

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 87 (September 17, 2021) 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. 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.

The Council requests that applicants use the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original hard copy (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts as detailed in the application instructions. Additionally you must submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your original application, or the digital copy may be submitted via email to john.jefferson@tncourts.gov.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Chancellor of the Chancery Court of Tennessee sitting in the 29th Judicial District.

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

1998: **BPR number:** 019330

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

Bar number: 019330 **Date of Licensure:** December 14, 1998 **License status:** Active

Arizona

Bar Number: 19426 **Date of Licensure:** November 29, 2002 **License status:** Inactive: "Resigned in good standing." I resigned from the Arizona Bar in 2015 because I knew I would never practice in Arizona.

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 have never been denied admission, been suspended, or placed on inactive status by the Bar of any state. My Arizona Bar license is inactive, because I voluntarily resigned.

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).

Since completion of legal education in 1998:

September 1, 2008 to present: **Chancellor of the Chancery Court of Tennessee sitting in the 29th Judicial District. District presiding judge since 2009.**

September 1, 2006–August 28, 2008: **General Sessions, Juvenile, and Probate Judge for Dyer County, Tennessee.**

August 2000-August 31, 2006: **Staff Attorney, Western Section, Tennessee Court of Appeals.**

Fall 1999-August 2000: **Assistant Public Defender in the 26th Judicial District.**

2004-2005: **adjunct professor at Lambuth University, Jackson, Tennessee (course taught: business law).**

September 1, 2004-August 31, 2006: **Dyer County Board of Education, District D Representative.**

1995-present: **Farmer: I operate a small row crop farming operation. I am a fourth-generation farmer.**

Other occupations, businesses, and professions prior to completion of legal education:

I grew up in rural Dyer County, Tennessee, and, to varying degrees, I have worked on farms for as long as I can remember. After high school, I worked my way through college and law school, gaining many life skills while working with Tennesseans from diverse backgrounds and communities. I gained valuable experience working for a variety of employers. I worked at a local Tennessee Farmer's Co-op; a factory that manufactured rubber and rubber hoses (DANA); a plant that assembled and shipped gasoline pumps and parts (TOKHEIM); and a book distributor (PENGUIN USA). I also worked as a roofer and as part of a crew that laid asphalt. I umpired local baseball games, and served as a precinct captain for the Dyer County Election Commission. From 1989 until graduating law school in 1998, I worked as a Rural Letter Carrier Associate with the United States Postal Service. During law school, I worked as a research assistant for Professor Amanda Esquibel.

These employment experiences gave me more than just monetary compensation. They gave me valuable skills, and more importantly, life experiences with Tennesseans from many backgrounds and walks of life. These skills and experiences have been invaluable to me as a judge.

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.

I have no six month or longer periods of unemployment since completing my legal education.

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 judge in rural West Tennessee since 2006 and, therefore, am currently not engaged in the practice of law. As a state trial court judge from a rural area, I am called upon to preside over all types of cases. As chancellor, I hear primarily civil and domestic matters but have also presided over a number of criminal cases including attempted murder, assault, rape, drug, theft, burglary, and probation violations. I have reviewed hundreds of applications for search warrants. Most of my caseload consists of civil and domestic cases. I hear medical malpractice, contract, tort, real estate, workers' compensation, probate, guardianship/conservatorship, trust, contempt and domestic (divorce, child support, adoption, paternity, legitimation, termination of parental rights, orders of protection) cases. I also hear administrative appeals and appeals from juvenile and general sessions courts. Additionally, I have served on a number of the Tennessee Supreme Court's special workers' compensation appeals panels. My docket recently has been approximately 80% civil and 20% criminal, and it encompasses virtually every area of the law.

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 Court Experience:

From 1999 through August 2000, I worked as an assistant public defender in the 26th Judicial District. During that time, I represented adults in the general sessions and circuit courts, and I represented juveniles in juvenile courts. The adults whom I represented were charged with crimes ranging from misdemeanors to the highest classifications of felonies. The juveniles were charged with what are referred to in juvenile court as delinquent acts. Delinquent acts are actions that would be called crimes if they had been committed by an adult. I also represented clients on appeal to the Tennessee Court of Criminal Appeals.

As an assistant public defender, I was responsible for handling every aspect of these cases. At the beginning of my involvement with a case, I first would meet with my clients, which often occurred in a jail or prison. I would then try to locate and interview witnesses and investigate the circumstances of the charge. As the case progressed, I would file appropriate motions, and I would engage in plea negotiations with prosecutors. The results of these negotiations would

always be relayed to my clients. If a client decided to accept an offer in exchange for a guilty plea, I would fully advise my client of the ramifications of that decision before the plea was finalized. If a negotiated conclusion to the case could not be agreed upon, I would develop a trial strategy and prepare the case for trial. I would always contact the prosecutor before the trial date to see if the prosecutor had any last minute plea offers that needed to be relayed to my clients. I would fully advise my clients of the results of these communications. Cases would proceed to trial if they did not settle. If a client was found guilty, I would fully advise them of their right to appeal their case to the Tennessee Court of Criminal Appeals. I informed them that right would be lost if it were not exercised within thirty (30) days of the entering of the final judgment, and I informed them I would initiate the appellate process if they decided to appeal. I was responsible for preparing briefs and appearing before the Court of Criminal Appeals if a client appealed their case.

Appellate Experience:

From September 2000 until being elected judge in 2006, I served as staff attorney for the Western Section of the Tennessee Court of Appeals, where I served Presiding Judge Frank Crawford, and Judges Alan Highers, David Farmer, and current Chief Justice (then judge) Holly Kirby. In that position, I had the unique opportunity to observe the inner workings of our appellate court. I reviewed all motions and applications filed with that section of the Court, including applications for interlocutory and extraordinary appeal. I drafted memorandums regarding each application, discussed motions and applications with the judges, and drafted the relevant orders.

Unless interlocutory permission to appeal has been granted, appellate courts only have jurisdiction to hear cases in which an appeal has been taken from a final judgment or order. As the staff attorney, I reviewed each record to determine whether the trial court had rendered a final judgment that disposed of all the issues and all the parties. I also worked closely with the appellate court clerk with respect to docketing, court orders, and court records. I acted as an informal liaison between the trial court clerks and the appellate court. I also worked closely with the judges' law clerks to resolve matters relating to the Tennessee Rules of Appellate Procedure, the Rules of the Appellate Court, the Rules of Civil Procedure, the Rules of Evidence, and the local rules of Tennessee trial courts.

As part of the Appeals Court staff, I worked closely with four judges who had different judicial styles and preferences. I worked as part of a relatively small system in which each role was important to the other. As staff attorney, I witnessed all of the small, essential, but often unnoticed things that must happen in the appellate process before an opinion can be rendered. I learned many valuable lessons while working in that position, but the most important were: (1) the value of careful, thorough, and timely opinions; (2) the importance of being diligent and attending to detail; (3) the significant, but unique and limited role that appellate courts play in our judicial system; (4) the fact that, except in the most limited of circumstances, it is not the role of appellate courts to raise issues; and (5) the rules matter and often determine the resolution of a case on appeal (I heard more than once, "they're called T.R.A.P. for a reason"). Most importantly, I learned that every case is the most important case to the parties involved, so every case must be treated with attention, timeliness, and care.

Judicial Experience:

I have been a judge for the last 17 years, and to be complete, I will list here the roles in which I have served in that capacity. They are:

- **Courts of Limited Jurisdiction Judge;**
- **State Court Trial Judge;**
- **Three Judge Panel Judge;**
- **Appellate Panel Special Judge; and**
- **Tennessee Board of Judicial Conduct**

For the sake of brevity, I will discuss these roles in detail in my response to section 10.

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

My time as a practicing attorney was limited to the time I spent as an assistant public defender. Every single one of those cases were important, but I had no matters of special note before the trial courts, appellate courts, or administrative bodies during that time.

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.

Judicial Experience:

- **Courts of Limited Jurisdiction Judge:**

In August 2006, I was elected General Sessions Judge of Dyer County after winning a contested election, and on September 1, 2006, I began my first day as the General Sessions Judge of Dyer County. The General Sessions Court of Dyer County is vested with criminal, civil, probate and juvenile jurisdictions, so I became the Juvenile Court and Probate Judge for Dyer County on that day as well. The criminal cases I presided over ranged from crimes as simple as speeding tickets to handling parts of felonies, such as murder. On the civil side, I presided over cases in which the monetary amount in dispute was no more than \$25,000.00 and over real estate matters such as detainer actions. As juvenile judge, I presided over cases that involved issues ranging from truancy to children who were charged with murder. On the domestic side of juvenile court, I presided over child support, visitation, custody, dependency and neglect, and termination of parental rights cases. Many people involved in these cases represented themselves. I knew the only interaction most people would ever have with a court would occur in that court of limited jurisdiction, and their experience would form their perception and understanding of the judiciary as a whole. My goal was to always be patient and respectful, and I worked hard to ensure everyone received a fair and speedy decision.

It did not take long to realize that many people whom I assessed a small fine and court cost to did not have the funds to pay that fine and cost on the day they were assessed. They were not bad people who had committed horrible crimes. Instead, like many people in my area, they were usually just living paycheck to paycheck. To collect those fines and costs while allowing people time to come up with the funds, I implemented a process in which I would reset their case for a period of time, usually two to four weeks, to see if they could get their fine and cost paid. I did not want a person living paycheck to paycheck to miss another day of work to come to court, so I would tell them they did not have to come to court on the next court date if they paid the fine and cost in full before that date. However, I also told them they must come to court if the fine and cost were not fully paid before the court date. As long as a person was making a reasonable effort to pay their fine and cost, I was willing to work with them. This process not only resulted in the collection of thousands of dollars of fines and costs, it also let people know that there were real consequences, both positive and negative, for their actions.

- **State Court Trial Judge:**

In August 2008, I was elected Chancellor for the 29th Judicial District after winning a contested election, and I have been the Presiding Judge of the 29th Judicial District since 2009. The role of presiding judge carries with it many administrative functions such as equalizing caseloads to assigning cases when a judge must recuse themselves. The presiding judge is also involved in courthouse safety and seeking funding to enhance the safety of the district's courthouses. Recently, Dyer County was awarded a grant of over \$130,000.00 to enhance safety at its courthouse. As a state trial court judge, I have presided over hundreds of trials, both bench and jury, and disposed of 15,000-16,000 cases. These cases span the full range of criminal, civil and domestic law. While every one of those cases is noteworthy to me and the people involved, I have selected two of those cases to bring to the Council's attention.

1) *Dr. Pepper Pepsi-Cola Bottling Company of Dyersburg, LLC v. Reagan Farr, Commissioner of Tennessee Department of Revenue*. This case was affirmed on appeal and is reported at 393 S.W.3d 201 (Tenn.Ct.App.2011). This case required the courts to determine whether the tax imposed by "the bottler's tax statute" (Tenn. Code Ann. § 67-4-402 et seq.) is properly imposed on an in-state soft drink manufacturer or upon that manufacturer's in-state distributor. It also required the court to determine whether the statute is constitutional. The issue had not been addressed by the courts previously, and I concluded that the bottler's tax statute imposed the tax on in-state soft drink manufacturers rather than on the manufacturers' in-state distributors. I also concluded that this taxing scheme did not violate the Constitution's equal protection clause. This was a challenging case with statewide ramifications.

2) *Wortman v. Jackson et al.* (docket number 16CV558). This tort case was filed in the Circuit Court of Tennessee sitting in Lake County and was decided by a jury in December 2019. This case stemmed from a warrantless non-consensual search of the Plaintiffs' home by law enforcement agents. The Defendants asserted that exigent circumstances justified the search and argued they were clothed with qualified immunity. This case was particularly interesting because it required the court to determine, as a matter of law, which party carried the burden of proof on the exigent circumstances question. I found no Tennessee case on point, and after extensive research, I concluded the Defendants had the burden of proving that exigent circumstances justified their search of the Plaintiffs' home. Since there was not a pattern jury

instruction addressing this situation, I had to create a special instruction for the case. This was one of those rare tort cases in which both parties had a burden of proof, making the presentment of evidence and closing arguments sequences somewhat unusual.

- **Three-Judge Panel:**

In 2021, the General Assembly created a three-judge panel process to decide cases that challenged the constitutionality of state statutes and other state actions. These panels consist of one judge from the judicial district in which the case is filed and one judge each from the State's other two Grand Divisions who are appointed by the Chief Justice of the Supreme Court. I was appointed by the Chief Justice to serve on a panel involving a case filed in Davidson County: *Hillside Winery, Inc. et al., v. Commissioner of Revenue, et al.* (docket number 21-0071-III). The panel decided the case on March 4, 2022. The Plaintiffs in that case challenged the constitutionality of the Wine Gallonage Tax and argued that it burdened interstate commerce in violation of the Dormant Commerce Clause of the United States Constitution. This case is noteworthy because it presented a direct facial challenge to a tax that had been in place since 1939. It arose from the recent development of interstate sales of wine by in-state wineries. The Department of Revenue had been assessing the tax on interstate sales of wine by in-state wineries, but reversed its policy of those assessments after the lawsuit had been filed. Both parties filed motions for summary judgement. The doctrine of mootness was raised in the Department's motion. Therefore, the panel had to address that doctrine before addressing the constitutional challenge. The panel first determined that the issue was moot because the actions of the Department made it "not likely" that the change in policy would "be abandoned" once this litigation had passed. The panel granted the Department summary judgment on the ground of mootness. As an alternative ground for granting the Department summary judgment, the panel applied the rules of statutory construction and concluded that the statute is not facially unconstitutional. This too was a challenging case with statewide ramifications.

- **Appellate Court Special Judge:**

The Tennessee Supreme Court has designated me numerous times to serve as a special appellate judge on its Special Workers' Compensation Appeals Panels. Although these panels are limited to hearing appeals of trial court decisions in workers' compensation cases, they function as an appellate court and exercise a duty of the Supreme Court when they are in session. I have authored approximately 30 opinions while serving on these panels. Most opinions were majority opinions, but at least two were dissenting opinions, and I concurred on many other opinions. I authored these opinions while simultaneously maintaining my duties as a state court trial judge, and I would like to bring three of those opinions to the Council's attention.

