

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

Name: William M. Harris

Office Address: 120 Buffalo Road, Lawrenceburg, Lawrence County, Tennessee 3846
(including county)

Office Phone: (931) 766-0580 Facsimile: (931) 244-6090

INTRODUCTION

The State of Tennessee Executive Order No. 41 hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website www.tncourts.gov). The Council requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to debra.hayes@tncourts.gov, or via another digital storage device such as flash drive or CD.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Self employed sole practitioner

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

1997-BPR#18688

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.

Only Tennessee; 1997; #018688; active

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

I have been self employed as an attorney since completing my legal education in 1997. Even though I lived in Lawrenceburg, I had an office sharing arrangement with Grant Smith in Nashville for approximately two (2) years after becoming licensed to practice law. While still attempting to establish a practice in Nashville, I began an office sharing arrangement in April 1998, with Paul A. Bates in Lawrenceburg, Tennessee and continued that arrangement until Paul announced his impending retirement in 2009. At that time I purchased an older house near the Lawrence County Courthouse and, with the help of my wife, renovated it as an office. I have continued a solo practice at this location for the past five (5) years. In addition to my solo

practice, I was hired as county attorney for Lawrence County in September 2003 and served in that position until deciding to run for General Sessions judge in 2006. My duties as county attorney were advisory as well as requiring the litigation of several issues including lawsuits filed against the county by elected officials. I was responsible for attending committee meetings, research on county legislative issues and preparing resolutions for the county commission's vote.

My employment history and experience prior to passing the bar is as follows:

From January 1996-October 1997 I was a legal assistant to Grant Smith in Nashville, Tennessee. My duties included legal research and preparing all types of pleadings including complaints, motions, answers, appellate briefs and memorandums of law for both State and Federal courts. I also assisted in trial prep for both State and Federal courts as well as assisting during trials in both courts.

From July/August 1982 until January 1996 I was in radio broadcasting. More specifically, WDXE AM/FM Radio in Lawrenceburg, Tennessee, WKRM AM/WKOM FM in Columbia, Tennessee and WCMG AM Radio in Lawrenceburg, Tennessee. At WDXE I served as program and music director with duties that included on-air shifts on both the AM and FM stations, advertising sales, writing and producing radio commercials, developing sales promotions, contests and games, programming music and news for both stations, gathering, writing and reporting news for both stations, and technical work including maintenance, installation and minor repairs to equipment. At WKRM AM/WKOM FM I was also program and music director with duties including an on-air shift, writing and producing radio commercials, developing sales promotions, contests and games, programming music and news for both stations, and scheduling and managing personnel for all shifts as well as working with sales staff to provide sales programming and promotions. At WCMG AM I served as program director, music director and then as general manager. WCMG was a small, 500 watt daytime station with a limited staff of two (2) full-time employees (myself included) and three (3) part time employees. My duties at WCMG included all of duties already listed above as well as budgeting and answering directly to the station owner.

Prior to the thirteen years I spent in radio, I worked at three (3) different manufacturing facilities beginning with my graduation from high school in 1971 when I went to work for Murray Ohio Manufacturing in Lawrenceburg, then in 1978 at Burlington Industries in Rayford, North Carolina, and finally in 1981 with Webster Industries in Lawrenceburg. At Murray Ohio I worked in receiving where I unloaded bicycle parts off of trailer trucks and train box cars. At Burlington Industries I began as a management trainee then moved into a supervisor position in the weave mill where I supervised the manufacture of worsted wool suiting material. My duties were supervising approximately twenty (20) employees whose individual duties included operating, maintaining and repairing weave machines. I was also a supervisor at Webster Industries in Lawrenceburg. Webster's primary business was manufacturing plastic garbage bags, sandwich bags and drop cloths. I supervised approximately fifteen (15) employees at the Lawrenceburg facility until it closed operations in 1982.

My other work experience includes working with my wife's family at their dairy/row crop farming operation in Lawrenceburg, selling life and health insurance for Metropolitan Life Insurance Company, assistant manager of a Sonic Drive In restaurant and working as a

veterinary assistant, all in McKenzie, Tennessee. While in college I worked at the college bookstore and later in the drama department. I also was part-time supply pastor for three (3) different Cumberland Presbyterian churches and worked as a summer youth director at Union City Cumberland Presbyterian Church and Clarksville Cumberland Presbyterian Church respectively. While attending Memphis Theological Seminary in Memphis, I was employed as a youth director at Decatur Trinity Christian Church and Park Avenue Cumberland Presbyterian Church. Those duties included developing and implementing programs for the youth of the church, working with the youth as a counselor and assisting the pastor with worship services including filling the pulpit in the pastor's absence.

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

N/A

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

My primary area of practice is criminal. I would estimate that this currently constitutes approximately forty (40%) to fifty (50%) percent of my practice. Next would be family/domestic law including divorce, adoptions, custody (both contested and uncontested) which would be thirty(30%) to forty (40%) percent of my business. The remaining areas of practice include probate, personal injury (plaintiff), and juvenile matters, which are approximately five (5%) percent each. There are also the occasional wills, powers of attorney, unemployment case, corporation formation, collection case and contract matters which round out the rest of my present practice.

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.

A significant part of my past seventeen (17) years of law practice have been spent in the courtroom. As stated before, criminal law is the largest percentage of my practice. This requires my being in General Sessions courts at least one to two days per week for appearances, plea negotiations, preliminary hearings and/or trials. Criminal Circuit court requires at least two to four days each month for regular arraignment/plea dockets, motion days and revocation dockets.

Being a sole practitioner, I am completely hands-on with all of my clients and personally responsible for all phases of the criminal process starting with the arrest and continuing through discovery, investigation, plea negotiation and trials when necessary. I have individually tried first degree murder, attempted first degree murder, rape of a child, theft, felony drug and assault cases in both jury and bench trials.

On the civil side, I have tried divorce and custody cases, copyright and trademark infringement cases (both as sole counsel and as co-counsel), fraud and breach of contract cases, collection actions (both as plaintiff's and defendant's counsel), easement and boundary line cases, wrongful termination/discrimination, and statutory actions brought by elected officials against Lawrence County for increases in personnel and salaries.

I have also represented clients in administrative hearings including social security disability cases, unemployment cases, and disciplinary board actions regarding emergency medical personnel. I have also appeared in federal court on an adversarial action for a bankruptcy creditor which ultimately settled just prior to trial.

By my count I have been counsel of record in thirteen (13) different appellate cases in the Tennessee Court of Appeals. My very first appellate case was actually settled after oral argument but before an opinion was rendered. I researched and prepared the briefs in all of the appellate cases and appeared for oral argument on all but three of these cases.

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

In *Dorning v. Bailey*, 2006 Tenn. App. LEXIS 83, the Sheriff of Lawrence County filed an application in the circuit court pursuant to section 8-20-101 *et seq.* of the Tennessee Code seeking funding for new vehicles, additional personnel and increased salaries for his employees. The trial court granted the sheriff additional funding for these items. The Appellate court reversed on three (3) of five (5) issues presented on appeal in favor of the county. The Appellate court specifically found the issue of awarding new cars to be one of first impression and reversed in the county's favor on that issue.

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.

None

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

I have served as guardian ad litem numerous times for both juveniles and adults. I am presently the trustee over two (2) different testamentary trusts and in the past year have also served as the executor over two (2) estates one of which is still active.

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

As stated above, while still in law school I left the radio business and went to work for Grant Smith, an attorney located on Music Row in Nashville. Within days of being hired I found myself spending hours in research at the Vanderbilt Law Library as well as waiting for what seemed like hours for cases to download off Westlaw during the days of dial-up modems. My legal experience really began in that office as I learned to draft all manner of pleadings including summary judgment motions and responses for State and Federal courts as well as memorandums of law in support of motions filed in Davidson County. One of the highlights of my legal assistant career came when Judge Echols granted a summary judgment in a copyright infringement case based on a memorandum I had researched and prepared. My excitement was relatively short lived, however, when Congress revisited and passed a law clarifying what constitutes public domain. Based on that clarification the Sixth Circuit Court of Appeals reversed and remanded the case back to the federal trial court. On a side note, the case tried and our client wound up losing.

