

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

Name: Christopher Dunn Heagerty

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(including county) County, TN 37902

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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.

Chancellor, Knox County Chancery Court - Part III

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

I was licensed to practice law in Tennessee in 1994. Tennessee BPR No. 016728

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. Tennessee BPR No. 016728 (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).

- Carpenter & O'Connor, PLLC, 500 South Gay Street, Knoxville, TN 37902 - Associate (1994-2000), Partner (2000-2004).
- Hodges, Doughty & Carson, PLLC, 445 South Gay Street, Knoxville, TN 37902 - Associate (2004-2005), Partner (2005 - 2014).
- Private Practice, Knoxville, TN 37902 - Attorney (2014-2021).
- Chancellor, Knox County Chancery Court - Part III (January 23, 2021 - Present).

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.

Not applicable.

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

I currently serve as Chancellor in Part III of the Knox County Chancery Court. In this position, I hear and decide all civil actions cognizable in the chancery court. The major areas of law which constitute the court's docket, in terms of breakdown by percentage of the whole, are: Family Law (40%); Adoption and Termination of Parental Rights (10%); Guardianship and Conservatorship matters (10%); Commercial litigation (10%); Construction litigation (15%); Probate (10%); and other general litigation matters (5%).

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.

My experience in the practice of law, as a lawyer and chancellor, has been almost exclusively in the area of civil litigation. After a clerkship with Hodges, Doughty & Carson during law school, I was hired by the Carpenter & O'Connor firm in Knoxville as an associate attorney. I was given the responsibility of handling all of the firm's subrogation files. Because the firm was founded upon insurance defense, the representative insurance companies would send a multitude of subrogation cases involving personal injury and/or property damage for filing, collection, and/or trial. I prepared and tried these tort cases throughout the state.

During this time, I was also assigned to the firm's senior partner to assist him in the preparation of trial memorandum, the preparation of appellate briefs, and the preparation of cases for trial. His practice was diverse but was mostly concentrated upon the defense of insurance companies in fire and arson cases. These cases were litigated in the circuit, chancery, and federal courts throughout East and Middle Tennessee. My senior partner and mentor encouraged, if not demanded, that I gather and secure a working understanding of the rules of evidence and procedure. It was his firm belief that such an understanding could, on occasion, overcome unfavorable facts. This lesson has been invaluable to me for decades. He also demanded a type of trial preparation at a level that is seldom seen today. He was sometimes stern, often demanding, but never treated me as less than his intellectual equal.

After a very short time, I was allowed to gain invaluable trial experience concerning all of the technical aspects of jury and non-jury trials as lead counsel. As my trial experience grew, I was given the opportunity to handle many different types of cases on my own. Along with the typical automobile accident and slip-and-fall cases to which I was assigned, I diversified my practice to all types of civil litigation. With this independence, I developed my own book of insurance clients and other clientele outside the insurance industry. My non-insurance clients were typically individuals who needed assistance with litigation matters. I have also assisted insurance companies in the investigation of theft and fire loss claims throughout the State through the taking of over two hundred (200) Examinations Under Oath during my career.

After six years as an associate and four years as a partner at Carpenter & O'Connor, I was invited to join the firm of Hodges, Doughty & Carson in Knoxville. This experience was of great benefit to me because that firm handled litigation of all types and not limited to insurance defense. During my ten (10) years at Hodges, Doughty & Carson, I believe that I tried more lawsuits than any member of the firm. This was no small feat as I believe that the firm had some of the best and busiest lawyers in this region during my time there. It was during this time (2004-2015), that I began to have an interest in family law matters. This interest led me to develop an extensive chancery court practice.

I left Hodges, Doughty & Carson in 2015 and established my own law firm. I practiced on my own for six (6) years. During that time, I was involved in cases which involved nearly every cognizable cause of action that can be brought in Chancery Court. When Chancellor Michael Moyers retired, I was encouraged to seek the position by Chancellor Moyers and other members of the bar. Since my appointment in 2020 and my election in 2022, I have strived to be a chancellor that is available, learned, industrious, and fair. I have worked, on average, approximately fifty (50) hours a week while chancellor. I have prepared hundreds of orders and

memorandum opinions. The cases which I have heard and decided as chancellor have been extremely diverse. All of the cases are important. I believe that preparation is pivotal to the process. A judge should be as well prepared, if not more prepared, than those before him as litigants.

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

I have been the attorney of record in twenty (20) civil appellate cases as attorney for the appellant or the appellee. I believe that the case of *Town of Crossville Housing Authority v. Murphy*, 466 S.W. 3d 574 (Tenn. Ct. App. 2014) is illustrative of the type and quality of the representation I provided to my clients in the appellate courts of this state.

Since taking the bench, several of the cases from my court have been the subject of appeal. I reference the opinion of the Eastern Section of the Court of Appeals in *John Doe Corporation v. Kennerly, Montgomery and Finley, LLC*, 707 S.W.3d 911 (Tenn. Ct. App. 2024), *perm. app. denied* (2024) as indicative of my analytical abilities, which the Court of Appeals quoted extensively from my memorandum opinion in upholding and affirming the ruling below.

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.

During my term as Chancellor, I have been asked to serve as a judicial mediator of disputes from surrounding counties. These requests have come from chancellors, judges, and attorneys and have arisen from both pending cases and civil disputes which had yet to be filed. None of these cases could be described as "noteworthy," but involved civil disputes which were important to the parties and which required some degree of assistance to reach a conclusion. Most of these cases involved disputes arising from alleged breach of contract or construction related matters.

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.

From 2014 to 2021 and while I was in private practice, the chancellors of the Knox County Chancery Court appointed me guardian *ad litem* in numerous cases. These cases were primarily related to conservatorships or actions for the termination of parental rights. A conservative estimate of the number of cases to which I was appointed would exceed fifty (50) in total. The insights gained by me personally through these experiences were both educational and beneficial.

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

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.

In the spring of 2017, I applied for the position of Magistrate Judge for the United States District Court for the Eastern District of Tennessee. I was not chosen for the position.

On September 30, 2020, I made application to the Tennessee Trial Court Vacancy Commission for appointment to the position of Chancellor of the Knox County Chancery Court. I believe that I was interviewed by the Commission on October 28th or 29th of 2020. The Commission submitted my name to the Governor as a nominee. I was ultimately selected by Governor Lee to fill the position.

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: 1982-1988 (Bachelor of Arts Degree).

Memphis State University (Cecil C. Humphreys School of Law): 1991-1992.

I transferred to the University of Tennessee College of Law after my first year of law school.

University of Tennessee College of Law: 1992-1994. I received my law degree in spring of 1994.

PERSONAL INFORMATION

15. State your age and date of birth.

I was born [REDACTED] 1964 and am 61 years of age.

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

I have lived in Tennessee my entire life.

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

I have lived in Knox County my entire life. I was a student resident of Shelby County for nine (9) months during my first year of law school at Cecil C. Humphreys School of Law.

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

Knox County

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

Not Applicable.

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.

In 2015, I responded to a complaint filed against me with the Tennessee Board of Professional Responsibility by my client Caroline Swann. The complaint concerned a claim of legal malpractice relating to the running of a statute of limitations as it applied to her claim for property damage against a contractor who had performed construction at her home. The Board conducted an investigation of the circumstances surrounding the claim and issued a private reprimand to me.

