

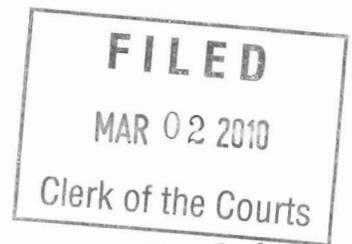
ORIGINAL

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



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RESPONSE TO MOTION TO AMEND CHARGES

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NOW INTO COURT comes The Honorable John A. Bell, Judge, General Sessions Court, Cocke County, Tennessee ("Judge Bell"), and submits his response to Disciplinary Counsel's Motion to Amend Charges:

Disciplinary Counsel has moved to amend the Formal Charges which were authorized by the Investigative Panel on October 13, 2009. Significantly, the amendments sought are substantive, not stylistic or grammatical, and add to the alleged facts and offenses being charged. It would be unfair and unjust to permit Disciplinary Counsel to amend the formal charges at this late date. In short, Disciplinary Counsel appears to believe he has complete autonomy to continue to investigate Judge Bell and add charges as this matter proceeds without adhering to the plain and unambiguous statutory directives which must be utilized before pursuing such Formal Charges.

Judge Bell opposes such amendments for two primary reasons. First, Disciplinary Counsel failed to obtain proper authorization for bringing these amended charges. Second, amendment at this stage would unduly prejudice Judge Bell as he prepares for the upcoming trial.

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First, the amendments appear to have been proposed (1) without the requisite authorization by the Investigative Panel for a full investigation (Tenn. Code Ann. §17-5-304(b)(1)), (2) without the statutory notice and opportunity to respond (Tenn. Code Ann. §17-5-304(c)(1)), (3) without any direction or other authorization by the Investigative Panel to Disciplinary Counsel to file formal charges, and (4) without any evidence that Rule 6, Sec. 3 of the Rules of the Court of Judiciary has been followed and complied with insofar as Sec. 3(b)'s requirement that an investigative panel "shall review" the matter and authorize a full investigation is concerned, insofar as Sec. 3(c)'s requirement that an investigative panel "shall review" Disciplinary Counsel's report and recommendation on the newly proposed charges is concerned, and insofar as Sec. 3(d)'s requirement the investigative panel determine that probable cause exists to believe that Judge Bell committed the amended offenses. Finally, the Amended Charges were not approved or signed by members of the Investigating Panel. All of these procedures are necessary to the administration of Disciplinary Counsel's duties and the "orderly and efficient method for making inquiry." Tenn. Code Ann. §17-5-101.

Second, the amendments come too late, absent requisite statutory notice, and Judge Bell will suffer undue prejudice if they are granted at this late stage in the proceedings as the parties near a trial in sixty (60) days. Tenn. R. Civ. P. 15.01 provides that leave of court to amend pleadings "shall be freely given when justice so requires." The Tennessee Supreme Court has recognized that the language of Tenn. R. Civ. P. 15.01 "substantially lessens the exercise of pre-trial discretion on the part of a trial judge." *Branch v. Warren*, 527 S.W.2d 89, 91 (Tenn. 1975); *see also Hardcastle v. Harris*, 170 S.W.3d 67, 80-81 (Tenn. Ct. App. 2004). Rule 15.01 does not, however, provide that leave to amend "shall be given," only that it "shall be freely given." *See Waters v. Coker*, 2008 Tenn. App. LEXIS 511, \*4 (Tenn. Ct. App. Aug. 28, 2008). Once a responsive pleading has been filed,

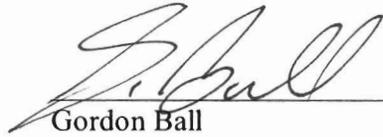
a party is entitled to amend a pleading only with the adverse party's consent or with leave of court, which is within the trial court's discretion to grant or deny. Tenn. R. Civ. P. 15.01; *Waters*, 2008 Tenn. App. LEXIS 511, at \*4. Because Judge Bell has filed an answer, leave to amend is required.

In ruling on a motion to amend a complaint, a trial court should consider several factors including: "1) undue delay in filing, 2) lack of notice to the opposing party, 3) bad faith by the moving party, 4) repeated failure to cure deficiencies by previous amendments, 5) undue prejudice to the opposing party, and 6) futility of amendment." *Kincaid v. SouthTrust Bank*, 221 S.W.3d 32, 42 (Tenn. Ct. App. 2006).

Here, there has been undue delay since Disciplinary Counsel has long possessed the information contained in the amended charges; Judge Bell has not received the statutory notice of the amended charges as required under Tenn. Code Ann. § 17-5-304 (c)(1); and Judge Bell will suffer undue prejudice if the amendment is granted since Judge Bell's counsel have – except for the disputed deposition of Mr. Daniel – already concluded their discovery, since the trial of this action is scheduled for June 2, 2010, and because amendment of the Formal Charges at this late date may needlessly result in further discovery of persons already once deposed and additional written discovery, as well as additional expense on the part of Judge Bell. Significantly, late amendments to assert new theories are not viewed favorably when the facts upon which the new theory of liability is based were known to the plaintiff since the inception of the cause of action. *Gentry v. Wagner*, -- S.W.3d --, 2009 Tenn. App. LEXIS 401, at \*12-13 (Tenn. Ct. App. June 30, 2009).

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Respectfully submitted, this 1<sup>st</sup> day of March, 2010.

A handwritten signature in black ink, appearing to read "G. Ball", is written over a horizontal line.

Gordon Ball

Allen McDonald

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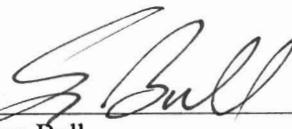
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**CERTIFICATE OF SERVICE**

A copy of the foregoing was served upon the following by United States Mail, first class postage prepaid, and by electronic mail, upon:

Joseph S. Daniel  
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Disciplinary Counsel  
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Assistant Disciplinary Counsel  
Court of the Judiciary  
503 North Maple Street  
Murfreesboro, Tennessee 37130

This 1<sup>st</sup> day of March, 2010.

  
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Gordon Ball