APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF TENNESSEE AT JACKSON

No. W2019-01157-SC-R11-CV

[Filed June 15, 2021]

JUDY MORROW WRIGHT ET AL.	)
	)
v.	)
	)
MATTEW G. BUYER ET AL.	)
	)

Probate Court for Shelby County
No. PR-7275-1

ORDER

Upon consideration of the application for permission to appeal of David L. Morrow and Judy M. Wright, and the record before us, the application is denied.

PER CURIAM

APPENDIX B

IN THE COURT OF APPEALS OF TENNESSEE AT JACKSON

No. W2019-01157-COA-R3-CV

[Filed March 2, 2021]

JUDY MORROW WRIGHT ET AL.	)
	)
v.	)
	)
MATTHEW G. BUYER ET AL.	)
	)

February 11, 2020 Session

Probate Court for Shelby County
No. PR-7275-1

JUDGMENT

This appeal came on to be heard upon the record of the Shelby County Probate Court, the arguments of counsel, and the briefs filed on behalf of the respective parties. Having considered the record, arguments, and the briefs, this Court is of the opinion that the trial court's judgment should be affirmed.

It is, therefore, ORDERED and ADJUDGED by this Court that the judgment of the trial court is affirmed. Costs on appeal are taxed against the appellants and their surety if any. We remand this matter to the trial

court for further proceedings consistent with this Court's opinion.

PER CURIAM

IN THE COURT OF APPEALS OF TENNESSEE AT JACKSON

February 11, 2020 Session

JUDY MORROW WRIGHT ET AL.	)
	)
v.	)
	)
MATTHEW G. BUYER ET AL.	)
	)

Appeal from the Probate Court for Shelby County
No. PR-7275-1 Kathleen N. Gomes, Judge

No. W2019-01157-COA-R3-CV

After their case was dismissed for lack of subject matter jurisdiction, the plaintiffs moved for relief from the judgment claiming that the trial judge should have recused herself. The court denied the motion for relief, and this appeal followed. We previously considered the plaintiffs' claims of the judge's "appearance of a predispositional bias" in an accelerated interlocutory appeal as of right under Tennessee Supreme Court Rule 10B. In that appeal, we determined that the plaintiffs had waived their right to challenge the judge's impartiality. So based on the law of the case, we affirm the denial of plaintiffs' motion for relief from the judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and CARMA DENNIS MCGEE, J., joined.

Larry E. Parrish, Memphis, Tennessee, for the appellants, David L. Morrow and Judy M. Wright.

Kenneth P. Jones and M, Matthew Thornton, Memphis, Tennessee, for the appellees, Matthew G. Buyer and SunTrust Bank, N.A.

OPINION

I.

Plaintiffs Judy M. Wright and David L. Morrow sued SunTrust Bank and Matthew G. Buyer in the Probate Court for Shelby County, Tennessee. The complaint sought "money damages from SunTrust Corporation, in its individual corporate capacity, as a tortfeasor which . . . [allegedly] usurped the role of trustee of the John Goza Lifetime Trust and took control . . . of the financial affairs of the *non compos mentis* adult, John J. Goza."[1] SunTrust did so, the plaintiffs claimed, in order "to tortiously convert use and benefit of the assets of the John Goza Lifetime Trust" to SunTrust's own use and the use of others. The plaintiffs claimed Mr. Buyer "acted for and on behalf of SunTrust Corporation, to carry out SunTrust Corporation's tortious wrongdoing, breaches of contract and conspiracy."

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[1] The plaintiffs were first cousins of John J. Goza. *See Morrow v. SunTrust Bank*, No. W2010-01547-COA-R3-CV, 2011 WL 334507, at *1 (Tenn. Ct. App. Jan. 31, 2011).

SunTrust and Mr. Buyer moved to dismiss the complaint for lack of jurisdiction and for failure to state a claim upon which relief can be granted. Among other things, the motion argued that, even if the court possessed subject matter jurisdiction, the plaintiffs' claims were barred by the applicable statutes of limitations.

The probate court granted SunTrust's and Mr. Buyer's motion to dismiss based on lack of subject matter jurisdiction. The probate court determined that the plaintiffs' complaint was "[i]n essence . . . a tort action brought against a bank and an individual." It then concluded that it had no "subject matter jurisdiction over an unliquidated tort claim as an original cause of action." *See Connell v. Walker,* 74 Tenn. 709, 714 (1881) (recognizing act creating the probate court of Shelby County had the effect of conferring on the court the original jurisdiction of a county court); Tenn. Code Ann. § 16-16-107(a)(1) (Supp. 2020) (providing for the original jurisdiction of county courts).

As an alternative basis for dismissal, the court concluded that the action was barred by the applicable statute of limitations. Because John J. Goza had been adjudicated incompetent, it determined that the tort claims alleged by the plaintiffs must have been filed, at the latest, within three years of the date of his death. *See Abels ex rel. Hunt v. Genie Indus., Inc.,* 202 S.W.3d 99, 105 (Tenn. 2006) ("The disability of unsound mind is removed when the individual is no longer of unsound mind, due either to a change in the individual's condition or the individual's death."); Tenn. Code Ann.

§ 28-1-106(c)(1) (2017) (authorizing a person's representative to commence an action "within the time of limitation for the particular cause of action, unless it exceeds three (3) years, and in that case within three (3) years from removal of such incapacity"). Mr. Goza died in 2007, but the plaintiffs filed their complaint against SunTrust and Mr. Buyer in 2016.

Although it dismissed the case for lack of subject matter jurisdiction, the court went on to conclude that an award of attorney's fees and expenses was appropriate under Tennessee Code Annotated § 20-12-119. That statute provides for an award of costs and attorney's fees "where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure for failure to state a claim upon which relief may be granted." Tenn. Code Ann. § 20-12-119(c)(1) (Supp. 2020).

A.

After the order of dismissal, the plaintiffs moved to alter or amend the order under Tennessee Rule of Civil Procedure 59.04. And while that motion was still pending, the plaintiffs moved to recuse the probate court judge. In a substituted and superseding motion to recuse, the plaintiffs claimed that the judge was "burdened by evident bias and prejudice." Specifically, the judge had appointed one of the attorneys for the defendants to serve as a substitute judge. This fact "evidence[d] a professional relationship between [the judge] and [the attorney]," creating "the appearance that [the judge] is adjudicating the instant case being defended by a person in a position as would be a

colleague who serves . . . in the same court, in the same courtroom and on the same bench."

The plaintiffs also alleged that the judge's "long history . . . as a practitioner" of trust and estate law had "'psychologically wedded' [her] to the proposition that so-called 'living trusts' are lawful in Tennessee." Thus, it would be "impossible for [the judge] to adjudicate claims for relief by [the plaintiffs] predicated on [the plaintiffs'] contention that so-called 'living trusts' are outlawed by controlling Tennessee precedent." And the judge "would give more weight" to the arguments of counsel for the defendants than to arguments of counsel for the plaintiffs.

Finally, the plaintiffs complained of the judge's "result-oriented adjudications" in cases involving the plaintiffs. This complaint extended to previous cases involving the plaintiffs as well as the current matter. The order of dismissal was just "one of many evidences of [the judge's] preexisting partiality disqualifying [the judge] as an adjudicator in the instant case or other cases involving Defendants and [the plaintiffs], where the status of John J. Goza and the probate Estate of John J. Goza is a subject matter."

The probate court denied the motion for recusal. The court found "[t]he fact that [opposing counsel] was appointed on one occasion to serve as a Substitute Judge[] d[id] not make a professional relationship" nor did it "make the Court bias[ed] in his favor." It also rejected the notion that a history of "practic[ing] in the area of Probate law and deal[ing] with many lawyers over the years" was a ground for recusal. The court noted that the validity of the trusts had "already been

determined." Although acknowledging that the plaintiffs and their counsel were upset by the court's adverse ruling, "the mere fact that a judge ha[d] ruled adversely to a party . . . in a prior judicial proceeding [wa]s not grounds for recusal." *See Davis v. Liberty Mut. Ins. Co.,* 38 S.W.3d 560, 565 (Tenn. 2001). In sum, the court found that the plaintiffs had failed to establish any personal bias or prejudice against the plaintiffs or their counsel.

B.

The plaintiffs sought an accelerated interlocutory appeal from the denial of the recusal motion. *See* TENN. SUP. CT. R. 10B § 2.01. And we affirmed the probate court. *Wright v. Buyer*, No. W2018-01094-COA-T10B-CV, 2018 WL 3546784, at *4 (Tenn. Ct. App. July 24, 2018)*, perm. app. denied,* (Tenn. Aug. 22, 2018). We concluded that the plaintiffs, who we referred to as "Petitioners," had waived their right to challenge the judge's impartiality by not promptly bringing the facts forming the basis for their motion to the court's attention.[2] *Id.*

> Here, Petitioners admit in their petition for recusal appeal that, even before the probate

[2] As an alternative ground for affirming the denial of the recusal motion, we determined that the appellate record was insufficient because the plaintiffs "did not support their recusal motion with an affidavit or a declaration under penalty of perjury on personal knowledge." *Wright,* 2018 WL 3546784, at *4; *see* TENN. SUP. CT. R. 10B § 1.01 (requiring recusal motions to "be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials").

> judge ruled on SunTrust's and Mr. Buyer's motion to dismiss, they "kn[ew] [the probate judge's] propensity to use result-oriented adjudication to defy precedent and rule according to [the probate judge's] self-centered predisposition." But Petitioners admittedly "withheld a motion to recuse in hopes that the absence of an issue concerning the unlawful use of the H. Goza Revocable Trust would suppress [the probate judge's] propensity and allow principled precedent-controlled adjudication to determine results." According to them, the dismissal order "was the most result-oriented adjudication Adjudicator had ever rendered . . . and withholding the Recusal Motion could no longer be justified."

Id. (alterations in original).

C.

During the pendency of the interlocutory appeal, the plaintiffs moved to set aside the order of dismissal in the probate court. *See* TENN. SUP. CT. R. 10B § 2.04 (providing that recusal appeals "do[] not automatically stay the trial court proceeding"). The motion specified that it did "not supersede or otherwise change" the plaintiffs' motion to alter or amend the order of dismissal, which had not been decided. Instead, the plaintiffs argued that the order of dismissal was "void *ab initio,* because it violate[d] the Fourteenth Amendment, Due Process Clause, to the United States Constitution" and was "a result-oriented adjudication, thus, per se, a violation of the Fourteenth Amendment Due Process."

The plaintiffs posited that the order of dismissal was void and violated the Fourteenth Amendment because, objectively, the probability of actual bias on the part of the judge was too high. For this point, the plaintiffs recycled the same arguments made in their substituted and superseding motion to recuse. They also relied on the same facts. But unlike their previous effort, they supported their factual assertions with an affidavit by their counsel, Larry E. Parrish.

The plaintiffs submitted that the order of dismissal was results-oriented because it failed to address a statute they claimed vested the probate court with subject matter jurisdiction. They also faulted the order for going beyond the court's subject matter jurisdiction. After determining that subject matter jurisdiction was not present, the plaintiffs deemed it "both unnecessary and 'irregular'" for the court to address the statute of limitations defense or to award costs and attorney's fees.

The plaintiffs requested that the judge recuse herself before ruling on their motion to set aside because any ruling would result in "yet another void *ab initio* order." And whether the judge decided to recuse or not, they asked that the order of dismissal be set aside.

The court denied both the motion to alter or amend and the motion to set aside. Its order concluded that both motions lacked merit. And it referenced a concession made by the plaintiffs' counsel: "Plaintiffs' counsel acknowledged at the hearing that the Motion to Set Aside Dismissal Order has to do with nothing other than whether the Judge adjudicated the

Dismissal Order with an appearance of non-neutrality and not whether the adjudication of the Dismissal Order was/is meritorious."

II.

In this appeal, the plaintiffs again focus on the impartiality of the probate court judge. They raise a single issue for review. Specifically,

> Does the Fourteenth Amendment, United States Constitution, per *Williams v. Pennsylvania,* [136 S. Ct. 1899 (2016)] . . . , combined with the Fourteenth Amendment "first instance" doctrine defined in *Concrete Pipe* & *Prod. of California, Inc. v. Constr. Laborers Pension Tr. for S. California,* 508 U.S. 602, 617-18 (1993); *Hamdi v. Rumsfeld,* 542 U.S. 507, 533 (2004); *Marshall v. Jerrica, Inc.,* 446 U.S. 238, 248 (1980) and *Ward v. Vill. Of Monroeville, Ohio,* 409 U.S. 57, 61-62 (1972), create, for state court litigants in all states, an inviolate right to be judged by trial court adjudicators as to whom there exists no risk of an appearance that the adjudicator might (in the future) adjudicate, might have (in the past) adjudicated or might (presently) be adjudicating the litigant's dispute with a temptation that might undermine the Fourteenth Amendment required neutrality of the adjudicator?[3]

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[3] In oral argument, counsel for the plaintiffs reframed the issue: "The issue on appeal exclusively, as I see it, is the qualification of Judge Gomes to decide anything in this case. It is—it's not the merits; none of the merits about any of the underlying issues are

SunTrust and Mr. Buyer respond that the plaintiffs' attempt to disqualify the "judge has already been thoroughly heard and denied." And, due to the law of the case doctrine, the plaintiffs are not entitled to be heard on the issue again.

The "law of the case" doctrine "generally prohibits reconsideration of issues that have already been decided in a prior appeal of the same case." *Memphis Publ'g Co. v. Tenn. Petroleum Underground Storage Tank Bd.,* 975 S.W.2d 303, 306 (Tenn. 1998) (citing 5 Am. Jur. 2d *Appellate Review§* 605 (1995)). Thus, "an appellate court's decision on an issue of law is binding in later trials and appeals of the same case if the facts on the second trial or appeal are substantially the same as the facts in the first trial or appeal." *Id.* (citing *Life & Casualty Ins. Co v. Jett,* 133 S.W.2d 997, 998-99 (Tenn. 1939); *Ladd ex rel. Ladd v. Honda Motor Co., Ltd.,* 939 S.W.2d 83, 90 (Tenn. Ct. App. 1996)). The doctrine extends "to issues that were actually before the appellate court in the first appeal and to issues that were necessarily decided by implication" but not to dicta. *Id.* (citing *Ladd ex rel. Ladd,* 939 S.W.2d at 90). It binds the trial court following remand from the appellate court and the appellate court if a second appeal is taken following remand. *Id.* The law of the case doctrine also extends to appellate decisions arising

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at issue in this case . . . "

from interlocutory appeals.[4] *Ladd ex rel. Ladd,* 939 S.W.2d at 90.

In their reply brief, the plaintiffs offer a variety of reasons for why law of the case should not apply. They submit that "[a]n order on a Rule 10 recusal motion is not a ruling by a court" and a "Rule 10B appeal is not an appeal from a ruling by a court." Because, according to the plaintiffs, "[n]either granting a S. Ct. Rule 10 recusal motion nor denying same effects [sic] the merits of [the] case," the law of the case doctrine cannot be implicated.

The plaintiffs' argument undercuts a basic premise of their appeal: "because the . . . dismissal order . . . was adjudicated by a disqualified adjudicator, the . . . dismissal order . . . is void *ab initio."* They tie recusal, or rather the failure to recuse, to the merits of the court's decision. Because "the trial court adjudicator is disqualified," they claim the "dismissal order . . . must be set aside." The plaintiffs cannot have it both ways.

Next the plaintiffs argue that our opinion from the accelerated interlocutory appeal was itself void *ad initio.* They claim that they "confessed error and mooted the appeal altogether before the Rule 10B appellate panel decided the Rule 10B Appeal." In the interlocutory appeal, we noted that the plaintiffs sought dismissal of their appeal in order to correct an oversight in their substituted and superseding motion

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[4] The doctrine applies even if our decision has not been reviewed by the supreme court. *Ladd ex rel. Ladd,* 939 S.W.2d at 91. The doctrine "does not apply to . . . appellate . . . opinions that have been reversed or vacated." *Id.*

to recuse. *Wright,* 2018 WL 3546784, at *3 n.5. But we denied that request. *Id.* So we decline the plaintiffs' invitation to proceed "as if neither the Rule 10[B] recusal motion nor the Rule 10B Appeal ever occurred." They did occur. And the plaintiffs lost on the question of the judge's impartiality.

Still, we will revisit an issue decided in a prior appeal under three limited circumstances:

> (1) the evidence offered at a trial or hearing after remand was substantially different from the evidence in the initial proceeding; (2) the prior ruling was clearly erroneous and would result in a manifest injustice if allowed to stand; or (3) the prior decision is contrary to a change in the controlling law which has occurred between the first and second appeal.

Memphis Publ'g Co., 975 S.W.2d at 306. The plaintiffs seemingly invoke the first two circumstances as additional reasons for not applying the law of the case doctrine.

They claim that the facts changed since the filing of their recusal motion and their motion to set aside, which relied on Tennessee Rule of Civil Procedure 60.02. The plaintiffs explain that "the facts most significant to the determination of the instant Rule 60.02 Appeal had not even occurred at the time the Rule 10B Appeal was initiated; thus, the Rule 10B Appeal could not have decided anything about the subsequently occurring facts that are determinative of the instant Rule 60.02 Appeal." Specifically, the plaintiffs refer to the events of May 30, 2019, when the

probate court held a hearing on the plaintiffs' motion to alter or amend and motion to set aside. At that hearing, the court also considered motions to quash subpoenas issued on behalf of the plaintiffs and directed to the probate court judge, the probate court clerk, the Tennessee Bar Association, and others. The plaintiffs submit that the probate court judge had a duty under the Due Process Clause of the Fourteenth Amendment to withdraw and to not decide the motions.

We do not find the facts substantially different from when we addressed recusal in the accelerated interlocutory appeal. The plaintiffs still maintain that the judge's experience as a practicing attorney makes her biased. They "suggest that an adjudicator who had the best interest of former clients at risk for the professional services rendered by the adjudicator, while in private practice, could adjudicate whether the advice given and documents drafted by the adjudicator were against the law . . . is beyond unthinkable." We addressed that same factual claim in the prior appeal. *Wright,* 2018 WL 3546784, at *2. And we deemed it waived. *Id.* at *4.

Although the plaintiffs do not use the words "clearly erroneous, or "manifest injustice" in describing our prior opinion, they do complain that Tennessee law governing disqualification or recusal is "inconsistent and/or incompatible" with the United States Supreme Court's decision in *Williams v. Pennsylvania,* 136 S. Ct. 1899 (2016). In *Williams,* the Supreme Court held that, "[w]here a judge has had an earlier significant, personal involvement as a prosecutor in a critical decision in the defendant's case, the risk of actual bias

in the judicial proceeding rises to an unconstitutional level." *Id.* at 1910.

We disagree that *Williams* is inconsistent or incompatible with Tennessee law. Recently, our supreme court cited *Williams* for the proposition that, in deciding whether a prosecutor turned judge should recuse from a criminal case, the judge's supervisory authority when a prosecutor is a consideration. *State v. Griffin,* 610 S.W.3d 752, 760 (Tenn. 2020). But, later in the same opinion, the court reaffirmed that "the analysis for impartiality . . . is whether 'a person of ordinary prudence in the judge's position, *knowing all of the facts known to the judge,* would find a reasonable basis for questioning the judge's impartiality.'" *Id.* at 762 (quoting *State v. Cannon,* 254 S.W.3d 287, 307 (Tenn. 2017). The analysis is an objective one. *Id.* at 758. The analysis employed by *Williams* is as well. *See Williams,* 136 S. Ct. at 1905.

