

**IN THE TENNESSEE SUPREME COURT,  
AT NASHVILLE**

**STATE OF TENNESSEE v. Arthur Jay Hirsch**

**Lawrence County Circuit Court  
36138**

**MA2023-00575-SC-UNK-CD**  
Case No. ~~M2023-00575-CCA-R3-CD~~

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**MOTION FOR RECONSIDERATION AND ORAL ARGUMENT  
PER**

***Barger v. Brock, 535 S.W.2d 337 (Tenn. 1976)***

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I, Arthur Jay Hirsch, constitutional rights claimant (hereinafter, "Claimant"), without counsel, files this Motion for Reconsideration and Oral Argument in response to the Court's previous *per curiam* Order in denial of Claimant's constitutional challenge to the misapplication of Tennessee appellate Rule 6(a). A \$550.00 litigation privilege tax/filing fee ("tax/fee") was invoiced by the clerk of appellate court in disregard to Claimant's inviolable right of access to justice in the courts of Tennessee, "without sale, denial, or delay," (Art. 1, § 17). This motion is premised on this Court's pertinent holding in *Barger v. Brock, 535 S.W.2d 337 (Tenn. 1976)*. Claimant's reasons for this motion to be granted are based on *Barger* and other authorities with commentary and argument.

1. **Venue.** Venue is proper with the Court as authorized by Tenn. Const. Art. VI § 1, which holds in part as follows, "The judicial power of this state shall be vested in one Supreme Court..."
2. **Jurisdiction.** Jurisdiction lies proper, and original, with the Court as recognized at T.C.A. §§ 16-3-401 & 402, and as determined in *Barger* where the Court holds that the inferior

courts lack jurisdiction and authority “to declare a Rule of the Supreme Court to be violative of the Constitution of Tennessee and enjoin its enforcement.”

3. ***Barger* holding is binding.**

- “The holding in this case, is the established law of Tennessee and is binding upon all the courts of the state.” (*Id.* at 340)

4. **Exclusive rule making authority.** In *Barger*, the Supreme Court takes cognizance of its exclusive/sole authority to promulgate rules of practice and procedure with the following conclusion of law:

- “We hold that the inferior courts of the state may not entertain any suit or action challenging the validity of any Rule of this Court. Such a suit would be in the nature of a bill of review or to impeach a judgment of this Court, and, in effect, would constitute an appeal to the chancery court from the action of this Court. Such a proceeding is unknown to the law.” (*Id.* at 342)

- “The Supreme Court is vested with the sole authority to promulgate, rescind and modify the rules, and until the rules are changed by the source of authority, they remain inviolate. 167 So.2d at 232.” “No court except the Supreme Court can alter, amend or change the rules.” “This is not to say, however, that there can be no relief from a Rule of this Court deemed to be arbitrary, illegal or improvident.” (*Id.* at 342)

Per *Barger*, Claimant was procedurally correct in filing his constitutional challenge to the application of said Rule 6(a) with this Court on 07/31/2023, since this Court is the “source of authority” prescribing the rule, and is the only authority that can “alter, amend or change the rules.”

5. **Appellate court cannot address constitutional challenge to rule.**

- “Fortunately our courts recognize and apply the rule that lower courts are bound by the decisions of higher courts. As held in *Bloodworth v. Stuart*, 221 Tenn. 567, 428 S.W.2d 786 (1968) “the Court of Appeals has no authority to overrule or modify Supreme Court’s opinions.” (*Id.* at 341)

6. **Constitutional limitations.** The inherent powers of the judicial branch are circumscribed only by constitutional limitations placed upon its authority as described by T.C.A § 16-3-403.

- “The rules prescribed by the supreme court pursuant to § 16-3-402 shall not abridge, enlarge or modify any substantive right, and shall be consistent with the constitutions of the United States and Tennessee.”

7. **In *Barger* criticism of Supreme Court rules is invited.**

- “This Court welcomes the continuing criticisms of its Rules. They never become final, and are always subject to change... When any individual deems any Rule of Court to be objectionable from any standpoint, it is his privilege to petition the Court for its elimination or modification.”(*Id.* at 342) (emphasis added)

Claimant finds the imposition of Rule 6(a), litigation tax/filing fee, constitutionally repugnant and “objectionable;” and, once again, reasserts his right to petition this Court under Art. 1, § 23, as supported by the *Barger* decision, and as initially expressed, and soundly supported, in his constitutional challenge of record, file dated July 31, 2023.

