

**THE UNITED STATES DISTRICT COURT 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)
 TENNESSEE ADMINISTRATIVE)
 OFFICE OF THE COURTS,)
)
)
 Defendant.)

Case No. 3:22-cv-00439

**District Judge Richardson
Magistrate Judge Frensley**

DECLARATION OF DAN McCALEB

Pursuant to 28 U.S.C. § 1746, I, Dan McCaleb, declare:

1. I am over eighteen years of age. I have personal knowledge of the statements herein. If called to testify at deposition or trial, I would testify as follows:
2. I reside in Crystal Lake, Illinois, and I am a citizen of the United States.
3. I am the Executive Editor of The Center Square.¹

¹ <https://www.thecentersquare.com/users/profile/dan%20mccaleb/>.

4. I have reviewed the First Amended Complaint being filed with the Court in this case and based on my personal knowledge, information, and belief, it is true and accurate. This declaration is submitted in support of the Motion for Preliminary Injunction.

5. The Center Square was launched in May 2019 to fulfill the need for high-quality statehouse and statewide news across the United States.²

6. The Center Square's focus is state-and local-level government and economic reporting. As a result of this approach, our readers are better informed about the issues of state and local government and its cost to the citizens whose tax dollars fund governmental decisions.

7. The Center Square is staffed by editors and reporters with extensive professional journalism experience. We engage our readers with essential news, data, and analysis.

8. The Center Square distributes its journalism through three main channels at no cost to readers, including a newswire service to legacy publishers and broadcasters, its own website, and social media.

9. The Center Square is a project of the 501(c)(3) Franklin News Foundation, headquartered in Chicago, Illinois.

10. The Center Square provides extensive news coverage throughout the United States, including the Southeast region and Tennessee.³

² <https://www.thecentersquare.com/site/about/about.html>.

³ <https://www.thecentersquare.com/tennessee/>.

11. As part of my duties as Executive Editor, I assign reporters to cover newsworthy events in Tennessee that I think would be keeping within The Center Square's focus on state-and local-level government.

12. As Executive Editor, I think reporting and covering Tennessee's bench-bar advisory commission established to recommend rules would be keeping within The Center Square's focus on state-and local-level government and would engage our readers with essential news, data, and analysis on the state court rulemaking process in Tennessee state courts.

13. Members of the current appointed advisory commission established to recommend rules of practice and procedure in Tennessee state courts may be found on the Tennessee Administrative Office of the Court's ("TAOC") website.⁴

14. The appointed members include individuals from both the bench and bar of Tennessee. *Id.*

15. Specifically, the current members include a Tennessee supreme court justice, the clerk of Tennessee appellate courts, a state court chancellor, three state court judges, the Tennessee solicitor general, a member of the Tennessee House of Representatives, two state supreme court staff attorneys, a law professor, the TAOC Assistant General Counsel, and several members of the state bar in private law practice. *Id.*

⁴ Available at <https://www.tncourts.gov/boards-commissions/boards-commissions/advisory-commission-rules-practice-procedure> (last visited June 30, 2022).

16. This appointed bench-bar advisory commission meets periodically to study and make recommendations on rules of practice and procedure in Tennessee state courts. *Id.*

17. Meetings of the bench-bar advisory commission established to recommend rules of practice and procedure in Tennessee state courts are closed to the public and press. I have searched and reviewed TAOC's website for public meeting notices for meetings of the bench-bar advisory commission, and I cannot find any such open meeting notices.⁵

18. The federal Judicial Conference of the United States has approximately 20 committees.⁶

19. One of the federal committees subject to 28 U.S.C. § 2073(c)(1)'s open meetings requirement is the committee on Rules of Practice and Procedure.⁷

20. Within this committee on Rules of Practice and Procedure are five Advisory Committees established to recommend federal rules, and meetings are open to the public. *Id.*

21. As set forth on the United States Courts' website in footnotes 6 and 7, the five federal Advisory Rules Committees that open their meetings to the public and press are as follows:

- Advisory Committee on Appellate Rules

⁵ <https://www.tncourts.gov/> (last visited June 30, 2022).

⁶ <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference> (last visited June 30, 2022).

⁷ <https://www.uscourts.gov/rules-policies/about-rulemaking-process/open-meetings-and-hearings-rules-committee> (last visited June 30, 2022).

