

DEPOSITION OF JOHN A. BELL

JANUARY 19, 2010

VOLUME 2

IN THE TENNESSEE COURT OF THE JUDICIARY

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IN RE: THE HONORABLE JOHN A. BELL :
JUDGE, GENERAL SESSIONS COURT : Docket No.
COCKE COUNTY, TENNESSEE : M2009-02115-
: CJ-CJ-CJ
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:
:
:
COMPLAINT OF DAVID PLEAU : File No.
: 08-3508

APPEARANCES:

FOR JOHN A. BELL:

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Knoxville, Tennessee 37902

FOR THE TENNESSEE COURT OF THE JUDICIARY:

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Murfreesboro, Tennessee 37130

ALSO PRESENT:

James T. LaRue

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by Mr. McHale -----96

E X H I B I T S

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attached -----98

Exhibit No. 7,
Copy of letter to J.S. Daniel from
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Exhibit No. 8,
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Exhibit No. 9,
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S T I P U L A T I O N

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2
3 The deposition of JOHN A. BELL, called
4 as a witness, pursuant to all applicable rules, taken by
5 agreement on the 19th day of January, 2010, beginning at
6 approximately 2:25 p.m., at the Law Offices of Ball &
7 Scott, 550 Main Street, Suite 601, Knoxville, Tennessee,
8 before Andrea McBee, Court Reporter and Notary Public,
9 pursuant to stipulation of counsel.

10 It being agreed that Andrea McBee,
11 Court Reporter and Notary Public, may report the
12 deposition in machine shorthand, afterwards reducing the
13 same to typewriting.

14 All objections, except as to the
15 form of the question, are reserved to on or before the
16 hearing.

17 It being further agreed that all
18 formalities as to notice, caption, certificate,
19 transmission, etc., excluding the reading of the completed
20 deposition by the witness and the signature of the
21 witness, are waived.
22
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24
25

1 JOHN A. BELL,
2 called as a witness, having been previously sworn, was
3 examined and deposed as follows:

4 EXAMINATION

5 BY MR. MCHALE:

6 Q. Judge Bell, this is Patrick McHale. We
7 are continuing your deposition here beginning at
8 approximately 1:25 Central time, 2:25 Eastern time, on
9 January 19th, continued from last Tuesday; and you
10 understand you're fully remaining under oath from that
11 oath and you're not being sworn again today? Is that
12 satisfactory to you?

13 A. Yes, sir.

14 Q. We're starting a little bit late.
15 Disciplinary counsel and I met with Mr. Ball from
16 approximately 1:00 to about 1:20 to deal with some
17 housekeeping issues. We've also discussed, prior to
18 commencing, where we are on our exhibits and so forth.
19 We're going to try to work through the lawyer's poor
20 memory here and lack of adequate notes and try not to
21 repeat ourselves. We're moving forward with the
22 deposition, and where I believe we were was that I had
23 asked last Tuesday Judge Bell about his receipt of the
24 initial Court of the Judiciary complaint, signed by David
25 Pleau, and I believe I had asked Judge Bell to then

1 identify, after he identified the complaint, his response
2 to that. And assuming that is the case, and at the risk
3 of repeating that, I'm going to offer to Judge Bell a copy
4 of two pages of his response. And there was a cover
5 letter with that also, was there not, Judge Bell?

6 A. There was.

7 Q. Do you have a cover letter handy?

8 A. I do.

9 MR. MCHALE: Can we make a copy of this
10 entire document, Mr. McDonald, and make it Exhibit,
11 I'm going to say, 6? And if we are repeating 5 with
12 this 6, then life goes on, but for identification and
13 as an exhibit we'll call Judge Bell's initial
14 response to the Court of the Judiciary complaint
15 Exhibit 6.

16 THE WITNESS: I do know that we had
17 previously admitted that, and I don't know what
18 exhibit it is, but if we duplicate, we duplicate.

19 MR. MCHALE: Okay. I think it may be 5
20 also. Madam Court Reporter, you understand if it's 5
21 and 6, we'll be okay with that. These things happen
22 when you continue depositions.

23 MR. MCDONALD: Do you need a copy of this
24 right now?

25 MR. MCHALE: No.

1 (Whereupon, the respective document was
2 marked Exhibit Number 6.)

3 BY MR. MCHALE:

4 Q. It's three pages total; is that correct,
5 Judge Bell?

6 A. Yes.

7 Q. Let me ask you to address and take a look
8 at, and first of all, page one of that exhibit is simply a
9 cover letter to J.S. Daniel, Disciplinary Counsel, bearing
10 the date of 14 August 2008; is that correct?

11 A. Yes, sir.

12 Q. Pages two and three are what I would
13 characterize as the substance of your response; is that
14 correct?

15 A. Yes, sir.

16 Q. Let me show you my copy of what we'll
17 purport to be part of Exhibit 6, and let you make sure
18 that's identical with what you have in front of you from
19 your own file.

20 A. It is all except for the number 13 and 14
21 in the lower right-hand corners.

22 Q. Let me ask you a couple of questions about
23 that.

24 A. Okay.

25 Q. Paragraph one indicates that you are John

1 A. Bell, General Sessions Court judge, and that you have
2 done nothing wrong or improper, and you make the following
3 statements under oath concerning the complaint filed by
4 David J. Pleau. And then you have a second paragraph, and
5 let me ask you to look at that, and I'm going to ask you a
6 question or two about that.

7 A. Okay. Go ahead.

8 Q. You reference a motion to dismiss, and
9 that was a motion to dismiss filed by the representatives
10 of Merastar, and you say that was done at the close of the
11 proof; is that correct?

12 A. Yes, sir.

13 Q. And that's been consistent with your
14 testimony last week; is that correct?

15 A. Yes, sir.

16 Q. You also say that "The motion to dismiss
17 is based purely on an issue of law," and then you further
18 said "The facts were easy to determine." I'm quoting. I
19 resolved all facts in favor of the plaintiff, David J.
20 Pleau." The legal issue required research. Is that a
21 correct statement?

22 A. I don't know where you're at, but that
23 sounds --

24 Q. I'm at the bottom of paragraph two, the
25 last four lines.

1 A. Okay.

2 Q. Is that a correct statement?

3 A. Yes, sir.

4 MR. MCDONALD: I'll object that the letter
5 speaks for itself.

6 MR. MCHALE: Fair enough. That's fair.

7 MR. MCDONALD: You left off a couple of
8 words, but that's fine.

9 MR. MCHALE: That's fair enough. We'll
10 agree and stipulate to rely on the letter.

11 BY MR. MCHALE:

12 Q. Paragraph three says you had to do
13 research on TCA section 56-7-1206 and was purely a
14 question of law, and then you said you had to do extensive
15 legal research, extensive being your word, to determine
16 the question of law; is that correct?

17 A. Yes.

18 Q. You had to research specifically
19 56-7-1206; is that correct?

20 A. That is what I did. I did research it,
21 yes.

22 Q. And that's the only statute you
23 researched, correct?

24 A. I looked for similar type statutes, but
25 that is the only statute that I researched, yes.

1 Q. You also reference a case, Ben Hooper, II
2 versus State Farm, and I believe you've told us already
3 that that case was important to you because it emanated
4 from Cocke County also and that the circuit judge, who may
5 or may not have ultimately become part of this case should
6 it go up on appeal, was that same Ben Hooper; is that
7 correct?

8 A. And not only that, but the attorney
9 representing Ben Hooper is Bill Shults, who is also a
10 state judge.

11 Q. And you found that case, then, to be both
12 significant in terms of the question in front of you and
13 enhanced significance because of the judges involved?

14 A. Yes, sir.

15 Q. Did you actually find similar cases in
16 other states in all federal jurisdictions?

17 A. I should say it this way. I looked at all
18 cases when I Shepardized the Hooper case. I looked at all
19 the cases that are referenced when you Shepardize Hooper's
20 case. And I tried to use similar type language and do
21 research in other states as well as other federal
22 jurisdictions, and there was some cases, and I don't know
23 if it was out of this particular case or not, but there
24 were some cases that did find in the federal jurisdiction
25 that addressed the state statute in Tennessee, to the best

1 of my memory.

2 Q. You also stated that you had to determine
3 or felt you had to determine whether or not the defendant
4 had somehow waived its right based on when they filed the
5 motion; is that correct?

6 A. Yes.

7 Q. And do you recall that we talked last week
8 about whether or not there were rules of procedure
9 applicable to your court in Cocke County? Did we discuss
10 that last week, to your recollection?

11 A. You asked if -- there are rules of
12 procedure that are applicable to my court that are state
13 rules. I do not have local rules. We don't have a set of
14 local rules, I should say.

15 Q. Did any rules applicable to your court
16 address the issue of when motions had to be filed in a
17 civil action such as Pleau versus Merastar?

18 A. I did not find any case or any rules that
19 dealt with the issue of not bringing the motion until all
20 the case had ended, until the merits had passed. I did
21 not find anything, either -- there are some things that
22 are determined waived procedurally if you do not bring
23 them pretrial, but I did not find anything related to this
24 statute that discussed it.

25 Q. Was anything in your mind -- either at the

1 time you heard this case or after you concluded your
2 research, were there any time limits available that did in
3 fact constitute a waiver by Merastar of their right to
4 file a motion when they filed it?

5 A. Okay. I'm not understanding your
6 question.

7 MR. MCDONALD: Objection. I think it's
8 vague too.

9 BY MR. MCHALE:

10 Q. Did you learn of any rules of procedure
11 that were applicable to your court that would have
12 justified finding that Merastar had somehow waived its
13 right to bring the motion they brought?

14 A. The statute is, as I see it, an
15 indispensable party rule, which is a procedural rule, and
16 procedural rules as well as evidentiary rules can be
17 waived by sitting on your rights and not raising them, and
18 I was of the opinion that Merastar had sat on their rights
19 and had waived it, and I was looking for some case that
20 dealt with the issue of waiting until that point in time
21 to raise the issue, and I could not find anything.

22 Q. Are the rules you're referencing in that
23 most recent response, are you referencing the Tennessee
24 Rules of Civil Procedure?

25 A. Well, not necessarily. There are some

1 things that by case law has, that discuss waiving of a
2 right by not asserting the right earlier.

3 Q. Are there any rules of civil procedure in
4 Tennessee or any local rules that address the issue of
5 when a motion such as that brought by Merastar needs to be
6 brought?

7 A. I did not find anything.

8 Q. And you've already answered, have you not,
9 whether or not you found any case law to support the
10 proposition that Merastar's time of filing a motion had
11 constituted a waiver; is that correct?

12 A. That is correct.

13 Q. Does 56-7-1206 use mandatory indispensable
14 party language?

15 A. No, sir.

16 Q. Is that solely your characterization?

17 MR. MCDONALD: I'll object.

18 THE WITNESS: I characterized it that way
19 because that is the way I see it. It is a rule that
20 requires there to be a party in certain circumstances
21 to a cause of action like this.

22 BY MR. MCHALE:

23 Q. During the course of any of your research,
24 did you find language to support the proposition that
25 56-7-1206 was, quote, essentially a mandatory

1 indispensable party statute, unquote?

2 A. No, sir.

3 Q. So that specific language is your
4 language, correct?

5 A. Yes, sir.

6 Q. Similarly -- and I'm looking now at item
7 "i" under paragraph three of your response -- did you find
8 any -- or have you already addressed that and answered it
9 in your previous answers? Let me ask you that.

10 A. I don't know what your question is. I'm
11 sorry.

12 Q. My question was a poor effort to try to
13 move us along. Did you find any research to answer the
14 specific questions you posed in paragraph 3(i) of your
15 initial response?

16 A. I found case law that discussed making a
17 party to an action who was not a party to an action
18 because someone was an indispensable party, someone party
19 had to be a part of it, and so it deals with issue of
20 joinder of parties and the need in certain circumstances
21 to join parties to an action.

22 Q. Were any of those circumstances applicable
23 to the case that you were addressing?

24 A. Nothing on all fours, but very close.

25 Q. Did you cite any such cases in your

1 ultimate opinion in that case?

2 A. No, I did not.

3 Q. Similarly, under item 3(j), did you find
4 any authority for the proposition that such motions needed
5 to be made pretrial or are considered waived that you
6 could apply to the General Sessions of Cocke County in the
7 case you were deciding?

8 MR. MCDONALD: Object, vague about what
9 you mean by such motions.

10 BY MR. MCHALE:

11 Q. I'm sorry. I'm waiting for the answer.

12 A. I'm sorry. I didn't understand your
13 question. I apologize.

14 Q. Did you find any case law to support the
15 proposition that motions, such as the motion to dismiss
16 filed by Merastar, had to be made pretrial or were to be
17 considered waived, applicable --

18 MR. MCDONALD: Objection, again, on the
19 vagueness of "such as the motion."

20 MR. MCHALE: We could be here for three or
21 four days. This is an intelligent witness, who I
22 feel very comfortable can ask me to restate a
23 question if he doesn't understand it, but I have
24 infinite patience.

25 THE WITNESS: I'm sorry. I didn't

1 understand your question the first time. I
2 understand it now.

3 MR. MCHALE: I stated it differently the
4 second time to try to make it more understandable.

5 THE WITNESS: Right, I understand it now.
6 Yes, such things as improper service of process,
7 other things that, you don't get proper service of
8 process, but you go ahead and defend the action, then
9 you get into a situation where you have waived and it
10 is too late to assert the issue of proper service of
11 process once you have already started defending a
12 case, and other things of a similar nature that must
13 be made pretrial or waived, but nothing on all fours.

14 BY MR. MCHALE:

15 Q. Let me ask you, then, to look at items in
16 your initial response, four, five, six, and I'm going to
17 ask you a couple of questions.

18 A. Okay. Go ahead.

19 Q. Were those responses true and correct in
20 your judgment when you made them, and do they remain true
21 and correct if I were to ask you specifically word for
22 word today?

23 A. To the best of my knowledge, yes.

24 Q. And all of those cases -- all of those
25 paragraphs, do they not, essentially address one issue as

1 being that you, as judge, are not in a position to give
2 legal advice to people, and that appeared, in your mind,
3 to be one of the complaints Mr. Pleau was making, correct?

4 A. Yes, but it's more complicated than that.

5 Q. Tell me about it.

6 A. Apparently he complains that someone told
7 him that his time for appeal had passed. I don't know who
8 told him that. If it was one of the clerks, they should
9 not. Sometimes they tell people things like that, and
10 it's really not their job to tell people and give legal
11 advice. I even have them to have signs posted that
12 they're not to give legal advice. And I was concerned of
13 whether or not someone had given him legal advice that the
14 time for an appeal had passed, when in my opinion it had
15 not.

16 Q. Now, let me ask you a couple of questions
17 about item number seven, and I think you've touched on
18 that in your previous response. Do you have any
19 information to dispute Mr. Pleau's complaint that he
20 received the judgment on July 10th?

21 A. I have no information on that one way or
22 the other.

23 Q. Do you have any dispute that he went to
24 file an appeal that same day?

25 A. I have no information on that one way or

1 the other.

2 Q. Now, you also indicate that you do not
3 mail judgments to litigants, nor do you advise of time
4 constraints concerning appeals, and that the clerk of the
5 court mails judgments to litigants and so did the defense
6 of counsel in that case. You told us last week about the
7 mechanism for judgments going out, did you not?

8 A. No, sir, we did not completely, no, sir.

9 Q. I understood you to testify -- and perhaps
10 I'm mixing that up with something else -- that your
11 practice at that time was that in most instances, and
12 certainly in this, you directed your secretary to take
13 your judgment down to the clerk's office. They would then
14 handle the mailing out of it, and your secretary then got
15 a copy that was put in a file that you maintained for all
16 of your final orders that you occasionally used for future
17 reference and so forth. Is that a fair understanding of
18 what you may have told us last week?

19 A. Partially, it is.

20 Q. Is there anything erroneous about that
21 that you would like to help me get clarified?

22 A. Well, I don't send my secretary to take
23 all those down to the clerk's office. The majority I take
24 myself, and when I do that I watch them sign it, I watch
25 them starting the process, and then I do not get a copy.

1 But when I send my secretary back, I want to see a signed
2 copy.

3 Q. Do you recall which of those processes you
4 undertook in this case?

5 A. I sent my secretary down.

6 Q. And how is it you know that?

7 A. I know it because I remember that I did
8 that, and it's not off my desk until the clerks have
9 accepted responsibility for it, filed it and, or mailing
10 it. Now, on mailing it, what I was saying, that we need
11 to go for the full discussion of that, our county does not
12 allow our offices to have stamps, and so we do not do the
13 mailing. It goes into a bin, and then it goes over to the
14 county mayor's office, and at the county mayor's office
15 one of our clerks typically stamp it, and then it gets put
16 into the mail after that. And so it's not like we have a
17 clerk who can just put it in the envelope and put a stamp
18 on it and put it in the mail.

19 Q. In June and July of 2008, did you ever
20 mail out decisions or orders directly from your office?

21 A. I don't believe I have ever mailed a
22 decision from my office. I may have, but I don't recall
23 ever doing that. The volume that we do is just too much.

24 Q. Now, as I understand it, the order was
25 actually filed June 27th, 2008, correct?

1 MR. MCDONALD: Can you show him something
2 about that, or are you going by his memory?

3 MR. DANIEL: I think that was made an
4 exhibit the last time.

5 MR. MCHALE: I think the order was an
6 exhibit last time, but I could show him his letter of
7 December 16th when he, Judge Bell, says that.

