

**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

**Respondent's Objections and Motion To Revise Orders of
February 11 and February 13, 2008 To Remove Limitations On
The EDTN LR 83.7(d) Hearing**

Respondent objects to the limitations on Respondents rights and the burden of proof requirements of EDTN LR 83.7(d)(2), (3) and (4) placed in the Order of the District Judge Collier dated February 11, 2008 and this Court's Order dated February 13, 2008.

Memorandum

EDTN LR 83.7 provides in pertinent part:

(1) **Hearing Procedures.** When it has been determined that a hearing is necessary, the judicial officer shall provide the member with written notice of the hearing a minimum of twenty days before its scheduled date. The notice shall contain the date and location of the hearing and a statement that the member is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses.

(2) **Conduct of the Hearing.** The hearing shall be conducted by the judicial officer, who shall have the authority to resolve all disputes on matters of procedure and evidence which arise during the course of the hearing.

All witnesses shall testify under penalty of perjury. Such hearings, at the discretion of the judicial officer, shall be confidential and shall be recorded. The record of the hearing shall be kept on file in the clerk's office, under seal.

(3) Rights of the Complainant and the Respondent. During the hearing, the respondent shall be entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine any adverse witnesses. The judicial officer may permit the complainant to participate in the proceedings through counsel.

(4) Burden of Proof. The respondent's violation of the Rules of Professional Conduct or rule or orders of the court shall be proven by clear and convincing evidence. A certified copy of a final order of disbarment or judgment of conviction for a criminal offense, entered in any state or federal court, shall be considered clear and convincing evidence.

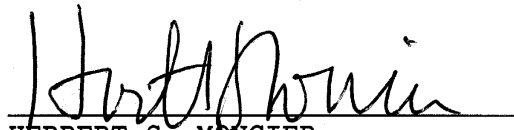
The Order of Chief District Judge Collier dated February 11, 2008 and this Court February 13, 2008 provide:

The hearing shall be limited to a showing by respondent that the allegations in the show cause order are inaccurate, or if accurate, are not subject to disciplinary action.

Respondent finds no provision of EDTN LR 83.7 authorizing the limitations on a hearing as ordered by Chief Judge Collier or this Court.

WHEREFORE, Respondent objects to the limitations on Respondents rights and alterations to the burden of proof provided for by EDTN LR 83.7 and moves that the orders be set aside and that the hearing in Respondents case be conducted as provided for by EDTN LR 83.7(1)-(4).

This 24th day of February 2008.

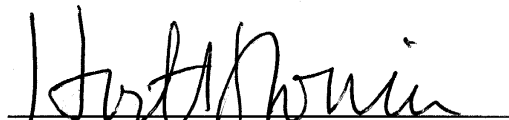


HERBERT S. MONCIER
Respondent

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BPR # 1910

Certificate

The undersigned certifies that on February 24, 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