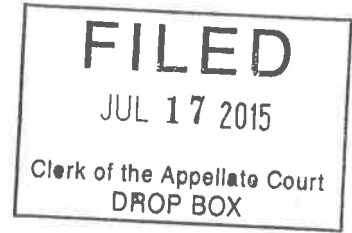


IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE



STEPHEN MICHAEL WEST, *et al.*,)
)
 Plaintiffs-Appellees,)
)
)
)
 v.)
)
 DERRICK D. SCHOFIELD, *et al.*,)
)
 Defendants-Appellants.)

No. M2015-01305-COA-R10-CV
Chancery Case No. CV13-1627-I
Death Penalty Case

**PLAINTIFFS-APPELLEE’S NOTICE THAT PENDING MOTION
FOR RULE 10(D) APPEAL IS NOW MOOT**

COMES NOW the Plaintiffs-Appellees in this matter and advise the Court that the Appellants’ Motion for Rule 10(d) appeal is now moot. In support of this Notice, Plaintiffs-Appellees show the following:

1. On July 17, 2015, Plaintiffs-Appellees moved in open court to withdraw the request for the testimony of the John Doe Executioner and the request for site visit.
2. The trial court approved the request.
3. After moving to conform the complaint to the evidence presented, Plaintiffs rested.
4. The subject matter of the Rule 10(d) motion is now moot as the requests have been withdrawn.
5. This motion is fully supported by the attached declaration of counsel, Kelley J. Henry, who is lead counsel for twenty-three of the intervening plaintiffs.

Respectfully submitted this 17th day of July, 2015.

STEPHEN KISSINGER
SUSANNE BALES
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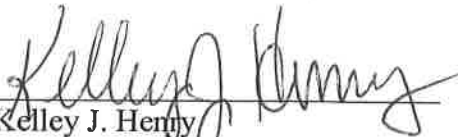
BY: 

CERTIFICATE OF SERVICE

I, Kelley J. Henry, hereby certify that a true and correct copy of the foregoing document in Adobe PDF format was served via email to:

Jennifer Smith
Scott Sutherland
Linda Kirklen
Assistant Attorneys General
Office of the Attorney General of Tennessee
P.O. Box 20207
Nashville, TN 37202

this the 17th day of July, 2015. An original will follow in the United States Mail on July 20, 2015.


Kelley J. Henry
Supervisory Asst. Federal Public Defender

DECLARATION OF KELLEY J. HENRY

I, Kelley J. Henry, being a citizen of the State of Tennessee, County of Davidson, and of lawful age, declare the following:

1. I am an attorney licensed to practice law in this State. My Tennessee bar number is 021113. I am also licensed to practice law in the State of Missouri. My Missouri Bar number is 038849. I am admitted to practice in the United States Court of Appeals for the Sixth Circuit; the United States Court of Appeals for the Eighth Circuit; the United States Court of Appeals for the Ninth Circuit; the United States Court of Appeals for the Tenth Circuit; United States District Court for the Middle District of Tennessee; the United States District Court for the Western District of Tennessee; the United States District Court for the District of Arizona; and the United States District Court for the Western District of Missouri.

2. I am currently lead counsel of record for twenty-three of the intervening plaintiffs in the matter of *Stephen West, et al. v. Derrick D. Schofield, et al.*, Davidson County Chancery Court No. No. 13-1627-I.

3. The trial in this case commenced in Davidson County Chancery Court on July 7, 2015 and has continued daily.

4. Defendants-Appellants initiated a Rule 10(d) appeal mid-trial. The subject matter of the appeal related to two rulings made during the course of the trial that 1) the Plaintiffs would be permitted to call the John Doe Executioner by telephone in a manner that would disguise his voice about matters that the trier-of-fact found probative to the issues in the case as it evolved over the course of the trial; and 2) that the Plaintiffs should be permitted to conduct a site visit of the execution chamber in order to assist with rebuttal testimony from Plaintiffs' experts.

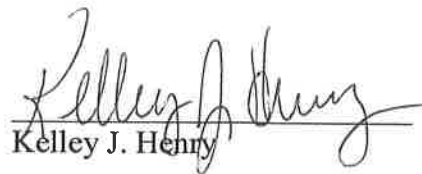
5. While the Plaintiffs' evidence was stayed by this Court, Defendants commenced their case in chief. As a result of evidence presented by Defendants and other developments in the case, Plaintiffs announced in open court today, July 17, 2015, that they no longer wished to call the John Doe Executioner and no longer needed a site visit of the lethal injection room and execution chamber. The Court allowed Plaintiffs to withdraw their requests. Plaintiffs moved to conform the complaint to the evidence and rested their case in chief.

6. Plaintiffs informed the Chancellor that they would expeditiously advise this Court that the instant appeal was now moot. Plaintiffs are doing so by way of the attached notice.

7. I am authorized to file this notice on behalf of all Plaintiffs and all counsel for Plaintiffs.

I declare under penalty of perjury and the laws of the United States and the State of Tennessee that the foregoing is true and correct to the best of my information and belief.

Dated this 17th day of July, 2015.


Kelley J. Henry