

Tennessee Judicial Nominating Commission
Application for Nomination to Judicial Office

Rev. 22 December 2011

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INTRODUCTION

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating 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 <http://www.tncourts.gov>). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) *and* electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit fourteen (14) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to debra.hayes@tncourts.gov.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am a member of the law firm of Toppenberg & Burke, P.C., 612 S. Gay Street, Suite 1, Knoxville, TN 37902.

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

1987, Tennessee BPR # 012584.

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 am only licensed to practice law in Tennessee.

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).

Tax Attorney, ERNST & WHINNEY (now ERNST & YOUNG), Atlanta, Georgia, August 1987 to March 1988. Associate Attorney, WAGNER, MYERS & SANGER, P.C., Knoxville, Tennessee, May 1988 to August 1989. Member, TOPPENBERG & BURKE, P.C., Knoxville, Tennessee, September 1989 to Present.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable.

7. 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.

My current practice focuses primarily on Domestic Relations matters, including divorce; child custody and co-parenting issues; child support and alimony; and equitable division of the marital estate, including real property, financial assets, business interests and debt. I also represent clients in post-divorce cases enforcement of judgments, and modifications of parenting plans, alimony and child support. In the Juvenile Courts I represent parents in custody, co-parenting, dependency and neglect, and abuse issues. I prosecute and defend orders of protection actions. I draft and enforce prenuptial agreements, and represent both adoptive and biological parents in adoption matters. Domestic Relations cases account for approximately 85 to 90% of my practice.

I serve as a Rule 31 Family Law Mediator, which represents approximately 5 to 10% of my practice, and I handle occasional tort actions and other civil law matters which represent approximately 5% of my practice.

8. 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. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, *etc.*) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Commission needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Commission. Please provide detailed information that will allow the Commission to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

I have experience in all phases of civil litigation from pre-trial investigation through the appellate level.

During my tenure at TOPPENBERG & BURKE, P.C. I handled approximately twelve hundred cases in various Chancery, Circuit, Juvenile, Sessions and United States District and Bankruptcy courts, including the following counties: *Knox, Anderson, Blount, Bradley, Campbell, Claiborne, Cocke, Davidson, Grainger, Greene, Hamblen, Hamilton, Hawkins, Jefferson, Loudon, Monroe, Morgan, Roane, Sevier, Scott, Sullivan, Union and Washington.*

I have participated in seven cases before the Tennessee Court of Appeals Eastern Section, five of which were my cases. In two I was co-counsel with Mr. Toppenberg and wrote the appellate briefs, including the well-known *Casteel* child support case [*Casteel v. Casteel*, 1997 WL 414401 (Tenn.Ct.App 1997)(cert. denied)]. Four cases involved challenges to the Court's property division and/or alimony award [*Florian v. Edenfield*, 1996 WL 310018 (Tenn.Ct.App. 1996); *Jenkins v. Jenkins*, 2000 Tenn.App. Lexis 424 (Tenn.Ct.App. 2000); *Rowe v. Rowe*, 2007 Tenn.App. Lexis 95 (Tenn.Ct.App. 2007); and *Gencay v. Gencay*, Docket No. E2011-01521-COA-R3-CV, (Tenn.Ct.App. 2011) (appeal voluntarily withdrawn by appellant)]. Another affirmed the Court's suspension of a father's co-parenting time following his violation of court orders [*Smith v. Smith*, 1996 WL 591181 (Tenn.Ct.App. 1996)]. The last upheld the dismissal of a paternity action brought against a married mother five years after the child's birth [*Blair v. Norris*, 2000 WL 631399 (Tenn.Ct.App. 2000)].

I have handled administrative law hearings and appeals in unemployment and child support cases at various times in my career. I have had two jury trials, one involving personal injuries in a car wreck and one a wrongful discharge employment case. Both cases were heard in the Knox County Circuit Court. I have also handled several workers compensation cases in Knox and surrounding counties.

