

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.

Associate Solicitor General and OSG Liaison for Criminal Divisions, Office of the Tennessee Attorney General

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

1994; Tennessee BPR No. 016514

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, TN BPR No. 016514, Active

Mississippi, MS Bar. No. 9030, Inactive (Not engaged in the practice of law in Mississippi)

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).

Associate Solicitor General, Office of the Tennessee Attorney General, October 2015 to present.

Deputy Attorney General, Law Enforcement and Special Prosecutions Division, Office of the Tennessee Attorney General, February 2013 – September 2015.

Associate Deputy Attorney General, Criminal Justice Division, Office of the Tennessee Attorney General, May 2004 – January 2013.

Assistant Attorney General / Senior Counsel, Criminal Justice Division, Office of the Tennessee

Attorney General, June 1994 – July 1996, July 1998 – August 1999, May 2000 – April 2004.

Associate Attorney, Farrar & Bates, LLC, Nashville, Tennessee, September 1999 – April 2000.

Assistant Public Defender (serving as Metro Guardian Ad Litem), Davidson County Public Defender's Office, January 1998 – July 1998.

Solo Practice, Nashville, Tennessee, August 1996 – January 1998.

Associate Attorney, Colingo, Williams, Heidelberg, Steinberger & McElhaney, P.A., Pascagoula, Mississippi, June 1991 – May 1994.

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 Associate Solicitor General, I review and conduct appellate work in criminal cases before the Tennessee Supreme Court, United States Court of Appeals for the Sixth Circuit, and United States Supreme Court. The cases generally involve constitutional, statutory, and other substantive and procedural issues impacting criminal convictions and/or sentences. My work consists entirely of criminal-justice-related cases.

I review and edit appellate briefs prepared by colleagues, participate in moot courts in preparation for oral argument, and provide advice and assistance to Assistant Attorneys General in the Criminal Justice Section and to other State officials, including District Attorneys General, upon request. I also review state and federal appellate decisions and make recommendations to the Solicitor General on whether to seek further appellate review and potential grounds for review.

I separately handle significant cases addressing a range of criminal justice issues. Recent examples include a constitutional challenge to the Tennessee Public Safety Act in the Tennessee Court of Criminal Appeals, constitutional challenges to the Tennessee Department of Correction's Protocol for Lethal Injection in the Tennessee Supreme Court, and appeals to the United States Court of Appeals for the Sixth Circuit in capital habeas corpus cases under 28 U.S.C. § 2254.

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 legal experience has been focused largely on criminal justice issues and includes trial, appellate, advisory, and management experience. I have handled appeals at all levels of the state and federal appellate systems, including cases before the Tennessee Court of Criminal Appeals, Tennessee Supreme Court, United States Court of Appeals for the Sixth Circuit, and United States Supreme Court. As an Assistant Attorney General for the State of Tennessee, I have been

assigned the most serious criminal law cases—those in which the death sentence has been imposed—and I have handled appeals of those matters at all stages of review. I have extensive experience in the federal district courts and in the Sixth Circuit Court of Appeals in federal habeas corpus cases. These cases may require bench trials on discrete legal challenges, such as allegations of ineffective assistance of counsel, prosecutorial misconduct, and at times, claims of actual innocence.

I also gained substantial trial-court experience in private practice defending individuals accused of criminal violations before the Davidson County Criminal and Juvenile Courts. Many of those cases involved appointments representing indigent defendants. I have handled criminal cases in federal district court and before the Sixth Circuit Court of Appeals as a member of the federal Criminal Justice Act Panel. And I participated in numerous civil trials in the state and federal court, focusing primarily on tort liability, as an Associate Attorney in a civil litigation firm in the early years of my career.

In 1998, I served as Metro Nashville’s first Guardian ad Litem, a position established within the Metro Public Defender’s Office to represent children in abuse/dependency proceedings in the Davidson County Juvenile Court. Those matters involved more informal proceedings with relaxed evidentiary standards.

