

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 41 hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council'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 Council 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 Council 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 document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and any attachments 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.

I currently serve as an assistant district attorney general for the 25th Judicial District of Tennessee pursuant to appointment by District Attorney General D. Michael Dunavant.

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

The Supreme Court of Tennessee licensed me to practice law in the State of Tennessee on October 21, 1985. My Tennessee Board of Professional Responsibility number is 011507.

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

I have never been licensed to practice law in any state other than 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).

I have neither been denied admission to the Bar of any state nor have I ever been suspended or placed on inactive status by the Bar of any state.

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 graduated from law school in the spring of 1985 and began practicing law as a staff attorney for the Tennessee Department of Revenue in Nashville in August of the same year. I held that position until the summer of 1987, when I resigned to return to McNairy County to open a private practice. I continued in private practice, as a sole practitioner, until I accepted my current position as an assistant district attorney general on September 1, 2006. In August of 1990, the citizens of McNairy County elected me General Sessions/Juvenile Judge, a part-time position that allows the office holder to maintain a private practice. I won re-election in August of 1998, but I lost my bid for a third term in 2006. In the late 1990's, the commissioners of the Town of Adamsville appointed me City Judge, a position I held until September 1, 2006. I then accepted my current position as an assistant district attorney general. Since the fall of 2009, I have also been an adjunct professor with the University of Tennessee, Martin, teaching constitutional law,

American government, Tennessee government, legal jurisprudence, and business law.

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 completing 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.

As an assistant district attorney general, 100% of my practice directly or tangentially involves the prosecution of criminal offenses. In the absence of a conflict, I prosecute all crimes occurring in McNairy County, both felonies and misdemeanors. I also prosecute all delinquent and unruly acts committed by juveniles in the county. Although I am primarily assigned to our Selmer office, I frequently represent the State of Tennessee in other courts within our district. I have tried cases in each of our five counties. I have also served as a prosecutor on a pro tem basis in other districts, including Madison, Hardin and Decatur counties. According to General Dunavant's office protocol, I represent the state from the beginning of a criminal prosecution until its ultimate disposition in either General Sessions or Juvenile or Circuit Court. Although the Attorney General's Office represents the state in criminal appeals, I also represent criminal defense attorneys when defendants seek post-conviction relief. In addition to trying criminal cases, I also provide advice and assistance to court clerks and law enforcement officers, especially with regard to the drafting and issuance of arrest and search warrants. At least once each year I teach in-service classes for all law enforcement agencies in the county. Infrequently, I also represent the State of Tennessee in quasi-civil matters. These include the denial or revocation of handgun carry permits, the disposition of contraband, forfeited weapons, or unclaimed property held by law enforcement, and petitions seeking declaration of habitual motor vehicle offender status. My total case load invariably exceeds 2,000 matters per year. Literally everything that I do professionally demands the daily interpretation and application of the Tennessee and United States Constitutions.

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 Council 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 Council. Please provide detailed information that will allow the Council 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.

Department of Revenue

I began my legal career in 1985 as a staff attorney for the Tennessee Department of Revenue in Nashville. Primarily, I wrote letters and memorandums to taxpayers and members of state government regarding the application of Tennessee's sales and use taxes in various situations. I also represented the state in bankruptcy proceedings in all three federal districts in Tennessee and, on one occasion, in the State of Florida.

Private Practice

Returning home in 1987, I spent the next 19 years building a thriving general practice. Practicing law in rural West Tennessee demands a willingness to work hard and become proficient in a variety of areas. I never had a partner, although I had an office-sharing arrangement with an older attorney for a time. Therefore, I was totally involved, and totally responsible, in every case I took. I personally interviewed all clients, drafted all letters and pleadings, conducted all discovery, made all court appearances necessary, and drafted any resultant orders or decrees. I represented clients in trial courts in almost every county in West Tennessee and in many counties in Middle Tennessee. Although the vast majority of my practice involved trial work, I also appeared in both the Tennessee Court of Appeals and in the Tennessee Supreme Court. My areas of trial practice included criminal defense, defense of delinquent and unruly juveniles, paternity, divorce, child custody, child support, personal injury (plaintiff and defense), workers compensation (plaintiff and defense), products liability, debt collection, debt defense, boundary line disputes, estates, conservatorships, guardianships, social security disability, bankruptcy (debtor and creditor), and contracts. Outside the courtroom, I drafted wills, partnership agreements, easements, deeds, deeds of trust, loan documents, leases, license agreements, and contracts. I assisted individuals and organizations in the formation of corporations, partnerships, and limited liability companies. I conducted real estate closings and foreclosure sales, and I prepared abstracts of title regarding real property. I contracted with the Tennessee Department of Transportation, and with private agencies, to provide title examinations for highway expansion projects in many West Tennessee counties, including McNairy, Hardeman, Hardin, Gibson, Madison, Henderson, Carroll, and Shelby. These projects demanded long hours spent reviewing real property and tax records in each county to determine who held title and whether any encumbrances or liens existed. I did all this while holding court four days a week for 16 years as the case load steadily increased.

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

I had the privilege of appearing in the Tennessee Supreme Court when I was 27 or 28 years old. I inherited the case from a retiring attorney who had lost in the trial court and won in the Court of Appeals. The issue was whether the divorce of a state employee automatically terminated that employee's designation of a beneficiary for their retirement or disability funds. We contended

that it did in light of statutory language in effect at the time. I prepared the brief and argued the case. We lost, but the legislature did subsequently change the statute to clarify the effects of divorce. I remember being perturbed because the State of Tennessee stepped in on behalf of the other side to argue against us. In retrospect, I suppose it was the correct decision.

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 served as McNairy County's duly elected General Sessions and Juvenile Judge from September 1, 1990, until August 31, 2006. I also served as the appointed City Judge of the Town of Adamsville from the mid-to-late 1990's until August 31, 2006. In holding those positions, I exercised a wide variety of jurisdictions.

General Sessions Civil Jurisdiction

I heard civil cases where the amount in controversy was under \$15,000, regardless of the nature of the claim. Those cases involved a wide variety of causes such as automobile accidents, consumer debt, loan defaults, and medical bills. I heard suits seeking recovery of property, both real and personal. I determined the amount of any deficiency subsequent to successful recovery and sale of secured property. I heard motions by debtors to pay their debts in installments. I also issued orders of protection and conducted hearings to determine their permanency.