I prosecuted three cases in the United States District Court, Eastern District of Tennessee, two of which went to the United States Court of Appeals for the Sixth Circuit. One was a retaliatory discharge case filed in conjunction with the EEOC which reached settlement prior to trial. [*Hanley v. Rockwell Intl.*, Civil Action No. 2:95-IV-73 (1995)]. In the second matter, I was co-counsel in a Title VII race discrimination case and received a successful verdict at trial. [*Cantrell v. Knoxville Community Development Corporation*, Civil Action No. 3-91-756 (1995)]. The Defendant appealed and I briefed and argued the case before the Sixth Circuit which resulted in a published opinion. [*Cantrell v. Knoxville Community Development Corporation*, 60 F.3d 1177 (6thCir. 1995)]. Finally, I was co-counsel in a Section 1983 civil rights action against a local municipality and several individual defendants which received national media coverage (*Waters v. City of Morristown, et. al*, Civil Action No. 2:94-CV-77(1999)]. We reached a settlement as to some defendants, but the claims against the City were dismissed. The trial court found the city councilman had not acted under color of law. We appealed but the dismissal was affirmed. [*Waters v. City of Morristown, et. al*, 242 F.3d 353 (6thCir. 2001)].

I represented a local electrical contracting company for approximately ten years until the principal retired and sold his business. I provided general corporate advice and handled its collections, including the filing of mechanic and materialmen liens, and lawsuits to enforce the liens.

Early in my career I represented debtors in Chapter 7 and 13 bankruptcy cases, and I am still

regularly involved in bankruptcy matters ancillary to my domestic relations practice. These generally involve defending against an opposing party's attempt to discharge property and support obligations.

In addition to my responsibilities to our clients, I have been the financial officer and co-manager of my firm since its inception. This has included such tasks as firm and trust accounting; corporate and employee tax filings; hiring and managing associates, clerks, paralegals and support staff; planning, marketing and budgeting; and the myriad of other responsibilities necessary to run a small business. Mr. Toppenberg and I were early urban pioneers in downtown Knoxville, purchasing the Old City Club property in 1994 and converting it into our present office space. I also assist in managing and maintaining a 150-year-old historic building.

At WAGNER, MYERS & SANGER, P.C. I was responsible for a variety of general corporate matters. These included drafting contracts for corporate healthcare clients; preparing local, state and federal filings and reports for a variety of businesses; and overseeing the due diligence for the sale of two local businesses to national companies. I also prepared research memoranda on a variety of issues for our corporate clients.

At ERNST & WHINNEY (now ERNST & YOUNG) in Atlanta, Georgia, I prepared personal and corporate tax returns, developed tax strategies for a large real estate development, prepared research memoranda for the firm on a variety of issues, and assisted in firm recruiting.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

My ability to make a positive difference in a family's life was evident in the case I handled for a young widow whose four-year old son drowned in a neighbor's swimming pool. He was revived after an extended time under water, but was thereafter severely handicapped. We negotiated settlements with the neighbor who left her pool gate open, the child's inattentive care giver, and a fencing contractor who had improperly installed a gate on the care giver's fence. While the settlement could never rectify the wrong done, it allowed my client to devote herself to her quadriplegic child's round-the-clock care. Afterwards, I helped her establish a special-needs trust and a conservatorship for the child. I continued to help her with various legal issues that arose and, when her son passed away several years later, I assisted in wrapping up the child's legal affairs.

I was co-counsel in a Federal Court race discrimination trial against a municipal corporation, and later briefed and argued the matter before the Sixth Circuit Court of Appeals. Our client was given a larger verdict than what had been pled and the Defendant appealed. The trial judge took judicial notice of the Plaintiff's previous counsel's disability and tolled the deadline for filing an EEOC claim. The Sixth Circuit upheld the amount of damages and the attorney's fee awards but remanded for further hearing on the propriety of the judicial notice. The case was settled without further hearing [*Cantrell v. Knoxville Community Development Corporation*, 60 F.3d 1177 (6th Cir. 1995)].

Mr. Toppenberg and I worked together on the case *Casteel v Casteel*, 1997 WL 414401

(Tenn.Ct.App.1997)(cert. denied), which established a per diem adjustment in the calculation of child support when a parent exercised more or less the standard 80 co-parenting days. Child support at the time was calculated solely as a percentage of the payer's income. We convinced the trial court to allow deviation of support based upon the parents' similar incomes and their ratio of time with the children. The Court of Appeals adopted another approach (for years known as the "Casteel Rule") for deviations in support. Eventually the child support regulations were amended to adopt an Income Share Method which take into account both parent's income and the number of days each spend with the children, and this remains the current law in Tennessee (*Tenn.Reg. 1240-2-4 et seq*).

