

Tennessee Trial Court Vacancy Commission
Application for Nomination to Judicial Office

04/15/16

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INTRODUCTION

Tennessee Code Annotated section 17-4-301 et seq. charges the Trial Court Vacancy Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website www.tncourts.gov). The Commission requests that applicants obtain the word processing form and respond directly on the form. Respond in the box provided below each question. (The box will expand as you type in the document.) **Review the separate instruction sheet prior to completing this document. Submit by the noon deadline date an original (unbound) completed application (with ink signature) 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 currently serve as the District Public Defender for the 19th Judicial District (Robertson and Montgomery Counties) of the State of Tennessee.

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

I was licensed to practice law in Tennessee in 1997. My Board of Professional Responsibility number is 018513.

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.

I was first licensed to practice law in the State of Iowa, being admitted on June 15, 1990. Last I checked, Iowa still did not assign bar numbers. I was next licensed to practice law in the State of Florida, being admitted on April 30, 1992. My Florida bar number is 932851.

Since Tennessee law forbids me from practicing outside of my duties as public defender, I do not maintain an active license in Iowa or Florida. I entered inactive status in Iowa on January 17, 2002 and retired status in Florida on August 7, 2009.

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).

I have not been denied admission to any Bar, nor have I been suspended by any Bar. I am currently on inactive status in Iowa and in retired status in Florida, both voluntarily, because Tennessee law forbids me from practicing outside of my duties as public defender and I do not need to maintain an active license in those States.

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).

I have been engaged in the practice of law since to include time of military service.

District Public Defender for the 19th Judicial District of Tennessee. September 2000 – present. I was appointed by Governor Don Sundquist in September 2000 to fill a vacancy. I was elected in August 2002 to fill the remainder of the unexpired term and re-elected in August 2006 and August 2014 to full terms. My primary responsibility is to represent persons accused of offenses that could result in loss of liberty and to lead and supervise the eight attorneys, seven support staff, and several interns and volunteers who assist in that endeavor. Duties, responsibilities, and nature of practice are further detailed in the response to question 6.

Private Practice, Founding Member, Goble & Nell Attorneys, PLLC, Clarksville, Tennessee. July 1999 – September 2000. Our firm was a general practice firm. We represented individuals in estate planning and administration, custodianships, domestic relations, personal injury actions, criminal (State, federal, and courts-martial) (at least 10% of which was court appointed work), and consumer protection/advocacy issues (*pro bono* for soldiers). We represented business clients in the establishment of small businesses and in debt collection actions. I also devoted a fair amount of time *pro bono* to assisting non-profit organizations such as the Montgomery County Historical Society and the Fort Campbell Historical Foundation and Wings of Liberty Military Museum.

Private Practice, Law Office of Roger Eric Nell, Clarksville, Tennessee. October 1998 - June 1999. My practice centered on criminal work (State, federal, and courts-martial) (at least 10% of which were court appointed cases) and estate planning and administration. I also took *pro bono* cases for soldiers who were in disputes with businesses.

Assistant Attorney General, Enforcement Division (now Law Enforcement and Special Prosecutions Division), Office of the Attorney General & Reporter, Nashville, Tennessee. June 1997 - September 1998. We (four attorneys and an investigator, along with two federal Environmental Protection Agency investigators who were co-located with our office) were responsible for investigating and working with State and federal prosecutors to enforce State and federal environmental protection statutes (solid waste disposal, clean water, wastewater, well drilling, and clean air). We also investigated and prosecuted securities fraud cases and pursued civil action to recover State funds. In order to carry out those responsibilities, I was appointed as a Special Assistant United States Attorney, Middle District of Tennessee and as a Special Assistant District Attorney General in the 16th, 17th, and 20th Judicial Districts.

In addition to litigation duties, at the time the Enforcement Division represented several client agencies such as: the Tennessee Bureau of Investigation, Department of Safety (now Department of Safety and Homeland Security), and the Alcoholic Beverage Commission. In that capacity, I reviewed agencies' proposed rules for legal sufficiency under the Administrative Procedures Act. We also assisted client agencies, in coordination with the agencies' general counsel, with interpreting new enactments after each session of the General Assembly. Lastly, our office drafted Attorney General opinions in response to requests from elected State officials when the subject matter fell within the purview of our client agencies.

Senior Defense Counsel, U.S. Army Trial Defense Service, 101st Airborne Division (Air Assault), Fort Campbell, Kentucky. September 1995 - June 1997. I was responsible for the leadership and supervision of five attorneys and two support staff with an annual case load of

over 3000 disciplinary actions and over 200 courts-martial. I was assigned to this billet as a captain even though it was typically held by a major (one grade senior to a captain). I maintained my own caseload in addition to fulfilling my leadership and supervision duties. Specific duties related to representing clients were the same as those detailed below under Trial Defense Counsel. Being the Senior Defense Counsel at a major military installation entailed meeting with, negotiating with, and often disagreeing with senior officers.

Chief of Legal Assistance and Military Magistrate, 24th Infantry Division (Mechanized), Fort Stewart, Georgia. March 1994 - September 1995. I was responsible for the leadership and supervision of five attorneys and six to ten support staff (both soldiers and Department of the Army civilians) with an annual client load of over 2000. My responsibilities also included oversight of a federal income tax assistance center. We twice staffed and operated 24-hour operations to provide legal assistance (wills, powers of attorney, helping resolve open court cases, etcetera) as the Division prepared for Operations Vigilant Warrior and Uphold Democracy. The duties of this position, beyond the leadership aspect, are detailed below under Legal Assistance Officer. The office won the U.S. Army Chief of Staff Award for Excellence in Legal Assistance during my tenure.

I was appointed by the military judge at Fort Stewart, Georgia to serve as a magistrate. A military magistrate is a judicial officer responsible for reviewing pretrial confinement orders and for reviewing applications for search authorizations.

A magistrate reviews a commander's order to place a soldier into pretrial confinement to determine whether there is probable cause to believe that an offense triable by court-martial was committed, whether there is probable cause to believe that the soldier committed it, and whether confinement is necessary because it is foreseeable that the soldier will not appear at trial, that the soldier will engage in serious criminal misconduct, and that less severe forms of restraint are inadequate. The military magistrate may order that pretrial confinement be continued or that the soldier be released from confinement.

