

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

**State of Tennessee**

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

Name: Steven Wayne Maroney

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**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 [ceesha.lofton@tncourts.gov](mailto:ceesha.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, Teel & Maroney, P.L.C.

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

1992; BPR # 015545

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 # 015545; October 23, 1992; Active

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

Attorney, Teel & Maroney, P.L.C. 2003-present; Attorney, Waldrop & Hall, P.A. 1992-2003

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable

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

I would estimate my present practice breakdown as: Delinquent Property Tax Collection, 35%; County and Municipal Government (including associated litigation), 50%; General Civil Litigation, 15%.

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 have practiced law for nearly twenty-seven years. Mine has been a general civil practice, with an emphasis on civil litigation in both state and federal courts.

I am admitted to practice in the following courts since the listed dates of admission: Tennessee State Courts, October 23, 1992; United States District Court, W.D. TN, July 29, 1993; United States Court of Appeals For the Sixth Circuit, December 20, 2005.

I have had a wide variety of practice areas. My first eleven years in practice were spent working for a mid-sized firm where I became a partner, primarily handling injury defense litigation on behalf of insurance carriers and their insureds. This was a high volume litigation practice in which I took hundreds of medical depositions and tried numerous cases, both bench and jury trials.

I left that firm and joined my current smaller firm as partner. Here, for the past sixteen years, I have handled a broader range of civil litigation. I continued to handle some insurance defense matters, but my practice expanded to include direct representation of smaller business clients in defense of employment law matters, appeals of unemployment decisions, Fair Credit Reporting Act litigation, and other business litigation. As would be expected in a smaller general practice firm, I also represented some individuals who were plaintiffs in injury cases. My practice also expanded to include divorce and post-divorce matters, adoptions, bankruptcy, contractual disputes, and will contests.

In the last seven years, my practice has become more heavily weighted in work on behalf of county and municipal governments. I am currently the Delinquent Tax Collection Attorney for

Madison County, handling a high volume litigation practice that includes obtaining judgment for delinquent real property and personal property taxes and sale of real property, with corresponding real estate title work. I am also currently the Madison County Attorney and the City Attorney for Bolivar, Tennessee and Three Way, Tennessee. This work involves advising the legislative bodies and officials for each entity, providing interpretation of statutes, as well as representing them in varied civil litigation, including: employment litigation; enforcement of zoning resolutions and ordinances; litigation over complex taxing disputes with other governmental entities; public nuisance cases; and, in one case, the ouster and removal from office of a county sheriff. This work has also required the drafting and interpretation of resolutions, ordinances, and contracts. I have also represented a local school system in a contractual dispute with a vendor.

My diverse legal experience has resulted in my appearing in State Court in every Judicial District in Western Tennessee, and some in Middle Tennessee, including Davidson County. I have also appeared in United States District Court, and, on one occasion, the Sixth Circuit Court of Appeals. I have practice experience in virtually every type of civil litigation which can be filed in Tennessee. I have handled twenty-six appellate matters, and in all but a handful of those, I have both written the brief and appeared at oral argument.

I believe this varied practice for a wide variety of clients has given me a diverse perspective that would benefit the Court's work if I am selected for this position.

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

I prosecuted an ouster lawsuit against the elected Sheriff of Madison County, Tennessee on grounds of willful misconduct and violation of a penal statute involving moral turpitude. This included successfully arguing a Motion to suspend the Sheriff from office pending a jury trial. After the suspension, the sheriff resigned from office.

I successfully prosecuted a nuisance lawsuit under T.C.A. 29-3-101, *et seq.* against the owner of real property in Madison County where a nightclub notorious for criminal incidents was located. The trial court declared the property a nuisance and entered an Order of Abatement, including a Permanent Injunction against the property owner. This case required me to defend a challenge to the constitutionality of the nuisance statutes cited above.

I brought suit on behalf of Madison County, Tennessee against the City of Jackson, Tennessee concerning the City's alleged breach of an agreement providing for the application of local option sales tax revenue for educational purposes, pursuant to T.C.A. § 67-6-701, *et seq.* Unchallenged, this would have resulted in a twelve million dollar annual loss of education funding for Madison County. After a pre-trial hearing in which the trial judge commented on the strength of the County's presentation, the matter was compromised, saving millions annually for the education of Madison County children.

I handled a hotly disputed case seeking the involuntary termination of parental rights on behalf

of a couple seeking to adopt a neglected child placed in their custody following the incarceration of the child's parents. After much litigation, the effort succeeded, and the child is now being raised in a loving home.

I defended a business owner accused of violating the Fair Credit Reporting Act, a lengthy federal act codified at 15 U.S.C. § 1681. A Motion for Summary Judgment in favor of my client was granted by the United States District Court in 2006.

In a reported case, *Jones v. Sterling Last Co.*, 962 S.W.2d 469 (Tenn. 1998), I successfully defended a worker's compensation claim on grounds that notice had not been given pursuant to statute. The published opinion addressed the sufficiency of notice and clarified that termination does not relieve an employee's burden to provide notice of a work related injury.

Shortly after beginning my practice, I wrote the brief for the successful appellee in a case involving, among other things, the interpretation of the Restatement (Second) of Tort concerning Liability of Third Parties for Negligent Performance of Undertaking. The Court of Appeals issued an opinion which agreed with the brief's arguments on this subject and its application to the facts of the case. The reported case is *Dudley v. Unisys Corp.*, 852 S.W.2d 435 (Tenn.App. 1992).

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 am a Rule 31 listed mediator. I have only served as a mediator in one case, a fairly routine civil dispute.

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 have only had one experience as a guardian ad litem. I was asked to report to the Court on a proposed workers compensation settlement for an injured worker who did not speak English. I reviewed the proposed agreement, consulted with the injured worker through an interpreter, and reported to the Court that the proposed settlement was reasonable and in the best interest of the injured worker.

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

Criminal law has not been a part of my practice. However, I have the unique experience of having the only criminal matter on which I have ever worked be a capital murder case. Between my first and second year of law school, I clerked for the late Russell X. Thompson, who had been appointed to represent a defendant charged with murder. I spent the summer researching and writing numerous memorandums on the standards required to establish various aggravating circumstances and their applicability to the case being defended. Coming early in my legal education, the experience helped teach me the importance of legal research and made me better appreciate how real lives are affected by our practice of law.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor or similar commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

I submitted an application to fill a vacancy on the Tennessee Court of Appeals, Western Section, in 2014. A public hearing was held by the Commission then in existence for considering judicial appointments on May 16, 2014. At the hearing's conclusion, my name was one of three submitted by the Commission to Governor Haslam as a nominee.

#### 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.

Memphis State University (now the University of Memphis), August 1989-May 1992; Juris Doctorate; Member, Moot Court Board; Recipient, Mead Data Central Writing Award; American Jurisprudence Award, Corporations; American Jurisprudence Award, Agency and Partnerships; Winner, Best Brief, Advanced Moot Court Competition; Finalist, Advanced Moot Court Competition.

Union University, August 1983-May 1987; Bachelor of Science; Alpha Chi (Top Ten Percent); President, Junior and Senior Class; President, Phi Beta Lambda Business Fraternity; President, Sigma Alpha Epsilon, Social Fraternity

#### PERSONAL INFORMATION

15. State your age and date of birth.

53; [REDACTED] 1965

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

Since [REDACTED] 1965; my entire life

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

From August 1992- present, and from August, 1965 –December 1987

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

Madison

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

I did not serve in the military.

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

No

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

I am under no such investigation.

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

I have never been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, professional group, or any other organization of any kind or character.



I once had a complaint made about me to the Board of Professional Responsibility by a former client unhappy after being asked to pay a long outstanding bill. I responded to correspondence from the Board by providing requested documentation of my work on the file, and I advised that the outstanding balance had been forgiven. The matter was dismissed with no further action beyond the exchange of letters.

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.

I was listed as one of the Defendants in a case in which a former firm client sued a former law partner and my firm concerning a real estate transaction handled by the former partner. I had no involvement in, or even knowledge of, the transaction. The case was settled out of court after the filing of an Answer, and an Order of Dismissal entered. There was no discovery or other advancement of the litigation beyond the initial filings. The case was filed in Madison County Chancery Court, Docket # 67890 on June 9, 2011.

In 2014, I brought a public nuisance suit at the request of the Madison County Sheriff's Office against a property owner (in her nineties) and her son (who allegedly managed her affairs) concerning alleged criminal activity (including a shooting) at her public events building. The litigation was resolved by the parties entering an agreement prohibiting certain uses of the property in the future. Subsequently, the son filed a *pro se* complaint against me alleging various unusual theories without merit. A preliminary Motion to Dismiss disposed of the matter. The case was filed on January 5, 2015 in Madison County Circuit Court, Docket # C-15-3, Div. II. Interestingly, the *pro se* plaintiff, a Madison County Commissioner, subsequently joined in my unanimous third reappointment as Madison County Attorney on March 20, 2017.

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.

Fellowship Bible Church, Member; University School of Jackson Board of Trustees, Chairman, 2012-2014, Vice-Chairman, 2010-12, Strategic Planning Committee Chairman, 2008-10; Wyndchase Homeowners Association. In addition, as an elected member of the Republican Party State Executive Committee, I have been automatically added to the County Executive Committees of the Republican Party in Crockett, Dyer, Lake, Lauderdale, and Madison Counties since 2018. With respect to the Madison County Republican Party specifically, I have additionally held the following offices: Chairman, 2001-05 and 2007-11; 2d Vice-Chairman, 1999-2001.

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.

I have never belonged to such an organization.

### 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.

Jackson-Madison County Bar Association, 1992-present; Tennessee Bar Association, 1992-present; Tennessee County Attorney's Association, 2012-present; Tennessee Municipal Attorneys Association, 2012-present; Tennessee Association of Property Tax Professionals, 2012-present; Federalist Society, 2013-present; National Republican Lawyers, 2013-present; International Municipal Lawyers Association, 2014-present; American Inns of Court, Howell E. Jackson Chapter, 2015-present.

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

None

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

None

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.

