



Navigating the Three-Judge Panel

TENNESSEE JUDICIAL CONFERENCE 2023

MARCH 14, 2023, 2:15 – 3:15 PM (CENTRAL TIME)

HON. DONALD PARISH: JUDICIAL OUTREACH LIAISON FOR THE STATE OF TENNESSEE AND RETIRED 24TH JUDICIAL DISTRICT CIRCUIT COURT, JUDGE

HON. DOUGLAS T. JENKINS: THIRD JUDICIAL DISTRICT CHANCERY COURT, CHANCELLOR.

JORDAN EMILY: THREE-JUDGE PANEL LAW FELLOW, TENNESSEE SUPREME COURT – ADMINISTRATIVE OFFICE OF THE COURTS

DUNCAN BRYANT: THREE-JUDGE PANEL LAW FELLOW, TENNESSEE SUPREME COURT – ADMINISTRATIVE OFFICE OF THE COURTS

DANIELLE LANE: THREE-JUDGE PANEL COORDINATOR, TENNESSEE SUPREME COURT – ADMINISTRATIVE OFFICE OF THE COURTS

Agenda:

- ▶ Jordan Emily
 - ▶ What is a Three-Judge Panel, and what cases qualify
 - ▶ What's a Law Fellow?
- ▶ Danielle Lane
 - ▶ Three-judge panel process and the AOC's involvement
 - ▶ Case Center by Thomson Reuters
- ▶ Duncan Bryant
 - ▶ Order Adopting SCT Rule 54 for Special Three-Judge Panel - ADM2021-00663
 - ▶ New rule updates and how they will affect your case
- ▶ Judge Parish and Chancellor Jenkins
 - ▶ Discussion on Panel experience, suggestions, and general overview.
- ▶ Questions/discussion



Jordan Emily: Three-Judge Panel Law Fellow

THREE FREQUENTLY ASKED QUESTIONS



What are the three-judge panels?

- ▶ The Three-Judge Panel System is NOT a special or otherwise different court.
- ▶ A qualifying case filed with a particular chancery or circuit court remains with that court in every respect.
- ▶ The only difference is that two additional judges are appointed by the Tennessee Supreme Court, one from each of the other Grand Divisions, to resolve the constitutional challenge(s) presented by that case.
- ▶ The provision of AOC staff to these cases is intended only to ease the additional burdens of presiding over cases as a panel of judges.

What cases qualify for three-judge panels?

- ▶ According to Tenn. Code Ann. § 20-18-101 and Tenn. Sup. Ct. R. 54, the following criteria must be met:
 - ▶ (1) Civil cases
 - ▶ (2) filed in a Tennessee trial court
 - ▶ (3) against the State of Tennessee (or its agencies or officers in their official capacity)
 - ▶ (4) challenging the constitutionality of a state law (statute, executive order, or regulation)
 - ▶ (5) seeking injunctive or declaratory relief

Tenn. Code Ann. § 20-18-101(a)

- ▶ A **civil action** *in which the complaint* meets each of the following criteria must be heard and determined by a three-judge panel pursuant to this chapter:
- ▶ (1) **Challenges the constitutionality of:**
 - ▶ (A) **A state statute**, including a statute that apportions or redistricts state legislative or congressional districts;
 - ▶ (B) **An executive order**; or
 - ▶ (C) **An administrative rule or regulation**;
- ▶ (2) *Includes a claim for* **declaratory judgment or injunctive relief**; and
- ▶ (3) *Is brought* **against the state**, a state department or agency, or a state official acting in their official capacity.

Tenn. Sup. Ct. R. 54, § 1

- ▶ This rule applies to **civil actions** filed in a trial court in this state in which **the state**, a department or agency of the state, or a state official acting in his or her official capacity **is a defendant** in a complaint that:
 - ▶ (a) **challenges the constitutionality of a state statute**, including a statute that apportions or redistricts state legislative or congressional districts; or **an executive order**; or **an administrative rule or regulation**; and
 - ▶ (b) *includes a claim for* **declaratory judgment or injunctive relief**.
- ▶ Comment: *This rule applies to* **amended complaints, counter-claims, and third-party complaints** as well as complaints.

What is a law fellow?