In addition to being counsel of record in appellate cases, I have at times been retained by other attorneys to research and prepare briefs and/or memorandums for cases in which they were involved.

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

I submitted an application for the Circuit Judge position in the 22nd Judicial District created when Judge Robert L. Holloway was appointed to the Criminal Court of Appeals. The Council considered my application at a meeting held in Columbia, Tennessee on October 15, 2014. Following that meeting I was honored by my name being submitted to the Governor as a nominee.

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.

Bethel College (now Bethel University); 1971-1975; BA Degree; Broad Area Major in Speech/English/Drama; Served as Sophomore Class President; Phi Delta Sigma fraternity.

Memphis Theological Seminary; 1975-1977; no degree; the reason I left was that I felt I was working toward the wrong profession (pastoral ministry) and that to go forward with graduate school would be a mistake.

Nashville School of Law; 1993-1997; Doctorate of Jurisprudence.

PERSONAL INFORMATION

15. State your age and date of birth.

I am sixty-two (62) years of age. My date of birth is February 23, 1953.

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

I have lived in Tennessee for thirty-four (34) continuous years. December 1978 until August 1980, I lived in North Carolina but before that, I had lived my entire life in Tennessee.

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

I have lived in Lawrence County for the past thirty-four (34) years.

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

Lawrence

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.

N/A

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

No.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.

22. Please state and provide relevant details regarding any formal complaints filed against you with any supervisory authority including, but not limited to, a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you.

There have been no formal complaints filed against me that I am aware of.

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.

In 1999 I was named in a lawsuit filed in Davidson County General Sessions Court, Docket No. 99-GC-19649. I had been associated in a State court case in Davidson County and had picked up and signed for a copy of a deposition or trial transcript from a court reporter service. When I received the statement I sent it for payment to the attorney who had associated me. Several months later I was served with a civil warrant for payment of the deposition. I immediately contacted the lead attorney and told him what had happened. He and I both contacted the court reporter who was paid and the lawsuit was dismissed. I am not aware of any other legal proceeds for which I was named as a party with the exception of a few minor traffic violations I have received over the years.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

I have been a member of the Cumberland Presbyterian Church since about age twelve (12). My wife and I presently attend First Methodist Church in Lawrenceburg and have done so for the past six (6) years. Up until this last year I was a member of the Lawrence County Catbackers Club, an organization devoted to providing support for the Lawrence County High School football program. I have also been a member of the Lawrence County Chamber of Commerce.

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- If so, list such organizations and describe the basis of the membership limitation.
 - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No.

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

Tennessee Bar Association-2002(?) to present.

Lawrence County Bar Association-1998 to present.

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

None.

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

None.

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

None.

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

I was a candidate for General Sessions Judge for Lawrence County, Tennessee in 2006. I had applied for that position with the Lawrence County Commission in 2004 following the death of Judge Lee England, however, did not receive the appointment.

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

No.

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

100%

ESSAYS/PERSONAL STATEMENTS

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

One of the things I enjoy most about practicing law is researching legal issues in preparation of writing appellate briefs, memorandums or just preparing for trial. Having been an English major, I also enjoy writing as time permits. I also thoroughly enjoy just being in the courtroom as an observer, watching and listening to attorneys question witnesses, present evidence and facts, and then plead their cases before the court. My enjoyment of these activities are the primary reasons that I am seeking this position. I believe that being a judge would afford me the opportunity to tackle simple and complex legal issues, giving full weight to the arguments presented by counsel for the parties, and ultimately reaching a decision only after researching the issues as fully as necessary and then impartially applying the law to each case.

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)*

When I started practicing law, like most new attorneys, I began taking criminal appointments just to make ends meet. Now, seventeen years later, I fortunately do not have to depend on appointments for the bulk of my income. However, I do feel that it is my responsibility as an officer of the court to continue to take appointments of indigent defendants when called upon by the court to do so. And over the past several years I have made it my personal practice to make many of these appointments *pro bono* by not turning in my time to the State for payment. Further, it has been my goal from the beginning of my practice to treat appointed defendants no differently than those who retain my services. By doing this, I have also found that many of those appointed individuals and/or their families return to hire me on later cases. But even if they do not, I still feel a great sense of satisfaction when defendants and their families simply thank me for doing what we as attorneys are supposed to do, namely provide legal representation to the best of our ability for all clients regardless of their status in life.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

I am seeking the circuit judge position for the 22nd Judicial District which includes Maury, Lawrence, Giles and Wayne Counties. There are currently four (4) judges who serve both as

circuit judges and chancellors for this district. Cases heard are both civil and criminal in nature and include juvenile appeals, general sessions appeals, custody matters, divorces, adoptions, termination of parental rights, land disputes, condemnations and probate matters (except in Lawrence County) to name a few. I currently live in Lawrence County and, if appointed, plan to remain here. Presently, all of our sitting circuit judges live in Maury County and I believe that by staying in Lawrence County I would be more centrally located to the courts and hopefully more physically accessible to a majority of the attorneys, law enforcement officers and courts of the district.

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)*

Even though I am currently not a member of a civic group or organization, I do make every effort to support community based activities such as sports programs, schools and local charities. I have sponsored several little league baseball teams over the past years as well as monetarily contributing to various local high school and extracurricular sport programs when asked to do so. I have also sponsored other events and activities when called upon by various local civic groups. If appointed judge, I believe I will have the time to become involved with the community in a more beneficial way. One of the primary needs I see almost every day in my practice is to find a way to address the drug problem in our district (prescription and illegal) by means other than just probation and/or incarceration. I would explore the possibility of reinstating the drug court program as I feel it would be a valuable tool in providing defendants an incentive to become drug free and being productive instead of destructive.

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)*

As noted above, I did not begin practicing law until I was forty-four (44) years old. Prior to attending law school I had several different careers which placed me in contact with people from all walks of life. As a youth director in churches, I worked directly with young people helping them to sort out their problems and giving them guidance to help them cope with those problems. As a supervisor I worked with people, both younger and older, and found myself in the position of having to discipline employees when they violated company policy (which sometime required termination) while at the same time gaining their respect by treating everyone as equals and showing no favoritism. As a radio announcer, I learned that what really mattered to your audience was not how good you sounded on the air, but how you treated those same listeners when you met them in public. I also learned that people need to be "talked to" not "talked at" and when someone else is talking, to refraining from interrupting and simply listen to what's being said and then respond. Listening before speaking, I believe, is one of the most important talents that I have developed through my life experiences. I also believe that my life experiences have taught me that true respect from others is earned and not something demanded simply because of one's position in life.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

I will uphold the law regardless of my feelings as to the substance of the law at issue. As I have stated above, the biggest percentage of my practice is criminal law. Increasingly over the past several years it has become the practice of local law enforcement agencies to concentrate on arresting and prosecuting persons for the sale of prescription drugs. The primary method used by law enforcement is to enlist the aid of a confidential source to make purchases from individuals which they do with great success. After several months of undercover work and the use of several confidential sources indictments will issue and upwards to thirty (30) or more per people per county will be arrested and charged. Out of those arrested there will be several persons of older or advanced age that have no prior criminal record but who were approached by a "friend" or even a relative and asked if they would sell "a few pills". I admit that I have little or no sympathy for those (even my clients) who are in the business of selling their prescription drugs. That said, I still find it unfortunate that these older individuals with limited income are caught up in this net. However, the fact remains that the law has been broken and those who break the law must suffer the consequences of their actions and as a judge I would uphold those laws regardless of my feelings.

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. Jonathan Edwards, President/CEO Edwards Oil Company, 105 Helton Drive, Lawrenceburg, TN 38464; (931) 762-5531
B. John Sharp, Owner Sharp Transport, Inc., 3935 Hwy. 43 North, Lawrenceburg, TN 38464;
C. Blake Lay,
D. Hon. Stella L. Hargrove, Circuit Judge 22 nd Judicial District, P.O. Box 1056, Columbia, TN 38402-1056; (931) 380-2543
E. Paul A. Bates, Attorney (Retired),

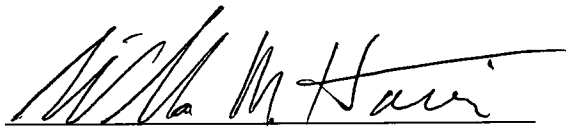
AFFIRMATION CONCERNING APPLICATION

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

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Circuit Court of the 22nd Judicial District of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: February 24, 2015.



