

FILED

2010 JAN 27 PM 1:00

APPELLATE COURT CLERK
NASHVILLE

IN THE TENNESSEE COURT OF THE JUDICIARY

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

Docket No. M2009-02115-CJ-CJ-CJ

**COMPLAINT OF DAVID PLEAU
FILE NO. 08-3508**

**MOTION FOR PROTECTIVE ORDER and
MOTION TO QUASH NOTICE OF DEPOSITION**

COMES NOW Joseph S. Daniel, Disciplinary Counsel for the Tennessee Court of the Judiciary, pursuant to Rules 26-37, Tennessee Rule of Civil Procedure, and would respectfully move the Court for an Order directing that a deposition heretofore set by Notice by counsel for The Honorable John A. Bell to occur on February 11, in Knoxville, Tennessee, not be held and that the Notices of Deposition setting same be quashed. As grounds therefore, Movant would state as follows:

1. John Bell by his Notice seeks to dispose Disciplinary Counsel for the Court of the Judiciary Joseph S. Daniel, on February 11, 2010 at 11:00 a.m. in Knoxville, Tennessee.

2. As such counsel, Joseph S. Daniel is entitled to claim and does claim attorney-client privilege and "work product" protection.

3. The Notice of Deposition and attempt to obtain a deposition is on its face calculated to subject Disciplinary Counsel Daniel to "annoyance, embarrassment,

oppression, or undue burden or expense,” within the obvious meaning and intent of Rule 26.03, Tennessee Rules of Civil Procedure.

4. The Notice seeks to require Joseph S. Daniel to bring with him “ Any and all investigative files and materials regarding any investigation of John A. Bell and Tom Testerman.” Further, Joseph S. Daniel is directed to bring an astonishing number of files, and summaries of files maintained by the Court of the Judiciary extending as far back as January 1, 2003. A copy of the deposition Notice is attached hereto as Exhibit A

5. Due to the sweeping breadth of the request/demand by Jahn A. Bell (e.g., “Any and all...”), the said Joseph S. Daniel is unable at this point to segregate what in his file, a file he maintains for the prosecution of this action, for purposes of asserting his rights under Tennessee Rules of Civil Procedure 26.02 (3) and 26.02 (5).

6. The Notice of Deposition and the contents therein wholly depart from well-recognized principles of Tennessee law, are advanced in bad faith, and entitle Movant to expenses pursuant to Rule 26.03, Tennessee Rules of Civil Procedure. By way of example and not by limitation, the Notice fails to meet the requisite burden to establish (1) that the material being sought is relevant to the subject matter involved in the pending action, (2) that the material being sought is not otherwise privileged, and (3) that the material being sought consists of documents or other tangible things.

7. The proposed deposition is further unreasonable particularly given the nature of The Honorable John A. Bell’s Answer and Responses to written discovery, and his conduct during his own deposition January 19, 2010, to be the subject of yet another Motion to Compel to be filed within a time frame heretofore ordered by this Court.

8. By statute and by Rule, even were the material sought not entirely violative of fundamental understanding of the “work product” rule and elemental discovery precepts as practiced in this state, specific statutes and Rules applicable to the Court of the Judiciary preclude the effort of Judge Bell, given the following statutes and Rule:

Tenn. Code Ann. § 17-5-305. Frivolous or unfounded charges

If it develops that the charges against a judge are frivolous or unfounded, or beyond the permissible scope of the court's inquiry, the matter will be closed and all documents, records and papers pertaining thereto shall be destroyed and the court's docket will recite the investigation and dismissal of a groundless complaint.

Tenn Code Ann. § 17-5-203. Rules of practice and procedure

The court of the judiciary shall have full authority to adopt rules regulating the practice and procedure before the court.

Rule 8. CONFIDENTIALITY

Except for hearings conducted pursuant to Tenn. Code Ann. § 17-5-308 or sanctions required to be public, matters that come before the Court are confidential. Individual members of the Court will not discuss any matter pending before the Court, except with other members of the Court and with Disciplinary Counsel. However, nothing in the Rule shall prohibit the complainant, respondent-judge, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding under these Rules or from disclosing any documents or correspondence filed by, served on, or provided to that person.

9. Even were the request not subject to refusal on the work product basis, or the confidentiality of the Court of the judiciary statutes and Rule *supra.*, the deposition request is little more than a “fishing expedition” fabulously broad and vague in its scope and not in any fashion calculated to lead to relevant evidence

10. To countenance the unusual deposition request of Judge Bell and his attorneys would be in effect to authorize in any litigation matter that a party and his, her,

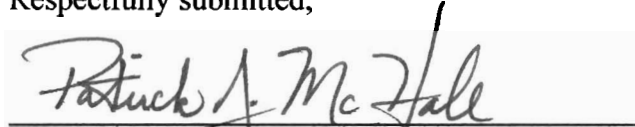
or its counsel would have unfettered and total access to the litigation file of his adversary without any showing at all beyond simple wish and aspiration.

Wherefore, Joseph S. Daniel prays as follows:

That this Motion be filed and that the deposition or depositions noticed for February 11, 2010 be quashed, and that the Movant obtain such other and further relief to which he may be entitled, including expenses incident to this Motion.

