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IN THE TENNESSEE COURT OF THE JUDICIARY

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IN RE: **THE HONORABLE GLORIA DUMAS,  
JUDGE, GENERAL SESSIONS COURT  
METROPOLITAN NASHVILLE and  
DAVIDSON COUNTY, TENNESSEE, Division IV**

DAVIDSON COUNTY  
CLERK OF COURT  
NASHVILLE, TN

Docket No. M2009-01938-CJ-CJ-CJ

Complainant: **JOSEPH S. DANIEL, in the exercise of his duties as  
Disciplinary Counsel, and at the direction of an Investigative Panel of the  
Tennessee Court of the Judiciary.**

File No. 08-3487

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**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL  
and  
RESPONSE TO MOTION TO QUASH SUBPOENA**

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COMES NOW Joseph S. Daniel, Disciplinary Counsel for the Tennessee Court of the Judiciary, in support of his Motion to Compel heretofore filed, and further in Response to the Motion to Quash Subpoena heretofore filed by The Honorable Gloria Dumas, and would state as follows:

1. The body of the initial Motion to Compel is adopted herein by reference, with the exception of striking the second “and” in Paragraph 6 therein.
2. *Tenn. R. Civ. P. 26.02(1)* states the general principle that parties may obtain discovery of any matter which is relevant to the subject matter of the litigation. The scope of discovery is not unlimited, however, and *Tenn. R. Civ. P. 26.02(1)* gives the court the authority to limit discovery if the court determines that the enumerated grounds for limiting discovery exist.

3. Judge Dumas has yet to articulate any legitimate basis for opposing discovery other than it is inconvenient or time-consuming for her. Her conclusory protestations fail to erode the traditional and heretofore thought by Disciplinary Counsel well-recognized principles favoring discovery embraced by Rule 26 and the applicable jurisprudence.

Discovery is allowed in an effort to do away with trial by ambush. The purpose of discovery is to bring out the facts prior to trial so the parties will be better equipped to decide what is actually at issue. *Ingram v. Phillips*, 684 S.W.2d 954 (Tenn.App.1984).

In *White v. Vanderbilt University*, 21 S.W. 3d 215, at 223 (Tenn. App. 1999), Justice (then Judge) Koch summarized fundamental discovery policies as follows:

The Tennessee Rules of Civil Procedure permit the discovery of relevant, non-privileged information. See *Wright v. United Servs. Auto Ass'n*, 789 S.W.2d 911, 915 (Tenn. Ct. App.1990); *Duncan v. Duncan*, 789 S.W.2d 557, 560 (Tenn. Ct. App.1990). They strike a balance between two important policies. The first, and perhaps more important, policy is that discovery should enable the parties and the courts to seek the truth so that disputes will be decided by facts rather than by legal maneuvering. See *Harrison v. Greeneville Ready-Mix, Inc.*, 220 Tenn. 293, 302, 417 S.W.2d 48, 52 (1967); *Pettus v. Hurst*, 882 S.W.2d 783, 786 (Tenn. Ct. App.1993). The second policy is that the discovery rules should not permit less diligent lawyers to benefit from the work of their more diligent opponents. See *Vythoulkas v. Vanderbilt Univ. Hosp.*, 693 S.W.2d 350, 357 (Tenn. Ct. App.1985).

Disciplinary Counsel for the Court of the Judiciary seeks no more than and is entitled to no less than discovery meeting the elemental notions consistently espoused by Tennessee courts.

4. Disciplinary would simply reiterate, as to the Requests for Admission, that Judge Dumas has wholly failed to meet the obligations required and the instant matters should therefore be deemed admitted.

5. In fact, the necessity of the remaining written discovery, and the ongoing investigation which Judge Dumas finds to be somehow unethical by Disciplinary Counsel is rendered acutely necessary due to Judge Dumas' continued delay and obstreperous recalcitrance in meeting her obligations. By way of illustration and not limitation, the need for the employment records of her daughter are required to prove her employment within the "clear and convincing" standard required at trial, T.C.A. § 17-5-308, and to verify the material state with ample equivocations on the face of the Answer filed herein. Had Judge Dumas simply elected to formally acknowledge that employment by admitting it under Rule 36, then the records would not need to be investigated in advance of being otherwise established at trial. Should this Court grant the relief sought by Disciplinary Counsel as to the Admissions, those records would likewise become moot.

6. Upon information and belief, the Court of the Judiciary, largely for logistical reasons, had evolved an internal practice of designating the Presiding Judge to hear Motions and other pretrial matters. Any decisions of the Presiding Judge are subject to appeal to the entire Court. In other respects as to motions, the Tennessee Rules of Civil Procedure are fully viable in accordance with the provisions of T.C.A. § 17-5-301, *et. seq.*, and the Motion to Compel is therefore proper. Any party herein aggrieved by a determination of the Presiding Judge retains the capacity to have the entire Court of the Judiciary hear the matter of controversy.