Even if we accept the notion that *Williams* "constitutionaliz[ed] judicial recusal under the Fourteenth Amendment," as plaintiffs argue, the law of the case would still thwart the plaintiffs' current effort to set aside the order of dismissal based upon disqualification of the probate court judge. Due process rights may be waived. *See Bailey v. Blount Cty. Bd. of Educ.,* 303 S.W.3d 216, 238 (Tenn. 2010). And in the previous appeal, we determined that all the plaintiffs' claims about the probate judge had been waived. *Wright,* 2018 WL 3546784, at *4.

Our decision in the accelerated interlocutory appeal has become the law of the case as to the sole issue raised by the plaintiffs in this appeal. The plaintiffs

raised the same concerns regarding the probate judge in their interlocutory appeal as they do now. So we will not revisit the issue of disqualification of the judge.

III.

We affirm the judgment of the trial court. The case is remanded for any further proceedings, consistent with this opinion, that may be necessary.

/s/ W. Neal McBrayer
W. NEAL McBRAYER, JUDGE

APPENDIX C

IN THE COURT OF APPEALS OF TENNESSEE AT JACKSON

No. W2018-01094-COA-T10B-CV

[Filed July 24, 2018]

JUDY MORROW WRIGHT ET AL.	)
	)
v.	)
	)
MATTHEW G. BUYER ET AL.	)
	)

Assigned on Briefs June 15, 2018

Appeal from the Probate Court for Shelby County
No. PR-7275 Kathleen N. Gomes, Judge

This is an accelerated interlocutory appeal as of right from the denial of a motion for recusal. In their petition for recusal appeal, Petitioners admit that they did not promptly file the recusal motion after the facts forming the basis for the motion became known. As such, Petitioners waived their right to challenge the probate judge's impartiality. The record is also insufficient to support a finding of error on the part of the probate judge because the motion for recusal was unaccompanied by an affidavit as required by the rules.

Thus, we affirm the probate court's denial of the recusal motion.

Tenn. Sup. Ct. R. 10B Accelerated Interlocutory Appeal as of Right; Judgment of the Probate Court Affirmed and Case Remanded

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which THOMAS R. FRIERSON II and ARNOLD B. GOLDIN, JJ., joined.

Larry E. Parrish, Memphis, Tennessee, for the appellants, Judy M. Wright and David L. Morrow.

OPINION

I.

Petitioners, Judy M. Wright and David L. Morrow, are first cousins of the late John J. Goza, the son of Helen B. Goza. *See Morrow v. SunTrust Bank*, No. W2010-01547-COA-R3-CV, 2011 WL 334507, at *1 (Tenn. Ct. App. Jan. 31, 2011). Petitioners, along with the Estate of John J. Goza,[1] filed what was entitled a "FIRST AMENDED COMPLAINT FOR CIVIL CONSPIRACY TO DEFRAUD AND TO CONVERT PROPERTY OF NON COMPOS MENTIS[2] CESTUI

[1] Although the first amended complaint included the Estate of John J. Goza as a party-plaintiff, none of the other pleadings or orders in the supporting documents filed with this appeal list the Estate as a party. The Estate is also not a party to this appeal.

[2] *Non compos mentis* is Latin for "not master of one's mind." *Non compos mentis*, BLACK'S LAW DICTIONARY (10th ed. 2014).

QUE TRUST,[3] TO BREACH INDIVISIBLE DUTY OF LOYALTY, FOR FRAUD, FOR BREACH OF CONFIDENCE/CONFIDENTIAL RELATIONSHIP, FOR CONVERSION AND FOR NEGLIENCE [sic]" against SunTrust Bank and Matthew G. Buyer in the Probate Court for Shelby County, Tennessee.

At ninety-one pages, all but one page of which is exhibited to the petition for recusal appeal, the first amended complaint defies succinct description. The first amended complaint does contain a two and one-half page "Preface," which is somewhat illuminating. The "Preface" provides as follows:

> This complaint seeks money damages from SunTrust Corporation, in its individual corporate capacity, as a tortfeasor which, though disqualified (paragraph 181f herein) as a trustee by a patent conflict of interests, usurped the role of trustee of the John Goza Lifetime Trust and took control (without any accountability to any duly authorized conservator or guardian answerable to a court of competent jurisdiction) of the financial affairs of the non compos mentis adult, John J. Goza, the decedent of plaintiff, The Estate of John J. Goza (hereinafter "Estate"). The purpose, Estate alleges, was to tortiously convert use and benefit of the assets of the John Goza Lifetime Trust to the use and benefit of SunTrust Corporation and others (e.g.,

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[3] *Cestui que trust* refers to "[s]omeone who possesses equitable rights in property" or, in other words, a beneficiary. *Cestui que trust*, BLACK'S LAW DICTIONARY (10th ed. 2014).

> Perpetual Charitable Trust) with interests in conflict to John J. Goza's interests.
>
> Mr. Buyer is the agent of SunTrust Corporation who acted for and on behalf of SunTrust Corporation, to carry out SunTrust Corporation's tortious wrongdoing, breaches of contract and conspiracy.
>
> Among other injuries, the complaint seeks recovery of compensatory damages for SunTrust Corporation and Mr. Buyer intentionally causing John J. Goza to suffer personal injury.

Later in the first amended complaint, we learn that Petitioners also seek "punitive damages inuring to the benefit of Estate by virtue of the tortious acts/omissions causing . . . personal injury and economic injury to John J. Goza, during part of John J. Goza's life, more particularly from May 15, 2001 through the September 2[6], 2007 death of John J. Goza."

The Preface also explains that the first amended complaint does not challenge the creation or existence of either of the referenced trusts. The Preface begins as follows:

> The hereinafter complaint presupposes that the John Goza Lifetime Trust . . . and the Perpetual Charitable Trust . . . were created and the John J. Goza Lifetime Trust existed until terminated by the cessation of John J. Goza's Lifetime [sic] and, in the case of the Perpetual Charitable Trust, has continued uninterruptedly to exist.

The Preface concludes as follows:

> The instant claims for relief are solely based on the fact that SunTrust Corporation and Mr. Buyer "committed a wrongful or tortious act" and not all [sic] on "whether or no [sic] not a trust in fact exists" or anything about "the proper court" to determine whether a "trust in fact exists."

Ultimately, the probate court granted SunTrust's and Mr. Buyer's motion to dismiss based on lack of subject matter jurisdiction and the expiration of the statute of limitations. The probate court concluded it had no "subject matter jurisdiction over an unliquidated tort claim as an original cause of action." *See* Tenn. Code Ann. § 16-16-107 (Supp. 2017). The court further concluded that the three-year limitations period for a tort action had long expired because the cause of action accrued on September 26, 2007, upon Mr. Goza's death. *See id*. § 28-1-105 (2017).

In response to the probate court's order of dismissal, Petitioners filed a motion to recuse, and later, a substituted and superseding motion to recuse. Among other things, Petitioners sought recusal of the probate court judge because Matthew Thornton, one of the attorneys for the defendants, previously served as substitute judge for the probate court. According to Petitioners, this fact "evidence[d] a professional relationship between [the probate court judge] and Mr. Thornton," creating "the appearance that the [probate court judge] is adjudicating the instant case being defended by a person in a position as would be a colleague who serves . . . in the same court."

Petitioners also alleged that the probate court judge's "long history . . . as a practitioner" of trust and estate law involved performing tasks "associated with so-called 'living trusts.'" As a result, Petitioners argued that the probate court judge's prior legal experience "has so 'psychologically wedded' [her] to the proposition that so-called 'living trusts are lawful in Tennessee," making "it impossible for [the probate court judge] to adjudicate claims for relief by [Petitioners] predicated on [Petitioners'] contention that so-called 'living trusts' are outlawed by controlling Tennessee precedent."

The probate court entered an order denying the motion for recusal. The court found "[t]he fact that Mr. Thornton was appointed on one occasion to serve as a Substitute Judge[ ] does not make a professional relationship" nor does it "make the Court bias[ed] in his favor." The court also denied that her history of "practic[ing] in the area of Probate law and deal[ing] with many lawyers over the years" was a ground for recusal because the validity of the trusts "has already been determined." The court found that Petitioners "failed to establish that this Court is biased or prejudiced in any way against" Petitioners or their counsel. From this order, Petitioners seek an accelerated interlocutory appeal.

II.

A.

Rule 10B of the Rules of the Supreme Court of Tennessee governs the procedure for "determin[ing] whether a judge should preside over a case." TENN. SUP. CT. R. 10B. Section 2 of that rule governs appeals

from a trial court's denial of a motion for disqualification or recusal. The unsuccessful movant can either seek "an accelerated interlocutory appeal as of right . . . or the ruling can be raised as an issue in an appeal as of right . . . following the entry of the trial court's judgment." *Id.* § 2.01. These are "the exclusive methods for seeking appellate review." *Id.* In this instance, Petitioners asserted that they filed a timely motion to alter or amend the order of dismissal under Rule 59.04 of the Tennessee Rules of Civil Procedure; if so,[4] the order of dismissal is not yet final. *See* TENN. R. APP. P. 4(b); *see also Ball v. McDowell*, 288 S.W.3d 833, 836 (Tenn. 2009).

An accelerated interlocutory appeal as of right is initiated by the filing of "a petition for recusal appeal." *Id.* § 2.02. The petition for recusal appeal must contain certain elements and be accompanied by certain documentation to facilitate appellate review, which we are required to carry out "on an expedited basis." *Id.* §§ 2.03, 2.06. In a Rule 10B appeal, "the only order we may review is the trial court's order that denies a motion to recuse." *Duke v. Duke*, 398 S.W.3d 665, 668 (Tenn. Ct. App. 2012). We review a trial judge's ruling on a recusal motion "under a de novo standard of review." TENN. SUP. CT. R. 10B § 2.01.

After a review of the petition and supporting documents, we have determined that an answer, additional briefing, and oral argument are

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[4] The motion to alter or amend under Rule 59 is not included in the record on appeal. But whether we treat this as an accelerated interlocutory appeal or not, the outcome would be the same.

unnecessary. *See id.* §§ 2.05, 2.06. Thus, we act summarily on the appeal.[5] *See id.* § 2.05.

B.

In Tennessee, litigants "have a fundamental right to a 'fair trial before an impartial tribunal.'" *Holsclaw v. Ivy Hall Nursing Home, Inc.*, 530 S.W.3d 65, 69 (Tenn. 2017) (quoting *State v. Austin*, 87 S.W.3d 447, 470 (Tenn. 2002)); *see also* TENN. CONST. art VI, § 11. This right is not absolute, however; the party seeking recusal must file the recusal motion "promptly after the facts forming the basis for the motion become known." *Kinard v. Kinard*, 986 S.W.2d 220, 228 (Tenn. Ct. App. 1998). "It is a well known and well accepted rule that a party must complain and seek relief immediately after the occurrence of a prejudicial event and may not silently preserve the event as an 'ace in the hole' to be used in event of an adverse decision." *Gotwald v. Gotwald*, 768 S.W.2d 689, 694 (Tenn. Ct. App. 1988) (quoting *Spain v. Connolly*, 606 S.W.2d 540, 543 (Tenn. Ct. App. 1980)). A party's failure to take action "in a

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[5] While this case was pending on appeal, Petitioners filed a motion to dismiss their petition for recusal appeal. According to Petitioners, "by oversight," their substituted and superseding motion to recuse did not quote "the precise and exact words" contained in § 1.01 of Rule 10B. The section requires that any motion seeking disqualification or recusal of a trial judge to "affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." TENN. SUP. CT. R. 10B § 1.01. Petitioners seek dismissal for purpose of filing a new motion to recuse, including any missing language. We deny the motion to dismiss the petition for recusal appeal.

timely manner results in a waiver of a party's right to question a judge's impartiality." *Kinard*, 986 S.W.2d at 228.

We conclude Petitioners waived their right to challenge the probate judge's impartiality in this case. Here, Petitioners admit in their petition for recusal appeal that, even before the probate judge ruled on SunTrust's and Mr. Buyer's motion to dismiss, they "kn[ew] [the probate judge's] propensity to use result-oriented adjudication to defy precedent and rule according to [the probate judge's] self-centered predisposition." But Petitioners admittedly "withheld a motion to recuse in hopes that the absence of an issue concerning the unlawful use of the H. Goza Revocable Trust would suppress [the probate judge's] propensity and allow principled precedent-controlled adjudication to determine results." According to them, the dismissal order "was the most result-oriented adjudication Adjudicator had ever rendered . . . and withholding the Recusal Motion could no longer be justified."

Even if the issue was not waived, we further conclude the record is insufficient to support a finding that the probate court judge erred in its denial of the motion to recuse. *See, e.g., Elseroad v. Cook*, No. E2018-00074-COA-T10B-CV, 2018 WL 576658, at *4-5 (Tenn. Ct. App. Jan. 26, 2018); *Johnston v. Johnston*, No. E2015-00213-COA-T10B-CV, 2015 WL 739606, at *2 (Tenn. Ct. App. Feb. 20, 2015). Rule 10B § 1.01 provides that the motion to recuse "**shall** be supported by an affidavit under oath or a declaration uder penalty of perjury on personal knowledge." TENN. SUP. CT. R. 10B § 1.01 (emphasis added). We have

interpreted this language as mandatory. *Johnston*, 2015 WL739606, at *2. Here, despite arguing that the court's order denying the recusal motion "must be given less deference than the words of the Recusal Motion because the former are unsworn, and the latter are sworn," Petitioners did not support their recusal motion with an affidavit or a declaration under penalty of perjury on personal knowledge.[6] We have previously stressed "that the accelerated nature of these interlocutory appeals as of right requires meticulous compliance with the provisions of Rule 10B regarding the content of the record provided to this Court." *Id*. "As such, it is imperative that litigants file their petitions for recusal appeal in compliance with the mandatory requirements of Rule 10B in the first instance." *Id*.

III.

Based on waiver and Petitioners' failure to properly support their motion, we conclude that the probate court did not err in its denial of the recusal motion. Thus, we affirm the decision of the probate court. This

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[6] According to the probate court judge, "[t]he accusations and allegations [in the substituted and superseding motion to recuse] are based on innuendo and suppositions, and not based on fact." We agree, and not just because of the lack of an affidavit or declaration. For example, in their memorandum in support of the motion to recuse, Petitioners concede that "it is anticipated by probable cause, but not yet known for certain, that [the probate court judge], in private practice, advised clients that living trusts are an enforceable means by which a living trust settlor can control post-death distribution of the living trust's corpus." Yet Petitioners describe this slender reed as their "[f]irst and foremost" basis for recusal.

case is remanded for such further proceedings as may be necessary.

_____

W. NEAL McBRAYER, JUDGE

APPENDIX D

IN THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE (Div. 1)

No. PR007275

[Filed June 3, 2019]

JUDY MORROW WRIGHT and DAVID MORROW, JR.,	)
Plaintiffs,	)
MATTHEW G. BUYER and SUNTRUST BANK,	)
Defendants.	)

ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND AND PLAINTIFFS' MOTION TO SET ASIDE APRIL 10, 2018 DISMISSAL ORDER

Before the Court pursuant to Tenn. Ct. App. R. 59 and R. 60 are Plaintiffs' April 19, 2018 Motion to Alter or Amend April 10, 2018 Dismissal Order; June 14, 2018 Memorandum in Support of Motion to Alter or Amend; July 6, 2018 Motion to Set Aside April 10, 2018 Dismissal Order, With Attached Affidavit; and May 28,

2019 Supplemental Memorandum in Support of Motion to Set Aside April 10, 2018 Dismissal Order.

The Motions were heard in open court on May 30, 2019. The Court also heard motions to quash which are the subject of a separate order. Upon the Motions, Defendants' August 28, 2018 Response in Opposition, the arguments of counsel, and the record in this cause, the Court hereby finds as follows:

1. The Court reaffirms its rulings in the April 10, 2018 Dismissal Order.

2. The Rule 59 Motion to Alter or Amend the Dismissal Order is not well-taken.

3. Plaintiffs' counsel acknowledged at the hearing that the Motion to Set Aside Dismissal Order has to do with nothing other than whether the Judge adjudicated the Dismissal Order with an appearance of non-neutrality and not whether the adjudication of the Dismissal Order was/is meritorious.

4. The Rule 60 Motion to Set Aside the Dismissal Order is not well-taken.

5. Pursuant to Rule 54, this order adjudicates all the claims and rights and liabilities of all the parties and is the final judgment in this cause.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that neither the Motion to Alter or Amend Judgment nor the Motion to Set Aside Judgment is well-taken and both motions are denied. Pursuant to Tenn. R. Civ. P. 54, this order adjudicates all the claims and rights and liabilities of all the

parties and is the final judgment in this cause. Costs are assessed against Plaintiffs.

This the ____ day of **JUN 03 2019**, 2019.

KATHLEEN N. GOMES
KATHLEEN N. GOMES
Probate Court Judge, Part I

[seal]

APPENDIX E

IN THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE

Docket No. PR-7275 - I

[Filed May 21, 2018]

IN RE:	)
	)
JUDY MORROW WRIGHT and DAVID MORROW, JR.,	)
Plaintiffs,	)
	)
v.	)
	)
MATTHEW G. BUYER and SUNTRUST BANK,	)
	)
Defendants.	)

ORDER DENYING SUBSTITUTED AND SUPERCEDING MOTION TO RECUSE

Plaintiffs' Motion to Recuse was brought to this Court's attention when attorney Larry Parrish brought a courtesy copy of his Memorandum in Support of Motion to Recuse, dated May 11, 2018. Upon then reviewing the Court file, it appears that attorney Larry Parrish filed a Motion to Recuse on April 26, 2018. No courtesy copy of this Motion was provided to the Court,

so the Court was unaware that a Motion was filed. Further, upon reviewing the file, it appears that on May 14, 2018, Plaintiffs filed a Substituted and Superceding Motion to Recuse. Unless a matter is set on the Court's docket or a copy of the pleading is provided to the Court, this Court has no idea what is filed in any case.

Plaintiffs' Substituted and Superceding Motion to Recuse alleges the following four reasons that this Court should recuse itself from this case:

(1) The Court is bias and prejudice in violation of the United States Constitution and the Tennessee Constitution;

(2) That Matthew Thornton, one of the attorneys for the Defendant, has served as a Substitute Judge for the Court, thereby evidencing a professional relationship with Mr. Thornton;

(3) The Court's long history as a practitioner is wedded to utilizing Living Trusts, and the Court believes Living Trusts are valid in Tennessee and therefore would give more weight to the arguments of the Defendants;

(4) That the Court adjudicated this case by result-oriented adjudication and did not adjudicate impartially.

This Court is bound by the Rules of Judicial Conduct. Rule 10, Cannon 2.2 states: "A judge shall

uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Rule 2.3(A) further states that: "A judge shall perform the duties of judicial office . . . without bias or prejudice."

The Rules further state:

> (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:
>
> (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

Rule 10, Cannon 2.11 (A)(1).

As in all cases, this Court reads the record, listens to oral argument, researches the law and writes an Opinion based on the law. The Goza case is no different. Even though many of the facts had come before this Court before, the Court made a decision based on the law, not on the lawyer or his clients. Mr. Parrish has accused this Court in his Memorandum of: " . . . deliberately, intentionally and with forethought, evading and avoiding Tennessee's controlling precedent, including Tennessee's precedent-on-precedent." (Memorandum, p. 69).

The Memorandum further accuses this Court of ethical violations. The Memorandum states: "Your Honor has ethical obligations which are, at best, borderline, if not violated by some ways in which your Honor has portrayed counsel." (Memorandum, p. 50).

This Court disputes these accusations and would state that this Court's decision was made based on the law and not on any result-oriented adjudication or bias. The Motion alleged that this Court has a professional relationship with Matthew Thornton and that is not true. The fact that Mr. Thornton was appointed on one occasion to serve as a Substitute Judge, does not make a professional relationship. The fact that this Court knows many of the attorneys who practice in Probate Court, does not constitute a professional relationship with any of them. Lawyers are periodically asked by both Probate Judges to sit as Substitute Judges. The selection of any Substitute Judge is because the appointed lawyer practices Probate law. The fact that Mr. Thornton has been appointed does not make the Court bias in his favor. Nothing in Plaintiffs' Memorandum points to bias.