8 THE WITNESS: Okay. If that's what it is,
9 yes.

10 BY MR. MCHALE:

11 Q. And Mr. Pleau says he got it on the 10th
12 and went down there on the 10th, and you have no reason to
13 dispute that. Do you have any independent recollection as
14 to what day of the week July 10th was or June 27th?

15 A. I do not.

16 Q. What's the basis for your claim that the
17 10 days had not run or not expired?

18 MR. MCDONALD: Objection, mischaracterizes
19 his testimony.

20 THE WITNESS: I would say this. There is,
21 under Rule 58, a case that says very plainly that the
22 statute does not begin to run until the secretary or
23 the clerk has completed her duties of mailing the
24 order out.

25 BY MR. MCHALE:

1 Q. What date would that have been in this
2 instance?

3 A. It never occurred. I should not say
4 that. I don't know whether it occurred or not occurred.

5 Q. The clerk certified the order as being
6 mailed out on June 27th; is that correct?

7 A. The same day, yes.

8 Q. If the order had been mailed out June
9 27th, would the 10 days have run on July 10th or before?

10 MR. MCDONALD: Well, I'll object. If that
11 calls for weekends, and we haven't established
12 whether there were one or two weekends in that time
13 period, then I'll object, because --

14 MR. MCHALE: Well, he's made the assertion
15 that in his judgment it hadn't --

16 THE WITNESS: I don't think it would.

17 BY MR. MCHALE:

18 Q. Because of why?

19 A. Because there's additional time that's
20 added to it for mail, for being placed in the mail.

21 Q. What is the authority to add time for
22 placing mail in the General Sessions Court?

23 A. Well, it's the same court decision that
24 makes reference to it not being -- time does not start
25 running until the clerk has done her duty.

1 Q. What court decision is that, if you
2 recall?

3 A. I don't recall, but I can look it up
4 pretty quick for you.

5 Q. All right.

6 MR. MCDONALD: I'm going to object to the
7 relevancy of this test on the rules of civil
8 procedure and what this has to do with really any
9 issue in this case, whether the time period had run
10 or not run.

11 MR. MCHALE: Well, I didn't think it was
12 an issue until we got here today.

13 THE WITNESS: Binkley, B-i-n-k-l-e-y, v.
14 Medling, M-e-d-l-i-n-g, 117 S.W.3d 252.

15 BY MR. MCHALE:

16 Q. Is that construing a General Sessions
17 Court determination or a rule of civil procedure not
18 applicable to General Sessions Court, as you recall?

19 MR. MCDONALD: If you know.

20 THE WITNESS: I recall it dealing with
21 that your time does not start running until the clerk
22 does her duty, and that additional time is added to
23 it if it is done by mail service under the rules.

24 BY MR. MCHALE:

25 Q. Does that decision, in your judgment,

1 apply to General Sessions Court?

2 A. That decision, in my judgment, would apply
3 to anytime there is an issue of whether or not a clerk has
4 done her duty in mailing out a notice and when the time
5 would start running.

6 Q. Were you here when Mr. Pleau testified
7 that he was told by a deputy clerk or a clerk on July 10th
8 that the time had already expired for him to file his
9 appeal?

10 A. I was here.

11 Q. Do you have any reason or basis or
12 evidence or facts to dispute that claim by Mr. Pleau?

13 A. I have no information one way or the
14 other, but again, that goes back to my concern that
15 clerks, that it's not their job to be giving out advice
16 like that.

17 Q. When you learned of Mr. Pleau's claim, at
18 any time, that he had been told that the time for appeal
19 had run, did you make any attempt to further determine
20 whether or not that was correct?

21 MR. MCDONALD: What was correct, counsel?

22 I'm not sure I understand that.

23 THE WITNESS: That's what I was going to
24 say; I don't understand your question.

25 BY MR. MCHALE:

1 Q. Did you determine, after learning of Mr.
2 Pleau's claim, whenever that was, that he was told that
3 the time to appeal had expired, did you make any inquiry
4 or attempt to learn whether or not that was correct, and
5 if so, who told him that?

6 MR. MCDONALD: Again, I'm, not sure that
7 either I or the witness understands what you mean.
8 What was correct, that it was correct? What was
9 correct?

10 THE WITNESS: Are you talking about that
11 did somebody tell him that and was that the advice
12 that was given?

13 MR. MCHALE: Yes, sir.

14 THE WITNESS: Okay. I don't have any
15 information one way or the other about that. I have
16 told the clerks they're not to give advice, and I
17 posted a sign saying that they are not to give
18 advice, but sometimes they think they're being
19 helpful when they're not necessarily being helpful.
20 Whether they did or not in this case, I don't know.
21 Mr. Pleau said it happened.

22 BY MR. MCHALE:

23 Q. Do you have any reason to dispute that?

24 A. No, I have no reason to dispute that.

25 Q. I suppose if you went and asked all the

1 clerks if any of them gave legal advice in contravention
2 of your directions, you would not get any solid response?
3 Would that be a fair characterization?

4 MR. MCDONALD: I object to that question.

5 THE WITNESS: I don't know. I've not
6 asked them. I've told them they're not to give
7 advice. They're not to tell people when their time
8 for appeal passes, or when they have -- of their time
9 limitations, I told them not to do that, because it's
10 just not a good thing.

11 BY MR. MCHALE:

12 Q. If I recall correctly, you told us last
13 time about item number eight. Let me ask you a couple of
14 things about item number nine.

15 A. Now, on this, you referred to this as
16 12,123 cases during a year. This is not during a year.
17 This is only during this time frame.

18 Q. Okay. Did you acquire that information
19 exclusively from the clerk's office, or do you maintain
20 independent records of that?

21 A. With this I obtained the information from
22 the clerks and youth services officers with the juvenile
23 cases, and that is the information that they provided me
24 at that time.

25 Q. I'm going to ask you about item number one

1 -- I'm sorry, number nine. You had an automobile accident
2 in April of 2008; is that correct?

3 A. Yes, sir.

4 Q. You were totally away from work. You say
5 temporarily. I think you mean temporarily, but I'm not
6 going to speak for you. You were totally out of work for
7 a week; is that correct?

8 A. Yes, sir.

9 Q. Then indicating after that you were
10 partially disabled, according to the letter, for the next
11 three months; is that correct?

12 A. I don't remember the exact period of time,
13 but yes, I was. In fact, I wrote Judge Daniel a letter
14 about it because he tried to contact me on the first day
15 that I was back at work, and I didn't return his phone
16 call, and he called back the next day, wanted me to meet
17 him, and I could not. And I wrote him, explaining to him
18 about the car accident and that I was in severe pain, and
19 that in fact I had been throwing up that day in court, my
20 first day back, trying to hold court, because I was in so
21 much pain.

22 Q. Your first day back was when that you're
23 talking about now? I didn't have the first answer.

24 A. The accident was on a Saturday. That full
25 next week, Monday through Friday, I did not go to court.

1 The next Monday I did, and I had difficulties. I had to
2 recess court. I was in severe pain; I vomited. I spent
3 part of the rest of that case standing and sitting,
4 depending on how much I could stand the pain.

5 Q. Now, was this after the one week you were
6 completely away from work in late April or early May?

7 A. No, sir, it is -- I gave you the exact
8 time frame. I had the accident on a Saturday. I missed
9 the next week, Monday through Friday, and this was the
10 following Monday.

11 Q. So it would have been nine days after the
12 April accident, if I'm understanding you? Correct me if
13 I'm misunderstanding.

14 A. Well, I don't know the day count, but it
15 is -- the immediate Monday through the Friday I was unable
16 to go to work. The Monday following that I did go to
17 work, but I was in severe pain while I was at work, to the
18 point of being sick.

19 Q. Is it your testimony Judge Daniel called
20 you?

21 A. Called my office a couple of times, asked
22 for --

23 Q. On that -- go ahead and finish, and then
24 I'll ask you this question.

25 A. He called me a couple of times on that

1 Monday, asked me to return his call. I did not even look
2 at my telephone messages because I was not able to do
3 anything other than do the bare necessities as far as
4 trying court. I came in on the Tuesday where he had
5 called again, and was upset because I had not called him
6 back, and I ended up sending him a letter, explaining to
7 him about the car accident and about how sick I was and
8 that I did not return his call, and I apologized for that,
9 but I was too sick to even look at any of those messages.

10 Q. Why was he calling you on that Monday and
11 Tuesday, if you recall?

12 A. He wanted me to meet with him on the
13 following Monday, and I could not because I could not
14 drive down to Nashville, and I had more than 50 cases,
15 because some of the cases were pushed to the next week. I
16 had 50 cases set on that Monday, and I could not meet with
17 him when he wanted me to drive to Nashville to meet with
18 him.

19 Q. But that had to do with another case,
20 correct?

21 A. Yes, sir.

22 Q. Okay. Now I'm understanding. He was not
23 calling you about this case?

24 A. No, sir, he was not calling me about this
25 case, but this case was there at the time, and I was sick

1 at the time and had that car accident at the time, and he
2 was aware of it, and I sent, by correspondence to him, a
3 letter explaining to him.

4 Q. After you returned to work following your
5 full week off from being totally disabled, did you keep
6 records of how much work you missed?

7 MR. MCDONALD: Because of this accident?

8 MR. MCHALE: Yes, because of the
9 automobile accident.

10 THE WITNESS: No, sir, I did not miss any
11 day work. I came in and did -- I'm set for trial
12 every day. I did all the cases that were set for
13 trial.

14 BY MR. MCHALE:

15 Q. Did you take any sick leave?

16 A. No, sir.

17 Q. Take any disability leave?

18 A. No, sir.

19 Q. Take any vacation from the conclusion of
20 your temporary total disability until July?

21 MR. MCDONALD: I'm going to object to this
22 to the extent that you're going beyond this accident,
23 which was referenced in his letter. Judge Ash has
24 already ruled that vacation or any other time that he
25 took off is not relevant. That's been decided upon,

1 I think, by Judge Ash. I have given you quite a bit
2 of leeway to go into this because it was referenced
3 within his response, but I don't think we need to go
4 any farther than that.

5 MR. MCHALE: Are you instructing him not
6 to answer?

7 MR. MCDONALD: I'm instructing him not to
8 answer to the extent that it goes beyond taking any
9 leave as a result of the automobile accident that was
10 referenced in Exhibit 5 or 6.

11 MR. MCHALE: Are you instructing him not
12 to answer?

13 MR. MCDONALD: I'll stand on what I said
14 before.

15 BY MR. MCHALE:

16 Q. Go ahead and answer, please.

17 A. I don't know, because I'm not sure if I
18 took any vacation time at all. That week was scheduled to
19 be the vacation time, and I did not, and I don't know if I
20 did from April through July or not.

21 Q. We do know from other records, would you
22 agree, that you completed the order in the first Pleau
23 case at least as of June 27th, 2008; is that correct, if
24 that's the date of the order?

25 A. Whatever the date of the order is.

1 Q. Is everything else in your -- I'm sorry.
2 Is everything else in your response accurate?

3 A. We discussed last time that I had assumed
4 that the other attorney there was representing the
5 insurance carrier for the other driver. I assumed that.
6 I put that in my statement. And then later I learned that
7 I was wrong, that the same insurance company had sent two
8 attorneys to sessions court instead of just one.

9 MR. MCHALE: I have, as usual, made a
10 mistake. Something is out of order in my file.
11 Judge Bell's answer appears to continue on to the
12 fourth page down in his cover letter. Can we go off
13 the record for a second?

14 (Off-the-record discussion)

15 MR. MCHALE: We're back on the record.

16 BY MR. MCHALE:

17 Q. With respect to the order, would you agree
18 that the clerk did not date what date she purported to
19 mail it out or forward it?

20 A. I never noticed that before. It appears
21 to be signed by her and signed as filed by her, but you're
22 correct, I don't see any date for --

23 Q. Is there any way we would have to
24 determine the date, other than what may or may not have,
25 that it was purportedly mailed, other than what was or was

1 not put on the face of the order by the clerk?

2 A. I don't know of anything else --

3 Q. What was --

4 A. -- any other way.

5 Q. What was the practice at that time in your
6 clerk's office for when orders that were filed were to be
7 mailed out?

8 A. I believe they do them same day, because
9 generally what they do is they put them in a stack and put
10 them in an envelope and put them in the bin, and then
11 someone takes them over to the county mayor's office and
12 gets them stamped and put in the mail.

13 Q. Is there any requirement of which you're
14 aware that it poses on you any independent responsibility
15 to follow up to make sure such orders go out?

16 A. I do that by generally watching the clerk
17 sign it or the deputy clerk sign it, the certificate of
18 service, that they're signing it, and that it is filed,
19 and so I try to make sure that all of them are filed and
20 signed.

21 Q. But in this case you weren't there, as you
22 recall?

23 A. I was not there. My secretary did that,
24 but she brought it back to me, and everything was okay.

25 Q. One thing I wanted to follow up on from

1 last time, you talked, if I recall correctly, about people
2 who knew about your dealings with the Court of the
3 Judiciary in this case, and you mentioned a Mr. McCarter
4 and a Ms. Holt and other individuals and other clerks.

5 A. Yes, sir.

6 Q. When was the first time, to your
7 understanding, that any of these individuals became aware
8 of Mr. Pleau's complaint against you?

9 A. Sir, I have no idea.

10 Q. Was it before the formal charges were
11 filed?

12 A. Oh, yes, sir.

13 Q. Was it -- but you don't have any idea?

14 A. I don't have any idea. I know that Ms.
15 Holt told me that Mr. McCarter told her when it was going
16 to be filed, and it was not filed as he thought, but it
17 was filed within a week of it.

18 Q. After your response of August 14th, Judge
19 Daniel -- I'm sorry, Disciplinary Counsel Daniel wrote you
20 again, and you responded to that by a letter dated August
21 29th; is that correct?

22 A. But before we go to that I would like to
23 mention, because you did not ask about it, when you
24 research the Hooper case, you will find that the major
25 case talking about not being able to file directly against

1 an insurance company is the Glover case, and that is a
2 Tennessee Supreme Court case. Then when you look at the
3 Glover case, you'll find that, if you look at the
4 Shepard's on it, that it has been superseded, and so it
5 is not the law in Tennessee.

6 Q. Okay. Go ahead with your answer to
7 whether or not you generated a letter in response to
8 disciplinary counsel's letter to you of August 19th, 2008.

9 A. I did.

10 Q. And is that a copy of that letter?

11 A. It is.

12 MR. MCHALE: Let's make this, then,
13 Exhibit Number 7.

14 (Whereupon, the respective document was
15 marked Exhibit Number 7.)

16 BY MR. MCHALE:

17 Q. I got distracted. You have acknowledged
18 that's a true and exact copy of what you wrote Judge
19 Daniel?

20 A. Yes, sir.

21 Q. And you talk about really what we've
22 talked about, and you also -- well, let me just ask you.
23 Was that letter correct when you wrote it, and is it
24 correct as you sit here today under oath talking about it?

25 A. Yes.

1 Q. After you received notice that Mr. Pleau
2 had filed a Court of the Judiciary complaint against you,
3 when did you next have any dealing or dealings at all with
4 Mr. Pleau's accident case in any form?

5 A. It would be, I believe, when I did a
6 notice sua sponte to have a hearing on the 23rd of
7 December.

8 Q. Let me broaden my question to include any
9 second lawsuit that Mr. Pleau filed this time, if I recall
10 the records correctly, a suit against both Merastar and Jo
11 Anne Coleman?

12 A. It would be -- other than the
13 correspondence with your office and phone calls to your
14 office, it would be the notice and for the sua sponte
15 hearing that was for the 23rd of December.

16 Q. Did Mr. Pleau's second suit come to your
17 attention in any fashion before you raised sua sponte the
18 notice of December 2008?

19 A. I became aware of it on the 22nd of
20 December 2009.

21 MR. MCDONALD: 2008?

22 THE WITNESS: Yes.

23 BY MR. MCHALE:

24 Q. Became aware of what?

25 A. I became aware that there was a second

1 suit that he had filed on that day, the 22nd of December
2 2008.

3 Q. It's going to be a little out of
4 chronological order, but I'm going to ask you about that
5 now so that I don't forget. What caused you to become
6 aware of it on December 22nd?

7 A. I had ask the clerk to get for me the
8 Pleau file. And they said, which one? And I said,
9 there's only one. And they said, there's two. So there
10 ended up being two files, and I became aware of it at that
11 time.

12 Q. Now, on December 15th, 2008 you also wrote
13 Judge Daniel, responding to his letter of October 26th,
14 2008; is that correct?

15 A. And also a partial response, I believe, to
16 a phone call that we had had.

17 Q. Do you have a copy of your letter to
18 disciplinary counsel dated December 15th --

19 A. I do, but it's got notes on it, front and
20 back.

21 Q. Oh, I don't want the copy. I just want to
22 know if you have access to it.

23 A. Yes, I do.

24 Q. Is this a copy of that letter?

25 A. (Witness examines document.) It is,

1 except for the numbers three and four in the lower
2 right-hand side.

