

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.

Associate General Counsel, University of Tennessee

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

Licensed 2003, Board No. 023073

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.

No states other than Tennessee. Admitted in the U.S. District Courts for the Eastern, Middle, and Western Districts of 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).

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).

- University of Tennessee, Associate General Counsel, April, 2015 – present
Assistant General Counsel, November, 2011 – April, 2015
- Paine, Tarwater, and Bickers, LLP, Partner, January, 2011 – November, 2011
Associate, October, 2004 – January, 2011
- Law Office of J.D. Lee, Associate, October, 2003 – October, 2004
Law clerk, June, 2001 – October, 2003
- Knoxville Symphony Orchestra, Second trombone/assistant principal trombone, 1997 - present

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.

I represent the University of Tennessee System/State of Tennessee in tort and workers' compensation claims before the Tennessee Claims Commission, in Circuit Court, and on appeal; I represent the University in Uniform Administrative Procedure Act contested cases at the administrative level, Chancery Court judicial review, and any appeal from Chancery Court; and I advise various University individuals and groups regarding risk, potential liability, workers' compensation, HIPAA, FERPA, Public Record Act requests, and other compliance issues. My litigation primarily originates from the Knoxville and Chattanooga campuses, although I have matters from the other campuses from time to time. I estimate that my practice breaks down as follows:

- Health care liability – 30%
- Premises liability – 15%
- Auto liability – 15%
- Workers' compensation – 5%
- Defamation – rare
- Other negligence claims – 15%
- UAPA contested cases – 5%
- Appeals – less than 5%
- Advising – 10%

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.

My legal career has been entirely in civil law and almost entirely in litigation. My current practice areas are described in the preceding response. I am the only UT lawyer on the eastern side of the state with tort and workers' compensation responsibilities, so I am responsible for all pleadings, motion practice, discovery, expert witnesses, trial, and any appeals in those cases. In representation of the state, I coordinate with the Attorney General's Office on issues of state-wide application and on any appeals. In my various responsibilities, I have tried cases in the Claims Commission, tried UAPA contested cases before administrative judges, litigated judicial review of UAPA contested cases in Chancery Court, and have represented the state in appeals before the Court of Appeals.

When practicing with Paine, Tarwater, I represented individual and corporate clients, primarily defendants, in all aspects of pre-trial, trial, and appellate litigation. My practice areas included products liability, toxic torts, health care liability, personal injury, real property disputes, commercial litigation, estate-related litigation, and contract disputes. I litigated in both state and federal courts, primarily state courts. I was responsible for pleadings, motions, discovery, expert witnesses, and trials. I tried cases in state Sessions, Circuit, and Chancery courts and briefed appeals.

When practicing with the Law Offices of J.D. Lee, my practice consisted almost entirely of plaintiffs' personal injury in state and federal courts. I represented individuals in state and federal courts. I was responsible for pleadings, discovery, and motions.

Throughout my career, I have represented plaintiffs, defendants, and the State of Tennessee in Circuit Court. I believe this variety provides me a good understanding of the particularities of representing each type of client and uniquely prepares me for this position.

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

If I asked any client about a matter of special note, he or she would of course identify his or her case. With that in mind, I will describe the case and result of which I am most proud. I represented three family members who had invested in ENRON bonds and lost the investment due to ENRON's fraud and subsequent bankruptcy. The amount of money at stake was not that large, especially when compared to other cases, but it was a significant sum to my clients. By strategically avoiding various class settlements and engaging in negotiations with individual defendants, my clients were able to recover the amount of their initial investment. Sadly, I think they were part of a very small group of individuals able substantially to recover their losses from that debacle. Although the amount of money at stake was not particularly noteworthy, I have always believed that this is the best "pound for pound" result that I have achieved for a client.