Military magistrates also review applications for search authorizations (search warrants in civilian terms). When a military law enforcement officer or commander believes a search is appropriate, an application is made and submitted to the magistrate for review much like an affidavit for a search warrant is submitted to a judge in civilian practice. The military magistrate reviews the application and information provided, determines whether there is probable cause to believe that the person, property, or evidence sought is located in the place or on the person to be searched, and then decides whether to authorize a search.

Trial Defense Counsel and Officer-in-Charge, U.S. Army Trial Defense Service Branch Office, 2nd Infantry Division, Camp Howze, Republic of Korea. March 1993 - February 1994. In this position and at that time, the trial counsel assigned to Camp Howze and I were the most forwardly deployed judge advocates in the U.S. Army, being the judge advocates closest to a declared hostile force - North Korea. As trial defense counsel, I was responsible for representing soldiers facing disciplinary action from letters of reprimand through general courts-martial. I assisted many officers and soldiers respond to disciplinary action and guided them through the process of administrative separation boards, to include representing them at hearings to

determine whether they should be separated from the service and, if so, to determine the characterization of service. In courts-martial, military trial defense counsel have the same duties and responsibilities (and freedom from interference from the chain of command) as civilian defense counsel, private and public, have in civilian criminal trials. I practiced in the following forum/courts: general and special courts-martial, Article 32 investigations, officer show-cause boards, Department of Defense Inspector General Investigation hearing, and enlisted administrative separation boards throughout the Republic of Korea and Okinawa.

As an officer-in-charge of a branch office, I was also responsible for leading and supervising two paralegals during my tenure. I was also responsible for ensuring that we were ready and prepared for our “go-to-war” mission. Being less than ten miles from the North Korean border and within range of some ten thousand communist artillery pieces, that basically meant being ready to be a speed bump on their race to Seoul.

Task Force Judge Advocate, Task Force 2-502, Multinational Force and Observers (MFO), Sinai, Egypt. August 1992 - February 1993. The MFO is an organization that monitors Egypt’s and Israel’s compliance with the 1979 Egypt-Israel Peace Treaty and its 1981 Protocol. The MFO was created for and exists solely for that purpose. The United Nations was unable to assume that function because the Soviet Union signaled its intent to veto the necessary U.N. Security Council resolution. As part of the MFO, the United States contributed one U.S. Army support battalion and one U.S. Army infantry battalion who, along with military contingents from about two dozen other countries and a corps of civilians, observed and reported military activities by Egypt and Israel on the Sinai Peninsula. I deployed with an infantry battalion as the commander’s lawyer. In this role, I had the same duties described below as trial counsel, and I shared legal assistance duties, also described below, with the trial defense counsel who also deployed with us. Beyond that, I was responsible for advising the commander, subordinate commanders, and staff on the applicable international agreements, standard operating procedures, and rules of engagement applicable to that mission. We also processed claims filed by civilians against the MFO for property damage caused by MFO operations using its policies and procedures, which were based on European law.

Trial Counsel, 101st Airborne Division (Air Assault), Fort Campbell, Kentucky. November 1991 - August 1992. In this assignment, I was the legal advisor to three brigade commanders and dozens of battalion and company/battery commanders. The primary responsibility of this position was to prosecute soldiers at courts-martial. Advice to commanders focused mostly on disciplinary issues with regard to individual cases and also with regard to trends within the unit overall. Discussions focused on suspected offenses, available evidence, the soldiers involved, and the appropriate level of disposition. The trial counsel is responsible for carrying out the commander’s direction with respect to disposition. I practiced in the following forum/courts: general and special courts-martial, Article 32 investigations, officer show-cause boards, and enlisted administrative separation boards at Fort Campbell, Kentucky.

At court-martial, the trial counsel is the prosecuting attorney with duties similar to an assistant district attorney. Unlike a civilian prosecutor, trial counsel is also responsible for ensuring that: witnesses (including defense witnesses) appear at trial, the accused soldier appears for trial and is in proper uniform, the conditions of any pretrial restraint or confinement are in compliance with

law and regulation, the panel members (jury) are properly empaneled and are present for trial, and the record of trial is properly prepared and submitted to the military judge for authentication after trial.

Responsibilities of trial counsel also expand to operational law. The trial counsel is the commander's legal advisor on domestic U.S. law (fiscal, contracts, *posse comitatus*, etcetera), international law (for example, Geneva Conventions, Hague Conventions, Status of Forces Agreements), rules of engagement, and other issues related to military operations from peacekeeping to combat. Trial counsel were also responsible for training the units' soldiers on the Uniform Code of Military Justice, law of war, code of conduct, and other matters, and routinely conducted classes to that end.

Legal Assistance Attorney, 101st Airborne Division (Air Assault), Fort Campbell, Kentucky. April 1991 - November 1991. I helped eligible clients with wills and simple estate planning, powers of attorney, advanced medical directives, divorce, adoptions, name changes, immigration and naturalization, landlord-tenant disputes, contract reviews and disputes, and consumer protection issues. We also assisted soldiers who were appealing some adverse administrative actions such as poor evaluation reports and rebuttals to reports of survey (a report of survey [now known as financial liability investigations for property loss] is the process by which the Army takes pay from a soldier for equipment that a soldier lost, damaged, or destroyed through neglect).

Claims Attorney, 101st Airborne Division (Air Assault), Fort Campbell, Kentucky. October 1990 – April 1991. In this position, I primarily worked with affirmative claims although I worked on claims against the government, too. With regard to affirmative claims, when a soldier or dependent is injured by a civilian, the soldier or dependent receives medical care for those injuries. While the medical care is at no cost to the soldier, it still costs the government and taxpayers. As a claims officer, I pursued tortfeasors and their insurers to recover the costs of that medical care. We also worked closely with civilian counsel who were pursuing remedies in civilian courts, and I had to maneuver through the various subrogation issues under federal and State law to ensure the government recovered its costs.

6. 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 District Public Defender, I practice criminal law 100%; representing persons who courts have determined cannot afford to hire private counsel. We represent individuals charged with any offense that could result in loss of liberty. Those offenses range from traffic offenses through capital murder.

