

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

Barbara Sims Arthur,)
)
 Petitioner,)
)
 v.) No. 10-0908
) Part II
 Board of Professional Responsibility)
 of the Supreme Court of Tennessee,)
)
 Respondent.)

MEMORANDUM AND ORDER

There are two motions before the Court:

1. The Board of Professional Responsibility's ("BPR") motion to dismiss the appeal; and
2. Petitioner's motion to amend.

In deciding these motions, the Court has well considered the supporting arguments of both sides contained in the replies to the motions, as well as the supporting briefs and pleadings.

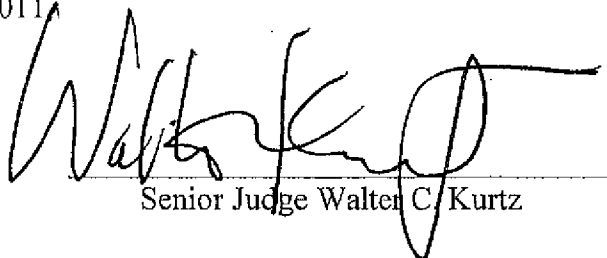
This is an attorney discipline case. Ms. Arthur was the subject of an adverse finding by a Hearing Panel rendered July 20, 2010, with an amended judgment rendered August 26, 2010. Ms. Arthur filed a petition for writ of certiorari on October 25, 2010, seeking review pursuant to SCR 9, § 1.3. She did not file the petition under oath, nor did the petition state that it was the first application for the writ as required by Tenn. Code Ann. §27-8-106. Failure to contain the oath and the applicable language deprives this Court of jurisdiction. *BPR v. Cawood*, ___ S.W.3d ___, 2010 WL 5141785 (Tenn. Dec. 20, 2010). *See also Nebel v. BPR*, ___ S.W.3d ___, 2011 WI 197868 (Tenn. Jan. 21, 2011).

The petitioner attempted to cure this defect by filing a motion to amend on February 2, 2011. The proposed amended petition was filed under oath and did contain the language that "it was the first application for the writ." The problem with the motion to amend and the amended petition is that they were filed well beyond the 60-day window allowed by Tenn. Code Ann. § 27-9-102. This Court has no jurisdiction over the appeal, and, therefore, no jurisdiction to grant a motion to amend.

Based upon the holdings in *Cawood, supra*, and *Nebel, supra*, this Court GRANTS the BPR's motion to dismiss the appeal. The motion to amend and to file an amended petition is DENIED.

The appeal is DISMISSED. Any remaining court costs are taxed to Ms. Arthur.

This the 17th day of February, 2011



Senior Judge Walter C. Kurtz

The undersigned hereby certifies that a copy of this order has been mailed to all parties or their counsel in this case.

This 22nd day of Feb, 2011
S. LEE AKERS, C & M

By LA SN DC & M

cc:
Martin J. Levitt
312 Vine Street
Chattanooga, Tennessee 37403
Via facsimile: 423-266-8342

Krisann Hodges, Disciplinary Counsel - Litigation Section
Board of Professional Responsibility of the Supreme Court of Tennessee
1101 Kermit Drive, Suite 730
Nashville, Tennessee 37217
Via facsimile: 367-2480