

**IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE
AT MEMPHIS**

HOMER L. CODY,
Petitioner,

vs.

Docket No.
CT-005534-13

BOARD OF PROFESSIONAL
RESPONSIBILITY of the Supreme Court
of Tennessee,
Respondent.

AMENDED ORDER

This matter came to be heard on the 14th day of August, 2014. A Petition for Certiorari was filed by Homer L. Cody, requesting this court for relief from the Judgment of the Hearing Panel, arguing the judgment is in violation of constitutional or statutory provisions, in excess of the panel's jurisdiction, made upon unlawful procedure, or unsupported by the evidence which is both substantial and material in the light of the entire record. After hearing the presentation and argument of counsel for the Board and Mr. Cody as well as the record as a whole, this court makes the following findings of fact and conclusions of law:

A. FINDINGS OF FACT

1. Mr. Cody represented two clients, Pee Wee Wisdom Child Development Center (referred to as "Pee Wee") and Vivian Braxton, also the executive director of Pee Wee, in a single civil action for corporate dissolution of Pee Wee in Shelby County Chancery Court.
2. Mr. Cody represented both Pee Wee and Ms. Braxton after Ms. Braxton pled guilty to a charge of theft of property of funds belonging to Pee Wee. Within the civil matter, the receiver for Pee Wee obtained a judgment against Ms. Braxton. (Statement of Undisputed Material Facts, A.R. p. 121, ¶ 6; Tr. p. 38, l. 23- p. 39, l. 5). On June 22, 2007, the trial court entered an "Order Denying Motion to Disqualify Homer L. Cody." (A.R. p. 334). In the appeal of *Pee Wee Wisdom Child Development Center, Inc., and Vivian Braxton, v. Paul G. Summers, in his official capacity as Attorney General and Reporter for the State of Tennessee*, No. W2007-01218-COA-R3-CV, the Court addresses the conflict in representing both Ms. Braxton and Pee

Wee, ultimately finding there is a conflict in his representation and he is disqualified from representing either Pee Wee or Ms. Braxton on appeal or any other matters related to the litigation. (A.R. p. 342).

3. Mr. Cody did not obtain written consent for any conflict of interest existing or to potentially exist between Pee Wee and Ms. Braxton. (Tr. p. 23, l. 10-12). On March 16, 2012, the Supreme Court entered the Order of Enforcement imposing a Public Censure on Mr. Cody for this action, as adjudged by the Hearing Panel in No. 2011-2008-9-RS on November 14, 2011.

4. On March 6, 2012, Mr. Cody filed a motion representing he continued to serve as the attorney for both Pee Wee and Ms. Braxton. (Tr. Ex. 3). The Shelby County Chancery Court struck the motion and ordered Mr. Cody represent either Pee Wee or Ms. Braxton. (Tr. Ex. 7). Mr. Cody then drafted a notice of extraordinary appeal for Ms. Braxton which Ms. Braxton filed pro se. (Statement of Undisputed Material Facts, A.R. p. 122, ¶ 16).

5. The Board of Professional Responsibility filed its Petition for Discipline on August 2, 2012. (A.R. p. 1).

6. Additionally, the Board filed a Motion for Partial Summary Judgment, which was granted in part, finding Mr. Cody violated Rules 1.7(a), 8.4(a), and 8.4(d) of the Rules of Professional Conduct. (A. R. p. 618).

7. On September 5, 2012, on behalf of both Ms. Braxton and Pee Wee, Mr. Cody filed a complaint for violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act in the United States District Court for the Western District of Tennessee. (Tr. Ex. 4). This action included damages for money Pee Wee allegedly owed Ms. Braxton, allegations the “Tennessee Judicial System” is a criminal enterprise, and alleged assistant attorneys general and judges in the Shelby County Chancery Court matter conspired to defraud his clients and the government. (Tr. Ex. 4, Tr. p. 37, l. 7 – p. 38, l. 12).

8. On February 14, 2013, the Board filed a Supplemental Petition to which alleged Mr. Cody violated Rules 3.1, 3.4(c), 4.4(a)(1), 8.2(a), 8.4(a), 8.4(d) of the Tennessee Rules of Professional Conduct, as a result of the allegations within the September 5, 2012, complaint filed in the United States District Court. (A.R. p. 638).

