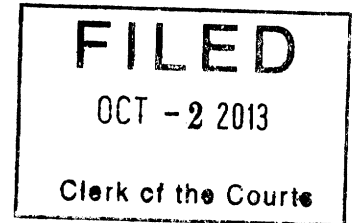


IN THE TENNESSEE BOARD OF JUDICIAL CONDUCT

**IN RE: THE HONORABLE JOHN A. DONALD
GENERAL SESSIONS JUDGE
SHELBY COUNTY, TENNESSEE**



Docket No. M2013-02204-BJC-DIS-FC

File No. 11-4762

FORMAL CHARGES

Timothy Discenza, Disciplinary Counsel for the Tennessee Board of Judicial Conduct, at the direction of an investigative panel of three members of the Board of Judicial Conduct, in accordance with Tennessee Code Annotated § 17-5-301, *et. seq.*, hereby files formal charges against the Honorable John A. Donald, General Sessions Judge of Shelby County, Tennessee.

Jurisdiction

1. Following a full investigation authorized under the provisions of Tennessee Code Annotated § 17-5-304(b)(3)(2009 Repl.) the three member investigative panel composed of the Honorable Angelita Dalton, Mr. Miles Burdine, and Mr. Thomas Lawless found, pursuant to Tennessee Code Annotated § 17-5-304(d)(2)(A), that there is reasonable cause to believe that the Honorable John A. Donald has committed judicial offenses alleged herein in violation of Tennessee Code Annotated § 17-5-302, and directed Disciplinary Counsel to file formal charges pursuant to Tennessee Code Annotated § 17-5-304(d)(2)(A).

2. The Honorable John A. Donald, at times relevant herein, was a General Sessions Judge of Shelby County, Tennessee, having been elected to that position. Therefore, Judge Donald is subject to judicial discipline by the Board of Judicial Conduct pursuant to Tennessee Code Annotated § 17-5-102.

Charges

Disciplinary Counsel charges the Honorable John A. Donald as follows:

Count I

3. On or about October 17, 2011, David Gold, an attorney practicing in Shelby County, Tennessee filed a complaint with the Tennessee Court of the Judiciary, the predecessor agency of the Tennessee Board of Judicial Conduct, against Judge Donald, the respondent, alleging violations by Judge Donald of the Tennessee Code of Judicial Conduct that was then in effect. This complaint is attached as exhibit A to these formal charges.

4. On or about October 23, 2011, Judge Donald was sent a copy of the complaint and asked to respond to the complaint.

5. On or about December 2, 2011, Judge Donald responded to Mr. Gold's complaint by letter to the Disciplinary Counsel to the Tennessee Court of the Judiciary.

6. On or about December 7, 2011, Judge Donald, in retaliation for the filing of a complaint with the Tennessee Court of the Judiciary against him, wrote a letter of complaint to the Tennessee Board of Professional Responsibility, making a complaint against David Gold, and asking the Board to investigate another attorney who had been

associated with David Gold and who was listed by David Gold as a witness to Mr. Gold's complaint against Judge Donald.

7. On or about November 15, 2012, the Tennessee Board of Professional Responsibility advised David Gold that after inquiry of the matter brought to their attention by Judge Donald, the matter was dismissed.

8. At all times described in the preceding paragraphs, the said John A. Donald, as a General Sessions Judge of Shelby County, Tennessee was subject to the Code of Judicial Conduct, as set out in Rule 10, Rules of the Supreme Court of Tennessee, that were then in effect.

In pertinent part, the Code of Judicial Conduct, by and through its Canons, provided as follows:

CANON 1 — A Judge Shall Uphold the Integrity and Independence of the Judiciary

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary. Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2 — A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law* and shall act at all

times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary. —Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

9. The above-described conduct and actions of Judge Donald set forth herein in paragraphs 3 through 7 constitute a violation of the Code of Judicial Conduct as set forth in the preceding paragraph 8, and as such, subject him to the sanctions provided by the provisions of Tennessee Code Annotated § 17-5-301.