I am statutorily and ethically responsible for the defense of thousands of criminal charges annually. To fulfill that responsibility, I am fortunate to lead and supervise a tremendous staff of eight attorneys and seven support personnel (investigator, office manager, paralegals, and secretaries) along with numerous interns, externs, clerks, and volunteers. I also manage an annual budget in excess of \$1.3 million and three physical locations, which is the primary responsibility of our office manager who does a fantastic job.

Over the course of years, my personal caseload has shifted to meet the needs of the office. Initially, I carried a full caseload along with the other attorneys, moving between courts on a rotation. As we added attorneys, I was able to reduce my personal caseload to spend more time on systemic issues. I have assumed about one-quarter of the cases in one of our circuit courts and I handle most of the appellate work from the office. I am also the "floater," covering courts when one of our attorneys is unexpectedly absent.

Throughout the year, we have also served as an intern site for law students from most of the law schools in Tennessee, around the eastern United States, and from as far away as California. We also serve as an intern site for undergraduate and graduate social work students from Austin Peay State University and have served as a paralegal extern site for various schools around middle Tennessee. All of these interns provide extra manpower, helping us manage our workloads, while they gain experience in the practice of law and social work, all at great savings to the taxpayer. Stewardship of taxpayer funds is an aspect of my position as a State official, and I strive to fulfill our responsibilities as cost-effectively as we can. In the end, constitutionally effective representation of Tennesseans saves taxpayer funds.

My duties as district public defender also extend beyond the office walls. I make it a point to meet with our judges, district attorney general, and clerks of court on matters that affect the criminal justice system as a whole in our district. I have a responsibility to ensure that the citizens of Robertson and Montgomery Counties understand our work, why it is necessary, and why it is important. To that end, I have made over forty presentations to community organizations like Civitan, Rotary, Kiwanis, and to our middle and high school students; and helped coach the Clarksville High School Mock Trial team for two years. I also work with county mayors, county commissions, and our legislative delegation in the Tennessee General Assembly on issues of concern to them.

7. 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.

Trial Courts.

Courts. I have practiced in: Circuit Courts, Chancery Courts, and Courts of General Sessions in several counties in Tennessee; District and Circuit Courts of Christian County, Kentucky; U.S. District Courts of the Middle District of Tennessee and the Western District of Kentucky; and courts-martial worldwide.

Capacity. I have served as: prosecuting attorney, criminal defense attorney, supervising defense attorney, supervising prosecuting attorney, magistrate, criminal trial judge, civil plaintiff's attorney, civil defense attorney, a juror in a civil trial, and a witness in various post-conviction and civil proceedings. If I had any idea of the number of cases I have touched in twenty-eight years, I would tell you, but I really have no idea.

Matters. The types of matters include: prosecution of crimes from minor offenses such as disrespect to serious offenses such as securities fraud; defense of criminal cases from public intoxication to capital murder; presiding over courts-martial from thefts to desertion; civil actions that included conservatorships, eviction, debt collection, and unfair and deceptive trade practices.

Appellate Courts.

Courts. I have practiced in the Tennessee Court of Criminal Appeals, Tennessee Supreme Court, and, once, in the United States Supreme Court.

Capacity. I have served as appellant's and appellee's counsel. A computer search pulled up 134 cases with my name as counsel on appellate cases, although a few were because I was counsel at trial. I did not get to argue the United States Supreme Court appeal. The Court summarily granted *certiorari*, vacated the judgment of the Tennessee Court of Criminal Appeals, and remanded the case for further consideration.

Matters. Matters on appeal have all been in the realm of criminal law. The specific issues have ranged from the routine sufficiency of the evidence and appropriate sentence issues, to evidentiary issues, to constitutional issues, to rarer issues such as territorial jurisdiction.

Administrative Bodies.

Forum. I have practiced in administrative separation and show-cause boards, in Article 32 investigations of the U.S. Army, and a Department of Defense Inspector General (DoDIG) investigation.

Capacity. I have served as counsel for the government as well as counsel for respondents before these boards. I have also served as the legal advisor to investigating officers under Army Regulation (AR) 15-6, to Article 32 investigating officers, and to summary courts-martial officers. I also served as an Article 32 investigating officer in a high profile, widely reported case with international implications. An Article 32 investigating officer performs a quasi-judicial function that combines functions of a grand jury and a preliminary hearing in Tennessee practice.

Matters. In administrative separation and show-cause boards, the issue is whether a soldier or officer should be separated from or retained in the Army because of misconduct (not necessarily criminal), unsatisfactory performance, or other cause. AR 15-6 investigations can cover any issue that a commander designates from equal opportunity complaints, allegations of abusive command climate, death of a soldier, major damage to military property, unusual combat incidents, etcetera. The DoDIG matter was an investigation of senior military officers and others that resolved favorably for my client who went on to become a two-star general.

Legislative or Regulatory Bodies or other forums.

I have not practiced before any legislative or regulatory bodies.

Transactional Matters.

Over the course of years, my practice has touched many transactional matters. I have prepared wills and other estate planning documents, powers of attorney, advanced medical directives, articles of incorporation, annual reports for corporations, 501(c)(3) applications, and other such matters. I have also prepared contracts and conducted contract reviews such as car sales, rental agreements, bills of sale, and other consumer transactions on behalf of consumers/purchasers. I have also conducted legal sufficiency reviews of proposed rules under the Tennessee Administrative Procedures Act. In military practice, I have reviewed operations plans/orders for compliance with domestic and international law; reviewed required financial disclosures by those required to do so under federal ethics regulations; reviewed reports of investigations and reports of summary courts-martial for legal sufficiency, and many other similar legal sufficiency reviews of administrative matters. I have also conducted contract reviews worth millions of dollars under federal rules and regulations on behalf of the government.

8. Describe any matters of special note involving your practice in trial courts, appellate courts, and administrative bodies.

The seed leading to a new appellate standard of review of sentences in *State v. Bise*.

