

ORIGINAL

IN THE TENNESSEE COURT OF THE JUDICIARY

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APPELLATE COURT CLERK
MEMPHIS

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

Docket No. M2008-00932-CJ-CJ-CJ

**Complainant: Dan A. Metcalf
File No. 06-2741**

FORMAL CHARGES

Joseph S. Daniel, Disciplinary Counsel for the Tennessee Court of the Judiciary, at the direction of an investigative panel of three judges of the Court of the Judiciary, in accordance with Tenn. Code Ann. § 17-5-304(b)(2)(A), hereby files formal charges against the Honorable John A. Bell, Judge of the General Sessions Court of Cocke County, Tennessee.

Following a full investigation authorized under the provisions of Tenn. Code Ann. § 17-5-304(b)(3), the three judge investigative panel composed of the Honorable David G. Hayes, the Honorable Don R. Ash, and the Honorable Gregory D. Smith found, pursuant to Tenn. Code Ann. § 17-5-304(d)(2)(A), that there is reasonable cause to believe that the Honorable John A. Bell has committed and continues to commit judicial offenses alleged herein in violation of Tenn. Code Ann. § 17-5-302(1), (3), and (8) and directed disciplinary counsel to file formal charges pursuant to Tenn. Code Ann. § 17-5-304(d)(2)(A).

The Honorable John A. Bell is a full time judge of the General Sessions Court of Cocke County, Tennessee, having taken the oath of office on or before September 1, 1998, and the second oath of office on or before September 1, 2006. Therefore, General Sessions Judge John

A. Bell is subject to judicial discipline by the Court of the Judiciary pursuant to Tenn. Code Ann. § 17-5-102. Disciplinary Counsel charges Honorable John A. Bell as follows:

COUNT ONE

On April 29, 2005, the Tennessee Supreme Court amended Supreme Court Rule 10, Canon 3C by adding paragraph (5) which provides:

When a judge refers litigants to community resources as a condition or requirement relating to litigation, such referrals shall be made impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. For the purpose of this provision, a "community resource" is any person or organization providing services such as, but not limited to: counseling services; driver education or traffic safety programs; mental health, substance abuse or other treatment programs; parenting classes; private probation services; and similar types of services.

The commentary that accompanies this amendment requires that referrals to these types of services be made impartially and on the basis of merit and without nepotism or favoritism. This provision went into effect July 1, 2005.

On July 1, 2005, Judge Bell was utilizing the private probation services of East Tennessee Probation, Inc. East Tennessee Probation, Inc. was incorporated in 1999 to provide private probationary services. The incorporator of East Tennessee Probation, Inc. was Tommy Large, who is married to Judge Bell's spouse's sister. Shortly after the incorporation of the company, Judge Bell selected the company to provide probationary services for the Cocke County General Sessions Court.

Large was the Executive Director/chief operating officer of the corporation from its inception, was its Executive Director/chief operating officer on July 1, 2005, and has continued to be its Executive Director/chief operating officer to the present. He has been and continues to be the registered agent for service of process for the corporation. He has been and continues to be compensated by the corporation.

The above information relating to Judge Bell's actions prior to July 1, 2005, is set forth for the purpose of providing background information. The actual charges of misconduct relate only to the actions and/or inactions of Judge Bell on and after July 1, 2005.

Judge Bell became aware of the 2005 amendment to the Supreme Court rule at some time prior to the general election in August 2006. Judge Bell was re-elected to the judgeship in August 2006 and began his new term of office on September 1, 2006. In an effort to circumvent the 2005 amended Tennessee Supreme Court rule, Judge Bell sought to create an artificial barrier for his continued utilization of East Tennessee Probation, Inc. as the exclusive probation provider for Cocke County General Sessions Court. He created or had created a Memorandum of Agreement effective September 1, 2006, which ostensibly vests the authority for the selection of a private probation company provider with the Cocke County Mayor. There is no statutory authorization for such a designation. This Memorandum of Agreement was signed by Judge Bell and, at the request of Judge Bell, by Cocke County Mayor Iliff McMahan in order to create the position of Director of Court Services for Cocke County. Thereafter, Mayor McMahan, at the direction of Judge Bell, used that appointment for the purpose of selecting Jennifer Shelton as the Director of Court Services. Shelton is now and was at the time of this appointment Judge Bell's Juvenile Probation Officer.

The Memorandum of Agreement between Judge Bell and County Mayor McMahan provides that the purpose of the Director of Court

Services is to “select, utilize, change, coordinate with, and to make all decisions concerning provider services to be utilized for both the Cocke County General Sessions and the Cocke County Juvenile Courts for all court services.” No probation provider other than East Tennessee Probation, Inc. has provided or been asked to provide probation services for the Cocke County General Sessions Court and/or Juvenile Court pursuant to this agreement.

East Tennessee Probation, Inc. collects fees for each of its services, which fees must be paid by people placed on probation. Failure to pay these fees, or to report as directed to take drug tests, for which the individual is separately charged, is a reason for Judge Bell to revoke the suspended sentence and require the individual to serve a jail sentence or to extend the probation term. Extension of the probation necessitates additional costs and fees that are paid to East Tennessee Probation, Inc. These fees provide income to the company, which in turn pays Large a salary. Judge Bell allows Large to sit on the bench adjacent to him in court sessions. It is known by the general public in Cocke County that Large has a familial relationship to Judge Bell, and that Large receives compensation as a result of those who are required to undergo supervision by East Tennessee Probation, Inc.