NOTICE


The Honorable Judge John A. Donald is hereby given written notice of the details of the Formal Charges brought against him pursuant to Tenn. Code Ann. § 17-5-307.

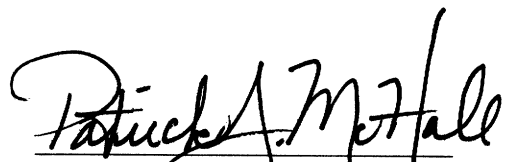
Pursuant to Tenn. Code Ann. § 17-5-307(c), Judge Donald shall have thirty (30) days from and after the date of receipt of these Formal Charges to file an Answer with the Court by filing the same at the Office of the Clerk of the Supreme Court, 100 Supreme Court Building, 401 Seventh Avenue North, Nashville, Tennessee 37219 and by serving a copy on Disciplinary Counsel at P.O. Box 50356, Nashville, Tennessee 37205.

Failure to answer these Formal Charges shall constitute an admission of the factual allegations not answered.

WHEREFORE, Disciplinary Counsel moves the Board to set this matter for hearing before a Hearing Panel of the Board of Judicial Conduct at such location where the Board of Judicial Conduct may convene by law, within sixty (60) days from and after the date the Answer is filed by Judge Donald as required by Tenn. Code Annotated § 17-5-308(a), or, in the event no Answer is filed, to set the matter within ninety (90) days of the date these Formal Charges are filed with the Clerk of the Court, in order to comply with the statutory time limit, and upon the hearing of this action, to impose just and proper sanctions as provided by law, including the costs and discretionary costs as provided by law.

This the 2 day of OCTOBER, 2013.


Timothy R. Discenza #008716
Disciplinary Counsel
Tennessee Board of Judicial Conduct
P.O. Box 50356
Nashville, Tennessee 37205


Patrick J. McHale, # 004643
Assistant Disciplinary Counsel
Tennessee Board of Judicial Conduct

APPROVED BY THE INVESTIGATIVE PANEL
IN ACCORDANCE WITH RULE 6, SECTION 4
OF THE RULES OF PRACTICE AND PROCEDURE
OF THE TENNESSEE BOARD OF JUDICIAL CONDUCT:

BY: Angelita Blackshear Dalton by
W. R. Gibson
Angelita Blackshear Dalton
Investigative Panel Member

BY: Miles Burdine by
W. R. Gibson
Miles Burdine
Investigative Panel Member

BY: Thomas Lawless by
W. R. Gibson
Thomas Lawless
Investigative Panel Member

11-4762

EXHIBIT A

RECEIVED

OCT 20 2011

TENNESSEE COURT OF THE JUDICIARY

Timothy R. Discenza, Disciplinary Counsel

P.O. Box 50356

Nashville, Tennessee 37205

Phone: (615) 649-8851

COMPLAINT AGAINST JUDGE UNDER CODE OF JUDICIAL CONDUCT

Your Name: David A. Gold (please type or print)

Address: 2884 Walnut Grove Road

Phone: Daytime (901) 322-6461 Evening (901) 692-0645

I have information of possible misconduct or disability on the part of John A Donald
(name of judge or acting judge) of the General Sessions Civil Court in
Memphis (city), Shelby (county), Tennessee.

STATEMENT OF FACTS

(You may attach additional pages if necessary)

1. When and where did this happen?
Date(s): 9/29/11, 10/6/11, 10/12/11 Time: 10:00 AM Location: 140 Adams, Memphis, TN 38103

2. If your information arises out of a court case, please answer these questions:

a) What is the name and number of the case?
Case name: Gridiron of Memphis Case No. 1319727, 1319715

b) What kind of case is it?
 criminal domestic relations general sessions probate
 civil juvenile other (specify): _____

c) What is your relationship to the case?
 plaintiff/petitioner defendant/respondent
 attorney for other (specify): _____
 witness for

d) If you were represented by an attorney(s) in this matter at that time, please identify the attorney(s):
Name(s): _____
Address(es): _____
Phone: () _____

e) Identify any other attorney(s) who represented other parties involved in the case:
Name of attorney: _____
Address: _____
Phone: () _____ Represented: _____

