

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

**State of Tennessee**

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

Name: E. Jerome Melson

Office Address: 900 S. Gay Street, Suite 2300  
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Home Phone: Cellular Phone:

**INTRODUCTION**

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

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website [www.tncourts.gov](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 your original, hard copy (unbound), completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your hard-copy application, or the digital copy may be submitted via email to [cesha.lofton@tncourts.gov](mailto:cesha.lofton@tncourts.gov).

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

Attorney – Member – Gentry, Tipton & McLemore, P.C.  
900 S. Gay Street, Suite 2300  
Knoxville, TN 37902

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

1988 BPR# 013340

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

Tennessee – BPR# 013340; 1988; Active

Montana – BPR# 9763; 2009; Inactive. In Montana, inactive means you are eligible for active membership but are not currently engaged in the practice of law there.

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. See response to number 3, above. As mentioned, holding inactive status in Montana means you are eligible for active membership but are not currently engaged in the practice of law there.

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).

Attorney/Member – 3/2003 to present - Gentry, Tipton & McLemore, P.C.

900 S. Gay Street, Ste. 2300, Knoxville, TN 37902

Delinquent Tax Attorney – 1/2015 to present – Monroe County, TN

105 College St., Madisonville, TN 37354

Examination Assistant – 12/2013 to present - Tennessee Board of Law Examiners  
511 Union St., Nashville, TN 37219

Adjunct Faculty – 7/2010 to 12/2013 – University of Tennessee, College of Law  
1505 W. Cumberland Ave., Knoxville, TN 37996

County Attorney – 10/2008 to present - Monroe County, TN  
105 College St., Madisonville, TN 37354

Counsel – 6/2005 to present – Industrial Development Board of the County of Monroe, Inc.  
Monroe County Courthouse, Madisonville, TN 37354

City Attorney – 8/2004 to 9/2014 – Town of Vonore  
613 Church St., Vonore, TN 37885

City Attorney – 12/1991 to 4/2003 and 8/2004 to present – City of Rocky Top  
(f/k/a City of Lake City)  
195 S. Main St., Rocky Top, TN 37769

Attorney/Partner – 3/1991 to 3/2003 – Watson, Hollow and Reeves, PLC  
(n/k/a Watson, Roach, Batson, Rowell & Lauderback)  
900 S. Gay St., Knoxville, TN 37902

City Attorney – 10/1988 to 11/1990 and 10/2002 to present – City of Madisonville  
105 College St., Madisonville TN 37354

Law Clerk/Associate – 1987 to 3/1991 – McCampbell and Young, P.C.  
(n/k/a Young, Williams and Ward)  
300 Montvue Road, Knoxville, TN 37919

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.

My practice is a general civil practice in which I represent individuals and business and governmental entities in a wide variety of legal matters that regularly involve trial and appellate work. Much of my work consists in serving as counsel for multiple local governments. This work involves routinely drafting contracts, legislative ordinances and resolutions, and providing advice on a range of matters including finance, personnel and human resources, law enforcement, parliamentary procedure, constitutional matters, risk management, litigation, and preparing appropriate pleadings and briefs. I also represent businesses in commercial disputes, pursue and defend personal injury claims, and conduct and participate in mediations. The percentages of time devoted to these areas is as follows:

Governmental Litigation - 15%

Commercial Law - 15%

Local Government Representation - 60%

Personal Injury - 5%

Mediation - 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.

I am a trial attorney with extensive experience in governmental litigation and local governmental representation, including defense of law enforcement officers in federal civil rights litigation. I also have substantial experience in commercial law and insurance defense litigation.

My first employment as an attorney was with the firm of McCampbell and Young, PC, now known as Young, Williams and Ward. I began there as a Law Clerk approximately half-way through my law school career and accepted a position as an Associate Attorney upon my

admission to the Bar in the fall of 1988. I worked primarily in insurance defense matters. These involved providing defense in automobile negligence, premises liability, and product liability matters. Immediately upon licensure, I was appointed City Attorney for Madisonville, Tennessee. In that position I drafted ordinances, advised city council on a variety of issues and represented the city in court. In addition, I represented multiple clients in collection matters and also provided criminal defense representation on an appointed basis in multiple cases. The most significant criminal case in which I was involved was a second-degree murder case tried in Knox County Criminal Court. I assisted a senior attorney in that case. A judgment of acquittal was obtained.

From the period of March 1991 through late March 2003, I practiced at Watson, Hollow & Reeves, PLLC, now known as Watson, Roach, Batson & Lauderback. My practice consisted primarily of insurance defense related matters. I served as lead counsel in scores of cases ranging from automobile negligence and premises liability to defense of federal civil rights claims and medical negligence claims lodged against numerous health care providers. I represented municipalities and municipal officials throughout Eastern Tennessee in both state and federal courts, both at the trial and appellate levels, and served as City Attorney for Lake City during that time as well.

In March 2003 I joined the firm of Gentry, Tipton & McLemore, PC, in which I continue to serve as a Member. Over the 17 years of my tenure at this firm, I have litigated cases in state and federal courts in a variety of areas. These include commercial disputes, tax litigation, adversary proceedings in bankruptcy courts, employment disputes, will contest and probate claims, personal injury claims, and the representation of numerous governmental officials and employees in state and federal courts, both at the trial and appellate levels, on a variety of constitutional and statutory claims. I have also served as counsel to multiple local governments. That has included serving as counsel to the Industrial Development Board for Monroe County, serving as City Attorney for Vonore, Madisonville, City of Lake City *n/k/a* Rocky Top, and serving both as the County Attorney for Monroe County and the Delinquent Tax Attorney for Monroe County. In addition, over that same time period, I have served as outside counsel in numerous cases assigned by Knox County and the City of Knoxville. Apart from governmental clients, I have represented individuals in personal injury matters, small businesses, banks, and corporations, as well as some insurance companies. Additionally, I have litigated several cases before state administrative tribunals over the course of my career and have also briefed and argued multiple cases in both the Tennessee Court of Appeals and the United States Court of Appeals for the 6<sup>th</sup> Circuit.

Beginning in 2010 and over the ensuing four years, I taught Trial Advocacy as a member of the Adjunct Faculty at the University of Tennessee College of Law. I then began working as an Examination Assistant with the Tennessee Board of Law Examiners.

As an Examination Assistant with the Tennessee Board of Law Examiners, I have participated in the authorship of essay questions, the formulation of proposed model answers, and the grading of answers for numerous bar examinations. In that connection, I have completed multiple training and review sessions provided by the National Conference of Bar Examiners.

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

In addition to the practice descriptions provided in the preceding response, there is attached hereto a listing of more than 70 citations to orders and/or opinions in various cases in which I have been involved. The subject matter of these cases includes worker's compensation, federal civil rights including claims of excessive force and wrongful death, breach of contract, premises liability, employment law, federal income taxation, election contest, dispute involving the sale of real property, and governmental tort liability. The cases reflect forums in various circuit and chancery courts, as well as the United States Bankruptcy Court and the United States District Court.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I completed the required training to serve as a Mediator in 2016. Since that time, I have mediated multiple cases for litigants in both state and federal courts in Eastern Tennessee. These cases have involved, among other things, federal civil rights claims and related state law claims. Such cases have alleged excessive force by law enforcement officials including the application of deadly force, as well as claims for violation of Eighth Amendment rights predicated upon allegations of the wrongful death of a prisoner. Other cases have involved commercial contract disputes. All but one of the cases were resolved during the mediation. Apart from conducting such mediations, I have represented clients in scores of mediated cases over the course of my career.

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.

I served as a Conservator for a disabled individual for a period of 18 months approximately 20 years ago in Knox County, Tennessee.

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

While in college and for a portion of law school, in my capacity as a field representative for United States Congressman John J. Duncan, Jr., I conducted monthly constituent service meetings in the Monroe County Courthouse. This provided citizens who had governmental and legal concerns with an opportunity to communicate their concerns and requests for assistance with various aspects of the federal government to a legislative representative. I accordingly

gained extensive experience in assisting individuals with a variety of legal-related matters. These included assisting applicants with a variety of federal benefit programs and initiatives. These early experiences in dealing with a wide range of problems and concerns possessed by citizens from all walks of life were invaluable. I learned the importance of listening to individuals and the importance of providing detailed responses to specific concerns expressed by anyone regardless of race, sex, age, creed or social standing.

For several years, a substantial part of my practice has been devoted to representing law enforcement officers in federal civil rights litigations. These cases have dealt with claims arising from the use of force to effect arrests, including deadly force. The law enforcement officers I have represented have been employed by multiple law enforcement agencies and my work in defending those sworn to protect and serve their fellow citizens has been among the most challenging and rewarding of my career. For example, I am pleased to have recently successfully defended at trial a federal civil rights wrongful death case involving a Knoxville police officer compelled to use deadly force against an individual who initiated an assault on the officer during a traffic stop.

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 made application for appointment to a position on the Tennessee Claims Commission. In April of that year, I was interviewed by a panel that included multiple members of the Governor's Council for Judicial Appointments as well as the Counsel to the Governor. Of approximately twenty-eight applicants, my name was among four ultimately submitted to the Governor for that 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, College of Law, Knoxville, TN – 8/85 to 6/88 – J.D. with honors  
University of Tennessee, Knoxville, TN – 9/82 to 6/85 – B.A. w/highest honors, College Scholars Program, English, History, and Political Science

- Chancellor's Citation for Extraordinary Professional Promise – 1985
- Alternate, State of Tennessee, Harry S. Truman Scholarship – 1984

Recipient, John W. Green Scholarship – 1985 -1986 – Univ. of Tennessee College of Law

Dean's List – 1986 to 1988 – Univ. of Tennessee College of Law  
Recipient, National Alumni Association Scholarship – 1982 to 1987 – Univ. of Tennessee College of Liberal Arts and College of Law  
Highest Grade in Trial Practice – 1988 – Univ. of Tennessee College of Law

**PERSONAL INFORMATION**

15. State your age and date of birth.

Age: 55      D.O.B.: [REDACTED] 1964

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

All my life, with the exception of intermittent periods during high school, college, and law school when I worked for Congressman John J. Duncan, Jr. in Washington D.C.

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

37 years, except for during intermittent periods during college and law school when I worked for Congressman John J. Duncan, Jr. in Washington D.C.

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.

Although not a disciplinary complaint, in 2015 an individual whom I never met completed an online form with the Consumer Assistance Program of the Tennessee Board of Professional Responsibility expressing dissatisfaction that I cancelled an initial consultation meeting with the individual upon ascertaining that a conflict of interest prevented my representation. I explained this in a letter and the matter was closed.

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.

Along with approximately a dozen individuals and entities, I was named as a Defendant in a litigation filed in Knox County Circuit Court in 2002, styled *J.D. Lee et al. v. State Volunteer Mutual Insurance Company et al.*, which litigation was dismissed approximately nine weeks after it was filed. The Plaintiff alleged that the Defendants wrongfully conspired to resolve a related personal injury litigation involving a minor for substantially less than the alleged value of the claim, thus depriving Plaintiff's counsel of a larger fee. The Knox County Circuit Court promptly granted a Motion to Dismiss in favor of all Defendants. Thereafter, in January 2003,

the Plaintiff's attorney issued a written apology to me and all other individual Defendants named in the action.

In 2000, I was a party to a divorce proceeding predicated upon irreconcilable differences filed in Knox County Chancery Court, bearing Docket No. 146767-3.

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.

East Tennessee Historical Society – President – 4/2018 to present  
East Tennessee Historical Society – Vice President, Knoxville Area – 4/2014 to 4/2018  
East Tennessee Historical Society – Member, Board of Directors – 4/2013 to present  
TN Board of Law Examiners – Examination Assistant – 12/2013 to present  
Delta Dental of Tennessee – Member, Board of Directors – 5/2018 to present  
Sequoyah Hills Presbyterian Church, Knoxville – Deacon – 2018 to present  
Church of the Good Shepherd, Knoxville – Member – 2006 to 2016  
The International Churchill Society  
George Washington's Mount Vernon

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

NITA Advocate Designation, National Institute for Trial Advocacy – 1/2008  
Civil Trial Specialist Certification, Tennessee Commission on CLE and Specialization – 6/2005  
Civil Trial Advocacy Certification, National Board of Trial Advocacy – 6/2005  
Civil Pretrial Practice Advocacy Certification, National Board of Civil Pretrial Practice Advocacy – 8/2012  
Tennessee Supreme Court Alternative Dispute Resolution Commission Listed General Civil Mediator pursuant to Rule 31 of the Rules of the Tennessee Supreme Court – 1/2016  
Certified Mediator in the Federal Mediation Program – 3/2016  
Knoxville Bar Association – 1988  
    DICTA Newsletter Editorial Board – approx. 1991 to 1993  
    Speaker, KBA Community Law School  
    Speaker, KBA CLE on Open Records  
Tennessee Bar Association – 1988  
Barrister, Master of Bench, Hamilton S. Burnett Chapter, American Inns of Court – since approx. 1995  
Montana Bar Association – 2009  
Keynote Speaker, Smoky Mountain Criminal Justice Conference – 2013  
Presenter, Smoky Mountain Criminal Justice Conference – 2012

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.

Mid-South Super Lawyers – 2007 to present  
Martindale-Hubbell Peer Review Rated for Ethical Standards and Legal Ability – AV – Preeminent – Highest Rated/5.0 out of 5.0  
Cityview Magazine, Knoxville’s Top Attorneys – 2008, 2010, 2012, 2013, 2014, 2016, 2017, 2019  
Best Lawyers, Civil Rights and Litigation – Municipal – 2012 to present

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.

City of Madisonville – City Attorney – 10/1988 to 11/1990 and 10/2002 to present – appointed  
City of Lake City/Rocky Top – City Attorney – 12/1991 to 4/2003 and 8/2004 to present – appointed  
Town of Vonore – City Attorney – 8/2004 to 9/2014 – appointed  
Industrial Development Board of the County of Monroe, Inc. – appointed 6/2005 to present  
Monroe County – County Attorney – 10/2008 to present – appointed  
Monroe County Delinquent Tax Attorney – 1/2015 to present – appointed

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 briefs. These are largely my work product, with some assistance received on the research and final revisions.

**ESSAYS/PERSONAL STATEMENTS**

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

I represent the first generation of my family to have obtained a college education and a professional license. I decided to become a lawyer at a young age and never wavered. From my teenage years working on Capitol Hill and beyond, I have desired to serve the institutions of our government specifically including its courts. Now, with more than three decades of professional experience during which I have handled a wide variety of legal disputes involving individuals, businesses and governments, I believe I possess a breadth of knowledge and skills, including proficiency in research and writing, that would enable me to serve the citizens of

Tennessee well as an appellate judge.

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)*

A commitment to equal access to justice necessarily involves service. In service to the public interest in providing information about the work of the justice system, I have addressed numerous school and employee and/or professional groups. In service to the development of those seeking to enter the profession, I taught students for several years at the University of Tennessee College of Law. Similarly, in serving the interest of appropriately licensing applicants for bar admission, I have served and continue to serve as an Examination Assistant to the Tennessee Board of Law Examiners contributing to its composition and grading. In service to the development of new entrants to the profession I have, for many years, mentored young lawyers. In addition, I have regularly provided pro bono legal advice and representation to individuals and entities, including non-profit organizations. I have also supported legal aid organizations.

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 a position as judge on the Tennessee Court of Appeals for the Eastern Section. The Tennessee Court of Appeals consists of twelve judges, divided into three sections of four judges. The Eastern Section is composed of four judges residing in East Tennessee. My selection would enable the Eastern Section to continue to fulfill its duties to hear appeals in a competent and timely manner. Having lived in East Tennessee my entire life, both in a small town and the urban area of Knoxville, I believe my background would contribute to a balanced appellate court that is representative of the people of Tennessee.

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 am active in my faith community and serve as a deacon and committee chair in Sequoyah Hills Presbyterian Church in Knoxville where I have also taught Sunday school on occasion. In addition, I have served for approximately seven years as a member of the board of the East Tennessee Historical Society, Inc., founded in 1834. I am soon to begin my third year as President of that non-profit organization, which preserves, interprets, and promotes the history of Tennessee, focusing on East Tennessee. The work of this important organization includes the operation of the East Tennessee History Center and the regular provision of public outreach through history education programs and support for many school history initiatives and activities. I also serve on the Board of Delta Dental of Tennessee, a nonprofit corporation that seeks, among other things, to improve access to dental care to underserved individuals

throughout Tennessee. In the event of being appointed, my intention would be to continue to serve my community through these organizations to the extent doing so would not be proscribed by any rule or provision regulating judicial conduct.

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

An eighth generation East Tennessean, I was raised in a rural county in humble circumstances. Blessed with parents who instilled a strong work ethic and love of country in their three children, I learned from a young age the necessity of hard work and the importance of education. At the age of twelve, I obtained my first job working after school for \$2.00 an hour on the printing floor of a small town newspaper. That same year, as a young 4-H club member attending a public hearing on the proposed completion of a TVA dam project, I extemporaneously addressed the assembly and my remarks drew the attention of United States Congressman John J. Duncan, who was present. Less than four years later, he employed me on his Washington staff, the youngest person he had hired since holding the office. I spent much of the last two years of high school working in Washington. When I graduated high school, I continued in his employ while I worked my way through the University of Tennessee College Scholars Program in three years. I entered law school on scholarship and continued to work then as well. Graduating with honors, I achieved my dream of becoming a lawyer and serving in the judicial system. For more than three decades, I have represented both the humble and the affluent, the government and the citizen. Given my own life experiences, I have learned much about the need to ensure that justice is equally available to all.

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 would uphold the law as enacted and as would be consistent with a judge's oath. To be sure, there are occasions when the adherence to a rule or statute is challenging. In the context of governmental representation, for example, the transparent conduct of the public's business ordinarily requires that matters which may be personally vexing or embarrassing to public officials nevertheless be addressed publicly. In that regard, I have, on occasion, been tasked with publicly addressing alleged improprieties of elected officials and publicly disclosing the results of those efforts or a difference of opinion with a position taken by a member of a body that I represent. While it may be more comfortable to address certain allegations or circumstances outside a public meeting, the legal obligations to deal with such matters publicly may not be violated.

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. Bennett L. Cox, Senior Vice President and Chief General Counsel, University Health System, Inc., [REDACTED] Knoxville, TN 37920; [REDACTED]
B. Ronald E. Mills, Deputy Law Director, City of Knoxville, TN, [REDACTED] Knoxville, TN 37902; [REDACTED]
C. James S. Tipton, Attorney, [REDACTED] Knoxville, TN 37902; [REDACTED] [REDACTED]
D. Rev. Charles Fels, [REDACTED] Knoxville, TN 37915; [REDACTED] [REDACTED]
E. Susan Richardson Williams, Public Affairs Consultant, [REDACTED] Knoxville, TN 37922; [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 Appellate Court 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: Jan. 31, 2020.

  
\_\_\_\_\_  
Signature

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





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

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

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

**WAIVER OF CONFIDENTIALITY**

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

E. Jerome Melson

Type or Print Name

*E. Jerome Melson*  
Signature

1-31-20  
Date

013340  
BPR #

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

Montana - 9763

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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ATTACHMENT FOR FURTHER RESPONSE TO  
QUESTION NUMBER 9

### 1. Thomas v. Buck

United States District Court, E.D. Tennessee. November 22, 2019 Slip Copy 2019 WL 6255838 3:16-CV-631-TAV-DCP

On October 24, 2015, Plaintiff visited his girlfriend, Alice Adams, who had been injured in a car wreck that afternoon, at the hospital where Defendants worked [Doc. 76 p. 4–6]. During this visit, Plaintiff alleges, he began to inquire as to why Adams was not being treated and became concerned about her well-being [Id. at 5–6]. He also...

