

Memorial Resolution

Honorable Herschel Pickens Franks

June 2021

Retired Court of Appeals Judge Herschel Pickens Franks, who served as Presiding (Chief) Judge of the Court as well as the Presiding Judge of the Eastern Section from 2004 – 2012, died on March 19, 2020, at the age of 89 years old. At the time of his retirement in 2012, Judge Franks was the longest serving state court judge in Tennessee's history.

Born in Savannah, Tennessee, on May 28, 1930, Herschel Franks was the only child of Vada Pickens Franks and Herschel Ralph Franks. The family operated a small farm and country store near Pickwick Lake. Young Herschel received his undergraduate education from the University of Tennessee – Martin and the University of Maryland. He enlisted in the National Guard while studying at UT Martin and later served in the United States Air Force from 1950 to 1954. Upon completion of his military service, he attended the University of Tennessee College of Law in Knoxville on the GI bill, receiving his law degree in 1957.

Arriving in Chattanooga in 1957 after graduation from law school, the new lawyer entered private practice as a claims attorney for United States Fidelity & Guaranty, an insurance company that insured a large number of industries and businesses in the East Tennessee area. In 1959, he became a member of the law firm of Harris, Moon, Meacham and Franks, where he continued to practice insurance defense law. Well liked by his fellow attorneys, he was elected to and served as the president of the Chattanooga Bar Association. He was also an active participant in both state and national bar associations.

In 1970, Judge Franks was appointed Chancellor of Part 2, Chancery Court of Hamilton County by Governor Buford Ellington, a position he held for eight years until his elevation to the Court of Appeals. As a trial court jurist, Chancellor Franks made many groundbreaking rulings. Guided by his respect for the law, adherence to the facts, and a deep sense of fairness, he did not shy away from controversial cases despite the political consequences.

The landmark case of *Paty v. McDaniel* is one of the decisions in which Chancellor Franks overturned existing standards. He ruled that the Tennessee Constitution's provision banning ministers from serving as legislators in the Tennessee General Assembly violated their right to due process of law under the United States Constitution. Despite his ruling being reversed by the Tennessee Supreme Court, it was reinstated on appeal by the United States Supreme Court in a 9-0 opinion in 1978.

Chancellor Franks also authored a controversial decision relating to comatose patients on life support machines and the ability of family members to authorize medical care providers to discontinue use of the machines. In the face of opposition from the Tennessee Medical Society, Chancellor Franks laid down a ruling that became instrumental in creating a national movement for living wills and right-to-die laws. These standards are commonly used in today's society but were a novelty at the time of his initial ruling.

Chancellor Franks also handled a case involving James Earl Ray, the assassin of Rev. Dr. Martin Luther King. Ray had filed a pro se petition against two of his habeas corpus lawyers who he claimed refused to turn over his file after he fired them. The case was eventually settled between the parties upon the return of the file. Ironically, when the court-appointed lawyer turned the file over to him at the state penitentiary in Nashville, Ray remarked that "it was the only time he had won anything in a court of law."

In 1978, Governor Ray Blanton appointed Chancellor Franks to the Tennessee Court of Appeals, where he continued to serve for 34 years. During the last eight years of his tenure, he served as Presiding Judge for the Eastern Section and Presiding (Chief) Judge of the full court. As an Appellate Court Judge, Judge Franks authored many groundbreaking opinions. In one case, he did not hesitate to rule against a municipal court judge who jailed an indigent defendant who could not pay the fine or court costs owed to the city of Chattanooga for contempt. Judge Franks ruled that the defendant had been illegally detained and ordered her release.

Judge Franks also wrote the opinion in the case involving the late John Jay Hooker as a Democratic gubernatorial candidate. Hooker had filed suit against then Governor Bill Haslam in 2012 to attack the constitutionality of the Tennessee Retention Election Statute that governs how intermediate appellate (Tennessee Court of Appeals and Tennessee Court of Criminal Appeals) judges are elected. After all the appellate court judges were recused, upon his appointment to hear the

case, Judge Franks wrote the opinion that decided the case. Like his trial court rulings, his appellate court decisions were likewise full of courageous rulings. Judge Franks was not one to test the political winds prior to making decisions in cases that might further his judicial career. His adherence to his personal political philosophy and willingness to decide each case based solely on the law and facts demonstrated judicial courage that results in him ranking highly among judges who have served the state of Tennessee.

In 2019, biographical publisher Marquis presented Judge Franks with the Albert Nelson Marquis Lifetime Achievement Award. In 2009, he received the Tennessee Bar Association's highest service award to the judiciary, the Francis F. Drowota III Award. Judge Franks also received many awards and accolades from his peers, including the Foundation of Freedom Award from the Chattanooga Bar Association and the Merit Award from the American Bar Association. Further, he mentored generations of young lawyers who worked as clerks in his chambers and new judges in the trial and appellate courts. The community was blessed by his efforts on behalf of the Big Brothers and Big Sisters organization.

As a husband, father and friend, Judge Franks is remembered for his kindness, generosity, lively spirit, good humor, and ready supply of stories and tales concerning the law and lore of Tennessee. He is also fondly remembered for his skillful gardening and homegrown tomatoes.

Herschel Pickens Franks, a lawyer, a Chancellor (Trial Court Judge), an Appellate Court Judge, and a good and respectable person. He dedicated his life to God, his family and loved ones, his community and state, and to his profession. He was a pillar of Hamilton County and the State of Tennessee and a model of decorum in every aspect of his life. In the letter sent to Gov. Bill Haslam in September 2012 announcing his retirement, Judge Franks said, "Words cannot adequately express my heartfelt and sincere appreciation for Tennessee's voters who have elected me as one of their judges in seven elections." I say to you, Judge Franks, it is us, the Citizens of Tennessee, who should express to you our heartfelt thanks and sincere appreciation for the service you have rendered this great state of ours.

Judge Franks passed away on the morning of March 19, 2020, and was laid to rest at the Chattanooga National Cemetery. He is survived by his wife of thirty years, Judy Franks; his daughter Ramona Hagmaier and her husband Jason; granddaughter Megan Hagmaier; step-daughters, Mary Beth and Anne Black,

along with Anne's husband Martin Beeler and their children Nora, Genevieve and Nico.

NOW, THEREFORE, BE IT RESOLVED by the Tennessee Judicial Conference on this 16th day of June 2021, that this resolution in honor of our departed colleague and friend Herschel P. Franks be entered on the minutes of this conference, that a copy be furnished to West Publishing Company for publication in **Tennessee Decisions**, and that a copy be furnished to the family.

Respectfully submitted by:

Judge John W. McClarty,
Tennessee Court of Appeals

Jerry Summers, Esq.