

DEPOSITION OF THOMAS V. TESTERMAN

JANUARY 12, 2010

IN THE TENNESSEE COURT OF THE JUDICIARY

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Docket of the Courts
M2009-02115

IN RE: THE HONORABLE JOHN A. BELL :
JUDGE, GENERAL SESSIONS COURT : Docket of the Courts
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:

William Gordon Ball, Esq.
Allen W. McDonald, Esq.
Ball & Scott
550 Main Street, Suite 601
Knoxville, Tennessee 37902

FOR THE TENNESSEE COURT OF THE JUDICIARY:

Patrick J. McHale, Esq.
J.S. "Steve" Daniel, Esq.
Disciplinary Counsel
The Tennessee Court of the Judiciary
503 North Maple Street
Murfreesboro, Tennessee 37130

ALSO PRESENT:

James T. LaRue
Rachel Waterhouse

ORIGINAL

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(no exhibits)

1 THOMAS V. TESTERMAN,
2 called as a witness, having been first duly sworn, was
3 examined and deposed as follows:

4 MR. BALL: Before Mr. Testerman begins to
5 testify, I want to state for the record that John
6 Bell is not waiving and specifically intends not to
7 waive any attorney/client privilege that may have
8 existed between Mr. Bell and Mr. Testerman, and that
9 it would be a violation of attorney/client privilege
10 if Mr. Testerman testified as to any conversation
11 between John Bell and himself, and we would instruct
12 Mr. Testerman that he cannot waive that privilege
13 because that privilege is not his to waive. So any
14 questions in that vein, we would instruct
15 Mr. Testerman not to respond based on attorney/client
16 privilege. The second thing, as I am given to
17 understand, we have been joined by a lawyer from the
18 Board of Professional Responsibility. Would you
19 state your name for the record, please?

20 RACHEL WATERHOUSE: Rachel Waterhouse.

21 MR. BALL: Ms. Waterhouse, as I'm given to
22 understand from this morning's activities, that there
23 may or may not be a BPR, Board of Professional
24 Responsibility complaint filed by Mr. Daniel against
25 Mr. Testerman or by anyone against Mr. Testerman, and

1 of course that would be subject to Mr. Testerman
2 deciding to testify about that one way or the other,
3 if there is a privilege, and I don't know this, that
4 that would be up to Mr. Testerman to waive. But any
5 discussions concerning Judge Bell and the alleged
6 representation of Judge Bell by Mr. Testerman, either
7 in the BPR complaint or otherwise, we would instruct
8 Mr. Testerman that he cannot waive and should not
9 waive the attorney/client privilege.

10 MR. DANIEL: Okay. And for the record, in
11 response to that attorney/client privilege, I think
12 that Mr. Testerman would agree is codified in
13 23-3-105, it deals with statements made from the
14 potential client to the attorney, but not necessarily
15 from the attorney to the client. I'm sure he has
16 looked at that. And this is a legal issue that will
17 probably be resolved by the Court, will probably have
18 to be presented, because it's incumbent on the person
19 who is asserting that privilege to be able to
20 establish that it exists, so that's my response to
21 the record.

22 MR. BALL: And in response to that, as I
23 appreciate the procedure to be used here today and
24 the state of Tennessee, the procedure that is used in
25 the state of Tennessee, that that privilege will be

1 asserted on a question-by-question basis, and in
2 fact, I agree with you, counsel, that at some point
3 in time some judge is going to have to decide that,
4 and you can propound the question, we will assert the
5 privilege and instruct him not to testify.

6 MR. DANIEL: I agree only with the fact
7 that it is going to be a question-by-question
8 determination.

9 EXAMINATION

10 BY MR. DANIEL:

11 Q. Before we begin, I want to ask you a few
12 questions. First of all, have you ever been the subject
13 of giving a deposition before?

14 A. Have I ever given --

15 Q. Have you ever given, yourself, a
16 deposition before?

17 A. Not that I recall.

18 Q. You've taken depositions, I'm sure, as an
19 attorney?

20 A. Oh, yes, certainly.

21 Q. But as far as giving one yourself, this
22 may be the first one that --

23 A. I think it is.

24 Q. As an attorney, and so I'm going to give
25 you some preliminary matters I want to discuss with you,

1 but I'm sure you're very well aware of them. You
2 understand today you're under oath and everything you say
3 is being recorded?

4 A. I do.

5 Q. Do you understand that this is not video'd
6 today, but it's an audio, so that you would be required to
7 answer verbally. You wouldn't answer with nodding your
8 head or huh-uh or uh-huh so that we can record it
9 correctly?

10 A. I understand.

11 Q. In this particular case and today, are you
12 represented by an attorney?

13 A. No.

14 Q. Have you consulted with an attorney prior
15 to today?

16 A. No.

17 Q. If you don't understand a question that I
18 ask you, if you want me to rephrase it, please let me know
19 so that I can be sure that you understand what I'm asking
20 you about, okay?

21 A. Okay.

22 Q. All right. My first question to you goes
23 back to your background. How long have you practiced law?

24 A. More than 25 years. I don't know exactly,
25 maybe 27.

1 Q. Okay. Where do you practice?

2 A. Newport, Tennessee.

3 Q. Could you give us your address?

4 A. 301 East Broadway, Newport.

5 Q. And your Board of Professional

6 Responsibility number?

7 A. 010324.

8 Q. And where did you attend law school?

9 A. University of Tennessee.

10 Q. When did you graduate?

11 A. I believe 1982.

12 Q. When did you take the bar examination?

13 A. I think 1982.

14 Q. Did you successfully pass it the first
15 time there?

16 A. Yes.

17 Q. When was it that you were admitted to the
18 practice of law?

19 A. 1983 or 1984. I don't recall exactly.

20 Q. Now, when you were admitted to the
21 practice of law, where did you first begin your
22 practice?

23 A. Newport, Tennessee.

24 Q. Could you tell us each and every place
25 that you have practiced law and what association you've

1 had with the practice from and after that time, I mean,
2 after your admission?