9. The Hearing Panel determined Mr. Cody violated Rules 1.7, 8.4 (a), and 8.4(d) of the Tennessee Rules of Professional Conduct, as previously ruled in its Order Granting in Part the Board of Professional Responsibility’s Motion for Partial Summary Judgment; and continues

to violate Rules 1.7, 8.4(a), and 8.4(d) by filing the RICO complaint in Federal Court. (A.R. p. 1182).

10. The Hearing Panel applied five (5) aggravating factors: prior disciplinary offenses, a pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, and substantial experience in the practice of law as aggravating factors as Mr. Cody continued to engage in the violation of the Rules after having received discipline for the misconduct. (A.R. 1182).

11. The Hearing Panel suspended Mr. Cody from the practice of law for 180 days. (A.R. 1182).

12. The American Bar Association Standard 2.3 states “suspension should be for a period of time equal to or greater than six months...”

13. Mr. Cody filed this appeal, arguing the judgment is in violation of constitutional or statutory provisions by violating Mr. Cody’s right to due process; in excess of the panel’s jurisdiction because the panel overturned the ruling of the trial court; made upon unlawful procedure due to the court’s failure to abide by Tennessee Rule of Civil Procedure 63, based upon whether the Board of Professional Responsibility had probable cause to bring an action against Mr. Cody, and based upon whether the Panel used a proper standard of review; and unsupported by the evidence which is both substantial and material in the light of the entire record in finding Mr. Cody violated Rule 1.7 of the Rules of Professional Conduct.

B. CONCLUSIONS OF LAW

1. Having made the aforementioned findings of fact, this court makes the following conclusions of law. First, Tennessee Supreme Court Rule 9, section 33.1(b), states the standard of review for this matter, in pertinent part:

The review shall be on the transcript of the evidence before the Hearing Panel and its findings and judgment. If allegations of irregularities in the procedure before the Hearing Panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities in the proceeding. The court may affirm the decision of the Hearing Panel or remand the case for further proceedings. The court may reverse or modify the

decision if the rights of the party filing the Petition for Review have been prejudiced because the Hearing Panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the Hearing Panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the Hearing Panel as to the weight of the evidence on questions of fact.

2. Further, "[A]lthough the trial court may affirm, remand, reverse, or modify a Hearing Panel decision, the trial court may not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact." *Board of Professional Responsibility v. Allison*, 284 S.W.3d 316, 322 (Tenn. 2009).

3. In particular, this Court will not reverse the decision of a Hearing Panel so long as the evidence "furnishes a reasonably sound factual basis for the decision being reviewed." *Hughes*, 259 S.W.3d at 641 (quoting *Jackson Mobilphone Co. v. Tenn. Pub. Serv. Comm'n*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993)).

4. In *Jackson Mobilphone Co. v. Tennessee Pub. Serv. Comm'n*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993), the Court of Appeals provided "the court should review the record carefully to determine whether the administrative agency's decision is supported by 'such relevant evidence as a rational mind might accept to support a rational conclusion.'" (citing *Clay County Manor v. State Dep't of Health & Environment*, 849 S.W.2d 755, 759 (Tenn.1993); *Southern Ry. v. State Bd. of Equalization*, 682 S.W.2d 196, 199 (Tenn.1984)).

C. RULING

1. In Mr. Cody's brief, Mr. Cody argues the Chancery Court Judge who presided over his case after the retirement of Chancellor Alissandrados did not certify the transfer of the case, pursuant to Rule 63 of the Tennessee Rules of Civil Procedure. Chancellor Evans gained jurisdiction over this matter well before March 16, 2012, when the Supreme Court of Tennessee

issued a public censure against Mr. Cody for the issues arising out of Mr. Cody's representation before Chancellor Evans.

2. In his argument before the court, Mr. Cody asserts because the Chancery Court found no conflict in its Order entered June 22, 2007, everything entered after this order regarding any conflict is void.

3. The Public Censure of the Supreme Court of Tennessee and the Board of Professional Responsibility Hearing Panel adjudication of November 14, 2011, are not before this court. As such, this court finds all arguments related to the proceedings wherein Mr. Cody represented Pee Wee and Ms. Braxton, including Mr. Cody's issue #1, moot as previously adjudicated and enforced by the Tennessee Supreme Court. Remaining issues, as defined by Mr. Cody, are:

- a. Whether the Board of Professional Responsibility had probable cause to bring suit, as addressed by Mr. Cody in his issue #4.
- b. Whether the Panel violated Mr. Cody's rights of due process and equal protection by issuing a protective order prohibiting the discovery of evidence involving Mr. Cody's arguments regarding the Chancery Court Judge's failure to abide by Rule 63 of the Rules of Civil Procedure, as addressed by Mr. Cody's in his issue #2.
- c. Whether the Panel's findings were in excess of its jurisdiction, improperly failed to rely upon res judicata by failing to abide by the ruling of the Chancery Court, as addressed by Mr. Cody in his issue #3.
- d. Whether the Panel used the proper standard of review, as addressed by Mr. Cody's in his issue #5.
- e. Whether the evidence was sufficient to support the Panel's findings, as addressed by Mr. Cody in his issue #6.

