



**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

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RELEASE OF INFORMATION
RE: HOMER L. CODY, BPR #10755
CONTACT: WILLIAM C. MOODY
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

April 20, 2018

SHELBY COUNTY LAWYER HELD IN CRIMINAL CONTEMPT

On April 19, 2018, the Supreme Court adopted the recommendation of a Special Master and held Homer L. Cody of Memphis, Tennessee in criminal contempt and sentenced him to serve thirty days in jail. The Court previously had entered an Order of Enforcement on July 27, 2015 suspending Mr. Cody's license to practice law for one-hundred eighty days; a second Order of Enforcement on July 7, 2016 suspending Mr. Cody's license for one year; and a third Order of Enforcement on August 11, 2017 suspending Mr. Cody's license for two years, in connection with three judgments of Hearing Panels issued on Petitions for Discipline filed by the Board of Professional Responsibility.

The Board received a complaint that after the effective date of the first two suspensions, Mr. Cody continued to practice law by filing two pleadings in a case in the Shelby County Chancery Court, and that after the effective date of the third suspension, Mr. Cody continued to practice law by filing a third pleading in the same case. Following an investigation, the Board filed a Petition for Contempt on August 11, 2017. The Supreme Court appointed a Special Master who held a hearing on December 4, 2017. In the report and recommendation filed on February 1, 2018, the Special Master found Mr. Cody guilty beyond a reasonable doubt of three counts of criminal contempt pursuant to Tenn. Code Ann. 29-9-102, and sentenced him to ten days in jail plus a \$50.00 fine for each.

On February 8, 2018, the Supreme Court ordered Mr. Cody to show cause why the recommendation should not be adopted. By the April 19, 2018 Order, the Court has adopted the recommendation finding that, while on suspension, Mr. Cody willfully and intentionally engaged in three separate acts of criminal contempt by filing the pleadings in the Chancery Court for Shelby County.

The Court sentenced Mr. Cody to a period of incarceration of thirty days and ordered him to pay a fine of \$150.00. Mr. Cody was ordered to surrender to the Shelby County Sheriff's Department by May 4, 2018.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

04/19/2018

Clerk of the
Appellate Courts

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

No. M2017-01668-SC-BAR-BP
BOPR No. 2017-2758-9-WM

ORDER

On July 27, 2015, Homer L. Cody was suspended from the practice of law for one hundred eighty (180) days by a Judgment of this Court. On July 7, 2016, this Court entered an Order of Enforcement which suspended Mr. Cody from the practice of law for one year. Mr. Cody has not requested, nor been granted, reinstatement. Mr. Cody has since been suspended for a period of two years by Order of Enforcement entered August 11, 2017.

On August 11, 2017, the Board of Professional Responsibility ("BPR") filed a Petition for Contempt, alleging that Mr. Cody had engaged in the practice of law during his period of suspension, in contempt of this Court's July 27, 2015 and July 7, 2016 Orders.

By Order entered August 25, 2017, this Court appointed Robert L. Childers to serve as Special Master; directed the Special Master to serve Mr. Cody, pursuant to Tennessee Rule of Criminal Procedure 42, with a notice of criminal-contempt hearing; instructed the Special Master to conduct an evidentiary hearing on the Petition; and directed the Special Master, upon completion of the hearing, to transmit the record of the proceedings and a report of his findings of fact and conclusions of law to this Court.

The Hearing before the Special Master occurred on December 4, 2017, and on February 1, 2018, the Special Master filed the record of the proceedings and a report of his findings of fact and conclusions of law with this Court. The Special Master determined the following:

Mr. Cody engaged in three separate acts of criminal contempt of both the July 27, 2015 and the July 7, 2016 orders by filing two separate pleadings in the Chancery Court of Shelby County on May 15, 2017, and filing a third pleading on June 2, 2017. The Special Master finds that the violations were willful and intentional and demonstrate a complete lack of respect for the Supreme Court's orders, considering that Mr. Cody received a Public

Censure, a 180-day suspension and a one-year suspension and yet still continues to practice law. Mr. Cody had the ability to comply with the orders of the Supreme Court of Tennessee. In light of the evidence and totality of the circumstances the Special Master finds Mr. Cody's conduct to be egregious and, therefore, recommends that Mr. Cody be fined \$50.00 for each of the three violations and, in addition, that he be sentenced to the maximum of ten (10) days incarceration for each of the three violations.

This Court filed an order on February 8, 2018, requiring Mr. Cody to respond to the Special Master's report and show cause why this Court should not enter judgment holding him in contempt of this Court's July 27, 2015 and July 7, 2016 Orders. The Court also ordered the BPR to respond to the Special Master's report.

Upon our review of the transcript of the hearing and the report filed by the Special Master in this matter, as well as the responses to the Special Master's report filed by Mr. Cody and the BPR, we adopt the findings of fact of the Special Master. Moreover, we adopt the Special Master's conclusion that Mr. Cody willfully and intentionally engaged in three separate acts of criminal contempt. Therefore, Mr. Cody is adjudged to be guilty of three counts of criminal contempt, and we must determine the appropriate punishment.

Tennessee Code Annotated section 29-9-102 (2012) provides the authority for this Court to punish criminal contempt: "The power of the several courts to issue attachments, and inflict punishments for contempts of court, shall not be construed to extend to any except the following cases: (3) The willful disobedience or resistance of any officer of the such courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of such courts" Tenn. Code Ann. § 29-9-102. "This provision enables the courts to maintain the integrity of their orders." Konvalinka v. Chattanooga-Hamilton Cty. Hosp. Auth., 249 S.W.3d 346, 354 (Tenn. 2008). "Criminal contempt . . . is designed 'to preserve the power and vindicate the dignity and authority of the law and the court as an organ of society.'" Baker v. State, 417 S.W.3d 428, 436 (Tenn. 2013) (quoting State v. Beeler, 387 S.W.3d 511, 520 (Tenn. 2012)). "Sanctions for criminal contempt are generally both punitive and unconditional in nature, designed to punish past behavior, not to coerce directly compliance with a court order or influence future behavior." Id.

