

Tennessee Judicial Nominating Commission
Application for Nomination to Judicial Office

Rev. 26 November 2012

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INTRODUCTION

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

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

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Assistant District Attorney General, 11th Judicial Circuit, Hamilton County.

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

2000. BPR#20912.

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: 20912. Admitted 10/27/2000.
- Georgia: 566404. Admitted 6/15/2001. Voluntarily went inactive 8/1/2003. Resigned 9/1/2008.
- Alabama: 1518-Y82P. Admitted 9/27/2002. Voluntarily went inactive 1/3/2006.
- Maintaining the Georgia and Alabama licenses was not necessary to practice law at the Hamilton County District Attorney's Office.

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).

For the reasons stated above, I voluntarily went inactive in Georgia and Alabama.

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).

Youth Violence Assistant

Hamilton County District Attorney's Office: April 2013-present

- Work with Juvenile Court Judge and staff to implement youth violence prevention and intervention initiatives involving: curfew enforcement, truancy enforcement, link analysis

- of delinquency data and specialized dockets
- Prosecute gang cases and selected youth violence cases
- Provided training at annual nursing conference on *Anti-gang Initiatives: Best Practices*
- Wrote 3rd Edition of courtroom manual Trial Guide: 404(b) Evidence by Topic; designed to clarify admissibility of evidence against repeat offenders

Gang Task Force Coordinator

Hamilton County District Attorney's Office/City of Chattanooga: November 2011-April 2013

- Researched and implemented numerous "best practices" gang reduction initiatives regarding gang prevention, intervention, suppression and successful reentry into mainstream society
- Designed and implemented a community-based, anti-gang program based upon the nationally recognized Comprehensive Gang Model
- Built partnerships with numerous governmental, law enforcement, outreach, academic, business, legal, civic, neighborhood and faith community organizations
- Organized Steering Committee of key community leaders to provide support to the Gang Task Force
- Supervised five-person team with departmental budget of \$532,270
- Initiated two large-scale, multi-agency "best practices" Boston Ceasefire suppression operations to send a message to violent gangs
- Obtained \$20,000 grant for overtime pay for the CPD Crime Suppression Unit to conduct additional gang suppression operations
- Developed multi-jurisdictional agreement between Tennessee and Georgia Sheriffs to share gang intelligence and collaborate on gang investigations
- Created and designed Gang Intelligence Analyst position for the Chattanooga Police Department
- Expanded "consent to search" language in Hamilton County probationary agreement forms for gang members
- Developed gang graffiti removal partnership between the City of Chattanooga and Hamilton County Community Corrections
- Wrote anti-gang legislation, resulting in the State of Tennessee's first substantive gang offense under the Racketeer Influenced and Corrupt Organizations (RICO) statute
- Wrote large-scale "best practices" anti-gang legislation for Tennessee designed to initiate gang-free school zones, create the offense of gang member in possession of firearm, provide heavier punishments for gang members engaged in criminal activity and increase the collection and dissemination of statewide gang intelligence
- Organized Chattanooga planning sessions with IBM and the Florida Office of Statewide Prosecution to develop new law enforcement technologies to perform link analysis for gang investigations and racketeering prosecutions
- Organized "best practices" informational sessions with local felons and gang members in which they are advised of the federal consequences of committing narcotics and firearms offenses
- Designed comprehensive anti-gang website thefutureisours.net, which provided information about how to get out of a gang, how to report gang activity, general gang information for citizens, obtaining social services, employment initiatives, a schedule of

- positive community events and how citizens could work with the Gang Task Force
- Organized Chattanooga Homefront, a “best practices” community policing initiative which partnered the faith community, law enforcement and service providers to support struggling families in gang-entrenched neighborhoods
 - With the Parks and Recreation Department, secured the installation of Lexia literacy education software in a community center located in a gang-entrenched neighborhood, allowing youth and adults to improve their educational and occupational prospects
 - With Olivet Baptist Church, organized a city-wide faith-based funding drive for a 13-year old victim of gang violence, resulting in medical supplies and donations totaling over \$25,000
 - With numerous partners, organized public outreach events that promoted youth empowerment, nonviolence, literacy, musical expression, healthy choices and support for victims of gang violence
 - Designed the *Stars of Chattanooga* music initiative with the Parks and Recreation Department, through which at-risk youth commit to avoid drugs and gangs, and then compete to have their original songs recorded to a CD, played on a local radio station and promoted throughout the city
 - Created a Teen Council that incorporated the voice of the youth in program development
 - Met informally with gang members, felons and at-risk youth to provide them information and support regarding leaving their gangs, acquiring additional education, obtaining legitimate employment, reinstating their driver’s licenses and expunging prior convictions from their records
 - With multiple partners, developed a “best practices” anti-gang Implementation Plan that involved family support, mentoring, after-school programming, community engagement, community leadership, youth jobs, reentry employment and suppression
 - Provided statewide Community Corrections officer training on *The Psychology of Street Gangs*
 - Organized local law enforcement training on *Confidential Source Management*, applied to street gangs
 - Made numerous informational presentations to elected officials, outreach agencies, citizen groups and community organizers about the city’s gang problem and how they can join the effort
 - Additional departmental funding secured through grants and solicitations approximated \$80,000