2. In regards to whether the board of professional responsibility had probable cause to bring suit, this court finds the Board of Professional Responsibility acted properly under Supreme Court Rule 9, §§ 8.1 and 11.1 in bringing forth its action against Mr. Cody, as Mr. Cody is subject to the disciplinary jurisdiction of the Court, the Board, panels, the district committees and Hearing Panels established within Supreme Court Rule 9. As well, as stated in Rule 9, § 11.1, those "acts or omissions by an attorney, ... which violate the Rules of

Professional Conduct of the State of Tennessee, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.” This court finds the Board of Professional responsibility had proper cause to bring disciplinary action against Mr. Cody under these rules.

3. Addressing whether the Hearing Panel abused its discretion in granting the Board of Professional Responsibility’s Motion for a Protective Order, this court finds the Hearing Panel did not abuse its discretion. The Hearing Panel found the requests for discovery made by Mr. Cody were outside the scope of the Hearing Panel’s proceeding, and, further, found the issues had also been previously determined in the Panel’s order granting in part and denying in part partial summary judgment.

4. Mr. Cody also alleges the Hearing Panel improperly failed to rely upon res judicata and the Panel’s findings were in excess of the Panel’s jurisdiction. As argued by the Board, citing *Massengil v. Scott*, 738 S.W.2d 629, at 631-632, the doctrine of res judicata applies to those matters which the same parties or their privies on the same cause of action as to issues which were or could have been litigated. Here, the Hearing Panel is not to determine whether it is appropriate to disqualify an attorney; rather, the Hearing Panel determines whether an attorney violated the rules of professional conduct, and, if so, whether and what form of disciplinary action should be taken. These are entirely different issues, and the Hearing Panel appropriately determined the issues before it, as it was not required to abide by the rulings of the Chancery Court.

5. In regards to whether the panel used the proper standard of review, this court finds the Hearing Panel appropriately and independently reviewed and adjudicated the evidence presented before it rather than reviewing the decisions of the Chancery Court. This court finds no basis for Mr. Cody’s assertion the Panel used an improper standard of review, as the Hearing Panel, pursuant to Tennessee Supreme Court Rule 9, does not review the discretion or findings of another tribunal.

6. Finally, Mr. Cody alleges the evidence was not sufficient to support the Hearing Panel’s findings. The Hearing Panel found there was a conflict of interest between two current clients, pursuant to Rule 1.7 (a) of the Rules of Professional Conduct, based, in part, upon Mr. Cody’s continued representation of the same clients at issue in a disciplinary proceeding which resulted in a public censure against him. The proof before the Hearing Panel included several

exhibits which placed Pee Wee and Ms. Braxton in positions directly adverse to one another; in addition, Mr. Cody admitted his federal complaint included damages sought wherein Pee Wee owed Ms. Braxton a sum of money. Mr. Cody fails to show the Hearing Panel's decision is either arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or unsupported by evidence which is both substantial and material in the light of the entire record.

7. In review of the Hearing Panel's decision, this court does not find the panel's findings, inferences, conclusions, or decisions are in violation of constitutional or statutory provisions, in excess of the panel's jurisdiction, made upon unlawful procedure, arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion, or unsupported by evidence which is both substantial and material in light of the entire record. The Court finds the Hearing Panel's findings of fact and conclusions of law are fully supported by the evidence presented in this matter and reversal or modification of the Hearing Panel's decision is simply not warranted.

8. Mr. Cody failed to demonstrate the Hearing Panel's conclusions were not supported by substantial and material evidence or their decision was arbitrary and capricious. Mr. Cody's suspension is fully supported by the facts and this Court must not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

9. This Court AFFIRMS the decision of the Hearing Panel and assesses costs to Mr. Cody.

IT IS SO ORDERED, this the 30 day of sep, 2014.

