The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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(including county)

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INTRODUCTION

The State of Tennessee Executive Order No. 54 hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

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 your original, hard copy (unbound), completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your hard-copy application, or the digital copy may be submitted via email to ceesha.lofton@tncourts.gov.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Chancellor of the Tenth Judicial District

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

1987; BPR #12785

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.

State of Tennessee, BPR #12785, October 14, 1987. License is currently active.

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

No.

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

Claiborne, Davis, Buuck & Hurley, 1986-1990 - Knoxville, TN

I clerked here while I was in law school and was hired as an associate. I worked with four attorneys in federal and state courts all over East Tennessee. My primary work was in personal injury, family law, business, real estate, banking, insurance, employment law, and annexation.

Carter, Harrod & Cunningham, 1991-1998 - Athens, TN

After driving to Knoxville from Sweetwater for over 3 years, I was offered a job in my hometown to practice law. In Athens, I practiced in areas of family law, insurance defense, estate planning, real estate, business law, adoption, and litigation. I handled the firm's appointed criminal defense work. I practiced in all federal and state courts, including appellate, juvenile, sessions, chancery, circuit, criminal, and probate courts. I tried cases in all

courts and additionally represented two (2) municipalities, the school board, and the local utility board. I was listed in Martindale-Hubbell Law Directory (BV Rating)

Tennessee Supreme Court Rule 31 General Civil Mediator, 1997

Tennessee Wesleyan University, Part-time Instructor, 1993-1994

Chancellor of Tenth Judicial District, 1998-present

(Bradley, McMinn, Monroe and Polk Counties)

I was elected to this position after the retirement of Chancellor Earl Henley. I ran successful contested primary and general elections. I was unopposed and re-elected in 2006 and 2014.

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

I have been continuously employed.

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.

Currently serving as Chancellor of the Tenth Judicial District. I preside over the following types of cases as identified by the Administrative Office of the Courts:

Contract/Debt, specific performance, real estate matters, workers' compensation, probate, appeals from administrative hearings, conservatorships, guardianships, miscellaneous general civil, paternity, legitimation, adoptions, surrenders, divorces, orders of protection, other domestic relations cases, judicial hospitalization, contempt, residential parenting, child support cases, etc.

In fiscal years 2017-2018 and 2018-2019, there were 4,324 cases filed in the chancery court in the Tenth Judicial District, with my dispositions being 4,250 cases.

Over the last twenty years, I estimate I have disposed of over 30,000 cases.

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.

While in Knox County, I worked for Claiborne, Davis, Buuck & Hurley. I worked with four attorneys and appeared in federal and state courts all over East Tennessee. My primary work was in personal injury, business, real estate, banking, insurance, annexation, and employment law. I assisted in some criminal defense work. While in Knox County, I traveled to many other counties outside Knoxville to handle litigation. I also wrote the majority of the appellate briefs at this firm. While in Knoxville, I was active in the TBA-YLD and the Knoxville Barristers.

When I moved back to my hometown of Athens, I was hired by Carter, Harrod & Cunningham, practicing insurance defense work, with a general practice. In a rural practice, you must be a problem solver. As such, I grew my practice with my own clients, particularly in family law, estates, and small businesses and some work for non-profits. I tried to help all who walked in the door. At times, this meant working for free. It was important to give clients good advice and be mindful of the impact of that advice, financially and otherwise. I learned to be efficient with my time and resources.

I tried cases in mostly state courts. This included both jury and non-jury trials. I represented a small number of clients in front of regulatory authorities and discharged employees in administrative law cases. Our firm performed title closings, which I assisted with from time to time. We also represented Bowater when it was sued after a multi-car accident on Interstate-75. This was one of the largest traffic accidents in the state's history. I performed most of the firm's court appointed work, including handling a death penalty case, which took several years to conclude.

I represented the City of Calhoun and the Town of Englewood in a wide range of legal issues. I also represented the county school board at their meetings and in administrative hearings as well as the local utility board.

On the appellate level, I argued cases in the Court of Appeals and the Court of Criminal Appeals. A rural practice teaches you diverse areas of law, creative solutions while being mindful of costs, and providing service to the community.

Since being elected to the bench, I have heard and decided thousands of cases. I inherited approximately 1,100 cases when I began. Because I was sensitive to the needs of the attorneys, and their clients, I changed the schedule to appear in every county in the district monthly and most of the time weekly. I have served on three (3) worker's compensation appeals panels that generated seventeen (17) opinions. I authored five (5) opinions with the assistance of the worker's compensation law clerks. I have tried cases by interchange in Knox, Roane, Loudon, Campbell, Meigs, Sequatchie, Blount, and Hamilton Counties, as well as served the Criminal Court of Union County.

I became and continue to be active in the Tennessee Judicial Conference. In 2013, I was elected President of the Conference, as the second woman to hold that position in 56 years. It consists of 186 state trial and appellate judges. I have served on and chaired several committees of the conference. I am currently chairing the Compensation and Retirement Committee and co-chairing the Judicial Academy. I chair the Wellness Committee. I have

also served as an officer and worked on various committees for the Tennessee Trial Judges Association.

I was chosen by the Tennessee Bar Association to serve on a committee to revise the Rules of Judicial Conduct. This committee worked over eighteen (18) months to produce new rules which were adopted by the Tennessee Supreme Court.

I have testified before a legislative panel while working on legislation concerning the composition of the Board of Judicial Conduct. I met with members of the house and senate to discuss this legislation. I also serve on the Legislative Committee.

I regularly meet with local bar associations to update them on legislative and legal issues. I work with my Clerk and Masters to provide consistent, friendly service to those who come in contact with the court system. I have pushed to update our courtrooms to provide technology to assist in trials and to make access to justice easier.

I hold regular docket calls to assure cases are moving and to keep trials on track for a timely conclusion. I view docket management as an important part of my job.

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

Special cases of note include the following:

Hopkins vs. Bradley Co., Tennessee, et al
Bradley Circuit #V-07-965

This case involved a self-represented plaintiff who was also an attorney but did not practice in this state. The plaintiff filed a Motion to Recuse based on a judicial settlement conference that I was unable to perform in his divorce case. After the hearing on his motion, he was impressed that I had treated him fairly; and he withdrew his Motion to Recuse.

Albright vs. Tallent, et al
McMinn Chancery #24512

This case involved a boundary line dispute, specifically, a spite fence between neighbors that was intrusive to one party but was nonetheless legal. It is notable as a case where the law dictated a result I felt was not equitable. However, I followed the law.

Tennessee Farmers Mutual Insurance Company v. DeBruce
No. E2017-02078-SC-R11-CV

As a trial judge, I ruled that the trial court had authority in a declaratory judgment action to resolve coverage issues between an insurance company and it's insured when the claimant was not a party to the action. The Court of Appeals reversed and the Supreme Court reversed the Court of Appeals and affirmed my order.

In Re: * (intentionally omitted)**
Bradley Chancery

This case was noteworthy for different reasons. It was initiated as a simple name change petition. These are quick petitions with little to no controversy. The petitioner was 30 year old male who came in and was tearful. He told the story of being in court in Texas and being

beaten so he would say nothing about his adoption. He came to Tennessee to get his father's name back. This case continues to remind me how important even seemingly small things are to those who come before us.

Several other matters of note include presiding over:

- *A multi-million dollar estate which settled on the eve of trial. We were prepared to have several hundred jurors empaneled due to the notoriety of the family. The issues were complicated and involved a prominent family and involved many hearings which I presided over for several years. By keeping the case moving, the family was able to get resolution.*
- *A case filed by the Circuit Court Clerk over budgeting issues;*
- *A case in which a constable wanted to run for sheriff;*
- *State of Tennessee ex rel Bradley County, Tennessee and the City of Charleston vs. Delinquent Taxpayers and the United States of America; and*
- *A two-week jury trial in Hamilton County because of recusal of all local judges.*

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.

Certified as a Tennessee Supreme Court Rule 31 General Civil Mediator in 1997.

Shortly after, I was elected as Chancellor of the Tenth Judicial District in 1998. I performed several judicial settlement conferences.

One case of significance involved two (2) title insurance companies fighting over the responsibility for faulty title work in the State of Tennessee, Fidelity Nat'l Title Ins. Co. vs. Transcontinental Title Co. After hearing counsel argue motions in the case, I suspected that there was more to the controversy than I was hearing. This case was one of many in the State of Tennessee. In an effort to be more efficient and work toward consistent outcomes, I conducted a settlement conference for all cases in the state, at one time. Several attorneys and out of state clients were involved. After two (2) meetings, the parties settled their differences. This resulted in the dismissal of twenty-two (22) active and pending cases across the state in various courts, including the Court of Appeals. This saved the parties and many courts time and money.

At the request of another judge, I performed a judicial settlement conference in a case that was scheduled for a multi-day trial in circuit court, Fuller vs. Bradley Co. Sheriff's Dept., et al. This was a personal injury case involving a plaintiff who had been injured in a psychiatric ward and was subsequently transported to another facility and alleged additional injury during the transport by the Bradley County Sheriff's Department. This case involved governmental immunity, medical malpractice, and negligence. We were able to fashion a creative settlement in one (1) day that provided the plaintiff with drug and psychological treatment, a place to live, and transportation. This met her needs, with less cost to defendants, without putting large sums of money into her hands.

