

# INTRODUCTION

Under Tennessee law, every appellate judge who seeks election to fill either an unexpired or full eight (8) year term of office must be evaluated by the Judicial Performance Evaluation Commission prior to a scheduled August election. The Commission is charged with the duty to evaluate these judges and to make separate recommendations to retain or replace each of them. In the event that a final recommendation is made to retain an appellate judge, that judge is eligible to participate in a retention election where the voters of the State are given the option to vote to retain or replace each such appellate judge. In the event that a final recommendation is made to replace an appellate judge, then that judge is eligible to participate in a contested election where the voters of the State are given the option to vote for that judge or other statutorily qualified candidates. The purpose of the evaluation process is two-fold: (1) to assist the public in evaluating the performance of appellate court judges; and (2) to promote self-improvement among all judges.

The Judicial Performance Evaluation Commission is authorized by T.C.A. § 17-4-201 and consists of nine (9) members and includes lawyers, non-lawyers and state trial court judges. Members participating in the 2013 evaluation process include Judge Robert Jones, Chair; Michasel E. Tant, Vice Chair; Henrietta Grant; J. Gregory Grisham; Renata Soto; Judge J. Michael Sharp; Judge Robert H. Montgomery; Christopher Clem and Joseph A. Woodruff.

The Commission's report contains the evaluation results and retention recommendations for the three Supreme Court justices, ten Court of Criminal Appeals judges, and nine Court of Appeals judges who are standing for retention election in August 2014. Under the guidelines outlined in Supreme Court Rule 27, evaluations are based upon the following criteria:

1. Integrity
2. Knowledge and Understanding of the Law
3. Ability to Communicate
4. Preparation and Attentiveness
5. Service to the Profession
6. Effectiveness in Working with Other Judges and Court Personnel

In developing individual evaluations, the Commission considered the following: confidential evaluation surveys, personal information self-reported by each judge; caseload and workload statistics for each judge; and relevant public input that was received. The Commission reviewed selected opinions authored by the judges being evaluated. The Commission conducted at least one formal interview with each judge to discuss judicial performance issues as part of the evaluation process. In two cases, the Commission conducted a second interview with judges who requested a second interview.

Confidential survey questions were sent to (1) appellate court judges, (2) trial court judges, (3) court personnel and (4) attorneys who had cases before the various appellate courts. The surveys solicited an assessment of each evaluated judge's performance based on a variety of criteria and was based on a five-point scale:

- 5 - Excellent
- 4 - Above Average
- 3 - Average
- 2- Below Average
- 1- Unacceptable

Although individual survey responses remained confidential, the cumulative results for the appellate court judges being evaluated are as follows:

**Tennessee Supreme Court**

	<b>Appellate Court</b>				<b>Overall Average</b>	
	<b>Judges</b>	<b>Trial Judges</b>	<b>Personnel</b>	<b>Attorneys</b>		
Clark	4.61	4.33	4.36	4.19	Clark	4.43
Lee	4.65	4.41	4.50	4.67	Lee	4.52
Wade	4.80	4.82	4.50	4.46	Wade	4.71

**Tennessee Court of Appeals**

	<b>Appellate Court</b>				<b>Overall Average</b>	
	<b>Judges</b>	<b>Trial Judges</b>	<b>Personnel</b>	<b>Attorneys</b>		
Bennett	4.93	4.24	5.00	4.31	Bennett	4.62
Clement	4.71	4.32	4.80	4.35	Clement	4.55
Dinkins	4.69	4.05	4.00	4.25	Dinkins	4.25
Frierson	4.69	4.58	5.00	5.00	Frierson	4.82
Kirby	4.63	4.31	5.00	4.27	Kirby	4.55
McClarty	4.57	4.42	5.00	4.16	McClarty	4.54
Stafford	4.43	4.61	5.00	4.20	Stafford	4.56
Susano	4.80	4.66	5.00	4.60	Susano	4.77
Swiney	4.79	4.69	5.00	4.34	Swiney	4.71

**Tennessee Court of Criminal Appeals**

	<b>Appellate Court</b>				<b>Overall Average</b>	
	<b>Judges</b>	<b>Trial Judges</b>	<b>Personnel</b>	<b>Attorneys</b>		
Bivins	4.80	4.75	5.00	4.32	Bivins	4.72
Glenn	4.85	4.73	4.88	3.95	Glenn	4.60
McMullen	4.07	4.04	4.63	3.81	McMullen	4.14
Ogle	4.53	4.38	4.82	4.14	Ogle	4.47
Page	4.79	4.75	5.00	4.13	Page	4.67
Thomas	4.67	4.53	5.00	4.15	Thomas	4.59
Wedemeyer	4.86	4.56	5.00	4.24	Wedemeyer	4.67
Williams	4.40	4.52	5.00	4.01	Williams	4.48
Witt	4.53	4.29	5.00	4.20	Witt	4.51
Woodall	4.53	4.36	5.00	4.14	Woodall	4.51

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The evaluations contained herein express the Commission's evaluation of each judge's performance measured against the evaluation criteria of Supreme Court Rule 27 and include the Commission's vote and recommendation whether each judge should be retained or replaced.

In addition to the evaluations and recommendations of individual judges, the Commission also offers the following recommendations for appropriate consideration to improve the evaluation process and to improve the appellate courts generally.

1. The Commission believes that the Supreme Court should consider revisions to Rule 27. Specifically, the Commission found the Rule to be contradictory in certain respects and lacking in definitive guidance on the issue of confidentiality. For example, § 5.03 of Rule 27 states, in part "The Commission's meetings and deliberations shall be public." Yet, § 6 of the Rule sets out numerous instances where the activities of the Commission are to be confidential. Harmonizing these two sections so that the Commission can conduct evaluations "candidly and in strict confidence so that the areas for improvement may be determined fairly" (§ 6.01), while at the same time opening meetings to the public (§ 5.03), should be addressed. The Commission recommends that interviews be held in public, but that preliminary deliberations and the drafting of preliminary evaluation reports, be confidential. Moreover, the Commission recommends that final evaluation reports remain confidential, even after they are furnished to the respective judges, until a set time in advance of the date by which a judge must formally declare his or her intention to seek retention in office.

2. The Commission believes that the data that is compiled on the work-flow of each judge be revised.

Currently, the system tracks the number of days that lapse between oral argument in a case and the date that the final opinion in a case is filed. The Commission believes that a more meaningful statistic is the number of days that lapse between oral argument and the date that the judge assigned with writing responsibility for the case releases the draft opinion into circulation with the other members of the court. The Commission also believes that each appellate court should evaluate their respective internal guidelines for the circulation and filing of opinions to determine whether those guidelines should be revised. Appellate judges, the clerk of the appellate courts and the Administrative Office of the Courts are encouraged to gather statistics which are more refined than those presently available to help future evaluators to better understand the differences that may exist between the appellate courts with respect to workload and reasonable expectations regarding timeliness for issuing opinions.

3. The Commission is aware that from time to time a case is reassigned from one authoring judge to another after oral argument but before the case is filed. The Commission is advised that in such instances, there is no "resetting of the calendar." In other words the judge to whom the case is newly assigned takes the case and is statistically burdened with the days that have lapsed since oral argument. The Commission believes that a more reasonable practice would be to start tracking the lapse of days after reassignment and not from oral argument.

4. The Commission believes that the practice of the Court of Criminal Appeals, to rotate all members of the Court between all of the Court's sections is a reasonable practice that promotes collegiality, enhances the professional development of all the judges and encour-

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ages greater review of draft opinions and collaboration in decision making. The Commission recommends that the Court of Appeals consider and evaluate the efficacy of adopting the same or a similar practice.

5. The Commission believes that the practice of both the Court of Appeals and Court of Criminal Appeals to assign writing responsibility in cases prior to oral argument should be reconsidered. This practice appears to be calculated to insure the even distribution of work among all of the judges on the Court so that no judge is assigned a disproportionate number of cases. This is a reasonable objective; nevertheless, it is possible that this practice has the unintended consequences of discourag-

ing in-depth review of draft opinions and diminishing collaboration in decision making. Other models exist for assignment of cases following oral argument. The Commission has not evaluated any other model, nor does it have any opinion whether any other model could be successfully adapted to Tennessee. The answers to those questions are the exclusive province of the appellate courts.

