

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 54 hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website www.tncourts.gov). The Council requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original, hard copy (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy you're your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your hard-copy application, or the digital copy may be submitted via email to cesha.lofton@tncourts.gov.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am a founding partner in the law firm of King & King, PLC in Jackson, TN. My husband, Jay Dustin King, and I started King & King, PLC in 2005. Since its inception, we have built an established practice primarily focusing on family law matters. Currently, I maintain an active caseload consisting of divorce, child custody and support (including modifications), termination of parental rights and adoption, probate, and juvenile court cases (primary custody and support matters), along with appellate work. In addition, I have had my listing as a Rule 31 Family Law Mediator since 2008 and regularly mediate family law matters throughout West Tennessee.

In conjunction with maintaining an active caseload, I assist in the daily management of the firm. This entails everything from staff management, to marketing, to accounts payable. I am proud to say that we have been proactive and progressive in utilizing the latest technology to assist us in communication with our clients and management of cases. For example, we have implemented the use of a web-based software which streamlines the case management process and allows clients instantaneous access to their file, thus keeping them informed of the progress of their case.

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

2002; BPR# 022321

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.

State of Tennessee—BPR#022321; November 14, 2002; 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).

King & King, PLC—2005 to present; I am a partner at the firm along with my husband, Jay Dustin King. My practice consists primarily of domestic relations cases including divorce, custody and child support cases, termination of parental rights and adoption matters, and family law mediations. In addition, I handle appeals from my caseload.

4 Clover Apparel—2015-2016; I started and operated an online and traveling clothing boutique selling women's apparel and accessories. I created sales events in homes, businesses, and trunk shows. I handled the purchasing of the clothing and accessories along with outfitting a trailer to transport the clothing. In addition, I created an e-commerce website and used social media to promote my business. I planned, orchestrated, and promoted two large trunk shows to benefit the March of Dimes and the Employee Assistance Fund at West Tennessee Healthcare in Jackson, Tennessee.

Union University—2014-2016; I served as an adjunct professor at Union University in the sociology department for three semesters. My job responsibilities included developing a curriculum and lesson plans. I worked closely with students to develop their knowledge and keep them motivated, and I consistently earned high marks for my teaching style and effectiveness.

Law Office of Charles R. Pettigrew—2003-2005; I represented business and individual clients in a general practice firm. I created a new litigation business unit that did not previously exist at the firm until my hire. I also assisted Charles Pettigrew in his real estate practice and probate practice. Notably, the litigation division of the firm was started from scratch and included me networking with other law firms to generate referrals. As a result, I successfully built a client base and a domestic relations practice.

Waldrop & Hall, PA—2002-2003; I represented clients in workers' compensation, personal injury and real estate matters. In addition, I conducted legal research and assisted in drafting appellate briefs.

Law Office of Richard McNeese; Memphis, TN—2001-2002; During law school at the University of Memphis, I worked part-time at a law firm primarily assisting the attorneys with real estate closings and title work.

Re/Max Elite; Cordova, TN—2000-2001; I assisted the real estate agents with organization of their purchase and sales agreements and scheduled showings for the realtors.

Re/Max Elite, Brentwood, TN; Nashville, TN—1997 to Spring 1999; I worked at both real estate offices located in Brentwood, TN, and in the Green Hills area of Nashville, TN to schedule home showings for the real estate agents, organize the agents' files prior to closing, and maintain general operations of the office. I was dubbed "the air traffic controller" by the real estate broker over the firm given my ability to multi-task and assist many different realtors with various assignments at the same time.

During high school, I also worked as a store clerk at McMackin's Men's Store in Huntingdon, Tennessee, in 1994.

Previously, I babysat children during my high school years (1992-1995).

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.

Not Applicable

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 primarily consists of domestic relations cases, including mediations. Domestic relations is 99% of my practice whether it be a divorce case, child custody matter (including modification of parenting plan), child support, termination of parental rights and adoption matters, mediations, and appeals from my caseload. I have conducted approximately five hundred mediations since my listing in 2008. The remaining portion of my practice (1%) consists of drafting wills and the probate of estates.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the

Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

Initially, I began my legal career at Waldrop & Hall, PA. I was primarily assigned to assist Donald Glenn at the firm, but I also assisted many other attorneys in the office. Under Mr. Glenn's tutelage, I handled foreclosures, detainer actions, real estate litigation and closings. In assisting other partners in the firm, I gained experience in workers' compensation, personal injury, and collection matters. While there, I was introduced to the appellate process, including the preparation of the necessary briefs and oral argument for workers' compensation appeals. In handling workers' compensation defense work, I was required to interview witnesses, review recordings and videos and do investigative work. In addition, I participated in the defense of personal injury claims. One case I will never forget was the case of the EMS driver who was accused of injuring an individual with a flashlight. This individual had a history of ambulance chasing and interfering with EMS personnel's ability to treat individuals in need. This resulted in me interviewing various witnesses to assist lead attorneys to prepare for depositions. With the assistance of the firm's infrastructure, I maintained organized files, regularly reported my progress on a case to the lead attorneys and learned the immense importance of documentation. It established a foundation on which we built our own practice.

While at the Law Office of Charles Pettigrew, I built a litigation department from the ground up. I developed a marketing strategy and implemented a practice management software including a much-needed conflicts check. I also set up the legal research software for the firm. During the growth of my litigation practice, I assisted Mr. Pettigrew on real estate closings and other transactional work. I also wrote wills, power of attorneys, living wills and handled the probate process from start to finish for numerous intestate and testate estates. Over a period of just two years, I built a stable family law practice. Given Mr. Pettigrew did not practice domestic relations law, I was essentially self-taught. Notably, my first divorce case was a contested divorce in Gibson County, Tennessee, involving a dispute over custody of four children. The case necessitated a psychological evaluation of the parties and the children. Since then, I have developed an extensive knowledge of the use of experts in divorce cases including psychologists, forensic accountants, and business evaluators. The matter went to trial for two days and resulted in my client, the mother, being designated as the primary residential parent of her children. Many years later, I represented this mother again in a termination of parental rights and step-parent adoption involving these same children, and she said she never realized that she was my first divorce client.

The first termination of parental rights and adoption case I handled was a contested matter in Madison County Chancery Court. The father contested the termination and was incarcerated out of state. The case was tried at the trial court level and I was successful in the court granting the termination and adoption. In preparation for trial, I had the forethought to obtain my client's phone records to substantiate that there had been no contact between the children and Father. After the trial court's ruling, the case was appealed to the TN Court of Appeals. The Court of Appeals affirmed the trial court and the case was published (*In Re: K.B.H.*, 206 S.W. 3d 80 (Tenn. Ct. App. 2006)). My success on appeal was largely determined by my research skills,

organization, and preparation. Specifically, I quoted current law versus opposing counsel's use of defunct law. Termination and adoption cases are regularly appealed, so I handle these matters with extreme precision, as the consequences to the children involved can be devastating if the case is overturned. In addition to contested termination of parental rights, I have handled countless adoptions involving adoption by a step-parent or relative throughout my practice. This line of work remains truly rewarding. I regularly handle adoptions for families all across West Tennessee who are foster parents who ultimately adopt the children placed in their home. As a result, I have developed a close working relationship with various caseworkers with the Department of Children's Services and other placement agencies. In order to handle these matters effectively, I have to verify that the termination process was handled correctly. I regularly research the latest caselaw concerning termination matters and attend various continuing education courses to ensure that I am up to date on the existing law. I am also a member of the TN Adoption Lawyers group who assist one another on issues in their various cases in an online forum.