Our office represented a defendant sentenced under the then-new 2005 sentencing statutes following the upheaval from a series of U.S. Supreme Court cases. In *State v. Carter*, 2007 WL 677864 (Tenn. Crim. App. No. M2005-02784-CCA-R3-CD, Mar. 7, 2007) *rev'd* 254 S.W.3d 335 (Tenn. 2008), our client elected to be sentenced under the 2005 amendments, though his offense was committed prior to their enactment. The trial court imposed a sentence of 10 years on probation and the State appealed. The Court of Criminal Appeals overruled the trial court, increased the length of sentence to fifteen years, and imposed confinement as the manner of service. We appealed to the Tennessee Supreme Court.

In my brief, asserting that the trial court had acted within its discretion under the new statutes and that the Court of Criminal Appeals had acted outside of its standard of review, I wrote: “The tenor of the 2005 amendments is that the only limitations on the discretion of the trial court are the bounds of the applicable range.” That, as it turns out, was a seed.

The Tennessee Supreme Court reversed the lower court in part by reducing the sentence to 10 years, but affirmed confinement as the manner of service. In its footnote 10, the Court wrote: “The Defendant asserts in his brief that ‘[t]he tenor of the 2005 amendments is that the *only* limitations on the discretion of the trial court are the bounds of the applicable range.’ (emphasis added). While our holding relieves us of the necessity of addressing this assertion, we note that every sentence imposed pursuant to the Sentencing Act must comport with the purposes . . . and the principles [of sentencing]” *State v. Carter*, 254 S.W.3d 335, 344 n.10 (2008) (internal citations omitted).

A different panel of the Tennessee Court of Criminal Appeals picked up on that language in its first contact with *Bise*. In that case, the Court of Criminal Appeals found the trial court had misapplied an enhancement factor. As a result, the appellate court reduced the length of the sentence from 3 years to 2 years. Dissenting from the notion that the appellate court *had* to reduce the sentence because of the misapplied enhancement factor, Judge Woodall noted, after reciting footnote 10 from *Carter*: “Despite what I may have previously written or concurred in, I am now compelled to conclude that not only the ‘tenor of the 2005 amendments,’ but *Blakely* and *Cunningham* mandate that a trial judge’s discretion to set a sentence anywhere within the appropriate range cannot be limited by the fact that no ‘advisory’ enhancement factors are applicable.” *State v. Bise*, 2011 WL 4090792, *11 (Tenn. Crim. App. No. E2011-00005-CCA-R3-CD, Sept. 15, 2011) (Woodall, J. dissenting). The defendant appealed.

The Tennessee Supreme Court followed Judge Woodall’s opinion that misapplication of an enhancement did not require a reduction in the sentence. *State v. Bise*, 380 S.W.3d 682, 706 (Tenn. 2012). The Court went further to establish a new standard of appellate review of sentences and noted “In our view, *Carter* marked the beginning of this Court’s recognition that sentences should be reviewed under an abuse of discretion standard.” *Id.* at 707.

International Incident.

As an additional duty while assigned as a military judge, I was appointed as an Investigating Officer under Article 32, UCMJ (10 U.S.C. § 832) in one of the Bagram detainee cases. An Article 32 Investigating Officer performs a quasi-judicial function that combines functions of a grand jury and a preliminary hearing in Tennessee practice. This particular case caused a little dust-up between the United States and Indonesia.

The Bagram Detainee cases were a series of courts-martial charging several soldiers with abusing individuals being held in confinement at Bagram Airfield, Afghanistan. During the investigation of this particular case, defense counsel requested that the government produce an individual to testify about the conditions at Bagram. He was one of the detainees this accused had allegedly mistreated. The government responded that that individual had escaped and was beyond the government's ability to produce. It was within my authority to order the government to produce a witness requested by the defense if the witness was reasonably available. Given that he was not within the government's control, though, I could not order his production.

According to open source reports, the individual had been captured by Indonesia and had been turned over to the U.S. government in 2002. He was of great concern to the Indonesian government. According to open source reports at the time, four individuals had escaped Bagram in July 2005. Those stories, though, did not name the escapees.

The Bagram Detainee cases, including this one, had a lot of media attention, and an Associated Press (AP) reporter covered all of the proceedings. So, the AP reporter sent out the story that that particular individual was one of the four who had escaped the previous July. Unknown to us at the hearing in November 2005, though, the U.S. government had apparently not notified Indonesia that he was one of the escapees. The first they heard of it was from this story.

Unfortunately, the Attorney General of the United States was on a journey through Southeast Asia, including a visit to Indonesia, at the time the story broke. His visit was probably not as pleasant as it might have been given the timing of the revelation, even though this was something almost completely, if not entirely, outside his bailiwick (being more of a Department of Defense and maybe State issue and not a Justice issue).

The detainee cases were important for several reasons. First, the cases sent mixed signals to U.S. soldiers about what treatment of detainees was permitted, legal, illegal, and/or criminal. Over two dozen soldiers were investigated, but only fifteen were charged. Of those: one was convicted after trial; four pled guilty to various offenses; six (including the accused in my investigation) were acquitted; and charges against three others were ultimately dismissed. (I do not know the disposition of the fifteenth case). Second, the overall issue of detainee treatment at Bagram and later Abu Ghraib sent mixed signals to other countries and to non-governmental actors with respect to our adherence to the rule of law (which had tremendous impact on the battlefield and personal influence on me). Third, there is a difficult lesson in leadership to be learned from this entire episode. Lastly, there is a lesson in the way that a single person's misdeeds can have such dramatic, strategic implications on the world stage.

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

I cannot think of any other legal experience not discussed elsewhere in this application.

10. List and describe all prior occasions on which you have submitted an application for any state or federal judicial position.

In 2005, I submitted an application for military judge in the U.S. Army. I was appointed by The Judge Advocate General of the U.S. Army, upon the recommendation of the Chief Judge of the U.S. Army Court of Criminal Appeals, the Chief Trial Judge of the U.S. Army, and the Commander, 150th Legal Support Organization. I was further qualified and certified by The Judge Advocate General as a General Court-Martial Judge under Article 26, Uniform Code of Military Justice (10 U.S.C. § 826), an Article I federal judicial post.

I applied for the position created by the retirement of Judge David Welles from the Tennessee Court of Criminal Appeals. The Judicial Nominating Commission met on June 6, 2011 to consider applicants for that position. I was not selected.

