Tennessee Judicial Nominating Commission

Application for Nomination to Judicial Office

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INTRODUCTION

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website http://www.tncourts.gov). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) ***and*** electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit seventeen (17) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to debra.hayes@tncourts.gov.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Assistant District Attorney, District Attorney's Office, Memphis, Tennessee

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

1984; #011107

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, October 6, 1984; Active License #011107.

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

No.

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

I have been an assistant district attorney since October, 1984.

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.

N/A

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.

I currently serve as Division Leader (Chief Prosecutor) in Division 1 of Criminal Court, Shelby County. I lead a team of three prosecutors in handling a docket of approximately 1200 pending cases, negotiating settlements and trying cases. Most cases tried (90%) are violent felonies such as murder, armed robberies, etc.

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

After graduation from Washington and Lee University School of Law, I took a job with the District Attorney's Office in Memphis in August,1984. After several months as an investigator, I started working as an assistant district attorney in the General Sessions Criminal Courts. My duties in General Sessions included negotiating guilty plea settlements, trying misdemeanors in bench trials, and representing the state in felony preliminary hearings. In the fall of 1986, I was promoted to a position as an assistant district attorney in the Criminal Court of Shelby County, where I am today. Over the years, I have represented the state in approximately 200 jury trials, trying everything from assault to murder in the first degree. I have tried one death penalty case, twice. Each time the defendant was sentenced to death, and he remains on death row.

From 1992 to 1994, I represented the state in Juvenile Court at hearings to determine whether juveniles, charged with exceptionally violent offenses, should stand trial as adults in Criminal Court. From December 2001 to February 2007, I served as Chief Prosecutor, Child Abuse and Neglect, and the leader of the Shelby County Child Protection Investigation Team (CPIT). As Chief Prosecutor, I led a multi-disciplinary team of prosecutors, police officers, and children's services caseworkers in the investigation and prosecution of child abuse and neglect. I made team policy, charging decisions, prepared indictments and tried the most aggravated cases myself, including child abuse homicides.

Upon my return in 2008 from my Army deployment to Afghanistan, I became division leader in Div. 5 of Criminal Court. After three years in Div. 5, the District Attorney assigned me to the

position of division leader in Criminal Court, Div. 1. As division leader, I lead two other prosecutors in managing a docket of about 1200 pending cases, making offers, negotiating settlements, and trying cases. Since becoming division leader, almost all the cases I have tried have been homicides.

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

As an Army Reserve/Army National Guard judge advocate (military lawyer) from 1989 to 2010, I represented soldiers accused of misconduct before administrative boards.

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.

As detailed below, I served on active duty with the U.S. Army from October 2007 to October 2008 as Command Judge Advocate for the Afghan Regional Security Integrated Command, South, (ARSIC-S), Kandahar, Afghanistan. Among my duties as the commander's legal advisor, I provided him with advice, as to sufficiency of the evidence and sentencing, when he exercised his quasi-judicial authority to hear disciplinary cases under the Uniform Code of Military Justice.

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.

N/A.

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

N/A.

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your

application, and whether or not the body submitted your name to the Governor as a nominee.

N/A.

EDUCATION

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

Washington and Lee University School of Law, 1981-1984, J.D.; University of Mississippi, 1976-1980, B.A., English literature, cum laude.

PERSONAL INFORMATION

15. State your age and date of birth.

53. Born on September 2, 1958.

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

Twenty-eight years.

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

Twenty-eight years.

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

Shelby County

19. Describe your military Service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

I served twenty-one years in the reserve components of the U.S. Army, Judge Advocate

General's Corps. The President commissioned me as a first lieutenant on April 23, 1989. I retired as a lieutenant colonel in June 2010, with an honorable discharge.

During the first Persian Gulf War 1990, I volunteered for active duty, serving in the Staff Judge Advocate's Office at FT Campbell, Kentucky. Over four months of active duty, I provided legal assistance to soldiers and their dependents. The Staff Judge Advocate of the 101st Airborne Division (Air Assault) awarded me the Army Achievement Medal in recognition of my service.

In October 2007, I again volunteered for active service, this time in Afghanistan. As Command Judge Advocate to the U.S. commander of the Afghan Regional Security Integrated Command (ARSIC-S) and legal mentor to my counterparts in the Afghan National Army's 205th Corps, I served 12 months at Kandahar Airfield in southern Afghanistan. Working daily with the Afghans, I monitored courts-martial, inspected conditions in the Afghan military jail, and assisted in training Afghan soldiers in the law of war and non-judicial punishment. On the American side, I was responsible for providing legal counsel on military justice, the law of war, administrative law, legal assistance, and operational law.

Upon completion of my service in Afghanistan, I was awarded the Bronze Star Medal for Meritorious Action in a War Zone. I also received the National Defense Service Medal (2nd Award), the Afghanistan Campaign Medal, the Global War on Terrorism Service Medal, the Army Service Ribbon, the Overseas Service Ribbon, the Armed Forces Reserve Medal with the "M" device (2nd Award), and the NATO Medal.

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

No.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.

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

N/A

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.

