

Tennessee Judicial Nominating Commission
Application for Nomination to Judicial Office

Rev. 26 November 2012

Name: ROBERT H. MONTGOMERY, JR.

Office Address: P.O. Box 585
(including county)

Blountville, Sullivan County, TN 37617

Office Phone: 423-279-2732 Facsimile: 423-279-3258

Email Address: judge.robert.montgomery@tncourts.gov

Home Address: [REDACTED]
[REDACTED]
[REDACTED]

Home Phone: [REDACTED] [REDACTED]

INTRODUCTION

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

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

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Criminal Court Judge, Sullivan County, Second Judicial District

The Second Judicial District is a single county district containing only Sullivan County. I am one of four Circuit-level judges. By statute I can hear any matter filed in Circuit, Chancery or Criminal Court, but by local rule I am assigned two-thirds of all criminal filings and a percentage of child support filings.

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

1979 – BOPR #006682

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

Tennessee – BOPR #006682, Licensed October, 1979

Active license

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).

Criminal Court Judge, Sullivan County, Second Judicial District, 2006 – Present

Assistant District Attorney General, Sullivan County, Second Judicial District, 1987 – 2006

Unemployment Appeals Referee, Tennessee Department of Employment Security, Kingsport, Morristown, and Knoxville, 1986 to 1987

Associate Attorney, Donelson, Stokes and Bartholomew, Nashville, Resident attorney in Tri-Cities office, 1985 to 1986

Partner, Tennessee Printing Company, Kingsport, 1983 to 1987

Attorney, Private Practice, Kingsport, 1982 to 1985

Deputy Director, Beard '82 Committee, 1982

Associate Attorney, Hunter, Smith and Davis, Kingsport 1979 to 1982

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.

I am currently serving as Criminal Court Judge in Sullivan County, Second Judicial District. Over 95% of my day to day work as a judge involves presiding over criminal matters, including misdemeanors, felonies and juvenile appeals. I also handle post-conviction petitions, other post adjudication motions or writs, habeas corpus petitions and violations of probation. The remainder of my judicial responsibility involves issuing search warrants, judicial subpoenas and reviewing child support orders from the child support referee, as well as administrative duties involving the grand jury, petit juries, and bail bonding companies.

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

allow the Commission to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

1979 – 1986, Private Practice

From my first being licensed to practice law in 1979 until 1986, I primarily practiced civil law either for law firms or as a sole practitioner. My work during that time involved preparing wills, probating estates, preparing documentation for simple and complex real estate transactions and industrial development bond issues, drafting contracts, and handling government relations, and other legal matters for corporate clients. During this period, I appeared in General Sessions Court in insurance subrogation and criminal defense matters. I worked extensively on a government consolidation charter for a voter referendum. I also prepared the appeal brief on a statutory interpretation issue under the governmental tort liability act and successfully argued the case before the Tennessee Supreme Court. In 1982, I took a leave of absence from my position as a law firm associate to work in a state-wide political campaign. I did not return to the firm after the campaign and began working with a family owned business and doing legal work as a sole practitioner. Beginning in 1985, I returned to working as an associate with a law firm.

1986 – 1987, Unemployment Appeals Referee

After a few years of private practice and business activities, I came to realize that my interests and skills as an attorney were better served by being in the courtroom. In September of 1986, I was appointed to serve as an unemployment appeals referee for the Tennessee Department of Employment Security (now part of the Department of Labor and Workforce Development). During my five-month tenure with that agency, I conducted more than 200 appeal hearings to determine whether, under the law, individual claimants were entitled to receive unemployment compensation. As referee, I heard sworn testimony, received physical evidence, questioned witnesses, and prepared written opinions in each case. My decisions were reviewable on appeal by an unemployment appeals tribunal. To my knowledge, none of my decisions were reversed on appeal.