The case of Gossett, et al vs. Carmike Cinemas, Inc., et al, was post-trial. The jury had entered a substantial verdict for the plaintiff. Between the time of the verdict and the appeal, I performed a settlement conference that saved both parties the time and expense of appeal.

I do not have the dates of these or other cases in which I performed a judicial settlement conference.

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

As a licensed attorney, I served as *guardian ad litem* in various cases in the Juvenile and Probate Courts of McMinn County, Tennessee. I have not served in this capacity other than when I was a practicing attorney.

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

I have made great effort in restructuring the frequency in which chancery court is held in each county. With this increase, the court has become more accessible and responsive to the litigants and lawyers. Often, litigants have emergencies that need to be addressed as quickly as possible. I have balanced accessibility while maintaining a current trial docket.

I encourage the clerks to view their jobs as public service. I have been able to appoint the Clerk & Master in each county within the Tenth Judicial District. These clerks exemplify true working clerks who have structured their offices to better serve the public and address the ever-increasing workload. I have been careful to choose clerks who are qualified and continue to educate themselves in an effort to provide the most effective and efficient service. We are a team and are mindful of providing good value and responsible stewardship of county and state resources. We have regular meetings to improve our service.

Because of this, the chancery docket has grown. I have always paid close attention to the pending cases. It is my goal to keep the docket current by setting cases in a timely manner, while also being able to address emergency hearings when necessary. I hold a docket call twice a year, in four (4) counties, where all pending cases are either set for hearing or a status report is provided.

Problem-solving techniques and consensus building allow clerks, judges, and attorneys to work together to serve the public in a very efficient and meaningful way. Personal experience with trial courts forms the majority of the public's opinion, trust, and confidence in our court system. My clerks and I work to insure that citizens have faith in the professionalism and efficiency of our courts.

Also since being elected Chancellor, I have gained legal experience through my participation, teaching and/or attendance of the following:

- **Attorneys Role in Mediation, *2000***
- **KBA – Chancery Court, Bench Bar Conference, *2002 - Speaker***
- **TTLA - Worker's Compensation, *2003***
- **Tennessee Bar U - Adoption Law, *2003***
- **American Academy of Judicial Education - Advanced Evidence, *2003***

- KBA – Ain't Behavin-What Not to Do-A View from the Bench, *2005 - Speaker*
- Local Practice in the 10th Judicial District, *2006 - Speaker*
- Court Security Training, *2006 - Organizer & Speaker*
- Local Practice in the 10th Judicial District, *2007 - Speaker*
- Parenting Plans, Family Law Mediation and Ethics, *2007*
- Legal Aid of East Tennessee , An Afternoon with the Judges, *2007*
- Chancery Court Practice: Views from the Bench, *2008 - Speaker*
- Financial Statements in the Courtroom, *2008*
- Effective Caseflow Management, *2009*
- Practice Pointers from the Judges, *2009 - Speaker*
- Bench Bar Program, *2009*
- Supreme Court Rule 9, *2009*
- Law Office Management, *2010*
- Ain't Behavin-What Not to Do-A View from the Bench, *2010 - Speaker*
- Law Conference for Tennessee Practitioners, *2010 - Speaker*
- It's a Wonderful Life: Dealing with Stress Related Issues, *2010*
- 21st Century Depositions: It's a New Ballgame, *2011*
- Intellectual Property Matters for the Non-IP Attorney, *2011*
- Jury Evidence Recording System in Federal District Court, *2011*
- Tennessee Workers Comp Conference, *2011 - Speaker*
- Tennessee Bar Association Convention, Code of Judicial Conduct, *2012 - Speaker*
- TLAP Judicial Intervention Training, *2010*
- TBA Task Force on Judicial Conduct Rules, *2010- 2011*
  I was a member of this 18+ month long project resulting in a new code of judicial conduct being adopted by the Tennessee Supreme Court.
- Brock-Cooper American Inns of Court, Social Media Presentation, *2012*
- Nat'l Business Institute, Civil Court Judge Panel, *2012*
- Nat'l Business Institute, The Judges Speak: Civil Court Litigation Do's and Don'ts, *2018*
- Judicial Conference, "To Enjoin or Not to Enjoin, That is the Question", *Spring 2016*
- Judicial Conference , "Court Driven Docket Management", *Spring 2016*
- Judicial Conference, "How to Make Your Decision Bullet Proof", *Spring 2018*
- Wellness Sessions at Judicial Conference, *2018-present*
- Mini Judicial Academy, *2016-present*
- Chancellors Luncheon, *2019-present*

*This list is not complete but is what I can document.

I have also participated in the TBA Summer Intern Program. I welcome high school, college, and law students as interns and shadows to encourage them in the profession of law. I hold and want others to also feel great regard for this profession.

As Chancellor, I have been very involved in the Tennessee Judicial Conference. Besides holding leadership positions described elsewhere in this application, I created a "Chancellors Luncheon". This is a time set aside for Chancellors across the state to meet and discuss issues that are unique to our judicial position. We meet at our normal conferences and have a working lunch where we have

speakers for our continuing education and participate in discussions to enhance our service statewide.

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

October 2012 – Tennessee Court of Appeals. My name was submitted to the Governor, who ultimately selected Thomas "Skip" Frierson, II.

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.

University of Tennessee
Knoxville, Tennessee

Tennessee Wesleyan University, BA History, Minor Math & English
Summa Cum Laude
Athens, Tennessee, ***1984***
History Award
Secondary Education: Certifications to teach Math & Social Studies
I worked full-time to pay for my education. My employer graciously worked my schedule around my classes.

University of Tennessee College of Law, J.D.
Knoxville, Tennessee, ***1987***
I drove from Athens to Knoxville daily for the first half of law school. I also worked on the weekends until I obtained a job as a law clerk, at which time I moved to Knoxville.

Tennessee Judicial Academy
Nashville, Tennessee, ***1998***

National Judicial College
General Jurisdiction
Reno, Nevada, ***2001***

American Academy of Judicial Education
Court Improvement Through Education
Advanced Evidence
Savannah, Georgia, ***2003***

Leadership Program of the Southern Legislative Conference
Coastal Carolina University

South Carolina *2011*

National Judicial College
Theory & Practice of Judicial Leadership
Reno, Nevada, *April 2012*

National Judicial College
Theory & Practice of Judicial Leadership
Reno, Nevada, *September 2012*

National Judicial College
Logic and Opinion Writing
Santa Fe, New Mexico, *November 2018*

PERSONAL INFORMATION

15. State your age and date of birth.

I am 58 years of age. [redacted] 1961.

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

Approximately 53 years.

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

Approximately 53 years, with the exception of the years from 1986 through 1991, when I resided in Knox County.

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

McMinn County

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

None

20. Have you ever pled guilty or been convicted or placed on diversion for violation of any

law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No

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

No

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

None that I could recall and this was also verified by Shane Hutton at Board of Judicial Conduct.

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.

Divorce Complaint filed in 1986, in the Circuit Court for McMinn County, Athens, Tennessee, Docket #15,047. The divorce was granted on the grounds of irreconcilable differences.

Divorce Complaint filed in 2000, in the General Sessions Court of Loudon County, Loudon, Tennessee, Docket #8057. The divorce was granted on the grounds of irreconcilable differences.

A case was filed by a former litigant in 2008 naming myself, the attorney of record, and another individual in U.S. District Court, Eastern Division, Docket #08-CV-00193. This case was dismissed in November 2008, upon the filing of the appropriate motions.

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.

Keith Memorial United Methodist Church, ***Member (1995-present)***
Pastor/Parish Chair (2010-2013)
Board of Trustees, Past Member
Chair Church Council 2014-present)

Athens Kiwanis Club, ***Member (1991-present)***
President, (October 2001-2002)
Vice President, (2000-2001)
Secretary, (1999-2000)
Treasurer, (1998-1999)
Board of Directors, (1994-2003)

McMinn County Republican Women, ***Member***

Monroe County Republican Women, ***Member***

Tennessee Wesleyan University, ***Board of Trustees (2015-present)***

University of Tennessee Women's Council, ***Member (2014-2017)***

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

    a. If so, list such organizations and describe the basis of the membership limitation.

    b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

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 Trial Judges Association, ***Member, 1999 - present***
Secretary, Executive Committee & Various Offices

Tennessee Judicial Conference, ***Member, 1998 – present***
Long Range Planning Committee, Weighted Caseload Committee, Compensation and Retirement Committee-Chair, Education Committee, Domestic Relations Committee, Legislative Committee, Judicial Academy/ Orientation- Co-Chair, Public Trust & Confidence in the Courts, Strategic Planning, Executive Committee, Wellness Committee - Chair
Vice President 2010-2011
Moving Vice President 2011-2012
President Elect 2012-2013
President 2013-2014

National Association of Women Judges, ***Past Member***

Tennessee Law Association for Women, ***Member***

Tennessee Bar Association, ***Member***

I was also appointed by the TBA President to the Task Force on Judicial Conduct to work on a project to revise the Code of Judicial Conduct. This project lasted over eighteen (18) months.

