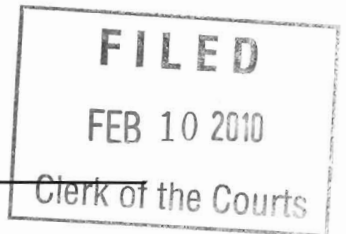


ORIGINAL

IN THE TENNESSEE COURT OF THE JUDICIARY



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

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

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



**MOTION TO DISMISS OR IN THE ALTERNATIVE
FOR A MORE DEFINITE STATEMENT**

NOW INTO COURT comes Defendant Judge John A. Bell ("Judge Bell"), by and through undersigned counsel, pursuant to Tennessee Rule of Civil Procedure 12.02 and 12.05, and hereby moves this Court for an order dismissing the Formal Charges, or in the alternative for an order requiring Disciplinary Counsel to provide a more definite statement of the factual allegations supporting the Formal Charges. It support of this motion, Judge Bell would show unto the Court as follows:

1. On Thursday February 4, 2010, attorneys for Judge Bell were advised via email from Disciplinary Counsel that the investigation into Judge Bell is not complete, but rather is "ongoing."¹ This revelation is prejudicial to Judge Bell's ability to defend himself and contrary to Tennessee law.

2. Tennessee Code Annotated §17-5-301, et. seq. provides the statutory framework for bringing Formal Charges against an active judge.

¹ A copy of the email from Disciplinary Counsel Patrick J. McHale to W. Allen McDonald is attached hereto as Exhibit A.

3. Under Tenn. Code Ann. §17-5-304, Disciplinary Counsel has the duty to evaluate complaints against judges to determine whether the allegations, if true, would constitute judicial misconduct or incapacity. If so, Disciplinary Counsel “shall conduct a preliminary investigation.” Tenn. Code Ann. §17-5-304(a).

4. If, and only if, the preliminary investigation reveals evidence supporting the allegations, Disciplinary Counsel then recommends that the Investigative Panel authorize a “full investigation.” If there is no evidence supporting the allegation and there are no grounds to believe that evidence could be obtained by subpoena or further investigation, Disciplinary Counsel must recommend the matter be dismissed. Tenn. Code Ann. §304(b).

5. Importantly, Disciplinary Counsel may only recommend the filing of Formal Charges “[u]pon the conclusion of the full investigation.” Tenn. Code Ann. §17-5-304(d).

6. Conditioning Formal Charges upon the completion of a full investigation is consistent with the further statutory requirement that a trial occur within 60 days of the filing of an answer. Tenn. Code Ann. §17-5-308(a). In addition to guaranteeing judges such as Judge Bell a speedy and public trial, the statute contemplates a “full evidentiary hearing measuring up to all requirements of due process.”

7. Because Disciplinary Counsel is still investigating the allegations of this matter, Judge Bell’s ability to prepare a defense is significantly undermined.²

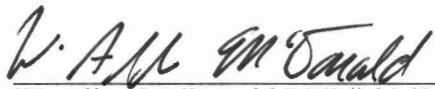
8. The prejudice to Judge Bell is compounded due to Disciplinary Counsel’s (1) refusal to turn over records of its investigator, James LaRue, and (2) efforts to thwart

² The Court will note that Disciplinary Counsel’s disclosure of the ongoing nature of its investigation came two days after Judge Bell’s filed a Motion for Summary Judgment and Statement of Undisputed Material Facts in Support of the motion.

Judge Bell's efforts to depose J.S. Daniel regarding Mr. Daniel's direct involvement in the investigation.

WHEREFORE, Judge Bell requests that this Court enter an order dismissing the Formal Charges, with the right of Disciplinary Counsel to refile only upon the conclusion of its full investigation. In the alternative, Judge Bell requests an order requiring Disciplinary Counsel to provide a more definite statement of all of the factual allegations supporting the Formal Charges.

Respectfully submitted this 9th day of February, 2010.



