2004 and the Liberty Bell Award from the Nashville Bar Association in April 2001, as well as a number of other awards for service to the community and to the legal profession. Judge Dinkins has taught continuing legal education seminars for attorneys and spoken on various topics to youth programs, employee groups and other groups.

Performance Evaluation: At the time of the evaluation, Judge Dinkins had been serving on the Court of Appeals for one week. Therefore, no survey results were available for consideration in his evaluation process.

Interview: The Commission used the information available in Judge Dinkins' application to the Judicial Selection Commission to conduct the interview. As a result of the interview, the Commission found Judge Dinkins to have a broad range of experience in civil law matters. He appears to possess the knowledge and writing ability to serve on the appellate court, though he acknowledged that the writing process for an appellate judge is different from the writing process of a trial judge. He has already enrolled in an opinion writing course for appellate judges. Judge Dinkins was sworn in one week prior to his interview. Therefore, Judge Dinkins had not yet sat on an oral argument panel and had only one case assigned to him on brief. However, he committed to drafting opinions in a timely manner with the same quality of some preceding appellate judges whose writings he admired, and expressed a clear understanding of the importance of producing timely decisions.

Recommendation: The Commission recommends the retention of Judge Richard H. Dinkins on the Tennessee Court of Appeals by a vote of 10-0. It should be noted that 2 members were unable to participate in the evaluation.

COURT OF CRIMINAL APPEALS

JUDGE D. KELLY THOMAS, JR.

Recommendation: RETAIN

Commission Vote: 12 FOR RETENTION – 0 AGAINST RETENTION

Legal Education and Experience: Judge D. Kelly Thomas, Jr. received a law degree from the University of Tennessee College of Law in 1977. He engaged in the private practice of law from 1978 until 1990 when he was elected Circuit Judge for the Fifth Judicial District, Division II. He was reelected Circuit Judge in 1998 and 2006. Judge Thomas was appointed by the governor to serve on the Court of Criminal Appeals in November 2006.

Service to the Profession: Judge Thomas is the current President of the Tennessee Judicial Conference and has served on the Executive Committee for the same. He is a Fellow of the Tennessee Bar Foundation. He is a past president of the Tennessee Trial Judges Association. He has served as a faculty member of The National Judicial College at the University of Nevada, Reno. Judge Thomas has lectured on legal topics to judicial conferences, court clerks' conferences and other groups.

Performance Evaluation: Judge Thomas' survey ratings from appellate judges, attorneys, and court personnel reflected a very good performance, with some areas of excellence as well as some areas of potential for self improvement. He received excellent to good ratings in the area of oral argument from appellate judges, attorneys, and court employees and excellent to good ratings on his written opinions from appellate and trial judges. He received good to adequate ratings on his written opinions from attorneys, indicating an area for potential self improvement.

Interview: The interview with Judge Thomas supported the survey results. It was noted that he has been on the court for one year, and that he had received high ratings in almost all areas of his performance. Nevertheless, he expressed willingness and desire to address the attorneys' concerns as to his written opinions.

Recommendation: The Commission unanimously recommends the retention of Judge D. Kelly Thomas, Jr. to the Tennessee Court of Criminal Appeals.