- ▶ Law Clerk-Staff Attorney hybrid
- ▶ Performs typical law clerk functions as requested by the panel: review filings, performs legal research, prepares draft orders
- ▶ Some panels want bench memoranda only, others only want the law fellow to bluebook dispositive orders
- ▶ Some panels rely on the law fellow extensively, others don't use the law fellow at all
- ▶ Primarily work with the Chief Judge but can be utilized by entire panel
- ▶ Entirely up to each individual panel

Danielle Lane: Three-Judge Panel Coordinator

THREE-JUDGE PANEL PROCESS, THE AOC'S INVOLVEMENT, AND CASE CENTER



The three-judge panel AOC involvement

AOC Involvement from
Appointment to
Dissolution



- ▶ Tennessee Supreme Court Clerk's Office forwards order appointing a new Panel to Three-Judge Panel Coordinator



Every Panel has different needs and preferences, so the Coordinator and the Fellows will be available to utilize as much or as little as this Panel wants

- ▶ The Coordinator assigns one of the Three-Judge Panel Law Fellows to the Panel



- ▶ The Coordinator disseminates the initiation materials to the Panel

What does the three-judge panel team offer the Tennessee Judiciary?



The Law Fellows

The Law Fellow is available to perform any and all law-clerk related tasks for the panel, usually at the request of the Chief Judge but also by any panel member.

These tasks typically consist of research into a particular issue, the preparation of memoranda, or the drafting of orders or separate opinions.



The Coordinator

The Coordinator may be utilized to set up motion hearings, judicial conferences, and hybrid settings

The Coordinator often sets up the initial conference with the Panel to make the introductions and discuss the groundwork for the team

The Panel may utilize the Coordinator to develop scheduling orders for the case

The Coordinator will ask you to track your hours and report the totals after your case has concluded

Zoom and In-Person Options

▶ Zoom Administration

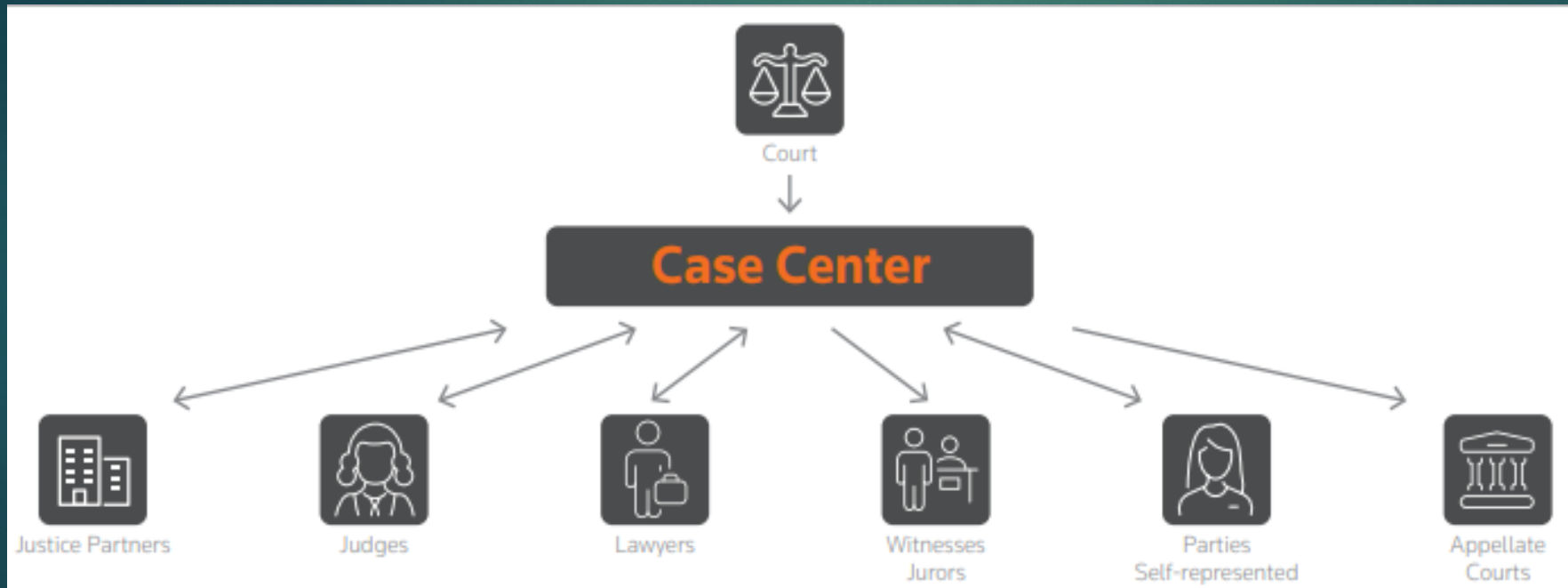
- ▶ With the distance barrier of these panels, we strongly encourage using Zoom for these cases.
- ▶ When you use Zoom, the Coordinator can act as the administrator to alleviate the burden on your staff
- ▶ Our policy is to use a password-protected Zoom session with a live stream for the public
- ▶ Our team is happy to come to your courthouse to help set up/check any equipment to allow you to Zoom
- ▶ We also provide a hybrid Zoom option, where we administer at the division's courthouse while the other panelists appear via Zoom