1) *Brooks v. Corr. Med. Servs.*, No. W2010-00266-WC-RR3-WC, 2011WL684600, (Tenn. Workers Comp. Panel Feb. 25, 2011) and *Smith v. Elec. Research & Mfg. Coop. Inc., No. W2012-006560-WC-R3-WC*, 2013WL683192 (Tenn. Workers Comp. Panel Jan. 30, 2013) were appeals from trial court decisions finding that an employee had rebutted the statutory presumption of correctness enjoyed by an anatomical impairment rating given by a physician selected through the Medical Impairment Rating (MIR) process. These opinions were some of the first court decisions to address the issue of what evidence courts should focus on when determining if this statutory presumption of correctness had been rebutted. Both opinions were

cited and quoted several times by the Supreme Court in *Mansell v. Bridgestone Firestone North America Tire, LLC.*, 417 S.W.3d 393 (Tenn. 2013).

2) *Watson v. Parent Co.*, No.M2012-01147-WC-R3-WC, 2013WL1920870 (Tenn. Workers Comp. Panel May 8, 2013) is not significant because it made the legal headlines or decided a new or novel issue of law. Instead, this case explains which cases appellate courts have jurisdiction to hear, which they do not, and the process by which a case comes before an appellate court. Significantly, neither party raised the issue of the Panel's subject matter jurisdiction. A court without subject matter jurisdiction has no authority to decide a case, so one of the first things a court must do is determine if it has subject matter jurisdiction. As I reviewed the appellate record, I realized that the Panel did not have jurisdiction to decide the case because the parties had appealed a judgment that was not final. The judgment was not final because the trial court had not adjudicated all the issues presented by the parties. Any action taken by a court acting without subject matter jurisdiction is "a nullity." Accordingly, the Panel dismissed the appeal.

• **Tennessee Board of Judicial Conduct:**

In 2023, I was appointed to a three-year term on the 15-member Tennessee Board of Judicial Conduct (BJC). My term will end on June 30, 2026. As stated on the Tennessee Administrative Office of the Courts' website, "the (BJC) is charged with: providing an orderly and efficient method for making inquiry into the physical, mental and moral fitness of any Tennessee judge; the manner of performance of duty; and the judge's commission of any act that reflects unfavorably upon the judiciary or brings the judiciary into disrepute or that may adversely affect the administration of justice." The BJC consists of three-member investigative panels and five-member hearing panels. The investigative panels are the first step in the process, and, as their name implies, they investigate complaints against judges. Hearing panels act as trial courts to adjudicate the case if the complaint makes it to that step. I have served on many investigative panels, and I believe the BJC plays a vital role in maintaining the integrity of the judiciary in the eyes of all Tennesseans.

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

I served as Co-Administrator/Executor of my father's estate.

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

I had an experience my first year as juvenile court judge that I would like to share with the council. Although perhaps not technically a "legal experience," it is an experience in law that illustrates the important role a judge can play in an individual life.

This experience involved a young girl in middle school who had missed many days of school. Her absences were unexcused, so she was a chronic truant. She first appeared before me about a month before the end of the school year. While reviewing her record, I noticed that she had appeared before the juvenile court on the same issue during the prior two or three school years. I also noticed that all of her prior cases had begun about a month before the school year ended. The records showed she would have good attendance from the time a case was filed until the end of the school year. The case would then get dismissed when the school year ended, and the absences would resume the beginning of the next school year. This pattern would repeat itself year after year. Two things quickly became apparent. First, this young girl would never get an education unless this pattern was broken. Second, the adults in her life were not adequately monitoring her school attendance. I decided to reset her case for the week after the school year ended. As I expected, she had perfect attendance that last month. When the school year ended, the truancy officer proposed dismissing the case. I wanted to continue monitoring the student's attendance during the beginning of the next school, so I reset the hearing to a date after the first six weeks of the next school year. The next time she appeared in court, I was informed she had perfect attendance. I reset the case for the end of the second six weeks, and when she appeared in court, I was informed that she still had perfect attendance. I felt I had done all I could do, so I dismissed the case.

The guidance counselor at the school this girl attended is a friend, and I asked her to tell the girl that I asked about her and hoped she was doing well. Months passed, and I received a call from the middle school inviting me to present an award at the end of the school year. Of course, I accepted. When I arrived at the event, I was informed I would be presenting a perfect attendance award to that very same girl who had been chronically truant year after year. I got a lump in my throat and a little misty-eyed as I presented that award and this girl thanked me for caring about her.

That was a good day to be a judge.

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 or similar 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.

None

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.

Dyersburg State Community College

Fall of 1985 to the Fall of 1989. **No Degree Awarded:** Transferred to the University of Tennessee at Martin

University of Tennessee at Martin

Briefly, 1988-1989; 1990 to December 1992. **Degree Awarded:** Bachelor of Science **Major:** Education

University of Memphis Cecil C. Humphreys School of Law

August 1995-May 1998. **Degree Awarded:** Juris Doctor **Recognitions:** I received recognition in the classes of Debtor/Creditor, Secured Transactions, and Commercial Paper.

Other Aspects of My Education: I was the first person in my family to be awarded a college degree.

PERSONAL INFORMATION

15. State your age and date of birth.

Age: 56 **Date of Birth:** [REDACTED] 1967

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

Tennessee has been my state of residence my entire life. Other than an extended stay in Arizona for a few months in late 1998/early 1999, I have lived continuously in Tennessee since 1967.

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

I have lived continuously in Dyer County, Tennessee, since 1967, except for a few months I spent in Arizona in late 1998/early 1999 and several months I lived in Madison County Tennessee between 2000-2001.

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

Dyer 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.

I have never served in the military.

20. Have you ever pled guilty or been convicted or placed 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

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 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.

I have never been required to respond to a formal complaint.

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.

Yes.

In Re Syngenta AG MIR 162 Corn Litigation: This was a class action lawsuit filed by corn producers and others against the agricultural chemical company Syngenta. As I understand it, the suit centered around allegations that Syngenta created a genetically modified corn seed which contained a “trait” that had not received import approval from China. The lawsuit alleged that Syngenta sold these corn seeds to corn producers in the United States and that, thereafter, China began rejecting corn shipments from the U.S. after this “trait” was allegedly detected in corn shipments originating from the U.S. This rejection of corn shipments and loss of access to the Chinese market resulted in lower corn prices for U.S. producers. I believe that the initial case was settled, became a class action, and then the search began for members of the class. Since I was a corn producer during the period of time in question, I qualified to be a member of the class, so I was contacted and I signed up in 2018 or 2019. Signing up as a member of the class was the extent of my involvement.

Court: The United States District Court for the District of Kansas

Date: A “FOURTH AMENDED CLASS ACTION MASTER COMPLAINT” was filed on March 12, 2018, so that case was initially filed prior to March 2018.

Docket Number: No. 2:14-MD-02591-JWL-JPO

Disposition: Settled

Childress v. United Parcel Service, Inc., et al.: My father was involved in an automobile accident in 2012, and he ultimately passed away. My mother, who is also a co-administrator/executor of my father's estate, filed a civil action on behalf of herself, my father's estate, and my father's heirs. I was involved in that case by virtue of my status as an heir. This was a personal injury/wrongful death case.

Court: Circuit Court of Tennessee sitting in Dyer County

Date: 2015

Docket number: 2015CV38

Disposition: Voluntarily dismissed

Sikes v. Childress: Property line and drainage dispute on farm land in Dyer County, Tennessee.

Date: 2004

Court: Chancery Court of Tennessee sitting in Dyer County

Docket number: 04C499

Disposition: Dismissed

Other than what has been mentioned above, I do not recall having been involved as a party in any other legal proceeding.

I have had 5 or 6 traffic citations for speeding since I began driving over four decades ago. I

deserved every citation for speeding that I have ever been issued, because I was driving over the posted speed limit. I either paid the fine and court costs without a court appearance, or I attended a driving class and the citation was dismissed.

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.

Dyer County Volunteer Fire Department: Volunteer Fireman for nearly 25 years. Currently, a Captain and the Treasurer at the Bogota Station.

Church of Christ: Bogota, Tennessee

WestStar Leadership: Class of 2018

Bogota Community Center

Community Cancer Fund

Tennessee Farm Bureau

Tennessee Soybean Association

Ducks Unlimited

National Rifle Association

Noonday Rotary Club of Dyersburg: Paul Harris Fellow

Dyer County Future Farmers of America

Dyer County Republican Party

Tennessee Republican Party

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.

- 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.

I was a Cub Scout and Boy Scout in the 1970s. I believe at that time membership was limited only to boys.

I have not been a part of those organizations since that time.

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.

Tennessee Trial Judge Association (TTJA): 2008-present

- **President:** 2019-2021. The President of the TTJA is elected by the trial judges of Tennessee. I was elected twice to this position. The President organizes and appoints an executive committee. This committee is comprised of the offices of Vice President, Secretary, and Treasurer plus non-office members. As President, I appointed members to the executive committee from each grand division of the state. My goal was to appoint a diverse committee made up of members who represented urban, rural, and suburban areas. The President presides over the meetings of the executive committee and the meetings of the membership. The President has a number of administrative responsibilities. These responsibilities range from organizing meetings to keeping the executive committee and membership informed of issues that will impact the trial level judiciary. The President also has the responsibility of filing reports with the Bureau of Ethics. The TTJA appoints two members to the Board of Judicial Conduct, and in 2020 I appointed two members to that Board.
- **Treasurer:** 2014-19 and 2021-present. As treasurer of the TTJA, it is my responsibility to collect dues, keep a record of who has paid dues, and maintain the association's financial records. The treasurer issues financial report to the association's executive committee and the association's entire membership at least three times per year.
- **Member:** Executive Committee: 2014-present. This committee is appointed by the President. This committee, along with the President, operates the association. The committee takes positions on issues identified by the President or brought to its attention by a committee member. It also makes recommendations to the membership regarding what courses of action to be take on these issues.
- **Member and Secretary:** Judicial Resource Study Committee: 2017. I was appointed to this committee by the President of the TTJA. The committee's purpose was to review the 31 judicial districts and to make recommendations regarding possible redistricting and resource allocation. The goal of the committee was improving the trial level judiciary's service to the citizens of Tennessee. The committee issued a report which addressed each grand division of the State separately. I kept the minutes of committee meetings, and I authored the initial draft of the West Tennessee portion of the final report.

Member of Tennessee Judicial Conference (TJC): 2008-present

- **Member Executive Committee:** 2019-present. The President of the TTJA is an *ex officio* member of the TJC executive committee, and it is through that position that I first

became a part of this committee. When my second term as President of the TTJA ended in 2021, the President of the TJC appointed me to a three-year term on this committee as a representative from West Tennessee. I am in the third year of that term. This committee makes important decisions on various issues that range from how to accomplish the long-term goals of the judiciary to what should be requested in the judiciary's budget.

- **Chair:** Weighted Caseload Committee: 2016-present. I have served on this committee since its creation in 2016. The president of the TJC appointed me to serve as one of the original nine members of this committee. I was elected chair by the members at the committee's organizational meeting. I have served in that position ever since.

The weighted caseload study is required by Tennessee Code Annotated section 16-2-513(a), and the results of that study are used to determine the need for trial court positions within the state and each judicial district. The accuracy and credibility of the study is very important to the judiciary as this study is used to gauge judicial need. Thus, the study is essential to the administration of justice, since its outcome is an indicator of which areas of the state may need additional resources to ensure that Tennesseans have timely access to the courts. The primary purpose of this committee is four-fold. First, the committee serves as the voice of the TJC regarding the annual adjustments to the weighted caseload formula required by Tennessee Code Annotated section 16-2-513(a). Second, the committee actively maintains the current weighted caseload formula and stands ready to assist in devising any future weighted caseload formula. Third, the committee reviews new legislation to determine if its enactment will affect a trial judge's workday, and if it does, the committee makes recommendations concerning any necessary adjustments to the study formula. Fourth, the committee seeks to raise awareness of the importance and function of the weighted caseload study among the state's trial judges and court staff. As committee Chair, I have spoken several times regarding the weighted caseload study at TJC conferences and at meetings of the State Court Clerk's Conference.

- **Member:** Committee on Judicial Resources: 2022. This committee of seven judges was created to review issues surrounding judicial redistricting and resource allocation among the judicial districts. I was appointed to this committee by the President of the TJC. I authored the initial draft of three sections of the report and contributed ideas and editing to the report's other sections. The committee submitted its final report to the Conference President in October 2022. The submission of the report fulfilled the committee's responsibilities, and the committee has been disbanded.
- **Chair:** Ad Hoc Committee to Review Judicial Assistant Compensation: 2021. This committee was created to study the compensation package of trial judge assistants as compared to others in the legal arena. I was appointed to this committee by the President of the TJC. I authored the initial draft of the committee's report and assembled all of the report's exhibits. The committee submitted its final report to the Conference President in August 2021. The committee disbanded soon thereafter.
- **Member:** Legislative Committee: 2012-present. This committee reviews legislation that

has been filed in the General Assembly with the goal of determining what impact, if any, the proposed legislation might have on the judiciary. When appropriate, the committee sends comments and suggestions regarding proposed legislation to the AOC's legislative team.

- **Member:** Workload Assessment Advisory Committee: 2013. This committee assisted with creating the current weighted caseload study and helped devise the current weighted caseload formula that is used to gauge the needs of Tennessee's trial level judiciary.
- **Dyer County Bar Association:** This bar association has not always been active. From 2006 to the present, I have been a member when it has been active.
- **Arizona Bar Association:** 2002-2015. The Arizona Bar Association is a mandatory membership organization, so I was a member while I held an active Arizona Bar license.

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 am honored to have been elected by the people to serve as a judge since 2006, have served on numerous service committees, and have been appointed to several leadership positions as described above. The Supreme Court has also appointed me to serve on various panels, and I have been elected twice by the trial judges of Tennessee to serve as President of the Tennessee Trial Judge Association. Other than as previously discussed, I have not received prizes, awards, or formal/public recognitions or honors.

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

I have published no books or articles.

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.

Let's Learn a Little about Why you have this New Job: The Tennessee Judicial Weighted Caseload Formula: August 25, 2022; Tennessee Judicial Academy

Some Things to Know When Selecting/Working with a Clerk and Master: October 2022; Tennessee Judicial Conference

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.

