

**Tennessee Trial Court Vacancy Commission**

***Application for Nomination to Judicial Office***

04/15/16

Name: David M. Rudolph

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**INTRODUCTION**

Tennessee Code Annotated section 17-4-301 et seq. charges the Trial Court Vacancy Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website [www.tncourts.gov](http://www.tncourts.gov)). The Commission requests that applicants obtain the word processing form and respond directly on the form. Respond in the box provided below each question. (The box will expand as you type in the document.) Review the separate instruction sheet prior to completing this document. Submit original (unbound) completed application (with ink signature) to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to [debra.hayes@tncourts.gov](mailto:debra.hayes@tncourts.gov), or via another digital storage device such as flash drive or CD.

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

Partner/Attorney, Bourland, Heflin, Alvarez, Minor & Matthews, PLC

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

1988 Tenn BPR No. 13402

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee, Tenn. BPR No. 13402; license active

Arkansas, Ark. BPR No. 2007100; license active

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any State? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

Bourland, Heflin, Alvarez, Minor & Matthews, PLC, Memphis, Tennessee,  
Member, 2008 to present

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Memphis, Tennessee,  
Shareholder, 2007 to 2008

Martin, Tate, Morrow & Marston, P.C., Memphis, Tennessee, 1991-2007,  
Shareholder, 1995-2007

Burch, Porter & Johnson, Memphis, Tennessee, 1989-1991  
Associate Attorney

Hon. Bailey Brown, United States Court of Appeals, Sixth Circuit, 1988-1989 Judicial Clerk

6. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

I have nearly twenty-eight years of experience representing clients in civil litigation matters. I am an experienced trial lawyer in state and federal courts in Shelby County and have concentrated my practice in the areas of complex commercial litigation and employment law. The major areas of law in which I practice and percentages are as follows:

Commercial Litigation (35%)  
Employment Law (35%)  
Business Torts (15%)  
Personal Injury (5%)  
Workers' Compensation (5%)  
Other (Domestic, Estate Planning, Bankruptcy) (5%)

7. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters.

Through the years, I have tried a number of civil litigation cases in Shelby County. The following is a list of representative cases and trials:

*Bryant v. City of Memphis*, 2016 U.S. App. LEXIS 2960 (6th Cir. 2016)(defended fire supervisor in assault/race discrimination claim brought by firefighter and tried before a jury; defense jury verdict for fire supervisor; affirmed on appeal)

*Hale v. Providential Fabricators, Inc.*, No. CT-005811-10 Div. II (Circ. Ct. Tenn. 2012)(represented employee in disability discrimination case; judgment for employee)

*Arvest Bank v. Sykes*, 2:10-cv-02007 (W.D. Tenn. 2011)(commercial litigation; represented financial institution against developer/guarantor; obtained summary judgment in favor of financial institution)

*Midgett v. Aetna Life Ins. Co.*, 2008 WL 2669264 (E.D. Ark. 2008)(represented employer in ERISA case; summary judgment in favor of employer)

*Vaughan v. Memphis Health Center, Inc.*, 2006 WL 2038577 (W.D. Tenn. 2006)(represented employee in age discrimination case tried before jury; judgment for employee)

*Hudson v. M.S. Carriers, Inc.*, 335 F. Supp. 2d 853 (W.D. Tenn. 2003)(represented employer in sexual harassment case; summary judgment in favor of employer)

*Little v. Independent Bank*, No. 02-2720 Ma A (W.D. Tenn. 2003)(represented employer in age discrimination case; summary judgment in favor of employer)

*Harris v. Wal-Stores, Inc.*, No. 1:00-cv-01251-JDT (W.D. Tenn. 2001)(represented employee in gender discrimination case tried before jury; judgment for employee)

*Schnider v. Carlisle Corp.*, 65 S.W.2d 619 (Tenn. Ct. App. 2001)(represented employee in breach of oral employment contract case; reversed trial court on appeal; judgment in favor of employee)

*Disney v. Sheraton Tunica Corp.*, 2000 U.S. Dist. LEXIS 10808 (N.D. Miss. 2000)(represented employer in sexual harassment case; summary judgment in favor of employer)

