

IN THE CIRCUIT COURT FOR BLOUNT COUNTY, TENNESSEE
DIVISION II

IN RE: **The Local Rules**
 and
IN RE: **Statistical Reporting**
 To the Administrative Office of the Courts

FINDINGS OF FACT, ANALYSIS
AND ORDER

This cause having come before the Court on sworn testimony and in open court from all of which the court makes the following findings of fact, analysis and Orders as follows:

BACKGROUND

1. On April 11, 2008 the Judge of Division II, Michael H. Meares, wrote a letter to the Blount County Bar Association asking for the formation or reconvening of a Local Rules Committee for the purpose of amending the Local Rules “to provide for a simple systematic approach” allowing Division II “to have a larger supportive role in hearing civil matters” of Division I. The letter complimented Chancellor Telford E. Forgety, Jr. and the Judge of Division I, W. Dale Young, for having “done much to keep pace with the ever increasing Civil docket in Blount County.” (Ex. 1A)
2. On April 25, 2008 the Division I Judge for the Fifth (5th) Judicial District issued a Memorandum announcing to the Judge of Division II, the Blount County Bar Association, the Chancellor, the District Attorney and the Judges of the General Sessions Court the assignment of twenty-nine (29) civil cases from Division I to Division II. (Ex. 1B).
3. The April 25 Memorandum was written by the Judge of Division I in his capacity as “Presiding Judge” and “pursuant to [an] ethical and moral duty where false information

concerning a judicial candidate is made in public.” The Memorandum cites hearsay evidence from the Clerk, unnamed members of the Bar and unnamed Judges to support the conclusion that the Division II Judge has created “mass confusion” and “delayed the prompt and efficient handling of the Criminal Docket.” (Ex. 1B).

4. By the April 25 Memorandum the Presiding Judge outlined for the lawyers a procedure to be followed by counsel, by the Clerk and by the Division II office assistant in the scheduling of all activity for the twenty-nine (29) reassigned civil cases. (Ex. 1B).

STATISTICAL FINDINGS

5. The April 25 Memorandum makes three assertions of fact: (a) that since the Judge of Division II “took office in July 2007, a backlog of criminal cases has occurred and exists today” and (b) further states that “the public records actually show that before Judge Meares took office, there were never more cases filed than disposed of in the Criminal Division of Circuit Court for Blount County, Tennessee” and (c) that “there is no ‘backlog’ in the civil division of Circuit Court. (Ex. 1B).

6. The numbers provided to the Judge of Division I for the April 25 Memorandum were received from the Blount County Circuit Court Clerk’s Office without the knowledge or participation of the Clerk or the Judge of Division II. (Hatcher Testimony, June 18, 2008, p30, 1.22 – p33, 1.15).

7. The Clerk’s office provided information to the Judge of Division I of Circuit Court (Ex. 3 to June 18, 2008 Hatcher proceedings) which stated that the total Circuit Court cases filed from July 1, 2006 through June 30, 2007 was 1,489, and the total case dispositions was 1,383. The record plainly indicates that there were 106 more case matters filed than disposed of in the Criminal Division of Circuit Court in the year before Judge Meares took office

in direct contradiction to the finding in the April 25 Memorandum that “the public records actually show that before Judge Meares took office, there were never more cases filed than disposed of in the Criminal Division of Circuit Court for Blount County, Tennessee”.

8. The Blount County Circuit Court Clerk’s office provided information to the Judge of Division I of the Circuit Court which stated the total of Judge Meares’ dispositions from July 1, 2007 to April 18, 2008 totaled 830. (Ex. 3 to June 18, 2008 Hatcher proceedings).

9. An official Criminal Audit Report of Dispositions by Judge received from the Administrative Office of the Courts from July 1, 2007 through April 30, 2008 showed 850 case dispositions by Judge Meares. (Ex. 1 to Hatcher proceedings). After certain corrections to the Blount County Circuit Court Clerk’s reporting on or about June 5, 2008, and after receipt of regularly reported dispositions for May 2008, an official Criminal Audit Report of Dispositions by Judge received from the Administrative Office of the Courts from July 1, 2007 through May 31, 2008 showed 1,052 case dispositions by Judge Meares. (Ex. 2 to June 18, 2008 Hatcher proceedings).

10. Official Criminal Audit Reports of Filings by Judge received from the Administrative Office of the Courts from July 1, 2007 through May 31, 2008 show only 864 new case filings before Judge Meares as of May 31, 2008. (Ex. 4 to June 18, 2008 Hatcher proceedings). According to the Administrative Office of the Courts, the Judge of Division II has concluded 188 more cases than have been filed during the same time period in direct contradiction to the finding in the April 25 Memorandum that since the Judge of Division II “took office in July 2007 a backlog of criminal cases has occurred and exists today.”

