

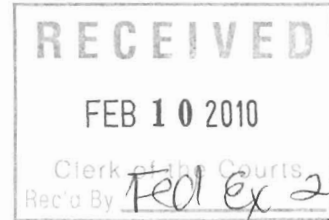
ORIGINAL

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 COMPEL PRODUCTION OF DOCUMENTS

NOW INTO COURT comes Defendant Judge John A. Bell ("Judge Bell"), by and through undersigned counsel, and hereby moves this Court for an order compelling Disciplinary Counsel to produce documents and records created by James LaRue regarding his investigation into Judge Bell. In support of this motion, Judge Bell would show unto the Court as follows:

I. Disciplinary Counsel has provided inconsistent information the requested material since the beginning of this case.

1. On November 19, 2009, Judge Bell noticed the deposition of James T. LaRue, investigator for the Court of the Judiciary, and the complainant David J. Pleau. The notice instructed Mr. LaRue to produce among other things documents "contained in the deponent(s) files".

2. On November 23, 2009, Disciplinary Counsel moved this Court for a protective order regarding Mr. LaRue's and Mr. Pleau's deposition.¹

¹ The following excerpt from Disciplinary Counsel's motion indicates that the motivation for filing the motion for protective order was related, at least in part, to the privileges asserted by Judge Bell: "The depositions are premature, and unreasonable particularly given the nature of The Honorable John A. Bell's Answer and Responses to written

3. Also on November 23, 2009, Disciplinary Counsel moved this Court for a scheduling order in to “determine a meaningful direction at this stage of the litigation”.

4. A hearing was held via telephone on November 30, 2009 regarding Disciplinary Counsel’s motions.

5. During the hearing, Assistant Disciplinary Counsel Patrick J. McHale agreed that the deposition of Mr. LaRue and Mr. Pleau would occur “around the holiday” and “if we [Disciplinary Counsel] could have a couple of weeks, that would be more than enough”.

6. Mr. McHale also addressed the topic of the request for Mr. LaRue’s documents, and the following exchange occurred between counsel:

MR. MCHALE: And I wanted to suggest to Mr. Ball that -- and I want to do this in the context of today's hearing so that we're again respecting the compression of time we're dealing with. We're going to have some items prepared in anticipation of litigation as part of what Mr. LaRue would be testifying about. And I will try to get you a list of what that is that we would be objecting to at the deposition so maybe we can hash that out.

MR. BALL: I'm afraid I don't really understand what items we would be talking about.

MR. MCHALE: Well, I don't know either until I talk to him and sit down and get an inventory of what he has in terms of mental impressions, the statements he's taken, investigative material, matters that are available to you from other sources, things like that. For example, he talked to Mr. Testerman.

THE COURT: Okay. Well, wait a second, guys. And I love being involved in this conversation, but I've got a docket. They're waiting for me.

MR. MCHALE: We'll get that out.

discovery...the sequencing of discovery would appear to be severely out of balance when the party deposing by notice has refused to confirm, *inter alia*, their name and occupation in their original Answer and discovery responses.”

7. Despite Mr. McHale's admitted knowledge that Disciplinary Counsel was contemplating the possibility of alleging that some of Mr. LaRue's documents were privileged, Disciplinary Counsel did not raise the issue of privilege again in any of the conversations and emails regarding setting the deposition dates.

8. Mr. LaRue brought no documents to his deposition on December 22, 2009.²

9. However, Mr. LaRue admitted that such documents existed. On page 16 of this deposition (attached as part of Collective Exhibit A), LaRue stated that he had taken notes during a hearing Judge Bell conducted on February 20, 2009.

10. On page 17 of his deposition, LaRue stated that he had prepared "two or three reports" for Disciplinary Counsel (attached as part of Collective Exhibit A),

11. During Mr. LaRue's deposition, Disciplinary Counsel produced the following documents from its files:

- a. An affidavit signed by David Pleau at the request of Mr. LaRue. LaRue deposition, Page 89 (attached as part of Collective Exhibit A).
- b. Details of phone calls to and from the phones of Judge Bell and his attorney, Tom Testerman, obtained from a TBI subpoena, together with notes made by Mr. LaRue regarding those calls. LaRue deposition, Page 91 (attached as part of Collective Exhibit A).³

² After some initial delay, ultimately Disciplinary Counsel produced certain documents at Mr. LaRue's deposition. See ¶11 below.