3 A. You're asking where I've had law offices?

4 Q. Yes.

5 A. Newport, Tennessee.

6 Q. All of them in Newport?

7 A. Correct.

8 Q. Have you been located in your entire
9 practice in the same location?

10 A. No. You mean office wise? I've had
11 different addresses in Newport.

12 Q. Does that also include different office
13 arrangements as to who you've practiced with?

14 A. Yes, for a few months, and then otherwise
15 I practiced as a sole practitioner.

16 Q. When you first started your practice, who
17 did you practice with and where was it?

18 A. A fellow named Phil Owens.

19 Q. Where was that located?

20 A. I cannot remember the address. It was in
21 Newport. I don't remember the address. I apologize.

22 Q. How long did you practice there, from
23 1983, I take it, until when?

24 A. Maybe a year. I just don't recall. It
25 was a short time.

1 Q. Where did you move to from Phil Owens'
2 office?

3 A. I moved to an office above the office
4 presently occupied by Bill Leibrock, and the address was
5 East Main Street, but I cannot remember the number.

6 Q. All right. Were you associated with
7 someone in that office?

8 A. You know, as a matter of fact, yes, I
9 was. There was a short period of time in that office, and
10 then another period of time when I moved to the office I'm
11 presently in where an attorney by the name of David Hill
12 and I shared office space.

13 Q. Did that begin in 1984?

14 A. You mean with David Hill?

15 Q. Yes.

16 A. Honestly, no, it would not have been that
17 early, but I don't remember when it was. I would be
18 speculating. It went on for three or four years or
19 thereabouts.

20 Q. Are you talking about your practice over
21 the office of Leibrock?

22 A. I don't recall how long I was situated in
23 an office on the second floor of the building Bill
24 Leibrock owns, a couple, four years.

25 Q. Would that take you up to '87? I'm asking

1 you to try to give me a chronological of your law practice
2 and locations.

3 A. I apologize. I can't remember exactly how
4 long I was there, at least -- I believe it was at least
5 three years. It may have been a little longer. Then I
6 moved from that location to where I'm presently located on
7 East Broadway.

8 Q. When was that, approximately?

9 A. I cannot remember. Let me think. Early,
10 mid-90s.

11 Q. Mid-90s?

12 A. Yeah.

13 Q. And you've been in that same location
14 since then?

15 A. Correct.

16 Q. Have you been in law practice with anyone
17 else, associated with anyone else?

18 A. No.

19 Q. Have you ever practiced law with Mr. John
20 Bell, Judge John Bell?

21 A. No.

22 Q. Have you ever been associated with him on
23 a case or cases?

24 A. Not that I recall. I've been against him
25 on numerous cases, but never with him that I recall, but

1 let me think. I don't recall any.

2 Q. Okay. So you have never had any business
3 relationship as far as law practice business?

4 A. Sure, I've had cases against him as a
5 lawyer.

6 Q. What is your telephone number, both at
7 home and office?

8 A. At the office, 423-623-0375. Now, there's
9 a second line, and I cannot remember that second line.
10 It's a rollover.

11 Q. So it rolls over?

12 A. Right. I just call 0375 if I need to. My
13 phone number at home is 423-623-4495.

14 Q. Was that the phone numbers that you had in
15 2007, 2008 and 2009?

16 A. Yes.

17 Q. Have there ever been any other telephone
18 numbers that you used during those measured period of
19 times?

20 A. I have a cell phone.

21 Q. What is your cell phone number?

22 A. 423-608-3549. I also have a fax line of
23 course, but I don't use it for conversational telephone,
24 just for fax.

25 Q. Okay. Now, were you raised in Newport?

1 A. No.

2 Q. Where were you raised?

3 A. Primarily in Morristown, Tennessee.

4 Q. When did you move to Newport?

5 A. When I started practicing law.

6 Q. Did you know Judge John Bell when you were
7 growing up in Morristown?

8 A. No.

9 Q. Did you first learn of him, have dealings
10 with him after you graduated from law school?

11 A. I first knew of John Bell -- he had
12 practiced in Greeneville. I did not know him from his
13 practice in Greeneville, but he had, I believe, started
14 his practice in Greeneville as a lawyer, and then he moved
15 his practice back to Newport, and that's where I came to
16 know him. I met him after --

17 Q. Was he originally from Newport; is that
18 what you're saying?

19 A. Well, from the Cocke County area. I don't
20 know exactly where he grew up.

21 Q. Were you in law school at the same time as
22 he was?

23 A. Yes, but we didn't attend the same law
24 school.

25 Q. Where did he go to school?

1 A. I understand he went to Memphis, and I, of
2 course, attended UT of Knoxville.

3 Q. I see. So you graduated and he graduated
4 at or about the same time and took the bar about the same
5 time; is that right or wrong?

6 A. No, I think he may have been a year behind
7 me in school. I did not know John Bell at all until he
8 came to practice from Greeneville back into Newport, and
9 that was several years after I started to practice.

10 Q. When was that, then, that you first met
11 John Bell?

12 A. I don't remember. The best I can tell,
13 you can determine that by when he moved his practice back
14 to Newport, and that would have been when I met him.

15 Q. Okay. If you haven't practiced law with
16 him, have you ever had any business dealings with him?

17 A. We've had lawsuits against each other,
18 yeah.

19 Q. Have you at any time represented John
20 Bell?

21 MR. BALL: I'm going to object to that
22 question and instruct you not to answer that based on
23 attorney/client privilege.

24 BY MR. DANIEL:

25 Q. I'll ask it this way. Have you ever

1 represented John Bell prior to 2009?

2 A. Help me out here, fellows.

3 MR. BALL: I'm going to assert the
4 attorney/client privilege from 2000, and I'm going to
5 say five on to the present and instruct you not to
6 answer those questions. If counsel wants to go back
7 prior to 2005, then that's fine.

8 BY MR. DANIEL:

9 Q. Have you -- go ahead with your --

10 A. If you're speaking of prior to 2005, and
11 I'm okay in answering that, then there would be from time
12 to time that John Bell would ask my legal advice on some
13 things, and quite frankly, I think prior to that probably
14 vice versa. I don't have independent recollection, but
15 pretty much what you have happen in small towns. You
16 know, lawyers, we all know each other. If you've got a
17 question in your mind about something, you would inquire,
18 I'd ask the advice of another -- I'm not talking about --
19 I'm talking about where you have something that might
20 affect you.

21 Q. My question was had you represented him in
22 a legal matter of his?

23 A. You mean in a lawsuit?

24 Q. In any type of legal matter, whether it
25 logged into a lawsuit or business or any other type of

1 relationship.

2 A. Help me out.

3 MR. BALL: Again, I would object based on
4 attorney/client privilege and instruct the witness
5 not to answer on anything, any matter after 2005.

6 BY MR. DANIEL:

7 Q. Go ahead with your answer. We'll have to
8 take this up with the Court at a later time, but limited
9 to before 2005.

