

**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 Motion for EDTN LR 83.7(h)(1) Minimum Of
Twenty Days For The Hearing Ordered on February 27, 2008**

Pursuant to EDTN LR 83.7(h) Respondent moves for a minimum of twenty days before the date of the hearing ordered on February 27, 2008.

Memorandum

EDTN LR 83.7(h)(1) provides:

(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.

By order of February 27, 2008 received by Respondent on February 29, 2008 this Court ordered a hearing on the Show Cause Order. EDTN LR 83.7(h)(1) provides that Respondent after receipt of that determination is entitled to twenty days before the hearing.

Respondent needs the minimum twenty days to prepare for the hearing and obtain proffers for the record as on matters the Court has held are not within the limited hearing granted.

Respondent acknowledges the Court set a date for a hearing before the Court determined it would grant a hearing. The rule does not provide for truncating the minimum time period after the determination that a hearing will be held.

There is good reason for this rule. It would be an unnecessary expense and waste of resources to prepare for a hearing prior to a determination a hearing would be granted. Plans must be made for witnesses.

Further, although the limitation on the hearing was stated by Chief Judge Collier, Respondent had a reasonable belief that the limitation was inadvertent in the context of the clear wording of the local rule. Until the Court's Order of February 27, 2008, Respondent had did not know whether the hearing would be conducted under the clear and convincing burden required by EDTN LR 83.7(h)(4) or on the limited issue of whether the Show Cause Order allegations were "accurate".

Responding to the accuracy of the Show Cause Order is different from defending against evidence required to be clear and convincing. For example, now that the issue is limited to "accuracy" of the Show Cause Order it is apparent that Respondent will be required to retain a linguistic expert to interpret the dialog in the

transcripts to establish that Chief Judge Collier's opinions and conclusions are not "accurate".

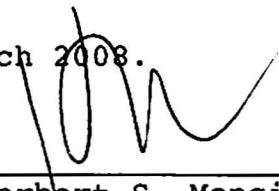
Also, until the Order of February 27, 2008, Respondent was uncertain as to whether the allegations would include other matters the Court uncovered during its investigation.

Respondent has been working on a major federal case the entirety of the March 1, 2008 weekend since the receipt of the Order for hearing Friday afternoon. Counsel is in motion hearings in a major parent-child rape case in *State v. Hicks* in Anderson County on Monday morning. Counsel has three briefs due during the week of March 3, 2008 leaving little time to prepare for the limited-issue hearing on March 5, 2008.

Respondent will be pleased to participate in a telephone scheduling conference with the Court to arrive at the earliest date after the twenty-day minimum of EDTN LR 83.7(h)(1).

WHEREFORE, Respondent moves the hearing ordered on February 27, 2008 be set a minimum of twenty days from that date or February 29, 2008.

This 2 day of March 2008.

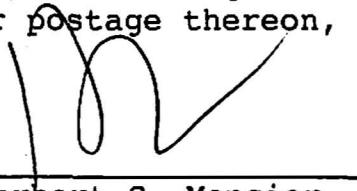


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Respondent

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BPR # 1910

Certificate

The undersigned certifies that on ^{March 2, 2008}~~February~~
2008, pursuant to the Court's directive, the foregoing 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 be filed
under seal.



Herbert S. Moncier
Respondent