

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

2009 APR 28 PM 12:08

HOWARD G. HOGAN,

IN RE: PETITION OF)
KNOX COUNTY PUBLIC DEFENDER)

Docket No. 174552-L

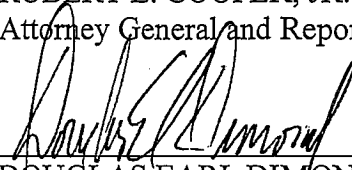
**MOTION FOR INTERVENTION OF ATTORNEY GENERAL AND/OR JOINDER OF
THE ADMINISTRATIVE OFFICE OF THE COURTS**

The Attorney General, on behalf of the Administrative Office of the Courts ("AOC"), respectfully renews in this Court his motion for intervention and/or joinder that was previously filed in the Knox County General Sessions Court. A copy of the previous motion is attached and fully incorporated into this motion. As noted in the previous motion, the Attorney General's motion should be granted for at least two reasons. First, AOC should be joined in order to vindicate its substantial interest in protecting approximately \$2.5 million taxpayer dollars. *See* Tenn. R. Civ. P. 19.01 and 24.01 (providing for joinder or intervention of a party who claims an interest that will not be protected in that party's absence). Second, the Attorney General possesses broad powers to participate in this matter of broad public interest affecting public officers. *See, e.g., State ex rel. Inman v. Brock*, 622 S.W.2d 36, 42-43 (Tenn. 1991) (recognizing Attorney General's right to intervene in a lawsuit questioning the right of Supreme Court Justices

to hold office). Accordingly, the Attorney General should be permitted intervention and/or joinder in this action, both independently and on behalf of AOC.

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter



DOUGLAS EARL DIMOND
Senior Counsel
Office of the Attorney General
General Civil Division
P.O. Box 20207
Nashville, TN 37202
(615) 532-7913
BPR No. 17953

CERTIFICATE OF SERVICE

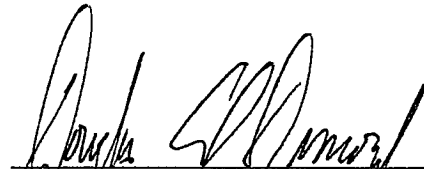
I certify that a copy of the foregoing motion was forwarded by first class U.S. Mail,
postage paid, to:

T. Maxfield Bahner
1000 Tallan Building
Chattanooga, TN 37402-2500

Hugh J. Moore, Jr.
1000 Tallan Building
Two Union Square
Chattanooga, TN 37402-2500

Mark E. Stephens
District Public Defender
1101 Liberty Street
Knoxville, TN 37919

on this 27th day of April 2009.



DOUGLAS EARL DIMOND
Senior Counsel

IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE
MISDEMEANOR DIVISION

FILED

JUN 09 2008

By MARTHA PHILLIPS, Clerk

IN RE: PETITION OF)
KNOX COUNTY PUBLIC DEFENDER)

Docket No. _____

MOTION FOR INTERVENTION OF ATTORNEY GENERAL AND/OR JOINDER OF
ADMINISTRATIVE OFFICE OF THE COURTS

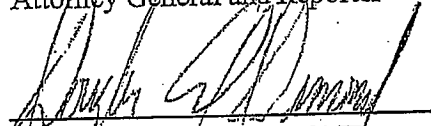
The Attorney General respectfully moves the court to order joinder into this action of the Administrative Office of the Courts ("AOC") as a necessary party and/or intervention into this action of the Attorney General on behalf of AOC. The undersigned discovered no general sessions court rules governing either joinder or intervention. However, both Rules 19.01 and 24.01 of the Rules of Civil Procedure and the relevant case law indicate that joinder and/or intervention is necessary in this matter.

If the Public Defender's petition is granted, the resultant cost to AOC and Tennessee's taxpayers will likely be somewhere in the neighborhood of \$2.5 million annually. AOC thus has a substantial interest in this matter that no existing party will protect. Accordingly, AOC should be joined as a party. There is also a great public interest in the expenditure of substantial public moneys. The Attorney General independently possesses broad powers to participate in matters of important public interest. *See, e.g., State ex rel. Inman v. Brock*, 622 S.W.2d 36 (Tenn. 1991).