Signature

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



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS
ADMINISTRATIVE OFFICE OF THE COURTS**

511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
AND OTHER LICENSING BOARDS**

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

WILLIAM MICHAEL HARRIS

Type or Print Name

Signature

February 24, 2015

Date

018688

BPR #

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

CASE NO. M2004-02392-COA-R3-CV

In The
**COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION, AT NASHVILLE**

**WILLIAM DORNING,
Sheriff of Lawrence County, Tennessee**

Petitioner/Appellee

VS.

**AMETRA BAILEY,
County Mayor of Lawrence County, Tennessee**

Respondent/Appellant

**ON APPEAL FROM ORDER OF
THE CIRCUIT COURT FOR THE 22ND JUDICIAL DISTRICT
AT LAWRENCEBURG, TENNESSEE
Docket No. CC-1446-03**

BRIEF OF APPELLANT

Counsel for Appellant

**William M. Harris
B.P.R. No. 18688
234 Pulaski Street
P.O. Box 743
Lawrenceburg, Tennessee 38464
(931) 766-0580**

ORAL ARGUMENT REQUESTED

STATEMENT OF THE CASE

On September 23, 2003, the Petitioner/Appellee, William Dorning, Sheriff of Lawrence County, Tennessee (hereinafter “**Sheriff Dorning**”), filed a Petition against the Respondent/Appellant, Ametra Bailey, County Mayor of Lawrence County, Tennessee (hereinafter “**Ms. Bailey**”), in the Circuit Court for Lawrence County, Tennessee, pursuant to T.C.A. § 8-20-101 *et seq.* [T.R. Vol. I; p. 1]¹. Sheriff Dorning’s Petition requested by implication a *writ of mandamus* compelling the County Mayor to appropriate and pay to his office funds sufficient to accomplish:

- a. Purchase and equip eighteen (18) new vehicles for \$541,200.00;
- b. Hire an additional clerical assistant for a total of five (5);
- c. Hire two (2) additional corrections officer for the jail for a total of eleven (11);
- d. Hire two (2) additional deputies for a total of twenty-four (24);
- e. Hire two (2) additional deputy lieutenants for a total of six (6); and
- f. Increase salary ranges for the positions of Administrative Assistant, Corrections Officer, Deputies, Deputy Sergeants, Jail Supervisor, Deputy Lieutenants, Deputy Captains and Chief Deputy. [*Id.*]

On October 22, 2003, the Respondent filed an Answer in response to Petitioner’s Petition raising as affirmative defenses that the Petitioner’s Petition failed to state a cause of action upon which relief may be granted, and further that Petitioner does not have the statutory authority to

¹References in this brief to the Technical Record will be noted as “T.R. Vol. I; p(p). ___.” Appellant notes that there are three (3) volumes of the trial transcript with each being hand numbered for the record on the upper right hand corner of their respective covers as VOL. II, III, and IV. Accordingly, references in this brief to the transcript of the proceedings before the Circuit Court of Lawrence County, Tennessee on July 30-31, 2004 will utilize the hand numbering and be noted as “T.R. Vol. II(III)(IV); p(p). ____, l(l). ____” References in this brief to Trial Exhibits will be noted as “Exhibit ‘ ___ ’”.

petition the Court for certain items stated in his Petition. [T.R. Vol. I; p. 5].

On December 31, 2003, an Order from the Supreme Court of Tennessee was entered appointing the Honorable Donald Harris, Judge of the Circuit Court for the 21st Judicial District, to hear the present case. [T.R. Vol. I; p. 8].

On December 31, 2003, Sheriff Dorning filed an application for a temporary restraining order prohibiting the Respondent from discontinuing the use of and/or cancelling the Sheriff's Department's cell phone contract. On that same day, a hearing was held in Columbia, Tennessee before the Honorable Jim T. Hamilton on Sheriff Dorning's application, and, following testimony and evidence presented, Judge Hamilton granted Sheriff Dorning's application issuing an Order restraining Lawrence County from "interfering with the contract for cellular phone service between the Sheriff's Department and its provider." [T.R. Vol. I; p. 9].

On January 13, 2004, Sheriff Dorning, through counsel, filed a Motion To Amend Petition said Amended Petition to include:

- a. Pay for his (Sheriff Dorning's) employees for overtime worked in 2003; and
- b. *A writ of mandamus* pursuant to T.C.A. § 8-20-120 compelling appropriations by the County for the cellular phones and vehicles. [T.R. Vol. I; p. 11].

On January 22, 2004, Ms. Bailey, through counsel, filed a response to Sheriff Dorning's Motion To Amend Petition, Defendant's (Ms. Bailey's) Motion For Partial Dismissal Of Claims and Memorandum Of Fact And Law In Support Thereof with the basis of Ms. Bailey's motion for partial dismissal being that Sheriff Dorning was without the statutory authority to petition for vehicles and/or equipment. [T.R. Vol. I; p. 18].

On January 23, 2004, an Order was entered setting this matter for non-jury trial on May 7,

2004. [T.R. Vol. I; p. 34].

On February 12, 2004, Sheriff Dorning filed Sheriff's Response To Motion To Dismiss. [T.R. Vol. 1; p. 35].

On February 13, 2004, a hearing was held before the Honorable Donald Harris, sitting as special Circuit Judge, on Plaintiff's (Sheriff Dorning's) Motion To Amend and Defendant's Motion For Partial Dismissal. [T.R. Vol. I; p. 43]. Following the aforesaid hearing, the Judge found that Ms. Bailey's Motion For Partial Dismissal, based upon the affirmative defense of Sheriff Dorning's failure to state a claim for which relief is available which was supported by Ms. Bailey's reliance upon statutory language and interpretation which Ms. Bailey maintained did not provide authority for a cause of action by the Sheriff Dorning for anything other than additional personnel and salary increases, was not well taken and denied. [*Id.*]. Further, the Court granted Sheriff Dorning's Motion To Amend to include the cellular phone and overtime issues. [*Id.*].

On April 28, 2004, an Order was entered resetting this case for trial on June 25, 2004. [T.R. Vol. I; p. 45].

On June 23, 2004, Ms. Bailey filed a pre-trial Motion To Reconsider Ms. Bailey's previous Motion For Partial Dismissal of the Sheriff Dorning's claims. [T.R. Vol. I; p. 50].

The trial did not proceed as scheduled on June 25, 2004, however, the parties entered into an Agreed Order resetting the matter for July 29-30, 2004. [T.R. Vol. I; p. 63].

This matter was eventually tried on July 30-31, 2004, in the Circuit Court for Lawrence County, Tennessee with the Honorable Donald Harris sitting as Special Judge. [T.R. Vol. II-IV]. As a preliminary issue, Ms. Bailey raised its aforesaid Motion To Reconsider, however, the Court declined to hear and/or rule on Ms. Bailey's motion and the trial proceeded. [T.R. Vol. II; p. 9, 11.

13-25].

At the close of Sheriff Dorning's proof, counsel for the Ms. Bailey, pursuant to Rule 41.02 of the Tennessee Rules of Civil Procedure, orally moved the Court for an involuntary dismissal on the basis that Sheriff Dorning had failed to prove his case and, further, stating again that Sheriff Dorning was without the statutory authority to request vehicles and/or equipment. [T.R. Vol. IV; p. 390, l. 14-p. 396, l. 13]. The Court denied Ms. Bailey's Motion. [T.R. Vol. IV; p. 396, ll. 19-20].

On August 18, 2004, the Court issued a Memorandum Opinion in this case. [T.R. Vol. I; p. 73]. Said Memorandum was reduced to a Final Decree which was filed on September 3, 2004, and which ordered:

1. That Lawrence County fund the base salaries of the following employees of the Lawrence County Sheriff's Department, effective July 1, 2003, as follows:

Administrative Assistants:	\$20,000.00
Corrections Officers:	\$21,500.00
Jail Supervisor:	\$27,500.00
Deputy:	\$27,000.00
Deputy Sergeant:	\$29,700.00
Deputy Lieutenant:	\$30,375.00
Deputy Captain:	\$37,000.00
Chief Deputy:	\$40,700.00

2. That Lawrence County fund the Sheriff's Department to increase the above base salaries pertaining to administrative assistants, deputies, deputy sergeants and deputy lieutenants by five (5%) percent for each year of time in service with a satisfactory

evaluation up to five (5) years retroactive to the beginning of the 2004 fiscal year. Further, that Lawrence County fund the Sheriff's Department to increase the above base salaries pertaining to jail supervisor, deputy captain and chief deputy by five (5%) percent for each year of time in grade with a satisfactory evaluation up to five years retroactive to the beginning of the 2004 fiscal year.

