

**Tennessee Judicial Nominating Commission**  
***Application for Nomination to Judicial Office***

*Rev. 22 December 2011*

Name: Major Michael R. McCusker, (USAR, Retired)

Office Address: Shelby County District Attorney General's Office  
(including county) 3<sup>rd</sup> Floor, 201 Poplar Ave., Memphis, Tennessee 38103

Office Phone: (901) 222-1486 Facsimile: (901) 222-1305

Email Address: [REDACTED]

Home Address: [REDACTED]  
(including county)

Home Phone: [REDACTED] Cellular Phone: [REDACTED]

---

**INTRODUCTION**

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating 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 <http://www.tncourts.gov>). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) **and** electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit seventeen (17) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to [debra.hayes@tncourts.gov](mailto:debra.hayes@tncourts.gov).

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

I am an Assistant District Attorney General in Shelby County presently assigned to the DUI Prosecution Task Force, where I am responsible for prosecuting Vehicular Homicides and DUI cases in Shelby County Criminal Court Divisions 6, 7 & 8.

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

2000. BPR #020885.

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 have an active license to practice in Tennessee as noted in question no. 2. I was previously licensed in Arkansas under license no. 2001075, where I was admitted to the bar in 2001. I voluntarily surrendered my license by petition to the Supreme Court of Arkansas, which was granted on September 4, 2008. I acquired the license at the request of my first employer, but after becoming an Assistant District Attorney, I was, by law, prohibited from practicing law outside of the District Attorney's Office. With no intention of ever relocating to or practicing law in Arkansas, I chose to surrender my license so that I would not continue paying for a license that I never intended to use in the future.

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 except as it pertains to the issue discussed in question 3.

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).

**Shelby County District Attorney General's Office** (2001-Present), Memphis, Tennessee

\* General Sessions Criminal Court Prosecutor, 2001-2002

\* Criminal Court Prosecutor, 2003-Present

*Special Assignments:*

\* Domestic Violence Unit Prosecutor, 2002-2003

\* Special Assistant United States Attorney, 2004-2005, 2006-2007

*-Assigned as a special prosecutor to handle firearm violations pursuant to 18 USC 922(g).*

\* Special Prosecution Unit Prosecutor, 2008

*- Responsible for prosecuting career offenders in Shelby County Criminal Court Division 10.*

\* Felony Desk Prosecutor in General Sessions Court, 2008-2009

*-Responsible for screening & litigating felony arrests prior to being held to the State.*

\* DUI Prosecution Task Force, 2012-Present

*-Assigned pursuant to a grant to prosecute all vehicular homicides and DUI matters before Shelby County Criminal Court Divisions 6, 7 & 8.*

**Black, McLaren, Jones & Ryland, P.C.** (2000-2001), Memphis, Tennessee

\* Associate Attorney in the areas of family law, insurance defense, and corporate law.

**Knox County Archives** (1995-1997), Knoxville, Tennessee

\* Assistant Archivist responsible for record management and preservation of historic court documents, including the archiving and preservation of criminal indictments from 1860-1880, the records of the Knox County District Attorney's Office from 1940-1960, and original documents of Governor John Sevier and Judge Andrew Jackson.

**KCARC, Sunshine Industries** (1990-1995), Knoxville, Tennessee

Independent Living Skills Trainer responsible for training adolescent males who were dual diagnosed with intellectual disabilities and mental health disorders.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable.

7. 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.

As a prosecutor, one hundred percent of my practice is in the area of criminal law. Presently, I am engaged in prosecuting vehicular homicides and DUI cases before Shelby County Criminal Court Divisions 6, 7 & 8. However, the majority of my career has been dedicated to prosecuting all types of felonies throughout the Shelby County Criminal Courts, including murders and other crimes of violence, as well as property crimes and narcotics.