³ Disciplinary Counsel agreed to produce the entire 300+ pages of phone records as a late filed exhibit to Mr. LaRue's deposition. LaRue deposition, page 92 (attached).

c. Mr. LaRue's typewritten summary of his and Mr. Daniel's interview with Tom Testerman. LaRue deposition, Page 93, (attached as part of Collective Exhibit A)

12. During Mr. LaRue's deposition, Disciplinary Counsel also agreed to provide certain reports given to Disciplinary Counsel and certain notes of Mr. LaRue. LaRue deposition, Pages 48-53.

13. Further, Disciplinary Counsel announced on the record that there was a timeline used by Mr. LaRue to refresh his recollection. LaRue deposition, Page 90.

14. In addition, Disciplinary Counsel agreed to provide a privilege log on or before January 5, 2010 describing material that it was not willing to voluntarily produce.

15. On January 6, 2010, Disciplinary Counsel submitted a privilege log, which claimed for the first time that the reports of Mr. LaRue and his notes were privileged. A copy of the Privilege Log Material of James LaRue is attached as Exhibit B.

16. On January 22, 2010, Disciplinary Counsel revealed that in fact Mr. LaRue had only one page of notes. When confronted with the inconsistent testimony from Mr. LaRue during his deposition, Disciplinary Counsel McHale replied that Mr. LaRue "was surprised there was one page only of handwritten notes, although there is quite a bit of material on that page" (emphasis added). Disciplinary Counsel McHale's email of Jan. 22, 2010 is attached as Exhibit C.

17. On February 4, 2010, Disciplinary Counsel further confirmed that Mr. LaRue had discarded "pieces of paper on which he wrote things like directions and non substantive matters" – but contrary to his representation of less than 2 weeks earlier states that the one page of notes merely has "investigative material e.g., phone numbers of

people with whom to speak". Disciplinary Counsel McHale's email of Feb. 4, 2010 is attached as Exhibit D.

II. The Notes and Reports of Mr. LaRue are Necessary for Judge Bell's Defense.

18. Mr. LaRue will likely be a witness at trial.⁴

19. Whether Mr. LaRue will testify regarding personal knowledge or based upon what he learned from others, the notes and reports of Mr. LaRue provide timely written accounts of these events.

20. By the time of trial it will have been 16 months since Mr. LaRue first started his investigation. His memory has already been shown to be poor regarding his investigation (see ¶13 above regarding Mr. LaRue's surprise that he only had one page of notes). Further, Mr. LaRue destroyed his investigative notes, which increases the relevance and need for Judge Bell to have access to the reports.

21. In sum, without access to Mr. LaRue's notes and/or reports, Judge Bell's ability to effectively cross-examine Mr. LaRue will be hindered.

22. Even if Mr. LaRue is not a witness at trial, certainly one or more of the individuals interviewed by Mr. LaRue will be called as witnesses, including without limitation the complainant David Pleau. Judge Bell has no way to determine if these witnesses have changed their story (innocently or intentionally) without access to the material requested.

III. Waiver by Disciplinary Counsel.

23. As described above, Disciplinary Counsel agreed to provide Mr. LaRue's notes and reports, and has thereby waived any applicable privilege.

⁴ For what is worth, Disciplinary Counsel's position on whether Mr. LaRue will testify is non-committal: According to Mr. McHale, "LaRue may or may not be a witness--much of that determination will be made when and if Mr. Testerman testifies again."

24. Further, Mr. LaRue relied on a timeline prepared by Disciplinary Counsel's office to refresh his recollection before testifying.

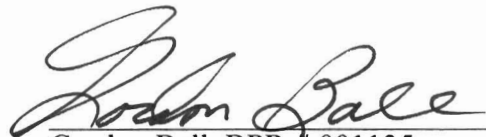
IV. Disciplinary Counsel Never Intended for the Notes and Reports of Mr. LaRue to be Privileged.

