

**The Governor’s Council for Judicial Appointments**

**State of Tennessee**

***Application for Nomination to Judicial Office***

Name: Jerome Cochran

Office Address: 116 South Main Street, Carter County Elizabethton, TN 37643  
(including county)

Office Phone: 423-542-0081

Facsimile: 423-542-0082

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**INTRODUCTION**

The State of Tennessee Executive Order No. 41 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 questionnaire. For example, when a question asks you to “describe” certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website [www.tncourts.gov](http://www.tncourts.gov)). The Council requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to [debra.hayes@tncourts.gov](mailto:debra.hayes@tncourts.gov), or via another digital storage device such as flash drive or CD.

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

I have owned and operated my own law practice, Jerome Cochran, Attorney at Law, in Elizabethton, TN since 2000.

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 2000 and my BPR number is 020446.

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 only and BPR number is 020446

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).

February 2000 – May 2000- Associate Attorney at Klein and Associates, Kingsport, TN

July 2000 – present- Owner of Jerome Cochran, Attorney at Law, Elizabethton, TN

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 have a general law practice where I handle criminal and civil matters in State and Federal Court. My practice areas and breakdown are as follows: Criminal 40%, Domestic/Civil 40%, Probate 20%.

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.

As an attorney for nearly 15 years, I have handled a wide variety cases in criminal, civil, and administrative courts. Being an attorney practicing in a rural community, one could not be too picky on the types of cases one could handle. Because of this, I have managed to gain a lot of experience in different courts. The experienced gained in a small general law practice, I believe is invaluable and will benefit me if appointed judge. There are many challenges to operating one's own firm; it requires hard work, determination, and a real passion for the law. These are all qualities I have that I will bring with me as a judge.

I have conducted jury trials in matters of arson, forgeries, and thefts. I further have conducted criminal preliminary hearings, suppression hearings, sentencing hearings, and bench trials.

I have also conducted divorce trials involving child custody, debt and asset distribution, and fault. I have further represented clients in regard to termination of parental rights, dependency and neglect cases and adoption.

My administrative law experience includes handling of cases before the Board of Nursing, the Claims Commission, Department of Safety and Department of Labor and Workforce Development.

I also served four years in the Tennessee House of Representatives where I was a member of the Judiciary Committee and the Children and Family Affairs Committee. During my service in the legislature, I had the opportunity to deal with many important issues and had to examine complex legislation.

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

Not Applicable.

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.

Not Applicable.

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

I have served as a guardian ad litem on several cases involving dependency and neglect and child abuse. I have also served as a substitute trustee on several foreclosure auctions.

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

Not Applicable.

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 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.

Not Applicable.

### **EDUCATION**

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

University of Tennessee-Knoxville, 1990-1995, Bachelor of Arts in Political Science  
Regent University College of Law, 1997-1999, Juris Doctor

**PERSONAL INFORMATION**

15. State your age and date of birth.

I am 43 years old and was born on November 17, 1971.

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

I have lived in Tennessee most of my life except for approximately one month when I was born and lived in Saigon, Vietnam and while I was attending law school in Virginia Beach, Virginia for 2 ½ years.

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

I grew up in Carter County and have lived and worked here all my life except for the times I have been attending college and law school and the brief period mentioned in the previous question.

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

Carter 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 are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

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 state and provide relevant details regarding any formal complaints 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.

Not Applicable.

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.

No.

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.

Friends of Sycamore Shoals State Historical Association-Board Member (2008 – present)/Treasurer (2010-2014)

Abortion Alternatives and Women's Center-Board Member/Legal Counsel (2004 – present)  
Shepherd's Inn Women's Shelter-Board Member/Legal Counsel (2011 – present)  
Carter County Republican Party  
Elizabethton High School Band Boosters  
Carter County Chamber of Commerce

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.

