

IN THE SUPREME COURT OF TENNESSEE

FILED

February 24, 2000

(Certified Mail 2/22/00)

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

VS.

No. M1999-01313-SC-DPE-PD

ROBERT GLEN COE

**MOTION FOR SUPREME COURT TO RECUSE
ITSELF FROM HEARING THIS CASE, ALTERNATIVELY MOTION TO DISQUALIFY
STATE ATTORNEY GENERAL'S OFFICE DUE TO INHERENT CONFLICT
BETWEEN SUPREME COURT AND ATTORNEY GENERAL**

COMES NOW your appellant, Robert Coe, through his undersigned counsel of record, and moves this Court pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Ford v. Wainwright 477 U.S. 399 (1986) to recuse itself from further proceedings in this hearing, or alternatively to recuse the entire State Attorney General's Office from further proceeding in this case, due to the unconstitutional relationship between the State Supreme Court and the Attorney General. In support of his motion, Mr. Coe would show to the Court as follows:

The Tennessee Attorney General and Reporter is a political appointee of the Supreme Court of the State of Tennessee.

1. Tennessee is the only state in the union wherein the Supreme Court of the state decides who will be Attorney General, and consequently who will prosecute criminal

appeals before it.¹ Specifically, Tennessee Constitution Article VI, Section 5 provides in relevant part as follows:

An Attorney General Reporter for the State shall be appointed by the Judges of the Supreme Court and shall hold office for a term of eight years . . .

(See also T.C.A. § 8-6-101).

2. Furthermore, the Attorney General is paid a salary equivalent to that of an Associate Justice of the Supreme Court. (See T.C.A. § 8-6-104).

3. The Tennessee Supreme Court is given no constitutional or statutory guidelines as to how to select who should be Attorney General for the State of Tennessee. Thus, the appointment is purely a political appointment, for which the recipient of the highly lucrative position is awarded to the attorney the Supreme Court Justices “like.” As such an appointment to be the Tennessee Attorney General is not a judicial function *per se* wherein the Court is applying law to resolve a particular issue, and it is also not a routine

¹All other states either elect the State Attorney General, or the position is filled by executive appointment:

Alabama (general election), Ala. Const. Art. V, § 114; Alaska (appointed by governor), Alaska Const. Art. III § 25, AS 44.23.010; Arizona (general election), A.R.S. Const. Art. 5 § 1; Arkansas (general election), AR. Const. Sched. § 3; California (general election), CA. Const. 1849 Art. 5, § 18; Colorado (general election), CO. Const. Art. 4 § 1; Connecticut (general election), CT. ST s 3-124; Delaware (general election), DE. Const., Art. 3 § 21; Florida (general election), FL. Const. Art. 4 § 5; Georgia (general election), GA. Const. Art. 5 § 3, PI; Hawaii (appointed by governor) HRS 26-31 (1997); Idaho (general election), ID ST s 34-612; Illinois (general election), IL ST. CH 10 § 5/2A-5; Indiana (general election), IN ST 4-6-1-2; Iowa (general election), IA Const. Art. 5, § 12; Kansas (general election), KS ST § 25-101a; Kentucky (general election), KY Const. § 95; Louisiana (general election), LA Const. Art. 4 § 3; Maine (general election), ME ST T. 5 § 191-A; Maryland (general election), MD Const. Art. 5 § 1; Massachusetts (general election), MA Const. Amend. Art. 64 § 3; Michigan (general election), MI ST 168.76; Minnesota (general election), MN Const. Art. 5 § 1; Mississippi (general election), MS Const. Art. 6 § 173; Missouri (general election), MO ST 27.010; Montana (general election), MT Const. Art. 6 § 2; Nebraska (general election), NE ST § 32-507; Nevada (general election), NV ST 228.020; New Hampshire (appointed by governor) RSA Const. Pt. 2, Art. 46 (1997); New Mexico (general election), NM Const. Art. 5 § 1; New Jersey (appointed by Governor), NJ Const. Art. 5 § 4; New York (general election), NY Const. Art. 5 § 1; North Carolina (general election), NC Const. Art. 3 § 7; North Dakota (general election), ND Const. Art. 5 § 2; Ohio (general election), OH ST § 109.01; Oklahoma (general election), OK Const. Art. 6 § 4; Oregon (general election), OR ST § 180.020; Pennsylvania (general election), PA Const. Art. 4 § 4.1; Rhode Island (general election), RI ST § 17-2-1; South Carolina (general election), SC Const. Art. VI § 7; South Dakota (general election), SD Const. Art. 4 § 7; Texas (general election), TX Const. Art. 4 § 22; Utah (general election), UT Const. Art. 7 § 1; Vermont (general election), VT ST T. 3 § 151; Virginia (general election), VA Const. Art. 5 § 15; Washington (general election), WA ST 43.10.010; West Virginia (general election), WV Const. Art. 7 § 2; Wisconsin (general election), WI Const. Art. 6 § 1; Wyoming (appointed by governor) Wyo. Stat. § 9-1-601 (1998).

