

**IN THE CHANCERY COURT FOR LOUDON COUNTY, TENNESSEE**

STATE OF TENNESSEE,  
RUSSELL JOHNSON, AS THE DISTRICT ATTORNEY  
GENERAL FOR THE 9<sup>TH</sup> JUDICIAL DISTRICT,  
ON INFORMATION OF HENRY CULLEN

PETITIONER,

V.

NO. 12751

JULIA C. HURLEY,  
LOUDON COUNTY COMMISSIONER  
FOR THE 2<sup>ND</sup> COMMISSION DISTRICT,

FILED 29<sup>th</sup> DAY OF May 2020  
Julia C. Hurley AT 4:15 P.M.  
LOUDON CO. CLERK & MASTER

RESPONDENT.

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**RESPONSE TO RESPONDENT'S MOTION TO DISMISS**

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In response to the Respondent's Motion to Dismiss, the Petitioner, the State of Tennessee, on relation of Russell Johnson, District Attorney General for the Ninth Judicial District of Tennessee, moves this Honorable Court to deny the Respondent's Motion to Dismiss because the Petitioner satisfied the requirements of Tenn. Code Ann. § 29-35-110.

The Respondent's Motion to Dismiss is disjointed and based upon unrelated legal principles that are not relevant to the case at hand. First the Respondent relies upon *Johnson vs. Hopkins* and asserts that the bond is jurisdictional, Petitioner does not see how this bares any relation to the present issue but will address Respondent's assertion.

*Johnson vs. Hopkins* is a landlord tenant case out of Davidson County with the principal dispute being whether the tenant who appealed a decision from the general sessions court needed to post a bond equivalent to one-year of rent. 432 S.W.3d 840 (Tenn. 2013). There is no basis within the case cited by the Responded to support Respondent's assertion that security for costs is a prerequisite to filing a lawsuit.

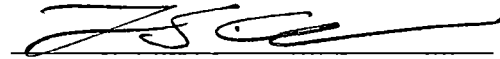
Next, the Respondent relies upon the assertion that Mr. Henry Cullen cannot act as a surety in this action and relies upon *Bernatsky vs. Designer Baths & Kitchen LLC*. The section cited by the Respondent is in reference to how a criminal defendant would post bond with a bonding company and describes the relationship between the bonding company and the criminal defendant. *Bernatsky vs. Designer Baths & Kitchen LLC* is another case dealing with an appeal from general sessions to circuit court, claiming the appellant failed to satisfy Tenn. Code Ann. § 27-5-103. No. W2012-00803-COA-R3-CV, 2013 Tenn. App. LEXIS 106, at \*1 (Ct. App. Feb. 15, 2013). The citation relied on by the Respondent has no relation to the issue other than to misinform the Court.

Proper security was given by Henry Cullen executing a cost bond on the Quo Warranto petition and the issuance of process by the Clerk and Master on March 26, 2020. Tennessee Code Annotated § 20-12-120 provides that “[n]o leading process shall issue from any court without security being given by the party at whose instance the action is brought for the successful prosecution of the party’s action...”

If this Court does not believe that Henry Cullen’s execution of a cost bond is sufficient then Tennessee Code Annotated § 20-12-124 provides that “[a]ny person required by law to give security for costs may, at any stage of the cause, be ruled to give such security, if it has not previously been done, or to justify or give new or additional security on sufficient cause shown.”

For the above stated reasons, the Petitioner request this Honorable Court to deny the Respondent’s Motion to Dismiss; or in the alternative, if the Court believes insufficient security has been provided that the Court order the posting of additional security by Henry Cullen.

Respectfully submitted this 29<sup>th</sup> day of May, 2020.

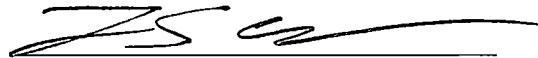
  
Russell Johnson (TN BPR: 014369)  
Jason S. Collver (TN BPR: 034187)  
District Attorney General  
Ninth Judicial District  
1008 Bradford Way  
Kingston, TN 37736

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing pleading has been delivered pursuant to the Tennessee Rules of Civil Procedure by U.S. Mail or hand delivery at:

T. Scott Jones  
Banks & Jones  
2125 Middlebrook Pike  
Knoxville, TN 37921

This 29<sup>th</sup> day of May, 2020.

  
Attorney

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[Signature] AT 4:15 PM  
LOUDON CO. CLERK & MASTER

RESPONDENT.

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**RESPONSE TO RESPONDENT'S MOTION TO DISQUALIFY**

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In response to the Respondent's Motion to Dismiss, the Petitioner, the State of Tennessee, on relation of Russell Johnson, District Attorney General for the Ninth Judicial District of Tennessee, moves this Honorable Court to deny the Respondent's Motion Disqualify, as the motion is based on supposition and meant to distract the Court from the true issue at hand. Respondent contends that this action is politically motivated and therefore should be thrown out; however, that is not the basis of the action brought by the State of Tennessee.