1987 – 2006, Assistant District Attorney General

Beginning in January of 1987, I was appointed to serve as an assistant District Attorney General in the Second Judicial District which comprises Sullivan County Tennessee. My initial responsibility was in a newly created position as the county funded highway safety prosecutor. Over the next six years, I served four days a week in the three General Sessions Courts that held court in Kingsport and Bristol. During that period of time, I developed the procedures for working with the courts and law enforcement to prosecute literally 1,000's of DUI cases, as well as numerous other traffic-related offenses. As additional duties during this period, I served as the county's primary juvenile court prosecutor. I was responsible for implementing a program to increase the collection of fines and costs from traffic offenses. I also developed and implemented the process to

identify and successfully file hundreds of petitions for our Criminal and Circuit Courts to hold hearings to determine whether individuals who had committed multiple serious traffic offenses should be declared as habitual motor vehicle offenders.

In 1993, as a result of my highway safety prosecution experience, I was asked to attend a DUI faculty development course conducted by the National Highway Traffic Safety Administration (NHTSA), and the National District Attorneys Association (NDAA). The course was designed to improve the trial skills of young DUI prosecutors in the southeastern United States. After completing that week-long course, I was invited over the next twelve years by NHTSA and the NDAA to serve as a member of the faculty for some 25 courses presented to prosecutors and law enforcement in eight states. These courses included DUI and vehicular homicide trial advocacy courses, as well as faculty development courses for prosecutors. I also served as a faculty member of courses designed to improve the courtroom skills and DUI-related crash investigation procedures for law enforcement officers.

Beginning in September of 1994, I was assigned by the District Attorney General to begin service as one of four prosecutors assigned to Criminal Court. From that time, until my election as Criminal Court Judge, I prosecuted over 1700 cases and handled over 60 jury trials. While serving in Criminal Court, I was assigned to only one court and my case-load averaged about 120 cases at any given time. I handled cases literally from beginning to end. My responsibility included working with law enforcement to complete investigations, preparing and presenting indictments to the grand jury, preparing and responding to pre-trial motions, responding to discovery, communicating with victims and witnesses, making plea offers, prosecuting jury trials and handling sentencing. My jury trial experiences ranged from a case involving a pro-se defendant appealing a speeding ticket, to a week-long double homicide trial. I was also responsible for handling probation violations and post-conviction filings for the cases that had originally been assigned to me for prosecution.

While assigned to Criminal Court, I, along with others in the District Attorney's Office, became concerned about the lack of quality in the investigation in Sullivan County of motor vehicle crashes that involved death and serious bodily injury. Based on my experience in traffic prosecutions, our District Attorney General asked me to serve as one of the organizers and advisers to a group of officers with knowledge and interest in this type of investigation. The end result was the creation of Sullivan County's Fatal Incident Response and Support Team (FIRST). When fully implemented in 2001, FIRST was unique to Tennessee and was a cooperative effort of the three primary law enforcement agencies in Sullivan County and the District Attorney's Office. FIRST members were all sworn as sheriff's deputies and an interagency mutual cooperation agreement was executed by all the law enforcement agencies involved. I met monthly with the members of FIRST for training with the goal of improving the response to and the investigation of serious crashes. The team was able to obtain specialized equipment to help in these investigations. As a result of this program, if there was a serious crash anywhere in Sullivan County and FIRST was activated, officers from multiple agencies would respond to insure that the crash scene and subsequent investigation were properly staffed. I was regularly called to

the crash scene to provide legal advice and to assist with investigations.

2006 – Present, Criminal Court Judge

In 2006, I ran for and was elected Criminal Court Judge after Judge Phyllis Miller, in whose court I had served as an assistant District Attorney, announced her retirement. Since that time, I have served full-time as Criminal Court Judge. I have provided more detailed information on my work as Criminal Court Judge in Item 10, below.

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

Otha S. Chapman, et al. v. Sullivan County, Tennessee, 608 S.W.2d 580 (Tenn. 1980) This case, and its companion case in which my law firm represented one of the parties, involved the statutory interpretation of the notice provision of the Tennessee Governmental Tort Liability Act. I prepared a brief which focused on the legislative history of the Act and I was one of the attorneys that argued the case before the Tennessee Supreme Court. Our client prevailed.

State v. James D. Lamor Perry, upheld on appeal as No. E1999-00271-CCA-R3-CD (Tenn. Crim. App. 2000) I was the prosecutor in the Sullivan County jury trial of this case which was one of the first appellate cases addressing the constitutionality and the application of the drug free school zone law in Tennessee. The case was also notable in that the defendant was charged and convicted for the actual possession of drugs in one school zone and at the same time the constructive possession of drugs in another school zone.