September 2004-August 2006: **Dyer County Board of Education representing District D. I was elected to this position.**

September 2006-August 2008: **Dyer County General Sessions and Juvenile Court Judge. I was elected to this position.**

September 2008-present: **Chancellor of the Chancery Court of Tennessee sitting in the 29th Judicial District. I was elected to this position in 2008, 2014 and 2022.**

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

No

34. Attach to this application 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.

The Supreme Court is a five-member court. In order for that court to function smoothly, a justice must be able to develop and maintain a healthy and open working relationship with the court's other four members. When disagreements occur, as they will, a justice must be respectful of the opinions, thoughts, and ideas of the other members. Deciding cases and issues of law are the Supreme Court's most important function, but it is not the Court's only function. Instead, this Court has significant administrative responsibilities such as appointing the State's Attorney General, the Director of the Administrative Office of the Court, and the Clerk of the Appellate Courts. The Court also sets budget priorities for the judiciary. It is important that the Court be in tune with the needs of the State and be aware of what resources the judiciary as a whole need to serve the citizens of Tennessee. Additionally, the Court exercises supervisory authority over the practice of law and the lower courts. I was mindful of these roles when selecting which writing samples to submit, and I believe three of the six short writing samples I have chosen to submit shed light on my ability to aid the court with each of these roles.

One sample is a majority opinion that I authored while serving as a special judge on the Supreme Court's Special Worker's Compensation Appeals Panel, and one is a dissenting opinion that I authored while serving in that same role. The majority opinion is the panel's joint effort, but it does reflect my legal reasoning and ideas. The dissenting opinion reflects only my efforts. After I drafted an opinion, the staff of the Supreme Court justice who sat on the panel helped proof, style and arrange the opinion.

Of the four remaining samples, one is a committee report titled *Operating an Effective and Efficient Judicial System* which was submitted to the Tennessee Judicial Conference in 2022. This report addresses issues the judiciary currently faces and offers possible solutions to those issues. The initial drafts of sections 3, 4, and 5 of the report were authored by me, and I contributed with the editing and content of the report's other sections. This report is the

committee's joint effort. However, sections 3, 4, and 5 of the report largely reflects my efforts. The last three are samples from cases I have decided. One is findings of fact and conclusions of law in a breach of contract case. Another is an order in a common law writ of certiorari case. The last is an order involving the application of the ecclesiastical abstention doctrine. These samples are my work.

ESSAYS/PERSONAL STATEMENTS

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

Those in leadership must understand the roles of those whom they try to lead. The Supreme Court is the head of Tennessee's judiciary, and judges look to it for leadership. The judges of limited jurisdiction and trial courts are the overwhelming majority of those judges. I believe it is important that the Supreme Court have a member who has firsthand working knowledge of what those judges do on a daily basis. I have been in the trenches doing that type of work for over 17 years, so I would bring those firsthand experiences to this court.

I believe my experience and background, and work in all levels of Tennessee's judiciary have prepared me to serve Tennessee as a Supreme Court Justice. I seek this position because I believe I will be an asset to the Court in its leadership of the judiciary and service to Tennessee.

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)*

Different people give different meanings to the phrase "equal justice under the law." To me, the most important part of that phrase is that everyone (plaintiff, defendant, State, victim, people with attorneys, and people who represent themselves) has the right to have access to and be treated fairly by the court system. There should be no unreasonable barriers to legal issues being addressed thoroughly and as quickly as possible. This phrase means not only access to the courts, it also means treatment that is respectful, honest, and free from bias or prejudice. I am firmly committed to these principles, and since becoming a judge many years ago, I have worked hard to deliver "equal justice under the law" every day.

I have been employed as a public defender, court staff, or judge since 1999. The rules and law regarding my employment have precluded me from the private practice of law.

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)*

The Tennessee Supreme Court is a five-member statewide court that can hear appeals of all types of cases. Under Tennessee's Constitution, the pending vacancy must be filled by someone who resides in West or East Tennessee.

I would bring a diverse background to the Court. I have practiced criminal law, served as a staff

attorney for the Court of Appeals, and served as a general sessions, juvenile, and trial judge. I have presided over criminal, civil, and domestic cases and written innumerable decisions and orders. I have also authored roughly thirty appellate opinions. Additionally, I have held many leadership positions in two judicial organizations. I have been a mail carrier, a factory worker, and I am a fourth-generation farmer. I believe my diverse experiences in life and the law, my leadership roles, and my rural and business backgrounds will bring perspectives and insights that will enhance and positively impact this court.

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)*

From a young age, I have been involved in various community services and organizations. I learned from my parents that service brings a sense of fulfillment to life. I will not repeat here all the community services and organizations in which I have participated. I will simply say that most have been activities to raise funds or awareness for services or organizations I believed served the needs of people or the community. Most recently, my volunteering efforts have been geared toward a local community center and fire department.

For more than two decades, I have been a volunteer firefighter with the Dyer County Fire Department (DCFD). I am a Captain and Treasurer of the Bogota station. The DCFD is full of volunteers who provide a mentally and physically demanding service when people are in tough and bad situations. I am proud to be a part of those efforts. Now, I am no super fireman, and I do not make every call. I just make the ones that I can and do my best when I get there.

I believe people need and want to see judges involved in their communities. By being involved, judges seem more relatable to everyday people. I genuinely believe community service helps the image of the judiciary and keeps a judge grounded. So, if appointed, I intend to remain a volunteer firefighter and stay involved in my community in much the same way as I always have. It is just part of who I am.

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)*

I grew up in the late 1970s-early 1980s on a small livestock and row crop farm in rural West Tennessee, where I witnessed government decisions cause the collapse of the farming economy. Times were very tough. That had a lasting effect on me. I played football in high school. I was slow and weighed 140lbs, but I learned the value of teamwork. I learned how to stand my ground and battle to the end. I made the All-Conference team, twice. No one in my family had a college degree, but I decided to go to college. I worked my way through college. It took me seven years, but in 1992 I became the first member of my family to earn a college degree. I worked many jobs to earn money to attend law school. I worked more than one job to make ends meet, and I graduated from college and law school without borrowing money, which was my goal. My parents served the community doing whatever needed to be done: from raising money for the community's school to facilitating the installation of a reliable community water

supply. I saw the fulfillment those efforts brought to them, and it had a lasting effect on me, too.

Life has taught me there will be ups and downs, but things will be ok if you work hard, make sacrifices, prepare yourself, be respectful, stay involved, and serve God and your community. These are some of the experiences I would bring to the Court.

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)*

Yes. I will always uphold the law. Allow me to give two examples.

The first involved the former version of the "Paternal Relocation Statute." That statute precluded a court from determining whether the relocation of a child out of state or more than 50 miles from the other parent within the state was in the best interest of the child unless each of the parents were "actually spending substantially equal intervals of time with the child." The caselaw that developed around that statute evolved into baffling mathematical determinations. In my opinion, that was a poor way to treat children and to determine those emotional cases. I thought that courts should always determine whether the relocation was in a child's best interest. However, that was not the law at that time, so I set aside my beliefs and applied the law.

Another example involved a Court of Appeal's (COA) opinion which held that even when divorcing parties agreed to a plan to parent their children, the trial court nevertheless had to enter written findings and conclusions on whether that plan was in the children's best interest. I had always supported making a best interest determination, but what I, and many others, disagreed with was having to take extensive proof and then make written findings and conclusions on settled issues. That seemed like a waste of judicial resources and the litigants' time and money, but I did what was required by the COA until the General Assembly nullified that holding.

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. Mr. Jeff Agee, Chairman and CEO, First Citizens National Bank, One Citizens Place, Dyersburg, Tennessee, 38024; [REDACTED]

B. Mr. Stan Welch, Tyson Foods Plant Manager, 611 Deal Road, Dyersburg, Tennessee, 38024; [REDACTED]

C. Mr. Bradford Box, The Law Firm of Rainey, Kizer, Reviere & Bell, PLC., 209 East Main, Jackson, Tennessee, 38301; [REDACTED]

D. The Honorable J. B. Cox, Chancellor 17th Judicial District of Tennessee, Former President Tennessee Trial Judge Association and Tennessee Judicial Conference, P. O. Box 713, Fayetteville, Tennessee, 37334; Office Phone: 931-438-1956; Cell Phone: [REDACTED]

E. The Honorable John C. Rambo, Chancellor 1st Judicial District of Tennessee, President of Tennessee Trial Judge Association, 108 West Jackson Boulevard, Jonesborough, Tennessee, 37659; Office Phone: 423-788-1436; Cell Phone: [REDACTED]

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Justice of the Supreme Court 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 application with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this application 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: December 10, 2023.



Signature

When completed, return this application to John Jefferson at the 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.

Tony A. Childress
Type or Print Name

T.A. Childress
Signature

December 10, 2023
Date

019330
BPR #

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

Department of Education: State of Tennessee:
License Number: 000253082

State Bar of Arizona: State of Arizona:
License Number 19426

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
December 10, 2012 Session

**JOSEPH E. SMITH v. ELECTRIC RESEARCH & MANUFACTURING
COOPERATIVE, INC. AND ACE AMERICAN INSURANCE CO.**

**Appeal from the Chancery Court for Obion County
No. 28,967 William Michael Maloan, Chancellor**

No. W2012-00656-WC-R3-WC - Mailed January 17, 2013; Filed February 22, 2013

Joseph E. Smith ("Employee") alleged that he injured his back in the course and scope of his employment with Electric Research & Manufacturing Cooperative, Inc. ("Employer"). Employee's evaluation physician assigned a 12% permanent impairment rating to the body as a whole as a result of the injury. A physician selected through the Medical Impairment Registry ("MIR") process assigned a 3% permanent impairment rating to the body as a whole. The trial court found that Employee rebutted the statutory presumption of accuracy afforded the MIR physician's rating by clear and convincing evidence pursuant to Tennessee Code Annotated section 50-6-204(d)(5) (2008) and awarded 40% permanent partial disability to the body. Employer has appealed.¹ After reviewing the record as we are required to do, we affirm the trial court's judgment.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Obion Chancery Court Affirmed**

TONY A. CHILDRESS, SP. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J., and DONALD F. PARISH, SP. J., joined.

Lori J. Keen, Memphis, Tennessee, for the appellants, Electric Research & Manufacturing Cooperative, Inc., and Ace American Insurance Co.

Jeffrey A. Garrety and Charles L. Holliday, Jackson, Tennessee, for the appellee, Joseph E. Smith.

¹ Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

MEMORANDUM OPINION

Factual and Procedural Background

Employee began working for Employer in 2007. Employee's job required him to lift coils or cores that weighed thirty to eighty pounds. On April 7, 2008, Employee was lifting a core and twisting to place it on a table when he heard a "pop" in his lower back and felt pain in his back and tingling in his buttocks. Employee reported the injury to Employer and received treatment at Urgent Care in Dyersburg.

In June of 2008, Employee was referred to Dr. Jason Hutchison. Dr. Hutchison, who testified at trial by way of deposition, stated that Employee told him that he had pain in his back, buttocks, and legs. Dr. Hutchison testified that a June 2008 magnetic resonance imaging scan ("MRI") showed retrolisthesis with a posterior bulge at L5-S1 and an annular tear in the posterolateral aspect of the L5-S1 disc. Dr. Hutchison stated that the MRI indicated the left S-1 nerve root was pinched between the left disc extrusion and left hypertrophy facet joint. According to Dr. Hutchison, retrolisthesis is a disc slippage backwards whereas spondylolisthesis is a disc slippage forward. Dr. Hutchison stated that the retrolisthesis was "most likely" a preexisting asymptomatic condition that was aggravated by what occurred on April 7, 2008. When asked whether retrolisthesis is a "form of spondylolisthesis or under the umbrella definition of spondylolisthesis," Dr. Hutchison responded, "Yes. Spondylo we typically think of as going forward, but - - retrolisthesis is going backward, but yeah, I would - - under a broad stroke, they're under the same heading." Dr. Hutchison prescribed conservative treatment and physical therapy for Employee; however, Employee's symptoms did not diminish. Dr. Hutchison imposed a permanent restriction against lifting in excess of fifty pounds. Employee was subsequently laid off by Employer.²

Dr. Apurva Dalal examined Employee in March of 2010. In his deposition testimony, Dr. Dalal stated that Employee reported ongoing pain in his lower back as well as bilateral leg pain. Dr. Dalal stated that the June 2008 MRI showed "minimal retrolisthesis" at L5-S1 "with a small broad based posterior disc bulge," as well as "[a]n annular tear in the left posterolateral aspect of the disc with a minimal left foraminal, left posterolateral, and supradiscal extrusions, which contours the left L5 dorsal root ganglion as well as the L5-S1 nerve root." Dr. Dalal opined that the "left S1 nerve root is probably pinched," and he also

² Because Employee did not return to work for the pre-injury Employer at a wage equal to or greater than the pre-injury wage, the parties agreed that the greater statutory multiplier applied, meaning Employee's award of benefits may not exceed six times the medical impairment rating. See Tenn. Code Ann. § 50-6-241(d)(2)(A) (2008).

noted a disc bulge at L1-L2. Dr. Dalal explained that x-rays revealed Employee had “mild spondylolisthesis.” According to Dr. Dalal, Employee had ongoing radicular pain and radiculopathy. Dr. Dalal assigned a 12% impairment rating to the body as a whole based on the Sixth Edition of the American Medical Association Guides (“AMA Guides”), and he based this rating specifically on the portion of Table 17-4 located on page 571 of the AMA Guides. Dr. Dalal explained that when a medical condition may be rated under more than one section of the AMA Guides, the AMA Guides call for applying the section that provides the “higher rating.”