TBA YLD Fellows

Hamilton-Burnett American Inn of Court, ***Master, 2009 - present***

Brock-Cooper American Inn of Court, ***Master, 2010, Presently on sabbatical***

McMinn County Bar Association, ***Past President***

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.

The Mary Mildred Sullivan Award
Tennessee Wesleyan College, ***2012***

Adoption Ambassador, ***2009***

Served on Service Academy Panel for Senator Frist, ***2004***

Active in TBA-YLD and held various offices and worked in various public service projects,

including mock trials, and DUI and divorce videos.

Coached High School Mock Trial Team – Student won best attorney in the state.

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

No publications

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.

Knoxville Bar Association – Ain't Misbehavin' Seminar, ***2014***

Judicial Conference, "Court Driven Docket Management", ***Spring 2016***

Judicial Conference, "To Enjoin or Not to Enjoin, That is the Question", ***Spring 2016***

Mini Judicial Academy, ***2016-present***

NBI Seminar, Civil Court Judicial Forum, ***2016***

UT Symposium – Eye of the Beholder – Panelist, ***2017***

Chattanooga Bar Association – As Judges See It, ***2017***

Judicial Conference, "How to Make Your Decision Bullet Proof", ***Spring 2018***

NBI Judicial Forum, "The Judges Speak: Civil Court Litigation Do's and Don'ts", ***2018***

NBI Judicial Forum, "What Civil Court Judges Want You to Know", ***2019***

Wellness Sessions - Judicial Conference, ***2018-present***

Chancellors Luncheon, ***2019***

Continuing Education for McMinn and Bradley County Bar Associations, ***Various years***

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.

Elected Chancellor of the Tenth Judicial District, *1998*

Re-Elected Chancellor of the Tenth Judicial District, *2006, 2014*

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

No

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

I frequently write orders in cases, three of which are attached. I have not written legal articles, books, or briefs. I co-wrote opinions as a member of the Worker's Compensation Appeals Panel with the help of law clerks, one of which I have attached.

ESSAYS/PERSONAL STATEMENTS

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

It is my desire as a trial court judge to have someone with extensive and relevant judicial experience serving on the Court of Appeals. This person would understand all aspects of trials and judging. With my experience, having presided over and disposed of thousands of cases in the last 21+ years, my current work mirrors cases taken to the appellate level. I can offer additional insight to the panel as a Chancellor from a rural district, which includes one of the poorest counties in the state. As an attorney, I practiced in trial courts all across East Tennessee. Having both urban and rural legal practice backgrounds in both plaintiff and defense practices will complement the Court of Appeals. I desire to expand my service to the profession and use my legal abilities on a larger scale. I feel that as someone who has worked on the front lines for so long, I understand and can appropriately review the work of other trial judges.

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)***

As a licensed attorney, I provided pro bono services to individuals and organizations in various legal situations, including working with victims of domestic violence while securing orders of protection and volunteered for legal aid in Knox County. In Athens, I was appointed to cases in criminal court and as guardian-ad-litem in juvenile and probate courts. A rural practitioner recognizes and appreciates that many people cannot afford legal services. I would take cases on a

free or reduced fee basis in an effort to provide services to those in need. As a president of the bar association, I encouraged the local bar to get involved in pro bono work. I have also provided legal services to non-profit groups and was on the founding board of the H.O.P.E. Center, a center for victims of domestic violence and the McMinn County Education Foundation.

As a judge, I supported a friend of the court system in Bradley County to improve Order of Protection court. When I speak at seminars, I am often given two free admissions, which I attempt to pass those on to lawyers who work for legal services or represent pro bono clients.

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

The judgeship I seek is on the Eastern Division of Court of Appeals. Currently, there are 4 judges serving this section of court. This court handles appeals as of right and interlocutory appeals under Tenn. R. App. Pro. Rule 9 or 10 and recusal appeals under Tenn. Sup. Ct. Rule 10B. I would bring 21 years of experience as a rural trial court judge to this group. I would also bring the experience of having practiced law both in a large city and a small town. As the first woman elected to the bench in the Tenth Judicial District, I would likewise add diversity to the Court of Appeals. This diversity will add a variety of skills and experiences in working with my colleagues to produce timely, well-reasoned, and legally strong opinions.

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)***

It is my belief that to whom much has been given, much is expected. I feel an intrinsic obligation to give back to my communities and have served on the boards of many not for profit organizations, including the following:

Keith Memorial United Methodist Church, ***Board of Trustees, Worship Committee Chair, Pastor/Parish Chair Church Council Chair***

H.O.P.E. Center, Inc., ***Past President, Founding Board of Directors For Victims of Domestic Violence***

United Way of McMinn County, ***Board of Directors, (1997-1999) Worked on fundraising for years prior to serving on the board.***

YMCA, McMinn County, Tennessee, ***(1996-1999), Secretary, (1999)***

Athens Kiwanis Club, Member, ***(1991-present) President, (October 2001-2002) Vice President, (2000-2001) Secretary, (1999-2000) Treasurer, (1998-1999) Board of Directors, (1994-2003)***

Tennessee Technology Center, ***Past Advisory Council Member (1999)***

University of Tennessee National Alumni Association, *Board of Governors, (1994-1995)*
McMinn County Chapter, *Past President*

Boys/Girls Club of Monroe County

I have drafted documents for the McMinn County Education Foundation and worked with my churches and advised them in business and personnel matters.

I have served as a volunteer judge in regional and state mock trial competitions and have assisted Tennessee Wesleyan College with its mock trials.

I volunteer at the local warming shelter for the homeless.

I also assisted the Tennessee Supreme Court in the organization of the SCALES Project in the Tenth Judicial District, Athens, Tennessee, on October 4 & 5, 2012 serving over 1,000 students. This was the largest SCALES event to date.

I support many organizations by attendance. I intend to continue community involvement to the extent allowed by the Code of Judicial Conduct.

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

I raised two boys as a divorced parent. This experience brought many lessons including communication in times of stress.

I have participated in several trips as a high-altitude mountaineer. High altitude mountaineering is a sport involving climbing mountains of over 10,000 feet. I have trained for and climbed, or attempted to climb, four of the Seven Summits, comprised of the tallest mountain on each continent. In order to properly achieve this, one must be in top physical and mental condition. Training the mind and body to acclimatize at altitudes above 10,000 feet requires endurance and perseverance. These mountains are in areas with no supplies and harsh conditions. Proper planning and preparation are a must. It requires patience to give your body time to adjust. I have climbed other mountains in various countries.

The preparation for those climbs is a six month or longer process. This sport requires sound decisions and judgment in order to be safe. Even with the goal in sight, sometimes it is the better choice to turn around. The skills I developed are those I utilize in my everyday life and raising my children.

I have traveled to other countries with my family. It has provided an opportunity to teach my children how fortunate we are in this country and that not everyone comes from our same circumstances.

I have worked on various committees and panels in the judicial conference to work toward a consensus between various individuals as we do the business of the court.

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

It is vitally important for judges to follow precedent as well as law. This allows parties to know their rights and responsibilities and provides stability. It also recognizes the doctrine of separation of powers. Appellate courts do not make law.

It is part of the oath of office for this job to uphold the Constitutions of the State of Tennessee and the United States. I take the oath of office seriously. There were times when I disagreed with the outcome the substantive law dictated but nonetheless followed the law. That is my job. As a trial court judge, it is my duty to follow the law unless the constitutionality of the law has been directly challenged using the proper legal procedure. To do otherwise undermines our constitutional system of government.

As an example, in the case of Albright vs. Tallent, et ux, McMinn Chancery #24512, a dispute arose over a *spite* fence between neighbors that was intrusive to one party but was nonetheless legal. I felt the fence should come down but it was put up legally by a neighbor and close to the front door of the plaintiff. I followed the law.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A. ***John M. Gentry, McMinn Co. Mayor,*** [redacted] ***Athens, TN 37303,*** [redacted]
B. ***Joel C. Riley, Retired,*** [redacted] ***Athens, TN 37303,*** [redacted]
C. ***Larry Wallace, Former Director TBI; Former McMinn County Sheriff; Athens Insurance,*** [redacted]
D. ***J. Michael Sharp, Circuit Court Judge,*** [redacted] ***Cleveland, TN 37311,*** [redacted]
E. ***D. Mitchell Bryant, Attorney,*** [redacted] ***Athens, TN 37303,*** [redacted]

AFFIRMATION CONCERNING APPLICATION

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

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

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

Dated: Feb. 3, 2020.

Signature

When completed, return this application to Ceesha Lofton, 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.

