

IN THE SUPREME COURT OF TENNESSEE AT NASHVILLE

PETITIONERS

In re: John Jay Hooker, under the Attorney's Oath in this matter involving the highest public interest and as an independent candidate for Governor and as a citizen under penalty of perjury under Supreme Court Rule 10 Rule 3.01 lawyer for Walt Brumit, Tony Gottlieb and Holly Spann under ARTICLE I§§1,2 §23; Article XI §16 of the Tennessee Constitution which provide a constitutional right to file this document,

RESPONDENTS

PUBLIC OFFICIALS AND THE PRESIDENT OF THE TENNESSEE BAR ASSOCIATION
Chief Justice Lee, Justice Bivens, Justice Clark, Justice Kirby and Justice Wade; as members of the Supreme Court in both their official and individual capacities,

Bill Haslam, Governor of Tennessee, under his Oath of Office has a duty to "take care that laws are faithfully executed" which includes the Code of Judicial Conduct and the Official Misconduct Statute as a political leader involved in the advertising campaign for, Vote Yes on Amendment #2,

Herbert Slatery, in his capacity as Attorney General of Tennessee and Attorney for all Supreme Court Judges and the Governor of Tennessee,

Jonathan O. Steen: in his capacity as President of the Tennessee Bar Association and individually as a lawyer.

AMENDED MOTIONS

This is a motion and a declaration filed under Supreme Court Rule 10B Section 3.01 under penalty of perjury on personal knowledge which is not being presented for any improper purpose addressed to Chief Justice Lee and to other members of the Supreme Court requesting that under the "inherent supervisory

powers” of to Supreme Court to enforce the provisions of Supreme Court Rules 8, ,10, 11, and 27, the Code of Judicial Conduct, that the Chief Justice “**resign**” her office on the basis that she has failed to “**comply with the law**” and that she has [abused] the “**prestige of judicial office**” to advance the personal “**economic interest**” of the Judges by making an effort to “**unlawfully solicit**” the members of the Tennessee Bar Association to seek votes from their clients and friends on behalf of Amendment #2 in violation of Supreme Court Rule 8.4. This conduct by Chief Justice Lee would appear to be a violation of the Official Misconduct Statute TCA 39-16-402, which is a Class E felony.

This circumstance should be addressed by all members of the Court, as the conduct of the Chief Justice in cooperating, with the President of the Tennessee Bar Association Mr. Jonathan O. Steen, in sending an email to membership of the Tennessee Bar Association (TBA), including this lawyer, has made further judicial participation on the Court, by the Chief Justice, “**improper**” because the Chief Justice has “**knowingly and intentionally**” for her own “**economic benefit**” been guilty of, “**impropriety and the appearance of impropriety**” in violation of Supreme Court Rule 10 including all the provisions of Rule 1.01, 1.2, 1.3 and Rule 4.1(11) for making a “**false and misleading**” statement in her letter relating to the right to “**vote**” and “**choose**” Judges for her own “**economic benefit**” and the “**economic benefit**” of her colleagues on the Supreme Court and all the Judges of the appellate Courts.

Further this motion is filed by this Lawyer in accordance with the Attorney’s Oath and this Lawyer on behalf of himself and Brumit, Gottlieb and Spann requests that the Judges of the Supreme Court recuse themselves, as they are “**incompetent**” under ARTICLE VI §11, as each has an “**economic interest**” in the subject matter of this Motion, made to protect the “**integrity**” of our judicial system and that Special Judges accordingly be immediately appointed by the Governor of Tennessee, on a emergency basis, so that this matter may be addressed and adjudicated prior to the election on November 4th 2014, as Bill Haslam, Governor of Tennessee has a duty under Article III Section 10 of the Constitution, to “**see that the laws are faithfully executed,**” notwithstanding his status as the leading proponent of Vote Yes on Amendment #2.

In addition, this is a Motion for the Court to require Jonathan O. Steen, as President of the Tennessee Bar Association (TBA), who intentionally authorized Chief Justice Lee to unlawfully solicit the members of the TBA which action violates Supreme Court Rule 8.4, because Mr. Steen has **“knowingly assisted a Judge or judicial officer in conduct that is in violation of the applicable rules of judicial conduct or other law.”** Consequently, this is a motion for the Court to Order that **Mr. Steen send a copy of this motion to any and all persons to which he sent an email containing Chief Justice Lee’s letter.** That letter began Fellow Tennessee Lawyers so as to advise said lawyers of the fact that it is a violation of Supreme Court Rule 8.4 for any lawyers to seek votes in support of Amendment 2, based upon Chief Justice Lee’s letter which violated the Code of Judicial Conduct and the Official Misconduct Statute.