- Advisory Committee on Bankruptcy Rules
- Advisory Committee on Civil Rules
- Advisory Committee on Criminal Rules
- Advisory Committee on Evidence Rules

22. The Standing Committee and each of the Advisory Committees typically meet twice a year and meetings are open to the public subject to the limited exceptions in 28 U.S.C. § 2073(c)(1). *See* n 7.

23. This open access policy extends to both in-person and virtual attendance of meetings. *Id.*

24. In addition to listing upcoming meeting dates and locations in a calendar format on the U.S. Courts' website, advance notices for each Advisory Committee meeting are published in the Federal Register. *Id.*

25. Transcripts and testimony provided during Advisory Committee meetings are published and archived.⁸

26. Meeting agenda books dating back to 1992 are published and archived.⁹

27. The Administrative Office of the U.S. Courts — the federal equivalent to TAOC — maintains and archives Advisory Committee meeting reports from 1937.¹⁰

⁸ <https://www.uscourts.gov/rules-policies/records-rules-committees/transcripts-and-testimony> (last visited June 30, 2022).

⁹ <https://www.uscourts.gov/rules-policies/records-rules-committees/agenda-books> (last visited June 30, 2022).

¹⁰ <https://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/committee-reports> (last visited June 30, 2022).

28. The federal administrative court office also archives Advisory Committee meeting minutes going back to 1935.¹¹

29. Additionally, a search on YouTube reveals that some past open bench-bar meetings with federal judges discussing the rule and decision-making process—for example a 2006 Federal Circuit Court of Appeals session—have been broadcast on cable television by C-SPAN.¹²

30. Closed bench-bar advisory commission meetings prevent me in my capacity as Executive Editor of The Center Square to assign reporters to report on future meetings of Tennessee bench-bar advisory commission established to recommend rules.

31. Upon information and belief, Tennessee’s bench-bar advisory commission established to recommend rules will convene meetings during the remaining six months of the 2022 calendar year.

32. Although the precise meeting dates are unclear because TAOC does not make them public, upon information and belief it is possible meetings could convene as early as October 2022, if not sooner. Based on publicly available information on the First Judicial District of Tennessee’s website, the bench-bar commission

¹¹ <https://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/meeting-minutes> (last visited June 30, 2022).

¹² <https://www.youtube.com/watch?v=EwVUyZmynF0&t=33s> (last visited June 30, 2022).

meetings could coincide with Tennessee Judicial Conference meetings scheduled for October 25-27, 2022.¹³

33. Director Long has the legal authority as the “director of the administrative office of the courts” under Tenn. Code Ann. § 16-3-802(a) to close future meetings of bench-bar advisory commission established to recommend rules.

34. There exists a reasonable expectation that Director Long will continue to close future meetings of Tennessee bench-bar advisory commission established to recommend rules.

35. On or about June 30, 2022, I learned of the Tennessee bench-bar advisory commission established to recommend rules and its closed meetings.

36. But for closed meetings of the bench-bar advisory commission established to recommend rules, I would make an editorial decision to assign reporters to report on future meetings, either virtually or in person.

37. A favorable decision from the Court stopping Director Long from closing future meetings of Tennessee bench-bar advisory commission established to recommend rules and providing me with virtual and in-person access so I can assign reporters to cover future meetings would redress my First Amendment deprivation and injury.

¹³ <https://www.washingtoncountyttn.org/DocumentCenter/View/1196/2022-Judges-Schedule> (last visited June 30, 2022).

38. Open meetings of Tennessee's bench-bar advisory commission established to recommend rules would be positive and enhance the state court rulemaking process.

39. Openness would promote transparency and public confidence in the judiciary as well as in the advisory commission's rule recommendations.

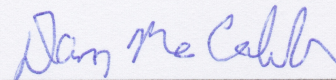
40. Allowing the public and press to observe meetings of federal Advisory Committees considering proposed rules and making rule recommendations has played a significant and positive role in the federal court rulemaking process.

41. I am seeking declaratory and injunctive relief to stop Director Long from closing future meetings and ending the continuing violation of my First Amendment right of access that prevents public and press access to future meetings of the Tennessee bench-bar advisory commission established to recommend rules.

42. I am requesting relief ordering Director Long to provide me, and the public, with both virtual and in-person access so that I may assign reporters I supervise as Executive Editor of The Center Square to report on future meetings of the Tennessee bench-bar advisory commission established to recommend rules.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.

Executed on June 30, 2022
Crystal Lake, Illinois



DAN McCALEB,
Executive Editor of The Center Square