

IN THE CHANCERY COURT FOR CARTER COUNTY, TENNESSEE

BOARD OF PROFESSIONAL	)		
RESPONSIBILITY OF THE	)		
SUPREME COURT OF	)		
TENNESSEE,	)		
Petitioner,	)		
	)	No. 27363	
vs.	)	BPR Docket Nos.	2004-1439-1-TH
	)		2006-1571-1-TH
THOMAS EWING COWAN,	)		2006-1776-1-KH
Respondent.	)		

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FINDINGS and CONCLUSIONS

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As a result of four separate petitions for discipline which included supplemental petitions filed by the Board of Professional Responsibility, a Hearing Panel suspended Respondent from the practice of law for a period of three years and the Panel also ordered restitution in one case. These Petitions filed by the Board alleged nineteen separate instances of professional misconduct, covering a period of approximately eight years. The Board voluntarily dismissed one charge of misconduct. The Hearing Panel concluded that the Board had proven by a preponderance of the evidence the remaining eighteen charges. The Hearing Panel found that the Respondent violated numerous disciplinary rules including 8.1; 8.4(a) and (d); 3.2 and 1.3. Both the Board and the Respondent filed writs of certiorari to this Court.

Rule 9, Section 1.3 provides in pertinent parts as follows:

The review shall be on the transcript of the evidence before the hearing panel

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April 2010 AT 4:25  
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MELISSA MCQUEEN  
CLERK / DEPUTY

and its findings and judgment . . . The court may affirm the decision of the panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record.

The basis for Respondents request for relief is the assertion that the Panel failed to consider as a mitigating circumstance the Respondent's tender of a conditional plea of guilty on June 26, 2007. The Hearing Panel approved the conditional plea on August 8, 2007. The plea's terms called for a suspension of three months. Consequently, Respondent took action to conform to the plea's terms. However, the plea was rejected by the Supreme Court on May 13, 2008 and remanded for further proceeding resulting in this three-year suspension. The Supreme Court has the final authority to approve or reject a tendered conditional guilty plea pursuant to Rule 9 § 16.1. The rejection of Respondent's conditional plea is not a mitigating factor. Respondent's further claims for relief in this writ is a reiteration of his testimony or arguments before the Hearing Panel and this Court. Specifically, Respondent attributes the majority of the complaints to client dissatisfaction; inadvertent negligence; problems in his office and personal affairs. This Court has reviewed the entire Record and finds that his arguments are without merit.

The Board asserts that the Hearing Panel's decision to suspend rather than disbar the Respondent was "arbitrary or capricious or characterized by abuse of discretion or clearly

unwarranted exercise of discretion.” Rule 9 § 1.3 (4). The Board asserts that the Hearing Panel failed to follow the ABA Standards for Imposing Lawyer Sanction as mandated by Rule 9 § 8.4.

The Respondent has been practicing law since 1968. As the Hearing Panel noted, he has a lengthy history of prior disciplinary sanctions, including suspension. He has received fifteen private admonitions. He has been suspended from practice before the U.S. District Court of the Eastern District of Tennessee. Furthermore, he has been suspended from practice from the 1st Judicial District of Tennessee. His prior disciplinary sanctions are similar to the eighteen charges that were sustained by the Hearing Panel. In the *Sue Ann Meade Case*, the Panel found that Respondent misrepresented to Chancellor Johnson that he had paid his annual registration fee. After a review of the transcript, “misrepresentation” is a mild description of his conduct. Respondent was aware many months before that his fees had not been paid and that he was subject to summary suspension. He accepts little blame for the fact that this case had to be retried at considerable expense to the parties, and the administration of justice. It is worth noting that this was not the first time Respondent was delinquent and sanctioned for his failure to pay fees. Several of the complaints sustained by the Hearing Panel involved his consistent failure to file orders or judgments within the parameters of the Rules of Court. These instances involved the *Peters Schilling*, *Tester*, *Benefield and Hawkins* matters. As the Hearing Panel concluded, Respondent’s lack of diligence delays the progress of litigation and prevents the conclusion of simple matters. In

the *Guinn* case, Respondent took no action for five years. In the *Ward* case, he took no action to disburse settlement funds. In *Ward*, his client learned of the settlement not from Respondent, but from another source. In *Persada* he failed to notify his client of an adverse decision by the Court of Appeals. Respondent also failed to communicate with his clients, specifically in the *Roark* case. He failed to disclose to Ms. Fink that she was signing a Power of Attorney. The *Celmer Taylor* case is a striking case of Respondent's insouciance to his responsibilities as an attorney. His statement "maybe she will die or you can shoot her" may have resulted in actions of a tragic proportions. It is not necessary to review the particular facts and circumstances of each allegation of misconduct. Suffice it to say, this Court agrees with the Hearing Panel in its factual findings. Respondent's lack of diligence and candor has been egregious and he has continued to display systematic conduct that is prejudicial to the administration of justice.

