

Tennessee Trial Court Vacancy Commission
Application for Nomination to Judicial Office

1/31/19

Name: Shawn Joseph McBrien, BPR 012169

Office Address:
(including county)

Lebanon, Wilson County, Tennessee 37087

Office Phone:

Facsimile:

Email Address:

Home Address:
(including county)

Lebanon, Wilson County, Tennessee 37087

Home Phone:

NONE

Cellular Phone:

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 ceesha.lofton@tncourts.gov, or via another digital storage device such as a flash drive.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Attorney/Owner, McBrien Law Group

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

October 11, 1986, BPR 012169

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, October 1986: Bar Number: 012169: Active: October 1986 to the present

Wyoming, April 22, 1988, Attorney Number 5-2529. Status: Terminated 2/28/1994. I moved my wife and two sons back to Lebanon, Tennessee in April, 1992. At that time, I began working with The Law Offices of Hugh Green in Lebanon. My wife and I had no intention of moving back to Wyoming to practice law. I let my license lapse because I was not going back to Wyoming.

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. Other than as I stated in my answer to Question 3, the State of Wyoming shows my license terminated on 2/28/1994.

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 not been employed in any other profession or business other than the law since I was licensed in October, 1986. I began the practice of law in Chattanooga, Tennessee in August, 1986 just after taking the bar exam. I was sworn in by the Supreme Court in October, 1986. I began working as an associate attorney in Chattanooga with the firm of Hall, Haynes, Lusk & Foster.

In September 1987, my wife and I moved to Powell, Wyoming. I worked with Dick Kahl law offices.

In Fall of 1989, I went to work for Bormuth, Freeman & Fuller in Cody, Wyoming.

In March 1992, we moved from Wyoming back to Lebanon, Tennessee.

On April 1, 1992, I began work with the Law Offices of Hugh Green in Lebanon, Tennessee.

In August 1994, I went into solo practice in Lebanon, Tennessee.

On August 27, 2004, I began the firm of McBrien & Kane with Brody Kane (now 15th Judicial District Criminal Court Judge), Angel Kane and myself.

On August 1, 2018 I opened McBrien Law Group which is where I currently practice.

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.

Civil Litigation - 30%

Business - 25%

Mediation - 20%

Probate - 15%

Estate Planning - 5%

Family Law 5%

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.

My trial experience began the first day I started work. I have tried bench and jury trials in almost all of the counties in Middle and Southeast Tennessee and Northwest Wyoming. My trial experience has involved divorce, post-divorce, child custody and support, adoptions and termination of parental rights, personal injury, insurance defense involving personal injury and business matters, construction (for homeowners, builders and developers), boundary line disputes, adverse possession, easement and other land ownership cases, business dissolutions involving breach of operating, shareholder or partnership agreements, breach of contracts,

materialman liens, lemon law, foreclosures, collections of debts, evictions, complex business accounting and transaction litigation. Also, employee termination involving non-compete, non-disclosure agreements, and severance agreements.

I have tried cases involving breach of contract, unjust enrichment, Tennessee Consumer Protection Act (both as Plaintiff and Defendant), intentional interference with a Business Contract/Relationship, fraud, negligent and intentional misrepresentation, slander/liable of title, will contests, probate litigation involving creditor claims, Department of TennCare claims, abuse of powers of attorney, conservatorships and validity of wills.

As to criminal matters I have tried bench and jury felony and misdemeanor criminal charges (in both state and federal courts) which involved various drug related charges, assault, aggravated assault, possession of firearms, domestic assault, improper sale of secured property, theft, burglary, aggravated robbery, driving under the influence, reckless driving and driving without a license and other criminal cases.

In juvenile matters I have been appointed and privately hired to represent children and parents involving delinquent, dependent and neglect, truancy, charges involving burglary, assault, escape from a detention center, drugs and alcohol, run away, gun possession, vandalism, and shop lifting.