3. That Lawrence County fund the Sheriff's Department to hire two (2) additional corrections officers, along with one (1) additional administrative assistant, at the above base pay levels, retroactive to July 1, 2003.
4. That Lawrence County fund the Sheriff's Department to purchase one (1) additional patrol vehicle for the 2004 fiscal year, as well as one new patrol unit for each vehicle currently in the Sheriff's fleet when such vehicle's odometer reading exceeds 150,000 miles.²
5. That the cellular phone contract shall not be funded.
6. That Lawrence County must, within thirty (30) days of the entry of this Decree, declare in a filing with the Court whether it intends to either (a) pay the Sheriff's Department employees the \$32,955.00 in unpaid overtime from 2003 along with the \$37,780.00 in unpaid overtime for 2004 or (b) fund the Sheriff's Department to hire one (1) additional deputy and one (1) additional deputy lieutenant to serve as replacements for deputies when they take the compensatory time off that they are owed both for the current and future overtime owed.

²It should be noted that at the time of the entry of the Final Decree, nine (9) vehicles had in excess of the requisite 150,000 miles. [T.R. Vol. I; p. 140].

7. That the Sheriff is awarded his attorney's fees subject to the approval by the Court, and counsel for the County Attorney shall have five (5) days to respond to the Sheriff's more specific, sworn request for fees.
8. That the costs of this cause are taxed to Defendant Bailey and Lawrence County.
9. That, with one exception, the provisions of this Decree requiring Lawrence County to fund the above pay increases, additional employees, additional vehicle(s), overtime pay, attorney's fees (once approved by the Court), and costs shall not be stayed pending the finality of this decree. *However*, the requirements of Paragraphs 1 and 2 above that Lawrence County fund the increased pay levels retroactive to July 1, 2003 shall be stayed pending the finality of this Decree.

[T.R. Vol. I; pp. 115-118].

On August 23, 2004, counsel for the Sheriff Dorning filed a Petition For Attorney's Fees requesting the amount of \$19,775.00 as said fee. [T.R. Vol. I; p. 78]. On that same day, counsel also filed a Motion For Discretionary Costs requesting the amount of \$1,948.75 as said costs. [T.R. Vol. I; p. 86]. On August 26, 2004, counsel for the Ms. Bailey filed a response to the aforesaid petition for attorney's fees. [T.R. Vol. I; p. 94]. On September 1, 2004, counsel for the Sheriff Dorning filed a reply to Ms. Bailey's response. [T.R. Vol. I; p. 113]. On September 10, 2004, an Order was entered granting counsel for the Sheriff Dorning the amount of \$15,820.00 as attorney's fees in this matter. [T.R. Vol. I; p. 121]. Further, on November 22, 2004, an Order was entered granting Sheriff Dorning's Motion for Discretionary Costs in the amount of \$1,252.75 and also granting Sheriff

Dorning's Petition for Witness Reimbursement in the amount of \$322.70.³ [T.R. Vol. I; p. 119].

On September 20, 2004, a Supplemental Order was entered primarily for the purpose of clarifying the Final Decree in this matter. [T.R. Vol. I; p. 124].

On September 29, 2004, Ms. Bailey timely filed a Notice of Appeal. [T.R. Vol. I; pp. 126-128]. Filed contemporaneously with the aforesaid Notice of Appeal was Ms. Bailey's Motion For Stay Pending Appeal [T.R. Vol. I; p. 129] with accompanying bond. [T.R. Vol. I; p. 137]. The aforesaid Motion also requested in the alternative, a partial stay of execution on that portion of the trial court's judgment pertaining to the award of vehicles to the Sheriff's Department. [T.R. Vol. I; p. 129].

A hearing on Ms. Bailey's Motion For Stay was held on October 19, 2004, and an Order subsequently was entered on November 19, 2004, denying Ms. Bailey's Motion For Stay as to the entire judgment. [T.R. Vol. I; p. 119]. The trial did grant a stay as to the provision in the judgment pertaining to overtime/compensatory time. [*Id.*]. The Order also left a previously granted stay in effect as to the Court's award of pay increases retroactive back to July, 2003. [*Id.*, p. 120].

STATEMENT OF THE FACTS

Through testimony and evidence presented at trial, it was shown that Lawrence County, Tennessee covers approximately six hundred fourteen (614) square miles. [Exhibit "6"]. Further, Lawrence County has a population of between approximately thirty nine thousand nine hundred forty (39,940) [Exhibit "7"] and forty thousand five hundred (40,500) people. [T.R. Vol. III; p. 208, l. 17]. Lawrenceburg, the county seat of Lawrence County, has a population of approximately fourteen

³It appears that Sheriff Dorning's Petition for Witness Reimbursement is not included in this record save for reference in the aforesaid Order.

thousand (14,000) persons. [T.R. Vol. III; p. 183, ll. 6-9].

At the time of trial, the Sheriff's Department employed thirty four (34) sworn certified officers. [T.R. Vol. III; p. 206, l. 17-p. 208, l. 17]. Twenty two (22) of the aforesaid deputies were classified as "road deputies" and four (4) were classified as lieutenants. [T.R. Vol. II; p. 14; ll. 14-21]. Further, three (3) of those deputies were involved in a crime suppression unit. [T.R. Vol. III; p. 286, ll. 1-7]. In addition to the aforesaid certified deputies, the Sheriff's department also employed four (4) clerical assistants and nine (9) corrections officers. [*Id.*]. Finally, the Sheriff's Department also employs a Chief Deputy, a Chief Administrative Officer and a Jail Administrator. [T.R. Vol. III; p. 245, l. 23-p. 247, l. 18].⁴

At the time of the trial, all positions within the Sheriff's Department were filled. [T.R. Vol. III; p. 265, ll. 4-9]. Further, records indicate that in the year 2003, thirteen thousand eight hundred twenty four (13,824) calls were received by the Sheriff's Department. [T.R. Vol. IV; p. 346, ll. 14-19][Exhibit "18"]. All calls received by the Sheriff's Department were answered with the staff employed. [T.R. Vol. III; p. 264, l. 24-p. 265, l. 3; T.R. Vol. IV; p. 348, ll. 12-20]. Likewise, all necessary transports of prisoners were being made. [T.R. Vol. III; p. 264, ll. 8-12]. Also, evidence was presented that in the year 2003, seven thousand nine hundred forty five (7,945) warrants were entered by the Sheriff's Department with seven thousand two hundred thirty four (7,234) warrants being served. [T.R. Vol. VI; p. 335, ll. 8-12][Exhibit "15"]. Accordingly, approximately ninety (90%) percent of warrants received were served by the Sheriff's Department. [T.R. Vol. IV; p. 335, ll. 13-17]. Further, a large majority of warrants not served was due primarily to the fact that the

⁴In addition to law enforcement provided by the Sheriff's Department, the city of Lawrenceburg employs thirty five (35) officers who work within the corporate city limits. [T.R. Vol. III; p. 183, ll. 3-5].

person upon whom the warrant was to be served could not be located. [T.R. Vol. III; p. 283, l. 17-p. 284, l. 3].

At the time the present lawsuit was filed, the Sheriff's Department had approximately fifty two (52) vehicles in its fleet. [T.R. Vol. III; p. 226, ll. 2-6]. However, within two (2) weeks prior to the trial, the Sheriff's Department sold ten (10) used vehicles, reducing its fleet to forty two (42) leaving a reserve of only three (3) vehicles. [*Id.*]. At the time of trial, five (5) of the aforesaid vehicles were relatively new and had low milage; sixteen (16) vehicles had over one hundred thousand (100,000) miles; twelve (12) vehicles were in the seventy thousand (70,000) to eighty thousand (80,000) mile range; and fourteen (14) vehicles were in the sixty thousand (60,000) mile range. [T.R. Vol. III; p. 228, ll. 3-20]. Further, all certified officers with the Sheriff's Department were provided with a vehicle. [T.R. Vol. III; p. 276, ll. 15-20].