10 A. You all have got me on the horns of a
11 dilemma here. I have a lady over here from the Board of
12 Professional Responsibility that is here obviously for me
13 and whether I'm doing something incorrect ethically, and
14 he's advising me that he's asserting attorney/client
15 privilege for Judge Bell. I'm afraid to answer that
16 question. I'm afraid that I'm kind of --

17 MR. DANIEL: He's limited his objection,
18 you said 2005 forward.

19 THE WITNESS: Before 2005?

20 MR. BALL: I am not objecting to any kind
21 of representation, if any, that you had with John
22 Bell before 2005. Any time after 2005, we object on
23 the basis of attorney/client privilege. And let me
24 say this, and I should have said this earlier, I
25 really don't understand why Ms. Waterhouse is sitting

1 in on this deposition and would object to it.

2 MR. DANIEL: It's open. It's an open
3 deposition, and there has been no motion filed.

4 MR. BALL: I didn't know she was coming.
5 I had no idea you were coming.

6 MR. DANIEL: Do you represent
7 Mr. Testerman?

8 MR. BALL: I do not represent Mr.
9 Testerman.

10 MR. DANIEL: So that's his interest.

11 MR. BALL: It would be his call if he
12 didn't want to testify.

13 MR. MCDONALD: Gordon, may I clarify
14 something? Your objection is only to allowing him to
15 talk about the fact that he did represent, or if he
16 did, but that the context of any conversations from
17 2005 before, we wouldn't waive that privilege?

18 MR. BALL: Right, but it's up to
19 Mr. Testerman to -- I do not represent Mr. Testerman,
20 and so I cannot say one way or the other, but it
21 would be up to Mr. Testerman to testify. With the
22 Board of Professional Responsibility sitting here, I
23 can say that I did not know the Board of Professional
24 Responsibility was going to be represented at this
25 matter today until you came.

1 BY MR. DANIEL:

2 Q. Do you want to answer the question?

3 A. I don't think anybody objects to anything
4 before 2005, and I think I can answer it this way and
5 hopefully be accurate. I did not represent John Bell in
6 any lawsuit or anything such as that. As far as before
7 2005, being asked legal advice on things that would affect
8 him personally from time to time, that would happen, you
9 know, not anything that I can recall in particular, but --

10 Q. Did he hire you or pay you for that advice
11 in those instances prior to 2005?

12 MR. BALL: I'm going to object to that and
13 instruct him not to answer on any matters that John
14 Bell, before, after 2005, that John Bell has ever had
15 with Mr. Testerman.

16 MR. DANIEL: On what basis?

17 MR. BALL: On the basis of attorney/client
18 privilege. I instruct you not to answer that
19 question.

20 MR. DANIEL: Let me make sure I
21 understand. You're going to assert that he can't
22 answer any question about his relationship with John
23 Bell at any time?

24 MR. BALL: If John Bell, if he had a --

25 MR. DANIEL: You think the position is

1 that the law would support that you can make a
2 unilateral claim of attorney/client without ever
3 establishing that it exists between these two --

4 MR. BALL: Absolutely. If you're saying
5 it exists, then --

6 MR. DANIEL: Consider that as a carte
7 blanch blocking of any questions.

8 MR. BALL: I understand. Go ahead.

9 MR. DANIEL: But is that your position?

10 MR. BALL: My position is that you're
11 asking him a question to establish whether or not an
12 attorney/client privilege existed or a relationship
13 existed. I'm saying he cannot answer those
14 questions, and we're asserting the attorney/client
15 privilege.

16 MR. DANIEL: Okay.

17 BY MR. DANIEL:

18 Q. Have you ever been a guest in John Bell's
19 home?

20 A. Yes.

21 Q. Has he ever been a guest in your home?

22 A. The only time I ever recall John Bell
23 being at my home -- he didn't come into my home. He came
24 by my house and spoke to me in my driveway.

25 Q. Do you consider yourself a personal friend

1 of John Bell?

2 A. Yes.

3 Q. Have you supported him in his political
4 campaigns, both when he initially ran, and I believe that
5 was in 1998, and as well as 2006?

6 A. Yes.

7 Q. Have you been a political contributor to
8 him?

9 A. Well, that was my support.

10 Q. Okay.

11 A. I also supported the other fellow, gave
12 them both money.

13 Q. Playing both sides?

14 A. Let me say this in defense of myself.
15 That's duplicitous, I know, but both sides knew that I had
16 given the other side money.

17 Q. Most of the time they do in --

18 A. No, I told them. I told them. Too small
19 a town not to do that.

20 Q. Are you familiar with Judge Bell's family
21 members?

22 A. Why, certainly.

23 Q. Who is his wife?

24 A. Vida Ivy Bell.

25 Q. Is she an attorney?

- 1 A. She is.
- 2 Q. Practices in Newport?
- 3 A. She does.
- 4 Q. Have you ever had any business dealings in
5 which you worked with her in your law practice?
- 6 A. Yes.
- 7 Q. Who is Judge Bell's administrative
8 assistant or secretary?
- 9 A. Joy Large.
- 10 Q. Who is she? What relationship is she to
11 Judge Bell or Judge Bell's wife, or do you know?
- 12 A. You know, I don't know. There's maybe
13 something distant there. I don't know.
- 14 Q. In Judge Bell's wife's law practice, who
15 is her secretary or administrative assistant?
- 16 A. Waynella Large, I believe. I believe that
17 is.
- 18 Q. Who is she?
- 19 A. She is -- who is she in relation to Vida?
- 20 Q. Yes.
- 21 A. She's Vida's sister.
- 22 Q. Have you represented her?
- 23 A. Vida?
- 24 Q. No, no, Ms. Large.
- 25 A. Waynella?

1 Q. Yeah.

2 A. You mean have I ever done any legal work
3 that pertained to her?

4 Q. Yes.

5 A. I think -- let me say yes. I'm not sure
6 what I can tell you about what it was, but let me say I
7 have done some legal work.

8 Q. Was that in relationship to a corporation
9 that was formulated, specifically East Tennessee
10 Probation?

11 A. I did some work on East Tennessee
12 Probation. I'm not sure if that qualifies as doing it for
13 Waynella Large.

14 Q. And was she and Tommy -- is it Tommy
15 Large?

16 A. Tommy Large is her husband.

17 Q. Were she and Tommy Large the
18 incorporators?

19 A. I may have been the incorporator.

20 MR. BALL: I'm going to object to the
21 relevance of this, but go ahead.

22 THE WITNESS: I may have signed as the
23 incorporator. I don't recall who signed the charter
24 as the incorporator. It was a nonprofit charter
25 filed with the State of Tennessee in Nashville.

