

Tennessee Trial Court Vacancy Commission
Application for Nomination to Judicial Office

04/15/16

Name: Tabitha Francisco McNabb

Office Address: 2439 Regents Walk
(including county)

Germantown, Shelby County, TN 38138

Office Phone: (901)753-3763 _____ Facsimile: (901)526-4084 _____

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). 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, 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.

I took "of counsel" status with Harris Shelton Hanover Walsh in 2016 after 20 years with the firm. I spent 6 years with Armstrong Allen and 5 years with Shuttleworth Smith before joining Harris Shelton.

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

I was licensed in 1985, and my BPR number is 011489.

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.

I was first licensed in Tennessee in 1985. My BPR number is 011489 and is active. I am not licensed in other states.

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).

I started my legal career at Armstrong Allen where I was an associate attorney from 1985 to 1991. I joined Shuttleworth Smith in 1991 and was an associate attorney until 1996. In 1996, I

joined Harris Shelton as an associate attorney. I became a member in 2000 and remained a member until 2016 when I took 'of counsel' status.

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 always been a litigator. The subject matter of my cases was broader in my earlier practice when I handled cases involving divorces, contracts, personal injury, products liability and medical malpractice. Over time, my practice focused on medical malpractice defense for physicians and health care facilities. Since 1996, medical malpractice has been about 90% of my practice.

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.

The majority of my trial practice has been in the 30th Judicial District, with some in the 25th Judicial District. I have handled motions and hearings in other west Tennessee counties and I have been involved in cases in Federal Courts. I have participated in approximately 30 jury trials, many of which lasted 2 weeks. I have experience and knowledge of the Rules of Evidence and the Rules of Civil Procedure and their application both from trial preparation and trials. I have prepared and defended privilege logs; I have defended and pursued claims of spoliation. I have prepared and argued summary judgment motions. I have represented clients in appellate courts.

Because of the complexity and expected length of medical malpractice trials, almost all cases involved a team approach at trial. When one of my cases went to trial, I prepared trial notebooks, witness lists (including experts), scheduled prep and trial appearance for witnesses. I selected expert witnesses and prepared them for deposition and trial testimony. I outlined witness examinations, determined exhibits to be introduced at trial, determined and prepared demonstrative exhibits. I prepared witnesses for trial appearance. I evaluated voir dire points, motions in limine, and anticipatable evidentiary issues. I prepared, responded to and argued motions in limine. I prepared opening statements, points for directed verdict motions and proposed jury instructions (pattern and special). During trial, I assessed whether plaintiff had met his/her evidentiary burdens, examined and cross-examined witnesses, managed exhibits, witness appearances, and handled clients and reports to distant clients as trial proceeded.

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

courts, and administrative bodies.

In addition to my trials, I have worked on even more cases which were on track for trial but were settled, dismissed or nonsuited near or at the beginning of trial; some even after trial started. Many cases settled through mediation. I have been involved in minors' settlements and structured settlements.

Since the ruling in McIntyre, most of my cases have involved multiple defendants and included complex causation issues. I have been involved in cases that involved multiple plaintiffs. I have experienced enough unexpected events during jury trial to understand that the unexpected is a given. I have seen jurors who refused or failed to timely attend trial; jurors who tainted the jury; potential jurors whose answers in voir dire tainted the entire panel. I have handled Batson objections and am aware of how and why to challenge and how to defend. I have been involved in the interaction between the Court, counsel and the jury during trial and deliberation. I have experienced a jury comforting a defendant physician who was overcome with emotion after a defense verdict. I have experienced the plaintiffs comforting that same physician; and I have experienced an unhappy plaintiff who accosted jurors after a verdict.

I have been involved in motions for new trial-both pursuing and defending them. I am knowledgeable about the appellate rulings on the Court's role as thirteenth juror and the risk of the court's straying from what must be said to make a clean record.

I have prepared and requested Court costs pursuant to TRCP 54.04.

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

I have had experience in adoption proceedings (Chancery) and in divorces- both uncontested and tried. I stay abreast of appellate decisions in domestic cases. I habitually review the TBA link for appellate decisions. I look for helpful points for my practice areas, but I have often found evidentiary points and rulings of law in other types of cases including domestic cases and criminal cases.

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

None.

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.

I attended the University of the South from 1978 to 1982 and graduated with a B.A. in Mathematics. I attended the University of Tennessee Law School and I graduated with honors in 1985.