I applied for the positions created by the retirement of Judge Jerry Smith and the elevation of then-Judge Jeff Bivins both from the Tennessee Court of Criminal Appeals. I was first considered by the Governor's Commission on Judicial Appointments on May 13, 2014 and was selected as a nominee. I was next considered by the commission on June 1, 2014 and the commission again submitted my name as a nominee.

EDUCATION

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

<u>School.</u>	Drake University School of Law, Des Moines, Iowa
<u>Dates.</u>	August 1987 to May 1990
<u>Degree.</u>	Doctor of Jurisprudence with Honors
<u>Rank.</u>	Top 10%
<u>Honors.</u>	Order of the Coif, Law Review, Dean's Scholarship
<u>Activities.</u>	Phi Alpha Delta Law Fraternity, Honors Council, Research Assistant for Professor James Albert. I also worked throughout law school in part time jobs or clerkships with law firms in addition to drilling in the U.S. Army Reserve.
<u>School.</u>	United States Army War College, Carlisle Barracks, Pennsylvania
<u>Dates.</u>	May 2005 to July 2007

<u>Degree.</u>	Master of Strategic Studies
<u>Major.</u>	Strategic Studies
<u>School.</u>	University of Iowa, Iowa City, Iowa
<u>Dates.</u>	August 1983 to May 1987
<u>Degree.</u>	Bachelor of Arts with Honors
<u>Major.</u>	History
<u>Honors.</u>	Distinguished Military Graduate, U.S. Army Reserve Officer's Training Corps Scholarship, Freshman Honors Scholarship
<u>Activities.</u>	Alpha Phi Omega Service Fraternity, Intramural sports

PERSONAL INFORMATION

12. State your date of birth.

I was born 1965.

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

I have lived continuously in Tennessee since October 1990, except for those times that the U.S. Army ordered me elsewhere.

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

I have lived continuously in Montgomery County since October 1990, except for those times that the U.S. Army ordered me elsewhere.

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

I am registered to vote in Montgomery County.

16. 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.

I served in the U.S. Army from signing an ROTC scholarship contract in 1983 until I retired in 2013. Each of my three releases from active duty was honorable. I retired from the Army on September 1, 2013. Duties, promotions, and awards are detailed below.

Deputy Legal Counsel (TPU), Office of Legal Counsel to the Chairman of the Joint Chiefs of Staff, The Joint Staff, Suffolk, Virginia (Reserve). August 2011 – September 2013. The Chairman of the Joint Chiefs of Staff is the principal military advisor to the President of the United States and the Secretary of Defense. Legal Counsel to the Chairman is the Chairman's principal legal advisor. Office of the Legal Counsel consisted of several active duty, reserve, and civilian attorneys. The office was responsible for advising and counseling the Chairman, Vice Chairman, Director and Vice Director of the Joint Staff, and the Joint Staff (all flag/general officers of all services of the U.S. Armed Forces).

Specific areas of practice included: federal fiscal law, federal contracting and acquisition, cooperative research and development agreements, bailments, federal civilian employment law, Freedom of Information Act/Privacy Act issues, intellectual property issues, federal government ethics and Department of Defense joint ethics regulations. We also reviewed military doctrine, federal legislative proposals, operation plans.

Staff Judge Advocate (Reserve), United States Joint Forces Command (USJFCOM), Norfolk, Virginia (Reserve). July 2009 – August 2011. I was the senior reserve judge advocate and the "back-up" for the active duty Staff Judge Advocate. We were responsible for advising and counseling the combatant commander, deputy commander, chief of staff, staff, directors, and subordinate commanders (all flag/general officers of all services of the U.S. Armed Forces). We were responsible for leading and supervising a team of eighteen active and reserve Navy, Air Force, Marine, Army, and civilian attorneys and paralegals as they provided guidance, advice, and counsel on issues of national importance in support of USJFCOM's mission to provide joint capable forces worldwide and to support the development and integration of military, government, and multinational capabilities to meet the operational needs of the joint force. Issues involved federal constitutional, treaty, statutory, international, and regulatory frameworks within which the U.S. government, the Department of Defense, and USJFCOM operated.

Specific areas of practice included: federal fiscal law, federal contracting and acquisition, cooperative research and development agreements, bailments, federal civilian employment law, Freedom of Information Act/Privacy Act issues, intellectual property issues, federal government ethics and Department of Defense joint ethics regulations, military personnel law, and disciplinary issues under the Uniform Code of Military Justice and the regulations and instructions of all services of the U.S. Armed Forces. We also reviewed military doctrine, federal legislative proposals, operation plans of other combatant commands, and the like.

I do not wish to inflate my personal expertise in these matters, though. While I maintained personal familiarity with these highly complex, technical areas of law in order to spot and respond to issues, the vast majority of the expertise resided with, and the well from which I drew when confronted with these issues was, the cadre of civilian counsel at USJFCOM who were the true subject matter experts and who had my utmost trust, admiration, and respect.

Excess, 174th Legal Support Organization, 90th Regional Readiness Command, Miami, Florida (Reserve). March 2009 – June 2009. No duties assigned.

Command Judge Advocate, Task Force Cincinnatus/Warrior, Combined Joint Task Force – 82/101, OPERATION ENDURING FREEDOM (Active Duty). February 2008 – March 2009. This was my second combat assignment. I served as the command judge advocate in a joint/combined brigade task force consisting of U.S. active duty Army units, U.S. Army reserve units, U.S. Army national guard units, a French Marine Parachute Infantry Battalion, a New Zealand unit, and U.S. Air Force units. Our mission included controlling an area of operations covering four Afghan Provinces and supporting several operating bases, including Bagram Airfield. Legal issues included operational law, law of war, rules for the escalation of force, rules of engagement, detention operations, fiscal and contract law, prosecution of offenses by U.S. soldiers and civilians (to include initiating the prosecution of a U.S. civilian contractor for the murder of an Afghan civilian under the Military Extraterritorial Jurisdiction Act of 2000), administrative investigations, and adverse administrative actions. I twice served as the brigade Executive Officer (XO) during the absence of the normally assigned XO.