7. The thesis advanced by Judge Dumas in Paragraph "C" of her Response to the effect that Disciplinary Counsel is somehow banned from investigating the case is certainly a novel if innovative concept. Surely a party such as Judge Dumas bearing such a righteous and lofty concern for the ethical conduct of Disciplinary Counsel (Response,

Paragraph “C”) would seemingly demand Disciplinary Counsel fulfill the statutory and ethical responsibilities of his office in trial preparation.

Again, by way of illustration and not limitation, the investigative subpoenas Judge Dumas finds offensive or illegal are simply necessary for fundamental trial preparation, the need being exacerbated by the fact that discovery has been refused by Judge Dumas.

The governing and relevant Court of the Judiciary statute authorizes investigation and such subpoenas by the plain terms of the statutory language.

*Tenn. Code Ann. § 17-5-301.*

*Powers and duties of court of judiciary and disciplinary counsel*

(a) The court of the judiciary is hereby **given broad powers to investigate**, hear and determine charges sufficient to warrant discipline or removal, and to carry out its duties in all other matters as set forth in this chapter.

(b) The court of judiciary is specifically authorized to administer oaths and affirmations; to issue process to compel the attendance of witnesses and the production of evidence; to conduct hearings; and to use, exercise and enjoy any of the powers normally exercised by courts of record in this state. The Tennessee Rules of Civil Procedure are applicable, and the Tennessee Rules of Evidence will govern the presentation of proof.

(c) No action of the court shall be valid unless concurred in by a majority of the members voting upon such action.

...

(e) Disciplinary counsel has the authority and duty to:

(1) Receive and screen complaints, refer complaints to other agencies when appropriate, conduct preliminary investigations, recommend to the investigative panel of the court and, upon authorization, conduct full investigations, notify complainants about the status and disposition of their complaints, make recommendations to the investigative panel on the disposition of complaints after full investigation, file formal charges subject to approval of the investigative panel when directed to do so by the investigative panel, and prosecute formal charges;

(7) Only with concurrence of the applicable investigative panel, seek investigative assistance from the Tennessee bureau of investigation, or

from any district attorney general and, in appropriate cases, **employ private investigators or experts, as necessary, to investigate and process matters before the court;** and

*Tenn. Code Ann. § 17-5-304.*

*Complaints of judicial misconduct or incapacity; investigations; notice requirements; recommendations of disciplinary counsel; filing of formal charges*

(a) Disciplinary counsel shall evaluate all information coming to disciplinary counsel's attention by complaint or from other sources that allege judicial misconduct or incapacity. Unless the complaint alleges specific facts, not conclusions, which would cause a reasonable person to believe that there is a substantial probability that the conduct involved violates § 17-5-302, disciplinary counsel shall, subject to review by the investigative panel pursuant to subdivision (b)(3), dismiss the complaint, or if appropriate, refer the matter to another agency. If the information contains specific facts that would cause a reasonable person to believe that there is a substantial probability that the conduct violates § 17-5-302, disciplinary counsel shall conduct a preliminary investigation.

**(b)(1) Disciplinary counsel may conduct interviews and examine evidence to determine whether the specific facts alleged are true and, if so, whether such facts would cause a reasonable person to believe that there is a substantial probability that a violation of § 17-5-302 has occurred; provided, that no subpoena shall issue to obtain testimony or evidence until the investigative panel authorizes a full investigation pursuant to subdivision (b)(3).**

*(emphasis supplied)*

Thus, Disciplinary Counsel plainly may investigate. Disciplinary Counsel may obtain subpoenas pursuant to such investigation, but not until a full investigation has been authorized. One has been authorized in this action.

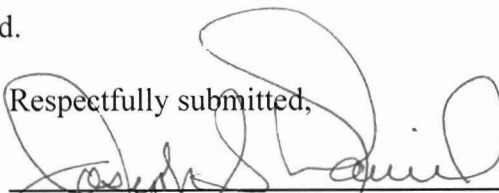
The administrative subpoenas to investigate and the authority to utilize same do not suddenly evaporate upon the filing of Formal Charges. Administrative subpoenas in fact are specifically recognized. *73 C.J.S. Public Administrative Law and Procedure § 157; State, Dept. of Commerce and Ins. v. FirstTrust Money Services, Inc., 931 S.W.2d 226 (Tenn. Ct. App. 1996).*

The subpoenas in question were simply not for testimony or evidence as reasonably contemplated by Rule 45, but rather as part of the investigation, *supra*. Yet any and all protections for the witnesses exist and in fact have been fully exercised by either attorneys for Metropolitan Nashville and Davidson County or attorneys for Ms. Levitan (*see annexed affidavit*). None of those attorneys have filed Motions to Quash or any other objections. Any evidence or testimony adduced from the usage of the Court of the Judiciary subpoena power still must pass muster if in fact such evidence or testimony is anticipated for use in discovery or trial. At that point certainly any and all remedies available by Judge Dumas could be exploited. At the same time, this Court apparently has sufficient jurisdiction to determine adequate protective measure relative to dissemination of any information obtained in the entire investigative process. *State, Dept. of Commerce and Ins, supra*.