Carter County Bar Association 2002 – present  
Tennessee Bar Association 2004 – 2008  
Tennessee Association of Criminal Defense Lawyers 2015  
American Legislative Exchange Council 2003 – 2006  
Carter County Chamber of Commerce 2008 - 2010

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.

Mother's Against Drunk Driver's Legislator of the Year (2003)  
Regent University School of Government Mission Award

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

Not Applicable.

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.

Not Applicable.

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

Elected and served as a Tennessee State Representative (2002-2006)

Candidate for District Attorney (2014)

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

No.

34. Attach to this questionnaire 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.

Article 1 is a Motion for Summary Judgement/Dismissal that I submitted in a case involving the split of a church. The Motion and Memorandum of Law is entirely my work. The case was ultimately settled prior to trial.

Article 2 is an Answer in Opposition to the Defendants' Motion to Dismiss that I submitted in a personal injury case. The Motion and Memorandum of Law is entirely my work. The case was settled prior to hearing of the Motion.



**ESSAYS/PERSONAL STATEMENTS**

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

I am seeking this position due to my desire to serve the public. Few positions in society have more of a direct impact on the lives of people than that of a judge. That desire to serve is what drove me to run for the legislature. I feel that as an attorney I have had a positive impact on the lives of my clients, whether that impact was from helping them to avoid prison time or from gaining them custody or time with their children. I have tried to treat all my clients with the respect and compassion they deserve, and I intend to treat people the same way if appointed judge. I feel that I would be able to easily switch from my role as an advocate to that of a neutral decision maker that will apply the laws fairly to all regardless of their economic or social status.

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)*

Since the beginning of my legal career and to this day, I have accepted court-appointed cases as well as performed cases at a reduced fee or pro bono. I believe all people, regardless of income or social status, should have access to competent counsel that will treat them with respect. Even though I have become one of the older attorneys in my community, I continue to accept court-appointed or reduced fee cases because I believe it is important to give indigent clients access to experienced attorneys. I hope that my example of continuing to accept appointed and reduced fee cases will lead to new attorneys to continue to do so even after they become well established. It is my hope that if appointed judge, I can convince other experienced attorneys to devote some time to representing indigent clients.

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

I am seeking one of the two Circuit Court Judgeships for the First Judicial District. The Circuit Court in this district hears all civil cases except for probate. It also hears appeals from Sessions and Juvenile Courts.

My appointment as Circuit Court Judge would impact our local court system in several ways. If appointed, I would be the only civil judge from Carter County and the first Circuit Court Judge from Carter County in nearly 30 years. Further, I would mostly likely be the first Asian American state court judge in Tennessee history and the first ethnic minority judge in the history of the First Judicial District. Most importantly, I think my experience in dealing with a wide variety of cases, both criminal and civil, prepares me to handle the complex issues before this Court and will enable me to move the docket in a fair and efficient manner.

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 community service involves my church and service in various organizations. I am a member of First Baptist Church of Elizabethton.

I currently serve on the board of the Friends of Sycamore Shoals State Historic Association. This organization is dedicated to teaching the important contributions our community has had to the forming of our nation. We help the park in its presentation of "Liberty", the official outdoor drama of Tennessee. Each year during the play's nine-day run, I maintain and work in the concession stand. I am also the past treasurer of the board.

I serve as legal counsel and on the advisory board of the TLC Community Center, formerly known as Abortions Alternatives and Women's Center. This organization helps young mothers, feeds poor families, and runs a women's prison education program, to name just a few of their services. As legal counsel, I handle legal issues for the center and aid prospective parents in the adoption process. There are few things I do as a lawyer that are as rewarding as helping parents adopt a child.

I have also served as legal counsel and board member of the Shepherd's Inn Battered Women's Shelter since 2011. As their legal counsel, I have helped them on issues of privacy, incorporation, and rights of victims of domestic violence.

I am also active in the activities of my four children. My oldest is color guard for the University of Tennessee Band, while my three younger children are active in band, sports, and ballet.