None

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

I was appointed by the Madison County Commission as County Attorney in 2012. I was also appointed Attorney for the City of Three Way, Tennessee by its Board of Aldermen in 2012. I was appointed by the Madison County Trustee and Madison County Mayor as Delinquent Tax Attorney for Madison County in 2012. In 2015, I was appointed Attorney for the City of Bolivar, Tennessee by its City Mayor. I continue to hold each of these positions, having been periodically reappointed.

In 2018, I won popular election to the Republican Party State Executive Committee representing the 27<sup>th</sup> District of Tennessee. I won a contested race with 73% of the vote across five West Tennessee counties (Crockett, Dyer, Lake, Lauderdale, and Madison).

I was appointed as Madison County Election Commissioner in 2008 and served until 2011. I was selected as an alternate delegate to the Republican National Convention by the Tennessee Republican Party in 2004, 2008, and 2012.

In 2012 and 2016, I was an unsuccessful candidate as a delegate to the Republican National Convention, an elected position; I received enough votes to have been elected a delegate, had my pledged presidential candidates also received enough votes to be allocated delegates under the complex delegate selection formula.

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

No

34. Attach to this application at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example

reflects your own personal effort.

Please see the attached writings. Each of these reflects my personal effort exclusively.

**ESSAYS/PERSONAL STATEMENTS**

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

I am seeking a better opportunity to serve my community and state. My life has been blessed and benefited by the service of others, beginning with my parents. I have tried to repay those efforts by looking for opportunities to serve, often in leadership roles. Working in local government, I have seen that one's efforts can be leveraged for greater benefit through public service.

Life is too precious and brief to be wasted on personal indulgence. Individuals who lead such lives are seldom remembered. Instead, we remember those who made a difference by serving others and causes larger than themselves. For me, the greatest model of servant leadership is Christ.

As I move into the second half of my life, the diverse professional experiences and unique perspectives gained in the first half will allow me to make my best contribution by serving on the Court of Appeals.

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)*

During my practice, I have at times provided pro bono legal services to various non-profit organizations. I have handled the preparation of wills for members of the clergy on a pro bono basis in recognition of their contributions to our community and to support those in ministry. I have met for free with countless individuals who simply had a problem and needed advice from an attorney on how to respond to it in a legally appropriate way.

I have also, on occasion, represented individuals who came to me through West Tennessee Legal Services. Most of these involved drafting or assisting in the understanding of documents; however, I represented one of these individuals in litigation and trial at the General Sessions and Circuit Court level.

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

I am applying to serve as Judge on the Tennessee Court of Appeals, for the Western Section, which is bordered on the East and West by the Tennessee River and the Mississippi River,

respectively. The full Court consists of twelve (12) judges, four (4) from each of Tennessee's three Grand Divisions. The Court handles direct appeal of civil cases from Tennessee trial courts. To assist in the administration of the docket, judges in the Western Section occasionally sit in Tennessee's Middle and Eastern Sections.

My twenty-seven years of practice handling civil litigation in diverse areas of law would bring broad experience to the Court and assist its mission to review lower court decisions with efficiency and excellence.

Both oral and written communication skills have been critical to my litigation practice; however, my strength has been researching and writing briefs and legal memorandums, which would complement and benefit the Court's work.

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)*

Living in Madison County for nearly my entire life, I have been very active in our community. I recognize that most of these activities, while providing worthy service, would no longer be available to me if selected as judge.

Union University plays an important role in the educational, cultural and spiritual life of Madison County, and I was honored to serve as president of Union's National Alumni Association from 2001-03.

Believing that elective office is a noble calling and that recruiting and electing quality candidates to local, state and federal government matters, I served two terms as Chairman of the Madison County Republican Party. I was also appointed to the Madison County Election Commission, a bipartisan panel which ensures fair and free elections. More recently, I was popularly elected to serve on the Executive Committee of the Tennessee Republican Party, which has previously recognized me as its Statesman of the Year for the 8<sup>th</sup> Congressional District.

I served several years on the Board of Directors for the West Tennessee Fellowship of Christian Athletes and JACOA (an organization assisting those battling substance abuse), and I am grateful for their service to our community. Love for my children and education led me to serve nine years on the Board at their independent school, including two years as Chairman.

As judge, I would no longer participate on such boards and would resign the State Executive Committee. I would obviously continue to attend and be actively involved in the ministry of Fellowship Bible Church.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this

judicial position. *(250 words or less)*

I have had the opportunity to serve in leadership positions my entire life. Yet, in every organization where that has been the case, I was never anyone's first guess as an eventual leader. I was never the "kid picked first" for the team. Nonetheless, by consistently being available and working hard for the organization's mission, with a cheerful attitude, the effort usually has resulted in leadership and organizational success. I have seen this pattern repeat itself throughout my life.

My parents modeled faith and work ethic for their children. We were taught that whatever you do, do it as though you were doing it for the Lord. My father came from modest means and was unable to afford college. Instead, he served honorably in the Navy. Thereafter, he worked hard, sometimes at two jobs, to give his children a college education. I believe the strain of his effort is why he is not here today to see his son considered for a judgeship.

I miss him every day but learned much from his example. If nominated, I will have much to learn from the example of the other members of the Court. I promise to work hard in the job of appellate judge, with a servant's heart, for the sake of the mission – in this case, the fair administration of justice for the State of Tennessee and the litigants who appear in our Courts. I will keep this promise - I don't know any other way to tackle an assignment.

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

I firmly believe in the State and Federal Constitutions' separation of powers. A judge must apply the law as codified by the legislature. To the extent a case requires interpretation of a statute or rule, this must be accomplished in an impartial, non-results oriented manner. Therefore, even if the legislature has acted in a manner not of my choosing, or if neutral application of that law ensures an outcome other than one I personally prefer, I would follow my oath which mandates support for the Constitution, administration of justice without respect to persons, and faithful and impartial discharge of my judicial duty.

This point is not merely academic for me. As a local government attorney, I regularly advise local officials from differing political persuasions on interpretation of Tennessee statutes and their application to local issues (often on live television), and sometimes opine against officials regarding conflicts of interest, public records, and open meetings. As Chief Justice John Roberts has stated, "it's my job to call balls and strikes, and not to pitch or bat." Occasionally, my legal opinions disagree with my preferences, or those of politicians who appointed me. However, by giving opinions based on law, not preferences, I have earned respect even from those who dislike the rulings.

Perhaps surprisingly, serving as county political party chairman also provided experience and preparation for this task. Ensuring neutral interpretation and application of party rules during

hotly contested primaries was essential. After such contests ended, most candidates recognized and appreciated my objectivity.

**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. Charles Campbell, President, Williams Steel; 26 O'Keena Cove, Jackson, TN 38305; (731) 423-4900; cwcampbell@williams-steel-co.com

B. Jimmy Harris, Madison County Mayor; 100 E Main St, Suite # 302, Jackson, TN 38301; [REDACTED]

C. Jim Pentecost, Partner, Pentecost & Glenn, PLLC; 106 Stonebridge Blvd., Jackson, TN 38305; [REDACTED]

D. Catherine Kwasigroh, Vice President for Institutional Advancement, Union University; 1050 Union University Drive, Jackson, TN 38305; [REDACTED]

E. Jody Pickens, District Attorney General, 26<sup>th</sup> Judicial District of Tennessee; P.O. Box 2825, 225 Martin Luther King Jr. Drive, Suite 330, Jackson, TN 38302; [REDACTED]

**AFFIRMATION CONCERNING APPLICATION**

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

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Court of Appeals, Western Division, 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: February, 3 \_\_\_\_\_, 2019.

s/Steven Wayne Maroney

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.

Steven Wayne Maroney  
Type or Print Name

s/Steven Wayne Maroney  
Signature

2/3/2019  
Date

015545  
BPR #

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

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The attached unsigned writings, from former pleadings, reference attachments to various documents and cases which are not included here. I have also removed, where applicable, certain concluding statements originally featured in these pleadings, such as a certificate of service, notary block, and cost bond, for the sake of brevity.

IN THE CHANCERY COURT OF MADISON COUNTY, TENNESSEE  
AT JACKSON

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STATE OF TENNESSEE, EX REL.	)	
STEVEN W. MARONEY, ATTORNEY FOR	)	
MADISON COUNTY, TENNESSEE,	)	
	)	
Plaintiff,	)	
	)	
V.	)	CASE NO. 71298
	)	
DAVID LEE WOOLFORK,	)	
	)	
Defendant.	)	

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**MEMORANDUM OF LAW AND ARGUMENT IN SUPPORT OF MOTION  
FOR DEFAULT JUDGMENT AND IN THE ALTERNATIVE APPLICATION  
FOR SUSPENSION FROM OFFICE PENDING FINAL HEARING**

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Comes now Plaintiff, State of Tennessee (hereafter, "Plaintiff"), pursuant to the Tennessee Rules of Civil Procedure, by and through its attorneys of record, and submits this Memorandum in advance of the hearing on Plaintiff's Motion for Default Judgment and, in the alternative, Application for Suspension of Defendant David Lee Woolfork (hereafter, "Defendant") from the office of Sheriff of Madison County, Tennessee, pending a trial of this cause, presently scheduled for July 14, 2014, and would show unto the Court as follows:

**I. FACTS**

Defendant holds the office of Sheriff of Madison County, Tennessee (Woolfork testimony, Order of Protection Hearing Transcript, October 23, 2013, Volume II, at pg.

206). He was first elected to this office in August, 1994, and subsequently re-elected, most recently in August, 2010, and sworn into office for his current term on or about September 1, 2010. See, *Id.*; Complaint, paragraph 4.