As to my experience in the area of divorce law, I have had numerous complex trials. Many, if not most of my cases, require having a temporary hearing to establish temporary alimony, temporary custody (i.e., establish a temporary parenting plan), and establish an allocation of the parties' bills and expenses. In one divorce matter, I even had to track down the location of a horse for my client's child that the other party was attempting to consign. As a result of the opposing party's threats to consign the horse, I filed for emergency injunctive relief which was granted by the court. In other instances, I have clients who are in need of temporary support for lack of employment. Many times, my clients need relief before the discovery process is completed which means I have to take a proactive approach to obtaining income information of the opposing party. In the case of a self-employed party, I obtain tax returns, audited financial statements, and enlist the assistance of an accountant to determine income. In cases where one spouse refuses to allow the other spouse visitation, it is imperative to pursue temporary relief, often in opposition of the stall tactics of the opposing party.

I have had several cases involving an equitable division of a business within a divorce. In multiple instances, it was necessary to argue, irrespective of the current value of the business, that the opposing party failed to establish a pre-marital value due to the business being owned prior to marriage. Thus, the opposing party could not establish any substantial contribution to the value. As a result, I successfully preserved the value of the business for the client. Such complex matters have resulted in me working in close contact with various accountants across West Tennessee.

In addition to business valuations, I have had complex cases over the classification of property as marital versus separate. For example, in one matter my client was devised multiple business entities from his father. However, the father's Will was not probated fully, but only for a muniment of title. Consequently, the question loomed at trial of whether my client actually owned the businesses. In this case, I used caselaw and orders from the probate estate to establish that the Will was probated only for a muniment of title of real estate and thus, it did not transfer ownership of stock. This case is currently on appeal.

Given the volatility of family law, I have also litigated hundreds of orders of protection both in General Sessions and Chancery Court. On one occasion, I successfully established the elements

of stalking despite the fact that the opposing party never made face to face contact with my client. I did this through the use of digital records, phone records, and text messages sent to my client.

I was appointed Special Master on a divorce case by Chancellor James F. Butler in Madison County Chancery Court. The main issue involved a dissipation of assets by the parties of personal property and business assets. I took an inventory of the residences of both parties and reported my conclusions to the court. Ultimately, my involvement helped facilitate a settlement by the parties.

Since 2008, I have had my Rule 31 Family Law mediation listing. I have conducted approximately five hundred mediations since 2008. This allows me to utilize a different skill set from that of a litigator. To be effective, you have to balance the personalities not only of the clients, but of the attorneys. Mediation provides an opportunity for creative solutions, especially when it comes to parenting plans. For example, your typical parenting plan is ineffective if you have two parents with unorthodox work schedules. You must think outside the box to put a plan together that works for the parents and the children.

Feeding into my love of animals, I had the privilege of representing the Madison County Humane Society in an equine abuse case against a vet tech. At the initial court appearance, several neighbors of the Defendant appeared in support of the humane society. The neighbors had attempted to feed and provide water for the horse over objection of the Defendant. This case pre-dated recent changes to notify the Department of Agriculture of an equine abuse case. With the assistance of an expert witness from the University of Tennessee Extension Office, we successfully retained possession of the horse who, to this day, lives a happy life on green pastures.

Owning a business necessitates adaptability. In order to cut down expenses, we made the decision in 2015 to become as paperless as possible. This resulted in reducing expenses by thousands of dollars annually. It has also involved crisis management. In one particular year, we had a staff person lose two babies in thirteen months. The balance between empathy for the staff person and maintaining proper work flow was imperative.

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

Dana Jo Stricklin v. Jerone Trent Stricklin, No. 2015-00538-COA-R3-CV (Tenn. Ct. App.

2015).

I represented Dana Stricklin in a modification of a parenting plan in Hardin County General Sessions Court. The trial court heard testimony from Mrs. Stricklin. The parties settled the matter at court and an agreement was announced in open court with a court reporter present. The court approved the order entering a new parenting plan based upon the announcement of the agreement. Subsequently, the father moved to set aside the trial court's order and that was denied. Father then appealed the trial court's ruling to the Court of Appeals. The main issue on appeal was whether the trial court erred by not setting aside the Order which incorporated the parenting plan announced to the court. Father challenged the trial court's order claiming that his consent to the parenting plan was never demonstrated and that the trial court's order lacks appropriate findings of fact and conclusions of law.

The Court of Appeals held that father did consent to the terms of the agreement. Specifically, the Court noted that I outlined in detail the terms of the various provisions the parties agreed to in the parenting plan. Nevertheless, the Appellate Court vacated the order due to the trial court's failure to make findings on the modification being in the child's best interest. The ruling held that "given the trial court's failure to conduct an appropriate best interest analysis, we conclude that it erred in denying father's June 25 motion to alter or amend or vacate." As such, the case was remanded to the trial court for appropriate findings and also an evidentiary hearing on the best interest issue.

This case is of special note to me due to the repercussions that it may have in all custody and parenting plan matters that are uncontested. It has resulted in the domestic relations bar in Madison County and surrounding counties adding special language into its parenting plans to attempt to comply with the terms of this case. This case brings to light a larger issue—to what extent does this case usurp parents' autonomy and right to resolve their own parenting and/or custody dispute? The Court cited the Fletcher case and stated that "the trial judge, and the trial judge alone, has the solemn duty to determine whether a given parenting arrangement is in the best interest of a child in his charge."

While the Court noted that "we see no reason why parents who have agreed to modify a parenting arrangement must be forced to spend time and attorney's fees in an attempt to prove a material change of circumstance. In the same vein, requiring such proof would be a burden to judicial economy and efficiency." While the Court does not require a showing of a material change in an uncontested proceeding, the Court still placed a burden on a parent reaching an agreement for a parenting arrangement to establish it is in the child's best interest. In summary, the far-reaching implications of the Stricklin case could be that all mediated and agreed-upon matters involving children will require findings before the trial court that the parenting arrangement is in the children's best interest.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected

or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I received my listing as a Rule 31 Family Law mediator in 2008. In addition, I received training and was listed as a mediator specially trained in domestic violence in 2014. As a result, I have served as a mediator in over five hundred family law cases. The cases that I have mediated typically were cases filed in either chancery, juvenile, or general sessions courts throughout West Tennessee. Serving as a mediator has been both challenging and rewarding. I have successfully helped to craft settlements involving parenting plans where either or both parties have unorthodox work schedules.

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.

None, other than as a lawyer in this capacity.

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

On or about April 2018, I participated in a seizure of 150 various animals living in inhumane conditions in Carroll County, Tennessee, through Animal Rescue Corps. The efforts were coordinated with the Carroll County Sheriff's Department. My role was to serve as intake for numerous animals that day and to assist in photographing and identifying the animals for the court case.

On or about 2008, a client was referred to me in need of emergency assistance over custody of a child. I obtained an emergency custody order for my client in Tennessee. The trial court gave my client only days to file a subsequent action in Mississippi where she resided. Days later, I applied and was admitted to practice pro hac vice in the state of Mississippi. In conjunction with another law firm in Mississippi, my client was awarded custody of the minor child. This case also took me to Denver, Colorado, for the deposition of an expert. Ultimately, the parental rights of the biological parents were terminated and my clients were allowed to adopt the child. Each year I receive a message and card from my clients with the typical message being, "Thank you for my life." Last year while I attended Dawn Coppock's Adoption Law CLE, my clients invited me to their home to meet the now young girl that they adopted.

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

Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

None

EDUCATION

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

David Lipscomb University, August 1995 to December 1998; Bachelor of Arts Degree, Magna Cum Laude

Jackson State Community College, one semester to complete a Chemistry class while home from Lipscomb University; Summer 1996.