Special Prosecutions Division Head

Hamilton County District Attorney’s Office: July 2011-November 2011

- Provided framework of support and peer feedback to two other Special Prosecution divisions
- Prosecuted special assignment cases, with an emphasis upon prosecution of gang members
- Responsible for developing innovative prosecutorial tools and techniques
- Designed and developed Hamilton County’s first gang prosecution program
- With the Hamilton County IT Department, designed computer programs to identify gang members on court dockets, identify gang members on probation caseloads and merge existing gang lists

- Created statewide online networks for trial development and for child abuse prosecutors
- Assisted in designing technology updates to criminal courtrooms, including cost-saving closed-circuit television equipment to increase officer safety and reduce prisoner transportation costs
- Researched expedited transportation of criminal defendants to the penitentiary, potentially saving between \$80,000-\$100,000 per year in local housing costs
- Conducted local prosecutorial training on *The Gang Enhancement Statute*
- Conducted statewide prosecutorial training on *The Psychology of Repeat Offenders and Evidence at Trial*
- Conducted nationwide prosecutorial training on *Trial Preparation for Prosecutors* through LawLine.com

Trial Development Assistant

Hamilton County District Attorney's Office: January 2010-July 2011

- Litigated jury trials with numerous prosecutors, with the additional goal of learning/sharing trial techniques and communicating with all prosecutors the lessons from those trials
- Conducted office-wide pretrial strategy sessions
- Conducted post-trial debriefings and disseminated reports to criminal court prosecutors
- Disseminated selected litigation articles to criminal court prosecutors
- Wrote courtroom manual Trial Guide: 404(b) Evidence by Topic ; 2nd Edition was released in July of 2012
- Wrote articles for the National District Attorneys Association on trial preparation, trial presentation and litigation philosophy

Criminal Court Assistant

Hamilton County District Attorney's Office: December 2002-January 2010

- Litigated thousands of criminal cases ranging from misdemeanors to first-degree murder
- Averaged a jury trial every 1.9 months for eight years

Associate

Campbell & Campbell, Chattanooga, TN: November 2000-November 2002

- Performed legal research and wrote memorandums, trial briefs and appellate briefs
- Litigated hundreds of civil cases, ranging from slight property damage to the multi-million dollar class action *In Re: Tri-State Crematory Litigation*, 2003 U.S. Dist.LEXIS 28272

Associate

Robinson and Associates, Chattanooga, TN: August 2000-November 2000

- Performed legal research
- Handled small personal injury and child support cases

Clerk/Intern

Office of Public Defender, Pittsburgh, PA: 1998-1999-2000 (second and third years of law school)

- Performed legal research
- Assisted attorneys in the Trial Division

Counselor

Inner Harbour Hospital, Douglasville, Georgia: July 1995-July 1997

- Counseled delinquent/at-risk teenage boys
- Specialized in experiential therapy, utilizing ropes courses and creating other experience-based therapeutic sessions
- Worked as member of overall treatment team that provided range of services to clients, including psychological assessment, individual therapy, group therapy, family therapy and substance abuse counseling

Restaurant worker

Chattanooga, TN: 1986-1994 (high school, undergraduate, post-bachelor's degree years)

- Yesterday's: 1990-1994
- Formosa: 1986-1990
- Ryan's: 1986

LitigatorTechnology.com

Legal tech startup/hobby: founded 2011

- Designed and developed the nationally recognized iPad app JuryStar; 2012 nominee for the National Law Journal's "Best Trial Preparation App" and the only jury selection app named in The American Lawyer's article "Which legal apps really deliver?"
- Designed and developed the online jury consulting service Web Jury Consulting for DecisionQuest, the nation's largest jury consulting firm, headquartered in Los Angeles, California
- Founded the Legal App Incubator; provides support to lawyers who wish to develop legal apps

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.

N/A

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.

Criminal law; 100%

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.

Criminal Law Experience

The overwhelming majority of my professional experience comes from practicing criminal law. Closing in on a decade of practicing in criminal court, sessions court, juvenile court and local municipal courts, as well as other jurisdictions as a *pro tempore* prosecutor, has provided thousands of cases and exponentially more issues from which to learn. I averaged a jury trial every 1.9 months for eight years. Every week involved hearings and the courtroom handling of dozens of cases, plus the valuable observation of colleagues handling dozens more. As might be expected, a general description of the complete breadth of issues that I have researched and/or handled over the years would necessarily involve almost every felony charge, most misdemeanors, most rules of evidence and a good number of the rules of criminal procedure. However, the issues that perhaps arise most in my practice are:

