

Tennessee Trial Court Vacancy Commission
Application for Nomination to Judicial Office

9/8/20

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INTRODUCTION

Tennessee Code Annotated section 17-4-301 et seq. charges the Trial Court Vacancy Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in Microsoft Word format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website www.tncourts.gov). The Commission requests that applicants obtain the Microsoft Word form and respond directly on the form. Respond in the box provided below each question. (The box will expand as you type in the document.) **Review the separate instruction sheet prior to completing this document. Submit by the noon deadline date an original (unbound) completed application (with ink signature) to the Administrative Office of the Courts.** In addition, submit a digital copy with electronic or scanned signature via email to ceesha.lofton@tncourts.gov, or via another digital storage device such as a flash drive. See section 1(g) of the application instructions for additional information related to hand-delivery of application packages.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Kennerly, Montgomery & Finley, P.C.

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

1995. BPR No. 017291

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

Tennessee. BPR No. 017291.

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).

1995-1996: Baker, Kinsman & Hollis. Chattanooga, TN. Associate.

1996-2008: Carpenter & O'Connor. Knoxville, TN. Associate 1995-2003, Partner 2003-2008.

2008-present: Kennerly, Montgomery & Finley. Knoxville, TN. Of counsel.

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

My practice is 95% civil litigation, representing both plaintiffs and defendants in disputes involving general negligence, vehicle accidents, premises liability, wrongful death, product liability, contracts, construction, transportation, defamation, insurance coverage, consumer protection, and real property. The remaining 5% is advising insurance clients regarding coverage and claims, and miscellaneous civil practice.

7. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters.

In 1996, I tried my first case in General Sessions Court in Chattanooga. Since then, I have tried more than 50 jury trials as lead or sole counsel in Tennessee Circuit Courts, the United States District Court for the Eastern District of Tennessee, and one jury trial in Knox County Chancery Court. I have tried many non-jury cases in Chancery and General Sessions Courts in Tennessee. I have also represented clients in administrative hearings and in binding arbitrations. I have briefed and argued cases before the Tennessee Court of Appeals, and the Tennessee Supreme Court (Workers Compensation Panel).

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

Appellate cases:

State Farm Mut. Auto. Ins. Co. v. Howard, 2000 WL 116048 (Tenn.Ct.App. 2000): Represented the plaintiff in a declaratory judgment action filed by an automobile insurer to deny coverage for a wrongful death claim.

Fletcher v. White, 2010 WL 3715624 (Tenn.Ct.App. 2010): Represented the insurer in an uninsured motorist claim regarding coverage under a business policy.

Sample of cases representative of my practice:

Cook v. The Pep Boys—Manny, Moe & Jack, Inc., U.S.Dist.Ct., E.D. Tenn.: Represented a defendant in a product liability case involving catastrophic burn injuries to two children.

Cramer v. Oak Haven Resort, et al. U.S.Dist.Ct., E.D. Tenn.: Represented a defendant in a premises liability case involving severe injuries, tried in November 2019.

The Standard Fire Ins. Co. v. Gribble Resort Properties, et al. U.S.Dist.Ct., E.D. Tenn.: Represented a defendant in an action for a fire loss of a rental cabin.

Nash v. Lett, Knox County Circuit Court, Division 3: Represented the Defendant in a vehicle accident case, tried in January 2020.

Solomon v. The Comedy Barn, et al, Sevier County Circuit Court. Represented a Defendant contractor in a mixed premises liability and product liability case.

Consumers Insurance v. Phillips, Roane County Circuit Court: Represented the plaintiff in a declaratory judgment action regarding insurance coverage for a wrongful death claim.

Thomas v. Stout, Knox County Chancery Court, Division 1: Represented the plaintiff in a claim for adverse possession of a right of way, tried in 2016.

McTavish v. Long, et al., Knox County Circuit Court, Division 1: Represented a defendant in an action for libel and slander.

Owen v. Carpenter, Greene County Circuit Court: Represented an uninsured motorist carrier in a statutory arbitration involving a wrongful death and a severely-injured minor.

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

I have served as an invited lecturer at, and authored materials for, CLE programs on civil trial practice, evidence, and insurance law.

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

None.

EDUCATION

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

East Tennessee State University, B.S. Political Science 1992

University of Tennessee College of Law, J.D. 1995.

PERSONAL INFORMATION

12. State your date of birth.

1969.

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

51 years (entire life).

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

28 years.

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

Knox.

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

None.

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

No.

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

No.

19. Please identify the number of formal complaints you have responded to that were filed

against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint. You may wish to request a report from the appropriate supervisory authority (or authorities) for a complete history.

