The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 87 (September 17, 2021) hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

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

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am the Clerk and Master of the Sixth Judicial District of Tennessee, which comprises solely Knox County.

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

2007; BPR #026339

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee; BPR #026339. My licensure date is November 20, 2007, and my 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).

Judicial Experience and Service to the Judiciary:

Clerk and Master of the Sixth Judicial District of Tennessee; Knoxville, TN (Sept. 2022 – Present)

Special Assistant (Bar Examiner) to the Tennessee Board of Law Examiners, by appointment of the Tennessee Supreme Court; Knoxville, TN (May 2020 – Aug. 2022)

Law Clerk to the Hon. William M. Barker, Chief Justice, Tennessee Supreme Court; Chattanooga, TN (Aug. 2007 – Aug. 2008)

Professional Experience in the Practice of Law:

Long, Ragsdale & Waters, P.C.; Shareholder; Knoxville, TN (Jun. 2020 – Aug. 2022)

Hodges, Doughty & Carson, PLLC; Member; Knoxville, TN (Nov. 2014 – May 2020)

Holbrook Peterson Smith PLLC; Associate Attorney; Knoxville, TN (Apr. 2013 – Nov. 2014)

Paine, Tarwater, & Bickers LLP; Associate Attorney; Knoxville, TN (Sept. 2008 – Mar. 2013)

Teaching Experience:

University of Tennessee College of Law; Adjunct Professor of Law; Knoxville, TN (Jan. 2012 – May 2013 & Aug. 2025 – Present)

Professional Experience Outside the Practice of Law:

Calvary Banking (now Pinnacle Financial Partners); various positions within the bank's operations division; Murfreesboro, TN (Aug. 1999 – Dec. 2001 & Jun. 2022 – Dec. 2003)

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 employed continuously since completion of my legal education.

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

Due to my service as Clerk and Master, I do not practice law presently. Please see my responses to Questions 10 and 12 below for a description of my current role.

Immediately prior to the Knox County Chancellors asking me to enter public service, my private practice focused on estate administration, litigation, and planning (~40%); commercial litigation (~25%); and advising individuals, business owners, and governing bodies of private and public entities in a blend of governance, tax, and transactional matters (~35%). Earlier in my career, I represented manufacturers in products liability claims, physicians in healthcare liability lawsuits, and a wide array of other clients, often in highly regulated fields, such as tax and public utilities law.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide

detailed information, especially in this question, will hamper the evaluation of your application.

After graduating from the University of Tennessee College of Law, I began my legal career as a law clerk for the Hon. William M. Barker while he was serving as Chief Justice of the Tennessee Supreme Court. This was an invaluable experience that exposed me to the intellectual rigors demanded of judges. Chief Justice Barker relied upon me to research thoroughly and accurately a variety of state and federal issues; draft opinions that captured his "voice" and judicial philosophy; and, most importantly, debate the merits of the cases with him to ensure that the Court's opinions were faithful to the law and respectful of the judiciary's role under our Constitution.

During my clerkship, the importance of the "rule of law" ceased being an abstract concept gleaned from legal textbooks. Chief Justice Barker instilled in me the same deep respect that he had for our courts and how they should responsibly, equitably, and conservatively exercise their authority. He also impressed upon me that the judiciary relies upon members of the bar to help with the administration of justice and that if I were ever called upon to serve then I should do so. Respect for and adherence to the rule of law is the foundation upon which I have built my career and which guides me today.

I was the last law clerk that Chief Justice Barker hired before his retirement. Following his retirement in 2008, I entered the ranks of private practice with Paine, Tarwater, & Bickers, LLP. Though I could not have known it then, I moved from the tutelage of one justice to another, now that Dwight E. Tarwater is a Justice on the Supreme Court. When I was an associate attorney with his firm, he and the other partners emphasized the importance of building every case as if it eventually would end up on appeal. I leaned on my foundation as a law clerk to grow into an advocate. We primarily represented manufacturers in products liability cases across the nation. I appeared in cases in Illinois, New York, California, Ohio, and New Jersey. Closer to home, I began representing fiduciaries and beneficiaries in trust-related litigation along with physicians in healthcare liability lawsuits in local chancery and circuit courts. Because of my clerkship experience, I also assisted with multiple appeals before the Supreme Court and Court of Appeals.

This experience taught me how to build cases through thoughtful planning, targeted discovery, and careful drafting. (I also learned that you should not schedule your first jury trial to start on your first wedding anniversary.)

Through the peaks and valleys of life as a young professional, I relied upon my love of language to translate complex ideas into persuasive arguments. While many experiences stand out, the most impactful are my first jury trial and becoming a principal brief writer for a large medical products manufacturer.

Though I have garnered significant experience helping others prepare for their jury trials, in my first jury trial I represented a plaintiff who had contracted with a local manufacturer to build a custom-made vehicle. The manufacturer failed to deliver as promised, and we filed suit for breach of contract, fraud, and violations of the Tennessee Consumer Protection Act. I developed the trial plan, drafted pleadings, deposed witnesses, and handled the pre-trial discovery and motion practice. Following two days of testimony, the jury awarded compensatory and treble damages to my client along with his attorneys' fees.

It was an exhilarating experience; especially when the trial judge surprisingly announced to the jurors as I was walking to the podium that I was given only ten minutes in which to deliver my opening statement. I had planned on speaking for twenty minutes. While I will never know if the trial judge was timing me or not, I adapted my opening statement in the span of three strides and walked away with a new-found appreciation for how attorneys must adjust to changing landscapes.

Next, our firm was national trial counsel for an international medical products manufacturer in a federal multi-district litigation involving several hundred lawsuits. The plaintiffs alleged that they became ill after their healthcare providers administered one of our client's products to them. Given the complexities of the science behind the product, regulatory environment, the plaintiffs' medical histories, and potential damages, numerous national law firms represented the client. I was tasked with drafting motions in limine to exclude certain experts, including the plaintiffs' generic epidemiologist in the bellwether trial. Numerous other attorneys from the various law firms were likewise assigned to brief writing. Though the district court ultimately denied all of the client's motions in limine, my motion was the only one that gained any traction with the district judge, and he applied a heightened standard of review. That result drew the client's attention, causing it to request that I take the lead role drafting several important upcoming motions and edit others' drafts to develop a consistent voice for the client. I include my motion in limine as one of my writing samples.

While my time with Paine, Tarwater, & Bickers, LLP was invaluable to my development as an attorney, the demands of travel took me away too much from my responsibilities as a husband and new father. I joined Holbrook Peterson Smith PLLC, a boutique estate planning law firm, in the spring of 2013 to bolster its administration practice and offer litigation services. I also wanted an opportunity to grow beyond litigation.

The practice of wills and trusts requires attorneys to draw from diverse bodies of law, because each plan must be customized to fit the particular needs of each client. In any given engagement, a practitioner may have to incorporate issues relating to property, contracts, domestic relations, special needs, benefits, business associations, or tax. I enjoy the challenge such variety brings.

This new practice area, however, required me to change how I approached drafting. As a planner, my writing had to capture how my clients wanted to be remembered after their death and share it in such a way that others could honor their wishes. These are very personal matters that most people rarely want to discuss; however, to represent my clients effectively I had to develop rapport with them and gain their trust. I did this by building connections through active listening and taking the time to learn about their needs, families, and assets.

While my practice expanded beyond litigation, I primarily remained an advocate. I represented clients in lawsuits involving questions of interpretation, recovery of assets, boundary line disputes, will contests, and breach of fiduciary duty allegations. One of the most significant challenges I faced when representing fiduciaries was helping them understand that the law often restrains their ability to act. On the flip side, I represented numerous beneficiaries against fiduciaries who refused to respect the limitations or requirements that the law imposed on them.

Though my tenure with this firm was short-lived (and it ultimately dissolved after I left), I gained new insights into representing individuals in stressful personal situations. Much like my colleagues in the domestic relations and criminal defense bar, I had to be empathetic while

remaining sufficiently detached to preserve my objectivity.

In late 2014, I joined Hodges, Doughty & Carson, PLLC, a general practice law firm. I continued building my estate administration, litigation, and planning practice, but balanced it by joining the team that represented the largest municipal utility in East Tennessee. I found that my comfort with the maxims of interpretation translated well to public utility law.

This client frequently asked me to draft policies, procedures, guidance documents, leases, and deeds. I answered questions about public records laws and delved deeply into procurement matters, especially eminent domain and administrative law issues. I negotiated sales of surplus real property and advised on large infrastructure improvement projects. I also defended the client against personal injury and economic damage lawsuits filed under the Tennessee Governmental Tort Liability Act in more than one circuit court in East Tennessee.

While practicing with Hodges, Doughty & Carson, the complexity and depth of my estate administration and litigation practice significantly expanded. For example, I represented a pair of executors administering an estate with over $50 million in assets and which faced substantial tax liabilities. The estate's assets were mostly composed of business ventures that the decedent often had consummated with little more than a handshake. I successfully prosecuted, defended, or resolved nearly a dozen lawsuits stemming from those ventures. With the estate's accountants, we also settled multiple tax audits on favorable terms.

My last private practice position was as a shareholder with Long, Ragsdale & Waters, P.C. This firm is widely known for its expertise in the fields of property development and related commercial engagements. I joined this firm in mid-2020 after several of my colleagues moved their practices there from our prior firm.

I continued representing fiduciaries, beneficiaries, financial institutions, and businesses in estate administration and litigation matters and continued handling commercial litigation in chancery and circuit courts. However, I also took on more entity representation, especially governance and transactional matters. I assisted clients with employment agreements, entity formation and termination, lending, and the buying and selling of businesses. From my litigation experience, I was well equipped to identify and mitigate threats that jeopardized my clients' success. Another area I especially enjoyed was helping clients create public charities and obtain tax exempt status. It was very rewarding to witness how my work supported my clients' vision to improve the lives of others.

Through hard work and dedication to my clients and colleagues, I developed a successful practice. I have represented clients in several East Tennessee chancery and circuit courts, and I came to appreciate how each legal community develops its own local customs and practices. I learned that, in more rural counties, it could be a fatal mistake to present yourself as the "big city lawyer from Knoxville," and I went to great lengths to avoid such pitfalls. Being respectful and appreciative of the courts' clerks and local customs is a key practical component of the practice of law.

In July 2022, Chancellors John F. Weaver and Christopher D. Heagerty told me that the current Clerk and Master was retiring after 24 years of service and that they wanted me to succeed him. During our initial conversation, they paid me one of the greatest professional compliments I have received, when they shared that one of the reasons they trusted me with this position was that they believed I possessed the right temperament to be a judge. Though Chancellor Richard

B. Armstrong, Jr. had not yet been sworn into office, he supported my appointment. Remembering Chief Justice Barker's encouragement to serve the judiciary when asked, I left private practice and accepted their appointment as the next Clerk and Master.

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

The Tennessee Supreme Court has twice appointed me to represent indigent criminal defendants in cases pending before it. The first involved the question whether retained counsel, who represented the defendant during a delayed direct appeal and subsequent post-conviction relief proceedings, had a conflict of interest. The Court ruled for my client and remanded the case to the post-conviction court for further proceedings. *See Frazier v. State*, 303 S.W.3d 674 (Tenn. 2010).

The second case centered on whether the trial court had properly imposed a sex offender surcharge on the defendant. Again, the Court held in favor of my client and vacated the judgments of the trial court and Court of Criminal Appeals. *See Craig v. Mills*, No. E2010-00487-SC-R11-HC, 2011 Tenn. LEXIS 961 (Tenn. Oct. 14, 2011) (not for publication).

I also represented a group of beneficiaries on appeal before the Tennessee Court of Appeals on whether a holographic writing was a testamentary instrument and the filings necessary for appointment of a personal representative in a probate estate. The Court ruled in my clients' favor on one issue and the opposing party on the other. *See In re Estate of Pierce*, 511 S.W.3d 520 (Tenn. Ct. App. 2016).

While I served as a Special Assistant to the Board of Law Examiners, in which my primary task was grading bar exams, the Board asked me to represent it at two show cause hearings on the respective applicants' character and fitness issues. The Board denied admission to the applicants and the Supreme Court upheld those decisions.

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.

I serve as the Clerk and Master of the Sixth Judicial District. I am a constitutional officer of the Judicial Department, serving by appointment of the Chancellors. My term of office is six years. It began on September 1, 2022, and expires on August 31, 2028. Under the Charter for Knox County, I am an independent fee office holder.

The role of Clerk and Master is divided between that of clerk of the court and special master in chancery. Being the executive leader of one of Tennessee's largest civil trial courts carries incredible responsibility, but the valuable insights gained from my title of Master, along with

my diverse experiences from private practice and my Supreme Court clerkship, uniquely qualify me to serve as an appellate court judge.

Various statutes authorize clerks and masters to perform certain judicial functions. As most attorneys discover at some point in their careers, our federated trial court system allows for each judicial district to develop its own local customs and practices. In many judicial districts, the first part of my office title – Clerk – takes precedence. However, in the Sixth Judicial District, the Clerk and Master presides over the Probate Division, serving a judicial function as to probate matters. To my knowledge, ours is the only jurisdiction to utilize its clerk and master in this fashion. According to the Annual Statistical Report of the Tennessee Judiciary for fiscal year 2023-2024, there were 1,610 probate matters filed in the Probate Division. This accounted for nearly 41% of all filings in the Chancery Court. For the sake of comparison, there were 1,864 new probate filings in Davidson County's Probate Court, over which an elected probate judge presides. I have thus had the opportunity to serve in a judicial capacity.

While some might dismiss probate cases as merely administrative, our Supreme Court has recognized that the "probate of a decedent's will and the administration of a decedent's estate are among the most complex areas of the law." Like elected trial court judges, I preside over motion dockets multiple times per week in the Probate Division courtroom. I regularly conduct bench trials where I receive testimony from the witness stand and exhibits into the record, rule on objections, and consider the arguments of counsel and self-represented parties. Though I do not wear a robe, and I am quick to point out that I am not an elected judge, I have felt the pressure that comes with sitting on the bench and being called upon to decide issues when all eyes in the courtroom are on you. It is a humbling experience, and one that I respectfully and cautiously approach.

The Legislature limits the subject matter jurisdiction of probate courts and, consequently, I must remain vigilant of these boundaries and those of my authority. The probate statutes create the procedural guardrails; however, issues surrounding property, contracts, debt, domestic relations, breach of fiduciary duty claims, interpretation of statutes, construction of instruments, tax, and valuations are commonplace. The Rules of Civil Procedure and Evidence apply to the Probate Division with the same force as they do to the Chancery Court, and so I must often resolve disputes about affirmative defenses, summary judgment, discovery, service of process, hearsay, authentication, Deadman's Statute, and so forth.

Many estates involve significant assets and complicated family relationships. While not every estate involves weighty issues of public policy or high-profile decedents, every estate involves the loss of someone who was a parent, spouse, child, or friend. For the survivors trying to navigate this complex area of the law, my duty to them is to be a fair and impartial jurist who authentically adheres to the law and issues opinions timely.

Our local rules and historical precedence require me to issue Master's Reports instead of signing orders as the statutes otherwise permit. In each report, I must thoroughly summarize the factual and procedural history of each matter, recite the relevant legal authorities, and clearly articulate my recommendations to the Chancellors and the analysis supporting my reasoning. Much like Court of Appeals opinions, my reports must systematically describe the procedural and factual landscape, accurately recite and analyze the law, and clearly articulate the outcome. I must go to such lengths so that the Chancellors may have a sufficient record in order to exercise their

independent review of my recommendations.

Last year, I issued over 300 reports. Of the more than 900 reports I have issued since becoming Clerk and Master, parties have filed exceptions to only about 40 of them, and the Chancellors have rarely modified or disagreed with my recommendations. I believe these results stem, in part, from my ardent attempts to write in language that even self-represented parties can understand. Self-represented parties comprise a significant part of my audience in the Probate Division.

Though each estate is noteworthy to those involved, I highlight three estates as representative of the complexity and depth of issues over which I preside.

The first estate involved a multi-day bench trial where I received testimony from seven fact witnesses and one expert witness. The disputes centered on the personal representative's accounting and inventory, valuation of certain investment-grade coins, and ownership of the decedent's real property, bank accounts, and vehicle. Both sides were represented by attorneys who each raised numerous evidentiary objections and zealously represented their clients. My report is one of my writing samples.

Next, I presided over an estate that involved application of the anti-lapse and ademption statutes in the context of a specific devise of lakefront realty. The central issue was one of first impression in Tennessee, which required me to articulate an evidentiary standard to determine whether the decedent, while living, had possessed an intent contrary to his written will. One of the parties disagreed with my analysis and filed an exception to my report. Chancellor Heagerty adopted my analysis without modification and granted permission for the same party to seek interlocutory review. The Court of Appeals denied permission. To date, this is the only case a party has appealed beyond the Chancellor.

The last estate revolved around the unexpected death of a young entrepreneur who had substantial debts. The creditors filed claims in excess of several million dollars. The majority of my analysis focused on the interplay of the Tennessee Rules of Civil Procedure, as modified by the creditor claims statues, and the subject matter jurisdiction of probate courts. Chancellor Weaver confirmed my report without change.

I would be remiss, however, to not provide the Council with some insight into my responsibilities as clerk of the court. I candidly admit that prior to my appointment, I rarely wondered what happened behind the clerk's counter. I am the custodian of the court's records and primarily responsible for their preservation and management. To that end, I design, implement, and oversee my office's policies, procedures, and operations. With the leadership team I have built, I supervise approximately 22 deputy clerks across two divisions, account for annual revenues of over $1.5 million, and safeguard several million dollars in public and private funds. As a steward of funds, my office undergoes annual external financial audits.

The Chancellors challenged me to modernize the court's operations. I have drawn from all of my experiences in private practice to meet this challenge. I have drafted new personnel handbooks, financial internal control policies, staff training materials, and educational materials for self-represented parties. I abandoned the model of "that's the way we've always done things" in favor of building systems that honor and advance our commitment to the public.

However, I have devoted most of my modernization efforts on completely overhauling the court's technology environment. Our current environment has not changed meaningfully in the

past two decades and surpassed its useful life years ago. Our new system goes into service in early 2026.

Shortly after I took office, the Supreme Court appointed me to its new Tennessee Court System Information Technology Oversight Committee. Led by Justice Sarah K. Campbell, the committee's mission is to develop a strategic plan for the use and maintenance of technology in the judicial branch and to oversee its implementation. Our work has led to the development of a new strategic plan that embraces the latest technologies and empowers the judiciary to leverage those advancements for improved efficiency and transparency. Meanwhile, we must remain mindful of the weighty ethical considerations that are implicated by how technology is used.

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.

While I was in private practice, the former Clerk and Master and other attorneys often asked me to serve as a fiduciary when an estate involved complex tax issues, litigation, or strife among the interested parties.

For example, I administered an estate of a prominent East Tennessee personal injury attorney who held judgments potentially worth several million dollars. The beneficiaries' attorneys asked me to serve as personal representative because of the potential tax liabilities and threat of litigation by a previously unknown child about paternity.

I administered one estate involving the sale of real property with over 20 beneficiaries and another where a mother unexpectedly died, leaving behind a teenage son who inherited significant assets. I have also been appointed as guardian ad litem and once as attorney ad litem in an emergency conservatorship for a man on life-support following a catastrophic brain injury.

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

Most of the issues I encountered in private practice were controlled by statute or regulation. These same authorities followed me into my current role.

For several years, I served as local counsel for a large law firm from Memphis that represented owners of commercial real property who wanted to appeal unfavorable property tax assessments. I represented the owners before local boards of equalization throughout East Tennessee. These boards usually met in courthouse conference rooms and were composed solely of local residents who were dedicated to protecting their local tax bases. Armed with the law and voluminous appraisals, I pled our case to the board members, often with the local elected property assessor sitting next to me shaking his or head in righteous disbelief. This was a unique challenge, and one I approached with great humility. I came to enjoy these exchanges thoroughly and they gave me a greater appreciation of these communities.