*Land v. Sheraton Tunica Corp.*, No. 2:96CV109-B (N.D. Miss. 1997)(represented employer in Title VII retaliation case; judgment as a matter of law in favor of employer at close of plaintiff's proof)

*Bay Area Factors v. Calvert*, 105 F.3d 315 (6th Cir. 1997)(represented creditor in bankruptcy case; obtained reversal of bankruptcy court and district court on appeal)

I have regularly appeared in administrative proceedings before various federal and state agencies, including but not limited to the United States Equal Employment Opportunity Commission, Tennessee Department of Labor and Workforce Development and Tennessee Claims Commission. I have also been trained and certified as a Rule 31 mediator and participated in numerous mediations and arbitrations.

8. Describe any matters of special note involving your practice in trial courts, appellate courts, and administrative bodies.

In my legal practice, I have represented individuals and companies in legal matters and have gained the respect of both sides in employment and commercial disputes. I believe that the parties to litigation would perceive me as knowledgeable, fair and impartial. I also believe in the importance of technology in the courtroom and use it regularly for trials in my cases.

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

After graduating law school, I had the privilege to serve as a judicial law clerk to the Honorable Bailey Brown for the United States Court of Appeals for the Sixth Circuit. Judge Brown was an exceptional trial and appellate judge and a mentor for me. I gained not only legal experience but practical experience on the proper role of judges in the administration of justice.

In my legal career, I have given numerous CLE seminars and presentations (representative sampling below):

“Annual Review of Western District of Tennessee Labor & Employment Law Decisions,” Memphis Bar Association Labor & Employment Law Section, 1998-1999; 2010-2016

“Employment Law in the Technology Age: E-Discovery and Pre-Trial Issues and Discussion of Proposed Rule Changes,” Memphis Bar Association Labor & Employment Law Section, 2006

“The Electronic Courtroom: A Demonstration of Age Discrimination Jury Trial Techniques,” Federal Bar Association, 2005

“Emerging Trends and New Developments in State and Federal Employment Law,” Council on Education in Management, 2003

“Basic Equal Employment Opportunity Law and Procedures: Ethical Issues in Employment Cases,” American Bar Association, 2001

“Avoiding the Emergence of Common Exempt/Non-Exempt Classification Mistakes under the Fair Labor Standards Act,” Tennessee Personnel Law Update Conference, Council on Education in Management, 1999

“Return-to-Work-- Clearing the Liability and Productivity Hurdles that Trip Up Even the Most Savvy Employers,” Tennessee Workers' Compensation Update, Council on Education in Management, 1998

“Implementing Pre and Post-Hire Employment Testing Practices that Get the Right Personnel in the Right Positions—Legally,” Tennessee Personnel Law Update, Council on Education in Management, 1998

10. List and describe all prior occasions on which you have submitted an application for any state or federal judicial position.

No prior applications for state or federal judicial position

### EDUCATION

11. List each college, law school, and other graduate school which you have attended, including dates of attendance, degree awarded, major, any form of recognition or

other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

Vanderbilt University School of Law, Nashville, Tennessee, Doctor of Jurisprudence (J.D.), 1985-1988 Honors: Moot Court Board Editor-in-Chief, *Vanderbilt Journal of Transnational Law*, 1987-1988

Vanderbilt University, Nashville, Tennessee; Bachelor of Arts (B.A.), 1981-1985 Major: Classics Honors: *Summa Cum Laude*; Phi Beta Kappa; Harold Stirling Vanderbilt Scholar (highest four year scholarship awarded)

**PERSONAL INFORMATION**

12. State your date of birth.

September 29, 1962

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

53 years

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

53 years

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

Shelby County

16. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not applicable

17. Have you ever pled guilty or been convicted or are now on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the

approximate date, charge and disposition of the case.

No

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

No

19. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

Over fifteen years ago, I had a complaint that was filed by a former pro bono client with the Tennessee Board of Professional Responsibility. The complaint was without merit and was summarily dismissed by the Board.

20. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No

21. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No

22. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

No

23. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices which you have held in such organizations.