The parties also obtained an evaluation through the Tennessee Department of Labor MIR process and selected Dr. Alan Pechacek as the MIR physician. Dr. Pechacek examined Employee in August of 2010. Dr. Pechacek interpreted the June 2008 MRI substantially the same as Dr. Dalal. Additionally, like Dr. Dalal, Dr. Pechacek determined that Employee had ongoing pain, decreased sensation, limited leg extension, and leg pain. However, Dr. Pechacek found no muscle atrophy and opined that Employee “does not have spondylolisthesis as dictated by Dr. Dalal.” After diagnosing low back pain, Dr. Pechacek classified the injury as a sprain or a strain and assigned a 3% impairment rating to the body as a whole under the AMA Guides, based specifically on the Soft Tissue and Non Specific Conditions portion of Table 17-4 located on page 570. Dr. Pechacek’s MIR report was introduced into evidence, but Dr. Pechacek did not testify in person or by deposition.³

In his deposition, Dr. Dalal responded to Dr. Pechacek’s findings. Dr. Dalal testified that Employee’s pain, decreased sensation, limited leg extension, atrophy, and leg pain were consistent with radiculopathy. As a result, Dr. Dalal opined that Dr. Pechacek erred in treating the injury as a sprain/strain and in assigning an impairment rating under the Soft Tissue and Non Specific Conditions portion of the AMA Guides. Specifically, Dr. Dalal testified:

[A] sprain/strain kind of rating indicates that there is no other pathology rather than just ligaments. In this particular case, . . . [w]e have objective findings of spondylolisthesis. We have objective findings of a compressed nerve root on an imaging study. We have findings on physical examination of myself, Dr. Hutchison and Dr. Pechacek that this patient has evidence of radiculopathy. And because of all the doctors’ physical findings, they match with the

³ See Tenn. Code Ann. § 50-6-204(f) (2008) (stating that a physician “whose services are furnished or paid for by the employer and who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge acquired by the physician in the course of the treatment or examination as the treatment or examination relates to the injury or disability arising therefrom”).

objective science on radiographs and on MRI. So the right thing . . . to do is assign an appropriate rating based on those exams and objective findings.

At the time of trial, Employee was thirty-two years of age, and he had experience as a roofer, a boat dock worker, and a correctional officer. Despite this experience, Employee testified that he had been unable to find full time employment following his injury. Employee testified that standing, sitting, twisting, turning, pushing, pulling, and lifting caused pain in his back and legs. Employee reluctantly admitted that he had taken some jobs as a roofer and as a hunting guide to make some money. Employee also admitted that he had been involved in sporting activities on a limited basis. Employee testified that these jobs and sporting activities had caused pain in his lower back and legs.

After considering the live testimony and the depositions, the trial court determined that Employee injured his lower back in the course and scope of his employment with Employer and suffered a 40% permanent partial disability to the body. Employer has appealed, and on appeal, Employer argues that the trial court erred in failing to apply the 3% impairment rating assigned by Dr. Pechacek's MIR report and that the award was otherwise excessive. Employee responds that the evidence in the record does not preponderate against the trial court's judgment.

Standard of Review

Our standard of review of factual issues in a workers' compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008); see also Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004). When issues of credibility of witnesses and the weight to be given their in-court testimony are before the reviewing court, considerable deference must be accorded to the factual findings of the trial court. Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 733 (Tenn. 2002). When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over another. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). This Court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). Questions of law are reviewed de novo with no presumption of correctness afforded to the trial court's conclusions. Gray v. Cullom Machine, Tool & Die, 152 S.W.3d 439, 443 (Tenn. 2004).

Analysis

1. MIR Report

Tennessee Code Annotated section 50-6-204(d)(5) provides that the “written opinion as to the permanent impairment rating given by the independent medical examiner” selected through the MIR process “shall be presumed to be the accurate impairment rating,” unless “rebutted by clear and convincing evidence to the contrary.” Tenn. Code Ann. § 50-6-204(d)(5) (2008). Clear and convincing evidence has been defined as evidence “in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 n.3 (Tenn. 1992). We have observed that the presumption found in section 50-6-204(d)(5) may be rebutted by affirmative evidence that an MIR physician “used an incorrect method or an inappropriate interpretation” of the AMA Guides. Tuten v. Johnson Controls, Inc., No. W2009-1426-SC-WCM-WC, 2010 WL 3363609, at *4 (Tenn. Worker’s Comp. Panel Aug. 25, 2010).

In awarding 40% permanent partial disability, the trial court relied on Dr. Dalal’s 12% impairment rating and found that Dr. Pechacek’s 3% impairment rating was “inconsistent with the lay and medical testimony in this case.” The trial court explained as follows:

Dr. Pechacek’s MIR report which is filed into evidence indicates that [Employee] has a 3% impairment to the whole person based upon the 6th Edition AMA Guides for a sprain/strain. Dr. Pechacek found that [Employee] had “persistent chronic back pain from the right lumbar region, with primarily muscular pain and spasm and right leg symptoms, but without objective neurological deficits.” Dr. Dalal testified to complaints of low back and bilateral leg pain. Dr. Dalal reviewed the June 12, 2008 MRI report which showed a pinched nerve at L5-S1. Dr. Dalal also found that [Employee] had spondylolisthesis which was confirmed by the MRI. Dr. Dalal reviewed Dr. Pechacek’s MRI report and disagreed with Dr. Pechacek’s evaluation that [Employee] merely had a strain based upon numerous objective findings, such as history of bilateral leg pain, positive straight leg raise test, atrophy of the right thigh, and ongoing radiculopathy.

Dr. Pechacek’s 3% impairment rating was based on his determination that Employee had no neurological deficits, radiculopathy, or spondylolisthesis. Dr. Dalal testified that these conclusions were inconsistent with Dr. Pechacek’s own observations of Employee’s leg pain, limited movement and loss of sensation and also conflicted with the results of Employee’s MRI. Dr. Pechacek’s MIR report stated that Employee “does not have

spondylolisthesis as dictated by Dr. Dalal.” Dr. Dalal stated that Dr. Pechacek erred in concluding that Employee does not have spondylolisthesis. Thus, Dr. Dalal and Dr. Pechacek disagreed, in some respects, as to the proper diagnosis of Employee’s condition.

A disagreement between medical expert witnesses as to the proper diagnosis of an employee’s condition may not, in and of itself, constitute the clear and convincing evidence needed to overcome the statutory presumption of accuracy afforded an MIR physician’s impairment rating. “When deciding whether or not an employee has rebutted the statutory presumption of correctness enjoyed by an MIR physician’s impairment rating, the focus is on the evidence offered to rebut that physician’s rating.” See Brooks v. Corr. Med. Serv., W2010-00266-WC-R3-WC, 2011 WL 684600, at *5 (Tenn. Workers’ Comp. Panel Feb. 25, 2011).

In this case, the MIR physician did not testify in person or by way of deposition. Instead, his report was simply submitted into evidence as an exhibit. To rebut the MIR physician’s rating, Employee introduced Dr. Dalal’s deposition testimony, and Dr. Dalal stated that the Dr. Pechacek erred in concluding that Employee did not have spondylolisthesis. Dr. Dalal also testified that when a medical condition may be rated in more than one section, the AMA Guides call for applying the section that provides the “higher rating.” Dr. Dalal explained that the impairment rating he assigned pursuant to the portion of Table 17-4 located on page 571 of the AMA Guides was the higher rating. Employer did not offer any evidence that refuted Dr. Dalal’s testimony on these points. Moreover, Dr. Dalal’s testimony that Employee had spondylolisthesis is consistent with Dr. Hutchison’s testimony. Dr. Hutchison explained that Employee had retrolisthesis, that retrolisthesis is a form of spondylolisthesis, and that both conditions fall under “the same heading.”

In reaching its decision, the trial court considered the lay and expert testimony offered in the case. The trial court’s judgment does not specifically cite the “clear and convincing” evidence standard, but the trial court’s findings clearly identified the shortcomings of the rating assigned by Dr. Pechacek. The trial court’s ruling indicates that it found clear and convincing evidence rebutting the statutory presumption of accuracy afforded to Dr. Pechacek’s impairment rating. Considering the record as a whole, we are simply unable to conclude that the evidence preponderates against the trial court’s finding.

2. Vocational Disability

In assessing the extent of an employee’s vocational disability, the trial court may consider the employee’s skills and training, education, age, local job opportunities, anatomical impairment rating, and her capacity to work at the kinds of employment available

in her disabled condition. Tenn. Code Ann. § 50-6-241(d)(2)(A) (2008); Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn. 1990). The Employee's own assessment of physical condition and resulting disabilities cannot be disregarded. Uptain Constr. Co. v. McClain, 526 S.W.2d 458, 459 (Tenn. 1975); Tom Still Transfer Co. v. Way, 482 S.W.2d 775, 777 (Tenn. 1972). The trial court is not bound to accept physicians' opinions regarding the extent of the disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. Hinson, 654 S.W.2d at 677.

In this case, Employee testified that he was a high school graduate with no vocational training and "one or two" semesters of college. He had prior work experience as a roofer, a dock worker, and a corrections officer. He started working for Employer in 2007 because of the pay and benefits. Since his injury, he has had consistent pain in his lower back and both legs. He has difficulty sitting, standing, pulling, pushing, bending, squatting, twisting, and lifting. Employee had worked as a roofer and as a duck hunting guide following his injury, but he testified that these and other activities increased the pain in his low back and both legs. Employee also stated that he has "constant pain in [his] back through [his] right leg, numbness, and also [his] left leg with activities that make it hurt even more." While evidence was introduced that may have raised doubts as to Employee's truthfulness, the trial court heard Employee's testimony in-court and implicitly found him to be a credible witness. See Richards, 70 S.W.3d at 733 (recognizing that a trial court's credibility findings may be inferred from the manner in which conflicts in the testimony are resolved and the case is decided).

Although a trial court's award of workers' compensation benefits may be reversed or modified under the appropriate circumstances, Howell v. Nissan N. Am., Inc., 346 S.W.3d 467, 474 (Tenn. 2011) (citing Tryon v. Saturn Corp., 254 S.W.3d 321, 335 (Tenn. 2008)), a reviewing court may not "simply substitute its judgment for that of the trial court in assessing the employee's vocational disability." Id. While the evidence certainly does not mandate the judgment reached by the trial court on this issue, after our review of the record, we are unable to conclude that the evidence preponderates against the trial court's judgment.

Conclusion

For the foregoing reasons, the trial court's judgment is affirmed. Costs are assessed to Employer, for which execution shall issue, if necessary.

TONY A. CHILDRESS, Special Judge

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

December 10, 2012 Session

DAVID HARDY v. GOODYEAR TIRE & RUBBER CO.

Appeal from the Chancery Court for Obion County
No. 28,407 W. Michael Maloan, Chancellor

No. W2012-00396-SC-WCM-WC - Mailed March 4, 2013; Filed May 9, 2013

CHILDRESS, SP. J., concurring in part and dissenting in part.

I concur fully in the majority's conclusion on the issue of estoppel. On the statute of limitations issue, however, I respectfully dissent.

The statute of limitations for workers' compensation claims arising after January 1, 2005 provides that:

In those instances where the employer has not paid workers' compensation benefits to or on behalf of the employee, the right to compensation under this chapter shall be forever barred, unless the notice required by § 50-6-202 is given to the employer and a benefit review conference is requested on a form prescribed by the commissioner and filed with the division within one (1) year after the accident resulting in injury.

Tenn. Code Ann. § 50-6-203(b)(1) (2008). The discovery rule applies to this statute of limitations, *Gerdau Ameristeel, Inc. v. Ratliff*, 368 S.W.3d 503, 508 (Tenn. 2012) and in a loss of hearing case the statute of limitations begins to run when "the plaintiff knew or as a reasonably prudent person should have known, that his hearing loss was work connected." *Hawkins v. Consol. Aluminum Corp.*, 742 S.W.2d 253, 254 (Tenn. 1987).

The majority relies on the decisions of, among others, *Hawkins* and *Ferrell v. Cigna Property & Casualty Insurance Co.*, 33 S.W.3d 731 (Tenn. 2000), to support its conclusion that the statute of limitations did not begin to run until *after* Employee received a medical diagnosis from Dr. Studtmann in April of 2010. In my opinion this case is distinguishable from *Hawkins* and *Ferrell*.

Specifically, the employees in both *Hawkins* and *Ferrell* did not know their gradually occurring injuries were work related until after a doctor told them their injuries were related to their employment. In this case, however, Employee's own testimony establishes that he knew as early as 1991 that he had ringing in his ears; he knew from the hearing tests he was taking at work that his hearing was getting worse year by year; he knew that the noise levels at his work were causing his hearing problems; and he knew all these things well *before* he visited Dr. Studtman in April of 2010.

I do not disagree that under both *Hawkins* and *Ferrell* the statute of limitations would not have begun to run if Employee had not known what his injury was or that it was related to his work until after being told so by Dr. Studtman. Those, however, are not the facts of this case. Instead, the evidence establishes Employee knew what his injury was, and he knew what caused his injury before he went to see Dr. Studtman. Thus, in my opinion, the evidence establishes Employee knew his injury was work related before he went to the doctor. Since Employee knew his injury was work related before being diagnosed by Dr. Studtman in April of 2010, I conclude the evidence preponderates against the trial court's conclusion that Employee discovered the cause of his injury after the medical diagnosis. Thus, I would respectfully reverse the trial court and dismiss this case.¹

For these reasons, I concur in part and dissent in part.

TONY A. CHILDRESS, SPECIAL JUDGE

¹ The last-day-worked rule is discussed in footnote 4 of the majority's opinion as being a possible "separate and independent basis for affirming the trial court's judgment that Employee's claim was timely." Under the last-day-worked rule, the statute of limitations begins to run on "the last day the employee was exposed to the work activity that caused the injury." *Barnett v. Earthworks Unlimited, Inc.*, 197 S.W.3d 716, 721 (Tenn. 2006), *overruled on other grounds by Bldg. Materials Corp. v. Britt*, 211 S.W.3d 706, 713 (Tenn. 2007). Determining when was the last day Employee was exposed to the work activity that required him to be around the loud noises that caused his hearing loss would require a presentation of facts to the trial court, and it does not appear that Employee tried that issue in the trial court. Also, Employee did not raise that issue in the brief he filed with this court. Thus, although the majority does not rely on the last-day-worked rule to affirm the trial court, in my opinion this rule could not be used in this case to affirm the trial court since the possible application of that rule to this case has been waived.

REPORT AND RECOMMENDATIONS
OF COMMITTEE:
OPERATING AN EFFECTIVE AND EFFICIENT
JUDICIAL SYSTEM

Tennessee Judicial Conference

Prepared by
Committee on Judicial Resources

Chancellor Douglas T. Jenkins, Chairman
Judge Donald H. Allen
Chancellor Tony Childress
Judge Greg McMillan
Judge Kathryn Olita
Chancellor John C. Rambo
Judge Barry Tidwell



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CHANCERY COURT
STATE OF TENNESSEE
THIRD JUDICIAL DISTRICT

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October 17, 2022

Chancellor Pamela A. Fleenor
President of the Tennessee Judicial Conference
Hamilton Co. Courthouse, Suite 311
Chattanooga, TN 37402

RE: Report and Recommendations on Operating and Efficient and Effective Judiciary
by the Committee on Judicial Resources

Dear President Fleenor:

Chancellor J.B. Cox, former President of the Tennessee Judicial Conference (“TJC”), appointed a committee designated as the Committee on Judicial Resources. The charge of the committee was to make recommendations to the Judicial Conference regarding resources needed by the judiciary to effectively fulfill its obligations to operate an efficient and effective justice system. As current President of the TJC, Chancellor Pamela A. Fleenor directed this committee to continue its work and to report its recommendations prior to the October conference.