...11/22/2019 Matthew A. Thomas, Hartsville, TN, pro se. E. Jerome Melson John M. Kizer , Gentry, Tipton & McLemore, PC, Knoxville, TN, for...

### 2. Dickey v. Knoxville Police Dep't

United States District Court, E.D. Tennessee, Northern Division, at Knoxville. August 21, 2019 Slip Copy 2019 WL 3949049 3:17-CV-412

This matter is before the Court on Defendant Travis Baker's Motion for Summary Judgment [doc. 23]. After the Court granted a motion to defer ruling pending limited discovery [doc. 36], Plaintiff has now responded [doc. 39], and Defendant Baker has replied [doc. 40]. For the reasons stated below, Defendant Baker's Motion for Summary Judgment [doc....

...Kristopher Baker , The Baker Law Firm, Knoxville, TN, for Plaintiff. E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM OPINION...

### 3. Thomas v. Buck

United States District Court, E.D. Tennessee. June 11, 2019 Slip Copy 2019 WL 2438786 3:16-CV-631-TAV-DCP

This is a pro se prisoner's civil rights action filed under 42 U.S.C. § 1983. Now before the Court are Plaintiff's motion for depositions by written questions [Doc. 49] and motions for discovery from third parties [Docs. 50 and 51], Defendants' motion for summary judgment [Doc. 53] and motion for protective order [Doc. 56], and Plaintiff's...

...06/11/2019 Matthew A. Thomas, Hartsville, TN, pro se. E. Jerome Melson John M. Kizer , Gentry, Tipton & McLemore, PC, Knoxville, TN, for...

### 4. Dickey v. Knoxville Police Department

United States District Court, E.D. Tennessee, Northern Division, at Knoxville. August 08, 2018 Not Reported in Fed. Supp. 2018 WL 3762988 3:17-CV-412

Plaintiff Jawon Dickey filed this civil rights action against the Knoxville Police Department ("KPD") and KPD Officer Travis Baker in which he claims that Officer Baker punched him in the face several times and knocked out his front tooth [Doc. 2]. KPD has filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) on the grounds...

...Kristopher Baker , The Baker Law Firm, Knoxville, TN, for Plaintiff. E. Jerome Melson , Gentry, Tipton & McLemore, PC, Ronald E. Mills , City of Knoxville...

### 5. Carden v. Gerlach

United States District Court, E.D. Tennessee. June 13, 2018 Not Reported in Fed. Supp. 2018 WL 2974389 3:15-CV-314-TAV-HBG

This civil matter is before the Court on defendant's motion for a directed verdict on liability, damages, and qualified immunity. The motion was argued by both plaintiff and defendant at trial on April 23, 2014. On April 24, 2014, the Court orally granted defendant's motion and stated that a written order would follow [Doc. 112]. The Court has...

...Richard M. Brooks , Brooks Law Group, Carthage, TN, for Plaintiff. E. Jerome Melson John M. Kizer , Gentry, Tipton & McLemore, PC, Knoxville, TN, for...

### 6. Carden v. Gerlach

United States District Court, E.D. Tennessee. June 13, 2018 Not Reported in Fed. Supp. 2018 WL 2974390 3:15-CV-314-TAV-HBG

This civil matter is before the Court on defendant's second renewed and supplemental motion for summary judgment [Doc. 114]. Plaintiff did not respond and the time for doing so has now passed. E.D. Tenn. L.R. 7.1. In his motion, defendant asserts that he is entitled to qualified immunity as a matter of law. For the reasons set forth below, the...

...Richard M. Brooks , Brooks Law Group, Carthage, TN, for Plaintiff. E. Jerome Melson John M. Kizer , Gentry, Tipton & McLemore, PC, Knoxville, TN, for...

### 7. Jelsma v. Knox County, Tennessee

United States Court of Appeals, Sixth Circuit. May 31, 2018 725 Fed.Appx. 396 2018 WL 2446699 17-6140

Patty Jelsma sued Officer Bradley Cox, claiming that he had used excessive force to arrest her. The district court initially denied Cox's motion for summary judgment, but it reconsidered that decision after Jelsma effectively admitted that Cox's use of force was reasonable. We affirm. In 2013, Jelsma's mother called 911 to report...

...Law Department, Knoxville, TN, for Defendant-Appellee Knox County, Tennessee Earl Jerome Melson , Gentry, Tipton & McLemore, Knoxville, TN, for Defendant-Appellee Bradley Cox...

### 8. Wheeler v. Knox County, Tennessee

United States District Court, E.D. Tennessee, Northern Division, at Knoxville. March 28, 2018 Not Reported in Fed. Supp. 2018 WL 2376763 3:16-CV-108-CLC-HBG

This case is before the undersigned pursuant to 28 U.S.C. §636, the Rules of this Court, and Standing Order 13-02. Now before the Court are two Motions for Protective Order [Docs. 47, 49], filed by Catherine Shanks and Raymond Hill, respectively. The parties appeared before the Court on March 26, 2018, for a motion hearing. Attorney...

...Ill, appeared on behalf of Defendant Knox County, Tennessee. Attorneys E. Jerome Melson and John Kizer appeared on behalf of Catherine Shanks. Attorney...

### 9. Carden v. Gerlach

United States District Court, E.D. Tennessee, Northern Division, at Knoxville. February 28, 2018 Not Reported in Fed. Supp. 2018 WL 1095558 3:15-CV-314-TAV-HBG

This case is before the undersigned pursuant to 28 U.S.C. §636, the Rules of this Court, and the referral Order [Doc. 62] of the Chief District Judge. Now before the Court is Defendant David Gerlach's Motion for Sanctions [Doc. 55]. The parties appeared telephonically before the Court on February 16, 2018, for a motion hearing. Attorney...

...Richard M. Brooks , Brooks Law Group, Carthage, TN, for Plaintiff. E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendant. MEMORANDUM AND...

...hearing. Attorney Richard Brooks appeared on behalf of Plaintiff. Attorneys Jerome Melson and John Kiser appeared on behalf of Defendant Gerlach. Accordingly...

### 10. CIC Services, LLC v. Internal Revenue Service

United States District Court, E.D. Tennessee, Northern Division, at Knoxville. November 02, 2017 Not Reported in Fed. Supp. 2017 WL 5015510 3:17-CV-110

Before the Court is a motion to dismiss filed by Defendants, the Internal Revenue Service, the Department of Treasury, and the United States of America. (Doc. 25.) Also before the Court is Plaintiffs CIC Services, LLC ("CIC"), and Ryan, LLC's ("Ryan") conditional motion for leave to amend. (Doc. 26.) For the reasons stated...

...02/2017 Adam R. Webber , Falke & Dunphy LLC, Dayton, OH, E. Jerome Melson John M. Kizer , Gentry, Tipton & McLemore, PC, Knoxville, TN, Kenneth...

### 11. Jelsma v. Knox County, Tennessee

United States District Court, E.D. Tennessee. August 25, 2017 Not Reported in Fed. Supp. 2017 WL 3687317 3:14-CV-351-TAV-CCS



Before the Court is defendant Officer Bradley Cox's motion for reconsideration of the Court's ruling on defendants' motion for summary judgment [Doc. 95]. Plaintiff responded in opposition to defendant's motion [Doc. 98] and Officer Cox replied [Doc. 99]. For the reasons explained below, the Court will grant Officer Cox's motion to reconsider and...

...S. Wigler J. Myers Morton , Knox County Law Director's Office, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM OPINION...

### 12. Carden v. City of Knoxville, Tennessee

United States Court of Appeals, Sixth Circuit. July 12, 2017 699 Fed.Appx. 495 2017 WL 2963510 17-5157



CIVIL RIGHTS - Excessive Force. Shooting unarmed fleeing suspect was an unjustified violation of suspect's right to be free from excessive force.

...Richard M. Brooks , Law Office, Carthage, TN, for Plaintiff-Appellee Earl Jerome Melson , Gentry, Tipton & McLemore, Knoxville, TN, for Defendant-Appellant BEFORE: GUY...

**13. Jelsma v. Knox County, Tennessee**

United States District Court, E.D. Tennessee, at Knoxville. June 14, 2017 Not Reported in Fed. Supp. 2017 WL 2589340 3:14-CV-351-TAV-CCS

This case is before the undersigned pursuant to 28 U.S.C. §636, the Rules of this Court, Standing Order 13-02, and the referral Order [Doc. 60] of the Chief District Judge. Now before the Court are the following Motions: (1) Motion in Limine of Defendant Bradley Cox or in the Alternative Motion to Dismiss Pursuant to Fed. R. Civ....

...S. Wigler J. Myers Morton, Knox County Law Director's Office, E. Jerome Melson, Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM AND...

**14. CIC Services, LLC v. Internal Revenue Service**

United States District Court, E.D. Tennessee, Northern Division, at Knoxville. April 21, 2017 Not Reported in Fed. Supp. 2017 WL 6016526 3:17-CV-110

Before the Court is a motion for preliminary injunction and partial summary judgment filed by Plaintiffs CIC Services, LLC ("CIC") and Ryan, LLC ("Ryan") (collectively "Plaintiffs"). (Doc. 8.) For the reasons stated hereafter, Plaintiffs' motion for preliminary injunction will be DENIED. As stated in the Court's...

...21/2017 Adam R. Webber, Falke & Dunphy LLC, Dayton, OH, E. Jerome Melson John M. Kizer, Gentry, Tipton & McLemore, PC, Knoxville, TN, Kenneth...

**15. Carden v. City of Knoxville, Tennessee**

United States District Court, E.D. Tennessee. January 23, 2017 Not Reported in Fed. Supp. 2017 WL 5709590 3:15-CV-314-TAV-HBG

This civil action is before the Court on the Motion for Summary Judgment on Behalf of Defendant David Gerlach [Doc. 14]. Plaintiff filed a response in opposition [Doc. 25], and defendant replied [Doc. 26]. After careful examination of the record and the relevant law, the Court finds that defendant Gerlach is entitled to summary judgment as...

...Richard M. Brooks, Brooks Law Group, Carthage, TN, for Plaintiff. E. Jerome Melson, Gentry, Tipton & McLemore, PC, Ronald E. Mills, City of Knoxville...

**16. Jelsma v. Knox County**

United States Court of Appeals, Sixth Circuit. January 20, 2017 673 Fed.Appx. 525 2017 WL 244812 16-6202

Officer Bradley Cox brings this interlocutory appeal from the district court's order denying him qualified immunity on Patty Jelsma's excessive force claim filed under 42 U.S.C. § 1983. On July 28, 2013, Officer Cox and another officer responded to a report of a domestic disturbance at the home of Jelsma's mother. When the officers arrived,...

...Patrick LaVaughn Looper, Law Office, Knoxville, TN, for Plaintiffs-Appellees Earl Jerome Melson, Gentry, Tipton & McLemore, Knoxville, TN, for Defendant-Appellant BEFORE: MERRITT...

**17. Jelsma v. Knox County, Tennessee**

United States District Court, E.D. Tennessee. July 06, 2016 Not Reported in Fed. Supp. 2016 WL 8678053 3:14-CV-351-TAV-CCS

This civil action is before the Court on Defendants' Motion for Summary Judgment with Memorandum in Support [Doc. 30]. Defendants move the Court to dismiss the action, alleging that they are entitled to summary judgment as a matter of law. Plaintiffs responded in opposition [Doc. 33], and defendants replied [Doc. 37]. After careful examination of...

...S. Wigler J. Myers Morton , Knox County Law Director's Office, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM OPINION...

### 18. Nichols v. Knox County, Tenn.

United States District Court, E.D. Tennessee, Northern Division.      September 29, 2015      Not Reported in  
F.Supp.3d      2015 WL 5725166      3:11-CV-417-PLR-HBG

This matter has been stayed while the parties appealed the Court's ruling on summary judgment. [R. 128]. The appeals have now been resolved and dismissed, and the plaintiff has moved to lift the stay and set the case for trial. [R. 164]. While the case was stayed, the plaintiff settled his claims against all remaining parties except for Knox...

...S. Wigler Thomas S. Mullin , Knox County Law Director's Office, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. Memorandum Opinion...

### 19. Jelsma v. Knox County, Tennessee

United States District Court, E.D. Tennessee, at Knoxville.      September 21, 2015      Not Reported in Fed. Supp.  
2015 WL 13216641      3:14-CV-351-TAV-CCS

This civil action is before the Court on the motion to dismiss filed by defendant Knox County, Tennessee, and all defendants in their official capacities [Doc. 9], and the motion to dismiss filed by defendant Sheriff J.J. Jones in his individual capacity [Doc. 10]. Defendants move the Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil...

...S. Wigler J. Myers Morton , Knox County Law Director's Office, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM OPINION...

### 20. Bivens v. White

Court of Appeals of Tennessee, AT KNOXVILLE.      September 16, 2015      Slip Copy      2015 WL 5444126  
E201402251COAR3CV

This appeal involves an incumbent candidate's attempt to challenge the election for the office of Sheriff of Monroe County based upon the ineligibility of the other candidate. The incumbent candidate sought to claim the office or void the election. The trial court voided the election following a bench trial. This appeal followed. We affirm. This...

...Burks, Jr. , Knoxville, Tennessee, for the appellee, Randy Dwaine White. E. Jerome Melson , Knoxville, Tennessee, for the appellee, Monroe County Election Commission. JOHN...

### 21. Nichols v. Knox County, Tenn.

United States District Court, E.D. Tennessee, Northern Division.      June 19, 2014      Not Reported in F.Supp.3d  
2014 WL 2803106      3:11-CV-417-PLR-HBG

Donald Nichols filed this complaint under 42 U.S.C. § 1983 alleging that his Eighth Amendment right against cruel and unusual punishment was violated while he was incarcerated at the Knox County Detention Facility (the "Facility" or "Knox County" ). On August 27, 2010, Mr. Nichols was asleep on the top bunk in his cell when he fell off the bed...

...Stanley & Kurtz, PLLC, Knoxville, TN, for Plaintiff. Amy S. Hickerson E. Jerome Melson , Gentry, Tipton & McLemore, PC, Thomas S. Mullin , Knoxville, TN, Leslie...

## 22. Holt v. Knox County, Tenn.

United States District Court, E.D. Tennessee, Northern Division.      May 05, 2014      Not Reported in F.Supp.3d  
2014 WL 1784054      3:12-CV-465-PLR-CCS

Plaintiffs William and Rhonda Holt brought this action under 42 U . S.C. § 1983 alleging violations of their Fourth Amendment rights against unreasonable search and seizure relating to the plaintiffs' arrest. Mr. Holt also brought state-law claims for assault and battery. The Holts dismissed Knox County on March 10, 2014. Presently before the Court...

...Plaintiffs. Mary Ann Stackhouse , Lewis, Thomason, King, Krieg & Waldrop, P.C., E. Jerome Melson , Gentry, Tipton & McLemore, P.C., Knoxville, TN, for Defendants. Memorandum Opinion...

## 23. In re Hubbard

United States Bankruptcy Court, E.D. Tennessee, Winchester Division.      April 25, 2014      Not Reported in B.R.  
2014 WL 1654703      ADV 14-1010, 13-15606

The debtor Steven Erich Hubbard ("Debtor" or "Plaintiff") filed a complaint in this adversary proceeding against defendant Pennsylvania Higher Education Assistance Agency ("PHEAA" or "Defendant"). [Doc. No. 1, Complaint]. He seeks the dischargeability of certain student loans pursuant to 11 U.S.C. § 523(a)(8). He further seeks declaratory relief...

...1010. Signed April 25, 2014. Steven Erich Hubbard, pro se. E. Jerome Melson , Gentry, Tipton & McLemore, P.C., Knoxville, TN, for Defendant. MEMORANDUM SHELLY...

## 24. Dawson v. Monroe County, Tenn.

United States District Court, E.D. Tennessee.      February 24, 2014      Not Reported in F.Supp.3d      2014 WL  
700400      3:13-CV-240-TAV-CCS

This civil matter is before the Court on several motions: (1) defendants Monroe County, Tennessee and Bill Bivens' (collectively, the "County defendants") Motion to Dismiss [Doc. 11]; (2) defendant Doug Brannon's Motion to Dismiss for Failure to State a Claim [Doc. 13]; and (3) defendant James Patrick Henry's Motion to Dismiss [Doc. 25]. Plaintiff...

...Knight, Luke A. Shipley Margaret B. Held , Held Law Firm, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM OPINION...

## 25. Faulkner v. Mattina

United States District Court, E.D. Tennessee.      January 17, 2014      Not Reported in F.Supp.3d      2014 WL  
201463      3:11-CV-250-KKC



This matter is before the Court on Defendants Joseph P. Mattina's and Benjamin McVay's joint motion for summary judgment (DE 20) and Plaintiff Eric Benjamin Faulkner's motion to deny that motion. (DE 28). For the reasons stated below, both motions are granted in part and denied in part. Defendants McVay and Mattina are officers at the Knoxville...

...Law Office of Joshua D. Hedrick, Knoxville, TN, for Plaintiff. E. Jerome Melson , Gentry, Tipton & McLemore, PC, Ronald E. Mills , City of Knoxville...

#### **26. In re Lane**

**United States Bankruptcy Court, E.D. Tennessee.    December 20, 2013    Slip Copy    2013 WL 6798947  
12-31902, ADV 12-3065**

This adversary proceeding is before the court upon the Complaint filed by the Plaintiff on August 2, 2012, asking the court to award it a judgment against the Defendant and for a determination that the judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) (2006). On March 29, 2012, the Plaintiff filed the Motion for Summary Judgment on...

...12-31902. Adversary Proceeding No. 12-3065. Dec. 20, 2013. Jerome Melson , Esq., Gregory D. Meadows , Esq., Gentry, Tipton & McLemore, P.C.E., Knoxville...

#### **27. Leath ex rel. Leath v. City of Knoxville**

**United States District Court, E.D. Tennessee.    November 08, 2013    Not Reported in F.Supp.2d    2013 WL  
5969602    CIV.A. 11-382-DLB**

This civil rights action is again before the Court sue sponte pursuant to Federal Rule of Civil Procedure 56(f). In a previous Memorandum Opinion and Order (Doc. # 30), the Court held that Defendant Officer Randall Smith did not violate Plaintiff Leath's Fourteenth Amendment right to Due Process and was, therefore, entitled to summary judgment....

...Knoxville, TN, for Plaintiff. Ronald E. Mills , City of Knoxville, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM ORDER...

#### **28. Smith v. City of Knoxville**

**United States District Court, E.D. Tennessee.    September 26, 2013    Not Reported in F.Supp.2d    2013 WL  
5428354    CIV.A. 11-419-DLB**

Plaintiff Carlton Smith commenced a 42 U.S.C. § 1983 action against Defendants City of Knoxville (hereafter "City"), Joel Ascencio, and Brian Mullane for violating his Fourth Amendment right to be free from unreasonable seizure. Plaintiff also advanced several other claims based on both federal and state law. On August 20, 2013, the Court granted...

...Knoxville, TN, pro se. Ronald E. Mills , City of Knoxville, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM OPINION...

#### **29. Leath v. City of Knoxville**

**United States District Court, E.D. Tennessee.    September 25, 2013    Not Reported in F.Supp.2d    2013 WL  
5408847    CIV.A. 11-382-DLB**

Plaintiffs bring this civil rights action under 42 U.S.C. § 1983 on behalf of their deceased daughter against the City of Knoxville and two Knoxville Police Officers. Plaintiffs assert that the officers, acting under the color of state law, were deliberately indifferent to their daughter's serious medical need in violation of her constitutional...

...Knoxville, TN, for Plaintiff. Ronald E. Mills , City of Knoxville, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM OPINION...

