



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

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

DOCKET NO. 2017-2770-9-WM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter came on for hearing on March 27, 2017 before a Hearing Panel consisting of David L. Bearman, Panel Member; Jennifer A. Sink, Panel Member; and Andre B. Mathis, Panel 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. Mr. Cody has been licensed to practiced law in Tennessee since 1984.
2. Mr. Cody represented both plaintiffs, Pee Wee Wisdom Child Development Center, Inc. ("Pee Wee") and Vivian Braxton ("Braxton"), in a civil action in the Shelby County Chancery Court. On February 3, 2011, the Board initiated a formal disciplinary proceeding against Mr. Cody under Docket Number 2011-2008-9-RS. A judgment was issued by the Hearing Panel in that action on September 8, 2011, finding that the Respondent had a conflict of interest in representing both Pee Wee and Braxton in violation of R.P.C. 1.7 and recommended a Public Censure. On March 16, 2012, the Supreme Court entered its order imposing that Public Censure.

3. Despite that finding of a conflict of interest, Mr. Cody continued his dual representation of Pee Wee and Braxton in the Chancery Court litigation. Consequently, on August 2, 2012, the Board filed a second Petition for Discipline against Mr. Cody, Docket Number 2012-2142-9-KB, again alleging that Mr. Cody had a conflict of interest because of his dual representation of Pee Wee and Braxton in the Chancery Court case.

On September 5, 2012, while the second disciplinary case was pending, Mr. Cody filed a civil Racketeer Influenced and Corrupt Organizations ("RICO") Act complaint in the United States District Court for the Western District of Tennessee on behalf of Vivian Braxton, her husband, Otis Braxton, and Pee Wee, thereby continuing his conflict of interest. The second disciplinary case was amended to include an allegation that Mr. Cody had a conflict of interest by representing both Pee Wee and Braxton in the federal court case, too.

On October 28, 2013, the Hearing Panel in the second disciplinary case recommended a 180-day suspension because of Mr. Cody's continued conflict of interest in representing both Pee Wee and Braxton in the Chancery Court case as well as in the federal RICO case. Mr. Cody appealed that Hearing Panel's decision to Circuit Court where the decision was affirmed. Mr. Cody appealed the Circuit Court decision to the Supreme Court where it was affirmed on July 27, 2015. (*Cody v. Bd. of Prof'l Responsibility of Supreme Court of Tennessee*, 471 S.W.3d 420 (Tenn. 2015))

4. On August 13, 2013, an order was entered in the federal RICO case finding that Mr. Cody had a conflict of interest in representing both Pee Wee and Braxton and granted the defendants' motion to disqualify Mr. Cody and dismissed the action with prejudice. The order provided that Mr. Cody "is again **ORDERED** to refrain from filing any additional pleadings, motions, responses or cases on behalf of these parties at any time, now and in the future."

Otis Braxton and Braxton appealed the dismissal of their case *pro se*. On March 25, 2014, they filed their *Pro Se* Appellants' Brief in the United States Circuit Court of Appeals for the Sixth Circuit. On March 25, 2014, they filed their *Pro Se* Appellants' Response to Appellees' Initial Brief in the United States Circuit Court of Appeals for the Sixth Circuit. The two briefs were ghost-written by Mr. Cody in violation of the August 13, 2013 order.

Because Mr. Cody violated the court's order to refrain from filing any further pleadings on behalf of the parties by ghost-writing their appellate briefs, on July 14, 2014, the Board filed the third disciplinary action against Mr. Cody arising from his representation of these parties. On April 2, 2015, the Hearing Panel in the third disciplinary case found that by preparing the Braxtons' *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. Mr. Cody appealed that Hearing Panel's decision to Circuit Court where the decision was affirmed. Mr. Cody appealed the Circuit Court decision to the Supreme Court. His appeal was dismissed and an order of enforcement was entered on July 7, 2016 imposing the one-year suspension.