11. No proof has been sought or received as to the accuracy of the finding in the April 25 Memorandum of Judge Young that “there is no ‘backlog’ in the civil division of Circuit Court” and such finding is adopted as true.

12. The statistics of some case dispositions were not reported to the Administrative Office of the Courts as required by law. Some of the cover sheets which were mailed by the Clerk were not received by the Administrative Office of the Courts. The remainder of the unreported case dispositions occurred because of a technical problem with the Bridge Computer System or because they involved the disposition in certain old cases involving 202 defendants who may never have been input into the Bridge Computer System, but “whose cases this Court required either prosecution or dismissal.” (Ex. 9 June 18, 2008 Hatcher proceedings).

13. A significant discrepancy persists between the information provided by the Clerk’s office as of April 18, 2008 (Ex. 3 to June 18, 2008 Hatcher proceedings) showing 1,020 new case filings and the May 31, 2008 official Administrative Office of the Courts audit statistics showing only 864 new case filings at the later date of May 31, 2008. (Ex. 4 June 18, 2008 Hatcher proceedings).

THE LOCAL RULES

14. The introductory paragraph to the Order adopting the Local Rules on April 30, 2007 and entered May 16, 2007 during the vacancy of office for the Circuit Judge, Division II for the Fifth Judicial District reads as follows:

Pursuant to the Recommendation of the Local Rules Committee of the Blount County Bar Association and with the consent of the circuit Judges and the Chancellor, the following Local Rules are hereby adopted by the Circuit Courts and the Chancery Court for Blount County, Tennessee, same having been published for public comment by the Administrative Office of the Courts, pursuant to the direction of the Supreme Court of the State of Tennessee, to wit:

(Ex. 4).

15. The introductory paragraph to the Order adopting Local Rules which was and is published to the public on the Administrative Office of the Courts’ website reads as follows:

All former rules of local practice are abrogated and these local rules are hereby substituted in lieu thereof:

(See website www.tsc.tn.us and Ex. 5).

16. The Local Rules as adopted on April 30, 2007 contain a paragraph 2 which reads as follows:

Presiding Judge-Notwithstanding the provisions of paragraph 1., above, the Presiding Judge of the Fifth Judicial District shall have the duties and responsibilities imposed upon such judge as provided by the statutes and shall oversee the administration and be the final arbiter of the case load for the Fifth Judicial District, to include the designation of the judges to hear civil and criminal cases.

17. Paragraph 2 of the Local Rules as submitted by two members of the Local Rules Committee read as follows:

2. Chancery Court-The Chancellor shall have primary administrative responsibility for all matters pending in the Chancery Court in Blount County.

(See Ex. 2A Rules as Recommended)

18. On May 7, 2008, the Blount County Bar Association met and voted to approve an April 24, 2008 letter from the President of the Bar Association replying to the Division II Judge's April 11, 2008 letter that "The assignment of cases among judges and the promulgation of local rules of practice are the province of the local trial court judges; however the bar would appreciate the opportunity to review and to comment upon any amendments to the local rules that the trial judges propose prior to adoption, as set forth in Rule 18(a) of the Rules of the Supreme Court of Tennessee." (Ex. 1C).

19. There was some disagreement among persons present at the May 7, 2008 Bar meeting as to whether the Local Rules Committee of the Bar ever recommended the Rules as adopted on April 30, 2007, and particularly whether the Presiding Judge had been given authority as "final arbiter" over the assignment of all civil and criminal cases. (Ex. 4).

20. Each attorney with knowledge of a misstatement of fact or law within any Court Order is obligated to immediately inform the Court of such misstatement.

21. On May 10, 2008, this Court issued an Order requiring four attorneys to appear and produce their files relative to the April 30, 2007 adoption of the Local Rules.

22. A review of the files as produced revealed to the Court a copy of the Local Rules as recommended by two members of the Local Rules Committee. (Ex. 2A). The Local Rules as recommended differ from the Local Rules as adopted as outlined above. (Compare Ex. 4).

23. By subsequent Order dated May 30, 2008 this Court Ordered two attorneys to appear and testify. Further, on May 30, 2008, this Court issued an Order to the Clerk to appear and show whether some 96 certain cases were reported as should have been reported to the Administrative Office of the Courts and what procedure or practice, if any, needs to be changed to insure that all cases and matters subject to Administrative Office of the Courts reporting are accurately reported.