8. **Unconstitutional misapplication of rule is sole issue.** (similar to *Barger’s* (*Id.* at 342)).

- “The sole issue before the Court is the constitutionality of Rule 42.” (similar to Rule 6(a) litigation privilege tax).

Claimant’s sole purpose in his recently filed EMERGENCY STAY AND RULING REQUEST; CONSTITUTIONAL CHALLENGE TO APPELLATE RULE, was to challenge the Tennessee Rules of Appellate Procedure, Rule 6(a), as is currently misapplied to the constitutionally excepted citizens of Tennessee, as distinguished from the plaintiffs in *Barger*. Claimant’s primary challenge alleges that this Court’s rule, which demands payment of \$550.00 litigation tax/filing fee as a condition precedent to his constitutional exercise to freely access the courts of justice “*without sale, denial or delay,*” is patently unconstitutional. The requested stay of appellate proceedings was sought, secondarily, simply to allow this Court an opportunity to hear from the Claimant, *en banc*, and issue a written ruling detailing the Court’s conclusions of law with regards to Claimant’s challenge. Since, the “stay” was not the primary issue for this Court’s consideration, it was

improvidently presumed and summarily denied without giving any consideration, whatsoever, to Claimant's properly pled primary issue – for which this Court alone has original jurisdiction.

**9.Litigation privilege tax.** Said appellate rule, requiring the payment of the litigation tax upon Claimant's filing of his notice of appeal, is a **privilege tax** (Art. II, § 28), which cannot constitutionally be levied on his person. This Court knows all too well that a privilege tax is levied on business or occupational activity affecting the public interest for private gain (e.g. doctors, practicing attorneys [e.g. *Barger's* annual "license fee"], motor freight carriers, etc.). Since attorneys derive personal financial benefit and profit from the use of the publicly funded court system, therefore, the Rule 6(a) privilege tax and administrative fees are to be born by all licensed attorneys – NOT the general public under Art. I, § 17 and Art. XI, § 16 (original intent) who are constitutionally excepted/immune! It is the misapplication of the aforesaid rule that Claimant is challenging as unconstitutional – not the rule itself!

10. **Premises considered.** Claimant asserts that the Court's previous order was prematurely and improvidently determined; and, that he enjoys the liberties of petition, oral address and audience before this Court, without levy and payment of tax or fee, pursuant to Tenn. Const. Art. I §§ 1, 2, 8, 17 & 23 as secured by Tenn. Const. Art. XI § 16; and, federally, by U.S. Const. Art. 4 § 4 and U.S. Const. amend. 1, 4, 5, 9, 10 & 14.

#### **REQUESTED RELIEF**

**THEREFORE**, for reasons stated above, with ample support from established law cited by this Court in *Barger v. Brock*, and other relevant authorities, Claimant hereby requests:

(1) An ORDER granting Claimant's motion for reconsideration and docketing of Claimant's original constitutional challenge with an *en banc* hearing and in-person oral arguments, to be held in Nashville; or, alternatively, an ORDER granting an *en banc* hearing on Claimant's motion for reconsideration per *Barger v. Brock*, with in-person oral arguments, to be held in Nashville.

(2) That this Court stay proceedings in the lower court pending adjudication and exhaustion of appeal over Claimant's constitutional challenge to the current practice of imposing and collecting litigation privilege taxes and fees from the citizens of Tennessee (who are not privileged licensees) under the pretense of appellate Rule 6(a).

(3) That this Court state in writing, with specificity, the facts and conclusions law relied upon should it deny this motion.

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I, Arthur Jay Hirsch, on this 7<sup>th</sup> day of August, 2023, do hereby declare and affirm under penalty of perjury, with God as my witness, that the above motion is true according to my personal knowledge and belief.

By Arthur Jay Hirsch  
Arthur Jay Hirsch (all rights reserved)  
1029 W. Gaines Street  
Lawrenceburg, TN 38464  
310-948-1668

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the above motion was mailed to the office of Jonathan Skrmetti, Attorney General and Reporter, P.O. Box 20207, Nashville, TN 37202 by USPS certified mail (#7020 2450 0002 0884 6699), on August 7, 2023.

Arthur Jay Hirsch  
Arthur Jay Hirsch

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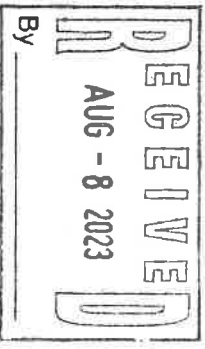


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