8. 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. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Commission needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Commission. Please provide detailed information that will allow the Commission to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

Except for my first year of practice with a civil firm, I have spent the last eleven years practicing as an Assistant District Attorney, except for those times (2002-03 & 2005-06) when I was deployed to Virginia and later Afghanistan as an Army National Guard officer in a non-legal capacity. As a prosecutor, I have tried cases in both state and federal courts. I have also handled countless negotiations and developed a solid reputation for knowing the value of a case and the necessity for competent plea negotiations, as a means to controlling criminal dockets to promote judicial economy. Additionally, a considerable part of my career has been spent in special assignments in the areas of domestic violence, DUI & vehicular homicide prosecution, and a tour as a Special Assistant United States Attorney for the Western District of Tennessee, where I prosecuted firearm violations pursuant to 18 USC 922(g), as part of the *Project Safe Neighborhoods Initiative*. It was during my time in the federal courts that I also wrote and submitted briefs to the United States Court of Appeals for the 6<sup>th</sup> Circuit.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

I have tried many cases, including first-degree murder, rape, aggravated robberies, drug offenses, etc., but these are my most notable cases:

**State v. Davis Brooks**, Indictment No. 12-03529 (Vehicular Homicide)

*\* Currently pending before Criminal Court Division 10, I am the lead prosecutor in this vehicular homicide intoxication, which claimed four lives on Christmas Eve 2011.*

**State v. Zachary Carlisle**, Indictment No. 11-03600 (Voluntary Manslaughter)

*\* Currently pending appeal from Criminal Court Division 5. This case involved a killing during a drug deal where a middle-aged victim, with no criminal record, was attempting to buy heroin for a friend who was dying from cancer. The case was primarily based on circumstantial evidence, including records of cell phone calls just prior to the murder. Initially, the case only carried an exposure of 15 years, and the defendant had been offered six years before I took over the case. Moreover, the case had been under-indicted because the State had failed to indict the defendant (a persistent offender) for employing a firearm during the voluntary manslaughter, but I personally reindicted the matter to reflect all proper charges. Upon conviction, the defendant was sentenced to 30 years.*

**State v. Kenneth Lewis**, Indictment No. 09-00033 (Murder Second Degree)

*\* Currently pending appeal from Criminal Court Division 3. Initially indicted as Criminal Attempt Murder Second, the victim, who was mentally disabled, lingered on life support for eighteen months before dying from injuries received in a brutal beating over a stolen bicycle. Thereafter, the case was indicted for Murder Second Degree, and upon conviction, the defendant was sentenced to 35 years.*

**State v. Derek Coleman**, Indictment No. 09-06588 (Voluntary Manslaughter)

*\* Of note because I tried this case with only an hour's notice when another prosecutor fell ill. Involved the murder of a family member at a July 4<sup>th</sup> cookout. It was the second time in my career that I tried a homicide that occurred at a July 4<sup>th</sup> cookout.*

**State v. Linda Abbott**, Indictment No. 05-08024 (Murder Second Degree)

*\* Tried before Criminal Court Division 3, the case was of considerable interest because initially, investigators believed that the victim had been killed when his truck exploded after crashing while cutting donuts in his pasture much to the annoyance of his wife, the defendant. However, when the charred remains were x-rayed, a bullet was found in the victim's brain, which was the result of his wife shooting at him to get him to stop. Although charged as Murder Second, the jury returned a verdict of Voluntary Manslaughter.*

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

Not applicable.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

During the course of my service in the United States Army, I was constantly entrusted with large sums of property and money without ever incurring a single shortage. As a commanding officer from 1997-2001 & 2002-2004, I was responsible for several million dollars worth of property and equipment, and during the course of my service in Afghanistan, I regularly carried more than \$100,000 (U.S.) in cash for the purposes of paying Afghan soldiers and contracting services for improvements to infrastructure.

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

None.

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

30<sup>th</sup> Judicial District, Criminal Court Division VI, July 23, 2007.

\* Was not submitted to the Governor as a nominee.

### EDUCATION

14. 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.

- **University of Memphis**, Cecil C. Humphreys School of Law, JD 2000 (Attended 1997-2000).

- **University of Tennessee**, Knoxville, BA in English 1994 (Attended 1986, 87-90, 93-94\*).

*\* Due to financial hardships following the death of my mother, my father could not afford to send me to college. So, I had to pay my own way, which occasionally meant taking time off to work and earn tuition. It is for this reason that I did not graduate within four years.*

### PERSONAL INFORMATION

15. State your age and date of birth.

44 years. March 22, 1968.