24. Four brief hearings were held, each in open Court and each recorded in full by a stenographer. (May 12, 2008, June 6, 2008, June 13, 2008, and June 18, 2008).

25. On June 6, 2008, Mr. Rob Goddard, Esquire, a former member of the Local Rules Committee, appeared and testified that he did not know of any discrepancy between the Local Rules as recommended and those as adopted until after the Court's May 30, 2008 Order for him to appear and testify. He further indicated that his prior statements to the contrary had been in error. (Goddard Testimony p8, 1.25 – p10, 1.23)

26. On June 13, 2008, Ms. Melanie Davis, Esquire, Chair of the former Local Rules Committee appeared and testified that she was asked at the May 7, 2008 bar meeting to determine whether a discrepancy between what was recommended and adopted existed. (Davis Testimony, p11, 1.24 – p12, 1.15).

27. Ms. Davis testified that she did find a discrepancy between the Rules as recommended and as adopted (Davis Testimony, p12, l.18 – p13, l.6) and discussed the discrepancy with her senior partner, David Black, Esquire, but did not communicate what was found to this Court. (Davis Testimony, p16, l.21 – p17, l.6).

28. Ms. Davis did call Judge Young after receiving the Order to produce her file from this Court and both she and Judge Young “recalled the same thing independently” about a phone call in which he informed her of adding a provision about presiding judge, and her checking what he was telling her against the presiding judge statute and she “didn’t have a problem with it.” (Davis Testimony, p18, l.21 – p21, l.17).

29. Paragraph 2 of the Local Rules, the Presiding Judge Rule, was not drafted, voted upon or even considered by any Local Rules Committee of the Blount County Bar and was not “recommended” for the consent of the Circuit Judges and Chancellor as stated in the introductory paragraph of the Order adopting Local Rules. (Davis Testimony, p51, l.25 – p52, l.11).

30. By Memorandum dated June 6, 2008, the Judge of Division II confirmed that Paragraph 2 was inserted after a draft copy from Local Rules Committee had been received. (Ex. 7).

31. By Memorandum dated June 6, 2008, the Judge of Division II states that “Such section was formulated for the purpose of stating the duties and obligations of the Presiding Judge as they are codified in Tennessee Code Annotated §16-2-509”.

32. Among the cases reassigned under the authority of the Presiding Judge local rule were Donna Phillips vs. Asbury Center Inc, #L-15159, a case wherein the Judge of Division II had previously acted as counsel for one of the parties and Ana Matilde Calixto vs. Fernando J. Calixto, Blount County Circuit #E-22024, a case wherein the Judge of Division I has publicly

claimed that the Judge of Division II has an interest. (See Ex. 8, May 1, 2008 letter listing reassigned cases).

33. The criminal case of *State of Tennessee v. Kenneth Lawrence Melton*, Case No. C-12290, has also been reassigned after years of its pendency in Division II to Division I without following any policy, procedure, Memorandum or Order known to the Clerk. (See Hatcher testimony, p56, l.4 – p57, l.21, and See Ex. 8; Order filed November 6, 2007).

RULE 18 PUBLICATION AND CONTENT COMPLIANCE

34. The publication procedure followed with the last adopted Local Rules is set out in a July 19, 2006 letter from the Judge of Division I to the President of the Blount County Bar Association. The letter stated “Our Local Rules are old and antiquated” and suggested that “By having the Bar suggest proposed rules, we can avoid publication for comment by the Bar and then the AOC will publish the rules for comment by the general public before they are formally adopted.” (See Ex. 7, June 6, 2008 Memorandum).

35. On their face the Order adopting Local Rules on April 30, 2007 changed the outline from the antiquated 1984 headings for the Fifth Judicial District Local Rules which are still found on the Tennessee Bar Association www.tba.org website from:

- I. Administration
- II. Rules of Court in Civil Matters
- III. Rules of Court in Criminal Matters

to

- I. Administration
- II. General Rules of Court

36. The Local Rules as adopted on April 30, 2007 during the vacancy of a Judge in Division II, fail to prescribe procedures for “settlement or plea bargaining deadlines for criminal cases” as required by Rule 18(a)(4).

37. The Local Rules as adopted do however address the manner of setting Circuit Court Criminal cases for trial as follows:

(b) Circuit Court-Criminal. All jury or non-jury cases shall be set for trial by either 1) agreement of the state and counsel for defendants or 2) upon order of the court after a properly filed motion to set trial. Coordination of trial dates shall be made through the Judge's secretary.