6. The Commission believes that the surveys used in the evaluation process should be modified so that the questions in the surveys are tailored for each group whose ratings are being sought.

# JUSTICE CORNELIA A. CLARK

**Recommendation: RETAIN**

**Commission Vote: 8 FOR RETENTION • 1 FOR REPLACEMENT**

## **Legal Education and Experience**

Justice Clark received a law degree from Vanderbilt University School of Law in 1979. She practiced law from 1979 until 1989. Justice Clark served as Circuit Judge from 1989 to 1999. She was director of the Tennessee Administrative Office of the Courts from 1999 to 2005. Justice Clark was appointed to the Supreme Court in September 2005, was elected in 2006, and served as Chief Justice from 2010 to 2012.

## **Service to the Profession**

Justice Clark has previously served on the faculty for Vanderbilt University School of Law, the National Judicial College and the American Academy of Judicial Education, and now teaches for the American Institute for Justice. She was named as one of 21 members of the ABA Commission on the American Jury in 2004. She is a Fellow of the Tennessee, American and Nashville Bar Foundations and a member of the Tennessee John Marshall American Inn of Court. Justice Clark has served on the Board of Directors as well as serving as chair of the Education Committee for the Conference of State Court Administrators. She was a member of the Conference of Chief Justices from 2010 to 2012. Justice Clark chaired the Tennessee Judicial Council for five years and was the first chair of the Judicial Evaluation Commission. She is a frequent lecturer on legal topics. In 2010, Justice Clark was named Appellate Judge of the Year by the American Board of Trial Advocates, and was inducted into the YWCA Academy for Women of Achievement. She was awarded the Liberty Bell Award by the Williamson County Bar Association in May of 2005.

## **Survey Results and Interview**

Justice Clark rated well among other appellate judges

for her judicial temperament and ethical conduct. She circulates opinions in a timely manner. Attorneys gave Justice Clark high marks for being free of impropriety or the appearance of impropriety. Her work with other court personnel showed room for improvement. Justice Clark's interview confirmed the Commission's impression that she has been a consistent asset to the judiciary, and is dedicated to improving its overall quality. She stated that reviewing her performance evaluations was a positive experience for her.

## **Comments and Recommendation**

The Commission was impressed with Justice Clark's professed commitments to judicial restraint and adherence to original intent in construing legislative and constitutional provisions. Justice Clark expressed the view that the court's function of developing 'new law' was narrowly confined to the evolution of the common law, and not a license to substitute the Court's view of social policy in place of the view expressed through legislation. Moreover, Justice Clark professed a jurisprudential philosophy of deference to the co-equal branches of state government when those branches exercise their legislative and executive functions. A minority of the Commission expressed concern over Justice Clark's ability to communicate and work effectively with court personnel.

**The Commission recommends Justice Cornelia A. Clark be retained on the Tennessee Supreme Court.**

## **Justice Clark's Response**

I appreciate the Commission's recommendation and look forward to continuing my service on the court.

# SUPREME COURT

# JUSTICE SHARON G. LEE

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Justice Sharon G. Lee received a law degree from the University of Tennessee College of Law in 1978. She engaged in the private practice of law in Madisonville from 1978 until 2004 during which time she served as County Attorney for Monroe County, as City Judge for Madisonville, and City Attorney for Madisonville and Vonnore. She was appointed to the Court of Appeals on June 2, 2004, elected in August 2004, and reelected in 2006. She was appointed to the Tennessee Supreme Court in October 2008, and was elected in August, 2010.

## **Service to the Profession**

Justice Lee is a member of the Tennessee Bar Association, Tennessee Lawyers Association for Women, East Tennessee Lawyers Association for Women, Knoxville Bar Association, Tennessee Bar Foundation, Knoxville Bar Foundation and the American Bar Foundation. She co-authored "Opening and Closing Arguments," an article on the Judicial Selection Process for the Tennessee Lawyers Association for Women newsletter, and a book review of the history of the Tennessee Supreme Court for the Knoxville Bar Association newsletter. She frequently lectures on legal topics to both legal and non-legal audiences.

## **Survey Results and Interview**

Justice Lee's survey ratings from appellate judges, trial judges, and attorneys reflect an overall excellent performance. Her ratings in the areas of oral argument, administrative performance and general performance were consistently noteworthy from these groups. Appellate and trial judges consistently rated her written opinions as excellent, and attorneys gave her consistently high marks for her professional demeanor and attention to ethical obligations. The Commission found that Justice Lee is very knowledgeable and experienced in the law, as demonstrated by her experiences both as a legal practitioner and as a member of the Court of Appeals. Justice Lee noted that there is an adjustment between serving on the Court of Appeals and the Supreme Court be-

cause of the additional administrative duties that are required of Justices of the Supreme Court. She stated that while the Supreme Court writes fewer opinions than the Court of Appeals, the review of applications for permission to appeal, addition of administration duties and the increase in the number of requests to speak at public functions ensures significant workload. Justice Lee's heavy schedule speaks highly of her work ethic and her work product demonstrates her commitment to timely, high-quality written opinions.

## **Comments and Recommendation**

The Commission was impressed with Justice Lee's professed commitments to judicial restraint and adherence to original intent in construing legislative and constitutional provisions. Justice Lee expressed the view that the court's function of developing 'new law' was narrowly confined to the evolution of the common law, and not a license to substitute the Court's view of social policy in place of the view expressed through legislation. Moreover, Justice Lee professed a jurisprudential philosophy of deference to the co-equal branches of state government when those branches exercise their legislative and executive functions.

**The Commission unanimously recommends Justice Sharon G. Lee be retained on the Tennessee Supreme Court.**

## **Justice Lee's Response**

I am grateful for the outstanding evaluation and unanimous recommendation for retention. It is an honor and privilege to serve the citizens of Tennessee as a Supreme Court Justice. During my six years on the Supreme Court, I have, at all times, exercised judicial restraint and have impartially and fairly interpreted and applied the laws of this state. I hold true to the conservative family values I learned growing up in a small town as the daughter of a War World II veteran and prisoner of war. During my next term of office, I will continue to provide leadership and service to all Tennesseans based on the values that make Tennessee strong. The people of Tennessee deserve nothing less.

# SUPREME COURT

# JUSTICE GARY R. WADE

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Justice Gary R. Wade received a law degree from the University of Tennessee College of Law in 1973. He practiced law in Sevierville from 1973 to 1987. Justice Wade was appointed to the Court of Criminal Appeals in 1987, was elected in 1988, and was re-elected in 1990, 1998 and 2006. He attended the New York University Institute of Judicial Administration. Justice Wade served as Presiding Judge of the Tennessee Court of Criminal Appeals from May 1, 1998 until August 31, 2006. Justice Wade was appointed by the governor to begin serving on the Supreme Court effective September 1, 2006. He was elected in 2008, and currently serves as Chief Justice.

## **Service to the Profession**

Chief Justice Wade is a Fellow of the Tennessee Bar Foundation. He is a member of the Hamilton Burnett American Inn of Court. He is a member and past President of the Tennessee Judicial Conference, a member of the Knoxville Bar Association, a past member of the Tennessee Sentencing Commission and past member of the Commission on the Future of the Tennessee Judicial System. Chief Justice Wade served on the Governor's Task Force on Sentencing. In 2004 he was given the Judicial Excellence Award by the Knoxville Bar Association and was named Appellate Judge of the Year by the American Board of Trial Advocates. He is a Fellow of both the Knoxville and American Bar Associations, has authored legal publications and is a frequent lecturer on legal topics.