The above-described actions and/or inactions of Judge Bell are in violation of the following:

(1) Canon 2A in that Judge Bell's above-described conduct does not promote public confidence in the integrity and impartiality of the judiciary;

(2) Canon 2B in that Judge Bell has allowed family relationships to influence his judicial conduct;

(3) Canon 3C(5) in that Judge Bell's referrals to and use of East Tennessee Probation, Inc. are based upon partiality and do not avoid favoritism;

(4) Tenn. Code Ann. § 17-5-302(1) in that the above-described misconduct was and is willful; and

(5) Tenn. Code Ann. § 17-5-302(8) in that the conduct was and is calculated to bring the judiciary into public disrepute and adversely affects the administration of justice.

COUNT II

All of the above-alleged facts are incorporated by reference. Judge Bell hears cases involving East Tennessee Probation, Inc. Judge Bell is disqualified from hearing any and all cases in which Tommy Large and/or East Tennessee Probation, Inc. are involved because of his above-described familial relationship to Large and Large's spouse. Large is married to the judge's spouse's sister. Judge Bell's wife's sister has been an officer of the corporation. Both Judge Bell's spouse's sister and Large are and were known by the judge to have more than a *de minimis* interest that could be substantially affected by proceedings involving East Tennessee Probation, Inc. Further, the judge's impartiality could reasonably be questioned in all such cases. No motion to recuse is required. Accordingly, the judge's failure to *sua sponte* disqualify himself in any and all such proceedings from and after July 1, 2005, is in violation of Canon 3E(1) and in express violation of Canon 3E(1)(d)(iii).

It is further alleged that Judge Bell has continued to hear cases involving East Tennessee Probation, Inc. even after being specifically informed of the applicable provisions of Canons 3E(1) and 3E(1)(d)(iii) by Disciplinary Counsel by letter dated June 18, 2007.

COUNT III

On February 6, 2006, during a court hearing, Judge Bell was considering a request from Scottie Ellison for an extension of time in order to pay bad checks, costs and/or probation fees. Ellison had previously been convicted of the offense of passing worthless checks.

During this session, Ellison spoke to a representative of East Tennessee Probation, Inc. and informed him/her that he had overheard Dan Metcalf talking to others in a separate area of the courthouse about the propriety of private probation services in Cocke County. The representative brought this to the attention of Judge Bell, who had Ellison approach the bench. In this bench session which is not recorded, it is the contention of Judge Bell that Ellison stated that Metcalf had earlier told him that "[p]robation was crooked [and] you was crooked." Metcalf was not present in court when this exchange between Judge Bell and Ellison occurred and denies that he made those statements to Ellison. Accepting these statements of probationer Ellison as true, Judge Bell had Metcalf immediately brought into open court and sworn. Judge Bell thereupon admonished Metcalf in open court that he considered Metcalf's remarks to be "contemptuous and slanderous." Judge Bell, without stating specifically what alleged statements he found contemptuous and before allowing Metcalf the opportunity to respond, thereupon threatened Metcalf in open court with contempt if he heard that similar statements were being made by him in the future. The threat of contempt by Judge Bell in open court under these circumstances was improper and in violation of Canons 2A, 3B(2), 3B(4), 3B(7) of the Code of Judicial Conduct and Tenn. Code Ann. § 17-5-302(8).

COUNT IV

In March 2004, Judge Bell spoke at the Grace Missionary Baptist Church in Newport, Tennessee, and was paid the sum of \$100. Judge Bell made no report of this extra-judicial compensation on his required Public Disclosure Report of Extra-Judicial Compensation for the year 2004. This failure to disclose is a violation of Canon 4H(2).

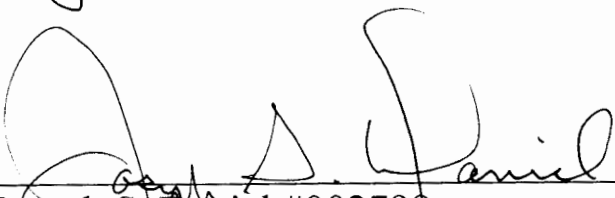
NOTICE

Judge John A. Bell is hereby given written notice of the details of the Formal Charges brought against him pursuant to Tenn. Code Ann. § 17-5-307(a).

Pursuant to Tenn. Code Ann. § 17-5-307(c), Judge Bell shall have thirty (30) days from and after the date of receipt of these Formal Charges to file an Answer with the Court by filing the same at the Office of the Clerk of the Court of the Judiciary, 100 Supreme Court Building, 401 Seventh Avenue, North, Nashville, Tennessee 37219 and by serving a copy on Disciplinary Counsel at 503 North Maple Street, Murfreesboro, Tennessee 37130. Failure to answer these Formal Charges shall constitute an admission of the factual allegations which are not answered.

Disciplinary Counsel moves the Court to set this matter for hearing before the Hearing Panel of the Court of the Judiciary at the Cocke County Courthouse in Newport, Tennessee, within sixty (60) days from and after the date the Answer is filed by Judge Bell, as required by Tenn. Code Ann. § 17-5-308(a), or, in the event no Answer is filed, to set the matter within ninety (90) days of the date these Formal Charges are filed with the Clerk of the Court, in order to comply with the statutory time limit.

This the 6 day of May, 2008.



Joseph S. Daniel #002799
Disciplinary Counsel
Tennessee Court of the Judiciary

APPROVED BY THE INVESTIGATIVE PANEL
IN ACCORDANCE WITH RULE 6, SECTION 5
OF THE RULES OF PRACTICE AND PROCEDURE
OF THE TENNESSEE COURT OF THE JUDICIARY:

BY: David G. Hayes by J. S. D. O. with permission
Honorable David G. Hayes
Investigative Panel Member

BY: [Signature]
Honorable Don R. Ash
Investigative Panel Member

BY: Gregory D. Smith by J. S. D. O. with permission
Honorable Gregory D. Smith
Investigative Panel Member