In *Blair v. Norris*, 2000 WL 631399 (Tenn.Ct.App. 2000), I successfully argued that the alleged biological father was estopped from challenging the paternity of my client's child born during my client's marriage, and defended the decision on appeal. The statute was later amended to establish specific procedures and deadlines for filing such actions.

Each case in which I am involved is of utmost significance to my client as the outcome will have a profound effect on the future course of his or her life. Family law cases are among the most difficult in the practice of law because they involve not only legal but emotional issues which must be considered in handling the case. Unlike other civil law matters, the parties are often unable to look at their situation objectively, or to weigh the costs and benefits of addressing their affairs in a businesslike manner. I have handled domestic cases for very wealthy individuals, for those of very modest means, and from all economic strata in between. All have required the same level of my attention to the client's emotional, financial and legal needs.

Without violating client confidentiality, I can say generally that I have handled many different domestic situations including those with issues of domestic violence, child abuse, loss of financial status, mental illness, kidnapping, theft, hired hit men, murder and attempted murder, IRS, FBI and TBI involvement, and a variety of other complicating behaviors and circumstances which have made representing the interests of my client more difficult. It has always been my goal, however, to help my clients make their way through very difficult circumstances, and to emerge in a viable financial condition with their dignity intact and their children protected.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I was certified as a Rule 31 Family Law Mediator in January, 2005. Since that time I have handled between fifty and sixty mediations in a variety of divorce and child custody matters, many of which required multiple sessions. The job of a family law mediator is challenging in that these parties bring years of unresolved conflict to the table, and the task of finding a path to consensus is left with the mediator.

In one post-divorce child-support matter, I was able to mediate a resolution to years of contentious litigation which had been ongoing since the parties' children were young. The

settlement resolved all outstanding issues and made provisions for the children to complete their college education. In another matter, I mediated the dispute of parents who had coincidentally chosen to remarry on the same day. While there was a good deal of disagreement as to who scheduled their wedding first, I was able to negotiate an agreement whereby their child could attend and participate in both ceremonies. While the solution should have been self evident, it took hours of patient effort to bring the parties to the obvious conclusion.

I have taken the bench as a Special Master in Knox County Fourth Circuit Court for Orders of Protection on a number of occasions. In that role I receive the testimony of parties and witnesses, make evidentiary rulings, hear the arguments of counsel, and issue findings of fact and dispositional recommendations to the trial judge. Unless my findings and recommendations are appealed to the judge, which I recall happening only once or twice, they become the order of the court. In a typical day on the bench, I handle between fifteen and twenty cases, of which four or five require contested hearings. One representative case involved a daughter's action against her mother for breaking out her windows with a golf club in an alcohol-fueled dispute. Another case involved a wife who was seeking protection from her abusive husband who was the lay pastor of their church. A number of the cases I heard had ended up in Order of Protection court because the parties were unable to afford counsel for divorce.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

I have served as a guardian ad litem in many cases in Knox County over the years in a wide variety of situations, but I never served as a financial fiduciary. In one matter, I represented the interests of a child whose mother sought to terminate the parental rights of the father for the sole purpose of preventing his co-parenting. I opposed the termination, and the mother dismissed her petition. In another case, I represented a woman who required a financial and medical conservator after she fell off a roof and broke her back. On another occasion, I represented the interests of man who had suffered a debilitating stroke, making recommendations to the court after both his daughter and his second wife had petitioned to be his conservator. I represented the interests of children in their parents' acrimonious divorces when allegations of serious emotional harm or abuse were raised.

My involvement typically requires a home or hospital visit to my client, and interviews with the parties, extended family members, teachers, healthcare professionals, *etc.*, before preparing a report or recommendation to the court (under the old rule) or participating in the hearing (under the new rule). Each time I was asked to serve as a guardian ad litem, I worked closely with counsel for both parties while maintaining my independence and protecting the interests of my client.

In 2010, I was appointed to serve as a member of the Tennessee Supreme Court Rule 40A Workgroup which made recommendations to the Supreme Court concerning their proposed revisions to the Guardian ad litem rules.

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

I have been involved in providing *pro bono* legal services to a number of charitable organizations. I assisted the Concord Sailing Center, Inc. in drafting the necessary forms to establish a boat donation program. I am currently preparing a 501(c)(3) application for my son's high school swim team booster club. Early in my career I also set up a 501(c)(3) corporation for a religious organization in Oregon.

