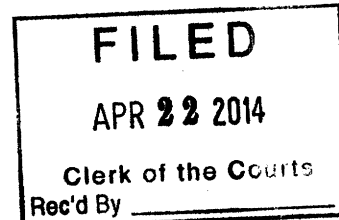


IN THE TENNESSEE BOARD OF JUDICIAL CONDUCT

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

DOCKET NO. M2013-02204-BJC-DIS-PC  
File No. 11-4762



---

RESPONDENT'S MOTION, IN LIMINE, THAT THIS BOARD TAKES JUDICIAL  
KNOWLEDGE OF THE FOLLOWING RULES OF OUR SUPREME COURT'S  
ESTABLISHING OUR CODE OF JUDICIAL CONDUCT

---

Respondent moves *in limine* that this Board takes judicial knowledge of Rule 10,  
RJC 2.15, (B) and (D) in particular, and the comments thereto, as follows:

**Rule 10, RJC 2.15, Responding to Judicial and Lawyer Misconduct**

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action...

*Comment*

*(1) Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.*

**Rule 8, RPC 8.2, Judicial and Legal Officials, RJC 2.15**

Respondent further respectfully requests that the Board take judicial knowledge of Rule 8, RPC 8.2 and the comments thereto:

- (a) A lawyer shall not make a statement that the lawyer knows to be false or that is made with reckless disregard as to its truth or falsity concerning the qualifications or integrity of the following persons:
  - (1) a judge;

*Comment*

- (1) Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.*
- (2) When a lawyer seeks judicial office, the lawyer is bound by applicable limitations on political activity.*
- (3) To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized and to responsibly speak out when necessary to prevent or rectify injustice or to promote needed improvements in the judicial system.*

**Rule 8, RPC 3.4, Fairness to Opposing Party or Counsel**

Respondent further requests that this Board take judicial notice of Rule 8, RPC 3.4, in particular sub paragraphs (d) and (e) thereof, to-wit:

A lawyer shall not:

- (d) In pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party: or
- (e) In trial,
  - (1) Allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence; or
  - (2) Assert personal knowledge of facts in issue except when testifying as a witness

**Rule 10, RJC 2.10. Judicial Statements on Pending and Impending Cases**

- (A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.
- (B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.
- (C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).
- (D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.
- (E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

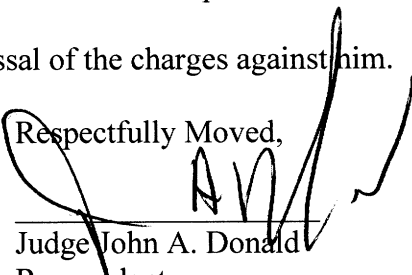
*Comment*

- (1) This Rule's restriction on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.*
- (2) This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity or represents a client as permitted by these Rules. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.*
- (3) Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.*

Your Respondent is now before you, per Comment (2), as a "litigant in a personal capacity," and also, as a judge seeking re-election.

Respondent respectfully requests that these Motions be considered prior to the scheduling of a trial, along with his Argument for Summary Dismissal of the charges against him.

Respectfully Moved,



\_\_\_\_\_  
Judge John A. Donald  
Respondent  
140 Adams, Suite 110  
Memphis, TN 38103  
901-222-3571

#### Certificate of Mailing

I, Jennifer Sigan, Secretary to Judge Donald, certify that a copy of the foregoing Motion *in limine*, has been mailed by US Mail, postage prepaid, to Mr. Michael Catalano, Appellate Court Clerk, and Mr. Tim Discenza, this \_\_\_\_\_ day of April, 2014.

\_\_\_\_\_  
Jennifer Sigan, Secretary