Mens rea for premeditated, knowing, reckless and negligent homicide, as well as for felony murder and voluntary manslaughter; reasonable suspicion; consent to search; search warrants; consensual encounters with police; community caretaking; exigent circumstances; probable cause; standing to object; general suppression issues; bail; probation violations; preliminary hearings; sentencing enhancement, mitigation, length, manner of service, consecutive vs. concurrent sentences; juvenile transfer hearings; sufficiency of indictments; criminal responsibility; consolidation and severance; alibi; self-defense; first aggressor; impairment in DUI; limitation of prosecutions; jury instructions; purely circumstantial cases; federal prisoners as witnesses; relevance, generally; character evidence; motive; lesser included offenses; motions for new trial; knowing and voluntary pleas of guilty; post-conviction proceedings, generally; habeas corpus; speedy trial; bills of particulars; mistrials; standards of appellate review; impeachment of witnesses, including defendants; chain of custody; expert testimony, generally; short tandem repeat DNA analysis; fingerprint evidence; eyewitness evidence; motions for judgment of acquittal; *Batson* objections; co-conspirator testimony; judicial notice; presumption of innocence; lost evidence; burden of proof; weight vs. admissibility; admissibility of drug use or drug possession evidence; gang affiliation; prior child abuse; flight; discovery; threats to victims and witnesses; confidential informants; redaction of defendants' statements; authentication; physical evidence; hearsay exceptions; photographic lineups; non-hearsay; lay opinion; autopsy reports and medical examiner's testimony; and jury selection.

Work habits/philosophy

Just a few weeks after passing the bar exam, I had the great fortune of landing at a small, family-run insurance defense firm. All three lawyers were highly experienced litigators and each one role-modeled various professional qualities that formed the overall basis of the firm's success.

The older brother basically charged through his daily schedule, knocking out numerous projects throughout the course of a single workday. The younger brother consistently demonstrated that, while all competent lawyers take care of the big issues pertaining to their cases, the best lawyers also take care of the little things that, in the case of opposing competent lawyers, were difference makers. The father set the tone of the office with his commitment to remain a student of the law. We all kept notebooks in which to record helpful rulings from the case law we came across during the week. With WestLaw available, this practice initially seemed pointless. However, it was not long before the additional effort of recording key aspects of the law caused those aspects to come more easily and completely to mind when needed later. We all worked most evenings and at least one day of the weekend and I could fill several notebooks with other observations of their dedication and effectiveness. One piece of professional advice provided by the managing partner during my first few months at the firm was "*Experience matters. However, a young lawyer can make up that ground by preparing.*" At that point, it took me longer to prepare for my cases than the more experienced attorneys on the other side, who already knew much of what I had to learn. However, a favorable result in court always made the long hours worthwhile. The motivation to work to "make up that ground" and the resulting satisfaction associated with my first two years of practice is the same motivation and satisfaction I feel today when preparing for cases and, as a result, continuing to remain a student of the law.

Another fortunate aspect of working for this firm was that, once the partners observed my work ethic, they continued to increase my level of responsibility. Preparation habits and trial experience from small subrogation cases soon led to deposing doctors. Common types of cases included property damage, personal injury, vehicular collisions, general negligence and fraud. The biggest case I handled for the firm was a class action in which a nearby crematory owner failed to cremate 339 bodies. *In Re: Tri-State Crematory Litigation* was a class action of class actions that ended up consolidated in the federal court of the Northern District of Georgia. The season opening episode of Law and Order: Criminal Intent ("Dead," September 29, 2002) was based upon this case. With the second highest number of improperly handled bodies associated with my firm's client, we had a relatively high level of exposure. Accordingly, I felt honored when the firm made me the lead attorney. Once again, approximately a year and a half after passing the bar exam, I was sitting beside and against attorneys with decades of experience. Yet, as I was advised earlier by the managing partner, "*a young lawyer can make up that ground by preparing.*" Although the Tri-State Crematory case wrapped up after I became an Assistant District Attorney, the work habits and acceptance of responsibility from working my first two years as an attorney for that family continue to this day.

Reported Cases

State v. Little, 2013 Tenn.LEXIS 309; *State v. James*, 2010 Tenn.LEXIS 570; *State v. Cannon*, 2008 Tenn.LEXIS 278; *State v. Hannah*, 2008 Tenn.LEXIS 417; *State v. Kirk Williams*, 2006 Tenn.Crim.App.LEXIS 181; *State v. Anderson*, 2006 Tenn.LEXIS 6; *State v. Sayles*, 2013 Tenn.Crim.App.LEXIS 374; *State v. Marsh*, 2012 Tenn.Crim.App.LEXIS 728; *State v. McCleod*, 2011 Tenn.Crim.App.LEXIS 690; *State v. McMillon*, 2011 Tenn.Crim.App.LEXIS 727; *State v. Boyd*, 2011 Tenn.Crim.App.LEXIS 706; *State v. Yokley*, 2011 Tenn.Crim.App.LEXIS 357; *State v. Gann*, 2010 Tenn.Crim.App.LEXIS 538; *State v. Nunn*, 2009 Tenn.Crim.App.LEXIS 1025; *State v. Timmons*, 2009 Tenn.Crim.App.LEXIS 1022; *State v. Bigoms*, 2009 Tenn.Crim.App.LEXIS 557; *State v. Smith*, 2009 Tenn.Crim.App.LEXIS 402; *State v. Smith*,