Madison County, Tennessee has adopted and enacted a County Personnel Policy of 1998 (see affidavit of Madison County Clerk Fred Birmingham). Section VI of the County Personnel Policy of 1998 is entitled “SEXUAL HARASSMENT POLICY FOR LAW ENFORCEMENT PERSONNEL.” This section provides that “[t]he purpose of this policy is to create for members of the Madison County Sheriff’s Department a comfortable environment in which to work free of sexual harassment.” See, County Personnel Policy of 1998 at pg. 19. The section further provides that “[t]he sexual harassment of any employee of the Madison County Sheriff’s Department by any other employee *or non-employee* is absolutely prohibited. The Department will not tolerate the sexual harassment of any of its employees, and will take immediate positive steps to stop it when it occurs” (emphasis added). *Id.* The section defines sexual harassment as:

***Behavior with a sexual content or overtone that is unwelcome and personally offensive. Sexual harassment m[a]y consist of sexually-oriented “kidding” or jokes, physical contact such as patting, pinching or purposely rubbing up against another person’s body; demands or requests for sexual favors tied to promises of better treatment or threats concerning employment; discrimination against an employee for refusing to “give in” to demands or requests for sexual favors; or rewarding or granting favors to one who submits to demands or request for sexual favors;***

*displaying sexually-explicit or pornographic material, no matter how it is displayed.*

(Emphasis added). *Id.* at 19, 20.

#### **A. SHARON SANGSTER**

Sharon Sangster (hereafter, “Sangster”) is an employee of the Madison County Sheriff’s Office, and has been since March, 2011 (Sangster testimony, Order of Protection Hearing Transcript, October 23, 2013, Volume I, at pg. 16). Shortly after Sangster commenced this employment, Defendant and Sangster began a sexual relationship. *Id.* As Sheriff, Defendant is the head of this office/department, responsible, *inter alia*, for written personnel policies on sexual harassment. Tenn. Code Ann. § 5-23-101, *et seq.*

On or before March 30, 2013, the parties’ consensual sexual relationship had concluded (Sangster testimony, Order of Protection Hearing Transcript, October 23, 2013, Volume I, at pg. 40). Sangster has testified she was attempting to “move on with” her life with another person. *Id.*

On March 30, 2013, Defendant went to Sangster’s home. *Id.* Sangster has testified that during this visit, Defendant physically assaulted Sangster and struck Sangster multiple times. *Id.* The following day, Defendant wrote to Sangster apologizing for his “weak moment” the previous night. *Id.* at 41, 42, 47-49.

Following March 30, 2013, and prior to October 10, 2013, Defendant, on one or more occasions: 1) asked Sangster to engage in sexual activity with Defendant (they

did engage in sexual activity during this time period); 2) threatened Sangster with discipline using sexually explicit language; 3) questioned Sangster about her relationships with other men; and 4) advised Sangster to resign. Some of these communications concerning discipline occurred in close time proximity to communications concerning the sexual relationship of the parties and/or others (Woolfork testimony, Order of Protection Hearing Transcript, October 23, 2013, Volume II at pp. 237-239, 257-259, 263-265).

On the evening of October 10, 2013, Defendant went to Sangster's home (Sangster testimony, Order of Protection Hearing Transcript, October 23, 2013, Volume I, at pg. 19). Just prior to and/or during this visit, Defendant consumed alcoholic beverages. *Id.* at 19, 21. Sangster has testified that: 1) during this visit, Defendant asked Sangster at least once to engage in sexual relations with him. This proposal was declined by Sangster. *Id.* at 20, 23; 2) following a disagreement, Sangster asked Defendant to leave her home. *Id.* at 22, 23; and 3) at some point, Defendant laid his hands on Sangster in an unwelcome manner. *Id.* 23-26. Over Sangster's objection, Defendant placed his hand down her shorts and touched her genitals. *Id.* at 26. At some point, Sangster was able to break free of Defendant. *Id.* at 26. During this altercation, Sangster sustained bodily injury. *Id.* at 32-37.

## **B. LISA BALDERRAMA**

Lisa Balderrama (hereafter, "Balderrama") is an employee of the Madison County Sheriff's Office, and has been since approximately 2001 (Balderrama Affidavit at pg.13).

During her employment, Defendant and Balderrama began a sexual relationship. *Id.* at 14. According to Balderrama, this relationship began with promises by Defendant to Balderrama of improved employment opportunities and/or conditions (Balderrama Affidavit at pg.13). According to Balderrama, Defendant was sometimes physically abusive with her. *Id.* at pp.13, 21. This sexual relationship ended when Balderrama married. *Id.* at 21. The marriage ended after approximately three months. *Id.* at 21, 22.

Balderrama states that after her divorce, Defendant, while continuing to be the head of the Department which employed Balderrama, continued to ask her to engage in sexual relations. *Id.* at 24. These sexual encounters continued into Defendant's current four year term as Madison County Sheriff but had concluded prior to April 30, 2013. *Id.* at 23. Balderrama states that in January 2013, during one of the conversations when Defendant was attempting to rekindle his romantic relationship with her, Defendant promised to obtain a new vehicle for her. *Id.* at 25, 26.

Balderrama states that on April 30, 2013, she requested that Defendant approve a transfer of one of her subordinates. *Id.* at 28-30. Balderrama states that Defendant advised he would approve the transfer if Balderrama gave Defendant oral sex. *Id.* Balderrama states she was humiliated but complied with this request. *Id.* Subsequent to this event, Balderrama states that Defendant made comments to her implying he might transfer her to a less favorable position or shift. *Id.* at 34. Balderrama states that the relationship has taken a mental and physical toll on her. *Id.* at 42, 43.

### **C. BARBARA AUTRY**

Barbara Autry (hereafter, "Autry") is a former employee of the Madison County Sheriff's Office (Autry Affidavit at pg.1). She worked for the Sheriff's Office first from approximately January 2001 to January 2003. *Id.* at 2. She then worked for the Sheriff's Office again from approximately February 2008 to September 2011. *Id.* Autry states that during her first term of employment, Defendant made requests for sexual favors, sometimes accompanied with comments that implied adjustments could be made to Autry's employment conditions. *Id.* at 4-6, 12, 24. Autry states that during her second term of employment, and during Defendant's current term of office, Defendant made unwelcome sexual advances toward Autry. *Id.* at 9-11, 13. Autry states that Defendant would make comments indicating dissatisfaction concerning any other romantic relationships in which she engaged during her employment. *Id.* at 18.

## II. PROCEDURAL HISTORY

The Complaint for Order of Suspension from Office and for Writ of Ouster was filed by the undersigned Relator, pursuant to Tenn. Code Ann. § 8-47-101, *et seq.*, on December 13, 2013. Defendant's Attorney accepted service for Defendant on the same date, December 13, 2013. Tenn. Code Ann. § 8-47-114 provides as follows:

*Upon the filing of the complaint or petition for the writ of ouster, a summons shall issue for the defendant, and there shall accompany the summons and be served upon the defendant a copy of the complaint or petition filed against the defendant, and the defendant shall have the right to answer within twenty (20) days from such service.*



As of January 2, 2014, twenty days after service upon Defendant through his attorney, Defendant had filed no Answer as required by Tenn. Code Ann. § 8-47-114. In addition, no application for an extension of time to file an Answer had been made by Defendant or his counsel prior to the expiration of the time required by statute for the filing of an Answer. On January 3, 2014, Plaintiff filed a Motion for Default Judgment due to Defendant's failure to file an Answer as required by statute. Subsequently, on January 7, 2014, Defendant filed his Answer to the Complaint. As of the date of submission of this Memorandum, Defendant has filed no response to the Motion for Default Judgment.

### **III. LAW AND ARGUMENT IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT**

Although ouster proceedings are not common in Tennessee, a recent ouster case was determined by a grant of default judgment. In *State ex rel. Jones v. Looper*, 86 S.W.3d 189 (Tenn.App. 2000), the defendant failed to file an Answer within the twenty days provided for by statute. Although an Answer was eventually filed, shortly before a hearing was held on the Motion for Default Judgment, the Motion was granted and Defendant's subsequent Motion to Set Aside Default Judgment was denied. *Id.* at 193. In granting the Motion for Default Judgment, the trial court observed:

*This is a very simple procedure that you take in these matters. You get served and you answer and all you have to do is just say not guilty or I didn't do it. You don't have to file a big answer, but you have to file something. In this case, nothing was filed in twenty days and nothing was filed in thirty days and no*

*excusable neglect has been proven to this court by any affidavit. This type of action is one that generally requires expedition, expeditious action. It's a very serious matter, a very severe matter. The court feels and finds in this case that there was ample time for an answer, a brief, small answer of any kind. And that to come up here on the last hour and file something is not permissible.*

*Id.* at 192.

In denying the Motion to Set Aside Default Judgment, the trial court stated:

*The situation still remains as I expressed in the earlier hearing that this is a very serious case which should be expedited. The statute provides for twenty days. No action was taken in twenty days. Sometime thereafter, Lawyer Barrett was fired. However, there was never a request for any extension of time within the twenty days or, matter of fact, forever.*

*Id.* at 193.

On appeal, the trial court's exercise of discretion was upheld. *Id.* at 197, 201.

Rule 6.02 of the Tennessee Rules of Civil Procedure states:

*When by statute or by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, (1) with or without motion or notice order the period enlarged **if request therefor is made before the expiration of the period originally prescribed** or as extended by a previous order, or (2) **upon motion made after the expiration of the specified period permit the act to be done**, where the failure to act was the result of excusable neglect, but it may not extend the time for taking any action under*

*Rules 50.22, 59.01, 59.03 or 59.04, except to the extent and under the conditions stated in those rules. This subsection shall not apply to the time provided in Tennessee Rule of Appellate Procedure 24(b) & (c) for filing a transcript or statement of evidence.*

(emphasis added).

In the present case, no application was made for an extension, nor was an extension granted, prior to the expiration of the time provided for filing an Answer to the Complaint. Further, while Defendant has filed an Answer subsequent to the expiration of the time provided by law, Defendant has as of the date of this filing made no Motion for an enlargement of time for doing so, as provided by Rule 6.02. In *Looper, supra* at 195, the defendant likewise made no such motion for an enlargement of time, though he did file a late Answer. Accordingly, the trial court granted the Motion for Default Judgment. *Id.* at 193. Without a Rule 6.02 Motion for Enlargement of time to file an answer, the issue of whether excusable neglect existed is never reached. *Id.* at 195, 196. As was noted in *Looper*, “[t]he belated filing of an answer is not an adequate response to a motion for default. There must be some application to the court for relief from the failure to timely file an answer.” *Id.* at 196 (citing *Rosche v. Von Holten*, 1991 WL 74263, at pg. 5 (Tenn.App.)(unpublished opinion)(copy attached)).