As mentioned above, the Board asserts that disbarment is the appropriate sanction. The ABA Standards for Imposing Lawyer Sanction requires that four factors be weighed in determining the appropriate sanction: "(a) the duty violated; (b) the lawyer's mental state; (c) the actual or potential injury caused by the lawyer's conduct; and (d) the existence of aggravating or mitigating factors." The majority of the misconduct of the Respondent dealt with lack of diligence and conduct prejudicial to the administration of justice. The Panel found that Respondent acted knowingly and caused injury or potential injury to clients. The Panel also found that Respondent was not credible. This finding is supported throughout

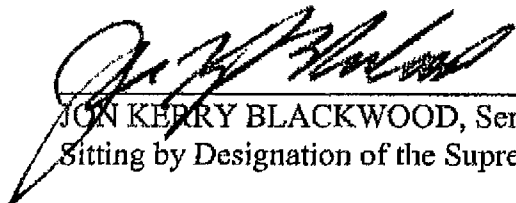
the Record. The Respondent's testimony is self-serving, evasive and specious. In his explanation of these allegations, he attempts to deflect his own responsibility and place blame on his clients and even the administration of justice. The Panel found that the Respondent violated duties to clients, the legal profession and the legal system. Finally, the Panel found no mitigating circumstances, but found nine aggravating factors that included prior disciplinary offenses; dishonest or selfish motives; a pattern of misconduct, multiple offenses; bad faith obstruction of the disciplinary proceeding; refusal to acknowledge wrongful nature of conduct; vulnerability of victim; substantial experience in the practice of law; and indifference to making restitution. The Panel did not make a finding on whether Respondent benefitted from his prior disciplinary proceedings. It is, however, obvious from the Record that he has failed to benefit from any of the prior legal proceedings filed against him.

As explained above, the decision of a hearing panel may be modified or reversed "if the decision is (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Under the abuse of discretion standard, the trial court ruling "will be upheld so long as reasonable minds can disagree as to the propriety of the decision made." State v. Scott, 33 S.W.3rd 746, 752 (Tenn. 2000); State v. Gilliland, 22 S.W.3rd 266, 273 (Tenn. 2000). A trial court abuses its discretion only when it "applies an incorrect legal standard, or reach[es] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." State v. Shirley, 6 S.W.3rd 243, 247 (Tenn. 1999). The abuse of discretion standard does not permit the appellate court to substitute its

judgment for that of the trial court. Myint v. Allstate Ins. Co., 970 S.W. 2d 920, 927 (Tenn. 1998).

The Respondent's ethical violations in this case display a total disregard for his ethical responsibilities to his clients, the public and the legal profession. Respondent displays no remorse and little indication that his past experiences have impressed upon him the need to reform and rehabilitate. To the contrary, he evinces a total disdain for the disciplinary process and the important function it discharges to our profession and the public. Reasonable minds could certainly question whether a three-year suspension was an appropriate sanction given the history and attitude of Respondent. However, in applying the abuse of discretion standard, this Court does not find that the Panel either abused its discretion or that the discretion was clearly unwarranted. Consequently, the judgement of the Hearing Panel is affirmed.

ENTER THIS THE 16<sup>th</sup> DAY OF April, 2010.

  
JON KERRY BLACKWOOD, Senior Judge  
Sitting by Designation of the Supreme Court

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, Court Clerk, hereby certify that I have mailed a true and exact copy of same to all Counsel of Record this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
CLERK

**CERTIFICATE OF SERVICE**

I, Melissa Moreland, Clerk and Master for the Chancery Court of Carter County, Tennessee, hereby certify that a copy of the foregoing Findings and Conclusions was served upon the parties by depositing in the U. S. Mail with sufficient first-class prepaid postage addressed as follows:

Honorable Jon Kerry Blackwood  
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This the 19th day of April, 2010.

  
Melissa Moreland  
Clerk and Master