Section 29-9-103 (2012) outlines the range of punishments for criminal contempt. It states:

- (a) The punishment for contempt may be by fine or by imprisonment, or both.
- (b) Where not otherwise specially provided, the circuit, chancery, and appellate courts are limited to a fine of fifty dollars (\$50.00), and

imprisonment not exceeding ten (10) days, and, except as provided in § 29-9-108, all other courts are limited to a fine of ten dollars (\$10.00).

Tenn. Code Ann. § 29-9-103.

Thus, section 29-9-103(b) authorizes up to ten days incarceration, as well as a fifty dollar (\$50.00) fine, for each of Mr. Cody's contempt convictions. The Special Master determined that the maximum sentence for each count of criminal contempt was appropriate in this case. Mr. Cody does not deny that he prepared and filed three filings, two filed on May 17, 2017, and the third on June 2, 2017. Mr. Cody does not deny that he was aware of his suspension from the practice law by Orders of this Court entered July 27, 2015, and July 7, 2016. Rather, Mr. Cody continues to argue, as he did before the Special Master, that the Supreme Court Orders of suspension were void for lack of jurisdiction.

Mr. Cody has made this argument multiple times, and this Court has previously ruled on this issue. Cody v. Board of Professional Responsibility, 471 S.W.3d 420, 425 (Tenn. 2015). Moreover, regardless of Mr. Cody's view of the rulings from this Court, Rule of Professional Conduct 8.4(g) states that an attorney must comply with orders entered in proceedings in which the lawyer is a party. Tenn. Sup. Ct. R. 8, RPC 8.4(g) ("It is professional misconduct for a lawyer to: . . . (g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party . . ."). There are two exceptions to this rule, but neither are applicable. Id. Finally, this Court has outlined the duty to follow orders, even though they are perceived to be erroneous, or even those held to be erroneous: "[E]ven though the trial judge's order is erroneous and is reversed on appeal, an adjudication of contempt for failure to obey that order will be sustained." State v. Jones, 726 S.W.2d 515, 517 (Tenn. 1987) (citing Vanvabry v. Staton, 88 Tenn. 334, 12 S.W. 786 (1890)).

Thus, given the blatant and deliberate manner in which these violations occurred, we find a ten-day sentence, as well as a fifty-dollar fine, for each of Mr. Cody's contempt convictions is appropriate. Therefore, we adopt the Special Master's conclusion as to sentencing and accordingly sentence Mr. Cody to ten days for each of his three criminal contempt charges and order him to pay a fine of fifty dollars (\$50.00) for each charge totaling one hundred fifty dollars (\$150.00).

Finally, we must determine the manner in which Mr. Cody shall serve his sentences. Tennessee Code Annotated section 40-35-115 outlines the applicable criteria for when "a defendant is convicted of more than one (1) criminal offense" and states that the Court "shall order sentences to run consecutively or concurrently as provided by the criteria in this section." Tenn. Code Ann. § 40-35-115 (2014). The decision regarding whether sentences are to be served concurrently or consecutively is left to the sound discretion of the sentencing court. See State v. Nelson, 275 S.W.3d 851, 870 (Tenn. Crim. App. 2008). The pertinent criteria for this case in section 40-35-115 states that a

defendant can be sentenced consecutively if “[t]he defendant is sentenced for criminal contempt.” Tenn. Code Ann. § 40-35-115. Any single ground is a sufficient basis for the imposition of consecutive sentences. State v. Pollard, 432 S.W.3d 851, 862 (Tenn. 2013). As Mr. Cody has been found guilty of criminal contempt, we find by a preponderance of the evidence that the criteria is satisfied to impose consecutive service for the three sentences of criminal contempt. See In re Sneed, 302 S.W.3d 825, 828 (Tenn. 2010) (ordering a partially consecutive sentence in an attorney criminal contempt case). Moreover, we find that a total effective sentence of thirty days’ incarceration is “a sentence justly deserved in relation to the seriousness of the offense[s],” Tenn. Code Ann. § 40-35-102(1), and “no greater than that deserved for the offense[s] committed.” Id. § 40-35-103(2).

Accordingly, pursuant to Tennessee Code Annotated section 29-9-103, we hereby sentence Mr. Cody to ten days’ incarceration in Shelby County Jail for each count, to be served consecutively, for a total effective sentence of thirty days’ incarceration. Mr. Cody shall surrender himself to the Shelby County Sheriff’s Department within fifteen days of the filing date of this Order. If Mr. Cody fails to report to the Shelby County Sheriff’s Department within fifteen days of the filing date of this Order, any law enforcement officer in this State is authorized to arrest Mr. Cody and transport him to the Shelby County Sheriff’s Department to serve his sentence. Furthermore, Mr. Cody shall pay a fine of fifty dollars (\$50.00) for each of the three counts, for a total fine of one hundred fifty dollars (\$150.00). The Clerk of this Court is directed to forward a copy of this order to Mr. Cody and the Sheriff of Shelby County. The Clerk also shall forward a copy of this Order to the Board of Professional Responsibility.

Upon the filing of the Special Master’s declaration of costs in this matter, both sides shall respond within ten days as to the assessment of costs.

PER CURIAM

HOLLY KIRBY, J., not participating.