Leadership Memphis, Member, Class of 1997

Memphis Downtown Rotary Club, Member, Board of Directors 2009

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

No

### ACHIEVEMENTS

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

Memphis Bar Association, Member, 1988-present; Chair, Labor and Employment Law Section 1997-1999; Member, Board of Directors, 1997-1999; President, Young Lawyers Division,



1994-1995

Tennessee Bar Association, Member, 1988-present; Treasurer, Young Lawyers Division, 1995-96

American Bar Association, Member, 1988-2015

American Inns of Court, Barrister, Leo Bearman, Sr. Chapter 1995-1997

1. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school which are directly related to professional accomplishments.

I have an "AV" Martindale-Hubbell rating, which is the highest rating by that publication and is based on peer reviews. After graduating from law school, I was selected and served as a judicial clerk for the Honorable Bailey Brown for the United States Court of Appeals for the Sixth Circuit. In 1994, I was elected President of the Memphis Bar Association Young Lawyers Divisions and subsequently was elected and served two terms as a member of the Board of Directors of the Memphis Bar Association. In 1997, I was the founding chair of the Memphis Bar Association Labor and Employment Law Section.

2. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

Not applicable

### ESSAYS/PERSONAL STATEMENTS

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

My grandfather was a well-respected circuit court judge for over 45 years in Christian County, Kentucky. I have always wanted to follow in his footsteps as an attorney and trial judge. I have significant years of legal experience as a trial lawyer and litigator in large and small law firms in Shelby County handling all types of litigation matters including commercial, employment, domestic, personal injury and other litigation and know that I could be an effective trial judge. I have been active in the bar through the years and have advised and represented multiple pro bono clients. I believe that I am known and respected by my peers. I would be committed as a trial judge to the fair and impartial administration of justice. I would also be open to new courtroom technology and other efficiencies to enhance the courtroom experience.

4. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*)

I am applying for the Circuit Court, Division VII position, which is one of nine Circuit Court positions in Shelby County. I have practiced before and already know many of the judges and other practitioners in Circuit Court. With my legal experience, I believe that I can be an effective and innovative member of Circuit Court in Shelby County as the judge in Division VII.

5. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

Yes, I will uphold the law even if I disagree with the substance of the law. Judges have to apply the law and not legislate it. Judges are also bound by principles of stare decisis. I consider myself to be a student of the law and believe that diligent legal research of applicable law is critical to being a good lawyer and good judge. As a judicial clerk, I can recall one difficult criminal case where I believed that the statutory punishment was disproportionate and left no discretion for the trial judge. After researching the issue, however, I could not recommend that the punishment be overturned because the binding case law and statute did not support such a decision. The issue of mandatory punishment for certain crimes was a matter of public policy for the state legislature, and in that instance was not for the court to legislate.

#### REFERENCES

6. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

A. John J. Heflin, III, Esq., Attorney, Bourland, Heflin, Alvarez, Minor & Matthews, PLC,

B. Richard M. Carter, Esq., Attorney, Martin, Tate, Morrow & Marston, P.C.,

C. John R. McCarroll, Jr., Esq., Retired Circuit Court Judge, Division I,

D. Ellis Haguewood, Headmaster, Memphis University School,

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E. Micah D. Greenstein, Senior Rabbi, Temple Israel, 1376 East Massey Road, Memphis, TN 38120; (901) 761-3130

**AFFIRMATION CONCERNING APPLICATION**

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Circuit Court of Shelby County for the 30<sup>th</sup> Judicial District of Tennessee, Division VII, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: July 6, 2016.

  
Signature

When completed, return this questionnaire to  Shelby Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.

**TENNESSEE TRIAL COURT VACANCY COMMISSION**

**ADMINISTRATIVE OFFICE OF THE COURTS**

511 UNION STREET, SUITE 600

NASHVILLE CITY CENTER

NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY**

**TENNESSEE BOARD OF JUDICIAL CONDUCT**

**AND OTHER LICENSING BOARDS**

**WAIVER OF CONFIDENTIALITY**

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to,

recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Trial Court Vacancy Commission to request and receive any such information and distribute it to the membership of the Commission and to the Office of the Governor.

David M. Rudolph

\_\_\_\_\_  
Type or Print Name

  
Signature

July 6, 2016 \_\_\_\_\_  
Date

#13402 \_\_\_\_\_  
BPR #

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

Arkansas BPR No. 2007100

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