State v. Carl Ray Nidiffer, 173 S.W.3d 62 (Tenn. Crim. App 2004) I was the pro tempore prosecutor in the Carter County Criminal Court in which one of the issues was whether the DUI suspect was under arrest at the time he was asked to take a blood test pursuant to the implied consent law. The trial court ruled against the State and I filed the appeal. This case was the first reported Tennessee decision in which the State appealed a trial court's denial of a violation of the implied consent law. The Tennessee Attorney General handled the case on appeal and the Court of Criminal Appeals reversed the trial court's denial of a violation and affirmed the position I argued in the trial court.

State v. George Arvil Vance and Vincent Vance, upheld on appeal as No. E2003-00110-CCA-R3-CD. (Tenn. Crim. App. 2004) I was the prosecutor in the Sullivan County jury trial in this case involving the operation of alleged gambling devices that were marketed to local businesses as legitimate vending machines dispensing baseball-type trading cards. At the time of trial, these machines were still in operation in numerous counties throughout Tennessee. Proof at trial showed that the over one million dollars had been paid into these machines in less than six months of operation in Sullivan County, alone. The defendants

were convicted of aggravated gambling promotion after a five-day trial which involved the presentation of extensive financial records and expert testimony. During sentencing, I successfully argued to the trial court that the scheme used by the defendants was designed to avoid the payment of appropriate Tennessee sales taxes and the trial court ordered restitution of over \$130,000 to be paid to the Tennessee Department of Revenue.

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.

Between September of 1986 and January of 1987, I served as an unemployment appeals referee. I have provided more detailed information about this service in Item 8, above.

In 2006, I ran for and was elected Criminal Court Judge after Judge Phyllis Miller, in whose court I had served as an assistant District Attorney, announced her retirement. Since that time, I have served full-time as Criminal Court Judge. By local rule, I am assigned two-thirds of all criminal filings in Sullivan County. Sullivan County's current population exceeds 150,000 and includes the cities of Kingsport and Bristol, as well as some suburban parts of Johnson City. Based on the statistics reported by the Sullivan County Circuit Court Clerk to the Administrative Office of the Court, I have disposed of between 1370 and 1627 cases each year I have been on the bench. Those statistics also reflect that, over the last five fiscal years, an average of 3560 criminal counts, including about 525 violations of probation, have been filed in my court. During that same period of time, on average, 3620 criminal counts have been disposed of in my court. I have presided over almost 200 jury trials, averaging about 30 jury trials in each of my years as judge. There are five assistant district attorneys that are assigned full-time to my court and three assistant district attorneys that are assigned to serve part-time in my court. Four assistant public defenders are assigned full-time to my court. In addition to my criminal case load, I am assigned an average of 65 child support files each year in which I review the actions of the judicial district's child support referee.

Maintaining a current docket is important to me. I regularly review the number and status of cases assigned to my court and work with prosecutors and defense attorneys to reduce the delay in resolving cases. With my docket, I am currently able to set a case for a definite jury trial date within four months of arraignment.

Since my election, I have served a term as presiding local judge, chaired the local court security committee and led the review and adoption of the first changes in the local rules of criminal procedure in over 30 years. As the Criminal Court Judge, I have responsibility for jury orientation, for the operation of the Grand Jury and the appointment and supervision of its foreman, and for the admission and supervision of all bail bonding companies in the

Second Judicial District. In 2012, I was nominated and invited to attend and participate in two week-long judicial leadership seminars at the National Judicial College designed to prepare judges in leadership positions with enhanced skills to improve the justice system in their home state.

Some of the locally noteworthy cases over which I have presided as judge include:

State v. Marvin Crawford, 2007 Sullivan County Criminal Court Case No. S52,301 and upheld on appeal as No. E2008-01943-CCA-R3-CD (Tenn. Crim. App 2009) I presided over this trial in which the defendant was charged with multiple counts of the rape of a twelve year old girl. The child and her mother had moved into the defendant's home after being "kicked out" of their last home by the victim's father. Subsequently, the child's mother was sent to jail and the child was left in the care of this defendant. It was then that the rapes occurred. The defendant was found guilty of all 8 counts and I sentenced him to serve 75 years.