Further, the fact that this Judge practiced in the area of Probate law and dealt with many lawyers over the years, is not grounds for recusal. The issue of the validity of Revocable Living Trusts in Tennessee has already been determined and it is not a question of prejudice or bias. The accusations and allegations are based on innuendo and suppositions, and not based on fact.

This Court understands that Mr. Parrish and his clients are upset because of the decision made by this

Court; however, an adverse decision by a Court is not grounds for recusal.

> [T]he mere fact that a judge has ruled adversely to a party or witness . . . is not grounds for recusal . . . . If the rule were otherwise, recusal would be required as a matter of course since trial courts necessarily rule against parties and witnesses in every case, and litigants could manipulate the impartiality issue for strategic advantage, which the courts frown upon.

Davis v. Liberty Mutual Insurance Co., 38 S.W.3d 560, 565 (Tenn. 2001) as cited in In re Estate of James E. Miller, No. E. 2018-00658-COA-T10B-CV, (Tenn. Ct. App.) April 27,2018.

The Miller case further cited McKenzee v. McKenzee, 2014 WL § 75908 at *8, stating:

> Generally, in order to justify recusal, any alleged bias must arise from extrajudicial sources and not from events or observations during litigation of a case. If the bias is alleged to stem from events occurring [*sic*] in the course of the litigation of the case, the party seeking recusal has a greater burden to show bias that would require recusal, i.e. that the bias is so pervasive that it is sufficient to deny the litigant a fair trial.

This Court has no animosity toward Mr. Parrish or his clients. This Court follows the law and in this case, the law did not support Mr. Parrish's position.

It should further be noted that this Court had no knowledge of any Board complaint filed against Mr. Parrish until he mentioned it in oral argument of the Motion to Dismiss. This Court knew nothing about the actual allegations until Mr. Parrish included a copy of the transcript argument before the Tennessee Supreme Court as part of his exhibits to his Memorandum. His situation with the Board of Professional Responsibility played no part in this Court's decision to dismiss the Complaint, and further, it has no bearing on this Court's decision regarding this Motion to Recuse.

In this Court's opinion, Mr. Parrish has failed to establish that this Court is bias or prejudiced in any way against Mr. Parrish or his clients. "The terms 'bias'and 'prejudice' generally refer to a state of mind or attitude that works to predispose a judge for or against a party, however, '[n]ot every bias, partiality, or prejudice merits recusal.'" Alley v. State, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994) as cited in Ricky L. Boren v. Hill Boren, P.C., W2017–02255-COA-T10B-CV (Tenn. Ct. App., December 21, 2017).

This Court dismissed Mr. Parrish's Complaint based on the law. This Court does not rule based on result-oriented adjudication. Each case is examined and researched based on the law. It is a fact that the Goza case has been before this Court on several occasions. Regardless of that fact, this Court decided the case on the law. Mr. Parrish has failed to establish that this Court has any personal bias or prejudice against him or his clients. Therefore, this Court denies the Substituted and Superceding Motion to Recuse.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Substituted and Superceding Motion to Recuse is denied.

/s/ Kathleen N. Gomes
JUDGE KATHLEEN N. GOMES

DATE: **MAY 21, 2018**

APPENDIX F

FIN THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE

Docket No. PR-7275 - I

[Filed April 10, 2018]

IN RE:	)
	)
JUDY MORROW WRIGHT	)
and DAVID MORROW, JR.;	)
Plaintiffs,	)
	)
v.	)
	)
MATHEW G. BUYER	)
and SUNTRUST BANK,	)
Defendants.	)
	)

ORDER OF DISMISSAL

THIS CAUSE came on to be heard upon a Motion to Dismiss, filed by Defendants; upon Memoranda of Plaintiffs and Defendants, filed in this cause; upon statements of counsel; upon the entire record; and the Court finds as follows:

1. On October 21, 2016, Judy Morrow Wright and David Morrow, Jr. filed a lawsuit against Mathew G. Buyer, Individually, and SunTrust Bank, styled "Complaint for Civil Conspiracy to Defraud and to

Convert Property of Non Compos Mentis Cestui Que Trust, to Breach Indivisible Duty of Loyalty, for Fraud, for Breach of Confidence/Confidential Relationship, for Conversion and for Negligence."

2. This lawsuit was originally filed in Division II of the Probate court of Shelby County, Tennessee. On January 17, 2017, the Defendants filed a "Motion to Transfer Case to Part I of Probate Court, or, in the Alternative, to Dismiss Complaint." On the same day, Defendants filed a "Memorandum in Support of Defendants' Motion to Transfer Case, or, in the Alternative, to Dismiss Complaint."

This Court realizes that alternative grounds for dismissing a lawsuit are not necessary and it is irregular, but candidly, this Court believes that it is time for this litigation to end. The purpose of Helen Goza Trust was to fund programs for disabled persons, and her wishes have been thwarted by the wasteful, continuous litigation of the Plaintiffs.

Therefore, pursuant to T.R.C.P. 12.02(6), this matter should be dismissed or failure to state a claim upon which relief can be granted. Pursuant to T.C.A. § 20-12-119, this Court has discretion to award costs and attorney fees

> . . . where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure for failure to state a claim upon which relief can be granted, the court shall award the party or parties against whom the dismissed claims were pending at the time of the successful motion to dismiss was granted the

> costs and reasonable and necessary attorney's fees incurred in the proceedings as a consequence of the dismissed claims by that party or parties.

T.C.A. § 20-12-119(c)(1). This Court hereby has determined that fees and expenses should be awarded against David Morrow and Judy Wright.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:

1. The Motion of Defendants is granted and the Complaint is dismissed, pursuant to T.R.C.P. 12.02, because this Court lacks subject matter jurisdiction, to the findings stated herein.

2. Alternatively, the Motion to Dismiss is granted and the Complaint is dismissed as the allegations are time-barred, and pursuant to T.R.C.P. 12.02(6), the Complaint fails to state a claim upon which relief can be granted.

3. Further, pursuant to T.C.A. § 20-12-119(c)(1), this Court awards all costs and reasonable and necessary attorney fees incurred in this proceeding to be paid by the Plaintiffs. A separate hearing will be set to assess the fees and costs.

/s/ Kathleen N. Gomes
JUDGE KATHLEEN N. GOMES
DATE: **APR 10 2018**

APPENDIX G

IN THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE

No. D-10567

[Filed November 27, 2012]

IN THE MATTER OF:	)
THE ESTATE OF JOHN J. GOZA,	)
Deceased	)
	)

AFFIDAVIT OF LARRY E. PARRISH IN SUPPORT OF RENEWED MOTION TO RECUSE

COMES NOW affiant, Larry E. Parrish (hereinafter **"I," "me," "my" or "mine"**), and states that I am over the age of 21 years, of sound and disposing mind and qualified to give testimony in the courts of the United States and of Tennessee. Having so stated, I make oath that all of the information hereinafter stated is personal and firsthand to me.

* * *

3. Since May 6, 1968, I have been licensed to practice law in Tennessee and, uninterruptedly, since before May 6, 1968 I have engaged in the practice of law.

* * *

[pp. 3]

* * *

11. For over twenty years, I have personally known and known of Judge Benham and his reputation as a practicing member of the bar in Shelby County and, thereafter, as a distinguished member of the judiciary of the Thirtieth Judicial District, Shelby County, Tennessee.

12. At no time during the period have I known Judge Benham and known Judge Benham's reputation among his peers, have known his reputation to be anything but exemplary and him to be a person with admirable qualities to which others would aspire.

13. Before Judge Benham assumed his position as a Probate Judge, he was among the luminaries in the practice of trust and estate law in Shelby County.

14. As a practitioner concentrating his practice in trust and estate law before, during and after the continuing consumer "avoid probate" craze spawned by Dacey, Judge Benham was among the leading trust and estate attorneys in Shelby County to use the revocable living trust to satisfy the demand of clients desiring to "avoid probate," i.e., maintain complete control of all assets while alive and, by an "agreement" during the settlor's lifetime, control distribution of

assets after the settlor's death without involvement of a probate court.

* * *

[pp. 4]

* * *

17. Though I never discussed the subject personally with Judge Benham, during his private practice, I have been told by Judge Benham's peers that Judge Benham served as the attorney for numerous clients preparing for them revocable living trust agreements to accomplish for clients the have-your-cake-and-eat-it-too objective.

* * *

19. To avoid breaching confidences, I will withhold names, but, by heresay, make oath, that I have been told by a person who professes to have firsthand information, that, while Judge Benham was practicing, Judge Benham, literally, drafted for clients what may be thousands of revocable living trust agreements.

20. From what I am told, the revocable living trust agreements, routinely and on multiple occasions, drafted by Judge Benham, while he was practicing law, in no material respects, deviated in form or substance from the revocable living trust agreement which is the center of the controversy between Estate and SunTrust Bank (hereinafter

"SunTrust"), save only that each revocable living trust agreement differs from the other with regard to particulars customized for a particular client/settlor.

21. Again, to avoid breaching confidence, I will withhold the names, but make oath that I have been told by persons professing to have firsthand knowledge, that, for Judge Benham to rule that The Helen B. Goza Revocable Living Trust, at the moment of Mrs. Goza's May 15, 2001 death, terminated and that The Helen B. Goza Revocable Living Trust Agreement, after Mrs. Goza's death, had no force or effect, leaving the corpus thereof to be distributed by probate, in terms of practical effect, would cause Judge Benham to rule that advice Judge Benham, while a practicing lawyer, gave clients (probably hundreds in number) was inconsistent with law controlling at the time he gave the advice.

22. If Judge Benham self-reported that Judge Benham, any member of Judge Benham's family (including spouse, parents, siblings, children or grandchildren) was either a beneficiary, a settlor or a trustee of a revocable living trust living where the settlor died prior to July 1, 2004 and/or what is thought to be a "trust," referred in a revocable living trust agreement (where the settlor died prior to July 1, 2004), which was funded for the first time after the pre-July 1,

2004 death of the revocable living trust settlor, Judge Benham would be disqualified to administer Estate for the same reason a judge who owned stock in a litigant company would be disqualified, i.e., financial interests of the judge might possibly be or appear to be affected, positively or negatively, by the judge's ruling.

23. For all of the years that I have practiced law in Shelby County, it has been common knowledge and known to me that the attorneys in Shelby County concentrating their practices on trust and estate law were a relatively small group of lawyers who had a special collegiality and familiar relationships with the various trust departments and trust department employees; so, the relationships, between and among those lawyers, was and continues to be perceived to have a fraternity-like quality.

24. From my knowledge, Judge Benham, before assuming the bench, was a long-time member of the trust and estates bar in Shelby County and, on assuming the bench, without implying any conflict-of-interest, the previously formed collegial relationships, formed over decades practicing trust and estate law in Shelby County, endured.

25. One of the lawyers in Shelby County who was and remains a highly respected member of the trust and estates bar in Shelby County and with whom Judge Benham enjoyed a

collegial relationship, while Judge Benham was a practicing member of the trust and estates bar in Shelby County, was/is Michael Potter, Esq.

26. I know Mr. Potter from only having met him once (when I took his deposition) but have known his reputation, as a long-practicing attorney in Shelby County, to be exemplary, and I have no personal disrespect for him and no interest or desire to cause Mr. Potter any negativity.

27. Without any innuendo of disregard for Mr. Potter or that the collegial relationship between Judge Benham and Mr. Potter disqualifies Mr. Potter from practicing law before Judge Benham, the fact of the matter is that Mr. Potter is the draftsman of The Helen B. Goza Revocable Living Trust Agreement and the attorney who advised Helen B. Goza to execute The Helen B. Goza Revocable Living Trust Agreement as an instrument that would allow Mrs. Goza to maintain complete control over her assets during her lifetime and, at the same time, control distribution of those same assets after Mrs. Goza's death without need for probate, i.e., the have-your-cake-and-eat-it-too device.

28. The Helen B. Goza Revocable Living Trust Agreement differs in no material way from revocable living trust agreements drafted, not only by Judge Benham and Mr. Potter, but, virtually, by all other members of the

trust and estate bar in Shelby County; advising clients and drafting revocable living trust agreements to accomplish the purposes stated above is a standard practice which has prevailed in Shelby County for decades.

29. From my close study of the law and the standard practice of trust and estate lawyers in Shelby County, before the 1983 decision of the decision of the Tennessee Supreme Court in ***Crews v. Overbey,*** 645 S.W.2d 388 (Tenn. 1983), the trust and estate lawyers were using revocable living trust agreements, as stated above, for over a decade, and assuming they gave the subject any thought, apparently, presumed that the common law of Tennessee was or would be ruled to be what the Illinois Supreme Court ruled to be Illinois common law in ***Farkas v. Williams,*** 125 N.E.2d 600 (Ill. 1955).

30. This same study reveals to me that, when the Tennessee Supreme Court rejected, as Tennessee law, what the Illinois Supreme Court ruled was the common law of Illinois, trust and estate lawyers in Shelby County, Judge Benham and Mr. Potter among them, continued use of revocable living trust agreements the same as if ***Crews*** had not been decided.

31. It is my opinion, which is shared by attorneys who mutually are my friends and friends of Judge Benham, that the foregoing realities create for Judge Benham, with respect to his

adjudication of the issues concerning The Helen B. Goza Revocable Living Trust and The Helen B. Goza Trust Agreement, an unusual pressure mitigating against Judge Benham holding true to the reputation Judge Benham has created for himself after becoming a Probate Judge, i.e., to make hard decisions that go against his personal inclinations in order to adjudicate strictly in accordance with rule of law.

32. While knowledgeable trust and estate attorneys with whom I have discussed he details of the issues, concerning a ruling that The Helen B. Goza Revocable Living Trust terminated with Mrs. Goza's May 15, 2001 death and that The Helen B. Goza Trust Agreement had no force and effect after Mrs. Goza's death, are concerned that potential "negative" results would flow from such a ruling, none can deny that rule of law in Tennessee dictates an adjudication that (1) The Helen B. Goza Revocable Trust, by operation of law, terminated the moment of Mrs. Goza's death on May 15, 2001, that (2) the Helen B. Goza Trust Agreement has had no force and effect since Mrs. Goza's death and that (3) the termination, having occurred, the corpus of what had been The Helen B. Goza Revocable Living Trust was required to be distributed by probate.

* * *

34. While I can find no person who disputes (though there are some who, on first blush, will argue until they run into the brick walls of law and logic) what rule of law on point is, uniformly, because of the "negative" results a ruling consistent with rule of law is feared to have, all of the trust and estate lawyers with whom I have spoken are convinced that Judge Benham "just won't let it happen;" a repeated comment is that there is just too much at stake.

35. The question raised by the renewed motion to transfer or recuse is whether Estate has a right, even a constitutional right, to have the critical question adjudicated by a jurist other than one who was an architect and artisan who, in Shelby County, helped design and etch the status quo in stone and who, personally, stands to lose face and possibly have to defend (depending on statute of limitations discovery rule and a host of other consideration) personal liability claims for professional negligence, if not more, if law defeats the status quo.

* * *

37. It is my hope that requiring testimony and the subpoenaing records can be avoided by the fact that what is revealed by hearsay in this affidavit is, hopefully, well enough known history, even without the names of the declarants, that Judge Benham would not need to hear the declarants firsthand or

see the subpoenaed records, many of whlch he would have drafted.

* * *

[pp. 11]

* * *

41. While a bland reading of the above-quoted words evidences no intemperance, being only days away from 45 years uninterruptedly practicing law, having appeared before multiplied dozens of different trial and appellate judges in courts throughout the United States, including being lead attorney in too many hotly contested and emotionally charged proceedings before judges strongly and philosophically inclined/disinclined toward one position or another, I have witnessed displays of intemperateness on the part of judges, from time to time, but, thankfully, not often.

42. Only on two other occasions have I witnessed judicial intemperance nearing the intemperate outburst of Judge Benham as the above-quoted words were exchanged in open court.

43. In the proceedings in question, Judge Benham, while standing and in a discernibly raised tone, red-faced, with a scowl and evident animosity leveled the legally and factually baseless accusation.

44. The statements by Judge Benham were incorrect and improper, legally and factually, in five significant respects: [* * *]

45. Judge Benham followed the intemperance, as described above, with entry of an order against Estate that, on its face, irrespective of whether Judge Benham thought he was correct on the law, evidences gratuitous castigation of Personal Representative for which there is no basis in law or fact.

46. The order speaks for itself and includes statements of objective fact for which there is not an iota of substantiation but for which the record clearly reflects the opposite with forewarnings.

47. As a matter of objective fact, Estate was not a party to any prior chancery court proceedings; indeed, Estate was not created, by Probate Court's issuance of letters of administration, until months after the referred to chancery court proceedings were terminated by a Final Judgment.

48. Without a hearing, Judge Benham prejudged, by forewarning that Judge Benham was going to award attorneys fees against Personal Representative and in favor of SunTrust.

49. As a matter of fact, by Judge Benham's actions in court, Judge Benham intimidated and frightened Personal Representative who, literally, fears Judge Benham, convinced that

Judge Benham is dead-set on vengeance toward Personal Representative for some infraction of which Personal Representative is oblivious.

50. Whether Judge Benham, as a matter of fact, is able to approach all that lies before him to adjudicate with utter impartiality and with lack of bias or prejudice (which I believe is impossible), there is nothing Judge Benham could do to undo the appearance Judge Benham has conveyed to the Personal Representative that Judge Benham is biased and prejudiced against Personal Representative and intends to take vengeance on him.

51. While I have attempted to assuage the fear of the Personal Representative, it has been impossible because of what I consider to be indelibly imprinted acts of Judge Benham, in person, that ring out prejudice and bias which, to Personal Representative, is confirmed by the gratuitous intemperance in the written order referenced above.

52. From my experience, it is virtually impossible to dissuade a litigant like the Personal Representative who draws conclusions which are rational and based on firsthand evidence that any reasonable person would interpret the same as Personal Representative has interpreted; for me to attempt to dissuade Personal Representative from the conclusions Personal Representative

has reached, by appealing to precepts of the law about the ability of a jurist to be impartial and unbiased even though the jurist appears to the contrary, i.e., any unbiased reasonable person, witnessing what Personal Representative has witnessed, would conclude that the jurist is unfair, bias and prejudiced.

53. I perfectly understand Personal Representative's feelings because, in my attempts to explain away the significance of what is detailed above, to him, as would be the case with any reasonable person, I am being disingenuous because what I say so departs from real life; on reflection, I believe the Personal Representative's feelings are justified, i.e., when he appears before Judge Benham, he has no sense of being before a judge; rather his feelings are more those of a person appearing before his henchman, as would any reasonable person in Personal Representative's shoes.

54. It is my opinion that, for Judge Benham to continue to adjudicate issues before Probate Court concerning Estate tarnishes the integrity of the judiciary, i.e., even if Judge Benham adjudicated every issue left to be adjudicated in favor of Estate, the appearance, even if not justified, would be that Judge Benham was or may have been motivated by factors other than strict adherence to rule of law.

* * *

56. In my opinion, there is little or no substantive difference in Judge Benham attempting to adjudicate issues concerning The Helen B. Goza Revocable Living Trust and The Helen B. Goza Revocable Living Trust Agreement than would be the case if Judge Benham were called on to adjudicate issues where his wife and children were parties to the litigation.

57. In terms of actuality, there is the theoretical possibility that Judge Benham could adjudicate, fairly and without any pressure from the circumstances, issues involving his wife and children; however, the law automatically intervenes to rescue Judge Benham from even attempting to so adjudicate because the law recognizes that such a task would be virtually superhuman.