University of Memphis School of Law, August 1999 to May 2002; Juris Doctor; top one-third of graduating class; participated in mock trial and moot court and received high marks for those competitions. Participated in Elder Law Clinic through the University of Memphis and advocated for the needs of low-income clients in Shelby County, TN.

PERSONAL INFORMATION

15. State your age and date of birth.

41 years old; [REDACTED] 977

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

41 years, 5 months

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

I have lived in Carroll County, Tennessee, since 2008. Prior to that, I resided in Madison County from 2002 to 2008. I was in law school at the University of Memphis from 1999 to 2002 and lived in Germantown, Tennessee. Prior to this period, I lived in Carroll County, Tennessee, other than when I attended Lipscomb University from August to December 1998, when I lived in Nashville, Tennessee.

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

Carroll 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.

Not Applicable

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

No

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

No

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

I have never received a complaint filed against me to the Board of Professional Responsibility. A lawsuit was filed against me by Joshua Cathey in Madison County Circuit Court that was dismissed. Mr. Cathey was the opposing party in a Madison County Juvenile Court custody case and his lawsuit was frivolous and promptly dismissed.

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

No

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC,

corporation, or other business organization)?

No

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

Yes. The style of the case was Joshua D. Cathey v. King & King, PLC; Jennifer King; Jay Dustin King; Docket Number C-13-99, Div. I. Mr. Cathey was the opposing party in a custody and child support matter that I filed on behalf of my client in Madison County Juvenile Court. Mr. Cathey was unhappy with the trial court's ruling and filed the lawsuit which was frivolous and promptly dismissed.

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

Carroll County Humane Society--lifetime member; Tennessee Trails Association member—2017-2019; I also intend to apply to become a member of the Jackson Service League. I am President of the board of Highland Place Office Condo effective January 2019, which is where my office is located.

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- If so, list such organizations and describe the basis of the membership limitation.
 - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

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

Lawyers Association for Women—2002 to present; scholarship committee for the Lawyers Association for Women, 2017 and 2018; Tennessee Bar Association-2002 to present; Madison County Bar Association—2002 to present; Howell Edmunds Inns of Court, barrister—2010 to 2016; Madison County Republican Women—2019-present; Carroll County Republican Party—2019 to present; Tennessee Board of Professional Responsibility hearing officer—2008-2014.*

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

Pinnacle Award for Emerging Business, 2008, from the Madison County Chamber of Commerce; certificate from the Tennessee Board of Professional Responsibility for service as a hearing officer for the Board; CASA Champion award; Super Lawyers “Rising Star” for 2015-2017

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

My publication consists of the work that I have prepared for the various seminars that I have taught which are referenced in question number 31.

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.

On more than one occasion, I have taught a CLE on pre-nuptial agreements at the “James F. Butler Seminar” held in Jackson, Tennessee, sponsored by West Tennessee Legal Services. Also, I taught at the “James F. Butler Seminar” on “Violence in the Home—Restraining Orders, Orders of Protection, Child Abduction and Other Assorted Problems and Solutions” in December 2017. In addition, I have served as a CLE speaker for the Tennessee Bar Association on modifications of a parenting plan. I was a speaker at the “Mediation Update Seminar” for West Tennessee Legal Services. In addition, while I served on the Board of Professional Responsibility, I also served as a speaker at the Tennessee Lawyer’s Assistance Program.

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.

None

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

No

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

Attached please find two examples of legal writings that reflect my personal work. Both of these examples reflect my own personal effort.

ESSAYS/PERSONAL STATEMENTS

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

The position as judge for the Tennessee Court of Appeals would allow me to continue to represent and serve the best interest of the public at a different level. At this level, I would be able to interpret policy and develop a body of caselaw to benefit the public for generations to come. The Court of Appeals represents the judicial system at its purest form—the judges are able to drive legal precedent for the benefit of society as a whole.

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

During law school, I worked at a clinic for Memphis Area Legal Services. My first client was a woman who was indigent and HIV positive. I assisted the woman in preparing end of life directives.

Prior to the legalization of same sex marriages, I handled several same sex adoptions, some of which involved children with severe disabilities.

In addition, my aunt was mentally challenged. My husband and I handled the representation of a case on her behalf for her to be allowed to stay in the nursing home until the end of her life with my grandmother. Moreover, my brother-in-law is autistic so it is important to me to provide a voice for those that cannot.

During my legal career, I have never made any distinction on the basis of race, gender or

economic background in the clients that I represent. I treat all my clients equally.

I have handled pro bono family law mediations since I acquired my listing in 2008.

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 seeking appointment to the Court of Appeals, Western Division. My selection would add an element of diversity to the Court as there are no women currently on the Court of Appeals after Judge Gibson's vacancy. I have practiced in courts across West Tennessee. As such, I would bring my experience in family law which is a huge part of the cases that the Court hears.

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)*

I am applying to be a member of the Jackson Service League. The league donates their proceeds to various charities across Madison County primarily benefiting women and children including The Dream Center, RIFA, etc. I would continue this work if I am appointed judge as long as it is allowed under the Rules of Judicial Conduct. In addition, I have assisted various animal rescue organizations and would continue to do that as permitted.

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

While attending college at Lipscomb University, I contracted a severe case of mononucleosis. I had been healthy my entire life and have never been ill since this time. That semester I had an internship at the state capitol, so I was also required to defer the internship. I used this time to read many of the classics in modern literature. This illness resulted in me withdrawing from college for a semester. As soon as I was able, I returned and started summer classes. Despite the illness, I graduated in three and a half years from Lipscomb University magna cum laude. I have found that my persistence and tenacity is essential to being a successful attorney.

I am a researcher and a planner. Whether in the practice of law or everyday life, there is not much that I do that is not researched or planned beforehand. In addition, it is somewhat of a joke in my family that I am a very fast reader. This has helped me in my practice since I can absorb many documents in a short time period. Finally, I am organized in both work and home life. Organization is something that comes easy to me and I do it almost without thinking. It was Benjamin Franklin that said, "For every minute spent in organizing, an hour is earned."

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. I appreciate the doctrine of separation of powers and that the role of the Court of Appeals is to interpret the law and apply it to the cases before it. Prior to the change in the law as to the time limitation for retroactive child support, I had to give the bad news to my client about the amount of child support arrears he would owe. Despite what I thought was an inequitable result for my client, we were bound by the existing law at that time.

REFERENCES

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

A. Chancellor James F. Butler, Chancellor for the 26 th Judicial District, [REDACTED]
B. William Bowen, Attorney at Kizer, Bonds, Hughes and Bowen, [REDACTED]
C. Charlotte Jaquet, court reporter, [REDACTED]
D. Lisa Houston, attorney, [REDACTED]
E. Jeff Griggs, Mayor of Lexington, TN; [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 of Appeals of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Council members.

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

Dated: February 8, 2019.


Signature

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



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS
ADMINISTRATIVE OFFICE OF THE COURTS**

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

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

WAIVER OF CONFIDENTIALITY

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

Jennifer Twyman King
Type or Print Name

Jennifer King
Signature

2-8-19
Date

022321
BPR #

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

WRITING SAMPLES

IN THE CHANCERY COURT OF MADISON COUNTY, TENNESSEE
AT JACKSON

ROSE MARIE VAN DEN BOSCH,)
)
 PLAINTIFF,)
)
 VS.)
)
 JOHN VAN DEN BOSCH, JR.,)
)
 DEFENDANT.)

