

Tennessee Trial Court Vacancy Commission
Application for Nomination to Judicial Office

9/8/20

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(including county)

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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 Microsoft Word 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 Microsoft Word 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. See section 1(g) of the application instructions for additional information related to hand-delivery of application packages.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am an attorney in private practice. In addition, I serve as Special Judge for the Davidson County General Sessions Courts, Rutherford County Juvenile Court, Sumner County General Sessions Court, and was designated by the Chief Justice to serve in Montgomery County General Sessions and Juvenile Court during the vacancy caused by the death of Judge Grimes. I have also been selected to serve as a Special Magistrate in Federal Court to assist with a class action lawsuit involving a Juvenile Court in Middle Tennessee.

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

1994, BPR#016674

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 have only been licensed to practice law in the State of Tennessee. My bar number is 016674. I have been licensed continuously since 1994.

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).

1994 – 1998, 2006 - Present, Private Law Practice. I have general practice as set forth more

particularly below. I also frequently serve as a Special Judge in General Sessions and Juvenile Court.

From 1998 to 2006 I served as General Sessions and Juvenile Court Judge for Robertson County, Tennessee. In addition to my duties as judge, I was also the department head of both General Sessions staff and the Juvenile Court staff, managing personnel, planning, annual budgets, etc. During my tenure as Judge for Robertson County, I served as an executive committee member for the Tennessee Council of Juvenile & Family Court Judges. I was also Chairman of the Legislative Committee for the TCJFCJ, where I assisted in drafting legislation and overseeing the implementation of modifications to the Tennessee Code Annotated. I also served as Chairman of the Compensation and Benefits Committee for the Tennessee General Sessions Judges Conference.

I am a former member of the Tennessee Supreme Court's Permanency Planning Commission. I have been a Delegate to the American Bar Association, representing Tennessee judges at the American Bar Association's annual meeting in New York. I also served as a member of the Tennessee Supreme Court's Judicial Council which reviews proposed legislation to assist the State Legislature in drafting bills by making comment on the effect of any proposed legislation on the court system.

Prior to becoming an attorney, I was the Regional Manager for Aetna Investment Services, Inc. I was responsible for oversight of operations and sales of retirement plans in Tennessee, Alabama and Kentucky in consulting with governmental and non-profit organizations regarding employee benefits and retirement plans. I supervised securities sales personnel and support staff in all three states, including budgeting, hiring, training, discipline, compliance, etc. My office oversaw approximately \$300,000,000.00 in retirement assets. Clients included Metropolitan Nashville, State of Tennessee, University of Tennessee and Tennessee State Board of Regents Colleges and Universities as well as Governmental employers and non-profit hospitals. I had various securities licenses, including series 7, 8, 4 and 63. I received my Chartered Life Underwriter and my Chartered Financial Consultant degrees from The American Collage of Bryn Mawr, PA.

Prior to my service with Aetna Investment Services, I was Vice President and Compliance Officer for Garrett Securities, Inc., where I was responsible for compliance and oversight of securities transactions and personnel. I was licensed as a General Securities Sales Representative, General Securities Sales Supervisory Principal, Commodities and Municipal Securities Principal.

Garrett Securities, Inc. was a wholly owned subsidiary of Cumberland Valley Bank Shares, which also owned First Cumberland Bank. I was involved with the charter of First Cumberland Bank, where I served as Vice President and Compliance officer of the bank. I was also a loan officer and managed bank personnel while at the bank.

Prior to the formation of Cumberland Valley Bank Shares, I worked as Regional Director of Garrett Financial Services of Florida, where I established a regional office for GFS in Florida. GFS was a bank service company working with various banks across the state. I obtained the

endorsement of the Florida Bankers' Association for our company.

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 do a good bit of family law work, approximately 40% of my practice is focused on family law, including juvenile court cases. I also do criminal defense work, approximately 20%. Civil litigation takes up about 15% of my practice, and estate and probate take up about 5%. The remainder of my time (20%) is spent serving as Special Judge, primarily in the Davidson County General Sessions Courts.

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.

Because a good deal of my practice is in family law, I have been a frequent representative in the Circuit and Chancery Courts. I have also been in the Criminal Courts for criminal defense work. I have done appellate court work, however not extensively. I have also had cases in the Federal Court forums but have associated with other counsel who more frequently engage in Federal practice.

One of the longest trials I have had in a trial court was a jury case in the Chancery Court in Lincoln County, Tennessee. The initial trial lasted six (6) days, when the jury made an award of compensatory damages and found that punitive damages were appropriate. The punitive phase was bifurcated and was subsequently held later over two-and-one half days.

I enjoy trying cases and attempting to assist my clients in obtaining favorable outcomes.

As stated previously, I have significant experience as a result of my service as Chairman of the Legislative Committee for the Tennessee Council of Juvenile and Family Court Judges, in which capacity I rewrote the jurisdictional statute for Juvenile Courts and the transfer statute from Juvenile Courts to other appropriate Courts (T.C.A. 37-1-103 and 37-1-112), the result of a case over which I presided involving these issues (Thompson v. Branch No. 13168) Juvenile Court of Robertson County and subsequent proceedings before the Court of Appeals.