The report identifies issues of concern from both the trial judges and their support staff. The committee report offers recommendations to effectively deal with those issues moving forward. The report is divided into six sections: (1) the inequity in the salary system of trial judge legal secretaries, (2) the option to hire a law clerk to increase efficiency of trial judges, (3) the Comptroller’s Tennessee Judicial Weighted Caseload Study used to determining judicial allocation and reallocation; (4) the General Assembly’s creation of a Task Force to review judicial districts, (5) the need for a transition period of any statewide redistricting, and (6) the importance of the issues in the report receiving immediate attention.

The Committee hopes this information is helpful. Thank you both President Fleenor and former President Cox for their time and trust in the committee members to tackle these issues.

Sincerely,

Douglas T. Jenkins
Chairman- Committee on Judicial Resources

SUMMARY

The Tennessee Judicial Conference (“TJC”) understands that knowledge and information are key to running an efficient and effective justice system. The trial judges and their support staff are the main resources for that knowledge. It is important for the TJC to hear, to understand and to act on the various issues set forth in this report to make the wheels of justice turn smoothly. The information that is gleaned from the research, investigations and data gathering is key to the TJC in understanding the course of action needed that will affect the allocation and reallocation of judicial resources. This report outlines these issues and offers the committee’s recommendations.

The inequities of the salary system for the trial judge legal secretaries needs fixed. The committee identified a disparate treatment in the pay between the trial judge legal assistant salaries and the appellate court legal assistant salaries. There are structural problems with the Tennessee Court System Salary Plan that need also to be visited and remedied.

The current structure for hiring legal secretaries was developed prior to the current practice of trial judges making more detailed written findings of fact and conclusions of law. The committee identified the need for the additional option to hire a law clerk as an efficient way to assist trial judges in legal research and the preparation of orders and opinions.

The committee addressed the issue of allocation or reallocation of judicial positions to or from a judicial district. Present Tennessee law requires the comptroller to maintain a weighted caseload formula to measure the judicial need. Tennessee Judicial Weighted Caseload Study (“TJWCS”) bases their report on annual case filings. The committee recommends following the data, but allocation and reallocation should be based on several years of annual updates rather than a single year statistic.

The General Assembly created yet another Task Force to review, once again, the composition of the current judicial districts and recommend and publish a proposed statewide redistricting plan. While this report is not expected to be published until late 2027, the committee recommends the judiciary be proactive and offer for consideration its own ideas on the issue. This report includes the committee’s proposed configurations, the most preferable being the current configuration.

If redistricting does occur, the committee recommends a transition period so all the judiciary and resources associated with the judicial system can smoothly make the transition to any revised districts.

The committee feel there are issues in this report that need immediate attention to those with authority to address these issues.

The Committee makes the following Recommendations:

1. Revamp the Tennessee Court System Salary Plan to equalize salaries between appellate court secretaries and trial court secretaries.
2. Create a law clerk option for Tennessee trial judges.

3. Allocation or reallocation of trial judge positions should be based on the Tennessee Judicial Weighted Caseload Study.
4. A legislative Task Force will soon be created to submit a redistricting plan for the judicial districts, so the judiciary should be proactive and offer for consideration its own set of ideas on this issue.
5. Any redistricting must include a transition period so all the judiciary and resources associated with the judicial system can smoothly make the transition to any revised districts.
6. A copy of this report be submitted to the Governor, the Speakers of the House and Senate, the Chairs of the House and Senate Judiciary Committees, the Chief Justice, and the Director of the Administrative Office of the Courts.

1. Fix the Inequities of the Salary System for Tennessee Trial Judge Legal Secretaries

Tennessee trial judges are most effective when the judiciary is assisted by highly-qualified support staff. The work environment maintained by trial judges and the benefits and salaries paid by the Administrative Office of the Courts must be attractive and competitive. Trial judges are fortunate to have highly-qualified judicial secretaries. As a result of education attainment and experience, all trial judge secretaries earn more than the base or entry level salary on the Tennessee Court System Salary Plan. As of July 2021, the median salary for Tennessee trial judge secretaries was \$48,684.¹

To keep trial judge assistant salaries competitive with comparable salaries, Tennessee trial judges previously requested an across-the-board increase of 30% for trial judge assistant salaries. The first ten percent was obtained, but later requests for the remaining twenty percent have repeatedly failed. The committee recommends moving to a more targeted approach that would equalize salaries between trial and appellate court secretaries.

1.1. Salary Comparison between Secretaries Working for Trial Judges and Intermediate Appellate Courts

The committee examined the job descriptions for an appellate court assistant and trial court assistant, the official titles for judicial secretaries working for appellate court and trial court judges. The committee determined the job descriptions are essentially equivalent. Yet the salaries illogically diverge.

Again, using the 2021 AOC salary scale, a new hire Step 1 assistant to a trial judge will earn \$31,284 as compared to the base salary of an intermediate appellate court assistant at \$48,684—a difference of \$17,400. A trial judge assistant with a paralegal certificate or B.S. degree qualifies a new hire to Step 2 pay of \$33,288. In contrast, the same employee would earn \$52,920 working for an Intermediate appellate court judge. This difference is even more stark—\$19,632.

The committee cannot rationalize the differences in responsibilities, skills, or workloads to justify these pay scale gaps. Although working for the appellate bench could be perceived as higher in prestige, the committee cannot discern any justification for the disparate treatment in legal assistant salaries. For comparison, a trial judge accepting an appointment to the intermediate appellate bench results in a pay increase of around 4%, while a judge's assistant who follows the judge may receive up to a 55% pay increase.

¹ As of July 1, 2021, the actual annual salary range of trial judge secretaries employed by the Administrative Office of the Courts was \$37,824-\$62,280.

1.2 Inequities with AOC Pay Scales

In discussing the pay scale for judicial secretaries working for Tennessee judges, it is important to remember these are the starting salaries, and employees who have worked for years will have incomes that exceed the top pay levels for newly-hired judicial secretaries. For example, the median salary for a judicial assistant to a Tennessee trial judge is \$48,684, but this same number is the base or starting salary for an appellate court secretary. This means that approximately half of the current trial court judicial secretaries make less than the starting salary for an appellate court secretary.

Unless the AOC and Supreme Court acts to fix these structural problems, the Tennessee Court System Salary Plan will perpetuate the current inequities in trial court assistant pay. The only fair remedy is for salary equalization between the positions of trial judge secretary and appellate court secretary in the Tennessee Court System Salary Plan.

Recommendation: The committee recommends Tennessee judges support reforming the AOC pay schedules to increase starting salaries for newly-hired trial judge secretaries. The committee further recommends the salary structure for all trial judge secretaries should essentially match the salary structure for intermediate appellate court judges' secretaries. These reforms should be a top priority for a revamped salary scale for judicial secretaries.

2. The Efficiency of the Trial Judges Would Increase if Given the Option to Hire Law Clerks

Many judges on the appellate bench have shifted from hiring an administrative assistant to a third law clerk. This third law clerk is also known as an administrative law clerk, and the position earns \$53,388. If the lawyer worked for a trial judge, the starting salary would be \$33,288—a Step 2 trial court secretary level. Again, the difference between the appellate and trial court level is dramatic—\$20,100.

The current structure for secretaries to trial judges was developed before the current practice of trial judges making more detailed written findings of fact and conclusions of law in many, if not most, of their rulings. Case law and legislative enactments are not anticipated to reverse this trend, nor should it. The committee recognizes that written findings of fact and conclusions of law are required by court rules, and the abuse of discretion standard of appellate review regularly requires trial judges to explain their discretionary decisions. At any rate, this laudable trend impacts the time demanded of trial judges and skill set required of those who assist trial judges. For some trial judges, the assistance provided by a law clerk may prove more valuable than traditional judicial assistant or secretarial work product.

Typically, the broad range of duties assigned to a law clerk includes conducting legal research, preparing bench memos, drafting orders and opinions, proofreading the trial judge's orders and opinions, verifying citations, communicating with counsel regarding case management and procedural requirements, and assisting the judge during courtroom proceedings. Further, a law clerk can help a trial judge to manage the exponential growth of self-represented parties, which

often requires the trial judge to prepare orders instead of the custom of assigning the task to a trial attorney.

There are important secondary benefits to trial judge law clerkships. A judicial trial court clerkship would also prove beneficial to developing the bar. Law clerks receive an opportunity to hone research and writing skills. They are exposed to diverse legal issues.

They are exposed to a wide range of legal styles and abilities and can make better decisions on employment in the local legal community. Insights gained from understanding the processes of judges will help lawyers gain practical experience that will assist them in future careers in litigation.

The committee also notes the skill set of trial judges may be going thru a generational change where many trial judges no longer engage in significant dictation, which eliminates the transcription needs of some trial judges. Therefore, the skills traditionally associated with certified administrative secretaries may be less desirable to some trial judges than the assistance that an administrative law clerk may provide. For these reasons, the AOC is encouraged to modernize its job descriptions and pay schedules to provide trial judges with the same option that appellate judges have to hire an administrative law clerk instead of a judicial assistant.

Recommendation: The committee recommends the AOC—Supreme Court create a new administrative law clerk position for trial judges with the equivalent or near equivalent pay scale for administrative law clerks working in the Appellate courts.

3. Allocation and Reallocation of Judicial Resources Should be Based on the Tennessee Judicial Weighted Caseload Study

Tennessee law currently provides “[t]he comptroller of the treasury shall devise and maintain a weighted caseload formula for the purpose of determining the need for creation or reallocation of judicial positions using case weights derived from the most recent weighted caseload study. The comptroller of the treasury shall update the formula at least annually.”² In response to that statutory mandate the comptroller devised the first Tennessee Judicial Weighted Caseload Study (“TJWCS”) in 1999. In the next two decades the TJWCS formula was revised in 2007 and again in 2013, and the application of the 2013 formula was updated in 2017 and again in 2018. The Comptroller’s TJWCS is the only objective tool available designed to measure judicial need. Each year since 1999, with the Covid-related exception of 2021 and 2022, the Comptroller issued an updated caseload report based on annual case filings. These updates provide a two-decade data driven record of judicial resource needs in each judicial district. The updates are a trove of objective data designed solely to gauge judicial need and over the years they have been used to justify requests for additional trial judge positions. If the Comptroller’s report on the need for judicial positions in certain judicial districts is valid, then it is fair to use the same data to measure any need for reallocation of resources from districts.

The decision to allocate or reallocate judicial positions to or from a judicial district should not be based on the results of one annual update. Instead, reviewing several years of annual updates is the

² Tenn. Code Ann. § 16-2-513(a)

only sure way to determine what the “need trend-line” is in a particular district. For example, if five years of annual updates indicating a judicial district has a sustained need for one or more judges, then the need trend-line suggests a long-term need for more judicial resources. Likewise, if five years of annual updates indicates a judicial district has more judicial resources than needed, then the long-term trend-line indicates a reallocation of resources from that district may be in order.

Recommendation: The committee recommends following the data from the TJWCS when allocating or reallocating state trial court judge positions.

4. Realignment of the Judicial Districts

In 2018, the Tennessee General Assembly created an advisory task force “to study the current make-up of the State’s judicial districts and determine if a realignment of the district lines would promote greater access to justice for the people of Tennessee.”³ This Task Force conducted five public hearings, heard from more than eighty speakers, and received over one hundred public comments.⁴ The Task Force released its final report in December 2019, and the Task Force concluded that the 21st Judicial District should be modified. Williamson County should be a stand-alone, single-county judicial district. The balance of the 21st Judicial District-Hickman, Lewis and Perry counties-should form a separate judicial district. The Task Force recommended no other changes to judicial district lines.⁵

The Tennessee Trial Judges Association supported this conclusion and recommendation of the Task Force. On September 1, 2022, Williamson County became a standalone, single-county judicial district and Hickman, Lewis and Perry counties became the 32nd Judicial District.⁶ In its report the Task Force noted that, except for the 21st Judicial District,

[T]here is no current need to change the district lines in Tennessee . . . The public’s response indicates that there is no desire for change in any of the judicial districts in Tennessee. Furthermore, the clear indication was that the public believes that all of the judicial districts in Tennessee were functioning well. There were no complaints of a lack of access to justice based on any of the factors considered by the Task Force. Population, weighted caseload, communities of interest, contiguity, and geography have not posed a problem in any part of the State, and consequently the Task Force recommends no change to district lines in Tennessee other than [to the 21st Judicial District].⁷

This committee believes the Task Force’s findings remain true today. The current district alignments are serving Tennesseans well and that there is public no desire for change in any of the judicial districts in Tennessee. In fact, the public would be contacting their state representatives and senators and demand change if that was indeed the public’s desire. At any rate, there is no indication this is occurring on a widespread basis.

³ FINAL REPORT: ADVISORY TASK FORCE ON THE COMPOSITION OF JUDICIAL DISTRICTS (Dec. 2019) page 1.

⁴ *Id.*

⁵ *Id.*

⁶ Tenn. Code Ann. § 16-2-506(21) & (32)

⁷ *Id.* at 21.

In the legislative session of 2022, the Tennessee General Assembly created another Task Force to review the judicial districts. This statute provides that: (1) “by no later than July 1, 2025, the speaker of the senate and the speaker of the house of representatives shall establish an advisory task force to review the composition of Tennessee’s current judicial districts codified at § 16-2-506[;]” (2) “[b]y no later than January 1, 2027, the task force shall. . . recommend and publish a proposed statewide judicial redistricting plan[;]” (3) “[o]n or before December 31, 2027, . . . it is the duty of the general assembly to: reapportion the judicial districts codified at § 16-2-506 . . .” (4) funding for some judicial districts will be reduced by 10% if the general assembly fails to reapportion the judicial districts.⁸ Although the current district alignments are serving Tennesseans well and there is no public clamoring for change, the committee recognizes the creation of this Task Force is the reflection of the General Assembly’s desire to implement redistricting. Thus, this committee has reviewed the district lines with a goal of providing common sense options that will not adversely affect the administration of justice in Tennessee. Those options are attached to this report as exhibits A, B, C, and D.