I also represented a local charitable foundation on appeal to the State Board of Equalization following the denial of an application for partial exemption from real property taxes. My client

owned a commercial building that leased space to nonprofit and for-profit tenants through a series of limited liability companies in order to take advantage of certain income tax planning strategies. In arguing the appeal to the administrative law judge, I had to educate him on the ownership and tenant structure and how each tenant's partial use of the space met the requirements of the property tax exemption laws. I was ultimately able to convince him that our approach satisfied the requirements for partial exemption.

Now I conduct the delinquent real property tax sale for Knox County and the City of Knoxville. Our last sale included over 150 parcels and we collected over $2 million in overdue taxes. I carefully study the property tax code and closely work with other public officials to ensure we are protecting property owners' due process rights while faithfully fulfilling our obligations to the taxing authorities.

I also sale real property at judicial sales either by auction or private agreement. The skills I developed in private practice guide me as I work to maximize each parcel's value and ensure that I convey good and marketable title to the purchasers.

As I continue to refine my professional skill set, the addition of drafting legislation has greatly enhanced my dexterity, allowing me to navigate complex legal frameworks with greater ease and precision. Trial courts are funded mostly through the filing fees and court costs that court clerks collect. The General Assembly sets those amounts and it has not increased them since 2006. Before last legislative session, the Tennessee State Court Clerks Association decided to ask the General Assembly to increase these fees and costs so that the court clerks could offset the rising costs of operating our offices and invest more in our staffs and technology. I volunteered to draft the proposed legislation and find a sponsor. I applied the same mindset to the bill as I did to an estate plan. I examined the existing statute critically and charted a new statutory scheme to allow for greater clarity and smaller incremental changes more frequently. I defined terms and used them consistently. I built in oversight mechanisms and worried how others would interpret the words I chose. Rep. Andrew Farmer, the Chair of the newly restructured House Judiciary Committee, sponsored the legislation and I worked with him and others to shepherd it through the various committees and votes. The legislation passed both houses and Governor Lee signed it into law on May 21, 2025.

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.

I have not previously submitted an application for judicial appointment.

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 College of Law (Aug. 2004 – May 2007)

Degree: Juris Doctorate

Honors and Activities: Dean's List multiple semesters; The Federalist Society; Order of the Barristers; W.K. McClure Scholarship for the Study of World Affairs; Moot Court Board (Chair); Saul Lefkowitz Trademark Moot Court Team (national competition finalist, regional champion, and winner of best brief award); *Transactions: The Tennessee Journal of Business Law* (staff member); and judicial extern to the Hon. C. Clifford Shirley and the Hon. Bruce H. Guyton

Middle Tennessee State University (Aug. 1998 – Dec. 2003 & May 2006 – Aug. 2006)

Degrees: Bachelor of Business Administration in Accounting (*magna cum laude*) and Bachelor of Science in Political Science (*magna cum laude*)

Honors and Activities: Dean's List all semesters; Charles R. Ray Pre-Law Scholarship; W. Wallace Roberston Accounting Scholarship; Jeffrey J. Dye Leadership Foundation Fellowship; Beta Alpha Psi (accounting honors society); Mock trial team (numerous individual honors); Mock mediation team (national champion; numerous individual honors)

PERSONAL INFORMATION

15. State your age and date of birth.

I am 45 years old and my date of birth is [redacted] 1980.

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

45 years. I have resided in Tennessee my entire life; however, I lived temporarily outside Washington, D.C., for one semester while I was completing an internship with Merrill Lynch as part of my undergraduate studies.

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

17 years. I returned to Knox County in September 2008, after completing my clerkship with Chief Justice Barker in Chattanooga, Tennessee.

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

Knox County, Tennessee

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

I have not served in the military.

20. Have you ever pled guilty or been convicted or placed on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No.

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

No.

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

I have responded to two formal complaints filed against me with the Tennessee Board of Professional Responsibility and one with the Tennessee Board of Judicial Conduct. These boards dismissed each complaint at the staff level and without any informal or formal discipline. No attorney or party has ever sought sanctions against me, nor has any court imposed any sanctions against me or questioned my 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.

In my current role as Clerk and Master, I have been a party to numerous proceedings where the Chancellors have appointed me as a special master or otherwise directed me to sell real property.

In my individual capacity, I have been a party in two legal proceedings, both initiated by other members of the bar.

The first lawsuit was styled *Wanda McClure Dry, as Administrator ad Litem, on behalf of Laurence R. Dry, M.D., J.D. v. Christi Lenay Fields Steele, et al.*, and was filed in the Circuit Court for Anderson County, Tennessee, under Civil Action No. B2LA0060. I became a party as a result of a third-party complaint filed on May 3, 2012, and the case was closed on September 12, 2019.

This lawsuit stemmed from a tortured series of lawsuits. When I was a relatively new associate attorney at Paine, Tarwater, Bickers, & Tillman, LLP, a senior associate attorney and I represented a physician in a healthcare liability lawsuit brought by a former patient. My involvement centered on researching various defenses, including service of process. While I did not appear at any depositions or hearings, I wrote briefs and assisted with discovery. My research led to the filing of a summary judgment motion arguing that the plaintiff's attorneys failed to serve our client properly. The trial court agreed and granted summary judgment in favor of our client.

After the healthcare liability lawsuit ended, our client's co-defendants filed a malicious prosecution lawsuit against the patient and his attorneys. One of the plaintiff's attorneys, in turn, filed a third-party complaint against nearly everyone involved in either the healthcare liability lawsuit or the malicious prosecution lawsuit, including our client, our client's professional liability insurer, its adjustor, the senior associate attorney, and me. The attorney alleged that the senior associate attorney and I had made various misrepresentations to the trial court in the healthcare liability lawsuit. The trial court assigned to the malicious prosecution lawsuit (and, consequently, the third-party complaint) had also presided over the underlying healthcare liability lawsuit. The trial court dismissed the claims leveled against the senior associate attorney and me. After numerous appeals, including an unsuccessful petition for certiorari to the United States Supreme Court, the appellate courts affirmed dismissal.

The second lawsuit was styled *David C. Lee v. Long, Ragsdale & Waters, P.C., et al.*, and was filed in the Circuit Court for Knox County, Tennessee, under Case No. 323523 on August 28, 2023. The Circuit Court entered an Order of Dismissal on May 13, 2024. The underlying estate administration is styled *In re Estate of John Davis (JD) Lee*, which is pending before the Chancery Court for Knox County, Tennessee, Probate Division, under Docket No. 84058-3. The Chancery Court appointed me as the personal representative on March 23, 2021, and approved my resignation on November 14, 2024.

When I was still in private practice, the Chancery Court for Knox County appointed me as the personal representative of a probate estate for a prominent East Tennessee personal injury

attorney. With the consent of the Chancellors and the parties interested in the estate, my appointment continued after I became Clerk and Master. The estate had significant potential tax liabilities, but it did not have sufficient assets to pay the potential liabilities. One of the beneficiaries, who is an attorney, began demanding distributions before I had resolved the tax issues. Adhering to federal and state law, I declined to make interim distributions until I had resolved the tax issues and all other matters with superior claims. Under federal law, if I had distributed assets before paying all outstanding tax liabilities, then I would have become personally liable for the deficiency.

The beneficiary was unsatisfied with my response and filed numerous motions in the administration, seeking to compel distributions and ultimately my removal as personal representative. He also filed a lawsuit against my attorney and me in the Circuit Court for Knox County, claiming various statutory and fiduciary duty violations that overlapped with his claims in the estate administration. After I successfully resolved the tax issues and obtained clearance from the IRS (without triggering an audit), I petitioned the Chancery Court to approve my accountings and allow me to resign. The Chancery Court approved my accountings and fees and allowed me to resign. The beneficiary voluntarily dismissed the Circuit Court lawsuit.

I did not admit liability in either matter.

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.

- Fountain City Recreation Commission; Commissioner (2025 to present)
- St. John's Lutheran Church; Member of Church Council (2024 to 2025)
- Middle Tennessee State University Alumni Association; Director (2021 to 2024) and Treasurer (2022 to 2024)
- Little Oaks Academy; Director and Treasurer (2019 to 2021)

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 Bar Association (2007 to present)
    - Committees: Access to Justice and Publications
- Knoxville Bar Association (2008 to present)
    - Committees: Hunger and Poverty Relief (chair), Publications, Professionalism and Judicial
- American Bar Association (2008 to 2025)
- Knoxville Bar Foundation (2021 to present)
- The Federalist Society – Knoxville Lawyers Chapter (2022 to present)
- The Hamilton Burnett American Inns of Court (2022 to present)
- Tennessee State Court Clerks Association (2022 to present)
    - Officer: Board of Directors and President of Eastern Grand Division
    - Committees: Legislative and Probate
- County Officials Association of Tennessee (2022 to present)

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

- Justice Joseph W. Henry Award for Outstanding Legal Writing by Tennessee Bar Association
- Harris Gilbert Pro Bono Volunteer of the Year Award by Tennessee Bar Association
- Pro Bono Advocate Award by Legal Aid of East Tennessee
- KBA Pro Bono Award Winner by Legal Aid of East Tennessee (numerous times)
- Fellow of the Knoxville Bar Foundation
- Court Clerk of the Year – Tennessee State Court Clerks Association – Eastern Grand Division

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

- *Case Commentaries*: *Tennessee's Statute of Frauds: Worth Writing Home About*, 7 Transactions: Tenn. J. Bus. L. 197 (2005)
- *Case Commentaries: If It Looks Like a Debt, Paid like a Debt, and Recorded Like a Debt, Guess What?*, 7 Transactions: Tenn. J. Bus. L. 419 (2006)
- *Case Commentaries: Joining the Majority: Tennessee Changes its Statute of Frauds*, 8 Transactions: Tenn. J. Bus. L. 445 (2007)
- *Changing with the Times: Eminent Domain Practice in Light of Tennessee Public Act 863*, 9 Transactions: Tenn. J. Bus. L. 179 (2007)
- *Property Rights v. Public Use: Analyzing Tennessee's Response to Kelo Eminent Domain Ruling*, 43 Tenn. B.J. 14 (Feb. 2007) (first student written article published as the cover article)
- *A Redeeming Interest in Religious Freedom: Are Islamic Mortgage Alternatives Clogs on the Equitable Right of Redemption?*, 13 Fordham J. Corp. & Fin. L. 419 (2008)
- *Service of Process after Hall v. Haynes: Practice Tips for Counsel & Advice for Management*, 47 Tenn. B.J. 26 (Mar. 2011) (winner of Justice Joseph W. Henry Award for Outstanding Legal Writing)
- *Who's to Blame?: Supreme Court Says Contractors are Liable for their Subcontractors' Work*, 48 Tenn. B.J. 12 (Apr. 2012)
- *Balancing the Scales: Legal Considerations for Employer-Sponsored Wellness Programs*, 40 Dicta 15 (Feb. 2013)
- *Big Changes to Tennessee's Uniform Trust Code: 10 Things You Should Know*, 49 Tenn. B.J. 20 (Dec. 2013)
- *A Tentative First Step: Same-Sex Marriage in Tennessee*, 41 Dicta 16 (May 2014)

I also wrote two columns for the Knoxville Bar Association's *Dicta* about works of legal fiction and profiles of members of the Knoxville bar between 2013 and 2015.

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.

Law School Courses:

- Wills & Trusts at the University of Tennessee College of Law

CLE Seminars:

- Conservatorship Refresh with Clerk and Master
- Judicial Sales and Court Clerks
- Court Media Overview
- A Conversation with the Clerk and Master: Change is in the Air

- Probate Practice Tips: Procedure and Evidentiary Rules
- Chancery Court Practice – Bench Bar Conference

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

I am the Clerk and Master of the Sixth Judicial District of Tennessee. The Chancellors appointed me to this position. My term began on September 1, 2022, and ends on August 31, 2028. I have not sought any other public office.

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.

Please see attached three writing samples. Though others reviewed and provided feedback to each of these samples, I am the sole author of each sample. Two of my samples are Master's Reports I recently issued and the third is the motion in limine I describe in my response to Question 8 above. Though I did not sign the filed version of the motion in limine, I authored it.

ESSAYS/PERSONAL STATEMENTS

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

Before seeking this position, I spoke with state senators and attorneys to hear what they value in appellate court judges. I consistently heard: experience, faithfulness, and temperament. I also met with appellate court judges to learn about the demands of the position. Its hallmarks include contemplation, collaboration, and diligence.

Though I am outgoing, I am an introvert. I find solace in quiet thoughtfulness and sharing my views through the written word. This self-awareness coupled with my diverse experiences as an advocate, counselor, teammate, and judicial officer drives my candidacy. I have no agenda, except to serve the law faithfully. I treat others as I want to be treated, and strive for excellence rather than perfection. I find that a well-timed joke can defuse a tense situation and most times people simply want to be heard respectfully. That is my temperament. I seek this position in order to serve only others.

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)***

Equal justice under the law is enshrined in the Supreme Court's top strategic priority: access to justice. In private practice, my pro bono representations ranged from litigation and estate planning to advising nonprofits. The Tennessee Bar Association recognized my volunteerism with its highest individual award. My most impactful work, however, was helping save a daycare from closing. I created a framework that saved jobs and maintained care for numerous families.

Now, I build systems that increase access to justice. I am leveraging technology to reduce barriers to our courts and promote confidence in our judiciary. I emphasize empathy with my staff and remind them that, while we must follow the law, we cannot ignore the toll that interacting with our courts extract from those involved.

On the bench, I offer understanding tempered with pragmatism. When announcing decisions, I strive to explain how the facts and law compel the outcome.

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)***

Tennessee's Constitution vests judicial power in the Supreme Court and in such other inferior courts as the Legislature shall "ordain and establish." The Legislature established the Court of Appeals and limits its jurisdiction to appellate review of civil cases. Twelve judges serve on this court; however, only four can reside in the same grand division. I seek to be one of the four from the Eastern Grand Division.

My diverse experiences will add value to the Court. As a law clerk, I learned respect for the rule of law. As a practitioner, I learned how to listen, plan, and execute. As an educator, I learned how to mentor. As a court clerk, I learned teambuilding; and, as a special master, I learned how to make tough decisions fairly, faithfully, and timely. Each experience will influence how I will collaborate with my colleagues if called to serve.

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)***

My parents were called to public service and they instilled in me a deep and abiding faith in community. I have served on governing boards for nonprofits that promote local history, children's literacy, and alumni involvement. I have coached youth basketball and baseball teams, and I recently completed a term on my church's council. I am now a commissioner for a local youth sports recreation league. As a fellow of the Knoxville Bar Foundation, I support efforts to improve public awareness of the courts and access to justice.

I have also represented numerous local and national public charities and foundations who help with organ transplantation, support local elementary schools, care for the less fortunate, educate mental health professionals, and treat patients with neurodegenerative disorders and support

caregivers.

I speak publicly about the need for estate planning and have volunteered my time with the Wills for Heroes program. I am also wrapping up the fall semester teaching the wills and trusts course at the University of Tennessee College of Law. I host law students enrolled in the estate planning clinic in my courtroom, and I hire law students as interns in the Probate Division to further their careers.

If the Governor calls me to serve, I will continue to serve my community in adherence to the Code of Judicial Conduct. I hope though to remain involved with the Supreme Court's technology-related modernization efforts and teaching.

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)***

My wife will tell you that she knows I think highly of someone if I refer to him or her as "down to earth." To me, this phrase describes a person with three qualities: hardworking, fair, and humble.

My parents set an early example. My mother put herself through college while working full-time and raising three young children. After a decade of hard work, she graduated with honors and ultimately became the Finance Director of one of the largest school districts in Tennessee. She taught me the value of education.

My father was in law enforcement for over two decades and often spoke of the difficult choices he had to make while protecting our community. It is an odd sensation to have strangers tell you how much they appreciate how your father treated them while he was taking them into custody. He taught me to respect everyone and be kind to them.

Chief Justice Barker was humble. He rose from very modest beginnings and became Chief Justice of the Supreme Court through his love of learning, good humor, and concern for those around him. But he always made time to answer his law clerks' questions and laugh with anyone who crossed his path. He taught me to never forget that a court's decision has a profound impact on people's lives and livelihoods and that our words matter.

I strive every day to live up to their example so that someday someone may refer to me as "down to earth."

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

I will uphold the binding law even when I may disagree with it.

When hearing probate cases, I have encountered situations where I disagreed with the policy giving rise to a law. My judicial philosophy, however, compels me to set my beliefs aside and

carry out the Legislature's intent as solely expressed by the words it chose.

For example, I presided over a case where a decedent died without a will, unmarried, and survived by one adult daughter. The estate was very modest. Under the laws of intestate succession, the daughter was the only heir-at-law and was qualified to serve as administrator, except for the fact that she had been convicted of a drug-related felony years earlier.

An administrator serves as a court-appointed receiver and the probate court has considerable discretion with regard to such appointments. However, Tennessee has a specific disability statute that was enacted shortly before the Civil War that bars persons convicted of a felony from serving as an administrator. Even though she was the only person interested in the estate, she could not be appointed and had to bear the costs and delay of finding someone else to administer her parent's estate. I believe that a probate court should have the discretion to consider the facts and circumstances surrounding the appointment and exercise that discretion accordingly. However, I must respect the Legislature's words and the consequences that result from them whether I agree or not.

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. Hon. Glenn T. Jacobs
Mayor of Knox County, Tennessee
[redacted]

B. Hon. Charles D. Susano, III
Clerk of the Circuit, Civil Sessions, and Juvenile Courts
Sixth Judicial District of Tennessee
[redacted]

C. Marianne H. Wanamaker, Ph.D.
Dean and Professor of Economics and Public Policy
Howard H. Baker, Jr. School of Public Policy and Public Affairs
The University of Tennessee, Knoxville
[redacted]

D. William D. Edwards, J.D.
Long, Ragsdale & Waters, P.C.
[redacted]

E. Robert F. Parsley, J.D.
Bradley Arant Boult Cummings LLP
[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 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: NOVEMBER 28, 2025.

Jeffery Scott Daniel
Signature

When completed, return this application to Laura Blount at the Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE
PROBATE DIVISION

IN RE: ESTATE OF J. MORTON CAMPBELL,
Deceased. **No. 87696-2**

MASTER'S REPORT

This cause came to be heard on the 11th day of April 2024, before J. Scott Griswold, Clerk and Master of Knox County Chancery Court, pursuant to Tennessee Code Annotated section 16-16-201 and Rule 18 of the Local Rules of Practice for Knox County Chancery Court. Pursuant to Rule 53.04 of the Tennessee Rules of Civil Procedure, any objections to this Master's Report must be filed within ten (10) days of the date of the Notice of Filing attached hereto.

This cause came to be heard upon the Exception to Claim filed December 18, 2023, by Julieanne McCamy Foy, as Executor of the Estate of J. Morton Campbell ("Executor" and the "Estate," respectively), and the Claim Against Estate filed November 20, 2023, by Margaret Jane Myers (the "Claim" and "Claimant," respectively). Thomas M. Leveille appeared at the hearing on behalf of Executor and Amanda R. Busby appeared on behalf of Claimant. The Clerk and Master received sworn testimony from Claimant and two exhibits into evidence. Exhibit 1 is the "Consent Final Judgment and Decree" ("Consent Decree") entered May 20, 2009, by the Superior Court for the County of Rabun, State of Georgia (the "Georgia Superior Court"), in the matter styled *Margaret Myers Campbell v. Julian Morton Campbell*, Civil Action File No. 08-CV-339-W. Exhibit 2 is a "Divorce Decree Calculation" Claimant prepared in support of the Claim. After considering the filings, evidence, and the record as a whole, the Clerk and Master files this Report.

I. PROCEDURAL AND FACTUAL BACKGROUND

J. Morton Campbell ("Decedent") and Claimant were married and subsequently divorced. *See* Consent Decree at 1. As part of their divorce proceedings before the Georgia Superior Court, they attended mediation, and it resulted in a settlement agreement ("Mediation Agreement") dated May 1, 2009. The Georgia Superior Court attached a copy of the Mediation Agreement to the Consent Decree and adopted and incorporated its terms into the Consent Decree, which it entered on May 20, 2009. *See* Consent Decree at 2. The parties agreed that Decedent would pay $32,000.00 to Claimant "by making equal monthly payments over a ten (10) year period beginning June 1, 2010, and every month thereafter until the full $32,500.00 is paid in full. Said payments are due the first of each month and are late if not paid by the 15th of each month." *See* Consent Decree at 2; Med. Agmt. ¶ 5. Neither the Mediation Agreement, Consent Decree, nor testimony specified the amount of late fees.

