

**Tennessee Judicial Nominating Commission**  
***Application for Nomination to Judicial Office***

*Rev. 26 November 2012*

Name: Kenneth F. Irvine Jr.

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(including county) Knox County

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[REDACTED] [REDACTED] [REDACTED]

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**INTRODUCTION**

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

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website <http://www.tncourts.gov>). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) **and** electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit fourteen (14) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to [debra.hayes@tncourts.gov](mailto: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 General, Sixth Judicial District.

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

1990

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

I am only licensed in Tennessee. My bar number is 014360. I was licensed in 1990 and my license is currently active.

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

No.

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

Law Clerk to the Honorable Joe B. Jones, Tennessee Court of Criminal Appeals, 1990-1991.  
Associate, Ritchie, Fels & Dillard, P.C., 1991-1996.  
Partner, Eldridge, Irvine & Gaines, PLLC, 1996-2004.  
Assistant Public Defender, Sixth Judicial District, 2004-2006.

Assistant District Attorney General, Sixth Judicial District, 2006-2007.

Special Judge, Criminal Court, Division II, Sixth Judicial District, 2007-2008.

Assistant District Attorney General, Sixth Judicial District, 2008-Present.

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

February 1, 2006 to September 1, 2006: Candidate for Criminal Court Judge, Sixth Judicial District.

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

My practice is exclusively criminal law as a prosecutor working in the Knox County Criminal Court, Division One.

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.

My entire career has been devoted to criminal law. I started as a paralegal in the United States Army in 1980. While in the Army I spent most of my time working with prosecuting attorneys. After graduation from law school in 1990, I spent one year clerking for the Honorable Joe B. Jones on the Tennessee Court of Criminal Appeals. I then went to work for the law firm of Ritchie, Fels and Dillard. This law firm was primarily a criminal defense firm. We handled complex criminal cases across the United States. In 1996 I opened my own law firm. My practice was almost exclusively criminal defense at this firm. While at Ritchie, Fels and Dillard,

and in my own firm, I had an extensive appellate practice. I regularly appeared before the Tennessee Court of Criminal Appeals and also had cases before the Tennessee Supreme Court and the Sixth Circuit Court of Appeals. In 2004, I accepted a position with the Public Defender's Office in Knox County. I was assigned to Knox County Criminal Court, Division Three. In addition to my normal case load in Division III, I also was regularly assigned to more serious cases in other divisions as part of a team of lawyers. In 2007 and 2008 I spent just over a year as a Criminal Court Judge when one of our local judges became ill and then passed away. I am currently serving as an Assistant District Attorney General and I am assigned full time to Knox County Criminal Court, Division One.

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

A. Trial Court Cases of Note:

State of Tennessee v. Christopher Hendricks, Fall 1991 first degree murder trial. Tried before the Criminal Court of Anderson County. The jury found Mr. Hendricks not guilty of all charges. (Co-counsel with Thomas Dillard).

State of Tennessee v. Robert Holden, May 2005 aggravated assault trial. Tried in Division III, Knox County Criminal Court. The jury found Mr. Holden not guilty in a case involving a victim with serious injuries. (Sole counsel).

Hugh Nicely v. State of Tennessee, Spring 2006, post conviction case. Robertson County Criminal Court. Trial court ordered a new trial for Mr. Nicely based on failure of original trial counsel to get a copy of crucial evidence and have it examined by an expert. (Sole counsel).

- B. Three cases that I have taken to the Tennessee Supreme Court have resulted in significant decisions. I was sole counsel in each of these cases.

In State v. Pearson, 858 S.W.2d 879 (Tenn. 1993), the Court dealt with several difficult issues involving the Criminal Sentencing Reform Act of 1989. One of the key questions that the Court was faced with was what to do with defendants who committed offenses before the effective date of the Act but are sentenced after the effective date. Ultimately, the Court held that, due to ex post facto concerns, trial courts must consider a sentence under the law at the time the offense was committed and also the law at time of sentencing. The trial court was then required to apply the lesser of the two sentences.

In State v. Levandowski, 955 S.W.2d 603 (Tenn. 1997), the Court was faced with a question of first impression dealing with the false reporting statute. Ms. Levandowski had been convicted under the false reporting statute for a response she made to a law enforcement officer's inquiry. After reviewing the history of this statute, and considering the legislative intent, the Court held that the statute did not reach citizens who merely responded to questions posed to them by law

enforcement officers. This was a SCALES case.

In Logan v. Winstead, 23 S.W.3d 297 (Tenn. 2000), the appellant sued his former criminal defense attorney for legal malpractice. The appellant asked that the matter be held in abeyance until he was released from prison. The trial court never ruled on this motion but did grant the attorney's motion for a summary judgment. The Tennessee Supreme Court held that the trial court erred by failing to rule on the appellant's motion to put in abeyance. The case was remanded with guidance on when a motion such as this should be granted.

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.

On August 18, 2007, I was appointed as a Special Criminal Court Judge, Sixth Judicial District. I held this position until the end of August 2008. I took over a court with a significant backlog of cases and within one year was able to eliminate that backlog.

