

**IN THE TENNESSEE COURT OF APPEALS
EASTERN SECTION**

James Gray, Bee DeSelm)
and John Schmid)
)
Appellants)
)
v.)
)
Timothy Hutchison, et al)
)
Appellees)

APPELLANTS' T.R.A.P. 24(e) DOCUMENT

1. Plaintiff received the attached Orders in *Gray v. Hutchison* and *Schmid v. Hutchison* in the mail on April 17, 2006.
2. Also included in the mail were copies of the Final Judgments in *Gray v. Hutchison* and *Schmid v. Hutchison* stamp filed "Entered April 12, 2006".
3. As the Court will see these Orders were entered by Chancellor Weaver *sua sponte* after Appellants Notices of Appeal were filed in those cases.
4. Chancellor Weaver lost jurisdiction after the Notice of Appeals were filed. see *Reed v. Alamo Rent-A-Car, Inc.* 4 S.W.3d 677 (Tenn.App.,1999); *McCormick v. Phillips*, 204 S.W. 636, 636-37 (1918); *Sweetwater Bank & Trust Co. v. Howard*, 16 Tenn.App. 91, 66 S.W.2d 225, 228 (1932).
5. Chancellor Weaver having lost jurisdiction his Orders are void.

6. Respectfully, pursuant to Tennessee Supreme Court Rule 10, Canon 3 E. these orders provide additional reasons that Chancellor Weaver's "impartiality might reasonably be questioned."

7. The Final Judgments were marked ENTERED by the Clerk and were served on all Defendants by Counsel on April 12, 2006 and also served by the Clerk and Master.

8. T.R.Civ.P 58 provides a party may file a motion for T.R.Civ.P. 60 relief from a Final Judgment not correctly entered.

9. Defendant's can not possibly claim prejudice from any deficiency in the Final Judgments other than Defendants can no longer obtain delay before Chancellor Weaver for adjudication and appellate review of the constitutional rights of the voters, candidates, taxpayers, office holders and people of Knox County.

10. A reasonable reading of Chancellor Weaver's *sua sponte* Order is that Chancellor Weaver deliberately attempted to keep this case in his Court to cause delay until after the May 2nd primary and prevent appellate review.

11. Chancellor Weaver still has under advisement Appellant DeSelm's third motion to disqualify that was argued on March 29, 2006.

12. The Constitution of Tennessee Article VI, § 11 does not make an exception to Appellants' rights to a disinterested judge for "preliminary matters."

13. Supreme Court Rule 10, Canon 3 E. does not make exceptions for disqualification of a judge to consider "preliminary matters."

14. Chancellor Weaver's definition of "preliminary matters" differs greatly from Appellants' where Chancellor Weaver (1) ruled Appellants do not have standing to seek either a temporary injunction or a writ of mandamus; (2) Appellant Schmid made a "legal mistake" by qualifying for Commissioner while the Court of Appeals opinion in *Bailey* was the law; (3) Knox County's Charter is invalid; (4) Timothy Hutchison can not be term limited; (5) it is "too late" to change the May 2, 2006 primary election date to protect the Tennessee and Federal Constitutional rights of the voters, candidates, taxpayers, office holders and people of Knox County; (6) held evidentiary hearings for applications for temporary injunctions and writs of mandamus; and (7) denied Appellants temporary injunctive relief and mandamus relief.

15. The only thing left in the case after Chancellor Weaver addressed "preliminary matters" was prayers for declaratory judgment Chancellor Weaver had prejudged in his orders denying injunctive and mandamus relief.

16. Chancellor Weaver's *obiter dicta* that he was misled into signing the Final Judgments also provides reason to believe that Chancellor Weaver's "impartiality might reasonably be questioned" as to his prejudice against Appellants, their claims or their attorney.

17. On April 12, 2006 Counsel presented Chancellor Weaver's secretary an application for writ of alternative mandamus by answer or show cause in *Seider v. Knox County Election Commission* and the Final Judgments.

18. Chancellor Weaver's secretary took the documents into his office.

19. Counsel waited in the hallway.

20. Chancellor Weaver's secretary then brought the documents back to Counsel.

21. Counsel took the documents to the Clerk and Master and presented them for entry.


22. At no time did Counsel speak with Chancellor Weaver.

23. The Final Judgments were clear and unambiguous.

24. Counsel did not mislead Chancellor Weaver.

25. Chancellor Weaver learned through some source Notices of Appeal had been filed and he then tried to stop these appeals to delay the case further in his Court providing a reasonable basis to believe he has an unconstitutional personal interest and his "impartiality might reasonably be questioned" disqualifying him under Supreme Court Rule 10, Canon 3 E.

WHEREFORE, Appellants file these additional documents received on April 17, 2006 pursuant to T.R.A.P. 24(e) and assert these documents as additional basis for disqualification.


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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served upon the following:

1. The Knox County Law Director;
2. Robert H. Watson, Jr., Attorney for Timothy Hutchison;
3. Jerold Becker, attorney for Michael E. Moyers;
4. James Murphy, attorney for the Knox County Election Commission;

5. Janet Kleinfelter, Senior Counsel, Tennessee Attorney General's Office, Attorney for Coordinator of Elections for the State of Tennessee.


HERBERT S. MONCIER