5. On March 11, 2015, the Sixth Circuit issued its order disposing of the Braxtons' appeal. On March 25, 2015, the Braxtons filed their *pro se* Petition for Panel Rehearing and Rehearing En Banc in the United States Circuit Court of Appeals for the Sixth Circuit. On June 11, 2015, the Sixth Circuit issued an order denying the Petition. On September 9, 2015, the Braxtons filed their *pro se* Petition for Writ of Certiorari in the United States Supreme Court. On December 8, 2015, they filed their *pro se* Petition's (sic) Reply Brief in the United States

Supreme Court. All three of these most recent "*pro se*" pleadings were ghost-written by Mr. Cody.

On September 28, 2016, the Board initiated a fourth formal disciplinary proceeding against Mr. Cody, Docket Number 2016-2637-9-WM, alleging that Mr. Cody by his role in the preparation of the March 25, 2015 Petition for Panel Rehearing and Rehearing En Banc, the September 9, 2015 Petition for Writ of Certiorari and the December 8, 2015 Petition's (sic) Reply Brief, Mr. Cody created the false impression that the Braxtons were without substantial legal assistance and he knowingly disobeyed the August 13, 2013 order of the United States District Court prohibiting him from filing additional pleadings on behalf of the plaintiffs.

A judgment was issued by a Hearing Panel in Docket Number 2016-2637-9-WM on April 18, 2017 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 two years. On August 11, 2017, the Tennessee Supreme Court entered an order of enforcement suspending Mr. Cody for two years.

6. On May 15, 2017, in the Chancery Court case previously referred to herein, Mr. Cody filed an "Open Refusal to Obey Judicial Orders."

7. On May 15, 2017, Mr. Cody filed "Plaintiffs' Objections to Receiver's Interim Final Accounting, Request for Fees and Expenses, and Motion for Complete Accounting at Receiver's Personal Expense and Determination of Receiver's Personal Liabilities."

8. On June 2, 2017, Mr. Cody filed a "Response to Michael McLaren's Motion to Strike Pleadings (sic) and for Sanctions, Objection to McLaren (sic) Fees, Motion to Disgorge, and Motion for Criminal Referral (sic)."

9. On September 14, 2017, Mr. Cody filed a "Motion for Determination of Proper Venue."

10. At the time Mr. Cody filed the pleadings referred to in paragraphs 6 through 9 above, Mr. Cody was suspended from the practice of law.

11. Mr. Cody does not dispute any of the facts, but asserts that his actions either were not violative of any court order or the Tennessee Rules of Professional Conduct based upon his contention that "all prior prosecutions are void due to failure of Board jurisdiction over the conflict issue and the determination as to whether the orders of another tribunal had been willfully disobeyed."

12. To date the Tennessee Supreme Court has entered four (4) disciplinary orders affirming the judgments of a Hearing Panel arising out of these facts: public censure on March 16, 2012; 180 day suspension from the practice of law on July 27, 2015; one year suspension from the practice of law on July 7, 2016; and two year suspension from the practice of law on August 11, 2017.

13. Mr. Cody acknowledged the existence of the Tennessee Supreme Court's Order entered on August 11, 2017, but denies its legitimacy.

14. Mr. Cody has not acknowledged and still does not acknowledge that his conduct as set out in prior petitions for discipline and the present one was wrongful and/or improper. Moreover, Mr. Cody testified that there "was no end" to his willful violation of any current or future Tennessee Supreme Court Order

CONCLUSIONS OF LAW

1. This panel has jurisdiction over the Petition pursuant to Tennessee Supreme Court Rule 9. By virtue of the prior findings that Mr. Cody had a conflict of interest in his dual representation in the Chancery Court litigation, that fact is conclusively determined in the present case.¹

2. 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.

3. By filing the May 15, 2017 "Open Refusal to Obey Judicial Orders," the May 15, 2017 "Plaintiffs' Objections to Receiver's Interim Final Accounting, Request for Fees and Expenses, and Motion for Complete Accounting at Receiver's Personal Expense and Determination of Receiver's Personal Liabilities," the June 2, 2017 "Response to Michael McLaren's Motion to Strike Pleadings (sic) and for Sanctions, Objection to McLaren (sic) Fees, Motion to Disgorge, and Motion for Criminal Referral (sic)," and the September 14, 2017 "Motion for Determination of Proper Venue," Mr. Cody engaged in a conflict of interest in violation of RPC 1.7(a) (Conflict of Interest).