Jerri Saunders Bryant
Type or Print Name

Signature

2-3-2020
Date

12785
BPR #

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

IN THE CIRCUIT COURT FOR BRADLEY COUNTY, TENNESSEE

JEREMY PAUL HOPKINS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. V-07-965
	)	JURY DEMANDED
BRADLEY COUNTY, TENNESSEE, BRADLEY COUNTY SHERIFF'S DEPARTMENT, SHERIFF TIM GOBBLE, OFFICER MARSHALL HICKS, OFFICER JOHN DOE #1, OFFICER JOHN DOE #2, OFFICER JOHN DOE #3, OFFICER JOHN DOE #4, OFFICER JOHN DOE #5, OFFICER JOHN DOE #6, OFFICER JOHN DOE #7, OFFICER JANE DOE # 1, OFFICER JANE DOE #2,	)	
	)	
Defendants.	)	

ORDER

Plaintiff and Defendants in this case have filed Motions for Summary Judgment. All parties have stipulated that no material issues of fact exist. On December 21, 2006 an arrest warrant was issued for Plaintiff in this case. At the time of the issuing of the arrest warrant, Plaintiff's bond was set at $1,500 (See attached Exhibit A). Mr. Hopkins had on his person sufficient funds to post bond immediately. The domestic assault for which Mr. Hopkins was arrested was alleged to have occurred at or around 8:30 a.m. on December 21st, 2006. At or about 7:20 p.m. on December 22nd, 2006, Mr. Hopkins turned himself in to the Bradley County Sheriff's Department at the Bradley County Jail. Mr. Hopkins was released at approximately 6:24 a.m. on December 23rd, 2006. There were no written findings by the Judge or Magistrate regarding whether Mr. Hopkins should be held for

more than twelve (12) hours or released in less than twelve hours as required by T.C.A. 40-11-150.

While detained, Plaintiff spent approximately three hours going through the standard booking procedures, approximately five hours in the cell, and approximately four hours sitting in a chair in the lobby of the booking area. Plaintiff's claims against the named Defendants arise solely from being detained twelve hours pursuant to the policy of the Bradley County Sheriff's Department. The Plaintiff is not claiming there was any unconstitutional or otherwise tortuous conduct by any of the named defendants with regard to his arrest or arising after his release on December 23rd, 2006. Plaintiff is not licensed to practice law in Tennessee but is seeking fees related to his pro se representation at an hourly rate of $295 to $395 per hour.

The Defendants have a "policy, practice or custom" of holding all persons arrested for alleged domestic violence for a period of twelve hours. Defendants refused to allow Mr. Hopkins to post bail to get out of jail until Mr. Hopkins remained in custody for twelve hours. Mr. Hopkins was never taken before a Magistrate, Judge or other official prior to being released on bond on December 23, 2006.

The parties all agree that the arrest warrant in this case was validly issued by the General Sessions Judge in Bradley County, Tennessee. The arrest was lawful, and the warrant was lawful. The question in this case is whether or not the twelve hour hold, as was the policy of the Bradley County Sheriff's Department, was a violation of the Plaintiff's due process rights or other rights under the Constitution, or a violation of Tennessee Code Annotated 40-11-150. The Plaintiff also challenges the constitutionality

of the statute itself as written, and a response has been filed by the Attorney General's Office.

This court will address first the issue of the constitutionality of the statute. The court finds that this statute makes provisions for a hearing and bail and does not violate any of Plaintiff's rights as a matter of law. The court finds that this statute is constitutional and the State of Tennessee is hereby dismissed.

Next, in addressing the application of the statute through the "policies of the Bradley County Sheriff's Department", T.C.A. 40-11-150 provides:

> **"Determination of the risk to victim prior to release; condition of release, discharge of conditions; notification to law enforcement."**
>
> (h)(1) Any offender arrested for the offense of stalking, aggravated stalking . . . or any criminal defense defined in Title 39, Chapter 13 . . . shall not be released within twelve hours of arrest if the Magistrate or other official duly authorized to release the offender finds the offender is a threat to the alleged victim. The official may, however, release the accused in less than twelve hours if the official determines that sufficient time has or will have elapsed for the victim to be protected.
>
> (2) The written findings must be attached to the warrant and shall be preserved as a permanent part of the record. The arresting officer shall make official note of the time of the arrest in order to establish the beginning of the twelve hour period provided for in this subsection (h).

When reviewing this statute in light of the stipulated facts above, it appears that the Bradley County Sheriff's Department policy of a twelve hour hold in all domestic violence situations is a misreading of the statute and therefore inappropriate. The statute provides only that the offender "shall not be released within twelve hours of arrest if the Magistrate or other official duly authorized to release the offender **finds** that the offender is a threat to the alleged victim. Likewise, that same official could find that sufficient

time has elapsed for the victim to be protected. In this case, there were no written findings.

Pursuant to T.C.A. 40-11-150 (2), the written findings must be attached to the warrant and preserved as part of the record. Here they were not. Bradley County Sheriff's Department has promulgated a policy in violation of this statute. Bradley County Sheriff's Department does not have authority to hold the offender for the twelve hour period absent specific findings required by the statute. This did not happen in this case. While it is true as raised by the Defendants that Bradley County Sheriff's Officers, in their individual and official capacities, are allowed to presume the twelve hour hold period mandated in T.C.A. 40-11-150 is constitutional, that is not the issue here. The statute was not followed, and findings were not made. Without a finding of a threat to the victim, the offender is to be released. Further, the bond form to be used in domestic violence cases pursuant to T.C.A. 40-11-150 was not used in this case. The proper form is attached as Exhibit B. Therefore, the policy of the Bradley County Sheriff's Department violates Plaintiff's due process rights when the policy violates the statute.

Defendants have raised the defense of qualified immunity that officers are allowed to presume a statute is valid and private causes of action are barred by the Tennessee Governmental Tort Liability Act. The court does find the individual officers have immunity from suit. There is no proof here any officer was acting outside the employment. Each followed the policy of Bradley County Sheriff's Department. They are entitled to presume the policy is constitutional. They are entitled to qualified immunity. The court finds the Governmental Tort Liability Act provides immunity for the officers in this case.

Next, the court addresses the issue of whether the application of this policy results in a cause of action for violation of any civil rights of the Plaintiff. In order to state a claim, Plaintiff must show that: 1) the action occurred under color of state law (which he has); 2) the action resulted in a deprivation of a constitutional right; and 3) that this deprivation resulted in a particular injury.

Previous cases raised by the Defendants have held a forty-eight (48) hour detention prior to arraignment does not violate a defendant's constitutional rights. That is not the issue here. Here, we have bond set and the officers refusing to accept it. The court has been provided no case law on point. No doubt the hold part of the statute has a legitimate purpose. However, in this instance there was no alleged need for a cooling-off period. This Plaintiff turned himself in to officials approximately thirty-six (36) hours after the alleged incident occurred.

The actual time Plaintiff was held was nine (9) hours after booking. Does Plaintiff have a constitutional right to have his bail accepted immediately? The courts and statutes cited to this court have stated that upon bond being set, a defendant is entitled to immediate release. Defendants cite Lopez v. Sampson, 201 F.3d, 448 (10th Cir. 1999), as supporting their right to refuse bond. This case of the Immigration Court is not persuasive. Doe v. Thomas, 604 F. Supp. 1508, 1510 (N.D. Ill. 1985), cited by Defendants is a pre-bail issue. Here bail was already set. T.C.A. 40-11-118 (a) creates a statutory entitlement to release if bail has been set.

The court finds no violation of the Fourth, Fifth, Eighth, or Ninth Amendments.

Based on the above, the court finds the Plaintiff's due process rights were violated.

Since the amount of damages, if any, is a factual question, the Motion for Summary Judgment is overruled on that issue.

This matter shall be set on the issue of damages to Plaintiff, if any.

This _____ day of November, 2009.

s/
CHANCELLOR JERRI S. BRYANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been forwarded to the following by placing a copy of same in the United States Mail, postage pre-paid:

Jeffrey A. Miller, Esq.
P.O. Box 44
Cleveland, TN 37364-0044

Thomas LeQuire, Esq.
537 Market St., Suite 203
Chattanooga, TN 37402

Warren Jasper, Esq.
Tennessee Attorney General's Office
P.O. Box 20207
Nashville, TN 37202

This ____ day of _____, 2009.

_____
CHANCELLOR

IN THE CHANCERY COURT FOR BRADLEY COUNTY, TENNESSEE

JOHN MICHAEL SHEALY and DAVID LEBRON REAGAN,	)	
Plaintiffs	)	
Vs.	)	NO. 01-389
POLICY STUDIES, INC., d/b/a CHILD SUPPORT SERVICES OF TENNESSEE, and TENNESSEE DEPARTMENT OF HUMAN SERVICES, CONNIE BELL, and NATASHA METCALF, COMMISSIONER,	)	
Defendants	)	

ORDER

This cause came on to be heard on the 18th day of February, 2004, upon the parties' cross motions for Summary Judgment. The stipulated facts are as follows:

1. Mr. Shealy owes a legal duty of support to the three children born to his marriage with Kimberly P. Shealy.

2. In August of 2001, Mr. Shealy was paying $170.00 per week in child support for his three children based on the 1997 Bradley County Circuit Court divorce decree.