## **Survey Results and Interview**

Chief Justice Wade's overall survey ratings from appellate judges, attorneys, and court personnel were good

to excellent. Appellate and trial judges rated him excellent on his participation in oral argument, on his written opinions, and on his administrative and general performance. In his interview, Chief Justice Wade expressed deep commitment to the Commission about his new responsibilities as a Justice on the Tennessee Supreme Court.

## **Comments and Recommendation**

Canon 4.1 of the Code of Judicial Conduct admonishes judges to not "publicly endorse or oppose a candidate for any public office." The Judicial Performance Evaluation Commission was created by the legislature as part of a statutory structure that seeks to reach a compromise between retention elections and contested races. Accordingly, each of the judges appearing before this Commission were candidates for public office within the meaning of Canon 4.1. Several members of this Commission were troubled by published statements attributed to the Chief Justice which, if accurate, amounted to active endorsement and public lobbying of this Commission to retain each and every judicial candidate irrespective of the Commission's preliminary votes applying the evaluation criteria of Supreme Court Rule 27 § 3. Although the Chief Justice was subsequently quoted in media reports expressing his support for the Commission's work, several members of this Commission question whether the Chief Justice's earlier public comments and advocacy efforts were appropriate.

The Commission was impressed with Justice Wade's professed commitments to judicial restraint and adherence to original intent in construing legislative and constitutional provisions. Justice Wade expressed the view that the court's function of developing 'new law' was narrowly confined to the evolution of the common law,

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# JUSTICE GARY R. WADE

and not a license to substitute the Court's view of social policy in place of the view expressed through legislation. Moreover, Justice Wade professed a jurisprudential philosophy of deference to the co-equal branches of state government when those branches exercise their legislative and executive functions.

**The Commission unanimously recommends Justice Gary R. Wade be retained on the Tennessee Supreme Court.**

## **Justice Wade's Response**

I have been honored to serve the people of Tennessee as a Supreme Court Justice and sincerely appreciate the unanimous endorsement of the Judicial Performance Evaluation Commission.



# JUDGE ANDY BENNETT

**Recommendation: RETAIN**

**Commission Vote: 7 FOR RETENTION • 2 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Andy D. Bennett received a law degree from the Vanderbilt University School of Law in 1982. Upon completing law school, Judge Bennett practiced law in the Tennessee Attorney General's Office, rising to the position of Chief Deputy Attorney General. Judge Bennett was appointed by the governor to the Court of Appeals in September 2007, and was elected in 2008.

## **Service to the Profession**

Judge Bennett is a Fellow of the Tennessee Bar Foundation and a member of the Tennessee Bar Association. He received the William M. Leech, Jr. award for outstanding service to the Tennessee Attorney General's Office in 1998 and the Marvin Award from the National Association of Attorneys General for "outstanding leadership, expertise, and achievement in advancing the goals of the National Association of Attorneys General" in 2004. Judge Bennett is a frequent author and lecturer on legal topics to law students, lawyers, judges, legislators and other groups.

## **Survey Results and Interview**

Judge Bennett was ranked highest overall by other appellate court judges. He ranked highly with court personnel. His opinions are circulated in a timely manner. In the aggregate, trial judges expressed concern over the clarity of Judge Bennett's opinions. Some attorneys expressed a similar concern. At his initial interview, Judge Bennett expressed some concern about what he described as the "amorphous" nature of the evaluation process. Judge Bennett requested, and was granted, a second interview.

## **Comments and Recommendation**

Judge Bennett is favorably regarded by his fellow appel-

late judges. His productivity and timeliness are squarely within the range established by his peers. His service to the profession and the public is commendable. Although concerns exist with regard to Judge Bennett's jurisprudence, a majority of the Commission concluded that his overall performance, applied to the evaluation criteria, justified retention. A minority of the Commission was concerned by examples from Judge Bennett's opinions that suggest a willingness to justify the result reached in the case rather than have the outcome of the case arise out of the proper application of judicial precedent and the proper standard of review. Judge Bennett's responses to questions on this topic during the initial interview did not mitigate those concerns. In a subsequent interview with the Commission, Judge Bennett offered his assurances that he does and will continue to use the Supreme Court's review of his cases as a tool for improvement. Also in that second interview, Judge Bennett professed an appreciation of the importance of the proper application of the standards of appellate review and, in particular, the deference to be accorded a trial court's exercise of discretion.

**The Commission recommends Judge Andy D. Bennett be retained on the Tennessee Court of Appeals.**

## **Judge Bennett's Response**

I deeply appreciate the Commission's strong recommendation that I be retained. I am pleased that the Commission found that I satisfy all the criteria for retention. I feel, however, that two of the comments in the Commission's recommendation require some response. In discussing the surveys, the comments suggest that trial judges and attorneys have expressed concerns about the clarity of my opinions. But, the survey results do not support that comment. When asked whether my opinions clearly explain the conclusion and the basis

# JUDGE ANDY BENNETT

for the conclusion, two-thirds of the judges ranked me above average or better and 75% of the attorneys ranked me above average or better. All of the appellate judges ranked me above average or better. Thus, the data reveals a different result from the written comments of the Commission.

That said, I believe in and will practice continual self-improvement. I also feel compelled to address a concern that was included in the Commission's comments, but voiced by only two members: that certain of my cases "suggest" a willingness to justify a particular result. I do not approach cases that way. Four former Tennessee At-

torneys General, as well as numerous attorneys across the state and other appellate judges provided the Commission with letters attesting to the analytically sound nature of my opinions. I follow the facts and the law to arrive at the conclusion. I respectfully submit that the view of the two members who voted against me has no basis in fact. I am gratified that the other seven members disagreed with them and voted for me.

Again, I appreciate the Commission's recommendation in favor of retention. I hope to be reelected and to continue to serve the people of Tennessee.

## COURT OF APPEALS

# JUDGE FRANK G. CLEMENT, JR.

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Frank G. Clement, Jr. received a Doctor of Jurisprudence degree from the Nashville School of Law in 1979. He engaged in the private practice of law in Tennessee from 1979 until 1995. He was then appointed to the position of Judge of Division VII of the Circuit Court of Davidson County. He served in that capacity until his appointment to the Court of Appeals in September, 2003, was elected in 2004, and was re-elected in 2006.

## **Service to the Profession**

Judge Clement is a Fellow in the Tennessee and Nashville Bar Foundations. He is a Past President of the Nashville Bar Association and a member of the Tennessee and Nashville Bar Associations. Judge Clement was selected to participate in the Institute of Judicial Administration for Appellate Judges at New York University in July of 2004. He was recently recognized as the Appellate Court Judge of the Year in 2012 by the American Board of Trial Advocacy.

## **Survey Results and Interview**

Judge Clement's survey ratings from appellate judges, trial judges, attorneys and court personnel reflect an excellent performance. His ratings in the general perfor-

mance category, including, among other things, ethical conduct, demonstration of courtesy and respect, and appropriate judicial temperament were particularly noteworthy, as was his rating in using structured, logical reasoning in written opinions. The interview supported the survey ratings. Judge Clement noted that as he gained experience on the bench, he has an increased comfort level in writing opinions.

## **Recommendation**

**The Commission unanimously recommends Judge Frank G. Clement, Jr. be retained on the Tennessee Court of Appeals.**

## **Judge Clement's Response**

Having served as a judge of the Tennessee Court of Appeals for ten years, I am most fortunate and gratified that the Judicial Performance Evaluation Commission has unanimously recommended that I be retained to continue to serve our state for another term. I have endeavored to perform ethically, competently, and without bias or prejudice in each of the thousands of cases of which I have been involved. Should the good people of Tennessee choose to retain me in this position, I promise to continue to serve to the best of my abilities.

# JUDGE RICHARD H. DINKINS

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Richard H. Dinkins received a law degree from the Vanderbilt University School of Law in 1977. Upon completing law school, Judge Dinkins engaged in the private practice of law, practicing for twenty-six years in a general civil practice. His practice included civil rights and constitutional litigation, as well as serving as counsel for Fisk University and the Metropolitan Development and Housing Agency. Judge Dinkins was appointed Chancellor of Part IV of the Chancery Court for Davidson County in September 2003. He was elected to the same position in August 2004 and reelected in August 2006. Judge Dinkins was appointed by the governor to the Court of Appeals in January 2008 and was elected in August 2008.