### 30. In re Lane

United States Bankruptcy Court, E.D. Tennessee.      September 16, 2013      Slip Copy      2013 WL 5219582  
12-31902, ADV 12-3065

The Plaintiff filed a Complaint on August 2, 2012, asking the court to award it a judgment in the amount of \$1,912,367.23 plus accrued interest, expenses, collection costs, and attorneys' fees and for a determination that the judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2). The Defendant filed Defendant's Answer to Complaint (Answer)...

...McLemore, P.C., Maurice K. Guinn , Esq., Gregory D. Meadows , Esq., E. Jerome Melson , Esq., Knoxville, TN, for the Plaintiff. Law Offices of Mayer...

### 31. Smith v. City of Knoxville

United States District Court, E.D. Tennessee.      August 20, 2013      Not Reported in F.Supp.2d      2013 WL  
4494976      CIV.A. 11-419-DLB

Plaintiff Carlton Smith commenced this 42 U.S.C. § 1983 action against Defendants Joel Ascencio and Brian Mullane for violating his Fourth Amendment right to be free from unreasonable seizure. Plaintiff also advances several other claims based on both federal and state law. The Court has federal question jurisdiction under 28 U.S.C. §...

...Knoxville, TN, pro se. Ronald E. Mills , City of Knoxville, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM OPINION...

### 32. Harris v. City of Knoxville, Tenn.

United States District Court, E.D. Tennessee.      July 08, 2013      Not Reported in F.Supp.2d      2013 WL 3423895  
3:12-CV-319

This civil rights action is before the Court on two pending motions for summary judgment: one filed by individual defendants Thomas Thurman and Fred Kimber [Doc. 12] and one filed by defendant City of Knoxville, Tennessee [Doc. 17]. Both motions are supported by memoranda of law [Docs. 13, 18]. Plaintiff Ty'Relle Lee Harris has responded to both...

...Knoxville, TN, for Plaintiff. Ronald E. Mills , City of Knoxville, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM OPINION...

### 33. Cheatham v. Knox County

United States District Court, E.D. Tennessee.      January 07, 2013      Not Reported in F.Supp.2d      2013 WL  
83390      3:10-CV-541

This civil matter is before the Court on the Report and Recommendation (the "R & R") entered by United States Magistrate Judge H. Bruce Guyton [Doc. 52]. In the R & R, Magistrate Judge Guyton recommends denying

Knox County's Motion for Attorney's Fees [Doc. 43] because Knox County is not a prevailing party for purposes of 42 U.S.C. § 1988 and thus...

...Law Offices of A. Philip Lomonaco, Knoxville, TN, for Plaintiff. E. Jerome Melson , Gentry, Tipton & McLemore, PC, Thomas S. Mullin , Office of Knox...

#### **34. Cheatham v. Knox County**

United States District Court, E.D. Tennessee.      January 07, 2013      Not Reported in F.Supp.2d      2013 WL 81999      3:10-CV-541

This civil matter is before the Court on the Report and Recommendation (the "R & R") entered by United States Magistrate Judge H. Bruce Guyton [Doc. 53]. In the R & R, Magistrate Judge Guyton recommends granting in part and denying in part Defendant Jeanette Harris's Motion for Attorney Fees [Doc. 45]. Magistrate Judge Guyton recommends [Doc. 53]...

...Law Offices of A. Philip Lomonaco, Knoxville, TN, for Plaintiff. E. Jerome Melson , Gentry, Tipton & McLemore, PC, Thomas S. Mullin , Office of Knox...

#### **35. Rattan v. Knox County Sherrif's Office**

United States District Court, E.D. Tennessee.      December 19, 2012      Not Reported in F.Supp.2d      2012 WL 6626143      3:12-CV-196

This matter is before the Court on Defendants' Motion to Dismiss, Plaintiff's motions for a scheduling order and motion for a ruling [Doc. 17, 29, and 30.]. The Defendant's Motion to Dismiss avers that the Knox County Sheriff's Office is immune from suit under 42 U.S.C. § 1983. Second, the Motion correctly states that punitive damages are not...

...Office, Thomas S. Mullin , Office of Knox County Law Director, E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. ORDER THOMAS...

#### **36. Cheatham v. Knox County**

United States District Court, E.D. Tennessee.      November 19, 2012      Not Reported in F.Supp.2d      2012 WL 6802292      3:10-CV-541

This case is before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, and the order of the District Judge [Doc. 50] referring Defendant Jeanette Harris's Motion for Attorney Fees [Doc. 45] to the undersigned for disposition or report and recommendation as may be appropriate. The Plaintiff filed this case on December 16, 2010,...

...Law Offices of A. Philip Lomonaco, Knoxville, TN, for Plaintiff. E. Jerome Melson , Gentry, Tipton & McLemore, PC, Thomas S. Mullin , Knoxville, TN, for...

...Attorney Phillip Lomonaco was present representing the Plaintiff, and Attorney Jerome Melson was present representing Defendant Jeanette Harris. Attorney Thomas Mullin was...

#### **37. Cheatham v. Knox County**

United States District Court, E.D. Tennessee.      November 14, 2012      Not Reported in F.Supp.2d      2012 WL 6802224      3:10-CV-541

This case is before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, and the order of the District Judge [Doc. 50] referring Defendant Knox County's Motion for Attorney's Fees [Doc. 43] to the undersigned for disposition or report and recommendation as may be appropriate. The Court addressed the Motion for Attorney's Fees at a...

...Law Offices of A. Philip Lomonaco, Knoxville, TN, for Plaintiff. E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, Thomas S. Mullin , Office...

...Attorney Thomas Mullin was present representing Defendant Knox County. Attorney Jerome Melson was also present representing Defendant Jeanette Harris. The Plaintiff filed...

### **38. Harris v. City of Knoxville, Tenn.**

United States District Court, E.D. Tennessee.      September 24, 2012      Not Reported in F.Supp.2d      2012 WL 4372517      3:12-CV-319

This civil action is before the Court on the Motion to Dismiss [Doc. 3] filed by defendant David B. Rausch ("Rausch"). Defendant moves the Court to dismiss all the claims against him set forth in the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff did not file a response, and the time for doing so has passed....

...for Plaintiff. Ronald E. Mills , City of Knoxville Law Dept., E. Jerome Melson , Gentry, Tipton & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM OPINION...

### **39. Smith v. City of Knoxville, Tenn.**

United States District Court, E.D. Tennessee.      August 28, 2012      Not Reported in F.Supp.2d      2012 WL 3750936      3:11-CV-419

Plaintiff Carlton Smith has brought suit pursuant to 42 U.S.C. § 1983 for violation of his constitutional rights arising out of his arrest by officers of the Knoxville Police Department on August 27, 2010. Smith has also alleged several tort claims based on Tennessee law for false imprisonment, official oppression, and malicious prosecution....

...Tiptonville, TN, pro se. Ronald E. Mills , City of Knoxville, E. Jerome Melson Gentry , Tipton & McLemore, PC, Gary M. Prince Jeffrey R. Thompson...

### **40. Yolanda v. City of Knoxville**

United States District Court, E.D. Tennessee, at Knoxville.      August 10, 2012      Not Reported in Fed. Supp. 2012 WL 12885694      3:10-CV-160

Plaintiffs Yolanda and Michael Chigano, on behalf of their daughter, M.C., have filed suit against the Defendants under 42 U.S.C. § 1983 for deprivations of M.C.'s constitutional rights in violation of the Fourth, Eighth, and Fourteenth Amendments. The Chiganos have also alleged violations of Title VI of the Civil Rights Act of 1964 and...

...Law Offices of A. Philip Lomonaco, Knoxville, TN, for Plaintiffs. E. Jerome Melson , Gentry, Tipton & McLemore, PC, Thomas S. Mullin , Office of Knox...

### **41. Cheatham v. Harris**

United States District Court, E.D. Tennessee.      July 12, 2012      Not Reported in F.Supp.2d      2012 WL 2873682 3:10-CV-541

This civil rights action is before the Court on the Motion for Summary Judgment on Behalf of Defendant Jeanette Harris ("Officer Harris") [Doc. 21], in which she submits that there are no genuine issues of material fact regarding plaintiff's claims in this case and that she is entitled to judgment as a matter of law, pursuant to Rule 56 of the...

...Law Offices of A. Philip Lomonaco, Knoxville, TN, for Plaintiff. E. Jerome Melson , Gentry, Tipton & McLemore, PC, Thomas S. Mullin , Office of Knox...

#### 42. Hollow v. Ingram

Court of Appeals of Tennessee. November 29, 2010 Slip Copy 2010 WL 4861430  
E201000683COAR3CV

The parties, owners of a tract of land, ultimately agreed to the sale of the property by a Special Master appointed by the Court. The sale was held and the Master ultimately reported the purchase and asked that the sale be confirmed. Before the Court acted on the Master's Report, the plaintiff moved for a dismissal pursuant to Tenn. R. Civ. P. Rule...

...Knoxville, Tennessee, for the appellee, Patrick J. Schaad, Trustee, and E. Jerome Melson , Knoxville, Tennessee, for the appellees, Richard L. Hollow, Trustee, Kent...

#### 43. In re Held

United States Bankruptcy Court, E.D. Tennessee. January 26, 2010 Not Reported in B.R. 2010 WL  
396294 ADV. 09-3075, 09-30967

BANKRUPTCY - Discharge. Obligation arising from chapter 7 debtor's student loans was nondischargeable.

...Schuchardt , Esq., Knoxville, TN, for Plaintiff. Gentry, Tipton & McLemore, P.C., E. Jerome Melson , Esq., Tyler C. Huskey , Esq., Knoxville, TN, for Defendant American...

#### 44. Shipwash v. Knox County

United States District Court, E.D. Tennessee. March 05, 2009 Not Reported in F.Supp.2d 2009 WL 560001  
3:08-CV-186

This matter is before the court on the Motion to Dismiss of Defendants Southern Management & Development, L.P. and Robin Renea Fritz Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for Failure to State a Claim upon Which Relief Can Be Granted [Doc. 17] and plaintiff's Motion to Amend Complaint [Doc. 22]. For the reasons that...

...Plaintiff. Thomas S. Mullin Ronald E. Mills , City of Knoxville, E. Jerome Melson , Gentry, Tipton, Kizer & McLemore, PC, Rebecca Brake Murray Steven E...

#### 45. State v. Good Times, Ltd.

Court of Appeals of Tennessee. September 23, 2008 Not Reported in S.W.3d 2008 WL 4334894  
E20071172COAR3CV



The State of Tennessee ("State") sued Good Times, Ltd. ("Good Times") and others with regard to real property deeded to the State by Good Times after the State was sued for inverse condemnation by Good Times' lessee,

Pun Wun Chan d/b/a # 1 China Buffet ("China Buffet"). The State claimed that it was entitled to indemnity from Good Times in the...

...Meghan H. Morgan , Knoxville, Tennessee for the Appellee, Elizabeth James. E. Jerome Melson , Knoxville, Tennessee for the Appellee, Knoxville Association of Realtors, Inc...

**46. Bright v. Monroe County Sheriff's Dept.**

United States District Court, E.D. Tennessee. June 11, 2008 Not Reported in F.Supp.2d 2008 WL 2401262  
3:05-CV-264

This civil action is before the Court on defendants' Motion for Summary Judgment [Doc. 26]. Plaintiff has not responded and time for doing so has now passed. Thus, this matter is ripe for determination. The Court has carefully considered the pending motion, along with the relevant affidavits and other filings. For the reasons set forth herein,...

...June 11, 2008. Carl Lee Bright, Vonore, TN, pro se. E. Jerome Melson , Gentry, Tipton, Kizer & McLemore, PC, Knoxville, TN, for Defendants. MEMORANDUM...

**47. Nisus Corp. v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee. August 09, 2007 Not Reported in F.Supp.2d 2007 WL  
2317401 303-CV-120

This civil action is before the Court on two motions: (1) Objections to Report and Recommendation on Defendant's Motion for Sanctions [Doc. 506]; and (2) Motion to Strike or Dismiss Motion for Sanctions [Doc. 513]. At the outset, the Court notes that the patent infringement action underlying this dispute has now been settled [see Doc. 509], leaving...

...3:03-CV-120. Aug. 9, 2007. Bradley H. Hodge E. Jerome Melson Gentry, Tipton, Kizer & McLemore, PC Chris T. Cain Thomas S...

**48. Harper v. Bohanan**

United States District Court, E.D. Tennessee, Northern Division, at Knoxville. February 08, 2007 Slip Copy  
2007 WL 9734415 3:97-CV-80

This case represents an effort to relitigate a twenty-five year old attempted murder case filed in state criminal court in Knoxville, Tennessee. Plaintiffs Jenny Harper, as the widow and next of kin of James H. Harper, and Leonard D. Hutchison bring this civil rights action against city of Knoxville law enforcement officials, Arthur Bohanan, Jim...

...Harwell, Nashville, TN, Roy P. Neuenschwander , Knoxville, TN, for Plaintiffs. E. Jerome Melson , Gentry, Tipton, Kizer & McLemore, PC, Knoxville, TN, Joe G. Bagwell...

**49. Nisus Corp. v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee. October 20, 2006 Not Reported in F.Supp.2d 2006 WL  
3007363 3:03-CV-120

This matter is before the undersigned pursuant to 28 U.S.C. § 636(b), the Rules of this Court, and by the Order [Docs. 449, 460] of the Honorable Thomas A. Varlan, United States District Judge, for a report and

recommendation on the following motions: Perma-Chink's Renewed First Motion for Sanctions as to the Pauly Declaration & '698 IDS [Doc....

...3:03-CV-120. Oct. 20, 2006. Bradley H. Hodge E. Jerome Melson Gentry, Tipton, Kizer & McLemore, PC Chris T. Cain Thomas S...

**50. Harper v. Bohanan**

United States District Court, E.D. Tennessee. August 25, 2006 Not Reported in F.Supp.2d 2006 WL 2473649 3:97-CV-80

Plaintiffs Jenny Harper, as the widow and next of kin of James H. Harper, and Leonard D. Hutchison bring this civil rights action against state and federal law enforcement officials, Arthur Bohanan, Jim Morris, Patrick Wade, Rex Ownby, Joe Mann, Clyde Merryman, Ernest Peel, Tom Stiles, the City of Knoxville, and one private citizen, James David...

...Mary M. Bers Office of the Attorney General , Nashville, TN, E. Jerome Melson Gentry, Tipton, Kizer & McLemore, PC , Knoxville, TN, Holly M. Loy...

**51. Nisus Corporation v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee, Northern Division, at Knoxville. August 01, 2006 Slip Copy 2006 WL 8442853 3:03-CV-120

This patent infringement action is before the Court for consideration of a motion [Doc. 467] filed by Merchant & Gould, its attorneys Allan Altera and Douglas Williams, and Daniel Pauly seeking to vacate or withdraw the Court's order referring to the Magistrate Judge Perma-Chink's renewed motions for sanctions. Following entry of findings of...

...120 (VARLAN/SHIRLEY) Filed 08/01/2006 Bradley H. Hodge E. Jerome Melson , Gentry, Tipton & McLemore, PC, Chris T. Cain Thomas S. Scott...

**52. Nisus Corporation v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee, Northern Division, at Knoxville. July 27, 2006 Slip Copy 2006 WL 8442841 3:03-CV-120

This patent infringement action is before the Court for consideration of Perma-Chink's motion pursuant to Fed. R. Civ. P. 59(e) [Doc. 427] to declare unenforceable divisional patents numbered 5,104,664 ("664 patent") and 5,645,828 ("828 patent"). As grounds for the motion, defendant argues that the '664 and '828 patents...

...03-CV-120 Filed 07/27/2006 Bradley H. Hodge E. Jerome Melson , Gentry, Tipton & McLemore, PC, Chris T. Cain Thomas S. Scott...

**53. Nisus Corporation v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee, Northern Division, at Knoxville. July 27, 2006 Slip Copy 2006 WL 8442852 3:03-CV-120

This patent infringement action is before the Court for consideration of Nisus's motion for reconsideration and amendment [Doc. 426] pursuant to Fed. R. Civ. P. 52(b) and 59(e). Specifically, Nisus seeks reconsideration and amendment of the Court's findings of fact and conclusions of law [Doc. 416] and judgment [Doc. 417] to "articulate the...

...120 (VARLAN/SHIRLEY) Filed 07/27/2006 Bradley H. Hodge E. Jerome Melson , Gentry, Tipton & McLemore, PC, Chris T. Cain Thomas S. Scott...

**54. Nisus Corp. v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee. July 27, 2006 Not Reported in F.Supp.2d 2006 WL 2128903  
3:03-CV-120

This patent infringement action is before the Court for consideration of a motion to intervene [Doc. 420] filed by Michael Teschner, an attorney who formerly represented Nisus and who testified on behalf of Nisus during trial of this action. Mr. Teschner seeks to intervene as of right, pursuant to Fed.R.Civ.P. 24(a), or alternatively, by permission...

...3:03-CV-120. July 27, 2006. Bradley H. Hodge E. Jerome Melson Gentry, Tipton, Kizer & McLemore, PC Chris T. Cain Thomas S...

**55. Williams v. Leatherwood**

United States District Court, E.D. Tennessee. June 26, 2006 Not Reported in F.Supp.2d 2006 WL 1788012  
3:05-CV-189

This civil action is before the court on the motion of defendant Brian Leatherwood for summary judgment [doc. 20]. The plaintiffs have responded [doc. 30], and the defendant has filed a reply brief [doc. 34]. The court finds that oral argument is not necessary, and the motion is ripe for the court's consideration. For the reasons discussed below,...

...Law Office of Herbert S. Moncier , Knoxville, TN, for Plaintiffs. E. Jerome Melson Gentry, Tipton, Kizer & McLemore, PC Herbert S. Moncier Law Office...

**56. Harper v. Bohanan**

United States District Court, E.D. Tennessee. May 23, 2006 Not Reported in F.Supp.2d 2006 WL 1462574  
3:97 CV 80

Plaintiffs Jenny Harper, as the widow and next of kin of James H. Harper, and Leonard D. Hutchison bring this civil rights action against state and federal law enforcement officials, Arthur Bohanan, Jim Morris, Patrick Wade, Rex Ownby, Joe Mann, Clyde Merryman, Ernest Peel, Tom Stiles, one private citizen, James David Comer, and the City of...

...Mary M. Bers Office of the Attorney General , Nashville, TN, E. Jerome Melson E. Jerome Melson Gentry, Tipton, Kizer & McLemore, PC , Knoxville, TN, Holly M. Loy...

**57. Nisus Corp. v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee, Northern Division. March 16, 2006 421 F.Supp.2d 1084 2006  
WL 686887 3:03-CV-120

PATENTS - Inequitable Conduct. Failure to disclose information about related infringement litigation to the PTO amounted to inequitable conduct.

...W. Jordan, III Merchant & Gould , Atlanta, GA, Bradley H. Hodge E. Jerome Melson Gentry, Tipton, Kizer & McLemore, PC John A. Lucas Hunton & Williams...



**58. Harper v. Bohanan**

United States District Court, E.D. Tennessee, Northern Division. February 08, 2006 Not Reported in F.Supp.2d 2006 WL 319029 3:97-CV-80

Plaintiffs Jenny Harper, as the widow and next of kin of James H. Harper, and Leonard D. Hutchison bring this civil rights action against state and federal law enforcement officials and prosecutors, Arthur Bohanan, Jim Morris, Patrick Wade, William Crabtree, Rex Owenby, Joe Mann, Clyde Merryman, David Jennings, one former prosecutor, J. Mikel...

...for Plaintiffs. Mary M. Bers Office of the Attorney General E. Jerome Melson Gentry, Tipton, Kizer & McLemore, PC , Nashville, TN, Holly M. Loy...