In April of 2023, I responded to a complaint filed against me with the Tennessee Board of Professional Responsibility by my client. The complaint was investigated by the Board and was dismissed.

In October of 2024, a complaint was filed against me with the Board of Judicial Conduct by a party to a civil action in the Chancery Court. This complaint was dismissed without the requirement of a response from the undersigned.

In September of 2025, a complaint was filed against me with the Board of Judicial Conduct by a witness in a civil action before the Court. This complaint was dismissed by letter of November 13, 2025.

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.

Yes. A Notice of Federal Tax Lien was filed against me in the Register of Deeds for Knox County on January 28, 2021. The total amount of this assessment, including penalty, interest, and costs, has been resolved by payment in full.

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.

C.H.F., Inc. v. Christopher D. Heagerty and Kimberlie Heagerty, Davidson County General Sessions Court No. 16GC15K0. This matter was a suit of collection of medical bills incurred for treatment in 2015. The civil warrant was not served on me, and a judgment was entered. This matter was subsequently paid in full.

Christopher D. Heagerty v. Kimberlie M. Heagerty, Knox County Chancery Court No. 191805-2. This divorce action was settled after mediation.

Caroline Swann v. Christopher D. Heagerty and Hodges, Doughty & Carson, Jefferson County Circuit Court No. 15-cv-132. This malpractice action was settled after mediation. The suit involved the running of the statute of limitations in relation to the Plaintiff's property damage claim resulting from construction at her home.

Connie Craft v. Main Street Law Office, PLLC, Keith Stewart, and Christopher D. Heagerty, Knox County Circuit Court No. 3-221-22. This legal malpractice action was voluntarily dismissed as to the undersigned shortly after it was filed. The remaining defendants settled the matter through mediation.

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.

Sacred Heart Cathedral, Knoxville, TN - Communicant.

Sigma Chi Fraternity Housing Corporation - Beta Sigma Chapter (2007-2021).

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.

Yes. I was a member of the Beta Sigma Chapter of the Sigma Chi Fraternity during my undergraduate education. The Sigma Chi Fraternity limits its membership to men. I am no longer an active member of the fraternity, advisory board, or any affiliated alumni association.

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: (1994-Present).

Knoxville Bar Association: (1994-2015, 2019 - Present).

Hamilton Burnett Inns of Court: Member (2010-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.

2005 Recipient of The Legal Aid of East Tennessee "Pro Bono Partner Award."

Tennessee Bar Association Leadership Law - Class of 2005.

2013 *Cityview Magazine*: Best Lawyers - Insurance Law.

2017 Recipient of a Tennessee Supreme Court commendation for pro bono hours expended during the calendar year.

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

I have not published any "legal articles," but my works have been published several times as a guest contributor in the Knoxville Bar Association periodical, *Dicta*, on issues relating to voting, voting rights, and employee rights on election day while a member of the Knox County Election Commission.

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.

Adjunct Professor of Law, Lincoln Memorial University, Duncan School of Law, Remedies, Domestic Relations (Fall 2023 - Present).

Adjunct Professor of Law, University of Tennessee, Winston School of Law, Contract Drafting (Fall 2025 - Present).

Knoxville Bar Association, Continuing Legal Education: *Ain't Behavin': What Not To Do – A View from the Bench*, November 5, 2021.

Knoxville Bar Association, Continuing Legal Education: *How to Expedite Your Divorce Case in Knox County Chancery Court*, June 7, 2022.

Knoxville Bar Association, Continuing Legal Education: *Chancery Court Practice - Bench Bar Conference*, May 12, 2023.

Knoxville Bar Association, Continuing Legal Education: *Family Law 101: An Introduction and Overview*, June 20, 2024.

Knoxville Bar Association, Continuing Legal Education: *Contempt Proceedings in Family Law*, November 12, 2025.

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.

Knox County Election Commission: Member (2002-2020); Chairman (2004-2020). The Election Commission is appointed by the members of the Knox County legislative delegation. Each appointment is for a two (2) year term.

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.

See attached:

- (1) Memorandum Opinion, Order, and Final Judgment, entered February 15, 2023 by interchange, *John Doe Corp. v. Kennerly, Montgomery & Finney, P.C.*, Knox County Circuit Court Docket No: 2-343-20, affirmed by *John Doe Corp. v. Kennerly, Montgomery & Finney, P.C.*, 707 S.W.3d 911 (Tenn. Ct. App. 2024);
- (2) Memorandum Opinion and Order, entered March 31, 2025, *John Doe v. Third Dimension Technologies, LLC et al.*, Knox County Chancery Court Docket No: 199786-3.

ESSAYS/PERSONAL STATEMENTS

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

I would like to continue to serve my community in a different function. I was privileged to serve the people of Knox County for nearly twenty years as a member of the Knox County Election Commission. I have likewise been privileged to serve the the people of Knox County as chancellor for five years. I believe that my perceived talents would, and could, be put to their best use through service on the Court of Appeals. I have and possess a vast array of experience in the trial courts of this state that, I believe, would be beneficial to the analysis of problems arising in the trial courts of this grand division of the State.

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)*

I was selected as a member of the Tennessee Bar Association Leadership Law Class of 2005. I have been the recipient of several commendations for pro bono service to the community from both the Knoxville Bar Association and the Tennessee Supreme Court. Most recently, I was elected to the board of directors of "Care Cuts," a local non-profit which provides, among other aid, legal assistance to the homeless of Knoxville. It is my firm conviction that all of the dispossessed, particularly those suffering from mental illness, should receive aid, assistance, and legal services from their community. This conviction stems, in no small part, from the fact that I live just a few hundred yards away from the "Care-Cuts" facility on North Gay Street in downtown Knoxville.

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

I seek appointment to the Eastern Section of the Tennessee Court of Appeals. This court is available for appellate review of the judgments of the trial courts of record in the Eastern Grand Division of the State of Tennessee. The court is made up of four judges who hear both appeals as of right and interlocutory appeals from the trial courts. I believe that my selection would bring a wealth of litigation experience to the court as well as a strong work ethic, writing skills, and a broad range of understanding of diverse legal issues.

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)*

I believe that the individual achievement of a legal education is a benefit to the community. As such, I would continue to teach the law as an adjunct professor. I would also continue my involvement in community-based services provided by the non-profit organization of which I have been recently associated. I find that community involvement is pivotal to individual self-worth and personal industry.

See also Response to Paragraph 36 above.

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

I left employment with Hodges, Doughty and Carson in 2014. The cause of the severance was my addiction to alcohol. This addiction caused the loss of my job. I sought treatment in both Nashville and Knoxville. After my treatment was complete, I returned to my family and attempted to rebuild my life. I gained primary custody of my children and went to work as a solo practitioner. I rebuilt my law practice and my life. I have not had a drink of alcohol in eleven years. In the interim, I have raised two children, provided both of them with a college education, and supported them in all of their endeavors. In addition, I was appointed chancellor by Governor Lee, and have since been elected to the position in a general election. This experience has taught me much about myself and others. I have used this experience to see the world through the eyes of others and to seek tolerance, justice, industry, and perseverance. I am not proud. I am beholden. I no longer seek to be a "great" man, only a "good" one.