## **Service to the Profession**

Judge Dinkins is a Fellow of the Tennessee Bar Foundation and a member of the Tennessee, Nashville and Napier-Looby Bar Associations, currently serving on the Board of Directors of the Nashville Bar Association. He is also a member of the National Bar Association Judicial Council and is a Fellow of the Tennessee Bar Foundation. He received the William M. Leech, Jr. Public Service Award from the Tennessee Bar Association in June 2004 and the Liberty Bell Award from the Nashville Bar Association in April 2001, as well as a number of other awards for service to the community and to the legal profession. Judge Dinkins has taught continuing legal

education seminars for attorneys and spoken on various topics to youth programs, employee groups and other groups.

## **Survey Results and Interview**

Appellate judges gave Judge Dinkins high marks for his work. He received somewhat lower ratings by trial court judges and attorneys. Judge Dinkins' interview showed a marked improvement in areas identified in previous evaluations. He has shortened the turnaround time for opinions since mid-term evaluations in 2010. Judge Dinkins took the survey results seriously and indicated a strong desire to continue to improve.

## **Recommendation**

**The Commission unanimously recommends Judge Richard H. Dinkins be retained on the Tennessee Court of Appeals.**

## **Judge Dinkins' response**

I am grateful that the Judicial Performance Evaluation Commission has unanimously recommended that I be retained as a Judge of the Court of Appeals, on which I have been honored to serve for six years. Throughout my time on the court, I have sought to render timely opinions based on the facts presented and to treat each party fairly and without bias or favor. If I am retained by the voters, I pledge to continue to pursue excellence and integrity in my personal and professional life.

# JUDGE THOMAS R. FRIERSON, II

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Thomas R. Frierson, II received his law degree from the University of Tennessee College of Law in 1983. He engaged in the private practice of law in Morristown from 1983 to 1990. In August of 1990, he was elected General Sessions Judge for Hamblen County, and served in that capacity until being appointed Chancellor for the 3rd Judicial District in March, 1996. Judge Frierson was appointed by the Governor to serve on the Court of Appeals on February 14, 2013.

## **Service to the Profession**

Judge Frierson is a past president of the Tennessee Judicial Conference. He was a member of the Tennessee Bar Association's Board of Governors from 2010 to 2011, and is a member of the Tennessee and the Knoxville Barr Associations. He was recognized as Trial Judge of the Year by the Tennessee chapter of the American Board of Trial Advocacy in 2000, and recently made a presentation regarding the Code of Judicial Conduct to attorneys from the Republic of Georgia at the UT College of Law in April, 2013.

## **Survey Results and Interview**

Because Judge Frierson has only been a member of the Court of Appeals since February, 2013, several appellate judges were unable to evaluate him, having not worked with him in that capacity as of yet. The same was true of trial judges; however those that did rate him gave him high marks for the respect and collegiality he shows other judges and court personnel. At his interview, Judge

Frierson impressed the Commission as a very congenial jurist. He has produced opinions within an acceptable time range.

## **Recommendation**

**The Commission unanimously recommends Judge Thomas R. Frierson, II be retained on the Tennessee Court of Appeals.**

## **Judge Frierson's Response**

Please allow me to express humble appreciation for the recommendation of retention included in the Final Public Report of the Tennessee Judicial Performance Evaluation Commission. I am grateful for the opportunity to have participated in the judicial performance evaluation program, which includes submitting this response before publication of the Commission's final report.

Regarding service to the legal profession and the public, I am committed to performing the duties of judicial office impartially, competently, and diligently. I shall strive to administer justice to the best of my ability. Respecting the judicial office as a public trust, I shall aspire at all times to conduct that ensures public trust and confidence in the judiciary. I am fully committed to upholding and promoting the independence, integrity, and impartiality of the judiciary.

Again, I thank all members of the Tennessee Judicial Performance Evaluation Commission for your recommendation that I be retained as a judge to serve on the Tennessee Court of Appeals.

# JUDGE HOLLY M. KIRBY

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Holly M. Kirby received a law degree from Cecil C. Humphreys School of Law, University of Memphis in 1982. She served as a judicial law clerk in the Sixth Circuit Court of Appeals from 1982 to 1983. She engaged in the private practice of law in Memphis from 1983 to 1995. Judge Kirby was appointed to the Tennessee Court of Appeals in December 1995, was elected in 1996 and was re-elected in 1998 and 2006.

## **Service to the Profession**

Judge Kirby served on the Tennessee Appellate Court Nominating Commission from 1989 to 1994, and was chairperson in 1994. She was a former member of the Leo Bearman, Sr., American Inn of Court from 1995-1998. Judge Kirby is a member of the Board of Judicial Conduct and serves on the Executive Committee of the Tennessee Judicial Conference. Judge Kirby received an award in 1996 for University of Memphis Outstanding Young Alumna, as well as a 2002 award for Outstanding Alumna from the University of Memphis, College of Engineering. She frequently lectures on legal topics.

## **Survey Results and Interview**

Judge Kirby's survey ratings from appellate judges, trial judges, attorneys and court personnel reflect a good performance, with both areas of excellence and demonstrated self-improvement since her previous evaluation in 2006. Her ratings relative to oral argument are partic-

ularly noteworthy. Her survey ratings in the use of structured, logical reasoning, properly applying law to the facts of the case, and promptness in writing opinions all appear to have improved. In her interview, Judge Kirby demonstrated to the Commission that she has addressed areas of concern expressed in previous evaluations and appears to be much improved in all areas of her position.

## **Comments and Recommendation**

The Commission was favorably impressed with Judge Kirby's insights and recommendations regarding internal improvements to the operation of the Court of Appeals, especially with regard to practices calculated to improve the collaborative disposition of cases. The Commission is also pleased that she has been appointed to fill a vacancy on the Tennessee Supreme Court effective September, 2014.

**The Commission unanimously recommends Judge Holly M. Kirby be retained on the Tennessee Court of Appeals.**

## **Judge Kirby's Response**

I thank the members of the Judicial Performance Evaluation Commission for their thorough work and conscientious public service. I especially appreciate the Commission's unanimous vote in favor of my retention. I look forward to serving our State on the Tennessee Supreme Court in the fall of 2014.

# JUDGE W. NEAL McBRAYER

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge W. Neal McBrayer received his law degree from the Marshall-Wythe School of Law, The College of William and Mary in 1989. He has engaged in the private practice of law in Nashville since then, and was most recently a member of the firm of Butler Snow LLP. His practice emphasized commercial litigation and bankruptcy, as well as some transactional work. He also co-authors and annually supplements a treatise on secured transactions, *Tennessee Secured Transactions Under Revised Article 9 of the Uniform Commercial Code: Forms and Practice Manual (2001 & Supp. 2013)*.

## **Service to the Profession**

Judge McBrayer is a member of the American and Tennessee Bar Associations, as well as the Nashville Bar Association. He has been a delegate to the TBA House of Delegates since 2001. He is a past chair of the TBA's Bankruptcy Law Section and member of the TBA Joint Article 9 Committee responsible for studying and proposing legislation adopting the 2010 version of amendments to Article 9 of the UCC in 2011-2012. He is a past president of the Mid-South Commercial Law Institute. He is a member of the Defense Research Institute and the American Bankruptcy Institute.

## **Survey Results and Interview**

At the time of the interview, Judge McBrayer had only been sworn in to his position on the Court of Appeals for two days. For the same reason, no survey results were

available for consideration by the Commission. The Commission used the information available in Judge McBrayer's application to the Governor's Commission for Judicial Appointments and his Self-Evaluation Form to conduct the interview. As a result of the interview, the Commission found Judge McBrayer to have a broad range of experience as a practitioner and litigator.