8. In support of this Memorandum and Response, Disciplinary Counsel submits the annexed affidavit Exhibit A.

9. Wherefore, Disciplinary Counsel again respectfully requests that a Motion to Compel against the Honorable Gloria Dumas be granted, that the Requests for Admission be deemed admitted, that the Motion to Quash of Gloria Dumas be denied, such other and further relief to which he may be entitled.

Respectfully submitted,



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**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**

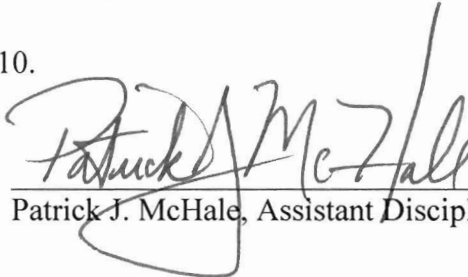
I certify that a true and exact copy of the foregoing has been mailed, delivered, and/or transmitted by facsimile to:

Ben H. Cantrell, BPR #3160  
Tune, Entekin & White, P.C.  
Suite 1700, Regions Center  
315 Deaderick Street  
Nashville, TN 37238-1700

Mr. William H. Farmer  
Jones, Hawkins & Farmer PLC  
One Nashville Place  
150 4<sup>th</sup> Avenue North, Suite 1820  
Nashville, TN 37219

Attorneys for The Honorable Gloria Dumas

on this the 22nd day of February, 2010.



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Patrick J. McHale, Assistant Disciplinary Counsel

STATE OF TENNESSEE, COURT OF THE JUDICIARY

Joseph S. Daniel, in the exercise of his )
duties as Disciplinary Counsel )
Vs. ) Case No. M-2009-01938-CJ-CJ-CJ
The Honorable Gloria Dumas )

AFFIDAVIT OF JOSEPH S. DANIEL

STATE OF TENNESSEE )
COUNTY OF RUTHERFORD )

Joseph S. Daniel, being duly sworn, states as follows:

1. I am the Disciplinary Counsel for the Tennessee Court of the Judiciary. I am statutorily charged with the responsibility of investigating acts of judicial misconduct that come to my attention either by complaint or otherwise, Tennessee Code Annotated § 17-5-301 (b), § 17-5-301(e) (1) and § 17-5-304(b)(1). In performing these duties Disciplinary Counsel is expressly authorized to "conduct interviews and examine evidence" by way of subpoena after and investigative panel of the court authorizes a full investigation.

2. A full investigation was authorized in this case by the Honorable Pamela Reeves, the Honorable Jean A. Stanley, and the Honorable Dwight E. Stokes on April 29, 2009.

3. Disciplinary Counsel is obligated to continue the investigation and development of evidence after a full investigation and formal charges have been authorized or filed. In discharging this responsibility, Disciplinary Counsel's subpoena power is viable and unabated.

4. With the trial of this matter set within the next sixty days and with no discovery having been produced by Judge Dumas in response to my discovery request, I directed my investigator to proceed to obtain records from Metro public officials who were charged with the official duty of maintaining the desired records. On February 3, 2010 this investigator was informed by a Metro employee that she had been directed by Judge Daniel Eisenstein, presiding judge of the Davidson County General Sessions




judges, that she was not to provide any answers to any questions that the investigator might have.

5. Disciplinary Counsel has issued subpoenas for the production of desired documents to advance this case and has entered into an agreed protective order as to some of these documents. This protective order was not entered into by Mr. Cantrell although his office was notified of the order and he was given such an opportunity according to representatives of the Metro legal department that prepared the order.

6. Disciplinary Counsel has been willing to enter into a protective order as to the records of the daughter of Judge Dumas. To this end Counsel has had a discussion with a Nashville attorney that represents the daughter and her husband on February 17 and 18 concerning that matter and an agreement has been made that will be evidenced by a letter from these parties attorney.

Further Affiant saith not.

  
Joseph S. Daniel

Sworn to and subscribed before me on this 22<sup>nd</sup> day of Feb. 2010.

  
Notary Public

My Commission Expires: 08/15/2010

