

**The Governor's Council for Judicial Appointments**

**State of Tennessee**

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

Name: David L. Allen

Office Address: P.O. Box 369, 200 Mahr Avenue, Lawrence County, Lawrenceburg, TN  
(including county) 38464

Office Phone: (931) 762-0010 Facsimile: (931) 762-0741

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**INTRODUCTION**

The State of Tennessee Executive Order No. 41 hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council'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 Council 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 Council 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 document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and any attachments 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.

My present employment is at David L. Allen, Attorney at Law. I am a sole practitioner in Lawrenceburg, Tennessee.

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

I was licensed to practice law in Tennessee in 1981. My Board of Professional Responsibility number is 9329.

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 am also licensed to practice law in Alabama. My Alabama bar number is ASB-9028-L55D. I was licensed in Alabama in 1980. My Alabama license is currently 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).

After graduation from law school in 1980, I was employed by the Birmingham, Alabama law firm: Barnett, Tingle, Noble and Sexton. I clerked for them while in law school and was employed by them from 1980 – 1982. In 1982, I moved back home to Lawrenceburg, Tennessee and was employed from 1982 – 1985 by Paul B. Plant, Attorney at Law. In 1985, I opened my own practice as a sole practitioner and that employment continues to date.

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.

N/A.

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.

I have been a sole practitioner in Lawrenceburg, Tennessee for thirty years. I have a general practice. I practice in the following major areas of the law: Divorce (38%), Adoption and Termination of Parental Rights (10%), Personal Injury (5%), Workers Compensation (2%), Wills and Estates (15%) and Mediations (30%).

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 Council 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 Council. Please provide detailed information that will allow the Council 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.

Trial courts: I have been involved in hundreds of bench trials involving divorces, contempt petitions, adoptions, workers compensation, and estates.

Jury trials: Over the course of my practice, I have tried about fifteen jury trials. Approximately five of those were criminal jury trials, but they were quite a number of years ago. One jury trial was a multi-day Will contest. The remaining jury trials were personal injury actions. I was sole counsel in about ten of those cases, and co-counsel in about five of those cases. In the cases that I participated as co-counsel, I shared equally in the trial responsibilities.

Appellate courts: I have been involved in appeals relating to criminal cases, termination of parental rights, divorce, personal injury actions, and estates. I have argued approximately six times before the Tennessee Court of Appeals. In the 1980s I argued twice before the U.S. Court of Appeals in Atlanta, Georgia.

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

I was involved in *Kelly vs. Johns*, a Maury County, Tennessee will contest. It is my understanding that case is frequently relied upon in will contest trials and appeals.

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.

I am a Rule 31 listed mediator. I have been actively mediating cases for approximately fifteen years. I have mediated over five hundred forty cases. Those cases involved one hundred forty-five lawyers from twelve counties (Lawrence, Wayne, Giles, Maury, Lincoln, Dickson, Lewis, Hickman, Perry, Williamson, Humphries and Davidson). About one third of my time is spent conducting mediations.

The types of disputes I have mediated include divorce, post-divorce child custody matters, personal injury, will contests, boundary line disputes, business related issues, tortious work related injuries, and estate related issues.

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.

I have served for nineteen years as the court appointed Guardian of a disabled former service member. I report annually to the Veterans Administration and to the Probate Court.

I have served as the personal representative of estates through Probate Court. I serve as a Trustee of the Joe and Hazel Kraus Human Development Foundation. The role of that Foundation is to make gifts to deserving entities and individuals making a positive impact on their community. I serve pro bono.

I have served as a guardian ad litem for children and disabled adults numerous times. I have gladly accepted those roles, even under circumstances where it was clear from the outset that most, if not all, of my work would be done pro bono.

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

I am serving my second term as a hearing panel member for the Board of Professional Responsibility.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments 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.

This is my first application for a judgeship to the Governor's Council for Judicial Appointments.

### **EDUCATION**

14. List each college, law school, and other graduate school that 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 college at Middle Tennessee State University. I graduated in 1974 with a Bachelor of Arts Degree in Music Education.

I attended law school at Cumberland School of Law of Samford University. I graduated in 1980 with a J.D. degree. I graduated cum laude.

### **PERSONAL INFORMATION**

15. State your age and date of birth.

I am 62 years old. I was born on July 11, 1952.

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

I have lived continuously in the State of Tennessee for thirty-three years.

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

I have lived continuously in Lawrence County, Tennessee for thirty-three years.

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

I am registered to vote in Lawrence County, Tennessee.

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.

None.

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. Please state and provide relevant details regarding any formal complaints 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.

In my thirty-four years of practicing law, there has been one formal complaint filed against me. That complaint was dismissed by the Board of Professional Responsibility on or about July 23, 2007. The formal complaint alleged that I failed to have a criminal record expunged. However, in that case, I was retained to have a criminal charge dismissed, which I did in a timely manner. There was no finding of misconduct on my part. There was no discipline imposed.

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.

The person who filed the unsuccessful complaint with the Board of Professional Responsibility (See Question 22) filed a pro se lawsuit against me in the Circuit Court for Lawrence County, Tennessee on November 22, 2006. That suit alleged that I negligently handled his case in that I acquired a dismissal of his criminal case instead of an expungement of his criminal case. That case is Douglas C. Berry vs. David L. Allen, Attorney at Law, CC-1985-06 in the Circuit Court for Lawrence County, Tennessee. Mr. Berry's lawsuit was dismissed with prejudice by summary judgment on June 7, 2007.