State v. Joey Lee Goins, 2008 Sullivan County Criminal Court Case No. S49,095 and upheld on appeal as No. E2009-00021-CCA-R3-CD. (Tenn. Crim. App 2010) I presided over this five-day jury trial in which Mr. Goins was charged with the first degree murder and robbery of an alleged drug dealer. Before trial, a co-defendant had pled to second degree murder and agreed to testify against Mr. Goins at trial. The co-defendants had met each other while confined to the same military mental health facility while awaiting discharge from the military. The trial was complicated by the fact that the pair had also previously been convicted in Federal court for the widely publicized killing of a local college student. The pair had strangled the college student at the college and placed the body in the trunk of the student's vehicle. The pair then took the vehicle to a remote location where they dumped the body and then took the vehicle to Virginia where they robbed a bank. Mr. Goins had already been found guilty in the Federal trial. In the Federal trial, the co-defendant had also taken a plea agreement in return for testifying against Mr. Goins about the bank robbery and the murder of the student. At the time of my trial, Mr. Goins was serving a Federal "life without parole" sentence. In my court, the jury found the defendant guilty of solicitation of second degree murder and especially aggravated robbery. I sentenced the defendant to serve the maximum sentence of 37 years, consecutive to his Federal sentence.

State v. Samuel A. Ireson, 2009 Sullivan County Criminal Court Case No. S55,866 and upheld on appeal as No. E2010-01648-CCA-R3-CD (Tenn. Crim. App. 2011) I presided over this jury trial in which the defendant was charged and convicted of voluntary manslaughter, fabrication of evidence and the use of a firearm in the commission of a dangerous felony. Mr. Ireson had employed the victim at his moving company and during a work-related argument the defendant was struck in the face by the victim. Mr. Ireson pulled out a hand gun that he carried and shot and killed the employee. Mr. Ireson had a valid carry permit. The defendant claimed self-defense stating that the victim was armed with the knife that was found on the ground near where the victim was found after the shooting. Nevertheless, the evidence showed and the jury found that the defendant had

planted the knife to make it appear as if the victim had been armed. I denied the defendant's request for diversion and sentenced the defendant to serve 16 years in the Department of Correction.

State v. Douglas Wayne Young, 2008 Sullivan County Criminal Court Case No. S54,721 and upheld on appeal as No. E2009-00765-CCA-R3-CD (Tenn. Crim. App. 2011), and State v. Douglas Wayne Young, 2009 Sullivan County Criminal Court Case No. 54,663 and upheld on appeal as No. E2010-00027-CCA-R3-CD (Tenn. Crim. App. 2011) In these two cases I presided over separate multi-day jury trials involving this defendant. In the first trial, the defendant was charged with sexually assaulting his estranged wife. In the second trial, the defendant was charged with breaking into the same victim's home in violation of a no-contact order while the first charge was pending in General Sessions Court. In the second case, the defendant had sexually assaulted the victim, kidnapped her at gun point, and over the next seven days forcibly took her to locations in three states before the victim was rescued and the defendant arrested in Rabun County Georgia. After his convictions, the defendant was sentenced by me to serve 22 years for the first incident and a consecutive fifty-year sentence on the second set of charges.

State v. George R. Thacker, 2011 Sullivan County Criminal Court Case No. S55,532 and upheld on appeal as No. E2011-02401-CCA-R3-CD (Tenn. Crim. App 2012) I presided over this jury trial in which the defendant was convicted of solicitation of first degree murder. The defendant planned to hire someone to kill his cousin, a former IRS agent, who was serving as the executor of a family member's estate. The cousin, in his capacity as executor, had obtained a judgment against the defendant for \$45,000 and the defendant had filed an appeal. The defendant wanted the cousin dead so that, as the executor, he would not be present when the appeal was heard. The defendant had paid a woman \$1,000 to find someone to carry out the killing. The woman reported this to the police. The police obtained an undercover TBI agent to act as someone who would do the killing. After the defendant paid the TBI agent \$500 as down payment for the killing, the defendant was arrested. I sentenced the defendant to serve 11 years in the Department of Corrections.