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 was the first person in my family to graduate from college. My father was drafted after his high school graduation and sent to Vietnam, where he met my mother. They were married in Saigon, which is also where I was born. Outside of my thirty days in Saigon and law school attendance, I have lived in Tennessee all of my life. I was raised in a very middle-class family. My parents worked at Lowes and Walmart, respectively. I attended college at the University of Tennessee and law school at Regent University College of Law. Without the help of student loans, I could never have attended college or a private law school.

I married my wife a year after my undergraduate graduation, and we had my oldest child prior to my beginning law school. I completed law school after 2 ½ years and moved back to Carter County where I grew up. I started my own law office soon after. A little over two years later, I was elected to the Tennessee House of Representatives where I served for four years.

I think my life story and background make me uniquely qualified to serve as Circuit Court Judge. I hope that being a parent raising older and younger children will help me relate to many of the people coming before this Court. As Judge, I would strive to treat the parties with respect and dignity and ensure that their rights are protected and they are given a fair hearing.

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 absolutely uphold the law whether I agree with it or not. As an attorney who has represented plaintiffs and defendants in civil matters and represented criminal defendants charged with murder, rape, arson, child abuse, drug dealing, etc., I constantly have to put aside my personal objections to represent them to the best of my ability. As a judge, I intend to listen to the facts of the case and apply the law irrespective of my personal feelings.

During my time in the Legislature, I was constantly faced with the decision to support or vote against laws that I didn't agree with personally. However, in the name of compromise, I made my decision based on what was best for the people of Tennessee and not just what I thought was right. I had to make tough votes on a variety of issues, and many times the votes I cast did not reflect my personal feelings. I hope, however, that these votes reflected the greater good.

I recognize that as a judge I am there to interpret laws, not make them. I have a deep respect for the doctrine of separation of powers, and I will be committed to interpreting the laws as best as I can, regardless of any personal feelings. I recognize that I no longer will be an advocate for a client, but instead be a neutral party that will apply the law objectively based on rules and statutes as promulgated by the legislature.

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. David Crockett, former District Attorney General of the 1 <sup>st</sup> Judicial District, 11
B. Roger Day, City Attorney of Elizabethton,
C. Claire Paris, Medical Doctor,
D. Dexter Lunceford, Sheriff of Carter County, N
E. Jeff Kelly, Public Defender of the 1 <sup>st</sup> Judicial District,

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 Circuit Court of the First Judicial District, Part 1 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 questionnaire with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this questionnaire 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: April 12, 2014.

  
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Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS  
ADMINISTRATIVE OFFICE OF THE COURTS**

511 UNION STREET, SUITE 600  
NASHVILLE CITY CENTER  
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY  
TENNESSEE BOARD OF JUDICIAL CONDUCT  
AND OTHER LICENSING BOARDS**

**WAIVER OF CONFIDENTIALITY**

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

Jerome Cochran

\_\_\_\_\_  
Type or Print Name

  
\_\_\_\_\_  
Signature

04-12-2015

\_\_\_\_\_  
Date

020446

\_\_\_\_\_  
BPR #

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

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**IN THE CIRCUIT COURT FOR JOHNSONCOUNTY  
AT MOUNTAIN CITY, TENNESSEE**

**KARL CHAPPELL**

**Plaintiff,**

**Vs.**

**VIRGINIA NELL SNYDER**

**Defendant.**

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**Civil Action No.: w2936**

**PLAINTIFFS' MEMORANDUM OF LAW AND ARGUMENT IN OPPOSITION  
TO DEFENDANTS' MOTION TO DISMISS**

Come now the Plaintiff, KARL CHAPPELL, by and through Counsel, and submit the following Memorandum of Law and Argument in Opposition to Defendants' Motion to Dismiss.