1 BY MR. DANIEL:

2 Q. Were you representing that corporation
3 in the fall of 2008 and in 2009 as the corporate attorney?

4 A. Yes.

5 Q. Do you currently represent them?

6 A. Why, yeah. There's not much to represent,
7 but yes.

8 Q. Is Tommy Large still in the probation
9 business in any way?

10 A. To my knowledge, absolutely not.

11 Q. Does he appear in Judge Bell's court at
12 this point?

13 A. I'm not -- no.

14 Q. Now, let's go forward and let me ask you
15 this question. Do you know David Pleau?

16 A. Yes.

17 Q. When did you first meet David Pleau?

18 A. Do you mean personally or to speak to him
19 on the phone?

20 Q. Well, let's begin personally.

21 A. I believe he came to my office and I met
22 him personally in March of 2009. I believe it was in
23 March. Now, don't hold me to that. I can give you an
24 exact date if I was at my office and could look at my
25 calendar.

1 Q. All right. In that regard, have you
2 looked at anything or been provided any documents to
3 review prior to coming to this deposition?

4 A. Yes.

5 Q. What was that?

6 A. I was provided copies of some
7 depositions. I have not looked at those, okay? I looked
8 at my calendar several days ago when I spoke to somebody
9 here about this deposition and had that date, and that's
10 why I say I believe it was in March.

11 Q. March of?

12 A. 2009.

13 Q. What depositions were you provided and
14 who provided them?

15 A. I can't tell you because I didn't look at
16 them. Let me explain to you what I mean by that, because
17 that seems fantastic. Yesterday afternoon I received some
18 faxes to my office that were some depositions, okay? I
19 did not look at them, did not have time.

20 Q. From who?

21 A. From Gordon Ball's office.

22 Q. You haven't read those?

23 A. I have not.

24 Q. And you can't tell us what you received.
25 Have you received or looked at anything else --

1 A. Not that I know of.

2 Q. -- in preparation for this deposition?

3 A. No.

4 Q. You were telling me about David Pleau, and
5 the first time you actually met him, I think you said it
6 was in March of '09?

7 A. Uh-huh.

8 Q. When did you first hear the name David
9 Pleau?

10 A. Earlier in 2009. I don't remember. It
11 was several weeks, I believe, before I would have talked
12 to him at my office.

13 Q. Several weeks before March?

14 A. Right. I don't remember the exact date.
15 I would just be speculating if I tried to tell you. It
16 was January, February, March.

17 Q. Where and how did you learn of the name
18 David Pleau?

19 MR. BALL: I'm going to object to that
20 under the attorney/client privilege. If there's any
21 mention of Judge Bell or if there's any attempt to
22 state that Judge Bell had any conversation with this
23 witness concerning Mr. Pleau, we would object under
24 the attorney/client privilege and instruct him not to
25 answer. If Mr. Testerman has some independent

1 knowledge of Mr. Pleau, then certainly he can answer,
2 but if it had anything to do with Judge Bell, we
3 would object.

4 THE WITNESS: I can't answer.

5 BY MR. DANIEL:

6 Q. Your response was you can't answer?

7 A. I can't answer, given the objection.

8 Q. All right. You didn't look Mr. Pleau's
9 name or address up in the phone book?

10 A. No -- well -- no -- I may have looked it
11 up in the phone book. Yes, I may have. I don't
12 remember. It seems like for some reason I looked in the
13 phone book, but I don't remember exactly, but anyway,
14 that's --

15 Q. Why would you have looked in the phone
16 book for his name and phone number?

17 MR. BALL: I'm going to object to that
18 based on attorney/client privilege, and again, if it
19 was at any instruction from Judge Bell or any
20 discussion with Judge Bell, we would object and
21 instruct this witness not to answer.

22 THE WITNESS: I'm afraid to answer. I'm
23 afraid ethically I would be remiss.

24 BY MR. DANIEL:

25 Q. Okay. Who initiated -- did you telephone

1 Mr. Pleau?

2 A. Yes.

3 Q. I assume that after you looked his name
4 and phone number up, you telephoned him?

5 A. I telephoned him.

6 Q. When did you make this phone call?

7 A. As I said, I can't remember the date. It
8 would have been several weeks before Mr. Pleau had visited
9 me in my office, and it would have been in the afternoon
10 hours. I apologize, I can't tell you any more precisely
11 than that at this time.

12 Q. Would it have been February the 2nd?

13 A. Possibly.

14 Q. Did you speak with Mr. Pleau for about 28
15 minutes?

16 A. Several minutes. I don't have any idea of
17 how long I might have spoken to him, sir.

18 Q. Did you call him or did he call you?

19 A. I called him.

20 Q. What was the subject of your call?

21 MR. BALL: I'm going to object to that and
22 instruct him -- hang on a second. I'm going to take
23 a break.

24 (Recess taken.)

25 MR. BALL: I withdraw an objection as to

1 that question, so go ahead.

2 MR. DANIEL: Do you want her to read it
3 back?

4 THE WITNESS: Yes, please.

5 (Question read.)

6 THE WITNESS: I did call him. And then
7 there was another question after that.

8 (Last question read.)

9 THE WITNESS: The subject was I was
10 inquiring of him about his intent to pursue a
11 complaint against Judge Bell in the Court of
12 Judiciary.

13 BY MR. DANIEL:

14 Q. How did you know of a complaint with the
15 Court of Judiciary?

16 MR. BALL: I'm going to object to that
17 question based on attorney/client privilege and
18 instruct the witness not to answer.

19 BY MR. DANIEL:

20 Q. Was your call at the direction of Judge
21 Bell?

22 MR. BALL: I'm going to object to that
23 question and instruct the witness not to answer based
24 on attorney/client privilege.

25 BY MR. DANIEL:

1 Q. Why would you have made the call?

2 MR. BALL: I'm going to object to that
3 question and instruct the witness not to answer based
4 on attorney/client privilege.

5 BY MR. DANIEL:

6 Q. Is that what your position is going to be?

7 A. It will have to be. I mean, I don't --

8 Q. I want to give you an opportunity to
9 respond.

10 A. Let me say this. I am willing to listen
11 to some tribunal that can give me some directions on
12 whether or not it is appropriate for me to respond to
13 that. And at this point in time I'm kind of glad that the
14 representative with the Board of Professional
15 Responsibility is here, because she'll have firsthand
16 knowledge on what to jump on me about as far as giving me
17 some direction at some point in time, I hope. Anyway,
18 that would have to be my position right now.