## **Comments and Recommendation**

Judge McBrayer appears to possess the knowledge and writing ability to serve on the appellate court. He has written extensively on the law of commercial transactions, including his 2001 Article 9 practice manual. Having served previously as a hearing committee member for the Tennessee Board of Professional Responsibility, Judge McBrayer should conduct himself in a professional and ethical manner as a member of the Court of Appeals.

The Commission unanimously recommends Judge Neal McBrayer be retained on the Court of Appeals.

## **Judge McBrayer's Response**

I am grateful for the unanimous recommendation of retention and thank the Judicial Performance Evaluation Commission. It is an honor to serve on the Tennessee Court of Appeals, and if given the privilege to continue my service by the citizens of the State of Tennessee, I promise to respect and honor the office as a public trust and to pursue my responsibilities with diligence.

# JUDGE JOHN WESTLEY McCLARTY

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge John Westley McClarty received a law degree from Southern University School of Law in 1976. He engaged in the private practice of law in Chattanooga since graduating from law school. He also served as a part time Juvenile Court Referee for Hamilton County in 1990. Judge McClarty was appointed to the Court of Appeals on January 14, 2009, and was elected in 2010.

## **Service to the Profession**

Judge McClarty is a member of the Chattanooga Bar Association, Chattanooga Bar Foundation and American Board of Trial Advocates. He is a past board member of the Tennessee Trial Lawyers Association and past president of the Chattanooga Trial Lawyers Association. He is a Fellow in the American College of Trial Lawyers. Judge McClarty also served as a hearing panel member for the Board of Professional Responsibility from 2001-2009. Judge McClarty has served as an instructor in the Criminal Justice Department for Cleveland State Community College and has also given presentations on housing discrimination to the Chattanooga Bar Association. Since taking the bench, he has attended numerous judicial training events, including the Institute of Judicial Administration at the New York School of Law in 2012.

## **Survey Results and Interview**

Judge McClarty's survey ratings from appellate judges, trial judges, attorneys and court personnel reflect an overall good performance. He received ratings of "excellent" from appellate judges, attorneys, trial judges and court employees in the categories of administrative per-

formance and general performance. He also was rated "excellent" in oral argument by appellate judges, attorneys and court employees (trial judges do not rate in this category). Judge McClarty was rated "good" in the quality of his written opinions, reflecting an area for self improvement. As a result of its interview with Judge McClarty, the Commission found Judge McClarty to have a broad range of knowledge and experience in civil law. Judge McClarty has a history of service to the community. While most new judges experience a backlog of opinions while transitioning into and adapting to the judicial position, Judge McClarty has completed his work in a timely manner, a fact that demonstrates his impressive work ethic. Judge McClarty has recently completed judicial opinion writing courses that will serve to forward the process of continually improving the quality of written opinions.

## **Recommendation**

**The Commission unanimously recommends Judge John Westley McClarty be retained on the Tennessee Court of Appeals.**

## **Judge McClarty's Response**

I thank and appreciate the Commission for again recommending me for retention on the Tennessee Court of Appeals. It has been my privilege and a great joy to serve the people of this Great State as a Judge on this Court. If re-elected I will continue to devote my best efforts to grant a full and fair hearing to the litigants before the Court and after serious and thoughtful consideration decide their cases based upon the law and facts of each particular case.

# COURT OF APPEALS



# JUDGE STEVE STAFFORD

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Steve Stafford received a law degree from the Cumberland School of Law at Samford University in 1983. Upon completing law school, Judge Stafford engaged in the private practice of law in from 1983 until 1993. In 1988, Judge Stafford was elected to serve as the part time judge of the Dyersburg Municipal Court, exercising both municipal and general sessions jurisdictions. In 1993, Judge Stafford was appointed Chancellor for the 29th Judicial District and was reelected in 1998 and 2006. Judge Stafford was appointed by the Governor to the Court of Appeals in June 2008, and was elected in August, 2008.

## **Service to the Profession**

Judge Stafford is a Fellow of the Tennessee Bar Foundation and a member of the Dyer County and Tennessee Bar Associations. He served as president of the Dyer County Bar Association in 1987-1988. Judge Stafford served as presiding judge of the Court of the Judiciary from 2004 until 2007. He has also served as president of the Tennessee Judicial Conference. In 2007, Judge Stafford was selected Judge of the Year by the Tennessee Chapter of the American Board of Trial Advocates. Judge Stafford is a frequent lecturer on legal topics to court clerks, lawyers, and judges, with a majority of

his lectures focusing on ethics, and is a member of the American Inns of Court.

## **Survey Results and Interview**

Judge Stafford rated highly in some areas, with others showing some room for improvement. His professional demeanor and collegial nature were noted; however his written opinions received somewhat lower ratings from appellate judges and attorneys. During his interview, Judge Stafford regarded the results of the survey as a useful tool for self-improvement. He particularly expressed his intentions to use the results of the appellate courts' evaluations of his work to improve the overall quality of his opinions.

## **Recommendation**

**The Commission unanimously recommends Judge J. Steven Stafford be retained on the Tennessee Court of Appeals.**

## **Judge Stafford's Response**

I want to thank the members of the Commission for their hard work and thoughtful consideration. I respect the evaluation process and intend to use the information gleaned from this process to enhance my effectiveness and performance as an appellate judge in the future.

# JUDGE CHARLES D. SUSANO, JR.

**Recommendation: RETAIN**

**Commission Vote: 8 FOR RETENTION • 1 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Charles D. Susano, Jr. received a law degree from the University of Tennessee College of Law in 1963. He served as law clerk to the Tennessee Supreme Court from 1963 to 1964. He engaged in the private practice of law in Knoxville from 1964 to 1994. He also served as Assistant District Attorney for Knox County from 1967 to 1968. Judge Susano was appointed to the Tennessee Court of Appeals in March 1994 and was elected in August 1994 and re-elected in 1998 and 2006.

## **Service to the Profession**

Judge Susano served as a member of the Court of the Judiciary from 1999 to 2003 and was Presiding Judge Pro Tem from 1999 to 2002. He is a Fellow of the Tennessee and American Bar Foundations. He was selected 2003 Appellate Judge of the Year by the American Board of Trial Advocates, Tennessee Chapter. Judge Susano was also awarded the Courage in the Face of Adversity Award by the Knoxville Bar Association in 2004. He has served as an Executive Committee Member and Treasurer for the Tennessee Judicial Conference. He has frequently lectured on legal topics.

## **Survey Results and Interview**

Judge Susano's survey ratings from appellate judges, trial judges, attorneys and court personnel reflect an excellent performance. His ratings in all areas related to written opinions were particularly noteworthy, encompassing

elements of quality and promptness. His ratings in the areas of oral argument, ethical conduct, freedom from bias, and demonstration of appropriate judicial temperament were equally noteworthy. The interview with Judge Susano confirmed the survey results. Judge Susano has an excellent turnaround time on his opinions.

## **Comments and Recommendation**

One Commission member was concerned that the excellent work now being done by this judge may be difficult to sustain into his 80's.

**The Commission recommends Judge Charles D. Susano, Jr. be retained on the Tennessee Court of Appeals.**

## **Judge Susano's Response**

I thank the Commission for its vote of confidence in recommending me for another term as Judge of the Court of Appeals. It is an honor and a privilege to serve the people of Tennessee. I am also thankful to my fellow judges for selecting me Chief Judge of the Court. I will continue to uphold my oath of office to support and defend the state and federal constitutions. My goal will always be to render fair and impartial judgments in the cases that come before the Court.

# JUDGE D. MICHAEL SWINEY

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge D. Michael Swiney received a law degree from the University of Tennessee College of Law in 1978 and engaged in the private practice of law in Knoxville from 1979 to 1999. Beginning in 1994, he served as a Certified Mediator with the U.S. District Court for the Eastern District of Tennessee until appointed to the Court of Appeals in July 1999. He was elected in August 2000 and re-elected in 2006.