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

Yes. I believe in the Rule of Law. It is the responsibility of the judiciary to uphold and enforce the law. This is true regardless of any personal thoughts or convictions that the individual judge may have regarding the rule, statute, or regulation in question. A judge should interpret, not legislate. Legislation is the business of the General Assembly.

On several occasions during the course of serving as a lawyer, and as chancellor, I have come across situations where claimants were denied access to a remedy because they had brought their claims outside the statute of limitations or contractual limitations period. As counsel for the defendant, or as chancellor in these actions, it was obvious that the limitations period provided by a statute or contract would deny redress to the plaintiff or claimant. While some of the claimants or plaintiffs were highly sympathetic, the statute or contractual limitation period clearly excluded their claims from consideration.

In like manner, as an election official I was forced to turn away many would-be voters on election day because the individual had failed to register or timely register to insure their right to vote in a particular election.

While both of these situations led to a harsh result and because the rules, statutes, or regulations had been put in place by the legislative body, it was beyond my authority or discretion to ignore the plainly stated rule, statute, or regulation.

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. Congressman Timothy F. Burchett,	[REDACTED]
[REDACTED]	
B. J. Chadwick Hatmaker, Esq., Woolf, McClane, Bright, Allen & Carpenter, PLLC,	[REDACTED]
[REDACTED]	
C. Robert E. Petrone, Retired,	[REDACTED]
D. Chancellor John F. Weaver,	[REDACTED]
E. Shea Welford, Martin, Tate, Morrow and Marston, P.C.,	[REDACTED]
[REDACTED]	

AFFIRMATION CONCERNING APPLICATION

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

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

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

Dated: December 1, 20 25. Christopher D. Heagerty
Signature

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

FILED
CHARLES D. SUSANO II
RK

IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

JOHN DOE CORPORATION,

Plaintiff,

v.

KENNERLY, MONTGOMERY &
FINLEY, P.C.,

Defendant.

2023 FEB 15 PM 2:17

KNOX COUNTY CIRCUIT
CIVIL SESSIONS
AND JUVENILE COURTS

No. 2-343-20

**MEMORANDUM OPINION,
ORDER, and FINAL JUDGMENT**

This civil action came before the Court for hearing on January 9, 2023, before the undersigned (sitting by interchange), upon the MOTION TO ALTER OR AMEND JUDGMENT filed by Plaintiff ("John Doe Corporation") on October 6, 2021, the DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND filed November 3, 2021, PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO ALTER OR AMEND filed November 5, 2021, and PLAINTIFF'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT WITH ELECTION TO VOID JUDGMENT filed June 24, 2022.¹ After reviewing the MOTION TO ALTER OR AMEND JUDGMENT, the response of Defendant ("Kennelly, Montgomery & Finley, P.C."), Plaintiff's reply thereto, PLAINTIFF'S SUPPLEMENTAL BRIEF IN

¹ The Court is tasked to hear this civil action pursuant to the June 2, 2022 ORDER of then presiding Judge Clarence E. Pridemore, assigning the undersigned responsibility of hearing this matter by interchange, as a result of the recusal of Judge William T. Ailor. Judge Ailor recused himself from this civil action by ORDER of April 5, 2022, for the reasons set forth therein.

SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT WITH ELECTION TO VOID JUDGMENT, the entire court file, and hearing the arguments of counsel for both parties, the Court took the matter under advisement and granted leave to the parties to submit further authorities in support of their respective positions within the five (5) days following the hearing. Both parties took the opportunity to file additional submissions. The matter is now ripe for consideration. The following will serve as the Court's MEMORANDUM OPINION, ORDER AND FINAL JUDGMENT with regard to the issues addressed herein.

I. Procedural Posture of the Case:

This action was filed on October 28, 2020. The action sounds in legal malpractice. See Complaint for Legal Malpractice. The COMPLAINT was filed on behalf of the Plaintiff by Attorney Mark N. Foster. Id. The case was assigned to the Honorable William T. Ailor, Judge of the Circuit Court for Knox County, Tennessee (Division II), in the normal fashion under which cases are typically assigned in this judicial district.² Defendant was served with the SUMMONS and COMPLAINT on October 28, 2020. An ANSWER was filed on behalf of Defendant on December 18,

² The Knox County Circuit Court Clerk identifies civil actions under a "rotation" in which cases are sequentially assigned to a particular Division of the Court (I, II, or III), in the order in which they are filed, with each case receiving a case number, and a number designating a division to which the case will be assigned, and a number reflecting the last two digits of the year the action is filed. For example, this case was designated to Division II, under case number 343, in the year 2020. This methodology is illustrated as follows:

(Division) - (Case Number) - (Year):

2 - 343 - 20

or

2-343-20

2

2020. See Summons (with return) & *Answer*. The ANSWER was filed by Knox County Attorneys Greg Brown and Chelsea Spurling. While no ORDER OF SUBSTITUTION or NOTICE OF APPEARANCE was filed with the Court, Attorney Daniel J. Ripper of the Hamilton County Bar filed a MOTION TO DISMISS on behalf of the Defendant on June 3, 2021. A MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS was also filed on June 3, 2021. This Motion and Memorandum were mailed to Attorney Foster.

On July 7, 2021, an AGREED ORDER SUBSTITUTING COUNSEL FOR PLAINTIFF was entered by Judge Ailor substituting Attorney H. Anthony Duncan for Mark N. Foster as attorney for Plaintiff. On July 13, 2021, Attorney Ripper again filed a MOTION TO DISMISS on behalf of Defendant, along with a MEMORANDUM OF LAW. These repeat submissions to the Court were, in all respects, identical to those filed on June 3, 2021, with the exception that the second Motion and Memorandum were mailed to Attorney Duncan. On September 13, 2021, the Court issued an ORDER ON DEFENDANT'S MOTION TO DISMISS. By this Order, the Court dismissed the COMPLAINT FOR LEGAL MALPRACTICE, stating: "After review of the Motion and Complaint, and the file as a whole, including the lack of response from the Plaintiff, the Court is of the opinion that the statute of limitations expired and, therefore, Defendant's Motion to Dismiss should be GRANTED." Plaintiff filed a timely MOTION TO ALTER OR AMEND JUDGMENT on October 6, 2021.

In support of its MOTION TO ALTER OR AMEND JUDGMENT, Plaintiff asserts: (1) that “[t]his Court granted Defendant’s Motion to Dismiss while it was pending, without notice or a hearing, via an order entered *sua sponte* on September 13, 2021”; and (2) that “[t]his *sua sponte* dismissal violates Plaintiff’s procedural due process rights under both U.S. Constitution and the Tennessee Constitution since no hearing or meaningful opportunity to be heard was afforded to Plaintiff as to the Motion”. See Motion to Alter or Amend Judgment, pp. 1-3. Defendant filed its RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION TO ALTER OR AMEND on November 3, 2021. On November 5, 2021, Plaintiff filed a REPLY IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT. On January 31, 2022, PLAINTIFF’S MOTION FOR MANDATORY RECUSAL was filed. Defendant’s response thereto was filed on February 25, 2022. See Defendant’s Response in Opposition to Plaintiff’s Motion for Mandatory Recusal. On April 5, 2022, Judge Ailor signed an ORDER in which he recused himself from further consideration of this case. See Order- Filed April 5, 2022. On June 2, 2022, an ORDER was entered which directed the undersigned to hear this civil action by interchange. See Order - Filed June 2, 2022. Thereafter, on June 24, 2022, PLAINTIFF’S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT WITH ELECTION TO VOID JUDGMENT was filed.