The committee takes no position for or against district realignment, but leaves that decision to the General Assembly with the assistance of its Task Force. Since redistricting remains possible, if not likely, the committee believes the judiciary should seize this opportunity to offer its insight on possible redistricting to the General Assembly and the Task Force.

Recommendation: The committee recommends the current district configuration be considered primarily, but if the general assembly is bound to make changes, those configurations reflected in the following exhibits are submitted for consideration by the General Assembly and its Task Force.

5. Period of Transition

If redistricting occurs, a period of transition is advisable so court cases in counties moving from one group of counties to another can be timely integrated into established court dockets and schedules. A transition period will aid the courts, district attorney generals and district public defenders to establish new relationships with drug task forces and other law enforcement agencies. The transition period allows participants in recovery courts to finish their programs, and it allows local operations funded by grants to run their course and to apply for new grants for newly-constituted programs. Finally, an adequate transitional period will allow time to collect enough TJWCS data to enable the General Assembly to make informed asset allocation decisions for the newly-formed districts before the 2030 judicial elections.

The Tennessee Attorney General has opined more than once that changes to judicial district lines can be made at any time, so a transition period is constitutional.⁹ In fact, a period of transition is not a novel idea as the changes that occurred to the judicial districts in 1984 took effect after the 1982 statewide elections, and a transition period mechanism was included in that legislation.¹⁰

⁸ Tenn. Code Ann. § 16-2-522.

⁹ See, e.g. *Op. Tenn. Atty. Gen. U81-136* (September 22, 1981); *Op. Tenn. Atty. Gen. 83-401* (December 1, 1983); and *Op. Tenn. Atty. Gen. 87-163* (October 23, 1987).

¹⁰ See, e.g., Tenn. Code. Ann. §16-2-506.

With proper planning, any undesirable effects caused by redistricting can be minimized if law enforcement, judicial programs, and courts have a period to transition to the change. To properly execute redistricting, legislation changing judicial districts should be adopted no later than 2025 with a subsequent transition period concluding with elections for the new districts in 2030.

Recommendation: The committee recommends that any redistricting occur no later than 2025, and the General Assembly include a transitional period when implementing redistricting.

6. Submitting Report

There are issues in this report that need immediate attention and need to be brought to the attention of those who have the authority to address these issues.

Recommendation: The committee recommends a copy of this report be submitted to the Governor, the Speakers of the House and Senate, the Chairs of the House and Senate Judiciary Committees, the Chief Justice and the Director of the Administrative Office of the Courts.

End of Report

EXHIBIT A - CURRENT CONFIGURATION

EAST TN

1. JOHNSON, CARTER, WASHINGTON, UNICOI
2. SULLIVAN
3. HAWKINS, HANCOCK, GREEN, HAMBLEN
4. COCKE, SEVIER, JEFFERSON, GRAINGER
5. BLOUNT
6. KNOX
7. ANDERSON
8. CLAIBORNE, CAMPBELL, SCOTT, UNION, FENTRESS,
9. MORGAN, ROANE, LOUDON, MEIGS
10. BRADLEY, POLK, MCMINN, MONROE
11. HAMILTON

MIDDLE TN

12. BLEDSOE, SEQUATCHIE, MARION, GRUNDY, FRANKLIN, RHEA
13. PICKETT, CLAY, OVERTON, PUTNAM, CUMBERLAND, WHITE, DEKALB
14. COFFEE
15. WILSON, SMITH, TROUSDALE, MACON, JACKSON
16. RUTHERFORD, CANNON,
17. LINCOLN, MOORE, BEDFORD, MARSHALL
18. SUMNER
19. MONTGOMERY, ROBERTSON
20. DAVIDSON
21. WILLIAMSON
22. MAURY, GILES, LAWRENCE, WAYNE
23. DICKSON, HOUSTON, HUMPHREYS, STEWART, CHEATHAM
31. WARREN, VAN BUREN,
32. HICKMAN, LEWIS, PERRY

WEST TN

24. HENRY, CARROLL, BENTON HARDIN, DECATUR
25. LAUDERDALE, TIPTON, FAYETTE, HARDEMAN, McNAIRY
26. MADISON, CHESTER, HENDERSON
27. WEAKLEY, OBION,
28. GIBSON, CROCKETT, HAYWOOD
29. LAKE, DYER
30. SHELBY

EXHIBIT B – POSSIBLE OPTION 1 ON REDISTRICTING

EAST TN

1. JOHNSON, CARTER, WASHINGTON, UNICOI
2. SULLIVAN
3. HAWKINS, HANCOCK, GREEN, HAMBLEN, GRAINGER
4. COCKE, SEVIER, JEFFERSON
5. BLOUNT
6. KNOX
7. ANDERSON, CLAIBORNE, CAMPBELL, SCOTT, UNION
8. MORGAN, ROANE, LOUDON, MEIGS, RHEA
9. BRADLEY, POLK, MCMINN, MONROE
10. HAMILTON

MIDDLE TN

11. PICKETT, CLAY, FENTRESS, OVERTON, PUTNAM, CUMBERLAND, WHITE
12. BLEDSOE, VAN BUREN, SEQUATCHIE, MARION, GRUNDY, FRANKLIN
13. WILSON, SMITH, TROUSDALE, MACON, JACKSON
14. CANNON, DEKALB, WARREN, COFFEE
15. SUMNER
16. DAVIDSON
17. WILLIAMSON
18. RUTHERFORD
19. LINCOLN, MOORE, BEDFORD, MARSHALL
20. MONTGOMERY, ROBERTSON
21. DICKSON, HOUSTON, HUMPHREYS, STEWART, CHEATHAM
22. MAURY, GILES, LAWRENCE
23. HICKMAN, LEWIS, PERRY, HARDIN, WAYNE

WEST TN

24. HENRY, CARROLL, BENTON, DECATUR
25. MADISON, CHESTER, HENDERSON
26. WEAKLEY, GIBSON, CROCKETT, HAYWOOD
27. OBION, LAKE, DYER, LAUDERDALE
28. TIPTON, FAYETTE, HARDEMAN, McNAIRY
29. SHELBY

EXHIBIT C – POSSIBLE OPTION 2 ON REDISTRICTING

EAST TN

1. JOHNSON, CARTER, WASHINGTON, UNICOI
2. SULLIVAN
3. HAWKINS, HANCOCK, GREEN, HAMBLEN, GRAINGER
4. COCKE, SEVIER, JEFFERSON
5. BLOUNT
6. KNOX
7. ANDERSON, CLAIBORNE, CAMPBELL, SCOTT, UNION
8. MORGAN, ROANE, LOUDON, MEIGS, RHEA
9. BRADLEY, POLK, MCMINN, MONROE
10. HAMILTON

MIDDLE TN

11. PICKETT, CLAY, FENTRESS, OVERTON, PUTNAM, CUMBERLAND, WHITE
12. BLEDSOE, VAN BUREN, SEQUATCHIE, MARION, GRUNDY, FRANKLIN
13. WILSON, SMITH, TROUSDALE, MACON, JACKSON
14. CANNON, DEKALB, WARREN, COFFEE
15. SUMNER
16. DAVIDSON
17. WILLIAMSON
18. RUTHERFORD
19. LINCOLN, MOORE, BEDFORD, MARSHALL
20. MONTGOMERY, ROBERTSON
21. DICKSON, HOUSTON, HUMPHREYS, STEWART, CHEATHAM
22. MAURY, GILES, LAWRENCE
23. HICKMAN, LEWIS, PERRY, WAYNE, HARDIN, DECATUR

WEST TN

24. WEAKLEY, HENRY, CARROLL, BENTON,
25. MADISON, CHESTER, HENDERSON
26. GIBSON, CROCKETT, HAYWOOD
27. OBION, LAKE, DYER, LAUDERDALE
28. TIPTON, FAYETTE, HARDEMAN, McNAIRY
29. SHELBY

EXHIBIT D – POSSIBLE OPTION 3 ON REDISTRICTING

EAST TN

1. JOHNSON, CARTER, WASHINGTON, UNICOI
2. SULLIVAN
3. HAWKINS, HANCOCK, GREEN, HAMBLEN, GRAINGER
4. COCKE, SEVIER, JEFFERSON
5. BLOUNT
6. KNOX
7. ANDERSON, CLAIBORNE, CAMPBELL, SCOTT, UNION
8. MORGAN, ROANE, LOUDON, MEIGS, RHEA
9. BRADLEY, POLK, MCMINN, MONROE
10. HAMILTON

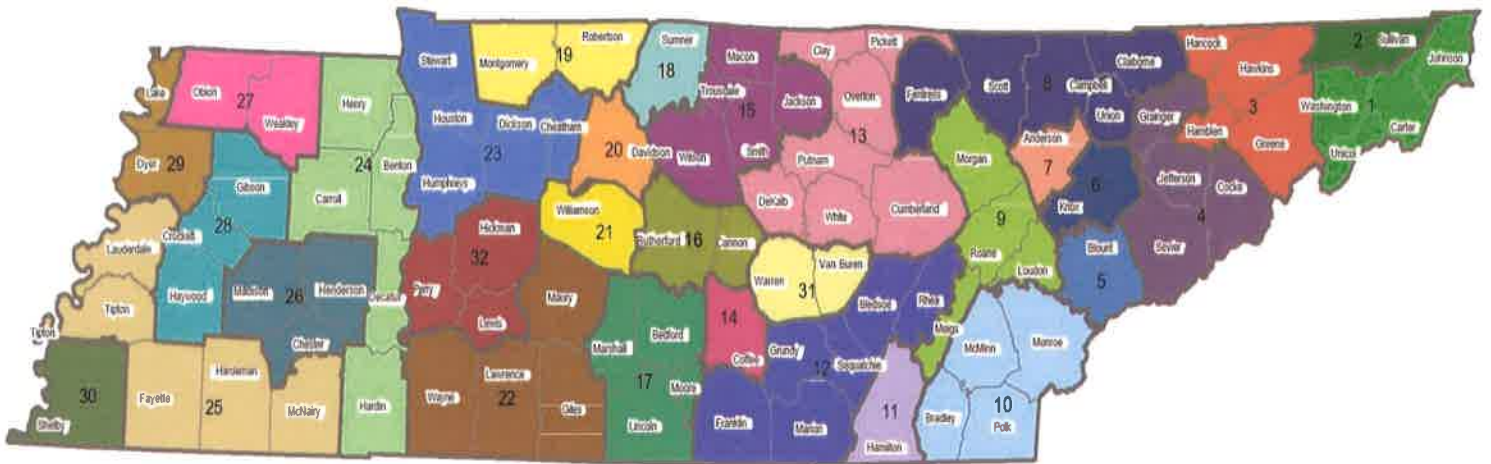
MIDDLE TN

11. PICKETT, CLAY, FENTRESS, OVERTON, PUTNAM, CUMBERLAND, WHITE
12. BLEDSOE, VAN BUREN, SEQUATCHIE, MARION, GRUNDY, FRANKLIN
13. WILSON, SMITH, TROUSDALE, MACON, JACKSON
14. CANNON, DEKALB, WARREN, COFFEE
15. SUMNER
16. DAVIDSON
17. WILLIAMSON
18. RUTHERFORD
19. LINCOLN, MOORE, BEDFORD, MARSHALL
20. MONTGOMERY, ROBERTSON
21. DICKSON, HOUSTON, HUMPHREYS, STEWART, CHEATHAM
22. MAURY, GILES, LAWRENCE, WAYNE,
23. HICKMAN, LEWIS, PERRY, HARDIN, DECATUR

WEST TN

24. WEAKLEY, HENRY, CARROLL, BENTON
25. MADISON, CHESTER, HENDERSON
26. GIBSON, CROCKETT, HAYWOOD
27. OBION, LAKE, DYER, LAUDERDALE
28. TIPTON, FAYETTE, HARDEMAN, McNAIRY
29. SHELBY

Appendix A
Map Corresponding to Exhibit A- Current Configuration



WEST TN

- 24 HENRY, CARROLL, BENTON, HARDIN, DECATUR
- 25 LAUDERDALE, TIPTON, FAYETTE, HARDEMAN, McNAIRY
- 26 MADISON, CHESTER, HENDERSON
- 27 WEAKLEY, OBION
- 28 GIBSON, CROCKETT, HAYWOOD
- 29 LAKE, DYER
- 30 SHELBY

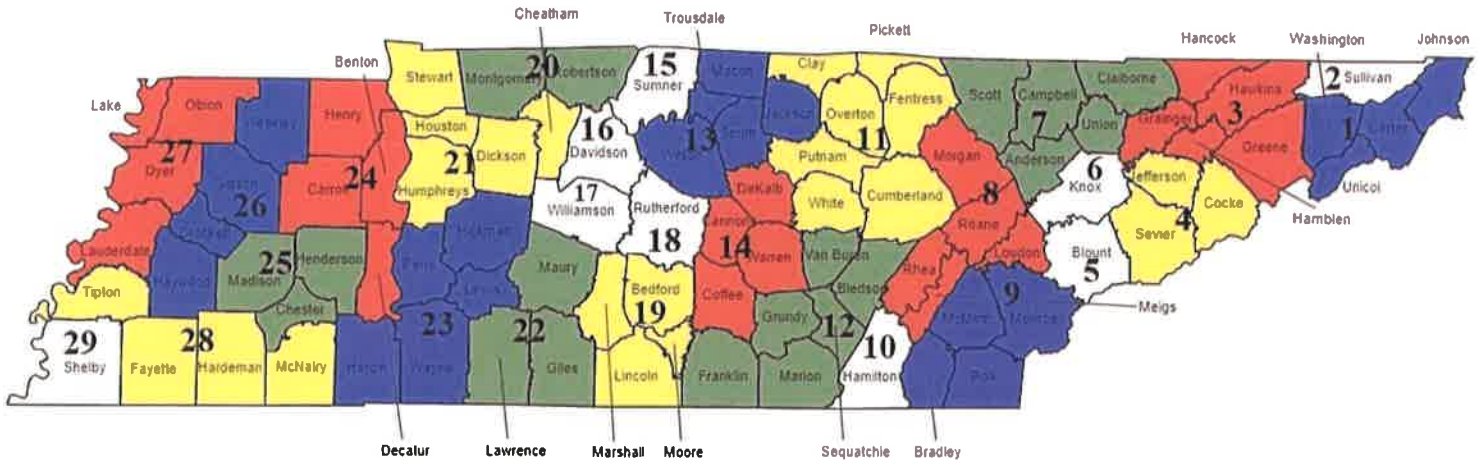
MIDDLE TN

- 12 BLEDSOE, SEQUATCHIE, MARION, GRUNDY, FRANKLIN, RHEA
- 13 PICKETT, CLAY, OVERTON, PUTNAM, CUMBERLAND, WHITE, DEKALB
- 14 COFFEE
- 15 WILSON, SMITH, TROUSDALE, MACON, JACKSON
- 16 RUTHERFORD, CANNON
- 17 LINCOLN, MOORE, BEDFORD, MARSHALL
- 18 SUMNER
- 19 MONTGOMERY, ROBERTSON
- 20 DAVIDSON
- 21 WILLIAMSON
- 22 MAURY, GILES, LAWRENCE, WAYNE
- 23 DICKSON, HOUSTON, HUMPHREYS, STEWART, CHEATHAM
- 31 WARREN, VAN BUREN
- 32 HICKMAN, LEWIS, PERRY