**LAW AND ARGUMENT**

- I. THE DEFENDANT WAS PROVIDED CONSTRUCTIVE NOTICE OF HEARING WITH THE PLAINTIFF'S MOTION FOR SUBSTITUTION OF PARTY AND EVEN IF ACTUAL NOTICE IS REQUIRED THE DEFENDANT WOULD NOT BE PREJUDICED BY THE LACK OF NOTICE.**

Tennessee Rules of Civil Procedure Rule 25.01 allows for the substitution of proper parties and states, "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....." The Plaintiff filed a Motion for Substitution of Party on March 24, 2009. Upon filing of Motion, Plaintiff's counsel informed Defendant's counsel by telephone call of the Motion. Further, Plaintiff's counsel informed opposing counsel that due for the need to

provide thirty (30) days time to file an answer and that the court calendar for May hearing dates was not prepared that we could discuss a mutual agreeable hearing date when the court calendar was ready. Plaintiff maintains that this suffices for constructive notice of hearing or in the alternative a waiver by the Defendant's of actual notice of hearing, which is also supported by Defendant's actions since the filing of Plaintiff's Motion.

Since the initial discussion regarding a hearing date on Plaintiff's Motion, the parties have engaged in negotiations to attempt to resolve this matter, an offer of settlement and counteroffer has been made, and Plaintiff's offer of mediation has been rejected. Once settlement attempts failed, Plaintiff initiated discussions regarding setting of a hearing date for Plaintiff's Motion. The parties agreed upon November 23, 2009 as a hearing date with a special setting out of county and Plaintiff did not object to a late filing of an Answer by the Defendant.

Further, failure to provide actual notice to the Defendant at the time of the filing of the Motion for Substitution of Party did not prejudice the Defendant. The Defendant was allowed to file an answer, discovery proceeded, and settlement negotiations have begun.

Plaintiff also contends that failure to fully comply with T.R.C.P. Rule 25.01 does not automatically cause a dismissal of one's case. In *Douglas v. Estate of Lee A. Robertson*, 876 S. W. 2<sup>nd</sup> 95 (Tenn. 1994) and *Wagner v. Frazier*, 712 S. W. 2<sup>d</sup> 109, the Courts upheld that in instances of excusable neglect and where the opposing party has not been prejudiced by the delay, T.R.C.P. 25.01 should be construed in conjunction with T.R.C.P. 6.02(2) to allow substitution of parties

after 90 days. While these cases do not relate to notice of hearings, they do go to Plaintiff's contention that failure to fully comply to T.R.C.P. 25.01 should not lead to the dismissal of Plaintiff's case.

**II. THE PLAINTIFF'S REQUEST FOR AN APPOINTMENT IS PROPER AND IN THE ALTERNATIVE, IF NOT PROPER, THE ERROR IS HARMLESS AND THE COURT SHOULD APPOINT A PROPER PARTY.**

In the event of the untimely death of a defendant, T.R.C.P. 25.01 allows for the substitution of party. The Plaintiff asserts that the Court has the authority to appoint an individual to open and represent the estate of the deceased, Defendant and that the use of an improper term by the Plaintiff to refer to this individual is a harmless error that in no way has prejudiced the Defendant. As of the date of this hearing, no member of the Defendant's family nor any individual has filed a Motion to Probate her estate. In light of this, Plaintiff's only recourse is to ask the Court to appoint an individual to open her estate in order for this action to proceed.

**III. THE DEFENDANT'S ATTORNEY WAS NOT AUTHORIZED TO MAKE A SUGGESTION OF DEATH AND PLAINTIFF MAY STILL FILE AN AMENDED MOTION FOR SUBSTITUTION OF PARTY IF THE COURT DISMISSES PLAINTIFF'S ORIGINAL MOTION AND THUS GRANTING A MOTION TO DISMISS WOULD BE IMPROPER.**

Under T.R.C.P. 25.01, once a suggestion of death has been filed with the Court the Plaintiff shall have ninety (90) days to move for substitution of party. Defendant's counsel filed a Suggestion of Death with this Court of February 10, 2009 and Plaintiff's Motion for Substitution of Party was filed on March 24,



2009. The Plaintiff contends that Defendant's counsel did not have authority to file a Suggestion of Death and for that reason the ninety (90) day rule for substitution party has never been triggered. This was the holding in *Murrell v Reid*, 1985 Tenn. App. Lexis 2972, which stated, "the attorney for the deceased was not authorized by the rule to make a suggestion of death". Further, Plaintiff contends that due to the ninety (90) day rule having never been triggered than Plaintiff may file an amended or new motion for substitution of party for consideration by the court.