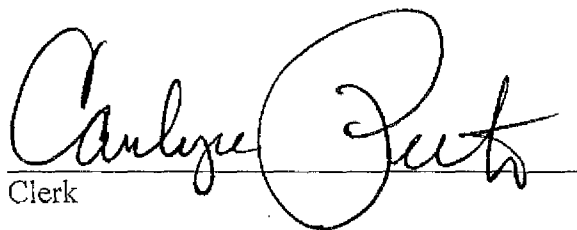

HONORABLE DON R. ASH

CERTIFICATE OF SERVICE

I hereby certify the foregoing has been served upon the following by U.S. Mail on this
the 7th day of Oct, 2014:

Homer L. Cody
6955 North Watkins Road
Millington, TN 38053

William C. Moody
10 Cadillac Drive, Suite 220
Brentwood, Tennessee 37027


Clerk

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ORDER

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A. FINDINGS OF FACT

1. Mr. Cody represented two clients, Pee Wee Wisdom Child Development Center (referred to as "Pee Wee") and Vivian Braxton, also the executive director of Pee Wee, in a single civil action for corporate dissolution of Pee Wee in Shelby County Chancery Court.

2. While Mr. Cody was representing both Pee Wee and Ms. Braxton, Ms. Braxton pled guilty to a charge of theft of property of funds belonging to Pee Wee. Within the civil matter, the receiver for Pee Wee obtained a judgment against Ms. Braxton. (Statement of Undisputed Material Facts, A.R. p. 121, ¶ 6; Tr. p. 38, l. 23- p. 39, l. 5). On June 22, 2007, the trial court entered an "Order Denying Motion to Disqualify Homer L. Cody." (A.R. p. 334). In the appeal of *Pee Wee Wisdom Child Development Center, Inc., and Vivian Braxton, v. Paul G. Summers, in his official capacity as Attorney General and Reporter for the State of Tennessee*, No. W2007-01218-COA-R3-CV, the Court addresses the conflict in representing both Ms.

Braxton and Pee Wee, ultimately finding there is a conflict in his representation and he is disqualified from representing either Pee Wee or Ms. Braxton on appeal or any other matters related to the litigation. (A.R. p. 342).

3. Mr. Cody did not obtain written consent for any conflict of interest existing or to potentially exist between Pee Wee and Ms. Braxton. (Tr. p. 23, l. 10-12). On March 16, 2012, the Supreme Court entered the Order of Enforcement imposing a Public Censure on Mr. Cody for this action, as adjudged by the Hearing Panel in No. 2011-2008-9-RS on November 14, 2011.

4. After the Public Censure was entered on March 6, 2012, Mr. Cody filed a motion representing he continued to serve as the attorney for both Pee Wee and Ms. Braxton. (Tr. Ex. 3). The Shelby County Chancery Court struck the motion and ordered Mr. Cody represent either Pee Wee or Ms. Braxton. (Tr. Ex. 7). Mr. Cody then drafted a notice of extraordinary appeal for Ms. Braxton which Ms. Braxton filed pro se. (Statement of Undisputed Material Facts, A.R. p. 122, ¶ 16).

5. The Board of Professional Responsibility filed its Petition for Discipline on August 2, 2012. (A.R. p. 1).

6. Additionally, the Board filed a Motion for Partial Summary Judgment, which was granted in part, finding Mr. Cody violated Rules 1.7(a), 8.4(a), and 8.4(d) of the Rules of Professional Conduct. (A. R. p. 618).

7. On September 5, 2012, on behalf of both Ms. Braxton and Pee Wee, Mr. Cody filed a complaint for violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act in the United States District Court for the Western District of Tennessee. (Tr. Ex. 4). This action included damages for money Pee Wee allegedly owed Ms. Braxton, allegations the "Tennessee Judicial System" is a criminal enterprise, and alleged assistant attorneys general and judges in the Shelby County Chancery Court matter conspired to defraud his clients and the government. (Tr. Ex. 4, Tr. p. 37, l. 7 – p. 38, l. 12).

8. On February 14, 2013, the Board filed a Supplemental Petition to which alleged Mr. Cody violated Rules 3.1, 3.4(e), 4.4(a)(1), 8.2(a), 8.4(a), 8.4(d) of the Tennessee Rules of Professional Conduct, as a result of the allegations within the September 5, 2012, complaint filed in the United States District Court. (A.R. p. 638).

