

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**FILED**  
**December 6, 2000**  
**Cecil Crowson, Jr.**  
**Appellate Court Clerk**

PHILIP R. WORKMAN, )  
 )  
Defendant/Appellant/Movant, )  
 )  
v. )  
 )  
STATE OF TENNESSEE, )  
 )  
Plaintiff/Appellee/Respondent. )

No. M1999-01334-SC-DPE-PE

**RESPONSE OF BOARD OF PROFESSIONAL RESPONSIBILITY TO  
MOTION OF PHILLIP WORKMAN REQUESTING AN  
ORDER IMPLEMENTING NOVEMBER 13, 2000, DIRECTIONS  
OF ADVISORY ETHICS OPINION 2000-A-731 OF DISCIPLINARY COUNSEL**

Comes the Board of Professional Responsibility, by and through Chief Disciplinary Counsel Lance B. Bracy (“Disciplinary Counsel”), and submits the following response to the Motion of Phillip Workman (the “Movant”) Requesting an Order Implementing Advisory Ethics Opinion 2000-A-731 of Disciplinary Counsel (the “Motion”). Disciplinary Counsel received a request for an Advisory Ethics Opinion from attorney John Pierotti dated October 31, 2000. On November 13, 2000, Disciplinary Counsel issued Advisory Ethics Opinion 2000-A-731, addressing the inquiry of Mr. Pierotti framed as follows:

Inquiry is made concerning whether a former Assistant District Attorney who later became the District Attorney for the same district and who then retired and went into private practice can represent a death row inmate before the Board of Pardons and Paroles, when the inmate was prosecuted by the District Attorney's office while he was an Assistant District Attorney (although he had nothing to do with the case) and when there was a post-conviction matter brought by that inmate and defended by the District Attorney's office while he was the District Attorney for that district (although he was not required to and did not know or sign anything relating to that post-conviction matter at the time).

Advisory Ethics Opinion 2000-A-731 of Disciplinary Counsel (“AEO 731”) (Exhibit 2 to Movant’s Motion).

In the Motion, the Movant asks this Court to implement the following instructions contained

in AEO 731:

It is the opinion of Disciplinary Counsel that this disclosure should be made, and the inmate's informed consent given, on the record in a setting where due process is available, i.e., in a hearing before a court. As a part of this disclosure, the inmate should be informed that he has the right to (and be given the opportunity to) seek the advice of independent counsel as to whether he should consent to this representation.

Disciplinary Counsel's intent, in including the above-quoted language in AEO 731, was to ensure there would be an authoritative record that Mr. Workman received a full disclosure regarding Mr. Pierotti's former employment with the District Attorney's office and that if, following that disclosure, he consented to be represented by Mr. Pierotti before the Board of Pardons and Paroles, his consent to this was informed consent. Thus, as long as Mr. Workman received this contemplated full disclosure and was given the opportunity for his consent (if he consented) to be informed "on the record in a setting where due process is available," the recommendation of Disciplinary Counsel contained in the above-quoted language would be satisfied.<sup>1</sup> Any court of record (such as the Davidson County Chancery Court, which Movant indicates he prefers) would suffice as a forum for such a hearing. Disciplinary Counsel does not believe it is necessary for Movant to invoke the supervisory authority of the Supreme Court in order to satisfy the recommendation of Disciplinary Counsel that such a hearing be held.

Disciplinary Counsel recommends that Movant might want to consider withdrawing the Motion before this Court and instead seeking a Declaratory Judgment in the court of record of Movant's choice, and that the hearing on the record to ensure the full disclosure to and informed consent of Mr. Workman could then be held in the context of that Declaratory Judgment action.

WHEREFORE, Disciplinary Counsel asks the Court to permit the Movant to consider the above recommendation and to withdraw the Motion if Movant chooses to do so upon considering the above recommendation.

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<sup>1</sup>Since counsel for Movant (for the purposes of this Motion) appears to be providing independent representation to Movant solely on this issue, the aspect of the recommendation in AEO 731 that Movant be given the opportunity to seek advice from independent counsel on this issue is apparently thereby being satisfied.

Respectfully Submitted,

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Lance B. Bracy, BPR No. 3663  
Theresa M. Costonis, BPR No. 17054  
Board of Professional Responsibility  
of the Supreme Court of Tennessee  
1101 Kermit Drive, Suite 730  
Nashville, Tennessee 37217  
(615) 361-7500

Certificate of Service

I hereby certify that I have forwarded a copy of the foregoing by facsimile transmission and United States mail to Michael J. Passino, Esquire, Lassiter, Tidwell & Hildebrand, PLLC, 213 Fifth Avenue, North, Nashville, Tennessee, 37219 (Fax: 615-242-4214); Teresa Thomas, Esquire, General Counsel, Tennessee Board of Probation and Parole, Parkway Towers, Suite 1300, Nashville, Tennessee, 37219 (Fax: 615-532-8581); Joseph Whalen, Esquire, Assistant Attorney General, 425 Fifth Avenue, North, Nashville, Tennessee, 37243 (Fax: 615-532-7791); and John Campbell, Esquire, Assistant District Attorney General, Suite 301, 201 Poplar Avenue, Memphis, Tennessee, 38103 (Fax: 901-545-3937), this the 6th day of December, 2000.

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Theresa M. Costonis