The parties did not specify the reason for the payment; however, the Consent Decree expressly states that the Mediation Agreement is a "division of marital property and apportionment of marital debt[.]" *Id.* In addition, neither party would pay "support, alimony, or attorneys fees" to the other. *Id.* Decedent did not make any installment payments to Claimant prior to his death.

Decedent executed his last will and testament on December 28, 2022. Article I directs Executor to pay "all debts" of the Estate "as soon as possible after my death." Article VI provides, in its entirety, that:

> I give and bequeath the sum of One Hundred Twenty Thousand Dollars ($120,000) to my ex-wife, MARGARET JANE MYERS, if she is surviving at the time of my death. If MARGARET JANE MYERS is not surviving at such time, such bequest shall lapse and pass as part of my Residuary Estate hereinafter disposed of.

Decedent's niece and nephew are the residual beneficiaries of the Estate. *See* Art. VIII. Other than the general direction to Executor to pay "all debts," there is no mention of the debt owed to Claimant in the Will.

Claimant also testified that in the months prior to Decedent's death, Pinnacle Financial Partners began paying her $1,000.00 each month as an advancement towards her specific bequest. In all, Claimant received $3,000.00 towards her specific bequest. There is no evidence before the Clerk and Master that Decedent intended for these payments to be credited towards the debt owed to Claimant.

Decedent died testate as a resident of Knox County on April 12, 2023, at the age of sixty-three (63), unmarried and without issue. This Court, by order entered May 16, 2023, admitted to probate in common the Last Will and Testament of J. Morton Campbell dated December 28, 2022 (the "Will"), and appointed Executor. Following Executor's appointment, the Clerk and Master caused a Notice to Creditors to be published in *The Knoxville Focus*, a newspaper of general circulation, on May 22, 2023. *See* Aff. of Pub'l dated May 22, 2023. The four-month creditor claim period expired on September 22, 2023.

Claimant was aware of Decedent's death and communicated with Edward A. Cox, Jr., counsel for Executor. Claimant did not alert Mr. Cox or Executor about the debt from the divorce until after the four-month creditor claim period expired. Once Mr. Cox learned that Claimant may be a creditor of the Estate, he sent her a copy of the Notice to Creditors by letter dated November 10, 2023. Claimant filed the Claim *pro se* on November 20, 2023, which was beyond the four-month creditor claim period, but less than sixty (60) days from receipt of the Notice to Creditors. According to the evidence before the Clerk and Master, Claimant's filing of the Claim is the first affirmative steps that she took to attempt collection of the debt.

Executor timely filed the Exception on December 18, 2023, arguing that the Claim was untimely and satisfied by the specific bequest. First, Executor avers that the last day for filing a claim against the Estate was September 22, 2023, the end of the four-month creditor claim period, and that Claimant did not file the Claim until November 20, 2023, which was almost sixty (60) days too late. In addition, Executor posits that all or some portion of the Claim is barred by the statutes of limitations provided in Tennessee Code Annotated sections 28-3-105 and -109 and/or Georgia Code Annotated section 9-3-24. Second, Executor believes that specific testamentary bequest satisfied the debt that Decedent owed to Claimant under the equitable doctrine of satisfaction.

Executor disbursed $117,000.00 to Claimant in satisfaction of the specific bequest.

II. LAW AND ANALSYS

There are five issues for this Court to consider: (1) whether Claimant timely filed the Claim pursuant to Tennessee Code Annotated section 30-2-306; (2) whether enforcement of the Claim based on the Consent Decree is classified properly as enforcement of a contract or judgment; (3) which statute of limitations applies to the Claim, i.e., under Georgia law as a substantive right or under Tennessee law as a procedural right; (4) whether Claimant is entitled to receive prejudgment interest and, if so, how much; and (5) whether the doctrine of satisfaction extinguishes the Claim.

A. Claimant Filed the Claim Timely.

The first issue is whether Claimant timely filed the Claim pursuant to Tennessee Code Annotated section 30-2-306. In her defense, Claimant cites Tennessee Code Annotated section 30-2-306(b), which provides that:

> All persons, resident and nonresident, having claims, matured or unmatured, against the estate are required to file the same with the clerk of the above named court on or before the earlier of the dates prescribed in (1) or (2), otherwise their claims will be forever barred:
>
> (1)(A) Four (4) months from the date of the first publication (or posting, as the case may be) of this notice if the creditor received an actual copy of this notice to creditors at least sixty (60) days before the date that is four (4) months from the date of the first publication (or posting); or
>
> (B) Sixty (60) days from the date the creditor received an actual copy of the notice to creditors if the creditor received the copy of the notice less than sixty (60) days prior to the date that is four (4) months from the date of first publication (or posting) as described in (1)(A); or
>
> (2) Twelve (12) months from the decedent's date of death.

Claimant also cites Tennessee Code Annotated section 30-2-306(d), which provides that:

> [I]t shall be the duty of the personal representative to mail or deliver by other means a copy of the published or posted notice as described in subsection (b) to all creditors of the decedent of whom the personal representative has actual knowledge or who are reasonably ascertainable by the personal representative, at the creditors' last known addresses.

Claimant correctly points out that Executor did not provide her with a copy of the Notice to Creditors until November 10, 2023. As such, Tennessee Code Annotated section 30-2-306(b) did not require her to file the Claim until sixty (60) days later. *See also Burke v. Langdon*, 190 S.W.3d 660, 663 (Tenn. Ct. App. 2005) (discussing the personal representative's fiduciary duty to notify creditors). Under this statutory scheme, Claimant had until January 9, 2024, to file her claim. After receiving the Notice to Creditors, Claimant timely filed her claim on November 20, 2023. Therefore, this Court should reject Executor's argument that Tennessee Code Annotated section 30-2-306(b) bars the Claim.

B. Claimant Seeks to Enforce a Contract Right.

The second issue is whether Claimant should enforce the Claim as a contract right or judgment right. Before addressing other issues, the Clerk and Master must first consider the basis of the Claim and Exception – the Consent Decree. The parties disagree about the Claim's manner of enforcement: Executor contends that Claimant should enforce the Claim as a contract, and Claimant contends that she is seeking to enforce a foreign judgment.

Executor points out that under Tennessee law, "the agreements in a marital dissolution agreement ["MDA"] are enforceable contract obligations," subject to two exceptions. *Long v. McAllister-Long*, 221 S.W.3d 1, 8 (Tenn. Ct. App. 2006). These two exceptions are agreements that "merge" into the final divorce decree and remain modifiable by the courts: agreements involving child support and alimony. *Id.* at 8, n.7 (citing *Penland v. Penland*, 521 S.W.2d 222, 224 (Tenn. 1975)). "Once an MDA is incorporated into a final decree, the trial court retains authority to modify spousal and child support but not to modify the parties' agreement as to distribution of marital property, which is contractual." *McKay v. McKay*, No. M2016-01989-COA-R3-CV, 2018 Tenn. App. LEXIS 68, at *19 (Tenn. Ct. App. Feb. 7, 2018). Besides those two exceptions when the trial court has the power to modify the agreement, "obligations in a marital dissolution agreement retain their contractual character, [and] they should be construed and enforced like other contracts." *Long*, 221 S.W.3d at 8 (citing *Barnes v. Barnes*, 193 S.W.3d 495, 498-99 (Tenn. 2006)). If a trial court modified an agreement in a final decree that is contractual, its modification "would violate the Tennessee Constitution's prohibition against the impairment of contractual obligations. *McKay*, 2018 Tenn. App. LEXIS at *19 (quoting *Gibbs v. Gibbs*, No. E2015-01362-COA-R3-CV, 2016 2016 Tenn. App. LEXIS 661, at *14 (Tenn. Ct. App. Sept. 7, 2016) (citing *Blackburn v. Blackburn*, 526 S.W.2d 463, 465 (Tenn. 1975) (quoting Tenn. Const. art. I, § 18)).

On the other hand, Claimant states that under Georgia law, a martial dissolution agreement that is incorporated into a divorce decree becomes one with the decree, so "the rights of the parties after a divorce is granted are based not on the settlement agreement, but on the judgment itself." *Walker v. Estate of Mays*, 619 S.W.2d 679, 680 (Ga. 2005) (quoting *White v. White*, 561 S.E.2d 801 (Ga. 2002)). Thus, a martial dissolution agreement incorporated into a decree is a judgment, not a contract. If a party to a divorce decree breaches that judgment, then the aggrieved party can make a claim on the judgment, not a breach of contract claim. *Id.* Claimant then pivots her argument outside of Georgia by citing the United States Constitution: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. In Tennessee, "[t]he principle of comity has long been applied in this

state for foreign divorce decrees." *Herrington v. Boatright*, 633 S.W.2d 781, 783 (Tenn. Ct. App. 1982). In summary, Claimant posits that this Court should recognize the Consent Decree as a judgment and give full faith and credit to it by honoring its provisions.

The Clerk and Master agrees with the *Gibbs* Court that "[t]he characterization of a martial dissolution agreement as both a contract between divorcing parties and as a part of the trial court's decree creates something of a legal anomaly." 2016 Tenn. App. LEXIS 661, at *14. As a threshold matter, the Clerk and Master must determine under *McKay* whether the payment provision at issue falls into the two exceptions to the merger doctrine and is thus modifiable and not contractual, or whether the payment provision constitutes a distribution of marital property and thus is not modifiable and contractual.

Because "the court's goal is to ascertain and to give effect to the parties' intentions," the Clerk and Master "must begin with the language of the marital dissolution agreement itself." *Long*, 221 S.W.3d at 9 (citing *Ahern v. Ahern*, 15 S.W.3d 73, 81 (Tenn. 2000); *Buettner v. Buettner*, 183 S.W.3d 721, 730 (Tenn. 2001)). The Clerk and Master "should defer to the contracting process by construing the marital disagreement [sic] fairly and reasonably and by enforcing the agreement as written according to its plain terms." *Id.* (citing *Pylant v. Spivey*, 174 S.W.3d 143, 152 (Tenn. Ct. App. 2003)). Georgia law echoes Tennessee law: "[w]here the parties in a divorce action enter into a settlement agreement, its meaning and effect should be determined according to the usual rules for the construction of contracts, the cardinal rule being to ascertain the intention of the parties." *Torgesen v. Torgesen*, 617 S.E.2d 223, 226 (Ga. App. Ct. 2005) (quoting *Gray v. Higgins*, 421 S.E.2d 341 (Ga. App. Ct. 1992)); *accord Angst v. Augustine*, 847 S.E.2d 392, 393 (Ga. App. Ct. 2020) ("the controlling principle to be applied when interpreting a *divorce decree which incorporates the parties' settlement agreement* is to find the intent of the parties by looking to the four corners of the agreement and in the light of the circumstances as they existed at the time the agreement was made." (emphasis added)).

Next, as Personal Representative highlights, a consent decree from a Georgia court – like the one at bar – is a "contract and, therefore, must be interpreted like any other contract." *Duke Galish, LLC v. Manton*, 707 S.E.2d 555, 558 (Ga. App. Ct. 2011). The Georgia Court of Appeals has explained that a consent decree

> differs from a judgment rendered on the merits in that it results from an affirmative act of the parties rather than the considered judgment of the court following litigation of the issues. A consent judgment is one entered into by stipulation of the parties with the intention of resolving a dispute, and generally is brought to the court by the parties so that it may be entered by the court, thereby, compromising and settling an action.

Brown v. Williamson Tobacco Corp., 627 S.E.2d 549, 553 (Ga. Ct. App. 2006) (quoting *City of Centerville v. City of Warner Robbins*, 508 S.E.2d 161 (Ga. 1998)).

Because the Mediation Agreement was incorporated into the Consent Decree, the Clerk and Master looks to the relevant provision in the Consent Decree: "IT IS FURTHER ORDERED [Decedent] shall pay to [Claimant] $32,500.00 by making monthly payments over a ten (10) year period beginning June 1, 2010 and every month thereafter until the full $32,500.00 is paid in full." Consent Decree at 2. Importantly, before the payment provision at issue, the Georgia Superior Court adopted the parties' agreement "that neither party shall pay support, alimony, or attorneys fees to the other." *Id.*

At first blush, the payment provision appears to function as spousal support because it requires Decedent to make monthly payments to Claimant, his former spouse, for an unspecified purpose. However, the Consent Decree clearly states: "that neither party shall pay support . . . to the other" and, consequently, the plain language of the Consent Decree eviscerates this line of analysis. *Id.* Deferring to this language in the Consent Decree, the payment provision cannot be construed as spousal support, and it cannot be construed as child support because Claimant and Decedent did not have children. As a result, the Clerk and Master finds that the payment provision does not fall within the two exceptions to the merger doctrine.

Turning to the other half of the *McKay* dichotomy, the Clerk and Master next considers whether the payment provision is a distribution of marital property. Again, the Consent Decree's plain language answers the question. The Consent Decree states that "IT IS HEREBY ORDERED as a *division of marital property* and apportionment of marital debts, the mediation agreement entered into between the parties on May 1, 2009, attached hereto as Exhibit "A" and incorporated herein is hereby adopted and made the order of the Court." *See* Consent Decree at 2. The plain language reveals that Decedent and Claimant intended the Mediation Agreement to be a contractual agreement dividing their marital property. Moreover, the Consent Decree is not a "considered judgment" of the Georgia Superior Court, but a consent decree entered into by the affirmative act of Decedent and Claimant to divide their marital property as part of resolving their divorce proceeding. As a result, the Clerk and Master concludes that the payment provision in the Consent Decree is not modifiable and thus contractual. Therefore, Claimant is enforcing her contract rights, not a judgment.

The Clerk and Master acknowledges Claimant's argument that Tennessee courts recognize divorce decrees from other states and that they are obligated to do so under the Full Faith and Credit Clause in the United States Constitution. Furthermore, the Clerk and Master understands that the Georgia Superior Court adopted and incorporated the Mediation Agreement into the Consent Decree, so according to the Decree's title, it is a judgment. However, under Tennessee law (and likely under Georgia law) and the merger doctrine, the provision did not lose its contractual nature when merged into the Consent Decree. Thus, the provision is still contractual and should be enforced as such.

In reaching this determination, the Clerk and Master relies on Tennessee case law, like *McKay* and *Long*, rather than Georgia case law, like *Walker*. Because this section's issue is closely related to the statute of limitations issue in the next section, this choice of Tennessee law will be explained more thoroughly in the next section.

C. The Tennessee Six Year Statute of Limitations Controls the Claim.

The third issue for the Clerk and Master's consideration is which statute of limitations should apply to the Claim, under Georgia law as a substantive right or under Tennessee law as a procedural right. Under conflict of law principles, the first step requires a decision on whether statutes of limitations are procedural or substantive, and, based on that determination, which state's law should apply to the statute of limitation in this case. After identifying the proper state's law, the Clerk and Master will then proceed to select the appropriate statute of limitations.

First and foremost, "[m]atters of procedure are governed by the law of the forum." *Boswell v. RFD-TV the Theater, LLC*, 498 S.W.3d 550, 556 (Tenn. Ct. App. 2016) (citing *State ex rel. Smith v. Early*, 934 S.W.2d 655, 658 (Tenn. Ct. App. 1996)). Tennessee courts apply their "own procedural rules even if the law of another state governs the substantive issues." *Id.* (citing *Beach Cmty. Bank v. Labry*, No. W2011-01583-COA-R3-CV, 2012 Tenn. App. LEXIS 387, at *10, n. 6 (Tenn. Ct. App. Jun. 15, 2012); *Standard Fire Ins. Co. v. Chester O'Donley & Assocs., Inc.*, 972 S.W.2d 1, 5 (Tenn. Ct. App. 1998)).

The parties initially disputed whether statutes of limitations are procedural or substantive issues, but following Claimant's Supplemental Memorandum, the parties appear to agree that both Tennessee and Georgia view its statute of limitations issues as procedural. Both parties cite *SunTrust Bank v. Ritter*, in which the Tennessee Court of Appeals held that, "statutes of limitations are procedural because they merely extinguish a party's remedy for a cause of action, not the rights giving rise to a cause of action." No. E2017-01045-COA-R3-CV, 2018 Tenn. App. LEXIS 61, at *11-12 (Tenn. Ct. App. Feb. 1, 2018). Claimant initially requested this Court to apply the Georgia dormancy statute to the Claim, but after further research, she concedes that Georgia treats its dormancy statute as a statute of limitations. The Clerk and Master agrees with the parties that the correct legal conclusion pursuant to the case law stated above is that statutes of limitations are procedural in nature, so the law of the forum state, Tennessee, governs the statute of limitations over the Claim.

The Clerk and Master now moves to which Tennessee statute of limitations should apply to the Claim. Because Executor contends that the Consent Decree provision at issue is a contract, she asks this Court to impose Tennessee's six year statute of limitations for a breach of contract claim pursuant to Tennessee Code Annotated section 28-3-109(a)(3).[1] On the other hand, because Claimant argues that the Consent Decree should be enforced as a judgment, Claimant asks this Court to impose Tennessee's ten year statute of limitations for enforcing foreign judgments pursuant to Tennessee Code Annotated section 28-3-110(a).[2] Claimant adds that under both Tennessee and Georgia law, the statute of limitations for divorce judgments payable in installments do not begin to run until each installment is due. *Gleason v. Gleason*, 164 S.W.3d 588 (Tenn. Ct.

[1] "The following actions shall be commenced within six (6) years after the cause of action accrued: * * * (3) Actions on contracts not otherwise expressly provided for." Tenn. Code Ann. § 28-3-109(a)(3).

[2] "The following actions shall be commenced within ten (10) years after the cause of action accrued: * * * (2) Actions on judgments and decrees of courts of record of this *or any other state* or government;" Tenn. Code Ann. § 28-3-110(a)(2) (emphasis added).

App. 2004); *Holmes-Bracy v. Bracy*, 808 S.E.2d 669, 671 (Ga. 2017). Based on the determination above that the provision should be enforced as a contract, the Clerk and Master concludes that Tennessee's six year statute of limitations for a breach of contract claim applies to this Claim pursuant to Tennessee Code Annotated 28-3-109(a)(3).

Tennessee courts recognize that the "filing of a claim in effect amounts to a demand for payment and is the equivalent of the beginning of an action." *Needham v. Moore*, 292 S.W.2d 720, 722 (Tenn. 1956); *accord In re Estate of Karesh*, No. W2012-00181-COA-R3-CV, 2012 Tenn. App. LEXIS 868, at *14 (Tenn. Ct. App. Dec. 17, 2012). Decedent's first installment payment was due on June 1, 2010, and when he failed to pay timely, Claimant's cause of action for breach of contract accrued. Under Tennessee Code Annotated section 28-3-109(a)(3), the statute of limitations expired six years later. The same timeframe applies to each subsequent installment payment. Claimant's filing of the Claim on November 20, 2023, cut off the statute of limitations. By that time, all installment payments due before November 20, 2017, were time-barred. As of November 20, 2017, Decedent still owed Claimant for thirty (30) installment payments of $270.83, which totals $8,125.00. This is the proper amount of the Claim.

D. Claimant Should Not Receive an Award of Prejudgment Interest.

The fourth issue is whether Claimant should receive prejudgment interest and, if so, how much. The Clerk and Master will first examine whether prejudgment interest is a procedural or substantive issue, and the answer to this inquiry will dictate which state's law governs. Then, the Clerk and Master will determine whether Claimant is entitled to prejudgment interest under the proper state's law, and if she is so entitled, how much prejudgment interest should she receive.