On January 9, 2023, a hearing was convened before the undersigned for argument of the issues raised by the MOTION TO ALTER OR AMEND JUDGMENT and the ELECTION TO VOID JUDGMENT.

II. Facts:

This COMPLAINT arises from Defendant's alleged failure to ensure that a judgment rendered more than ten (10) years ago, in favor of "John Doe Corporation," was revived within the applicable limitation period for judgments. See Complaint, p. 4, ¶ 16. The judgment in question was rendered in *Tennessee Valley Orthopedics & Sports Medicine Associates, P.C. v. Teresa A. Hightower and David C. Hightower*, Knox County Chancery Court No. 169103-1 (the "underlying case"). Based upon the facts recited to the Court in Plaintiff's MOTION TO ALTER OR AMEND JUDGMENT, there is no question that Judge Ailor, then in private practice, represented the Defendants (the "Hightowers") in the underlying case. See also Rule Docket, No. 169103-1. It is equally clear that Kennerly, Montgomery & Finley, P.C. ("KMF") represented the Plaintiff in the underlying case. Id.

In the case at bar, the COMPLAINT does not mention or reveal the identity of the Judgment Creditor or Judgment Debtor in the underlying action. Id. Nor is there mention of the venue in which the underlying action took place. Id. The parties to the underlying action are not identified in the file of this Court until such reference is made in the MOTION TO ALTER OR AMEND JUDGMENT filed on October 6, 2021. This motion was filed twenty-three days after the case was dismissed on September 13, 2021.³

³ The Declaration of H. Anthony Duncan, attached to the MOTION TO ALTER OR AMEND JUDGMENT, states:

6. I performed my due diligence in researching the facts of this case and the applicable law. As part of my research, I discovered that Judge Ailor had represented the defendants in the underlying case (footnote omitted - identifying case No. 169103-1) that the complained of

Plaintiff's MOTION FOR MANDATORY RECUSAL was not filed until January 31, 2022, four (4) months after Plaintiff's counsel knew of the alleged grounds requiring recusal. See Footnote 3. For the reasons set forth below, Plaintiff's MOTION TO ALTER OR AMEND JUDGMENT is OVERRULED. Further, and as set forth more fully herein, Plaintiff's ELECTION TO VOID JUDGMENT is declared VOID by waiver of the right asserted therein.

III. Analysis:

Plaintiff insists that the ORDER ON DEFENDANT'S MOTION TO DISMISS entered by Judge Ailor in this case is void due to his involvement in the "underlying case" referenced above. In that case, Judge Ailor represented judgment debtors, who are not named as parties herein. Plaintiff bases this argument upon Article VI, § 11, of the *Tennessee Constitution* and *Tenn. Code Ann.* § 17-2-101. The referenced provisions state, in pertinent part, as follows:

No judge of the Supreme or Inferior Courts shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity of consanguinity, within such degrees as may be prescribed by law, or in which he may have been of counsel, or in which he may have presided in any Inferior Court, except by consent of all the parties.

malpractice arose from before he became a judge. Accordingly, His Honor, in my professional opinion, is disqualified from presiding over this case. (Citations omitted).

7. I was in the process of drafting a motion seeking His Honor's recusal when I found out from Defendant's counsel, Dan Ripper, Esq., during a telephone call on the afternoon of Friday, Sept. 17, 2021, that this case had been dismissed *sun sponte*, without notice or a hearing.

....

Tennessee Constitution, Art. VI, § 11 (emphasis added). The competency of judges and chancellors is further circumscribed by *Tenn. Code Ann.* § 17-2-101(3), which provides that: "No judge or chancellor shall be competent, except by consent of all parties, to sit in the following cases: (3) Where the judge or chancellor has been of counsel in the cause [.]” Plaintiff argues that Judge Ailor’s representation of a judgment debtor in a case giving rise to this legal malpractice claim against the law firm of the judgment creditor somehow renders him incompetent to sit as judge in this case, and thus renders the judgment of dismissal of this legal malpractice case a nullity. Plaintiff’s argument presumes, without citation of authority, that the “underlying” collection case and the legal malpractice case at bar would be deemed the “same case” for the purposes of analysis under the constitutional provision and the referenced statute. The issue in this regard is far from clear. See *State v. Warner*, 649 S.W.2d 580, 581 (Tenn. 1983)(“We agree with the intermediate court that the constitutional disqualification is limited by its very language to the cause on trial and does not include prior concluded trials....”)(emphasis in original); see also *State v. Conway*, 77 S.W.3d 213, 225 (Tenn. Crim. App. 2001)(Following *State v. Warner*, supra).

In support of this argument, Plaintiff relies upon *Reams v. Kearns*, 45 Tenn. (5 Cold.) 217, 219-20 (1867) which states that a judgment rendered by a judge who was once of counsel in the same action is a “mere nullity.” While illustrative of the prior law on this subject, careful research reveals *Reams* was later overruled on this point.

See *Holmes v. Eason*, 76 Tenn. (8 Lea) 754, 758-62 (1882).⁴ In fact, a decisional history of this “issue,” and the *Reams* case, is set forth in *Radford Trust Co. v. East Tennessee Lumber Co.*, 92 Tenn. (8 Pickle) 126, 21 S.W. 329, 331 (1893), which lends the following additional analysis to the problem before this Court:

The right to a trial by an impartial judge is a very high right, but these cases establish, not only that one may consent to a trial before a disqualified judge, but that if he fails to object he is conclusively presumed to consent.

Counsel for Plaintiff admits that he had knowledge of the grounds which allegedly required Judge Ailor’s recusal prior to the time when the case was dismissed on September 13, 2021. See *Footnote 3*. Plaintiff’s failure to bring this issue before the Court prior to the time when the judgment of dismissal was rendered, and at which time counsel had full knowledge of the existence of these grounds, constitutes a waiver of Plaintiff’s right to object and also gives rise to a conclusive presumption that the case was heard with the non-objecting party’s consent to the alleged grounds for disqualification. See *Radford Trust Co. v. East Tennessee Lumber Co.*, 21 S.W. at 331.⁵ The Court further finds that the “underlying” collection case and the case at bar do not constitute the “same case” for the purposes of the analysis of the facts under

⁴ Disqualification of a judge by reason of having been counsel in the case is waived by going to trial without objection as to that issue, and the judgment entered by the judge will not be invalid or void and may not be even voidable. *Id.* at 756-758; see also *Wroe v. Greer*, 32 Tenn. (2 Swan) 172 (1852); *Crozier v. Goodwin*, 69 Tenn. (1 Lea) 125 (1878); *Hilton v. Dan’l Miller & Co.*, 73 Tenn. (5 Lea) 395 (1880).