CASE NO. 66896 TIME:

FILED
3:05

JUL 28 2010

PAM CARTER
CLERK & MASTER

BY: DEPUTY CLERK

MEMORANDUM OF LAW IN SUPPORT OF PRE-MARITAL AGREEMENT'S
WAIVER OF ALIMONY

Comes now, John Van den Bosch ("Defendant" or "Mr. Van den Bosch"),
by and through his attorney of record, and submits the following Memorandum of
Law in Support of Pre-Marital Agreement's Waiver of Alimony and states unto the
Court as follows:

STATEMENT OF ISSUE

Whether the Pre-Marital Agreement waives all forms of alimony between
the parties in the event of a divorce?

STATEMENT OF LAW AND ARGUMENT

The Tennessee Supreme Court established in the Cary case that
antenuptial or pre-marital agreements containing a provision waiving alimony are
not void as contrary to public policy. The Courts have stated that prenuptial
agreements are favored by public policy because they allow individuals the
opportunity to remarry by protecting the separate assets. Wilson v. Moore, 929

S.W. 2d 367, 370 (Tenn. Ct. App. 1996). The Court held that as long as a pre-marital agreement is entered into freely and knowledgeably, with adequate disclosure, and without undue influence or overreaching, the provision waiving alimony will be enforced as long as it will not result in the spouse becoming a public charge. Cary v. Cary, 937 S.W. 2d 777, 782 (Tenn. Sup. Ct. 1996). The Court further noted in the Cary case that the wife had teaching experience and that there was nothing to suggest that enforcing the antenuptial agreement would lead to her becoming a public charge. Id. At 782.

In discussing the disclosure requirement, the requirement of disclosure does not mandate detailed disclosures such as financial statements, appraisals, balance sheets, or similar items. In addition, the failure to disclose an asset or undervaluation of an asset also does not invalidate a prenuptial agreement as long as the disclosure made provides an "essentially accurate understanding of the party's financial holdings." Erickson v. Erickson, 2007 Tenn. App. LEXIS 345, *8 (Tenn. Ct. App. 2007).

Prenuptial agreements are contracts and the language in the agreements must be taken and understood in its plain, ordinary, and popular sense. Ruder v. Ruder, 2008 Tenn. App. LEXIS 555, *8 (Tenn. Ct. App. 2008). In understanding the prenuptial agreement, the courts require that the usual, natural, and ordinary meaning of the parties' intentions be construed. If the language of the contract is unambiguous, the Court must interpret the contract as written rather than an unexpressed intention of one of the parties. Similarly, as with other contracts,

the Court cannot create an ambiguity in a contract where none exists in the contract. Id. At *8-*9.

In Erickson, the Court addressed the issue of whether the prenuptial agreement waived an award of attorney's fees when the terms of the agreement did not specifically waive the party's rights to request attorney's fees from the other party. The terms of the prenuptial agreement provided that "the mutual release given by each other with respect to the assets described... shall be in full satisfaction and discharge of any and all rights which either party might have against the other for alimony, of any kind, support, and maintenance under applicable law in the event of a separation or divorce." The Erickson Court held that an award of attorney's fees is a form of spousal support and is characterized as alimony in solido. Given that the parties made provisions for the discharge of any and all rights of alimony or support, the Court denied the Wife's request for any form of alimony, which included attorney's fees. Erickson v. Erickson-Mitchell, 2007 Tenn. App. LEXIS 345, *14 (Tenn. Ct. App. 2007).

In the present case, Plaintiff and Defendant executed a Pre-Marital Agreement prior to their marriage. While Rose Marie Van den Bosch alleged that she was coerced into executing the agreement, there was no evidence presented at the hearing of such coercion by Defendant. Rose Marie Van den Bosch is an educated person and testified that she read the agreement. In addition, she admitted that she could have retained an attorney to review the agreement with her prior to its execution. The terms of the agreement provide that both parties had knowledge that "both are fully acquainted with the business and resources of

the other; both understand the assets and possessions of the other; both have answered all questions the other has asked about income and assets; both have had access to any and all financial information of the other party." In addition, both parties provided a list of items of their separate property which met the disclosure requirement for prenuptial agreements. The agreement itself further provides that the list of items is not exhaustive between the parties.


In the terms of the Pre-Marital Agreement, the parties agreed "should the marriage between the parties be terminated by annulment or divorce, or upon the death of either of the parties, no claim for property distribution, alimony, support, acting as the other's executor or administrator, or any right by inheritance, descent, election to take against the will, elective portion, marital property portion or otherwise shall be made by either of the parties hereto against the other or the estate or inheritance or gifts of the other party." In construing the terms of the Pre-Marital Agreement in their usual and ordinary form, the parties waived any claim for alimony and support. As in the Erickson case where the prenuptial agreement did not specifically waive attorney's fees, the Court held that the waiver of alimony would include a waiver of attorney's fees. Similarly, Defendant submits that a waiver of alimony and support provision in the terms of the Pre-Marital Agreement would include a waiver of alimony pendente lite or temporary alimony by the parties.

CONCLUSION

The Court should enforce the terms of the Pre-Marital Agreement and find that the Pre-Marital Agreement waived a claim for alimony or support, in any form, from the other party.

Respectfully Submitted:

King & King, PLC



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CERTIFICATE OF SERVICE

This is to certify that I served a true and correct copy of this pleading or paper personally or via U.S. Mail, postage prepaid, upon Lanis L. Karnes, P.O. Box 10785, Jackson, TN 38308 this the 28th day of July, 2010.

BY: 
Jennifer Twyman King (#022321)
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(731) 664-6864

IN THE COURT OF APPEALS OF TENNESSEE AT JACKSON

JOEY CONNER,

)
)
)
)
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)
)

Appellant,

VS:

NO.: W2008-02254--COA-R3-CV
Haywood County Chancery No.: 11718

CARMEN CONNER,

Appellee.

BRIEF OF APPELLANT

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ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

Pursuant to Tennessee Rule of Appellate Procedure 3, the Appellant may appeal to this Honorable Court as of right.

STATEMENT OF THE ISSUES

WHETHER THE TRIAL COURT ERRED IN FINDING THAT A MATERIAL CHANGE IN CIRCUMSTANCE EXISTED TO WARRANT A MODIFICATION OF CUSTODY?

WHETHER THE TRIAL COURT ERRED IN FINDING THAT MOTHER'S REMARRIAGE, COMPLETION OF HER EDUCATION, AND CHANGE OF EMPLOYMENT CONSTITUTED A MATERIAL CHANGE IN CIRCUMSTANCE?

WHETHER THE TRIAL COURT SHOULD HAVE EXCLUDED TESTIMONY OF THE STATEMENTS MADE BY THE MINOR CHILD AS HEARSAY EVIDENCE UNDER RULE 802?

WHETHER THE TRIAL COURT RELIED UPON TESTIMONY OF THE STATEMENTS MADE BY THE MINOR CHILD AS A BASIS TO FIND THAT THERE WAS A MATERIAL CHANGE IN CIRCUMSTANCE TO WARRANT A MODIFICATION OF CUSTODY?

WHETHER IT WAS IN THE CHILD'S BEST INTEREST TO MODIFY THE PERMANENT PARENTING PLAN?

