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 seventeen (17) 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 currently a partner in the Murfreesboro law firm of Price & Tidwell.

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

I was admitted to practice law in Tennessee in 2000 and my Board of Professional Responsibility number is 20544

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 is the only state in which I have been licensed.

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

No.

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

I completed my legal education in 1998 at the Nashville School of Law.

During my first through third year of law school I worked at the Metro Legal Department in Nashville. While my general job assignment was as a runner for the department, I would, on occasion, be called upon to do some legal research. The research included issues involving one or more of the departments within the Metropolitan Nashville government and was performed under the supervision of one of the staff attorneys. The experience I gained was invaluable and touched on a wide array of areas of the law including civil rights violations, contract negotiations, back property tax enforcement, and issues with bills before the metropolitan counsel.

In May of 1997, at the end of my third year of law school, I was hired by the Honorable Cheryl Blackburn, Criminal Court Judge of Division III, 20th Judicial District, as her law clerk. Prior to this my experience with the legal system included the issues mentioned above at the Metro Legal Department. During the three and one half years with Judge Blackburn my legal experience was solely in the area of criminal procedure and substantive criminal law.

As Judge Blackburn's law clerk I assisted her in drafting memoranda of law, performing legal research, compiling jury charges, taking notes during motion hearings and trials, and any number of other related tasks. My primary areas including assisting in the drafting of memoranda of law in the areas of post-conviction relief, writs of *habeas corpus,* and motions to suppress evidence.

The experience of being closely involved in the day-to-day operation of a judicial office was very rewarding. Likewise, the opportunity to watch up close the process that Judge Blackburn took in deciding important issues, many of which affected lives for years to come, gave me an insight into the importance of preparation, discretion, and following the law.

On September 1, 2000, I opened a solo law practice in the Washington Square office building in Nashville in a suite that was known to local lawyers as the "incubator." The start of my private practice began by taking appointed cases in the Davidson County General Sessions Courts and in the Davidson County Criminal Court. I also was appointed as guardian ad litem on various conservatorship cases out of the Davidson County Probate Court. My practice evolved into a general practice where I took cases involving domestic relations, criminal defense, estate planning, and personal injury.

In April of 2003 I took on a partner, Eric Cartee, and we opened an office in Nashville doing business under the firm name Tidwell Cartee. We practiced as a true partnership where I focused on criminal defense and he focused on personal injury. It was during the years of 2003 and 2004 that two events occurred that changed my practice.

1. I was admitted to the Criminal Justice Act (CJA) panel of lawyers for the Middle District of Tennessee. This "panel" of lawyers is limited to lawyers who have second chaired a number of federal criminal defense cases and then placed on the first-chair panel of lawyers allowed to accept appointed cases in the Middle District of Tennessee Federal Court. Since 2003 I have either been appointed to, or been retained to represent, forty-eight (48) clients in the United States District Court for the Middle District of Tennessee. I have additionally represented several clients in the Eastern District of Tennessee.

2. In 2003 I took on a client that had been civilly sued by DirecTV, Inc. for the alleged surreptitious interception of DirecTV satellite signals. One client led to another and within a few years I had represented well over one-hundred (100) individuals who had either been sued in the Western, Middle, or Eastern District of Tennessee or who had been threatened with a lawsuit by counsel for DirecTV.

   The volume of these lawsuits required focused organization in that at any given time the cases would be in different stages of litigation. The experience I gained in the area of civil litigation was invaluable. The issues presented in these lawsuits were complex and at one point resulted in my assisting other attorneys in the Eleventh Circuit with researching and preparing for an appeal that ultimately was argued in the Eleventh Circuit Court of Appeals sitting in Miami, Florida. The appeal was decided in our favor. I did not argue the case but was present for the argument and provided support for the lawyers who argued.

   In April of 2006 I moved my office from Nashville to Murfreesboro and joined John Price in creating my current firm, Price & Tidwell. My practice since 2006 has included criminal cases in both federal and state courts, personal injury cases, domestic relation cases, and general civil matters.