State v. Michael D. Fields, 2009 Sullivan County Criminal Court Case No. S52,296 and upheld on appeal as No. E2010-02446-CCA-R3-CD (Tenn. Crim. App. 2013) I presided over this four-day jury trial in which the defendant was found guilty of two counts of first degree murder and two counts of especially aggravated robbery for the bludgeoning deaths of a young couple who were alleged to be the defendant's drug suppliers. This case was complicated by the fact that the defendant had already been tried once for the crimes, but the jury could not reach a verdict. The case was further complicated by the fact that the second trial occurred some six months after another Sullivan County jury had found the defendant guilty in another case of the stabbing death of a woman who was a stranger to the defendant. That woman was visiting Sullivan County and staying in a local tourist home. The defense raised several issues at trial and on appeal including the ordering of a stun belt to be placed on the defendant during trial, and the failure of the trial court to suppress the three statements given by the defendant and the court's failure to allow an expert to testify about false confessions at trial. The jury imposed a sentence of life without parole in each murder count. I ordered the two sentences to be served consecutively with

each other and consecutive to the life sentence that had previously imposed in the other murder case.

State v. Gwendolyn Hagerman, 2010 Sullivan County Criminal Court Case No. S57,179 and upheld on appeal as No. E2011-00233-CCA-R3-CD (Tenn. Crim. App. 2013) I presided over this four-day jury trial in which the defendant was found guilty of five counts of the rape of a 12 year old girl that was the daughter of the defendant's girlfriend. I sentenced the defendant to serve 60 years in the Department of Correction.

State v. Marvin Keeling, 2011 Sullivan County Criminal Court Case No. S58,417 and upheld on appeal as No. E2012-01158-CCA-R3-CD (Tenn. Crim. App. 2013) I presided over this jury trial in which this defendant and two others, were convicted of kidnapping a young man that the defendant believed to be a suspect that was out on bond and had failed to appear for court in Hawkins County. The defendants had been promised \$25,000 from the bonding company for finding the suspect that had skipped bond by failing to appear. The defendant went into the victim's home uninvited, handcuffed him, and drove him 45 miles to the Hawkins County jail where it was determined that the victim was the not the suspect that had failed to appear. While the defendant claimed to have made a mistake, the defendant had spoken with two different law enforcement officers who had gone with the defendant to the victim's home and looked at the victim's identification and had told the defendant that the victim was not the person that had failed to appear. A Hawkins County officer had also advised the defendant over the phone, prior to the victim be taken to Hawkins County, that the defendant could be charged with kidnapping if he brought in the wrong person. At sentencing, I denied the defendant's request for judicial diversion and ordered the defendant to serve one year in jail and five years on probation.

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.

I currently serve as a co-trustee of a testamentary trust for the benefit of a family member.

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

Not applicable.

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

Court of Criminal Appeals vacancy – Meeting was held September 19 and 20, 1996

My name was not submitted to the Governor as a nominee.

EDUCATION

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

Vanderbilt University 1971 – 1975, Nashville. Awarded Bachelor of Arts Degree in May of 1975. History major with a minor in Business Administration. Inducted into Omicron Delta Kappa. I was elected to serve on the Undergraduate Student Affairs Board, was a Class Vice President and I served as Vice President of the Student Government Association my senior year.

University of Tennessee College of Law 1975 – 1979, Knoxville. Awarded Juris Doctor Degree in May of 1979. Received Outstanding Achievement Award for Trial Moot Court. Legal Clerk with the Tennessee General Assembly's Office of Legal Services for the 1978 legislative session.

East Tennessee State University, 1995 – 1999. Graduate courses in Public Management.

PERSONAL INFORMATION

15. State your age and date of birth.

59 year of age. I was born in Kingsport, Tennessee, September 24, 1953

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

I have lived in Tennessee all my life – 59 years.

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

I have lived in Sullivan County, except while away at school, all my life – 59 years.

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

Sullivan County

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

Not applicable.

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

No. I have previously paid forfeitures on speeding tickets, but those incidents occurred more than 25 years ago.

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

No.

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

No.

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

No.

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

No.

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

Yes.