2008 Tenn.Crim.App.LEXIS 273; *State v. McClure*, 2008 Tenn.Crim.App.LEXIS 235; *State v. Jackson*, 2008 Tenn.Crim.App.LEXIS 231; *State v. Harwood*, 2007 Tenn.Crim.App.LEXIS 698; *State v. Hatten*, 2007 Tenn.Crim.App.LEXIS 668; *State v. Bailey*, 2006 Tenn.Crim.App.LEXIS 993; *State v. Sparks*, 2006 Tenn.Crim.App.LEXIS 873; *State v. Hill*, 2006 Tenn.Crim.App.LEXIS 473; *State v. Schreane*, 2006 Tenn.Crim.App.LEXIS 315; *Paris v. State*, 2005 Tenn.Crim.App.LEXIS 863; *State v. Pendergrass*, 2005 Tenn.Crim.App.LEXIS 760; *State v. Vincent Williams*, 2005 Tenn.Crim.App.LEXIS 391; *State v. Southers*, 2005 Tenn.Crim.App.LEXIS 328; *State v. Smith*, 2004 Tenn.Crim.App.LEXIS 864

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

The six Supreme Court opinions cited in the previous section clarify several noteworthy issues. *State v. Kirk Williams* established that an officer's activation of blue lights behind a stopped vehicle constitutes a seizure (issue of first impression in Tennessee). *State v. Little* addressed evidence of partial acquittal occurring during trial (issue of first impression in Tennessee), corroboration of accomplice testimony and criminal responsibility. *State v. James* addressed extending an inference of recently stolen property back to the underlying burglary, as well as allowing the jury to submit questions to witnesses. *State v. Hannah* addressed a trial court's statutory interpretation of moving violations, which justify a police stop of a vehicle. *State v. Anderson* addressed the applicability of the U.S. Supreme Court's *Crawford* decision to Tennessee's excited utterance hearsay exception. *State v. Cannon* addressed chain of custody, DNA collection from a felon, unavailability of a rape victim with dementia, testimonial and non-testimonial hearsay exceptions, judicial recusal and sentencing.

Murder trials generated many of the above-cited CCA opinions, which have also clarified numerous points of law, including: appellate procedure (*State v. Marsh*, *State v. Sparks*); self-defense (*State v. Sparks*); first aggressor evidence (*State v. Sparks*); sentencing (*State v. Marsh*, *State v. Vincent Williams*, *State v. Sparks*, *State v. Yokley*); suppression (*State v. Bailey*); expert testimony (*State v. Bailey*); prior recorded recollection (*State v. Bailey*); admissibility of graphic photos (*State v. Bailey*); jury instructions (*State v. Bailey*, *State v. McClure*); when a witness getting interviewed becomes a suspect (*State v. Vincent Williams*); Miranda warnings (*State v. Schreane*); closing argument (*State v. Vincent Williams*, *State v. Boyd*); post-conviction procedure (*Paris v. State*); defendant's statements (*State v. Schreane*, *State v. Yokley*); discovery (*State v. Yokley*); jury view of crime scene (*State v. Yokley*); gang affiliation (*State v. Yokley*, *State v. Boyd*); prior bad acts (*State v. McClure*); impeachment (*State v. McClure*); chain of custody (*State v. McMillon*); and newly discovered evidence (*State v. McMillon*),

Other reported cases cited above have also addressed noteworthy issues, including admissibility of juvenile confessions (*State v. Southers*); photo lineups shown to forgetful witnesses (*State v. Hill*); corroboration of accomplice testimony (*State v. Harwood*); citations in lieu of arrest (*State v. Jackson*); conferring subject matter jurisdiction by agreement (*State v. Anthony Smith*); brevity of sentencing hearing for repeat violent offenders (*State v. Timmons*); codefendants' direct

criminal liability vs. criminal responsibility (*State v. Nunn*); continued detainment after legitimate stop and admissibility of text messages (*State v. Sayles*).

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.

N/A

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.

N/A

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

N/A

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.

N/A

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.

- Duquesne Law School (8/97-5/2000), Juris Doctorate; Duquesne Law School Scholarship, Phi Delta Phi Legal Honors Fraternity
- State University of West Georgia (1/95-8/96), Masters of Psychology

- University of Tennessee at Chattanooga (8/87-12/92), Bachelor's of Psychology; Wesley M. Kergan Scholarship, Golden Key Honor Society, Psi Chi Psychology Honor Society, Kappa Sigma Scholar

PERSONAL INFORMATION

15. State your age and date of birth.

43. July 13, 1969.

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

1969-1994 (25 years). 2000-present (13 years).

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

1973-1994 (21 years). 2000-present (13 years).

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

Hamilton 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.

N/A

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

No.

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

No.

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

N/A.

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.