Because of my family law experience, I often serve as an informal adviser to attorneys in other areas of the law when family law issues arise in their practice.

I was a legal consultant for a family member who was working to establish a religious radio station, KASK, in Solano County, California. After the County's Zoning Administrator refused to give Maranatha Broadcasting a permit to build a broadcast facility on church property, Maranatha filed suit in state court then in federal court. The U.S. District Court (*No. CV-02-00336-MCE*) ruled favorably and set aside the zoning restrictions which targeted religious organizations. The county appealed to the U.S. Court of Appeals, Ninth Circuit, but voluntarily dismissed the appeal after mediation [*Vacaville SDA Church, et al. v. Solano County, et al*, No. 04-16413 (2007)], and the station went on the air in 2005. I am not licensed to practice law in California, and local counsel were retained to handle the litigation.

My husband's family inherited land within the Pisgah National Forest in North Carolina. There are title issues which go back to the original North Carolina land grants, and I have been responsible for researching the chain of title, and negotiating boundaries and a right-of-way with the U.S. Forest Service. This is been a particularly difficult process due to the number of handwritten deeds, unclear boundaries, intra-family transfers and intestate secession issues, timber company easements, and the involvement of the United States Government.

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

None.

EDUCATION

14. 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.

I attended Middle Tennessee State University on a Presidential Scholarship from August 1980 through May 1982 but transferred due to accreditation issues in the University's Accounting Department. I enrolled in Carson-Newman College in August 1982 and in May 1984 received a Bachelor of Science Degree in Accounting and Data Processing, *magna cum laude*. At Carson-Newman I received a Presidential Scholarship and won competitive scholarships from both the Tennessee and American Societies of Certified Public Accountants. I attended the University of Tennessee College of Law from August 1984 through May 1987 and graduated with a Doctor of Jurisprudence. While at the University of Tennessee, I was one of three members of the Stetson National Tax Moot Court Team that finished second place nationally in the Oral Competition, and third place nationally in the Brief Competition. I was Secretary and later Vice President of the Student Bar Association. I was on the Dean's List and a scholarship recipient. I served on the Moot Court Board and was a Representative on the Dean's Advisory Counsel. I was a student member of the Financial Aid and the Academic Standards and Curriculum Committees, and served as Assistant Editor of the Tennessee Judicial Newsletter.

PERSONAL INFORMATION

15. State your age and date of birth.

I was born on January 20, 1962 and I am 50 years of age.

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

I have lived continuously in East Tennessee since 1974, except from August 1987 through March 1988, when I resided in Atlanta Georgia.

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

I have lived continuously in Knoxville, Knox County Tennessee since March 1988.

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

Knox County, Tennessee.

19. 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.

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

I pled to a speeding violation in 1997 in the Knoxville City Court and to failing to stop at a stop sign in 2004. Both cases were dismissed upon payment of court costs.

21. 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.

22. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

No.

23. 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.

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

No.

25. 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.

Elaine Burke v Mary Katherine Langdon, I brought an action against a former divorce client who was the personal representative of her ex-husband's estate. The parties' daughter was the sole beneficiary of the estate. I had been awarded a judgment against the ex-husband for attorney's fees incurred in their divorce case. Ms. Langdon did not provide me the statutory creditor's notice, and I filed an action seeking recognition of my claim against the estate. The Estate refused to recognize my claim as timely, filed 29 months after the decedent's death. I sued Ms. Langdon [*Knox County Chancery Court, Docket No. 160692-2*] personally for breaching her duty to provide me the required statutory notice of the decedent's death. The Chancery Court granted her summary judgment, ruling that a personal representative had no personal liability for failing to give notice. I appealed the finding and the Court of Appeals reversed [*190 SW.3d 660 (Tenn.Ct.App.2005)*]. The issue of a personal representative's fiduciary responsibilities to a known creditor was a case of first impression in Tennessee, and was the subject of an article in the Tennessee Bar Journal (*December, 2005*).