Finally, this is a Motion for Chief Justice Lee, Justices Clark and Wade to **“resign”** their offices on the basis that said Judges intentionally, after having been warned as consequence of the case of Hooker, Brumit, Gottlieb and Spann vs. Lt. Governor Ramsey *et al* that any recommendation by the Judicial Performance Evaluation Commission would be **“void”** as a consequence of the fact the Commission was mal-apportioned with 7 men and 2 women and no black man in violation of TCA 17-4-201 (a);(b)(6). Said Judges under their of office well knew that they had no right to file a **“declaration of candidacy”** under TCA 17-4-115 (A)(2) based upon an unlawful recommendation by the JPEC under Supreme Court Rule 27, 2.01; 2.02; 2.03. Accordingly, the petitioners herein request an oral argument if the members of the Court do not **“recuse”** themselves under Article VI §11. Importantly, it should be noted that the Governor of Tennessee, under his Oath as Governor is likewise obligated **“not to consent”** to Your Honors’ presiding on these Motions.

In the alternative this a Motion for all the members of the Supreme Court to **“resign”** if they, in any way, participated with the Chief Justice in violating the aforesaid laws as such conduct is an **IMPEACHABLE** offense and or an offense under Article VI Section 6 where said Judges may be removed by the Legislature as a consequence of the Chief Justice’s October 22, 2014 letter.

ARGUMENT

Chief Justice Lee in an effort to use her influence with the lawyers, as Chief Justice, in “reckless disregard” of judicial ethics and her Oath of Office, communicated with TBA lawyers, including this lawyer, through Jonathan O. Steen, President of the Tennessee Bar Association, for the purpose of using the Tennessee Bar’s method of communication with its members, as a vehicle to communicate with Tennessee lawyers to “**unethically and unlawfully**” solicit votes in favor of Amendment 2, in violation of his Oath of Office as well as hers, as Chief Justice in a letter which provides:

from: Jonathan Steen <jonathansteen@tnbar.org>
to: John Jay Hooker <johnjayhooker@gmail.com>
date: Wed, Oct 22, 2014 at 2:33 PM
subject: Chief Justice Sharon Lee : An Open Letter

Chief Justice Sharon Lee : An Open Letter

Jonathan Steen <jonathansteen@tnbar.org>

Oct 22, 2014

Your bar association supports the adoption of the Judicial Selection Amendment to the Tennessee Constitution, known as Amendment 2. On rare occasions (we believe perhaps 10 times in 15 years), we have used the email address you have provided to deliver an important message directly to the inbox of all members. We have determined the following letter from Chief Justice Sharon Lee is just such an important message. Jonathan O. Steen, President. Letter from Chief Justice Lee to Tennessee Lawyers re: Amendment 2

October 22, 2014

Dear Fellow Tennessee Lawyers:

When early voting began, I received an unexpected phone call from my high school math teacher. He was seeking my opinion and advice regarding Amendment 2, and I told him that I am voting yes on 2. Many others have contacted me with questions about Amendment 2 during the past few weeks, once again illustrating that voters do listen to lawyers and judges for guidance on issues relating to the law and our court system. During the 26 years I practiced law in Monroe County before becoming a judge, I experienced over and over again the trust that people place in their local lawyers. With two weeks remaining in this election, it is important to remember that your opinion matters to your friends, neighbors, clients and colleagues who will be going to the polls.

Community leaders and organizations from all across the state have come together to build an unprecedented, bipartisan show of support for Amendment 2. Groups supporting Amendment 2 include the Tennessee Bar Association, Tennessee Farm Bureau Federation, Tennessee Chamber of Commerce & Industry, Tennessee Sheriffs' Association, NAACP of Tennessee, League of Women Voters of Tennessee, Tennessee Lawyers' Association for Women, Tennessee District Attorneys General, Tennessee District Public Defenders, Tennessee Voices for Victims and many others.

Amendment 2 strikes the right balance between preserving an independent, diverse, and qualified judiciary, while ensuring it is accountable to the people it serves. Although no method for selecting a judge is perfect, I believe passing Amendment 2 is the right choice for Tennessee and will protect the long-term integrity of Tennessee's justice system.

