# Tennessee Trial Court Vacancy Commission Application for Nomination to Judicial Office

1/31/19

Name:

Robert Neland Hibbett

Office Address:

Home address is office address

(including county)

Office Phone:

Cellular phone

Facsimile: None

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Mount Juliet, TN 37122 (Wilson County)

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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). 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 by the noon deadline date an 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 ceesha.lofton@tncourts.gov, or via another digital storage device such as a flash drive.

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

#### <u>PROFESSIONAL BACKGROUND AND WORK EXPERIENCE</u>

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1	All nough I am a licensed afforney. I am not presently employed by any entity or tirm
l	Although I am a licensed attorney, I am not presently employed by any entity or firm

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

#### 1985, BPR 11529

1.

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, BPR 11529, 1985, Active

State your present employment.

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).

I did not practice law while I was deployed to Iraq as commander of the 130th RAOC, 2007-2008. I was on inactive status during the month of February 2008 while I was deployed.

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 was Claims Commissioner for the Middle Division of Tennessee from July 1, 2011 until June 30, 2019.

I was an Assistant District Attorney and then Deputy District Attorney for the 15th Judicial District (Jackson, Macon, Smith, Trousdale, and Wilson Counties) from 1989 until 2011,

I was in private practice from 1986-1989 in Knoxville, Tennessee. I shared office space with Gail Wortley and Robert Cole during this time.

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 not practiced law since I left office as Claims Commissioner on June 30, 2019.

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.

2011-2019 Claims Commissioner for the Middle Grand Division. I adjudicated monetary lawsuits against the State of Tennessee. These were civil claims that included the areas of tort, contract, workers compensation, and criminal injuries compensation.

2009-2011 Deputy District Attorney General, Criminal Division. I essentially ensured that all criminal cases were being prosecuted in the five-county district by approximately ten criminal assistant district attorneys. I personally prosecuted high value economic crime, difficult homicides, cold cases, and other cases as assigned by the District Attorney General.

2008-2009 Assistant District Attorney General handling cases and duties as assigned by the District Attorney General.

May 2007- March 2008 Military Leave, Operation Iraqi Freedom.

2006-2007 Assistant District Attorney and Docket Manager for Circuit Court Div. II, Wilson Co. I prosecuted or ensured the prosecution of all offenses involving vehicles including DUIs and vehicular homicides.

1997-2005 Assistant District Attorney and Docket Manager for Criminal Court, Wilson Co. The Criminal Court for Wilson County is a large docket. I ensured that all cases had a prosecutor among the multiple assistant district attorneys that served Wilson County. I personally handled all sexual offenses, burglaries, thefts and many homicides.

1995-1997 Assistant District Attorney and Docket Manager for Jackson County. I prosecuted or ensured the prosecution of all criminal cases in Jackson County, both in Criminal and General Sessions Courts. I continued to handle the child sexual abuse and child homicide prosecutions in Wilson County.

1992-1995 Assistant District Attorney and Docket Manager for Smith County. During this time period, I prosecuted or ensured the prosecution of all criminal cases in Smith County, Tennessee, both in Criminal and General Sessions Courts. I was also assigned the duties of child sexual abuse and child homicide prosecutions in Wilson County and prosecuted in the Juvenile Court of Wilson County.

1989-1992 Assistant District Attorney General for child support enforcement for the 15th Judicial District. I prosecuted all the delinquent child support cases for the District Attorney's Office. I also prosecuted the paternity suits. During this time period, our office collected over a million dollars for the first time. One year we had the highest percentage increase in successful child paternity establishments.

1986-1988 Private practice of law in Knoxville, TN. Most of my work was in the areas of debtor bankruptcy, Social Security Appeals, criminal defense, and general tort plaintiff's work. I appeared in the Criminal, Circuit, Chancery, General Sessions, and Juvenile Courts of Knox County. I represented an inmate in a lawsuit against the State in United States District Court. I also represented a group of women deer hunters against the State in United States District Court.

I have tried over one-hundred jury trials during my career.

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

The following are cases of special importance that I tried as assistant district attorney:

State V. Fallon L. Tallent, 2006 Tenn.Crim. App. Lexis 14

1st Degree Murder. This case was tried in Circuit Court in Wilson County, Tennessee in 2004 using a jury from another judicial district. Fallon Tallent struck and killed two Wilson County

law enforcement officers while engaged in a high speed chase on Interstate 40. This was a case where a vehicle was the instrument of death in a first degree murder case and is still a valid conviction.

