

ORIGINAL

FILED
JUN 15 2010

IN THE TENNESSEE COURT OF THE JUDICIARY

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IN RE: **THE HONORABLE GLORIA DUMAS,
JUDGE, GENERAL SESSIONS COURT
METROPOLITAN NASHVILLE and
DAVIDSON COUNTY, TENNESSEE, Division IV**

APPELLATE COURT CLERK
NASHVILLE

Docket No. M2009-01938-CJ-CJ-CJ

Complainant: **JOSEPH S. DANIEL, in the exercise of his duties as
Disciplinary Counsel, and at the direction of an Investigative Panel of the
Tennessee Court of the Judiciary.**

File No. 08-3487

**MOTION FOR PROTECTIVE ORDER and
MOTION TO QUASH NOTICE OF DEPOSITION**

COMES NOW Joseph S. Daniel, Disciplinary Counsel for the Tennessee Court of the Judiciary, pursuant to Rules 26-37, Tennessee Rule of Civil Procedure, and would respectfully move the Court for an Order directing that a deposition heretofore set by Notice by counsel for The Honorable Gloria Dumas to occur on June 27, 2010, in Nashville, Tennessee (Exhibit A), not be held and that the Notices of Deposition setting same be quashed. As grounds therefore, Movant would state as follows:

1. Judge Gloria Dumas by her Notice seeks to dispose Disciplinary Counsel for the Court of the Judiciary Joseph S. Daniel, on June 21, 2010 at 9:00 a.m. in Nashville, Tennessee.

2. As such counsel, Joseph S. Daniel is entitled to claim and does claim attorney –client privilege and “work product” protection.

3. The Notice of Deposition and attempt to obtain a deposition is on its face calculated to subject Disciplinary Counsel Daniel to “annoyance, embarrassment, oppression, or undue burden or expense,” within the obvious meaning and intent of Rule 26.03, Tennessee Rules of Civil Procedure.

4. The Notice of Deposition and the contents therein wholly depart from well-recognized principles of Tennessee law, are advanced in bad faith, and entitle Movant to expenses pursuant to Rule 26.03, Tennessee Rules of Civil Procedure. By way of example and not by limitation, the Notice fails to meet the requisite burden to establish (1) that the material being sought is relevant to the subject matter involved in the pending action, (2) that the material being sought is not otherwise privileged, and (3) that the material being sought consists of documents or other tangible things.

5. To require Disciplinary Counsel to testify as demanded would further create an ethical dilemma for J. S. Daniel owing to Rule 3.7 of the Rules of Professional Conduct promulgated by the Rules of the Supreme Court (Rule 8), which reads as follows:

Rule 3.7

LAWYER AS A WITNESS

(a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case;
or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as an advocate in a trial in which another lawyer in the lawyer’s firm is likely to be called as a witness unless precluded from doing so by RPC 1.7 or RPC 1.9.

6. To countenance the unusual deposition request of Judge Dumas and her attorneys would be in effect to authorize in any litigation matter that a party and his, her, or its counsel would have unfettered and total access to the litigation file and privileged work product of thoughts of his adversary without any showing at all beyond simple wish and whimsical aspiration.

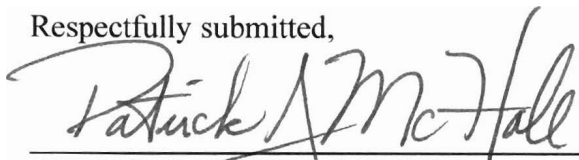
7. The Notice of Deposition as to J.S. Daniel was by its certificate mailed Monday, June 7, 2010. Disciplinary Counsel did not receive said Notice until June 8 or June 9, 2010. On June 10, 2010, counsel sought from the office of the Presiding Judge, Court of the Judiciary a date and time to hear this Motion, however learned from said office that the Presiding Judge was conducting a jury trial on that date and as of the close of business was not available to provide a hearing date prior to June 21, 2010, the date of the scheduled deposition.

Wherefore, Joseph S. Daniel prays as follows:

That this Motion be filed and that the deposition or depositions noticed for June 27, 2010 be quashed, and that the Movant obtain such other and further relief to which he may be entitled, including expenses incident to this Motion.

Further pursuant to Rule 6.02, Tennessee Rules of Civil Procedure, Movant requests for good cause that this Motion be filed and a time set for hearing prior June 21 and in accordance with the said Rule 6.

Respectfully submitted,



JOSEPH S. DANIEL #002799

Disciplinary Counsel

PATRICK J. McHALE, #004643

Assistant Disciplinary Counsel

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Certificate of Service

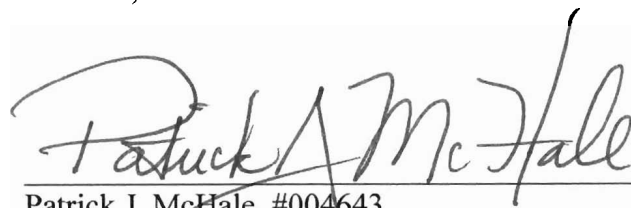
I certify that a true and exact copy of the foregoing has been mailed, delivered, sent via email, and/or transmitted by facsimile to:

Ben H. Cantrell, BPR #3160
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Attorneys for The Honorable Gloria Dumas,

on this the 11 day of June, 2010.



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