

Tennessee Trial Court Vacancy Commission
Application for Nomination to Judicial Office

04/15/16

Name: Daryl Miller South

Office Address: Kidwell, South, Beasley, and Haley; 112 South Maple Street,
Murfreesboro, Rutherford County, TN, 37130
(including county)

Office Phone: 615-893-1331 Facsimile: 615-893-2000

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.

Attorney at Law

Private Practice associated with Dicken E. Kidwell, Gary D. Beasley, and David O. Haley at 112 South Maple Street, Murfreesboro, Rutherford County, TN 37130.

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

1984- BPR 011143

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, BPR 011143

Licensed October 1984

Active

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

No

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

May 1985- began to practice as an Associate of Dicken E. Kidwell in the private practice of law in Murfreesboro, Tennessee, in the 16th Judicial District, which includes Rutherford and Cannon Counties. I have practiced in a continuing fashion and maintained my association with Dicken E. Kidwell in private practice through the current date. As of January 1, 2009, I became the Managing Counsel of our Association of Attorneys and currently maintain a private practice as associated with Dicken E. Kidwell, Gary D. Beasley, and David O. Haley. Immediately after

graduation from law school, I worked and was employed by the Equitable Insurance Company for a period of several months prior to my move back home to Murfreesboro to begin my practice of law. I have not engaged in any profession or employment experience other than the practice of law since May 1985.

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.

My practice is concentrated in the area of domestic relations. I have handled and maintained a practice in all areas of civil practice to include business disputes, personal injury matters, federal civil rights action, and previously maintained a significant workers' compensation practice. During the last twenty years of my practice, up through the present, my practice has been concentrated in the area of divorce/domestic relations to include all aspects of divorce, post-divorce, parenting plan modifications, and appellate work associated with divorce matters. I would estimate that 85% of my practice is associated with domestic relations causes of action.

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.

Beginning in 1985, I maintained a general practice which largely encompassed domestic issues, workers' compensation issues, and personal injury matters. I handled criminal matters for approximately 12-14 years at the beginning of my practice but have not practiced in criminal court since approximately 2000. Beginning in approximately 1995, my practice shifted and I began a practice which largely concentrated in the area of domestic relations. I developed an extremely strong niche and referral business in the area of domestic relations and as a result have practiced regularly before the trial courts in Rutherford and Cannon Counties, and would respectfully suggest I have presented as many divorce/domestic matters at trial within this district as any practicing attorney within the last twenty years. My domestic practice has led to the trial of matters in surrounding counties, and further has led to the involvement of a significant number of appellate presentations to include briefs and oral arguments. I regularly mediate domestic disputes both as counsel and acting as mediator in pending domestic disputes.

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

I was trial counsel in the reported case of Adelsperger vs. Adelsperger, 970S.W.2d.482, Court of Appeals, Middle Section at Nashville. This was a child relocation and modification issue. My client prevailed at the trial level and the Court of Appeals reversed. This matter is often cited regarding what constitutes a material change of circumstance in child relocation cases. It further describes the evidentiary necessities of a substantial change in circumstances necessary to deny relocation. It is respectfully submitted that the case has been frequently cited and provided a

platform for the Appellate Courts to clarify evidentiary issues and burdens of proof in relocation matters. The more recent Supreme Court ruling in *Armbrister vs. Armbrister*, 414S.W.3d.685, has provided further clarification.

I was trial counsel in the matter of John and Tammy Gibson vs. Shannon Gibson, Civil Action No. 58036 in the Rutherford County Circuit Court. This was an appeal of a dependency and neglect finding. I was able to utilize the extensive evaluation of a clinical psychologist to support a finding of substantial harm to the child if she were returned to the care of her mother. The matter was appealed and the Court of Appeals upheld the trial court's finding, specifically noting the extensive evaluation and professional findings of the child psychologist. This matter was not reported.

I have recently represented three juveniles and their parents in Federal Court alleging violation of their civil rights as a result of the arrest of elementary children in school, including the handcuffing of an elementary student without any notice to their parents. This case, 3:17-cv-00369, U.S. District Court, Middle District of Tennessee, was brought against the City of Murfreesboro and individual officers. As lead counsel, I was able to help secure a significant settlement on behalf of the plaintiffs. I respectfully submit that this lawsuit has helped further provide for the modification of the arrest policy concerning juveniles with the City of Murfreesboro.

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

None.

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

None.

EDUCATION

11. List each college, law school, and other graduate school which you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

Bachelor of Arts, Political Science, *cum laude*, 1981

Middle Tennessee State University

Murfreesboro, Tennessee

Juris Doctor, 1984

Memphis State University, Cecil C. Humphreys School of Law

Memphis, Tennessee

PERSONAL INFORMATION

12. State your date of birth.

April 1, 1959

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

I have lived continuously in the State of Tennessee since 1974.

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

I have lived continuously in Rutherford County, Tennessee since May 1985.

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

I am registered to vote in Rutherford County, Tennessee.

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.

None.

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.

None.

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.

None.

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.