   I have appeared in every court in the 16th judicial district and the Western, Middle and Eastern District Courts of Tennessee at one time or another and have taken a wide variety of cases. I have also appeared via pleadings in the Sixth Circuit Court of Appeals and the Tennessee Court of Criminal Appeals.

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.

I have been continuously employed since the completion of my legal education.

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 consists primarily of criminal defense work in both state and federal court. I estimate that these areas of practice make up 70% of my practice. The remaining 30% is split between domestic relations, personal injury cases, and other general civil cases. Because I am in a small firm I am faced regularly with new cases in all areas of practice. Those cases that I cannot personally take due to my caseload I refer to an associate within my office, D. Lyn Graves, or to my partner, John Price.

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 enjoyed a diversified career to date that has touched upon a variety of areas of practice. During much of my law school days I was employed by the Metro Legal Department. Although much of my work was as a runner, I gained insight into the workings of the Metro Nashville government and the legal issues that faced the Metro departments. On several occasions I was called upon to do legal research and I often had discussion with the staff attorneys concerning issues they were facing. I also observed court appearances from time to time, as cases would go to trial.

My exposure to criminal law began with my clerkship with Judge Cheryl Blackburn in Davidson County. As a law clerk I observed approximately ninety-(90) trials and many motions to suppress and post-conviction petition hearings in the three and one half years I was Judge Blackburn's law clerk. I also helped the Court put together the jury charge on many occasions. Along with the court officers I assisted with the jury during trials and interacted with the lawyers who practiced in her court. I also was fortunate enough to be able to interact with the court clerks, and the court officers and law clerks of the other judges in the 20th Judicial District.

During my years in private practice I have represented many clients charged with criminal

offenses. These matters have included charges from misdemeanors to Capital Murder. I have tried approximately thirty cases in state and federal courts including five (5) first-degree murder cases. The last murder trial I tried was in Rutherford County in 2010 and involved the State of Tennessee giving notice of the intent to seek death as a punishment. I have also been involved in the appeal of multiple cases in the state and federal system.

My civil practice began in earnest with the DirecTV litigation in 2003. The three (3) years of this litigation I was personally responsible for the 100 plus cases, all in various stages of litigation. I prepared discovery, took depositions, and prepared my client for discovery related issues and depositions. I have also represented numerous clients in divorce/child custody cases as well as numerous clients who have been injured either due to a car accident or slip and fall.

Early in my private practice I was appointed as *guardian ad litem* in multiple conservatorship cases by the Davidson County Probate Court. I have, likewise, represented proposed conservators later in my practice.

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

In *State of Tennessee v. Eric D. White*, CCA No. M2001-02731-CCA-R3-CD I received a reversal of a conviction based upon sufficiency of evidence after a jury trial that I tried for Mr. White. Based upon the Appellate Court's findings the case was reversed and dismissed.

I was a law clerk for Judge Blackburn during two separate capital murder trials in involving Paul Dennis Reid. (See Davidson County Case Nos. 97-C-1834 and 97-C-1836) Although Judge Blackburn was assisted by a capital case attorney from the Administrative Office of the Court during these cases, I was involved in most discussions concerning rulings in the case and became very well versed in the case law concerning evidentiary issues that arose during the two death penalty trials.

DirecTV v. multiple clients. As stated above, over a three year period (2003-2006) I represented well over 100 clients who had either been sued by DirecTV for unauthorized interception of DirecTV's satellite signals or who had received letters threatening a lawsuit for the same activities.

State of Tennessee v. Antonio Alexander, Rutherford County Case No. F-64676. I was lead counsel in this death penalty case tried in July of 2010. Among the convictions the jury returned a verdict of Second Degree Murder and Felony Murder and sentenced Mr. Alexander to Life in Prison Without Parole.

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 have not previously served as a mediator, an arbitrator, or a judicial officer.

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.