Additionally, I have been attorney of record in the following reported decisions:

- *DeBakkar v. Hanger Prosthetics & Orthotics East, Inc.*, 688 F. Supp. 2d 789 (E.D. Tenn. 2010)
- *Northeast Knox Utility Dist. v. Stanford Const. Co.*, 206 S.W.3d 454 (Tenn. Ct. App. 2006) *app. denied* (Oct. 2, 2006)

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

I have authored the following articles:

- *To Party or Not to Party: Mann v. Alpha Tau Omega Fraternity*, DICTA, Vol. 39, Issue 9 (Oct. 2012)
- *The Tennessee Civil Justice Act of 2011: What a Difference a Day Made*, 47-Aug. Tenn. B.J. 20 (2011) (coauthored with John W. Elder) (cited in *In re New England Compounding Pharmacy, Inc. Products Liab. Litig.*, No. MDL 13-02419-RWZ, 2014 WL 4322409 at *5 (D. Mass. Aug. 29, 2014))

I have taught multiple continuing legal education seminars for National Business Institute on damages, evidence, lay and expert witnesses, motion practice, statutes affecting liability, ethical issues, discovery issues, and other civil litigation issues. I cannot recall the exact dates or the

exact number. I have participated on one of the teams for Knoxville Bar Association's Ethics Bowl, and I have taught on ethics in settlement negotiations for Tennessee Attorney Memo's Medical Malpractice Conference.

I completed the 2008 International Association of Defense Counsel Trial Academy.

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

I applied to be Tennessee Claims Commissioner for the Eastern Grand Division in the spring of 2017. If I recall correctly, a portion of the Trial Court Vacancy Commission held a series of candidate interviews on April 21, 2017. My name was not submitted to the Governor.

Also in the spring of 2017, I applied to be a federal magistrate in the Eastern District of Tennessee. I do not recall any type of hearing or committee interview, and I was not selected for the position.

In February, 2020, I applied for a vacancy on the Eastern Section of the Tennessee Court of Appeals. As the committee voted, I advanced to the last five candidates under consideration, but I was not one of the three names submitted to the Governor.

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.

University of Tennessee College of Law, J.D., *summa cum laude* (3.93/4.3 GPA; class standing 2/144), May, 2003

- Named a top graduate of the 2003 class; Order of the Coif; Dean's List each semester
- Recipient, John W. Green Scholarship (2001-02 and 2002-03 academic years)
- Certificate of Academic Excellence in the following classes: Administrative Law, Constitutional Law, Criminal Law, Family Law, Fundamental Concepts of Income Tax, Gratuitous Transfers, Insurance Law, Legal Process I, Legal Process II, Products Liability, Trial Practice, and Worker's Compensation

University of Tennessee, Knoxville, B.M., *summa cum laude* (3.87/4.0 GPA), May, 1998

- Tennessee Scholars Scholarship (Honors Program)
- Theodore Presser Musical and Academic Achievement Award
- United States Army Band Eastern Trombone Workshop National Classical Solo Competition, runner-up, 1998, semifinalist, 1997

PERSONAL INFORMATION

12. State your date of birth.

1974

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

I have lived in Tennessee all my life.

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

20 years.

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

Knox County

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.

N/A

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.

Yes:

- *Joshua R. Walker, as Executor of the Estate of Joe H. Walker, v. Willard C. Kincannon, et. al.*, Roane County Chancery Court No. 2016-43, filed April, 2016. Before my father died, he had owned his home and used the same driveway for over 39 years. After his death, his neighbors claimed that they owned part of the driveway and that it could no longer be used. I could not convince the neighbors that my father had acquired a prescriptive easement to cross the driveway after 20 years of use, so I had to file suit on behalf of the Estate to enforce the prescriptive easement my father had acquired. The claim was settled and dismissed when the neighbors agreed to recognize the necessary easement. I do not believe I was a nominal party because I had an interest in the subject property as a beneficiary of the Estate.
- *Joshua R. Walker v. Greg Black Mouthpieces*, New Jersey Small Claims Court, I cannot recall the docket number, filed in the spring of 2013. I ordered and prepaid for several

trombone mouthpieces from Greg Black in 2012. The time for delivery was long past, and Greg would not respond to calls or emails. I filed suit after I learned that filing and effecting service in New Jersey Small Claims Court only cost \$25 - \$30. Shortly after filing suit, I received my mouthpieces, and the case was dismissed. This lawsuit was notable because I received a letter inviting me to resolve my dispute on a television court show.

- *Randall E. Pearson, M.D., et. al. v. Paul Koczera, et. al.*, Anderson County Circuit Court No. B2LA0060, filed May, 2012. I, along with several others, was named as a third-party defendant in a malicious prosecution case. The third-party plaintiff was an attorney who had been my opposing counsel representing the plaintiffs in the case that was the basis of the malicious prosecution suit. The third-party claim was dismissed in December, 2012.