5617-4; Filed 1/18/1998; Closed 4/12/1998; Complainant Frederick Moore; Status-Closed, Dismissed by Investigations. 11903-4-ss; Filed 3/28/1994; Closed 5/24/1994; Complainant William Cantrell, #133030; Status-Closed, Dismissed by Investigations. 11992-4-ss; Filed 4/26/1994; Closed 6/6/1994; Complainant Valerie B Young-Teal; Status-Closed, Dismissed by Investigations. 21521-4-jv; Filed 10/4/1999; Closed 11/30/1999; Complainant Dean A. Casselberry; Status-Closed, Dismissed by Investigations. 23553-4-ch; Filed 2/6/2001; Closed 5/4/2001; Complainant Kathy Dennison; Status-Closed, Dismissed by Investigations. 26403c-4-jv; Filed 7/9/2003; Closed 9/15/2004; Complainant Skip Reynolds; Status-Closed, Dismissed by Investigations. 26405c-4-jv; Filed 7/11/2003; Closed 7/12/2004; Complainant Darryl Webb; Status-Closed, Dismissed by Investigations. 26403c-4-lc-React; Filed 9/27/2004; Closed 4/22/2005; Complainant Skip Reynolds; Status-Closed, Private Informal Admonition. 28555c-4-jv; Filed 10/7/2005; Closed 4/3/2006; Complainant Lawrence P. Raymond; Status-Closed, Dismissed by Investigations. 29681c-4-JV; Filed 11/13/2006; Closed 3/28/2007; Complainant Mary A. Armstrong; Status-Closed, Dismissed by Investigations. 32195c-4-PS; Filed 5/20/2009; Closed 7/20/2010; Complainant Mr. and Mrs. Ciccarelli; Status-Closed, Private Informal Admonition. 36594-4-PS; Filed 10/8/2013; Closed 4/8/2014; Complainant LeAnn Barnes; Status-Closed, Dismissed by Investigations.

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.

None.

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.

Yes, Chancery Court of Cannon County, Tennessee, Case No. 10-11; Personal divorce in March 2010.

Yes, I was sued in a malpractice action in Rutherford County Circuit Court, Docket No. 55790, Claim No. LM109225. Such matter was dismissed upon payment of a nominal nuisance judgment in the Fall of 2007.

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.

Murfreesboro Downtown Barristers Lions Club. I have held no offices within the last five years.

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.

I have never belonged to any such organization.

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.

I am a member of the Rutherford/Cannon County Bar Association and was President of the Bar Association in 1992. I have previously been a member of the Tennessee Bar Association and Tennessee Trial Lawyers' Association.

26. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school which are directly related to professional accomplishments.

I accepted the request of the Rutherford County Bar Association to present CLE programming in each of the last two years on topics concerning domestic relations law. I further accepted the request to provide CLE programming on behalf of the Lions Barrister Club as co-presenter in 2015.

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)*

My strong interest in government dates back to the pursuit of my Political Science degree. My highest professional goal is to provide an accessible legal system that gives each member of our community equal access to opportunity for justice. I believe this to be at the heart of an effective government with judicial leadership.

My professional and personal experiences, which have shaped my temperament and personality, have served me favorably while handling a vast array of domestic issues, most of which present extreme emotional issues on behalf of not only clients, but also attorneys. This combination of experiences and temperament provide a positive platform necessary to be a Circuit Court Judge. I consider an appointment to this position an unparalleled opportunity to provide a vital public service to our community, as well as satisfy my longstanding interest in providing access to a fair and just legal system.

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 a Circuit Court Judge for the 16th Judicial District, Part III, Rutherford and Cannon County, Tennessee. The 16th Judicial District maintains a sitting Chancellor and four Circuit Court Judges. The judgeship, as vacated by the Honorable M. Keith Siskin, was hearing civil matters, comprised largely of domestic issues.

During last twenty years of my practice, I have concentrated heavily in the field of domestic relations and divorce. I have tried hundreds of cases before our sitting Judges and Chancellor. My background and knowledge concerning the preparation and trial of domestic relations matters would be extremely beneficial in handling the existing and continuing docket. I would be in a position to immediately accept and respond to issues which comprise the overwhelming portion of the existing docket, all to the benefit of the local Bar, community, and sitting Judges.

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)*

I would uphold the law regardless of my personal beliefs. I take an oath to do so and plan to honor that oath if I were to be appointed to the existing judgeship. Practicing in the field of domestic relations, I am frequently presented with matters where emotional and personal real-life circumstances of my clients appear to present a conflict with the law. Such examples include: relocation matters under T.C.A. § 36-6-108. Often, when considering the parent/child relationship, there is a very real emotional basis to deny the relocation. However, an application of the existing statutory and case law most often provides for the opportunity of relocation. Further, there have been times when a termination of parental rights would appear to present a very real positive life improvement on behalf of a child. However, the law requires an initial showing of very strict statutory grounds and evidentiary burdens for termination, which would obviously be a duty to both uphold and follow.

Lastly, I have on many occasions after explaining statutory provisions concerning grandparents' rights been required to advise potential clients that there is not an appropriate action to file on their behalf after consideration of the statutory constraints.

Each of these matters present specific factual examples wherein one might disagree with the substance of both statutory and case law. I have certainly taken great pride in advising my clients and pursuing such matters while following the statutory requirements of the law with the understanding of precedential case law.

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. Honorable J. Mark Rogers
B. Honorable Royce Taylor
C. Darrell L. Scarlett
D. Roseanne Barton
E. Raechelle Wilson

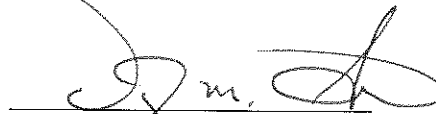
AFFIRMATION CONCERNING APPLICATION

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] _Circuit Court 16th Judicial District, Part III_ 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: August 21, 2017.


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.

DARYL M. SOUTH

Type or Print Name


Signature

August 21, 2017

Date

011143

BPR #

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

None