State V. Michael Wayne Perry, 2001 Tenn. Crim. App. Lexis 251

1st Degree Murder. This case was tried in Wilson County Criminal Court in 1999. Michael Perry picked up a virtually homeless woman in his truck and beat her. He raped or attempted to rape her and threw her out of his truck on the Lebanon Country Club Golf Course. He then ran over her with the truck and killed her. This was the first life without parole case tried in the Fifteenth Judicial District.

State V. Reginald Tyrone Donnell, 2000 Tenn. Crim. App. Lexis 922 2<sup>nd</sup> Degree Murder. This case was tried in Wilson County Criminal Court in 1998. Reginald Donnell shot several shots at a car driving away from him after an exchange of words. Instead of hitting the car, he shot and killed two other individuals that were not originally involved. We used the theory of transferred intent to obtain second degree murder convictions.

State V. William D. Stockwell, 1998 Tenn. Crim. App. Lexis 1149

1st Degree Murder. This case was tried in Wilson County Criminal Court in 1996. William Stockwell took his pregnant girlfriend to a rural area when her water broke. She had the baby and he then buried it. The question in the case was whether the baby was alive when he buried it. The jury found that the baby was alive and found him guilty.

The most significant and difficult case I tried as a defense attorney when I was in private practice was *State V. Paul Allen Mayes*, 1988 Tenn. Crim. App. Lexis 638. This was a habitual criminal case tried twice in Knox County Criminal Court. Under pre-1989 statutory law, if you committed three felonies you could be found guilty of being a habitual criminal on the fourth felony and receive life imprisonment. The jury could not come to a verdict in the first trial and a mistrial was declared. The case was tried again and he was found guilty of being a habitual criminal.

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

I was appointed and sworn by Governor Haslam as Claims Commissioner on June 30, 2011 for an eight year term. Essentially, I served as the trial judge of record on claims against the State of Tennessee involving over \$25,000.00 and workers' compensation cases. Smaller cases are adjudicated on the record or by an informal hearing. Judgments individually rendered by the three Claims Commissioners are directly appealable to the appellate courts or a request for an *En Banc* hearing may be made first. I had several judgments appealed during my tenure on the bench. The following are a few of the significant ones.

Farrar v. State, M2011-02559-COA-R3CV, 2012 WL 3893522 (Tenn. Ct. App. Sept. 7, 2012)

This appeal involves the forfeiture of property that was seized by law enforcement under the Drug Control Act. The property was subject to a lien held by a bank. The bank sued Claimant for the balance owed on the property and an order of judgment was entered against Claimant. Claimant filed suit against the State in the Claims Commission, alleging that the State was negligent because it failed to notify the proper lienholder of the forfeiture. The State filed a motion for summary judgment, which was granted by me because the lien was not recorded and the State did not have knowledge of it. Claimant appealed to the Court of Appeals and my judgment was affirmed.

The significance of this holding is that the State will not be liable for liens that are not properly recorded and are unknown.

*RCR Building Corp. v. State*, No. M2014001555-COA-R3-CV, 2015 WL 5016943 (Tenn. Ct. App. Aug. 34, 2015)

In RCR, the State of Tennessee entered into a contract with RCR Building Corporation to build a welcome center in Ardmore, Tennessee. The contract stated that changes to the plans or implementation of the project must be approved by written change orders. However, throughout the course of this project, the State, through its agent, repeatedly made modifications to the project without a written change order. At the project's conclusion, the State refused to pay for several of the modifications that did not have written change orders, arguing that, since these modifications were not made according to the provisions of the contract, it should not be liable for them. Further, the State argued that the Claims Commission lacked jurisdiction over this claim because it related to oral modifications and agreements, not a written contract. I found the State liable because the State's agent had ordered the changes.

Although the Tennessee Court of Appeals explicitly refused to "frame this issue as a question of jurisdiction," it nevertheless held the State liable for its subsequent oral modifications to the written contract. In its decision, the Court of Appeals quoted part of my judgment that stated, "The State cannot hide behind the Contract when it did not follow the terms of the Contract." The Court added, "We could not agree with the Commissioner more."

McRae v. State, No. M2014-00709-SC-R3-WC, 2015 WL 4155424, at \*7 (Tenn. Workers Comp. Panel July 10, 2015)

This was a workers' compensation claim involving a state correction officer who had been assaulted twice and was suffering from post-traumatic stress disorder (PTSD). He resigned from the Department of Correction (TDOC) because of his anxiety and nervousness. Two physicians opined that Claimant suffered from PTSD. The State asserted that Claimant's resignation was not reasonably related to his work injury. I ruled that the proof showed that his resignation was related to his PTSD and his work environment at TDOC.