3. Mr. Shealy's W-2 for 2001 reflected wages, tips, and compensation in the amount of $33,610.01, as did his 2001 tax return filed as a single taxpayer.

4. The documents referred to as Exhibits 1, 2 and 3 are true and correct copies of the Tennessee Child Support Guidelines, Guidelines Chart, and 2001 IRS Tax Rate Schedules in effect at the time of filing of this lawsuit.

5. Mr. Shealy would presumptively owe 41% of his net monthly income as child support for his three children.

6. Based on an average monthly income of $2920.00, Mr. Shealy would presumptively pay $926.00 per month or $213.69 per week in child support under the Tennessee Child Support Guidelines in effect in 2001 if there were no deviations.

7. In August of 2001, Plaintiff Shealy received a copy of an Administrative Order to redirect child support payments to "Central Child Support Services Receipting Unit" in Nashville, Tennessee. It was signed by the defendant, Connie Bell. Connie Bell specifically did not enter an appearance in the Circuit Court case or give notice of same prior to the issuance of the "Administrative Order".

8. On or about August 25, 2001, Mr. Shealy received a Notice of his Right to Request a Review.

9. On or after September 24, 2001, Mr. Shealy received a copy of an Administrative Order for Modification of Current Support dated September 24, 2001 and filed October 1, 2001, from the local child support office. This document specifically advised him of his right to appeal **that** Order. The sole ground for contesting the Order would be that there was a mistake of fact as to the amount or whether there should be any withholding. The Notice further advised that failure to comply could result in serious sanctions including the loss of his driver's license or a finding of contempt. This October 1st, 2001 Order raised his child support to $216.90 a week.

10. On or about October 2, 2001, Mr. Shealy received an initial Income Assignment Order from the local child support office.

11. On or about October 14, 2001, Mr. Shealy received a Notice of Right to Review from the local child support office which explained how to request an administrative hearing.

12. On or about October 26, 2001, Mr. Shealy received another Modified Income Assignment Order from the local child support office.

13. Mr. Shealy never requested an administrative hearing from the State or from the local child support office in response to any of the documents.

14. In September of 2001, there was a difference of at least 15% between the amount Mr. Shealy was ordered to pay by the Bradley County Circuit Court ($170.00) and the amount he presumptively would pay based on the Tennessee Child Support Guidelines and his income without deviations.

15. At the time of the filing of this cause in December of 2001, Plaintiff John Michael Shealy was under a child support obligation issued by the Circuit Court for Bradley County, Tennessee, Docket #96-V-537, to pay child support for his three minor children.

16. There was never a factual finding for a deviation from the amount he presumptively owed for child support under the Tennessee Child Support Guidelines in his case.

17. At no time prior to December 2001 were any pleadings filed in the Circuit Court for Bradley County, Tennessee, and at no time was a duly elected judge of a court of record asked to pass judgment on the issue that had previously been decided by that court order.

18. Subsequent to the filing of this action, the defendant, Child Support Services, filed a petition to modify the court's decree of support in the Circuit Court proceeding. An Agreed Order was entered and approved on June 16, 2003 which modified the previous court order retroactive to January 1, 2003.

19. Plaintiff, David Lebron Reagan, owes a legal duty of support to the two daughters born to his marriage with Kristie D. Johnson.

20. Jennifer was born on August 30, 1991, and Kristalin was born on October 20, 1992.

21. In May of 2001, Mr. Reagan was paying $75.00 per week in child support for his two daughters based on the 1994 Bradley County Chancery Court divorce decree.

22. On or about June 12, 2001, Mr. Reagan signed an Agreed Order to pay child support in the amount of $75.00 per week (not including clerk's fee) by wage assignment to the Child Support Collections Unit in Nashville, Tennessee.

23. On or about August 22, 2001, Mr. Reagan received a copy of an Administrative Order for Modification of Current Support from the local child support office setting his support at $191.08 per week. A true and correct copy of the Order is attached to the Request for Admissions as Exhibit 6. This document specifically advised him of his right to appeal the Administrative Order. There was no proof of a basis for the modification between June 12, 2001 and August 22, 2001.

24. On or about August 23, 2001, Mr. Reagan went to the local child support office and told them that he was unhappy with the Modified Income Assignment Order because the higher amount of child support was based in part on consideration of his overtime wages.

25. Mr. Reagan's ex-wife and the local child support office agreed to reduce the amount of child support he would pay to $157.00 per week based only upon his regular wages at 40 hours per week.

26. On or about September 25, 2001, Mr. Reagan received a Modified Income Assignment Order from the local child support office lowering the child support amount to $157.00 per week but adding a 5% fee for a total of $164.85.

27. On or about September 28, 2001, Mr. Reagan received a copy of a Notice of Modification of Income Assignment from the local child support office. This document specifically advised him of his right to appeal the notice.

28. On or about October 26, 2001, Mr. Reagan received a Notice of Administrative Offset and Federal Tax Refund Offset, a true and correct copy of which is attached as Exhibit 5 to his Complaint for Declaratory and Injunctive Relief. This document specifically advised him of his right to appeal the notice.

29. On or about November 8, 2001, Mr. Reagan contacted the local child support office about the amount of any arrearages claimed and asked them to recalculate the arrears.

30. On or about November 13, 2001, the local child support office mailed Mr. Reagan a calculation explaining where the child support arrearages had come from.

31. On or about December 11, 2001, Mr. Reagan received a copy of a modified income assignment order from the local child support office.

32. At no time were any pleadings filed in the Chancery Court for Bradley County, Tennessee, other than the notices above. At no time was a duly elected judge of

a court of record asked to make findings of fact or pass judgment on the issue that had previously been decided by a court.

33. At no time was there a finding made between the Orders upon which to base the change in child support.

34. This action was filed in December 2001.

35. **Subsequent** to the filing of this action, the defendant, Child Support Services, filed a Petition to Modify the court's decree of support in the Chancery Court proceeding. This was on or about January 9, 2002. An Agreed Order was entered and approved on June 16, 2003 which modified the previous court order retroactive to January 1, 2003.

36. Mr. Reagan never requested an administrative hearing from the State or from the local child support office in response to any of the documents.

37. Within the 10th Judicial District, the Department has entered into a contract with Defendant Policy Studies, Inc. (PSI) for the provision of child support enforcement services.

38. The defendant, Policy Studies, Inc., d/b/a Child Support Services of Tennessee (Child Support Services), is a Colorado corporation licensed to do business in the State of Tennessee and is under contract with the State of Tennessee Department of Human Services to perform the responsibilities of the State of Tennessee under Title IV-D of the Social Security Act for the collection of child support in the 10th Judicial District which covers the four counties of Bradley, Polk, McMinn and Monroe. The defendant, Child Support Services, is paid a percentage of the amount recovered by it under its

contract, and as such stands to profit directly from the monies that they are now attempting to set by "Administrative Orders".

39. Such a link provides incentive for PSI to increase child support obligations of non-custodial parents such as the Plaintiffs, notwithstanding the fact that PSI must follow the Tennessee Child Support Guidelines pursuant to the Contract.

40. Individual workers in the office have individual performance goals. If they reach their goals, they receive a financial bonus from PSI.

41. The defendant, Connie Bell, is an employee of Policy Studies, Inc. (PSI) and serves as the office manager for the district office. She is the one whose name is signed to the Administrative Orders. Connie Bell is not a lawyer. In her role as the office manager, she receives a "performance bonus". The bonus is based on the amount of child support collected.

42. Ms. Bell is the supervisor of a lawyer although she does not personally approve legal pleadings. She has given the authority to sign her name to administrative orders to enforcement workers. She plays no role in the process and specifically does not review or approve orders.

43. One way administrative modification of child support is processed is for the custodial parent to come to the child support office and request a modification. An enforcement specialist reviews the request and then determines if a modification is appropriate.

44. As to the other forms of administrative orders (IRS intercepts and requirements to pay by wage assignment), these are made by a computer based on the status reported on the computer system.

45. The defendant also has performance goals which can earn financial bonuses for the workers if they are met. The amount of current support distributed from the central collections unit in Nashville is just one of the factors to affect bonuses. The other factors are the number of cases under order, the paternity establishment rate, and the amount of child support arrearages collected.

46. The child support office also provides services to non-custodial parents who seek a reduction in current child support. This can be done administratively.

47. The attorney in the local child support office supervises the child support enforcement specialists and approves all pleadings and administrative orders issued by the office.

48. The State office automatically issues notices of IRS tax refund intercept when the computer system shows that the non-custodial parent owes at least $500 in child support arrearages in a non-welfare case and at least $150 in a welfare case. These are signed by the Department of Human Services Commissioner. Any arrearage is based on the affidavit of the custodial parent and is entered into the computer without proof and prior hearing. Collection activities, including the revocation of State licenses, are based on the reports by the custodial parent and likewise are without proof and hearing. These kinds of collection activities could be conducted even though a court may have found that there is no arrearage. In addition, Policy Studies could do an administrative modification even though a court may have no basis to do so.

49. Wage assignment orders are issued automatically by the State office in all cases being enforced by the State Child Support Enforcement Program once there is an order loaded into the system and a confirmed employer.