25. At all times relevant, Disciplinary Counsel Daniel was personally involved in this investigation. Mr. Daniel interrogated Tom Testerman. Mr. Daniel sought the assistance of the TBI and Tennessee Attorney General's office.

26. In a prior proceeding in this Court, Disciplinary Counsel Daniel allowed Mr. LaRue to fully testify regarding his investigation of Judge Bell, without reservation and without invoking any privilege. Thus, it appears that Mr. Daniel's practice (before this case) was that the actions of its investigator were not considered privileged.

WHEREFORE, Judge Bell requests that this Court enter an order requiring Disciplinary Counsel to produce all notes and reports prepared by James LaRue, as well as the timeline used to refresh Mr. LaRue's recollection.

Respectfully submitted this 9th day of February, 2010.



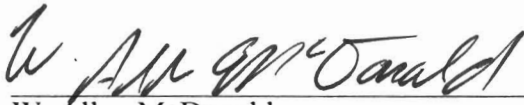
Gordon Ball, BPR # 001135
W. Allen McDonald BPR# 016210
BALL & SCOTT
550 West Main Street, Suite 601
Knoxville, Tennessee 37902
Telephone: (865) 525-7028
Facsimile: (865) 525-4679
Attorneys for the Plaintiff

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**

**COLLECTIVE EXHIBIT A TO
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Excerpts from Deposition of James T. LaRue

1 presence there?

2 A He did not.

3 Q Now, was Mr. Pleau's case the first
4 case called that morning?

5 A I don't recall the sequence of the
6 cases.

7 Q Did you take notes that day?

8 A I did.

9 Q Do you have those notes, keep those
10 notes?

11 A Those notes may be in a report that I
12 forwarded to Judge Daniel. I'm not certain about that.

13 Q But did you file a written report
14 with Judge Daniels concerning the February 20th hearing?

15 A On that occasion, I think I reported
16 to Judge Daniel by telephone, Mr. Ball.

17 Q Do you -- did you retain those notes?

18 A If I made written notes, I have a
19 record of them, yes, sir.

20 Q Would you check and report to your
21 counsel whether or not you do have those notes
22 available?

23 A Yes, sir.

24 MR. BALL: Make a note of that.

25

1 BY MR. BALL:

2 Q Did you review any notes or reports
3 made in connection with this case by you in preparation
4 for this deposition?

5 A I looked at some historical dates so
6 that I could correctly reflect to you the dates of the
7 February the 20th hearing and some other activities.

8 Q Okay. How many written reports have
9 you made to Judge Daniel concerning this matter?

10 A I don't recall.

11 Q One, two, three?

12 A Two or three perhaps.

13 Q Now, let me hand you a notice of
14 taking your deposition and ask you if you have ever seen
15 this before.

16 A I don't recall having specifically
17 seen this. I was informed of this deposition by Judge
18 Daniel and he may have forwarded me a copy of that.

19 MR. BALL: Let's file this as exhibit
20 1, a notice of Mr. LaRue's deposition.

21 (Thereupon, the respective
22 document was marked
23 Exhibit No. 1.)

24 MR. BALL: And counsel, obviously in
25 exhibit 1 is the request to produce copies of

1 certain material on the basis of the matters
2 being prepared and in anticipation of
3 litigation, work product and/or attorney
4 investigator privilege.

5 In order to facilitate this matter
6 hopefully and with knowledge that we have trial
7 dates set in the not so distant future and with
8 regard to that, we offered to provide the
9 material that has been asked thus far regarding
10 this witness and that is: All notes, if any,
11 of the February 20th conversations or
12 activities that Mr. LaRue gave that he may have
13 sent to disciplinary counsel Daniel. And item
14 number two would be an affidavit that Mr. LaRue
15 testified about that had been prepared by
16 Mr. Pleau on or about February 20th.

