

**FILED**  
SEP 01 2010  
Clerk of the Courts

**IN THE TENNESSEE COURT OF THE JUDICIARY**

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

DOCKET NUMBER: M-2009-02115-CJ-CJ-CJ

COMPLAINT OF DAVID PLEAU  
FILE NUMBER: 08-3508

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**ORDER**

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A Motion to Alter or Amend the Judgment of the Court of the Judiciary was filed by Disciplinary Counsel Steve Daniel on June 17, 2010. Subsequently, a Motion for discretionary costs was filed by Mr. Daniel. Due to the logistical issues in reconvening the hearing panel, no oral arguments were allowed. Instead, briefs were submitted by the respective parties. Mr. Daniel submitted his brief supporting the motions to the Court on July 26, 2010. A response brief was filed by Mr. Ball, Judge Bell's counsel on August 23, 2010. The hearing panel met by conference call and by person on August 25, 2010.

The Motion to Alter or Amend this judgment, pursuant to Rule 59.04, Tennessee Rules of Civil Procedure is denied. Article 6, § 7 of the Tennessee Constitution provides:

The Judges of the Supreme or Inferior Courts, shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased or diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office nor hold any other office of trust or profit under this State or the United States,

Tenn. Code Ann. § 17-5-301 (f) lists the appropriate sanctions in the case at bar. This statute provides as adopted by the legislature:

(f) The court has the power to impose any or any combination of the following sanction: (1) Suspension without impairment of compensation for such period as the court determines; (2) Imposition of limitations and conditions on the performance of judicial duties, including the issuance of a cease and desist order; (3) Private reprimand or private censure by the investigative panel; provided, that a private reprimand or private censure, whether imposed by the court or by an investigative panel, may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of the sanction to be imposed; (4) Entry into a deferred discipline agreement; (5) Public reprimand or public censure; and (6) Entry of judgment recommending removal of the judge from office.

Article 6 § 7 of the Tennessee Constitution along with Tenn. Code Ann. § 17-5-301 (f), do not provide the relief requested by counsel and this Court simply does not have authority to grant the request of the Disciplinary Council. For those reasons the Motion to Alter or Amend the judgment is hereby denied.

Tenn. R. Civ. P. 54.04(2) permits prevailing parties in civil actions to recover “discretionary costs.” The purpose of this provision is not to punish the losing party but rather to help make the prevailing party whole. *Duran v. Hyundai Motor America, Inc.*, 271 S.W.3d 178, 214-15 (Tenn. Ct. App. 2006), citing *Owens v. Owens*, 241 S.W.3d 478, 496-97 (Tenn. Ct. App. 2007). Parties are not entitled to discretionary cost simply because they prevail. *Id.* at 215, citing *Scholz v. S.B. Int’l, Inc.*, 40 S.W.3d 78, 85 (Tenn. Ct. App. 2000). The party seeking discretionary costs has the burden of convincing the trial court that it is entitled to these costs. *Id.* at 215, citing *Carpenter v. Klepper*, 205 S.W.3d 474, 490 (Tenn. Ct. App. 2006). A party seeking discretionary costs can carry its burden by filing a timely and properly supported motion demonstrating (1) that it is the prevailing party, (2) that the costs being sought are included in Tenn. R. Civ. P. 54.04 (2), (3) that the costs are necessary and reasonable, and (4) that it has not engaged in conduct during the litigation that would justify depriving it of the costs it is requesting. *Id.* at 215,

citing *Trundle v. Park*, 210 S.W.3d 575, 582 (Tenn. Ct. App. 2006). Disciplinary Counsel for the Tennessee Court of the Judiciary requested three thousand seven hundred and forty-seven dollars and ninety-five cents (\$3747.95) in "discretionary cost" in this matter. Pursuant to Tenn. R. Civ. P. 54.04(2), only three thousand one hundred and seven dollars and forty-five cents (\$3107.45) may be granted, due to the fact that court reporter fees for attending pre-trial hearings are not permitted. *Duran*, at 215. This amount is the total provided by counsel, minus (-) the November 30 hearing, March 3 hearing, and May 10 hearing. This Court hereby orders the Respondent to pay \$3107.45 discretionary cost pursuant to Tenn. R. Civ. P. 5404(2).

Finally, Judge Bell has requested the ethics requirement of this Court's Order be partially coupled with his attendance at the annual Tennessee Conference for General Sessions Judge. This request is denied. Judge Bell is still required to meet the minimum requirements of Continuing Legal Education established by the Tennessee Board of Professional Responsibility in addition to the sanctions previously ordered by this Court.

This Order has been reviewed by all members of the hearing panel and the Presiding Judge is hereby granted the authority to sign this Order on their behalf.

IT IS SO ORDERED, this 1 day of Sept, 2010.

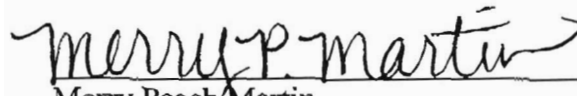
  
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JUDGE DON R. ASH  
PRESIDING JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was delivered by U. S. Mail this 1 day of September, 2010 to the following:

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