Executor contends that the decision to grant prejudgment interest is procedural, not substantive. Executor states that no Tennessee courts have directly decided this question, so she resorts to other states' case law, citing five cases holding that the decision to award prejudgment interest is a procedural issue. *See* Mem. of Law of Personal Rep. at 7 (citing *Sentinel Indus. Contracting Corp. v. Kimmins Indus. Serv. Corp.*, 743 So.2d 954, 960 (Ms. 1999); *Laudenberger v. Port Auth. of Allegeny Cnty.*, 436 A.2d 843, 848 (Pa. 1981); *N. Bergen Rex Transport, Inc. v. Trailer Leasing Co.*, 730 A.2d 843, 848 (N.J. 1999); *UBS Fin'l Servs., Inc. v. Martin*, No. 13-CV-1498-MMA-DHB, 2014 U.S. Dist. LEXIS 71338 (S.D. Cal. May 23, 2014); & *Gleason v. Norwest Mortg., Inc.*, 253 Fed. App. 198, 203-04 (3d Cir. 2007). Because she asserts that it is a procedural issue, Executor asks the Court to apply Tennessee law. Claimant cites no case law that directly supports her position that prejudgment interest is a substantive issue.

In deciding this question, the Clerk and Master considers the full context of the cited authority. The Clerk and Master agrees with Executor that Tennessee case law provides no direct authority on this question, [3] so the Clerk and Master, like Executor, turns to other states' case law,

[3] In a footnote, Executor hints that Tennessee courts might view prejudgment interest as substantive. Executor notes the *Boswell* Court's declination to review the trial court's decision on a prejudgment interest conflict of law question and stated that the Court's declination "is at least an implication that the trial court was in error in not applying Tennessee law." Mem. of Law of Personal Rep. at 7, n.1. However, the *Boswell* Court clarified in a footnote that its "decision should not be construed as a holding or implication that we consider the issue of prejudgment interest either substantive or procedural. We express no opinion in that regard." 498 S.W.3d at 562, n.6. The Clerk and Master

starting with the authority cited by Executor. Three of her five cited cases apply the law of one state, New Jersey.[4] The Clerk and Master finds that many other states and federal jurisdictions treat prejudgment interest as a substantive in nature.[5] Based on the lack of guidance in Tennessee and the persuasive authority from the majority of other jurisdictions, the Clerk and Master concludes that the issue of prejudgment interest is substantive, not procedural. As a result, Georgia law should apply to the prejudgment interest decision in this case.

Next, the Clerk and Master resolves under Georgia law whether Claimant is entitled to prejudgment interest. Executor argues that prejudgment interest should not be awarded to Claimant because the Consent Decree does not contain any specific provision for any interest on the debt owed to Claimant. Furthermore, Executor presents several equitable factors as reasons why Claimant should not receive prejudgment interest under Tennessee law, including (1) Claimant has failed to be prompt in pursuing the Claim; (2) the uncertainty of the Claim's amount in dispute; (3) the doctrine of satisfaction; and (4) the fact that any award of prejudgment interest will come not from Decedent himself but from his residuary beneficiaries, his nephew and niece, who, unlike Claimant, are natural objects of his affection. Claimant, on the other hand, posits that due to Decedent's failure to pay any of the monthly payments, Claimant is entitled to interest on his payments under either Tennessee or Georgia law.

As the Clerk and Master has already determined, Georgia law controls the issue of prejudgment interest. Under Georgia law, a trial court's award of prejudgment interest can depend on whether the amount of the claim is liquidated or unliquidated. "A claim is unliquidated when there is a bona fide contention as to the amount owing. A liquidated claim is an amount certain and fixed, either by the act and agreement of the parties or by operation of law; a sum which cannot be changed by the proof." *Holloway v. State Farm Fire & Cas. Co.*, 537 S.E.2d 121, 124 (Ga. Ct. App. 2000) (internal citation omitted). A liquidated claim results in a mandatory award of prejudgment interest, *In re Est. of Miraglia*, 658 S.E.2d 777, 780 (Ga. Ct. App. 2008), and an unliquidated claim falls within the discretion of the trial judge. *CRS Sirrine, Inc. v. Dravo Corp.*, 445 S.E.2d 782, 790 (Ga. Ct. App. 1994) (internal citations omitted). As stated by the Georgia

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will abide by the *Boswell* Court's footnote and will operate under the fact that no Tennessee court has directly answered this question.

[4] *See UBS Fin'l Servs., Inc.*, 2014 U.S. Dist. LEXIS 71338 ("[U]nder New Jersey law, prejudgment interest is a procedural issue, and as such, the law of the forum applies."); *N. Bergen Rex Transp., Inc.*, 730 A.2d at 848 ("[B]ecause the award of attorney fees and interest is a procedural rather than a substantive law issue, we conclude that the correct choice of law is New Jersey law."); *Gleason*, 253 F. App'x at 203-04 ("Although the parties agreed to be bound by Minnesota law, the law of the forum state—in this case, New Jersey—applies to questions of process, of which the award of interest is one.").

[5] See the following examples for jurisdictions that treat prejudgment interest as substantive: *Municipality of Anchorage v. Gregg*, 101 P.3d 181, 194 (Ak. 2004) (Alaska); *Conway v. Planet Fitness Holdings, LLC*, 189 N.E.3d 675, 681 (Mass. App. Ct. 2022) (Massachusetts); *King v. Huntress, Inc.*, 94 A.3d 467, 500 (R.I. 2014) (Rhode Island); *In re Sept. 11 Litig.*, 802 F.3d 314, 343 (2d Cir. 2015) (applying New York law); *In re Poli*, 298 B.R. 557, 562 (Bankr. E.D. Va. 2003) (applying Pennsylvania law); *Owatonna Clinic-Mayo Health Sys. v. Med. Protective Co. of Fort Wayne, Indiana*, 714 F. Supp. 2d 966, 968 (D. Minn. 2010) (Minnesota); *Nelson v. Tradewind Aviation, LLC*, 111 A.3d 887, 904 (Conn. App. Ct. 2015) (Connecticut); *Oak Harbor Freight Lines, Inc. v. Sears Roebuck, & Co.*, 513 F.3d 949, 961 (9th Cir. 2008) (applying Washington law); & *Winder v. D.C.*, 555 F. Supp. 2d 103, 111, n.4 (D.D.C. 2008) (applying District of Columbia law).

Court of Appeals, "it is within the discretion of the factfinder to increase the immediate amount of damages found by an allowance of interest in actions for unliquidated damages arising out of breach of contract." *Typo-Repro Servs., Inc. v. Bishop*, 373 S.E.2d 758, 761 (Ga. Ct. App. 1988). Unliquidated claims for prejudgment interest are governed by Georgia Code Annotated section 13-6-13, which permits prejudgment interest on damages in a breach of contract suit. *Id.* Georgia Code Annotated section 13-6-13 provides that "[i]n all cases where an amount ascertained would be the damages at the time of the breach, it may be increased by the addition of legal interest from that time until the recovery." The Clerk and Master concludes that Georgia Code Annotated section 13-6-13 is appropriate for the payment provision at issue in this case, rather than Claimant's proposed Georgia Code Annotated section 7-4-12.1 that governs interest on judgments.

Neither the Mediation Agreement nor the Consent Decree provide for liquidated damages and the parties now dispute the amount of the debt owed to Claimant. As such, this is claim for unliquidated damages. This Court, therefore, has discretion to award prejudgment interest under Georgia law. Under this authority, the Clerk and Master recommends that this Court deny Claimant prejudgment interest. Claimant did not pursue recovery of the debt owed to her until after Decedent's death, a delay of several years. Nor did she demand payment of this debt when communicating with Executor's counsel at the outset of this administration even though she was aware of his death and the debt, a delay of several additional months. As such, an award of prejudgment interest is not appropriate in this cause.

E. The Doctrine of Satisfaction does not Bar Claimant from Recovering on the Claim.

The fifth issue is whether the equitable doctrine of satisfaction extinguishes some or all of the Claim. Executor avers that the testamentary specific bequest of $120,000.00 satisfies the Claim. Noting the perceived abnormality of Decedent's specific bequest to a former spouse who would not normally be considered a natural object of Decedent's affection, Executor contends that Decedent may have included the specific bequest to address his debt owed to Claimant. In legal terms, Executor asserts the "doctrine of satisfaction," outlined in *Locke v. Davis*, 526 S.W.2d 455, 457 (Tenn. 1975):

> It is basic that in construing a will, the testator's intention must prevail if it can be ascertained from the language of the will read in the light of circumstances known to the testator at the time the will was executed. *Tigrett v. Tigrett*, 61 Tenn. App. 172, 453 S.W.2d 100 (1968); *Ashley v. Volz*, 218 Tenn. 420, 404 S.W.2d 239 (1966); *Blackmore v. Blackmore*, 35 Tenn. 365 (1855). If the testator's intention is not evident from the language of the will and the surrounding circumstances, in cases where a legacy of the same or greater amount, and agreeing in character and time of payment, with an existing debt of the testator, is given to the creditor by a will which contains no provision indicating a different intention, it is presumed to be in satisfaction of the debt and not in addition to it. Whenever this presumption of satisfaction arises, the creditor-legatee is put to an election and cannot have both legacy and debt.

Applying *Locke*, Executor avers that Claimant is not entitled to both payment of the Claim and the specific bequest.

Claimant offers no case law to refute Executor's doctrine of satisfaction assertion. Instead, Claimant makes a practical argument: a creditor should not be prevented from collecting a debt owed to her simply because that claimant received a bequest in the decedent's will. In other words, nothing prevents a beneficiary from also being a claimant.

Tennessee courts have long held that a testator "has absolute power to make any division of his or her property *regardless of how capricious or apparently unnatural such division may appear*." *In re Estate of Eden*, 99 S.W.3d 82, 92 (Tenn. Ct. App. 1995) (emphasis added). The General Assembly further mandates that a "will shall be construed, in reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, and shall convey all real estate belonging to the testator, or in which the testator had any interest at the testator's decease, unless a contrary intention appears by its words in context." Tenn. Code Ann. § 32-3-101.

The Clerk and Master follows *Locke*'s guidance by first looking at Decedent's testamentary intentions as expressed in the Will, not superimposed upon him after his death. Article VI states in whole, "I give and bequeath the sum of One Hundred Twenty Thousand Dollars ($120,000.00) to my ex-wife, MARGARET JANE MYERS, if she is surviving at the time of my death. If MARGARET JANE MYERS is not surviving at such time, such bequest shall lapse and pass as part of my Residuary Estate hereinafter disposed of." Article VI does not contemplate that this specific bequest should satisfy any indebtedness owed to Claimant. Article I states, in pertinent part, "I direct that all debts . . . be paid as soon as possible after my death." Article I directs Executor to pay Decedent's debts, not deduct the amount he owed from testamentary gifts. Thus, the Clerk and Master concludes that the Will lacks any indication that Decedent intended his specific bequest to Claimant to satisfy any debts owed to her.

Regarding the doctrine of satisfaction discussed in *Locke*, after the excerpt provided above, the Tennessee Supreme Court immediately adds:

> This rule of construction, which is known as the doctrine of satisfaction, has been frequently criticized . . . . '[G]enerally, the courts recognize the existence of this doctrine, but in the next breath they are apt to observe that the rule is regarded with disfavor, and that slight variations suffice to make it inapplicable. Indeed, (the doctrine of satisfaction), at least in the later cases, has shown such debility that it is probably safe to say that no reliance can be placed on it with any degree of prudence.' 47 A.L.R.2d 1143. In 6 Bowe-Parker: Page on Wills, Sec. 57.9, it is pointed out that 'in some cases this attitude very nearly results in a practical if not an admitted denial of the presumption, unless such presumption appears affirmatively to coincide with the testator's intention.' *German v. German*, 47 Tenn. 180 (1869), where the legacy was smaller than the debt, is included in cases cited in support of the statement. *See also* 1 Phillips, *Pritchard on Wills*, Section 465 wherein it is stated:
>
> 'The courts have shown a disposition to restrain the operation of the rule in all cases where from circumstances to be collected from the will, it might be inferred the

> testator did not intend to satisfy the debt with the legacy; and have not been disposed to understand the testator as meaning to pay a debt when he declares he makes a gift, Unless the circumstances or language of the will lead to a different conclusion.'

Locke, 526 S.W.2d at 457. Application of this doctrine is in "disfavor" and "debility," and should be so here especially when the language of the Will demonstrates no intention to satisfy the debt with the specific bequest. The presumption does not appear to affirmatively coincide with Decedent's intention as stated in the Will. Nor should this disfavored doctrine override the more recent and universally accepted policy that a testator "has absolute power to make any division of his or her property *regardless of how capricious or apparently unnatural such division may appear*." *In re Estate of Eden*, 99 S.W.3d at 92 (emphasis added). While a testamentary gift to a former spouse may appear to some as outside the norm, Executor cannot divine what thoughts influenced Decedent. The thoughts that manifested themselves in the Will must control. Therefore, the Clerk and Master concludes that Decedent's specific bequest to Claimant does not satisfy the Claim, in whole or in part.

III. RECOMMENDATIONS

Based on the above, the Clerk and Master recommends that this Court enter an order providing as follows:

1. That the Exception to Claim ("Exception") filed December 18, 2023, by Julieanne McCamy Foy, as Executor of the Estate of J. Morton Campbell ("Executor" and "Estate," respectively), is **DENIED**, in part, and **GRANTED**, in part, as follows:

a. The amount of the Claim Against Estate (the "Claim") filed November 20, 2023, by Margaret Jane Myers ("Claimant") is reduced to $8,125.00, such amount being the total of those installment payments not time-barred by operation of Tennessee Code Annotated section 28-3-109(a)(3) and without prejudgment interest;

b. Executor is authorized and directed to pay the reduced amount of the Claim to Claimant as a valid debt of the Estate from estate assets; and

c. Executor shall not deduct the amount of the reduced Claim from the amount of the specific bequest provided in Article VI of the Last Will and Testament of J. Morton Campbell dated December 28, 2022.

2. All other matters are reserved pending further orders from the Court.

Respectfully submitted this ____ day of _____ 2024.

_____

J. SCOTT GRISWOLD, CLERK AND MASTER

NOTICE OF FILING OF
MASTER'S REPORT

Notice is hereby given that the foregoing report was filed in the above styled cause on the ____ day of _____ 2024.

_____
J. SCOTT GRISWOLD, CLERK AND MASTER

CERTIFICATE OF SERVICE

I, J. Scott Griswold, Clerk and Master, hereby certify that I mailed on the ____ day of _____ 2024, a true and exact copy of the foregoing MASTER'S REPORT and NOTICE OF FILING OF MASTER'S REPORT to each attorney of record and unrepresented party.

_____
J. SCOTT GRISWOLD, CLERK AND MASTER

cc: Thomas M. Leveille, Attorney
Edward A. Cox, Jr., Attorney
Amanda R. Busby, Attorney
Julieanne McCamy Foy, Executor
Margaret Jane Myers
Andrew Pope
Macy Pope Starkes

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE
PROBATE DIVISION

IN RE: ESTATE OF LILLIAN NELETTE WOODRUFF,
Deceased. **No. 84972-2**

MASTER'S REPORT

This matter came before J. Scott Griswold, Clerk and Master of the Chancery Court for Knox County, Tennessee, pursuant to Tennessee Code Annotated section 16-16-201 and Rule 18 of the Local Rules of Practice, Knox County Chancery Court, to resolve numerous disputes regarding the management and settlement of the Estates of Robert Lee Woodruff, Sr. and Lillian Nelette Woodruff.[1] The Clerk and Master received testimony and evidence from the parties and their witnesses on May 23, 2023; July 14, 2023; November 8, 2024; and April 9, 2025. Any exceptions to this Master's Report must be filed within ten days of the date of the attached Notice of Filing as provided in Rule 53.04 of the Tennessee Rules of Civil Procedure.

Barbara W. Clark represents Coretta N. McGraw[2] as Executor of the Estates of Robert Lee Woodruff, Sr. and Lillian Nelette Woodruff. Jerrold L. Becker and Emily K. Stulce represent Demond T. Woodruff ("Demond") and, until their withdrawal, Robert L. Woodruff, Jr. ("Robert Jr.") in their capacities as beneficiaries of these two estates. Executor and Demond appeared at all four hearings. Robert Jr. appeared at the first two hearings, but after his attorneys withdrew, he did not appear at any additional hearings. The Probate Division gave notice of the hearings to all parties interested in these estates.

Over the course of these four days, the Clerk and Master received sworn testimony from Executor (in her fiduciary and individual capacities), Demond, Robert Jr., along with Glenn B. Taylor, Wayne Upton, Georgezena Moulden, Gary Lynn McGraw, and John Kittrell Barrett. In addition, the Clerk and Master received twenty-five exhibits into evidence: (1) photographs of an inventory of a coin collection; (2) periodic statements from Knoxville TVA Employees Credit Union for account ending in -2109 in the name of Mr. Woodruff for February, March, and April 2021; (3) Notice of Hearing dated June 24, 2021 and Petition for Conservatorship dated June 14, 2014, filed in the matter styled *In the Matter of Lillian Nelette Woodruff*, in the Chancery Court for Knox County, Docket No. 202674-2; (4) various receipts related to Mrs. Woodruff's care.; (5) Last Will and Testament of Robert Lee Woodruff, Sr. dated September 21, 2020; (6) Notice of Filing of Receipts from Beneficiaries in Mr. Woodruff's Estate and Receipts of Heir or Legatee by Yahonatan Yisra'el and Verlina C. Crockett; (7) Last Will and Testament of Lillian Nelette Woodruff dated September 21, 2020; (8) periodic statements from Regions Bank for account ending in -6851 in the names of Mr. and Mrs. Woodruff for January, February, March, April, May,

[1] The parties agreed that the Clerk and Master may hear these matters jointly because they present common questions of law and facts. *See* Tenn. R. Civ. P. 42.01. The Estate of Robert Lee Woodruff, Sr. is pending before this Court under Docket No. 84351-2.

[2] For the sake of clarity and consistency, the Clerk and Master shall refer to Coretta N. McGraw as "Executor" when referring to her in her fiduciary capacity in either estate and as "Coretta" when referring to her in her individual capacity. Similarly, the Clerk and Master shall refer to Robert Lee Woodruff, Sr. as "Mr. Woodruff" and Lillian Nelette Woodruff as "Mrs. Woodruff."

and June 2021; (9) Agreed Order entered March 15, 2022 in Mrs. Woodruff's Estate; (10) Letter from Barbara W. Clark to Emily K. Stulce dated April 26, 2022; (11) General Power of Attorney dated June 10, 2021 and Living Will & Durable Power of Attorney for Healthcare dated June 10, 2021; (12) Cashier's Check No. -4290 for $48,776.77 payable to Coretta; (13) Coin Appraisal No. 1 by Kits Coins; (14) Coin Appraisal No. 2 by Kits Coins; (15) Coin Appraisal No. 3 by Kits Coins; (16) Email chain No. 1 between John Kittrell Barrett and Demond dated May 17, 2023; (17) Email chain No. 2 between John Kittrell Barrett and Demond dated May 17, 2023; (18) Statement Regarding Interim Accounting dated December 15, 2022 filed in Mrs. Woodruff's Estate; (19) Transaction Confirmation dated April 19, 2021 from Jackson National Life Insurance Company; (20) Chesapeake Life Insurance Company Check Remittance payable to Coretta for $17,146.84; (21) Regions Bank Personal Account Maintenance and Signature Form dated March 18, 2021 for account ending in -6851; (22) Advanced Care Plan for Lillian Nelette Woodruff dated November 10, 2015; (23) Inventory Listing of Personal Property dated December 14, 2022 filed in Mrs. Woodruff's Estate; (24) 3329 Shipe Road Inventory List; and (25) Coin Appraisal No. 4 by Kits Coins. For the sake of clarity and consistency, the Clerk and Master shall refer to these twenty-five (25) exhibits as "Hearing Exhibits" and he further incorporates them by reference as if fully re-stated herein.