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.

Early in my career I served a number of times as a guardian ad litem in Knox County Juvenile Court.

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

None.

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.

September 1998 – Judge, Tennessee Court of Criminal Appeals – Name submitted to the Governor but not selected by the Governor.

September 2007 – Criminal Court Judge, Sixth Judicial District – Name submitted to the Governor and I was selected for that position.

### **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.

Florida State University

1975-1979 & 1987

B.S. in Political Science and Social Science

Austin Peay State University - Fort Campbell Branch

1980

Transferred by US Army

Los Angeles Metropolitan College - Camp Howze, Korea Branch

1983

Transferred by US Army

Saint Leo College - Hunter Army Airfield Branch

1984

Transferred by US Army

Troy State University - Fort Benning Branch

1985-1986

Left military service

University of Tennessee College of Law

1987-1990

Doctor of Jurisprudence (with High Honors)

Order of the Coif

Phi Kappa Phi

James L. Powers III Award for Excellence in Criminal Advocacy

Dean's Citation

**PERSONAL INFORMATION**

15. State your age and date of birth.

55, February 6, 1958.

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

Twenty six years.

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

Twenty two years.

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

Knox County, Tennessee.

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

- a) Branch of Service: United States Army
- b) Dates of active duty: 12 Mar 80 to 18 Dec 86
- c) Rank/rate at separation: Sergeant
- d) Decorations, honors, or achievements: Army Achievement Medal with two oak leaf clusters, Army Commendation Medal, Parachutist Badge, Army Service Ribbon, Overseas Service Ribbon, Good Conduct Medal and Jungle Expert Badge.

I was honorably discharged.

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.

No.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No.

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

No.

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

Divorced on February 5, 1984. Chancery Court, Montgomery County, Clarksville, Tennessee.

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.

The American Legion, Life Member

Post 2 Commander, 2009-2011

Post 2 Vice Commander, 2011-Present

Post 2 Judge Advocate, 2013-Present

Department of Tennessee, Legislative Chair, 2011-2013

East Tennessee Veterans Memorial Association

Board Member, 2011-Present

Phi Kappa Phi, Life Member

101<sup>st</sup> Airborne Association, Life Member

US Army Ranger Association, Life Member

UT Legal Clinic Advisory Board

Knox County Community Alternatives to Prison Program

Board Representative, 2011-Present

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

- a. If so, list such organizations and describe the basis of the membership limitation.
- b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No.

### **ACHIEVEMENTS**

28. List all bar associations and professional societies of which you have been a member

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

Tennessee Bar Association - 1990-2010  
Knoxville Bar Association - 1991-2013  
CLE Committee – 2007-2008  
National Association of Criminal Defense Lawyers - 1991-2006  
Tennessee Association of Criminal Defense Lawyers - 1991-2006  
President – 2000-2001  
Board of Directors - 1993-1994 & 1996-1998  
Hamilton Burnett American Inn of Court – 2004-2008  
Post Conviction Defender Commission, Board Member, 2002-2006  
Federal Community Defender Board  
Board Member, 2001-2006  
President, 2004-2005  
Bench/Bar Committee, Tennessee Judicial Conference, 1996-1998  
Indigent Defense Commission, 1999-2001  
Secretary, 2001

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.

1994 - Robert W. Ritchie Award, for outstanding service to the Tennessee Association of Criminal Defense Lawyers  
  
1996 - Robert W. Ritchie Award, for outstanding service to the Tennessee Association of Criminal Defense Lawyers  
  
2003 - Pro Bono Award, Legal Aid of East Tennessee, Pro Bono Project

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

Tennessee Judicial Newsletter, 1988  
For the Defense, 1992-1993, Series of articles on state sentencing issues  
For the Defense, 1995-1996, Series of articles on issues that can win cases (w/ Wade Davies)

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.

Basic Course, Environmental Crime Investigators, Federal Law Enforcement Training Center, Brunswick, Georgia

Discovery, New Prosecutor's Academy, Nashville, Tennessee

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.

Candidate for Knox County Criminal Court Judge, Division II – August 2006  
Appointed to the same position, on August 20, 2007, by Governor Bredesen.

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.

Attached to this application are two responses that I have prepared and filed in cases while serving as a prosecutor. The third attachment is a memorandum I did as a private attorney:

- A. State v. Karen Newman, Case No. 90474, Response to Defendant's Motion to Suppress.
- B. Kimberly Evans v. State, Case No. 99872, Response to Defendant's Second Petition for a Writ of Habeas Corpus.
- C. Hugh Nicely v. State, Case No. 8530, Memorandum of Fact and Law – Duty to Find Appropriate Expert.

### **ESSAYS/PERSONAL STATEMENTS**

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

If I were chosen to serve on the Court of Criminal Appeals I believe I could bring a unique perspective to the Court. Few lawyers have been blessed with the opportunity to have served as a prosecutor, a defense attorney and as a trial judge. I have literally seen the criminal justice

system from all sides. With this unique perspective I believe I could fashion opinions that would make the system work more efficiently while still seeking to do justice.