AR98-004002, Allegheny County Court of Common Pleas, Pittsburgh, PA. The house I purchased had a preexisting roof issue that was missed by the home inspector. The case settled on April 28, 1999, which enabled me to fix the problem.

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.

St. Jude Church, member

Hamilton County Children's Advocacy Center, Board Member

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

No.

ACHIEVEMENTS

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

Inns of Court (2012)
 Chattanooga Bar Association (2011)
 Georgia Bar Association (2001, went inactive in 2003)
 Alabama Bar Association (2002, went inactive in 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.

All recognition received as a result of professional dealings has been unofficial, i.e., thank you cards from citizens, being asked to serve as the keynote speaker for the First Annual Walk-A-Mile event sponsored by our local Rape Crisis Center and being asked to serve as the keynote speaker for the Fall 2010 Virginia College Graduation.

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

Non-existent Trophies: Trial Preparation for Prosecutors, The Prosecutor: Journal of the National District Attorneys Association (October 2009)
The Litigation Roller Coaster, The Prosecutor: Journal of the National District Attorneys Association, (April 2010)

Force Multipliers: Trial Presentation Techniques for Prosecutors, The Prosecutor: Journal of the National District Attorneys Association (July 2010)

Trial Manual: 404(b) Evidence by Topic (self-published, 3rd ed. 2013).

Science of Trauma and Recovery, National Criminal Justice Reference Service (self-published 2011)

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.

- Conducted informational session/discussion with the Chattanooga Criminal Defense Bar on *Anti-gang Initiatives*
- Provided training to the local Inns of Court on *Admissibility of Social Media*
- Provided training at a local nursing conference on *Anti-gang Initiatives: Best Practices*
- Conducted statewide prosecutorial training on *The Psychology of Repeat Offenders and Evidence at Trial*
- Conducted nationwide prosecutorial training on *Trial Preparation for Prosecutors* through LawLine.com

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.

N/A

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.

The attached legal article and brief were 100% my work. *Trial Guide: 404(b) Evidence by Topic, 3rd Edition* is being finalized and will be provided to the Commission per the "amended questionnaire" provision set forth on page 18 of this application.

ESSAYS/PERSONAL STATEMENTS

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

I have great respect for the appellate judge's mission, which is to interpret the applicable law. Providing clearly written opinions about that law serves a great purpose in ensuring fair and consistent legal results for all future defendants and victims across the state. I wish to serve in this role. This interest comes from the reality that, apart from the rare "slam dunk" case with overwhelming evidence, most criminal cases in state court present at least some challenges to both prosecutors and defense attorneys in assessing likely outcomes. Statutes, court rules and reported appellate opinions all provide some measure of terra firma upon which the parties can evaluate the strengths and weaknesses of their cases and, if need be, to create a beach-head upon which to base their litigation strategy. The importance of appellate judges in not just arriving at the right decision in the presenting case, but in clearly explaining their rationale for future cases, cannot be overstated.

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)*

Equal justice is typically discussed using real-life examples of citizens who have limited resources. However, the equal justice that must be established and maintained as part of the criminal justice system is perhaps best illustrated by less sympathetic defendants. One high-profile case in 2003 involved the public slaying of a local youth by the son of a prominent attorney. The community loudly called upon the District Attorney's Office to make sure that the son did not escape punishment due to his family's political connections. After reviewing the evidence, regardless of the public outcry and of appearing soft on crime, I advised my elected official that it seemed to be self-defense, albeit an imperfect one. The law as written applies equally to the sympathetic poor, the non-sympathetic rich and everyone in between, which is a fundamental necessity of equal justice and has always been a part of my practice.

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 12 judges who sit on the Court of Criminal Appeals review criminal cases and hear legal issues only. CCA judges who represent the Eastern Division come from the eastern third of the state. One significant way that the CCA would be positively impacted by selecting me (or, frankly, any former Assistant District Attorney with litigation experience) comes from the fact that prosecutors have the burden of proof. Every murder, aggravated robbery, cocaine for resale, DUI, etc., that every ADA presents to a jury requires an intimate familiarity with every element of every crime. The type of evidence for each element, and even the prerequisites to admission of every piece of that evidence, must be examined to the degree that it will survive challenge. I feel

that anyone having the knowledge and experience generated from performing this depth of scrutiny on such a variety of criminal cases would serve the citizens well.

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)*

Assisting crime victims and youth at-risk of getting caught up in the criminal justice system will always remain a part of my life. Both populations have had their trust in others broken. Both are needy and, thus, easily reached. Without support, both are likely to engage in self-destructive behavior. I wrote *The Science of Trauma and Recovery* for our local Rape Crisis Center, to help victims of sexual assault better understand the biological basis of Post-Traumatic Stress Disorder. *The Action Commandment* was written to help young people find meaningful direction from Scripture and their painful experiences. All proceeds from *Trial Guide: 404(b) Evidence by Topic, 2nd Ed.* went to the family of a 13-year old girl who became severely brain injured after being caught in the crossfire of a gang shootout. The Gang Task Force partnered with a local church to spearhead a 13-day fundraiser for the same family, resulting in over \$25,000 worth of medical supplies and other donations. The website 5000Angels.com was designed to facilitate community support for children who have been victimized. The Gang Task Force initiatives that continue operating, even though the task force itself has concluded, speak to the critical need in my community for even more outreach services for at-risk youth. I will also continue serving The Hamilton County Children's Advocacy Center however possible. Finally, this fall will be my eighth season as a youth soccer coach.