⁵ A party may lose the right to challenge a judge’s impartiality by engaging in strategic conduct. Courts frown upon the manipulation of the impartiality issue to gain procedural advantage and will not permit litigants to refrain from asserting known grounds for disqualification in order “to experiment with the court ... and raise the objection later when the result of the trial is unfavorable.” *Holmes v. Eason*, 76 Tenn. (8 Lea) 754, 757 (1882); see also *Gotwald v. Gotwald*, 768 S.W.2d 689, 694 (Tenn.Ct.App.1988). Thus, recusal motions must be filed promptly after the facts forming the basis for the motion become known, see *United States v. Baker*, 441 F.Supp. 612, 616 (M.D.Tenn.1977); *Hunnicut v. Hunnicutt*, 248 Ga. 516, 283 S.E.2d 891, 893 (1981), and the failure to assert them in a timely manner results in a waiver of a party’s right to question a judge’s impartiality. See *Radford Trust Co. v. East Tennessee Lumber Co.*, 92 Tenn. 126, 136-37, 21 S.W. 329, 331 (1893); *Cook v. State*, 606 S.W.3d 247, 254 (Tenn. 2020).

Article VI, § 11 of the *Tennessee Constitution* and *Tenn. Code Ann.* § 17-2-101(3). See *Order of Recusal* filed April 5, 2022 (The Court acknowledging that it had no knowledge of the identity of the parties to the “underlying case” when ruling upon the MOTION TO DISMISS); see also *State v. Byington*, 2009 WL 5173773 at *4 (Tenn. Crim. App. 2009).

It is, therefore, ORDERED, ADJUDGED, and DECREED, that PLAINTIFF'S ELECTION TO VOID JUDGMENT be, and the same hereby is, declared VOID by waiver of the right asserted therein, and to be of no effect in this civil action.

Plaintiff also takes issue with the manner in which the case was dismissed by the Court, claiming that the procedures employed by the Court are violative of the Plaintiff's Due Process rights under both the State and Federal Constitutions. See *Motion to Alter or Amend Judgment*, pp. 1 & 2. Plaintiff hinges this argument upon the contention that “[t]his Court granted Defendant's Motion to Dismiss while it was pending, without notice or hearing, via an order entered *sua sponte* on September 13, 2021.” Id.

Plaintiff's argument in this regard is without merit. A trial court has the authority to dismiss a case *sua sponte* for failure to state a claim for which relief can be granted. See *Huckeby v. Spangler*, 521 S.W.2d 568, 571 (Tenn. 1975); *Patton v. Estate of Upchurch*, 242 S.W.3d 781, 791 (Tenn. App. 2007); *Donaldson v. Donaldson*, 557 S.W.2d 60 (Tenn. 1977); *Cockrill v. Everett*, 958 S.W.2d 133 (Tenn. App. 1997); *Lackey v. Carson*, 886 S.W.2d 232 (Tenn. App. 1994).

However, Plaintiff's characterization of the order dismissing this case as "*sua sponte*," ignores the accepted definition of such an order. See Gentry v. Former Speaker of the House Glen Casada, 2022 WL 5587720, at *6, Footnote 6 (Tenn. App. - September 17, 2020), perm. app. denied, (Jan. 13, 2021), cert. denied, 141 S.Ct 2804 (June 21, 2021) ("Gentry I").⁶ The ORDER ON DEFENDANT'S MOTION TO DISMISS was not a *sua sponte* order. The order in question was entered upon motion of Defendant.⁷ In fact, Defendant filed its MOTION TO DISMISS twice. See Procedural Posture of Case, infra, at p. 3. The MOTION TO DISMISS was mailed to counsel for Plaintiff. Under the rules then in effect (See Amended COVID-19 Comprehensive Plan of Action), motion practice in the Knox County Circuit Court was controlled by the following edict:

For any other motion filed after May 1, any party opposing the motion will have thirty days to file a written response and thereafter the Court may rule without the need for a hearing.⁸

Under this rule, and the notice provisions of Rule 5.01 of the *Tennessee Rules of Civil Procedure*, Plaintiff was given notice of the fact that a dispositive motion had been filed against it. Plaintiff failed to file a response to the dispositive motion. The order dismissing Plaintiff's case was not of the Court's own accord, but was rather at the

⁶ "Sua Sponte" is Latin for "of one's own accord; voluntarily." Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary defines the term to mean: "[w]ithout prompting or suggestion; on its own motion." Id. An example of its use is: "the court took notice sua sponte that it lacked jurisdiction over the case." Id.

⁷ "[T]he term 'motion' generally means '[a]n application made to a court or judge for purpose of obtaining a rule or order directing some act to be done in favor of the applicant.' Black's Law Dictionary (6th ed.) p. 1013." See Melendez v. U.S., 518 U.S. 120, 116 S.Ct. 2057, 135 L. Ed. 2d 427 (1996).

⁸ Defendant's first and second MOTION TO DISMISS were filed and served after May 1, 2020.

request of the Defendant, and in accordance with the clear wording of the rules then in effect. It was not a *sua sponte* order of the Court.⁹

For reasons unknown to the undersigned, Plaintiff chose to ignore the fact that a dispositive motion had been filed and failed to follow the rules applicable to motion practice under the COVID-19 plan in place in the Knox County Circuit Court. The record in this civil action also reflects that Plaintiff, as of yet, has failed to substantively respond to the MOTION TO DISMISS filed by the Defendant. Further, the record does not reflect that Plaintiff has filed any request for an enlargement of time to file such a response under Rule 6.02 of the Tennessee Rules of Civil Procedure.

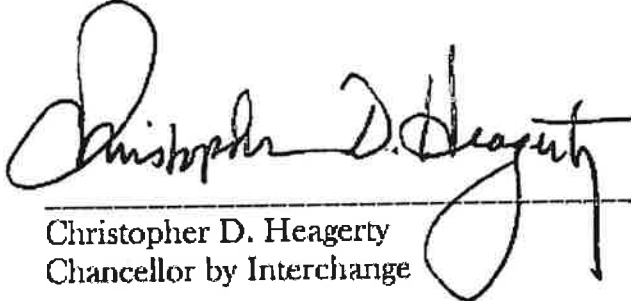
The concept of due process imports an obligation on behalf of the Court to ensure that the parties will be heard and that their arguments will be thoughtfully considered. "Due process does not require that oral argument be permitted on a motion, and except as otherwise provided by local rule, the court has discretion to determine whether it will decide the motion on the papers or hear argument by counsel. Oral argument is especially unnecessary when only questions of law are concerned." *See Jerkins v. McKinney*, 533 S.W.2d 275, 279 (Tenn. 1976); *Hutter v. Bray*, 2002 WL 1190273, at *24 (Tenn. App. June 5, 2002) ("There is no requirement in the rules of civil procedure that oral arguments be permitted on motions. The trial court has the discretion whether it will hear arguments or decide the issues on the

⁹ Defendant's reliance upon *Regions Bank v. Prager*, 625 S.W.3d 842 (Tenn. 2021), is misplaced insofar as the dismissal at issue in that case was truly a *sua sponte* dismissal, entered at the Court's own accord for failure of the Plaintiff to prosecute, rather than at the behest of one of the parties. Notice in the instant case was provided by the filing of the MOTION TO DISMISS and the local rules in place at all times relevant to this cause.

pleadings.”); see also *Simpkins v. John Maher Builders, Inc.*, 2022 WL 1404357, at *24 (Tenn. App. May 4, 2022)(“Although the trial court eventually made a determination concerning Plaintiff’s motions based on written submissions only, such action does not constitute a violation of due process”). In accordance with the foregoing authorities, the Court must find that Plaintiff’s MOTION TO ALTER OR AMEND JUDGMENT is not well taken, and is therefore OVERRULED.