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

The above referenced case in Lincoln County is probably the most unique matter I have handled. It involved a client whose former attorney mishandled her legal malpractice case, then sued my client to collect a "Res". The attorney was a former United States Attorney, who had specialized in deceptive business practices prosecutions. My client countersued, and we eventually obtained a six-figure compensatory award and a two-million-dollar punitive damages award. The attorney administratively dissolved his P.C. under which he had practiced, then filed for bankruptcy (which was dismissed). The attorney appealed the adverse decision to the Tennessee Court of Appeals. His appeal was denied, and the trial court decision was upheld by the Court of Appeals. He then sued (individually) the justices on the Court of Appeals as well as the Chancellor. He most recently has lost another attempt to set aside the judgments in the United States District Court, which dismissed his petition, resulting in an appeal by the attorney to the Sixth Circuit in Cincinnati.

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

Though I am not a Rule 31 mediator, I have occasionally done mediations for others, usually at the request of a Court or by private individuals. I have also served as judge for the mental health courts involving commitments of patients at Middle Tennessee Mental Health Institute, Skyline Hospital, Vanderbilt, Parthenon Pavilion, etc.

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

None

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.

Manatee Community College, Bradenton, FL, Associate of Arts Degree, 1976 (my degree was obtained in one year)

Belmont College, Nashville, TN, Bachelor of Business Administration, 1979

Investment Training Institute, Atlanta, GA, NASD Series 4, 7, 8, & 63, 1986

American College, Bryn Mawr, PA, Chartered Life Underwriter degree, 1994 and Chartered Financial Consultant degree, 1995

Nashville School of Law, Nashville, TN, Doctor of Jurisprudence, 1994 (9th in class), awarded the faculty scholarship in my third and fourth year at NSL

Tennessee Bar Associations Leadership Law Class, 2005

PERSONAL INFORMATION

12. State your date of birth.

██████████ 1957

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

43 years

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

I lived in Robertson County from 1986 – 2010 when I moved to Davidson County. My wife and I returned to Robertson County in 2019 when we bought our home in Springfield. My daughter and son-in-law and their two children have always lived in Robertson County, as has my wife’s entire family (she is one of five siblings). As a result, we have continuously been active in Robertson County. We have actually been residents of the county for approximately 26 years.

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

Robertson

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 was not in the military. My family has had extensive military contribution.

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. I did voluntarily enter a guilty plea (class C misdemeanor, the same as a speeding ticket) for killing a deer out of season, December 6, 2005. I am an avid outdoorsman, and years ago went bow-hunting one weekend and took a buck with my bow. I checked the deer in to the local market and noticed that the clerk seemed a bit unusual. I did not know if it was because she knew who I was or something else. When I returned home, I checked my "green card" which had a synopsis of the game seasons, and realized that for the first time ever, the TWRA had inserted a "youth hunt" during the bow season. As a result, I had technically taken the deer out of season.

The next Monday morning, I called our game warden, with whom I was good friends, and told him I needed to report someone who had taken a deer out-of-season. I told him that this person had gone bow hunting and taken a deer during the youth season, not realizing that there was a youth hunt over the weekend. Our game warden asked who this person was, and I told him it was me. I told him he needed to come to see me at his earliest convenience.

A few days later he appeared during court at the back of the courtroom, and I took a recess. We went to my chambers, and he suggested that he just give me a "warning". Although I appreciated his generosity, I asked him if he had ever had this type of situation happen before. He replied that he had a similar matter a few years earlier, where a muzzleloader hunter had harvested a deer and then realized it was during a "youth hunt" weekend. The hunter called and reported himself. I asked our game warden what he did in that case. He replied that he gave the man a citation, which he could pay without coming to court. I told our game warden that he needed to do the same thing with me. Reluctantly, the game warden wrote me a citation and we walked down to the clerks' office. The game warden handed the clerk the citation, which she read and abruptly looked up at me. I wrote her a check.

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

complete history.

In my nearly 27 years of practice, I have had one complaint with the Board of Professional Responsibility which was dismissed.

In my career as a judge, I think I have had possibly 4 or 5 complaints. They were all dismissed except for one, which resulted in an informal reprimand.

About six (6) months after my election, there was a case where several individuals of one family took out assault charges against members of another family. They also requested ex-parte orders of protection. The allegations in the requested orders of protection were months old and related to the same criminal matters which were pending. The criminal cases all had bond conditions which prohibited any contact between the parties, and the bond conditions afforded the petitioners of the orders of protection the relief they sought through the orders of protection. I denied the ex-parte orders and set the matters for hearing.

A few days later, the former judge who was then in private practice as a result of the election, appeared as counsel for the petitioners. It was the first time he had returned to court since he lost the election. He asked me to recuse myself from the case. Although I knew nothing about the case or the parties (other than what was alleged in the affidavits), I decided to grant his recusal request in hopes that it would make him feel more comfortable and help him get back into court and the practice of law.