19 Q. First of all, did you know or have you
20 learned that David Pleau had a civil lawsuit in the
21 General Sessions Court of Cocke County in Judge Bell's
22 court where he had sued Merastar and Ms. Coleman?

23 A. I know he had a civil lawsuit. As far as
24 who the exact parties were, I don't know, but I have
25 learned that.

1 Q. Did you know that at the time that you
2 called?

3 A. I knew he had a civil lawsuit. I didn't
4 know who the parties were.

5 Q. And it was pending?

6 A. Correct.

7 Q. When you talked with Mr. Pleau next, it
8 was in, did you say March?

9 A. I believe it was March. In fact, I'm
10 going to -- I could tell you exactly when it was, because
11 it's still on my calendar on my computer at the office. I
12 just obviously don't have access to that here today. But
13 I believe it may have been March 20th, but I'd have to
14 check and make sure of that.

15 Q. All right. At that point in time did you
16 discuss with Mr. Pleau, when you talked with him in March,
17 parts of his case or about helping him or offered to help
18 him in his case?

19 A. I discussed with him about parts of his
20 case. Mr. Pleau wanted to discuss, I think, with a lawyer
21 or something about that. I was not interested in helping
22 him with his case, but, you know, I don't mind talking to
23 somebody.

24 Q. Had he had problems with his subpoenas in
25 a previous hearing, and did you discuss that with him?

1 A. I may have. Honestly, I don't recall
2 exactly what we discussed, but yes, I may have discussed
3 something about a subpoena with him.

4 Q. At the time that you discussed this or
5 talked with Mr. Pleau, and this was in March, early March,
6 I'm asking, of '09, did you ever tell him that you
7 represented Judge Bell?

8 MR. BALL: I'm going to object to that
9 based on attorney/client privilege and instruct the
10 witness not to answer.

11 BY MR. DANIEL:

12 Q. Is that your position?

13 A. Sir, it will have to be my position right
14 now until somebody can give me some guidance as to whether
15 or not it would be permissible for me to answer that.

16 MR. DANIEL: Bear with me for just a
17 second while I find my notes.

18 BY MR. DANIEL:

19 Q. In your telephone conversation or call of
20 February the 2nd, which you discussed where you called
21 Mr. Pleau, did you tell Mr. Pleau that you were calling on
22 behalf of Judge Bell, that Judge Bell knew that he could
23 not call Mr. Pleau, that it would be inappropriate, and
24 ask Mr. Pleau if he would withdraw his complaint in the
25 Court of the Judiciary?

1 MR. BALL: I'm going to object to that
2 question based on attorney/client privilege and
3 instruct the witness, Testerman, not to answer that
4 question.

5 BY MR. DANIEL:

6 Q. Was the purpose of your call on February
7 the 2nd to follow the instructions of Judge Bell, to ask
8 if Mr. Pleau would drop the Court of the Judiciary
9 complaint?

10 MR. BALL: I'm going to object to that
11 question, likewise, under the attorney/client
12 privilege and instruct the witness not to answer that
13 question.

14 BY MR. DANIEL:

15 Q. During your telephone conversation on
16 February the 2nd, did you indicate or tell Mr. Pleau that
17 if he wanted to drop the complaint in the Court of the
18 Judiciary, that you could prepare some documents, that he
19 could come in your office and sign?

20 MR. BALL: I'm going to object to that
21 question based on the attorney/client privilege and
22 instruct the witness not to answer.

23 BY MR. DANIEL:

24 Q. Is that the position you take?

25 A. Yeah. I've not answered verbally as to

1 those, but it would be the same on all of those, sir.

2 Q. Did you first learn of the complaint --
3 first, where did you first learn of the complaint with the
4 Court of the Judiciary against Judge Bell by Mr. Pleau?

5 MR. BALL: I'm going to instruct the
6 witness not to answer that question based on
7 attorney/client privilege.

8 BY MR. DANIEL:

9 Q. The same?

10 A. Yeah, the same.

11 Q. Did you first learn of the complaint with
12 the Court of the Judiciary by Mr. Pleau in the hallway of
13 the Cocke County Courthouse in a discussion with Judge
14 Bell?

15 MR. BALL: I'm going to instruct the
16 witness not to answer that question based on
17 attorney/client privilege.

18 THE WITNESS: That, at this point in time,
19 would have to be my position.

20 BY MR. DANIEL:

21 Q. I understand. When you first learned of
22 this complaint, was any other person present?

23 MR. BALL: I'm going to object to that
24 question based on --

25 MR. DANIEL: By the way, I'm talking about

1 the complaint with the Court of the Judiciary from
2 Judge Bell, to clarify the question so he can
3 introduce an objection.

4 MR. BALL: I'm going to object to that
5 question based on attorney/client privilege, and it
6 presupposes there was a conversation between Judge
7 Bell and Mr. Testerman.

8 BY MR. DANIEL:

9 Q. After the telephone conversation of
10 February the 2nd that we've been discussing where you
11 called Mr. Pleau, did you report back to Judge Bell what
12 you had learned in your telephone conversation?

13 MR. BALL: I'm going to object to that
14 question based on attorney/client privilege and
15 instruct the witness not to answer.

16 THE WITNESS: That will have to be my
17 position at this point in time, sir.

18 BY MR. DANIEL:

19 Q. Now, the next contact that you had with
20 Mr. Pleau after the March telephone call that you
21 testified to back a while ago --

22 A. March telephone call?

23 Q. I think you said you thought it was
24 March.

25 A. Telephone call?

1 Q. Yeah. Let me back up and ask you this.

2 A. Mr. Pleau in March came to my office,
3 sir. I'm sorry, I was unclear about that. Mr. Pleau came
4 to my office.

5 Q. Prior to him coming to your office
6 physically, did he call to talk to you about arranging an
7 appointment to come and visit with you?

8 A. I don't recall him calling me. It's
9 possible he may have, but I swear, I don't -- I don't
10 remember independently him talking to me, and usually my
11 office staff arranges most of my appointments. I don't
12 talk to them because that could be very time consuming,
13 but it would be possible that I may have talked to
14 Mr. Pleau. I just don't independently recollect at this
15 time.

16 Q. If he says he called and made an
17 appointment, you don't have any recollection?

18 A. Most certainly he called and made an
19 appointment because an appointment was made, and I don't
20 think we would have initiated that. But now, whether he
21 talked to me when he made the appointment, I just don't
22 recollect.