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

I have handled more than one hundred criminal and federal habeas corpus appeals, resulting in over thirty-five published decisions. I have argued three cases before the United States Supreme Court and more than twenty cases before the Sixth Circuit Court of Appeals and the Tennessee Supreme Court.

The following is list of United States Supreme Court cases in which I have actively participated: *Cone v. Bell*, 129 S.Ct. 1769 (2009) – briefed and argued; *House v. Bell*, 547 U.S. 518 (2006) – briefed and argued; *Bell v. Thompson*, 545 U.S. 794 (2005) – briefed and argued; *Bell v. Cone*, 543 U.S. 447 (2005) (per curiam) – prepared certiorari petition which case was decided; *Holland v. Jackson*, 542 U.S. 649 (2004) (per curiam) – prepared certiorari petition on which case was decided; *Bell v. Cone*, 535 U.S. 685 (2002) – briefed.

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

I have advised and consulted with prosecuting attorneys across the State of Tennessee, individually and through formal speaking engagements, on a range of criminal law issues. I have also served in a supervisory capacity as Deputy Attorney General of the Law Enforcement and Special Prosecutions Division. In that capacity, I managed a team of attorneys, investigators, and support personnel handling a range of matters, including appeals in civil forfeiture

proceedings under the Uniform Administrative Procedures Act, criminal actions related to state securities and environmental law violations, and responses to subpoenas for law enforcement records and/or evidence, among other things.

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

This is my first application for a judicial position.

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 Mississippi, 08/84 – 05/88, Bachelor of Arts (English), awarded May 1988.

University of Mississippi School of Law, 08/88 – 05/91, Juris Doctor, *cum laude*, awarded May 1991.

National Intelligence University, Washington, D.C., 08/06 – 07/08, Master of Science in Strategic Intelligence, awarded July 2008.

PERSONAL INFORMATION

12. State your date of birth.

1966

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

24 years

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

24 years

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.

I have served as an Intelligence Officer in the United States Navy Reserve since August 1999. I hold the rank of Commander and am Information Warfare qualified. I currently serve as Commanding Officer of a Navy reserve unit in St. Louis, Missouri, supporting the Office of Naval Intelligence Kennedy Irregular Warfare Center. Additional reserve assignments include Commanding Officer and Reserve Director of Intelligence for the Joint Intelligence Center Central Command 0597, Devens, Massachusetts (2015-17), and Executive Officer of Naval Reserve Defense Intelligence Agency Headquarters 1567, Huntsville, Alabama (2013-15).

My active duty assignments have included two overseas deployments in support of Operation ENDURING FREEDOM. Most recently, I served at Coalition Forces Headquarters in Kabul, Afghanistan from July 2011 to August 2012 as Team Lead and Production Manager in the Joint Intelligence Operations Center. Before that, I served as an Indications & Warnings Watch Officer for the U.S. Fifth Fleet in Bahrain from January to May 2003 during the run-up and initial phases of the second Iraq conflict. I was honorably discharged from both active duty tours.

Personal decorations and awards include the Defense Meritorious Service Medal (2 awards), Navy and Marine Corps Commendation Medal, Navy and Marine Corps Achievement Medal (2 awards), Afghanistan Campaign Medal, NATO Medal, and the National Defense Service Medal. In 2005, I was selected as Junior Officer of the Year for Navy Reserve Intelligence Region Southeast.

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.

None to my knowledge.

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.

In 2006, I was named as a defendant in my official capacity as a State employee in a matter filed under 42 U.S.C. § 1983 involving a constitutional challenge to Tennessee's protocol for carrying out death sentences by lethal injection. The trial court summarily dismissed me as a party in that case. *Edward Jerome Harbison v. George Little, et al.*, No. 3:06-cv-01206 (M.D. Tenn).

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.

Boy Scout Troop 1914, Cathedral of the Incarnation, Nashville, Tennessee; Committee Member, October 2015 to present.

Hillsboro High School Band Boosters, Nashville, Tennessee; Fundraising Chair, June 2017 to

present.

Cub Scout Pack 32, Eakin Elementary, Nashville, Tennessee; Committee Chair; Webelos Den Leader, 2013-15.