(See Ex. 4 II.(1.)(b)).

38. Two members of the Local Rules Committee testified that the work of other committee members who were charged with drafting the rules in Domestic Relation Cases and Criminal Cases were never submitted to the Judges. (Goddard Testimony, p17, 1.7-18; Davis Testimony, p47, 1.12-19).

39. On August 31, 2007, Judge David R. Duggan stated by Memorandum to all other Judges and the Clerk: "In any event, I continue to believe that we need to revisit our local rules for domestic cases which apply to all three of our courts." (See Ex. 8).

40. Nevertheless, a June 16, 2008 Memorandum from Judge Young to Judge Meares opines:

The published Local Rules **in Civil Cases** as adopted by the Chancellor and me are the local rules of the Fifth Judicial District. Attorneys who practice in the Fifth Judicial District and the judges who hold court in the Fifth Judicial District are bound by these rules unless and until they are changed and that change must conform to the mandates of the Tennessee Supreme Court.

(See Ex. 8 emphasis added).

41. The former chair of the Local Rules Committee also opines that "the criminal and domestic [rules] are still in place as previous." (Davis Testimony, p47, 1.20 – p48, 1.1).

42. The introductory paragraph of the Order adopting Local Rules on April 30, 2007 contains no words indicating an intention to "abrogate" or substitute for all former rules of local practice as is stated in the AOC published version of said Order. (Ex. 4)

43. The June 6, 2008 Memorandum from Judge Young states that the Local Rules were published on January 9, 2007 by email to many attorneys in the local Bar association and further definitively states:

During the thirty (30) day period following the AOC's publication of these rules for public comment, which began in early January, 2007, no comments were received and no suggestions were made relative to the proposed Local Rules.
(See Ex. 7).

44. By email to the Administrative Office of the Courts dated April 30, 2007 and attached to the June 6, 2008 Memorandum, Libby Sykes, the Director of the Administrative Office of the Courts and the assistant to the Judge of Division I discussed when the Local Rules would be published for comment as follows:

>>> "Amanda Nolan" anolan@blounttn.org 4/30/2007 2:07 PM >>>
Libby,

Judge Young asked me to be in touch with you regarding our Local Rules, which I have attached. He was of the understanding that the AOC would be posting the rules for comment before we made them final. Is this correct and if so, when will this happen?

Thank you for your assistance.
Amanda Nolan
Assistant to Judge W. Dale Young

From: Libby Sykes [lsykes@tscmail.state.tn.us]
Sent: Monday, April 30, 2007 3:31 PM
To: Amanda Nolan
Subject: Re: FW: Emailing: RULES.wpd

Yes. We can post them immediately. How long and where do they send comments?

(See Ex. 7 attachments).

45. By this June 16, 2008 Memorandum Judge Young declines meeting with Judge Meares with respect to the Local Rules until after the August Election. (Ex. 8).

ANALYSIS

These matters bring into question several legal issues of importance including the accuracy of the Court's prior Order adopting Local Rules and the findings of fact contained within the April 25, 2008 Memorandum utilizing the Presiding Judge local rule to reassign cases from Division I to Division II. Also at issue is compliance with Rule 18, Supreme Court Rules, in the adoption of our Local Rules, the validity of our Presiding Judge local rule, and compliance with Supreme Court Rule 11, II.

I. This Court has the authority and obligation to act with respect to its administrative responsibilities.

The court's authority and obligation to act in this matter arises from three sources. First, the court has an independent obligation to insure the impartial administration of justice. Second, the court has the authority to correct misstatements in its own orders. Third, the court has supervisory responsibilities for lawyers and the clerk of court.

The obligation to insure impartiality in the administration of justice is anchored in Tennessee constitutional law. Article 6, Section 11 of the Constitution of the State of Tennessee prohibits judges from acting in cases from which they "may be interested". As stated by our Supreme Court in *Chumbley v. People's Bank & Trust Co.*, 57 S.W.2d 787 at 788 (1933):

"Every litigant is entitled to the cold neutrality of an impartial court and the members of this court approach the consideration of every case conscious of that truth and burdened with anxiety to give it application."

To that end, judges are required by oath "to administer justice without respect of persons, and impartially to discharge all duties incumbent on a judge." T.C.A. §17-1-204. This obligation is not confined to adjudicative responsibilities. Judges are also specifically obligated to carry out

their administrative responsibilities without bias or prejudice. Supreme Court Rule 10, Canon 2.C. Judicial administrative responsibilities include both the adoption of Local Rules and statistical reporting as outlined in Supreme Court Rules 18 and Rule 11 respectively. This Court's administrative inquiry has been conducted with a keen awareness that each case represents the rights of people to their life, liberty and property.