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.

Middlebrook Pike United Methodist Church

- Staff-Parish Relations Committee, 2004 – 05; 2014 – 16 (Chair 2015 – 16)
- Visioning Committee, 2006 – 09 (Chair, 2008 – 09)
- Church Leadership Council, 2008 – 09; 2015 – 16
- Youth counselor and Sunday school teacher, 2002 – present

FISH (Food In Service of Humanity) of Knox County, Board member, 2013 – present

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.

In middle and high school, I was a member of the Boy Scouts of America. At the time, they did not allow female members. I am no longer a member of the Boy Scouts.

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.

Knoxville Bar Association, 2003 – 2018, 2020 - present (I let my membership lapse by oversight in 2019)

- Former member, Judicial Committee
- Barristers Mobile Meals route coordinator for UT Office of General Counsel

National Association of College and University Attorneys, 2011 – present

I was previously a member of the Tennessee Bar Association but do not recall the exact dates. It was primarily while I practiced at Paine, Tarwater.

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.

N/A

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, other than the judicial applications listed above

ESSAYS/PERSONAL STATEMENTS

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

I seek this position because I believe my best legal skills are particularly well suited to serve as a judge, and I desire to serve the State and bar in the best way that I can. After impartiality, any judge should have superior knowledge of the law and the ability to apply that law to the facts of a case, as accurately and efficiently as possible, ruling on motions, evidentiary issues, and instructing a jury. My best legal skills are researching and analyzing the law, applying that law to the facts, and expressing the result cogently in writing. Because my strengths correspond with the primary responsibilities of a judge, I believe that this position would provide me the best opportunity to use my skillset to help serve the administration of justice in Knox County.

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

I seek appointment to Division I of the Sixth Judicial District Circuit Court. This Court sits in only Knox County and consists of four judges. Division I exercises jurisdiction over all civil cases that may be brought in the Circuit Court, with the exception of domestic relations matters, which are heard by Division IV.

If selected, I would strive always to remember that, no matter how "important" a case may be from a precedential, public concern, or similar standpoint, it is most important to the litigants involved. My primary role as a judge would be to effectuate an efficient resolution to their dispute under the applicable law and rules. As part of this effort, I have some ideas about motion settings, scheduling orders, and trial settings that I believe will be efficient for litigants that I cannot describe in 150 words or less.

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. In my personal opinion, the four-year statute of repose for improvements to real property, set forth at Tenn. Code Ann. §§ 28-3-201 *et. seq.*, is too short, at least for buildings or similar structures that should have anticipated lives of 30 – 50 years. For example, an architect could be negligent in designing an office building that collapses six years after substantial completion, killing and injuring multiple people. Because the injury occurs more than four years after substantial completion, no recovery is available, even if the architect admitted negligence. To me, the four-year repose period is too short in comparison to the reasonable anticipated life of such a building.

With that being said, I would apply this statute as written if serving as a judge. In my practice, I have asserted this statute of repose as a defense multiple times, despite my personal disagreement with the statute. As an attorney, I do not have the option to avoid asserting valid legal positions that benefit my clients because I may personally disagree with the substance of a particular law. As a judge, I would likewise be required to apply the law as written despite any personal disagreement I might have.

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. William O. Shults, retired Commissioner, Tennessee Claims Commission

B. Andrew R. Tillman, Arbitration and Complex Litigation Section Chair, London Amburn; former Chancellor, Tennessee Eighth Judicial District

C. C. Ryan Stinnett, University of Tennessee General Counsel

D. Deb Holly, Chairperson of Christian Education, Middlebrook Pike United Methodist Church

E. Don Hough, Emeritus Professor of Trombone, University of Tennessee

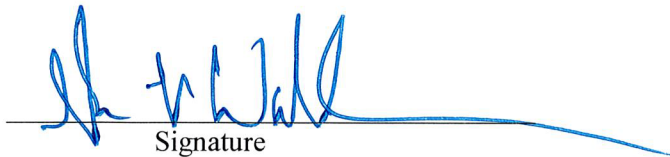
AFFIRMATION CONCERNING APPLICATION

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 of the Sixth 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: September 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.

Joshua R. Walker

Type or Print Name

Joshua R. Walker

Signature

Date

9/21/2020

BPR #

023073

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

N/A