50. Either the non-custodial parent or the custodial parent can appeal within 15 days of receiving notice of an administrative order. They can initiate the appeal in person, by telephone or through their attorney.

51. If an appeal is requested, the matter is forwarded to the state office in Nashville which assigns a state hearing officer. This officer schedules a hearing which is held in the requesting person's county of residence.

52. The burden of proof in the administrative hearing is on the State to prove that there was a proper basis for issuing the administrative order.

53. If the party requesting the administrative hearing is not satisfied with the hearing officer's decision, he/she can ask for a rehearing before the agency, and if still not satisfied by the agency decision, the party can ask for judicial review from the court that had jurisdiction over the underlying matter.

54. In June of 2003, the Plaintiffs each entered into Agreed Orders increasing their child support obligations which have been entered by this Court and by the Bradley County Circuit Court.

55. On October 7, 2003, DHS issued administrative orders withdrawing the administrative modification orders which initiated this lawsuit.

All parties have filed their motions requesting summary judgment and stating there exists no genuine issue of material fact. For purposes of summary judgment, the trial court is to take the strongest legitimate view of the evidence in favor of the non-moving party and allow all reasonable inferences in favor of that party and discard all countervailing evidence. If there is a dispute as to any material fact or doubt as to

conclusions to be drawn from that fact, the motion is to be denied. Only those disputed facts which are material are to be the basis for denying a Motion for Summary Judgment.

The plaintiffs challenge the state statutory scheme for modification of child support by the Department of Human Services on three bases:

> 1. The statutory scheme violates the Doctrine of Separation of Powers under the Tennessee and U.S. Constitutions.
>
> 2. The current scheme subjects liberty and property to a tribunal in which the trier of fact has a direct, pecuniary interest.
>
> 3. The statutory scheme used by the defendant violates the Doctrine of Procedural Due Process in that the adjustment is to be performed without proof or showing of any change in circumstances under a differing legal standard than in a court of law and without a pre-deprivation hearing.

In construing statutes, it is the court's duty to adopt the construction which will sustain the statute and avoid constitutional conflict if any reasonable construction exists that satisfies the requirements of the constitution. Davis-Kidd Booksellers, Inc. vs. McWherter, 866 S.W. 2d 520 (1993). The court is required to indulge every presumption and resolve every doubt in favor of constitutionality of a statute, and this rule applies with even greater force where facial constitutional validity of a statute is questioned. In Re: Verson, 909 S.W. 2d 768 (1995).

Plaintiffs have raised certain statutes and regulations as being unconstitutional in this case. First, Plaintiffs argue that the Tennessee Constitution provides in Article II, Section 1, the powers of the government shall be divided into three distinct departments: the legislative, executive and judicial. Article II, Section 2 of the Tennessee Constitution provides that:

> Section 2 - Limitation of Powers. No person or persons belonging to one of these departments shall exercise any of the powers properly

belonging to either of the others except in cases herein directed or permitted.

Plaintiffs argue that the legislature has delegated to the Department of Human Services certain functions that are judicial in nature. Plaintiffs argue that the delegation of findings of fact as to whether or not there is a basis to increase or reduce child support or deviations from guidelines, findings of arrearages in child support, for what amount, setting an amount and a re-payment schedule, and deciding whether a wage assignment is necessary violate the Tennessee and U.S. Constitutions in that they violate the Doctrine of Separation of Powers.

The question of the Doctrine of Separation of Powers with reference to administrative orders has been discussed in several states. In State of Iowa, ex rel, Allee v. Gocha, 555 N.W. 2d 683 (1996), the court noted that the order prepared by Department of Human Services lacked enforceability without judicial approval and thereby dispelled any concern over usurpation by the agency of judicial power. The Iowa Constitution provides for three separate branches of government much the same as in Tennessee. When the agency infringes upon the original jurisdiction of the Court, the Doctrine of Separation of Powers is violated. Holmberg v. Holmberg, 588 N.W. 2d 720 (Minn. 1999).

While the legislature may confer jurisdiction in administrative courts as it may deem necessary, when it does so and includes enforcement of any state statutes, constitutional judicial power is vested in them under Article IV or Article VI because state courts then exercise a concurrent jurisdiction with an inferior court. Therefore, it was the opinion of the Supreme Court of Tennessee that it is necessary that the administrative officer exercising concurrent jurisdiction must be elected for a term of

eight years as required by Article VI, Section IV, and may not be removed except pursuant to the Constitution of Tennessee. The State of Tennessee, Town of South Carthage vs. Barrett, 840 S.W. 2d 895 (1992).

In the Tennessee statutory child support enforcement scheme, Policy Studies is empowered to modify support orders whether facts have changed or not if income has changed. Like Seubert vs. Seubert, 301 Mont. 399, 13P.3d 365 (2000), every contested modification is subject to a hearing before an Administrative Law Judge, and all modifications are subject to judicial review. Plaintiffs have likewise in this case asserted that the procedure for judicial review does not cure the statutory scheme of its constitutional infirmity because judicial review is not automatic and the scope of review is limited by the Tennessee Administrative Procedures Act. Further, the basis for modification is different in the administrative hearing versus the judicial hearing. Review of the Tennessee statutory scheme clearly demonstrates that Policy Studies is authorized to initiate a modification proceeding, modify a court's child support order, and then enforce that modified order as a court. While Policy Studies argues these functions are merely quasi-judicial and do not violate the Separation of Power Doctrine, the child support order or modification is effective upon filing regardless of whether a party appeals. Judicial review provided for in Tennessee is substantially the same as that in Montana. For this reason, this Court finds to the extent that Policy Studies is granted "judicial power" to make and enforce child support orders without an automatic and mandatory judicial review, it is a violation of the Doctrine of Separation of Powers under the Tennessee Constitution. The citizens of this state have a right to an independent judiciary.

The role and powers of Policy Studies in the administrative process raises questions. Policy Studies gains increased fees for increased child support collections. In the court process, Courts have the power to regulate the practice of law and maintain discipline over attorneys and protect the public. The issuance of administrative orders is the practice of law. The public is not protected if the administrative officer does not have a law degree, and the Court does not have supervisory powers other than where participants in this administrative process have the resources to mount an appeal or challenge administrative modification of a previous court order. Under these statutes, Policy Studies drafts pleadings, makes decisions on whether modification is monetarily justified, and enters orders by non-attorneys and has a financial stake in the process. All action is prior to a hearing and violates procedural due process.

Plaintiffs contend the administrative hearings result in a deprivation of property (money that could be used for child support payments) without due process.

> "If the right to notice and a hearing is to serve its full purpose, then it is clear that it must be granted at a time when the deprivation can still be **prevented** . . . No later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. Fuentes v. Shevin, 407 U.S. 67, 81, 92 S. Ct. 1983, 1994, 32 L. Ed. 2d 556 (1972).

The current system provides no advance review by the courts prior to orders being placed in court files and signed by people with no law degree or judicial status.

Title IV of the Social Security Act provides grants to states for implementation of services to needy families with children and for child welfare services. Participating states must provide a child support enforcement plan under Title IV-D which must operate a child support program in substantial compliance with the Act. Under Title

IV-D, Congress created mandatory provisions for states to follow in an effort to enforce support orders. This federal statute provides that certain provisions ***must comport with the state's procedural due process requirements***. 42 USC §604-679 provides that the state must provide that child support be withheld from income in cases subject to enforcement under the state plan. Future orders must provide that if arrearages occur, there will be an income assignment issued without the need for a judicial or administrative hearing. Further, the U.S. Code requires expedited administrative and judicial procedures for establishing, modifying and enforcing support obligations. Provisions can be waived under certain sections of the Act. All of these are subject to due process requirements under state law.

The Code further goes on to provide that the state child support enforcement agency will be allowed to attach refunds of state income tax ***(subject to procedural due process requirements of the state)*** and after notice has been sent to the non-custodial parent of the proposed reduction of state income tax refund.

Section VII of the statute provides procedures for reporting child support arrearages to credit bureaus only after such parent has been afforded ***all due process required under state law*** including a notice and a reasonable opportunity to contest the accuracy of such information. Tennessee Code goes further than the U.S. Code in providing that when the obligor becomes in arrears as reflected in the records of the court clerk or in the records of the Department of Human Services, the contractor in IV-D cases can issue an order of income assignment ***without the necessity of an affidavit of the obligee***. Procedures under 42 USC 666, et seq., only provide that a support obligation imposed by a support order issued or modified after January 1st, 1994 can become subject

to withholding if arrearages occur without the need for a judicial or administrative hearing. Further, U.S. Code provides that the non-custodial parent shall be subject to withholding except when a written agreement is reached between both parties which provides for an alternate arrangement. Neither of these instances requires a state due process hearing presumably because there has been a hearing to determine if there is an arrearage and the amount.

The taking of money before there is a hearing to determine if in fact an arrearage exists and the amount of the alleged arrearage violates due process.

