

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

FILED UNDER SEAL

In re:
HERBERT S. MONCIER
BPR NO. 1910

**Motion (Request) For A Hearing
And For Authority To Issue Subpoenas And Take Deposition**

1. Respondent received this Court's order on the afternoon of Friday, February 15, 2008.

2. Respondent will file a written response pursuant to EDTN Local Rule 83.6(d) on or before February 25, 2008.

3. Respondent does request a hearing as provided for by EDTN Local Rule 83.6(d)(4).

4. Respondent request authorization to issue Fed. R. Civ. P. 45(a)(1)(C) subpoenas to inspect and copy the following materials on February 27, 2008 at 1:30 p.m. at the federal courthouse in Greeneville, Tennessee¹:

(1) The Court Reporters audio-tape recording of the November 17, 2006 hearing. This audio-recording is material

¹ Counsel is beginning a major child rape trial in the case of *State v. John E. Young* in Knox County Criminal Court on February 25, 2008 that is expected to last three to five days. If Counsel cannot attend the inspection and copying Counsel will have some else do so.

to the intonation, cadence and demeanor of the parties to the proceedings cited in the transcript in the show cause order;

(2) The written or recorded statement of Mark Thornton allegedly made in October 2005 that was the basis for the United States Attorney's letter to the undersigned of November 16, 2006 that Mark Thornton had attributed a statement to Mike Vassar about Harold Grooms. This statement is material to establishing the background for the matters cited in the transcript in the show cause order.

4. Respondent request authorization to issue Fed. R. Civ. P. 45(a)(2) subpoenas for the following witnesses to appear at the hearing on March 5, 2008^{2 3}:

(1) District Court Judge J. Ronnie Greer. After the November 17, 2006 hearing Judge Greer on January 21, 2007 reinstated Counsel to represent Michael Vassar at his sentence hearing. On February 17, 2007 Counsel appeared and represented Michael Vassar before Judge Greer. It is expected that Judge Greer will testify that Counsel conducted himself properly and

² Counsel is mindful of the schedules of witnesses. Counsel is not opposed to either taking depositions for proof or to participate in a scheduling conference a with the Court pertaining to a hearing date that witnesses can be present.

³ Counsel has limited judicial witnesses to only those Judges who have presided over Counsel's jury trials since November 17, 2006. Counsel has not included the numerous judges on the state, federal and appeals courts that Counsel has appeared before since November 17, 2006.

that there was no re-occurrence of the events cited in the show cause order. It is further expected that Judge Greer will testify that Counsel appeared before Judge Greer on April 23, 2007 during which time Counsel against conducted himself properly and there was no re-occurrence of the events cited in the show cause order. It is also expected that Judge Greer did not consider the matters cited in the show cause order to be disrespectful of the Court within the meaning of Fed. R. Crim. P. 42(a)(3).

(2) Knox County Circuit Court Judge Wheeler Rosenbaum. Judge Rosenbaum presided over *Henderson v. Knox County Tennessee et al*, beginning April 15, 2008 after the November 17, 2006 proceeding cited in the show cause order. That trial was hotly contested during pretrial hearings and resulted in a \$85,000.00 settlement as a jury was being placed in the box. It is expected that Judge Rosenbaum will testify that Counsel did not display any of the conduct cited in the show cause order during the proceedings in *Henderson v. Knox County Tennessee*.

(3) Knox County Criminal Court Judge Richard Baumgartner. Judge Baumgartner presided over the first criminal jury trial Counsel tried after November 17, 2006 in the case of *State v. Hoban*. Ms. Hoban was found not guilty by the jury. Judge Baumgartner also presided over the child rape trial of

State v. John Whitton that began December 12, 2007. Mr. Whitton was found not guilty by the jury. It is expected that Judge Baumgartner will testify that Counsel did not display any of the conduct cited in the show cause order during the trials of *State v. Hoban* or *State v. Whitton*.

(4) Knox County Criminal Court Judge Mary Beth Leibowitz. Judge Leibowitz presided over the difficult case of *State v. Bradley Noble* set for a jury trial on May 29, 2007. The Noble trial was tried and resulted in a mistrial, an appeal followed and on remand included extended pretrial motions and ultimately resulted in a last minute plea agreement. It is expected that Judge Leibowitz will testify that Counsel did not display any of the conduct cited in the show cause order during the trials of *State v. Noble*.