I also was tasked by the commanders with assisting the local Afghan provincial and district judges to re-establish and/or improve the formal Afghan judicial system within our area of operations. This included planning and executing several missions in permissive and hostile environments to meet with Afghan officials, visit various sites, and assess the local situation. We supported U.S. Department of State efforts to conduct training for Afghan lawyers at two conferences in our area of operations. We also obtained funds to publish and distribute Afghan legal resources and to build court centers in two districts that had not had operating courts for over a year. This aspect of my duties required coordination with representatives of the U.S. Department of State, U.S. Agency for International Development, and United Nations Assistance Mission – Afghanistan. Through a series of meetings with provincial and district Afghan judges, we convinced them to reopen court in Tagab District, Kapisa Province – a district that was a hotly contested area between U.S./Afghan forces and insurgents.

Military Judge, 150th Legal Support Organization, Alexandria, Virginia (Reserve). July 2005 – January 2008. I was appointed to this position by The Judge Advocate General of the U.S. Army, upon the recommendation of the Chief Judge of the U.S. Army Court of Criminal Appeals, the Chief Trial Judge of the U.S. Army, and the Commander, 150th Legal Support Organization. I was further qualified and certified by The Judge Advocate General as a General Court-Martial Judge under Article 26, Uniform Code of Military Justice (10 U.S.C. § 826).

Military Judges are federal Article I judges with jurisdiction to preside over criminal cases arising from the armed forces of the United States worldwide. Military judges preside over courts-martial referred to them by an appropriate convening authority. Trials may be by a panel of members (a jury) or by judge alone (bench trial). Courts-martial follow the Military Rules of Evidence which are essentially the same as the Federal Rules of Evidence with changes to account for unique military circumstances.

For the most part, courts-martial proceed as any trial in Tennessee Circuit Courts and military judges perform the same duties as circuit court judges. Military judges are expected to ensure that the proceedings comply with law and rule and that they are fair to the government and accused. Military judges rule upon any pretrial motions made by the parties and upon objections during the course of a trial. Military judges tend to conduct the majority of voir dire and

typically restrict the lawyers more than State court judges do. If a trial is judge alone, the military judge determines the verdict based upon the evidence and the standard of beyond reasonable doubt. Otherwise, the military judge drafts instructions on the law and charges the panel. If the trial is judge alone, the military judge determines the sentence if a soldier is convicted. If the trial is to a panel, then the military judge prepares instructions on sentencing, charges the panel, and the panel determines the sentence.

As in civilian practice, most courts-martial are resolved by settlement (pretrial agreement in military terms). However, there are two significant differences. First, military judges bear a greater burden in courts-martial to ensure that a guilty plea is provident. Even the simplest guilty plea in a court-martial may take an hour or longer to accept as opposed to a few minutes for the most lengthy plea colloquy in State court. Second, plea agreements in the military do not state a specific sentence. Rather, the plea agreement will contain a provision setting the maximum sentence which the convening authority will approve, but that provision is unknown to the sentencing authority be it military judge or panel. So, after a soldier's guilty plea has been accepted, there is still a sentencing hearing, and the military judge or panel will determine a sentence based on the evidence presented.

Military judges are also more involved in post-trial processing of cases than civilian judges. The responsibilities of civilian clerks of court (there are no clerks of court in the military) are shared by the prosecuting attorney and military judge. However, it is the military judge who is ultimately responsible for ensuring that the record of trial is complete and accurate, and it is the military judge who finally authenticates it.

Beyond trial duties, military judges are expected to be mentors to the lawyers who appear before them. As an institution, the Army's trial judiciary routinely meets with counsel after a trial is complete to conduct a "bridge-the-gap" session. During this meeting, held with all counsel and sometimes their supervising attorneys, the military judge highlights the good and the not-so-good of the lawyers' performances: trial advocacy skills, knowledge of evidentiary rules, courtroom demeanor, witness control, etcetera.

Team Director, Team 3, 139th Legal Support Organization, Nashville, Tennessee (Reserve). January 2005 – July 2005. As a team director, I was responsible for the training and readiness of judge advocates and paralegals to mobilize and deploy in support of contingency operations. I was responsible for assessing the proficiency of the soldiers in the team and developing training plans and programs to remedy deficiencies and to maintain strengths. This included not only legal tasks, but warrior tasks demanded of all soldiers (physical fitness, marksmanship, and other soldier skills). I was also responsible for supporting other units' needs for legal assistance and soldier readiness preparation as those units strove to maintain their readiness for mobilization.

Executive Officer/Team Director, Team 1, 139th Legal Support Organization, Nashville, Tennessee (Reserve). February 2004 – December 2004. In this position, I was the second-in-command of the 139th and was responsible for ensuring the commander's guidance and directives were executed. As executive officer, I was responsible for coordinating the staff to ensure all tasks from higher headquarters were carried out, to ensure that all soldier actions were completed, and that all resources needed for mission success were obtained. I was also

responsible for ensuring that subordinate team directors were properly tasked to execute various missions, that the teams received the resources they needed to complete missions, and that the teams accomplished the missions.

Brigade Judge Advocate, 1st Brigade (Bastogne Brigade), 101st Airborne Division (Air Assault), OPERATION IRAQI FREEDOM. February 2003 - February 2004 (Active Duty). I mobilized and deployed with the 101st Airborne Division (Air Assault). I was originally assigned to the division rear tactical operations center. Because of the incident at Camp Pennsylvania where a U.S. soldier attacked the officers of the 1st Brigade headquarters, killing two officers and injuring their judge advocate among others, I was sent forward to be the brigade judge advocate. We invaded Iraq on March 26, 2003. I advised the brigade commander, subordinate commanders, and staff officers during combat operations and stability and support operations. We, myself and my four soldiers (Sergeant Eric Tanner, Corporal Fernando Lucero, Specialist Susan Miller, and Specialist Alex Buchanan), were responsible for ensuring operations were conducted in compliance with international law, rules of engagement, and that commanders and soldiers were trained in the identification of capitulating forces and procedures for commandeering private and public property during combat operations. I served as a foreign claims commission, and my team received claims from Iraqi citizens for damage, injury, and death caused by non-combat operations, which we then adjudicated. We were responsible to the commander for ensuring detainee operations complied with Geneva Conventions and U.S. law and policy. We continually monitored conditions at the brigade detention site, reviewed the cause for each individual detention, and, along with the brigade intelligence officer and attached counter-intelligence agents, determined each person's disposition. My team supported commanders' efforts to maintain discipline in the ranks by taking appropriate actions to punish soldiers for misconduct and offenses through adverse administrative action, non-judicial punishment, and courts-martial. I prosecuted one of the first courts-martial of a U.S. soldier in Iraq. We were also responsible for reconstituting the Iraqi civilian judicial system in the brigade area of operations within Nineveh Province, northern Iraq. In this endeavor, I was aided greatly by Mahmood, an Iraqi attorney and interpreter, who spent months working with us, willingly encountering the same risks we did. After we redeployed in February 2004, Mahmood was killed. He was our friend and colleague.