3. List documents that help support your information that the judge or acting judge has engaged in misconduct or has a disability, noting which documents you have attached:

Exhibits A Judgement, Exhibit B Subpoena, Exhibit C Brief of Plaintiff, Exhibit D Letter from Judge Donald, Exhibit E Affidavit
Exhibits A Judgement, Exhibit B Subpoena, Exhibit C Brief of Plaintiff, Exhibit D Letter from Judge Donald, Exhibit E Affidavit

4. Identify, if you can, any other witnesses to the conduct of the judge or acting judge:

Name(s): JAY GYTD AHL MICHAEL BUVISI
 Address(es): 2884 WALNUT GROVE, MEMPHIS, 38111 840 VALLEY BROOK, MEMPHIS, TN 38120
 Phone: (901) 489-3014 (901) 569-7646

5. Specify below the details of what the judge or acting judge did that you think constitutes misconduct or indicates disability. (Please type or print legibly; attach additional pages if necessary.)

SEE ATTACHED

I UNDERSTAND THAT STATE LAW PROVIDES THAT THE COURT OF THE JUDICIARY'S PROCEEDINGS ON THIS REQUEST FOR INVESTIGATION ARE CONFIDENTIAL PRIOR TO THE FILING OF ANY FORMAL CHARGES BY DISCIPLINARY COUNSEL.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THESE STATEMENTS AND INFORMATION CONTAINED IN ANY ATTACHED DOCUMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND CONSTITUTE ALL OF MY COMPLAINTS AS OF THIS DATE AGAINST THE ABOVE-NAMED JUDGE OR ACTING JUDGE.

SIGNATURE: *David A. [Signature]*

DATE: 10/17/2011

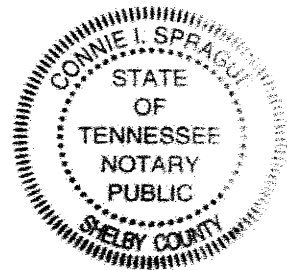
STATE OF Tennessee

COUNTY OF Shelby

SWORN TO AND SUBSCRIBED 17 day of OCTOBER, 2011.

Notary Public: Connie L Sprague

My Commission Expires: 6-10-14



October 17, 2011

Dear Court of the Judiciary:

I have a case before Judge John A. Donald of the Shelby County General Sessions Court. Along with Jay Grytdahl, we represent a Plaintiff, Gridiron of Memphis, LLC. Prior to our involvement, another attorney had taken a judgment against both Defendants for about \$15,000.00. (Exhibit A) After repeated attempts to get the two defendants, Tracey and Patrick Mathews to come to court, they finally showed on September 29, 2011. The Mathews had denied that they owed the money and insisted to me that the judgment was fraudulent.

When Judge Donald called the case, before I put the Defendants on the stand, I asked the Court to explain to them that the judgment was a valid and proper judgment and even had a copy of the judgment to show the Court. Judge Donald refused to explain that the judgment was valid and said "he was not here to help me collect (my) money" and told us to go in the hall to discuss it.

I was unable to persuade the Defendants that they owed the money. We came back into the court room. I knew that Patrick Mathews was in a bankruptcy (and Tracey Mathews was not) and that we had been sent money from the bankruptcy court to satisfy this judgment. I was not certain whether or not we had been granted relief from the stay since Mr. Grytdahl had handled many of the matters prior to September 29, 2011. Mr. Grytdahl filed subpoenas duces tecum (Exhibit B) for us to get Ms. Mathews to testify about her assets and for Mr. Mathews to testify about her assets and any joint assets that they may own together.

I had planned to question Ms. Mathews first, but she was in the rest room when the case was called. Judge Donald called Mr. Mathews. I began to question him and was reading from a standard script that I have used in other cases. I have attached that document. (Exhibit B). Mr. Mathews stated that he had not brought any of the documents I requested. He then showed the judge something proving that he was in a bankruptcy. At that point, Judge Donald got angry with me and said that I had no right to question Mr. Mathews at all. I explained to him that I did know he was in a bankruptcy but that my understanding was that he could testify as to her assets. He told me to come back with "case law" supporting my position. He also said in front of his court personnel that I had been "rude" and "disrespectful" to him.