9. The Hearing Panel determined Mr. Cody violated Rules 1.7, 8.4 (a), and 8.4(d) of the Tennessee Rules of Professional Conduct, as previously ruled in its Order Granting in Part

the Board of Professional Responsibility's Motion for Partial Summary Judgment; and continues to violate Rules 1.7, 8.4(a), and 8.4(d) by filing the RICO complaint in Federal Court. (A.R. p. 1182).

10. The Hearing Panel applied five (5) aggravating factors: prior disciplinary offenses, a pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, and substantial experience in the practice of law as aggravating factors as Mr. Cody continued to engage in the violation of the Rules after having received discipline for the misconduct. (A.R. 1182).

11. The Hearing Panel suspended Mr. Cody from the practice of law for 180 days. (A.R. 1182).

12. The American Bar Association Standard 2.3 states "suspension should be for a period of time equal to or greater than six months..."

13. Mr. Cody filed this appeal, arguing the judgment is in violation of constitutional or statutory provisions by violating Mr. Cody's right to due process; in excess of the panel's jurisdiction because the panel overturned the ruling of the trial court; made upon unlawful procedure due to the court's failure to abide by Tennessee Rule of Civil Procedure 63, based upon whether the Board of Professional Responsibility had probable cause to bring an action against Mr. Cody, and based upon whether the Panel used a proper standard of review; and unsupported by the evidence which is both substantial and material in the light of the entire record in finding Mr. Cody violated Rule 1.7 of the Rules of Professional Conduct.

B. CONCLUSIONS OF LAW

1. Having made the aforementioned findings of fact, this court makes the following conclusions of law. First, Tennessee Supreme Court Rule 9, section 33.1(b), states the standard of review for this matter, in pertinent part:

The review shall be on the transcript of the evidence before the Hearing Panel and its findings and judgment. If allegations of irregularities in the procedure before the Hearing Panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The trial court may, in its discretion, permit discovery on appeals limited only to allegations of irregularities in the proceeding. The court may affirm the decision of the Hearing Panel or

remand the case for further proceedings. The court may reverse or modify the decision if the rights of the party filing the Petition for Review have been prejudiced because the Hearing Panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the Hearing Panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the Hearing Panel as to the weight of the evidence on questions of fact.

2. Further, "[A]lthough the trial court may affirm, remand, reverse, or modify a Hearing Panel decision, the trial court may not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact." *Board of Professional Responsibility v. Allison*, 284 S.W.3d 316, 322 (Tenn. 2009).

3. In particular, this Court will not reverse the decision of a Hearing Panel so long as the evidence "furnishes a reasonably sound factual basis for the decision being reviewed." *Hughes*, 259 S.W.3d at 641 (quoting *Jackson Mobilphone Co. v. Tenn. Pub. Serv. Comm'n*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993)).

4. In *Jackson Mobilphone Co. v. Tennessee Pub. Serv. Comm'n*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1993), the Court of Appeals provided "the court should review the record carefully to determine whether the administrative agency's decision is supported by 'such relevant evidence as a rational mind might accept to support a rational conclusion.'" (citing *Clay County Manor v. State Dep't of Health & Environment*, 849 S.W.2d 755, 759 (Tenn.1993); *Southern Ry. v. State Bd. of Equalization*, 682 S.W.2d 196, 199 (Tenn.1984)).

C. RULING

1. In Mr. Cody's brief, Mr. Cody argues the Chancery Court Judge who presided over his case after the retirement of Chancellor Alissandrados did not certify the transfer of the case, pursuant to Rule 63 of the Tennessee Rules of Civil Procedure. Chancellor Evans gained jurisdiction over this matter well before March 16, 2012, when the Supreme Court of Tennessee

issued a public censure against Mr. Cody for the issues arising out of Mr. Cody's representation before Chancellor Eyans.

2. In his argument before the court, Mr. Cody asserts because the Chancery Court found no conflict in its Order entered June 22, 2007, everything entered after this order regarding any conflict is void.

3. The Public Censure of the Supreme Court of Tennessee and the Board of Professional Responsibility Hearing Panel adjudication of November 14, 2011, are not before this court. As such, this court finds all arguments related to the proceedings wherein Mr. Cody represented Pee Wee and Ms. Braxton, including Mr. Cody's issue #1, moot as previously adjudicated and enforced by the Tennessee Supreme Court. Remaining issues, as defined by Mr. Cody, are:

- a. Whether the Board of Professional Responsibility had probable cause to bring suit, as addressed by Mr. Cody in his issue #4.
- b. Whether the Panel violated Mr. Cody's rights of due process and equal protection by issuing a protective order prohibiting the discovery of evidence involving Mr. Cody's arguments regarding the Chancery Court Judge's failure to abide by Rule 63 of the Rules of Civil Procedure, as addressed by Mr. Cody's in his issue #2.
- c. Whether the Panel's findings were in excess of its jurisdiction, improperly failed to rely upon res judicata by failing to abide by the ruling of the Chancery Court, as addressed by Mr. Cody in his issue #3.
- d. Whether the Panel used the proper standard of review, as addressed by Mr. Cody's in his issue #5.
- e. Whether the evidence was sufficient to support the Panel's findings, as addressed by Mr. Cody in his issue #6.