Elaine Burke v John Doe, et al. In 2003 I was a passenger in a vehicle struck from behind on I-40 in North Carolina by a hit-and-run driver. Our vehicle rolled over multiple times, and the other passenger and I suffered significant injuries. The matter was settled by the various insurance companies involved without the necessity of a trial. (*Knox Co. Circuit Court, Docket No. 2-675-04*)

Mary Lynn Cameron and Michael Cameron v. Judith Burke and Douglas Toppenberg. In 2004 a suit was filed against my husband and me but was never served upon us nor pursued by the Plaintiff. I slid into the Plaintiff's vehicle during a rainstorm, and it was a minor "fender bender" incident with no injuries; the only property damage was a bent license plate holder. I first learned about the case when I received a copy of a dismissal order from the court for failure to prosecute. Because the court's file is archived, I have yet to see the complaint. (*Knox County Circuit Court, Docket 2-189-04*).

Elaine Burke v. Linda Harb. In 2005 I was the passenger in a car struck by the Defendant's vehicle at an intersection in Knoxville. This incident occurred while my attorney was still negotiating settlement of the John Doe case referenced above. As there were multiple insurance companies involved, a lawsuit was filed to avoid a statute of limitations problem. The matter was settled amicably (*Knox County Circuit Court, Docket No. 2-38707*).

Earl Pickett v Elaine Burke. In 1999 I represented a mother in an Order of Protection action against her daughter's middle school teacher who was engaged in a sexual relationship with the child. When he violated the Order of Protection by continuing to communicate with the child, we filed contempt charge against him. Mr. Pickett then filed a third-party suit against me for abuse of process, malicious prosecution and violation of his civil rights in an attempt to disqualify me from the case. My attorney filed a motion to dismiss and a motion for Rule 11

sanctions after which Mr. Pickett dismissed his complaint against me. He subsequently pled guilty in Criminal Court and served time in the state penitentiary. During the course of these events, Mr. Pickett's attorney filed several motions with the Court of Appeals involving myself and my client which the court denied and dismissed (*Knox County Fourth Circuit Court, Docket No. 80906*)(*Tenn.Ct.App. Docket No. E1999-02295-COA-R3-CV 03-A-01-9909-CV-00317*).

26. 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 was a member of the PTA at Webb School of Knoxville and a parent volunteer for the Webb School Sailing and Girls Field Hockey Teams. I am a member of the PTA at the L&N STEM Academy. I am assisting the STEM Academy Swim Team Booster Club, Gryphon Aquatics, in setting up a 501(c)(3) corporation, preparing coach contracts, etc. I serve as the scoring official for my son's summer swim league and his high school swim team.

My firm hosted art shows at our downtown office for students at Nature's Way Montessori School and for local artist David Seal, and a photography exhibition for Judge Harold Wimberly. I volunteered as a Wednesday night pre-school teacher at First Baptist Church for many years. I served on the Knox County Foster Care Review Board, a volunteer panel of citizens that meets monthly to review and make recommendations concerning children in the custody of the Tennessee Department of Children's Services.

I have participated in mentoring programs with students from several local middle and high schools. I am a member of my local neighborhood association, Town Hall East. My family has a social membership at Holston Hills Country Club, and we previously held membership at the Concord Yacht Club where both our children learned to sail.

27. 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

28. 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.

Master and Emeritus Member, Hamilton Burnette Chapter, American Inns of Court, 2005 to present; *Chair*, Family Law Section, Knoxville Bar Association, 2010 to present; *Chair*, Unmet Needs of Children Committee, Knoxville Bar Association, 2003 to 2011; *Member*, Tennessee Supreme Court Rule 40A Workgroup, 2010 to 2011; *Member*, IOLTA Grant Review Committee, Tennessee Bar Foundation, 2001 to 2003; *President (2000), Treasurer (1989-1999) and Executive Board Member*, East Tennessee Law Association for Women; *Participant*, Volunteer Legal Assistance Pro Bono Program, 1989 to present.

I am admitted to practice before all Tennessee Courts and the United States District Court, Eastern District of Tennessee, the United States Court of Appeals for the Sixth Circuit, and the Supreme Court of the United States of America.

29. 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.

Cityview Magazine, Top Attorneys Award, 2010, 2011 and 2012.

30. List the citations of any legal articles or books you have published.

Not applicable

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

Knoxville Bar Association, *Family Law Practitioner's Guide: In the Best Interests of the Child*, November 9, 2012.

Tennessee Bar Association, *Guidelines for Handling a Divorce Case in Tennessee*, August 24, 2012.