3 MR. MCHALE: I am going to ask that this
4 be made Exhibit Number 8.

5 (Whereupon, the respective document was
6 marked Exhibit Number 8.)

7 MR. MCDANIEL: Do you have an extra
8 copy?

9 MR. MCHALE: (Shakes head.)

10 BY MR. MCHALE:

11 Q. Was that letter an accurate representation
12 of your position at the time you wrote it and is it now?

13 A. I should say it this way. I assumed that
14 the clerk, who is the one who made the mistake, and after
15 talking with my attorney, he let me know that, well, it
16 could have been whoever took it and got the stamps on it.
17 I should say it this way. There are other ways that it
18 could not have got served by mistake other than what I put
19 in my letter. Sorry.

20 Q. Who was your attorney at that time?

21 A. The attorney I was talking with at that
22 time was about this letter, not at that time, but about
23 this letter was Mr. Ball, and that was after the pleadings
24 had been filed. He pointed out to me, he said there's
25 other mistakes that could have been made other than what I

1 alleged in the letter or said in the letter.

2 MR. MCHALE: Let's take about two minutes,
3 or longer if anyone wants to.

4 (Recess taken.)

5 MR. MCHALE: We're back on.

6 BY MR. MCHALE:

7 Q. I may have misunderstood. Was Mr. Ball
8 your attorney in late 2008?

9 A. Mr. Ball was my attorney after the filing
10 of the formal charges.

11 Q. And that's why I may have misunderstood.
12 Those formal charges were not filed until 2009, correct?

13 A. Correct.

14 Q. So would it be --

15 MR. MCDONALD: For the record, Mr. Ball
16 was also his attorney in the other action that was
17 brought in 2008 --

18 MR. MCHALE: Yeah, but Mr. Ball --

19 MR. MCDONALD: -- just to clarify the
20 record.

21 BY MR. MCHALE:

22 Q. Well, Mr. Ball clarified the record last
23 week, and that's what confused me. I thought that he did
24 not become involved in this case until after the formal
25 charges in this case were filed; is that correct, Judge

1 Bell?

2 A. That's correct, but what I was talking
3 about was that --

4 Q. After he got into this case --

5 A. In this case, he looked at this and showed
6 me where I was wrong.

7 Q. That's fine. Thank you. Now, in that
8 letter, that is, the letter we've identified as Exhibit 8,
9 you went ahead and talked about the process of what you
10 intended to do with respect to the first Pleau case and
11 the difficulties in the progress of that case; is that
12 true?

13 MR. MCDONALD: I'm going to object based
14 upon the fact that what this letter is, is it is a
15 response to previous correspondence from Disciplinary
16 Counsel Daniel, which you have not provided to the
17 witness, so I think that this letter, when you asked
18 if this is his, if this is the position that he was
19 taking, I think this is the position that he was
20 taking vis-a-vis issues that had been brought up
21 earlier by Disciplinary Counsel Daniel.

22 MR. MCHALE: I don't think that was
23 anywhere related in the universe to the question I
24 asked, but let me try to restate it.

25 THE WITNESS: I think it is, because it

1 was also based on -- I did this because of his letter
2 and because of what he told me on the phone.

3 BY MR. MCHALE:

4 Q. What I specifically wanted to ask you, and
5 perhaps did it inartfully, is in that letter that's been
6 exhibited as Number 8, did you talk about a procedural
7 remedy you had determined might be useful in addressing
8 these issues?

9 A. Based on Mr. Daniel's recommendation.

10 Q. Did Mr. Daniel -- specifically now I'm
11 referring to the second full paragraph on December 15th.
12 Did Judge Daniel suggest to you using Tennessee Rule of
13 Civil Procedure 60.01, as made applicable to the General
14 Sessions Courts through TCA section 16-15-727?

15 A. Yes and no.

16 Q. All right. Please explain your answer.

17 A. He told me to look at the rule, Tennessee
18 Rules of Civil Procedure as is applied to General Sessions
19 Court. He did not mention the statute.

20 Q. Did you then do that?

21 A. I did that.

22 Q. As a result of that, what steps did you
23 take?

24 A. I did this letter, sent it to Judge
25 Daniel, and that if he had any objection I was not going

1 to do it. I sent it to my secretary so that she could
2 ensure that it was filed and so a certificate of service
3 would go out in a timely fashion, because I was not at my
4 office.

5 Q. Let me go back in time a moment. After
6 your automobile accident, did you continue to engage in
7 your military service-related activities?

8 A. Yes.

9 Q. Did you miss any of those?

10 A. During what time?

11 Q. From April of 2008 forward.

12 A. Yes.

13 Q. What did you miss; do you recall?

14 A. I went the week or so before Christmas to
15 Fort Drum, New York.

16 Q. Christmas of 2008?

17 A. When this letter was sent, which would
18 have been December 2008.

19 Q. I'm sorry. I either misstated the
20 question or you misunderstood. I'm back to April of 2008
21 after your accident. After April of 2008, did you have
22 any military duties that you missed?

23 A. Yes -- oh, military duties that I missed?

24 Q. Yes, sir.

25 A. Yes, I did.

1 Q. Tell me about those.

2 A. I missed a partial of a day on that day,
3 and I missed the next day altogether.

4 Q. Any others that you missed?

5 A. No.

6 Q. Subject to the ongoing objection and
7 rulings, are there records pertaining to your attendance
8 or lack of attendance at your required military service
9 that you could identify if need be?

10 A. No.

11 Q. There's nothing called like a D-14 or a
12 DD-214 or anything like that that you know of?

13 A. Not that would apply to this, no, sir.

14 Q. Just out of curiosity -- well, never
15 mind. Strike that. Now let's go back to where we were
16 before I --

17 A. I should also say this. Because of my
18 rank and my position with the military, I can and do
19 sometimes juggle my dates so that they are more of a
20 convenience to me when they will allow it.

21 Q. So you learned Mr. Pleau had filed a new
22 suit on December -- well, first of all, you sent a notice
23 out December 15th, 2008; is that correct?

24 A. No, I mailed it to my secretary, and my
25 secretary filed it and sent it out.

1 Q. Let me show you a copy of a document and
2 ask you if that's it.

3 A. That is a copy of the notice, yes.

4 Q. You say you mailed it to her. From where
5 did you mail it to her?

6 A. I mailed it to her from Fort Drum, New
7 York.

8 MR. MCHALE: Let's make that Exhibit 9.
9 (Whereupon, the respective document was
10 marked Exhibit Number 9.)

11 BY MR. MCHALE:

12 Q. Do you recall when you actually signed
13 that?

14 A. I do not recall, but I believe I signed it
15 on the 15th.

16 Q. And mailed it from Fort Drum, New York on
17 the 15th?

18 A. Yes.

19 Q. Then --

20 A. One of us is mistaken as to the date, yes,
21 sir.

22 Q. Thank you for anticipating my question.
23 Do you dispute, based on the contents and face of Exhibit
24 9, that this notice was filed December 15th, 2008?

25 A. It says what it says as December 15th, and

1 so one of us was off on the date, and it may very well
2 have been me. I may have signed it on the 14th. I do not
3 recall.

4 Q. Now, in this instance, this notice, which
5 related to case number 2007-CR-869, was actually mailed by
6 your secretary; is that correct?

7 A. Yes, and I had her to do that because I
8 did not want to have a problem with some clerk not mailing
9 it out like it's supposed to be. I wanted to make sure
10 that it was mailed and it was mailed properly.

11 Q. And you indicate that there will be a
12 hearing on December 23rd, and you've already told us that
13 December 22nd you learned that Mr. Pleau had filed a
14 second suit, correct?

15 A. Yes, sir.

16 Q. Did you notice on December 22nd that a Ms.
17 Coleman was a party in that suit?

18 A. Yes, sir, I did.

19 Q. Did you know or notice when that suit was
20 filed?

21 A. I did. I believe that it was filed or
22 appeared to be filed just against Ms. Coleman, and then on
23 another occasion that he added another defendant,
24 Merastar.

25 Q. You knew then on December 22nd of the

1 parties, but you also knew, correct, that Ms. Coleman was
2 not aware of any sort of December 23rd meeting, correct?

3 A. That is correct.

4 Q. Did you do anything to try to get her
5 involved in the December 23rd meeting, based on the
6 knowledge you acquired?

7 A. No, sir.

8 Q. Do you know if she attended the December
9 23rd meeting?

10 A. I do not believe she did.

11 Q. Did anything happen between what you
12 learned on December 22nd and the parties convening on
13 December 23rd, pertaining to Mr. Pleau's case?

14 A. I'm sorry. You lost me.

15 Q. Did anything happen between what you've
16 described on December 22nd and the parties convening on
17 December 23rd, pertaining to Mr. Pleau's case?

18 A. Pertaining to the first case or to the
19 second case?

20 Q. Either one.

21 A. Nothing pertaining to the second case
22 prior to the meeting and nothing pertaining to the first
23 case prior to -- I shouldn't say meeting, to the time
24 court was in session on that day.

25 Q. Now, on December 23rd you held a meeting

1 in the courtroom; is that correct?

2 A. I had a court hearing, yes, sir.

3 Q. Was it in a courtroom?

4 A. Yes, sir.

5 Q. You made a tape of that; is that correct?

6 A. No, sir, I had the clerk make a tape of
7 it.

8 Q. Is that a cassette tape?

9 A. No, sir.

10 Q. The clerk provided our investigator with a
11 CD ROM, which some day we hope to be able to actually
12 play, but it appears to be very unwilling to play on some
13 computers we've attempted. Be that as it may --

14 MR. MCDONALD: Glad to know that you have
15 the same technical difficulties at the state that we
16 do here.

17 MR. MCHALE: Oh, these aren't state
18 computers.

19 BY MR. MCHALE:

20 Q. You stand willing and able to make us a
21 coherent copy of that tape if need be; is that correct?

22 A. The tape that she has provided is the one,
23 but you have to get on to the internet and download the
24 software to be able to play it.

25 Q. Unless you have a Mac?

1 A. I don't know.

2 Q. Or unless you have Judge Daniel's PC?

3 A. Okay. Mine is a Mac, so I don't know.

4 MR. MCHALE: Can you make that the next
5 exhibit, please?

6 (Whereupon, the respective document was
7 marked Exhibit Number 10.)

8 BY MR. MCHALE:

9 Q. I'm showing you a proposed Exhibit Number
10 10, which is a two-page letter to Judge Daniel on December
11 29th, 2008, and I'll ask you to take a look at that.

12 A. (Witness examines document.)

13 Q. Before we get to that, tell us what
14 happened, according to your recollection, your notes or
15 any other basis you have to describe what happened, on the
16 courtroom hearing of December 23rd, 2008.

17 A. I formally gave both parties, both Mr.
18 Pleau and Merastar, a copy of the order. I apologized to
19 them for the delay in getting the order filed.

20 Q. I'm sorry. Let me interrupt just to make
21 sure. By order, you mean the order that was of June 27,
22 2008, correct?

23 A. Yes, sir.

24 Q. Go ahead. I'm sorry.

25 A. I gave them formal service on the record,

1 and I also apologized to them for them not getting served
2 and did not know why they were not served. They said they
3 weren't, and I apologized for that also.

4 Q. At that hearing, did you indicate that you
5 were going to, under the authority you previously
6 indicated, cite or set aside the first order?

7 A. No, sir.

8 Q. What did you decide at that hearing?

9 A. I didn't decide anything. I just gave
10 them copies.

11 Q. What did you -- did you make any orders or
12 rulings or determinations?

13 A. No, sir.

14 Q. Was there any discussion about a new
15 trial?

16 A. In Pleau one, no, sir.

17 Q. Was there any discussion about Pleau two,
18 to use your jargon, at that hearing?

19 A. For setting it for trial, yes.

20 Q. What was that discussion?

21 A. There was a trial date, and if they were
22 not going to be ready we could set another date. If they
23 were going to be ready we would try it on that day.

24 Q. What did the parties respond to that?

25 A. They would prefer another special day

1 setting.

2 Q. Was that agreed to or agreeable to you?

3 A. That was agreeable to me and with notice
4 being sent to Ms. Coleman as to the new court date.

5 Q. What was the original scheduled date, if
6 you recall?

7 A. I don't recall, but it's on the --

8 Q. On the warrant?

9 A. It's on the tape from that day.

10 Q. Before this occasion, had you ever used
11 the statutory authority of TCA section 16-15-727 and/or
12 Tennessee Rules of Civil Procedure 60.01 in your court?
13 By your court, I mean the court over which you preside?

14 A. Yes, sir.

15 Q. Before this time?

16 A. Yes, sir.

17 Q. In what context, if you recall?

18 A. Errors such as wrong amount of money.
19 Errors, I should say it that way.

20 Q. Well, my question, I guess, is did you
21 know, at the time you had this conversation you've
22 testified about with Judge Daniel, that specifically
23 Tennessee Rules of Civil Procedure may have become
24 applicable to --

25 A. Yes, sir.

1 Q. How did you know that?

2 A. We had -- what happened was, there's a
3 Supreme Court case that came out that said that General
4 Session judges have no authority to make any changes at
5 all to their orders. Once an order is done they lose
6 jurisdiction. And so even simple things that judges had
7 been correcting they could no longer correct. And so the
8 State of Tennessee passed a statute that gave General
9 Sessions judges some authority and leeway on correcting
10 errors and mistakes and things in General Sessions Court
11 on their orders. Otherwise, once an order is done, that's
12 it.

13 Q. That's the implementation of the Tennessee
14 Rules of Civil Procedure that you cite in your letter as
15 having become applicable through the TCA section 16-15-727
16 on or about June 18th, 2007; is that correct?

17 A. That's the reference I made into my -- I'm
18 not keeping up with you on your numbers, but that's the
19 reference, yes, I made into my letter of December the
20 15th, 2008, because I think there may have been another
21 statute that was done prior to the June date that gave
22 some partial relief, but not full relief.

23 Q. Now, was Mr. Pleau's pending complaint in
24 the Court of the Judiciary any factor at all in your
25 determination to set aside the decision filed on June

1 27th, 2008?

2 MR. MCDONALD: Objection.

3 THE WITNESS: I never set aside a
4 decision.

5 BY MR. MCHALE:

6 Q. What did you do about correcting or
7 amending the final order of June 27th, 2008?

8 A. I gave both sides a copy as formal service
9 on the record.

10 Q. So is it your -- do I understand you to be
11 saying that that order was still a final order as of --

12 A. Yes, sir.

13 Q. As of December 23rd, 2008?

14 A. Yes, sir. You're talking about in the
15 complaint where he made the allegation I set aside? Judge
16 Daniel made that up. It never happened.

17 Q. The order was never set aside?

18 A. No, sir. Judge Daniel made that up.

19 Q. How do you know he made that up?

20 A. Well, it's in this complaint against me,
21 and it did not occur, and there's a tape recording of what
22 did occur. He made it up.

23 Q. So as we sit here today, is it your
24 position that the June 27th, 2008 order is a final order?

25 A. Oh, yes, sir.

1 MR. MCDONALD: Objection, asked and
2 answered.

3 THE WITNESS: Yes, sir, it was a final
4 order. It was a final order at that time. All I did
5 was give formal service on the record because parties
6 said they did not have service.

7 BY MR. MCHALE:

8 Q. So do I understand your testimony to be
9 that you did not use Rule 60 of the Tennessee Rules of
10 Civil Procedure as made applicable to TCA section
11 16-15-727 in this Pleau one case?

12 A. Only for the limited purpose of correcting
13 a clerk's mistake by formally giving the parties on the
14 record a copy of the order.

15 Q. So how did that correct the clerk's
16 mistake?

17 A. Well, if the clerk did not send it to them
18 or the clerk made a mistake in failing to send it to them,
19 now they have it formally from the Court.

20 Q. Would that have started a new and
21 different 10-day period?

22 A. That was a question that was asked on that
23 record on that day, and I said I'm not here to answer
24 that.

25 Q. Did anybody file an appeal of that order

1 based on anything, including but not limited to what
2 transpired at the hearing on December 23rd, 2008?

3 A. Not that I'm aware.

4 Q. Again, forgive me, but so that I'm capable
5 of understanding you, it is your position, as we sit here
6 today, that the final order of June 28th, 2008 in the
7 General Sessions Court previously made an exhibit in this
8 case, was and remains a final order of your court?

9 A. Yes, sir.

10 MR. MCHALE: All right. Now let's take a
11 little bit of a longer break. We've been at this
12 about an hour and 15 minutes. Is that all right?

13 MR. MCDONALD: Fine.

14 MR. MCHALE: Five minutes, if that's okay.

15 (Recess taken.)

16 BY MR. MCHALE:

17 Q. Judge Bell, I'm going to show you another
18 two-page letter purporting to be from you bearing the date
19 of December 31st, 2008 and ask you to identify that as a
20 true and correct copy of a letter you wrote?

21 A. It is, except for the numbers eight and
22 nine in the lower right-hand corner.

23 MR. MCHALE: May we make that the next
24 exhibit?

25 (Whereupon, the respective document was

1 marked Exhibit Number 11.)

2 BY MR. MCHALE:

3 Q. Did your letter of December 31st, 2008
4 accurately represent your position at the time you wrote
5 it, and does it accurately represent your position today?

6 A. And of course it asks that the other
7 letters, which I had previously sent, be included as part
8 of this, and it does, I guess, with the exception of one
9 thing.