* * *

FURTHER AFFIANT SAYETH NOT

/s/ Larry E. Parrish
Larry E. Parrish

STATE OF TENNESSEE
COUNTY OF SHELBY

PERSONALLY appeared before me, a Notary Public in and for said State and County, Larry E. Parrish, with whom I am personally acquainted and who, upon oath, acknowledged that he executed the foregoing

motion and acknowledged that he executed same as his free act and deed, and further makes oath that the statements of fact in the motion are true and correct.

WITNESS MY HAND, at office, this 26th day of November 2012.

/s/
NOTARY PUBLIC

[seal]

My Commission expires: 10/19/16

APPENDIX H

IN THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE

No. D-10567

[Filed November 27, 2012]

IN THE MATTER OF:	)
THE ESTATE OF JOHN J. GOZA,	)
Deceased	)
	)

AFFIDAVIT OF PERSONAL REPRESENTATIVE

COMES NOW Personal Representative, David Lee Morrow, Jr. (hereinafter **"I," "me," "my" or "mine"**), and state that I am over the age of 21 years, of sound and disposing mind and qualified to give testimony in the courts of the United States and of Tennessee. Having so stated, I make oath that all of the information hereinafter stated is true and is personal and firsthand to me.

1. I give this affidavit in my capacity as Personal Representative of The John J. Goza Estate (hereinafter **"Estate"**) and not in my capacity as an heir of Estate but including information about me personally, in no representative capacity.

* * *

[pp. 9]

* * *

55. Laying aside everything above, what I have seen Judge Benham do when I have watched and listened to him has shattered any confidence that Judge Benham is allowing Probate Court to function as a court but is, instead, using his office and the authority of Probate Court to kick Estate out of court to avoid having to rule on Estate's legal claims.

56. To me, Judge Benham is known only from the acts I have witnessed as I have served as Personal Representative, i.e., before this experience, I knew nothing of Judge Benham, good or bad, but had only the encounter when he appointed me to be my cousin's guardian.

57. As to Judge Benham, I came to this case with a blank slate and no preconceived ideas, good or bad.

58. I did come to Judge Benham with the ordinary and commonplace belief that judges are to be highly respected, deserve to be honored and know the law and who blindfolded (like the statute) and apply the law no matter who benefits or who suffers from the outcome of applying the law is.

59. Both before and after what is described in Mr. Parrish's affidavit about Judge Benham's intemperate blow-up, the blank slate I brought on which to write what I saw about Judge Benham had been shattered.

* * *

61. In stark contrast, on the multiple occasions I have been in Judge Benham's courtroom, he has been curt, overbearing, fidgety, agitated, accusatory, hot-headed, hurried, a demeanor and a tone that expressed disgust and what I would express in common language as a smart-aleck, disrespectful, snide and obviously, more deferent to Mr. Thornton than to Mr. Parrish.

62. From my experience and observations, when I am asked about Judge Benham's attitude about Estate's request for a ruling, the thought first to my mind is that Judge Benham let me know that he wanted me to "get the hell out of this court."

63. My personality is such that, if I detect that a person is telling me to "get out" of a place, I "get out," because I do not want to cause trouble; except for my fiduciary duties as Personal Representative, what I heard from Judge Benham would have caused me to exit.

64. I have read the Affidavit of Mr. Parrish in support of estate's renewed motion to recuse, and the words of that affidavit are words chosen by him without any prior consultation with me; that said, the words Mr. Parrish includes in his affidavit in enumerated paragraphs 49, 50, 51, 52 and 53, concerning me and my feelings, state the truth; for me to restate those same thoughts, using my

words, in this affidavit would be unnecessary duplication.

65. From my perspective, Judge Benham has shown the willingness to use the power and the influence of his office as a means by which to prevent Estate from having access to the law of Tennessee and to throw out Estate's claims by forcing Estate's to withdraw the claims, by me, as Personal Representative, dismissing Estate's claims.

* * *

[pp. 13]

76. As far as me personally – not in my office of Personal Representative – I probably would have been subdued by the threats, humiliation, insults, fear and, most importantly, what came across to me, loud and clear, from Judge Benham, i.e., "get the hell out of this court."

FURTHER AFFIANT SAYETH NOT

/s/ David Lee Morrow, Jr.
Personal Representative
David Lee Morrow, Jr.

STATE OF TENNESSEE
COUNTY OF SHELBY

PERSONALLY appeared before me, a Notary Public in and for said State and County, the Personal Representative of the John J. Goza Estate, David Lee Morrow, Jr., with whom I am personally acquainted and who, upon oath, acknowledged that he executed, in

his capacity as Personal Representative, the foregoing affidavit that he executed same as his free act and deed, and further makes oath that the statements of fact in the affidavit are true and correct.

WITNESS MY HAND, at office, this 26th day of November 2012.

/s/
NOTARY PUBLIC

[seal]

My Commission expires: 10/19/2016

APPENDIX I

IN THE PROBATE COURT OF TENNESSEE FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

No. PR-7275

[Filed October 21, 2016]

JUDY MORROW WRIGHT,	)
successor-in-interest to John J. Goza,	)
and	)
DAVID MORROW, JR.	)
successor-in-interest to John J. Goza	)
	)
Plaintiffs,	)
	)
v.	)
	)
MATTHEW G. BUYER, ESQ.,	)
a *sui juris* human person,	)
and	)
	)
SUNTRUST BANK,	)
a *sui juris* Georgia corporation	)
	)
Defendants.	)

Jury Demanded

COMPLAINT FOR CIVIL CONSPIRACY TO DEFRAUD AND TO CONVERT PROPERTY OF NON COMPOS MENTIS CESTUI QUE TRUST, TO BREACH INDIVISIBLE DUTY OF LOYALTY, FOR FRAUD, FOR BREACH OF CONFIDENCE/CONFIDENTIAL RELATIONSHIP, FOR CONVERSION AND FOR NEGLIGENCE

PREFACE

The hereinafter complaint presupposes that the John Goza Lifetime Trust *(infra* at paragraphs 23cc, 23dd, 140f) and the Perpetual Charitable Trust *(infra* at paragraphs 42, 140f) were created and that the John J. Goza Lifetime Trust existed until terminated by the cessation of John J. Goza's lifetime and, in the case of the Perpetual Charitable Trust, has continued uninterruptedly to exist.

This presupposition is contrary to what plaintiffs believe to be the controlling law, but plaintiffs, for all purposes related to the claims for relief stated in the hereinafter complaint,

* * *

[pp. 90]

* * *

PLAINTIFFS DEMAND A JURY TO TRY THE ISSUES HEREIN JOINED.

PARRISH LAWYERS, P.C.,
Attorneys for Plaintiff

By: /s/ Larry E. Parrish
Larry E. Parrish, BPR 8464
1661 International Drive, Suite 400
Memphis, Tennessee 38120
(901) 818-3072
(901) 767-4441 (facsimile)
Email: parrish@parrishandshaw.com

APPENDIX J

IN THE PROBATE COURT OF TENNESSEE FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

No. PR-7275

[Filed May 14, 2018]

JUDY MORROW WRIGHT,	)
successor-in-interest to John J. Goza,	)
and	)
DAVID MORROW, JR.	)
successor-in-interest to John J. Goza	)
	)
Plaintiffs,	)
v.	)
	)
MATTHEW G. BUYER, ESQ.,	)
a *sui juris* human person,	)
and	)
	)
SUNTRUST BANK,	)
a *sui juris* Georgia corporation	)
	)
Defendants.	)

Jury Demanded

SUBSTITUTED AND SUPERCEDING MOTION TO RECUSE

COME NOW, plaintiffs, David Morrow Jr. and Judy Morrow Wright (hereinafter **"Movants"**), having previously filed, on April 26, 2018, what is titled "Motion To Recuse" (hereinafter **"First Recusal Motion"**) and, pursuant to ***Rules of the Supreme Court of the State of Tennessee,*** Rule 10 (Rules of Judicial Conduct), Rule 10B § 3.01, § 3.02 (hereinafter collectively **"Rule 10B"** or **"§ 3.01"**), hereby, file the instant motion, [* * *] Recusal Motion and, again, move Your Honor to recuse Your Honor from any participation in any adjudications of any kind in the instant case or any other case involving the parties and subject matter of the instant case.

* * *

[pp. 3]

FOR FURTHER CAUSE, Your Honor's prior history as a practicing lawyer in Tennessee has so "psychologically wedded" Your Honor to the proposition that so-called "living trusts" are lawful in Tennessee that, for Your Honor to adjudicate, with cold neutrality and absence of any doubt that Your Honor, assessed objectively, either consciously or unconsciously and relying on Your Honor's personal knowledge and impression that so-called "living trusts" are lawful in Tennessee, irrespective of controlling precedents, would give more weight to the arguments of Mr.

Thornton and other counsel for Defendants than to arguments of counsel for Movants.

* * *

FOR FURTHER CAUSE, measured by the constitutional standards of the Due Process Clause of the United States Constitution, as pronounced by the United States Supreme Court by its 2016 decision styled ***Williams v. Pennsylvania***, U.S., 136 S.Ct. 1899, 195 L.Ed2d 132 (2016), plus other authorities on point, the recusal of Your Honor is constitutionally mandated, as will be more particularly detailed in the forthcoming memorandum in support of the instant motion.

* * *

APPENDIX K

IN THE COURT OF APPEALS FOR TENNESSEE
WESTERN SECTION
JACKSON

No. W2018-01094-COA-T10B-CV

[Filed June 13, 2018]

JUDY MORROW WRIGHT,	)
successor-in-interest to John J. Goza,	)
and	)
DAVID MORROW, JR.	)
successor-in-interest to John J. Goza	)
	)
Plaintiffs,	)
	)
v.	)
	)
MATTHEW G. BUYER, ESQ.,	)
a *sui juris* human person,	)
and	)
	)
SUNTRUST BANK,	)
a *sui juris* Georgia corporation	)
	)
Defendants.	)

Shelby County Probate
No. PR-7275

PETITION FOR RECUSAL APPEAL

COME NOW, petitioners (hereinafter **"Petitioners"** or, when individually referenced, **"Mr. Morrow"** or **"Mrs. Wright"**), pursuant to the ***Rules Of The Tennessee Supreme Court,*** Rule 10B 2.01 (hereinafter **"Rule 10B"**), and initiate the instant accelerated interlocutory appeal pleading that the Court reverse the denial by the judge (hereinafter **"Adjudicator"**) who is the subject of the hereinafter described motion to recuse filed, on May 21, 2018, entitled "Order Denying Substituted And Superseding Motion To Recuse" (hereinafter **"Adjudicator's Denial"**), which is not an order of any court but a copy of which is filed herewith under separate cover as **Exhibit A hereto** and incorporated herein by reference.

Adjudicator's Denial denied Petitioners' motion, filed May 14, 2018, entitled "Substituted And Superseding Motion To Recuse" (hereinafter **"Recusal Motion"**), a copy of which is filed herewith under separate cover as **Exhibit B hereto** and incorporated herein by reference. **Exhibit C hereto,** filed herewith under separate cover, is what Petitioner's filed on May 11, 2016, entitled "Memorandum In Support Of Motion To Recuse" (hereinafter **"Recusal Memo"**) and is incorporated herein by reference.

* * *

[pp. 3]

* * *

STATEMENT OF ISSUES

Issue One

Did the trial judge (hereinafter **"Adjudicator"**) deny the Recusal Motion without applying the "appearance only standard" restated (on June 6, 2016) by the United States Supreme Court, by ***Williams v. Pennsylvania***, 546 U.S. 829 (Jun. 6, 2016)(hereinafter ***"Williams"),*** thereby, rendering void any theretofore existing standard that required actual bias or prejudice, as the standard required by the Fourteenth Amendment to the United States Constitution (hereinafter **"Fourteenth Amendment"**).

* * *

[pp. 8]

* * *

While the Recusal Motion (Exhibit B hereto) accuses that Adjudicator evidenced actual **bias** and actual **prejudice** (mostly in the form of a **predisposition** with respect to **outcome for reasons self-serving to Adjudicator**), because actual bias and prejudice is not an element to necessitate Fourteenth Amendment-required recusal. This appeal causes this Court to review *de novo,* with no presumption of correctness, will focus on establishing only an unconstitutional (per the Fourteenth Amendment) APPEARANCE of a risk/chance that an appropriate audience might believe that Adjudicator would be tempted to compromise Adjudicator's cold neutrality.

Indeed, the evidence might be plenty to prove actual bias and prejudice (i.e., an unconstitutional predisposition, for self-serving reasons, concerning outcome), but this will be incidental to the unconstitutional **appearance**.

Finally, Petitioners contend that the quantum of evidence needed to require recusal is probable cause. Thus, the Recusal Motion (Exhibit B hereto), itself, is a statement of facts. Adjudicator's Denial (Exhibit A hereto), while unsworn, is a document that includes judicial admissions by Adjudicator and statements by Adjudicator which Adjudicator is judicially estopped from denying; thus, Adjudicator's Denial is citable for its factual content, even though the facts might be inferences which are nonetheless (maybe even more so) probative because the facts are inferences. Being a circumstantial evidence case, what facts are evidenced in Adjudicator's Denial require contextual explanations that, properly, are part of the Statement Of Facts, though arguably disputable, if there were in the record, evidence with which to dispute, but there is no such evidence.

* * *

[pp. 18]

* * *

Adjudicator's Relevant Private Practice Facts

The following excerpts from the Recusal Memo (Exhibit C hereto) explain the factual predicates, concerning Adjudicator's disqualifying private practice experience, on which the Recusal Motion was based (pp. 27-31):

On principle, Your Honor has decades of experience as a trust and estate practitioner at the Memphis Bar with a relatively small number of other such practitioners. The truth of the matter is that experienced trust and estate practitioners at the Memphis Bar routinely have advised clients and drafted documentation to create what are known as living trusts as a means for living trust settlors to control transfer of the living trust's corpus after the settlor's death.

The evidence will tell the tale, but it is anticipated by probable cause, but not yet known for certain, that Your Honor, in private practice, advised clients that living trusts are an enforceable means by which a living trust settlor can control post-death distribution of the living trust's corpus. It would be unusual, if Your Honor had not given this advice many times over many years, and, no doubt, Your Honor, in good faith, believed the advice was in accord with controlling precedent and reliable, Furthermore, it is highly likely that Your Honor could prove that such advice was the standard advice given by fellow trust and estate lawyers in Memphis and Tennessee.

It would be surprising to find that, before Your Honor ever heard the word Goza, Your Honor had not formed a legal opinion, which was without any doubt in Your Honor's mind, that living trusts were legally effective means for living trust settlors to control after-death

distribution of living trust assets. It is expected that, as with all trust and estate practitioners known to Your Honor in Memphis, the thought that living trusts so used are legally invalid had never been expressed, orally or in writing. In short, truth be known, the evidence is highly likely to prove that Your Honor, before Your Honor commenced as an adjudicator in the instant case, Your Honor had a firmly convinced predisposition about the legality of living trusts being lawfully usable as testamentary devices and a firmly held predisposition as to very negative effects that could flow from an adjudication that Your Honor's predisposition about living trusts as testamentary devices was wrong, i.e., living trusts cannot be lawfully so used.

The documentation ordinarily used, for decades, in Memphis, to effectuate living trusts, in all material respects, mirror the documents which movants, in cases prior to the instant case, challenged as lawfully ineffective, based on what can be summarized as a claim that, in Tennessee, living trusts are unlawful means by which to control testamentary distributions.

In Memphis, SunTrust Bank and its predecessor, National Bank of Commerce, for decades, through an aggressive Trust Department, has served as "Trustee" of living trusts used as devices to control testamentary dispositions. For decades, in Memphis, SunTrust has been one of only a very few large banks,

with Trust Departments, available to serve, as "Trustees," the living trusts advised and drafted by one of the relatively few trust and estate practitioners at the Bar of Memphis. Because of the commercial relationship between SunTrust and other such large banks in Memphis, for decades, the relatively few trust and estate practitioners at the Bar of Memphis have familiar relationships with trust officers, like Mr. Buyer, at the large bank Trust Departments.

From persons who implored counsel for movants to support the election of Your Honor, when Your Honor ran in a contested electoral political contest to become a probate judge, and from knowing the decades-long reputation to Your Honor as one of relatively few trust and estate practitioners at the Bar in Memphis, it is known to Your Honor was and remains well-connected in the trust and estate lawyer community at the Memphis Bar.

Though subpoenas have not yet been issued to SunTrust Bank to discover how many living trust documents have been drafted by Your Honor, designating SunTrust as the living trust Trustee, it is reasonably predictable that there are such documents and that either the settlor or the beneficiaries of both of the living trusts, in private practice, were clients of Your Honor who could be negatively impacted by an adjudication that living trusts cannot lawfully

used to control post-death distribution of a living trust's corpus.

Apart from SunTrust Bank, it is reasonably expectable that subpoenas to the trust departments of other banks and/or trust companies in Memphis will produce documentation that Your Honor, for decades, drafted documentation, very similar to the documentation at issue in prior cases filed by movants, as means by which to create living trusts for clients advised by Your Honor to execute documentation in material respects like the documentation at issue in the instant case.

As can be illustrated by testimonial evidence, the camaraderie between the trust and estate practitioners at the Memphis Bar is notable to be relatively close-knit. Indeed, this is a fact of which Your Honor could take judicial notice.

Movants have probable cause to believe that, when Your Honor left private practice to assume your current position as a judge, Your Honor had existing attorney-client relationships which became attorney-client relationships with other trust and estate practitioners at the Memphis Bar. Study of evidence so gathered, expectably, would reveal that there are former clients of Your Honor who continue to be settlors/beneficiaries of living trusts, some of which have as "Trustees" trusts which are bank trust departments.

It would be foolhardy for it to be assumed that Your Honor does not continue to maintain close personal relationships with trust and estate practitioners at the Memphis Bar, for whom Your Honor has a personal desire not to interfere with their practice in such a way that it would be deleterious to the professional success of those personal friends and relations.

It further would be foolhardy not to believe that, if Your Honor adjudicated in such a way as to hold that the living trusts like what was claimed to be a living trust by SunTrust Bank and Mr. Buyer, in previous cases filed by movants, were unlawful would, in Your Honor's view, be a negative factor in the professional success of Your Honor's personal friends and relations practicing trust and estate law at the Bar of Memphis. Likewise, it would be foolhardy for one to believe that Your Honor would not be concerned for the welfare of certain former clients of Your Honor, if Your Honor so ruled.

Your Honor must stand election to continue past Your Honor's current term as a probate judge. Judicial notice could be taken that, if the trust and estate bar and the bank trust departments in Memphis opposed Your Honor's reelection, Your Honor would have no chance of reelection; thus, Your Honor staying in good graces with the trust and estate bar and the bank trust departments is personally important to Your Honor. Granting the relief for which movants

plead would not stand Your Honor in good standing in these quarters.

Indeed, Your Honor evidenced such a concern, on the record, at the open-court hearing, the transcript of which is of record, where Your Honor inquired with a question to movants' representatives about what would happen to the people who have living trusts if movants were successful. This is an inquiry that evidences a result-oriented mindset of Your Honor which combines with many similar evidences in the record that Your Honor was interested in the results following precedent would portend, instead of Your Honor following precedent unconcerned about what results precedent dictated.

In addition, movants contend that the trust and estate bar, in Shelby County, is a relatively small and relatively tightly-knit-group of attorneys, inclusive of bank trust departments and trust officers with fiduciary duties, most, if not all, of whom have followed the same practice in giving the same advice and rendering the same services, relative to the utility of living trusts as post-death distribution devices, as Your Honor has given.

Movants contend that Your Honor continues to have relationships with friends and associates who Your Honor perceives potentially could be negatively impacted, if a purely principled totally precedent-controlled disposition of movants' claims for relief occurred.