General Sessions Divorce Jurisdiction

By private act, the Tennessee General Assembly conferred divorce jurisdiction upon the General Sessions Court of McNairy County in the 1970's. It sits, therefore, as a court of record for divorce cases and appeals lie to the Tennessee Court of Appeals. I had to take special care to ensure that the record was properly preserved for review. As judge, I granted divorces, determined custody of children, set child support, awarded visitation, set alimony, and divided marital property. I issued injunctions and temporary restraining orders as necessary. I supposed that some of the decisions I made over 16 years must have found their way into reported decisions but I do not remember any of particular note. I am sure, however, that they were very important to those involved. I initiated a mediation requirement after seeing the emotional toll taken on parents and children by protracted litigation. In truth, those were the only cases that I lost sleep over because those decisions certainly affected the lives and well-being of innocent children. Doing the right thing is sometimes difficult.

General Sessions Criminal Jurisdiction

Most criminal matters are resolved at the general sessions level, so this is the court where most people, whether defendants or victims, have their experience with our judicial system. In

presiding over criminal matters, I had a wide variety of duties. I advised defendants of their constitutional rights and set their bonds at their initial appearances. I considered bond reduction requests and the imposition of special conditions on some bonds. I conducted preliminary hearings to determine whether probable cause existed to bind cases over to the action of the grand jury. Most misdemeanors were resolved by guilty pleas or bench trials. In both situations, I had to once again ensure that the defendants understood and were afforded their constitutional rights. If indigent, I had to ensure that they had access to counsel. If convicted, I then sentenced defendants according to the appropriate statutes, sentencing guidelines, and principles of sound judgment. I attempted to be fair and respond to each situation individually and appropriately. I also issued search warrants and arrest warrants for law enforcement. I determined probable cause for forfeiture of seized vehicles. I am particularly proud of some innovations that I made after taking office. In 1990, the county had no ability to monitor defendants after sentencing. I began using misdemeanor probation services and developed a system of community service as an alternative form of punishment for suitable offenders. As in any county, I heard my share of speeding tickets.

Juvenile Court Jurisdiction

While I was in office, this area of law saw the greatest growth in case numbers and judicial responsibilities. One or two cases per week in 1990 became an entire day of court each week by 2006. My duties included the adjudication of paternity, determinations of custody, awarding visitation and support, and enforcing child support obligations. I presided over proceedings for temporary custody brought by both individuals and DCS. Unfortunately, I also had to determine whether parental rights should be terminated. Those proceedings, and some others, required the appointment of a guardian ad litem and counsel for indigent parties. I also adjudicated delinquent and unruly cases and entered appropriate dispositions for those juvenile offenders. I conducted transfer hearings to determine whether juveniles should be tried as adults. Again, each step of the proceedings required that I inform those involved of their constitutional rights and ensure that they were afforded to them. Upon application of parents, I granted permission for juveniles to marry. I also instituted a county probation service for juvenile offenders and a corresponding system of community service.

City Judge of Adamsville

I heard cases involving the alleged violation of municipal ordinances. The vast majority of those cases were speeding tickets.

Other Activities

Although not necessarily a duty, I performed many marriage ceremonies as judge. I also sought to inform and educate county citizens about their judicial system through local access television, newspaper articles, and speaking engagements. I took special care to invite all educators to bring their classes to court to observe. Afterwards, I reviewed the proceedings with them and tried to help them understand how pivotal they were to their individual rights and freedoms. I took every available opportunity to speak at community events and meetings of civic organizations, encouraging all to learn more about their government and the constitutions that serve to keep us

free.

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.

On several occasions the Chancery Court in McNairy County appointed me as guardian ad litem in a variety of proceedings. Sometimes they involved minors and sometimes adults. I represented the interests of those individuals in court and prepared and filed the appropriate responses and reports.

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

I have served as an executor and an administrator in decedents' estates, both for family members and for others. On at least one occasion I was appointed by the Chancery Court to serve as an administrator for a gentlemen who died without family.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments 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.

This is the first application for judgeship that I have ever submitted.

EDUCATION

14. List each college, law school, and other graduate school that 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 the University of Tennessee, Knoxville, from 1978 until 1985. I received a Bachelor of Science in Communications With Highest Honors from that university on June 11, 1982. I received a Doctor of Jurisprudence from that university on June 11, 1985.

PERSONAL INFORMATION

15. State your age and date of birth.

I am 56 years old. I was born February 24, 1960.

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

I have lived continuously in the State of Tennessee for 56 years, my entire life.

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

I have lived continuously in McNairy County for almost 29 years, since the summer of 1987. I have lived in McNairy County my entire life except for approximately two years in Williamson County after graduating from law school.

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

I am registered to vote in McNairy 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.

I have never served in the military.

20. Have you ever pled guilty or been convicted or are now on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No.

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. 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.

During my legal career, I have been subject to the supervising authority of both the Tennessee Board of Professional Responsibility and the Tennessee Court of the Judiciary. To the best of my recollection, I have responded formally to three complaints from each, a total of six. All complaints to the Court of the Judiciary were dismissed. All complaints to the Board of Professional Responsibility, except one, were dismissed. On July 13, 2005, the Board issued a "Private Informal Admonition" to me based upon the complaint of Mr. William T. Pickett. To the best of my memory, the relevant facts are as follows: I had undertaken to represent his wife, Sabrina Pickett, in a divorce proceeding in another county that was never finalized. Some time later I heard a case as General Sessions Judge involving a debt that would have been a part of that divorce. I cannot remember whether or not the debt was disputed. Neither party requested that I recuse myself, and I did not remember even speaking with Ms. Pickett, even though I had a file to help avoid conflicts. Obviously, the Board did not find my actions egregious enough to warrant any public sanction, and my conduct was certainly unintentional. The responsibility for failing to recuse myself, however, was mine, and I accept it.

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.

Yes. To the best of my memory, I was sued one time in federal court by a criminal defendant. In *Mickey G. White v. McNairy County, et al.*, No. 06-1198, filed in United States District Court, Western District of Tennessee, Mr. White alleged that I, and almost everyone else in county

government, had violated his civil rights. I do not know the disposition as to the other defendants, but Mr. White's suit against me was summarily dismissed. He also filed a complaint against me with the Court of the Judiciary. It was likewise dismissed after I responded to his allegations.