Similarly, the Clerk and Master considered the exhibits filed with Executor's Submission of Documents pursuant to the Court's Ruling on August 14, 2025: (1) periodic statements from Regions Bank for accounting ending in -6851 in the names of Mr. and Mrs. Woodruff for December 2020 through August 2022; (2) periodic statements from Regions Bank for account ending in -4318 in the names of Mr. and Mrs. Woodruff for January 2020 through June 2021; (3) periodic statements from Knoxville TVA Employees Federal Credit Union for account ending in -2103 for January 2021 through September 2021; (4) periodic statements from Knoxville TVA Employees Federal Credit Union for account ending in -4457 in the name in Gary Lynn McGraw and Coretta N. McGraw from January 2021 through July 2023; (5) receipts for house repairs; (6) statements for expenses and bills paid for Estate of Lillian Nelette Woodruff; (7) letter from William G. Godfrey, III, CPA, dated July 20, 2023; (8) Tennessee Department of Revenue Official Vehicle Registration form; (9) residential rental value; (10) coin appraisal; (11) affidavits of notice to heirs, creditors, and the Bureau of TennCare and an estate recovery release for Mrs. Woodruff's estate; and (12) affidavits of notice to heirs, creditors, and the Bureau of TennCare and an estate recovery release for Mr. Woodruff's estate. The Clerk and Master shall refer to these twelve (12) exhibits as "Filing Exhibits" and he further incorporates them by reference as if fully re-stated herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

Robert Lee Woodruff, Sr. was married to Lillian Nelette Woodruff. Mr. Woodruff died testate on February 18, 2021, survived by Mrs. Woodruff and their three adult children: Robert Jr., Demond, and Coretta. On April 23, 2021, Coretta petitioned this Court to open the Estate of Robert Lee Woodruff, Sr., admit the Last Will and Testament of Robert Lee Woodruff, Sr. dated September 21, 2020, to probate in common form, and appoint her as executor. This Court granted the petition. *See* Order of Prob. entered Apr. 28, 2021, in *In re Estate of Robert Lee Woodruff, Sr.*, Knox Co. Chanc. Ct., Dkt. No. 84351-2.

Mrs. Woodruff died shortly after her husband on June 30, 2021, survived by the same three children. Coretta petitioned to open Mrs. Woodruff's estate, admit the Last Will and Testament of Lillian Nelette Woodruff dated September 21, 2020, to probate in common form, and appoint her as executor. As before, this Court granted her petition. *See* Order of Prob. entered Sept. 9, 2021.

Mr. Woodruff made numerous specific bequests of tangible personal property in his Will, namely: Army medals and pictures, 44-magnum pistol, blue train set, a family picture, bowling ball equipment, and any cameras to Demond; Santa Fe Blue train set, tools, rifles, and rings to Robert Jr.; .38-caliber pistol, Santa Claus collection, and art collection to Coretta; and a 9mm pistol and $2,000.00 to his godson, Yahonatan Yisra'el. *See* Hrg. Ex. 5 at Arts. II-V. The residuary estate passed to Mrs. Woodruff. *See id.* at Art. VI. Because Mrs. Woodruff survived her husband, the residuary estate vested in her and became an asset of her estate. *Id.*at Art. VI.

Mrs. Woodruff likewise made multiple specific bequests of tangible personal property in her Will, namely: her jewelry to Gary McGraw; $2,000.00 to her godson, Yahontan; $2,000.00 to her niece, Verlina C. Crockett;[3] and all her dining room furniture, fine China dishes, Temptation cookware, hat collection, clocks, and Genie bottles to Coretta. *See* Hrg. Ex. 7 at Arts. II-V. Had Mr. Woodruff survived his wife, then the residuary estate would have passed to him; however, because he died first, Robert Jr., Demond, and Coretta are the beneficiaries of the residuary estate in equal shares. *See id.* at Arts. VI & VII.

Almost immediately after Mrs. Woodruff's death, Robert Jr. and Demond began filing motions concerning Executor's administration of their parents' estates. *See, e.g.,* Mtn. to Compel Detailed Invent. & Actg. & for Prod. of Appraisal(s) of Real Prop. &/or Props. filed Oct. 28, 2021, in both estates. They also seek her removal as executor. Executor filed interim accountings and inventories in her parents' estates and Robert Jr. and Demond filed exceptions.

Following the close of proof and closing statements, the Clerk and Master distilled the parties' disputes to the following issues: (1) ownership of certain bank accounts, including $48,776.77 that Coretta withdrew from one of the accounts while Mrs. Woodruff was still living; (2) refunds or liabilities concerning these estates; (3) ownership of a 2017 Nissan Murano; (4) who receives two refrigerators located in Mrs. Woodruff's residence; (5) division of Mr. Woodruff's coin collection; (6) expenses related to the Woodruffs' residence; (7) whether Coretta' daughter owes rent to Mrs. Woodruff's Estate for residing in the residence after Mrs. Woodruff's death; and (8) sale of the Woodruffs' residence and the division of the net sale proceeds. Following the closing arguments, Executor and Demond, by and through respective counsel, acknowledged that these are the only remaining issues in dispute between them.

II. LAW AND ANALYSIS

A. Executor's Authorities and Responsibilities.

An executor of a testate probate estate "serves as a court-appointed receiver to collect and preserve the decedent's assets during the pendency of the probate proceeding, to pay the claims of

[3] Mr. Yisra'el and Ms. Crockett executed receipts for their specific bequests, and they are of record in each estate. *See, e.g.,* Receipt of Heir or Legatee dated Nov. 15, 2022, filed in each estate.

creditors, and to recommend to the court an appropriate final distribution of the decedent's estate." *In re Estate of Boote*, 198 S.W.3d 699, 727 (Tenn. Ct. App. 2005) (citing *In re Estate of Barnhill*, 62 S.W.3d 139, 144 (Tenn. 2001)). The probate court's appointment of an executor "through the issuance of letters testamentary is a mere equitable remedy that is ancillary to the underlying probate proceeding." *Id.* In this fiduciary capacity, the executor owes those interested in it a "duty of good faith and diligence in amassing and preserving assets of the estate, and the [executor] must refrain from fraudulent or abusive use of discretion." *In re Estate of Schorn*, No. E2013-02245-COA-R3-CV, 2015 Tenn. App. LEXIS 225, at *20 (Ct. App. Apr. 17, 2015) (citing *Coffee v. Ruffin*, 44 Tenn. 487, 517 (1867)). These duties are summarized as:

> In the custody, management, and disposition of the estate committed to the charge of [an executor], that person is bound to demonstrate good faith and to exercise that degree of diligence, prudence, and caution which a reasonably prudent, diligent, and conscientious business person would employ in the management of their own affairs of a similar nature.

Id. at *20 (quoting *In re Estate of Inman*, 588 S.W.2d 763, 767 (Tenn. Ct. App. 1979)).

One means by which executors communicate formally to those interested in the estate and the probate court is by filing an inventory and periodic accountings. *See* Tenn. Code Ann. §§ 30-2-301 & 30-2-601 (requiring a complete and accurate inventory and periodic accountings verified under oath). Once the administration is complete, the executor lodges a final settlement of the estate; the purpose of which is to assure the probate court and the beneficiaries the executor has collected all assets; paid administration expenses, taxes, and debts; properly distributed the estate's assets; and otherwise administered the estate as required by law. The final settlement serves as a check to protect the interested parties. *Id.* § 30-2-606; *see also 2 Pritchard on Wills & Admin. of Estates*, § 857 *et seq.* (2025). An executor is only chargeable with probate assets; as opposed to non-probate assets, which pass outside the probate estate by operation of law, such as jointly owned assets with rights of survivorship or those with beneficiary designations. *See Heirs of Ellis v. Estate of Ellis*, 71 S.W.3d 705, 712 (Tenn. 2002) (recognizing that real property held as tenancy by the entirety cannot pass by will); *see also* Tenn. Code Ann. § 45-2-703 (providing for joint tenancy with rights of survivorship for financial institution accounts). Non-probate assets fall outside an executor's scope of authority.

B. Ownership and Division of Personal Property.

1. The Regions Bank Accounts are not Assets of Mrs. Woodruff's Estate.

The parties dispute ownership of two accounts at Regions Bank ending in -6851 and -4318, respectively. They also dispute whether Coretta properly withdrew $48,776.77 from the account ending in -6851 while their mother was still living. *See* Hr. Ex. 12 & Fil. Ex. 1. Immediately prior to Mrs. Woodruff's death on June 21, 2021, significant disputes arose between Coretta and her brothers concerning Mrs. Woodruff's care and finances while she was hospitalized for her final illness. Demond testified that he asked Mrs. Woodruff to execute a general power of attorney that appointed him as her agent. She purportedly agreed and signed the instrument on June 10, 2021, while at the hospital. Coretta found out and accused Demond of coercing Mrs. Woodruff into

signing this instrument and she, in turn, immediately withdrew the funds from the Regions Bank account to protect them from Demond. She further testified that she hastily filed for a conservatorship over her mother (and purportedly with her consent) to prevent Demond from exercising any authority under the power of attorney instrument. *See* Ex. 3.

Neither party introduced any reliable medical proof concerning Mrs. Woodruff's capacity (or lack thereof) during these events in June 2021. Nor did Robert Jr. and Demond introduce any medical proof concerning Mrs. Woodruff's capacity (or lack thereof) on March 18, 2021, when she executed the Regions Signature Card.

Executor avers that these accounts and the funds are not part of her mother's estate and that she became their sole owner when her mother made her a joint tenant with rights of survivorship following Mr. Woodruff's death. In support, she introduced the Personal Account Maintenance and Signature Form ("Regions Signature Card") dated March 18, 2021, which bears the signatures of Mrs. Woodruff and Coretta and clearly has a designation of joint tenants with right of survivorship. *See* Hrg. Ex. 21. The Regions Signature Card and the periodic statements also identify Mr. and Mrs. Woodruff as the owners of the Regions Bank accounts prior to this change. *Id.*; *see* Fil. Ex. 1.

Robert Jr. and Demond counter by pointing out that Coretta stated in her sworn conservatorship petition that their mother owned these funds, and her medical condition had rendered her "unable to care for her physical and personal needs[.]" *See* Hrg. Ex. 3 ¶¶ 5 & 6. Coretta did not file medical proof in support of her petition but stated that she would obtain it. *Id.* ¶ 10. The Chancery Court set the conservatorship matter for hearing on July 14, 2021; however, Mrs. Woodruff died before the hearing occurred.

Though the parties hotly dispute the others' conduct during their mother's final days, the Regions Bank accounts belonged to Mrs. Woodruff and Coretta as joint tenants with rights of survivorship. As such, Coretta had the legal authority to withdraw the funds from the account while her mother was living. Following Mrs. Woodruff's death, Coretta became the sole owner of the Regions Bank accounts. Because these accounts transferred to Coretta by operation of law, they are non-probate assets and do not comprise part of Mrs. Woodruff's estate. Executor is only required to inventory estate assets and, consequently, she correctly did not include the Regions Bank accounts and the $48,776.77 in her inventory.

The authorities cited below compel this outcome. In Tennessee, a married couple can own property as tenants by the entirety and when the first spouse dies, the survivor continues to own the whole in fee simple. *In re Estate of Fletcher*, 538 S.W.3d 444, 449 (Tenn. 2017) (citing *Bryant v. Bryant*, 522 S.W.3d 392, 400 (Tenn. 2017)). The entirety estate, which is unique to married couples, applies to real and personal property, including bank accounts. *Id.* (citing *Griffin v. Prince*, 632 S.W.2d 532, 535 (Tenn. 1982)). Here, no one disputes that Mr. and Mrs. Woodruff owned the Regions Bank accounts as tenants by the entirety. The periodic statements and Regions Signature Card clearly support this conclusion. When Mr. Woodruff died, Mrs. Woodruff – as the surviving tenant of the entirety – continued to own the Regions Bank accounts in fee simple.

As the sole owner of the Regions Bank accounts, Mrs. Woodruff could dispose of them as she believed best. She chose to add Coretta as a joint tenant to these accounts and provide for their disposition after her death. The case *In re Estate of Hawn* is analogous to the one at bar. There, a mother opened a passbook savings account with her daughter as a joint tenant with right of survivorship. *In re Estate of Hawn*, No. 03A01-9308-CH-00285, 1993 Tenn. App. LEXIS 764, at *1-2 (Tenn. Ct. App. Dec. 15, 1993). Mother and daughter signed the account agreement that reflected the joint ownership and survivorship rights. Daughter lost the passbook and withdrew the funds shortly before her mother's death and deposited them into her personal account to safeguard them. *Id.* Following mother's death, the co-administrators of her estate filed suit against the daughter to recoup the funds, arguing that they were probate assets. *Id.* at *3-4.

While the trial court sided with the co-administrators, the Court of Appeals reversed. The intermediate appellate court reasoned that the account agreement was a contract between the joint tenants and the bank, giving the mother and daughter equal ownership and authority to withdraw the funds. *Id.* at *5. It noted that the creation of the joint tenancy bank account with the right of survivorship "is subject to the parol evidence rule and is generally immune from attack in the absence of fraud, misrepresentation, duress, undue influence, mutual mistake, and incapacity." *Id.* at *6 (quoting *Lowry v. Lowry*, 541 S.W.2d 128, 133 (Tenn. 1976)). The mother and daughter's account agreement with the bank was unambiguous in creating a joint tenancy with right of survivorship, noting that:

> Absent proof of fraud, undue influence or the existence of and an overreaching in a confidential relationship, the written agreement signed by the decedent speaks just as loudly and clearly as if the deceased herself took the stand and orally expressed the words written on the paper.

Id. at 8 (quoting *Iacometti v. Frassinelli*, 494 S.W.2d 496, 500 (Tenn. Ct. App. 1973)). The *Hawn* court also highlighted that the burden of proof does not rest with the joint tenant, but with the party contesting ownership. *Id.* (citing *Iacometti*, 494 S.W.2d at 500).

In addition to *Hawn*, Tennessee Code Annotated section 45-2-703(a) provides that when a deposit is made into a bank account held in the names of two or more persons as joint tenants, the bank properly may pay some or all the deposited funds to only one of the joint tenants upon demand. Section 703(e) further states that multiple party accounts designated as joint tenants with rights of survivorship "shall be conclusive evidence in any action or proceeding of the intentions of all named that title vests in the survivor."

With this legal framework in mind, Coretta, as a joint tenant of the Regions Bank accounts, was an owner of the funds and had the authority to order Regions Bank to pay the $48,776.77 to her, even while Mrs. Woodruff was alive. Demond and Robert Jr. made numerous accusations about Coretta's conduct during Mrs. Woodruff's final illness, but they failed to show that the creation of the joint tenancy with right of survivorship in the Regions Bank accounts months before their mother's death was procured by fraud, undue influence, overreach of a confidential relationship between her and Coretta, or incapacity. The crucial moment to this analysis is when Mrs. Woodruff decided to change ownership of the Regions Bank accounts.

Next, Demond's act of having Mrs. Woodruff sign a power of attorney instrument on the same day that Coretta withdrew shows that he believed she had the requisite capacity to sign legal documents and manage her affairs. While Demond and Robert Jr. attempt to use Coretta's filing of a conservatorship petition as proof that Coretta knew the funds belonged to Mrs. Woodruff, their reliance is misplaced. Under the authorities cited above, Mrs. Woodruff and Coretta jointly owned the funds. The import of the funds inclusion in the conservatorship petition does not end the ownership analysis but reflects the legal reality that there were two owners at that time.

Coretta became a joint tenant to the Regions Bank accounts when Mrs. Woodruff added her as a joint tenant with rights of survivorship. Coretta thus had the right to withdraw the funds for safekeeping or any other purpose. Even if she had not withdrawn the funds before Mrs. Woodruff's death, she would still have become their sole owner once Mrs. Woodruff died. Because Tennessee Code Annotated section 30-2-301 only requires Executor to include probate assets on her inventory, she correctly omitted the Regions Bank Accounts and the $48,776.78.[4]

2. The 2017 Nissan Murano is an Asset of Mrs. Woodruff's Estate.

In her Inventory Listing Personal Property dated December 15, 2022 of Mrs. Woodruff's Estate, Executor did not include a 2017 Nissan Murano with vehicle identification number ending in -5663 (the "Murano"). Demond and Robert Jr. objected to this omission, arguing that it is an asset of Mrs. Woodruff's Estate.

Demond testified that his parents purchased the Murano and financed it with a loan from Knoxville TVA Employees Credit Union, the terms of which are reflected on the statement dated February 28, 2021. *See* Hrg. Ex. 2. This statement reflects that the monthly loan payment was $516.76 and that there was an outstanding balance of $23,358.00 as of February 12, 2021. *See id.* While the statement does not identify the borrowers, it shows that Mr. and Mrs. Woodruff were the account owners. The parties did not introduce the title to the Murano from when it was purchased or any loan documentation.

This evidentiary gap is not fatal, though, because, following Mr. Woodruff's death, title to the Murano transferred to Mrs. Woodruff either through termination of the entirety – if they owned it as tenants by the entirety – or by operation of Mr. Woodruff's Will. *See Ladd v. Marks (In re Estate of Ladd*), 247 S.W.3d 628, 644 (Tenn. Ct. App. 2007) (providing that "property that is held jointly by a husband and wife is presumed to be held as tenants by the entirety[.]"); *see also In re Estate of Fletcher*, 538 S.W.3d at 449 (holding that the surviving tenant is the sole owner of the property); *see also* Hrg. Ex. 5 at Art. VI (naming Mrs. Woodruff as residual beneficiary).

At this point, Mrs. Woodruff was the sole owner of the Murano. However, following her death, events become murky. Coretta contends that Mrs. Woodruff gifted the Murano to her and, consequently, it is not an asset of Mrs. Woodruff's Estate. *See* Resp. of Pers. Rep. to Exceps. filed by Demond Tyrone Woodruff Purs. to the Ct.'s Ruling & Renewal of Mtn. to Remove Pers. Rep. dated May 31, 2024, ¶ 10. In support, Coretta introduced a Certificate of Title issued on May 12,

[4] Any objections to spending out of the Regions Bank accounts are consequently moot. Similarly, any objections to withdrawals or spending during Mrs. Woodruff's lifetime are likewise without merit considering the lack of evidence of fraud, undue influence, overreach of a confidential relationship between her and Coretta, or incapacity.

2021, by the Tennessee Department of Revenue, showing her as the sole owner of the Murano. *See* Hrg. Ex. 10.

Coretta's testimony, however, undercuts this claim. Coretta testified that Mrs. Woodruff surrendered her driver's license in April 2020. When Mrs. Woodruff became the sole owner of the Murano following Mr. Woodruff's death, their insurer would no longer provide coverage because of Mrs. Woodruff's lack of a driver's license. Coretta contacted the Tennessee Department of Transportation and learned that Mrs. Woodruff could not regain her driver's license without completing a driving test. Instead of taking steps to regain her driver's license and insurance, Mrs. Woodruff chose to transfer title to Coretta so she could insure the vehicle in her name and use it to transport Mrs. Woodruff to healthcare provider appointments and provide for her other needs. Demond contends that while Mrs. Woodruff had a driver's license at some point, she had not driven since his childhood. Moreover, he testified that his mother met with her three children after Mr. Woodruff's death and discussed that the Murano would stay at her house for their use to transport her to healthcare appointments and errands.

Eight days after Mr. Woodruff's death, the loan was paid in full by two payments; the first was a transfer of $12,451.90 from the Woodruffs' joint account at the credit union (now Mrs. Woodruff's account solely) and the second was a payment of $10,906.10. Coretta offered that she paid the second payment of $10,906.10 from her personal funds. She considered this payment a "bridge loan" to her mother until Mr. Woodruff's life insurance proceeds were paid to Mrs. Woodruff. Coretta did not think of her payment as consideration for a purchase. She did not introduce any documents to support this understanding or the source of the funds.