It is axiomatic that a court may correct its own orders. As stated in the second edition of American Jurisprudence:

A court of general jurisdiction, unless restricted by statute, may, pursuant to its full control of its own orders and in the exercise of its sound discretion, correct, revise, open, vacate, or amend an order in furtherance of justice.

56 Am Jur 2d §42

The judicial power includes this inherent power to correct the Court's own Orders (Article 6 §1 of the Constitution of the State of Tennessee) and general jurisdiction "in all cases where jurisdiction is not conferred upon another tribunal." T.C.A. §16-10-101. Inasmuch as there was a vacancy of the office of Division II Judge when the Local Rules were last adopted and questions have arisen as to their content, correctness and the procedure followed in their adoption, it has become incumbent on this court to review and where possible to correct any errors which are shown to exist.

Finally Judges have disciplinary responsibilities to take appropriate action "when they receive" information indicating a substantial likelihood "that another Judge or lawyer has committed a violation of the Judicial Code or the Rules of Professional Conduct." Supreme Court Rule 10, Canon 3.D. All lawyers owe a duty of candor to the tribunal. Supreme Court Rule 8, R.P.C. 3.3. It is misconduct for any lawyer to engage in conduct "involving dishonesty, fraud, deceit or misrepresentation" or conduct "prejudicial to the administration of justice". Supreme Court Rule 8, R.P.C. 8.4(c) and (d). This court has not found and does not imply by its inquiries the misconduct of any individual. Nevertheless, the Presiding Judge's exercise of a

unique administrative authority granted by a local rule adopted during the vacancy of office of the sitting judge coupled with multiple erroneous misstatements of fact require a response or the abandonment of the oath of office.

II. The Presiding Judge local rule for the Fifth Judicial District grants authority in excess of the statute and is invalid.

Rule 18, Supreme Court Rules provides that “any local rule that is inconsistent with a statute or a procedural rule promulgated by the Supreme Court shall be invalid.” Rule 18(c). In Glisson v. Mohon Intern., Inc. / Campbell Ray, 185 S.W.3d 348 (Tenn. 2006), the Tennessee Supreme Court invalidated a 24th Judicial District Local Rule which conflicted with the Tennessee Rules of Civil Procedure. The Fifth Judicial District Local Rule at issue here reads as follows:

Presiding Judge-Notwithstanding the provisions of paragraph 1., above, the Presiding Judge of the Fifth Judicial District shall have the duties and responsibilities imposed upon such judge as provided by the statutes and shall oversee the administration and be the final arbiter of the case load for the Fifth Judicial District, to include the designation of the judges to hear civil and criminal cases.

Does this Local Rule as written or applied grant to the Presiding Judge powers which are inconsistent with T.C.A. §16-2-509 or other laws?

In interpreting any Order the Court is required to construe it, if possible, in favor of validity. Just as in looking at the validity of legislative enactments “courts do not assume that the Legislature intentionally passed an invalid act, because legislators, as well as judges, are bound by the law, and it is understood that they weighed the constitutionality of the act while it is before them and held it valid.” (Bank of Commerce and Trust Co. v. Senter, 149 Tenn. 569,

260 S.W. 144 (Tenn. 1924)). It is a fundamental rule of statutory construction to give effect to the intention or purpose expressed which “must be ascertained primarily from natural and ordinary meaning of the language used.” (*State v. Southland News Co., Inc.*, 587 S.W.2d 103 at 106 (Tenn.Cr.App., 1979); see also *Tennessee Manufactured Housing Ass’n v. Metropolitan Government of Nashville*, 798 S.W.2d 254 (Tenn.App., 1990)).

The Court seeks to apply these rules of statutory construction in interpreting our local Presiding Judge Rule. The first part of the rule provides that “the Presiding Judge of the Fifth Judicial District shall have the duties and responsibilities imposed upon such judge as provided by the statutes... .” If the only intention or purpose of the rule was to grant the Presiding Judge authority “as provided by the statutes”, then no further words would be needed. Instead our local Presiding Judge Rule goes on to add: “and shall oversee the administration and be the final arbiter of the case load for the Fifth Judicial District, to include designation of the judges to hear civil and criminal cases.” This language must be considered as having been added to effect a purpose. As long as that purpose is not inconsistent with the Presiding Judge Statute or other law the local rule would be sustained as valid.