In 1991, I was a party to a divorce case, David L. Allen vs. Martha Gail Allen, Case # 4919 Chancery Court for Lawrence County, Tennessee. This case was settled prior to trial. About twenty-five years ago, I recall that I filed a General Sessions lawsuit to collect an attorney fee that I was owed. I obtained a judgment, which my former client promptly bankrupted. I have not filed a lawsuit against a client since that time. I consider that a lesson well learned.

On November 1, 1993, I was served as a Defendant in a pro se lawsuit that did not seek any relief against me. That case was filed in the Chancery Court of Davidson County, TN, case # 93-3121-III. In that case, I was sued along with the Circuit Court Judge, the Circuit Court Clerk, and many others, in a frivolous lawsuit filed pro se by a person incarcerated at RMSI at Cockrillbend in Nashville, TN. That case was dismissed against all parties.

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 that you have held in such organizations.

I am a member of the First United Methodist Church, Lawrenceburg, Tennessee. I have served as choir director for thirty-two years. I served two terms as Chairperson of the Administrative Board. I served as Finance Committee Chairman for two terms. I am a thirty-two year member of the Lawrenceburg Rotary Club. I served as President in 1989-90, and as a member of the Board of Directors from 1987-1989. I am a member of the Masonic Lodge, but have not participated in twenty or more years. (See Question 27.)

27. Have you ever belonged to any organization, association, club or society that 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.

I am a member of the Masons. The Masons limit their members to the masculine gender. I have not been an active participant for twenty or more years. If I am nominated and selected for the judgeship, I will resign from membership.

### 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 that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

I am a current member of the Tennessee Bar Association. I have been a Fellow in the Tennessee Bar Foundation from 2011 to the present.

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

I was nominated and accepted as a Fellow in the Tennessee Bar Foundation in 2011.

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.

None.



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.

I was an applicant to the Lawrence County Commission for the position of General Sessions Judge for Lawrence County, Tennessee in 2004.

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 that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

Exhibit A is an Order Granting Termination of Parental Rights. At the conclusion of the trial, Judge Stella Hargrove made her oral ruling and requested that I draft the Order in accordance with her rulings. I drafted that Order.

Exhibit B is Memorandum Brief In Support Of Expedited Motion For Medical Treatment. I drafted that Memorandum Brief.

### **ESSAYS/PERSONAL STATEMENTS**

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

I have always viewed my practice of law from the perspective of service to others. My focus has been on meeting the legal needs of my clients to the best of my ability over personal gain. I view this judgeship as an opportunity to carry my service to others to another level. After practicing law for thirty-four years, I would enjoy the challenge of a shift in role from attorney to judge. I feel my legal experience and life experiences have helped prepare me for this position.

36. State any achievements or activities in which you have been involved that 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)*

On several occasions in recent years, I have provided pro bono representation to Petitioners in Conservatorship matters. In those cases, the Petitioners needed to establish Conservatorships for disabled persons, often children who were reaching the age of majority. Representing those persons pro bono gave them access to the court system which they otherwise may not have had. I drafted Wills, Advance Care Plans and Business Powers of Attorney pro bono for service members who were being deployed. I frequently reduce the mediation fees in circumstances where payment of my fee would create a financial burden on those participating in the mediation.

I have served as Guardian Ad Litem in numerous cases pro bono or for a substantially reduced fee.

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 the opening created by the retirement of Circuit Judge Jim T. Hamilton in the 22<sup>nd</sup> Judicial District. A significant amount of the court's time is expended on domestic relations matters. If selected, my serving as Judge would impact the court by adding a Judge who has extensive experience in domestic relations matters.

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 am involved in the Miracle League of Lawrence County. The Miracle League is a baseball league for person with disabilities. The players range in age from five years to sixty-seven years. I am a member of the Lawrenceburg Rotary Club. I have been a Rotarian for thirty-two years and served as President in 1989-90. I donate annually to the Boy Scouts of America, area schools, the Fellowship of Christian Athletes, the American Heart Association, the Legal Aid Society, CASA of Maury County, and the Tennessee Bar Foundation. I would continue to support these community and charitable activities.

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

My wife, Kaye, and I are the caregivers for my sister, Darlene Allen, who suffers from mental retardation and cerebral palsy. Darlene has lived with us for the last seven and a half years. She is sixty-seven years old. She needs assistance with many of her activities of daily living, including dressing, bathing, wiping herself after using the bathroom, and cutting her food. Caring for her is a labor of love. She enriches our lives. Caring for her keeps us grounded and is a daily reminder of what is truly important and precious in this life.

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)*

I will uphold the law, even if I disagree with the substance of the law at issue. In my practice of law, I have not had to deal with a situation where I was faced with having to uphold the law or rule that I disagreed with. Nonetheless, if ever faced with that situation, I would uphold the law.

**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 Council or someone on its behalf may contact these persons regarding your application.