10 Q. What's that?

11 A. I had a computer problem in December that
12 affected the time in which it took to get Mr. Pleau's
13 order done.

14 Q. December of what year?

15 A. I would believe that would be December of
16 2008. It is the December immediately prior to the order
17 being done, which --

18 Q. The order of June 27th, 2008?

19 A. Yes.

20 Q. That would make it December of 2007,
21 correct?

22 A. Yes.

23 Q. How long was your computer out of service?

24 A. Gone.

25 Q. For how long?

1 A. It's gone. It was -- I don't know how
2 describe it, but the entire hard drive was fried on it,
3 and so it could not be used.

4 Q. How much time had you spent on the Pleau
5 case prior to that?

6 A. It was particularly bothersome, because I
7 was using the December days where we kind of go into a
8 mode where I have more time, and I had been spending a lot
9 of time on that by doing work, and it was all gone.

10 Q. Did you make any effort to recover your
11 computer?

12 A. Yes, I sent it to Allen's Computer in
13 Newport. They could not do anything, and then we ended up
14 sending it to a computer place in Sevierville, and they
15 could not do anything.

16 Q. Let's go back, then, to late December
17 2008. Were you asked -- do you recall if you were asked
18 by Mr. Fraser if the next hearing involving his client,
19 Merastar, would be a fully de novo hearing?

20 A. I'm sorry. You lost me.

21 Q. Do you recall being asked by Mr. Fraser,
22 attorney for Merastar, on December 23rd, whether or not
23 Mr. Fraser asked you if the next hearing involving this
24 automobile accident would be a de novo hearing?

25 A. I do not recall that being asked on that

1 day; however, we did discuss it in February.

2 Q. Do you recall being asked at the December
3 23rd hearing if there would be any presumption of
4 correctness attached to the determination you had made
5 formal in June of 2008 by the order we've previously
6 exhibited?

7 A. You've lost me. Sorry.

8 Q. Do you recall independently whether or not
9 at the December 23rd hearing Mr. Fraser asked you if the
10 previous ruling of the Court in June of 2008 would have a
11 presumption of correctness in any further hearings?

12 A. I do not recall that being asked there. I
13 do recall questions being asked which I would not answer.

14 Q. All right. Again, as you've told us,
15 would the tape be the best recollection for all of us?

16 A. The tape and the typed transcript, yes.

17 Q. Who has a typed transcript of that
18 December 23rd hearing?

19 A. I do; my attorney does.

20 Q. Would you be willing to make that an
21 exhibit to your testimony? And I'll make an exception to
22 the rule. You may consult with your attorney either now
23 or outside.

24 A. I think we could make you a copy without a
25 problem.

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MR. MCDONALD: I don't have a problem with that.

MR. MCHALE: Let's make Exhibit Number 12 a transcript of the December 23rd, 2008 hearing that Judge Bell, with the acquiescence of counsel, has agreed to make an exhibit to this deposition.

BY MR. MCHALE:

Q. Judge Bell, do you know Tom Testerman?

A. I do.

Q. How long have you known him?

A. Probably since 1990.

Q. Did you all attend any school together?

A. No.

Q. Have you ever had a business relationship with him?

A. No.

Q. Have you ever practiced law with him?

A. Not with him, but against him.

Q. Have you ever been to his home?

A. Once.

Q. Has he ever been to your home?

A. I have never had anything with him just at my home, but there may be things where we did things for the bar association or others that he may have attended.

Q. Have you ever socialized regularly with

1 him outside either of your all's homes?

2 A. No.

3 Q. Do you all belong to any social
4 organizations or civic organizations together?

5 A. The Kiwanis Club he and I both were a
6 member of, but I have not been to the Kiwanis Club since,
7 maybe two or three times since 2003, I guess, 2002.

8 Q. Does he appear in your court, that is,
9 your court being the General Sessions Court over which you
10 preside, as an attorney?

11 A. Yes.

12 Q. Does he appear in all of the various
13 jurisdictions you exercise in that court that you told us
14 about last time?

15 A. I believe he does, but I'm not, I cannot
16 think of anything he has done concerning an order of
17 protection. That doesn't mean he's not. I just can't
18 think of anything at this time.

19 Q. Since when has he been appearing in your
20 court?

21 A. Since the time I was elected.

22 Q. Does he still appear in your court?

23 A. He does.

24 Q. Was he appearing in your court in late
25 2008 and early 2009?

1 A. He has continued to appear in my court. I
2 could not give you any specific dates, but yes, he has
3 continued to appear in my court.

4 Q. Has he ever represented you?

5 A. Yes.

6 Q. When?

7 A. I'm going to exercise my right to remain
8 silent under both the U.S. and Tennessee constitutions and
9 my right under the attorney/client privilege.

10 Q. How many times has he represented you?

11 A. I'm going to exercise my right to remain
12 silent under both the U.S. and Tennessee constitutions and
13 my right under the attorney/client privilege.

14 Q. How many matters has he represented you
15 on?

16 A. I'm going to exercise my right to remain
17 silent under both the U.S. and Tennessee constitutions and
18 my right under the attorney/client privilege.

19 Q. Describe the matters he's represented you
20 on.

21 A. I'm going to exercise my right to remain
22 silent under both the U.S. and Tennessee constitutions and
23 my right under the attorney/client privilege.

24 Q. Has Mr. Testerman represented you in any
25 element related to the Pleau matter?

1 A. I'm going exercise my right to remain
2 silent under both the U.S. and Tennessee constitutions and
3 my right under the attorney/client privilege.

4 Q. Has Mr. Testerman ever represented you
5 before the Court of the Judiciary?

6 A. I'm going to exercise my right to remain
7 silent under both the U.S. and Tennessee constitutions and
8 my right under the attorney/client privilege.

9 Q. If Mr. Testerman was ever your attorney,
10 when did he first become your attorney, for any reason?

11 A. I'm going to exercise my right to remain
12 silent under both the U.S. and Tennessee constitutions and
13 my right under the attorney/client privilege.

14 Q. If Mr. Testerman has ever been your
15 attorney, describe the circumstances in detail, if you
16 will, of how he became your attorney in the Pleau matter.

17 A. I called his office on two occasions. He
18 did not return my call. I saw him in the hallway. I
19 asked him if he had time to speak with me. He said he
20 did. We went into my office and talked.

21 Q. Did you address the Pleau matter?

22 A. I'm going to exercise my right to remain
23 silent under both the U.S. and Tennessee constitutions and
24 my right under the attorney/client privilege.

25 Q. What were the dates of the two phone

1 contacts you attempted to make?

2 A. I'm going to exercise my right to remain
3 silent under both the U.S. and Tennessee constitutions and
4 my right under the attorney/client privilege.

5 Q. What was the date you met him in the
6 courthouse that you've testified about?

7 A. I'm going to exercise my right to remain
8 silent under both the U.S. and Tennessee constitutions and
9 my right under the attorney/client privilege.

10 Q. When you met him at the courthouse, was
11 it an arranged meeting or a chance meeting?

12 A. I'm going to exercise my right to remain
13 silent under both the U.S. and Tennessee constitutions and
14 my right under the attorney/client privilege.

15 Q. Who was present when you met him in the
16 courthouse?

17 A. In my office, no one, other than me and
18 him.

19 Q. Who was present within earshot of the
20 courthouse when you met him prior to going into your
21 office?

22 A. I'm going to exercise my right to remain
23 silent under both the U.S. and Tennessee constitutions and
24 my right under the attorney/client privilege.

25 Q. From what telephone did you attempt to

1 initiate these telephone calls to Mr. Testerman?

2 A. I'm going to exercise my right to remain
3 silent under both the U.S. and Tennessee constitutions and
4 my right under the attorney/client privilege.

5 Q. Prior to the initiation of these telephone
6 calls, did you ever have any contact with Mr. Testerman
7 regarding the Pleau matter?

8 A. I'm going to exercise my right to remain
9 silent under both the U.S. and Tennessee constitutions and
10 my right under the attorney/client privilege.

11 Q. During the meeting in your office, did
12 you ask him about whether or not he could represent you in
13 the Pleau matter?

14 A. I'm going to exercise my right to remain
15 silent under both the U.S. and Tennessee constitutions and
16 my right under the attorney/client privilege.

17 Q. During the contact in your office that
18 you've described, did Mr. Testerman offer to represent you
19 as an attorney?

20 A. I'm going to exercise my right to remain
21 silent under both the U.S. and Tennessee constitutions and
22 my right under the attorney/client privilege.

23 Q. Did you engage him to act as your attorney
24 during the meeting in your office?

25 A. I'm going to exercise my right to remain

1 silent under both the U.S. and Tennessee constitutions and
2 my right under the attorney/client privilege.

3 Q. Did you ask him to do anything on your
4 behalf in any fashion during the meeting in your office?

5 A. I'm going to exercise my right to remain
6 silent under both the U.S. and Tennessee constitutions and
7 my right under the attorney/client privilege.

8 Q. What was the date of the meeting in your
9 office?

10 A. I'm going to exercise my right to remain
11 silent under both the U.S. and Tennessee constitutions and
12 my right under the attorney/client privilege.

13 Q. Did you pay Mr. Testerman a fee to
14 represent you?

15 A. I'm going to exercise my right to remain
16 silent under both the U.S. and Tennessee constitutions and
17 my right under the attorney/client privilege.

18 Q. Did you and Mr. Testerman have any
19 discussions about paying him a fee to represent you?

20 A. I'm going to exercise my right to remain
21 silent under both the U.S. and Tennessee constitutions and
22 my right under the attorney/client privilege.

23 Q. During the meeting in your office, did
24 you engage in any contract, whether a verbal agreement or
25 written contract, with Mr. Testerman for any purpose?

1 A. I'm going to exercise my right to remain
2 silent under both the U.S. and Tennessee constitutions and
3 my right under the attorney/client privilege.

4 Q. After the meeting in your office, did you
5 have any discussions with Mr. Testerman about being your
6 attorney?

7 A. I'm going to exercise my right to remain
8 silent under both the U.S. and Tennessee constitutions and
9 my right under the attorney/client privilege.

10 Q. After the meeting in your office, was
11 there ever a contract, written or otherwise, about
12 Mr. Testerman representing you?

13 A. I'm going to exercise my right to remain
14 silent under both the U.S. and Tennessee constitutions and
15 my right under the attorney/client privilege.

16 Q. After the meeting in your office, did you
17 ever become aware that Mr. Testerman acted as your
18 attorney?

19 A. I'm going to exercise my right to remain
20 silent under both the U.S. and Tennessee constitutions and
21 my right under the attorney/client privilege.

22 Q. After the meeting in your office, did
23 Mr. Testerman ever do anything on your behalf?

24 A. I'm going to exercise my right to remain
25 silent under both the U.S. and Tennessee constitutions and

1 my right under the attorney/client privilege.

2 Q. After the meeting with Mr. Testerman, did
3 you ever pay him a fee for representing you?

4 A. I'm going to exercise my right to remain
5 silent under both the U.S. and Tennessee constitutions and
6 my right under the attorney/client privilege.

7 Q. After the meeting with Mr. Testerman in
8 your office, at any time did you ever generate a memo or a
9 memorandum in any form, audio, video or written
10 documentary in any form, as it is commonly understood,
11 about that meeting?

12 A. I'm going to exercise my right to remain
13 silent under both the U.S. and Tennessee constitutions and
14 my right under the attorney/client privilege.

15 MR. MCDONALD: It would be work product as
16 well.

17 BY MR. MCHALE:

18 Q. Your work product or somebody else's?

19 A. I'm going to exercise --

20 MR. MCDONALD: Collectively the defense's
21 work product.

22 BY MR. MCHALE:

23 Q. Have you ever, Judge Bell, filed a
24 privilege log in this case in any fashion?

25 MR. MCDONALD: The record will speak for

1 itself if there has been or hasn't been.

2 THE WITNESS: I'm not sure what you're
3 asking.

4 BY MR. MCHALE:

5 Q. Have you ever attempted to comply with
6 Rule 26, Tennessee Rules of Civil Procedure, regarding an
7 assertion of privilege in this case at any time?

8 A. We have asserted the attorney/client
9 privilege during the testimony of Mr. Testerman.

10 MR. MCDONALD: As well as in our previous
11 discovery.

12 BY MR. MCHALE:

13 Q. That wasn't quite my question. Have you
14 ever submitted a privilege log under the provisions of
15 Tennessee Code Annotated -- I'm sorry, the Tennessee Rules
16 of Civil Procedure, Rule 26.025 in this case?

17 A. I do not know whether my attorney has or
18 not. I have not.

19 Q. After meeting with Testerman, Mr.
20 Testerman, in your office, did you ever write him a letter
21 regarding the Pleau matter?

22 A. I'm going to exercise my right to remain
23 silent under both the U.S. and Tennessee constitutions and
24 my right under the attorney/client privilege.

25 Q. Did he ever write you a letter?

1 A. I'm going exercise my right to remain
2 silent under both the U.S. and Tennessee constitutions and
3 my right under the attorney/client privilege.

4 Q. During the meeting in your office or at
5 any time, did you have a discussion with Mr. Pleau about
6 him approaching Mr. -- I'm sorry, a discussion with
7 Mr. Testerman about him approaching Mr. Pleau regarding
8 either the Court of the Judiciary complaint or Mr. Pleau's
9 automobile accident case?

10 A. I'm going to exercise my right to remain
11 silent under both the U.S. and Tennessee constitutions and
12 my right under the attorney/client privilege.

13 Q. Is Mr. Testerman still acting as your
14 attorney in any fashion?

15 A. I'm going to exercise my right to remain
16 silent under both the U.S. and Tennessee constitutions and
17 my right under the attorney/client privilege.

18 Q. If Mr. Testerman ever acted as your
19 attorney, when did he stop acting as your attorney?

20 A. I'm going to exercise my right to remain
21 silent under both the U.S. and Tennessee constitutions and
22 my right under the attorney/client privilege.

23 Q. Do you have any information that
24 Mr. Testerman ever spoke of any matters that you discussed
25 with him in your office?

1 MR. MCDONALD: Objection, vague.

2 MR. MCHALE: Read it back, please.

3 (Question read back)

4 MR. MCHALE: Let me try to restate it.

5 BY MR. MCHALE:

6 Q. Do you have any information from any
7 source about whether or not Mr. Testerman ever spoke with
8 any other parties about matters discussed in your office?

9 MR. MCDONALD: Objection, still vague.

10 THE WITNESS: Mr. Testerman gave his
11 deposition, and other than that, I'm exercising my
12 right to remain silent under both the U.S. and
13 Tennessee constitutions and my right under the
14 attorney/client privilege.

15 BY MR. MCHALE:

16 Q. Have you discussed this case with
17 Mr. Testerman at all since the meeting in your office?

18 A. I'm going to exercise my right to remain
19 silent, both under the U.S. and Tennessee constitutions
20 and my right under the attorney/client privilege.

21 Q. Did you and Mr. Testerman, in your mind,
22 reach an agreement, either in your office or at any time
23 thereafter, for him to act as your attorney?

24 A. I'm going to exercise my right to remain
25 silent, both under the U.S. and Tennessee constitutions

1 and my right under the attorney/client privilege.

2 Q. Did you have any e-mail correspondence
3 with Mr. Testerman about his representation of you, if
4 there was indeed one?

5 A. I'm going to exercise my right to remain
6 silent, both under the U.S. and Tennessee constitutions
7 and my right under the attorney/client privilege.

8 Q. If there was an attorney/client
9 arrangement with Mr. Testerman, who was aware of it?

10 A. I'm going to exercise my right to remain
11 silent under both the U.S. and Tennessee constitutions and
12 my right under the attorney/client privilege.

13 Q. Did Mr. Testerman provide you any legal
14 advice in your office or at any time thereafter?

15 A. I'm going to exercise my right to remain
16 silent under both the U.S. and Tennessee constitutions and
17 my right under the attorney/client privilege.

18 Q. Did you ask Mr. Testerman to provide you
19 with any legal advice, either during the meeting in your
20 office or after?

21 A. I'm going to exercise my right to remain
22 silent under both the U.S. and Tennessee constitutions and
23 my right under the attorney/client privilege.

24 Q. Were you seeking legal advice from
25 Mr. Testerman when you met with him in the office?

1 A. I'm going to exercise my right to remain
2 silent under both the U.S. and Tennessee constitutions and
3 my right under the attorney/client privilege.

4 Q. Did you seek legal advice from
5 Mr. Testerman at any time after the meeting in your
6 office?

7 A. I'm going to exercise my right to remain
8 silent under both the U.S. and Tennessee constitutions and
9 my right under the attorney/client privilege.

10 Q. Did you ask Mr. Testerman to keep the
11 contents or any portion of the contents of your meeting
12 with him in the office confidential?

13 A. I'm going to exercise my right to remain
14 silent under both the U.S. and Tennessee constitutions and
15 my right under the attorney/client privilege.

16 Q. Have you made any statements to
17 Mr. Testerman regarding the Pleau case that the
18 communications you made with him were made in the
19 confidence of the attorney/client privilege?

20 A. Can you ask that again, please?

21 Q. Have you made any communications with
22 Mr. Testerman regarding the Pleau matter that were made in
23 the confidence of the attorney/client relationship?