Accordingly, AOC, by and through the Attorney General, should be permitted joinder and/or intervention in this matter. This motion is supported by the accompanying memorandum of law.

Respectfully Submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter



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Senior Counsel
General Civil Division
P.O. Box 20207
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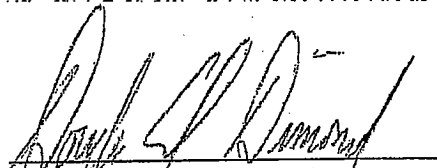
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D. Aaron Love
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Mark E. Stephens
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1101 Liberty Street
Knoxville, TN 37919

on this 9th day of June 2008.



DOUGLAS EARL DIMOND
Senior Counsel

IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE
MISDEMEANOR DIVISION

FILED
JUN 09 2008
By MARTHA PHILLIPS, Clerk

IN RE: PETITION OF)
KNOX COUNTY PUBLIC DEFENDER)

Docket No. _____

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
INTERVENTION OF ATTORNEY GENERAL AND/OR JOINDER
OF ADMINISTRATIVE OFFICE OF THE COURTS

The Rules of Civil Procedure requires joinder of a party when

the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may . . . as a practical matter impair or impede the person's ability to protect that interest.

Tenn. R. Civ. P. 19.01. Similarly, the Rules require that a party shall be permitted to intervene in an action

when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by the existing parties.

Tenn. R. Civ. P. 24.01.

The Attorney General has particularly broad powers to participate in cases such as this that affect an important public interest. The Legislature has provided that among the Attorney General's duties is "the trial and direction of all civil litigated matters and administrative proceedings in which the state of Tennessee or any officer, department, agency, board, commission, or instrumentality of the state may be interested." Tenn. Code Ann. § 8-6-109(b)(1).

Case law also accords the Attorney General sweeping power to intervene in cases such this.

In *State ex rel. Inman v. Brock*, 622 S.W.2d 36, 38 (Tenn. 1991), the plaintiffs had instituted an action alleging that the Justices of the Tennessee Supreme Court held office illegally. The Attorney General represented the Justices at trial over the plaintiffs' objections. *Id.* at 40. The *Inman* court agreed with the trial court, writing that "[a] broad discretion is vested in [the Attorney General] in determining what matters may, or may not be, of interest to the people generally." *State ex rel. Inman v. Brock*, 622 S.W.2d 36, 41 (Tenn. 1981) (quoting *Mundy v. McDonald*, 185 N.W. 877, 880 (1921)). That power is not only statutory but inherent to the office, which is "ancient in its origin in history, and it is generally held by the states of the Union that the attorney general has a wide range of powers at common law . . . in addition to his statutory powers. *Id.*

The Administrative Office of the Courts ("AOC") is among the state entities that the Attorney General represents pursuant to Tenn. Code Ann. § 8-6-109(b)(1). The Legislature established AOC and set out AOC's powers in Tenn. Code Ann. § 16-3-801 through 821. AOC pays the expenses of private lawyers to represent indigent criminal defendants who are not represented by a public defender. *See generally* Tenn. Sup. Ct. R. 13; Tenn. Code Ann. § 40-14-206 through 208. *See also* Affidavit of Elizabeth A. Sykes, ¶ 1 (copy attached.)

AOC has a substantial interest in this action because AOC will be responsible to pay the expenses of representation of indigent defendants in the Misdemeanor Division of the Knox County General Sessions Courts if the Public Defender's petition is granted. For example, if AOC had been responsible for those expenses in FY2006, AOC would have paid out an additional \$2,724,150.00 of taxpayer dollars. Affidavit of Elizabeth A. Sykes, ¶ 4. Similarly, had AOC paid those expenses in FY2007, the taxpayers would have been charged an additional \$2,649,600.00. Affidavit of Elizabeth A. Sykes, ¶ 8. In both years, the bill for Knox County would have exceeded by about one

million dollars the amount AOC paid out statewide for all misdemeanor offenses. Affidavit of Elizabeth A. Sykes, ¶¶ 5 and 9.