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

33 years.

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

15 years.

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

Shelby.

19. 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.

#### United States Army

##### United States Army Reserves, 1985-1990

- Enlisted 12 September 1985, Age 17
- Separated 1 October 1990

##### Tennessee Army National Guard, 1990-2007

- Retired 1 March 2007 (Honorable Discharge)
- Rank at Separation: Major
- Branch of Service: United States Field Artillery

Active Duty Service:

- Operation Noble Eagle II, August 2002-August 2003  
Fort Monroe, Virginia
- Operation Enduring Freedom IV, April 2005-July 2006  
Camp Mike Spann, Deh Dadi, Afghanistan

Decorations, Honors, and Achievements

- Bronze Star Medal for Meritorious Service in Afghanistan from 2005-2006. (Attached)
- Army Commendation Medal (2<sup>nd</sup> Award) for Actions in Afghanistan from 10-12 November 2005. (Attached)
- *Additional:* Army Achievement Medal (2<sup>nd</sup> Award), Army Reserve Components Medal (4<sup>th</sup> Award), National Defense Service Medal (2<sup>nd</sup> Award), Afghanistan Campaign Medal, Global War on Terrorism Service Medal, Armed Forces Reserve Medal, Army Service Ribbon, Overseas Service Ribbon, Army Reserve Component Overseas Training Ribbon, Armed Forces Reserve Medal with M Device (3<sup>rd</sup> Award).
- *Inducted:* The Honorable Order of Saint Barbara, 17 November 2001.
- *Commissioned:* Second Lieutenant, 11 May 1990 (UT Army ROTC).

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

No.

21. 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.



22. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

Not applicable.

23. 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.

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

No.

25. 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.

26. 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.

**Knights of Columbus, 1988-Present**

- Tennessee State Warden (2011-Present)
- Grand Knight, Council 9317, Cordova, Tennessee (2010-11)
- Deputy Grand Knight, Council 9317, Cordova, Tennessee (2009-10)
- Chancellor, Council 9317, Cordova, Tennessee (2007-2009)

**Leadership Germantown Alumni Association, 2012-Present**

**Veterans of Foreign Wars, 2010-Present**

**Boy Scouts of America, 2011-Present**

-Den Leader, Cub Scout Pack 457

-Eagle Scout Award (1986)

27. 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**

28. 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.

**St. Thomas More Catholic Lawyers' Guild, 1998-Present**

- Executive Board, 2007-2008.

29. 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.

None.

30. List the citations of any legal articles or books you have published.

None.

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

**Tennessee Association of Criminal Defense Lawyers: General Sessions Criminal Court Training:** Introduction to Felony Prosecution in General Sessions Court, Fall 2009.

32. 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.

**Shelby County Chancery Court Clerk & Master**

- Applied for appointment November 2011.

**Shelby County Criminal Court Clerk**

- Formed a campaign committee and appointed a treasurer to run for Criminal Court Clerk in 2010. I was never an official candidate as I withdrew from the race prior to filing my petition, but I did file financial reports and made a full accounting of all financial activities to the Shelby County Election Commission.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No.

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings which reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

Attached. (The attached writings reflect my own personal effort.)

**ESSAYS/PERSONAL STATEMENTS**

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

Simply put, I want to ensure that the level of judicial excellence and efficiency that Judge Fowlkes has established is not only continued but built upon to further judicial economy, collegiality, and a respect for criminal procedure that promotes the sound administration of equal justice under the law.

36. State any achievements or activities in which you have been involved which demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

As a career prosecutor, I have worked for many years to ensure equal justice under the law in both protecting the innocent victims of crime but also in ensuring that in the course of prosecuting the guilty that the rights of the accused remain inviolate. Prosecutors choose to enter upon an endeavor, which does not compensate as well as most private attorneys, and to a large extent much of our daily lives are very much tied to social work just by the general nature of our profession. Although, prosecutors may not engage in pro bono work, I have worked to assist a convicted felon named Toriano Henry, one of my former soldiers, in acquiring employment, collecting his GI Bill Benefits, and in enrolling in college at the University of Memphis, because I believe anybody who pays their debt to society deserves our commitment and support in rebuilding their lives.