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 that you have held in such organizations.

Within the last five years, I have belonged to no associations or organizations other than the churches I have attended. I have attended the Savannah Church of Christ since the fall of 2011. I hold no offices, but I teach Bible classes on Sunday mornings and Wednesday evenings. Prior to worshipping with our present congregation, I attended the Adamsville Church of Christ, where I served for many years as a teacher, deacon and elder.

27. Have you ever belonged to any organization, association, club or society that 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.

I never have, and never would, belong to any such organization.

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 that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

I have not been a member of any such association or professional society within the last ten years.

29. List honors, prizes, awards or other forms of recognition which you have received since

your graduation from law school that are directly related to professional accomplishments.

Other than the honor of serving the citizens of the State of Tennessee as a judge and as an assistant district attorney general, I am aware of none.

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

As noted earlier, my legal career has been in the courtroom. I have never published any legal articles or books. I did, however, assist Professor Robert M. Lloyd in his research for the preparation of an article entitled "Refinancing Purchase Money Security Interests" that appeared in the Fall 1985 issue of the Tennessee Law Review, for which he generously gave me credit.

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.

I have never taught any such course for which I received credit.

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 was elected McNairy County General Sessions and Juvenile Judge in 1990 and again in 1998. I served until August 31, 2006. I was appointed City Judge of the Town of Adamsville in the mid-to-late 1990's and served until August 31, 2006. I have neither held nor sought any other 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 that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

I have attached the examples as requested. Each are totally and completely the result of my own personal effort.

ESSAYS/PERSONAL STATEMENTS

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

Thirty years of experience in Tennessee's criminal justice system have given me a wealth of experiences and opportunities to develop my legal skills. My roles within that system have changed from time to time, but my guiding principles have not. Whether criminal defense attorney or general sessions judge or assistant district attorney, I simply strive to do the right thing—to seek justice for all involved. A seat on our Court of Criminal Appeals would give me a chance to help safeguard the rights and liberties embodied in our state and federal constitutions by applying the skills, knowledge and wisdom that I have earned through 30 years of public service. I very much want to use my professional abilities to help give the people of Tennessee the criminal justice system they deserve, a system of equal justice for all under the law, and faith in their courts.

36. State any achievements or activities in which you have been involved that 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 practiced criminal law, as a defense attorney, in rural West Tennessee for 19 years. Of the hundreds of people that I represented, approximately 10% paid me nothing. The rest paid me only what they could afford, guilty plea or jury trial. I never charged for an office visit or a phone call in any case, civil or criminal. When I took the bench in 1990, I could no longer practice criminal law in McNairy County, but I continued to do so elsewhere. I felt obligated to continue to give back because I had received so much. I still do. When it was still active, I took referrals from West Tennessee Legal Services, representing indigent people in civil matters, especially domestic relations issues. Love of money has never been a weakness for me. I have waived thousands of dollars in social security disability fees, and I have never charged a fee for any work done on behalf of any church or charitable organization.

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 seek appointment to the Tennessee Court of Criminal Appeals, the intermediate appellate court of our state for criminal cases. Its 12 judges, four from each grand division, hear trial court appeals. Those cases may be felonies, misdemeanors or petitions for post-conviction relief. Sitting in panels of three in Jackson, Nashville and Knoxville, the court may also meet elsewhere as needed. Because it is an appellate court, no additional evidence is presented. Decisions are based upon arguments, oral and written, presented by attorneys. My selection would bring 30 years of primarily rural criminal law experience to the bench. I offer perspectives from all aspects – defense, prosecution, and judicial. I offer 30 years of professional experience dedicated to public service and the pursuit of justice. I offer a lifetime of 56 years dedicated to honesty, integrity and sound judgment. Most important, I offer a profound reverence of our constitutions and the firm conviction that judges should interpret, not make, the law.

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)*

Judges hold a unique position in our legal system. Ethical considerations often limit, and in some instances prohibit, their participation in activities that other community members may enjoy freely. Judges at times must forego First Amendment rights of free speech and free association, such as political endorsements and solicitation of charitable contributions, to meet those stricter ethical standards. Avoiding even the appearance of impropriety inevitably leads to a degree of isolation. A good judge, however, has the heart of a servant, and one can always find ways to serve ethically. Not every path of service leads through an organizational structure. For many years, while still on the bench, I was a Rotarian and a chairman of the board of directors of the Southwest Human Resources Agency. I had to resign from both because of time constraints and potential ethical conflicts. I now serve, pursuant to my current position, on the McNairy County Child Protective Investigative Team and the Child Fatality Review Team for our judicial district. These are both important works, but I have been blessed with other talents, too. One is teaching. I have taught Bible classes at my church on Sundays and Wednesdays for over 25 years. I also teach several law and government classes at UTM's Selmer campus and at other campuses through distance learning. If appointed, I intend to continue teaching, especially constitutional law, to help younger generations appreciate the rights and freedoms we enjoy, and I intend to continue speaking about those same rights and freedoms at every opportunity.

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

I grew up on a family farm in McNairy County, Tennessee. We grew crops and raised livestock. Whatever that I have done or become that is good, I owe to my parents. They taught me before I started to school that I was better than no one else and that no one else was better than me. This simple philosophy has served me well as judge and prosecutor. They also taught me to not fear hard work. Farm work does not end at 4:30 in the afternoon. It ends when the task is completed, and that often meant getting home well after midnight and getting up at daybreak to begin again. I brought that same work ethic to my education and my practice of law. I graduated from my high school as salutatorian in 1978, and I maintained my academic achievements through undergraduate and law school. It meant hard work. My wife and I have been married for 30 years. We have two wonderful grown children and no debt. For most of my career I have held two, and sometimes three, jobs, but I love my life. I have been blessed with the gifts of patience and humility, traits that I believe essential for a proper judicial temperament. As teacher, judge, private attorney, and prosecutor, I have tried my best to follow my parents' lessons and examples. Treat all fairly and with respect. Stop when the job is finished. Do not compromise your personal integrity. Serve at every opportunity. Be humble. Love God, family and country.