**59. American Civil Liberties Union of Tennessee v. Monroe County, Tennessee**

United States District Court, E.D. Tennessee, Northern Division. November 18, 2005 Not Reported in F.Supp.2d 2005 WL 3108384 3:04-CV-48

This civil action is before the Court on the parties' respective motions for summary judgment [Docs. 34, 37]. The parties dispute whether the defendants' voluntary removal of a display of the Ten Commandments in the Monroe County Courthouse renders the plaintiffs' claims as moot. The Court has carefully reviewed the pending motions and related...

...American Civil Liberties Union of Tennessee , Nashville, TN, for Plaintiffs. E. Jerome Melson Gentry, Tipton, Kizer & McLemore, PC , Knoxville, TN, Francis J. Manion...

**60. Nisus Corp. v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee. May 27, 2005 Not Reported in F.Supp.2d 2005 WL 6112992 3:03-CV-120

This matter is before the undersigned pursuant to 28 U.S.C. § 636(b), the Rules of this Court, and by the Orders [Docs. 262, 270] of the Honorable Thomas A. Varlan, United States District Judge, for disposition of Perma-Chink's Motion for Sanctions [Doc. 254] and Second Motion for Sanctions [Doc. 263]. The undersigned conducted a hearing on these...

...2005. Named Expert: Ernest Lipscomb, III Esq Bradley H. Hodge E. Jerome Melson , Gentry, Tipton, Kizer & McLemore, PC, Chris T. Cain Thomas S...

**61. Nisus Corp. v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee. March 31, 2005 Not Reported in F.Supp.2d 2005 WL 5164856 3:03-CV-120

In this case, known as Nisus II, plaintiff Nisus Corporation ("Nisus") alleges that defendant Perma-Chink Systems, Inc. ("Perma-Chink") infringed on U.S. Patent No. 6,426,095 ("the '095 patent"), which involves "Methods and Compositions for Retarding and Eradicating Infestation in Trees and Tree Derived Products." This matter is presently before...

...3:03-CV-120. March 31, 2005. Bradley H. Hodge E. Jerome Melson Gentry, Tipton, Kizer & McLemore, PC Chris T. Cain Thomas S...

**62. Mullins v. U.S.**

United States District Court, E.D. Tennessee.    March 01, 2005    366 F.Supp.2d 573    2005 WL 928415    3:01-CV-171

TAXATION - Attorney Fees. Taxpayers who prevailed in refund action were entitled to recover attorney fees.

...services. 26 U.S.C.A. §7430(c)(1) Bradley H. Hodge E. Jerome Melson Mack A. Gentry , Knoxville, TN, for Plaintiffs. Beatriz T. Saiz...

**63. Nisus Corp. v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee.    January 25, 2005    Not Reported in F.Supp.2d    2005 WL 5164855    3:03-CV-120

This matter is before the undersigned pursuant to 28 U.S.C. § 636(b), the Rules of this Court, and by the Order [Doc. 211 ] of the Honorable Thomas A. Varlan, United States District Judge, for a report and recommendation on the construction of the claims at issue in this case pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370, 116...

...effective to prevent or eradicate infestation Agitating Bradley H. Hodge E. Jerome Melson , Gentry, Tipton, Kizer & McLemore, PC, Chris T. Cain Thomas S...

**64. Nisus Corp. v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee.    September 17, 2004    Not Reported in F.Supp.2d    2004 WL 6081220    3:03-CV-120

This matter is before the undersigned pursuant to the provisions of 28 U.S.C. § 636(b), the Rules of this Court, and by the Orders [Docs. 73, 98, 102, 107] of the Honorable Thomas A. Varlan, United States District Judge, for disposition of the following motions: Plaintiff Nisus' Motion to Compel Responses to Interrogatories Nos. 1-3, 16 and 17,...

...3:03-CV-120. Sept. 17, 2004. Bradley H. Hodge E. Jerome Melson , Gentry, Tipton & McLemore, PC, Chris T. Cain Thomas S. Scott...

**65. Nisus Corp. v. Perma-Chink Systems, Inc.**

United States District Court, E.D. Tennessee.    September 17, 2004    Not Reported in F.Supp.2d    2004 WL 6081221    3:03-CV-120

This matter is before the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A), the Rules of this Court, and by the Order [Doc. 99] of the Honorable Thomas A. Varlan, United States District Judge, for consideration of the following motions: Defendant PermaChink's Motion for Leave to File Amended Answer with Counterclaims and...

...3:03-CV-120. Sept. 17, 2004. Bradley H. Hodge E. Jerome Melson , Gentry, Tipton & McLemore, PC, Chris T. Cain Thomas S. Scott...

**66. Hall v. City of Gatlinburg**

Court of Appeals of Tennessee.    February 06, 2002    Not Reported in S.W.3d    2002 WL 185479  
E2001-01470-COA-R3CV

Cathy L. Hall ("Plaintiff"), was attending a convention at the convention center of the City of Gatlinburg ("Defendant"), when she fell and sustained physical injury. Plaintiff fell in one of two separate areas just mopped by Defendant's employee. After the parties submitted proof at trial, the Trial Court found Defendant negligent. The Trial Court...

...Sevier County, No. 99-793-III; Rex Henry Ogle , Judge. E. Jerome Melson , Knoxville, Tennessee, for the Appellant, City of Gatlinburg. Ronald J...

#### **67. Livingston v. Hayes**

Court of Appeals of Tennessee. July 23, 2001 Not Reported in S.W.3d 2001 WL 823626  
E200001619COAR3CV

In this appeal from the Circuit Court for Hamblen County, the Plaintiff/Appellant, William P. Livingston, Jr., questions whether the Trial Court erred in entering a summary judgment dismissing his action for libel against the Defendants/Appellees, Mike Hayes, et al. We affirm the judgment of the Trial Court and remand for collection of costs below....

...was submitted and oral argument was waived by Mr. Livingston. Earl Jerome Melson , Knoxville, TN, for appellee, Joel Seal. Gary Prince , Knoxville, TN...

#### **68. King v. City of Gatlinburg**

Court of Appeals of Tennessee. May 08, 2001 Not Reported in S.W.3d 2001 WL 483419 E2000-00734-  
COA-R3CV

The Trial Court refused to entertain plaintiff's action on the grounds there was no justiciable controversy between the parties. We affirm. In this declaratory judgment action, the Trial Court concluded there was no justiciable controversy, and dismissed the action. Plaintiff has appealed. Plaintiff's complaint outlined that he owns property in...

...Steven E. Marshall , Sevierville, TN, for appellant, Bobby Clark King. E. Jerome Melson , Knoxville, TN, for appellee, City of Gatlinburg. FRANKS , J., delivered...

#### **69. Cooper v. Norris**

Court of Appeals of Tennessee. February 22, 2001 Not Reported in S.W.3d 2001 WL 173209  
E200001208COAR3CV

Misty L. Cooper sues Claiborne County Board of Education for breach of a teaching contract she contends was entered into with her. The School Board contends that the offer of employment was contingent upon her passing the National Teachers Examination, which she did not do. The Trial Court found in favor of the Board. We affirm. In this suit, Misty...

...Judge. W. Andrew Fox , Knoxville, TN, for appellant, Misty Cooper. E. Jerome Melson , Knoxville, TN, for appellee, Claiborne County Board of Education. GODDARD...

#### **70. Bennett v. Putnam County**

Court of Appeals of Tennessee, Middle Section, at Nashville. October 12, 2000 47 S.W.3d 438 2000 WL  
1514074 M1999-00716COA-R3-CV

GOVERNMENT - Public Safety. ambulance attendants were not negligent in parking ambulance, and thus not liable to bystander.

...line and hit ambulance. T.C.A. §55-8-108 (2000). E. Jerome Melson Robert H. Watson, Jr. Nathan D. Rowell , Knoxville, for appellant...

### **71. Austin Powder Co. v. Thompson**

Court of Appeals of Tennessee. December 16, 1996 Not Reported in S.W.2d 1996 WL 718291  
03A01-9607-CV-00229

The Defendant appeals a judgment entered by the Blount County Circuit Court awarding the Plaintiffs discretionary costs including attorney fees. This appeal arises from an earlier action (second lawsuit) seeking specific performance of a settlement agreement resolving the original lawsuit filed by the Defendant. The Defendant, Walter Thompson, sued...

...Dec. 16, 1996. HENRY T. OGLE OF KNOXVILLE FOR APPELLANT E. JEROME MELSON OF KNOXVILLE FOR APPELLEES HON. W. DALE YOUNG JUDGE WALTER...

...attorney fees. Attached to this petition was an affidavit of Jerome Melson, the Plaintiffs' attorney, outlining the Plaintiffs' costs. The Plaintiffs requested...

### **72. Austin Powder Co. v. Thompson**

Court of Appeals of Tennessee, Western Section, at Knoxville. February 20, 1996 Not Reported in S.W.2d  
1996 WL 73815 03A01-9507-CV-00225

This appeal involves a suit for specific performance of an agreement to compromise and settle a damage suit. Plaintiffs, Austin Powder Company, Renfro Construction Company, and D & P Construction Company (hereinafter plaintiffs or Austin Powder) sued defendant, Walter Thompson, seeking specific performance of an alleged agreement settling an...

...Court, Blount Circuit No. E-16403; W. Dale Young , Judge. E. Jerome Melson of Watson, Hollow & Reeves , Knoxville, for Plaintiffs-Appellees. Henry T...

...of Thompson's attorneys of record in the underlying litigation, advised Jerome Melson, attorney for Austin Powder, that Thompson accepted Austin Powder's offer...

...It is further undisputed in the record that Spalvins advised E. Jerome Melson, Counsel for Plaintiffs, in this case, that Thompson accepted the...

...in the afternoon. Later, on Friday afternoon, Austin Powder's attorney, Jerome Melson, advised Spalvins by telephone that the offer was increased to...

### **73. Austin Powder Co. v. Thompson**

Court of Appeals of Tennessee, Eastern Section. January 27, 1995 Not Reported in S.W.2d 1995 WL  
33778 03A01-9408-CH-00294

Walter Thompson ("Thompson"), the Defendant below, appeals the trial court's grant of summary judgment to the Plaintiffs, Austin Powder Company, Renfro Construction Company, and D & P Construction Company ("Plaintiffs"). The Plaintiffs moved for summary judgment on their claim for specific performance of an alleged contract among the parties...

...W. Dale Young , Judge. Henry T. Ogle , Knoxville, for appellant. E. Jerome Melson and Watson, Hollow & Reeves , Knoxville, for appellees. OPINION SUSANO , Judge...

...is undisputed in the record before us that Spalvins advised E. Jerome Melson, counsel for the Plaintiffs, that Thompson accepted the Plaintiffs' offer...

**74. Buckner v. Kilgore**

United States Court of Appeals, Sixth Circuit.    October 03, 1994    36 F.3d 536    1994 WL 530736    93-5833

Juveniles filed §1983 claims against police officer who established roadblock with which they collided. The United States District Court for the Eastern District of Tennessee, Joe A. Tilson, United States Magistrate Judge, denied officer's motion for summary judgment. Officer filed interlocutory appeal. The Court...

...for Murphy Roland Silver, Jr. Robert H. Watson, Jr. (briefed), Earl J. Melson (argued and briefed), Watson, Hollow & Reeves, Knoxville, TN, Rebecca L...

**75. Bailey v. Colonial Freight Systems, Inc.**

Supreme Court of Tennessee, at Knoxville.    July 20, 1992    836 S.W.2d 554    1992 WL 190724

The Chancery Court, Scott County, Billy Joe White, Chancellor, awarded workers' compensation benefits to worker, and employer appealed. The Supreme Court, Anderson, J., held that: (1) court could admit testimony of vocational expert as to worker's vocational disability, but (2) worker was not entitled to lump-sum payment of partial...

...rehabilitation to be used, if necessary, for education and retraining. E. Jerome Melson and Richard L. Hollow Watson, Hollow & Reeves, Knoxville, for defendant...

**76. Collins v. Debusk**

Court of Appeals of Tennessee.    April 09, 1991    Not Reported in S.W.2d    1991 WL 47507    199

This is a breach of contract action wherein the plaintiff-appellant alleges that he is due certain sums of money from the defendant under a contract entered into between the parties in March, 1985. The trial court granted judgment to the plaintiff in the amount of \$8,250.66, and from this judgment the plaintiff has appealed. We respectfully...

...Perry P. Paine, Jr. Paine, Garrett & Bray, Maryville, for appellant. E. Jerome Melson McCampbell & Young, P.C., Knoxville, for appellees. OPINION McMURRAY, Judge. This...

**77. Zimmerer v. Tuckaleechee Caverns, Inc.**

Court of Appeals of Tennessee, Eastern Section at Knoxville.    June 07, 1990    Not Reported in S.W.2d    1990 WL 74394    C.A. 178

The plaintiffs appeal the dismissal of their action for damages for personal injuries and loss of consortium following a merit trial. Tuckaleechee Caverns is a tourist attraction in Blount County. The plaintiffs allege that they paid a fee for a guided tour through these caverns which has a walkway rough and uneven in places, is ill-lighted and...

...Non-Jury A.B. Strand, Jr., Dandridge, for appellants. Richard Hollow Jerome Melson, Knoxville, for appellee. OPINION WILLIAM H. INMAN, Special Judge. I...

**78. Town of Madisonville v. Tucker**

Court of Appeals of Tennessee, Eastern Section.      January 31, 1990      Not Reported in S.W.2d      1990 WL 6369      69

Truman Tucker appeals a judgment rendered against him by the Circuit Court for Monroe County in the amount of \$10 pursuant to the Trial Court's finding that he was guilty of public drunkenness and assessing a \$10 fine as a result thereof. On appeal Mr. Tucker makes a number of contentions. However, we deem it necessary to address only his...

...S. Randolph Ayres , Judge. John W. Cleveland , Sweetwater, for appellant. Jerome Melson , Knoxville, for appellee. OPINION GODDARD , Judge. Truman Tucker appeals a...

**79. Commerce Federal Sav. Bank v. Parten**

Court of Appeals of Tennessee.      March 17, 1989      Not Reported in S.W.2d      1989 WL 22726      C.A. 1235, C.A. 1236, C.A. 1237



A continuing guaranty executed by Hannah S. Parten for the debts of her husband was enforced by the Chancellor and she appeals, insisting that the Bank violated the Tennessee Consumer Protection Act; T.C.A. 47-18-109 et seq., because of its unfair and deceptive practices in not explaining to her the entire import of the guaranty. Mrs. Parten...

...1236, C.A. 1237, Hon. Sharon Bell, Chancellor. Bruce A. Anderson, Jerome Melson, Knoxville, for appellant Hannah S. Parten. Shumate and Bowling, Knoxville...

ATTACHMENT FOR FURTHER RESPONSE TO  
QUESTION NUMBER 34

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION AT KNOXVILLE**

DONALD NICHOLS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 3:11-CV-417
	)	
KNOX COUNTY, TN, JOHN AND JANE DOE	)	
PHYSICIAN, AMY LUXFORD, SELENIA	)	
ALLEN, DEANNA JONES, JUDY SIMS,	)	
DEBORAH BUNCH, MELANIE ADAMS,	)	
JOHN AND JANE DOE NURSES, JOHN AND	)	
JANE DOE DEPUTIES, DOANLD KEEBLE,	)	
M.D., AND JOHN AND JANE DOE JAILERS/ GUARDS	)	
	)	
Defendants.	)	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
ON BEHALF OF DEFENDANTS SELENIA ALLEN, DEANNA JONES, JUDY SIMS,  
DEBORAH BUNCH AND MELANIE ADAMS**

Come Defendants Selenia Allen, Deanna Jones, Judy Sims, Deborah Bunch and Melanie Adams, by and through the undersigned counsel, and pursuant to Rule 56 of the Federal Rules of Civil Procedure submit this Memorandum of Law in Support of their Motion for Summary Judgment.

This case stems from a neck injury allegedly sustained by Plaintiff Donald Nichols when he fell from his bunk bed during his incarceration at the Knox County Detention Facility on August 27, 2010. On August 26, 2011, Plaintiff filed the present action pursuant to 42 U.S.C. § 1983, asserting violations of his federal constitutional rights associated with the alleged inadequacy of medical attention he received for his injury [Doc. 23, ¶ 25]. For the reasons stated



herein, Plaintiff's constitutional rights were not violated and, in any event, these Defendants are entitled to qualified immunity.

### **FACTUAL BACKGROUND**

Plaintiff was incarcerated at the Knox County Detention Facility (the "Facility") on August 13, 2010 following his arrest for violating the terms of his probation<sup>1</sup> [Doc. 23, ¶ 15]. Plaintiff was booked at the Facility<sup>2</sup> and underwent an initial intake examination during which the Facility's medical staff investigated Plaintiff's health and physical status [Nichols Deposition, pp. 167-69]. For the ensuing days and weeks Plaintiff regularly received his medication as needed, including a pill prescribed to him for blood pressure, which he received once a day, as well as psychotropic medication for his bipolar condition [Nichols Deposition, pp. 94-96].

On August 27, 2010, Plaintiff was asleep on the top bunk in his cell when he testified he rolled off his bed, falling forty-nine (49) inches to the concrete floor [Doc. 23, ¶ 16]; [Nichols Deposition, p. 98]. After the fall, Plaintiff alleges he temporarily lost feeling in his extremities and experienced a tingling sensation in his body [Doc. 23, ¶ 17]; [Nichols Deposition, p. 98]. Plaintiff's cellmate immediately alerted the guards in the area who then summoned the on duty nurse [Doc. 23, ¶ 17]. According to the Medical Visit Form documenting the care which Plaintiff

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<sup>1</sup>Specifically, Plaintiff was arrested as a result of an August 10, 2010 altercation with his ex-wife stemming from a telephone call he received from her at midnight in which Plaintiff testified "she was making fun of [him]." [Deposition of Donald Nichols ("Nichols Deposition"), p. 70 (Attached as **Exhibit A** to the Defendants' Motion)]. In response to his ex-wife's remarks, Plaintiff got in his car and drove to her residence in violation of an order of protection and, following a heated argument, Plaintiff tossed a rock through a window of her mobile home and struck her car with his [Nichols Deposition, pp. 70-71, 74-75]. Plaintiff acknowledged that he was knowingly violating the law when operating his car during these events as he did not possess a valid driver's license [Nichols Deposition, pp. 146].

<sup>2</sup>Prior to August 13, 2010, Plaintiff had been booked at the Facility no less than twenty-seven (27) times [Nichols Deposition, pp. 47-48].

received after his August 27, 2010 accident (the “First Medical Visit Form”), two nurses<sup>3</sup> responded and examined Plaintiff in his cell [Nichols Deposition, p. 99].

The First Medical Visit Form indicates (and Plaintiff does not dispute) that Defendant Luxford and Defendant Allen encountered Plaintiff on the cell floor and cleaned an abrasion on Plaintiff’s forehead with soap and sterile water, provided him ibuprofen, and changed his assignment from a top bunk to a bottom bunk:

Q: This says that they cleaned an abrasion with sterile water and they mentioned giving you 400 milligrams of ibuprofen for three days, two of those. Did that happen?

A: Just the one they gave me right then.

Q: Okay. Did they clean you up?

A: Yeah. They cleaned my wound, yes.

Q: Where was your wound? Show me.

A: It seems like it was right in here.

Q: You are pointing to the area of your hairline right above your nose, right?

A: Yeah.

Q: Did the skin open up?

A: I seen blood. I couldn’t get up to look at it.

Q: Did they put a bandaid on you or anything?

A: No.

Q: So they cleaned it up and gave you the ibuprofen. Do you remember being cleaned with soap and water?

A: I remember being cleaned, yes.

....

Q: At any rate, after you were cleaned up, given the ibuprofen, did the nurse leave the cell, or nurses?

A: As far as I can remember.

Q: Okay. Were you placed on a bottom bunk?

A: After I fell, yes.

Q: At that time?

A: Yes, sir.

Q: Okay. That was agreeable to you, correct?

A: Yes, sir.