A. Dr. Virgil Crowder,
B. Circuit Judge Robert L. Jones, 20 Public Square, P.O. Box 462, Columbia, TN 38402; (931) 540-2458.
C. Jason Whatley, Attorney at Law, 29 Public Square, Columbia, TN 38401; (931) 388-4288.
D. Randy Hillhouse, Attorney at Law, P.O. Box 787, Lawrenceburg, TN 38464; (931) 762-1400.
E. Tommy Lee Kidd,

**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 for the 22<sup>nd</sup> Judicial Circuit of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, 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 Council 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 Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature

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



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS  
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 Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

David L. Allen  
Type or Print Name

David L. Allen  
Signature

February 24, 2015  
Date

#9329  
BPR #

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

Alabama # ASB-9028-L55D

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# EXHIBIT A

IN THE CHANCERY COURT FOR LAWRENCE COUNTY, TENNESSEE

IN RE: JACEON MALIEK SMITH, ) Case No. 13-16121  
DOB 06/17/2011, A MALE CHILD and )  
JAXON MARCELLE SMITH, )  
DOB 06/17/2011, A MALE CHILD )  
By: )  
MATTHEW HERMAN DUNKIN and )  
ASHLEY ARGO DUNKIN )  
Petitioners )  
Vs. )  
MARCUS RANKINS )  
Defendant )  
and )  
THE TENNESSEE DEPARTMENT OF )  
CHILDREN'S SERVICES, *IN* )  
*LOCO PARENTIS* )  
Defendant )

**ORDER GRANTING SANCTIONS**

**AND**

**DISMISSAL OF DCS MOTION TO INTERVENE**

**AND**

**ORDER GRANTING TERMINATION OF PARENTAL RIGHTS**

This matter came on to be heard on the 24<sup>th</sup> day of March 2014, upon the Motion For Sanctions, the Petition For Termination of Parental Rights, the Default against Defendant Marcus Rankins Pursuant to TRCP 37.02(C), the testimony of witnesses in open court, statements and argument of counsel, and the record; from all of which the Court finds that Petitioners have carried their burden of proof by clear and convincing evidence that one or more statutory

grounds for termination exist and by clear and convincing evidence that termination of Defendant's parental rights is in the best interest of the children.

### **The Motion For Sanctions**

The Court makes the following findings relating to the Motion for Sanctions:

Petitioners Matthew Herman Dunkin and Ashley Argo Dunkin served Interrogatories and Requests for Production of Documents on Defendant Marcus Rankins on December 12, 2013.

On January 13, 2014, a letter was sent to counsel for Defendant Marcus Rankins requesting Interrogatory answers and responses to the Request for Production of Documents.

That when Defendant Marcus Rankins continued to fail to answer Interrogatories and Request for Production of Documents, a Motion to Compel Discovery was filed February 18, 2014, and heard on February 25, 2014.

At the hearing on February 25, 2014, Defendant Marcus Rankins was ordered to respond to Petitioners' Interrogatories and Requests for Production of Documents by March 11, 2014, and that if Defendant Marcus Rankins failed to respond to said Interrogatories and Requests for Production of Documents by March 11, 2014, this matter shall be set for a hearing for sanctions on March 24, 2104, at 1:00 p.m. at the Maury County Courthouse in Columbia, Tennessee.

That Defendant Marcus Rankins failed to respond Petitioners' Interrogatories and Requests for Production of Documents by March 11, 2014.

Further, Defendant Marcus Rankins failed to respond to Petitioners' Interrogatories and Requests for Production of Documents on March 24, 2014, the date of the hearing for sanctions.

That Defendant Marcus Rankins had over three months in which to answer said Interrogatories and respond to said Request for Production of Documents, yet he failed to do so.

That sanctions against Defendant Marcus Rankins are appropriate for his failure to answer Interrogatories and respond to the Request for Production of Documents.

That the Order Granting Motion To Compel and Order Setting Hearing For Sanctions For Failure To Answer Interrogatories and Request For Production of Documents stated that default judgment is a sanction this Court may Order.

That Counsel for Defendant Marcus Rankins notified Defendant of the hearing date and time for the hearing relating to sanctions; that the letter was very clear as to the significance of said hearing; that said letter was a very blunt letter that included much bold print stressing the seriousness of the hearing and sanctions; that the letter was mailed by first class mail to the address

that Defendant Marcus Rankins provided to his Counsel; that said letter was not returned as undelivered; and that Counsel for Defendant Marcus Rankins has successfully sent mail to Defendant Marcus Rankins at that address in the past.

The Court finds that Defendant Marcus Rankins knew of the hearing date and time; that Defendant Marcus Rankins knew or should have known that among the sanctions the Court may Order was the granting of default against him; that Counsel for Marcus Rankins acted with due diligence in notifying Defendant hearing date and time and of the seriousness of the consequences of the sanctions; that Defendant Marcus Rankins nonetheless still failed to answer the interrogatories and respond to the request for production of documents; and that Defendant Marcus Rankins did not appear at the hearing.

The Court finds that the appropriate sanction in this cause is for the Court to grant a default judgment against Defendant Marcus Rankins based on Tennessee Rule of Civil Procedure 37.02(C).

#### **The Department of Children's Services Motion To Intervene**

The Court makes the following findings relating to the Department of Children's Services Motion To Intervene:

The Department of Children's Services had previously filed a Motion To Intervene, but has, as of this date, not yet filed its Petition To Intervene.

The Department in open Court moved the Court to dismiss their Motion To Intervene and the Court finds that it should dismiss the Department's Motion To Intervene without prejudice.

#### **Testimony of Witnesses**

Two witnesses testified, Ashley Argo Dunkin and Matthew Herman Dunkin.

The Court finds the following:

Ashley Argo Dunkin testified that she is the Juvenile Court Magistrate for Lawrence County, Tennessee. She further testified that Defendant Marcus Rankins is the biological father of Jaceon Maliek Smith and Jaxon Marcelle Smith. Said minor children were born on June 17, 2011, in Lawrenceburg, Lawrence County, Tennessee.