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)*

I will uphold the law even if I disagree with the substance of the law at issue. During 16 years on the bench, I had ample opportunity to disagree with laws that I had to uphold and enforce. Today I face the same situation as an assistant district attorney general. But in each case I swore an oath. I swore an oath to support our constitutions and to administer justice impartially and without respect of person. I swore an oath to follow the law. Oaths are not formalities to me, because I still believe in personal honor and integrity. I also believe in the ideas embodied in the Tennessee Constitution and the Constitution of the United States of America. I believe in the wisdom of separation of powers. The power to make law belongs primarily to the legislature, not to the courts. I strongly believe that all judges should exercise restraint in making any decisions that might invade the providence of the legislative branch. Yet, I do understand that our judicial system is based upon the concept of common law. My example of disagreement lies in a ruling from the court I wish to join. In an unreported case from my own experience, the Court of Criminal Appeals held that a trial judge may award restitution to a victim only in an amount that the defendant can reasonably pay at the time of sentencing. In virtually every case involving restitution I must tell the victim that the law does not even allow the judge to completely recognize the economic losses they suffer because of someone's criminal conduct, much less make them whole. But I follow the law.

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 Council or someone on its behalf may contact these persons regarding your application.

A. D. Michael Dunavant, District Attorney General,

B. Craig Kennedy, Deusner & Kennedy,

C. Shana Johnson, Assistant Public Defender, 25th Judicial District,

D. Sherrie Wilson,

E. SA Robert K. Lee,

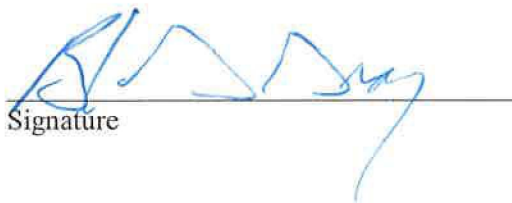
AFFIRMATION CONCERNING APPLICATION

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 of Criminal Appeals of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, 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 Council 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 Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: February 24, 2016


Signature

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



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS
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 Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

Bobby Gene Gray, Jr.
Type or Print Name


Signature

February 24, 2016
Date

011507
BPR #

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

Writing Examples

IN THE COURT OF APPEALS OF TENNESSEE AT JACKSON

CHARLES F. KNIGHT,)

Appellee)

V.)

**W2003-00001-COA-R3-CV
(Hardin County General
Sessions No. 5345)**

RAMONA D. KNIGHT,)

Appellant)

**APPEAL FROM THE GENERAL SESSIONS COURT OF TENNESSEE
FOR HARDIN COUNTY**

BRIEF OF THE APPELLEE

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ORAL ARGUMENT REQUESTED

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STATEMENT OF THE ISSUE

Whether the trial court erred in designating the father, Charles F. Knight, as the primary residential parent of Dewayne Lee Knight.

STATEMENT OF THE CASE

Charles F. Knight (hereinafter the “Father”) filed suit for absolute divorce from Ramona D. Knight (hereinafter the “Mother”) in the Hardin County General Sessions Court on May 6, 2002. The trial court approved his proposed temporary parenting plan, which designated the Father as primary residential parent. The temporary parenting plan restricted the Mother to visitation “under the direct supervision of the child’s maternal grandmother.” The temporary parenting plan remained unmodified until entry of the trial court’s final parenting plan. The Mother filed an answer and counter-complaint and her own proposed temporary parenting plan on May 9, 2002. The Father answered the counter-complaint, and the trial court ordered psychological evaluations.

The parties tried their case on October 24 and 31, 2002. There is no transcript of the proceedings below. They stipulated that the psychological evaluations would not be introduced into evidence. The trial court took the case under advisement and entered a Permanent Parenting Plan and Findings of Fact and Opinion on December 3, 2003. The permanent parenting plan again designated the Father as Dewayne’s primary residential parent. On January 13, 2003, the trial court entered a Final Decree. The Mother had already filed her notice of appeal.

The Mother filed a proposed statement of evidence. The Father filed timely objections. Pursuant to T.R.A.P. 24 (c) and (e), the trial court entered its own Statement of Evidence on April 22, 2003.

STATEMENT OF FACTS

The parties married December 31, 1997. This is the Mother's second marriage and the Father's third. They resided in Hardin County, Tennessee, until their final separation in May of 2002. One child, Dewayne Lee Knight, was born to them on February 9, 1998. The Mother has no other children, but the Father has two children from his prior marriages. Those children reside with their respective mothers.

Prior to their separation, both parties shared parenting responsibilities, but the Father has been Dewayne's primary residential parent since the parties separated. The Father received the marital home in the Final Decree, and the two of them live there by themselves. The mother enjoys visitation with Dewayne on alternate weekends and every Wednesday. Both parties have family with whom they enjoy close relationships. Dewayne stays with the same daycare provider as before the parties separated.

Prior to the marriage, the Mother spent from four to seven days at Pathways because of psychological problems. She discontinued her use of prescribed psychological medication without consulting her doctors. During the marriage, two law enforcement officers responded to allegations of domestic violence at the parties' home. They never arrested anyone, and neither officer observed any evidence of physical abuse. The Mother never made an allegation of abuse to any health-care provider, and she never sought an order of protection. The Father had no extra-marital affairs, but the Mother engaged in a sexual relationship with a married male co-worker.

ARGUMENT

This is a child custody case. The Mother asks this Court to review the order of the trial court that designates the Father as the primary residential parent of the parties' minor child. The standard of such review by the Court of Appeals is well-settled and "shall be *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." T.R.A.P. 13(d) and *Hass v. Knight*, 676 S.W.2d 554, 555 (Tenn. 1984). The trial court's findings of fact and opinion incorporate the final parenting plan and are found at page 23 of the record on appeal. For sake of clarity, the Father will use the same "TR" abbreviation as found in the Mother's appellate brief.

Child custody disputes often demand difficult decisions. They require the trial court to determine a child's best interests when the child's natural parents vie for custody. The judge must consider all relevant factors, including those enumerated in T.C.A. §36-6-106, in deciding where to place the child. Perfection is neither expected nor sought. Rather, "(f)itness for custodial responsibilities is largely a comparative matter." *Edwards v. Edwards*, 501 S.W.2d 283, 290 (Tenn. App. 1973). Such a comparison of parents may involve "literally thousands" of factual considerations. *Bah v. Bah*, 668 S.W.2d 663, 666 (Tenn. App. 1983). As the finder of fact, the role of the trial court cannot be over-stated.