The Presiding Judge Statute reads in its entirety as follows:

16-2-509. Presiding judges. – (a) The judges in each judicial district shall assemble within ten (10) days after September 1, 1984, at a time and place and upon a date designated by the senior judge, for the purpose of selecting a presiding judge of the district.

(b) Each presiding judge initially elected shall serve until September 1, 1985. During the month of August 1985, and in August of each succeeding year, the judges within each district shall assemble at the call of the presiding judge and select a successor to such presiding judge who shall serve until September 1, 1986, and until September 1 of each succeeding year. If upon any selection date the judges in any district fail to choose or are unable to agree upon the selection of a presiding judge, the chief justice of the supreme court shall designate one (1) of their number to serve.

(c) It is the duty of the presiding judge to:

(1) Reduce docket delays and hold congestion to a minimum;

(2) Seek and maintain an equitable distribution of the workload and an equal sharing of the bench and chambers time necessary to dispose of the business of the district;

(3) Promote the orderly and efficient administration of justice within the district; and

(4) Take immediate and affirmative action to correct or alleviate any caseload imbalance, or any condition adversely affecting the administration of justice within the district over which the judge presides.

(d) To effectuate the duties enumerated in subsection (c), the presiding judge may assign cases to judges and chancellors within the district over which the judge presides. In assigning cases, the presiding judge shall, whenever possible and not detrimental to the orderly and efficient administration of justice, give due regard to the court upon which the judge or chancellor serves, the judge's or chancellor's particular background, experience and preference and economy of judicial travel time.

(e) If a presiding judge is unable to correct a caseload imbalance or reduce docket delays utilizing the available judges within the district over which the judge presides, it is the affirmative duty of such presiding judge to contact other presiding judges and request assistance or contact the supreme court and request assistance pursuant to § 16-3-502.

(f) This part shall not be construed as altering or modifying any law concerning interchange by agreement.

Nowhere in the statute does language appear relative to authority as the “final arbiter of the case load.” In fact, the statute indicates that the Presiding Judge’s authority is permissive rather than absolute. The statute states that “the presiding judge **may** assign cases to judges” to effectuate the duties enumerated elsewhere in the statute. As summarized elsewhere:

The major objective of presiding judges should be to achieve an equitable distribution of the workload and an equal sharing of the bench and chamber time necessary to dispose of the total case load within acceptable time limits.

Rule 11, Rules of the Supreme Court, Section III(b.).

This Court respectfully disagrees with the opinion of the Judge of Division I in his Memorandum dated June 6, 2008, that “Such section was formulated for the purpose of stating the duties and obligations of the Presiding Judge.” The plain language of the rule indicates a further purpose. In addition, the actions undertaken by the Judge of Division I in his April 25, 2008 Memorandum uses authority not found in T.C.A. §16-2-509. By the April 25, 2008 Memorandum the Judge acts in his “capacity as the Presiding Judge for the Fifth (5th) Judicial

District.” It is the plain intention of the April 25, 2008 Memorandum for the Presiding Judge to assign cases from a Division of the Fifth Judicial court where there is no backlog of cases to a Division where he believes a backlog exists. This action under the local rule is inconsistent with the “major objective” of the Presiding Judge statute. The Fifth Judicial District Presiding Judge’s supplementing a backlog of criminal cases with additional civil cases runs contrary to both common sense and the law. Such an action could only be predicated on authority found in the newly adopted local rule as it exists nowhere else in the law.

The Court further notes that the excess authority exercised here under our local Presiding Judge rule extends to administrative directives to the Clerk, counsel and the secretarial assistant for the Division II Judge. (See Ex. 1B). Such authority is also not found in the Presiding Judge statute and would run contrary to the independent responsibilities of our fellow judges.

Finally, the Court notes the reassignment of three specific cases which appear not to be in conformity with judicial obligations to maintain impartiality in the administration of justice. In Donna Phillips vs. Asbury Center Inc, #L-15159, the Judge of Division II was reassigned a case wherein a real conflict appeared on the face of the record as he had acted previously as counsel for a party therein. Second, the Judge of Division II was reassigned the case of Ana Matilde Calixto vs. Fernando J. Calixto, Blount County Circuit #E-22024, in spite of the fact that the Judge of Division I has publicly claimed that an unnamed but “known associate” of the Judge of Division II was a close friend of one of the parties and further claimed that such unnamed person approached a newspaper for publicity in the case. (Knoxville News Sentinel, June 18, 2008). Such claims are untrue. Judge Meares does not know the Calixtos or their friends and no one approached any newspaper on his behalf about Judge Young’s rulings in their case. Nevertheless, having made the claim the Presiding Judge has created an appearance of a conflict in the case he chose to reassign. This Court can find no authority by which a Presiding Judge

could selectively assign cases to another judge wherein he either knows or has any reason to believe that judge might have an interest. Judges “shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Supreme Court Rule 10, Canon 2.A.).