In August 2003, the Lawrence County Commission passed a budget for the fiscal year 2003-2004 in which the total appropriation for the county general fund was approximately Seven Million Eight Hundred Thousand (\$7.8 million) Dollars. [T.R. Vol. IV; p. 398, ll. 7-16]. Of that amount, approximately One Million Three Hundred Thousand (\$1.3 million) Dollars was appropriated to the Sheriff's Department which equated to seventeen point two (17.2%) percent of the total general fund. [T.R. Vol. IV; p. 400, ll. 11-19].

STATEMENT OF THE ISSUES

The Respondent/Appellant raises the following issues in this appeal:

1. Did the trial court err by granting Petitioner/Appellee's Motion To Amend his Complaint and denying Respondent/Appellant's Motion For Partial Dismissal, ultimately awarding vehicles to the Sheriff's Department;

2. Did the trial court err in awarding a) two (2) additional corrections officers and; b) one (1) additional administrative clerk to the Sheriff's Department;
3. Did the trial court err in awarding salary increases to personnel within the Sheriff's Department; and
4. Did the trial court err in making the salary increases retroactive back to July 1, 2003.

ARGUMENT

I. The Trial Court Erred In Awarding Vehicles To The Sheriff's Department As There Is No Statutory Authority To Do So.

As hereinbefore stated, Sheriff Dorning, in his original Petition, had requested the Court to order Lawrence County to appropriate and pay to his office funds sufficient to purchase and equip eighteen (18) new vehicles at a cost of Five Hundred Forty One Thousand Two Hundred and NO/100 (\$541,200.00) Dollars. [T.R. Vol. I; p. 1]. As further stated, the trial court granted Sheriff Dorning's motion to amend the original petition to include a *writ of mandamus* compelling Lawrence County to appropriate funds for cellular phones as well as funding for the aforesaid vehicles while at the same time, denying Ms. Bailey's Motion For Partial Dismissal. [T.R. Vol. I; p. 43].⁵ However, Ms. Bailey continues to maintain that Sheriff Dorning was and is without any authority to file suit or application for appropriations other than those provided for by and under the pertinent Tennessee statutes.

T.C.A. § 8-20-101 states in pertinent part:

[W]here any one (1) of the clerks and masters of the chancery courts, the county clerks and the clerks of the probate, criminal, circuit and

⁵It should be noted that the trial court also declined to entertain Respondent's pre-trial Motion To Reconsider on this issue. [T.R. Vol. II; p. 9, ll. 13-25].

special courts, county trustees, registers of deeds, and sheriffs cannot properly and efficiently conduct the affairs and transact the business of such person's office by devoting such person's entire working time thereto, such person may employ such deputies and assistants as may be actually necessary to the proper conducting of such person's office in the following manner and under the following conditions, namely:

....

The sheriff may in like manner make application to the judge of the circuit court in the sheriff's county, for deputies and assistants, showing the necessity therefor, the number required and the salary that should be paid each; provided, that in the counties where criminal courts are established, the sheriff may apply to a judge of such criminal court. . .

T.C.A. § 8-20-101(a)(2)(2003)(emphasis added).

Further, T.C.A. § 8-24-103 states in pertinent part:

[T]he county legislative body in any county shall make the necessary appropriation and pay to the sheriff of its county the maximum salary fixed by § 8-24-102, and the authorized expenses fixed by law for the operation of the sheriff's office, including the salary of all the sheriff's deputies, which shall be the sole manner of compensation for those deputies, as authorized pursuant to chapter 20 of this title, direct from the county trustee in twelve (12) equal monthly installments, irrespective of the fees earned by the sheriff.

T.C.A. § 8-24-103(a)(1)(2003).

Finally, T.C.A. § 8-20-120 states:

[N]otwithstanding any other provision of the law to the contrary, county governing bodies shall fund the operations of the county sheriff's department. The sheriff may appoint such personnel as may be provided for in the budget adopted for such department. No county governing body shall adopt a budget absent the consent of the sheriff, which reduces below current levels the salaries and number of employees in the sheriff's department. In the event a county governing body fails to budget any salary expenditure which is a necessity for the discharge of the statutorily mandated duties of the sheriff, the sheriff may seek a writ of mandamus to compel such appropriation.

T.C.A. § 8-20-120 (2003) (emphasis added).

As hereinbefore stated, Ms. Bailey maintains that while the aforesaid statutes are clear as to the Sheriff's authority to bring proceedings to establish his need for additional personnel and compel funding for said personnel, it is equally clear that these statutes do not provide any authority by which the Sheriff may maintain any other cause of action compelling additional funding. More specifically, T.C.A. § 8-20-101 provides only that the Sheriff may make application to the judge of the circuit court in the sheriff's county, for deputies and assistants, showing the necessity therefor, the number required and the salary that should be paid each. *Id.* (Emphasis added). Likewise, under T.C.A. § 8-20-120, if a county governing body fails to budget any salary expenditure which is a necessity for the discharge of the statutorily mandated duties of the sheriff, the sheriff may seek a writ of mandamus to compel such appropriation. *Id.* (Emphasis added).

Further, the office of sheriff is a constitutional office. Tenn. Const. art. VII, § 1. Although the duties of sheriffs were originally established by common law, most are now prescribed by statute. *Smith v. Plummer*, 834 S.W.2d 311, 313 (Tenn. App. 1992). The primary statutory provisions essentially categorize those duties into four classes: 1) serving process; 2) attending the courts; 3) operating the jail; and 4) keeping the peace. T.C.A. § 8-8-201 (Supp. 1996); T.C.A. § 8-8-213; *Smith*, 834 S.W.2d at 313. In *Jones v. Mankin*, 1989 Tenn. App. LEXIS 325 (an unreported Appellate Court opinion, a copy of which is attached hereto as Appendix), the Court further categorized the duties of a sheriff, stating in pertinent part:

[T]he duties of the sheriff generally fall into two categories:

(1) The duties imposed and defined by statute. The fee to be paid for the performance of these duties generally is prescribed by statute.

(2) Duties which the common law annexes to the office of sheriff (some of which are now covered by statute) for which no fee or charge is specified in payment. These duties are generally referred to as "ex officio" duties or services. *Id.*, citing, *State ex rel. Windham v. LaFever*, 486 S.W.2d 740, 742 (Tenn. 1972); see also *Hagan v. Black*, 159 Tenn. 290, 294, 17 S.W.2d 908, 909 (1929).

The Court in *Jones* further found:

[T]he determination of the value of the sheriff's ex officio services is particularly within the knowledge of the county legislative body. *Shanks v. Hawkins County*, 160 Tenn. 148, 151, 22 S.W.2d 355, 356 (1929). Accordingly, Tenn. Code Ann. § 8-24-111 (1988)⁶ gives the county legislative body complete control over the budget for the sheriff's ex officio services.

....

We should construe Tenn. Code Ann. § § 8-20-101(2) and 8-20-120 harmoniously with Tenn. Code Ann. § 8-24-111. When read together, these statutes stand for the proposition that sheriffs can invoke the procedures in Tenn. Code Ann. § 8-20-101(2) only with regard to the personnel needed to perform the statutory duties for which the statutes provide a fee. Thus, in considering a Tenn. Code Ann. § 8-20-101(2) application for increased personnel-related expenditures, the courts may consider only those requests that are related to statutory duties for which the sheriff collects a fee. *Jones, supra*. (Emphasis added).

Accordingly, Sheriff Dorning had no authority to bring or maintain the aforesaid causes of action relating to appropriations for funding of vehicles or cellular phones.

Further, it is well settled Tennessee law that the Court's role in statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. *John Doe, et al. v. Board Of Professional Responsibility Of The Supreme Court Of Tennessee, et al.*, 104 S.W.3d 465, 469 (Tenn. 2003)(other citations omitted).

⁶T.C.A. § 8-24-111 presently provides: "The county legislative bodies of the different counties in this state shall, at their first session in each and every year, make such allowance as they in their discretion shall think sufficient to compensate their sheriffs for ex officio service."