The appellate courts frequently emphasize the discretion and the responsibilities of the trial court in child custody matters. In *Bah*, 668 S.W.2d 663, at page 665, the Court states that " the trial judge, not the appellate court, has the opportunity to observe the witnesses. All we can review is the cold printed word and the exhibits." At page 667, the Court further observes

that the trial "court is in a far superior position to assess these qualities [referring to the relative maturity and emotional stability of the parents] than this court because of the ability to view the witnesses and assess their demeanor, mannerisms and other visual and audio characteristics not apparent in the transcript." The Middle Section, Judge Koch, in *Gaskill v. Gaskill*, 936 S.W.2d 626 (Tenn. App. 1996) succinctly summarizes the role of the trial court at page 631:

Child custody and visitation determinations often hinge on subtle factors, including the parents' demeanor and credibility during the divorce proceedings themselves. Accordingly, appellate courts are reluctant to second-guess a trial court's decisions. Trial courts must be able to exercise broad discretion in these matters, but they still must base their decisions on the proof and upon the appropriate application of the applicable principles of law.

In this case, as in all child custody disputes, the facts are determinative. In this case, as in most child custody disputes, the relevant facts were developed solely through the testimony of witnesses. Unfortunately, there is no transcript or other substantially verbatim recital of the proceedings below. In §18-8 at page 276 of his *TENNESSEE DIVORCE, ALIMONY AND CHILD CUSTODY* (2002 ed.), W. Walton Garrett cites unreported case law from all three sections of the Court of Appeals that address similar situations as in this case.

In three opinions in 1984 and one in 1985, the problems of appellate review of fact findings by the trial judge were discussed. The Middle Section, Judge Cantrell, in *Gobbell v. Gobbell*, wrote: "Without a transcript the facts found by the trial judge are conclusively presumed correct." In *Dearien v. Dearien*, the Eastern Section, Judge Franks wrote, "Where a factual determination is the basis of the trial court's decision, we conclusively presume the correctness of the ruling where there is no transcript of the evidence considered by the trial judge presented for review." In *Ezell v. Ezell*, the Western Section, Judge Nearn, wrote: "In the absence of a transcript of the evidence heard by the trial court the appellate court can't reverse the trial court's findings that custody with the father is in the child's best interests." In *Hardin v. Hardin*, the Middle Section affirmed a trial court increase of child support in the absence of a transcript or statement of the evidence. Because domestic relations cases are generally decided on the facts,

it is impossible to overemphasize the importance of a transcript or statement of the evidence on appeal. (citations omitted)

The trial court made findings of fact based upon the credibility of those witnesses who testified. The Mother's credibility is reflected in the statement of evidence she submitted. Her statement did not convey a fair, accurate and complete account of the testimony given at trial. The Father filed objections, and the trial court settled the differences, pursuant to T.R.A.P. 24(e), by preparing the statement of evidence found at page 51 of the record. The trial court's determinations are conclusive under Rule 24.

The Mother cites *Crabtree* on page 4 of her brief in support of her apparent argument that this Court should review the record without an accompanying presumption that the findings of the trial court were correct. Her reliance on that case is misplaced. *Crabtree* did not involve a child custody dispute, there were no findings of fact, and the appellate court had a transcript of the evidence presented at trial. In this case, there is no transcript, and the trial court made findings of fact that are found at page 23 of the record. The trial court clearly determined that Dewayne's best interests would be served by designating the Father as primary residential parent. Even so, if this Court conducts an independent review of the record, the soundness of the trial court's decision is readily apparent.

Once again, only the particular facts in this particular case determine with whom Dewayne should primarily live. *Scarborough v. Scarborough*, 752 S.W.2d 94 (Tenn. App. 1988). The facts in this case appear on pages 23 through 25 and pages 51 through 56 of the record, the trial court's findings and statement of evidence. In her statement of facts and in her argument, the Mother repeatedly cites her own statement of evidence, her own affidavit for temporary

parenting plan, and the psychological reports as if they had been admitted into evidence in this case. The references are found on pages 3, 5, 6, 7, and 8 of her brief. Because the trial court's statement of evidence is conclusive, her references to other portions of the record as sources of evidence are improper.

The Mother argues that she should have been designated as Dewayne's primary residential parent because:

- 1) She was Dewayne's primary caregiver;
- 2) The Father abused her; and,
- 3) Dewayne is of "tender years."

A review of the evidence and the applicable law does not support her argument.

The Mother as Primary Caregiver

This appears to be the primary focus of the Mother's argument. Very little evidence, however, supports her portrayal of herself as primary caregiver. The parties testified that the Mother cooked some and took Dewayne to the doctor. (TR 52, 53) Vickey Sipes and Angela Maness, the daycare providers, testified that she took him to daycare and helped them at times. (TR 54) The Father and the Father's mother testified that the Father usually prepared Dewayne's meals. (TR 52, 55) As the opinion in *Gaskill*, 936 S.W.2d 626, noted at page 630 and 631, "Depending on the facts, a parent who has been a child's primary caregiver may not necessarily be comparatively more fit than the other parent to have permanent custody of the child." The role of primary caregiver is simply one of the factors that a trial court should consider. In this case, the evidence supports a finding that the Father was Dewayne's primary

caregiver. He testified that he did most of the parenting, including discipline. (TR 52) Mildred Summerford, the Father's aunt, testified that the Mother relied on the Father to care for Dewayne. (TR 54) The great majority of the testimony on this issue came from the parties themselves, and the trial court apparently found the Father and his witnesses to be more credible.

Abuse by the Father

Two witnesses testified that the Father severely abused the Mother--the Mother and Callie Kirk, her mother. (TR 53, 56) One other witness, Vickey Sipes, testified that the Mother told her that some bruises on the Mother's arm were caused by a fight with the Father. (TR 54) The only proof of abuse came either directly or indirectly from the Mother or her mother. Two Hardin County Sheriff's deputies testified that they responded to calls of alleged domestic violence at the parties residence. They made no arrests, and they observed no evidence of any type of physical abuse. (TR 51) The Father categorically denied abusing the Mother. (TR 52) The Mother admitted that she never reported abuse to any medical provider, that no one ever saw the Father abuse her, and that she never sought an order of protection. (TR 53) Again, the trial court apparently found the Father and his witnesses to be more credible.