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<sup>3</sup>During his deposition, Plaintiff testified that although he could only remember one nurse in his cell, he did not dispute that Defendants Amy Luxford and Selenia Allen responded as set forth in the First Medical Visit Form [Nichols Deposition, p. 99].

[Nichols Deposition, pp. 99-100, 102]. At no time during Defendant Luxford and Allen's August 27 examination did Plaintiff communicate to them that he had temporarily lost feeling in his extremities and/or that he experienced a tingling sensation in his body after the fall [Nichols Deposition, p. 216].

Plaintiff, despite acknowledging he received medical attention from Defendant Luxford and Defendant Allen shortly after his August 27 accident, apparently disagreed with their course of treatment:

Q: So, I take it that, with regard to this visit on August 27, 2010, you don't really have any problem with what was done for you at that moment in time. Is that correct?

....

A: I think they should have took me to the hospital.

[Nichols Deposition, p. 101].

The following day, Defendant Allen performed a follow-up examination on Plaintiff. On his own power, Plaintiff walked from the building in which he was housed to the medical unit [Nichols Deposition, p. 110-11]. The Medical Visit Form associated with Defendant Allen's follow-up examination of Plaintiff (the "Second Medical Visit Form") states, *inter alia*, that Defendant Allen observed Plaintiff "alert and oriented" while "ambulating to medical" [Nichols Deposition, pp. 110-11]. Defendant Allen thereafter recommended that Plaintiff receive the muscle relaxer Robaxin at 750 milligrams for 10 days "for possible muscle strain/sprain." [Deposition of Selenia Allen ("Allen Deposition") pp. 80-81 (Attached as **Exhibit B** to the Defendants' Motion)]; [Nichols Deposition, pp. 110-11, 112-113]. In addition, Plaintiff was permitted to continue with his assignment on the bottom bunk [Nichols Deposition, p. 110]. The Second Medical Visit Form indicates further that Plaintiff informed Defendant Allen that he

desired not to be housed in the medical unit at that time. Specifically, Plaintiff testified as follows during his deposition:

- Q: If you look down there under physician's orders here on [the Second Medical Visit Form], Ms. Allen of the medical staff documented, "Inmate states he don't want to be housed in medical." Do you remember initially telling a nurse that?
- A: Yes.
- Q: The reason you didn't want to be housed in the medical unit was you wanted to continue to be in the general population?
- A: I didn't want to be locked down all the time.
- Q: So [ ] if you are housed in medical, you are locked down all the time, correct?
- A: Yes, sir.
- Q: Tell us what you mean by use of the phrase locked down all the time.
- A: You don't get out of your cell but maybe 30 minutes to an hour a day. You're by yourself in medical.
- Q: So your preference was to stay outside medical, and that's what happened initially, correct?
- A: Yes, sir.

[Nichols Deposition, pp. 114-15].

On the evening of August 28, 2010, an inmate Plaintiff identified as "Johnny C" alerted the guards that Plaintiff needed a nurse [Nichols Deposition, pp. 106-07]. The guards in turn alerted the on-duty nurse, Defendant Deanna Jones, who initiated an examination of Plaintiff in Plaintiff's cell [Nichols Deposition, p. 115]; [Deposition of Deanna Jones Rader ("Jones Deposition"), pp. 48-49 (Attached as Exhibit C to the Defendants' Motion)]. As indicated by the Medical Visit Form associated with Defendant Jones's examination of Plaintiff (the "Third Medical Visit Form"), Defendant Jones encountered Plaintiff lying on his left side on a mat which he had removed from his bed and placed on his cell floor [Jones Deposition, pp. 49-50]; [Nichols Deposition, pp. 105-06, 115]. Defendant Jones, after noting that the cut on Plaintiff's forehead was healing well, checked Plaintiff's vital signs [Jones Deposition, p. 50]. Defendant Jones concluded based on her assessment of Plaintiff's condition that he possibly had a muscle

strain and/or sprain, and she treated Plaintiff in accordance with the Facility's protocol then in place for that particular prognosis [Jones Deposition, pp. 73-74]. Upon stating that his head and neck pain persisted, Plaintiff was assisted into a wheelchair [Jones Deposition, p. 50]. Defendant Jones thereafter transported Plaintiff to the Facility's medical unit where he remained for observation until August 31, 2010 [Nichols Deposition, pp. 105, 115].

While in the medical unit, Plaintiff regularly received the Robaxin which had been previously endorsed by Defendant Allen, as well as his regular medication for blood pressure and his bipolar condition [Nichols Deposition, pp. 105-06, 111-12]. As Plaintiff's practice had been on previous occasions, he took the mat that was provided to him in the medical unit and placed it on the floor despite having a bed available to him [Nichols Deposition, pp. 119-20]. The Medical Inmate Charting Report associated with the medical care Plaintiff received in the medical unit (the "Charting Report")<sup>4</sup> demonstrates, and Plaintiff acknowledges, that he received constant medical attention from various individuals from August 28 through August 31:

Q: You saw a nurse – you got 24 hour around the clock care during the time you were in the medical unit, did you not?

A: They came by once every eight hours.

Q: So if you were [in the medical unit] three days and they came by once every eight hours, that's three times a day for three days. That's nine contacts that you had with nurses by your own admission while you were in the medical unit, true?

A: Yeah.

....

Q: The [Charting Report] that you have just looked at, the two pages of that charting record in the medical unit for you from August 28, 2010 through August 31, 2010, contains multiple entries that document your condition as it was noted at various times by multiple named individuals. Do you see that?

A: Yes, sir.

Q: I'll represent to you that the names of these individuals include Ms. Luxford, who is here today, but also nurses that I represent, licensed

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<sup>4</sup>The Charting Report, as well as the First, Second and Third Medical Visit Forms, are attached to the Defendants' Motion as Exhibits D – G.

practical nurses that you have sued in this case. That documents that, during those three days, there are – there's the entry on the 28<sup>th</sup> for your admission. I'm counting four entries on August 29, three entries on August 30, and two on August 31<sup>st</sup>, 2010, that document your condition as observed by those persons referenced on that document. Do you see that?

A: Yes, sir.

Q: Does that look correct to you in terms of your being checked on periodically all of those dates?

A: They looked in the doors, and every once in awhile, they would speak to me, yes.

Q: Okay. Well, they got your blood pressure documented, your temperature documented, complaints that you were relating documented, pulse readings. All of that is documented in those entries, is it not?

A: Yes, sir.

....

Q: When the nurses were coming in during those days to make their various checks on you, were you on the mat in the floor or were you occupying the bed? Can you recall?

A: Sometimes – the first day or so, I was on the floor, and then I finally got enough strength to get on the bunk and I laid there for a day and then they put me back in my pod.

[Nichols Deposition, pp. 86, 108-09, 120]. Consistent with Plaintiff's allegations [Doc. 23, ¶¶ 4-8], the Charting Report<sup>5</sup> reflects that Defendant Luxford examined Plaintiff twice on August 29, Defendant Melanie Adams examined Plaintiff on August 29 and August 31, Defendant Judy Sims examined Plaintiff on August 29 and August 30, and Defendant Deborah Bunch examined Plaintiff on August 30 and August 31. After discharge from the Facility's medical unit on August 31, 2010, Plaintiff returned on his own power to the general population in the building where he was housed previously and was again provided a bottom bunk [Nichols Deposition, pp. 121-22, 180].

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<sup>5</sup> Plaintiff testified during his deposition that his only bases to dispute the treatment he received in the medical unit as documented by the Charting Report were his taking issue with whether Defendant Luxford tested his bilateral upper extremities on August 29, whether he was observed by guards walking around his pod (30) minutes prior to Defendant Jones's August 28 medical examination, and whether he was referred for a possible x-ray by Defendant Jones [Nichols Deposition, pp. 116-18].

Plaintiff did not exhibit any lingering symptoms from his August 27 accident in his daily activities during September of 2010. Specifically, by Plaintiff's admission, he completed a variety of tasks consistent with being in good health:

- Q: You were going back and forth to the bathroom and you were moving up and around this pod as you were able, right?
- A: Yes, sir.
- Q: You didn't have a cane, didn't have a wheelchair, did you?
- A: No, sir.
- Q: You were able to feed yourself and see to taking showers and keeping clean and those sorts of things, were you not?
- A: Yes, sir.
- Q: You had a pretty good appetite from these commissary records I have seen, but I'll show them to you. It looked like you were getting a fair . . . . It looks like you were able to get some, for lack of a better word, we'll call them treats, cookies and honey buns, in addition to medicine?
- A: Yes.

[Nichols Deposition, pp. 180-81]. Plaintiff also continued to receive his regular medications consisting of pills for his blood pressure and his bipolar condition [Nichols Deposition, p. 122]. Through a series of written requests made by Plaintiff during the month of September [Nichols Deposition, pp. 123-25], he received additional medical attention. Specifically, Plaintiff submitted a Dental Sick Call Request dated September 8 stating that he needed a tooth extraction, and on September 14 the medical staff referred him to the Facility's dental unit [Nichols Deposition, pp. 127-28]. The day before his referral, on September 13, Plaintiff submitted a Medical Care Form in which he stated that he had head and neck pain, which prompted the medical staff to provide him over-the-counter pain medication [Nichols Deposition, p. 126].

In accordance with the referral to the dental unit Plaintiff received on September 14, Plaintiff maintained an appointment with a dentist on September 17 during which four of his lower-right teeth were pulled [Nichols Deposition, p. 129-130]. Plaintiff testified the dentist

intended to pull eight of his teeth during the appointment on the 17<sup>th</sup> of September but, because “they couldn’t get the other side numb,” he was scheduled to return on September 27 [Nichols Deposition, p. 130]. Following Plaintiff’s submission of a Medical Care Form on September 22 in which he stated his head and neck pain persisted,<sup>6</sup> Plaintiff returned to the dental unit on September 27 to have his four lower-left teeth pulled [Nichols Deposition, pp. 130-31]. Regarding the quality of the dental care Plaintiff received on September 17 and September 27, he testified that the dentist was “real good,” and that “[t]hey numbed [him] perfect.” [Nichols Deposition, p. 137]. Plaintiff’s post-operative treatment following the tooth extractions consisted of 400 milligrams of ibuprofen, which he took twice a day over the next five days [Nichols Deposition, p. 131].

In October of 2010, Plaintiff continued to be accommodated with a bottom bunk and to have access to ibuprofen and Tylenol [Nichols Deposition, pp. 132-33, 135]. As in September, Plaintiff’s physical condition did not restrict him from engaging in his daily living activities:

Q: For the month of October that we have gone over, you were ambulating in and around your cell and you were not attended by anybody and you weren’t making any use of any cane or walker or any device to assist you during the month of October. Is that right?

A: The only help I needed was to get up and down where there wasn’t no chairs. You go out to like a basketball court and you could lean up against the wall. I had to lean up against the wall, and the guys would help me get up and down.

.....

Q: Were you taking regular meals?

A: Yes.

.....

Q: During the month of October, were you able to take care of your bathing and bathroom needs?

A: Yeah, pretty good.

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<sup>6</sup>Plaintiff identified the September 22, 2010 Medical Request Form during his deposition as the only request for medical attention during the month of September that did not generate a response from the Facility’s medical staff [Nichols Deposition, pp. 127, 131].



[Nichols Deposition, pp. 181, 132, 135].<sup>7</sup>

A Medical Care Form submitted by Plaintiff dated November 1, 2010 states that “Left knee needs cortisone shot real bad, neck pain still pretty stiff, low back pain pretty bad, need to see doctor.”<sup>8</sup> [Nichols Deposition, p. 134]. On November 3, 2010, Plaintiff was examined by Nurse Stephanie Minor who referred Plaintiff for an x-ray [Nichols Deposition, p. 138]. Later that day, Plaintiff was released from the Facility and taken to a local clinic where an x-ray was performed [Nichols Deposition, p. 139]. On November 5, a doctor at the Facility advised Plaintiff of his neck fracture and provided him a neck brace [Nichols Deposition, p. 178]. Thereafter, Plaintiff was admitted to the medical unit [Doc. 23, ¶ 21]. On or about November 7, 2010, Plaintiff was again released from the Facility to attend an appointment with a neurosurgeon, Dr. Richard Boyer [Doc. 23, ¶ 21]; [Nichols Deposition, p. 140], who informed Plaintiff his condition required surgery based upon the diagnostic findings of the x-ray [Doc. 23, ¶ 21].

Plaintiff returned to the Facility after his appointment with Dr. Boyer and was provided Tramadol for his neck pain until his release on November 10, 2010 [Nichols Deposition, pp. 232, 140-41], however, Plaintiff did not have the surgery which Dr. Boyer recommended until January 20, 2011, over seventy (70) days after his release from the Facility [Nichols Deposition, p. 141]. The crux of this case, Plaintiff testified, is the Defendants’ alleged delay in diagnosing the extent of his neck injury by approximately seventy (70) days<sup>9</sup> [Nichols Deposition, pp. 143-44, 229]. Medically, Plaintiff did not encounter any detrimental effects as a result of the

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<sup>7</sup> There is no documented record of Plaintiff making a single request for medical care during October of 2010.

<sup>8</sup> The November 1 request was the first and only time Plaintiff requested medical attention for his left knee during his incarceration [Nichols Deposition, pp. 137-38].

<sup>9</sup> Calculated with reference to the alleged date of Plaintiff’s injury (August 27, 2010) to the date he was informed that his neck was fractured (November 5, 2010).

Defendants' alleged delay in diagnosing the extent of his neck injury [Nichols Deposition, pp. 142-44].

### **STANDARD OF REVIEW**

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). The evidence must be viewed in a light most favorable to the non-moving party, and all reasonable inferences must be drawn in their favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Hoover v. Walsh, 682 F.3d 481, 492 (6th Cir.2012) (citing Bazzi v. City of Dearborn, 658 F.3d 598, 602 (6th Cir.2011)).

However, “[o]n a motion for summary judgment, facts must be viewed in the light most favorable to the nonmoving party only if there is a genuine dispute as to those facts.” Ricci v. DeStefano, 557 U.S. 557, 586 (2009) (quoting Scott v. Harris, 550 U.S. 372, 380, (2007)) (internal quotation marks omitted). “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment....” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) (emphasis in original). “The pivotal question is whether the party bearing the burden of proof has presented a jury question as to each element of its case.” Hartsel v. Keys, 87 F.3d 795, 799 (6th Cir.1996) (citing Celotex v. Catrett, 477 U.S. 317, 325 (1986)).

### **ARGUMENT**

Plaintiff alleges that these Defendants were deliberately indifferent to his serious medical needs in violation of the Eighth and Fourteenth Amendments of the United States Constitution. Specifically, Plaintiff avers that “the individual Defendants should have easily recognized the necessity of proper attention based upon their respective training and experience. Yet, the need

was not addressed within a reasonable time. Further, . . . the individual Defendants inferred the substantial risk to the medical health of Plaintiff as a result of the fall but disregarded the same creating a risk of serious harm to the Plaintiff.” [Doc. 23, ¶ 25]. The undisputed facts establish that these Defendants are entitled to judgment as a matter of law.

**I. These Defendants Were Not Deliberately Indifferent to Plaintiff’s Medical Needs**

To sustain a cause of action under § 1983 premised on alleged violations of the Eighth Amendment, a plaintiff must establish that the defendants acted with “deliberate indifference to serious medical needs.” Estelle v. Gamble, 429 U.S. 97, 104 (1976). An Eighth Amendment claim includes both an objective and subjective component. The objective component requires a prisoner to show that the medical need at issue is “sufficiently serious.” Blackmore v. Kalamazoo County, 390 F.3d 890, 895-96 (6<sup>th</sup> Cir. 2004); Comstock v. McCrary, 273 F.3d 693, 702-03 (6<sup>th</sup> Cir. 2001). The subjective component requires a showing that prison officials have a sufficiently culpable state of mind in denying medical care. Alspaugh v. McConnell, 643 F.3d 162, 169 (6<sup>th</sup> Cir. 2011). Here, there is no dispute and/or question of fact that Plaintiff’s alleged neck fracture is an objectively serious condition. The only remaining analysis, therefore, is whether Plaintiff can establish the subjective component of his Eighth Amendment claim.

The subjective component requires a showing that the Defendants were deliberately indifferent within the meaning of the Eighth Amendment’s cruel and unusual punishment clause. The Supreme Court has equated deliberate indifference with “criminal recklessness.” Weaver v. Shadoan, 340 F.3d 398, 410 (6<sup>th</sup> Cir. 2003) (citing Farmer v. Brennan, 511 U.S. 825, 837 (1994)). That is, a defendant must know of and disregard a substantial risk of serious harm. Weaver, supra at 410. “[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Id.;

see also Runkle v. Kemen, \_\_\_Fed.Appx. \_\_\_, 2013 WL 2249462, \*3 (6<sup>th</sup> Cir. May 23, 2013) (“To satisfy the subjective component, the plaintiff must allege facts which, if true, would show that the official being sued subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and that he then disregarded that risk.”). It is insufficient for a plaintiff to establish that there existed a danger of which an officer *should* have been aware, as deliberate indifference is something much more than negligence. Id. at 835, 838.

Importantly,

The prison official’s state of mind must evince deliberateness tantamount to intent to punish. Knowledge of the asserted serious needs or of circumstances clearly indicating the existence of such needs is essential to a finding of deliberate indifference. Thus, an official’s failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.

Miller v. Calhoun County, 408 F.3d 803 (6<sup>th</sup> Cir. 2005) (internal citation and punctuation omitted).

In evaluating deliberate indifference claims, courts distinguish between cases where there has been a complete denial of medical care and those cases where the claim is that a prisoner received inadequate medical treatment. See Westlake v. Lucas, 537 F.2d 857, 860 n.5 (6<sup>th</sup> Cir. 1976) (“Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law.”). In other words,

[a] medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment.

Humphries v. Smith, 9 Fed. Appx. 304, 308 (6<sup>th</sup> Cir. 2001) (quoting Estelle, 429 U.S. at 107); see also Broyles v. Correctional Medical Services, Inc., 478 Fed.Appx. 971, 975 (6<sup>th</sup> Cir. 2012) (“[A]llegations of medical malpractice or negligent diagnosis and treatment . . . fail to state an

Eighth Amendment claim of cruel and unusual punishment.”); Selby v. Martin, 84 Fed.Appx. 496, 499 (6<sup>th</sup> Cir. 2003) (“A mere difference of opinion between the plaintiff and his doctor regarding diagnosis and treatment does not state a claim under the Eighth Amendment.”). This is so because one “who provides careless or ineffective treatment merely displays incompetence, not unconstitutional deliberate indifference,” Bertl v. City of Westland, 2009 WL 247907 at \*5 (6<sup>th</sup> Cir. 2009), and where officials reasonably respond to the medical situation presented, they are not liable “even if the harm ultimately was not averted.” Harrison v. Ash, 539 F.3d 510, 519 (6<sup>th</sup> Cir. 2008) (citation omitted).

The subjective component of a deliberate indifference claim must be analyzed individually, requiring the district court to assess whether each defendant had a sufficiently culpable state of mind in the specific circumstances she confronted. Titlow v. Correctional Medical Services, Inc., 507 Fed.Appx. 579, 585 (6<sup>th</sup> Cir. 2012); Bishop v. Hackel, 636 F.3d 757, 767 (6<sup>th</sup> Cir. 2011); see also Heyerman v. County of Calhoun, 680 F.3d 642, 647 (6<sup>th</sup> Cir. 2012) (“Persons sued in their individual capacities under § 1983 can be held liable based only on their own unconstitutional behavior.”). Accordingly, the conduct of these individual Defendants will be analyzed separately.