#### **IV. THE DEFENDANT'S MOTION FAILS TO COMPLY WITH PROPER NOTICE OF HEARING FOR OPPOSING COUNSEL.**

Pursuant to T.R.C.P. 6.04, the Plaintiff objects to this hearing on Defendant's Motion to Dismiss in that it failed to provide Plaintiff five (5) days notice on their Motion to Dismiss. The Defendant's Motion to Dismiss was filed on November 18, 2009 and set to be heard on November 23, 2009.

#### **CONCLUSION**

The Plaintiff attempted in good faith to adhere to Rule 25.01 requirement of Notice of Hearing. Upon filing of Motion, Plaintiff's counsel contacted counsel for the Defendant to inform her of the problems of setting a hearing date due to the court schedule for May not having been set yet. Defendant's counsel did not object. Plaintiff contends that Defendant received constructive notice of hearing and waived actual notice of hearing due to the case proceeding forward and

Defendant was not prejudiced by their lack of actual notice of hearing. The Plaintiff would also assert that if his Motion is not proper in that it fails to ask for the proper party, which Plaintiff does not concede, then Plaintiff may amend Motion to bring the proper party before the Court for appointment due to the ninety (90) day rule in Rule 25.01 not being triggered. The Plaintiff maintains that the Suggestion of Death filed by Defendant's counsel was not proper. Further, Plaintiff would maintain that failure to provide a proper Suggestion of Death would allow Plaintiff the opportunity to cure any errors in Plaintiff's Motion. Plaintiff also contends that the Motion for Dismiss is improperly before this Court due to non-compliance with Rule 6.04 in failure to provide adequate notice.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully request that the Defendants' Motion to Dismiss be denied and that the Plaintiffs be allowed to Substitute Party.

Respectfully submitted,

Karl Chappell

Approved By:

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JEROME COCHRAN  
Attorney for Plaintiff  
116 South Main Street  
Elizabethton, TN 37643  
(423) 542-0081  
BPR # 020446

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and exact copy of this pleading or document has been served upon counsel in interest in this case by delivering a true and exact copy of said pleading or document to the office of said counsel or by placing a true and exact copy of said pleading or document in the United States Mail, addressed as follows, with sufficient postage thereupon to carry the same to its destination and via facsimile.

Carrie S. O'Rear  
Norton Spanger & Cramer P.C.  
Suite P-270  
Landmark Center  
1111 Northshore Drive  
Knoxville, TN 37919

This the \_\_\_\_ day of \_\_\_\_\_, 2009.

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Jerome Cochran  
Attorney for Plaintiff

IN THE CIRCUIT COURT FOR CARTER COUNTY  
AT ELIZABETHTON, TENNESSEE

STATE OF TENNESSEE, ex rel. )  
RICHARD WAGNER, PATSY WAGNER, )  
GREGORY WAGNER, WENDY WAGNER, )  
EULIS BUMGARNER, GLENDA BUMGARNER, )  
JANICE A. HALMAN, DARLENE STINNETT, )  
LARRY STEVEN HOLDREN, JERRY FREEMAN, )  
AND KAY FREEMAN, INDIVIDUALLY AND )  
AS MEMBERS OF PRAYER TABERNACLE )  
CHURCH OF ELIZABETHTON, TENNESSEE, )

Plaintiffs )

vs. )

Case No. C10387 )

