

**IN THE UNITED STATES DISTRICT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**DAN McCALEB, Executive Editor of
THE CENTER SQUARE,**

Plaintiff,

v.

**MICHELLE LONG, in her official capacity
as DIRECTOR of the TENNESSEE
ADMINISTRATIVE OFFICE OF THE
COURTS,**

Defendant.

Case No. 3:22-cv-00439

Judge Richardson

Magistrate Judge Frensley

DEFENDANT’S STATEMENT OF UNDISPUTED MATERIAL FACTS

In support of her Motion for Summary Judgment, and pursuant to Local Rule 56.1(b), Defendant submits this statement of the undisputed, material facts:

1. The purpose of the Tennessee Advisory Commission on the Rules of Practice and Procedure (“Advisory Commission”) is to discuss rule proposals and make recommendations of possible changes to the Tennessee Supreme Court. (Exhibit 1 (“Consiglio-Young Dep.”), at 53-54.)¹

RESPONSE:

¹ All Exhibits referenced are attached to Defendant’s Memorandum of Law in Support of Motion for Summary Judgment. (D.E. 72.)

2. A proposed recommendation as to such rules can come from a number of sources: a member of the Advisory Commission; a legislator; a judge; an attorney; and even a member of the public. (Consiglio-Young Dep., at 68; Exhibit 2 (“Wiseman Dep.”), at 29.)

RESPONSE:

3. After considering a proposed rule change, the Advisory Commission votes on the rule. If approved, the Tennessee Administrative Office of the Court’s (the “AOC”) liaison to the Advisory Commission sends the recommendation to the Tennessee Supreme Court. (Exhibit 3 (“Bulso Dep.”), at 32; Consiglio-Young Dep., at 55-56.)

RESPONSE:

4. Thereafter, the Tennessee Supreme Court decides whether to move forward on a rule proposal, including making its own revisions to the proposed rule, and can make any such changes without consulting the Advisory Commission. (Consiglio-Young Dep., at 56-57, 61; Wiseman Dep., at 31-32, 53.)

RESPONSE:

5. After deciding on a proposed rule, the Tennessee Supreme Court will publicize it for public comment for at least 60 days. (Consiglio-Young Dep., at 56-57.)

RESPONSE:

6. Once the comment period ends, the Tennessee Supreme Court takes the comments into consideration before filing an order of proposed rules that are then transmitted to the General Assembly. (Consiglio-Young Dep., at 57-58.)

RESPONSE:

7. The proposed rules do not go into effect unless affirmatively approved by the General Assembly. (Wiseman Dep., at 53.)

RESPONSE:

8. Advisory Commission members understand their meetings to be closed to the public. (Wiseman Dep., at 66; Bulso Dep., at 27, 29, 78.)

RESPONSE:

9. Discussions between Advisory Commission members can involve sensitive information in seeking to propose a rule change, and confidential meetings allow members a certain level of candor that would be diminished if they were open to the public. (Wiseman Dep., at 48, 67; Bulso Dep., at 78-79; Exhibit 4 (“Long Dep.”), at 105, 111.)

RESPONSE:

10. The AOC provides education sessions and administrative support to the Tennessee Judicial Conference (“Judicial Conference”). (Long Dep., at 148; Harmon Dep., at 118.).

RESPONSE:

11. The Judicial Conference does not make recommendations for changes to the rules of practice and procedure. (Harmon Dep., at 136.)

RESPONSE:

Respectfully submitted,

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*Counsel for Defendant Michelle Long
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CERTIFICATE OF SERVICE

I, Robert W. Wilson, counsel for Defendant Michelle Long, hereby certify that a copy of the foregoing memorandum of law, is being served electronically via the Court's ECF/ECM service on December 15, 2023, upon the following:

M.E. Buck Dougherty, III (a/k/a Buck Dougherty) bdougherty@libertyjusticecenter.org <i>Counsel for Plaintiff Dan McCaleb</i>	James J. McQuaid jmcquaid@libertyjusticecenter.org <i>Counsel for Plaintiff Dan McCaleb</i>
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I also certify that, pursuant to LR 56.01(b), a copy of the statement of undisputed material facts is being provided to opposing counsel in an editable electronic format.

s/ Robert W. Wilson

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Senior Assistant Attorney General
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