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IN THE TENNESSEE SUPREME COURT

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

**NO. M2010-01447-SC-43-CJ)
Court of the Judiciary)
No. M2009-02115-CJ-CJ-CJ)**
COURT CLERK
NASHVILLE

OBJECTION OF JUDGE JOHN A. BELL TO "STATEMENT OF RECOVERABLE COSTS OF THE COURT OF THE JUDICIARY DISCIPLINARY COUNSEL"

NOW INTO COURT comes the Appellant, Judge John A. Bell, pursuant to Rule 40(d) of the Tennessee Rules of Appellate Procedure, and submits this Objection to the "Statement of Recoverable Costs of the Court of the Judiciary Disciplinary Counsel." For his Objection, Judge Bell would state as follows:

Disciplinary Counsel seeks as costs reimbursement for a copy of the transcript of the evidence (\$1,425.20) and for costs of producing necessary copies of the brief (\$62.44), for a total of \$1,487.64. Because the Court taxed Judge Bell with the costs in this appeal, Judge Bell does not dispute the costs for reproducing Disciplinary Counsel's brief, as those costs are plainly recoverable under Rule 40(c) ("Recoverable costs on appeal include . . . the cost of producing necessary copies of briefs and the record. . . ."). However, for the following reasons, Judge Bell does object to Disciplinary Counsel's request that Judge Bell pay for the "costs of the transcript of the evidence, in the amount of \$1,425.20"

First, while Rule 40(c) clearly "provides for the recovery of the cost expended by the successful party for *preparation of a transcript of the evidence necessary to prosecute the appeal*,"

see *Smith v. Watts*, 625 S.W.2d 712 (Tenn. 1981), it does not provide for recovery of **a copy of the transcript of the evidence**, especially by the non-appealing party who prevailed in the trial court. In fact, that the rule explicitly states that recoverable costs include “the cost of a transcript of the evidence or proceedings” plainly indicates that the cost of a copy is not recoverable.¹ Put simply, as the prevailing party – as opposed to the appealing party – in the Court of the Judiciary, Disciplinary Counsel was not responsible for having a trial transcript prepared, that was Judge Bell’s burden and responsibility, and he clearly fulfilled it.

Second, nor was Disciplinary Counsel “prosecuting the appeal.” Judge Bell was the appealing party, *i.e.*, the “appellant,” in this appeal, and as noted above, pursuant to Rule 24(b), Judge Bell was the party responsible for having the transcript of the evidence prepared for the record on appeal. See Rule 24(b) (“... the **appellant** shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal.”). Judge Bell did indeed have the transcript of the complete trial proceedings transcribed by the Court Reporter, paid for same, and filed the complete two-volume trial transcript with this Court on or about October 29, 2010 as part of the record on appeal under Rule 26.

Third, there is good reason for the exclusion of such costs as recoverable costs under Rule 40. After all, the Appellate Court Clerk makes the *entire* record on appeal – including the transcript of the evidence – available to all parties on appeal to assist them in preparing their briefs and making

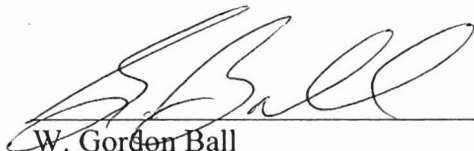
¹This is supported by the maxim of *Inclusio Unius est Exclusio Alterius*. The express inclusion of one is the exclusion of another. See *Black’s Law Dictionary*, at p. 906 (4th ed. 1968); see also *South Cent. Bell Tel. Co. v. Tennessee Public Service Com.*, 675 S.W.2d 718, 719 (Tenn. App. 1984) (“The express inclusion of one (person or thing) (implies) the exclusion of all others.”).

proper references to the record therein. Disciplinary Counsel was undoubtedly provided an equal opportunity to check out and review the record in order to prepare its brief. Accordingly, Disciplinary Counsel's purchase of a copy of the trial transcript for \$1,425.20, when the original transcript was available at no cost, was unnecessary to Disciplinary Counsel's defense of Judge Bell's appeal.²

Finally, taxing Judge Bell with the costs of copying a transcript that he originally purchased and filed with this Court would clearly be a duplicative charge, resulting in Judge Bell having paid for the same transcript *twice*.

For all of these reasons, Judge Bell objects to Disciplinary Counsel's request for \$1,425.20 to reimburse it for a copy of the transcript and respectfully requests that the request for such costs be denied and that such costs be excluded from the approved recoverable costs to be issued by the Appellate Court Clerk.

Respectfully submitted, this 14th day of July, 2011.



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²To the extent such costs are requested as "necessary copies of briefs and the record," nothing submitted by Disciplinary Counsel supports the proposition that purchasing a copy of the trial transcript – available at no cost from the Appellate Court Clerk – from the court reporter was "necessary." In fact, if Disciplinary Counsel had checked out the record, it could have likely purchased a complete copy at a copy service, *e.g.*, Staples, at a much discounted-rate.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon Disciplinary Counsel, by placing a copy of the same in the U.S. Mail, postage pre-paid, for delivery:

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This 14th day of July, 2011.



W. Gordon Ball