Removal of an elected official by ouster is an extremely serious action; but accomplishing ouster by means of a default judgment is not to be discounted simply because of the gravity of the cause. Indeed, the Court of Appeals in *Looper, supra* at 197, expressly discussed the balancing of these interests and held:

*While we agree that removal of an officeholder is a matter of serious significance to the officeholder and to the public, we are not convinced that the public interest would be served by allowing a defendant officeholder to retain his or her office, in the face of substantive claims of misconduct, by failing or refusing to respond to those claims....*

In *Looper, supra* at 198, the Court of Appeals also noted the need for ouster proceedings to be handled in an expedited, summary fashion:

*[T]he ouster statutes also reflect the General Assembly's deep concerns regarding allegations of misconduct by public officials. They establish special, expedited judicial procedures for the removal of errant officials. Recognizing the gravity of accusations of misconduct in public officials, these procedures authorize the court hearing the matter to suspend the official pending a final hearing and determination. Tenn. Code Ann. § 8-47-116. A hearing on a motion to suspend can be held on as little as five (5) days' notice. Tenn. Code Ann. § 8-47-117. As discussed earlier, the statutes also limit the number of pleadings allowed and shorten the usual time permitted to answer petitions or complaints. Tenn. Code Ann. §§ 8-47-114, 8-47-115. Continuances of the trial by agreement of the parties is expressly prohibited. Tenn. Code Ann. § 8-47-119. Both the trial court and the appellate court are directed to give ouster cases precedence. Tenn. Code Ann. §§ 8-47-119, 8-47-125. In addition, the legislature has determined that proceedings in ouster actions are to be "summary." Tenn. Code Ann. § 8-47-119....Based on the language of the statutes, our courts have held that the legislature intended ouster actions to be*

*conducted in speedy summary proceedings. See Wright, 622 S.W.2d at 810. The object of the ouster statutes has been described as “to rid the public of unworthy officials,” State ex rel. Milligan v. Jones, 143 Tenn. 575, 577, 224 S.W. 1041, 1042 (1920), and “to improve the public service, and to free the public from an unfit officer.” State v. Howse, 134 Tenn. 67, 78, 183 S.W. 510, 513 (1915).*

Finally, in the present case, no request for an extension of time to file an answer was ever made by counsel for Defendant to counsel for Plaintiff. However, the statutory language and case law suggest that even if made, such informal agreements would be inconsistent with the spirit behind the Ouster Act. For example, Tenn. Code Ann. § 8–47–119 expressly prohibits continuances by agreement of the parties, reflecting the need for a speedy disposition of such cases.

Therefore, as Defendant has failed to file an Answer within the time provided by statute, and as the public interest in ouster cases demands an expedited, summary disposition, Plaintiff respectfully asks that its Motion for Default Judgment be granted.

#### **IV. LAW AND ARGUMENT IN SUPPORT OF APPLICATION FOR SUSPENSION FROM OFFICE PENDING FINAL HEARING**

Should this Court deny the Motion for Default, Defendant’s willful misconduct and statutory violations are such that he should nonetheless be suspended from office pending trial of this cause. In support thereof, Plaintiff submits the following:

##### **A. STANDARD AND SUFFICIENCY OF PROOF**

Tenn. Code Ann. § 8–47–116 provides as follows:

*Upon petition or complaint being filed, praying for a writ of ouster against any of the officers herein named, and whether such action is brought by the attorney general and reporter, district attorney general, county attorney, city attorney, or by relator citizens and freeholders, the court, judge, or chancellor may, on application of the attorney general and reporter, the district attorney general for the state, the county attorney, city attorney, or relator citizens and freeholders bringing such action, suspend such officer or officers so accused from performing any of the duties of their office, pending a final hearing and determination of the matter; and, thereupon, the vacancy shall be filled as the law provides for the filling of vacancies in such office, and such person or persons so filling such vacancy shall carry on the duties of the office until such hearing shall be finally determined or until the successor of the officer so suspended shall be elected or appointed as provided by law, and shall have qualified.*

Inasmuch as ouster proceedings are rare in Tennessee, the case law concerning suspension from office pending a full trial is even rarer. However, there is one case that elaborates upon the procedure to be employed. In *State v. Howse*, 132 Tenn. 452, 178 S.W. 1110 (1915), the Supreme Court considered an appeal from such a hearing. The Court held:

*[W]e are of opinion that the order of suspension is properly to be likened to the interlocutory orders entered in the usual equity proceeding, such as decretal orders for the appointment of a receiver, or for injunctive process. The suspension is to be by "order," and clearly to be differentiated from the final decree of ouster.*

*Id.* at 1111.

As for the type of proof acceptable at such hearings, the Supreme Court added:  
*Touching the character of the proof, we are of opinion that it need not necessarily be adduced as is done on a formal trial on the merits. In matters interlocutory in character a hearing means “the **introduction of evidence thereon by affidavit or otherwise, the argument of solicitors, and the order of the chancellor.**”*  
*The circuit judge **admitted and considered a transcript of a proceeding pending at the time in another court, the [C]hancery [C]ourt of Davidson [C]ounty, to which the accused officials were parties and sought to be held liable for the same acts. In that transcript were incorporated the depositions of witnesses who had been cross-examined by their counsel. These were considered as of the nature of affidavits by the trial judge. In addition there was so incorporated a deposition of Mayor Howse, which was clearly competent as an admission under oath. **We think there was no error in this.*****

*Id.* (Citations omitted)(Emphasis added).

Therefore, it is sufficient for purposes of a suspension hearing for the Court to rely upon sworn testimony through the form of affidavits, depositions, or testimony from other hearings. This is the character of the evidence presented by Plaintiff in support of this Application for an Order of Suspension: The affidavits of Lisa Balderrama, Barbara Autry, and Madison County Clerk Fred Birmingham, and the transcript of the Order of Protection hearing heard in Madison County General Session Court on October 23, 2013, featuring, *inter alia*, the sworn testimony of Sharon Sangster and Defendant.

## **B. WILLFUL MISCONDUCT**

## 1. DEFENDANT IS GUILTY OF MISCONDUCT

“Our research tells us that there is no bright line test for determining what is or is not knowing or willful misconduct in office.....” *State ex rel. Carney v. Crosby*, 255 S.W.3d 593 (Tenn. App. 2008).

“Misconduct” is a term that has been applied and defined in a variety of cases in Tennessee, many of which have no seeming relation with each other. Consistently, however, these cases reflect that violating known rules and/or policies constitutes misconduct. In a criminal contempt case, the Tennessee Supreme Court, in defining the term in that context, noted it was helpful to consider how the term “misconduct” had been defined in other unrelated legal cases:

*We have used the phrase “willful misconduct” interchangeably with “willful misbehavior.” Black, 938 S.W.2d at 401. Additionally, in the contempt context, we recently reaffirmed that “willful disobedience or resistance ... to any lawful writ, process, order, rule, decree, or command of [the] courts,” Tenn. Code Ann. § 29–9–102(3), entails an intentional violation of a known duty for both civil and criminal contempt. See In re Sneed, 302 S.W.3d 825, 826 n. 1 (Tenn.2010) (published order) (criminal contempt for “willful” violation of court order, Tenn. Code Ann. § 29–9–102(3)); Konvalinka, 249 S.W.3d at 357 (civil contempt for “willful” violation of court order, Tenn. Code Ann. § 29–9–102(3)); cf. Mitchell v. Fayetteville Pub. Utils., 368 S.W.3d 442, 449 (Tenn.2012) (“[T]he willful*



*misconduct defense [in workers' compensation cases] was intended to preclude recovery for **intentional violations of established rules or policies.***”).

*State v. Beeler*, 387 S.W.3d 511 (Tenn. 2012)(emphasis added).

Following the lead of the Supreme Court in *Beeler*, it is significant to note that when one examines multiple Tennessee cases and statutes that have defined “misconduct” in a variety of legal settings, the term invariably is defined as violation of established rules or policies. See, e.g., Tenn. Code Ann. § 50-7-303 (defining misconduct in an unemployment compensation context as including “[d]eliberate violations or disregard of reasonable standards of behavior that the employer expects of an employee;...[d]eliberate **disregard of a written attendance policy;...a violation of an employer's rule** (emphasis added); *Armstrong v. Neal*, 725 S.W.2d 953 (Tenn.App.1986)(defining misconduct in an unemployment compensation context as “*deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee... or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer*”); *Marvin Windows of Tennessee, Inc. v. Gardner*, 2012 WL 2674519, (Tenn. 2012)(unpublished opinion)(copy attached)(“*Misconduct [in a workers' compensation context] refers to an employee's inability to perform his or her job due to reasons unrelated to a workplace injury....The **standards for behavior and productivity are governed by reasonable policies established by the employer***”)(emphasis added). Further, attorneys are familiar with Rule 8.4 of the Tennessee Rules of Professional Conduct, which specifically states that to violate or attempt to violate the Rules of Professional Misconduct is “professional misconduct” warranting disciplinary action.

It is clear then that misconduct, while possibly containing multiple definitions, must clearly include as one such definition the violation and disregard of express rules and policies. In the present case, Defendant's conduct in continuing to pressure female employees to engage in sexual activities, even after the allegedly consensual nature of these relationships had concluded, constitutes violation of the express policies of Madison County as adopted in its County Personnel Policy of 1998 which prohibited sexual harassment of its employees. As noted above, this policy defined sexual harassment as:

***Behavior with a sexual content or overtone that is unwelcome and personally offensive. Sexual harassment may consist of sexually-oriented "kidding" or jokes, physical contact such as patting, pinching or purposely rubbing up against another person's body; demands or requests for sexual favors tied to promises of better treatment or threats concerning employment; discrimination against an employee for refusing to "give in" to demands or requests for sexual favors; or rewarding or granting favors to one who submits to demands or request for sexual favors; displaying sexually-explicit or pornographic material, no matter how it is displayed.***

See, County Personnel Policy of 1998 at pg. 19, 20 (emphasis added).