Tender Years

Dewayne is five years old. In light of the principles of law that now guide courts in making custody decisions regarding children of his age, the importance of a parent's gender is greatly diminished. "To the extent that the 'tender years' doctrine has continued efficacy it is simply one of many factors to be considered in determining custody, not an unyielding rule of law." *Bah v. Bah*, 668 S.W.2d 663, 666 (Tenn. App. 1983).

In her brief, the Mother also makes certain allegations of fact completely devoid of basis in the record. On page 5, she suggests that the Father has somehow tried to undermine the relationship between the Mother and Dewayne. On page 6, she alleges that she made sure Dewayne followed his doctor's orders and that the daycare providers saw him daily for five years. On page 7, she refers to a bond between Dewayne and his maternal grandmother and describes her mother's home as a "stable, nurturing and loving environment." On page 8, she seeks support from psychological reports that counsel for both parties stipulated would have no bearing on the custody issues. On page 8, she tries to justify her extra-marital affair by saying that the parties' marriage "had essentially been over for years before the filing of the Complaint." On page 9, she states that the Father "was not involved with Dewayne prior to the divorce proceedings." And on page 11, she again refers to herself as Dewayne's "primary caregiver his entire life" and avers that residing with the Father has "devastated" him. These allegations are supported neither by admitted evidence nor by logical inference.

Trial court judges make mistakes, and appellate courts sometimes overrule them in matters of child custody. The Mother cites several such decisions in her brief. Precedent, however, is of limited value in child custody disputes because the facts of each case are different. *Long v. Long*, 488 S.W.2d 729, 732 (Tenn. App. 1972). Even so, a review of the particular facts in each of those decisions readily distinguishes them from this case. In the *Kelly* and *Gaskill* cases (cited on pages 8 and 10 of the Mother's brief), the appellate courts had transcripts of the trial court proceedings. The evidence admitted at trial clearly preponderated in favor of awarding custody to the respective fathers. In the *Carr* case found in the appendix to the

Sipes acknowledged that the Mother brought Dewayne to daycare with an odor of urine. (TR 54)

The Importance of Continuity in the Child's Life and the Length of Time the Child Has Lived in a Stable, Satisfactory Environment

The trial court awarded the marital residence to the Father. Dewayne continues to live there in the only home he's ever known. He continues to attend the same daycare. The temporary parenting plan designated the Father as primary residential parent, and the Father has met Dewayne's needs since the parties separated. (TR 7) The Mother entered no evidence that would suggest that this is not a stable and safe environment for Dewayne. She testified that she now lives with her mother in another county. (TR 53) Presumably, she would remove Dewayne from Hardin County if she were his primary residential parent.

The Mental and Physical Health of the Parents

The record contains no evidence that either parent has a significant physical health problem. The Mother's psychological problems are undisputed. She admitted that she spent four days at Pathways because of mental health concerns and that she discontinued her prescription medication for those problems without consulting her doctors. (TR 53) The Father testified that he knew of her history of psychological disturbance prior to their marriage and that she spent a week at Pathways. He described her propensity for physical violence, including an incident where she went "berserk." (TR 52) Mildred Summerford saw the Mother "throw a fit." (TR 55) The Mother's mother acknowledged that the Father attempted to "get help" for the Mother at Pathways. (TR 56)

**Each Parent's Past and Potential for Future Performance of
Parenting Responsibilities, Including the Willingness and
Ability of Each of the Parents to Facilitate and
Encourage a Close and Continuing Parent-Child
Relationship Between the Child and the Other Parent**

The record contains no evidence that the Father has in any way interfered with the Mother's relationship with Dewayne. Her testimony contains no allegations that the Father has denied her the visitation ordered by the trial court or that he has restricted her communication with Dewayne in any manner.

Parental Sexual Misconduct

The Mother admitted that she had a sexual relationship with a married co-worker while the parties were married. (TR 53) This alone may not be sufficient to deprive the Mother of custody. Her adulterous relationship, however, does reflect on her fitness as a custodial parent and is a factor that the trial court properly considered in comparing the relative fitness of both parties. *Barnhill v. Barnhill*, 826 S.W.2d 443, 453 (Tenn. App. 1991)

Maturity of the Parents

Mildred Summerford testified that the Mother pouted and acted jealous. (TR 54) Connie Etheridge described an incident when the Mother insisted on playing with a dog rather than caring for Dewayne or otherwise helping out. She testified that the Mother became "belligerent" when asked to help and that she saw the Mother "pull Dewayne off the kitchen table and cause him to fall." (TR 55) Eloise Hopper also recounted the dog incident and described the jealousy of the Mother toward the Father's other children. (TR 56) This testimony indicates the Mother's lack of maturity, which is a proper factor for the trial court to consider. *Bah*, 668 S.W.2d 663, 667.

Relative Parenting Skills of the Parents

The Father testified at length about the different approaches that the parents took in caring for their child. He described the Mother's arguing with Dewayne, or just giving in to him, rather than requiring him to mind. He told how the Mother characterized her relationship with Dewayne as that of "brother and sister." And he noted that she has trouble keeping Dewayne clean. (TR 52) Mildred Summerford described the Father as "good with children." (TR 55) Eloise Hopper testified that the Father takes care of his other children. (TR 56) The Mother testified very little about her parenting abilities, and the Mother's mother said nothing about them at all. (TR 53, 56) The trial court heard the evidence and determined that the Father's skills as a parent were comparatively better than those of the Mother.

CONCLUSION

The trial court heard two days of testimony. The judge saw the witnesses. He observed their mannerisms and weighed their credibility. Based solely upon the facts presented at trial, he determined that the Father is comparatively more fit than the Mother to be Dewayne's primary residential parent. The Father respectfully submits that there is no lawful reason to overturn this decision. He requests that the decision of the trial court be affirmed and the costs of this appeal be taxed to the Mother.



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Certificate of Service

I hereby certify that I mailed or delivered a copy of the foregoing appellee's brief to Betty Stafford Scott, P.O. Box 1985, Jackson, Tennessee 38302, on June 30, 2003.



