

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

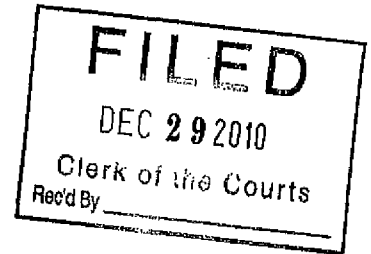
**TERRY R. CLAYTON v. BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE SUPREME COURT OF TENNESSEE**

**Direct Appeal from the Chancery Court for Davidson County  
No. 09-1801-II Donald Harris, Senior Judge**

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No. M2010-01935-SC-R3-BP

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**ORDER**

On July 21, 2009, a Hearing Panel of the Board of Professional Responsibility suspended Mr. Clayton's license to practice law for seven months, with one month of the suspension "actively serve[d]" and the remaining six months "served on probation." The Hearing Panel also imposed certain conditions upon Mr. Clayton during the six-month probationary period.<sup>1</sup> On July 23, 2010, the Chancery Court for Davidson County entered an order affirming the Hearing Panel's decision in all respects. Mr. Clayton has now appealed to this Court from the trial court's July 23, 2010 order, and this matter has been scheduled for oral argument on February 2, 2011 at 9:00 a.m.

Mr. Clayton asked the trial court to review the Hearing Panel's decision pursuant to Tennessee Supreme Court Rule 9, section 1.3, which provides that parties dissatisfied with the decision of a hearing panel may obtain judicial review by filing a petition for a writ of certiorari in accordance with Tenn. Code Ann. §§ 27-9-101 through -114 (2000 & Supp. 2010). Article VI, Section 10 of the Constitution of Tennessee requires that all writs of certiorari be supported by oath or affirmation, and Tenn. Code Ann. § 27-8-106 (2000) requires that a petition for a writ of certiorari be "sworn to" and state that "it is the first application for the writ." We recently held that the failure to satisfy these requirements

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<sup>1</sup>In particular, the Hearing Panel required Mr. Clayton to attend six additional hours of continuing legal education on the topics of legal ethics and law office management and to employ at his own expense a Law Practice Monitor during the probationary period. The Hearing Panel directed the Law Practice Monitor to meet monthly with Mr. Clayton and to provide a monthly report to Disciplinary Counsel detailing Mr. Clayton's compliance with meeting deadlines in open cases and in communicating candidly and in a timely manner with each of his clients. The Hearing Panel stated that should Mr. Clayton fail to meet any of the foregoing conditions of probation or the Law Practice Monitor report noncompliance, Mr. Clayton's probation will be revoked and he will be required "to serve the entirety of the suspension beginning (10) days from the date of revocation."

deprives trial courts of jurisdiction to review a hearing panel's decision. *Bd. of Prof'l Responsibility v. Cawood*, \_\_\_ S.W.3d \_\_\_, 2010 WL 5141785, at \*2 (Tenn. 2010).

Tennessee Rule of Appellate Procedure 13(b) obligates this Court to consider subject matter jurisdiction whether or not the issue is raised by the parties. Thus, in accordance with Rule 13(b), we have reviewed the record to determine whether Mr. Clayton's petition for writ of certiorari satisfied the requirements identified in Cawood as necessary to confer subject matter jurisdiction upon the trial court. We conclude that the petition for writ of certiorari Mr. Clayton filed on September 21, 2009, failed to satisfy the requirements of Article VI, Section 10 of the Constitution of Tennessee and of Tennessee Code Annotated section 27-8-106. Mr. Clayton's petition for writ of certiorari was neither "sworn to" nor recited that "it is the first application for the writ." Because Mr. Clayton's appeal from the Hearing Panel's decision was not properly perfected, the trial court lacked jurisdiction to hear and decide his petition. Thus, the trial court's July 23, 2010 order must be vacated, and Mr. Clayton's appeal must be dismissed for failure to file a proper petition within sixty days from the entry of the Hearing Panel's order as required by Tennessee Supreme Court Rule 9, section 8.3.

Accordingly, the trial court's July 23, 2010 order is vacated, and Mr. Clayton's appeal to this Court is dismissed. The Clerk is directed to remove this matter from the February 2, 2011 docket. However, because the sanction imposed by the Hearing Panel exceeds a three-month suspension and because no appeal was properly perfected, the Board is directed to file a copy of the Hearing Panel's order for review by this Court in accordance with Tennessee Supreme Court Rule 9, section 8.4.

The costs of this appeal are taxed to Terry R. Clayton for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

i, Michael W. Catalano, Clerk, hereby certify that  
this is a true and exact copy of the original

order  
filed in the cause.

This 29 day of December, 2010  
CLERK OF COURT

By: Chris Jackson D.C.