ISRAEL OCHOA, MARVIN BABB, )  
JAMES ROBERT EDENS, JAMES EDWARD )  
EDENS, CHARLES JONES, EVERETT )  
DARRELL WAGNER, TROY DALE WAGNER )  
WAYNE WINCHESTER, JAMES TAYLOR )  
and DAVID BOWERS, )

Defendants )

**DEFENDANTS' MEMORANDUM OF LAW AND ARGUMENT IN SUPPORT OF  
THEIR MOTION FOR SUMMARY JUDGMENT**

Come the Defendants, by and through Counsel, and submit the following  
Memorandum of Law and Argument in Support of Their Motion for Summary  
Judgment.

**LAW AND ARGUMENT**

Tennessee Courts have held that "courts in this country do not exercise  
jurisdiction over purely ecclesiastical, religious, or theological disputes."

Anderson v. Watchtower Bible and Tract Society of New York, Inc., et al., 2007

WL 161035 (Tenn. Ct. App.) (attached as Exhibit “3”) The Tennessee Supreme Court has denied the appeal of this decision. (attached as Exhibit “4”) The Court in *Anderson v. Watchtower*, clearly ruled on the Court’s lack of jurisdiction over the exact issues currently before this Court. Every decision by the Church Board with regard to the Plaintiffs is not reviewable by the Courts and therefore their Complaint and Amended Complaint should be dismissed.

The ecclesiastical abstention doctrine (sometimes called the church autonomy doctrine) is rooted in the First Amendment to the United States Constitution, and its purpose is to protect the civil courts from engaging in unwarranted interference with the practices, internal affairs, and management of religious organizations. *Murrell v. Bentley*, 286 S.W. 2<sup>nd</sup> 359, 365 (Tenn.Ct.App. 1954) The actions of the Pastor and Church Board were legitimate exercises of their power and authority granted to them under the Church By-Laws and are not reviewable by the Courts.

**I. THE COURT CANNOT REVIEW THE CHURCH’S MEMBERSHIP VOTE AND DECISION TO EXPEL MEMBERS.**

Pastor Ochoa and the Church Board’s decision to expel Plaintiffs as members was held at a properly called church meeting and was done so with the majority vote of the congregation. The Church By-Laws, specifically state under Article VII, Section 3, “A majority of voting membership shall constitute a quorum at any annual assembly or special business meeting and a **majority vote shall constitute a requisite vote for action**”.

The Plaintiffs position regarding wrongful expulsion of membership is not supported by statute. The Plaintiffs rely on Tennessee Code Annotated § 48-56-202 relating to termination of memberships. However, Tennessee Code Annotated § 48-67-102, specifically states that § 48-56-202 does not apply to religious corporations. The Prayer Tabernacle Church is a religious corporation and therefore, this claim should be dismissed as a matter of law.

However, if the Court finds that they do apply then the Defendants' actions regarding the expulsion of membership and the Court's inability to review these actions is supported by settled case law. "Tennessee recognizes no cause of action for wrongful expulsion from a religious organization. Our Courts will not review such decisions, but will take as binding the decision of the church".

Anderson v. Watchtower Bible and Tract Society of New York, Inc., et al., 2007 WL 161035, pg. 11 (Tenn. Ct. App.) The Court in this decision further stated, "Consequently, we find there is clear and controlling authority that Tennessee Courts have no authority to decide questions of membership or the correctness of expulsion from membership. Anderson v. Watchtower Bible and Tract Society of New York, Inc., et al., 2007 WL 161035, pg. 11 (Tenn. Ct. App.) The Court in Anderson further stated, "The same reasoning applies to defamation claims arising out of a church disciplinary or expulsion proceedings involving a member, since the church-member relationship is a fundamentally ecclesiastical matter". Anderson v. Watchtower Bible and Tract Society of New York, Inc., et al., 2007 WL 161035, pg. 26 (Tenn. Ct. App.)