Bob G. Gray

APPENDIX

Tennessee Code Annotated

36-6-106. Child custody. – (a) In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child, such determination shall be made upon the basis of the best interest of the child. The court shall consider all relevant factors including the following where applicable:

- (1) The love, affection and emotional ties existing between the parents and child;
- (2) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;
- (3) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment; provided, that where there is a finding, under §36-6-106(8), of child abuse, as defined in §39-15-401 or §39-15-402, or child sexual abuse, as defined in §37-1-602, by one (1) parent, and that a non-perpetrating parent has relocated in order to flee the perpetrating parent, that such relocation shall not weigh against an award of custody;
- (4) The stability of the family unit of the parents;
- (5) The mental and physical health of the parents;
- (6) The home, school and community record of the child;
- (7) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;
- (8) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; provided, that where there are allegations that one (1) parent has committed child abuse, [as defined in §39-15-401 or §39-15-402], or child sexual abuse, [as defined in §37-1-062], against a family member, the court shall consider all evidence relevant to the physical and emotional safety of the child, and determine, by a clear preponderance of the evidence, whether such abuse has occurred. The court shall include in its decision a written finding of all evidence, and all findings of facts connected thereto. In addition, the court shall, where appropriate, refer any issues of abuse to the juvenile court for further proceedings;
- (9) the character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child; and

(10) Each parent's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child.

Tennessee Rules of Appellate Procedure

RULE 13. SCOPE OF REVIEW

(d) Findings of Fact in Civil Actions. Unless otherwise required by statute, review of findings of act by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Findings of fact by a jury in civil action shall be set aside only if there is no material evidence to support the verdict.

RULE 24. CONTENT AND PREPARATION OF THE RECORD

(c) Statement of the Evidence When No Report, Recital, or Transcript Is Available. If no stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is available, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. The statement, certified by the appellant or the appellant's counsel as an accurate account of the proceedings, shall be filed with the clerk of the trial court within 90 days after filing the notice of appeal. Upon filing the statement, the appellant shall simultaneously serve notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the appellant intends to present an appeal. Proof of service shall be filed with the clerk of the trial court with the filing of the statement. If the appellee has objections to the statement as filed, the appellee shall file objections thereto with the clerk of the trial court within fifteen days after service of the declaration and notice of the filing of the statement. Any differences regarding the statement shall be settled as set for the in subdivision (e) of this rule.

(e) Correction or Modification of the Record. If any matter properly includable is omitted from the record, is improperly included, or is misstated therein, the record may be corrected or modified to conform to the truth. Any differences regarding whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by the trial court regardless of whether the record has been transmitted to the appellate court. Absent extraordinary circumstances, the determination of the trial court is conclusive. If necessary, the appellate or trial court may direct that a supplemental record be certified and transmitted.

**IN THE CIRCUIT COURT OF TENNESSEE
SITTING IN McNAIRY COUNTY**

STATE OF TENNESSEE

V.

No. 2570

LAJUAN C. BILLS, Defendant

**STATE'S RESPONSE TO DEFENDANT'S
MOTIONS TO SUPPRESS**

Comes now the State of Tennessee and responds to the defendant's motions to suppress as follows:

1. On June 14, 2009, Deputy James McNeil of the McNairy County Sheriff's Department observed a dark-colored pickup being driven recklessly on Highway 64 near the Rose Creek community in McNairy County. Deputy McNeil stopped the truck, ran the tag number, and found the defendant to be the driver and sole occupant.

2. Deputy McNeil asked to see the defendant's drivers license. The defendant identified himself as Takerio Bills, but he could not produce a drivers license or any other form of identification. The defendant stated that he did not know his social security number. Deputy McNeil called in the name and date of birth given to him by the defendant, and dispatch advised that no such person could be found in the system. Dispatch further advised Deputy McNeil that the only "Bills" in the warrant system was Lajuan, whose driving privileges were then revoked for DUI. Deputy McNeil again asked the defendant to identify himself, and the defendant insisted that he was Takerio and not Lajuan Bills.

3. Deputy McNeil asked the defendant to step out of the truck. He asked the defendant if anyone could bring the defendant's drivers license to the scene. The defendant replied that his "niece-in-law" was on the way and that the truck belonged to her. Deputy McNeil then asked the defendant if there was any contraband in the truck and for permission to search the truck. The defendant said he didn't have anything illegal but declined consent to search because it was not his truck. Deputy McNeil asked the defendant to sit in the back of his patrol car for safety, and he advised the defendant that he was not under arrest then.

4. A female arrived at the scene, and Deputy McNeil verified her identity as Farrah Bills. He explained to her why he had stopped the defendant. She claimed ownership of the truck, but she could not provide any proof of ownership. She denied consent to search it. Mrs. Bills also identified the defendant as Takerio Bills, although he was in fact her husband Lajuan Bills. Deputy Steve Ellsworth arrived on the scene to assist. Both deputies noticed that the defendant and the female appeared to be more nervous than the situation warranted.

5. Deputy McNeil arrested the defendant for Reckless Driving and Driving Without a License. He advised the female that the truck would be towed and impounded. She asked to take the truck, but because ownership could not be verified, the deputies declined her request. She left the scene, and both deputies proceeded to inventory the truck. They found two bags containing an off-white substance under the driver's seat. They also found a registration certificate indicating the truck belonged to Farrah Bills and Lajuan Bills. A copy is attached as Exhibit A. The defendant subsequently verified that the substance was cocaine and that he was in fact Lajuan Bills and not Takerio Bills. The truck was towed and impounded, and the McNairy County Sheriff's Department filed a notice of seizure. The General Sessions Court of McNairy County found probable cause for forfeiture based upon the transport of cocaine and upon the defendant driving the truck after his license had been revoked for DUI. Copies are attached as Exhibit B. The report from the TBI Crime Lab in Knoxville confirmed that the substance was 12.4 grams of cocaine. A copy is attached as Exhibit C. The defendant was ultimately charged with Possession of Schedule II with Intent to Sell, Driving on a Revoked/Suspended License, Criminal Impersonation, Reckless Driving, and Failure to Provide Proof of Financial Responsibility.

6. The defendant challenges the validity of his arrest. Deputy McNeil observed the defendant operating the truck in a reckless manner, giving him probable cause to stop the defendant. Reckless driving in Tennessee is a Class B misdemeanor pursuant to T.C.A. §55-10-205. When asked, the defendant could not produce a valid drivers license. T.C.A. §55-50-351 requires every driver to have a valid license in his or her immediate possession when operating a motor vehicle. A violation of that statute is a Class C misdemeanor. T.C.A. §40-7-103 authorizes an officer to make an arrest without a warrant for an offense committed in that officer's presence. Deputy McNeil witnessed two criminal offenses committed in his immediate presence by the defendant. He effected a custodial arrest of the defendant. T.C.A. §40-7-118 requires that a citation be issued in lieu of continued custody for a misdemeanor arrest, *except when the person arrested cannot or will not offer satisfactory evidence of identification.* The

defendant failed to provide any evidence of his true identity and falsely assumed the identity of another, Takerio Bills. This issue is without merit.