Senior Legal Opinions Officer/Training Officer, 139th Legal Support Organization, Nashville, Tennessee (Reserve). October 2000 - February 2003. The 139th was re-activated in October 2000 as a unit in the U.S. Army Reserve. I and four other officers were recruited by the commander to organize, man, and equip this new unit. As the training officer, I was responsible for creating, establishing, and implementing all mission and training documents and guidance for the unit, to include drafting the commander's restated mission statement, mission essential task list, and supporting collective, individual and leader tasks, training guidance, and training calendars; assessing the unit's training status; and tracking the military education status of the soldiers. I was also responsible for providing legal opinions and advice to supported unit commanders and staff in the areas of law of war, administrative law, standards of conduct and government ethics, and military justice, among others. Overall, we had about a year to get the unit ready for mobilization. Within two years of re-activating, the unit was mobilized to support Operations Iraqi Freedom and Noble Eagle.

Also, during this assignment, I would help teach the Criminal Law Advocacy Course (CLAC) at The Judge Advocate General's School. CLAC is a NITA-like (National Institute of Trial Advocacy) training program. Student judge advocates were given a case file and were instructed to develop various parts of a trial from voir dire through closing argument. Students conducted the parts of a trial in small groups with experienced trial attorneys serving as judges (my role) who critiqued and evaluated their performances.

Professor, Administrative and Civil Law Department, The Judge Advocate General's School (now The Judge Advocate General's Legal Center and School), Charlottesville, Virginia (Reserve). November 1997 - September 2000. I served in the areas of legal assistance, professional responsibility, and ethics. I developed and prepared instructional materials for distribution to the field to support active and reserve component staff judge advocates' efforts to conduct required training. I also developed classroom presentations on legal assistance office management. I was responsible for reviewing and submitting comments on draft changes to regulations, rules, and federal legislative proposals pertaining to or affecting legal assistance programs and professional responsibility issues.

Individual Ready Reserve. June 1997 - November 1997. No duties assigned.

Active duty with U.S. Army as detailed above in question 5. May 1987 - June 1997.

Executive Officer, Company B, 3rd Battalion, 338th Armor Regiment, 85th Training Division (Reserve). June 1987 - July 1990. I was responsible for the supervision and direction of the administrative operations of an Armor Company. I formulated and implemented operating policies and procedures; communicated and coordinated with the battalion personnel action center to ensure that all company medical, dental, personnel, and finance records were properly updated and maintained; and ensured that all organizational clothing and equipment was maintained and accounted for. I was also responsible for overseeing individual and unit training and for developing training plans to maintain and/or improve proficiency. I generally carried out the orders of the company commander and assumed command in his absence.

Cadet, U.S. Army Reserve Officer's Training Corps, University of Iowa. August 1983 - May 1987.

Promotions: Second Lieutenant (1987); First Lieutenant (1990); Captain (1991); Major (1998); Lieutenant Colonel (2004); Colonel (2008).

Decorations, Service Awards, Unit Awards, and Badges: Legion of Merit, Bronze Star Medal with Oak Leaf Cluster, Defense Meritorious Service Medal, Meritorious Service Medal with 2 Oak Leaf Clusters, Army Commendation Medal with 3 Oak Leaf Clusters, Army Achievement Medal with Oak Leaf Cluster, Army Reserve Components Achievement Medal with 4 Oak Leaf Clusters, National Defense Service Medal with Bronze Star, Afghanistan Campaign Medal with Campaign Star, Iraq Campaign Medal with 2 Campaign Stars, Global War on Terrorism Service Medal, Korea Defense Service Medal, Armed Forces Reserve Medal with Silver Hourglass, Mobilization device, and Numeral "2", Army Service Ribbon, Overseas Service Ribbon with Numeral "3", North Atlantic Treaty Organization Medal – International Security Assistance

Force, Multinational Force and Observers Medal, Joint Meritorious Unit Award with Oak Leaf Cluster, Meritorious Unit Award with Oak Leaf Cluster, Army Superior Unit Award, Air Assault Badge, Joint Chiefs of Staff Identification Badge, four Overseas Bars.

17. Have you ever pled guilty or been convicted or are now on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

I have not.

18. 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.

I am not.

19. Please identify the number of formal complaints you have responded to that were 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. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

No such complaints have been filed against me.

20. 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.

It has not at any time.

21. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

I have not.

22. 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.

January 29, 2003, U.S. District Court, Middle District of Tennessee, 3:03cv85. A client filed a § 1983 suit. The matter was summarily dismissed.

June 14, 2000, Court of General Sessions, Montgomery County, Tennessee, G0005057. I initiated this suit to recover a fee. I obtained a judgment, but abandoned it since the former client had become indigent.

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

Stroudsville Church of Christ: deacon since 2017

Boy Scouts of America: District Chair, Cogioba District 2014-2017; District Committee Vice-Chair, Cogioba District 2017-present; Assistant Scoutmaster, Troop 503 2017-present

Clarksville Civitan Club: President 2007-2008

Ft. Campbell Historical Foundation, Inc.: Silver Lifetime Member, Board of Directors 2005-08

Clarksville Christian School, Inc.: Board of Directors 2009-2013; Chair, Risk Management Committee 2009-2011; Member, Development Committee 2010-2011; Chairman of the Board 2011-2013

Montgomery County Farmers Cooperative

National Rifle Association

Veterans of Foreign Wars

Honorable Order of Kentucky Colonels

24. Have you ever belonged to any organization, association, club or society which limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

- 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.