It is, therefore, ORDERED, ADJUDGED, and DECREED that PLAINTIFF’S MOTION TO ALTER OR AMEND JUDGMENT be, and the same is hereby DENIED and OVERRULED. It is further ORDERED, ADJUDGED, and DECREED that PLAINTIFF’S ELECTION TO VOID JUDGMENT be, and the same is hereby declared VOID by waiver of the right asserted therein. As such, there are no further claims or issues which require determination by this Court. The Court’s ORDER ON DEFENDANT’S MOTION TO DISMISS of September 13, 2021 is incorporated herein by reference, as if set forth verbatim. The court costs in this civil action are taxed to Plaintiff, in care of its attorney, for which execution may issue if necessary.

Enter this 15th day of February, 2023.


Christopher D. Heagerty
Chancellor by Interchange

Certificate of Service

The undersigned does hereby certify that a true and correct copy of the foregoing has been mailed (via U.S. Mail) and/or transmitted by email to the following:

H. Anthony Duncan, Esquire
Truxton Trust Bldg.
4525 Harding Pk., Suite 200
Nashville, TN 37205

Daniel J. Ripper, Esquire
P.O. Box 151
Chattanooga, TN 37402

This 15 day of February, 2023.



Circuit Court Clerk

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

JOHN DOE,

Plaintiff,

v.

THIRD DIMENSION TECHNOLOGIES, LLC and
CLARENCE EARL THOMAS, JR.,

Defendants.

oooooooo

Docket No. 199786-3
Notice of Entry Requested

oooooooo

C.D. Heagerty
Chancellor

MEMORANDUM OPINION
&
ORDER

This civil action came on to be heard, before the undersigned, upon the MOTION TO DISMISS of April Loraine Thomas as Executrix of the Estate of Clarence Earl Thomas, Jr. ("Mrs. Thomas"), and PLAINTIFF'S RESPONSE AND MEMORANDUM OF LAW IN OPPOSITION TO THE ESTATE'S MOTION TO DISMISS. After hearing the arguments of counsel for both

parties and reviewing the entire record in this civil action, the Court took the matter under advisement.

Overview:

After the commencement of this civil action, and proper service upon the two (2) defendants, the attorney for both co-defendants (Mr. Attanasio) suggested the death of one co-defendant upon the record. Plaintiff's attorney then filed a timely *Motion for Substitution*, seeking to add the estate of the (decedent) defendant as a party. The motion was served upon the attorney for the original defendants (Mr. Attanasio) in accordance with Rule 5 of the *Tennessee Rules of Civil Procedure*. The *Motion for Substitution* was not served upon a representative or successor of the estate of the deceased co-defendant in accordance with Rule 4 of the *Tennessee Rules of Civil Procedure*. The Plaintiff's attorney also failed to file a notice of hearing of the *Motion for Substitution*. Thereafter, and without being formally served with the *Motion for Substitution*, the representative of the estate (April Loraine Thomas as Executrix of the Estate of Clarence Earl Thomas, Jr.) made an appearance in this action by filing a *Motion to Dismiss* "all claims against it," pursuant to Rules 12.02(6) and 25.01 of the *Tennessee Rules of Civil Procedure*.¹ Mr. Attanasio then moved to

¹ This motion was filed on behalf of the executrix by Attorneys Panter and Garceau. Attorneys Panter and Garceau were subsequently joined in the defense of the Estate by Attorney Rust, who made his separate appearance in this action "without prejudice, and reserving all rights and defense, including, but not limited to, all defenses related to the statute of limitations, jurisdiction, venue, process, service of process....." See *Notice of Appearance*, filed June 9, 2023. Panter, Garceau,

withdraw as counsel for co-defendant Third Dimension Technologies, LLC ("3rd Dimension"). The *Motion to Withdraw* was granted by the Court.

Findings of Fact and Conclusions of Law

Though not required by Rule 52 of the *Tennessee Rules of Civil Procedure*, the Court hereby renders the following *Findings of Fact* and *Conclusions of Law* with regard to the issues encompassed by the referenced submissions of the parties:²

1. The Court FINDS that this civil action was commenced on February 25, 2020 with the filing of a *Complaint* and the issuance of *Summons* directed to the Defendants named in the caption. See Technical Record.

2. The Court FINDS that both named Defendants were served with the *Complaint* and that return of service was made to the Clerk and Master on March 3, 2020.

3. The Court FINDS that, on March 10, 2020, Mr. Attanasio entered a written appearance as counsel for "Defendants." See *Notice of Appearance*, p.

1.

and Rust were members of the same law firm at the time of their separate appearance(s). Attorney Panter was later allowed to withdraw as counsel for the estate by *Agreed Order*.

² T.R.Civ.P., Rule 52.01 provides: "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 and 56 [.]" Given the nature of the Court's ruling below, the undersigned deems it advisable to include findings of fact and conclusions of law in this memorandum opinion for the purpose of review of the decision rendered herein.

4. The Court FINDS that, on June 12, 2020, an *Answer and Counter-Complaint* was filed by Mr. Attanasio on behalf of "both Defendants" named in the caption of this matter. *See Answer and Counter-Complaint.*

5. The Court FINDS that, on **December 2, 2021**, a *Suggestion of Death* was filed by Mr. Attanasio, indicating that Defendant Clarence Earl Thomas, Jr. died on November 22, 2021. A copy of the *Certificate of Death* issued by the Tennessee Department of Health (under the seal of the State of Tennessee) was attached to the *Suggestion of Death* as *Exhibit A*. The *Suggestion of Death* identifies Mr. Attanasio as "Attorney of Record for the Defendants." *See Suggestion of Death*, p. 1.

6. The *Suggestion of Death* does not identify a representative or successor who may be substituted as a party in the place of the decedent, but includes only the following content:

Comes now Ronald J. Attanasio, Attorney of record for the Defendants, pursuant to Rule 25 of the Tennessee Rules of Civil Procedure and files this Suggestion of Death upon the record and states that Clarence Earl Thomas, Jr., died on the 22nd day of November 2021. A copy of the Death Certificate is attached hereto as Exhibit A.

7. Rule 25.01(1) of the *Tennessee Rules of Civil Procedure* provides:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or

representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of process. Unless the motion for substitution is made not later than ninety (90) days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

8. This rule is substantially similar to Rule 25 of the *Federal Rules of Civil Procedure*. "Federal case law interpreting rules similar to our own are persuasive authority for purposes of construing the Tennessee rule." *Harris v. Chern*, 33 S.W.3d 741, 745 n.2 (Tenn. 2000).³

9. The Court FINDS that, upon the death of Mr. Thomas, his attorney, Mr. Attanasio, no longer had authority to act upon the decedent's behalf. *See Jenkins v. Atkins*, 20 Tenn. (1 Hum.) 294, 299 (1839)(the death of the principal acts as an instantaneous and absolute revocation of the authority of the agent); *Darling Stores, Inc. v. Fidelity-Bankers Trust Co.*, 156 S.W.2d 419, 422 (Tenn. 1941)(Generally, death terminates any existing agency); *see*

³ Rule 25(a)(1) of the *Federal Rules of Civil Procedure* provides:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

also 7 AM.JUR.2D, Attorneys at Law § 179 (2011);⁴ 7A C.J.S., Attorney & Client § 335 (December 2024 Update);⁵ Restatement 3d of the Law Governing Lawyers § 33 (American Law Institute 2000).⁶

10. Several courts interpreting the federal version of Rule 25 have held that an attorney for a deceased party has no authority to file a suggestion of death. See *Woodson v. City of Richmond, Va.*, 2014 WL 7462509, at *1 (E.D. Va. 2014) (“Under Rule 25(a)(1), a deceased party’s lawyers are not permitted to file a statement noting the party’s death because the lawyers do not qualify as either a party or representative or successor of the deceased party.”); *Schmidt v. Merrill Lynch Trust Co.*, 2008 WL 2694891, at *3 (M.D. Fla. 2008) (“deceased party’s attorney is not the type of representative contemplated by Rule 25(a)” until she is duly appointed by the decedent’s estate or by his representative.); *Hilsabeck v. Lane Co., Inc.*, 168 F.R.D. 313, 314 (D. Kan. 1996) (attorney for deceased party is not proper party to make suggestion of death).