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

I value innovation and self-determination. These two words are probably not among the first that come to mind when thinking of judicial values. Even so, I believe that all aspects of the criminal justice system, including the CCA, would benefit from such a perspective. "Pushing the envelope" does not mean discarding what we have; it means expanding upon what we know. My family has always valued utilizing what you have, no matter how meager, to create something better. Early role models included my grandfather who, on his nearly nonexistent salary, practically built an entire church, as well as my father who put himself through engineering school. I admire seeing and enjoy fostering those qualities in others; one of our mantras at the Gang Task Force was "The best idea wins," exemplified by a comprehensive model that involved both suppression and outreach. Additional specific endeavors that represent these two values are included in the answer to question 5. As an appellate judge, moving forward includes utilizing appropriate cases to maximize the clarity of existing law. It also means integrating technology applications to better receive, analyze and transmit information, which is a process that could describe the entire practice of law. All of this and more can be achieved through

innovation and self-determination to make a difference.

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, and I generally agree with the substance of the law. The law is what the law is, requiring all sides to evaluate their cases accordingly. Furthermore, Assistant District Attorneys have accepted public service roles in which "society" is their client. While it may not seem fair from the victim's perspective, my role requires me to provide my other client, the defendant, with helpful information. If the case goes to trial, I advise juries during voir dire not to be confused by my presenting evidence both favorable and unfavorable to the State. In short, I have been required to simply "uphold the law" from day one; whether a prosecutor agrees or disagrees with the law they have sworn to uphold is irrelevant. A recurring example from my personal experience pertains to dismissals of cases that cannot be proved in court. One of the more inveterate drug dealers I prosecuted had 11 various cases pending at one point. Due to the investigator's wish to maintain the confidentiality of his informant, only one low-level drug case could be proved. However, the legal process that later took the dealer off the street got its legitimacy from being the same due process that earlier protected him.

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. Bill Cox, District Attorney General, 11th Judicial Circuit. City Courts Building, 600 Market Street, Suite 310, Chattanooga, TN 37402. 423-209-7400. bill.cox@hcdatn.org

B. Karla Gothard, Assistant Public Defender, Public Defender's Office, 709 Broad Street, 2nd Floor, Chattanooga, TN 37402. 423-255-6299. [REDACTED]

C. Vince Dean, State Representative, [REDACTED] East Ridge, TN 37412-1476. [REDACTED]
rep.vince.dean@capitol.tn.gov

D. Jim Coppinger, Hamilton County Mayor, 208 Courthouse, 625 Georgia Avenue, Chattanooga, TN 37402. 423-209-6100. jcoppinger@hamiltontn.gov

E. Joe Smith, President and CEO, Youth Community Action Program, 1600 Central Avenue, Chattanooga, TN 37408. 423-400-8472. [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] 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: 6/11, 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.

BOYD M. PATTERSON, JR
Type or Printed Name


Signature

6/11/13
Date

20912
BPR #

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

State Bar of Georgia, 104 Marietta Street, NW, Suite
100, Atlanta, GA 30303. 404-527-8720

566404

Alabama State Bar, Center for Professional
Responsibility, 415 Dexter Avenue, Montgomery, AL
36104. 334-269-1515

1518-Y82P

IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE
DIVISION III

STATE OF TENNESSEE)
v.) No. 272591
JAMES EDWARD SPATES)

POST-HEARING MEMORANDUM AND
REQUEST FOR 404(b) ANALYSIS

On October 11, 2010, the Court heard the defendant's motion to sever. The consolidation/severance analysis for such a motion is relatively stringent, requiring the Court to find:

- I. A common scheme or plan, in the form of:
 - (a) A distinctive design, i.e., "signature crime"
 - (b) A larger continuing plan or conspiracy, or
 - (c) A common or inseparable plan, i.e., "same transaction"
- and**
- II. That the evidence of one crime would be admissible in the trial of the other, per T.R.E. 404(b).

The State has provided the Court case law regarding sexual offenses perpetrated upon different victims that were properly consolidated for trial. *State v Adams, 2004 Tenn.Crim.App.LEXIS 580*. However, in the event the Court determines that these cases must be severed, the State requests that the Court review the witness testimony under the four-part 404(b) analysis only, to determine the admissibility of the defendant's prior acts in an individual victim's severed trial. As the court has heard the substance of the proffered 404(b) evidence during the defendant's motion to sever, the State believes that a further evidentiary hearing is not necessary. In support of its request, the State argues that:

1. The State is allowed to introduce the 404(b) evidence in its case-in-chief

Oftentimes, a defendant waits until trial to present his entire theory of the case.