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)**

The following activities demonstrate my commitment to equal justice under the law:

- a. Co-Founder and Past President of the Tennessee Innocence Project
- b. Member of the Indigent Defense Commission
- c. Thousands of hours spent representing people on a pro bono basis
- d. Appearance as guest lecturer at several programs for average citizens where the local bar seeks to educate them about the law.
- e. Guest lecturer at over 30 CLE programs where I have sought to educate fellow lawyers so they could better represent their clients.
- f. The writing of articles which have sought to educate attorneys so they could better represent their clients.
- g. Participant in the Veterans Stand Down Program which works with homeless veterans.
- h. Co-founder and current participant in the Knox County Veterans and Homeless Legal Assistance Initiative.

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

The Tennessee Court of Criminal Appeals was created by the Tennessee Legislature in 1967. The Court originally had nine judges but was expanded to twelve judges in 1996. There are currently four judges from each of the three Grand Divisions. The Court of Criminal Appeals hears all trial court appeals in criminal matters. The various judges sit as three judge panels in Knoxville, Nashville and Jackson to hear cases.

I am seeking to fill a future vacancy in the Eastern Grand Division. I know each of the current judges in this division and I believe I could work well with each of them.

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)**

My community involvement over the last ten years has come primarily through my work with the American Legion and other veterans organizations. I would continue this work if I were appointed to the Tennessee Court of Criminal Appeals.

My involvement with the American Legion allows me to work with a variety of groups within the community. I especially enjoy the programs that we sponsor that involve the youth of our community. Our annual oratorical contest, leadership training like Boys State and other programs allow me to see young people that are excelling in their academics and as leaders. Working daily in the criminal justice system brings me into contact with a different group of people. Seeing bright young men and women is refreshing and brings balance to my life.

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 am living the American dream. My father was a mechanic who had to drop out of school in the eighth grade so he could help support his family after his father died in his arms. I was the first person in my family to earn a college degree and the only one that has been able to go on and get an advanced degree.

My parents never had the chance to go to college but they were able to show me through their actions the importance of an education. They also, by their example, taught me the importance of hard work and being fair.

I am grateful for the blessing that I already have in my life. If I can continue as a Judge on the Tennessee Court of Criminal Appeals, I will never forget the importance of working hard and treating each person with respect and dignity.

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)*

The law is written in our state by the Tennessee Legislature. It is the duty of each judge to enforce the law as the Legislature intended. I would always uphold the law whether I agree with it or not. If appointed as a Judge, I would resign my position if I ever felt I could no longer uphold the law because of some personal conviction.

I am currently working on a case where the law, as written by the Legislature, has restricted my ability to prosecute several people. In 2009, the Tennessee Legislature amended the definition of serious bodily injury. This amendment has prevented me from charging three defendants with aggravated assault where the victim suffered several broken ribs. As a result I have charged these people with simple assault because that is the only type of assault available under the amended definition.

However, I have also gone on to draft a legislative proposal which will be presented to the Tennessee Legislature next session. I do not believe that the Legislature intended the consequences that have flowed from the 2009 amendment. The solution I have proposed would fix the problem for future aggravated assault cases.

### **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. Randall E. Nichols  
District Attorney General  
Sixth Judicial District  
400 West Main, Suite 168  
Knoxville, Tennessee 37902  
(865) 215-2515  
[randy.nichols@knoxcounty.org](mailto:randy.nichols@knoxcounty.org)

B. John E. Eldridge, Esq.  
800 South Gay St., Suite 2100  
Knoxville, Tennessee 37929  
(865) 523-7731  
[REDACTED]

C. Robert C. DeWald  
[REDACTED]  
Knoxville, Tennessee 37934  
[REDACTED]  
[REDACTED]

D. Erin Morrison  
Victim/Witness Coordinator  
Sixth Judicial District  
400 West Main, Suite 168  
Knoxville, Tennessee 37902  
(865) 215-2515  
[erin.morrison@knoxcounty.org](mailto:erin.morrison@knoxcounty.org)

E. Jerry "Marty" Everett  
[REDACTED]  
Knoxville, Tennessee 37918  
[REDACTED]  
[REDACTED]

**AFFIRMATION CONCERNING APPLICATION**

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

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Tennessee Court of Criminal Appeals, 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: June 5, 2013.

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Signature

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



**TENNESSEE JUDICIAL NOMINATING COMMISSION**

511 UNION STREET, SUITE 600  
NASHVILLE CITY CENTER  
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY  
TENNESSEE BOARD OF JUDICIAL CONDUCT  
AND OTHER LICENSING BOARDS**

**WAIVER OF CONFIDENTIALITY**

I hereby waive the privilege of confidentiality with respect to any information which concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to,

recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee 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 Tennessee Judicial Nominating Commission to request and receive any such information and distribute it to the membership of the Judicial Nominating Commission and to the office of the Governor.

Kenneth F. Irvine Jr.

Type or Printed Name

\_\_\_\_\_  
Signature

5 Jun 13

Date

014360

BPR #

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