

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

PHILIP RAY WORKMAN,)	
)	
Movant/Defendant,)	
)	
v.)	S.Ct. No. M1999-01334-SC-DPE-PD
)	
STATE OF TENNESSEE,)	Filed: December 8, 2000 at 11:16 a.m.
)	
_____ Respondent.)	

**RESPONSE TO MOTION OF PHILIP WORKMAN REQUESTING
ORDER TO IMPLEMENT ADVISORY OPINION OF BOARD OF PROFESSIONAL
RESPONSIBILITY**

Movant, Philip R. Workman, asks this Court to order the extraordinary relief of compelling a lower court to conduct a hearing at which Workman may give his consent to being represented by Mr. John Pierotti, Esq., in clemency proceedings before the Board of Probation and Parole. Presumably, he initiates this action to ensure, consistent with an advisory opinion issued by the Board of Professional Responsibility, that Mr. Pierotti does not run afoul of this Court’s ethical rules — namely, Canon 9 and DR 9-101(B).¹

Canon 9, of course, provides that, notwithstanding all other ethical rules, lawyers should avoid the appearance of any impropriety. *See* EC 9-2 (conduct that is otherwise ethical may, on occasion, appear to laypersons to be unethical). By so providing, the rule seeks to promote public confidence in the integrity and efficiency of the legal system and legal profession. *See* EC 9-1, 9-2. DR 9-101(B) prohibits a lawyer from accepting employment in a matter in which he had substantial responsibility as a public employee. Consistent with the goal of Canon 9, DR 9-

¹ The Board of Professional Responsibility identified DR 9-101(B) as the “applicable rule” in this instance.

101(B) seems clearly designed to avoid the possibility (or even the appearance of the possibility) that a private litigant, involved in a dispute against a public entity, will somehow gain an undue advantage in the matter by hiring a former public attorney who has been privy to the confidences and secrets of the private litigant's public adversary. It likewise seems clear that the import of the rule is not to protect such a private litigant from whatever windfall he may derive from securing such representation.

Accordingly, in the case of Workman's proposal to hire Mr. Pierotti, even assuming that a district attorney general can ever disavow substantial responsibility for a case handled during his tenure so that he may later accept employment in the same matter,² the advisory opinion's suggestion that the interests of Workman — the new client — must be protected over the interests of the former client — the State of Tennessee — is misplaced. Indeed, the purpose of DR 9-101(B), not to mention that of DR 4-101, suggests that it is Mr. Pierotti's former client, not Workman, to whom he owes a duty to offer to provide full disclosure and an opportunity to consent to his representation of Workman.³

With respect to any concerns Workman may have regarding potential conflicts of interest that might affect Mr. Pierotti's judgment or loyalty to his new client, Workman is certainly free to secure from Mr. Pierotti a full disclosure regarding his former service in the District Attorney's Office during the pendency of Workman's case, and to provide Mr. Pierotti with his informed consent to the representation. But there is simply no need for such disclosure and

² This was apparently the conclusion of the Board of Professional Responsibility's advisory opinion.

³ The State of Tennessee, Mr. Pierotti's former client, does not insist upon such disclosure or opportunity to consent.

consent to be solemnized by any public court hearing, or for any court to be compelled to effectively place its imprimatur on any such representation by entering a declaratory judgment. Mr. Workman already has the benefit of the services of a veritable fleet of talented attorneys, who may be counted upon to provide him with such independent advice as he may require in deciding whether to add Mr. Pierotti to his team.

For these reasons, Workman's motion for an order to implement the November 13, 2000, advisory opinion of the Board of Professional Responsibility should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served on the movant by facsimile, and by mailing a copy of same, postage prepaid, to Michael J. Passino, LASSITER, TIDWELL & HILDEBRAND PLLC, 213 Fifth Avenue North, Nashville, Tennessee 37219, on this the ___th day of December, 2000.

JOSEPH F. WHALEN
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