Finally, the Court notes that the Blount County Circuit Court Clerk has testified that he has no policy and has implemented no policy whatsoever which would allow for the selective assignment of cases from one division of court to another. (Hatcher Testimony June 18, 2008 p.56, 1.4-1.19). He specifically notes that consistent with the Local Rules all criminal cases are assigned to the Judge of Division II. Nevertheless, this Court has found that at least one criminal case which was pending for years in Division II of Circuit Court has been selected for hearing in Division I of the Circuit Court. *State of Tennessee v. Kenneth Lawrence Melton*, Case No. C-12290. (See Ex. 8; Order filed November 6, 2007). Without making any assumptions about this or any other particular case this Court states that the practice of selective reassignment permitted by the current Presiding Judge local rule inevitably raises questions which a standard, random and blind assignment rule would not. To avoid any future questions about the impartiality of our local system in the assignment or reassignment of cases this Court is constrained to invalidate our local Presiding Judge Rule.

III. The reassignment of 29 civil cases from Division I to Division II was not inconsistent with the Presiding Judge Statute.

In order to determine whether the transfer of civil cases from Division I to Division II of Circuit Court was consistent with T.C.A. §16-2-509, this Court undertook to determine whether the factual findings contained within the April 25, 2008 Memorandum reassigning such cases

was accurate. They were not. The Judge of Division I had been provided a document from the Clerk's office which clearly showed that in the year immediately preceding Judge Meares' tenure there were 106 more case matters filed than were disposed of in the Criminal Division of Circuit Court. Moreover, the Circuit Court Clerk himself (who was not consulted about statistics by the Division I Judge) volunteered in his testimony that Judge Meares had dealt "with a lot of cases that were laying around when he was appointed to the bench" (See Hatcher Testimony, June 18, 2008 p.61, 1.13-1.22, and Ex. 9 October 16, 2007 Order). According to the Clerk, that old backlog of cases predated TJIS reporting and were not in the computer system. (Hatcher Testimony June 18, 2008, p.19, 1.1 – p.20, 1.4). Finally, Criminal Audit Reports of official statistics from the Administrative Office of the Courts state that from July 1, 2007 to May 31, 2008 Judge Meares concluded 188 more cases than had been filed during the same time period. This audit negates and reverses the finding of fact contained in the April 25, 2008 Memorandum that since Judge Meares "took office in July 2007 a backlog of criminal cases has occurred... ."

Just as it would be inconsistent with the law for the Presiding Judge to reassign cases to a Judge with a backlog of cases it is equally clear that the reassignment of cases to a Judge who has successfully reduced a backlog of cases would "promote the orderly and efficient administration of justice within the district." T.C.A. §16-2-509(c)(3). Accordingly this Court concludes that because the predicate factual findings have been proven wrong the reassignment of civil cases by the April 25, 2008 Memorandum within the 5th Judicial District was consistent with the Presiding Judge Statute.

IV. The Amendments to the 5th Judicial District Local Rules adopted April 30, 2007 are not void.

Supreme Court Rule 18 requires each judicial district to adopt written uniform local rules, and that “all local rules of court shall be adopted in accordance with this rule.” At a minimum local rules must prescribe procedures for 5 things:

- (1) setting cases for trial;
- (2) obtaining continuances;
- (3) disposition of pre-trial motions;
- (4) settlement or plea bargaining deadlines for criminal cases;
- (5) preparation, submission and entry of orders and judgments.

Rule 18 further mandates that:

Prior to the adoption or amendment of local rules of court, the judges of the judicial district shall solicit and consider input from members of the public and attorneys concerning the proposed rules or amendments.

Finally, Rule 18(b) provides:

Not less than thirty (30) days prior to the effective date of any local rules, including any amendment thereto, the presiding judge of the judicial district shall cause the rules to be printed and made available to members of the public and to attorneys and shall file the rules with the administrative director of the courts in a format specified by the director.