Movants contend that, by the fact that Your Honor invites counsel for movants' adversaries to sit specially as a judge serving in place of Your Honor, on the bench ordinarily occupied by Your Honor in the court adjudicating movants' claims for relief, evidences what appears to be a relationship between Your Honor and movants' adversary counsel that may be a product of this closely-knit relationship between and among trust and estate lawyers in Shelby County.

Movants contend that there is probable cause *(supra* at 49 – 53) to believe that Your Honor, in private practice, may have rendered professional services which included interaction with the SunTrust Bank Trust Department and SunTrust trust officers, one of movants' adversaries in the instant case, and/or settlors and/or beneficiaries of trusts or purported trusts and/or heirs or creditors or debtors of such trusts or purported trusts where SunTrust was the Trustee.

Likewise, movants contend that there is probable cause *(supra* at 49- 53) to believe that there are former clients of Your Honor who continue to have relationships, which Your Honor facilitated as an attorney in private practice, with SunTrust Bank Trust Department and trust officers and who potentially could negatively be impacted, if movants' claims are successful.

Movants contend that there is probable cause *(supra* at 49 – 53) to believe that, if not with Mr.

> Buyer, with other trust officers at SunTrust Bank Trust Department, Your Honor has done business, as an attorney in private practice, and/or present or past professional associates and/or friends, from private practice, continue to maintain such business relationships.

* * *

[pp. 39]

Innuendo/Suppositions/Probable Cause

On the same page and the same paragraph as the two immediately preceding quotations from Adjudicator's Denial, Adjudicator ends the paragraph with the following sentence:

> The accusations and allegations are based on innuendo and suppositions, and not based on fact.

This exceedingly self-serving statement by Adjudicator, perhaps more than any other, indicts Adjudicator as being burdened by a recusal-necessitating state of mind.

An adequately documented statement of probable cause is not innuendo. An adequately documented statement of probable cause is sufficient to indict people for crimes, to issue search warrants and to issue arrest warrants. Suppositions are not bad things. Suppositions are foundations on which great inventions are built. For Adjudicator to dismiss, as innuendo and supposition, the sworn Recusal Motion as if such a proclamation excuses a substantive response evidences a guilty mindset. If Adjudicator had facts to refute the

accusations, Adjudicator would have included those in Adjudicator's Rule 10B 1.03 written statement.

The test with respect to **recusal** is one **based on all the knowledge the adjudicator has**. Beyond any reasonable shadow of doubt, **Adjudicator knows** positively whether Adjudicator has drafted and had clients execute revocable living trusts as post-death transfer devices. In the same way, **Adjudicator knows** whether such instruments drafted and used by Adjudicator in Adjudicator's private practice remain executory, with former clients relying on advice from Adjudicator that the revocable living trusts drafted by Adjudicator are sufficient for their purpose. **Adjudicator knows,** in the same way, whether Adjudicator has had prior dealings with SunTrust Bank, on behalf of former clients, and the depth and breadth of that prior involvement.

Adjudicator has not denied a single accusation of Petitioners about Adjudicator's private practice experience. Adjudicator has not even suggested that there is a dispute about any such accusation.

All Adjudicator has included in Adjudicator's Rule 10B 1.03 statement (i.e., Adjudicator's Denial) is deflection and "I didn't do it" kind of denials, e.g., Adjudicator's *ex cathedra* pronouncement that the accusations are **innuendo and suppositions,** with the added statement that the accusations are not based in fact.

There is nothing to have stopped Adjudicator, if true, to have included in the Rule 10B 1.03 statement, for instance, that Adjudicator never advised a former

client that a revocable living trust was a lawful device by which to effectuate post-death transfers and never drafted or facilitated a former client in the execution of a revocable living trust for use as a post-death transfer mechanism and on and on. The vast majority of the Recusal Motion's accusations are completely ignored by Adjudicator's Denial.

The absence of such specific affirmative refutation by Adjudicator, like an unanswered averment in a Rule 3 civil complaint, leaves this Court with no other choice but to take the accusations as true and accurate. Per Rule 10B 1.01, the Recusal Motion is suppmied by an affidavit. Adjudicator's Denial is not supported by Adjudicator's oath. Had Adjudicator created a genuine issue of fact by controverted evidence, an evidentiary proceeding would have been needed with fact-finding by a coldly neutral fact-finder. The necessity for this Court to grapple, in light of ***Williams***, with a fact-finding procedure is averted by the absence of controverted facts and/or admissions of Adjudicator in Adjudicator's Denial.

Whether an unconstitutional appearance requiring Adjudicator to be recused exists presupposes that the one finding whether the appearance, in fact, exists makes that finding based on **all of the knowledge of the accused adjudicator**; this is not a finding based on what is merely observable to a person uninformed as to **all of the knowledge of the accused adjudicator**. How all of an adjudicator's knowledge is excavated and weighed by an impartial fact-finder is yet to be explored review.

In the evidence world, a self-serving statement by an accused person who, if the accusation is true, will be forced to do something the accused person does not want to do is, perhaps, the most unreliable evidence, having the lowest probative significance, of all evidence. This elementary rule of evidence changes not a whit because the declarant is a judge.

Probable cause, normally, is a collection of some direct knowledge combined with other circumstances to cause a reasonable inference that what appears probably to be so either is so or creates the opportunity to adduce more evidence to provide additional certainty as to whether what there is probable cause to believe can be believed by a preponderance or beyond a reasonable doubt.

Counsel, having drafted many applications for arrest, search warrants and many criminal indictments, knows that the reliability of the information (much of which usually hearsay) provided as probable cause is dependent on the reliability of the source and specificity of the information. The Recusal Motion is based on reliable sworn information, from a reliable source and includes many ostensibly credible specifics.

Adjudicator's Denial simply sloughs off the probable cause presented by Petitioners of what, reasonably considered. Is or probably is fact. Adjudicator's Denial verifies the reliability of the probable cause.

What is more, when the question is nothing other than whether there **might** arise an **appearance** that cold neutrality **could** be compromised by **temptation.**

The necessity to recuse exists, if there is nothing more than probable cause to establish the constitutionally prohibited **appearance.** The necessity to recuse is all about probable cause. There need not be a preponderance of evidence. There need not be clear and convincing evidence. There need not be proof beyond a reasonable doubt. There need be only probable cause, and the quantum of probable cause need not be great.

* * *

[pp. 45]

* * *

ARGUMENT

Summary

It is the position of Petitioners that, on June 6, 2016, United States Supreme Court, by ***Williams***, replaced any and all law of Tennessee relative to standards governing when the Fourteenth Amendment of the United States Constitution requires a judge to recuse, except and unless the law of Tennessee includes standards for recusal that are less rigorous than the standards pronounced in ***Williams***.

In other words, it is the position of Petitioners that ***Williams*** set the bar for when recusal is required very low to the ground. Unless Tennessee has a bar that is even lower to the ground than the ***Williams*** bar, Tennessee law pertaining to when a judge must recuse has been preempted by ***Williams***.

It is the position of Petitioners that, in one respect, Tennessee law on point has been supplanted by

Williams, and in two other respects, Tennessee law is even more relaxed than ***Williams***.

Here, Petitioners have grounded their claim of right that Adjudicator be recused on the Fourteenth Amendment augmented by Tennessee's "any doubt" standard and Tennessee's "cold" neutrality rule. That is, Petitioners contend that Tennessee's "any doubt" standard and "cold" neutrality standard relax, to a level lower than ***Williams***, when an adjudicator must be recused.

Petitioners, here, do not ground Petitioners' right to Adjudicator's recusal on a claim that Adjudicator, in actual fact, was/is biased or prejudiced against Petitioners or Petitioners' counsel. This is not to be interpreted as a concession that Adjudicator was/is not actually biased and actually prejudiced; however, ***Williams*** makes actual bias and actual prejudice an irrelevancy. Therefore, it is the position of Petitioners that whether Adjudicator was/is actually biased or actually prejudiced is an academic question of no concern to the right Petitioners claim the right to the recusal of Adjudicator.

It is the position of Petitioners that Adjudicator's Denial, in effect, makes no reference to ***Williams***, directly or indirectly, makes the standard for whether Adjudicator is or not required to recuse, solely, whether Adjudicator admits that Adjudicator is actually biased and actually prejudiced in animus-based way.

It is the position of Petitioners that Adjudicator's Denial provides not even a scintilla of evidence that Adjudicator is even aware that ***Williams*** makes the

mere risk of an appearance that Adjudicator might be tempted, by circumstances, to relax Adjudicator's constitutional requirement to remain coldly neutral.

Finally, Petitioners argue that there is one other respect in which Tennessee law on recusal potentially is more relaxed and less rigorous (the bar is closer to the ground) than the ***Williams'*** standards. That is, the target audience in Tennessee is arguably an average person.

To whom must it appear that there is a risk that Adjudicator might be tempted to compromise Adjudicator's constitutional duty to remain coldly neutral

In Tennessee, this appearance need only be to an average person. ***Williams*** identifies the target audience an average man as a judge. A target audience of an average person is a more relaxed standard than a target audience of an average man as a judge.

From Adjudicator's Denial, there is no way to glean that Adjudicator had any idea that there was/is a target audience, much less the kinds of persons who make up the target audience.

From Adjudicator's Denial, the only conclusion to be drawn is that Adjudicator considered whether Adjudicator is required to recuse is a decision to be judged based on whether Adjudicator believes that Adjudicator is able to adjudicate without being actually biased and actually prejudiced in an animus-based way.

This perception makes Adjudicator's Denial patently and plainly a gross error.

Petitioners having incorporated in this Petition, by reference, the Recusal Memo (Exhibit C hereto), Petitioners reference Exhibit C hereto, pp. 23-26, for Petitioners' dissection of ***Williams***. Relying on this ***Williams*** discussion, plus the elucidating law review article discussing ***Williams*** and ***Williams'*** implications (Exhibit C hereto pp. 13-23), Petitioners, here, will comment further only to the extent of elaborating on what is meant by ***Williams*** "low bar."

As seen from the discussion in Exhibit C hereto pp. 13-26, ***Williams*** cautioned that the part of ***Williams*** the Supreme Court wanted to be communicated is the principles ***Williams*** either reiterated or announced. Petitioners assert that getting hamstrung by the explicit facts in ***Williams*** causes to be lost what the Supreme Court intended to be found in ***Williams***.

On principle, the question is: What is the quantum and quality of an appearance of a risk that a judge might be tempted to compromise the judge's neutrality and, therefore, violate the Fourteenth Amendment due process rights of a litigant?

Because there is a 3-Justice dissenting opinion, the thrust of the 6-Justice opinion of the Supreme Court can be more clearly discerned as with a diamond in black velvet. The 3-Justice dissenting opinion expressed the thought that the appearance from the facts in ***Williams*** were significantly insufficient to invoke the Fourteenth Amendment.

In ***Williams***, 33-years prior to the litigant appearing before the Pennsylvania Supreme Court, on the litigant's fifth habeas corpus petition attempting to avoid the death penalty, the chief justice of the Pennsylvania Supreme Court, 33-years earlier the District Attorney for Philadelphia, routinely signed the consent form necessary for the District Attorney's assistant to seek the death penalty for the appellant appearing before the Pennsylvania Supreme Court, 33-years later.

At the time the appellant appeared before the Pennsylvania Supreme Court, the Chief Justice was one of nine (9) justices and had only one vote. The issue before the Pennsylvania Supreme Court, relative to the fifth habeas corpus petition, had nothing to do with the routine consent the chief justice signed 33-years earlier to accommodate his assistant.

The chief justice, without comment, denied the appellant's motion for the chief justice to recuse and, therefore, withdraw from adjudicating the habeas corpus petition of the appellant. On hearing, the Pennsylvania Supreme Court justices, in a 9-0 vote, denied the habeas corpus petition.

The "no harm, no foul" argument was made in an attempt to convince the United States Supreme Court, in ***Williams***, to grant no relief, even if the chief justice should have recused.

The Supreme Court rejected the "no harm, no foul" argument, holding that the mere presence of the chief justice during the process was sufficient risk of an appearance that the chief justice might be tempted to

relax his neutrality. Therefore, on this holding, the Pennsylvania Supreme Court's ruling was reversed, and the appellant received a new the Pennsylvania Supreme Court hearing, with the chief justice recused. One would assume that the remaining eight Pennsylvania Supreme Court justices voted exactly the same, to deny the appellants habeas corpus petition. No doubt, the 6-Justice was as aware of this as anybody. Obviously, ***Williams*** is about much more than the appellant appearing before 8 of the nine justices he appeared before the first time. Rather, ***Williams*** is about making it easier for litigants to make doubly sure that they, without ANY doubt, are judged only be coldly neutral judges.

The reasoning of the 3-Justice dissent was that the Supreme Court's opinion opened up a Fourteenth Amendment right to recusal much wider than had been previously necessary. This was and is beyond debate. However, the Supreme Court felt the Constitution required that the Fourteenth Amendment recusal right be opened wider than it had been before June 6, 2016.

* * *

[pp. 53]

CONCLUSION

For the foregoing reasons, Petitioners request the Court to reverse Adjudicator's Denial, issue a mandate recusing Adjudicator from any further participation as an adjudicator in the instant case or any other cases involving the aspect of the dispute evidenced in the Complaint (Exhibit F hereto) and vacate the non-final Dismissal Order (Exhibit E hereto).

Respectfully Submitted,
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APPENDIX L

IN THE TENNESSEE COURT OF APPEALS AT JACKSON

No. W2019-01157-COA-R3-CV
Shelby County Probate Court
No. PR 7275

[Filed: November 18, 2019]

JUDY MORROW WRIGHT,	)
	)
and	)
	)
DAVID MORROW, JR.	)
Appellants	)
	)
v.	)
	)
MATTHEW G. BUYER, ESQ.,	)
	)
and	)
	)
SUNTRUST BANK,	)
Appellees	)
	)

BRIEF OF APPELLANTS

On appeal from Shelby County Probate Court.

* * *

EDITORIAL NOTE

Though the Tennessee Supreme Court, in ***State v. Decosimo,*** 555 S.W.3d 494, 506 (Tenn. 2018), cert. denied, 139 S. Ct. 817, 202 L. Ed. 2d 577 (2019) (hereinafter **"*Decosimo*"**), has touched on the edges of the question at hand, since the June 6, 2016 decision of the United States Supreme Court in ***Williams v. Pennsylvania,*** __ U.S. __, 136 S.Ct. 1899, 195 L.Ed.2d 132 (2016) (hereinafter "***Williams v. Pennsylvania***"), no court in Tennessee has been reported to have even mentioned ***Williams v. Pennsylvania*** in passing. Undebatable is the proposition that ***Williams v. Pennsylvania*** explicitly held that any state law that was not in accord with the Fourteenth Amendment Due Process dictates laid down in ***Williams v. Pennsylvania*** are, by ***Williams v. Pennsylvania***, negated.

Williams v. Pennsylvania is all about when Fourteenth Amendment Due Process requires adjudicators to recuse or be recused. The breadth, scope and effect ***Williams v. Pennsylvania*** has on the law of Tennessee is a question that, to date, has not been addressed by any Tennessee court.

Because the questions about Tennessee law are solely of constitutional magnitude, this Court is handicapped in its ability to decide this appeal. That is, the disposition of this appeal is 100% dependent on the impact of ***Williams v. Pennsylvania*****,** combined with the "first instance" doctrine spelled out in ***Concrete Pipe & Prod. of California, Inc. v. Constr. Laborers Pension Tr. for S. California,*** 508 U.S. 602, 617–18 (1993); ***Hamdi v. Rumsfeld,*** 542 U.S.

507, 533 (2004); ***Marshall v. Jerrico, Inc.,*** 446 U.S. 238, 248 (1980) and ***Ward v. Vill. of Monroeville, Ohio,*** 409 U.S. 57, 61–62 (1972).

As an inferior appellate court, this Court, institutionally, is devoid of any appellate jurisdiction to modify or do anything else but follow, without the slightest iota of deviation, what has previously been decided by the Tennessee Supreme Court, even if the United States Supreme Court has interpreted the United States Constitution in such a way as to negate what the Tennessee Supreme Court has previously decided.

It is naïve to suggest that ***Williams v. Pennsylvania*** has no effect on Tennessee precedent on the question of adjudicator recusal requirements, but exactly what the effect is can only be authoritatively decided by the Tennessee Supreme Court and, possibly, thereafter, by the United States Supreme Court.

All's to say that appellants contend that this appeal is quintessentially an appeal that the Tennessee Supreme Court should be given the opportunity, per ***Tennessee Code Annotated*** § 16- 3-201(d), to reach down and initially decide. Therefore, after this Appellants' Brief is filed, Appellants will file, in the Tennessee Supreme Court, the prerequisite § 16-3-201(d)(C) motion.

* * *

STATEMENT OF ISSUES

Issue One

Does the Fourteenth Amendment, United States Constitution, per *Williams v. Pennsylvania v.*

Pennsylvania, __ U.S. __136 S.Ct. 1899, 195 L.Ed.2d 132 (2016) (hereinafter "***Williams v. Pennsylvania***"), combined with the Fourteenth Amendment "first instance" doctrine defined in *Concrete Pipe & Prod. of California, Inc. v. Constr. Laborers Pension Tr. for S. California,* 508 U.S. 602, 617–18 (1993); *Hamdi v. Rumsfeld,* 542 U.S. 507, 533 (2004); *Marshall v. Jerrico, Inc.,* 446 U.S. 238, 248 (1980) and *Ward v. Vill. of Monroeville, Ohio*, 409 U.S. 57, 61–62 (1972), create, for state court litigants in all states, an inviolate right to be judged by trial court adjudicators as to whom there exists no risk of an appearance that the adjudicator might (in the future) adjudicate, might have (in the past) adjudicated or might (presently) be adjudicating the litigant's dispute with a temptation that might undermine the Fourteenth Amendment required neutrality of the adjudicator (hereinafter "**Constitutionally Impermissible Appearance**")?

Appellants contend that the answer to this question is "**YES**."

* * *

[pp. 7]

The affidavit (RoA Vol.11 1475 p. 948) attached to the Rule 60.02 Set Aside Motion (RoA Vol. 11 p. 1453) reads as follows:

> **COMES NOW** affiant, Larry E. Parrish (hereinafter "I," "me," "my" or another first-person pronoun), and state that I am over the age of 21 years, of sound and disposing mind and qualified to make oath in the courts of Tennessee and the United States.

The information herein describes circumstances which, from the facts known to me firsthand, create probable cause to believe that there was/is an APPEARANCE that The Honorable Kathleen Gomes (hereinafter "**Her Honor**") might have been and/or be tempted, by conflicting self-interests, to adjudicate claims made by plaintiffs (heirs of John J. Goza), with a predisposition which unconstitutionally interfered with Her Honor's constitutionally required neutrality.

When assessing testimonial evidence to determine whether what is provided establishes probable cause that Her Honor adjudicated claims of the plaintiffs, in the case styled above, burdened by an APPEARANCE prohibited by the Fourteenth Amendment to the United States Constitution's Due Process Clause, it is important to consider the source of the information, and, for this purpose, I, here, provide historical background about myself. Attached as Exhibit A here to is a resume of my history.