At the outset, Plaintiff’s Eighth Amendment claims against each of these Defendants suffer from the same flaw. Plaintiff did not testify, nor does he even allege, that any of these Defendants ever *denied* him medical treatment.<sup>10</sup> Moreover, Plaintiff’s allegations and his testimony establish that these Defendants’ individual contacts with Plaintiff were limited. As discussed, *supra*, demonstrating the requisite culpability to support a deliberate indifference claim requires a showing of a clear indication of a serious medical need coupled with a disregard

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<sup>10</sup>Significantly, Plaintiff has not asserted that any of these Defendants were aware of the September 22, 2010 medical request that was allegedly disregarded.

of that need, both of which are seldom exhibited, as in this case, through brief and isolated encounters. See for e.g., Clark-Murphy v. Foreback, 439 F.3d 280, 291 (6<sup>th</sup> Cir. 2006) (holding correctional nurse's limited exposure to inmate during only one shift and the resulting lack of evidence regarding her purposeful indifference to inmate's health was insufficient as a matter of law to establish a violation of the Eighth Amendment); Sanderfer v. Nichols, 62 F.3d 151, 154 (6<sup>th</sup> Cir. 1995) ("The evidence as to [defendant] is confined to her single encounter with [inmate] . . . the facts surrounding her examination of him, and her diagnosis of and prescribing medication for his condition. . . .Therefore, 'strong proof of a pervasive pattern of indifference' simply was not present."); Ramirez-Rosales v. Matheny, 2011 WL 4062291 (E.D. Tenn. Sept. 6, 2011) ("It is difficult for the Court to conclude that, based on a single gesture, [defendant] could have drawn the inference that [inmate's] health was in serious jeopardy . . . Based on her testimony and her medical notations, [defendant] believed [inmate] to be suffering from slight glandular swelling without a sore throat, not a condition that presented an excessive risk to his health, and she treated him accordingly."). Indeed, Plaintiff's encounters with these Defendants were so uneventful that he could not identify them by name during his deposition, despite having brought suit against them:

Q: As you sit here today, do you know anything specifically that Selenia Allen did with respect to your care that you disagree with or find objectionable?

A: I don't know who it is.

Q: Okay. What about Deanna Jones? Anything specifically you can identify as you sit here today that she did with respect to your care that you find objectionable or disagree with?

....

Q: Did Deanna Jones, one of the nurses, is there anything you can identify today that she did with respect to your care that you disagree with or find objectionable?

A: I don't know which one she is.

Q: Okay. What about Judy Sims? Anything you can specifically identify that she did that you disagree with or find objectionable?

A: I don't know who that is.  
Q: I'm going to give you two other names, Deborah Bunch and Melanie Adams. Did either of those ladies do anything?  
A: I couldn't tell you . . . .

[Nichols Deposition, pp. 155-56].

**a. Selenia Allen**

Defendant Allen's only encounters with Plaintiff occurred on August 27 and August 28, 2010. On August 27, Defendant Allen accompanied Nurse Luxford to Plaintiff's cell in response to the code blue after Plaintiff allegedly fell from his bunk [Allen Deposition, pp. 65-66]. Defendant Allen and Nurse Luxford cleaned the abrasion on Plaintiff's forehead with soap and sterile water [Allen Deposition, pp. 69-70]; [Nichols Deposition, pp. 99-100]. Afterwards, Plaintiff was provided ibuprofen and allowed access to a bottom bunk [Allen Deposition, p. 70]; [Nichols Deposition, p. 102]. Plaintiff did not complain to Defendants Luxford or Allen of pain in his neck and back, that he was temporarily paralyzed, or that his body was tingling [Nichols Deposition, p. 216]. The very next day, Defendant Allen accompanied Plaintiff as he walked to the Facility's medical unit on his own power and, in response to Plaintiff's complaints of head and neck pain, Defendant Allen recommended, in accordance with the Facility's protocol for treating muscle strains and sprains, that Plaintiff begin taking the muscle relaxer Robaxin [Allen Deposition, pp. 75, 93-94]; [Nichols Deposition, pp. 110-113].

The undisputed facts are insufficient to establish that Defendant Allen was deliberately indifferent to Plaintiff's serious medical needs. At no point did Defendant Allen deny Plaintiff medical treatment. Rather, Defendant Allen responded to the code blue, made an assessment of Plaintiff's condition, and rendered a plan of care which included a follow-up evaluation the next day. Plaintiff's position, in retrospect, is that Defendant Allen should have transported him to a

hospital for further evaluation<sup>11</sup> [Nichols Deposition, p. 101]. However, the undisputed facts establish that Plaintiff did not mention his neck pain to Defendant Allen on August 27, that Plaintiff was able to ambulate to the medical unit on his own power on August 28, and that Plaintiff told Defendant Allen he did not want to be housed in the Facility's medical unit [Nichols Deposition, pp. 114-15, 220]. As to Defendant Allen, a reasonable jury could not find that she was aware of facts from which she drew the inference of a substantial risk of harm to Plaintiff's health, or that by rendering the medical care that she provided, she consciously chose to ignore that risk. This case presents a classic example of an inmate's mere difference of opinion regarding the diagnosis and treatment of his condition. See for, e.g., Lane v. Wexford Health Sources (Contreator), 510 Fed.Appx. 385, 388 (6<sup>th</sup> Cir. 2013) (“[Plaintiff’s] allegations suggest, at most, a difference in medical opinion, which is not actionable under § 1983.”). Well-settled precedent supports a finding that Defendant Allen was not deliberately indifferent to Plaintiff's medical needs in these circumstances, and summary judgment should be granted in her favor.

**b. Deanna Jones**

Defendant Jones's sole contact with Plaintiff was on August 28 when she encountered Plaintiff lying on his mat on the floor of his cell [Nichols Deposition, pp. 105-06, 115]; [Jones Deposition, pp. 48-49, 51-52]. Defendant Jones, after noting that the cut on Plaintiff's forehead was healing well, checked Plaintiff's blood pressure, pulse, respiration, and temperature [Jones Deposition, p. 50]. In response to Plaintiff's complaints of pain to his head and neck, Defendant Jones concluded Plaintiff possibly had a muscle strain and/or sprain and, in accordance with

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<sup>11</sup> Plaintiff makes this contention despite acknowledging that he never asked Defendant Allen to be taken to the hospital [Nichols Deposition, p. 219].



Facility protocol, decided to move Plaintiff to the medical unit for observation and to continue Robaxin three times a day for ten days [Jones Deposition, pp. 51, 73-74].

Here, as in Clark-Murphy, *supra*, 439 F.3d at 291, there is simply a lack of evidence establishing that Defendant Jones was aware of and disregarded an excessive risk to Plaintiff's medical needs through her brief and isolated encounter with him. Moreover, Defendant Jones's plan of care consisting of transferring Plaintiff to the medical unit for further medical observation and treatment was a reasonable response to Plaintiff's medical needs, and cannot support a deliberate indifference claim even though the plan of care did not ultimately result in an earlier diagnosis of Plaintiff's neck injury. See Harrison, *supra*, 539 F.3d at 519-20 (stating that prison officials are free from liability under § 1983 for alleged violations of inmates' Eighth Amendment rights where they reasonably respond to the risk to an inmate's health by seeking additional medical assistance, even if the harm is not ultimately averted). Thus, Defendant Jones did not violate Plaintiff's Eighth Amendment rights and she is entitled to judgment as a matter of law.

**c. Melanie Adams, Judy Sims, and Deborah Bunch**

Defendant Adams, Sims, and Bunch examined Plaintiff while he was in the medical unit. Defendant Adams examined Plaintiff on August 29 and 31 [Doc. 23, ¶ 6]; [Nichols Deposition, pp. 116-18]. On August 29, Defendant Adams checked Plaintiff's vital signs and charted that he was "calm and cooperative" and "alert and oriented times three." [Deposition of Melanie Adams ("Adams Deposition"), pp. 29-30 (Attached as Exhibit H to the Defendants' Motion)]. While Plaintiff complained to Defendant Adams of experiencing a headache, he had no further concerns at the time [Adams Deposition, p. 30]. Plaintiff did not have any complaints when he

was evaluated by Defendant Adams on August 31 just prior to his discharge from the medical unit [Adams Deposition, pp. 40, 43].

Defendant Sims examined Plaintiff on August 29 and 30 [Doc. 23, ¶ 7]; [Nichols Deposition, pp. 116-18]. During Defendant Sims' examination of Plaintiff on August 29, she checked Plaintiff's vital signs and charted complaints Plaintiff had that he was experiencing a headache [Deposition of Judy Sims ("Sims Deposition"), pp. 49-50, 53 (Attached as Exhibit I to the Defendants' Motion)]. On August 30, Defendant Sims again examined Plaintiff at which time she charted that Plaintiff was again experiencing headaches and that Plaintiff had been cleared to move back to general population with an assignment to a lower-level cell and a bottom bunk [Sims Deposition, p. 61]; [Nichols Deposition, pp. 116-18].

Defendant Bunch examined Plaintiff on August 30 and 31 [Doc. 23, ¶ 8]; [Nichols Deposition, pp. 116-18]. On August 30, Defendant Bunch documented Plaintiff's vital signs, including the taking of his temperature, his blood pressure, and oxygen saturation [Deposition of Deborah Bunch ("Bunch Deposition") pp. 29-30 (Attached as Exhibit J to the Defendants' Motion)]. Defendant Bunch further observed that Plaintiff's skin was warm and dry, that his respirations were "even and unlabored," and that Plaintiff was "alert and oriented." [Bunch Deposition, p. 30]. In response to Plaintiff's complaints that he was experiencing a headache, Defendant Bunch gave Plaintiff 650 milligrams of Tylenol [Bunch Deposition, pp. 30-31]. On August 31, Defendant Bunch again checked Plaintiff's vital signs, noting that Plaintiff's skin was warm and unlabored, and that his pupils were "equal and reactive to light" [Bunch Deposition, p. 52]. Defendant Bunch also charted that Plaintiff experienced a headache "when he move[d] from one position to another, laying down to sittin[g] up." [Bunch Deposition, p. 52].

No reasonable jury could find that Defendants Adams, Sims or Bunch were deliberately indifferent to Plaintiff's medical needs through their encounters with Plaintiff while he was housed in the medical unit. The undisputed facts establish merely that each Defendant was aware that Plaintiff was experiencing headaches at a time when, admittedly, he was regularly being evaluated by various nurses [Nichols Deposition, p. 86] and provided prescription and over-the-counter pain medication [Doc. 23, ¶ 18]; [Nichols Deposition, pp. 105-06, 111-12].<sup>12</sup> The record is devoid of any evidence upon which a jury could conclude that Defendants Adams, Sims, or Bunch possessed the requisite knowledge that Plaintiff was in serious need of medical care<sup>13</sup> and/or that by rendering their plans of care they consciously chose to disregard the need. See Hall v. Holmes, 2012 WL 3842475 (E.D. Mich. 2012) (“[T]here is no dispute that [plaintiff] received *some* medical attention. Indeed, he received regular care . . . . All he can show is that he disagreed with the care given by Defendants. Given the regular and frequent care Plaintiff received, this disagreement does not amount to reckless disregard to his medical needs.”). Accordingly, there is no genuine issue of material fact regarding whether Defendants Adams, Sims or Bunch were deliberately indifferent to Plaintiff's serious medical needs and his § 1983 claim premised on the Eighth Amendment should be dismissed as a matter of law.

In sum, as to each of these Defendants, Plaintiff cannot establish the subjective component of his Eighth Amendment claim. The undisputed facts demonstrate that Plaintiff's neck fracture was not so obvious to these Defendants during their isolated encounters with him such that they subjectively perceived facts from which to infer a substantial risk to Plaintiff's

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<sup>12</sup>By Plaintiff's admission, the Robaxin was effective in alleviating his pain [Id.].

<sup>13</sup>The Sixth Circuit recently held that headaches are not sufficiently serious indicators of a medical need to put prison officials on notice that further diagnosis or treatment is appropriate under the Eighth Amendment. See Reilly v. Vadlamudi, 680 F.3d 617, 625-626 (6<sup>th</sup> Cir. 2012) (holding physician was not deliberately indifferent to inmate's medical needs where physician's single contact with inmate who was ultimately diagnosed with bone cancer reflected that inmate was treated for “minor symptoms” consisting of a headache and left-eye swelling).

health. See Reilly, 680 F.3d at 624 (“Indeed, knowledge of the asserted serious needs or of circumstances clearly indicating the existence of such needs, is essential to a finding of deliberate indifference.”). At most, all that can be gleaned from the record is that Plaintiff had persistent head and neck pain following his alleged August 27 fall which pain appears to have subsided justifying Plaintiff’s discharge from the Facility’s medical unit at the end August 2010.

It is also important to consider Plaintiff’s physical condition after his discharge from the medical unit in evaluating Plaintiff’s medical needs when these Defendants encountered him in late August of 2010. During the months of September and October, Plaintiff was not only proficiently able to complete his daily living tasks without assistance, but also requested the September 17 and 27 dental procedures during which eight (8) of his teeth were extracted. Plaintiff’s apparent vigor during the months of September and October, as well as the fact that Plaintiff’s surgery was performed over 70 days after his release from the Facility, is wholly consistent with these Defendants’ collective assessment that Plaintiff’s physical condition was improving, and verifies the appropriateness of the treatment which these Defendants undisputedly provided.

Moreover, assuming, *arguendo*, that these Defendants subjectively perceived that Plaintiff was in serious need of medical care, no reasonable jury could conclude that these Defendants (or the other named Defendants in this case) disregarded that risk. The record establishes beyond genuine dispute that the Defendants responded—repeatedly<sup>14</sup>—to Plaintiff’s complaints, albeit not with the particular treatment Plaintiff, in hindsight, now prefers. As stated, *supra*, a prisoner’s difference of opinion regarding treatment does not rise to the level of an Eighth Amendment violation, Estelle, *supra*, 429 U.S. at 105-06, and, where the prisoner has

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<sup>14</sup>As discussed previously, the record is literally teeming with instances that Plaintiff received medical attention during his incarceration. See generally, *supra*, pp. 2-10 text and accompanying notes.

received some medical attention and disputes the adequacy of that treatment, federal courts should not second-guess prison officials' medical judgments and constitutionalize claims which sound in state tort law. Westlake, 537 F.2d 857, 860 n.5; see also Christian v. Michigan Dept. of Corrections, 2013 WL 607783, \*6 (E.D. Mich. 2013) ("Plaintiff's disagreement with particular medical decisions made by Defendants and his conclusory allegations of deliberate indifference do not negate the extensive allegations that these Defendants reasonably and diligently addressed Plaintiff's medical needs over an extended period of time."). To subject the medical treatment that these Defendants undisputedly provided Plaintiff to constitutional scrutiny would force this Court to inquire into medical standards of care, and that is not its proper function in analyzing claims alleging deliberate indifference under the Eighth Amendment. Thus, Plaintiff has failed to present a genuine issue of material fact that these Defendants were deliberately indifferent to his serious medical needs, and they are each entitled to judgment on Plaintiff's § 1983 claims pursuant to Fed. R. Civ. P. 56.

## **II. These Defendants are Entitled to Qualified Immunity**

Assuming these Defendants' conduct violated Plaintiff's constitutional rights, which it did not, they are nevertheless entitled to qualified immunity and the entry of summary judgment in their favor. The Sixth Circuit recently stated as follows regarding the doctrine of qualified immunity:

The qualified-immunity doctrine shields government officials performing discretionary functions from civil liability unless their conduct violates clearly established rights. *Bishop*, 636 F.3d at 765. "Thus, a defendant is entitled to qualified immunity on summary judgment unless the facts, when viewed in the light most favorable to the plaintiff, would permit a reasonable juror to find that: (1) the defendant violated a constitutional right; and (2) the right was clearly established." [ ] *Id.* (citing *Pearson v. Callahan*, 555 U.S. 223, 232, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009)). We may choose to analyze either prong first. *Pearson*, 555 U.S. at 236, 129 S.Ct. 808. Once a defendant invokes qualified immunity, the plaintiff bears

the burden to show that qualified immunity is inappropriate. *Silberstein v. City of Dayton*, 440 F.3d 306, 311 (6th Cir.2006).

Quigley v. Tuong Vinh Thai, 707 F.3d 675, 680-81 (6<sup>th</sup> Cir. 2013). As to the second prong, the qualified-immunity defense bars individual liability where “a reasonable official in the defendant’s position would not have understood his or her actions to violate a person’s constitutional rights.” Gregory v. City of Louisville, 444 F.3d 725, 738 (6<sup>th</sup> Cir. 2006). Qualified immunity ““gives ample room for mistaken judgments,”” protecting ““all but the plainly incompetent or those who knowingly violate the law.”” Chappell v. City of Cleveland, 585 F.3d 901, 907 (6<sup>th</sup> Cir. 2009) (quoting Hunter v. Bryant, 502 U.S. 224, 229 (1991)).

In the case at bar, even if the Court were to find that any of these Defendants’ conduct is unconstitutional, they would still each be entitled to qualified immunity because Plaintiff cannot demonstrate that the Defendants’ conduct was clearly prohibited by the Eighth Amendment in the specific situation each confronted. Saucier, 533 U.S. 194, 201-02 (2001). To the best of the undersigned counsel’s knowledge, there is no precedent from the United States Supreme Court or the Sixth Circuit Court of Appeals that would have put these Defendants on notice that by providing medical care to an inmate upon his request, although perhaps not in the manner he would prefer, is violative of his constitutional rights. Indeed, prevailing Eighth Amendment jurisprudence, which requires a showing of a *denial* of medical care, directs otherwise. Accordingly, Plaintiff cannot present a jury question that his rights were clearly established during the relevant events and these Defendants are entitled to qualified immunity.

### **CONCLUSION**

There is no genuine issue of material fact precluding summary judgment in favor of these Defendants on each of Plaintiff’s claims. Plaintiff cannot establish facts supporting essential

elements of his claims set forth in the Complaint. For all of the above reasons, Selenia Allen, Deanna Jones, Melanie Adams, Judy Sims and Deborah Bunch are entitled to summary judgment of dismissal on each of Plaintiff's claims.

Respectfully submitted this 26th day of August, 2013.

/s/ E. Jerome Melson

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2013, a copy of the foregoing **Memorandum of Law in Support of Motion for Summary Judgment on Behalf of Defendants Selenia Allen, Deanna Jones, Judy Sims, Deborah Bunch and Melanie Adams** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

/s/ E. Jerome Melson

E. Jerome Melson

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

DIANE CHEATHAM,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:10-CV-541
	)	
KNOX COUNTY and LIEUTENANT	)	
JEANETTE HARRIS	)	
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
ON BEHALF OF DEFENDANT JEANETTE HARRIS

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant Jeanette Harris, by and through counsel, submits this Memorandum of Law in Support of her Motion for Summary Judgment.

This case stems from an approximately nineteen (19) minute interview of Plaintiff Diane Cheatham by officers of the Knox County Sheriff's Department, including Jeanette Harris<sup>1</sup> ("Officer Harris"), Miranda Spangler ("Officer Spangler"), and Greg Faulkner ("Officer Faulkner"), which interview occurred during the course of a felony criminal investigation of the Plaintiff's boyfriend for alleged possession of child pornography and potential sexual exploitation of a minor [Doc. 1 at ¶¶ 1-5]; [Deposition of Dianne Cheatham ("Cheatham Deposition") at pp. 56:12-25, 57:1-10, 178:20-25, **EXHIBIT B**].<sup>2</sup> The Plaintiff filed the present lawsuit alleging that her constitutional rights were violated during a brief portion of the

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<sup>1</sup> Jeanette Harris was a Lieutenant rank during the events that form the basis of this lawsuit but she has since been promoted to Captain [Deposition of Jeanette Harris ("Harris Deposition") at pp. 11:23-25, 12:1-3, **EXHIBIT A**].