23 Q. If in fact he did talk with you on that
24 first March date, which you don't recall, did you at any
25 time tell him that you represented Judge Bell in this

1 Court of the Judiciary or any other --

2 MR. BALL: I'm going to object to that
3 question and instruct the witness not to answer based
4 on attorney/client privilege.

5 BY MR. DANIEL:

6 Q. Is that your response?

7 A. That would have to be my response.

8 Q. All right. Now, going to the day that
9 you do recall now as being in March, do you remember what
10 day in March that Mr. Pleau came to your office?

11 A. Right, I believe it was -- subject to the
12 same thing I told you before, I believe it was March 20th,
13 but as I said, I'm not for certain of that, but I believe
14 it was somewhere around March 20th.

15 Q. What was the purpose of Mr. Pleau coming
16 to your office on that particular day?

17 A. Mr. Pleau wanted to discuss some facts
18 involving his lawsuit.

19 Q. Did you on that occasion -- and you're
20 talking about -- when you say his lawsuit, are we talking
21 about his pending lawsuit dealing with his property damage
22 against Merastar and Coleman, as far as you know?

23 A. His pending lawsuit. I'm not sure who it
24 was against. As I said, if that was the parties, that was
25 the parties. I don't have any independent recollection

1 who they were.

2 Q. That was a lawsuit that you knew to be in
3 the General Sessions Court of Cocke County?

4 A. I believe it was at that time. I don't
5 remember the exact posture at that time.

6 Q. All right. In this particular
7 conversation, did Mr. Pleau ask you about papers that you
8 were drawing up or might consider drawing up dropping the
9 complaint against, the complaint in the Court of the
10 Judiciary against Judge Bell?

11 MR. BALL: I'm going to instruct him not
12 to answer. That presupposes that there were papers,
13 and it's going back to your earlier question as to
14 whether or not Mr. Testerman had ever said to
15 Mr. Pleau that he would prepare papers, and instruct
16 the witness not to answer based on attorney/client
17 privilege.

18 BY MR. DANIEL:

19 Q. Your response?

20 A. I'm going to have to take the same
21 position, sir.

22 Q. On this occasion, on the occasion of the
23 meeting that you had in March with Mr. Pleau, did you ever
24 tell Mr. Pleau that you were an attorney representing
25 Judge Bell in any matter?

1 MR. BALL: I'm going to object to that
2 question based on the attorney/client privilege and
3 instruct the witness not to answer.

4 BY MR. DANIEL:

5 Q. Your response again?

6 A. Once again, I'll have to take the same
7 position I've taken earlier, respectfully, sir.

8 Q. Have you ever seen the complaint that
9 Mr. Pleau filed in the Court of the Judiciary?

10 A. I don't think so. I read about it in the
11 newspaper.

12 Q. After the March meeting, did you have a
13 meeting in July, July the 16th, with Mr. LaRue and
14 myself?

15 A. You and Mr. LaRue came to my office. I
16 don't remember the exact date.

17 Q. At that particular time were you asked
18 questions about this telephone conversation of February
19 the 2nd?

20 A. I believe that I was.

21 Q. Did you answer those questions truthfully?

22 A. I believe that I did, yes.

23 Q. Did you at any time, during that
24 particular discussion with myself and Mr. LaRue, indicate
25 that you had an attorney/client relationship with Judge

1 Bell?

2 MR. BALL: I'm going to object to that
3 question and instruct the witness not to answer based
4 on attorney/client privilege.

5 BY MR. DANIEL:

6 Q. Okay. Later in the month of August, did
7 you have a meeting in which TBI Agent Lott and Special
8 Investigator King came to your office?

9 A. I don't remember the date that some TBI
10 gentlemen came to my office, but yes, they did.

11 Q. On that particular occasion, did you
12 indicate to them or tell them that you were an attorney
13 representing Judge Bell?

14 A. I don't --

15 MR. BALL: I'm going to object to
16 that question based on attorney/client privilege and
17 instruct the witness not to answer.

18 BY MR. DANIEL:

19 Q. Now, let me ask you this question,
20 Mr. Testerman. Counsel has continued to raise these
21 objections about attorney/client privilege. On what day
22 or days do you state that you became an attorney, came
23 into an attorney/client relationship with Judge Bell?

24 MR. BALL: I'm going to object to that
25 question and instruct this witness not to answer

1 based on attorney/client privilege.

2 BY MR. DANIEL:

3 Q. As to the date when the relationship
4 began.

5 MR. BALL: It is our position that any
6 matter concerning, and I'm going to say alleged,
7 attorney/client privilege, whether it existed or did
8 not exist, is privileged.

9 BY MR. DANIEL:

10 Q. When did you come to know, Mr. Testerman,
11 that Gordon Ball represented Judge Bell?

12 A. You mean for anything?

13 Q. In these matters.

14 MR. BALL: I'm going to ask --

15 BY MR. DANIEL:

16 Q. The question is -- let me clarify the
17 question. On what date did you learn that Gordon Ball
18 represented John Bell in these matters that are before the
19 Court of the Judiciary?

20 A. I do not recall a date, sir. I just
21 don't.

22 Q. Do you have now an attorney/client
23 relationship with Judge Bell in this matter or any other
24 matter?

25 MR. BALL: I'm going to object to that

1 question and instruct the witness not to answer based
2 on attorney/client privilege.

3 MR. DANIEL: Do you contend that you have
4 a continued attorney/client relationship at this
5 time, Mr. Ball?

6 MR. BALL: I'm not contending one thing or
7 another, sir. It's up to you to ask the questions,
8 and I'm going to object. And I will object --

9 THE WITNESS: Once again, I'll have to
10 take the same position I've taken before, sir,
11 respectfully.

12 BY MR. DANIEL:

13 Q. Do you appear in Judge Bell's court?

14 A. I do.

15 Q. If this attorney/client relationship
16 exists, have you continued to appear in Judge Bell's court
17 in 2009?

18 MR. BALL: I'm going to object to that and
19 instruct this witness not to answer based on
20 attorney/client privilege, and that really goes to
21 the form of the question if this attorney/client
22 privilege has been --

23 BY MR. DANIEL:

24 Q. Have you appeared in Judge Bell's court in
25 2009?

1 A. Yes.

2 Q. Have you appeared in Judge Bell's court in
3 December of 2009?

4 A. Yes.

5 Q. November 2009?

6 A. Yes.

7 Q. October 2009?

8 A. Yes.

9 Q. September 2009?

10 A. Yes.

11 Q. August of 2009?

12 A. Yes.

13 Q. July of 2009?

14 A. Yes.

15 Q. Let me ask you this, and maybe I can
16 simplify this. Have you appeared in Judge Bell's court as
17 an attorney representing parties in every month of 2009?