The affidavits of Balderrama and Autry, as well as the testimony at Sangster's Order of Protection hearing, all make clear that Defendant made repeated sexual advances toward them, even after the time period of any alleged consensual sexual relationship between Defendant and these women had concluded. See, e.g., Balderrama Affidavit at pp. 21-26; Autry Affidavit at pp. 9-11,13; Sangster testimony,

Order of Protection Hearing Transcript, October 23, 2013, Volume I, at pg. 40; Woolfork testimony, Order of Protection Hearing Transcript, October 23, 2013, Volume II, at pp. 237-239, 257-259. 263-265.

In *Tennessee ex rel. Leech v. Wright*, 622 S.W.2d 807, 817 (Tenn.1981), the plaintiffs seeking ouster alleged that the defendant, who held the public office of Road Superintendent of Lincoln County, engaged in willful misconduct in office which included an allegation “that the defendant misused county employees to dispense **personal favors**, illegally improve private property and **for his own personal benefit**; ....” *Leech, supra*, at 808. The Supreme Court sustained the ouster verdict. In our present case, Defendant has misused county employees for personal favors and his own personal benefit – however, this particular benefit was not financial gain but sexual gratification. This is equally, if not more, repugnant than the action of the defendant in *Leech* which was held to be “misconduct.”

In Kansas, an ouster action was maintained against a public official (the county treasurer) who had committed similar misconduct to that of Defendant in our present case. “It was alleged (the treasurer) credited several employees with time not worked and **willfully utilized his public office to solicit sexual favors, impose sexual burdens, attempt to impose sexual burdens**, hold out promises of financial rewards for sexual favors by approving payments from Sedgwick County for hours not worked, and **did sexually harass female employees.**” *State ex rel. Miller v. Richardson*, 229 Kan. 234, 623 P.2d 1317 (Kan. 1981)(copy attached)(emphasis added).

At the time Kansas had adopted an ouster statute almost identical to the current Tennessee statute (the only significant difference is that the Kansas statute did not address intoxication or gambling):

*Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) **willfully misconduct himself or herself in office**, (2) willfully neglect to perform any duty enjoined upon him or her by law, or (3) **who shall commit any act constituting a violation of any penal statute involving moral turpitude**, shall forfeit his or her office and shall be ousted from such office in the manner hereinafter provided.*

K.S.A. 60-1205, cited in *Miller, supra*, at 235 (*emphasis added*).

Four of the nine counts of the complaint were upheld by the three judge panel sitting en banc to hear the case (and subsequently affirmed on appeal by the Kansas Supreme Court). The panel found that all of the general charges summarized above were supported by evidence and that Richardson should forfeit his office because of willful misconduct for failing to follow the personnel policy of the county as to rates and hours of pay, and because of deliberate acts of sexual harassment against female employees. *Miller, supra* at 236.

Defendant in our case has similarly engaged in deliberate acts of sexual harassment, as defined by the Madison County Personnel Policy of 1998, and, in so doing, obviously has failed to follow the Madison County Personnel Policy of 1998. Defendant has engaged in behavior similar to that of the defendant in *Miller*, which was

found to constitute misconduct sufficient for ouster under a statute virtually identical to the ouster statute of Tennessee.

## **2. DEFENDANT'S MISCONDUCT WAS WILLFUL**

As used in reference to the ouster statute, the terms “knowingly” and “willfully” have been defined as encompassing “a mental attitude of indifference to consequences or failure to take advantage of means of knowledge of the rights, duties or powers of a public office holder.” *Tennessee ex rel. Leech v. Wright*, 622 S.W.2d 807, 817 (Tenn.1981) (citing *Jordan v. State*, 217 Tenn. 307, 397 S.W.2d 383, 398 (1965)). The *Jordan* court also noted that the terms “knowingly” and “willfully” as used in ouster proceedings are “not confined to a studied or deliberate intent to go beyond the bounds of the law.” *Jordan*, 397 S.W.2d at 399.

As Sheriff of Madison County, Defendant is the head of the Madison County Sheriff's Department and, at the time of the alleged sexual harassment of Sangster, Balderrama, and Autry, was, or should have been, cognizant of the Madison County Personnel Policy of 1998 which prohibited sexual harassment of its employees. His actions in violation of this express policy clearly reflect indifference to consequences spelled out in the policy. In the implausible likelihood that Defendant failed to understand the consequences of his actions, as the elected sheriff, he has failed to take advantage of means of gaining knowledge of his rights, duties and powers, both under Tennessee statutes and under the Madison County Personnel Policy and its sections addressing sexual harassment as applied specifically to the department of which he has

been head since 1994. For example, Defendant could have reached out to the County's personnel and human resources managers who have served during his tenure; the County Attorneys who have served during his tenure; or Tennessee's County Technical Assistance Service (CTAS), which in May 2006 published the "Tennessee Sheriff's Handbook" (found online at [http://www.ctas.tennessee.edu/public/web/ctas.nsf/EntriesWeb/3BD2E3040D979FAC8625719A0070A911/\\$FILE/SheriffsHandbook.pdf](http://www.ctas.tennessee.edu/public/web/ctas.nsf/EntriesWeb/3BD2E3040D979FAC8625719A0070A911/$FILE/SheriffsHandbook.pdf)); to name a few of his available options.

Clearly, Defendant's misconduct can only be characterized as willful and knowing.

### **C. VIOLATION OF A PENAL STATUTE INVOLVING MORAL TURPITUDE**

Defendant has been indicted by the Madison County Grand Jury on one Count of Criminal Attempt: Aggravated Sexual Battery and one Count of Domestic Assault. These counts arise out of the October 10, 2013 incident at Sangster's home, as described above. The sworn testimony of Sangster is that she was assaulted by Defendant on at least two occasions (March 30, 2013 and October 10, 2013)(Sangster testimony, Order of Protection Hearing Transcript, October 23, 2013, Volume I, at pp. 19-26, 32-37, 40). Comparison of her testimony to related criminal statutes reflects that Defendant has violated one or more penal statutes involving moral turpitude, which constitutes grounds for ouster in Tennessee and is therefore grounds for Defendant's suspension from office pending trial of this cause.

#### **1. AGGRAVATED SEXUAL BATTERY**

Tenn. Code Ann. § 39-13-504 provides, in relevant part, as follows:

(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

....

(2) The defendant causes bodily injury to the victim;

....

(b) Aggravated sexual battery is a Class B felony.

Tenn. Code Ann. § 39-12-101 defines criminal attempt as follows:

(a) A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:

(1) Intentionally engages in action or causes a result that would constitute an offense, if the circumstances surrounding the conduct were as the person believes them to be;

(2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or

(3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.

.....

On the evening of October 10, 2013, Defendant went to Sangster's home (Sangster testimony, Order of Protection Hearing Transcript, October 23, 2013, Volume I, at pg. 19). Just prior to and/or during this visit, Defendant consumed alcoholic beverages. *Id.* at 19, 21. Sangster has testified that: 1) during this visit, Defendant asked Sangster at least once to engage in sexual relations with him. This proposal was declined by Sangster. *Id.* at 20, 23; 2) following a disagreement, Sangster asked Defendant to leave her home. *Id.* at 22, 23; and 3) at some point, Defendant laid his hands on Sangster in an unwelcome manner. *Id.* 23-26. Over Sangster's objection, Defendant placed his hand down her shorts and touched her genitals. *Id.* at 26. At some point, Sangster was able to break free of Defendant. *Id.* at 26. During this altercation, Sangster sustained bodily injury. *Id.* at 32-37.

This conduct as testified to by Sangster under oath establishes that Defendant has violated, or attempted to violate, Tenn. Code Ann. § 39-13-504, a penal statute involving moral turpitude. This conduct constitutes grounds for ouster in Tennessee and is therefore grounds for Defendant's suspension from office pending trial of this cause.

## **2. DOMESTIC ASSAULT**

Tenn. Code Ann. § 39-13-111 provides, in relevant part, as follows:

(a) As used in this section, "domestic abuse victim" means any person who falls within the following categories:

.....



(3) Adults or minors who are dating or who have dated or who have or had a sexual relationship, but does not include fraternization between two (2) individuals in a business or social context;

....

(b) A person commits domestic assault who commits an assault as defined in § 39-13-101 against a domestic abuse victim.

Tenn. Code Ann. § 39-13-101 provides, in relevant part, as follows:

(a) A person commits assault who:

(1) Intentionally, knowingly or recklessly causes bodily injury to another;

(2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or

(3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.

Sangster has testified that on March 30, 2013 and again on October 10, 2013, she was physically assaulted by Defendant. Specifically, Sangster has testified that on March 30, 2013, Defendant physically assaulted Sangster in her home and struck her multiple times (Sangster testimony, Order of Protection Hearing Transcript, October 23, 2013, Volume I, at pg. 40). The following day, Defendant wrote to Sangster apologizing for his “weak moment” the previous night. *Id.* at 41, 42, 47-49.

On the evening of October 10, 2013, Defendant went to Sangster's home. *Id.* at pg. 19. Just prior to and/or during this visit, Defendant consumed alcoholic beverages. *Id.* at 19, 21. Sangster has testified that: 1) during this visit, Defendant asked Sangster at least once to engage in sexual relations with him. This proposal was declined by Sangster. *Id.* at 20, 23; 2) following a disagreement, Sangster asked Defendant to leave her home. *Id.* at 22, 23; and 3) at some point, Defendant laid his hands on Sangster in an unwelcome manner. *Id.* 23-26. Over Sangster's objection, Defendant placed his hand down her shorts and touched her genitals. *Id.* at 26. At some point, Sangster was able to break free of Defendant. *Id.* at 26. During this altercation, Sangster sustained bodily injury. *Id.* at 32-37.

This conduct as testified to by Sangster under oath establishes that Defendant has violated, or attempted to violate, Tenn. Code Ann. § 39-13-111, a penal statute involving moral turpitude. This conduct constitutes grounds for ouster in Tennessee and is therefore grounds for Defendant's suspension from office pending trial of this cause.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this Court grant its Motion for Default Judgment against Defendant. In the alternative, Plaintiff respectfully requests that this Court suspend Defendant from the office of Sheriff of Madison County, Tennessee, without pay, pursuant to Tenn. Code Ann. § 8-47-116, pending the trial of this cause.