## **Service to the Profession**

Judge Swiney is a member of the Knoxville and Tennessee Bar Associations, and the Hamilton Burnett American Inn of Court. He served as adjunct professor at the University of Tennessee College of Law from 1997 to 2006. Judge Swiney also served as a member of the Court of the Judiciary from 2003 to 2011. He authored an article for DICTA, a Knoxville Bar Association publication, and frequently lectures on legal topics to bar associations and other groups. Most recently, he participated in a presentation on appellate practice in

Tennessee to a delegation from the Republic of Georgia.

## **Survey Results and Interview**

Judge Swiney's survey ratings from appellate judges, trial judges, attorneys and court personnel reflect an excellent performance. His ratings in the use of structured, logical reasoning, knowledge of rules of evidence and procedure and promptness in written opinions were particularly noteworthy. In his interview Judge Swiney noted that he evaluates the complexity of cases for the purpose of managing his resources and time to produce quality opinions with reasonable promptness. He also noted that the major responsibility of an appellate judge is disposing of cases, which requires two things – reaching a decision and then writing the opinion to explain it.

## **Recommendation**

**The Commission unanimously recommends Judge D. Michael Swiney be retained on the Tennessee Court of Appeals.**

# JUDGE JEFFREY S. BIVINS

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Jeffrey S. Bivins received his law degree from Vanderbilt University School of Law in 1986. He engaged in the private practice of law from 1986 until 1994 and again from 2002 until 2005. Judge Bivins served as Assistant Commissioner and General Counsel for the State of Tennessee, Department of Personnel from 1995 until 1999 and again from 2000 until 2002, serving as Circuit Court Judge for the 21st Judicial District during 1999 and 2000. Judge Bivins returned to serve as Circuit Court Judge for the 21st Judicial District in 2005, where he served until he was appointed as a Judge of the Court of Criminal Appeals in August 2011. He was elected to that position in 2012.

## **Service to the Profession**

Judge Bivins is a member of the Tennessee Bar Association and a Fellow in both the Tennessee Bar Foundation and the Nashville Bar Foundation. He is a member and past president of the John Marshall American Inn of Court and is also a member of the Harry Phillips American Inn of Court. Judge Bivins served on the Judicial Performance Evaluation Commission from 2009 until he was appointed to the Court of Criminal Appeals. He is a current member of the Board of Judicial Conduct,

and serves as its legislative liaison. Judge Bivins is an active member of the Tennessee Judicial Conference, serving on the Executive Committee currently as the Moving Vice-President and serving as the Co-Chair of the Compensation and Retirement Committee.

## **Survey Results and Interview**

Judge Bivins' survey ratings from appellate judges, trial judges, attorneys and court personnel reflect an excellent performance. His ratings among attorneys showed room for improvement in the structure and reasoning of his opinions, but his courtroom demeanor received higher ratings from that same group. His overall survey ratings were outstanding. His interview confirmed the survey results. Judge Bivins has carefully chosen qualified staff to assist him and has made a commendable transition to the appellate bench. Judge Bivins has completed his work in a timely manner, a fact that demonstrates his impressive work ethic.

## **Recommendation**

**The Commission unanimously recommends Judge Jeffrey S. Bivins be retained on the Tennessee Court of Criminal Appeals**

# JUDGE ALAN E. GLENN

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Glenn received a law degree from Vanderbilt University School of Law in 1968. He served as a law clerk to a Memphis U.S. District Judge. He was an assistant U.S. attorney from 1970-71, an assistant district attorney general from 1971 to 1982 and in private practice in Memphis from 1982 to 1999. He was appointed to the Court of Criminal Appeals in April 1999 and was elected in 2000 and was re-elected in 2006.

## **Service to the Profession**

Judge Glenn is a Member of the Memphis/Shelby County Bar Association and Tennessee Bar Association. He has served as an instructor in Trial Advocacy at Harvard Law School and as a lecturer at the National College of District Attorneys. Judge Glenn has also served as an arbitrator in the American Arbitration Association. Judge Glenn serves as Chair of the Judicial Ethics Committee, and is a frequent lecturer on legal topics.

## **Survey Results and Interview**

Judge Glenn's survey ratings from appellate judges, trial

judges and court personnel reflect an excellent performance. His rating from attorneys was below the mean score. His ratings in all areas related to written opinions were particularly noteworthy, encompassing elements of both quality and promptness. His ratings in the areas of oral argument, ethical conduct, freedom from bias, and demonstration of appropriate judicial temperament were equally noteworthy. The interview with Judge Glenn supported the survey results. Judge Glenn has an excellent record for timely production of opinions, and could serve as a model of efficiency to all judges.

## **Comments and Recommendation**

The Commission was favorably impressed with Judge Glenn's willingness to mentor newer judges on the Court of Criminal Appeals and to promote the efficiency of the court as a whole. His willingness to take responsibility for more time intensive cases was particularly noteworthy.

**The Commission unanimously recommends Judge Alan E. Glenn be retained on the Tennessee Court of Criminal Appeals.**

# JUDGE CAMILLE R. McMULLEN

**Recommendation: RETAIN**

**Commission Vote: 6 FOR RETENTION • 3 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Camille R. McMullen received a law degree from the University of Tennessee College of Law in 1996. She served as law clerk for Judge Joe Riley in the Tennessee Court of Criminal Appeals during 1996. She joined the District Attorney's office of the 30th Judicial District in 1997 where she prosecuted cases until 2001. Judge McMullen then became an Assistant U.S. Attorney for the Western District of Tennessee, where she prosecuted cases from 2001 until June, 2008, when she was appointed by the Governor to serve on the Court of Criminal Appeals. She was elected in August, 2008.

## **Service to the Profession**

Judge McMullen is a member of the Tennessee and Memphis Bar Associations, as well as the National Bar Association. She received recognition for Outstanding Efforts in Project Neighborhood in 2002. She also was awarded the US DOJ Special Achievement Award in 2005. Judge McMullen has coached the mock trial team at Central High School in Memphis for a number of years.

## **Survey Results and Interview**

Judge McMullen had the lowest overall rating of Court of Criminal Appeals judges from all 4 evaluating groups, appellate judges, trial judges, attorneys and court staff. She received low marks from appellate judges in the area of promptness in writing opinions. Her initial interview in December of 2013 did not alleviate the concerns of the majority of this Commission. However, her second interview in January of 2014 did alleviate the concerns of a majority of this Commission. Judge McMullen did demonstrate to the Commission in the second interview her commitment to improve the timeliness of filing her opinions and working on her relationships with court personnel and fellow judges.

## **Comments and Recommendation**

A majority of the Commission found that after the second interview of Judge McMullen that she should be recommended for retention. The majority of the Commission found that she had unquestioned integrity, knowledge of the law and service to the profession. The majority had been concerned about her ability to communicate as was demonstrated in a poor first interview and demonstrated in poor survey results by court personnel. The majority also had concerns about Judge McMullen's preparation and attentiveness as was evidenced by her very poor turnaround time in finalizing her opinions. Finally, the majority had concerns about her effectiveness in working with other judges as was demonstrated in her poor survey results from both the appellate judges and the trial judges. Judge McMullen gave an excellent interview the second time and gave sufficient assurance to this Commission that she would improve in the above areas. A minority still expressed serious concern that Judge McMullen did not initially recognize or acknowledge in the first interview that she had a problem issuing opinions in a timely manner. Also, the survey results demonstrate that all groups surveyed identify significant issues with Judge McMullen's performance. The minority still had significant concerns that Judge McMullen did not offer the Commission any assurances at the first interview that she recognized these performance issues and had a plan to correct them. While the second interview was a significant improvement the minority did not change their initial vote to replace Judge McMullen.

**The Commission recommends Judge Camille R. McMullen be retained on the Tennessee Court of Criminal Appeals.**

## **Judge McMullen's Response**

It has been said that the essential function of an appellate court judge is to ensure the fair and impartial

# JUDGE CAMILLE R. McMULLEN

application of the rule of law. I want to thank the Commission for recognizing that I have “unquestioned integrity, knowledge of the law, and service to the profession.” Should the voters of this State retain me for a second term, I will continue to work tirelessly to ensure the fair and impartial application of the law in each and every case that comes before me. Above all, I will continue to maintain my integrity as a jurist and will continue to provide exemplary service to the people of the State of Tennessee.