18 A. I'm sure, yes. I'll say yes. Now, if it
19 turns out in February or March I didn't -- but I'm pretty
20 sure I did, because I'm regular in his court.

21 Q. Has there ever been an announcement, by
22 yourself or Judge Bell, in any of these court appearances
23 that you had in 2009 that you and he were in an
24 attorney/client relationship?

25 MR. BALL: I'm going to object to that and

1 instruct the witness not to answer based on
2 attorney/client privilege.

3 THE WITNESS: Once again, I cannot answer
4 that question at that time because of that
5 objection.

6 BY MR. DANIEL:

7 Q. Okay. Tell me, Mr. Testerman, what's your
8 understanding of what an ex parte communication is?

9 A. You mean in a legal sense?

10 Q. Yes, particularly -- and I'll clarify
11 that. As far as a judge is concerned.

12 A. Excuse my ignorance, but my understanding
13 of it is when there are -- an ex parte communication would
14 be a communication where both sides are not present, both
15 sides in a particular controversy are not present.

16 Q. Is that an unethical act by a judge?

17 MR. BALL: I'm going to object to this
18 line of questioning because there's been no
19 groundwork laid that this witness would be an expert
20 witness on the conduct of judges in the state of
21 Tennessee. Other than that, you may ask.

22 BY MR. DANIEL:

23 Q. Go ahead then, answer.

24 A. The question was -- could you restate the
25 question?

1 Q. I can never remember how I said it, so
2 I'll just ask the court reporter.

3 (Last question read.)

4 THE WITNESS: An ex parte communication?

5 MR. DANIEL: Yes.

6 THE WITNESS: It can be. My understanding
7 is it can be. I don't know that it always is.

8 BY MR. DANIEL:

9 Q. Okay. That's fair enough. Going forward,
10 an ex parte communication can be made by a judge through a
11 third party; is that correct, in your knowledge?

12 A. I suppose that would be possible.

13 MR. DANIEL: Can we have a break for just
14 a second?

15 MR. BALL: Sure.

16 (Recess taken.)

17 MR. DANIEL: I'm ready to go back on the
18 record if you are, Mr. Testerman.

19 THE WITNESS: Yes, sir.

20 BY MR. DANIEL:

21 Q. I've used some terms here I thought were
22 most conclusive, but perhaps I need to clarify that.
23 When I'm talking about asking you whether you have
24 appeared in Judge Bell's court, Judge Bell exercises a
25 number of different types of jurisdiction, doesn't he?

1 A. He does.

2 Q. He has civil jurisdiction, criminal
3 jurisdiction, juvenile jurisdiction. He may have probate
4 jurisdiction, I'm not sure.

5 A. He does not have probate jurisdiction, to
6 my knowledge, sir.

7 Q. My questions as to your appearance as an
8 attorney in Judge Bell's court goes to all of those
9 various types of jurisdiction. Would you agree that
10 you've appeared in Juvenile Court and maybe these other
11 courts as well?

12 A. Let me make it easy. On all those months
13 we've spoken about, I believe in all those months I would
14 have appeared in all of those courts.

15 Q. All of those types of jurisdiction of
16 courts?

17 A. Right.

18 Q. Have you ever sat specially as a judge for
19 Judge Bell?

20 A. A time or two. Not many, but a time or
21 two.

22 Q. Have you sat specially this last year,
23 2009?

24 A. Right, right. I'm trying to think. I
25 don't think so. I don't recall. It's possible, but I

1 don't independently recollect. It would have been the day
2 they do the traffic tickets, if that were the case. I'm
3 just saying I don't remember.

4 Q. Were you familiar with the fact that Judge
5 Bell had an automobile collision in 2008?

6 A. You know, independently I don't recall
7 that, but I guarantee you I would have known that at the
8 time if he had. We're a small town, and if any lawyer or
9 judge had a collision, I would have known about it, or I
10 assume I would have.

11 Q. And do you know of any time that Judge
12 Bell missed from his official duties in 2008 or 2009
13 because of an automobile accident or any other accident?

14 A. I don't independently recollect any, I
15 mean, for that reason.

16 Q. Are there any written notes or documents
17 associated with your interaction with Mr. Pleau, either --

18 A. You mean from me?

19 Q. Yeah.

20 MR. BALL: I would object to that based on
21 the attorney/client privilege and instruct this
22 witness not to answer that.

23 BY MR. DANIEL:

24 Q. Your position?

25 A. It would have to be the same.

1 Q. All right. Today are you here
2 voluntarily for this deposition?

3 A. Right.

4 Q. Were you subpoenaed?

5 A. Not that I know. I was called and they
6 told me you wanted to take my deposition, so I --

7 Q. Who called you?

8 A. Somebody from Mr. Ball's office.

9 MR. BALL: Let the record reflect that
10 counsel for the disciplinary committee asked to take
11 Mr. Testerman's deposition, and we said that we could
12 contact Mr. Testerman without a subpoena, which we
13 did.

14 BY MR. DANIEL:

15 Q. So you are here without notice?

16 A. No, I had notice to be here.

17 Q. I'm talking about formal notice.

18 A. Oh, yes. I mean, you know, nobody
19 subpoenaed me. What else may have been done as far as you
20 all noticed between yourselves, I don't know.

21 Q. So you waived formal notice to be here and
22 appeared voluntarily; is that correct?

23 A. I guess. I don't know that I waived
24 anything one way or the other. I just said I'd come.

25 MR. BALL: I'm going to object to that,

1 if there's any attempt to mischaracterize why
2 Mr. Testerman is here. We were doing a service, we
3 thought, to opposite counsel to attempt to secure a
4 witness that you requested us to do. I assume you
5 could have subpoenaed him and accomplished the very
6 same thing.

7 MR. MCDONALD: I went to some very great
8 lengths to try to organize four depositions on the
9 same date --

10 THE WITNESS: Well, if you had called me
11 and asked me to come, I would have done the same
12 thing. I mean, I kind of know the process like you
13 do.

14 MR. DANIEL: That will be our questions.

15 EXAMINATION

16 BY MR. BALL:

17 Q. Mr. Testerman, do you remember on July
18 the 16th that Mr. Daniel and Mr. LaRue came to your
19 office?

20 A. They did. I mean, I don't know the date.
21 I know they came to my office.

22 Q. Do you remember Mr. Daniel saying to you
23 that it was inappropriate conduct for a lawyer to
24 communicate with a person represented by an attorney
25 without permission?