At every election, I'm reminded of the lesson I learned from my father who served his country in WWII. His sacrifice and the sacrifices of so many others to defend our right to vote and to choose the way in which we are governed taught me to never take this right for granted. Our judiciary is a vital part of our government that protects the liberties we enjoy and upholds the rule of law fairly and equally for all Tennesseans. I hope that during this election you will take the time to consider the importance of Amendment 2, encourage those around you to vote and remember that your opinion matters. [Emphasis added because this statement is false and misleading in that Amendment #2 limits the members' rights to vote, in violation of Supreme Court Rule 10 Canon 4.1 (11)]

Sincerely,

Chief Justice Sharon Lee

For more information, go to the [TBA Amendment 2 Resource Page](#)

This letter by Chief Justice Sharon Lee is a “smoking gun” written for her self serving purposes as a Retention-Elected Judge and sent in “**reckless disregard**” of the “Rule of Law” is “**false and misleading,**” in violation of Supreme Court Rule 10 Rule 4.01(11) and accordingly this circumstance must be addressed if the Chief Justice is to have any credibility. Chief Justice Lee’s letter speaks for itself and as a consequence, this matter should be investigated by the Tennessee Board of Judicial Conduct as it relates to the Judges and by the Tennessee Board of Professional Responsibility as it relates to Mr. Jonathan Steen participation in the matter. These charges are made in accordance this lawyer’s responsibility under Supreme Court Rule 8.3 as Mr. Steen, by sending out the email containing Chief Justice Lee’s letter violated the “**misconduct**” provisions of Supreme Court Rule 8.4 on a matter involving the highest public interest.

Consequently, a copy of this motion has been sent to the Board, requesting that the Board take the appropriate action, because Chief Justice Lee's conduct in this matter, **"detrimentally affected the integrity of the judiciary."** The Board exercised its powers to discipline on such grounds on October 23, 2014 in a complaint involving Davidson County Judge Casey Moreland finding that Judge Moreland did not "comply with the law" and did not "promote confidence in the Judiciary and abused the prestige of his office," and as a result under that precedent must discipline the Chief Justice.

In the words of Senator Brian Kelsey, Chairman of the Senate Judiciary Committee, published in The Tennessean newspaper and repeated at a debate with this lawyer at the University of Tennessee Law School, there is a *"constitutional crisis"* in Tennessee that results from proceeding to elect judges under the unconstitutional Retention-Elect statute TCA §17-4-101, for all these years since 1974, under which the aforesaid judges were retention-elected on August 7th 2014.

This lawyer claims that we not only have a *"constitutional crisis,"* which will exist whether or not the Amendment 2 is adopted, as all the appellate Judges in Tennessee were unlawfully retention elected on August 7th 2014, and Amendment 2 can have no *ex-post facto* effect on the unconstitutional August 7th 2014 retention election. Consequently, this lawyer and the other Petitioners, Brumit, Gottlieb and Spann declare that we have a *"moral crisis"* which has *"destroyed the integrity"* of the Judicial system as well as the *"integrity of the Executive and Legislative branch of State government."* This circumstance, we claim, has created in Tennessee a *"Judgegate"* with all the intrigue of *"Watergate"* which occasioned President Nixon's resignation, and caused a dark cloud to hover over the entire government of our nation that lingers yet.

As aforesaid, Chief Justice Lee, by writing her letter for her own **"economic benefit,"** has violated the law and has **"misled"** and will **"mislead"** many lawyers of Tennessee, in the days ahead, into believing that they are licensed to unlawfully solicit votes in accordance with Chief Justice Lee's letter. The fact is, that by aiding Chief Justice Lee in her unlawful conduct, unsuspecting lawyers will then be guilty of misconduct under Supreme Court Rule 8.4.

This conduct makes Chief Justice Lee subject to indictment or presentment by a Grand Jury in this county or any county for “**official misconduct**” which circumstance can be avoided, it would appear, if Chief Justice Lee *resigns* as a consequence of her own misdeeds, as President Nixon did to avoid impeachment and or criminal charges in the Watergate disaster.

Chief Justice Lee’s arrogant letter, as aforesaid, is a “**smoking gun**” and is an embarrassing assault on the “**Rule of Law**” and proves that Retention-Elections, notwithstanding the fanciful claims of its proponents do not limit Judicial “**corruption.**” In fact, for decades notwithstanding efforts of this lawyer Retention Elections have “**corrupted**” the entire State government.