Considering the testimony and exhibits, the Murano is an asset of Mrs. Woodruff's Estate and the relationship between Mrs. Woodruff and Coretta is that of bailor-bailee, not donor-donee. A bailment is a "delivery of personalty for a particular purpose or on mere deposit, on a contract express or implied; that after the purpose has been fulfilled, it shall be redelivered to the person who delivered it, or otherwise dealt with according to his direction or kept until he reclaims it." *Dispeker v. New S. Hotel Co.*, 213 Tenn. 378, 373 S.W.2d 904, 908 (1963) (citing *Breeden v. Elliott Bros.*, 173 Tenn. 382, 118 S.W.2d 219, 219 (1937)). While this relationship usually "involves contractual agreements, an agreement is not always an indispensable element of a bailment relationship. A bailment relationship is generally founded on a contractual relation; however, 'an actual contract or one implied in fact is not always necessary to create a bailment.'" *Akers v. Prime Succession of Tenn., Inc.*, 387 S.W.3d 495, 510 (Tenn. 2012) (quoting *Aegis Investigative Grp. v. Metro. Gov't. of Nashville & Davidson Cnty.*, 98 S.W.3d 159, 163 (Tenn. Ct. App. 2002)).

Tennessee recognizes constructive or involuntary bailment, "which arises by operation of law where (1) the person who has possession of a chattel holds it under such circumstances that the law imposes on him or her the obligation of delivering it to another; (2) a person has lawfully obtained possession of another's personal property by means other than a mutual contract of bailment; or (3) a person has lawfully acquired the possession of another person's chattel and holds it under circumstances whereby he or she should, on principles of justice, keep it safe and restore it or deliver it to the owner." *Aegis Investigative Grp.*, 98 S.W.3d at 163; *see also Campbell v. State*, 450 S.W.2d 795, 801 (Tenn. Crim. App. 1969) (holding that an actual contract or one

implied in fact is not necessary to create a bailment when a person has lawfully acquired the personal property of another and holds it under circumstances whereby principles of justice dictate that the possessor keep it safe and restore it to the owner).

A valid *inter vivos* gift, on the other hand, requires the donee to prove that the donor (1) intended to make the gift, (2) delivered the gift to the donee, and (3) the donee accepted it. *Fugate v. Fugate*, No. E2004-00546-COA-R3-CV, 2004 Tenn. App. LEXIS 608, at *6-7 (Tenn. Ct. App. Sept. 20, 2004). With respect to vehicles, it "has been held a number of times by our courts that the intention of the parties, not the certificate of title, determines the ownership of an automobile." *See Smith v. Smith*, 650 S.W.2d 54, 56 (Tenn. Ct. App. 1983) (citing *Couch v. Cockroft*, 490 S.W.2d 713 (Tenn. Ct. App. 1972); *Stevens v. State Farm Mut. Auto. Ins. Co.*, 443 S.W.2d 512 (Tenn. Ct. App. 1969); *Mercado v. Travelers Ins. Co.*, 443 S.W.2d 819 (Tenn. Ct. App. 1969); & *Hayes v. Hartford Accident & Indem. Co.*, 417 S.W.2d 807 (Tenn. Ct. App. 1967)). In determining ownership, the trial court may consider such evidence as:

> (1) the circumstances surrounding the vehicle's purchase; (2) the registration of the vehicle; (3) all aspects of insuring the vehicle; (4) the parties' respective financial stakes in the vehicle; (5) the actual possession of the vehicle; (6) the responsibility of bearing the expense of operating, maintaining, and licensing the vehicle; and (7) the ultimate right to control the vehicle and to make major decisions concerning the vehicle such as its use and restrictions on its use or sale, or other disposition of the vehicle.

Gipson v. State Farm Fire & Cas. Co., No. W2013-02872-COA-R3-CV, 2014 Tenn. App. LEXIS 712, at *14-15 (Ct. App. Nov. 4, 2014) (citing *Cunningham v. Dep't of Safety*, No. 01A01-9509-CH-00411, 1997 Tenn. App. LEXIS 354, at *2 (Tenn. Ct. App. May 21, 1997)).

Here, Coretta points to the Certificate of Title to support her claim of ownership. As the cases cited above illustrate, this is insufficient considering her testimony and the circumstances surrounding the vehicle's actual use while Mrs. Woodruff was alive. Mrs. Woodruff caused the Department of Revenue to issue the Certificate of Title to Coretta for the practical purpose of obtaining insurance. Mrs. Woodruff maintained control over the Murano by keeping it at her house and directing its use for her needs. As such, Coretta held record title to the Murano as a bailee and the law imposes a duty upon her to "keep it safe and restore it to the owner." *Campbell*, 450 S.W.2d at 801. Once Mrs. Woodruff died, the purpose of the bailment ceased, and her estate became the owner of the vehicle. It is now incumbent upon Coretta to return it to Mrs. Woodruff's Estate and include it in her inventory.

3. The Refrigerators are Assets of Mrs. Woodruff's Estate.

This Court directed the parties to meet and divide the items of tangible personal property described on Executor's inventory dated May 23, 2023, which was not filed under oath or verified. The parties met and divided the items, except that Executor and Demond could not agree over the item simply described as "Refrigerator" on the inventory. *See* Hrg. Ex. 24. Demond claims that "Refrigerator" refers to the unit found in the residence's kitchen. Executor counters that she is

referring to a mini refrigerator located in the basement and that the kitchen refrigerator is a side-by-side modeled manufactured by Kenmore. Executor added that she purchased the Kenmore refrigerator after Mrs. Woodruff's death.

One of the first tasks that Tennessee law imposes on personal representatives is that of filing an inventory under oath or verified. *See* Tenn. Code Ann. § 30-2-301(a). The inventory is "simply a written list, or schedule, containing, article by article, the goods and chattels, rights and credits of the estate to which the representative, as such, is entitled and with the administration of which he is charged." *2 Pritchard on the L. of Wills & Admin. of Ests.* § 688 (Matthew Bender 2009) ("Pritchard"). Though the statutes do not prescribe an exact form, the "degree of particularity with which the enumeration must be made will depend largely upon the character of the effects." *Id.* A person interested in the estate may object at any time before the probate court approves the personal representative's final settlement by "proof that the representative has not returned a complete inventory." *Id.* § 689.

Executor's unverified inventory includes items found in most homes and their relative economic value is small. Demond though has the right to challenge the omission of the Kenmore refrigerator, and the Court must consequently decide the issue without regard to its economic value. Executor did not provide any identifying information in her unverified inventory, such as manufacturer, location, or serial numbers. The unverified inventory, was, however, sufficient for the parties to meet and divide the other items of tangible personal property.

The dispute surrounding the "Refrigerator" arises because there are two units found within the residence. The confusion is further magnified by Executor's inclusion of two refrigerators in the Inventory Listing of Personal Property she verified under oath and filed on December 15, 2022. *See* Invent. List'g of Pers. Prop. dated Dec. 15, 2022, a copy of which is of record with the Court. In her verified inventory dated December 15, 2022, Executor listed two refrigerators. The first is described simply as "Refrigerator" and the second is a "Small refrigerator." *Id.* The verified inventory dated December 15, 2022, places the "Small refrigerator" "downstairs." *Id.* She does not, however, detail where the first "Refrigerator" is found.

Executor's use of simply "Refrigerator" in the unverified inventory dated May 23, 2023, is a classic example of latent ambiguity, which is one that "does not readily appear in the language of a document, but instead arises from a collateral matter when the document's terms are applied or executed." *Horadam v. Stewart*, No. M2007-00046-COA-R3-CV, 2008 Tenn. App. LEXIS 601, at *15 (Tenn. Ct. App. Oct. 6, 2008). When confronted with a latent ambiguity, the probate court may rely upon parol or extrinsic evidence to resolve the meaning of the latently ambiguous words. *Id.* An inventory made under oath and filed with the clerk "is said to possess the verity of judicial records[]" and it is "conclusive to charge him unless he can show that he was mistaken in the facts upon which he admitted his liability." Pritchard, ch. 15, § 690; *see also In re Love's Estate*, 145 S.W.2d 778, 782-83 (Tenn 1940).

During the evidentiary hearing, Demond did not point to any specific extrinsic evidence to support his exception to Executor's omission of the Kenmore refrigerator in her unverified inventory. However, such failure is not fatal to his claim, because the verified inventory filed December 14, 2022, is conclusive upon Executor. Coretta did not argue that her original inventory,

which she swore was accurate, was filed in error. She instead argued that she purchased the Kenmore refrigerator after her mother's death and placed it into the residence for her daughter's use while she was residing there. Executor did not, however, introduce any evidence to support her testimony.

Considering the conclusive nature of the verified inventory filed December 14, 2022, Executor's listing of two refrigerators in the residence is binding. As such, the Kenmore refrigerator and the smaller unit found downstairs are assets of Mrs. Woodruff's Estate and subject to division. If the parties cannot agree on how to divide and distribute these items, then Executor must sell them and add the proceeds to the residue of Mrs. Woodruff's Estate.

4. The Coins are Assets of Mrs. Woodruff's Estate.

Mr. Woodruff owned various coins as an investment. Following his death, Executor prepared an inventory and filed it under oath on December 15, 2022, in Mr. Woodruff's Estate. *See* Hrg. Ex. 23. She described the following coins as being part of Mr. Woodruff's Estate:

- 2019 United States Mint Limited Edition Silver Proof Set;

- Coin Collection Proof Sets (2002, 2005, 2009, 2010, 2012); 7 wine boxes; 2 green boxes; 3 black boxes; long gold box with coin collection; 1 black box with coin; 1 wine box with coin; 5 opened gold boxes with coins; Carson City Silver Dollars; Carson City, uncirculated Silver Dollars;

- 2001, 2003, 2006, 2008, 2011, 2013, 2015, 2016, 2020 Proof Sets of Coins; 7 wine box; 2 green boxes; 3 black boxes, long gold box with coins; 2 Carson City, 5 opened gold boxes with coins; and

- Coin collection – Silver Dollars.

Executor is charged with the coins because she included them on her verified inventory. In his will, Mr. Woodruff did not specifically or generally devise the coins to anyone and, consequently, ownership passed to Mrs. Woodruff as part of the residue of her late husband's estate. *See* Hrg. Ex. 5 at Art. VI. Mrs. Woodruff's Will does not specifically or generally devise the coins to anyone; and, as such, they pass as part of the residue of her estate to Coretta, Demond, and Robert Jr., considering that Mr. Woodruff predeceased her. *See* Hrg. Ex. 7, at Art. VI.

Executor did not include the coins in her verified inventory dated December 15, 2022, of Mrs. Woodruff's Estate. Demond and Robert Jr. expressly called out Executor for omitting the coins as part of Mrs. Woodruff's Estate. *See* Except. to Invent. List. of Pers. Prop. & Mtn. to Hold Pers. Rep. Accountable for Mismgmt. of Est. dated Jan. 27, 2023, at 2. Demond and Robert Jr. ask this Court to require Executor to produce all the coins in her possession and sell them. *Id.* at 3.

During the first day of testimony, Demond introduced into evidence an eleven-page document purporting to be photographs of a handwritten inventory prepared by Mr. Woodruff. *See* Hrg. Ex. 1. Demond testified that he photographed the handwritten inventory in February 2021.

Though the exact timing is unclear, Executor distributed coins to Demond and Robert Jr. Demond testified that he is not a coin collector like his father and took the coins he received to John Kittrell Barrett, owner of Kits Coin, for an appraisal. Mr. Barrett appraised the coins that Demond received as having a fair market value of approximately $1,866.00. *See* Hrg. Ex. 13. He likewise examined the coins that Robert Jr. received, appraising them at $1,837.00. *See* Hrg. Ex. 14. Demond and Robert Jr. claim though that Executor did not divide the coins into equal shares as Mrs. Woodruff's Will requires.

Next, Mr. Barrett testified that he reviewed the handwritten inventory that Mr. Woodruff allegedly prepared. He did not inspect the coins themselves but relied solely upon the handwritten inventory to offer that the collection had potential significant value. He also cautioned though that the potential value could vary widely depending on numerous factors, such as their actual quality and market conditions.

Following this day of testimony, the Court ordered the parties to coordinate an appraisal of the coins and report the results and how the appraiser suggests they should be divided among the parties. *See* Order of Conf. ¶ 2 entered Oct. 2, 2023. Executor filed numerous additional documents in support of her administration of her parents' estates, including an un-signed, three-page document purporting to be an appraisal completed by Mr. Barrett. *See* Hrg. Ex. 25. The un-signed document contains more details about each coin and an approximate fair market value. Demond and Robert Jr., however, point out that this document is un-signed and does not align with the appraisals Mr. Barrett prepared for them. *See* Resp. & Except. to Pers. Rep.'s Subm. of Docs. Purs. to the Ct.'s Rul'g & Renewed Mtn. to Remove Pers. Rep. dated Apr. 22, 2024.

During that portion of the evidentiary hearing conducted on April 9, 2025, Mr. Barrett testified that he did not prepare the un-signed document. He did, however, review three boxes of coins that Executor produced during the hearing and offered that these three boxes contained coins worth approximately $6,687.00. Again, Mr. Barrett cautioned that this was not a formal appraisal and that the final value could fluctuate depending on various factors.

Mr. Barrett's testimony supports the sons' argument that Executor did not divide the coins into equal shares: they only received coins worth approximately $1,800.00 each; whereas, she kept coins valued, at least informally, at over $6,600.00. Mr. Barrett's testimony also calls Executor's credibility into question – she filed the un-signed document stating that he prepared it; however, during the hearing, Mr. Barrett disavowed it. Regardless, the evidence before the Clerk and Master shows that Executor did not divide the coins in equal shares as Mrs. Woodruff's Will requires.

Demond likewise continues to question whether Executor has produced all of Mr. Woodruff's collection. Executor testified that her father was an active trader and seller of coins, and the coins listed in her inventory, produced during the hearing, and distributed previously to her brothers are all the coins. Neither Demond nor Robert Jr. produced any evidence to suggest otherwise other than the handwritten inventory that Mr. Woodruff prepared during life. This document suggests that at some point Mr. Woodruff may have possessed an extensive collection and that, according to Mr. Barrett, it may have had significant value at some point. However, the handwritten inventory is not dated and does not show when Mr. Woodruff owned these coins. The requirement to inventory is limited to those assets that the decedent possessed as of his date of

death. *In re Estate of Love*, 145 S.W.2d at 783; *see also* Tenn. Code Ann. § 30-2-301(a). Demond and Robert Jr. have the burden of proving that Executor failed to include all coins, and they did not carry that burden. *See* Pritchard, ch. 15, § 690. Executor is charged with only the coins identified in her inventory filed in her father's estate along with those produced during the hearing and previously distributed to her brothers.

The evidence adduced during the hearing show that Executor did not distribute the coins in conformity with Mrs. Woodruff's Will. Executor occupies "a fiduciary position and, therefore, must deal with beneficiaries of the estate in the utmost good faith." *Ladd v. Marks (In re Estate of Ladd)*, 247 S.W.3d 628, 637 (Tenn. Ct. App. 2007). This requires her to "exercise loyalty and honesty in administering his or her duties." *Roberts v. Iddins*, 797 S.W.2d 615 (Tenn. Ct. App. 1990). Probate courts "are cautious not to hold executors liable upon slight grounds[;]" and an executor "who acts reasonably and in good faith while carrying out [her] duties will be shielded from liability if [her] judgment simply turns out to be wrong in light of subsequent events." *Ladd*, 247 S.W.3d at 637 (citing Pritchard §§ 328-29). However, an executor who fails to "competently, prudently, and reasonably discharge [her] duties as required by law, however, finds no protection in [her] lack of judgment as viewed in hindsight." *Id.*

Executor's unequal division of the coins is not slight. She reserved unto herself more than half of these valuable coins. Executor's failure to divide the coins into equal shares is a breach of her duty of loyalty and honesty owed to her brothers in the administration of their mother's estate.

5. Executor must sell the Murano, Refrigerators, and Coins.

Mrs. Woodruff's Will does not contain any direction to distribute the Murano, the Kenmore refrigerator, the small refrigerator, or the coins to the beneficiaries in kind. *See generally* Hrg. Ex. 7. Nor did she specifically bequeath any of these items to a specific beneficiary. *See id.* Absent these express testamentary instructions, Tennessee law requires Executor to sell the assets and add the sale proceeds to the estate for division and distribution as part of the residue, unless the beneficiaries of the residuary estate agree to the division and in-kind distribution. *See Austin v. Austin*, 920 S.W.2d 209, 212 (Tenn. 1996) (interpreting Tenn. Code Ann. § 30-2-303).

Tennessee Code Annotated section 30-2-303 provides that:

> Unless otherwise directed by the will and unless the specific personal property is the subject of a bequest, the personal representative of a testate or intestate estate may, in the personal representative's discretion, sell the personal property of the decedent at public or private sale, for cash or on terms, in such manner and for such prices as the personal representative may deem advisable; but the personal representative shall not make a private sale to the personal representative, to business associates, to members of the personal representative's immediate family or to their agents without court approval or the written consent of all residuary distributees of the estate. The personal representative may

> employ persons or firms to conduct the sale and shall receive credit for all reasonable expenses of the sale in the final accounting.

While at first glance this statute may be read as giving a personal representative the discretion of whether to sell personal property, the Tennessee Supreme Court interprets it as only bestowing discretion on the manner of sale. *Austin*, 920 S.W.2d at 213. The Supreme Court examined a long line of historical and modern precedents and treatises and found that a personal representative is called upon to sell the decedent's personal property and distribute the surplus, if any, to the residuary beneficiaries. *Id.* (citing *Bradshaw v. Cruise*, 51 Tenn. 260 (1871); *Union Planters Nat'l Bank & Trust Co. v. Beeler*, 112 S.W.2d 11 (Tenn. 1938); *Boulton v. Cochran*, 292 S.W.2d 511 (Tenn. 1954); James Schouler, *A Treatise on the Law of Executors & Administrators* §§ 339, 341, 506 (2d ed. 1889); Joseph Higgins, *Administration of Estates in Tennessee*, § 932 (1943); Eustace W. Tomlinson, *Administration of Decedents' Estates*, § 7.6-2 (1972); & Pritchard's § 829 (5th ed. 1994)).

The long recognized public policy of Tennessee is to favor the prompt administration of estates. *See Burris v. McConnell*, 216 S.W.2d 10, 12 (Tenn. 1949). With this policy in mind, an "executor has a duty to marshal and collect the assets of an estate within a reasonable time; discharge [her] statutory duties and distribute the estate in a timely manner; and close [her] administration as quickly as possible." *Estate of Doyle v. Hunt*, 60 S.W.3d 838, 844-45 (Tenn. Ct. App. 2001) (citing *McFarlin v. McFarlin*, 785 S.W.2d 367, 370 (Tenn. Ct. App. 1990); *Love v. First Nat'l Bank*, 646 S.W.2d 163, 166 (Tenn. Ct. App. 1982); & *Campbell v. Miller*, 562 S.W.2d 827, 832 (Tenn. Ct. App. 1977)).

With respect to the administration of a decedent's personal estate, the Supreme Court cited with approval the following excerpt:

> The law does not contemplate the division of personal property *in specie*, but provides for reducing it to cash, so that equal distribution may be made of the surplus funds. However, if all persons interested are *sui juris* and agree to a division in kind of property left after payment of debts, or not needed for that purpose, such a course is not objectionable, if equality can be attained and the administrator stands impartial. But the legal method of discharging distributive shares is by paying distributees the amounts to which they severally are entitled in lawful currency, and taking their receipts therefor. This mode is to be insisted upon in every case, and unless all distributees otherwise agree to a division in kind, a departure from it can only be justified where it is manifest that its adoption will work extraordinary hardships and equally clear that specific division of the chattels will not produce inequalities, complications and future litigation.

Austin, 920 S.W.2d at 212 (citing Pritchard § 829 (5th ed. 1994)).

Here, the beneficiaries *sui juris* agreed to an in-kind distribution of items of tangible personal property. However, they cannot agree on whether the items discussed above are assets of Mrs. Woodruff's Estate or if Executor's division of the coin collection was in equal shares as their mother's will requires. In the absence of express testamentary direction from Mrs. Woodruff or agreement by the beneficiaries, then Tennessee law is clear: Executor must sell the Murano, Kenmore refrigerator, small refrigerator, and the coins. Executor only has discretion over the method of sale. *See* Tenn. Code Ann. § 30-2-303. Once sold, she must add the net sale proceeds to the estate for payment of lawful administration expenses and debts with the surplus to be divided into equal shares and distributed to Coretta, Demond, and Robert Jr.