7. The defendant also seeks to suppress all evidence found during the search of the truck that he was driving. The deputies sought no warrant for the search of the truck. Inasmuch as the search was warrantless, it is presumed to be unreasonable, and the burden is upon the State to show an exception to the warrant requirement. The applicable exceptions justifying a warrantless search are as follows:

a) **Search Incident to a Lawful Arrest** -- Prior to *Arizona v. Gant*, the authority to search by the deputies after the defendant's arrest could not be seriously questioned. As relevant to this discussion, *Gant* holds that police may search a vehicle incident to a recent occupant's arrest only if it is reasonable to believe the vehicle contains evidence of the offense of arrest. Certainly there could be no evidence as to the offense of Reckless Driving and no evidence as to the status of the defendant's driving privileges. The truck could, however, contain evidence as to the true identity of the defendant. The defendant was ultimately charged with criminal impersonation. He refused to give his true name to the deputies and sought to use the identity of another, Takerio Bills, with the intent to injure or defraud him. The truck could have contained items such as mail, checks, receipts, etc., that would have identified the defendant. In fact, a certificate of registration was found.

b) **Exigent Circumstances** -- This deputies had probable cause to search the defendant's truck because of his failure to provide proof of identification and because of his deliberate attempts to obscure his true identity. Combined with his inordinate nervousness, these factors justified the search under the exigent circumstances exception to a warrantless search as set forth in *State v Saine*, 297 S.W.3d 199 (Tenn. 2009).

c) **Inventory Search** -- The deputies followed the established written policy of the McNairy County Sheriff's Department by inventorying the truck after the defendant's arrest. *State v. Glenn*, 649 S.W.2d 584 (Tenn. 1983) sets out the law in Tennessee regarding the inventory of impounded vehicles. As noted in *Glenn* no probable cause was needed to conduct a permissible inventory search. A copy of the inventory report is attached as Exhibit D.

d) **Inevitable Discovery** -- Otherwise inadmissible evidence may be properly admitted if it would have inevitably been discovered by lawful means. The defendant's truck was subject to seizure because he was driving while his license was revoked for DUI. His wife, Farrah Bills, told the deputies that she knew his license were revoked for DUI and that he was driving the truck. In this situation, T.C.A. §55-50-504 authorizes the seizure and forfeiture of the

truck, as in fact did occur. The cocaine would certainly have been discovered during the inventory attendant to the forfeiture procedure.

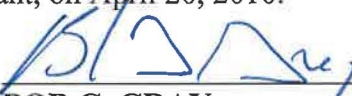
Wherefore, the State of Tennessee respectfully requests that the defendant's motion to suppress be overruled.



Bob G. Gray
Assistant District Attorney General

Certificate of Service

I certify that I mailed or delivered a true and exact copy of the foregoing response to the Hon. Ryan B. Feeney, attorney for the defendant, on April 20, 2010.



BOB G. GRAY

Letter of Recommendation



Office of the District Attorney General
25th Judicial District

D. Michael Dunavant
District Attorney General

February 22, 2016

Lauderdale, Tipton, Fayette,
Hardeman, McNairy Counties

Governor's Council for Judicial Appointments
% Debra Hayes
Administrative Office of the Courts
511 Union Street, Suite 600
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RE: Application of Bob Gray for Judicial Appointment
Tennessee Court of Criminal Appeals

Dear Council Members:

I am writing to recommend my friend and colleague, Bob Gray, for nomination by the Governor's Council for Judicial Appointments and appointment by Governor Haslam to fill the remaining term of Judge Roger Page in the Tennessee Court of Criminal Appeals. I am sure that once you review General Gray's character, experience, and qualifications, you will agree with me that he is a worthy candidate for this important judicial position.

In my legal career as a District Attorney General, I have worked with Bob in his position as an Assistant District Attorney General in my office for the last ten (10) years. I can say without question that Bob possesses the necessary knowledge, skills, and experience to assume the solemn responsibilities of the Court of Criminal Appeals bench. I am in a unique position to have experienced General Gray's representation of and service to the State in various ways. I have observed his prosecutorial trial skills in criminal cases, and have found him to be well-prepared, zealous and reasoned in his advocacy, and effective in his argument of the facts and law. While reviewing, discussing, and making charging decisions in cases from my district with General Gray, I have had the pleasure to receive his wise and thoughtful counsel, and witness his insight and understanding of complex legal issues. And while serving as a prosecutor with him in his home county of McNairy County, I have witnessed his sensitivity to victims of crime; his high ethical and moral standards; his creativity in finding solutions to legal problems; and his dedication to promoting greater cooperation with law enforcement, as well as accountability and efficiency in state government.

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Bob has outstanding organizational skills, good communication skills, and is easily able to work well with the judiciary, bar, and court personnel. Bob is a person of unquestionably high moral character, who takes his employment duties and responsibilities with the State of Tennessee very seriously. Through his hard work, dedication to his job, and his professional demeanor, Bob has earned the respect and admiration of prosecutors, members of the bar, and the judiciary across West Tennessee. His legal writings demonstrate a good, practical, and well-rounded working knowledge of the law, and his courtroom presence is respectful and professional. He is a tenacious advocate, yet possesses a quiet steadiness which serves him well in difficult situations. I am confident that as an appellate judge, he would be a fair, skillful, and common sense jurist.

Bob has the necessary honesty, integrity, fairness, work ethic, and temperament to serve as a Court of Criminal Appeals Judge, and has already distinguished himself as a selfless public servant as a prosecutor with my office, as well as in his many years as the General Sessions Judge of McNairy County. The citizens of Tennessee would be very well served by having Bob Gray as a Court of Criminal Appeals Judge.

It is for all of these reasons, and many more, that I wholeheartedly recommend Bob Gray for judicial nomination and appointment, and urge you to give him the utmost consideration. If you wish to speak further with me concerning Bob's qualifications, please do not hesitate to call.

Yours very truly,



D. Michael Dunavant
District Attorney General

DMD:md