That theory can involve any number of issues, including the 404(b) related issues that the

31 THE DISTRICT ATTORNEY
WILLIAM H. COX
DISTRICT ATTORNEY GENERAL
HAMILTON COUNTY
SNOOKS COURTES BUILDING
606 MARKET STREET
ANDOVER, TENNESSEE 37015

defendant lacked motive, lacked knowledge, made a mistake, etc. For that reason, 404(b) evidence frequently gets discussed for the first time during the course of a defendant's trial. However, the State can present evidence pertaining to those same 404(b) issues, regardless of whether or not the defendant "opens the door" through his own case theory.

In State v. Mickens, 2010 Tenn. Crim. App. LEXIS 573, the Court of Criminal Appeals held that:

"Neither the language of the rule nor the comment to the rule requires that 404(b) evidence be admissible only to rebut evidence offered by the defense. The content of this rule makes sense in light of the frequency that a defendant chooses to put on no proof at trial. It would be unreasonable to assume...that 404(b) evidence could never be admitted in situations where the defendant chooses not to put on any proof after its opening statement. Clearly, Rule 404(b) allows for the State to present prior act evidence in its case-in-chief after satisfying the four-part test within the rule. See Tenn. R. Evid. 404(b). Once the trial court determines that the prior bad act evidence satisfies this four-part test...the State may present this prior act evidence in its case-in-chief without regard to the evidence presented by the defense. This is reasonable given that the State may not get an opportunity to present rebuttal evidence if the defendant, as in the case here, chooses not to present any evidence at trial." *State v. Mickens*, 2010 Tenn. Crim. App. LEXIS 573

In the present case, the State asserts that the defendant's prior acts are relevant to show that (1) the defendant acted with criminal intent and (2) the touching of the victims' erogenous areas during the pat downs was not a mistake.

2. The 404(b) evidence demonstrates the defendant's criminal intent

In hearing the defendant's motion to sever, the court heard testimony from the three victims, along with a fourth witness, about the unprofessional, sexual nature of the contact the defendant initiated with them. All three victims were Caucasian teenage females. All three victims were delinquents. All three victims had the defendant respond in his official capacity to the circumstances of their delinquency. All three assaults came in the context of a pat down. All three pat downs occurred with no other adults nearby. All three pat downs involved the defendant touching just the erogenous areas, while skipping all other areas involved in a legitimate pat down. All three assaults involved no penetration.

One of the long-standing illustrative cases on the issue of intent is Rafferty v State, 16 S.W. 728 (1891). The Rafferty case involved an allegation that the defendant burned down a house to file an insurance claim for personal articles that were not in the house when it burned. The insurer was able to show that the defendant had the misfortune to have the same articles destroyed in thirteen previous fires, all covered by insurance. In that case, an inference of the defendant's criminal intent in the charged offense was shown by the prior similar offenses. Additionally, the inference of a defendant's intent "is stronger if the previous acts and results closely resemble those alleged in the instant case." *Tennessee Law of Evidence, 5th Edition*, at 4-99. In the present case, while the Court may determine that the numerous similarities do not rise to a level permitting consolidation, the acts certainly bear the close resemblance that permits 404(b) evidence to be admitted in a severed trial as proof of the defendant's intent.

3. The 404(b) evidence demonstrates that the defendant's patting down of only the victims' erogenous areas was no mistake

The primary case on this issue featured in the *Tennessee Law of Evidence, 5th Edition* handbook also provides support for the admission of the defendant's prior acts. In Laird v State, 565 S.W. 2d 38 (Tenn.Crim.App. 1978), the defendant was charged with escaping from a workhouse. To show that the defendant had not accidentally fallen off the truck carrying him to do road work, evidence of defendant's two prior escapes was admitted to negate the claim of accident and to prove defendant's intent to escape. In the present case, the State has the right to show *in it's case-in-chief* that the defendant's repeated pat downs not involving the standard areas to be searched, but focusing time and time again on the victims' erogenous areas, was no one-time mistake.

4. The 404(b) evidence demonstrates the defendant's intent and absence of mistake in the context of the official misconduct charges

One of the aspects that sets this case apart from most, if not all, other reported cases in Tennessee involving 404(b) evidence of sexual crimes against multiple victims are the additional charges of official misconduct. Just as the 404(b) evidence is important to show that the defendant committed sexual battery, the same evidence is just as important to show that he exceeded the official authority given to him. The non-propensity reasons for its admission apply just as squarely to the official misconduct

charges, specifically to show that he exceeded his official authority to conduct pat downs (1) intentionally and (2) not as a mistake. The State has just the same burden in the official misconduct case as it does in the sexual battery case. In State v Reginald Johnson, 1999 Tenn.Crim.App.LEXIS 251, the Court of Criminal Appeals gave its reasoning for upholding the admission of 404(b) evidence (in that case to show identification) by stating:

“We know that in any criminal case, the burden rests with the state to establish a defendant's guilt. No reasonable law would impose a burden upon a party without granting that party an opportunity to carry the burden. Absent some concession by the accused, the state has the burden, and should be afforded the opportunity, of identifying the accused as the perpetrator in every criminal case.” *State v Reginald Johnson*, 1999 Tenn.Crim.App. LEXIS 251.