About a week later, the Chief Deputy from the Sheriff's office came to me and said that they had just received ex-parte orders of protection in the above case which had been signed by the substitute judge. The Chief Deputy said that the cases were set in the next day or two, and that the Sheriff's office could not get the ex-parte orders served in time. He was asking what to do, since I had previously denied the ex-parte orders. I told him to just let the matters come to court and to let the substitute judge decide when the matters were set for hearing, not to serve the ex-parte orders. I told him that the bond conditions protected the O.P. petitioners and that the ex-parte orders were essentially redundant.

Approximately 10 days later, I received a complaint from the Court of the Judiciary which had been filed by the former judge. He was complaining about my instructions to the Chief Deputy. I filed my response to the complaint, explaining what had happened. The Court of Judiciary asked me to come in to meet with them. When I did, they advised that a recusal decision is in the sole discretion of the judge, and if there is no basis for recusal, there is no requirement to grant a recusal request. I said that I was simply trying to be kind to the former judge. Disciplinary counsel advised that once a recusal is granted, the judge thereafter should take no further action in the case. I advised that I understood, and that it would not happen again. It has not.

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.

I was divorced in 2002 in the Chancery Court in Robertson County. The docket number was 16380. My ex-wife and I resolved our case by agreement and did not have a trial.

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.

Tennessee Bar Association, Nashville Bar Association, Robertson County Bar Association, First Baptist Church Hendersonville, TN, (church member and choir member, I also served as a Vacation Bible School volunteer in 2019). I have previously (more than 5 years ago) served as Chairman of the Board of the Robertson County Senior Citizen Center, board member of Habitat for Humanity, Chairman of Deacons of Springfield Baptist Church, Interim Minister of Music for Springfield Baptist Church, Chairman of the Constitution and Bylaws committee for Springfield Baptist Church, and Sunday School Teacher. I am also a former Kiwanis member, having applied for re-entry to the organization. (I cooked pancakes on May 8, 2021 from 7:00 – 10:00 a.m., I was instrumental in establishing a CASA (Court Appointed Special Advocate) program in Robertson County during my term as judge. I also significantly helped to recruit foster families on behalf of the Department of Children's Services, approximately 30 foster families in a concerted effort during my service as Juvenile Court Judge.

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.

None

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

American Bar Association

Robertson County Bar Association, 1994 – present

Nashville Bar Association

No committee responsibilities, dates have been from time-to-time

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 served on the Executive Committee for the Tennessee Council of Juvenile and Family Court Judges, I also was selected to serve as the Chairman of the Legislative Committee for the Council

I was selected to serve as Chairman of the Compensation and Benefits Committee for the Tennessee General Sessions Judges Conference

I was selected to participate in the Tennessee Bar Association's Leadership Law Class in 2005

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.

General Sessions and Juvenile Court Judge, Robertson County, TN 1998 - 2006

ESSAYS/PERSONAL STATEMENTS

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

I find public service extremely rewarding, and there is no better forum where I can serve, which matches my skillset, than as a jurist. I am seeking this position because it is one of the most familiar courts to me, in my community, and with others in this legal community with whom I have had the privilege to work. The Circuit Court is an important forum for people to resolve civil conflicts, determine criminal consequences, and deal with all manner of disputes. It is an honorable place. Integrity is paramount with me, as I believe a judge must not only act appropriately but must avoid even the appearance of impropriety. I would count it an honor to serve the 19th judicial district in this important capacity.

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 judgeship covers both Montgomery and Robertson county. Presently, this particular judgeship has focused primarily on criminal cases, although the Circuit Court has jurisdiction to hear both criminal and civil matters. There are four (4) Circuit Court judges and one Chancery Court judge. If selected, I believe my judicial experience would benefit the administration of justice in the 19th district. I know the judges and believe we would work well together. Judge Goodman is not only a former neighbor, but also my former Sunday School teacher. The majority of my judicial experience has been involved in criminal cases, which is the focus of this particular court.

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 personally do not agree with abortion, however, I have heard cases involving juvenile girls who sought an abortion without the consent of their parent(s). I appointed a Guardian Ad Litem, set the matter for hearing and ruled on the case, as the law required. I have also presided over same-sex marriages, as the law affords such couples the benefits of marriage.

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. Judge Ana Escobar, [REDACTED] Nashville, TN 37219, [REDACTED]
B. Judge Gale B. Robinson, [REDACTED] Nashville, TN 37201, office phone ([REDACTED])
C. Raymond G. Prince, Esq., [REDACTED] Nashville, TN 37219, [REDACTED]
D. Howard Bradley, former County Mayor of Robertson County, [REDACTED] [REDACTED] Springfield, TN 37172, [REDACTED]
E. Gina Fox, Davidson County Court Administration, [REDACTED] [REDACTED] Nashville, TN 37210, [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 [Court] 19th Judicial District, Circuit Court, Division IV 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: May 10, 2021.



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.

Max D. Fagan
Type or Print Name

[Signature]
Signature

5/10/21
Date

016674
BPR #

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

None