⁴ “Generally, when a client dies, the attorney-client relationship terminates, and thereafter, the attorney must obtain authorization from the decedent’s personal representative in order to pursue the interests of the decedent; in the absence of this authorization, the attorney cannot proceed because he or she no longer represents a party to the litigation.”

⁵ “The death of a client ordinarily terminates the attorney-client relationship and the powers and duties which the attorney would otherwise have by reason of the employment unless and until such attorney is authorized to proceed further by the qualified personal representative of the deceased.”

⁶ “(1) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation and with an order of a tribunal requiring the representation to continue.
(2) Subject to Subsection (1) and § 33, a lawyer’s actual authority to represent a client ends when:...(b) the client dies[.]”

11. There is, however, authority to the contrary. See *Jones Inlet Marina, Inc. v. Inglima*, 204 F.R.D. 238, 240 (E.D. N.Y. 2001) (“[I]t is permissible for the former attorney of the decedent to file the suggestion of death, even though the attorney-client relationship ceased.”) (citing *U.S. v. Private Sanitation Indus. Ass’n of Nassau/Suffolk, Inc.*, 159 F.R.D. 389, 390 (E.D.N.Y. 1994)).

12. The foregoing analysis (¶¶ 5 through 11 above) is, however, rendered moot insofar as Mr. Attanasio was also the attorney for the decedent’s co-defendant Third Dimension Technologies, LLC at the time of the filing of the *Suggestion of Death*. In this position, Mr. Attanasio was qualified to file the *Suggestion of Death*. See *Woodson*, supra, at *1 (although “the text of Rule 25(a)(1) does not limit who may file a statement noting the death of a party..... decisions that have interpreted the rule, [the] suggested form language in the Federal Rules of Civil Procedure, and the Advisory Committee notes all teach that those who may file such a statement are limited to parties and the ‘decedent’s successor or representative’”)(emphasis added).

13. The Court FINDS that the authority of Mr. Attanasio to act on behalf of Co-Defendant Third Dimension Technologies, LLC, remained unchanged by the death of Mr. Thomas.

14. The Court FINDS that Plaintiff filed a *Motion for Substitution of Party of Record*, on January 24, 2022, seeking to name April Loraine Thomas, as Executrix of the Estate of Clarence Earl Thomas, Jr., as a party Defendant. This Motion was served upon Mr. Attanasio, who had previously identified himself as counsel for Mr. Thomas (the decedent) and Defendant Third Dimension Technologies, LLC ("3rd Dimension"). See ¶¶ 3 and 4 above.

15. The Court FINDS that service of the *Motion for Substitution* upon Mr. Attanasio, as Attorney for 3rd Dimension, was proper and effective under Rule 5 of the *Tennessee Rules of Civil Procedure*.

16. The Court FINDS that service of the *Motion for Substitution* upon Mr. Attanasio, as representative of the decedent (Mr. Thomas) or his estate (Mrs. Thomas as Executrix), was ineffective under Rules 4 and 25 of the *Tennessee Rules of Civil Procedure*. See *McCutcheon v. Sumner County Sheriff's Office*, 2019 WL 1672299, at *3-5 (M.D. Tenn. 2019)(service upon non-parties under Rule 25 must comply with Rule 4).

17. The Court FINDS that the Plaintiff failed to comply with the requirements of Rules 4 & 25 of the *Tennessee Rules of Civil Procedure*, which relate to service of a motion for substitution and notice of hearing upon a non-party. See *Worley v. Islamic Republic of Iran*, 75 F.Supp.3d 311, 333 (D. D.C.

2014)("[Rule 25] states that once a formal suggestion of death is made on the record, a party or the decedent's successor or representatives has 90 days in which to file a motion for substitution of a proper party.... The rule's time limit is only triggered by a formal statement of death on the record that identifies the successor who may be substituted as a party.") (citing *McSurely v. McClellan*, 753 F.2d 88, 98 (D.C. Cir. 1985)).

18. The Court FINDS that no service of the *Motion for Substitution* was effected upon any representative or successor of the decedent, in accordance with Rule 4 of the *Tennessee Rules of Civil Procedure*.

19. At this juncture, it would appear that the facts set forth above support the conclusion that the Plaintiff has failed to comply with Rule 25, thus rendering the Plaintiff's cause of action against the deceased co-defendant subject to dismissal. See T.R.Civ.P., Rule 25.01(1) ("Unless the motion for substitution is made not later than ninety (90) days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.") (emphasis added).

20. Closer review of those facts, however, leads the Court to the conclusion that Plaintiff's *Suggestion of Death* was defective and did not trigger

the running of the ninety (90) day limitation found in Rule 25. *See Worley v. Islamic Republic of Iran*,
supra at 333.

21. This Court has failed to identify a Tennessee state court case which explicitly requires the party making a suggestion of death to identify the decedent's representative or successor within the document providing notice of death. The facts above (¶ 6), establish that the *Suggestion of Death* filed by Mr. Attanasio did not identify the decedent's representative or successor. *See Suggestion of Death*, p. 1.

22. Neither T.R.Civ.P., Rule 25, nor F.R.Civ.P., Rule 25, explicitly require that the party making the suggestion of death identify the decedent's representative or successor.⁷

23. Many federal courts, however, have imposed such a requirement. *See Fehrenbacher v. Quackenbush*, 759 F.Supp. 1516, 1519 (D. Kan. 1991)(valid suggestion of death must identify the representative or successor who may be substituted as a party); *McSurely v. McClellan*, 753 F.2d 88, 98 (D.C.

⁷ *See Fehrenbacher v. Quackenbush*, 759 F.Supp. 1516, 1519 (D. Kan. 1991)("[T]he court notes that Rule 25 does not explicitly require the party making the suggestion of death to identify the decedent's representative. As the parties note, some jurisdictions hold that a valid suggestion of death must identify the representative or successor who may be substituted as a party. *See McSurely v. McClellan*, 753 F.2d 88, 98 (D.C.Cir. 1985). In reality, Rule 25 implicitly imposes such a requirement. By requiring service of the suggestion of death on parties and non-parties, the rule implicitly allocates the burden of identifying the substitute party to the party making the suggestion of death.")