St. Patrick Catholic Church, Nashville, Tennessee; Member.

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.

a. I have participated as an adult leader in the Boys Scouts of America (BSA) since 2013 to support the membership and participation of my two sons. Before October 2017, BSA restricted the membership of its primary scouting organization to boys (although girls did participate in the Venture and Sea Scout BSA programs). BSA now permits girls to participate as members in all of its programs.

b. If selected, I would continue to serve as an adult leader of BSA because I believe the program teaches its members (boys and girls) life skills, self-confidence, leadership, and values that will serve them for years to come.

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; Nashville Bar Association; Association of Government Attorneys in Capital Litigation; American Bar Association; U.S. Naval Institute

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.

William M. Leech, Jr. Award, Tennessee Attorney General's Office, 2010.

Regional Vice President's Award for Excellence in Appellate Advocacy, Association of Government Attorneys in Capital Litigation, 2002.

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.

None

ESSAYS/PERSONAL STATEMENTS

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

A judicial appointment would represent the pinnacle of a legal career dedicated to criminal justice and would allow me to effect positive change in individual lives and the community at large. The position entails tremendous responsibility, but my broad experiences as a legal practitioner, a military leader, a parent, and a member of the Davidson County community have prepared me for the task. A trial judge must deliver justice according to the law, taking into account individual circumstances while balancing the purposes of criminal justice—to impose punishment when necessary, to facilitate rehabilitation whenever and however possible, and to provide moral support to the victims of crime always. I am seeking the position of Criminal Court Judge because I believe I have the knowledge, skills, and judgment to carry out those critical responsibilities.

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 appointment as Criminal Court Judge for the 20th Judicial District serving Davidson County, Tennessee. The position is one of six trial judges with jurisdiction of criminal matters in Davidson County. If appointed to fill the vacant position, I would bring substantial legal experience, diligence, and operational efficiency that would allow a seamless transition in a high-volume judicial district. Going forward, I believe the impact of my appointment will be evident in my commitment to provide fair and effective judicial processes that are true to constitutional and statutory mandates and that take into account the unique qualities, characteristics, and potential of each individual who comes before the 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 have served as an Assistant to the Tennessee Attorney General in various capacities for more than twenty years focusing in large part on the criminal appeals process. Most of that time has been spent in the Criminal Justice Division handling criminal appeals originating in judicial districts across the State and federal habeas corpus cases challenging judgments secured by District Attorneys statewide. I have always committed my best efforts to upholding criminal judgments secured at the trial court level, drilling down on each legal point from every angle to support the desired outcome. And admittedly, as an advocate operating in an adversarial system, the ability to win the hard cases can be a source of pride. But some cases present close legal questions. Sometimes a concession is necessary even in cases involving the most egregious crimes. Sometimes defense of a criminal judgment is necessary even if the case seems trivial. But the obligation to seek justice, regardless of personal views or opinions, must be the paramount consideration and has been a guiding principal of my practice.

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. Andrée S. Blumstein, Solicitor General, Office of the Tennessee Attorney General,

B. Mark E. Davidson, District Attorney General, 25th Tennessee Judicial District,
, Ripley, TN 38063,

C. Amy L. Tarkington, Senior Deputy, Criminal Justice Section, Office of the Tennessee Attorney General,

D. Verna Wyatt, Executive Director, Tennessee Voices for Victims, Nashville, Tennessee,

E. Kathleen J. Hawk, CAPT, USN, Commander, Naval Information Forces Reserve, Region Southwest,

AFFIRMATION CONCERNING APPLICATION

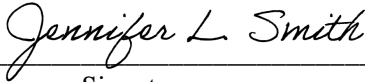
Read, and if you agree to the provisions, sign the following:

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] Criminal Court, 20th Judicial District (Davidson County) 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 23, 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.

Jennifer L. Smith
Type or Print Name

Jennifer L. Smith
Signature

July 23, 2018
Date

016514
BPR #

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

Mississippi, Bar No. 9030
