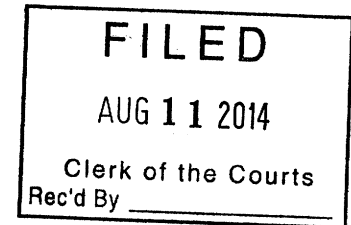

IN THE TENNESSEE BOARD OF JUDICIAL CONDUCT

**IN RE: THE HONORABLE JOHN A. DONALD
GENERAL SESSIONS JUDGE
SHELBY COUNTY, TENNESSEE**

Docket No. M2013-02204-BJC-DIS-FC

File No. 11-4762



MOTION TO AMEND COMPLAINT / FORMAL CHARGES

COMES NOW Timothy Discenza, Disciplinary Counsel for the Tennessee Board of Judicial Conduct, formerly the Tennessee Court of the Judiciary, pursuant to Rule 15, Tennessee Rules of Civil Procedure ("TRCP"), and would move to amend his original complaint (entitled "Formal Charges") as follows:

1. By deleting the last page of the Complaint/Formal Charges (the signature page for members of the Investigative Panel of the Board of Judicial Conduct), attached hereto as Exhibit A to this motion, and replacing it with a signature page bearing the actual signatures of those Investigative Panel members, a proposed copy of that that page which is attached as Exhibit B to this motion.

2. This Motion to Amend is made due to the statement of respondent Hon. John A. Donald in his original "Response to Formal Charges and Motion to Dismiss," filed November 4, 2013 in this action, namely that "The formal charges filed in this cause should be dismissed because the document captioned 'Formal Charges' does not contain the signatures of the members of the investigative panel."

3. If granted, this Motion to Amend should relate back to the original Formal Charges and the filing thereof.

Statement in Support of Disciplinary Counsel's Motion to Amend Complaint

Rule 15, Tennessee Rules of Civil Procedure, provides in pertinent part as follows:

Rule 15.01 Amendments.

A party may amend the party's pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been set for trial, the party may so amend it at any time within 15 days after it is served. Otherwise a party may amend the party's pleadings only by written consent of the adverse party or by leave of court; and leave shall be freely given when justice so requires...

Tennessee law and policy favor permitting litigants to amend their pleadings to enable disputes to be resolved on their merits rather than on legal technicalities. *Hardcastle v. Harris*, 170 S.W. 3d 67 (Tenn. App. 2004).

Generally, a party may amend its complaint with leave of the court, and such leave is to be freely given. *Messer Griesheim Industries v. Cryotech of Kingsport, Inc.* (Tenn. App 2001). The grant or denial of a motion to amend a pleading is discretionary with the trial court. *Cumulus Broadcasting, Inc. v. Shim*, 226 S.W.3d 366 (Tenn. 2007). Generally, trial courts must give the proponent of a motion to amend a full chance to be heard on the motion and must consider the motion in light of the policy to freely allow amendments. *Cumulus, supra*.

The proposed amendment should relate back to the original pleading, as no new or additional claims, theories, or facts are raised. Specifically, Rule 15.03, Tennessee

Rules of Civil Procedure, styled “Relation Back of Amendments,” provides in relevant portion, a direct statement:

Whenever the claim or defense asserted in amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading...

No prejudice to Judge Donald would result from the proposed amendment. No time or statute of limitations issues would be implicated. No substantive facts or legal theories are set forth. No additional discovery or trial preparation would ensue as a result of the proposed amendment. No delay in the advancement of this action, threatening the selected trial date would result.

As previously noted (see, e.g., Paragraph No. 2, *supra.*), Judge Donald appears to perceive that the signature issue involving the actual signature of members of the investigative panel authorizing formal charges be brought against him, justifies wholesale dismissal of the charges against him in this action, despite the seemingly direct and unmistakable language of Rule 11.01, Tennessee Rules of Civil Procedure, authorizing representative signature by counsel. This proposed amendment assuages Judge Donald’s sensibilities in this regard, and yet does not advance substantive change or alteration to the original Formal Charges—it simply comports with a literal though arguably superfluous requisite of Board of Judicial Conduct Rules. The amendment, as it relates back to the time of original filing, also serves to further the undisputed proposition that “Tennessee law and policy favor permitting litigants to amend their pleadings to enable disputes to be resolved on their merits rather than on legal technicalities,” *supra.*

WHEREFORE, Disciplinary Counsel requests that the proposed amendment to the original Formal Charges in this action be granted, in accordance with Rule 15, Tennessee Rules of Civil Procedure.

Respectfully submitted,



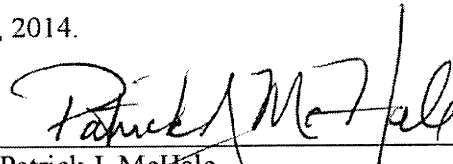
TIMOTHY R. DISCENZA #008716
Disciplinary Counsel
PATRICK J. McHALE, #004643
Assistant Disciplinary Counsel
Tennessee Board of Judicial Conduct
P.O. Box 50356
Nashville, TN 37205

Certificate of Service

I hereby certify that a true and exact copy of the foregoing Motion to Amend Complaint/Formal Charges was mailed or delivered to the following:

Hon. John A. Donald
General Sessions Judge
140 Adams Avenue, Suite 110
Memphis, Tennessee 38103

This the 12 day of August, 2014.



Patrick J. McHale
Assistant Disciplinary Counsel

Exhibit BA

**APPROVED BY THE INVESTIGATIVE PANEL
IN ACCORDANCE WITH RULE 6, SECTION 4
OF THE RULES OF PRACTICE AND PROCEDURE
OF THE TENNESSEE BOARD OF JUDICIAL CONDUCT:**

BY: Angelita Blackshear Dalton by
Angelita Blackshear Dalton
Angelita Blackshear Dalton
Investigative Panel Member

BY: Miles Burdine by
Miles Burdine
Miles Burdine
Investigative Panel Member

BY: Thomas Lawless by
Thomas Lawless
Thomas Lawless
Investigative Panel Member

Exhibit B

APPROVED BY THE INVESTIGATIVE PANEL
IN ACCORDANCE WITH RULE 6, SECTION 4
OF THE RULES OF PRACTICE AND PROCEDURE
OF THE TENNESSEE BOARD OF JUDICIAL CONDUCT:

BY: s/Angelita Blackshear Dalton
Angelita Blackshear Dalton
Investigative Panel Member

BY: s/Miles Burdine
Miles Burdine
Investigative Panel Member

BY: s/Thomas Lawless
Thomas Lawless
Investigative Panel Member