No.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices which you have held in such organizations.

I am a member of St.Andrew's Episcopal Church in Collierville, Tennessee, the Veterans of Foreign Wars, and the Military Officers' Association.

27. Have you ever belonged to any organization, association, club or society which limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

    a. If so, list such organizations and describe the basis of the membership limitation.

    b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No.

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

I was a member of the Judge Advocate's Association from approximately 1995 to 2007.

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

Because of my experience as a prosecutor and my knowledge of the Law of Armed Conflict, the American Bar Association's Coalition for International Justice asked me to review un-indicted war crimes cases for a month at the International Criminal Tribunal for the Former Yugoslavia (ICTY), the Hague, Netherlands. In 2002, I was nominated for Outstanding Criminal Justice Professional of the Year in Shelby County. In 2008, I received the Bronze Star Medal for Meritorious Actions in a War Zone in recognition of my efforts to strengthen the rule of law in Afghanistan.

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

N/A.

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.

N/A.

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

I have been an assistant district attorney in Memphis, Tennessee, since 1984. I have been a commissioned officer in the reserve components of the U.S. Army since April 23, 1989.. On June 1, 2010, I moved from the Active Reserve to the Retired Reserve.

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

No.

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

I have attached "ANA 205th CORPS LEGAL MENTOR MONTHLY REPORT" and "STATE'S RESPONSE TO DEFENDANT'S MOTION FOR A 'TAINT' HEARING" in State v. John Lee Hackworth. Each writing reflects my own effort.

ESSAYS/PERSONAL STATEMENTS

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

I have the breadth and depth of experience, the sense of fairness, the temperament, and the fortitude to be a good judge. As a civilian lawyer and an Army Judge Advocate, I have become accustomed to working with people from a wide range of backgrounds. I have been tried and tested in the courtrooms of 201 Poplar and the deserts of Afghanistan.

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

From 1994 to 2002, I wrote comments on draft criminal laws for the countries of the former Soviet Union and the former Warsaw Pact as part of the American Bar Association's Central and East European Law Initiative (CEELI). In 2000, I raised money from FedEx to support the donation of thousands of dollars worth of computer equipment to International Criminal Tribunal for the former Yugoslavia (ICTY). In 2008, working in conjunction with the U.S. State Department, I arranged for two Afghan lawyers to attend, on full scholarship, Washington and Lee University School of Law's L.L.M. program in American law for international students. I also reviewed child protection policies and procedures for the Roman Catholic Diocese of Memphis and the Episcopal Diocese of West Tennessee in 2005. As prosecutor, I am prohibited by law from representing in court anyone other than the State of Tennessee.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. ***(150 words or less)***

I am ready to take up a judgeship in a division of the Criminal Court of the 30th Judicial District of Tennessee. The district encompasses the city of Memphis, the suburban municipalities, and the unincorporated areas of Shelby County. There are ten divisions of Criminal Court. If

appointed, I will be the first veteran on the bench in Shelby County Criminal Court in many years.

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)***

For twenty-one years, I served my community, my state, and my country as a member of the Active Reserve components of the U.S. Army. As Chief Prosecutor, Child Abuse, I regularly spoke to the media on child abuse. I served on the DCS West Tennessee Regional Commissioner selection committee, and the Child Protective Services reform legislative subcommittee. As judge, I would participate in the activities of the Memphis, Tennessee, and American Bar Associations.

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

I believe in the rule of law, and I have put my life on the line to uphold it. In 2007, at age 49, I volunteered for active duty with the Army in southern Afghanistan. I thought about the matter long and hard before I decided to go. I have a family, and I value my life. I had not yet been called upon for active service since 9/11. However, I decided I could not stay at home any longer when there was something that I, as a middle-aged Reserve lawyer, could do.

It seemed to me then, and it seems to me now, that the rule of law is the antithesis of the horror of 9/11. If I could do something to strengthen the rule of law in the land where the 9/11 plot began, then I had to do it. So I went, and yes, it was dangerous. I will bring the same dedication to duty and principle to a Criminal Court judgeship.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. ***(250 words or less)***

Yes. My actions as a prosecutor show that I will uphold the law as judge. I am troubled, at times, that persons who have violate our country's immigration laws are eligible for probation upon conviction of a violation of Tennessee's Criminal Code. The federal government's apparent inability to resolve the immigration issue has compelled our state courts, at least to some extent, to ignore violations of the law. Nevertheless, our state appellate courts have spoken on this issue, and I have followed their direction. As prosecutor, I consider all relevant and lawful factors in determining whether to oppose or support an undocumented immigrants application for probation or diversion.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

A. Colonel Thomas McGrath, U.S. Army (retired). [redacted]
B. Ms. Laurie Walpole. [redacted]
C. Mr. James Challen. [redacted]
D. Mr. Joseph McDonald, [redacted]
E. Mr. Kevin Weaver, Attorney at Law. [redacted]

AFFIRMATION CONCERNING APPLICATION

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

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the [Court] Criminal Court, Div. 6, Thirtieth Judicial District of Tennessee, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

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

Dated: Aug 27, 2012

Signature

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