STATEMENT OF THE CASE

Plaintiff, Joey Conner, hereinafter referred to as "Plaintiff" or "Father", was granted an absolute divorce from Defendant, Carmen Conner, hereinafter referred to as "Defendant" or "Mother" in the Chancery Court of Haywood County, Tennessee, at Brownsville, on September 10, 1998. R. at 5.¹ The Amended Consent Final Decree of Absolute Divorce provided that Plaintiff would be the primary custodian of the minor child, Sharron Denise Conner, who would reside with Plaintiff during the week and attend school in Haywood County, Tennessee. Defendant was granted visitation with the child on weekends. R. at 6. Defendant filed a Petition to Modify Custody on March 9, 2000, which was denied by the Court. R. at 8-16. Plaintiff filed a Motion to Set Specific Times for Defendant's Visitation on July 24, 2001. R. at 22. The Court approved a Permanent Parenting Plan entered on January 8, 2002, which provided that Father would be the primary residential parent of the child with the Mother having alternate weekends with the child on Thursday at 4:00 p.m. and return the child to school on Monday morning. The Mother was to pick up the child from Father's home at 4:00 p.m. on Thursday and return the child to school on Friday morning on the Father's weekends with the child. R. at 38.

Plaintiff filed a Petition for Contempt, to Increase Child Support and For Modification of Previous Order of the Court along with a proposed Permanent Parenting Plan on November 29, 2004. R. at 44-48. Defendant filed an Answer

¹ The one volume Technical Record will be referred to as "R. at ___" and the one volume Transcript of Evidence will be referred to as "T at ___".

to the Petition for Contempt, To Increase Child Support, and for Modification of the Previous Child Support Order on January 14, 2005. R. at 57. The Court ordered a Custodial Evaluation of the parties and the minor child with Dr. Robert Kennon on October 27, 2005. R. at 73. Defendant filed a Petition for Custody and Modification of Previous Order of the Court and Petition for Civil and Criminal Contempt on January 12, 2006. R. at 76. Plaintiff filed a Response to the Petition for Custody and Modification of Previous Order of the Court and Petition for Civil and Criminal Contempt on January 18, 2006. R. at 99. That during the pendency of the case, Maximus, on behalf of Plaintiff, also filed a Petition for Contempt against Defendant for her failure to pay child support as ordered by the Court. R. at 102. That Defendant filed a Motion in Limine to Exclude Any Testimony of Dr. David Pickering or Admission of Any Reports or Recommendations of Dr. David Pickering which was denied by the Court. R. at 119 and R. at 144. The Department of Children's Services filed a Motion to Quash the subpoena issued by Defendant for the custodian of records and for the testimony of the Department employee, Adrian Shields, which was denied by the Court. R. at 121-127 and R. at 144. Subsequently, the Court issued an Order requiring Geoffrey Lewter with the Department of Children's Services and the caseworkers to appear in court. R. at 146. Plaintiff filed a Motion for Contempt on the nonpayment of attorney's fees by Defendant which were awarded to Plaintiff from the hearing on the Motion to Compel. R. at 154.

Trial was held on August 22, 2006, November 27, 2006, May 8, 2007, and May 9, 2007, on the Petition for Contempt and for Modification of Permanent

Parenting Plan filed by Father and Petition for Custody and for Modification of Previous Order of the Court and Petition for Civil and Criminal Contempt filed by Mother. After the trial, the Court ordered that custody should be modified from the Father to the Mother without any finding of a material change in circumstance. R. at 157. The Trial Court approved a Permanent Parenting Plan which was entered with the Court on July 23, 2007. R. at 160-168. Father filed a Notice of Appeal on July 30, 2007. R. at 171. Mother filed a Notice of Appeal on August 22, 2007. R. at 174. The Court of Appeals issued an opinion which remanded the case back to the Trial Court to allow counsel for Father to cross-examine the Mother and to allow for the testimony of the Father. The Trial Court conducted a hearing on August 20, 2008, and an Order was entered on September 25, 2008. R. at 1. Father filed a Notice of Appeal on October 3, 2008. R. at 11.

STATEMENT OF FACTS

At the time of trial, Plaintiff, Joey Conner, resided in Brownsville, Haywood, County, Tennessee, with his wife, Kim Conner, and children which included Sharron Conner. Plaintiff, Joey Conner, has one daughter, Sharron Conner, who was eleven years old at the time of the trial. T. at 5-6. The minor child, Sharron Conner, had been in the primary care of her Father for eight years at the time of the trial. T. at 5-6. Carmen Conner exercised every other weekend visitation with Sharron Conner from Friday until Monday and on Thursdays since 2002 except from April 2003 to June 2004 when she was stationed in Iraq. T. at 38 and 84, Vol. 8. Mother relocated with her current husband to Murfreesboro, Tennessee, in October 2006. T. at 609 and T. at 620.

Joey Conner testified that he was presently married to Kim Conner and had one daughter, Jordan Conner, with her along with two other step-daughters, Shana and Shaterica. In his own testimony, Joey Conner demonstrated that it would be in Sharron Conner's best interest to remain in his custody. He testified that there had been continuity in Sharron's life during the eight years that she was in his care and custody. T. at 144, Vol. 8. In addition, he testified about Sharron's close relationship with Kim Conner and that they treated all of their children the same in their household. T. at 147, Vol. 8. Joey Conner maintained a stable job at Haywood Company from 2002 to 2007 and as a real estate agent at Crye-Leike for four years and had the means to provide financially for Sharron Conner. T. at 173, Vol. 8. In addition, Mr. Conner was actively involved in Sharron's education and she was an Honor Roll student in his care. T. at 163,

Vol. 8. Along with her education, he also coached her softball for five years, took her to basketball practice, and took her to dance. T. at 170, Vol. 8. Joey Conner testified that he and his wife were primarily involved in Sharron's homework and activities until July 2007 when the Court modified the custody arrangement. T. at 172, Vol. 8. In comparison, he testified that the Mother was not active in the child's school.

Dr. David Pickering performed an evaluation of Joey Conner and Sharron Conner. Dr. Pickering administered the MMPI test to Joey Conner which produced a valid test result. Dr. Pickering found that the minor child was an average eleven year old child. Dr. Pickering testified that the child indicated to him that her Mother and maternal grandparents had promised her many things if she came to live with them. T. at 303. Dr. Pickering indicated that he did not find any mental health concerns with his evaluation of Father. Furthermore, Dr. Pickering indicated that he did not have any concerns about the Father's discipline of the child. Specifically, Dr. Pickering testified that the child stated that the Father's disciplinary practices were very similar to the Mother's since they both yelled sometimes and spanked sometimes. T. at 297. In addition, Dr. Pickering indicated that he tested the child with the Behavior Assessment System for Children, Second Edition which is an objective personality test used extensively with children. T. at 297 and 300. Dr. Pickering testified that Dr. Kennon did not administer this test with the child. T. at 300. In the testing of the child, Dr. Pickering found that the child's testing was within normal limits in all arrears with nothing abnormal indicated in the test. T. at 307. Dr. Pickering

testified that due to the fact that Mr. Conner had been the primary custodial parent for the past eight years, has MMPI results that are essentially within normal limits, has raised Sharron and her responses indicate that she is a typical average eleven-year-old girl, that he saw no factor that would indicate a change of custody was necessary. T. at 366-367. In his opinion, the child was “an eleven year old child in an extremely stressful situation who was coping much better than most eleven year olds would.” T. at 352. In addition, Dr. Pickering’s opinion was that the child had feelings of guilt in expressing her preference and indicated that the child feels guilty when she expresses the preference to live with her Father. Dr. Pickering further testified that “the child was caught in the middle between two parents and feels disloyal to either one of them when she expresses a preference over the other.” T. at 396-397.