EAST TN

- 1 JOHNSON, CARTER, WASHINGTON, UNICOI
- 2 SULLIVAN
- 3 HAWKINS, HANCOCK, GREEN, HAMBLEN
- 4 COCKE, SEVIER, JEFFERSON, GRAINGER
- 5 BLOUNT
- 6 KNOX
- 7 ANDERSON
- 8 CLAIBORNE, CAMPBELL, SCOTT, UNION, FENTRESS
- 9 MORGAN, ROANE, LOUDON, MEIGS
- 10 BRADLEY, POLK, McMINN, MONROE
- 11 HAMILTON

Appendix B
Possible Option 1 on Redistricting set forth in Exhibit B



WEST TN

- 24 HENRY, CARROLL, BENTON, DECATUR
- 25 MADISON, CHESTER, HENDERSON
- 26 WEAKLEY, GIBSON, CROCKETT, HAYWOOD
- 27 OBION, LAKE, DYER, LAUDERDALE
- 28 TIPTON, FAYETTE, HARDEMAN, McNAIRY
- 29 SHELBY

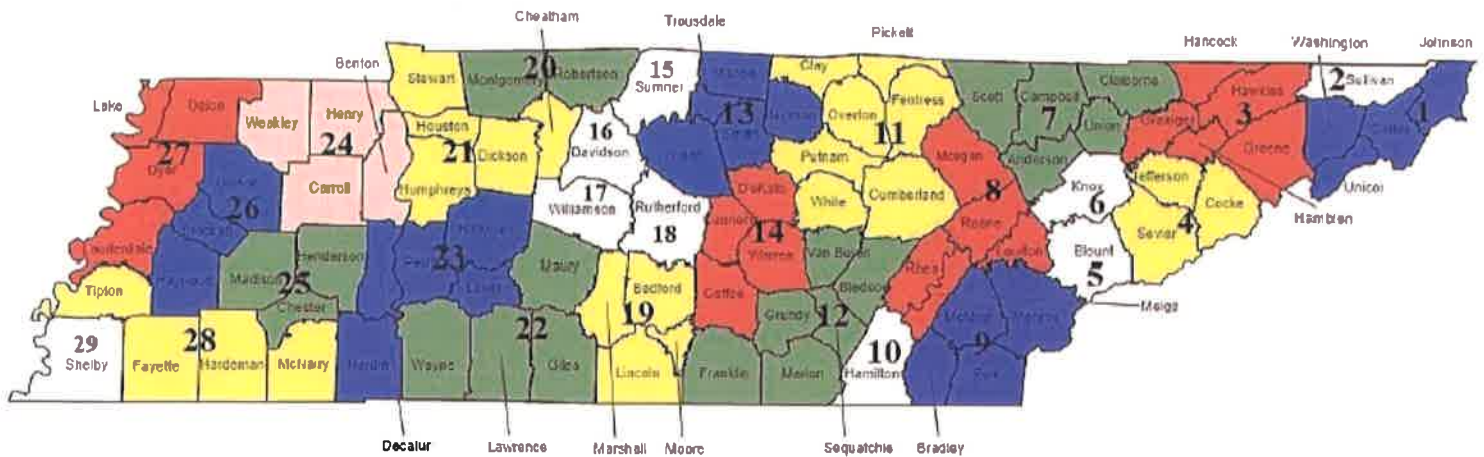
MIDDLE TN

- 11 PICKETT, CLAY, FENTRESS, OVERTON, PUTNAM, CUMBERLAND, WHITE
- 12 BLEDSOE, VAN BUREN, SEQUATCHIE, MARION, GRUNDY, FRANKLIN
- 13 WILSON, SMITH, TROUSDALE, MACON, JACKSON
- 14 CANNON, DEKALB, WARREN, COFFEE
- 15 SUMNER
- 16 DAVIDSON
- 17 WILLIAMSON
- 18 RUTHERFORD
- 19 LINCOLN, MOORE, BEDFORD, MARSHALL
- 20 MONTGOMERY, ROBERTSON
- 21 DICKSON, HOUSTON, HUMPHREYS, STEWART, CHEATHAM
- 22 MAURY, GILES, LAWRENCE
- 23 HICKMAN, LEWIS, PERRY, HARDIN, WAYNE

EAST TN

- 1 JOHNSON, CARTER, WASHINGTON, UNICOI
- 2 SULLIVAN
- 3 HAWKINS, HANCOCK, GREEN, HAMBLÉN, GRAINGER
- 4 COCKE, SEVIER, JEFFERSON
- 5 BLOUNT
- 6 KNOX
- 7 ANDERSON, CLAIBORNE, CAMPBELL, SCOTT, UNION
- 8 MORGAN, ROANE, LOUDON, MEIGS, RHEA
- 9 BRADLEY, POLK, McMINN+4, MONROE
- 10 HAMILTON

Appendix D
Possible Option 3 on Redistricting set forth in Exhibit D



WEST TN

- 24 WEAKLEY, HENRY, CARROLL, BENTON
- 25 MADISON, CHESTER, HENDERSON
- 26 GIBSON, CROCKETT, HAYWOOD
- 27 OBION, LAKE, DYER, LAUDERDALE
- 28 TIPTON, FAYETTE, HARDEMAN, McNAIRY
- 29 SHELBY

MIDDLE TN

- 11 PICKETT, CLAY, FENTRESS, OVERTON, PUTNAM, CUMBERLAND, WHITE
- 12 BLEDSOE, VAN BUREN, SEQUATCHIE, MARION, GRUNDY, FRANKLIN
- 13 WILSON, SMITH, TROUSDALE, MACON, JACKSON
- 14 CANNON, DEKALB, WARREN, COFFEE
- 15 SUMNER
- 16 DAVIDSON
- 17 WILLIAMSON
- 18 RUTHERFORD
- 19 LINCOLN, MOORE, BEDFORD, MARSHALL
- 20 MONTGOMERY, ROBERTSON
- 21 DICKSON, HOUSTON, HUMPHREYS, STEWART, CHEATHAM
- 22 MAURY, GILES, LAWRENCE, WAYNE
- 23 HICKMAN, LEWIS, PERRY, HARDIN, DECATUR

EAST TN

- 1 JOHNSON, CARTER, WASHINGTON, UNICOI
- 2 SULLIVAN
- 3 HAWKINS, HANCOCK, GREEN, HAMBLÉN, GRAINGER
- 4 COCKE, SEVIER, JEFFERSON
- 5 BLOUNT
- 6 KNOX
- 7 ANDERSON, CLAIBORNE, CAMPBELL, SCOTT, UNION
- 8 MORGAN, ROANE, LOUDON, MEIGS, RHEA
- 9 BRADLEY, POLK, McMINN, MONROE
- 10 HAMILTON

Defendant did not have insurance for the property on the date of this closing, so the loan officer decided to deny the loan and this closing did not take place. The Defendant's failure to obtain insurance is the only thing that prevented the loan from going through. The Defendant's failure to obtain insurance had nothing to do with the insurability of the property. Instead, it was based on the Defendant's procrastination in obtaining insurance. The closings were scheduled in mid and late June of 2012.

The Plaintiff spent the following sums making repairs to the property:

\$3,000.00 to All Around Floor Support for repairs made to floors
\$2,625.00 to Heritage Remodeling Roofing & Siding for repairs.

These repairs were not required under the parties' contract, but they had to be made in order for the Defendant to qualify for the loan described in the parties' contract. These repairs occurred after May 2, 2012, and before the last scheduled closing.

The Defendant also spend \$512.00 for a termite inspection and \$500.00 for a home inspection.

These inspections were not required under the parties' contract, and they were not required in order for the Defendant to qualify for the loan described in the parties' contract.

The Plaintiff placed a \$650.00 deposit on an apartment, which she lost when the closing did not occur and she had to move back into the property. The Defendant requested when the parties entered into the contract that the Plaintiff move quickly after closing, and she knew that the Plaintiff would have to rent housing in order to meet that request.

II. CONCLUSIONS OF LAW

A. Breach

The parties had a valid enforceable contract. This contract was contingent upon the occurrence of two things. First, the property had to appraise for at least 100% of purchase price. The purchase price was \$127,500.00, and the property appraised for \$130,000.00. Thus, this contingency was satisfied. The second contingency was that the Defendant have the "ability to obtain a loan(s) in the principal amount up to 100% of the Purchase Price." "Ability to obtain" is a defined term in the contract, and it means that the "[Defendant] is qualified to receive the loan described herein based on customary and standard underwriting criteria." The Defendant qualified for the loan, and the closing would have occurred if the Defendant had obtained insurance on the property prior to the closing date. The Defendant was aware that she had to obtain insurance on property, but she simply procrastinated in her efforts in obtaining insurance. The Defendant's procrastination led to the closings being postponed, and it then led to the loan officer denying the loan altogether. The only thing that stopped the loan from going through was the Defendant's failure to obtain insurance, and this Court concludes that the Defendant breached this contract.

B. Damages

The law on damages in a breach of contract case involving real estate is as follows:

[T]he general rule and proper measure of damages available to [seller] as against a breaching [buyer] in a real estate transaction is that the [seller] is entitled to the difference between the contract price and the fair market value of the property *at the time of the breach*. In addition, however, the [seller] may recover special damages, if any, *that arise out of the breach of the contract* in order to compensate the [seller] for any loss or injury actually sustained by reason of the [buyer]'s breach. These special damages, though, must be within reasonable contemplation of both parties, at the time the contract was made.

...

If, at the time of breach the actual value of [the real estate] equaled or exceeded the contract price, then under the general rule, the [non-breaching party] would be entitled to only nominal damages.

Turner v. Benson, 672 S.W.2d 752, 754-55 (Tenn. 1984)(citations omitted)(emphasis added).

“Nominal damages are given, not as an equivalent for wrong, but in recognition of a technical injury, and by way of declaring a right. . . .” Womack v. Ward, 189 S.W.2d 619, 620 (Tenn. Ct. App. 1944) (cert. denied Oct. 14, 1944)(citations omitted).

(i). Actual damages.

A non-breaching party in a real estate contract is entitled to the actual damages sustained, and those damages are calculated by taking the difference between the contract prices and the fair market value (FMV) of the property on the date of the breach. Turner, 672 S.W.2d at 754-55.

The contract in this case was breached in June of 2012, and the only persuasive evidence the Court had to go on as to the FMV of the property on the date of the breach was the appraised value of \$130,000.00 that was given on May 2, 2012 and the \$5,625.00 in repairs that were made to the property after this appraisal had been given. There was no testimony that the housing market had changed between the date of the appraisal and the breach. Further, while FMV and appraised value are not always the same, there was no substantial evidence introduced that persuaded the Court they were different in this case. This Court is in the position to weigh the evidence on every issue. However, there has to be evidence to weigh on an issue before it can, and under the circumstances, this Court would be hard pressed to conclude that the FMV of the property on the date of the breach was less than \$130,000.00 especially after over \$5,000.00 in repairs had been made to the property after the \$130,000.00 appraisal was given. Thus, this Court concludes that the FMV of the property on the date of the breach was \$130,000.00, and since the contract price was less than the FMV on

the date of the breach, this Court cannot conclude that the Plaintiff suffered any actual damages.

(ii). Nominal damages.

The Defendant clearly breached the parties' contract. Technically non-breaching parties are injured whenever there is a breach of a contract even if actual damages are not proven, see Womack, 189 S.W.2d at 620., and this case is no different. In recognition of the injury the Plaintiff suffered by the Defendant's breach of the contract, the Court concludes that the Plaintiff should be awarded \$500.00 in nominal damages.

(ii). Special damages.

Special damages are those damages that "arise out of the breach of the contract" and they are recoverable "in order to compensate the [non-breaching party] for any loss or injury sustained by reason of the . . . breach." Turner, 672 S.W.2d at 754-55 .

In this case the Plaintiff spent a considerable sum of money, \$5,625.00, to make repairs to the property. These sums, however, were not spent or incurred because of the Defendant's breach. Instead, they were spent before the breach so that the property would meet requirements of the loan described in the contract and the Defendant would therefore qualify for that loan. Also, there was no evidence that the parties had contracted with one another for the Defendant to reimburse the Plaintiff for the costs of the repairs after the closing had occurred. While the Plaintiff would not have made those repairs had she and the Defendant not entered into the contract, she did not make those repairs and spend those sums because of the breach. Unfortunately, the sums spent on these repairs are not the type of special damages recoverable under Turner. The Plaintiff, however, did suffer a loss of \$650.00 that was directly related to Defendant's breach, and the Court concludes she is entitled to recover that amount as special damages.

C. Attorney's fees.

In the event of a breach the parties' contract provides that the non-breaching party may recover reasonable attorney's fees from the breaching party. The Defendant breached the contract, and the Plaintiff incurred attorney's fees because of that breach. The Court concludes that the Plaintiff should recover her reasonable attorney's fees from the Defendant.