24 A. Yes.

25 Q. What were those?

1 MR. MCDONALD: Objection.

2 THE WITNESS: I'm going to exercise my
3 right to remain silent under both the U.S. and
4 Tennessee constitutions and my right under the
5 attorney/client privilege.

6 BY MR. MCHALE:

7 Q. When have you made communications with
8 Mr. Testerman that were made in the confidence of the
9 attorney/client relationship?

10 MR. MCDONALD: Objection, privileged.

11 THE WITNESS: I'm going to exercise my
12 right to remain silent under both the U.S. and
13 Tennessee constitutions and my right under the
14 attorney/client privilege.

15 BY MR. MCHALE:

16 Q. Were those made with the intention of
17 confidentiality?

18 A. Could you --

19 Q. Were any statements you made during Mr.
20 Testerman's meeting with you in your office made with the
21 intention of confidentiality, in your mind?

22 A. Yes.

23 Q. Were any statements made with
24 Mr. Testerman, after the meeting in your office, during
25 any contact with Mr. Testerman, in person or otherwise,

1 made with the intention of confidence?

2 A. I'm going to exercise my right to remain
3 silent under both the U.S. and Tennessee constitutions and
4 my right under the attorney/client privilege.

5 Q. During or after the meeting in your
6 office, did you ever notify anyone that Mr. Testerman was
7 acting as your attorney?

8 MR. MCDONALD: Objection, privileged.

9 THE WITNESS: I'm going to exercise my
10 right to remain silent under both the U.S. and
11 Tennessee constitutions and my right under the
12 attorney/client privilege.

13 BY MR. MCHALE:

14 Q. After the meeting with Mr. Testerman, did
15 you advise David Pleau specifically that Mr. Testerman was
16 acting as your attorney?

17 A. I'm going to exercise my right to remain
18 silent under both the U.S. and Tennessee constitutions and
19 my right under the attorney/client privilege.

20 Q. Did you ever advise Mr. Pleau at any time
21 that Mr. Testerman was acting as your attorney, prior to
22 your responsive pleadings in this case?

23 A. Could I have the question again, please?

24 Q. Did you ever, after the meeting with
25 Mr. Testerman in your office, at any time advise Mr. David

1 Pleau that Mr. Testerman was acting as your attorney?

2 A. If I understand your question, you're
3 asking me if I had a conversation with Mr. Pleau, telling
4 him that Mr. Testerman was my attorney? Is that what
5 you're asking?

6 Q. It's broader than that, but go ahead and
7 answer that question.

8 A. No.

9 Q. Did you have any contact with Mr. Pleau, a
10 conversation or otherwise, advising him that Mr. Testerman
11 was acting as your attorney?

12 A. The only conversation I had with him was,
13 like I talked about in the previous deposition, where he,
14 or that part of the deposition, where he wanted to talk
15 with me in the hall, and I told him I could not talk with
16 him.

17 Q. Did you tell him anything about
18 Mr. Testerman being your attorney at that point?

19 A. No.

20 Q. Did you ever advise Disciplinary Counsel
21 Daniel or anyone related to the Court of the Judiciary
22 that Mr. Testerman was acting as your attorney, with
23 respect to Mr. Pleau's case?

24 A. I'm sorry?

25 MR. MCDONALD: Before the pleadings?

1 MR. MCHALE: Anytime, yeah, before the
2 pleadings.

3 BY MR. MCHALE:

4 Q. Did you ever advise Disciplinary Counsel
5 Daniel or anyone affiliated with the Court of the
6 Judiciary that Mr. Testerman was acting as your attorney?

7 A. No.

8 Q. Are you aware of whether or not Mr.
9 Testerman contacted David Pleau after the meeting in your
10 office?

11 MR. MCDONALD: Objection.

12 THE WITNESS: I'm going to exercise my
13 right to remain silent under both the U.S. and
14 Tennessee constitutions and my right under the
15 attorney/client privilege.

16 BY MR. MCHALE:

17 Q. Are you aware of whether or not Mr.
18 Testerman contacted anyone else regarding the David Pleau
19 matter after the conversation you had in your office?

20 MR. MCDONALD: Objection.

21 THE WITNESS: I'm going to exercise my
22 right to remain silent under both the U.S. and
23 Tennessee constitutions and my right under the
24 attorney/client privilege.

25 BY MR. MCHALE:

1 Q. Did Mr. Testerman ever refuse to provide
2 legal advice to you?

3 MR. MCDONALD: Objection, privileged.

4 THE WITNESS: I'm going to exercise my
5 right to remain silent under both the U.S. and
6 Tennessee constitutions and my right under the
7 attorney/client privilege.

8 BY MR. MCHALE:

9 Q. Did he ever expressly refuse to represent
10 you in the Pleau matter?

11 MR. MCDONALD: Objection, privileged.

12 THE WITNESS: I'm going to exercise my
13 right to remain silent under both the U.S. and
14 Tennessee constitutions and my right under the
15 attorney/client privilege.

16 BY MR. MCHALE:

17 Q. Did you have communications with Mr.
18 Testerman, either in your office or at any time after
19 that, that were communications pertaining to the Pleau
20 matter where he was acting merely as your friend or your
21 advisor and not as an attorney?

22 A. I'm going to exercise my right to remain
23 silent under both the U.S. and Tennessee constitutions and
24 my right under the attorney/client privilege.

25 Q. At any time did you advise Ms. Coleman,

1 one of the parties in the automobile accident, that Mr.
2 Testerman was acting as your attorney in this matter?

3 A. No.

4 Q. At any time did you advise Merastar or any
5 of its representatives that Mr. Testerman was acting as
6 your attorney pertaining to this matter, being the Pleau
7 matter, in any of its incarnations?

8 A. No.

9 Q. And may we understand going forward that
10 when I say Pleau matter, I mean both Pleau Court of the
11 Judiciary complaint as well as the underlying General
12 Session's action or actions; is that satisfactory with
13 you?

14 A. From this question forward?

15 Q. What about prior questions?

16 A. I don't know what your question is, then.

17 Q. Would any of your answers, to your
18 knowledge, change that you can recall? And I realize I've
19 asked you several questions.

20 A. I don't -- I've tried to be specific,
21 whether it's Pleau one or Pleau two or this complaint, and
22 I can't go back and rethink the question to try to --

23 Q. Sure, I understand that. I guess with
24 respect to Mr. Testerman, would any of your answers
25 change, depending on which Pleau matter was involved?

1 A. I'm going to exercise my right to remain
2 silent under both the U.S. and Tennessee constitutions and
3 my right under the attorney/client privilege.

4 Q. Was Mr. Testerman asked by you to do
5 anything specifically as a result of your meeting or after
6 that?

7 MR. MCDONALD: Objection, privileged.

8 THE WITNESS: I'm going to exercise my
9 right to remain silent under both the U.S. and
10 Tennessee constitutions and my right under the
11 attorney/client privilege.

12 BY MR. MCHALE:

13 Q. Did you have any intention, as a result of
14 that meeting, that Mr. Testerman was going to do anything?

15 A. I'm going to exercise my right to remain
16 silent under both the U.S. and Tennessee constitutions and
17 my right under the attorney/client privilege.

18 Q. What was your objective in meeting with
19 Mr. Testerman in your office?

20 MR. MCDONALD: Objection, privileged.

21 THE WITNESS: I'm going to exercise my
22 right to remain silent under both the U.S. and
23 Tennessee constitutions and my right under the
24 attorney/client privilege.

25 BY MR. MCHALE:

1 Q. What did he ask, if anything, about any
2 duties that he was supposed to perform to you as a result
3 of the meeting in your office or thereafter?

4 MR. MCDONALD: Objection, privileged.

5 THE WITNESS: I'm going to exercise my
6 right to remain silent under both the U.S. and
7 Tennessee constitutions and my right under the
8 attorney/client privilege.

9 BY MR. MCHALE:

10 Q. Did you ever reach an understanding about
11 what he was supposed to do for you, if anything, as a
12 result of the meeting in your office or after?

13 A. I'm going to exercise my right to remain
14 silent under both the U.S. and Tennessee constitutions and
15 my right under the attorney/client privilege.

16 Q. Do you believe there was any
17 misunderstanding about what you and Mr. Testerman
18 discussed, as between you and Mr. Testerman, as a result
19 of the meeting at your office at any later time?

20 MR. MCDONALD: Objection, privileged.

21 THE WITNESS: I'm going to exercise my
22 right to remain silent under both the U.S. and
23 Tennessee constitutions and my right under the
24 attorney/client privilege.

25 BY MR. MCHALE:

1 Q. Has any professional relationship you had
2 with Mr. Testerman at any time been discussed or disclosed
3 to anyone else, to your knowledge?

4 A. I'm going to exercise my right to remain
5 silent under both the U.S. and Tennessee constitutions and
6 my right under the attorney/client privilege, except for
7 what has already been taken as a deposition in this
8 matter.

9 Q. Has -- do you mean all depositions?

10 A. Yes, sir.

11 Q. Including Testerman --

12 A. Yes.

13 Q. -- Pleau, LaRue and TBI, sir? Do you mean
14 all of those?

15 A. They are what they are.

16 Q. Well, I know, but are they what they are
17 in specific response to my question?

18 A. No. No, I'm exercising my right to remain
19 silent under both the U.S. and Tennessee constitutions and
20 the attorney/client privilege. However, I do acknowledge
21 that depositions have been made and things have been said,
22 but I am not commenting on that. I am exercising my right
23 to remain silent.

24 Q. Have you made any announcements to any
25 parties appearing in your court involved in a case where

1 Mr. Testerman was representing a party of any
2 attorney/client relationship you had with Mr. Testerman?

3 A. I'm going to exercise my right to remain
4 silent under both the U.S. and Tennessee constitutions and
5 my right under the attorney/client privilege.

6 Q. Have you obtained a waiver of any conflict
7 from any parties in any situations where Mr. Testerman has
8 appeared in your court?

9 A. I'm going to exercise my right to remain
10 silent under both the U.S. and Tennessee constitutions and
11 my right under the attorney/client privilege.

12 Q. Have you at any time spoken with the
13 Tennessee Bureau of Investigation or any of its
14 representatives directly concerning this matter, that is,
15 the Pleau matter in any of its incarnations --

16 A. Okay.

17 Q. -- with respect to the Pleau matter or
18 matters? Including the General Sessions actions and the
19 Court of the Judiciary complaint, have you at any time
20 spoken with the Tennessee Bureau of Investigation or any
21 of its representatives?

22 A. I'm going to exercise my right to remain
23 silent under both the U.S. and Tennessee constitutions and
24 my right under the attorney/client privilege.

25 Q. Have you at any time directly spoken with

1 anybody at the TBI regarding the Pleau matter?

2 A. No.

3 Q. Have you directly, yourself, spoken with
4 anyone from the district attorney's office that governs or
5 covers Cocke County regarding the Pleau matter?

6 A. No.

7 Q. Have you spoken at any time with anyone
8 from the Board of Professional Responsibility or have you
9 been in any communication with them regarding anything to
10 do with any of the Pleau matters?

11 A. Only as what has transpired in taking
12 depositions.

13 Q. And can you be more specific about who you
14 spoke with, when you spoke with them and what the nature
15 of --

16 A. I did not speak with anyone. There was a
17 representative here in the depositions, and the
18 depositions were taken.

19 Q. Other than that, have you had any contact
20 with anyone from the Board of Professional Responsibility
21 regarding the Pleau matter?

22 A. No.

23 Q. Have you spoken with the FBI or any of its
24 representatives concerning the Pleau matter?

25 A. The FBI, no. The representatives, I do

1 not know what you mean by that.

2 Q. Anybody that purported to identify
3 themselves as being affiliated with the Federal Bureau of
4 Investigation.

5 A. No.

6 Q. Have you spoken with anybody from the
7 United States Attorney's Office for the Eastern District
8 of Tennessee regarding anything regarding the Pleau
9 matter?

10 A. No.

11 Q. Have you spoken with any law enforcement
12 locally, that is, locally in Cocke County, Tennessee,
13 about anything regarding the Pleau matter?

14 A. I would have to say yes, I have.

15 Q. Who have you spoken with about the Pleau
16 matter?

17 A. Several officers have asked me about the
18 complaint that has been filed against me, and I have told
19 them that I have done nothing wrong.

20 Q. Any other conversations that you can
21 recall?

22 A. None, other than just in a generic nature
23 about the complaint that was filed by Mr. Daniel and
24 concerning information that was relayed to me through
25 Cathy Holt and her husband.

1 Q. Who is Cathy Holt's husband?

2 A. I'm sorry, not -- yes, it is Cathy Holt.
3 He's a police officer with the city. His last name is
4 Holt, James Holt.

5 Q. What does he know about this case that he
6 related to you?

7 A. Similar type things that his wife has
8 talked with me about concerning matters prior to and even
9 after the filing of the complaint.

10 Q. What were the terms of your engagement of
11 Mr. Testerman as an attorney, if he was so engaged?

12 A. He was so engaged, and as to the rest of
13 the question, I am exercising my right to remain silent
14 under both the U.S. and Tennessee constitutions and my
15 right under the attorney/client privilege.

16 Q. Are you aware that Mr. Testerman talked
17 about you directly with Mr. Pleau on at least one
18 occasion?

19 MR. MCDONALD: Objection, privileged.

20 THE WITNESS: I'm going to exercise my
21 right to remain silent under both the U.S. and
22 Tennessee constitutions and my right under the
23 attorney/client privilege.

24 BY MR. MCHALE:

25 Q. Did Mr. Testerman at any time provide you

1 information about any contacts he had with David Pleau?

2 MR. MCDONALD: Objection, privileged.

3 THE WITNESS: I'm going to exercise my
4 right to remain silent under both the U.S. and
5 Tennessee constitutions and my right under the
6 attorney/client privilege.

7 BY MR. MCHALE:

8 Q. Do you understand I'm not asking you what
9 he said? I'm simply asking you did he communicate with
10 you at any time regarding any conversations he had with
11 David Pleau?

12 A. And I'm exercising my right to remain
13 silent, as to if there were and how many and the content
14 of any discussions we may have had, under the U.S. and
15 Tennessee constitutions and under my right as the
16 attorney/client privilege.

17 Q. Did you ask Mr. Testerman to undertake
18 representation of you, at least in part, for the purpose
19 of committing a crime?

20 A. I'm going to exercise my right to remain
21 silent under both the U.S. and Tennessee constitutions and
22 my right under the attorney/client privilege.

23 Q. Did you ask Mr. Testerman at any time to
24 act as your attorney for the purpose of violating any
25 rules of the Code of Judicial Conduct?

1 A. I'm going to exercise my right to remain
2 silent under both the U.S. and Tennessee constitutions and
3 my right under the attorney/client privilege.

4 Q. Did you ask Mr. Testerman at any time to
5 commit a fraud upon any court, including your own, during
6 his representation of you?

7 A. I'm going to exercise my right to remain
8 silent under both the U.S. and Tennessee constitutions and
9 my right under the attorney/client privilege.

10 Q. Did you know at any time that if Mr.
11 Testerman approached Mr. Pleau on your behalf, he would be
12 violating various ethics provisions applicable to both you
13 and to him or to either of you or to him?

14 A. I'm going to exercise my right to remain
15 silent under both the U.S. and Tennessee constitutions and
16 my right under the attorney/client privilege.

17 Q. Did you know at any time that Mr.
18 Testerman, if he approached Mr. Pleau on your behalf, with
19 your knowledge and acquiescence, would potentially be
20 violating state law in any fashion?

21 MR. MCDONALD: I'm going to object. Judge
22 Ash has already ruled that anything regarding
23 whatever classes, courses or any other education that
24 he may have concerning judicial ethics is not
25 relevant to this proceeding, and he doesn't have to

1 answer that.

2 MR. MCHALE: That wasn't the question I
3 was asking.

4 BY MR. MCHALE:

5 Q. Go ahead and answer the question, please

6 --

7 A. I'm exercising --

8 Q. -- unless your attorney instructs you not
9 to.

10 A. I'm exercising my right to remain silent
11 under both the U.S. and Tennessee constitutions and my
12 right under the attorney/client privilege.

13 Q. If there's a trial in this case, do you
14 intend to continue to take the position of asserting your
15 constitutional rights and your alleged attorney/client
16 privilege at that trial?

17 MR. MCDONALD: Objection. Don't answer
18 that. That's privileged.

19 BY MR. MCHALE:

20 Q. On the advise of your attorney, are you
21 not going to answer that question?

22 MR. MCDONALD: That's our trial strategy,
23 and that is privileged.

24 THE WITNESS: And I'm not going to answer
25 it, based on his instruction not to answer it.

1 MR. MCHALE: Let's take a brief respite,
2 and then we can possibly move on to another topic.
3 Is that all right?

4 MR. MCDONALD: Another five?

5 MR. MCHALE: Yeah.

6 (Recess taken.)

7 BY MR. MCHALE:

8 Q. Judge Bell, a couple more questions on
9 this issue. At any time did you instruct Tom Testerman to
10 maintain any confidences resulting from your conversation
11 with him?

12 MR. MCDONALD: Objection, privileged.

13 THE WITNESS: I wish to exercise my right
14 to remain silent under both the U.S. and Tennessee
15 constitutions and my right under the attorney/client
16 privilege.