When I began private practice I regularly took appointments from the Davidson County Probate Court to act as *guardian ad litem* in conservatorship cases. Most of these were uncontested, however on one occasion, the contested conservatorship resulted in a three (3) day trial.

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

As a result of having worked in the office of a judge as well appearing before all of the federal courts in Tennessee and many of the state courts in the counties surrounding Rutherford County, I believe that I know what it takes to be good Trial Judge. Treating lawyers, clerks, staff, and witnesses with respect is paramount; listening before making a decision is key; and following the law despite personal feelings for either side is demanded. Based upon my experiences I believe that these qualities make a good judge.

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.

I have never submitted and application for judgeship to the Judicial Nominating Commission.

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.

Middle Tennessee State University – August, 1988 – August, 1992 – Bachelor of Science
Criminal Justice Major and Psychology Minor

Nashville School of Law – August, 1993 – May 1998 – Doctor of Jurisprudence

PERSONAL INFORMATION

15. State your age and date of birth.

42 – January 8, 1970

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

42 years

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

9 years

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

Rutherford County

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.

I have not served in the military.

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.

No

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.

Not Applicable.

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.

Jason L. Holley v. Price & Tidwell, John Price, Barry Tidwell, Rutherford County Chancery Court No. 09-1731MI. In this case a former client sued my firm, my partner, and myself individually for the return of a $750.00 fee. Our position was that the fee had been earned. Mr. Holley took the position that the fee had not been earned. Mr. Holley never showed up in Court and the case was dismissed for failure to prosecute on August 10, 2011. Mr. Holley filed a Notice of Appeal but never filed a brief. The appeal was dismissed and Mr. Holley was taxed with all costs on June 4, 2012. (See Court of Appeals No. M2011-02010-COA-R3-CV)

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.

Rutherford County Habitat for Humanity – Board Member 2005-2008

Middle Tennessee Christian Student Center – Board member 2004 – Present

Board Chairman -2009 - Present

Deacon – Rural Hill Church of Christ – 2003 - Present

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.

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.

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.

American Bar Association – August 8, 2008 – August 31, 2009

Tennessee Bar Association – January, 2009 – March 2009; January 2012 – March 2012

Nashville Bar Association – July, 2001 – October, 2001; April, 2003 – October, 2003

Rutherford/Cannon County Bar Association – May, 2006 - Present

Tennessee Association of Criminal Defense Attorneys – I am a current member but do not have

the dates of membership

Criminal Justice Act Panel (Middle District of Tennessee) – 2004 - Present

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.

Not applicable.

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.

Not Applicable

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.

I have not held public office nor been a candidate for public office.

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.

See the attached four memoranda/briefs. They reflect 99% of my personal work and are found at tabs A- D.

A. The Sentencing Memorandum I submitted on behalf of a client in Middle District case no. 3:09-00109(2).
B. The Memorandum in Support of a Motion to Sever I recently filed in Middle District

case no. 3:11-00012 (20).

C. The Memorandum in Support of a Motion to Suppress I recently filed in Middle District case no. 3:11-00012 (20).

D. A Response filed recently in Chancery case no. 09-1473DR in Rutherford County.

ESSAYS/PERSONAL STATEMENTS

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

I have been very blessed during my legal career. I have been taught by some of the best lawyers during law school, worked for great lawyers at the Metro Legal Department, and clerked for a great judge in Judge Blackburn. Lawyers who have mentored me over the years and been subject to countless questions from me have also helped shape my practice of law. Based upon all the help that I have received from lawyers and judges alike nothing would mean more to me than an opportunity to use that knowledge of the law and courtroom experience to serve the community. Sitting as a public servant and impartially hearing cases would be an honor and being able to apply the law to a case to determine the appropriate outcome is the ultimate responsibility of a judge and I believe that I have the ability to do that.

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 have in the past been involved in the Christian Legal Clinic in Rutherford County. As a part of this group I would go from time to time to the Salvation Army building, and later to a local lawyers office, to give legal advise to those who may otherwise not be able to seek legal counsel due to lack of finances.