Pursuant to the Judge's request, I called attorney Michael Bursi who has practiced in bankruptcy court for over 30 years. Armed with my research and the advice of Mr. Bursi, I returned to Court on October 6, 2011 with a written brief (Exhibit C) prepared by Mr. Grytdahl and myself detailing our position that a co-defendant in a bankruptcy could testify about the assets of a co-defendant and that the stay does not extend to the co-defendant who is NOT in the bankruptcy.

Because I knew that the Judge was still hostile towards me, I asked Mr. Grytdahl to argue it. Mr. Grytdahl provided the brief to the Judge who took it into his chambers for about 3 minutes. He returned and explained to us that he had spoken to Judge David Kennedy, a bankruptcy judge and even Judge Kennedy "agreed that we could not proceed against either defendant". He also spent a great deal of time criticizing my actions and my tone in his court. I sought permission to speak twice and both times he said that I was not allowed to speak. He ruled that because the Plaintiff had "unclean hands" he was dismissing both subpoenas and would issue a written order stating his grounds. The Judge retired to his chambers. I have provided an Affidavit of attorney Jay Grytdahl to confirm this. (Exhibit E).

On the way out of the Court room, the defendants began to curse at me and taunt me and also tore up the subpoena's that had been issues. I said to one of them, "Oh, I'll get you" in response to their shouting at me. I also told them to "get out of the court room" as they were physically blocking the door daring me to approach them. This was seen and heard by Judge Donald's court clerk who was still in the court room.

After this happened, I called attorney Michael Bursi and told him. He suggested that he and I visit Judge Donald on October 12, 2011 and try to smooth things over. When we got there, Judge Donald told Mr. Bursi that even his court officers, (who are evaluated by him yearly), agreed that I had been disrespectful to him. Mr. Bursi said that I was here to apologize. Judge Donald said that he would not accept my apology because it was not sincere. Mr. Bursi respectfully disagreed and said that it was apparent that I was sincere because I had contacted him and requested that he go with me to apologize. Nevertheless, Judge Donald said that he did not have a problem with Mr. Bursi but that he **DID have a problem with me**. I asked if I could say something. Judge Donald said **No, I am may not speak**. Judge Donald referenced the incident involving the taunts by the defendants to me and said that he was going to find out if I said "I'll get you" to the Defendants after court ended.

On October 14, 2011, Mr. Grytdahl received a letter from Judge Donald. (Exhibit D) In that letter, Judge Donald scheduled a hearing on October 27, 2011. Specifically, he is re-opening the Court's consideration of Plaintiff's right to depose Mrs. Mathews. Judge Donald sent this letter and gave notice to Mr. Grytdahl and both Defendants but failed to contact me or give me notice of the hearing even though I am the attorney of record on this case. It would appear to me that Judge Donald, again, does **NOT WANT TO HEAR FROM ME**.

I believe that Judge Donald has violated Canon 2 which states that a Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

I believe that Judge Donald has violated Canon 2 (A) which states that a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

I believe that Judge Donald has violated Canon 3 (B) (2) which states that a judge shall be faithful to the law and maintain professional competence in it.

I believe that Judge Donald has violated **Canon 3 (B) (4)** which states that a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

I believe that Judge Donald has violated **Canon 3 (7)** which states that a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

I believe that by his own admission, Judge Donald has violated **Canon 3 (7) (B)** which states that a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

I have never been spoken to or treated the way that Judge Donald treated me. I feel like he is in violation of the Judicial Code of Conduct. His attitude towards me was tyrannical. I fear that if I appear in his Court again, he will continue his path of hatred and dislike thereby prejudicing future cases I have before him.

What really surprises me is that he would not accept a show of remorse and then scheduled a hearing on MY case without giving me notice. Also the fact that he continues to refuse to let me speak, whether in Court or in Chambers is against public policy and is unfair to my client. I hope that you will investigate this claim and if necessary, ask Judge Donald to conform his future actions to the Code of Judicial Conduct.