**II. THE COURT CANNOT REVIEW THE CHURCH'S DECISION REGARDING THE TERMS OF EMPLOYMENT FOR A PASTOR.**

The Plaintiffs contend that the Defendants improperly denied them a vote on the reaffirmation of Pastor Ochoa as church pastor. The Defendants once again rely on the ecclesiastical abstention doctrine. “It has been uniformly held that decisions as to hiring or firing of pastors, as well as other issues regarding minister’s employment, are protected from court inquiry because such decisions necessarily involve questions of religious practice or governance”. Anderson v. Watchtower Bible and Tract Society of New York, Inc., et al., 2007 WL 161035 pg. 14 (Tenn. Ct. App.) There was no written employment agreement regarding a re-election vote. This is clearly a church governance issue. “Thus, decisions by the governing bodies of religious organizations on matters related to doctrine, faith, or church governance and discipline are not reviewable by civil courts”. Mason v. Winstead, 196 Tenn. 268, pg. 265 (Tenn. 1954)

### **III. THE COURT HAS NO JURISDICTION OVER ANY PROPERTY CLAIMS MADE BY THE PLAINTIFFS.**

The Plaintiffs are asking the Court to award them possession and use of the Church property, including the real property and all cash, checking accounts, and other property of the Church. The Defendants also rely on the ecclesiastical abstention doctrine to claim that the Court does not have any jurisdiction on property claims. “Even where property rights are involved, judicial intervention is still prohibited where courts would be called upon to resolve underlying disputes over religious doctrine or practice”. Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 707, pg. 709-710) The Pastor and Church Board acted within their authority and with the support of the congregation when they

prevented the Plaintiffs from coming on church property and told them that they would be prosecuted for trespassing if they remained on church property.

With regard to specific items such as cash and checking accounts and church property, the Defendants maintain that the Plaintiffs have neither right nor basis for their claims on the property. Even if, the Court found that the members were expelled improperly, the Plaintiffs would still have no right to the church property. “Generally, a non-profit corporation, and not its members, owns the property of the non-profit. Absent a departure by the majority from doctrine accepted by the articles of incorporation, the minority has no right to claim church property from a majority of the church membership.” Two Rivers Baptist Church, et Al. v. Jerry Sutton, et Al., 2010 Tenn. App. 347, pg. 13 (Tenn. App. Ct. 2010)

### **CONCLUSION**

The Plaintiffs have brought before this Court a matter to which the Court has no jurisdiction. The Plaintiffs were expelled by a majority of the members of the Church based on their conduct of disrupting church services and causing disharmony in the church by their repeated calls for the re-election of a pastor. The Church Board decided against conducting another election for the pastor and the Plaintiffs refuse to recognize the Church Board’s authority to make this decision. All these issues are ecclesiastical matters and these types of matters are under the exclusive jurisdiction of the church’s authority under the Ecclesiastical Abstention Doctrine. This Doctrine is rooted in the First and Fourteenth Amendments of the United States Constitution. Based on statutory law and case law, the courts are prohibited from interfering or reviewing the



decisions of church organizations. The courts have deferred those decisions to the highest tribunal of the religious organizations.

**PRAYER FOR RELIEF**

WHEREFORE, the Defendants respectfully request that the Court grant their Motion for Summary Judgment and dismiss the Plaintiff's Complaint and Amended Complaint.

Respectfully submitted,

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Jerome Cochran  
Attorney for the Defendants  
116 South Main Street  
Elizabethton, TN 37643  
(423) 542-0081  
BPR# 020446

**CERTIFICATE OF SERVICE**

I, Jerome Cochran, do hereby certify that I have sent a true and exact copy of the Defendant's Answer by facsimile and United States mail with sufficient postage to:

Thomas Banks  
Banks and Banks  
Post Office Box 400  
Elizabethton, TN 37644

This the \_\_\_\_\_ day of February, 2012.

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Jerome Cochran  
Attorney for the Defendants