Knoxville Bar Association, *Effectively Representing Children: Legal Duties and Ethical Challenges*, October 29, 2010.

East Tennessee Lawyers Association for Women, *Unmet Needs of Children*, October 17, 2007.

Additionally, as co-chair of the Family Law Section and the Unmet Legal Needs of Children Committee for the Knoxville Bar Association, I have been responsible for planning, organizing and moderating other CLE seminars for the Knoxville Bar Association over the past five years.

32. 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.

In 2006 I submitted my resume for consideration for the position of Eastern District Claims Commissioner, a position appointed by the Governor.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No.

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings which reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

I am attaching two appellate briefs which I researched and wrote in the matters of *Casteel v. Casteel*, 1997 WL 414401 (Tenn.Ct.App 1997), and *Rowe v. Rowe*, 2007 Tenn.App. Lexis 95 (Tenn.Ct.App. 2007). My partner and my office staff assisted only in the final editing of the documents.

ESSAYS/PERSONAL STATEMENTS

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

When I was twelve years old, I spent a week at the home of our family friend, Arzo Carson, who served as the Scott County District Attorney General. During this visit, General Carson prosecuted the Ratliff brothers who had killed an elderly neighbor, then burned her body to hide the crime. I spent several days attending the trial. It had a profound impact on me, and from that point forward I knew I would be an attorney. I saw that the law brought a measure of justice for the victim's family and the community. While I practice civil rather than criminal law, I carry many of the impressions made and lessons learned from that experience to my law practice today. Diligent effort in difficult circumstances can make a difference.

My skills in dealing with individuals in difficult personal circumstances, twenty-three years of litigation practice, and my background in business and accounting, give me the experience necessary to serve the people of Knox County in a judicial capacity. I plan to handle not only general civil litigation cases, a need that appears to be decreasing, but I will also serve the ever-increasing domestic relations case load in our district.

36. State any achievements or activities in which you have been involved which demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. (150 words or less)

I work with Legal Aid of East Tennessee to provide *pro bono* legal services to individuals they are unable to represent. I volunteer on "Order of Protection Day" in Fourth Circuit Court to help unrepresented petitioners. In my Knoxville Bar Association capacity, I am regularly approached by members of the local bar concerning unmet domestic legal needs in our community. I often handle the situation myself or find another attorney to assist the individual. Under my chairmanship, the Family Law Section prepared responses to the Administrative Office of the Court concerning the proposed pro se divorce and permanent parenting plan forms developed by the Access to Justice Commission. We also suggested changes to proposed Supreme Court Rule 40A.

37. 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 applying to serve as judge of the Knox County Circuit Court, Division III. If selected, I would be the first woman to serve as a Circuit Judge in Knox County, and would be one of only two female, trial judges serving Knox County out of ten such positions (four Circuit, three Chancery and three Criminal).

There are four Circuit Court divisions in Knox County, but historically only Division IV hears domestic relations matters, while the remaining three divisions hear general civil cases.

According to the latest available data from the Administrative Office of the Court (July 1, 2010 - June 30, 2011) domestic relations cases made up 72% (4871/6793) of all Knox County Circuit Court filings. This data suggests that Division IV handles more than the other three Circuit divisions combined. The Administrative Office of the Court data also indicates that the number of jury trials in the first three divisions has declined in recent years (90 jury trials in Knox County Circuit Court in the 2000-2001 fiscal year and 35 jury trials in 2010-2011). Domestic relations cases are also heard by all three Chancery divisions in Knox County making up 27.4% (1433/5225) of all cases filed in the 2010- 2011 time period.

Residents of Knox County are much more likely to appear in court on a domestic relations matter than any other type of civil case. If selected, I would make myself available to hear family law cases, thereby lessening that case load in the other trial courts in Knox County.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

I have been primarily involved with community organizations involving the legal community and my children. I have balanced my community activities with my responsibilities as an attorney, as a wife and mother, and as a manager of our law firm, rental property and other business activities. I have detailed my community activities in paragraphs 26, 29 and 36, above. As my children are now older (ages 22 and 15), I see this judicial position as an opportunity to further serve the community utilizing my skills and experience.