* * *

That said, for the purposes of stating the circumstances creating probable cause that Her Honor has adjudicated, on repeated occasions, motions and/or causes of action involving the John J. Goza Estate and the heirs (including plaintiffs) of John J. Goza, the most recent being the April 10, 2018 order of dismissal, the knowledge and understanding I have

> accumulated in the practice of law over the past 51 years provides insight not necessarily obvious to a person without the training and professional experience I have. While matriculating at the Memphis bar, I have no memory of any personal interaction with Her Honor prior to appearing before Her Honor in Her Honor's capacity as a probate judge.
>
> * * *

[pp. 8]

> * * *
>
> Information which I have garnered has focused on Her Honor's practice as a trust and estate lawyer.
>
> * * *

[pp. 9]

> * * *
>
> A senior member of the trust and estate bar, with whom I have a decades-long mutually respectful relationship, has respectfully urged me to drop the Goza claim. The gist of the request was a forthcoming explanation about the threat that the Goza claim (i.e., that the living trust cannot lawfully be used as a post-death asset transfer device) being successful poses to the trust and estate bar and many clients served by estates planned around living trusts as postdeath asset distribution devices.
>
> Despite conceding that the controlling precedent is what it is and despite our longstanding

amiable personal relationship, this person said that, if called on to adjudicate the stated claim, this friend would rule against the claim because too made good and innocent people potentially would be hurt by plaintiffs' claim being granted. The point of my friend is that precedent cannot be allowed to effectuate such a result. This is a classic tenet of Legal Realism which breeds result-oriented adjudications in defiance of traditional common law administration of justice by precedent and precedent, only and alone.

Other members of the trust and estate community in Memphis, with whom I have discussed the Goza claim, have been nonchalant, because they are very confident that courts would make certain the Goza claim was not successful. These colleagues at the Memphis bar have expressed, in one way or another, the "ain't no judge gonna" saying. They often add: "It just is not going to happen, Larry."

Those who are part of the trust and estate bar, with whom I have had private conversations, about the *res judicata* defense, agree that it is meritless but rejoin that it was the hook on which the courts would hang their opinions to block success of the Goza claim and, thereby, block the Goza heirs from litigating the merits of the claim, which is necessary because the merits are indefensibly favorable to the Goza claim.

Her Honor became part of what, in April 2015, had preceded Her Honor, i.e., a series of

classically defined result-oriented adjudications which Her Honor, essentially, replicated with Her Honor's added twists.

Her Honor's decades-long professional practice, engaged in giving advice and rendering service to clients, which, if the Goza claim that using living trusts as a device to control post-death transfers of settlors' property violates Tennessee's governing precedent, in fact, is the controlling precedent, would place Her Honor in the position, albeit in good faith, of having advised and rendered professional service, for many years, contrary to Tennessee's controlling precedent (law). If the Goza claim is meritorious and Her Honor can devise a way to block an adjudication on the merits of the claim, what Her Honor (and numerous other lawyers and trust officers before and after Her Honor) have advised (i.e., that living trusts are lawful means to control post-death transfers of assets) clients may avoid being called into question.

The claims of plaintiffs, in prior cases, placed Her Honor in the position of having to adjudicate whether plaintiffs' claims were meritorious which, if meritorious, would be an adjudication that what Her Honor, in private practice, had routinely done (i.e., advised clients that living trusts are lawful devices to control post-death asset transfers) arguably would be professional negligence and conceivably put Her Honor's former clients jeopardy of having relying on estates planned, relying on advice of Her

Honor, with defective estate planning instruments, which could thwart the former clients' post-death distribution intent.

The thought repeatedly expressed to me by various members of the Memphis bar' trust and estate lawyers is that the Goza claim, in effect, is asking Her Honor to adjudicate in a way that potentially could plunge a dagger into Her Honor's professional heart. Therefore, I have been repeatedly advised, as stated above, by the thought: "Larry, it is just not going to happen."

This being the outcome of an adjudication by Her Honor in favor of plaintiffs' claims, the probability of an appearance that Her Honor might have been por will be tempted to adjudicate in a way favorable to plaintiffs is blocked by a predisposition bias that has nothing to do with a personal bias against the plaintiffs or against me.

The trust and estate bar, in Shelby County, is a relatively small and relatively tightly-knit-group of attorneys, inclusive of bank trust departments and trust officers with fiduciary duties, most, if not all, of whom have followed the same practice in giving the same advice and rendering the same services, relative to the utility of living trusts as post-death distribution devices, as Her Honor.

Her Honor continues to have relationships with friends and associates who Her Honor reasonably perceives potentially could be

negatively impacted, if there was favorable disposition of plaintiffs' claims.

On another topic, Her Honor invited counsel for plaintiffs' adversaries to sit specially as a judge serving in place of Her Honor, in the court adjudicating plaintiffs' claims. At the time, the list of attorneys from whom Her Honor could have chosen to sit specially for Her Honor were attorneys not representing, at the time, plaintiffs' adversaries.

As with Her Honor, if plaintiffs' claims were adjudicated to have merit, as a member of the Memphis trust and estate bar, the adversary counsel who Her Honor selected to serve her specially as Her Honor's substitute judge would suffer financial loss, plus adversary counsel and adversary (SunTrust), a bank trust department stood, potentially, to suffer the same consequences, in relation to their client, as Her Honor and Her Honor's former clients. Her Honor admits that Her Honor invited counsel for plaintiffs' adversaries to sit in Her Honor's stead, as a special judge, as stated, but dismissed the event as creating an APPEARANCE of an animus by Her Honor against plaintiffs or favoritism toward plaintiffs' adversaries or counsel for plaintiffs' adversaries.

As a lawyer for 51 years, uninterruptedly practicing at the Memphis bar and many other places, it is my professional opinion that, to a reasonable person, this *ex parte* interaction between Her Honor and adversary counsel

creates an APPEARANCE that the relationship between Her Honor and the adversary counsel is extraordinary and includes a commonality, personally, of adverse consequences of a favorable outcome for plaintiffs and of extraordinary confidence in the acumen and judgment of adversary counsel in comparison to plaintiffs' counsel.

Throughout the time when the John Goza Estate was opened, in October 2010, there was counsel of record representing five of the Goza heirs, other than plaintiffs. This counsel was a longexperienced trust and estate lawyer, from and in Nashville, who was about as knowledgeable as one could be about the history of trust and estate practice in Tennessee. He, like Her Honor, for decades used of living trusts as a post-death device for distribution of assets. This counsel for these five Goza heirs was aware of Tennessee precedent on which his client/heirs relied.

Likewise, there was a very long-tenured trust and estate law professor, who had planned, estates using living trusts just like the living trust in Goza was attempted to be used.

In addition, prior to October 2010, I had co-counsel, who is a long-experienced member of the trust and estate bar in Memphis, representing plaintiffs in chancery court claims different from, but involving the plaintiffs in their capacity as heirs of Helen Goza. Because of conflicts with other clients of this co-counsel, he

had to withdraw as co-counsel prior to the Goza Estate being opened in October 2010

These resources were available to me 24/7, except co-counsel in chancery peeled off before the Estate was opened in October 2010. I utilized these resources to make sure that the Goza claim was in accord with the law, as various Goza cases progressed.

Both of the former 2 experts predicted that, in spite of Tennessee's precedent, adjudicators would not let the outcome of the Goza claim be controlled by precedent because precedent could have a disruptive effect, including a direct negative effect on most probate court adjudicators and trust and estate lawyers.

Her Honor is a person whose motives, unquestionably, are admirably high, that Her Honor has an unblemished reputation as a person of impeccable integrity and a person of demonstrated competence as a jurist and, before a jurist, as a practicing lawyer.

Though plaintiffs contend that the instant case is different from prior Goza Estate claims asking for a ruling that the living trust at issue was and remains unlawful and, thus, nonexistent, Her Honor explicitly wrote, in the April 18, 2018 order that the instant case is just a different way to get the trust's assets; thus, Her Honor expressed that Her Honor considered the same consequences, if the claims of plaintiffs, in the instant case, are successful.

The Rule 60.02 Set Aside Motion (RoA Vol. 11 p. 1453) reads, in part pertinent to this appeal, as follows:

> **COME NOW** plaintiffs, Judy Morrow Wright and David Morrow Jr. (hereinafter "**Movants**"), pursuant to ***Tennessee Rules of Civil Procedure,*** Rule 60.02(3) and 60.02(5), and move the Court to set aside what is entitled "Order Of Dismissal," entered, as if a final judgment, on April 10, 2018 (hereinafter "**Putative Judgment**"). Movants do not, hereby, supersede or otherwise change any part of what Movants filed, April 19, 2018, entitled "Motion To Alter or amend" or what Movants filed, June 14, 2018, entitled "Memorandum In Support Of Motion To Alter or amend."
>
> What is here filed is grounded in Rule 60.02(3) (Putative Judgment is void *ab initio*, because it violates the Fourteenth Amendment, Due Process Clause, to the United States Constitution (hereinafter "**Fourteenth Amendment Due Process**"), irrespective of whether the Putative Judgment does or does not violate Tennessee's common law) and Rule 60.02(5) (Putative Judgment is a result-oriented adjudication, thus, per se, a violation of the Fourteenth Amendment Due Process); in contrast, what was filed on April 19, 2018 and June 14, 2018 seeks Rule 59.04 relief.
>
> **FOR CAUSE,** the Putative Judgment was adjudicated by The Honorable Kathleen Gomes (hereinafter "**Your Honor**") who, for the purpose of the instant motion only, is

presumed, as a matter of **actual fact,** to have had **no conflicting self-interest** that motivated the Putative Judgment.

FOR CAUSE, Your Honor adjudicated the Putative Judgment burdened by an **APPEARANCE** which, from the perspective of an objective reasonable adjudicator, in the shoes of Your Honor, informed by all of the information known or which should have been known (e.g., Your Honor's private practice former clients relying on advice given by Your Honor) to Your Honor, creates **doubt** about whether there is a **risk** Your Honor **might** have been and/or could, in the future, be **tempted** to relax that which Fourteenth Amendment Due Process mandates, i.e., to remain constitutionally qualified to adjudicate the Putative Judgment, Your Honor had constantly to remain free of any reasonably-based **suspicion (doubt)** that there is a **risk** that Your Honor **might** be or have been tempted to adjudicate a result consistent with Your Honor's personal interests (including Your Honor's personal interest in like-situated friends and colleagues with clients and former clients like-situated as Your Honor's former clients) (hereinafter "**Predispositional Conflicting Self-Interest Appearance**"), rather than adjudicating a *ratio decidenti* result, i.e., a purely principled totally precedent-controlled result.

* * *

[pp. 14]

* * *

FOR FURTHER CAUSE, less than a year after ***Williams***, in ***Rippo v. Baker***, ___ U.S. ___, 137 S. Ct. 905, 197 L. Ed.2d 167 (March 6, 2017) (hereinafter "***Rippo***"), stating as follows (137 S. Ct. at 907): We vacate the Nevada Supreme Court's judgment because it applied the wrong legal standard. Under our [United States Supreme Court] precedents, the Due Process Clause may sometimes demand **recusal** even **when a judge** " 'ha[s] **no actual bias**.' " *Aetna Life Ins. Co. v. Lavoie,* 475 U.S. 813, 825, [] (1986). Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow v. Larkin,* 421 U.S. 35, 47, 95 [] (1975);

* * *

APPENDIX M

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

No.2:20-cv-02153

JURY DEMANDED

[Filed: March 3, 2020]

IN RE: MAY 27, 2011 ORDER	)
	)
***Res* One**	)
	)
Defendant,	)
	)
and	)
	)
IN RE: MAY 22, 2012 JUDGMENT	)
	)
Res Two	)
	)
Defendant.	)
	)

IN REM INDEPENDENT ACTION BY WHICH CLAIMANT STATES CLAIM OF INTEREST IN THE STATUS OF *RES* ONE AND STATUS OF *RES* TWO AS "JUDGMENTS" VOID *AB INITIO*

COMES NOW, Judy Morrow Wright (hereinafter "**First Claimant**"), pursuant to ***Federal Rules of***

Civil Procedure, Rule 60(b)(4) and Rule 60(d)(1)(hereinafter "**Federal Rule 60**")[1] and ***Tennessee Rules of Civil Procedure***, Rule 60.02(3) and Rule 60.02(5) (hereinafter "**State Rule**

* * *

[pp. 5]

* * *

19. Because the only ground First Claimant asserts for the status of Defendant, May 27 Order being that of a void *ab initio* non-judgment is that the adjudicator, Robert S. Benham (hereinafter "**Subject Adjudicator**"), who adjudicated Defendant, May 27 Order (para. 15; quoted in part para. 148), was disqualified, by the United States Constitution, Fourteenth Amendment (hereinafter "**Fourteenth**

---

[1] Because the "Independent Action" is not often encountered by courts or adjudicators, attention is directed to a history of Federal Rule 60(b)(3) (State Rule 60.02(3)'s counterpart rule) in the *Federal Rules of Civil Procedure,* which is traced, in Wagner, D.W., *Invalidating A Judgment For Fraud … And The Significance Of Federal Rule 60(b)*, 3 **Duke Law Journal** 41-51 (1952) **Exhibit A hereto**). The fact that "fraud" is in article's title should not mislead; the content of the article is more expansive than might be assumed because of the word "fraud" so used**.** State Rule 60 (ADVISORY COMMISSION COMMENT "This Rule supersedes chapter 7 of Title 27, T.C.A., dealing with the writ of error coram nobis, and T.C.A. §§ 27-203, 27-204 [both repealed] dealing with bills of review. The Committee felt that it was better to bring together under one Rule the subject matter formerly covered by these statutes and to provide a simple remedy by motion or by separate suit to obtain relief under the circumstances set out in the Rule.") exists to provide a procedure by which to carry the function performed by the common law Bill of Review and common law writ of coram nobis.

Amendment"), from adjudicating Defendant, May 27 Order.

20. Subject Adjudicator, from December 10, 2010 until March 28, 2013, was the adjudicator in Probate Court assigned to adjudicate all issues relating to Estate (*supra* at para. 15).

21. Subject Adjudicator retired from the bench on March 28, 2013.

* * *

[pp.59]

* * *

Respectfully Submitted,

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APPENDIX N

SUPREME COURT OF TENNESSEE
AT JACKSON

No. W2019-01157-SC-R11-CV

Shelby County Probate Court
No. PR 7275

[Filed: April 17, 2021]

JUDY MORROW WRIGHT,	)
	)
and	)
	)
DAVID MURROW, JR.	)
	)
Appellants	)
	)
v.	)
	)
MATTHEW G. BUYER, ESQ.,	)
	)
and	)
	)
SUNTRUST BANK,	)
Appellees	)
	)

APPELLANT'S RULE 11
APPLICATION TO APPEAL

COME NOW Judy Morrow Wright and David Morrow, Jr. ("Applicants"), and, pursuant to ***Tennessee Rules of Appellant Procedure,*** Rule 11 ("Rule 11"), apply to this Court to review and reverse the March 2, 2021[1] opinion ("Opinion"), a copy of which is attached hereto as Exhibit A of the Tennessee Court of Appeals ("COA").

No ***Tennessee Rules of Appellate Procedure,*** Rule 39 petition to rehear was filed.

PREFACE

This appeal is about two subjects: **(1)** whether a court lacks subject matter jurisdiction (*infra* fn. 3, p. 5; 9, 11, 12, 24, 41, 42, 45, 46, 48) (to render a judgment issued by a judge disqualified by an appearance of neutrality that might be compromised by an innocent predispositional bias, **(2)** whether it is constitutionally possible for a litigant to waive, voluntarily or otherwise or to consent to be judged by a judge disqualified by an appearance of neutrality that might be compromised by an innocent predispositional bias.

* * *

[pp. 48]

* * *

Applicants respectfully suggest that the practical effect ***Williams*** is intended to have in the courtrooms in Tennessee and the rest of the United States are simple and very achievable.

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[1] Full citation is ***Wright v. Buyer***, W2019-01157-COA-R3-CV, 2021 WL 796701 (Tenn. Ct. App. Mar. 2, 2021) ("***Wright* 2021**").

First, as much as 95% of the responsibility for withdrawing from an adjudication is shifted from the litigant (requiring a motion to recuse) to the adjudicator, requiring no motion to recuse.

Second, the primary emphasis of adjudicator disqualification is shifted from animus-based bias or conflict-of-interest bias to innocent predispositional ("psychologically wedded") bias.

The **question** the judge must ask is **NOT**, in spite of my innocent predispositional bias, can I, without any doubt, set aside that bias and adjudicate the case with cold neutrality.

This shift requires every adjudicator to ask herself/himself whether, assuming everybody in the relevant public audience knew about the adjudicator "all of the facts known to the judge [adjudicator]," would there be a chance that reasonable members of the public would have "any doubt about whether the adjudicator's neutrality could be undermined by an innocent predispositional ("psychologically wedded") bias?

If the adjudicator asks himself/herself that question and concludes in the negative, is the adjudicator so confident of the negative answer that he/she is prepared to be questioned, subject to the penalties of perjury, about "all of the facts known to the judge" and leave to a cold stone neutral adjudicator whether the adjudicator's self-assessed negative answer is reliable?

By all but eliminating actual bias as a factor, ***Williams*** frees up adjudicators to recuse without admitting an inability to be impartial. Recusal is now

100% about appearances and 100% not about actuality. How neutral a judge could be, in actuality, is absolutely irrelevant.

This could be the most momentous change ***Williams*** made. Almost always, subliminally, even if not spoken, the actuality of whether a judge or other judges believe the challenged judge could and would, in fact, be neutral drives recusal decisions. This cannot be so post-***Williams***.

No adjudicator has reason to refrain from recusal/withdrawal because recusal/withdrawal reflects poorly on the adjudicator. If a judge refuses because of a fear that so doing will give opportunity for a result different from the result the adjudicator wants to adjudicate, that is the polar opposite of cold neutrality and is certain evidence that not recusing will be an adjudication that our system cannot tolerate.

Respectfully Submitted,

PARRISH LAWYERS, P.C.
Counsel to Appellant

APPENDIX O

TRIAL COURT FAILURE RECUSAL REVERSED

1. ***Winne v. Winne***, 2019 WL 5606928 (Tenn. Ct App. 2019)

2. ***State v. Murphy***, 2019 WL 5431880 (Tenn. Ct App. 2019)

3. ***Schwager v. Messer***, 2019 WL 4733475 (Tenn. Ct App. 2019)

4. ***In re Kingston A.B.***, 2019 WL 3946095 (Tenn. Ct App. 2019)

5. ***Parker v. Brunswick Forest Homeowners Association, Inc.***, 2019 WL 2482351 (Tenn. Ct App. 2019)

6. ***In re Colton B.***, 2018 WL 5415921 (Tenn. Ct App. 2018)

7. ***Buchanan v. Buchanan***, 2018 WL 4635746 (Tenn. Ct App. 2018)

8. ***Mitchell v. State***, 2018 WL 3005379 (Tenn. Ct App. 2018)

9. ***Hindiyeh v. Abed***, 2018 WL 1953213 (Tenn. Ct App. 2018)

10. ***State v. Coleman***, 2018 WL 1684365 (Tenn. Ct Crim. App. 2018)

11. ***Johnson v. State***, 2018 WL 784761 (Tenn. Ct Crim. App. 2018)

12. ***Holsclaw v. Ivy Hall Nursing Home, Inc.***, 530 S.W.3d 65 (Tenn. 2017)

13. ***Murray v. Miracle***, 2017 WL 1137093 (Tenn. Ct App. 2017)

14. ***State v. Brooks***, 2017 WL 758519 (Tenn. Ct Crim. App. 2017)

15. ***Arrington v. Broyles***, 2017 WL 541536 (Tenn. Ct App. 2017)

16. ***Holsclaw v. Ivy Hall Nursing Home, Inc.***, 2016 WL 7364901 (Tenn. Ct App. 2016)

17. ***Beaman v. Beaman***, 2018 WL 5099778 (Tenn. Ct App. 2018)

18. ***Jekot v. Jekot***, 2018 WL 4677676 (Tenn. Ct App. 2018)

19. ***Buckley v. Elephant Sanctuary in Tennessee, Inc.***, 2020 WL 3980437 (Tenn. Ct. App. 2020)

20. ***Jackson v. State***, 2020 WL 5792961 (Tenn. Crim. App. 2020)

21. ***Cook v. State***, 606 S.W.3d 247, 257 (Tenn. 2020)

22. ***Chase v. Stewart***, 2021 WL 402565, (Tenn. Ct. App. 2021)

23. ***Davidson v. State***, 2021 WL 3672797 (Tenn. Crim. App. 2021)

24. ***Tucker v. State***, 2021 WL 3855859 (Tenn. Crim. App. 2021)

SUA SPONTE **RECUSALS**

1. ***Swafford v. Swafford***, 2018 WL 1410900 (Tenn. Ct App. 2018)

2. ***Purifoy v. Mafa***, 556 S.W.3d 170 (Tenn. Ct App. 2017)

3. ***Rainbow Ridge Resort, LLC v. Branch Banking and Trust Co.***, 525 S.W.3d 252 (Tenn. Ct App. 2016)

4. ***Lovett v. Lynch***, 2016 WL 7166407 (Tenn. Ct App. 2016)

5. ***Young v. Dickson***, 2019 WL 4165237 (Tenn. Ct App. 2019)

6. ***Nena Proffitt Valentine v. Fred Holt et al.***, 2020 WL 373338 (Tenn. Ct App. 2020)

7. ***In re Estate of Lloyd***, 2020 WL 91836 (Tenn. Ct App. 2020)

8. ***Adams v. State***, 2019 WL 6999719 (Tenn. Ct Crim. App. 2019)

9. ***Dougherty v. Dougherty***, 2020 WL 7334388 (Tenn. Ct. App. 2020)

10. ***Stump v. Stinson***, 2021 WL 3667231 (Tenn. Ct. App. 2021)

11. ***Jones v. State***, 2021 WL 2255504 (Tenn. Crim. App. 2021)

12. ***Reliant Bank v. Bush***, 2021 WL 408902 (Tenn. Ct. App. 2021)

RECUSAL DENIED

1. ***Winder v. Winder***, 2019 WL 6133853 (Tenn. Ct App. 2019)

- The court found no evidence of bias.