Respectfully submitted this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

STATE OF TENNESSEE

---

Steven W. Maroney, BPR # 15545  
Madison County Attorney  
425 E. Baltimore Street  
Jackson, TN 38301  
(731) 424-3315

**IN THE CHANCERY COURT FOR MADISON COUNTY, TENNESSEE**

MADISON COUNTY, TENNESSEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. _____
	)	
CITY OF JACKSON, TENNESSEE,	)	
	)	
Defendant.	)	

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**COMPLAINT**

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COMES NOW the Plaintiff, Madison County, Tennessee (sometimes hereafter, "County"), pursuant to the Tennessee Rules of Civil Procedure, by and through its attorneys of record, and files this Complaint against Defendant, City of Jackson, Tennessee (sometimes hereafter, "City"), and in support thereof, Plaintiff would show unto the Court as follows:

**JURISDICTION AND PARTIES**

1. Plaintiff County is a political subdivision of the State of Tennessee.
2. Defendant City is a Tennessee municipality and may be served through its City Attorney, Mr. Lewis Cobb, *esq.*, at 312 E Lafayette St, Jackson, TN 38301.
3. This Court has jurisdiction and venue over these parties and the subject matter of this Complaint.

## STATEMENT OF FACTS

4. This matter concerns the agreement for funding of the Jackson-Madison County School System. Prior to 1989, County and City each operated separate and distinct school systems.
5. Tennessee Code Annotated § 67-6-701, *et seq.*, also known as the “1963 Local Option Revenue Act”, governs the adoption of a local option sales tax by counties and cities. The Act provides that a county by resolution, or a city by ordinance, is authorized to levy a sales tax not to exceed 2.75%. However, the Act further provides that *“[a]ny ordinance or resolution of a county or of a city or town levying the tax under authority of this part shall not become operative until approved in an election herein provided in the county or the city or town, as the case may be.”* Tennessee Code Annotated § 67-6-706 (emphasis added).
6. Pursuant to Tennessee Code Annotated § 67-6-712(a), the distribution of revenue from an adopted local option sales tax is as follows: (1) One-half ( $\frac{1}{2}$ ) of the proceeds shall be expended and distributed in the same manner as the county property tax for school purposes is expended and distributed; and (2) the other one-half ( $\frac{1}{2}$ ) as follows: (A) Collections for privileges exercised in unincorporated areas, to such fund or funds of the county as the governing body of the county shall direct; (B) Collections for privileges exercised in incorporated cities and towns, to the city or town in which the privilege is exercised; (C) ***However, a county and city or town may by***

***contract provide for other distribution of the one-half (½) not allocated to school purposes.***

7. In 1988 (and continuing to the present day), a 1.5% local option sales tax was in effect (and continues in effect to this day) whereby the revenue from one-half of the tax (or 0.75%) is contributed to the County education system, while the revenue from the remaining one-half (0.75%) is distributed to the County or City, depending upon the point of collection.
8. In July, 1988, by Joint Resolution (copy attached as Exhibit 1), the City and County, through its legislative bodies, committed themselves to the pursuit of consolidation of their respective school systems pursuant to Tennessee Code Annotated § 49-2-1201, *et seq.* This included the establishment of a Planning Commission and its development of a Consolidation Plan (sometimes hereafter, "Plan"). Said Plan, consisting of 26 sections (and an appendix which is incorporated into the Plan in Section 26), was promulgated on March 7, 1989 (copy attached as Exhibit 2).
9. The Joint Resolution of July, 1988, as well as the Consolidation Plan provided that funding of the consolidated school system would be by the Madison County Commission. Among other benefits to the City, this arrangement relieved (and presently relieves) the City of the day to day operation of its independent school system, while significantly increasing the County's education costs. Additionally, Section 21 of the Plan provided the City with veto power over the disposition of former City school property which was consolidated. Significantly, the City was not dissolving or

eliminating its City School system; it was consolidating its school system with that of the County. Hence, the consolidated school system is not the "Madison County School System"; it is the "**Jackson-Madison County School System**" (emphasis added).

10. The Plan contained an itemized operating costs analysis which begins on page 39 of the Plan appendix. This Plan summarized the projected annual costs and financial analysis of system consolidation on pages 42 and 43 of the Plan appendix (attached separately as Exhibit 3). The summaries note that, factoring in the amortization of capital costs **over a twenty year period** and utilizing the revenue from the 1.5 % local sales tax in effect at the time, there would be a projected shortfall of \$8,495,000 per year. The summary further projects that if the local sales tax increased by 1.25% (to 2.75%, which is the statutory maximum for a local-option sales tax pursuant to Tennessee Code Annotated § 67-6-702(a)(1)), **with the full amount of that increase being dedicated to the consolidated school system**, the revenue from such increase would balance the budget and eliminate the projected shortfall.
11. Thereafter, a significant promotional campaign was undertaken by the Planning Commission in the first few months of 1989 to promote the Plan (detailed in part on Page 48 of the Plan appendix). The campaign included multiple presentations at public meetings and through local broadcasts. It also included presentations to the legislative bodies of the County and the City, and public hearings, all pursuant to Tennessee Code Annotated § 49-

2-1206. The promotion of the Plan to the public necessarily promoted all of its aspects, including the adoption of an increase in the local option sales tax by 1.25%, dedicated wholly to funding the consolidated school system, as set forth in the aforementioned budgetary materials. The Plan was scheduled for presentation to the Madison County Commission on February 20, 1989, to the Jackson City Council on March 7, 1989, and Public Hearings for both legislative bodies concerning the Plan were scheduled for March 20, 1989.

12. The Madison County Board of Commissioners met on March 20, 1989 (a meeting attended by the Jackson City Commissioners, i.e., Council) and approved, by Resolution, the proposed Consolidation Plan pursuant to Tennessee Code Annotated § 49-2-1206. (Madison County Commission Minutes and Resolution, March 20, 1989)(copy attached as Exhibit 4). The Madison County Board of Commissioners then, in the same meeting, adopted a resolution pursuant to Tennessee Code Annotated § 67-6-702 as follows: "The adoption of a 1 ¼ [%] increase in local sales tax will be appropriated for use in education and only for this purpose, and not for any other use. ***The City and County Government are in agreement that money from this increase will go solely toward this end.***" (Madison County Commission Resolution, March 20, 1989)(copy attached as Exhibit 5)(emphasis added). This was consistent with the Plan terms which were being presented to the community for consideration.



13. The Jackson City Council met on April 4, 1989 and likewise adopted a Resolution adopting the proposed Consolidation Plan and referred the Plan to the voters of Jackson for approval by referendum. At the same meeting, the City Council passed a Resolution as follows:

*WHEREAS, on May 25 [1989] a referendum will be held to determine whether schools in Jackson and Madison County are consolidated; and*

*WHEREAS, **the proposed plan calls for additional funding by revenue generated from an increase of the local option sales tax, from 1.5% to 2.75%; and***

*WHEREAS, T.C.A. 67-6-712 provides the manner of distribution of revenue from the sales tax and provides that one-half the tax be distributed to the city or town in which the tax is collected; and*

*WHEREAS, T.C.A. 67-6-712(2)(c) provides that **a county and city may by contract provide for other distribution of the sales tax;** and*

*WHEREAS, the City of Jackson desires to allocate all of its share of the proposed sales tax increase to education and specifically to a newly created consolidated school system.*

*NOW, THEREFORE, be it resolved by the City Council of Jackson, Tennessee meeting on this the 4<sup>th</sup> day of April, 1989 that the City of Jackson hereby **agrees** to relinquish its right to its share of the proposed sales tax so that all of the revenue generated from said tax*

*may be devoted to a consolidated school system in Jackson and Madison County. **If the proposed plan of consolidation is not approved, this resolution shall be null and void.***

(Minutes, Jackson City Council, April 4, 1989)(copy attached as Exhibit 6)(emphasis added).

14. Once the legislative bodies for the County and the City adopted their respective Resolutions in support of the Plan and in support of the 1.25% sales tax increase dedicated solely to education, a Special Referendum Election was subsequently scheduled for May 25, 1989 for the citizens of Jackson and the non-Jackson resident citizens of Madison County to vote **on both** the Consolidation Plan **and** the increase in the local sales and use tax. The newspaper advertisement notifying citizens of the Election (copy attached as Exhibit 7) combined and presented these items in a single advertisement. In addition, pursuant to Tennessee Code Annotated § 49-2-1206(b)(1), the consolidation plan – ***including the portions of the Plan detailing the necessity of the full 1.25% sales tax increase revenue to balance the educational budget*** – was filed with the Madison County Election Commission, so as to inform the public precisely upon what it was voting. The Referendum ballot (copy attached as Exhibit 8) likewise listed both items together. The electorate, then, was presented these items as a package, just as the Plan and the tax increase had been presented jointly during the promotion of the plan and as they had been linked in the City's April 4, 1989 Resolutions. Having been publicly informed by both the City

and the County's legislative bodies that the proposed tax increase would be dedicated solely to education, the electorate voted to approve the Plan and the tax increase (see copy of vote totals from Madison County Election Commission, attached as Exhibit 9).

15. In addition, prior to and after the referendum vote on the Consolidation Plan and tax increase, the City and County school systems were operating under the jurisdiction and close monitoring of the United States District Court, Western Section of Tennessee, Civil Action Nos. C-1327 and C-2209-E (later consolidated as Civil Action No. C-1327)(this continued from 1963 until the Court determined the unified school system had achieved full unitary status in 2010). On June 7, 1989, the City and County ***jointly moved*** the United States District Court to approve the Consolidation Plan – ***which necessarily included the portions of the Plan detailing the necessity of the full revenue from the 1.25% sales tax increase to balance the educational budget*** - which had been approved by voters two weeks earlier (copy attached as Exhibit 10).
16. Since the approval of the Plan and Local Option Sales Tax Increase by Referendum of May 25, 1989, the City has without interruption applied its portion of the local option sales tax revenue from the 1.25% increase to the education budget of Madison County as agreed and as promoted to the voters of Madison County during the campaign for Plan approval in the Referendum.