There are two types of due process. The first is that substantive right that the Supreme Court has interpreted under the Fourteenth Amendment. The other is procedural. Section 667 of the U.S. Code provides that the income of the non-custodial parent shall not be subject to withholding if:

> 1) one of the parties demonstrates in the court or the administrative process finds that there is cause not to require immediate income withholding, or
>
> 2) a written agreement as reached between both parties provides for an alternate arrangement.

Under the current child support scheme, administrative orders apply automated methods to identify orders eligible for review and apply adjustment to those orders, thereby violating procedural due process rights of the parties to have a written agreement which provides for an alternative arrangement of the payment of child support and usurps the Court's role in the fact finding process where there has been a previous finding of "cause" not to require immediate income withholding or to deviate from the child support guidelines previously applied in a case. Sixth Circuit Court of Appeals extensively

described the appropriate test for due process in Chernin v. Welchans, 844 F. 2d 322 (1988).

> A basic principle of due process under the Fourteenth Amendment is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." Mullane v. Central Hanover Trust Co., 339 U.S. 306, 303, 94 L. Ed. 865, 70 S. Ct. 652 (1950). The United States Supreme Court has consistently held that some form of a hearing is required prior to an individual being *finally* deprived of a property interest. Wolff vs. McDonnell, 418 U.S. 539, 557-58, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974). The requisite hearing must be "at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552, 14 L. Ed. 2d 62, 85 S. Ct. 1187 (1965). The scope and timing of the required hearing varies with the circumstances of the individual case. See Morrisey v. Brewer, 408 U.S. 471, 481, 33 L. Ed. 2d 484, 92 S. Ct. 2593 (1972). Thus, where the length or severity of the deprivation does not indicate a likelihood of serious loss and the procedures underlying the decision to act are reliable so as to minimize the risk of erroneous deprivation, the government may act without providing additional advance procedural safeguards.

Another basis for violation of due process is the different standards of proof in an administrative hearing versus a judicial one. Specifically, T.C.A. §36-5-103(f) (1) provides that upon the request of the custodial or non-custodial parent . . . the Department shall **review**, **and**, **if appropriate**, **adjust** (emphasis added) the order in accordance with the child support guidelines established pursuant to §36-5-101(e). T.C.A. §36-5-103(f)(1) provides if at the time of the review there is a "significant variance" as defined by Department's child support guidelines, between the current support order and support order if adjusted based upon the obligor's income, the Department **shall** adjust the order. Further, the adjustment "**shall** be made without a requirement for proof or showing of any other change in circumstances". This changes the rebuttable presumption in T.C.A. §36-5-101(e)(1)(A) to an irrebuttable presumption when filed under T.C.A. §36-5-103.

T.C.A. §36-5-103 mandates adjustment without additional fact finding. Therefore, the delegation of certain findings of fact and conclusions to be drawn from those facts to the Department of Human Services is different from the law that must be followed judicially. T.C.A. §36-5-101(a) (1) provides a court may decree "an increase or decrease" of such an allowance only upon a showing of substantial material change of circumstances. This statute goes on to provide that a substantial material change of circumstances is found when there is a significant variance in income **unless the variance has resulted from a previously court ordered deviation from the guidelines and the circumstances which caused the deviation have not changed.** This section allows the court to hear proof on the rebuttable presumption of the guidelines and in addition factor in whether their application would be unjust or inappropriate.

In order to determine exactly what procedures are necessary to protect a particular property interest, courts balance the government's interest against the private interest involved. Mathews v. Eldridge, 424 U.S. 319, 334, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976). The Supreme Court in Mathews established three factors for courts to consider in such situations:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335.

> Depending on the circumstances of the particular case, the hearing called for by the fourteenth amendment may be a pre-deprivation hearing, see, e.g., Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 56 L. Ed.

2d 30, 98 S. Ct. 1554 (1978), or a pre-deprivation abbreviated "opportunity to respond" with a prompt post-deprivation hearing, e.g. Cleveland Board of Education v. Loudermill, 470 U.S. 532, 84 L. Ed. 2d 494, 105 S. Ct. 1487 (1985), or solely a prompt post-deprivation hearing. Mathews, 424 U.S. 319, 47 L. Ed. 2d 18, 96 S. Ct. 893. See also Mackey v. Montrym, 443 U.S. 1, 61 L. Ed. 2d 321, 99 S. Ct. 2612 (1979).

In this case the private interests affected are the interests of noncustodial parents in their income on a weekly, bi-weekly or monthly basis balanced by the government's interest, including the function involved and the physical/administrative burdens for an additional procedural step.

In Goldberg vs. Kelly (Goldberg), 397 U.S. 254, 25 L. Ed. 2d 287, S. Ct. 1011 (1970), the Supreme Court held due process required an evidentiary hearing prior to the State withholding welfare benefits. The Court's decision in that case turned on the fact that individuals receiving such benefits are usually living on the margin of subsistence and had no other sources of income. The Supreme Court followed the same type of analysis in situations where basic necessities of life were threatened. It has even gone as far as to say when Plaintiff's wages are garnished because of its inability to pay certain bills, there is a pre-deprivation hearing required. Sniadach vs. Family Finance Corporation, 395 U.S. 337, 23 L. Ed. 2d 349, 89 S. Ct. 1829 (1969).

In the case of the Tennessee scheme for collection or increase of child support, the statute allows for post deprivation hearings.

The balance of the obligor's interest in their income with the government's interest in expedited hearing in child support cases tilts in favor of a pre-deprivation hearing.

Subjecting liberty and property of defendants to an administrative officer which has direct, substantial, pecuniary interests in the outcome is both a denial of due process

and a violation of the Doctrine of Separation of Powers guaranteeing independence of the judiciary. Tumey v. Ohio, 273 U.S. 510, 47 S. Ct. 437 (1927). Officers acting in judicial or quasi-judicial capacity are disqualified by interest in controversy. Ward vs. Village of Monroeville, 409 U.S. 57, 93 S. Ct. 80 (1972).

In conclusion, this Court finds the current statutory scheme for the collection of child support in this state fails to provide a pre-deprivation hearing, operates under a different standard of proof, and violates the Doctrine of Due Process as well as the Doctrine of Separation of Powers, all in violation of the Constitution of the State of Tennessee. Therefore, the Plaintiffs are granted summary judgment. The issuance of the injunction prayed for by the Plaintiffs shall be stayed for thirty (30) days pending the finality of this decision.

Costs of this cause are taxed to the Defendants.

This April _____, 2005.

_____
CHANCELLOR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been forwarded to the following by placing a copy of same in the United States Mail, postage pre-paid:

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This ____ day of _____, 2005.

/s/
CHANCELLOR

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 23, 2011 Session

MICHAEL[1] A. PARISH v. HIGHLAND PARK BAPTIST CHURCH ET AL.

Appeal from the Chancery Court for Hamilton County
No. 09-0355 W. Frank Brown, III, Chancellor

No. E2010-01977-WC-R3-WC-FILED-OCTOBER 18, 2011

Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. The Employee was injured when he was thrown from a horse. He alleged that the injury arose in the course and scope of his employment. His Employer contended that the Employee was engaged in a purely private activity; therefore, the injury was not compensable. The trial court denied the claim. On appeal, the Employee contends that the trial court erred by finding his injury was not related to his employment. We affirm the judgment.

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

JERRI S. BRYANT, SP. J., delivered the opinion of the Court, in which GARY R. WADE, J. and JON KERRY BLACKWOOD, SR. J., joined.

Richard A. Schulman and McKinley S. Lundy, Jr., Chattanooga, Tennessee, for the Appellant, Michael A. Parish.

Thomas O. Sippel and Benjamin T. Reese, Chattanooga, Tennessee, for the Appellees, Highland Park Baptist Church and Guideone Mutual Insurance Company.

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[1] Mr. Parish's first name is spelled "Michael" in the transcript of proceedings below and the trial court's order, but "Micheal" in his appellate brief. The former spelling is used throughout this opinion.

MEMORANDUM OPINION

Factual and Procedural Background

Michael Parish ("Employee") was employed as the Business Manager and Personnel Director of Highland Park Baptist Church ("Employer") from 1992 until May 2009. He was injured on May 17, 2008 when he was thrown from a horse on the premises of Camp Joy. Camp Joy is a summer camp for inner city-children operated by Employer. As a result of the injury, Employee suffered a "burst fracture" of the L1 vertebra. The injury required a long period of recuperation and caused him to have some permanent limitations of his activities. For purposes of this appeal, it is not disputed that Employee was ultimately unable to continue in his employment because of the combined effects of non-related selenium poisoning and the back injury.

At the time Employee's injury occurred, Jeff Frances[2] was the director of Camp Joy and his wife, Gail, was the assistant director. Dr. David Bouler was the senior pastor of the church and Employee's direct supervisor. Mr. Frances, Ms. Frances, Dr. Bouler and Employee all testified at length about the history of horses at Camp Joy. In the spring of 2008, someone offered to donate four horses to Camp Joy. The offer was accepted, and the horses were received in March or April of that year. Employee implied that the intent was for the horses to be ridden by children campers. Mr. Frances testified that he "envisioned . . . bring[ing] horses back where kids could actually do trail rides again." Ms. Frances understood that the horses were to be ridden but did not specify by whom. Dr. Bouler testified that the horses were to be "personal horses" for Mr. and Ms. Frances and their family, and that the church would allow the horses to be kept at Camp Joy. He testified that he did not consider the horses to be safe for children to ride and that he never intended for them to be used for that purpose.