<sup>2</sup> On January 12, 2012, Bob Gene Robinson ("Mr. Robinson"), the Plaintiff's boyfriend, pled guilty in Knox County Criminal Court to the felony offense of sexual exploitation of a minor under Tenn. Code Ann. § 39-17-1003 and was sentenced to a term of 6 years of incarceration in the Tennessee Department of Correction. A certified copy of the judgment of his conviction is attached hereto as **EXHIBIT C**.



interview.<sup>3</sup> Specifically, the Plaintiff alleges that Officer Harris used excessive force against her in violation of the Fourth Amendment and that Officer Harris is additionally liable under state law for assault and kidnapping. Viewing the facts in a light most favorable to the Plaintiff,<sup>4</sup> Officer Harris did not violate any of her constitutional rights. Moreover, Plaintiff's claims predicated upon state law are likewise appropriate for dismissal.

### **FACTUAL BACKGROUND**

The Plaintiff is a divorced single mother and moved to Knoxville, Tennessee in November of 2008 [Cheatham Deposition at p. 26:5-9]. The Plaintiff and Mr. Robinson became acquainted in June 2010 after the Plaintiff contacted a local handyman service for the purpose of hiring someone to assist her with the construction of a cage for her pet chameleon [Cheatham Deposition at pp. 57:11-21, 58:1-25, 59:6-8]. Mr. Robinson responded to the call and visited the home rented by the Plaintiff located at 4101 Maloney Road, Knoxville, Tennessee 37920 [Cheatham Deposition at p. 26:10-21], and, after reviewing plans and specifications of the cage produced by the Plaintiff, agreed to undertake the job [Cheatham Deposition at p. 59:1-24]. Prior to hiring Mr. Robinson to build her cage in June of 2010, the Plaintiff and Mr. Robinson had never met [Cheatham Deposition at pp. 59:25, 60:1-4].

Mr. Robinson worked on the cage at the Plaintiff's home and the job spanned several weeks [Cheatham Deposition at p. 60:5-15]. At some point during the job Mr. Robinson expressed an interest in living in an empty bedroom in the Plaintiff's home. Having developed a close relationship with Mr. Robinson over the course of these weeks, the Plaintiff allowed him to

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<sup>3</sup> The Plaintiff initially sued Officers Harris, Faulkner and Spangler, though she voluntarily dismissed her claims against Officer Faulkner and Officer Spangler on January 19, 2011.

<sup>4</sup> Although Officer Harris categorically denies, *inter alia*, the Plaintiff's testimony as to the duration and amount of force that was used during the interview, *infra*, for purposes of the present motion only, the Plaintiff's version of the incident is undisputed. Nevertheless, she cannot, as a matter of law, establish a cognizable claim under state or federal law.

move in with her and her young daughter, Kyla [Cheatham Deposition at pp. 60:21-25, 61:21-25, 62:13-25]. Shortly after Mr. Robinson moved in, the Plaintiff let him drive her deceased father's vehicle [Cheatham Deposition at pp. 72:20-25] and allowed him to sleep with her in her bed [Cheatham Deposition at p. 75:1-7].

On or about September 13, 2010, the Plaintiff received a credit card statement in the mail for an account that had previously been opened by her father [Cheatham Deposition at pp. 66:11-18]. The Plaintiff became suspicious of Mr. Robinson and believed that he was responsible for making purchases on her late father's account [Cheatham Deposition at p. 66:18-22]. After searching his belongings, the Plaintiff found, among other things, the credit card and several pairs of little girl panties that were wrapped in a doo-rag [Cheatham Deposition at pp. 66:23-25, 67:1-3, 80:1-25, 81:1-25, 197:12-25, 198:1-5]. The Plaintiff's discovery prompted her to search Mr. Robinson's computer where she found multiple pictures of "naked little girls" [Cheatham Deposition at p. 68:12], whereupon she immediately contacted the police [Cheatham Deposition at pp. 67:4-25, 68:1-25, 69:1-7, 81:23-25, 82:1-4, 198:1-5].

An investigation immediately ensued. On the afternoon of September 13, 2010, multiple officers from the Knox County Sheriff's Office responded to the Plaintiff's call and arrived at her home to search Mr. Robinson's belongings, including his computer and his van [Cheatham Deposition at pp. 69:13-25, 70:1-23, 72:11-25]. The officers discovered thousands of pornographic images of minors on Mr. Robinson's computer [Cheatham Deposition at pp. 153:24-25, 154:1-7] and several additional pairs of small girls' panties in Mr. Robinson's van [Cheatham Deposition at p. 77:9-18]. The Plaintiff unequivocally expressed to the officers that she wanted Mr. Robinson and all of his belongings removed from her home [Cheatham

Deposition at pp. 73:4-23, 82:6-12]. In that regard, the Plaintiff called a tow truck company to remove Mr. Robinson's van from her property [Cheatham Deposition at p 73:19-20].

The following day and on September 14, 2010, the Plaintiff brought Kyla to the Knoxville Family Justice Center to be interviewed by a DCS employee to ensure that Mr. Robinson did not have any inappropriate contact with her [Cheatham Deposition at p. 79:2-8, 84:12-25, 85:1-25, 86:1-20]. From her discussions with her daughter, the DCS employee, and Officer Spangler, the Plaintiff was satisfied that Kyla had not been sexually abused or victimized by Mr. Robinson [Cheatham Deposition at pp. 85:17-20, 86:14-20, 94:5-9].

The next day, September 15, 2010, despite having reasonable assurances that Mr. Robinson had not sexually abused Kyla, the Plaintiff made arrangements on her own initiative to see Mr. Robinson by sending text messages to him so that they could meet at a local park [Cheatham Deposition at pp. 87:20-25, 88:1-16]. The meeting, which according to the Plaintiff lasted approximately 30-45 minutes [Cheatham Deposition at 91:5-13], was interrupted when officers from the Knox County Sheriff's Office, including Officer Faulkner, arrived to arrest Mr. Robinson [Cheatham Deposition at pp. 96:7-12, 97:1-25, 98:1-1-23, 100:6-17]. After Mr. Robinson was detained and placed in the backseat of the police car, the Plaintiff requested to have an opportunity to speak with Mr. Robinson at which point she advised him "to be quiet and only speak with an attorney." [Cheatham Deposition at p. 101:1-17]. The Plaintiff's conversation with Mr. Robinson was recorded by Officer Faulkner [Harris Deposition at p. 58:20-25].

The Plaintiff's presence with Mr. Robinson at the park just two days after she adamantly requested that he be removed from her home, and her advising him not to cooperate with the police, were alarming to the arresting officers and prompted them to contact their supervisor, Defendant Harris [Harris Deposition at pp. 26:21-25, 27:1-25, 28:1-7]. Officer Faulkner

accordingly called Officer Harris<sup>5</sup> and discussed his concerns with her and suggested that she talk to the Plaintiff to ensure she was aware of the severity of Mr. Robinson's crimes and the importance of the felony investigation, the importance of the continued safety of her daughter, and for Officer Harris to assist in determining whether the Plaintiff was in any way involved or was complicit in Mr. Robinson's misconduct [Harris Deposition at pp. 27:5-16, 28:2-7].

On September 16, 2010, the Plaintiff brought her computer to the Knoxville Family Justice Center for forensic analysis [Cheatham Deposition at p. 110:1-24]. While she waited, the Plaintiff was asked if she would step inside a small office adjacent to the waiting area to speak to Officer Harris, Officer Spangler, and Officer Faulkner [Cheatham Deposition at pp. 110:25, 111:1-3]. In response, the Plaintiff voluntarily entered the office to discuss the investigation with the officers [Cheatham Deposition at pp. 151:2-25, 152:1-11].<sup>6</sup>

The office was approximately 10 feet by 12 feet [Cheatham Deposition at p.138:17-25], and contained a round table and a desk.<sup>7</sup> The Plaintiff and Officer Harris sat down at the round table and were only separated by approximately three and a half feet [Cheatham Deposition at pp. 136:13-20, 174:8-24]. Officer Faulkner sat behind the desk, and Officer Spangler stood next to the desk [Cheatham Deposition at pp.136:23-25, 137:1-5].

The Plaintiff was aware that the interview was being conducted in a public building [Cheatham Deposition at pp. 150:18-22, 176:19-25, 177:1-14]. Nevertheless, she repeatedly acted in a loud, erratic, and profane manner [Cheatham Deposition at pp. 145:15-23, 148:25, 149:1-10, 155:25, 156:1-25, 158:9-24, 159:1-25, 160:1-25, 161:1-2, 177:11-15]. Specifically, the

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<sup>5</sup> Up until that time, Officer Harris had not participated in the investigation [Harris Deposition at p. 26:12-15].

<sup>6</sup> The resulting interview lasted approximately nineteen (19) minutes and was recorded in its entirety [Id. at 111:4-11]. The interview represents the only objectionable contact the Plaintiff ever had with Officer Harris [Cheatham Deposition at pp. 56:12-25, 57:1-10, 108:1-3, 178:20-25]. A true and correct copy of the audio recording has been filed manually contemporaneously with the electronic filing of this Defendant's Motion for Summary Judgment. A Notice of Manual Filing is attached hereto as **EXHIBIT D**.

<sup>7</sup> The Plaintiff made a diagram of the office during her deposition. A copy of her diagram is attached hereto as **EXHIBIT E**.

Plaintiff acknowledges that she began screaming when Officer Harris asked her questions about her relationship with her ex-husband where the Plaintiff introduced the topic. Illustrative of her conduct, the Plaintiff testified during her deposition regarding her behavior during the interview<sup>8</sup> as follows:

- Q. Fifteen minutes in. Anything [objectionable] happen yet? Have you been touched?  
A. No, I have not been touched.  
Q. Are you raising your voice there?  
A. There, probably a little bit.  
Q. 15:08, you are raising your voice. **Is that you screaming, “I date one fucking guy and he turns out to be the devil”?**  
A. **Yes.**  
Q. **That’s the third instance of a vulgar and profane term, and that, again, is coming from your mouth, isn’t it?**  
A. **Yes, sir.**  
Q. All right. And you have raised your voice by this point?  
A. So has she.  
Q. **You raised your voice by this point, correct?**  
A. **Yes.**

[Cheatham Deposition at p. 158:6-24] (emphasis added).

The Plaintiff’s rage ultimately led her to terminate the interview. In anger, she hit her hand down on the round table where she was seated in close proximity to Officer Harris [Cheatham Deposition at pp. 172:15-25, 159:25, 160:1-5], continued to yell [Cheatham Deposition at pp. 174:25, 175:1-2], and suddenly jumped up to exit the office [Cheatham Deposition at p. 174:8-24]. Regarding the Plaintiff’s behavior during the interview when she elected to leave the office, she testified as follows:

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<sup>8</sup> The audio recording was played to the Plaintiff during her deposition, thus enabling her to accurately testify, to the precise second, how long each component of the incident lasted. It is undisputed that the only events during the nineteen (19) minute interview the Plaintiff found objectionable and that are the basis of her lawsuit against Officer Harris occurred during the last two (2) minutes of the interview [Cheatham Deposition at pp. 143:13-20, 145:9-12, 146:2-4, 146:18-20, 149:12-14, 149:16-18, 149:20-22, 149:24-25, 150:1-5, 150:15-17, 152:14-25, 154:23-25, 155:18-19, 155:21-23, 157:20-25, 158:1-8, 161:3-5]. Numerical references in the Plaintiff’s deposition refer therein to minutes and seconds (min : sec) corresponding to specific events that occurred during the approximately nineteen minute interview as represented by the audio recording.

- Q. Is that Ms. Harris telling you to calm down?  
A. Yes.  
Q. Because you're the only one screaming at that point, right?  
A. Because she was arguing with me and upsetting me.  
Q. Because you are screaming, right? That's why you needed to calm down?  
A. Okay.  
Q. You agree with that, right?  
A. The way you worded it, yeah.  
(Audio played.)  
Q. That's you screaming, "why don't you stop interrogating me like I did something wrong," right?  
A. Yes, it is.  
(Audio played.)  
Q. Is that you screaming, "I did not know, I did not know"?  
A. Yes, it is.  
Q. Have you been touched at this point?  
A. Not this point.

[Cheatham Deposition at pp 160:7-25, 161:1-5] (emphasis added).

Officer Harris stood up from the table and attempted to calm the Plaintiff down and to have her refrain from screaming [Cheatham Deposition at p. 160:7-18]. When the Plaintiff reached for the office door to leave, Officer Harris moved the Plaintiff's arm away from the door [Cheatham Deposition at p. 167:1-6], placed her hands on both of the Plaintiff's upper arms [Cheatham Deposition at p. 167:11-13], and placed the Plaintiff against the wall [Cheatham Deposition at pp. 167:7-10, 190:13-25, 191:1-9]. Officer Harris subsequently released the Plaintiff, [Cheatham Deposition at p. 167:14-20], and when the Plaintiff attempted to reach for the office door a second time, Officer Harris again moved her arm away from the door [Cheatham Deposition at p. 168:10-25]. Officer Harris blocked the door and would not allow her to leave for a brief period of time thereafter [Cheatham Deposition at p. 175:5-19].

By the Plaintiff's own testimony, the force applied by Officer Harris described above consisted of two touches for a total of twenty-five (25) seconds, and the entire incident during

which she alleges that she was held against her will lasted one (1) minute and forty-seven (47) seconds.

Regarding the duration of Officer Harris's touching, the Plaintiff testified as follows:

Q. 15:47 is where that shows up where you had me stop . . . .

....

Q. Now, that was the first touching. I want you, as best you can, as you listen here, to stop me when you believe that that touching was over. Okay?

(Audio played.)

Q. Are you still being touched?

A. She must have let go before then.

Q. Okay. All right. That's at 16:09, you are saying I'm going to let go. **So 15:47 to 16:09 is 22 seconds. Would you agree with that?**

A. **With your math, yes.**

Q. You think at this point, you are reaching to get your things and get out?

A. Uh-huh.

Q. Is that right?

A. Yes, but she was – go ahead.

(Audio played.)

Q. Was that the second time?

A. That's the second time. Again, I went for the door. She was blocking the doorway. I reached out and she grabbed my hand.

....

Q. **That second touching you estimate took two to three seconds?**

A. **Yes, sir.**

[Cheatham Deposition at pp. 165:19-20, 167:14-25, 168:1-9, 169:1-3] (emphasis added).

With respect to the length of the detention, the Plaintiff testified as follows:

Q. Okay. So at 15:47 is [when] you are leaving. You have not been touched yet, but you are leaving. You are about to be touched. Then at 17:30, she tells you that she's not keeping you there?

A. But she still is. She's still blocking the door. She's not letting me out until she finally says "get out" and you can hear the door.

....

Q. So you start getting your stuff. Okay. That's at 17:34. **So it starts at 15:47. It goes to 17:34. It's less than two minutes total that you believe you were held against your will?**

A. **Absolutely.**

....

Q. So at 17:38, you're –

A. Out of the room.

[Cheatham Deposition, pp. 176:10-18, 177:19-23, 171:23-24] (emphasis added). Shortly after the interview, the Plaintiff went to the emergency room for evaluation and was discharged the same day. Her emergency room medical records indicate that she did not suffer any physical injuries from the encounter [Cheatham Deposition at pp. 125:1-25, 126:1-22].

### **STANDARD OF REVIEW**

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The court enters summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

The moving party always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record that show the absence of a genuine issue of material fact. Id. at 323, 106 S. Ct. 2548. A fact is material if its resolution will affect the outcome of the lawsuit. Daughenbaugh v. City of Tiffin, 150 F.3d 594, 597 (6th Cir. 1998) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). Once the moving party satisfies its initial burden, the burden shifts to the non-moving party who “must set forth specific facts showing that there is a genuine issue for trial.” Anderson, 477 U.S. at 250, 106 S. Ct. 2505 (quoting Fed. R. Civ. P. 56(e)). The non-moving party cannot avoid summary judgment by resting on its pleadings or reasserting its previous allegations. It is insufficient “simply [to] show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct.



1348, 89 L. Ed. 2d 538 (1986). Instead, Rule 56(e) “requires the nonmoving party to go beyond the pleadings” and present evidentiary material in support of its position. Celotex, 477 U.S. at 324, 106 S. Ct. 2548.

In deciding a motion for summary judgment, the court views the factual evidence and draws reasonable inferences in favor of the non-moving party. National Enters., Inc. v. Smith, 114 F.3d 561, 563 (6th Cir. 1997). The Court must decide “whether the evidence presents sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Terry Barr Sales Agency, Inc. v. All-Lock Co., 96 F.3d 174, 178 (6th Cir. 1996) (internal punctuation omitted). “The mere existence of a scintilla of evidence in support of a plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” Street v. J.C. Bradford & Co., 886 F.2d 1472, 1477 (6th Cir. 1989) (citation and internal punctuation omitted). The court “is not . . . obligated to wade through and search the entire record for some specific facts that might support the nonmoving party’s claim.” InterRoyal Corp. v. Sponseller, 889 F.2d 108, 111 (6th Cir. 1989).

### **ARGUMENT**

As an initial matter, the Plaintiff states in her Summary of Complaint that the Defendants’ alleged mistreatment of her is actionable under 42 U.S.C. §§ 1983, 1985 and 1986 [Doc. 1 at pp. 1-2]. However, the Plaintiff’s Complaint is devoid of any allegation that Officer Harris’s alleged use of excessive force was motivated by racial or other class-based animus to support a conspiracy claim under 42 U.S.C. §§ 1985 or 1986. See Bass v. Robertson, 167 F.3d 1041, 1050, and n.5 (6th Cir. 1999) (citing Griffin v. Breckenridge, 403 U.S. 88, 102–03, 91 S.Ct. 1790, 1798–99, 29 L.Ed.2d 338 (1971)) (holding summary judgment was appropriate as to plaintiff’s Section 1985 and 1986 claims where plaintiff failed to allege or produce any evidence

of racial motivation for the alleged use of excessive force by officers during the course of the plaintiff's arrest). Furthermore, there is no evidence otherwise in the record to support or suggest that Officer Harris's alleged use of excessive force was motivated by racial or gender based discrimination. Thus, to the extent the Plaintiff alleges her claims against Officer Harris are actionable under § 1985 or § 1986, they should be dismissed as a matter of law.

The Plaintiff's only remaining viable federal claim against Officer Harris arises under 42 U.S.C. § 1983 for alleged deprivations of her constitutional rights, pursuant to the Fourth and Fourteenth Amendment. The Plaintiff has also alleged state law claims against Officer Harris of assault and kidnapping. Officer Harris is entitled to summary judgment on each of the Plaintiff's theories as the undisputed facts establish that Officer Harris is entitled to judgment as a matter of law.

**A. Ms. Cheatham Cannot, as a Matter of Law, Establish That She Was Deprived of Any Right Secured by the Constitution**

Summary judgment is appropriate as to the Plaintiff's Section 1983 claim because she cannot establish that she was deprived of any right secured by the Constitution. To establish liability under § 1983, the Plaintiff must demonstrate: (1) she was deprived of a right secured by the Constitution or laws of the United States, and (2) that she was subjected, or caused to be subjected, to such deprivation by a person acting under color of state law. Monistere v. City of Memphis, 115 Fed.Appx. 845, 850 (6th Cir. 2004).