17 MR. DANIEL: Let me correct you. I
18 think it's a report.

19 MR. MCHALE: The reports first and --
20 yeah, that's right; the report rather than the
21 notes; I'm sorry. And item two would be the
22 aforementioned affidavit. Now, we maintain and
23 continue to maintain and continue to assert the
24 privileges and the work product issues
25 indicated earlier. However again, owing to the

1 situation with respect to our docket, we will
2 do this.

3 Disciplinary counsel, Daniel, will
4 repair to the car and get his file and we will
5 provide any and all documents that we came
6 today prepared to provide, that even though
7 technically we may be asserting those
8 privileges and/or defenses to production, we
9 will provide again both in response to specific
10 questions that Mr. Ball may have of this
11 witness -- and for that matter, I assume the
12 next witness.

13 And that also we were willing to
14 provide and had prepared to provide not
15 withstanding that or in response to any further
16 written discovery that comes without a
17 discovery dispute in suing him. I guess I
18 should then ask, Mr. Ball, have I fairly stated
19 the nature and content of our conversation
20 outside?

21 MR. BALL: The answer to your
22 question counsel is I think you have fairly
23 stated the nature and content of your
24 conversation out in the hall, but let me say
25 this: Certainly we had requested -- we feel --

1 and properly so in our notice of deposition --
2 that Mr. LaRue bring these documents with him
3 and no motion for a protective order or
4 anything I don't believe has been filed on
5 behalf of the disciplinary counsel concerning
6 these documents.

7 But you tell us now you are
8 prepared to give us some documents, but not all
9 the documents. And so in that, we don't know
10 what all the documents are until we actually
11 see the file. We would request that you
12 provide us and Judge Ash a copy of a privilege
13 log or a privilege log asserting a privilege as
14 to each specific document so we may be able to
15 address in the correct order whether or not
16 there is a privilege or not concerning these
17 documents, but with the idea that we want to go
18 forward with Mr. LaRue's deposition and that we
19 don't waive any matters whatsoever and that we
20 want to continue his deposition until such time
21 as we do have a ruling from Judge Ash
22 concerning the entire file.

23 MR. MCDONALD: May I add one thing,
24 which is at the hearing that I think occurred
25 by telephone on November the 30th, that there

1 was a representation made that you were going
2 to advise our office of any items that you were
3 going to be making such an objection to. And
4 we have received nothing during the three
5 weeks. Plus, that's been going on since the
6 date of that hearing.

7 There has been a lot of
8 communication back and forth about setting
9 dates both for this deposition and other
10 subsequent depositions, and you have not raised
11 that issue at any time before now.

12 MR. BALL: So what we would like to
13 do -- and we would file as we will get a copy
14 of the file as exhibit 2 to Mr. LaRue's
15 deposition, is a copy of the transcript of the
16 hearing before Judge Ash. So with that said
17 counsel, that's fine if you can give us those
18 documents, we will go forward. We just want to
19 get things properly before Judge Ash and I
20 think that's way it should be done.

21 MR. MCHALE: Let me see the notice if
22 I could please.

23 MR. BALL: That's exhibit 1. Would
24 you mark this transcript as exhibit 2?
25

1 (Thereupon, the respective
2 document was marked
3 Exhibit No. 2.)

4 MR. MCHALE: Well, we were -- there
5 was no intention without it coming up today
6 that we would respond to that type of inquiry,
7 and then particularly under the facts of how
8 this case has come because it's all documents
9 because of its breath, and we made that
10 objection today. So it's our position it's
11 timely. Be that as it may, this is precisely
12 the type of hassle we seek to avoid and we will
13 then give you the material.

14 Well, first of all, we don't have
15 Mr. LaRue's file here, but we can recreate
16 what's in his file from what Judge Daniel has
17 because he has nothing in his file to our
18 knowledge without -- we haven't discussed with
19 him.

20 But one of this things you asked
21 about that we haven't discussed were did he
22 make any notes about his original tasking, if
23 I'm not mistaken, and of course we would
24 provide those too. But we will provide -- we
25 will do this. We will provide the material

1 today that we have discussed. We will prepare
2 a specific privilege log as to what we are not
3 willing to provide, and we will do that before
4 January 5th.