C. Ownership and Division of the Residence and Matters Ancillary to the Residence.

Executor listed her parents' address as 3329 Shipe Road, Corryton, Tennessee 37721 (the "Residence") in her respective petitions to open their estates. *See* Aff. with Will dated Sept. 1, 2021 & Aff. with Will dated Apr. 23, 2021. The Clerk and Master takes judicial notice that there is a Warranty Deed dated August 6, 1973, of record with the Knox County Register of Deed's Office as Instrument Number 197308060011986 (the "Deed"), reflecting that "Robert Lee Woodruff and wife Lillian N. Woodruff" are the fee simple owners of the Residence and that they owned it as tenants by the entirety. *See* Dodgson v. Williams, No. E2021-00873-COA-R3-CV, 2022 Tenn. App. LEXIS 326, at *3 n. 1 (Tenn. Ct. App. Aug. 22, 2022) (noting that a trial court may take judicial notice of instruments recorded with the register of deeds); *see* Tenn. R. Evid. 201, 803 (14) & 902(4).

Because Mr. and Mrs. Woodruff owned the Residence as tenants by the entirety, fee simple title vested solely in Mrs. Woodruff at Mr. Woodruff's death by operation of law and not pursuant to Mr. Woodruff's Will. *See Grahl v. Davis*, 971 S.W.2d 373, 378 (Tenn. 1998); *see also Ladd*, 247 S.W.3d at 644 (holding that tenancy by the entirety property does not become part of the probate estate).

The next inquiry centers on ownership of the Residence following Mrs. Woodruff's death. Vesting of title to real property in the probate arena is counterintuitive. A probate asset is one that does not pass by operation of law, such as by contract (i.e., a beneficiary designation), tenancy by the entirety, joint tenancy with rights of survivorship, or statute, but forms part of the probate estate and its ownership is determined either by the decedent's will or the laws of intestate succession when there is no valid will. Real property is different. Even if the decedent was the sole fee simple owner, interests in real property do not become an asset of the probate asset by default like other assets owned solely by the decedent.

Tennessee Code Annotated section 31-2-103 controls the vesting of title to real property following the owner's death, providing, in pertinent part, as follows:

> The real property of a testate decedent vests immediately upon death in the beneficiaries named in the will, unless the will contains a specific provision directing the real property to be administered as part of the estate subject to the control of the personal representative. Upon qualifying, the personal representative shall be

> vested with the personal property of the decedent for the purpose of first paying administration expenses, taxes, and funeral expenses and then for the payment of all other debts or obligations of the decedent as provided in § 30-2-317. If the decedent's personal property is insufficient for the discharge or payment of a decedent's obligations, the personal representative may utilize the decedent's real property in accordance with title 30, chapter 2, part 4.

Thus, real property only becomes an asset of a probate estate if (1) there is a valid will that contains specific provisions directing the executor to administer it as part of the estate or (2) if the personal property is insufficient to pay the decedent's obligations and the real property must be brought into the estate to be sold. Absent these two limited circumstances, a decedent's interest in real property vests in the appropriate interested parties by operation of law and outside of the probate estate. *See Henderson v. Johson*, No. M2024-00270-COA-R3-CV, 2025 Tenn. App. LEXIS 74 (Tenn. Ct. App. Feb. 27, 2025).

Demond and Robert Jr. accuse their sister of improperly taking possession of their parents' residence, improving it without their consent, and allowing her daughter to reside there without paying rent. *See, e.g.,* Except. at 1-2. However, these disputes are beyond the subject matter jurisdiction of the Chancery Court when exercising its probate jurisdiction and must be directed to a court with such authority.[5]

Subject matter jurisdiction relates to the court's "authority to adjudicate a particular type of case or controversy brought before it." *In re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn. 2012). This authority arises either "explicitly or by necessary implication, from the Constitution of Tennessee or from a statute enacted by the Tennessee General Assembly or Congress." *Id.* (citing *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004); *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996); *Walker v. White*, 89 S.W.3d 573, 577 (Tenn. Ct. App. 2002)). Courts and the parties must respect the limitations that the legislature imposes upon a court's jurisdiction and neither judge nor party can usurp the legislature's authority by unilaterally granting or expanding a court's subject matter jurisdiction. *Id.* (citing *Caton v. Pic-Walsh Freight Co.*, 364 S.W.2d 931, 933 (Tenn. 1963); & *Brown v. Brown*, 281 S.W.2d 492, 501 (Tenn. 1955)). Courts must guard their subject matter jurisdiction carefully, because "the orders and judgments entered by courts without jurisdiction over the subject matter of a dispute are void" and "issues regarding a court's subject matter jurisdiction should be considered as a threshold inquiry . . . and should be resolved at the earliest possible opportunity." *Id.* (internal citations omitted). The question of subject matter jurisdiction may be raised at any time by a party or the court *sua sponte*. *See Reliant Bank v. Bush*, 631 S.W.3d 1, 6 (Tenn. Ct. App. 2021).

The administration of a probate estate is ecclesiastical in nature rather than of common law origin. *In re Estate of Wakefield*, M1998-00921-COA-R3-CV, 2001 Tenn. App. LEXIS 905, at *111 (Ct. App. Dec. 10, 2001) (Koch., J., concurring, in part, and dissenting, in part,) (citing *Petty v. Call*, 599 S.W.2d 791, 793 (Tenn. 1980) & *Buchanan v. Matlock*, 27 Tenn. 390, 391-96 (1847)).

[5] The Chancery Court, exercising its jurisdiction as a court of equity, may adjudicate these disputed matters under a Chancery Court Docket number pursuant to Tennessee Code Annotated section 16-11-101 *et seq.*; but not under its probate court jurisdiction granted under Tennessee Code Annotated section 16-16-201(a).

"Because probate proceedings are statutory in nature, courts exercising probate jurisdiction have only the subject matter jurisdiction and power conferred on them by constitution or by statute, or necessarily incidental to the exercise of the jurisdiction and powers specifically granted." *In re Estate of Wakefield*, 2001 Tenn. App. LEXIS at *111 (citing *Meighan*, 924 S.W.2d at 639 & *Dishmon v. Shelby State Cmty Coll.*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999)).

Pursuant to Tennessee Code Annotated section 16-16-201(a), the Chancery Court for Knox County is the "probate court" for the Sixth Judicial District and, consequently, has "exclusive jurisdiction over the probate of wills and the administration of estates of every nature, including the estates of decedents and of wards under guardianships or conservatorships *and all matters related thereto* . . . ." *In re Hudson*, 578 S.W.3d 896, 907 (Tenn. Ct. App. 2018) (citing *In re Estate of Trigg*, 368 S.W.3d at 494) (emphasis added). By section 16-16-201(b), Rule 53 of the Tennessee Rules of Civil Procedure, and Rules 17, 18, and 19 of the Local Rules of Practice for the Chancery Court of Knox County, the Clerk and Master is authorized to hear certain matters and report on them as a special master in chancery.

As such, the Chancery Court – when exercising its statutory authority as probate court – only has subject matter jurisdiction over probate assets. The same subject matter jurisdiction limitations likewise extend to the Clerk and Master. The Residence is not a probate asset because neither of the two exceptions to Tennessee Code Annotated section 31-2-103 are present. First, Mrs. Woodruff's Will does not contain a specific provision directing that the Residence be administered as part of her estate, subject to Executor's control. Second, Executor has not alleged that the personal property is insufficient to pay Mrs. Woodruff's obligations or meet the estate's administration expenses. As such, title to the Residence vested in Coretta, Demond, and Robert Jr. as tenants in common by operation of Tennessee Code Annotated section 31-2-103 and Mrs. Woodruff's Will.

The Chancery Court, as the probate court, lacks subject matter jurisdiction over the Residence and any order adjudicating issues concerning its expenses, improvements, rents, or ownership would be void. *In re Estate of Trigg*, 368 S.W.3d at 489. The parties must, therefore, take these disputes to a court of competent jurisdiction.

D. Removal of Executor.

Robert Jr. and Demond allege that Executor has failed to include all assets on her inventory; improperly accounted for expenses and income; allowed her daughter to reside in the Woodruffs' residence without paying rent; did not distribute assets in compliance with their parents' wills; and otherwise failed to communicate effectively with them. For all these alleged transgressions, they want this Court to remove Executor from her fiduciary role. Executor disputes these allegations.

The probate court may remove executors who fails to comply with their fiduciary and statutory duties either by its own volition or at the request of an interested party. *In re Estate of Thompson*, 952 S.W.2d 429, 432 n. 1 (Tenn. Ct. App. 1997); *see* Tenn. Code Ann. §§ 30-1-119 & 35-15-706. Section 30-1-119 points probate courts to the removal provisions for trustees found in section 35-15-706, which include in relevant part: "(1) [t]he trustee has committed a serious breach of trust;" or "(3) [b]ecause of unfitness, unwillingness, or persistent failure of the trustee to

administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries[.]" *Id.* § 35-15-706(b)(1) & (3).

Tennessee law has recognized for over 150 years that an executor must "do and perform every act directed or provided for in the will, without restriction by the character of the property disposed of, or the nature of the trusts imposed by the will." *Porter v. Moores*, 51 Tenn. 16, at *20 (Tenn. 1871). When reading a will, the executor must perform that which the testator has written and not from what the executor supposes the testator may have intended. *In re Crowell*, 154 S.W.3d 556, 559 (Tenn. Ct. App. 2004).

The siblings' long running disputes have marred the administration of their parents' estates. Executor has not communicated transparently or effectively. Moreover, these issues have caused significant expense and delay in administering these estates. Given what has occurred in the past, it is easy to foresee future strife if Executor remains in her fiduciary position. The law favors the efficient and timely administration of estates; and, considering the findings recited herein, the Court has sufficient grounds to remove Executor. However, removing Executor would require the appointment of a successor fiduciary and the costs and delays that follow. Moreover, the siblings have shown that will not cooperate and that appointing either Demond or Robert Jr. would likely lead to additional litigation.[6] *See* Tenn. Code Ann. § 30-1-117.

The only pragmatic option available to the Court is to appoint an independent administrator *cum testamento annexo et de bonis non* to complete the administration of these estates. The remaining tasks to complete are selling of the Murano, refrigerators, and the coins and then a final settlement and distribution of the surplus to the beneficiaries in equal shares. The costs of entrusting these remaining tasks with an independent fiduciary are likely less than those that may come if Executor is allowed to remain in office or permit Robert Jr. or Demond to assume control of their parents' estates.

III. RECOMMENDATIONS

Based upon the above, the Clerk and Master recommends that the Court enter an Order providing as follows:

1. The interim accountings and inventories filed by Coretta N. McGraw ("Executor") as Executor of the Estates of Robert Lee Woodruff, Sr. and Lillian Nelette Woodruff are **APPROVED**, in part, and **REJECTED**, in part, as follows:

a. The Regions Bank accounts ending in -6851 and -4318, including the $48,776.77 withdrawn prior to Lilliam Nelette Woodruff's death by Coretta N. McGraw, are not assets of the Estate of Lillian Nelette Woodruff ("Mrs. Woodruff's Estate");

b. The 2017 Nissan Murano with a vehicle identification number ending in -5663 ("Murano") is an asset of Mrs. Woodruff's Estate;

[6] Neither Demond nor Robert Jr. have petitioned this Court to be appointed as successor executors of their parents' estates as Tennessee Code Annotated section 30-1-117 requires. *See also In re Estate of Pierce*, 511 S.W.3d 520, 525-26 (Tenn. Ct. App. 2016).

c. The Kenmore refrigerator and the small refrigerator are assets of Mrs. Woodruff's Estate;

d. The coin collection is an asset of Mrs. Woodruff's Estate and Executor's division is not equitable;

2. The residence located at 3329 Shipe Road, Corryton, Tennessee 37721 (the "Residence") is not an asset of Mrs. Woodruff's Estate and fee simple ownership vested in Coretta N. McGraw, Robert L. Woodruff, Jr., and Demond T. Woodruff as tenants in common pursuant to Tennessee Code Annotated section 31-2-103 and the Last Will and Testament of Lillian Nelette Woodruff dated September 21, 2020. Consequently, any disputes concerning its use, improvement, rent, partition in kind or by sale, sale, maintenance, or expenses are beyond the subject matter jurisdiction of the Chancery Court for Knox County when exercising its probate jurisdiction;

3. Robert L. Woodruff, Jr. and Demond T. Woodruff's request to remove Executor is **GRANTED**;

4. The Letters Testamentary issued to Executor in the Estate of Robert Lee Woodruff, Sr. and the Estate of Lillian Nelette Woodruff are hereby cancelled, revoked, and recalled, and Coretta N. McGraw shall deliver all documents, information, and assets related to or comprising part of these estates to her successor within thirty (30) days of receiving notice of her successor's appointment;

5. Elizabeth Maxy Long, an attorney in good standing and member of the Knoxville Bar, is appointed as administrator *cum testamento annexo et de bonis non* to complete the administration of these estates;

6. The Clerk of the Court shall issue letters of administration to Ms. Long upon the filing of one bond in the amount of $50,000.00 in Mrs. Woodruff's Estate and an oath of office. She shall possess the rights and powers of fiduciaries provided in Tennessee Code Annotated section 35-50-110;

7. Without limiting her authority, Ms. Long is authorized and directed to marshal the Nissan, refrigerators, and coins from Coretta N. McGraw, Robert L. Woodruff, Jr., and Demond T. Woodruff and sell all marshalled assets in a commercially reasonable manner;

8. Coretta N. McGraw, Robert L. Woodruff, Jr., and Demond T. Woodruff are directed to cooperate with Ms. Long; and

9. All other matters are reserved pending further orders from the Court.

Respectfully submitted this _____ day of _____ 2025.

_____
J. SCOTT GRISWOLD, CLERK AND MASTER

NOTICE OF FILING OF MASTER'S REPORT

Notice is hereby given that the foregoing report was filed in the above styled cause on the _____ day of _____ 2025.

_____
J. SCOTT GRISWOLD, CLERK AND MASTER

CERTIFICATE OF SERVICE

I, J. Scott Griswold, Clerk and Master, hereby certify that I mailed on the _____ day of _____ 2025, a true and exact copy of the foregoing MASTER'S REPORT and NOTICE OF FILING OF MASTER'S REPORT to each attorney of record and unrepresented party.

_____
J. SCOTT GRISWOLD, CLERK AND MASTER

cc: Barbara W. Clark
Emily K. Stulce
Coretta N. McGraw
Demond T. Woodruff
Robert L. Woodruff, Jr.
Elizabeth M. Long

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: GADOLINIUM BASED CONTRAST AGENTS PRODUCTS LIABILITY LITIGATION	Case No. 1:08-gd-50000 MDL No. 1909 Judge Dan Aaron Polster
THIS DOCUMENT APPLIES TO ALL CASES	

MEMORANDUM OF LAW IN SUPPORT OF GE HEALTHCARE'S MOTION TO EXCLUDE CERTAIN TESTIMONY OF PLAINTIFFS' GENERIC EXPERT, JOACHIM H. IX, M.D., MAS.

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MEMORANDUM OF LAW

Even though Joachim H. Ix, M.D., MAS has never researched or published on gadolinium-based contrast agents ("GBCAs") or nephrogenic systemic fibrosis ("NSF"), the plaintiffs retained him to testify regarding the association between GBCAs and NSF and whether a causal connection exists. Despite his lack of independent research related to GBCAs or NSF and questionable methodological techniques that, by his own description, do not rise to the level of his own peer-reviewed research, Dr. Ix intends to testify that a causal connection exists between this exposure and disease. This Court should exclude any purported expert witness whose opinions are unreliable and lack the safeguards of "good science." *See Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1317 (9th Cir. 1995) ("*Daubert II*"). As explained below, Dr. Ix's general causation opinions are unreliable because he failed to: 1) maintain in this litigation the same level of intellectual rigor that characterizes his independent research; 2) employ reliable methods and principles; and 3) apply the methods and principles reliably to the facts of this litigation. Consequently, this Court should exclude plaintiffs' generic expert epidemiologist, Joachim H. Ix, M.D., MAS, from offering his general causation opinions.

BACKGROUND

I. Epidemiology in Toxic Tort Litigation

A. Epidemiology.

In order to effectively evaluate Dr. Ix's methods and opinions it is important to understand how epidemiology has evolved in the realm of litigation. "Epidemiology is the field of public health and medicine that studies the incidence, distribution, and etiology of disease in human populations." Michael D. Green, *et al., Reference Guide on Epidemiology,* Reference Manual on Scientific Evidence 333, 335 (2d ed. 2000) ("Reference Guide on Epidemiology") (Ex. 38). Epidemiologists study the relationship between exposures and diseases in large

populations. *Id.* at 337 & 348; *see also In re Fosamax Prods. Liab. Litig.*, 645 F. Supp. 2d 164, 187 (S.D.N.Y. 2009). When called upon to determine whether a causal relationship between a disease and a possible exposure exists, an epidemiologist will first attempt to ascertain if an association between the disease and exposure can be established. *Reference Guide on Epidemiology* at 348 (Ex. 38). An association exists when the exposure and the disease occur more frequently than one would expect to find by chance alone. *Id.*

However, an association does not necessarily mean that there is a causal relationship between the exposure and the disease. *Id.* at 336; *see also Nelson v. Tennessee Gas Pipeline Co.*, 243 F.3d 244, 253 (6th Cir. 2001); *DeLuca v. Merrell Dow Pharms., Inc.*, 911 F.2d 941, 945 & n.6 (3d Cir. 1990) ("Epidemiological studies do not provide direct evidence that a particular plaintiff was injured by exposure to a substance."), *overruled on other grounds by Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 585 (1993); *see also* Dep. Tr. of Joachim H. Ix, M.D., MAS Sept. 22, 2009 ("Sept. 22 Ix Dep. Tr.") (Ex. 20), at 43) (testifying that an association does not necessarily imply a causal relationship). Even if an association is present, epidemiologists must still determine whether the exposure causes the disease or if a confounding factor is wholly or partly responsible for the development of the outcome. *Reference Guide on Epidemiology* (Ex. 38), at 369. An epidemiologic study that fails to account for possible confounding factors can be misleading due to bias, *i.e.*, error, in the findings. *Id.* at 370; *see also Brock v. Merrell Dow Pharms., Inc.*, 874 F.2d 307, 311 (5th Cir. 1989) (noting that "[o]ne difficulty with epidemiologic studies is that often several factors can cause the same disease."); *Nelson* 1998 WL 1297690, at *4 (W.D. Tenn. Aug. 31, 1998), *aff'd*, 243 F.3d 244 (6th Cir. 2001) (excluding an expert witness who failed to take into consideration confounding factors).

B. Meta-Analysis.

One method epidemiologists utilize to express the strength of an association is an odds ratio. For example, an odds ratio in a cohort study[1] is the "ratio of the odds of developing a disease when exposed to a suspected agent to the odds of developing the disease when not exposed." *Reference Guide on Epidemiology* (Ex. 38), at 350. An epidemiologist may calculate an odds ratio by performing a meta-analysis, which allows researchers to pool several study results together in order to "arrive at a single figure to represent the totality of the studies reviewed." *Id.* at 380. This technique addresses the problem presented by studies of rare diseases that often lack the statistical power necessary for definitive conclusions. *Id.*

However, meta-analysis is not a panacea for epidemiologists. A "problem with meta-analyses is that they generate a single estimate of risk and may lead to a false sense of security regarding the certainty of the estimate." *Id.* at 381; *see also In re Bextra and Celebrex Marketing Sales Practices & Prod. Liab. Litig.*, 524 F. Supp. 2d 1166, 1174 (N.D. Cal. 2007) (discussing the dangers of meta-analyses); John C. Bailar, III, *Assessing Assessments*, 277 Science 529 (1997) (Ex. 33) (arguing that "problems have been so frequent and so deep, and overstatements of the strength of conclusions so extreme, that one might well conclude there is something seriously and fundamentally wrong with [meta-analysis].").