The Tennessee Supreme Court in *Doe* further stated:

[W]e determine intent "from the natural and ordinary meaning of the statutory language within the context of the entire statute without any forced or subtle construction that would extend or limit the statute's meaning." (Citation omitted). Moreover, we have consistently held that "in construing a statute, all sections are to be construed together in light of the general purpose and plan." *Doe, supra, citing State v. Netto*, 486 S.W.2d 725, 729 (Tenn. 1972).

In construing the statutory intent of the legislature in the present case, it would follow that had the legislature intended to provide any authority other than that contained in the pertinent statutes, it would have done so. However, as the statutes are silent as to any authority to bring suit against the County, other than to establish the number of deputies and their respective salaries necessary to perform the statutory duties of the Sheriff's Department, Sheriff Dorning failed to state a claim or cause of action for which relief is available. Consequently, Sheriff Dorning's causes of action relating to funding for additional vehicles should have been dismissed. Likewise, Sheriff Dorning's Motion to Amend the original petition to include funding for cellular phones should have been denied for the same reasons hereinbefore stated. Accordingly, the trial erred by awarding any vehicles to the Sheriff's Department.

II. The Trial Court Erred In Awarding Additional Personnel To The Sheriff's Department.

In its Memorandum Opinion, the trial court stated that:

[T]he court is of the opinion the sheriff has proven by a preponderance of the evidence the need for two additional corrections officers and an administrative assistant and his petitioner with regard to these three additional personnel should be granted. [T.R. Vol. I; p. 75].

As hereinbefore stated, in order for the Court to consider the staffing and compensation of

the Sheriff's Department, the Sheriff must demonstrate: (1) an inability to discharge the duties of his office by devoting his entire working time thereto; and, (2) the Sheriff must petition the court and show the necessity for assistants, the number of assistants required, and the salary each should be paid. T.C.A. § 8-20-101(a)(1), (3). Once the necessity of employing assistants is established, the appropriate trial court is empowered to determine the number of assistants needed and their salaries.

Boarman v. Jaynes, 109 SW3d 286, 291 (Tenn. 2003).

While acknowledging that the trial court has the discretion and power to determine the number of assistants needed, Respondent/Appellant maintains that the evidence presented at trial preponderated against the award of additional personnel. More specifically, Chief Deputy, Tony Crouch, testified on behalf of the Sheriff's Department that the reason for requesting an additional administrative clerk was not to assist the current administrative clerks with their duties, but rather to assist the criminal investigators in the performance of their duties:

Q. You said you're requesting an additional clerical position.

A. Yes, sir.

Q. Where would that clerical assistant go?

A. This assistant would probably be assigned in the investigative unit.

Q. To do paperwork – to do the reports for the investigators, is that correct?

A. Yes, sir.

Q. And you say presently they're writing up their own reports – doing their own reports.

A. Yes, sir.

Q. Is that not something that all officers do: they write up their own reports, and then they're submitted to the department for being put into the TIBRS system?

A. Yes, sir.

Q. So you would have a clerk that was doing something for the investigators - -

A. Yes, sir.

Q. – that is not being provided for the regular deputies.

A. Basically, we have a records clerk that maintains the overall records within the department. We have four investigators assigned to do various activities, and they have a greater case load per number, actually, than the deputies would.

THE COURT: They would continue to write up their reports?

THE WITNESS: Yes, sir.

THE COURT: What is this clerk doing?

THE WITNESS: She would actually be or would be creating the case files and documentation for the investigative section, as well as victim services type things for the domestic violence officer.

Q. But the officers – the lieutenants or the investigators – they would still have to continue to write up their own reports.

A. Yes, sir.

[T.R. Vol. III; p. 261, l. 20-p. 263, l. 7].

In *Smith v. Plummer*, 834 S.W.2d 311 (Tenn. App. Ct. 1992), the court held that while the duty of the Sheriff to "keep the peace" includes the duty to prevent and suppress crime of which he has notice, it also found that no statute is found to require a sheriff to maintain a criminal investigator. *Id.* at 314. Such officials are ordinarily a part of the staff of the prosecuting attorney or provided in the budget set by the county legislative body for ex officio duties. Accordingly, as

there is no statutory authority which provided the trial court the ability to grant the Sheriff additional criminal investigators, it stands to reason that the trial court was without the authority to grant an additional administrative clerk whose duties are strictly contained to assisting criminal investigators.

Likewise, applying the same principals as hereinbefore stated, Respondent/Appellant maintains that the evidence preponderated against the trial court's award of two (2) additional corrections officers. The primary reason given for needing the additional correctional officers is that the officers are having to help with transports of prisoners from the jail to "the hospitals, transports from the hospital to the mental health facility, and things of that sort." [T.R. Vol. III; p. 238, ll. 13-20]. While acknowledging that the Sheriff's Department maintains transportation of prisoners is not within the "normal" duties of a correctional officers, there is no evidence in the record of the frequency in which this occurs nor is there any evidence of how or why this would affect the Sheriff's ability to perform the statutory duties of the Department. Accordingly, Respondent/Appellant maintains that the trial court erred in awarding these additional personnel.

III. The Trial Court Erred In Awarding Salary Increases In The Sheriff's Department.

As hereinbefore stated, once the necessity of employing assistants is established, the appropriate trial court is empowered to determine their salaries. *Boarman, supra* at 291. However, Respondent/Appellant maintains that the evidence preponderates against the trial court's award of across the board salary increases. Moreover, T.C.A. § 8-20-102 provides that once an application is filed with the court, "the court may hear proof either for or against the petition." The court then may allow the application by determining the number of deputies and assistants necessary and "may allow the salaries set out in the application or smaller salaries, all as the facts justify." T.C.A. § 8-

20-102 (emphasis added).

In this case, for justification of salary increases, Sheriff Dorning relied primarily upon the testimony of some seventeen (17) former employees who, by and large, testified that one of the reasons they left the Sheriff's department was for better paying jobs both in and out of law enforcement. [T.R. Vol. II; p. 1, l. 1-p. 129, l. 1]. Further, over objection from Ms. Bailey's counsel, the trial court heard testimony pertaining to salary ranges from the Chief Deputies of Maury County and Giles County, which are border counties to Lawrence. [T.R. Vol. II; p. 139, l. 17-T.R. Vol. III; p. 162, l. 1-p. 176, l. 21].

In spite of the aforesaid testimony, Respondent/Appellant strongly maintains that there is no proof in the record that the Sheriff's Department cannot perform its statutorily required duties under the present salaries being paid to its employees. To the contrary, the proof and evidence established that at the time of the trial, all positions within the Sheriff's Department were filled. [T.R. Vol. III; p. 265, ll. 4-9]. Further, the record indicates that all calls received by the Sheriff's Department were answered with the staff then employed. [T.R. Vol. III; p. 264, l. 24-p. 265, l. 3; T.R. Vol. IV; p. 348, ll. 12-20]. Likewise, all necessary transports of prisoners were being made. [T.R. Vol. III; p. 264, ll. 8-12]. Also, evidence was presented that in the year 2003, seven thousand nine hundred forty five (7,945) warrants were entered by the Sheriff's Department with seven thousand two hundred thirty four (7,234) warrants being served. [T.R. Vol. VI; p. 335, ll. 8-12][Exhibit "15"]. Accordingly, approximately ninety (90%) percent of warrants received were served by the Sheriff's Department. [T.R. Vol. IV; p. 335, ll. 13-17]. Further, a large majority of warrants not served was due primarily to the fact that the person upon whom the warrant was to be served could not be located. [T.R. Vol. III; p. 283, l. 17-p. 284, l. 3].

Further, the Sheriff's Department offered no comparison of the salaries being paid in other comparable counties. In *Boarman, supra*, evidence was introduced regarding comparable salaries for county clerks in all positions from as many as ten Tennessee counties closest to Washington County's population that reflected that the chief deputy clerks in Washington County were the lowest paid. *Id.* at 292. In the present case, over objection, the only testimony of salaries from other jurisdictions came from Maury and Giles counties, whose only established similarity to Lawrence County was the size of the respective counties' land masses. [T.R. Vol. III; p. 297; Exhibit "6"]. More importantly, the proof established that neither county was comparable in population to Lawrence County [T.R. Vol. III; p. 297; Exhibit "7"], and further, neither county was comparable to Lawrence County in the number of certified deputies employed, with Giles County employing twenty (20) certified deputies and Maury County employing sixty (60) sworn deputies. [T.R. Vol. III; p. 170, ll. 1-2][T.R. Vol. III; p. 148, ll. 16-17]. Accordingly, in light of all the foregoing, the weight of the evidence does not justify the trial court's award of salary increases for the Sheriff's Department.