No existing party to the petition or will protect AOC's interest or even oppose the Public Defender's petition. The Public Defender is the only party to the petition thus far, and his interest is diametrically opposed to AOC's interest. AOC's is doubly vulnerable in that no other party will be available to appeal the case should the Public Defender prevail at this level. Thus, any order in the Public Defender's favor would leave AOC irreparably harmed with no meaningful opportunity to be heard or appeal. AOC will have been shut out of the decision of its fate.

The taxpayers will be equally harmed. Accordingly, this is a matter in which a significant public interest is at stake and in which the Attorney General may exercise his broad discretion to participate.

Given the irreparable harm to AOC if the Public Defender's petition is granted and the substantial public interest in the outcome of this action, the Attorney General should be permitted

to participate and AOC granted party status, whether styled as joinder, intervention, or both. This

is a matter of basic fundamental fairness in a matter of significant public concern.

Respectfully Submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter



DOUGLAS EARL DIMOND

Senior Counsel
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D. Aaron Love
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Chattanooga, TN 37402-2500

Mark E. Stephens
District Public Defender
1101 Liberty Street
Knoxville, TN 37919

on this 14th day of June 2008.



DOUGLAS EARL DIMOND
Senior Counsel

**IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE
MISDEMEANOR DIVISION**

**In Re: Petition of
Knox County Public Defender**

Docket No. _____

AFFIDAVIT OF ELIZABETH A. SYKES

STATE OF TENNESSEE:

COUNTY OF DAVIDSON:

COMES NOW the affiant, Elizabeth A. Sykes, after having been duly sworn, deposes and says:

1. My name is Elizabeth A. Sykes. I am the Director of the Administrative Office of the Courts for the State of Tennessee (AOC). One of the duties of the AOC, pursuant to Tenn. Sup. Ct. R. 13 and Tenn. Code Ann. §§ 40-14-207 and 40-14-208, is to compensate attorneys appointed to represent criminal defendants under the authority of Tenn. Code Ann § 8-14-205(e) and (f). Further, the AOC maintains statistics and data concerning the compensation of such attorneys.

2. According to data from fiscal year 2006, attorneys compensated pursuant to Tenn. Sup. Ct. R. 13 and Tenn. Code Ann. §§ 40-14-207 and 40-14-208 for misdemeanor offenses in Knox County courts were paid an average fee of \$429 per case.

3. The Public Defender's Petition states that during fiscal year 2006, the Public Defender's Office was appointed to 6,350 new "cases" in the Misdemeanor Division of the General Sessions Court.

4. Assuming that the 6,350 new "cases" that were assigned to the Public Defender in 2006 were instead assigned to private attorneys, utilizing the average attorney fee of \$429 per

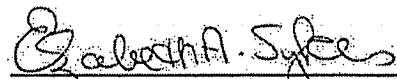
case calculated for fiscal year 2006, the additional cost to the taxpayers of compensating private attorneys for representation in these cases would be \$2,724,150.00 (Two Million, Seven Hundred Twenty-Four Thousand, One Hundred Fifty Dollars).

5. According to data from fiscal year 2007, attorneys compensated pursuant to Tenn. Sup. Ct. R. 13 and Tenn. Code Ann. §§ 40-14-207 and 40-14-208 for misdemeanor offenses in Knox County courts were paid an average fee of \$460 per case.

6. The Public Defender's Petition states that during fiscal year 2007, the Public Defender's Office was appointed to 5,760 new "cases" in the Misdemeanor Division of the General Sessions Court.

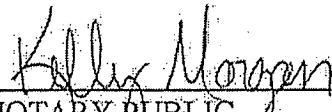
7. Assuming that the 5,760 new "cases" that were assigned to the Public Defender in 2007 were instead assigned to private attorneys, utilizing the average attorney fee of \$460 per case calculated for fiscal year 2006, the additional cost to the taxpayers of compensating private attorneys for representation in these cases would be \$ 2,649,600.00 (Two Million, Six Hundred Forty-Nine Thousand, Six Hundred Dollars).

Further the affiant saith not.


ELIZABETH A. SYKES

Sworn to and subscribed before me

this the 5th day of June, 2008


NOTARY PUBLIC

My Commission Expires: 3/20/10