Unhappily, I must declare, notwithstanding the good ole days where Judges were constitutionally elected during the time when my father was President of the Tennessee Bar Association, lawyers thereafter, leading the TBA, sponsored this corrupt system that we now have that has caused “Judegate.”

RESPECTFULLY SUBMITTED,

JOHN JAY HOOKER BPR #005118
Nashville, Tennessee 37205
Phone (615) 269-6558
Cell (615) 479-6531
Fax (615) 383-6036
johnjayhooker@hpeprint.com

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent via First Class mail, postage prepaid, email and or fax, to:

Attorney Herbert Slatery
Attorney General for the State of Tennessee
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202

Joanthan O. Steen
Tennessee Bar Association
221 4th Avenue N.
Suite 400
Nashville, TN 37219

On this the 27th Day of October, 2014

John Jay Hooker

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TENNESSEE CONSTITUTION

ARTICLE I Section 1, Section 23

ARTICLE I. Declaration of Rights.

Section 1. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.

Section 2. That government being instituted for the common benefit, the doctrine of nonresistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

Section 23. That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address of remonstrance.

ARTICLE III Section 10

ARTICLE III Executive Department

Section 10. He shall take care that the laws be faithfully executed.

ARTICLE VI Section 6, Section 11

ARTICLE VI. Judicial Department.

Section 6. Judges and attorneys for the state may be removed from office by a concurrent vote of both Houses of the General Assembly, each House voting separately; but two-thirds of the members to which each House may be entitled must concur in such vote. The vote shall be determined by ayes and noes, and the names of the members voting for or against the judge or attorney for the state together with the cause or causes of removal, shall be entered on the journals of each House respectively. The judge or attorney for the state, against whom the Legislature may be about to proceed, shall receive notice thereof accompanied with a copy of the causes alleged for his removal, at least ten days before the day on which either House of the General Assembly shall act thereupon.

Section 11. No judge of the Supreme or Inferior Courts shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity of consanguinity, within such degrees as may be prescribed by law, or in which he may have been of counsel, or in which he may have presided in any Inferior Court, except by consent of all the parties. In case all or any of the judges of the Supreme Court shall thus be disqualified from presiding on the trial of any cause or causes, the court or the judges thereof, shall certify the same to the governor of the state, and he shall forthwith specially commission the requisite number of men, of law knowledge, for the trial and determination thereof. The Legislature may by general laws make provision that special

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judges may be appointed, to hold any courts the judge of which shall be unable or fail to attend or sit; or to hear any cause in which the judge may be incompetent.

ARTICLE XI Section 16

ARTICLE XI Section 16 Miscellaneous Provisions.

Section 16. The declaration of rights hereto prefixed is declared to be a part of the Constitution of the state, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the general powers of the government, and shall forever remain inviolate.

TENNESSEE CODE ANNOTATED

TCA §17-4-115 (a) (2)

17-4-115. Declaration of candidacy for reelection for full term -- Time of filing -- Exception -- Form of ballot -- Rejection of candidate -- Appointment.

(a) (2) An incumbent appellate judge who seeks election for a full eight-year term but who was appointed to the office after the first Thursday in February before the next regular August election occurring more than thirty (30) days after occurrence of the vacancy that was filled by the incumbent appellate judge must qualify by filing with the state election commission a **written declaration of candidacy**. (Emphasis added) The declaration must be filed not later than the first Thursday occurring at least one (1) full week after the appointment. After timely filing the declaration, any request by the candidate to withdraw must be filed with the state election commission not later than twelve o'clock (12:00) noon prevailing time on the seventh day after the deadline for filing the declaration of candidacy.

TCA 17-4-201 (a);(b)(6)

Section 17-4-201 Judicial performance evaluation program

(a) **(1)** By rule, the supreme court shall establish a judicial performance evaluation program for appellate court judges. The purpose of the program shall be to assist the public in evaluating the performance of incumbent appellate court judges. The judicial performance evaluation commission, established pursuant to subsection (b), shall perform the required evaluations. The commission shall make a recommendation either "for retention" or "for replacement" of each appellate court judge; provided, that the commission shall not evaluate or make any retention recommendation with regard to any appellate judge whose term of office is abbreviated

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because of death, resignation or removal. Furthermore, the commission shall not include within the final report, publicly disclosed pursuant to subsection (c), an evaluation or retention recommendation for any appellate judge whose term of office is abbreviated because of death, resignation or removal or who fails to timely file a declaration of candidacy as required by § 17-4-114(a) or § 17-4-115(a), unless the judge is a candidate for another office subject to evaluation under this section.