17. In 1999, ten years into the agreement to dedicate its portion of the local sales tax revenue to education, the Jackson City Council spoke on the matter again. The City Council noted that under the collection process in place at the time, the Madison County Trustee was, pursuant to Tennessee Code Annotated § 8-11-110, retaining a one percent (1%) collection fee on the funds collected pursuant to the local option sales tax. The City Council then passed a Resolution signed by then Mayor Charles Farmer instructing the State of Tennessee to pay directly to the City its share of the revenue derived from the 1.25% sales tax increase approved in the May 25, 1989 referendum in order that the City could directly pay this money to the school system and avoid the 1% collection fee.

18. In the 1999 Resolution, and in support thereof, the City Council stated:

*WHEREAS, on March 20, 1989, the Madison County Board of Commissioners passed a Resolution authorizing the imposition of a 1 ¼% increase in the local option sales tax; and*

*WHEREAS, Madison County, Tennessee agreed that the "increase in local sales tax will be appropriated [sic] for use in education and only for this purpose and not for any other purpose." **The City and County government are in agreement that the money from this increase will go solely towards this end; and***

.....

*WHEREAS, **contrary to the specific agreement set forth in the Resolution as passed by the City of Jackson and Madison***

***County, the funds earmarked solely for education have been diverted by the Madison County Trustee by a device wherein said Trustee has retained one percent (1%) fee for collection in contravention of the agreement between the City and Madison County, Tennessee; ....***

(1999 RESOLUTION FOR THE CITY TO RECEIVE AND PAY DIRECTLY TO THE JACKSON-MADISON COUNTY SCHOOL SYSTEM ALL OF ITS PORTION OF THE 1 ¼ LOCAL OPTION SALES TAX)(copy attached as Exhibit 11)(emphasis added).

19. On May 18, 2017, the Jackson City Council approved a resolution to rescind its April 4, 1989 Resolution, in which it agreed to allocate its share of the [then] proposed 1.25% local sales tax increase, just weeks in advance of the referendum asking City and County voters to approve said increase, as set forth in the Plan the voters approved the same day.
20. The City's May 18, 2017 decision will result in a reduction of available and expected funds for the consolidated Jackson-Madison County School System for the 2017-18 fiscal year of approximately \$12 million dollars (and continuing annually thereafter, should the City persist in its decision to deviate from the agreement under which the parties have been operating since 1989).
21. As the County is obligated under the State of Tennessee's "Maintenance of Effort" requirements (see, Tennessee Code Annotated §§ 49-2-203(a)(10)(A)(ii) and 49-3-314(c)) to fund the Jackson-Madison County

School System at its current level of funding (a current level which included the City's promised sales tax revenue), a County property tax increase to offset this \$12 million dollar deficit would result in an approximate tax increase of 28% for every county resident, including those who live in the City of Jackson. Alternative tax increase measures would result in similar shocks to the system if implemented to address the expected \$12 million dollar deficit.

## **CLAIMS**

### **I. Breach of Express Written Contract**

22. County hereby adopts and incorporates by reference as if restated herein paragraphs 1-21 above.
23. The Tennessee Supreme Court has stated that "a contract 'must result from a meeting of the minds of the parties in mutual assent to the terms, must be based upon a sufficient consideration, free from fraud or undue influence, not against public policy and sufficiently definite to be enforced.' " *Doe v. HCA Health Servs. of Tenn., Inc.*, 46 S.W.3d 191, 196 (Tenn. 2001) (citations omitted).
24. The actions of the parties as set forth above formed a contractual agreement between the parties which is breached by the City's rescission of its agreement to allocate its share of the local option sales tax revenue to the funding of the consolidated Jackson-Madison County School System.
25. On March 20, 1989, the Madison County Commission adopted a resolution pursuant to Tennessee Code Annotated § 67-6-702 as follows: "The

adoption of a 1 ¼ [%] increase in local sales tax will be appropriated for use in education and only for this purpose, and not for any other use. ***The City and County Government are in agreement that money from this increase will go solely toward this end.*** In 1999, the Jackson City Council adopted a Resolution citing and agreeing with the 1989 County Resolution. The 1999 City Resolution stated on its face that the City and County ***“are in agreement that money from”*** [the 1 ¼ % increase in local sales tax] will go solely toward education (emphasis added). The 1999 City Resolution further adds that the Trustee’s practice of retaining a one percent (1%) fee for collection was ***“contrary to the specific agreement set forth in the [1989] Resolution as passed by the City of Jackson and Madison County and “in contravention of the agreement between the City and Madison County, Tennessee.”***

26. Both parties, then, in separate writings signed by their lawfully authorized chief executives, admitted to an agreement with each other which required the full amount of the 1.25% local option sales tax increase – including the City’s portion – to be dedicated to the educational funding for the then-proposed consolidated Jackson-Madison County School System. The City, by its admission and course of conduct, particularly its subsequent payments in accordance with the contract over twenty-eight years, has ratified the contract.
27. The 1989 and 1999 writings admit that there was a meeting of the minds of the parties in mutual assent to the terms (i.e., the parties have mutually

agreed that their respective revenue from the 1.25 % local option sales tax increase shall go to fund the education of the consolidated Jackson-Madison County School System).

28. There was sufficient consideration to support this mutual assent. "It is well-settled that consideration exists when the promisee does something that it is under no legal obligation to do or refrains from doing something which it has a legal right to do." *Brown Oil Co. v. Johnson*, 689 S.W.2d 149, 151 (Tenn.1985). Both parties agreed to forego their right to apply to their general fund the revenue from the local sales tax that was not already mandated for education.
29. As additional consideration, it is clear from the City's April 4, 1989 Resolution – referenced in its 1999 Resolution admitting an Agreement - that it considered the foregoing of its local sales tax revenue to be conditionally linked to the adoption of a consolidated school system – a condition that has been satisfied. The Resolution states: "*...the City of Jackson hereby **agrees** to relinquish its right to its share of the proposed sales tax so that all of the revenue generated from said tax may be devoted to a consolidated school system in Jackson and Madison County. **If the proposed plan of consolidation is not approved, this resolution shall be null and void.***" Inasmuch as approval of the Consolidation Plan by the electorate required as a prerequisite that the County and City (under Tennessee Code Annotated § 49-2-1206) each vote its independent approval of the Consolidation Plan and recommend its adoption by



referendum to the electorate, the City and County's approval and recommendation of the Consolidation Plan additionally constituted the giving of consideration, along with the County and City's agreement to dedicate its sales tax revenue to the educational purposes of the newly consolidated school system.

30. There is no suggestion that the parties entered this agreement, whereby they would mutually dedicate their revenue from the local option sales tax to education and whereby they would mutually approve and recommend the Consolidation Plan, due to fraud or undue influence, nor is such an agreement against public policy since it is expressly provided for by Tennessee Code Annotated § 67-6-712(a). Further, the terms of the contract – the County's and City's agreement to dedicate local sales tax revenue solely to education - are sufficiently definite to be enforced.
31. The contract having been established, the City's decision to rescind its dedication of its share of the local option sales tax constitutes a nonperformance amounting to a breach of the contract.
32. The County has sustained or will sustain damages on account of the breach of the contract, including, but not limited to, the loss of approximately twelve million dollars to meet the County's burden of funding education. As the County is obligated under the State of Tennessee's "Maintenance of Effort" requirements (see, Tennessee Code Annotated §§ 49-2-203(a)(10)(A)(ii) and 49-3-314(c)) to fund the Jackson-Madison County School System at its current level of funding (a current level which included the City's promised

sales tax revenue), a County property tax increase to offset this \$12 million dollar deficit would result in an approximate tax increase of 28% for every county resident, including those who live in the City of Jackson. Alternative tax increase measures would result in similar shocks to the system if implemented to address the expected \$12 million dollar deficit.

33. Further, had the City not originally made its promise to pay these sales tax revenues toward education, *upon which the County has relied*, the corresponding Consolidation Plan might not have been approved by the County legislative body and/or the County citizens in 1989, and the County's present obligation to fund the fully consolidated Jackson-Madison County School System – including the absorbed City schools which County prior to the Plan approval had no obligation to fund – would not exist; only the original County schools would be the obligation of the County to fund. Therefore, the County has relied to its detriment upon the City's promise and Agreement and will sustain damages as set forth herein if the breach is not remedied by the Court.

## **II. An Implied Contract in Fact Exists between the County and City**

### **Concerning the Allocation of Local Sales Tax Revenue**

34. County hereby adopts and incorporates by reference as if restated herein paragraphs 1-33 above.
35. In the alternative, should the Court rule that an express written contract does not exist, a contract implied in fact exists between County and City, in which contract the County and City are bound to apply their portion of the

revenue generated from the local option sales tax to education, particularly the funding of the consolidated school system.

36. The Tennessee Court of Appeals, Western Section, in *Jones v. LeMoyne-Owen College*, 308 S.W. 3d 894 (2009) has stated the following: “A contract implied in fact “arises under circumstances which show mutual intent or assent to contract....A contract implied in fact is similar to an express oral contract. The primary difference between the two is the manner in which the parties express their assent....In an express contract, the parties assent to the terms of the contract by means of words, writings, or some other mode of expression.... In a contract implied in fact, the conduct of the parties and the surrounding circumstances show mutual assent to the terms of the contract” (citing *Thompson v. Hensley*, 136 S.W.3d 925 (Tenn.App. 2003).
37. The conduct of the City and County and the surrounding circumstances show mutual assent to the terms of the contractual agreement whereby each would dedicate its portion of the local option sales tax revenue to education, particularly the funding of the consolidated Jackson-Madison County School System, and each would approve and recommend adoption of the Consolidation Plan. This conduct includes, but is not limited to: the City and County’s respective 1989 Resolutions approving the allocation of the increased sales tax revenue to education; the City and County’s respective 1989 Resolutions approving and recommending adoption of the Consolidation Plan; the City and County’s 1989 Joint Motion asking the United States District Court to approve the Consolidation Plan; the City’s

1999 Resolution containing a written acknowledgement and admission by the City of an Agreement with the County for the allocation of the local sales tax revenues to education; the County's assumption of funding the additional City schools absorbed into the created Jackson-Madison County School System as contemplated by the Consolidation Plan; and the City's assent and course of conduct in conformity with an agreement by its uninterrupted allocation of its local sales tax revenues for approximately twenty-eight years.