A brief summary of the case brought by the State of Tennessee is that Ms. Hurley moved out of her elected commission district (the 2<sup>nd</sup> Commission District in Loudon County) and moved to the 5<sup>th</sup> Commission District, therefore vacating her elected office as a County Commissioner for the 2<sup>nd</sup> Commission District in Loudon County. Factually, there is very little proof that is relevant for the Court's consideration, but the Respondent desires to inject extraneous irrelevant information into this proceeding asserting there is a conspiracy against her when the case actually boils down to a simple question of whether she vacated her residence in the 2<sup>nd</sup> Commission District and moved into a new residence in the 5<sup>th</sup> Commission District.

The assertions made within the Respondent's Motion to Disqualify are premature and irrelevant to the matter before the Court. The Respondent is attempting to make District Attorney General Russell Johnson a witness in this matter when the only information he could offer is hearsay as he supervised the investigation, no different than a personal injury attorney sending an investigator out to gather information and receiving a report back. The Tennessee Rules of Professional Responsibility require that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis in law and fact for doing so that is not frivolous..." Tenn. S. Ct. R. 8, RPC 3.1 (emphasis added). Part of District Attorney General Johnson's due diligence prior to filing this action was to review the investigation and speak with potential witnesses regarding the veracity of the allegation forming the basis of the Quo Warranto petition.

The Respondent has provided neither proof that District Attorney General Johnson is the only source from which she can obtain the alleged information she wishes to present, nor has she shown that said information is relevant or even admissible in this proceeding. There is little case law on the question of disqualifying an attorney as a necessary witness under Tenn. S. Ct. R. 8, RPC 3.7, however, *State vs. Spears* speaks to the issue plainly:

[S]everal courts within the Sixth Circuit have addressed what it means to be a "necessary witness" for purposes of disqualification. In both Ohio and Michigan, whose rules of professional conduct pertaining to disqualification contain language identical to our own rule, there are cases interpreting what qualifies as a necessary witness for purposes of disqualification. *See e.g.*, MRPC 3.7(a); Ohio R. Prof'l Conduct 3.7(a). Ohio has defined a necessary witness as a witness whose "proposed testimony was relevant, material and unobtainable elsewhere." *Puritas Metal Prods. v. Cole*, 2008-Ohio-4653, 2008 WL 4193934, at \*8 (Ohio Ct. App. 2008). In Michigan, "attorneys are not necessary witnesses if the substance of their testimony can be elicited from other witnesses and the party seeking disqualification did not previously state an intent to call the attorney as a witness." *People v. Tesen*, 276 Mich. App. 134, 739 N.W.2d 689, 695 (Mich. Ct. App. 2007) (citing *Smith v. Arc-Mation, Inc.*, 402 Mich. 115, 261 N.W.2d 713, 715

(Mich. 1978); *In re Susser Estate*, 254 Mich. App. 232, 657 N.W.2d 147, 151-52 (Mich. Ct. App. 2002)).

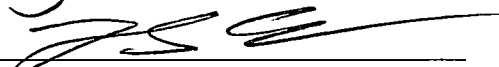
*State v. Spears*, No. E2017-01836-CCA-R9-CD, 2018 Tenn. Crim. App. LEXIS 548, at \*10-11 (Crim. App. July 23, 2018).

As to the position stated in *State vs. Spears*, the Respondent has presented no evidence that District Attorney General Johnson is the only source of information she wishes to attempt to introduce, and therefore; General Johnson is not a necessary witness to this proceeding.

The Respondent wishes to paint the picture of a political conspiracy when it is undisputed that she moved from the 2<sup>nd</sup> Commission District to the 5<sup>th</sup> Commission District irrespective of whatever explanation she has concocted to justify moving out of her elected district.

Wherefore, the Petitioner moves this Honorable Court to deny the Respondent's Motion to Dismiss on the basis that District Attorney General Johnson is not a material witness to this proceeding.

Respectfully submitted this 29<sup>th</sup> day of May, 2020.

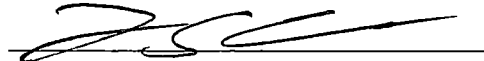
  
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Banks & Jones  
2125 Middlebrook Pike  
Knoxville, TN 37921

This 29<sup>th</sup> day of May, 2020.

  
\_\_\_\_\_  
Attorney

Office *of the* District Attorney General  
Ninth Judicial District

Serving Loudon, Meigs, Morgan and Roane Counties  
Russell Johnson, District Attorney General

May 29, 2020

Lisa Niles, Clerk and Master  
Loudon County Chancery Court  
P.O. Box 509  
Loudon, TN 37774

FILED 29<sup>th</sup> DAY OF May 2020  
Jason S. Collver AT 4:15 P.M.  
LOUDON CO. CLERK & MASTER

RE: State of Tennessee vs. Julia Hurley, Docket #: 12751

Dear Lisa,

If you would please file, the enclosed Response to the Respondent's Motion to Dismiss and the Response to the Respondent's Motion to Disqualify.

Sincerely,



Jason S. Collver  
Assistant District Attorney General

Enclosures  
CC: T. Scott Jones