The Commission’s primary area of concern was a survey, which was based upon subjective information. I believe it is important for the voters of this State to consider the survey results in the proper context. Respondents were asked to rate judges on a scale of 1 to 5, with 1 being “unacceptable”, 2 being “below average”, 3 being “average”, 4 being “above average”, and 5 being “excellent.” My overall rating was a 4.14, which is “above average.”

The Commission’s concerns, which I have taken to heart, focused on the survey results in certain areas. For example, the Commission was of the opinion that the survey results from court personnel, for which I received an “above average” rating of 4.63, were “poor.” I value the court personnel in the Tennessee judicial system, and I will make every effort to increase my rating from “above average” to “excellent” in this area. From appellate and trial judges, I received an overall rating of “above aver-

age,” 4.07 and 4.04, respectively. I will continually strive to increase my rating in this area from “above average” to “excellent.”

In the area of timeliness, the survey results suggested that I had the slowest opinion turnaround time on the Court. This was of concern to the Commission. However, the objective report from the Administrative Office of the Courts (AOC) established that my rank on the court with respect to turnaround time for opinions has continually improved. In 2009, my first full year on the court, I was ranked ninth out of ten judges; in 2010, eighth out of ten judges; in 2011, eighth out of eleven judges; in 2012, sixth out of twelve judges; and in 2013, seventh out of twelve judges. As I expressed to the Commission in the second interview, the disparity between the survey results and the AOC report demonstrates the need to improve the perception of untimeliness. In addition, I will continue to refine my efforts in issuing high quality opinions in a timely manner and will make every effort to increase my survey results from “above average” to “excellent.”

I believe it is important for the voters of this State to know that the primary work product of an appellate judge is the written opinion. In this regard, I have authored over 400 opinions and have had less than 1% of them reversed. I will continue to strive to write high quality opinions and maintain a low reversal rate. Again, I would like to thank the Commission for its service and recommendation for my retention.

# JUDGE NORMA MCGEE OGLE

**Recommendation: RETAIN**

**Commission Vote: 6 FOR RETENTION • 3 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Norma McGee Ogle received a law degree from the University of Tennessee College of Law in 1977. She practiced law with the Memphis Area Legal Services, Inc. from 1977 to 1979, and engaged in the private practice of law from 1979 to 1998, during which time she served as the City Attorney for Pigeon Forge and the Town of Pittman Center. Judge Ogle was appointed to the Court of Criminal Appeals in November 1998 and elected in August 2000, and was re-elected in 2006.

## **Service to the Profession**

Judge Ogle is a member of the Sevier County, Knox County and Tennessee Bar Associations. She was a member of the Tennessee Human Rights Commission from 1995 to 1998 and served as its chair in 1998. She regularly lectures on legal topics as well as speaking to lay groups on the role of judges and the courts.

## **Survey Results and Interview**

Judge Ogle's survey ratings from appellate judges, trial judges, attorneys and court personnel reflect a satisfactory performance. Her ratings in oral argument and appropriate judicial temperament are particularly noteworthy. The Commission did express concern about the promptness of Judge Ogle's written opinions during the judicial term. From 2010 to 2011 Judge Ogle was aver-

age 6 to 9 months after oral argument to submit her opinions. She did improve from 2012 to 2013 with an average of 5 to 6 months after oral argument to submit her opinions. Judge Ogle did express concern over the timeliness of her opinions and a commitment to continue improving the promptness of her written opinions without sacrificing the quality of the opinion.

## **Comments and Recommendation**

The majority of the Commission found Judge Ogle to easily meet and exceed the criteria of integrity, knowledge of the law, ability to communicate and service to the profession. Judge Ogle noted that she initially was concerned that the emphasis on timeliness of opinions would cause the quality of opinions to suffer. The minority of the Commission was concerned that Judge Ogle had not met the criteria of preparation, attentiveness and effectiveness of working with other judges as demonstrated by the length of time she took in finalizing her opinions. However, her average may have been influenced by her willingness to accept reassignment of cases from other judges. Judge Ogle affirmed her commitment to meet or exceed the standards for appellate judges in promptness and quality of opinions.

**The Commission recommends Judge Norma McGee Ogle be retained on the Tennessee Court of Criminal Appeals.**



# JUDGE ROGER A. PAGE

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Roger A. Page received his law degree from University of Memphis School of Law in 1984, after working as a licensed pharmacist for several years. Upon graduation, Judge Page served as law clerk to Judge Julia Smith Gibbons in the Federal District Court in Memphis, Tennessee. He then practiced law in Atlanta for two years and in Jackson, Tennessee for four years. He served the Tennessee Attorney General's Office as an Assistant Attorney General from 1991 until 1998 when he was elected Circuit Court Judge for the 26th Judicial District. He was reelected in 2006 and served as Circuit Court Judge until his appointment to the Court of Criminal Appeals. The Governor appointed Judge Page to the Court of Criminal Appeals in December 2011, and he was elected in 2012.

## **Service to the Profession**

Judge Page is a member of the Jackson-Madison County Bar Association, Tennessee Bar Association and the Edmund Howell Jackson American Inn of Court. Judge Page served on the Judicial Evaluation Commission from 2004 until 2008. Judge Page is an active member of the Tennessee Judicial Conference, serving on the Executive and Legislative Committees. He was elected as a Fellow of the Tennessee Bar Foundation in 2012.

## **Survey Results and Interview**

Judge Page rated highly in the promptness of circulat-

ing his opinions. His received high ratings overall by trial judges and court personnel. Attorneys, on the other hand indicated the Judge Page has room for improvement in the opinions he authors, including the basis for the conclusions reached in cases. In his interview Judge Page noted that he understands the importance of drafting quality opinions in a timely manner having served previously on the Judicial Evaluation Commission. He also demonstrated a commitment to continued improvement.

## **Recommendation**

**The Commission unanimously recommends Judge Roger A. Page be retained on the Tennessee Court of Criminal Appeals.**

## **Judge Page's Response**

I am grateful that the Judicial Performance Evaluation Commission has unanimously recommended my retention on the Tennessee Court of Criminal Appeals. I have thoroughly enjoyed my service to the citizens of our great state for the past two years in this capacity. If I am retained, I will do my best to produce timely, quality opinions. I will conduct my personal and professional life with honor and integrity and will make every citizen of this state proud that I am serving.

# JUDGE D. KELLY THOMAS, JR.

**Recommendation: RETAIN**

**Commission Vote: 7 FOR RETENTION • 2 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge D. Kelly Thomas, Jr. received a law degree from the University of Tennessee College of Law in 1977. He engaged in the private practice of law from 1978 until 1990 when he was elected Circuit Judge for the Fifth Judicial District, Division II. He was reelected Circuit Judge in 1998 and 2006. Judge Thomas was appointed by the governor to serve on the Court of Criminal Appeals in November 2006 and was elected to that position in August of 2008.

## **Service to the Profession**

Judge Thomas is a past President of the Tennessee Judicial Conference and has served on the Executive Committee for the same. He is a Fellow of the Tennessee Bar Foundation and a member of the Hamilton Burnett American Inn of Court. He is a past president of the Tennessee Trial Judges Association. He has served as a faculty member of The National Judicial College at the University of Nevada, Reno. Judge Thomas has lectured on legal topics to judicial conferences, court clerks' conferences and other groups, and has taught classes on criminal law.

## **Survey Results and Interview**

Judge Thomas' survey ratings from appellate judges, at-

torneys, and court personnel reflected a very good performance, with some areas of excellence as well as some areas of potential for self improvement. He received excellent to above average ratings in the area of oral argument from appellate judges and court personnel. Oral argument ratings from attorneys were excellent to above average with some average ratings. He received excellent to above average ratings on his written opinions from appellate judges, trial judges and court personnel. He received good to adequate ratings on his written opinions from some attorneys, indicating an area for potential self improvement. Judge Thomas acknowledged that the timeliness of his opinions needed improvement and informed Commission members that he has improved his clerk staff to achieve this.

