

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

FILED

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BOARD OF PROFESSIONAL
RESPONSIBILITY

Ree EXEC. SEC.

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

DOCKET NO. 2016-2637-9-WM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for hearing on March 21, 2017 before a Hearing Panel consisting of Amber Floyd, Buckner Potts Wellford, and Kamilah Elaine Turner, Chair. The Board of Professional Responsibility (the "Board") was represented by William C. Moody. Mr. Cody was present for the hearing, and represented himself. At the outset of the hearing, the Hearing Panel considered Respondent's Motion to Dismiss and denied the motion.

FINDINGS OF FACT

1. Mr. Cody has practiced law in Tennessee since 1984.
2. Mr. Cody received a private reprimand from the Board on October 18, 2011 for a trust account violation.
3. 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.
4. On August 13, 2013, the court in *Braxton* entered an order finding that Mr. Cody must be disqualified from representing the plaintiffs, ordering him to refrain from filing any additional pleadings on their behalf, and dismissing the case.

5. Otis Braxton and Vivian Braxton appealed the August 13, 2013 District Court order.

6. On March 25, 2014, the Braxtons filed their Pro Se Appellant's Brief in the United States Circuit Court of Appeals for the Sixth Circuit.

7. On June 25, 2014, the Braxtons filed their Pro Se Appellant's Response to Appellees' Initial Brief in the United States Circuit Court of Appeals for the Sixth Circuit.

8. The Pro Se Appellant's Brief and the Pro Se Appellant's Response to Appellees' Initial Brief were prepared by Mr. Cody on his computer, and essentially drafted on behalf of the Braxtons by Mr. Cody.

9. On July 14, 2014, the Board initiated a formal disciplinary proceeding against Mr. Cody, Docket Number 2014-2339-9-WM, alleging that Mr. Cody, by his role in the preparation of the Pro Se Appellant's Brief and the Pro Se Appellant's Response to Appellees' Initial Brief, created the false impression that the Braxtons were without substantial legal assistance and he knowingly disobeyed the August 13, 2013 order of the U.S.D.C. prohibiting him from filing additional pleadings on behalf of the plaintiffs.

10. On March 25, 2015, while Docket Number 2014-2339-9-WM was pending, the Braxtons filed, pro se, their Petition for Panel Rehearing and Rehearing en Banc in the United States Circuit Court of Appeals for the Sixth Circuit.

11. On April 2, 2015, a judgment was issued by the Hearing Panel in Docket Number 2014-2339-9-WM, finding that 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, engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(d), Misconduct, and engaged in conduct involving deceit in violation of RPC 8.4(c), Misconduct, and recommended a suspension of one year.

12. Mr. Cody appealed the April 2, 2015 Hearing Panel judgment by filing a Petition for Writ of Certiorari in the Shelby County Circuit Court.

13. On September 9, 2015, while Mr. Cody's appeal in Docket Number 2014-2339-9-WM was pending, the Braxtons filed, pro se, their Petition for Writ of Certiorari in the United States Supreme Court.

14. On December 8, 2015, Otis Braxton and Vivian Braxton filed, pro se, their Petition's (sic) Reply Brief in the United States Supreme Court.

15. The Petition for Panel Rehearing and Rehearing en Banc, the Petition for Writ of Certiorari, and the Reply Brief were prepared by Mr. Cody on his computer and essentially drafted on behalf of Otis and Vivian Braxton by Mr. Cody.

16. Mr. Cody failed to disclose his role in preparation of the pro se pleadings.

17. On July 7, 2016, the Tennessee Supreme Court dismissed Mr. Cody's appeal in Docket Number 2014-2339-9-WM and entered an order of enforcement suspending Mr. Cody for one year.

18. In this Petition for Discipline, the Board alleged in paragraph 38, that "Mr. Cody's prior disciplinary offenses are an aggravating factor justifying an increase in discipline to be imposed against him."

19. In his Respondent's Response's to Board's Petition for Discipline, Mr. Cody replied to paragraph 38 of the Petition for Discipline by stating, "False. No prior disciplinary offenses on Respondent's part."

20. Mr. Cody testified that he denied the existence of prior disciplinary offenses including a private reprimand for actions unrelated to his representation of the Braxtons because he does not acknowledge their legitimacy.

21. Mr. Cody refuses to acknowledge the wrongful nature of his conduct in the prior

petitions for discipline brought against him, one of which concerned conduct unrelated to his representation of the Braxtons, as well as in the present petition for discipline.

22. 22. Mr. Cody was aware of the existence of an Ethics Opinion addressing the issue of providing assistance to a pro se litigant, but violated the pertinent provisions of that opinion by drafting and assisting in the filing of legal documents with the Court of Appeals and Supreme Court of the United States on behalf of the Braxtons.

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Sup. Ct. R. 9, § 1, 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 Petition for Panel Rehearing and Rehearing en Banc, the Petition for Writ of Certiorari and the Reply Brief, Mr. Cody knowingly and intentionally violated the District Court's Order of August 13, 2013.

3. By preparing the Braxton's Petition for Panel Rehearing and Rehearing en Banc, the Petition for Writ of Certiorari and the Reply Brief, Mr. Cody engaged in undisclosed participation on 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 Petition for Panel Rehearing and Rehearing en Banc, the Petition for Writ of Certiorari, and the Reply Brief, 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 Petition for Panel Rehearing and Rehearing en Banc, the Petition for Writ of Certiorari and the Reply Brief, 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 on 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).

8. 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.

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

10. 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.

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

- a. Prior disciplinary offenses.
- c. A pattern of misconduct.
- d. Multiple offenses.
- e. Refusal to acknowledge wrongful nature of conduct.
- f. Substantial experience in the practice of law.

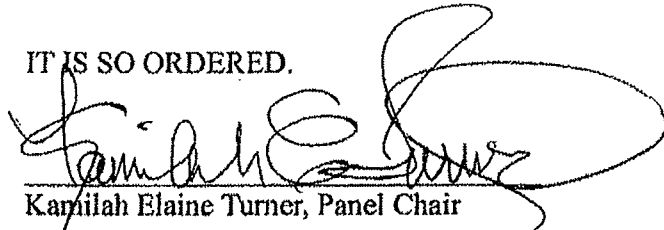
12. Pursuant to ABA Standard 9.23, the following mitigating factors exist with respect to a decision whether to suspend or disbar Mr. Cody: (a) Mr. Cody does not appear to have financially benefitted from his involvement in drafting legal documents on behalf of the Braxtons; (b) The Tennessee Supreme Court's order enforcing Mr. Cody's one year suspension and dismissing his appeal was entered on July 7, 2016, and it is not alleged that he engaged in inappropriate conduct after that date.

13. Based upon the evidence and admissions in this matter, the Panel finds that a two-year suspension, as opposed to disbarment, is the appropriate discipline.

JUDGMENT

In light of the Findings of Fact and Conclusions of Law and the aggravating as well as mitigating factors set forth above, the Hearing Panel hereby finds that Mr. Cody should be suspended from the practice of law for two years.

IT IS SO ORDERED.


Kamilah Elaine Turner, Panel Chair


Amber Floyd, Panel Member


Buckner Potts Wellford, Panel Member

NOTICE TO RESPONDENT

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.

2025 RELEASE UNDER E.O. 14176

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent Homer L. Cody, 6955 North Watkins, Millington, TN 38053, by U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 18th day of April, 2017.

A handwritten signature in cursive script, appearing to read "Rita Webb", written over a horizontal line.

Rita Webb
Executive Secretary