James Leon Parker v. Lewis Combs, et al., Sullivan County Law Court at Blountville, Docket No. C3572. Filed October 24, 2012 and dismissed March 8, 2013. Complaint was filed against me, assistant district attorneys and defense counsel by an individual sentenced after a jury trial over which I presided to serve 33 years for drug-related offenses. The complaint was dismissed upon defense motion and without a hearing. I was represented by the Tennessee Attorney General's office.

Daniel H. Jones v. Robert H. Montgomery, Jr., et al., United States District Court, Eastern District of Tennessee, Docket No. 2:11-CV-47 filed and dismissed in 2011. Complaint was filed by individual convicted out of my court for drug-related offenses. The individual was complaining about being required to register as a sex offender in Tennessee as a result of a Kentucky conviction. The complaint was dismissed by the Federal Magistrate Judge without a hearing and without my being served with the complaint.

Henley Paper v. Tennessee Printing Company, Sullivan County General Sessions Court, No. 90274-1986; Young Phillips v. Robert Montgomery, Partner, Tennessee Printing Company, Sullivan County General Sessions Court, No. 91604-1986; Karl M. Harrop, Inc. v. Robert Montgomery, Partner, Tennessee Printing Company, Sullivan County Chancery Court, No 17944-1986; First Bank v. Robert Montgomery, Jr., Sullivan County Chancery Court, No 18106-1986. These claims arose out of debts of a family-owned business, of which I was a partner. The business closed in 1987. All amounts due, including court costs and collection fees, were paid in full.

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

First Broad Street United Methodist Church, Member

Tri-Cities Rotary Club; President - 1994 to 1995

Friends of the Kingsport Public Library, Member; Organizer and Incorporator - 1985

Friends of the Kingsport Archives, Member

Friends of Allandale Mansion, Member

Bristol YMCA, Member

Kingsport Tomorrow, Member

Leadership Kingsport, Member

Boy Scouts of America, Member; Troop Committee - 2010 to Present

Kingsport Jaycees, Life Member; President - 1985 to 1986

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

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

i. 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.

My college social fraternity, Sigma Nu, limits its membership to men only. I am no longer an active participant in its activities.

ACHIEVEMENTS

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

Tennessee Judicial Conference, Member – 2006 to Present

Pattern Jury Instructions Committee (Criminal) – 2007 to Present

Executive Committee, East Tennessee Representative – 2010 to Present

Nominee for Vice President to serve 2013 to 2014

Compensation and Retirement Committee, Secretary - 2010 to Present

Legislative Committee, Member since 2007; Chair – 2012 to Present

Special Committee on Judicial Conduct, Member – 2011 to 2012

Special Committee on Court Reporters – 2010 to 2012

Tennessee Trial Judges Association, Member 2006 to Present

Kingsport Bar Association, Member – 1979 to Present

Tennessee Bar Association, Member – 1979 to Present

Fellows of the TBA Young Lawyers Division, President - 2009 to 2010

Board of Governors, East Tennessee Member - 2001 to 2004

Board of Governors, First District Member - 1995 to 2001

Young Lawyers Division, Board Member – 1981 to 1991

Executive Council Coordinator – 1990 to 1991

Treasurer – 1987 to 1990

District Representative – 1981 to 1987

Tennessee District Attorneys General Conference, Member – 1987 to 2006

Legislative Committee – 2004 to 2006

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

President's Award, Tennessee District Attorneys General Conference – 2005

Fellow, Tennessee Bar Foundation – 2000

Paul Harris Fellow, Tri-Cities Rotary Club - 1999

Trustee of the Year, Tennessee Library Association – 1994

Charter Fellow, Tennessee Bar Association Young Lawyers Division – 1991

Kingsport's Outstanding Young Man, Kingsport Jaycees – 1985

Leadership Kingsport Graduate - 1983

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

Not Applicable

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.

The Robert F. Borkenstein Course on Alcohol and Highway Safety, Center for Studies of Law in Action at Indiana University, Bloomington, Indiana – Since December of 2000, I have served twice a year as a member of the course's international faculty. For over fifty years, this week-long course has been the only nationally-recognized course preparing lab analysts, chemists and law enforcement officers to testify as experts in the area of blood and breath testing in DUI-related cases. As a faculty member, I have presented sessions on statutory law, constitutional law, and expert testimony regarding breath and blood testing in Driving Under the Influence cases. I have been a member of the faculty in every course held during the period between December of 2000 and May of 2013.