▶ In-Person Options

- ▶ When you have hearings/trials in person, the AOC will reimburse your travel expenses. We provide a "3JP Expense Form," which will be filled out and sent in via you or your staff/proxy for reimbursement.
- ▶ The Panel may have the Coordinator secure a date and location for the trial if there is not one easily available.
- ▶ **If you wish to have your hearing/trial at a location, not in the cases original county, you must seek permission from the Tennessee Supreme Court to do so.**

Case Center for the Three-Judge Panel

- ▶ Organize, share, review, and present documentary and multimedia hearing materials in a single, cloud-based repository



- Case Center is a cloud-based, secure solution for the three-judge panel.
- Seamlessly upload digital exhibits in a centralized location.
- Quickly view and share thousands of file types.

[Case Center is designed to make courts and judges more productive \(thomsonreuters.com\)](https://www.thomsonreuters.com)

What does Case Center do?

Deliver a more efficient in-person, virtual, and hybrid courtroom

- Case Center is a central hub for both internal and external court users with a simple, easy-to-use interface used by judges, parties, court staff, and self-represented litigants
- In hearings, it delivers increased productivity with a single-page numbering system for fast navigation and the ability to direct everyone to the accurate document

Receive, review, and admit evidence

- Case Center allows you to securely receive, review, admit, and present evidence regardless of format, from case documents to multimedia, in a dedicated review workspace
- Parties and self-represented litigants can upload materials from mobile phones or computers
- Everything uploaded to a case is indexed and paginated into fully searchable case files, and marked exhibits are automatically placed in an exhibit case file for easy identification

Hold more productive hearings

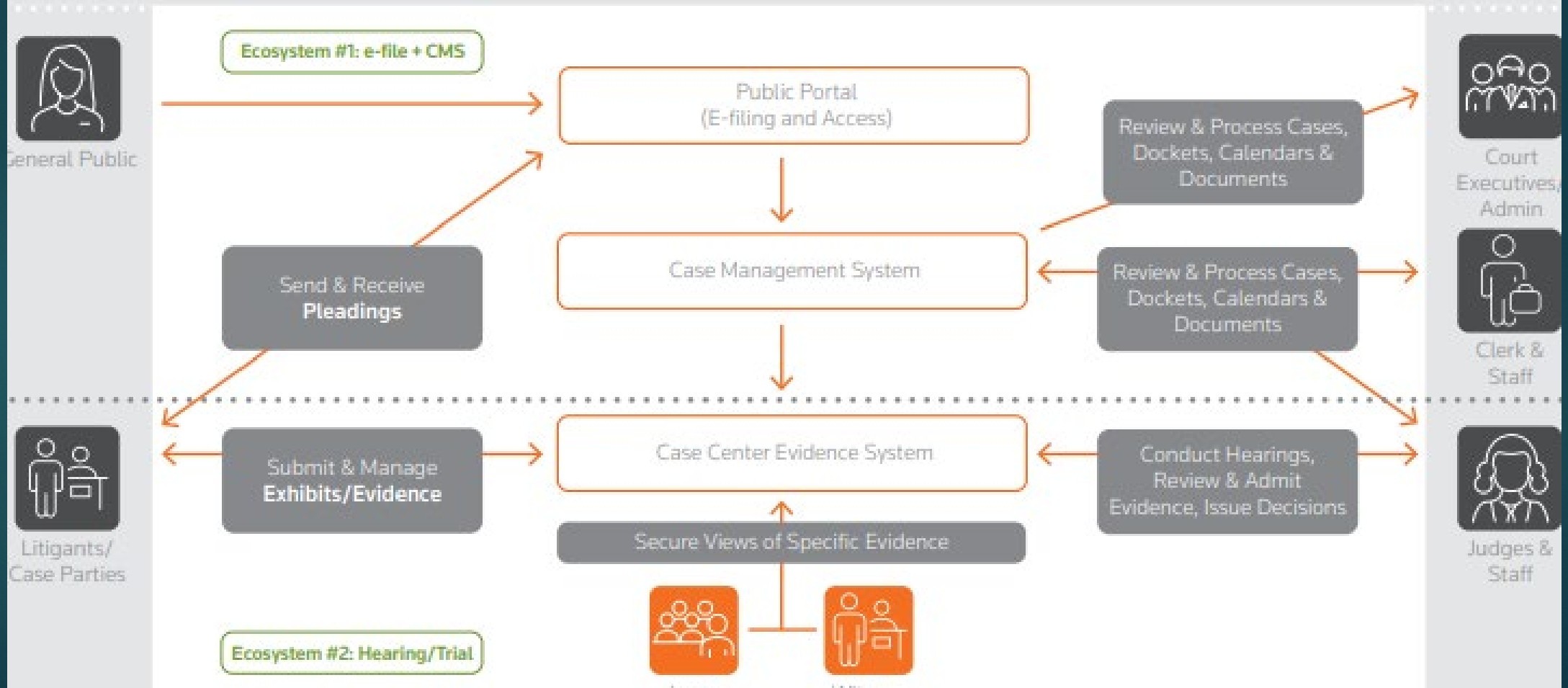
- **Digital solutions must ensure that 3JP hearings are easy to follow for all participants — regardless of physical location**
- **Case Center allows participants to follow in real-time in person or virtually with a common set of hearing materials**
- Direct everyone to the right document instantly and even present video files in sync
- Stream multimedia within the browser in both virtual and in-person hearings with no additional tech required, allowing you to optimize hearing time and accelerate access to justice

