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**IN THE TENNESSEE COURT OF THE JUDICIARY**

**IN RE: THE HONORABLE JOHN A. BELL  
JUDGE, GENERAL SESSIONS COURT  
COCKE COUNTY, TENNESSEE**

**Docket No. M2009-02115-CJ-CJ-CJ**

**COMPLAINT OF DAVID PLEAU  
FILE NO. 08-3508**

**RESPONSE TO MOTION FOR SUMMARY JUDGMENT and  
RULE 56 STATEMENT OF UNDISPUTED FACTS RESPONSE**

Joseph S. Daniel, Disciplinary Counsel for the Tennessee Court of the Judiciary, pursuant to Rule 56, Tennessee Rules of Civil Procedure, would, by way of response to the Motion for Summary Judgment of The Honorable John A. Bell, deny that movant is entitled to Summary Judgment.

Further, in accordance with Rule 56.03(i, ii, and iii), Disciplinary Counsel would file the following response to the Statement of Undisputed Facts submitted by Judge Bell:

1. Undisputed
2. Undisputed
3. Irrelevant but undisputed for purposes of the hearing pursuant to Rule 56.03(ii).
4. Irrelevant but undisputed for purposes of the hearing pursuant to Rule 56.03(ii).
5. Undisputed
6. Undisputed
7. Undisputed for purposes of the hearing pursuant to Rule 56.03(ii).
8. Disputed Pleau testimony (9)

9. Undisputed
10. Undisputed for purposes of the hearing pursuant to Rule 56.03(ii).
11. Undisputed for purposes of the hearing pursuant to Rule 56.03(ii).
12. Undisputed for purposes of the hearing pursuant to Rule 56.03(ii).
13. Undisputed
14. Undisputed
15. Undisputed
16. Undisputed for purposes of the hearing pursuant to Rule 56.03(ii).
17. Undisputed except the date noted should be in the year 2008, not 2007.
18. Undisputed
19. Undisputed
20. Undisputed
21. Undisputed
22. Undisputed
23. Undisputed for purposes of the hearing pursuant to Rule 56.03(ii).
24. Undisputed
25. Undisputed
26. Undisputed
27. Undisputed
28. Undisputed
29. Undisputed
30. Undisputed
31. Undisputed

32. Undisputed
33. Undisputed
34. Undisputed
35. Not a "fact"
36. Undisputed
37. The issues regarding "Pleau II" followed the conduct of Judge Bell in his response to the initial Complaint of David Pleau and are considered a natural product and continuation of Judge Bell's violations and of the ongoing investigation stemming from the handling of the initial matter.
38. Undisputed
39. Undisputed
40. Undisputed
41. Undisputed
42. Undisputed other than Judge Bell missed one week of work in late April, 2008 (Bell deposition, p. 118)
43. Undisputed
44. Undisputed
45. Undisputed
46. Undisputed
47. Undisputed
48. Undisputed
49. Undisputed
50. Undisputed

51. Undisputed
52. Until February 20, 2009, Disciplinary Counsel was unaware of the efforts of Judge Bell to enlist Testerman to influence or involve in the Court of the Judiciary matter or the underlying accident litigation (LaRue deposition, p. 22-24)
53. Disputed as the misconduct continued following the investigation and in fact was designed to undermine and thwart the investigation.
54. Disputed as to “many” and legal conclusions contained therein as not being facts.
55. Disputed. Bell never mentioned any such “anonymous” call and Testerman never mentioned same. Pleau denied making any such statement (Pleau deposition, p. 64-65)
56. Disputed due to inconsistent Bell answers and Testerman answers on multiple occasions during their respective depositions
57. Undisputed
58. The question of whether or not there was a *quid pro quo* is not a fact.
59. Disputed in that Testerman declined to testify on the matters stated
60. Undisputed
61. Disputed as “fact.” Obviously investigation as of January 5 would be limited to events before January 5, 2009. After January 5, additional acts of misconduct pertaining to or from the delay issues occurred and became relevant. In terms of the 2/20/2009, the scheduled hearing for that day was a product of the original delay issues.
62. First sentence admitted. The second is Bell’s counsel language, not Pleau’s.

