

Koch's appointment fills last vacancy on Supreme Court

"We are now complete." These were the words of Chief Justice William M. Barker following Gov. Phil Bredesen's appointment of Court of Appeals Judge William C. Koch Jr. to the state's highest court. The court has been operating with four justices for over nine months.

Background. In January 2006, Justices Riley Anderson and Adolpho A. Birch Jr., the only African-American on the court, announced their retirements effective Aug. 31 of last year. Bredesen filled one of the vacancies with the appointment of then Court of Criminal Appeals Judge Gary Wade of Sevierville.

On July 18, 2006, the Commission certified to the governor three nominees for the second vacancy — Nashville Chancellor Richard Dinkins, Covington attorney J. Houston Gordon, and Memphis Attorney George T. (Buck) Lewis. On July 24, Dinkins, the only African-American on the panel, requested that his name be withdrawn from consideration. Bredesen wrote a letter to the Commission chair requesting a new panel of nominees "that includes qualified minority candidates."

On Sept. 7, the Commission certified to the governor the names of Memphis Circuit Judge D'Army Bailey, J. Houston Gordon, and Koch of Nashville as the second panel of nominees. Bailey was the only African-American on the panel. On Sept. 18, Bredesen filed a suit seeking a ruling as to the validity of the second panel.

The Tennessee Supreme Court ruled that once the Commission certified the names of three nominees to the governor, its role in the selection and appointment process was complete, unless and until the governor exercised his statutory right to reject the first list of nominees. The court ruled that a person listed on a first panel rejected by the governor could not be renominated on the second panel. The court ordered the Commission to select and certify to the governor a second panel of three nominees, which could not include Gordon or Lewis, to fill the judicial vacancy on the court.

On April 13, the Commission sent to the governor the names of Bailey, Koch, and Savannah Circuit Judge C. Creed McGinley. Shortly after the legislative session ended, Bredesen appointed Koch.

Koch. Koch was appointed to the Court of Appeals in 1984. He has served as presiding judge of the Middle Section since 2003. Before his appointment, he served as Commissioner of Personnel and was Legal Counsel to Gov. Lamar Alexander from 1981 to 1984. He began his legal career on the staff of the state attorney general in 1972, rising to the position of deputy attorney general in 1977.

Koch has publicly suggested that he is not necessarily a Republican, even though he served under a Republican governor. Regardless, his service on the appellate court has not involved political partisanship, and appointment of an appellate court judge from the opposing party is not without precedent. Justice Frank Drowota, a Democrat, was appointed to the Court of Appeals in 1974 by Gov. Winfield Dunn, a Republican. We estimate that while on the Court of Appeals, Koch authored 1,035 opinions (294 of which have been published to date), 79 opinions in which he dissented in whole or in part, and 113 opinions in which he concurred with the court's decision.

Koch was named the Appellate Judge of the Year in 2002 by the American Board of Trial Advocates and was the only Tennessee state judge named to The Lawdragon 500 Leading Judges in America in 2006. He has served as president of the Harry Phillips American Inn of Court in Nashville since 1990 and, since 2004, has served as secretary of the national American Inns of Court Foundation, an organization that works to promote professionalism, excellence, and civility in the practice of law. He is an instructor in Constitutional Law at the Nashville School of Law, where he has been recognized as teacher of the year on three occasions. Koch earned his legal degree from Vanderbilt University Law School and earned his Masters of Law in Judicial Process from the University of Virginia.

Bredesen characterized Koch as “a highly qualified judge who has proven himself in the practice of law and on his service on the Court of Appeals.” Bredesen added, “While I have expressed concerns about the judicial selection process in our state, there is no question that Bill Koch will be an excellent Justice on our Supreme Court. His reputation for fairness and consistency, his strong commitment to the law and his dedication to the faithful dispensation of justice will serve the Tennessee Supreme Court and the citizens of our state well.” Koch was sworn in June 22.

Composition of the appellate courts. Within a short time, Bredesen has appointed a majority of the justices on the Supreme Court. When Drowota retired in 2005, Bredesen appointed Justice Cornelia A. (Connie) Clark, 56. Justice Janice Holder, 57, who was appointed by Gov. Don Sundquist in 1996, has been on the court longer than any other justice. Barker, 65, was appointed by Sundquist in 1998. He was elected chief justice in October 2005. Wade and Koch, both 59, the newest justices, have the most appellate court experience, having served 19 and 23 years, respectively, on the intermediate appellate courts before their ascension to the state’s highest court.

On the Western Section of the Court of Appeals, Judge Frank Crawford, 80, and Judge Alan Highers, 69, were appointed in 1982 by Alexander. Judge David Farmer, 66, was appointed in 1986 by Alexander. Judge Holly Kirby, 49, was appointed by Sundquist in 1995. She was the first woman to serve on the Court of Appeals and is the youngest judge on the appellate courts.

The senior member of the Middle Section of the Court of Appeals is now Judge William Cain, 75, who was appointed in April 1998 by Sundquist. Judge Patricia Cottrell, 60, was appointed in November 1998 by Sundquist. Judge Frank G. Clement Jr. was appointed by Bredesen in September 2003. (Clement’s date of birth is not given in his official biography, but he was born in 1949). With Koch’s appointment to the Supreme Court, there is now a vacancy. Cain’s health has been deteriorating. At a recent ceremony in his honor, he said he would stay on the court as long as possible.

The senior member of the Eastern Section of the Court of Appeals is Judge Herschel Franks, 77, who was appointed to the court in 1978 by Gov. Ray Blanton. Franks has the longest tenure on the intermediate appellate courts. Judge Charles Susano, 71, was appointed in 1994 by Gov. Ned McWherter. Judge Michael Swiney, 58, was appointed in 1999 by Sundquist. Judge Sharon Lee, 53, was appointed by Sundquist in 2004.

On the Court of Criminal Appeals, the senior member in the West is Judge David Hayes, 63, who was appointed to the court in 1994 by McWherter. Judge John Everett Williams, 53, was appointed in 1998 by Sundquist. Judge Alan Glenn, 64, was appointed

in 1999 by Sundquist. Judge J.C. McLin, 59, the only African-American on the appellate courts, was appointed in September 2004 by Bredesen.

Judge David A. Welles, 58, is the senior member in the Middle. He was appointed to the court in 1994 by McWherter. Judge Jerry Smith, 53, was appointed in 1995 by Sundquist. Judge Thomas Woodall was appointed in 1996 by Sundquist (Woodall's date of birth is not given in his official biography, but he was born in 1955). Judge Robert Wedemeyer, 56, was appointed in 2000 by Sundquist.

Judge Joseph Tipton, 60, is the senior member in the East. He was appointed in 1990 by McWherter. Judge Curwood Witt, 58, was appointed in 1997 by Sundquist. Judge Norma Ogle, 54, was appointed in 1998 by Sundquist. Ogle is the only woman on the Court of Criminal Appeals. Judge D. Kelly Thomas Jr., 55, the newest member on the intermediate appellate courts, was appointed by Bredesen in 2006. He was just elected president of the 178-member Tennessee Judicial Conference.