5 MR. BALL: That's fine.

6 MR. MCHALE: And we will go from
7 there.

8 MR. BALL: That's fine. Thank you
9 counsel. Are we ready?

10 THE WITNESS: Yes, sir.

11 MR. DANIEL: I'm going to retire and
12 see if I can find what you need.

13 MR. BALL: That will be fine.

14 BY MR. BALL:

15 Q Mr. LaRue, let me see if I can see
16 where we were. I think we, Mr. LaRue, were up to the
17 April call to Mr. Testerman's office and that call again
18 was made from the local district attorney general's
19 office in Sevierville; is that correct?

20 A That is correct.

21 Q And then tell me what you did after
22 that call was made. What was the next thing you did
23 concerning this Pleau matter?

24 A I requested that the state attorney
25 general inspector, Mr. King, keep me advised if I could

1 address matters that I have made notes on that
2 follow the subject to correction or
3 supplementation. There are no notes in Judge
4 Daniel -- Mr. Daniel's file with respect to a
5 February 20th meeting or event that has been
6 testified about, that being when Mr. LaRue went
7 to observe a hearing in Cocke County.

8 The second item is, I believe that
9 I have made a note, is an affidavit of
10 Mr. Pleau --

11 MR. DANIEL: No. It's reports of
12 Mr. LaRue to me.

13 MR. MCHALE: That's part of number
14 one. Number two that I wrote down is a report
15 of an affidavit -- I'm sorry; an actual
16 affidavit by Mr. Pleau made on February 20th,
17 and I am placing that in the middle of the
18 table right now as our first document provided.
19 The next item --

20 MR. BALL: Counsel, could we mark the
21 affidavit as exhibit 3?

22 MR. MCHALE: Sure.

23 MR. BALL: Is that all right?
24
25

1 (Thereupon, the respective
2 document was marked
3 Exhibit No. 3.)

4 MR. DANIEL: That's a copy, by the
5 way.

6 MR. BALL: I understand.

7 MR. MCHALE: And certainly we'll let
8 you examine the original if you want to. The
9 next item is any documentation regarding a
10 meeting of -- we have been working on a
11 timeline that is not a completed document. And
12 I think Mr. LaRue -- I know he doesn't have it
13 with him now. I don't know if he has it in his
14 file, but it's just to refresh his
15 recollection. I think he testified about that.

16 We don't have such a timeline with
17 us -- I'm sorry; we have a timeline, but it's
18 not a finished product, and we would not want
19 to vouch for its accuracy and have it be used
20 accordingly. It's notes we have made in
21 anticipation of trying to get a sketch of when
22 we are going on. We can talk about that if you
23 want to. The next item, which you have not
24 specifically asked for, but we presume -- and
25 it's always dangerous to presume -- would be

1 the phone records about which Mr. LaRue
2 testified that were forwarded to him by
3 Mr. Daniel for his review, and I then pass
4 those to be the next exhibit.

5 MR. DANIEL: Those were originals.
6 You can copy those.

7 MR. MCHALE: That would be, I guess,
8 number 4; is that right?

9 MR. BALL: Yes.

10 (Thereupon, the respective
11 document was marked
12 Exhibit No. 4.)

13 MR. MCDONALD: The testimony was that
14 there was 306 pages and --

15 MR. MCHALE: That's what he said,
16 yeah. And I have noticed on the top, there was
17 something about 329 in there. I don't know
18 where these numbers are coming up from and I
19 assume you are free to ask about that. I just
20 know that there is a title up there that says
21 something about 329, but my reaction was the
22 same. It didn't feel like 329 when I picked it
23 up.

24 MR. BALL: Counsel, do you have the
25 actual -- in your file, the actual search

1 warrant to get these --

2 MR. MCHALE: May I consult? We do
3 not. It did not emanate from our office.

4 MR. BALL: I understand that. And
5 can you tell us -- maybe Mr. Daniel can.
6 Mr. LaRue testified that there were 329 pages
7 and there is probably 30 here.