37. 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 seek an appointment as the Judge of Criminal Court Division VI of the 30<sup>th</sup> Judicial District at Memphis, which has ten criminal court judges and handles both felony and misdemeanor offenses. By my appointment, I would significantly impact the court through both my experience as a career prosecutor as well as my experience as a military officer, who has served in war and made many difficult decisions in some of the most unimaginable circumstances. I am accustomed to the weight of great responsibility and would not shrink from my duties as a criminal court judge. Moreover, by my selection, I would become the first judge in the Shelby County Criminal Court system who both attended and graduated from law school in this century, allowing for a fresh perspective on the challenges and constraints facing the criminal justice system today.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

I would continue to serve as a leader in both the Tennessee Knights of Columbus, where I am a State Officer, and also in the Boy Scouts of America, where I am a Cub Scout Den Leader to my son and his peers. As to the former, the Knights form the basis of my charitable and service oriented contributions to my community. I would also continue my involvement in Leadership Germantown, and continue to serve on the Diocese of Memphis' Annual Bishop's Appeal Steering Committee.

Specifically, as a Judge, I would endeavor to work with the State, the defense bar, lawmakers, the local probation services and community organizations to seek practical solutions to the direct impact that mental health and addiction issues have upon recidivism rates.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Commission in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

My greatest talent lies in the wisdom I have gained from both enduring and overcoming tremendous challenges. At fourteen, I lost my mother to breast cancer, which left my father, a recovering alcoholic, financially devastated as he did his best to raise three teenage sons.

As such, I paid for my college and law school out of my own pocket, and early on, I learned to never let circumstances defeat your dreams.

In 2002, I had to leave my wife and four-month-old daughter to spend a year in Virginia as part of the War on Terror. Three years later, I did it again, this time to serve in Afghanistan, leaving my wife to care for our two young children.

In my life, I have personally known great pain, hunger, and fear, especially as it relates to Afghanistan. I have also known the struggle to resume a normal life after such an experience.

These and many other experiences, aside from my own practice of law, will form my perspective of the world from the bench. I understand the many complexities of the human condition and the struggles that so many face, and at the same time, I understand the need for accountability and balance within our system of equal justice.

I understand that in the end, we are dealing with people, and not just names and numbers on the docket.

I will work to ensure the unbridled integrity of the system.

40. 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)*

Absolutely. As a prosecutor, I have taken an oath to uphold and interpret the law, even when I do not agree with it. For example, it is inconceivable that Tennessee law would ever allow for diversion in cases where the accused has been convicted of taking the life of another, to wit: Voluntary Manslaughter, Reckless Homicide or Criminally Negligent Homicide, and yet that is the state of the law in Tennessee. It is appalling that an individual could be guilty of taking another's life and still have the possibility of being granted diversion, and ultimately, having that conviction expunged from their record. Whereas I do not agree with all aspects of the Sentencing Act, I must nevertheless uphold it in my work as a prosecutor and ensure it is followed, and to that extent, if selected to serve as a judge, in spite of my objections to the law on this issue, I would do the same.

REFERENCES

41. 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.

Caroline C. Hunter, Esq.

[REDACTED]  
[REDACTED]  
[REDACTED]

Major General Robert A. Harris  
Assistant Adjutant General Army

[REDACTED]  
[REDACTED]  
[REDACTED]

Honorable Robert Hibbett, Esq.  
Middle Tennessee Commissioner  
Tennessee Department of Treasury

[REDACTED]  
[REDACTED]  
[REDACTED]

Mr. Stephen P. Hall, Esq.  
Assistant United States Attorney  
Western District of Tennessee

[REDACTED]  
[REDACTED]  
[REDACTED]

Lieutenant Colonel Joseph B. Hollister  
Tennessee Army National Guard  
117<sup>th</sup> Regiment (RTI)

[REDACTED]  
[REDACTED]  
[REDACTED]

**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 **Criminal Court Division VI of the 30<sup>th</sup> 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: July 30, 2012.



Signature

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



**TENNESSEE JUDICIAL NOMINATING COMMISSION**

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**