## **Comments and Recommendation**

The Commissioners voting to replace noted there was no evidence of improvement of the timeliness of writing opinions.

**The Commission recommends Judge D. Kelly Thomas, Jr. be retained on the Tennessee Court of Criminal Appeals.**

# JUDGE ROBERT W. WEDEMEYER

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Robert W. Wedemeyer received his law degree from the Memphis State University School of Law in 1976. Judge Wedemeyer engaged in the private practice of law from 1977 until 1990. He was appointed to serve as Circuit Judge in the 19th Judicial District in 1990, was elected to the position in 1990 and was reelected in 1998. Judge Wedemeyer was appointed to the Court of Criminal Appeals in 2000, and was elected in 2000, and was re-elected in 2006.

## **Service to the Profession**

Judge Wedemeyer serves on the Bench/Bar Relations Committee of the Tennessee Judicial Conference and has previously served on the Tennessee Pattern Jury Instructions Committee of the conference. He is a member of the Tennessee, Montgomery County and Robertson County Bar Associations, having served as President of the Montgomery County Bar Association. Judge Wedemeyer is also a past member of the Tennessee Trial Lawyers Association and the Tennessee Trial Judges Association. He is a frequent lecturer on legal topics and has taught courses on Family Law and the Death Penalty at Austin Peay State University.

## **Survey Results and Interview**

Judge Wedemeyer's survey ratings from appellate judges, trial judges, attorneys and court personnel reflect a good

performance with both areas of excellence and potential for self-improvement. He received high marks for his collegiality and courtesy toward those appearing before him. Attorneys rated Judge Wedemeyer slightly lower than the other groups, leaving some room for improvement in what was an overall favorable evaluation. Judge Wedemeyer also consistently renders opinions in a timely manner. The interview with Judge Wedemeyer supported the survey ratings. Judge Wedemeyer noted that the addition of a third law clerk to his staff has allowed him to circulate opinions in less time.

## **Recommendation**

**The Commission unanimously recommends Judge Robert W. Wedemeyer be retained on the Tennessee Court of Criminal Appeals.**

## **Judge Wedemeyer's Response**

I appreciate the work of the Judicial Performance Evaluation Commission and I am gratified by the Commission's unanimous recommendation that I be retained for another term on the Tennessee Court of Criminal Appeals. It is an honor to serve the citizens of Tennessee as a judge, and I will continue to do so with humility and hard work. Thank you.

# COURT OF CRIMINAL APPEALS

# JUDGE JOHN EVERETT WILLIAMS

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge John Everett Williams received a law degree from the Cumberland School of Law, Samford University, in 1981. He engaged in the private practice of law in Huntingdon from 1981 until 1998. Judge Williams was appointed to the Court of Criminal Appeals in November 1998 and was elected in 2000 and was re-elected in 2006.

## **Service to the Profession**

Judge Williams is a member of the Tennessee and Carroll County Bar Associations. He has also been a member of the Tennessee Trial Lawyers Association and participated in the Tennesseans for Fair and Impartial Courts Project in 2011. Judge Williams is a frequent lecturer on legal topics.

## **Survey Results and Interview**

Judge Williams' survey ratings from appellate judges, trial judges, attorneys and court personnel reflect a good performance with both areas of excellence and potential

for self-improvement. His ratings in giving parties an adequate time to be heard in oral argument and demonstrating courtesy and respect to court personnel are particularly noteworthy. During his interview, Judge Williams described his judicial philosophy as one that reflects a practical approach to the law. He noted that he has made a concerted effort to improve the quality of his written opinions. To that end, he has sought and received assistance from other judges and has paid greater attention to the details of opinion writing. He noted that some cases require more time than others and stated that there is no better cause than reaching the correct result.

## **Comments and Recommendation**

While Judge Williams' ratings in the quality of written opinions reflect the need for additional self-improvement, the Commission recognizes his improvement in this area during the judicial term.

**The Commission unanimously recommends Judge John Everett Williams be retained on the Tennessee Court of Criminal Appeals**

# COURT OF CRIMINAL APPEALS

# JUDGE JAMES CURWOOD WITT, JR.

**Recommendation: RETAIN**

**Commission Vote: 9 FOR RETENTION • 0 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge James Curwood Witt, Jr. received a law degree from the University of Tennessee College of Law in 1973. He served as Juvenile Court Referee in Monroe County from 1974 to 1979 and was Juvenile Court Judge from 1979 to 1982. Judge Witt also served as counsel for the Monroe County Board of Education from 1989 until 1997. He was appointed to the Court of Criminal Appeals in January 1997 and was elected August 1998 and re-elected in 2006.

## **Service to the Profession**

Judge Witt has served on the Judicial Council and on the Court of the Judiciary. He is a Fellow of the Tennessee Bar Foundation. He is a member and Past President of the Monroe County Bar Association. He has served as a Hearing Committee Member for the Board of Professional Responsibility. Judge Witt has served on the Faculty of the Tennessee Judicial Academy and regularly lectures on legal topics. Since 2001, he has served as an adjunct professor at the University of Tennessee College of Law.

## **Survey Results and Interview**

Judge Witt's survey ratings from appellate judges, trial judges, attorneys and court personnel reflect an excellent performance. His ratings in oral argument and ethical conduct were particularly noteworthy. The interview with Judge Witt supported the survey results. In describing his approach to his work, Judge Witt noted that he has developed a personal process of reviewing cases that substantially reduces the opportunity for technical errors, thus reducing the likelihood of applications to re-hear or reconsider cases.

## **Recommendation**

**The Commission unanimously recommends Judge James Curwood Witt, Jr. be retained on the Tennessee Court of Criminal Appeals.**

# COURT OF CRIMINAL APPEALS

# JUDGE THOMAS T. WOODALL

**Recommendation: RETAIN**

**Commission Vote: 5 FOR RETENTION • 4 FOR REPLACEMENT**

## **Legal Education and Experience**

Judge Thomas T. Woodall received his law degree from Cecil C. Humphreys School of Law, University of Memphis in 1981. He served as a judicial law clerk from 1981 to 1982. He served as Assistant District Attorney General from 1984 to 1990, and engaged in the private practice of law in Dickson from 1990 to 1996. He was appointed to the Court of Criminal Appeals in December 1996 and was elected in 1998 and was re-elected in 2006.

## **Service to the Profession**

Judge Woodall is a member of the Tennessee and Dickson County Bar Associations. Judge Woodall has authored articles for the Memphis State University Law Review as well as "A Judge's View of Appellate Advocacy," *The Prosecutor's Desk Book (3d ed.): Ethical Issues and Emerging Roles for 21st Century Prosecutors*, 2001, American Prosecutors Research Institute. Judge Woodall frequently lectures on legal topics to groups such as attorneys, court clerks, law clerks and municipal and general sessions judges.

## **Survey Results and Interview**

Judge Woodall's survey ratings from appellate judges, trial judges, attorneys and court personnel reflect a sat-

isfactory performance. His ratings in use of structured, logical reasoning, applying law to the facts of the case, and ethical conduct were particularly noteworthy. Judge Woodall's integrity, knowledge of the law and service to his profession were unquestioned.

## **Comments and Recommendation**

The majority of the Commission found that Judge Woodall had improved the timeliness of his opinions, and that he had made notable improvement since the last quarter of 2011. However, there is still room for improvement and Judge Woodall appears to be headed in the right direction in addressing this issue according to the majority. The Commissioners voting against retention noted that Judge Woodall was taking over 10 months from oral argument to issue an average opinion from 2009, 2010 and 2011. Judge Woodall's improvement in 2012 and 2013 to issuing an average opinion in 6 to 7 months from oral argument was sufficient improvement for the majority to vote to retain. Judge Woodall expressed deep concern over the timeliness of his opinions and a commitment to continue to make significant improvements.

**The Commission recommends Judge Thomas T. Woodall be retained on the Tennessee Court of Criminal Appeals.**