I have appeared and argued 12-15 cases in the Appellate Court for the Middle District of Tennessee. These appeals have involved breach of contract, property ownership involving easements, rights of way, adverse possession, interpretation of deeds, construction contracts and fraud, negligent misrepresentation, Tennessee Consumer Protection Act, real estate transactions involving damages, deeds with an automatic reverter and fee simple determinable.

Several of the appellate cases involved divorce and post-divorce issues. These cases on appeal addressed the division of marital and separate property, alimony, calculation and division of military retirements, commingling and transmutation of separate property, visitation/parenting time, termination of visitation/parenting time, contempt and the enforcement of a prenuptial agreement.

I have represented many clients in transactional matters involving purchases of business stock, limited liability company membership interests, partnership interests, commercial leases, letters of intent, co-packing contracts with national brands, employment and severance agreements for business and employees, the sale and purchase of businesses, mergers, the review and sale of technology. I have prepared independent contractor agreements, non-disclosure and non-compete agreements, incorporated sub-S corporations, limited liability companies and non-profit organizations, independent contract / 1099 agreements, and IRS sec. 1031 Like Kind exchanges.

During my practice, I have prepared and or updated corporate by-laws, minutes, charters, stock powers, officer resignations, changes to registered agent and registered office, shareholder redemption, partnership and operating agreements.

I have represented clients regarding Social Security Disability claims and appeared at hearings before Administrative Law Judges and Boards of Appeal on their behalf. I have appeared on

behalf of client in front of Lebanon City Counsel, Wilson County Commissioners, Wilson County Planning Commission and the Board of Zoning Appeals. I have appeared before the Tennessee Occupational Safety and Health Administration regarding safety inspections. I was counsel for several Nashville cab drivers regarding their licenses and transferability in front of both the Board and City Council.

I have appeared before the Tennessee Department of Safety regarding forfeitures in criminal cases and suspension of driver's licenses.

At the present time, Judge Wooten hears both criminal and civil cases. I know my legal experience, and what I have learned over these 33 years, will allow me to quickly and effectively manage the Circuit Court docket.

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

While in Wyoming I represented grandparents in the first grandparent visitation case in Wyoming. I was unable to argue the case in front of the Wyoming Supreme Court due to returning to Tennessee. However, my clients' grandparent visitation was upheld.

I represented a local business owner in a corporate dissolution between two equal owners of a multi-million dollar company. The case involved very complex accounting and business evaluations, allegations of fraud, breach of fiduciary duty, embezzlement and dissolution of the company. We were able to completely disprove all the allegations and were able to successfully purchase the Company. In doing so, over 40 jobs were saved and the business has continued to grow to supply its customers nationally.

McFarland v. McFarland, 2007 Tenn. App. LEXIS 509, the husband owned his farm prior to the parties' marriage. In fact, we were able to show that the husband's family had owned the farm since the original land grant from the State of North Carolina. Also, the parties were receiving or would receive a military retirement which involved complicated calculations for the division of the marital portion. After a trial, both parties appealed issues to the Court of Appeals. The Court held that there was not a transmutation of the family farm even though the wife had made contributions to the house. Due to the market driven forces in the area, neither parties contribution to the farm affected its value. The appellate court remanded the case to the trial court with directions to vacate the portion of the final divorce decree valuing and dividing the parties' interest in the wife's military pension. The appellate court affirmed the remainder of the judgment for the husband.

In Raines v. Raines, M2002-01952-COA-R3-CV, the Court upheld the ruling in favor of my client regarding the transmutation and commingling of separate assets which the trial court found to be marital property.

In White v. Early, 211 S.W.3d 723, which is a reported case, the plaintiffs filed the action against the defendant marina owners and my client who was a previous owner of a boat slip, alleging fraudulent misrepresentation, breach of contract, and violation of the Tennessee Consumer Protection Act. The trial court found for the plaintiffs, finding that the defendant marina owners made fraudulent misrepresentations and that the defendant slip owner transferred rights that were illusory. On appeal the Trial Court was overturned and held that valuable rights were transferred and that the damages to the plaintiffs were not caused by the allegedly fraudulent misrepresentations.