Lon V. Boyd Seminar, Kingsport Bar Association, Grove Park Inn, Asheville, NC

Ethical Issues in Criminal Pleas – April, 2013

The New Code of Judicial Conduct – April, 2012

Professionalism for Bench and Bar – April, 2010

Guns, Crime and Citizenship Rights – April, 2009

Ethical Issues in the Use of Personal Information by Lawyers – April, 2008

What All Lawyers Need to Know About the Implied Consent Law – April, 2007

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.

Tennessee Judicial Performance Evaluation Commission, Member – 2012 to Present
Appointed by the Lieutenant Governor

Criminal Court Judge, Sullivan County, Second Judicial District – 2006 to Present
Elected by the voters of Sullivan County

Watauga Regional Library Board, Member – 1993 to 2006, Chair - 2002 to 2006
Appointed by the Sullivan County Commission

Sullivan County Library Board, Member – 1993 to 2006
Appointed by the Sullivan County Commission

Tennessee Advisory Council on Libraries, Member – 1992 to 1999
Appointed by the Tennessee Secretary of State

Kingsport Public Library Commission, Member – 1984 to 1994, Chair – 1989 to 1993, Vice Chair – 1987 to 1989
Appointed by the Kingsport Board of Mayor and Aldermen

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

No.

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

State v. Carl Ray Nidiffer, Carter County Criminal Court, Case No. S14939. This Memorandum was prepared solely by me for the purpose of a violation of implied consent hearing in a case in which I was serving as a District Attorney pro tempore. While the trial court judge ruled against my argument, the Court of Criminal Appeals agreed with my position and reversed on appeal.

Jeffery Ratliff v. State, Sullivan County Criminal Court, Case No. C56,651. This order was prepared solely by me for the purpose of denying post-conviction relief after a hearing. My decision was upheld on appeal by the Court of Criminal Appeals.

Bruce Steven Rishton v. State, Sullivan County Criminal Court, Case No. C53,320. This

order was prepared solely by me for the purpose of denying post-conviction relief after a hearing. My decision was upheld on appeal by the Court of Criminal Appeals.

David Lawrence Holt v. State, Sullivan County Criminal Court, Case No. C61,815. This order was prepared solely by me for the purpose of denying a petition for a writ of habeas corpus.

ESSAYS/PERSONAL STATEMENTS

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

Over 15 years ago, I applied for a position on the CCA. Looking back, I realize that even though I did not have the depth of knowledge and experiences that I have today, I still have the same reasons for wanting to become an appellate judge – to serve the public by determining how justice is administered, not just in one courtroom, but throughout Tennessee.

Over the years as a criminal court judge and prosecutor, I have worked hard to develop my knowledge and expertise in criminal law. I believe that my professional and personal background, my abiding interest in legal concepts and ideas, my temperament and collegiality, my attention to details, my willingness to reflect on and make informed and logical judgments about people and the law, and my desire to share my knowledge in the law, provide me with the skills to be a valuable member of the CCA.

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

While serving as a prosecutor and judge, I have had limited opportunities for pro bono service, other than giving legal advice to organizations on whose boards I served.

My work as a prosecutor, however, has demonstrated my commitment to equal justice under the law. The prosecutor's role is to "seek justice". As a prosecutor, I made decisions that I believed were fair to all and in the interest of justice, rather than decisions reached only with regard to obtaining a conviction. As a prosecutor, I willingly dismissed charges that I believed were unfounded or where sufficient evidence of guilt was lacking. As a prosecutor, I properly disclosed evidence to the defense and never ignored exculpatory evidence. As a prosecutor, I worked to protect the rights of the victims.

As a judge, I have continued to ensure that the principle of equal justice under the law is followed in my courtroom.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges,

etc. and explain how your selection would impact the court. *(150 words or less)*

The Court of Criminal Appeals (CCA) is comprised of 12 judges that review appeals from trial courts. Four of the judges must reside in each of Tennessee's grand divisions, but a judge may hear appeals in any grand division.