63. Undisputed
64. Undisputed
65. Undisputed
66. Undisputed
67. Undisputed
68. Undisputed
69. Undisputed
- 70 Disputed as to the conclusion admitted in terms of the quoted language
- 71-90 (inclusive). Undisputed
- 91 Disputed as opinion and not fact
- 92 Disputed as opinion and not fact
- 93 Disputed as opinion and not fact
94. Undisputed
95. Undisputed
- 96 Disputed as threatening is an opinion
97. Undisputed
98. Undisputed
99. Undisputed
100. Undisputed
101. Undisputed
- 102 Disputed as investigation continues. Specific elements objected to as work product.
103. Undisputed

Disciplinary Counsel, in accordance with Rule 56.03, would state the following facts are undisputed:

1. On or about August 9, 2007 David J. Pleau filed a complaint in the General Sessions Court of Cocke County. This complaint was styled David J. Pleau vs. Merastar Insurance Company. This case was assigned docket number 2007-CV-869 and was set for hearing September 18, 2007 at 9:00 a.m. The civil summons which formed the complaint stated that this was a civil action brought by David J. Pleau, “policy #TNA11181953 for failure to pay damages resulting from accident with an uninsured motorist on 12-29-07 under \$5,000.” (Exhibit 2 to Bell deposition)

2. On September the 18, 2007, this case was heard by the Honorable John A. Bell, General Sessions Judge of Cocke County, and taken under advisement. (Pleau deposition; Bell deposition).

3. At the hearing of this case the defendant insurance company was represented by Brad A. Fraser who moved the court to dismiss the complaint as a result of the fact that Mr. Pleau was in this complaint suing directly his own uninsured motorist carrier as opposed to suing the uninsured motorist. Tennessee Code Annotated § 56-7-1206 requires that such a lawsuit be maintained against the uninsured motorist before one may be maintained against the uninsured motorist’s carrier. (Bell deposition Exhibit 1).

3. At the conclusion of the proof Judge Bell announced that he would make his decision in one week. No such decision was made. (Pleau deposition, p. 60)

4 Subsequent to that “one week,” Mr. Pleau then on more than one occasion asked Judge Bell directly to rule upon the case and was assured by Judge Bell that the decision would be immediately forthcoming. (Pleau deposition, p. 60-61)

5. The Honorable John A. Bell thereafter on the June 27, 2008 entered a judgment in favor of the defendant, some nine months after the presentation of the proof (Exhibit 3, Bell deposition).

6. The judgment which Judge Bell filed with the clerk reflects a Certificate of Service signed by Joyce S. Clark which indicates that a true and exact copy of the order had been forwarded to counsel for the parties and the unrepresented Mr. Pleau. Neither counsel for the defendant nor Mr. Pleau received a copy of this judgment. Each learned of the decision after all appeal time had expired. (Bell deposition, Exhibit 3, Pleau deposition).

7. The judgment rendered by the Honorable John A. Bell makes findings of fact as to the cause of the underlying automobile collision and the related damages. These findings demonstrate Judge John A. Bell's opinion as to the responsibility for or the cause of the accident as well as the amount of damages and ascribed the negligent conduct to the driver of the "other vehicle." (Bell deposition, Exhibit 3)

8. Pleau attempted to appeal, however upon going to the Clerk's office he learned the time for appeal had passed (Pleau deposition, p. 58-59).

9. Pleau filed a Complaint with Court of the Judiciary (Pleau deposition, Exhibit 6)

10. After Judge Bell learned that Mr. Pleau had filed a complaint with the Court of the Judiciary for the untimely resolution of this matter, Judge Bell filed a response denying that he had failed to comply with the above described Canons of Judicial Ethics (Bell deposition, Exhibit 6).

11. When it became obvious that the judgment in question had never been forwarded to any of the parties as required by law, Judge Bell summoned both parties to his court December 23, 2008 to take up the issue of the Certificate of Service on the original judgment and the fact that it had not been properly served; Judge Bell having the intention to under the auspices of Tennessee Rules of Civil Procedure 60.01 and Tenn. Code Ann. § 16-15-727 amend his June 27, 2008 order. On December 23, 2008 Judge Bell thereupon held a hearing under the auspices of Rule 60, Tennessee Rules of Civil Procedure and presented to the original parties or their counsel the order of June 27, 2008. He did not enter any new or additional order relative to the June 27, 2008 determination and order. Bell deposition, Exhibits 9 and 10).

12. Prior to December 23, 2008, David J. Pleau filed a second complaint concerning this automobile accident which was styled David Joseph Pleau vs. Jo Ann Coleman, Docket No. 2008-CV-1186. This complaint was filed October 8, 2008 and states in the civil summons portion of the complaint that it is for “damages done to my vehicle in a judgment rendered in Cocke County Sessions Court on September 18, 2007, Court Number 2007-CV-869.” (Bell Amended Answer, Paragraph 6).