After accepting this position, I will follow the requirements set forth in the Code of Judicial Conduct concerning participation in community services and organizations. While some of my activities may necessarily be curtailed, I welcome the opportunity to continue involving myself in charitable events and community life to the extent allowed under the Code.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Commission in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

I was raised in the small town of Oneida, Tennessee and my parents are both natives of East Tennessee. My father taught special needs children and my mother had the difficult task of raising three children on a teacher's salary. I don't remember going without, but I learned at an early age that I would have to work to help pay for school activities and extras. I began babysitting at age 13 and have been continuously employed since that time. I worked at a local drug store weekends and summers throughout high school and college, and this experience taught me responsibility and helped me develop a strong work ethic. I also learned how to allocate my time to meet my goals and responsibilities, and I was still able to graduate as high school Valedictorian and participate in many extracurricular activities. Despite our modest circumstances, it was always understood that my brothers and I would attend college, and we all

worked to finance our education. I was a good student and earned merit scholarships to finance my tuition, but there were times I had to work three jobs to meet my other expenses.

My husband and I have lived and practiced law together in Knoxville, Tennessee since 1989. I began my legal career planning to have a corporate law practice, but soon after our marriage I learned I was pregnant and chose to practice law with my husband while our daughter was young. I discovered to my surprise that I enjoyed litigation, that I enjoyed helping clients going through difficult life experiences, and I never left. My daughter has started law school at the University of Tennessee, and my son is in his sophomore year at the L&N Stem Academy, so I have the time and opportunity to pursue new challenges. With the encouragement of my colleagues, family and friends, I hope to give back to a profession and a community that has been supportive of me by serving as a Knox County Circuit Court judge.

40. 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)*

A good judge desires to right all encountered legal wrongs, but will not be able to do so in every circumstance. Following the law will, on occasion, require a result that seems inequitable or distasteful. In order for our system of justice to work, judges must set aside their personal beliefs and biases and follow the letter and spirit of the law. A trial judge's job is not to legislate, but rather to implement the legislature's intent. Each component of our justice system plays an integral role in the process and, if one branch acts to supersede the role of another, the whole system is suspect, leading to uncertainty for the parties and counsel, and a disrespect for the law by the public.

In many child support cases, the application of the guidelines to a particular set of facts results in inequity. I recently represented a mother in a child support modification action. Her children's father had adopted his step-children and, as the guidelines allow a credit for the payor's after-acquired children, there was a substantial reduction in the amount of support my client received. While this was an apparent end run around the child support regulations, it was nevertheless the law which the court was required to follow.

In another case handled by my firm, the ex-husband remarried and named his new wife (our client) as the survivor beneficiary for his pension, and died a few months later before retiring. His previous wife had been given half of his retirement benefits in their divorce, but as it was a municipal pension that was not subject to a qualified domestic relations order, and as the prior wife had not been named a survivor beneficiary under his pension, the court had no choice under the law but to give the new wife the full amount of the deceased husband's survivor benefits, and the prior wife received nothing. I will commit myself to make decisions based solely on the law and the relevant facts of the case before me. And while equitable principles will be considered when appropriate, I do not believe it will be my job to rewrite the law to achieve a particular result.

REFERENCES

41. 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. Arzo Carson, former Director of the Tennessee Bureau of Investigations, [REDACTED] [REDACTED]
B. Marshall H. Peterson, Attorney, HOLBROOK, PETERSON & SMITH PLLC, 2607 Kingston Pike, Suite 150, Knoxville, TN 37919. 865.523.2900.
C. John Beaty, Attorney and client, [REDACTED] [REDACTED]
D. Dr. Carol Ann Coyle, Psychologist, [REDACTED] [REDACTED] [REDACTED]
E. Karen Tyrell, PhD, Sr. Vice President, BHE Environmental Inc., [REDACTED], [REDACTED].

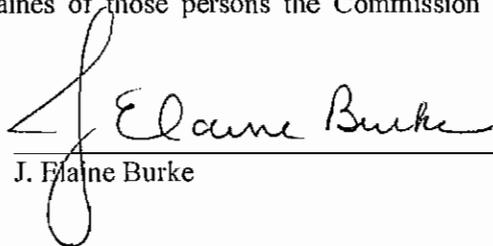
AFFIRMATION CONCERNING APPLICATION

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 Knox County Tennessee Third Circuit Court, 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: November 8, 2012.



J. Elaine Burke