Should I be appointed to the CCA, I will bring a perspective to the court that I believe will benefit the CCA. First, as a resident of northeast Tennessee, I would be the only member of the CCA from northeast of Knoxville and one of only two appellate judges from that area serving on an appellate court in Tennessee. Second, as a former assistant district attorney, I would become only the fifth member of the CCA that has had daily criminal court experience as a prosecutor. Third, as a criminal court judge I would become only the fifth member of the CCA that has extensive criminal trial experience as a judge.

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)*

Throughout my life, I have believed in the importance of involvement in my community. I have served as president of Volunteer Kingsport, the Tri-Cities Rotary Club, and the Kingsport Jaycees and have participated in Leadership Kingsport and Kingsport Tomorrow. I believe that lawyers and judges have a responsibility to be visible and participate in their communities in order to improve the public's perception of lawyers and judges. As a member of the CCA, I would continue to be visible in my community and state.

Two specific areas in which I will continue to participate are public libraries and the Boy Scouts. For almost 25 years, I served on either a local, regional or state library board. I believe that libraries are one of society's greatest public assets. As a member of the CCA, I will continue to support public libraries to respond to the information needs of our fellow citizens.

I became a Boy Scout in the sixth grade and while in high school I earned my Eagle rank. Since then, I have continued to be involved with Scouting. Scouting helps to instill important values in young people and prepares them to become future leaders in our communities. As a father of a thirteen-year-old Scout, I regularly work with his troop as an adviser and I participate in his troop's activities. I plan to continue these activities if I am appointed judge.

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

As a young boy my parents taught me, by example, that no matter what career path I

chose, that choice carried with it certain obligations – to work to be the best you can be at your life’s work and to work to make your chosen career an even better one for those that come along after you. As an attorney, I have tried to follow their example throughout my professional life.

As both a prosecutor and judge, I have worked hard to develop my knowledge of criminal law and my skills in the courtroom. I have spent countless hours observing, reading, attending courses and learning from others. Whether I am trying to make my docket more efficient, learning about tricky evidentiary issues, or preparing jury instructions for a complex trial, my goal has always been to gain as much experience and knowledge as possible so that I can be the best I can be at what I do.

Immediately after being admitted to the bar, I joined my local and state bar associations. Since that time, I have always participated in activities that improve my profession. Whether my work involved coaching a high school mock trial team, teaching trial skills to new prosecutors, or resolving budget issues in tough economic times, my goal has always been to make our justice system and profession even better.

If I should be chosen serve on the CCA, I will continue to follow the example that my parents taught me.

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)*

As a judge, I have taken an oath to uphold the law. This is a country of laws, not of men. While a judge may not personally agree with a law, a judge has the duty to enforce and follow the law as it is, not as the judge wishes the law to be. In my first campaign for judge, I said that judges should not legislate from the bench. I have followed this tenet in my actions as a judge and will continue to do so as a member of the Court of Criminal Appeals. In my jury instructions, I tell jurors that in deliberations they should not have any prejudice or sympathy and they should not allow anything but the law and the evidence to have any influence upon their thinking in the case. As a judge, I cannot do anything less than what I ask of my jury.

From time to time as a judge, I have been asked by the parties in a criminal case to deviate from the mandatory punishment set out in the law for a particular crime. In many of those cases, I have had sympathy for the defendant’s situation. However, as I have told the lawyers involved, it is the legislature’s responsibility to enact laws and it is my responsibility to uphold the laws as written.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would

recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

A. Tommy R. Kerns, Sullivan County Circuit Court Clerk, 423-279-2752
B. Barry P. Staubus, District Attorney General, Second Judicial District, 423-279-3278
C. Ron L. Ramsey, Lieutenant Governor, 423-323-8700
D. John S. McLellan, Circuit Court Judge, Second Judicial District, 423-224-1728
E. Charles W. Swanson, City of Knoxville Law Director, 865-215-2050

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 CRIMINAL APPEALS 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: June 11, 2013.


Signature

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



TENNESSEE JUDICIAL NOMINATING COMMISSION

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

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

WAIVER OF CONFIDENTIALITY

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

Robert H. Montgomery, Jr
Type or Printed Name


Signature

June 11, 2013
Date

006682
BPR #

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