I have not.

ACHIEVEMENTS

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

Tennessee Bar Association since 1997: Executive Council, Criminal Law Section 2004-2006, 2013-present, Vice-Chair 2017-present; Executive Council, Appellate Practice Section 2016-present.

Montgomery County Bar Association since 1997: Board of Directors 2005, CLE Committee 2005

Tennessee Association of Criminal Defense Lawyers since 1998: Board of Directors 2007 and 2016-present, Long Range Planning Committee 2011

The Florida Bar 1992-2010

National Association of Criminal Defense Lawyers since 1999

Tennessee District Public Defenders Conference since 2000: Legislative Committee 2000, 2005, 2011-2016; Information Technology Committee 2011-present; Executive Committee, Middle Tennessee Representative 2007-2008 and 2017-present

Integrated Criminal Justice Steering Committee (Tenn. Code Ann. § 16-3-815) Tennessee Bar Association's Designee 2009-present

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

TACDL Massey-McGee Trial Advocacy Award 2016

Gideon's Hero, National Legal Aid & Defender Association, April 2003.

Master Military Justice Practitioner, The Judge Advocate General, U.S. Army.

See also military awards in the response to question 16.

27. 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.

Applicant for District Public Defender, 19th Judicial District in September 2000 to fill a vacancy and was appointed by Governor Don Sundquist.

Candidate for District Public Defender, 19th Judicial District in August 2002 to fill unexpired term and for full terms in August 2006 and August 2014 and was elected each occasion.

Candidate for Circuit Court Judge, Division III, 19th Judicial District in 2016 in the Montgomery County Republican primary to fill a vacancy, but was unsuccessful.

Applicant for the positions created by the retirement of Judge Jerry Smith and the elevation of then-Judge Jeff Bivins both from the Tennessee Court of Criminal Appeals. I was first considered by the then-Governor's Commission on Judicial Appointments on May 13, 2014 and was selected as a nominee. I was next considered by the commission on June 1, 2014 and the commission again submitted my name as a nominee.

Applicant for the position created by the retirement of Judge David Welles from the Tennessee Court of Criminal Appeals. The then-Judicial Nominating Commission met on June 6, 2011 to consider applicants for that position. I was not selected.

ESSAYS/PERSONAL STATEMENTS

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

As an undergraduate, I was allowed to take a law class. On the first day, the professor said that being a lawyer was about solving problems and studying law was about learning how to do that. Law and courts developed to facilitate peaceful resolution of disputes by a neutral decision maker. Within law, the highest calling is to serve the community as that unbiased problem solver.

It is my sincerest desire, and it would be an honor, to serve my community, the bench, and the bar as circuit court judge. I can think of few other ways in which I can employ a life of learning and decades of personal and professional experiences to best serve my community than by resolving disputes so those involved can bring order to their affairs, proceed with their plans, and move forward in their lives.

29. 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)*

This is a newly created, fifth seat on the Circuit Court, 19th Judicial District serving Montgomery and Robertson Counties which include, by population, the State's 7th largest county, 5th largest city, 6th largest judicial district, and the nation's 2nd largest military installation. Our circuit court

hears all cases, civil and criminal, conducts jury trials, and may sit by interchange in chancery. The comptroller reported our trial courts received nearly 9,000 initial filings in 2016-17.

The General Assembly created this seat to improve the court's ability to timely and efficiently resolve matters for our citizens. The successful applicant must fulfill that purpose by being assiduous and abundantly organized, by having the desire and aptitude to learn, and by being able and willing to adapt to the needs of the court. Having those attributes, I would share in the work with the other judges to fulfill the court's mission.

30. 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)*

Yes. I have seen what happens when the rule of law breaks down. I have seen the effects when decision makers abandon principles of law in favor of whim, self-preservation, or personal belief. I am acutely aware that a judge will be asked to decide between an easy, expedient wrong and the difficult, judicious right and am ready to make the difficult decision the law dictates.

Under Article 13, UCMJ, a soldier in pretrial confinement who is subjected to conditions that are not in compliance with military regulation is entitled to additional credit against the sentence. So, the convicted soldier would get credit for the actual calendar days spent in pretrial confinement plus additional "days" for the substandard conditions. Such was the situation before me as military judge at one installation that used a local jail to house soldiers pretrial.

Those "substandard" conditions, though, were pretty good compared to what his buddies in combat were facing at the very same time. We would have been tickled to have had: air conditioning, a shower, no sand in every imaginable place, three hot meals that didn't come in a plastic bag, not carrying 100 pounds of equipment in 120°F weather, not being shot at, etcetera. He committed a crime (often desertion), avoided combat as a result and ended up in better living conditions than his comrades, and yet the law demanded that I, as the military judge, adjudge the convicted soldier additional credit. Albeit grudgingly, I did.

REFERENCES

31. 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. Susan K. Atchley ; County Clerk of Robertson County; Tennessee 37172;	Springfield,
B. Katie Gambill ; President and General Manager, 5 Star Media Group, Clarksville, Tennessee 37043,	
C. CSM Robert G. Nichols , US Army (Retired); Executive Director, Fort Campbell Historical Foundation, Inc. and Montgomery County Commissioner; Fort Campbell, Kentucky 42223-2133;	
D. Jack B. Turner ; Jack B. Turner & Associates, Inc. 37040;	Clarksville, Tennessee
E. Hon. William E. (Bill) Young ; Chancellor, 20 th Judicial District; Nashville, Tennessee 37201;	


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 Circuit Court, 19th Judicial District of Tennessee, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: July 3, 2018.



Signature

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



**TENNESSEE TRIAL COURT VACANCY COMMISSION
ADMINISTRATIVE OFFICE OF THE COURTS**

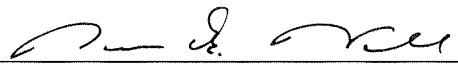
511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

**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 Trial Court Vacancy Commission to request and receive any such information and distribute it to the membership of the Commission and to the Office of the Governor.

Roger E. Nell
Type or Print Name


Signature

July 3, 2018
Date

018513
BPR #

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

Iowa Supreme Court (no bar number)

Florida Supreme Court - 932851