In affirming my judgment, the Special Workers Compensation Appeals Panel ruled that the State offered no testimony contradicting the physician's opinion that Claimant's decision to resign was reasonable and was related to his work activities. It agreed that his PTSD was a work injury and his resignation was reasonable.

Jones v. State, No. M2017-02198-COA-R3-CV (Tenn. Ct. App. July 24, 2019)

This health care liability case involved the death of a Tennessee State University (TSU) football player who suffered a cardiac arrest during practice. The main issue in this case was whether the athletic trainer was negligent in not using an AED and this caused the player's death. I found that the failure to attach the AED did not cause the player's death. I also ruled that the athletic trainer did not violate the applicable standard of care.

The Court of Appeals wrote that the key question was whether the player, "more likely than not, would have survived his sudden cardiac arrest absent TSU's alleged negligence." The Court found that the cardiologist who opined that the use of an AED anywhere from two to seven minutes after the player's collapse would not have been successful because of his extensive scar was relevant as to the causation issue. The Court affirmed the dismissal of claim. (This case is currently on a Rule 11 permission to appeal before the Tennessee Supreme Court.)

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

I applied for Criminal Court Judge for the 15th Judicial District in 2009. The Commission met on February 11, 2009 in Lebanon. The Commission submitted my name along with two others to the Governor as a nominee. However, I was not selected by Governor Bredesen.

I applied for Court of Criminal Appeals Judge in 2014. I believe the Governor's Commission on Judicial Appointments met on May 13, 2014 in Nashville. The Commission did not submit my name to the Governor as a nominee.

I applied to be reappointed as Claims Commissioner but was not.

#### **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.

University of Tennessee at Martin, 1978-82, B.S in Business Administration (With Honors)

University of Tennessee College of Law, 1982-85, J.D.

Tennessee State University, 1991 (One graduate course in criminal justice. I did not plan to receive a degree)

National Judicial College, Reno Nevada, 2012. This is a two week course for new judges.

#### **PERSONAL INFORMATION**

12. State your date of birth.

1960

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

I have lived in Tennessee all my life except for five months at Fort Knox, KY (Sept. 1985 – Jan. 1986) and while deployed to Iraq (2007-08).

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

Thirty years in Wilson County except when I was in Iraq. However, I was raised in Wilson County, also.

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

Wilson 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.

I served in the Tennessee Army National Guard as a reserve officer for over thirty years. I honorably retired on June 30, 2011 with the rank of Colonel. My branches were Armor and Military Intelligence. I am still in the Retired Reserve. I served as Commander of the 130<sup>th</sup> Rear Area Operations Center while in Iraq. I was also Deputy Forward Operating Base Commander of Camp Bucca, Iraq. I was on active duty from May 2007 until March 2008. At my retirement, I was the J2/Deputy Chief of Staff, Intelligence, for Joint Force Headquarters, Tennessee National Guard. I was awarded the Legion of Merit, Bronze Star Medal, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal, Iraqi Campaign Medal, Global War on Terrorism, and the Air Assault Badge.

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. You may wish to request a report from the appropriate supervisory authority (or authorities) for a complete history.

In 1989 or 1990, when I was an assistant district attorney, a complaint was made to the Board of Professional Responsibility. The allegation was that I did not represent a client zealously and that I had criticized a judge in a child support matter. Both allegations were dismissed.

In 2012, a complaint was made to the Board of Judicial Conduct concerning a flooding case I adjudicated. The allegations by a self-represented claimant were (as far as I can ascertain from his complaint): 1. My findings of fact were incorrect. 2. I said that he had not spent enough to protect his property. 3. I excluded some of his proffered evidence. Disciplinary Counsel recommended that the complaint be dismissed. I was notified of the dismissal by letter dated July 20, 2012.

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.

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.

Yes. I was sued among multiple defendants by a criminal defendant for violation of civil rights. The suit was dismissed by summary judgment. *Dexter P. Jones v. Elnore Jones et al*, Wilson Co. Circuit No. 13065 filed 11/25/03 dismissed 4/2/04. Mr. Jones sued his ex-wife, attorneys, prosecuting attorneys, and judge for violating his civil rights for his prosecution on domestic assault charges after he pleaded guilty to several counts of domestic assault. All defendants were eventually dismissed.