W. Allen McDonald BPR# 016210
Gordon Ball, BPR # 001135
BALL & SCOTT
550 West Main Street, Suite 601
Knoxville, Tennessee 37902
Telephone: (865) 525-7028
Facsimile: (865) 525-4679
Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the following via electronic mail.

Patrick J. McHale
patrickjmchale@gmail.com
Joseph S. Daniel
tlawdaniel@comcast.net

This 9th day of February, 2010.



W. Allen McDonald

IN THE TENNESSEE COURT OF THE JUDICIARY

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

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

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

**EXHIBIT A TO MOTION TO DISMISS
OR IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT**

Email dated February 4, 2010 from Disciplinary Counsel Patrick J. McHale to W. Allen
McDonald

Allen McDonald

From: Patrick McHale [patrickjmchale@gmail.com]
Sent: Thursday, February 04, 2010 3:28 PM
To: Allen McDonald
Cc: tlawdaniel@comcast.net
Subject: Re: FW: Judge Bell - M009-02115-CJ-CJ-CJ

LaRue has no other reports other than the one you have of the Testerman meeting, or anything else produced at his deposition. He did discard pieces of paper on which he wrote things like directions and non substantive matters. The privilege log indicates a one page piece of paper that has investigative material e.g., phone numbers of people with whom to speak. We see that as protected. Emails to and from Larue to the DC or to me are claimed to be protected.

The investigation is ongoing and since I spoke with him last, my thinking is that he has spoken with some people but no reports have been made

On Thu, Feb 4, 2010 at 2:10 PM, Allen McDonald <mcdonald@ballandscott.com> wrote:
Patrick,

Have you followed up with LaRue regarding whether he still has any reports and whether prior reports were destroyed?

Is there any writing or document created by LaRue or used by LaRue that Disciplinary Counsel is not claiming to be protected?

W. Allen McDonald
Ball & Scott
550 Main St.
Suite 601
Knoxville, TN 37902
(865) 525 7028

From: Allen McDonald
Sent: Thursday, January 28, 2010 9:50 AM
To: 'Patrick McHale'
Cc: tlawdaniel@comcast.net
Subject: RE: Judge Bell - M009-02115-CJ-CJ-CJ

Patrick,

Have you had a chance to follow up with LaRue?

Further, is LaRue going to be a witness at trial?

Allen

From: Patrick McHale [mailto:patrickjmchale@gmail.com]
Sent: Friday, January 22, 2010 5:15 PM

2/8/2010

To: Allen McDonald
Cc: tlawdaniel@comcast.net; coljimatrivier@sprynet.com
Subject: Re: Judge Bell - M009-02115-CJ-CJ-CJ

Thank you for the transcripts.

As to LaRue, I apologize, however I thought I had indicated in person to you on January 12 that we were comfortable with our log. The irony of your insistence on a log and assertions regarding when the privilege applies is striking, but I respect your entitlement to your views.

I will ask LaRue again specifically if he has discarded anything as I do not recall asking him that directly. I do recall asking for everything in his file and further recall that he himself was surprised there was one page only of handwritten notes, although there is quite a bit of material on that page.

I will also actively engage DC Daniel again in this inquiry and report further.

Patrick McHale

On Fri, Jan 22, 2010 at 3:49 PM, Allen McDonald <mcdonald@ballandscott.com> wrote:
Patrick

Attached are transcripts of the hearings on 12/23/08 and 2/20/09.

I'm still waiting for a reply to my email of 1/11/10 requesting additional information pertaining to the claimed privilege log of Mr. LaRue's material.

I do not believe that the privilege applies if Mr. LaRue will be testifying about information obtained in his investigation at trial. Please confirm whether or not you plan to call him as a witness.

Further, there is only 1 page of notes listed on the privilege log. Do other notes taken by LaRue as described in his deposition still exist? If these notes exist, they should be immediately produced. Or, did LaRue purge the notes after writing his reports to Daniel? If the latter, then I believe we are entitled to the reports and I'd ask you to reconsider your position.

W. Allen McDonald
Ball & Scott
550 Main St.
Suite 601
Knoxville, TN 37902
(865) 525 7028

2/8/2010