2. ***Nesmith v. Clemmons***, 2019 WL 5847286 (Tenn. Ct App. 2019)

- The court thoroughly reviewed the record in this case and concluded that Appellants failed to meet their burden to show a bias so pervasive that it denied them their right to a fair trial. The record on appeal contains no indication that Judge Binkley has prejudged any of the issues in this case in favor of one party, despite the contentiousness of the proceedings among all participants.

3. ***Sharifa v. Wells Fargo/ASC***, 2019 WL 5664095 (Tenn. Ct App. 2019)

- The Plaintiff did not file her motion to recuse until nine months after the alleged events detailed in the motion.

4. ***Matthews Construction, Inc. v. Omanwa***, 2019 WL 5309061(Tenn. Ct App. 2019)

- The court also held that the motion failed to comply with section 1.01 of Rule 10B in that it did not state that it was not filed for an improper purpose, that the motion was not

timely, and that Defendant failed to establish grounds warranting recusal.

5. ***In re Estate of Ellis***, 2019 WL 4566962 (Tenn. Ct App. 2019)

- No factual basis had been established to either create an appearance of impropriety or of misconduct.

6. ***Doe v. Davis***, 2019 WL 4247753 (Tenn. Ct App. 2019)

- Davis's motions to recuse had deficiencies; there was no reasonable basis for questioning the court's impartiality because Ms. Doe's cause of action stemmed from Mr. Davis's tortious conduct, which was unconnected to his lawsuits involving MBA.

7. ***Hamilton v. Methodist Healthcare Memphis Hospitals***, 2019 WL 4235000 (Tenn. Ct App. 2019)

- The court found no basis to conclude that the trial judge's impartiality might be reasonably questioned.

8. ***Russell v. Household Financial Services, Inc.***, 2019 WL 4052494 (Tenn. Ct App. 2019)

- The Plaintiff demonstrated no reason for recusal other than the fact that she was unhappy with some of the rulings of the Chancery Court.

9. ***State v. Vandenburg***, 2019 WL 3720892 (Tenn. Ct Crim. App. 2019)

- The Defendant did not include it in his motion for new trial
- The Defendant waived plenary review of this issue by failing to raise the issue in his motion for new trial or motion to recuse.

10. ***Ryan v. Soucie***, 2019 WL 3238642 (Tenn. Ct App. 2019)

- The Court determined that there was no basis for recusal.

11. ***Lee v. Lee***, 2019 WL 2323832 (Tenn. Ct App. 2019)

- The Court determined no evidence of improper purpose.

12. ***Foster v. Foster***, 2019 WL 1959603 (Tenn. Ct App. 2019)

- It was concluded that the trial court was not required to recuse itself – no evidence of bias.

13. ***Stark v. Stark***, 2019 WL 2515925 (Tenn. Ct App. 2019)

- The Plaintiff failed to seek recusal in a timely manner.

14. ***Watson v. Watson***, 2019 WL 1514087 (Tenn. Ct App. 2019)

- The court found that neither of the Plaintiff's motions, either the original motion to recuse or

his supplemental motion to recuse, are supported by the required affidavit under oath or declaration as required under rule.

15. ***Harcrow v. Harcrow***, 2019 WL 1397085 (Tenn. Ct App. 2019)

- The motion for recusal wasn't timely filed and the basis for the recusal is simply an allegation that the Court is misapplying the law.

16. Purswani v. Purswani, 2019 WL 1376893 (Tenn. Ct App. 2019)

- There was no basis warranting recusal.

17. ***Gibson v. State***, 2019 WL 962898 (Tenn. Ct Crim. App. 2019)

- The Motion to Recuse was procedurally deficient.

18. ***State v. Woodard***, 2019 WL 454276 (Tenn. Ct Crim. App. 2019)

- The trial court found that there was not sufficient evidence warranting recusal.

19. ***Ueber v. Ueber***, 2019 WL 410703 (Tenn. Ct App. 2019)

- The Plaintiff failed to seek recusal in a timely manner.

20. ***Harcrow v. Harcrow***, 2019 WL 410701 (Tenn. Ct App. 2019)

- There was a lack of subject matter jurisdiction.

21. ***State v. Wilson***, 2019 WL 246249 (Tenn. Ct Crim. App. 2019)

- The trial court found no objective basis for recusal.

22. Murray v. Miracle, 2018 WL 4520573 (Tenn. Ct App. 2018)

- The record submitted by the Plaintiff with her petition for recusal appeal does not include any affidavit filed in support of her motion to recuse.

23. ***Phillips v. State***, 2018 WL 4462179 (Tenn. Ct Crim. App. 2018)

- There was no evidence of judicial bias.

24. ***Patterson v. STHS Heart, LLC***, 2018 WL 4091633 (Tenn. Ct App. 2018)

- The court found no facts in the record to establish that the trial court's ex parte communications mandate recusal.

25. ***Berg v. Berg***, 2018 WL 3612845 (Tenn. Ct App. 2018)

- At the outset of our review, we observe that Mother's recusal motion was, in fact, defective. Here, although an affidavit in support of the motion to recuse is included in the record provided, it clearly does not meet the standard set forth in Rule 10B. Instead of being made under oath on "personal knowledge" as is required, the affidavit filed in this case includes an oath attesting that the statements included

are "true to the best of [Mother's] knowledge, information and belief."

- The motion for recusal was filed in an untimely manner.
- The issue of waiver notwithstanding, we are of the opinion that the merits of this case do not warrant recusal.

26. ***In re Charles R.***, 2018 WL 3583307 (Tenn. Ct App. 2018)

- Motion for recusal was filed in an untimely manner and the parental rights were terminated.

27. ***Wright v. Buyer***, 2018 WL 3546784 (Tenn. Ct App. 2018)

- The Petitioners did not support their recusal motion with an affidavit or a declaration under penalty of perjury on personal knowledge. They did not promptly file the recusal motion after the facts forming the basis for the motion became known.

28. ***Duke v. Duke***, 563 S.W.3d 885 (Tenn. Ct App. 2018)

- The Court affirmed the trial court's ruling on appeal, determining that recusal was not warranted.

29. ***Gibson v. Bikas***, 2018 WL 2671627 (Tenn. Ct App. 2018)

- There was no evidence in the case supporting recusal.

30. ***Doe by Doe v. Brentwood Academy Inc.***, 2018 WL 2282605 (Tenn. Ct App. 2018)

- There was no evidence in the case indicating bias and supporting recusal.

31. ***Johnson v. State***, 2018 WL 2203241 (Tenn. Ct Crim. App. 2018)

- The petitioner failed to establish that he was prejudiced by the district attorney's review of the sealed exhibits or by the contact with the jurors.

32. ***Pearson v. Koczera***, 2018 WL 2095276 (Tenn. Ct App. 2018)

- The bias was so pervasive that it is sufficient to deny the litigant a fair trial.

33. ***Prewitt v. Brown***, 2018 WL 2025212 (Tenn. Ct App. 2018)

- The Plaintiff's misplaced reliance on Tenn. R. Civ. P. 63, which is inapplicable, her failure to substantially comply with Rule 10B, and realizing that her grounds are primarily based on rulings she claims were erroneous, which do not, without more, justify disqualification for recusal.

34. ***In re Estate of Miller***, 2018 WL 1989610 (Tenn. Ct App. 2018)

- There was no evidence of bias that would require recusal.

35. ***Rich v. Rich***, 2018 WL 1989619 (Tenn. Ct App. 2018)

- The motion to recuse and petition for recusal were brought before the courts for an improper purpose.

36. ***C.D.B. v. A.B.***, 2018 WL 1976119 (Tenn. Ct App. 2018)

- The trial court's actions in this case did not create the appearance of bias.

37. ***Ismoilov v. Sears Holdings Corporation***, 2018 WL 1956491 (Tenn. Ct App. 2018)

- The bias was so pervasive that it was sufficient to deny the litigant a fair trial.

38. ***In re Allie A.***, 2018 WL 1124517 (Tenn. Ct App. 2018)

- The trial court did not find anything wrong with the trial judge's actions and statements.

39. ***Gibson v. Bikas***, 556 S.W.3d 796 (Tenn. Ct App. 2018)

- The Plaintiff never filed a motion for the trial court judge's recusal pursuant to Tennessee Supreme Court Rule 10B.

40. ***In re Samuel P.***, 2018 WL 1046784 (Tenn. Ct App. 2018)

- The trial court found the father in criminal contempt.

41. ***In re Britton H-S***, 2018 WL 1040945 (Tenn. Ct App. 2018)

- The court found the father's testimony at trial was not credible.

42. ***State v. Sisco***, 2018 WL 1019870 (Tenn. Ct Crim. App. 2018

- The trial court found no reason for the D.A.'s Office to recused from the case.

43. ***Olivier v. State***, 2018 WL 615185 (Tenn. Ct Crim. App. 2018)

- The motion for recusal was struck and sealed by the trial court as "impertinent, offensive, and contemptuous" and are not contained in the record before this Court.

44. ***Elseroad v. Cook***, 553 S.W.3d 460 (Tenn. Ct App. 2018)

- The husband's contention that the judge showed bias by refusing to allow the husband to testify in support of his motion for recusal was not sufficient. The husband also failed to attach an affidavit.

45. ***Metzger v. Metzger***, 2018 WL 522414 (Tenn. Ct App. 2018)

- Not only did the Judge take great pains to explain in her remarks that she was not prejudging the issues in this case, but she also made clear in those remarks that she viewed both parties as "good parents," both of whom were needed in the life of their minor child. Such remarks hardly indicate any bias or prejudice against Mother, let alone the level of bias or prejudice necessary to warrant recusal.

46. ***Gentry v. Gentry***, 2017 WL 6623387 (Tenn. Ct App. 2017)

- There was no evidence of bias.

47. ***Boren v. Hill Boren, PC***, 557 S.W.3d 542 (Tenn. Ct App. 2017)

- The judge did not engage in inappropriate ex parte communication with chancellor.

48. ***Kiser v. State***, 2017 WL 6549893 (Tenn. Ct Crim. App. 2017)

- The Petitioner failed to establish that counsel's failure to file a motion to recuse constituted deficient performance. There was no evidence that an inappropriate relationship had occurred requiring the trial judge's recusal.

49. ***Alattiyat v. Qasqas***, 2017 WL 5197290 (Tenn. Ct App. 2017)

- The court did not find any evidence of bias.

50. ***In re Estate of Abbott***, 2017 WL 4864816 (Tenn. Ct App. 2017)

- Consistent adverse rulings may lead a party to wish for another trial judge, but they do not provide a basis for requiring the trial judge's recusal from the case.

51. ***State v. Bargery***, 2017 WL 4466559 (Tenn. Ct Crim. App. 2017)

- Sufficient ground did not exist to require the recusal of the trial judge.

52. ***Armstrong v. State***, 2017 WL 4315376 (Tenn. Ct Crim. App. 2017)

- The Petitioner submitted no evidence at the post-conviction hearing that there was a valid reason to request recusal.

53. ***Chase v. Stewart***, 2017 WL 3738466 (Tenn. Ct App. 2017)

- A recusal motion was not filed in a timely manner.

54. ***Moses v. Oldham***, 2017 WL 3149635 (Tenn. Ct App. 2017)

- The bias was so pervasive that it was sufficient to deny the litigant a fair trial.

55. ***Drayton v. Cooper Moving Services***, 2017 WL 2925058 (Tenn. Ct App. 2017)

- The allegations set out in the motion for recusal have no basis in fact and cannot support a request for recusal.

56. ***Turner v. State***, 2017 WL 2895938 (Tenn. Ct Crim. App. 2017)

- The motion was filed in an untimely manner.

57. ***Hearing v. State***, 2017 WL 2829754 (Tenn. Ct Crim. App. 2017)

- The trial court's prior findings concerning the nature of the Petitioner's release eligibility do not provide a basis for recusal of the court.

58. ***State v. Jones***, 2017 WL 2493686 (Tenn. Ct Crim. App. 2017)

- The motion for recusal was not filed in a timely manner. The judge's impartiality could not reasonably be called into question. The court found no abuse of discretion in the trial court's denial of the defendant's motion to recuse.

59. ***Stone v. State***, 2017 WL 2438580 (Tenn. Ct Crim. App. 2017)

- In the instant case, the defendant, after reciting the applicable law for the review of ineffectiveness claims, merely listed his multiple claims of ineffective assistance of counsel in a 15–line, single sentence that was devoid of

argument, citation to authorities, or appropriate references to the record.

60. ***Veard v. Veard***, 2017 WL 2179921 (Tenn. Ct App. 2017)

- The evidence in this case simply does not rise to the level of demonstrating an impermissible pervasive bias.

61. ***Adkins v. Adkins***, 2017 WL 1960549 (Tenn. Ct App. 2017)

- There was no proper request made by Mr. Adkins or his attorney for this evidence to be filed.

62. ***Dialysis Clinic, Inc. v. Medley***, 2017 WL 1137100 (Tenn. Ct App. 2017)

- Because of Appellants' acquiescence in the trial court's hearing and failure to object to the trial court's proposed procedure, we conclude that recusal was not necessary in this case.

63. ***Valentine v. State***, 2017 WL 716015 (Tenn. Ct Crim. App. 2017)

- The post-conviction court stated that "a complaint against the judge is not a basis for recusal."

64. ***Clemmons v. Nesmith***, 2017 WL 480705 (Tenn. Ct App. 2017)

- There was no impropriety created when the trial court ruled a denial of the motion for recusal.

65. ***Hobbs Purnell Oil Company, Inc. v. Butler***, 2017 WL 121537 (Tenn. Ct App. 2017)

- The appellants did not provide the mandatory affidavit in support of their motion for recusal. The mere fact that a witness takes offense at the court's assessment of the witness' does not provide grounds for recusal.

66. ***State v. Heard***, 2017 WL 111299 (Tenn. Ct Crim. App. 2017)

- The record, however, is totally devoid of any evidence to support the Defendant's contention that the trial judge should have recused himself. Furthermore, the motion for recusal is not in the record, nor is the transcript of the proceeding alluded to during the June 21 hearing.

67. ***Cisneros v. Miller***, 2017 WL 113964 (Tenn. Ct App. 2017)

- The father's petition for recusal appeal does not include a copy of the motion for recusal filed in the trial court.

68. ***State v. Davidson***, 509 S.W.3d 156 (Tenn. 2016)

- The action was unintentional and did not result in **prejudice** to the defendant.

69. ***Gentry v. Gentry***, 2016 WL 7176981 (Tenn. Ct App. 2016)

- Mr. Gentry has offered nothing but misinterpretation of rules and case law combined with unsupported suspicion to justify

the recusal of the panel. His arguments are not reasonable.

- In the courts, the panel's rulings and orders were correct and did not establish bias.

70. ***Davis v. State***, 2016 WL 6791078 (Tenn. Ct Crim. App. 2016)

- There was no evidence that the judge had a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

71. ***Clemmons v. Nesmith***, 2016 WL 6583790 (Tenn. Ct App. 2016)

- The recusal motion was ineffective because it was not signed by local counsel.

72. ***Davis v. Lewelling***, 2016 WL 6311799 (Tenn. Ct App. 2016)

- The evidence in this case simply does not rise to the level of demonstrating an impermissible **pervasive** bias.

73. ***Anderson Lumber Company, Inc. v. Kinney***, 2016 WL 6248597 (Tenn. Ct App. 2016)

- The court concluded that the mere existence of a friendship between a judge and an attorney is not sufficient, standing alone, to mandate recusal.

74. ***Groves v. Ernst-Western Corporation***, 2016 WL 5181687 (Tenn. Ct App. 2016)

- The allegations fell short of requiring recusal.

75. ***Wadhwani v. White***, 2016 WL 4579192 (Tenn. Ct App. 2016)

- The court found that no basis for recusal existed pursuant to Tennessee Supreme Court Rule 10 because the judge held no bias or prejudice toward either party and had no doubt of his ability to proceed impartially in this matter.

76. ***Hatfield v. Allenbrooke Nursing and Rehabilitation Center, LLC***, 2016 WL 4487997 (Tenn. Ct App. 2016)

- The bias and prejudice did **not merit** recusal.

77. ***Oni v. Tennessee Department of Health***, 2016 WL 4467690 (Tenn. Ct App. 2016)

- The Court declined to find that judicial recusal rules applied to administrative panel members.

78. ***Garner v. Garner***, 2016 WL 4249479 (Tenn. Ct App. 2016)

- The party seeking recusal bears the **burden of proof,** and "any alleged bias must arise from extrajudicial sources and not from events or observations during litigation of a case.
- The mere fact that a witness takes offense at the court's assessment of the witness cannot serve as a valid basis for a motion to recuse.

79. ***Turner v. State***, 2016 WL 4009559 (Tenn. Ct Crim. App. 2016)

- The petitioner failed to demonstrate that he was prejudiced by trial counsel's failure to seek recusal of the trial judge.

80. ***State v. McMiller***, 2016 WL 3947878 (Tenn. Ct Crim. App. 2016)

- The defendant failed to seek recusal of the trial judge at any time during the trial.

81. ***State v. Lowe***, 2016 WL 4909455 (Tenn. Ct Crim. App. 2016)

- The State asserts that any argument that the trial court should have recused itself for bias based on its actions during trial is waived for failure to move for a recusal.

- There is absolutely no mention of any other basis for recusal in the entire history of the case—other than today there is a double standard issue being raised." The trial court concluded that it had "no partiality" and that "the record absolutely demonstrates the trial court's fairness and impartiality."

- The trial court's decision to limit the cross-examination of the defendant's father regarding her church activities does not indicate bias warranting recusal.

82. ***Commerce Union Bank, Brentwood, Tennessee v. Bush***, 512 S.W.3d 217 (Tenn. Ct App. 2016)

- The motion to recuse was filed in an untimely manner and failed to comply with Tennessee Supreme Court Rule 10B.

83. ***State v. Jones***, 2016 WL 3261513 (Tenn. Ct Crim. App. 2016)

- The motion to recuse was neither timely filed nor meritorious.