Petitioners, Matthew Herman Dunkin and Ashley Argo Dunkin, are resident citizens of Lawrence County, Tennessee, and have had actual physical custody of said minor children from July 7, 2011, continuously through the present.



Petitioners, Matthew Herman Dunkin and Ashley Argo Dunkin are the prospective adoptive parents of Jaceon Maliek Smith and Jaxon Marcelle Smith and desire to adopt said children.

Jaceon Maliek Smith's present address is 241 Caperton Avenue, Lawrenceburg, Tennessee in Lawrence County, Tennessee. Jaxon Marcelle Smith's present address is 241 Caperton Avenue, Lawrenceburg, Tennessee in Lawrence County, Tennessee.

Petitioners Matthew Herman Dunkin and Ashley Argo Dunkin received physical care of the twins on July 7, 2011.

Defendant Marcus Rankins was given the opportunity to visit with the children, but he chose not to visit them. Defendant Marcus Rankins never visited the children.

Defendant Marcus Rankins never paid support to Petitioners.

According to Defendant Marcus Rankins' Facebook page, Defendant Marcus Rankins is presently employed at IBEX Global.

Initially, the biological mother named Demontre Smith as the father of said children, but he was proven not to be the father through DNA testing.

The biological Mother testified during court proceedings to terminate her parental rights at an October 2012 hearing that Marcus Rankins was the biological father of the twins and that she believed that he was incarcerated in the Maury County Jail.

During court proceedings to terminate the biological mother's parental rights, Defendant Marcus Rankins testified under oath on November 27, 2012, that if Demontre Smith was not the biological father of these children, then he was the father. DNA results from December, 2012, confirmed that Defendant Marcus Rankins was the biological father of Jaceon Maliek Smith and Jaxon Marcelle Smith. Defendant Marcus Rankins did not file a Petition to establish paternity of said children within thirty (30) days after notice of alleged paternity by the child's mother.

During that same court proceeding to terminate the biological mother's parental rights, Defendant Marcus Rankins testified, under oath, that he knew the biological mother was pregnant and that the children could possibly be his biologically. He testified that he asked her during the pregnancy about the parentage of the children, and that she told him they were not his. However, Defendant Marcus Rankins testified that he knew that, despite what the Mother had told him, the children could be his biologically. Despite knowing during the biological mother's

pregnancy that he could be the biological father of these children, Defendant Marcus Rankins did not file a petition to establish paternity of the children.

Defendant Marcus Rankins was incarcerated at the time of the biological mother's November 27, 2012, hearing and was released from jail on June 17, 2013. Defendant Marcus Rankins was incarcerated on January 8, 2013, the date that this Petition For Termination Of Parental Rights.

That Defendant Marcus Rankins has the following criminal history (See Exhibit 1):

<u>Charge</u>	<u>Violation Date</u>	<u>Disposition</u>
Criminal Impersonation	04/29/2007	Dismissed
Fugitive from Justice	04/29/2007	Dismissed
Theft (up to \$500) - Attempt	04/23/2008	Guilty
Driving While License Suspended	04/23/2008	Dismissed
Theft (up to \$500) - Attempt	06/25/2008	Guilty
Simple Poss/Casual Exchange	12/08/2008	Guilty Plea
Criminal Impersonation	12/08/2008	Dismissed
Simple Poss/Casual Exchange	02/24/2009	Dismissed
Poss Unlaw Drug Paraphernalia Uses & Activities	02/24/2009	Dismissed
Driving While License Suspended	02/24/2009	Dismissed
Simple Poss/Casual Exchange	04/14/2009	Convicted of Lesser Charge
Contempt of Court – In Presence of Court	11/06/2009	Guilty
Contempt of Court	11/06/2009	Guilty
Domestic Assault	11/17/2009	Guilty
Probation Violation	10/05/2010	Probation Revoked
Driving While License Suspended	10/21/2010	Dismissed
Theft (up to \$500) - Attempt	11/24/2010	Guilty
Driving While License Suspended	11/27/2010	Dismissed
Simple Poss/Casual Exchange	11/27/2010	Dismissed
Driving While License Suspended	12/19/2010	Dismissed
DUI By Allowing	01/07/2011	Guilty Plea

Contempt of Court	01/13/2011	Dismissed
Contempt of Court	01/13/2011	Dismissed
Contempt of Court	01/13/2011	Dismissed
Contempt of Court	01/18/2011	Dismissed
Contempt of Court	01/18/2011	Dismissed
Contempt of Court	02/15/2011	Dismissed
Burglary – Auto - Attempt	03/15/2011	Guilty Plea-Lesser Charge
Probation Violation	04/05/2012	Probation Revoked
Probation Violation	04/05/2012	Probation Revoked
Probation Violation	04/05/2012	Probation Revoked
Theft (up to \$500)	05/03/2012	Guilty
Identity Theft	05/03/2012	Dismissed
Forgery	05/03/2012	Dismissed
Simple Poss/Casual Exchange	11/18/2012	Guilty
Theft of Property - \$1,000-\$10,000	08/26/2013	

The Court rules that on the issue of wantonness it will only consider criminal conduct that occurred from the date of the children’s birth forward.

Petitioners Matthew Herman Dunkin and Ashley Argo Dunkin are not aware of when Defendant Marcus Rankins became incarcerated.

