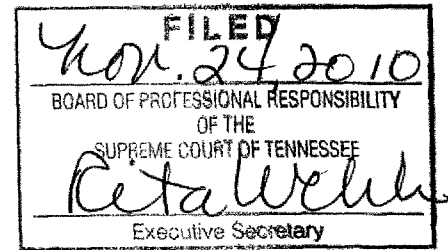


IN DISCIPLINARY DISTRICT I
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: THOMAS EWING COWAN, DOCKET NO. 2010-1900-1-KH(14)
BPR #2026, Respondent,
An Attorney Licensed and
Admitted to Practice
Law in Tennessee
(Carter County)

JUDGMENT

This matter came on for hearing before a duly appointed Hearing Panel on October 14, 2010 upon a Petition for Final Discipline filed by the Board pursuant to Tenn. S. Ct. R. 9, Section 14. Present were Barry Paul Staubus, Panel Chair; Kenneth Clark Hood, Panel Member; William Erwin Phillips, Panel Member; Krisann Hodges, Disciplinary Counsel; and Thomas Cowan, Respondent. Upon statements of counsel, testimony of Respondent, evidence presented, and upon the entire record in this cause, the Panel makes the following findings and judgment.

STATEMENT OF THE CASE

On March 1, 2010, the Tennessee Supreme Court suspended Respondent pursuant to Section 14 of Tenn. S. Ct. R. 9 due to Respondent's plea of guilty entered in the United States District Court, Eastern District of Tennessee, involving a crime, to wit: willful attempt to defeat or evade the payment of taxes, in violation of 26 U.S.C. 7201.

The March 1, 2010 Order referred the matter to the Board of Professional Responsibility for the institution of formal proceedings. Accordingly, the Petition for Final Discipline was filed in this cause on March 4, 2010. Both parties submitted pre-trial briefs for the Panel's consideration.

FINDINGS¹

On September 25, 2009, Respondent pled guilty to a charge involving a federal crime, to wit: willful attempt to defeat or evade the payment of taxes, in violation of 26 U.S.C. 7201.

On or about August 16, 2010, a Judgment was entered sentencing Respondent to a term of imprisonment of twelve (12) months and one (1) day, a term of supervised release of three (3) years, and restitution in the amount of \$270,169.00.

The Panel finds that the Respondent's guilty plea is conclusive evidence of the crime of willful attempt to defeat or evade the payment of taxes, in violation of 26 U.S.C. 7201. Pursuant to Tenn. S. Ct. R. 9, Section 14, the sole issue to be determined in this matter is the extent of final discipline.

After hearing arguments from the Board and Respondent, the Panel concludes that ABA Standard 5.11(a) is not applicable, since it recommends disbarment for attorneys who engage in serious criminal conduct only if the crime contains one of the following elements: intentional interference with the administration of justice; false swearing; misrepresentation;

¹ The decision of the Panel was not unanimous. Panel Chair Staubus dissents from the findings of the Panel as set forth below.

fraud; extortion; misappropriation; theft; the sale, distribution, or importation of controlled substances; the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses. The elements of the crime of tax evasion are a tax deficiency, an evasive act, and a willful act, none of which are included in the list of elements in Standard 5.11(a). rendering that Standard inapplicable.

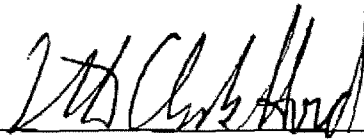
Further, the Panel has determined that ABA Standard 5.11(b) is also inapplicable because “any *other* intentional conduct” applies to conduct other than “criminal offenses,” since Standard 5.11(a) refers to criminal offenses. The Panel has determined, therefore, that the crime of tax evasion does not fit within either subsection of ABA Standard 5.11, but does fall within ABA Standard 5.12 which states that suspension is appropriate “when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer’s fitness to practice.”

The Panel finds that ABA Standard 5.12, recommending suspension, does apply to Respondent’s disciplinary misconduct because it specifically refers to “criminal conduct” and because the Panel finds that Respondent’s conduct seriously adversely reflects on his fitness to practice law.

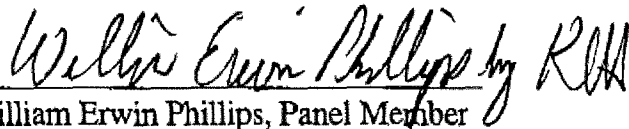
The Panel finds that there are several aggravating factors, including prior disciplinary history, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law under Standard 9.22. The Panel finds that the only mitigating circumstance under Standard 9.32 is the imposition of other penalties or sanctions, but that the aggravating circumstances outweigh the mitigating circumstance.

JUDGMENT

Accordingly, it is the decision of the Panel that Respondent should be suspended from the practice of law for two (2) years. As a condition of reinstatement, Respondent must demonstrate that he has completely and satisfactorily fulfilled the conditions of his plea agreement.




Kenneth Clark Hood, Panel Member



William Erwin Phillips, Panel Member

DISSENT

Panel Chair Staubus respectfully dissents from the findings and judgment of the majority of the Hearing Panel. It is the opinion of Mr. Staubus that ABA Standard 5.11(a)(b) applies and that disbarment is the appropriate sanction. Further, Mr. Staubus finds that ABA Standard 7.1 is also applicable.



Barry Paul Staubus, Panel Chair

Prepared by:

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Brentwood, TN 37027
(615) 361-7500

CERTIFICATE OF SERVICE

I certify I have served a copy of the foregoing FINDINGS AND JUDGMENT, on Respondent, Thomas Ewing Cowan, by mailing a copy to him at 111 South Main Street, Elizabethton, Tennessee, 37643-4516 and to USP McCreary, U.S. Penitentiary, Inmate #32547-074, P.O. Box 3000, Pine Knot, Kentucky 42635 on the ____ day of October, 2010.

Krisann Hodges