17 BY MR. MCHALE:

18 Q. Are you aware that Mr. Testerman, after
19 the meeting in your office, spoke directly concerning you
20 with David Pleau?

21 A. I'm going to exercise my right to remain
22 silent under both the U.S. and Tennessee constitutions and
23 my right under the attorney/client privilege.

24 Q. Are you aware that after the meeting in
25 your office, Mr. Testerman spoke directly with James

1 LaRue, an investigator for the Court of the Judiciary?

2 A. I'm going to exercise my right to remain
3 silent under both the U.S. and Tennessee constitutions and
4 my right under the attorney/client privilege; however, I
5 have sat through depositions. I have heard what was said
6 in depositions.

7 Q. Other than the depositions that have been
8 said, did you become aware, at or near the time or shortly
9 after the time, of any such conversation Mr. Testerman has
10 testified about that he had with Mr. LaRue that Mr.
11 Testerman had in fact had that conversation?

12 A. I'm going to exercise my right to remain
13 silent under both the U.S. and Tennessee constitutions and
14 my right under the attorney/client privilege.

15 Q. Are you aware that Mr. Testerman spoke
16 with Disciplinary Counsel J.S. Daniel about you at any
17 time after the meeting in your office with Mr. Testerman,
18 other than what you've heard in depositions?

19 A. I'm going to exercise my right to remain
20 silent under both the U.S. and Tennessee constitutions and
21 my right under attorney/client privilege.

22 Q. What was your response to learning, if you
23 did so learn before the depositions, that Mr. Testerman
24 had spoken about you with either David Pleau, James LaRue
25 or J.S. Daniel?

1 MR. MCDONALD: Objection, privileged.

2 THE WITNESS: I'm going to exercise my
3 right to remain silent under both the U.S. and
4 Tennessee constitutions and my right under the
5 attorney/client privilege.

6 BY MR. MCHALE:

7 Q. Other than what you heard at depositions
8 in this case, are you aware that Mr. Testerman talked
9 about you with TBI representatives Trey King and Scott
10 Lott?

11 A. I'm going to exercise my right to remain
12 silent under both the U.S. and Tennessee constitutions and
13 my right under attorney/client privilege, except for I
14 have sat here through depositions, and I've heard what has
15 been said in depositions.

16 Q. Other than depositions, are you aware that
17 Mr. Testerman talked about you, or if he talked about you,
18 regarding the Pleau matter with anyone else?

19 A. I'm going to exercise my right to remain
20 silent under both the U.S. and Tennessee constitutions and
21 my right under the attorney/client privilege.

22 Q. Let's move on to the next setting of any
23 case involving Mr. Pleau and Mr. Merastar. We've heard
24 testimony that a setting was made in February, and if I
25 recall your earlier testimony, that February 2009 hearing

1 was set during the December 23rd, 2008 proceeding; is that
2 correct?

3 A. Yes.

4 Q. We've also heard testimony, if I recall
5 correctly, that at the February hearing there was some
6 problem with subpoenas in that witnesses were on the face
7 of the subpoena subpoenaed for the wrong day, which was a
8 Saturday, when in fact the trial was set on a Friday, if I
9 recall correctly; is that correct?

10 A. Yes.

11 Q. And upon learning of that information,
12 what did you do on the February hearing?

13 A. I asked the plaintiff if he wanted a
14 continuance or he wanted to go forward. If he wanted to
15 go forward, we would go forward. If he requested a
16 continuance, then we would continue it, because he made a
17 mistake in subpoenaing the witnesses.

18 Q. What was his response to that?

19 A. He tried not answering it for some time,
20 and I just simply had to say you have to decide, do you
21 want to go forward today or do you want a continuance?
22 Which do you want? And he said that he would prefer
23 having the continuance, and then it was continued.

24 Q. Did Mr. Fraser object to that?

25 A. No, he was in agreement to it.

1 Q. Was there a tape or a transcript made of
2 that meeting?

3 A. Both, and it's not a meeting. It's a
4 court hearing, both.

5 Q. I'm sorry. Do you have a copy of that
6 transcript?

7 A. I do, but I do not have one with me.

8 MR. MCHALE: Would you agree to make as
9 the next exhibit, to be late filed, a written
10 transcript of the February 2009 hearing?

11 THE WITNESS: And I should say it this
12 way. I do have that. I have not taken it and
13 listened to the tape to see if they're exactly
14 correct, but I do have it, yes.

15 BY MR. MCHALE:

16 Q. Who made the transcript?

17 A. Elaine Kelly, court reporter, and I have
18 no reason to think that it might be incorrect. All I'm
19 saying is I've not listened to the tape and looked at the
20 words and make sure it's correct.

21 Q. Would you prefer that we attempt to get
22 that directly from her?

23 A. No. No, that's no problem.

24 MR. MCHALE: So what number would that be?

25 THE COURT REPORTER: 13.

1 MR. MCHALE: Counsel, is that
2 satisfactory?

3 MR. MCDONALD: That's fine. We'll get you
4 that.

5 BY MR. MCHALE:

6 Q. My helper has advised me that I missed a
7 very basic question. Was Ms. Coleman present at the
8 February hearing?

9 A. Yes.

10 Q. Was she represented?

11 A. No.

12 Q. Did she take a position about the
13 continuance, to your recollection?

14 A. I do not recall. I'm sorry, I don't. I
15 have not looked at that.

16 Q. And that's why I asked, based on your
17 recollection?

18 A. I have not -- actually I've not looked at
19 either of those since they've been transcribed because
20 they were, of how soon they were transcribed, and I just
21 sent them on to my attorney.

22 Q. The trial, as we've learned, was then
23 moved to April of 2009; is that your recollection?

24 A. I believe that's correct.

25 Q. The trial was held, and there was a

1 separate court file as to that trial; is that correct?

2 A. That's correct.

3 Q. And there was also a transcript made of
4 that trial which we've been provided by Merastar's
5 attorney; is that your understanding?

6 A. My understanding there is. I have seen
7 it. I have not looked at it.

8 Q. Do you have any recollection -- of course
9 that makes this question difficult. Do you have any
10 recollection of anything independent of what the
11 transcript might show?

12 A. I don't know what the transcript might
13 show. But there is -- the court reporter who was there
14 who took it, there is the clerk who tape recorded it, and
15 then my understanding is he has had a transcript typed,
16 and so there are those three different --

17 Q. And that's Mr. Fraser, when you say "he?"

18 A. I think it's Faser, but yes, I think --
19 well, no, I don't --

20 Q. Actually it was his assistant that typed
21 it, Mr. --

22 A. Yeah, I was going to say it was --
23 actually it was Mr. Rust, who was there the first hearing
24 that I thought was --

25 Q. That's correct. Thank you. Did you make

1 findings of fact in that case?

2 A. I did.

3 Q. Did you make conclusions of law in that
4 case?

5 A. I guess by nature you would have to say
6 yes.

7 Q. Did you generate an order in that case?

8 A. I did.

9 Q. Did you -- how long did it take you to
10 generate the order in that case?

11 A. I would guess a week. I'm not sure.

12 MR. MCDONALD: Can you refer him to the
13 order so --

14 MR. MCHALE: I was about to do that.

15 BY MR. MCHALE:

16 Q. Judge Bell, I'm going to provide you what
17 purports to be a copy of an order bearing the date of
18 April 27th, 2009. And first of all, let me ask you if my
19 representation is accurate?

20 A. What representation?

21 MR. MCDONALD: What representation is
22 that?

23 MR. MCHALE: If that's a true and exact
24 copy of the order that was signed by him on April
25 27th, 2009.

1 THE WITNESS: Yes.

2 BY MR. MCHALE:

3 Q. Why did you hand me a piece back?

4 A. Because you gave me an extra one.

5 Q. Okay. I'm sorry. You know, I have to ask
6 you this, and I think it's relevant, but I'm certain it
7 will be objected to. By this time did you not instruct
8 the clerk to put the date on the certificate of service,
9 given what you had learned from the Pleau matter going
10 back to the previous June?

11 MR. MCDONALD: Objection.

12 THE WITNESS: No, I did not instruct her
13 to put a date on it.

14 BY MR. MCHALE:

15 Q. Is that order accurate?

16 A. I believe so, yes, except for the fax
17 portions that's on the top.

18 MR. MCHALE: May we make that, then, the
19 next numbered exhibit?

20 (Whereupon, the respective document was
21 marked Exhibit Number 14.)

22 BY MR. MCHALE:

23 Q. How did you determine the damages?

24 A. Based on, I believe, the testimony that
25 was presented.

1 Q. You had previously determined damages in
2 this regarding this accident; is that correct?

3 A. Yes.

4 Q. Did you make determinations or did you
5 believe you were making determinations on comparative
6 fault with respect to this accident?

7 A. In this second order?

8 Q. Yes, sir.

9 A. Yes.

10 Q. It appears as though you found fault to be
11 100 percent that of Ms. Coleman; is that correct?

12 A. Yes.

13 Q. I want to ask you a few things about your
14 answers, or more specifically, your amended answers to the
15 formal charges. And you might want to have a copy of that
16 put in front of you, and I don't have an extra one.

17 MR. MCDONALD: I don't have a copy either.
18 Let's take a short break, and I'll make a couple of
19 copies of those.

20 MR. MCHALE: It's actually -- okay, that's
21 fine. We're not going to be on this very long, but
22 go ahead if you want to.

23 MR. MCDONALD: Well, that or you can show
24 him your copy.

25 MR. MCHALE: Well, my copy has got some

1 writing on it, but let me ask him -- if you need to
2 make a copy, that's fine. All right?

3 MR. MCDONALD: Okay. Go ahead.

4 BY MR. MCHALE:

5 Q. Judge Bell, in your amended answer,
6 there's a reference in the footnote to -- footnote one on
7 page -- not numbered one, but in the cover page. It says
8 previously been advised -- and I'm not reading precisely,
9 but previously advised that the TBI had become involved.
10 Do you see that language that I've underlined in red?

11 A. Yes.

12 Q. Is that exclusively and only from the TBI
13 testimony that you've heard, or is that from some other
14 source?

15 MR. MCDONALD: Objection. That answer was
16 prepared by counsel, and it's not necessarily based
17 upon the knowledge of Judge Bell, so I'll object.

18 THE WITNESS: And I would say that the
19 information that I had about that was under the
20 attorney/client privilege.

21 MR. MCHALE: Okay.

22 THE WITNESS: And I should say I'm not
23 answering it because of the attorney/client
24 privilege.

25 MR. MCHALE: Sure.

1 BY MR. MCHALE:

2 Q. I'm going to ask you to look at questions
3 10 and 11 -- I'm sorry, answer, paragraphs 10 and 11 on
4 page three of your amended answer.

5 A. Okay.

6 Q. Both of those refer to conversations that
7 Mr. Testerman is alleged to have had and whether or not
8 you had personal knowledge; is that a fair
9 characterization?

10 MR. MCDONALD: Objection. The answer
11 speaks for itself. The words are written right there
12 on the page.

13 BY MR. MCHALE:

14 Q. Did you have any personal knowledge of
15 conversations that Mr. Testerman had with David Pleau?

16 MR. MCDONALD: Objection. I'm not sure
17 what you're asking him.

18 MR. MCHALE: I'm asking him did you have
19 any personal knowledge of conversations Tom Testerman
20 had with David Pleau, as set forth in paragraph 10 of
21 your answer?

22 MR. MCDONALD: Judge Bell was not in the
23 room, according to all the testimony. Nobody has
24 testified that Judge Bell was a party of any of those
25 conversations, and therefore he couldn't have

1 personal knowledge. And to the extent that you're
2 going beyond that, we object, based upon the
3 attorney/client privilege and the Fifth Amendment.

4 BY MR. MCHALE:

5 Q. Do you have any personal knowledge from
6 any source, including Mr. Testerman -- let me just ask it
7 this way. Do you have any personal knowledge from Mr.
8 Testerman about any conversation that he had with David
9 Pleau as set forth in paragraph one?

10 MR. MCDONALD: Objection, privileged.

11 THE WITNESS: Other than as stated in that
12 paragraph 10, I exercise my right to remain silent
13 under both the U.S. and Tennessee constitutions and
14 my right under the attorney/client privilege.

15 BY MR. MCHALE:

16 Q. Similarly, do you have, with respect to
17 paragraph 11 of your amended answer, any personal
18 knowledge from any source, well, from Mr. Testerman, about
19 any conversations he had with any representatives of the
20 Court of the Judiciary?

21 MR. MCDONALD: Same objection.

22 THE WITNESS: Let me go back to your last
23 question first and say other than what has been
24 testified to in depositions. And then as to your
25 last question, other than what it says there and

1 other than what I have heard in depositions, I
2 exercise my right to remain silent under both the
3 U.S. and Tennessee constitutions and my right under
4 the attorney/client privilege.

5 BY MR. MCHALE:

6 Q. In your answer, paragraph 21, you assert
7 as an affirmative defense that disciplinary counsel is
8 estopped from charging you with alleged judicial offenses
9 for which you merely followed or adhered to Tennessee law,
10 including case law, statutory law, rules, regulations and
11 judicial ethics opinions as well as the instructions and
12 suggestions of representatives with the Court of the
13 Judiciary disciplinary office. You've told us earlier
14 about representations that you say D.C., Disciplinary
15 Counsel J.S. Daniel made to you about possible
16 implementation of Rule 60. Is there any other
17 instructions and suggestions of any representatives of the
18 Court of the Judiciary that estopped them from making
19 charges against you, other than that representation about
20 Rule 60, about which we've heard testimony?

21 MR. MCDONALD: Again, that was prepared by
22 counsel, but you can answer.

23 THE WITNESS: That is all I can think of
24 at this time.

25 BY MR. MCHALE:

1 Q. Is there any -- what other basis do you
2 have for claiming that disciplinary counsel has charged
3 you with judicial offenses for which you, quote, "merely
4 followed or adhered to Tennessee law," unquote?

5 MR. MCDONALD: Could you repeat the
6 question?

7 (Last question read)

8 MR. MCDONALD: I'll object. It's vague.

9 THE WITNESS: The only thing I can think
10 of at this time is where Judge Daniel asked me to
11 look at Rule 60 and to see basically what I could do
12 under Rule 60. That's all I can think of at this
13 time.

14 BY MR. MCHALE:

15 Q. You allege as an affirmative defense that
16 all formal charges should be dismissed to the extent those
17 charges are the, quote, "selective prosecution of actions
18 or inactions by Judge Bell that are consistent with the
19 conduct of other judges in Tennessee who have not been
20 investigated or charged by disciplinary counsel."

21 A. Could I see that?

22 Q. Sure. As a matter of fact, if you look
23 carefully, you can even see the next question.

24 A. (Witness examines document.)

25 Q. Go ahead. Is that language correct, as I

1 stated it, in paragraph 22, beginning at page four, of
2 your amended answer?

3 A. I think it is what it is, and I don't
4 recall how you read it. That's the reason I wanted to
5 re-look at it. But what that has to do with is this: I
6 submitted in my last submission to Judge Daniel an exhibit
7 that contained a large number of cases by the Court of
8 Appeals who used more time than I did to decide a case and
9 cases from the Tennessee Supreme Court that used more time
10 than I did on this case. And I do not think it's fair
11 that I get prosecuted on one, and then when I am within
12 time frames which the Court of Appeals and the Supreme
13 Court do their orders.

14 Q. Is it your testimony that the nature and
15 obligations of a General Sessions Court, yours or any
16 other county, is comparable to what a Court of Appeals
17 does or a Supreme Court does?

18 A. I think all judges have the same
19 obligations to the law and to the rules and to the code.

20 Q. Do you have any other evidence of
21 selective prosecution?

22 A. The only other thing is that this was
23 pending at the time of the other matter but was held back
24 by the Court of the Judiciary, specifically disciplinary
25 counsel, until after that one was done and then brought

1 this up.

2 Q. Well, you were actually aware of the Pleau
3 complaint before the Metcalf trial, correct?

4 A. Yes.

5 Q. And the other, some other allegations
6 about conduct made in the formal complaint in this case
7 did not occur temporally, t-e-m-p-o-r-a-l-l-y, until after
8 the Metcalf case had been resolved; is that correct?

9 A. I'm not sure of what you're asking me.
10 I'm sorry.

11 Q. Weren't there other allegations against
12 you in this formal complaint that related to events that
13 occurred after the Metcalf case had been resolved?

14 MR. MCDONALD: I'm going to object. The
15 timeline is going to speak for itself. You can
16 answer.

17 THE WITNESS: I think there are
18 allegations that were made, yes.

19 BY MR. MCHALE:

20 Q. You further allege, on page five, that
21 formal charges should be dismissed based upon information,
22 quote, "wrongfully obtained by disciplinary counsel or
23 representatives with the Court of the Judiciary." Do you
24 see that language?

25 A. Yes.

1 Q. What evidence was wrongfully obtained by
2 the disciplinary counsel or representatives of the Court
3 of the Judiciary?

4 MR. MCDONALD: Again, I'm going to object
5 to that question, and those affirmative defenses were
6 prepared by counsel, but you can answer to the extent
7 you can.

8 THE WITNESS: In listening to the
9 depositions by Mr. Testerman, he indicated that in
10 his deposition -- they speak for itself -- that
11 Mr. Daniel misrepresented himself to him as to his
12 client and had a bidding, and Mr. Testerman testified
13 that he gave attorney/client privilege information to
14 Mr. Daniel because he was afraid of him.