Petitioners Matthew Herman Dunkin and Ashley Argo Dunkin are the only parents the children have ever known. The children are very attached to the Petitioners Matthew Herman Dunkin and Ashley Argo Dunkin and know them as Mom and Dad.

The children have a large support network and are well attached to the Petitioner's immediate and extended family. Petitioners Matthew Herman Dunkin and Ashley Argo Dunkin have provided all care for the children since July 7, 2011.

Petitioners Matthew Herman Dunkin and Ashley Argo Dunkin are ready, willing, and able to care for the children financially and emotionally. Removing the children from the home of the Petitioners Matthew Herman Dunkin and Ashley Argo Dunkin, in their opinion, would be terribly detrimental and akin to a death.

Petitioner Matthew Herman Dunkin testified that he is an attorney in private practice. He and Ashley Argo Dunkin have been the sole providers and sole care givers for these children since the children came into their home. He stated that he and his wife have the financial ability to properly care for these children. That the children have bonded well in their home; that they are loved and well cared for; that they have a strong base of family support; that the children have bonded with their extended family; that his and Ashley Argo Dunkin's home is the only home these children have ever known; and that he and Ashley Argo Dunkin are the only parental figures these children have ever known. He stated it would be devastating to these children to be removed from their home.

### **STATUTORY GROUNDS FOR TERMINATION**

The Court finds that the following grounds for termination of parental rights of Defendant Marcus Rankins are present in this case:

Defendant, Marcus Rankins, has abandoned said minor children in that he, for a period of four (4) consecutive months immediately preceding his being incarcerated and preceding the filing of this Petition For Termination of Parental Rights, has willfully failed to visit or willfully failed to support or make reasonable payments toward the support of said minor children.

The Defendant Marcus Rankins has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the children in accordance with the child support guidelines promulgated by the department pursuant to § 36-5-101;

The Defendant Marcus Rankins is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to support or has willfully failed to make reasonable payments toward the support of the children for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the Defendant has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the children, as defined in § 36-1-102(1)(A)(iv);

The Defendant Marcus Rankins has failed to file a petition to establish paternity of the children within thirty (30) days after notice of alleged paternity by the children's mother, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(3);

### **CONCLUSIONS OF LAW**

The Petition for Termination of Parental Rights and for Adoption was filed in this matter on January 8, 2013.

Defendant Marcus Rankins is not a legal father of Jaceon Maliek Smith and Jaxon Marcelle Smith.

The Court has had the opportunity to observe the witnesses testifying and to observe their demeanor. The Court finds Petitioner Matthew Herman Dunkin and Petitioner Ashley Argo Dunkin to be credible witnesses. Defendant Marcus Rankins did not attend the hearing.

Father is presumed by law to have knowledge of his financial responsibilities to the children, and the father by clear and convincing evidence failed to willfully support these children.

**Defendant Marcus Rankins has failed to file a petition to establish paternity of the children within thirty (30) days after notice of alleged paternity by the children's mother, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(3).**

During court proceedings to terminate the biological mother's parental rights, Defendant Marcus Rankins testified under oath on November 27, 2012, that if Demontre Smith was not the biological father of these children, then he was the father. DNA results from December, 2012, confirmed that Defendant Marcus Rankins was the biological father of Jaceon Maliek Smith and Jaxon Marcelle Smith. Defendant Marcus Rankins did not file a Petition to establish paternity of said children within thirty (30) days after notice of alleged paternity by the child's mother. Defendant Marcus Rankins knew on November 27, 2012, that the birth mother stated that he was the biological father of said children. Therefore, Defendant Marcus Rankins had until December 27, 2012, to file a Petition to establish paternity. Defendant Marcus Rankins did not file said Petition to establish paternity.

The Court finds by clear and convincing evidence that Petitioners Matthew Herman Dunkin and Ashley Argo Dunkin have proven this ground in that Defendant Marcus Rankins has failed to file a Petition to establish paternity of the children within thirty (30) days after notice of alleged paternity by the child's mother.

**Defendant Marcus Rankins has abandoned said minor children in that he, for a period of four (4) consecutive months immediately preceding his being incarcerated and preceding the filing of this Petition For Termination of Parental Rights, has willfully failed to visit or willfully failed to support or make reasonable payments toward the support of said minor children.**

The Court finds that Exhibit 1, a certified copy of Defendant Marcus Rankins' criminal history, shows that Defendant Marcus Rankins' probation was revoked on April 5, 2012. Thus, Defendant Marcus Rankins was on probation prior to April 5, 2012. Therefore, the relevant time period in this case is the four months from December 5, 2011 until April 5, 2012. The proof is undisputed that Defendant Marcus Rankins did not visit with said minor children at all. The proof is also undisputed that Defendant Marcus Rankins paid no child support for these children. The Court finds that Petitioners have proven this ground by clear and convincing evidence.

**The Defendant Marcus Rankins is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to support or has willfully failed to make reasonable payments toward the support of the children for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the Defendant has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the children, as defined in § 36-1-102(1)(A)(iv).**

Defendant Marcus Rankins has an extensive history of criminal conduct prior to his latest incarceration, including probation violations, repeated incarcerations, criminal behavior, substance abuse, and the failure to provide adequate support for said minor children. See Exhibit 1. Defendant Marcus Rankins' choice of a lifestyle of criminal conduct put him at risk for incarcerations and did in fact result in incarcerations. This Court notes that the Court of Appeals has repeatedly held that "probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can, alone or in combination, constitute conduct that exhibits a wanton disregard for the welfare of a child". See In re Audrey S., 182 S.W. 3d (Tenn. App. 2005). The Court finds by clear and convincing evidence that Defendant Marcus Rankins pre-incarceration conduct displayed a wanton disregard for the welfare of these children.