84. ***Colley v. Colley***, 2016 WL 3633376 (Tenn. Ct App. 2016)

- There are no facts alleged or shown in the record that demonstrate either actual bias on the part of the Trial Court Judge or that would lead a well-informed, disinterested observer to question the impartiality of the Judge in this case.

85. ***Holleman v. Holleman***, 2019 WL 2308066 (Tenn. Ct App. 2019)

- The trial court found no error in how to Judge was conducting himself and going about the case.

86. ***Anderson Lumber Company, Inc. v. Kinney***, 2019 WL 3944007 (Tenn. Ct App. 2019)

- Defendants have demonstrated no reason for recusal other than the fact that they are unhappy with a number of the rulings of the Trial Court. Such unhappiness is insufficient to justify recusal. Furthermore, Defendants have

proven no facts supporting recusal. Rather, Defendants simply provide unsubstantiated argument, most of which concerns the merits of the underlying claim.

87. ***Odom v. Odom***, 2019 WL 3546437 (Tenn. Ct App. 2019)

- The motion for recusal was filed in an untimely manner. There was no basis for recusal.

88. ***Neamtu v. Neamtu***, 2019 WL 2849432 (Tenn. Ct App. 2019)

- The record indicated insufficient evidence of bias requiring recusal.

89. ***Butler v. First South Financial Credit Union***, 2019 WL 1998982 (Tenn. Ct App. 2019)

- The Plaintiff never filed a motion for recusal. Further, there is no evidence in the record to support any of Plaintiff's allegations relating to the handling of his case or the issuance of the injunction, which still permitted him access to the court.

90. ***Nelson v. Justice***, 2019 WL 337040 (Tenn. Ct App. 2019)

- The court concluded that Father failed to establish grounds to require the recusal of Judge Ash.

91. ***In re L.T.***, 2019 WL 761554 (Tenn. Ct App. 2019)

- There were no sustainable grounds for the motion, and "[m]oreover, as a practical matter,

the request for a hearing pursuant to Tennessee Code Annotated, Section 37-1-107(d) requires another judge to hear the case making the motion moot."

92. ***Haslett v. Gregory***, 2018 WL 6617822 (Tenn. Ct App. 2018)

- The defendants have failed to show the something more that would be necessary to justify disqualification. Their claim of partiality relies solely on one adverse ruling, the denial of their motion for summary judgment. Determining whether that ruling was in error is beyond the scope of this proceeding. In sum, we are presented with no facts that would support the proposition that the denial of the motion for summary judgment resulted from the chancellor's bias or prejudice against the defendants.

93. ***Turner v. State***, 2018 WL 6253822 (Tenn. Ct Crim. App. 2018)

- No conflict of interests existed that would warrant recusal.

94. ***Primary Residential Mortgage, Inc. v. Baker***, 2018 WL 3530835 (Tenn. Ct App. 2018)

- The record is insufficient to support a finding of error on the part of the trial court in denying the motion for recusal.

95. ***Freeman v. State***, 2018 WL 2095161 (Tenn. Ct Crim. App. 2018)

- The Petitioner has made no argument as to how any of the issues warranted recusal of the trial judge. Accordingly, he has failed to show that he is entitled to relief.

96. ***Harris v. State***, 2018 WL 1674222 (Tenn. Ct Crim. App. 2018)

- Because the Petitioner's underlying issues regarding recusal of the trial judge are without merit, trial counsel was not required to file a futile motion irrespective of the deliberate nature of the decision.

97. ***McKinley v. State***, 2018 WL 799166 (Tenn. Ct Crim. App. 2018)

- Therefore, no inferior court was involved; article 6, section 11 of the Tennessee Constitution was not implicated; and no constitutional provisions were violated. We conclude that the Appellant is not entitled to relief on this issue.

98. ***Odom v. State***, 2017 WL 4764908 (Tenn. Ct Crim. App. 2017)

- The court concluded that the post-conviction court did not err by denying post-conviction relief to the Petitioner. The Petitioner has failed to establish the existence of any error warranting relief. Thus, his cumulative error argument is also without merit.

99. ***Jacqueline Graybill McSurley v. Michael Glen McSurley***, 2020 WL 256190 (Tenn. Ct App. 2020)

- The record indicated insufficient evidence of bias requiring recusal.

100. ***Hill Boren Properties et al. V. Ricky Lee Boren v. Tamara Hill et al.***, 2020 WL 119738 (Tenn. Ct App. 2020)

- The alleged bias and prejudice proved to be unsubstantial.

101. ***Mathews v. State***, 2019 WL 7212603 (Tenn. Ct Crim. App. 2019)

- Although the trial judge heard similar testimony during the co-defendant's trial and approved the verdict of guilt against the co-defendant, the record did not reflect that the judge was influenced in his decision as a thirteenth juror in the defendant's case by his presiding at the co-defendant's trial.

102. ***Renner v. Renner***, 2019 WL 7287159 (Tenn. Ct App. 2019)

- The mere fact that a witness takes offense at the court's assessment of the witness cannot serve as a valid basis for a motion to recuse.

103. ***Harris v. Smith***, 2019 WL 7116205 (Tenn. Ct App. 2019)

- This record contains no evidence that the Trial Court Judge said or did anything even mildly

discourteous to Plaintiff, let alone something so egregious as to require recusal.

104. ***Alan O. v. Tennessee Department of Children's Services***, 2019 WL 6998309 (Tenn. Ct App. 2019)

- Whereas the brief generally, albeit summarily, contends that the trial court should be recused due to "improper bias," no explanation or citation to the record is proffered regarding this concern.

105. ***Dye v. Dye***, 2019 WL 6888673 (Tenn. Ct App. 2019)

- Moreover, a judge is not required to recuse himself or herself from every case in which counsel of record is a former law clerk or is viewed as a mentor or friend by the law clerk.

106. ***Smith v. Daniel***, 2019 WL 6825976 (Tenn. Ct App. 2019)

- The order states that the trial judge had no contact with or knowledge of Mother prior to the filing of her petition, and the trial judge's only contact with Mother occurred at the two hearings on October 11 and October 28. The order notes Mother's claim that she "felt" bias in open court but could not articulate a specific violation of any legal ground. The trial judge specifically addressed Mother's complaints of bias regarding the first hearing.

107. ***Haley v. State***, 2019 WL 6652020 (Tenn. Ct Crim. App. 2019)

- The post-conviction court refused, noting that the Petitioner's alleged issues of misconduct were merely challenges to the court's rulings at trial. The post-conviction court asked the Petitioner to detail his allegations against the court, noting that "foot dragging" was the only thing the Petitioner had mentioned.

108. ***In re Estate of Dorning***, 2020 WL 3481538 (Tenn. Ct. App. 2020)

- "A judge's irritation or exasperation with counsel, criticism of counsel for perceived delays or failures to follow rules, friction occurring during litigation, or even sanctions and contempt charges do not establish the objective personal bias that would prevent a fair assessment of the merits of the case."

109. ***State v. Griffin***, 610 S.W.3d 752, 762 (Tenn. 2020)

- We hold that the trial judge properly denied the motion for recusal because a person of ordinary prudence in the judge's position, knowing all of the facts known to the trial judge, would not find a reasonable basis for questioning the judge's impartiality.

110. ***Xingkui Guo v. Rogers***, 2020 WL 6781244 (Tenn. Ct. App. 2020)

- Concerning Mr. Guo's evidence of bias, in its order denying recusal, the trial court found that there was no evidence that [the trial court's] decision [held] any actual or perceived bias or prejudice towards [Appellant]. Rather, the decision was made on the application of the law to the facts that were before the [c]ourt. The allegations in [the] motion [for recusal] amount[ed] to nothing more than displeasure with the [c]ourt's ruling.

111. ***State v. Styles***, 610 S.W.3d 746, 752 (Tenn. 2020)

- We hold that the trial judge properly denied the motion for recusal because "a person of ordinary prudence in the judge's position, knowing all of the facts known to the judge," would not find a reasonable basis to question the trial judge's impartiality.

112. ***Moncier v. Wheeler***, 2020 WL 4343336 (Tenn. Ct. App. 2020)

- Because the record is insufficient to resolve the issue raised by Mr. Wheeler, the issue of recusal is waived on appeal. We therefore affirm the trial court's denial of his motion for recusal.

113. ***Salas v. Rosdeutscher***, 2021 WL 830009 (Tenn. Ct. App. 2021)

- As discussed herein, Mr. Manookian's request for Judge Jones' recusal is singularly predicated upon his filing of a complaint against Judge Jones with the Board. Moreover, there is no evidence before us that Judge Jones possesses any actual bias or prejudice against Mr. Manookian. Considering these limited facts and our discussion herein, we do not find there to be a reasonable basis for questioning Judge Jones' impartiality.

114. ***Herron v. State***, 2020 WL 3481696 (Tenn. Ct. App. 2020)

- Therefore, we find no factual basis upon which to conclude that a person of ordinary prudence in Commissioner Hamilton's position, "knowing all of the facts known to the judge, would find a reasonable basis for questioning his impartiality."

115. ***Wright v. Buyer***, 2021 WL 796701 (Tenn. Ct. App. 2021)

- We previously considered the plaintiffs' claims of the judge's "appearance of a predispositional bias" in an accelerated interlocutory appeal as of right under Tennessee Supreme Court Rule 10B. In that appeal, we determined that the plaintiffs had waived their right to challenge the judge's impartiality. So based on the law of the case, we affirm the denial of plaintiffs' motion for relief from the judgment.

116. ***State v. Clark***, 610 S.W.3d 739, 746 (Tenn. 2020)

- We hold that the trial judge properly denied the motion for recusal because "a person of ordinary prudence in the judge's position, knowing all of the facts known to the trial judge," would not find a reasonable basis to question the judge's impartiality.

117. ***Burgess v. Hoa***, 2020 WL 6317005 (Tenn. Ct. App. 2020)

- Mr. Burgess failed to comply with Rule 10B either before the trial court by not supporting his motion seeking disqualification or recusal with an affidavit or before this Court by not providing a copy of the affidavit. So, we affirm the denial of the motion.

118. ***Hawthorne v. Morgan & Morgan Nashville PLLC***, 2020 WL 7395918 (Tenn. Ct. App. 2020)

- As an initial matter, we are of the opinion that this asserted basis for recusal is somewhat premature. It is predicated on the notion that additional claims will later be asserted. We decline the invitation to hold that the trial judge should have recused himself on the basis that certain allegations, if asserted, would justify disqualification.

119. ***Diemoz v. Huneycutt***, 2020 WL 2188996 (Tenn. Ct. App. 2020)

- Here, Plaintiffs filed their motion to recuse the day before the scheduled hearing. The motion

was also not supported by an affidavit and was filed by a firm previously disqualified by the trial court. Under these circumstances, we find no error in the court's denial of the recusal motion.

120. ***Anderson v. State***, 2020 WL 186737 (Tenn. Crim. App. 2020)

- The petitioner is essentially arguing the post-conviction judge's adverse rulings at trial created judicial bias against the petitioner. However, adverse rulings by a trial court do not, by themselves, establish judicial bias requiring recusal of the trial court.

121. ***Johnson v. State***, 2020 WL 4745486 (Tenn. Crim. App. 2020)

- The Petitioner has not shown deficient performance or prejudice from the absence of a motion for change of venue or a motion for recusal of the trial judge and, therefore, is not entitled to relief as to this issue.

122. ***Campbell v. State***, 2020 WL 6793390 (Tenn. Crim. App. 2020)

- We simply cannot conclude that "'a person of ordinary prudence in the judge's position, knowing all of the facts known to the judge, would find a reasonable basis for questioning the judge's impartiality.'" *Smith v. State,* 357 S.W.3d 322, 341 (Tenn. 2011) (quoting *Bean v. Bailey,* 280 S.W.3d 798, 805 (Tenn. 2009)). Thus, the defendant is not entitled to relief.

123. ***State v. Duncan***, 2021 WL 3403152 (Tenn. Crim. App. 2021)

- The State responds that the Defendant has waived this issue by failing to "raise it in a timely motion to recuse." The State further argues that even if the issue were not waived, the Defendant has "failed to show the trial court was unfairly biased against him." We agree with the State.

124. ***Adkins v. Adkins***, 2021 WL 2882491 (Tenn. Ct. App. 2021)

- This accelerated interlocutory appeal is taken from the trial court's order denying Appellant's motion for recusal. Because there is no evidence of bias that would require recusal under Tennessee Supreme Court Rule 10B, we affirm the judgment of the trial court.

125. ***Parker v. SCG-LH Murfreesboro, LP***, 2021 WL 2767272 (Tenn. Ct. App. 2021)

- Without the benefit of the discovery propounded on Appellee, Appellee's responses, or Mr. Parker's motions for sanctions, we are simply unable to conclude that Mr. Parker met his high burden to show an abuse of discretion in the trial court's decision. *Cf.* ***Duke***, 563 S.W.3d at 906 (holding that we could not review the trial court's decision to deny a motion to recuse without being provided a copy of the trial court's written order). As such, the trial court's ruling

must be affirmed. All other arguments not specifically addressed are pretermitted.

126. ***State v. Davis***, 2021 WL 2661011 (Tenn. Crim. App. 2021)

- As for the trial judge's uncle and father, the trial judge noted in his order of recusal that he had no knowledge of his uncle's membership at Covenant. The Defendant does not explain why the employment of the judge's father or uncle as police officers, if that is indeed the case, rendered the judge impartial, other than that it is the Defendant's belief that the police and the district attorney and other governmental entities are part of a vast conspiracy to silence him. We note that the trial judge was lenient with the pro se Defendant, allowing him far more latitude than would be afforded a licensed attorney to present what was, at best, only marginally relevant evidence relating to his dispute with the Church. The Defendant is not entitled to relief on the basis of this issue.

Church v. Jones, 2021 WL 2070130 (Tenn. Ct. App. 2021) 05/24/2021

- Here, Father never filed a motion to recuse. "After the facts supporting a motion to recuse are known, the party seeking recusal must file the motion promptly." *Kershaw*, 2009 WL 4039262, at *4. A failure to file a motion to recuse timely results in a waiver of the party's right to challenge the impartiality of the judge.

Id. Thus, Father has waived the right to challenge the judge's impartiality.

Salas v. Rosdeutscher, 2021 WL 830009 (Tenn. Ct. App. 2021) 03/04/2021

127.

- As discussed herein, Mr. Manookian's request for Judge Jones' recusal is singularly predicated upon his filing of a complaint against Judge Jones with the Board. Moreover, there is no evidence before us that Judge Jones possesses any actual bias or prejudice against Mr. Manookian. Considering these limited facts and our discussion herein, we do not find there to be a reasonable basis for questioning Judge Jones' impartiality.

Wright v. Buyer, 2021 WL 796701 (Tenn. Ct. App. 2021) 03/02/2021

128.

- As an alternative ground for affirming the denial of the recusal motion, we determined that the appellate record was insufficient because the plaintiffs "did not support their recusal motion with an affidavit or a declaration under penalty of perjury on personal knowledge." *Wright*, 2018 WL 3546784, at *4; *see* TENN. SUP. CT. R. 10B § 1.01 (requiring recusal motions to "be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials").

MENTIONED BUT NOT DECIDED

1. ***Nationwide Investments, LLC v. Pinnacle Bank*,** 2019 WL 4415188 (Tenn. Ct App. 2019)

2. ***Tucker v. State***, 2019 WL 3782166 (Tenn. Ct Crim. App. 2019)

3. ***State v. Price***, 2019 WL 3282628 (Tenn. 2019)

4. ***Bruce v. Jackson***, 2019 WL 2157938 (Tenn. Ct App. 2019)

5. ***Cook v. State***, 2019 WL 2122798 (Tenn. Ct Crim. App. 2019)

6. ***Brunetz v. Brunetz***, 2019 WL 1092718 (Tenn. Ct App. 2019)

7. ***Smith v. Smith***, 2019 WL 410702 (Tenn. Ct App. 2019)

8. ***Lucchesi v. Lucchesi***, 2019 WL 325493 (Tenn. Ct App. 2019)

9. ***Duff v. State***, 2018 WL 5305052 (Tenn. Ct Crim. App. 2018)

10. ***Xcaliber International Ltd., LLC v. Tennessee Department of Revenue,*** 2018 WL 4293364 (Tenn. Ct App. 2018)

11. ***Board of Professional Responsibility v. Parrish,*** 556 S.W.3d 153 (Tenn. 2018)

12. ***State v. Price***, 2018 WL 3934213 (Tenn. Ct Crim. App. 2018)

13. ***Hatfield v. Allenbrooke Nursing and Rehabilitation Center, LLC***, 2018 WL 3740565 (Tenn. Ct App. 2018)

14. ***Cox v. State***, 2018 WL 1182581 (Tenn. Ct Crim. App. 2018)

15. ***Simmons v. Cheadle***, 2017 WL 4742971 (Tenn. Ct App. 2017)

16. ***Pandey v. Pandey***, 2017 WL 5244477 (Tenn. Ct App. 2017)

17. ***Sledge v. Tennessee Department of Correction***, 2017 WL 4331038 (Tenn. Ct App. 2017)

18. ***Poston v. State***, 2017 WL 4221147 (Tenn. Ct Crim. App. 2017)

19. ***In re David P.,*** 2017 WL 3535014 (Tenn. Ct App. 2017)

20. ***Gatlin v. State***, 2017 WL 2713506 (Tenn. Ct Crim. App. 2017)

21. ***Watkins v. Watkins***, 2017 WL 544695 (Tenn. Ct App. 2017)

22. ***State v. Thompson***, 2017 WL 262701 (Tenn. Ct Crim. App. 2017)

23. ***Greystone Homeowners Association Inc.***, 2017 WL 244112 (Tenn. Ct App. 2017)

24. ***In re I.G.,*** 2016 WL 8077967 (Tenn. Ct App. 2016)

25. ***Wilhoite v. Wilhoite***, 2016 WL 5723956 (Tenn. Ct App. 2016)

26. ***Washington v. State***, 2016 WL 5266620 (Tenn. Ct Crim. App. 2016)

27. ***Barrett v. State***, 2016 WL 4768698 (Tenn. Ct Crim. App. 2016)

28. ***State v. Moses***, 2016 WL 4706707 (Tenn. Ct Crim. App. 2016)

29. ***State v. Cathey***, 2016 WL 4578832 (Tenn. Ct Crim. App. 2016)

30. ***In re Samuel P.,*** 2016 WL 4547543 (Tenn. Ct App. 2016)

31. ***Frazier v. Frazier***, 2016 WL 4498320 (Tenn. Ct App. 2016)

32. ***State v. McGill***, 2016 WL 3947694 (Tenn. Ct Crim. App. 2016)

33. ***Davis v. Covenant Presbyterian Church of Nashville***, 2016 WL 3356940 (Tenn. Ct App. 2016)

34. ***Largen v. City of Harriman***, 2018 WL 3458280 (Tenn. Ct App. 2018)

35. ***Case v. Case***, 2017 WL 6314228 (Tenn. Ct App. 2017)

36. ***Winder v. Winder***, 2019 WL 4702625 (Tenn. Ct App. 2019)

37. ***McWilliams v. Vaughn***, 2019 WL 320252 (Tenn. Ct App. 2019)

38. ***Looper v. City of Algood***, 2018 WL 2247178 (Tenn. Ct App. 2018)

39. ***State v. Pearsons***, 2018 WL 4026758 (Tenn. Ct Crim. App. 2018)

40. ***Livingston v. Livingston***, 2020 WL 6612655 (Tenn. Ct. App. 2020)

41. ***Knapp v. Boykins***, 2020 WL 4783680 (Tenn. Ct. App. 2020)

Recusal Granted- 24 (.12%)
Sua Sponte Recusal- 12 (.06%)
Recusal Denied- 129 (.63%)
Recusal Mentioned but not Decided- 41 (.20%)
Total- 206