15 BY MR. MCHALE:

16 Q. Did Mr. Testerman testify before this
17 answer was submitted on December 3rd, 2009?

18 A. No, he did not.

19 Q. So this information was not, that you just
20 talked about regarding Mr. Testerman's deposition, was not
21 known to you before December 3rd, 2009; is that correct?

22 MR. MCDONALD: Objection. Again, that was
23 privileged conversations prepared by counsel, and he
24 may or may not know what evidence was available to
25 whom at that time. You can answer if you want to.

1 THE WITNESS: I do not know who my
2 attorney may have talked with or when he may have
3 talked with them.

4 MR. MCDONALD: Or the good faith basis
5 that we may have had pursuant to that.

6 BY MR. MCHALE:

7 Q. Is there any other information wrongfully
8 obtained by disciplinary counsel to support the
9 affirmative defense item number 23 in the answer?

10 MR. MCDONALD: Objection. It was prepared
11 by counsel. He may or may not be aware of those
12 things that went into the preparation of that answer.

13 THE WITNESS: Not that I'm aware of at
14 this time.

15 BY MR. MCHALE:

16 Q. Do you know if Mr. Testerman ever
17 represented to James LaRue or J.S. Daniel that he was your
18 attorney and conversations were privileged?

19 A. I do not know. I was not there.

20 Q. Do you know if Mr. Testerman ever
21 represented to a TBI agent that he was your attorney and
22 any conversations he had had with you were privileged?

23 A. Other than what has been told at
24 deposition, I have no information on either of those two
25 questions.

1 Q. Do you have any information that Mr.
2 Testerman at any time represented to Mr. Pleau that he
3 represented you and could not speak to matters concerning
4 you?

5 A. I'm going exercise my right to remain
6 silent under both the U.S. and Tennessee constitutions and
7 under the attorney/client privilege.

8 Q. Did you ever speak about a disciplinary
9 case involving a General Sessions judge, Ronald Darby,
10 with Judge Darby?

11 MR. MCDONALD: Objection, relevance. What
12 could that possibly have to do with anything?

13 THE WITNESS: Could you tell me who Judge
14 Darby is? I'm sorry.

15 MR. MCHALE: He was the General Sessions
16 judge in Benton County, Tennessee.

17 THE WITNESS: What's the name?

18 MR. MCHALE: Ronald Darby, D-a-r-b-y.

19 THE WITNESS: I don't have any
20 recollection at this time on that one way or the
21 other.

22 BY MR. MCHALE:

23 Q. Does anyone else whose name has not been
24 mentioned, to your recollection, have any knowledge of any
25 facts pertaining to the Pleau complaint against you?

1 MR. MCDONALD: Objection, privileged. You
2 can answer to the extent that that information may or
3 did not originate from counsel.

4 THE WITNESS: Other than what has, names
5 and discussions of positions and things that have
6 been done in depositions that have been done thus
7 far, I'm really not aware of anyone other than those
8 that have been named or discussed. That's not to
9 mean there's not, but --

10 BY MR. MCHALE:

11 Q. Did you speak with any members of the
12 media, print, television, radio or other media, on-line,
13 any other form of media, directly regarding this case at
14 any time?

15 A. No.

16 Q. At all times since September, that is, the
17 first General Sessions hearing of 2007 involving David
18 Pleau and Merastar -- well, that is the month of that
19 hearing -- have you at all times followed canon one and
20 upheld the integrity and independence of the Judiciary
21 factually, in your mind?

22 A. Could I see canon one?

23 Q. I'm going to hand you -- do you have that
24 with you, cannon one?

25 MR. DANIEL: No, I don't think so.

1 MR. MCHALE: May we borrow your rules of
2 procedure? Well, that's not yours. You've got to
3 ask.

4 MR. MCDONALD: Of course. It's the 2007
5 edition. I don't know if they've changed it or not.
6 But I'm going to object to the extent that you're
7 going to ask about any matters aside from the Pleau
8 matter collectively --

9 MR. MCHALE: That's fine. When I ask a
10 question, I'll couch it in those terms, to limit it
11 to the Pleau matter, unless Judge Bell wants to admit
12 to some violations of other things that we don't
13 know about, but I don't think that's what you mean by
14 that. You want to restrict it to the Pleau matter,
15 correct?

16 MR. MCDONALD: Of course.

17 BY MR. MCHALE:

18 Q. Your attorney has provided us with his
19 2007 version of the Supreme Court rules, and I want to ask
20 you, pursuant to Rule 10, Supreme Court rules, which deals
21 with the code of judicial conduct. And I am not asking
22 you, sir, for anything that doesn't have to do with the
23 David Pleau Court of the Judiciary complaint or the David
24 Pleau General Sessions lawsuits and anything directly
25 associated with the Pleau matter, nor am I asking you,

1 sir, for any legal opinions here today. Is that predicate
2 understood, first of all?

3 A. Okay. Let's try it again.

4 Q. I'm not asking you about anything --

5 A. No legal opinions.

6 Q. All right. Let's start with the second
7 one. I'm not asking you about at any point to give a
8 legal opinion as to the application of any of the
9 following canons and their application, all right? I'm
10 just going to be asking you factually.

11 A. Okay.

12 Q. Similarly, I am restricting the inquiry to
13 anything, and exclusively to anything that has to do with
14 David Pleau's Court of the Judiciary complaint and the
15 matters incident to that or any of David Pleau's two
16 General Sessions actions that are part and parcel, I
17 submit, to what we've been talking about. Satisfactory to
18 you?

19 A. Okay.

20 Q. Now, my first question to you is,
21 directing your attention to canon one, at all times do you
22 believe factually you have upheld the integrity and
23 independence of the judiciary?

24 A. Yes.

25 Q. At all times do you believe that you have

1 factually subscribed and followed and adhered to canon
2 two, "A Judge shall avoid impropriety and the appearance
3 of impropriety in all of the judge's activities?"

4 A. I do not believe I have violated that
5 section.

6 Q. Factually, do you believe you at all times
7 have followed canon three in that "A Judge shall perform
8 the duties of judicial office impartially and diligently?"

9 A. I do not believe I have violated that
10 canon.

11 Q. At all times do you believe factually you
12 have complied with canon 3(b), subsection seven, "A Judge
13 shall not initiate, permit or consider ex parte
14 communications or consider other communications made to
15 the judge outside the presence of the parties concerning a
16 pending or impending proceeding?"

17 A. I'm going to exercise my right to remain
18 silent under both the U.S. and Tennessee constitutions and
19 my right under the attorney/client privilege.

20 Q. Now I'm going to ask you if you at any
21 time factually have committed an act that constitutes an
22 unauthorized exercise of official power.

23 A. Okay. Which canon is that?

24 Q. That's not a canon. I'm sorry. I'm off
25 the canons for now.

1 A. I'm going to exercise my right to remain
2 silent under both the U.S. and Tennessee constitutions and
3 my right under the attorney/client privilege.

4 MR. MCHALE: Let's take a brief break, and
5 we may be headed for the homestretch.

6 (Recess taken.)

7 BY MR. MCHALE:

8 Q. Judge Bell, let me ask you to open back up
9 the rules of, the Supreme Court Rule 10, canons of
10 judicial conduct. Let me direct your attention and ask
11 you to look at canon 3B(8).

12 MR. MCDONALD: Well, I'm going to object.
13 Formal charges only reflect that he is being cited
14 under 3B(7). Well, let me read 3B(8) if we're going
15 beyond formal charges. Okay.

16 BY MR. MCHALE:

17 Q. Judge Bell, let us know when you've had an
18 opportunity to review that.

19 A. Okay.

20 Q. Again, not asking for a legal opinion, and
21 again, restricting ourselves only to the David Pleau
22 lawsuits or Court of the Judiciary proceedings, do you
23 believe at all times that you have disposed of all
24 judicial matters promptly, efficiently and fairly?

25 MR. MCDONALD: I'm going to object to the

1 extent that matters promptly, efficiently and fairly
2 would likely require a legal interpretation of those
3 words. I don't know how Judge Bell could answer
4 those questions or how any individual could answer
5 such a question without invoking a legal
6 interpretation of those words and their meanings.

7 BY MR. MCHALE:

8 Q. Go ahead and answer, please, subject to
9 the petitions we set forth.

10 A. I do not believe I have violated canon
11 3B(8).

12 MR. MCHALE: That's all the questions I
13 have.

14 MR. MCDONALD: We'll read.

15 THE WITNESS: So that's all the questions
16 you have?

17 MR. MCHALE: Yes, sir.

18 THE WITNESS: I would like to go back to a
19 couple of other things. You had asked me questions
20 last time concerning establishing policies about
21 doing something a certain way. I guess I should say
22 that I don't know that I have established policies
23 about doing things a certain way. I just have the
24 way that I do them, not necessarily based on any
25 established policies, but just my habit or method by

1 which I do something.

2 MR. MCHALE: All right.

3 THE WITNESS: If that's makes sense to
4 you.

5 MR. MCHALE: Yes, sir, and I will
6 represent to you that you're a young man compared to
7 most everyone in this room, and that ain't going to
8 get better, not that it's a problem.

9 BY MR. MCHALE:

10 Q. Do you have anything else you would like
11 to add, clarify or amend about anything you testified to
12 earlier at either last Tuesday's January 12th deposition
13 or today?

14 A. I think that as to your question
15 concerning Mr. Testerman and whether or not -- you used
16 the term earshot. I'm going to exercise my right to
17 remain silent as to, as it applies to after we were in the
18 office, and I'll state to you that in the hallway, when I
19 asked him to come into my office, there were people there,
20 and they could have heard me asking him to come into my
21 office, but after that, there was nobody in earshot other
22 than himself and myself.

23 Q. Let me ask you, then, a follow-up based
24 on that. When you had the conversation with
25 Mr. Testerman, did you explain to him what you wanted to

1 talk to him about in the office?

2 A. I will answer it this way. I did not talk
3 with him about what I wanted to talk with him about in the
4 hallway. In the office, as to what I told him, I'm
5 exercising my right to remain silent under both the U.S.
6 and Tennessee constitutions and the attorney/client
7 privilege.

8 Q. Yes, sir, and I may have poorly worded
9 it. I meant the question to be restricted to in the
10 office. I meant the question to be restricted to matters
11 that occurred in the hallway. Do you want me to start
12 over?

13 A. Yes, please. I'm sorry.

14 Q. And I understand your answer. My
15 intention was to ask you only on the earshot issue.

16 A. Okay.

17 Q. Did you speak with Mr. Testerman about any
18 matters concerning Mr. Pleau outside in the hallway?

19 A. No.

20 Q. All right.

21 A. I did tell him that I had called him twice
22 and wanted to talk with him about a matter and asked him
23 if he had time to talk with me. He indicated he did, and
24 we went into my office and we talked.

25 Q. But names, details and so forth were not

1 mentioned in the hallway; is that correct?

2 A. That's correct.

3 Q. Possibly another one, basically to follow
4 up on that.

5 A. Okay.

6 Q. I think we already asked this, but let me
7 double check. Forgive me. Had Mr. Testerman ever
8 represented you before January of 2009 on any matter?

9 MR. MCDONALD: Objection, attorney/client
10 privilege.

11 THE WITNESS: You did ask that, and I did
12 exercise my right to remain silent under both the
13 U.S. and Tennessee constitutions and under the
14 attorney/client privilege.

15 MR. MCHALE: That's all. Thank you, sir.

16 THE WITNESS: Okay.

17
18 FURTHER THE DEPONENT SAITH NOT
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I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of pages 93 to 206, inclusive, and I do again subscribe and make oath that the same is a true, correct, and complete transcript of my deposition so given as aforesaid and includes changes, if any, so made by me on the attached errata sheet(s).

JOHN A. BELL

SUBSCRIBED AND SWORN TO before me
this _____ day of _____, 2010.

NOTARY PUBLIC
My Commission Expires: _____

C E R T I F I C A T E

1
2
3
4 STATE OF TENNESSEE:

5 COUNTY OF KNOX :

6
7 I, Andrea McBee, Court Reporter and Notary
8 Public, do hereby certify that I administered the oath to
9 the deponent, that I reported in machine shorthand the
10 above testimony, that the foregoing pages, numbered from
11 93 to 208, inclusive, were typed under my personal
12 supervision and constitute a true and accurate record of
13 the proceedings, and that there has been a request made by
14 the deponent to review the transcript.

15 I further certify that I am not an attorney
16 or counsel for any of the parties, nor an employee or
17 relative of any attorney or counsel connected with the
18 action, nor financially interested in the action.

19 Witness my hand and official seal this 26th
20 day of January, 2010.

21 _____
22 Andrea McBee

23 Court Reporter and Notary Public

24 My Commission Expires 5/09/2012
25

JOHN A. BELL, JUDGE

111 Court Avenue, Suite 200
Cocke County Courthouse
Newport, Tennessee 37821

Phone: (423)-465-3007

FAX: (423)-465-3008

J.S. Daniel
Disciplinary Council
503 North Maple Street
Murfreesboro, TN 37130

14 August 2008

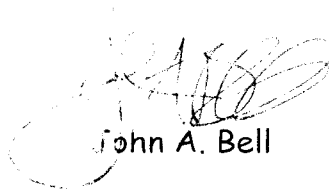
RE: Complaint of David J. Pleau
File No.: 08-3508

Honorable J.S. Daniel,

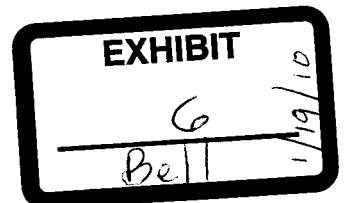
This letter is written in response to your letter dated 17 July, 2008 concerning the above styled matter. Enclosed you will find my sworn statement in response.

If you need any additional information, please contact me at your convenience.

Sincerely,



John A. Bell



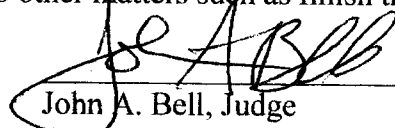
11/19/10

1. I am John A. Bell, General Sessions Court Judge for Cocke County Tennessee. I have done nothing wrong or improper in this matter. I make the following statements under oath concerning the Complaint filed by David J. Pleau.
2. The court case involved the filing of a civil complaint concerning an automobile accident. David J. Pleau represented himself and filed a civil complaint against his own insurance company. At trial, David J. Pleau was pro se and his insurance company was represented by their counsel. Further, at court, to observe, was additional counsel, who represented the insurance carrier for the driver of the other automobile. But, neither the other driver nor their insurance carrier was made a party to the action. At the close of the proof by the Plaintiff, the Defendant insurance carrier filed a motion to dismiss and rested. The case was over. The motion to dismiss is attached as enclosure 1 hereto. The motion to dismiss is based purely on an issue of law. The facts were easy to determine. I resolved all facts in favor of the Plaintiff, David J. Pleau. The legal issue however required research.
3. The motion to dismiss was based on T.C.A. section 56-7-1206 and was purely a question of law. I was required to do extensive legal research¹ to determine the question of law. I researched generally the following:
 - a. T.C.A. section 56-7-1206 in Tennessee and all Federal jurisdictions.
 - b. The language in TCA 56-7-1206 in all state and all federal jurisdictions.
 - c. Similar statutes in all states and all federal jurisdictions.
 - d. Ben W. Hooper, II v State Farm Mutual Automobile Insurance Company 682 S. W. 21d 505, in Tennessee, all other states and Federal jurisdictions.
 - e. The language in Ben W. Hooper, II v State Farm Mutual Automobile Insurance Company 682 S. W. 21d 505, in Tennessee, all other states and all Federal jurisdictions.
 - f. Similar cases in all states and all federal jurisdictions.
 - g. Whether the Defendant has waived the right to bring the motion by waiting until after the trial has started and after the close of the plaintiff's case in chief (i.e. did the defense waive the issue by not making the motion pretrial?) I researched this issue in Tennessee, all states and federal jurisdictions.
 - h. T.C.A. section 56-7-1206 is essentially a mandatory indispensable party statute. Therefore, I researched mandatory indispensable party in Tennessee, all states and all federal jurisdictions.
 - i. When motions for mandatory indispensable party must be raised. (I.e. Must the motions be raised pretrial or can they be raised in the Defense case in chief?) I researched this issue in Tennessee, all states and federal jurisdictions.
 - j. Which motions must be made pretrial or they are considered waived. I researched this issue in Tennessee, all states and federal jurisdiction.
4. Mr. Pleau complains that he was not told he had 10 days to appeal. I admit that I did not give him legal advice on the issue of appealing his case. When I was a

¹ It is my practice to dispose of all judicial notes and research once a final order is completed. I wish I had retained the stack of research so you could have seen the work I put into this case.

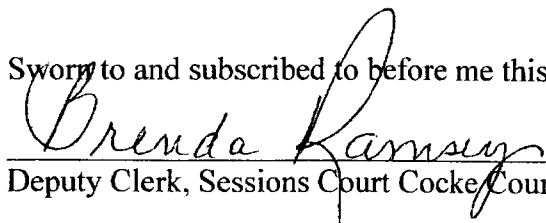
lawyer I gave advice on the time for appeals in cases. However, as judge I do not give advice to litigants.