**The Defendant Marcus Rankins has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the children in accordance with the child support guidelines promulgated by the department pursuant to § 36-5-101.**

Defendant Marcus Rankins has never paid a penny in child support. Therefore, the Court finds by clear and convincing evidence that Defendant Marcus Rankins has failed to pay child support for said minor children consistent with the child support guidelines. This ground is proven by clear and convincing evidence.

**BEST INTEREST OF THE CHILDREN**

The Court finds by clear and convincing evidence that termination of Defendant Marcus Rankins' parent rights is in the best interest of the children. Pursuant to Tennessee Code Annotated Sections 36-1-113(i), the Court has considered the following statutory provisions and makes the following conclusions:

**(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the children's best interest to be in the home of the parent or guardian;**

The Court finds by clear and convincing evidence that Defendant Marcus Rankins has not made such an adjustment of conduct as to make it safe and in the children's best interest to be in his home. Defendant Marcus Rankins has chosen a lifestyle of criminal type conduct. The Court is satisfied that it is not likely that Defendant Marcus Rankins will change his lifestyle. The Court observes that even though Defendant Marcus Rankins was incarcerated when this Petition To Terminate Parental Rights was filed on January 8, 2013, and remained incarcerated until June 17, 2013, within only a few weeks of his being released from an extended custody, he was charged on August 26, 2013, with theft over \$1,000.00 in violation of T.C. A. §36-14-103.

**(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;**

The Court finds this factor is not relevant.

**(3) Whether the parent or guardian has maintained regular visitation or other contact with the children;**

Defendant Marcus Rankins had the opportunity to maintain regular visitation or other contact with the children. However, the uncontroverted proof at trial was that even though he had the opportunity to visit, Defendant Marcus Rankins chose not to take the opportunity to visit

with these children. Defendant Marcus Rankins has no relationship with these children. The Court also finds it very telling that earlier in this case Defendant Marcus Rankins filed a Motion for Visitation; however, Defendant Marcus Rankins failed to appear at the hearing on his Motion for Visitation. The Court finds by clear and convincing evidence that Defendant Marcus Rankins has willfully failed to maintain regular visitation or contact with said minor children.

**(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the children;**

Defendant Marcus Rankins has not established or maintained a meaningful relationship with these children. He has never seen these children. Defendant Marcus Rankins is a stranger to these children.

**(5) The effect a change of caretakers and physical environment is likely to have on the children's emotional, psychological and medical condition;**

The proof is undisputed that the minor children are thriving in the home of Petitioners Matthew Herman Dunkin and Ashley Argo Dunkin. The children have bonded with said Petitioners, are well cared for and are happy. The children have integrated beautifully with their extended family. The children have resided in Petitioners' home for almost twenty-nine (29) months of their thirty (30) months of life. The Dunkins' home is the only home these children have ever cognitively known. The Dunkins' are the only parental figures that these minor children have ever cognitively known. A change of caretakers would have a detrimental effect, even a devastating effect, on said children.

The Court finds by clear and convincing evidence that a change of caretakers and physical environment is likely to have a detrimental effect on the children's emotional and psychological condition.

**(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the children, or another child or adult in the family or household;**

This factor does not apply.

**(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol,**



**controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the children in a safe and stable manner;**

Defendant Marcus Rankins, as proven by his criminal record, uses and abuses illegal drugs.

**(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the children or prevent the parent or guardian from effectively providing safe and stable care and supervision for the children; or**

Based upon Defendant Marcus Rankins' criminal history, his mental and/or emotional status would be detrimental to said children and prevent him from effectively providing safe and stable care and supervision for the children.

**(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to TCA Section 36-5-101.**

Defendant Marcus Rankins has never paid a penny in child support. Therefore, the Court finds by clear and convincing evidence that Defendant Marcus Rankins has failed to pay child support for said minor children consistent with the child support guidelines.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

Based upon the testimony of witnesses and the record, Petitioners, Matthew Herman Dunkin and Ashley Argo Dunkin, have carried their burden of proof and have proven their grounds to terminate parental rights by clear and convincing evidence and have proven by clear and convincing evidence that it is in the best interest of the children that the parental rights of Defendant Marcus Rankins be terminated.

It is accordingly, ORDERED by the Court that the parental rights of Defendant, Marcus Rankins, shall be, and are hereby terminated.

That the appropriate sanction in this cause is for this Court to grant a default judgment against Defendant Marcus Rankins based on Tennessee Rule of Civil Procedure 36.02(C), and the Court hereby does grant said default against Defendant Marcus Rankins based on Tennessee Rule of Civil Procedure 36.02(C).

That the Court dismisses the Department's Motion To Intervene without prejudice.

That all of the parental rights of Defendant, Marcus Rankins, as to the minor children, Jaceon Maliek Smith and Jaxon Marcelle Smith, are hereby forever terminated.

That this decree shall have the effect of terminating all the rights, responsibilities, and obligations of Defendant, Marcus Rankins, to the minor children, Jaceon Maliek Smith and Jaxon Marcelle Smith, and of the minor children, Jaceon Maliek Smith and Jaxon Marcelle Smith, to Defendant, Marcus Rankins, arising from the parental relationship.

