

ORIGINAL

FILED

IN THE TENNESSEE COURT OF THE JUDICIARY

2009 NOV 23 PM 12: 13

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

APPELLATE COURT CLERK
NASHVILLE

Docket No. M2009-02115-CJ-CJ-CJ

**COMPLAINT OF DAVID PLEAU
FILE NO. 08-3508**

**MOTION TO SET
and/or
MOTION FOR SCHEDULING ORDER**

COMES NOW Joseph S. Daniel, Disciplinary Counsel for the Tennessee Court of the Judiciary, pursuant to Rules 16 and 40, Tennessee Rules of Civil Procedure, and the provisions of Tennessee Code Annotated Sections 17-5-308 and 17-5-309, and would respectfully move the Court for an Order setting this action for trial, and in addition or in the alternative, establishing a scheduling Order, and as grounds therefore, would state as follows:

1. The statute governing the setting of actions before this Court provides as follows:

Tenn. Code Ann. § 17-5-308. Hearing; procedures; clear and convincing evidence

(a) The matter shall be set for hearing within sixty (60) days from and after the filing of the answer. This enactment contemplates a full evidentiary hearing measuring up to all requirements of due process, to include the right to be represented by counsel, the right of compulsory process to secure the attendance of witnesses, the right of confrontation and of cross-examination, and the right to a speedy and public trial. Upon

demand of the judge, or upon a finding by the court that the public interest would be served, the trial shall be conducted in the county of the judge's residence. A complete transcript shall be prepared by a court reporter.

The "answer" of the Honorable John A. Bell was filed on or about November 16, 2009 (Collective Ex.A to Motion to Compel), although by its terms it may not qualify as an answer pursuant to the Tennessee Rules of Civil Procedure, and thus not sufficient to trigger the aforesaid sixty (60) day time frame.

2. In addition, by statute, the Tennessee Rules of Civil Procedure specifically apply to this action. Tennessee Code Annotated Section and 17-5-301 provides as follows:

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.

3. Rules 16 and 40, Tennessee Rules of Civil Procedure, provide as follows:

RULE 16

**SCHEDULING AND PLANNING, PRETRIAL, AND
FINAL PRETRIAL CONFERENCES AND ORDERS**

16.01. Scheduling and Planning Conferences and Orders.—In any action, the court may in its discretion, or upon motion of any party, conduct a conference with the attorneys for the parties and any unrepresented parties, in person or by telephone, mail, or other suitable means, and thereafter enter a scheduling order that limits the time:

- (A) to join other parties and to amend the pleadings;
 - (B) to file and hear motions; and
 - (C) to complete discovery.
- (2) The scheduling order also may include:
- (A) the date or dates for conferences before trial, a final pretrial conference, and trial;
 - (B) provisions for the discovery of electronically stored information;
 - (C) any agreements the parties reach for asserting claims of privilege or of protection as to trial-preparation material after production, or in reference to electronically stored information; and
 - (D) any other matters appropriate in the circumstances of the case.
- (3) In deciding the content of any scheduling order, the court shall give consideration to minimizing the time that jurors are not directly involved in the trial or deliberations. A schedule once ordered shall not be modified except by leave of the judge upon a showing of good cause. [Amended by order filed January 31, 2003, effective July 1, 2003.]

RULE 40

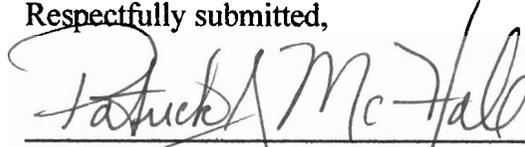
SETTING CASES FOR TRIAL

The courts shall provide by rule for the setting of cases for trial (a) without request of the parties but upon notice to the parties, or (b) upon request of a party and notice to other parties. Precedence shall be given to actions entitled thereto by any statute of the state of Tennessee.

Wherefore, Disciplinary Counsel respectfully moves the Court of the Judiciary for an Order setting this action for trial on a date or dates certain, and/or for a just and proper scheduling Order.

NOTICE is hereby given that the undersigned will appear before the Honorable Don R. Ash, Presiding Judge, Court of the Judiciary, at his courtroom, 4th Floor, Judicial Bldg., Public Square, Murfreesboro, Tennessee on the 30th day of November, 2009, at 3:00 p.m. central standard time, for a hearing on this Motion.

Respectfully submitted,



JOSEPH S. DANIEL #002799

Disciplinary Counsel

PATRICK J. McHALE, #004643

Assistant Disciplinary Counsel

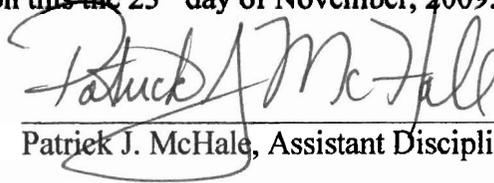
503 North Maple Street

Murfreesboro, TN 37130

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Certificate of Service

I certify that a true and exact copy of the foregoing has been mailed, delivered, and/or transmitted by facsimile to Mr. Gordon Ball, BALL & SCOTT Law Offices, Attorneys at Law, Attorney for The Honorable John A. Bell, 550 W. Main Street, Suite 601, Knoxville, Tennessee 37902, on this the 23rd day of November, 2009.



Patrick J. McHale, Assistant Disciplinary Counsel