In the Estate of Ora Sloan Blankenship, the personal representative proceeded to administer the Decedent's estate submitting a holographic will. My client filed a response asserting that the decedent was not of sound mind at the time of the execution of the will, that she was unduly influenced to sign the will and the will was not properly executed. During the jury trial we presented numerous witnesses, including a hand writing expert. The jury returned a verdict in favor of my clients on all issues. The administrator subsequently filed a motion for a new trial. Ruling on the motion for a new trial, the trial court found that there was insufficient evidence to support the jury's finding that the alleged will was obtained through Sloan's undue influence. However, the trial court found sufficient evidence to support the jury's conclusion that the document was not a properly executed holographic will and ordered the estate to proceed intestate. The administrator appealed. The Court of Appeals did not issue a formal ruling pursuant to Rule 10(a) of the Appellate Rules of Procedure. Rule 10(a) allows the Court, if all of the judges are in agreement, to find that the jury verdict would stand and a ruling would not further the rule of law. The Appellate Court stated that there was material evidence to support the verdict of the jury and affirmed the judgment, overruling the Trial Court.

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

From August, 1994 to August 27, 2004 I managed my own practice which involved 1-2 paralegals while handling cases in Chancery, Circuit and Federal courts throughout Middle Tennessee. My cases involved civil, criminal and juvenile issues.

On August 27, 2004 I became a partner at McBrien and Kane with Brody and Angel Kane. I continued to handle cases throughout Tennessee. We had three attorneys and four paralegals.

I was asked to sit as a Special Judge for General Sessions Judge John Gwin to hear Orders of Protection.

I have been mediating cases for other attorneys for over 6 years. These cases have involved business ownership disputes, family law (asset and debt division, parenting time, alimony and child support), veterinary malpractice, personal injury, will contests, employer/employee severance and non-compete agreements, contractual interference with a business relationship, debt collection and construction. Mediations have been with attorneys and pro se. I have had several mediations last for two to three days in order to work through the issues.

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

Not applicable.

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.

University of Tennessee, Bachelor of Science, Forestry, 1983
Cumberland University, Samford School of Law, Doctor of Jurisprudence, 1986

PERSONAL INFORMATION

12. State your date of birth.

1960

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

October 1960 – April 1988, 1992 – PRESENT.

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

27 Years

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

Wilson 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.

Not applicable.

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.

Not applicable.

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.

Not applicable.

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. You may wish to request a report from the appropriate supervisory authority (or authorities) for a complete history.

Board of Professional Responsibility: 2006: Complainant: Mark Cook. The complaint was dismissed.

Board of Professional Responsibility: approximately 2000: Complainant: Frances Sonneberg. The complaint was dismissed.

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.

Yes. I have owed federal taxes for which a tax lien was filed. The taxes were paid over a period of time and have been paid. During the years for which the lien was filed my wife had been injured in a car wreck, required surgery for two neck fusions, was out of work and the other driver was uninsured. I also had 3 of my children in college and my wife returned to school to finish her nursing degree during this time.

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

Not applicable.

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.

Not applicable.

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.

Lebanon Noon Rotary Club, Tennessee: Member of the Board of Directors: 2017 to 2019

The Glade Church: 9000 Stewarts Ferry Pike, Mt. Juliet, Tn. 37122: I have been on the Board of Trustees, taken mission trips to the 9th Ward in New Orleans, participated in 2010 Flood demolition and remodeled homes, cut fire wood, built handicap ramps, helped move military and other families, painted the Church and other homes. I have performed pro bono legal work for the church as needed for a number of years. I have volunteer as a driver for Compassionate Hands for the homeless. I mentor 4th-5th grade boys at a local elementary school and teach bible study to 4th-5th grade boys.