That Defendant, Marcus Rankins, shall no further right to notice of proceedings for the adoption of the minor children, Jaceon Maliek Smith and Jaxon Marcelle Smith, shall have no right to object to the children's adoption, and shall have no relationship, legal or otherwise, with the children.

That the complete custody, control and partial guardianship of the minor children, Jaceon Maliek Smith and Jaxon Marcelle Smith, is hereby awarded to the State of Tennessee, Department of Children's Services, with the right to place them for adoption and to consent to such adoption in loco parentis.

That the Guardian Ad Litem, Cara E. Lynn, and attorney for Defendant, Seth M. Lasater, are awarded a fee taxed to the Administrative Office of the Courts, upon a finding that Defendant Marcus Rankins is indigent for the purpose of paying counsel.

That there is no just reason for delay of entry of a final Order terminating the parental rights of Defendant, Marcus Rankins. Therefore, pursuant to Tennessee Rules of Civil Procedure 54.02, because there is no just reason for delay, entry of judgment as to the Defendant, Marcus Rankins, is directed. Accordingly, this is a final Order as to the Defendant Marcus Rankins and is immediately appealable as of right to the Court of Appeals pursuant to Tennessee R. App. 3(a). Any appeal of the trial Court's final disposition of the Complaint or Petition For Termination of Parental Rights will be governed by the provisions of the Rule 8A, Tennessee Rules of Appellate Procedure, which imposes special time limitations for the filing of a transcript or statement of the evidence, the completion and transmission of the record on appeal, and the filing of briefs in the appellate Court, as well as other special provisions for expediting the appeal. All parties must review Rule 8A, Tennessee Rules of Appellate Procedure, for information concerning the special provisions that apply to any appeal of this case.

ENTERED this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Chancellor

# **EXHIBIT B**

IN THE CHANCERY COURT FOR GILES COUNTY, TENNESSEE

GUY E. MILLER )  
 )  
 Plaintiff )  
 )  
 Vs. ) Case No. 8704  
 )  
 EDWARDS XPRESS, INC., and )  
 AETNA LIFE AND CASUALTY )  
 INSURANCE COMPANY )  
 )  
 Defendants )

**MEMORANDUM BRIEF IN SUPPORT OF EXPEDITED  
MOTION FOR MEDICAL TREATMENT**

Comes now GUY E. MILLER, by and through counsel, and for his Memorandum Brief in support of his Expedited Motion For Medical Treatment would state unto the court as follows:

On May 8, 1995, GUY E. MILLER was awarded worker's compensation permanent total benefits with open medicals. Pursuant to said Order, Defendants were ordered to continue to pay reasonable and necessary medical expenses and solely attributable to the subject injury *consistent with T.C.A. § 50-6-204*, (emphasis added) with all such expenses to be pre-approved and authorized by Aetna, and said treatment to be furnished by Dr. Jeffery T. Adams or the physician designated by Aetna and chosen by Plaintiff.

Dr. Jeffery T. Adams has opined that Plaintiff's right shoulder and need for surgery is directly related to Plaintiff's left shoulder injury. However, Defendants EDWARDS XPRESS, INC., and AETNA LIFE AND CASUALTY INSURANCE COMPANY have failed and refused to authorize said treatment for Plaintiff although GUIY E. MILLER was awarded open medicals on May 8, 1995. Finally, GUY E. MILLER also asks that the court Order Defendants EDWARDS

XPRESS, INC., and AETNA LIFE AND CASUALTY INSURANCE COMPANY to pay Plaintiff's attorney of record a reasonable attorney fee for work relating to this matter.

In his deposition, Dr. Adams' succinctly stated the reason GUY E. MILLER now needs surgery on his right shoulder.

11           You know, I think that -- the reason I think  
12   there is -- is **definitely a relation between the two**  
13   **is because he's had to basically use his right arm**  
14   **for most of this 14 years because he's had four major**  
15   **left shoulder surgeries. (emphasis added)**

Deposition of Dr. Jeffrey Adams  
P. 22  
L. 11-15

The following is an excerpt of the controlling statute, T.C.A. § 50-6-204.

**§ 50-6-204. Medical care and treatment; burial expenses; physical examinations**

(a)(1) **The employer** or the employer's agent **shall furnish free of charge to the employee such medical and surgical treatment**, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus, including prescription eyeglasses and eye wear, such nursing services or psychological services **as ordered by the attending physician** and hospitalization, including such dental work made reasonably necessary by accident as defined in this chapter, **as may be reasonably required**; provided, that within thirty (30) days after examination or treatment of an employee, a physician shall, upon request, furnish to the employer or to the employer's insurer and to the employee or the employee's attorney a complete medical report at a charge not to exceed ten dollars (\$10.00) for reports twenty (20) pages or less in length and twenty- five cents (25¢) per page for each page copied after the first twenty (20) pages, as to the claimed injury, its effect upon the employee, the medical treatment prescribed, an estimate of the duration of required hospitalization, if any, and an itemized statement of charges for medical services to date. If an employer or an insurer has not previously requested copies of such records from a physician or hospital, then an attorney for an employer may request such records under this subdivision (a)(1). (emphasis added)

The Plaintiff has met all the requirements of the T.C.A. § 50-60-204. Dr. Jeffrey Adams is the attending physician. Dr. Jeffrey Adams has ordered right shoulder surgery for GUY E. MILLER. The right shoulder surgery is reasonably required.

Dr. Adams opined that the need for surgery to GUY E. MILLER'S *right* shoulder is **directly related** to his *left* shoulder injury.