administrative function. Rather, the Tennessee Constitution grants a power to the Court to make a political appointment of an attorney to be Attorney General.

4. The Tennessee Attorney General, currently Mr. Paul Summers, prosecutes all criminal cases on appeal and before the Supreme Court in the state system.

The Fourteenth Amendment of the United States Constitution, due process clause is violated by the Supreme Court of the State of Tennessee, hearing capital cases on the merits, when the State Attorney General, a political appointee of the Supreme Court, argues before the Court in favor of the death penalty.

5. It is axiomatic that the due process clause of the Fourteenth Amendment grants the defendant a right to an unbiased and impartial judiciary.

The due process clause clearly requires a fair trial and a fair tribunal . . . before a judge with no actual bias against the defendant or interest in the outcome of the case.

Bracey v. Gramley, 520 U.S. _____, 117 S.Ct. 1793, 1797 (U.S. 1997).

6. Furthermore, Ford v. Wainwright 477 U.S. 399 (1986) requires that a competency to be executed proceeding comport with due process.

7. The fact that the State Attorney General, who prosecutes and seeks the death penalty on appeal before the Tennessee Supreme Court is a political appointee of the Tennessee Supreme Court violates due process as guaranteed by the U.S. Constitution. The Attorney General, being appointed politically, unquestionably raises an appearance of favoritism by the Supreme Court. After all, out the thousands of qualified lawyers in the State who could serve as Attorney General, no statutory or legislative criteria is given to the Supreme Court to determine who should be Attorney General, other than merely who the Justices of the Court want for the job. Thus, the Supreme Court would appear to be biased in favor of the arguments of the Attorney General, since he was selected by the Supreme Court to hold the office.

8. Additionally, because the Attorney General is dependent upon the Supreme Court for reappointment, the Attorney General is beholden to the Tennessee Supreme Court and is thus a defacto employee of the Court. After all, just as trial judges wish to get

re-elected by the public at large, and consequently campaign for re-election, the Attorney General depends on the good graces of the Supreme Court for reappointment. In essence, the Attorney General of the State is an employee of the Supreme Court, and since the Court's employee will take a position contrary to Mr. Coe's interest, the Court is not unbiased and impartial, and due process will not allow the Supreme Court and/or the Attorney General's Office to handle the case on appeal.

WHEREFORE, PREMISES CONSIDERED, Mr. Coe prays this Court enter an order declaring that the Attorney General's Office be disqualified and/or the Tennessee Supreme should recuse itself from hearing any issues in this case.

Mr. Coe further requests a special Supreme Court be appointed to rule upon this Motion.

Respectfully submitted,

GLANKLER BROWN, PLLC
1700 One Commerce Square
Memphis, Tennessee 38103
901/525-1322

By: _____
Robert L. Hutton #15496

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via U.S. regular mail, postage prepaid, this the ____ day of _____, 2000, to the following:

Glen Pruden
Office of the Attorney General
Criminal Division
425 Fifth Avenue North
Cordell Hull Building
Nashville, TN 37243-0493
