

IN THE TENNESSEE COURT OF THE JUDICIARY

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

APPELLATE COURT CLERK
NASHVILLE

DOCKET NUMBER: M-2009-02115-CJ-CJ-CJ

COMPLAINT OF DAVID PLEAU
FILE NUMBER: 08-3508

**DISCIPLINARY COUNSEL'S
BRIEF IN SUPPORT OF MOTION TO ALTER OR AMEND and
BRIEF IN SUPPORT OF MOTION TO ASSESS DISCRETIONARY COSTS**

Comes now Disciplinary Counsel for the Tennessee Court of the Judiciary, pursuant to Order of the Court of the Judiciary entered in this action on July 8, 2010, and would state as follows:

Motion to Alter or Amend

The court in this action announced its findings following deliberation at the conclusion of trial on June 3, 2010. In accordance with the findings, the determination of the Court of the Judiciary was made the Order of the Court, that Order having been filed with the Clerk on June 14, 2010.

Thereafter, Disciplinary Counsel filed in a timely fashion a Motion to Alter and Amend, the essence of which was the following language:

The Court and hearing panel of the Tennessee Court of the Judiciary found that Judge John A. Bell was guilty of having violated the Code of Judicial Conduct under each of the three enumerated counts. In announcing orally the Court's findings as to sanctions, the Court imposed a combination of suspensions as well as required ethical education over the next three years in addition to other requirements. In announcing these findings, the Court did not deal with the cost of implementing these sanctions. Although Judge Bell may not have his compensation diminished during the term of office, it would

be inequitable, unfair and unjust for the State of Tennessee or the citizens of Cocke County to be required to pay for a substitute judge to hold the normal business of Cocke County General Sessions Court during the period of the term of suspension. It is anticipated that Judge Bell will seek to either have the Administrative Office of the Courts to obtain and fund a substitute judge or to require the citizens of Cocke County to fund a substitute judge during his suspension. It is also anticipated that Judge Bell will seek to have either Cocke County fund or the State of Tennessee fund judicial ethics programs to comply with the announced findings of this Court. Those expenses should be borne by Judge Bell and not be at the expense of either the State or the citizens of Cocke County.

The intent of the Motion needs no specific elaboration. Simply stated, Judge Bell was found culpable of ethics and conduct violations. It is at best incongruous that State or Local Government, and the citizens and taxpayers of government, bear in any fashion the financial consequences of Judge Bell's own adjudicated malfeasance. The result occasioned thereby is further exacerbated by the reality of the finding that permits Judge Bell a paid suspension while the business of the court for which he is responsible continues unabated, and is potentially funded ultimately by those who elected him to perform his duties properly, ethically, and without misconduct.

The purpose of the Court of the Judiciary statute is, as "expressly declared to be the legislative intent..." to

(1) Provide an orderly and efficient method for making inquiry into:

(A) The physical, mental and moral fitness of any Tennessee judge;

(B) The judge's manner of performance of duty;

(C) The judge's commission of any act calculated to reflect unfavorably upon the judiciary of the state or bring the judiciary into disrepute or that may adversely affect the administration of justice in the state;...

It is precisely to “prevent injustice” to the citizens responsible for ultimately funding state or county government that Disciplinary Counsel urges a alteration or amendment of the judgment entered by this Court.

Motion to Assess Discretionary Costs

Rule 54.04, Tennessee Rules of Civil Procedure, provides impertinent part:

(1) Costs included in the bill of costs prepared by the clerk shall be allowed to the prevailing party unless the court otherwise directs, but costs against the state, its officers, or its agencies shall be imposed only to the extent permitted by law...

In that Judge Bell was found guilty of ethical and conduct violations in the face of his steadfast denial of any wrongdoing, Disciplinary Counsel, acting pursuant to statute upon the complaint of David Pleau, is the "prevailing party." Under the language of the Rule, "[t]rial courts are afforded a great deal of discretion when considering whether to award costs," *see, e.g., Mix v. Miller*, 27 S.W.3d 508, 516 (Tenn.Ct.App.1999), In determining whether to award discretionary costs, the trial court should: (1) determine whether the party requesting the costs is the ‘prevailing party,’ (2) limit awards to the costs specifically identified in the rule, (3) determine whether the requested costs are necessary and reasonable and (4) determine whether the prevailing party has engaged in conduct during the litigation that warrants depriving it of the discretionary costs to which it might otherwise be entitled. *Mass. Mutual Life Ins. Co. v. Jefferson*, 104 S.W.3d 13, 35-36 (Tenn.Ct.App.2002).