Cir. 1985) *cert. denied* 474 U.S. 1005, 106 S.Ct. 525, 88 L.Ed.2d 457 (1985)(same); *Tolliver v. Leach*, 126 F.R.D. 529, 531 (W.D. Mich. 1989)(same); *Hamilton v. Kemper*, 2018 WL 1616808 (D. Colo. filed April 4, 2018)(same); *Dummar v. Lummis*, 2007 WL 4623623, at *3 (D. Nev. 2007)("[A] suggestion of death must identify the successor or representative who may be substituted for the decedent."); *Rende v. Kay*, 415 F.2d 983, 984-986 (D.C. Cir. 1969)(suggestion of death must identify the representative or successor of the decedent). *But see Unicorn Tales, Inc. v. Banerjee*, 138 F.3d 467, 470 (2d Cir. 1998)(noting disagreement with *Rende v. Kay*, 415 F.2d 983, 986 (D.C. Cir. 1969) regarding interpretation of Rule 25(a)(1) and holding that F.R.Civ.P. 25 (a)(1) "does not require that the statement identify the successor or legal representative; it merely requires that the statement of death be served on the involved parties"); *Jackson v. Rowlett*, 2007 WL 397114, at *1 (E.D. Cal. 2007)(declining to require that the suggestion of death identify the decedent's successor or representative). *See also Klein v. City of Portland*, 2009 WL 2006890, at *8 (D. Or. 2009)(acknowledging split of authority); *In re C.R. Stone Concrete Contractors, Inc.*, 462 B.R. 6, 18 (Bankr. D. Mass. 2011)(same).

24. The reasoning behind the rule requiring a valid suggestion of death to identify the representative or successor of the decedent has been stated as follows:

[T]he Suggestion of Death should have identified [the decedent's] representatives or successors. One of the primary concerns that led [the] court to adopt the rule was awareness that a defendant's attorney could use the Suggestion of Death as a tactic, placing the burden on the plaintiff to determine the identity of a decedent's successor or representative, particularly in cases where there is no conventional estate administration..

See Bolton v. Cochran, Cherry, Givens & Smith - TN LLP, 2006 WL 1302547, at *5 (W.D. Tenn. 2006)(citing *Rende*, 415 F.2d at 986)).

25. It appears to this Court that the rule requiring a Suggestion of Death to identify the representative or successor of the decedent in order to be valid under Rule 25 constitutes the "majority rule" on this subject.

26. Courts following the majority rule have explained their adherence thereto as follows:

* * * *

In our opinion [Rule 25(a)(1)], cannot fairly be construed, as defendant's attorney argues, to make his suggestion of death operative to trigger the 90-day period even though he was neither a successor nor representative of the deceased, and gave no indication of what person was available to be named in substitution as a representative of the deceased. Counsel's construction would open the door to a tactical maneuver to place upon the plaintiff the burden of locating the representative of the estate within 90 days.

We can conceive of cases wherein even the lawyer retained to represent a defendant might know the defendant had died, yet not readily know where his estate would be administered.

* * * *

The tactic of the defendant's attorney would place on plaintiff the burden, where no conventional representative was appointed for the estate in probate court, of instituting machinery in order to produce some representative of the estate ad litem, pending appointment of the representative contemplated by law of the domicile of the deceased.

* * * *

The 90-day period was not intended to act as a bar to otherwise meritorious actions.

* * * *

No injustice results from the requirement that a suggestion of death identify the representative or successor of an estate who may be substituted as a party for the deceased before Rule 25(a)(1) may be invoked by those who represent or inherit from the deceased. If the heirs or counsel fear that delay may prejudice the litigation they may move promptly for appointment of a representative, perhaps a temporary representative, either under the law of the domicile or by special order in the court wherein the litigation is pending.

* * * *

Rende v. Kay, 415 F.2d 983, 986 (D.D.C. 1969).

27. The Court FINDS that the analysis, reasoning, and policy considerations stated by the *Rende* court (as set forth in the preceding paragraph) have equal application to the facts as they exist in instant case.

28. There is no competent proof in this record which would indicate that a personal representative, executrix, or successor was appointed for the purpose of the probate of the decedent's estate.

29. There has been no allegation, averment, or competent proof that the representative or successor of the decedent will suffer any prejudice should the Court allow the substitution of Mrs. Thomas (as Executrix of the Estate of the decedent) as a party defendant in the place and stead of the decedent.

30. Federal courts in Tennessee follow the "majority rule," requiring that a suggestion of death must reveal the identity of the representative or successor of the decedent in order to be "valid." See *Bolton*, supra (citing *Fehrenbacher v. Quackenbush*, 759 F.Supp. 1516, 1519 (D. Kan. 1991); *Rende v. Kay*, 415 F.2d 983, 986 (D.C. Cir. 1969); *McSurely v. McClellan*, 753 F.2d 88, 98 (D.C. Cir. 1985)).

31. The facts found by the Court above establish that the *Suggestion of Death* filed by Mr. Attanasio did not identify the representative or successor of the decedent.

32. Mrs. Thomas (as Executrix) has now entered an appearance for the purpose of seeking the dismissal of Plaintiff's cause of action. Mr. Attanasio was

allowed to withdraw as attorney for the decedent's co-defendant (3rd Dimension), thus leaving 3rd Dimension in the status of a pro se defendant.

33. The Court CONCLUDES that the *Suggestion of Death* filed by Mr. Attanasio was legally insufficient to trigger the ninety (90) day limitation contained in Rule 25.01 of the *Tennessee Rules of Civil Procedure*, insofar as the *Suggestion of Death* did not identify the representative or successor of the decedent.

34. As such, the Court CONCLUDES that the *Motion to Dismiss* filed by Mrs. Thomas as Executrix of the Estate of Clarence Earl Campbell, Jr., is not well taken at this time, and, therefore, the same is hereby DENIED, without prejudice to the refiling of same.

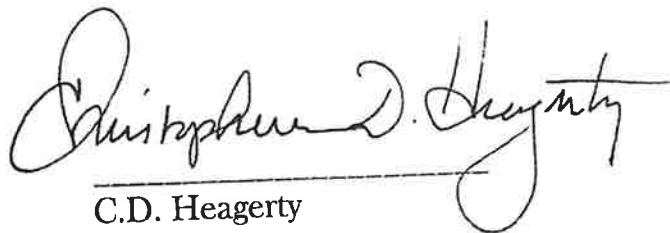
35. The Court further FINDS that the policy considerations which form the basis of the Court's ruling herein (§ 27) are implicated by the facts stated above.

36. In light of the foregoing, the Court does hereby ORDER that the Plaintiff is granted leave to file and serve a revised Suggestion of Death which identifies the representative or successor of the decedent and that the time limitation contained in Rule 25 shall commence to run upon the proper service of said Suggestion of Death upon the Plaintiff. Thereafter, the Plaintiff shall take

such actions as he/she deems appropriate under the Tennessee Rules of Civil Procedure.

37. The costs associated herewith shall be taxed upon the final disposition of this civil action.

ENTER this 31st day of March, 2025.

A handwritten signature in cursive script, reading "Christopher D. Heagerty". The signature is written in dark ink and is positioned above a horizontal line.

C.D. Heagerty
Chancellor

Certificate of Service

I, the undersigned, hereby certify that a true and accurate copy of the Memorandum Opinion & Order has been forwarded by U.S. Mail to the following parties of record this _____ day of _____, 2025.

Curtis W. Isabell, Esquire
251 Short Street
Clinton, TN 37716

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DEPUTY CLERK