(b) (1) The judicial performance evaluation commission shall be composed of nine (9) members.

(6) The appointing authorities for the judicial performance evaluation commission shall make appointments that approximate the population of the state with respect to race and gender. In appointing attorneys to the commission, the speakers shall receive, but shall not be bound by, recommendations from any interested person or organization.

TCA 39-16-402 Official Misconduct Statute

Section 39-16-402 Official misconduct

(a) A public servant commits an offense who, with intent to obtain a benefit or to harm another, intentionally or knowingly:

(1) Commits an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power;

(2) Commits an act under color of office or employment that exceeds the servant's official power;

(3) Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the public servant's office or employment;

(4) Violates a law relating to the public servant's office or employment; or

(5) Receives any benefit not otherwise authorized by law.

...

(e) (1) An offense under subsection (a) in which the conduct described in subsection (c) is not the basis of the violation is a Class E felony.

...

(3) If the defendant's conduct violates this section and other criminal statutes, nothing in this subsection (e) shall be construed as prohibiting prosecution and conviction for theft or any other such applicable offense in addition to or in lieu of prosecution and conviction for a violation of this section.

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(f) Charges for official misconduct may be brought only by indictment, presentment or criminal information; provided, that nothing in this section shall deny a person from pursuing other criminal charges by affidavit of complaint.

Supreme Court Rules 8, 10, 11, 27

Supreme Court Rule 8.4

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
 - (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
 - (d) engage in conduct that is prejudicial to the administration of justice;
 - (e) state or imply an ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;
 - (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
 - (g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.
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Supreme Court Rule 10 including all the provisions of Rule 1.01, 1.2, 1.3 and Rule 4.1(11)

CANON 1 — A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

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RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

A judge shall comply with the law, including the Code of Judicial Conduct.

Supreme Court Rule 10 Rule 4.01(11).

CANON 4 — A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

RULE 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law, or by RJC's 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

(12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

Supreme Court Rule 10B

Section 3. Motion Seeking Disqualification or Recusal of Appellate Judge or Justice.

3.01. Any party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge or justice of an appellate court shall do so by a timely filed written motion. The motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials; the motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge or justice and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A party who is represented by counsel is not permitted to file a pro se motion under this Rule.

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3.03. If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of a Supreme Court justice, the justice in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the justice shall state in writing the grounds upon which he or she denies the motion. If the justice denies the motion, the movant, within fifteen days of entry of the order, may file a motion for court review, which shall be determined promptly by the remaining justices upon a de novo standard of review.

Supreme Court Rule 11

Supreme Court Rule 11 Supervision of the Judicial System

I. General.

This Rule is promulgated pursuant to the inherent power of this Court and particularly the following subsections of T.C.A. § 16-3-502, providing that the Supreme Court shall have the power:

(1) To designate and assign temporarily any judge or chancellor to hold, or sit as a member of any court, of comparable dignity or equal or higher level, for any good and sufficient reason.

* * *

(4) To take affirmative and appropriate action to correct or alleviate any imbalance in case loads among the various judicial circuits and chancery divisions of the state.

(5) To take affirmative and appropriate action to correct or alleviate any condition or situation adversely affecting the administration of justice within the state.

(6) To take all such other, further and additional action as may be necessary to the orderly administration of justice within the state, whether or not herein or elsewhere enumerated.

Supreme Court Rule 27, 2.01; 2.02; 2.03

2.01. In accordance with this Court's inherent supervisory authority over the court system and the judges, and pursuant to Tenn. S. Ct. R. 1 1, Tenn. Code Ann. § 16-3-501 and Tenn. Code Ann. § 17-4-201(a)(1), there is hereby established a Judicial Performance Evaluation Program as part of the judicial branch of state government.

2.02. The Judicial Performance Evaluation Program shall be administered by the Judicial Performance Evaluation Commission established by Tenn. Code Ann. § 17-4-201(b).

2.03. The Judicial Performance Evaluation Commission shall have the responsibility for the design, the implementation, and the day-to-day operation of the Judicial Performance Evaluation Program. The Commission's decisions shall be consistent with this rule, and the Commission has no power to waive or to modify any provision of this rule.