

IN DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

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BOARD OF PROFESSIONAL
RESPONSIBILITY
Lee EXECUTIVE

IN RE: HOMER L. CODY,
BPR# 10755, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Shelby County)

DOCKET NO. 2014-2339-9-WM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for hearing on February 26, 2015 before a Hearing Panel consisting of Rehim Babaoglu, Ricky Dolan Click, and John Kevin Walsh, Chair. The Board of Professional Responsibility (the "Board") was represented by William C. Moody. Mr. Cody was present for the hearing.

FINDINGS OF FACT

1. This matter was initiated with the Board in December, 2013.
2. Mr. Cody represented the plaintiffs, Vivian Braxton, Otis Braxton and Pee Wee Wisdom Child Development Center, Inc., in *Vivian Braxton, et al v. Apperson, Crump & Maxwell, PLLC*, et al, No: 2:12-cv-02761-JTF/tmp, filed in the United States District Court for the Western District of Tennessee.
3. On August 13, 2013, the court in *Braxton* entered an order finding that Mr. Cody must be disqualified from representing the plaintiffs as a result of a conflict of interest, ordering him to refrain from filing any additional pleadings on their behalf and dismissing the case.

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4. Vivian and Otis Braxton filed a *pro se* notice of appeal to the United States Circuit Court for the Sixth Circuit appealing the District Court's August 13, 2013 order dismissing their case.

5. On March 25, 2014, Vivian and Otis Braxton filed a *Pro Se* Appellants' Brief in the United States Circuit Court of Appeals for the Sixth Circuit in *Braxton, et al v. Apperson, Crump & Maxwell, PLLC, et al*, No. 13-6218/13-6219.

6. On June 2, 2014, Vivian and Otis Braxton filed a *Pro Se* Appellants' Response to Appellee's Initial Brief in the United States Circuit Court of Appeals for the Sixth Circuit in *Braxton, et al v. Apperson, Crump & Maxwell, PLLC, et al*, No. 13-6218/13-6219.

7. The *Pro Se* Appellants' Brief and the *Pro Se* Appellants' Response to Appellee's Initial Brief were prepared for Vivian and Otis Braxton by Mr. Cody.

8. Mr. Cody failed to disclose his role in preparation of the *pro se* briefs in order to circumvent the August 13, 2013 order forbidding his further representation of Vivian and Otis Braxton.

9. Mr. Cody refuses to acknowledge the wrongful nature of his conduct.

10. Mr. Cody has practiced law in Tennessee since 1984.

11. Mr. Cody received a Private Reprimand from the Board on October 18, 2011 for a trust account violation.

12. Mr. Cody received a Public Censure from the Tennessee Supreme Court on March 16, 2012 for a conflict of interest in his dual representation of Vivian Braxton and Pee Wee Wisdom Child Development Center, Inc. in a Shelby County Chancery Court case as well as in *Vivian Braxton, et al v. Apperson, Crump & Maxwell, PLLC*.

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Sup. Ct. R. 9, § 3, the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct of the State of Tennessee shall constitute misconduct and be grounds for discipline.

2. By preparing the Braxton's *pro se* briefs, Mr. Cody knowingly and intentionally violated the District Court's Order of August 13, 2013.

3. By preparing the Braxton's *pro se* briefs, Mr. Cody engaged in extensive undisclosed participation in behalf of *pro se* litigants which created the false appearance of their being without substantial professional assistance.

4. By preparing the Braxton's *pro se* briefs, Mr. Cody knowingly disobeyed an obligation under the rules of a tribunal in violation of RPC 3.4(c), Fairness to Opposing Party and Counsel.

5. By preparing the Braxton's *pro se* briefs, Mr. Cody engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(d), Misconduct.

6. By engaging in extensive undisclosed participation in behalf of *pro se* litigants, Mr. Cody engaged in conduct involving deceit in violation of RPC 8.4(c), Misconduct.

7. The preponderance of the evidence establishes that Mr. Cody has committed the following violations of the Rules of Professional Conduct.

a. Mr. Cody violated RPC 3.4(c) (Fairness to Opposing Party and Counsel).

b. Mr. Cody violated RPC 8.4(c) and (d) (Misconduct).

c. Violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4(a) (Misconduct).

9. The Board has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. The Board has carried its burden and proven the aforementioned violations of the Rules of Professional Conduct by a preponderance of the evidence.

10. Once disciplinary violations have been established, the Panel shall consider the applicable provisions of ABA Standards for Imposing Lawyer Sanctions.

11. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

5.11 Disbarment is generally appropriate when:

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

12. Pursuant to ABA Standard 9.22, the following aggravating factors are present in this case:

- a. Prior disciplinary offenses.
- b. A dishonest motive.
- c. A pattern of misconduct.
- d. Multiple offenses.

- e. Refusal to acknowledge wrongful nature of conduct.
- f. Substantial experience in the practice of law.

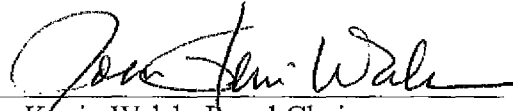
13. Pursuant to ABA Standard 9.23, there are no mitigating factors present in this case.

14. Based upon the evidence and admissions in this matter, the Panel finds that a one (1) year suspension is the appropriate discipline.

JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating factors set forth above, the Hearing Panel hereby finds that Mr. Cody should be suspended from the practice of law for one (1) year.

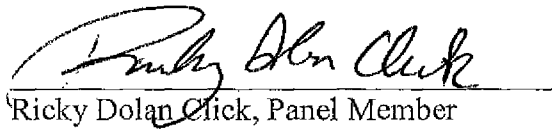
IT IS SO ORDERED.



John Kevin Walsh, Panel Chair



Rehim Babaoğlu, Panel Member



Ricky Dolan Cluck, Panel Member

NOTICE: This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 by filing a Petition for Writ of Certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the Writ. See Tenn. Code Ann. § 27-8-104(a) and 27-8-106.