I have also made a presentation to the Stones River Manor Nursing home residents on estate planning issues at no cost to the residents.

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)***

The judgeship I seek is for Part 3 of the Circuit Court of the 16th Judicial District. The 16th Judicial District is comprised of four Circuit Judges, a Chancellor, and three General Sessions Judges. Part 3 of the Circuit Court, along with Part 2 of the Circuit Court, has for many years handled the bulk of the criminal cases in Rutherford and Cannon Counties with the two remaining Circuit Courts and the Chancery Court handling the bulk of civil cases.

Considering the extremely large size of the criminal dockets in this judicial district, the attorney

selected for this position must be able to step in and immediately be able to handle a criminal docket and preside over criminal cases and trials.

My selection would impact the court in that I have the background to do this.

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 honored to serve in the past on the board of the Rutherford County Habitat for Humanity. Habitat's efforts in Rutherford County have transformed areas of the city and county that otherwise have traditionally been known for drug use, prostitution, and dilapidated housing. Seeing first hand the way the very outlook of a neighborhood can change with the improvement of housing is phenomenal.

I currently serve on the board of directors for the Raiders for Christ Christian student center serving Middle Tennessee State University. For the past three (3) years I have served as the chair of this board. The ability to set policy and help administer this campus ministry that influences young people's lives that are starting, and attending, college has been a blessing.

To the extent allowed by the Code of Judicial Conduct I would continue to be involved in church activities and continue to serve on the board of the Christian student center.

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 a home where I was taught conservative values by two great parents, grandparents, and a host of aunts and uncles who all helped shape who I am today. I saw first hand that hard work and dedication to the task (whether school, athletics, or work) was the path to success. I was raised in a Christian home and take pride in my Christian values. My proudest achievements all involve my family and my wife and children mean the world to me. Anything I have accomplished or will accomplish in my professional career can be traced to the support of my family. This upbringing will assist me in making difficult decisions that will impact not only the litigants, but also, in applicable cases, victims and the community.

My wife and I served as foster parents early in our marriage. This service resulted in the adoption of my two oldest children in 2000. To the extent that I would hear domestic relations cases, adoptions, and custody matters, my life experiences in this area will aid me in making decisions related to these types of cases.

From a professional perspective, I feel that my varied experiences from the Metro Legal Department, then clerking for Judge Blackburn, then transitioning into private practice has prepared me for the opportunity of serving as a judge. The variety of cases that I have handled

has provided me a basis of knowledge that will serve me well in the role of a sitting 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)***

Yes, I would uphold the law even if I disagree with the substance. Without divulging specific information that could be considered work product and potentially privileged, I would state that in a very recent case approximately 5000 documents were delivered to my co-counsel's office pursuant to a Rule 17(c) subpoena. After a very short review by my co-counsel of several of the documents it became clear that the documents delivered contained email correspondence that could be considered work product of opposing counsel, and thus non-discoverable.

In this particular case it certainly could have been productive to my client to read the emails in that they could have given insight into the strategy and mindset of my opposition. While I certainly would have liked to read the emails, the ethical and legal response to this dilemma, I believe, resulted in a different outcome.

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. Brian Roark; Partner, Bass, Berry, and Sims, [redacted]

B. Paul J. Bruno, Sole Practitioner, [redacted]

C. Russ King, Minister, Donelson Church of Christ, [redacted]

D. John W. Price, Partner, Price & Tidwell, [redacted]

E. Beth Smith, Executive Director, Rutherford County area Habitat for Humanity [redacted]

AFFIRMATION CONCERNING APPLICATION

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

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Circuit Court, Part 3, 16th Judicial District, of Tennessee, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: July 31, 2012.

Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.

TENNESSEE JUDICIAL NOMINATING COMMISSION
511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE COURT OF JUDICIARY
AND OTHER LICENSING BOARDS

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information which 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 Court of 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