



NASHVILLE AND DAVIDSON COUNTY:

Section 1: The Metropolitan Department of Law is authorized to satisfy the judgment against the Clerk to resolve the claim of NCBF for the sum of \$193,279.92, to be paid from the Judgments and Losses Fund.

Section 2: This resolution shall take effect from and after its adoption, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

In February 2020, the Nashville Community Bail Fund (“NCBF”) sued Davidson County Criminal Court Clerk Howard Gentry in his official capacity, challenging a 2008 local Criminal Court rule regarding bail bonds and a related garnishment policy. The Davidson County Criminal Court rule requires criminal defendants seeking to secure bail with a cash bond deposit to sign a form acknowledging and accepting that the deposit would be returned subject to any fines, fees, court costs or restitution owed.

The Criminal Court judges entered an order exempting NCBF from this rule in 2016. NCBF uses a revolving fund to pay up to \$5,000 in cash bail deposits on behalf of defendants who could not afford bail and would otherwise remain in jail. This exemption order, issued *en banc*, allowed NCBF to receive a full reimbursement of its bail deposits, which is needed for the NCBF fund to function.

In September 2019, the Criminal Court judges revoked the exemption order. While Mr. Gentry disagreed with the decision, the Criminal Court Clerk’s Office began enforcing the original bail rule against NCBF bail deposits, resulting in the federal litigation. NCBF served Mr. Gentry through the Metro Department of Law, even though Mr. Gentry serves as a state constitutional officer. Although the Department of Law repeatedly requested that the Tennessee Attorney General’s Office represent Mr. Gentry in his official capacity, the State of Tennessee declined to enter the case or defend the bail rule issued by judges for a state court - even after the federal district court found that the Criminal Court and the Clerk’s Office were arms of the State of Tennessee. Mr. Gentry was forced to retain private counsel to represent him for the remainder of the litigation.

The case was eventually resolved in favor of NCBF, and the parties entered a consent judgment and decree in December 2020. NCBF moved for an award of attorney’s fees of \$340,335.42. The Department of Law argued that the State was responsible for the fee award, and the State argued that the Metropolitan Government was responsible. The Court declined to resolve the issue and stated that its only duty was to assess fees against the losing party in the case.

Mr. Gentry then filed a claim with the Tennessee Board of Claims to obtain funds to pay the award, which denied Mr. Gentry’s claim in June 2023.

The Metropolitan Government filed a declaratory judgment action in federal court in March 2024 and sought an order declaring the State as responsible for paying attorney’s fees. However, the federal court finding it lacked jurisdiction to hear the case granted the State’s motion to dismiss.

Following this dismissal, NCBF offered to waive a portion of the fee award reducing it to \$193,279.92. This offer is in lieu of NCBF conducting asset discovery of the Clerk’s Office which would likely include depositions of Mr. Gentry and/or representatives from the Department of Finance. The Department of Law is not aware of further legal avenues to compel the State to pay the judgment.

The Department of Law recommends resolving the claim against NCBF and satisfying the judgment against the Davidson County Criminal Court Clerk's office for the amount of \$193,279.92.

*Fiscal Note: The total settlement amount is \$193,279.92. This would be the 5<sup>th</sup> payment after approval by Metropolitan Council from the Judgment and Losses Fund in FY25 for a cumulative total of \$162,366. The fund balance would be \$19,293,208 after this payment.*