Under the applicable standards, Disciplinary Counsel should be afforded each and every item of costs specified in his Motion.

2) Provide a process by which appropriate sanctions may be imposed; ...T.C.A. Section 17-5-101.

The statute “shall be liberally construed to accomplish the declared purposes and intents set forth in this part.” T.C.A. 17-5-103.

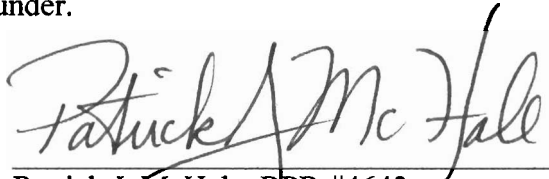
Disciplinary Counsel urges the Court to alter or amend its judgment in this action to insure that the conduct of Judge Bell not further undermine the “administration of justice in the state...,” supra. By imposing additional burdens, i.e., costs and confusion in the state or county governments.

While the leading cases in this state construing the operation of Rule 59.04 appear to address summary judgment practice, see, e.g., *Harris v. Chern* 33 S.W. 3d 741 (Tenn. App 2000), the general purpose of Rule 54 was summarized by now Justice Koch in *Bradley v. McLeod*, 984 SW 2d 929 (Tenn. App. 1998) (modified on other grounds), as follows:

The purpose of Tenn. R. Civ. P. 59 motions is to prevent unnecessary appeals by providing trial courts with an opportunity to correct errors before a judgment becomes final. See *Rupe v. Durbin Durco, Inc.*, 557 S.W.2d 742, 748 (Tenn.Ct.App. 1976), overruled on other grounds, *Crosslin v. Alsup*, 594 S.W.2d 379, 380 (Tenn. 1980). Tenn. R. Civ. P. 59.04 motions may be granted (1) when the controlling law changes before a judgment becomes final, (2) when previously unavailable evidence becomes available, or (3) **when, for sui generis reasons, a judgment should be amended to correct a clear error of law or to prevent injustice.** See *Helton v. ACS Group*, 964 F.Supp. 1175, 1182 (E.D.Tenn.1997) (construing Fed.R.Civ.P. 59(e)). They should not, however, be granted if they are simply seeking to relitigate matters that have already been adjudicated. See *Windsor v. A Fed. Executive Agency*, 614 F.Supp. 1255, 1264 (M.D.Tenn.1983) (construing Fed.R.Civ.P. 59(e)). Thus, a Tenn. R. Civ. P. 59.04 motion should not be used to alter or amend a summary judgment if it seeks to raise new, previously untried legal theories, to present new, previously unasserted legal arguments, or to introduce new evidence that could have been adduced and presented while the summary judgment motion was pending. See *Helton v. ACS Group*, 964 F.Supp. at 1182; *McCorkle v. Dyer County*, No. 02A01-9701-CV-00020, 1998 WL 155437, at *4 (Tenn.Ct.App. Apr.6, 1998) (No Tenn. R.App. P. 11 application filed). **(emphasis supplied).**

Conclusion

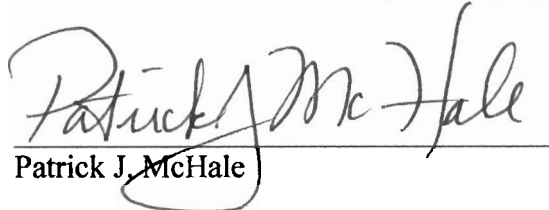
Wherefore, Disciplinary Counsel respectfully states that his Motion to Alter or Amend and Motion to Assess Discretionary Costs should be granted, and this Court enter an Order providing just and proper relief thereunder.



Patrick J. McHale, BPR #4643
Assistant Disciplinary Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served upon Gordon Ball, Ball & Scott, Attorney for Judge Bell, 550 West Main Street, Suite 601, Knoxville, Tennessee 37902, by depositing the same in the U. S. Mail, postage prepaid, on this 23 day July, 2010.



Patrick J. McHale