Case Center can complement multiple Case Management Systems across Tennessee

- ▶ It is important to note that **Case Center was designed as a Digital Evidence Platform (DEP)** that does not take over the role of Case management systems (CMS) but complements it.
- ▶ They work hand in hand, where the CMS of each district handles the filing and efficient management of their cases to keep the case flow of a three-judge panel case the same as all cases in that court.
- ▶ The DEP provides an efficient way to review and analyze evidentiary materials in preparation for any hearing or dispute and a well-organized digital repository of all the key materials.
- ▶ **This alleviates the distance burden presented, providing more virtual options for three-judge panel cases and viewing case files anytime (where e-filing is not an option).**

CMS and DEP: Two unique ecosystems, two unique services

A CMS and DEP can compliment or work entirely independent from each other, meaning that Case Center still serves its purpose regardless of the existing CMS in place.





Duncan Bryant: Three-Judge Panel Law Fellow

New rule updates and how they will affect your case

TN Sup. Ct. R. 54, § 7 – **Dissolution; Panel Held in Abeyance.**

- ▶ (a) Upon the entry of a final, appealable order, the panel shall be held in abeyance.
- ▶ (b) If at any time the case assigned to the panel no longer meets the criteria described in Section 1, the chief judge may enter an order holding the panel in abeyance and re-assigning the case to the trial judge to whom the case was originally assigned. The trial judge shall then hear and determine the rest of the case.
- ▶ (c) A panel held in abeyance pursuant to this section shall remain in abeyance until either:
 - ▶ (1) All appeal rights have been exhausted, at which point the panel shall dissolve; or
 - ▶ (2) The case is remanded on appeal to the trial court, at which point any remaining causes of action shall be heard and determined by the panel or the trial judge to whom the case was originally assigned, as appropriate. If the case is returned to the original trial judge, the chief judge shall order the panel dissolved.

TN Sup. Ct. R. 54, § 7 – **Dissolution; Panel Held in Abeyance.**

► **COMMENT:**

Examples of when a case “no longer meets the criteria” needed for a three-judge panel include but are not limited to cases where the claim challenging the constitutionality of the statute, executive order, or administrative rule or regulation is dismissed upon a defendant's dispositive motion, or when a complaint is amended to no longer seek declaratory or injunctive relief.

Remember § 20-18-101 Criteria!

- ▶ (1) Challenges the constitutionality of:
 - ▶ (A) A state statute, including a statute that apportions or redistricts state legislative or congressional districts;
 - ▶ (B) An executive order; or
 - ▶ (C) An administrative rule or regulation;
- ▶ (2) Includes a claim for declaratory judgment or injunctive relief; and
- ▶ (3) Is brought against the state, a state department or agency, or a state official acting in their official capacity



Hon. Donald Parish

Hon. Douglas T. Jenkins

Discussion on Panel experience, suggestions, and general overview.