13. This civil summons was set initially for October 28, 2008 and thereafter continued until it was heard April 24, 2009. After the hearing of this case on April 24, 2009, Judge John A. Bell took the matter under advisement for the purpose of making a finding of fact and the entry of an order. On April 27, 2009 Judge John A. Bell rendered a decision in favor of Mr. Pleau and against Jo Ann Coleman and Merastar Insurance Company which recited identical findings of facts and conclusions of law as to allocation fault and amount of damages as had previously been determined by Judge Bell. On this



occasion these findings were made against Jo Ann Coleman who was pro se at these proceedings and was found to be one hundred percent at fault for the collision and a judgment was rendered against her in the sum of \$4,726.78. (Bell Amended Answer, Paragraph 6).

14. In late January, 2009, or early February, 2009, Judge Bell enlisted Mr. Testerman, for consideration or considerations unknown, to approach Mr. Pleau on behalf of Judge Bell in a direct and unequivocal effort to induce Mr. Pleau to cease the pursuit of his complaint in the Court of the Judiciary (Pleau affidavit).

15. Mr. Testerman thereafter called Mr. Pleau in an effort to determine if Mr. Pleau was still interested in pursuing his complaint in the Court of the Judiciary and to induce him to drop or dismiss the complaint. The said telephone conversation was initiated by Mr. Testerman to February 2, 2009 to Mr. Pleau's telephone number, and lasted in excess of twenty minutes. During the telephone call, Testerman explained to Pleau that Judge Bell knew that it would be improper for him (Bell) to contact Mr. Pleau directly. Specifically, during this telephone conversation, Mr. Testerman asked Mr. Pleau to come in and sign a document to dismiss his complaint in the Court of the Judiciary against Judge Bell. (Affidavit of David Pleau) (Testerman deposition)

16. On July 16, 2009, Mr. Testerman met with representatives of the Court of the Judiciary Disciplinary office, and at that time a conversation ensued relative to Mr. Testerman's knowledge of Mr. Pleau and how he came to call him on February 2<sup>nd</sup> and make the request that Mr. Pleau drop his complaint against Judge Bell. During that conversation, Mr. Testerman indicated that he had had a meeting with Judge Bell in the hallway of the courthouse some time shortly before his call on Monday, February 2<sup>nd</sup> in

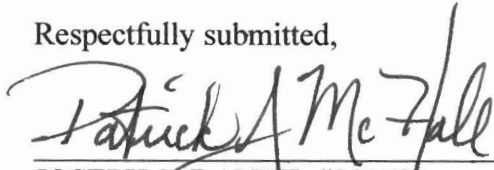
which he learned of the complaint and that he thereafter called Mr. Pleau in an effort to determine if Mr. Pleau was still interested in pursuing his complaint. The call of February 2 was made within weeks of the setting of Mr. Pleau's second lawsuit against the uninsured motorist and after Judge Bell's purported Rule 60 hearing on December 23, 2008. (Statement of James LaRue, Exhibit F to Bell Statement of Undisputed Facts).

17. Testerman at the direction of Bell's attorney although allegedly not represented by Bell's attorney asserted attorney client privilege at his January 12, 2010 depositions no less than 17 times (Testerman deposition).

18. Judge Bell at his January 19 deposition (a continuation of his deposition begun January 12), asserted attorney client privilege and the Fifth Amendment no less than 86 times, as follows:

<b>Page</b>	<b>Line(s)</b>	<b>Answer begin(s)</b>	<b>Page</b>	<b>Line(s)</b>	<b>Answer begin(s)</b>
150	7,11,16,	21	170	4,18	
151	1,6, 11,	22	171	3, 9, 22	
152	2,7,12,	22	174	12, 20	
153	2,8,14,20,	25	175	3, 12, 20	
154	5,10,15,	20	176	1, 4, 14	
155	1,7,13,19,	24	177	10	
156	4,12		178	13, 21	
157	22		179	2, 12, 19	
158	1,10,15,	20	180	2, 11, 19	
159	10,18,	24	190	11, 22	
160	5,10,15,	21	201	17	
161	1,7,13		202	1	
162	2,11		206	11	
163	2, 9, 17				
165	12, 21				
166	4,12, 22				
168	1, 8, 21				
169	5,13, 21				

Respectfully submitted,



JOSEPH S. DANIEL #002799

Disciplinary Counsel

PATRICK J. McHALE, #004643

Assistant Disciplinary Counsel

503 North Maple Street

Murfreesboro, TN 37130

Phone (615) 898-8004

Certificate of Service

I certify that a true and exact copy of the foregoing has been mailed, delivered, and/or transmitted by facsimile to Mr. Gordon Ball, BALL & SCOTT Law Offices, Attorneys at Law, Attorney for The Honorable John A. Bell, 550 W. Main Street, Suite 601, Knoxville, Tennessee 37902 on this the 26 day of February, 2010.



Patrick J. McHale, Assistant Disciplinary Counsel