PERSONAL INFORMATION

12. State your date of birth.

10/25/60.

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

My entire life.

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

With the exception of my time in college and law school, I have lived my entire life in Shelby County, Tennessee. I attended Germantown Elementary from 1st to 3rd grade; St. Mary's Episcopal School from 4th grade until graduation in 1978. I attended college in Sewanee, Tennessee from 1978 to 1982 and then law school in Knoxville, Tennessee from 1982 to 1985. I returned to live and practice in Memphis right after law school.

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

Shelby County, Tennessee.

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.

None.

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.

None.

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.

I have been a resident of the Oaks neighborhood in Germantown since 1996 and have been active in the association since that time. I have been a Member of the Board of the Oaks Neighborhood Association for the last several years and served as the Vice President in 2015-2016 and am currently the President until October 2017. The Oaks is a 93 home neighborhood association.

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.
- a. If so, list such organizations and describe the basis of the membership limitation.
 - b. 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.

When I was in college, I was among the founding members of a local sorority, named Alpha Delta Theta. We did not have any male members.

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.

I have been a member of the Memphis Bar Association, the Tennessee Bar Association, the Tennessee Defendant Lawyers' association and Defense Research Institute for at least the last 10 years. After my years as a Board Member of the Young Lawyers of the Memphis Bar in 1988, 1989, 1991 and 1992, I have not held any offices.

26. 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 been a Super Lawyer in a litigation category since 2011 and a Fellow with the Memphis Bar Foundation since 2012. I have an AV rating from Martindale Hubbell.

27. 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.

None.

ESSAYS/PERSONAL STATEMENTS

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

At the age of 56, my knowledge, experience and energy are at their combined peak. The opportunity to offer my services to the community excites and energizes me. In my 30 years of practice, I have appeared before many of the District Court judges. I have the temperament, legal knowledge and trial experience to follow in the footsteps of the best. My trial practice has exposed me to good and bad behavior. I have experience in dealing with those behaviors. I can deal with litigators who have lost their perspective on a case matter-of-factly, firmly, and courteously. I value and would encourage efficiency in case management because that benefits all who come before the Court.

29. 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 seeking the position of Judge in Division IX of the 30th Judicial District of Tennessee. Shelby County has 9 Circuit divisions. The Circuit Courts handle all civil litigation, including tort cases, domestic cases, personal injury, car wrecks, products liability cases, premises liability, medical malpractice (now health care liability), and professional negligence. I have the balance, demeanor, temperament, maturity and experience to run a courtroom, handle a trial, and permit lawyers to try their cases. I believe in getting the job done efficiently. I would work hard to provide fair rulings while moving the cases through the system to closure.

30. 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 uphold the law even if I disagree. An example is the treatment of *ex parte* communication with treating physicians. In 1985, it was common, accepted practice for medical malpractice defense lawyers to contact the treating physicians of the plaintiff to discuss issues related to the claim and contained within the medical records. Review of medical records alone was not always sufficient to answer questions about medical care, causation and damages. Treators helped with issues as simple as reading their handwriting and as complex as causal connection to damages. Occasionally, the treaters encouraged settlement. *Givens v Mullikin*, 75 S.W.3d 383 (Tenn. 2002), halted this practice. The Supreme Court found there was an implied covenant of confidentiality between patient and physician, and treaters became inaccessible to

defense counsel for such discussions. Successive cases expanded the Givens decision. Enactment of T.C.A. Section 29-26-121 (f) in 2012, allowed defense counsel to petition Courts for a qualified protective order which would permit the contact upon Court approval. The Tennessee Supreme Court has accepted a case which challenges the constitutionality of this section. As a judge, it would be my job to apply the law even if I found the law frustrating in my practice.

REFERENCES

31. 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.

John Ryder
Harris, Shelton, Hanover, Walsh, PLLC

Thomas L. Parker
Baker, Donelson

Gary K. Smith
Law Offices of Gary K. Smith

Madelyn E. Gray

Robert B. Carter


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 Division IX of the 30th Judicial District of Tennessee, 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.

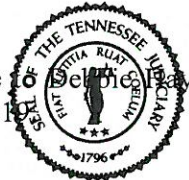
I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the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

Dated: June 21, _____, 2017.



Signature

When completed, return this questionnaire to Selma 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.

Tabitha Francisco McNabb _____
Type or Print Name

Tabitha J. McNabb
Signature

June 21, 2017
Date

011489 _____
BPR #

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