4. By filing the May 15, 2017 "Open Refusal to Obey Judicial Orders," the May 15, 2017 "Plaintiffs' Objections to Receiver's Interim Final Accounting, Request for Fees and Expenses, and Motion for Complete Accounting at Receiver's Personal Expense and

¹ See also *Cody v. Bd. of Prof'l Respon.*, 471 S.W.3d 420 (2015).

Determination of Receiver's Personal Liabilities," the June 2, 2017 "Response to Michael McLaren's Motion to Strike Pleadings (sic) and for Sanctions, Objection to McLaren (sic) Fees, Motion to Disgorge, and Motion for Criminal Referral (sic)," and the September 14, 2017 "Motion for Determination of Proper Venue" while suspended from the practice of law, Mr. Cody engaged in the unauthorized practice of law in violation of RPC 5.5(a) (Unauthorized Practice of Law).

5. By filing the May 15, 2017 "Open Refusal to Obey Judicial Orders," the May 15, 2017 "Plaintiffs' Objections to Receiver's Interim Final Accounting, Request for Fees and Expenses, and Motion for Complete Accounting at Receiver's Personal Expense and Determination of Receiver's Personal Liabilities," the June 2, 2017 "Response to Michael McLaren's Motion to Strike Pleadings (sic) and for Sanctions, Objection to McLaren (sic) Fees, Motion to Disgorge, and Motion for Criminal Referral (sic)," and the September 14, 2017 "Motion for Determination of Proper Venue" while suspended from the practice of law, Mr. Cody committed the criminal act of unlawful practice as proscribed by Tenn. Code Ann. § 23-3-103(a) in violation of RPC 8.4(b) (Misconduct).

6. By filing the May 15, 2017 "Open Refusal to Obey Judicial Orders," the May 15, 2017 "Plaintiffs' Objections to Receiver's Interim Final Accounting, Request for Fees and Expenses, and Motion for Complete Accounting at Receiver's Personal Expense and Determination of Receiver's Personal Liabilities," the June 2, 2017 "Response to Michael McLaren's Motion to Strike Pleadings (sic) and for Sanctions, Objection to McLaren (sic) Fees, Motion to Disgorge, and Motion for Criminal Referral (sic)," and the September 14, 2017 "Motion for Determination of Proper Venue" while suspended from the practice of law, Mr. Cody knowingly failed to comply with multiple court orders from proceedings in which he was a

party in violation of RPC 8.4(g) (Misconduct). The actions by Respondent were not done in good faith to determine the “validity, scope, meaning, or application of law upon which the order is based.” RPC 8.4(g).

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

- a. RPC 1.7(a) (Conflict of interest).
- b. RPC 5.5(a) (Unauthorized Practice of Law).
- c. RPC 8.4(b) and (g) (Misconduct).
- d. 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. Prior to consideration of any aggravating or mitigating circumstances, the following ABA Standards apply to this case:

6.21. Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

- 8.1 Disbarment is generally appropriate when a lawyer:
- (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
11. Pursuant to ABA Standard 9.22, the following aggravating factors are present in

this case:

- a. Prior disciplinary offenses.
 - b. A pattern of misconduct.
 - c. Multiple offenses.
 - d. Refusal to acknowledge wrongful nature of conduct.
 - e. Substantial experience in the practice of law.
 - f. Illegal conduct.
12. Pursuant to ABA Standard 9.23, there are no mitigating factors present in this

case.

13. Based upon the evidence and admissions in this matter, the Panel finds that a disbarment 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 disbarred from the practice of law.

IT IS SO ORDERED.

Andre B. Mathis

Andre Bernard Mathis, Panel Chair

Jennifer Anne Sink by Andre Mathis
Jennifer Anne Sink, Panel Member *w/ permission*

David Lee Bearman by Andre Mathis
David Lee Bearman, Panel Member *w/ permission*

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.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Respondent, Homer L. Cody, 6955 North Watkins Road, Millington, TN 38053, by U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 8th day of June, 2018.

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

Rita Webb
Executive Secretary

NOTICE

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.