When the horses arrived at Camp Joy, it was apparent to Mr. Frances that they had not been ridden for some time and were not suitable for children to ride. Ms. Frances agreed with that assessment. Both decided it would be necessary to work with the horses before they could be used at the camp. Employee testified that he told Mr. Frances that "if you guys can get them ready, I'm planning on going out there and checking them out. If I feel like they're ready to go, I'll make the recommendation to Dr. Bouler." During the week before May 17, 2008, Employee had a brief conversation with Ms. Frances. He testified that he "told her it was getting time for the camp to open and that I wanted to come out and check

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[2] Mr. Frances's name is spelled both "Frances" and "Francis" in the record. The former spelling is used throughout this opinion.

the horses and make sure they are okay for liability [purposes]." He testified that his "intent was to ride all four horses and check them out and make sure they were ready to go."

Although Employee did not usually work on Saturdays, on May 17, 2008, he and his wife, Patricia, rode to Camp Joy on his motorcycle. Although they both owned saddles, they did not bring them on this occasion. At the camp, they took two horses from their stalls. Ms. Parish brushed one of them while Employee saddled the second, then "took it for a ride around the pasture several times." Employee then saddled the horse his wife had been grooming. When he got on the horse, "[s]omething spooked her. She went up on her back legs. She lost her balance and went back and slammed me into the ground." Employee was immediately in pain. He rested for a short time but did not improve. Eventually, his wife obtained the camp truck and took him to a nearby hospital. He was diagnosed with a broken bone in his right knee and a burst fracture of the L1 vertebra.

Employee testified that he viewed checking the safety of the new horses as his responsibility. However, neither Dr. Bouler, nor any other official of Employer, instructed him to check the horses. He testified that he had done this when the camp had owned horses in the past, including during a year when the director of the camp had no experience with the animals. However, this was not within his job description. Employee's wife testified that he had also helped an assistant pastor handle the horses on one occasion in the past. Employee had also ridden the camp's horses for recreation.

The trial court issued a written opinion and order. It found that Employee

> was not injured in the course of his employment by [Employer]. [Employee] was the business manager of [Employer]. He was not employed as the director of Camp Joy. It was not his job to train the horses. The camp director did not expect [Employee] to train the horses. [Employee] was not asked to ride the horses. His riding of the horses was a personal mission, outside his job duties, even though such may have some remote, potential benefit to [Employer].

The trial court, therefore, dismissed Employee's claim for workers' compensation benefits. It made an alternative finding that, if his injury was determined on appeal to be compensable, Employee had sustained a permanent partial disability of 22% to the body as a whole. Employee has appealed, arguing that the trial court erred by finding that his injury was not compensable and by awarding discretionary costs to Employer.

Standard of Review

In Tennessee workers' compensation cases, this Court reviews the trial court's findings of fact de novo, accompanied by a presumption of correctness of the findings, unless

the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008); *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). "This standard of review requires us to examine, in depth, a trial court's factual findings and conclusions." *Galloway v. Memphis Drum Serv.*, 822 S.W.2d 584, 586 (Tenn. 1991) (citing *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 675 (Tenn. 1991)). We give considerable deference in reviewing the trial court's findings of credibility and assessment of the weight to be given to that testimony when the trial court has heard in-court testimony. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). On questions of law, our standard of review is de novo with no presumption of correctness. *Wilhelm*, 235 S.W.3d at 126. Although workers' compensation law must be construed liberally in favor of an injured employee, it is the employee's burden to prove causation by a preponderance of the evidence. *Crew v. First Source Furniture Grp.*, 259 S.W.3d 656, 664 (Tenn. 2008).

Analysis

Employee contends that the evidence preponderates against the trial court's decision. He points out that his job responsibilities included supervision of Camp Joy, including direct supervision of the director of the camp, as well as securing insurance for the camp and for other church activities. He was familiar with horses and had "assisted" with the camp horses in the past. Further, he notes that although his job primarily involved oversight of the books of Employer's various functions, he also frequently participated in "hands on" activities such as assisting with security and moving pews within the church. In light of the breadth of his responsibilities and activities, he argues that his activities on May 17, 2008 bore a rational connection to his employment. He cites *Loy v. North Brothers Co.*, 787 S.W.2d 916 (Tenn. 1990) in support of his position.

In *Loy*, the employee was injured in a motor vehicle accident. 787 S.W.2d at 918. The accident occurred after his normal working hours while he was driving to meet with a potential replacement for an employee who had quit earlier that day. *Id.* at 917-18. The employee did not have the authority to hire employees himself and did not inform his employer of his intent to seek a replacement employee. *Id.* The trial court found that the injuries sustained as a result of the accident were compensable, however, and the Supreme Court affirmed that decision. *Id.* at 920.

Employee also relies upon *Jones v. Hartford Accident & Indemnity Co.*, 811 S.W.2d 516, 519-20 (Tenn. 1991), in which the Supreme Court applied the "mutual benefit test" in affirming a trial court's finding that an employee was acting in the course of her employment while performing her duties as a union steward.

Employer argues that the evidence in the record supports the trial court's finding that Employee's injury was not compensable. In support of this position, it points out that

Employee's job description, which Employee drafted, does not contain any reference to maintaining safety at Camp Joy generally, or evaluating horses specifically. Employer further points to the testimony of Mr. and Mrs. Frances that they considered themselves responsible for training and evaluating the horses. Also, Employer relies on Dr. Bouler's testimony that he considered the donated horses to be the Francescs' responsibility and did not intend for them to be ridden by campers. In light of this assertion, Employer argues that there was no reason for Employee to make an independent evaluation of the animals.

We agree with Employer's contention that *Loy* is not applicable to these facts. In *Loy*, the trial court found that the injured employee's supervisor "expected" him to take independent action to replace the employee who had resigned if "he knew someone." 787 S.W.2d at 918. In contrast to *Loy*, the trial court in this case found that Employer had no expectation that Employee would train or evaluate the horses at Camp Joy. Similarly, *Jones* is not applicable because the employee in that case had been "summoned pursuant to a direct order from the owner of the plant to receive and pass along a message to the union's business manager . . . [that] related directly to the plant owner's authority to question employees in general, and [the employee] specifically, about their employment status." 811 S.W.2d at 520. The trial court in this case found that, unlike the employee in *Jones*, Employee was on a personal mission that Employer did not order or expect. Moreover, the benefit of that mission to Employer was remote at best.

In its decision, the trial court referred to *McClain v. Holiday Retirement Corp.*, No. M2001-02850-WC-R3-CV, 2002 WL 31512326 (Tenn. Workers' Comp. Panel Nov. 12, 2002). Employee criticizes the trial court's reliance upon that decision, arguing that the facts of the two cases are not comparable. In *McClain*, the Special Workers' Compensation Appeals Panel affirmed the trial court's finding that the employee's injury, which occurred while she was packing her personal belongings in her residence on the employer's premises, was not compensable. *Id.* at *2. We agree that the facts in *McClain* are not analogous to the facts here. However, it is clear to us that the case was cited to illustrate the principle that injuries sustained in the course of a personal mission outside the employment relationship are not compensable, rather than to support a finding that the facts of that case somehow dictate the result here.

The trial court's factual findings are supported by evidence throughout the record, including Employee's past recreational use of the camp horses, the testimony of Dr. Bouler that the horses were not going to be ridden by campers, and the testimony of Mr. and Ms. Frances that the horses were their responsibility. Further, Dr. Bouler was surprised Employee had gone out to the camp. Those findings were necessarily based in large part upon the trial court's assessment of the credibility of the witnesses. We give the trial court's credibility determination the deference to which it is entitled. *Whirlpool Corp.*, 69 S.W.3d at 167 ("When the trial judge has seen and heard a witness's testimony, considerable

deference must be accorded on review to the trial court's findings of credibility and the weight given to that testimony."). Having examined the entire record independently, as we are required to do, we conclude that the evidence does not preponderate against the trial court's finding that Employee's injury occurred in the course of a personal mission and is therefore not compensable. In light of that conclusion, it follows that the trial court did not err by awarding discretionary costs to Employer pursuant to Tennessee Rule of Civil Procedure 54.04.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Michael Parish and his surety for which execution may issue, if necessary.

JERRI S. BRYANT, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

MICHAEL A. PARISH v. HIGHLAND PARK BAPTIST CHURCH ET AL.

Chancery Court for Hamilton County
No. 09-0355

No. E2010-01977-SC-WCM-WC-FILED-OCTOBER 18, 2011

ORDER

This case is before the Court upon the motion for review filed on behalf of Michael A. Parish pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Michael A. Parish, and his surety, for which execution may issue if necessary.

PER CURIAM

GARY R. WADE, J., not participating