NOTICE is hereby given that the undersigned will appear before the Honorable Don R. Ash, Presiding Judge, Court of the Judiciary, at his courtroom, 4th Floor, Judicial Bldg., Public Square, Murfreesboro, Tennessee on the 10th day of February, at 10:00 a.m., central standard time, for a hearing on this Motion.

Respectfully submitted,



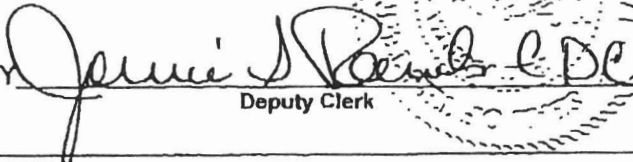

JOSEPH S. DANIEL #002799
Disciplinary Counsel
PATRICK J. McHALE, #004643
Assistant Disciplinary Counsel
503 North Maple Street
Murfreesboro, TN 37130
Phone (615) 898-8004

Certificate of Service

I certify that a true and exact copy of the foregoing has been mailed, delivered, dispatched by electronic mail, and/or transmitted by facsimile to Mr. Gordon Ball, BALL & SCOTT Law Offices, Attorneys at Law, Attorney for The Honorable John A. Bell, 550 W. Main Street, Suite 601, Knoxville, Tennessee 37902, on this the 26th day of January, 2010.



Patrick J. McHale, Assistant Disciplinary Counsel

STATE OF TENNESSEE TENNESSEE COURT OF THE JUDICIARY	<h1 style="margin:0;">SUBPOENA</h1> (Order To Appear)	CASE FILE NUMBER M2009-02115-CJ-CJ-CJ
PLAINTIFF DISCIPLINARY COUNSEL	vs.	DEFENDANT JUDGE JOHN A. BELL
TO: (Name, Address & Telephone Number of Witness) Steve Daniel, 503 North Maple Street Murfreesboro, Tennessee 37130		FILED JAN 21 2010 Clerk of the Court
You are hereby commanded to appear at the time, date and place specified for the purpose of giving testimony. In addition, if indicated, you are to bring the items listed. Failure to appear may result in punishment or imprisonment as provided by law.		
TIME 11:00 A.M.	DATE FEBRUARY 11, 2010	ITEMS TO BRING: Any and all investigative files and materials regarding any investigation directly or indirectly of John A. Bell and Tom Testerman. <input checked="" type="checkbox"/> Additional List Attached
PLACE BALL & SCOTT, Attorneys at Law 601 Bank of America Building 550 West Main Avenue Knoxville, Tennessee 37902		DATE ISSUED 1-21-10
This subpoena is being issued on behalf of <input type="checkbox"/> plaintiff <input checked="" type="checkbox"/> defendant Attorney: Gordon Ball, BALL & SCOTT, Attorneys at Law 601 Bank of America Building 550 West Main Avenue Knoxville, Tennessee 37902		MICHAEL W. CATALANO, CLERK OF THE APPELLATE COURT
ATTORNEY'S SIGNATURE	865-525-7028	BY  Deputy Clerk
DESIGNEE: DESIGNEE'S SIGNATURE:		
RETURN ON SERVICE		
Check one, (1 or 2 are for the return of an authorized off officer or attorney; an attorney's return must be sworn to; 3. Is for the witness who will acknowledge service and requires the witness's signature.)		
1. <input type="checkbox"/> I certify that on the date indicated below I served a copy of this subpoena on the witness stated above by _____		
2. <input type="checkbox"/> I failed to serve a copy of this subpoena on the witness because _____		
3. <input type="checkbox"/> I acknowledge being served with this subpoena on the date indicated below.		
Sworn to and subscribed before me on this _____ day of _____	DATE OF SERVICE 	
Signature of <input type="checkbox"/> Notary Public or <input type="checkbox"/> Deputy Clerk	SIGNATURE OF WITNESS, OFFICER, ATTORNEY OR ATTORNEY'S DESIGNEE	
Commission Expires: _____		

Disciplinary Counsel v. Bell
Case File Number M2009-02115-CJ-CJ-CJ

Deposition Subpoena to Steve Daniel

Additional Items to Bring:

1. A list of all complaints filed in the Tennessee Court of the Judiciary between January 1, 2003 and the present alleging that a violation of Canon 3(B)(8) or undue and/or excessive delay in rendering a decision, specifically including but in no way limited to the complaint alleging a 4 ½ year delay by a judge in Tennessee in rendering a decision (File Number 073098).
2. A written statement setting forth the facts for each case listed in response to item 1 above.
3. A written statement of the disposition of each case listed in response to item 1 above.

In lieu of these items, the Witness may bring a copy of the entire files in the Tennessee Court of the Judiciary filed between January 1, 2003 and the present alleging that a violation of Canon 3(B)(8) or undue and/or excessive delay in rendering a decision, specifically including but in no way limited to the complaint alleging a 4 ½ year delay by a judge in Tennessee in rendering a decision (File Number 073098).