

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
November 30, 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

AFFIDAVIT OF MICHAEL J. PASSINO

Affiant, Michael J. Passino, being duly sworn states:

1. I am an adult resident citizen of Nashville, Davidson County, Tennessee. I make this declaration based on personal knowledge, except where expressly indicated otherwise.
2. I have been a member of the bar of the Tennessee Supreme Court since 1977.
3. In mid-November 2000, I was approached by the office of the Post-Conviction Defender about meeting with and representing Mr. Philip Workman in connection with the November 13, 2000, Advisory Ethics Opinion No. 2000-A-731.
4. Based on the above conversation or conversations, and my review of the Advisory Ethics Opinion I met with Philip Workman at the Riverbend Maximum Security Institution to discuss the issue raised by the Advisory Ethics Opinion and Mr. Pierotti’s representation of Mr. Workman before the Tennessee Board of Probation and Paroles.
5. In determining how to effectuate the direction of the Advisory Ethics Opinion that Mr. Workman be fully informed of the issues relating to Mr. Pierotti’s representation on the record, “in a hearing before a court,” I contacted a number of attorneys and agents for the State of Tennessee.

6. Although it was my legal opinion, based on a review of the Advisory Ethics Opinion, legal research, and my basic understanding of the ethical issues surrounding attorney potential conflicts, that the decision of Mr. Workman was a personal one, I sought to determine if any arguably interested state attorney viewed the issue otherwise, and to determine the views of those most directly involved for the State so as to eliminate unnecessary confusion or litigation.

7. I contacted Mr. Joseph Whalen, the Assistant Attorney General representing the State in the death penalty judicial proceedings, about his office's participation in any proceedings directed by the Advisory Ethics Opinion. Mr. Whalen informed me that from the perspective of the Attorney General's office, the issue addressed by the Advisory Ethics Opinion, involved a personal representational issue as to which the Attorney General had no interest, or words to that effect.

8. I also contacted Mr. John Campbell on a number of occasions, the Assistant District Attorney General who represents the State before the Parole Board, about the District Attorney's Office's participation in any proceedings directed by the Advisory Ethics Opinion. Mr. Campbell informed me that from the perspective of the District Attorney's Office, the issue addressed by the Advisory Ethics Opinion, involved a personal representational issue as to which the District Attorney General's Office had no interest, or words to this effect.

9. I also contacted Ms. Teresa Thomas, General Counsel for the Parole Board, about the Parole Board's wish to participate in any proceedings directed by the Advisory Ethics Opinion. Ms. Thomas explained that it was the Parole Board's policy that it had no authority or interest in addressing inmate representational issues in the unique commutation process. Ms. Thomas further explained that given this, the Parole Board did not involve itself in any personal

representational issues, or words to this effect.

10. Finally, I also contacted Chief Disciplinary Counsel Lance Bracy on a number of occasions about the Board of Professional Responsibility's views on participating in the proceedings directed by the Advisory Board. On this issue, Mr. Bracy explained that pursuant to the provisions of Rule 9, Section 7.2 (h), once his office had rendered an advisory opinion, its duties and responsibilities were concluded, or words to that effect.

11. Based on the foregoing conversations, I concluded that consistent with the nature of client conflict issues, the resolution of such issues is generally a personal one for the client; that in Mr. Workman's case, no state agency or actor with any conceivable interest in Mr. Pierotti's representation of Mr. Workman perceived that the State's interests were involved in Mr. Workman's decisions; and that, as such, none of the above-described state agencies had, or believed it had, a cognizable interest in any proceeding recommended by the Advisory Board.

Further, affiant saith not.

Michael J. Passino

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

On November 30, 2000, Michael J. Passino appeared before me and made oath that the foregoing was true and correct.

NOTARY PUBLIC _____

My Commission Expires on _____.

CERTIFICATE OF SERVICE

I certify that I have forwarded a copy of the foregoing by facsimile transmission, and United States mail to the **Hon. Lance Bracy**, Chief Disciplinary Counsel, Tennessee Board of Professional Responsibility, 1101, Kermit Drive, Suite 730, Nashville, Tennessee 37217 [Fax:367-2480]; **Hon. Teresa Thomas**, General Counsel, Tennessee Board of Probation and Parole, Parkway Towers, Suite 1300, Nashville, Tennessee 37217 [Fax: 532-8581]; **Hon. Joseph Whalen**, Assistant Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 [Fax: (615) 532-7791]; the **Hon. John Campbell**, Assistant District Attorney General, 201 Poplar Avenue - Suite 301, Memphis, Tennessee 38103 [Fax: 545-3937], which are the last addresses and facsimile numbers of such persons known to me.

Dated: _____

Michael J. Passino