- 25 Q. Dr. Adams, in your opinion based upon a
- 1 reasonable degree of medical certainty, is the need
  - 2 for surgery to Guy Miller's right shoulder directly
  - 3 related to his left shoulder injury?
- 4 A. Yes.

Deposition of Dr. Jeffrey Adams

P. 30

L. 25

and

P. 31

L. 1-4

Dr. Adams opined that the surgery that GUY E. MILLER needs on his *right* shoulder is **reasonably required** as a result of his *left* shoulder injury.

- 5 Q. Dr. Adams, in your opinion based upon a
- 6 reasonable degree of medical certainty, is the
  - 7 surgery that Guy Miller needs on his right shoulder
  - 8 reasonably required as a result of his left shoulder
  - 9 injury?
- 10 A. Yes.

Deposition of Dr. Jeffrey Adams  
P. 31  
L. 5-10

Dr. Adams opined that the surgery that GUY E. MILLER needs on his *right* shoulder is **necessary** as a result of his *left* shoulder injury.

11 Q. Dr. Adams, in your opinion based upon a  
12 reasonable degree of medical certainty, is the  
13 surgery that Guy Miller needs on his right shoulder  
14 necessary as a result of his left shoulder injury?

15 A. Yes.

Deposition of Dr. Jeffrey Adams  
P. 31  
L. 11-15

GUY E. MILLER testified in his deposition that at the time of his initial work related injury he was left handed and he had to learn to do everything right handed.

21 A. I'm having the popping and grinding in the  
22 right shoulder. I have had it ever -- after this  
23 surgery I was left-handed. I was totally left-handed.  
24 And I had to learn to do everything right-handed. And  
25 then after that is when all of this with my right  
1 shoulder started.

Deposition of Guy E. Miller  
P. 23  
L. 21-25  
P. 24  
L. 1

GUY E. MILLER testified in his deposition that he has had no new injuries since November 1993, the date of his initial work related injury.

15 Q. Since November of 1993, have you had any other  
16 injuries?

17 A. No.

18 Q. No falls or accidents or anything?

19 A. No.

Deposition of Guy E. Miller  
P. 24  
L. 15-19

T.C.A. § 50-6-204 allows for the award of attorneys fees and reasonable costs incurred by the injured worker if the employer fails to furnish appropriate medical and surgical treatment.

T. C. A. § 50-6-204

(2) In addition to any attorney fees provided for pursuant to the provisions of § 50-6-226, a court may award attorney fees and reasonable costs to include reasonable and necessary court reporter expenses and expert witness fees for depositions and trials incurred when the employer fails to furnish appropriate medical, surgical and dental treatment or care, medicine, medical and surgical supplies, crutches, artificial members and other apparatus to an employee provided for pursuant to a settlement or judgment under this chapter.

The Plaintiff, GUY E. MILLER, requests that his attorney fees and reasonable costs be awarded in this cause. TCA § 50-6-226 authorizes the Court to make such an award. Those expenses and fees are as follows:

Elite Reporting Services  
Deposition of Dr. Jeffrey T. Adams  
\$156.40  
See attached statement.

Accredited Court Reporting  
Deposition of Guy E. Miller  
\$126.00



See attached statement.

David L. Allen  
Attorney fee  
\$2,415.00  
See Attached affidavit.

If the Court feels it is called upon to interpret the term “solely attributable”, GUY E. MILLER contends that the term “solely attributable” means that the injury for which medical treatment is sought must have been the result of the initial injury and not the result of a new accident or illness. In this case, GUY E. MILLER was granted open medicals that were reasonable and necessary medical expenses and solely attributable to the subject injury *consistent with T.C.A. § 50-6-204*.

In interpreting T.C.A. § 50-6-204, Stephens v. Hensley’s Supply and Industry, Inc., 2 S.W.3d 178 (1999), states that under the Workers' Compensation Act, the employee is entitled to recover **any reasonable and necessary medical expenses in the future which may be incurred as a result** of a compensable injury. T.C.A. § 50-6-204. Stephens v. Henley's Supply and Industry, Inc., 2 S.W.3d 178 (1999) and Roark v. Liberty Mutual Ins. Co., 793 S.W.2d 932 (1990). The Order in GUY E. MILLER’S case specifically stated that it is to be applied **“consistent with T.C.A. § 50-6-204”**. (emphasis added)

If the language of the Order is required to be construed by the Court, the Court must construe the language of the Order in the light most favorable to the injured worker.

50-6-116. Construction of chapter.

The rule of common law requiring strict construction of statutes in derogation of common law shall not be applicable to the provisions of the Workers' Compensation Law, but the same is declared to be a remedial statute which shall be **given an equitable construction** by the courts, to the end that the objects and purposes of this chapter may be realized and attained. (emphasis added)

History

[Acts 1919, ch. 123, § 47; Shan. Supp., § 3608a197; Code 1932, § 6901; impl. am. Acts 1980, ch. 534, § 1; T.C.A. (orig. ed.) § 50-918.]

Even where the evidence allows inferences which could support the contention of either party, the court is bound by the strong public policy, as enunciated in this section, to **resolve doubts and conflicts in favor of the claimant**. Wheeler v. Glens Falls Ins. Co., 513 S.W.2d 179 (Tenn. 1974).

If there is a conflict between the language of the statute and the language in the Order, the language in the statute takes priority over the language in the Order.

Respectfully submitted,

---

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