(5) Monroe County Criminal Court Judge Carroll R. Ross. Judge Ross presided over a four-day jury trial in the case of *State v. Hagey* that began on June 19, 2007. Mr. Hagey was found not guilty of all felony charges and guilty of a reckless boating charge. It is expected that Judge Ross will testify that Counsel did not display any of the conduct cited in the show cause order during the trial of *State v. Hagey*.

(6) Knox County Circuit Court Judge Harold Wimberly, Jr. Beginning on July 6, 2007 Judge Wimberly presided over the jury trial of *Hubbs et al v. Jenkins*. That trial

resulted in a 2 million dollar verdict. Later beginning on August 16, 2007 Judge Wimberly presided over the trial of *Justice v. Knox County*. After hotly contested pretrial proceeding Knox County paid \$385,000.00 to settle that case as the jury was being called. It is expected that Judge Wimberly will testify that Counsel did not display any of the conduct cited in the show cause order during the proceedings in *Hubbs et al v. Jenkins* or in *Justice v. Knox County*.

(7) Knox County Chancellor Daryle R. Fansler. Beginning on September 11, 2007 and continuing through October 2, 2007 Chancellor Fansler presided over the jury trial of *DeSelm v. Knox County Commission* and *Akerman v. Knox County Commission* that resulted in a verdict in favor of Counsel's clients against the Knox County Commission for open meetings violations. It is expected that Judge Wimberly will testify that Counsel did not display any of the conduct cited in the show cause order during the proceedings in *Hubbs et al v. Jenkins* or in *Justice v. Knox County*.

(8) Knox County Circuit Court Judge Dale Workman. Judge Workman presided over the jury trial of *Garcia v. Holden* that began October 6, 2007. That case resulted in a \$2,000,000.00 verdict for Counsel's client. It is expected that Judge Workman will testify that Counsel did not display any of

the conduct cited in the show cause order during the proceedings in *Garcia v. Holden*.

(9) District Court Judge Thomas Varlan. Beginning on November 5, 2007 Judge Varlan presided over the federal 42 U.S.C. § 1983 action in *Yancey v. Carson* wherein a deputy was charged with shooting and killing another deputy. After a five (5) day trial, the jury found for Counsel's client and awarded a judgment of \$5,000,000.00. It is expected that Judge Varlan will testify that Counsel did not display any of the conduct cited in the show cause order during the proceedings in *Yancey v. Carson*.

(10) Knox County Criminal Court Judge Kenneth Irvine. Judge Irvine took over and completed the jury trial of *State v. Whitton* that began on December 12, 2007 after Judge Baumgartner became ill. Mr. Whitton was acquitted. It is expected that Judge Irvine will testify that Counsel did not display any of the conduct cited in the show cause order during the proceedings in *State v. Whitton*.

(11) Counsel for the Tennessee Board of Professional Responsibility. It is expected that Counsel for the Tennessee Board of Professional Responsibility will testify that there have been no prior complaints about Counsel to that Board for conduct similar to the conduct cited in the show cause. It is further expected that Counsel for the Board will

testify that Counsel has not been previously disciplined by the Board of Professional Responsibility.

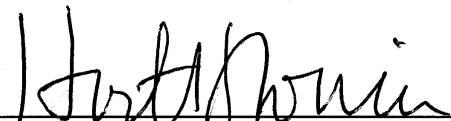
5. Counsel is willing to obtain this testimony by deposition for proof if the Court would authorize that procedure.

6. Counsel will available for a conference with the Court in the event the Court has questions pertaining to this request for subpoenas.⁴

7. Counsel intends to offer additional evidence by deposition, if permitted, or by witnesses appearing at the hearing, however, at this time witnesses who need to be subpoenaed have not been determined.

WHEREFORE, the undersigned moves for authority to issue the requested subpoenas or, in the alternative for a scheduling conference with the Court as to depositions or the dates for a hearing.

This the 20th day of February 2008.

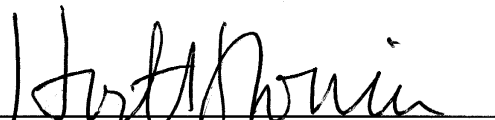

HERBERT S. MONCIER
Respondent

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BPR # 1910

⁴ See footnote 1.

Certificate

The undersigned certifies that on February 20, 2008, pursuant to the Court's directive, the foregoing Motion for Relief has been served only upon Geneva Ashby, Division Manager, 209 Joel. W. Solomon Federal Building and United States Courthouse, 900 Georgia Avenue, Chattanooga, TN 37402, by United States Mail, with proper postage thereon, to e filed under seal.

A handwritten signature in black ink, appearing to read "Herb Moncier", written over a horizontal line.

HERBERT S. MONCIER

Respondent