The Plaintiff sued Officer Harris under Section 1983 for alleged violations of her rights under the Fourth and Eighth Amendments to the United States Constitution [Doc. 1 at p. 1]. Initially, it is clear that summary judgment is appropriate as to her Section 1983 causes of action to the extent she alleges Officer Harris violated her Eighth Amendment rights because the Plaintiff was neither convicted of a crime, nor was she a prisoner when the alleged misconduct

occurred. See, for e.g., Graham v. Connor, 490 U.S. 386, 392 n.6, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989) (noting that the Eighth Amendment’s protections do not attach until after conviction and sentence); Aldini v. Johnson, 609 F.3d 858, 864 (6th Cir. 2011) (“The Fourth Amendment’s prohibition against unreasonable seizures of the person applies to excessive-force claims that arise in the context of an arrest or investigatory stop of a free citizen, while the Eighth Amendment’s ban on cruel and unusual punishment applies to excessive-force claims brought by convicted criminals serving their sentences.”). As a matter of law, there could not have been a violation of her Eighth Amendment rights, and summary judgment is proper to the extent the Plaintiff relies on the Eighth Amendment for her § 1983 claim. Thus, the only remaining analysis is whether Officer Harris violated the Plaintiff’s Fourth Amendment right to be free from unreasonable seizures.

All claims that law enforcement officers have used excessive force in the course of an arrest, investigatory stop, or other seizure of a free citizen should be analyzed under the Fourth Amendment and its “reasonableness” standard. Graham, 490 U.S. at 395. “Determining whether the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” Id. at 396 (internal quotations and citations omitted). In making this determination, courts use an “objective reasonableness” standard, which does not take into account the underlying intent or motivation of the officer. Dunigan v. Noble, 390 F.3d 486, 493 (6th Cir. 2004). Moreover, the “objective reasonableness” of a particular seizure and the use of force to effectuate it

must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . . Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for

the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

Graham, 590 U.S. at 396-97 (internal quotations and citations omitted); see also Burchett v. Kiefer, 310 F.3d 937, 944 (6th Cir. 2002) (noting that the standard “contains a built-in measure of deference to the officer's on-the-spot judgment about the level of force necessary in light of the circumstances of the particular case.”).

Ultimately, whether an officer’s use of force was reasonable in effectuating a seizure turns on the facts of each case. Dunigan, 390 F.3d at 493. While not exhaustive, the Supreme Court has noted some relevant factors to consider, including (1) the severity of the crime at issue; (2) the immediate threat the suspect poses to the safety of the officers and others; and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Graham, 490 U.S. at 396.

As an initial matter, to the extent the Plaintiff challenges Officer Harris’s detention of her on the basis it was not justified or that it was unreasonable in length, her claim fails as a matter of law because Officer Harris had probable cause to arrest the Plaintiff under the circumstances.

Under Tennessee law, a person commits the offense of disorderly conduct who

(a) . . . in a public place and with intent to cause public annoyance or alarm:

(1) Engages in fighting or in violent or threatening behavior;

(2) Refuses to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard or other emergency; or

(3) Creates a hazardous or physically offensive condition by any act that serves no legitimate purpose.

(b) A person also violates this section who makes unreasonable noise that prevents others from carrying on lawful activities.

(c) A violation of this section is a Class C misdemeanor.

Tenn. Code Ann. § 39-17-305.

Here, Plaintiff's screaming and her violent, belligerent, and profane behavior, which occurred in a public building and in Officer Harris's presence, and her subsequent refusal to comply with orders to calm down [Cheatham Deposition at pp. 158:6-25, 159:1-25, 160:1-18, 172:15-25], were sufficient to support a charge of disorderly conduct. See State v. Mitchell, 343 S.W.3d 381, 390-91 (Tenn. 2011) (holding that a defendant's aggressive, threatening, and belligerent behavior toward police officers at a rally, coupled with a challenge to an officer's authority, was sufficient to support a conviction under Tenn. Code Ann. § 39-17-305). Nevertheless, the probable cause inquiry requires only that Officer Harris had a reasonable belief that the Plaintiff committed or was committing a crime at the time she detained her. Harris v. Borhorst, 513 F.3d 503, 511 (6th Cir. 2008).

A reasonable officer could conclude, as Officer Harris did, that the Plaintiff was guilty of making unreasonable noise that prevented others from carrying on lawful activities in violation of Tenn. Code Ann. § 39-17-305(b). Indeed, Officer Harris testified that she threatened to arrest the Plaintiff "[b]ecause she was being very disorderly in the office. She was causing such a disturbance with all of her loud screaming and profanity in the office that, yes, I was going to put her in jail." [Harris Deposition at pp. 55:22-25, 56:1]. Officer Harris testified further as to why she elected to briefly detain Ms. the Plaintiff:

I wasn't going to let her leave in that manner from that office, because there's children all up and down that hallway every day. So I didn't want her to leave because she was so upset, and I was trying to like tell her to calm down and all of that kind of thing, but she was so offended by what I said, she couldn't like bring herself back down to even have a normal conversation.

[Harris Deposition at p. 45:9-17]. Additionally, a reasonable officer could believe the Plaintiff violated subsection (a)(1) of the disorderly conduct statute by engaging in violent or threatening

behavior due to her loud and profane language, her hitting the table in anger, and the sudden manner in which she jumped up from the table while being just three and a half feet from Officer Harris. In her deposition, Officer Harris described the Plaintiff's behavior as "erratic" and "enraged" during these events. [Harris Deposition at p. 44:22-23].<sup>9</sup> Accordingly, Officer Harris had probable cause *to arrest* the Plaintiff when she abruptly terminated the interview. Tenn. Code Ann. § 40-7-103(a)(1); see also Atwater v. City of Lago Vista, 532 U.S. 318, 354, 121 S.Ct. 1536 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."). The Plaintiff concedes that she was angry and screaming during the interview before ever being touched by Officer Harris [Cheatham Deposition at pp. 158:6-24, 160:7-25, 161:1-5]. It is axiomatic, then, that Officer Harris was authorized by law to briefly detain the Plaintiff for one minute and forty-seven seconds in an effort to calm the Plaintiff and restore order. Thus, the only remaining analysis is whether the alleged force used against the Plaintiff during the detention was objectively reasonable.

"The right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). Even if, as the Plaintiff alleges, Officer Harris pushed her against the wall, Officer Harris acted reasonably under the circumstances. Officer Harris was attempting to detain an enraged, loud and profane individual in a public office building who refused to calm down despite being told to desist. At that point, some level of force became necessary to address the increasing threat posed by the Plaintiff's behavior toward Defendant Harris and the other two officers present in the small office. It was reasonable for

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<sup>9</sup> Officer Harris's testimony is not inconsistent with the Plaintiff's testimony on this issue [Cheatham Deposition at p. 172:15-25].

Officer Harris to conclude that a brief show of force by placing the Plaintiff against the wall for less than twenty-two seconds, and subsequently moving her arm away from the door, was necessary to ensure the Plaintiff complied with her orders to calm down before walking out of the office in an enraged state with children and others present in the public building. See Thacker v. Lawrence County, 182 Fed.Appx. 464, 472 (6th Cir. 2006) (holding summary judgment was appropriate to officers for alleged use of force during the course of plaintiff's arrest for disorderly conduct where plaintiff and two officers fell to the ground and struggled with plaintiff after officers grabbed plaintiff to handcuff him); Bockoven v. Watts, No. 3:09-CV-0802 (Feb. 18, 2011), 2011 WL 704832, at \*\*1, 3-4 (M.D. Tenn. 2011) (granting summary judgment to defendant on plaintiff's excessive force claim arising out of arrest for disorderly conduct where officer pushed plaintiff face-first against his patrol car); Overton v. Hamilton County, No. 1:08-CV-278 (Aug. 24, 2009), 2009 WL 2601848, at \*3 (E.D. Tenn. 2009) (granting summary judgment to officer on plaintiff's excessive force claim arising out of disorderly conduct arrest where pregnant plaintiff continued to resist and use loud and profane language despite officer's orders for her to calm down, resulting in officer's decision to use pepper spray and to take plaintiff to the ground in a controlled fall); Crowel v. City of Madisonville, No. 3:06-CV-060 (July 12, 2007), 2007 WL 2043879, at \*\*4, 20-21 (E.D. Tenn. 2007) (Phillips, J.) (granting summary judgment to defendant officers for pulling plaintiff's arms and legs in different directions while attempting to handcuff him for disorderly conduct in a store where plaintiff disregarded officers' instructions for him not to leave).

It is also important to consider the undisputed facts placing in context the parties' encounter. Officer Harris and her subordinate officers were investigating crimes of a very serious nature that occurred in the Plaintiff's home and around her young daughter. The day prior to the

interview, the Plaintiff was in the company of Mr. Robinson at a park and, in the presence of investigating officers, advised Mr. Robinson not to cooperate with their investigation and to only speak with a lawyer [Cheatham Deposition at p. 101:13-17]. In this context, the Plaintiff's behavior was reasonable cause for officers in Officer Harris's unit to alert their supervisor of potential impediments to the investigation posed by the Plaintiff's inconsistent behavior toward Mr. Robinson. On the one hand, the Plaintiff expressed an interest to the officers that she wanted Mr. Robinson removed from her house and that she wanted the fullest measure of law enforcement investigative and prosecution resources applied to the case because of the seriousness of the crime [Cheatham Deposition at pp. 162:14-22, 163:1-25, 164:19-23] and, on the very next afternoon, she is found meeting with Mr. Robinson at a park and advising him not to talk to the police. It was entirely reasonable for Officer Harris to ask the Plaintiff questions in an effort to determine whether the Plaintiff, the complaining witness regarding the felony under investigation, could be counted on to support continued investigative and prosecutorial efforts of Mr. Robinson.

Furthermore, the Plaintiff has presented no facts that would allow a jury to conclude that Officer Harris used more force than was necessary. To the contrary, the record indicates that the Plaintiff never actually submitted to Officer Harris's lawful show of authority, because she continued to resist, scream, use profane language, and attempt to leave the office despite Officer Harris's brief show of force. The transcript of the Interview reads as follows:

Officer Harris:	Let me tell you something.
15:47 Ms. Cheatham:	<b>No. You let go of me.</b>
Officer Harris:	Listen to me.
Ms. Cheatham:	<b>Let go of me. This is assault.</b>
Officer Harris:	Stop yelling.
Ms. Cheatham:	<b>Tell her to let me the fuck go. This is assault.</b>
Officer Harris:	Stop –
Ms. Cheatham:	<b>Let go of me.</b>



.....

Ms. Cheatham: **I'm grabbing my stuff and I am leaving** if you are going to talk to me like this.

16:09 Officer Harris: Let me tell you –

Ms. Cheatham: I was helping.

Officer Harris: Hold on a minute.

Ms. Cheatham: **Do not touch me again.**

Officer Harris: You do not understand what –

Ms. Cheatham: You do not understand.

Officer Harris: You do not understand what you're fixing to do.

Ms. Cheatham: I have bruises up and down my arms right now because of where you just grabbed me.

Officer Harris: Because you are not going to yell and scream and throw stuff.

Ms. Cheatham: And you can't lock me in here and tell me how bad a person I am. **Don't you think I fucking know that?** I trusted this person.

Officer Harris: That's why I'm trying –

Ms. Cheatham: **Let me go.** You calm down and you change your attitude. I will talk to anybody else, but I will not talk to you. I will shut the fuck up and I will not say another word. I'm telling you right now. This is not fair and I will not be treated this way by this woman. That's it. Excuse me. I have to get the rest of my papers.

17:00 Now, get her out of here and I will talk to somebody else, but I am not speaking to her.

Officer Spangler: I don't think she's trying to say that you're a bad mom.

Ms. Cheatham: **The fuck she's not, and I'm not talking to her.**

Officer Harris: Look how you are acting, and you want to know why that I said something to you?

Ms. Cheatham: Get out.

Officer Harris: Listen. I am –

Ms. Cheatham: **You get out or you let me out.**

Officer Harris: I'm not trying to keep you here.

Ms. Cheatham: **Oh, my God, you just fucking grabbed me. You fucking bitch, look what you did to me.**

Officer Harris: Get out before I put you in jail.

[Transcript of Audio CD at pp. 19-22, **EXHIBIT F**] (emphasis added). Indeed, Officer Harris would have been well within her rights not only to have arrested the Plaintiff as discussed above, but to have applied even more force than the Plaintiff alleges she was subjected to since the Plaintiff plainly continued to resist and act in a loud, belligerent and profane manner after Officer

Harris briefly placed the Plaintiff against the wall and ordered her to calm down. In any event, Officer Harris's use of force, which consisted of two touches of twenty-two (22) seconds and three (3) seconds, respectively, was reasonable because she employed no greater force than was necessary under the circumstances. Thus, the Plaintiff has failed to present a genuine issue of material fact that she was subjected to excessive force or an unreasonable seizure, and summary judgment is appropriate as to her Section 1983 claims as a matter of law.

**B. Officer Harris is Entitled to Qualified Immunity**

Assuming Officer Harris's conduct violated the Plaintiff's constitutional rights, which it did not, Officer Harris is nevertheless entitled to qualified immunity and the entry of summary judgment in her favor. The Sixth Circuit recently stated that the

doctrine of qualified immunity operates to shield government officials performing discretionary functions from civil liability insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Determining the applicability of qualified immunity involves a two-step analysis. First, the court asks whether the officers' conduct violated a constitutional right. If no constitutional violation exists, the inquiry stops, the § 1983 claim fails as a matter of law, and the officers do not need qualified immunity. But if the court finds a potential constitutional violation, it then asks whether the right was clearly established in light of the specific circumstances of the case. When the law is not sufficiently clear such that a reasonable officer would be on notice that his conduct is clearly unlawful, qualified immunity is appropriate.

Williams v. Sandel, 433 Fed.Appx. 353, 360 (6th Cir. 2011). "The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct." Dorsey v. Barber, 517 F.3d 389, 394 (6th Cir. 2008) (internal quotations omitted). "The doctrine protects all but the plainly incompetent or those who knowingly violate the law." Id. (internal quotations omitted).

Importantly, when a public official asserts the affirmative defense of qualified immunity, the plaintiff carries the burden to allege and prove that the defendant violated a clearly established right. Adams v. Metiva, 31 F.3d 375, 386 (6th Cir. 1994).

Thus, when a defendant moves for summary judgment based on qualified immunity, the plaintiff must: (1) identify a clearly established right alleged to have been violated; and (2) establish that a reasonable officer in the defendant's position should have known that the conduct at issue was undertaken in violation of that right.

Pray v. City of Sandusky, 49 F.3d 1154, 1158 (6th Cir. 1995). The qualified immunity analysis "must be undertaken in light of the specific context of the case, not as a broad general proposition." Saucier v. Katz, 533 U.S. 194, 201-02, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001), *overruled on other grounds by* Pearson v. Callahan, 555 U.S. 223, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009).

#### **Ms. Cheatham's Rights Were Not Clearly Established**

As a general matter, an individual's right to be free from excessive force by law enforcement is a clearly established right, Neague v. Cynkar, 258 F.3d 504, 507 (6th Cir. 2007), but "it is not enough that a plaintiff establishes that the defendant's use of force was excessive under the Fourth Amendment. To defeat qualified immunity, the plaintiff must show that the defendant had notice that the manner in which the force was used had been previously proscribed." Livermore ex rel Rohm v. Lubelan, 476 F.3d 397, 403-04 (6th Cir. 2007) (quoting Brosseau v. Haugen, 543 U.S. 194, 198-99, 125 S.Ct. 596, 160 L.Ed.2d 583 (2004)).

Here, even if the Court were to determine Officer Harris's use of force was excessive, she would still be entitled to qualified immunity because the Plaintiff cannot demonstrate that the force used was clearly established in a "particularized" sense such that it would be clear to a reasonable officer that her conduct was unlawful in the situation she confronted. Saucier, 533

U.S. at 201-02. To the best of the undersigned counsel's knowledge, there is no precedent from the United States Supreme Court or the Sixth Circuit Court of Appeals that would have alerted Officer Harris that it was unconstitutional to use this amount of force to calm down an erratic, screaming, resisting, profane and combative witness who voluntarily agreed to answer questions related to a pending criminal investigation of a serious felony. Accordingly, the Plaintiff cannot present a jury question that her right to be free from excessive force was clearly established at the time of the interview and Officer Harris is entitled to qualified immunity.

**C. Ms. Cheatham's Claims Predicated Upon State Law Must Be Dismissed**

As previously set forth, summary judgment is appropriate as to the Plaintiff's federal claims, leaving only her state law claims of assault and kidnapping for the Court to adjudicate. While the Court has broad discretion under 28 U.S.C. § 1367(c)(3) to dismiss or to retain jurisdiction over pendent state law claims under these circumstances, "the usual course is for the district court to dismiss the state-law claims without prejudice if all federal claims are disposed of on summary judgment." Thacker v. Lawrence County, 182 Fed.Appx. 464, 472 (6th Cir. 2006) (quoting Brandenburg v. Hous. Auth. of Irvine, 253 F.3d 891, 900 (6th Cir. 2001)); see, for e.g., Jackson v. Town of Caryville, Tenn., No. 3:10-CV-153, 3:10-CV-240 (Oct. 28, 2011), 2011 WL 5143057, at \*10 (E.D. Tenn. 2011) (Varlan, J.); Duff v. Oak Ridge, Tenn., No. 3:10-CV-230 (Sept. 22, 2011), 2011 WL 4431128, at \*4 (E.D. Tenn. 2011) (Varlan, J.).

If the Court retains jurisdiction over the Plaintiff's assault and kidnapping claims,<sup>10</sup> summary judgment is nevertheless appropriate. The Sixth Circuit recently held that

[w]here a plaintiff asserts a battery claim under Tennessee law that arises out of the same use of force as her § 1983 excessive-force claim, the analysis is the same for both causes of action. That is, whether the analysis concerns whether an officer violated a plaintiff's constitutional rights by using excessive force or

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<sup>10</sup> It is assumed that Ms. Cheatham's claims for assault and kidnapping are of the tort variety rather than criminal allegations. Thus, they are treated herein as battery and false imprisonment claims, respectively.

whether the analysis concerns whether an officer committed state-law battery by using force that was ‘clearly excessive,’ the same principles ... are applied.

Griffin v. Hardrick, 604 F.3d 949, 956-57 (6th Cir. 2010) (quoting Lee v. Metro. Gov't of Nashville & Davidson County, 596 F.Supp.2d 1101, 1118 (M.D. Tenn. 2009)); Long v. City of Coopertown, 801 F.Supp.2d 674, 689 (M.D. Tenn. 2011). Accordingly, because the Plaintiff's Section 1983 excessive force claims are without merit, the Court should also grant Officer Harris summary judgment on her battery claim.

Summary judgment is also appropriate as to her false imprisonment claim. Under Tennessee law, the elements of the tort of false imprisonment, or false arrest, are “(1) the detention or restraint of one against his will and (2) the unlawfulness of such detention or restraint.” Coffee v. Peterbilt of Nashville, Inc., 795 S.W.2d 656, 659 (Tenn. 1990). However, as set forth, supra, Officer Harris's detention of the Plaintiff, which was less than two minutes, was lawful because it was based upon probable cause. See Butturini v. Blakeney, No. 3:08-CV-128 (March 7, 2012), 2012 WL 775293, at \*8 (E.D. Tenn. 2012) (Phillips, J.) (“Plaintiffs’ claims for false arrest and false imprisonment are subsumed in plaintiffs’ federal claims for arrest without probable cause. Because the court has found that defendants had probable cause to arrest plaintiffs, defendants are granted summary judgment as to these claims, and the same are hereby dismissed with prejudice.”). Accordingly, Ms. Cheatham's false imprisonment claim should be dismissed as a matter of law.

### **CONCLUSION**

There is no genuine issue of material fact precluding summary judgment in favor of Officer Harris on each of Plaintiff's claims. Plaintiff cannot establish facts supporting essential elements of her claims set forth in the Complaint. For all of the above reasons, Officer Harris is entitled to summary judgment of dismissal on each of Plaintiffs' claims.

Respectfully submitted,

/s/ E. Jerome Melson

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 9, 2012, a copy of the foregoing **Memorandum of Law in Support of Motion for Summary Judgment on Behalf of Defendant Jeanette Harris** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

/s/ E. Jerome Melson

E. Jerome Melson