8 THE WITNESS: I can clear that up.
9 The documents that you have, without me looking
10 at them, would be the ones that I had gleaned
11 from the 300 and some pages because of the
12 volume of calls between the courthouse and
13 Mr. Testerman and all the phone records that
14 are provided. These -- it is my assumption --
15 are the ones I determined were pertinent.

16 MR. MCHALE: Do you want to -- do you
17 still have the remaining balance of the 300 and
18 however many?

19 THE WITNESS: I only have a PDF file
20 which was forwarded to me, which I reviewed and
21 then printed off these pertinent documents.

22 MR. MCHALE: Well, we could provide
23 the whole PDF file if they want; correct?

24 MR. BALL: We do.

25 MR. MCHALE: Why don't we make the

1 whole PDF file, then, exhibit 4A.

2 MR. BALL: That's fine.

3 (Thereupon, the respective
4 document was marked
5 Exhibit No. 4A.)

6 MR. MCHALE: The next item that -- I
7 don't know if you specifically asked about and
8 if you have, that's fine. If you haven't,
9 that's fine and I've got it denominated as a
10 record or an interview with Testerman or a
11 statement prepared by Mr. LaRue. And I would
12 identify that has a three-page statement that I
13 would tender as exhibit number 5 to Mr. LaRue's
14 deposition, and that's only copy we have today.

15 (Thereupon, the respective
16 document was marked
17 Exhibit No. 5.)

18 MR. MCHALE: And that is it. We do
19 not -- Judge Daniel -- Mr. Daniel advises me
20 that he does not have any handwritten notes
21 from Mr. LaRue for anything. Mr. LaRue -- I
22 noticed last night and he can speak for
23 himself -- there has been a one-page yellow pad
24 with some scrawlings on it. I have no idea
25 what that was or how it pertained to this case.

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 B TO
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Privilege Log Material of James LaRue

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**

**PRIVILEGE LOG
MATERIAL OF JAMES LaRUE**

COMES NOW Joseph S. Daniel, Disciplinary Counsel for the Tennessee Court of the Judiciary, pursuant to Rule 26, Tennessee Rules of Civil Procedure, and would state as follows:

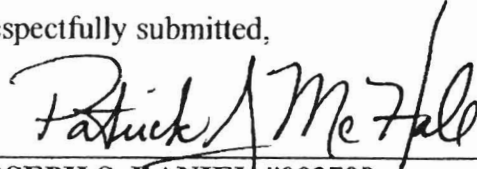
1. Disciplinary Counsel has heretofore, during the deposition of James Larue on December 22, 2009, asserted privileges with respect to material in possession of Mr. LaRue, including but not necessarily limited to trial preparation materials (Rule 26.02 (3)), and the attorney investigator privilege (Tennessee Code Annotated Section 24-1-209).

2. Rule 26.02(5), Tennessee Rules of Civil Procedure, provides as follows:

(5) CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION MATERIALS. When a party withholds information otherwise discoverable under the rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege protection.

3. The items constituting the privilege log are eight (8) pages of email dialogue between Mr. LaRue and either Disciplinary Counsel or Assistant Disciplinary Counsel and one (1) page of hand-written notes relating to the investigation, mental impressions and conclusions

Respectfully submitted,



JOSEPH S. DANIEL #002799

Disciplinary Counsel

PATRICK J. McHALE, #004643

Assistant Disciplinary Counsel

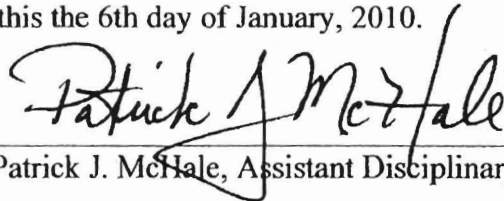
503 North Maple Street

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 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 6th day of January, 2010.



Patrick J. McHale, Assistant Disciplinary Counsel

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 C TO
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

E-mail dated January 22, 2010 from Disciplinary Counsel Patrick J. McHale to W. Allen McDonald

Allen McDonald

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

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 D TO
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

E-mail 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
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