IV. The Trial Court Erred In Making The Salary Increases Retroactive To July 1, 2003.

In its Memorandum Opinion the trial court made its award of salary increases retroactive to the beginning of the 2004 fiscal years, which began on July 1, 2003. [T.R. Vol. I; p. 75].⁷ However, in *Roberts v. Lowe*, 1997 Tenn. App. LEXIS 256 (a copy of which is attached hereto as Appendix "B"), the Court held:

[T].C.A. § 8-20-101, *et seq.* (1993 & Supp. 1996),

⁷The trial court stayed its award of retroactive pay pending the finality of the decree. [T.R. Vol. I; p. 75].

contains no provision for an award of retroactive raises, nor has Roberts cited any authority in his brief to support the trial court's action. We therefore conclude that the trial court abused its discretion in making the salaries effective retroactively. *Roberts* at 17.

The *Roberts* Court further held that the raises given in that case were effective on the day the Judgment was entered. *Id.* Accordingly, the trial court erred in its retroactive award, and should this Court uphold the trial court's ruling as it pertains to the across the board raises, the present increase should only become effective on September 3, 2004.

CONCLUSION

For all of the aforesaid reasons and arguments, and those expected to be presented at the oral arguments in this matter, Respondent/Appellant respectfully requests that the judgment of the trial court be reversed, either in whole or in part, and that the Respondent/Appellant be awarded such other relief to which she may be entitled.

Respectfully submitted,

WILLIAM M. HARRIS #18688
Counsel for Respondent/Appellant
234 Pulaski Street, P.O. Box 743
Lawrenceburg, Tennessee 38464
(931) 766-0580
(931) 766-9712 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent via **U.S. Mail & Facsimile** to Mr. John S. Colley, III, Attorney for Petitioner/Appellee, COLLEY & COLLEY, P.O. Box 1476, Columbia, Tennessee 38402-1476 on this the _____ day of February, 2005.

EXCERPT FROM PROPOSED ORDER (FINDINGS OF FACT AND LAW)
FRAKES V. COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT
CHANCERY COURT FOR LAWRENCE COUNTY, TENNESSEE
DOCKET NO. 12-16105

The Facts

The petitioner, Michael Frakes, began working for the respondent company (Lincare) on August 5, 2008 and continued his employment until he was terminated on June 1, 2012. Other than the incidents described herein below, Mr. Frakes was a good employee during the time of his employment.

On July 2, 2011, an incident occurred wherein Mr. Frakes and David Butler, the respondent's center manager, had a conflict over the way Mr. Frakes had dealt with one of the respondent's patients. More specifically, Mr. Butler confronted the Mr. Frakes for allegedly making detrimental statements to the aforesaid patient about another employee and that employee's relationship with Mr. Butler. Mr. Frakes and Mr. Butler got into a verbal confrontation over the telephone concerning the issue but then later Mr. Frakes came to Mr. Butler's office and apologized for his behavior. As Mr. Butler had not had any other incidents with Mr. Frakes he did not give him a formal write-up but did give him a verbal warning which was memorialized in a note that was placed in the Mr. Frakes's personnel file. The written document was not signed by Mr. Frakes and stated that Mr. Butler counseled him and "...gave him a break this time that I would not write him up but that I would document it." There was nothing in the written memorandum that indicated in any way that Mr. Butler told Mr. Frakes that any further incidents would result in his termination.

On June 1, 2012, another incident occurred wherein Mr. Frakes came to Mr. Butler with a complaint about the actions of the same employee who was the subject of the previous incident. The

incident took place in the warehouse at the respondent's business when Mr. Frakes came up to Mr. Butler to begin the discussion. As Mr. Butler was Mr. Frakes supervisor, he was the appropriate person that Mr. Frakes would come to with any problems of this nature. Mr. Butler was alone in the warehouse at this time and Mr. Frakes began telling him that the other employee had agreed to take call for him but had decided to that he was not going to do so. Mr. Butler initially agreed that he would be upset had that happened to him but that the schedule would take precedence over any disputed agreements between employees. At that point, Mr. Frakes began to express some other concerns that he had with the other employee to which Mr. Butler asked Mr. Frakes "Do we need to go back to my (Mr. Butler's) office?" Mr. Frakes declined the offer. At some point Mr. Frakes began to express some of his concerns about Mr. Butler's management with the company and his conduct with the employee in question. By this time another employee had apparently come into the warehouse and Mr. Frakes did ask him if he (the other employee) felt the same way as Mr. Frakes, however, the other employee simply declined to take part in the conversation. Mr. Butler then made the comment to Mr. Frakes that if he did not like his job, there were "...other jobs out there." Mr. Frakes then responded that he was "...always looking". Mr. Butler then walked off from the conversation and Mr. Frakes went on to perform his job duties for the remainder of the day.

When Mr. Frakes returned at the end of the work day, he was told by Mr. Butler that he had been terminated and he (Mr. Frakes) needed to get his personal items and get off the property. Mr. Butler also gave Mr. Frakes a termination letter that stated Mr. Frakes was being terminated for insubordination and engaging in behavior designed to create discord and lack of harmony, or willfully restricting work output.

On June 7, 2012, the Mr. Frakes filed a claim for unemployment compensation benefits

stating that he was terminated following an incident involving his manager that occurred at the workplace. The record in this matter contains Mr. Frakes's statement filed in his claim which states as follows:

[A]t approximately 9:15 a.m. I approached my manager inquiring why my immediate supervisor was not made to take my on-call duties for the prior weekend as he had agreed to with me on a previous date. My manager stated that my call was my responsibility. Previous company policy had allowed us to work out call between ourselves. Even when I stated that my wife was a witness, he stated that she (my wife) did not work there (Lincare). I asked him also why my senior rep did not help us clean as the previous rep. His response "there are a whole lot of things you don't know and you need to mind your own business." He told me that if I did not like it, I needed to find another job. I responded I am always looking. I told him that he was right, that I did not know what went on and I apologized to my manager in front of another driver, Jeremy Clifton. At that point, I began my route. When I returned at 4:15, I asked if I needed to clean. My manager told me to 'get my sh!t and get off property.

On August 1, 2012, the Agency found that the Mr. Frakes was discharged but that the respondent did not provide sufficient evidence to prove Mr. Frakes' actions constituted work-related misconduct under T.C.A. § 50-7-303, and that he was eligible for benefits.

On August 7, 2012, the respondent filed an appeal from the decision of the Tennessee Department of Labor & Workforce Development to the Appeals Tribunal and an in-person hearing was held on this case on Monday, September 10, 2012. At the hearing on this matter, the respondent was represented by Linda Green, a representative for Thomas and Thorngren a company under contract to handle employment issues for the respondent. Ms. Green is apparently licensed to practice law in California but not in Tennessee. An objection to allowing Ms. Green to proceed was made by counsel for the Mr. Frakes based upon the fact that she was not licensed in the State

of Tennessee. The objection was overruled and the hearing proceeded with Ms. Green's representation.

On September 25, 2012, a decision was issued by the Appeals Tribunal finding that the Mr. Frakes was not eligible for unemployment benefits under T.C.A. §50-7-303(a)(2).

On October 1, 2012, the Mr. Frakes filed a Petition for Review with the Tennessee Department of Labor & Workforce Development appealing the decision dated September 25, 2012. The Board of Review of the Tennessee Department of Labor & Workforce Development affirmed the decision of the Appeals Tribunal by letter dated November 5, 2012. Mr. Frakes then filed his Petition for Judicial Review which is now before this Court.

Issues Presented By The Parties

Whether the hearing officer should have sustained objection by petitioner's counsel and disallowed representation of the respondent by an individual licensed to practice law in another state who had not followed proper statutory and/or administrative procedures by filing a notice of appearance with the administrative board.¹

Whether there is substantial and material evidence in the record to support the factual findings of the Commissioner's Designee and an reasonable basis in law to support the Designee's conclusion that the petitioner was discharged for work-connected misconduct and therefore, not eligible for unemployment compensation benefits under T.C.A. § 50-7-303(a)(2).