Robin Cunningham testified that the child was in her fifth grade class at Sunny Hill School in Haywood County from August 2005 to May 2006. T. at 418. Ms. Cunningham indicated that she had known the Father since he was in her fifth grade class years ago. Ms. Cunningham testified that she had not had any regular contact with the Mother except that she saw her one time at Sunny Hill. T. at 419. Ms. Cunningham further testified that she never saw any bruising or witnessed any evidence of abuse of the child. T. at 410. In her opinion, the child came to school smiling every morning and was not a discipline problem. T. at 424. In addition, she indicated that she recalled the Father coming to the school to check on the child’s progress, but did not see the Mother other than on one occasion. T. at 426. Wendy Piercey also testified that she had taught the child

in fifth grade at Sunny Hill School. T. at 454. Ms. Piercey indicated that the Father was involved with the child's activities at school such as Fun Night, child's lunch time, and parent-teacher conference. T. at 460. In addition, she testified that the child appeared happy and that she had no indication that the child was unsafe or mistreated by the Father. In her opinion, Mr. Conner appeared to be a good father. T. at 462.

Mother alleged that the Father abused his daughter which was unsubstantiated at trial. Specifically, Adriene Shields and Lamonica Lenore, caseworkers with the Department of Children's Services, testified that they found no evidence of abuse and closed their case. T. at 19 and T. at 68-69.

At the trial in 2007, counsel for Mother stated that there had been a change in circumstance to modify the custody arrangement due to the Mother now maintaining steady employment, has been to school, and is in a better position today than she was back in 1998 to provide for the needs of the child. In addition, counsel for Mother indicated that the change of circumstance was that the Mother moved back to Brownsville from Memphis at the time that she filed her petition to modify custody. T. at 640-641. However, Mother testified that nothing had changed since she had entered into the permanent parenting plan except that she was closer to her daughter and could have spent more time with her than she was allowed to spend. Mother also indicated that she now makes more money than she made at the time that she entered into the original Permanent Parenting Plan due to her obtaining a new job. T. at 684. Upon the case being remanded from the Court of Appeals back to the Trial Court in August

2008, Mother testified that she was already enrolled in college at the time that the parties' Permanent Parenting Plan was entered with the Court in 2002. T. at 121, Vol. 8.

LAW AND ARGUMENT

An appellate court's review of a trial court's findings of fact in a child custody case is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tennessee Rule of Appellate Procedure 13(d); Hass v. Knighton, 676 S.W.2d 554, 555 (Tenn. 1984).

I. The trial court must find that a material change in circumstances exists before modifying a custody order.

Once an initial custody order has been entered with the Court, the Court shall consider the custody order to be res judicata. The Appellate Courts "will not disturb a child custody decision unless it is based on a material error of law or the evidence preponderates against it." Gillum v. Gillum, 2004 Tenn. App. LEXIS 582 (Tenn. Ct. App. 2004) *citing* Adelsperger v. Adelsperger, 970 S.W.2d 482, 485 (Tenn. Ct. App. 1997). The Court may modify an award of child custody when a material change of circumstance has occurred and a change of custody is in the child's best interest. Richards v. Richards, 2007 Tenn. App. LEXIS 46, *12 (Tenn. Ct. App. 2007). Pursuant to Tennessee Code Annotated § 36-6-101 (a)(2)(B)(I), the Court shall make a finding as to the reason and the facts that constitute the basis for the custody determination in a contested proceeding involving a modification of custody. Tenn. Code Ann. § 36-6-101 (a)(2)(B)(I).

The change of circumstance must be a change that has occurred after the order sought to be modified, a change that was not known or reasonably anticipated when the order was entered, and a change that affects the child's well-being in a meaningful way. Blair v. Badenhope, 77 S.W. 3d 137 (Tenn. 2002). The party seeking to change an existing custody arrangement has the burden of proof to show that there has been a material change in circumstance. In absence of proof of a material change in circumstance, the trial court should not change custody and is not required to make a best interest determination. Curtis v. Curtis, 215 S.W. 3d 836, *8 (Tenn. Ct. App. 2006); Caudill v. Foley, 21 S.W. 3d 203 (Tenn. Ct. App. 1999).

Prior to the case being remanded by the Court of Appeals for further testimony in August 2008, the Court did not find that a material change in circumstance existed to warrant a modification of custody from the Father to the Mother. At the time of the Court's initial ruling, the Court had heard the testimony of witnesses for the Mother and Father along with testimony of the Mother. The Court specifically stated in its ruling that it **did not find a material change in circumstance but granted a modification of custody:**

The Court: ...”After listening to the proof, the Court became aware that Sharron will turn 12 in July. And the law in the State of Tennessee is when a child gets that age, the courts generally follow what the child desires. And the Court is aware, and I think you both agree, that at this point she thinks she wants to go live with her mom. Now, that may change. I'm not necessarily convinced thus far that there's been a change of circumstances to merit a change of the

parenting plan. But I'm well aware that it would be foolish for me to rule like that and then you all have to come back in another three months, and spend all the time and the money and the effort to do this again when it's pretty clear in the state of Tennessee that a 12 year old has a big say as to where that 12 year old wants to live. I don't have any question, having not talked to the little girl, that if she had her druthers, and you all remember this, she'd want to live in the house with mama and daddy." T. at 694-695.

The Court: "So this is what I'm going to do. I'm going to rule that there hasn't been any change in circumstances since the last hearing or parenting plan. T. at 697.

A. The Mother's remarriage, completion of her undergraduate degree, and change of employment does not constitute a material change in circumstance to warrant a modification of custody.

After the case was remanded to the Trial Court, the Court held that Mother had a history of changing residences since the divorce, changing jobs, and had not established a stable lifestyle in April 2000. T. at 321, Vol. 8. The Court further stated that the change of circumstances are that Mother had remarried, completed her undergraduate degree, has a stable job, and has left the National Guard. T. at 321, Vol. 8.

The Courts have consistently held that remarriage of either parent, in and of itself, is not a sufficient change of circumstance to justify a change of custody. Patterson v. Patterson, 2000 Tenn. App. LEXIS 364, *8 (Tenn. Ct. App. 2000). This is due to the fact that remarriage is foreseeable after the separation of two parents; as such, remarriage is not a change in circumstance that would trigger a re-examination of an existing custody arrangement because "remarriage is such

a common occurrence in contemporary society that it can reasonably be anticipated when parties divorce. Caldwell v. Caldwell, 250 S.W. 3d 865, *10 (Tenn. Ct. App. 2007). As such, the fact that Mother remarried in the present case was a foreseeable event which does not constitute a material change in circumstance.

In addition, the Tennessee Supreme Court has found that a move and improvement in one parent's residence does not constitute a material change in circumstance. Scotfield v. Scotfield, 2007 Tenn. App. LEXIS 117, *14 (Tenn. Ct. App. 2007) *citing* Blair, 77 S.W. 3d at 150. The fact that a parent settles down and intends to remain in one location does not necessarily affect the child's well-being in a meaningful way. There must be more proof that the change in the parent's life will have a substantial effect on the child's well-being. Id. In the Scotfield case, the Father, who had been an officer in the United States Army, retired from the Army and moved back to Huntsville, Alabama, where he would permanently reside.

As in the Scotfield case, the fact that Mother had ended her duty with the National Guard and established a residence in Murfreesboro, Tennessee, does not constitute a material change in circumstance. Mother further testified at trial that one of the change in circumstances was her move from Memphis, Tennessee, back to Brownsville, Tennessee. T. at 640, Vol. 8. However, Mother further testified that she was living in Brownsville, Tennessee, in 2002. T. at 640, Vol. 8. Given that the last Permanent Parenting Plan was entered with the Court in 2002, Mother's move to Brownsville in 2002 is not a

material change in circumstance and had already taken place before the entry of the 2002 Permanent Parenting Plan. While the Court held that Mother's completion of her undergraduate degree was also a change in circumstance, Mother testified that she was in college before the entry of the Permanent Parenting Plan in 2002. T. at 121 (Vol. 8). As such, the completion of Mother's education is not a change that has occurred since the entry of the Permanent Parenting Plan in 2002. While the Court also points to Mother's job at Vanderbilt University, Mother has been employed both before and after the entry of the Permanent Parenting Plan in 2002. Finally, there was no evidence that any of the circumstances given by the Court or by Mother at trial materially affected the child to warrant a modification of custody. Mother was asked the following by her own attorney as to what circumstances had changed since the entry of the Permanent Parenting Plan:

Counsel for Mother:” What other circumstances changed from the time that you entered into this parenting plan as it relates maybe to finances or your ability to perform some of your parenting functions?