- 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.
  - 1. Wilson County Fellowship of Christian Athletes Advisory Board
  - 2. American Legion, Mount Juliet Post 281
  - 3. Assistant Coach, Mt. Juliet Christian Academy Middle School Football Team
  - 4. Victory Baptist Church, Mount Juliet, Tennessee
  - 5. Tennessee Sons of the American Revolution, Andrew Jackson Post
- 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.

Yes. Tennessee Sons of the American Revolution. It includes male descendants of those that fought in the Revolutionary War. I am not currently an active member.

#### <u>ACHIEVEMENTS</u>

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.

American Bar Association: Member during the majority of years since 1986 until 2018.

Tennessee Bar Association: Served on Board of Governors: 2007 to 2013. Left membership soon after my term on the Board ended.

Fifteenth Judicial District Bar Association: Secretary, Vice President and then President in early 1990s

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 recognized several times by the District Attorneys General Conference for teaching at the New Prosecutors Academy.

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.

Tennessee Claims Commissioner, Middle Grand Division, 2011 - 2019, appointed and confirmed by the General Assembly in 2011.

Applied to be appointed to the Court of Criminal Appeals in 2014.

Applied to be appointed as Criminal Court Judge for the 15th Judicial District in 2009.

Candidate for election as Criminal Court Judge for the 15th Judicial District in 2006.

#### ESSAYS/PERSONAL STATEMENTS

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

I am seeking to be Circuit Judge, Division II, because I would be grateful in giving due process and lawful judgment to all civil litigants and criminal defendants. Adjudicating civil claims has been a tremendously rewarding experience. I found it gratifying to listen, be cordial, and to contemplate decisions when sitting on the bench during hearings and trials. All my prior experience will assist me in providing justice.

During my tenure as Claims Commissioner, I changed several procedural order templates that ensured that self-represented litigants received due process. I would ensure that self-represented litigants and defendants understand all the rules and procedure that apply to them. Furthermore, I would direct that proposed scheduling orders be submitted to ensure the efficient timeline of lawsuits. Lastly, I am a listener and I would listen to all respectful and lawful arguments and testimony.

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)

The 15th Judicial District (Jackson, Macon, Smith, Trousdale, and Wilson Counties) has four trial judges. The Chancellor adjudicates civil cases. The Criminal Court Judge judges criminal cases. Circuit Court Division I adjudicates civil cases. This specific vacancy, Circuit Court Division II, has jurisdiction over both *civil* and *criminal* cases for the entire district.

When I was Claims Commissioner, I adjudicated tort and contract claims. While I was in private practice, I was involved in both civil and criminal lawsuits. I was an assistant district attorney general for over twenty-two years. I prosecuted a variety of criminal cases during that time. Because of this prior experience, I will be able to methodically rule on both criminal cases and civil lawsuits. Furthermore, because I was a judge for eight years, I learned how to listen and give due process according to the law to all litigants.

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 would absolutely uphold the law without reservation. As Claims Commissioner, I adjudicated appeals of criminal injury compensation cases that were denied by the Division of Claims and Risk Managemnet. Under the statutory law, in leaving the scene of an accident cases, only victims who suffer *serious* bodily injury are eligible for compensation from the Fund. *See* Tenn. Code Ann. § 29-13-104. In all other cases of eligible crimes, only bodily injury is required. In at least two cases I adjudicated, the victims could show bodily injury but not serious bodily injury. I had to deny their claims. I did not agree with this distinction but I had to follow it. I have stated in many judgments that the Claims Commission does not make law; it follows the law enacted by the General Assembly as interpreted by our appellate courts. I would continue to uphold the current law. Trial Judges cannot make law; they must follow the law.

#### **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.

A The Honorable Robert Holloway, Judge, Court of Criminal Appeals, Columbia, TN 38401	
B The Honorable James Hamilton, Claims Commissioner and Chair, Wes Tennessee Claims Commission, Dyersburg, TN 38024	
C David Jennings, Vice President of Security, Tennessee Education Lotter Mount Juliet, TN 37122 Cell	ry,
D Tom Boyd, Decker Wealth Management LLC,	Lebanon, TN 37087
E Chief James Hambrick, PhD., Mount Juliet Police Department, Mount Juliet, TN 371222 W Cell	

#### 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 [Court] Circuit Court, Division II, 15th 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: November 25, 20 19.

Signattire A

When completed, return this questionnaire to Ceesha Lofton, 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.

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.  Not Applicable
5,2019