Conclusions Of Law

¹While the Court finds that this issue does have merit in that the proper procedure pertaining to representation by a licensed attorney was not followed, the Court finds it unnecessary at this time to address this issue due to the Court's findings herein below on the second issue in this case.

The judicial standard of review in unemployment insurance benefit cases is set forth in T.C.A. § 50-7-304(i)(2) and (3) which states in pertinent part:

[T]he Chancellor may affirm the decision of the commissioner or the chancellor may reverse, remand, or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (A) In violation of constitutional or statutory provisions;
 - (B) In excess of the statutory authority of the agency;
 - (C) Made upon unlawful procedure;
 - (D) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
 - (E) Unsupported by evidence which is both substantial and material in light of the entire record.
- (3) In determining the substantiality of evidence, the chancellor shall take into account whatever in the record fairly detracts from its weight, but the chancellor shall not substitute the chancellor's judgment for that of the commissioner's designee as to the weight of the evidence on questions of fact. No decision of the commissioner's designee shall be reversed, remanded, or modified by the chancellor unless for errors which affect the merits of the final decision of the commissioner's designee. Such petition for judicial review shall be heard by the chancellor either at term time or vacation as a matter of right, any other statute of this state to the contrary notwithstanding.

T.C.A. § 50-7-304(i)(2)(3) (2012).

For purposes of subsection (E), substantial and material evidence is "such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration." *Sweet v. State Technical Inst. at Memphis*, 617 S.W.2d 158, 161 (Tenn. Ct. App. 1981) (quoting *Pace v. Garbage Disposal Dist. of Washington County*, 54 Tenn. App. 263, 390 S.W.2d 461, 463 (Tenn. Ct. App. 1965)).

Based on the entire record before the Court, including the evidence presented at the

administrative hearing pertaining to any alleged insubordination and disruption of workplace the Court finds that Mr. Frakes' actions do not rise to the level necessary to warrant the his termination from work on the grounds of misconduct.

More specifically, the Hearing Officer and Commissioner's Designee appear to place much weight on what is referred to as a "verbal warning" by Mr. Butler on July 1, 2011. However, it is clear from testimony, as well as the documentation in Mr. Frakes's file (which was made an exhibit to the hearing) that the Mr. Butler simply "..counseled.." Mr. Frakes but did not specifically warn him of the consequences of any further like conduct, noting in the document only that he told Mr. Frakes if it happened again he would have to take action against him. Further, it is apparent Mr. Butler did not find the incident to be very significant as the documentation only states that he "..had a *little* conflict.." with the Mr. Frakes. The Court specifically finds the documentation to be the best evidence in this matter as it is written proof of what transpired at the time of the incident and that the documentation itself severely detracts from the weight of the overall evidence relied upon by the Hearing Officer and Board.

Further, the Hearing Officer's finding that the "..evidence establishes that the Mr. Frakes was terminated for insubordination and causing a disruption in the work place" is arbitrary and/or capricious as well as being characterized by abuse of discretion and unsupported by evidence which is both substantial and material in light of the entire record in this case. More specifically, on cross-examination, Mr. Butler acknowledged that if the Mr. Frakes had a problem with a co-worker, he (as Mr. Frakes' supervisor) was the proper person with which to take up the complaint. And this is exactly what Mr. Frakes did in this case. The fact that this discussion occurred in the warehouse does not in and of itself show a disruption in the work place. The further testimony of the supervisor

that “..he asked the Mr. Frakes “...if he wanted to come [sic] the center manager’s office, but Mr. Frakes declined” likewise does not rise to insubordination as the there was no direct instruction or command by the supervisor, only a suggestion. Further, when faced with some criticism about his job performance, the supervisor made the statement to Mr. Frakes (apparently in the presence of another employee) , that if he “..did not like his job there were other jobs out there”, a comment which would necessarily elicit Mr. Frakes’s spontaneous response that he “..was already working on getting another job.” Further still, there is absolutely no evidence (substantial or material) that Mr. Frakes’s conduct caused any disruption in the work place. The seriousness of the alleged “insubordination” and/or “misconduct” is belied by the fact that Mr. Frakes was not terminated on the spot but rather was allowed to complete that day of work before being informed at the end of the day that he was being terminated.

T.C.A. § 50-7-303(b)(3) states in pertinent part:

(A) "Misconduct" includes, but is not limited to, the following conduct by a petitioner:

(i) Conscious disregard of the rights or interests of the employer;

(ii) Deliberate violations or disregard of reasonable standards of behavior that the employer expects of an employee;

(iii) Carelessness or negligence of such a degree or recurrence to show an intentional or substantial disregard of the employer's interest or to manifest equal culpability, wrongful intent or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employee's employer;

(iv) Deliberate disregard of a written attendance policy and the discharge is in compliance with such policy;

(v) A knowing violation of a regulation of this state by an employee of an employer licensed by this state, which violation would cause the

employer to be sanctioned or have the employer's license revoked or suspended by this state; or

(vi) A violation of an employer's rule, unless the petitioner can demonstrate that:

(a) The claimant did not know, and could not reasonably know, of the rule's requirements; or

(b) The rule is unlawful or not reasonably related to the job environment and performance;

.....

(c) "Misconduct" does not include:

(1) Inefficiency, or failure to perform well as the result of inability or incapacity;

(2) Inadvertence or ordinary negligence in isolated instances; or

(3) Good faith errors in judgment or discretion...

T.C.A. § 50-7-303(b)(3) (2012).

Under the above stated statutory definition Mr. Frakes' actions that precipitated his termination clearly do not meet any of the criteria necessary to establish misconduct. Moreover, relying on paragraph (c) above it is clear that Mr. Frakes' actions did not constitute misconduct as they could only be construed as inadvertent and/or ordinary negligence in an isolated instance and/or simply a good faith error in petitioner's judgment as to the time and place to present a complaint to his supervisor.

When the factual support for an administrative decision is challenged, the courts must examine the entire record to determine whether the decision is "arbitrary or capricious" or is not supported by "substantial and material evidence." *Tenn. Code Ann. § 4-5-322(h)(4) & (5); Miller*

v. Tenn. Bd. of Nursing, 256 S.W.3d 225, 229 (Tenn. Ct. App. 2007).

An arbitrary or capricious decision is one that is not “based on any course of reasoning or exercise of judgment or . . . [one which] disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.” *City of Memphis v. Civil Serv. Comm'n.*, 216 S.W.3d 311, 316 (Tenn. 2007) (quoting *Jackson Mobilphone Co. v. Tenn. Pub. Serv. Comm'n.*, 876 S.W.2d 106, 110-11 (Tenn. Ct. App. 1993)). The appellate court must review the record to determine whether the evidence in the record furnishes a reasonably sound factual basis for the Board's decision. *City of Memphis*, 216 S.W.3d at 316-17 (quoting *Jackson Mobilphone Co.*, 876 S.W.2d at 110-11). A decision that is not supported by substantial and material evidence is necessarily arbitrary and capricious. *Mitchell v. Madison County Sheriff's Dept.*, 325 S.W.3d 603, 618 (Tenn. Ct. App. 2010) (citing *Miller v. Civil Serv. Comm'n.*, 271 S.W.3d 659, 665 (Tenn. Ct. App. 2008))

In the case at bar, it is clear that the hearing officer original decision which was adopted by the Commissioner's Designee is not based on any course of reasoning or exercise of judgment or one which disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion. In this case the Court finds that the decision reached by the Hearing Officer and affirmed by the Board and Commissioner is not supported by substantial and material evidence and therefore is arbitrary and capricious. The Court further finds that reasonable minds could not differ and could only find that there was no misconduct by the Mr. Frakes that would warrant his termination.

Based on the above findings of fact and conclusions of law, it is, therefore, **ORDERED, ADJUDGED and DECREED** that the decision of the Commissioner is **REVERSED** and that the

Petitioner is entitled to the relief requested including the receipt of unemployment benefits pursuant to T.C.A. § 50-7-302 et seq.