1 A. Something like that, yes, he did.

2 Q. Do you remember him saying that to you
3 concerning Mr. Pleau?

4 A. Yes.

5 Q. Do you remember him saying that he
6 represented Mr. Pleau?

7 A. Yes.

8 Q. Did Mr. Daniel point out that you could be
9 subject to a disciplinary complaint filed by him because
10 you contacted Mr. Pleau when in fact Mr. Daniel
11 represented Mr. Pleau?

12 A. He did.

13 Q. Did he point out that under Rule 8.1, that
14 you had an obligation not to make any false statements or
15 failed to disclose certain facts to him, Mr. Daniel?

16 A. I don't -- he may have mentioned Rule 8.1,
17 but we discussed that I would not -- or that I should not
18 and was not allowed to make false statements.

19 Q. During your conversation with Mr. Daniel,
20 did he tell you that he was going to report you to the
21 Board of Professional Responsibility and specifically
22 Nancy Jones, who is his counterpart?

23 A. He told me he was going to report me. I
24 don't remember the name Nancy Jones. I mean, he could
25 have used the name Nancy Jones; I don't recall that.

1 Q. Did he in fact report you to the
2 disciplinary committee?

3 A. I'm not sure if I'm allowed to disclose
4 that, so I'm going to not answer that question. There's
5 something about you're not supposed to disclose certain
6 things, so -- it may be all right, but --

7 Q. Do you have an opinion as to whether or
8 not Mr. Daniel tried to intimidate you that day, on July
9 the 16th?

10 A. Yes, I think that was an interviewing
11 witness he was attempting to intimidate.

12 Q. Were you in fact intimidated by
13 Mr. Daniel that day?

14 A. Yes.

15 Q. Were you in fact intimidated by Mr. Daniel
16 because of his position as the lawyer for the judicial
17 committee, Court of the Judiciary?

18 A. That and the statements that were made,
19 yes.

20 Q. And the statements made being those that
21 he was going to report you to the board and that you had
22 committed some -- did he make a statement -- strike that.
23 Did he make a statement that you had violated any
24 criminal statutes?

25 A. Yes, criminal activity was afoot. Not

1 exactly those words, but yes.

2 Q. Did that intimidate you?

3 A. Certainly. Yes, it did.

4 Q. And did you make statements to Mr. Daniel
5 that day that were not authorized by Judge Bell?

6 A. I believe that I did.

7 Q. Did you make statements to Judge Daniel
8 and Mr. LaRue that day that in your opinion violated,
9 knowing what you know now, violated any attorney/client
10 privilege, if any existed between you and Judge Bell?

11 A. I would have to say at this point in time,
12 yes, I think I did.

13 Q. Did Judge Bell give you any authorization
14 that day, on July the 16th, to talk to Mr. Daniel or Mr.
15 LaRue of any kind?

16 A. No.

17 Q. Has Judge John Bell ever granted you any
18 waiver of any kind to discuss any matter that he may have
19 consulted you on an attorney/client privilege with anyone
20 else?

21 A. Including you?

22 Q. Not including me. Let me be more
23 specific. I always tend to ask one question too many.
24 Has Mr. Bell ever given you any authorization to discuss
25 the Pleau matter with -- strike that.

1 A. I didn't mean to be a smart aleck in --

2 Q. No, I want to be specific in the question
3 because we will be taking this up before the Court. Did
4 Judge John Bell give you any authorizations to discuss
5 any matter concerning David Pleau with Steve Daniel or
6 anyone from the Court of the Judiciary?

7 A. No.

8 MR. BALL: I believe that's all.

9 EXAMINATION

10 BY MR. DANIEL:

11 Q. Would you agree that an attorney is the
12 agent of the principal client?

13 MR. BALL: I'm going to object to that
14 based on attorney/client privilege.

15 BY MR. DANIEL:

16 Q. This has nothing to do with anything about
17 Judge Bell. This is just in general. Would you agree
18 with that? And he may want to object still.

19 MR. BALL: I do want to object based on
20 attorney/client privilege and instruct him not to
21 answer that question based on attorney/client
22 privilege.

23 BY MR. DANIEL:

24 Q. Your response?

25 A. I'll have to take the same position.

1 Q. You're going to take the same position?

2 A. Respectfully so, sir.

3 Q. Even if we're just talking about globally,
4 that's the position you're going to take?

5 A. Yeah, I'm going to have to. At this point
6 in time, yes, respectfully so, and hopefully somebody can
7 give me some direction.

8 Q. Did Judge Bell authorize you to talk to
9 Mr. Ball?

10 A. Yes.

11 Q. When?

12 A. I don't remember. Sometime --

13 MR. BALL: I'm going to object to that and
14 instruct you not to answer based on attorney/client
15 privilege.

16 BY MR. DANIEL:

17 Q. Your response?

18 A. Well, I obviously have to do the same.

19 Q. Based on your responses to Mr. Ball, are
20 you saying today that what you told LaRue and myself in
21 July, you violated your confidential relationship with
22 your principal, Judge John Bell?

23 MR. BALL: I'm going to object to that
24 based on attorney/client privilege and instruct you
25 not to answer that question.

1 BY MR. DANIEL:

2 Q. Your response?

3 A. It will have to be the same, given the
4 exercise of privilege, or confidence, I guess.

5 MR. DANIEL: No other questions.

6

7 FURTHER THE DEPONENT SAITH NOT

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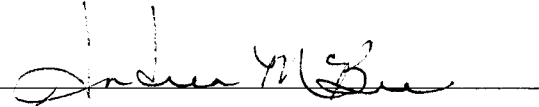
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STATE OF TENNESSEE:
COUNTY OF KNOX :

I, Andrea McBee, Court Reporter and Notary Public, do hereby certify that I administered the oath to the deponent, that I reported in machine shorthand the above testimony, that the foregoing pages, numbered from 1 to 55, inclusive, were typed under my personal supervision and constitute a true and accurate record of the proceedings, and that there has not been a request made by the deponent to review the transcript.

I further certify that I am not an attorney or counsel for any of the parties, nor an employee or relative of any attorney or counsel connected with the action, nor financially interested in the action.

Witness my hand and official seal this 19th day of January, 2010.



Andrea McBee
Court Reporter and Notary Public
My Commission Expires 5/09/2012