Lebanon Youth Soccer Association: 2014 to 2016: Board member

Lebanon Youth Travel Soccer: 2014 to 2017: Chairman of the Board and Board Member. Travel assistant coach and manager.

Ducks Unlimited: Member of Board of Directors - 2014 to 2019

Middle Tennessee Area Retrievers Club

Delta Waterfowl: Member of the Board - 2014 to 2019

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.

Not applicable.

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.

Fifteenth Judicial Bar Association: 1992 to the present

Tennessee Bar Association: 2009 - 2016

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.

Not applicable.

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.

Not applicable.

ESSAYS/PERSONAL STATEMENTS

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

Throughout my thirty-three year practice of law, I have strived to understand and incorporate the needs of the parties within the boundaries of the law. My parents raised us to listen and see

people for who they are and have compassion for them. They taught us to never look down on anyone and to strive to understand them without quick conclusions.

I am very familiar and work well with all of the judges in this district and the clerks. I know that I can work with the judges in managing the court dockets and case load without interruption.

Since I began conducting mediations, involving all types of litigation, I have truly enjoyed working through the factual issues to resolve the case. My ability to listen to the parties dealing with complex personal and legal issues, and reliance on my legal experience, helped me to determine the issues to be resolved.

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)*)

I am seeking the position of Circuit Court Judge for the 15th Judicial District consisting of Wilson, Macon, Smith, Trousdale and Jackson counties. There are three circuit court judges. Judge John Wootten hears civil and criminal cases in all five counties and in the one-year period ending June 30, 2018 had heard 1,220 cases. With my 33 years of experience in both civil and criminal litigation, I know that I can handle these types of cases. Throughout my career I have spent many long nights and weekends preparing for trials, drafting documents and managing my practice. Based on my work ethic and experience, I believe there will be no impact or need to change the current system for this district. However, if a change were needed, (for example I would be needed to handle domestic cases as well), then my experience would allow me to do so without any issues.

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)*

I believe that at the core of the judicial position the Court has to follow the law even though his personal feelings or beliefs are different. A judge is not given this position to legislate or impose his own feelings. The judge has to listen to the evidence and apply it to the law regardless of personal belief.

As an attorney, I have represented mothers and fathers regarding a parent relocating to another state with the party's children. Being a father who is very involved with his children, it has conflicted with my personal experience to argue on behalf of the mother that she should be allowed to move with the children. However, I have not allowed my personal feelings interfere with the representation of my client. The law allows for parents to move with their children and each parent has the right to have the matter heard fairly and impartially. I know that I can bring that to the litigants that would appear before the court.

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. Honorable Brody N. Kane
Criminal Court Judge, 15th Judicial District
[REDACTED]
Lebanon, TN 37087
PO Box 804 (37088-0804)
[REDACTED] (office)
[REDACTED] (cell)

B. Senator Mark Pody
[REDACTED]
Nashville, TN 37243
Phone: [REDACTED]
Cell: [REDACTED]
Email: [REDACTED]

C. Honorable Ensley Hagan
General Sessions Judge, Division III, 15th Judicial District
[REDACTED]
Lebanon, TN 37087
[REDACTED] (office)
[REDACTED] (cell)

D. Dale Nunnery, President & CEO
Shenandoah Mills Inc
[REDACTED]
Lebanon, TN 37087
[REDACTED] (office)
[REDACTED] (cell)

E. Representative Clark Boyd
[REDACTED]
Nashville, TN 37342
Phone: [REDACTED]
Cell: [REDACTED]
Email: [REDACTED]

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, Fifteenth 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:

December 2, 2019.


Signature

When completed, return this questionnaire to Ceesha Lofton, 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.

SHAWN J. MCBRIEN

Signature

12-2-2019

Date

012169

BPR #

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

Wyoming State Bar. 5-2529