2. In regards to whether the board of professional responsibility had probable cause to bring suit, this court finds the Board of Professional Responsibility acted properly under Supreme Court Rule 9, §§ 8.1 and 11.1 in bringing forth its action against Mr. Cody, as Mr. Cody is subject to the disciplinary jurisdiction of the Court, the Board, panels, the district committees and Hearing Panels established within Supreme Court Rule 9. As well, as stated in Rule 9, § 11.1, those "acts or omissions by an attorney, ... which violate the Rules of

Professional Conduct of the State of Tennessee, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.” This court finds the Board of Professional responsibility had proper cause to bring disciplinary action against Mr. Cody under these rules.

3. Addressing whether the Hearing Panel abused its discretion in granting the Board of Professional Responsibility’s Motion for a Protective Order, this court finds the Hearing Panel did not abuse its discretion. The Hearing Panel found the requests for discovery made by Mr. Cody were outside the scope of the Hearing Panel’s proceeding, and, further, found the issues had also been previously determined in the Panel’s order granting in part and denying in part partial summary judgment.

4. Mr. Cody also alleges the Hearing Panel improperly failed to rely upon res judicata and the Panel’s findings were in excess of the Panel’s jurisdiction. As argued by the Board, citing *Massengil v. Scott*, 738 S.W.2d 629, at 631-632, the doctrine of res judicata applies to those matters which the same parties or their privies on the same cause of action as to issues which were or could have been litigated. Here, the Hearing Panel is not to determine whether it is appropriate to disqualify an attorney; rather, the Hearing Panel determines whether an attorney violated the rules of professional conduct, and, if so, whether and what form of disciplinary action should be taken. These are entirely different issues, and the Hearing Panel appropriately determined the issues before it, as it was not required to abide by the rulings of the Chancery Court.

5. In regards to whether the panel used the proper standard of review, this court finds the Hearing Panel appropriately and independently reviewed and adjudicated the evidence presented before it rather than reviewing the decisions of the Chancery Court. This court finds no basis for Mr. Cody’s assertion the Panel used an improper standard of review, as the Hearing Panel, pursuant to Tennessee Supreme Court Rule 9, does not review the discretion or findings of another tribunal.

6. Finally, Mr. Cody alleges the evidence was not sufficient to support the Hearing Panel’s findings. The Hearing Panel found there was a conflict of interest between two current clients, pursuant to Rule 1.7 (a) of the Rules of Professional Conduct, based, in part, upon Mr. Cody’s continued representation of the same clients at issue in a disciplinary proceeding which resulted in a public censure against him. The proof before the Hearing Panel included several

exhibits which placed Pee Wee and Ms. Braxton in positions directly adverse to one another; in addition, Mr. Cody admitted his federal complaint included damages sought wherein Pee Wee owed Ms. Braxton a sum of money. Mr. Cody fails to show the Hearing Panel's decision is either arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or unsupported by evidence which is both substantial and material in the light of the entire record.

7. In review of the Hearing Panel's decision, this court does not find the panel's findings, inferences, conclusions, or decisions are in violation of constitutional or statutory provisions, in excess of the panel's jurisdiction, made upon unlawful procedure, arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion, or unsupported by evidence which is both substantial and material in light of the entire record. The Court finds the Hearing Panel's findings of fact and conclusions of law are fully supported by the evidence presented in this matter and reversal or modification of the Hearing Panel's decision is simply not warranted.

8. Mr. Cody failed to demonstrate the Hearing Panel's conclusions were not supported by substantial and material evidence or their decision was arbitrary and capricious. Mr. Cody's suspension is fully supported by the facts and this Court must not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

9. This Court AFFIRMS the decision of the Hearing Panel and assesses costs to Mr. Cody.

IT IS SO ORDERED, this the 4 day of Sept, 2014.


HONORABLE DON R. ASH