Mother: Nothing had really changed. I was just closer to her, and I could have spent more time with her than I was allowed to.

Mother: And now I make, you know, more money, than I made then, because I've gotten a new job. T. at 684.

B. The preference of a minor child, standing alone, is not a material change in circumstance.

Upon the case being remanded, the Trial Court held in its ruling that the child stated that she wanted to live with the Mother. T. at 324. It is well-established under Tennessee law that a child's stated preference to live with one parent over the other, standing alone, cannot constitute a material change in circumstance as a matter of law. Mulkey v. Mulkey, 2004 Tenn. App. LEXIS 701 (Tenn. Ct. App. 2004). Absent a material change in circumstance, courts do not examine the statutory facts used in the best interest analysis, including the preference of the child. If there has been a finding of a material change in circumstance, then the preference of the child is one of the statutory factors that the trial court can consider when determining what is in the best interest of the child. Id. The Courts have found that it is error to base a custody determination solely upon the testimony of the child since a child's preference to live with one parent over the other parent may be misguided. Krup v. Cunningham-Grogan, 2006 Tenn. App. LEXIS 568 (Tenn. Ct. App. 2006).

In the present case, the minor child, who was eleven years old at the time of the initial trial, did not testify in the proceeding. As in the Mulkey case, the Court should have found that since there was no testimony of the child, the Court cannot assume that the child actually expressed a preference of living with one parent over the other parent. Mulkey v. Mulkey, 2004 Tenn. App. LEXIS 701 (Tenn. Ct. App. 2004). However, the Court in the Mulkey case stated that even if the record had contained testimony by the child of her preference, there must still be a material change in circumstance found before a modification of custody.

Mulkey at *12. In the present case, the only statements contained in the record are those of other witnesses and those made to Dr. Robert Kennon.

C. The Court erred in considering testimony of the child's statements which should have been excluded as hearsay under Rule 802.

In the present case, the Court held that he believed that the child wanted to live with her Mother. T. at 324. Given that the minor child did not testify directly at any of the proceedings, the Court presumably based this finding on statements from the child testified to by other witnesses. Pursuant to Rule 802 of the Tennessee Rules of Evidence, the testimony of other witnesses to statements made by the child constitutes hearsay. While the Court regularly acknowledged that the statements made by the child were hearsay throughout much of the proceedings, the Court did allow the Mother to testify to what she told Dr. Kennon about her preference over the objection of counsel for Father. T. at 67, Vol. 8. This directly contradicts the Court's prior rulings that the child's statements were hearsay:

Question by Counsel for Mother: You talked with the child?

Answer by Witness: Yes.

Question by Counsel for Mother: Okay. And what did she tell you happened?

Counsel for Father: Your Honor, I'm going to object if she's asking for the testimony of the child as to hearsay.

Court: Sustained. T. at 115.

In an exchange between counsel for Mother and the Court, counsel for Mother requested some leeway to allow testimony of statements made by the

child. T. at 186-187. The Court responded that counsel for Mother was asking to allow hearsay. T. at 187. However, in contradiction of the Court's prior rulings, counsel for Mother questioned the Court on whether the Mother would be allowed to testify to the child's statements. While counsel for Father objected to the testimony of statements made by the child, the Court held that the Court of Appeals had allowed that and "Judge Kurtz seemed not to have an issue with that." T. at 33, Vol. 33. The Court specifically ruled that the objection to hearsay made by counsel for Father was "overruled, based on the prior statements of the prior trial. T. at 33-34, Vol. 8. However, as the record reflects, the Court failed to establish any consistency of its rulings in allowing the child's statements to come into evidence throughout this trial. The statements of the child should have been excluded as hearsay by the Trial Court and influenced the Trial Court's ruling in finding a material change in circumstance exists to modify the custody arrangement.

The Court further held that "one of the most compelling things came from Dr. Pickering, when he stated that the child loves both parents, and the Court is satisfied that both parents love the child and that the stepmother does, as well as the grandmother. A lot of conflicts, but the Court – The statement by the little girl, which was so probing was the fact that she felt like this was the time in her life that she needed to be with the female parent to help her with female issues that face every female." T. at 324-325, Vol. 8. After making that statement, the Court ruled that the Mother would be the custodial parent with the Father having visitation every other weekend and the holidays as set forth in the shared

parenting. T. at 325. **However, in the eight volumes of transcripts, there is no such statement made by Dr. Pickering in his report or testimony.** As such, the Court appeared to rely heavily upon evidence which was never introduced in this proceeding.

Dr. Pickering did testify to the fact that the child vacillated between wanting to live with her mother and father. T. at 304. According to Dr. Pickering, it is typical for a child to give conflicting statements based on when she is asked where she wants to live. T. at 414. Furthermore, Dr. Pickering testified that the child indicated to him that her Mother and maternal grandparents had promised her many things if she came to live with them. T. at 303. Specifically, Dr. Pickering was asked if she believed these promises to the child would affect Dr. Kennon's evaluation:

Counsel for Father: Do you believe—was there indication that you believed, in meeting with Sharron, that the promises made would have affected Dr. Kennon's evaluation?

Dr. Pickering: I think it's likely that she would state that she would want to live with her Mother if she thought there were advantages there. Most children would. T. at 304.

Counsel for Father: Was there an indication in your assessment of Sharron that she was manipulating the relationship between the parents?

Dr. Pickering: I would say, yes, to a degree certainly.

Counsel for Father: And what gave you that indication?

Dr. Pickering: Well, she made the statement that the promises had been made and she continued to vacillate. That would suggest it. T. at 304-305.

II. The statutory factors enumerated in Tennessee Code Annotated Section 36-6-106 do not support a finding that it is in the child's best interest to modify the custody arrangement.

Upon the Court finding that a material change in custody exists, the Court must determine that modifying the custody arrangement is in the children's best interest under the factors enumerated in Tennessee Code Annotated Section 36-6-106. The factors contained in Tennessee Code Annotated Section 36-6-106 include: 1. love, affection, and emotional ties existing between the parents and child; 2. disposition of the parents to provide the child with food, clothing, medical care, education, and other necessary care and the degree to which a parent has been the primary caregiver; 3. importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment; 4. stability of the family unit of the parents; 5. mental and physical health of the parents; 6. home, school, and community record of the child; 7. reasonable preference of the child, if twelve years of age or older; 8. evidence of physical or emotional abuse to the child, to the other parent or to any other person; 9. character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child; and 10. each parent's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with

the best interest of the child. Tenn. Code Ann. § 36-6-106. However, the Court will not repeat the comparative fitness analysis that is appropriate at the time of the original custody decree until the moving party has met the burden of showing that a material change in circumstance exists. Cranston v. Combs, 106 S.W. 3d 641, 644 (2003).