38. The contract implied in fact having been established, the City's decision to rescind its dedication of its share of the local option sales tax constitutes a nonperformance amounting to a breach of the contract.
39. The County will sustain damages on account of the breach of the contract, as set forth in more detail above.

**II. An Implied Contract in Law Exists between the County and City**  
**Concerning the Allocation of Local Sales Tax Revenue**

40. County hereby adopts and incorporates by reference as if restated herein paragraphs 1-39 above.
41. In the alternative, should the Court rule that neither an express written contract nor a contract implied in fact exists, a contract implied in law exists between County and City, in which contract the County and City are bound to apply their portion of the revenue generated from the local option sales tax to education, particularly the funding of the consolidated Jackson-Madison County School System.

42. "Contracts implied in law, or more appropriately, quasi or construction contracts, are a class of obligations which are imposed or created by law without the assent of the party bound, on the ground that they are dictated by reason and justice." *Weatherly v. American Agr. Chemical Co.*, 16 Tenn.App. 613, 65 S.W.2d 592 (1933)(cited by *Metropolitan Government of Nashville and Davidson County v. Cigna Healthcare of Tennessee, Inc.*, 195 S.W.3d 28 (Tenn.App. 2005). "A party may recover damages in equity if there exists a contract implied in law." *Metropolitan, supra*, at 7.
43. An opinion by the Tennessee Attorney General (Tenn. Op. Atty. Gen. No. 82-10, 1982 WL 177860 (copy attached) noted that there is no prohibition on imposing implied contracts in law upon a municipality, citing prior case Tennessee law. The opinion analyzed whether Maury City was entitled to the local option sales tax proceeds collected and distributed for teachers' supplements during the years subsequent to the expiration of an agreement with Crockett County governing the same. The opinion provides that an implied contract had arisen after the prior agreement expired because Maury City continued to receive the supplement. ***The fact that the City received and retained the benefits contemplated under the agreement meant that an implied contract existed.*** The opinion goes on to state: *It is also the generally-accepted rule that when a contract is within the scope of a municipality's corporate powers, the municipal corporation may be held liable on an implied contract, whether it is implied in fact or implied in law, to prevent the municipality from enriching itself by accepting and retaining*

*benefits without paying just compensation therefor. See 63 C.J.S. Municipal Corporations, § 975.*

44. Equitable principles of promissory estoppel were also applied in *May v. Kearney*, 145 Neb. 475, 17 N.W.2d 448 (1945)(copy attached as Exhibit 12), to enjoin a city from issuing general obligation bonds for a project which had been authorized by the voters, after representations by the mayor and council that only revenue bonds would be required, and that the voters would never have to pay a cent in taxes for the particular project.
45. Even should this Court find that the conduct of the City and County and the surrounding circumstances are insufficient to show mutual assent to a contractual agreement, the Court should nonetheless impose an obligation upon the City to continue its allocation of local option sales tax revenue to education, based upon reason, justice and principles of equity. The parties' respective promise to each allocate its portion of the increased local option sales tax revenue to education, linked to the passage of the Consolidation Plan and its created consolidated Jackson-Madison County School System, induced not only the County to support the Plan (significantly increasing its obligations and liabilities) and the tax increase; it induced the voters of Madison County, both City and non-City residents, to support the same. It would be inequitable and an injustice to allow the City, **having received and retained the benefit** of its bargain (the City gained relief from the responsibilities of maintaining a City school system; the City gained veto power over the disposition of former City school buildings; the City also

endorsed and approved the Consolidation Plan, which included a list of mutual benefits and advantages of consolidation on page 16 of the Appendix), to now leave the arrangement, depriving the County of its own benefit of the bargain. *“The City having received the benefit of its bargain in the early years of the Contract period, is obligated to honor its Contract with Bradley County during the period when Bradley County is receiving its benefit.”* *City of Cleveland v. Bradley County*, 1999 WL 281086 (Tenn.App.)(unpublished opinion)(copy attached as Exhibit 13).

46. Further, this is not a situation whereby the City dissolved its school system, leaving only the “Madison County School System.” The approved Consolidation Plan, promoted in conjunction with the promise to allocate increased City sales tax revenue to education, created the **Jackson-Madison County School System**, a system in which the City retains rights and benefits, such as the veto power over the disposition of former City school buildings, and other benefits described in the preceding paragraph. The Consolidation Plan created a comingled system, part-County and part-City. The City’s decision to rescind its prior agreement to allocate sales tax revenue to education essentially puts the City in the situation it would be in had it simply dissolved its school system (with no resulting liabilities), while allowing the City to retain rights and interests in the consolidated Jackson-Madison County School System; essentially, the City receives all of the benefits and none of the burden of the consolidation. But the City did not dissolve its school system; it entered into a merger with the County. It would

not be equitable, nor just, to allow the City to induce the County (and the voters) into such a merger, promising as inducement additional obligations to the County, only to later depart with its funding and leave the County solely exposed and bearing the obligations and liabilities.

47. The timing of the City's decision to withdraw its sales tax revenue from the consolidated Jackson-Madison School System further demonstrates that reason, justice, and equity require judicial intervention and determination of an implied contract in law. The City took its action of rescission on May 18, 2017, less than six weeks before the July 1, 2017 date on which the County must adopt its budget for fiscal year 2017-18. The County has held monthly Budget Planning meetings with public notice during 2017. The City knew, or reasonably should have known, that the County was planning for the next fiscal year based upon the funding arrangement followed for the past twenty-eight years. Both the City and County are aware, and have long been aware, that the other has a duty to submit a budget by July 1 on an annual basis. Nonetheless, the City Mayor only notified the County Mayor of the proposal to rescind the City's allocation of its local sales tax revenue for education on May 16, 2017 – two days before the City voted to rescind and long after the County had concluded its Budget hearings. The City's presentation on May 18, 2017 in support of its decision demonstrated that the decision had been in the planning stages for some time, and certainly prior to May 16, 2017. Again, it would be neither equitable, nor just, for the City to be allowed to take this drastic step so late in the process such that



the County has little time to adjust to the sudden loss of twelve million dollars from its budget.

48. Based upon the foregoing, the County asks the Court to find that a Contract in Law exists, to impose an obligation upon the City to continue the funding arrangement it has assented to for twenty-eight years, and for such further and general equitable relief as the court sees fit to give.

WHEREFORE, PREMISES CONSIDERED, Madison County, Tennessee respectfully requests as follows:

1. That proper process issue and be served upon the Defendant City of Jackson, Tennessee and that it appear or otherwise answer in the time and manner prescribed under applicable law;
2. That the Court issue a declaratory judgment that the City and the County have a valid and enforceable contract requiring the allocation of revenue from the 1989 local option sales tax increase be dedicated solely to the educational funding of the consolidated Jackson-Madison County School System, the breach of which has or will cause County to incur harm, requiring damages and/or equitable relief.
3. That the Court issue a Permanent Injunction enjoining the City of Jackson, Tennessee from rescinding its agreement to allocate its share of the revenue generated by the local option sales tax collected pursuant to Tennessee Code Annotated § 67-6-701, *et seq.*, to the educational funding of the consolidated Jackson-Madison County School System, or from

otherwise diverting said revenues from the funding of the consolidated Jackson-Madison County School System;

4. That City bear the costs of these proceedings;
5. Any and all further and general relief that this Court deems just and equitable.

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### **MOTION FOR TEMPORARY INJUNCTION**

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COMES NOW the Plaintiff, Madison County, Tennessee (sometimes, hereafter, "County"), by and through its Counsel, pursuant to the Rules of Civil Procedure, and moves the Court to enter a Temporary Injunction against Defendant, City of Jackson, Tennessee (sometimes, hereafter, "City"). In support of said Motion, County would show unto the Court as follows:

1. County hereby adopts and incorporates as if restated herein verbatim its Complaint.
2. County respectfully requests that the Court enter a Temporary Injunction, after a hearing with notice, enjoining the City of Jackson, Tennessee from rescinding its agreement to allocate its share of the revenue generated by the local option sales tax collected pursuant to Tennessee Code Annotated § 67-6-701, *et seq.*, to the educational funding of the consolidated Jackson-Madison County School System, or from otherwise diverting said revenues from the funding of the consolidated Jackson-Madison County School System.

3. County will suffer immediate, irreparable injury, loss or damage if City is allowed to proceed with its announced intentions effective July 1, 2017 to withhold its share of the local option sales tax revenue collected pursuant to Tennessee Code Annotated § 67-6-701, *et seq.*, from educational use in support of the consolidated Jackson-Madison County School System in disregard of City's Agreement with County. Due to Maintenance of Effort requirements, County will be forced remedy the educational budget shortfall with significant tax increases and/or cuts by July 1, 2017. Due to the deadline, these tax increases and/or cuts will have to be enacted without the normal deliberation and study which would accompany such steps. Potential tax increases would require multiple public readings. Further, if County is forced to adopt such measures and subsequently prevail in its case against City, reversing these measures after a budget for fiscal year 2017-18 has been adopted will be incapable of being accomplished prior to the next fiscal year. For example, tax increases would have to be left in effect until the end of the fiscal year. Capital projects, such as those affecting law enforcement, education, and firefighting, face impact, with a corresponding impact upon the community. In addition, there is a risk to the County's bond rating, which could result in irrecoverable losses on large scale and long range projects already in motion, such as the construction of a new County jail facility.
4. This is Madison County, Tennessee's first application for extraordinary injunctive relief in this matter.

WHEREFORE, PREMISES CONSIDERED, Madison County, Tennessee respectfully requests as follows:

1. That the Court issue a Temporary Injunction enjoining the City of Jackson, Tennessee from rescinding its agreement to allocate its share of the revenue generated by the local option sales tax collected pursuant to Tennessee Code Annotated § 67-6-701, *et seq.*, to the educational funding of the consolidated Jackson-Madison County School System, or from otherwise diverting said revenues from the funding of the consolidated Jackson-Madison County School System, pending the trial of this matter;
2. Any and all further and general relief that this Court deems just and equitable.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

MADISON COUNTY, TENNESSEE

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