None.

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

No.

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

No.

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

No.

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

Powell United Methodist Church, Member.

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

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

No.

ACHIEVEMENTS

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

Tennessee Bar Association, 1995 to present.

Knoxville Bar Association, 1996 to present.

American Board of Trial Advocates (ABOTA), 2016 to present.

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

Invited member of American Board of Trial Advocates (ABOTA).

Rated AV/Preeminent by Martindale-Hubbell.

Named to "Best Lawyers," 2020.

Recognized as a Top Attorney in five civil litigation categories by City View magazine, 2020.

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

None.

ESSAYS/PERSONAL STATEMENTS

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

I have been a trial lawyer for almost 25 years, and I strongly believe in the jury trial. While no system of justice created by humans can ever be perfect, when a group of diverse citizens are brought together, presented with facts, and instructed on the law, they form a powerful engine for the administration of justice, and they rarely make a wrong decision. As a judge, I would strive to impress on potential jurors how important their participation is, that they should be proud of their service, and that they are appreciated.

I believe that a trial judge should manage the docket and expeditiously move cases toward resolution. These days, that often means helping the parties narrow the issues and move toward a settlement. When a case is tried, however, the judge should “call balls and strikes” but otherwise allow the lawyers to try the case and intervene only when necessary.

My experience as a trial lawyer gives me insight into how a judge should treat parties, witnesses, jurors, and lawyers, and I am eager for the opportunity to positively impact both the justice system and the legal profession from a new perspective.

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

The Circuit Court for the 6th Judicial District (Knox County) has three divisions. The Court has jurisdiction over civil matters, including general torts, vehicle accidents, premises liability, contracts, healthcare liability, products liability, wrongful death, and defamation.

In my 25 years as a civil litigator, I have tried many cases in this Court, and I have experience representing both plaintiffs and defendants in most of these types of cases. I understand the substantive, procedural, and evidentiary issues that frequently arise in this Court. If selected to serve, I would bring this experience, along with a passion for civility, professionalism, and impartial administration of justice.

I understand how the work of the trial court has changed, as parties have come to rely on mediation and other forms of ADR rather than take cases to trial. As a lawyer, I have been involved in every step of that process. Some cases still need to be tried, and I understand that process also. I believe this background makes me an ideal candidate for the job.

Finally, I know, like, and respect the current members of the Court. I would be honored to join them as a colleague.

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

Yes. I strongly believe that the role of a trial judge is to apply and charge the law as it is, not as the judge believes it should be. A recent example is the dispute over medical expense damages, and whether the jury should hear evidence of the amounts paid by third parties or should only be presented with the amounts charged by the providers. There was good-faith disagreement on both sides of that issue, by both lawyers and judges. My personal view was that the damages are the amounts actually paid, not the charged amounts. The Tennessee Supreme Court, however, ruled otherwise. Although I did not agree with the decision philosophically, the issue is now settled. I respect the decision, and I understand the Court's reasoning.

Another example is the statutory cap on noneconomic damages. Although the majority of my practice has been on the defense side, I believe the determination of the amount of those damages is best left to the jury deciding the case, and the authority of the judge to grant a remittitur is a sufficient safeguard against anomalous verdicts that are not supported by the evidence. However, the caps were passed by the legislature, and our Supreme Court has upheld them, so the law is essentially settled. My personal opinion is immaterial. It is not the role of a trial judge to make law, or to change existing law. That is the role of the legislature and, at times, the appellate courts. A trial judge must respect this limitation.

REFERENCES

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

A.

Sam Rutherford, Attorney.

Kennerly, Montgomery & Finley, P.C., [REDACTED] Knoxville, TN 37902.

B.

Mark Kinsman, Attorney.

[REDACTED] Hixson, TN 37343

C.

Louis Andrew McElroy, Attorney.

[REDACTED] Knoxville, TN 37909-2453
[REDACTED]

D.

Melvin Swafford

[REDACTED] Knoxville, TN
[REDACTED]

E.

Chuck McCarter

Oak Haven Resort

1947 Old Knoxville Hwy., Sevierville, TN 37876
[REDACTED]


AFFIRMATION CONCERNING APPLICATION

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

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Circuit Court for the 6th Judicial District, Division 1, 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: 9/21, 2020.


Signature

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



**TENNESSEE TRIAL COURT VACANCY COMMISSION
ADMINISTRATIVE OFFICE OF THE COURTS**

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

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

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Trial Court Vacancy Commission to request and receive any such information and distribute it to the membership of the Commission and to the Office of the Governor.

Toby R. Carpenter


Signature

9/21/2020
Date

BPR # 017291

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