The parties requested that the Court allow them to submit evidence on this issue after the Court had entered its findings and conclusions, and the Court will grant that request. If the parties can agree on an amount that is reasonable the Plaintiff may submit her evidence on this issue in the form of a notarized affidavit, and if not, an evidentiary hearing on that issue will be held on December 10, 2014 at 9:00 a.m. in the Chancery Court room of the Dyer County Courthouse.



Tony A. Childress

IN THE CHANCERY COURT OF TENNESSEE
TWENTY-NINTH JUDICIAL DISTRICT
LAKE COUNTY, TENNESSEE

JEREMY WHITE,
PETITIONER
v.
TOMMY MILLS, ET AL
RESPONDENTS

LAKE COUNTY CHANCERY COURT
FILED
DATE: 3/30/09 TIME: 11:45 AM PM
BK 12 PAGE 13
NANETTE R. COOK, CHANCERY CLERK
BY Nanette R. Cook CLERK
BY _____ D.G.

Docket Number: 5469

ORDER ON PETITIONER'S COMMON LAW WRIT OF CERTIORARI

This matter came before the Court upon petitioner Jeremy White's common law writ of certiorari, and the response that Respondents have filed thereto. A brief history of this case reviews that the prison disciplinary board ("Board") found Petitioner guilty of the following disciplinary infractions: (1) possession of contraband¹ and (2) attempt to intimidate an employee. Petitioner appealed the Board's decision to Warden Tommy Mills. Warden Mills affirmed the conviction for possession of contraband and dismissed the conviction for attempt to intimidate an employee. Petitioner appealed Warden Mills' affirmation of the conviction to Commissioner Little. Commissioner Little concurred with Warden Mills. Petitioner then timely filed the pending writ. Respondents did not oppose the granting of the writ, and on March 25, 2008, the record was filed with the Clerk of this Court. By brief filed on April 7, 2008, Petitioner presented seven issues for this Court to review. Respondents filed a brief on June 6, 2008, and on June 24, 2008, Petitioner responded to Respondents' brief.

LAW GOVERNING REVIEW OF COMMON LAW WRITS OF CERTIORARI

"The common-law writ of certiorari serves as the proper procedural vehicle through which prisoners may seek review of decisions by prison disciplinary boards, parole eligibility review boards, and other similar administrative tribunals." *Jackson v. Tenn. Dep't of Corr.*, No. W2005-02240-COA-R3-CV, 2006 WL 1547859, at *3 (Tenn. Ct.App. June 8, 2006)(citing *Rhoden v. State Dep't of Corr.*, 984 S.W.2d 955, 956 (Tenn.Ct.App.1988)). The issuance of a writ of common-law certiorari is not an adjudication of anything. *Keen v. Tenn. Dep't of Corr.*, No. M2007-00632-COA-R3-CV, 2008 WL 539059, at *2 (Tenn.Ct.App. Feb. 25, 2008)(citing *Gore v. Tenn. Dep't of Corr.*, 132 S.W.3d 369, 375 (Tenn.Ct.App.2003)). Instead, it is "simply an order

¹ The contraband in question was "alcohol pads."

to the lower tribunal to file the complete record of its proceedings so the trial court can determine whether the petitioner is entitled to relief.” *Id.* (citing *Hawkins v. Tenn. Dep’t of Corr.*, 127 S.W.3d 749, 757 (Tenn.Ct.App.2002); *Hall v. McLesky*, 83 S.W.3d 752, 757 (Tenn.Ct.App.2001)). “Review under a writ of certiorari is limited to whether the inferior board or tribunal exceeded its jurisdiction or acted illegally, arbitrarily, or fraudulently.” *Jackson*, 2006 WL 1547859, at *3 (citing *McCallen v. City of Memphis*, 786 S.W.2d 633, 640 (Tenn.1990)). “The reviewing court is not empowered ‘to inquire into the intrinsic correctness of the board’s decision.’” *Gordon v. Tenn. Dep’t of Corr.*, No. M2006-01273-COA-R3-CV, 2007 WL 2200277, at *2 (Tenn.Ct.App. July 30, 2007)(quoting *Willis v. Tenn. Dep’t of Corr.*, 113 S.W.3d 706, 712 (Tenn.2003)). Our Supreme Court has held that a common-law writ of certiorari may be used to remedy: “(1) fundamentally illegal rulings; (2) proceedings inconsistent with essential legal requirements; (3) proceedings that effectively deny a party his or her day in court; (4) decisions beyond the lower tribunal’s authority; and (5) plain and palpable abuses of discretion.” *Gordon*, 2007 WL 2200277, at *2 (citing *Willis*, 113 S.W.3d at 712). The reviewing court does not weigh the evidence, but must uphold the lower tribunal’s decision if the lower tribunal “acted within its jurisdiction, did not act illegally or arbitrarily or fraudulently, and if there is any material evidence to support the [tribunal’s] findings.” *Jackson*, 2006 WL 1547859, at *3 (citing *Watts v. Civil Serv. Bd. of Columbia*, 606 S.W.2d 274, 276-77 (Tenn.1980); *Davison v. Carr*, 659 S.W.2d 361, 363 (Tenn.1983)). “A board’s determination is arbitrary and void if it is unsupported by any material evidence.” *Gordon*, 2007 WL 2200277, at *2 (citing *Watts*, 606 S.W.2d 274, 276-77 (Tenn.1980)). Whether there existed material evidence to support the board’s decision is a question of law which should be determined by the reviewing court based on the evidence submitted. *Id.* (citing *Watts*, 606 S.W.2d at 277).

Smith v. Tennessee Dept. of Correction 2008 WL 4922428, 2 (Tenn.Ct.App. Nov. 14, 2008) citing *Ross v. Tenn. Dep’t of Corrections*, W2008-00422-COA-R3-CV, 2008 WL 4756873 (Tenn.Ct.App. Oct. 30, 2008).

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON ISSUES PRESENTED BY PETITIONER

Petitioner contends in his April 7, 2008 brief that Respondents violated “T.D.O.C. Policy #502.01 section (IV)(I)”; “T.D.O.C. Policy #502.01 section(II)”; “T.D.O.C. Policy #502.01 section (V)”; “T.D.O.C. #502.01 section (IV)(L)(4)(c)(3)(6)”; “T.D.O.C. #502.01 section (IV)(L)(4)(d)(1)”; “T.D.O.C. #502.01 section (IV)(J)(1) and (VI)(A)(6)(b)”; and “section (VI)(A)(5)(b)(d) of T.D.O.C. Policy #502.01”. In the brief they filed on June 6, 2008, Respondents asserted, among other things, that they did not violate Petitioner’s due process rights. Petitioner, however, asserted in the brief he filed on June 24, 2008, that he is not contending that Respondents violated his rights to due process. Instead, Petitioner contends that he is only alleging that he should be granted relief because Respondents’ violation of the above referenced policies of Tennessee Department of Corrections renders the decision the Board reached “arbitrary and illegal.” The Court will first address Petitioner’s contention that Respondents’ failure to comply the above referenced policies makes the

decision the Board reached illegal.

In *Clark v. Rose*, W2002-01245-COA-R3-CV, 2003 WL 21051737 (Tenn.Ct.App.) (Tenn.Ct.App. Feb.5, 2003), the Western Section of the Tennessee Court of Appeals stated the following:

[F]ailure to follow TDOC policies may be considered illegal only when the Board's actions constitute a failure to follow the "essential requirements of the law." *See Ahkeen v. Campbell*, No. M2000-02411-COA-R3-CV, 2001 Tenn.App. LEXIS 815, at *15 (Tenn.Ct.App. Nov. 2, 2001). The "essential requirements of the law" are comprised of those rights established by the due process clause. [*Id.*] at *21-22. Therefore, "the disciplinary proceeding is not 'illegal' within the meaning of ... the common law writ of certiorari simply because the disciplinary board failed to comply with its own internal disciplinary policies; the petition for a writ of certiorari must sufficiently allege a violation of due process." *Baxter v. Tenn. Dept. of Corr.*, No. M2000-02447-COA-R3-CV, 2002 Tenn.App. LEXIS 279, at *14 (Tenn.Ct.App. Apr. 23, 2002).

Clark v. Rose, W2002-01245-COA-R3-CV, 2003 WL 21051737, 5 (Tenn.Ct.App. Feb.5, 2003) (citing *Hall v. Campbell*, W2002-00301-COA-R3-CV, 2002 WL 31423842 (Tenn.Ct.App. Oct. 29, 2002)).

As the Court in *Clark* clearly stated, failure to comply with TDOC policies may be considered illegal under a common law writ of certiorari when the failure to comply with the policies violates rights established by the due process clause. In this case, however, Petitioner clearly states that he is not alleging that the Board violated his rights to due process. Since Petitioner does not allege a violation of due process, the Court does not find that the Board's alleged failure to comply the above referenced policies renders the decision that it reached illegal. The Court will now address Petitioner's contention that the decision the Board reached was "arbitrary."

A prison disciplinary board's actions can be arbitrary when the actions lack a rational basis or are not based on reasoning or judgment. *Hall*, 2002 WL 31423842, at *5. Also "[a] board's determination is arbitrary and void if it is unsupported by any material evidence.' Whether there existed material evidence to support the board's decision is a question of law which should be determined by the reviewing court based on the evidence submitted." *Smith*, 2008 WL 4922428 at * 2. (citations omitted). In *McCall v. Bennett* 243 S.W.3d 570, 574 (Tenn.Ct.App. 2007), the Tennessee Court of Appeals observed the following:


The Tennessee Supreme Court has defined "material evidence" as "evidence material to the question in controversy, which must necessarily enter into the consideration of the controversy and by itself, or in connection with the other evidence, be determinative of the case." *Knoxville Traction Co. v. Brown*, 115 Tenn. 323, 89 S.W. 319, 321 (Tenn.1905). One legal dictionary further defines "material evidence" as "evidence having some logical connection with the consequential facts or the issues." *Black's Law Dictionary* 578 (7th ed.1999).

McCall v. Bennett 243 S.W.3d 570, 574 (Tenn.Ct.App. 2007).

In this case, the question in controversy for the Board to determine was whether or not Petitioner was in possession of contraband. Petitioner candidly admits that he possessed the alcohol pads. Since Petitioner admits that he possessed the contraband in question, the Court finds that there exists in the record material evidence to support the Board's decision that Petitioner was in possession of contraband. Further, nothing in the record before this Court indicates that the Board's decision lacks a rational basis nor does the record indicate that the decision was not based on reasoning and judgment.

CONCLUSION

After considering the entire record, the arguments and issues advanced by the parties, and the pleadings filed in the matter, this Court does not find that the action of the Board was illegally or arbitrary. Thus, the Court concludes that Petitioner is not entitled to the relief he requests. Costs associated with this matter are taxed to petitioner Jeremy White for which execution may issue, if necessary.

 3-27-05

Tony A. Childress

**IN THE CHANCERY COURT OF TENNESSEE
TWENTY-NINTH JUDICIAL DISTRICT
DYER COUNTY, TENNESSEE**

**IN RE:
MILLER'S CHAPEL CHURCH OF JESUS CHRIST, INC. f/k/a
MIDDLE CITY CHURCH OF JESUS CHRIST, INC.**

RONNY WEBB

v.

JEFF SMITH

Docket Number: 18CV476

AM 8:45 PM

FEB 05 2019
H. STEVEN WALKER
CHANCERY CLERK *HW* DC

ORDER

These matter came before the Court on January 22, 2019, upon the Defendant's motion to dismiss this matter and the Plaintiff's response thereto, and the Plaintiff's motion to amend the complaint and the Defendant's response thereto. After due consideration and for the reasons stated below, the Court concludes the ecclesiastical abstention doctrine prevents it from obtaining subject matter jurisdiction over causes of action A., B., C., and E. of the Plaintiff's complaint and these claims must be dismissed. The Court also concludes that at this time causes of action D. and F. should not be dismissed under any theory asserted by the Defendant. Finally, the Court concludes the Plaintiff shall be allowed to amend his complaint to add additional Plaintiffs for causes of action D. and F. only.

Intertwined throughout Plaintiff's causes of action A., B., C., and E. are references to violations of the bylaws of the church in question, a copy of which the Plaintiff attached to his complaint and which the Court reviewed in ruling on Defendant's motion to dismiss, and it is clear that violations of these bylaws form the foundation of causes of action A., B., C., and E. While these bylaws are the worldly rules that form the basis of the governance of this church, the preamble of these bylaws make it crystal clear "[t]he interpretation of these bylaws must be in keeping with Biblical teachings." In fact, these bylaws contain numerous references and citations to passages of the New Testament including for example part 2, section 6, Article II which provides "[a]ny grievance arising between individual members of the assembly shall be dealt with according to Matt. 18:15-18. . . ."

One central issue the complaint would require to be determined by this Court is if persons who were not members of this church voted at a "Voting Meeting." How one becomes a member of this church is set forth in Article II of the church bylaws, and even a cursory review of this Article

reveals membership in this church is steeped in Biblical teachings. Taking all allegation in the complaint as true as must be done at this stage it is clear the bylaws of this church must be reviewed and interpreted before this Court could determine if causes of action A., B., C., and E. had any merit at all, and as stated above, the preamble of these bylaws make it crystal clear “[t]he interpretation of these bylaws must be in keeping with Biblical teachings.” Thus, an interpretation of these bylaws would necessarily require this Court to delve into the Biblical teachings of this church and resolve questions concerning the same, and courts such as this one are rightly prohibited from venturing into that arena when addressing legal claims involving religious organizations. *See e.g., Church of God in Christ, Inc. v. L. M. Haley Ministries, Inc.* 531 S.W.3d 171 (Tenn. 2017).

Since the interpretation of this church’s bylaws is an integral component of Plaintiff’s causes of action A., B., C., and E. and would require this Court to venture into the Biblical teachings of this church, the Court concludes it does not have subject matter jurisdiction over causes of action A., B., C., and E.. Accordingly, those causes of action are dismissed. The Court concludes the Plaintiff shall be allowed to amend his complaint to add additional Plaintiffs for causes of action D. and F. only, and the request to do so is granted. The Court concludes that at this stage the remainder of the causes of action in the Plaintiff complaint contains sufficient allegations to overcome a dismissal under both theories advanced by the Defendant. Thus, the request to dismiss those claims on those theories is denied. The clerk is to serve the parties’ counsel with a stamped copy of this order. **It is SO ORDERED.**

 2-9-19

Tony A. Childress