5. The real basis for Mr. Pleau complains that his case was dismissed on a "...legal technical." and that I should have given him advice to keep his case from being dismissed. I admit that I was required by both statutory law and case law to dismiss the case on a legal technicality. I did not want to dismiss his case based on a legal technicality that is why I spent so much time researching the legal issues in the case. I was trying to find a way not to dismiss his case. But, when I could not find legal authority on behalf of the Plaintiff, I followed the law and did my duty and dismissed his case as required to by law.
6. Mr. Pleau complains he thought he "...would be informed in advance of court of any issues pertinent to my issues." I did not give him legal advice on his issues. My job, as judge, is to rule on the issues as presented. I do not give advice I give rulings based on the facts and the law.
7. Mr. Pleau complains he got the judgment on the 10th of July 2008 and went to file an appeal on the same day he received the judgment. He further complains that "...I received this judgment without being informed of the time constraints concerning appeal..." I do not mail judgments to litigants nor do I advise of time constraints concerning appeals. The clerk of the court mails judgments to litigants and so did the defense council in this case. Had he filed his appeal on the 10th of July when he went to the clerk's office his appeal would have been perfected. However, instead of doing an appeal, he chose to file a judicial complaint. The Court of the Judiciary does not hear appeals.
8. During this period of time, I disposed of approximately 12,123² other cases. This is more work than most judges do in a full year.
9. In addition, I was the victim of a DUI driver who ran into my car in April. I was temporally totally disabled for a week (I stayed at home with medical issues unable to get up and down as before.). I was temporally partially disabled for approximately three months (April - July). I had numerous medical visits. I was treated in the emergency room, treating doctor and for physical therapy. I was in severe pain and only did the cases on the docket. I had difficulties in hearing cases due to the pain. I was unable to do other matters such as finish the research in this case until my pain got better.



John A. Bell, Judge
General Sessions Court
Cocke County, Tennessee

Sworn to and subscribed to before me this the 14 day of August 2008.



Deputy Clerk, Sessions Court Cocke County, Tennessee

²During this period I disposed of 1,926 civil cases (9/18/07 – 6/27/08), 2,576 juvenile cases (9/18/07 – 6/27/08), and 7,621 criminal cases (9/18/07 – 5/13/08) for a total of cases of 12,123.

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8/14/08

JOHN A. BELL, JUDGE

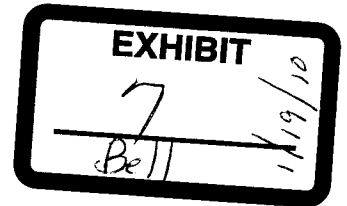
111 Court Avenue, Suite 200
Cocke County Courthouse
Newport, Tennessee 37821

Phone: (423)-465-3007

FAX: (423)-465-3008

August 29, 2008

J.S. Daniel
503 North Maple Street
Murfreesboro, TN 37130



RE: Complaint of David J. Pleau
File No. 08-3508

Dear J. S. Daniel,

This letter is written in response to your letter dated August 19, 2008.

The delay in rendering a judgment was justified based on two reasons. First, the case had legal issues that needed to be researched before I could render a legal opinion. The key case in Tennessee is one that involved our Circuit Judge Hooper II personally; see *Ben W. Hooper, II v State Farm Mutual Automobile Insurance Company* 682 S. W. 21d 505. I have previously detailed what needed to be researched. I wanted to leave no stone unturned since, now, as Circuit Judge, Ben Hooper II would hear any appeal. I wanted to make doubly sure I got the answer correct in this matter. I do not have any designated office time to do research. My regular work schedule has me holding court every day Monday through Friday. I have office time to do research only when the cases finish early. I did office work and research on this case when I was finished with court. The second reason was because I was in a car wreck, the victim of a drunk driver. During the last three months of the relevant time period, I was unable to perform my duties as usual. As soon as I was able to resume my full duties, I completed the last portion of the research and typed the order in this matter.

If you have any further questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "John A. Bell". The signature is stylized with a large loop at the beginning.

John A. Bell, Judge

c:jl

RECEIVED
12/19/08

JOHN A. BELL, JUDGE

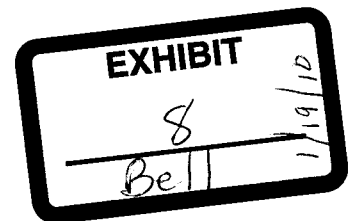
111 Court Avenue, Suite 200
Cocke County Courthouse
Newport, Tennessee 37821

Phone: (423)-465-3007

FAX: (423)-465-3008

December 15, 2008

J. S. Daniel
503 North Maple Street
Murfreesboro, Tennessee 37130



Re: Complaint of David J. Pleau File #08-3508

Dear J. S. Daniel

This letter is written in response to your letter dated October 26, 2008. I will try to address each of the issues raised in your letter.

I have previously filed a sworn statement outlining the reasons for the length of time it took to do the research and my medical condition following my car wreck as the Victim of a drunk driver. I will be glad to provide you medical documentation if necessary. I would also inform you that I have cases set for trial every day Monday through Friday. My case schedule does not have any administrative time scheduled to allow time for research and drafting orders. My caseload was extremely high, more than one judge should be required to handle. I have been doing the job of two judges¹ for about 10 years. I did my job, as best I could, doing the research on this case as time allowed.

When finalizing the order on 27 June 2008 I amended the normal Certificate of Service I used for the Sessions Court Clerk/Deputy Clerk to sign and modified it to require the clerk to "...forward a true and exact copy of the foregoing order to the counsel of for the parties **and the unrepresented parties** at their address of record with postage pre-paid." It was my intention, by this amendment to the normal Certificate of Service, to make sure Mr. Pleau, who was unrepresented, was mailed a copy of the order by the clerk's office. I gave the finalized order to my secretary, Joy Large on 27 June 2008, to take to the clerk's office for filing and serving by the clerk's office.

After receiving your letter, I talked to Joy concerning this matter. She informed me that she took the order the same day to the clerk's office. The order shows it was filed at the clerk's office on "06-27-08" by "Joyce S. Clark" and the certificate of service was also signed by Joyce S. Clark. I talked to Joyce and she told me she does not have any recollection concerning this particular case.

¹ When I was elected, I replaced both Judge Mooneyhan and Judge Owens.

**IN THE GENERAL SESSIONS COURT
FOR COCKE COUNTY, TENNESSEE**



DAVID J. PLEAU
PLAINTIFF

VS.

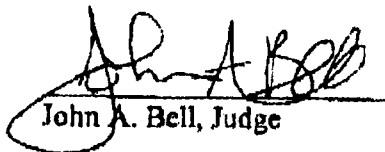
No. 2007-CR-869

MERA STAR INSURANCE COMPANY
DEFENDANT

NOTICE


This Court will sua sponte (on It's own motion) take up this matter on the 23rd day of December 2008 at 9:00 AM at the Cocke County General Sessions courtroom. The Court will take action on said date to address the issue involving the Certificate of Service and such other matters in the case as the Court deems necessary in accordance with Tennessee Rules of Civil Procedure 60.01 and T.C.A. section 16-15-727 as amended 18 June 2007.

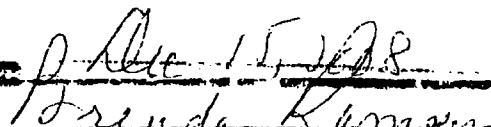
Entered this the 15th day of December 2008.


John A. Bell, Judge

CERTIFICATE OF SERICE

I hereby certify that I have called and mailed a true and exact copy of this NOTICE to the Plaintiff, DAVID J. PLEAU and I have called, fixed and mailed a copy of this notice to the Attorney for the Defendant, Brad A. Fraser postage pre-paid at their addresses of record in this matter. This the 15th day of December 2008.


JOY LARGE ADMINISTRATIVE
ASSISTANT TO JUDGE BELL

FILED 15 Dec 15, 2008

Brenda K. Korman
COCKE COUNTY SESSIONS COURT

I called the office of the attorney for the Defendant to inquire as to when they received their mailed copy from the clerk's office. I spoke only to his paralegal and found out that they did not receive a mailed copy from the clerk's office. It appears that they called and got a faxed copy from the clerk's office after they called. It appears that the clerk's office may have made a mistake and failed to mail a copy to either Mr. Pleau or to the attorney for the Defendant.

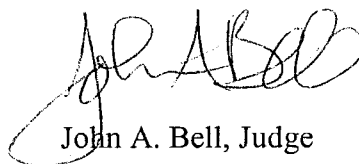
Unless you object, I am going to attempt to correct the mistake by the clerk's office. I am giving the parties 5 days Notice of Hearing for the purpose of correcting the clerk's mistake Sua Sponte. The authority for correcting the mistake of the clerk's office is Tennessee Rules of Civil Procedure 60.01 as made applicable to General Sessions Courts through T.C.A. section 16-15-727 as amended 18 June 2007. I will give notice on 15 December 2008 for a hearing on 23 December 2008.

I would also note that the order I entered on 27 June 2008 dismissing the case was based on a procedural issue/error. I did not enter an order based on the merits of the case. I made it a point to make specific findings based on the evidence presented. However, the order adjudged and decreed section of the 27 June order only makes reference to the procedural error/mistake "...this case is dismissed for failure to comply with T.C.A. 56-7-1206." Therefore, the case was dismissed without prejudice as to the merits of the case without a res judicata effect. The Plaintiff, Mr. Pleau is therefore not barred from re-filing his action within the statute of limitations.

If there is other information you need in this matter please let me know.

I appreciate your cooperation in this matter and respectfully request that this complaint be dismissed. Also, I would like to meet with you to discuss this matter at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Bell". The signature is fluid and cursive, with a large initial "J" and "A".

John A. Bell, Judge

c:jl

RECEIVED
11/2/09

JOHN A. BELL, JUDGE

111 Court Avenue, Suite 200
Cocke County Courthouse
Newport, Tennessee 37821

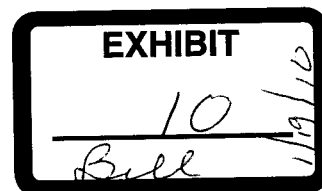
Phone: (423)-465-3007

FAX: (423)-465-3008

J.S. Daniel
Disciplinary Council
503 North Maple Street
Murfreesboro, TN 37130

29 December 2008

RE: Complaint of David J. Pleau
File No.: 08-3508



Honorable J.S. Daniel,

This letter is written as an update to you concerning the above styled matter.

On the 23rd day of December 2008 at 9:00 AM at the Cocke County General Sessions courtroom I held a sua sponte hearing in DAVID J. PLEAU VS MERA STAR INSURANCE COMPANY No. 2007-CV-869. Both Mr. Pleau and the attorney for Mera Star, Brad A. Fraser were present based on the NOTICE¹ I sent to them. I had the hearing taped in case you wanted a copy. I gave a public, on the record, apology for the delay in finishing the order and they accepted my apology.

I also apologized on behalf of the General Sessions Clerk's Office for the clerical error in failing to mail the order as prescribed in the Certificate of Service. I also on the record gave them a copy of the order for formal service. I deemed this action necessary and in accordance with Tennessee Rules of Civil Procedure 60.01 and T.C.A. section 16-15-727 as amended 18 June 2007.

The attorney for Mera Star, Brad A. Fraser at the hearing advised the court that he gave notice of the procedural error to Mr. Pleau well in advance of the trial date. Therefore, while the court may have been surprised by the motion, the Plaintiff, Mr. Pleau was not.


As I stated in writing to you previously, the dismissal in the case of DAVID J. PLEAU VS MERA STAR INSURANCE COMPANY No. 2007-CV-869 was based on a procedural error and was not an on the merits decision. Please be advised that Mr. Pleau has on November 21, 2008 cured the procedural error by filing a new action against Mera Star Insurance Company and Joann Coleman, the uninsured driver. The style of the new case² is DAVID J. PLEAU VS JOANN COLEMAN and MERA STAR INSURANCE COMPANY No. 2008-CV-1186. The parties have been served with process and this new case has been set by agreement of the parties for trial on the 20th day of February 2009 at 1:30 pm.

¹ See copy attached exhibit 1.

² See copy attached exhibit 2.

I hope this information will be helpful to you and if you need any additional information, please contact me at your convinience.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Bell". The signature is fluid and cursive, with the first name "John" being more prominent and the last name "Bell" following in a similar style. The signature is positioned above the printed name.

John A. Bell

RECEIVED
12/31/08

JOHN A. BELL, JUDGE

111 Court Avenue, Suite 200
Cocke County Courthouse
Newport, Tennessee 37821

Phone: (423)-465-3007

FAX: (423)-465-3008

J.S. Daniel
Disciplinary Council
503 North Maple Street
Murfreesboro, TN 37130

31 December 2008

RE: Complaint of David J. Pleau
File No.: 08-3508



Honorable J.S. Daniel,

This letter is written as a response to your letter of 23 December 2008 concerning the above styled matter. I respectfully submit to you that I have not refused to respond to the issue concerning the time which I took to render a decision.

I respectfully submit to you that I have not refused to respond to the issue concerning the time which I took to render a decision in the DAVID J. PLEAU VS MERA STAR INSURANCE COMPANY No. 2007-CV-869. I have responded to you by letter dated December 15, 2008 and also previously by sworn affidavit. Those reasons which I outlined for you were as follows:

- a. The length of time it took to do the research.
- b. My medical condition following my car wreck as the victim of a drunk driver. (I even offered to provide you medical documentation if necessary.)
- c. My caseload was extremely high, more than one judge should be required to handle. I would also inform you that I have cases set for trial every day Monday through Friday. My case schedule does not have any administrative time scheduled to allow time for research and drafting orders.

- d. I have been doing the job of two judges¹ for more than 10 years.
- e. I did my job, as best I could, doing the research on this case as time allowed.
- f. I also gave a public, on the record, apology for the delay in finishing the order and they accepted my apology.

Your letter of 23 December indicates you have already made your mind concerning this matter and have already sent your recommendation to the panel for their consideration. I thought I would get the opportunity to talk to you before you made up your mind on this matter. I do not see how my meeting with you would be of any benefit to either of us now.

I respectfully request that you submit this letter, my previous letters to include but not limited to the letters dated 15 December and 29 December and my sworn affidavit to the panel for their consideration.

I hope this information will be helpful to you and if you need any additional information, please contact me at your convenience.

Sincerely,



John A. Bell

¹ When I was elected, I replaced both Judge Mooneyhan and Judge Owens.

EXHIBIT
124
Bell
11/19/10

IN THE GENERAL SESSIONS COURT
FOR
COCKE COUNTY, TENNESSEE

David J. Pleau,
Plaintiff,

VS

Jo Ann Coleman and Merastar Insurance
Company,
Defendants.

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* COURT No.: 15GS1-2008-CV-1186
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FILED
APR 27 2009
JOHN A. BELL
COCKE COUNTY SESSIONS COURT

ORDER

This cause came to be heard on 24th day of April 2009 before the Honorable John A. Bell, General Sessions Court Judge, upon the appearance of the Plaintiff and Attorney for the Defendant, the Merastar Insurance Company and Jo Ann Coleman, pro se, with the swearing of witnesses and their testimony in open court, the introduction of exhibits, arguments of counsel and the Plaintiff and the Court having given great consideration to all of this and to the record as a whole, and therefore based on the foregoing the court finds as follows:

1. The Plaintiff failed to stop before entering upon US Hwy 321. However, the stop sign was positioned such that the Plaintiff could not see the stop sign. Plaintiff's vehicle pulled onto the highway crossing the path of the other vehicle's lane of travel. However, the Plaintiff's vehicle was completely in his lane of travel prior to the impact of the accident. The Defendant driver of the other vehicle, Jo Ann Coleman, crossed the center of the highway crossing into the lane of travel of the Plaintiff. The Plaintiff applied his brakes in an effort to avoid the accident. Jo Ann Coleman should not have been driving at all the day of the accident because she did not have automobile insurance and was in violation of the Financial Responsibility laws of the state of Tennessee. Therefore, the Court finds and assigns fault as follows: David J. Pleau - 0% Jo Ann Coleman - 100%.
2. The Court finds the damages to the Plaintiff's vehicle to be in the amount of \$4,726.78.
3. The parties have stipulated that Merastar Insurance Company has uninsured motorist coverage for this accident under a policy with the Plaintiff in this matter.

Therefore, it is Ordered, Adjudged, and decreed that the Defendant, Jo Ann Coleman shall pay to the Plaintiff, David J. Pleau damages in the amount of \$4,726.78. Further, the Plaintiff has the right to recover, the above referenced damages of \$4,726.78 which are payable by Jo Anne Coleman, under the uninsured motorist provisions of his

policy with the Merastar Insurance Company. Upon payment of the damages by the Merastar Insurance Company, they shall have the right to receive their subrogation from Jo Anne Coleman for the full amount of the damages and costs. Cost of this cause is taxed to the defendants for which execution shall issue if necessary.

Entered this the 27th day of April 2009.



John A. Bell, Judge
General Sessions Court

CERTIFICATE OF SERVICE

I the undersigned Clerk/Deputy Clerk of the Cocke County General Sessions Court do hereby certify that I have forwarded a true and exact copy of the foregoing order to the counsel for the parties and the unrepresented parties at their address of record with postage pre-paid.



Sessions Court Clerk/Deputy