With both sexual battery and official misconduct charges involved, the present case actually has two of these legal contexts in which the 404(b) evidence has relevance and application. Those additional purposes to which the 404(b) evidence applies increases its relevance to the matters before this Court and, accordingly, creates additional purposes supporting its admission.

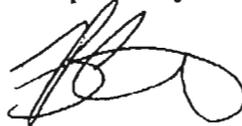
Conclusion

The Court of Criminal appeals recognized the evidentiary significance of prior acts evidence in the aforementioned State v Mickens, providing that:

“We note that the Sixth Circuit has concluded that the admission of prior act evidence may be necessary in cases involving specific intent crimes: ‘In prosecuting specific intent crimes, prior acts evidence may often be the only method of proving intent. Thus, where the crime charged is one requiring specific intent, the prosecutor may use 404(b) evidence to prove that the defendant acted with the specific intent notwithstanding any defense the defendant might raise.’ *United States v. Johnson*, 27 F.3d 1186 (6th Cir. 1994).” Mickens, at 39.

Clearly, trial courts must take care when analyzing 404(b) evidence. Yet, when that care is taken, when the 4-part analysis is applied in its entirety, when the findings are stated on the record and when the evidence is admitted, the trial court’s ruling is provided great deference and, absent an abuse of discretion, will stand.

Respectfully Submitted



Boyd Patterson
Assistant District Attorney

AN EXACT COPY MAILED TO DEFENDANT'S ATTORNEY
ON 10/14/10 BY (BAP)
OFFICE OF THE DISTRICT ATTORNEY GENERAL
HAMILTON COUNTY TENNESSEE

The Litigation Roller Coaster

BY BOYD M. PATTERSON, JR., ASSISTANT DISTRICT ATTORNEY, 11TH JUDICIAL DISTRICT OF TENNESSEE

EXHILARATING PEAKS. Stomach dropping plummets. Twists. Turns. Sudden loops that unexpectedly turn a familiar landscape upside down. All part of the trial lawyer's reality.

Naturally, some people avoid roller coaster professions. So, in an effort to provide some insight into the tumultuous world of litigation, I would like to share the most effective technique that I have ever witnessed to help lawyers not lose their cases. To my knowledge, this technique has never failed any lawyer who applies it, whether prosecutor or defense attorney. Ready to hear it? The fail-safe technique for never losing a case is: never try a case. Just stay off the roller coaster. You can watch from the sidelines. This is the only way to avoid the lows of litigation practice and I personally guarantee that if you start utilizing this technique today, you will never again lose a single trial.

The slightly bolder soul can venture onto the gentler rides where the twists or turns, if any, remain moderate. Try only the cases in which the defendant has confessed. Or when the video camera captures him committing the crime. Or if DNA evidence seals his fate. This policy enables one to venture into the arena and try meritorious cases, while escaping the stress of both hard-fought victory and crushing defeat.

Yet, some prosecutors do not avoid peaks and valleys. Some actually seek out the risky cases. They run toward the child rape case where the defendant has prior sex offenses that the jury will never know about. They run toward the case against the violent career criminal in which the only people willing to testify against him are the easily impeached federal prisoners who used to run with him. If you are one of those prosecutors, the citizens in your community owe you their gratitude. While you will win some of those precarious cases, you will certainly lose several. You may lose several in a row. It can get depressing. When the

deeper valleys of defeat have you questioning your abilities, keep the following in mind.

Failure (and success) is cyclical. Rotate out of a bad spot by continuing to try cases. As in Hollywood, you are only as good as your latest project. A very interesting, very real phenomenon is that a single victory usually restores your standing as a competent litigator, regardless of the number of your previous losses. Additionally, jumping into the next case immediately moves you out of the past by refocusing your vision on the tasks at hand. The case file for that next trial is somewhere close by, waiting for you to immerse yourself within it.

You still grow as a litigator. Recognizing the logical reasons why your prostitute victim's testimony has to be true. Having to show how the defendant's alibi is impossible. Adjusting on the fly to the screwy evidentiary ruling that turns your case upside down. The breadth of that experience determines your professional value. A prosecutor who has diligently prepared, competently litigated and, unfortunately, lost his last five trials adds far more value to his office than the prosecutor who has won the single case, probably a confession case, he tried in the last five years. Win, lose or draw, you will always reap the entire benefit of your courtroom experience, regardless of how the 12 people vote.

Finally: Your character is defined by the cases you try and how you try them. In the spectrum of the cases you take on, there is an entire category of "truly guilty, truly dangerous defendant, with weak proof." A prosecutor who does not walk away from such challenging cases *will* have a lower trial conviction percentage. Who that prosecutor is as a person gets defined by his courage to take those risks. Not by the results. Losing stinks. However, if your efforts got your best case to the jury, then you can lose without losing the lessons.