In deciding custody, the child's best interest is the "paramount consideration." "The child's best interest is the polestar, the alpha and omega." Id. at 665. Our courts recognize that there are "literally thousands of things that must be taken into consideration in the lives of young children." Id. In making this analysis, the trial court "should not focus only on one parent's fitness since both parents' fitness should be compared and considered." Gaskill v. Gaskill, 936 S.W.2d 626, 631 (Tenn. Ct. App. 1996). As stated in Bah:

This is and must remain the true test for the award of custody. To arrive at the point of deciding with whom to place a child in preparation for a caring and productive adult life requires consideration of many relevant factors, including but certainly not limited to the age, habits, mental and emotional make-up of the child and those parties competing for custody; the education and experience of those seeking to raise the child; their character and propensities as evidenced by their past conduct; the financial and physical circumstances available in the home of each party seeking custody and the special requirements of the child; the availability and extent of third-party support; the associations and influences to which the child is most likely to be exposed in the alternatives afforded, both positive and negative; and where is the greater likelihood of an environment for the child of love, warmth, stability, support, consistency, care and concern, and physical and spiritual nurture.

Bah at 666. This "comparative fitness" analysis does not measure the parents against the standard of perfection because the courts are pragmatic enough to understand that perfection in marriage and parenting is as evanescent as it is in life's other pursuits. Rather, the analysis requires the courts to determine which of the parents, in light of their present circumstances, is comparatively more fit to assume and discharge the responsibilities of being the primary residential parent. In re Zaylen R., 2005 Tenn. App. LEXIS 612 (Tenn. Ct. App., September 27, 2005).

Joey Conner testified that he was presently married to Kim Conner and had one daughter, Jordan Conner, with her along with two other step-daughters, Shana and Shaterica. In his own testimony, Joey Conner demonstrated that it would be in Sharron Conner's best interest to remain in his custody. He testified that there had been continuity in Sharron's life during the eight years that she was in his care and custody. T. at 144, Vol. 8. In addition, he testified about Sharron's close relationship with Kim Conner and that they treated all of their children the same in their household. T. at 147, Vol. 8. Joey Conner maintained a stable job at Haywood Company from 2002 to 2007 and as a real estate agent at Crye-Leike for four years and had the means to provide financially for Sharron Conner. T. at 173, Vol. 8. In addition, Mr. Conner was actively involved in Sharron's education and she was an Honor Roll student in his care. T. at 163, Vol. 8. Along with her education, he also coached her softball for five years, took her to basketball practice, and took her to dance. T. at 170, Vol. 8. Joey Conner testified that he and his wife were primarily involved in Sharron's homework and

activities until July 2007 when the Court modified the custody arrangement. T. at 172, Vol. 8. In comparison, he testified that the Mother was not active in the child's school. T. at 171, Vol. 8.

Dr. David Pickering testified as an expert witness on behalf of Father who found that there was no basis for a modification of custody in this proceeding. Dr. Pickering testified that he met with the Father and the child in May and June of 2006 to evaluate both of them. T. at 290. In his evaluation of the Father and child, Dr. Pickering indicated that he reviewed Dr. Kennon's report of the Father, Mother, and child. T. at 290. Dr. Pickering testified that he administered the MMPI to the Father instead of the MMPI-2 test which was administered by Dr. Robert Kennon due to the fact that he believed it was a better test than the MMPI-2. T. at 291-292.

Dr. Pickering indicated that he did not find any mental health concerns with his evaluation of Father. Furthermore, Dr. Pickering indicated that he did not have any concerns about the Father's discipline of the child. Specifically, Dr. Pickering testified that the child stated that the Father's disciplinary practices were very similar to the Mother's since they both yelled sometimes and spanked sometimes. T. at 297. In addition, Dr. Pickering indicated that he tested the child with the Behavior Assessment System for Children, Second Edition which is an objective personality test used extensively with children. T. at 297 and 300. In the testing of the child, Dr. Pickering found that the child's testing was completely within normal limits in all areas with nothing abnormal indicated in the test. In addition, Dr. Pickering found no evidence of anxiety, depression, or stress in the

child's testing. In the event that the child had been abused, Dr. Pickering testified that the child's levels on the test would indicate clinically significant levels on the testing scales. T. at 302.

According to Dr. Pickering, the child indicated that she could get away with some things at her Mother's home that she could not get away with at her Father's home. T. at 305. While Mother has alleged that Father abused the child in spanking the child, Dr. Pickering, contacted the Department of Children's Services regarding the Father's spankings of the child and determined that the Department found the allegations to be non-supported. T. at 358-359. In giving his opinion regarding Father's care of the child, he noted that the child also reported that she had a positive relationship with her stepmother and stepsisters in her Father's home. T. at 307. In his expert opinion, Dr. Pickering found that the child had been in the Father's care for eight years at the time of his testing and did not observe any factors in the case that would warrant a change of custody from the Father. T. at 307. Specifically, Dr. Pickering stated that his conclusion **"given that Mr. Conner has been the primary custodial parent for the past eight years, has MMPI results that are essentially within normal limits, has raised Sharron and her responses indicate that she is a typical average eleven-year-old girl, I see no factor that would indicate a change of custody was necessary."** T. at 366-367. In his opinion, the child was "an eleven year old child in an extremely stressful situation who was coping much better than most eleven year olds would." T. at 352.

In addition, Dr. Pickering testified about his concerns in disrupting the continuity of the child's placement with the Father. Dr. Pickering's opinion was that moving the child to Nashville with her Mother would be a disruptive influence on the child's peer relationships. T. at 370. This opinion coincides with the strong presumption of continuity of placement under Tennessee law. Placencia v. Placencia, 48 S.W. 3d 732 (Tenn. Ct. App. 2000). In addition, he found it would be problematic for the child to maintain continuity in her relationships if she moved to Nashville with her Mother since the people the child has had relationships with for the past eight years would remain in Brownsville. T. at 371. In addition, Dr. Pickering disputed Dr. Kennon's finding that the child expressed feelings of intimidation and fear since he did not find the child to exhibit problems with anxiety. T. at 376-377. Dr. Pickering further questioned Dr. Kennon's finding that the Mother may have been able to identify supportive community services since the Father was the primary custodial parent. T. at 381.

Robin Cunningham testified that the child was in her fifth grade class at Sunny Hill School in Haywood County from August 2005 to May 2006. T. at 418. Furthermore, Ms. Cunningham indicated that she had known the Father since he was in her fifth grade class years ago. However, Ms. Cunningham testified that she had not had any regular contact with the Mother except that she saw her one time at Sunny Hill. T. at 419. Ms. Cunningham also stated that she never saw any bruising or witnessed any evidence of abuse of the child. T. at 410. In her opinion, the child came to school smiling every morning and was not a discipline problem. T. at 424. In addition, she indicated that she recalled the Father

coming to the school to check on the child's progress, but did not see the Mother other than on one occasion. T. at 426. Wendy Piercey also testified that she taught the child in fifth grade at Sunny Hill School T. at 454 Ms. Piercey indicated that the Father was involved with the child's activities at school such as Fun Night, child's lunch time, and parent-teacher conference. T. at 460. In addition, she testified that the child appeared happy and that she had no indication that the child was unsafe or mistreated by the Father. In her opinion, Mr. Conner appeared to be a good father. T. at 462.

CONCLUSION

Appellant respectfully requests this Honorable Court to reverse the decision of the trial court and reinstate the original Permanent Parenting Plan entered with the Court on designating the Father as the primary residential parent of the child.

Respectfully Submitted,

KING & KING, PLC.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has served a true copy of the foregoing on Ms. Felicia Corbin Johnson, Corbin Johnson Law Firm, 2736 Warford Ave., Suite 102, Memphis, TN 38128, by mail, this _____ day of _____ 2008.

JENNIFER TWYMAN KING