Assessing whether an exposure is causally related to a disease requires more than just finding a strong association. It also involves an "understanding of the strengths and weaknesses of the study's design and implementation, as well as a judgment about how the study's findings

[1] "In cohort studies the researcher identifies two groups of individuals: (1) individuals who have been exposed to a substance that is considered a possible cause of a disease and (2) individuals who have not been exposed." *Reference Guide on Epidemiology* (Ex. 38), at 340. Researchers follow both groups for a set amount of time and compare the proportion of individuals in each group who develop the disease. *Id.*

fit with other scientific knowledge." *Reference Guide on Epidemiology* (Ex. 38), at 336-37. Moreover, epidemiological causation is not equivalent to legal causation. "When epidemiologists evaluate whether a cause-effect relationship exists between an agent and disease, they are using the term causation in a way similar to, but not identical with, the way the familiar 'but for,' or *sine qua non*, test is used in law for cause in fact." *Id.* at 374. To epidemiologists, causation means that the increase in the incidence of the disease within the exposed population would not have resulted if they had not received the exposure. *Id.* In the end, "causation is a judgment for epidemiologists and others interpreting the epidemiologic data." *Id.*

C. Sir Bradford Hill's Causation Criteria.

Sir A. Bradford Hill, a well-respected British physician, developed a widely accepted set of criteria for assessing causation between an exposure and a disease. *Gannon v. United States*, 292 Fed. Appx. 170, 172-73 n.1 (3d Cir. 2008) (noting that Bradford Hill's principles are "broadly accepted criteria for evaluating causation."); *In re Welding Fume Prods. Liab. Litig.*, MDL No. 1535, 2005 U.S. Dist. LEXIS 46164, at *56 (N.D. Ohio Aug. 8, 2005) (acknowledging the role of the Bradford Hill criteria in guiding epidemiologists in making judgments about whether causation may be inferred from an association); *Reference Guide on Epidemiology* (Ex. 38), at 333, 375. The factors are: "(1) Strength of Association, (2) Consistency, (3) Specificity, (4) Temporality, (5) Biologic Gradient, (6) Plausibility, (7) Coherence, (8) Experimental Evidence, and (9) Analogy." *Gannon*, 292 Fed. Appx. at 172-73 n.1.

II. Dr. Ix's Methods and Opinions.

Until the plaintiffs retained Dr. Ix to testify in this litigation, he had never researched or published any articles about NSF or GBCAs in his career. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 27:1-7, 28:11-24 & 30:13-20.) Indeed, the majority of his non-litigation research had been devoted to studying the overlap between chronic kidney disease and cardiovascular disease. (*See*

id. at 12:21-25.) For this litigation, the plaintiffs asked Dr. Ix to evaluate whether an epidemiologic association exists between GBCAs and NSF and, if so, whether a causal relationship is also present. (*See id.* at 39:16-25 & 40:1-11.) After performing a meta-analysis and employing the Bradford Hill criteria to assess causation, Dr. Ix intends to testify that NSF is causally linked to GBCAs. (*See* Expert Report of Joachim Ix, M.D., MAS. ("Ix Report") (Ex. 5), at 43-44.) As part of his meta-analysis, Dr. Ix calculated an odds ratio by reviewing five studies from the peer-reviewed medical literature. From these studies, Dr. Ix opines that "subjects with kidney disease who are exposed to GBCA are at approximately 11 fold higher odds of developing NSF than kidney disease patients not exposed to GBCA; an association unlikely to be due to chance." (*See id.* at 27.) Of critical import is that Dr. Ix's conclusions relate to the class of GBCAs, not simply Omniscan. (*See id.* at 42.)

ARGUMENT

The law under *Daubert* and its progeny is more specifically set forth in GEHC's Memorandum of Law In Support of GE Healthcare's Motion To Exclude Expert Opinions Relating To "Free" Gadolinium and GEHC incorporates that brief here.

I. It Is the Plaintiffs' Burden to Establish the Admissibility of Dr. Ix's Opinions.

The decision whether to admit expert testimony rests within this Court's sound discretion. *General Elec. v. Joiner*, 522 U.S. 136, 143 (1997); *see also Nelson*, 243 F.3d at 251. It is plaintiffs' burden to convince this Court by a preponderance of the evidence that Dr. Ix's opinions are admissible. *Nelson*, 243 F.3d at 251 (citing *Daubert*, 509 U.S. at 592 n.10 (1993)). "On a motion for summary judgment, disputed issues of fact are resolved against the moving party. . . . But the question of admissibility of expert testimony is not such an issue of fact." *Joiner*, 522 U.S. at 143.

II. Admissibility Standards Applicable to Expert Testimony.

Rule 702 of the Federal Rules of Evidence states that a witness "qualified as an expert" may offer opinion testimony provided that: "(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case." *Id.* In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the United States Supreme Court recognized that because expert testimony "can be both powerful and quite misleading," district courts must act as a "gatekeeper" to "ensure that" expert testimony "is not only relevant, but reliable." 509 U.S. at 589.

With regard to the reliability determination, the focus is on whether the expert's testimony reflects "'scientific knowledge' . . . derived by the scientific method," *id.* at 590, and thus represents "good science." *Id.* at 593. In making this reliability determination, the *Daubert* court outlined a non-exhaustive list of factors to be considered. These include: (1) whether the theory or technique has been tested; (2) whether it has been subjected to peer-review; (3) whether there is a known potential rate of error; and (4) whether the methodology has gained general acceptance. *Id.* at 593-94; *see also Daubert II*, 43 F.3d at 1328 (noting "that the research is accepted for publication in a reputable scientific journal after being subjected to the usual rigors of peer review is a significant indication that it is taken seriously by other scientists, *i.e.*, that it meets at least the minimum criteria of good science.").

This inquiry is flexible and the above-stated factors may or may not be pertinent in a particular case. Consequently, courts will consider other factors in making their reliability determination, one of which is whether an expert arrived at his opinions solely for the purposes of testifying in litigation. *Johnson v. Manitowoc Boom Trucks, Inc.*, 484 F.3d 426, 435 (6th Cir. 2007) (citing *Daubert II*, 43 F.3d at 1317-18); *see also Avery Dennison Corp. v. Four Pillars Enter. Co.*, 45 Fed. Appx. 479, 484 (6th Cir. 2002) (noting that the prepared-solely-for-litigation

factor is often assessed in addition to those specifically enumerated in *Daubert*); *Smelser v. Norfolk S. Ry. Co.*, 105 F.3d 299, 303 (6th Cir. 1997) (same).

The Sixth Circuit has long recognized that a trial court should proceed cautiously when evaluating expert testimony prepared solely for litigation as opposed to testimony "flowing naturally from an expert's line of scientific research or technical work." *Johnson*, 484 F.3d at 434. In determining whether an expert's proffered opinions constitute "good science," the trial court should "not ignore the fact a scientist's normal workplace is the lab or the field, not the courtroom or the lawyer's office. . . ." *Daubert II*, 43 F.3d at 1317. Independence from litigation provides objective support that the proffered opinions adhere to the requirements of "good science." *Id.* The party asking the trial court to admit research that does not flow naturally from the expert's independent research must "come forward with other objective, verifiable evidence that the testimony is based on 'scientifically valid principles.'" *Id.* at 1317-18. Ultimately, whatever factors the trial court considers, the objective is "to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kuhmo Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999); *Best v. Lowe's Home Ctrs., Inc.*, 563 F.3d 171, 181 (6th Cir. 2009); *In re Fosamax*, 645 F. Supp. 2d at 174.

Here, the plaintiffs have failed to satisfy their burden under Rule 702 and *Daubert* that Dr. Ix's opinions are sufficiently reliable. It is telling that Dr. Ix generated his opinions solely for this litigation. In doing so, he admits he deviated from his previous methods of conducting meta-analyses for publication in the peer-reviewed medical literature and came to his opinions after relying on a weaker standard than that which would withstand peer review. Put simply, Dr. Ix has failed to employ the same intellectual rigor to his litigation research as he does to his

independent research. As such, this Court should exclude him from offering his unreliable opinions to the jury.

III. Dr. Ix Failed to Require in this Litigation the Same Level of Intellectual Rigor that Characterizes His Independent Research.

A. Dr. Ix's Meta-Analysis Methodology Is Inconsistent with the Methodology He Uses for His Independent Research.

Dr. Ix testified extensively in his deposition about how his litigation research methods deviated from the independent research he has previously subjected to peer review. Dr. Ix has published the results of two meta-analyses in the peer-reviewed medical literature. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 184:4-8 & 185:1-23.) In his published works, Dr. Ix sought the advice of experts in the field to identify studies that should be included in the research. (*See id.* at 187:18 & 188:7.) Here, by contrast, he did not consult with any such experts on NSF or GBCAs. (*See id.* at 119:25-120:9; 128:7-20 & 187:12-188:7.) Similarly, in one of his published meta-analyses, Dr. Ix and a co-author independently reviewed each of the included studies to verify that they were adhering to the pre-defined inclusion and exclusion criteria. (*See id.* at 188:8-189:2.) Even though he testified in his deposition that he "would have liked to," Dr. Ix chose not to seek independent verification in this litigation because he "didn't want [his] opinion to be influenced by . . . others that might have been involved in reviewing the manuscripts. . . ." (*See id.* at 188:3-189:9.)

Moreover, Dr. Ix's methodology irreconcilably conflicts with the hierarchy he identified for assessing the various types of epidemiological data. He testified that the "highest level of evidence" in support of causation from an epidemiological perspective is randomized, double-

blind placebo controlled trials[2] followed by prospective observational cohort studies and retrospective, observational cohort studies. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20). at 45:2-11 & 148:3-5.) Consistent with this hierarchy, he excluded "studies that were retrospective, case-control, non-randomized or did not have placebo arms" from his published research. (*See id.* at 189:14-20.) But here, all of the studies Dr. Ix included in his litigation meta-analysis were retrospective and non-randomized. (*See id.* at 189:21-190:5.) Thus, Dr. Ix performed his litigation meta-analysis using studies that he would not have relied upon for his peer-reviewed works.

Similarly, Dr. Ix's litigation meta-analysis is less statistically precise than his published research. In particular, Dr. Ix's meta-analysis studying acetylcysteine had a confidence interval of -.343 and -0.11, which he described as "quite narrow." (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 190:15-191:25.)[3] By contrast, Dr. Ix's meta-analysis for the plaintiffs suffered from a much wider confidence interval: 5.18864 and 25.326.[4] (*See* Ix Report (Ex. 5), at 26.) The extreme difference in range of precision highlights the unreliability of Dr. Ix's methodology by illustrating that he requires narrower confidence intervals for his professional research than for his study in this litigation that will be presented to a lay jury under the guise of science.

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[2] *See also In re Bextra & Celebrex Mktg. Sales Practices & Prods. Liab. Litig.*, 524 F. Supp. 2d 1166, 1173 (N.D. Cal. 2007) (stating that "[t]he 'gold standard' for determining whether a drug is related to the risk of developing an adverse health outcome is a 'randomized clinical trial' in which the subjects are randomly assigned to one of two groups: one group exposed to the drug of interest and the other not exposed").

[3] The more narrow the confidence interval, the more precise the study. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 190-91.)

[4] The studies Dr. Ix included in his litigation meta-analysis had the following confidence intervals: Marckmann: 2.303 to 120; Deo: 1.39 to 132; Jennifer: 1.01 to 82; Shabana: 2.17 to 160; and 2.627 to 28.1538. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 192:1-193:11); Ix Report (Ex. 5), at 26.) All of the studies had very wide confidence intervals that indicate a lack of statistical precision. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 192:1-193:11.)

B. Dr. Ix's Opinions Would Not Withstand Peer Review.

Dr. Ix's conclusions would not withstand the critical eye of his peers because his self-described method of deriving these conclusions applies a less stringent standard than that required for publication in peer-review medical literature. Combined with his methodology deviations, Dr. Ix's decision to apply this watered-down standard reveals that he has failed to adhere to the same intellectual rigor that characterizes his independent research.

Dr. Ix testified in his deposition that he was giving his opinions to a "more likely than not" standard for this litigation. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 168:4-24; 169:18-170:16 & 196:15-197:7.) In the same breath, he acknowledged that this standard was different (*i.e.*, lower) than that required for publication in the peer-reviewed medical literature. (*See id.* at 168, 170, 196-97.) When presented with a peer-reviewed, published article that applied the Bradford Hill criteria to assess whether a causal relationship existed between GBCAs and NSF, concluding that "[a]lthough the current evidence makes Gadolinium a strong suspect as an etiologic agent for NSF and the presence of severe renal failure, the dye is not cast yet," Dr. Ix disagreed:

> I also think again that this is being published in the medical literature, so it's being held to a different standard than I'm being asked to give my opinion on in regards to this litigation.

(*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 195:1-197:17) (contrasting the "more likely than not" standard with the standard applied to peer-reviewed medical literature). Dr. Ix described that his "more likely than not" standard "leaves the possibility that there is . . . more to be written on this topic in the future." (*See id.* at 197:8-17.) In essence, Dr. Ix contends that his opinions are sufficient for the courtroom and a lay jury, but lack the reliability to pass scientific scrutiny. Significantly, the Supreme Court holds a different view. Under *Daubert* and the Federal Rules

of Evidence, unless and until an expert's opinions are sufficiently reliable to pass muster under the exacting eyes of fellow researchers, they should not be introduced in court.

Furthermore, Dr. Ix's general causation opinions are also suspect because he has never applied Bradford Hill's widely accepted criteria and he lacks any professional experience that would qualify him to assess causation through the criteria's implementation. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 194:3-19.) Aside from mentioning them in class, Dr. Ix has never employed the Bradford Hill criteria, nor published on them, nor ever taught specifically on their application. (*See id.* at 194.) In a case very similar to the one at bar, the Southern District of New York excluded an epidemiologist's causation opinions, in part, after it was shown that he lacked any experience applying the Bradford Hill criteria outside of litigation. *In re Fosamax*, 645 F. Supp. 2d at 188. Just like Dr. Ix, the epidemiologist there had neither applied the Bradford Hill criteria in practice nor authored an article concerning their application. *Id.* The *Fosamax* court held that the epidemiologist did not apply "the same level of intellectual rigor that characterized his work as an epidemiologist in the field." *Id.* at 187. The same rationale should hold true for Dr. Ix and, likewise, prevent him from offering his opinions to the jury.

Dr. Ix's opinions are unreliable because he did not require the same demanding standards as those that characterize his independent research. His failures to comply with widely accepted and scientifically sound epidemiologic methods and standards severely undermine the reliability of his litigation research. Accordingly, this Court should exclude Dr. Ix from testifying about his meta-analysis or general causation opinions.

IV. Dr. Ix Failed to Employ Reliable Principles and Methods and Did Not Faithfully Apply Them to the Facts of This Litigation.

A. Dr. Ix's Methods and Principles Are Unreliable.

A trial court should protect a jury from an expert who fails to abide by scientifically valid methods and principles. *Daubert*, 509 U.S. at 589. Here, Dr. Ix could not identify any text or "guiding light" that he relied on to design and perform the meta-analysis for the plaintiffs -- his only basis for knowing how to do the meta-analysis was that he had performed one in the past and taken a course on the technique while completing his master's degree. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 95:12-96:19.) He did not consult with any other epidemiologists about the selection criteria necessary for deciding which studies to include in his litigation meta-analysis. (*See id.* at 119:21-120:9.) Nor did any of Dr. Ix's colleagues test or independently verify that he complied with his selection criteria. (*See id.* at 188:2-189:25.) Similarly, he did not rely on any colleagues for locating journals that may contain relevant studies. (*See id.* at 128:14-20.) Thus, Dr. Ix's methods and principles lack the scientific safeguards of reliability.

B. Dr. Ix Imputed and Disregarded Data Without a Scientific Basis for this Methodology.

After selecting which studies to include in his meta-analysis, Dr. Ix extracted patient data from five published studies to calculate an odds ratio of the probability that a patient suffering from kidney disease and undergoing dialysis would develop NSF after being exposed to GBCAs. (*See* Ix Report (Ex. 5), at 10-27.) However, in arriving at this estimate, Dr. Ix imputed, *i.e.*, added, data into four of the five studies. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 149:10-151:4.) Specifically, Dr. Ix added a single case of NSF without antecedent GBCA exposure to the patient data in the underlying studies. (*See* Ix Report (Ex. 5), at 12, 13, 15, 16, 18, & 20-21); (*see also* Sept. 22 Ix Dep. Tr. (Ex. 20), at 149:10-151:4.) During his deposition, Dr. Ix could not provide any authority for his decision to impute the additional data into his litigation meta-analysis. (*See*

Sept. 22 Ix Dep. Tr. (Ex. 20), at 149:10-151:4.) When pressed for any authority supporting his decision, Dr. Ix quipped that "this may be a good question to ask a Ph.D level biostatistician about whether there are methods to [calculate an odds ratio] without imputing a case [of NSF without antecedent GBCA exposure]." (*Id.* at 151:5-152:2.) Dr. Ix's own published works further call into question his methods here, since he admittedly did not impute any patient data into his peer-reviewed studies. (*Id.* at 193:12-194:2.)

Further, Dr. Ix failed to consider studies that did not report an association between GBCAs and NSF and ignored the possibility of confounding factors contributing to the development of NSF. In addition to adding data not found in the underlying studies, Dr. Ix intentionally excluded studies failing to find an association between GBCAs and NSF. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 105:25-107:3.) While Dr. Ix referenced co-factors in his report, he contradicted that at his deposition. (*See id.* at 153:8-154:2.) By failing to consider negative studies and other possible causative agents, Dr. Ix is misleading the jury by not providing the complete picture. *See Nelson*, No. 95-1112, 1998 WL 1297690, at *4 (excluding an expert witness who failed to take into consideration confounding factors).

V. Dr. Ix Prepared His Opinions Solely for this Litigation.

Dr. Ix's opinions originated solely from his work as the plaintiffs' generic expert in epidemiology, and this relationship has tainted every aspect of his research. As demonstrated by his methodology, Dr. Ix's lack of independence severely compromises his ability to fairly evaluate the medical literature and render reliable opinions. Therefore, this Court should rigorously apply the *Daubert* factors to Dr. Ix's opinions. *Johnson*, 484 F.3d at 435.

Plaintiffs' influence over Dr. Ix is most clear when examining the decision to ignore the presence of confounding factors. Dr. Ix admitted that he did not take them into account because he "was . . . asked specifically to look at Gadolinium-based contrast agents" by the plaintiffs.

(*See id.* at 153:20-154:2.) The plaintiffs crafted the research question and Dr. Ix provided the answer they desired, but he did so only by deviating from his standard methods for peer-reviewed research and employing a weaker standard that would not survive scrutiny by his peers. Moreover, prior to his being retained by the plaintiffs, Dr. Ix had never researched GBCAs or NSF. (*See* Sept. 22 Ix Dep. Tr. (Ex. 20), at 27:1-7; 28:11-24 & 30:13-25.) Accordingly, Dr. Ix's meta-analysis opinions do not flow naturally from his work as an epidemiologist, and instead emanate solely from his association with the plaintiffs. Thus, this Court should shut the gate on Dr. Ix and prevent his unreliable opinions from influencing the jury. *See Johnson*, 484 F.3d at 434; *see also Daubert II*, 43 F.3d at 1317 (noting that reliability inquiry includes scrutiny of whether expert arrived at opinions solely for purpose of litigation).

CONCLUSION

The plaintiffs will be unable to overcome the serious questions surrounding the methods and standards Dr. Ix employed for this litigation. Dr. Ix ignored methods he previously relied upon to perform independent research and arrived at his causation opinions only after applying a watered-down standard that would not withstand peer review. Dr. Ix's opinions are unreliable because they lack the same level of intellectual rigor that characterizes his independent research, he did not employ reliable methods and principles, he failed to apply the methods and principles of epidemiology faithfully to the facts of this litigation, and his interest in this research derives solely from his employment as a generic expert witness for Plaintiffs. Dr. Ix's general causation opinions are unreliable and lack the safeguards of "good science." For all these reasons, GEHC respectfully moves this Court to enter an order excluding the plaintiffs' generic expert, Joachim H. Ix, M.D., MAS, from testifying about the epidemiologic association or putative causal relationship between GBCAs and NSF.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically on February 12, 2010. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Charna E. Sherman
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