The Local Rules for the Fifth Judicial District as published on the Administrative Office of the Courts’ website would lead any lawyer or member of the public to believe that all former Local Rules were completely replaced and supplanted by the new Rules. The Rule 18 publication of the Fifth Judicial District Local Rules at the Administrative Office of the Court’s website begins with the recitation: “**All former rules of local practice are abrogated and these local rules are hereby substituted.**” A close inspection of such newly adopted Local Rules as filed with the Blount County Circuit Court Clerk and available on its website www.blountccc.com, however, reveals that they are not complete and were not intended to

replace and supplant all prior Local Rules. Ms. Davis, the former chair of the Local Rule Committee testified that “the criminal and domestic [rules] are still in place as previous.” (Davis Testimony, p47, 1.20 – p48, 1.1). Our Presiding Judge has separately opined:

The published Local Rules **in Civil Cases** as adopted by the Chancellor and me are the local rules of the Fifth Judicial District. Attorneys who practice in the Fifth Judicial District and the judges who hold court in the Fifth Judicial District are bound by these rules unless and until they are changed and that change must conform to the mandates of the Tennessee Supreme Court.

(See Ex. 8 emphasis added).

Of primary importance to our local practitioners, however, is whether the adoption of a new local rule designated as section II, paragraph 11 which is now entitled: “Preparation, Submission and Entry of Orders and Judgments in civil matters” replaced the entire body of the “Amended Domestic Relations Rules” formerly contained in section II, paragraph 11 of the local rules. (See Amended Domestic Relations Rules adopted January 27, 1993 and found in Minute Book 92, page 307).

In this Court’s opinion the discrepancy between the Local Rules as published and adopted calls into question their compliance with Supreme Court Rule 18. Whether or not a thirty day public notice period took place, the incorrect representation of the contents of the Court’s Order is a matter of serious concern. Either prior rules were abrogated or they were not. If they were not, their publication should not have said that they were. (See Ex. 5). Similarly, if the local rules as adopted were not recommended by a local rules committee they should not say that they were. At the same time the invalidity of one portion of the local rules as found above should not invalidate the whole. While the adoption of an erroneous or irregular order issued within the court’s jurisdiction may be voidable, it cannot be disregarded until reversed or set aside. 60 C.J.S. Motions and Orders §75 Void and Voidable Orders.

Based upon all the testimony and exhibits received in open Court, the findings of fact, analysis of the law, the Court ORDERS AND ADJUDGES as follows:

1. The Circuit Court Clerk shall continue to improve the system for the statistical reporting of criminal case dispositions and shall report on or before July 18, 2008 as to the measures taken to correct the problems with the Bridge Computer System.

2. The Circuit Court Clerk shall report to the Judge of Division II the exact number of criminal case filings in Circuit Court from July 1, 2007 to present, and further report for each case not concluded, the date the defendant is next scheduled to appear in Court or the date when process was issued to secure the presence of the defendant or that the defendant has neither a pending court date nor pending process.

3. The introductory unnumbered paragraph of the Local Rules as adopted April 30, 2007 which reads:

PURSUANT TO THE RECOMMENDATION of the Local Rules Committee of the Blount County Bar Association and with the consent of the Circuit Judges and the Chancellor, the following Local Rules are hereby adopted by the Circuit Courts and the Chancery Court for Blount County, Tennessee. [S]ame having been published for public comment by the Administrative Office of the Courts, pursuant to the direction of the Supreme Court of the State of Tennessee, to wit:

is inaccurate and was never published pursuant to Rule 18, Supreme Court Rules, and is void and of no effect.

4. Numbered paragraph 2 of the Local Rules as adopted April 30, 2007, the local Presiding Judge rule which reads:

2. Presiding Judge-Notwithstanding the provisions of paragraph 1., above, the Presiding Judge of the Fifth Judicial District shall have the duties and responsibilities imposed upon such judge as provided by the statutes and shall oversee the administration and be the final arbiter of the case load for the Fifth Judicial District, to include the designation of the judges to hear civil and criminal cases.

is void and of no effect to expand the statutory authority of the Presiding Judge.

5. The prior reassignment of civil cases by Memorandum from Division I to Division II is affirmed by Division II as a transfer to promote the orderly and efficient administration of justice within the District except this Court has already declined assignment of cases by separate Order wherein either a conflict exists or has been alleged to exist.

6. The Circuit Court Clerk shall notify the Division II Judge in writing upon any further reassignment of cases either from or to Division I of the 5th Judicial District.

7. The Circuit Court Clerk shall record this Order in its minutes and shall make it available for copying when requested and a copy shall be sent to the Administrative Office of the Courts.

This the ____ day of July, 2008.

E

N

T

E

R

JUDGE MICHAEL H. MEARES