

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.

Assistant District Attorney, Office of the District Attorney of Davidson County, 20th Judicial District

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

1981 – TBPR 009418

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 1981) - TBPR number 009418. License currently active

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any State? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

I have been employed as an Assistant District Attorney for my entire career as a lawyer, except for a clerkship with Justice William Harbison the Tennessee Supreme Court in 1981-82. I have never been employed in a non-attorney position.

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.

I prosecute all types of criminal cases in Criminal Court of Davidson County. My present caseload includes murder cases (five of which are currently set for trial) ; attempted murder ; rape and sexual battery ; robbery, burglary and felony drug cases. I also frequently handle a docket in General Sessions Court ("jail docket") where I represent the State on preliminary hearings on various felony cases, and negotiate plea agreements.

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.

Over my 36 years as an attorney, I have tried over 200 jury trials, and also have prosecuted thousands of cases in General Sessions Court and Juvenile Court. For eight years (2007-2015), while serving as an Assistant District Attorney at Juvenile Court, I handled many transfer hearings, as well as adjudicative and dispositional hearings. From 1983 to 1985, I headed the Vehicular Crime Unit in Davidson County. In that position I prosecuted virtually all DUI and vehicle crimes at the jury trial level. This assignment was particularly important at the time because an amendment to the sentencing laws for driving under the influence in 1982 mandated incarceration for those convicted of driving under the influence.

At present, and over the past 36 years, I have prosecuted violent felonies in Criminal Court. Having been an Assistant District Attorney for those many years, I am very familiar with all types of cases that come before a Criminal Court Judge. These include domestic violence prosecutions, murder cases, complex white collar and fraud cases, rape and sexual offenses, vehicular homicide and so on.

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

One of my special duties in Division IV has been to prosecute violators of Judge Seth Norman's Drug Court program. This has given me an appreciation of the suffering of those unfortunate men and women who abuse prescription and non-prescription drugs. When these addicted defendants relapse, and thus incur a probation violation, I believe that putting their full sentences into effect should be used by a judge only as a last resort. Re-incarceration of drug court violators is often the least effective means of addressing the problem of drug abuse.

I am familiar with not only the ordinary matters that come before a Criminal Court judge, but also less frequently-occurring hearings on Post-Conviction Relief and Writs of Error Coram Nobis. I also have experience with cases in which the insanity defense is raised.

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

I have served as an advisor to a homeowner's association, coached high-school students in the Davidson County Mock Trial competition, and mentored young attorneys through the Nashville Bar Association.

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

In 2012 I applied for an open position as a magistrate at Juvenile Court of Davidson County.

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 North Carolina at Chapel Hill, B.A. 1977. American History major

Cumberland School of Law at Samford University, J.D. 1981

PERSONAL INFORMATION

12. State your date of birth.

1955

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

I have lived in the State of Tennessee my entire life, except for seven years living out-of-state while attending college and law school.

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

I have lived in Davidson County since my birth in 1955, except for seven years pursuing my undergraduate and law degrees in North Carolina and Alabama.

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

Davidson 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.

No military service

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.

No

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.

No

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.

One complaint in 1990 or 1991 was filed against me. As I recall, a person complained that I had not prosecuted her case vigorously enough. The Board of Professional Responsibility dismissed the complaint without a hearing.

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.

No

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

No

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.

No

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.

I am a member and co-leader of the Murdock MacLeod Sunday School Class at Westminster Presbyterian Church in Nashville, and, separately, have participated actively for five years in Tuesday morning Disciple Bible Study classes at this church. I also am a member of the Shakespeare Club of Nashville.

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.
- If so, list such organizations and describe the basis of the membership limitation.
 - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No

ACHIEVEMENTS

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.

Nashville Bar Association, Historical Committee

Nashville Bar Association, Memorial Service, Sub-Committee. Chair in 2006-2007

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.

I was named a Fellow with the Tennessee Bar Foundation in 2009, and the Nashville Bar Foundation in 2010.

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.

I sought appointment as a Magistrate for the Juvenile Court of Davidson County in 2012.

ESSAYS/PERSONAL STATEMENTS

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

Being situated in a heavily urban and rapidly-growing jurisdiction, the Criminal Court of Davidson County serves as the trial court for many very important prosecutions. The judge presiding over this court must bring a temperament and experience equal to this demanding task. He or she must be able to protect the constitutional rights of the defendants who come before him or her, and must also be sensitive to the maintenance of community safety.

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)*

Criminal Court of Davidson County, Division IV.

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. Regardless of my personal views, I would follow the U.S. Constitution, the Tennessee Constitution, the case law established by the appellate courts of our State and nation, and the various statutes enacted by our legislature. My personal preferences, though not irrelevant, must take a back seat to the Constitution and law decided by the courts and legislatures. I have great respect for the principle of *stare decisis*.

I once prosecuted a case in which an accomplice to a double murder, who had pled guilty prior to trial, agreed to testify that the defendant on trial perpetrated the two murders. Under Tennessee law, an accomplice's testimony must be corroborated by some other evidence as to the identity of the perpetrator. The jury found the defendant guilty and the trial judge upheld the verdict, but the appellate court reversed the conviction and dismissed the case because, except for the accomplice, we prosecutors did not have any witness or other evidence to identify the defendant. I personally believe that if a jury credits the testimony of any witness (even an accomplice) as to the identity of the defendant, and returns a guilty verdict, the court should recognize that verdict even though there may be no other witness who can identify the defendant. Nevertheless, I would uphold this decided Tennessee law if I were to preside over a trial where the prosecution failed to provide any evidence to corroborate the testimony of the accomplice.

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. Ana Escobar, Assistant District Attorney, Nashville, TN
37201. Judge-Elect of General Sessions Court of Davidson County.

B. Edward Yarbrough, Attorney at Law, Bone, McAllester, Norton PLLC,
Nashville, TN 37219

C. Guy Griffith, Associate Pastor, Westminster Presbyterian Church,
Nashville, TN 37205

D. Glenn Funk, District Attorney, 20th Judicial District,
Nashville, TN 37201

E. Wilford Fuqua, Business Consultant, Nashville, TN,

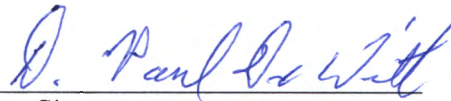
AFFIRMATION CONCERNING APPLICATION

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 **Criminal Court, Division IV, 20th 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 16, 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.

David Paul DeWitt

Type or Print Name

David Paul DeWitt

Signature

July 16, 2018

Date

009418

BPR #

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